$4,215.00

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND *

v. * CASE NOS. 199103042-46

ADNAN SYED, *

Defendant

* * * * * * * * * * * * * * * *

(TRIAL ON THE MERITS)

FEBRUARY 18TH, 2000

BALTIMORE, MARYLAND

BEFORE:

THE HONORABLE WANDA KEYES HEARD, ASSOCIATE JUDGE
(And a Jury)

APPEARANCES:

For the State:

KEVIN URIK, ESQUIRE
KATHLEEN MURPHY, ESQUIRE

For the Defendant:

CHRISTINA GUTIERREZ, ESQUIRE

RECORDED BY: VIDEO TAPE

TRANSCRIBED BY: DELORES HAY
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FRIDAY, FEBRUARY 18TH, 2000

(P R O C E E D I N G S)

(Jury and defendant not present in courtroom).

THE COURT: Mr. Urik, we're looking at the counts of the indictments. You've charged false imprisonment.

MR. URIK: Yes, Your Honor.

THE COURT: What is the second count?

MR. URIK: I believe -- let me, if I might.

THE COURT: The lesser included of false imprisonment?

MR. URIK: The first one is just by forcible assault, and the second one is just --

THE COURT: Common law, false imprisonment, so that there are two counts by forcible assault and by common law. Okay.

I just want to let you know we're drawing up a sample verdict sheet. And we need to look at your jury instructions at some point, too. Assuming we get past the State's case, I like to have it all drawn so you can take a look at it, and make any changes.

MS. GUTIERREZ: Thank you, Judge.

THE COURT: All right.

MS. GUTIERREZ: I plan to work on instructions over the weekend.

THE COURT: That will be fine. I just want to let you know what we're doing. We try to the extent that we can get everything done in advance.

(A brief recess was taken awaiting the arrival of the defendant).

(The jury and the defendant were present in the courtroom upon resuming).

THE CLERK: All rise. This court will resume its session, The Honorable Wanda Keyes Heard presiding.

THE COURT: Please be seated. Good morning.

THE JURORS: Good morning.

THE COURT: I'm glad to see everyone made it in safely. We're going to continue with the testimony of Detective McGilveary. I need you to stand up, Detective. Raise your right hand. Because it's a new day, a new tape, we need to swear you in.

DETECTIVE MCGILVEARY,

resumed the witness stand, and after having been first duly sworn, was examined and testified further, as follows:

THE CLERK: Be seated.

THE COURT: You may resume with cross examination by M's Gutierrez. And, M's Gutierrez, I hear the knocking of the radiators. If at any time it gets to be too much, let me know, and we can just recess for a few minutes till it gets under control.

CROSS EXAMINATION

BY MS. GUTIERREZ:

Q Yesterday I was beginning to ask you questions about your interview with M's Pusitari.

A Yes.

Q Do you know there was a transcript made of that interview?

A That is correct.

Q I want to show you what I have just marked, the transcript of your interview which was provided me by Mr. Urik. Would you take a look at that. And first let me refer you to page 31, the page numbers are in the upper right-hand corner, and about two-thirds of the way.

Now, at this time, this is the interview that gook place on Saturday, February 27th. Correct?

A Yes.

Q And that's the interview that started, you told us yesterday, the taped statement started at 3:45 in the afternoon and went to 5:10.

A Correct.

Q Okay. And that was the interview that took place after you first went to M's Pusitari's lawyer's house, correct?

A Correct.

Q And the lawyer's name was James Failey?

A Foley.

Q Foley. Is that correct?

A Correct.

Q Okay. And this is the transcript of that taped interview.

A Correct.

Q Is that right? And that interview was transcribed pursuant to your direction?

A Yes.

Q By somebody in the Police Department?

A Secretary.

Q And you've reviewed this before, have you not?

A Yes.

Q Okay. And it's an accurate transcription of the tape recording, is it not?

A It is.

Q That's why you would do it. Is that correct?

A Correct.

Q All right. Now, I was asking you about -- oh, present at that interview in addition to M's Pusitari and her lawyer was her mother?

A That is correct.

Q M's Pusitari.

A Yes.

Q Yourself.

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Page 5

A Myself.
Q Detective Ritz, and a person by the name of Sergeant Lehman?
A Correct.
Q Okay. And you invited Sergeant Lehman there?
A Yes.
Q Okay. And he was participating with you.
A Correct.
Q And Sergeant Lehman also asked questions of M's Pusitari?
A He did.
Q And they were questions that were relevant to the investigation into the death of Heyman Lee?
A Yes.
Q Okay. At some point in the interview, you asked or Sergeant Lehman asked or Detective Ritz asked M's Pusitari to sort of describe her relationship with Jay Wiles, did she not?
A Sergeant Lehman asked the question.
Q Okay. And that was an okay question with you, was it not?
A It was.
Q What, if any, relationship M's Pusitari had with Jay Wiles, and exactly what kind of relationship it was, was important to you, was it not?

Page 6

A Yes.
Q Because she had described things that had been told to her by this person, Jay Wiles.
A Yes.
Q And that was the first time that you had heard mention of his name.
A Yes.
Q From her, right?
A From her.
Q So, whatever relationship she may have had with Jay Wiles was now an important issue for you to find an answer to, was it not?
A That's why it was asked.
Q If you would look down about two-thirds of the page, the question that Sergeant Lehman asked was how would you describe your relationship with Jay, was it not?
A It was.
Q And M's Pusitari answered, "Jay?"
MR. URIK: Objection.
THE COURT: Overruled. I assume you are laying a foundation, Counsel?
MS. GUTIERREZ: Yes.
THE COURT: For some other question?
MS. GUTIERREZ: Yes.
THE COURT: All right. Very well. Overruled.

Page 7

BY MS. GUTIERREZ:
Q And her answer was, "Jay?" I would also note for the record, Judge, that M's Lehman (sic) has already testified to this exact exchange. Your Honor, M's Pusitari has testified to this exact exchange.
MR. URIK: May we approach the bench?
THE COURT: Yes. You may approach.
(Counsel and defendant approached the bench, and the following ensued:)
THE COURT: And I would note -- counsel, you just said that M's Pusitari has already testified to this exact exchange.
MS. GUTIERREZ: Yes, meaning this exact exchange that I'm reading from the transcript on page 31
THE COURT: So, if she's already testified to the exact exchange, why are you eliciting it from --
MS. GUTIERREZ: Because I have further questions for this detective regarding --
THE COURT: Something that she said?
MS. GUTIERREZ: -- why the questions were asked, and what they did as a result of them. As to the subject matter of this exchange --
THE COURT: Other questions.
MS. GUTIERREZ: -- i.e., her relationship with Jay Wiles.

Page 8

THE COURT: Very well.
MR. URIK: Then the proper way to say that was based on this answer, why did you do what was next. She doesn't have to give what the answer was. That's already before the jury.
THE COURT: Well --
MR. URIK: At this point the statement itself is hearsay from this person. He can testify as to why he did something else, if he did something as a result of what was contained in there. But that statement was pure hearsay for this, and it's fully before the jury. The witness never denied making it.
THE COURT: Very well.
MR. URIK: So, it's not, her answer is not a prior inconsistent statement to anything she testified to previously.
THE COURT: It's not a prior inconsistent statement, that's correct, but it lays a foundation for something that this witness did.
MR. URIK: But he can say based on what was in there, he can say what he did and why, but he does not need to say --
THE COURT: He doesn't have to, but there is no problem with him saying what it is that she said. However, I would just ask that we not proceed on a pattern of going

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Page 9

through all of her testimony word-for-word, verbatim instead --

MS. GUTIERREZ: I'm not, only as to a couple separate issues.

THE COURT: All right.

MS. GUTIERREZ: As a foundation to being able to lay for --

THE COURT: What he did as a result of what she said.

MS. GUTIERREZ: Right.

THE COURT: And to the extent that you use it in that fashion, there's no objection that I have to it, and then your objection would be overruled. This is just a technique that she's using that is admissible if the court finds that it is. So, it is not something that is blatantly in violation of the rules, but rather it's a different way of doing something.

Granted, you are correct, that he is going to restate something that's already in evidence, but to the extent that it lays a foundation to what he did as a result, if anything, I have no objection to it. Your objection is overruled, but I will guard your objection, and if at any time I find that counsel is abusing the latitude given --

MS. GUTIERREZ: I understand.

Page 10

THE COURT: -- and, you know, we're basically retracing every single thing that was said, then I may revisit that objection.

MR. URIK: Thank you.

MS. GUTIERREZ: I understand.

THE COURT: All right. Very well.

(Counsel and defendant returned to trial tables).

BY MS. GUTIERREZ:

Q Detective McGilveary, returning again to two-thirds of the page down on page 31, she answered the question posed to her by Detective Lehman by saying, "Jay? I'd say we're very close, very close," did she not?

A She did.

Q And then Sergeant Lehman asked her "Boyfriend/girlfriend type," did he not?

A He did.

Q And she answered, "No, not like, you know, not really. But I mean we're really, we're close like. I love Jay as a friend, but I mean with all my heart Jay is like, I trust Jay with my life." Is that right?

A That's what, that's what she answered.

Q Now, yesterday you told us you previously asked her, when you were collecting personal information, whether or not she had a boyfriend. Right?

Page 11

A Correct.

Q And she had said she did not, correct?

A Correct.

Q But prior to collecting that information, when you saw her on the street in the car and she rolled down the window, she said she had some place to go, and she was going to her boyfriend's.

A She did.

Q Did she not? And you knew all of time that Sergeant Lehman asked this question, right?

A Knew what?

Q That she had said she was going to her boyfriend's the night before.

A Yes.

Q As the reason for not just talking to you right then and there, right?

A Correct.

Q And you knew that she had denied having any boyfriend when you collected specific information. Is that right?

A That's correct.

Q When Sergeant Lehman asked her those questions, and she answered, particularly the answer when you posited to her whether or not she was the girlfriend of Jay Wiles, did you confront of her with that she had said she didn't

Page 12

have a boyfriend, although she had referred to her boyfriend the night before?

A No.

Q Did you take --

A The reason --

THE COURT: You may answer. The reason?

A I had understood her answer was the fact that Jay was not her girlfriend, her boyfriend.

Q When you heard her that answer --

A Jay was not her boyfriend, and that they were very close friends.

Q Okay. Now, when she answered no, not like that, you know, not really, how did you take the "not really"?

A They're not boyfriend/girlfriend.

Q They're not boyfriend/girlfriend, not that they're really boyfriend and girlfriend?

A They're not; however, they had known each other for so long that they're very close.

Q Okay.

A They're very good friends.

Q Did you at that time or at any subsequent time take any action to confront her about the discrepancy between her saying that she had no boyfriend, and her saying she was going to see her boyfriend the night before as a reason to not talk with you on the street?

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Page 13

A No.
Q No. And did you observe Sergeant Lehman or anyone else to confront her --
A No.
Q -- about that? Now, you were telling us yesterday that on the Friday she came down, she spoke to you for about 45 minutes.
A Half an hour to 45 minutes.
Q Half an hour to 45 minutes. And you ended up when she left with the clear impression that she knew more than she was telling.
A That's correct.
Q Is that right?
A That's right.
Q And that was an unequivocal impression, right?
A I had the impression.
Q Okay. And she never mentioned Jay Wiles' name that day.
A Yes.
Q On Friday?
A She did.
Q She did?
A She did.
Q Okay. Now, Detective McGilveary, previously to today, there's been typed up -- were you asked to describe

Page 14

to Mr. Urik what it is that Jan Pusitari said on Friday the 26th.
A Was I asked to type up?
Q Yes.
A Type up what?
Q What it is that Jen Pusitari said on February 26th, on the Friday night.
A I didn't take a statement from her, from M's Pusitari, so there was no reason to type anything up.
Q I'm asking at any date subsequent to that were you asked by Mr. Urik, M's Murphy or anyone else to type up a summary of what it was that M's Pusitari said to you on that evening.
A No.
Q No. And did you ever type up anything?
A Just the fact that M's Pusitari had come in, and she was interviewed by myself, and she left.
Q Okay. Not the substance of what she said?
A No. I had notes.
Q Did you take -- you took notes?
A Yes, I did.
Q And you preserved your notes, did you not?
A I did.
Q And do you have them with you?
A I do.

Page 15

Q They're normally kept with the homicide file, right?
A They are.
Q Could you locate that?
A Yes.
Q Would you?
A (Looking for notes). I have located them.
Q Now, do your notes indicate the subject matter of what she told you?
A It's got names of friends and where they live.
Q And is Jay Wiles' name there in your notes?
A It is.
Q And any identifying information about him?
A It has at the top, black female, 17, Stephanie McPhearson, Woodbridge Valley, and her phone number. And then --
Q That's Jacqueline McPhearson --
A Correct.
Q Okay.
A And then an arrow, I have made an arrow to boyfriend/girlfriend, Jay Wiles, Rich Avenue, and his phone number, and that he didn't have an E-Mail address.
Q That he did not?
A He did not.
Q Okay. And you asked about that, did you not?

Page 16

A I did.
Q You were concerned about communications, about E-mail among all these students?
A Correct.
Q That might be helpful to you.
A Possibly.
Q And your concern was raised by information that you had received prior to that day?
A Not specific information, just the fact that the trend of the teenagers today in high school relay information by the way of E-mail.
Q And prior to the 26th of February, you had received Heyman Lee's diary, had you not?
A Yes.
Q Let me show you State's Exhibit Number 2 in evidence. Is that the diary that you had received?
A It is.
Q And you received that from the family of Heyman Lee?
A No.
Q From the police?
A No.
Q Who did you receive that from?
A From a friend of the victim's family.
Q A friend of Heyman Lee's family?

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Page 17

A Correct.
Q Okay. And I'm sure you carefully reviewed that after receiving it, did you not?
A I did.
Q Because you were looking for any evidence or clues particularly in the most entries that might help you determine what had happened to Heyman Lee. Correct?
A Correct.
Q And there are entries in that diary that refer to her putting diary entries on the computer, were there not?
A I don't recall.
Q You became aware that she had a computer, did you not?
A We did.
Q And you came to have custody of her computer or the information inside of it?
A I did not.
Q And you, of course, reviewed all of the entries inside the computer?
A I did not.
Q And did you call up someone else to do so?
A I didn't have the computer.
Q But you knew that it existed.
A I knew a computer existed. Correct.
Q You never went to view it?

Page 18

A No. Baltimore County had it.
Q That Baltimore County already had it?
A Baltimore County detectives had it.
Q And were you made aware of what information was inside her computer?
A No, I was not.
Q And having then read the diary, did you go back and ask Detective O'Shay or another member of the Missing Persons Investigative Team involving the county to check the computer to see if, in fact, that all of the entries like the diary might be helpful for your figuring out what she had done or not done in the days before her disappearance?
A You asked a number of questions there.
Q No, that was one. Did you ever go back, having read the diary, and asked Detective O'Shay or any member of the Baltimore County investigative team or the Missing Persons investigation into Heyman Lee's disappearance, to ask them whether or not there was any information on the computer that they had from Heyman Lee?
A I requested from a Detective Rowe in Baltimore County -- he is in the Computer Crimes Unit. Baltimore County had taken the computer --
Q Of Heyman Lee?
A -- of Heyman Lee. It was a property of not only

Page 19

Heyman Lee, but her brother, and they were going to execute a search and seizure warrant.
Q On the computer.
A On the computer.
Q In order to get out what information was in there?
A Correct. However, --
Q Is that at your request?
A Excuse me. I'm not finished. However, their office contacted us, indicating that we would need somebody from our office to contact them to make the request, and which we did, and they never actually, I believe, did anything with the computer.
Q Now, as to that point we talked about yesterday. First of all, we talked about they were going to get a search and seizure warrant on the computer.
A Yes.
Q And had you asked them to do that?
A Yes.
Q And that was at the time that her body, after her body had already been found. Right?
A Yes.
Q And at that point, Baltimore County, called off the Missing Persons Investigation when she was found. Right?

Page 2

A There was a missing persons investigation in the beginning.
Q As of January 9th --
A When she was --
Q -- when she was found --
A -- found, it no longer was a missing persons investigation. It became a suspicious death. Once the autopsy was performed, and it was ruled a homicide, then it became a homicide investigation.
Q And that homicide investigation is under your jurisdiction, right?
A It is.
Q And the homicide investigation was under the jurisdiction of Baltimore City.
A Yes.
Q Not Baltimore County.
A Correct.
Q Now, my question goes back to, you reviewed the diary, did you not?
A I did.
Q And you've no reason -- it appeared that the diary belonged to Heyman Lee, did it not?
A It did.
Q And it covered the time period from April, 1998?
A I don't recall. I mean, there's quite a bit of

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Page 21

information in there.
Q I am showing you what has been marked as State's Exhibit 2. Detective McGilveary, could you tell us the date of the first entry?
A 4/1/1998.
Q And would you turn to the last entry and tell us that date, or the last dated entry in the book?
A 1/6/99.
Q 1/6/99. Well, actually, there is an entry after that, isn't there?
A Oh, there is 1/12/99.
Q And so you were aware, having read the book, at that time that it covered that entire time span, did it not?
A It had.
Q And having read it, once you became aware that she was heard to making other entries on her computer, did it not become important to you to know what information her computer contained?
A You're asking --
Q A simple question, that requires a yes or no --
MR. URIK: Objection.
Q -- answer.
THE COURT: Sustained.
Q Did it become --

Page 22

THE COURT: If you can answer the question, do so. If not, say I can't answer the question or I don't know.
THE WITNESS: I don't know whether she made any entries in her computer.
BY MS. GUTIERREZ:
Q Her diary refers to that fact, does it not?
MR. URIK: Objection.
THE COURT: Overruled.
THE WITNESS: I don't recall.
BY MS. GUTIERREZ:
Q You don't recall. And, sir, the request that Baltimore County referred to getting a search and seizure warrant to get out the information that was contained in her computer, was that important to you?
A Not at that time, it wasn't.
Q Not at the time. Did it ever become important to you?
A No.
Q So, you never obtained the information inside her computer?
A No.
Q And, sir, having reviewed her diary, it covers the time period from April 1st until the day before her disappearance, you became aware, in fact, that she referred

Page 23

to E-mail communications, did you not?
A She had referred to E-mail, but specifically who, I don't know.
Q And getting information what the E-mail communication said, and to whom they were addressed also became important to you, did it not?
A No.
Q You, yourself, you were made aware that the computer had been -- had that been seized by the Baltimore County Police?
A It had not been seized. It had been --
Q It had been given consensually.
A -- given to. Correct.
Q Is that correct?
A That is correct.
Q When people give over property to the police consensually, you really don't go and get a search and seizure warrant, do you.
A Yes.
Q You do?
A Yes.
Q That's your common practice?
A Correct.
Q Even when people consent and turn over things?
MR. URIK: Objection.

Page 24

THE COURT: Sustained.
BY MR. GUTIERREZ:
Q Now, sir, you never obtained a search and seizure warrant from a Baltimore City Judge to examine Heyman Lee's property, did you?
A No.
Q Her house and property and the evidence relating to her was made readily available to you by her family, wasn't it?
A I didn't get any property from the family.
Q Did you ever go in Heyman Lee's house?
A Yes.
Q And did you search her room?
A I did not, no.
Q Did you cause it to be searched?
A Yes.
Q And by someone from your department?
A Yes.
Q And seized information, take her information?
A No.
Q No? If you would again turn to this, Detective McGilveary. On the 26th, when you saw Jan Pusitari, you indicated to her, did you not, that you would like to talk to her more?
A Excuse me?

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Page 25

Q Well, you told us you had a very short conversation, at most 45 minutes maybe less, on the 26th of February which was a Friday --
A Yes.
Q And that although you suspected that she knew more than what she was telling you, you didn't confront her on that.
A No.
Q And you didn't set up another appointment?
A No, I did not.
Q But, surely, you indicated to this young woman, who you had only just met and whom we now believe had information that she wasn't telling you, you surely indicated to her that you would like to speak to her again. Right?
A Prior to her leaving, I indicated that I would be in touch with her.
Q So, you were not surprised when you got the call from the lawyer?
A I was very surprised.
Q You were very surprised?
A Yes.
Q Okay. Because you hadn't set up a time, right?
A Correct.
Q Okay. And it was important enough to you that it

Page 26

made you drive out to the lawyer's home, did it not?
A Yes.
Q That's a pretty unusual event, is it not?
A It is.
Q Generally, if you have people you want to interview when you're doing an investigation into a homicide, you cause them to come down to you.
A Correct.
Q Is that right? And many other witnesses that you spoke you in this case, in fact, you spoke to right two blocks down or two blocks over at 601 East Fayette Street. Is that correct?
A Yes.
Q Now, when you went out there after you first spoke to her lawyer, you then made arrangements to bring her and the lawyer down to 601 East Fayette Street, right?
A Yes. Everybody went downtown to our Headquarters, where we have our files and our paperwork and our computers and our tape recorders, and our tapes.
Q It makes sense that that's your practice, that you do it all down there, right?
A Generally, that's where we do our taping. However, a lot of the witnesses in here were from Woodlawn High School, so naturally we did a lot of the interviews out at Woodlawn High School.

Page 27

Q But Jen Pusitari, to your knowledge, is no longer at Woodlawn, is he?
MR. URIK: Objection.
THE COURT: Overruled. To your knowledge.
THE WITNESS: Yes. She came down to Headquarters.
BY MS. GUTIERREZ:
Q No. My question is, to your knowledge, Jen Pusitari was no longer at Woodlawn, was she?
A No.
Q So, she would not have been somebody that you might have interviewed at Woodlawn High School?
A Correct.
Q Okay. Now, when she came down, and when you got the call from the lawyer, had you received any other information regarding Jay Wiles from any source?
A No.
Q Not overnight.
A No.
Q And you hadn't received calls from Jay Wiles?
A No.
Q Right? And she had not told you anything on Friday night that made you believe that Jay Wiles had something to do with the death of Heyman Lee, had she?
A No, she had not.

Page 28

Q The only information she gave was that he was the boyfriend of Stephanie McPhearson. Right?
A Stephanie McPhearson and Jay had been dating for sometime, and that she was very close with Jay.
Q Okay. Now, the she, doesn't mean Stephanie. And you mean Jen?
A Jen.
Q Okay. Now, at that time, on the 26th, you already knew who Stephanie McPhearson was, did you not?
A No.
Q You had never heard her name before?
A No.
Q And she was not one of the students at Woodlawn that had come forward with any information --
A No.
Q -- about the last day of, of Heyman Lee?
A No.
Q Or about anything that might have happened or been going on in Heyman Lee's life?
A Not that I'm aware of.
Q Or about any conversation she may have had with Heyman Lee in the recent days before her disappearance?
A No.
Q Or somebody who had any idea where Heyman Lee might have been?

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Page 29

A No.
Q Okay. So, those were two new names to you, correct?
A Correct.
Q And in regard to her, if you had not received in between the time Jen Pusitari left your office and the time you got a call from her lawyer, information that in any way connected her to the disappearance of Heyman Lee?
A Her being?
Q Stephanie?
A No.
Q Nor any information that connected Stephanie to the burial of Heyman Lee?
A No.
Q Now, when you went out to the lawyer's house, did you receive -- was Stephanie and her mother already there when you got there, to the lawyer's house? I'm sorry. Jen and her mother are present when you got to the lawyer's house?
A They were.
Q Okay. And before you caused everybody to come downtown to your office to conduct a formal interview, did you receive information about Jay while you were out there?
A At the attorney's office?
Q Yes.

Page 30

A I mean house.
Q House, yes.
A No.
Q Nor on the way down?
A No.
Q And you didn't receive any further information about Stephanie?
A No.
Q When the lawyer called you up, you agreed to go to his house?
A I never spoke to the lawyer.
Q Uh-huh. To your knowledge, did somebody else agree? You got a message that the lawyer called, did you not?
A Yes.
Q And said that his client was willing to speak to you, right?
A I received a phone call from Sergeant Lehman from the Offices of Homicide.
Q Okay. Sergeant Lehman --
A Sergeant Lehman is a supervisor within Homicide. Sergeant Lehman indicated that an attorney representing Jennifer Pusitari had called and made arrangements for us to respond to his home, which happens to be in the near vicinity of Detective Ritz.

Page 31

So, I responded over to Detective Ritz, picked up Detective Ritz, and then we went over to the attorney's house.
Q Okay. Now, my question is, after you got the call, did you call back the lawyer and say, oh, no, I don't meet at lawyers' houses?
A No.
Q Did you --
A He lived right next to Detective Ritz. I figured I could go over, pick Detective Ritz up, and we could go over to the attorney's office, find out what was going on and then go down to Homicide.
Q And you didn't call Detective Ritz and tell him to go next door and find out what's going on?
A No.
Q Before you got there?
A No, I did not.
Q Okay. Now, when you spoke to Jan Pusitari, while the tape was on, while you were down at your office on Saturday the 27th in the afternoon, she gave you a great deal of information concerning this person, Jay Wiles, right?
A Yes.
Q And that was the first time any information had been given to connect Jay Wiles to the death or

Page 32

disappearance of Heyman Lee. Correct?
A Correct.
Q And M's Pusitari indicated to you that all her information about these events came from Jay Wiles.
A Correct.
Q From what Jay Wiles had told her. Isn't that correct?
A Yes.
Q And M's Pusitari clearly indicated to you that she didn't know anything first-hand, did she not?
A Correct.
Q And that she had nothing to do with the disappearance of Heyman Lee?
A Correct.
Q And that she had nothing to do with the burial of Heyman Lee?
A Correct.
Q Or with concealing any of the evidence that might show a connection to either of those events.
A She didn't conceal any, anything.
Q And based on what she said, she never portrayed herself in any light that would make you think that she was a suspect?
A Correct.
Q And the information that she had given you about

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Page 33

Jay Wiles indicated that he had nothing to do with the disappearance of Heyman Lee. Right?
A That's what she said.
Q And that according to what Jay told her, that although he had been asked to help bury the body, that he had not done so.
A Correct.
Q And she was pretty adamant about that's what Jay told her.
A That's what she believed.
Q Right. Well, but she told you in that statement what Jay told her, did she not?
MR. URIK: Objection.
THE COURT: Yes. Overruled. Is that what she said? Is that what you recall, that she telling you in the taped interview what someone else had told her?
THE WITNESS: Yes. However, she believed that he didn't participate in the burial.
BY MS. GUTIERREZ:
Q Okay. So, you spoke to her not only about what she heard from Jay, but whether or not she believed Jay.
A Correct.
Q And she indicated to you she did, did she not?
A Yes.
Q And that was one of the reasons that it was so

Page 34

important to establish what the relationship between Jan Pusitari and Jay was, was it not?
A I had already established their relationship. They were friends.
Q From her?
A Correct.
Q Now, did you ever in that interview ask her, what was the name of the boyfriend that she went to see after she left from her house where you spoke to through the open car --
A When we ask questions in an initial information sheet, a great number of times people don't want to involve boyfriends, girlfriends or anyone else. I ask the question, do you have a girlfriend; do you have a boyfriend. If they say, no, I write no. I don't get into it.
Q But, sir, you were the one that had heard from her mouth about where she was going the night before was to her boyfriend.
A I actually didn't care where she was going, as long as she came down to our office.
Q Now, sir, after you spoke to her on the 27th, you heard from her that she had spoken to Jay Wiles after she left you or you left her in front of her house on Friday night, did you not?

Page 35

A Excuse me, now. What was the question?
Q In the interview that was taped on the 27th, you heard from her that, in fact, she had spoken to Jay Wiles after she left you the night before in front of her house.
A Yes.
Q Okay. And she told you that, did she not?
A Yes.
Q And she told you that she had spoken to Jay about the events.
A Yes. She said that the police had talked to her, and Jay told her, you didn't do anything wrong. Tell the police the truth.
Q And when she said the police had talked to her, it was about the event, about Heyman Lee?
A Correct.
Q Her statement made it very clear that that's what she had spoken to Jay about the night before?
A Yes.
Q Okay. Now, you also asked her questions about her volunteered opinion that she believed Jay and you asked questions about that, did you not?
A Do you want to direct me to the specific question?
Q Yes. It's again on page 31, shortly above, well, it wasn't until today that I thought -- that line.

Page 3

A On page 31?
Q Yes.
A Where is this?
Q On page 31, one, two, three, four, five answers down. It's M's Pusitari. It begins with the statement, well, it wasn't until today. Are you with me?
A Yes, I --
Q Okay.
A I'm with you.
Q If you would just read that answer.
A From M's Pusitari?
Q Yes. Just read that to yourself.
A Well, it wasn't until --
THE COURT: No. Read it to yourself.
THE WITNESS: Oh! I was talking -- excuse me.
MS. GUTIERREZ: That's okay.
THE WITNESS: Okay.
BY MS. GUTIERREZ:
Q Now, if you would turn just briefly back to page 30, and read the last sentence by Sergeant Lehman.
A Yes.
Q Okay. In fact, you and Sergeant Lehman solicited her opinion as to the truth of what Jay had told her. Her, meaning Jen Pusitari.
A I still come back to the fact that she believed

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Page 37

that Jay didn't participate.
Q I know that. You have already answered that. That's not what I'm asking you. You and Sergeant Lehman questioned her about her belief of Jay Wiles when he told her whatever it is he told her, did you not?
A Yes.
Q And she answered essentially, and now I'm referring back to page 31, that she didn't think that Jay would lie to her, first of all. Correct?
A Correct.
Q And then she stated that, like I don't know unless Adnan paid Jay a good sum of money that she really wouldn't see Jay helping Adnan.
A Right.
Q In that answer Adnan Syed's name is spelled A-d-n-a-r, is it not?
A Yes.
Q That's the transcription your secretary made?
A Yes.
Q Of the tape that you caused to be made?
A Yes.
Q And did, in fact, it is spelled Adnan throughout the transcript, is it not?
A It is.
Q That's how Jen Pusitari referred to him, did she

Page 38

not?
A That's how the individual who typed it, but the name was Adnan.
Q And this was the transcript that you reviewed?
A Yes.
Q And you didn't correct that?
A No. I think everybody understands who we're speaking about.
Q And that's all that was important to you?
A Correct.
Q Now whether Jen Pusitari said his name right?
A She knew it was Adnan. She went to school with him her whole life. She knew him.
Q The question was, it wasn't important to you whether or not she knew how to say his name right, was it?
A I didn't say she didn't say his name right.
Q I didn't ask you that, sir.
A She did say his name right.
Q My question is --
A The transcriptionist typed it wrong.
MR. URIK: Objection.
THE COURT: The objection is overruled. And I'd ask the witness to answer the question. The question wasn't anything other than, it wasn't important to you whether or not M's Pusitari referred to him as Adnar or

Page 39

Adnan. That was her question.
THE WITNESS: That would have been important.
THE COURT: Very well. Next question.
BY MS. GUTIERREZ:
Q Now, the issue of whether or not Jen Pusitari had heard from Jay Wiles anything about that he was paid money by Adnar or Adnan was important to you, was it not?
A Can you rephrase that again, please?
Q You and/or Sergeant Lehman had asked M's Pusitari a series of questions about whether or not Jay had told Jan that he had been paid money by Adnar or Adnan to help him, did you not?
A Yes.
Q And that was an important issue to you then?
A It was very important.
Q And that was, her response to Sergeant Lehman was unless Adnan paid Jay a good sum of money, that she really didn't think that Adnan would help him.
A Correct.
Q You asked her about the chain of events and the time and chronological order in which they occurred on the 13th, did you not?
A Asked Jennifer Pusitari?
Q Yes.
A Yes.

Page 40

Q Yes, you did, right?
A Yes.
Q And part of that started out with a phone call, did it not?
A It did.
Q To her residence, right?
A Correct.
Q To her line, right?
A Correct.
Q Okay. And one of the things you asked her was, when she first saw Jen that day, when Jen first say Jay that day, did you not?
A One of the first questions I asked her?
Q Yes, sir. One of the things that you asked her about was when Jen first saw Jay that day, meaning the 14th of January.
A Yes.
Q The day that you had information --
A That was one of the questions.
Q -- about a call that had been made to her land line. Correct?
A Correct.
Q And she told you that the first time she saw Jay was after she got home from her job.
A Yes, that afternoon.

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Page 41

Q Is that right? But that she came home from her job first, and then Jay came.
A Where in the statement is that?
Q Is that because you don't remember, sir?
A If it's in the statement.
Q Well, Detective, let me ask you this. Was not the chronology of events important to you?
A Yes.
Q Okay. And once you heard about Jay having some involvement in the death, in the disappearance or death of Heyman Lee, the chronology became even more important to you, did it not?
A Yes, it was.
Q Okay. Let me see if I can find -- (pause). I direct you on page 6. There's an entry under Pusitari about the middle of the entry, the first word in that entry is "Our," and then it goes on, "So, I want to say I got home." If you would read from there to the one, two, three, four lines down from that to yourself. Did you find the place, Detective?
A Yes, I'm reading it.
Q It's just those four lines. You don't need to --
A I want to read the whole context of the question.
Q Well, no, sir, I really only asked you to read those four lines.

Page 42

THE COURT: M's Gutierrez, I am going to allow the witness to finish reading the page, and when he's done refreshing his recollection, he can look up and we will hear the next question.
MS. GUTIERREZ: Very well.
(Pause for witness to read).
THE WITNESS: What I'm getting, she's confused.
MS. GUTIERREZ: Well, sir, there's not a question.
THE COURT: Detective McGilveary, you must understand that counsel gets to ask the questions. You're only asked to answer what it is that she asks.
THE WITNESS: Okay.
THE COURT: And she can lead you and ask you to respond in whatever way is appropriate.
THE WITNESS: Very good.
THE COURT: If the State wants to counter, they will have an opportunity to do so. Now, your next question.
BY MR. GUTIERREZ:
Q Having read that, it is clear that Jen Pusitari told you that she got to her house first, is it not?
A Yes.
Q And that Jay arrived after she was already home, is not?

Page 43

A That was as to her recollection.
Q Okay. Not the other way around, that Jay was already at her house, and then she came home. Right? That's not what her statement says, is it?
A No.
Q Okay. Now, also she indicated that after Jay got there, that we played video games, does she not?
A Correct.
Q And, sir, having read the whole rest of the page, she never once mentions her brother Mark's name, does she?
A In this statement?
Q Right there in the part that you read.
A Not in this section, no.
Q Okay. Then that's in the section where she describes that we played video games, correct?
A That she didn't say that her brother was there?
Q Yes.
A Correct.
Q And his name is not mentioned in that part that you read on page 6, is it?
A Correct.
Q All right. Now, you also asked her from that point on to when things happened and in what order. Isn't that correct?
A Yes.

Page 44

Q And she initially told you that Jay had the cellphone with him, correct?
A Correct.
Q And that she knew it wasn't Jay's cellphone, because she had never seen him with a cellphone, right?
A Correct.
Q And that he had indicated to her that he was waiting for a call.
A Yes.
Q Is that right? And that he thought the call would come in at about 3:30. Isn't that right?
A I believe so.
Q Okay. And let me refer you to page 8, and if you would read to yourself from the bottom, the fourth entry, which is marked Pusitari. That is four lines, if you would read her answer to yourself.
A (Reading transcript). Okay.
Q Okay. And what she indicated is that she remembered a phone call coming in, but she wasn't sure whether it was on the cellphone or on her house phone number. Correct?
A That was correct.
Q That was to the best of her recollection in response to your question.
A Yes.

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Page 45

Q Is that correct? You also asked her questions to describe Jay Wiles' demeanor during that first time period, did you not?
A Did --
Q And by the first time period, was the time he came to her house after she got home about somewhere near 12:30 and the time they first left in late afternoon, before 4:00 o'clock.
A Yes.
Q And she described his demeanor during that time period. First of all -- and let me direct you to page 10
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q She described his demeanor during that time period, did she not?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q After you spoke to Jan Pusitari at 5:10, she then -- that concluded at 5:10, she then left?
A Yes.
Q Okay. And after that, you then went to see Jay Wiles?
A I probably talked -- can you ask that question

Page 46

again?
Q At 5:10 the tape recorder went off and the statement was finished. Correct?
A Correct.
Q With Jen Pusitari.
A Correct.
Q And she then left the police station, did she not?
A She did.
Q And you then went to see Jay Wiles.
A Later on that evening.
Q Okay. And was it before midnight or after midnight?
A I believe it was before midnight.
Q Okay. And you went to see him at the Southwestern Video Store?
A Correct.
Q And that video store, that's a porn video store, is it not?
A It's a video store.
Q And you didn't call him to let him know that you were on the way?
A I did not.
Q And when Jen Pusitari had left your presence on or about 5:10 p.m. on Saturday night, did you tell her not

Page 47

to speak to Jay?
A We did.
Q You did. And you instructed her to honor your request, did you not?
A We did.
Q You made it very clear to her, did you not?
A We did.
Q And that was in front of her lawyer.
A Correct.
Q Is that right? Did she ever tell you spoke to him?
A Not that I'm aware of.
Q Did you ever ask her?
A I don't remember.
Q Okay. From her you had learned that Jay worked at this video store?
A Yes.
Q Okay. Now, you said you went afterward, and you spoke to him, and did you then invite him down to see you at 601?
A Actually, the invitation was extended, and he came with us.
Q Okay. And, of course, you just invited him to visit you?
A Well, we asked him to come along with us.

Page 48

Q Did you advise him out there at the video that he might be a suspect?
A Did not.
Q And did you pull out the advisement of rights form that we have discussed before and give it to him?
A When?
Q When you were out at the video store?
A No.
Q Did you cause anybody else to do so?
A At the video store, no.
Q And did you orally advise him of any rights?
A No.
Q Or advise him to get a lawyer?
A No.
Q And he rode down with you to your office in your car?
A That is correct.
Q Did he have choice of not doing that?
A Sure.
Q He didn't have to go?
A He didn't have to go.
Q And if he felt compelled to go, that would be a surprise to you to learn that, would it not?
A Excuse me?
Q If he said that he felt compelled to go, that

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Page 49

would be a surprise to you to learn that?
A I don't understand what you mean.
Q I'll ask another question.
Now, you had asked Jen Pusitari in her recorded statement any questions designed to elicit any detail that she might know about what it is that Jay told her, did you not?
A I don't understand that question either.
Q Okay. Well, when you spoke to her, she presented that she had nothing to do with the death or disappearance of Heyman Lee, right?
A Correct.
Q But that what she knew about it was from Jay.
A Yes.
Q Right? From what he told her, right?
A Yes.
Q And what he told her was both what he had personally experienced and observed, correct?
A Yes.
Q And what he told her, he had been told by Adnan Syed. What Jen told you included what she said to you she learned from Jay, who heard it out of Adnan Syed's mouth, is it not?
A I don't understand what you're asking.
Q All right. Let's go back. Jen said she wasn't

Page 50

there, and anything to do with the disappearance of Heyman Lee. Is that correct?
A That is correct.
Q But what she told you was what Jay Wiles told her.
A That's correct.
Q About the disappearance, correct?
A Yes.
Q But what she told you was according to Jay Wiles, he had nothing to do with her disappearance, right?
A Yes.
Q That Jay Wiles wasn't present when anything happened to Heyman Lee, right?
A Yes.
Q That Jay was not present when Heyman Lee was strangled, right?
A Jay was not present.
Q Okay. And that what Jay told her what he knew about the disappearance of and the strangulation of Heyman Lee had been told to him by Adnan Syed, right?
A Yes.
Q That's what she told you?
A Yes.
Q Okay. And in regard to what she told you about what Jay knew, according to what she told you, that Jay

Page 51

Wiles told her is that he didn't know where the body was.
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q You didn't ask her where the body was, did you?
A I don't remember asking, myself.
Q If you had thought she knew where the body was, surely you would have asked her, would you have not?
A Yes.
Q And if she indicated to you that somebody knew where the body was, you would have asked her questions about that, would you have not?
A I would have.
Q Because like the strangulation information there were some particular things about the burial site that you knew about, did you not?
A I did.
Q Okay. Well, one of the things about the burial site was how far off the road it was, was it not?
A It was.
Q And that it was behind this forty foot wall?
A Yes.
Q Correct? So, if somebody knew where the body was, that would have certainly raised your interest, would it have not?

Page 52

A Yes.
Q As a good investigator, correct?
A Yes.
Q Because that would mean somebody knew where it was, that maybe they had something to do with the burial of the body.
A Possibly.
Q And you don't have any recollection of events from Jen Pusitari with regard to those things, do you?
A No.
Q No. You did ask her questions about what happened after she saw Jay Wiles again that night, on the 13th, after he had left her house sometime close to 4:00 o'clock, did you not?
A Yes.
Q And you asked her based on her description of what she said describing Jay's behavior, whether he knew ahead of time about anything that was going to happen, did you not?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Now, Detective, you asked her when she met up with or if she ever met up with Jay after he left her house, correct?

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Page 53

A Yes.
Q And she told you about meeting up with him --
MR. URIK: Objection.
Q -- at the Valu-City, right outside Valu-City in the parking, which is in Westview Mall.
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q You asked her about whether or not she met up with him, did you not?
A I did.
Q And you got an answer to that question, did you not?
MR. URIK: Objection.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MS. GUTIERREZ:
Q And you wanted to know the details of that, did you not?
A Yes.
Q And she supplied the details, did she not?
A She did.
Q And whether or not she had met up with Jay on the 13th was important to you, was it not?
A It was.

Page 54

Q And she indicated to you that she did see him again after he had left her house at 3:45, correct?
MR. URIK: Objection.
THE COURT: Overruled.
THE WITNESS: Yes.
BY MS. GUTIERREZ:
Q And she indicated to you where it was that she saw him?
A Yes.
Q And now, sir, you knew prior to talking to her that the body of Heyman Lee had been almost totally, but not quite, buried. Isn't that correct?
A Correct.
Q But you didn't know how it had been buried, correct?
A Correct.
Q You didn't know particularly based on the bodily depression, that he's described for us, whether or not there had been a hole already there, whether or not a hole had to be fashioned, did you?
A No.
Q You could tell from what you saw, however, that there was clearly dirt and leaves on top of her body?
A Correct.
Q And based on what you saw, there certainly was an

Page 55

issue that concerned you that perhaps the body had been buried by digging a hole for her. Isn't that true?
A Can you ask the question again? I'm sorry.
Q Okay. You didn't know from what you saw how it had been buried, correct?
A Correct.
Q But it was buried under dirt and leaves, was it not?
A Yes.
Q And although you didn't know it, the issue of how she had been buried was important to you, was it not?
A Yes.
Q And if it had been done by digging a hole, was important to you, was it not?
A Yes.
Q Because there might be evidence of digging or an implement or something that got into the dirt from the person who put her there, right?
A Yes.
Q That's exactly why you were so careful in the disinterment of the body, was it not?
A That's correct.
Q To collect any evidence that would be helpful, correct?
A That is very correct.

Page 56

Q And if she had been buried by the use of an implement, such as a shovel, that would be important to you.
A Yes.
Q Isn't that correct?
A That is correct.
Q You received information from Jen Pusitari about Jay Wiles talking about shovel or shoves, did you not?
A Yes.
Q And you questioned her in great detail about that, did you not?
A Yes.
Q And you learned from her that although she didn't see the shovels, that she had been told to return to a dumpster to address the shovels, were you not?
A Yes.
Q Okay. And you were told that she went to a location, and that location was at F&M, was it not, or behind F&M?
A No.
Q If I could refer you to page 23 of her statement. And one, two, three, four entries from the bottom, and if you go to that entry by M's Pusitari, and go up -- you need to go up eight lines to the beginning of the sentence. And then if you would read that to yourself.

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A And we are on 23, correct?
Q Page 23.
A Yes.
Q Okay. Have you read the entry that --
A I have read the whole page.
Q M's Pusitari.
A Correct.
Q Okay. You asked her a question which she answered and responded that at some point she was directed by Jay to go to F&M, to a dumpster near the F&M, did she not?
A Yes, they went to the dumpster.
Q You asked her, and exactly which F&M, did you not?
A Yes.
Q And she indicated the F&M off of Baltimore National Pike.
A Correct.
Q And Baltimore National Pike is the road that is also known and designated as Route 40?
A Yes.
MR. URIK: Objection.
Q And ultimately becomes Edmondson Avenue inside the Baltimore City Limits. Is that right?
THE COURT: Overruled to the State's objection as

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to this line of questioning. I'm assuming you will get a question that will allow or tie this all in.

BY MS. GUTIERREZ:

Q Is that right?

A That's correct.

Q And she had told you in response to the question that she was directed to that location, and you knew where that location was based on what she told you, did you not?

A Yes.

Q But the reason you asked her questions because --

A She told us the location.

Q And based on that location, then you could find it. Is that correct?

A That's correct.

Q And she described that dumpster located behind that parking lot?

A Yes.

Q And that the activity in regard to the dumpster was done by Jay Wiles?

A Yes.

Q While she stayed in the car, and acted as a lookout in case someone came by?

A She doesn't say anything about that in this.

Q She says, well, from other information, she described herself as remaining in the car, did she not?

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A She doesn't say anything about being a lookout.

Q She describes herself as remaining in the car, does she not?

A Correct.

Q And she describes that Jay --

THE COURT: One moment. One moment. The question was, did she describe herself as remaining in the car. The objection is sustained. And I'd ask the witness, the transcript is provided to you for the purposes of refreshing your recollection as what was said by a witness. You may use to refresh your recollection as to what a witness said to you, and then look up for the next question. If you do not recall what the witness said to you, then you may use it to refresh your recollection. If you recall what the witness said to you, then you may just merely answer the question.

The next question.

BY MS. GUTIERREZ:

Q On the part that you just reviewed, Detective McGilveary, the, whatever it is that she describes at the F&M --

MR. URIK: Objection.

Q -- whatever it is that she describes at the F&M in that entry, she described it taking place on the 14th of January, did she not?

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A Yes.

Q Okay.

THE COURT: The objection is overruled.

Q Then that's a different day than the 13th. Correct?

A It is.

Q She made it very clear in her description that was a different day, did she not?

A Yes.

Q And she described and said that ultimately at the end of the night on the 13th, that she went home, got up, did her normal routine, hooked back up with Jay again on the 14th. Isn't that correct?

A That is correct.

Q And that in the parking lot near the dumpster that on the next day is when she observed him throwing away his boots.

A Correct.

Q And his clothing?

A Yes.

Q That she had already previously described because she recognized the clothing that he had had on the night before?

A Yes.

Q And she had also described that when she saw him,

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Page 61

when she picked him up the night before, in the parking lot of Value-City, that what he had on was some kind of dark black pants.

A Yes.

Q Is that right? And she also described that she couldn't see anything wrong or dirty or out of the ordinary with his clothing.

MR. URIK: Objection.

THE COURT: Sustained. Now, at this point, Counsel, I've advised you that for the record you may not use this witness to re-state what another witness said. However, if you want to ask the detective if and when he did anything as a result of what she said to you, you're welcome to do that.

Ladies and gentlemen, please be advised that at this juncture the court is going to sustain the State's objection to what someone else said, who has already testified before you, that person having testified exactly as the transcript appears. However, M's Gutierrez is free to bring out any inconsistencies and to the extent that she wants to do that, she may, and to the extent that she would like this witness to talk about what he did as a result of any questions and answers, she may do that.

I will, from this point on, M's Gutierrez, sustain any objections if you're merely going over what the

Page 62

witness has already said.

MS. GUTIERREZ: I'm not, Judge. I'm trying to lay a foundation. The questions are --

THE COURT: I understand, but I have yet to hear you ask this witness what he did as a result of anything that M's Pusitari told him. You haven't asked that question.

MS. GUTIERREZ: Right. Well, I can't, Judge, until I get the foundation.

THE COURT: I understand, but I might note that the record will reflect that you asked about cellphones, but you never asked this witness what he may have done relative to the cellphones. You only asked what M's Pusitari said. No follow up questions. So, I am just cautioning you that that's the ruling of the court.

MS. GUTIERREZ: I understand.

THE COURT: Ladies and gentlemen, counsel has the absolute right to make these objections. And I also need to advise you that as those objections are being made, and I am responding in the presence of you, understand what the attorneys are saying and my ruling on this particular evidentiary issue have no bearing on this case other than to advise counsel as to the way in which we will proceed, and they shall be disregarded.

As I told you nothing that the witnesses, nothing

Page 63

that the attorneys say is evidence. And my rulings relative to that ruling is only evidentiary in nature to the extent that it has to do with the law.

And you may proceed now with your next question.

BY MS. GUTIERREZ:

Q Detective McGilveary, in addition to what you asked about that M's Pusitari told you that happened in regard to a dumpster on the 14th, you questioned her about something that occurred near a dumpster on the 13th, did you not?

A Yes.

Q Okay. And that dumpster was at a different location, was it not?

A It was.

Q And that dumpster was somewhere in the boundaries of the Westview Mall Parking Lot, was it not?

A It was.

Q And M's Pusitari had indicated to you that --

MR. URIK: Objection.

Q -- she went to that dumpster at Jay Wiles' request, did she not?

THE COURT: The objection is overruled, because M's Gutierrez is going to tie it up, but at this juncture I need to advise you that we need to take a facilities break. But I also note that it is now --

Page 64

MS. GUTIERREZ: If I could just ask my last two questions so I can tie this up?

THE COURT: All right. Very well.

BY MS. GUTIERREZ:

Q And that the information was that there was something that had happened in the dumpster relative to the disappearance and murder of Heyman Lee, correct?

A Yes.

Q And she gave you the exact location of where that dumpster was located, did she not?

A She attempted to.

Q And she told you that Jay Wiles had directed you to go there, did she not?

A Directed me?

Q I mean, that Jay Wiles had directed her to go there, did he not?

A Yes.

Q Now, after hearing the information about both of those dumpster locations, you took action to obtain other information about the dumpsters, did you not?

A I did.

Q You sought to get the collection schedules of the dumpsters, did you not?

A I did.

Q And as to when they would have been empty,

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Page 65

correct?
A Correct.
Q And as to whether or not any worker had collected the dumpsters or transported them to be ultimately taken to a refuse lot had noticed anything, did you not?
A Correct.
Q And the things that you asked about those specific locations was whether or not anyone had noticed anything, such as a shovel.
A Correct.
Q Or shovels, correct?
A Yes.
Q And also boots?
A Yes.
Q Clothing?
A Yes.
Q And outer, like an outer jacket. Correct?
A Yes.
Q And you tried hard to seek that information, did you not?
A I asked another detective to handle that.
Q Okay. You became aware that that detective did what you directed, did you not?
A Yes.
Q That the supervisor of the BF Management Company,

Page 66

which owns and operates the dumpsters, was contacted, was he not?
A He was.
Q And the information collected indicated that because of the lateness of the request, that nobody knew anything?
A Correct.
Q Right, and that there was really no way to track down the refuse and what had happened to it after it left the dumpster.
A Actually, he indicated that they would have an area within the dump if it went to that dump.
Q During a certain time --
A That it would be in that area.
Q Okay. And the first time that the dumpster information was requested was after Jennifer Pusitari's statement on the 27th?
A Correct.
Q And after Jay Wiles' statement on the 28th?
A Correct.
Q But the information that you had received indicated that whatever had been put in either of those dumpsters had been put in there on the 13th of January?
A Yes.
Q And the 14th of January.

Page 67

A Yes.
Q At that point, some six weeks earlier?
A That is correct.
Q And you were informed how difficult it might be to try to locate exactly what came out of those dumpsters.
A That is correct.
MS. GUTIERREZ: I'm finished with that, Judge.
THE COURT: Thank you very much, M's Gutierrez. At this point, ladies and gentlemen, rather than just take a short facilities break, we'll break for lunch. It's 12:30. But I will advise you -- I know time flies -- we are going to break for one hour. That is, we are going to resume at 1:30.
Please be advised that you must put your notepads face down. You must not discuss the testimony of Detective McGilveary or any other witness. You can't discuss it among yourselves or with anyone else.
We will return promptly at 1:30 to resume this case. And let me also advise you that you shouldn't have any contact with any of the witnesses.
Detective McGilveary, you are on the witness stand, and you are sequestered. You cannot talk to the State or to the defense during the break. I will see you back in this chair at 1:30. And when all counsel are present, Mr. Syed, as well, we will resume this case.

Page 68

And, ladies and gentlemen, have a great lunch I'll see you back at 1:30 and, Madam Forelady, as soon as 15 heads are counted, someone will knock on the door to check. Please go to lunch and I'll see you back at 1:30. This court will stand in recess then until 1:30.
(The jury was excused and left the courtroom).
(LUNCHEON RECESS)
AFTERNOON SESSION
MS. GUTIERREZ: Judge, I have a question of the court. It's something I've never done, but I intend to offer or at least attempt to offer the tape --
THE COURT: Well, wait, wait, wait. Wait until your client gets here.
MS. GUTIERREZ: I have an administrative question.
THE COURT: Oh, administratively? All right.
MS. GUTIERREZ: It's just that I don't know. M's Sheldon wasn't available. I've never done or tried to introduce a tape, you know, that we get from her. Do I need to call, either attempt to call her --
THE COURT: Do you have a tape?
MS. GUTIERREZ: Well, no, but it's a tape that's readily available. She knows and she kept it out, and that's the tape of the guilty plea of Jay Wiles?

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Page 69

THE COURT: Have you looked at it?
MS. GUTIERREZ: Yes.
THE COURT: And you aren't going to offer that it's relevant to this proceeding?
MS. GUTIERREZ: Oh, yes, Judge, particularly since Jay Wiles testified that he never took an oath before Judge McCurdy --
THE COURT: Whoa, whoa. Why don't we have --
MS. GUTIERREZ: It doesn't concern anything with the detective.
THE COURT: And there is no problem with the detective remaining in the courtroom while you discuss this?
MS. GUTIERREZ: No, Judge.
THE COURT: All right. I still think --
MS. GUTIERREZ: I have never done it, so I went down to M's Sheldon in the event, one, because she has custody of the tape. As you recall, we requested it and she brought it up here, and we looked at it here. I had previously seen that tape. But I assume that it is a business record, but it's not self-identified. You know, you just get the tape with an indication of the date and the part, and the Judge and the name of the tape on the outside, but there's nothing about the tape, either on the tape or attached to the tape, that would indicate that it's

Page 70

a business record.
I would think that it was, but I just frankly don't know whether or not I need M's Sheldon, and have her alerted and subpoena --
THE COURT: To auntheticate the tape?
MS. GUTIERREZ: To authenticate, and then I also want to ask her about another matter that I believe is going to be generated about M's Benaroyal (ph.) about this other thing, this other hearing, inquiry, whatever that occurred, and discussed in the plea in front of Judge McCurdy. And I just want to ask her briefly if she is the custodian, if she was given a date by M's Benaroyal, if these are indeed all the tapes for that day, and that there is nothing in her records for that day.
And that's really -- I just want to insure --
THE COURT: One second. One second. One second.
MS. GUTIERREZ: -- technically as to whether or not I needed to alert M's Sheldon, and because, you know, she has certain duties down there, and I know that it would be an inconvenience to just call her to come up. So, I guess I need the -- since I have never done that or tried to authenticate something like a video tape that there's no dispute that it comes from the records, but --
THE COURT: All right. First of all, with regard to, assuming that the tape is relevant and admissible,

Page 71

assuming that, and I'm not saying it is. I'm not asking the State to concede that point. But assuming it is, let's take that issue first. Are you going to request that someone from the Clerk's Office authenticate the tape?
MR. URIK: No, we would not request an authentication of a court tape.
THE COURT: All right. So that's done.
MS. GUTIERREZ: So that part's done.
THE COURT: Now, I'm assuming that the State would like to be heard on the relevance, if any, of the tape.
MR. URIK: We would make a motion to exclude the tape, having no relevance to this proceeding.
THE COURT: And that being because?
MR. URIK: It's the proponement of the evidence that has the burden of showing its relevance.
THE COURT: You're saying, that based on what she has said so far, that there's isn't any relevance shown?
MR. URIK: Correct.
MS. GUTIERREZ: Well, Judge, I think the relevance is pretty apparent. This witness, Mr. Wiles -- And they are suggesting open and shut, established that, in fact, on September 7th he entered a guilty plea to the charge of accessory after the fact, and that there was a proceeding in front of another judge hanging over his head.

Page 72

In fact, Judge, that tape reveals that the transcript would reveal that once it's played --
THE COURT: That's a transcript of the tape?
MS. GUTIERREZ: That is the transcript, and the reason, Judge, that I don't want to put the transcript in although if I'm forced to, I will, but unfortunately, and I never noticed it before, but it doesn't show an oath, and the fact in there --
THE COURT: Wait a minute. That's a transcript of the tape in Judge McCurdy's chambers, or is that the transcript of the tape of the guilty plea?
MS. GUTIERREZ: Calling the guilty plea, but we maintain it's not a guilty plea, and it's either called as a separate --
THE COURT: I'm misunderstanding. Let's say that. Let's start there. I'm misunderstanding. The tape that you want to put in, the tape that is downstairs that you have sitting aside, is a tape of the alleged guilty plea.
MS. GUTIERREZ: Yes.
THE COURT: Okay.
MS. GUTIERREZ: Yeah. But it is an accurate description, and it would serve for some purpose, but if you will recall that during the cross of Mr. Jay Wiles he was adamant, and I worked hard to make sure he was boxed in

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Page 73

that he had never had to take an oath before, that he didn't take an oath in front of Judge McCurdy.

Unfortunately, what the tape does, you know, it doesn't have the oath being administered, it has a -- first being duly sworn to tell the truth. I want to put in that that tape shows him being administered the oath as opposed to just -- I don't think that is apparent from the transcript that what it is, is an oath, which is what I set up the impeachment of him on.

As to the other -- anyway, so I believe they are relevant for both, that that guilty plea transcript is relevant for both of those purposes that we as the proponent and as the defendant under due process under Chambers v. Mississippi, under David v. Alasa (ph.), that we must also have the right to pick our best evidence and prove our case the way that we wish to do so, and we choose to put on the best evidence of the impeachment, and the best evidence establishing that that he was asked about the rights that he gave up, that there was no statement.

I also believe that it would be relevant for another issue that I'm here to speak to the court outside of the presence of the State's Attorney, but since we have not been required, I mean, since we've not started our case, I don't believe that we should have to reveal what evidence we believe is going to come out regarding the

Page 74

appeal. And since the only record that's been established up to this point that has been proffered by Mr. Urik, that has been asked of this witness, Jay Wiles, what the deal was, and we believe with the tape there will be other evidence adding information on that issue.

THE COURT: That's contained in the tape?

MS. GUTIERREZ: Well, no, that's not contained in the tape, but that will make this tape relevant for that additional reason. If the court wishes a proffer of that, as I said, I'm prepared to do that on the record, but out of the presence of Mr. Urik and M's Murphy, because I believe we have a right to keep our defense strategy to ourselves until we have to reveal it.

But for all three of those reasons I --

THE COURT: I only have two. That the tape shows that Mr. Wiles was under oath.

MS. GUTIERREZ: Yes. And that's an impeachment relevant --

THE COURT: Okay.

MS. GUTIERREZ: The second is that the tape shows that what happened is not a guilty plea, and that all happened had no mention of the statement of facts, and that the holding back of the statement of facts was due to Mr. Urik. So, that is not a guilty plea. The impeachment of his assertion that he pled guilty.

Page 75

And the third relevance, I believe, will come out once we start our case, in regard to what the deal is.

THE COURT: And it is not something that you want to disclose at this time?

MS. GUTIERREZ: That's correct.

THE COURT: All right. With regard to the items that you wish to disclose at this time, I'll hear from the State as to the first; wants to admit the tape, show that he, Mr. Wiles, was under oath when he said he was not.

MR. URIK: As I recall, the first mention of this on the stand of Mr. Wiles, he was asked, did you take an oath. He said, I don't remember. That was his response. M's Gutierrez then changes, and what she constantly does, she then tries to put words in people's mouths, and so you didn't take an oath.

THE COURT: Mr. Urik, you know, I would really appreciate it if you would just stick to the facts and not talk about what M's Gutierrez usually does or always does, but rather, just using the facts and circumstances of this case, and your particular point of view as to the law, as to why this tape is not relevant or is relevant or under any other rule should not be admissible. I would appreciate it.

MR. URIK: His initial testimony was, I do not recall. If this is being used as a prior inconsistent

Page 76

statement, there was no proper foundation. He should have then been asked -- he should have been asked, do you recall being placed under oath. If he said, no, then he should be shown the statement and allowed to comment on it. That has not been done in this case.

There has been no proper foundation on this as a prior inconsistent statement, and it is not inconsistent with his initial testimony which is, I don't recall.

THE COURT: Well, what difference does it make? What difference does it make whether he was under oath or not under oath in a guilty plea where no statement of facts was raised?

MR. URIK: She is trying to say --

THE COURT: No. I'm asking you. I'm just asking you. In terms of relevance ground, what difference does it make whether Mr. Wiles was under oath or wasn't under oath at a guilty plea where no statement of facts was read, and he was just told these are your rights for this crime, and do you understand you have all these rights, and you are giving all the rights up, and there's no statement of facts that was read whether he would either admit to the statement of facts or ask for a correction in the statement of facts, or acquiesce that that's what the State would say since there was no statement of facts read?

MR. URIK: That would be our second point, that

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Page 77

it is barely probative on the issue of the witness' credibility. It has no relevance as to that, that point.

THE COURT: And probative value?

MR. URIK: It's to attack the State, somehow to suggest the State here is --

THE COURT: And is there anything that outweighs that probative value?

MR. URIK: It's prejudicial. The question is the impeachment of the witness, and it's based on an argument that is incorrect.

THE COURT: How about confusing and a waste of time?

MR. URIK: Confusing and a waste of time as well.

THE COURT: Is there any particular rule you would cite me to?

MS. GUTIERREZ: I am going to object to the court's --

THE COURT: I was just asking for some direction.

MR. URIK: Rule 5-403.

THE COURT: Thank you. M's Gutierrez, is there any response?

MS. GUTIERREZ: No, Judge.

THE COURT: I appreciate your acquiescence, truly I do, and I would agree that, to the extent that this item might be relevant, that under the rules I believe that it

Page 78

will take us off in an area that would be really a waste of time. I think that you have all other aspects of the items to test Mr. Wiles' credibility available to you at this point. And, even more so, an abundance of items to challenge his credibility.

And I would indicate, as I have indicated before, that I would be interested in an instruction relative to his credibility, which I have already asked both counsel to prepare because I believe that there's an abundance of things that have been raised by the defense where a proper instruction would be appropriate, and for them to weigh his credibility in a fashion that would be, and understanding what the law is, and how they should view that testimony.

So, for that reason, I am going to deny the motion to seek to obtain that tape, and I would appreciate if there's some other issue.

MS. GUTIERREZ: Well, no. In light of the court's ruling, that will be -- I would ask that the State be precluded in argument or in any further direct or cross examination that they do, from referring to this event as a guilty plea. I think that would have been the compounding with leading this jury in light of the court's decision to deprive us of an opportunity to unequivocally establish that it was. In light of an instruction that we believe that the court should grant in my favor.

Page 79

But I don't have to argue that motion now --

THE COURT: No. But later on we'll deal with it.

MS. GUTIERREZ: And I don't think that there are witnesses that they will ask that of, but if there are, then I would ask that the court, that the prosecutor notify us before making such a reference, so that I would have an opportunity since I do have the transcript of that proceeding, which establishes there was prior discussion that Mr. Urik and the judge referred to that clearly the agreement was that there would be no statement of facts. It wasn't called as a guilty plea, and that there are no facts introduced upon which to predicate a guilty plea and have the defendant take any action. So, that's why I'm making a motion in limine.

THE COURT: I will hold in abeyance, not only your response to the motion in limine -- at this point I don't think it's relevant to anything, to be honest with you.

MR. URIK: I do intend at the end of this witness to offer as State's Exhibit 46, I believe, a true test copy of the docket entry in that case.

THE COURT: The docket entry for what?

MR. URIK: Jay Wiles.

THE COURT: For the purpose of?

MR. URIK: Showing that the court, you know, the

Page 80

court called it a guilty plea; the court says, guilty plea continued.

THE COURT: Well, what relevance does it have on the case?

MR. URIK: The defense counsel has attempted to make a legal argument that it's not a guilty plea because a guilty plea must be A, B, C, D and E.

THE COURT: Mr. Urik, what relevance does it have whether it was a guilty plea or not? What difference does it make? And, I mean, if there is, I'd like you to tell me. What difference does it make whether or not what Mr. Wiles did in front of Judge McCurdy? Was it a guilty plea or wasn't it a guilty plea? What does that have to do with him signing a plea agreement?

Now, he signed a plea agreement. That's in evidence. I believe the plea agreement is in evidence. Now, whether or not he actually facilitated a plea of guilty on the record or not, legally, is really irrelevant, isn't it? If he has testified what he believes he did, whether it was, in fact, under the law a guilty plea or not, isn't that irrelevant?

MR. URIK: And the State would make a motion in limine that --

THE COURT: No, I'm asking a question. Isn't it?

MR. URIK: No. That is our point; it is totally

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Page 81

irrelevant. We would make a motion in limine that defense counsel not be allowed to give an instruction as to what a guilty plea is or be argued, argued to the jury that this was not a guilty plea; therefore, there's something suspect about it.

THE COURT: All right. Well, I'm going to take up both of your motions --

MS. GUTIERREZ: But, see, Judge, we --

THE COURT: -- at the end of the case before we start argument, because I'm sure there's going to be a long list of motions in limine about what each of you want the other one to say or not to say in closing argument.

MS. GUTIERREZ: Judge, just for the record, we think it's relevant not for the issues that the court thinks, not for what was in his mind, whether or not it was a guilty plea, but it has been argued and presented to this jury that --

THE COURT: That it was a guilty plea.

MS. GUTIERREZ: -- it was a guilty plea, and that a guilty plea means not just that -- that he actually conducted his agreement, the guilty plea is done, and that that has some significance on why he should be credible since he's owned up and effectuated this truth agreement. That's what makes it relevant, and I believe that relevance takes it away from whether or not he believed it happened

Page 82

but how he is being presented to this jury, and to buttress his credibility. That he's lied before, but now his credibility -- and he's locked in, so now they should believe it.

THE COURT: I understand. I understand your argument, but I must add --

MS. GUTIERREZ: The only --

THE COURT: -- that nothing you say, as you know, nothing you say is evidence, and I'm going to tell the jury that nothing you say is evidence. And if the two of you want to say it's a guilty plea, it doesn't matter. It's not evidence.

MS. GUTIERREZ: It's not.

THE COURT: And if you want to say it's not a guilty plea, it doesn't matter.

MS. GUTIERREZ: It does matter.

THE COURT: It's not evidence.

MS. GUTIERREZ: It does matter. If an advocate goes to a fact-finder in a murder case and he intentionally misleads them with an intention to buttress the credibility of their only witness, then it does matter. Then it is relevant. It's not nothing.

THE COURT: And, M's Gutierrez, whenever that happens, the other side always has the opportunity to argue what is evidence.

Page 83

MS. GUTIERREZ: But I do understand that, Judge, and I don't want to waste any more time, but am concerned given that this court has made a ruling that I can't get in evidence to establish that position, then I move in limine that in light of that ruling to preclude them from using that information that this court has just prevented us from being able to get in and present. Because then I think that that would be the height of unfairness, that that would create a bigger hurdle that we must then overcome because it's so misleading.

THE COURT: Do you have your rules that outline guilty pleas?

MS. GUTIERREZ: I don't, Judge, but it's right in Volume One of the rules. I didn't --

THE COURT: You didn't bring your rules?

MS. GUTIERREZ: I didn't bring my rules, Judge.

THE COURT: I'm going to ask us all to look at it together.

MS. GUTIERREZ: This morning -- I totally looked at it umpteen times, the minute I learned about the way we were proceeding.

THE COURT: Mr. Urik, do you have it with you? And you're not talking about the plea agreement.

MS. GUTIERREZ: No, Judge.

THE COURT: You're talking about the actual

Page 84

guilty plea --

MS. GUTIERREZ: Guilty plea.

THE COURT: -- litany.

MS. GUTIERREZ: Yes.

THE COURT: All right. Well, pursuant to Rule 4-242(C), the court may accept the plea of guilty only after it determines upon an examination of the defendant on the record in open court, conducted by the court, the State's Attorney, the Attorney for the defendant or a combination thereof, that the defendant is pleading voluntarily with an understanding of the nature and the consequences of the plea, and there is a factual basis for the plea.

In addition, before accepting the plea, the court shall comply with Section (e) of this rule. The court may accept the guilty plea even though the defendant does not admit guilt. Upon refusal to accept the guilty plea, the court shall enter a plea of not guilty.

(e) Collateral consequences of the plea, before the court accepts the plea of guilty, the court, State's Attorney and attorney, the attorney for the defendant or any combination thereof, shall advise the defendant that by entering a plea that the defendant is not a United States citizen, blah, blah, blah, blah, that the defendant should consult with, blah, blah, blah blah, if he's represented and needs additional information concerning potential

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Page 85

consequences of the plea, et cetera.
Now, that's what the law says is a guilty plea. It doesn't say anything, really, about an oath, and it doesn't say anything or it does say that there should be a statement of facts. And what you're proffering is that there is no statement of facts.
MS. GUTIERREZ: Well, Judge, it doesn't say that -- it says that there must be.
THE COURT: It's well understood --
MS. GUTIERREZ: It doesn't have to be at the same -- but those things are required --
THE COURT: But there was an oath, obviously. According to your proffering to me what the transcript says, there was an oath. But there wasn't a statement of facts.
MS. GUTIERREZ: And having viewed it, there is an oath that appears on the video tape.
THE COURT: And so counsel is saying that even if there was an oath, and whether there was a statement of facts or not, it's irrelevant. Right, Mr. Urik, is that what you're saying?
MR. URIK: It's irrelevant because it's Mr. Wiles' requirement to enter the plea. What M's Gutierrez is trying to talk about here is the acceptance of the plea by the court. That's a separate thing. He has, he has

Page 86

come in; he has entered his plea. That's all, his guilty plea is entered as it required him to do. He has done that. It was a binding entry of that, and it was done pursuant to a process in which something of the final court decision had to be held sub curia anyway.
We're in Mr. Syed's trial right here, right now. A trial includes voir dire, jury selection, evidence, motion for judgment of acquittal, instructions, argument and a verdict. We're --
THE COURT: You're saying what he did was A.
MR. URIK: Yeah. He has --
THE COURT: 242(a).
MR. URIK: Yes, he --
THE COURT: Not (c)?
MR. URIK: Correct. He has come in, and he has entered his guilty plea. He did it on the record in a court pursuant to the agreement, and it is a binding entry of his plea of guilty. He may not withdraw it.
MS. GUTIERREZ: Judge, I'm like --
THE COURT: We've gone a little far --
MS. GUTIERREZ: A plea of not guilty, which isn't up to the court to accept or not accept, so there's no rule about the conduct of it. There is a rule, and --
THE COURT: Wait a minute. Whoa. I just need to handle, I need to deal with what he just said. First of

Page 87

all, and I will let you speak, M's Gutierrez. I just want to make sure I understand.
First of all, under the rules, Mr. Urik, and in accordance to what you've said, the rule says he can withdraw the plea. That says clearly, at any time before sentencing the court may permit a defendant to withdraw a plea of guilty when withdraw serves the interest of justice. After the imposition of sentence, on a motion that the defendant files within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty or nolle contendere if the defendant establishes that the provisions of Sections (c) or (d) of this rule were not complied with or there's a violation of the plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on a timely motion to withdraw.
My information is that the defendant, Mr. Wiles, has not been sentenced. You just said he can't withdraw a plea, but under the rules, he certainly can.
MR. URIK: If the purpose, just as any contract has to be determined by a court --
THE COURT: That's true.
MR. URIK: Even if he was sentenced, the court could come back and say, well, if the interests of justice require it, I can counteract this sentence, this plea.

Page 88

Under his agreement, he has agreed that he will come in, and he will enter a plea of guilty. He understands and agrees coming in that he will not be allowed to withdraw that. There are certain conditions under which it can be. If he does not comply -- if he does not satisfy the terms of the plea, the State can come in and ask a court to strike the plea and allow us to proceed to trial.
He can come in and enforce the contract against us. It is a -- he has a plea agreement which he has entered into. He has, pursuant to that plea agreement, come in and entered his plea of guilty. And pursuant to that agreement, the final sentencing could not be achieved till after his performance is done anyway, because the court that has to sentence, has to be able to tell what the performance standard was, and to be able to make a determination, yes, he's satisfied the agreement he made with the State, I will enforce the agreement against the State at this point.
That's what the judge will do at sentencing is, determine that, did that person perform pursuant to the agreement he entered into, the contract itself. It is a legally enforceable contract against the State, that we would not be allowed to take away from him upon the determination of the court. So, this is a guilty plea, and we are working it out because it's performance based.

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Page 89

THE COURT: Correct me if I'm wrong. As an officer of the court, you are informing me that the only thing missing on that tape is the statement of facts? There's an oath and all the other questions?
MS. GUTIERREZ: You mean as to the oath?
THE COURT: Right.
MS. GUTIERREZ: Yes.
THE COURT: Okay.
MS. GUTIERREZ: But there is --
THE COURT: And I --
MS. GUTIERREZ: Your Honor, I'd offer the --
THE COURT: Let me, let me finish. I find that that's not under the rule a guilty plea. Okay. But I also find that the tape itself, that being the only difference, is not relevant.
MS. GUTIERREZ: I understand. I understand that.
THE COURT: And I am prepared to entertain a specific request, motion in limine, as to what to curtail during closing argument. I need you to specifically draft me what it is you want.
MS. GUTIERREZ: Yes, Judge, but right now I'm asking --
THE COURT: Where is it -- no, no, no. I need to see it. I want to see it.
MS. GUTIERREZ: Well, I just haven't done it.

Page 90

It's on my list, and I told the court I would do that, and that's part of my instruction.
THE COURT: And Mr. --
MS. GUTIERREZ: And I realize that the motion in limine to -- I have other things that I believe should be fairly --
THE COURT: Relative to that?
MS. GUTIERREZ: No, not, that they not be allowed to argue. But my specific motion in limine right now is that in light of the court's ruling, and I understand it, that I want to move in limine that they shouldn't continue, be allowed to continue to refer to it --
THE COURT: As a guilty plea.
MS. GUTIERREZ: -- as a guilty plea.
THE COURT: I understand.
MS. GUTIERREZ: Because you've already said and so --
THE COURT: Let me get to them on that issue.
MS. GUTIERREZ: But that's my only relief right now.
THE COURT: I understand. Let me deal with that --
MS. GUTIERREZ: I will come to the court with a motion in limine regarding limitation of argument, and specific instructions on the --

Page 91

THE COURT: This is the last witness. This is Detective McGilveary. I understand that it's the State's last witness.
MS. GUTIERREZ: Yes.
THE COURT: I want the State to provide me with a specific area in closing argument on your motion in limine relative to the use of this plea agreement by the defense. I mean, what exactly it is that you do not want the defense to refer to in closing argument relative to this plea agreement, this plea of guilty or the tape. You've asked for a motion in limine precluding the defense. I want to know exactly what you want. I don't need it today, but I would like you to prepare one.
The second thing I'm going to advise you with regard to the witness on the witness stand. Are you asking him any questions or is it your intention to ask him any questions on re-direct relative to any plea agreement, any guilty plea proceeding or anything like that?
MR. URIK: No.
THE COURT: Very well.
MR. URIK: And at this time, just for the record, I would like to offer as State's Exhibit 46 the true test copy --
THE COURT: Of the docket entry?
MR. URIK: Yes.

Page 92

THE COURT: Showing the guilty plea?
MR. URIK: Yeah. I'd ask it to be marked for identification. I would offer it at this time. I'm assuming the court's ruling is that it has no relevance at this time, therefore it won't be admitted, but I would ask you to hold because I'll need to revisit that if at sometime it becomes relevant in the future.
THE COURT: Anything can be marked for identification, so let it be marked for identification, but it's not going to be admitted. M's Gutierrez, unless you want to be heard on that, I'm giving you that. I think it's irrelevant, and I think at this point we're going into an area that we're doing things to confuse the jury. We're moving away from the issue at hand. The issue at hand is not whether Mr. Wiles pled guilty. It is of no relevance. Whatever he did or whatever day he did it, is only relevant to what he believed that he was doing. And what he believed in his mind, what he thought was happening, whether he remembered he was under oath and he didn't remember he was under oath, what he believed he was doing.
Had there been a statement of facts, M's Gutierrez --
MS. GUTIERREZ: If I saw that, Judge, I wouldn't be making this argument.
THE COURT: You wouldn't have to make this

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Page 93

argument, because that statement of facts would come in, the transcript would come in.

MS. GUTIERREZ: Absolutely.

THE COURT: That is what he would have pled guilty to, and we would have a whole different discussion.

MS. GUTIERREZ: Judge, that's my argument, why I think the court is wrong. I think it is relevant, because there's only one reason, and there will be testimony -- well, there will be at least an attempt to get in testimony. There is only one reason to not read the statement of facts, and that's to keep it from us, and to keep it -- as to what it is, and that's what makes it relevant. Not that that's what he thought or that's what he called it, and whether or not his understanding is correct.

But just the attempt to keep getting this in, even the docket entries, is the intent to continue to mislead. The transcript of that guilty plea says, the court said, well, we haven't finished the plea yet. It was an attempt to enter a guilty plea. It wasn't done because it can only be concluded when whatever the numbers are, but it's --

THE COURT: M's Gutierrez, that's why the transcript or the docket entry is inadmissible, and that's why I'm not letting it in. The State can't have its cake

Page 94

and eat it, too. It can't call it a guilty plea, but then fail to give facts that would constitute a guilty plea under the rule. You can't say, well, we want the statement of facts, and we want to call it a guilty plea, Judge, and we did everything under 242, but we don't want to have to tell the defense what the facts are, that we're having this witness, who is going to be a State's witness, agree to. So, therefore, we're going to leave it open, and we're not going to give any facts. And you can't have it. You can't have your cake and eat it, too. If you're going to have the witness plead guilty, and you want to be able to use that guilty plea, then you're going to have to follow the rule. And that's why it's not admitted.

And the rule says, and a statement of facts. And I can tell you that if I ever accepted a guilty plea in any court, and did not accept a statement of facts to support a guilty plea, the Court of Appeals would throw it right back to me. If I accepted a guilty plea, and the facts did not legally support the charge for which the defendant was pleading, they would toss it back to me. So, there is no way we can have a guilty plea without any facts, for which the defendant is saying, either through an Alford plea, or through a guilty plea, yes, this is what I did.

Now, with that said, let's proceed with the testimony of Detective McGilveary.

Page 95

MS. GUTIERREZ: Yes, Judge.

THE COURT: If we could have our jurors. And as I said, and I emphasize, counsel, if you want or you expect certain things to be raised in closing argument, I'm going to ask you clearly, I want it in writing. One, motion in limine to do this. Two, motion in limine to do that. Whatever it is you believe, please put it down in writing. I'll entertain them one-by-one.

And I want to tell you that, both counsel should be advised to the extent that the motions in limine are granted or denied, I will be not happy if counsel argues those points anyway in closing. I mean, of course, that's understood, but I'm just kind of letting you know that that is the court's concern, that you write it out so that everyone can see clearly what it is that we agree will be argued in closing and what is not going to be argued in closing to the extent of their motions.

And the jurors are coming in, and I'm going to ask that they step along. Don't rush or run.

(The jury entered the courtroom).

THE COURT: Ladies and gentlemen, we are going to continue with the testimony of Detective McGilveary. Detective, I want to remind you that you're still under oath, and you were being questioned at the time that we stopped by M's Gutierrez. M's Gutierrez, I believe we

Page 96

were at the point where you were asking about whether or not two locations where there were dumpsters had been searched.

MS. GUTIERREZ: Yes, Judge.

(The Witness, DETECTIVE MCGILVEARY, resumed the witness stand).

BY MS. GUTIERREZ:

Q And just to make -- you did speak or caused to be spoken to people at the BFI.

A Correct.

Q Regarding the dumpsters, the locations of which had been established or had been told to you by Jennifer Pusitari.

A Yes.

Q And the only time you ever spoke to her on October 30th was on that Saturday evening or late afternoon?

A Correct.

Q From then all the way up to now, right?

A Yes.

Q Okay. Now, I asked you earlier this morning about other information from her. The reason you went to her was because you already had the cellphone records, correct?

A Yes.

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Page 97

Q And the cellphone records that you had were the cellphone records, the service users -- right?
A Correct.
Q And, Detective McGilveary, as an experienced detective, you understood the difference in what records of a land line phone could tell versus records of a cellphone could tell, could you not?
A I don't understand what you mean.
Q The cellphone records that you got indicated what numbers the cellphone called, did they not?
A Correct.
Q And the times of the calls?
A Yes.
Q And the durations of the calls?
A Yes.
Q And an item that's called a cell site.
A A location.
Q Okay. When I have a land line, meaning a wired phone, not cell, not towers, not microwave transmissions, but it's connected to the telephone company's wires, and you get the records, it doesn't indicate the numbers that I called, does it?
A Correct. Unless it's long distance.
Q Well, unless it's long distance. But local calls, it really doesn't indicate the duration of those

Page 98

calls.
A No._
Q Or the time that the calls were made.
A Correct.
Q Or anything that's triggered at all?
A Not that I'm aware of.
Q Okay. And you understood when you testified that even if the cell sites of things, what a cell site was.
A When?
Q When you got these records, did you understand what a cell site was?
A Yes.
Q Okay. And you understood that all the cell site could tell you was what cell site tower was triggered in the making of that call?
A Correct.
Q The transmission of that call.
A Yes.
Q Not an address that would give you the location of the person making that call?
A Not on the cellphone.
Q Not on the cellphone.
A Correct.
Q Now, when you spoke to Jennifer Pusitari, you already knew her home phone number, right?

Page 99

A M's Pusitari.
Q I mean, Jennifer Pusitari.
A Correct.
Q You knew her phone number, right?
A Yes.
Q You knew that she lived with the subscriber of that phone?
A Yes.
Q And you asked her if she had a cellphone, did you not?
A I don't remember.
Q And you asked her if she had a pager, did you not?
A I believe we did.
Q And the pager came up on your completion of her?
A Yes.
Q As a result of learning the information, gathering the information -- the information about her cellphone, did you request her pager number records?
A Yes.
Q And did you get them?
A Yes.
Q And did they tell you calls that were made?
A I don't remember.
Q The relationship to the calls?

Page 100

A I don't remember.
Q And you understood that several of what you got, you never requested any cellphone numbers of Jennifer?
A She didn't have a cellphone.
Q That's what she told you?
A Right.
Q You didn't do any search as to whether or not there was such a cellphone, did you?
A She told me she didn't have a cellphone.
Q And you accepted that --
A That's correct.
Q -- right, as true?
A I didn't have any reason not to believe her.
Q Okay. And in regard to the pager, your conversation showed that what she was there were messages or numbers left on the pager, did she not?
A Excuse me?
Q She indicated when she spoke to you on the 27th of February that on the 13th of January that there were numbers and messages left for her on her pager, did she not?
A I believe the question was, were there any messages left on her answering machine.
Q Well, did you ask her about her pager number?
A I believe we did.

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Page 101

Q Okay. And do you recall speaking about her pager number, and that's was some of the communication between her and Jay?
A Yes.
Q And when somebody pages someone else, they never actually reach a live human being, do they?
A No.
Q No. They, I don't know what you call it, but something allows them to put in a message. Is that right?
A I don't understand what you mean.
Q If you have a pager, Detective McGilveary, and I'm trying to reach you on your pager line, there's no -- I leave you a message that I'm trying to reach you, do I not?
A You use the telephone. You put in the number.
Q Right.
A And it comes up.
Q To your pager, the number of your pager. Is that true?
A And if I have my pager on, I get your message.
Q And sometimes even if you don't have your pager on, it goes to the pager message part, does it not?
A I don't have a clue.
Q Don't you have on a pager?
A I have a pager.
Q You get messages on your pager that are

Page 102

numerical?
A Yes.
Q Giving you a number that would indicate that someone at that number wants to return the call?
A Yes.
Q And do you also get messages on your pager that are actually voice mail like messages?
A No.
Q You are aware that some pagers do that, are you not?
A Yes.
Q It's possible to do that. Isn't that right?
A Yes.
Q And pagers like phones sometimes have other features, do they not?
MR. URIK: Objection.
THE COURT: Overruled. As a lay person --
THE WITNESS: I believe they do.
THE COURT: -- can you answer that question?
BY MR. GUTIERREZ:
Q One of the features that phones have is caller ID?
A Pagers?
Q No, that was not my question. One of the features that phones may have is a thing called caller ID?

Page 103

A Yes.
Q And the caller ID is the system whereby the number of the caller that's trying to reach you is identified. Is it not?
A On caller ID?
Q On caller ID.
A Yes.
Q Is that right? And some people have phone caller ID is because they want to know the identity of the caller before they decide to answer the phone, right?
A I don't know. I don't have the luxury of owning one of those phones.
Q Okay. And so you're aware of it, are you not, that it comes up sometimes on your work?
A I have not, no.
Q Are you aware that caller ID systems often are systems that record the numbers called?
A Yes.
Q And that the system keeps that in the system unless you, the person owning the phone, the pager or whatever it is, erases it?
A Yes.
Q That calls, in fact, can be retrieved unless they're been erased?
A Yes.

Page 104

Q And did you ever inquire -- in fact Jen Pusitari indicated that she had a caller ID system, did she not?
A On your hard line?
Q This period, wherever --
A I don't recall.
Q Well, do you recall that you asked her how she got the number of the cellphone of a person that she really wasn't friends with, meaning the family she -- do you remember asking her how she got the cellphone number?
A She was paged.
Q And you recall that you also asked her about another occasion when she indicated that she got off of her caller ID?
THE COURT: Do you recall? If you don't, say yes or no.
A No.
Q Give me a minute.
THE COURT: By the way, what number is this transcript marked as?
MS. GUITERREZ: I don't remember, Judge. Could you just read us off the number?
THE WITNESS: 6.
MS. GUTIERREZ: 6.
THE COURT: Okay.
BY MS. GUTIERREZ:

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Page 105

Q I would direct your attention to page 12, about one, two, seven -- starting on line 7, at the first entry that's indicated, M's Pusitari. If you could start there and then I think if you would just read the four lines, that might refresh your recollection.

THE COURT: And you should read those to yourself.

(Pause for witness to read the lines).

THE WITNESS: Okay.

BY MS. GUTIERREZ:

Q Okay. And essentially what she told you, number one, that she either got the number to know where to call back --

A Right.

Q -- from her pager, right?

A Correct.

Q Or from her caller ID?

A Correct.

Q Correct. And, sir, you understand that on the pager, at least the one that you have, that if a person numerically punches in the phone from which they're calling a number to call back, that it appears visually on the pager, does it not?

A It does.

Q And that there's a system that keeps those

Page 106

numbers on the pager, on some pagers, is there not?

A Yes.

Q Much, operating much the same way as a called ID would operate on the land based one, is it not?

A Caller ID identifies the person and number that's coming into the hard line.

Q Well, --

A Your pager --

Q Uh-huh.

A Your pager identifies the number. If it identifies the person who owns the number, I have never seen that.

Q Well, the caller ID can't really identify the person, can it?

A Well, the number from where they're coming.

Q Right, and maybe the person to whom that number might be the subscriber of.

A Yes.

Q But it certainly can't identify and doesn't attempt to identify the person who put the number in?

A No.

Q Does it?

A No.

Q And it doesn't try to do that, does it?

A No.

Page 107

Q But in regard to that, it displays a number, right?

A Yes, it does.

Q Some pagers visually display a telephone number.

A Yes.

Q Correct. And on the caller ID it displays a telephone number, correct?

A It does.

Q And on the pager, some pagers have a system much like caller ID. that shows numbers that are displayed or kept.

A Inside the?

Q Inside the pager.

A Okay.

Q Is that right?

A I, I don't know.

Q Well, if you -- your pager, sometimes you're not going to answer your pager right away, correct?

A Yes.

Q And look at the numbers, right?

A Yes.

Q But sometimes you're not near a phone to return the page.

A Yes.

Q Right? And there are times when you would have

Page 108

to go in search of a phone in order to return the page to the number that the pager displayed.

A Yes.

Q Is that -- and sometimes you might forget the number.

MR. URIK: Objection.

THE COURT: Overruled.

A Yes.

Q While you look for the phone, right? And you have to go back to the pager and punch it up again, right?

A Yes.

Q And the pager has the capability of keeping that number that's displayed, and the number of someone who is trying to reach you, inside the pager for awhile, does it not?

A A certain number, correct.

Q A certain number of them, right, until you, the owner, erases them. Right?

A For?

Q Or a certain amount of time elapses.

A A certain amount of pages that go into the pager, then the first will automatically be taken out.

Q Go off. Right. Unless, you, yourself, as the pager owner, would make room so that other numbers can get put in there. Right?

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Page 109

A By emptying, erasing the messages.
Q Okay. Would you agree that, I know it's a different technology, but the caller ID sometimes that system works the same way, by keeping track of the numbers, up to a certain number, that call until you, as the owner of the caller ID. choose to erase them?
MR. URIK: Objection.
THE COURT: Sustained. The witness has already indicated that he doesn't know.
BY MR. GUTIERREZ:
Q As to any information that you received from M's Pusitari regarding her phone lines --
A Excuse me. I'm sorry. When you turn that way, I can't hear you.
Q Oh, I'm sorry. After you got the information that you got from M's Pusitari regarding her phone lines or her pager, did you seek anyone else's phone records?
A I'd have to look through the file.
Q Do you --
A I've got five files here. We got an awful lot of business records.
Q Well, before you spend the time doing that, can you answer me that nothing comes readily to mind, does it?
A Like I said, I've got five files. One of the files is completely filled with telephone numbers, business

Page 110

records, pager numbers.
Q Now --
THE COURT: Counsel, would you like the witness to take some time to go through those files?
MS. GUTIERREZ: No, Judge. He has indicated there are five files, and I'll leave it at that.
THE COURT: All right.
BY MS. GUTIERREZ:
Q Detective McGilveary, had you received some information from M's Pusitari about a person's name that you already knew that, from her before, of Stephanie McPhearson, right?
A Yes.
Q And you received that in conjunction with the name of Jay Wiles, correct?
A Yes.
Q And it was important to you, was it not, to learn what, if any, relationship M's Pusitari had with Stephanie McPhearson, was it not?
A I didn't recall asking -- no, it was not important.
Q After you spoke with her, and she told you all about Jay Wiles, you received information that she and Jay Wiles had visited or gone over to Stephanie McPhearson's house that evening at some point?

Page 111

A Yes. It was Stephanie's birthday, and Jay wanted to tell her happy birthday, and give her something.
Q Okay. And you got information that because it was Stephanie's birthday, that that was the reason that Jay had told Jennifer Pusitari why he had borrowed Adnan's car to begin with.
A I don't believe I asked that.
Q You don't believe you asked it?
A No.
Q You ultimately asked her about whether or not at night when they went to Stephanie's house, whether or not Jay had a birthday present with him, did you not?
A I believe I did.
Q Yes. Because you had heard from her about what Jay had said about earlier going and getting a gift for Stephanie because it was her birthday?
A Yes.
Q Yes. And you heard that from Jennifer Pusitari, correct?
A Correct.
Q And you, when she told you that, she indicated that it was Jay that told her, right?
A I believe so.
Q As a result of talking to Jennifer Pusitari that evening about that matter, did you go speak to Stephanie

Page 1 1

McPhearson?
A I did not.
Q Did you ever -- did you ever speak to her?
A Yes.
Q And when was that?
A A few weeks ago.
Q In the year 2000?
A Yes.
Q Not in the year 1999?
A I didn't talk to her; however, Detective Ritz did.
Q And did you do that as a result of what you learned from M's Pusitari?
A No.
Q Okay. Prior to, sometime in the early morning hours of February 29th, you were present when they arrested Adnan Syed, were you?
A Yes.
Q That was at his house, was it not?
A It was.
Q And you told us on direct when Mr. Urik asked you,that based on your conversation with Jay, that arrested Adnan. Is that correct?
A I obtained a warrant.
Q And pursuant to that warrant, you went to his

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Page 113

house and arrested him, did you not?
A Yes.
Q Okay. So, you did so based on your conversation with Jay that occurred in the middle of the night or in the early, early morning hours of February 28th, right?
A I did so as a result of all the facts that I had, I had gathered, not just strictly on what Jay Wiles told me.
Q Well, Mr. Urik asked you specifically on direct if based on your conversation with Jay, you charged Adnan, did he not?
A Subsequent to the conversation with Jay.
Q Well, the question he asked you was --
MR. URIK: Objection.
Q -- based on your conversation with Jay, if you did anything, did he not?
THE COURT: Sustained.
Q Will, Detective McGilveary, whatever Jennifer's relationship, Jennifer Pusitari's relationship with Stephanie --
MR. URIK: Objection.
Q -- was something that you asked about. Right?
THE COURT: I'm sorry. You are going to have to repeat that question for me, because there is an objection.
Q Whatever Jennifer Pusitari's relationship with

Page 114

Stephanie is, was something you asked her about, was it not?
THE COURT: Overruled.
A I don't remember asking specifically.
Q Would the transcript of that refresh your recollection?
A It certainly would.
Q And I direct you to page 33, two-thirds, at the bottom, one, two, three, four from the bottom up the page, the last two lines, I believe, will refresh your recollection.
A (Pause while reading transcript).
Q Have you read those last two lines?
A Yes.
Q Okay. And in that M's Pusitari indicated that she did not like his, referring to Jay's girlfriend, very much, did she not?
A Repeat that again, please?
Q In what you reviewed on page 33 --
A Yes.
Q And the entry of Pusitari, that is four from the bottom.
A Yes.
Q She indicates that, I don't like his girlfriend very much.

Page 115

MR. URIK: Objection.
MS. GUTIERREZ: Did she not?
THE COURT: Overruled.
BY MS. GUTIERREZ:
Q If you would look at her answer --
A Well, I'm -- you need to get the whole context of what the conversation is.
Q Well --
THE COURT: Detective McGilveary, if I may, if it doesn't say that, then you say, it doesn't say that.
THE WITNESS: No.
BY MS. GUTIERREZ:
Q It doesn't say that? The last two lines, the second line from the bottom, does it not say, "I don't like his girlfriend very much"?
A Yes, it does.
Q Okay. And does it further say, "We don't get along very well at the time"?
A Yes, it does.
Q And is that not Jen Pusitari's answer?
A Yes.
Q In response to a question posed to her from Sergeant Lehman?
A Yes.
Q Okay. And had you not already received

Page 116

information that Jan Pusitari, although she visually knew Heyman Lee, that Heyman Lee was not someone she had ever hung out with?
A Two different types of person.
Q But the information you got from Jen, they had not hung out together, right?
A No.
Q Okay. And that --
A Both gifted and talented students. Heyman was an athlete. Jen Pusitari was not.
Q Okay. So --
A They didn't hang out in the same circles.
Q All right. And that was clear to you, was it not?
A Very clear.
Q And that they were not independent friends?
A Correct.
Q And that Jennifer, for instance, had never indicated that she spent social time with Adnan and Hey while Adnan and Hey were together. Right?
A Not that I'm aware of.
Q Okay. And that -- now, let's move on to something else. Detective, you described that when you spoke to Jay, you did so at Police Headquarters, correct?
A Correct.
Q All right. Now, when you spoke to him, at some

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Page 117

point you did pull out that advice of rights form?
A Yes.
Q And you had him sign it, did you not?
A Yes.
Q You wanted to make sure that he understood it, did you not?
A Yes.
Q That he understood the words, and you first asked him to read it and sign it, correct?
A Yes.
Q And that was the advice of rights form used by the Police Department, right?
A It is.
Q And it is generally read to or given to suspects and sometimes witnesses?
A Yes.
Q And now, when you brought him, when you extended him the invitation and he came down in your car after midnight, you had a conversation with him, did you not?
A A conversation in the car?
Q No. There or when he first got down there.
A I don't recall any --
Q Well, let me ask you another question, Detective. At some point you took a formal statement from him, did you not?

Page 118

A Yes.
Q And that was tape recorded, was it not?
A It was.
Q And present were yourself --
A Yes.
Q -- Detective Ritz --
A Yes.
Q -- and Mr. Wiles.
A Yes.
Q And that tape recording started at 1:30 in the morning, was it not?
A Yes.
Q Okay. And at point Mr. Wiles consented to the tape recorder being on, correct?
A Yes. He knew he was being recorded.
Q And prior to the tape recorder being turned on, you had just spoken to Mr. Wiles, had you not?
A For a short time, correct.
Q Okay. And so, you and Detective Ritz took notes of that first conversation, did you not?
A Yes.
Q And both of you were still in the room with him, right?
A On the road or in the room?
Q In the room.

Page 119

A Yes, in the room.
Q And the subject of the conversation was connected to your investigation into the disappearance of the homicide of Heyman Lee, correct?
A It was.
Q Your wanting to see Mr. Wiles was from the information you had received from Jennifer Pusitari.
A Excuse me?
Q Your wanting to have that conversation, or starting that conversation was premised on the information that you had gotten from Jennifer Pusitari?
A Yes.
Q The night before, right?
A Yes.
Q And --
A Actually, earlier that day. The 27th, all day long, and now we're into the 28th.
Q But and --
A Correct.
Q -- the 1:30 starting time obtained according to your records, correct?
A It's when the tape recorder went on.
Q Okay. Now, you went to the video store much earlier than that, did you not?
A Yes.

Page 12.

Q And when you brought him down to Homicide, what time was it?
A I filled an information sheet out on Mr. Wiles, and the time of that 0030 hours, so it was 12:30 at night.
Q 12:30 midnight.
A Correct.
Q Like 30 minutes after midnight.
A 30 minutes after midnight.
Q And the tape recorder wasn't turned on for an hour, was it?
A Correct.
Q Is that correct? And it didn't take you very long to fill out the information sheet, did it?
A No.
Q No, and so you spoke to Mr. Wiles before the tape recorder was turned on for just about an hour?
A I don't recall the exact time that we actually had an interview. When we're down there, sometimes we'll get coffee or you will ask a witness if they need anything or do they actually need to go to the bathroom or I take phones. Relax, have a witness sit for a period of time, and I collect the articles that I'm going to need for an interview. And once that is accomplished, there may be some time before the information sheet and an actual taped statement occurs.

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Page 121

Q Now, Detective McGilveary, in answer to my question about how long you spoke to Mr. Wiles prior to --
A I don't remember.
Q All right. Now, but at least you took notes, right?
A Yes, I did.
Q And your notes still exist, do they not?
A They certainly do.
Q And they are more than one page, are they not?
A There are three pages.
Q Three pages, and are those three pages, they are in your own handwriting?
A They are.
Q Okay. And they reflect the subjects that were spoken about in that conversation with Mr. Wiles before the tape recorder was turned on, do they not?
A Yes.
Q And you wouldn't keep track of what you said. You would be taking notes on what he said, right?
A Correct.
Q And you are aware that Detective Ritz took notes of that conversation, are you not?
A Yes.
Q And that his notes are also --
A I believe so.

Page 122

Q That they are about the same number?
A I believe so.
Q I understand you are familiar with Officer Ritz's notes?
A Yes, I am.
Q As a Homicide Detective, you did take notes and you keep them in the record, do you not?
(Pause for siren to pass).
A I don't understand what you mean. We take notes.
Q Well, you have a practice about taking notes, do you not?
A When we have a conversation, if I think that somebody has said something noteworthy, I copy it down.
Q And the reason for somebody to talk -- is because you take lots of notes, do you not?
A There's a lot that goes into the investigation of a homicide. Taking notes is only a portion of the investigation. If I already know the information that I'm going to ask someone, there isn't any reason for me to write notes down. I can take a taped interview that will last for an hour and not write any notes down. I already know what I'm going to ask the individual.
Q But when the tape recorder went on, Detective McGilveary, you didn't know what he was going to say, did you?

Page 123

A No.
Q You didn't know if he was going to tell you the same thing that Jen Pusitari told you.
A I did not.
Q What Jay Wiles and what Jennifer Pusitari said to you about what he said was the first thing that put you closest to answering the questions about what happened to Heyman Lee, was it not?
A It was.
Q It was pretty important to you to speak to this guy, wasn't it?
A Absolutely.
Q And you didn't know what he had to say because he didn't have a script, right?
A I had spent the whole day before with Jennifer Pusitari, and her account of what he had told her. I had a fair account of what he was going to say.
Q According to her.
A According to her.
Q But you hadn't received any other information about what she said he said to her at any earlier time, right?
A Correct.
Q Now, Detective McGilveary, to make sure I understand. You just said that you had spent the whole day

Page 124

with Jennifer Pusitari?
A The majority of the day.
Q Well, what you said was the whole day, was it not?
A The majority of the day.
Q But what you said, sir, my question is, what you just said was the whole day, was it not?
MR. URIK: Objection.
THE WITNESS: Yes, that's --
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Now, Detective McGilveary, your tape recorded interview with Jennifer Pusitari, you told us started at 3:45 in the afternoon. Isn't that correct?
A That's when the tape recorder went on.
Q And it ended at 5:10, correct?
A Correct.
Q Thank you. Now, when you talked to Jay Wiles, it would have been pretty important, wouldn't it?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q You regarded it as important, did you not?
MR. URIK: Objection.
THE COURT: Sustained.

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Page 125

Q And you did take notes of what he said to you.
MR. URIK: Objection.
THE COURT: Sustained.
Q And, Detective McGilveary, did he ask for a lawyer?
A No, he did not.
Q Not during that time?
A He did not.
Q If he had, you would have stopped questioning him, would you not?
A That is correct.
Q Now, the very first thing that Jay said didn't match up with what Jennifer Pusitari had said, did it?
A Not the first couple of minutes, no.
Q Not at all?
A No.
Q And you then confronted him with what Jennifer Pusitari said?
A No, I did not.
Q And at no point did you confront him with what she said?
A No, I did not.
Q And then at any time during this whatever period of time you spoke to him, the hour between when he got down there and when you turned on the tape recorder at 1:30 in

Page 126

the morning, did you threaten to charge him?
A No.
Q And did you charge him?
A No.
Q With any crime related to the disappearance of and murder of Heyman Lee?
A I did not, no.
Q And did anybody else that you didn't know about?
A Excuse me?
Q Did anybody else charge him that you didn't know about?
THE COURT: At what time? On that day or --
Q I'm only asking about the hour between when he got him down there and 1:30 in the morning when the tape recorder went on.
A No.
Q No. Nobody could charge him without your say-so, right?
A Correct.
Q And you didn't threaten him at all with any type of charge related to that?
A No.
Q Even in assisting burying a dead body.
A Not that I can recall.
Q And mutilation of a dead body?

Page 127

A No.
Q Or any crime related to murder in any degree, right?
A Not that I can recall.
Q Now, were you both -- Detective Ritz was with you the whole time you --
A Yes, he was.
Q Okay. Both before the tape recorder went on and after, right?
A Yes.
Q Okay. And after you turned the tape recorder on, did you ever threaten him with being charged?
A Not that I can recall.
Q Did you tell him -- well, you would recall that, wouldn't you?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Did you ever tell him he was going to be charged?
A No.
Q And did you or anybody else ever charge him?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q After you turned on the, just during that period

Page 12

of time after you turned on the tape recorder, after then did you ever charge him?
MR. URIK: Objection.
THE COURT: Overruled.
THE WITNESS: No.
BY MS. GUTIERREZ:
Q And during that conversation, did he ever ask for a lawyer?
A No.
Q And if he had asked for a lawyer, you would have stopped questioning him, would you not?
A Absolutely.
Q And because that's what the law says, right?
A That is correct.
Q If somebody you're questioning, and he decides to ask for a lawyer, then you have got to stop questioning him.
MR. URIK: Objection.
MS. GUTIERREZ: Right?
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Detective McGilveary, if he had asked for a lawyer, would you have gotten him a lawyer?
MR. URIK: Objection.
THE COURT: Sustained.

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Page 129

BY MS. GUTIERREZ:
Q Do you have a procedure for getting a lawyer for someone whom you're questioning if they ask for one?
MR. URIK: Objection.
THE COURT: Just answer the question yes or no. Is there a procedure?
THE WITNESS: No.
BY MS. GUTIERREZ:
Q Have you ever had to provide a lawyer for a person who has asked for one?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Have you had other occasions when you have personally turned the tape recorder on when they asked for a lawyer?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Did you that night do anything to provide a lawyer for him?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Do your notes reflect whether or not Jay Wiles

Page 130

asked for a lawyer?
A No, they do not.
Q Do you recall whether in the statement of Jay Wiles on the 28th of March, 28th of February that there comes a point in there where the tape recorder is turned off?
A Yes.
Q At Mr. Wiles' request?
A No, I believe that the tape was going to run out, so we had to flip the tape.
Q That the tape in the tape recorder was going to run out?
A Yeah. It's 60 minutes on one side, and 60 minutes on the other side. So, when you're taping a statement, and you know you're going to run over, you stop the tape so you can flip it over, and then you start to tape again so you can continue recording the statement.
Q Okay. So, you're saying the only interruption on the tape would have been occasioned by him to go from one side to the other side?
A I believe that's the case.
Q If I may have a minute, Your Honor.
(Brief pause).
THE COURT: M's Gutierrez, while you're doing that, I notice the temperature in the courtroom has

Page 131

dropped. I've been advised that it is 71.8 degrees in here. And I've been advised that they're doing what they can to get a little more warmth sent to this courtroom. And so I would just like to advise everyone of that fact in the event that anyone is a bit chilly.
(Pause).
BY MS. GUTIERREZ:
Q Detective McGilveary, I can't find them, but I want to make sure it's your recollection that the only time the tape was off was when it was flipped from one side to the other?
A That's correct.
Q Just for the purpose of changing the tape?
A For flipping the tape.
Q Right. And that there was no occasion during your interview in which Mr. Wiles asked for the tape to be turned off?
A Not that I can recall.
Q And certainly not an occasion where he asked for the tape to be off in order for him to ask your help in getting a break?
A No.
Q And if such a thing had happened, you certainly would have been assured that it was on the tape, would you have not?

Page 132

A If he would have asked, it would have been on the tape.
Q And if he had asked for help with getting a lawyer, you would have stopped questioning him, would you have not?
A Yes.
Q Immediately?
A Yes.
Q Now, in regard to Jay Wiles, you refer on your tape to the fact that prior to the tape going on, that you, in fact, had conversations with him, did you not?
A Excuse me?
Q After you turned the tape on, you mentioned to Jay Wiles, you refer to the fact that you had prior conversations with him, meaning before the tape was turned on.
A Yes.
Q Did you not? And you spoke with him, that the first interview that there were a lot of inconsistencies, were there not?
A Now, let me clarify something. Are you talking about after we have flipped to side B or are you saying while we're still on side A?
Q Well, actually, while you're still on side A, but that's not really the relevant portion of my question.

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Page 133

Whenever it may have occurred, but there came a time on the tape when you actually mentioned earlier conversations that had occurred before the tape had got turned on.
A Yes.
Q Is that right?
A Yes.
Q One of the reasons you mentioned those earlier conversations was because he was now telling you something different than what he had previously said.
MR. URIK: Objection.
THE COURT: Overruled. Can you answer that?
THE WITNESS: Yes.
BY MS. GUTIERREZ:
Q Okay. And, in fact, I'm not sure, but I think it's Detective Ritz who refers to it as a lot of inconsistencies, does he not?
A Yes.
Q And that the inconsistencies referred to, that the substance of the information was different that he was telling you now. Correct?
A Yes.
Q And that in the substance of what he first told you and in light of all other information you knew up until that point, that what he said didn't add up. Is that right?

Page 134

A Correct. He started telling me --
Q I didn't ask you that, Detective McGilveary. I asked you, in the --
THE COURT: M's Gutierrez, just indicate to the court that the witness is not responding to any question, and we will have him wait for the next question, won't we, Detective McGilveary?
THE WITNESS: Yes, ma'am.
MS. GUTIERREZ: Thank you, Your Honor.
THE COURT: All right. Next question.
BY MS. GUTIERREZ:
Q Detective McGilveary, he had told a number of different stories, had he not?
A Yes.
Q And in some of his stories he told, you knew then that the 13th was his girlfriend's birthday, right?
A Yes.
Q And you knew that the 12th was his birthday, right?
A Yes.
Q In all of his stories there was information about going to the mall, correct?
A Yes.
Q The first time he told you about going to the mall, he said he walked to the mall.

Page 135

MR. URIK: Objection.
MS. GUTIERREZ: Did he not?
THE COURT: Overruled.
THE WITNESS: Yes.
BY MS. GUTIERREZ:
Q And another time he told you about the mall, the said he walked to the mall or he might have walked with Mark Pusitari.
A Correct.
Q Did he not? And the first time he spoke about the mall, he said he walked to Westview Mall, did he not?
A Yes.
Q And then he later he said he said he walked to Security Mall, did he not?
A Actually, the note said that he went to the Westview Mall. It doesn't say about walking or riding.
Q Well, it says walking, does it not?
MR. URIK: Objection.
THE COURT: May I see counsel at the bench?
MS. GUTIERREZ: Sure.
(Counsel and defendant approached the bench and the following ensued:)
THE COURT: If counsel is going to proffer that the inconsistencies that you are bringing up are basically inconsistencies as to essential or important facts of, or

Page 1.

essential and important facts in this case, the objection will be overruled. If the purpose of whether he walked or he rode is significant because he rode with Jennifer Pusitari, I don't know which -- I don't have the transcript in front of me to know.
MS. GUTIERREZ: Judge, the only significance for me --
THE COURT: And so I am going to overrule the objection --
MS. GUTIERREZ: -- I'm certainly --
THE COURT: -- if they are significant to the case, like whether he was with Jen Pusitari or not. But if there are minor facts as to whether he walked or rode at a time when nothing happened of any consequence, then I'm going to sustain the objection.
MS. GUTIERREZ: Well, Judge, I guess our argument is that I think there are significant although they may not appear to be because, number one, what I'm asking him about now are the notes of the conversation about which we received no disclosure until after this trial began and are based on the notes. And the history whether he walked or rode to the mall is significant regarding the issue of whether or not he had Adnan's car at all during that day.
THE COURT: The period of time that you're talking about --

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MS. GUTIERREZ: Is the day.

THE COURT: -- is the day, the 13th?

MS. GUTIERREZ: That's right. And the only place where we get the walk is from the notes that you ordered disclosed, and that's why.

THE COURT: I just needed a proffer as to whether this date --

MS. GUTIERREZ: Yes, I'll make it clear.

THE COURT: -- was the 13th.

MS. GUTIERREZ: Yes.

THE COURT: Versus some other date.

MS. GUTIERREZ: No, it's only on the 13th.

THE COURT: And if that's the case, the objection is overruled.

MS. GUITERREZ: Okay.

MR. URIK: I will make a continuing objection on the fact that this is continuing introduction of hearsay that has already been fully presented to the jury. There's no hearsay exception to bring it in through this particular witness.

THE COURT: You're right. They're no hearsay exceptions. This isn't in the hearsay exception as opposed to she is attempting to deal with -- well, perhaps I'll let counsel tell us under what theory you're offering the testimony of --

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MS. GUTIERREZ: Well, again, our defense of attacking a fundamental credibility that on other occasions and particularly on the first occasion, he never indicated he had Adnan Syed's car; that he went to a different location than he ultimately said. It's critical to attacking his credibility, and the credibility of the State's entire theory. I believe that hearsay under these circumstances, as I previously argued, cannot be used to defeat our ability to get into the theory of the defense. And particularly I know that the information about walking in, it being Westview as opposed to, walking to the mall as opposed to driving to the mall is significant. It's attacking the credibility of if, in fact, he had Adnan's car on that day, which we believe is a critical piece of the defense. And at the very first option he never mentioned Adnan's car, using Adnan's car, having it on that day, and described his entire day from prior to any time that he hooked up with Adnan as occurring without a car completely.

THE COURT: So, with regard to impeachment and the inquiry into the credibility of the witness under 5-616?

MS. GUTIERREZ: Yes, and particularly because although Jay Wiles has testified to some of it, the only information we got that might have allowed us to attack the

credibility of Jay Wiles as to those issues. The car which Molly (ph.) went to, if you recall, he testified that he had the car from earlier in the day, and that he went to Security Mall with Adnan, in Adnan's car. The only notice that we had that there is impeachment of that, that was recorded in the notes of the detective who first interviewed him, came to us during the time Jay Wiles was on the stand in this trial and never, ever before.

THE COURT: I understand, but he still wasn't -- someone certainly could have asked of him, but this witness was present when the statement was made as well, correct?

MS. GUTIERREZ: That's correct.

THE COURT: Because the declarant made statements to him.

MS. GUTIERREZ: He took it, yes.

THE COURT: And he made the notes. It wasn't Mr. Wiles' notes --

MS. GUTIERREZ: Yes. And they were made contemporaneous. I thought we went through that to establish those notes were made contemporaneous with the time he was interviewing Mr. Wiles.

THE COURT: I understood that that was the purpose of how you were and under what circumstances you were seeking to get the statement in. I'll hear from counsel.

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MR. URIK: Your Honor, defense counsel had those notes at the time that she questioned Jay Wiles about this. She questioned him from the notes on this exact same thing.

This goes beyond cumulative. She repeatedly questioned Jay Wiles about that information. She is now bringing in the exact same information before the jury. This is not new information. This was already previously provided through Jay Wiles. It is just repetitive.

THE COURT: So, you're saying that she is only reiterating that, that he has already admitted that he said different things to the police officers at different times.

MR. URIK: And these exact same things. And he said, yes, I said that.

THE COURT: Very well. I'll allow you to inquire a few more in this area, but I'm not going to allow --

MS. GUTIERREZ: I was just about finished.

THE COURT: -- you to go into any further detail, but I would note that it is not hearsay, which was the basis initially of counsel's objection. Now, your objection is that it's cumulative, which is a different objection, and to that I would admonish you that we should move on. Very well.

MS. GUTIERREZ: Thank you.

(Counsel and defendant returned to trial tables).

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Page 141

BY MS. GUTIERREZ:
Q Okay. Detective, after you spoke to Jay Wiles, -
- well, that tape recorder was on for close to two hours?
A An hour.
Q An hour. Okay. And after that, the tape recorder was shut off, right?
A It was.
Q And after the tape recorder was shut off, you didn't take any more statements from him.
A Correct.
Q You didn't have any more conversations with him.
A No, that's not correct.
Q Well, you had more conversations?
A Yes.
Q Any of which made it onto the tape recorder?
A No.
Q After there came a time that he took you someplace, right?
A Yes, he did.
Q And by taking you someplace, he didn't drive, did he?
A No, he did not.
Q You drove, right?
A Yes.
Q But he directed you where to go, right?

Page 142

A He did.
Q And the first place he took you was a place off of Edmondson Avenue by Hilton Parkway?
A Yes. Edgewood.
Q And then he took you to the exact location of the car which turned out to be a car, in your investigation, the car that Heyman Lee drove.
A That's correct.
Q And the car that she was seen in when she was last seen on the 13th of January.
A Correct.
Q And he took you right there, didn't he?
A Yes, he did.
Q He didn't have any difficulty finding it, did he?
A Not that I'm aware of.
Q And he didn't have any difficulty -- there were other cars back there off of Edgewood Road, were there not?
A Yes, there were.
Q And there wasn't any real paved parking lot. There was an open area on which there was parked a bunch of cars, were there not?
A Yes.
Q And those cars were different makes and models from her car, were they not?
A They were.

Page 143

Q And different colors. Is that right?
A Yes.
Q He didn't have any difficulty pointing out the color, did he?
A No.
Q Didn't have to go look up license tags to locate which car it was that you were looking for.
A No.
Q He had previously indicated to you that between the time of January 13th and that day, at that point it was just about daylight?
A No. It was still dark.
Q It was still dark. He had indicated to you that he had gone to check on the car, did he not, in between that period of time?
A No.
Q Do you recall that you asked him that --
A Yes.
Q -- and he answered to you that he had?
A No.
Q You don't recall that?
A No. He said that he had not gone and, gone back to the car.
Q That's your recollection?
A It is.

Page 144

Q Give me a minute.
(Pause).
Q You had asked him to drive you to that location, I mean, to take you to that location?
A I drove the car, and he directed us to that location.
Q You had asked him to do so, had you not?
A I had.
Q Okay. Based on what he told you, he knew where the car was?
A Yes.
Q And he directed you right there?
A Yes.
Q I mean, he didn't take you to some other place.
A No.
Q And you didn't have to ride around looking for something, did you?
A No.
Q And when you got there, that matched up the information that you already knew, about Heyman's Lee car, did you not, did it not?
A It did.
Q Now, after you left there, he also took you to another location, did he not?
A He did.

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Page 145

Q And that location was also off Edmondson Avenue, was it not?
A It was.
Q But it was below, closer in Baltimore City than where the car was, was it not?
A It was --
Q On the other side of Hilton Parkway, was it not?
A Yes.
Q It was closer to the intersection of Hopperburg (ph.) than Edmondson Avenue, was it not?
MR. URIK: Objection
THE COURT: If you know.
THE WITNESS: Franklintown and Edmondson.
BY MS. GUTIERREZ:
Q Franklintown and, Franklintown and, where Franklintown ends at Edmondson was near the intersection of Hopperburg and Edmondson, is it not?
A It is.
Q That's a pretty big intersection, is it not?
A Which one?
Q Hopperburg and Edmondson.
A Yes.
Q It's a well known drug-selling corner, is it not?
A It is.
Q That's popularly referred to by the name Strip

Page 146

(ph.). Have you ever heard that term before?
A For that location?
Q That location.
A Where drugs are sold in a certain area --
Q That's strip?
A -- people call that, at locations all over the city, call it the strip.
Q As a, right, a strip is a location where drugs --
A To buy drugs.
Q -- are commonly sold.
A Correct.
Q Okay. And the location where he took you, Franklintown Road, Franklintown Road is the same road off of which her body was found in Leakin Park, is it not?
A However, that section is extended on the other side.
Q Right. And that would go deeper or closer into Baltimore City as opposed to further out.
A Which one are you referring to?
Q Franklintown Road and where you talk about Franklintown Road and Edmondson Avenue.
A That's within the city.
Q All right. Therefore, it's deeper inside the city. It's closer to downtown than the part of Franklintown Road off of which the body was found.

Page 147

Correct?
A It is.
Q And if you would go out on Franklintown Road, past where the body was found, the road would change its name to Dogwood, would it not?
A It does.
Q And that's where it becomes Baltimore County, does it not?
A It does.
Q Where Franklintown meets Edmondson is at the very end of the park, is it not?
A It's actually on the other side.
Q Okay. It comes to the end of the park, and then the street goes up, does it not?
A It does.
Q Up a hill? Is that right?
A Correct.
Q And that's right at the contours of the neighborhood that's called Rosemont. Is it not?
A I don't know the name of the neighborhood
Q And that location was, you were directed to the location again by Mr. Wiles.
A Yes.
Q And you didn't ride around in circles to find it.
A No.

Page 148

Q He didn't have a difficult time taking you there.
A No.
Q And that was, according to him, that night the location at which he had met Mr. Syed on the day of January 13th, and he was shown the body in the trunk of the car.
A Correct.
Q Isn't that right? And that was the location designated by Mr. Wiles in the early morning hours of February 28th at that location. Is that right?
A That's correct.
Q And you had asked him to take you there. Correct?
A Yes.
Q At the intersection that you were shown at that part of Edmondson Avenue, Edmondson Avenue and Franklintown Road, dead ends into Edmondson, does it not?
A It does.
Q One would have to either go left or right.
A I don't --
Q On Edmondson.
A I don't recall.
Q But you don't go through at that juncture, do --
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:

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Page 149

Q Franklintown Road at that intersection is not a through street that then continues on the other side, is it?
A Correct.
Q Okay. And that's what I meant by dead ended.
A Yes.
Q And that's what you understood.
A Correct.
Q Did you not?
And at that intersection, Edmondson is a six-lane road, is it not?
A I'm not sure.
Q It's a big road, isn't it?
A It's a big road.
Q It's a heavily travelled road, isn't it?
MR. URIK: Objection.
A It is.
Q Morning, noon and night?
THE COURT: Overruled.
A I wouldn't say late at night.
Q When Mr. Wiles took you there, on the 28th when Mr. Wiles indicated that was the location, you made sure he was sure about what he was showing you.
A Yes.
Q Did you not? And he expressed no uncertainty

Page 150

whatsoever about that, did he?
A No.
Q You made sure of that by questioning him very carefully, did you not?
A I did.
Q And what he had told you about that location was that sometime after he left Jen Pusitari's house at 3:45, and before 9:00 o'clock at night, that that's where this trunk top viewing had taken place, correct?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q On February 28th, before you asked him to take you to that location, he described when and under what circumstances he had been there previously on January 13th, had he not?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q You had asked him to direct you to that specific location, after asking him to direct you to the location that was previously discussed when you located Heyman Lee's car, did you not? Do you recall that?
A I don't have a clue what you just asked me.
Q You asked him, you specifically asked him to go

Page 151

to that location that he showed you. You specifically asked him to take you to that location at Franklintown and Edmondson, correct?
A I don't recall asking him to take me directly to Edmondson and Franklintown.
Q Not the address, but to a specific location.
A Of where?
Q That he had described.
A Yes.
Q And what had he described about that location?
MR. URIK: Objection.
THE COURT: I think counsel is trying very hard not to get into what the witness said, but I'm going to allow the question. As it leads to a question that would be appropriate?
MS. GUTIERREZ: Yes, Judge.
THE COURT: All right. It's overruled.
THE WITNESS: Ask me the question again, please.
BY MS. GUTIERREZ:
Q What did he describe that had happened --
A He just said Franklintown is when Adnan had popped the trunk and shown Jay Wiles that Hey had been strangled and put in the car by Adnan.
Q And that was according to Jay, right?
A Yeah, Jay told me this.

Page 152

Q And based on what he told you, that's why you understood that he took you there.
A Correct.
Q After he showed you where Heyman Lee's car was?
A Yes.
Q You didn't pick out the location?
A No.
Q You didn't suggest it to him.
A No.
Q Okay. Judge, I'll have to get to some of this later, but let me just make sure. You have no recollection of Mr. Wiles asking you to turn off the tape for any reason.
A No.
Q And after the 28th of February, you again talked to Mr. Wiles, did you not?
A I did.
Q On the 15th of March?
A Yes.
Q And again at Headquarters?
A Yes.
Q Okay. And once again at your invitation.
A Correct.
Q He didn't just arrive at Headquarters.
A No.

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Page 153

Q He was there because you wanted him there.
A Correct.
Q And, once again, you took a formal statement from him?
A Correct.
Q And at any time on that day, on the 15th of March, did you again pull out an advice of rights form?
A Yes.
Q And did you have him sign it?
A I did.
Q And you again made sure he read and understood it?
A Correct.
Q And on that occasion, you never threatened him with being charged, did you?
A No.
Q And nobody charged him that day, did they?
A No.
Q You certainly didn't, did you?
A No.
Q And nobody else that you know of, at your direction or otherwise, did so, did they?
A No.
Q With any crime relating to the disappearance of or death of Heyman Lee.

Page 154

A No.
Q And that entire conversation took place while it was being recorded, did it not?
A Yes.
Q And he wasn't under oath at any time during that tape recording, was he?
A No.
Q Okay. And you didn't speak to him at any time between the 28th and the 15th of March, did you?
A Not that I can recall.
Q And you didn't take any formal statement from him.
THE COURT: Do you mean that same period of time, M's Gutierrez?
MS. GUTIERREZ: Yes, between the 28th and the 15th.
THE WITNESS: No.
BY MS. GUTIERREZ:
Q Now, when you spoke to him on the 15th, it was about this same thing that you spoke to him about on the 28th. Isn't that correct? The same things generally, is that right?
A Generally. However, at this point, I had cell site information.
Q And by cell site, again, you are referring to the

Page 155

location of a cell tell (ph.). Is that correct?
A Correct.
Q Which signal was triggered according to records of the cellphone telephone calls. Is that right?
A Correct.
Q And the cell site then only refers to, is you're referring to the address of the tower that would transmit or receive the signal, correct?
A The area within where the phone call was made.
Q Okay. But your understanding is that the cell site designation only refers to the location of the cell tower.
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q And now, was that phone directed to that cellphone?
A Yes.
Q You already had them before you even spoke to Jay Wiles, did you not?
A No.
Q Now, Detective McGilveary, you told us that you got Jen Pusitari's number at her home, subscribed to my her father, at the time that you saw her in the car and you spoke to her while she was inside the car, and you were

Page 156

outside, on Friday evening, the 26th of February, did you not?
A Yes.
Q And you had gotten that information, you told us, from having gotten the cellphone records of Adnan Syed, did you not?
A Correct.
Q And as we've discussed, the cellphone records from --
(Pause while looking for records with clerk).
THE COURT: 34 is the cellphone record.
MS. GUTIERREZ: Right. The mock up.
THE COURT: The mock up. And the exhibit number is? 31?
MS. GUTIERREZ: May I just show it, please?
THE COURT: Yes, you may.
BY MS. GUTIERREZ:
Q Detective McGilveary, I'm going to ask you to look at State's Exhibit 31, specifically the last three pages. Have you seen that information before?
A Yes.
Q And you are aware, and this is just to refresh your recollection, that these, as to what phone number these records relate to.
A Yes.

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Page 157

Q And there's one number there like 2 or 253-9023?
A It is.
Q And that's the number that to your belief is registered to the service or Adnan Syed is registered as the service user, is it not?
A Yes.
Q And these records you obtained based on information drawn out by Mr. Urik on direct, that he received prior to visiting Jen Pusitari's address that might.
A What happened was, when we send a subpoena out for subscriber information, this subscriber information came back. However, we learned at that point that you needed a court order to get the cell site locations. So, we had subscriber information without cell site information. We wanted the cell site information so what we had to do was send another subpoena out with a court order in order to get the cell site locations. Why we had to do that, I don't know, but they just black out the cell site location.
Q Sir, this, these last few pages that you've looked at are the records at least for certain dates of that cell phone that we read out, are they not?
A It is.
Q And it includes the date started on the 11th of

Page 158

January, does it not?
A It does.
Q Actually, I think it actually goes back to the 9th of January, 1999?
A 1/9.
Q And it goes through at least 1/14/1999, does it not?
A It does.
Q Okay. And the information it receives, in fact, to your knowledge, was that these last three digits are exactly what the subscriber would receive in their bill, would they not?
A No.
Q The columns list the call numbers, does it not?
A It does.
Q And including the area code, the identity of numbers that are listed as dialed numbers, does it not?
A It does.
Q And it lists the call time?
A It does.
Q And it lists call duration?
A Yes.
Q And call duration is recorded by hours, minutes and seconds?
A Yes.

Page 159

Q As each call time?
A Yes.
Q And it lists cell sites, does it not?
A Not under those.
Q Now, I just asked you to look. It lists cell sites, does it not?
A They don't provide cell site information on your bill. They don't want you to know --
Q That isn't what I asked you. My question is --
THE COURT: Counsel!
Q -- did you --
THE COURT: Counsel, do not argue with the witness. As I indicated, if you need help because the witness is not being responsive, we will ask the witness, and I will direct the witness to indicate --
MS. GUTIERREZ: Very well, Judge --
THE COURT: -- to look at the exhibit, and if the exhibit indicates cell number, say yes, it does. And if the exhibit does not, say, no, it does not. That is the question. Not what you knew about it, but whether the exhibit that you're looking at, Exhibit Number 31, shows cell sites.
THE WITNESS: This does. Yes, ma'am.
THE COURT: Then your answer is yes.
BY MS. GUTIERREZ:

Page 160

Q Thank you. You answered a question Mr. Urik posed to you this morning that at some point Mr. Wiles remembered things a little better?
A I didn't speak to Mr. Urik this morning.
Q I'm sorry. On your direct examination you answered a particular question with the answer that at some point Mr. Wiles started to remember things a little bit better. Do you recall that?
A No.
Q You spoke to Jay Wiles before the recorder was on. Right?
A Yes.
Q And he told you some things about the events that may have occurred on January 13th. Correct?
A Yes.
Q And then you spoke to him again when you turned the recorder on, correct, that same day, the 28th of February?
A Yes.
Q And when you turned the recorder on, he told you something different, did he not?
A Not all entirely different.
Q But some things different?
A Yes.
Q Concerning more than one thing.

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Page 161

A Yes.
Q Did he not? And subsequent to the 28th, you spoke to him again on the 15th of March, correct?
A Correct.
Q At the time there was a recording, correct?
A Yes.
Q And, once again, he told you something different about more than one thing, did he not?
A He did.
Q And you spoke to him on the 13th of April, did you not?
A Yes.
Q Okay. And at that time the recorder wasn't on, right?
A No, we did not take a taped statement from him.
Q But you spoke to him.
A Yes.
Q And the 13th day of April was the day --
A Excuse me. When you turn that way, I can't hear you.
Q The 13th was the date that the Grand Jury returned an indictment against Adnan Syed.
MR. URIK: Objection.
THE COURT: Sustained.
MR. URIK: Is that right?

Page 162

THE COURT: Sustained.
BY MR. GUTIERREZ:
Q And you, of course, took notes of your interview with Mr. Wiles on that date, did you not?
A No.
Q No notes?
A No notes.
Q No notes by Detective Ritz?
A Not that I'm aware of.
Q Now, and that was your choice, was it not?
A It was.
Q Mr. Wiles hadn't asked for a lawyer on the 13th, had he?
A He had not.
Q He hadn't refused to speak to you, had he?
A He had not.
Q And he hadn't asked for the tape recorder to be not running, had he?
A No.
Q That was your choice?
A The conversation was not taped.
Q Between the 13th of April and September the 6th, did you have any additional conversations with Mr. Wiles?
A Not that I'm aware of.
Q There were no other tape recorded statements?

Page 163

A No.
Q No other notes?
A No.
Q And you didn't ask anybody else to speak to Mr. Wiles whether it was on the record or off, did you?
A Not that I'm aware of.
Q And then on the 13th, had you come to any conclusion about Mr. Wiles that his memory got better the more you spoke to him in regard to his recollection of events that had occurred on January 13th?
MR. URIK: Objection.
THE COURT: Overruled.
THE WITNESS: When we had the cell phone site locations, told him we had cell site locations. The meat of the subject was the same; however, some of the phone calls that were made involved purchases of marijuana, and he originally didn't want to say anything about the marijuana because he thought he would get in trouble and get the people that he was trying to buy the marijuana from in trouble.
BY MS. GUTIERREZ:
Q So, the answer to the question I asked you, Detective McGilveary, is yes?
A Yes.
Q You had formed an opinion that his memory got

Page 164

better because of the information you provided him, right?
A Yes.
Q And his explanation for giving a different answer was he didn't want you to know about his marijuana buying on January 13th.
A The defendant and his marijuana purchase.
Q It was your belief when you spoke to him that he was out to protect the defendant, Adnan Syed?
A That person that he was making the purchase from.
Q The person he was making the purchase from?
A Correct.
Q Not Adnan Syed?
A No.
Q And he hadn't described Adnan as somebody he was out to protect, had he?
A No.
Q Not on the 28th at anytime?
A No.
Q Not on the 15th at any time, the 15th of March, right?
A No.
Q And certainly not on the 14th of April.
A No.
Q And, in fact, he had only described Adnan Syed as an acquaintance, had he not?

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Page 165

A A friend.
Q Well, he used the word acquaintance, did he not?
A He did.
Q Not --
A Several times.
Q -- the word friend. Isn't that true? Is an acquaintance and a friend the same thing to you, in your mind?
A It is.
Q It is. Now, sir, on the 13th, your opinion that he started to remember things better, was that exclusively because he no longer wanted to protect the people from whom he had bought marijuana?
A It was my telling him that I didn't care about whether he or the defendant or anybody else in Baltimore City was smoking marijuana. I didn't care about that. I cared about the investigation of the homicide. Forget about if you drove out there to buy marijuana or if you drove there to smoke it, and who you smoked it with. I didn't care. I was only concerned about the death of Heyman Lee and what happened.
Q And when you gave him that reassurance, did you do so in writing?
A No.
Q Did you ever give anything in writing that

Page 166

assured him that he wouldn't be charged with any crime that might be connected to his buying marijuana?
A No.
Q But prior to him telling you about that which he concealed, you had no other information about Jay Wiles buying marijuana, did you?
A On which occasion?
Q Prior to him telling you about it, at any time he may have done so, you had no other information about his buying of marijuana --
A No.
Q -- did you? You did have information from his friend, Jennifer Pusitari, that perhaps sometimes he smoked it?
A Yes.
Q Perhaps sometimes?
A Yes.
Q In regard to the inconsistencies in Jay Wiles' various statements, did you regard them as lies?
A All of them?
Q Any of them.
A They were lies.
Q In the first, the first time he never mentioned Jen Pusitari, did he?
A No.

Page 167

Q And the first and second time he never mentioned M's Vincent (ph.), did he?
A No.
Q At no time did he, Jay Wiles, mention Jeff Johnson, M's Vincent's boyfriend, in regard to the events of January 15th, did he?
A No.
Q You got that information from others, right?
A Yes.
Q But not from Jay Wiles.
A Not in the beginning.
Q And Jay Wiles lied to you about having Adnan's car, did he not, during the morning of the 13th of January?
A Which statement are you speaking about?
Q Any of them.
A He did have Adnan's car.
Q Well, he first didn't say that, did he?
A No.
Q He first put himself as walking around, did he not?
A No.
Q And, sir, he lied to you about such a silly thing as what mall he went to.
A I can't hear you.
Q He lied to you about such a silly thing as to

Page 168

what mall he went to, did he not?
A No. I have Westview Mall.
Q And in the statement on the 15th of March, he says that he and Adnan went shopping in Security Mall, does he not?
MR. URIK: Objection.
THE COURT: Overruled.
THE WITNESS: Do you recall which page it's on, because this is --
MS. GUTIERREZ: I don't.
THE WITNESS: -- not what --
BY MS. GUTIERREZ:
Q So, you have no recollection that first he mentioned Westview and then he mentioned Security?
A In my notes I have Westview. Later on I learned that it's Security.
Q You learned that from him, right?
A That's correct.
Q And you would agree that Security Mall and Westview Mall are two entirely different places?
A They are.
Q Sir, in regard to Best Buy, he never mentioned the first time that he spoke to him, did he?
A That who spoke to him?
Q Jay Wiles. That's who we're talking about.

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Page 169

A Spoke to who?
Q To Jay Wiles. He did not mention the first time you spoke to him Best Buy, did he?
A No.
Q And he didn't mention it the second time, after you turned on the tape recorder, did he?
A No.
Q He only mentioned it on the 15th of March, right?
A Correct.
Q And when he mentioned it, that was to correct the lie about the place where he had shown you at Edmondson and Franklintown Road, was it not?
A Yes.
Q And the 15th of March was after you were aware that they had arrested and charged Adnan Syed, was it not?
A That's correct.
MS. GUTIERREZ: I have nothing further.
THE COURT: Thank you, M's Gutierrez. Any re-direct?
Before I do that. Ladies and gentlemen of the jury. I know we have been sitting since lunchtime. If you would like a break for about ten minutes to stretch your legs, please signal by raising your hand. All right. I see a few hands. We'll take a break, and allow you to stretch your legs. Use the facilities and then we'll bring

Page 170

you back.
I would advise you that unfortunately we have done the best we can do with the heat or lack thereof. I've closed the blinds in hopes that at least some of the air doesn't just pass through. But we are asking that they try to warm it up just a little bit in here. I can advise you that we will have the deputy sheriff walk you around.
Leave your notepads face down. Do not discuss the testimony of Detective McGilveary or any of the other witnesses you've heard. You have not heard the entire case, nor have you been advised as to the law or heard closing argument in this matter.
Please go with the detective, I mean the sheriff at this time, and I'll see you back in a few moments.
(The jury was excused to the jury room).
THE COURT: You may also take a break, Detective. You are on the witness stand. You cannot discuss your testimony with either the State or the defense. When we return, we will have re-direct.
This court will stand in recess for about ten minutes.
THE CLERK: All rise. We will stand in recess for ten minutes.
(Brief recess).
(Jury not present upon resuming).

Page 171

THE COURT: Please be seated.
MS. GUTIERREZ: Judge, during the break, I did locate one of the portions that I couldn't find in the statement. I would ask for permission to ask that one question that was in regard to this detective, who stated that he didn't remember receiving any information from Jay Wiles about visiting the car after the 13th before the statement. And I did locate that.
THE COURT: Would you give that information right now to Detective McGilveary, so he can starting looking through his -- I think he has a copy of the transcript, if you would just give him the page number.
MS. GUITERREZ: Do you have a copy of the 28th transcript, because I have an extra copy if you don't.
THE COURT: And then if you do, then we can move on. If we can ask that the deputy sheriff bring the jury out for me. Mr. Syed, you can have a seat, please.
MS. GUITERREZ: Did you find your copy? Oh, he has his copy.
THE COURT: Mr. Syed, please sit. Thank you. I appreciate that. Yes, you can. The sheriff was not wanting to leave until you sat down. And, Counsel, while the jury is not yet in, I see it's 4:00 o'clock.
MS. GUITERREZ: Yes, Judge.
THE COURT: Never mind. Kindly stand up, yes.

Page 172

(Jury entered the courtroom).
THE COURT: All right. Detective, you may take the stand once again. I want to remind you that you are still under oath. And at this time re-direct -- I'm sorry. One last question, I think M's Gutierrez has indicated she has one last question to ask. She has located something that she was looking for earlier.
(The witness, DETECTIVE MCGILVEARY, resumed the witness stand).
BY MS. GUTIERREZ:
Q Thank you. Detective McGilveary, you have had an opportunity to review a portion of the recorded statement of February 28th that I pointed out to you?
A Yes.
Q Okay. Now, you recall, I asked you whether or not you got information from Jay regarding whether or not he had gone to check on the car or to see the car of Heyman Lee subsequent to the 13th of January before the date of your statement on the 28th. Do you recall that?
A Yes.
Q Okay. And, in fact, in questioning from Detective Ritz, he did indicate that, in fact, he had done so, did he not?
A Yes.
Q Detective Ritz asked him, asked him and if you

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Page 173

will look at the second entry, Detective Ritz, that he had gone -- starting in the middle of the sentence -- had he gone back to that location to see if, in fact, the car was still there. Detective Ritz asked that question, did he not?

A Yes, he did.

Q And Mr. Wiles answered, I was, during the commute I made an effort, yeah, went out of my way to see if it was still there. Yeah, it was. Did he not?

A Yes, he did.

Q And, in fact, Detective Ritz inquired further, when was the last time that you went out of your way to see if the car was still there, did he not?

A He did.

Q And Mr. Wiles answered, four days ago. So, the 24th, isn't that correct?

A Correct.

Q So, in fact, the information that Mr. Wiles gave you in that first interview that he, on his own, had gone back to check to see whether the car was in the same location at least twice.

A Yes.

MS. GUTIERREZ: Thank you. I have nothing further, Your Honor. Thank you.

THE COURT: Thank you, M's Gutierrez. Any re-

Page 174

direct from the State?

MR. URIK: Somewhat briefly, Your Honor.

RE-DIRECT EXAMINATION

BY MR. URIK:

Q Detective McGilveary, when you arrive on a homicide scene and there are potential witnesses present on the scene, what do you do with those witnesses?

A They are transported down to Homicide.

Q And when do you get around to interviewing them?

A After I leave the crime scene.

Q Now, when you have interviewed, -- say, a crime scene where the crime occurred shortly before you get there, and there are a lot of witnesses on the scene, eye-witnesses present at the time that you find them, has it been your experience that you spend a lot of time trying to -- is it your experience that even witnesses directly on the scene at the time are good about chronology, places, things of that, points of that sort?

MS. GUTIERREZ: Objection.

THE COURT: Sustained.

BY MR. URIK:

Q How long after the disappearance of Heyman Lee did you identify Jen Pusitari, Jay Wiles, Christina Vincent?

A After the discovery?

Page 175

Q Yes. From the time of the discovery till the time that, well, let's say from the time of her disappearance.

A That was the 13th. The first time I identified Pusitari, speaking with her, was the 26th of February.

Q May I refer you --

THE COURT: Excuse me. You mean the 13th of January?

THE WITNESS: The 13th of January.

THE COURT: Versus the 26th of February?

THE WITNESS: Correct.

THE COURT: Very well. Continue

BY MR. URIK:

Q Now, the three pages of notes that you took on the 28th with Jay Wiles, are all three pages notes that were taken before you turned on the tape recorder?

A Not all of them, no.

Q How much of those three pages are notes that --

MS. GUTIERREZ: Objection. May I approach the bench?

THE COURT: Yes. I'll see you at the bench.

(Counsel and defendant approached the bench, and the following ensued:)

MS. GUTIERREZ: I thought they were marked and identified.

Page 176

THE COURT: They are in the file. The originals are in the file. These are the court's copies of the two exhibits.

MS. GUTIERREZ: Now, I don't remember which is which, but both of those notes have been identified to us in response to a previous request, that the initial response is that there are no notes. The earlier conversation, that we had no notice that they existed even though we had already questioned this witness, Jay Wiles, at trial.

THE COURT: M's Gutierrez, I don't believe that was his first --

MS. GUTIERREZ: No, no, no, but -- well --

THE COURT: His question was whether or not the events of that day are just of the period when the tape was off or is some of the notes part of the --

MS. GUTIERREZ: I understand the question, Judge.

THE COURT: Was that not your question?

MR. URIK: That was my question.

THE COURT: All right.

MS. GUITERREZ: That was his question. These notes were produced to us in the middle of this trial, on the day when we expected --

THE COURT: Keep your voice down.

MS. GUTIERREZ: -- following Mr. Urik's

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Page 177

conversation with this detective, we were notified that there were no notes of the unreported conversation that had occurred before the tape had been turned on, on February 28th, about which we had just learned, and we expected to be provided the following morning. On the court's order, an affidavit from both Detective Ritz and Detective McGilveary that there were no notes of that earlier conversation. Prior to that moment we had been provided through the first trial of the transcript of the recorded conversation. And having been so provided, absent something happened, we would not have been entitled to seek the notes of the recorded conversation unless they were -- and although we might have thought there might have been, we wouldn't have been entitled to them if we had sought --

THE COURT: And the next morning, the court received the notes. --

MS. GUITERREZ: -- in lieu of the affidavit -- these were notes that were identified at that juncture as the notes of the unrecorded statement. Not as to the recorded statement, which we already had a transcript of, these are identified as the separate notes of Detective Ritz and Detective McGilveary, as being their notes of the conversation, that were made prior to the tape recorder coming on.

And so, I would object at this juncture to him

Page 178

asking a question that is eliciting information that in its very terms is to designed to show that these notes are not what we were told they were. And if that's true, they have no right to re-direct their witness on information that they have intentionally concealed from us, and attempted to assert are something else.

MR. URIK: When I passed the notes on to the law clerk --

THE COURT: Well, no. I don't want any facts. I want you respond to the issue that she's raised. Are these notes not what they purport or that you had purported them to be?

MR. URIK: When we passed them on, we provided them with the explanation that the officer had been mistaken, because when he went back to check his notes -- he thought the notes were just of the recorded portion. I passed on the notes with his apology, because he actually had started taking notes before the recorder was put on, and then continued. That is why he had thought that he had no notes. So, I passed them on through what I thought was the proper way, with that explanation, although that's what I provided them as.

THE COURT: Where are you going with the questions with regard to what notes he took or before the tape was turned on?

Page 179

MR. URIK: I just want to show that it was a substantial length of time.

THE COURT: The objection is sustained.

MS. GUTIERREZ: Thank you.

(Counsel and defendant returned to trial tables).

THE COURT: Thank you. Your next question, please.

MR. URIK: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

BY MR. URIK:

Q I am going to hand him State's Exhibit 31, and I ask the clerk to hand him the blank copy of State's Exhibit 34, and I'll show you the same page for the 13th that defense counsel showed to you. And this is to clarify something. You have seen State's Exhibit 31 before. You were shown that in direct, I mean on cross examination, correct?

A Yes.

Q At the time you went out and tried to find the address, what information had come back as a result of a subpoena of the defendant's cellphone records?

A Just the subscriber information.

Q This State's Exhibit 34, incorporates that. Can

Page 180

you read across the top --

MS. GUTIERREZ: Objection. Move to strike.

THE COURT: Sustained.

BY MR. URIK:

Q On the State's Exhibit Number 31, will you read -

-

THE COURT: In the witness' left hand, for the record, is State's Exhibit Number 34 for identification purposes. I believe it may be listed as 34-C. Does that say 34-C on it? 34-C.

MR. URIK: Yes.

THE COURT: Which is a blank form of Exhibit 34.

BY MR. URIK:

Q Can you read the columns on that exhibit that were --

A Yes.

Q -- included in the subscriber information that you received prior to speaking to Jennifer Pusitari?

A The phone number, who it's listed to, the call time, the duration. That's it.

Q And after that but prior to the second conversation with Jay Wiles, what specific information did you have to subpoena again from the AT&T Wireless Company?

A We had to send the subpoena along with a court order in order to get the cell site information that

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Page 181

coincides with each of the numbers.
Q And is that column in State's Exhibit 34-C?
A It is.
Q And evaluating the first statement of Jay Wiles and going back for the second time, was that new information important as to why you went back to talk to him?
A It most certainly was.
Q And would it be fair to say that it was important for you to see if this independent evidence could corroborate important parts of his statement?
A Yes.
Q And after you got the second statement, and you began comparing it back to the cell site information that you received based on telephone calls made or received by the defendant's cellphone did, in fact, you see a pattern of corroboration then between the cellphone information and Jay Wiles' statement?
A Yes.
MS. GUTIERREZ: Objection to the form of the question. Move to strike.
THE COURT: Overruled.
BY MR. URIK:
Q You may answer the question.
A Yes.

Page 182

Q Now, you were asked a lot of questions about Jennifer Pusitari's statement. Do you recall the time she said Jay Wiles received the telephone call that caused him to leave her place?
A Do I remember the time?
Q Yes, sir.
A It was in the afternoon.
Q Do you recall the specific time she told you?
A No.
Q If you would, please, look at page six of -- do you have a separate copy of the Jennifer Pusitari statement?
A I do.
Q Please look at the bottom of page six.
THE COURT: I believe that's marked as Defense Exhibit Number 6?
MS. GUTIERREZ: I did mark it, Judge.
THE WITNESS: Okay.
MS. GUTIERREZ: If you can give me a minute to find it.
BY MR. URIK:
Q If you would look up three lines from the bottom, just where it says Jay talked.
THE COURT: One moment, please. Do you have the exhibit?

Page 183

MS. GUTIERREZ: Exhibit 6.
THE COURT: Page six. Is it page six, Counsel?
MR. URIK: Yes.
THE COURT: Very well.
MS. GUTIERREZ: And where are you directing him?
MR. URIK: Three lines up from the bottom of the page where it says Jay talked.
BY MR. URIK:
Q If you would, please, read that and the next sentence, which continues on the next page.
THE COURT: And read that to yourself.
A (Witness reading silently). Okay.
Q Has your memory been refreshed as to what time she told you it might have been that Jay Wiles received the call that caused him to leave?
A Between 2:30 and 4:30.
Q Now, I'd like to refer you back to the report you wrote of the conversation you had with the defendant on February 26th. Do you have your own copy of that?
A I do.
Q I can't remember what --
MS. GUITERREZ: If you will give me a minute to find it, Mr. Urik.
THE COURT: If you would just tell the court what the exhibit is.

Page 184

MR. URIK: I can't remember the defendant's number.
MS. GUTIERREZ: I have it.
THE COURT: Just tell me what it is. Describe the exhibit.
MR. URIK: It is the officer's report of his conversation of the 26th with the defendant, Adnan Syed.
THE COURT: Is this in memo form?
MR. URIK: Yes.
MS. GUTIERREZ: Yes, Judge. I thought I did -- it's marked September 14th.
THE COURT: Mr. White, it would have been an exhibit on a day when you were not the clerk. I don't know what the number is. It is one page. That is it there. For the record, that is Exhibit Number?
THE CLERK: 4, Defendant's Exhibit Number 4.
THE COURT: Defense 4. Do you want to show that to the witness?
MR. URIK: Yes. I have taken back 34-C and 31 at this time. Hold onto 31.
THE WITNESS: Okay.
BY MR. URIK:
Q Have you looked at the exhibit yet? Do you recall what the defendant's answer was when you asked him about the day of January 13th?

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Page 185

A Yes.
Q What was his answer?
A He didn't recall the events.
Q And did you immediately ask him if he had ever been in Hey Lee's car?
A I did.
Q Was that the very next question you asked?
A Yes.
Q What was your exact question that you asked of him?
MS. GUTIERREZ: Objection.
THE COURT: If you know, what was your exact question? Overruled.
THE WITNESS: Had he ever had the occasion to be in the victim's auto.
BY MR. URIK:
Q And how did he answer that question, if you recall?
A Yes.
Q Did he add anything else to that?
A Not that I can recall.
Q If you would take a look at your report and see if your memory is refreshed.
A "However, not on that date."
Q That was something he added to the answer?

Page 186

A Correct.
Q Was he under arrest at the time?
A No, he was not.
Q How close were you standing to him?
A Sitting on the living room couch. He was seated in the chair.
Q Where was he?
A In the living room of his home.
Q Who, if anyone, else was there?
A Detective Ritz, the defendant, Adnan, and his father.
Q Had you threatened him at all?
A No.
Q Now, did there come a time when you learned that the defendant had an opportunity to use this particular cellphone?
A Yes.
Q Do you recall what date he got this cellphone?
A No.
Q Please look at page, the second page of State's Exhibit 31 and see if that refreshes your memory.
A It was activated on 1/11/99.
Q And that is how many days in relation to the disappearance of Hey Lee?
A Two days.

Page 187

Q As a trained homicide investigator what, if any, significance does that fact have to you?
MS. GUTIERREZ: Objection.
THE COURT: Sustained.
BY MR. URIK:
Q As the defense was asking you on cross examination, you have interviewed numerous people here and had numerous tests run, things of that sort, during the course of your investigation, haven't you?
A Yes, I have.
Q Based on the totality of the evidence that you gathered in this investigation, what, if any, conclusions did you come to as regards other possible suspects?
MS. GUTIERREZ: Objection.
THE COURT: I need you to re-ask that last question.
BY MR. URIK:
Q Based on the totality of the evidence that you gathered in this case what, if any, actions did you take as regards other possible suspects?
THE COURT: And you're objecting?
MS. GUTIERREZ: Your Honor --
THE COURT: Sustained. No, that you have an objection to that question, correct?
MS. GUTIERREZ: Yes, Judge.

Page 188

THE COURT: Sustained.
MR. URIK: Thank you, Your Honor. That will be all.
THE COURT: Thank you, Mr. Urik. Any re-cross?
MS. GUTIERREZ: Just a little bit, Judge.
RE-CROSS EXAMINATION
BY MS. GUTIERREZ:
Q Detective McGilveary, you were asked about what you do when --
A Excuse me. When you turn that way, I cannot hear you.
Q Detective McGilveary, you were asked by Mr. Urik about what you do with potential witnesses if you come upon a crime scene and potential witnesses are there. Correct?
A Yes.
Q And when you got to the crime scene in Leakin Park you could tell there was a body that had been dead and buried for some time, did you not?
A We discovered remains that were partially buried. I didn't know how long it was there.
Q Okay. The answer to my question then is, yes?
A Yes.
Q Okay. Now, Detective McGilveary, Alonzo Sellars (ph.) was not just a potential witness. He was the finder of this body that turned to have been missing for almost a

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Page 189

month.
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q On the 15th, when you interviewed Jay Wiles, as you've already testified, he told you different information than he told you on the 28th, did he not?
A Somewhat, yes.
Q And the only reason that you interviewed him did not -- the only reason was not the cell site information, was it?
A There were several variables that affected the second interview.
Q Including the inconsistencies about what he had already told you.
A The additional information that we had gotten.
Q Now, in regard to the statement that you took of Adnan Syed in front of his father --
THE COURT: M's Gutierrez, I didn't understand the question, and so --
Q In regard to the statement that you took of Adnan Syed in front of his father --
A I did not take a statement from Adnan in front of his father.
Q Well, you asked him questions, did you not?

Page 190

A I did.
Q And he gave you answers, did he not?
A Yes.
Q And his father was present the whole time, was he not?
A He was present.
Q You never threatened him?
A No. In fact, I was offered juice.
Q And you never -- and they treated you appropriately, did they not?
A They most certainly did.
Q They asked you to come in the living room and sit down, did they not?
A They did.
Q And you were aware that he was 17 years old, were you not?
A Yes.
Q There was nothing inappropriate about his father being present, was there?
MR. URIK: Objection.
THE COURT: Overruled. There was nothing inappropriate about that, was there?
THE WITNESS: No.
BY MR. GUTIERREZ:
Q Now, sir, the memo that you wrote concerning that

Page 191

interview of the defendant is dated September 14th, 1999, is it not?
A It is.
Q You gave us that date, did you not?
A I did.
Q The interview, the questions that you asked him, they took place on the 26th of February, 1999, did they not?
A They did.
Q Now, Detective McGilveary, if you would refer to the fourth paragraph in that memorandum dated September 14th, 1999, and read that to yourself.
A (Witness reading memo). Okay.
Q Okay. What your memo, given many months later, says is that, however, he, Adnan, doesn't remember the events that occurred in school that day. Isn't that what it says?
A No, it does not.
Q The fourth paragraph.
A I'm looking at the fourth paragraph.
Q Does it not read on January, on 13 January, 1999, he had the occasion to be in the school. Does it not read that?
A It does.
Q And then in parenthesis it's typed out, Woodlawn

Page 192

Senior High?
A It does.
Q Okay. And then it says, however, doesn't remember the events that occurred in school that day.
A Yes.
Q And you wrote out that memo --
A I did.
Q -- did you not, on September 14th, 1999?
A September 14th.
Q Okay. And your name appears at the bottom of the memo, does it not?
A It does.
Q And so what he said about remembering -- and that day is in reference to January 13th, 1999, is it not?
A It is.
Q The same day that appears at the beginning of that paragraph, isn't that correct?
A Yes.
Q So, what Adnan Syed told you upon your questioning, was that he didn't remember the events that occurred in school that day.
A Okay. Yes.
Q Is it not?
A Yes.
Q That's exactly what it says, isn't it?

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Page 193

A Yes.
Q Your memo didn't write down that he said, I don't recall the events that occurred on January 13th, does it?
A No.
Q It says that what he didn't recall is what events occurred in school. Isn't that correct?
A That's correct.
Q Now, your memo only lists in words that you wrote down what it is that he's supposed to have said. Correct?
A Correct.
Q I mean, you didn't treat him as a suspect when you were inside his house, did you?
A No.
Q And you didn't arrest him and you didn't threaten him, right?
A Correct.
Q And after you wrote this memo on September 14th, seven months after he was charged --
A Yes.
Q -- you didn't go back to him and ask him to review it for accuracy as to what he said, did you?
A No.
Q You never did that, did you?
A No.
Q You never went back and asked him, do you adopt

Page 194

that memo that I've written seven months after I charged you with murder, do you adopt it as your own, did you?
MR. URIK: Objection.
THE COURT: Sustained.
BY MR. GUTIERREZ:
Q And your memo written on September 14th doesn't even reflect your questions, does it?
A No.
Q Is that a no?
MR. URIK: Objection.
THE COURT: Overruled.
A No.
Q There was no tape recording of this event, was there?
A No.
Q Not your questions.
A No.
Q Not your answers.
A No.
Q How long after the 13th did you discover Jay Wiles, Jen Pusitari and Christine Vincent. Do you recall that?
A Yes.
Q You first met Jen Pusitari on the 26th because of the information you had that led you to that address

Page 195

because of the phone number listed there. Isn't that correct?
A That is correct.
Q And when you first heard about Jay Wiles on that evening from M's Pusitari it was in connection with her (sic) being the boyfriend of Stephanie McPhearson, correct?
MR. URIK: Objection.
THE COURT: Overruled. You may answer that.
THE WITNESS: Will you restate it? You keep turning around and I can't hear it.
BY MS. GUTIERREZ:
Q In terms of time, sir, you heard about Jay Wiles from Jen Pusitari on the evening of February 26th down at your office, did you not?
A That's correct.
Q Once again a time that you didn't record, correct?
A Yes.
Q And then, sir, on that occasion you told us that you heard about Jay Wiles in connection with his being the boyfriend of Stephanie McPhearson, correct?
A Yes.
Q Now, in any way in connection with the disappearance of Heyman Lee.
A No.

Page 196

Q Nor with her murder, is that not correct?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Detective, you told us that there was another young woman in the car when you first met Jen Pusitari, correct?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Was that woman ever identified to you as Christine Vincent?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q And did Jay Wiles mention Jeff Pusitari in his first statement?
MR. URIK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Was Christina Vincent mentioned in Jay Wiles' first statement
MR. URIK: Objection.
THE COURT: Sustained. This is all beyond the scope of re-direct.

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Page 197

MS. GUTIERREZ: Well, Judge, the re-direct question was when did he discover Jay Wiles, Jen Pusitari, and Christina Vincent. I would respectfully ask the court to reconsider. That was his exact question.

THE COURT: In light of the fact that defense counsel is saying her questions are relative to the State's question specifically as it relates to when that information was discovered, I'll allow the witness to answer the question again. I would note that it is cumulative. The witness has already answered the question both during direct and during cross. But you may answer the question at this time.

THE WITNESS: Could you rephrase the question again, please?

BY MS. GUTIERREZ:

Q On the night that you went to Jen Pusitari's house, there was another young woman in the car, correct?

A Yes.

Q She wasn't identified to you, was she?

A No.

Q And Jay, and she accompanied M's Pusitari down to your office, did she not?

A No.

Q On that night, on Friday the 26th of February --

A Jay did not come downtown.

Page 198

Q No, the young woman who was in the car at Jen Pusitari's house.

A Yes.

Q Okay. And she wasn't identified to you then, was she?

A No.

Q And her name wasn't mentioned then on that night as having anything to do with the events of January 13th by Jen Pusitari?

A No.

Q And when you first spoke to Jay Wiles, whose identity at first had not been given to you in connection with anything to do Heyman Lee, Jay Wiles did not mention Christy Vincent did she?

A Did he?

Q He.

A No.

Q No, not in any way connected with any events on the 13th, isn't that correct?

A Correct.

MS. GUTIERREZ: I have nothing further.

THE COURT: Thank you, M's Gutierrez. The State has nothing further. Is that correct? May this witness be excused?

MR. URIK: Yes.

Page 199

THE COURT: May he be released from --

MS. GUTIERREZ: Oh, I did have one question I forgot to ask.

THE COURT: All right. The last question.

BY MR. GUTIERREZ:

Q You were asked on re-direct about the cellphone, and when it was activated of Adnan Syed.

A Yes.

Q Okay. And you became aware that Adnan Syed's cellphone was in Hailey, Heyman Lee's diary, did you not?

A The cellphone was in the diary?

Q It cellphone number was in her diary.

A I don't recall.

Q And you were aware of the diary, were you not?

A Yes.

Q And having reviewed the records of the cellphone, you were aware of lots of calls that were made on it from the time of the activation of the cellphone, were you not?

A Yes.

Q And that many other students at Woodlawn had this cellphone number, were you not?

A Had the defendant's cellphone number?

Q Yes.

A I don't know if the students had his cellphone number at that time.

Page 200

Q Did you ever ask any of them that?

A After the arrest.

Q After the arrest?

A Yes.

Q Okay. And didn't you find out that others had his cellphone number?

A Yes.

Q Okay. Including many others out of that magnet group at Woodlawn?

A I don't recall how many people did.

Q But among those you spoke to?

A I don't remember specifically who did have the number.

MS. GUTIERREZ: Thank you.

THE COURT: Anything further?

MR. URIK: Thank you.

THE COURT: May this witness be excused from the subpoena and summonses from the State?

MR. URIK: No, Your Honor.

THE COURT: Okay. I must advise you, Detective, you cannot discuss your testimony with anyone else. You are a sequestered witness, and you must remain outside of this courtroom. You can't discuss your testimony with anyone that's been a witness nor with anyone else. Do you understand?

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Page 201

THE WITNESS: Yes, Your Honor.
THE COURT: Thank you very much. You may step down.
(The witness was excused and left the courtroom).
THE COURT: I note that it is 4:40, and the court has a number of matters that it needs to take up with counsel at this juncture. Can you estimate about how long, M's Gutierrez, you expect to be? In other words, should I release our jury, who are --
MS. GUTIERREZ: May we approach the bench?
THE COURT: Certainly.
(Counsel and defendant approached the bench, and the following ensued:)
MS. GUTIERREZ: Judge, M's Murphy and I had discussions on an issue. As you're aware, M's Benaroyal (ph.) is here pursuant to the request that was communicated to her. I really don't anticipate argument on the motion taking very long, and I --
THE COURT: Do you think they will be more than ten minutes?
MS. GUTIERREZ: I don't think so. I just have, you know, the credibility issue as Jay Wiles. I certainly am going to make an argument in regard to other crimes if they keep asking him --

Page 202

THE COURT: Right.
MS. GUTIERREZ: But I really don't expect it to take it long. M's Benaroyal came up, and I think has discussed trying to figure out if she was going to stay, if we thought we could reach her. I do have other witnesses, but since she has been specifically asked to be here, I felt compelled to call her first in that she had travelled --
THE COURT: Yes.
MS. GUTIERREZ: -- from Montgomery County, and when we spoke about it, the best estimate I could give her, and you had indicated you would sit until 5:30 or so today --
THE COURT: Well, I will sit till 5:30, but I still -- if you are going to proffer what her testimony is going to be, I still think it's something that I need to consider even outside the presence of the jury. So that even argument, we'll get through argument and --
MS. GUTIERREZ: Am I to get --
THE COURT: I still need to speak to her myself, and I don't want to do that in front of the jury, and I expect that she's going to --
MS. GUTIERREZ: Well, but then we need her, so okay. That's fine.
THE COURT: She may have to come back.

Page 203

MS. GUTIERREZ: That's fine.
MR. URIK: The State is going to make a motion in limine anyway as it regards her and as well as the custodian of records for the Circuit Court tapes.
THE COURT: Well, it sounds like at least 40 minutes. It sounds like 40 minutes --
MS. GUITERREZ: Okay. Well, then --
THE COURT: -- for the stuff that we're going to be doing.
MS. GUTIERREZ: Okay.
THE COURT: And even in the end, even in the worst case scenario, advising your client on the record.
MS. GUTIERREZ: Right. Okay.
THE COURT: I think we'll send them away at this point. You know, we may sit here for awhile, but sending them away might be the most advisable thing.
MS. GUTIERREZ: Okay.
THE COURT: So, I'll do that.
MS. GUTIERREZ: And I'll advise M's Benaroyal of this, because she may be a issue, that she should stay in the --
THE COURT: Yes. If she is going to leave, she should -- in fact, you know what, why don't I have the deputy do that.
MS. GUTIERREZ: Yes.

Page 204

(Counsel and defendant returned to trial tables).
THE COURT: Ladies and gentlemen, there are a number of matters that I need to take up with the attorneys before we go any further. M's Gutierrez -- formally, Mr. Urik, what would be the State's next witness?
MR. URIK: At this time, Your Honor, the State will rest.
THE COURT: Very well. The State has rested its case, ladies and gentlemen, and there are some matters I do need to take up with counsel. I would also note that we expect those matters to take about 45 minutes or so, which means that even if you sat here for 45 minutes, it would be 5:30, and we would recess anyway. Rather than have you do that -- I know you think you're going to be with me forever, but that's not going to happen. The reality is, you are going to come back on Tuesday. Monday is a holiday for us, but you're going to be returning on Tuesday.
I do have a docket on Tuesday, and I understand that I may be getting some assistance with it, so that I'm going to advise you accordingly. 9:00 to 9:30, please return to Jury Assembly and be paid. Then I'm going to ask that you be seated in the jury room by 10:15. I'm going to ask my clerk to check at about 10:15 to make sure you're all there, and as soon as we finish the docket, we will be

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Page 205

with you.
I know you are all starting to chuckle when I say that, but I must advise you that I do diligently try to move the docket as quickly as I can so that I can get on with this trial. And please be advised that I will do that.
The State has rested its case, and so I need to advise you that at this juncture you still have not heard closing arguments, you still have not been instructed as to the law. The case is not yet over, and because of that fact, it would be inappropriate for you to discuss this case amongst yourselves or with anyone else.
Also, I need to advise you that you need to leave your notepads face down. And if you're in doubt about whether this courthouse would be open on Tuesday for some reason, something happens over the weekend, keep in mind WBAL makes announcements about this courthouse as well as you have my number. You can call the City operator. If the courthouse is closed, I will change my message from please leave a message to the courthouse is closed. And, also, you may leave a message.
So, at this juncture, I wish you all a pleasant and a wonderful weekend. I will see you back here at 10:15. That is, I will be looking for your presence at 10:15 on Tuesday. And you may now go with the sheriff,

Page 206

who will walk you over to the jury room. Okay. Have a good weekend.
(The jury was excused and left the courtroom).
THE COURT: M's Gutierrez has asked for a few moment break, so we will allow her to do that. I'll give you five minutes to collect yourselves before I hear the motions, following which I'd like to hear two things just done on the record. I'd like you to advise -- assuming the motions are denied, I would ask counsel for the State that when we return if there are any counts that you know that you are not going to be sending to the jury, if we could start off by your advising me of those, which I think may save a little time when we start dealing with the motions. If there is something that you don't have any intention of pushing or moving forward, if you will tell us what those are, so that I can hear argument only on those issues that are viable.
And once that's done, I do have a number of matters, scheduling matters, that I'd like to discuss with counsel. So, we have four things, the motions, advising, assuming that they're denied, advising Mr. Syed of his rights, dealing with M's Benaroyal and scheduling in terms of witnesses.
We'll take a five-minute recess.

Page 207

MS. GUTIERREZ: Could I have a copy of the counts --
THE COURT: I'll give you one better. I'll give you a sample of my verdict sheet that I've come up with assuming that the motions are denied. I think I've covered each of the counts that I've been able to identify, and I would only indicate that I have been advised that I shouldn't worry about the counts under 44, the case ending in 044.
The court will stand in recess for five minutes.
THE COURT: All rise. The court will stand in recess for five minutes.
(Brief recess).
THE COURT: Please be seated. We're at the end of the State's case, and at this juncture it would be appropriate for motions to be made.
MS. GUTIERREZ: I would make a motion for judgment of acquittal, and I wish to be briefly heard. As to the indictment ending in 42 that charges murder, I would argue that there's no evidence of the elements of first degree murder, that would include deliberation and premeditation. In any event, in any degree, there's no evidence to suggest anything other than the strangulation, as Dr. Korrell testified, could have taken less than ten seconds. And even if you add in Jay Wiles' testimony,

Page 208

there's no evidence from him, even that he said that he got any statement from Mr. Syed that adds to that.
There's no evidence from anyone else suggesting anything other than what occurred in her car. And it certainly is information -- and so I would make a motion in regard to first degree in 42.
As to 43 -- well, first as to forced or fraudulently carrying the body of M's Heyman Lee and, Judge, here I'm confused because Mr. Wiles had stated --and I frankly don't remember so if he said so at this trial, whether he said it out of the presence of the jury or whether or not it was what he said at the first trial, but the only statement of Jay Wiles that was available was an alleged statement from my client that earlier that he was going to get in Heyman Lee's car by asking for a ride because his car was in the shop.
Even if that was what he testified to, and I frankly don't remember, Judge, that doesn't establish that, in fact, he did so. There's no evidence from the car of her that suggests that the murder took place inside the car -- that establishes that the murder took place inside the car, or how she got in her own car, and the State's case in chief establishes that my client had been known to drive her car, drove her car, was in her car on a regular basis or that he would have to use any force or fraud to get her

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Page 209

to a specific place.

There's no evidence establishing that she was at this place or that she was carried from a specific location to another location. The element of some transportation or asportation of the victim is a critical element of kidnapping, and there has been no evidence even suggested. The only evidence that comes close to her intended whereabouts are from witnesses who either they spoke to her -- I don't remember the witness' name -- the athletic director said, that said that she spoke to her and that she was aware from M's Lee that she had to go pick up her cousin at another location.

There is another witness, M's Warren, who indicates that she on cross acknowledged that she told at the first opportunity that she was asked, that the last information that she received from Heyman Lee was that her intention was to go to the mall. And so all you have is the last stated intention of the victim. No evidence to establish where she was, when she hooked with the person who ultimately strangled her at some location.

And that even if the court is prepared at this time to accept the credibility of Jay Wiles and his evidence, that only establishes where he says Adnan says the murder, the strangulation took place, in her car at that -- and establishes nothing to establish any of the

Page 210

elements of kidnapping by force or fraudulently carrying her within the State.

As to kidnapping by force with intent to conceal for all the same reasons, that there has been no evidence adduced before this jury or fair inference from, in light of the fact that as to their case in chief they didn't establish, they didn't establish they had broken up. They were still friends. There were occasions in very recent time, in relationship to the date when she was last seen, that they had a friendly relationship such that she had, in fact, invited Adnan to take her someplace. Her diary entries document that. That inferences arising fairly from the evidence even in the light most favorable to the State in regard to that, there's no evidence to suggest the ordinary inference from that, and that is that he backs up to her car, the way she treated him in regard to her car, particularly inviting him up to Owings Mills Mall in response to her accident in her car to give her a ride in fact supports the inference that if Adnan Syed got in her car, it would have been with her consent, defeating any inference that he got into such to ask for her for any purpose, by fraud or with any intent to conceal.

In regard to robbery, which is 45, robbery must, my understanding, must be of a person, and frankly -- we researched it in regard to this question, that I believe

Page 211

the case law purports that the definition of a person under robbery means a live person. The only evidence of taking anything that -- there has been no evidence to establish anything was taken from her, anything that she had on her person or within the control of her person. And at the time that she was last seen, and the only evidence to establish, and that is again the testimony of Jay Wiles, and his testimony relies exclusively to what he said he saw, but none of the statements that he said Adnan made prior to the death of Heyman Lee relates to him robbing her while she was alive or afterwards. And he describes items in one statement. He says he thinks that there was a wallet. All of that occurred after her death, not before.

As to assault in the first and second degree, there's no evidence of anything else other the allegation of murder that resulted in any injury, no evidence even from Jay Wiles, who is the only person that is offered as to what Adnan may have said that indicates any other injury. And, surely, if you're guilty of the strangulation, then you're guilty of murder and assault, both assault in the first degree and in the second degree, I believe would merge and that it would not be fair to tag them onto the jury. They're no separate assault alleged, no separate injury, no impermissible conduct that could be construed as an assault. There is no threat. In light of

Page 212

that, it's neither the first or the second degree other than the allegation of the strangulation, which is contained within the count of, we believe, most respectfully, of second degree murder, but in any event, under the murder indictment.

As to the fourth count of 45, which is essentially felony theft, there has been no testimony as to any value whatsoever to anything that may have been missing. First of all, there's no testimony as to anything missing. There's no testimony establishing that her wallet was missing but when -- there was something about that it was her wallet. Jay Wiles put himself in a position that he barely knew Heyman Lee, and there was no personal interaction, no basis has been established for him to identify that was her wallet, and no -- as a basis for certainty that it's her wallet.

And in any event, there was no testimony regarding any value, whether it was over or under $300.00, under Count Four.

As to false imprisonment by forcible assault or by theft, which is Count One and Two, as before, Judge, for the same reasons that I argued as to kidnapping. You know force imprisonment or prior to the element of a retention of a person, which is the imprisonment part of that charge, and there is no evidence on which this court could infer,

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Page 213

even if takes all the evidence in the light most favorable to the State, that it's anything more than supposition. There is no evidence establishing again where she was or how she got there. The court can't even infer that she got herself in her car to that location, and what led her to get there if, in fact, she got there by herself, much less to give them credit for proving an exception. They have adduced no evidence whatsoever in regard to the crimes under 46 as to either forcible assault or by retention.

THE COURT: All right. Very well. Does the State wish to be heard? I note by the way, Counsel, you did not address 044.

MS. GUITERREZ: I understood that they're not pursuing the robbery.

THE COURT: That was what I understood from my law clerk, but counsel hadn't told me that, so before you - -

MS. GUTIERREZ: Oh! They did tell me.

THE COURT: They did tell you. Okay. So, I guess you're the one that knows, because I -- so, for the record, you're not pursuing 044? You're not asking that that be sent to the jury?

MR. URIK: Since you started with the defense, I probably should have jumped up and said which counts we would submit on. We would submit on that entire

Page 214

indictment. And there are a couple of others that I think --

THE COURT: When you say you submit, you're saying that you are asking that those counts to the jury or are you submitting that there isn't sufficient evidence, and that you're not requesting that they go to the jury.

MR. URIK: The latter. We would acknowledge there's insufficient evidence under 044 of an attempted robbery.

THE COURT: Okay. So, the attempted robbery.

MR. URIK: Yes.

THE COURT: And the counts under Indictment 044.

MR. URIK: Yes. There are three counts altogether, attempted robbery, assault in the first degree and assault in the second degree.

THE COURT: Under that 044?

MR. URIK: Yes.

THE COURT: Very well. All right. Well, then let's do the easy things first. Since you're submitting as to that, I'll grant the motion as to 044, and as a matter of law, grant your motion as to all counts of case ending in 044, attempted robbery, et cetera.

All right. So, then I'll hear you on the counts ending in 042, specifically murder in the first degree, 043, 045.

Page 215

MR. URIK: As to 042 for the premeditation, the standard instruction is that there must be sufficient time to have deliberated, and this does not have to be any set time. The very act here is a premeditated act. Dr. Korrell testified that it takes about ten seconds for unconsciousness to occur, and then death occurs shortly thereafter, say fifteen seconds. That is clearly enough time for a jury to infer that deliberation took place, sufficient for premeditation.

But in addition to that, you've got the evidence of Jay Wiles that the defendant told him in advance, I'm going to kill him, kill her. Pardon me. You've got the scheme or plan to do that. You've got Jay Wiles being given the car. Jay Wiles being given the cellphone. Why? Because the defendant needs to set a trap, and that this trap was set we know because sometime that morning, in the first period, he told, the defendant told his friend, Christa Meyers, who left school by about 10:30 because she only had one class, that he needed to get a ride home from Hey because his car was in the shop.

Iesha (ph.) Pittman testified to these same statements of the defendant. These are evidence of premeditation, the fact that it was a trap. It was a plan. It shows premeditation, and it shows deliberation. And so there is evidence for a first degree murder, to send it to

Page 216

the jury.

Defense counsel did not argue as to second degree murder, as I won't address that.

They have not requested an instruction on manslaughter. I don't know if the facts raised that or not, but since they haven't asked for it, I'm not going to argue that.

THE COURT: So, when you say you're not going to argue, you're just submitting on the evidence at trial then?

MR. URIK: Yes.

THE COURT: All right. Very well.

MR. URIK: And, in fact, the second degree is supported, and we would submit that the evidence shows that.

THE COURT: All right.

MR. URIK: As to 043, kidnapping, we would submit that only one count of kidnapping should go to the jury, Count One, and we think it should be labeled as the Pattern Jury Instructions says, kidnapping by deception. You do not have to have a forcible taking of the person to have kidnapping or false imprisonment for that matter. Watkins v. State, which is --

THE COURT: Let's slow down. You're saying that you're only asking that kidnapping by deception?

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Page 217

MR. URIK: Yes. Count One.
THE COURT: Count One.
MR. URIK: Kidnapping by deception.
THE COURT: By deception.
MR. URIK: Right.
THE COURT: All right. And you would like it entitled as such.
MR. URIK: Or kidnapping by fraudulent carrying, I guess.
THE COURT: Kidnapping by fraudulent carrying, Count One, all right. And you're submitting as to Count Two?
MR. URIK: Yes.
THE COURT: You're saying that you don't think there's enough evidence for Count Two?
MR. URIK: Right. We don't think --
THE COURT: And you're not asking that it go to the jury?
MR. URIK: Not asking. We don't believe that there's evidence that he intended to conceal her as a person.
THE COURT: All right.
MR. URIK: And similarly in 046, says false imprisonment and kidnapping. The same argument. I would say that the second count, false imprisonment by deception,

Page 218

should go to the jury. False imprisonment by forcible assault should not.
THE COURT: All right. And you're going to argue with regard to, in your argument I want to hear from you with regard to the evidence of each of those items that you are -- unless you are submitting on the evidence.
MR. URIK: I would refer the court to Watkins v. State, which is at 59 Md. App. 705 (1984). That case stands for the proposition that the use of force or threat of force in kidnapping can be substituted for by fraud, by deception, that you don't -- that to induce someone to do something by fraud, by deception overcomes their will sufficient to show false imprisonment, sufficient to show kidnapping. That is deception, this fraud, is an alternative basis for finding and overcoming of will, that it does not in every case require force or threat of force, that deception can be sufficient by itself because it overcomes the will, which is the basis of the false imprisonment, the basis of the kidnapping.
Here you've got evidence of fraud that the defendant asked Hey Lee to give him a ride because his car was in the shop. He induced consent by fraud. That consent was not willingly given, because it was not given for the purpose that the defendant was seeking it, namely to have the opportunity to murder her. He induced that

Page 219

consent. He kidnapped her by fraud. He deceived her. That overcoming of her will by the use of deception is sufficient for false imprisonment, and is also for the false imprisonment element of kidnapping.
And the Pattern Jury Instructions do include deception as the alternative to force or threat of force in the instruction itself.
As to robbery, you can have a taking of property after deadly force. You can kill someone, and taking their property is sufficient for a robbery. Here you've got the defendant taking dominion and actually having control of, we would argue, the vehicle prior to the murder. In any case, he clearly has control of it afterwards. Taking someone's property after they're killed is robbery. That is the taking of the property can come after the application of the deadly force.
Here you've got the car. You've got all of the personal property contents of it, the purse, the bag, the books and all of that stuff, and that should be included as the property that's been robbed in this case. The indictment lists the car. That would also include all the contents, the personal property of the victim.
Assault in the first, and assault in the second and felony theft are lesser included of a robbery, and traditionally are included when you indicted him, and

Page 220

traditionally go to the jury as lesser included counts. I believe with the fact that the car is a 1998 Nissan, and all of the personal property, there is sufficient evidence circumstantially for the jury to make an inference of property valued over 300. If the court disagrees, it can be just simple theft, in which case no value needs to be shown, and that would be the misdemeanor --
THE COURT: Counsel, the registration of this vehicle was in the victim's name, Heyman Lee?
MR. URIK: Yes.
MS. GUTIERREZ: No.
MR. URIK: Well, it's in the --
MS. GUTIERREZ: It's not in the victim's name.
MR. URIK: I take that back. I don't know. The registration card, I think, is in evidence. It could be checked, but it does not have to be her ownership. The fact that she was in possession of it is sufficient to show robbery. She does not have to be the titled owner. The fact that it's taken out of her possession --
THE COURT: But you're arguing theft, were you not, and on the theft count, don't you have to show the intent to deprive the owner of the vehicle?
MR. URIK: That's outright use of a vehicle, but for theft, it's just taking out of the possession. Theft always includes taking from a legal possessory interest.

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Page 221

If I have your code book and I'm walking down the hall and somebody grabs it, they are guilty of a theft of me because they have taken out of my possession an article that belongs to you.

THE COURT: So, you don't have to prove that the, or the owner of the item doesn't have to come in and say that they didn't give him permission to take the item?

MR. URIK: Not for theft, just that there was a taking of the property from the person who had the possessory interest.

THE COURT: At the time the vehicle was in the custody of the person whose vehicle -- that the custody of the vehicle was in someone else. Well, that the vehicle was in the custody of someone else other than the owner, and that that owner hadn't given the defendant permission. That doesn't have to be proved by the State.

MR. URIK: Not for a theft or robbery. If he was charged with a traffic offense, the offense of unauthorized use, then that would be an element that we might have to bring in the owner for that particular --

THE COURT: All right.

MR. URIK: -- element of unauthorized use.

THE COURT: All right. Anything else?

MR. URIK: I believe that covers everything.

MS. GUTIERREZ: May I just respond briefly,

Page 222

Judge?

THE COURT: Yes. Just give me one second.

(Brief pause).

MR. URIK: I take back what I said the Pattern Jury Instruction says, taking away from without the authorization of the owner. I think that under the, you have circumstantial evidence here, that there was no authorization. Killing someone could not, could reasonably raise an inference that there was authorization to take the property. And I'll submit on that.

THE COURT: All right.

MS. GUTIERREZ: Judge, I would like to refer quickly --

THE COURT: I'm listening.

MS. GUTIERREZ: In regard to 43, the kidnapping and the assaults of the first two, 46, false imprisonment, all that Watson stands for is that, you know, deception can -- it doesn't do anything to remove the obligation that they prove by evidence that element of deception. Even if Jay Wiles is believed, that's evidence of what he said not what he did. There is no evidence of deception to allow that to go forward. It would invite the jury to speculate. Even at this juncture, even if you give them the added free benefit, that's not deception. It's my belief that any robbery or theft requires intent permanently to deprive

Page 223

either the rightful owner or the lawful possessor and, of course, the lawful possession of it.

Would it have been okay to produce evidence to establish? That would have been pretty simple to do, to say from the lawful owner, you know, that nobody gave Adnan permission. Even if she had said that, well, then it was open did their daughter have lawful permission. But they didn't even prove that. They didn't even attempt to prove that. Mr. Urik believes he doesn't have to. Of course, there has to be somebody with a lawful possessory interest sufficient to defeat the interest of the alleged robber. Or course, it is an element. Does it have to be the actual owner? No. But they didn't even attempt to establish any lawful possessory interest here of her, of Heyman Lee, the person from whom it was alleged to be taken.

The bag that was described or established as evidence in regard to the fourth count, by inference. Has he established by circumstantial evidence? Well, maybe, but not speculating as to what it might be. Value can't be inferred from a picture. It can't be inferred from the year of the car, or whom it was registered to. And, clearly, that defeats, we believe, any offense such as robbery or larceny, felony theft over 300. Under does require that such be taken with the intent to permanently deprive the owner of its use. And that can't again be

Page 224

inferred, but if anything, particularly regarding the theft, the evidence that they adduced defeats that, that the car wasn't taken from the or deprived the owner of it. It has never been established who the owner was, and there's no establishment that --

And I would tell you, Judge, the registration reveals that it is someone other than Heyman Lee. So, there's no evidence establishing from the person with the only lawful right to give someone with less rights to an item, the right to have it, and to hold it, to use it. And there's no even attempt to do that.

THE COURT: Thank you. With regard to the argument that counsel -- starting with the case ending in 042, I'm going to deny the motion in the light most favorable to the State on the count of first degree murder. I find that there is sufficient evidence for that issue to or that case to go to the jury. There was testimony by a number of witnesses, including Mr. Wiles, of conversation where the trier of fact is going to have to determine whether there was premeditation, as well as the testimony of the Medical Examiner and other bits of testimony right down to the last inference that the State was making with regard to the purchase of the cellphone, or the activation of the cellphone two days before M's Lee was alleged to have been murdered.

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Page 225

So, for that reason I think that, that coupled with all other aspects of the testimony in this case, I'm going to deny the defense's motion on the first degree murder count as well as second degree murder, which obviously everyone is submitting on. And those two issues will go to the jury. Thank you.

MS. GUTIERREZ: Well, we're submitting on it at this juncture.

THE COURT: At this juncture.

MS. GUTIERREZ: Right.

THE COURT: At the end of the State's case. With regard to the case ending in 043, kidnapping, the State is submitting or indicating that it does not believe that Count Two of case ending in 043 should go to the jury. Correct?

MR. URIK: Correct.

THE COURT: And I believe that under Count One, in a light most favorable to the State, there is sufficient evidence to establish that there was a carrying away, that is an attempt to deceive or fraudulently carry. And for the reasons indicated, and the fact that this is at the end of the State's case, in a light most favorable to the State, inferences of how it was that M's Lee may have been taken or moved in a way of fraudulent means. I believe that there is evidence that the trier of fact has before it

Page 226

where it could find beyond a reasonable doubt. And so to the extent that there is enough for a weighing to take place, and a determination of whether or not that meets the standard of beyond a reasonable doubt, I'm going to deny the motion on 043 as to Count One, and as to Count Two, the motion will be granted, there not being sufficient evidence of that, and that issue not going to the jury.

As to Count 046 -- I'm sorry, Case Number 046, Count One, the State is submitting, and that will therefore be not sent to the jury, the motion being granted as to 046, Count One, false imprisonment by forcible assault.

As to Count Two, I find that there is once again, if the theory of the State be true, and if the trier of fact were to evaluate the testimony, could find that there's sufficient evidence at the end of the State's case. So, therefore, I will deny the motion as to Count Two, and send that issue of false imprisonment by deception to the jury.

With regard to the robbery count, the case ending in 045, which is Count One of 045, the issue that the State posed to me is a robbery, arguing that the vehicle and the wallet, I take it, correct, or those items that were taken from the victim; correct?

MR. URIK: Any personal property that was contained in the car.

Page 227

THE COURT: And all personal property that was contained in the car.

MR. URIK: Yes.

THE COURT: Clearly there were personal items of the victim contained in the vehicle, and clearly there was testimony that there was a wallet identified as the victim's wallet, that there was testimony in regard to that. So, with regard to Count One, in the light most favorable to the State, I will deny the motion. Those items being taken, and in light of the fact that she is now deceased.

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Page 228

TRANSCRIBER'S CERTIFICATE

This is to certify that proceedings in the matter of State of Maryland v. Adnan Syed, Case Numbers 199103042-46, heard on February 18th, 2000, were recorded by means of video tape.

I do hereby certify that the foregoing pages constitute the official transcript of said video-taped proceedings to the best of my ability in a complete and accurate manner.

In witness whereof, I have hereunto subscribed my name this 11th day of November, 2000.

Delores Hay

DELORES HAY, OFFICIAL COURT REPORTER

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INDEX

WITNESS	PAGE
DETECTIVE MCGILVEARY	
Cross Examination by M's Gutierrez	2
Re-Direct Examination by Mr. Urik	174
Re-Cross Examination by M's Gutierrez	188

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