IN THE CIRCUIT COURT FOR BALTIMORE CITY
(PART 9)

STATE OF MARYLAND	*	
v.	*	CASE NO. 199103042,43,45,46
ADNAN SYED	*	
Defendant	*	
_____/*		

BALTIMORE, MARYLAND

THURSDAY, FEBRUARY 24, 2000

(TRIAL ON THE MERITS)

BEFORE:

THE HONORABLE WANDA K. HEARD, ASSOCIATE JUDGE
(AND A JURY)

APPEARANCES:

FOR THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN C. MURPHY, ESQUIRE

FOR THE DEFENDANT:

CRISTINE GUTIERREZ, ESQUIRE

RECORDED BY: VIDEOTAPE

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BALTIMORE CITY
CRIMINAL DIVISION

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PROCEEDINGS

(9:37 a.m.)

(Jury not present)

THE COURT: Good morning, everyone.

MS. MURPHY: Good morning.

MR. URICK: Good morning.

THE COURT: I understand that Mr. Syed is being brought up. While he is on his way, with regard to my morning docket, I understand I only have one matter.

MR. URICK: I just tried to fill out your form, Your Honor.

THE COURT: That involves Chaz Johnson?

(Off-the-record discussion not pertaining to this matter.)

THE COURT: We're waiting for Mr. Syed to arrive. And as soon as he does arrive, we'll begin. All the jurors are present, we've already checked.

MS. MURPHY: Your Honor, may I be excused briefly?

THE COURT: Yes.

Mr. White, as soon as Mr. Syed arrives, I'm going to ask that you put the jury panel in the box, and then I'll come out, okay? Because this is a waste of time. As soon as you see him come in the door, just go get the jury and put them on. If they ask you what you're doing, tell

them I said so, okay?

The Court will take a brief recess.

(Whereupon, the trial was recessed at 9:42 a.m. and subsequently reconvened at 9:54 a.m.)

(Jury present)

THE COURT: We're back on the record in the case of State versus Adnan Syed. At this time we need to reswear in the witness.

Will you stand, sir?

Whereupon,

SYED RAHMAN

was recalled as a witness at 9:54 a.m., and after having been first duly affirmed, was examined and testified as follows:

THE CLERK: You may be seated.

Please keep your voice up. State your name and your address for the record. Name?

THE WITNESS: My name is Syed Rahman.

THE CLERK: Your address?

THE WITNESS: [redacted] Johnnycake Road, Catonsville, Maryland.

THE COURT: I believe we were about to start with cross-examination.

MR. URICK: Yes, just a few questions. Thank you, Your Honor.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. URICK:

Q Good morning.

A Good morning, sir.

Q You live on Johnnycake Road, is that correct?

A That's right.

Q And the mosque is on Johnnycake Road, too, is that correct?

A That's correct.

Q Now, you said the mosque is just east of Rolling Road on Johnnycake, is that correct?

A Yeah.

Q And your house is just west of Rolling Road on Johnnycake?

A Well, it's on the same road.

Q But Rolling Road comes between your house and the mosque, is that correct?

A That's correct.

Q And at that -- along there, Johnnycake Road runs parallel to I-70, doesn't it?

A No. It is crossing I-70. Johnnycake Road is -- yeah, approximately parallel, yeah.

Q It crosses Rolling Road but runs parallel to I-70?

A That's correct.
Q Thank you.
And you've owned that house for how long?
A For approximately 11 years.
Q You bought it yourself?
A That's correct.
Q And you own two cars at the moment?
A We own two personal car, and one is the state vehicle which I used for the job.
Q So you own two cars and you have one state-provided car as well?
A That's correct.
Q So you have access to three vehicles?
A That's right.
Q And you have a phone in the house, don't you?
A Yeah.
Q And that phone's listed in your name?
A Yeah, it's in my name.
Q Do you have a cell phone of your own?
A Yeah.
Q Now, if I understood correctly, you said during Ramadan you would generally get to the mosque about 7:30 to 7:45, and then the prayers would begin at 8, is that correct?
A That's correct.

Q And the prayers would take 2½ hours?
A Two hours, 2½ hour, it depends.
Q So, in general, when you would leave the mosque, it would be around 10:30?
A Yeah, 10:30 or quarter of 11, yeah.
Q When was it that you found out that your son had a cell phone?
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q You may answer the question.
A Yeah. It's probably 12th.
Q Pardon me?
A Twelfth. Twelfth of January.
Q And when you found out that he had a cell phone, you found out that it was signed for by someone who was not a family member, didn't you?
A Yeah, I knew it.
Q And that the bill went to that person's house, not your house, didn't it?
A That's correct.
Q Now, your son's name is Adnan, is that correct? A-D-N-A-N?
A Yes, sir.
Q It's not Adrian, A-D-R-I-A-N?

A No.

Q And his last name is spelled S-Y-E-D, is that correct?

A That's correct.

Q With only one D?

A That's right.

Q There are not two D's in his last name?

A That's right.

Q Okay, thank you.

Now, when you were testifying about usual custom of how you would go to the mosque, it would sometime vary on any given day, wouldn't it?

A Can you say that again, please?

Q When you were saying your usual custom about going to the mosque, that was an average, but on any given day it might have been different, might it not?

A Well, actually, it's every time. It's, you know, preferable to go to the mosque. But in Ramadan, that's a very special occasion.

Q The Defendant, your son, basically had free use of a car, didn't he?

A Most of the time.

Q He would use that to drive to school?

A That's correct.

Q He would use that to go to functions at school?

A That's correct.

Q Go to visit his friends?

A Yeah, it's correct.

Q He'd drive to the mosque in it?

A Oh, we drive together.

Q And when you were testifying about usual custom, you're not making any specific testimony about any given day, were you?

A Well, the specific day is the 14th. That is the day when he led the prayers. But all the days, all the days in Ramadan he had been going with me.

Q So it's the 14th that you've been talking about specifically?

MS. GUTIERREZ: Objection.

THE WITNESS: No, it's the whole month.

THE COURT: Overruled.

MR. URICK: If I may have the Court's indulgence for just a second.

THE COURT: Certainly.

(Pause)

MR. URICK: Thank you, Your Honor. That'd be all the questions we'd have.

THE COURT: Very well. Witness with you.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Rahman, just a couple questions.

Was your son Adnan's getting a cell phone hidden from you?

A No, it was not hidden.

Q Was it done with your permission?

A That's correct.

Q Were you aware of it before he got it?

A Yeah.

Q And did you approve of him getting a cell phone?

A Yeah, because he needed it for his job, to be called in the winter when he was needed.

Q Okay. Were you aware that prior to his getting a cell phone he used the home phone that's in your house?

A That's correct.

Q Okay. And was he allowed to do that?

A Yeah.

Q Were you aware of any difficulty that he had with his mother picking up the phone while he was on it?

A No, I didn't notice anything like that.

Q If you had known that a reason, among other reasons, for him to get the cell phone was to enable girls to call him, would you have given him permission?

A Well, I would not know who is calling him and who's not.

Q And you knew that when you gave him permission to

get a cell phone?

A Actually, he worked during the Christmas holidays and all those holidays and when he saved the money. So he saved --

Q The money to pay for the cell phone?

A To pay for the cell phone, that's correct.

Q Okay. And you knew of that ahead of time?

A That's right.

Q And the person in whose name the cell phone was gotten -- your son was how old at that time?

A He was 17 years and a few months.

Q And were you aware of who that person was?

A Yeah.

Q And is that person an adult?

A That's right.

Q And is that person then -- or was that person a member of the mosque community to which you and your son belong?

A That's correct.

Q Okay. And you knew all about that?

A That's correct.

Q You didn't have to go find it out?

A That's correct.

Q Okay. Now, in regard to the free use of the car question, the car that Adnan had use of, did he have to

share it with anyone else?

A No, not with anyone. We would go to the mosque, that's it.

Q Okay. And he drove back then?

A That's correct.

Q He's had his license since he was 16?

A That's right.

Q Okay. And that car was pretty much his to get back and forth to school?

A That's right.

Q All right. And did you ever put any restrictions on that car for his use of it?

A Just for his use, personal use.

Q Now, was the first time that you became aware of any suggestion by the police that your son was involved, did that occur before or after his arrest --

MR. URICK: Objection.

MS. GUTIERREZ: -- on the 28th of February?

THE COURT: Sustained.

THE WITNESS: Well, actually --

THE COURT: Excuse me, sir.

MS. GUTIERREZ: Let me ask you another question.

THE COURT: That objection is sustained.

BY MS. GUTIERREZ:

Q You were asked by Mr. Urick about, you know, what

your usual custom is in regard to Ramadan? He just asked you a question about that, do you recall that?

A Usual custom?

Q Yeah. That he asked you a question about that, do you recall that?

A Usual --

Q Do you recall that Mr. Urick just --

A Yeah, yeah.

Q -- asked you a question about using the term usual custom during Ramadan?

A Yeah.

Q Okay. Now, on the 14th, the day that your son led the prayer, at the mosque during Ramadan is there any sign-in sheet?

A No, there's no sign-in sheet.

Q Do you keep any sign-in sheet of your son's attendance at Ramadan?

A No, nobody keeps that.

Q Or on any other day of the year?

A No attendance slips.

Q When was the first time that you were asked to try to recollect the days that included the 13th and 14th of January?

A Well, actually, I had my, you know, calendar. The calendar tells me --

Q No, sir, listen to my question. When was the first time that you were asked to remember those days?

A Well, when, you know, he was arrested.

Q Okay. So it was after he was arrested?

A Yeah.

Q And were you home when they came to arrest him?

A No, I was not at home.

Q Okay. And were you aware of the date that he got arrested?

MR. URICK: Objection. Way beyond the scope of cross-examination.

THE COURT: Well, I think your objection is a little late because at this point I think she's tying it up.

So you may proceed.

MS. GUTIERREZ: Yes, Judge.

THE COURT: Overruled.

BY MS. GUTIERREZ:

Q Were you aware of the date that he was arrested?

A That's correct.

Q And what date is that?

A That was the 28th of February, 5:30.

Q So it was after that date, that was the very first time that you were asked to recollect the events of the Ramadan --

A That's right.
Q -- that had occurred a month and a half before that?
A That's right.
Q All right. Now, you told us yesterday you specifically remember the 14th.
A Yeah.
Q And why is that?
A Because it was a day of honor for us.
Q And the honor was related to?
A Related to leading the prayers of a few hundred people.
Q Of Adnan leading the prayers?
A That's correct.
Q Was that a happy occasion for you?
A That was the happiest occasion of my life.
Q Okay. And so, you specifically remember that day?
A Sure.
Q All right. And yesterday we went through the Ramadan calendar. Let me ask you to look through it again.
MS. GUTIERREZ: May I approach the witness?
THE COURT: Yes, you may.
I note there are some individuals in court. I want to make sure that there's no sequestration problems.

MS. GUTIERREZ: I don't think so.

THE COURT: All right, very well. Great.

BY MS. GUTIERREZ:

Q If you would take a look again through that, the 14th of January, if you would find that date on that calendar. Do you have that?

A Yeah.

Q That's the 26th of Ramadan, is that right?

A That's correct.

Q And that would put the 14th within the last 10 days of Ramadan, is that right?

A That's correct.

Q And let me make sure. The last 10 days, it's not that they're holier but they're more special?

A Yeah, they are more special.

Q And generally, that's why, for instance, your son's leading of the prayer occurred on the 14th?

A Yeah.

Q One of the last 10 days of Ramadan?

A That's correct.

Q And you recall specifically that those last 10 days you went to the mosque every day?

A That's correct.

Q And if you had been able to get off, you would have stayed at the mosque 24 hours?

A Yeah, if I were to be off from the job, yeah.
Q But during Ramadan, very specifically, the last 10 days of Ramadan 1999, did your son Adnan go with you to the mosque every night for the Ramadan prayers that began at 8?
A That is correct.
Q Is that correct?
A That's correct.
Q And so, he went with you on the 14th and you specifically recollect an additional fact about that day, right?
A That's right.
Q That he led the prayers that day, right?
A That's right.
Q He also went with you on the 15th?
A Yeah.
MR. URICK: Objection.
MS. GUTIERREZ: And the 16th?
THE WITNESS: That's correct.
THE COURT: Overruled.
BY MS. GUTIERREZ:
Q And he also went with you on the 13th?
A That's correct.
Q And the 12th?
A That's correct.

Q And the 11th?
A That's correct.
Q And the 10th?
A That's correct.
Q And the 9th?
A That's correct.
Q And the 8th?
A That's correct.
Q You weren't just merely testifying that he usually went with you?
A He was every day with me.
Q He was with you every day?
A That's correct, yeah.
Q To go back and, after you broke the fast, to return to the mosque physically?
A That's correct.
Q With you?
A That's correct.
MS. GUTIERREZ: That's all, thank you.
THE COURT: Very well. Any further?
MR. URICK: Very briefly, Your Honor, based on that.

RECROSS EXAMINATION

BY MR. URICK:
Q At the mosque, the prayer from 8 to roughly 10,

10:30 is a continuous series of prayers, is it not?

A That's correct.

Q Now, was early January of 1999 when you found out that your son wanted a cell phone?

A Yeah, that's in January.

Q And he -- you say he told you he needed it for work purposes, is that correct?

A That's correct.

Q Did you know that he had a pager?

A Yeah, he had a pager.

MR. URICK: Thank you. No further questions.

THE COURT: Thank you very much.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Did he have that pager with your permission?

A Yeah, the pager was with permission but the phone was better because he could receive the call and could call them back right away.

Q And did he work at a job then when he told you he needed it for his job?

A He need it for the job, yeah.

Q And did he need it for the job, as far as you knew?

A Well, he said that if they call him what schedule they want to change it from time to time, so it's easy for

him. More convenient.

Q And on the job that he worked then, was the schedule changed from time to time?

A Well, the schedule changes from time to time.

Q And to your knowledge, were you aware that his job needed to reach him?

A His job?

Q That his job did, in fact, need to reach him?

A Yeah.

MS. GUTIERREZ: Thank you. I have nothing further.

May I approach the witness to retrieve the --

THE COURT: I believe Mr. White can get it.

Thank you very much.

Counsel, is there anything further for this witness?

MR. URICK: No, thank you, Your Honor.

THE COURT: Ms. Gutierrez?

MS. GUTIERREZ: No, Judge. And since he's the Defendant's father, we'd ask that he be allowed to remain.

THE COURT: He can -- well, he's released from the summonses at this point because he's no longer sequestered.

I must advise you, though, sir, you may not discuss your testimony with anyone who's yet to be a

witness in this case, but you are welcome to remain in the courtroom.

THE WITNESS: All right, thank you.

THE COURT: Very well.

THE COURT: Your next witness, Ms. Gutierrez.

You may step down.

(Whereupon, at 10:11 a.m., the witness was excused.)

MS. GUTIERREZ: May I just have the monitor deliver something --

THE COURT: Yes, you may.

Mr. Lewis, I would note -- Mr. Lewis, if you have any difficulty, let the Court know.

MR. LEWIS: Thank you, Your Honor.

THE COURT: Very well.

Counsel, that was a standard subpoena where I have to initial because of the time limits. So I was just making sure that they were aware that my initials were on it, which is required.

(Pause)

It is not a new one, it's a reissue of an old one.

MS. GUTIERREZ: The Defense's next witness would be Detective Ritz.

THE COURT: Detective Ritz, would you walk up to

the witness stand here? Remain standing and face my clerk, Mr. White and raise your right hand.

Whereupon,

WILLIAM F. RITZ

was called as a witness at 10:13 a.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated.

MS. GUTIERREZ: Detective Ritz --

THE COURT: One second, Ms. Gutierrez. Let's get him on the witness stand, get his name and his assignment.

THE WITNESS: My name is William F. Ritz. I'm a detective police officer with the Baltimore City Police Department. I'm currently assigned to the Homicide Unit.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Were you assigned to the Homicide --

THE COURT: I'm sorry. Would you spell your last name, because I think we've had about five different ways, including the way you spell cracker, so if you can tell us.

THE WITNESS: Yes, ma'am. It's R-I-T-Z.

THE COURT: Thank you.

BY MS. GUTIERREZ:

Q Detective Ritz, back on February 9th, 1999, were you assigned to the Homicide Unit?

A Yes, ma'am, I was.

Q And at that point, back then, how long had you been so assigned?

A I was assigned to the Homicide Unit since May of 1991.

Q May of 1991?

A Yes, ma'am.

Q All right. Now, prior to February 9th, 1999, did you have any assignment relating to the investigation into the death of Hey Men Lee?

A No, ma'am.

Q Okay. And on that day, did you become assigned in any way to that investigation?

A Shortly thereafter. It was about three or four days later.

Q Okay. Now, Detective Ritz, on the 18th of February 1999, did you have occasion to participate in the interviewing of Alonzo Sellers?

A Yes, ma'am, I did.

Q And was that after you had been assigned to have some role in the investigation into the death of Hey Men Lee?

A Yes, ma'am, it was.

Q Now, Detective Ritz, on February 9th, had you gone out to the scene where Hey Men Lee's body had been

discovered?

A Yes, I did.

Q And on that -- and did you go in your capacity as a homicide detective?

A Yes, ma'am.

Q And in -- did you have an occasion to meet Mr. Sellers then?

A Yes, I did.

Q And did you speak to him then?

A Yes, I did.

Q About how it is he found the body?

A Yes.

Q On the 18th of February 1999 when you interviewed Mr. Sellers, did that take place at the Homicide Unit?

A Yes, it did.

Q And were you present when he was formally advised of his rights by use of a form?

A Yes, I was.

Q And that interview, was that tape recorded?

A Yes, it was.

Q And was that tape recorded on police department equipment?

A Yes, ma'am, it was.

Q Okay. And subsequent to -- on the 18th, was the entire interview taped?

A Yes, ma'am.

Q Subsequent to that interview, did the police department have occasion to transcribe the tape of the interview of the 18th?

A Yes, ma'am.

Q And was that done in the normal course of business?

A Yes, it was.

MS. GUTIERREZ: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

MS. GUTIERREZ: Detective Ritz, I'm going to show you --

Judge, I'm going to replace this with a clean copy but it's my only copy. I'm just doing it --

THE COURT: Does counsel --

MS. GUTIERREZ: -- for foundation.

THE COURT: Well, let's see if counsel has it.

Do you have a clean copy of the Sellers --

MS. GUTIERREZ: The 18th.

THE COURT: -- that we could use to mark for identification purposes? I do not believe counsel's going to put that in evidence?

MS. GUTIERREZ: No. Just the pages, yes.

THE COURT: But the excerpts that -- but we first

have to lay the foundation, unless you waive the foundation questions that would be prerequisite.

(Pause)

MR. URICK: This is which day's interview?

MS. GUTIERREZ: The 18th.

(Pause)

Judge, I can get a clean copy of it. I would just mark this for now and replace it.

THE COURT: We can do that. Or if counsel would compare the two and maybe we can get an agreement that the items are at least the pages that they purport to be, and then let the witness identify whether he listened to the tape and compared the tape with the transcript. We could -- unless there's a vehement objection by counsel.

MR. URICK: No, there's no vehement objection.

THE COURT: Very well. The Court is going to on its own ask a couple of questions.

What we would normally do, Detective Ritz, as you know, is to provide you with a copy of a transcript, and I just have a question. Have you compared the transcript with the tape of the recording of that interview on the 18th?

THE WITNESS: Yes, ma'am. I do have a clean copy of the transcript in the case folder. If it would please the Court, if you would like that.

THE COURT: Very well. That's even better.

MS. GUTIERREZ: Oh, that's fine. Do you have that with you here?

THE WITNESS: Yes, ma'am.

MS. GUTIERREZ: Thank you. If you would go get that.

THE COURT: You can step down and do that for us. That would be wonderful, thank you.

(Pause)

Ms. Gutierrez, now, since the detective has kindly facilitated this, I'm going to ask you to give him your clean copy so he can return that to his case folder.

MS. GUTIERREZ: Yes, I will do so.

THE COURT: And it will remain completed.

Do you know what the next number would be?

MS. GUTIERREZ: No, Judge, I don't.

THE COURT: Thank you, detective.

THE WITNESS: You're welcome.

MS. GUTIERREZ: Have this marked as the next Defendant's number, 17.

THE COURT: That will be 17 for identification purposes at this time.

(Whereupon, the document referred to as Defendant's Exhibit No. 17 was marked for identification.)

MS. GUTIERREZ: May I show him that?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q Detective Ritz, what is it that's marked as Defendant's Exhibit 17?

A This is a transcript of the interview that was conducted with Mr. Alonzo Sellers on the 18th of February 1999.

Q Okay. And was that transcript made in the ordinary course of police business?

A Yes, ma'am, it was.

Q And can you tell us by looking at the last page who transcribed it and when it was transcribed?

A If you'll bear with me one second, I think I left the last page in the case folder.

The tape was transcribed by Ms. Jackie Taylor.

Q Is Ms. Jackie Taylor an employee of the Baltimore City Police Department?

A Yes, ma'am, she is.

Q And is the transcribing of tapes of interviews of suspects, witnesses, defendants something that she does in the ordinary course of her business?

A Yes, it is.

Q Okay. And what date was it transcribed?

A It was transcribed on April the 1st, 1999.

Q And was the transcription done at your and Detective McGilvery's direction?

A Yes, ma'am, it was.

Q And following the transcription which is contained in your case file, did you have an occasion to review it for accuracy?

A Yes, ma'am, I did.

Q Okay. And did you do that in the ordinary course of business?

A The transcript is fairly accurate, and I say that -- there are some grammar and spelling errors, but the content --

Q In other words, some places where it's marked "inaudible"?

A Yes, ma'am.

Q And having reviewed the tape, is that consistent with the tape, that there are some minor portions of the tape that are inaudible as to what the words are that are being said?

A That is correct.

Q Okay. Now, having reviewed that, let me direct your attention to page 18 of that transcript. I'm going to ask you to review Defendant's Exhibit 14, if you will. And if you would review that in connection with page 18 in Defendant's Exhibit 17. Is that a copy of page 18 in the

transcript?

A Yes, it is.

Q An exact copy?

A Yes, it is.

Q Okay. And I would ask you if you would review Defendant's Exhibit 12, which is a copy of page 21 of that same, and if you would compare both of those things. And is that an exact copy of page --

A Twenty-one.

Q -- 21 --

A Yes, ma'am, it is.

Q -- of the copy of the entire transcript that was -- this one?

A Yes, ma'am.

Q And I would ask you to review Defendant's Exhibit 13, which is a copy of page 22 of that transcript. And is that an exact copy of that page of the transcript as it appears in Defendant's Exhibit 17?

A Yes, it is.

MS. GUTIERREZ: I would move into evidence Defendant's Exhibit 12, 13, and 14.

MR. URICK: No objection at this point.

THE COURT: Let them be admitted.

(Whereupon, the documents referred to as Defendant's Exhibit Nos. 12,

13, and 1[illegible] prev[illegible]sly marked for identification, wer[illegible]eived into evid[illegible]

BY MS. GUTIER[illegible]EZ:

Q And I'll pass this to you.

A Okay.

Q Now Detect[illegible]z, you were present during that entire recorded interview of Mr. Sellers?

A Yes, ma'am, I was.

Q And you were present when he was advised of his rights?

A Yes, I was.

Q Now, detective, after you were appointed to be involved in the investigation of this murder, did you have occasion to receive information from other sources, specifically, the Baltimore County Police Department in regard to their participation investigation into Hev Mer[illegible]'s being missing?

A Yes, ma'am.

Q Did you also speak to those involved in Baltimore County regarding what, if any, information they had?

Well, I spoke with the detective in -- working the Missing Person Unit. I didn't speak with the officer who took the initial missing person report.

Detective McGilvery had spoken with him.

Q Okay. But you reviewed the reports of that police officer, did you not?

A Yes, ma'am, I did.

Q And you were aware early on that Adnan Syed had been spoken to by Officer Adcock?

A Yes, ma'am.

Q And that he had told Officer Adcock on the day that he was called that he had no idea where Hey Men Lee was?

A That is correct.

Q And that he had not seen her after school?

MR. URICK: Objection as to the form of the question.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q And did you also have access to information collected by Detective O'Shea?

A Well, the information that was provided to Detective Adcock -- if I can just go back for a minute to the last question you just asked, the information was that he hadn't seen her, that he was supposed to meet up with her earlier that day. He later told Detective O'Shea during his interview with him that he hadn't seen her and he wasn't going to meet up with her that day.

Q Okay. But in either the information from Detective Adcock or from Detective O'Shea, the initial information from Adnan Syed was that he had not seen Hey Men Lee?

A I believe that was the follow-up information, that he hadn't seen her. The initial information was provided that he was going to meet up with her at after school and she was going to give him a ride home after track practice.

Q But the information also included that he didn't see her that day?

A Right, from Detective O'Shea.

Q She didn't provide a ride, right?

A That's correct.

Q And that he did not see her physically at all after school on the 13th?

A According to Detective O'Shea.

Q Okay. But him not seeing Hey Men Lee was also according to Officer Adcock, was it not?

A No. I believe in Officer Adcock's report, and I'd have to review it again, that Adnan had told Officer Adcock that he was going to meet up with her after school. She was going to give him a ride home. He had waited around for a brief period of time. She didn't show up, so he went on to track practice.

Q Okay. So the answer to my question then is yes, what he told Officer Adcock --

MR. URICK: Objection.

MS. GUTIERREZ: -- involved the fact that he did not actually meet up with Hey Men Lee?

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q All right. Now, you were present when -- on February 26th, did you and Detective McGilvery go to Adnan Syed's home?

A Yes, ma'am, during the evening hours on that day.

Q To interview him in regard to this case?

A Yes, ma'am.

Q Okay. Prior to that day --

MS. GUTIERREZ: Judge, may I approach the witness?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q What's been marked as Defendant's Exhibit 3 for identification and ask you to look at that. Have you reviewed that?

A Yes, ma'am, I have.

Q And you're familiar with that?

A Yes, ma'am, I am.

Q And is that an internal memo of the Baltimore

City Police Department?

A Yes, it is.

Q And is that contained also in your case file?

A Yes, ma'am.

Q And does that convey or purport to convey information concerning Adnan Syed?

A Yes, it does.

Q Okay. And did you receive that information?

A It was given to Detective McGilvery and I later learned of the information.

Q Okay. So you're familiar with it?

A Yes, ma'am.

Q In your role as a secondary investigator on a murder, that information came to you also?

A That is correct.

Q Okay. And who notated that information?

A Detective McGilvery would have.

Q Well, he didn't write that memo?

A Oh, I'm sorry, I misunderstood your question.

Q Who wrote the memo?

A Detective Darryl Massey of the Homicide Unit.

Q And at that time he was also a detective in the Homicide Unit?

A Yes, he was.

Q And what does that memo indicate the information

about Adnan Syed is?

MR. URICK: Objection.

THE COURT: Sustained.

MS. GUTIERREZ: May we approach, Judge?

THE COURT: Yes, you may.

(Whereupon, counsel and the Defendant approached the bench and the following ensued.)

THE COURT: What exhibit number?

MS. GUTIERREZ: It's Defendant's Exhibit 3. It is an internal memo written by Detective --

THE COURT: It's ID, right, it's not --

MS. GUTIERREZ: It's ID, yes. I think I ID'ed it through McGilvery, I'm not sure, but it was -- in any event, it was ID'ed.

It's an internal memo from Detective Massey relating information that relates to Adnan received via two anonymous phone calls to the police department that suggest that the police should look at Adnan Syed in regard to the murder of Hey Men Lee. I think the phone calls are minutes apart and the detective -- the detective's memo indicates his belief that it was the same caller based on his receiving --

THE COURT: The same person?

MS. GUTIERREZ: Yes. One was at 1519 hours, one was at 1525 hours. And, Judge, I recognize that there's

some level of a hearsay objection here. On that issue, I guess I would argue there's no way we can produce the declarant since it was anonymous, according to them. It's not taped. There's no way that the declarant can be ascertained from the information we've received, no matter what investigation we do.

We are maintaining our right to get this in, notwithstanding any hearsay objection or double-hearsay objection because it is critical to our theory of the defense. The other detective has already testified, and I could certainly run this detective through it, that they received information about Adnan. They've already been asked they received it from Detective O'Shea. That information has not been explained.

In order to buttress our theory of defense, is that the police, once having been led to Adnan through any source, then fixated on him and never looked elsewhere. In order to attack that theory and to dispel any speculation that there was significant information about Adnan that the police had, that the jury hasn't heard, we believe that it is imperative in our request to introduce our theory of defense, which includes that the police fixated on Adnan Syed based on what's already before the jury, you know, the rumors at the school among the students, speculation about Adnan to establish that, in fact, they received telephone

calls that suggested -- well, they named Adnan by name, information that suggested that Adnan should be concentrated on as a suspect.

And so, for those reasons, because it is critical -- there's no way we can get the declarant who made the statements. We've had difficulty in tracking down Detective Massey, who is now assigned -- I think it's Northern District. It could be Northwestern. We've spoken to his supervisor. I've sent -- he was on midnight but then off. I've had difficulty in -- since we were told last night, I spoke to his supervisor, and the night before that he would be given the summons, which has been faxed to him and notified and asked us to fax this sheet so that he'd have recollection of it. We've been unable to serve or locate or speak to Detective Massey. We have no home number for him. I've asked his supervisor for it. And I believe that I can finish today, but if I have to, I'll go stand at Northwestern District and serve Detective Massey who, for whatever reason, notwithstanding our speaking to his supervisor, we've been unable to serve with a summons to appear.

THE COURT: You're offering this for the truth of the matter contained in the document or --

MS. GUTIERREZ: We're offering it for --

THE COURT: -- the truth of the fact that they

received phone calls --

MS. GUTIERREZ: And that they then acted on those phone calls in terms of focusing on Adnan Syed.

THE COURT: Okay. And so, you're offering this for the truth of what the phone caller said or the truth that the result of phone calls caused the police department -- what was said in the phone calls --

MS. GUTIERREZ: In part. To focus on Adnan Syed.

THE COURT: The State's position?

MR. URICK: Then the correct question would be what, if any, action did you take as a result of the information contained in this?

THE COURT: I believe that was the question that was asked of Detective McGilvery.

MS. GUTIERREZ: (Shaking head affirmatively)

MR. URICK: That question was never asked.

THE COURT: Yes, it was.

MS. GUTIERREZ: Yes, it was.

THE COURT: It was asked of Detective McGilvery.

MS. GUTIERREZ: That's how I got it ID'ed.

THE COURT: When you objected to the content of the exhibit, the next question was as a result of what was contained in it what did you do?

MR. URICK: I don't remember him being asked that question.

THE COURT: I do, and I made a note of it.

And, counsel, do you have that recollection?

MS. GUTIERREZ: I do, Judge. And I did it specifically because I wanted to get this in. I'd have to look on my notes --

THE COURT: I'd have to look in mine but --

MS. GUTIERREZ: But also, at that time, Judge, I did anticipate the ability to get Detective Massey, a member of the police department, served with a summons, which is why I didn't try to take it any further then. I marked it for ID to establish that Detective McGilvery got it.

THE COURT: All right. So she's offering it, really, for the truth of the matter asserted, as well as that being truth by the caller and statement, causing the police to do a certain thing as a result of what they received in the calls. And the State's position is that they can get it in through someone else, and what else?

MR. URICK: That it's hearsay. That the proper way to deal with it is ask the question what, if anything, did you do as a result of this, and that's the line of questioning --

THE COURT: All right. The Court's going to sustain the objection. However, I will allow you to ask the questions that you did of McGilvery: As a result of

information contained in this document, what did you do? As a result of something that -- did you receive calls? You can get that it. And then as a result of the calls that you received, what did you do? Did you receive any other calls or was it brought to your attention? Were there any other calls as a result of those calls, what did you do? But I will not let you put in the content of the calls through this witness.

MS. GUTIERREZ: Okay. Well, then, Judge, I'm going to ask for the Court's assistance. Obviously, Detective Massey is available. We just haven't been able -- I will need another summons and I'll send my investigator out to literally sit at the district and wait for Detective Massey, although I'd anticipate finishing my defense early afternoon.

THE COURT: Do you have any way to contact Detective Massey?

MS. GUTIERREZ: That I would then need till tomorrow to get --

MR. URICK: If he's not working right now, I could only call his shift commander and ask them to call.

THE COURT: All right. Would you assist the Court in doing that? Calling the shift commander and asking Detective Massey to be here?

MR. URICK: I don't believe Detective Massey

could do anything further to get the content in.

THE COURT: But that's not, that's not -- that isn't my request.

MR. URICK: Okay.

THE COURT: The Defense has a right to have a witness here. Now, if it turns out that she is not able to accomplish what she wants to accomplish after the witness gets here, that's another issue. But the fact that she's asking for assistance in getting the witness here --

MR. URICK: I'll be happy to --

THE COURT: Do you follow what I'm saying?

MR. URICK: -- assist the Court. I think we would need a brief recess to do that.

THE COURT: All right. Why don't I do this?

Mr. White, will you call my chambers and ask my secretary to give Detective Massey a call?

He's at what district?

MS. GUTIERREZ: I think he's at Northern.

MR. URICK: Detective Ritz might know a better person who could get a message to Detective Massey.

THE COURT: Detective Ritz, could you step up here for just one moment, please?

You wouldn't happen to know how the Court could get in contact with Detective Massey?

THE WITNESS: We would still have his pager

number. I can call to the office and they can call his new assignment.

THE COURT: Is there a number that you could give?

THE WITNESS: Sure.

THE COURT: Do you have Mr. Lewis here?

MS. GUTIERREZ: No, but he's due back. He went to deliver that.

THE WITNESS: Just a call to Homicide Unit, somebody should be able to look his name up in -- card file and have a pager number for him possibly.

THE COURT: All right. And the number would be?

THE WITNESS: 396-2100.

THE COURT: 396-2100.

THE WITNESS: That's the number to the Homicide Unit.

THE COURT: The Homicide Unit. Ask them to page Detective Massey.

THE WITNESS: They'll give you his new assignment --

MS. GUTIERREZ: Do you know if it's at Northern? Wasn't it Northern District?

THE WITNESS: I believe so.

THE COURT: All right. Mr. White, I'm going to ask you to call my chambers, give my secretary this number,

and ask her to page Detective Darryl Massey.

MR. URICK: If they can, ask them to call him at home, too, because if he worked midnight and he's sleeping, he might not have his pager.

THE COURT: Page or call at home and have him call the Court, and my question is, from the Court, when can he be here. Okay? Thank you.

Thank you very much for your assistance.

THE WITNESS: You're welcome.

THE COURT: Now, that's the best that I can do, Ms. Gutierrez.

MS. GUTIERREZ: Okay. So I can go ahead and ask him those questions about this?

THE COURT: And I will let you know, I will let you know that I'm doing this in the best interest of justice and also to accommodate you, but I'm going to restate that doesn't assume --

MS. GUTIERREZ: I understand, you have a rule --

THE COURT: All right. I just -- look, I do every --

MS. GUTIERREZ: I've learned.

THE COURT: That's right, I'm supposed to make sure that you get all the tools. If you can't build a house, you can't build a house. If you can build a house, there you go.

MS. GUTIERREZ: Okay. Thank you, Judge.

MR. URICK: Thank you.

THE COURT: Very well.

(Whereupon, counsel and the Defendant returned to trial tables and the following ensued.)

MS. GUTIERREZ: May I approach the witness again, Your Honor?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q Again, if you would just take a look at Defendant's Exhibit 3, Detective Ritz, did you receive the information contained --

A I couldn't hear the last part of your question.

Q Did you receive the information contained in that memo?

A Yes, ma'am, I did.

Q And is that an internal police department memo?

A Yes, it is.

Q Okay. And is there anything unusual about that memo relaying information to you in regard to an investigation that you were investigating?

A Unusual in the sense of just relaying the information?

Q Yes.

A No.

Q And, sir, that memo is dated -- the information contained in the memo was received on what date?

A On February the 12th, 1999.

Q And the body of Hey Men Lee was discovered on what date?

A February the 9th, 1999.

Q As a result of receiving that memo, what, if any, action did you take -- what, if any action, did you take?

A The action taken was trying to identify the caller, and this was done by telephone -- the memo. Detective Massey, when he took the information, also had the call traced and --

Q He had it what?

A Activated call trace.

Q Call traced, okay.

A When the call came into the Homicide Unit -- after -- he was unable to get any information as a result of doing that. The call -- he obtained was out of the area.

Q Meaning the phone was outside of the area?

A Yes. If I can explain a little bit about call trace, if you're calling from a cell phone, you would not be able to get that number. If you're calling from a public telephone, you would not be able to get that number. The only way that --

Q And if you tried to trace it --

A If you tried to trace the call from where it originated. The only way you can get the call is from a hard line or a public telephone or a residence phone or a business phone.

Q Okay. And was the identity of the caller known before call trace was initiated?

A No.

Q Following your receipt of that information -- well, prior to the 12th, was Adnan Syed listed as a suspect?

A No, he was not.

Q And subsequent to February 12th, was Adnan Syed listed as a suspect?

A No, he was not.

Q And did you or Detective McGilvery take any action in regard to the information received in that memo?

A Yes, ma'am.

Q And what action did you take?

A I had gone to the crisscross directory and looked up the telephone number area code 410-203-0522, and I believe it came --

Q And whose line was that?

A It came back to a Yassar Hussein (phon. sp.), I believe, on Charlow (phon. sp.) Court out in Baltimore County.

Q And was that person a student at Woodlawn?
A No, he was not.
Q And was that person's name mentioned, of the unable to be identified caller, in the memo?
A No, it was not.
Q And as a result of receiving that information, what did you do?
A Contacted -- I believe his first name is Yassar. In the memo, it's stated Baser, B-A-S-E-R. We contacted him at the telephone number, introduced myself to him, and told him we were investigating a homicide, that we would like to speak with him. I believe we went out to a Pizza Hut located near his home and met with him there.
Q And you spoke to him?
A That is correct.
Q And did the subject of your speaking to him include the name of Adnan Syed?
A Yes, it did.
Q Okay. And were you ever able to identify the person who made the call that was recorded in the memo?
A No, we were not.
Q And, in fact, is there more than one call that's identified?
A There are actually two calls in the memo. After the caller hangs up the first time, he subsequently calls

back to the office.

Okay. And in regard to the identity of the caller, was there any information in the memo relayed that might help you identify who it was that called?

A Detective Massey had indicated that the voice sounded that of an African male, 18 to 21 years of age.

Q An African male?

A Yes.

Q And what was the age?

A Eighteen to 21 years of age.

MR. URICK: Your Honor, the State is going to withdraw its objection to the entry of this exhibit.

THE COURT: Very well.

Counsel, if you'd like to move that into evidence at this time, you may do so.

MS. GUTIERREZ: I would move it into evidence.

THE COURT: It will be admitted.

(Whereupon, the document referred to as Defendant's Exhibit No. _ previously marked for identification, was received into evidence.)

THE CLERK: She's trying to track him down. He say he s in insurance training.

THE COURT: All right. Would you call back and

tell her to please call back and say his appearance is not -- Thank you very much, Mr. White, and also thank my staff.

Your next question.

BY MS. GUTIERREZ:

Q Now, after that date, you then had an occasion to go on February 26th to the home of Adnan Syed?

A Yes, ma'am.

Q And his father was present?

A Yes, he was.

Q And did you ask him questions?

A His father?

Q No, Mr. Syed.

A Yes, we did.

Q And did he answer your questions?

A Yes, he did.

Q And two days later, were you present with Adnan Syed was arrested?

A Yes, ma'am, I was.

Q At his home?

A That is correct.

Q Was Detective McGilvery also present?

A Yes, he was.

Q And at that time, he was advised of what's called his rights, his Miranda rights?

A Not at the time while at the house. He was subsequently transported down to the Homicide --

Q Down to Homicide, and that was pursuant to the arrest?

A That is correct.

Q Okay. And at that time, Mr. Syed indicated that he had no involvement in the murder of Hey Men Lee?

A That is correct.

Q Okay. And -- oh, Detective Ritz, you had an occasion to interact with a man by the name of Jay Wilds?

A Yes, ma'am, I did.

Q And Jay Wilds was -- and were you present during his interviews?

A Yes, I was.

Q Okay. And those interviews took place on the 28th of February?

A Yes, ma'am.

Q And on the 15th of March?

A That is correct.

Q And also on the 13th of April?

A That is correct.

Q In addition to those dates, did you have occasion to ride around with Mr. Wilds?

A Yes, I did.

Q And that took place on the 18th?

A I believe that's the correct date.

Q Is that correct?

Now, prior to the 18th of March had you ridden around or been shown places by Mr. Wilds?

A Yes.

Q And did that include the location of Hey Men Lee's car?

A Yes, it did.

Q And was her car physically where he said it would be?

A Yes, it was.

Q And did you ask him if he had seen the car from the time that he says it was put there up until the time that you spoke to him on the 28th of February?

A Yes, I did.

Q And did he indicate to you that he had been back to see if the car was there?

A Since the car was parked there originally, he had not returned to the location to see if it was there.

Q That's what he told you?

A I believe so.

Q Okay. Now, Detective Ritz, and did you make notes of -- did he also take you to a location initially, on the 28th, that he says the trunk was popped on the car in which he then had a 5- to 10-second look at the body of

Hey Men Lee?

A That is correct.

Q Is that correct?

And he physically took you to a location close in proximity to the intersection of Edmondson Avenue?

MR. URICK: Objection as to the form of the question.

THE COURT: Sustain the objection at this time.

BY MS. GUTIERREZ:

Q Did he take you to a location?

A Yes, ma'am, he did.

Q Where he said the -- was?

A Yes, he did.

Q And where was that location?

A I don't recall the exact hundred block but it was on Edmondson Avenue, once you come off -- near Poplar Grove Street.

Q Near Poplar Grove Street?

A Yes, ma'am.

Q And that intersection is pretty heavily peopled and automobile traffic intersection?

A Yes, it is.

Q And is that intersection known as a strip?

A I've never heard that particular intersection be referred to it until I had spoke with Mr. Wilds, and he

referred to it as a strip.

Q But you had heard the term strip before?

A No.

Q Except from him?

A That is correct.

Q But you heard that term from him that night, on the 28th of February?

A That is correct.

Q And what did you understand that term to mean?

A Well, he explained it to me. It's an area where people loiter about, selling narcotics.

Q Selling narcotics?

A Right. It's a --

Q Illegal narcotics?

A That is correct.

Q Okay. And he used that term -- did he use that term in a statement to you on the 28th?

A Yes, he did.

Q Okay. And when he used it, was he referring to places where --

MR. URICK: Objection.

MS. GUTIERREZ: -- illegal narcotics were being sold?

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q And that's the location where he took you to show where the trunk pop was?

A Yes, ma'am.

Q Detective Ritz, after arresting Adnan Syed at his house, did you have an occasion to return to his house pursuant to your investigation? After the 28th?

A Yes.

Q Okay. And was that pursuant to any kind of court order?

A I can't recall.

Q Well, sir, were you present when his house was searched?

A Yes. That was on the 28th.

Q Okay. His house?

A Yes. We had executed a search and seizure warrant that morning.

Q And you were present on that occasion?

A Yes, ma'am, I was.

Q And did you and Detective McGilvery give direction to the officers that actually conducted the search?

A Yes, ma'am.

Q As to what to take?

A Yes, ma'am.

Q As to what to seize?

A Yes, ma'am.
Q As to what to look for?
A That is correct.
Q Were shoes and boots that belonged to Adnan --
MR. URICK: Objection as to the form of the question.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q In regard to any clothing articles, what was seized?
MR. URICK: Objection. Same objection.
THE COURT: Overruled. What was seized is not a leading question.
You may answer that, if you know.
THE WITNESS: I believe a pair of brown boots and a pair of pants.
BY MS. GUTIERREZ:
Q Brown boots?
A Yes, ma'am.
Q Okay. And were those boots and the pants taken at the direction of you or Detective McGilvery?
A Yes, ma'am.
Q And was the seizure of those items based on information you had received from Jay Wilds?
A I'm not sure if the information came from Jay

Wilds or Jennifer Pusitari (phon. sp.). The clothing description and articles that we were looking for came from interviews subsequent to obtaining the search and seizure warrant. I can't recall which interview that those articles were provided.

Q You were present when Jen Pusitari was interviewed?

A Yes, ma'am.

Q And from your understanding, based on that interview, was Jennifer Pusitari present during any events that -- of Hey Men Lee?

A Not in the -- those events that you had described but an event subsequent to that where she later met up with the Defendant and Jay Wilds at a parking lot.

Q And you were also present during the interviews of Jay Wilds concerning the same events?

A Yes, ma'am, I was.

Q And Jennifer Pusitari said she met up with the Defendant where?

A On Westview Mall shopping center parking lot.

Q That's --

A Yes, it is.

Q Okay. And the purpose of her being at that location was to do what?

A To pick up Mr. Wilds.

Q And you were present when Mr. Wilds spoke about Jennifer Pusitari picking him up?

A Yes, ma'am.

Q And did he say he was --

MR. URICK: Objection as to the form of the question.

THE COURT: Sustained.

This is your witness, Ms. Gutierrez.

BY MS. GUTIERREZ:

Q In any event, the information about the boots and the clothing came from Jay Wilds and/or Jennifer Pusitari?

MR. URICK: Objection.

THE COURT: Sustained.

MS. GUTIERREZ: I have nothing further of this witness.

THE COURT: Thank you very much, Ms. Gutierrez.

Any questions?

MR. URICK: Yes, thank you, Your Honor.

CROSS-EXAMINATION

MR. URICK: At this time, I would request that the Defense Exhibit be given to the witness and it be published to the jury by the witness reading it, with the Court's permission.

THE COURT: Certainly. You may do it that way.

MR. URICK: Mr. Clerk, will you give that to the

witness, please?

THE CLERK: Which one, No. 3?

THE COURT: I believe it's 15, is it not?

MS. GUTIERREZ: Seventeen, Judge.

MR. URICK: Three.

THE COURT: Three.

MS. GUTIERREZ: Oh, 3, right. Correct.

THE COURT: Exhibit 3?

MR. URICK: Yes, this is the exhibit.

THE COURT: Detective, we'll need you to read the entire thing since we're publishing it. Everything that's on that page needs to be read.

THE WITNESS: Yes, Your Honor.

THE COURT: From top to bottom.

THE WITNESS: The memo is dated 12 February 1999. It's from Detective Darryl Massey to Detective Greg McGilvery. It's in reference to possibly pertaining to Hey Men Lee investigation, H-99-030.

> Sir, on February 12th, 1999, approximately 1519 hours, your writer received a call from anonymous called (Asian male, 18 to 20 years old) who advised your investigators should concentrate on the victim's boyfriend (Adnan Syed, Asian male, 17 years of age) as a suspect in the murder. The caller further

advised that the boyfriend has taken the victim to Leakin Park on past occasions for sexual encounter. Prior to concluding the phone interview, the caller further stated that the victim broke off the relationship with her boyfriend about a week before she was reported missing.

At this point, the caller terminated the conversation. Simultaneously, your writer activated Star 57 on extension 2100. The recording informed your writer the service was not available due to the caller not being in the service area.

On February 12th, 1999, approximately 1525 hours, the above anonymous person called the Homicide Unit. This time the caller remembered that a year ago the suspect informed a friend of his (Baser Ali, Asian male, 17) if he ever hurt his girlfriend he would drive her car into a lake. The caller stated the suspect's friend attends Centennial High School in Columbia, Maryland, and his home phone number is area code 410-203-0522. Again Star 57 was activated. The recording stated the service

was not available due to the caller not being in the service area.

Respectfully, Darryl Massey.

THE COURT: Thank you.

BY MR. URICK:

Q And you looked that number up in a crisscross directory, is that correct?

A That is correct.

Q And that number came back listed to who?

A I believe it was -- the last name of the family was Hussein, 35 I believe it was 09 Charlow Court out in -- it wasn't Baltimore County, it was Howard County, I believe.

Q And you are aware that that is the home address of Yassar Ali?

A Yes, sir, I am.

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

MS. GUTIERREZ: Wasn't established, any home address of anybody. He's only established the listing to the name.

THE COURT: Overruled.

BY MR. URICK:

Q And that Yassar Ali is a friend of the Defendant, is that correct?

A Yes, sir.

Q You may give that back to the clerk, if you will.

MS. GUTIERREZ: If he would keep it. I'm going to --

BY MR. URICK:

Q And you're aware that Yassar Ali is not a Woodlawn High School student, is that correct?

A That is correct.

Q And that he knows him from the mosque, is that correct?

A Yes, sir.

Q And you're also aware that Yassar Ali's phone records appear on the Defendant's cell phone? Calls?

A Yes, sir.

Q Now, you were asked about the search and seizure warrant that you served at the Defendant's house. Pursuant to that warrant, you seized certain items because the warrant allowed you to, is that not correct?

A That is correct.

Q However, in searching the Defendant's bedroom, you also found other items that you could not seize because they were not allowed by the warrant, is that correct?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

BY MR. URICK:

Q What, if any, items did you find in the Defendant's bedroom that you did not seize?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

BY MR. URICK:

Q Now, Defense counsel asked you about the -- Jay Wilds taking you to the spot on Edmondson Avenue. You later got a statement from him that indicated that, in fact, that incident took place somewhere else, did you not?

A That is correct. It was in the second interview, I believe.

Q And during that interview, you questioned Mr. Wilds about why the first statement did not contain certain information that the second one did, did you not?

A Yes. We were clarifying the inconsistencies.

Q And why did he tell you that there were inconsistencies?

A He was trying to protect his friends.

MS. GUTIERREZ: I'm going to object.

THE COURT: I'm going to sustain the objection --

MR. URICK: May we approach?

THE COURT: -- to the question that was posed. I'll sustain the objection to the question as posed. You may be able to restate your question.

BY MR. URICK:

Q Do you recall what Mr. Wilds' answer was?

MS. GUTIERREZ: Objection. Well --

THE COURT: Overruled.

MS. GUTIERREZ: -- not to that question.

THE WITNESS: I can't recall verbatim. I could probably paraphrase it, that he didn't want to get other --

MS. GUTIERREZ: Objection. Move to strike.

THE COURT: Overruled.

Your recollection in paraphrasing, you may do that.

THE WITNESS: There were some people that --

MS. GUTIERREZ: Objection.

THE COURT: Your objection is being overruled as to what this witness heard from Mr. Wilds. The objection is sustained as to anything else, unless counsel wants to lay a foundation for any opinion or indication or conclusions that the witness may have drawn from what Mr. Wilds told him.

MR. URICK: I'm just asking the witness at this time as to what Mr. Wilds said.

THE COURT: Very well.

MS. GUTIERREZ: I'd still note our objection and ask for a continuing objection to the hearsay nature of him repeating Jay Wilds.

THE COURT: Understood. Overruled.

If the witness can answer the question, you may answer it.

THE WITNESS: One of the inconsistencies that we clarified was the location where they first saw the body of Hey Men Lee. He originally told me and Detective McGilvery it was on Edmondson Avenue. In his follow-up statement, he said the first time that he saw the body and described it in great detail was on the parking lot of Best Buy out in Security Boulevard area.

He stated the reason that he did not -- wasn't truthful with us at the beginning was that he thought they had surveillance cameras on the outside of the building and didn't want to get caught or involved in it.

He knew that the Defendant would get caught eventually and he didn't want to get involved in it. He was trying to dissociate himself from the parking lot in that regards.

The other inconsistencies were being at someone else's house. Because of some narcotics activity --

MS. GUTIERREZ: I'm going to object. It's beyond the scope of the question.

THE COURT: I think counsel can ask another question, if you want to draw anymore information. So I'll sustain the objection at this point.

BY MR. URICK:

Q Did you ask him about other inconsistencies?

MS. GUTIERREZ: Objection. It's beyond the scope of cross -- direct.

THE COURT: Overruled as to that one question, did you ask him about other inconsistencies? And this is cross.

THE WITNESS: Yes, I did.

BY MR. URICK:

Q Do you recall what his answers were?

MS. GUTIERREZ: Objection.

THE COURT: If I can have the question, I'll know whether I'm going to sustain it or overrule it.

BY MR. URICK:

Q Do you recall what Mr. Wilds' answer to those questions were?

MS. GUTIERREZ: Objection.

THE COURT: Sustained as to the general nature of that question. If you could be more specific.

BY MR. URICK:

Q Do you recall what his explanations for the inconsistencies were?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

As to which inconsistencies are you referring? All of them? Some of them? Certain ones?

BY MR. URICK:

Q Do you recall what his explanations were for not naming certain names or not admitting to being at certain places in the first statement?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

MS. GUTIERREZ: That's clearly beyond the scope.

THE COURT: Overruled.

THE WITNESS: Yes, I do.

THE COURT: You may answer that.

BY MR. URICK:

Q What did Mr. Wilds tell you?

A It was because of --

MS. GUTIERREZ: Objection. May I note a continuing objection?

THE COURT: Yes, you may.

You may answer the question.

THE WITNESS: Because of illegal narcotics activity.

BY MR. URICK:

Q And did you ask him about -- for explanations of why certain names were not named in the first statement?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. URICK:

Q Do you recall what his answer was?

MS. GUTIERREZ: Continuing objection to this, too.

THE COURT: It's noted for the record.

You may answer.

THE WITNESS: I can't recall exactly what his response was to that question.

BY MR. URICK:

Q Can you paraphrase what his answer was?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

BY MR. URICK:

Q Is that a document contained in your files that would help you refresh your memory at this time?

A Yes, there is.

MR. URICK: May I ask the witness to find that and look at it to refresh his memory at this time?

THE COURT: Yes, you may. And I note Ms. Gutierrez' objection for the record.

MS. GUTIERREZ: If I could have that document identified, and I will object to that.

THE COURT: It's noted.

Detective, if you want to bring those up and sit them next to you so that they're a little closer, you're

welcome to do that. It's a little easier, I think.

(Pause)

THE WITNESS: I believe I've found it, Your Honor.

MS. GUTIERREZ: Can I find out what the witness is --

THE COURT: Absolutely.

MS. GUTIERREZ: -- looking to so that I can enter an objection before we have any questions?

THE COURT: Absolutely.

If you could tell us what item you're looking at, detective.

THE WITNESS: I believe it starts on page 49.

MS. GUTIERREZ: Of which interview?

THE WITNESS: This would be the second interview.

MS. GUTIERREZ: The one on the 15th of March?

THE COURT: Counsel, you're going to have to have the item --

THE WITNESS: Yes, ma'am.

THE COURT: -- that he's referring to marked for identification purpose so the record reflects what it was that the witness utilized to refresh his recollection. I don't know if that item is already in evidence. It may be, I don't know.

Mr. White, perhaps you could note your list. Is

there a statement?

MS. GUTIERREZ: Where are you looking?

MR. URICK: Mr. Clerk, did you find a -- I don't think there has been one. If you could put a new State's number on this.

For identification purposes, this'll be State's Exhibit 47.

THE COURT: Exhibit 47 for identification.

(Whereupon, the document referred to as State's Exhibit No. 47 was marked for identification.)

MS. GUTIERREZ: And is that the statement of March 15th?

THE WITNESS: Yes, it is.

BY MR. URICK:

Q And, Detective Ritz, you said you were starting on page 49?

A Let me retract that. I believe it starts on page 56. There was something else I was referring to on page 49.

THE COURT: Just for the record, Mr. Urick, do you want to lay the foundation for the witness's use of the item formally so the record reflects --

BY MR. URICK:

Q Detective Ritz, isn't it correct that this is a

taped statement taken from one Jay Wilds on March 15th, 1999?

A Yes, sir, it is.

Q And that it was transcribed by a Homicide Department stenographer, is that correct?

A Yes, it was.

Q And have you had -- were you present at the interview?

A Yes, sir, I was.

Q And have you had a chance to review the transcript?

A Yes, sir, I have.

Q And other than minor spelling and grammatical errors, is it a fair and accurate representation of the interview that took place that was taped?

A Yes, sir, it is.

Q Have you had a chance to read through the exhibit?

A Yes, sir.

Q And is your memory refreshed at this time as to why he told you he didn't name certain names in the first interview?

A Excuse me a second, let me find that part.

Q Specifically, I'd refer you to page 59 and ask you to read that and see if that refreshes your memory.

A Yes, sir.

Q And why did he tell you he didn't name names?

A That he didn't want to get those people involved.

Q Thank you.

Now, Defense counsel asked you about the several interviews that were conducted with Alonzo Sellers, do you recall those questions?

A Yes, sir.

Q Isn't it a fact that initially he was treated as a suspect?

A Yes, sir, he was. Well --

Q And he was investigated thoroughly as a result of that, is that correct?

A If I can go back just for a minute, initially --

MS. GUTIERREZ: Objection.

THE COURT: You have to answer the question as asked, and if you're not able to do that or you need to add to it once you've answered the question, you may do that. His question was isn't it a fact that Mr. Sellers was treated as a suspect? That was the question.

THE WITNESS: No.

THE COURT: No. The answer is no?

THE WITNESS: That is correct.

THE COURT: Next question.

BY MR. URICK:

Q Did he come to be investigated as a suspect?
A Later that evening.
Q And was he investigated thoroughly?
A Yes, sir, he was.
MS. GUTIERREZ: Objection.
THE COURT: Overruled.
BY MR. URICK:
Q And as a result of that investigation, was he eliminated as a suspect?
A Yes, sir, he was.
Q Now, Defense counsel asked you about things that the Defendant told you. Is it your practice as a homicide detective to listen to someone and take what they tell you as the truth, without examining -- seeing whether or not you can corroborate it through other evidence?
A No.
MR. URICK: No further questions. Thank you.
THE COURT: Any redirect?
MS. GUTIERREZ: Yes.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:
Q Detective, would you look at page 59 --
A Yes, ma'am.
Q -- the page you used to refresh your recollection as to why Jay Wilds didn't mention all these names the

first time?

A Yes, ma'am.

Q Do you recall that?

Right below, you essentially refreshed your recollection with the question of Detective McGilvery, after having said that he had left out certain names and asked him why was that, and Jay Wilds said, "I didn't want them to be involved."

A Yes, ma'am.

Q Is that what Jay Wilds said?

A That is correct.

Q And Detective McGilvery repeated his answer, didn't he?

A Yes.

Q And then Jay Wilds said, "I didn't, I didn't, yeah, I didn't want her to be questioned by the police and all that stuff." Isn't that right?

A That is correct.

Q Okay. And that's from the same page of the interview that you were just asked about to refresh your recollection?

A Yes, ma'am, page 59.

Q I'm going to show you -- or ask you to look at what I will have marked as Defendant's Exhibit --

MS. GUTIERREZ: Is this 18?

THE CLERK: Yes.

(Whereupon, the document referred to as Defendant's Exhibit No. 18 was marked for identification.)

BY MS. GUTIERREZ:

Q -- 18 for identification, where I've highlighted exactly that portion that I just read to you. And if you would compare it with the transcript of the interview that you did with Jay Wilds.

A It would be a fair and accurate representation.

Q Of exactly what you were reading there?

A That is correct.

Q And the part that I've highlighted is exactly that part that I've read to you?

A Yes, ma'am.

Q Thank you.

MS. GUTIERREZ: I would move Defendant's Exhibit 18, that's been marked for identification --

MR. URICK: No objection.

MS. GUTIERREZ: -- into evidence.

THE COURT: Let it be admitted.

(Whereupon, the document referred to as Defendant's Exhibit No. 18 was received into evidence.)

BY MS. GUTIERREZ:

Q Now, detective, you were asked about inconsistencies?

A Yes, ma'am.

Q That's a word that you and Detective McGilvery used back on -- with Jay Wilds, isn't that correct?

A Yes, ma'am.

Q And inconsistencies -- in its scope things that were actually lies?

MR. URICK: Objection as to the form of the question.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Was it inconsistencies a word that you and Detective McGilvery used with Jay Wilds?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q I'm going to ask you to refer to the first page that you've told us you were looking at, and that was page 49 of that same interview, the interview that took place on March 15th?

A Yes, ma'am.

Q Okay. And that part refers to essentially the fact that Jay Wilds tells you that he knew about this ahead of time --

MR. URICK: Objection.

THE COURT: Sustained.

MS. GUTIERREZ: -- meaning Adnan was going to kill Hey and that he communicated that to Jennifer Pusitari whom he had not mentioned before?

THE COURT: Ms. Gutierrez, the objection is sustained and it is as to the form of the question since these are leading questions and this is still your witness.

BY MS. GUTIERREZ:

Q Detective Ritz, you first referred us to the part, to refresh your recollection, to page 49?

A Yes, ma'am.

Q Okay. And that's of the March 15th interview?

A Yes, it is.

Q Is that correct?

A Yes, ma'am.

Q And in -- on page 49 at the bottom of the page, what are you questioning Jay Wilds about at that juncture?

A About after receiving this information from Adnan that he had planned on killing Hey Lee that morning --

Q Meaning Adnan had planned on killing, right?

A Yes. There was a discussion inside his vehicle on the morning of her disappearance.

Q Which was the 13th?

A Of January, that is correct.

Q And?

A And I questioned Mr. Wilds as to why he was reluctant or did not report that information to the police, which may have saved Hey Lee's life that day.

Q And if you would review your question that appears at the middle of the page, does it mention Jennifer Pusitari?

MR. URICK: Objection.

THE COURT: Overruled as a foundation question. Does it mention Jennifer Pusitari's name?

THE WITNESS: It mentions Jennifer, and I am referring to Jennifer Pusitari.

BY MS. GUTIERREZ:

Q Pusitari. And is the mention related to what you just spoke about, that Mr. Wilds had previous knowledge of the planned death of Hey Men Lee?

A Yes, ma'am.

Q And had, in fact, Mr. Wilds told you previously that he had told -- that he had relayed any information about Adnan's plan to kill Hey Men Lee to Jennifer Pusitari?

A He stated that he didn't take it seriously, although he had been told that -- of Adnan's plans to kill Hey Lee.

Q He told who?

A Adnan had told Jay Wilds. However, he didn't take it seriously.

Q The question was -- did that relaying of information that Jay Wilds told you at any point, that he had relayed that information to Jennifer Pusitari?

MR. URICK: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. GUTIERREZ:

Q Yes. And that was one of the inconsistencies?

A Reading through this to find the inconsistencies, that was something that stuck out in my mind as he was being questioned, why didn't he notify the police.

Q Okay. And --

A But I think the inconsistencies start on page 56.

Q On the -- you mean the questioning about the inconsistencies?

A Yes, ma'am.

Q On the 15th, you had already spoken to Jay Wilds, starting at 1 or starting sometime after midnight on February 28th?

A Yes, ma'am.

Q You had spoken to him before the tape recorder was turned on?

A Yes, ma'am.

Q And then you had spoken to him at length while the tape recorder was turned on?

A That is correct.

Q And this on March 15th was another time to interview him, correct?

A That is correct.

Q But you had already spoken to Jen Pusitari, had you not?

A Yes, ma'am.

Q And some of the inconsistencies that you were confronting Jay Wilds about on March 15th, the second tape recorded interview, related the inconsistencies as to what he said with what she had said, was it not?

A Well, the interview was going over everything, from start to finish, and then addressing the inconsistencies during that statement.

Q Okay. And that included addressing not only inconsistencies between what he said himself but between what he said and what she said?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q At that time that you interviewed him on the 15th, the taped interview which you are referring to to refresh your recollection to answer Mr. Urick's question,

had Jen Pusitari indicated to you that she had prior knowledge of the plan to kill Hey Men Lee?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Other than interviewing Jen Pusitari on the 27th of January, had you spoken to her after that date and taken any kind of tape recorded statement?

A You said January 27th?

Q I'm sorry, February 27th.

Do you recall that you spoke to Jen Pusitari on the 27th?

A Yes, ma'am.

Q Okay. And took a tape recorded interview?

A Yes, ma'am.

Q And that was at Homicide?

A That is correct.

Q After that date, did you take any other tape recorded statements from Jen Pusitari?

A No.

Q Okay. And did you ever go back to her about inconsistencies in what she said?

A Yes, ma'am.

Q But you didn't tape record any interview?

A Jennifer -- well, we didn't tape record that, no.

Q And did you ever ask her as to whether or not Jay Wilds had told her ahead of time that Adnan was planning to kill Hey Men Lee?

A Yes, sir -- I mean, yes, ma'am, I did.

Q And that was at an unrecorded interview?

A Yes.

Q Okay.

A And it may have been addressed -- it was -- interviews. It wouldn't have been addressed on the initial interview with her because we hadn't spoke with Jay yet.

Q And other than the -- because then there wouldn't have been any inconsistency, right?

MR. URICK: Objection.

THE COURT: Overruled.

THE WITNESS: That is correct.

BY MS. GUTIERREZ:

Q Okay. And the only interview that you tape recorded was on the 27th of February --

A Yes, ma'am.

Q -- with Jen Pusitari?

A That is correct.

Q And that was an interview to which she brought a lawyer?

A Yes, ma'am.

Q Thank you.

One of the inconsistencies that you asked him about, as indicated on page 49 which we've identified, was why he didn't do anything with his knowledge, meaning Jay?

A Yes, ma'am.

Q Is that correct?

And he responded to all your questions, did he not?

A Yes, he did.

Q And the one that -- he first told you that --

MR. URICK: Objection.

MS. GUTIERREZ: -- occurred --

THE COURT: Can I get the question?

MS. GUTIERREZ: The trunk pop that occurred at a place he identified as a strip near Edmondson and Poplar Grove?

THE WITNESS: Yes, ma'am.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q I'd refer you now to page 56. You specifically advised -- McGilvery did, that they had the tape -- that you all had the taped interview of February 28th, did you not?

A Yes, ma'am.

Q Okay. And Detective McGilvery said there were a lot of inconsistencies, did he not?

A Yes, ma'am.

Q And then Detective McGilvery says, "And to start with, you indicated that you didn't know before Adnan killing Hey, you didn't have any idea," correct?

A That is correct.

Q And Detective McGilvery said, "But then that's wrong," is that correct?

A That is correct.

Q And the wrong was -- Detective McGilvery said, "Well, you did have knowledge, right?"

A Yes.

Q And then began questions that involved other inconsistencies, is that correct?

A Yes, ma'am.

Q And those are inconsistencies that were also wrong, is that correct?

A That is correct.

Q Okay. And by wrong, did that mean untrue?

A I think some of the inconsistencies in Mr. Wilds' statement was he didn't remember or he couldn't remember at that particular time. Some of the inconsistencies, as far as why he didn't tell us about other people and the location where he first seen the car, we were able to clarify those, and he explained why he said what he did and also why he didn't notify the police.

Q And in regard to the inconsistency about where the trunk pop took place?

A That is correct.

Q Okay. That wasn't something that he didn't remember and, therefore, made up a different location, was it?

A No.

Q He offered an explanation as to why he had told you a place that didn't happen?

A That is correct.

Q And his explanation was that the videos on the Best Buy lot show something and he didn't want to be involved, right?

A Bear with me one second.

That is correct.

Q Is that correct?

A Yes, ma'am.

Q And he had told you up until that point that all he had done at that location -- this is his second story -- was to walk over to the car and view the apparent dead body of Hey Men Lee, correct?

A Well, he did other things on the parking lot. He became involved in a brief confrontation with Adnan because he couldn't believe what he was peering into when he looked into the trunk or couldn't believe what he saw.

Q None of that information indicated that, from what he told you, that he had anything to do with causing the death of the body in the car, correct?

A That's correct.

Q And that at that time -- at the time that he was at Best Buy, at the time the video would have been filming, he had never said that he had done anything criminal?

A He knew that he had done something wrong.

Q My question was had he told you that he had done anything criminal?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Had he described any criminal activity related to anything?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q In fact, exactly what he said when he was asked by Detective McGilvery --

MR. URICK: Objection.

MS. GUTIERREZ: -- and I'll refer you to page 58 o that statement.

THE COURT: Ms. Gutierrez, if you're going to read the statement, you'll be leading the witness, and that

objection is going to be sustained. If you want to ask him what it was that was said or if you want to do it the other way around --

BY MS. GUTIERREZ:

Q Was Mr. Wilds asked about why he lied about the location from Edmondson Avenue to Best Buy, using that term lie?

A Yes, ma'am.

Q Okay. And what exactly was Mr. Wilds asked?

A Detective McGilvery had asked him "Why would you lie about the location?"

Q Okay. And you're reading from?

A Page 58, middle of the page.

Q And is that fifth or sixth line down?

A It's the ninth line down.

Q Oh, okay. Before asking that question, Detective McGilvery had asked it before, had he not?

A Yes.

Q Okay. And that's six lines down?

A On the fifth line, as you said before. I'm sorry.

Q And was the word lie in Detective McGilvery's question?

A Yes, it was.

Q Okay. And in the second lie question, how did

Mr. Wilds answer?

A "Because I'm associated with it."

Q With it?

A With it.

Q And that was Wilds' answer to the question about why?

A Yes.

Q And you were present during this?

A Yes, ma'am, I was.

Q Okay. And the transcript of this that you're referring to was made in the ordinary course of business?

A Yes, it was.

Q And as Mr. Urick asked you, you reviewed this for accuracy when it was made?

A Yes, ma'am.

Q And it was made by an employee of the Baltimore City Police Department?

A Yes, Ms. Jackie Taylor.

Q And it is an accurate transcription of the recording that was made?

A Other than the spelling errors and the grammar.

Q So the minor --

A Yes. The context is true and accurate.

Q And the answer that Jay Wilds provides, as you read it to us, "Because I'm associated, I'm associated with

it," are there no spelling or grammatical errors, are there?

A No, ma'am.

MS. GUTIERREZ: I would like to have this page marked as Defense Exhibit 19.

(Whereupon, the document referred to as Defendant's Exhibit No. 19 was marked for identification.)

MS. GUTIERREZ: May I approach the witness?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q I'd ask you to review this, Detective Ritz, with your copy that --

Have you had a chance to review it?

A Yes, ma'am.

Q And is what I've handed you an exact copy of --

A Yes, it is.

Q And that's a true and accurate representation of the transcript at page 58, the statement that Jay Wilds made on March the 15th, 1999?

A Yes, it is.

MS. GUTIERREZ: I would move Defendant's Exhibit 19 into evidence.

MR. URICK: Objection.

THE COURT: May I see the exhibit?

(Pause)

The objection is sustained.

Thank you.

BY MS. GUTIERREZ:

Q Did Mr. Wilds tell you in either of the interviews about his transaction -- any transactions involving illegal narcotics?

MR. URICK: Objection.

THE COURT: Can you repeat the question, please?

MS. GUTIERREZ: Did Mr. Wilds, in any of his interviews, tell you about any of his transactions involving illegal narcotics?

THE COURT: Sustained.

MS. GUTIERREZ: I have nothing further.

THE COURT: Thank you, Ms. Gutierrez.

Any recross? Re-recross?

MR. URICK: Just extremely briefly.

RECROSS EXAMINATION

BY MR. URICK:

Q What did you take Mr. Wilds to mean when he said "I'm associated with it"?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

BY MR. URICK:

Q Did Mr. Wilds explain to you what he meant by

"associated"?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

Yes or no?

THE WITNESS: Yes.

BY MR. URICK:

Q Do you recall what his explanation was?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. URICK:

Q What was his explanation?

MS. GUTIERREZ: Objection. May I have a continuing objection?

THE COURT: Yes, you may.

Overruled.

THE WITNESS: His association was with helping Adnan dispose of the body, following Adnan as Adnan is driving Hey Lee's vehicle from the Best Buy parking lot to different locations and finally the burial site out in Leakin Park. That was what he was referring to as his association.

BY MR. URICK:

Q And you personally spoke to Jay Wilds, like you personally spoke to Jennifer Pusitari, like you personally

spoke with Christine -- is that correct?

A That is correct.

Q Would it be fair to describe them as suburban Woodlawn teenagers who were scared?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

MR. URICK: No further questions?

THE COURT: Any further questions, Ms. Gutierrez?

MS. GUTIERREZ: Yes. If I may look at the last exhibit.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q If you would again review page 58.

A Yes, ma'am.

Q The question before Mr. Wilds answer "Because I'm associated with it" --

MR. URICK: Objection. Beyond the scope of the recross.

MS. GUTIERREZ: -- was what question?

THE COURT: The question before the question?

MS. GUTIERREZ: No. The question to which Mr. Wilds answered that line that you were just asked about by Mr. Urick was what?

MR. URICK: Objection. Beyond the scope of the

recross.

THE COURT: Well, I don't have the exhibit in front of me, so may I see the exhibit? And, Ms. Gutierrez, if you could approximate the line that you're referring to?

MS. GUTIERREZ: It's sort of in the middle.

THE COURT: In the middle?

(Pause)

The objection is sustained.

BY MS. GUTIERREZ:

Q Were there any follow-up questions, Detective Ritz, when he said "I'm associated with it"?

MR. URICK: Objection.

THE COURT: I believe I sustained the previous question when the State asked to explain what associated meant pursuant to the Defense objection. And so, I'm going to be consistent and sustain this objection as to what was meant, but if Detective Ritz can recall exactly what the witness said he may tell us that.

THE WITNESS: Would you repeat the question again? I'm sorry.

THE COURT: Do you understand my ruling, Ms. Gutierrez?

MS. GUTIERREZ: I really don't, Judge.

THE COURT: The Court has sustained any description of what Mr. Wilds meant by the word association

because of where we are in the case and the previous questions and testimony. So therefore, the State was not allowed to ask the question --

MS. GUTIERREZ: Okay. Let me try to --

THE COURT: -- to describe what association meant. And now the Defense is being precluded from doing that.

BY MS. GUTIERREZ:

Q On page 58 where Mr. Wilds answer "I'm associated with it" appears --

A Yes, ma'am.

Q -- in regard to page 58, the questions that led to that answer were related to the location of what?

MR. URICK: Objection.

THE COURT: Overruled.

THE WITNESS: To where the murder had taken place.

BY MS. GUTIERREZ:

Q Okay. And that was Best Buy?

A Yes, ma'am.

Q And this was -- did you ever receive any evidence to suggest that burial took place at Best Buy?

A No.

Q No. And did you ever receive any information that anything else related to the killing and burial of Hey

Lee took place at Best Buy?

A I'm not sure I'm understand the question because it's two parts here.

Q From any source, including Mr. Wilds' later statements, did you ever receive any information that any other part of the killing or burial or anything that took place between the killing and the burial actually took place at Best Buy?

A The only thing that took place on the parking lot of Best Buy was the murder of Hey Lee.

Q Of Hey Men Lee?

A Hey Men Lee, that's correct.

Q And Jay Wilds, to your knowledge, was he present during the murder of Hey Men Lee?

A No, he was not.

Q The only time he saw the evidence of the murder was at Best Buy?

A That is correct.

Q Did you ever receive any information from Jay Wilds that indicated that he did anything other than look at the body for 5 to 10 minutes in regard to the proximity to Hey Men Lee's body? Five to 10 seconds?

A Are you talking about during the -- from the initial murder to the burial or just at the homicide --

Q I'm just talking about at Best Buy.

A That was all he did, other than getting into an argument with the Defendant.

Q Okay.

MS. GUTIERREZ: I would again move page 58 into evidence.

MR. URICK: Objection.

THE COURT: Since parts of that exhibit are not -- have not been testified to, the objection will be sustained.

MS. GUTIERREZ: Well, then I would move that the relevant part in and I could certainly redact the exhibit.

THE COURT: It's consistent with the witness's testimony, as I've reviewed the exhibit. And therefore, since the sum and substance of what is contained, the admissible part has already been testified to, the objection will be sustained.

MS. GUTIERREZ: I have no further questions.

THE COURT: Very well.

MR. URICK: Nothing from the State. Thank you, Your Honor.

THE COURT: Thank you very much, detective, you may step down.

May this detective be excused?

MS. GUTIERREZ: Yes, Your Honor.

THE COURT: And released from summonses,

Ms. Gutierrez?

MS. GUTIERREZ: Yes, Your Honor.

THE COURT: Mr. Urick?

MR. URICK: I don't --

THE COURT: You're not sure?

MR. URICK: I'm not sure. I just like to keep him under --

THE COURT: All right. Detective, you are still a sequestered witness then. You may not remain in the courtroom and you need to just be aware you may be recalled, so please be on alert status or in contact with either my chambers or the State's Attorney's Office in the event that we are looking for you to call you as a witness. The State --

Do you want him to call your office, Mr. Urick, or --

MR. URICK: I can get a hold of him on short notice.

THE COURT: Very well. Very well.

(Whereupon, at 11:43 a.m., the witness was excused.)

THE COURT: All right, your next witness, Ms. Gutierrez?

MS. GUTIERREZ: Judge, can we take a short break now? I know I have several witnesses but I'm not sure of

people's requirements.

THE COURT: Well, that might be an ideal time to do that. I note that it is 11:30-ish and I do plan to go on till about 12:15, like we did yesterday. I have contacted Jury Commissioner and, with Mr. White's help, they are going to be looking for you again today at about 12:15, where you will be paid and then you will go over -- unless you have already been there. You have not, correct? Some of you have been over and some of you have not, is that it?

For those of you who have not, they are available at 12:15.

And so, we will take a brief recess now. If you'll go with the deputy sheriff. And as you exit, I'll remind you to leave your notepads face-down, not to discuss the testimony of Detective Ritz or any other witness. You have not heard all the witnesses and you have not been instructed as to the law, nor have you heard closing argument of counsel. It would be inappropriate to discuss this case among yourselves or with anyone else.

Please go with Deputy Sheriff Church, and when we're ready for you, we will have you walked back.

(Whereupon, at 11:44 a.m., the jury was excused.)

THE COURT: I would allow you to take a recess, counsel, as well.

(Whereupon, the trial was recessed at 11:44 a.m. and subsequently reconvened at 11:55 a.m.)

(Jury not present)

THE COURT: Please be seated.

MS. GUTIERREZ: Judge, the subpoena that I asked you to sign did get served, and that witness will be here the first witness after lunch.

THE COURT: Very well.

MS. GUTIERREZ: So we'll be fine.

THE COURT: Is the deputy sheriff out there?

Mr. Buddemeyer, please step up, please. I think you're the next witness.

MR. DAVIS: Yes, ma'am. Thank you.

THE COURT: Just come on around and have a seat for a moment, until we can get the jury back.

MS. GUTIERREZ: Do you have a copy of the records, Mr. Davis?

THE COURT: I'm sorry, your last name is?

MR. DAVIS: Davis, Andrew Davis.

THE COURT: Davis. I don't know why I wanted to call you Buddemeyer.

MR. DAVIS: That's okay. I answer to all kinds of things these days. Thank you.

(Pause)

(Whereupon, at 11:58 a.m., the jury returned to

the courtroom.)

THE COURT: Mr. Davis, I need you to raise your right hand when you get a moment.

Whereupon,

ANDREW DAVIS

was recalled as a witness at 11:59 a.m., and after having been first duly sworn, was further examined and testified as follows:

THE CLERK: You may be seated.

THE WITNESS: Thank you.

THE CLERK: You're welcome.

MS. GUTIERREZ: Judge, I'd like to approach the witness.

THE COURT: Certainly. Let him state his name and his --

MS. GUTIERREZ: -- as Defendant's Exhibit No. 20 -- authenticity -- stipulated to.

(Whereupon, the document referred to as Defendant's Exhibit No. 20 was marked for identification.)

THE COURT: For the record, ladies and gentlemen, there are some records that have been stipulated to by counsel.

Ms. Gutierrez, the jurors have been asked to raise their hand when they cannot hear, and what you just

said, they are signaling they could not hear.

MR. URICK: We only stipulate to authenticity, not to --

THE COURT: I understand that, the authenticity of the records. That's what she said and that's what I was attempting to repeat for the benefit of the juror who raised his hand and indicated he could not hear.

That's Exhibit No. 20, correct?

MS. GUTIERREZ: Yes.

THE COURT: Very well.

MS. GUTIERREZ: Mr. Davis --

THE CLERK: Excuse me. Let me get his name and his --

MS. GUTIERREZ: Oh, I'm sorry.

Recalling Andrew Davis.

THE WITNESS: Yes, ma'am, my name is Andrew Davis. My address is 207 East Redwood Street, Suite 703, Baltimore, Maryland 21202. Employed as a private investigator.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Davis, just if you can, were you employed as a private investigator in the defense of Adnan Syed?

A Yes, ma'am, that's correct.

MS. GUTIERREZ: May I approach the witness?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q Mr. Davis, I'm going to show you what's been marked as Defendant's Exhibit 20 and ask if you've seen them and you know what they are?

A Yes, ma'am, I have and, yes, ma'am, I do.

Q What are they?

MR. URICK: Objection.

THE COURT: I'm going to need to see what it is that the witness has. Mr. White can assist.

(Pause)

Counsel, and when you say what are they, you're asking as to all the items that are attached as Exhibit No. 20 for identification?

MS. GUTIERREZ: Yes, Judge. The generic term for what they are.

THE COURT: You may answer the what are they question, if you know, if that --

That question is overruled.

THE WITNESS: Yes, ma'am. These are discovery that has been provided to the Defense by the State, and what they actually are are bank records from Hey Men Lee.

BY MS. GUTIERREZ:

Q And do they cover the use of an ATM card associated and given to Hey Men Lee?

A Yes, ma'am.

Q I'd like to direct your attention to where I put the little pink sticky, and if you would locate the date of 1/13, 1999.

A Yes, ma'am, I have it.

Q And do those records indicate that Hey Men Lee used her ATM card on that date?

A Yes, ma'am, they do.

Q And where does it indicate -- what do those records reveal --

MR. URICK: We're withdrawing the objection to the admission of the document.

MS. GUTIERREZ: -- as to her use of the ATM card on that date, the 13th of January 1999?

THE COURT: You may answer.

THE WITNESS: Thank you.

It states that this card was used for a purchase of $1.71 at Crown, 11902940 Baltimore, Maryland.

BY MS. GUTIERREZ:

Q Okay. And did you have occasion to determine where the Crown, that number, is located?

A Yes, ma'am.

Q And where is that Crown located?

A That group of numbers actually indicates that it's Crown No. 29, and Crown No. 29 is located at the

intersection of Harford Road and Northern Parkway in Baltimore, Maryland.

Q And are you familiar with that intersection, Harford Road and Northern Parkway?

A Yes, ma'am.

Q And where is that located? Is that in Baltimore City?

A Yes, ma'am, it is.

Q And where is that location in relationship to the Woodlawn area of Baltimore County?

A It's not close to Woodlawn. I wouldn't say it's on the opposite side of the city but it's pretty far on the way to the opposite side of the city.

Q Okay. And did you have an occasion to visit that particular property?

A Yes, ma'am.

Q And do the bank records indicate what time the use of the ATM card was? What time it occurred?

A This printout from NationsBank does not indicate the time that the card was used.

Q Okay. In your visiting that particular Crown, did you determine whether or not someone could use the ATM outside, like at the pump?

A Yes, ma'am, I did determine that.

Q And can you do that at that Crown?

A No, ma'am, you can't.

Q What is required to use an ATM at that specific location?

A You actually have to present the card to cashier in person.

Q Okay. And is that inside as opposed to outside --

A Yes, ma'am.

Q -- the Crown building?

A Yes, ma'am.

Q Okay. And did you determine whether or not records would have been made indicating the time of that purchase?

A Yes, ma'am. Crown is obligated to maintain its records for a period of one year after a purchase was made.

Q Did you determine whether -- were you ever -- did you attempt to locate those records?

A Yes, ma'am, I did.

Q And were the Crown people helpful in assisting you in doing that?

A Yes, ma'am. The owners, yes, ma'am.

Q Were you able to locate the records that would indicate that that ATM that's indicated on the bank records was used at that time?

A No, ma'am.

Q And was that because they didn't exist?
A That's correct.
Q And did they -- did you determine whether or not they ever existed?
A Yes, ma'am.
Q And what did you so determine?
A Those records existed up to as late as October of 1999. The records were actually kept at the owner's residence, Jeff Weelis (phon. sp.), in his garage. He has three Rottweilers, and they tore the garage apart one day and destroyed all the records that he had kept in this garage and were since thrown away, as late as October of last year.
Q Okay. By October, you mean just a couple months ago, October?
A Yes, ma'am.
Q And did you determine that in the records that had been destroyed would have been records that relate to January 13th?
A Yes, ma'am, that's correct.
Q From speaking to the owner and visiting the Crown, did you determine what was bought that was covered --
MR. URICK: Objection.
MS. GUTIERREZ: -- by the $1.71 entry for the use

of the ATM card?

THE COURT: Sustained as to that question.

BY MS. GUTIERREZ:

Q Did you determine if the records would have revealed a purchase -- what the purchase was that was represented by the $1.71 entry on the ATM records?

MR. URICK: Objection.

THE COURT: Overruled.

Yes or no? Not what was purchased but yes, you were able to and the records would have, or no, the records would not.

THE WITNESS: The answer is yes.

BY MS. GUTIERREZ:

Q And in regard to that information, would that -- did you determine whether or not that information, meaning what the purchase would have been, would have been contained in the same records that you sought to obtain that would indicate the time of the sale?

MR. URICK: Objection.

THE COURT: I believe it's been asked and answered now. He's just said yes.

MS. GUTIERREZ: No, Judge, this is as to what the purchase was. I've asked him about -- the records that would indicate the time of the sale and neglected then to ask did he determine whether or not those very same records

would have indicated the purchase.

THE COURT: Very well.

Yes or no, and don't say what the item was or what you were told.

THE WITNESS: Yes, ma'am.

Yes.

BY MS. GUTIERREZ:

Q Yes. Okay. Those were the same records that were destroyed sometime in October of 1999?

A That's correct.

Q Is it your understanding that those same records would have been available, meaning to determine the purchase of the sale all the way up to October of 1999?

A That's correct.

MS. GUTIERREZ: I would move Defendant's Exhibit 20 into evidence.

THE COURT: Any objection?

MR. URICK: No objection.

THE COURT: Let it be admitted.

(Whereupon, the document referred to as Defendant's Exhibit No. 20 was received into evidence.)

MS. GUTIERREZ: I have no further questions at this time.

THE COURT: Any questions?

MR. URICK: Yes.

CROSS-EXAMINATION

BY MR. URICK:

Q Good afternoon, Mr. Davis.

A Hi, Mr. Urick.

Q Now, the column --

MR. URICK: Could the witness see the exhibit again that he was just looking at, please?

THE WITNESS: Thank you.

BY MR. URICK:

Q Do you have a credit card of your own?

A A credit card? Yes, sir.

Q Now, you see the far left column, that says "Date Posted," does it not?

A Yes, sir.

Q Now, date posted is not the same thing as date transacted, is it?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

If you know.

THE WITNESS: I do know because I spent numerous hours with Crown receipts and had this fully explained to me, so I can answer your question.

BY MR. URICK:

Q Go ahead.

A On this purchase date, that would -- the 13th would, in fact, be the date that purchase was made. Because of the procedure that Crown uses to batch out, they do four batches a day which -- in that time period, which would allow them to show what actual purchases were made that day and then actually send the batch through to the credit card company.

Q Now, you're aware that Ms. Lee -- well, this is a 24-hour Crown, correct?

A Yes, sir.

Q And you're aware that Ms. Lee was dating a Donald Kleindenst (phon. sp.), correct?

A Was dating Donald Kleindenst?

Q Yeah.

A Yes, sir.

Q And if the night before she had been with him and was coming home, she might have stopped at this Crown place at 12:05, 12:30, to get a soda, is that correct?

MS. GUTIERREZ: Objection.

THE COURT: Sustained as to what might have happened.

BY MR. URICK:

Q And the records show that there are absolutely no transactions on this ATM card after January 13th, is that correct?

A The next date here posted is 1/27.

Q That's the monthly maintenance fee?

A And I was going to explain that. That's what is presented here, yes, sir.

Q So there is no use of that ATM card after this purchase of $1.71 that was made on -- sometime on January 13th? Absolutely no other transactions on that ATM card?

A Just the monthly maintenance.

MR. URICK: Okay, thank you.

THE COURT: Thank you very much.

MS. GUTIERREZ: Nothing further.

THE COURT: May this witness be excused?

MS. GUTIERREZ: Yes, Judge, he may.

THE COURT: May this witness be released?

MS. GUTIERREZ: Yes, yes.

THE COURT: And counsel?

MR. URICK: No, we have no further questions of him.

THE COURT: Very well.

Mr. Davis, you're released from summons and if you would like to remain in the courtroom, you may. You may not discuss your testimony with anyone who is yet to be a witness in this case.

THE WITNESS: Yes, ma'am. Thank you.

(Whereupon, at 12:11 p.m., the witness was

excused.)

THE COURT: Your next witness, Ms. Gutierrez.

MS. GUTIERREZ: Judge, I do have some witnesses. They are going to be lengthy. In light of the fact that you're going to -- I think it might be appropriate to not start them.

THE COURT: We'll take a lunch break now. Please understand that we will be back by 1:15.

MS. GUTIERREZ: That's fine.

THE COURT: Very well.

MS. GUTIERREZ: That's fine.

THE COURT: Ladies and gentlemen, it's a few minutes after 2 -- I'm sorry, after 12. They'll be looking for you in Jury Assembly, and that'll give them 15 or so minutes, so why don't we say 1:30? That gives you enough time to get over there, get paid, and still have an hour for lunch. One-thirty, I'll give you till 1:30, but I'm giving counsel till 1:15 because you don't have to go to the Jury Commissioner's office.

MS. GUTIERREZ: I wish.

THE COURT: All right. So if counsel could be back at 1:15 and the jurors will be back at 1:30, we will resume this case.

I'm going to ask you once again to leave your notepads face-down and not to discuss the testimony of

anyone you've heard today or any other day, not to discuss it amongst yourselves or with anyone else. You have not heard all the evidence and you've not heard all the witnesses, nor have you heard closing argument or been instructed as to the law.

I'd ask you to go to lunch now and return by 1:30, at which time we will resume this matter. Have a wonderful lunch and I'll see you back at 1:30.

(Whereupon, at 12:12 p.m., the trial was recessed.)

ooOoo

AFTERNOON SESSION (1:48 p.m.)

(Jury not present)

MS. GUTIERREZ: Mr. Chaudry, would you take the stand?

(Whereupon, at 1:49 p.m., the jury returned to the courtroom.)

MS. GUTIERREZ: The Defense would call Saad Chaudry to the stand.

THE COURT: Mr. Chaudry, will you please stand?

This is Mr. White. Raise your right hand, please, and listen to what he has to say.

Whereupon,

SAAD CHAUDRY

was called as a witness at 1:50 p.m., and after having been

first duly affirmed, was examined and testified as follows:

THE CLERK: Take a seat. Please keep your voice up. State your name for the record.

THE WITNESS: Saad Chaudry.

THE CLERK: Spell your first and last name for the record.

THE WITNESS: First name is Saad, S-A-A-D, last name's Chaudry, C-H-A-U-D-R-Y.

THE CLERK: State your address for the record.

THE WITNESS: [redacted] Valley Drive, Catonsville, Maryland 21228.

THE COURT: Witness with you, Ms. Gutierrez.

MS. GUTIERREZ: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Chaudry, are you currently a student?

A Yes, I am.

Q Where is that?

A At Catonsville Community College.

Q And what year are you in?

A This is my freshman year.

Q And what are you studying?

A I'm in the Honors Program but right now it's just general courses.

Q All right. Now, Mr. Chaudry,let me direct your

attention back to the school year that would have begun in September of 1998 and run through May of 1999. Were you a student then?

A Yes, I was.

Q Where?

A At Mount Hebron High School.

Q And where is Mount Hebron High School located?

A In Ellicott City.

Q All right. And did you -- your home address currently is located where?

A In Catonsville, Maryland.

Q In Catonsville. And did you live there last year?

A At the end of last year, I moved to Catonsville.

Q All right. Now, Mr. Chaudry, let me direct your attention back to the school year again, beginning in September of '98, ending through May of '1999. Were you a member of any religious faith?

A Yes.

Q And what faith was that?

A I'm Muslim.

Q You're Muslin. And did you practice at any particular mosque that you practiced your faith or were a member of?

A The mosque I attended was the Al Raqman Mosque.

Q And does it have another name?
A It's located on Johnnycake. Islamic Society of Baltimore.
Q Okay. And where is it located?
A On Johnnycake Road.
Q And how long have you been a member of that mosque?
A About four years.
Q And is your family a member of that mosque?
A Yes.
Q All right. Now, through that mosque, did you come to know one Adnan Syed?
A Yes, I have.
Q Could you tell us how that came about?
A I met him the summer before my freshman year of high school and I just met him at the basketball courts outside of the mosque.
Q Okay. Now, is he your age?
A Yes, he is.
Q From the time that you met him, at some point afterward, did you develop a relationship with him?
A Yes.
Q And how would you describe that relationship?
A Good friends.
Q All right. Now, how often did you have an

occasion to see him at the mosque?

A At times, it would be almost every other day but sometimes it would be weekly.

Q Sometimes it would be weekly. And what would, what would that depend upon?

A Whether we had school or not. In the summer, I'd be there almost every day or every other day, but during school, most likely, it was a weekly basis.

Q As between yourself and Adnan Syed, who was at the mosque more often?

A Adnan.

Q And to your awareness, how close to the mosque did he live?

A Less than a mile. He was very close.

Q Okay. And, Mr. Chaudry, did your -- the rest of your family belong to the mosque?

A Yes.

Q And did the rest of Adnan's family belong to the mosque?

A Yes, as far as I know.

Q What are the obligations of Muslims or the encouragement of Muslims in regard to ordinary days of the year and praying?

A The Muslims pray at least five times a day.

Q And is it required that the praying take place at

a specific location?

A No, it's not.

Q And is the mosque open to accommodate Muslims coming to the mosque to pray?

A Yes, it is.

Q And does that include students such as yourself who would still be in high school?

A Yes.

Q And are you encouraged to pray five times a day?

A Yes, I am.

Q And is there any tenet of the faith that requires you to go to the mosque to pray?

A Nothing that requires me to go to the mosque to pray.

Q But it urges you to do so?

A Yes.

Q All right. Now, during the regular year in regard to attendance at the mosque for prayer in the evening, were you a better attender or was Adnan?

A Adnan.

Q Okay. And how did you know that?

A Well, one of the ways I met him was going to the mosque. You know, almost every time I went, which was occasionally, he would be there. So that's how I met him.

Q Did you also speak to him about that? About

going to the mosque and --

A Not really. I just knew that he was there. I didn't speak to him about it.

Q In addition to the mosque -- is that located inside a building?

A Yes, it is.

Q Okay. And are there other activities that involved, particularly, young men of high school age on the mosque property?

A Yes. There's basketball courts there where a lot of young men get together and play.

Q Okay. And is there a -- anything akin to what Christians might call a Sunday School for young people?

A To some extent. They have, like, youth groups, things like that.

Q Youth groups?

A Yeah.

Q Do they have different groups for girls and boys?

A Yes.

Q Okay. And did you participate in any of those?

A No, not really.

Q Did Adnan participate in those?

A More than I have -- more than I did, you know, to what I thought.

Q Okay. Let me direct your attention to

approximately December of -- January, both of this year, last year, and all other years in which you've belonged to the mosque. Is there a special Holy Month in Islam?

A Yes.

Q What is that called?

A Ramadan.

Q And when does that occur?

A Every year it's a little different, just slightly off because of the Islamic calendar, but last year it occurred during December or January. Around January sometime, I'm not really too sure.

Q And although it may vary from year to year, is it predicted according to events of the calendar?

A Yeah.

Q I'm going to show you, Mr. Chaudry, something that's been admitted into evidence as Defendant's Exhibit 5. Could you take a look at that?

A Yeah, I know what it is.

Q And having looked at that, can you identify what that was?

A Yeah. This is a calendar for the month of Ramadan.

Q For what year?

A Well, the Islamic year is 1419 but --

Q But the A.D. year?

A Is 1998-1999, December and January.

Q Okay. And does that reflect the exact dates of Ramadan?

A Yes, it does.

Q Now, Mr. Chaudry, during Ramadan, what if any other obligations are imposed on Muslims?

A They're obligated to fast.

Q To fast, and what does fasting mean?

A Fasting is withstaining (sic) from food or drink or, like, backbiting, lying, you know. Basically, you restrain yourself from any, like, any, like -- I don't know, like bad deeds or like bad things you could during that time.

Q And fasting, when is it to occur?

A During the day, from sunrise to sunset.

Q Sunrise to sunset. And are there special other obligations in regard to prayer?

A During the evenings, during each day of Ramadan, they have, I guess, a congregation that they -- most of the men -- most people come and pray in the evenings.

Q More on days outside of Ramadan?

A Yes, that's right.

Q Okay. And is there anything special or proscribed about the prayers?

A They're supposed to be more meaningful and, you

know, it's best to go if you can go, because a lot of people do attend.

Q Go to the mosque?

A Yeah.

Q Okay. And are there any occasions during the month of Ramadan in which members of the community are invited to lead the community in prayers?

A Yes.

Q And is there any honor associated with being asked to lead the prayers?

A Yes, there is.

Q And what is that?

A Usually, the person that leads the prayers in an honorable person in that, like, he has the respect of the other members to follow behind him while he's leading.

Q During Ramadan of last year, which began in late December of 1998, is that right?

A Yes.

Q And went through late January 1999, during that period of time, was there any occasion that you became aware of where Adnan led the prayers?

A Yes.

Q How did you become aware of that?

A I heard it through Adnan and through other members of the community.

Q Okay. And were you present on the day that he led the prayers?

A No, I was not.

Q Was there anything unusual about that?

A No, not really. I was -- I try to attend as much as I can but it was off and on.

Q During that period of time, during December and January, you were a full-time high school student?

A Yes.

Q And the high school student that you -- the high school you attended was actually in Howard County?

A Yes, that's correct.

Q In driving distance, how long is that from the mosque?

A About 10 miles.

Q All right. And during that time period, specifically, in addition to your full-time duties at school, did you participate in any extracurricular activities?

A Yes. I played basketball.

Q You played basketball?

A Yeah.

Q And for whom did you play basketball?

A Mount Hebron High School.

Q And what did that require in regard to your time

and when?

A Every day we'd either have a game or practice which would either -- would last about two, three hours.

Q And were some of those games located at places other than Mount Hebron?

A Yes.

Q Did you fast during that Ramadan?

A Yes.

Q And did that impact on your basketball playing?

A To some extent, but most of the games were played after sunset, so I was able to eat and drink.

Q So you would fast, then break the fast?

A Yeah, I was able to break it.

Q And then -- sir, were there -- did you ever not fast?

A Yes.

Q Okay. And on days that you didn't fast did you have to seek dispensation from anyone?

A No.

Q From your parents?

A No.

Q From elders at the mosque?

A No.

Q Or any other Muslim?

A No.

Q From the Creator?

A Well, I mean, I really didn't think of it like that, but just a day I didn't fast for like -- it was my -- you know, it was like my business if I fasted or not, so I didn't really discuss it.

Q Your business as to whether or not you, as a young Muslim, follow what you're encouraged to do?

A Yeah.

Q And not anybody else's?

A Yes.

Q And if you did not follow that encouragement, was there any other person alive anywhere who you would be required to seek permission of --

A No.

Q -- for not following something such as fasting?

A No.

Q Or the requirement of praying?

A No.

Q When you couldn't make the prayers, particularly at night, did you pray elsewhere?

A Yes.

MR. URICK: Objection as to the form of the question.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q When you could not make prayers, as encouraged by your religion, at the mosque, what did you do?

A I prayed at home.

Q And was that your custom?

A Yes.

Q And is praying at home acceptable in your religion?

MR. URICK: Objection.

THE WITNESS: Yes, it is.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Now, sir, let me direct your attention back again to Ramadan of last year. Did you have occasion to see Mr. Syed?

A Yes.

Q And was he your friend?

A Yes, he was.

Q And did that include the whole time period of December-January, December '98-January '99?

A Yes.

Q And how was it that you had occasion to see him?

A Usually, on weekends or Friday nights we'd hang out.

Q What would you do when you would hang out?

A Chill at his place, he'd come over to my house.

We'd go out, go to movies, get something to eat. Nothing too much.

Q According to the Islamic faith, is there any encouragement on behavior in regard to young people dating?

A Yes, there is.

Q And what is that?

A The encouragement is to not date and to separate yourself from -- if you're a young man, to separate yourself from young women.

Q And if you're a young girl?

A The same. Separate yourself from young men.

Q And is there any encouragement in regard to premarital sex between young men and women?

A Yes, there is.

Q And what is that?

A Not to do it.

Q Not to have any premarital sex?

A Yes.

Q And to again direct your attention back to the school year beginning in September of 1998 through May of 1999, did you become aware of whether or not your friend Adnan Syed was dating a young woman?

A Yes.

Q And how did you become aware of that?

A He told me.

Q And did you come across what the young woman's name was?

A Her name was Hey.

Q And did you meet her?

A Yes.

Q On how many occasions did you meet her?

A I met her once.

Q In regard to you, did Adnan, after having told you about it, even hide the fact that he was dating her?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q On the occasion that you met her, what was that?

A I met her at the Woodlawn Spring Musical.

Q All right. And was that a school function?

A Yes, it was.

Q And was that a function in which Adnan did any performance?

A No, he did not.

Q And was there anybody that you knew that was doing a performance at that function?

A She was.

Q Who is the she?

A Hey.

Q Okay. And was that the occasion in which you met

her?

A Yes.

Q And why -- you never attended Woodlawn, did you?

A No.

Q Okay. And why is it or how is it that you came to be there?

A I came with Adnan.

Q Okay. And had he invited you?

A Yes.

Q And did you know of his relationship with Hey and dating prior to that event?

MR. URICK: Objection.

THE COURT: Overruled.

Did you know about the relation prior to that, yes or no?

THE WITNESS: I think the relationship was just starting then.

BY MS. GUTIERREZ:

Q And did you continue to receive information about that relationship?

A Yes.

Q From whom?

A Adnan.

Q Okay. And was it a regular topic of conversation?

A To some extent. Yeah, occasionally we'd talk about it.

Q Prior to your receiving information about his dating relationship with Hey Men Lee, had you ever known him to date anyone else?

A Yes.

Q And when had that occurred?

A He would date other girls but it wasn't like, like regularly. Like, he didn't have a girlfriend, but I know him for dating girls.

Q Do you know when that occurred?

A Not a precise date but, I mean, before he met her, like, just occasionally -- I mean, every weekend or so. I don't know.

Q Did you become aware of any time in which Adnan and Hey Men Lee stopped dating?

A From what I heard, it was after Homecoming, Woodlawn's Homecoming.

Q And when would that have been, if you know?

A About the fall of 1998.

Q And after you heard about that -- and from whom did you hear about that breakup?

A Adnan.

Q And after you heard about that breakup, did there come a time when you got further information about their

relationship?

A Not really, no.

Q Did you ever hear from any source that they were back again dating?

A Later on, from Adnan I did.

Q Okay. And after you heard that they were back again dating, did you ever hear further that they again stopped dating?

A Yes, I did.

Q And from whom did you get that information?

A Adnan.

Q And if you know, can you tell us when that was when they stopped dating?

A The second time?

Q Yes.

A That was, I guess, around Christmastime, somewhere around there.

Q Before Christmastime?

A I'm not really sure. Just around it.

Q Just to make sure, Mr. Chaudry, is Christmas an event that Muslims celebrate?

A No.

Q Is Christmas an event that is marked in any way on the Islamic calendar?

A Not that I'm aware of.

Q Now, Mr. Chaudry, when you heard that Adnan had broken up for the second time, from whom did you hear that?

A Adnan.

Q And at the time that he told you, what was his demeanor, in what you could observe?

A He was pretty laid back. He just told me that they broke up, and I wasn't too surprised.

Q And why was that?

A Because Adnan was showing interest in other girls.

Q And how did you know that?

A From him. He told me that he had met some other girls.

Q And what else did you become aware of? Did you know any of the girls?

A Yeah. He told me he met this one girl and he even went to visit her at --

Q And was that?

A Her name's Angeli.

Q Angeli, and where is it that Angeli lived?

A She is near Philadelphia at college, at Bryn Mawr

Q Bryn Mawr College?

A Yes.

Q And to your knowledge, did Adnan share that information with Hey Men Lee prior to the breakup?

A No.

Q Did that surprise you?

A No.

Q And were there any other girls that you were aware of?

A I knew Adnan had met, you know, a few girls but not that -- you know, not too much. I didn't ask him too much about it.

Q Now, in the entire time, from the time that you heard that Hey Men Lee and Adnan began dating, were you aware that that was against the advice of the Muslim religion?

A Yes.

Q As a result of being so aware, did you tell anybody?

A No.

Q Did you report him to anybody?

A No.

Q Did you chastise him?

A No.

Q Why not?

A It was pretty common.

Q What do you mean by that?

A A lot of young Muslim men date, so it wasn't, you know, anything special to me. It wasn't anything --

Q Even though they're not supposed to?
A Yeah, that's right.
Q And does nobody report them?
A Not that I know of, no.
Q And is there any punishment that is meted out for a young man who chooses to date against his religion?
A Not that I know of.
Q And when you say it's common, it's common among whom?
A Among young men at our -- in our community center, in our community.
Q At your mosque?
A Yes.
Q The one off of Johnnycake Road?
A Yes, that's right.
Q Are the adults in the mosque aware of how common it is?
A To some extent, maybe, but it seems like they turn -- you know, they don't know too much.
Q Is their state of ignorance of all that a state of ignorance that is encouraged by the young people?
A Yeah.
Q Do the young men that you're aware of that date against the encouragement of their faith, do they date young women from the mosque community?

A Some of them do but most of them don't, I don't think.

Q And why is that?

A Well, as far as, like, from my family, it's -- like, my sisters were a lot sheltered than I was.

Q Is that common in your community?

A Yes, I think it is.

Q Okay. So who do they date, if not --

A Usually, non-Muslim girls.

Q Non-Muslim girls?

A Yes, that's right.

Q From other communities?

A Yes.

Q Okay. Did you become aware if Adnan, after his breakup with Hey, increased interest in other young women?

A Yes.

Q And what communities did those young women come from?

A They were Indian but they weren't Muslim.

Q They were not Muslim?

A Yeah.

Q What religion were they?

A I believe they were Hindu but I'm not --

Q Hindu?

A Yeah.

Q And are you aware of any proscriptions, meaning any edicts, that prohibit dating among Hindu young women?

A From having friends from that culture and from that religion, it's also not looked upon to be good, either.

Q Similar to the Muslim community?

A Yes, that's right.

Q But in your experience, do the young people of the Hindu community also greatly ignore that?

A Yes.

MR. URICK: Objection.

THE COURT: Overruled.

BY MS. GUTIERREZ:

Q During that period of time, Mr. Chaudry, were you dating?

A Yes, I was.

Q And were you dating -- when you were dating, were you fully aware that that was behavior that at least was not encouraged by your community?

A Yes.

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q And was your dating -- did you ever bring your dating to the attention of your parents?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Sir, let me direct your attention to early January 1999.

MS. GUTIERREZ: Could I see the --

May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q Mr. Chaudry, I'm going to show you what's in evidence as State's Exhibit 30 -- could you tell us what that is?

A A cellular phone.

Q And what kind of cellular phone is it?

A A Nokia.

Q Did you become aware of whether or not -- during the time that you knew him, did Adnan Syed ever have a cellular phone?

A Yes.

Q Did he always have a cellular phone or did there come a time where he got one?

A There came a time where he got one.

Q And were you aware of that time when it happened?

A I'm not sure of exact dates but it was his senior year.

Q Okay, but were you aware of when -- the point in time when he got it, whether you remember the date or not?

A Oh, yes.

Q Okay. And do you recognize that cell phone to be any specific cell phone?

A Yes. It's about the same type as mine.

Q Okay. And what, if any, relationship -- is there any similarity between the type of cell phone you had and the type of cell phone Adnan had?

A Yes. It's basically the same phone, except mine has a flip cover on it.

Q Okay. Instead of the leather cover that just shows through the numbers --

A Yes, that's right.

Q -- that's on that phone?

And when you became aware of Adnan getting a cell phone, did you have his cell phone number?

A Yes.

Q And did you reach him on that cell phone?

A Yes.

Q And in reaching him, did that occur with his consent?

A Yes.

Q At the time, did you have a cell phone number?

A No.

Q Okay. Did you subsequently get one?

A Yes.

Q Being familiar with the model number, is there a feature on that cell phone that stores the numbers that you want stored?

MR. URICK: Objection.

THE COURT: May I see counsel at the bench?

(Whereupon, counsel and the Defendant approached the bench and the following ensued.)

THE COURT: Your objection?

MR. URICK: There's been no testimony from this witness that he's familiar with that model number. He said he has a Nokia himself that's got a flip-up. He said it's similar. That has nothing to do with the model type or number.

MS. GUTIERREZ: Judge, I spent a little more time with it, I've laid the foundation. It is exactly the same phone. The only difference is the cover. And I will ask the witness questions to establish it's the cover. It contains no features -- that the features of this phone and his phone are the same, that the features of his phone and Adnan's phone, which he's previously examined, but there's nothing in this phone to tell that it's exactly Adnan's phone, but that the features are the same, to establish his familiarity and then to describe a feature that can be

exercised if this phone were on and which he knew to be a feature on Adnan's phone that stores -- is capable of storing numbers that one dials and then be scrolled down to locate any other numbers that one has stored as being dialed numbers or numbers desired to be dialed.

THE COURT: Anything else that you want to say about this?

MR. URICK: No.

THE COURT: Okay. Assuming that the witness can testify that the numbers can be stored and scrolled down to recover or retrieve the numbers, what relevance does that have?

MS. GUTIERREZ: Well, the -- that he knows that Adnan's phone has that. And the testimony in regard to the cell phone is only intended to put a location on the phone and cannot establish who had the phone in one's hand. I believe the evidence has established the relationships between Adnan and the persons at the numbers that appear in the chart for the 13th as being people who had his cell phone number, he had theirs, he had ways to reach them, they called him, he called them, to establish that if those phone numbers were in -- which, of course, you can't since the cell phone has been turned off since Mr. Syed's arrest and the seizure of the phone by the police, but that this witness knows, for instance, that his own number was in

there and that all someone had to do is to push the button that caused all the numbers to be scrolled down and then push a single button that would then cause any number that one identified in that scrolled portion to be dialed, to show what I believe has been made relevant since there is no testimony other than from Jay Wilds, who specifically said that he dialed certain numbers, that there are only numbers that the only evidence before the jury is that those numbers were dialed at specific times and they triggered specific cell tower locations. But there is no testimony as to who had the cell phone in their hand during the dialing of most of those numbers, absent from Jay Wilds, and --

THE COURT: Is there any -- you're not disputing the Exhibit No. 34 that lists --

MS. GUTIERREZ: The list?

THE COURT: -- all the phone calls that were made?

MS. GUTIERREZ: No.

THE COURT: And so, in fact --

MS. GUTIERREZ: But that list doesn't establish who dialed the numbers. Other evidence --

THE COURT: Mr. Chaudry is not going to be able to do that for you.

MS. GUTIERREZ: No, no, but Mr. Chaudry can

establish on this phone, which he knows of and which his number was once there, was capable of speed dialing numbers and that that feature of the phone is simple to operate and simple to discover. It involves the pushing of one button and then another button to actually actuate (sic) the call to the number. And I believe from that information, we can certainly establish enough to argue that anyone who's admittedly having the phone in their hand could well be the dialer of the numbers that are established in 34 since all those are people who had his cell phone number, he had theirs, were in contact with him, were good friends of his and --

Right, right.

And none of those people, when asked, specifically recall speaking to him that day or the date in which, although they acknowledge they talked to him on other occasions, and that then puts into evidence, certainly --

THE COURT: What you're getting at is merely the assumption that the numbers that he would have known --

MS. GUTIERREZ: But because they were dialed --

THE COURT: -- the numbers themselves wouldn't have had to be punched in by the person who was holding the phone?

MS. GUTIERREZ: That's right.

THE COURT: I understand.

MS. GUTIERREZ: And that, therefore, those cell phone calls could have been dialed by Jay Wilds or anyone else --

THE COURT: Understood.

MS. GUTIERREZ: -- who had that cell phone in their hands.

THE COURT: Understood. I would ask that you ask the witness a question, just generally, is he familiar with how the phone works --

MS. GUTIERREZ: Okay.

THE COURT: -- with regard to speed dialing or calling without punching in numbers. And if so, to tell the jurors how it works, if you could get to that.

MS. GUTIERREZ: That's fine.

THE COURT: And that will be --

MS. GUTIERREZ: That would draw the immediate objection --

THE COURT: Well, no, but that will be a non --

MS. GUTIERREZ: But yes, yes.

THE COURT: That's a nonleading question and it will allow the witness to answer the question.

Your objection is overruled.

(Whereupon, counsel and the Defendant returned to trial tables and the following ensued.)

BY MS. GUTIERREZ:

Q Mr. Chaudry, you were describing the similarities between that phone -- do you still have it in your hand?

A Yes.

Q -- and the cell phone that you ultimately got?

A Um-hum.

Q Okay. And you said yours had a flip cover?

A Yeah.

Q Did the flip cover have anything at all to do with the operation of the phone?

A The only thing that it had to do is if the phone rang, instead of hitting talk, I just have to open the flip.

Q And that would activate your receipt of the call?

A Yes.

Q Are you familiar with the operation of the phone in your hand?

A Yes.

Q And is that the same model that you had?

A Yes.

Q And is that the same model that Adnan Syed had?

A Yes.

Q And being familiar with the operation of the phone, is there a mechanism for storing numbers in the phone?

A There's a directory.
Q Okay. And how is that directory activated?
A There's a scroll feature. It's --
Q Are you saying the word scroll?
A Scroll, yeah. It just arrows up or down, and you can --
Q Okay.
A -- get into the directory.
Q And if you -- does that involve pushing a button?
A Yes.
Q And if someone puts numbers inside the directory, then you activate it by doing what?
A Hitting the down button or the up button.
Q Okay. And once you arrive at a number and locate a number, are you familiar with then what happens to dial that number that's been scrolled onto?
A If the number is in front -- if you've scrolled down to a number and you see it, all you have to do is hit talk and it automatically calls that number.
Q And is talk a one-button --
A Yes.
Q -- command?
And once you hit talk, does the number that appears on the scroll, does that have to be punched in?
A No.

Q And if you hit talk, what happens?
A It automatically calls the number.
Q What's the it?
A The phone.
Q The phone automatically calls the number?
A Yes.
Q And what number would it automatically call?
MR. URICK: Objection.
THE COURT: Overruled.
You can answer.
THE WITNESS: Okay. It calls the number that was on the screen that you scrolled down to.
BY MS. GUTIERREZ:
Q Okay. And is putting numbers in that directory that can be scrolled, is that something that has to be done all at once?
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Are you familiar with how the directory works?
A Yes.
Q Is one required to make a single entry of numbers?
A Yes.
Q Are you allowed to add new numbers to that

directory?

A Yes.

Q And are you allowed to delete numbers from that directory?

MR. URICK: Objection.

THE COURT: Sustained.

Mr. Chaudry, how does the phone work as it relates to phone numbers you want to call of people you know or people who have called you in the past?

THE WITNESS: Just by these arrow buttons, you need to go up, and when you go up it goes up to -- it starts at Z and then it goes backwards in alphabet or down. And it basically gives a name and the person's phone number with the name -- if you go down, it starts with a A, whoever's name start with A, B, whatever, and it goes down. And all you have to do is -- when you see the person that you're looking for, you see their name, you see their phone, and if you want to call them you can hit talk and it will call them automatically.

BY MS. GUTIERREZ:

Q And you wouldn't have to dial a phone number?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Is there -- on your phone, do you have such a

directory?

A Yes, I do.

Q And a scroll feature?

A Yes, I do.

Q And to your knowledge, did Adnan's phone have such a directory?

A Yes.

Q And a scroll feature?

A Yes.

Q And on your phone, are you familiar -- if you gave me your phone, could I activate that directory feature --

MR. URICK: Objection.

MS. GUTIERREZ: -- and scroll?

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Let me just direct your attention, because I'm not sure I asked this question, Mr. Chaudry. After you became aware of the breakup between Hey Men Lee and Adnan were the holidays, the Christmas holidays that we spoke of?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Directing your attention to the time, whenever it was, before Christmas that Hey and Adnan broke up, after

that time, did you attend any social functions with Adnan outside of the mosque?

A Yes.

Q And did you attend any parties that may have been related to holidays that you don't celebrate as a Muslim?

MR. URICK: Objection.

THE COURT: Could we put a time frame after that --

BY MS. GUTIERREZ:

Q After that, up until the New Year's?

A Yes.

Q Yes. And were those parties which both young men and young women attended?

A Yes.

Q And did you ever become aware of Adnan meeting any young women at any of those parties?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q After the breakup, you became aware of when Adnan got the cell phone?

MR. URICK: Objection.

THE COURT: I believe we've been over this and described the phone and how it works.

MS. GUTIERREZ: I'm now tieing it together,

Judge.

THE COURT: All right. Your next question. Right now it's sustained. If you can ask another question.

BY MS. GUTIERREZ:

Q After you became aware of Adnan having a cell phone, did you have any conversations with him as to why he got it?

A No.

Q Okay. Why did you get your cell phone?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q And did you ever become aware of any difficulties that Adnan had with talking to girls on his home phone?

MR. URICK: Objection.

THE COURT: Overruled.

You may answer that.

THE WITNESS: Adnan had trouble talking to girls at home.

BY MS. GUTIERREZ:

Q And where did you get that -- had trouble talking to girls?

A On the phone.

Q On the phone --

A At home.

Q -- and where did you get that information from?
A From Adnan.
Q Okay. And did you ever become aware from him of the reasons why he got the cell phone?
MR. URICK: Objection.
THE COURT: Sustained.
MS. GUTIERREZ: Nothing further.
THE COURT: Thank you very much.
Any cross-examination?
MR. URICK: Yes, thank you.
Good afternoon, Mr. Chaudry.
THE COURT: Mr. Chaudry, a few questions.
You may proceed.

CROSS-EXAMINATION

BY MR. URICK:
Q Would you like a glass of water?
A No, I'm fine, thank you.
Q Now, you just testified that the Defendant told you that he had trouble talking on the home phone to girls, correct?
A Yes.
Q But it's also your testimony that from the time he began dating Hey Men Lee, which was sometime in the spring of 1998, through December of 1998 he had no cell phone, correct?

A No. For some time that he was dating Hey Men Lee, he didn't have a cell phone.

Q And it wasn't till after the second breakup with her that he actually got a cell phone, correct?

A I don't remember the exact date he got the cell phone, but I do know that while he was going out with Hey, for some time, he did not have a cell phone.

Q Now, you appeared before the Grand Jury on April 2nd --

MS. GUTIERREZ: Objection.

MR. URICK: -- April 5th, April 6th, and April 7th, correct?

THE COURT: Sustained.

BY MR. URICK:

Q Do you have any recollection of seeing the Defendant on January 13th?

A No.

Q Is it a fact the Defendant told you that his parents came to the Homecoming Dance?

MS. GUTIERREZ: Objection. Beyond the scope.

THE COURT: Overruled.

And you can answer that yes or no.

THE WITNESS: Yes.

BY MR. URICK:

Q And is it a fact that he told you that Hey broke

up with him because she thought that she was interfering with -- coming between him and his family?

A Yes.

Q And you've testified on direct that within Islam premarital dating is generally not accepted, didn't you?

A That's right.

Q All right. And the Defendant told you that he was dating, is that correct?

A Yes.

Q And also on direct, you testified that premarital sex is generally not accepted within Islam, isn't that correct?

A That's right.

Q And he had told you that he had had sex, hadn't he?

A Yes.

Q Where did he tell you he would have sex?

A He'd tell me mostly -- like, if I were to ask, he said in the car, in his car.

Q Did he ever tell you that it was in parking lots?

A No.

Q Do you recall having testified on a previous occasion that the Defendant may have mentioned the Best Buy parking lot but that you weren't positive?

A Yes.

Q And that he had told you that he had sex in cars and in hotel rooms and that was with Hey?

A Yes.

Q Did you ever have conversations with the Defendant about where Hey Men Lee may have gone when she was missing?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. URICK:

Q And do you recall him telling you that she may have gone to California to be with her real father?

A Yes.

Q Have you ever known the Defendant to smoke marijuana?

A Yes.

Q Have you ever known him to drink alcohol?

A Yes.

Q And you've actually seen him do both?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. URICK:

Q And it was your testimony on direct about the older, more devout Muslim community that they don't know

too much about the actions of the younger males, is that correct?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

If you can answer that.

THE WITNESS: Yes.

BY MR. URICK:

Q And all these things were things that the Defendant kept from his father, is that correct?

A That I'm aware of, yes.

Q His father would not have approved, would he?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

BY MR. URICK:

Q Did the Defendant ever talk to you about how his father viewed premarital sex, dating, smoking marijuana?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. URICK:

Q Do you know who got the Defendant his phone?

A As far as I know, Mr. Ahmad helped him get the phone.

Q Do you know his correct name or his full name?

A Mallah Ahmed.

Q And who is that?

A That was his acquaintance, his, like, mentor, I guess. He was a teacher, an Islamic mentor at our mosque.

Q And did you ever have the occasion to see the two of them together?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

MR. URICK: May I have State's Exhibit 34, the --

THE COURT: I believe that has got a letter next to it, 34-something. C?

MR. URICK: Exhibit 34-C for identification.

THE COURT: Yes.

MR. URICK: And may I approach the witness and have him look at that?

BY MR. URICK:

Q Now, please examine line no. 2 there.

In the second column, there's a number, 410-869-9498, do you recognize that number?

A Yes, I do.

Q Whose number is that?

A That's mine.

Q And that shows that the call was placed on 10:29 and 40 seconds p.m. This is at the top, on January 13th, 1999, and the length of the call was 18 seconds.

A Yes.

Q Do you recall receiving a telephone call from the Defendant on January 13th?

A No, I do not recall receiving it.

Q But that is your number?

A That's right.

Q Do you recall when and where the Defendant told you that Hey Men Lee was missing?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: When, I guess it was sometime in January. Where, no, I'm not --

BY MR. URICK:

Q Was that conversation relayed to you in person?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: He was speaking to me and he just brought it up: Did you know that she's been missing for a little while?

BY MR. URICK:

Q And was that while you were physically with him?

A Yes, that's right.

MR. URICK: Thank you, Your Honor.

THE COURT: Thank you, Mr. Urick.

Anything further, Ms. Gutierrez?

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q At the time, Mr. Chaudry, that you learned from your friend Adnan Syed that Hey Men Lee was missing, were she and Adnan broken up or together?

A As far as I knew, they were broken up.

Q And how long, if you recall, had they been broken up?

A I'm not sure exactly but it had been some time, maybe a week, couple weeks, I don't know.

Q The information that you said you learned from him in your conversation with him, meaning Adnan, that she may be in California with her father?

A Yes.

Q Did you know the origin of that information?

A Well, I asked him where do you think she might be, and that's one of the reasons he said.

Q And did you know where he had gotten that information?

MR. URICK: Objection.

THE COURT: Sustained as to that question as asked.

BY MS. GUTIERREZ:

Q Do you know a person by the name of Deborah Warren?

A No.

Q Do you know any of his friends from Woodlawn High School?

A Of Adnan's?

Q Yes.

A Yes.

Q And had you ever attended social occasions with friends of his from Woodlawn with him?

A Yes.

Q Yes. Okay, and you had never met a person by the name of Deborah Warren?

A I don't remember her.

Q At the time that you had the conversation with him about the dad in California, did you know that Hey Men Lee's father was in Korea?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q And, sir, in regard to -- Mr. Urick asked you about smoking marijuana and drinking alcohol, is that an activity that you've engaged in?

A No.

Q Are those activities that other Muslim young men in your mosque have engaged in?

MR. URICK: Objection.

THE COURT: Sustained.

MS. GUTIERREZ: Nothing further.

THE COURT: Thank you.

MR. URICK: I have one follow-up question in regards to that.

THE COURT: Yes, Mr. Urick.

RECROSS-EXAMINATION

BY MR. URICK:

Q Ms. Gutierrez asked you about friends of the Defendant from Woodlawn High School that you had met. Did you ever meet a somewhat tall, skinny, African American by the name of Jay?

A Yes.

Q How did you meet him?

A I met him once at a party, at a birthday party, some girl's birthday party.

Q Who introduced you to him?

A Adnan did.

Q And he introduced him as what?

A Jay. He said -- I asked him who that was and he brought him over and introduced us.

Q Thank you.

THE COURT: Anything further?

MS. GUTIERREZ: No.

THE COURT: Very well. May this witness be excused?

MS. GUTIERREZ: Yes.

MR. URICK: Yes.

THE COURT: May he be released from the summons?

MR. URICK: Yes.

MS. GUTIERREZ: Yes.

THE COURT: Sir, you are now released from the summons, which means you're free to go. I must advise you you cannot discuss your testimony with anyone who will be a witness in this case, but if you'd like to remain in the courtroom, you're welcome to do that, do you understand?

THE WITNESS: All right.

THE COURT: With that, you're free to go.

THE WITNESS: Okay, thank you.

(Whereupon, at 2:44 p.m., the witness was excused.)

THE COURT: Your next witness?

MS. GUTIERREZ: The Defense would call Saad Patel to the stand.

THE COURT: Step up, please. Raise your right hand, please, and listen to Mr. White, this gentleman right here.

Whereupon,

SAAD PATEL

was called as a witness at 2:44 p.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: Please keep your voice up. State your name for the record.

THE WITNESS: I'm Saad Patel.

THE CLERK: Spell your first and last name for the record.

THE WITNESS: First name S-A-A-D, last name Patel, P-A-T-E-L.

THE CLERK: State your address for the record.

THE WITNESS: [redacted] Springs Court, Baltimore, Maryland 21228.

THE COURT: Witness with you, Ms. Gutierrez.

MS. GUTIERREZ: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Patel, first of all, how old are you?

A I'm 18 years old.

Q Okay. Now, Mr. Patel, Randolph Spring Court, what neighborhood is that located in?

A That's in the Woodbridge area.

Q Okay. Now, Mr. Patel,let me direct your attention to last year, but first of all, are you currently a student?

A Yeah. I'm a college student --

Q Where?

A -- at Towson University.

Q Okay. And what are you studying?
A I'm just taking gen. ed. classes right now.
Q Okay. And so, you're in your freshman year?
A Freshman year.
Q And that freshman year started in September of 1999?
A Yes, ma'am.
Q Let me direct your attention back to September of 1998 through May of 1999, last school year.
A Okay.
Q Were you a student then?
A Yes, I was.
Q And where were you a student?
A At Woodlawn High School.
Q And what program were you in?
A I was in the Magnet Program.
Q And is that also known as the Gifted and Talented?
A Yes, ma'am.
Q All right. And how long were you in that program?
A Since my freshman year in high school.
Q And while you were there, did you know a student by the name of Hey Men Lee?
A Yes, I did.

Q How did you know her?
A She was in a few of my classes and just knew --
Q At Woodlawn?
A At Woodlawn.
Q Did you know her before Woodlawn?
A No, I didn't.
Q How would you characterize your relationship with her?
A We were just friends. Whenever I saw her, I'd just say hey, what's up.
Q Had you ever socialized with her?
A No. I mean, not off school.
Q Now off of school, but in school?
A Yeah. Just joke around now and then.
Q All right. And did you know back then, last year, a person by the name of Adnan Syed?
A Yes, I --
Q Could you identify him?
A Right there (pointing).
Q Sitting next to me?
A Yes, ma'am.
Q All right. And how is it that you knew him?
A I've known him since birth.
Q Since birth?
A Since birth.

Q And how is it that you've known him?
A Through my parents. I guess my parents know his parents, so that's how I met him.
Q And is there any other connection between your family and his?
A Through the community, I guess. That's it.
Q And what community are you talking about?
A Our mosque.
Q The mosque. And what mosque is that?
A The mosque on Johnnycake Road.
Q And what kind of mosque -- what faith is that?
A Oh, it's for the Muslim faith, where people --
Q Have you been a member of that mosque since your birth?
A Yes, I have.
Q And do all the members of your family belong to that mosque?
A Yes, ma'am.
Q And as a result of you belonging to the mosque, you attend what are called prayers there?
A Yes, I do. I attend.
Q And do you participate in other activities for young people?
A Yes, I do.
Q And does Adnan Syed belong there?

A Yeah, he belongs there.
Q And does he participate in the prayers?
A Yes, he did.
Q And does he participate in other activities of the mosque?
A Yes, he did.
Q And do other members of his family also so participate?
A Yes, they do.
Q How is it you know that?
A I know his parents. How do I know -- oh, I know his parents through him and through my parents.
Q Have you physically seeing Adnan Syed regularly praying at the mosque?
A I didn't go that often, but whenever I went, I saw him there.
Q Okay. So he was there every time you went?
A Most of the time, yeah, he was there.
Q But you didn't go all the time?
A I didn't go all the time. No, I didn't.
Q Was there anything wrong with that, your not going all the time?
A I mean, it's recommended that I go. I can also pray at home.
Q Okay. And do you do so?

A Oh, I pray.

Q Okay. Now, Mr. Patel, directing your attention back to that school year, in school, how would you characterize your relationship with Adnan Syed?

A We're -- we played sports together.

Q What sport did you play?

A Senior year?

Q Um-hum.

A We played football together and we used to go to practice together. And basically, whenever I saw him in the hallways, you know, just say hey, what's happening?

Q What kind of a athlete at football was he?

A He was a pretty good athlete.

Q And what kind of student was he?

A He was a very good student.

Q And were you also a good athlete?

A Yeah, I was a good athlete. Yes, I was.

Q And a good student?

A Yes.

Q Okay. Now, Mr. Patel, would you have called him a friend?

A Yeah, he was a pretty good friend.

Q As a friend, did you see him outside of school?

A Yeah, sometimes.

Q Other than the mosque activities, did you see

him?

A Yeah. We went out a couple times.

Q And where did you go?

A The movies or went to a basketball game.

Q All right. Now, sir, did you become aware from any source of a relationship between Hey Men Lee and Adnan Syed?

A He told me about it himself.

Q Okay. And did you observe that relationship?

A I mean, I saw -- I saw them and stuff but it wasn't a big deal to me.

Q It wasn't a big deal, the fact that they were having a relationship?

A Not to me.

Q Okay. Now, sir, just -- back then, you were still a Muslim?

A Yes, I was.

Q And you still prayed, as required?

A Yes, I did.

Q And you considered yourself an active Muslim?

A Yes, I did.

Q Were you aware that the Muslim faith does not encourage people, young people to date each other?

A Yes, they don't encourage it.

Q Okay. And do you encourage that the Muslim faith

doesn't encourage young people to have sex with each other prior to marriage under any circumstance?

A Yes, I know about that.

Q When you became aware from him that they had a relationship, what did you understand their relationship to be?

A I thought they were just going out and having fun, I guess.

Q Dating?

A Dating.

Q Was it dating, from what you were told?

A From what I saw, that's what I assumed.

Q Dating as a girlfriend and a boyfriend?

A Boyfriend, yes.

Q Okay. And did you ever discuss with Adnan or receive information from any other source that told you whether or not they had sex?

A No one else told but I -- I asked him once. I was just like, you know, what's going on and --

Q And did he answer you?

A Yeah, he told me. Yes.

Q And did he indicate whether or not he was having sex with Hey Men Lee?

A Yes.

Q And what did he tell you?

A That's it, he was having sex. He didn't go into detail or nothing. That was that, you know.

Q Okay. As a result of your finding out that information, did you report Adnan to anyone?

A Did I -- excuse me?

Q Did you report him to anyone?

A No, I didn't.

Q For dating against the Muslim religion?

A No. I didn't tell no one.

Q Or for having sex with a woman to whom he was not married?

A No, didn't report that to anyone.

Q Is there any procedure for you, as a Muslim, to report that kind of activity?

A There is no procedure. I mean, it's between him and --

Q Okay. Now, from the time that you learned that he was having this relationship, did you become aware of any ups or downs in that relationship?

A I wasn't aware of any. I didn't really -- I used to just ask him, like, how's she doing, stuff like that. That's it.

Q Were the ups and downs of their relationship, if there were any, was that important to you?

A I mean, he's a friend so I cared about him, but

if there were, I mean, it would have been important to me, but I wasn't really --

Q Did you become aware of a break up in the relationship?

A Yeah, I was aware.

MS. MURPHY: Objection.

THE COURT: Sustained

BY MS. GUTIERREZ:

Q Did you ever become aware of whether or not there were ups or downs in their relationship?

MS. MURPHY: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q And, sir, what else did Adnan tell you about the relationship?

A I used to just ask him, like, what's going on and how's -- how are they doing, basically.

Q And what would he ever tell you?

A He would just be honest with me. He's like everything's fine, you know. We're just going out and stuff like that, basically.

Q Did there ever come a time when he told you something different, that everything wasn't fine?

MS. GUTIERREZ: Objection.

THE COURT: Overruled.

THE WITNESS: Not that I remember.

BY MS. GUTIERREZ:

Q Let me direct your attention to that same school year, the period of time from the 20th of December through the end of January. Did that time period have any significance to you as a Muslim?

A The 20th of December to the end of January?

Q Yes.

A I think Ramadan started --

Q Could you tell us in your own words what Ramadan is?

A It's when Muslims fast, they fast during that month.

Q Is it a special month?

A It's a special month, yes.

Q What does the fasting require?

A You don't eat from dawn till dusk and you shouldn't eat, drink, smoke, shouldn't do any bad things.

Q And, sir, during Ramadan, are there special prayers that are said?

A Yeah. At nighttime, they have extra prayers and you just go there and pray.

Q And during that month, do more Muslims go to the mosque to pray?

A Yes, more Muslims come.

Q Is your attendance at the mosque greater or lesser than at other times of the year during Ramadan?

A During that month, I come more often. I go more.

Q And during that time, did you ever become aware of a time in which Adnan led the prayers for the mosque?

A I didn't go to the mosque that day but I heard it from a lot of people there. They're talking about it because it's like a big thing when you have someone your age lead prayers there. And they're like, oh, he led --

Q Why is it such a big thing for a young person to lead prayers?

A Because usually, like, the adults lead prayers, and he's -- and other kids lead prayers, but I guess for him it was, like, someone I know and it was kind of cool, you know.

Q Did you talk to Adnan about that?

A Yeah. He told me about it. He was, like, were you there? And I was just, like -- I was, like, no I wasn't there.

Q When he told you about it, how was he?

A He was excited about it. You know, he was --

Q Do you remember the day that that was?

A The day he led prayers?

Q Yes.

A I don't remember the day but I think it was the

26th of Ramadan, which is about -- which is -- it was like 13th or 14th or 12th or something. February 12th or 13th.

Q Okay. Whatever the 26th, around that day of Ramadan?

A Yes.

MS. GUTIERREZ: May I approach the witness again, Your Honor?

THE COURT: Yes, you may.

MS. GUTIERREZ: If I could have the calendar again, Mr. White. Thank you.

BY MS. GUTIERREZ:

Q If you could take a look at this and tell us what that is.

A This is a calendar of -- the Islamic calendar.

Q And for what year is it? Not in Islamic terms but in our terms?

A December '98-January '99.

Q And does that include the month of Ramadan?

A Yes, it does.

Q Does it identify the dates of Ramadan?

A Yes, it does.

Q I'm not sure, did you say the 26th day of Ramadan --

A It was the 26th and the night of the 27th. It's kind of --

Q Okay. And what day in our calendar would that --
A I think it was the night of the 14th, January 14th.
Q That's what month?
A January.
Q January 14th?
A Yes.
Q Not January 13th?
A No.
Q January 14th, and what year would that be?
A 1999.
Q Mr. Patel, were you in contact with Adnan?
A I saw him at school and at the mosque when I went.
Q Okay. And you -- speak to him outside of school?
A Yeah.
Q And to your knowledge, especially when you spoke with him about the day that he led prayers, knowing that it was such an honor -- is leading prayers something that one must practice to do?
MS. MURPHY: Objection.
THE COURT: Overruled.
If you know, do you have to practice to do that?
THE WITNESS: You have to pray but you don't have to practice. But it's recommended that you do.

BY MS. GUTIERREZ:

Q And why is that?

A Because it's your faith and you should, I guess, learn how to pray, learn how to lead prayers.

Q Okay. And prayers that are led for the faithful during Ramadan are in what language?

A Excuse me?

Q The prayers that are led for the faithful during Ramadan are in what language?

A Arabic.

Q Arabic?

A Yes.

Q And is that a language that you're aware of that Adnan Syed speaks?

A He doesn't speak Arabic but --

Q Do you?

A No, I don't.

Q Is that a language that's spoken among the faithful at your mosque?

A People speak it but not everyone.

Q But not Adnan?

A Not Adnan, no, not that I'm aware of.

Q Was there ever a time when -- in your relationship with Adnan that he hid his relationship with Hey from you?

A No.

Q Did you ever become aware of a time when Adnan and Hey were broken up?

A Yeah, I knew that.

Q And when did that happen and how did you learn of it?

A He told me they had broken up, but I don't remember when it was at all.

Q In relationship to Ramadan, do you have any idea?

MS. MURPHY: Objection.

THE COURT: Sustained. He said he did not know when it was.

BY MS. GUTIERREZ:

Q Whenever that period of time was, after that period of time, did you ever become aware of Adnan dating any other girl?

A I knew -- yeah, he told me that he was seeing someone else.

Q And knowing that you were aware that that was not an approved behavior for a young Muslim, did you tell anybody else of that?

A No, I didn't.

Q And did you become aware of when Adnan got a cell phone?

A Yes.

Q And did you receive his cell phone number?
A Yes.
Q And did he reach you -- did you ever reach him on his cell phone?
A I don't -- I called him once but I didn't get in contact with him. It was right when he got it, so --
Q Okay. Right when he got the cell phone?
A Right when he got it, yeah.
Q But you actually got a cell phone from what source?
A He gave it to me, he gave me his number.
Q Were you aware of a girl by the name of Nisha Tanna (phon. sp.)?
A By what name?
Q By the name of -- a young girl by the name of Nisha Tanna?
A Yeah, I heard about her.
Q How did you hear about her?
A He -- I think Adnan told me about her. I think she was from Rockville.
Q Okay. And what is it that he told you about her?
A He just told me that he met her, he met a girl named Isha. That's about it.
Q Are you aware of whether or not he was pursuing her as a girlfriend?

A I assumed that because why else would he bring her up, you know? So --

Q And did you become aware of a girl by the name of Angeli?

A Yeah, I heard about her, too.

Q How did you hear about her?

A He told me about her.

Q And what context was that -- in what context was that?

A He just told me that he met a girl who was from Philly, from Philadelphia.

Q From Philadelphia?

Were you aware of whether or not she was a college student?

A No, I didn't know about all -- I didn't know about that at the time.

Q At the time.

Did you ever understand him to be girlfriend/boyfriend with her?

A I knew they were seeing each other but they could have been friends, I don't know.

Q During any of this time, Mr. Patel, were you aware of whether or not Adnan's parents were aware of his relationship with any young girl?

A I don't know.

Q And did you attend social events at Woodlawn High School?

A Not really.

Q Did you attend the Homecoming Dance?

A No, I didn't go to that.

Q Did you ever hear about the events of that dance from Adnan?

A Yes, he told me about it.

Q And were you aware that his parents came up to Homecoming?

A Yes.

Q And prior to that, were you aware of whether or not his parents approved of his dating?

A I don't know. I don't know.

Q Did you ever, ever become aware of information that his parents actually approved of his dating Hey Men Lee at any time during their relationship?

MS. MURPHY: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q During Ramadan of last year, you said you attended the mosque more often than you had other times?

A Yes.

Q And the attendance, did that include the evening prayer?

MS. MURPHY: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q What did your attendance at the mosque consist of during Ramadan?

MS. MURPHY: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q What time of night was the evening prayer?

MS. MURPHY: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Did you ever see Adnan at the evening prayer?

A Yes.

Q Okay. How regularly?

A Well, when I went there, I used to see him and other guys up there, so --

Q And was that at the time of the evening prayer?

A Yes.

MS. MURPHY: Objection.

MS. GUTIERREZ: And what was he doing on occasions that you saw him at the evening prayer?

MS. MURPHY: Objection.

THE COURT: Overruled.

THE WITNESS: When I saw him there, he was

praying, and I guess we just talked.

MS. GUTIERREZ: I have no further questions.

THE COURT: Thank you.

Any questions?

MS. MURPHY: Just briefly, Your Honor.

THE COURT: Very well.

CROSS-EXAMINATION

BY MS. MURPHY:

Q Mr. Patel, good afternoon.

A Hi.

Q Now, your testimony is you weren't there on the 14th of January when the Defendant led the prayers?

A Yes.

Q And you didn't go on the 13th?

A The day before he led prayers?

Q Right.

A I may have.

Q You don't remember?

A I don't remember.

Q The 12th?

A I probably was there because I'm there more often during Ramadan. I was there -- so I went almost every day during the month of Ramadan but I didn't go the day he led prayers and a few other days before.

Q So that's the only day you definitely know you

weren't there, was the day he led prayers?

A I may have been there but I wasn't there when he led the prayers.

Q Oh, okay.

But the rest of it's pretty hard to remember? I mean, this is a year later.

A You could say that.

Q Well, are you saying that?

A Yes, I am.

Q And it's not something remarkable if you don't go, right?

A It's recommended that you do go but --

Q But you can pray at home?

A You can pray at home but during this month you should go.

Q But you didn't?

A I did except for that day -- I mean that time.

Q But some nights you didn't?

A Yeah, I missed some nights here and there.

Q Did you get in trouble?

A I didn't get in trouble, but my parents told me to go.

Q Okay. But it wasn't anything earth-shattering that you didn't happen to go on those nights?

A No.

Q Now, the Defendant told you about a girl named Isha?

A Yes.

Q And the Defendant told you about a girl named Angeli?

A Angeli, yes.

Q Is there anything you know about -- you didn't meet these girls personally?

A I never met them.

Q You only know about them from what the Defendant told you?

A Yes.

Q And you never actually saw him with these girls?

A No.

Q Now, you told us a little bit about Ramadan and you said during that time you shouldn't eat, drink, smoke while you're fasting?

A Yes.

Q That would include marijuana, I'm assuming?

A Yes.

Q You shouldn't -- and isn't it true that you shouldn't think bad thoughts during Ramadan?

A You shouldn't but you're a human being. You know, what can you do? You try not to but --

Q But you're encouraged not to?

A You're encouraged not to.

Q Right. And you shouldn't lie?

A You shouldn't lie.

Q You shouldn't deceive people?

A No.

MS. MURPHY: No other questions, Your Honor.

THE COURT: Thank you.

Any redirect?

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q On the days of the year other than Ramadan, are you allowed to lie?

A Not --

MS. MURPHY: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q You said generally, in answer to Ms. Murphy's question, that you were there during Ramadan?

A Yes, I was.

Q But you remember specifically you weren't there on the 14th? Or you weren't there on the day that he led the prayers?

A I wasn't there when he led the prayers.

Q When he led the prayers. So you might have actually been at the mosque but not actually praying --

A Yes.
Q -- or able to listen to him?
A Yes.
Q But generally, otherwise, you were there every day of Ramadan?
A Most of the time I was there.
Q Because it was recommended?
A It was recommended.
Q And every time you were there, was Adnan there?
MS. MURPHY: Objection as to form.
THE COURT: Overruled.
Do you recall?
THE WITNESS: Yes. He was there most of the time. Most of the time he was there.
BY MS. GUTIERREZ:
Q Much more than you?
A Oh, he was there more than I was.
MS. GUTIERREZ: Thank you. I have nothing further.
THE COURT: Anything further, Ms. Murphy?
MS. MURPHY: No, Your Honor. Thank you.
THE COURT: May this witness be excused, Ms. Gutierrez?
MS. GUTIERREZ: Yes, Your Honor.
THE COURT: May he be released from the summonses?

MS. GUTIERREZ: Yes.

THE COURT: Ms. Murphy?

MS. MURPHY: Yes, Your Honor.

THE COURT: All right, sir, you are free to go. You may not discuss your testimony with anyone who is yet to be a witness in this case. However, since you've been released from the summonses as a sequestered witness, you may remain in the courtroom since you will not be called again.

THE WITNESS: Thank you.

THE COURT: You're welcome.

(Whereupon, at 3:08 p.m., the witness was excused.)

MS. GUTIERREZ: Our next witness would be Mr. Patel.

THE COURT: Sir, step all the way up here to the witness stand. When you reach, I'd like you to direct your attention to my courtroom clerk, raise your right hand, and listen to what he has to say.

Whereupon,

MAQBOOL PATEL

was called as a witness at 3:08 p.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated.

Keep your voice up, state your name for the

record.

THE WITNESS: My name is Maqbool, M-A-Q-B-O-O-L. My last name is Patel, P-A-T-E-L.

THE CLERK: And state your address for the record.

THE WITNESS: [redacted] Springs Court, 21228.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Patel, what is your religious faith?

A I can't hear you.

Q What is your faith, your religious faith?

A Islam.

Q Okay. And were you born a Muslim?

A I was born Muslim.

Q As a result of your faith, are you affiliated with any mosque?

A Yes.

Q And what mosque is that?

A Islamic Society of Baltimore.

Q And where is that located?

A That's 6631 Johnnycake Road.

Q Through that mosque, have you ever met Adnan Syed?

A Yes, many --

Q And how has that happened?

A -- many times.

I know the family for almost two decades now.

Q For almost two decades?

A Um-hum.

Q And have you known him since his birth?

A Yes.

Q Has he been raised in that mosque?

A Yes.

Q And have you seen him so raised?

A Yes.

Q Now, sir, let me direct your attention to the whole month of Ramadan last year, that began in December of 1998 and continued through January 1999.

MS. GUTIERREZ: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q First, let me have you look at Defendant's Exhibit 5, and, if you would, does that calendar accurately reflect the start and the end of the Holy Month of Ramadan?

A I believe so, yes.

Q And in the Muslim faith, could you tell us basically what happens during Ramadan --

A During the month of Ramadan?

Q Yes.

A Well, you normally fast during the day, and we have a special prayer -- prayers at night.

Q And special prayers include what?

A Special prayers include breaking our fast. It is prayers, and then there's a break for a rest and there's additional prayers in addition to our normal prayers at night.

Q And by the normal prayers at night, is there a special service that occurs?

A Yes.

Q And what time do those night prayers start?

A Normally, we arrange it between 7:45 and 8:00.

Q That's --

A That's starting 7:45 --

Q 7:45 or 8:00 in the evening?

A Yeah, it starts.

Q And that follows -- I want to make sure I'm clear, that there's a rest?

A There is a rest between sunset time and that time.

Q Oh, okay. And during that rest period, nothing's happening at the mosque?

A People talk, socialize.

Q Socialize, but there's not any prayers or anything --

A No.

Q -- that are led?

During the nightly prayers, are there other activities in which people give talks or lead prayers?

A Yes. We encourage our youth to give a talk, especially before and after the prayers.

Q By youth, what are you referring to?

A People, you know, anywhere from 12 to 22, 25, or anybody who wants to participate.

Q And why do you encourage your young people to so get involved?

A To give them the opportunity to learn.

Q Is there any honor associated with a member of the mosque, whether adult or young, being asked to lead the prayers or give a talk?

A Generally, it's a pride for the family.

Q It's pride?

A They feel much good that their children do it.

Q For the family, is it a happy occasion when someone is asked to lead the prayers?

A I would say very happy for the family.

Q Okay. Now, in regard to the young people, have you -- you've personally known Adnan Syed since he was born?

A Yes.

Q And is he one to generally -- outside of Ramadan, are Muslims -- is it recommended that they go to the mosque on a daily basis to pray?

A The mosque is normally open for five times daily prayers. Most people show up either early in the morning and late in the afternoon, after either come back from the school or come back from work.

Q Okay. And it's just -- is it just that the prayers are different during Ramadan?

A The prayers are not different, there are just additional prayers.

Q There are additional prayers?

A Um-hum.

Q And during that period of time, are faithful Muslims recommended to pray the same five times a day?

A Right.

Q Is participation by the Muslims who belong to the mosque in regard to praying at the mosque greater during Ramadan?

A Yes.

Q And why is that?

A It is, it is a part of the belief and stated in the Holy Book.

Q Okay. And what is the Holy Book.

A Koran.

Q Koran. And are the prayers that are recited by the faithful directly from the Koran?

A Not the prayers by themself, but fasting is prescribed in the Koran itself and additional prayers are recommended.

Q Directing your attention -- and is that an accurate calendar of Ramadan that you've looked at?

A To the best of my knowledge, yes.

Q That indicates -- is there anything additional recommended or required of the Muslim faith during the last 10 days of Ramadan?

A The last 10 days are -- from the spiritual point of view, it's considered more rewarding.

Q More rewarding?

A Yes.

Q To do prayer?

A To do additional prayers --

Q Okay. And what --

A -- and, you know, some people opt to awake all night.

Q Okay. Meaning -- do they stay at the mosque all night?

A Some people opt to do that.

Q To try to use the terms holier, are the last 10 days holier than the first 20 days of Ramadan?

A I would say.
Q Okay. Now, directing your attention back to Ramadan last year, do you recall that?
A Yes.
Q Okay. And, sir, back then you knew Adnan Syed?
A Yes.
Q And you knew his family?
A Yes.
Q Is Adnan Syed someone you saw during Ramadan?
A Yes.
Q And when and where would you see him?
A Normally, the Prayer Hall.
Q And is that during the night prayers that we've discussed?
A I would say yes.
Q In whose company would he be?
A The young people of his age.
Q And did you see his father there?
A Yes.
Q Was his father someone who attended the mosque to pray on a nightly basis?
A Yeah, he's pretty regular.
Q And did his -- when his father came to the mosque, did he bring Adnan, if you know?
A I cannot recall that because I see most of the

people in the mosque itself.

Q Okay. But you can't recall any specific day?

A As soon as they get out of the car, I will -- different people take different routes.

Q In regard to -- did there come a day when Adnan gave a talk or led a prayer?

A Yes.

Q And do you recall that day?

A Reason I recall it, that most of the arrangements are made through me, the list --

Q Through you?

A Right. Those people, you know, normally -- one of the person who's in charge will make the recommendation and we will --

Q That's one of your jobs?

A Yes.

Q For the mosque?

A Yes.

Q Okay. And were you physically present when Adnan did so?

A I have seen him talking in them mosque.

Q Okay. And was that an occasion -- was that a good or bad occasion for his family, if you know?

A It's an excellent occasion for the family and the community.

Q And why is it such a good occasion for his family?

A See, normally, prayers are derived from the Koran itself and --

Q Which is considered the Holy Book in --

A It's considered the Holy Book.

Q For Muslims?

A For the Muslims, yeah.

And then normally, the talk is given based on that. So, you know, they are really prepared to talk from the Book itself.

Q Is there some significance to a younger person, such as 17, being afforded the opportunity to do so?

A Yes. The mosque always tries -- try to do that, the younger people should being to --

Q And why is that?

A So that they know and they have a knowledge because there is no other place to gain such knowledge.

Q Okay. And you remember that occasion?

A Yes.

Q And that occasion occurred on what date?

A I cannot say. What it is, is every night I am there.

Q Oh, okay. So you recall the occasion but not specific --

A I recall the occasion that he was there.

Q Okay, but -- and generally, during Ramadan that began on December 20th, 1998, and ended in late January 1999, did Adnan attend regularly with his father?

A I would say yes.

Q Now, being familiar with Adnan all of his life, what language does he speak?

A Normally, all of our children, including him, tend to speak English.

Q Okay. And are you aware whether or not English was his first language?

A First language is, I believe -- see, that's the reason -- he originally come from a region where the Pashtu was being spoken.

Q And that would have been the Pakistani language of his parents?

A One of the Pakistani languages.

Q Are you aware of whether or not Adnan speaks Arabic?

A I don't believe he can speak Arabic.

Q Is the Koran written in Arabic?

A Right. He can read it but --

Q Now, Mr Patel, are you familiar with the tenets of the Islamic faith in regard to whether or not young people are allowed to date each other or date others of the

opposite sex prior to a marriage?

A Premarital mating is actually not encouraged unless -- it's not encouraged unless there is a pure intention of getting married.

Q Okay. So under Muslim faith, one must have an intent of marriage --

A Um-hum.

Q -- or else the young sexes shouldn't really --

A They should not --

Q -- have a relationship?

A That's correct.

Q And when you use the term not encouraged, could you explain to us what you mean by that?

A Like I said, the concept of dating that we see here, or these days anyway, that is not encouraged, means we don't ask our youngsters to go out and meet, you know, in public two opposite sexes independently.

Q Are young people, whether or not they are dating, encouraged to have sex with each other?

A Say it again, please?

Q Are they -- I don't want to make the double negative. Are they encouraged to have sex with each other? Is that something that's allowed?

A No.

Q No. And is it the same way of encouraging young

A No.

Q No. And is it the same way of encouraging young people as it is in regard to not encouraging dating?

A Like I say, the concept of dating does not exist is Islamic teaching.

Q Okay.

A Unless, unless you have intent to get married to that person.

Q Now, what happens when young people don't listen to not being encouraged to date?

A Normally, young people are not really exposed to that situation, but the consultation of advice begins from the family and then, if the family opt, they get the mosque involved to counsel or advise the children.

Q In regard to -- you said the consultation of the family, what does that mean? Is there punishment for ignoring the encouragement?

A The one thing you must understand, that we are living in a society where, even by the law, that we cannot really punish the child. So there is no physical or any other punishment, other than strongly advising them.

Q Once they break the encouragement or do something wrong, are they banished from a community?

MR. URICK: Objection.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Is there any punishment extracted on young Muslims who may not live up to these things that they are encouraged to do or not to do?

MR. URICK: Objection.

THE COURT: Sustained

BY MS. GUTIERREZ:

Q Was there ever any action in the mosque community, at the Islamic Society of Baltimore, ever taken against Adnan Syed for dating, though he was not encouraged to do so?

A I was not aware of the situation.

Q And if you had become aware, would there ever have been any action taken against him?

A No.

MR. URICK: Objection

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Is there any sign-in sheet for Muslims who belong to the mosque to document their presence?

A No.

Q And did you become aware of when Adnan Syed was arrested?

A Yes, later.

Q And was it before or after that time that you

A The arrest was made, I believe, after I see him in Ramadan.

MS. GUTIERREZ: Thank you. Nothing further.

THE COURT: Thank you.

Any questions? Mr. Urick, is there any --

MR. URICK: Thank you, Your Honor, extremely briefly.

CROSS-EXAMINATION

BY MR. URICK:

Q Good afternoon, Mr. Patel.

A Good afternoon, sir.

Q Are you the father of the young man that was in here a moment ago?

A Yes.

Q Now, you just testified that the Defendant speaks Pashtu, is that correct?

A Right. I mean, I believe so. That's the region -- I mean, the family is originally from there. And he might be able to speak some Pashtu. Whether he does normally or not, I do not know.

Q Are you a Pashtu speaker, yourself?

A No.

Q His family is Pashtu-speaking?

A Yes. And they also speak Urdu as a second language.

MR. URICK: No further questions. Thank you, Your Honor.

THE COURT: Thank you.

You may step down. Let me advise you -- one moment.

Ms. Gutierrez, are you going to need him again?

MS. GUTIERREZ: No, Judge, he's released.

THE COURT: May he be released from the summons?

MS. GUTIERREZ: Yes.

MR. URICK: Nothing further.

THE COURT: Released from the summons?

Sir, you may step down. You are a sequestered witness. What that means is you may not discuss your testimony with anyone who is yet to be a witness. However, since you've been released from the summons, you may remain in the courtroom, if you would like, or you're free to go at this time.

THE WITNESS: Thank you.

(Whereupon, at 3:25 p.m., the witness was excused.)

THE COURT: Your next witness, Ms. Gutierrez.

MS. GUTIERREZ: My next witness would be Ms. Bettye Stuckey.

Ms. Stuckey, if you'll go up and take the stand.

THE COURT: Walk all the way up here,

Ms. Stuckey, and I need you to turn and face the clerk of the Court, raise your right hand, and listen to what he has to say.

Whereupon,

BETTYE M. STUCKEY

was called as a witness at 3:25 p.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated.

Please keep your voice up, state your name and your address for the record.

THE WITNESS: Bettye Stuckey, 2301 British (phon. sp.) Avenue, Baltimore, Maryland.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Ms. Stuckey, what is your profession?

A I'm a guidance counselor at Woodlawn High School.

Q And last year, the school year that began in September of 1998 and ended in May or June of 1999, were you a guidance counselor at Woodlawn?

A Yes, I was.

Q And quickly, could you tell us what are your duties as a guidance counselor?

A As a guidance counselor, I was responsible for certain letters of the alphabet, A and B, and the entire Magnet Program counseling for that year.

Q Okay. And could you tell us briefly what the Magnet Program is?

A All right. The Magnet Program puts a special focus on preengineering and student-conducted research, and students have a very rigorous academic program that they go through for the four years.

Q Okay. And as a guidance counselor, you were then the guidance counselor for all the students of the Magnet Program?

A Yes.

Q In that capacity, Ms. Stuckey, did you come into contact and come to know one Adnan Syed?

A Yes.

Q And when did you first meet him?

A I met Adnan in his junior year. I met him before the senior year.

Q Okay. And was he in the Magnet Program?

A He was in the Magnet Program at that time.

Q And what kind of student was he?

A Adnan was one of those bright, enthusiastic, I would say, delightful young men.

Q Okay. And how much contact did you have with him in his junior year?

A I had limited contact in junior year but a lot of contact in senior year.

Q And why was -- what was the reason for that?

A I was not his counselor but I was the coordinator for the AP, Advanced Placement Program, and that's -- and the PSAT, so I got to meet him through those particular testing situations.

Q Was he assigned to Advanced Placement credit courses?

A He was in Advanced Placement courses.

Q Okay. And how often would you have contact with him during his senior year?

A Frequent contact. Adnan -- may I go on?

Q Yes, please.

A Adnan would come in -- he was assisting one of our gentlemen in the guidance area who works with the programming, and Adnan would come and sit with me at times and talk when he didn't have a lot of responsibilities. And I learned a lot -- just about him as a person at that time, which enabled me to write his recommendation from knowing about him later on.

Q Was writing recommendations an ordinary part of your duties as a guidance counselor?

A Yes.

Q And what were those recommendations when you so wrote them based on?

A They were based on personal contact with the

student, personal interview with the student, talking with them, comments from the teachers or coaches, whomever they were involved with at the school.

Q Directing your attention to January of 1999, was that a busy time for seniors in regard to college?

A Very much so.

Q Why is that?

A Because we have to finalize all of the preparations, transcripts, recommendations, things of that nature. We want to get everything in.

Q Were there deadlines for students' applications for college?

A There were deadlines, and sometimes the deadline may have been met but a recommendation was needed to accompany that at a later date.

Q Okay. And, Ms. Stuckey, during that time, was Adnan Syed in your view, in your experience with him, a college-bound senior?

A Yes.

Q And did he require -- did you have occasion to become involved with his applications for school?

A Yes.

Q And let me direct your attention to January 13th, 1999, do you recall that date?

A I do not exactly recall that date because there

are so many days in January that were so busy.

Q Okay. And did you have an occasion to print out a recommendation for Adnan Syed and sign it on that day?

MS. MURPHY: Objection.

THE COURT: If you recall.

THE WITNESS: I recall printing out a recommendation for him in January, in the second week of January. I don't know if that was exactly the 13th but I do remember printing that out for him.

MS. GUTIERREZ: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q I'm going to show you what's been previously marked as Defendant's Exhibit 21, Ms. Stuckey. Could you take a look at that?

A Yes.

Q And is that your signature --

A This is my signature.

Q -- that appears on the second page?

A This is my signature.

Q Is there a date that you dated underneath your signature?

A That's my date.

Q And what date is there?

A It's 1/13/99.

Q And on the front page of Defendant's Exhibit 21 is a title --

A It's a recommendation for Adnan Syed.

Q And in order for Adnan Syed to get this, did he come to see you on the 13th?

A He came to see me on the 13th. If he has this in his hand and I dated it on the date that he came to see me.

Q Okay. And do you recall actually seeing him that day?

A Yes. I remember that we did have a meeting, as I said, about the second week of -- because I kept a log and we did have a meeting and we talked about supporting his recommendation -- supporting his application, rather, for the University of Maryland with a recommendation at that time.

Q And were you aware on the date that you did this recommendation that he was actively pursuing college --

A Yes, I was.

Q At more than one institution?

A Yes, I was.

Q Okay. And did you draft this recommendation from your own personal knowledge?

A Yes, I did.

Q And did you yourself draft the words?

A Yes.

Q And did you know the things that are contained in this recommendation about Adnan Syed?

A I knew the things from school, from talking personally with the sponsors of the activities. I was talking personally with teachers. And also, some of the things that I knew about his relationship with the students and teachers, I knew that from observations and --

Q From observing him --

A Yes.

MS. GUTIERREZ: I would move Defendant's Exhibit 21 into evidence.

THE COURT: Any objection?

MS. MURPHY: Yes, Your Honor.

THE COURT: May I see the document?

(Pause)

Overruled. Let it be admitted.

(Whereupon, the document referred to as Defendant's Exhibit No. 21, previously marked for identification, was received into evidence.)

MS. GUTIERREZ: May I have that published by asking her to read it --

THE COURT: That'll be fine.

BY MS. GUTIERREZ:

Q Could you read that recommendation for us, Ms. Stuckey?

THE COURT: Ms. Stuckey, I need you to read every item on the page since it's being published to the jury. Normally, the jurors would have it in their hands. So that means you've got to read every little thing, including any dates, numbers, whatever, that appears on that page and on the next page as well.

THE WITNESS: Woodlawn High School, 1801 Woodlawn Drive, Baltimore, Maryland 21207.

Recommendation for Adnan Syed. As a student in our challenging Magnet Program for Preengineering and Student-Conducted Research, Adnan Syed has had many rich educational experiences, not only in the classroom but also in the community, serving as a tutor for elementary school students and working on research projects with mentors in mathematical and scientific fields. Whatever his assignment, Adnan strives for excellence at all times. His teachers remark that he's a bright, conscientious, and hard-working student who approaches his studies with sobriety. He

accepts criticism well and works to improve any area under consideration. His classroom contributions, verbal and written, reveal an analytical mind and a highly perceptive young man. Although his course work is paramount to him, Adnan has found time to participate in a number of activities at school and in the community that require time and dedication and reflect his special interests. An avid member of our MESA team, he participated in building a solar vehicle that won sixth place in national competition in Topeka, Kansas, last spring. Furthermore, he works diligently on projects sponsored by the National Honor Society, such as food and clothes drives, and on various committees for the Multicultural Club. In the community, he is an effective youth coordinator for Islamic functions at his mosque. He also volunteers at the local Woodlawn Fire Department where he has EMT mentors from whom he is learning new and useful skills. Adnan enjoys an excellent rapport with his peers and teachers who represent a diversified cultural background.

His warm, friendly manner, linked with his general interest in the welfare of others, have been definite assets in establishing his interpersonal relationships. This is a fine young man whose academic record, fine character, and strong commitment to his educational goals make him an excellent candidate for admission to the University of Maryland College Park.

And signed, "Sincerely, Bettye M. Stuckey, Chairperson, Guidance and Counseling Office, 410-887-1311," And because I wrote these with our secretary, I always dated them. After our secretary would write them, I date them on the date that I gave it to the student, 01/13/99.

BY MS. GUTIERREZ:

Q Ms. Stuckey, thank you. I'll take that back.

Ms. Stuckey, as a guidance counselor at Woodlawn, are you aware of the various racial classifications students are --

A I believe I am.

Q And is that by a lettered or numbered system?

A It's by number.

Q And the numbers, they go through 1 to -- what number?

A Up until six.

Q Up until six.
A Six.
Q And do you know what number corresponds to what category?
A I believe I do.
Q Okay. And what is Category 1?
A Category 1 is American Indian.
Q And Category 2?
A Asian.
Q And Category 3?
A African American.
Q And Category 4?
A White.
Q And Category 5?
A Hispanic.
Q And Category 6?
A Multicultural.
Q Now, were you aware of what racial category was assigned to Adnan Syed?
A Two.
Q Two. And that category again is?
A Asian.
Q And did you know a student by the name of Hey Men Lee?
A I did not really know Hey Men Lee, I knew of her.

Lee?

A I did not really know Hey Men Lee, I knew of her.

Q Okay. Did you know her physically, what she looked like?

A Yes.

Q And what racial category was assigned to her?

A Two, also.

Q Asia?

A Asian.

Q The same racial category assigned to Adnan?

A Yes.

MS GUTIERREZ: I have no further questions of this witness.

THE COURT: Thank you.

Any witness -- any questions of the witness?

MS. MURPHY: Court's indulgence, please.

THE COURT: Um-hum.

MS. MURPHY: Just briefly, Your Honor, thank you.

CROSS-EXAMINATION

BY MS. MURPHY:

Q Good afternoon, Ms. Stuckey.

A Good afternoon.

Q You've testified and read your recommendation, in part, regarding the Defendant's study habits and his performance in school, and you've also mentioned his

dedication to sports and other activities. Did you become aware after January of 1999 that some of his teachers were becoming concerned about his performance?

A After the January -- after January.

Q That his grades began to fail?

A After January.

Q And you're aware that his English teacher, Ms. Effron (phon. sp.), actually had to call his home because of her concern?

A I'm aware of that, yes.

Q And this was all after January of 1999?

A After January 13th, right, yes.

Q Were you also aware that his attendance in track decreased at that time as well?

A I'm not aware of that.

Q And that he -- this was discussed with the Defendant by Ms. Butler?

A I'm not aware of that.

Q So in spite of your recommendation, you are aware that these things happened after January?

A After I wrote the recommendation perhaps. I'm not aware of some of the things that you mentioned but I am aware of some of them, but this was after the recommendation.

MS. MURPHY: Nothing further, Your Honor.

MS. GUTIERREZ: Yes.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Yes, did you become aware that subsequent to your recommendation -- and that recommendation was to the University of Maryland College Park, is that right?

A Yes.

Q That you subsequently wrote a similar recommendation for the Honors Program at UMBC?

A Yes, I did.

Q Okay. And did you become aware that subsequent to each of those recommendations that Adnan Syed got accepted at College Park?

A That was -- yes, and that's --

THE COURT: You have to answer. When you nod --

THE WITNESS: I'm sorry.

THE COURT: -- that does not record anything.

THE WITNESS: Yes.

BY MS. GUTIERREZ:

Q Did you become aware that he got accepted?

A Yes.

Q And that he got accepted at the Honors Program at UMBC?

A Yes.

I'm very sorry. I didn't mean to nod.

A Yes.

I'm very sorry. I didn't mean to nod.

Yes.

Q That's all right.

And are you aware that after a senior is accepted at college that they really don't have to work as hard as before?

MS. MURPHY: Objection.

THE COURT: Sustained.

MS. GUTIERREZ: Nothing further.

THE COURT: Thank you very much, Ms. Gutierrez.

Anything further, Ms Murphy?

MS. MURPHY: Nothing, Your Honor.

THE COURT: At this time, can I release Ms. Stuckey from the summons?

MS. GUTIERREZ: Yes, Judge.

THE COURT: Ms. Stuckey, you are a sequestered witness. You may not discuss your testimony with anyone who is yet to be a witness. However, because you have been released from the summons, you are welcome to remain in the courtroom. At this time you're free to go.

THE WITNESS: Thank you.

(Whereupon, at 3:40 p.m., the witness was excused.)

THE COURT: Your next witness, Ms. Gutierrez.

MS. GUTIERREZ: One moment.

(Pause)

The Defense rests, Your Honor.

THE COURT: Very well.

At this juncture, we're going to allow the jurors to take a stretch. I will hear from counsel during the break as to our scheduling, and we'll have the jurors come back shortly.

Ladies and gentlemen, I'm going to ask that you go with -- Deputy Church is at the door. I ask that you leave the notepads face-down. You haven't heard closing argument, you haven't heard the law. Although the Defense has rested, the case is not yet over and -- it's almost over but it's not quite, so it would not be appropriate for you to discuss the case yet, either amongst yourselves or with anyone else.

I'm going to allow you to take a stretch break because when you come back expect to be seated for another two hours. That is, we're going to go to 5:30 today. At this time, I'm going to ask Deputy Church to take you to the jury room. Please leave your notepads face-down. And I'll see you in about 10 minutes. I'll have you walked back. Or so. Don't hold me to 10 minutes, maybe 15.

(Whereupon, at 3:41 p.m., the jury was excused.)

MR. URICK: May we have five minutes at this

your client, on the record, to make a selection.

MS. GUTIERREZ: Oh, that's right, Judge.

I just want to make sure everything I have moved in is --

THE COURT: Certainly.

MS. GUTIERREZ: I want to make sure that there's no --

(Pause)

Judge, I've whited out that one, but I have to make another copy because it does appear on --

I'll advise him now, Judge.

THE COURT: Yes, please.

MS. GUTIERREZ: Mr. Syed, would you stand?

As we previously discussed and as you've been advised, you have an absolute right to remain silent; you cannot be compelled to take the witness stand. And if you do not elect to take the witness stand and we ask the jury, and we've discussed this, the Judge will tell the jury, if we ask her to, that they can't draw what the law calls any inference of guilt, meaning they can't decide that you're guilty merely because you elected to remain silent, do you understand that?

THE DEFENDANT: Yes, ma'am.

MS. GUTIERREZ: That she will tell them that they can't hold your silence against you in any way because that

you have an absolute right to remain silent, do you understand that?

THE DEFENDANT: Yes, ma'am.

MS. GUTIERREZ: If you choose to give up that right, as you've previously been advised, you can become a witness like all other witnesses, subject to cross-examination and impeachment by the State's Attorney, do you understand that?

THE DEFENDANT: Yes, ma'am.

MS. GUTIERREZ: Have you and I had an opportunity to adequately discuss whether you should remain silent or take the stand?

THE DEFENDANT: Yes, ma'am.

MS. GUTIERREZ: And do you have any questions of me of that election?

THE DEFENDANT: No, ma'am.

MS. GUTIERREZ: All right. You understand that we've put on all the witnesses that we've discussed already?

THE DEFENDANT: Yes, ma'am.

MS. GUTIERREZ: Okay. And if you were to have an opportunity to testify, it would have to occur now. Are you prepared to make your election?

THE DEFENDANT: Yes, ma'am.

MS. GUTIERREZ: And is your election to testify

or to remain silent?

THE DEFENDANT: To remain silent.

MS. GUTIERREZ: Thank you. Do you have any questions about making that election?

THE DEFENDANT: No, ma'am.

THE COURT: Thank you very much, Ms. Gutierrez.

At this time, at the close of the Defense case, it would be a normal time for counsel to make the appropriate motions and --

MS. GUTIERREZ: Yes, Judge.

THE COURT: I would allow you to take the five-minute break --

MS. GUTIERREZ: Yes, I need to locate --

THE COURT: -- so you can organize things.

I would be asking, assuming -- and I haven't heard the arguments yet, so I haven't made a decision, but assuming any of the motions are denied which resulted in any cases moving forward or any of the counts moving forward, is the State going to have any rebuttal?

MR. URICK: No, Your Honor.

THE COURT: Very well. Then I need counsel to be prepared to for two things. First, I will her argument from both sides as to motions, first from the Defense and then from the State.

Upon my return, I am going to excuse the jurors

because we are going to have a charging conference from now until 5:30. I will pull out the Pattern rules. Starting with the State's requested voir dire, we will go through them.

And then, Ms. Gutierrez, we will go through any others that are normally given. And, Ms. Gutierrez, you are a very experienced lawyer, so I know that we can do that by reference to the Pattern instructions.

MS. GUTIERREZ: Yes, Judge.

THE COURT: I'm going to direct my law clerk to bring up an extra copy of the Pattern Instructions --

MS. GUTIERREZ: That will help.

THE COURT: -- so that you'll be able to have them handy to look through. And I will ask that counsel be prepared to do that.

I have asked both counsel to fashion an instruction as to two things: the expert witness -- I think there was some discussion about maybe having one -- and also, and more importantly, Jay Wilds.

Has the State done that, yes or no?

MR. URICK: As to --

THE COURT: Jay Wilds.

MR. URICK: Yes.

THE COURT: You've done that?

MR. URICK: As to --

THE COURT: And it's attached to the materials you've already given me?

MR. URICK: Yes. It's --

THE COURT: And has the Defense done that yet?

MS. GUTIERREZ: Yes, Judge, as to Jay Wilds.

THE COURT: Okay. And you have that handy with you?

MS. GUTIERREZ: Yes, Judge.

THE COURT: Mr. Lewis has it? Terrific.

MS. GUTIERREZ: Yeah, he probably does.

THE COURT: Luckily for Mr. Lewis.

MS. GUTIERREZ: If there are any errors, you have to blame Mr. Lewis, because I haven't had time to --

THE COURT: That's all right. I'll look past typos.

All right, so I'll let you have your five-minute recess.

MS. GUTIERREZ: I didn't draft up a jury instruction on expert witnesses because I think that --

THE COURT: I have one and we can work with the Pattern. I'm just kind of -- sort of preparing you for the fact that I'm going to be asking about it.

And there is an item that you wanted copied. If you could give that to my law clerk, the one that you whited out, I think you said, and you wanted to replace

the --

MS. GUTIERREZ: Yes. Yes, it's Defendant's Exhibit --

THE COURT: And, Ms. Gutierrez, I need to also advise you, and you can tell Mr. Lewis, maybe he can help you or you can use the phone in chambers if necessary, we are going to start at 8:30 tomorrow morning. So whatever phone calls you've got to make or you may need to do before the end of the day, I'm advising you that we're going to come back and we are starting at 8:30, prompt.

MS. GUTIERREZ: That's fine.

THE COURT: Okay. Now, the Court stands in recess for about 10 minutes.

(Whereupon, at 3:48 p.m., the trial was recessed and subsequently reconvened at 4:06 p.m.)

(Jury not present)

THE COURT: Please be seated.

Ms. Gutierrez, I would ask as you argue your motion for judgment of acquittal if you wouldn't mind tracking the --

MS. GUTIERREZ: The numbers?

THE COURT: -- the numbers, paragraphs -- or at least the counts and case numbers.

MS. GUTIERREZ: I'm going to follow it by the verdict sheet which I think is correct.

THE COURT: That will work fine. Which is as good as anything.

MS. GUTIERREZ: And assuming that the State is still pressing all of them, Judge, I would generally --

THE COURT: Well, let's ask them first, are you pressing all of the counts?

MR. URICK: All of the ones that -- motion for a judgment of acquittal, yes.

THE COURT: Very well.

MS. GUTIERREZ: I would renew, generally, my motion for judgment of acquittal, ask the Court to -- I think remembers my arguments on the issues. I only want to be heard briefly but ask the Court to incorporate the previous arguments that I've made. I don't --

THE COURT: I would only ask that as you do it, as you -- just tell me the numbers. I'm not as good a note-taker, typist as I am anything else, but I am listening to you and I really want to make sure that, as to each of your arguments, I separate them accordingly.

MS. GUTIERREZ: Okay. As to the indictment ending in 42, which is the murder indictment, Judge, I don't need to be heard in regard to Count 1.

As to Count 2, Judge, in the light of all of the evidence now, there is no evidence that would suggest second degree murder, either as a second degree murder

resulting from a mitigator of first degree murder or as to any other second degree murder, including depraved indifference or heat of passion or anything else. So our argument is under the light of all the evidence now, that the only count that should survive under the murder indictment, 42, is the first count, which is first degree murder, that it would be inappropriate -- there is no evidence suggesting second degree murder.

As to the indictment ending in 43, which is the kidnapping --

THE COURT: Which is Count 43?

MS. GUTIERREZ: Which is to -- as I understand it, it's Count 3 that survived.

THE COURT: Okay, wait a minute.

MS. GUTIERREZ: Count 4 was --

THE COURT: Give me -- the case ending in 043, correct?

MS. GUTIERREZ: Yes.

THE COURT: And that is the fraudulently --

MS. GUTIERREZ: Kidnapping --

THE COURT: -- carrying away?

MS. GUTIERREZ: Right. Kidnapping by force or fraudulently carrying. I believe we've all referred to it as kidnapping by deception.

You know, here are in the light of all the

evidence and, yes, they want to try to say that, but the only evidence from which they can argue is the evidence that comes from Jay Wilds. And all Jay Wilds says is what Adnan said, not what he did. There is no evidence of anything anybody did to establish that she was kidnapped. And in fact, there is contrary evidence before the Court, that has not been impeached, that there would have been no deception that anyone who knew Hey or knew the facts or knew their relationship, that anyone would have expected there to have had to have been deception in order for her to have allowed Adnan Syed in her car, either initially or to remain there. And the only evidence of kidnapping by deception is what Jay Wilds says Adnan said, not what Jay Wilds said he did.

And the only evidence in regard to kidnapping was something that Adnan Syed is alleged by Jay Wilds to have said before Jay Wilds left him in the early afternoon of January 13th, what he was going to do to get in her car, that -- if you believe that might have involved deception. But there is no evidence establishing that's what he did or, subsequent to Jay Wilds leaving him, that in fact that that's what he did. There's no evidence that supports or corroborates any argument that he did what he said he was going to do. And in fact, there's contrary evidence before the Court, so we would move for motion of a judgment of

acquittal as to Count 1 in 43, because to do otherwise would allow the State to invite speculation by the jury in a critical element.

As to the indictment ending in 45, which is robbery, as I understand it, all of the counts survived the first motion. I would ask the Court to reconsider our arguments now in light of all of the evidence, not in the light most favorable to the State.

Specifically, as to robbery, it is our maintenance that there is a requirement of intent to permanently deprive and there is no evidence that suggests that, even if you believe Jay Wilds that it was Adnan's decision. Where it was parked was a public area, locatable, perhaps with effort, but not in and of itself indicative of an intent to permanently deprive the owner.

As to the second and third count --

THE COURT: The car that we're talking about is the car --

MS. GUTIERREZ: Was the car of the victim.

THE COURT: That the property is the car?

MS. GUTIERREZ: Yes.

THE COURT: Not the property contained therein?

MS. GUTIERREZ: Yes, yes.

Well, to the extent that property is contained therein, then the same argument applies.

As to the evidence of the struggle in the car and, you know, by reason of the signal that the Court used to sort of substantiate keeping in Counts 6 and 7, assault in the first and second degree, now, in light of all the evidence, Judge, there is no evidence on the body -- in fact, there's evidence to the contrary -- no evidence of any injury on her leg or any portion of her body that may have been hit, may have been injured as a result of a struggle whatsoever.

There's no evidence, in fact, that the signal wasn't in the condition in which it was seen more than a month after it had been released from police custody, under unknown control or controlled by unknown persons, when that signal had been in whatever condition it was found to be at that much later date.

And there is no evidence that, in fact, she was assaulted other than the murder, whatever assault took place. And if that's true, then that's a lesser included offense as to the murder in the indictment and not as to a separate lesser included offense as to robbery. I mean, robbery is the sort of theft plus assault. And so, this indictment does not charge assault as a lesser included of murder, it charges assault as a lesser included of robbery, and there is no evidence from which to establish that.

As to felony theft, again we would argue there's

no establishment of who the owner was. They didn't attempt to do that. We believe that that's an element. There's no establishing the value of the car. You can't establish value by inference. You need evidence to establish the elements of the crime. And in fact, from their very own witnesses and ours, there is unrebutted evidence that Adnan Syed had permission to drive the car, to be in the car, had driven it, was always in lawful possession of it all the times that he had it, which were numerous.

And as to case ending in 46, which is the false imprisonment, again it's by deception. It's akin, I believe, Judge, to the same count charged in 43, which is the kidnapping by deception. And again, certainly there's some aspect of false imprisonment, you know, if the jury believes Jay Wilds and finds him guilty of murder. But this is specific false imprisonment by deception and, once again, although Jay Wilds says that Adnan said that's what he was going to do, that's what Adnan said not what he did, there's no evidence from Jay Wilds or from any other source -- of course, there's no other source after having spoken to Adnan about this other than Jay Wilds -- of meeting the element of any deception on the part of Adnan that actually happened. And so, to send that to the jury would invite speculation that Jay Wilds said that Adnan said that's how he was going to get her in the car. Jay

Wilds never said that Adnan said afterwards that that's how he got her in the car. So once again, that's only evidence of what he said, not what he did. And again, sending that to the jury would invite them to speculate as to critical elements of the crimes charged.

THE COURT: Thank you.

All right, I'll hear from the State with regard to -- it appears counsel is directing her attention --

And I take it you would submit on the other arguments and incorporate herein by reference your previous arguments, Ms. Gutierrez?

MS. GUTIERREZ: Yes, Judge. I intended to say that.

THE COURT: Very well.

MS. GUTIERREZ: And other than second degree which, of course, really didn't come up yesterday, but --

THE COURT: Which you had argued, I believe, at length.

MS. GUTIERREZ: Yes.

THE COURT: Very well. I'll do that and consider those arguments here with a different shifting of the burden.

And I'll hear from the State as to each of the counts. And again, I would ask that you, if you would, follow the verdict sheet that you have.

MR. URICK: Thank you, Your Honor.

Before I do that, was it your intent to excuse the jury?

THE COURT: No. It was my intent to hear from your argument and then I'll let you know what I decide to do. It has a lot to do with how long you're going to be.

MR. URICK: I would incorporate all my arguments at the motion for judgment of acquittal. I'll try not to needlessly repeat things I said then but I can't necessarily remember everything I said. So if I do, I apologize.

As to first degree murder, there is, as I noted then, ample evidence of intent. The method of the murder, strangulation, takes time. The way it was planned, the way it was a trap, the way that various things, including the obtaining of the cell phone, which was a necessary element for the crime to have been committed in the way it was, all these are evidence of premeditation. Hence, first degree murder.

As to second degree murder, that's just a specific intent to kill. It does not need to show premeditation. The intent to kill is you've got statements of the Defendant, you've got the method of death. Strangulation is not something that occurs easily or by accident, it requires an exertion of will over a period of

time. And you also have evidence that this Defendant had medical training and would have known exactly what he was doing. Hence, the intent can be shown here because he had the knowledge of what the consequences of that act would be and could actually determine what the consequences would be.

As to kidnapping by fraudulently carrying away, there is more than just the evidence of Jay Wilds. There's the testimony of Krista Meyers who had a morning class, who testified the Defendant told her that his car was in the shop and that he had asked Hey for a ride home after school. Ayisha Pittman testified to the same, that the Defendant had told her that his car was in the shop and that he was asking Hey for a ride home. So you've got --

THE COURT: How is that kidnapping if he asked her for a ride home and she agreed to give him a ride home? Counsel for the Defense is arguing that the victim voluntarily allowed the Defendant to get into her vehicle and that she was not forced to do that and that this was not something that was deceiving her and that she knew he was asking for a ride. He hadn't concealed himself in the back seat where she couldn't see him or hidden himself away in the trunk of her car but, rather, that from the evidence she knowingly allowed him to get in the car. And why isn't that obvious and not in any way deceitful or fraudulent?

MR. URICK: Because the method of obtaining the consent used deception. He lied to her about the true facts of the matter. That deception was a pretext to obtain her consent. That is, he received the consent by way of deception. That, under the case law, is sufficient for an alternative means of proving kidnapping to the means of force because deception overcomes one's will just as much as force does. Therefore, it is kidnapping by deception, that the lie as to the true reasons why he needed a ride was a deception. That deception was a pretext to obtain her consent. He obtained the consent by deception. Therefore, that is kidnapping under the case law and under the Pattern Jury Instruction as currently written.

THE COURT: I'm sorry, the last part of what you said?

MR. URICK: The Pattern Jury Instruction, as currently written, contains kidnapping by force or deception.

THE COURT: All right. And the pertinent part of that instruction?

MR. URICK: I'm just noting that it includes deception as one of the alternative bases for a ruling that kidnapping has occurred or --

THE COURT: And the facts of this case that

present a deception are?

MR. URICK: The fact that he gave a story to the victim to induce her consent that was false. He told her his car was in the shop and he needed -- therefore, he needed a ride home after school.

MS. GUTIERREZ: Judge, I would remind the Court there's no evidence whatsoever about Mr. Syed's car or it's operability or nonoperability on or at the date in question.

MR. URICK: The testimony of Ayisha Pittman and Krista Meyers to that effect.

MS. GUTIERREZ: Not as to the car.

MR. URICK: They've all testified the Defendant told them --

THE COURT: Well, Ms. Gutierrez, you know, unfortunately, you know, we let you make your best argument, and he's making his best argument. And I'm appreciating that you're pointing out the facts that you don't believe are in the record, but I've got to listen to his version. And then in a moment, I'm going to ask you to respond since it's your motion for judgment of acquittal. So if you'll let him make his pitch, I'll listen to what you have to say in response.

MS. GUTIERREZ: All right, Judge.

THE COURT: But I'm asking counsel to

specifically direct me to facts that show the deception.

MR. URICK: Both Ayisha Pittman and Krista Meyers testified as to what the Defendant told them as to why that -- in fact, he had asked Hey for a ride home after school, that both of them testified that he told them that his car was in the shop, although I think Krista Meyers phrased it he said either his brother had his car or it was in the shop, I can't remember which of the two it was. But Ayisha Pittman was quite clear that the Defendant had told her that the car was in the shop, that was why he needed a ride home from Hey.

That request from the Defendant was a lie. Therefore, it was a deception. Therefore, he induced a consent by means of deception that overcame -- that, in effect, negated her ability to give a voluntary consent because she was consenting to something that was a false statement of facts.

THE COURT: So the State's position is that the evidence shows beyond a reasonable doubt or could be inferred by the trier of fact sufficient for me to send it to the jury that the following threat of activity occurred? That he told Krista Meyers and Ayisha that he was going to do this, that he asked Hey for a ride, that she agreed to give him a ride, and that the ride home resulted in them going to his house?

MR. URICK: To the Best Buy parking lot.

THE COURT: To the Best Buy parking lot for the purposes of --

MR. URICK: Killing her.

THE COURT: -- killing her. So once they get to the Best Buy parking lot, you're saying that the evidence in your case shows that that's where she was killed?

MR. URICK: Yes.

THE COURT: And that the kidnapping occurred from the high school to the Best Buy parking lot?

MR. URICK: To the point of death, to the place where the murder occurred.

THE COURT: And that he got her there by deception?

MR. URICK: He kidnapped her. He kidnapped her, that's how he got her there. And the particular kidnapping was effected by means of deception.

THE COURT: And she didn't go there voluntarily?

MR. URICK: Not when it was induced by deception.

THE COURT: It was his intent, even if they were to have sex in that parking lot or if the intent was to -- what if the facts are -- that the trier of fact would find that the travel from the high school to the Best Buy was for the purposes of them engaging in sexual activity on the parking lot, as they had done on previous occasions, which

is in evidence, and that once there they had a fight, and that resulted in the fight that broke the signal bar and then she was killed? What do you say then with regard to the kidnapping count?

MR. URICK: The kidnapping charge and the murder charge are distinct charges. They're not related to each other.

THE COURT: I'm asking about the kidnapping.

MR. URICK: That's why I'm addressing it this way.

It's not the charge that he did kidnap her with the intent of killing her, it's just that he did kidnap her by means of deception. It is the travel itself which is the kidnapping. If they find that they agreed to go there to have sex, then there could be no kidnapping because there'd be no deception. But if they find that they went -- that they traveled in that car because the Defendant told a lie and that lie was that he needed a ride to get his car because it was in the shop or his brother had it, then you would have a carrying of someone by deception. That deception would overcome their will.

THE COURT: And the State's position is that there's sufficient evidence for a jury or trier of facts to find that inference?

MR. URICK: Yes.

THE COURT: All right. With regard to the robbery?

MR. URICK: And it's also consistent with what he told Jay.

THE COURT: And with regard to the robbery?

MR. URICK: As to robbery, the taking away with the intent to permanently deprive, you've got evidence that he took personal property, he threw it away in various dumpsters, that he secreted the car in a place in downtown Baltimore. That is, he hid the car. That is sufficient evidence for an inference of an intent to permanently deprive the owner, let alone to say the fact that he killed the owner -- and I would say there's evidence of that because Yung Lee testified, when asked, do you recognize this car, his answer was that's Hey's car. And he testified that was Hey's property in the car. The way it was secreted, the way it was hidden, hiding something, secreting it is traditional evidence of an intent to permanently deprive someone of that property.

THE COURT: And the assaults related, counsel has said that there's assault one and assault two.

MR. URICK: You've got the evidence of the bruising on the side of the head, the sign of the struggle through the damage to the car, and you've got recorded statements that are significantly corroborated by that

evidence.

THE COURT: Very well.

Now, Ms. Gutierrez, now that you know the State's position -- the facts, I'll hear from you.

MS. GUTIERREZ: Judge, the only thing I wanted to argue is, you know, this is how I understand it. The deception that they are alleging is -- the basis of the deception element for the kidnapping is that what he's allegedly said to Krista Meyers and Ayisha Pittman, and we dispute that's what Ayisha Pittman said. The record speaks for itself. But Krista Meyers said that and Ayisha Pittman did not. But if that's the deception, then all of the evidence is in, is that he said that he was going to ask Hey Men Lee for a ride because his car was in the shop. There is no evidence that has any bearing on whether that was true or false. There's no evidence about his car and its condition on that day or whether or not it was in the shop when he told Krista Meyers that that's what he was going to do. And at that juncture when he told her is the only thing that has any bearing on whether or not that was deceptive. And they brought in no evidence to show that early in the morning when Krista Meyers says that's what he said to her whether or not his car was in the shop or not.

THE COURT: Well, I mean, Ms. Gutierrez, obviously, if it's a lie, and assuming that it is a lie, it

wouldn't matter if the car was in the shop or not. If the car was truly in the shop and he said it, he still could have used the fact that the car was in the shop to get into her car. And if the car wasn't in the shop --

MS. GUTIERREZ: Well, true, but if their only theory is that that's the deception, then there has to be evidence from which a reasonable jury can infer from one to another to establish an element. And so, it does become important --

THE COURT: Or a series of facts from which an inference could be drawn.

MS. GUTIERREZ: Reasonably drawn.

THE COURT: That's right.

MS. GUTIERREZ: But if the first fact is an early morning statement made to a witness that his car is in the shop, if that's from which you then infer deception, and whether or not that's her statement is true or false, certainly is part of the element of defining whether or not -- otherwise, how can it be inferred? How can it be reasonable inferences from a series of facts? There is no evidence before this jury as to his car or its status at the time that he spoke -- of anything at the time that he spoke to Krista Meyers, which was early in the morning.

I don't have anything to respond as to the robbery other than, again, you know, the brother said that.

But then they put in evidence to establish the ownership of the car and that establishes it ain't Hey Men Lee. And that evidence is -- Judge, it's the registration for the car, the pictures of it, matches the tag number. It matches. So the evidence is that the owner of the car is not Hey Men Lee.

THE COURT: Well, I think the very argument that you both are presenting is the reason why these counts have to go to the jury. I mean, that's just, that's just the idea, is that depending on how you view the facts and apply those facts to the law determines how you see each of the counts. And at this juncture, there are a lot of facts from which someone could draw -- a number and a series of determining factors and evidence, and in weighing that evidence determine beyond a reasonable doubt and to a moral certainty whether or not the Defendant is guilty of these offenses or that the State has failed to meet that burden. But the assessment and the weighing of that evidence and as it applies to the law has to be done through the jury.

So with regard to 042, as to regard to first degree murder, I deny your motion. As to 042, as to second degree murder, I deny your motion because again, depending how the evidence is viewed, they might believe that the evidence shows premeditation or they may believe that it didn't.

As to 043, kidnapping by fraudulent carrying, Count 1, I also find that the -- and was that Count 1? I just want to make sure I have the counts correct.

MS. GUTIERREZ: Which number?

THE COURT: 043, kidnapping by fraudulently carrying, that's Count 1 of that indictment, correct, and not Count 2?

MS. GUTIERREZ: Yes, that's what I have.

THE COURT: All right. And so, I deny your motion as to that.

Under 045, robbery, assault in the first degree, assault in the second degree, and felony theft, as to each and every one of those, I think that the facts are there. Depending on how the trier of the facts views them and applies the law, who they believe, the credibility of the witnesses, who they believe in terms of the application of those facts and circumstances to the law will determine whether or not they find that the State has met its burden beyond a reasonable doubt. Those issues have got to go to the jury.

And as to 046, false imprisonment -- let me make sure I have that -- by deception, I still have that as an open count, correct? And counsel did not argue that, but the facts appear --

MS. GUTIERREZ: I did at first.

THE COURT: Well, you argued it as first in the context of the kidnapping.

MS. GUTIERREZ: Right.

THE COURT: As to 046 count, I think again the facts are such that either they believe that the kidnapping and false imprisonment deception occurred between the high school and a parking lot or they don't. If they believe the series of facts and weigh the credibility and apply it, then they will. And if they don't, they won't. But then after they determine what the facts are, they've got to decide whether the State has met its burden as to those elements beyond a reasonable doubt and to a moral certainty. And I think that because the trier of fact must make that weighing and must make the determination, 046 must also go to the jury as to Count 2 charging false imprisonment by deception, and I so find.

At this time, I am going to provide counsel with, and ask that you pull out -- that's what we had discussed the other day. And I'm going to ask that you review that for any typos that you might find.

Also, I'm going to ask that you pull out, if you have handy, the State's suggested voir dire. And while you're doing that, I'm going to have the jurors come in. I'm going to excuse them until tomorrow morning at 8:30, at which time I will do the following. At 8:30, we will have

instruction by the Court, which I expect will take about 45 minutes, maybe 50 minutes. Then we'll have closing argument by counsel. And then, depending on what time we finish that, they'll either go to lunch or they will --

MS. GUTIERREZ: Start.

THE COURT: -- start deliberating and then go to lunch.

I'm advised that my one remaining -- or my case dockets for tomorrow morning have been taken by another judge, so I will not have a docket in the morning. I'll be able to use this time to resolve this case. So that's my plan at this time.

And if my law clerk would be so kind to bring the jurors in.

MS. GUTIERREZ: Judge, before you do that, is the Court willing to discuss the 8:30 time at all?

THE COURT: No. I'm not going to discuss it.

MS. GUTIERREZ: Then I'm not going to bother.

THE COURT: At this time it's -- well, the Court has bent over backwards and this time we're going to accommodate me because I do have a vacation that I had planned more than four months ago, and I know that I might not be able to take it.

MS. GUTIERREZ: I've already mentioned --

THE COURT: So this time we're going to

accommodate the Court and we're going to start at 8:30, with the hope that we'll be able to get this resolved.

(Whereupon, at 4:36 p.m., the jury returned to the courtroom.)

THE COURT: Ladies and gentlemen, I want to give you an idea of what we're about to do. We're almost done with this case. The Court has some matters that I must take up with the attorneys. Following that, we will have instruction by the Court to you on the law. That takes about 40 minutes maybe a little longer. Following that, closing argument by each attorney. Each attorney will have an hour and a half. They may use all or part of that time. Because this case has gone on for six weeks, they may use all of it or they may use some of it, but they have an hour and a half.

For that reason -- it is now 4:30 and I'm not going to do that tonight. I'm going to talk with counsel, get everything else ready. But tomorrow morning I'm going to instruct you.

Now, I'm up first in the morning. That is, I talk to you first as to the law, and I'm going to do something unusual. I think we may have done this once before. I'm going to start at 8:30. I've gotten another judge to handle my docket, so I have nothing else but this case. And we will start with my instruction to you on the

law at 8:30, followed by closing argument by the State and then the Defense. Following that, there will be an opportunity for deliberation in this case. That will be the sequence of events.

I'm going to ask that, obviously, you not go to the Jury Commissioner's Office at 8:00 because they won't be there but, rather, that you come to our jury room at 8:30. Now, I know this may be inconvenient to your schedules and I've already been told that it maybe inconvenient. I'm just going to ask that you do what you can to make adjustments to your calendars and schedules this one last time so that you can be here at 8:30. I would truly like to get started promptly at 8:30 and I'm going to be here, right here, and I'm going to be very unhappy if those of you that have been part of this case are not here at 8:30. Because if we do that, as you can see from the time that we need to use before the case can even be given to you, we might be able to finish that in the morning, so that maybe by lunchtime the case will be with you for deliberation. That's my plan, that's what I'd like to do.

In the meantime tonight, once again, you cannot discuss what you've heard. You have now heard all of the evidence but you have not heard the law and you have not heard closing argument. So therefore, it would be

inappropriate to make up your mind, to come to a decision without hearing from me as to what the law is, without hearing from counsel as to what their argument is, and without discussing amongst yourself the evidence and the law. That would be inappropriate to do that before you've done all of what I've described.

So as you go today, one last time, you're going to leave your notepads face-down on your chair. You're going to go and return here tomorrow at 8:30. If you arrive at the front doors and they in any way try to stop you from coming in, you tell them that you've been ordered to return by Judge Heard who's going to take the bench early, at 8:30. I will have my staff call down and advise them that you will be coming up early.

The sheriff will have already unlocked the door, and you should not have any difficulty getting into chambers -- into your jury room.

I at this time would then excuse you for the evening and ask that you have a pleasant journey home, and I will see you tomorrow morning at 8:30 sharp.

(Whereupon, at 4:41 p.m., the jury was excused.)

THE COURT: All right, counsel, with regard to the State's requested jury instructions, what I intend to do is to start with those instructions that I normally give. And as they've already been instructions provided as

on a list, if the Defense challenges or disagrees with my giving that instruction, I'd ask that you note that as I go through them.

The binding nature of the instruction is a standard instruction I normally give in following the McPowell (phon. sp.) jury instruction. I will give that. Any objection?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Okay. Skip down to 2.04, impartiality of consideration, that's State's requested no. 5, that's a standard instruction I normally give. Any objection?

MS. GUTIERREZ: No, Your Honor.

THE COURT: 3.0, State's 6, is a standard instruction I normally give. Any objection?

MS. GUTIERREZ: No, Your Honor.

THE COURT: 3.01 is direct or circumstantial evidence, also a standard instruction. That's State's 7. Any objection?

MS. GUTIERREZ: No.

THE COURT: 2.02, reasonable doubt, I normally give is a standard instruction I normally give, with one caveat. My reasonable doubt --

MS. GUTIERREZ: I'm sorry, Judge, what number is that?

THE COURT: It is the Defense -- I'm sorry, the State's requested 3, Maryland Pattern Jury Instruction on reasonable doubt 2.02, 2.02.

MS. GUTIERREZ: Oh, I see. Okay, yes.

THE COURT: See it? No. 3?

MS. GUTIERREZ: Yes.

THE COURT: I normally give the Pattern Instruction with one caveat. I depart from it in that in the middle of the instruction I emphasize that -- and I'll read exactly what I say:

> Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. This burden remains with the State throughout the trial. The Defendant is not required to prove his innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty, nor is the State required to negate every conceivable circumstance of guilt. Proof beyond a reasonable doubt is proof

that leaves you very firmly convinced.

And then I follow the rest of the instruction. What it does is it emphasizes that this is not a civil case and reiterates that it's not just the tipping of the scales but proof more powerful than that.

Any objection?

MS. GUTIERREZ: No, Your Honor.

MR. URICK: No.

THE COURT: Okay. I just want to make sure I have that.

Okay. I normally give 3.02, which is the State's 8, where there's a stipulation of facts.

Ms. Collin, I need the sticky pads that normally are here. If you have a strip or pile of them, I'd appreciate it.

Okay, with regard to the stipulations of fact, I believe there was stipulation as to the authenticity of a couple of exhibits. Correct me if I'm wrong. Are there any instructions -- any items of evidence that were stipulated to by both counsel?

MR. URICK: The Defendant's cell phone records.

THE COURT: The cell phone records, okay.

MS. GUTIERREZ: The cell phone records and her bank records.

THE COURT: Her bank records? That authenticity

was stipulated to?

MS. GUTIERREZ: Right.

THE COURT: I don't believe that the records themselves --

MR. URICK: The various chains of custody, too, of evidence was stipulated to.

THE COURT: All right. Any objections to me indicating what -- or defining what stipulated evidence is, as I did at the time the items were admitted, but just to reiterate what is a stipulation?

MS. GUTIERREZ: No, Judge.

THE COURT: Okay. Then I'll leave that in.

All right. There are no depositions, that's no. 7.

I don't believe I took judicial notice of anything.

I'm not sending any dismissed charges, so there's nothing to talk about there.

All right.

MR. URICK: Just in case they get curious, though, on the verdict sheet, under the Indictment 199103046, you never told them there were two counts of false imprisonment. Maybe on the verdict sheet we should just change it, how do you find as to Count 1, false imprisonment by deception. That way, they won't be

confused.

THE COURT: You're looking for 046?

MR. URICK: Yes.

THE COURT: Under Count 2?

MR. URICK: Yeah. Could we just change it as to Count 1?

THE COURT: Just say as to the charge --

MR. URICK: Yeah.

THE COURT: -- as to the charge --

MR. URICK: That would be fine, too.

THE COURT: -- of. Any objection to that? All we're doing is on the verdict sheet, under 046, instead of it reading "As to Count 2, charging false imprisonment by deception," it would just say "As to the charge of false imprisonment."

MS. GUTIERREZ: "Of false imprisonment," that's fine.

THE COURT: So there's no reference to a count that's not there.

MS. GUTIERREZ: That's fine. No objection.

THE COURT: All right. Ms. Collie, don't take that away yet, but just note that that's going to have to be a correction.

All right, 3.06, determining individually, the charges individually, which is State's no. 9, I normally

give that. You have no objection?

MS. GUTIERREZ: No, Judge.

THE COURT: All right. Credibility of witnesses is not listed under 3.10. Let me see.

MR. URICK: That was a mistake on my part. I meant to include it as a requested instruction.

THE COURT: That's an instruction I normally would give. Ms. Gutierrez, 3.10 reads as follows:

> You are the sole judges of whether a witness should be believed. In making a decision, apply your common sense and everyday experiences. In determining whether a witness should be believed, you should carefully judge all the testimony, evidence, and circumstances under which a witness has testified. You should consider the witness's behavior on the stand and the way --

MS. GUTIERREZ: Judge, I have that, and that's one of the ones that I requested from the Pattern Jury, so --

THE COURT: I will give that instruction.

All right, 3.14, which is expert --

MS. GUTIERREZ: Expert witnesses?

THE COURT: Um-hum. Any objection?

MS. GUTIERREZ: No, Judge. Again, that's a --

THE COURT: An instruction --

MS. GUTIERREZ: -- one that I've requested.

THE COURT: That's State's no. 11.

And the next one I give is State's no. 12, which is 3.16, number of witnesses, standard instruction I give.

MS. GUTIERREZ: Yes, Judge, I believe that also I've requested that.

THE COURT: 3.17, at this point I would normally give the instruction failure of the Defendant to testify. That's what I normally would do. Are you requesting that instruction?

MS. GUTIERREZ: Yes, Judge, we are.

THE COURT: I will give that.

MS. GUTIERREZ: That's my no. 17.

THE COURT: Okay. 3.18, statement of the Defendant, this is where the Defendant has provided a statement and 18 -- I don't know if you're familiar with it.

MS. GUTIERREZ: Well, Judge, I am, and I actually put it in my request but I was --

THE COURT: You've changed your mind?

MS. GUTIERREZ: Well, I was concerned when I put it in because I think that, you know, there isn't an issue of voluntariness and, generally, that's when that Pattern

Jury Instruction applies. The bulk of that Pattern goes to tell the jury the issues that are solely related to voluntariness.

THE COURT: Right.

MS. GUTIERREZ: All the statements of Mr. Syed's have been brought before the jury. The ones that weren't brought by them we brought out. There isn't any issue of voluntariness or custodial -- I think that although it appears to be appropriate that in this case it would lead to greater confusion by the jury. So I'd withdraw my request and object to the Court giving it.

THE COURT: All right. I tend to agree with Ms. Gutierrez.

The State doesn't have any problem with that, do you?

MR. URICK: No. We think it's an inappropriate instruction, unless it's an incriminating confession.

THE COURT: Well, it wouldn't always have to be an incriminating, it could be a good statement for the Defense.

MR. URICK: I think there is a statement --

THE COURT: But in any event, the voluntariness of it is the issue and whether or not it was one where it was a challenge. But in any event --

MR. URICK: -- Your Honor.

THE COURT: -- you're correct as to whether it is appropriate, and I think -- I note that -- then you're withdrawing 3.18. All right.

Going back to my list, and I'm working off my list, and the order that I'm giving it to you is the order in which I'll be giving it to the jurors as opposed to following the order that the State or the Defense has provided.

Impeachment by prior conviction, which is not, in itself, relevant --

MS. GUTIERREZ: Is that -- anybody?

THE COURT: That's -- I don't think we had anybody that had a prior conviction.

MS. GUTIERREZ: I don't either.

THE COURT: The convictions of Mr. Sellers did not come in, so I don't think that that will be relevant and would not be appropriate.

Moving on to any identification issues, and I don't think we have any.

MS. GUTIERREZ: I don't believe so.

THE COURT: Although, have you looked at 3.30? I'll read it to you while you're looking. And normally --

MS. GUTIERREZ: It's 3.0?

THE COURT: It's normally a different type of case, but I'll read you the instruction. The instruction

says:

> The burden is on the State to prove beyond a reasonable doubt that the offense was committed and that the Defendant was the person who committed it. You have heard evidence regarding the identification of the Defendant as the person who committed the crime. In this connection, you should consider the witness's opportunity to observe the criminal act of the person committing it, including the length of time the witness had to observe the person committing the crime, the witness's state of mind and any other circumstance surrounding the event. You should also consider the witness's certainty or lack of certainty, the accuracy of any prior description, and the witness's credibility or lack of credibility, as well as any other factor surrounding the identification.

You have heard a witness identifying the Defendant by, and I would proffer it might be Jay Wilds, and I'm not suggesting that this particular instruction verbatim, but it may be a starting place for fashioning that instruction that I was referring to before.

It is for you to determine the reliability of any identification and to give it the weight you believe it deserves. Identification of the Defendant by a single witness as the person who committed the crime, if believed beyond a reasonable doubt, can be enough to convict the Defendant. However, you must examine the identification of the Defendant with great care.

Now, I know that you --

MS. GUTIERREZ: Judge, we looked at that and, obviously, there are pieces of it that we really like. And if the Court's open, maybe we'll cut and paste it, but I think it is essentially an identification instruction and that's not really the issue here.

THE COURT: Agreed.

MS. GUTIERREZ: It's not did Jay Wilds select the right person, it's do you believe Jay Wilds at all. That's from us. So -- and because I think it's mostly on identification, we decline to request it and would object to it now.

MR. URICK: The State concurs.

THE COURT: Very well. I just wanted to make sure I ran it by you.

Okay. We're now at the proof of intent under 3.31, which is, what, 13's requested instruction by the State?

MS. GUTIERREZ: We've also requested it as our 22.

THE COURT: Very well. And as to 3.32, motive --

MS. GUTIERREZ: Which is the motive? Yes, we've also requested it.

THE COURT: Very well. That's a normal instruction I would give. That's 14.

And I do have 5.0 stuck in here. Did you request 5.0, which is the alibi? Kind of, sort of.

MS. GUTIERREZ: I think we did, Judge. It's on the second to last page, our 29. Yes, the 5.0 alibi instruction.

THE COURT: Any objection by the State?

MR. URICK: No.

THE COURT: No?

All right, I will give that instruction as well. Let me get back to it.

All right. Unanimous verdict I give as part of -- and it's mixed in back at 2.0, which is 2.03.

MS. GUTIERREZ: Right.

THE COURT: And I give it twice. I give it once when I talk about what the burden is, but then I also read

to the jurors the verdict sheet. I read to them each -- what it says and then I read not guilty, a place for your response; guilty, a place for your response. I read each one. And then at the end, I say you must indicate your responses on each line and you must do so unanimously. That is, you all must agree before any response can be noted. So they hear it twice, reminding them that it is a unanimous verdict. So that is given.

Now, with that said, were there any stipulations of fact that we did not -- we already talked about that. I think we covered that.

Jurors to deliberate, I haven't gotten to that yet but I give that in a moment.

All right. I separate out, counsel, the standard instructions before I give the substantive ones, and once I've read them the jury verdict sheet and all others, then I talk about the substantive elements. But before I do that, I would do the jury's duty to deliberate following the substantive. In other words, I do the substantive instructions and then the next instruction would be the jury's duty to deliberate, which is --

MS. GUTIERREZ: That's the Pattern 2.01?

THE COURT: 2.01.

MS. GUTIERREZ: Yes, okay.

THE COURT: So why don't we depart from that

right now and go to the substantive counts? And before I do that, I'm just going to go back to Defendant's jury instructions up to this point. Binding nature, we agree.

MS. GUTIERREZ: Right.

THE COURT: The jury's duty to deliberate, I agree. Presumption is agree. Unanimous verdict, agree. And impartiality, agree. What constitutes evidence, agree. Direct or circumstantial, agree. Stipulated evidence, agree. Dismissal or considering the counts that are there individually, agree. Credibility of witnesses, agree. 3.11, which is the testimony of an accomplice --

MS. GUTIERREZ: And we've modified that.

THE COURT: And before I get to the substantive counts, I want to look at that.

3.12, which is witness who has pled.

MS. GUTIERREZ: Yes.

THE COURT: 3.13, witness promised leniency. And we already covered 3.14, expert testimony; 3.17, failure of Defendant to testify, number of witnesses, those two we've already discussed.

MS. GUTIERREZ: Yes.

THE COURT: 1.9, we have not discussed prior statements yet, evidence of good character, concealment. Proof of intent, your no. 22, we discussed. Motive we discussed, we're going to give. And false imprisonment is

substantive. And it looks like the rest are substantive, with the exception of 5.0, which I already said I'd give.

All right. It looks like we've cleared out all of the preliminaries and what's left are the accomplice related, Jay Wilds's instruction and the related instruction with regard to that witness, and then the substantive. So let's start with --

MS. GUTIERREZ: And then we have some additional, 9 --

THE COURT: Okay. Let me --

MS. GUTIERREZ: -- on the last page.

THE COURT: Okay. Let me first get to -- let me look at both the State's and the Defense's instructions as they appear to relate to Jay Wilds.

First, looking at testimony of accomplice, Defense 12, and I would think -- it appears that you're tracking the language of 3.11.

MS. GUTIERREZ: Yes, Judge. Any additions are in the italics.

THE COURT: Okay. Any objection from the State.

MR. URICK: Yes. That incorrectly states the law.

THE COURT: All right. So we'll give that. No objection you're saying?

MR. URICK: No. Objection. It incorrectly

states the law. For an accomplice -- to give the first one, the A, testimony of an accomplice, it has to be a accessory before the fact or a principal. A does not include an accessory after the fact.

If there's an argument about that, then it's B, you have heard testimony -- and this is what's given on the second page, up at the top. You have heard testimony from Jay Wilds, who may have been an accomplice. Then it properly identifies what an accomplice actually is: One who knowingly and voluntarily cooperated with, aided, advised or encouraged another person in the commission of a crime. That's the definition of an accomplice. If there's one that's to be given, it should be the B one, if they find he meets that definition.

THE COURT: B starts at you have heard testimony from Jay Wilds, which is on the next page, who may have been an accomplice. I would suggest to Ms. Gutierrez that everything from the second page, you have heard the testimony of Jay Wilds, who may have been an accomplice --

MS. GUTIERREZ: You mean at the top? Yes. Okay.

THE COURT: All of that to the end, which encompasses the first paragraph --

MS. GUTIERREZ: Of the --

THE COURT: -- and second in pertinent part.

MS. GUTIERREZ: Yes.

THE COURT: If you look at the last paragraph, your last paragraph, if you find the testimony of Jay Wilds -- should be considered with caution, da, da, da, da, da, which is basically what is said in the--

MS. GUTIERREZ: Okay. So you're taking out the first three paragraphs?

THE COURT: The first three paragraphs go.

MS. GUTIERREZ: But leaving in the last three paragraphs?

THE COURT: Yes.

Any objection?

MS. GUTIERREZ: Well --

THE COURT: Defines what an accomplice is.

MS. GUTIERREZ: If you give me a minute, yeah, I think it does.

THE COURT: Yeah, it does, in the first -- send sentence.

MS. GUTIERREZ: And it deals with the corroboration. Is that where -- okay, that's in the last paragraph.

THE COURT: See the, the --

MS. GUTIERREZ: Yes, you're right.

THE COURT: -- you have heard the testimony from Jay Wilds, who --

MS. GUTIERREZ: No, that's fine.

THE COURT: An accomplice is one who knowingly and voluntarily cooperated with, aided, advised, blah, blah, blah.

MS. GUTIERREZ: Yes. That would be fine, Judge.

THE COURT: Okay. All right.

All right, we're moving on the Defense 3.12, witness who has pled guilty.

MS. GUTIERREZ: Yes. Judge, we have another, we have another at the very end, instruction regarding pleading guilty because --

THE COURT: What number is that?

MS. GUTIERREZ: Thirty-one, our jury instruction 31. It's on the last page. And --

THE COURT: Okay. Let me look at the first one first and then -- because I think they look a little -- they're slightly different.

You've heard testimony that Jay Wilds says he has pled guilty to a crime arising out of the same events for which the Defendant is now on trial. The guilty plea of this witness must not be considered as evidence of guilt against the Defendant. You may consider the guilt of the witness in deciding whether the witness is telling the truth but for no other purpose.

That's instruction 3.12 with only Jay Wilds's name being inserted?

MS. GUTIERREZ: That's correct, Your Honor. We would ask that --

THE COURT: And then -- wait a minute. And then 31 you get from Fletcher v. State?

MS. GUTIERREZ: Yes, Judge.

THE COURT: The completion of Jay Wilds's guilty --

MS. GUTIERREZ: Well, parts of it we get from Fletcher.

THE COURT: The completion of Jay Wilds's guilty plea, the sentencing hearing, has been postponed until after this proceeding. Despite the fact that Jay Wilds has referred to this agreement with the State as a guilty plea, this agreement does not contain the necessary statement of facts and is not yet a guilty plea under Maryland law.

The fact that Jay Wilds's sentencing hearing has been postponed until after this trial and this proceeding may have a bearing on his credibility.

I think that's an excellent instruction.

You don't have any problem with that, do you?

MR. URICK: Actually, the second sentence I think is irrelevant, though.

THE COURT: Well, I think it is very relevant. I think that was the issue that I indicated to counsel that it could have bearing on it, because the plea agreement

says that the determination of whether or not he gets the deal, he's been completely truthful, is at the satisfaction of the State. And so, as a result, that has bearing on his credibility. And so, I think it's an excellent instruction and I will give both 13 and 31.

MS. GUTIERREZ: Thank you, Judge. Our only request is that they be given together. So although we tried to make it in the 3.12 --

THE COURT: You want me to cut and paste, is that it?

MS. GUTIERREZ: Well, no, just that they be given together with each other, so it's real clear. We say that he says he has pled guilty but --

THE COURT: That's cutting and pasting. I mean, I need scissors. Anybody here?

MS. GUTIERREZ: You want me to go in and find some scissors?

THE COURT: Looks like I've got some.

If I could have a pair of scissors or something that I can move this instruction around a little bit, unless you have a disk with you, by any chance.

MS. GUTIERREZ: I don't but he might.

MR. LEWIS: I don't have it on me, Your Honor.

THE COURT: That's all right. No, that's all right.

MS. GUTIERREZ: If you want us to do that before tomorrow morning, we can do that.

THE COURT: No, no, no. It's not necessary. But just for future reference, this Judge loves --

MS. GUTIERREZ: Mr. Lewis was dissing me for my being so low on the technologically astute level.

THE COURT: Well, Ms. Gutierrez, it's --

MS. GUTIERREZ: I received punishment from him for that.

THE COURT: It's your loss.

MS. GUTIERREZ: I'm trying.

THE COURT: It's your loss.

MS. GUTIERREZ: I'm trying.

THE COURT: You'd be amazed at what things can happen and how quickly we can operate if all I had to do was to block it and move the instruction over. Amazing.

MS. GUTIERREZ: I know how to do that, I just don't know how to print it or make anything happen. I'm too old, Judge.

THE COURT: How about some tape? A paper clip?

All right, I will give the two instructions together.

Perfect. Thank you.

MS. GUTIERREZ: Judge, in regard to our requested 14, we would ask that the Court then give that instruction

after, which we haven't modified. It's a Pattern. That the Court give that instruction, the witness promised leniency, after those two instructions that we just spoke of.

THE COURT: And you have no objection to that? I mean, in light of the facts and circumstances of this case, 3.13 would be appropriate?

MR. URICK: We, on one of our add-on ones, added an extra paragraph to that.

THE COURT: What number is that?

MR. URICK: State's jury instruction no. 22.

THE COURT: Twenty-two? Yes. Twenty-two is you may consider, is the first paragraph. The second paragraph --

Do you have State's 22 in front of you, Ms. Gutierrez?

MS. GUTIERREZ: I do, Judge.

THE COURT: The relevant inquiry into the witness's state of mind or what the witness understood he or she would receive for this understanding, that is relevant to the issue of bias.

MS. GUTIERREZ: Judge, we would object to that. I don't believe that that's a correct formulation of the law, particularly as to Ebb. That's right out of Ebb. It is not appropriate to establish this inquiry --

THE COURT: I'm going to stick to the Pattern.

MS. GUTIERREZ: And I think the Pattern clearly covers it.

THE COURT: I'm going to stick to the Pattern, 3.13. I'm not going to give anymore or any less. I'm going to stick to the Pattern. I'm not going to get into -- I think the Pattern clearly indicates you may consider the testimony of a witness who testifies for the State as a result of a plea agreement. However, you should consider such testimony with caution because the testimony may have been colored by a desire to gain leniency or freedom or a benefit by testifying against the Defendant.

All right. Now, we are at prior statements, Defense 19. You have heard testimony that Jay Wilds and Jennifer Pusitari made statements before trial, out of the presence, blah, blah, blah, blah.

Any objection to --

MS. GUTIERREZ: I guess I would add, Judge --

THE COURT: -- Defense 19?

MS. GUTIERREZ: -- that if we're going to put the names in that -- I forgot at this time that Alonzo Sellers should also --

THE COURT: Well, why don't we just say you have heard testimony of witnesses who made statements?

MR. URICK: That would be acceptable to the

State.

MS. GUTIERREZ: Judge, our request is that you put in the names of the three who have made statements. This has been a long trial and -- because we think that this is important, that the impact of it may be well lost on a jury if it just says witnesses.

THE COURT: All right. I note your disagreement but I'm just going to say witnesses who made statements because I -- there are McGilvery and -- I mean, they may find that some of those statements were different. During your cross, a couple times, you know, there was some, you know -- and the guy who --

MS. GUTIERREZ: There was no cross as to their statements.

THE COURT: The guy -- let me give an example. There was cross as to what McGilvery may have said or done with regard to looking for evidence, whether he followed through with the Baltimore County officers. I mean --

MS. GUTIERREZ: But those don't -- they didn't involve statements that McGilvery may have made. There is no statement of McGilvery.

THE COURT: Didn't you say or didn't you inquire as to what the officers said to Jay Wilds with regard to an attorney?

MS. GUTIERREZ: Yes, but that question came up as

a result of what Jay Wilds said. That's an issue of credibility as to Jay Wilds. They denied -- and there was no prior statement.

THE COURT: Unless you believe Jay Wilds, what he said --

MS. GUTIERREZ: And if you do --

THE COURT: -- McGilvery, that he didn't --

MS. GUTIERREZ: I understand that, but that's a question of credibility, that's not an issue of a prior statement --

THE COURT: True.

MS. GUTIERREZ: -- made by McGilvery, and that's why I don't think it's appropriate that it's his. The only persons for which there were prior statements that there was an attempt to impeach by use of the prior statements were Jay Wilds, Jennifer Pusitari, and Alonzo Sellers. There were lots of prior statements by other witnesses. They never came up as prior statements to be used by anyone, for any purpose. And so, they're not the subject of this instruction.

THE COURT: The State's position? You want the names or not?

MR. URICK: We think it's appropriate just to say you've heard from witnesses.

THE COURT: I think so, too. And to the extent I

don't like commenting on the evidence or what witnesses to bring anybody's attention --

MS. GUTIERREZ: We'll just note an objection.

THE COURT: Very well.

Your instruction no. 20, 3.20, evidence of Defendant's good character, the State has no objection, do you? Okay.

I'll give that instruction.

And 3.26, concealment or destruction of evidence as consciousness of guilt?

MS. GUTIERREZ: Judge, that one's not marked, but we did modify it if you --

THE COURT: I see where the italics is.

Does the State have any objection to that instruction as written? And if so --

MR. URICK: Yes. We would object to the third paragraph.

THE COURT: I think that that's irrelevant because if he were a codefendant and charged, then his consciousness of guilt would be relevant, but it doesn't go to his consciousness of guilt as much as it may go to his credibility, his reason to try to protect himself, or any other fashion. But I think that the issue of the concealment or destruction of evidence as consciousness of guilt -- the consciousness of guilt issue has to go to the

Defendant and not to anyone else.

MS. GUTIERREZ: Judge, I'd just like to be heard. It is our entire defense --

THE COURT: Certainly.

MS. GUTIERREZ: -- theory to make Jay Wilds the person who committed this crime, and I believe that that makes it relevant. We've spent our time doing that. I spent five days cross-examining Jay Wilds with all the ways in which he acted guilty and describing the ways, in fact, in which he acted with consciousness of guilty by concealing evidence.

Evidence of such concealment by the Defendant is not before the jury, with the exception of what Jay Wilds says, and Jay Wilds was impeached in regard to specific acts that went to concealing evidence that he admits was relevant. His clothes, his boots, his outer coat, his shovels, wiping shovels to conceal evidence, as he said both in his statement and on cross, to conceal evidence of his involvement, his assessment, any evidence that might be on him.

And so, it certainly goes to his credibility, too, but in this case, and given that he's alleged to have at least attempted to plead guilty to an accessory to this crime, which is a crime, this incident, and he concealed evidence of that which would connect him to that crime,

Judge, we believe it is not only relevant, it's the core of the instruction as to consciousness of guilt.

THE COURT: But not consciousness of his guilt, but consciousness of his involvement in a crime which goes to his credibility. In other words, given that sentence, wouldn't you rather have it maybe tucked into the credibility section?

MS. GUTIERREZ: Well, I want it tucked in there, too, Judge, but if our theory of defense is that he should be in the position where the Defendant is, then his consciousness of guilt that arises out of the circumstances that the Pattern Jury Instructions recognize are ordinary and they should be considered as consciousness of guilt.

So to deprive us of the ability in instructions to have the person that we are prepared to name, we have named, we've essentially accused him of it, we intend to accuse him of it in front of the jury, deprives us of means to bring forth our theory of defense in an appropriate relevant way. He is charged. He has a plea agreement. There's a beginning of an attempt to make a guilty plea for an accessoryship after the fact to these very crimes. There is evidence that he has admitted to that would be appropriate relevant evidence if he were the defendant.

THE COURT: And that's the operative point: if he were the defendant. You know, that's --

MS. GUTIERREZ: Judge, our theory of defense is to make him a defendant, to charge that he acted like a defendant. And so, if there is to be an instruction as to consciousness of guilt, then we're clearly, in order to get our theory across, entitled to throw at the person we think, and there is evidence to support that, should be the defendant, that he acted in a way that were he to be the defendant it would be considered consciousness of guilt.

THE COURT: And don't you have that instruction right now? In other words, there's nothing precluding --

MS. GUTIERREZ: No, Judge, that's the credibility instruction.

THE COURT: No, no, no.

MS. GUTIERREZ: And I can argue that.

THE COURT: No, no, no.

MS. GUTIERREZ: That there's no instruction that says --

THE COURT: The 3.26 instruction, the 3.26 instruction says you must first find that the defendant concealed evidence in this case. If you find that the Defendant concealed evidence in this case, then you must decide whether -- consciousness of guilt. Why --

MS. GUTIERREZ: That's all related to the Defendant.

THE COURT: Correct. And the argument you just

made, if Jay Wilds were the defendant, the evidence in this case shows the very things that would be consciousness of guilt.

MS. GUTIERREZ: But, Judge, that's an argument, and I'm always entitled to make an argument. And of course I can make an argument. But the purpose of instructions is to fairly instruct the jury in a way that this Court must know -- they listen to you better than they're going to listen to me.

THE COURT: I don't know that.

MS. GUTIERREZ: Well, the --

THE COURT: And you know --

MS. GUTIERREZ: That's the reason you get to instruct them --

THE COURT: And, Ms. Gutierrez, you know and I know --

MS. GUTIERREZ: -- and I'm bound to them.

THE COURT: -- they don't listen to the judge a lot of times. You and I know --

MS. GUTIERREZ: Judge, we would request --

THE COURT: Hopefully, they do.

MS. GUTIERREZ: -- and I believe it is a correct statement of the law.

THE COURT: True.

MS. GUTIERREZ: And that to get an instruction of

consciousness of guilt is a tremendous instruction that I believe has relevance to the jury, in addition to what else I'm going to get on credibility issues. And we would object.

THE COURT: All right. The State's position?

MR. URICK: The Pattern Jury Instruction should be given as written.

THE COURT: I agree with you. I think the Pattern Jury Instruction should be given. However, if counsel wants to argue and does argue that if Mr. Wilds were charged that the Court's instruction as to consciousness of guilt shows and blah, blah, blah, however you want to formulate that argument, that is a permissible argument. There shall be no objection to that argument and it will be allowed because it is appropriate.

MS. GUTIERREZ: I'm going to make it.

THE COURT: Well, I figured you would, but I figured I'd let you know and say it so that when you do make the argument there will be no objection, because I think that is an appropriate argument. And I will give the first two paragraphs, as you've requested, under 3.26.

Okay, we're getting there.

Now, at this point, it looks like the only thing we have left are the substantive.

MS. GUTIERREZ: Well, we still have our 32.

THE COURT: Let me see that, 32.

MS. GUTIERREZ: It's on the very last page.

THE COURT: You heard evidence that Jay Wilds' lawyer was provided with the assistance of Kevin Urick at no cost. This was a benefit that Jay Wilds received as part of his bargain with the State. You may consider this in the same way you consider the bargain itself. As to what -- if any, existed on Jay Wilds --

Any objection to that instruction?

MR. URICK: Yes. It's not a statement of law, it's an inference of fact that could be argued from the evidence that was presented to the jury.

THE COURT: Do you have an instruction with regard to the witnesses -- is it your 25 that you're offering?

MR. URICK: No, it was 22, the second part of it, the relevant inquiry. That was -- you said to look at the case law and, based on the law, present a statement of law.

THE COURT: Which one?

MR. URICK: State's 22, which is the witness promised leniency. You said you wouldn't give the second part of it.

THE COURT: No, I'm not inclined to give that. Nineteen, I -- we just talked about consciousness of guilt.

I kind of like your instruction, Ms. Gutierrez,

and I kind of don't.

MR. URICK: The State's position, it's a comment on the evidence, it's not an instruction of law.

THE COURT: I know. That's why I say I kind of like the instruction and I kind of don't, so let's play with it.

MS. GUTIERREZ: I'll work on it, Judge.

THE COURT: You've heard that Jay Wilds's lawyer --

MS. GUTIERREZ: If the Court could perhaps tell me what it is that gives the Court trouble, maybe I can --

THE COURT: The conclusion that I'm reading into the statement that the lawyer was provided with the assistance of Kevin Urick at no cost.

MS. GUTIERREZ: Well -- take that directly --

THE COURT: No, I, I -- you've heard evidence that Jay Wilds's lawyer was provided with the assistance of Kevin Urick. You have heard evidence that Jay Wilds's lawyer --

MR. URICK: Instruction 3.13, witness promised leniency, includes the language of benefit. Whether or not there was a benefit is an argument to be inferred from the evidence and argued for the jury.

THE COURT: No, but I think the concern is that your -- the instruction does not --

MR. URICK: That's why I added on the second paragraph, which goes to the witness's state of mind. Then you argue the witness perceived this as a benefit. Therefore, you should take that into account. That would be argument that could follow from the instruction.

THE COURT: All right. Looking at Defense 14, and in consideration of Defense --

MS. GUTIERREZ: Our no. 14?

THE COURT: Yes. And in consideration of your 32, how about the following: You have heard evidence that Jay Wilds's lawyer was present at the State's Attorney's Office at the request of the State. You may consider the testimony of a witness who testifies for the State as a result of a plea agreement. However, you should consider such testimony with caution because the testimony may have been colored by a desire to gain leniency, freedom or some benefit --

MS. GUTIERREZ: Why is the Court striking the financial benefit from --

THE COURT: Such --

MS. GUTIERREZ: -- the Pattern?

THE COURT: I was going to say such -- I was going to be specific. Or some benefit, such as an attorney. I thought it couldn't be any clearer than that, but if you'd rather have financial benefit -- by testifying

against the Defendant. You may consider this in the same way you might consider the bargain itself as to what pressure, if any, existed on Jay Wilds when he testified in this case.

MS. GUTIERREZ: Could the Court read the last sentence again?

THE COURT: It's your last sentence of 32.

MS. GUTIERREZ: Okay. I appreciate the Court's effort, Judge, but I guess we would object because I believe that certainly we attempted to prove that there was pay. We were unable to prove that. But prior to that, my belief is that this Court is clearly persuaded that providing a lawyer that otherwise Mr. Wilds would not have, and at that point all we knew was it was pro bono, was a benefit.

THE COURT: Could have been a benefit if the witness had testified -- if Ms. Bennett-Royal had testified that Mr. Urick convinced her to accept this case and that when she walked in the door she had already decided to represent Jay Wilds as a request of the State or because the State asked her to or because of something the State had done to work out some deal, either by payment, directly or indirectly, none of that occurred. She said that she accepted him only after talking to him and independently deciding that he needed her assistance and only if it was

on a pro bono basis.

MS. GUTIERREZ: So is the Court making a finding that it's not a benefit that he had her in his office?

THE COURT: No, I'm not. No, I'm not. What I'm saying is --

MS. GUTIERREZ: I'm not trying to take it further than it is, Judge. I understand I have a --

THE COURT: No, what I'm saying is the jury needs to be advised that if they believe, based on his testimony, that there was a benefit to him, I'm allowing any inferences that you want to argue that this attorney was a benefit.

MS. GUTIERREZ: My complaint, Judge, is that if you phrase it that way you suggest to the jury that it may not be a benefit, and I don't --

THE COURT: That's correct.

MS. GUTIERREZ: And see, I think that that's not fair. It is unrebutted that that lawyer was in his office because he arranged it. There is no other evidence to suggest that miraculously Ina Bennett-Royal was behind his door.

THE COURT: No doubt.

MS. GUTIERREZ: That's unrebutted.

THE COURT: That's unrebutted.

MS. GUTIERREZ: So to suggest -- and if the

Court's not saying that it's not a benefit that it occurred because of him, then, clearly, we're in a different place. But I can't imagine that the Court would say so. And if it is a benefit, then it is not a correct statement, even if it's a limited benefit, that is, having a lawyer there so if he decides and if she decides aha, they get together, that's a benefit that ordinarily this witness wouldn't have.

THE COURT: Does it mean that the benefit attached at the time Mr. Urick made the call? Because the witness, the witness, Mr. Wilds, said that he had not decided that he wanted the lawyer.

MS. GUTIERREZ: And I understand that, Judge.

THE COURT: So the benefit is not --

MS. GUTIERREZ: And that affects how what impact the benefit would have. But that's not where we are. He did accept this lawyer. The only reason the lawyer was up for his acceptance was because of the assistance of Mr. Urick, and there's no evidence that says, notwithstanding his -- to the otherwise, that he had requested a lawyer.

THE COURT: And that's just the point, Ms. Gutierrez. The State takes the position --

MS. GUTIERREZ: Well, Judge, the way it was modified --

THE COURT: -- that it wasn't a -- that's why I'm modifying it, because it is a conclusion of fact.

MS. GUTIERREZ: No, Judge, I believe that --

THE COURT: I'm not going to tell the jury --

MS. GUTIERREZ: -- the Court is supplanting the jury and making a finding that not only is unwarranted, it's violative of all due process to suggest to the jury from the Court it is making a fact determination of ultimate fact that, ladies and gentlemen, it may not be a benefit and for -- the unrebutted evidence that establishes that the only reason it was at issue such that if this witness accepted it, then it could have affected what he tells you since it is a benefit.

THE COURT: If the jury --

MS. GUTIERREZ: It is an unfair supplantation --

THE COURT: If the jury finds --

MS. GUTIERREZ: -- of their right to decide it.

THE COURT: If the jury finds that it's a benefit, that the jury believes that the circumstances were such, you argued the fishiness of the scenario and they believe that was a --

MS. GUTIERREZ: Well, I'm going to argue that.

THE COURT: Okay. And they believe that it was a benefit, then they should be instructed as to how to use that benefit in weighing the witness's credibility.

MS. GUTIERREZ: Well, Judge, you know --

THE COURT: And if they find that they don't believe it was a benefit, that they believe that Mr. Wilds had the opportunity of not picking a lawyer, that it was not a setup and that Mr. Wilds said he didn't feel fishy after talking to Judge McCurdy, then it doesn't and it can't and it isn't a benefit. But it's up to the trier of fact to apply the facts as they find them to the law. And if they find it's a benefit, then they need to be instructed how to -- what to do with that. If they find it's not a benefit, they also need to be instructed as to what to do with the rest of the plea agreement.

MS. GUTIERREZ: Except, Judge, by your modifications, then you have made a ruling of law that it's not a benefit.

THE COURT: How? In what words?

MS. GUTIERREZ: By saying that. By putting it up, by suggesting to the jury it's not a benefit, ladies and gentlemen of the jury, it's up to you to decide whether or not it's a benefit. And that's not appropriate for this Court to do when it is unrebutted --

THE COURT: It's your own sentence, Ms. Gutierrez.

MS. GUTIERREZ: -- that's a benefit.

THE COURT: It's your instruction.

MS. GUTIERREZ: But you're modifying it.

THE COURT: What modification do you object to?

MS. GUTIERREZ: My instruction says this was a benefit, getting a lawyer with the assistance of Kevin Urick was a benefit that he received. So that's not what your instruction says, you've taken out that.

THE COURT: And you're making a fact finding that it is a benefit, are you not?

MS. GUTIERREZ: Judge, I believe, as often and as with such passion we debated this issue, that this Court found not what the extent of the benefit was, but that providing a lawyer that this witness could not have gotten on his own, the assistance of setting up the opportunity for that to happen was a benefit. And before this jury, there is no contrary evidence to suggest, to even suggest that it's not a benefit. So no, Judge, it's not my making a fact, there are no facts from which this jury can infer from this record that it's not a benefit. You've taken away everything else regarding an issue from us. Don't take away the facts that are undisputed in front of this jury and attempt to take our request and turn it around by suggesting to the jury that what they saw and heard may well be in dispute. It's not. And that's not in any way my -- substituting my judgment. There is nothing else to suggest otherwise. It is a benefit, that's a matter of

law. They should have told us because it was a benefit. You agreed to that and then told us well, now no harm, no foul. Judge, this is the foul. We keep complaining about it. You have no right to take it away from us absent evidence that would support such an inference otherwise.

THE COURT: Mr. Urick?

MR. URICK: As the case law, it's the state of mind of the witness who testified. The jury has the evidence of the witness who testified, it's up to them to draw a conclusion what the -- what that evidence shows.

I believe that the instruction as read by the Court a minute ago would be correct.

THE COURT: As they say, Ms. Gutierrez, you said you weren't going to give up. You've moved me a little. This is the, this is the instruction that I'm going to give.

MS. GUTIERREZ: Okay.

THE COURT: I'm going to give the following instruction under -- I'll give -- in this order. I'll give your 13, then your 31 --

MS. GUTIERREZ: Wait a minute. Give me a chance to -- okay, my 13, right.

THE COURT: Then your 31.

MS. GUTIERREZ: And then 31.

THE COURT: All right. Then your 14 --

MS. GUTIERREZ: Right.

THE COURT: -- in total, including financial benefit.

MS. GUTIERREZ: Right.

THE COURT: Then I'm going to give your 31 with the following adjustments. If you find that Jay Wilds's lawyer was provided with the assistance of the State at no cost, this was a benefit that Jay Wilds received as part of his bargain with the State. You may consider this in the same way you may consider the bargain itself as to the plea agreement itself, as to what pressure, if any, existed on Jay Wilds when he testified in this case.

MS. GUTIERREZ: Okay.

THE COURT: Any objection to that?

MS. GUTIERREZ: I'll take that -- Judge.

THE COURT: I know the State notes an objection, do you?

MR. URICK: We'll note it but --

THE COURT: Noted for the record.

All right. One thing about this Court is I listen. I don't always make up my mind and I listen and I hope you remember that. I don't have a problem with an advocate who wants to make a point but sometimes it really is helpful to decide when you want to fight, you know. If you fight every battle, sometimes you win a lot of battles

and lose the war.

MS. GUTIERREZ: I understand that, Judge.

THE COURT: And on this one, I think this is appropriate under the facts and circumstance of this case.

All right. Moving right along then, expert testimony we talked about. We already talked about 19. We're now left with -- and we already talked about 20 --

MS. GUTIERREZ: Yes.

THE COURT: -- and we've talked about 21 with paragraph 22, including false imprisonment and the like. We're now down to the substantive instructions, and I'm going to start with homicide.

MR. URICK: Well, before we do that, the State had a couple. State's No. 25 --

THE COURT: Witness intimidation as consciousness of guilt?

MR. URICK: Yes.

THE COURT: What -- this is the State's 25? You've heard that the Defendant attempted to intimidate witnesses in this case? I didn't hear any testimony to that.

MS. GUTIERREZ: Right.

THE COURT: Did you?

MR. URICK: I think that's an inference that could be drawn, that the Defendant approached Hope Chad

with the intent to intimidate her when he confronted her about helping the Baltimore County missing persons investigation, asked her not to do that, that that could constitute witness intimidation.

THE COURT: Ms. Gutierrez, you don't want to be heard on that, right?

MS. GUTIERREZ: No, Judge.

THE COURT: Very well.

I'm not going to give that instruction. I think that's going to confuse the jury. It certainly is confusing the Court. Had I heard something else, I would give that instruction. There's not an account about witness intimidation or obstruction of justice or -- I really think that will send them into an area that will confuse them. I don't want to send them off on that, so I'm not going to give that instruction.

All right. Now let's go back to the murder count, the homicide, 4.17. 4.17 is homicide first degree, premeditated, and second degree, specific intent, no justification or mitigation generated.

I assume that the instruction you want is (a)?

MS. GUTIERREZ: Yes, Judge.

THE COURT: And (b), is that correct? From the State?

MR. URICK: Yes. We want the first degree and

second degree. Let me just see if --

THE COURT: Under 4.17, and that's the one I'll give, 4.17. I'll give that. And that is State's 15.

4.19 is the next one that the State requests, which is kidnapping by deception. Let me get to that. Now, let's see. My law clerk actually drafted one to include some of the actual --

Ms. Connolly, you had a kidnapping instruction that you had drafted with information, highlighted it in pink.

THE LAW CLERK: That was just the statute.

THE COURT: Yeah, that's what I want. You took it out of here?

THE LAW CLERK: No, no, no. I just copied that out of --

THE COURT: All right. I'm going to follow then -- 4.19, kidnapping. Looks like -- is everyone looking at 4.19? There's 1, 2, 3, and --

MS. GUTIERREZ: On kidnap, yes.

THE COURT: -- 4. All right, so 1; then 2, with deception; then 3; and then 4. Okay?

MS. GUTIERREZ: Yes.

THE COURT: Very well. False imprisonment by deception, 4.13.

MS. GUTIERREZ: Yes.

THE COURT: I just want to make sure I get to it and, and that would be 1, 2, and 3, with deception.

MS. GUTIERREZ: Yes.

THE COURT: Okay.

MS. GUTIERREZ: And in the body of that, the Court will strike out the force or threat of force?

THE COURT: Correct.

MS. GUTIERREZ: That's fine.

THE COURT: Just go with deception. All right. So that's State's 17.

State's 18, robbery, 4.28. And under 4.28, robbery, the Defendant took the property from the victim or from her presence and control. The Defendant took the property by force or threat of force and that the Defendant intended to steal the property and deprive the victim of the property permanently. 4.28, robbery.

And first degree assault, which is at 4.01.1. First degree assault and second degree assault. And this one, I have to read 4.01 first which is the second degree assault, which is on the previous page at 4.01, because then it defines intent to -- actually, intent to frighten is not what you want, correct? You want the --

MR. URICK: The battery part.

THE COURT: -- the battery at (c), assault is causing offensive contact. So I'll read 401 -- 4.01(c) and

then 4.01.1, okay? Any objection?

Hearing none.

And last but not least, theft at 3.32 -- I'm sorry, 4.32. 4.32. You're requesting (a) or (b)?

MR. URICK: (a).

THE COURT: Taking and carrying away? Are you sure about that?

MS. GUTIERREZ: Judge.

THE COURT: Yes?

MS. GUTIERREZ: I would object to your --

(Whereupon, at 5:51 p.m., the tape ended.)

TRANSCRIBER'S CERTIFICATE

This is to certify that the proceedings in the matter of the State of Maryland v. Adnan Syed, Case Numbers 199103042,43,45,46, heard on February 24, 2000, were recorded by means of videotape.

I do hereby certify that the aforegoing pages constitute the official transcript of said videotaped proceedings to the best of my ability in a complete and accurate manner.

In witness whereof, I have hereunto subscribed my name this 7th day of December 2000.

Delores Hay

Delores Hay, Official Court Reporter