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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT ARTHUR ERGONIS,)
)
 Defendant.)
-----)

NO. CR-20074823
2CA-CR 2012-0327

BEFORE: The Hon. Michael Miller
Judge of the Superior Court
Division 25

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Jury Trial - Day Two

October 26, 2010
Tucson, Arizona

Reported by: KAREN A. KAHLE, OFFICIAL
RPR, Certified Reporter Number 50075

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P R O C E E D I N G S

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3 THE COURT: This is matter number
4 CR-20074823. Record reflect the presence of counsel
5 and the parties. Counsel, any preliminary matters
6 before I have the jury brought in?

7 MS. ORTIZ: Your Honor, the State
8 prepared a brief substantiating the trial court's
9 decision on Friday regarding denial of the motion to
10 proceed pro per.

11 The only issue that I thought needed to
12 be clarified for the record before we proceeded with
13 impanelment or actually swearing in of the jury was
14 that the Court make a factual finding that the motion
15 to proceed in pro per was made untimely at the time
16 that impanelment proceedings had already commenced.
17 I think that's important for the record to be clear
18 before we move forward.

19 THE COURT: I did read the brief. I was
20 waiting to see whether there was going to be a brief
21 from the defendant.

22 MR. GATTONE: I got it earlier this
23 afternoon, Your Honor, and was occupied with other
24 things.

25 THE COURT: Well, that was -- I allowed

1 both sides to provide a brief if either intended to
2 do so. My recollection of my ruling was that I
3 denied the motion for self-representation absent a
4 brief that could be filed by noon today.

5 And I did review the State's motion.
6 With respect to the timing issue, the Court does find
7 that due to the fact that the defendant was obviously
8 waiting until I could rule on the second motion to
9 withdraw and that because that motion was brought
10 immediately before jury selection was scheduled to
11 begin on Thursday at 10:30 and I very specifically
12 found that I was going to hear that the following
13 day, I will find that the motion for
14 self-representation was timely made because if it
15 hadn't -- had not been brought immediately prior to
16 jury selection, I probably could have heard it at
17 that point.

18 But since the defendant's motions I
19 think totaled close to 30 pages, I knew that I could
20 not hear that and timely keep jury selection going.

21 MR. GATTONE: Your Honor, may we
22 approach on an issue?

23 THE COURT: Yes. Just one more --

24 MR. GATTONE: I'm sorry.

25 THE COURT: -- open record. The Court

1 does affirm its ruling with respect to
2 self-representation. Counsel, please approach.

3 (Whereupon a bench conference was held
4 as follows:

5 MR. GATTONE: Your Honor, yesterday when
6 I went to the jail to visit my client, he informed me
7 that apparently he has sued you and Judge Nichols and
8 the prosecutors in Federal District Court and I did
9 -- he wanted me to give you this notification.

10 THE COURT: Okay.

11 MR. GATTONE: I took the information in
12 hand, Judge. I didn't -- I had -- well, I did not
13 notify the Court because I -- I make no -- I don't --
14 yesterday was the first day I found out about it,
15 Judge.

16 THE COURT: I understand.

17 MR. GATTONE: I can't confirm or
18 anything and I just went on with my trial prep so --

19 THE COURT: I have notice. Counsel, do
20 you have notice? If you haven't seen the papers, go
21 ahead and look at them.

22 MR. GATTONE: Apparently he did it in
23 forma pauperis, did it through the -- whatever legal
24 or paralegal support they have over at the jail.

25 I'd notify the Court that I had no

1 knowledge or involvement in that. I found out about
2 it yesterday when I visited with him and I told him
3 that I would -- I asked to do it up here just because
4 I don't know that it needs to be publicized.

5 THE COURT: Thank you for bringing it to
6 my attention. I don't see that this has any impact
7 on this trial.

8 MR. GATTONE: I assumed that. Your
9 Honor, one other issue is you had deferred ruling on
10 the -- Mr. Conway's Facebook page. You told me to
11 approach if I used it.

12 I had hoped to refer to it in my
13 opening, but I didn't want to stop halfway through
14 the opening as was directed.

15 THE COURT: Okay. I'm glad you asked
16 for clarification. Don't mention it during your
17 opening statement --

18 MR. GATTONE: Okay.

19 THE COURT: -- because I have to hear
20 the context of the rest of the testimony.

21 MR. GATTONE: I'm sorry?

22 THE COURT: Because I have to hear the
23 context --

24 MR. GATTONE: Okay.

25 THE COURT: -- of the remainder of the

1 testimony, and I don't want to have to instruct the
2 jury unnecessarily on disregarding statements in
3 opening.

4 MR. GATTONE: And the other issue, too
5 -- the other issue that you deferred ruling on, I
6 should stay clear of that, too, in opening?

7 THE COURT: Yes, please.

8 MR. GATTONE: Okay. I'm going to
9 comment on a Facebook by Ms. Fulbright but it wasn't
10 the subject of anyone's -- so I assume it's not an
11 issue but -- okay.

12 MS. ORTIZ: Comment on what?

13 MR. GATTONE: Kumari had a Facebook
14 page. I'm going to --

15 THE COURT: Mr. Gattone, you have to --

16 MR. GATTONE: Oh. I'm sorry -- on
17 Kumari's Facebook page. It was disclosed a long time
18 ago.

19 MS. ORTIZ: It's been disclosed, but
20 there's no foundation for it. And you didn't notice
21 that you were going to use it as an exhibit, and you
22 haven't shown me how you're going to use it.

23 MR. GATTONE: Well --

24 MS. ORTIZ: And there's no foundation.

25 MR. GATTONE: That may be the case. I

1 could probably steer clear of it in my opening,
2 Judge.

3 THE COURT: That might be advisable.

4 MR. GATTONE: Okay. That's fine.

5 MS. ORTIZ: I have two issues.

6 THE COURT: Go ahead.

7 MS. ORTIZ: We're high maintenance.

8 Tony Windsor, did you make a ruling on the
9 ballistics? I think you had deferred that. I'm not
10 going to bring it up.

11 THE COURT: You're right, and remind me
12 of that. I want to get my notes in front of me --

13 MS. ORTIZ: Okay.

14 THE COURT: -- because I had meant to
15 mention that to you, but I have my notes. There's a
16 little bit of a subtlety there, and so I don't want
17 to delay this right now.

18 MS. ORTIZ: That's fine. I guess -- do
19 you need anything on that issue?

20 MR. GATTONE: No. It's another issue,
21 but go ahead.

22 MS. ORTIZ: Can we go back to the pro
23 per issue?

24 THE COURT: Yes.

25 MS. ORTIZ: I read all that case law

1 like 5,000 times. It's kind of confusing, but the
2 way I came out of it last night was that if you make
3 a finding that it's timely like you just did right
4 now --

5 THE COURT: Yes.

6 MS. ORTIZ: -- you have to make a
7 special finding that it's made for a dilatory purpose
8 or else he has a right to represent himself. If it's
9 -- if you made a finding that it was untimely, you
10 wouldn't have to make that finding.

11 THE COURT: I reread the Moody decision.
12 As it turns out, it was Moody I, not Moody II, and I
13 believe that the holding of Moody is that where the
14 only reason that a defendant wishes to represent
15 himself is because the Judge declines to appoint new
16 counsel after a defendant has requested it, then the
17 request is not made voluntarily.

18 In other words, the defendant doesn't
19 voluntarily relinquish the right to counsel. And in
20 this circumstance, the only reason that Mr. Ergonis
21 wishes to represent himself is so that he can do so
22 in place of Mr. Gattone after I ruled on several
23 different occasions denying the request to appoint
24 substitute counsel.

25 Now whether there's an element of it's

1 dilatory because for me to have granted that motion
2 would in part have continued the trial, I mean, that
3 was part of the factor I considered. For instance,
4 under the Moody factors, that can be ruled into that.

5 I'm not sure your reading of that is --
6 that I agree with it but in any event to the extent
7 that dilatory -- that the request be made for
8 dilatory reasons, I did find that it would delay the
9 trial and that it was made essentially on the eve of
10 trial. Therefore, it could be considered dilatory.

11 So, therefore, I won't address that, but
12 if I had to address it, I would find that it was
13 dilatory.

14 MS. ORTIZ: Thank you.

15 MR. GATTONE: Okay.

16 THE COURT: Okay.

17 MR. GATTONE: And, again, is that -- I
18 don't have an opinion on that.

19 THE COURT: Okay. So --

20 MR. GATTONE: I'm done.

21 THE COURT: -- neither side is going to
22 address the ballistics issue --

23 MR. GATTONE: No.

24 THE COURT: -- during their opening
25 statement. Okay.)

1 THE COURT: Let's have the panel brought
2 in, please.

3 (Whereupon the bailiff exited the
4 courtroom.)

5 THE COURT: Mr. Gattone, it takes --

6 MR. GATTONE: Oh, okay.

7 THE COURT: -- five minutes. You'll
8 have plenty of time.

9 MS. ORTIZ: Your Honor, may I file the
10 State's brief with the clerk?

11 THE COURT: Yes.

12 MS. ORTIZ: Thank you.

13 THE COURT: Mr. Gattone, is this notice
14 that you handed to me, has that been filed with the
15 clerk?

16 MR. GATTONE: I think my -- Mr. Ergonis'
17 intent was to file it in open court, Your Honor.

18 THE COURT: Okay. Well, my only
19 question for you is, do you want me to hand this one
20 to the clerk?

21 MR. GATTONE: I believe he does, Your
22 Honor.

23 THE COURT: Okay. We'll show that the
24 notice and attachment will be filed with the Clerk of
25 the Court.

1 THE BAILIFF: Jurors entering.

2 (Whereupon the jurors entered the
3 courtroom.)

4 THE COURT: Thank you. Everyone, please
5 be seated.

6 MR. GATTONE: Your Honor, may we
7 approach one more time, please?

8 THE COURT: Yes.

9 MR. GATTONE: Very briefly. I
10 apologize.

11 (Whereupon a bench conference was held
12 as follows:

13 MR. GATTONE: Sorry. Just to notify the
14 Court that the juror on the far right with the
15 glasses, I saw her in the hallway, and I wasn't even
16 thinking. It didn't dawn on -- I didn't see the jury
17 badge, and she said hello. I said hello.

18 THE COURT: That's fine.

19 MR. GATTONE: Okay. I just wanted you
20 to know. Thank you, Judge.)

21 THE COURT: Good afternoon, ladies and
22 gentlemen. I want to make sure that since we all
23 were together on Thursday no one's had any problem
24 following my admonition.

25 (No response.)

1 THE COURT: Okay. No one indicates that
2 they've had any problem with that. We have one more
3 thing then for each of you to do.

4 We have an oath that the jurors have to
5 take. It's different than the oath that you took
6 when you were simply a jury panel. There's an oath
7 for jurors in order to serve, so if you could all
8 please stand.

9 THE CLERK: Please raise your right
10 hand.

11 (Whereupon the jurors were sworn.)

12 THE COURT: Thank you. Please be
13 seated. Ladies and gentlemen, you're now going to
14 hear the opening statements of the attorneys.

15 As I had mentioned to you before, this
16 is not evidence. This is the outline of what the
17 attorneys expect the evidence will be. We'll start
18 with the State.

19 MS. ORTIZ: Thank you, Your Honor. On
20 December 8th, Saturday, 2007, that man right there,
21 Rob Ergonis, the defendant in this case, he had a
22 plan.

23 He had a plan with his ex-girlfriend
24 Kumari Fulbright and one of his very good friends,
25 kind of his BFF, his henchman, his enforcer, Dave

1 Radde. They had a plan to ambush that young man
2 right there in the maroon shirt in the front row,
3 Josh Conway, the victim in this case.

4 They had a plan to ambush him in that
5 hallway, Kumari Fulbright's hallway. They had a plan
6 to drag that six foot four young man down to the
7 ground with a gun -- two guns in his face.

8 They had a plan to zip tie that man
9 behind his back with heavy plastic cuffs behind his
10 back, throw him to the ground and psychologically and
11 physically torture him for eight hours until they
12 were going to kill him in the desert.

13 That's what his hand looked like the
14 night the police rescued him, torn up on the side of
15 his hands. He'd been zip-tied for eight hours, eight
16 hours on Saturday, December 8th, 2007.

17 This is what Josh Conway was thinking
18 about at about -- well, all day really, but really
19 about 10:20, 10:30, 10:40 p.m. Saturday night. These
20 were the words ringing in his head with his hands
21 tied behind his back on the floor. Rob Ergonis'
22 words ringing in his head, you are going to die in
23 the desert tonight.

24 That's what he heard. This is what else
25 he heard. You can know our names because you're not

1 going to live to tell anybody about it. That's one
2 of the first things that came out of his mouth when
3 they took Josh Conway down in the hallway of his
4 girlfriend's house. You're not going to live to tell
5 anyone.

6 And when they went after Josh Conway,
7 when he and Dave Radde went out for him, no mask, no
8 effort to conceal their faces. People who kidnap you
9 and show you their face, you're not going to live to
10 see that. You're not going to live to be able to
11 testify against them.

12 This is what else is ringing in his
13 ears, straight out of Rob Ergonis' mouth, that man's
14 mouth. We're going to kill him. We're not going to
15 do it here. We're not going to do it at Kumari
16 Fulbright's house.

17 His reason behind that was it's too
18 noisy. People are going to hear gunshots. That's
19 what Josh Conway was thinking about on Saturday,
20 December 8th of 2007, wondering -- desperately
21 wondering if at the age of 24 he was going to die at
22 the hands of that man.

23 So why was Josh Conway going to die in
24 the desert that night? Well, it all started with
25 that woman, Kumari Fulbright.

1 Josh met Kumari about two years before
2 this whole thing happened. He met her in the context
3 of her being a contestant in Arizona local beauty
4 pageants, and Mr. Conway was dating another girl, a
5 girl named Lisa. And he was friends -- she was
6 friends with Kumari.

7 So he was acquainted with her on this
8 circuit of women involved in the beauty pageants.
9 And when he knew her, she was clearly in a
10 relationship with Rob Ergonis, a long-term
11 relationship.

12 She was a spoken for woman. They were a
13 couple. The evidence will show that they were
14 actually engaged at one point, and Josh knew her
15 casually.

16 And over the couple years before this
17 whole thing happened, he saw her socially with Lisa
18 here and there. He texted her here and there. They
19 were friends, very casual, strictly acquainted, no
20 romance, no nothing.

21 Now you'll hear about Kumari's lifestyle
22 and how high maintenance she is and how she's used to
23 being pampered by Rob. You'll hear entries from her
24 diary from August 23rd of '06 when she was just
25 getting ready to start law school.

1 She was a first year law student in '06,
2 and this is what she wrote. Kumari started her first
3 semester at law school writing these words about
4 herself.

5 I'm dressed in designer clothes courtesy
6 of a stylist at Neiman Marcus. I've got a Louis
7 Vuitton in tow. I've got enough diamonds dripping on
8 me to look like Elizabeth Taylor on a casual day.

9 This is the kind of woman that we're
10 dealing with. This is just not going to go. I'm
11 still pursuing my dream to be famous. I want to be
12 famous. I want to be super famous. This is what --
13 this is what Kumari was writing in her diary in
14 August of 2006.

15 Now at this point in the case, she's
16 still with Rob. She and Rob are an item, but about
17 the fall of 2007, early fall 2007, Ergonis and
18 Fulbright split at some point.

19 She broke off the engagement, and this
20 is what she was writing in her diary if you can go
21 back. Rob thinks the only thing that I miss about
22 him is him paying my bills.

23 Now once she and Ergonis broke up,
24 Kumari didn't have the same kind of money to
25 subsidize her lifestyle, to subsidize her Neiman

1 Marcus stylist, her Louis Vuitton, her diamonds.
2 They were broken up.

3 But around September of 2007 -- and
4 you'll hear this from Josh Conway -- he and Kumari
5 had been keeping in touch. He'd been over to her
6 house a couple of times.

7 He went over to the house that you saw
8 in the very beginning with the hallway. He went over
9 to that house, and he heard from her that she and Rob
10 had broken up.

11 And to his surprise, they really
12 actually kind of hit it off, and it was kind of a
13 tabu area for him. She was a good friend of his
14 ex-girlfriend. It was a little weird.

15 He wasn't expecting it to go in that
16 direction, but he and Kumari actually hit it off.
17 And they really liked each other, and they started
18 dating.

19 And he'll tell you that they did normal
20 things that couples do. They went to the movies.
21 They went to dinner. They stayed over at each
22 other's house.

23 Josh actually lived with his grandmother
24 at the time who was pretty much legally blind, and he
25 helped take care of her. Kumari had been over to his

1 house with his grandmother. He met -- she had met
2 his family.

3 And this is what she writes in October
4 of 2007. Josh and I have fallen in love. Rob is not
5 in the picture. They're broken up.

6 Around November of 2007, Rob Ergonis
7 resurfaces in Kumari's life, and this is what she
8 writes in her diary November 5th, 2007. My ex-fiance
9 just returned from Columbia.

10 Now Josh Conway will tell you that a
11 couple weird things were going on at Kumari's house
12 that just made things a little uneasy once Rob came
13 back into the picture.

14 She heard -- I'm sorry, the car, the
15 Denali that she drove which is registered to Rob
16 Ergonis which he owns -- you'll see evidence of that
17 certified document -- was just flat out missing one
18 day from her house. She didn't take it.

19 Josh thought that was weird. Kumari
20 thought that was weird. She was worried about it.
21 Other little things were going on at the house.

22 Josh will tell you that one day he went
23 over to her house, and the little figurines that she
24 had up on her windowsill had -- in the kitchen had
25 gotten knocked over and they were in the sink, but

1 the window was closed. So how would they get knocked
2 over in the sink? Little strange things.

3 And he'll tell you that what she was
4 talking about, what they were wondering about is Rob
5 sneaking into her house.

6 There was an issue about money, that he
7 needed money, and she was worried that he was going
8 to steal some of the things in her house, maybe take
9 back some of the jewelry that he'd given her.

10 Rob had lavished Kumari with luxurious
11 gifts over their relationship. He's 20 years her
12 senior. He could afford it, giving her many pieces
13 of expensive jewelry and, you know, expressed his
14 affection for her with a lot of expensive gifts.

15 So in November when Rob resurfaces and
16 things are a little strange, this is what's going on
17 in Kumari's head. This is what she's writing in her
18 diary after the November 5th entry that we just saw.

19 This is what she writes about Josh
20 Conway. I went from a millionaire to a 24 year old
21 that is adorably clueless about life. She writes
22 that Josh and I argued about money today. The only
23 thing I really see -- and you can fill in the blank
24 -- to care about. The only thing that she cares
25 about is money.

1 She writes, I put all my time and all my
2 money into this relationship with Josh, and it's just
3 not going to work. That's what's going through her
4 head in November of 2007.

5 Josh doesn't have enough money for her.
6 It's not going to work. Rob's back. Rob has money,
7 but Kumari's worried for some reason that Rob Ergonis
8 is going to take her stuff and sell it, steal it.
9 She doesn't want to lose it.

10 She tells Josh, I've got to get rid of
11 this stuff, and she asks him outright to sell my
12 jewelry. Can you take this stuff and figure out what
13 to do with it? I need to get some money.

14 So he does that. He looks into that for
15 her. He'll tell you that he went to a store up at
16 one of the malls. He talked to some jewelers about
17 trying to get some appraisals on the jewelry to get
18 an idea what they're worth and that -- you'll see
19 evidence in the case of two instances here, one in
20 Tucson and one in Mesa where Josh Conway sold
21 jewelry.

22 He sold jewelry -- one ring on
23 November 13th at a pawn shop. I think Cashbox here
24 in Tucson, and he sold a Rolex, a lady's Rolex and
25 two rings up in Mesa on November 21st of 2007.

1 Now you will hear from the pawn shop
2 manager in Mesa who has an amazingly, actually just
3 kind of bizarrely clear recollection of this event.
4 It's unusual for witnesses to have such a clear
5 recollection, but he remembered Conway.

6 He remembered how well dressed he was,
7 that he was in business attire, that he came in over
8 his lunch hour. He remembered the types of shoes
9 that he had on.

10 He remembered that he had a really nice
11 car. He was driving a BMW. He remembered that this
12 was a legitimate transaction. That's what he told
13 people in his -- the attorneys in his pretrial
14 interview.

15 This was a legitimate transaction. This
16 wasn't like a junkie coming in off the street trying
17 to sell some hot jewelry or, you know, whatever it
18 was just to get some cash to fuel a drug habit. It
19 was nothing like that kind of transaction.

20 And pawn shop transactions may surprise
21 you to know you're on videotape. You're being taped.
22 You have to provide your identification. You have to
23 sign. You have to provide your fingerprint. There's
24 something clandestine about this.

25 He's out there in the open on tape,

1 fingerprinted, real I.D., selling this jewelry. And
2 the first day that Josh Conway came in was
3 November 20th.

4 And just for reference, this is the
5 Tuesday before Thanksgiving. And when he came in
6 over his lunch hour because he had been in Phoenix on
7 business -- he worked for a securities company called
8 Country and -- or Country Financial.

9 They did trainings up in Mesa and in
10 Phoenix, and he had been traveling back and forth for
11 work on many occasions. And he happened to be up
12 there for a work seminar.

13 So when he went in that first day, he
14 talked to the guy that -- the pawn shop manager who's
15 been a manager for at least 10 plus years, and his
16 dad owns it. He -- they went back and forth on
17 prices, and the manager gave him a price.

18 Josh hadn't sold jewelry before. He
19 wasn't familiar with jewelry. He didn't know how
20 much this was all worth. So he pulls out his phone
21 right smack in front of this pawn shop manager, and
22 he calls who the manager believes is a woman based on
23 the conversation.

24 Hey, sweetie, hey, honey, I'm here.
25 This is the price that they're offering. I want to

1 make sure this is right. I don't want to -- I want
2 you to be happy. I want to make sure you get a good
3 price, if this is what you want.

4 This is a long conversation right in
5 front of the manager, and he'll tell you that. Josh
6 did not sell the jewelry that day. He decided that
7 -- or she decided that they wanted to try and get
8 more money.

9 And the manager will tell you that he
10 told Josh Conway go shop around. There's some stores
11 down the street in that area. Mesa has several pawn
12 shops in a close vicinity.

13 He'll tell you that he told Josh if you
14 get a close price, if you get something close, come
15 back to me and we'll make a deal. And that's
16 actually what happened.

17 The very next day, the second day right
18 before Thanksgiving, Josh Conway came back, and he
19 made the sale. He's on tape. He's fingerprinted.
20 He signed his name. He showed his Arizona
21 identification. This is not a -- not a secret
22 transaction.

23 What's interesting for the jury for
24 objective corroborating evidence is it's not only the
25 manager who's going to say that he had this

1 conversation, that he remembered Josh, but the State
2 pulled phone records.

3 We subpoenaed phone records after
4 everybody was arrested in this case to try and put
5 the case together with objective evidence, not just
6 people's statements but something objective.

7 And this is what the phone records are
8 going to show you, that on the 20th, the day that he
9 first went in to try and make the sale during the
10 lunch time hour, 12:46 p.m., there's a 12 minute
11 phone call between Josh Conway's cell phone and
12 Kumari Fulbright's cell phone.

13 That's corroborating evidence. That
14 shows you that he talked to Kumari that day and that
15 this jewelry was sold with her consent, at her wish.

16 So why was Josh Conway going to die in
17 the desert that night? That's the question. Why?
18 Well, this is what the evidence is going to show you.

19 It's going to show you that Kumari
20 Fulbright started a chain of events with a lie, a
21 chain of events that spiraled out of control, a chain
22 of events that this man took charge of with weapons
23 and violence and resulted in Josh Conway being tied
24 up and assaulted with a gun put in his head, a gun
25 put in his mouth and tortured for eight hours until

1 he escaped.

2 She told her ex-fiance that Ergonis --
3 she told him that Conway stole her jewelry. We're
4 never going to know why, and sometimes in life you
5 just don't know.

6 Sometimes juries -- sometimes jury
7 trials don't give you all the answers. We're never
8 going to know why Kumari did that, but what you're
9 going to know at the end of the trial is that she
10 lied about it.

11 Maybe she was worried that Rob was going
12 to figure out that all the nice jewelry that he'd
13 given her was gone. She was trying to get back with
14 him. Maybe she wanted money.

15 Maybe she realized that dating somebody
16 her own age who was still trying to earn money and,
17 you know, become more financially stable wasn't going
18 to work for her.

19 She wanted that lifestyle back. Who
20 knows? But what we do know is that she lied, and
21 that lie started this whole chain of events.

22 I want to tell you about the defendants
23 in this case. There's four of them, and you've heard
24 the Judge tell you that the State charged Robert
25 Ergonis with kidnapping, kidnapping Josh Conway,

1 aggravated assault with a gun, holding a gun on him
2 on multiple occasions, aggravated robbery for
3 stealing property from him with a gun -- I'm sorry,
4 armed robbery and aggravated robbery for stealing
5 property from him with accomplices present.

6 Now all four defendants were charged
7 with that. Three of them have pled guilty. And
8 they're going to come into court, and they're going
9 to testify during this trial for you.

10 You've heard so far a little bit about
11 Fulbright and Ergonis. I told you a little bit about
12 Dave Radde, that he's a long time friend of Rob
13 Ergonis', and he really is best characterized as
14 somebody who is going to take direction from Rob, who
15 carries a gun, who isn't afraid to use it. He's
16 going to do what Rob said.

17 And the fourth defendant in this case
18 was a guy named Larry Hammond, and Larry Hammond is
19 best characterized as someone who's in the wrong
20 place at the wrong time. These are the four people
21 that you're going to hear about in this case.

22 Now three of those four had a plan.
23 Robert Ergonis, Kumari Fulbright and Dave Radde had a
24 plan to ambush Josh Conway. This was the plan, and
25 it was all about the jewelry.

1 Kumari was going to lure Josh to her
2 apartment with the pretext of having a date Saturday
3 night, going out to Winterhaven to see the lights,
4 and that's how she was getting Josh to come over.

5 Ergonis had a prearranged plan with
6 Kumari that he was going to call Kumari when he was
7 ready, when he was ready for her to get Josh over
8 there and that she needed to leave the key under the
9 mat at her apartment so he could get in. That was
10 the plan.

11 Now once she got Josh over there -- and
12 he'll tell you that he'd been out. There'd been an
13 Arizona basketball game that day. He showed up at
14 her house sometime in the early afternoon of
15 Saturday, December 8th.

16 When he got there, they chitchatted for
17 a little bit, and then Kumari told him, I need to
18 take a shower. I want to take a shower before we go
19 out.

20 He didn't really think anything of it.
21 I mean, usually women are ready for a date when
22 boyfriends come over but, you know, he thought
23 whatever. So he's kind of hanging around the house,
24 and within a couple of minutes of Kumari getting in
25 the shower, he is jumped by Rob Ergonis and Dave

1 Radde who you'll see in court.

2 And Dave Radde is a big man, six, four;
3 six, five; big, tall, strong, scary guy. Rob Ergonis
4 and Radde ambushed Josh at gunpoint, two guns on him
5 in that tiny little hallway, down on the ground,
6 flex-cuffed, zip ties, on his back, punched, kicked.

7 Josh is on the ground with his legs up
8 trying to protect his body from kicks and punches.
9 He has no idea what's going on.

10 Rob and his sidekick Radde eventually --
11 I'm fast-forwarding a little bit -- eventually take
12 him from Kumari's house, put him in the Denali, take
13 him over to a different house that you'll hear
14 testimony about and I'll talk about in a minute on
15 Bryant Street, and they torture him more there, got a
16 gun actually in his mouth.

17 He's down on the ground. He's got duct
18 tape on his legs, on his stomach. We're going to
19 kill you. All of that happens at the second house.

20 Now I want to tell you about the guy who
21 was in the wrong place at the wrong time, and he's
22 the guy who was at the Bryant house, Larry Hammond.

23 From the very beginning of this case,
24 one person has cooperated from the get-go, one
25 person, Larry Hammond. When he got arrested -- and

1 you'll hear about that. When he got rested, he gave
2 a statement, and he incriminated himself right out
3 the gate.

4 He was a little -- hedged a little bit
5 on Rob because he was afraid of him, and he'll tell
6 you that. But he got the basic gist pretty right on
7 in his very first statement with police.

8 He told the police that he had actually
9 been at the Bryant house which is associated with
10 Rob. It's a rental property that Rob had or rented.

11 He'll tell you that totally random, bad
12 luck for him that he was at Bryant. He had a friend
13 named Paul who had been doing handyman work over
14 there, and it wasn't going very well.

15 And Larry Hammond is a skilled
16 tradesman, a skilled carpenter. He's a union
17 carpenter, and his friend was worried because Rob
18 Ergonis was coming back into town. And this was just
19 a couple days before Saturday, December 8th.

20 He called Larry up and said, look, I --
21 Rob's coming into town. I've got to get this done.
22 Can you help me? So he agrees. He comes over to
23 this house, and he's working at Rob's house.

24 And this is what happens. He tells the
25 police he's been patching things on the wall. He's

1 trying to clean it up, fixing doors, working on the
2 yard. Rob appears to be moving out of this house or
3 patching it up or cleaning it up for somebody else.
4 Larry doesn't really know, but that's what he's
5 doing.

6 And so he's there by Wednesday, because
7 in the late hours of Wednesday, December 5th, into
8 the early morning hours of Thursday, December 6th,
9 his friend actually gets arrested by TPD because he
10 was riding his bike drunk.

11 So the one friend who was supposed to be
12 at this house that Rob knew about, who Rob knew was
13 actually doing work on his house was gone, and Larry
14 will tell you that he's at the Bryant house in those
15 early, early morning hours of Thursday when the
16 police come by.

17 They drop off the bike. They drop off
18 his friend's stuff. His friend's taken to jail, and
19 Larry's still hanging out at the house. It's late.
20 He goes to bed. This is what happens to him.

21 MR. GATTONE: Your Honor, can we
22 approach, please?

23 THE COURT: Yes. That's fine. Counsel?

24 (Whereupon a bench conference was held
25 as follows:

1 MR. GATTONE: Your Honor, I'm going to
2 have to object. I'm going to have to object to the
3 next line of questioning about supposedly some sort
4 of -- Rob coming in on this night and pulling a gun.

5 MS. ORTIZ: I'm sorry. I can't hear
6 you.

7 MR. GATTONE: You're about to tell this
8 supposed story that Rob came in that night and pulled
9 a gun on Larry Hammond. What does this have to do
10 with the incidents of December 8th?

11 It's completely irrelevant. It's
12 completely prejudicial. I didn't include it in my
13 motion in limine because it has nothing to do with
14 these events, so I did not do it.

15 But it's completely prejudicial, this
16 sort of information that Larry Hammond's going to say
17 that Rob came in, pulled a gun on him, said who are
18 you, someone took his jacket, you know, someone took
19 his wallet, something like that.

20 It has nothing to do with the events,
21 and it's just an attempt to show that, well, Rob
22 supposedly pulled a gun on Hammond on the 6th, so he
23 must have pulled a gun on Conway on the 8th.

24 THE COURT: Response?

25 MS. ORTIZ: We had a pretrial ruling on

1 evidence that Rob Ergonis carried guns, used guns,
2 was coming in right around before the offense.
3 Counsel's been on notice of that.

4 In fact, it's even more relevant than
5 showing Rob's propensity and character and habit of
6 evidence of carrying a weapon. Larry specifically is
7 going to identify that Sig that Rob was carrying that
8 night.

9 THE COURT: Just a second. What's the
10 time frame that you're going to be talking about?

11 MS. ORTIZ: It's one day before the
12 assault.

13 THE COURT: Okay.

14 MR. GATTONE: Your Honor, my --

15 THE COURT: The objection's overruled.

16 MR. GATTONE: Your Honor, if I could for
17 the record, my understanding of your ruling was he
18 couldn't say that. Heather Cannon saw him carrying
19 guns.

20 Unless it was -- he was supposedly
21 getting a gun in preparation for this sort of event.
22 This is highly prejudicial. It's just other bad acts
23 to show that he had a gun on this night. He pulled a
24 gun on somebody. He's going to pull a gun on someone
25 two days later.

1 THE COURT: Well, I assume the State is
2 going to link up that it's this gun and that that's
3 why this defendant participated.

4 MS. ORTIZ: That's correct, Judge.
5 Larry specifically identified the Sig arms that Rob
6 had. This shows -- this comports with the trial
7 court's previous ruling.

8 THE COURT: Okay. Is Mr. Hammond going
9 to testify that this is why -- part of the reason why
10 he participated in this whole thing?

11 MS. ORTIZ: Yes.

12 MR. GATTONE: No. His testimony when we
13 interviewed him was he just went along with it
14 because he was there working and he needed work.
15 He's not going to -- now if he's going to come in and
16 say he was scared --

17 THE COURT: Which is -- counsel, that
18 will be something for the jury to decide. The
19 objection's overruled. You've made a record, Mr.
20 Gattone.

21 MR. GATTONE: All right.)

22 MS. ORTIZ: So this is what Larry
23 Hammond woke up to on the early morning of Thursday,
24 December 6th, just two days before the attack on Josh
25 Conway.

1 Larry Hammond was sleeping in the front
2 room, and you'll see pictures. The house is very
3 sparsely furnished. There's hardly anything to sleep
4 on. He woke up to Rob Ergonis and a gun in his face.

5 Rob took Larry down to the ground, down
6 on his back. He's holding him down. He's got a gun
7 on him. He's there with one other guy and two women.

8 Larry has no idea who the other guy and
9 the two women are. He'll tell you that not only did
10 Rob have a gun on him, he also had a Sig, a 45 Sig
11 holster on him. And he'll tell you that he was
12 afraid of Rob Ergonis.

13 After several minutes messing with
14 Larry, why are you here, who are you, what are you
15 doing, why are you in my house, he eventually decides
16 that Larry is there for the reason that he said.

17 I'm there -- I'm working on your house.
18 This is what happened to Paulie. I'm just doing what
19 he asked me do. He said you were coming back in
20 town. I'm not doing anything to you. Please don't
21 hurt me.

22 So what happens that night is the two
23 women who are with him and the guy who he still
24 doesn't know to this day took some of his stuff, and
25 Larry didn't have a lot of stuff with him. But they

1 rifled through his things. They took a leather
2 jacket. They took a couple other things, and they
3 took off.

4 They decided that it's okay that Larry's
5 there. Rob decides that it's okay, and Larry's going
6 to keep working on the house.

7 So try and picture in your clock, we're
8 in the really early morning hours, and the next day
9 when he gets up, it's Friday, December 7th. We're
10 one day before the assault on Josh, and this is what
11 Larry's doing.

12 He's straightening up the house, you
13 know, picking up his belongings that they went
14 through. He's still working on the house, painting,
15 working in the yard, you know, doing normal stuff.

16 Throughout that day he's doing what Rob
17 had asked him to do. He's boxing up his possessions.
18 He's moving -- moving stuff around, you know, kind of
19 a normal day. Rob's moving out. Larry doesn't think
20 anything weird's going on.

21 He -- Rob comes back and forth a couple
22 times that day moving stuff in the Denali, moving
23 boxes out of the house, and at the very end of the
24 day he comes back, gives him 20 bucks for dinner and
25 wants to make sure Larry's going to stay at the house

1 until the stuff's out, just keep an eye on things.

2 This is what happens the morning of
3 Saturday, December 8th. This is the day that we're
4 here in court for. The morning of the 8th, Rob got
5 dropped off. Larry doesn't know by whom. He was in
6 the bathroom painting, but he overheard some
7 conversations that at the time didn't really mean
8 anything to him.

9 Fast-forward 12 hours, they meant a lot
10 to him, but he heard Rob making arrangements, some
11 type of travel arrangements to go lay on the beach
12 somewhere. He overheard this statement.

13 He also overheard Rob say that he would
14 call when he was ready for her to get in the shower
15 and to make sure she left the key under the mat. He
16 heard that, didn't know what it meant.

17 He heard another call where Rob said,
18 where are you? And then right after that, Dave
19 Radde, one of the co-defendants in this case, showed
20 up at the house.

21 And he hadn't met Dave before, but at
22 that time, Larry Hammond will tell you -- this is his
23 description of Dave -- very tall, light complected
24 Hispanic male. He's got a hoodie on that covers most
25 of his face, and he was wearing big, thick military

1 style boots with high, thick heels.

2 And at this point since he's pled
3 guilty, it doesn't really matter, but at that time
4 when the investigation -- when Radde was a fugitive
5 and the police were looking for him, it became very
6 significant as a factor to identify him.

7 So it's just interesting that Larry was
8 paying that close of attention on the very first
9 meeting to notice that. Other witnesses noticed
10 that, too.

11 So they're at the house and Rob shows --
12 or Dave Radde comes over, and Rob introduces Dave
13 Radde to Larry. And Larry's still in the house
14 working, but this is what he sees.

15 He sees Rob Ergonis, that man over
16 there, the defendant, and Radde start gathering some
17 things up. They're gathering he says a ski mask,
18 some zip ties, other things.

19 And when -- I think Rob's just trying to
20 mess with Larry a little bit, you know, make sure
21 that Larry knows who's boss. He says, do you know
22 what these are for, do you know what these mean?

23 And you'll meet Larry. He's got a kind
24 of quirky sense of humor, but he said I sure hope
25 not, I sure hope I don't know what those mean. He's

1 thinking in his own head, are these for him? You
2 know, is Rob still pissed off that he's in his house?

3 He's worried. He's afraid. He hopes
4 they're not for him. And then right before Ergoni s
5 and Radde leave the house and they're at the Bryant
6 house, he tells Hammond that the boyfriend of one of
7 his friends had stolen her jewelry.

8 And these were his words. They're going
9 to make it right. He was on his way to make it
10 right. So how are they going to make this right?
11 Well, they were going to lure and ambush him.

12 I already told you that he lured -- she
13 lured Josh over with the expectation of lights at
14 Winterhaven. She said she needed to take a shower.

15 Right down that hallway you saw in the
16 beginning, they jump him, guns drawn pointed at the
17 victim. Conway goes down to the floor, flex-cuffed,
18 kicked, punched repeatedly.

19 Now this is where the evidence is going
20 to show that Josh Conway was not going to make it
21 through this night. Rob asked him, do you want to
22 sit there, do you want to stay here or do you want to
23 go somewhere?

24 And right after he says that, he tells
25 him, you know, people don't want to go somewhere.

1 They don't usually want to go somewhere, but that
2 wasn't Conway's style. He had no idea what was going
3 on.

4 And, you know, amazingly what he's
5 thinking about is protecting Kumari. He doesn't have
6 any idea that she's involved in this. He chooses the
7 bad option behind Door B and says, get me out of
8 here, let's go, she doesn't need to see this, she's
9 in the shower.

10 He's trying to protect her. He's trying
11 to protect this woman that has arranged this ambush.
12 He wants to protect her. So this is what happens to
13 him in his effort to protect this woman.

14 They force him into the Denali, Rob's
15 car. During the car ride, there's guns on him. When
16 they get to the Bryant house, Rob walks into the
17 house first and -- well, actually in the car ride --
18 let me back up a little bit.

19 In the car ride, Rob Ergonis told --
20 told Josh that you weren't going to live to tell
21 anyone. Rob knew -- Josh knew who he was. He'd seen
22 his face, no efforts made to disguise himself, and
23 when they got to the Bryant house, Josh Conway told
24 police that they put him in a room.

25 They held him there for a long time, gun

1 in his mouth, gun to his head, down on the floor,
2 duct tape, on his stomach, and they repeatedly told
3 him over and over and over they were going to kill
4 him.

5 And that's how he spent his time there
6 on his stomach, flex-cuffed behind his back, duct
7 taped around his legs, on his stomach, completely
8 helpless with a gun to his head, we're going to kill
9 you. That's what he heard.

10 And this is what Larry Hammond heard and
11 saw of those same events that Josh is going to
12 describe to you. When the Denali pulled up, Rob went
13 into the house first. And the Denali pulled up right
14 by the side door, so Rob had to just get out and hop
15 into the side door.

16 He told Hammond, go into the room, close
17 the door. That's what Hammond did. He went into the
18 other room, and he closed the door. But this is what
19 he could hear behind closed doors.

20 He said he could hear people talking.
21 Something like an interrogation, noises. And he
22 couldn't make out the words, but he said he heard a
23 voice saying something like I don't know like over
24 and over. That's what he could hear behind closed
25 doors.

1 to Kumari's apartment, Larry will tell you that he
2 knew for certain once they were in the Denali that
3 Josh was not there for any fun. He wasn't a guest,
4 that he was there against his will.

5 And he'll tell you that that's based on
6 what Josh was saying, that Josh was frantic, that he
7 was like out of his mind, yammering, talking, my
8 dad's a police officer, don't hurt me, you know, you
9 kill me, you kill my grandmother, I take care of her,
10 she's blind, yes, I stole jewelry, yes, I did this.

11 You know, he -- in that Denali, he said
12 anything and everything that he could think of to try
13 and placate Rob Ergonis, but it kind of had the
14 opposite effect. It irritated Rob.

15 And Hammond will tell you that despite
16 Conway's efforts, despite his desperate efforts to do
17 anything to get Ergonis to leave him alone and to not
18 hurt him, that this guy was just talking too much.
19 Rob didn't want to hear it. That's what Larry will
20 tell you.

21 And then he'll tell you when they got to
22 Fulbright's house, that's when he saw that Josh was
23 zip-tied because they walked into the apartment. And
24 when Larry went behind him, he could see that his
25 hands were tied, so he knew this was not good. This

1 was not something that he wanted to be involved with.

2 He was afraid of Rob, and that's what
3 was going to happen. So they're back at the Knox
4 apartment. They're all back at Kumari's apartment,
5 all four of them. Conway is still zip-tied. He's
6 still held at gunpoint.

7 Many occasions over the hours that he's
8 there Ergonis is threatening to kill him and
9 continuing to accuse him of stealing the jewelry.

10 At some point during this assault, Rob
11 and Kumari went out to Josh's BMW which was parked at
12 her house. They rifle through it. They take his car
13 manual. He has a Glock in the car in a case. He has
14 a book.

15 They take that all into the house and at
16 gunpoint, again, with other people present, Josh is
17 robbed by Ergonis. They take -- he takes his
18 earrings out of his ears. He takes money out of his
19 pockets.

20 Josh has -- he'll tell you that his
21 wallet -- he hadn't been able to find it for about a
22 week or so, but it suddenly appears at Kumari's
23 house. And they take that, too.

24 Hammond will tell you that that book
25 that Kumari took out of his car -- it's "How to Win

1 Friends and Influence People" -- that she smacked the
2 crap out of him across the face with that book.

3 And when she's smacking him, when she's
4 hitting him in the head, she tells him, I've been
5 waiting for this all week. It was hard for her to
6 keep her mouth shut about this, that -- she says as
7 she's hitting him right smack in the head, we had to
8 set you up. And she told him, you're going to die.
9 It is time for you to die.

10 That's what's going on back at Knox.
11 Now at -- again, I mean, you know, we don't have a
12 clock. I don't have a stop watch to tell you this is
13 when this happened, this is when this happened, but
14 over this time period, the witnesses are going to
15 tell you that Radde and Ergonis leave.

16 There's going to be different stories
17 about why they left. One is that they were going to
18 look for pawn slips trying to get this jewelry back.
19 Another is that Radde was taking Rob to the airport.

20 Either way they leave, and that's what's
21 important. So the people that are left at the house
22 are Josh who's on the floor zip-tied, Kumari and
23 Larry Hammond. So at the house now, there is the
24 Glock, the Glock that was Josh's that was in his car.
25 And that's the gun that they're using to keep control

1 of Josh.

2 Now when Ergonis left, he told Larry to
3 stay and watch Conway. That was what Larry's job
4 was. But he told him, this is Kumari's show; all
5 right? She gets to do what she wants with Josh.
6 Those are his specific instructions, and Larry is
7 following them. Rob has the gun. Larry's following
8 them.

9 One thing that Rob tells him is if Josh
10 tries to escape, nothing above the waist. We're not
11 going to kill him now. You shoot him below the
12 waist, not a fatal injury, not a fatal shot.

13 When they leave, these three people are
14 alone, Larry, Kumari and Josh, and it's basically a
15 free-for-all with Kumari against Josh. She's
16 threatening him with a knife. She's holding it up to
17 his ear. I should cut your ear off for lying to me.

18 She goes further, I'm going to cut your
19 dick off, I'm going to shove it down your throat.
20 She is a crazy woman. The three of them are waiting
21 for Ergonis.

22 I can say it's more like Larry Hammond
23 is waiting for Ergonis and wanting to get out of
24 there, and he waits for several hours. He waits, he
25 waits, he waits. They're watching TV.

1 You know, Josh is still sitting on the
2 floor. I think the Heisman Trophy winner was on. I
3 mean, the TV's on. Larry's sitting on the couch.
4 The gun's right next to him. Kumari's running
5 around. Everybody's waiting for Ergonis to get back.

6 Larry finally kind of gets the courage
7 to ask Kumari, can you find out when Rob's coming
8 back, can you call him, can you let me know what's
9 going on. And she calls him, and what she tells
10 Larry is that he'll be back soon.

11 At this point, Larry and Josh will tell
12 you that when they're waiting for Rob to come back --
13 and it's getting late. We're -- we've got to be past
14 9:00, 9:30, 10:00. She's done with Josh. I am sick
15 of you, you're going to die, I don't want to hear
16 anything else from you. She's done. This is -- his
17 time is coming up.

18 So after she tells him that, you're
19 going to die, I'm sick of you, we're done, she starts
20 gathering the tools that she needs to carry this out.
21 You're going to see all this.

22 You're going to see plastic gloves.
23 You're going to see zip ties. You're going to see
24 big plastic garbage bags by the front door. You're
25 going to see a big knife by the front door, that

1 she's been sticking in his ear, cutting his ear,
2 cutting him with.

3 This is what Josh is looking at
4 wondering, am I going to die, are they going to stab
5 me, are they going to shoot me? He has no idea. All
6 he's thinking about is -- is he going to die that
7 night in the desert.

8 Rob comes back alone. David Radde is no
9 longer with him. So you're down to three, Hammond
10 Fulbright and Ergonis, and Josh is on the floor still
11 tied up.

12 Rob and Kumari go into her bedroom, and
13 Larry is pretty fidgety. He really wants to get out
14 of there but, you know, he's not in a position to
15 make any demands, and this is what he hears.

16 He hears Rob say to Kumari, are you
17 sure, is this what you want to do, is this what you
18 want to do. Well, it's what she wanted to do, and
19 it's what he was going to do for her.

20 It's time for Larry to go. It's going
21 to be Rob and Kumari and Josh in the desert. Rob
22 takes Hammond back to the Bryant house.

23 And this is kind of ironic, also. He
24 looks at Josh, says, I'll be right back, you know,
25 I'll be right back for you so you can think about

1 that for the next 15 minutes while I'm driving, but
2 I'm coming right back for you.

3 Now Larry will tell you that Kumari who
4 had been drinking steadily through the night comes
5 out of the bedroom, and she's got a gun. And she's
6 got a bottle of vodka.

7 And he'll tell you that he hasn't
8 actually seen anything much more scary than Kumari
9 with her finger on the trigger of a gun and a bottle
10 of vodka. Now the other people who have been
11 handling guns throughout this actual event actually
12 know how to handle the gun.

13 They do not put their finger on the
14 trigger, because if you put your finger on the
15 trigger, that gun's going to go off. They're holding
16 their finger the way they should if they're not going
17 to shoot.

18 Kumari has got her finger on the
19 trigger, the bottle of vodka. Larry is convinced
20 that Kumari is going to shoot somebody whether she
21 means to or not at that point, and this is the ironic
22 part.

23 Rob decides to leave Kumari with the gun
24 and with the vodka so that she doesn't get a DUI
25 because she'd been drinking. You know, he's okay

1 that she's at the house with a gun and a knife and a
2 bottle of vodka but not okay with a DUI.

3 So he takes Larry home, and this is it
4 for Josh. This is it. This is the first time he's
5 alone with the one person he has a relationship with,
6 the one person that he has a chance to connect with
7 at some emotional level to try and save his life.

8 Rob doesn't care about him. Radde
9 doesn't care about him. He doesn't know Larry. He
10 doesn't know any of these people, but he knows this
11 is his finite window of opportunity.

12 And he's been working. He has been
13 working. He has -- he'll tell you that over these
14 hours he'd actually managed to get one of his hands
15 out of the zip tie and that he was seriously
16 considering making a move on Larry Hammond on the
17 couch and that he was trying to get the courage to do
18 it, like one, two, come on, come on, Josh, you can do
19 it, you can do it, because this is it. I mean, he
20 could get shot.

21 And then Rob walked in, so he had to
22 shove his hand back into the zip tie. But so he's
23 loosened it. And at this point with Kumari alone,
24 he's able to pull his hand out again, but he's still
25 down on the floor. He doesn't have shoes. It's like

1 a slippery -- slippery linoleum floor.

2 But he's got Kumari and a short period
3 of time. You've heard and you'll hear at trial, I'll
4 be right back for you. And it's not far. He knows
5 where the Bryant house is. He was there. It's not a
6 long drive.

7 This is it. Josh's life is really in
8 his own hands at this point. He has loosened his
9 hands. He's got his hand out, and he'll tell you
10 that he was trying to, you know, connect with Kumari
11 on any type of emotional level, trying to make her
12 laugh.

13 Come on, Kumari, you know, we're good
14 or, you know, anything he can think of to try and
15 distract her. She's still waving that gun.

16 She has got that gun on him, but he
17 starts slipping around on the floor saying, look,
18 look, I'm so uncomfortable, please, please, please
19 let me get up in the chair. You see me slipping all
20 around.

21 And for some reason, she thinks that's
22 funny, so he goes with that. And he's still slipping
23 on the floor. You know, he's a big guy trying to get
24 up off the floor, stocking feet, and she laughs. She
25 laughs. And that's -- that is his moment, and he

1 moves. He takes that one second to change his life,
2 and he lunges for that woman, lunges for her, grabs
3 the gun.

4 He actually grabs the muzzle of the gun.
5 She's got her finger on the trigger. This could go
6 bad in so many ways, but this is his only hope in his
7 mind that night. He grabs the muzzle of that gun,
8 and he pushes it away from himself so he's not in the
9 line of the fire.

10 And guess what? That gun went off.
11 That gun went off. That Sig Sauer went off, bullet
12 in the wall, and you'll see all of it.

13 If Josh hadn't pushed the muzzle away,
14 who knows who would have gotten shot, him, Kumari,
15 who knows? That gun went off in a struggle.

16 He's a big guy. She's a much smaller
17 woman. He's holding the muzzle of that gun, and he
18 is locked in like mortal combat with Kumari who is
19 enraged, who is crazed.

20 She's biting him, like gnawing on his
21 arm. You're going to see a huge bite mark on his
22 arm. She's -- they are both holding onto the gun.
23 Josh is big enough that he can drag not only himself,
24 he drags Kumari and that gun with him out the door,
25 and they are still struggling frantically.

1 Once Josh gets out of the door, what's
2 going on through his mind is Rob is going to be back
3 at any minute, any minute, and I've got to get out of
4 here. I have got to get out of here, and he starts
5 screaming.

6 He starts screaming help, screaming at
7 the top of his lungs, and there's this moment of
8 recognition, like a moment of realization that he'll
9 tell you. Their eyes meet. They're looking at each
10 other, and she knows, you know, it's over. This is
11 over. This is over for me. This is over for Josh.

12 And Josh runs. He grabs that gun from
13 her. She's just kind of standing there like how --
14 how did this happen, how are we here? And he ran,
15 and he ran for his life.

16 And this is what came in at the same
17 time that Josh is running down that street screaming
18 for his life. Seven 911 calls come in in a
19 three-minute period between 10:50 p.m. --

20 (Whereupon the 911 tape was played.)

21 MR. GATTONE: Your Honor, I'm sorry.
22 Can we approach again? I don't think we had --

23 THE COURT: Okay. Yeah. Why don't you
24 -- Mr. Jette -- yes.

25 (Whereupon a bench conference was held

1 as follows:

2 MR. GATTONE: Your Honor, I don't know
3 that the Court has ruled on the 911 tape -- the 911
4 calls. We have objections to them.

5 I don't see how they can be played in
6 opening when there's some indication about whether
7 they're -- we haven't had any foundation for them,
8 Your Honor.

9 We haven't had any witnesses testify
10 about these calls, and to play one in opening I think
11 is -- I'm sorry, Your Honor, is something wrong?

12 THE COURT: One of the jurors just
13 walked across and I need to find out what's going on,
14 but go ahead.

15 MR. GATTONE: It's highly prejudicial.
16 We have not had any foundation laid. We have not had
17 any witnesses get on about these, and I think there's
18 some issues of who these people are. It's hearsay.

19 THE COURT: Okay. Just a second.

20 THE BAILIFF: The juror told me that she
21 was going to throw up.

22 THE COURT: Okay. Let's take -- we're
23 going to take a recess right now so I can address
24 these two issues and find out if the juror is sick.

25 MR. GATTONE: If the juror's sick?

1 THE COURT: Yeah, so --

2 MR. GATTONE: Okay.

3 THE COURT: Okay. Why don't you have a
4 seat, counsel.)

5 THE COURT: Ladies and gentlemen, we're
6 going to take a brief recess right now. Please
7 remember the admonition, so you're going to go back
8 with Eileen to the jury deliberation room. Please
9 remember that step, ladies and gentlemen, so you
10 don't trip. Thanks.

11 (Whereupon the jurors exited the
12 courtroom.)

13 THE COURT: The record will reflect the
14 jury has left the courtroom. Counsel, could you
15 please approach?

16 (Whereupon a bench conference was held
17 as follows:

18 THE COURT: I'm thinking of clearing the
19 courtroom so I can ask this juror whether she's
20 feeling bad or what, and it will be a little bit
21 difficult to do that unless we're all up here at the
22 bench. So I think it would be easier to do it that
23 way.

24 MR. GATTONE: I think that would be a
25 good idea, Your Honor.

1 MS. ORTIZ: Sure.

2 THE COURT: Okay.

3 MS. ORTIZ: Can we talk about the 911
4 calls?

5 THE COURT: We'll do that in just a
6 minute.)

7 THE COURT: Ladies and gentlemen, I'm
8 going to ask those of you who are not a victim -- no,
9 no. Officers --

10 MR. GATTONE: I think he wants her. He
11 wants --

12 THE COURT: She needs to come back in.
13 Right. Everyone else, if you could please leave the
14 courtroom, I'm just going to have counsel and the
15 parties remain.

16 MS. SMITH: Kim Smith from the Star.

17 THE COURT: Yes.

18 MS. SMITH: Does that go for me as well?

19 THE COURT: Yes, at least right now.

20 I'll make a ruling. Thank you.

21 MS. SMITH: Thank you.

22 MR. GATTONE: Your Honor, certainly the
23 victim. What about the victim advocates? Do they
24 have a right to be here, too --

25 THE COURT: They're here with the

1 victim.

2 MR. GATTONE: -- in the courtroom?

3 THE COURT: The ruling will apply.

4 MR. GATTONE: All right.

5 MS. ORTIZ: This is an attorney from my
6 office, Judge.

7 THE COURT: Okay. That's fine. And,
8 Ms. Altamirano?

9 JUROR ALTAMIRANO: Yes.

10 THE COURT: Yes. Are you -- the reason
11 I asked everyone to leave is just on the off-chance
12 that you were feeling bad physically, I didn't want
13 you to have to tell me about that with members of the
14 public here.

15 JUROR ALTAMIRANO: No. It's just it got
16 hot in here, and I got really sick.

17 THE COURT: Okay. Are you feeling
18 better now?

19 JUROR ALTAMIRANO: A little bit.

20 THE COURT: Okay. How long -- if we
21 take a 10-minute break, will that help you?

22 JUROR ALTAMIRANO: A little bit.

23 THE COURT: Okay. Can we get you any
24 water or anything like that?

25 JUROR ALTAMIRANO: I just drank some

1 water right now.

2 THE COURT: Okay. Well, we can get some
3 colder water for you or anything. If you think
4 something in particular would help, we'll be more
5 than happy to do that. Okay.

6 MR. GATTONE: Your Honor, she's feeling
7 sick because she's feeling sick or because of --

8 JUROR ALTAMIRANO: It's hot in the
9 courtroom, so it has nothing to do with the case.

10 THE COURT: Okay. Eileen, if you could
11 take Ms. Altamirano back down to the jury
12 deliberation room --

13 THE BAILIFF: Okay.

14 THE COURT: -- and get her some cold
15 water.

16 THE BAILIFF: Sure.

17 THE COURT: Thank you.

18 (Whereupon the bailiff and Juror
19 Altamirano exited the courtroom.)

20 THE COURT: The record reflect that
21 Juror Number 10 has left the courtroom. Okay.
22 Counsel, let me hear the -- well, actually let's have
23 -- the public can come back in if they wish to do so.
24 So, officers, you can let the public in. Yes.
25 Actually you can argue --

1 MR. GATTONE: Do you want us to do --
2 well, I mean -- okay. Your Honor, I think there's a
3 couple --

4 THE COURT: Okay. Well, let me state
5 something. The record will reflect that with the
6 public excluded I had a conversation with the juror
7 who felt ill.

8 I did not want to have her embarrassed
9 about her personal information and that we have
10 determined that she can continue participating in the
11 trial. Now -- and the public can re-enter the
12 courtroom and has entered the courtroom.

13 Now let me deal with the issue that came
14 up just as that juror was becoming physically ill and
15 we were having a conversation about the playing of
16 the 911 tapes.

17 MR. GATTONE: Your Honor --

18 THE COURT: Yes.

19 MR. GATTONE: -- there's been no
20 foundation for the 911 tapes. They've not been
21 admitted into evidence. I think we didn't even
22 discuss them during the course of our motions in
23 limine.

24 We haven't had a witness about them.
25 Those people -- I think we have -- also, my client

1 has a right -- confrontation right to have people
2 going to come in to testify has to be in person,
3 these 911 calls.

4 Again, it's highly inappropriate for
5 them to be played already in the opening. And I
6 think that -- well, I think it's grounds for a
7 mistrial myself. I also think that -- I have one
8 other issue, too, is we were not supposed to talk
9 about Windsor, and essentially counsel testified
10 about the gun went off, the gun was in the wall.

11 That's Mr. Windsor's testimony and you
12 -- His Honor said in the beginning don't refer to
13 that. You haven't ruled on that yet. Don't refer to
14 that. So it's already been referred to. The cat's
15 out of the bag, Your Honor. The jury's heard that.

16 And I'm just -- this issue with this
17 juror getting up and running out of the courtroom,
18 she runs right past Mr. Ergonis and sees his
19 situation here. I think that -- that it's highly
20 prejudicial, looks like she's, oh, my gosh, she can't
21 stand to hear what she's hearing.

22 I don't know what the rest of the jury
23 is going to hear about that, Your Honor, and I think
24 that there's -- that the fact that the 911 tape was
25 played already without -- under the circumstances, I

1 think it's grounds for a mistrial as is the referral
2 to the bullet in the wall.

3 That's Windsor's testimony, and we're
4 supposed to stay clear of that because you hadn't
5 made a ruling on that issue, Your Honor.

6 THE COURT: Response from the State?

7 MS. ORTIZ: All right. Well, the Tony
8 Windsor issue, a bullet --

9 THE COURT: Well, let's deal with it in
10 this order, first the 911 tape, second the ballistics
11 report, and then third the juror's leaving.

12 MS. ORTIZ: Number one, the 911 call --

13 THE COURT: Yes, please.

14 MS. ORTIZ: -- I'm reading an e-mail
15 from Paul Gattone on October 20th of 2010 at 10:33.
16 The subject line is re: 911 foundation witnesses. I
17 had asked Paul to please let me know either way
18 whether he'll stipulate to the foundation.

19 This is the e-mail. Sorry it took me a
20 while to get back to you on this, but I have no
21 problem stipulating to the 911 calls.

22 MR. GATTONE: Your Honor --

23 MS. ORTIZ: -- and represented that in
24 court to Your Honor last Friday. I filed a motion to
25 substantiate that 911 calls are independently

1 admissible.

2 And on top of that, Mr. Gattone knows
3 that I have independent foundation from the Tucson
4 Police Department emergency custodian of records that
5 I provided him with.

6 It's authenticated, and I have the
7 foundation and the legal position to introduce that
8 evidence at trial.

9 MR. GATTONE: Your Honor, the way that
10 was --

11 THE COURT: Mr. Gattone, I want to deal
12 with all three of them together, because to a limited
13 extent they overlap. Second, the ballistics report?

14 MS. ORTIZ: I didn't address the
15 ballistics report. I addressed the evidence that the
16 gun went off and that there's a bullet in the wall
17 which police recovered, and that's what the
18 testimony's going to be.

19 It's not that it was analyzed. It's not
20 that it was matched to the gun. It's just a fact
21 that occurred. I did not comment on anything
22 improper, and I didn't reference the report and I
23 won't.

24 THE COURT: And then third, the juror
25 getting up?

1 MS. ORTIZ: I just don't -- I mean, it's
2 just one of those things that happen at trial. I
3 don't think we can control that.

4 THE COURT: Reply?

5 MR. GATTONE: Your Honor, about a week
6 before trial I asked Ms. Ortiz could you please tell
7 me the order in which you're going to call your
8 witnesses, and she said, well, you're not
9 cooperating. I've asked you about, you know, if you
10 would agree to some of these foundation witnesses and
11 maybe if I got some cooperation there, you know,
12 you'd get some cooperation.

13 I said the whole issue and understanding
14 about that witness was to cut down the number of
15 witnesses. It certainly doesn't mean that we waive
16 any objections that you might have.

17 It just means that there -- that, you
18 know, you didn't have to have a person come in and
19 say -- well, she has it anyways, Ms. Spencer on the
20 911 person, these calls came in, et cetera,
21 et cetera.

22 It still doesn't mean that there's not
23 issues of confrontation and hearsay, Your Honor, when
24 you're playing those in -- in opening arguments when
25 that person is supposedly going to be brought in by

1 the Court -- I mean, by the State and has been listed
2 as a witness.

3 I think that that's highly problematic
4 using -- referring to evidence in opening that has
5 not been admitted yet into evidence.

6 Secondly, yes, that's exactly what
7 she did was refer to the Windsor report. That's the
8 Windsor issue, might as well just have said that the
9 gun -- the bullet from the gun was the one found in
10 the wall because that's what counsel said in opening.

11 That's the Windsor issue. His Honor had
12 not ruled on that, told us to stay clear of that.
13 And finally, I think that -- again, that's highly
14 prejudicial, someone gets up in the middle and runs
15 out.

16 You're looking. Everyone's looking. I
17 think it looks as if she's responding to the
18 information. I don't know how we get that out of
19 everyone else's head.

20 THE COURT: Let me rule on each of these
21 issues. First with respect to the 911 calls, the
22 Court notes that as soon as the 911 call was started
23 to play through counsel's computer that there was an
24 immediate objection and that I had directed Mr. Jette
25 on behalf of the State to turn that off.

1 I certainly could not hear the specific
2 words that were used, and I doubt that any juror
3 could even make out individual words.

4 Obviously there's been another
5 misunderstanding as between counsel regarding
6 foundation or the admission of evidence on this
7 point. Therefore, I'm going to reserve ruling on
8 those issues until I can see the actual e-mails
9 between counsel and any other materials you wish to
10 present.

11 I will also direct the State not to play
12 the 911 calls during the opening statement until I
13 can resolve -- rule on that issue.

14 Second, with respect to the comments by
15 the State's attorney regarding the bullet in the
16 wall, I did not hear any reference to the ballistics
17 report. This is the issue that's in contention.

18 I find that the State did not violate
19 the direction that the Court gave prior to trial not
20 to mention the ballistics report. I'm going to
21 address that particular ruling now, though, because I
22 told you that I would do that when we had a break,
23 and I'll use this opportunity to do so.

24 As I had indicated in my preliminary
25 ruling last week, the second report that was produced

1 the week before trial is inadmissible because it is
2 untimely. What remains, therefore, is the
3 admissibility or the use of the first report.

4 Quite frankly I'm not aware of whether
5 either party intends to use the first report that
6 ended up with an inconclusive finding because -- and
7 I don't recall. Was it the wrong bullet that was
8 used or the wrong gun?

9 MR. GATTONE: Wrong bullets, Your Honor.
10 Wrong bullet.

11 THE COURT: Wrong -- okay. So the
12 criminalist was asked to compare the actual weapon
13 that was recovered in the victim's person that
14 evening with a bullet that law enforcement did not
15 find at the scene or specifically in the wall.
16 Therefore, it's not surprising that the match was
17 inconclusive.

18 Mr. Gattone, there is a preliminary
19 question of whether you intend to still use the first
20 report that was done in February of 2010 that is
21 inconclusive.

22 You hadn't indicated during oral
23 argument whether it was your intention to do so.
24 Have you made a decision yet on that point?

25 MR. GATTONE: I'm assuming, Your Honor,

1 if I did, then it would open the door to the second
2 one, although I'm a little bit confused because the
3 way His Honor presented it when we were saying we
4 needed a continuance to retain an expert witness to
5 refute that second argument, you seemed to indicate
6 that it would be in our favor not to have that second
7 one because you could get up and say, look, it was
8 inconclusive.

9 So my reading of His Honor's ruling --
10 and I'm sorry, Your Honor, if I made it sound flip
11 the way you made that -- it appeared that you were
12 saying that we could reference the first one. It was
13 the second one was inadmissible.

14 THE COURT: Well, I had not ruled out
15 you using that. I wanted to find out if you were
16 going to. And, in fact, I've -- that's why I took
17 that portion of the ruling under advisement.

18 If the defendant intends to use the
19 first report, then I will permit the State to present
20 testimony that the reason why the criminalist
21 believes that the match was inconclusive was because
22 the wrong bullet was used for the comparison
23 purposes.

24 I will not allow the criminalist to
25 testify about the results of the match that occurred

1 immediately prior to trial, so that's the additional
2 supplemental ruling.

3 And essentially what the jury will
4 understand is there are the true facts that occurred
5 which is a match was done in -- or a comparison was
6 done in February of 2010. It was inconclusive and
7 there's -- the reason why it's inconclusive is
8 because it was the wrong bullet that was used for the
9 comparison.

10 But given that the State did not do the
11 correct comparison until essentially the week before
12 trial, it's untimely for them to bring in the results
13 of the comparison of the actual bullet with the gun
14 that was recovered. So that's the ruling on
15 ballistics.

16 Now finally, with respect to the juror
17 leaving, let me make the record on that. Counsel
18 were asked to approach -- or counsel did approach to
19 address the issue of the 911 calls.

20 All counsel were within two or three
21 feet of me as we were having the kind of discussion
22 that has to take place. None of the counsel were
23 able to observe that the juror who is essentially
24 closest to me stood up and simply walked across the
25 well in front of the bench but actually behind the

1 attorneys.

2 I want to emphasize that the juror did
3 not run, but it was unusual enough that you obviously
4 observed that I was watching that juror because I
5 wanted to know and I thought that it was similar to
6 what it turned out to be. That is, she wanted to use
7 the restroom.

8 Well, as it turned out, she wanted to
9 use the restroom because she was feeling sick to her
10 stomach, not because she wanted to use the restroom
11 for other purposes.

12 So I find that that's not unusual.
13 Jurors on occasion have to use the restroom, and they
14 sometimes need to do it when they need to do it. And
15 that occurs, and people understand.

16 The juror indicated that it wasn't
17 specific to the trial. This is maybe the first time
18 that she's in a more closed environment.

19 Most people think the courtroom's kind
20 of cold, but her reaction was the courtroom was
21 overly warm. And that made her upset, and so we're
22 having some water brought to her.

23 Therefore, the Court finds that there's
24 no prejudice from the fact that the juror got up,
25 walked over to the bailiff and asked if she could

1 leave to go to the restroom. That addresses those
2 three issues.

3 MS. ORTIZ: Your Honor, I'd like to be
4 heard more on the 911 evidence. It's very important
5 to the State's case.

6 I have the e-mails right here. I have
7 the foundation for it. I have the case law. The
8 case law is right on point from the United States
9 Supreme Court that 911 calls are not violative of the
10 confrontation call, that they're admissible as
11 excited utterances.

12 THE COURT: This is the Crawford issue?

13 MS. ORTIZ: Yes.

14 THE COURT: The Crawford testimonial
15 issue?

16 MS. ORTIZ: Yes.

17 THE COURT: Okay.

18 MS. ORTIZ: May I approach with the
19 e-mail? There is no misunderstanding. It clearly
20 says I will stipulate. I did not -- I know how to
21 read. I did not misunderstand that.

22 MR. GATTONE: Your Honor, my whole --
23 the discussion that we had had about do I need to
24 bring in another witness to lay a foundation, that
25 doesn't mean that we don't have any objections to the

1 admission of the 911 tapes.

2 They're different issues. The issue is
3 the -- Your Honor, they're completely different
4 issues, again, as I explained the circumstances.

5 THE COURT: Counsel --

6 MS. ORTIZ: I'm sorry.

7 THE COURT: -- I will look at this
8 during the break. I need to give my staff a
9 15-minute break so --

10 MS. ORTIZ: Okay.

11 THE COURT: -- I'll take a look at that
12 and I'll reconsider the State's request that you be
13 able to play it during the opening statement.

14 MS. ORTIZ: May I approach with the --

15 THE COURT: Yes, you may.

16 MS. ORTIZ: Thank you.

17 THE COURT: Have you seen this e-mail
18 that's being handed to me?

19 MR. GATTONE: I sent it, Your Honor.

20 THE COURT: Okay. Well, I just wanted
21 to make sure you had seen the paper version.

22 MR. GATTONE: I don't know that I've
23 seen the paper version.

24 MS. ORTIZ: I have a copy. I'll give it
25 to him.

1 THE COURT: It's just one page?

2 MS. ORTIZ: That's it.

3 THE COURT: Okay. Court is going to
4 stand in recess for 15 minutes.

5 (Whereupon a recess was taken.)

6 THE COURT: Record reflect the presence
7 of counsel and the parties outside the presence of
8 the jury.

9 With respect to the 911 calls, I have
10 had an opportunity to go through the additional
11 e-mail and the authentication of recordings that the
12 State had provided. What I'm still a little
13 concerned about is what exactly are the particular
14 words that are used on the 911 calls.

15 Ms. Ortiz, as I understand this,
16 essentially the 911 calls even under the excited
17 utterance exception for the rules of evidence
18 basically corroborate what I assume witnesses are
19 going to testify to, specifically including the
20 victim and the defendant Kumari Fulbright; is that
21 essentially correct?

22 MS. ORTIZ: There -- yes. They're the
23 only persons in the position to say the gun went off.

24 THE COURT: Okay. And they're the ones
25 who place a gun going off in the room. I assume

1 there's no other evidence that, for instance, guns
2 were going off in other apartments or someplace else
3 and, in fact, the direct testimony of those two
4 witnesses is going to be needed to place this gun
5 going off at that time; is that essentially true?

6 MS. ORTIZ: Yeah.

7 THE COURT: Okay. My earlier ruling
8 affirming -- is affirmed that I don't want the State
9 to play these until I have had an opportunity to
10 listen to the 911 calls.

11 I'm inclined -- and I believe the case
12 law will probably allow them to be admitted, but I
13 want to hear the 911 calls myself outside the
14 presence of the jury. And we really won't have the
15 opportunity to do that.

16 I also conclude that since this is not
17 direct evidence at this point, it's merely
18 corroborative, that it's not prejudicial -- unfairly
19 prejudicial to the State to restrict the playing of
20 the 911 calls during the opening statement.

21 I want to stress that I'm not making a
22 ruling on their admissibility, rather I'm just
23 affirming my earlier ruling that they won't be played
24 during the State's opening. Okay. Let's -- how much
25 longer do you have, Ms. Ortiz?

1 MS. ORTIZ: Maybe 10 minutes.

2 THE COURT: Okay. I want to be able to
3 make sure that we get through Mr. Gattone's opening
4 statement. Do you still estimate that you have about
5 a hour, Mr. Gattone?

6 MR. GATTONE: Yes, Your Honor.

7 THE COURT: Okay. You'll have that full
8 hour then. The break actually helped us out so that
9 Mr. Gattone's opening statement does not have to be
10 interrupted. Please have the jury brought in.

11 (Whereupon the bailiff exited the
12 courtroom.)

13 MS. ORTIZ: Your Honor, just on the
14 witness scheduling issue, I have the woman who's
15 going to testify concerning the 911 calls here now.
16 Should I just go ahead and release her and have her
17 come back tomorrow morning since you need to listen
18 to the audio?

19 THE COURT: In view of the time of the
20 day and -- I think that makes sense anyways, and I'll
21 use that opportunity. So you can release your first
22 witness.

23 MS. ORTIZ: Thank you, Judge. Do you
24 want me to just skip over the 911 calls coming in
25 completely?

1 THE COURT: You've already mentioned
2 them. What my ruling is, don't play the 911 calls.
3 I don't know what more there is to mention other than
4 the fact that seven 911 calls were recorded.

5 THE BAILIFF: Jurors entering.
6 (Whereupon the jurors entered the
7 courtroom.)

8 THE COURT: Everyone, please have a
9 seat. Ms. Ortiz, you may continue with your opening
10 statement.

11 MS. ORTIZ: Thank you, Your Honor. All
12 right. So we left off at the time when Josh had ran
13 out of the house and seven 911 calls hit the
14 emergency dispatchers within three minutes.

15 Now what is simultaneously going on
16 while these 911 calls come in is you'll remember that
17 Larry Hammond is driving back in Rob's Denali. And
18 they've left the Knox apartment, and they're headed
19 back to the Bryant house.

20 Now during that car ride, Larry Hammond
21 will tell you that Rob got a phone call, and he heard
22 the whole thing. It was a frantic phone call from
23 Kumari Fulbright.

24 Robert answers his phone, and Larry
25 Hammond will tell you. He will take the stand, and

1 he'll tell you that he heard Kumari screaming at the
2 top of her lungs. He got away. Josh got away. He's
3 running. She shot the gun. Conway is running down
4 the street.

5 She is screaming about this, and Larry
6 heard the whole conversation. He heard Kumari ask
7 Rob what is she supposed to do with this gun, what is
8 she supposed to do with the gun. This is the Glock
9 that Josh had in the car.

10 What is she supposed to do with the gun?
11 Josh Conway has run out with Rob's gun, and Kumari
12 has another gun still in the house. She needs to
13 know what to do with that gun.

14 She asks him, what do I do with the gun?
15 And Larry heard Rob Ergonis say, well, put it in the
16 toilet tank. Kumari said, is that a good place to
17 put a gun? Is that a good hiding place?

18 He said no, it's not a good hiding place
19 but, you know, it's a place. Rob told her that if
20 she had shot the gun in the house that the police
21 were going to come, and don't let them in. That's
22 what he told her. That's what Larry Hammond will
23 testify to.

24 So this phone call in the Denali is
25 going on almost contemporaneous with these 911 calls

1 coming in. And what Larry Hammond will tell you is
2 that they, either he or Rob -- I don't remember which
3 -- threw the magazines that he had for his gun --
4 Rob's gun smack out the window, I think, on Tucson
5 Boulevard, just threw that between maybe Speedway and
6 Grant and Speedway and Pima, threw those magazine
7 clips right out the window.

8 And Ergonis stopped that Denali, kicked
9 Larry out. Get out. Larry actually walked back to
10 the Bryant house. That's what happened that night.

11 Now go back to the Knox scene, and this
12 is what Josh Conway's doing. He is running down the
13 street, that hand zip-tied. He's got a gun. He's in
14 his socks. He's dishevelled. He's screaming for
15 help, and he's running down the street yelling for
16 anybody help me, help me.

17 One of these neighbors opens their door,
18 and they're actually terrified to see this guy, this
19 big man with a gun in their doorway. And they don't
20 know what's going on.

21 It's a couple, a husband and a wife,
22 that you'll hear from tomorrow, Gail Frank and Tom
23 Frank, and they're pretty freaked out that somebody
24 is there with a gun at their door. But Tom Frank
25 lets him in, and right away Gail says, put the gun

1 down.

2 And he puts that gun down. He puts it
3 down right away, right on their floor, and he is
4 freaking out that Rob is coming after him.

5 Close the door, they're going to get us,
6 they're going to kill us, close the door, call the
7 police, close the door, and this is the scene at the
8 Franks' house 1201 East Knox.

9 And Kumari's address is 1227, so it's
10 maybe a block, a block and a half down, and these
11 people open the door to Josh Conway. And that is
12 Rob's gun on the floor of their house, his 45 Sig,
13 the gun that Larry Hammond saw the day before this
14 assault that Rob pulled on him.

15 This is Josh's arm. You can see
16 Kumari's bite mark. You can -- once you get up close
17 to these, you can see right here how red -- red,
18 white, red, white -- where that cuff has been pulled
19 and tightened down his arm as he struggled to get
20 that off.

21 You'll see the abrasions on his arm.
22 You'll see how swollen his hand is. That's the
23 close-up of the bite mark. Josh will tell you it
24 took about two years for that to go away.

25 That's the blood in his ear from the

1 knife. These are pictures the police took when they
2 got to the scene.

3 This is Kumari's house. This is what --
4 how the police investigated the case after they went
5 to the Franks' house, and you'll hear the testimony
6 about going into the neighbors' houses.

7 The way the police responded to that was
8 a home invasion because they didn't know what was
9 going on. They knew a guy showed up at the door with
10 a gun, and the people in the house called 911.
11 That's how they responded.

12 And it was pretty traumatic for the
13 Frank family because on a cold December night, this
14 husband and wife and their young son -- I think he
15 was 9 or 10, and they had another middle -- maybe
16 high school aged boy there who was deaf.

17 They come out of the house hands up at
18 gunpoint with a whole mess of police officers who
19 don't know what's going on and want to clear this
20 house and keep it secure. It was pretty scary for
21 them, and that's what they're going to tell you.

22 After the police clear that house and
23 they figure out what's going on, that Josh has been
24 kidnapped, he's got this gun, he explains what's
25 going on, they see the zip ties, they see his

1 injuries, they start treating this like a kidnapping
2 and assault as reported by the victim in the case.

3 Josh tells them what happened, where it
4 happened. Police get a search warrant for Kumari's
5 apartment. This is what they find. This is what it
6 looks like.

7 This is the hallway that he's ambushed
8 in. The top right is her bedroom. This is another
9 room in her house. This is the scene of where Josh
10 was held hostage in the living room sitting on the
11 floor by that lamp, moved around in various
12 locations.

13 This is the evidence that you're going
14 to see of how the Knox house looked, more chaos at
15 her apartment, and here is the bullet in that top
16 right corner.

17 You see it in the wall, the shiny spot,
18 Evidence Item Number 16 that the case detective who's
19 sitting right behind Mr. Jette, Steve Harn, he and
20 another detective took -- did the search warrant and
21 retrieved the evidence that's marked. You'll see it
22 in court.

23 And on the right side is the knife, that
24 knife that she stuck in his ear, threatened him with,
25 Evidence Item 3. Now ultimately four defendants are

1 arrested.

2 The first one is Kumari. She's arrested
3 that night at the house. Police ultimately have to
4 pull her out of the window. She took Rob's advice.
5 She's not coming out. They searched the house.

6 Once that house is cleared, Josh has met
7 several times with the detectives to give statements.
8 He takes the detectives over to the Bryant house
9 because he knows where it is.

10 When they get to the Bryant house and
11 search it, Larry Hammond is still there. Larry
12 walked back to the Bryant house. He's still working
13 on Rob's house. He's just kind of hanging out. He
14 gets arrested there.

15 Two months later is when Rob Ergoni s
16 gets arrested, and about a month after that is when
17 Radde gets arrested. And all four are in custody by
18 -- or arrested by police by March 13th of 2008.

19 This is how Kumari looked the night she
20 was arrested when all this was going down. Now this
21 is the search warrant from Bryant. This is the place
22 where Josh is down on the ground, duct taped.

23 This is one of the bedrooms, and the
24 next slide will show the room. This is the room that
25 they took him into.

1 It's empty and you can see up here --
2 you'll see it better on the next picture, but right
3 up here is the roll of the duct tape, right here and
4 right there, and there's a close-up, Evidence Item
5 Number 29 that the police took, the tape up on top
6 and then the tape that they had to pull off his legs
7 so he could walk.

8 Now I told you that when Hammond was
9 arrested that he cooperated with the State fairly
10 immediately. He gave a statement to Detective Harn.
11 He described to police the hide the gun phone call
12 that was in the Denali, and that was really important
13 because it helped police identify phones that were
14 associated with Rob.

15 He gave a second statement. It's called
16 a free talk where he's trying to negotiate a plea
17 with the State, but he needs to come forward and tell
18 the whole version of events. He does that on
19 January 18th.

20 And since that time, he's done pretrial
21 interviews with two defense attorneys in this case,
22 Mr. Gattone and also Ms. Fulbright's attorney.

23 Now the rest of this is kind of
24 chronological about how the police followed up the
25 investigation after both houses were searched the

1 night of the offense on December 8th. They've got
2 the Sig gun in evidence, but that Glock is missing.

3 This is the Glock that Kumari was
4 talking about putting in the toilet tank. That Glock
5 showed up from an attorney here in Tucson who's going
6 to testify.

7 His name's Tom Hartzell. He's a local
8 defense attorney, and he had a conversation with
9 another attorney, Mike Storie, who one of the clients
10 that he has is the Tucson Police Officer's
11 Association.

12 And Tom called Mike Storie and said,
13 I've got some evidence in this case. It's in the
14 trunk of my car. What do you think I should do?

15 Well, that was an easy call for Mr.
16 Storie. He said to turn it over to the police, and
17 Mr. Storie made arrangements for the police to come
18 to this attorney's office to get this gun.

19 And this is -- you'll see the date.
20 January 14th is when this happened. It's more than a
21 month after the search warrant at Kumari's house, and
22 this is what happened when Detective Harn went over
23 to Tom Hartzell's office.

24 Tom Hartzell pulled out a gun that was
25 in a plastic bag that was still wet. It still had

1 water on it. That gun came out of the toilet of that
2 house. Police missed it. That's what happened.

3 Now one other witness that you'll hear
4 from, and this is chronologically in the way the
5 investigation went, is Heather Cannon and she -- she
6 was arrested with Rob in February.

7 And she'll tell you that these were some
8 of the things that Rob admitted to her, that he said
9 he had tied up Josh, that he had left his gun with
10 Fulbright, that he told Fulbright -- told Kumari
11 point the gun at Conway, make sure that she had the
12 power in the house while he was gone and that he was
13 on the run because he knew his gun was at the scene.
14 She'll tell you that.

15 Now this is how police identified Radde.
16 I showed you the picture of Kumari when she got
17 arrested. This is the picture of Dave Radde in the
18 bottom right, Number 4 -- I'm sorry, bottom left,
19 Number 4. That's how he looked when he got arrested.

20 And that's the lineup that Josh Conway
21 picked him out of when he was arrested in March of
22 2008.

23 Now meanwhile what police are doing is
24 trying to develop evidence to connect these people,
25 objective evidence to connect people besides

1 statements and --

2 MR. GATTONE: Your Honor, I'm going to
3 object to these, also. These have not been admitted
4 into evidence. We've not admitted -- I believe it's
5 highly inappropriate to show these. We have
6 objections to these.

7 THE COURT: Is it possible to move on?
8 And I'll sustain my earlier ruling.

9 MS. ORTIZ: The police had subpoenaed
10 records and done investigations to connect phone
11 records of the defendants. The victim had already
12 given his phone records to the State.

13 The State had subpoenaed Kumari
14 Fulbright's, and she will testify about those. They
15 started working to connect these subjects from the
16 investigation.

17 They identified two phone numbers
18 associated with Rob. One is a 313 number, and the
19 second one is a 520 number.

20 Now the 520 number police were able to
21 identify based on the 20 -- the 13-minute phone call
22 in the car when the 911 calls were coming in that Rob
23 had with Kumari, the 13-minute call where she's
24 freaking out about what to do with this gun, the gun
25 went off, Josh escaped.

1 That's the phone call that tracks with
2 Kumari's cell phone because her phone number has her
3 account, her name on it. That's how the police
4 connected that phone call.

5 And they also identified Dave Radde's
6 number 661-0753, and they will tell you that. And
7 Dave will also tell you that.

8 These are just an idea of how these
9 people were talking to each other between
10 December 1st and December 14th, many phone calls
11 between Kumari and Rob, both on his 313 number and
12 also on his Tucson number, his 269 number.

13 He also has the same pattern of calls
14 with Radde and Ergonis on the 269 number and then
15 after the offense phone calls from Radde to Ergonis
16 who were both fugitives at that time -- neither one
17 of them had been arrested -- on December 9th and on
18 December 11th.

19 And the next slide will show you just on
20 the day of the assault all of the phone calls that
21 these three defendants had with each other. Rob's
22 red, Dave's green and Kumari's yellow. Those are all
23 the phone calls that they started at 6:06 in the
24 morning up to 22:57.

25 And that's that call at 10:57 when the

1 911 calls are going off, going into the dispatch that
2 Kumari had with Rob where he told her what to do with
3 the gun.

4 Now Larry Hammond pled guilty early in
5 the case, five months out, 5/12/08. He pled guilty
6 to aggravated assault with a deadly weapon.

7 Dave Radde pled guilty a year later,
8 April 7th, 2009. He pled guilty to conspiracy to
9 commit kidnapping and he -- his plea said that he
10 conspired with Kumari Fulbright and Robert Ergonis to
11 kidnap Josh Conway.

12 Kumari has pled guilty on December 8th,
13 last year. She pled guilty to two counts, conspiracy
14 to commit kidnapping with Robert Ergonis and Dave
15 Radde to kidnap Josh Conway.

16 She also pled guilty to aggravated
17 assault against Josh Conway, deadly weapon/dangerous
18 instrument using a knife. All three pled guilty.
19 All three will testify here in court.

20 Now what happened to Josh is
21 unconscionable. Nobody should have to endure that
22 kind of violence, but he was also violated in a
23 different way after all of this happened.

24 When Josh escaped with his life the
25 night of December 8th, he took off from Arizona. He

1 was afraid of Rob. He wanted to get out of here. He
2 moved back east. He happened to move to Boston to
3 start over.

4 And in less than two weeks after this
5 attack, he had a job. This is before Christmas even,
6 and he had a gun. He had gotten a gun for
7 protection, and he had it in his jacket on his very
8 first day of work at his new job hung up in the
9 employee section, showed up for work, starting over
10 but afraid.

11 He doesn't know where Rob is. He knows
12 who Rob is. He knows what he's capable of, and he's
13 afraid. Well, big difference between Arizona and
14 Massachusetts. You can have a gun in Arizona. It's
15 not against the law.

16 You cannot have a firearm in
17 Massachusetts. It doesn't matter who you are. If
18 you have a gun, you're going to prison. That's what
19 happened to Josh Conway.

20 He was charged with a mandatory prison
21 for firearms possession in Massachusetts. Now this
22 Arizona victim has already pleaded guilty to felony
23 firearm possession in Massachusetts.

24 He has already served prison time on
25 that just for having a gun to protect himself, and he

1 is still on probation as he sits here right now. The
2 State Attorney General's Office had to get special
3 permission from Massachusetts to allow him to come
4 out here to testify in this case.

5 So this is what happened to Josh after
6 he fled Arizona, and he'll tell you about it. So
7 what is this about? What I asked you in the
8 beginning, what is this about, why was Josh going to
9 die in the desert that night?

10 Well, it seems like it's about a Rolex
11 and two diamond rings, and I want you to think about
12 what Josh thought about. This is what's in his head.

13 You're going to die in the desert
14 tonight. You can tell anybody our names. You're not
15 going to live from it -- you're not going to live
16 through this. If we're going to kill you, we're not
17 going to do it here.

18 Now this is just a case about senseless
19 violence. And what's the motivation? Jealousy?
20 Greed? It doesn't really matter. What they did is
21 against the law in Arizona.

22 At the end of this trial, you will have
23 more than enough evidence to find him guilty of all
24 charges.

25 THE COURT: Mr. Gattone?

1 MR. GATTONE: Thank you, Your Honor.
2 Well, members of the jury, the only way that you're
3 going to hear that story is if Ms. Ortiz gets up on
4 the stand and testifies herself, because otherwise
5 that's not what happened.

6 You know, it's difficult. I'm going to
7 use an old school PowerPoint. During the time that
8 Ms. Ortiz was giving her opening statement, she kept
9 saying maybe, maybe this, maybe that, maybe they
10 thought this, maybe they thought that.

11 Well, I'm a little bit confused because
12 when His Honor talked to you in the beginning last
13 Thursday or last -- I don't even remember when we
14 picked you -- I'm sorry, Thursday, he told you that
15 your responsibility was to come in here and make a
16 determination of guilt beyond a reasonable doubt, not
17 guilt because maybe something happened, not guilt
18 based on speculation as to what someone was thinking,
19 what someone was planning.

20 But if there's going to be a finding of
21 guilt in this case, it's got to be because of the
22 evidence that was presented to you and not based on
23 conjecture, not based on speculation, not based on
24 rumor. That's not the case.

25 As His Honor told you, as Robert Ergoni s

1 sits here today, he's innocent of all charges until
2 proven guilty beyond a reasonable doubt, and I always
3 start off with this because it's so important.

4 We talked a little bit when we -- during
5 the jury -- when we were picking you all about those
6 TV shows; right? You know, the TV shows, the cop
7 shows, the lawyer shows, CSI and all of those.

8 And I told you that my perception of
9 those shows is that these are the good, honest people
10 and that these are the bad, sneaky people, and
11 especially those defense attorneys in their fancy
12 J.C. Penney suits. They come up and they try to pull
13 the wool over your eyes.

14 And a lot of times when I come up and I
15 start talking about guilt beyond a reasonable doubt,
16 I see one or two jurors who start rolling their eyes.
17 Oh, my gosh, here it comes, that technical stuff
18 that's going to trip us up.

19 Well, I didn't make that up, and that's
20 not a technicality. That's the Constitution, and
21 it's the law. And it's what you're sworn to uphold.

22 So we are going to hear evidence in the
23 case, and we cannot abide by maybes. We have to know
24 beyond a reasonable doubt what happened.

25 You know, I have to agree with Ms. Ortiz

1 that some people in this case had plans. There were
2 a lot of people with plans in this case. Rob Ergoni s
3 was not one.

4 Do you know who had plans? The
5 princess, Ms. Fulbright, the beauty queen, the center
6 of the universe. You saw the picture of her.

7 I've seen a lot of pictures of her.
8 They're all about Kumari, the package that is Kumari,
9 and Kumari's used to getting her way and Kumari's
10 used to having people serve her.

11 Kumari is supposedly a law student. She
12 has a personal assistant and a maid, but she's so
13 broke she's got to sell her jewelry. Can you
14 imagine?

15 She still has that. She's jetting
16 around the country. She's going to beauty pageants.
17 She's flying to Hawaii on thanks -- or flying away on
18 Thanksgiving as a law student, but she's so poor that
19 she's got to get her boyfriend -- ex-boyfriend to
20 sell her jewelry. Speculative. Speculative.

21 Yeah, you're going to hear that she got
22 jewelry from Rob Ergonis. She and Rob were involved
23 in a long-term relationship, and he cared about her.
24 And she's high maintenance, and he did his best to
25 keep up with it; right?

1 And he did lavish her with a lot of
2 expensive gifts, gifts that she apparently, you know,
3 didn't think much of because she left them all over
4 the place.

5 And Mr. Conway, when he's talking about
6 -- to the police about it, he's saying, yeah, she
7 just left them here, left them there. I was like,
8 you should have them in a safe, you should have them,
9 you know, put away somewhere.

10 Kumari was just really flip about this
11 because she's Kumari. She's the princess. And yes,
12 she had a plan.

13 And you know who else had a plan? Mr.
14 Conway who I like to call the player, who comes in.
15 He's so innocent, but you know what's interesting is
16 Detective Harn when he spoke to Mr. Conway on the
17 night of the alleged kidnapping said to him, you know
18 what? 98 to 99 percent of the people who tell me
19 they were kidnapped are not innocent.

20 He said that a couple of times to him
21 because Detective Harn was starting to have his
22 suspicions. What's this all about? This guy comes
23 in and says, you know, if I was the kidnapers, I'd
24 do this. Well, if I was the kidnapers, I'd do that.

25 Detective Harn's like, what? What are

1 you talking about? You supposedly were kidnapped.
2 There's no demands made. Nothing. What did they
3 want? Well, he starts coming up with this story.

4 You know, how does Kumari know Mr.
5 Conway, as I said the player? Well, she's in this
6 beauty pageant circuit here in Arizona, beautiful
7 young women, you know, trying to stay real slim, you
8 know, prancing around up on the stage, and she knows
9 him because he had a girlfriend who was a beauty
10 pageant queen and because she knows him from selling
11 drugs to the pageant contestants, selling Adderall to
12 them, helping them stay jacked.

13 And she has this connection. They know
14 each other and Mr. Conway who -- you know, this
15 innocent guy, kind of glossed over counsel that one
16 of the guns that was supposedly involved in this was
17 his gun, that he rode around in his BMW with a gun, a
18 40 millimeter Glock pistol.

19 You're going to tell -- I just had it
20 for self-defense. Well, he ran out and got another
21 one in Boston because apparently he likes guns, and
22 you're going to hear about how he took Kumari out one
23 time and showed her how to shoot at a pistol range.

24 So they had this relationship, and the
25 princess is jetting in and out of town; all right?

1 She's carrying on with her lifestyle even though she
2 supposedly is this poor law student. And she notices
3 over time some of this jewelry that she leaves laying
4 around is missing. She can't find it, some of the
5 expensive jewelry that Rob has given her.

6 Rob and her broke up. They had a
7 long-term relationship. One time -- at one period,
8 they were engaged, and they broke up.

9 The princess went on her way, right, but
10 maintained connections because that's the way Kumari
11 is; right? She needs people to take care of her;
12 right? Rob took care of her. This guy doesn't take
13 care of her. She's got to have people to take care
14 of her. That's what she does.

15 She notices that some of her jewelry is
16 missing, and she starts to have some suspicions that
17 maybe Mr. Conway had something to do with it because
18 he's got a key to her house. He comes in and out of
19 the house.

20 And then when he's talking to the
21 detectives on the night of the alleged kidnapping,
22 he's just all over the place. Gosh, I went in one
23 time, and these little figurines were knocked down,
24 didn't say anything to the police on that occasion
25 about suspecting Rob.

1 I thought she was burglarized, but it
2 didn't look like a conventional burglary. I tried to
3 tell her you can't just leave the jewelry laying
4 around. He came in a couple times, Mr. Conway, to
5 her house supposedly to check on her house for her
6 when -- when she was on one of her trips out of town.

7 And she notices that some jewelry's
8 missing, and she thinks it's him. As a matter of
9 fact, he told the police that's why they broke up
10 because she suspected him and accused him of stealing
11 her jewelry.

12 And what does she do when the jewelry is
13 missing? She goes back to Rob who has broke up with
14 her. And Kumari Fulbright told us and she'll tell
15 you that she said that she blackmailed Rob into
16 helping her out, blackmailed Rob by saying, look, I
17 know some bad stuff about you and I'll tell and I'll
18 go in and sabotage your child custody if you don't
19 help me.

20 So Kumari's got a plan. Mr. Conway's
21 got a plan; right? Mr. Conway -- she believes that
22 he took the jewelry and he sold it. And he went up
23 to Phoenix. He went up to Mesa to pawn it.

24 Fascinating because when -- Detective
25 Harn when I spoke with him, Detective Harn said, you

1 know when people steal stuff, usually they want to
2 disassociate themselves with it or not -- I'm sorry.
3 Detective Ralston said this. They'll disassociate
4 themselves with it. They'll usually get somebody
5 else to sell it.

6 I said, well, that always happens?
7 Unless they're not very smart, he said. I said, how
8 about if they take the jewelry to another location,
9 like to Phoenix an hour and a half away, to Mesa an
10 hour and a half away, would that be disassociating
11 yourself? He said, yeah, that would be.

12 So Detective Ralston in his own
13 experience, you steal something, you take it, you
14 pawn it somewhere else, and you pawn it if you want
15 fast money because they said that Mr. Conway admitted
16 on that night that he owed a debt to someone of
17 \$16,000, a drug debt. And he needed that money, and
18 there was that jewelry and there was his opportunity.

19 He had a plan. Kumari had a plan. I'm
20 going to tell you about the plans of those other
21 three, four characters in a couple of minutes.

22 So you've got this night in question.
23 Supposedly there's planning; right? Well, I want to
24 tell you something. We hear all this about going to
25 the desert and you're never going to live the night.

1 This is not a murder case. This is not
2 an attempted murder case and we're going to have --
3 really be stretched to hear that from anybody other
4 than Mr. Conway who, again, has been accused of
5 stealing jewelry and taking it up to Phoenix, to Mesa
6 to sell.

7 And Mr. Ellertson, yeah, he's got a
8 clear memory, and it's so amazing. It's amazing, but
9 what's amazing is that when he talked to the Mesa
10 Police when they were first investigating it, he
11 didn't tell them that Mr. Conway came in twice. He
12 only remembered that when he was being interviewed by
13 Kumari's first attorney.

14 Oh, yeah. And Mr. Ellertson, he
15 remembered that because he's just an outstanding
16 individual, the guy who referred to me as hey, chief,
17 you know, says -- Mr. Ellertson says to me, have you
18 ever been raped? And I said, I'm sorry, what?

19 That's what Mr. Ellertson believes, that
20 losing his -- this jewelry because the police came
21 and took it away was like getting raped. That's what
22 Mr. Ellertson said, the one, fine, upstanding
23 individual who's going to come in and testify about
24 the pawn shop and how 350, 400 people a month come
25 into that pawn shop.

1 But he remembers this one because this
2 guy came in looking good; right? Of course. You
3 don't come in wearing gym shoes and whatever if
4 you're going to sell stuff. You don't want
5 suspicion. Come in looking good. You come in
6 looking good, and that's true if you're a crackhead.
7 You come in. You sell it for five bucks.

8 But he negotiated and, again, now Mr.
9 Ellertson remembers two days. And about this phone
10 call, fascinating phone call, Mr. Ellertson says,
11 yeah, he's talking on the phone.

12 He tells Mr. Weiss who's Kumari's first
13 attorney, I couldn't hear who he was talking to, but
14 I assume it was a female because he's saying, hey,
15 baby, hey, honey.

16 But for me all of a sudden when I'm
17 interviewing him a couple weeks ago, yeah, yeah,
18 yeah, he remembers everything.

19 Why? Because Mr. Ellertson wants that
20 jewelry back, and the way he gets it back is by this
21 case being over, by Rob being convicted. He gets his
22 jewelry back, the guy who believes that losing \$2200
23 is the same as getting raped.

24 He wants his money back, so he's going
25 to say whatever he has to say. Mr. Ellertson, he's a

1 nice guy. You'll like him a lot. At the end, I said
2 to him, you better not carry on like that in front of
3 Judge Miller because he's not going to like you. He
4 says, don't worry, Chief. Everyone loves me. Yeah,
5 he's going to be great.

6 So we've got this incident that took
7 place on December 8th and supposedly, my gosh, there
8 was beatings and torture, and it was just horrendous.
9 You've got -- you supposedly -- Kumari -- yeah, she
10 had a plan. She supposedly makes this plan; all
11 right?

12 She's going to go in, and she's going to
13 tell Mr. Conway to come over; right? And she's going
14 to come over, and then these people are supposedly
15 going to jump her.

16 Well, supposedly when Mr. Conway first
17 saw these individuals, he said he didn't even know if
18 it was Mr. Ergonis or not. And throughout the time,
19 he identified Mr. Ergonis' brother as the other
20 individual who was supposedly there that night.

21 Well, it turns out Mr. Ergonis' brother
22 was in Detroit, had an airtight alibi. Turns out Mr.
23 Conway when he was in and out of these houses, he saw
24 some pictures of Mr. Ergonis and his brother at
25 Kumari's house, and he's been in the house by himself

1 sometimes. So in his mind, oh, that's the other guy,
2 Joe.

3 It turns out it wasn't Michael Ergonis
4 at all. It was Dave Radde. Dave Radde is the
5 muscle. Dave Radde is the muscle. Dave Radde had a
6 serious accident some years ago, and he has a
7 prosthetic. One leg is shorter than the other.

8 That's why he has this big, long shoe
9 on, but he's the muscle. He'll tell you about some
10 other physical limitations he has, but he's the
11 muscle.

12 Mr. Radde and Mr. Ergonis are friends,
13 but that's probably unfortunate because Dave Radde is
14 not a nice guy. Dave Radde's going to come up here,
15 and he's going to tell you how everything went down
16 because he's so honest, been in prison in California.

17 He's been in prison in Arizona. He's
18 been in prison all over the place. And when they
19 picked up Mr. Radde that night, the night that he was
20 arrested, they found all sorts of drugs in his house.

21 So that's Mr. Radde, but he's willing to
22 come in. He's going to cut a deal. Why do people
23 cut deals in these cases? To keep themselves from
24 having to sit there, because they know that they're
25 going to get a good deal as long as they say what

1 needs to be said.

2 And that's what Dave Radde is going to
3 do. He's going to come in and try and save his
4 behind.

5 And Kumari, oh, Kumari, the princess,
6 the person who set this all into motion who had her
7 plans, who believed she could do what she wanted and
8 get people to do her will and skate, and she got a
9 good deal.

10 She'll tell you about it, saved her
11 behind. And I don't think princesses do really well
12 in prison. There's no jewelry. There's no -- you
13 know, can't get massages, can't go to Las Vegas. You
14 can't do any of those things when you're in prison.

15 Kumari's already planning. You know,
16 she's trying to work a deal for a reality show.
17 She's going to write a book. Kumari will be okay.
18 That's what happens to princesses.

19 So supposedly on this night in question,
20 they take Mr. Conway; right? They take him and they
21 take him away. He says -- he told the police that
22 night, I told them take me away, take me away, just
23 take me away from here; all right?

24 So they take him over to this Bryant
25 house. And at the Bryant house, who do we come in

1 contact with? Mr. Hammond. Notice nowhere in that
2 did it say his moniker that a lot of people knew him
3 by, Crackhead Larry, Larry Hammond, the crackhead,
4 the admitted crack user crackhead.

5 And where do we get the Crackhead Larry
6 from? Mr. Conway described him as a crackhead, and
7 Mr. Conway said that Larry admitted that night when
8 they had contact that he was a crack user.

9 Crackhead Larry is going to come in and
10 tell you all the truth because he's such a fine,
11 upstanding citizen who's got his own problems with
12 the law and who's got a nice criminal record and who
13 gets caught in something bad, starts talking before
14 he's even charged.

15 He starts talking before he's even
16 charged. Is he talking because he's -- out of a
17 sense of altruism? Oh, heck no. He's talking
18 because he wants to save his crackhead butt. That's
19 what he wants. Sorry, behind. He wants to save
20 himself.

21 And what happens? He gives what they
22 call a free talk. As a general rule, a free talk is
23 what you get to talk to the police and the
24 prosecution and what you say can't be used to convict
25 you or to punish you unless you lie to them; right?

1 So before Hammond talks to the
2 prosecution, gives his free talk, he gets all the
3 evidence in this case. He gets police reports. He
4 gets copies of Mr. Conway's statements to the police.
5 He gets prepared to make his statement.

6 And this is, again, before he's even
7 charged, before the disclosure which is -- you know,
8 the parties have to give things to each other. So
9 this is supposed to be what Mr. Hammond knows, and
10 he's getting coached. He's getting prepared.

11 And this is going to be good because
12 he's got to save himself. He wants to save himself
13 immediately. Wrong place at the wrong time, that's
14 interesting. That's very interesting.

15 Larry just wanted out. Larry didn't
16 want to be a part of this. Well, that's interesting
17 because supposedly when they took Mr. Conway back to
18 the Knox house to Kumari, well, this is the
19 interesting part.

20 You want to talk about torture. The
21 only person that did anything physical to him was
22 Kumari Fulbright. Oh, supposedly Dave Radde kicked
23 him when they first met him, and Radde says that.

24 When they bring him -- Conway -- back to
25 the Knox house, Kumari goes ballistic, and it wasn't

1 after she was alone with Larry. She goes nuts. She
2 wants to kill him. Yes, she does. She says, I want
3 to kill him. She starts biting him.

4 Kumari goes out to his BMW, finds his
5 pistol, finds his briefcase, finds his book, "How to
6 Win Friends and Influence People." Yeah, she smacks
7 him with it. She smacks him with it. She bites him.
8 She puts a knife in his ear.

9 And you know what? Mr. Conway tells the
10 police that night, he says, Rob was actually pretty
11 cool. Rob didn't do that stuff to me. Rob actually
12 told Kumari, knock it off, Kumari, you're not going
13 to hurt him, stop acting like that, you're not going
14 to kill him, that's ridiculous.

15 He tells the police that Rob was pretty
16 cool, tried to calm Kumari down, but she is in a
17 tizzy; all right? She's just off the wall.

18 She planned this. She carried it out.
19 She's the one that manipulated people and blackmailed
20 people into getting involved.

21 She's the one who did it, but she's
22 going to come in. You know, she already got a
23 smoking deal, and she's off on her way.

24 So Mr. Hammond, right, he's over there
25 at this house. Supposedly they're torturing Mr.

1 Conway. Well, the only one, again, who -- that they
2 connect -- having any DNA connecting the two of them
3 is Kumari because she bit him multiple times. She
4 hit him, bit him, put her nails into his neck, put a
5 knife in his ear. She did. She did. He did not.
6 He didn't do any of that.

7 We have Larry Hammond who says, I just
8 wanted to leave, I was in the wrong place at the
9 wrong time, Larry Hammond who on four occasions when
10 they're at the Knox house is given the keys to the
11 car and he goes to run some errands.

12 But you know what? He comes back every
13 time, doesn't split, doesn't go to the police. He
14 comes back. Rob wanted a phone card. Larry went out
15 and got some candy and ice cream.

16 Larry went out and got some beer and
17 came back, went to Fry's three or four times, didn't
18 go to police, didn't go to the phone, didn't go home,
19 didn't disappear. He came back. Larry came back.

20 And at one point, yeah, Rob and Radde
21 left, and Hammond's the one sitting there with the
22 gun. He'll tell you, Conway said will you shoot me
23 if I try to leave? And he said, you shouldn't move,
24 but Hammond's in the wrong place at the wrong time.

25 It's kind of interesting, too. They're

1 supposedly torturing him, having some sort of torture
2 party over at Knox, but they ordered pizza. Mr.
3 Conway ate some of the pizza; right? They had pizza
4 delivered to the house; right?

5 People are coming and going. They're
6 sitting there watching the Heisman Trophy show
7 chatting about it, chatting about it. And we have
8 all this information that you're going to hear;
9 right? All this information.

10 And at the end -- so then Rob leaves,
11 supposedly takes Larry Hammond, leaves Kumari there.
12 Yeah, Kumari's been drinking. She's just, you know,
13 out of her mind. That's Kumari.

14 She's out of her mind with anger, and
15 she wants revenge. She's the one who planned this
16 and set it into motion.

17 And you've got to talk about -- you
18 know, we know that there's specific elements of each
19 offense, and His Honor told you a little bit about
20 them in the beginning. Kidnapping requires proof
21 that the --

22 MS. ORTIZ: Your Honor, I'm going to
23 object that counsel's arguing law.

24 THE COURT: Sustained as to the actual
25 instructions on that point.

1 MR. GATTONE: Okay. Thank you, Your
2 Honor. Well, you've had -- you had the preliminary
3 instructions. And so the -- what your responsibility
4 is to put the facts to the law.

5 And no matter how bad something looked
6 or sounded, unless it fits those elements of the
7 offense, it's not a crime.

8 Oh, I forgot someone. I forgot Heather.
9 Heather's going to come in and talk about Rob, too.
10 Well, Heather is an interesting individual, too,
11 because Heather has had her own problems, drug use,
12 drug addiction, drug charges, felony drug charges
13 that she went warrant on.

14 She's another one, too, who's willing to
15 talk, talk, talk, talk, talk to get themselves in a
16 better position. When we talk -- when we spoke to
17 Heather a few weeks ago, you know, luckily things
18 have gotten better for her. She has moved on some in
19 life.

20 And her big concern -- you know, Rob's
21 on trial, maybe facing prison time. Her big concern
22 was when -- when she got arrested, they took a Louis
23 Vuitton bag from her. She wanted that back. She
24 wants that back.

25 She's kind of like some of the other

1 folks here that had their -- you know, their own --
2 what they want, and what they want is what they want.

3 So this case -- give me a second because
4 I know I missed a couple of things. Could I have
5 just a moment, please, Your Honor?

6 THE COURT: Yes.

7 MR. GATTONE: So anyways, you know,
8 there's got to be a lot of people that are going to
9 testify and a lot of the police officers.

10 As I said, the police officers talked to
11 the -- Mr. Conway. Gosh, Mr. Conway talked to the
12 police like six or seven times over the space of, I
13 don't even know, a couple of years.

14 And one thing that was fascinating as
15 you'll see is that he made all these statements, and
16 then he got an opportunity to go back and correct the
17 statements, make some changes. I didn't mean to say
18 that, I didn't say that.

19 You know, they talked to him so many
20 times. As I said, one of the times he misidentified
21 the other person. He thought Dave Radde was Michael
22 Ergonis because he saw some pictures of Mr. Ergonis
23 at Kumari's house.

24 Well, again, Mr. Ergonis and Ms.
25 Fulbright were in a long-term relationship.

1 Sometimes exes still have pictures of each other at
2 their houses whether they like it or not, but that's
3 supposed to be some sort of connection.

4 So Kumari is left alone at the house;
5 all right? She's the one who keeps saying I want to
6 kill him, I want to kill him. She's the one who says
7 those things.

8 She's the one that's making those
9 threats, and she's left alone with him and -- with
10 Mr. Conway. And he gets away.

11 He told the police that he was
12 pretending to slide on the floor trying to like
13 disarm her, right, make her laugh. Look, I'm a fish
14 out of water, and she laughs.

15 Then he grabs her; right? And they have
16 this struggle. Again, that's on Kumari. And what
17 does Kumari do afterwards? Supposedly she freaks
18 out, and she calls Rob because, again, that's what
19 Kumari does. That's what the princess does; right?

20 She's got to look to someone to clean up
21 her mess. She got into a mess. She connected
22 herself with someone who stole her jewelry, and now
23 she needs someone to clean up the mess.

24 She comes up with this plan. The whole
25 plan that Kumari came up with is falling apart, and

1 now she needs Rob to try to fix something else; all
2 right? That's what she does. She manipulates
3 people.

4 As I said, I called them the princess
5 and the player, people that manipulate each other to
6 try to get what they want, and we end up at this
7 point.

8 As I told you, Larry Hammond's going to
9 come in. Larry's going to say what he says because
10 Larry -- I'm glad for Larry, too. He turned his life
11 around. He wants to put this behind him, and he'll
12 say what he has to say to get there.

13 He told us in an interview that he would
14 bend the truth if he thought it was necessary for him
15 to protect himself. To protect him or the people he
16 cared about, he would bend the truth.

17 And, again, Dave Radde, we did an
18 interview with him, and he referred to somebody as a
19 scumbag. And I just -- as a joke, I said, like you?
20 And he said, yeah, like me. Dave Radde, the crippled
21 guy, he's the enforcer and the muscle.

22 Rob did know him. That's unfortunate
23 that he knew this guy and had some connection to him.
24 And as I said, Kumari -- Kumari's the interesting
25 character. It's going to be interesting having her

1 on the stand. She's all over the place.

2 When Kumari changed her plea, her
3 attorney at the time went through this whole big
4 litany of facts basically placing everything on Rob.
5 And when the Judge at the time -- a different judge
6 -- said to her, do you agree with what you're -- with
7 what your lawyer said, she said absolutely not. She
8 said absolutely not.

9 And when we interviewed her, they talked
10 to Kumari for so long. It took so long to have the
11 police and the prosecutors talk to Kumari to get her
12 to say what they wanted her to say that Rob did this
13 and Rob did that.

14 When I talked to her, she was in custody
15 at the time. She had a different lawyer, and the
16 story had changed. She said, I called up Rob. I
17 just said here's what I want or here's what I need.

18 We didn't have any plans to hurt
19 anybody. We didn't have any plans to have any
20 weapons, wanted to find out -- she wanted to find out
21 where the jewelry was. That's what she says the
22 whole plan was, and she got these other people
23 involved.

24 She wanted to know if he had stolen the
25 jewelry. And supposedly there's a robbery. That's

1 interesting, too. Kumari's the one who goes out to
2 the car -- to the BMW and comes back with his gun;
3 right?

4 And his wallet actually turns out --
5 Kumari comes out of the bedroom at one point and
6 says, look what I found. She had the wallet there.

7 And he tells the police, I think I had a
8 money clip. I think there was two, three hundred
9 dollars in it, I don't remember. Supposedly they
10 took earrings out of his ears that he said, I paid \$8
11 for those or something.

12 Kumari wanted information. She
13 manipulated people to help her find information, and
14 what she did was what she did. That's what she did;
15 all right? She wanted to hurt him, and Rob wouldn't
16 let her.

17 Kumari had a gun. She's pointing it
18 around. Larry Hammond told me, wow, man, it was
19 crazy. I was scared. Kumari's running around.
20 She's got, yeah, a bottle of vodka in one hand and a
21 gun in the other, and he was scared.

22 But, again, Larry Hammond is alone in
23 the house with Kumari. Larry who's supposedly in the
24 wrong place at the wrong time just wanted to leave,
25 and he doesn't leave.

1 He's got the gun. He's got a gun, but
2 he doesn't leave. He stays. Now he's going to get
3 up on the stand and tell us everything that went
4 down.

5 Kumari, when they arrest her, they take
6 her into custody, and she does what she has a right
7 to do. She invokes her right. She's not going to
8 talk, but she says he stole my jewelry and he tried
9 to kill me about Mr. Conway; all right?

10 And then like I said, she had a lot to
11 say afterwards. And at one point when she's talking
12 with me, you'll see that the prosecutor is
13 threatening to take away her plea offer because
14 Kumari is changing the story and saying, you know,
15 there wasn't this big plan, didn't do this, we didn't
16 do that.

17 We have to stop that interview and come
18 back another time, all right, because she's got to
19 get it straight. And even when we came back, Kumari
20 will still say that she forced him, forced -- coerced
21 him, blackmailed Rob into doing her bidding because
22 that's what Kumari does.

23 It's frustrating when, you know, you see
24 this about these co-defendants and they're all facing
25 this and they're all facing that. Now we're supposed

1 to believe that those guys did the honorable thing.

2 They took a plea. Well, they did it
3 because there was a benefit to them, but the benefit
4 comes with a price.

5 You have to get on the stand, Mr.
6 Hammond. You have to get on the stand, Mr. Radde.
7 You have to get on the stand, Ms. Fulbright, and they
8 have to testify. And they have to say what they're
9 supposed to say to get a conviction.

10 Kumari hasn't been sentenced yet,
11 waiting to see how things play out. Dave Radde with
12 his long, long, long record is just going to do a
13 little bit of time.

14 And Hammond's already -- you know, he
15 made his deal right quick. The first night they say
16 to Hammond, who are you protecting? We think you're
17 protecting someone. Oh, no, you know, and then they
18 -- shortly thereafter they're getting the story
19 straight.

20 You know, I want to finish my story with
21 that last part about Mr. Conway and Boston. It's
22 interesting. Mr. Conway goes to Boston. He gets a
23 gun.

24 Well, again, we know he likes guns.
25 When he's rolling around Tucson, he had a 40 caliber

1 pistol with him at all times. He's had it for
2 protection. Against who I don't know, maybe the same
3 people that he stole the jewelry to give the money
4 to.

5 He goes to Boston. He gets a gun. He
6 says, oh, I was afraid of Rob Ergonis. I had to flee
7 for my life. I had to get a gun.

8 What's fascinating is we'll see some of
9 the court papers that he and his attorney were going
10 to say that he had to do this. He had to break the
11 law and get a gun.

12 And Mr. Conway swears in an affidavit
13 that says under penalty of perjury, he says that
14 Detective Harn told him get out of town and get a
15 gun.

16 Well, when I interviewed Detective Harn,
17 I said, did you tell him to get out of town and get a
18 gun? He's like, no, I did not. So that's a lie
19 under oath in court documents Mr. Conway made.

20 And he went to prison in Boston because
21 he broke the law, and he's been punished enough.
22 That's what you were told. He went to prison in
23 Boston because he broke the law, and he got a pretty
24 good sentence, too, because the State got involved.

25 The prosecutors here got involved, sent

1 e-mails, got him a good deal. He went to Boston. He
2 broke the law, got a gun because he likes guns and
3 lied in court.

4 He's the innocent victim now, and Rob
5 Ergonis is the big bad man, right, who deserves to go
6 down. And the other people who did all that stuff,
7 they're going to come in and testify and be on their
8 way.

9 I know that story that you heard from
10 the prosecutor was difficult. This was crazy.
11 Crazy. But what we say is not testimony. That's
12 what the Judge is going to tell you.

13 The evidence is going to speak for
14 itself, and you're going to see it over the next week
15 or so and understand what really happened. And
16 you're going to have to put the law to the facts, and
17 when you do that, we know that you're going to find
18 that Rob Ergonis did not do the things that he is
19 accused of.

20 He didn't violate the law, that he's not
21 guilty of those charges. He's innocent as he sits
22 here today. You haven't heard any evidence.

23 Mr. Jette stole my thunder at the voir
24 dire. I usually do that little trick, say whoever
25 votes not guilty right now raise your hand. He did

1 it. Remember? People aren't sure what to do.

2 Well, everybody's hand should have shot
3 up. Everybody's hand should have shot up. So we're
4 going to hear all this evidence, and we're going to
5 have to understand what happened.

6 I know that this isn't easy being here.
7 We appreciate you being here. Myself and Rob, we
8 appreciate you being here.

9 Oh, I forgot one thing. I forgot to
10 introduce Lois Grushka who is a defense investigator
11 who is going to be sitting at our table. I'm sorry,
12 Your Honor. I forgot to do that at the beginning. I
13 wanted to do that before I forget, before I stop
14 talking.

15 We appreciate you being here, and we
16 know it's not easy. I've done so many jury trials,
17 and I've looked at the faces of jurors when they call
18 them down. It's never like, you know, the people
19 come on down to the "Price is Right."

20 Yay. You know, nobody comes down, yay,
21 I'm going to be in a two-week trial. This is great.
22 It's difficult, but it's important. And you have a
23 lot of responsibility here. You have the
24 responsibility --

25 MS. ORTIZ: Your Honor, I'm going to

1 object. Counsel is arguing law. This is not
2 evidence. This is not a preview of evidence.

3 THE COURT: Overruled.

4 MR. GATTONE: I'm almost done, Your
5 Honor. Thank you. So it's not easy, but this is
6 about finding the truth. This is about the law and
7 the facts.

8 This is about applying the law to what
9 happened on December 8th and putting aside emotion
10 and putting aside speculation and doing what's right.
11 Rob Ergonis has done some things, you know, in life
12 he's not happy with, but that's not the issue here.

13 The issue is whether he's guilty of the
14 crimes as charged. We know that at the end of your
15 time in hearing all the evidence that you'll be able
16 to come back with a verdict of not guilty on all
17 charges. Thank you.

18 THE COURT: Ladies and gentlemen, you've
19 now heard the opening statements. I have some legal
20 matters that I have to take up with the attorneys.

21 Although there's a chance I could get
22 them resolved within the time that I need to, it'd
23 still be difficult for the first witness to be
24 finished. So I'm going to excuse you now for the
25 day.

1 We're going to start again tomorrow at
2 10:30. I will remind you of the admonition. Also, I
3 mentioned this before. It's in the preliminary jury
4 instructions. If by chance there should be any media
5 attention to this matter and you happen to be exposed
6 to it, end your exposure to it immediately.

7 And if anything like that does happen,
8 you can let me know, but the important part is just
9 to end your exposure to it. So we'll see you
10 tomorrow at 10:30.

11 Remember just like this afternoon, you
12 go to the jury deliberation room. You can leave your
13 -- Eileen, do you want them to take the notebooks
14 back?

15 THE BAILIFF: No. They can leave them.

16 THE COURT: You can leave your notebooks
17 then in front of you, and please have a good evening.
18 See you tomorrow morning at 10:30.

19 Watch that step. I'll remind you a
20 couple times because I don't want anybody tripping as
21 you go up and then down again.

22 (Whereupon the jurors exited the
23 courtroom.)

24 THE COURT: The record will reflect the
25 jury has left the courtroom. Counsel, let's resolve

1 the 911 calls.

2 MS. ORTIZ: Your Honor, I'd like to make
3 a record as an objection so it's on the record that
4 Mr. Gattone violated the Court's pretrial order not
5 to discuss Adderall at all.

6 And he apparently didn't listen and just
7 blew right through that and accused Josh of selling
8 Adderall to keep the pageant girls -- there was a
9 clear pretrial ruling on that.

10 MR. GATTONE: Your Honor --

11 MS. ORTIZ: I want to make an objection
12 for the record.

13 THE COURT: Well, just a second. Are
14 you making a request for me to rule on?

15 MS. ORTIZ: Well, yes. I mean, I'm not
16 asking for a mistrial, but he violated your order.

17 THE COURT: Okay. I take it based on
18 your asking that there not be any further reference
19 to Adderall.

20 MS. ORTIZ: Yes, Your Honor. Thank you.

21 THE COURT: Okay. Mr. Gattone?

22 MR. GATTONE: Your Honor, you told me
23 not to testify or not to get up and talk about the
24 Facebook page. I did not talk about the Facebook
25 page. I didn't talk about the Facebook page.

1 This is something that Kumari Fulbright
2 has testified -- well, it's not testimony. It's
3 something she said in a couple of interviews. I
4 specifically did not touch on that Facebook page.

5 I didn't mention -- any of the
6 information from the Facebook page is very -- well,
7 very different from what I said. I'm sorry. I was
8 not told by the Court not to testify about that.

9 I was told by the Court not to bring up
10 the Facebook page and not to bring up the phone
11 message that was discussed on the night of the 8th or
12 the morning of the 9th with the officers. I didn't
13 bring up either of those, Your Honor.

14 THE COURT: What will be the relevance
15 of asking any witness about Adderall sales by the
16 victim?

17 MR. GATTONE: I think it goes directly
18 to his voracity, Your Honor. I think it goes
19 directly to his -- you know, whether he has some
20 reason to be less than honest with the police and
21 with the Court.

22 I think that sort of thing -- that sort
23 of activity goes right towards people's -- I'm sorry,
24 Your Honor. My brain isn't working -- goes right
25 towards, I think, his voracity, and it's impeachable

1 information.

2 That's what my -- that's my
3 understanding, Your Honor. That's why I brought it
4 up. I think that it shows a connection and, you
5 know, the State gets up there and paints the -- you
6 know, he just stumbled into all of this and I don't
7 think that that's the case.

8 THE COURT: The Court rules that there
9 shall be no questions about Adderall or mention of
10 it. It's likely to be precluded under 404(b), and
11 further maybe even if it is relevant, it's likely to
12 be precluded under Rule 403.

13 Therefore, before any -- either side
14 asks any witness about Adderall sales, offering for
15 sale, transfer, anything of that sort, whether of the
16 victim or of one of the defendants, counsel shall
17 approach the bench.

18 Okay. That deals with the Adderall.
19 Let's go back to the 911 calls. Can I -- do we have
20 a transcript of the 911 tapes?

21 MS. ORTIZ: There's no transcript. It's
22 a four minute --

23 MR. GATTONE: No. There's a transcript.

24 MS. GRUSHKA: I have --

25 MR. GATTONE: I don't know that I have

1 it with me, but I have a transcript of it somewhere.

2 MS. ORTIZ: We have a C.D. if you --

3 MS. GRUSHKA: I brought transcripts.

4 THE COURT: Well, if it's only about
5 four minutes --

6 MS. ORTIZ: Yeah, it's four minutes.

7 THE COURT: Let me listen to this,
8 please, in open court.

9 MR. GATTONE: Again, Your Honor, it's
10 been transcribed.

11 THE COURT: Well, if you have it, I can
12 follow along because sometimes those are hard to
13 understand.

14 MS. ORTIZ: They're really clear but --

15 THE COURT: Mr. Gattone, do you wish to
16 bring up the transcript?

17 MR. GATTONE: I'm sorry, Your Honor.

18 MS. GRUSHKA: Take a look and see what
19 that is.

20 MR. JETTE: Your Honor, may I just bring
21 the computer up on the witness stand?

22 THE COURT: You may. That's fine.

23 MS. GRUSHKA: You don't have a copy of
24 the transcribed 911?

25 MS. ORTIZ: No.

1 MR. GATTONE: I'm sorry, Your Honor.

2 This was in the materials that I got when I took over
3 the case, so I assumed it came from the State.

4 MR. JETTE: I'll put the computer on the
5 witness stand.

6 MR. GATTONE: Okay. You got the -- you
7 don't need these?

8 MR. JETTE: No. It's just right on the
9 computer so --

10 THE COURT: Counsel, so that we have a
11 clear record here, what I've been handed is a
12 transcript of 911 calls that's dated December 7,
13 2008.

14 It's seven -- actually six pages. The
15 seventh page is the signature of the transcriber. Is
16 that what counsel understands is the transcript of
17 all of the calls?

18 MR. JETTE: We haven't seen that so I
19 think maybe the defense --

20 MR. GATTONE: Yeah. It was in the
21 materials I got, Your Honor, when I took over the
22 case and assumed it came from the State but either
23 way is fine. These are the -- right. They're saying
24 Knox and --

25 MR. JETTE: This looks -- this looks

1 like it, Your Honor. I have no reason to --

2 THE COURT: Okay. Well --

3 MR. JETTE: We can just use that.

4 THE COURT: Do you believe, Mr. Jette,
5 that this is an entire transcript?

6 MR. JETTE: Without knowing, there's
7 only four minutes of voice so --

8 THE COURT: Well, so that there's --
9 excuse me. So that there's no doubt, go ahead and
10 play it. I'll follow along.

11 THE COURT REPORTER: Do I need to report
12 this?

13 THE COURT: No.

14 THE COURT REPORTER: Okay.

15 (Whereupon the 911 tape was played.)

16 THE COURT: Mr. Gattone, what probably
17 makes sense is if we could have a copy made of this
18 transcript.

19 MR. GATTONE: Of course, Your Honor.

20 THE COURT: It appears to be a very
21 close transcription of what I just heard.

22 MR. GATTONE: Okay. I gave a copy to
23 Ms. Ortiz and if you'd like --

24 THE COURT: Well, I'm just saying that
25 one of the two of you can borrow your copy. We'll

1 have a copy made and then it will just be filed for
2 identification purposes.

3 MR. GATTONE: Okay.

4 MS. GRUSHKA: Okay. Can you make a copy
5 for the Judge?

6 THE BAILIFF: Yeah.

7 THE COURT: I'll hear the substantive
8 argument on admissibility of the 911 calls.

9 MS. ORTIZ: Your Honor, the State's
10 position is that the 911 calls should be admitted as
11 evidence. They qualify as excited utterances under
12 Arizona Evidence Rule 803, Subsection 2.

13 These are spontaneous statements made
14 under the immediate stress of the situation. All of
15 the 911 callers are discussing an ongoing emergency
16 as opposed to something in the past.

17 They meet the requisite standard for
18 excited utterances and many Arizona courts -- all
19 Arizona courts have admitted statements on 911 calls
20 even 20 minutes after a murder. These are
21 contemporaneous calls, so the State is arguing that
22 they're admissible under the Arizona evidence rules.

23 Addressing the issue of the Crawford
24 confrontation clause, the United States Supreme Court
25 clarified what is testimonial and what is not

1 testimonial in Davis v. Washington, and the
2 distinguishing factor is evidence is non-testimonial
3 when it's made in the course of circumstances that
4 show that the primary purpose of the phone call is to
5 enable police to deal with an ongoing emergency which
6 clearly all of those calls are addressing what people
7 are hearing.

8 They don't go to the identification of
9 any defendants. They merely are reporting to police
10 information that police use to respond to an
11 emergency.

12 These meet the foundational and legal
13 requirements for admissibility under Davis, and the
14 State believes that all of these non-testifying
15 declarants are able to come in under the evidence
16 rules and they meet the Davis test.

17 THE COURT: Response?

18 MR. GATTONE: Your Honor, despite the
19 fact that they're duplicative, they're all just
20 repeating the same sort of thing. There's two
21 individuals that have been listed as witnesses to
22 come in and testify about calling 911 and what they
23 saw.

24 My understanding is the excited
25 utterance is somebody who's still involved in the

1 stress of the situation. Oh, my gosh, I almost got
2 hit by a car. Oh, my gosh, I ran that red light and
3 almost hit somebody. Someone called 911 and said,
4 someone just tried to kill me, you know, whatever.

5 You know, people calling -- these are
6 people that didn't see anything. Some them just
7 heard something. A man is calling for help, again,
8 is -- I think that it doesn't have a confrontation
9 issue there, in that, you know, there are two people
10 that are going to come in. We can cross-examine
11 them.

12 Having these other people who we have no
13 ability to cross-examine -- and as I said, I don't
14 think that it qualifies as an excited utterance
15 because those people weren't necessarily under
16 stress.

17 They hear somebody who's under stress,
18 and they're just repeating something. It's not as if
19 -- like I said, I say, oh, my gosh, I didn't mean for
20 the gun to go off. That's an excited utterance
21 because you're one of the people impacted by the
22 stress.

23 THE COURT: Thank you. The objection's
24 overruled. The tapes may be played during the trial.

25 MR. GATTONE: Can I --

1 THE COURT: Counsel, is there anything
2 additional that you want to raise before we recess
3 for the day? I have one other item, but I want to
4 hear all of your list.

5 MS. ORTIZ: There is one issue that Mr.
6 Jette would like to bring to the Court's attention.

7 MR. JETTE: Your Honor, during Mr.
8 Gattone's opening statement, he referenced that
9 Kumari Fulbright knew of stuff about the defendant he
10 was using to blackmail.

11 I just want to put the Court on notice
12 that we instructed our witnesses not to discuss
13 anything they know about the defendant that doesn't
14 pertain to this event including what they may know
15 about him being imprisoned or criminal activity or
16 drugs.

17 Now if the theory from the defense is
18 going to be that Kumari Fulbright knew about those
19 things and was blackmailing the defendant, the
20 State's contention is he's opened the door. He's
21 opened the door for the State to come in and allow
22 our witnesses to talk about what they know of this
23 man.

24 And if he's using it as a blackmail
25 theory, then I think he's opened the door for that,

1 Your Honor. I just want to put the defense on notice
2 of that statement he made in opening statement.

3 THE COURT: Well, let's wait for the
4 cross-examination. I agree with the instruction that
5 the State has given to its witnesses that there's not
6 to be any volunteering of information about Mr.
7 Ergonis' past that could suggest a bad character, and
8 that would certainly include prior crimes,
9 incarceration, anything of that sort.

10 We'll wait and see what the
11 cross-examination is, and if the defense chooses to
12 elicit that type of testimony, then I'll deal with it
13 at that point. Are there other issues, counsel?

14 MR. GATTONE: Not at this point, Your
15 Honor. Thank you.

16 MS. ORTIZ: No, Your Honor.

17 THE COURT: Counsel, I've been giving
18 some additional thought to the notice regarding the
19 federal action that evidently has been filed.

20 Just to head off any concerns that could
21 be raised down the road, Mr. Gattone, I understand
22 that you haven't had the chance to see the actual
23 filing in Federal Court; is that true?

24 MR. GATTONE: No, Your Honor. Yesterday
25 when I met late in the afternoon with my client, he

1 brought up the issue. It's the first I heard of it.
2 I haven't seen it.

3 I asked did you -- you know, I asked
4 some questions because I do work in Federal Court,
5 civil stuff, so I asked questions about, you know, if
6 it was more than just written up and -- but I have
7 not -- I have not looked on like PACER or anything to
8 confirm it. I haven't -- I haven't seen anything
9 like that, Your Honor.

10 THE COURT: Well, here's the point that
11 I'm going to get to right now because I want to head
12 off any concerns.

13 I assumed that this suit, whatever it
14 may say, pertains to this action in some respect,
15 whether it's essentially the form of a collateral
16 appeal or what I can only characterize as a special
17 action to Federal Court, something to that effect,
18 then I will just simply take it as an action that
19 pertains to this matter and it doesn't -- going to
20 have any ruling -- or I'm sorry, it's not going to
21 have any impact on my rulings.

22 Now if it's something different than
23 this particular action and it's just somehow a
24 coincidence that the defendants are myself, Judge
25 Nichols and the State's attorneys, then we better

1 have a record on that point.

2 MR. GATTONE: Your Honor, I --

3 THE COURT: Do --

4 MR. GATTONE: I went in to talk about
5 this case. Mr. Ergonis told me about that. I asked
6 for some brief clarification. I said, does it have
7 to do with this matter, and he -- well --

8 THE COURT: Do you want to either confer
9 with Mr. Ergonis and find out what the substance of
10 it is, or he can tell me?

11 (Whereupon Mr. Gattone and Mr. Ergonis
12 conferred out of the hearing of the court reporter.)

13 MR. GATTONE: No. He said he told me,
14 and he just clarified that it had to do with this
15 action. But, again, I don't know the substance. No,
16 I don't. I had no, you know, knowledge of that other
17 than yesterday.

18 THE COURT: Okay. Then just -- I'm
19 going to note for the record that the fact that Mr.
20 Ergonis is essentially seeking some kind of relief
21 from Federal Court pertaining to this case here is
22 something that he's permitted to do.

23 The federal courts will address it, and
24 it's not going to have any impact on my rulings going
25 forward. It hasn't had any impact with the rulings I

1 made this afternoon. Anything else that I need to
2 address?

3 MS. ORTIZ: Your Honor, the State's
4 filing a motion to clarify a previous ruling. I just
5 want to file it and give the parties a chance to take
6 a look at it.

7 But it's concerning Mr. Ergonis' -- what
8 the State has characterized as his habit evidence for
9 carrying a weapon. I just wanted to brief that issue
10 a little bit and bring it up at a later time.

11 THE COURT: File it, and as long as it
12 doesn't have to be addressed with any of tomorrow's
13 witnesses, I will take the opportunity to address it
14 at the appropriate time.

15 MS. ORTIZ: Thank you, sir.

16 THE COURT: Court will stand in recess
17 until tomorrow at 10:20. I'd like counsel to be here
18 at 10:20 just so that I can address any things that
19 you've thought of overnight, and I'd like to have the
20 jury brought in right at 10:30. So that's why I'm
21 going to have counsel come in at 10:20.

22 MS. ORTIZ: Thank you, Judge.

23 THE COURT: Court stands in recess.

24 * * * *

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C E R T I F I C A T E

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2
3 STATE OF ARIZONA)
4 COUNTY OF PIMA) ss.

5
6 I, Karen A. Kahle, RPR, do hereby
7 certify that as an official Court Reporter for the
8 Pima County Superior Court, I reported the foregoing
9 proceedings to the best of my skill and ability; and
10 that the same was transcribed under my supervision
11 via computer-aided transcription; and that the
12 foregoing pages of typewritten matter are a true,
13 correct, and complete transcript of all the
14 proceedings had as set forth in the title page
15 hereto.

16 IN WITNESS WHEREOF, I have hereunto
17 subscribed my name this 17th day of November, 2010.
18
19
20
21
22

23 _____
24 Karen A. Kahle, RPR
25 Certified Reporter
Certificate Number 50075