923-00

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND 13835

STATE OF MARYLAND,

vs. Indictment Nos. 199103042-46

ADNAN SYED,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Trial on the Merits)

Baltimore, Maryland

Thursday, January 27, 2000

BEFORE:

THE HONORABLE WANDA KEYES HEARD, Associate Judge
(and a jury)

APPEARANCES:

For the State:

KEVIN URICK, ESQ.
KATHLEEN C. MURPHY, ESQ.

For the defendant:

M. CRISTINA GUTIERREZ, ESQ.

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PROCEEDINGS

(10:50 a.m.)

(The jury was not present upon reconvening.)

THE COURT: Good morning, Ladies and Gentleman. On our -- the morning docket, the Syed case, before the snowstorm, Ms. Gutierrez indicated that she might have some preliminary matters. Are there items that we should take up before we proceed with opening and, of course, witness?

MS. GUTIERREZ: Yes, Judge. Preliminary, I guess; number one, we would note an objection to the seating of what is now Juror Number 6. And just how for the record, we had seated 12 jurors -- at that point I believe I had used 14 strikes. The State had used none.

And we both passed on the jury. We then went on to select alternate jurors. I didn't keep count, but I believe I used most of my strikes as to each of the five seats for alternates and therefore the alternates as seated did not necessarily get seated in the order in which they came, given the use of strikes subsequently.

And at the point where the Court was about ready to excuse the remaining jurors on the venire and swear the jury. And in addition there were, I think,

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about 15 jurors who had been struck that the Court held, pursuant to Mr. Urick's request on his Batson motion -- Batson-type motion, were still remaining in the courtroom.

And I believe there were nine to 12 venire -- of the venire left who had not been picked. All other jurors remaining in the venire had been previously excused by the Court once we began jury selection as it was clear that if all of those jurors -- even if all strikes were used that we would never reach a certain number.

And that at that juncture what was then Juror Number 6 started waving his hands and then -- in an insistent way to approach the bench. They came up to the bench, insisted that he could not be fair and impartial. that he would be biased, spoke briefly of his brother who was accused of murder or in jail for murder. I wasn't very clear.

And notwithstanding the fact that that juror had not asked a single question that called for such information -- I mean, had not answered a single question, that called for such information, the juror was insistent and ultimately the Court excused that juror.

THE COURT: Could you pause one moment

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MS. GUTIERREZ: Sure.

THE COURT: Ms. Connolly, you don't have the file, do you?

THE LAW CLERK: I do.

THE COURT: And if you would hand it to me I'd appreciate it. Thank you.

You may continue.

MS. GUTIERREZ: That ultimately the Court reluctantly, but based on what the juror said, then excused the juror, Juror Number 6, for cause.

And then we stood at the bench. Momentarily, I guess the Court contemplated what it was going to do, made -- my recollection is that the Court made an observation that I had not, that I had remaining challenges left. Which was accurate, I believe I had six at that point.

THE COURT: With regard to the panel.

MS. GUTIERREZ: With regard to the -- the -- the panel of 12, even though we had already completed. And then without any discussion or asking for input, the Court had us select a new Juror Number 6 from the remaining jurors.

And in order to do that, I believe I then exhausted all of my remaining challenges which I believe was six. And that venire person was then

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seated in the regular panel, Seat Number 6.

I guess; one, we would object entirely to the seating of that juror. It's not a process that I know of that's ever been done. The prejudice to Mr. Syed, I believe, is clear. And that is that now the juror seated in Seat Number 6 is seated there above at least five other members of the venire, the five alternates. all of whom came before that juror in numbers, and would have, any one of those -- and I don't suggest that they would have been seated in order because that's not how the jury selection and the exercise of strikes would have let those jurors be seated.

But at least all five of them would have been seated in Seat Number 6 prior to the juror now seated in Seat Number 6. And I believe that is violative of due process.

I understand the strangeness of circumstances that led to that, but -- but for a second or two, all remaining veniremen would have been gone and then the only remedy, if at all, would have been to seat one of the alternates in the jury panel as I believe the only other available remedy -- and as I said, if at all, frankly Judge, I -- I really didn't have time to do any research over the last couple days.

And I don't know, it's such an odd

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circumstance. I have certainly never encountered it in 20 years or have heard of such a circumstance, a juror right prior to being sworn, having been seated, having not answered suddenly insists in such a way that the Court must excuse that juror and then seat another after a process that would have selected other jurors to sit in that seat.

So number one, we would raise an objection to the seating of Juror Number 6. Number two, in -- in -- if the Court is not inclined to grant that objection, our request would be, and that would be to be consistent with due process, understanding that -- it -- and I don't know Judge. There may be a way.

I could not determine from my notes the order in which the strikes were exercised on the alternates, to be able to ascertain, know which juror would have been one of the first up, assuming that Juror Number 6 had brought to the Court's attention while the process was going on.

But that either if the Court could determine that and if not, that Alternate Number 1 be seated as Juror Number 6 and that Juror Number 6 be excused or seated in Alternate Seat Number 5.

And as I said, the Court may be able to determine --

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THE COURT: If you would just repeat your recommend -- your --
MS. GUTIERREZ: The request would be that Juror Number 6 be excused from sitting as Juror Number 6, the now seated Juror Number 6; that then in Seat Number 6 on the panel --
THE COURT: Excused entirely?
MS. GUTIERREZ: Well, either excused entirely or secondarily would be to then be put in at the end, meaning Alternate Number 5, but that be seated in the panel be either Alternate Number 1, or if there is a way for the Court to determine by reason of the way strikes were done, the first alternate seated and not struck -- you know, that was seated in the order those alternates would have come up on the panel and that that alternate be thereupon seated in Seat Number 6.
And as I said I -- I did try to go through my notes, but I know what strikes I used and how many per seat but I really could not figure out how to ascertain in what order those strikes were used to figure out which of the five alternates, you know, would have been the first.
I believe it would not have been Alternate Number 1. Because the juror who was first seated in Alternate Seat Number 1, I exercised two strikes

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against that seat and so that juror was at least three or four -- five plus down the road.
THE COURT: Before you go any further.
Mr. White, do you have your notes from jury selection?
THE CLERK: Yes.
THE COURT: At the time we were about to swear the jurors, can you confirm for me how many strikes the defense had remaining with regard to the panel, even though the panel had already been identified and we had moved on to the alternates -- how many strikes remaining Ms. Gutierrez and how many strikes remaining the State had?
MS. GUTIERREZ: The State had 10. They never exercised a single strike.
THE COURT: I understand. I just want to confirm for the record what the Clerk had in his notes. That's what I have but I want to make sure.
(Pause.)
MS. GUTIERREZ: Judge, if it will help, my notes reflected I exercised a 14th strike on Juror Number 90 and then my 15th strike I exercised on Juror Number 377. So there's quite a -- the alternates were selected in between there.
THE COURT: I have 90, then 299, then 377.

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That's why I asked Mr. White to check. That's what I have on my notes.
MS. GUTIERREZ: 299 was a strike that I exercised against Seat Number 4 -- was my second strike.
THE COURT: Okay.
MS. GUTIERREZ: -- against Alternate Seat Number 4. But my last regular strike, and the Court wants to look and I numbered them and then drew a line under strike number 14. And then the remaining strikes begin at 377 to 402 -- were the six strikes I exercised prior to refilling Seat Number 6.
THE COURT: So, Mr. White, were you able to locate your notes?
THE CLERK: Judge, we -- we really don't keep notes like when there --
THE COURT: I know. When you -- I'm just talking about the sheet that you were using, the yellow pad sheet, do you not have that? If you would -- just turn.
(Pause.)
THE COURT: All right. Mr. White's notes are only as to the number of strikes utilized by the conclusion.
MS. GUTIERREZ: Would the Court like to

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review my notes then?
THE COURT: Well, what I am doing is I'm looking at my own notes, and I just want to confirm that I have --
And, Mr. Urick, do you have any notes that follow the sequence of jury selection?
MR. URICK: I do have notes and also -- and on the day in question, I was aware that the defense had struck 14 when we seated them, so she had six remaining.
THE COURT: She had six remaining as to the panel.
MR. URICK: Yes.
THE COURT: As to the alternate, Seat Number 1, I have that you used both strikes.
MS. GUTIERREZ: Yes. That's what I have.
THE COURT: 289 --
MS. GUTIERREZ: But I didn't write down the numbers.
THE COURT: 289 and 351 are my notes.
(Pause.)
MS. GUTIERREZ: So Judge, that would indicate that the juror now seated in Alternate Seat Number 1 would not have been the first juror up.
THE COURT: Correct.

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MS. GUTIERREZ: You know, on the venire. I have no strikes exercised against Seat Number 2 but I'm not sure if that's accurate.

THE COURT: I have -- my notes do not reflect any strikes against Seat Number 2.

THE CLERK: Alternate Number 3.

THE COURT: Wait a minute. Let me just check.

MS. GUTIERREZ: Alternate Seat Number 2, yeah.

THE CLERK: You used one strike.

THE COURT: Yes, you did.

MS. GUTIERREZ: I used one strike --

THE COURT: As to 292.

MS. GUTIERREZ: Wait a minute. Well then, Seat Number 2. And then -- see Judge, from my notes I believed that the only seat that I did not exercise any strikes against as of the five alternates, was Seat Number 5.

THE COURT: Correct. That's what my notes show.

MS. GUTIERREZ: And I believe -- I mean, I could be incorrect, I tried to figure this out. But my belief is then that the person seated in Seat Number 5, whose only number I have would have been the first

juror up, assuming that, you know, we exercise the same strikes that we did.

And I will tell you that all of my strikes were exercised for a specific reason against a specific juror; that then the juror that would have come up normally and naturally, if those strikes to -- to reseat Juror Number 6, whether he'd been removed for cause or whether he had been struck, would be the juror seated in Seat Number 5.

And so our request, assuming the Court doesn't strike the whole panel, which would be our first request, would be to seat juror seated in Seat Number 5, whom I only know by number, 321, be seated in Juror -- the panel Seat Number 6.

And. Judge, I guess at this juncture, if the Court does that then we would have no objection to seating -- to the juror who's now seated in Seat Number 6, wind up now as Alternate Number 5, if the Court is insistent on having five alternates.

I guess our preference would be to then just go with four alternates because I think the whole procedure is so strange after two days of voir dire and the seating that I just worry about the impact on that juror who's now, if the Court decides to go this way, would then be removed from the jury and then put back

as an alternate. So, our first line would be, of course, to dismiss the entire jury panel, and alternatively we would ask for Alternate Number 5 to be seated in Seat Number 6 and that the juror in Seat Number 6 be excused entirely.

THE COURT: Thank you.

Any response with regard to the defense request with regard to the panel of 12 plus five as it appears?

MR. URICK: Very briefly, Your Honor. I know the State would object and oppose the defense request. They had -- with the first point we'd make is that it is waived at this point. They had plenty of opportunity on the day in question to raise -- raise an objection if they wanted to. They choose not to.

We went through an entire procedure without objection. It is now waived.

Secondly we would point out that there is no set order that jury selection has to be done. The Court can begin at the top, can begin at the bottom, there is no order such as that. So we would oppose that.

If the Court disagrees and wishes for a remedy, I remember this happened with one time in front of Judge Gordy, where either just before or just after

we were ready to swear the panel, one of the jurors who was sitting in the panel remembered that I had prosecuted them.

So Judge Gordy at that time released him, seated Alternate Number 1 in -- in that seat. So --

THE COURT: And that, you would agree, would be the normal course?

MR. URICK: Yeah. Would be --

THE COURT: Was that before or after the panel had been sworn?

MR. URICK: I can't remember. I think it may have been just before they were sworn that he just excused the juror that was let go. I think we'd already excused the entire panel and he just put Alternate Number 1 in that seat.

And if your going to seat -- you know, if you're grant the request, we just say move Alternate Number 1 to that seat.

However, we would oppose the request being granted. We think it's waived and that there was no violation of due process through the procedure that the Court employed on that day in question.

THE COURT: So do I -- do I have at least an agreement between counsel that Juror Number 6 should take Seat Number 5; that Juror Number 1 -- Alternate

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Number 1 should take Seat Number 6?
Was that not your initial request, Ms. Gutierrez?
MS. GUTIERREZ: That is my request, Judge, yes.
THE COURT: And is that not the State's -- State's request, indicating he has no opposition to that?
MR. URICK: If the Court is going to seek a remedy, that's what we say. But we think that there's no remedy required here.
THE COURT: I understand. For the record, there was an unusual circumstance that occurred. And the Court's recollection was that prior to the swearing in of the panel, Juror Number 6 indicated he had a problem.
In fact, the problem he outlined would have required, as Counsel for the defense points out, that the Court strike him for cause. There was no objection by either counsel as to the striking of Juror Number 6. In fact, both agreed that Juror Number 6 had to be stricken.
At that time, the defense had effectively exhausted its strikes with regard to alternates, save Juror Number 5, which would have given them two

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strikes.
The Court opted to give the defense and the State the opportunity to utilize as many strikes as it had left. And that was the reason the Court opted to allow the selection be -- to be for a member of the panel, to fill Seat Number 6 and effectively allowing the State to have -- use as many of its strikes it had left. And that's why I directed that the selection would be as to the panel, which in a sense gave the defense six strikes to exercise and the State to use whatever remaining strikes it had with regard to the panel as opposed to the two strikes the defense would have had for an additional alternate and the one strike that the defense -- the State would have had.
As I recollect, the State did not use any strikes; is that correct?
And -- but the defense choose to. And do you recall, Ms. Gutierrez, how many strikes you used before we were able to seat?
MS. GUTIERREZ: On my notes I have that I used six strikes. I have the numbers.
THE COURT: Right. So you would have been only afforded two strikes had I given you the strikes for an additional alternate.
MS. GUTIERREZ: Right. But that would only

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have occurred if the Court had moved up.
THE COURT: Correct.
MS. GUTIERREZ: And then, of course, we would have had this argument as to in what order.
THE COURT: And what order --
MS. GUTIERREZ: To move up.
THE COURT: And then --
MS. GUTIERREZ: Yes.
THE COURT: And then what -- and then we would have had an argument as to whether or not you would then have been entitled to additional strikes --
MS. GUTIERREZ: Right.
THE COURT: -- towards the juror that would then be Juror Number 5.
MS. GUTIERREZ: And Judge --
THE COURT: Where you never exercised a strike.
MS. GUTIERREZ: I will note for the record it was after five o'clock. I think it was close to six o'clock. It had been a very long day.
THE COURT: Well, I --
MS. GUTIERREZ: All of us in, I think everyone was taken by surprise and --
THE COURT: Well, that --
MS. GUTIERREZ: -- unclear to what to do.

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THE COURT: -- in not an unusual occurrence. In fact, I've seen it happen before. But by moving the jurors up in order, it would have effectively then caused an additional issue as to whether or not you would then have been entitled to an additional strike, --
MS. GUTIERREZ: Right.
THE COURT: -- having shuffled the order of the alternates. And that I have a not seen until after a jury has been sworn.
MS. GUTIERREZ: Yes.
THE COURT: And so --
MS. GUTIERREZ: But then, of course, that's a different circumstance.
THE COURT: Different circumstance. So for the reasons that I've indicated for my rationale, I am going to deny the motion. I'm going to leave Juror Number 6 as Juror Number 6. The panel was then sworn and so you had an opportunity to exercise six strikes towards that particular juror.
And the Court finds that the process was done in a manner that afforded both the State and the defense an opportunity to have a fair selection. And I will deny your motion.
Is there another motion with regard to the

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panel itself -- I mean with regard to the case itself? I understood that we were going to have some -- a bit of argument on a another motion.

MS. GUTIERREZ: Yes, Judge. I don't think either of these motions will take much time.

The first is that we've prepared -- we filed a similar motion in the last trial. And we're making a motion to have the jury view the crime scene and Best Buy. We are prepared to bear the financial cost of transporting the jury. And we've sought ways to do that by small bus that can carry the jury, the alternates, the Court, whatever other personal.

If transporting Mr. Syed is an impediment to granting this motion, he is prepared to waive his right to be present for such a viewing.

And, Judge, unlike other circumstances where juries don't see or just see pieces of it through photographs, it is our contention that the very terrain that is mentioned in Jay Wilds, who is the only eyewitness to those alleged events, that the State's entire case rests on that issue.

And it is our belief that not only would it be of helpful assistance to the jury, but that it is critical to Mr. Syed's ability to present a defense challenging the credibility of Jay Wilds in light of

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the terrain and the difficulty of traversing the terrain that Mr. Wilds has now described in three separate statements and one testimony in the first trial.

That cannot be adequately described without a violation of the presumption of innocence which Mr. Syed still has, since the only two persons alleged to have been there and carried part or all of Ms. -- either together or separately, Ms. Lee's body on the 13th of January would be, according to Jay Wilds, himself and Adnan Syed.

And the only dispute to what he says then would be extraneous evidence challenging his credibility as to events. The location is in the middle of Leakin Park. What we would propose, because of the difficulty of that terrain, we believe could be worked out, there is a witness who drew the maps -- Mr. Budenmyer is listed as to both -- both witness lists. We have subpoenaed him and expect to call him if the State does not.

We've been out to the scene with him and an investigator and believe what we need to demonstrate to the jury could be done without anyone else other than Mr. Budenmyer.

And he could easily do it without saying a

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word by notating certain places where he generated his measurements that were made at the behest of State agents back on January 13th, '99, that would allow the jurors to just merely get off the bus and enter -- well, it doesn't really have a name but at one point was a parking area off Franklintown Road; that all measurements were made that is alleged to be the place where Mr. Wilds and, if he's believable, Mr. Syed, and if he's not, either by himself or with someone else, entered the actual park itself and went 127 yards; and then in broad daylight -- this is a similar time and weather, although certainly not the snow as last January 13th.

There was a snow shortly before January 13th of just an inch and a half and there were snow days on the 14th and 15th of January, 1999; that it would be close in time that it could be accomplished readily and easily, there are no impediments to do so.

In addition the scene at Best Buy. Mr. Wilds, who gave several statements, first id -- did not identify Best Buy at all. That only came in his second written statement' and, in fact, prior to that not only did he give a -- a location of -- a different location then Best Buy as to where he allegedly met Mr. Syed and where he allegedly -- Mr. Syed allegedly popped the

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trunk of the car enabling Mr. Wilds, according to him, to see the body of Ms. Lee, in the trunk.

He initially, not only stated in his statement that that location actually existed in a place down near the bottom of the park from the end where the burial took place physically located inside Baltimore City, but that he also physically took the police to that specific location;

And that it was only subsequently in varying degrees in different statements and his testimony that he identified Best Buy as presumably the location of the death and the location of the trunk pop that afternoon.

And we believe that the physical description of the actuality of Best Buy including the location of the phone booth at Best Buy, the entrance, the existence or nonexistence of security cameras, the openness of Best Buy to traffic on Ambassador Road and on Security Boulevard and the traffic that comes in is an integral part of, again, attacking the credibility of Jay Wilds, without whose testimony the State could not proceed against Adnan Syed.

We bring it to the Court's attention now. We brought it, and Judge Quarles had indicated that he was apparently willing to grant that but was concerned

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about the time that it might take. I will note that the first trial took, in the absence of two witnesses, less than five days on the State side, which was far less than their estimate of trial.

I believe this could be easily accomplished in the morning. And as I said, Mr. Syed is willing to waive his right to be present if his presence becomes, because of his incarceration, an impediment to making this happen.

And again Mr. Syed is willing to bear the cost of such a viewing.

Because it will take time to plan to reserve the bus and meet the Court's schedule, we would ask to try to do this as the very first piece of evidence presented by the defense following the conclusion of the State's case to the extent that that can be arranged.

But we'd like a ruling on it so that we can begin, if that's possible, to make those arrangements.

THE COURT: State's position on the motion for jury viewing of the crime scene?

MR. URICK: We'd oppose it. There's nothing unique about this crime scene that requires a personal viewing by the jury. In fact, from the previous trial when the motion was made Judge Quarles said he would

considerate it, and later in the course of the trial he indicated he considered it, decided that there was nothing unique that could not be described by way of live testimony or videotape or pictures, if need be. So he denied the motion.

This is a very burdensome and time consuming proposition to do something of this sort. And the distance from the street to the body was 127 feet. It was not 127 yards.

The Court will later see some pictures come in. This is a very -- fairly open crime scene at this time of the year when there's no vegetation, no foliage. Pictures, videotapes are perfectly adequate for describing anything on the scene that needs to be -- due to the burdensome nature and the in-expediency of trying to have a day at the scene, the State opposes this motion.

MS. GUTIERREZ: Judge, for the record, Judge Quarles made no such finding. Although he indicated that he may have changed his mind because of his upsetness with how long, those were in his words, how long the trial that had been expected to take three weeks although it was only concluded, the State's portion in less than five days, he was upset at the time and what he perceived to the length of the trial.

Those feelings ultimately resulted in the mistrial of this case which was unfortunate for all involved. But he made no such ruling, and, in fact, his earlier ruling is the only thing that stands on the record that he agreed that the issues of the terrain as outlined, were important issues and that he was prepared to grant such a motion.

THE COURT: Well, counsel, what you're going to find during the course of this trial, is that, as you both know, there are abundance of issues that are discretionary. And like minds will differ.

Judge Quarles may have granted motions or denied motions in his discretion that you may find that I decide that I'm going to grant something he denied or deny something that he granted. So it would probably be best if you just put forth your best argument --

MS. GUTIERREZ: Well, that's what I did, Judge. But I'm not going through this trial having the State's Attorney lie about what occurred --

THE COURT: Ms. Gutierrez?

MS. GUTIERREZ: -- in the first trial.

THE COURT: Ms. Gutierrez?

MR. URICK: Objection.

THE COURT: Ms. Gutierrez, and, Mr. Urick, that's why I'm suggesting to you that I'm not really

concerned about what Judge Quarles did in a case that ended up in a mistrial.

MS. GUTIERREZ: That's why I didn't argue it first, Judge. But I will not allow the record to reflect a constant distortion of the truth by the State in this trial.

THE COURT: Very well. So then why don't I make a suggestion. We will not refer to the mistrial and what Judge Quarles did unless it's absolutely necessary and requires some reference for some reason, and you first tell me what the reason is and then tell me what -- what occurred in the last trial.

With regard to this motion, anything addition, Ms. Gutierrez?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Mr. Urick?

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

THE COURT: Okay. Unfortunately, at this moment, I'm going to reserve my ruling on this motion.

I'm going to tell you, Ms. Gutierrez, I'm not inclined to grant your motion. That's where I'm leaning. So -- but to the extent that I feel differently after I've heard some of the evidence in the State's case, I may be inclined to grant the motion.

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So at this juncture, I am not going to do so. I understand that you have some concern. I must note first with the advent of virtual reality and computer technology, I'm sure there's some way that you could have us see the scene by video rather than travel there.

I would note that Governor Glendening put the State -- in a state of emergency just as of yesterday and the day before. And I would take it that the park and areas near the park are probably icy and snow covered. And I noted on the news, and I guess everyone can note, for their own information, that we haven't had two feet of snow since 1996.

MS. GUTIERREZ: And I will note, Judge, -- I --

THE COURT: As a result I will say last year --

MS. GUTIERREZ: -- my house is located at the edge of the park and in my 12 years of owning that house the park has never once been plowed.

THE COURT: So, in any event, for those realistic weather-condition reasons, I'm not inclined to send a jury panel out to that location for those reasons, both for hazardous road conditions as well as what in Baltimore City, strange things happen.

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For all I know, it could be 75 degrees for the next three days, the snow will melt and it will be very safe and then I'll revisit for some other reason.

But at this juncture, I'm not inclined to grant it but I'm going to leave that open in the event that I see some need either as the case proceeds.

As I told you both, Ms. Gutierrez, and, Mr. Urick, I intentionally did not talk to Judge Quarles about this case. I intentionally don't know anything about this case other than what you've presented me. I am not one of those people that reads the newspaper a lot or follows the media on television. I look at it very rarely.

So if I hesitate in some way to make a ruling, it's not because I'm being difficult but rather I'm waiting to hear something that would assist me in making that determination. And at this juncture I'm not inclined to grant your motion.

I'm not saying I won't revisit it. I will tell you that at this juncture I am not. But I will keep in mind that you said that you do -- would need to make arrangements --

MS. GUTIERREZ: Yes.

THE COURT: -- in the event that I do grant it.

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MS. GUTIERREZ: Yes. And we have inquired and they've indicated there's -- the bus company needs as much notice as possible --

THE COURT: Lead time.

MS. GUTIERREZ: to, you know --

THE COURT: All right. And I would indicate for the purpose of you organizing your case and opening --

MS. GUTIERREZ: Okay.

THE COURT: -- statements consider it that the motion is not granted. So that you don't --

MS. GUTIERREZ: That's fine.

THE COURT: -- prematurely tell the jury we're going to do something.

MS. GUTIERREZ: Judge, I noticed there's not a television in here.

THE COURT: We can get one.

MS. GUTIERREZ: Is there a TV with a video cause we have the video.

THE COURT: There is. There is. The sixth floor attorney referral office has allowed us to use that when needed. All you need is someone from your staff to check in the morning of the day you want to use it, calling the day before to advise them that

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you're coming, they will have it available and you can wheel it. It's on wheels.

MS. GUTIERREZ: Okay. That's fine.

THE COURT: And it can be wheeled onto an elevator.

MS. GUTIERREZ: I think I've seen that equipment.

Judge, my next motion, and I will pass to the Court on you will see it's an amended State's disclosure that is stamped at the top of it with my office stamp that is was received on January 18th. And I will tell you that is the day that we received it.

The arrangement in this case regarding disclosure is that we received a call from Mr. Urick and Ms. Murphy's office on any given time if they have a package for us, which has been the reference indicating any disclosure. And we go down to their office and pick it up. So we did actually receive this on the 18th.

Judge, if you recall, we had a hearing on the 14th, which was a Friday, in the morning for an hour or so, and one of the issues was on our motion. What we wanted was a Brady hearing which the Court actually held.

And whatever it was, and that in response to

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that, and we demanded that the State answer certain questions. The -- not the 17th was a Monday and was a designated Court holiday, being the designated day to celebrate Martin Luther King's birthday. So the 18th was the first available open court date following that hearing.

And so we received this disclosure, Number 2, indicates that in response to defense questions on Friday, January 14th, and to clarify previously released material the, State avers.

And then it goes into a paragraph relating what was precisely the argument on January 14th regarding a previous statement that was referred to in Jan Pusateri's February 27th statement that had already been provided by the State in the first trial because she was going to testify. She would have been the very next witness following, if the mistrial had not occurred.

THE COURT: Are you looking at Paragraph 2 --

MS. GUTIERREZ: Yes.

THE COURT: -- in the amended State's disclosure?

MS. GUTIERREZ: State's disclosure, yes.

THE COURT: All right.

MS. GUTIERREZ: And for the Court's

information, Jan Pusateri is a friend of Jay Wilds Who is being offered at -- at least on some level to attempt to buttress and corroborate Jay Wilds' description of events that are alleged to have occurred on January 12th, 13th, and possibly 14th.

And that's -- and we got her statement, not as a result of any other discovery or Brady obligation that the State recognized. We have, as we've already previously argued, believe that Jan Pusateri fell into any definition of Brady, including impeachment. In that

-- that statement should have been disclosed.

But in any event --

THE COURT: She HAD not testified and so therefore it wasn't out -- it was not Jinks material either. Is that right?

MS. GUTIERREZ: Well, it actually got disclosed that way because it was ordered that the State try to disclose --

THE COURT: In advance --

MS. GUTIERREZ: -- in advance of the testimony knowing when they were going to testify. And, in fact, Jan Pusateri was on the witness stand but had not yet -- she may well have been sworn, I don't remember, but had not yet testified --

THE COURT: At the time.

MS. GUTIERREZ: -- at the time the mistrial was declared. And that's why we had received from the State her statement literally the day before at the time that we also got Jay Wilds' statement and the late disclosure of Jay Wilds' statement actually necessitated an overnight recess for us to have an opportunity to review Jay Wilds'.

In any event, if the Court recalls from the 14th, I -- I don't want to waste time if the Court does, but Jan -- Jan Pusateri's -- the statement that we received indicated that it occurred on January --

THE COURT: It?

MS. GUTIERREZ: The statement that -- that we got, that had occurred on January 20 -- I mean February 27th at police headquarters. And in the statement itself, in Jay Wilds' statement that we have, the first statement occurred in the early morning hours of February 28th, so hours after the conclusion of Jan Pusateri.

According to the discovery, although it does not appear to be believable --

THE COURT: And that was --

MS. GUTIERREZ: -- for other --

THE COURT: No. It was the second statement

of Jay Wilds; correct?

MS. GUTIERREZ: No. That was the first. The 28th -- well, that's the first that we know of.

THE COURT: All right.

MS. GUTIERREZ: It is inconceivable to us that they arrived at taking a statement from Jan Pusateri on particular details before having talked to Jay Wilds. However, the 28th of February -- of February statement is alleged by the State to be the first statement of Jay Wilds. The second statement is alleged to have occurred on March 15th.

In any event, in Jan Pusateri's statement on the 27th, she somehow, at least without any explanation of how, arrives at Police Headquarters in downtown Baltimore with her mother and a lawyer and proceeds to give a taped statement.

In that taped statement, she refers to a statement that she gave the night before. And if the Court recall on the 14th, although we repeatedly asked that question, the State did not answer.

We have received this package of an amended disclosure prior to receiving the Court's order based on the conduct and the answers of the State and the questions asked on the 14th, denying our motion for any further relief regarding Brady.

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In this very amended disclosure, the State admits that there was a statement, but, you know, gives us what, in our experience with the State, is a paraphrase of what occurred and does not answer the fundamental questions that we believe make it Brady, et. al.; i.e., critical to the credibility of both this witness, and since this witness is the credibility buttress to Jay Wilds, you know, intrinsic absolutely to be able to attack the credibility of Jay Wilds through the witness that they are offering as being the only one who can buttress Jay Wilds' credibility.

And all we have is -- is a paragraph in which we don't have actual words. There are no notes identified. There is no explanation as to how Jan Pusateri miraculously comes down to the Police Department the day before her taped statement.

And in light of that, and in light -- and clearly these are the State's words that they gave this up not willingly, not in recognition of their duty, but as they say, in response to defense questions on Friday, January 14th.

That says to us, in light of the entire history of this case, that some question that we asked that this Court allowed to be has struck a nerve with the State. That having withheld information, having

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withheld specifically this information, we're now past the first trial, decided that they better answer.

And yet they choose to answer by paraphrasing what occurred, not releasing the actual information.

Secondarily, --

THE COURT: With regard to Paragraph 2 and your request?

MS. GUTIERREZ: Yes.

THE COURT: If you were given disclosure, and this is not a motion, what is your request?

MS. GUTIERREZ: My request, Judge, is to be allowed to take a deposition, in this Court, of Detective McGilivary regarding the circumstances of both the February 26th, 1999 statement, that is averred in this Paragraph 2 of Jan Pusateri and as to the circumstances of anything that occurred between the time, which we don't know, or the circumstances of the 26th statement and how the 27th statement came about or was arranged.

That's our specific request regarding. And the others we would seek the production of any notes whatsoever taken by any State agent or in the control at any time of any State agent regarding the February 26th statement, regarding the appearance of Ms. Pusateri at Police Headquarters on the 26th, as to the

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27th statement, and as to the appearance of Ms. Pusateri on the 27th together with lawyer and mother, which statement we -- well, we had something that purports to be the entire statement.

And so that would be our specific request as to statement -- Paragraph Number 2 in their disclosure.

Paragraph Number 3 in their disclosure -- and Judge, I will tell you, much to my surprise having already been through three separate motions to compel, six months of fighting over the most minimal of discovery, having already been through a trial that almost went to conclusion to now discover something that we repeatedly, specifically asked for, that there is a statement that they now decide to disclose made by Adnan Syed;

That what is revealed to us, if the Court will go it's -- the third page past -- second page past, is an alleged report not on any form of the Police Department, not dated anywhere near the time of the alleged statement, but dated on September 14th, 1999, not a date with any significance to the Court or the Court case, or to Mr. Syed;

Obviously significant, not signed, by alleging -- appearing to be a memo regarding a February 26th statement by Mr. Syed to Detective Ritz, who is

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the secondary detective on this case along with Detective McGilivary, alleged to been done up by Detective McGilivary but not signed;

No indication of when it was made, other then the date September 14th, which is, I believe, eight months subsequent to the date, two days prior to the arrest; it allegedly conducted at his home in the presence of his father, but the State has repeatedly, since being -- started to be asked at the end of July, refused to answer a single question to indicate and, in fact, answered upon our inquiry upon what appeared to be in their discovery reference to that statement, indicated to us in writing that that was a never mind, that it didn't mean that.

There wasn't a statement. We received everything and has refused to answer any questions. And again, because of that, we're, you know, in a second trial and we've received more significant discovery.

I will note that that September 14th memo indicates that Mr. Syed readily answered questions that were put to him, acknowledged the relationship, acknowledged that it had ended, acknowledged already his embarrassment that his father was there and was hearing these questions about --

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THE COURT: You -- you're referring -- you're not referring --
MS. GUTIERREZ: To the September 14th --
THE COURT: Okay.
MS. GUTIERREZ: -- memo that -- that -- and that those are all essentially whether they may be characterized otherwise, are essentially exculpatory statements made by the defendant.
Whether or not that was an issue, again Judge, something happened on the 14th that made these prosecutors give up that statement that had been under the law in their possession, or their agents, since September -- since February 26th, almost a year ago and they've never before given.
THE COURT: What --
MS. GUTIERREZ: So in light of that, what we would like to do is to take a deposition in Court of Detective Ritz regarding all the notes, all the circumstances, including any notes or circumstances regarding why this memo got to be dated on September 14th.
THE COURT: Are you --
MS. GUTIERREZ: The first Brady hearing occurred on September the 8th.
THE COURT: Are you seeking to suppress the

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statement of Adnan Syed?
MS. GUTIERREZ: I don't think so, Judge. Obviously we may at some point but I concede that there are issues. He was not in custody. It is exculpatory. Frankly, we intend to use it.
And we would have been entitled to use it if we'd been given it, because it is exculpatory, at the first trial. So I really don't anticipate challenging the admissibility of the statement.
I may well challenge, based on a discovery violation, any ability of the State to use the statement in its case in chief. But I'm not challenging on normal admissibility grounds or voluntariness grounds the statement itself at this juncture.
THE COURT: Okay. The State doesn't want to be heard, do you?
MR. URICK: No.
THE COURT: With regard to the statement, I'm going to talk about that first, of your client. Ms. Gutierrez, one, you are free to use that statement in any way you would like. Two, you will have liberal ability to cross-examine the note taker, the statement taker, and any notes that he may have had, derived, or used to create this memo of 1999, September 14th.

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I believe that this arguably is exculpatory information, but you do have it now, and I will allow you to use it in an fashion that you would like.
Second, I think it's frankly irrelevant whether the State chooses to use it, because obviously if they use it, it helps your case. So they want to use it, I'm not going to preclude them from using it. However, they will have to use it by qualifying the manner in which it was taken, the circumstances, and the like. And I will allow you to voir dire that witness before the statement is admitted.
MS. GUTIERREZ: Voir dire outside the presence of the jury?
THE COURT: Outside the present jury.
MS. GUTIERREZ: Thank you.
THE COURT: In an abundance of caution, if they choose to use it in their state -- in their case in chief.
Next. With regard to the paragraph involving Ms. Pusateri. I find that that perhaps, in an abundance of caution, the State has provided that information to you. And I thank them. Because as you may recall, I asked that if there was information regarding the taped statements of witnesses, that they not wait until the last minute.

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And I find that they have, in fact, followed my instruction. And perhaps that's why the memo came January 18th; that maybe the change or different circumstances is that I'm very sincere about us working as professionals and insuring that this case is moved along in a expeditious fashion.
And to the extent that there can be some assistance in providing information in advance of a witness testifying, in advance of the witness taking the stand that will allow the defense to be prepared and to be able to adequately provide their cross-examination without taking a break, I'd ask that both the counsel do that.
Now, if it means that when the witness is finished testifying, Ms. Gutierrez, if you're not immediately prepared to proceed, let me know. We'll take a break and allow you to review whatever information has been provided to you at that moment, whether it's Jinx material or whatever, so that you can be prepared to proceed.
But I do find that with regard to your second request to have a separate deposition of Ms. Pusateri, that request is denied as is a --
MS. GUTIERREZ: We didn't want the deposition of Ms. Pusateri, just of the detective.

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THE COURT: Of the detective?
MS. GUTIERREZ: Yes.
THE COURT: Or of the detective. Well, I expanded it because obviously she would know when she went to visit with him and why and what generated it. And secondly, with regard to any detectives that may have asked her questions, the same reasons that I indicated in my order, I deny that.
I do not believe that the State is entitled to every step along the investigative route. And I believe that perhaps what generated a need to make some notes with regard to an additional statement of Ms. Pusateri came as part of the investigative process.
But in any event, you now have the information. And it's readily available to you. I thank the State for filing the amended disclosure and doing so in advance of the beginning of this trial whereby allowing the defense to be prepared to handle it.
And on the questioning of the either Detective McGilivary or Ms. Pusateri or any other detective who may have taken a statement, again, I will allow you liberal cross-examination to inquire the circumstances under which that may have been prepared.
MS. GUTIERREZ: Okay.

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THE COURT:
And so when we get to that point if there's an objection just, if you would, remind the Court that this is the area where you feel a need to inquire or go into a little more deeper and I will allow you to do that.
MS. GUTIERREZ: I have a final --
THE COURT: Okay.
MS. GUTIERREZ: -- matter.
THE COURT: Uh-huh.
MS. GUTIERREZ: For the Court's attention. I'm not sure what to call it. On the very same day we received that fax -- that package, we received another fax from the State's Attorney's Office that was a copy of correspondence addressed to the Court regarding defense witnesses.
Now, why it wasn't addressed to me or why I've never received a -- even so much as a call from witnesses who know me, have spoken to me, know how to get in touch with me, and one Mr. Urick would not have simply told witnesses to call the person who subpoenaed you --
THE COURT: What's the date? What's the date?
MS. GUTIERREZ: January 18th. And that's the

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date of the letter to you and that's the date of the fax in which it was faxed to my office. I don't know whether -- what time the Court received it.
But there's a series of letters all of which are dated January 18th to the Court regarding the State versus Adnan Syed, which they, on the body of the letter indicate they sent a copy to me, and I did receive the same on the 18th.
The -- the gist of the letters are to bring to the Court's attention, and as I note not to counsel's, but to the Court's attention that two witnesses, the main detectives in this case, Detective McGilivary and Ritz, with whom I have not had an opportunity to speak, have not contacted my office in writing or by phone.
I notice one of them is here today. I'm not sure where the other is. They have been subpoenaed as they were subpoenaed during the first trial. So they have known that they are witnesses. And they both indicate that they will be out of the Country -- one from February -- Detective Ritz from February 2nd to the 16th. And I believe there's a second letter that has attached a indication from Detective McGilivary. And again those indications are not directed from Detective McGilivary to the State that we

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can see. Obviously they got to them, but were addressed to each detective's superior officer indicating that he has set for a vacation from the 5th to the 12th.
And, you know, obviously we didn't anticipate the snow days, and we're all aware that there's additional snow called for starting any day that may render other snow days. It is snow time, although the snow here --
I will note voir dire took no longer than the first trial. Voir dire at the first trial took two days. It took two days here. I frankly don't expect the State's case to take longer, although, you know, certainly it could but -- if it could because of scheduling or the Court's availability.
I really frankly don't expect it to take much longer, if at all. And it could very well take a shorter time. The presentation of our defense, if we get to that point, is certainly not going to take longer than what we did.
But in any event, it appears that both of these witnesses, and particularly in light of the previous motions regarding disclosures and now all the new disclosures, Detective McGilivary and Ritz become critical defense witnesses as they have been since

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other disclosures that came about in the middle of the first trial.

And as I was said, I've not spoken to either of them. I've not even so much as gotten a call. And frankly Judge, since the first week of January, I've been under the weather with the flu, struggling to do that in between this schedule.

And I just got back into town on the 11th of January, three days before we began. And I frankly, have not spent any energy to track them down either. But I will note I find it odd that Mr. Urick saw fit to bring it to the Court's attention without first bringing it to ours or to indicate to those witnesses, who may well be joining witnesses, that they should contact us.

They are necessary witnesses. Their reports, although they may be helpful, would not suffice to bring in the information that we now need from Detectives McGilivary and Ritz regarding not only Jay Wilds and Jan -- Jan Pusateri, who will be the State's main witnesses against him, but as to other related, relevant items as well.

And that is to the issue of whether or not we put out any other substantive defense, I tell you, as an officer of the Court, that that's why I had both of

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those detectives personally served with summonses during the first trial and for this trial, that I intend to put them on.

THE COURT: Perhaps -- perhaps I can make it a very easy task for both of you. The Court is going to say you may not excuse any of your witnesses who you have subpoenaed without getting permission from the Court.

MS. GUTIERREZ: Okay. Thank you.

THE COURT: Period. They are subpoenaed witnesses. They received a subpoena and the subpoena is issued by the Clerk of the Circuit Court for Baltimore City. And upon receipt of a summons, they're commanded to appear, and they may not be released until the Court releases them.

So as a result of that, it says granted leave to depart by the Court or an officer acting on behalf of the Court. And I'm advising you that unless you get my permission, you cannot act as my agent. So consequently, anyone that you've subpoenaed will remain under subpoena until the court releases them.

I think that should suffice. At this point we could figure out what our best laid plans our for the next couple of days. And it could snow another two feet tomorrow.

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As a result, we won't be able to proceed as we haven't so far. So at this juncture, because I don't know what the weather will hold, no witnesses will be excused by anyone other than the Court. And we would ask that all witnesses be notified to -- to turn to WBAL television, Channel 11, which is where it is announced when this courthouse is closed.

And it does announce on Channel 11 that the courthouse is closed. When the courthouse is closed would mean that they do not have to appear but they are still under subpoena.

Any other questions? Or -- does that satisfy your quasi-motion.

MS. GUTIERREZ: That's fine, Judge.

THE COURT: Unnamed.

MS. GUTIERREZ: Without saying more, we'll just deal with it.

THE COURT: All right.

MS. GUTIERREZ: We certainly don't intend to inconvenience them but necessary witnesses and --

THE COURT: They're witnesses and under subpoena, and unless I have a request -- and I'll ask that that request be placed in writing. I do have McGilivary's request. I am not releasing him. He's talking about some dates in the future that have not

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yet arrived, so I'm not even going to deal with that.

I do have the second January 18th memo talking about the chain of custody and other testimony involving the testimony of a brother of the victim who is an immediate relative. And under the rules would be permitted to remain in the courtroom during the course of the trial.

MS. GUTIERREZ: We don't object to that. We didn't object to it before.

THE COURT: All right. So that's no longer an issue.

MS. GUTIERREZ: Just that he be instructed not to discuss --

THE COURT: To discuss. Well I will do that as soon as we get to that point.

MS. GUTIERREZ: As I said, I'll just remind the Court, I did have some concerns about the tightness of the courtroom and the location of the family of the victim because of the proximity to the jury and the clear emotional impact and stress on them that became obvious to everyone. And we were fearful of its impact on the jurors, so we'd --

THE COURT: I don't think we're going to have that problem. I think we've arranged the courtroom in a way that I doubt very seriously that that problem

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will arise. But if you note a problem, I'd ask that you bring it to my attention at the time you observe it.

MS. GUTIERREZ: Thank you. And the only other motion is that we would, of course, be making a motion for sequestration of all witnesses.

THE COURT: Absolutely.

And I guess you would join with that request, Mr. Urick?

MR. URICK: Yes. I'm not certain the Court addressed the State's concern here. We've gotten calls from five civilian witnesses who have been -- who are State's witnesses, that received duplicate summonses by the defense. Each one of them have complained because -- to us, because they called Ms. Gutierrez's office, they won't talk to them.

They won't tell them when they're supposed to show up, if they're going to show up. They won't talk to them about availability. They won't talk to them.

They ask me what can I do? I -- I tell them, as a State's Attorney, I can't tell them what they have to do in terms of the defense.

THE COURT: Will you please tell them, if you receive any additional calls, that they're under subpoena, that they should remain on call and wait till

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they hear from the Court or from you or the defense about when they should arrive. They are under subpoena, period.

MR. URICK: Their concern is they're not hearing from the defense to -- to --

THE COURT: Okay.

MR. URICK: -- to find out, you know, how to be on call.

THE COURT: I understand.

MR. URICK: They don't know how to respond to the defense subpoenas because they're not getting any information from the defense. They're contacting us. So I've been telling them contact the Court if -- if the defense won't talk to them.

THE COURT: They can contact the Court or they can remain on call at the phone number where they can be reached. And they are welcome to leave that phone number with the Court. But they are under subpoena and if they've received their subpoena, they are to remain under subpoena.

If they would ask or need a -- to leave, they can send a letter to the Court or call the court and make an inquiry, or appear in Court and indicate their concern, any of those options.

MR. URICK: Thank you.

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THE COURT: But at this point if you speak to a witness, they are under subpoena until they're released by the Court.

All right. Any other issues that need to be raised before we proceed?

MS. GUTIERREZ: Not at this time, Judge.

THE COURT: If Counsel, either the State or the defense, have any additional motions, I'd ask that you place those motions in writing. I'd ask that place those motions in writing and see that I get them as soon as possible.

It is very helpful to the Court to have the motions as soon as possible so that I may rule on them in a timely fashion. I ask for scheduling of witnesses. And I'd ask again if you happen to know how your case is going to proceed and you can give me a better idea, I would ask that you do that.

Mr. Urick, I find that your letters and information have been very helpful. And I appreciate them being sent to the Court. I would note that I also see that you've also numbered your exhibits, have you not?

MR. URICK: Yes.

THE COURT: All right. And that will -- I'd ask the defense to do the same if you have not already

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done to them. I know, Ms. Gutierrez, you -- I'm sure you have as that is the practice in Federal Court, and -- and normally I do that. So I'd ask you to follow that.

It makes for a case moving along little smoother and -- and certainly does allow us and -- the Clerk to know what exhibits to hand you at the time they are needed.

All right. Any other matters that we need to discuss?

MR. URICK: Your Honor, in several of the letters I've covered evidentiary issues of presenting document evidence. In that I've heard no objections from the defense, I'm going to assume that we may proceed in the manner --

THE COURT: Why don't you -- why don't you specifically refer to the exhibit? I don't consider your notes or letters as motions. So if you have a legal motion that you want to make with regard to evidentiary issues, I suggest that you bring it to my attention.

Your January 11th only indicates that there were stipulations as to the admission of the following items. And there's a list. And there again, you're talking about previous trial.

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Have you spoken to Ms. Gutierrez about the stipulations as to the admission of these items today?
MR. URICK: No.
THE COURT: In this case?
MR. URICK: They're all stipulated evidence before. I've not heard any objection.
THE COURT: Well, it doesn't work that way. As I said to you, I would really ask that you pretend that, as best as you can, that the trial didn't happen before. This is a new trial.
MS. GUTIERREZ: Judge --
THE COURT: It could be that she changes her entire theory and decides that she wants to challenge everything as opposed to allowing for stipulations. And that is her right.
So to the extent that -- that you two can talk with one another, and ask a simple question, are you going to stipulate to the same items you stipulated the last trial? Yes, or no?
MS. GUTIERREZ: I believe I've already sent a letter to that effect.
THE COURT: Saying yes?
MS. GUTIERREZ: Yes. Saying in fact offering to stipulate to other things.
THE COURT: Great.

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MS. GUTIERREZ: I don't have it in front of me but --
THE COURT: All right. So that's done. Your answer to your January 11th is yes. And your next question?
MR. URICK: We have several documents. First we have the defendant's cell phone records for the 11th, 12th, -- 12th, 13th, and 14th.
THE COURT: Is that Exhibits 31? That is the business records?
MR. URICK: Exhibit 31.
THE COURT: Uh-huh.
MR. URICK: And then we've got Exhibit 34.
THE COURT: Which is the chart?
MR. URICK: In -- yeah. It takes the defendant's cell phone records of the 13th, inserts the cell site addresses for the cell sites that are listed, and leaves space here for who received the call or who the phone is listed to that the call was made for.
We got -- throughout the course of the -- would you pass this back, please?
We have numerous witnesses who can identify these numbers as being theirs. And as each one does, we fill the blank for that individual.
THE COURT: Uh-huh.

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MR. URICK: And we would ask that we be allowed to provide jurors their own copy of this. We made a xerox of the smaller exhibits --
THE COURT: To follow along?
MR. URICK: To follow along.
THE COURT: You don't have any objection to that?
MS. GUTIERREZ: No, Your Honor.
THE COURT: All right. And I would note for the record that the type and the numbers are very tiny. And even with -- with this courtroom it's difficult to see. That's a -- looks like Exhibit Number, is that 35?
THE CLERK: 34.
THE COURT: 34. Okay.
MR. URICK: Now, Exhibit 31, the cell phone information, is a business record being entered by way of stipulation. We would reserve the right to have one witness highlight one telephone number on that record after it's admitted.
(Pause.)
THE COURT: You mean write on an exhibit and highlight it.
MR. URICK: Yeah. Use a highlight marker just to highlight that number.

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THE COURT: Ms. Gutierrez?
MS. GUTIERREZ: I don't think so.
THE COURT: Well, that's -- would probably be my response, but you're objecting to that? My response is, I don't think so. I have a procedure that if you admit a document into evidence, I don't care what it is, once it's admitted into evidence, you may not mark on it, alter it, write on it or change it in anyway.
If you want to have that witness testify and highlight before it's admitted, you can do that. I'll let you highlight, you know, take a highlighter --
MS. GUTIERREZ: Well, I would object to that and then I would withdraw my stipulation and then refuse to allow it to be admitted by stipulation.
THE COURT: Well, that's -- there you go.
MS. GUTIERREZ: And he can through what he wants.
THE COURT: There you go.
MS. GUTIERREZ: I'm not stipulating to any procedure that allows the witness out of the presence to highlight a document --
THE COURT: Oh, no.
MS. GUTIERREZ: -- that I've stipulated to.
THE COURT: I don't want to -- I want -- I don't want miss -- anything to be misunderstood.

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This procedure of highlighting an exhibit would not be out of the presence of the jury.
Were you suggesting it would be out of the presence of the jury?
MR. URICK: No. I was waiting -- I was suggesting we admit the exhibit with the first witness, as we did before. The some -- the last witness that we want to mark on -- would the Court give us the permission to do a 31-A, which is the one page as a -- xerox a second copy of it and enter it as 31-A. And at the time that that witness testifies we mark on it?
THE COURT: You're welcome to do that or you can take a sticky that says -- with a little arrow, and place it where the mark is, but you're not to write on the exhibit once it's been admitted.
MR. URICK: And we have another exhibit that we were going to put stickys on throughout the course of the trial and then enter the exhibit at the end. Would that be admissible with the Court?
THE COURT: Are the stickys going to be evidentiary issues? Are they going to remain?
MR. URICK: They're going to remain on it. They're going -- we're -- they're going to be put at places that people identify as important sites.
THE COURT: Then I have no problem if you put

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the stickys on there. But once you admit the item into evidence, you may not remove anything.
In other words, --
MS. GUTIERREZ: Judge, I would only ask that --
THE COURT: An item that's a piece of evidence is evidence because the record reflects what people did to that item. And then it's moved into evidence.
If you then alternate -- alter an exhibit, then it no longer is an exhibit for the purpose that it was offered initially. It has not become something different. And that's -- for that reason, I will not allow you to alter an exhibit.
An exhibit preserves an item for the record. If you then admit something and then alter -- alter it, it is no longer the exhibit that was initially offered in as at the time it was offered.
Now, if you want to not admit it and do all sorts of things to it at the time you would move it into admission, whatever it's viewed as, it now is an exhibit.
It could be that you have something that is an exhibit that is properly an exhibit at the time it's admitted and then you do something to that exhibit

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later that now makes it inadmissible, now what do I do with the exhibit? It's in evidence but it's not in evidence because now you've done something to it.
I cannot allow you to alter an exhibit once it's moved in. So once it's in evidence, you can't change it, you can't draw on it, you can't mark it up, you can't tear it up. You will not be able to alter it.
However, if you want to take a sticky that has a little thing that can be removed to -- to draw someone's attention, that is an arrow, and then take it off, that's fine for the purposes of -- it would be like using a pointer. I have no problem with that.
But I do not want any permanent marks, fixtures or anything placed on that is permanent in nature on an exhibit that's moved into evidence, if that's understood. You can make copies of it and then mark up the copy, and then later move that in if you want to. But you're not to -- once the exhibit has been identified, and it is moved into evidence, you may not alter the exhibit, permanently alter the exhibit.
MS. GUTIERREZ: Judge, my concern is because of what I hear and what they've done before is, have an exhibit, and I'm not objecting to that. And they want

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to have witnesses, you know, put stickys at pertinent places for them, I don't object to that one.
What I object to is that, as I agree with the Court, is than any exhibit has to be a permanent record, not just for the record. I'm concern as to the exhibit being the actual exhibit that the jury saw the witness do.
And stickys -- my experience with stickys is that, you know, it's different putting stickys in a transcript where it's bound, where there's pressure to keep the sticky in place as opposed to a larger exhibit
-- and I believe this will be a map, where any movement of the exhibit, you know, if -- if the exhibit is marked before it's admitted, and it's admitted with the stickys on it;
That if it's going to be stickys that those be affixed permanently to the exhibit before anything else is done with it; that they just not be allowed to lay a stickys, which has some adhesive but the adhesive; one, doesn't last forever; number two, can be easily be pushed off in -- not intentionally, but the slightest of pressure in and of itself.
So I object to any procedure where stickys or items like that to mark. The last time it was tapped,

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you know, witnesses mark with a mark, you know the specific location of a specific location that was relevant to their case, I'd suggest is the better procedure.

But if they choose stickys, then my request would be that they be permanently fixed to the exhibit at some point before it's actually admitted.

THE COURT: I will not require it to be permanently affixed unless it's admitted into evidence. So admit into evidence and whatever's on it at time it's admitted into evidence, becomes permanent.

If it's not -- in other words, if you have a map, and you want to use stickys to show where things are, and then when the next witness gets up, you want to take all the stickys off and let the next witness use that same map, that's fine with me.

But if you move that map in with stickys on it, no stickys will be removed from it and no stickys will be added to it. And I -- I don't think that that's difficult. I think I -- that's very clear.

And the reason I do that, as I've said, when an item is offered in as exhibit into evidence, if it's a map that's used and you can easily remove the stickys, that's fine. But when you actually have something that has been permanent in nature affixed to

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an exhibit that alters the exhibit, it no longer appears the way it did at the time you moved it's admission and is had become something totally different.

All right. Any other preliminary issues?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Hearing none, as we go along, if any come up, please let me know.

I would note that it's now ten minutes after 12:00. How long does the State expect for opening?

(Pause.)

MR. URICK: I would say 15 minutes. I may hit 10, I may hit 20.

THE COURT: Okay.

MR. URICK: 15 would be a reasonable.

THE COURT: Ms. Gutierrez?

MS. GUTIERREZ: 30 to 45.

THE COURT: All right. Then what I suggest is that we send them to lunch and do opening when we come back.

At this time if I could ask that you give me five minutes and then bring the jury out please.

MR. URICK: How many witnesses would the Court want the State then to have for this afternoon?

THE COURT: Well, --

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MR. URICK: How much time do you anticipate?

THE COURT: I expect that we're going to go to at least 5:00. So I don't know how long your witnesses are. But I would -- why don't I put it this way. We come back at two o'clock -- 12:30, 1:30, yeah -- two o'clock testimony would be opening, hour, so we have about almost three hours of testimony so -- three hours of testimony. I don't know how many witnesses that is.

But if you're -- in your mind you have three hours of testimony with cross-examining -- examinations, err on the side of safety and have an extra witness on hand in case Ms. Gutierrez does not take very long on cross.

MR. URICK: Thank you.

THE COURT: All right. I'm going to ask you to just give me -- why don't we have the jury just excused from --

MS. GUTIERREZ: That's fine.

THE COURT: Do you all need to see the jury?

MR. URICK: No.

MS. GUTIERREZ: No, Judge.

THE COURT: Before lunch?

MS. GUTIERREZ: That's fine.

THE COURT: I'm just going to excuse them to

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lunch.

Deputy Sheriff, would you just tell our jurors that we -- they're excused to lunch, they should return by two o'clock. No later. Make it 1:45. 1:45. They should be in that room by 1:45.

The Sheriff is going to excuse them to lunch till 1:45. For the record, the jurors have not come out and have not been seen by counsel this morning or the Court, but I understand all are present and accounted for.

We will take a recess then.

Counsel, I'd ask that you be back at 1:45 as I really would like to start promptly at two o'clock. So to the extent that we can all be present and accounted for by 1:45?

MS. GUTIERREZ: Judge, is your courtroom locked? I want to leave my bag here.

THE COURT: Do you -- do you wish to leave it here?

MS. GUTIERREZ: Yes. I really rather not --

THE COURT: Then the courtroom will be locked. Then the courtroom will be locked.

And, Officer Gilmore, if you can have the defendant here by 1:45? Actually why don't you make it two o'clock. The jurors will come back. So once we

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have confirmed that all the jurors are present then I'll ask you to bring him up.
OFFICER GILMORE: Thank you.
THE COURT: All right. This Court stands in recess then until 1:45.
(At 12:11 p.m. a luncheon recess was taken.)

AFTERNOON SESSION
(2:15 p.m.)
(The jury was not present upon reconvening.)
THE COURT: Before we broke, we had letters -- if you could send them back -- from two of the jurors. And I just wanted to bring them to the attention of counsel.
It's not my practice to accept any, whether it be oral or written communication from the jurors without letting counsel know about it.
The first note was the one from Alternate Number 1. It was left on my answering machine, and it was basically found out this evening that she has a 2-11 to 2-13 weekend trip that has already been paid for. What can she do? That's Alternate Number 1's question.

And I understand Counsel both have seen that; correct?

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MS. GUTIERREZ: Yes.
THE COURT: And the second thing is, Juror Number 6 is indicating he'd like to catch the course at

-- on Tues. at -- one, Tuesday at 5:00 p.m. and should leave by 3:30. And they only make $15 a day and goes on talk about 12 to 500 odds, whatever.
I think the idea being -- in any event, I hope you all have had an adequate time to review the correspondence. And so I --
MS. GUTIERREZ: Well, Judge, --
THE COURT: -- will take up whichever issue. Perhaps why don't we start with Juror -- Alternate Number 1, first things first.
MR. URICK: When is the trip on the 11th, when do they have to leave? Did they indicate?
MS. GUTIERREZ: 11th, 12th, and 13th?
THE COURT: Yeah. Doesn't say.
MR. URICK: They're backing up their -- that's Sunday. The 11th would be the only questionable --

THE COURT: That's a Friday?
MR. URICK: Yeah.
THE COURT: What's my docket look like that on that Friday, do you know? In the event that we're

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not finished.
THE CLERK: Nothing that we know of.
THE COURT: Okay. We can find out from her whether she's leaving on the 11th. Could be she's leaving Friday.
MS. GUTIERREZ: Well Judge, that's a -- I don't know how many more days. More days than what we anticipate taking the trial so we may not even reach it. I suggest we just wait until we get closer --
THE COURT: But you have to --
MS. GUTIERREZ: -- to that time, and if it's an issue, then we can --
THE COURT: And you have to recall, I did ask if they had a problem that they bring it to my attention. So they're doing that.
And then the second issue is Juror Number 6?
MR. URICK: The State's all in favor of that person furthering his education. I'd make a move to strike that juror.
MS. GUTIERREZ: I join in on that motion.
THE COURT: Oh, really? Well, geez, and is this not for the record, the very same juror that Ms. Gutierrez --
MS. GUTIERREZ: Yes, Judge.
THE COURT: -- was concerned about.

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MS. GUTIERREZ: Mr. Urick should have joined my motion this morning.
THE COURT: Well, he did. It was the Court that disagreed. And so how interesting that this would occur. Funny how things happen.
So since there's a request by both the State and the defense --
MS. GUTIERREZ: It's very rare.
THE COURT: And I must -- which is very rare, particularly as I've come to know this case, we'll make it unanimous.
MS. GUTIERREZ: Good.
THE COURT: And for the record I think this would also solve Ms. Gutierrez's initial concern.
MS. GUTIERREZ: Initial concern, yes.
THE COURT: Because Alternate Number 1 will now become Juror Number 6.
MS. GUTIERREZ: Well, I would renew my motion to seat Alternate Seat Number 5, particularly in light of potential problem with Alternate Number 1, with her paid weekend. That would sort of solve both problems.
THE COURT: Well, I don't think we can skip to Number 5, Ms. Gutierrez.
MS. GUTIERREZ: Well, on the theory, I'm not jumping Number 5, but that Number 5 would have been the

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first of all of those alternates to have sat, and therefore would have likely have seat in Seat Number 6 and then by --

THE COURT: Following the Court's procedure?

MS. GUTIERREZ: Right. Right. It would have avoided this problem altogether.

THE COURT: Not necessarily.

MS. GUTIERREZ: And if the Court follows that, since there really shouldn't be seen any difference between Alternates 1, 2, 3, 4, and 5, you know, the Court makes sure that there is no potential appellate problem with any of this by merely reversing, as is in within the Court's discretionary power, the order of the alternates by seating Number 5.

THE COURT: Well, actually, I -- I don't think there would be in any error in any event because arguably, as I thought through the scenario, if I granted your motion initially, and seated Juror -- Alternate Number 1 in Seat Number 6, --

MS. GUTIERREZ: Which wasn't my motion, just for the record.

THE COURT: But I'm saying. If -- if you had made that motion at the time on Friday, and we had put Alternate Number 1 in Seat Number 6, and then Alternate Number 2 became Number 1, in other words, everybody

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moved up.

MS. GUTIERREZ: Right.

THE COURT: Query whether or not you would have been able to strike Juror Number -- Alternate Number 2?

MS. GUTIERREZ: With the other available?

THE COURT: Right.

MS. GUTIERREZ: Well, sure. Except that I planned to the Court that I was conscious that the jurors were not seated in the order they came up.

THE COURT: Right.

MS. GUTIERREZ: Then -- but in the rush of the lateness of the hour, the rush of it --

THE COURT: No. That's not true.

MS. GUTIERREZ: -- and certainly recognizing --

THE COURT: We did follow the order. No. No. No. We follow the order. We did not step outside the order in which the jurors appeared in the roster. We stuck to the roster. In fact, --

MS. GUTIERREZ: No. No. No. But in terms of how the five alternates are seated is not following the appearance of the roster because one's strikes are limited to the seats. They don't accumulate. You have three strikes per seat.

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THE COURT: Correct. Correct.

MS. GUTIERREZ: So for instance, I believe that some of the alternates came up in the panel in different orders, meaning they were alternates who were seated past each other although in the venire that may not have well have been.

THE COURT: Oh, no. No. No.

MS. GUTIERREZ: They were called --

THE COURT: Ms. Gutierrez --

MS. GUTIERREZ: -- in the order of the venire.

THE COURT: No. And I -- in the order -- in the panel itself we have jurors that are higher up in the sequence number but appeared lower in number.

MS. GUTIERREZ: That's my point.

THE COURT: And that happens.

MS. GUTIERREZ: And I'm not saying -- that always happens.

THE COURT: That always happens.

MS. GUTIERREZ: But I -- I -- I guess my argument is that it happens in a particular way on the alternates. You don't have 15 strikes that you can use randomly against five seats however you want. You can only use three strikes per seat. And I --

THE COURT: Except when the Court gives you

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six for the --

MS. GUTIERREZ: Well, I guess I -- I'd dispute that the Court gave us six.

THE COURT: Because we used it for a panel.

MS. GUTIERREZ: Because we had six --

THE COURT: That's right.

MS. GUTIERREZ: -- out of the panel seats and I'm not --

THE COURT: Now, you understand my logic.

MS. GUTIERREZ: Yes. And I -- I don't dispute that the Court was logical in trying to fashion a solution, you know, at the end of the day with an unexpected given questions that the Court had asked.

THE COURT: Well, at the end of the day didn't bother me because luckily enough, we hadn't excused the panel.

MS. GUTIERREZ: Everybody. Right.

THE COURT: And we had those individuals present, and luckily enough the juror spoke up. But I think we can go on and not -- and --

MS. GUTIERREZ: Well, my point only being, Judge --

THE COURT: Is moot at this point.

MS. GUTIERREZ: -- is that, you know there -- there -- I don't think that the Court can foreclose

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what would have been our response to anything the Court proposed doing if, in fact, the Court had on Friday removed a juror and then opened it up, to assume that the juror seated now in Alternate Number 1 would have been the juror who then got moved up.

THE COURT: Well, --

MS. GUTIERREZ: Actually it was a predictable argument.

THE COURT: But you would not have known that. And I would note that I reviewed my notes and there was no objection from either the State or the defense as to the process that the Court elected to use; that is, the Court -- when the Court said, "All right. We're going to strike and we will use it as a panel strike," there was no objection, not only to that procedural or to your ability to use six strikes and to the State's ability to use 10, so.

MS. GUTIERREZ: I agree with that. The record will reveal that there was no objection. I would suggest is that what the record doesn't reveal because it doesn't, unlike a tape recorder, realizes that the Court sent counsel back to counsel table with the directions I note that the Court didn't ask for input, didn't ask for objections, There was not an opportunity to discuss it or object.

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THE COURT: And I -- and that might be well so. But I at this point find that that whole issue is really moot.

MS. GUTIERREZ: I just want to remake my same motion to seat Juror Number 5, who would have been the first juror in Seat Number 6.

THE COURT: All right. At this juncture the Court had reviewed in first finding that the defense and the State are in agreement that Juror Number 6 should be stricken.

I'd ask that -- so that we don't have any more confusion, if you could ask Juror Number 6 to come in. Just have them come in at this juncture.

MS. GUTIERREZ: Judge, while we're waiting, I see that you've made seats available to cover them, if you could just explain how they're going to sit so that we could keep them --

THE COURT: Yes. Juror Number 6? Ask Juror Number 6 to come in.

Juror Number 1 seats -- sits on the back row.

MS. GUTIERREZ: Back row. Okay.

THE COURT: Closest to the spectators.

MS. GUTIERREZ: Okay.

THE COURT: 2, 3, 4, 5, 6 and I believe 7, should be on the front row at the black chair. 8, 9, 10, 11, 12. Then it looks like Alternate Number 1 and Number 2.

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MS. GUTIERREZ: 1 and 2.

THE COURT: 3, 4 and 5. And we have sat in the chairs to ensure that you can see the witness' box and counsel table from each of the chairs.

And at this moment Seat Number 5 will not be taken.

Okay. Sir, I need you the step up here please.

Sir, I understand that you Juror Number 6; is that correct?

A JUROR: Yes, that's me.

THE COURT: And you sent a note to the Court regarding a class at the University System?

A JUROR: Yes, indeed. Judge Heard, I was supposed to take a graduate education course. It meets on Tuesday nights and starts at 5:30. And I was trying to be able to get off just kind of early on Tuesdays, you know, so I could leave to go, you know, to that course, You know, to catch it from the beginning, you know, if that's possible.

THE COURT: All right. It -- it's going to be possible. I've spoken to counsel and you are going to be excused.

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A JUROR: Oh, wonderful.

THE COURT: From jury service at this time. Counsel is both in agreement and the Court has agreed, so therefore, you are no longer in need of having to make any other arrangements. You are going to be excused at this time, finding good cause for that.

I also would note. Do I -- can I -- may I keep these notices?

A JUROR: Oh, definitely.

THE COURT: Very well. I will keep them and place them in our file. And you're excused to go at this time.

A JUROR: Thank you. It was a great pleasure working with you. And I hope you -- yes, I'll get back into the schools and it's -- because -- in other words, I guess -- I guess I'll be excused --

THE COURT: You're finished. That's right. You don't have to come back.

A JUROR: Because I guess with -- after me knowing that the -- in case he turns out to be the father of the defendant and I have seen him before in the, you know, Veterans Hospital.

THE COURT: Well, as it turns out, that's a good thing and so as I've indicated to you, you're free to go at this time. Thank you very much.

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A JUROR: Thank you very kindly.
THE COURT: You've completed your juror service. If you need a letter from my staff, --
A JUROR: That would be wonderful.
THE COURT: We're going to give you this and you can give that to your employer indicating --
A JUROR: Yes. Definitely.
THE COURT: -- that you were, in fact, here.
A JUROR: That's impressive. I'll send a photostat.
THE COURT: Thank you very much.
Deputy, do you -- I assume Juror Number 6 has a coat. Can you please escort him back and make sure that he gets his coat and have him leave. And I'd ask that -- that he not have discussions with any of the jurors. Okay?
A JUROR: Thank you, Judge Heard.
THE COURT: Thank you.
And would you, once you have escorted him, have our jury come. Thank you.
(The juror was excused.)
THE COURT: We will have the jury panel come in and when they arrive, noting your objection, Ms. Gutierrez, to Alternate Number 1 taking Seat Number 1, any objection from the State? Any objection to

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Alternate 1 taking seat Number 6?
MR. URICK: No objection.
THE COURT: That will be what the Court will do.
I've noted duly your objection, Ms. Gutierrez, to this procedure and let it be noted for the record.
MR. URICK: Excuse me, Your Honor.
THE COURT: I'll also incorporate in here by reference you're arguments that you made earlier this morning.
MS. GUTIERREZ: Thank you, Judge.
MR. URICK: Two minor requests from the State, Your Honor. We're going to introduce a diary with the first witness. We would ask the Court's permission to publish selections from this with a later witness.
THE COURT: Are you introducing the entire diary?
MR. URICK: Yeah.
MS. GUTIERREZ: Yes, Judge. That's -- I guess we -- there was a previous motion.
THE COURT: All right.
MS. GUTIERREZ: And we withdrew any objection as long as the diary in its entirety --

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THE COURT: Okay.
MS. GUTIERREZ: -- as opposed to limited excerpts come in. That would again be -- and it's our position, although I -- I don't know --
THE COURT: Ms. -- Ms. Connolly, can you go around --
MS. GUTIERREZ: Cause there is no outstanding motion in front of this Court, but that issue was resolved. Our position is the same, that we would not object to excerpts --
THE COURT: Being admitted?
MS. GUTIERREZ: Well, we'd object to excerpts. We would not object to the diary as a whole being admitted, and that's still our position.
THE COURT: Ms. --
MS. GUTIERREZ: The diary is the diary of the victim.
(Pause.)
MS. GUTIERREZ: Judge, I would note, particularly because the smallness and tightness of this court, that I would object to continuing if something is going to be published to the jury.
Like if it's going to be published, and Mr. Urick feels that's important, then it should be published and nothing else should be going on.

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THE COURT: That's my procedure.
MS. GUTIERREZ: Okay.
THE COURT: That's the procedure I use.
MS. GUTIERREZ: That's fine.
(The jury returned to the courtroom.)
THE COURT: Ladies and Gentleman, please step in. Please come in.
Juror Number 1, that's the seat on the front -- back row, fartherest away from me. And then it goes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. So please find your seat.
You might want to remain standing so folks can get by. Juror Number 1 is on the back row in the seat closest to you. 2, 3, 4, 5 -- please come in. Take a step -- no, up in the jury box. Please walk up to the jury box. Find your juror number.
There are pads of paper and there is a number on the back of the pad. It has your juror number on it. You are either 1 through 12, or 1 through 5. Find your number, please remain standing so that others can pass by you.
Alternate Number 1 and Number 2 are here on the front row. 3, 4, and 5 are in the back.
(Pause.)
THE COURT: Please remain standing so that

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jurors can pass by you.
(Pause.)
THE COURT: Alternates Number 1 and 2 are on the front row. 3, 4, and 5 are behind. You should be sitting in the same seat you were in on Friday. So in the back row I should have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. Alternate 1, Alternate 2, Alternate 3, Alternate 4, and Alternate 5.
All right. Before we sit down, we have lost one juror, Juror Number 6, there should be an empty chair at Juror Number 6's chair.
Alternate Number 1, will you please take Seat Number 6?
(Pause.)
THE COURT: All right. Now, will you all then be seated. For convenience sake, you are -- you were Alternate Number 2, you are now Alternate Number 1. You may move up one. And you are Alternate Number 2, you are welcome to stay where you are so that you can see or if you would like, you may take that seat.
In any event you are not Alternate 2.
And you are likewise Alternate Number 3.
And you are now Alternate Number 4.
Again, you may move up, take that other seat. If you take that now, you'll be writing on the pad of

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paper that should have your new number on it.
Very well. Ladies and Gentleman, I first want to welcome you back to the Circuit Court for Baltimore City. As you can see, my courtroom is quite a bit tinier than the one you had been part of the jury selection process.
And also you can note that there was -- there were a few snow days in there, so it was a good thing that that information was provided to you before we took our last recess.
At this time it is my duty and obligation to give you preliminary remarks. And that's for the purposes of continuing what I said to you when we were last together about what your responsibilities and obligations are.
This is a very, very small courtroom. We are not in a video courtroom. And we have Mr. Madden. Again, he's sitting to my left and he has a device. He speaks into the device and repeats everything that's being said in the courtroom. As a result, you will hear me stop people if there's an attempt to talk over one another; that is two people are trying to talk at the same time.
Because Mr. Madden obviously can only speak while one person is speaking because he is repeating

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into the device for a record of everything is being said in the courtroom.
You also find that this courtroom is very small. And believe it or not, even in its size, sometimes people have difficulty hearing one another. The witness box is here. The witness will be facing you the jurors.
But if at any time during the course of the statements or the testimony, you cannot hear or make out what is being said, you need only raise your hand and I will have that person either repeat what they are saying or speak louder.
You will also find that I may on my own ask them to speak louder, to lean forward, to keep their voice up for the sole purposes of making sure that you the jurors understand everything that's being said in the courtroom.
You'll notice that I take notes on my laptop. They are my own personal notes, things for me to remember about this proceeding. Other judges handwrite their notes, I choose to take my notes on the laptop. I'm not the stenographer though. Mr. Madden is the stenographer.
My job, as the judge, is to insure that this is a fair trial. When I say a fair trial, the rules of

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evidence and procedure that must be followed in any case. And those rules of procedure and evidence are followed for the purposes of following what we all know to be proper conduct in a courtroom
I say proper in that Ms. Gutierrez may make an objection or Mr. Urick may make an objection like you would see if it were a baseball game or football game and one side wanted to call one thing and another side said something else, and there's a referee who has to make a call, has to decide, in or out, yes or no.
That's my responsibility. And I explaining this to you because they are doing their job. If either of them or both of them make objections, that is their job and responsibility to do that when they see fit, and my job to make a call.
Nothing they say in this courtroom throughout this trial is evidence. Evidence will come from the witness box. And evidence will be those items that you see the blue and yellow sticky tabs or blue and red sticky tabs placed on, marked as exhibits and moved into evidence.
Anything that the attorneys say is not evidence. And I emphasize that because there will be time when counsel will make an objection, and I may have them come up to the bench, and we will whisper.

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And you will say, "Oh, they're being rude."
Well, no. What we are trying to do is make a decision about the rules of evidence or issues that I must call up or down, in or out. And the reason that you cannot hear that is because I have to decide whether it is appropriate for you to consider or not.
If you hear us or see us doing that, you'll hear the white noise. That's supposed to keep you from hearing what we're saying. Sometimes you'll see me pick up a piece of paper so that you can't read my lips or in any way make an attempt to speak outside of your presence.
Every now and then you'll even -- hear me ask you to take a break. Stretch your legs. Walk around. It gives us an opportunity to discuss things outside of your presence.
Now, I'm explaining the procedure so that you understand what it is that we are doing at the time we're doing it. And also I must reiterate what they say is not evidence. Because you will also hear me ask the attorneys to tell me the reason where they stand. And again it's for the purpose of me understanding why they're making an objection and also for the purposes of me making a determination.
And at that time I will instruct you as the

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jury as to whether or not you should consider an answer or not or any other instruction that I believe is appropriate at the given time to give to you.
Now, we're going to be hearing testimony in this case, and I need to make sure that you also understand that the way in which we proceed with a criminal trial is the following way.
The attorneys will speak to you, first the State, then the defense, the purpose is outlining what each party expects the evidence to show. The State will go first and they'll make their opening statement and then the defense attorney will make her opening statement, if she chooses to do so.
The State will then present evidence. And after the State's case has been presented, the defense will have an opportunity, if they choose to do so.
And after the conclusion of all the evidence, I will instruct you as to the law that's applicable. And you must follow the law as I explain it to you. After that there will be closing argument by the attorneys.
And they will argue for you what they contend the evidence and the inferences show and the evidence and conclusions they believe that you should find based or reached -- what you have heard.

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The State's Attorney will make the first closing argument. Then the defense attorney will make a closing argument and then the State has an opportunity to do what we call "rebuttal," come back a second time.
And after closing arguments, you will retire to the jury room and begin your deliberations. It will be your function and responsibility to decide the facts in this case. And you must base your finding only upon the evidence that's presented during the trial And any conclusions which may be fairly drawn from that evidence.
You came into this courtroom this morning or this afternoon with your common sense. And I'm going to ask you, through the course of this trial, to keep your common sense with you.
You will hear evidence by live witnesses, there may be some video, there may be some written items. There may be stipulations where the attorneys together agree that certain items should come in.
What the lawyers say, again, what their objections are and emotions you may hear, are not evidence. They are not sworn witnesses.
They are advocates for their position. And if the attorneys say something during the course of

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this trial regarding the facts that's different from your memory of the evidence or that you don't recall from the evidence that you have heard, you are required to rely on your own memory in making your decision at the end.
Now, you've been given a piece of notebook pad or little pad of paper and a pencil. That's for the purposes of your making notes during the course of the trial. Your seat number is on the back. And when you leave, each and every time before your deliberations, you must leave the notepad face down on your chair.
I can't allow you to take the notepad with you into the jury room because you are not supposed to talk about the case until the end. And if you've ever been to school and taken notes, and then called someone in your class and said, "Did you get that," or "Let me see your notes," or "Let me see if you forgot something," or, what it was the second thing they said," well that would be discussing the case.
And so to ensure that you don't do that, you must leave your notepads face down. When we take lunch recesses, Mr. White will lock them away. No one will read them. And when you return from lunch, he will place them back on your chair face down.

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At the end of the day, he will lock them away with the evidence. And he will bring them back on the next day and put them back on your chair face down.

I've already told you what to do in the event that anyone tries to talk to you. But I must reiterate do not have any discussions with anyone during the course of this trial, anyone inside the courthouse, anyone outside the courthouse.

You should not discuss this case until the very end, until I instruct you to do so through your deliberations with your fellow jurors.

Likewise, if you were to go home and turn on the television or pick up the newspaper and see anything about this case, I must instruct you not to read it, not to look at it, not to observe it nor should you have any discussions with anyone whatsoever about this case.

We expect to move this case along in the next few weeks and we will do our best to accommodate each and everyone of you. I must note that it is my practice to let you know the lay of the land to the best I can each and every day.

As you see today, we did not get started until the afternoon. And that was because we had preliminary matters we were hopeful we were going to

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handle on the days that turned out to be snow days, so we took care of those matters this morning.

Also I would note that each and every day I will try to tell you what my schedule looks like for the next day. For example, tomorrow I have no cases, so that means I can start this case at 9:30, which means you go over and be paid like you did today, but at 9:30, you won't be able to go down to the canteen for the last cup of coffee or cup of tea, like you may have done this morning because we will be able to start promptly at 9:30 since I have no docket other than this case. So that should work us well for the day in working on this case.

I will also direct you -- you've been told where this case took place, and I need to advise you either at recess, during lunch break, or at the end of the day, do not go to the scene. Do not try to visit the location that's talked about in this trial.

That would not be appropriate, would constitute investigation outside this courtroom. And that is not a proper -- appropriate procedure for any juror to follow. So I'm going to admonish you not to do that as well.

At this time I would also tell you one last thing. In a criminal case, the State has the burden of

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proving its case beyond a reasonable doubt and to a moral certainty.

The defendant comes into this courtroom innocent, cloaked with that innocence. For in this Country and individual who is charged with a criminal offense is presumed innocent; that is, they do not have to say a word. They do not have to open their mouth because the State has the burden of proving its case beyond a reasonable doubt and to moral certainty.

That is the burden in a criminal case. So at this juncture I must advise you as the end of this trial I will advise you as to all law that will be applicable. But for now keep yourselves alert, pay attention, take notes, keep your common sense with you, and at this time give your undivided attention to first Mr. Urick, on behalf of the State and then Ms. Gutierrez, on behalf of the defense.

At your leisure, either one of you should know you're free to move about this courtroom. I have no restrictions on where you go. The only thing I ask is that before you approach a witness, you let me know that you're going to approach the witness. It also helps to signal to the witness that you're going to approach them.

But for opening you may go anywhere in this

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courtroom. You may use the easels or the board over there, anything you would like. You may.

OPENING STATEMENT BY MR. URICK

MR. URICK: Thank you, Your Honor.

May it please the Court, Counsel?

THE COURT: You may.

MR. URICK: Has the Court selected a foreperson yet?

THE COURT: Juror Number 1, in my procedure, is the foreperson. And she is the Forelady on the back row in the blue turtleneck.

(Pause.)

MR. URICK: Madam Forelady, Ladies and Gentleman of the jury, good afternoon.

A JUROR: Good afternoon.

MR. URICK: As you were told, what may seem like a long time ago, my name is Kevin Urick. My co-counsel's name is Kathleen Murphy. We're Assistant State's Attorneys.

We're hired by Mrs. Patricia Jessamy, the State's Attorney for Baltimore City, to prosecute cases in Baltimore City. Every day in each of the 20-some criminal courts in Baltimore City, one of the 140 plus attorneys in my office appears to prosecute criminal

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cases.
On behalf of Mrs. Jessamy and the Office of the State's Attorney, Ms. Murphy and I would like to thank you for coming in to perform your jury duty service. This is a very important duty and we thank you in advance for coming in.
And we ask that you listen very patiently, because trials are not like movies. They don't have a neat beginning, middle and end that you can follow through.
You're given a lot of evidence that will make a picture but it's not a moving picture. It's a evidentiary picture created sort of like a quilt, a stew, by putting the pieces together.
What I'm trying to say is that sometimes it may be unclear, as you're listening to it, why this witness follows this one. Well, I'll be frank with you. sometimes we have to do that because that's the only time that witness is available so we have to take them out of what we would call their order.
Also it may not be that there's a clear line of testimony that we can present to you like a movie, so we have to present with you this piece here, this piece here, and then at the end we ask you to put it together to understand it. So bear with us as you're

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listening to the testimony.
Listen to all of it. Try not to see what the overall picture is or decide what it is until you're heard everything at the end of the trial.
At this time I get to let you know in advance what the evidence you're going to hear is. Well, you're going to find out that on January 13th of 1999, somewhere about 7:09, 7:16, one Jennifer Pusateri was calling a friend of hers by the name of Jay Wilds.
The number that she dialed was this number here, 443 253-9023. That's the defendant's cell phone number. She was dialing that number because she got a voice mail -- a message left on her voice mail from Jay Wilds that was somewhat garbled. It was somewhere around in here. She got this call. She --
(Pause.)
MR. URICK: Actually the seven o'clock call, a message was left for her. It was garbled. She didn't understand it. She called back to find out what's going on. Well, the phone was answered. One of these calls, 7:09, 7:16, was her calling this number.
The phone was answered. The defendant in this case answered the phone. She said, "This Jen I'm calling for Jay." The defendant said, "He can't come to the phone right now, we're busy," and hung up.

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At that moment the defendant, along with Jay Wilds, was in Leakin Park. The defendant was burying the body of one Hae Min Lee.
Hae Min Lee you're going to find out a lot about. She is a former girlfriend of the defendant. They were students together at Woodlawn High School. Woodlawn's in Baltimore County. It's where you have the magnet program for the bright and gifted. You also have non-magnet students who attend that school because they're local. But the magnet program is there.
The defendant and Hae Min Lee were two members of the bright and gifted track at Woodlawn High School. They started going together in their junior year.
This relationship caused problems. The defendant is of Pakistani background, he's a Muslim. In Islamic culture, people do not date before marriage and they definitely do not have premarital sex. Their family is a very structured event. They're not supposed to date. They're only supposed to marry and engage in activities after they marry.
So he was breaking the cultural expectations of his family and his religion to date Ms. Lee. Ms. Lee understood this. She was how it was causing problems for them.

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And you're going to find -- hear about some of these problems. One time they were at the Homecoming Dance in that fall of their -- senior year. The defendant's parents came and practically dragged him out to say, "What's going on? What's going on?
He tried to introduce the female to her, they were talking in a way that the principle of the high school thought was abusive. She went over took the female, Ms. Lee, away.
This, along with other incidents, precipitated a breakup. The two got together briefly. Then they broke up again. And you're going to find out that Ms. Lee truly loved this defendant but she loved him so much that she was ultimately willing to let him go because she saw that their relationship was bad for him.
You're going to get her diary. And you're going to hear and be able to read anything you want in it, but in her own words, you can tell she understood the problems. And she loved this individual so much that she was willing to let him up because she saw that their relationship was a problem.
This is an excerpt from her diary. "He called me on the 17th, twice, at 1:00 p.m. and 8:30 p.m. with calling cards. Isn't he sweet. I keep

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crying over the phone because I miss him so much.
"Then he went into the whole explanation of the purpose of the trip to Dallas. He told me that his religion means life to him and he hates it when he sees someone purposely going against it. He tried to remain a faithful Muslim all his life, but he fell in love with me which is a great sin.
"But he told me that there is no way he'll ever leave me because he can't imagine life without me. Then he said that one day he would have to choose between me and his religion.
"This was exactly what Savick was talking about. I love him so much. And when it comes to choosing, I'm going to let him go his way. If you have to deny yourself a part of you for love, than that's not good.
"I really couldn't care less since my religion means shit to me. But to him his religious -- his religion guides his life. It's the world to him. And I hate the fact that I'm the cause of his sin no matter what he says.
"He said that I shouldn't feel like I'm pulling him away from his religion but hello, that's exactly what I'm doing. I don't know how we'll live through all this. But this is bad.

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"Now, I'm going to anticipate the day when things will come to an end, gradually pulling me away, protecting myself from the oncoming pain.
"Baby I love you with all my heart. Nothing, no one, could ever -- ever come anywhere close to all the smile, happy tears, laughter, and love you have taught to me. I've never loved anyone as much as I love you and I'll never be able to love anyone as much as I love you.
"I think about you the moment I open my eyes in the morning to I fall asleep -- well, longer, because I think about you and dream about you in my sleep. My day drags on as I wait to hear your voice or see your face.
"The main point is that I love you, Adnan. If I were to have my way we would be together forever. But if something happens, my love is strong enough, strong enough to let you go."
And let him go she did. "Who would have thought that we would end like this? Who would have imagined the amount of pain that comes with a broken heart? I know I'm doing the right thing. Call me selfish but this pain is way less than what it would be if we stayed together.
"More hostility at his house. I loved you.

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Oh screw it, I still love you. I would give anything and anything to be in your arms but my heart's not that strong."
She saw that the relationship was not good for the defendant, and because she truly loved him, she let him go.
The defendant, however, had a different reaction. In order to have this relationship, he had to live a lie. He'd had to lie to his parents. He'd had to lie to his religious friends. He was living a lie, denying to them that he was engaging in the activities that was forbidden in their culture.
This is a great sacrifice. It was a double life for him. He was leading a lie, and when it ended, that's all he had left, was the lie that he'd been leading. He became enraged. He felt betrayed that his honor had been besmirched. And he became very angry. And he set out to kill Hae Min Lee.
Now, you're going to hear a lot of evidence how this happened. The more significant facts will be among these. You're going to hear how on the evening of the 12th of January, the defendant called Jay Wilds.
Now, Jay Wilds was a high school student at Woodlawn, too. But he's not among the bright and gifted. He lives in that area. He lives with his

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mother, who's very poor. He's had to work most of his own life.
And remember when you hear about Jay Wilds and you hear him, remember this is the person the defendant seated here, choose to use to put into effect his murder of his girlfriend.
The State has to take -- take its witnesses where it finds them. We don't get to pick and choose. We can't go down and ask Bea Gatty to come in and testify for us because we need a good witness. We have to take the ones that the defendants leave us.
So you may not like Jay Wilds. There may be things about him that you do not like, but remember, ask yourself when you hear these things, what was it about this individual that made him susceptible to being used and manipulated by this defendant.
As I say, Jay Wilds had to work to support himself. He wasn't from a wealthy family, a well-to-do family. He doesn't have a lot of money for clothes to dress well. He had to take the jobs that he could.
He worked in a porno shop at one time. He sells marijuana on the side. He takes the jobs that he can. But you'll hear that when he sells marijuana, he's primarily doing it to try to please the people around him.

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He would buy marijuana for people. And you'll find out that Jay Wilds particular ethnic background made it safe for him to come into the city to buy marijuana, so the Woodlawn high schoolers found him a very convenient person.

"Hey, Jay can go in the city and buy marijuana for us. Let's do that." So Jay would go in. Often- times he didn't even charge the people. He just bought it for them and then smoked with them. He was trying to please them.

You may not like all of this, but every time you hear about this ask yourself, what is it about this individual that allowed this defendant to use him in such a crass and manipulative way.

Now, you'll hear that Jay Wilds' girlfriend was one Stephanie McPhearson. She was in the best and brightest -- bright and gifted track at Woodlawn along with the defendant and Hae Min Lee. They were friends.

So when Jay would go out with his girlfriend Stephanie, they'd go out with her friends which included Hae Lee, the defendant. They would socialize that way.

They'd known each other for some time on a social basis.

Well, on the evening of the 12th the

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defendant calls Jay Wilds. You're going to see the defendant's cell phone records. You're going to see the telephone call to Jay Wilds' telephone on the evening of the 12th.

He says, "Hey, I'm going to skip out for a while tomorrow, let's go to the mall." So Jay says, "Okay."

Well, the next morning, and you'll see when you look at this, that these run backwards from a little bit after midnight until midnight of the next night so that the chronological order moves up 12:00 a.m. and then the morning -- or 12:00 a.m. and then 10:00 a.m.. It moves up into the p.m. and to the midnight of the next night. So the first call, just after midnight for the next day would be 34, and then number one is the last call of the day. This particular one took place at 10:37.

You'll see that the first two calls just after midnight, he called Hae Min Lee. That's her home address. Well the next morning he calls at 10:45 Jay Wilds, says, "I'm skipping out now, I'll pick you up."

In fact he did pick up Jay Wilds. They went to the mall. They're driving around. The defendant says, "You know what, I'm going to kill Hae today." Jay Wilds, "What's he talking about?"

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The defendant says, "I want you to take my cell phone. I want you to take my car." Well, Jay Wilds who has no car is quite willing to take it. He takes the car. He takes the defendant's cell phone. He goes over to his friend's house -- well, first they go out to buy marijuana.

You'll see that they went into the downtown. We know that from one of the cell sites which was on 714 Poplar Grove Street. He and the defendant went to buy marijuana, then he took the defendant back to school, dropped him off at school.

We know that that morning when he got to school, the defendant asked Hae Min Lee for a ride home after school. He told her that his car was in the shop, that he needed a ride to go get his car. We know that because he told friends of his that he had asked Hae for a ride for that reason.

Well, we know his car was not in the shop, he gave it to Jay Wilds. He returns to school. Jay Wilds goes over to his friend Jennifer Pusateri's house, starts playing video games with her brother Mark until she gets home.

At the end of the school day around 2:15, Aisha [redacted], who's a friend of the defendant, Ms. Lee, in all this, sees the defendant talking to Hae Lee

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after the last class. She leaves.

One Inez Butler, who's a teacher there who runs a little concession stand for the athletic department, talks briefly to Hae Lee about 2:15, 2:20 when she's leaving school. She picks up a soda and a bag of snacks. She's going to come back and pay for them. That's her usual practice.

She has a cousin who she picks up after school. She's leaving to pick up that relative who's a -- I think elementary student, take that person home then come back to school.

About 2:35, 2:36, Jay Wilds receives a call on the cell phone from the defendant saying, "Hey, come meet me at the BestBuy." This is the BestBuy off Security Boulevard just across from Security Square Mall. When he gets there, the defendant has Hae Lee's car.

Defendant says, "I've done it. I've done it." He pops open the trunk of the car. Jay Wilds see the body of Hae Min Lee in the trunk dead.

At that point the defendant says, "Help me. Follow me." He takes the victim's car to the I-70 Park and Ride, parks it there, gets in his car with Jay Wilds. The two of them alternately make various telephones. At 3:21, Jay Wilds calls Jennifer

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Pusateri. At 3:32 the defendant calls a friend of his by the name of Neisha [redacted] and he -- Phil Mendez is called, a Phillip Furlough, who's a contact. After they drop off the car the defendant wants to get some marijuana, wants to get high. He and Jay are riding around. Jay has some contacts he trying to see who's home, who's got marijuana. He calls up Jay Furlough, that person's not home. He makes another phone call to Jen Pusateri.

Well, at that point the defendant says, "I've got to go back to school for awhile. I've got to stop, go to track practice."

So Jay takes his back, drops him off briefly at track practice, comes back, picks him up, they go over to a Christie Vincent's house. While they're there, they're three incoming phone calls. By this time the family of Hae Min Lee has realized that Hae is missing because she should have been home with the relative before 3:00, she's not.

Well, somewhere in there, a member of the family calls Aisha [redacted] Aisha [redacted] calls a friend of their's by the name of Christy [redacted] and says, "Hae is missing." Christy Myers [redacted] this call at work, she immediately calls the defendant. His cell phone doesn't answer, she leaves a message on the voice

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mail.

And you'll see that there is a voice mail where the voice mail is checked at 5:14. Christy [redacted] will tell you that she called, left a message for the defendant to call her.

Well, the cell phone records indicate the voice mail was checked. And the very next call, which occurs at 5:38 is to Christy Myers. She's not home at that time. Her voice -- her answering machine comes on. You'll see it's a two second call, as soon as the answering machine comes on the person -- defendant hangs up.

They're at Christy Vincent's house. The family of Hae Lee has also called the police at this time. Officer Scott Adcock goes over there. They have found several numbers, one of which is this number, 443 253-9023, it's in the diary.

The brother of Hae Lee, Young Lee, thinks it's a friend, a girlfriend of his sister, so he calls the number. The defendant answers the phone. Young Lee recognizes the voice, says, "Hae is missing do you know where she is?

"No," very quick conversation.

Officer Adcock comes. He takes the information. He gets the number. He dials the number.

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He gets the defendant. And we know that because the defendant later that night tells Christy [redacted] that the police had called him and were -- basically gave a verbatim description of the conversation that Officer Adcock had on the phone with this person who identified himself as the defendant.

Officer Adcock speaks for about four or five minutes, and there's an incoming call, four minutes, at 6:24.

Well, Jay Wilds will tell you at that time the defendant became frantic. "What do we do? What do we do? We've got to get rid of the body." He says, "Come with me."

They go over to Jay Wilds' home. They get two shovels. They then head to Leakin Park.

And you'll see that at 6:59, there's a call made on the defendant's cell phone to one of the defendant's best friends, one Yasir Ali. Immediately after that, there's a call made to Jennifer Pusateri. And then there are the two incoming calls at 7:09, 7:16 at Cell Site 7689B, which is located on a cell tower at 2121 Windsor Garden Lane.

And you're going to see a map from the AT and T Wireless records showing 689C being this light brown area, that that cell site is the cell site that covers

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Leakin Park, that those two calls at 7:09 and 7:16 come out of -- actually it's 689B, pardon me, covers the Leakin Park, that that cell site covers Leakin Park and not much else.

You're going to hear from Jay Wilds, who after -- after the defendant buries the body there, says, "We've got to ditch the car." They take it down off Edmonson Avenue. They leave it in an apartment complex there. They head back Edmonson Avenue towards Woodlawn.

And you're going to see the two calls that come afterwards come out of a cell site, 765A -- or 7653A and then C, and you're going to see 653 which is on a tower on Athol Avenue, and how the "B" -- pardon me, the "A" site would be to the east of the "C" site and how you can almost track the car as it's coming down there from east to west moving through the cell sites first getting picked up in the "B" site and then afterwards getting picked up on the "C" site as they go along.

While they're heading back there, the two calls which are made are both made to Jennifer Pusateri where Jay Wilds is saying, "You got meet me, you got to pick me up." The defendant takes him to a mall. Jen Pusateri meets him there. Jay Wilds gets in the car

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with her. They drive off.
She's thinking there's something really strange here. He's acting strange. She says, "What's wrong?" At that time Jay Wilds tells her about what happened that day.
Now, you're going to hear that consistently the defendant has always given the same story about what the defendant did where -- as to the defendant's actions. Consistently he tells Jennifer a consistent story. He tells the police a consistent story about the defendant. He tells consistently the defendant's involvement, the defendant's actions on that day. He has never wavered on that point.
And you're going to see how the cell phone records corroborate that activity, both by who is making the call or they're alternating it the cell sites verify the locations that they're at, corroborates that.
You're going to see how Jay Wilds was able to lead the police to the victim's car and bring her back. You're going to hear that Jay Wilds has given several statements. And you're going to hear between the first statement and the second statement, he changed certain things. In fact he changed three things.
You're going to hear first that he said that

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when the calls came in from Officer Adcock and Young Lee, they were at a McDonald's Restaurant. Then in the second statement he's honest, he says they were at Christy Vincent's. He's going to tell you he didn't want to get Christy Vincent involved in this. He was trying to keep her out of it, so he didn't want -- want to admit that they were at their house.
Secondly he left out Jan Pusateri. And he'll tell you that he did so because he didn't want to get her involved.
And the third thing that he's going to tell you is that he initially told the police that when he met the defendant, it was not at the BestBuy, he was at a place on Edmonson Avenue.
So you're going to hear it. Yes, there were three things that he changed there. But you're going to hear that he's been completely accu -- consistent as to the defendant's activities throughout.
And you're going to hear from him, and he's going to explain to you what he did any why. And when you do, when you watch him, all I ask is that you keep asking yourself what is there about this individual that made him capable of being manipulated and used by this individual seated here.
And at the end of the case, I'm going to come

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back and I'm going to ask you to find this defendant guilty of the murder of Hae Min Lee.
Thank you very much.
THE COURT: Thank you very much.
Again, Ms. Gutierrez, feel free to move about the courtroom.
MS. GUTIERREZ: Thank you.
THE COURT: And use the easel or whatever.
(Pause.)
OPENING STATEMENT BY MS. GUTIERREZ
MS. GUTIERREZ: As the judge has already told you, Mr. Syed, as any citizen of this city or this country, has no duty whatsoever to bring you even an iota of evidence, no duty whatsoever.
And the judge will tell you again at the end of the case and further elaborate on that law. But in spite of his lack of duty, Adnan Syed wants you to know certain things before you begin because he believes that they may be helpful to you in dealing with the case.
Mr. Urick said that the thing is most important. He said that sometimes things are not clear. Sometimes things are not clear because they're not clear, because nobody knows.
It is important that you understand who these

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two young people were. Young, star-crossed lovers of different cultures, of different races, from different countries, from different families, from different religions, from one side of the street to the other, from one set of answers straight to another, throughout history populated our collective human history. The younger they are the more tragic it is.
And no one denies that whatever happened to Hae Min Lee on whatever day -- because we suggest to you that you will not even have enough evidence to establish, not only what happened to her, other than what you will hear from the medical examiner, who will clearly establish that someone capable of performing a strangulation which takes a bare minimum of pressure, put their hands on her neck and with in 10 seconds, snuffed our her life, leaving not another mark on her body, and that her death is certainly consistent with having occurred on or about the 13th of January.
But it's equally consistent with having occurred on the 14th of January, or the 15th, or the 20th.
Her body was not found until February 9th. And all the medical examiner can say and all the evidence will show you is that she was clearly murdered and had been dead for some period of time; more than a

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day, probably more than a week, likely more than two weeks.

But no one, not the medical examiner who exhumed her body from Leakin Park, or the medical examiner who examined it the next day, will dare to venture an opinion as to the exact time or circumstances other than what I've told you about her death.

The only other thing that you know is that she was seen by friends, and teachers, and students who participated with her in her joyful life as a scholar athlete at Woodlawn High in what is called the "Gifted and Talented Program," "GT," "Gifted and talented," where she had matriculated as a scholar athlete, beautiful, bright, performing at the top in both athletics and in her chosen course of study.

She was among at least 25 other students, students who have been together for a number of years, attracted by the magnet program at Woodlawn, a school of enormous proportions, 1700 students in four grades.

You will find that this group of students of 25 had matriculated in the Gifted and Talented Program was truly amazing to look at, to watch, to observe, to interact with.

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They all generally considered each other friends. But like any other grouping of young people, they each had their little sets of who was who and who was best friends with whom. And most, not all of them, had been together since various junior highs.

And because high schools are fed by more than one junior high, some of them in groups had been together since the earliest of their junior high years as 6th graders. Some had been together since they were in elementary school kids.

And you will find that Hae Min Lee, although she had been gone about a year and a half because of her mother's move to California to pursue another relationship with a man who was originally identified as her father -- he's not -- but she recollected him and people referred to him as her father.

She went away after she got to Woodlawn and was gone a year and then came back. All the other names that you've heard mentioned in connected with Woodlawn fit in the very same category. They were all, other than Jay Wilds, and other than Jan Pusateri, children who had an incredibly bright future and who represented the very best of this whole community and of this country.

You will be amazed at the diversity among

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this group of children. Some of them were Muslim who consider themselves Mideastern. Others were Indian, others were black of every hue, others were white of every ethnicity.

And it appeared at any juncture where you would stop and take a look at this group of children, that the differences among them mattered not to them at all. They chose their friends on what we as a people would say are the best of reasons; not what color they were, not what the shade of their skin was, not what their ethnicity was, not what their religion or their beliefs were.

Adnan Syed had been an identifiable scholar and athlete from his very earliest matriculation in the Baltimore County Public School system. He is an American.

His ancestry on both his mother's and father's side, whom you will get to know and identify, is of Pakistan. They are Pakistani. And they came to this country before he was born or thought of in hope of a better life from their native land, like generation after generation of immigrants, other than the first people in this country, with their hopes and dreams for new families, for new life.

But unlike all immigrants, over centuries

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immigrants to this country as immigrants before this country was dreamed about by Europeans, some have sought to assimilate, to leave behind their native languages, their native customs, their native dress, their native culture, and their religions or any other thing.

Many waves and waves of immigrant have sought to assimilate into whatever was current in American culture then and to raise their children who learn far easier than their parents the ways of the new land.

Pakistan is, depending upon your viewpoint, an Arab country, a Mideastern country, a Near Eastern country, a Far Eastern Asian country. Pakistan was a country that was formed out of the bloodbath that was India right after India gained its independence from Great Britain. It was a bloody revolution.

And one of the distinctions between Pakistan and India were the deep divisions of culture. Pakistan is predominantly a Muslim country. Muslim is the common definition to term those who hold Islam as the core of their fundamental belief system.

It is not so very different if one studies it, from Christianity. Islam is the majority religion in that region of this earth. India is a predominately Hindu, not all, but predominately Hindu country. And

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there was, literally, a bloodbath among those peoples that rent that country into two.

And as a result of the bloodbath, whatever one may thinks of it, the economies of both countries was torn asunder. And may a young couple of a young family sought refuge in the economic desolation -- many, many.

Among those who sought were the parents of this young man. And they brought with them their culture, their religion, their habits, their beliefs, their way of life, they're own language.

And they, like many other waves of immigrants, sought to sustain it by teaching their children first their own language, by teaching their children first their own beliefs that had survived centuries before any of us can even begin to trace our own ancestors.

And they sought to keep that in their home. And they joined, just like other waves of immigrants; German, Dutch, Finnish, Italians, in our own city, who sought to stay close to each other so that they could cling to those traditions better, so that they could feel the comfort that comes when a people share a common history and a common belief system.

And so they sought to assemble, just like

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those of us who are Christian, assemble in church communities.

They sought to assemble in a community of each other. They identified and joined with a Mosque. It's called the "Islamic Society of Baltimore."

It's located on Johnnycake Road. And on the very edges of the property one can overlook onto 695, out there on the western side of the county.

And they, like many parents, became concerned about their children, Syed, and as you'll get to see, his brother and others. They became concerned that for six to eight hours a day their children went from their own bosom, from their own language, from their own religion, out into the world in the control of others in the school system where they learned foreign things to them.

They learned things that were not in line with their religious or cultural beliefs at all. And they became so concerned that ultimately they pooled their money.

The Mosque involves a good thousand plus families. And for Islam, it requires the adherence to certain fundamental tenets, one of which is for the faithful to face in a certain direction five times a day on their knees and to assert -- to recite the words

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of the faithful that had been repeated from millennia after millennia.

And Muslims, those who practice Islam in this country, although I will tell you there are under 10 million of them in this country, struggle to meet their obligations whenever and wherever they can.

And in their worry about their children such as Adnan -- and they knew that he excelled right from the beginning, and that his friends whom they saw and interacted with on at least a minimal level, seemed to be decent people.

And they observed the diversity, and they knew he was a scholar and an athlete. And they were pleased in their hearts. They wanted acceptance in this country. They came with the same dream and the same belief that they could preserve what is important to them as a people and not have to give it up; to have their children conceived and born on this soil, no less citizens than any of us, no less citizens than any other group of the offspring of the immigrants who come here with hope.

Over the years, their worries about their children, that because of their belief system as Muslims, would get diluted in the general discourse, they ultimately started a school. That school exists

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today and it keeps adding on year after year, so that for the bulk of their days their children, their hopes and their dreams can learn what they as parents decide is essential.

But when Adnan was a young man, they didn't have a school. And so he went out in the world. And all the way up until the Spring of 1998, you will hear that this wonderful group of diverse young people, they accepted Adnan and they accepted him as who he was.

He was a Muslim. He wasn't like them. He fasted when he was supposed to fast. He prayed when he was supposed to pray. And notwithstanding that this was generally a group of, at least in my generation, we were called "geeks."

They were a little slow on the uptake of the kind of development on a personal level. They were great athletes. They were great scholars. But they weren't really out there or with it.

They were slow to sex. They were slow to drugs. They were slow to all the things that, in fact, every other group of kids, but they finally caught on. And at 17 most of them were beginning to date -- mostly each other but not always -- and beginning to have sex and to experiment -- mostly with not the worst drugs, some marijuana, a little bit of designer drugs. And to

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go and do things like drink that they surely would not have been proud of.

But generally for a group of kids they were pretty darn responsible in how they did it. And generally they kept within their own group.

Up until that point they respected Adnan and other Muslim other young men in their group as Muslims. And they didn't press the points about dating. "No. Adnan will come to dance and be with us, but he doesn't date. He doesn't have a girl. Doesn't have sex. He's a Muslim and that's his belief. And he fasts. And he prays. And he attends his mosque with his family every day." And they generally accepted that and just sort of whatever took each other as they came.

Another young woman in this group is a young woman by the name of Stephanie McPherson. Up until the Spring of 1998 she -- she's a young African-American scholar-athlete.

Up into the Spring of 1998, and perhaps for a long while afterwards she, and everyone else with Adnan, would have described the two of them as the best of friends, and that they had been the best of friends, not- withstanding their difference in gender, their in race, their difference in religion, their difference in culture, as best friends since the onset of middle

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school, if not before. And everyone knew it. And everyone acknowledged that.

In the Spring of 1998, there was what we will refer to as sort of like the junior prom. Adnan and Hae Min Lee, who had returned from her hiatus in California only in the middle of that year, and Stephanie and the rest of their huge class, held a homecoming dance.

And they held a junior prom for the junior class in the late Spring of 1998. At that prom Adnan Syed was the king and Stephanie was the queen. They were crowned by their fellow students. They were selected.

But at that prom for the very first time, for reasons that are not hard to understand, Adnan had a date, a date that was suggested to him by others in this group that sort of sensed that Adnan was sort of ready to step out.

And you will hear that other Muslim young men, not all, but others certainly within that Mosque if not outward, had already made decisions -- and none of us have a right to judge -- to step outside of some of the strictures of their communities.

Some of those decisions were the fruit of what happens when you take a young Muslim kid and you

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put him in an environment which the parents have no knowledge, no control and by choice, no interaction; were they are exposed to different thought than the thought of their own families and their church, their Mosque community over years and years and years of people they admire and trust and think highly of. And for whatever the reasons of those that suggested it, it ended up with Adnan Syed and Hae Lee going as a date.

And from that date grew a relationship, the first of any kind that Adnan ever had with a girl, with anyone, the first sex he had ever had -- and which truly was against his religion, against the vows, against his belief as a Muslim, which prohibits, like many other religions, premarital sex between men and women, for reasons that we as a group of people may or not agree on. It is not singular to Islam to preclude sex outside of marriage in a committed relationship.

When Adnan started this relationship, he, like any other young kid, certainly had no idea of how much of him it would take and draw and how it would alter him, and what fundamental conflict it would create. He's a 16-year old kid, and quickly fell in love.

You will see from Hae Min Lee's diary -- and I will tell you it is tragic to have to read the diary

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of a young woman whose promise has been wiped out some -- under some circumstances afterwards. And you will see the track of their relationship.

Adnan Syed was not her first boy. She had had previous relationships. And one of the things you will see from the diary, that she had had a relationship in which a boy had betrayed her, betrayed her by being intimate with another girl while he had made a commitment to her.

Whatever you think of the wisdom of trying to tell kids that it's not the end of the world, that they can't know what the world of people is out there, you will, as you read her diary, understand this was a young girl of incredible passion, smart enough to think about things, to feel things so deeply.

She fell in love. She had previously been in love, and she was afraid right off from the beginning of this young boy whom she knew from the outset took her heart.

You'll see the ups and downs of the relationship. She talks about the continual declaration of what she calls "recesses," which me and you will see exactly what they sound like. She would declare a recess from the relationship.

And during that release -- that recess, not

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speak to him, not talk to him, take a day here, take a day there and then come back in a rush of emotion. But remember the diary is what she felt and what she believed he felt.

What the diary will tell you is that, although she struggled with these feelings and struggled with her feeling like he had been a good Muslim, his Islam was his life until she came along, and who was she to force him to choose.

From her diary, you will see nothing from Adnan, no asking, no pushing her away, giving her space.

You will see from another piece of evidence, a piece of evidence written by a woman who would describe herself as Hae Lee's best friend, that she wrote, after Hae Min Lee's body was discovered, and after she was asked to record her recollections about the relationship of her best friend whom she loved, and the boy, Adnan Syed.

She was asked to describe and she wrote down Adnan's character. This is after the death of her best friend, after the ugly rumors that pointed the finger and said "Boyfriend, boyfriend, boyfriend." She described him as laid back, funny, always joking, completely understanding and compassionate, willing to

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do anything for anyone, very good listener, gave advice when he could, faithful, loyal, protective of friends and loved ones, spiritual, very respectful of everyone, polite. Loving, supportive.

And when asked to describe the relationship of her best friend with the boy, she wrote, "They were both very loving. They were both very faithful and loved to tease each other and make jokes, publicly affectionate yet very respectful. Never fought around anyone. Had little disagreements sometimes but always worked them out by talking.

"Neither one ever tried to hurt the other. If one was hurt, they both were hurt. A lot of empathy. If one did something to upset -- upset the other, -- a rarity -- and apology was always made and the problem resolved.

"Both would do anything for the other. If Hae wanted space at a certain time, Adnan said, 'Okay,' no questions asked," and gives an example of a trip to Kings Dominium. "Both were happy but knew it wouldn't last forever."

And when asked, after the arrest of the boy, Adnan, to describe the breakup this best friend of Hae Lee described it as follows, "Not at all bitter. Probably originated from Hae." Her best friend didn't

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even know. Knew of the breakup but both agreed on it.

And then described that Hae still paged the man she called her "soul mate" with, "I love you, I miss you" messages.

This is after her body was found. not a description of a single character trait or experience that would relate a young man filled with rage, not a single description from this victim's best friend that describes in anything but loving terms, a boy who loved a girl against his religion, against his culture.

Could they have made it notwithstanding her dreams expressed in her diary or his dreams? Were they soul mates? Who knows?

But in her diary, close to the last entry, as she's describing very conflicting feelings about the new boy, Don, with whom she began a relationship on January 1st, 1999, but by the 12th of January describes it as finding another soul mate. That's how she saw it in 12 days.

But as she wrote it, she describes at school seeing again the young man who still held her heart, and she writes in her own handwriting, "No more Don."

The second to the last page of her diary, she had a page filled with a teenage girl's handwriting writing over and over and over and over again the word,

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"Don," her current two-week old soul mate. And at the very corner, she has the number that you will see from the evidence is the cell phone number assigned to this boy just the day before.

Who is that he calls to give his new cell number but his best friend and his lost love. And she writes it down as she's daydreaming of the new boy and the new soul mate in her life.

Out the group of kids at Woodlawn, Stephanie McPherson and Adnan had been friends for a very long time, best of friends, notwithstanding their differences. But somehow Stephanie became -- and I think that any of the witnesses that are called regrettably answered the question that if Adnan were not a Muslim and not a Muslim living up to Islam, Stephanie and Adnan might well been an item in the earliest time of their age group that they began to date. But it wasn't to be so.

But at that junior prom night Stephanie and Adnan were dancing, something else not allowed for a Muslim young man. And Adnan left her, the princess, the queen, the selected one, his best friend on the dance floor to go join the woman who sort of swept him off his commitment and his struggle to live up to his family's expectations.

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Stephanie had a relationship with a young man who wasn't part of those gifted and talented young people. He's not a scholar, not an athlete. He barely passed. He was a year or so older.

But he stuck on Stephanie from the beginning. The rest of the crowd around which they hung, and they generally hung around each other a lot, although depending upon groupings and timings, that might vary.

They accepted Jay because he came with Stephanie -- you know lots of times the attitudes of young people are, "Whatever," -- not because he brought anything of himself.

He wasn't college material. He didn't do the same things they did. He didn't do the same things Stephanie did but for whatever reason, they were girlfriend and boyfriend.

There are many others, and you'll hear some, who tolerated Jay Wilds for other reasons. He was a young man who recognized that this was a pretty geeky, naive group of kids, who were late bloomers, and they needed a source.

Jay Wilds didn't supply marijuana to the group because he wanted to please them. He did it for money. He would get them things that perhaps they were capable of getting themselves, but they weren't really

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up on them. So he'd supply the marijuana, sometimes the uppers or downers, or the designer drugs.

He'd buy beer, liquor because he was older. And he exposed them to things that maybe some of them found exciting. He worked in a porn store. He had porn videos, things they neither knew about from their own experience or had the courage to go out and seek whether it's right or wrong.

He was never part of the group for himself. And if Stephanie had dropped him, he never would have been called by anybody. January 12th and 13th were important days to Jay Wilds and Stephanie McPherson. January 12th was his birthday. January 13th was hers.

Now, there was speculation that Jay Wilds, who didn't own a car himself, he was up at school all the time. He'd borrow mainly Stephanie's car. But sometimes he didn't. Sometimes he borrowed others cars, because the purpose of his needing a car, which he needed two or three times every week, related to his activities, right or wrong, moral or not, of stepping out on Stephanie McPherson with other women.

Now, among young people today often one finds young people clinging to a code of behavior that sometimes appears more conservative even than some adults. The tendency of young people to get involved

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in very deep relationships very early in life rather than awaiting their own maturation and the maturation of others and the accumulation of life experiences is a bane to this generation's parents as it has always been.

You will find that Jay Wilds approached Adnan Syed on the 12th and the 13th, which is why he called him to borrow his car for the alleged purpose of going shopping and planning a birthday surprise for his alleged loved one, Stephanie.

And then Adnan -- and if his parents knew they'd be appalled but he didn't ask them. Most kids don't. "My friend wants to borrow the car, let him have it," since he was in school.

You'll seen in evidence documents that establish that he was in school in testimony of witnesses that day. He sometimes skipped class, but he be in school. He was completing college education -- college applications just like all other students in that group of the 25 gifted and talented, expecting the bright future that they had exhibited, to go to college, to be chosen to be of the best of their generation.

And he completed some of those activities that day. A little bit before, about a week before,

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there had been an assembly, and at that assembly Jay Wilds came up and again borrowed another student's car -- not Stephanie's, not Adnan's, another students for the purpose of keeping an assignation meeting with another girl not Stephanie, his girlfriend, unbeknownst to her.

And as this particular day all the students went to the assembly, Hae Lee with her particular, born of her brand of loyalty and commitment, confronted her soul mate who she saw as shielding the guy from being caught by his girlfriend by persuading her, Stephanie, to not go look for Jay because he knew that Jay would have a women with him.

And, yes, Hae Lee was upset with Jay Wilds, whom she didn't like, she never choose to be with. Hae Lee and Adnan never went out with Stephanie and Jay Wilds. She didn't have to tolerate Jay Wilds because she never chose to spend her precious available time with her chosen one in the presence of others unless it was an event.

But she reserved most of her anger on that day towards her boyfriend. How dare he hide another man who was cheating and lying on his best friend. How dare he protect him.

Now, on January 13th, Hae Min was supposed to

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pick up her cousin's niece, nephew on -- I can't quite remember at the moment. Young children got out of daycare about 5:00, and she generally picked them up. She worked part time at LensCrafters in the Owings Mills Mall. And that will give her enough time, and she generally was every, very responsible.

She had struggled to get her license and then got a car in the early fall upon her passing her driving test which excited her and covers much of her diary.

Within minutes of her failing to appear at the appointed time, her family notified the police. Within minutes of getting that report, within minutes, the police of Baltimore County where all this was located, began an investigation into her status as being missing.

And they began, as they do -- although I'd suggest to you in any other occasions certainly not as quickly, they began to gather information. And Young Lee, Hae Min Lee's brother, went up to her room, got the diary -- got the diary thinking this was the new soul mate's phone number, called then gave it to the police.

He knew who Adnan Syed was. And in that day and the next day, Adnan Syed told them everything he

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knew as did others. Others saw her at school as late as three o'clock. Others, teachers and students, know that she was upset that day and asked her, inquired what was wrong.

Others told right away, when first asked on the 13th or the 14th or the 20th, their best recollection. Some thought that Hae Lee had deep problems with her mother and suggested that she would go to California as she had said she would do so if things at home got too bad.

The 14th and 15th were Thursday and Friday, and were snow days in which the Baltimore County Public Schools were closed. And the police covered a lot of ground in those -- in the next days, talking to teachers. All the teachers they spoke to, no one suggested that the boyfriend, Adnan Syed, would have harmed her.

Every teacher, every friend, every acquaintance, every schoolmate, described them still after her alleged disappearance, as then the best of friends although everyone knew that they had just recently broken up around Christmas time as a couple.

No one suggested him. No one suggested anything but what they all knew to be the truth. These were two young people, star-crossed in their love,

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histrionic in their descriptions of that, who had, because they were so bright, understood that the relationship could not continue.

In the diary which records many of Hae Min Lee's thoughts throughout the year, there's not a single mention of the Homecoming Dance which certainly was the cause of what appears to be a recess or breakup. But remarkably at that homecoming dance what Adnan's parents came to and with whom he left, that immediately upon leaving and going home, he got on his bicycle and rode back to school to try to meet the dueling, competing expectations of those he loved.

He was asked that very night, and he told whoever asked him what he done that day. He went to track practice. Even though his was a practicing Muslin, because it was during Ramadan, the holy month, where Muslims fast from sunup to sundown, that he was not required to go to track practice. He could have easily been excused.

But he was serious about what he did in track in the same way he was serious about all other things. He medaled in track shortly thereafter, certainly not the mark of an athlete who would willy-nilly miss track practice.

So he told -- and he was asked that very

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night. and he was asked several days later. And like all of her other friends, no one believed that any harm had come to Hae Min Lee. They all believed, because of what she had said that whatever conditions existed between her and her mother, over whatever issues, were causing her enough pain that either she went out to California to a man they believed was her father or that she was off with her new boyfriend.

Because they as friends had already experienced Hae, like all other young women, and like Adnan himself, consistently lie to her family as to where she was, to cover up activities that she knew would offend them.

On February 26 -- well, before I get there, on February 9th, Hae Min Lee's body was found buried in a shallow grave in Leakin Park. There isn't much else in Leakin Park but the park and the protected wildlife.

From whatever cell phone towers cover the area of Leakin Park, anyone who drives through there knows one cannot talk on the phone inside the park. The signal doesn't hold.

It is a park of terrain that, although now there is a pedestrian path on one side of the park from down the end at the beginning of Rosemont all the way up to where the county line descends at the foot of

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what is called "William/Division Street" at the county end of Franklintown Road, back then in February -- in January of 1999, it was not a place for hikers.

And although it's a year from now and the terrain is similar -- not the weather, but the terrain, Leakin Park is always a place known in this city to be a place to bury bodies. But it is a desolate and lonely place.

On February 9th, in broad daylight, a man by the name of Alonzo [redacted] who's prior involvement with the criminal justice system included at least three occasions in which he took off his clothes on a public street down to complete nudity, left his clothes and then struck through wherever he was, completely naked, completely naked.

On that day --

MR. URICK: Objection, Your Honor.

THE COURT: Overruled.

MR. URICK: May we approach?

THE COURT: No. It's opening statements. The jury's been advised.

But, Counsel, I would just advise you that this opening, part of an overview of your case or what you expect the evidence to be.

MS. GUTIERREZ: Yes, Your Honor.

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THE COURT: Please continue in this fashion.

MS. GUTIERREZ: I do expect the evidence to show that Mr. Sellers has been charged and convicted of those very offenses. But on this particular day he drove through Leakin Park -- during the day it's even desolate -- and pulled his truck off in the single place where it is left to park, a place with jersey walls mostly blocking the entrance, and got out of his vehicle and walked a 127 feet, a distance more than five times the distance between the walls at which he walked to urinate and hide himself from view.

And in doing so, he came across a tree that you'll see view pictures of. It's in excess of 50-feet long, had clearly been there for awhile. And on the far side of the tree and on a terrain that is lower than the near side of the tree, because that terrain is closest to the stream, the Gwynn Falls, that runs through Leakin Park, and so the ground is lower on the far side than on the near side.

And on that far side nestled up, he says he sees what appears to him to be a foot. Now, how he got there and what led him to pick that particular place, which is less than a couple of miles from where he lives -- and this day was a work day, I believe it's a Tuesday. I could be wrong. But he had signed into

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work and there's no special sign out.

He says on that day after he calls the police, which is not right away, that he went home and went through Leakin Park which would be on his way, he lives up off Franklintown Road which becomes across the county line Dogwood Road, which is a road that if you follow it out in the county off of which runs Woodlawn Drive off of which sits Woodlawn School.

He has an explanation that runs essentially to saying, "I'm a maintenance worker at Coppin State University, and although a plane, a P-L-A-N-E, a tool with which you plane gently edges of wood to plane it down to size or to even roughness before you would sand." It's a fairly common tool for a maintenance shop.

And man of them are owned or maintained at Coppin State University Maintenance Department. But he says on that day, "Because I was assigned this work I had to leave my work, go home, while I was home I was got -- I got the plane," which you will not see in evidence. It was never seized or located or looked at that day. At least there's not a single report indicating that.

"And while I was at home I drank 22-ounce beer." He even lists the brand. "And though I was

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home, I didn't urinate in my own bathroom. I got in my car and less than three miles after leaving on my way to return back to work the same way in which I had come, I was so overcome with the urgency to urinate I had to park my car in this place that one can barely fit and the jersey walls are set to discourage from doing so. And then I had to walk 127 feet."

The evidence will show you that this body, whenever it was buried, could not have easily been located and that the terrain leading from wherever one entered off Franklintown Road, from no direction, from any entry point, was not an easy terrain, much less a terrain one could easily locate. One certainly couldn't see from the road where it was. It was below a sight line.

On that day, on the 9th of February, the police reacted much like many of you are looking. "Ha, this couldn't be the truth. Let's treat this guy as a suspect." They marked him as a suspect. They treated him like one. They asked him questions. They took evidence from him and sought to test it from evidence that they had already gotten from the shallow grave.

What we're getting is they spoke to him, they treated him as a suspect. They had police forms in which they marked in big letters, "Suspect." They

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didn't believe what he said. They didn't believe his story. It didn't match. It didn't make sense.

They gave him a polygraph which he flunked.

MR. URICK: Objection.

MS. GUTIERREZ: And they continued to treat him like a suspect.

MR. URICK: May we approach?

THE COURT: One moment.

Ladies and Gentleman, at this point there's an objection and I want to instruct you that polygraph examinations are not admissible. They're not accepted evidence in any court in the State of Maryland. Therefore, I'll ask that you disregard any remark that the Counsel's made.

It would not be evidence that would be admitted in this case. And so I'd ask Counsel to try to stick to those items that would be or you expect would be evidence in this case.

I -- Counsel also to inquire as to how much longer you expect to be in terms of an overview?

MS. GUTIERREZ: 15 minutes.

THE COURT: Very well.

MR. URICK: May counsel approach, Your Honor?

THE COURT: On some other matter?

MR. URICK: This matter.

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THE COURT: On this matter, no. But I will allow you to note for the record at the conclusion of counsel's remarks.

MR. URICK: I appreciate that. Thank you.

THE COURT: Very well.

You may continue.

MS. GUTIERREZ: Now, remember on February 9th, once the body of Ms. Lee was discovered, it became a Baltimore City matter because all the information that was known was that the body was recovered inside Baltimore City limits.

And Baltimore County detectives transferred all their information to Baltimore City. And they continued to look, they continued to search. And they continued to treat Alonzo Sellers, with this incredible story, as a suspect.

Somewhere shortly before the 26th and on the 26th of February, they got a lot of calls. And among the calls they got was what they, the Police Department, identified that day in a memo as two calls within minutes of each other as from a source that they identified as a young Asian male.

And perhaps the Baltimore City Police Department, you will hear, has special powers and special training to distinguish the voice of an Asian

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from a non-Asian. And most of you should know that Asians, the vast peoples, on the continent of Asia, China, Japan, the Mideast, India, Pakistan, the most populous countries on the face of the earth -- why Asians, Chinese, comprise more than a quarter of the world's population. Asians, all of those most populous countries, certainly comprise close to half, and mostly half of them are men.

How the Baltimore City Police Department distinguishes between the accent of perhaps an American of Asian descent and an American of non-Asian or Japanese versus a Korean versus a Chinese versus an Indian, all different languages, different cultures, different sounds, is beyond me, but perhaps you will be able to find that.

In any event, there's two anonymous phone calls that for whatever reason their equipment can't trace. And both phone calls say something about, "Look at the former boyfriend." The last communication of those phone calls is in the second to last week of February.

And on February 28th, Adnan Syed was arrested. On that Friday evening, Detective McGilivary, the lead detective in this case, goes to Adnan's home, and in front of his father, in a position

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that even McGilivary recognizes and writes down that is obviously painful to Adnan, he tries to whisper his answers to questions about his breakup with Hae Lee.

Because he realizes it is painful for the father he loves and respects to have to have this shoved up again in his face; that his son had this relationship with the girl, any girl, any color, any religion, any girl at all.

And he again tells them what he's asked freely and voluntarily.

On February the 26th, the State also meet -- investigators, Detectives McGilivary and Ritz, also meet with Jan Pusateri. Jan Pusateri is another one like Jay. She thought Hae Min Lee was uppity, looked down on people like her. No love lost, she says that right out. She was a friend who she says spoke and saw every day her friend Jay Wilds.

Police say that on the 26th, the very day they're asking Adnan about what other information does he have, and he talks to them, she walks into the police station, Baltimore City downtown, right there on Fayette Street and says, "I know Hae Min Lee. I know she was strangled. I know Adnan. I don't know anything else." And she leaves.

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On the 27th she walks to the police station and she gives a statement in the presence of the lawyer she brang, and her mother and the lawyer and the detectives. And in that statement she identifies a series of events. She saw nothing, according to her, except she says she saw Adnan right in front of Value City in Westview Mall when she went to pick up her best friend, Jay Wilds, but that all that she knows about it came from her best friend, Jay Wilds.

The following day, the 28th of February, shortly after midnight, the police bring downtown Jay Wilds presumably based on what she said or perhaps some other information that they may choose or not to bring in.

And in the middle of the night Jay Wilds gives the statement that says, "Ha, I wasn't there. I didn't do anything. I didn't touch anything. I didn't know anything. Adnan Syed decided that he was going to kill her because he was broke up because she ditched him." And Jay Wilds tells a story.

You will hear the evidence will show you that shortly thereafter, 15 days when confronted by Detective Ritz and McGilivary about what they politely called the inconsistencies in his statement, that he gives another statement on the 15th.

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And in that, it's not that he changes three things, he changes the most fundamental of things. On March 15th they had already examined the body, done the autopsy, collected every piece of evidence they could find from her body.

On her body they found at least four hairs that were identified as being not hers and not Adnan's, someone else's. And they did nothing else with them.

Based on what Jay Wilds told them, they seized his car. They found her car because Jay Wilds took them to the car. He didn't just change his mind about where things are alleged to have occurred. He had taken them to a different place.

He not only lied to them, he acted on the lie, and he brought them along with it, took them to a place and he tells them that in the intervening time from the 13th to the 28th, he visited her car. He visited a car that he said he never drove, he never was in, he had no evidence about, and he had no interest in.

But he visited it four plus times in that intervening short period of time to check to see if it had been found.

The shovels that he describes -- and before you hear anything, remember that all Mr. Urick laid out

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to you comes out of Jay Wilds' mouth.

The cell phone contains mostly calls to and from only people who's numbers you never ever see except that day because they are to and from people who only have a connection to Jay Wilds, numbers that never, ever show up made to and from people who don't even know who Adnan Syed is; that all evidence seating this boy in this chair only comes out of Jay Wilds mouth and nothing else. There is no forensic evidence that conclusively establishes anything.

Adnan Syed, as all the group will tell you, was in Hae Min Lee's car almost every day from April. Even in January, her diary describes that in January when her car broke down, who does she call? Not Don Cliendist working at the place where she worked, but her best friend, her soul mate, Adnan Syed. He's the one who drove it around.

You would expect to find fingerprints as they found on a couple items in her car. But other than that not a single thing. There are hairs that are unidentified but capable of being compared.

There's a shirt, and they're other items that even up until a couple months ago, not February, not March, April, May, June, July, but September, October, November, December, they are still testing because they

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know they cannot rely solely on Jay Wilds.

Jay Wilds is the one who describes, you have clear evidence of at least three statements if not more, each time changing something fundamental.

Why would he change the location from Edmonson Avenue to BestBuy? Well, you just got to go back and look at the statement of Jan Pusateri taken first. Who describes, "Aha," BestBuy, over looks Security Boulevard.

There's a gas station and then a McDonald's and you go around and BestBuy's like all other BestBuy's all over America, have the same building. They're built according to a plan. Their entrance is the same.

The entrance to BestBuy shows you a huge glass panel in the shape of what I call house and the building is the same. There's a guard there that loosely checks. There's a parking lot on the side. There's a single telephone right inside that entrance open to the public.

And you'll hear Jan Pusateri note, "Aha," there are cameras on BestBuy.

You will hear that he lied on the first statement and admits lying because he says he did nothing. He just happened to be borrowing the car and,

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oh my, this guy whom he knows that he cannot even begin to call anything more than an acquaintance, just shares with him this rage, this passion. And not a single other witness who saw and interacted with him over years ever, ever saw an iota of.

You'll hear that Jay Wilds acted exactly as he sounds. It was his shovel -- shovels. He is the one that goes to retrieve from the dumpster the shovel so he can wipe off fingerprints that he first lies and says he never handled.

It is he who says, and then ask Jan Pusateri to back him up, except she talked first and either she didn't get it straight or she just totally lied, because she doesn't say what he says she should be able to corroborate.

But it is Jay Wilds and only Jay Wilds who goes back to take his clothes off and dump in a dumpster; that on the first go around he says, no, could have been one of three dumpsters. Except one of the locations is a place where he worked at Petsmart up on Route 40, a specific location that if he went in the middle of the night, as he says, to hide evidence that might contain what heretofore had never and still has yet to be connected to Adnan.

No dirt in his car. No dirt on his boots.

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They took everything from his house, from his car. They took out the carpet, not a single corroborative piece of trace evidence.

We think that these things are important, unusual for you to understand before you hear a bit of evidence. And we call you to the promises that you've made as jurors, understanding that you can never look on this side of the table for Adnan to answer.

He sits as any young man. The death of Hae Min Lee was a tragedy for all who loved her. And there were many. There is no dispute that someone killed her. And there is no dispute that that death could have occurred as quickly as 10 seconds, without warning, without planning.

But just like the judge told you, do not forget your common sense. Sometimes when it looks like a duck and it acts like a duck and it walks like a duck, it is a duck. Things aren't clear often because those with power to clarify seek to disguise the truth.

I give you Adnan Syed in your charge.

THE COURT: Ladies and Gentleman, at this moment I'm going to ask the State to present its first witness, and I need to speak to counsel at the bench before I do that.

(Counsel and the defendant approached the

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bench, and the following ensued:)

THE COURT: Would you come up. The mike is here. Speak in there. Mr. Madden will not have to come up.

MS. GUTIERREZ: Okay.

THE COURT: And obviously we're here in the position the jurors can see you now. I'm going to ask if you can keep your voices down.

MR. URICK: Your Honor --

MR. URICK: There's a motion I think.

MR. URICK: The State would move for mistrial at this point.

THE COURT: Basis?

MR. URICK: Polygraph evidence is absolutely inadmissible. No attorney could mistake that fact. To mention the polygraph test is so prejudicial and so contrary to law that it has made it impossible for the State now to get a fair trial.

The State moves for a mistrial because of the deliberate, prejudicial actions of counsel to try to get evidence before the jury that would be totally inadmissible.

THE COURT: Any response?

MS. GUTIERREZ: Well, Judge, I -- I think the law is clear that polygraph evidence; i.e, --

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THE COURT: I need just need you to speak up.

MS. GUTIERREZ: The polygraph itself and the report of polygraph are generally inadmissible, although they may be admissible under certain circumstances under certain kind of proceedings.

This is a polygraph. Almost all about law though, so made under circumstances --

THE COURT: We need to do this out of the presence of the jury.

MS. GUTIERREZ: -- where what is sought to be in or kept out relates to a defendant and is challenged. Well, this is not. And the only reference was that he was given a polygraph, which is crucial to establish that others --

THE COURT: Actually --

MS. GUTIERREZ: -- under reasonable --

THE COURT: Actually, I think what you said was that the gentleman was -- not your defendant, was given and failed.

MS. GUTIERREZ: Yes.

THE COURT: Well, --

MS. GUTIERREZ: Right.

THE COURT: "Flunked," was the word. Whatever.

MS. GUTIERREZ: Right. And -- but that

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number one, Mr. [redacted] is not a defendant whose due process rights have consideration here. We believe that on part of Mr. Syed's defense that he has a due process right to present, notwithstanding adherence to other rules of evidence, if, in fact, that comes in is to relate and to establish evidence, establishing that it was reasonable. That both Alonzo [redacted] -- I know, this argument that at least Alonzo [redacted] was seen as a suspect, treated as a suspect, all the behavior of the police was as a suspect and that he has a due process right to get that information in front of the jury as an alternate theory of who killed this girl.

THE COURT: And you will be making that argument at some other point.

MS. GUTIERREZ: Yes, I will. Yes.

THE COURT: And is the State's position that the curative instruction made by this Court to jury that polygraph examination and testimony is not admissible in the State of Maryland and therefore is not relevant to this proceeding is not sufficient?

MR. URICK: That is correct. That cannot overcome the prejudice of this. And there can be no good- faith basis for the defense counsel to say in opening comments. If she wanted to argue its

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admissibility she should have made a motion to enter the -- its -- she should not have stood up in opening and said it.

She could not do that in good faith. It is done to really prejudice this panel. The State cannot, at this point, get a fair trial. There can be no curative instruction, Your Honor, to overcome the prejudice that this counsel has to the really created through her misconduct and deliberate misconduct.

And it's clear that it's professional misconduct under the rules. There can be no good faith basis for what we saw here.

THE COURT: I've heard your argument. I don't agree with you. I think that the argument that counsel's made both with the Court's curative instruction and preliminary instruction that nothing that you or Ms. Gutierrez says is evidence, regardless of what you say.

It's opening statement. You can say what you want. But I will instruct them again now as a reminder and at the conclusion of this case and throughout the case that what you all may say during the course of this trial, is not evidence.

We'll direct them to follow their oath as ordered by this Court. And that is to follow the law

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as I instruct them and to consider only those items that are marked into evidence and the testimony that's given to them for their consideration as evidence in this case.

MR. URICK: That --

THE COURT: Your motion is denied.

MR. URICK: I would think under the doctrine of curative permissibility, I should be able to reopen my opening to say that the polygraph examiner who examined [redacted] came to the conclusion that it was his situational stress because he had to be elsewhere, gave him a second polygraph geared specifically to whether he had any knowledge as to how the victim died and he passed that.

THE COURT: I will take up the issue of what the State may or may not say with regard to the polygraph at which time during the course of your case you determine that that information would come in. Or on the alternative, if during the defense's case they take the course of asking questions to set out a factual scenario where a witness might say, "These are the things we do with a suspect, one of which to include giving a polygraph," and in some stretch of the imagination the results of any polygraph come in, I will allow in cross you to do that. But at this stage

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the motion is denied to reopen your case.

I will give a curative instruction once again as I gave as a reminder that they should be reminded that what counsel says is not evidence; that the purpose of opening is an overview of what they expect the evidence to be; that they should be mindful of the evidence comes from the witness stand and those items that are marked into evidence and admitted by this Court as evidence.

Anything further? Would you wish to note your objection for the record?

MR. URICK: I think the objection -- I don't think I need to note an objection to a motion that --

THE COURT: I feel in an abundance of caution you might want to.

MR. URICK: The State almost never gets an appeal on its -- never gets to address its -- its objections on appeal anyway.

THE COURT: It's up to you.

MR. URICK: But I would at this time make a motion in limine that defense counsel not broach that particular subject again. And I would second make a motion in limine that she not address charges, either arrest or convictions, that are not impeachable offenses.

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MS. GUTIERREZ: Well, Judge, I think --
THE COURT: Well, first of all, before you may respond, with regard to the argument as to -- and I -- I -- Counsel, I'm going to step on your toes a little bit.
If, in fact, there is a conviction of Mr. [redacted] of taking off his clothes in any of -- I will find that it is indeed relevant to the State -- to the defense's theory of the case that he may have been responsible for the murder of the victim. And I will allow that in.
I find that that is indeed, although it's not a crime of moral turpitude, it is indeed a question that may be asked and answered by this witness because of the particular facts and circumstances of this case. And to the extent that she would like to inquire, I will allow that.
So -- and if you were to make a motion or you are making a motion in limine, I will tell you if you bring in a certified copy, I will be happy to review those items that are on there that you believe are admissible. That may not necessarily be crimes of moral turpitude, but maybe indeed relevant on that issue of moral character.
MS. GUTIERREZ: There are two separate --

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THE COURT: Well, --
MS. GUTIERREZ: And I believe a third that just happened.
THE COURT: But you will have to --
MS. GUTIERREZ: Convictions.
THE COURT: You -- you will have to address that before the witness --
MS. GUTIERREZ: Yes. That's right.
THE COURT: -- takes the stand. And you will have to address that by way of a certified copy. And until the Court has ruled which of those offenses are admissible, I will grant the State's motion.
MS. GUTIERREZ: I understand.
THE COURT: And you will not be able to discuss them. But I will entertain from you a motion with regard to your ability to question the witness on those specific allegations. And if you would at the time you make the motion, tie them to your theory of the case, I'd be happy to hear from you.
And I can tell the State that I would be inclined to allow that in light of the way in which the defense has indicated their theory of the case is.
With regard to -- between now and then, I'm admonishing you, Ms. Gutierrez, you're not to discuss -
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MS. GUTIERREZ: Fine, Judge. It wouldn't come up --
THE COURT: And secondly, with regard to the poly -- the polygrapher's testing of any other individuals, I'll admonish you that you should not mention that. Because again, if you believe it would be admissible, I'd like you to indicate --
MS. GUTIERREZ: It's the only one I've been told about is Mr. [redacted] I know of no one --
THE COURT: But at time you're going to make that inquiry, I want to know the circumstances under which it was given and all types of information you plan to bring out. And I'd ask that that have the pre -- previously been placed in question by your questions on cross of the detectives of any procedure they use for suspects, which may include giving them a poly -- polygraph. But we'll discuss that at the time that particular witness is on the stand.
So granted in part, denied in part as to your motion in limine. In the interim you might want to do some research. So at the time that that -- Counsel raises the argument, since you know that's where she's going, you have cases to cite for the Court.
Anything else?
MR. URICK: How long does the Court plan on

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sitting today?
THE COURT: Until 5:00.
MR. URICK: I think we can just take Sergeant Forrester cause he's not available for next couple of days so --
THE COURT: All right. We can go to 5:30 if you would like?
MS. MURPHY: We got Peter Saars.'
MR. URICK: I'm not going to that but were you planning on it?
MS. MURPHY: Yeah, I've already purchased a ticket.
MR. URICK: If we could do one short witness and then break for the day we'll --
THE COURT: That will be fine.
MR. URICK: May we have a brief five minutes without --
THE COURT: Yes.
MR. URICK: We have about five or six witnesses.
THE COURT: That will be fine.
(Counsel and the defendant returned to the trial tables, and the following ensued:)
THE COURT: Ladies and Gentleman, I would like to proceed with the witnesses for this afternoon.

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And when I say witnesses I actually mean a witness. But I note we've been sitting for some time and I need to know from a show of hands, whether or not the jurors would like to stretch their legs, walk around to the jury room to use the facilities, and then come right back.

If you would like to do that, it will take about five minutes to get the witness up to the courtroom. Raise your hand if you would like to do that.

All right.

Then, Deputy Church, if you would walk my jurors around to the jury room, allow them to use the facilities and bring them back.

Ladies and Gentleman, I must ask you to leave your notepads stacked face down on your chairs. I must ask you not to discuss this -- the testimony you've heard -- you haven't heard any testimony. You've heard opening statements.

And as you know, opening statements is not evidence. You have not heard any testimony yet. You haven't had any exhibits offered into evidence. All you have heard is what the attorneys think will happen during the course of the trial.

But what they say is not evidence. So

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therefore there's nothing to discuss. Please go with the Deputy Church at this time. Use the facilities and he will then bring you back.

(Pause.)

(The jury left the courtroom.)

THE COURT: Asking the -- the Baltimore City officers if they would sit on the bench behind your client rather then -- rather then tying up two benches, since this courtroom is very small.

MS. GUTIERREZ: Yes, Judge.

THE COURT: Do you have any problem with that?

MS. GUTIERREZ: No, Judge.

THE COURT: And I have no problem if you -- if the second officer does want to sit in a chair by the Court. But if the other officers --

MS. GUTIERREZ: Since nobody else seems to be sitting there, that's fine.

(Pause.)

THE COURT: During the trial, I'm going to need you to move your chair around a little bit.

Right. That way --

MS. GUTIERREZ: The only problem, Judge, is that my room is limited because of the --

THE COURT: I understand.

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MS. GUTIERREZ: -- angling of the thing. And that's why I sort of put his chair --

THE COURT: The other thing --

MS. GUTIERREZ: -- the maximum --

THE COURT: The other thing that you could do, Mr. Syed, if you want, is that you could sit on the front row behind your attorney.

Now, Ms. Gutierrez, I'm telling you you're free to use the desk area behind you as well as --

MS. GUTIERREZ: That's what I've been doing, Your Honor. Thanks.

THE COURT: And your welcome to also to push your chair back so that you can see the witness clearly and also be able to talk to your client.

MS. GUTIERREZ: Fine.

THE COURT: That just means that chair will be empty.

MS. GUTIERREZ: Maybe we'll try a couple different ways this afternoon and see what works for us best.

THE COURT: Again, it's up to you. I've had counsel have their clients sit on that bench. And I've had also -- that bench moves.

MS. GUTIERREZ: Okay. Maybe we can move it up.

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THE COURT: And we -- so there's some -- there's some flexibility.

MS. GUTIERREZ: Okay.

THE COURT: But I want to advise you that the

--

MS. GUTIERREZ: That's fine. I'll move that.

THE COURT: I want to make sure that Mr. Syed is able to see the witnesses. But I also don't want him to feel likes he's right in their lap or them feel he's right in their lap.

THE DEFENDANT: Then if he sits there then that keeps me from being able to sit there.

THE COURT: No. If you sit -- just walk around if he needs to walk to the witness.

MS. GUTIERREZ: Right. Do you find, Judge, is it better -- we can always move this up thereby making it easier to pass.

THE COURT: Well I must add that normally that table is not in -- in the position it's in. It's usually extended.

MS. MURPHY: Right. We turned it to make more room back here for -- for the jurors and everybody walking back and forth.

THE COURT: Well, I'm just telling you in the

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past the chair has been the other way. It has --
MS. MURPHY: Right.
THE COURT: I mean that table has been extended into the room. The jurors don't have any problem getting to the jury box. But with the table the way it is --
MS. GUTIERREZ: Well they do now.
THE COURT: Yes. With the table the way it is now they do.
MS. GUTIERREZ: Yes.
THE COURT: So if the table were placed back the way it was initially, two things would occur. You would have space to rest your things, Which means you wouldn't have to put so much on the table in front of you. And also it would leave room behind that table for the jurors to -- to go back and forth without any problem.
It's just that's the way we've done it in the past. For you all this may be the first time you've had a trial in here.
MS. MURPHY: Yes.
THE COURT: But this is about the 60 or 70th trial I've had in here. And we've been able to manage without any difficulty. It -- for those that are not familiar with this courtroom, it's convenient to them -

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- inconvenient to them. But it hasn't been inconvenient to the scores of trials I've had.
As you can see, the jury box --
MS. GUTIERREZ: So Judge, just to make sure I understand. I don't remember this table. Was it because it was that way?
THE COURT: That's exactly correct.
MS. GUTIERREZ: Okay. And that's --
THE COURT: That's what's causing the problem.
MS. GUTIERREZ: Judge, I'm using the space under the table for my files.
THE COURT: That's right.
MS. GUTIERREZ: So I hadn't counted on using the top, so if we turn --
THE COURT: Well, if it were the other way -- as a matter of fact --
MS. GUTIERREZ: -- it would be more convenient.
THE COURT: Warren Brown during a recent jury trial where there were two defense counselors actually had the defendant sit in the middle, between two counsel.
MS. GUTIERREZ: Uh-huh.
THE COURT: And he used the table --

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MS. GUTIERREZ: For this stuff.
THE COURT: Right. He even sat in -- in that table.
MS. GUTIERREZ: Right.
THE COURT: On that bench and used the table.
MS. GUTIERREZ: Okay.
THE COURT: And it worked out fine.
Yes?
THE DEFENDANT: I want to --
THE COURT: If you want to talk -- ask her, she'll ask me. Because I don't know what you're going to say.
THE DEFENDANT: I'm sorry.
MS. MURPHY: I'm sorry, Your Honor. I was asking a question and was interrupted.
Do you find that it makes it easier or makes a difference to the jurors in hearing the witnesses if we ask questions standing or seated or -- since we actually are in front of some of the jurors, I didn't know if they had difficulty --
THE COURT: First of all, you do not have to stand when you're asking questions. What you might want to do is have a seat in the jury box. And you'll get my meaning, they can see over your head. They don't have any problems seeing.

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MS. MURPHY: I -- I'm more concerned that they won't hear our questions. If we're in front of them and they can't see our mouths, you know, we're directing everything towards the witness --
THE COURT: That's if your standing.
MS. GUTIERREZ: No. If we're sitting here I'm actually in front of these jurors here.
THE COURT: But that's why they're mikes.
MS. GUTIERREZ: Okay.
THE COURT: That's not been a problem.
MS. GUTIERREZ: Okay.
THE COURT: That's not been a problem. If you stand to ask your question where you're standing right now, yes, you're going to block the view of some of the jurors. If you sit where you're sitting right there, you will have no problem.
If you take about three steps back and ask the questions -- stop Mr. Urick -- from right where Mr. Urick is standing --
MS. MURPHY: Uh-huh.
THE COURT: You have no problem with the jurors or with -- with the ability of the witness to see or hear you. So there are abundance -- and as -- if you put that table back --
MS. MURPHY: Right.

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THE COURT: -- where it was you actually can put your notes on the table.
MS. MURPHY: While you're questioning.
THE COURT: And stand by the table and everyone can see and hear you. That bulletin board works -- the easel works well, even with the table the long way. And where Mr. Urick again, is standing, is generally where the -- the bulletin -- the easel is placed.
MS. MURPHY: And can all the jurors --
THE COURT: And all the jurors can see when the -- and there's a stand at -- a lip at the bottom of the easel. You can put things on it and rest things and you can see.
There are also clips at the top of each easel. So that if you don't want to rest it at the bottom you can pull it to the top. So it -- I mean, this courtroom is small but we've had trials in here without much difficulty.
MS. MURPHY: Thank you, Your Honor.
THE COURT: All right. And I -- and again, we're going to take a five minute recess and as soon as the jury comes back we will continue.
And I -- the Baltimore City Correctional Officer, I appreciate your cooperation and assistance.

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I've now learned a new rule that I did not know.
And so I don't want to interfere in anyway with what you're doing. But you're welcome to sit on the front row. The defendant will not sit on that row with you. He will sit in a chair.
MS. GUTIERREZ: Is there any need for the television now?
MR. URICK: Yeah. We've got a -- that's --
MS. GUTIERREZ: Judge, the reason I ask, I've already tripped it over this several times.
THE COURT: Is it taped?
MS. GUTIERREZ: It's not taped. If we could tape it to the floor it could be --
THE COURT: Is there an electrical outlet under the trial table?
MR. URICK: No. I've already checked.
MS. GUTIERREZ: No.
THE COURT: No? Very well. I'm going to stand in recess just for a few minutes. I'm going to ask that you bring the jury back.
(Short recess.)
(The jury was present upon reconvening.)
THE COURT: Please be seated. Ladies and Gentleman, we're just going to continue until just about 5:30 and then we'll recess for the day. Tomorrow

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you'll follow the same procedure you followed today and we'll resume at 9:30 or as close to that as we can.
Your witness.
MR. URICK: Thank you, Your Honor.
(Pause.)
THE COURT: Sir, please --
MR. URICK: Your Honor, with the Court's permission in order to accommodate witness who are possibly unavailable after today after day I will be calling the first two witnesses out of the order that we normally would be called them in.
State will call Emmanuel Obot of the Crime Lab at this time.
THE COURT: Okay.
Sir, please raise your right hand and be sworn.
Whereupon,
EMMANUEL OBOT,
a witness produced on call of the State, having first been duly sworn, was examined and testified as follows:
THE CLERK: You may lower your hand. Be seated.
Please state your name and assignment for the record?
THE WITNESS: My name is Emmanuel Obot, O-B-

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O-T, Baltimore City Police Crime Lab.
DIRECT EXAMINATION
BY MR. URICK:
Q. Good afternoon, Mr. Obot.
A. Good afternoon.
Q. What is the Mobile Unit?
A. Our primary function is to respond to the crime scene, process the crime scene for any type of physical evidence that might be available.
Q. And do you also seize evidence?
A. Yes.
Q. What is a criminal complaint number, sometimes called an offense number?
A. We give a CC number or complaint number.
Q. What is that?
A. That's number assigned by the dispatcher when the officer requests for crime lab to respond to the scene.
Q. And does that particular CC number follow every subsequent investigatory step that's takes for that incident?
A. Yes.
Q. And what is the Evidence Control Unit?
A. That is a unit that after we recover the evidence and we submit for safekeeping until it's

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requested by the Assistant State Attorney for trial.
Q. And what is a property control number?
A. That is a number that we can easily identify the evidence that was submitted also.
Q. Okay. Now, did there come a time when you took park in a search and seizure that occurred at 7034 Johnnycake Road on March 20th of 1999, in the investigation of the murder of the victim Has Min Lee, CC Number 998B5801?
A. Yes, I did.
Q. And what was your function that day?
A. My function there was to photograph and recover the evidence, process it and submit it to ECU, Evidence Control Section.
Q. Okay. At this time I'm going to --
MR. URICK: With the Court's permission to approach the witness?
THE COURT: Yes, you may.
BY MR. URICK:
Q. Show you three items. Two of them have been marked for identification purposes as State's Exhibit 36-A and 36-B. And then there's a larger bag as well.
First I would like you to look at the two exhibits marked 36-A and 36-B.
A. I took this photo -- this photographs.

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Q. And can you identify what those are?
A. This is -- down here is one of the detectives pulling out a book from the shelf. Look -- just looking through it for any type of physical evidence that he might find.
This one here is the book spread open and some documents in it. And then I photograph it.
Q. And do those fairly and accurately depict the state of the tenants -- the bookshelf in the defendant's bedroom on the day those were taken?
A. Yes.
MR. URICK: Would offer as State's 36-A and 36-B, photographs.
THE COURT: Any objection?
MS. GUTIERREZ: No, Your Honor.
THE COURT: All right. It will be admitted.
(State's Exhibits No. 36-A and 36-B previously marked for identification were received in evidence.)
MR. URICK: May I have the Court's permission to publish them to the jury at this time?
THE COURT: In the concern for time, is that something that you can do or would you do that, or that

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you would rather do that in the morning?
MR. URICK: I -- I think it can be done now before --
THE COURT: Very well.
MR. URICK: -- very, very quickly.
THE COURT: Ladies and Gentleman, as you observe these photographs, just have them passed along to the next juror when you're done. And if you would split them up as you finish the first one then send it along the way, that would expedite.
BY MR. URICK:
Q. Now, if you would please examine the bag that I've put down beside you.
THE COURT: I think there was a request that when items were published to the jury that we not ask any more questions. And so we will follow that procedure which is why I --
MR. URICK: I -- I misunderstood what the Court was talking about.
THE COURT: -- you perhaps you might want to hold off.
MR. URICK: Can I just ask the witness to examine the -- the bag while they're --
THE COURT: Sure. Certainly.
BY MR. URICK:

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Q. Please examine that bag while they're looking at the photographs.
MS. GUTIERREZ: While we're waiting can we come up to the bench on an items that's going to be subject --
THE COURT: Certainly. Why don't we do that. Come up to the bench.
(Counsel and the defendant approached the bench, and the following ensued:)
THE COURT: Remember that the mike is here at the black square. Okay.
MS. GUTIERREZ: Judge, I believe --
THE COURT: Okay.
MS. GUTIERREZ: Judge, I believe that this bag holds evidence of various numbers --
THE COURT: Shh. Whisper.
MS. GUTIERREZ: That were seized and processed during the search of my client's home. I certainly haven't objected to the pictures. And I won't object to other pictures, but I will issue an objection to the admission of some of these items.
THE COURT: Can you keep your voice down?
MS. GUTIERREZ: On relevance grounds.
THE COURT: Okay.
MS. GUTIERREZ: There's an awful lot --

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THE COURT: Can you tell me what items there are?
MS. GUTIERREZ: Well, as to the textbook, for instance, it shows a variety of paper things that are displayed in one Photograph B that -- displays items that were allegedly found inside the textbook. And I guess our -- my objection is based that some, if not all, of those items have no relevance whatsoever.
THE COURT: Okay. Stop there.
MS. GUTIERREZ: To -- to this.
THE COURT: With regard to the textbook items is there some relevance issue?
MR. URICK: The Court -- the State has pulled one specific item out as a separate exhibit, which is a letter that Hae Min Lee wrote to the defendant which the defendant afterwards was writing comments about with another person.
And after that conversation was over, the defendant wrote, in his own handwriting at the top, "I will kill." We were able to -- we were able to identify the victim's handwriting, the defendant's handwriting, including the statement, "I will kill," in his handwriting.
And we're also able to identify the person he was passing the note back and forth. And they were

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writing comments to each other.
THE COURT: All right. With regard to that specific item, I'm not ruling on its admissibility yet because they obviously have to lay a foundation for its admissibility. However, I find that if they are able to do so, that would be relevant item.
With regard to the other items in the textbook, which is the subject of her motion as well?
MR. URICK: If the Court prefers, there's a big bag in which that is a smaller item. I will leave for identification purposes only the entire bag of evidence. And then I'll enter the specific --
THE COURT: So you're not moving into evidence all of those items?
MR. URICK: I don't need to.
THE COURT: Okay.
MS. GUTIERREZ: Well, again, Judge, I would renew, certainly subject to other evidence that they have, my objection based on relevance grounds. There's been no disclosure of any expert establishing the handwriting, and no disclosure of anyone who will establish so I don't know that they can establish that it's my client's writing.
Or when or where -- when particularly, when, this alleged note was written either first by Hae Min

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Lee and secondly by whoever it is, we're not privy to, alleging to identify further still.
THE COURT: Assuming that they're able to make the connection --
MS. GUTIERREZ: Well then I'd have no objection.
THE COURT: -- actually that would be relevant. But I will reserve your -- your objection on two basis; one on the relevancy issue and one on the authentication -- authentication of the document that they claim that purports to be something written by your client and by the victim.
MS. GUTIERREZ: Okay.
THE COURT: So the items that you're not able to tie -- you're not moving in so that --
MR. URICK: I will leave the bag proper for identification.
THE COURT: Okay. And you -- you're next item.
MS. GUTIERREZ: That's it.
THE COURT: Is there anything else in that bag?
MS. GUTIERREZ: Not that I know of.
THE COURT: Okay. Very well.
MS. GUTIERREZ: But I don't know.

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THE COURT: Well as he pulls those items out --
MS. GUTIERREZ: There all relevant.
THE COURT: -- if there's anything else just bring it to my attention.
MS. GUTIERREZ: Okay.
THE COURT: All right. Thank you.
(Counsel and the defendant returned to the trial tables, and the following ensued:)
THE COURT: You may resume your questioning. What you can -- you've recovered both items. And I'd asked counsel if they're not going to use exhibits, if you just give them to the clerk only because I know there's not a lot of space there but that would be one less item that you'd have to worry about.
Thank you. You may proceed.
BY MR. URICK:
Q. Mr. Obot, what was the significance of the address [redacted]Road?
A. What -- excuse me. Could you repeat this question again?
Q. What was the significance of that address?
A. From the information I got it from the detective that that is the residence of the suspect.
Q. Suspect in this case being the defendant

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here, Adnan Syed?
A. Yes.
Q. Now, have you had a chance to examine that large bag that I gave you?
A. Yes.
Q. Can you identify that bag?
A. Those are the evidence I recovered from the residence, [redacted] Road.
Q. And does the bag have on it a reference to the CC Number 998B5801?
A. Yes. This my handwriting here.
Q. And does it have, in your handwriting, the property number that was assigned to that particular bag?
A. Yes.
Q. And what was that property control number?
A. This was MB5031. Or 50 -- 5801.
Q. Now, have you had a chance to look at the items inside the bag?
A. I can see -- then again some of the bags that I opened, you know, the pair of shoes that was recovered. Some of this are still sealed. This is pair of shoes also recovered from the basement.
Q. Now, other than opening the bag for various required discovery purposes and courtroom preparation,

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are the items in substantially the same shape as you packed them?
A. Yes.
MR. URICK: At this time, out of that bag, pursuant to stipulation, we would offer into evidence State's Exhibit 30, which is the defendant's cell phone proper.
THE COURT: And there's no objection, Counsel?
MS. GUTIERREZ: No, Your Honor.
THE COURT: Very well. Let it be admitted.
(State's Exhibit No. 30 previously marked for identification was received in evidence.)
BY MR. URICK:
Q. Now I show you this bag which has been marked for identification as State's Exhibit 37, I'd ask you to open it up and look inside it? Don't -- do not describe anything that you see.
(Pause.)
BY MR. URICK:
Q. Don't describe anything that's in there.
A. Okay.
Q. Please open it up again.

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MS. GUTIERREZ: Can I see that?
(Pause.)
THE COURT: No. I don't need to see it.
What is the exhibit that you're examining, Ms. Gutierrez?
MS. GUTIERREZ: Judge, I don't know. It's not marked in and of itself. There's a single letter that's marked.
THE COURT: Were you going to call it something?
MR. URICK: Yes. First the bag proper is for identification, State's 37.
THE COURT: 37.
MR. URICK: And within it there's one item which is marked for identification as State's 38.
THE COURT: All right. And that -- that item is the bag itself or an individual item?
MR. URICK: That's an individual -- 38 is an individual item within the bag proper.
THE COURT: All right.
BY MR. URICK:
Q. Mr. Obot, having had a chance to examine both the overall collection of items and specifically what's been marked for identification as State's 38, are these in substantially the same shape and form as when you

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seized them from the defendant's bedroom?
A. Yes.
MR. URICK: Would now -- these exhibits for identification only at this point in time but put them into the custody of the courtroom clerk.
THE COURT: Very well.
Any objection to that process?
MS. GUTIERREZ: No, Your Honor.
THE COURT: They're not being moved into evidence at this time. But they have been marked and properly identified as State's Exhibit's 37 and 38.
MR. URICK: I'd ask the witness at this time to replace the remaining items back in the large bag which I'm not going to do anything further with it at this time.
Witness with the defense.
THE COURT: Very well.
CROSS-EXAMINATION
BY MS. GUTIERREZ:
Q. Mr. Obot, you identified --
MS. GUTIERREZ: Can I see those two pictures. I think it's 36-A and B?
Thank you.
BY MS. GUTIERREZ:
Q. You identified State's Exhibit 36-A and B, do

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you recall? Sir?
A. Yes.
Q. Okay. Now I'm going to try to -- if you would look at the one that you described as 36-A, which shows the hands of someone else in the picture?
A. Yes.
Q. And that's on a bookshelf?
A. Yes.
Q. And that location of the hands on the picture, did they belong to the detective?
A. Likely, it's one of the detective. There were three detectives at the scene.
Q. At the scene? And there's nothing unusual about that is there?
A. They just doing a search and seizure, but that's normal thing that we're doing.
Q. Well, sir, you were called to the scene by the detectives, were you not?
A. Yes.
Q. And you understood that what you were processing was a scene, the search of which had been allowed pursuant to a search warrant?
A. That is what I'm -- I don't really question what I'm --
Q. You're just --

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A. -- requested at the scene. I just respond to the scene.
Q. Okay. And when you respond to a scene regardless of how it is, the lawful authority be there as obtained, sir, you process evidence, do you not?
A. Yes.
Q. And it is not unusual at a crime scene that you are called to have the detectives who are the primary detectives for that crime to be there at the scene, is it?
A. The primary detective -- we always respond -- respond to who is there as far as our request is --
Q. I'm not asking that, sir. I'm just asking you it's not unusual for the primary detective in a crime to be there at a scene you are called to process?
A. Depending.
Q. Okay. So it's not unusual is it?
A. Indeed it depends on what the situation is.
Q. Okay. Now, sir, prior to that day -- and the date of you took these pictures is when?
A. I responded down there on the 3-20-99.
Q. 3-20, that's March the 20th, 1999?
A. Yes.
Q. And, sir, you had not been involved in the investigation of the case, had you?

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A. From the onset of the case?
Q. At any time, sir, prior to that day, had you been involved in the investigation of the crime to which this CC Number was designated, yes or no?
A. No.
Q. Okay. And that's not unusual, is it?
A. Well, it's not unusual.
Q. Well, you're not a police officer, are you?
A. I'm from the crime lab mobile unit.
Q. And you're not a detective, are you?
A. No.
Q. You would not ordinarily be involved in the investigation of the case that led you to the scene which you were called to process evidence; correct?
A. I -- I have to respond to the scene if -- if I'm requested.
Q. I understand that. And you always respond when you're requested; right?
A. Yes.
Q. But you don't investigate the crime that's the basis of why you're at any particular location?
A. My primary function is to respond, process a crime scene, recover evidence.
Q. All right.
A. I don't -- I don't, you know, investigate the

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crime scene.
Q. And you don't do any investigative process; correct?
A. No.
Q. Now it's not unusual --
THE COURT: Can counsel slow down just a little bit?
MS. GUTIERREZ: Yes.
THE COURT: Ms. Gutierrez, I understand you're trying to move along. But I got to ask you not to answer while the witness --
MS. GUTIERREZ: Judge, I'm sorry.
THE COURT: Because Mr. Madden, remember, this is not recorded.
MS. GUTIERREZ: All right. Yes.
THE COURT: And it's not video so if two people talk at the same time, I don't know how he manages to get that down. But --
MS. GUTIERREZ: I'll try to remember that, Judge.
THE COURT: Thank you. You may continue.
BY MS. GUTIERREZ:
Q. In the picture that I'm having you look at, the picture clearly shows the textbook that you were asked to look at on the shelf; is that correct?

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A. Yes.
Q. You, of course, had no idea the significance of that textbook, did you?
A. I -- I do not, you know, investigate, you know, at the crime scene. I -- I'm just there to process the crime scene, recover the evidence and turn it in. I don't investigate what, you know, the detectives -- that's the job of the detectives.
Q. Sir, just listen to my questions. They're very simple and they really only call for yes or no.
MR. URICK: Objection.
THE COURT: Sustained.
Ms. Gutierrez, I understand you're indication. The -- officer or technician, what we need you to do is just listen to her -- her question. And if you can answer, yes or no, yes or no is fine.
Just listen to her question. As she's indicated and just indicate yes or no. And that will be very helpful to us.
THE WITNESS: Okay.
THE COURT: And if you would not direct the witness but if the witness has a problem answering your question, I'll be happy to assist you.
MS. GUTIERREZ: Thank you, Judge.

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THE COURT: Very well.
BY MS. GUTIERREZ:
Q. Technician Obot, the photographs shows a textbook with the name of "Perceptions" on it in 36-A, does it not?
A. Yes.
Q. And, sir, you didn't determine that that textbook had some significance to the crime that had the CC Number assigned that you've indicated, did you?
A. No.
Q. You didn't determine yourself from anything you did on that scene that gave significance to this textbook, did you?
A. No.
Q. And, in fact, the detectives were already at the scene when you arrived, were they not?
A. No.
Q. You waited for them?
A. No. We all drove, you know, up there to the scene.
Q. With the detectives?
A. Yes.
Q. So you all arrived at one time; is that correct?
A. Yes.

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Q. And, in fact, it was the detectives that directed your energy to recover certain pieces of evidence, was it not?
A. yes.
Q. And in -- other pieces of evidence that you've identified from this bag, were, for instance, shoes, do you recall that?
A. Yes.
Q. And those shoes, you said, were taken from the basement; isn't that correct?
A. Yes.
Q. Did you go search for the shoes or were the shoes existence brought to your attention by one of the detectives?
A. By the detective.
Q. Okay. And you, of course, because you had not been involved in the investigation, had no idea as to the significance of the shoes; is that correct?
A. Yes.
Q. Just like you had no idea of any significance of the textbook; correct?
A. Yes.
Q. Which you then recovered at their direction; correct?
A. Yes.

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Q. And you photographed it at their direction because they thought it was significant; correct?
A. Yes.
Q. Not because you independently wanted a picture of it?
A. At their own direction.
Q. Okay. And not because you yourself decided that this textbook in this bookcase had some significant bearing to the crime to which that CC Number was assigned --
A. Yes.
Q. Correct? And you, sir, photographed the inside papers inside the textbook again at the direction of one of the detectives?
A. Yes.
Q. And do you recall which detective it was that brought that to your attention?
A. I couldn't tell. This been over a year.
Q. Okay. And that's why you make a report of what you did and saw and what you processed; correct?
A. Yes.
Q. Now, one of the questions you were asked Technician Obot was the stuff in the bag in substantially the same condition as when you packaged it that way, do you recall that?

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A. Yes.
Q. Okay. And you answered yes; correct? And you had an opportunity to look at all that evidence; correct?
A. Yes.
Q. Now, sir, after you handled it you are aware that evidence, based on your handwritten notes and assignment goes into the control of the Evidence Control Unit, does it not?
A. Yes.
Q. ECU. And that's part of the Baltimore City Police Department; is it not?
A. Yes.
Q. And it is kept in a locked facility inside the Baltimore City Police Department; correct?
A. Yes.
Q. And there are various proscribed forms to make sure that the same evidence that you marked from a place that you were designated to see to a scene remains intact; is that correct?
A. Yes.
Q. In order to get something in Evidence Control, the person, a designated person, has to fill out certain designated forms; correct?
A. Yes.

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Q. And in order to get something out of Evidence Control, other forms have to be completed by the person who's entitled to get out that evidence; correct?
A. Yes.
Q. You don't have any control over that; correct?
A. Yes.
Q. And you have no knowledge of whether or not a piece of evidence that you gathered up on the 20th of March was, in fact, taken out of Evidence Control by any other person?
A. I don't have the knowledge of it.
Q. Nobody would have to consult with you; correct?
A. No.
Q. But to your general knowledge, as a member of doing crime scene processing, you are aware that often pieces of evidence that you procure and process at a scene where you are designated to go is often pulled out of Evidence Control to be analyzed by people empowered to analyze it, are you not?
A. Yes.
Q. And that's in the ordinary course of business; isn't that correct?
A. Yes.

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Q. And from looking at what you looked at as you were instructed to do by Mr. Urick, you, of course, can't tell us to what analysis any of those items of evidence have been subjected, can you?
A. I couldn't tell you that.
Q. No. Because that's not what you do; correct?
A. Yes.
Q. And nobody checks with you before they touch a piece of evidence that's been designated to you as having some significance in the investigation of a crime --
A. Yes.
Q. Is that correct?
MS. GUTIERREZ: I have nothing further, Judge.
THE COURT: Thank you.
Any redirect?
REDIRECT EXAMINATION
BY MR. URICK:
Q. And that evidence is over in Evidence Control where it's available should any defense count -- defense counsel wish to request any analysis to be done --
MS. GUTIERREZ: Objection.
THE COURT: Sustained.

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MS. GUTIERREZ: Request a curative instruction regarding the burden.
THE COURT: Not necessary.
Anything further?
MR. URICK: No. Thank you.
THE COURT: Very well.
You are --
Can this witness be excuse?
MR. URICK: Yes.
THE COURT: Is this one of those witnesses you'd like to hold onto?
MS. GUTIERREZ: No, Judge.
THE COURT: Very well.
You are excused, sir.
(The witness was excused.)
MR. URICK: With the Court's permission, I'd like to get one more witness in.
THE COURT: Yes. I think there's --
MR. URICK: This witness in unavailable for the next two days that's why I wanted to put him on now.
THE COURT: Why didn't you put him on first? How long do you think this will be?
MR. URICK: He should be fairly short.
THE COURT: When you say fairly short, how

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long will that be?
MR. URICK: I think the State's side --
MS. GUTIERREZ: Your Honor --
THE COURT: One moment, Ms. Gutierrez.
MR. URICK: -- shouldn't be more than 10 minutes.
THE COURT: Who is the witness?
MR. URICK: Sergeant Kevin Forrester.
THE COURT: And, Ms. Gutierrez, how long do you think you would be with be with --
MS. GUTIERREZ: Judge, I don't frankly remember how long.
THE COURT: Can you just take a look at --
MS. GUTIERREZ: I may be a --
THE COURT: Just give me an idea and I won't hold you to it but I just want to --
MS. GUTIERREZ: What do you have on -- I don't think I'll be long.
THE COURT: Okay. Can you have him come in?
MR. URICK: Thank you, Your Honor.
THE COURT: And we will not do this again. At 5:30 we will not be going after 5:30. So I just want to give you a heads up. This is not going to be a regular thing. One more witness, one more witness, we're not going to do that.

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(Pause.)
THE COURT: I am mindful of the weather and I am mindful of the temperature dropping at the late hour. And so for that reason I am not going to try to keep you here later than 5:30.
As the days go, we try to move along. This Court normally ends at 5:00 -- at 4:30. So when I keep staff this late it's unusual that we go beyond 4:30.
Can you have the witness step up and raise their right hand?
Whereupon,
KEVIN FORRESTER,
a witness produced on call of the State, having first been duly sworn, was examined and testified as follows:
THE CLERK: You may lower your hand. Be seated.
Please state your name and assignment for the record?
THE WITNESS: Detective Sergeant Kevin Forrester, currently assigned to Cease Fire. But at the time of this case I was a homicide sergeant.
THE COURT: Witness with you, Mr. Urick.
MR. URICK: Thank you, Your Honor.
(Pause.)
MR. URICK: I'd like to approach the witness

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at this time to show him what's been marked for identification as --
THE COURT: Are you going to show that video today?
MR. URICK: Yes.
THE COURT: How long is the video.
MR. URICK: About a minute or two.
THE COURT: Very well. You may proceed.
(Pause.)
THE COURT: Before you begin, the end of the jury panel, can you see the video machine from where you're sitting? You can?
Very well. You may proceed.
DIRECT EXAMINATION
BY MR. URICK:
Q. Have you had a chance to examine the item?
A. Yes, I have.
Q. And can you identify it?
A. Yes. It's a video tape that I took of Hae Lee's vehicle on 3-16-99 at approximately 1245 hours.
Q. Okay. Now, drawing your attention to February 28th of 1999, did you park the -- well, first of all, what are you assigned duties?
A. At that time I was supervisor of a Homicide squad. It consisted of seven detectives.

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Q. And on February 28th of 1999, were you part of a detail that responded to about the 300 block of Edgewood -- yeah, 300 block of Edgewood, off Edmonson Avenue?
A. Yes, I was.
Q. And what was your -- what were you doing on that date?
A. At that time it was Detective McGilivary, Detective Serio, myself, and Jay proceeded to that location.
Q. When you say Jay, are you referring to one Jay Wilds?
A. Yes. Jay Wilds.
Q. Who was directing you to that location?
A. Jay was.
Q. And when you got to that location what, if anything, did you find?
A. At this time we discovered Hae Lee's vehicle that had been missing for -- since recovery of her body.
Q. And did you have a chance to examine that vehicle on that date?
A. Yes, I did.
Q. And why did you come to make a videotape of it short time -- a few days later?

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A. At the time we recovered the car it was -- Crime Lab came out took photos of it which time we had a roll back take it down to our crime lab where they processed it later that morning.

During that process we discovered that the selector switch, if you sat on the driver's seat which would be on the left side of the steering column was broken.

Once we got the photographs back from Crime Lab, which were still photos, it really didn't show that the selector switch was broken. It just showed that it was a downward angle toward the floor. So at this time I determined that a video tape would better show that the selector switch was broken.

Q. And does it fairly and accurately describe the condition of the vehicle as you saw it on that date?

A. Yes, it does.

MR. URICK: We'd offer into evidence at this time State's Exhibit Number 6, the videotape of the victim's car.

THE COURT: Any objection?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Let it be admitted as State's Exhibit Number 6.

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(State's Exhibit No. 6 previously marked for identification was received in evidence.)

MR. URICK: We'd ask that to show it at this time?

THE COURT: Yes, you may.

MR. URICK: May the witness step down to come over near the jury to explain what they're seeing?

THE COURT: Yes, you may.

MR. URICK: Sergeant, if you'd come around the backside.

THE COURT: Mr. Urick, I'm going to ask that you -- yes, step back so that the defendant can see the video as well and counsel.

If you cannot see? You cannot see.

Counsel is it -- Ms. Murphy? Ms. Murphy, I'm going to ask you to step back to the front row there. There's room on that front bench behind the detective. And you'll be able to -- is that all right now? Very well.

(A video was shown.)

THE WITNESS: This Hae Lee's car that was recovered on 300 Edgewood. Assisting me was Detective Hastings who was also on the squad.

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(Pause.)

THE WITNESS: That's Detective Hastings showing the lever which I believe was for the windshield wipers was broken.

(Pause.)

THE COURT: Very well.

(Pause.)

(The videotape ended.)

MR. URICK: With the Court's permission if I may approach the witness again to show what's been marked for identification as State's Exhibits 8 and 12.

(Pause.)

BY MR. URICK:

Q. Now the damage that was done to the windshield wiper control, did you see that on the day that the car was seized?

A. Yes, I did.

Q. And again why was the tape recorded some days later?

A. It was an afterthought. We were looking -- once looking at the photographs, you can see as in this one which was done by Crime Lab just shows it down. Without it actually physically showing it be raised and lowered you determine that it may not be broken, that it was just punched in.

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THE COURT: Detective, what number is that?

THE WITNESS: That is State Exhibit Number 8, ma'am.

THE COURT: State's 8 then has been shown.

BY MR. URICK:

Q. And insofar as a photograph 10, does that particular exhibit fairly and accurately show the damage as you found it on the day the car was seized?

A. Yes, it does.

MR. URICK: Would offer into evidence State's Exhibit 8 at this time.

THE COURT: No objections, Ms. Gutierrez?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Let it be admitted.

(State's Exhibit No. 8 previously marked for identification was received in evidence.)

BY MR. URICK:

Q. Now can you identify what's been marked for identification as State's Exhibit 12?

A. Yes. These are photographs that were taken by the Crime Lab technician approximately half hour after we were out at the scene and located Hae Lee's vehicle.

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It was, I believe 3:00 -- if I recall, 3:00 or four o'clock in the morning. We were working midnight shift that particular week.

Q. And which car is hers?

A. Hers, if it was there, would be this one right up in here almost like behind the car here in the cover. Same thing with this one. It would be up behind.

Basically what it is, it's a common area behind a row homes, half asphalt, half grass. And there's numerous cars parked in there.

It was sitting right here. This is just a close up of it. We see other cars that it was parked along with.

Q. And did those fairly and accurately show the place where the car as you found it on that lot of Edgewood Street?

A. Yes, it does.

MR. URICK: Would offer State's Exhibit 12, the crime -- the exhibit at this time.

THE COURT: Exhibit with the four composite photos?

MR. URICK: Yes.

THE COURT: Any objection from Ms. Gutierrez?

MS. GUTIERREZ: No, Your Honor.

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THE COURT: That exhibit number again for the record?

MR. URICK: 12.

THE COURT: 12. Let it be admitted.

(State's Exhibit No. 12 previously marked for identification was received in evidence.)

MR. URICK: With the Court's permission I'll give these to the Clerk to be marked as evidence at this time.

BY MR. URICK:

Q. I'll show you what's been marked for identification purposes as State's Exhibit 33. Which contains a map of a portion of East Baltimore -- West Baltimore rather. If you take a few seconds and look at that.

Have you had a chance to examine the exhibit?

A. Yes, I have.

Q. And do see on there the location where the car was found?

A. Yes, I do.

Q. Could you please point it out please by pointing this sticker that has "C" on it for car?

A. Okay. Well, my best thing for reference

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points were this is Edmonson Avenue, Edgewood Street, this is Hilton Parkway. It was approximately two blocks westbound from Hilton Parkway.

Another identifier would be if you're familiar with St. Bernardine's Church on Edmonson Avenue. It's a tall church with the gold on top of it. Edgewood Street is right here, goes down approximately three -- three blocks and then breaks into a southeast direction.

The lot is right back there, which is almost below Mulberry Street.

MR. URICK: With the Court's permission I'm going to put some scotch tape over this sticker to affix it to the exhibit as a permanent --

THE COURT: A permanent affixion --

MR. URICK: Yes.

THE COURT: -- fixture to my -- my exhibit. All right.

MR. URICK: Thank you, Your Honor.

Sergeant, you may sit down again.

(The witness returned to the stand.)

(Pause.)

MR. URICK: Witness with the defense.

CROSS-EXAMINATION

BY MS. GUTIERREZ:

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Q. Detective Sergeant, you said you were there was about three or four o'clock in the morning?

A. If I recall right, yes, ma'am.

Q. Okay. And that day -- and the pictures show that, do they not?

A. Yes. It was nighttime.

Q. That date was February the 28th, was it not?

A. Yes, ma'am.

Q. And you were asked to go along with the whole team that went down, were you not?

A. Yes, I was.

Q. Even though you were not assigned as the primary or the secondary of this particular case?

A. No, I was --

Q. You were supervising; is that correct?

A. I was the supervisor.

Q. And there's nothing unusual about your going along with the other detectives to --

A. No. Because a lot of times in a situation like that I may make the determination that we're going to do a search and seizure warrant right there, --

Q. Right there --

A. -- and you have to have a supervisor for that.

Q. Okay. Now, sir, you mentioned that the

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person that directed you to this location was a person by the name of Jay Wilds; isn't that correct?
A. Yes, ma'am.
Q. And you knew then who Jay Wilds was, did you not?
A. Yes.
Q. And you knew that Jay Wilds had just completed a statement to the police; isn't that correct?
A. Yes.
Q. The location that you've listed as being with a "C" on the map, sir, is a location as the pictures reveal were there were more than just Ms. Hae Lin Mee - - Hae Lee Min's car; correct?
A. Yes, ma'am.
Q. There were lots of other vehicles, were there not?
A. Yes, there is.
Q. It's not really a parking lot but it's an area in which cars are parked behind a series of blocks of row houses; is it not?
A. Yes, ma'am.
Q. Okay. And out of all of the cars on the parking lot it was Jay Wilds that directed you and the other members of the group to the specific location of

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that particular car, was it not?
A. Yes, ma'am.
Q. Okay. It wasn't like Jay just sort of said, "Well, the car's in among all of those cars on that lot"; correct?
A. Correct.
Q. He went right to that car, didn't he?
A. Yes.
Q. And, sir, that wasn't the only location that Jay Wilds took you and the crew in those early morning hours, was it?
A. That was the only location.
Q. Okay. Well, sir, were you aware that Jay took other detectives to another location, again right off of Edmonson Avenue near to Hilton Parkway either right before he located the car or right after?
A. No. My recollection of that is Detective McGilivary and Ritz was also with Jay. They came and got me and said, "We believe we located Hae Lee's car."
Q. Okay.
A. At which time I responded.
Q. And that's why you were involved?
A. Yes.
Q. Okay. And, sir, were you aware that after locating the car that Jay Wilds directed members of

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your department to another location allegedly relevant to the murder or burial of Hae Min Lee close in proximity to Edmonson Avenue and Hilton Parkway?
A. No. I don't have knowledge of that.
Q. Okay. And you weren't involved in that; correct?
A. No. I was not.
Q. Regarding the video, Detective, the -- the car, when it was found that night, was transported on a Police Department vehicle down to headquarters, was it not?
A. Yes, it was.
Q. That's ordinarily the normal procedure for a car, is it not?
A. Yes, it is.
Q. It is then completely processed my the Mobile

-- or by the Crime Unit, is it not?
A. Yes, ma'am.
Q. It's processed for any evidence of trace analysis, is it not?
A. Yes, it is.
Q. For soil?
A. Yes.
Q. For fingerprints?

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A. Yes.
Q. For anything else identifying in the car that might be relevant to the investigation of this particular crime?
A. Yes.
Q. Correct?
A. Yes.
Q. And it's not released from the crime lab until they're done; is that correct?
A. Actually when the detectives to make that decision but normally yeah. When the crime lab says they're --
Q. They wait --
A. -- finished with it --
Q. -- until the crime lab;s --
A. Yes.
Q. -- done; right?
A. That's correct.
Q. And the crime lab does whatever it is that it thinks is necessary to adequately process that particular car; correct?
A. Correct.
Q. And then, as long as the detective okays it, the vehicle is released back to the custody of the rightful owners, unless there's a reason not to, is it

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not?
A. Yes.
Q. And this vehicle was, in fact, released back to the family of Hae Min Lee prior to your taking the video on 3-16-99; correct?
A. Yes, it was.
Q. And in order for that to be done, one of the detectives who was the primary or secondary detective on the investigation had to have made that decision to do that, had they not?
A. Yes.
Q. And the location where the video was made was at a location you had nothing to do with the car being present, did you?
A. No.
Q. That was just a location that you were given by the family of Hae Min Lee as to where the car was?
A. Yeah. It was --
Q. Is that correct?
A. Yes. It was a relative.
Q. And you went because that's where they told that's where the car is; right?
A. Correct.
Q. You had nothing to do with the car getting to that location; correct?

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A. No. We did not.
Q. And you made no decision as to when it got to that location?
A. No.
Q. Correct? Or whether or not it was transported or by whom it was transported; correct?
A. Correct.
Q. Once the car was released, the car was out of Police Department control; correct?
A. Correct. Correct.
Q. And you, sir, don't know the day that it was release, do you?
A. No, not --
Q. And back on the 16th you didn't know the day that it was released; correct?
A. Correct.
Q. So it could have been out of Police Department control and custody as early as the 29th or the 1st of March; correct?
A. Correct.
Q. And therefore been totally out of police control and under the control of others for at least 14 to 15 days?
A. Correct.
Q. On the 16th you didn't make any inquiry as to

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that, did you?
A. No.
Q. And that really didn't concern you, did you?
A. No, it did not.
Q. So you don't know if it was driven on any particular day from Police Department headquarters to that location; correct?
A. Correct.
Q. And what the condition of the car was; correct?
A. Correct.
Q. You didn't attempt to drive it?
A. No, I did not.
Q. And you didn't attempt to determine whether or not it was drivable at any time, did you?
A. No.
Q. And no one else under your command did that, did they?
A. Not to my knowledge.
Q. Okay. And -- at the time that Jay Wilds, this person that you knew had just given a statement to the police, was he identified to you as a suspect in the case?
A. Not at that time. Just a witness.
Q. Just a witness. And you were made aware of

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that by other members of the Police Department?
A. Yes.
Q. And you accepted that because they were told to you by members of the Police Department, did you not?
A. Yes.
Q. You didn't make any inquiry as to Mr. Wilds did you?
A. Not that particular day, no.
Q. And you didn't direct any questioning of him, did you?
A. No, I did not.
Q. And he didn't give a statement while he was out there at the scene at three or four o'clock in the morning; correct?
A. No. He remained in the car.
Q. He just remained in the car and pointed out the car, and it turned out to be Hae Min Lee's car, did it not?
A. Yes.
MS. GUTIERREZ: I have nothing further
THE COURT: Any redirect?
MR. URICK: No, thank you, Your Honor.
THE COURT: May this witness be excused?
MR. URICK: Yes, please.

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THE COURT: Ms. Gutierrez?
MS. GUTIERREZ: Yes, Your Honor.
THE COURT: And this is again, a witness that may be have been subpoenaed by both the State and the defense, and I'm asking if this person is excused?
MS. GUTIERREZ: Yes.
THE COURT: Very well. You may go. You are excused.
(The witness was excused.)
THE COURT: Ladies and Gentleman, we're going to break for today. And we would ask that you go home safely. I'll also remind you not to discuss this case either amongst yourselves or anyone else and not to read the newspaper, media or any other place.
If anyone tries to talk to you about this case, you're to advise my staff or make a contact with Ms. Chambers, you have my number, to let me know that someone's tried to talk to you, and I will approach you and talk to you about that at some other time.
Also admonish you that tomorrow morning when you come into the building across the street, the Clarence Mitchell, Jr., there is an entrance on the right-hand side, the Lexington Street entrance. Go in that door and when you pass by either them show them your -- your letter from me or if you can save your

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juror badge, sometimes they let you cut to the front of the line to get into the building.
I can't guarantee you, but sometimes they do that. When you get inside you go to be paid. You tell them you are coming back to Judge Heard on a continuing case; that you're not a new juror, but you are coming back on a continuing case.
They have a separate line for those individuals coming back and you will be paid. And then I'd ask you to report to my jury room no later than 9:30.
The weather is inclement. If by chance you're running late, come here first and let us know that you did not get a chance to get paid, we will make sure that there's someone available at the luncheon recess to pay you at that time.
My priority is to try to get started as close to 9:30 as possible. So given a choice and it's 9:25 and you're late, come here first. Just let us know. You can check in with the clerk. And they will call over and make it a time when you can go over and be paid.
I have no cases on my docket in the morning, which is why I would like to try to get started at 9:30 if at all possible.

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For your information, your loved ones, your scheduling, your parking, we will stop tomorrow at 4:30. We will not go this late tomorrow. We will stop at 4:30, for counsel.
We will take a very strict lunch break from 12:30 to 1:30. And we will come back at 1:30. If you want to bring your lunch, you're welcome to do that. If you want to go downstairs tomorrow because it's faster and closer and get a sandwich and bring it back to the jury room tomorrow, you're welcome to do that.
Or you may go out and weather the elements, but tomorrow you will only have an hour for lunch. We will break at 12:30 and continue at 1:30.
With that said, please have a safe journey home. Leave your notepads face down. We will lock them away. No one will read them. And they will be returned to your chair in the morning.
MS. GUTIERREZ: Judge, I'd like to leave my bag here overnight.
THE COURT: Yes. The courtroom will be locked. And you're welcome to leave your bag. In fact, if you like to give it to me?
MS. GUTIERREZ: It's right under the table.
THE COURT: Very well. That's fine. The courtroom will be locked.

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(The jury was excused.)
THE COURT: Back on the record and as the last jury -- juror files out, the Court has some direction.
Ladies and Gentleman, I have absolutely -- close the door. I have absolutely no problem with anyone being present in this courtroom to view any portion of this trial, all or some of it.
I know that this testimony and evidence and exhibits may be emotionally charging and upsetting to you, but, I must advise you that if you are emotional - - I made some observation both from the victim's family and the from the defense -- I must advise you, if you find yourself getting up -- upset, you're welcome to go step out in the hall, get yourself together, and then come back.
But in an abundance of caution, with the victim's family and the defense family present, I must advise you that if you are upsetting, and I can see that, my law clerk may ask you to step out in the hallway until you're able to pull yourself together.
We are going to have this trial. We are not going to have a mistrial. And if you are upsetting and you're crying or you're upset -- we had someone who looked like during opening he was smiling -- you will

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be asked to leave the courtroom.

And if it continues, you will be barred from the courtroom. Now, I know that may be harsh but my goal is to see that Mr. Sy --

THE DEFENDANT: Syed.

THE COURT: -- Syed, has a fair trial and the State as well. And to that end, that's my responsibility. Your responsibility is to be here if you would like to observe. And you are welcome to be here every single day.

But I have competing interests, and those must be a priority of me to run this Court as I have taken an oath to do. And so I'm telling you this to advise you and to let you know you are welcome to get up, go to the Ladies room or the Mens room, get yourself together, and come back.

You are welcome to talk to the attorneys and ask them if there's evidence they're going to be presenting that may be upsetting. I'm sure that they will let you know. But during the course of the trial, if I find that I can observe anything, then I may ask you to leave.

I would note for the record the jury is not facing the audience, they are facing to my left. And I would ask that Counsel be advised that if they observe

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anything that they believe is inappropriate, that they bring it to my attention, and I'd be happy to handle and deal with it.

I know that this is a murder trial. The victim's family is very upset. But I would also note that the defense family has had individuals here, and I noticed some grinning and laughing and smiling during Mr. Urick's opening.

Not -- neither of that is appropriate. And I say so because the defense is entitled to serious consideration as is the State.

And so to that end I want to make sure that both the State and the defense receive a fair trial. I would note that I don't believe any of the jurors made these observations because they weren't looking.

I looked to see, and they were not looking where I was looking. And so I'm asking that Counsel be mindful of that.

And the rules state that the family of the victim is entitled to be present in this courtroom. And to the extent those rights are victim's rights I will make sure you are here and present. But I must also tell you that I have that competing interest to make sure that the jury is not influenced by anything other than the testimony of the witnesses and the

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evidence, closing argument, and the law.

And so I recess Court now until 9:30 tomorrow morning.

(The trial was recessed at 5:55 p.m.)

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REPORTER'S CERTIFICATE

I, Charles F. Madden, an Official Court Reporter of the Circuit Court for Baltimore City, do hereby certify that I stenographically recorded the proceedings in the matter of State of Maryland versus Adnan Syed, Indictment Numbers 199103042-46, in the Circuit Court for Baltimore City, on January 27, 2001, before the Honorable Wanda Keys Heard, Associate Judge (and a jury.).

I further certify that the page numbers 1 through 225 constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter in a complete and accurate manner.

In Witness Whereof, I have affixed my signature this 23rd day of March, 2001.

Charles F. Madden
Official Court Reporter

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