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IN THE CIRCUIT COURT FOR BALTIMORE CITY
(PART 9)

STATE OF MARYLAND *

v. * CASE NO. 199103042,43,45,46

ADNAN SYED *

Defendant *

_____/*

BALTIMORE, MARYLAND
TUESDAY, FEBRUARY 22, 2000

(TRIAL ON THE MERITS)

BEFORE:
THE HONORABLE WANDA K. HEARD, ASSOCIATE JUDGE

(AND A JURY)

APPEARANCES:

FOR THE STATE:

KEVIN URICK, ESQUIRE
KATHLEEN C. MURPHY, ESQUIRE

FOR THE DEFENDANT:

M. CRISTINA GUTIERREZ, ESQUIRE

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Motion In Limine 3

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PROCEEDINGS

(11:32 a.m.)

(Jury not present)

THE COURT: I understand there's a motion in limine filed by the State. Now that Mr. Syed's here, I'll hear from the State.

MS. MURPHY: Thank you, Your Honor. Good morning.

Kathleen Murphy on behalf of the State.

Your Honor, we have filed this motion because of indications by the Defense that they intend to utilize a prior conviction of Mr. Sellers for indecent exposure. It's the State's understanding that that would be offered for one of two reasons, either impeachment or as character evidence of Mr. Sellers, and the State believes that conviction would be inadmissible for either purpose.

And I'd like to supplement my written motion with just a brief argument. With respect to impeachment, the law is now codified in Maryland Rule 5-609. Previously, that had been Rule 1-502, and there is an indication in the annotations that the Rules are virtually identical. But both of those Rules were codified after Ricketts, which is the main case cited in the State's motion. But the main difference in the codified Rules now is that the subsequent case law calls for a three-part test, step one of that test

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being a determination of whether the crime that's being offered is even within the eligible universe of cases that can be used for impeachment, and these fall into one of two areas, either infamous crimes or crimes relevant to credibility.

And I think the Ricketts case law stands firm and still pertains with this new codification because that is the specific issue that Ricketts addresses.

Step two, which I don't believe we even reach in this case, is whether or not the conviction is 15 or more years old or whether it has been reversed, pardoned or is pending appeal.

And the third step then gives to the Court the discretion and the ability to balance both the probative value against the prejudice involved.

The biggest difference in having this now codified is that the Rules favor the objecting party now, and I would cite to the Court the case of Bealas v. State, which is 329 Md. 263. That's a 1993 case. Bealas basically states that after the codification the effect was to favor the objecting party because where before when a case may have been per se admissible for impeachment purposes it is now subject to this balancing test.

But again, Your Honor, the reasoning in the Ricketts case still applies here in the step one of the

analysis. The crime of indecent exposure itself is a misdemeanor, so, therefore, it doesn't fall within the infamous crimes and the felony crimes discussed in Ricketts. And Ricketts is clear that the crime of indecent exposure covers such a wide scope of behavior that it doesn't shed any light on credibility and would therefor be more harmful and more confusing to the fact finder than helpful.

And the cases are quite clear that this does not imply or intend that counsel should then be able to explore the specific conduct behind the conviction. That's stated in the State's motion.

And I would also cite the case of State v. Giddens, 335 Md. 205, a 1994 case, which stands for the proposition that a Trial Court should never conduct a minitrial by examining the circumstances underlying the prior conviction, and that is not what is envisioned by the Rule.

And with respect to character evidence, Your Honor, the relevancy of information supplied under Rule 5-404 is clearly defined. These are the mimic exceptions. Other crimes, wrongs or acts, evidence of these is not admissible to prove the character of a person in order to show action and conformity therewith.

The Defense has indicated that in some way they

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hope to suggest that Mr. S[redacted] was the possible murderer or in some way involved in the death of Hey Men Lee, and the inference is that in some way the crime of indecent exposure is connected to her death, which seems to be precisely what the statute is barring, despite the fact that there is no foundation that this was a sexual assault. There is no foundation that Mr. S[redacted] knew or had any contact with Ms. Lee, despite those things.

The stretch from indecent exposure to a sexual assault, even -- or let alone murder, is so tenuous. And even then, it seems to do exactly what the Rule forbids. The only exceptions to that Rule are purposes such as motive, opportunity, intent, preparation, common scheme, knowledge, identity or absence of mistake, which clearly don't apply in this case. There's no foundation or connection involved with any of those exceptions.

And that is the gist of the State's argument, Your Honor.

THE COURT: Thank you.

I'll hear from the Defense.

I assume Mr. S[redacted] is a witness, since we've admonished him to make sure he is here.

MS. GUTIERREZ: Yes, Judge, we're going to call him as a witness for several purposes.

Judge, if you recall, we did discuss some of this

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at -- I think during their objection, during --

THE COURT: Opening.

MS. GUTIERREZ: Um-hum, in regard to Mr. S[redacted]

So that the Court understands who Mr. S[redacted] was, he is the man who found the body and ultimately notified the police, although he did not do so initially. And on the very day that he found the body, he took the police back because they couldn't find the body on their own. So he had to lead them and show them where the body was. And he was then transported in a mysterious hurry to the Homicide Division by -- subsequently questioned.

On that day, he was advised formally by the Explanation of Rights forms before they interviewed him and he was advised on the record in a tape recorded statement, which was the first of his statements taken, of his rights. He was treated as a suspect. He was treated as a suspect all the way up until the 26th of February, which is the day they then focused on Mr. Syed.

And in his story, which he told repeatedly, at least twice that we know of, on tape, and we've gotten the transcripts of those tapes in discovery, Mr. S[redacted] tells the following story, although it stretches it at some point. But essentially, it is that he had a benign reason for going home that day. He works in the maintenance department at Coppin State University. He left without

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signing out, without permission, without -- knowing that he was going. But he drove home in order to get a plane, P-L-A-N-E, which is a tool that's very common, the purpose of which is to plane down wood and other material in thickness in these small increments. It is a -- that we've established -- that the maintenance department of Coppin has and has always had -- was always available to maintenance workers in the maintenance department, that the job for which Mr. S[redacted] claims that caused him to go home -- and, Judge, he left not at lunchtime -- is a job that is among the most routine of jobs performed by the maintenance department at Coppin. That is, planing down wooden doors and windows in the aging plant for which there are thousands of them, for which requests come in routinely through the winter season, because the heat makes the wood swell and in the summer season because of the effect of the air conditioning strips the wood. So planing doors and windows is sometimes almost a daily request from various parts of the -- Coppin's campus that is covered by the maintenance department.

In any event, the story that Mr. S[redacted] tells is that he went home in order to retrieve a plane to enable him to do the job assigned by the maintenance department, and that was to plane a door -- and that he drove there and the route that he took took him on Franklintown Road,

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directly through Leakin Park, and that he lives on the street -- directly off of Dogwood Road, which is a continuation of Franklintown Road and it's about three miles from -- which I think has already been established by Detective -- but in any event, we have the survey here and it establishes that the 4400 block of Franklintown Road is -- point upon which they measured the parking area that's surrounded by kind of the jersey walls that are in the pictures that have been identified, and that the 4400 block of Franklintown Road -- in fact, does turn into Dogwood Road or off of that, less than about three miles from that distance is -- Road, and that's where Mr. S[redacted] lives.

According to Mr. S[redacted] he went home and retrieved a plane, although it is never spoken of again. It was not listed in evidence, it was not seized or accounted for in any other way. While he was home, he decided to retrieve a 22-ounce can of Budweiser -- actually, I'm not sure if it was a can or bottle -- from his own refrigerator and he then engaged in imbibing the entire 22-ounces.

The police asked him and he admits, but he won't talk to me so I can't comment on that -- and that he did not use the facilities at his house, but he got into his truck and was on his way back to Coppin. He went the exact

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same route, passing the curve at the 4400 block of Franklintown Road, and he was overwhelmed with the desire and the necessity or urinating, at which point he backed his truck into that parking pad. That has been identified as directly off -- backing his truck into a small opening of the jersey walls, got out of his car and, according to him, he says he walked 40 feet or so, 40, 50 feet. He describes an attempt to urinate standing on the street side of the wall and that as he's beginning to urinate -- and he describes the -- to where he stops in order to urinate -- difficult. He had to fight his way through vines and what was left of trees. There was no clear path -- and that at the exact moment that he's attempting to urinate on the near side of the tree, meaning the side of the tree closest to the road, not closest to the stream, that he notices where he describes to him to have the appearance of a body, at which point -- insists that he never steps over the tree. As this Court is aware of and what witnesses have described that the level of the terrain, on one side the tree is distinctly higher than on the other side, and that body is -- sort of wedged under the tree on the far side of the tree, farthest away from the road, closest to the stream -- in any event.

But that's Mr. S[redacted] story as to what he was doing. He then got in his car, he drove back to Parktowne,

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Employee Lot D, I think, went back to work. And sometime after going back to work, after lunchtime, he went across campus to track down a specific man, a member of the security force at Coppin. And roughly two hours or so after he returned to Coppin, he tracked down this -- gave the name. He told him to alert the security chief.

Mr. S[redacted] didn't alert the security chief, but the security officer did, to report the finding of the body. And a good hour, hour and a half after that, the police came to Coppin -- Mr. S[redacted] because, of course, given the location of the body and given the lack of markers off of Franklintown Road, nobody could begin to locate this body without Mr. S[redacted] so he was brought there and identified the location of the body, as I've described, there's other evidence already established where the body was -- the relationship of the tree -- and relationship of the tree to the stream.

And subsequent to that, Mr. S[redacted] was -- other occasions -- at least two of which we've been informed of. In light of the fact that there are lots of occasions -- the witnesses in this case, so -- spoken to more than once. There was two occasions. He was treated as a suspect, he was listed in documents as a suspect. At each occasion -- gave him Advice of Rights form, Explanation of Rights form -- identify -- Detective -- transcript of his

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statements certainly corroborate that he was -- discussed on the tape.

He was given a polygraph on one occasion, the 18th of February, and that polygraph report was -- discovery and it was not -- deceptive -- what the results are. It is not marked -- and then it's marked out and it says conclusive. It's marked in big letters, deceptive.

He was spoken to again on the 25th and, according to what we've been given, there's another polygraph report, given by the exact same person that gave him a polygraph on the 18th and -- that one has -- but he was given a second polygraph, although he flunked the first one, and he allegedly passed that one, the second one. He wasn't asked exactly the same questions but very close to the questions that were asked in the first polygraph, at least according to the --

Mr. S[redacted] -- both of them have used -- although he doesn't say it in those words, a clear inference, and there's a series of questions that are nailing down that inference that he got out of his truck, crossed the barrier, went into the difficult terrain and went a distance of 127 feet in order to urinate privately, as opposed to just getting out of his truck, could have stood there on the side farthest away from the road. He would have had as much privacy as he needed. It's not a well

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traveled road. And that that was his story that he stuck to, that that was reasonable and had to go in that far.

I do have -- copies of two of Mr. S[redacted] convictions, both of which were for indecent exposure. One is in the District Court, one is in the Circuit Court. The most recent one, the one in the Circuit Court, occurred on the 2nd day of February, which was an appeal of the conviction that had occurred in the District Court. There's a trial -- it came before, I believe it was Judge Murdock, and he entered a plea of guilty to --

THE COURT: The same thing?

MS. GUTIERREZ: -- what he had been found guilty of. The law --

THE COURT: Is that '99?

MS. GUTIERREZ: Yes, Judge. That was February the 2nd.

He's been arrested for indecent exposure on at least four times -- two of which were nol-prossed. The facts of each separate indecent exposure, we do have the police reports on all four of them, are similar and they are equally bizarre. The most recent one -- the facts are relatively simple, and that is --

THE COURT: Ms. Gutierrez, wait a minute. I couldn't hear what you said. The facts --

MS. GUTIERREZ: The facts are similar as to all

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of the arrests. The last -- the third arrest, which is the first conviction, the facts were that Mr. S[redacted] who, in his capacity working for Coppin State University, wears a uniform, and the uniform has an insignia that identifies it as belonging to the maintenance department of Coppin State, I believe it says College, only because it's only recently been University. And then it has a machine sewn, embroidered --

THE COURT: Name?

MS. GUTIERREZ: -- of his name over the left pocket of the uniform, and that he wore that uniform and it has his name spelled out, [redacted]. And the evidence will show -- prove it, I'd proffer to the Court, as an officer of the court, that he's the only [redacted] that works for the Coppin State College or University system, at least over the last six or seven years, and that on the occasion at which he was previously found guilty of indecent exposure the circumstances were that at an intersection in West Baltimore, at a light on the corner, he proceeded to stand there and remove every stitch of clothing he had, specifically exposing every private part that was attached to his body, including the private part through which he urinates.

There were cars at at least two of the intersecting streets at that light, and one of those cars

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was a police officer who watched this. And as he got in his -- exposing himself, taking off every stitch of clothing and his boots and leaving them very neatly folded at the corner. The police officer took after him and -- lost him. He ran naked for several blocks but he ultimately lost him as he ducked in somewhere.

The police officer returned to the corner and examined the clothes and, through the clothes, traced it right back to Coppin State University and obtained an ID of Mr. Sellers, which he identified, subsequently identified.

THE COURT: That's the case from February 2nd, '99, that he pled guilty to?

MS. GUTIERREZ: No, Judge, that's the case from -- that occurred on September the 7th of 1999. The officer's name was -- it's hard to read. I think it's Christopher -- that is the conviction -- he was convicted twice in the District Court, this case and then one other case shortly thereafter. He was arrested for indecent exposure twice before the date of February 9th, 1999, which is the date --

Judge, our intention is to ask Mr. S[redacted]. We believe that it is relevant, not in any sense of classic impeachment -- to generally tell the truth, but as -- the specific intent -- as to what he was doing there and how he came across the body. We certainly intend to treat him as

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a suspect and we ask the Court to allow us to treat him hostilely.

He initially agreed to meet my investigator, Andrew Davis, who is present and is also a witness in this case. And I guess one of the things we'd be asking him, to establish the background of that, but that ultimately, even though Mr. S[redacted] directed us to speak to his lawyer and his lawyer said it was okay, he -- and his lawyer did say it was okay, he ultimately refused to speak to us about anything -- a great deal of the investigator's and process server's time and a great deal of my client's money -- Mr. S[redacted] that we believe -- although he had been served while he was in jail, this case was initially set for January 14th, there had been no service and no communication with Mr. S[redacted] He had ultimately gotten out of jail subsequent to the time he was served.

And so, we believe that he is hostile -- his hostility. We are certainly making Mr. S[redacted] -- people that we believe were under suspicion, were treated under suspicion, treated as suspects, and that we're certainly entitled to argue why they should be potential suspects for the murder of Hey Me Lee.

I'm not at this time requesting to get into the facts of the indecent exposure, although I'm not persuaded that we shouldn't be entitled to that. I believe that

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we're entitled to bring to this jury our theory of the defense. Part of that theory is that there are several people, including Mr. S[redacted] who acted -- the murder. And to attack Mr. S[redacted] story, I mean, it gives a neutral reason how he just happened to come reason a hidden body, 127 feet off of a very low-traveled road, under the circumstances he describes. Even less true -- the fact finder as to this --whether or not Mr. S[redacted] meets the category -- was a suspect and still should be a suspect, should know that this is a man who has been convicted of -- proper inference of that, notwithstanding the indecent exposure -- Mr. S[redacted] case, the conduct includes exposing the very private part that he says he sought refuge for in -- that far off the road to secure privacy for his penis.

The fact that he's been convicted of indecent exposure, Judge, we believe is relevant. It's critical to establish that there are other suspects here whose stories didn't make sense whose credibility is at issue. The facts revealed that this is a witness who's credibility was certainly challenged by the very police who are being offered up as making credibility challenges at --

It is for those reasons, not -- certainly not character, although we'd love to attack the character of Mr. S[redacted] and we intend to argue everything that we can.

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But for those reasons, Judge -- and I don't think that either -- or Ricketts -- left for me minutes before we started this. I have no other reason -- and I believe it's Prout, which is the later of cases, I think Prout is the 1988 case. Ricketts is a 1981 case, but in Prout, in both the majority opinion and in Judge Smith's dissenting opinion, it still lists as for use of impeachment -- four separate categories: treason --

THE COURT: What page are you at?

MS. GUTIERREZ: It's on page 17 of that, and he's referring back to the majority opinion which essentially says the same thing. But, you know, as to impeachment -- are, you know, unequivocally still divided into four categories: treason and all common law felonies, to include infamous crimes. Number two is a crimen falsi, and, three, other crimes that reasonably bear on the question of credibility and other crimes that do not reasonably bear upon the question of credibility.

And although -- referred to, of course, there are circumstances under which it's up to this Court to balance, you know, whether all issues as to how far one can go. Both cases, and all of the cases in Maryland law, stand for the legal proposition that a defendant is entitled to -- of defense.

THE COURT: Are you suggesting that the crime

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of -- the crime of indecent exposure relates, in this case, is one of those lesser crimes affecting the credibility of the witness?

MS. GUTIERREZ: Yes, Judge, and the credibility --

THE COURT: Under Ricketts?

MS. GUTIERREZ: Right, and the credibility issue for us, and maybe there's a better word, but to -- not necessarily attack his credibility on the stand but his credibility in regard to the stories he's told to, to exploring how he found this body, under the circumstances that are already before this jury because they're relevant, where the body was, how far it was from the road. They've already seen the pictures. We have other witnesses that we intend to bring to the jury in our case who we will present to further establish those facts. So under to attack the credibility of his explanation for what he's doing, just inadvertently finding a body while he's trying to hide his penis so he can urinate --

And, Judge, we are, as we certainly laid out in opening -- Mr. S[redacted] -- of witnesses that, you know, initially hit the bricks and the police view as suspects, were treated as suspects. And, Judge, we believe right now -- as I said, I'm not convinced I shouldn't have the right to get into the facts because I think -- case that

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the facts of the crime did involve --

THE COURT: Well, I think that's -- isn't that the balancing test that has to take place? When you say that indecent exposure clearly, under Ricketts and under the reading of the Rules, is not a crime of moral turpitude per se --

MS. GUTIERREZ: Absolutely.

THE COURT: -- and it's not a crime that common law would normally allow for to be an infamous crime --

MS. GUTIERREZ: That's correct.

THE COURT: -- so the only thing left is that it's a crime that is a lesser crime. And even Ricketts has a discussion --

MS. GUTIERREZ: Yes.

THE COURT: -- about the weighing of the crime of indecent exposure per se.

MS. GUTIERREZ: Yes.

THE COURT: And the facts of that --

MS. GUTIERREZ: Yes, but --

THE COURT: -- case, although that was a rape case, was it not?

MS. GUTIERREZ: Right, and there was a specific argument of the proponent in trying to get the impeachment, you know, that that's what was relevant.

THE COURT: You're not arguing that?

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MS. GUTIERREZ: We're not arguing that. She wasn't sexually abused. We're not arguing he was there because he's been convicted of indecent exposure. We're arguing that as a specific, not a generic, exposure, not the normal circumstances under which --

THE COURT: You're saying that if he wants to go to hide his penis because he's concerned about his privacy, then why is he previously convicted of --

MS. GUTIERREZ: That's correct.

THE COURT: -- indecent exposure?

MS. GUTIERREZ: That's correct.

THE COURT: Well, maybe that's why he was going to hide, that he learned his lesson and he doesn't want to expose his body.

MS. GUTIERREZ: Well, then, Judge, that's an issue of credibility. If the State wants to support his credibility, they're perfectly willing to --

THE COURT: And isn't that the weighing test? Isn't that the weighing test, that this Court has to decide whether or not that is an issue?

MS. GUTIERREZ: No. I think that the weighing test --

THE COURT: That the Court should be --

MS. GUTIERREZ: -- narrower than that.

Your Honor, I remind the Court and not only tell

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you as an officer of the Court, but I intend to finish my case in two days. That's all I've -- this is our sixth week of trial. We're not suggesting something that is going to take us --

THE COURT: Far afield.

MS. GUTIERREZ: -- far afield. I have the true test copies. There's no issue that the convictions exist. The true test copies --

THE COURT: And the two dates that you have? I just want to make sure I have the dates. They don't, they don't -- they predate the alleged date of the murder?

MS. GUTIERREZ: No, Judge. The convictions postdate the 9th, although there are two other arrests for indecent exposure. I understand there were circumstances that predate, but I'm not making --

THE COURT: Give me the dates.

MS. GUTIERREZ: 2/2 --

THE COURT: 2/2 --

MS. GUTIERREZ: Yes.

THE COURT: -- is the date of the -- I have that. That's the date of the guilty plea or that's the date of the incident? I have --

MS. GUTIERREZ: Judge, I --

THE COURT: -- noted at 2/2/99, guilty --

MS. GUTIERREZ: -- have the true test copy. It

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says charge date, it doesn't say date of incident and --

THE COURT: Then the charge date is 2/2/99, is that right?

MS. GUTIERREZ: No, Judge. The 2/2 -- it's 2/2, 2000, is the date of the conviction --

THE COURT: 2/2 --

MS. GUTIERREZ: -- where he pled --

THE COURT: -- 2000 is the date of the conviction. And the date of the incident or the date of the arrest?

MS. GUTIERREZ: No, Judge, I'm --

THE COURT: Can I see the true test copy? Maybe that -- I can't imagine that they've changed that much over the years.

MS. GUTIERREZ: One's from District and one's from Circuit.

THE COURT: Maybe that's not true.

MS. GUTIERREZ: Well, they sure confused me, Judge.

But just so that the Court understands, I'm not -- although I'm not conceding that argument, I'm not trying to get in the facts.

THE COURT: So he was charged in November the 85th of '99.

MS. GUTIERREZ: Yes, Judge. That was the later

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date that I saw, yes.

THE COURT: And the case was disposed of on --

MS. GUTIERREZ: 2/2.

Judge, my understanding is that he prayed a jury trial in District Court and -- came up initially in the jury prayer that Mr. S[redacted] in jail and did get postponed. It was actually set for trial while we were in the first -- that's how --

The other incident, I believe, occurred on September the 7th, 1999, and that conviction, I believe, occurred in the first week of October, 1999.

The record that I passed up lists all of his other arrests, including the additional arrest for indecent exposure.

THE COURT: Yeah, he's got a '96 trespass that was nol-prossed and he's got a -- like, a '96 --

MS. GUTIERREZ: A couple of disorderlies in '98 and at least one indecent exposure --

THE COURT: PBJ for '96.

MS. GUTIERREZ: Yes.

THE COURT: And a --

MS. GUTIERREZ: But that was for something other than --

THE COURT: No, it says indecent exposure.

MS. GUTIERREZ: Oh, it was? Okay. And then I

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think there's an additional --

THE COURT: 6/12/96 is a PBJ.

MS. GUTIERREZ: There's an additional indecent exposure, yes. That was in --

THE COURT: 9/4, nol-pros. All right.

Anything else you want to say with regard to the response to the State's motion?

MS. GUTIERREZ: No, Your Honor.

THE COURT: The State would wish to respond?

MS. MURPHY: Just briefly, Your Honor. And I think it's interesting that the Court's questions regarding the Defense response precisely exemplify what the Court in Ricketts is talking about. The crime of indecent exposure simply doesn't tell these people, the jury, anything about the issue of credibility. You know, one person thinks maybe he did it for this reason, somebody else thinks maybe he did it for that reason.

THE COURT: That he did what for that reason?

MS. MURPHY: Maybe he exposed himself. It shows nothing concrete. For example --

THE COURT: Ms. Murphy, I'm not sure -- I initially thought, to be honest with you, that the Defense theory was that the idea of raising the issue of the indecent exposure was in some way to associate Mr. S[redacted] to a "sexual-like" activity as it relates to the body and

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as it relates to the murder. But that's not the reason that counsel is proffering -- that she's offering indecent exposure. She's saying that she's not offering the indecent exposure at a crime or moral turpitude and she's not offering it as an infamous crime. She's offering it to the issue of his credibility, that if he were to say on the witness stand, given a certain set of questions, I went out in the bushes to urinate, clearly, the indecent exposure conviction is not relevant. But if he were to say I went off in the bushes to urinate, to have privacy, then the indecent exposure conviction might be credible -- it might go to his credibility, that in the past he hasn't been so concerned about exposing himself, which tends to lend it to the argument well, you know, maybe he wasn't trying to -- I mean, if he says I was in the woods because I wanted to get naked and run through the woods, that's certainly consistent with his prior convictions for indecent exposure and, therefore, the conviction would not come in because it doesn't affect his credibility. But if he says on the witness stand in exchange -- in response to questions I went there in this particular spot solely in the manner I did so that no one would see me, then his conviction does become relevant because, you know -- and it could be that he says in response, if she asks about his prior conviction, well, I learned my lesson and I didn't want to

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get caught. On the other hand, he might say something totally different.

The issue is does not the conviction for indecent exposure now go to his credibility in such a way that it is evidence of a prior bad act? And to the extent that it shows that he's -- it's like the opening of the door, I've never used drugs in the past, and now the witness opens the door for us to bring in convictions of drug use that wouldn't maybe be relevant. But because of the fact he opens the door to the issue of the use of drugs, suddenly, prior convictions become relevant and could be admissible where they wouldn't previously. I've never -- well, theft is not a good example because we all know that's a crime of moral turpitude, but I've never went in someone's property when I was not given permission to be there, ever in my life have I done that. And then Ms. Gutierrez walks in with a prior conviction of trespass. Well, isn't it a fact on January 2nd you were convicted of trespass?

Isn't that a proper use of those other crimes, those lesser crimes, now becoming relevant to a witness's credibility?

MS. MURPHY: No. The reason being, Your Honor -- and Ricketts is very clear on this, that indecent exposure is not one of those lesser. Ricketts is explicit that it is not because the crime of indecent exposure is --

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encompasses such a broad array of behavior. It's a general intent crime.

So even if Mr. S[redacted] said I wanted my privacy on that day, the fact of his prior conviction doesn't tell the jurors anything about his credibility --

THE COURT: Or what he did on those other occasions?

MS. MURPHY: -- and it leaves the guessing --

THE COURT: It could be that he wanted privacy in his penis and not in his rear end or --

MS. MURPHY: Exactly. And it leaves them guessing as to what it was he did in that prior case, and that is exactly what the Court doesn't want them to do. And that is why Ricketts is on point here, Your Honor.

THE COURT: Very well.

MS. GUTIERREZ: Well, Judge, just further, obviously, I don't think that's what Ricketts said. Ricketts was where the prosecutor wanted to impeach the Defendant's credibility, and I think that's a very different context than here.

The second is that that's real easily solved, and that is fashioning a question instructing me to question so that the jury does know. There's no dispute here. The State should have no interest in the jury speculating on all kinds of behavior when, in fact, we know that the

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previous behavior concerned his penis, you know. And it isn't like oh, well, maybe he was convicted of this and it could have included all this other behavior. We know that that's not so. They know that that's not so.

And so, the Court has within its power to ensure that the jury doesn't go off speculating.

THE COURT: I'm going to, as they say, split the baby, so to speak. I am going to direct the Defense that you may not discuss Mr. S[redacted] prior conviction for indecent exposure, unless he opens the door. If he opens the door and says that he had an expectation in his private parts, whether that be his derriere or his penis, then I will find that he's opened the door to that. Before you ask the next question, I'll have you come to the bench.

MS. GUTIERREZ: That's fine.

THE COURT: While at that juncture allow the State to renote their objection, but I want to hear the question and the answer. In other words --

MS. GUTIERREZ: Yes, I understand.

THE COURT: -- it may be that I'm not convinced that the answer was the type of answer that I believed actually opened the door.

MS. GUTIERREZ: I understand.

THE COURT: On the other hand, Ms. Gutierrez, I'm not going to let you hound him until he says all right, all

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right already, I give up.

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

THE COURT: You understand what my meaning is in this. And the point is, is that I think that there is a weighing that must take place by the Court. To the extent that it is not being used as a crime to solely impeach, as a prior conviction of something, that is, being a crime of moral turpitude or an infamous crime, I do agree with the State.

I do distinguish Ricketts in that it is -- the facts of Ricketts involve a rape. This is not about a sexual crime being convicted on the victim. So the argument that the indecent exposure is too closely tied in a sexual nature, which seems to be the thrust of most of the State's argument, the written argument, although we fine tuned it in the oral argument, doesn't really apply because the Defense is not using it to say well, the body was molested or the victim was molested or raped and, therefore, this indecent exposure should come in because he's got some perverted tendencies that would tend to indicate guilt of the crime of rape or guilt of the crime of sexual offense or sexual abuse. But rather, if it appears that he is not -- that his credibility is in question because he talks about doing something, protecting himself in such a way that he, in the past, has not

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protected himself, that is, protected himself from view of the public, and to the extent that the witness opens the door by his answer, at that moment where the Court is satisfied that the door is open, I believe that it becomes relevant and it does allow for a proper use of that offense as a crime of a prior conviction. And I say a crime because I'm looking for only one.

There is a crime that occurred subsequent and there's a conviction subsequent, and there's one prior, I believe.

MS. MURPHY: Actually, Your Honor, they're the same conviction.

THE COURT: Are they?

MS. MURPHY: The District Court case and the Circuit Court case have the same tracking number. This is one and the same case.

THE COURT: No, no, no. If you open it up, Ms. Murphy, there's a second case, different date. Earlier year. There are several pages there, you've got to unfold them. There are several cases. In fact, there's one page that talks -- I think it's 1996, 1996, indecent exposure. He received a PBJ.

MS. MURPHY: That's the PBJ, and then --

THE COURT: Then there's a second case for which he did not receive a PBJ, the event having occurred in '98,

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I believe is the date of the arrest, and the incident, having been convicted, and then, as you said, his case went up to the Circuit Court on appeal. But the initial conviction at the District Court predates this case. That's what I was looking for, actually, was the date of the offense and the date of the conviction.

MR. URICK: You're talking about a conviction, correct?

THE COURT: Right. There's two. One's a PBJ and one's a conviction, a guilty finding.

MR. URICK: Okay. But the District Court conviction is the one that came up as the Circuit Court case.

THE COURT: Correct.

MS. MURPHY: Okay.

THE COURT: Correct. The PBJ he obviously didn't appeal.

MR. URICK: So there's only one case where he actually has a conviction then?

THE COURT: Correct, correct. And that's the only case that counsel will be able to talk about.

Ms. Gutierrez, you can't talk about two prior convictions because he doesn't have two prior convictions. A PBJ, as you know, guilty finding is not on the record. But the second case predates the incident. And, as I said,

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only if -- you can't introduce it. "Isn't it a fact" --

MS. GUTIERREZ: I understand.

THE COURT: -- "Mr. S[redacted], you've been convicted of" -- you understand?

MS. GUTIERREZ: Yes, I do, and --

THE COURT: I know you do.

MS. GUTIERREZ: Judge, in light of the fact -- you know, he was asked a lot of these questions before, so I do have -- I am hopeful we never get him to say that. If he does, he does.

THE COURT: And if he doesn't --

MS. GUTIERREZ: And I'm not --

THE COURT: And there may be a point in time, please understand, that the Court may say move on.

MS. GUTIERREZ: Yes.

THE COURT: And it'll be that he doesn't give you what you want.

MS. GUTIERREZ: Right. I do understand.

But I would like a ruling on my motion to treat him as a hostile witness, although --

THE COURT: Initially, no. But at such time that the Court has to instruct him, I will then -- in other words, you know, I like to give witnesses the benefit of the doubt. And to the extent that he is answering you in a way, well, you know, if you can. And if it turns out that

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he becomes reluctant and uncooperative, then we will deal with him accordingly.

MS. GUTIERREZ: I do have some other matters.

The first thing, I have a sentencing tat was set in, without consultation with me, by Judge Smith in Baltimore County. It's a sentencing that was set for our first week of trial, but it got moved because we were in the middle of jury selection.

THE COURT: What time and when?

MS. GUTIERREZ: It's set at 4:00.

THE COURT: Today?

MS. GUTIERREZ: Yes. I'm not asking to be excused -- if it does, I'll have to go. Because I have this very eager client -- rush back and forth. It's a sentencing in a significant theft that --

THE COURT: Have you asked the Court to postpone it?

MS. GUTIERREZ: No, Judge, I haven't. I only got notice this morning. They called to remind me since they realized I hadn't --

THE COURT: Would you make a phone call over the luncheon recess and explain and ask that this Court has asked you to stay. If there's a problem --

MS. GUTIERREZ: Yes. That's all I wanted.

THE COURT: Ask that you stay and ask -- if you

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would -- that Judge Heard asked that you should ask the Judge to try to reschedule it.

MS. GUTIERREZ: Okay. Thank you.

THE COURT: Judge Smith in Baltimore County?

MS. GUTIERREZ: Yes, James Smith in Baltimore County.

THE COURT: If you would do that. And if he says no, then we'll deal with that.

MS. GUTIERREZ: Okay.

THE COURT: All right. And I saw Ms. Murphy --

Do you have something else?

MS. GUTIERREZ: Yes, Judge. I would like an opportunity, and I don't need to do it now -- I know we haven't gotten to the jury yet and I have witnesses -- there are three witnesses that I'm aware of outside. I'd certain like to get to them. I would like an opportunity to address the Court again in regard to the decisions the Court made regarding calling Ms. --

And two things. One, I certainly want to address the Court again to make sure, because I wasn't sure -- an extra -- so I didn't have a tape to review -- clear in regard to what it is I believe Ms. -- would say as to the circumstances of the plea and as to her relationship with Mr. -- both of which, I believe, are admissible -- arguments.

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Secondly, if my argument fails to persuade the Court, then my relief is that I wish to have Mr. -- in an attempt to get out those issues on those very same things.

THE COURT: It sounds like we're going to be a little while. What I'd like --

MS. GUTIERREZ: Well, I'm saying I don't need to argue them now. I do have witnesses and I am prepared to go forward. But maybe before we start this afternoon --

THE COURT: Well, it's now 20 after 12, and I think perhaps what it makes more sense to do is to have them come out and send them to lunch. They've been sitting. And I can hear from you now, deal with the motions, and then we can proceed at 2 or at 1:30.

Counsel, did you have another issue?

MS. MURPHY: Your Honor, thank you. I had not made my final point with respect to the earlier motion after we got sidetracked in examining the convictions.

But it's the State's position that it's not a question of Mr. S[redacted]opening the door in this case because, even if he says that on the day he found Ms. Lee's body he wanted his privacy, it's not proper impeachment because the nature of indecent exposure is that the jury can't tell from that conviction whether it was a case that he didn't want privacy. The same situation, they don't know the facts of that case and, therefore, it doesn't help

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them in assessing his credibility with respect to whatever he says about that date.

And it's quite clear from the case law that counsel cannot go into the details of that prior conviction. The effect, and it's stated in several cases, is extremely prejudicial and it forces Mr. S[redacted] to retry his prior conviction.

And so without going into those facts, the fact of the indecent exposure itself does not tell them what they need to know in terms of his intent in the prior conviction, what he was doing. And, therefore, under Ricketts, it's not specific enough to impeach whatever he says on the stand.

That's the State's position, Your Honor.

THE COURT: Are you suggesting that the crime of indecent exposure has elements so vague that the mere conviction of it does not tell anyone what it was that the person was convicted of, without a description?

MS. MURPHY: And that is what Ricketts stands for, Your Honor, and that is followed in Prell.

THE COURT: Are you suggesting that if Mr. S[redacted] says I would never -- I didn't want anyone to see me, I didn't want to expose my penis, that that does not open the door to anything?

MS. MURPHY: That's correct, Your Honor, because

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even if in the prior conviction he wanted the entire world to see his penis, the jury isn't going to know that.

THE COURT: What if he says I never physically exposed my body whatsoever, ever, and, therefore, I wanted to go out in the woods and make sure I hid myself?

MS. MURPHY: I think that's more akin to the Court's analogy with respect to I've never distributed drugs. It's much more specific.

THE COURT: Well, we don't know what he's going to say, do we?

MS. MURPHY: No, Your Honor.

THE COURT: That's why I said depending on what he says, I may find that he doesn't open the door by what he says. On the other hand, I might find -- it could be that whatever it is that Mr. Gutierrez says to him causes him to make one of those global remarks and, under that scenario, it really wouldn't matter what he did under the underlying facts of the conviction or indecent exposure. If he says I've never exposed my body to the public and I would never do such a thing --

MS. MURPHY: Thank you, Your Honor. That was -- I just wanted to make sure we were clear.

THE COURT: -- I mean, that certainly would cause me to allow Ms. Gutierrez -- to say Ms. Gutierrez, there you go. But on the other hand, he just says I would like a

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private place to urinate, an indecent exposure does not require that he be urinating in public because there's a charge called urinating in public, and he hasn't been convicted of that. I don't know what he's going to say.

However, given the fact that he was going to a location where a body was found and given the fact that he has a prior conviction for indecent exposure, it in itself tells one conduct that he has been convicted of, that is, exposing his body to the public. What parts he exposed, I don't know, you're right, and the jury doesn't know. However, at this juncture, I don't know what he's going to say, which is why I won't close the door entirely, which is why I said I grant your motion in part and I deny it in part, because I don't find that it's an infamous crime. I agree with you that Ricketts is very clear that it's not, and it's not a crime of moral turpitude. But Ricketts does provide for a balancing. And given the circumstances and the statement by the witness, some crimes become crimes where the credibility of the witness could be impeached, regardless of what they are, if the facts are such that it would cause the witness to make a global statement, I have never walked on someone's property when I wasn't asked, I have never spit on the street. If you have a conviction of someone having done any of those things, that certainly goes to their credibility.

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However, if the facts are about spitting on the street and the person makes a comment, there may be a problem. Especially if it's the defendant once again being charged with spitting on the street, that may be a problem. But in this case we have a witness, not the Defendant, going to the location of a body where his credibility of how he found it and under what circumstances the Defense is claiming is integral to their case. His credibility then may come into play if he responds in a fashion that opens the door to his conviction being then something that could be used to impeach him.

I don't know what the question's going to be and I certainly don't know what his answer's going to be, which is why I said you won't get to ask the question about his record, Ms. Gutierrez, until I'm satisfied that you've opened the door. And at the point where you believe you've opened the door, just come on up and I'll let you know whether -- you may not be happy. I might find that his answer doesn't satisfy me. I hope that's clear.

MS. MURPHY: Thank you, Your Honor.

THE COURT: Now, I think at 12:30 we ought to let the jury go.

MS. GUTIERREZ: Two of the witnesses I have this afternoon I would like to show the tape. Mr. White advised me I should see Ms. Sheldon about making arrangements to

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have the TV here to show the tape. But she says that I should be able to do it here and that you need to advise her if she needs to send somebody up here that knows how to do that.

THE COURT: Who knows how to run this tape recorder?

MS. GUTIERREZ: Well, in a way that he can put in a different video so that the jury can see that video.

THE COURT: I think that that VCR over there is running, is it not, Mr. White?

MS. GUTIERREZ: Yes, but it's running with a videotape in it that's recording.

THE COURT: The far one?

MS. GUTIERREZ: I don't understand any of this stuff. My 14-year-old puts in videotapes and --

THE COURT: The one that's closest to me is the video where the tape goes.

MS. GUTIERREZ: Without the TV.

THE COURT: Correct.

MS. GUTIERREZ: But the TV --

THE COURT: Is also a video -- VCR.

MS. GUTIERREZ: It doesn't have a separate -- I think that's just the monitor. It's not hooked up.

THE COURT: Well, when we reach that point, we will make sure -- we will figure it out. If --

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MS. GUTIERREZ: But she needs to call --

THE COURT: Well, if necessary, we'll get something from, on this floor or upstairs, the Attorney Referral Service also has --

MR. URICK: Your Honor, it sounds like Defense counsel wants to have two witnesses view Ms. Bennett-Royo's (phon. sp.) out-of-the-jury testimony and then come in and testify about that to the jury.

I would make a moton in limine to totally exclude any of that.

THE COURT: What tape are we talking about?

MS. GUTIERREZ: Well, he certainly doesn't know what tape I'm talking about. He's speculating.

THE COURT: Well, I haven't heard anybody talk about a -- you have a videotape. I didn't know --

MS. GUTIERREZ: The two videotapes that I want to --

THE COURT: You want to proffer to me what the two videotapes are?

MS. GUTIERREZ: One videotape is the September 7th so-called attempt at a guilty plea in front of Judge McCurdy of Jay Miles, and that's -- I don't know, I think that's about 11 minutes long.

And the second is a videotape made together with one of the witnesses this morning, as made by Drew Davis

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who is here. It's a videotape with sound on it, but we'd be playing it without sound. That was made right before the first trial date, together with Mr. Buddemeyer, who's a surveyor from Baltimore City who was called out --

THE COURT: Out at the scene of the --

MS. GUTIERREZ: Through the crime scene, of the crime scene that just shows the terrain that one had to cross to get to the log, the difference in terrain on one side of the log and the other, and at various points -- mostly, you can see Mr. Lewis, my law clerk, and Mr. Buddemeyer, and at one point for a couple seconds you see me. You never see Mr. Davis. That tape in it's entirety, I think, is about 19 minutes long. And that's all that it shows.

I would like to have both Mr. Buddemeyer and Mr. Davis review that and then answer questions about that, but those are the --

THE COURT: Okay. Well, we will get a video machine for your use.

And now that you've proffered those tapes, I assume that the State wants to be heard about the admissibility about one or both of them.

MR. URICK: The first one, the September 7th plea in front of Judge McCurdy. We move in limine that it's irrelevant. If it has any relevant, it should be excluded

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under 5-403.

I'd also make a motion in limine at this point that Elizabeth Julian be excluded as a witness, if she's intended to be called by the Defense.

THE COURT: Elizabeth Julian? Is Elizabeth Julian a witness in this case?

MS. GUTIERREZ: Yes, Judge. We announced that --

THE COURT: She's a fact witness?

MS. GUTIERREZ: -- almost two weeks ago.

Judge, she's not a -- she has no facts about this murder. She has facts about my client, I believe I'm entitled to call her and -- her name was given to Mr. Urick more than two weeks ago, at the same time we indicated we might call him or we might call Ms. Bennett-Royo. So this isn't a surprise, and she is here this morning. She's the third witness that I intend to call. Though in light of the hour, she's advised me that her son -- a thing that she must attend at 3:00, so she may be gone until tomorrow.

THE COURT: I have to tell you that it's 12 -- first of all, with regard to Defense counsel's witnesses, I'm not going to in any way interfere or affect your theory of your case or your strategy.

Mr. Urick, the motion with regard to the admissibility of the hearing, "guilty plea or not guilty plea," whatever the proceeding was in front of

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Judge McCurdy --

I take it this is the follow up, not the initial guilty plea but the --

MS. GUTIERREZ: No, this is the initial --

THE COURT: The guilty plea?

MS. GUTIERREZ: There is no record of --

THE COURT: Of the second --

MS. GUTIERREZ: -- any follow-up part anywhere.

THE COURT: Okay. Well, then the first guilty plea proceeding, I've already ruled that that hearing was not admissible. I've already ruled pursuant to the State's motion in limine that the proceeding was only relevant to the extent that Mr. Wilds testified as to what it was he believed he did. And to the extent that you've already proffered to me that there was no statement of facts --

MS. GUTIERREZ: Right.

THE COURT: -- that he was under oath, that there was a transcript of that proceeding, I have no problem if you want to in some way use your time with regard to the other tape. But I'm going to tell you that the fact that he took an oath or he did not take an oath, which is, I believe, the part that you were very much concerned about --

MS. GUTIERREZ: Yes, Judge. And I remind the Court that Mr. Wilds denied that he'd either taken an oath

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prior to his testimony today --

THE COURT: I find that's a collateral issue. Whether he took the oath or did not take the oath does not change his view as to what it was that he did on that day. I don't find that has any relevance.

MS. GUTIERREZ: That's not our purpose, Judge. We don't believe it's collateral when a witness lies about such a fundamental issue as whether or not he's ever taken an oath. And he insisted that before Judge McCurdy, whatever we call that, and that's going to be the subject of jury instructions, as we've already discussed, what a plea is, what constitutes it.

You know, for the main witness to insist that he's never taken an oath before and there is best evidence available to show that, in fact, he did take an oath, that he did raise his arm, that he did promise to tell the truth, is certainly not collateral to Jay Wilds' credibility.

We're not offering it to show something different happened on that day than he says in regard to the plea, not through this. We are going to say that but not through this piece of evidence. We'll try to get that in through other witnesses, that the plea was different than -- the benefits of the so-called plea, which we maintain never occurred since there was no statement of fact. But the

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issue of whether or not he regarded himself under oath and that he has lied about being under oath, an I have an exhibit that will clearly show he lied, that he took an oath that he promised to tell the truth, is not at all collateral to his credibility. And in this case, his credibility is entirely it.

THE COURT: Ms. Gutierrez, was he asked any questions about the facts and circumstances of this case while under oath on that tape?

MS. GUTIERREZ: You mean as to a statement of facts?

THE COURT: Um-hum.

MS. GUTIERREZ: No. He was only asked --

THE COURT: About who he was and where he lived?

MS. GUTIERREZ: -- a series of questions -- no, he was asked all the litany questions about --

THE COURT: The litany questions for --

MS. GUTIERREZ: -- did he understand --

THE COURT: -- guilty pleas.

MS. GUTIERREZ: Was that your understanding of the plea, about -- you know, he had a lawyer, had he discussed it, and then all the rights --

THE COURT: He gives him.

MS. GUTIERREZ: -- that he will give up if he, you know, if he pursued this plea.

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THE COURT: And he wasn't asked for his version of the facts or he wasn't asked to make a statement as to what occurred or specifically --

MS. GUTIERREZ: Never got to that point.

THE COURT: So the issue is that he lied under oath when he said on the witness stand that he'd never taken an oath during the guilty plea, and you have a tape showing that he did take an oath.

MS. GUTIERREZ: Right. But he's also said that he's never taken an oath. He knows what an oath is, and I went back and established that he knew what the oath he took that day was. But he's never had to take an oath on any other occasion and he's never had to take an oath in regard to this case. And at the time that he appeared in front of Judge McCurdy, he never took an oath. He wasn't asked to take an oath and he didn't take an oath and he understood what that meant. So yes, that's right.

THE COURT: Very well. The State doesn't want to be heard, do you?

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

THE COURT: I'm not going to admit the tape. The tape is going to be excluded. It will not be shown to the jury because I don't find that it's relevant. I think it's a waste of time. It goes off on a tangent of an issue that is not going to have any significant bearing on the facts

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or circumstances and it will confuse the jury in that unless you show them the whole tape, and the only thing that the whole tape is going to show is that he did take an oath at one point during something that we can't call a guilty plea because it really wasn't a guilty plea, because there were no facts that were given. He doesn't make a statement in any way, and I don't find that it will advance justice by playing the tape. I think it'll waste a lot of our time.

For that reason, I do not -- I will not allow the playing of the tape for this jury. And to the extent that this has been a reargument of a previous motion by the State, motion in limine, to disallow this type of testimony, that is once again reiterated and granted once again.

With regard to the other tape, I will allow it.

MS. GUTIERREZ: -- the transcript, which wouldn't take any time whatsoever, so the same arguments certainly couldn't be advanced to support the exclusion of a written transcript.

THE COURT: Well, the written transcript, if I may see it, I believe, again does not serve any purpose other than to show that somebody was sworn. And again, it is not relevant to any initial or any significant issue at trial. It is a collateral issue. It's whether or not --

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he says he parked his car in front of this courthouse and you find out that he, in fact, didn't park his car in front of the courthouse, and you have a ticket to say I was speeding before, I mean, it's a collateral issue. I don't see it as a heart and substance -- it's not a credibility issue that goes to something specifically related to this offense.

Had there been a statement of facts, where he, under oath, said something, that he said differently under oath in this courtroom, then I would disagree with myself and say absolutely, his credibility is at issue. Had it gone to some specific facts that were either read into the record that he said happened or denied happened or in some way provided us with something where the fact that he was under oath at the time it was said -- he merely either didn't know he was under oath, forgot he was under oath or just didn't consider it an oath, I don't know. But it certainly isn't relevant to anything.

MS. GUTIERREZ: He lied about it, Judge.

THE COURT: I don't know.

MS. GUTIERREZ: The Court's making a finding that it --

THE COURT: I'm not making any finding.

MS. GUTIERREZ: -- doesn't find that -- or it finds that it is tenuously connected.

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THE COURT: Exactly.

MS. GUTIERREZ: Just like he lied about where he parked his car. So I will pursue this line -- I guess I want this marked.

THE COURT: You can certainly mark it for identification purposes.

Let the record reflect that there is a tape. Ms. Gutierrez says that it shows --

MS. GUTIERREZ: I'm going to have that brought up and have that marked for --

(Whereupon, the document referred to as Defendant's Exhibit No. 7 was marked for identification.)

THE COURT: -- the witness, Mr. Wilds, raising his hand and actually taking an oath. I believe Ms. Gutierrez's description of what that does and I understand her request to have it admitted for that purpose. Even if tangentially relevant, I'm excluding it because I think that the probative value is substantially outweighed by the danger of confusing the issues, misleading the jury, also, a waste of time, and doesn't further this case or the interest of justice. So, therefore, I will disallow the tape of the proceeding with Judge McCurdy.

However, with regard to the other tape, it sounds

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as though that tape is extremely relevant, see no reason why it would be disallowed, and we will make sure that there's a recording device here for your use.

MS. GUTIERREZ: The first witness I'm going to call is Mr. Buddemeyer as --

THE COURT: Why don't we ask that we have a tape or the player brought up here or find one on this floor. Do you have staff with you that can go --

MS. GUTIERREZ: No, Judge, not today, and I can't be trusted to work it, so --

THE COURT: Well, I don't know that there's anyone that can be trusted to work it because I don't know that any of us really know how it works. The last time we asked that the equipment be rolled over here, it did not work.

MS. GUTIERREZ: Right. And then we just used this one to play on that monitor so that we could look at it.

THE COURT: I don't know how that would work.

MS. GUTIERREZ: -- the monitor doesn't work, I don't know --

THE COURT: I'm going to ask that someone from Sue Sheldon's office come up in the interim, in the luncheon recess. But we need to send the jury to lunch.

Sheriff, if you could have the jury come in, I'm

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going to send them to lunch.

It is now almost quarter of one.

(Pause)

Ms. Julian, in terms of scheduling, please be informed we are going to take an hour. In other words, at quarter of two, I'm going to have everyone come back. So we're not going to take a long lunch break, we're going to take an hour.

You can have the jury come in, I'll advise them as well.

And, Mr. White, if you could call down to Sue Sheldon's while we're all here and ask if they can send someone from their video section to come up and set up the equipment so that we can play a tape.. This tape would be in evidence and it would also be something that the jury could see. And I'm not sure how the equipment should work. It could be that by playing it on that monitor that it becomes part of the record as well, I just don't know.

(Whereupon, at 12:49 p.m., the jury entered the courtroom.)

THE COURT: Ladies and gentlemen, if you could just come on into the room, I'm going to send you to lunch but I just want to advise you where we are.

Ladies and gentlemen, what we are going to do is take a luncheon recess. We have asked that you be back at

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quarter of 2 and we're going to resume with this case. Please be advised that you should not discuss the case. Obviously, you've all been sitting in the room, so you haven't gotten your notepads back yet. So I'm just going to ask that you take an hour. It is now quarter of 1. We will return and I'm going to be on the bench at quarter of 2. And I ask that you all return promptly so that we can resume with this trial. Ask that -- first of all, I'd like to thank you for all being patient with us and being present here today, and we will resume this case at quarter of 2.

Please go with the deputy sheriff at this time.

(Whereupon, at 12:50 p.m., the jury was excused.)

THE COURT: Counsel, I'm going to ask you to be here five minutes before, that'll be 20 of the hour, so that we can all be assembled and begin.

And also, I'm having Mr. White called down to have the equipment set up so that we can resume.

I also would ask, Mr. White, if you could ask Ms. Sheldon to assist us in finding out where the tape stopped on Friday with regard to your motion for judgment of acquittal. I'd like to find out how much, if any, of it was on the tape. That's the second question, and I need to make sure that we have that, if necessary, taken care of.

MS. GUTIERREZ: What date was Friday?

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MS. MURPHY: The 18th?

THE COURT: Eighteenth. Yes, the 18th.

I left a note for the folks but I don't know that they acknowledged my note in any way.

MR. URICK: Your Honor, just so the record is clear, my motion in limine to exclude Elizabeth Julian would be based on the grounds that of lack of relevance. If there were going to be relevance under 5-403 on grounds of prejudice, confusion or a waste of time.

THE COURT: Well, once we get to the point where Ms. Julian's going to be called, perhaps counsel could proffer what she's going to testify. At this point, I'm not going to require her to do so. And I think Ms. Gutierrez can make a decision as to whether or not she thinks there's something that the Court needs to know about this witness. If she's not going to call her today, perhaps before the end of the day she could proffer to the Court. I'm not going to require her to do it at any particular time but I am going to ask that she do it before the witness gets in front of the jury.

So at this point, we're going to stand in recess until quarter of 2.

(Whereupon, at 12:52 p.m., the trial was recessed.)

ooOoo

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AFTERNOON SESSION (2:05 p.m.)

(Jury not present)

THE COURT: Mr. Syed comes in and has the shackles removed. I need to talk to counsel about Friday last. You may recall that we were concerned about where the tape ended.

MS. GUTIERREZ: Yes, Your Honor.

THE COURT: And I can tell you, happily, that all of your arguments are on the tape. What was not on the tape was the instruction by counsel as to the Defendant's rights -- the election -- not the election, his right --

MS. GUTIERREZ: Oh, I understand that.

THE COURT: -- which we redid. If you recall, we did it a second time.

MS. GUTIERREZ: Yes.

THE COURT: And what also was not on the tape was my ruling with regard to the motion for judgment of acquittal. That is, the tape picked up my ruling as to Count 1 and Count 2 and then it stopped. So what I will do is restate for the record that I denied your motions with regard to the motion for judgment of acquittal, and let me indicate --

Mr. White, do you have the verdict sheet, the sample verdict sheet that was there?

THE CLERK: No.

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THE COURT: No?

What I need is the sample verdict sheet that I handed out to counsel because I believe I indicated the case -- the count numbers and referred to everything by way of the counts. Yes.

MR. URICK: On the second indictment, I inadvertently struck out the wrong one first. I wrote "okay" to indicate that one was --

THE COURT: Basically, I'll do it in reverse. I granted Defense motion as to case ending in 043, Count 2, kidnapping by force with intent to conceal, granted your motion. Denied all of your motions with regard to Count 1 and 2 in case ending in 042, which the tape picks up. Denied your motion as to 043 as to Count 1, charge of kidnapping by fraudulently carrying away or by deception. Denied your motion as to everything under 045, the robbery, the assault in the first degree, the assault in the second degree, and felony theft, finding that there were facts in the light most favorable to the State that could have provided or can provide the trier of fact with a factual basis for those particular, including a struggle evidenced by the broken signal thing and other items, as well as the theft of her belongings in the car, which I referred to by witness testimony during the course of the trial, giving rise to, in the light most favorable to the State, and,

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therefore, the motion being denied for 045 as to Count 1, 2, 3, and 4.

As to Count 046, I believe we struck 9 -- I'm sorry, we struck 10 and kept in No. 1, Count --

MS. GUTIERREZ: Which one was 10?

THE COURT: Ten was --

Mr. Urick, your recollection is what?

MR. URICK: What is No. 10 again?

THE COURT: False imprisonment by forcible assault and No. 10 is false imprisonment by deception.

MR. URICK: You kept in false imprisonment by deception, struck false imprisonment by force. So I think we struck 9 and kept 10.

THE COURT: Correct. I think that is correct. And for that reason, 9, which is Count 1, Question 9, Count 1 of 046 was removed. And your sheet reflects that.

MR. URICK: Yes, I believe that's correct.

THE COURT: Which is what I utilized in rendering it.

And then following that, I asked you, Ms. Gutierrez to advise your client. That entire portion was missed on the original tape.

MS. GUTIERREZ: But we then did do.

THE COURT: But we then did it, so we are now back to the place where we should have been.

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MR. URICK: While we're on the verdict sheet, let me -- you asked for possible corrections. The indictment dealing with robbery, since the three counts that follow, assault in the first, second, and theft, are lesser included, I believe there should be a note there. If they find him guilty of robbery, they should skip the next three, go on to the next indictment.

THE COURT: If they find him guilty of?

MR. URICK: If they find him guilty of whatever the question is that's robbery, then go on to Question -- the next indictment. If you find him not guilty, then consider the next --

THE COURT: The indictments are charged as lesser included and not as separate counts of the indictment?

MR. URICK: They're charged the same way as the first one, the first indictment, which is murder in the first degree and then -- I take that back. They're charged as separate counts in the indictment on the robbery. The murder was not charged --

THE COURT: And the point is, is that you could argue that the fact that there was a struggle could constitute assault in the first degree. We know that there was a struggle, if you were to believe the facts in the light most favorable to the State by evidence of the broken signal thing and the witness Mr. Wilds who testified that

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the Defendant told him that she put up a struggle and broke it.

MR. URICK: Yeah.

THE COURT: So that's why -- that was my reasoning for denying the motion and granting it in the light most favorable to the State, because there was evidence of that.

MR. URICK: Since they're charged as separate counts rather than lesser included, then all four should go as separate considerations.

THE COURT: I believe they should --

MR. URICK: Thank you.

THE COURT: -- unless you're submitting as to some counts that you do not wish to go.

MR. URICK: No.

THE COURT: Very well. That's cleared up. I thank you for your copy of the sheet.

MR. URICK: Your Honor, can you pass that back to me, please?

THE COURT: Yeah. And I will have them -- some corrections made and have a new verdict sheet done at some point in time.

At this juncture, Ms. Gutierrez, I need to advise you that Judge Smith will be looking for you at 4:30. I spoke to your office and asked them to relay that message

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to you.

MS. GUTIERREZ: They did.

THE COURT: And I advised Judge Smith that we would recess no later than 4:00. I told him probably quarter of to give you time to get out of the building and on the road. And he promised that if you were a few minutes late that he would not hold you contempt of court.

MS. GUTIERREZ: And I can come back to you if he does.

THE COURT: I'm telling you on the record that that's what he told me and I would not have any reason to think that he would not follow what he told me.

At this point, I'd like you to call your first witness. We can get our jurors out. If he can make his way to the --

MS. GUTIERREZ: He's sitting right on the first bench, Judge.

Just in case -- I wasn't sure I was clear this morning. In regard to Jay Wilds, I still have issues but I guess they can wait. I'd like to make them -- my issues -- whether or not they were recorded. I did understand that we had the discussion. Those were not the issues I was raising this morning -- really in regard to did I -- the record in terms of making our argument clear. It didn't have to do with whether I thought it was recorded

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correctly.

THE COURT: Which things?

MS. GUTIERREZ: We never reached that issue. I just wanted to put on notice that, one, I want to make all the arguments that -- but then was not sure that I had actually made every argument -- on the issue that I think now reflects on the issue of -- wish to recall Jay Wilds in light of the Court's ruling that -- previous rulings I couldn't call Mr. Urick, I couldn't get into it in and of itself. Mr. Wilds doesn't -- or didn't acknowledge this, but perhaps I could get it through Ms. Bennett-Royo or Judge McCurdy. All of those sources have been exhausted, either because, for instance, Judge McCurdy has no recollection of the subsequent hearing or any other off-the-record deal. And the Court's now ruled that I can't call Ms. Bennett-Royo because -- ruled I can't get it in through Mr. Urick. So I believe I'm at least entitled to make an effort to try to get it in through Mr. Wilds and then make another argument.

THE COURT: And what you want to get in at this point is the fact that this was not a guilty plea proceeding, that no statement of facts was read in?

MS. GUTIERREZ: No, Your Honor. No.

THE COURT: All right.

MS. GUTIERREZ: There are two issues I want to

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get in. I believe that -- and Mr. Wilds has said the only plea is what's on the tape --

THE COURT: Correct.

MS. GUTIERREZ: -- and that that's his understanding of everything that he expects -- was on the tape.

THE COURT: With the exception that you brought out that he did not have to pay for this lawyer, that this lawyer was --

MS. GUTIERREZ: Right, and I understand. But I think I've already established that and the Court's made rulings.

Based on what Mr. Urick said as a proffer, and I took him at his word, that he arranged for a subsequent hearing before Judge McCurdy and that on the table at that hearing -- which he didn't attend so he can't tell us what took place. He believes it would have been on the record. Judge, I've had Ms. Sheldon look at every single tape that Judge McCurdy has had from both the date Ms. Bennett-Royo gave us and all other dates in September and the first week of October. There is no such proceeding that is recorded. Anyway, he can't tell us.

What he tells us is, and he did this on the record, that such a hearing took place and -- judicial review of the counsel issue -- defense itself, I would

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presume. That's not even what I'm interested in. He acknowledges that at the hearing that he asked Judge McCurdy, and he may have a -- took place because of his request, but on the table was the ability of Jay Wilds to withdraw the plea.

When I spoke to Judge McCurdy in the presence of Ms. Murphy, he doesn't recall such a hearing and doesn't believe it would have occurred, believes he would have remembered if it had occurred. And if there had been anything, it would have occurred before the plea, you know, on the issue of counsel. But there's no other recollection. Judge McCurdy's office staff has already reviewed all his records, and I tell you, as an officer of the Court, that there is no record entry in the calendar, in any papers of Judge McCurdy's -- papers. And of course, as the Court's already aware, the court file reflects no such proceeding, either on or off the record -- the court file was handled by Judge McCurdy at any juncture following the September 7.

Mr. Bennett-Royo would have said, but -- couldn't go any further and cut off the questioning of her, that -- she may -- with Mr. Urick on the 7th, in the presence of her client, and that she made sure client understood that one of the benefits that's not reflected in the typewritten plea agreement and would not be reflected on the record was

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an agreement that would allow Mr. Wilds to withdraw his plea at a time later than the 7th, and she would have testified that's what she told me in the presence of my law clerk, that her concern and insistence on that being a benefit of the bargain was because she felt that there -- that this guy, meaning Mr. Syed, might feel that, in fact, she was just brought in to represent Mr. -- interests and that since it was so unusual that his lawyer be provided by the prosecutor that he had the absolute right, after reflection, to withdraw the plea.

As to that issue, and that's the first issue, I believe we're absolutely entitled to get in all the benefits of the bargain that were extended to Mr. Wilds, whether or not Mr. Wilds testifies truthfully as to what they are.

Now, the fact finder has a right to consider all of the benefits of the bargain in assessing whether or not the bargains have anything to do with influencing his testimony or what that bargain is or what extent he may be beholding to him when he made the bargain, both what's written and what's not written, and it's up to the jury to decide whether Mr. Wilds is telling the truth and to decide as to all things, including what Mr. Wilds' perception is of the bargain or -- his lawyer says that was part of the bargain, it was made in front of him, and that goes

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directly to impeach him. And that's certainly not attorney/client privilege, made in the face of and in the earshot of Mr. Urick.

Since the bargain that the jury knows about makes Mr. Urick the arbiter of truth, the issue of whether or not there's a side deal that Mr. Wilds may not want to admit to because if, in fact, it's true it makes him out to be a liar as to that issue, as to what the bargain was, and if the jury --

THE COURT: You're saying that there's another element of the bargain, that is, his ability to withdraw a plea, that he has not testified to?

MS. GUTIERREZ: Right, which -- and if they're willing to find some neutral reason he forgot, this jury should know that, the fact that there is an additional element to that bargain that was made on the very same day. It was made with the active participation of Mr. Urick, who has admitted that he asked for a hearing and that on the table would be the withdrawal of the plea, thereby corroborating exactly what Ms. Bennett-Royo says.

THE COURT: Is the State willing to stipulate to that fact?

MR. URICK: No, Your Honor. The State believes you are absolutely correct. On Friday --

THE COURT: No, no, I'm asking about whether or

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not you're willing to stipulate to the fact that as part of the plea bargain it was agreed that Mr. Wilds would have the ability to withdraw his plea.

MR. URICK: That was not agreed as part of the plea.

THE COURT: And so, that's not a stipulated fact, that's not something you agree to?

MR. URICK: Correct.

THE COURT: And with regard to Mr. --

MR. URICK: The only right to withdraw that Mr. Wilds has under the plea would be --

THE COURT: I understand.

MR. URICK: -- as a matter of law he has a -- if a Court rules as a matter of justice.

THE COURT: If it's found to be a guilty plea, which we haven't found that it's a guilty plea. A guilty finding was entered, it wasn't a -- according to the paperwork, it wasn't a guilty plea entered.

MR. URICK: The Rule just says, "At any time before sentencing the Court may permit the defendant to withdraw a plea of guilty." He's made his plea of guilty. If he withdraws to serve the interest of justice.

THE COURT: Mr. Urick, we are splitting hairs here. There's no way that that is, under 242, a guilty plea that would stand up before the Court of Special

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Appeals or Court of Appeals. There's no statement of facts, so there's no guilty plea. Whether it was under oath or not, there's no guilty plea. It was a beginning of a guilty plea. There was the beginnings of something you might call a guilty plea hearing, but it was never finished, so it wasn't a guilty plea. There's a plea bargain, there's a plea agreement, but there's no guilty plea, not under the Rule.

MR. URICK: Which is irrelevant for purposes of this discussion. Defense counsel has raised an irrelevant issue. The plea calls for him to enter his plea, that's a binding entry of plea. The completion of the guilty plea, and the statute does not require everything to be done in one proceeding.

THE COURT: That's not her issue. Her issue isn't whether or not it really was a guilty plea, her issue was whether or not, as part of the plea agreement bargain, he could withdraw his plea.

MR. URICK: He can't, unless he can meet the interest of justice --

THE COURT: So far, we've had testimony that he believes he -- well, he doesn't know because he really was never really asked about that. My recollection is he was kind of, sort of asked that question. But Ms. Bennett-Royo's point is that it was part of the plea

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agreement that he could withdraw his plea. And under the Rules, if it ever reached the point when it really was a guilty plea, he, under the Rules, could, with the permission of the Court, withdraw his guilty plea.

MS. GUTIERREZ: Right, but our point is that -- well, he may or may not be able to withdraw it, we don't know that because there isn't any attempt to finish it. So there isn't a plea. And if it's held to be -- advised of his rights with no -- is he locked into it -- that question, that's not my question. But if, in fact, he had the right to withdraw the plea and send Mr. Urick -- Judge, I'm --

THE COURT: It actually would have to be with the consent of Judge McCurdy.

MS. GUTIERREZ: Well, of course, that only existed -- in fact, he's deemed to be locked in since there -- he was advised of the waiver of his rights not in connection with any specific crime. And I'm saying, Judge, I won't touch that one. I don't know where that one will go. Assuming that he's locked in, if in fact --

THE COURT: Ms. Gutierrez, isn't the discussion we're having right now the very reason why it shouldn't go to the jury? I mean, you've been at the bar as many -- more years than I.

MS. GUTIERREZ: It's not what should not go to

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the jury.

THE COURT: And the issue of whether or not he had the ability to withdraw the plea or not, as a matter of law, whether he had that ability --

MS. GUTIERREZ: No, I'm not arguing --

THE COURT: -- whether he --

MS. GUTIERREZ: -- that that should go to the jury. What I'm arguing that we're entitled to go to the jury is that such a benefit was bargained for him, and, Judge, I believe that's what Mr. Urick said on the record. I know the record didn't catch everything, but he made a proffer as an officer of the court, regarding what was on the table at the time that the hearing took place.

THE COURT: I can tell you the record did catch up with him. There was nothing missing from the record, with the exception of my ruling.

MS. GUTIERREZ: Not on Friday, earlier. This issue of -- Tuesday, Wednesday of last week, and, Judge, at a time when I believe buttresses what Mr. Urick said because he hadn't told us anything unless he's absolutely required to or he thinks it's in defense of himself. From the very beginning, we've had to fight for any information. And he made a proffer as to -- because at the time he was arguing that his getting a lawyer, that there was nothing wrong with it, and attempting to show this proceeding in

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front of Judge McCurdy as what he kept calling sort of judicially -- the fundamental right to counsel. And he made a proffer, that's how that came about, in his belief it came about because -- request, and what is believed was on the table and what was to be discussed and he said withdraw the plea was on the table.

And so, Judge, what I am arguing is not what the matter of law is. Of course, that's not up before the jury. But if, in fact, the jury finds out that, in fact, there was this separate deal that would allow this witness who had been presented to them as someone who, notwithstanding all of his previous lies, should be believed now because he has a deal and he's required to live up to the deal. If, in fact, part of the deal is this deal that lets him slip away from it, to withdraw the plea, and there are no consequences, that is a fact that's theirs. It's the same reason why, of course, I was allowed to, and anyone would be allowed to, get out the facts in the plea agreement. It's why he gets to introduce it to the jury before I even get there. Of course, it is relevant to the fact finder's determination of what's on the table, why should we believe him, what has he bargained for, what can we do.

If one of the conditions is that he, not Mr. Urick but Mr. Wilds, can withdraw the plea because his

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lawyer bargained for it in his presence, then two things are properly at issue on the jury: Is that part of the plea bargain and, two, why did he intentionally lie about it if, in fact, we asked him, both of which the fundamental credibility and the single witness against him. Of course, we should be allowed to inquire.

And now that the Court has -- no, I think you're wrong -- to think you're wrong, but the fact is that now the only person we can go back to is Mr. Wilds because you've cut off any avenue, notwithstanding that there's a proffer on the record from Mr. Urick, to do essentially the same thing that buttresses what, if he had not pled out, Mrs. Bennett-Royo would have said was part of the bargain --

THE COURT: She did say it.

MS. GUTIERREZ: -- that she -- well, I thought she said most of it but I wasn't --

THE COURT: She said it. She said that she was -- it was her understanding that the Defendant Wilds, her client, could withdraw his plea.

MS. GUTIERREZ: Right. At any time.

THE COURT: That's what she said.

MS. GUTIERREZ: Since the Court has now ruled that we can't ask that -- to get it in and since -- I think the Court's recollection is the same as mine. We didn't

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quite ask that question of Mr. Wilds, partly because all of this came out during Mr. Wilds' cross-examination and we never even knew that Mr. Urick was the one that got him this lawyer that then led for us to have any way to investigate or find out that, and notwithstanding that this Court has ruled well, he got it now, so no harm, no foul, which we still think the Court's wrong on, this is precisely the fact. This is precisely what we couldn't anticipate. And now that you have cut off any ability to get it from other sources who have said they have it, then we believe that the Court is required to at least allow us to go back to Jay Wilds and take a shot at getting out what we know to be true, what we know that Mr. Urick would agree to, though he won't stipulate to it because it hurts him, and Ms. Bennett-Royo has said, but the jury doesn't know about a fundamental fact of the agreement that is different than what they know about, that it's not just the plea agreement, that it is the ability to withdraw the plea.

We made every effort to obtain other evidence of it, such as a recorded proceeding in front of Judge McCurdy that might have shown that, in fact, it was on the record, that he was advised and given the opportunity to withdraw the plea, which is what Mr. Urick says occurred. There's no evidence of that. We can't get that. We've exhausted --

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THE COURT: Well, the tape doesn't show that. There's nothing on the tape --

MS. GUTIERREZ: There is no tape, Judge.

THE COURT: Well, no, I mean the taped proceeding, the tape proceeding of the guilty plea.

MS. GUTIERREZ: Oh, the attempted guilty plea.

THE COURT: Of the hearing, the hearing thing.

MS. GUTIERREZ: I'm talking about we've exhausted all efforts --

THE COURT: I understand.

MS. GUTIERREZ: -- to locate evidence of a hearing that Ms. -- all three of them say occurred, although they disagree as to what took place there.

THE COURT: On tape.

MS. GUTIERREZ: There is no evidence that can be located based on their information, and they're the only ones that know. We don't know, we weren't there, we weren't part of it. We wouldn't have recorded what it was. And all evidence that should be recorded has not panned out.

And so, Judge, we would first move for an opportunity to recall Jay Wilds as a hostile witness, to be able to conduct cross-examination of him on these areas that we were unable to do during the -- cross-examination.

THE COURT: Would that be your first witness?

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MS. GUTIERREZ: No, Judge. I have my first witness --

THE COURT: The State's reiterating its position --

MS. GUTIERREZ: But I would have to make arrangements to get Mr. Wilds in again.

MR. URICK: We're reiterating our opposition to any such proceeding taking place in front of the jury.

THE COURT: As I indicated previously, I believe that calling Ms. Bennett-Royo would not be appropriate and it would just take us off on a needless presentation of evidence. And I would find that the credibility of Mr. Wilds has been exhausted. The ability to cross-examine him and bring out those things that might have affected his testimony and his credibility was done, and I believe that clearly it was what was in the mind of the Defendant at the time that he -- the Defendant meaning Wilds -- entered into this agreement, and he testified as to that. He's not a lawyer, he doesn't know what the Rules of Maryland provide, that even with a guilty plea and even if he signed something, that a judge could allow him to withdraw his plea under circumstances where the Court determined it would be appropriate. Whether he knew that or not, whether or not that's something that affected his testimony, clearly did not come out as something that was within his

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knowledge. What did come out was his confusing right -- confusion right down to the fact that he doesn't even know that he took an oath. But in any event, he was questioned, and I believe to the extent that the important aspects of what was negotiated, the benefits and the reason for his testimony were questioned and that information is before the jury. And I will allow counsel to argue that credibility. And also, to the extent that an appropriate instruction could be garnered, we will do that, and I will look for instruction from both the State and the Defense on this issue. And I'm directing both the State and the Defense to fashion an instruction with regard to Mr. Wilds's testimony because I will be looking at it specifically with an eye towards giving an instruction to the jury. So if there is anything that you'd like me to tell them or direct them as to the law, I will be looking for that instruction.

At this time, Ms. Gutierrez, I will ask you to call your next witness. I see that there's a gentleman in the --

MS. GUTIERREZ: Yes, we would call --

THE COURT: Mr. Davis, if you would step up, please.

MR. URICK: Your Honor, we would make a request -- it appears the Defense is going to call the Defendant's

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father as a witness. We would -- before he is called, we'd ask for a proffer of what he's going to testify to because there may be an issue, because he sat through basically every State's witness at the first proceeding. We may have a right to question him about --

THE COURT: At this point, can I get a witness on the witness stand? With all due respect to both counsel, it is now 2:30. We've had a jury sitting here since 9:30 this morning.

MR. URICK: I requested --

THE COURT: And I'm going to put this witness on the stand and get the jury in the box. And if you all want to spend tomorrow morning -- because I'm just advising you tomorrow morning at 9:30 we're starting this case -- we'll start this case before m docket. Now, if you want to come in tomorrow morning at 9:30 and talk for an hour or so about other issues that I think more appropriately could have been dealt with before now, fine. But at this moment, on Tuesday at 2:30 -- thank you.

I'm going to ask if the deputy could bring in the jury.

I believe this tape is how long, Ms. Gutierrez, 10 minutes?

MS. GUTIERREZ: I think so, Judge -- as 19 minutes.

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THE COURT: Okay. We'll get you out by --

MS. GUTIERREZ: The other thing, I wanted to make sure we aren't going to play the same --

THE COURT: No sound.

MS. GUTIERREZ: No, no sound, just the tape.

THE COURT: When the jury comes in, I'll ask you to stand and raise your right hand and listen to Mr. White.

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

(Whereupon, at 2:36 p.m., the jury returned to the courtroom.)

THE COURT: Good afternoon, ladies and gentlemen.

At this juncture, the Defense is going to call their first witness.

Ms. Gutierrez.

MS. GUTIERREZ: Thank you, Your Honor.

The Defense would call Drew Davis to the stand.

Whereupon,

ANDREW DAVIS

was called as a witness at 2:37 p.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: Please be seated.

THE WITNESS: Thank you.

THE CLERK: You're welcome.

Please keep your voice up. State your name and your professional address.

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THE WITNESS: Yes, sir. My name is Andrew Davis. My business address is 207 East Redwood Street, Suite 703, Baltimore, Maryland 21202.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Davis, what is your business currently?

A Yes, ma'am. I'm a private investigator, licensed through the State of Maryland.

Q Okay. And as a private investigator, did you have any prior skills investigating crimes?

A Yes, ma'am. Prior to being a private investigator, which I've been for approximately three years, I was a Baltimore County policeman for nine years. I was injured in the line of duty in '95.

Q Now, Mr. Davis, let me direct your attention back to March of 1999, last year, did you have occasion to be hired as a private investigator in regard to Adnan Syed's case?

A Yes, ma'am, I did.

Q All right. Now, let me direct your attention to -- were you asked to become familiar with the geographical location of various addresses, including Woodlawn High School?

A Yes, ma'am.

Q And Dogwood Road in Baltimore County?

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A Yes, ma'am, that's correct.
Q Franklintown Road in Baltimore City?
A Yes, ma'am.
Q Leakin Park in Baltimore City?
A That's correct.
Q And persons, including a person by the name of Alonzo Sellers?
A Yes, ma'am.
Q Okay.
MS. GUTIERREZ: May I approach the witness, Your Honor?
THE COURT: Yes, you may.
BY MS. GUTIERREZ:
Q Mr. Davis, if you could just step off, and right behind you is a map. If you could -- I'd ask you to take a look at it and, if you could, point out some locations on there that --
A Yes, ma'am.
Q Do you need some help or --
A No, thank you.
Q Okay. If you can orient yourself to this map. You've seen it before today?
A Yes, ma'am.
Q Okay. If you could orient yourself to it and see if you see the location of Franklintown Road where it turns

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into Dogwood Road.

A Yes, ma'am.

THE COURT: I'm going to ask both of you to keep your voices up. You are in a very strange location in this courtroom and the mike, the closest mike to you is at the witness stand and in front of the jurors.

THE WITNESS: Yes, ma'am.

THE COURT: So if you could direct your voices in that direction, it should pick up and record.

THE WITNESS: Okay.

BY MS. GUTIERREZ:

Q If you could first point to that location, that is, where Franklintown Road meets or turns into Dogwood Road.

A Yes, ma'am. It's right here at the intersection, North Forest Park, Franklintown, and Dogwood Roads, right here on the map.

Q Okay. And you've been to that intersection?

A Yes, ma'am.

Q And if one is traveling on Franklintown Road, out of the City toward Baltimore County, does the same road turn into Dogwood Road?

A That's correct.

Q Okay. And if you continue up on Dogwood Road, could you point to us the location of Woodlawn Senior High

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School?

A Yes, ma'am. You would just follow up Dogwood Road, then you would come up to the intersection of Woodlawn Drive. You would make a left and Woodlawn High School would be right here on the left.

Q And at the other end, if you continue out Woodlawn Drive, what is the street or road that you would come into at the opposite end of Dogwood Road?

A If you would continue on Woodlawn --

Q No, on this way. If you went toward the school but went beyond --

A Yes, ma'am. Security Boulevard.

Q Okay. And if you went on -- okay.

Did you become familiar with investigating a person by the name of Alonzo Sellers?

A Yes, ma'am.

Q And did you determine what Alonzo Sellers' address is?

A Yes, ma'am.

Q And could you point out that address to us on the map?

A Yes, ma'am. It's right here on Gilmore Street, which is approximately a block and a half off Dogwood Road.

Q And does Gilmore Street run the same direction as Dogwood or the --

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A Yes, ma'am, it runs parallel.

Q And can one get to Gilmore Street directly from Dogwood Road?

A Yes, ma'am. You would -- you could make a right at several different crossing intersections and you would come to -- Gilmore.

Q Mr. Davis, did you have an occasion, upon a request, to measure the distance between Alonzo Sellers' house and a location on Franklintown Road along where it turns into Dogwood Road, where a body was found?

A Yes, ma'am.

Q And what distance is that?

A The closest possible distance from the 4400 block of Franklintown Road --

Q And is the 4400 block where there's a D symbol?

A Yes, ma'am, that's the address.

Q Okay. The closest distance between that point and what other point?

A And actually, the front of Mr. Sellers' house is 2.9 miles.

Q Two point nine miles. Okay.

If you would retake the stand, Mr. Davis, I'm going to --

In connection with working on this case, did you have an occasion to visit a location that was identified as

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the burial spot of Hey Men Lee?

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

Q And did you -- with whom did you go when you visited such a location?

A I've been there numerous times, all by myself, except for on September 20th, in which I was there with yourself.

Q Prior to September 20th, you visited that exact spot --

A Yes, ma'am.

Q -- on other occasions?

A That's correct.

Q Now, on September 20th, I was there, and was anybody else there?

A Yes, ma'am.

Q Who else?

A There was a law clerk, Michael Lewis.

Q Okay. And was there some other person that was embodied there?

A Yes, ma'am. It was the gentleman from Baltimore City.

Q From the surveyor's office?

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

Q Okay. And is that the surveyor who was there on the day the body was found and had drawn a map and measured

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distances?

A That's what he told me, yes, ma'am.

Q Okay. On September 20th when you had occasion to visit that particular location, did you have an occasion to make a videotape from the road back to where the surveyor identified where the body was found?

MR. URICK: Objection.

THE COURT: Overruled.

Did you make a video?

THE WITNESS: Yes, ma'am, I did.

BY MS. GUTIERREZ:

Q And I'm going to ask you to look at --

MS. GUTIERREZ: I just push the tape --

THE COURT: Yes. I think we have an assistant here.

BY MS. GUTIERREZ:

Q Can you see this?

MR. URICK: Objection. May we approach?

THE COURT: Yes.

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

MR. URICK: At this time I'm going to move to strike any testimony concerning a videotape made September 20th. Leaves would still have been on the trees. The burial was found February 9th and there was no

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vegetation. The pictures clearly show that. Any videotape in September where there's foliage, vegetation, leaves on the trees would not be a fair and accurate depiction of the scene at the time at which anything was found.

THE COURT: You don't wish to be heard, do you?

MS. GUTIERREZ: No, Judge.

THE COURT: Overruled. Cross-examination.

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

THE COURT: You want to put the tape in?

(Whereupon, the aforementioned videotape was played.)

THE COURT: It's back at the beginning of the tape.

MS. GUTIERREZ: That's fine, Your Honor.

I'm finished with this witness on these issues, although I will recall him later.

THE COURT: And we've marked that at Exhibit?

THE CLERK: For identification.

MS. GUTIERREZ: Eight, Defense Exhibit 8.

THE COURT: Are you moving it in at this time?

MS. GUTIERREZ: And I would move it into evidence.

THE COURT: Any objection?

MR. URICK: No objection.

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THE COURT: Let it be admitted as Defense No. 8.

(Whereupon, the document referred to as Defendant's Exhibit No. 8 was marked for identification and received into evidence.)

THE COURT: Any questions?

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

CROSS-EXAMINATION

BY MR. URICK:

Q Good afternoon, Mr. Davis.

A How you doing?

Q Now, that's the only spot to pull off for quite a ways on Franklintown Road there, isn't it?

A On the left-hand side, yes, sir.

Q Across the street, where is the nearest one then?

A Just before the bridge there's a pull-off spot, just prior to the bridge, which may be 150 yards away. It depends on which way you're driving, but if you go from Dogwood Road towards this spot, there's a spot just before the bridge on the right-hand side.

Q If you go a quarter-mile in either direction, how many pull-offs are there on either side of the road?

A Well, actual marked pull-off spots, you have that one and then the area on the right-hand side. If you went a quarter-mile where you'd be at Winands Road, which

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there's a place to -- you have to stop, so you could pull off there. And previous to that, it's pretty windy, so it really wouldn't be safe to pull off there.

Q So there are not a whole lot of places where you could gain access to the park through there, right?

A Where you could gain access to the park?

Q Yes.

A Just a handful, I guess, in that quarter-mile each direction.

Q And your videotape shows there was a lot of trash all over the road and the ground in there, isn't that correct?

A I even videotaped the no dumping sign.

Q A lot of people go back there, if the trash is any indication, isn't it?

A I'd imagine, sir. Yes, sir.

Q And it was your testimony that when you actually entered the woods, the path of least resistance led you to the log where the body was buried, is that correct?

A To the -- just right of 40-foot log, yes, sir. Just to the right side of it.

Q And that place where the log is, that's not very far in the woods, is it?

A It's actually, I believe, 126 feet, so almost 40 yards, I guess.

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Q Well, that's from the roadway, isn't it? I mean, from the road to where the vegetation starts, it looks like a good 15, 20, 25 feet.

A Yeah, about probably eight yards or so.

Q So it's probably about less than 100 feet of actual woods before you get to the log, is that correct?

A I guess I would estimate maybe 100 feet or so, maybe 30 yards.

Q And that's the first place you get to where, really, it's almost like a little clearing. There's no vines growing up there around the -- the dirt is just dirt, there's not vines and trees growing in it. Like everywhere else, you have all those little saplings and things growing in it, correct?

A It's pretty much saplings and everything all around. I guess for that parking area, depending on which way you would go, there's -- I mean, I could try to describe it, if you'd like me to to answer your question.

Q Well, right there at the log is the first place where you really have open ground?

A There's open ground there because they just had a storm. We were talking about the flooded area there. The storm pretty much wiped it out.

Q So the ground there would be easier to dig up than the other places, where all the saplings and the vines

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are?

A Theoretically, I guess you could say that, yes, sir. Closer to the creek.

Q And you made this videotape in September when the leaves are fully on all the trees, correct?

A That's correct.

Q Yet, despite that, you had no problem seeing the Jeep at the -- where you had it parked?

A Thanks to the sun and reflection of the windshield, you could --

Q And if you watch the videotape, you can clearly see the cars driving along Franklintown Road?

A You might've picked up on something I didn't see.

MR. URICK: Mr. Clerk, could I see the State's exhibits and the photographs?

At this time, I'd like to approach the witness and have him look at what's in evidence as State's Exhibit 9.

BY MR. URICK:

Q If you could take a few moments and look at that briefly.

A Yes, sir.

(Pause)

Yes, sir.

Q Have you had a chance to examine the exhibit?

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Q Have you had a chance to examine the exhibit?
A I'm looking at them, yes, sir.
Q And do you recognize that scene?
A Yes, sir. It appears to be the crime scene of -- where Hey Men Lee was recovered.
Q And you've testified you've been to the crime scene when there's no foliage on the trees?
A Yes, sir.
Q Do those photographs fairly and accurately represent that scene when there's no foliage?
A Absolutely.
Q The top row on the right, do you see figures back in the trees?
A Yes, sir. I mean, I know that they are people, that you could see the upper half of their bodies back there, because I've seen this photograph before.
Q And can you identify the spot where they're standing?
A One would only assume that that's near the log where the body was recovered.
Q And you can see them clearly in that photograph, can't you?
A I personally, because I'm familiar with this photograph, can, yes, sir.
Q If you could return the exhibit to the clerk at

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this time.

A Yes, sir, sure.

Q Thank you.

Now, it didn't take any time at all to walk back to where the log was, did it? A minute or two?

A I guess that's a perspective, but it's not that far. It's maybe 40 yards.

Q And you made this videotape at the direction of the Defense attorney?

A Yes, that's -- yes, sir.

Q Thank you.

THE COURT: Ms. Gutierrez, any redirect.

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

THE COURT: Yes, you may.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Davis -- photograph on the upper left-hand side that has the little sticky on it, is that the photograph in which you looked to see if you saw people?

A No, ma'am.

Q Okay. It's the one on the right-hand side?

A Yes, ma'am.

Q Okay. The one where there's two blue cars?

A Yes, ma'am.

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A Yes, ma'am.

Q Does the photograph show the vineage and overgrowth that we discussed?

A Yes, ma'am. I mean, it -- yes.

Q And from that vantage point in the photograph, can you identify the log, the 40-foot log?

A No, ma'am.

Q And can you see the place where the body was recovered on the other -- on the far side of that log?

A No, ma'am.

Q Thank you.

MS. GUTIERREZ: I have nothing further at this time.

THE COURT: All right. May this witness be excused, Ms. Gutierrez?

MS. GUTIERREZ: No, Judge. I want to call him again on another issue, so right now --

THE COURT: All right, very well. This witness will still remain. I must advise you you're a sequestered witness. You cannot discuss your testimony with anyone else, the Defense or the State.

THE WITNESS: Yes, ma'am.

THE COURT: And you may be excused at this time.

THE WITNESS: Thank you.

(Whereupon, at 3:05 p.m., the witness was

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excused.)

MS. GUTIERREZ: My next witness is --

THE COURT: Very well.

Thank you very much, Mr. Davis.

THE WITNESS: Yes, ma'am.

THE COURT: Sir, please remain standing by the witness stand, face Mr. White, raise your right hand and be sworn.

Whereupon,

PHILLIP BUDDEMEYER

was called as a witness at 3:06 p.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: Keep your voice up. State your name for the record.

THE WITNESS: My name is Phillip Buddemeyer. I work for Baltimore City as a surveyor.

THE CLERK: Spell your last name for the record.

THE WITNESS: Buddemeyer, B-U-D-D-E-M-E-Y-E-R.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Buddemeyer, what's your job?

A I'm a surveyor for Baltimore City.

Q Okay. And does that make you a city employee or a state employee?

A I'm a city employee.

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Q Okay. And how long have you done surveying?
A Thirty-nine years.
Q As a surveyor, do you have an occasion to measure distances for other agencies of Baltimore City?
A Yes, ma'am.
Q Mr. Buddemeyer, let me direct your attention back to February 9th, 1999, do you recall that day?
A Yes, ma'am.
Q Did you have occasion to be called out to the 4400 block of Franklintown Road, in the middle of an area known at Leakin Park?
A Yes, I was.
Q Okay. Back on that day, were you familiar with that stretch of Franklintown Road?
A Yes, ma'am.
Q You had been there before?
A Several occasions.
Q Were you familiar with Leakin Park?
A Yes, ma'am.
Q And on that day, who called you out there?
A It was a detective from the Baltimore City Police Department.
Q And as a result of being called, did you then go?
A Yes, ma'am, right away.
Q Were you asked to perform any duties or

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functions?

A Yes, ma'am.

Q What were those?

A I was requested to measure the location of the body from the edge of the road into the park area where the body was found.

Q When you got there, were you shown where the body was?

A When I arrived, I wasn't shown where the body was. I walked back toward the area where the body was.

Q Is it easy walking back there?

A No. You have to find a path of the least resistance on account of the underbrush.

Q There's not any direct visible path?

A No, ma'am.

Q Was there overgrowth?

A Yes, ma'am.

Q Were there vines hanging down?

A Yes, ma'am.

Q Did things have to be moved out of the way to enable you to get back?

A Yes, ma'am.

MR. URICK: Objection.

THE COURT: Overruled.

BY MS. GUTIERREZ:

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Q And when you got back, did you locate the body?
A Well, when I arrived at the site, I walked back to the site, which was approximately 125 feet off the road, expecting to see a body. I never saw any, okay. I didn't know where it was, even though there was people around the body. A detective pointed the body out to me because it was partially buried, but I did not see the body until --
Q Do you remember where you were told the body was?
A The body was -- well, when I arrived at the site where the body was, there was a log on the ground approximately 40 feet long. I stepped over the log. I walked along the edge of the log, expecting to find a body real soon. I never saw one. At which time, had I taken one more step, I would have walked on the grave site where the body was. A detective --
Q Without having seen it?
A I didn't see it.
Q And at that point, there were others on the scene?
A Yes, ma'am, there was a lot of people there.
Q And at some point, did somebody point out to you the exact location of the body?
A Yes, ma'am. A detective pointed to the site. I looked down at the ground and I said well, I don't see any body. And the detective said well, the body is buried and

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parts of the body are visible, of which he pointed out various parts of the body which I examined and I found out that it, in fact, was a body there. But until he said that, I didn't know there was a body there.

Q So after he pointed it out, did you then examine where the body was?

A Pardon?

Q Did you then examine where the body was?

A Yes, ma'am.

Q And did you observe that it was at least partially interred, buried?

A It was probably 95 percent buried.

Q And could you tell whether the ground -- was there ground or dirt on top of the body?

A Well, after the officer pointed it out, the location of it, it just appeared to be a mound of dirt that had been undisturbed for a period of time. It wasn't freshly disturbed.

Q It was not freshly disturbed?

A No.

Q Okay. And that's how it looked to you?

A Yeah. It just blended in with the natural surroundings of the ground.

Q Okay. Were you asked to measure the distance of where that body was interred to the road of Franklintown?

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A Yes, ma'am.
Q Okay. And did you do that?
A Yes, ma'am.
Q And what distance did you determine it to be from the edge of Franklintown Road to the body?
A 127 feet.
Q Okay. And did you make a map of that distance?
A Pardon?
Q Did you make a map --
A Yes, ma'am.
Q -- demonstrating that?
A Yes, ma'am.
Q And that map was --
A I'm sorry, I --
Q The map was made in the course of your duties?
A Yes, ma'am.
Q And did you bring that map with you?
A Yes, ma'am.
Q And this is the original map that you made on February 9th?
A Yes, ma'am, it's original, and I made several copies of it.
MS. GUTIERREZ: May I have this marked as -- is this Defense 9?
THE CLERK: Yes.

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(Whereupon, the document referred to as Defendant's Exhibit No. 9 was marked for identification.)

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

THE COURT: Yes, you may.

BY MS. GUTIERREZ:

Q Mr. Buddemeyer, if we were to open this up, and perhaps I could hold it for you -- if I can, this is a map printed on Department of Public Works, City of Baltimore paper. And did you actually draw this map?

A Well, this map is on record at -- this is available to anyone. I actually drew the measurements and so forth at the bottom and a description of where it was found.

Q Of where the body was found?

A Yes, ma'am.

Q And where --

THE COURT: Mr. Buddemeyer -- one moment. Mr. Buddemeyer, I couldn't hear the end of what you just said. You actually drew the what?

THE WITNESS: I drew the location of the body on this map. This is a photographer's drawing of the area.

THE COURT: All right.

BY MS. GUTIERREZ:

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Q And on top of that, you drew where the body appeared, as you observed in, back on February 9th?
A That's correct.
Q The body that was hard to see?
A Right.
Q Okay. And does that indicate on the map the distance from the 4400 block -- the edge of the 4400 block of Franklintown Road?
A Yes, ma'am.
Q Okay. And you were actually back there, right?
A Yes, ma'am.
Q And you actually measured the distance?
A That's correct.
Q Okay. And the log, as you've drawn it inside this -- is that where the log was or is that a logo --
A Okay, this is just a blown-up description of where the body was, which is right here.
Q Okay. And where --
A And this is all to scale.
Q Okay. Meaning the distance that you measured?
A Yeah, it's correct.
Q And it's to scale. It shows that Leakin Park is far greater than just that little area?
A Leakin Park is large, very large.
Q And could you -- inside the little cloud, you

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have the 40-foot log drawn?

A Yes, ma'am.

Q Okay. Now, in regard to the direction that Franklintown Road goes at that area, is the log parallel or perpendicular?

A It's more parallel to the road.

Q Running the same direction?

A Very close.

Q Okay. And right past that area -- and beyond where you saw the body behind the tree, is there a stream?

A Gwynns Falls.

Q Okay. And is that stream plainly visible?

A It sure is.

Q And at that juncture, does that stream run parallel or perpendicular to the same direction, Franklintown Road?

A Perpendicular.

Q Okay. Now, sir, back there after you climbed over the jersey walls and you went back and, as you said, you took the path of least resistance and you discovered the body, did you notice any lighting sources back there?

A There was no lighting at all.

Q There's no city lights?

A No.

Q No lights from private property?

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Q No lights from private property?
A No.
Q No lamp posts?
A No lights whatsoever.
Q No lights whatsoever
A There isn't any need for lights out here.
Q Okay. On Franklintown Road, are there any light poles or lights in that hundred block of Franklintown Road?
A I don't know.
Q Okay. Did you observe any?
A No, ma'am.
Q Sir, if you would again mark this topography shows that beyond --
THE COURT: Mr. Buddemeyer, can I ask you to move your chair just a little bit back this way? Yes. So that your mouth still will be in the mike, so that we might hear you a little better? Thank you.
MS. GUTIERREZ: Thank you, Judge.
BY MS. GUTIERREZ:
Q Beyond where you have indicated you measured the 127 feet distance on the map, right below that you measured a distance on Franklintown Road.
A That's correct.
Q And that distance is?
A 760 feet.

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Q And that's from where it is -- where the jersey walls are off of Franklintown Road?

A That's the distance from --

Q To where? From that point to --

A From the intersection of Franklintown Road and Winands Parkway.

Q It's 760 feet, right?

A That's correct.

Q And that distance is shown on your map that then indicates Winands Way?

A That's correct.

Q And Winande Way is on the preprinted portion of the map?

A Yes, ma'am.

Q You actually measured the distance between where the cut-off surrounded by jersey walls is and the intersection where Winans Way dissects into Franklintown Road?

A Again, that's correct.

Q Okay. And are you familiar with Winans Way?

A Yes, ma'am.

Q And as Winans Way goes up and gets closer to Edmondson Avenue, are there houses there?

A At one point there is. You reach houses a fairly good distance up the road.

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the map?

A Yes, ma'am.

Q And where are they?

A They're down below, right here.

Q Down below, and that's off of a road called Briarcliff?

A That's correct.

Q And that's quite a distance off the intersection of Franklintown and Winans Way?

A That's right.

MS. GUTIERREZ: Judge, I would move Defendant's Exhibit 9 into evidence and ask that it be published to the jury.

THE COURT: Any objection?

MR. URICK: No.

THE COURT: Let it be admitted.

(Whereupon, the document referred to as Defendant's Exhibit No. 9 was received into evidence.)

MS. GUTIERREZ: May I publish it?

THE COURT: You may.

MS. GUTIERREZ: I'm going to fold it up, and if they want to unfold it, they can do so.

THE COURT: Thank you, counsel.

(Pause)

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BY MS. GUTIERREZ:

Q Mr. Buddemeyer, after these events on February 9th, did you have an occasion to return to the same scene?

A I went there the day after to relocate the body more accurately, using a surveyor's transit.

Q To make sure that your survey and the map were accurate?

A That's correct.

Q Did you make any changes to --

A No, ma'am.

Q Okay. They were accurate?

A They were accurate.

Q Okay. Now, after those events, did you agree to return to the scene in September of 1999?

A Yes, ma'am.

Q And at whose request was that?

A Your request.

Q At my request.

And did you meet me there?

A Yes, ma'am.

Q And did you show me and others exactly where the body was? Where it was back then, on --

A Yes, ma'am.

Q -- on February 9th, is that right?

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Q At my request.

And did you meet me there?

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Q And did you show me and others exactly where the body was? Where it was back then, on --

A Yes, ma'am.

Q -- on February 9th, is that right?

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A That's correct.

Q And did you walk with us from Franklintown back to where the body that was, as you said, 90 percent covered?

A Yes, ma'am.

Q Back on --

THE COURT: The tape needs to be pushed in. I believe it may be already in.

(Whereupon, the videotape was played.)

MS. GUTIERREZ: Thank you. Mr. Urick may have questions of you.

THE WITNESS: Thank you.

MS. GUTIERREZ: You have to wait. He might have some questions for you.

THE COURT: Witness with you, Mr. Urick?

MR. URICK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. URICK:

Q Mr. Buddemeyer, good afternoon.

A How you doing?

Q It's your testimony that the ground there is reasonably flat?

A Reasonably flat.

Q And it's only 127 feet from the edge of the road to where the body was buried, is that correct?

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the map?

A Yes, ma'am.

Q And where are they?

A They're down below, right here.

Q Down below, and that's off of a road called Briarcliff?

A That's correct.

Q And that's quite a distance off the intersection of Franklintown and Winans Way?

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(Pause)

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A Yes, ma'am.

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THE COURT: Witness with you, Mr. Urick?

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CROSS-EXAMINATION

BY MR. URICK:

Q Mr. Buddemeyer, good afternoon.

A How you doing?

Q It's your testimony that the ground there is reasonably flat?

A Reasonably flat.

Q And it's only 127 feet from the edge of the road to where the body was buried, is that correct?

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A That's correct.

Q And the path of least resistance pretty much led you to the spot where the body was buried, correct?

A I picked my own path.

Q But you described it as the path of least resistance?

A Yeah, that's right.

Q Okay, thank you.

MR. URICK: No further questions, Your Honor.

THE COURT: Very well.

REDIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. Buddemeyer, is 127 feet a short distance?

A Well, it depends on your point of view. Off the road, it's probably a long distance, 127 feet. That's probably a good distance back into the woods.

Q And when you went there on February 9th, 1999, could you, from the road see where the tree was?

A No, ma'am.

Q Did you see the body at any time as you traversed back where there were already people?

A No. I never saw it at all until it was pointed out to me.

Q And was there any clear visibility from that area, bounded by jersey walls, back to where the body was?

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A Not really.

Q And in regard to the road, the log is parallel with the road?

A Yes, ma'am.

Q And was the body on the side of the tree nearest to the road or farther away?

A On the far side.

Q On the far side.

And was there any visibility of that tree or body once you knew that it was there from the road?

A No, ma'am.

Q Would it have been possible to see the area where the body was buried from the road?

A No, ma'am.

Q Thank you.

MS. GUTIERREZ: I have nothing further.

MR. URICK: Nothing on redirect.

THE COURT: One moment, Mr. Buddemeyer.

Counsel, may I see you at the bench?

May I see the exhibit?

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

THE COURT: Question from the jury.

MS. GUTIERREZ: Okay. He did testify, but maybe it wasn't clear, that this area is a blow up of this, not a

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separate.

THE COURT: The area in the cloud?

MS. GUTIERREZ: Yes.

MR. URICK: That's the interest they're showing in that small section -- the larger one.

THE COURT: I'll clarify it.

MS. GUTIERREZ: That's fine. Thank you.

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

THE COURT: Ladies and gentlemen, the exhibit that was sent around for you to look at is Exhibit No. 9, has a blown up section. Mr. Buddemeyer has testified that the area in the cloud is a blown up version of the small area on the lower left-hand corner. There's an area on the lower left-hand corner, and he's testified that this is a blown up. What's in the cloud, as evidenced by the cloud, is what's in --

Is that correct, Mr. Buddemeyer?

THE WITNESS: That's correct.

THE COURT: Very well. I indicate this as there's been a question as to the body being found in two different places, and counsel's asked the Court to clarify that point with regard to this exhibit.

And I'm going to ask that the exhibit be placed into evidence, as well as the juror's question.

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Anything further, Ms. Gutierrez?

MS. GUTIERREZ: No, Your Honor.

THE COURT: Mr. Urick?

MR. URICK: No, thank you.

THE COURT: Very well. May this witness be excused?

MS. GUTIERREZ: Yes, he may be.

THE COURT: And released from the summons?

MS. GUTIERREZ: Yes.

THE COURT: Mr. Urick? Yes.

Sir, you're free to go and you're released from your summons at this time.

MS. GUTIERREZ: Do you want me to get my next witness?

THE COURT: Yes, you may.

(Pause)

MS. GUTIERREZ: The Defense would call [redacted] S[redacted] to the stand.

THE COURT: Mr. S[redacted] please step all the way up to the witness stand, please. All the way up here. Rest your coat on the back of the chair or on the table beside the chair.

I need you to raise your right hand, look at Mr. White here, sir. Raise your right hand and listen to Mr. White.

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Whereupon,

[redacted] S[redacted]

was called as a witness at 3:32 p.m., and after having been first duly sworn, was examined and testified as follows:

THE CLERK: You may be seated. Please keep your voice up. State your name, your address for the record.

THE COURT: State your name. There's a microphone in front of you.

THE WITNESS: I understand.

THE COURT: State your name.

THE WITNESS: [redacted] S[redacted]

THE COURT: And your address for the record.

THE WITNESS: [redacted]-- excuse me, can I talk to someone for a minute?

THE COURT: You can't speak to anyone. You're a witness. Your address? Do you live in Baltimore City?

THE WITNESS: Yes.

THE COURT: Where do you live?

THE WITNESS: [redacted]eet.

THE COURT: Very well. Listen to Ms. Gutierrez who has some questions for you.

DIRECT EXAMINATION

BY MS. GUTIERREZ:

Q Mr. S[redacted] Gilmore Street is close to a road called Dogwood, is it not?

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A Yeah.
Q Is that right?
A Yes.
Q Would you keep your voice up so that we can all hear you, Mr. S[redacted].
Is that a yes?
A Yes, that is a yes.
Q Okay. And Dogwood at that juncture connects and becomes the same road as Franklintown Road, does it not?
A I guess it does.
Q And that's closest in to the City?
A Yes, it is.
Q As opposed to going out farther in, in Baltimore County?
MR. URICK: Objection as to the form of the question.
THE COURT: Overruled.
Go ahead, you may answer that. Do you know?
THE WITNESS: What was that again?
BY MS. GUTIERREZ:
Q Franklintown Road would be closer into the City than going out farther into the County?
A I guess. I don't know. I'm not a map specialist. I don't know.
Q Well, you're familiar with Franklintown Road, are

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you not?

MR. URICK: Objection.

THE COURT: Mr. S[redacted] are you familiar with --

THE WITNESS: Yes, I'm familiar with Franklintown. Yes, I do.

THE COURT: All right, next question.

BY MS. GUTIERREZ:

Q Mr. S[redacted], you work at Coppin -- or you did back in February of 1999 -- at Coppin State College, did you not?

A Yeah.

Q In the maintenance department, did you not?

A Yeah.

Q And oftentimes, or at least on one occasion, you traveled from Coppin to your home by way of Franklintown Road, did you not?

MR. URICK: Objection.

THE COURT: Overruled.

Did you or did you not?

THE WITNESS: Yes, I traveled that way. Yeah.

BY MS. GUTIERREZ:

Q Yes, that way, right?

A Um-hum.

Q And you would take Franklintown Road, which turns into Dogwood, to get to your house on Gilmore, correct?

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A Yes.
Q Because that -- was that a yes?
A I said yes.
Q Okay. And that was back in February of 1999, you still lived on Gilmore, did you not?
A Yes, I did.
Q The same place you live now?
A Um-hum.
Q The same road right off of Dogwood Road, is that not right?
A I don't live off of Dogwood Road, no.
Q Well, you live on Gilmore, right?
A Right.
Q And to get to Gilmore from one way, you have to get off Dogwood Road, don't you?
A I guess you can, yeah.
Q Okay. And you can get to it another way, but then that road is Windsor Mill Road?
A No.
Q No?
A No.
Q If you could step off the witness stand, Mr. S[redacted] and if I can direct your attention to the State's exhibit behind you, which is a map. Would you step off the witness stand, please, and keep your voice up since

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it's hard to hear?

I'm going to show you an area of the map where there's a B, do you see that?

A (No audible response)

Q Okay. That's --

THE COURT: Is that a yes?

THE WITNESS: Yeah.

THE COURT: See, there's a microphone and, unfortunately, when you step away, it's hard to hear. That's why she said keep your voice up.

MS. GUTIERREZ: Maybe if I put him here.

If you stay here and you turn your voice toward the microphone, everything will be recorded.

BY MS. GUTIERREZ:

Q Where that B is is in the middle of Leakin Park, is it not?

A Yes, I see --

Q Okay. And it goes down Franklintown Road until it reaches a road that then would cross with Hilton Parkway, does it not?

A I guess. I don't know.

THE COURT: Your answer is I don't know?

THE WITNESS: I don't know.

BY MS. GUTIERREZ:

Q If you'd stand there, please, sir.

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Now, when you -- Coppin State College is along North Avenue, is it not?

A It's on North Avenue.

Q It's on North Avenue, it goes --

THE COURT: Ms. Gutierrez, can we ask him to step back? The map is not helping him and the mike would.

MS. GUTIERREZ: Well, I'll ask him to step off once I lay the foundation.

THE COURT: That'll be fine.

MS. GUTIERREZ: With the Court's permission, can I stay here?

THE COURT: I'd prefer if you would go back --

MS. GUTIERREZ: That's fine.

THE COURT: -- and I'd prefer if everybody get back to a mike because I think that that helps everyone here. And also, we have no stenographer, we just have the audio. I'd like to make sure that the questions are on the record.

Mr. S[redacted], listen to Ms. Gutierrez's next question.

BY MS. GUTIERREZ:

Q I was asking you about Coppin State College where you are employed. The actual mailing address of Coppin State is North Avenue, is it not?

A Yes, it is.

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Q And it is on the east of the area that would be called Walbrook Junction, is it not?

A I guess. I don't know.

Q Well, you're familiar with Walbrook Junction, are you not?

MR. URICK: Objection.

THE COURT: Overruled.

Do you know where Walbrook Junction is?

THE WITNESS: Where Coppin State College is located.

BY MS. GUTIERREZ:

Q From Coppin State College, you know where it is?

THE COURT: Can you lean forward a little bit? You can scoot the chair forward a little bit. There we go. If you could speak into the mike, that would help me. Thank you.

BY MS. GUTIERREZ:

Q And you are familiar, sir, with Hilton Parkway, are you not?

A Yes. Yeah.

Q And you are familiar with the fact that Hilton Parkway intersects North Avenue --

A Yes, yes.

Q -- west of Coppin State College, are you not?

A I guess.

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Q If you are standing in front of Coppin State's College main entrance on North Avenue, if you went to the right, you'd run into Walbrook Junction, would you not?

A Standing in front of Coppin State College?

Q Sir, when you lived on [redacted], the street that you've described you lived on back then, and you went to work through Leakin Park, describe for us how you would go, what road you would pass from your home.

A I would go through Dogwood Road to -- I think it turns -- I'm not sure what street it turns into. Through Franklintown Road, I think. I'm not sure.

Q You would go to Dogwood which would turn into Franklintown --

A Up to North Avenue.

Q -- Road?

A I think that's --

Q And would that mean that you would go through Leakin Park?

A Yes.

Q And that's an area where there aren't any houses, right?

A Right.

Q It's just woods?

A I guess.

Q Well, sir, you've traveled through it before,

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have you not?

A Yes.

Q Is it woods?

A I guess it is. It's a park.

Q Now, sir, after you would get through Leakin Park, what would you do to get to Coppin State College?

A I'd have to -- I don't know the name of the streets but I make a left to get on North Avenue, go down North Avenue to get to Coppin State.

Q And you'd go down North Avenue till you get to --

A Coppin State College.

Q -- Coppin, is that right?

A Yes.

Q And then you'd park on one of Coppin's lots, correct?

A Yeah.

Q All right. So whatever road it is that you take, it's at the end of Franklintown Road, correct?

A No. I think the road keep going. I turns off before the road ends. It don't end.

Q I understand that, but first you go on Dogwood, which turns into Franklintown, correct?

A Right.

Q And then you go on Franklintown, through the park, correct?

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A Right.

Q And then it's only after you exit the park that you can get to a place where you end up turning on North Avenue to get to Coppin, is that correct?

A I guess. There's another street that you get up to North Avenue.

Q Well, sir, is that a way that you'd take to get to your job when you worked at Coppin?

A That's just the way I take, yes, it is.

Q Is that right?

A Yeah.

Q And you worked five days a week, regularly?

A Right.

Q And you drove every day to work?

A Um-hum.

Q You drove yourself, sir?

A Yes, I drive myself.

Q Would you generally take the same route?

A On occasion, yes, I do.

Q What other route would you take?

A There's other routes I could take.

Q And the other route that we take, would it involve your going across Windsor Mill Road?

A I got Liberty Road.

Q Pardon?

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A Liberty Road.

Q Okay. But to get to Liberty Road from your house, sir, don't you have to cross Windsor Mill Road?

A Yes, you cross that.

Q Okay. And --

A That's Gwynns Falls -- Gwynn Oak.

Q -- you also have to --

THE COURT: I'm sorry, you what?

THE WITNESS: That's Gwynn Oak Avenue.

BY MS. GUTIERREZ:

Q Okay, Gwynn Oak Avenue. And then from Gwynn Oak, you have to get to --

A Liberty.

Q -- Liberty, is that right?

A Right.

Q And then from Liberty Road, you've go to get all the way down to North Avenue, is that correct?

A No, Gwynns Falls.

Q Gwynns Falls Parkway?

A Um-hum.

Q And from there, you have to get to North Avenue, do you not?

A No.

Q Or you have to get close to it, don't you?

A No. To Walbrook Avenue.

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Q All right. Let me direct your attention to February the 9th, sir, do you recall that day?

A No, I don't.

Q Well, you worked that day, didn't you?

A I guess I did.

Q You left work at some point in the morning to go get something, did you not?

A I don't recall that day.

Q Well, sir, you recall the day that you found the body in Leakin Park, don't you?

A Yes. Okay, I recall that day.

Q That was a pretty important day for you, was it not?

MR. URICK: Objection.

THE WITNESS: If you explain that, I would know what you're talking about.

MS. GUTIERREZ: Well, sir, that day --

THE COURT: Overruled.

BY MS. GUTIERREZ:

Q -- isn't significant to you?

A No, the date is not.

Q Okay. Now, on that date, whatever -- the same day that you found the body in Leakin Park, sir, you worked, did you not?

A Yes, I did.

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Q And at some point you left your work at Coppin State College?

A Yeah.

Q Is that correct?

A Um-hum.

Q And you drove home, correct?

A Right.

Q To your address on Gilmore, correct?

A Right.

Q The same address you live now, correct?

A Right.

Q And to get to Gilmore, you drove through Leakin Park, did you not?

A Yes, I did.

Q You took Franklintown Road, did you not?

A Um-hum.

Q Is that right?

A Right.

Q And you took it until it turned into Dogwood Road --

A Exactly.

Q -- is that right?

A Um-hum.

Q And then you turned off of Dogwood Road onto another road that then took you to your road, correct?

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A Um-hum.
Q Is that a yes?
A That's a yes.
Q Okay. Now, on that day you left your work in the late morning?
A Excuse me?
Q You left your work in the late morning?
A No, I go to work 7:30 in the morning.
Q No, no, you --
THE COURT: I'm sorry, I couldn't hear you. And you're speaking so softly --
THE WITNESS: I'm sorry.
THE COURT: -- that almost no one can hear you.
THE WITNESS: That's --
THE COURT: Well, then lean forward into the mike because we've got to hear you and the recording device has to pick up your voice, all right?
THE WITNESS: I'm sorry. That's my voice.
THE COURT: What you just did by leaning forward, puts you closer to the mike. You can lean forward in that chair. It's not going to bite you, that mike is not.
And your next question.
MS. GUTIERREZ: Yes.
BY MS. GUTIERREZ:
Q You had a purpose -- you left early in the

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morning, 7 or 7:30 to get to work, right?

A Yes.

Q And then you got to work, right?

A Right.

Q And then there came a time in the morning where you left work, right?

A No.

Q There was no time when you left work in the morning?

A No, not till lunchtime.

Q Okay. And so, it's your testimony that you left for lunch?

A Right.

Q At that time that you left work, you then drove back to Leakin Park, did you not?

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

THE COURT: Overruled.

You can answer that. Did you drive back through the park at lunchtime?

THE WITNESS: I left work to drive home to lunchtime, yes, I did.

THE COURT: All right, next question.

BY MS. GUTIERREZ:

Q And did you drive on Franklintown Road?

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A Yes, I did.

Q And you went to the end of Franklintown, till it turned into Dogwood?

A Yeah.

Q Is that a yes?

A Right.

Q And you then turned off Dogwood on a street which then took you to your street, right?

A Yes.

Q Now, it was your purpose to leave work because you were going to lunch?

A No. It was my purpose to leave work -- I had to get a tool to bring back to work.

Q You had to get a tool?

A Yes.

Q And by bring it back to work, you meant Coppin College --

A Coppin State College.

Q -- is that right?

A Right.

Q And you worked in the maintenance department, correct?

A Yes, I did.

Q And the tool that was your purpose for leaving work and returning home, that was a plane, was it not?

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A Excuse me. May I ask a question?
Q No, sir.
THE COURT: No, you can't ask a question.
MS. GUTIERREZ: You just have to answer mine.
THE WITNESS: Yes, it was.
BY MS. GUTIERREZ:
Q It was a plane, was it not?
A Yes, it was, right. Exactly, it was.
Q And for those of us who don't understand what a plane is, it's a tool that you shave off like doors or windows or pieces of wood.
A Right.
Q Is that right?
A That's what it does.
Q To reduce them?
A Yes.
Q And shaving off doors and windows at Coppin State College, that happened a lot, did it not?
A Yeah.
Q A lot of the buildings are older --
A Yeah.
Q -- and had interior wooden doors?
A Right.
Q And wooden windows?
A Yeah.

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Q And those windows and doors swelled a lot?
A Yes.
Q Isn't that right?
A I guess so. I don't know.
Q Well, the way that you got assigned work at Coppin State College is that somebody would request work and then that job would be assigned to you, would it not?
A Yes, one of us, yes.
Q Okay.
THE COURT: I'm sorry, what'd you say?
THE WITNESS: I'm one of the person that they do.
BY MS. GUTIERREZ:
Q It would be assigned to somebody from the maintenance department, correct?
A Right, right.
Q And that day was not the first day that you needed a plane in order to do some work that had been assigned to you, correct?
A Yeah, that was the first time.
Q Pardon?
A You asked me was that the first time?
Q That wasn't the first day that you had been assigned --
A Yes, it was. Yes, it was.
Q -- at Coppin State College, correct?

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Q -- at Coppin State College, correct?
A Right. Yeah, right.
Q You had worked there, back in February of 1999, for how long?
A I think it was '95 I think I started there.
Q Okay. So for at least a couple years, right?
A Um-hum.
Q Is that a yes?
A Yes.
Q Okay. And that was not the first day for you to get the assignment to shave down, with a plane, a door, was it?
A You say that wasn't the first day? Yes, that's the first day I got the assignment.
Q That is the very first time you ever got the assignment?
A I might've got the assignment but I didn't get around to do it. I mean, we have other things --
Q So you had never shaved down a door?
A At Coppin State College? No, that was the first.
Q That was the first time.
A Right.
Q And because it was your first time, of course, you wanted to have your own plane?
A We didn't have none on the job, so I have to get

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Q Okay. And because there was not a single plane available, you were required to go home and get a plane?

A Right.

Q So that you could do your work, is that right?

A Yeah.

Q To do a work that you'd never been assigned to before?

A I used to do home improvement. I have my own tools, okay, and they didn't have that tool. I went home, had to get this tool.

Q So it's not that you needed to go out and get a plane, it's that you wanted your own plane?

A Well, I have to use a plane, so where else am I going to get a plane at?

Q Well, let me ask you, Mr. S[redacted] a plane is a kind of ordinary tool, is it not? It's not something that has to be special ordered, is it?

A Well, you have to buy it. Where you going to get it from?

Q At Coppin State College, you're not the only employee in the maintenance department, are you?

A Excuse me?

Q You aren't the only employee in the maintenance department?

A No, I'm not.

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Q There are others that work there?
A Um-hum.
Q And there are -- is that a yes?
A Yes.
Q Okay. And the department -- you aren't responsible for ordering tools now, are you?
A I don't order tools.
Q Okay. And you don't requisition what tools should be in the maintenance department, correct?
A When I first started there, the supervisor asked me did I have my own tools; I told him yes, I had my own tools.
Q And, sir, did you bring your tools into work?
A Some of them, what I needed at the time.
Q So some of what you did for Coppin State College was with your own tools?
A Yes.
Q Now, would it be fair to say that you prefer to work with your own tools than their tools?
A Well, I would prefer --
MR. URICK: Objection.
THE WITNESS: -- to work with their tools, if they had the tools.
BY MS. GUTIERREZ:
Q If they had them. Now, when you discovered --

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and I assume that that's the first day you discovered that they didn't have a single plane for you to work with?

A What?

THE COURT: Did you not hear the question?

THE WITNESS: No, I did not hear the question.

THE COURT: All right. Then say I cannot hear, and then she'll repeat it.

BY MS. GUTIERREZ:

Q That day, there was requisition to do some work, correct?

A A work order.

Q Okay. And the work order that you got stated that you should shave down some doors or a specific door, did it not?

A Yes, I guess so.

Q And as you've already told us, that wasn't an unusual request that be handled by Coppin maintenance department, was it?

A It was what?

Q It was not an unusual request? That request was kind of ordinary, given the age of the building, was it not?

A I just go by whatever -- work orders, whatever work orders they gave me, that's what I go by day by -- daily. I don't --

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Q When you're given a work order, you just go do it, right?

A Yes. We try to do it.

Q So I'm sure before you drove all the way home to get your own plane you went and complained to your supervisor, there's no planes anywhere in all of Coppin State College maintenance department?

A I guess not.

Q Was that a yes or a no?

A A no.

Q It's a no?

A No.

Q You didn't go speak to your supervisor?

A No.

Q And you didn't go tell your supervisor oh, I have a plane at home and it's my tool, so I'll just go get it so I can go shave down the door?

A No, because I have a key to our, our room where the tools are. They were not in there.

Q There wasn't one there?

A No, right.

Q But you went there looking, of course, because you expected it to be there, didn't you?

A No, I didn't expect anything to be there. I don't know what's in the tool room.

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Q You get the order to shave down a door, right?
A Right.
Q Then you go look to see if there's a plane in the place that you have a key to, right?
A Right.
Q And that place was a place where tools are kept, right?
A Um-hum.
Q But you didn't see a -- is that a yes?
A No, I did not see a plane.
Q Okay. And you knew what a plane looked like back then, didn't you?
MR. URICK: Objection.
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Well, you had used a plane --
MR. URICK: Objection.
MS. GUTIERREZ: -- before?
THE COURT: Sustained.
BY MS. GUTIERREZ:
Q Mr. S[redacted] when you discovered there wasn't a plane in this place where you went to look for one, did you then go to your supervisor?
A No, because I had this work order the day before this. That's when I looked for -- the lady had kept asking

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me to come back to, you know, shave her door down.

Q To shave her door down?

A Right. And had so many work orders I had to cover before I could get to her. And that particular day, I just went to -- I said I would get her. I say I have a plane at home. I told her I'll go home and get -- bring my own back and I'll shave your door down.

Q So you knew that there wasn't any plane available for you to do the work order the day before this day?

MR. URICK: Objection.

A I don't know what day it was. I'm not sure. I'm not sure.

THE COURT: Sustained.

BY MS. GUTIERREZ:

Q Now, Mr. S[redacted] you just then waited on lunch to go get your plane, is that right?

A Well, I couldn't just leave the job to go get my plane. I had to wait till it's on my time to leave my job.

Q And lunchtime was your time?

A It was a good time, right. It was my time.

Q So your purpose in going home was to get the plane to help you do the work order --

A Right.

Q -- is that right?

A That's right.

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Q To shave her door down?

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BY MS. GUTIERREZ:

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Q And lunchtime was your time?

A It was a good time, right. It was my time.

Q So your purpose in going home was to get the plane to help you do the work order --

A Right.

Q -- is that right?

A That's right.

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Q And the work order would be done on their time, not your time, right?

A I guess. I guess so, yeah.

Q Well, which is it, sir?

A I don't make up the work orders. They make the work orders. They give it to us to do the work.

Q And when they give it to you, you're expected to do the work orders --

A As soon as possible.

Q -- that are given to you by Coppin on the time they pay you for, correct?

A Yes.

Q Not -- is that a yes?

A On what they pay us for? That's why I work there.

Q On the time that --

THE COURT: Wait, wait, wait.

First, wait till she finishes asking you a question before you answer. Don't argue with her, just answer her question.

THE WITNESS: Okay.

THE COURT: Ms. Gutierrez, I need you to ask a question and allow the witness to answer before you ask the next question.

MS. GUTIERREZ: Mr. S[redacted] --

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THE COURT: Please do not argue with the witness.

MS. GUTIERREZ: Yes, ma'am.

THE COURT: And if we would all just wait a moment until this noise passes.

(Pause)

If it'll pass.

(Pause)

All right, very well.

MS. GUTIERREZ: Thank you.

BY MS. GUTIERREZ:

Q Mr. S[redacted], when you worked for Coppin State College, you did so for pay?

A I what? Excuse me, I didn't -- say that again.

Q You did so for pay? You worked for them for pay?

A Of course.

Q You weren't a volunteer, were you?

A No, I was not a volunteer.

Q Okay. You got paid for the time that you worked, correct?

A Yes.

Q And were you expected to work the job orders or the work orders that came for you on time that they were paying you for?

A None of the work orders was on time. We got them as soon as -- we got to each job --

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Q That wasn't my question, sir.

MR. URICK: Objection.

THE COURT: Mr. S[redacted] if you would listen to her question, her question isn't whether you got -- you did your work on time, her question was were you supposed to do the work during your work time? In other words, during your work hours?

THE WITNESS: Um-hum. And my answer was if we could get to that job, specific job, yes, we -- if we could get to that specific job, we'd do it at the time. We can't do it at the time, we do it when we could get to it. That's my answer.

BY MS. GUTIERREZ:

Q Which might be the next day?

A Whenever.

Q Or the day after that?

A It doesn't -- whenever. I don't know.

Q Well, sir, my question is, though, you were expected to work during your work hours, were you not?

A We work -- that's what we're supposed to be doing our work hours.

Q And at the --

THE COURT: I'm sorry, I couldn't understand a word you said.

THE WITNESS: We are supposed to work during our

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work hours. Yes, we do work during our work hours.

BY MS. GUTIERREZ:

Q And your work day would end, you would then leave?

A I guess so.

Q You wouldn't -- well, sir, is that a yes or a no? I'm not asking you to guess.

A It's a yes. When you work day, don't you leave?

Q Okay. If you had to work overtime, did you require your supervisor's approval?

A Yes, we do.

Q Did you ever work overtime?

A Yes.

Q Okay. Now, Mr. Sellers, let us get back to the 9th of February, okay? Prior to the 9th, you had gotten this work order to shave the doors, is that right?

A Yeah.

Q And it was a specific door, correct?

A Yeah.

Q And a specific lady had asked you about when you were going to get to shaving down the doors?

A Right, because I had to --

Q Is that right?

A I didn't get to --

Q Just answer my question.

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MR. URICK: Objection. He was trying to answer.

BY MS. GUTIERREZ:

Q Did a specific lady -- sir --

A If you want me to answer your question, you've got to wait and listen to me, okay?

THE COURT: Mr. S[redacted]--

THE WITNESS: I'm sorry, Your Honor. She keep going on and on.

THE COURT: Mr. S[redacted] if you would just hold it one moment. Now, I'm not going to argue with you.

THE WITNESS: I'm sorry, but --

THE COURT: She's not letting you finish your answer. Well, guess what?

THE WITNESS: She is not.

THE COURT: I have the authority to let you finish your answer, okay? So if you would just be patient.

Now, Ms. Gutierrez, Ms. Gutierrez, I'm going to let the witness finish his answer. He wants to explain. Your question was did a specific person ask you to shave down the door. Your answer was yes, and then you wanted to explain, correct?

THE WITNESS: Right.

THE COURT: You may explain.

THE WITNESS: Okay, I had the order, like, I think a few days earlier, the work order, and she kept

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asking me when I might get to her. I said well, I can get to her that day.

THE COURT: What day?

THE WITNESS: The 9th.

THE COURT: All right, next question.

BY MS. GUTIERREZ:

Q The 9th of February?

A Yes, the 9th. And I --

Q Okay. So my question, sir, when the specific lady asked you about it, you had previously been given the work order to do the work, right?

A Right.

Q Previous to February the 9th, is that right?

A Yeah.

Q So before February 9th, you knew that you needed a plane to do the work, didn't you?

A Yeah.

Q Okay. And because you knew about it ahead of time, had you spoken to your supervisor about Coppin State College's maintenance department's lack of a plane?

A No.

Q No. And you hadn't requisitioned the plane in order for you to do the work, did you?

A I knew I had one, so I didn't have to ask.

Q Well, sir, on February 9th you got up and you

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drove yourself to work from your house, did you not?

MR. URICK: Objection.

THE COURT: Sustained.

I'm going to see counsel at the bench, please.

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

THE COURT: I would note that it's about 5 minutes of 4 and I'm going to recess --

MS. GUTIERREZ: Okay.

THE COURT: -- and pick up the testimony of Mr. S[redacted] tomorrow.

MS. GUTIERREZ: Okay. I would ask that --

THE COURT: Let me advise you --

MS. GUTIERREZ: -- the Court instruct him before he leaves.

THE COURT: Before he leaves, but I will advise you that we're going to start tomorrow morning at 9:30. Ask him to be here a few moments earlier, because at 9:30 I'm going to come on the bench and we're going to start this case. Whenever people get a docket together --

MS. GUTIERREZ: Then we can stop.

THE COURT: -- we're going to stop, but we're going to start this case again at 9:30 tomorrow morning, all right?

MR. URICK: Thank you.

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MR. URICK: Thank you.

THE COURT: Thank you.

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

THE COURT: Ladies and gentlemen of the jury, we're going to ask that you go home. The Court has some matters to take care of.

And I must advise you that we are going to change the schedule tomorrow a little bit. I've talked to the Jury Commissioner's office. This morning I did about six cases and was not able to get to you as soon as I was able to -- as soon as I wished to. Tomorrow, however, I'm going to make my docket wait. I'm going to start with this case first, at 9:30, which means that I'm going to ask that you not go to the Jury Commissioner's office in the morning but, rather, come straight here.

The Jury Commissioner will look for you between 12 and 1:30. They've given me that whole hour and a half window for you to get paid. What I propose to do, since I have a meeting at 12:30 tomorrow, is to break around noon, have you go to lunch. Go over, get paid, first, then go to lunch, and then return here at 1:30. In other words, you'll get an hour and a half for lunch, and I'll get to go to my meeting for that hour, from 12:30 to 1:30. That's my plan.

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arrangements in that I have no meetings tomorrow and I am planning to sit until 5:30. I know that makes it a long day for us tomorrow, but I really would like to try to get as much testimony. Today did not go the way I would have liked in terms of the amount of testimony we got in, but tomorrow, hopefully, we'll make up for some of that. I know this has been very difficult. We are into the Defense case and I really would like to move this case as much as we can. I've been trying to do that the whole time. With your continued patience, we will do that.

I'm going to ask that you leave your notepads face-down, not to discuss the testimony of Mr. S[redacted] or any of the other witnesses that you have heard amongst yourselves or with anyone else. We are near the end, we are getting there, but we're not there yet, and it would be inappropriate for you to discuss this case amongst yourselves or with anyone else. You haven't heard all the witnesses, you haven't heard the law, and you haven't heard closing argument of counsel.

I ask that you go home now, have a safe journey home. Make arrangements for a long day tomorrow. I'll see you tomorrow morning at 9:30. I'm going to send in -- folks, please, don't make me be out here by myself. This morning I was by myself, although you weren't supposed to be here, but I was alone out here at 9:30. Tomorrow, since

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everyone knows where I will be, I hope everyone will be here to join me.

And with that said, please travel home, ladies and gentlemen. I'll see you tomorrow here at 9:30.

THE JURORS: Good night.

(Whereupon, at 4:03 p.m., the jury was excused.)

THE COURT: Mr. S[redacted] I need to advise you that you are a witness on the witness stand, which means that you cannot discuss your testimony with the Defense attorney, you can't discuss it with the State's attorney. You can't talk about your testimony with either of them or anyone who's maybe a witness in this case. Because you are a sequestered witness, that means you can't talk about your testimony with anyone.

THE WITNESS: Okay.

THE COURT: I also need to advise you that tomorrow morning, since you're the witness on the witness stand, I need you here, in that seat, at 9:30. I'm going to be here in my seat, you need to be here in your seat.

THE WITNESS: I may not --

THE COURT: Now that the jurors have left and I have advised you about the fact that you're under subpoena --

THE WITNESS: Can I just --

THE COURT: -- and what will -- let me finish,

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let me finish -- and what will occur if you do not show up, I will send -- you see that sheriff over there?

THE WITNESS: That's not what happened.

THE COURT: So him or someone like him will come looking for you.

THE WITNESS: I'm going to need something for my job because I will get fired.

THE COURT: I'll be happy to give you something for your job. First of all, you have a summons. Where is your summons? Okay.

Sheriff, can you give Mr. S[redacted] another summons? If you would just write it out, telling him to be here at 9:00 tomorrow morning.

THE WITNESS: You all said something about I signed -- I never signed a subpoena.

MS. GUTIERREZ: He was served on --

THE WITNESS: It's not signed.

THE COURT: That's it.

THE WITNESS: It's not signed. I didn't even see -- it wasn't given to me. It was not given to me.

THE COURT: Right. Well, you're going to get another one just like this. And it doesn't have to be given to you, in your little hands.

THE WITNESS: Okay.

THE COURT: But you have it. That's why you're

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served. And tomorrow morning you'll be expected to be here at 9:30.

THE WITNESS: What I'm saying, I'm in construction and I work day by day. If I miss --

THE COURT: I understand. That's why he's going to give you another summons. You show that to --

THE WITNESS: I still don't get paid, though.

THE COURT: The only thing I can advise you is that you have to be here tomorrow.

THE WITNESS: I thought you said they could call me and I could come in or something like that.

THE COURT: Yeah, but you're on the witness stand now. You're testifying now.

THE WITNESS: After tomorrow, can --

THE COURT: Once you finish tomorrow morning, you're done, unless they tell you that they need you back.

THE WITNESS: Okay.

THE COURT: But you're now testifying. Tomorrow morning at 9:30.

THE WITNESS: You don't know how long that might be? Because I still --

THE COURT: Well, Ms. Gutierrez could tell you probably better than I. And then when she's finished asking you questions, Mr. Urick will ask you questions. And once they're finished, you will be excused. Do you

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understand?

THE WITNESS: I understand.

THE COURT: Now, I start promptly at 9:30. Don't let us wait for you. Just come straight in here, have a seat in that chair. Just have a seat in that chair. I'll know you're here because I'll look out the window -- out the door and see that you're present.

THE WITNESS: Okay.

THE COURT: Tomorrow will be the 23rd --

THE WITNESS: And you say I will have a slip --

THE COURT: -- 9:15.

THE WITNESS: -- for my job I can show them?

THE COURT: That is a summons. He's filling it out. You show that -- you do not have a choice. It says so at the bottom.

Give him his old one back for today.

And then I'll also give you my card. If your employer wants to call to verify that you were, in fact, a witness, you're welcome to give him the number to my chambers.

(Whereupon, at 4:06 p.m., the witness was excused.)

THE COURT: All right, ladies and gentlemen, this Court's going to stand in recess till tomorrow morning at 9:30.

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(Whereupon, at 4:07 p.m., the trial was adjourned.)



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