

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH**

UNITED STATES OF AMERICA)	CRIMINAL NOS. 2008-CF1-27068
)	2008-CF1-26997
v.)	2008-CF1-26996
)	
JOSEPH PRICE)	JUDGE LYNN LEIBOVITZ
VICTOR ZABORSKY)	
DYLAN WARD)	TRIAL DATE: 6/16/10

**GOVERNMENT'S OPPOSITION TO ANTICIPATED
DEFENSE MOTION FOR JUDGMENT OF ACQUITTAL**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully opposes the arguments it anticipates will be made in the defendants' motion for judgment of acquittal, which is to be filed simultaneously with this pleading. In support of this opposition, the Government relies on the following points and authorities, and upon any others developed at a hearing on this motion and opposition:

BACKGROUND

On August 2, 2006, Robert Wone was murdered while inside 1509 Swann Street, N.W., Washington, D.C. The known occupants of the residence at the time of the murder were Joe Price, Victor Zaborsky, and Dylan Ward.

On January 15, 2009, the grand jury returned a three-count superceding indictment, charging the defendants with Conspiracy, Obstruction, and Tampering with Evidence. In relevant part, the superceding indictment charges that:

FIRST COUNT

CONSPIRACY

Between on or about August 2, 2006, and on or about November 21, 2008, defendants Joseph Price, Dylan Ward, and Victor Zaborsky, did unlawfully combine, conspire, confederate, and agree to obstruct justice in connection with the homicide of Robert Wone by altering and orchestrating the crime scene,



disposing of, altering, and planting evidence, and lying to law enforcement authorities and others about the true circumstances surrounding the homicide of Robert Wone, in violation of 22 D.C. Code 722 (2001 ed.).

THE OBJECT OF THE CONSPIRACY

It was the primary object of the conspiracy for the defendants to conceal from the authorities and others the true circumstances surrounding the homicide of Robert Wone, which occurred on or about August 2, 2006, at 1509 Swann Street, Northwest, Washington, D.C.

BACKGROUND

Prior to August 2, 2006, Robert Wone, a college friend of Joseph Price, had arranged with defendant Price to spend the night at defendant Price's house located at 1509 Swann Street, Northwest, Washington, D.C. During the evening hours of August 2, 2006, Robert Wone arrived at 1509 Swann Street and entered the residence. Some time after Robert Wone entered the residence, Robert Wone was killed inside the residence.

OVERT ACTS OF THE CONSPIRACY¹

During the course of and in furtherance of the conspiracy and to effect the object thereof, defendants Price, Ward, and Zaborsky, individually and in combination, did commit the following overt acts, among others, within the District of Columbia:

1. The defendants, individually or in combination, cleaned the body of Robert Wone.
2. In an effort to avoid detection and misdirect law enforcement authorities and others, the defendants endeavored to orchestrate the crime scene to make it appear as if an intruder had entered through the back door of the residence, retrieved a knife from the kitchen of the residence, traveled to the second floor of the residence, stabbed Robert Wone, and then fled the residence.

¹ By oral amendment, the government amended overt act 1 of the superceding indictment to remove the prior reference to the defendants' alleged cleaning of the "crime scene." In addition, the government removed, in their entirety, overt acts 2 and 3, as originally found in the superceding indictment (i.e., the alleged making up the guest bed for Mr. Wone and then the alleged placing of Mr. Wone's body on the bed). See retyped indictment.

3. The defendants, individually or in combination, retrieved a knife from a knife set located on the kitchen counter of the residence.
4. The defendants, individually or in combination, used a white, cotton towel to place Robert Wone's blood on the knife that had been retrieved from the kitchen.
5. The defendants, individually or in combination then carefully placed the bloody knife on the night stand located beside the bed in the guestroom.
6. The defendants constructed and coordinated the fabricated story they would tell the law enforcement authorities about an intruder killing Robert Wone.
7. At approximately 11:49 p.m., on August 2, 2006, which was a considerable period of time after the fatal wounds had been inflicted on Robert Wone, defendant Zaborsky then placed a call to 9-1-1 and related, in part, the story that the defendants had fabricated and agreed to tell to law enforcement authorities.
8. While speaking with the 9-1-1 operator, defendant Zaborsky communicated that his partner, defendant Price, was using a towel to apply pressure to Robert Wone's wounds.
9. At approximately 11:54 p.m. on August 2, 2006, emergency medical personnel arrived and entered the residence at 1509 Swann Street. As the first paramedic reached the second floor he encountered defendant Ward, who was coming from the area of the second floor bathroom. The paramedic asked defendant Ward what was going on. Ward did not answer the paramedic but instead turned and walked into his bedroom.
10. The paramedic then approached the guestroom in which Robert Wone was located. Defendant Price was seated on the bed and was not applying pressure to Robert Wone's wounds. The paramedic asked defendant Price what was going on, to which defendant Price replied, "I heard a

scream.” Defendant Price then got up and moved away from the bed.

11. On August 3, 2006, defendant Price made statements to law enforcement authorities that were false in material respects and intended to misdirect and mislead law enforcement authorities into believing that an unknown intruder had, in fact, killed Robert Wone.
12. On or about August 3, 2006, defendant Price concealed from law enforcement authorities that his brother, Michael Price, had keys to the residence at 1509 Swann Street.
13. On August 3, 2006, defendant Ward made statements to law enforcement authorities that were false in material respects and intended to misdirect and mislead law enforcement authorities into believing that an unknown intruder had, in fact, killed Robert Wone.
14. On August 3, 2006, defendant Zaborsky made statements to law enforcement authorities that were false in material respects and intended to misdirect and mislead law enforcement authorities into believing that an unknown intruder had, in fact, killed Robert Wone.
15. In or about November, 2007, defendant Price falsely told Robert Wone’s widow, Katherine Wone, that he had in fact given law enforcement authorities the names of workers and/or contractors who had keys to the residence at 1509 Swann Street. However, defendant Price declined to tell Katherine Wone that his brother Michael Price possessed keys to the residence at 1509 Swann Street.

(Conspiracy, in violation of 22 D.C. Code Section 1805a (2001 ed.)).

SECOND COUNT:

From on or about August 2, 2006 through on or about November 21, 2008, within the District of Columbia, Joseph Price, Dylan Ward, and Victor Zaborsky, corruptly obstructed and impeded, and endeavored to obstruct and impede, the due administration of justice in an official proceeding, namely the criminal investigation into the murder of Robert Wone.

(Obstructing Justice, in violation of 22 D.C. Code, Section 722(a)(6))

THIRD COUNT:

On or about August 2, 2006 through on or about August 3, 2006, within the District of Columbia, Joseph Price, Dylan Ward, and Victor Zaborsky, altered, destroyed, mutilated, and concealed objects and items, that is, blood and bloody items, a knife, and items used to clean the scene of the homicide, knowing or having reason to believe that an official proceeding was likely to be instituted, with the intent to impair the integrity and availability of that evidence for use in the official proceeding.

(Tampering With Physical Evidence, in violation of 22 D.C. Code, Section 723)

Trial on these charges commenced on May 10, 2010 before the Court, sitting without a jury.² After approximately three weeks of evidence, the government anticipates that it will rest its case today, June 16, 2010. The Court has ordered each of the parties to simultaneously file briefs at the close of the government's evidence, outlining the arguments in support of its position with respect to an anticipated defense motion for judgment of acquittal. For the reasons that follow, the government respectfully submits that there is more than enough evidence for a reasonable juror to convict each of the defendants on each of the counts charged, and asks the Court to deny the defendants' anticipated motion for judgment of acquittal.

LEGAL FRAMEWORK

I. Motion for Judgment of Acquittal

"[A] motion for judgment of acquittal should not be granted where the evidence is such that a reasonable mind might or might not have a reasonable doubt as to the guilt of the accused." Guzman v. United States, 821 A.2d 895, 897-898 (D.C. 2003); *see also* United States v. Hubbard, 429 A.2d 1334, *cert. denied*, 454 U.S. 857 (1981) ("Where the evidence presented at

² As jury selection was set to begin, the defendants' voluntarily waived their right to a jury trial, opting for the Court as finder of fact.

trial is such that a reasonable person could find guilt beyond a reasonable doubt, a motion for judgment of acquittal should not be granted.”) (emphasis added). In deciding a motion for judgment of acquittal (“MJOA”), “the evidence must be viewed in the light most favorable to the government, ‘giving full play to the right of [the fact finder] to determine credibility, weigh the evidence, and draw justifiable inferences of fact.’ ” Singletary v. United States, 383 A.2d 1064, 1069 n.4 (1978), quoting Anderson v. United States, 364 A.2d 143, 145 (1976). When applying this standard, there is no legal distinction made between direct and circumstantial evidence. Shelton v. United States, 505 A.2d 767, 769 (1986). Importantly, “the evidence need not compel a finding of guilt beyond a reasonable doubt” for the government to survive an MJOA. Curry v. United States, 520 A.2d 255, 263 (D.C. 1987).

II. Conspiracy, Obstruction, and Tampering with Evidence

In this case, the defendants are charged with three counts: Conspiracy to Obstruct Justice into the investigation of Mr. Wone’s murder (Count I; Overt Acts 1-15); Obstruction of Justice (Count II); and Count III (Tampering with Physical Evidence).

As to the conspiracy count, in relevant part, 22 D.C. Code 22-1805a provides that:

(a) If 2 or more persons conspire . . . to commit a criminal offense . . . each shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both

(b) No person may be convicted of conspiracy unless an overt act is alleged and proved to have been committed by 1 of the conspirators pursuant to the conspiracy and to effect its purpose. . . .

The elements of the offense of conspiracy are that: (1) an agreement existed between two or more people to commit a criminal offense; (2) the defendant knowingly and voluntarily participated in the agreement, intending to commit a criminal objective; and (3) in furtherance of and during the

conspiracy, a co-conspirator committed at least one overt act. McCoy v. United States, 890 A.2d 204, 213-14 (D.C.2006), citing McCullough v. United States, 827 A.2d 48, 58 (D.C.2003).

As to the obstruction count, in relevant part, 22 D.C. Code § 722(a)(6) provides that:

(a) A person commits the offense of obstruction of justice if that person:

- (6) Corruptly, or by threat of force, any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any official proceeding.

Finally, as to the tampering with physical evidence count, in relevant part, 22 D.C. Code § 723 provides that:

- (a) A person commits the offense of tampering with physical evidence if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.

There are three elements to the offense of tampering with physical evidence; namely that the person: (1) “alter[ed], destroy[ed], mutilat[ed], conceal[ed] or remov[ed] a record, document, or other object; (2) while (a) knowing or having reason to believe that an official proceeding has begun, or (b) knowing that an official proceeding is likely to be instituted; [and] (3) with the intent to impair its integrity or availability for use in the official proceeding.” Timberlake v. United States, 758 A.2d 978, 981 (D.C. 2000).

Under both the obstruction of justice and tampering with physical evidence statute, the term “official proceeding” is defined as “any trial, hearing, investigation or other proceeding in a court of the District of Columbia or conducted by ... an agency or department of the District of Columbia government” D.C.Code 22-721(4) (emphasis added).

By its plain and unambiguous language, 22 D.C. Code § 722(a)(6) criminalizes a broad range of obstructive activities in that it prohibits a person from “corruptly, or by threat of force, any way obstruct[ing] or impede[ing] or endeavor[ing] to obstruct or impede the due administration of justice” in a criminal investigation undertaken by the D.C. Metropolitan Police Department. *See* 22 D.C. Code § 722(a)(6) (emphasis added). Where, as here, the language of a criminal statute is plain and admits of only one meaning (*i.e.*, a broad criminalization of any obstructive conduct), the need for further interpretation does not arise and the rules of statutory interpretation are inapposite. (Albert) Smith v. United States, 357 A.2d 418, 420 (D.C. 1976); *accord* Haney v. United States, 473 A.2d 393, 394 (D.C. 1984) (when the language of a criminal statute is plain and unambiguous, admitting of only one meaning, the need for interpretation does not arise).

In addition to the plain and unambiguous language in the statute itself, the legislative history of section 22-722(a)(6) itself supports a broad application of the statute to obstructive misconduct. Indeed, the D.C. Council clearly announced that the amendments to the statute in 1992 were intended to “expand[] the scope of the current obstruction of justice statute to encompass the wide-range of activities used by criminals to impede justice.” Council of the District of Columbia, Committee on the Judiciary, Report on Bill 9-385: “The Law Enforcement Witness Protection Amendment Act of 1992,” at 2 (May 20, 1992). Moreover, one legal commentator, who has reviewed the various obstruction statutes in effect across the country, has remarked that: “Twenty-four states and the District of Columbia have a general obstruction statute with broad language. . . . These types of statutes are characterized both by the broad range of prohibited conduct and the expansive range of government activities protected.” The Varying

Parameters of Obstruction of Justice in American Criminal Law, Decker, John F., Louisiana Law Review at 77-78 (Fall Ed. 2004). That the District of Columbia Court of Appeals has had few opportunities to opine about the breadth of the statute does not undercut the basic proposition that the statute is broad, intentionally so, in order to cover as much criminal conduct as possible.³

Here there is more than ample evidence – set forth in the detailed factual analysis that follows – for the Court to determine that (1) the information the defendants provided to the police was largely false, and (2) their intent was to obstruct the Metropolitan Police Department’s investigation into Robert Wone’s murder. Further, there is more than sufficient evidence to establish beyond a reasonable doubt that each of the defendants agreed with the others to obstruct that investigation, and that each committed several overt acts in furtherance of that conspiracy. Finally, there is sufficient evidence to establish beyond a reasonable doubt that each of the defendants tampered with physical evidence, namely the knife, the blood, and Robert Wone’s body.

The gravamen of the government’s charges of obstruction of justice and conspiracy stem from their statements to law enforcement authorities that were false in material respects and intended to misdirect and mislead law enforcement authorities. It is axiomatic that, among other

³ The closest federal obstruction statute, 18 U.S.C. § 1503, is not analogous either in its express language, or as more narrowly construed. To secure a conviction for conspiracy to obstruct justice under § 1503, the Government “must establish (1) that [one] defendant (a) knowingly entered into an agreement with another, (b) with knowledge, or at least anticipation, of a pending judicial proceeding, and (c) with the specific intent to impede that proceeding; and (2) the commission of at least one overt act in furtherance of the conspiracy.” *Schwartz v. United States*, 283 F.3d 76, 105-06 (2d Cir. 2002). Significantly, a criminal investigation does not qualify as a “judicial proceeding” for purposes of the federal obstruction of justice statute. *United States v. Aguilar*, 515 U.S. 593 (1995). The federal statute has been drafted, and construed, differently and more narrowly than the broad D.C. Obstruction of Justice statute, and thus the Court should not be limited by those narrow cases in its analysis here.

things, obstruction of justice encompasses conduct whereby a person is alleged to have made a false report to the police in the course of a pending criminal investigation, intending to mislead and misdirect the police in the process.⁴ A case from Illinois, which has a broad obstruction statute, is illustrative. In People v. Gray, 146 Ill.App.3d 714 (1986), a woman was convicted of obstruction of justice for lying to police who were investigating a homicide. Specifically, she gave inconsistent statements to the police over the course of three interviews, regarding whether she knew where the suspects – one of whom was the father of her unborn child, the other of whom was her cousin – had been on the night of the murder. In interpreting its Obstruction statute,⁵ the Court stated that

There were no challenges to the voluntariness of the three statements. If the statement is voluntarily, then *Brooks* requires that the defendant not intentionally mislead or withhold information about the crimes of other. The intent of the statute seems to include a requisite openness and citizen involvement in solving crimes once a citizen has voluntarily agreed to talk to police. This is a legitimate statutory purpose.

Id. at 717 (citation omitted). In upholding Gray’s conviction for Obstruction, the Court found that “[t]he fact that Gray furnished false information to the police coupled with her intent which can be inferred from the surrounding circumstances provided sufficient evidence for the trial court to find Gray guilty of obstructing justice beyond a reasonable doubt.” Id.; *see also*, United

⁴ This is true whether or not said obstructionist act is made orally or in writing, and whether or not it is separately chargeable in this jurisdiction as a “false statement to the police” in violation of a separate D.C. Code provision.

⁵ That statute states, in pertinent part: “Obstructing Justice. A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts: (a) . . . furnishes false information . . .” Ill.Rev.Stat.1983, ch.38, par. 31-4(a).

States v. Hunt, 526 F.3d 739, 745 (11th Cir. 2008) (affirming conviction for false reporting pursuant to 18 U.S.C. §§ 1519 where defendant communicated false information in a written police report in advance of a federal criminal investigation into alleged excessive use of force by the defendant); U.S. v. Price, 951 F.2d 1028, 1032 (9th Cir. 1991) (affirming conviction for obstruction of proceedings under 18 U.S.C. §§ 1505 where defendant communicated a false report in a 911 call to local law enforcement in order to impede or obstruct a pending proceeding against him); and United States v. Jacquemain, 368 F. Supp. 2d 800, 805 (E.D.Mich. 2005) (evidence sufficient to support conviction for obstruction pursuant to 18 U.S.C. §§ 1512(b)(3) where defendant falsified a written police report in advance of a federal investigation into his alleged excessive use of force); *cf.* U.S. v. Sprecher, 783 F.Supp. 133, 163-64 (S.D.N.Y. 1992) (defendant convicted of obstruction under 18 U.S.C. 1505 for making false statements to the SEC during an SEC investigation).

FACTUAL ANALYSIS

I. Evidence against the Defendants Collectively

1. There was no intruder.

As is clear from the facts set forth below, no intruder entered 1509 Swann Street, N.W. on August 2, 2006 and murdered Robert Wone. Thus, the murderer was either one of the defendants, or someone known to them who was able to enter without breaking. However, in all of their statements, the defendants maintained that they were the only people home that night with Robert Wone. This fact is the starting point of the assessment of the obstruction of justice evidence against Price, Ward, and Zaborsky. Each defendant gave statements that, to varying degrees, suggested that an intruder entered their home and committed the murder. The

obstruction of justice stems from the fact that they withheld information from the police, instead blaming an unknown, unseen, unheard “intruder.” Because they individually, and collectively, failed to tell the police what actually happened to Robert Wone, they conspired to obstruct justice and in fact did obstruct justice, in violation of D.C. Code § 22-722(a)(6).

Evidence of no intruder

- 83 inch fence
- Nothing disturbed on the fence-rail – covered in dirt/debris/plant material/pollen
- Cobwebs in the trees, and running from shed to fence
- Plants not trampled or damaged in any way
- No footprints, fingerprints, dents, scratches, damage or marks or other signs of disturbance on the hood of the BMW, which was processed for evidence. As Mobile Crime Technician Leothur Strong testified, there was a lot of dust on the car, so he would have noticed any signs of disturbance in the dust, had there been any (6/15/10 Strong testimony)
- There is absolutely no reason for an “intruder” to scale the fence – as opposed to going through the gate – on the way out. The “intruder,” who undoubtedly would have been in a hurry to get out, having awakened the home-owners who themselves would be thundering down the stairs from the third floor, would not catapult himself over the back fence on the way out, instead of simply opening the gate and running through. As Price himself noted, “I don’t know why he didn’t go out the gate. You know, I don’t know why the back door wasn’t wide open” (JP-TR-29). The gate was a heavy door that needed to be pushed closed. (JP-TR-13). Similarly, why didn’t the “intruder” go out the front door? As Price posited: “Look, it’s a crazy – I mean, why didn’t he – why wasn’t the back door – wide open? Why wasn’t the gate wide open? Why didn’t he go out the front door?” (JP-TR-41).
- The “intruder” hears a chime – *i.e.* alerting him to the fact that there is a security system – and keeps going in
- The “intruder” doesn’t bring his own weapon, but relies on finding a good one in the house

- And the knife he does choose happens to be a smallish knife at the bottom of the block, which was less accessible beneath the larger knives above
- People are obviously home – the car is parked out back
- People are likely home and still awake – it’s only 11:45 pm
- Indeed, as her testimony made clear, Mrs. Thomas was awake, in her kitchen next door, lights on, doing dishes, visible through the glass door in the kitchen
- The “intruder” did not steal anything – not the flatscreen, not the expensive knives, not the laptop – all of which were on the first floor, within 20 feet of the alleged entry point – not Robert Wone’s wallet (with credit cards visible) nor his Movado watch, nor his BlackBerry or cellphone
- In fact, given the orientation of the stab wounds, with the blunt edge at 10 o’clock and the sharp edge at 4 o’clock, the “intruder” would have had to walk right past the wallet, with credit cards visible, and the Movado watch on the desk, to the far side of the bed, to inflict those stab wounds.
- As retired Sergeant Dave Sargent testified, burglars rarely enter homes when they believe people are home. Indeed, 99% of the burglaries he investigated during his many years of experience in which he focused on burglaries were Burglary II offenses, *i.e.*, when the residents weren’t home. And of those when people were home, they were usually sex-offense related, or occurred when the residents would be expected to be asleep, *e.g.* after 3 a.m. Similarly, in those burglaries not related to sex offenses, property was always taken, or attempted to be taken.
- The “intruder” went past Wards’s room, right at the top of the stairs, with a view from the alley, and chose the room furthest away from the escape route, with a view from the street. The further the intruder traveled through the house, the greater the risk that he would encounter someone.
- The “intruder” left the knife on/in the victim. If, as Ward’s counsel posited in opening, he took the knife to protect himself in case he woke up a resident, why in the world would he not take it with him to protect himself until he got all the way out of the house, over the fence, and on out of sight? Under counsel’s theory, he had to use it once to “protect” himself from a resident, and thus it stands to reason that he would continue to need it until he got all the way out.
- Price and Zaborsky could hear “screams,” or “breathy grunts,” or “guttural moans,” or whatever version of the sound they would have the police and the

Court believe, all the way up in their room, but not someone going up and down the hardwood stairs, presumably at a decent clip.

- Similarly, DW hears a short, high-pitched scream that wakes him up, but does not hear the intruder pass within inches of his door, or down the hardwood stairs immediately outside his door, something he admits in his interview with Detective Norris that he thinks he would hear. (DW-TR-38)
- The bed linens were turned down on the bed, as the defendants generally would do when they were having guests [sarah morgan transcript], with Robert Wone on top, not under covers – as Kathy Wone stated was his habit [kathy transcript], suggesting that Robert Wone never went to bed
- If an “intruder” were bent on murder and not theft, why murder Robert Wone? Why bypass Ward’s room and go to Robert Wone, and stab and not steal? There is no motive for a stranger to do so, and absolutely no enemies or rivals or anything to warrant an assassin – which is essential what the defendants are suggesting.

2. The timeline is off.

William Thomas’s testimony was clear – he heard a scream of “desperation” coming from the room where Robert Wone was found, between 11 and 11:30 p.m. on August 2, 2006, during the course of Maureen Bunyon’s 11 o’clock news broadcast. However, the defendants did not call 9-1-1 until 11:49, even though they claim to have called the police within a minute of discovering Robert Wone’s body. Those are 19 (or significantly more) very long minutes, which were not, and can not be, explained by the defendants’ statements.

The most likely possibility is that the scream Mr. Thomas heard was in fact that of Zaborsky, who the government posits truthfully reported that he screamed when he saw Robert Wone. However, it is the timing that is untruthful. Even if Zaborsky came upon Robert Wone’s body at 11:30 p.m., as Ms. Bunyon was signing off for the evening, the defendants had more than enough time to tamper with the evidence on the scene, including planting a knife and disposing

of the actual murder weapon (see discussion of blood evidence *infra*), and to collaborate and conspire on a story to share with the police.

3. Robert Wone was unable to move at the time that he was stabbed.

Based on the autopsy findings, detailed below, Robert Wone was unable to move at the time that he was stabbed. This is significant for a number of reasons. First, it makes the defendants' story that an "intruder" entered their home through an unlocked back door and stabbed Robert Wone even less plausible, as intruders, even those bent on physical harm, do not take the time to incapacitate their victims before killing them. Second, the victim's inability to move is another fact for which the defendants' voluntarily-given statements provide no explanation, plausible or otherwise.

- The wounds were perfect, slit-like defects, almost surgical – no imperfections, tearing, fish-tailing, or other damage – indicating that Robert Wone was unable to move when each stab wound was inflicted, not even reflexively. As Dr. Goslinoski testified, there was no evidence of even an "autonomic" response.
- There were no defensive wounds on the hands, arms or legs of Robert Wone, nor even any blood on them – again indicating that he was entirely unable to respond to the pain of the wounds being inflicted.
- The bed was perfectly tidy, the covers were not ruffled, and he was lying on top of the turned down covers – again indicia that he was not able to, and did not, move when he was being stabbed, if in fact he was stabbed in that bed.
- The two discreet bloodstains on the bed were in uninterrupted circles, which is further evidence that he did not struggle with his attacker, or move in any way – had Robert Wone been able to move at the time of the attack, the blood evidence on the bed would almost certainly be in a more undefined, irregular pattern, indicating that the victim was struggling, or at least moving, while bleeding.
- The wounds were identical in depth, and orientation, indicating he was not moving at the time all three were inflicted.

- Dramatically different force was required to inflict these wounds – *i.e.*, the stab wound to the heart, which passed through the thick, hard sternum would require vastly more force than the stab wounds through the soft tissue of the abdomen – yet, each was identical in depth. This shows a methodical infliction of the stab wounds to a person who was unable to move at the time they were inflicted.
- As Dr. David Fowler, Chief Medical Examiner for the State of Maryland, testified, in his experience with more than 1,000 stabbing cases, he has never seen wounds this precise, uniform, and lacking in damage. (6/16/10 Fowler testimony)
- Similarly, Dr. Fowler testified that Mr. Wone would have been alive for minutes after he was stabbed, and significantly, conscious and able to move for at least 45 seconds.
- There were numerous needle puncture marks on the body of Robert Wone that were unexplained by medical intervention. Specifically, there were three needle puncture marks in his neck, two in his chest, and two in his ankle that did not result from attempts by either emergency medical or emergency room personnel to gain IV access to Robert Wone. As Dr. Fowler testified, the needle puncture marks on the ankle and chest appeared to be ante-mortem injuries.
- There is no logical reason, medical or otherwise, that explains Robert Wone's inability to move.

4. The blood evidence is flatly inconsistent with the defendants' claims to the police.

As is evidenced by the crime scene photos, and the testimony of several police officers and detectives, there was very little blood in the room where the defendants claim Robert Wone was stabbed by an intruder. There were two discreet, contiguous spots of blood on the sheet and pillow on the bed, with no other blood on the bed. Further, there were several small spots or areas of blood on a towel that was found on the floor of the guestroom, a few feet from the foot of the bed where Robert Wone was found by the emergency medical personnel. In addition, there was blood on a knife found on the edge of a night stand next to the bed on which the victim lay. Finally, according to EMS technician Jeffrey Baker, who was the first official to encounter the body of Robert Wone, there was a thin film of dried blood on his chest with lines or striations in

it, but no other blood on his person. These discreet areas of blood comprise the entirety of the blood evidence resulting from this violent stabbing death.

The blood evidence on the scene is inconsistent with both other physical evidence found at the scene and also the defendants' statements about what happened that night. This is circumstantial proof that the defendants tampered with the evidence on the scene, and also obstructed justice and conspired to do so.

First, all three defendants stated at various points that Price applied pressure in some manner to the stab wounds to Robert Wone's chest. In addition, all three defendants state that there was blood on Robert Wone's chest. However, there is no blood on the bed, but for those two discreet, contiguous spots. If, in fact, Price had applied pressure to three deep, bleeding chest wounds, common sense dictates that blood flow would have resulted from that pressure, causing a greater amount of blood on the bed, in a more diffuse manner, and a far greater amount on the towel.

Second, all three defendants stated that Price applied pressure to the wounds using some type of cloth – whether a towel (Price/Zaborsky), or a pad (Ward) – but the pattern of blood on the only towel in the guestroom with blood on it is inconsistent with having been used to apply pressure to three bleeding chest wounds. Although there are three small spots of blood on that towel, there is no blood smeared across a towel, as would be expected if that towel were placed onto Robert Wone's bloody chest. It is unreasonable to believe that the blood resulting from the allegedly fresh stab wounds merely pooled atop the wounds themselves. Rather, there can be little doubt that flowing blood, combined with gravity, would result in streams of blood on Robert Wone's torso. Thus, if in fact the towel recovered from the room had been placed on top

of Robert Wone's torso, there should be a blood pattern reflective of those streams on the towel. There is no such blood pattern on the towel.

Third, the towel does have a distinct patterned stain with a mirror-image quality. It is apparent, even to a layperson, that the pattern on the towel is most consistent with the towel having been used to absorb some of the blood from Robert Wone's injuries and then used to place blood on the blade of the knife on the scene. Indeed, the evidence bespeaks the following scenario: the towel is used to absorb blood from Robert Wone's injuries, the knife is then placed in the bloody portion of the towel with the towel then folded over on itself (and the knife blade), creating the mirror-image stain seen on the towel, the finger-tip impressions on the reverse side of the towel, and depositing the blood onto the blade of the knife.

This scenario also compellingly explains so many of the forensic findings in this case: the mirror-image blood pattern on the towel; the swipe pattern on the knife; the bloody loop-patterned marks on the bolster of the knife (a full inch beyond the depth of the wounds to Robert Wone's torso); the presence of so many white cotton fibers on the blade consistent with the white cotton fibers of the towel; the absence of blood on the cutting edge of the blade; and the absence of any fibers consistent with the damaged William & Mary t-shirt being worn by Robert Wone. The confluence of so many damning fact and circumstances leads to the only reasonable conclusion: the towel was used to place blood on the knife, compelling proof of tampering with evidence and obstruction of justice.

Finally, EMS technician Jeff Baker testified that there was no blood on Robert Wone's chest, only a thin film and striations – a pattern wholly unexplained by, and inconsistent with, the claim that Price applied pressure with the towel. Again, had that towel been the mechanism

by which the blood was wiped from Robert Wone's chest, there should be blood in a matching film/striation pattern on the towel. There is no such pattern on the towel.

5. The knife on the scene is not the murder weapon.

According to their statements at the Violent Crimes Branch, both Price and Zaborsky saw a knife on (or in, depending on what version of events Price was telling and the audience to which he was speaking) the body of Robert Wone. Price claimed that he moved that knife in the course of trying to investigate the extent of Robert Wone's injuries. A knife matching the block of knives in the Swann Street kitchen was found perched gingerly on the edge of the night stand adjacent to the bed on which Robert Wone's body was found. Robert Wone's blood was found on the knife in a swipe pattern ending with a looped pattern in blood on the hilt of the knife, 5 5/8 inches from the tip. For the reasons that follow, this knife was not the murder weapon.

Given that the knife that Price claimed to have placed on the night stand is not, in fact, the murder weapon, this is clear evidence that Price, Zaborsky and Ward tampered with the evidence. One or more of the defendants would have had to go down to the kitchen, obtain a knife from the block on the counter, return to the second floor guestroom, take a sample of Robert Wone's blood and wipe it along the knife. Given the timeline of events posited by all three defendants, each of them would have been in the room when this tampering took place, a fact that none of the defendants reported. This is both aiding and abetting tampering with evidence, and also obstruction of justice.

- The blade of the knife recovered from the scene is 5 5/8 inches, which is longer than the wounds, which were uniform in depth, and between 4 and 5 inches. This means that if this knife were the actual weapon used in the crime, the murderer stopped short of inserting the entire knife blade into the body, including when driving the knife all the way through the tough sternum. Yet there is a contiguous

swipe pattern of blood all the way down the 5 5/8 inch blade, to the hilt of the knife.

- As former FBI trace evidence expert Douglas Deedrick testified, the fibers he recovered from the knife were different in quantity, quality, and location on the knife blade from what he would expect, given both his experience generally and the quantity, quality, and location on the blade of the fibers recovered during the fiber transfer experiment.
- As Douglas Deedrick further testified, the dotted pattern of blood on hilt of the knife on the scene is consistent with looped towel fibers, not with what he would expect if the pattern were made by the t-shirt. This opinion is derived both from his experience and from the fabric imprint test he conducted.
- Common sense also dictates that if this knife were, in fact, the murder weapon, there would be blood and perhaps even tissue in and on the cutting edge of the knife. However, as the photographs of the knife on the scene make clear, there was a distinct absence of blood on that edge of the knife.
- In the same vein, if in fact the knife recovered from the night stand were indeed the knife used to murder Robert Wone, which Price falsely claimed to the police (although not to certain friends) was lying on Robert Wone's bloody chest – and which Zaborsky may or may not remember was lying on Robert Wone's bloody chest – the blood pattern would be markedly different from the pattern observed on the knife. Common sense dictates that there would be blood all over the knife, including on the handle, but there was a complete absence of blood on the handle of the knife. In addition, the pattern of blood on the blade of the knife is inconsistent with it having been laid on Robert Wone's bloody chest.

If the statements of the defendants are true, each of them was in the room with Robert Wone's body within a few minutes of hearing the scream/yell/grunt/moan emanating from that room.⁶ Price claimed that he came upon the body, moved the knife from Robert Wone's body, and never left the room until the paramedics arrived. Zaborsky claimed that he saw the knife on Robert Wone's chest when he first saw the body, then went upstairs to call 9-1-1. As reflected in the 9-1-1 call, he had returned to the second floor within at most two minutes from the time that

⁶ And if their statements are not true, then they are guilty of obstructing justice and conspiring to do so.

call was made, making it clear that, if his statements are true, he was at the very least present for the tampering with the knife, a fact he did not report. Finally, Ward stated that he heard the scream and emerged from his room within two to three minutes, again making clear that he was at least present at the time the knife was tampered with, a fact that he did not report.

6. The defendants were willing to protect a member of the family.

The facts make abundantly clear that no intruder entered the home at 1509 Swann Street, N.W. on August 2, 2006 and murdered Robert Wone. The murderer was either one of the defendants, or someone whom they allowed into the home. One of the only other people with access to the house was Joseph Price's brother, Michael Price. As the evidence made clear, Michael Price had a key to the house and he knew the alarm access code. Further, he was studying phlebotomy, which is the science of drawing blood, and missed his class that night for the first time in the more than six weeks of class. Finally, there were a number of needle puncture marks on Robert Wone's body, unexplained by medical intervention.

As is clear from the testimony of a number of witnesses – Tara Ragone, Scott Hixson, Louis Hinton – and from the statements of Joseph Price himself, and statements of Zaborsky and Ward, Joseph Price has taken care of his brother Michael for many years. Michael Price had a number of health problems, including an addiction to drugs and alcohol, and other medical problems. Joseph Price did all he could to assist his younger brother – indeed one might say he enabled him – from getting him into rehabilitation for his substance abuse problems, to giving him money, and other things in an effort to keep him stable and out of trouble. As Joseph Price himself described, his brother has stolen from him, and yet he supported him nonetheless.

An example of Price, Zaborsky, and Ward's willingness to protect Michael Price, a member of their family, is their failure to promptly report the burglary he committed on the weekend of October 27, 2006, just two and a half months after Robert Wone's murder. Michael Price's then-partner Louis Hinton alerted Joseph Price on October 30, 2006 that Michael Price had disappeared over the weekend and he wondered whether Joseph Price had seen his brother Michael. Joseph Price asked Ward, who was working near the Swann Street home, to stop by the home to check and see if Michael was there. Ward sought the assistance of neighbor Scott Hixson to accompany him into the home, because he feared that Michael Price was inside. Ward and Hixson entered the home, and did not find Michael, but did discover that a number of their high-end electronics and other equipment had been stolen (as one would expect in the typical second-degree burglary incident).

As Ward's grand jury testimony and Scott Hixson's trial testimony make clear, Ward immediately suspected that Michael Price had entered the home with his key, and stolen the items, something that infuriated Ward. Ward phoned Joseph Price, who in turn phoned Zaborsky, who went over to the Swann Street home to assist Ward. When Zaborsky arrived, he immediately shared Ward's impression that Michael Price was the culprit, and Ward's anger that Michael Price had burglarized their home. Neither Ward nor Zaborsky immediately reported the burglary to the police. Instead, each testified in the grand jury that he wanted to discuss what to do with Joseph Price, because Michael Price was Joseph Price's brother. "My visceral reaction was yes, report the burglary. But at that time, thinking it was Joe's brother, I felt like we had to defer to Joe and, you know, we were having conversations about it. . . . I think our first reaction is, okay, we just report this. But again, I mean, not without Joe's approval given." (DW-GJ-34)

“I definitely wanted to report the burglary. . . And I felt very strongly that we had absolutely no choice, that this was something that we had to do. And I think ultimately our discussion and our arguments persuaded Joe that that was the case.” (VZ-GJ-18-19)

Scott Hixson similarly testified at trial that when he asked Ward whether they were going to call the police, Ward replied: “I don’t know what we are going to do.” Hixson added that Ward wanted to wait to have a conversation with Joe regarding what to do because Michael was Joe’s brother. (6/14/10 Hixson testimony).

Price spent the next 3 hours on the telephone in more than 20 calls to Ward, Zaborsky, and Hinton, trying to decide what to do. After a conversation with Joseph Price, Louis Hinton called the Montgomery County Police Department and reported that Michael Price had stolen his car, in an effort to get Michael Price off the street. Michael Price was arrested a few hours later, at approximately 11 p.m., by Montgomery County Police. The trunk of the car contained a number of items stolen from 1509 Swann Street. The remaining items were recovered from nearby pawn shops in the ensuing weeks.

The following day, well after they had discovered the burglary, the defendants called their counsel and informed them about the burglary. Together with counsel, Ward reported the burglary on November 2, 2006 to the Metropolitan Police Department. Importantly, when Ward did ultimately report the burglary, he not only minimized Michael Price’s culpability, but in fact tried to exculpate him by suggesting that perhaps Michael Price had given the house key to a friend, who possibly came into the residence and stole the property. Ward further reported that Michael Price was on drugs at the time of the burglary and recently had been arrested in Maryland for Unauthorized Use of a Vehicle.

In an interview in the weeks that followed this burglary, Joseph Price told MPD Detective Danny Whalen that he had given Michael Price a key to the Swann Street home shortly after they had moved into the house in the spring of 2005, and that Michael Price knew the alarm code. However, at no time during the pendency of the Robert Wone homicide investigation had Joseph Price told the homicide detectives that his brother Michael had a key. Indeed, quite to the contrary, when he was pointedly asked by detectives who had keys to the home, he said : “I mean, other than us and our tenants there, there’s a few contractors who have keys and that’s it” – specifically and glaringly failing to mention his troubled younger brother Michael Price. (JP-TR-14). When Price told Detective Whalen that his brother Michael had a key, this was the first MPD had heard of this significant fact. This material omission is inarguably in and of itself obstruction of the homicide investigation. As Detective Bryan Waid testified, who had a key to a home in which a murder was committed, and where there were no signs of forced entry, would have been an important fact for him to know as the lead detective investigating that murder.

All told, even though the defendants were, in their own words, angry that Michael Price violated their trust in such a way, they each chose to delay this police report – and presumably lessen the chances that they would get their expensive property back – as they contemplated “what to do” (6/14/10 Hixson testimony) and the best way to “get [Michael] off the street.” (6/15/10 Hinton testimony, Gov’t Exh 915, p. 34, l. 14). This is powerful evidence of the lengths to which each defendant would go to protect a member of the family.

7. The defendants had a motive to cover up for someone close to them.

As the testimony from all of the witnesses who know them suggests, Price, Zaborsky and Ward were involved in a complex, intimate relationship that as of August 2006, spanned at least three years. Price and Zaborsky had been committed partners since approximately 2001, and Ward entered the relationship some time in approximately 2003. According to house mate Sarah Morgan, Price and Zaborsky were initially partners, but they had brought Ward into the relationship, to share in the relationship. "Polyamorous" is how Morgan reported that Ward described the relationship. They were "close, cohesive, caring towards each other" said Sarah Morgan, who saw them nearly every day. (6/1/10 Morgan testimony). And as Scott Hixson noted, they were in a three-way relationship, which he declared to be "progressive." (6/14/10 Hixson testimony).

Further, as their statements at the Violent Crimes Branch make clear, the three defendants were extremely close, considering themselves a family. For example, Price stated that he and Victor had been dating for six or seven years (JP-TR-134), and also stated that Ward was "happily married" to Price (JP-TR-55). Zaborsky used the word "family" to describe his relationship with Price and Ward (VZ-TR1-24; VZ-TR2-6). In a slight downplay, Ward described Price and Zaborsky as "friends." DW-TR-88).

Although the relationship among the three men was complicated, and there certainly would have been jealousies and rivalries along the way, the defendants remained steadfast in their commitment to each other. According to Ms. Morgan, Ward and Zaborsky in particular managed to be fond of and affectionate to each other, even as they were rivals for Price's affections. For example, although Ward initially had designs to "replace Victor as Joe's partner"

(6/1/10 Morgan testimony), he settled into his role as the third partner, moving with Price and Zaborsky from one home to the next. Although he took a separate bedroom from the original couple, he was very active in the family life, both day-to-day activities such as cooking, and entertaining guests, to having a sexual relationship with Price and an emotional relationship with both Price and Zaborsky.

The cards and emails between the three defendants provide further direct evidence of the nature of their relationship, in their own words. For example, in a card from Zaborsky to Price, dated March 24, 2006, Zaborsky wrote: “Happy Anniversary Joe. I hope you know how much I love you. You mean the world to me. I can’t imagine my life without you. . . . Let’s celebrate together next year. I think it’s good to plan ahead. With all of my heart. Love, Victor” (Gov’t Exh 675). Not six months before the murder and its aftermath, Zaborsky affirmed the importance of Price in his life – powerful evidence of Zaborsky’s devotion to Price, even as Price has brought Ward into their committed partnership and into their home.

Similarly, cards and emails between Price and Ward demonstrate their devotion to each other, albeit for reasons different from Zaborsky’s devotion to Price. For example, in a card dated 2006, in which Price commended Ward for all his efforts on behalf of Equality Virginia, Price stated: “whatever adventures are next, know that we will share them together, side by side.” (Gov’t Exh 674C) Similarly, a card dated 2005 from Price to Ward captures, in Price’s own words, what Ward has brought to his life that was lacking: “this card” – with the picture of a sparkly cat lying across a sofa, with the words “Tres Chic!” above – “captures you and what you give to my life – color – attitude – fear – smartassness – and excitement. You are magic to me,

and I know in this crazy and hectic life we live (or that lives us) I don't say that enough. So let's make more time for us to live and love! All my love, Joe" (Gov't Exh 674A).

The complex relationship among the men is also evident in emails among them, in which they discuss not only the mundane activities of daily life – planning trips to the gym, dinners, concerts, and other activities to do as a family – but also some of the issues that arose in the context of such a challenging situation. For example, in an email dated June 20, 2006, Price expressed to Ward that he was “scared and upset” by Ward’s apparent disinterest in him, noting that “it is nevertheless nerve racking and [he had] spent the past couple of days obsessing about why this happened and how, hunting for some clue or understanding, but finding none. . . . Guess we wait and see what happens and hope for the best.” Seemingly in an effort to draw Ward back into the relationship, a few weeks later Price suggested that he and Ward invite a third man – not Zaborsky – for a sexual encounter: “Hey love-of-my-life, I’m happy to give a third a try but only if you would like to try it.” Ward replied: “yes, intimidating. But we can try. Can’t know what it’s like without trying. ☺” This is evidence that, although there were challenges to their relationship, they sought out ways to keep it together, and stay committed to each other.

Significantly, Zaborsky was not included in these other activities of Price and Zaborsky. As Scott Hixson testified, Zaborsky was not one to stay out late at clubs, nor did Hixson have sexual encounters with Zaborsky, as he did with Ward and Price. Further, in the email suggesting a third man, Price specifically stated: “If ‘scary’ means you are interested but that it is a little intimidating (I think it is), then we can give it a try, and I would think that while Vic is gone, maybe next Thursday evening?” This is compelling evidence that although Zaborsky is not included in all of the activities of Price and Ward, notably the sexual activities, he nonetheless

remained devoted to Price and even to Ward. Ward may have been unsuccessful at unseating Zaborsky as Price's partner, but he certainly moved into certain territory. Instead of walking away, Zaborsky not only stayed, but seemed to welcome Ward in. As Zaborsky described the relationship to Detective Lewis, Ward did not share in an "equal partner relationship . . . but we are trying to develop it that way." (VZ-TR1-14). As demonstrated by these emails and cards, Price was fulcrum of the "family" – having deep, yet different, relationships with both his long-term partner Zaborsky, and his newfound love, Ward.

Finally, Price and Zaborsky had two children together, with a lesbian couple living in Silver Spring. (VZ-TR3-8; 6/1/10 Morgan testimony) As Zaborsky stated in the March 2006 anniversary card to Price: "We've built a family together with the boys, [the boys' mothers], your brother, and my family. Family bonds are very strong, and I am very happy that you and I have forged that bond." Zaborsky's words put it best – being fathers together is a powerful motivator to stick together through good times and bad, and protect each other, and those close to the family.

II. Specific Evidence against Each Defendant

What follows is a summary of the specific evidence against each of the defendants which the government submits proves the guilt of each defendant on all of the charges beyond a reasonable doubt. Although such an individualized assessment is necessary against each defendant, there are certain commonalities that apply, particularly with respect to their statements to the police and civilian witnesses. Each defendant made statements that are internally inconsistent with other statements that he made on the same topic. In addition, each defendant

made statements that are inconsistent with statements of the other defendants, on the same topic.⁷

The Court should view each of these statements, and significantly each of these discrepancies, through the following lens: The defendants are relating a small, finite universe of facts just hours after the murder of their friend. While it is certainly true that, as the jury instruction says, not all witnesses remember the same event in precisely the same way. However, discrepancies should be considered in weighing the credibility of any account: “Two or more persons witnessing an incident or transaction may see or hear it differently; an innocent misrecollection, like a failure of recollection, is not an uncommon experience. In weighing the effect of the inconsistency or discrepancy, always consider whether it pertains to a matter of important or unimportant detail, and whether the inconsistency or discrepancy results from an innocent error or intentional falsehood.” (Sup. Ct. Crim. Jury Instr. 2.200 – Credibility of Witnesses).

Here, the defendants are describing a short period of time – allegedly between when they discovered Robert Wone’s body and the paramedics arrived not more than 10 minutes later – and are describing details of the utmost importance to a homicide investigation. There should not be such memory lapses, changes, or dramatic discrepancies in their accounts. That there are so many discrepancies and memory lapses is a demonstration of the difficulty they had in maintaining a clear, coherent, consistent narrative across three defendants and many interviews.

⁷ To be clear, the government is not seeking to use the truth of statements of one defendant against the others; rather, as verbal acts against which a defendant’s statement can be compared, just as any other piece of evidence. In other words, if for example, Price claimed that the stoplight was red and Zaborsky claimed that the stoplight was green, the government would not suggest that because Price said the light was green, it was in fact green, and thus Zaborsky was lying. Rather, the statements are offered to highlight their inconsistencies.

A prime example of the glaring discrepancies in their recounting of events is each defendant's description of whether, to what extent, and how, Price attempted to save Robert Wone's life. As set forth in greater detail below in the specific evidence summaries, there are times in Price and Ward's narratives where they omit reference to these efforts entirely. And when prompted about whether Price performed any life-saving measures, the description by each defendant is markedly off: (1) Price stated: "[Zaborsky] gave – he handed me a towel. They – you know, they were telling him to apply pressure. You know, we were doing that." (JP-TR-5); (2) Zaborsky described it this way: "and she told me to apply pressure to the wound. So I grabbed a towel and I grabbed my robe and I went downstairs. At that point Joe was already applying pressure to the wound. I gave him another towel." (VZ-TR1-9); and (3) and Ward described it as this: "I never saw them trying to do any life-saving. . . . I did see some blood and I think that I did see some sort of – it liked like it was a pad, but I didn't, I couldn't get into the room." (DW-TR-11-12). Of all the facts that the defendants recall from that night, the precise manner in which they tried to save the life of a good friend is certainly a "matter of important detail" that they should have been able to recount consistently.⁸ These evasions, equivocations, hesitations, and outright untruths are powerful evidence of obstruction of justice.

⁸ As noted, these accounts are not only inconsistent with each other, they are inconsistent with the physical evidence recovered from the scene. Contrary to Zaborsky's claims of "another towel" there was only one towel recovered from the room, apart from those apparently unused towels neatly folded on the back of the office chair. Similarly, there was no "pad" or "square" in the room that would match the description provided by Ward.

A. Specific Evidence against Joseph Price

1. Opportunity:

Mr. Price was home at the time Robert Wone was murdered by someone known to Price, and thus had the opportunity to participate in a cover-up of certain aspects of the crime – and thus tamper with evidence, obstruct justice, and conspire with Ward and Zaborsky to obstruct justice – prior to the arrival of the police.

2. Efforts to control the situation in general, and Zaborsky and Ward in particular

From the moment the first officers arrived, through the time that he left the Violent Crimes Branch approximately nine hours later, Joseph Price was in control of the aftermath of the murder of Robert Wone. As several officers noted, Mr. Price did all of the talking on the scene, while Zaborsky and Ward said nothing. Indeed, when Ward attempted to speak, Price glared at him in a way that shut him down immediately. As Officer Alemian noted, it was the glare of a parent to a child who found himself in trouble. This is powerful evidence of one conspirator doing all the talking for all the conspirators, to minimize the risk of discrepancies.

Similarly, when Detective Waid asked the defendants to give formal statements at the Violent Crimes Branch, Price said “sure, anything you need,” and Zaborsky and Ward followed, indicating their assent and agreement with Price’s pronouncement. And when Price recounted the previous evening’s events to Scott Hixson in the parking lot of the Violent Crimes Branch on the morning of August 3, 2006, Zaborsky sat there and listened, chiming in only once to note that he might have left the back door unlocked after having cooked out that night. (6/14/10 Hixson testimony).

The scene at Swann Street in the early morning hours of August 3, 2006 bears striking similarities to the basement of Kathy Wone's house in the late evening hours of August 4, 2006 – Joe Price in control of the situation, providing the information that he wanted to provide, while Zaborsky and Ward sat there, silent, allowing one conspirator to speak for all. This goes beyond Joseph Price's penchant for the spoken word – it is the portrait of a man trying to create and maintain a coherent story, one he does not trust his conspirators to keep straight. Hence, even when Price left the room to take his attorney's call, Zaborsky and Ward held their tongues.

In the same vein, as his initial interview at the Violent Crimes Branch was winding down, he voiced his desire to see Ward and Zaborsky. (JP-TR-111). When he was told that wasn't possible, he terminated the interview and left the interview room. As he was walking down the hall of the Violent Crimes Branch, Price could be heard declaring that he was going to get a lawyer for Ward – attempting to invoke rights that were not his to invoke. (5/24/10 Wagner testimony).

Similarly, at the end of his interview with Detective Waid, when Detective Kasul came in to speak with him briefly, he said: "Yeah, I'd like to go and I'd like to see Dylan. You know, we've been here a long time." (JP-TR-146). When Detective Kasul told him he was free to leave, but that he couldn't see Ward at the Violent Crimes Branch, Price replied: "Okay, well, he, I'm sure, would like to go. His attorney is trying to reach him. You know, we're done. I don't know if he is being told what his rights are, but I suspect not. It's closing on 12 hours. You know, this is –" (JP-TR-147). Detective Kasul responded: "Well, certainly we inform everybody what their rights are at the appropriate times. And Dylan, you can't – he can speak for himself, okay?" As the interview concluded, Price's last words were: "What's the story with Dylan? I mean, you

know, I'm going to get his attorney to come down here.” (JP-TR-150). Price's anxiety at the prospect that Ward was sharing with the detectives what really happened is obvious in both his words and his demeanor.

As Detective Kasul so plainly stated, Joe Price couldn't speak for Ward and Zaborsky; but he sure did try. Particularly telling was his comment to Detective Kasul that Ward's counsel was trying to reach him, evidencing the lengths to which Price went to protect his co-conspirators and more importantly, to control the flow of information about the murder in an effort to protect and preserve the conspiracy.⁹ As a lawyer, Price knew that invoking a right to counsel may well shut down police questioning, which was becoming his goal at the Violent Crimes Branch that morning.

Further indicia of Price's control of matters can be seen in the manner in which he responded to questions by Detective Norris. Throughout that interview, he was dismissive of Norris's questions, flipping thru Blackberry, and appearing almost bored and at times contemptuous of Detective Norris. *See, e.g.*, (JP-TR-59) (Norris: “Do you want me to tell you what [burglars] normally do?” Price: “No, I don't.”) As he explained to Detective Waid when he sought him out in the Violent Crimes Branch parking lot to provide his account, the other detectives had been “unprofessional” and he wanted to speak to the lead detective to get things straight.

⁹ It is not clear whether Ward's lawyer was, in fact, trying to reach him – but either way, this is a damaging statement by Price: if the lawyer was trying to get in touch with Ward through Price, this is evidence that Price had begun those efforts on Ward's behalf, as Ward did not have his cell phone with him at the Violent Crimes Branch. And if false, it is both a material false statement to a detective investigating the homicide, and thus obstruction of justice, and evidence that Price was falsely endeavoring to shut down the questioning of Ward.

Finally, Price tried to control the flow of information to the investigators as well. A prime example of this is the testimony of Sarah Morgan. She testified that while she was in the parking lot of the Violent Crimes Branch on the morning of August 3, 2006, she observed Detective Waid speaking with Price. After Waid stepped away, Ms. Morgan asked Price whether he thought she should let him know that she also lived in the house. Price told her that Detective Waid had her identifying information, should he need to speak with her. After Price said this to her, Ms. Morgan did not go offer assistance to the police, feeling that she “didn’t need to inject [herself] at that point.” (6/1/10 Morgan testimony).

3. 9-1-1 Call

Mr. Price’s behavior in the immediate aftermath of discovering his friend’s stabbed, lifeless form on his guestroom bed is inconsistent with how a reasonable person would respond to such an event. He is not heard in the background of the 9-1-1 call shouting to Robert Wone to “hang in there, Robert, the ambulance is coming” or in any other way trying to stabilize Robert Wone. Similarly, and contrary to his claims in the Violent Crimes Branch interviews, Price is not shouting for an ambulance or raising his voice in any way, as would be expected if his friend were still alive, fighting for his life.

4. Behavior when he encountered Jeff Baker

When EMS technician Baker arrived, Price was sitting on the bed, with his back to the door, not applying pressure as instructed by the 9-1-1 operator (“keep him calm and talk to him until someone gets there”) (911-TR-4), or in any way providing assistance to his injured friend, again not even saying “hang in there Robert, it’s going to be OK.” When Baker asked him: “what’s going on?” Price simply stood up and moved away from the bed, and without even looking at

Mr. Baker said: "I heard a scream." Indeed, his behavior was so bizarre that Baker checked his hands for weapons and "spotted him up" across the room before commencing medical treatment to Robert Wone.

As with his behavior reflected in the 9-1-1 call, Price's behavior when Baker arrived on the scene a few minutes later is wholly inconsistent with a natural response to a situation where one's friend is lying on a bed in one's home, fatally wounded – rushing to the door, yelling for the paramedics to hurry upstairs, pointing out the injuries. Indeed, it is particularly inconsistent with what would be expected from Joseph Price, a man whom every witness who knew him described, and whose own videotaped interviews reflect, is a man of action and words.

In addition, the behavior Price exhibited just moments after Zaborsky's frantic 9-1-1 call is completely at odds with how Zaborsky described Price's actions in his taped interviews: "Joe is saying 'get an ambulance here right away. . . . And [the 9-1-1 operator] told me to apply pressure to the wound. So I grabbed a towel and I grabbed my robe and I went downstairs. At that point Joe was already applying pressure to the wound. I gave him another towel.'" (VZ-TR1-9). Similarly, it is at odds with how Price himself described his actions to both the police – "[Zaborsky] gave – he handed me a towel. They – you know, they were telling him to apply pressure. You know, we were doing that. I was yelling at him about, tell them, you know, we need an ambulance right now. We need an ambulance right now."¹⁰ (JP-TR-5) – and to civilian

¹⁰ Similarly, as noted above, the 9-1-1 call undercuts Price's representations as well. Price's voice can be heard in the background speaking to Zaborsky as he is engaged with the 9-1-1 operator, however, unlike Zaborsky, Price's tone is never raised or hysterical, and his words are difficult to decipher, even though he is, by their accounts, sitting within a few feet of Zaborsky. By no means is he "yelling at [Zaborsky] about, tell them, you know, we need an ambulance right now." (JP-TR-5)

witnesses, telling Tara Ragone that he pulled the knife out of Robert Wone's body and staunched his blood. (6/2/10 Ragone testimony)

5. Statements regarding the "scream"

When EMS technician Jeff Baker asked Price "what's going on?" Price uttered four words: "I heard a scream." Later, in his initial narrative of the evening's events to Detective Norris and Sergeant Wagner, Price described the sound he heard as "you know, it was yelling but it wasn't – it was just like grunts or something." (JP-TR-4); *see also* JP-TR-27 ("I hear the grunting and all that stuff"); (JP-TR-35) ("the grunting, yelling, whatever" is what brought Price downstairs). When asked to describe the sound to Norris and Wagner, Price made the same "uh uh uh" sounds that he imitated to Kathy Wone. (JP-TR-38). These sounds cannot plausibly be described as "screams." To Detective Waid, Price described the sounds as "grunts" adding "I said to the guys first 'yelling,' but then I got to thinking, well, it's not – it wasn't people yelling words, it was like (uh uh uh), something like that, like, repeatedly." (JP-TR-120-21). In the re-telling of the evening's events to Tara Ragone, he described the sounds as "guttural moans," (6/2/10 Ragone testimony), and to Scott Hixson as "guttural." (6/14/10 Hixson testimony).

Unlike Zaborsky, who consistently referred to the sound that awakened him as a "scream" – at least until after he and Price met in the parking lot of the Violent Crimes Branch after their initial interviews, after which he stopped saying "scream" and started saying "grunt" – and unlike Ward, who described a "high-pitched scream or laugh," Price variously described grunting, yelling, and guttural moans – three entirely distinct sounds, and equally distinct from "scream."

This evolution of the description of the sound is evidence that Price is re-thinking the logic of the story that they were telling – grunts are more consistent with the sound one might expect from someone who is stabbed in the chest while they are sleeping. Price had a chance to discuss this issue with Zaborsky as they waiting in the parking lot of the Violent Crimes Branch – hence Zaborsky’s staggering and telling change from “screams” to “grunting” – but not to Ward, who remained inside the Branch with the detectives at all times. Thus, although Price’s and Zaborsky’s accounts significantly evolved, Ward’s did not. If, on the other hand, the stabbing actually happened as the defendants reported, keeping the important details straight of what this terrifying noise actually sounded like would have been quite easy.

6. Statements regarding the shower

Each time he recounted the evening’s events, Price noted that Robert Wone took a shower prior to going to bed., noting that Mr. Wone said he was “all sticky.” (JP-TR-2); (JP-TR119). At first blush, the fact that Price mentioned the shower does not stand out. However, in his conversation with Detective Waid, Price seemed to emphasize this point, at a place in his narrative that is completely out of context. In describing the timing of events that night, he stated that Robert Wone arrived at approximately 10:30 p.m., when Project Runway was about half over. Price noted that he went back upstairs and caught the last five minutes of the show, “so that’s how I have any sense of what time it is.” (JP-TR-119). Price then added, without prompting “Robert did – I know he took a shower, went to bed. We watched the end of that show. I started watching the beginning of another one. . . .” (JP-TR-119-20). Similarly, when recounting the evening’s events to Sarah Morgan during a phone call early the next morning, Price provided very few details, but specifically included that Robert took a shower: “This is

unbelievable, this is not my life, we were hanging out in the kitchen, shooting the breeze, we had a glass of water, Robert decided to take a shower, and we all went to bed.” (6/1/10 Morgan testimony). Price was trying to stay on the message of the conspiracy, and offer a consistent version to as many potential witnesses as possible.

Pressing this point is plainly out of place for a number of reasons. First, the information comes from Price at times that don't seem to fit in his otherwise organized narrative. Second, there is no evidence that Robert Wone actually took a shower; indeed, all evidence on the scene points to the contrary: the towels that Price claims they showed him were dry and neatly folded on the chair in the office, as if they have just been laid out by the same individuals who turned down the bed linens hotel-style. Further, there were no wet towels in the bathroom either, rather dry, neat towels, hanging on the towel rack with the stamped insignia just so. Third, Ward, too, seemed to be pushing the seemingly insignificant fact that Robert Wone took a shower (*see* discussion *infra*). The logical inference is that Price and Ward are attempting to account for evidence that they fear may be found in the bathroom. There appears to be no other reason for them to emphasize this point so repeatedly, vehemently, and out of context.

7. Statements regarding the time of the 911 call

During the call to 9-1-1, in a complete non-sequitur, Zaborsky asked the operator what time it was. Her response reflected her surprise at such a question: “what time is it at the moment?” She told Zaborsky that it was 11:54 p.m., a time Zaborsky promptly repeated to Price. When asked by Detective Norris what time he discovered Robert Wone's body, Price replied: “I'm not exactly sure what time, but I know that I turned the TV off around 11:05, 11:10, something like

that. And when we were on the phone with 9-1-1, I¹¹ – Victor asked them what time it was and the person said, you know – told him it was 11:43. So, you know, maybe 11:40, I don't know, 11:35, something like that.” (JP-TR-22). He added later, “[Zaborsky] asked them, what time is it? And, you know, I was yelling, you know, we need an ambulance now.” (JP-TR-23).

When pressed on the timeline by Detective Norris, Price said: “[Zaborsky] asked on the phone, what time is it, because I was yelling for an ambulance and it seemed like it was taking forever. We were sitting downstairs in the living room, and at that point he said it – you know, they said it was 11:43.” (JP-TR-64). However, as the 9-1-1 call makes clear, Zaborsky repeated the time to Price – 11:54 – immediately upon hearing that fact from the operator.

These identical discrepancies with the actual time are further suspicious for a number of reasons. First, if the defendants were actually worried about how long the ambulance was taking, the natural question would be: “what’s taking so long?” “When will the ambulance be here?” Not: “what time is it?” The actual time doesn’t matter – unless one is attempting to establish a narrow timeline of events. Further, the 11-minute reduction effectively compresses the timeline between when Robert Wone arrived at 1509 Swann Street, and the 9-1-1 call was made. Finally, these identical discrepancies are evidence that the defendants had coordinated and were attempting to match their stories, in support of this compressed timeline.

8. Statements regarding the knife

Every time Price spoke to the police about the knife that he discovered on the scene, he stated that it was laying on Robert Wone’s body, and that Price moved it: “I believe it was laying on

¹¹ Price started to say that he told Zaborsky to ask what time it was, but stopped himself. Zaborsky reported to Detective Lewis that he asked for the time because Price asked “what time is it?” (VZ-TR1-10).

him - on his – like on his stomach or something like that. I picked up the knife. I moved it.” (JP-TR-4). However, when he described the knife to his friends Tara Ragone and Scott Hixson, his report was different: “I pulled the knife out of” his chest. Again, this is not one of the “unimportant details” that the Credibility of Witnesses jury instruction contemplates. Rather, it is an extraordinarily significant fact, one that Price certainly recalled.

The government submits that it’s true – Price likely did pull the knife out of Robert Wone’s chest. If so, his statements to the contrary to the police clearly obstruct justice. Price spent hours being interviewed by detectives about what happened to Robert Wone. After hours of maintaining that the knife had simply been lying on Robert Wone’s body, Price left the Violent Crimes Branch and entered the far safer and friendlier environs of his close friend Scott Hixson’s car. He then recounted, with Zaborsky listening in the back seat, how he had to pull the knife out of his friend. This had the ring of truth – in the rush of relief, after having deceived the police for many hours, one bit of factual accounting came bursting out of Price. It is human nature to share with those close to you an experience that is so profound and dramatic and memorable as pulling a knife from the chest of a friend. Indeed, Price told his close friend Tara Ragone the same thing, prompting her to state: “Oh my God, you must have been covered in blood!” But he never shared this fact with the police.

There can be no doubt that Price’s more credible account of this dramatic event is the one he told his friends – he pulled the knife from Robert Wone’s chest. Accordingly, his repeated lies to the police on this topic plainly constitute obstruction of justice.

9. Statements regarding the blood on the scene

When he described the room in which the body of Robert Wone was found, Price repeatedly indicated that there was a lot of blood on Mr. Wone's chest. *See, e.g.*, JP-TR-5 ("there was a lot of blood on his chest"); JP-TR-81 ("I lifted up his shirt to see the wounds, and there was blood everywhere"); JP-TR-122 ("there was a lot of blood on his chest"). In addition, Price also said that "there was a lot of blood on the bed" (JP-TR-98); "there was a lot of blood that was on the mattress." (JP-TR-143). If there were so much blood, where did it go? As the crime scene photos and testimony make clear, the scene was eerily devoid of blood. A compelling answer comes from Price's own words to Tara Ragone, after she told him that she would have a real problem if the crime scene had been tampered with: "There's a big difference between tampering with a crime scene and wiping away some blood if you're freaking out, waiting for the ambulance." (6/2/10 Ragone testimony). Notwithstanding Price's minimization, cleaning up blood is textbook tampering with evidence.

10. Statements regarding live-saving efforts

To a number of detectives, Price described the life-saving efforts he undertook, stating that he used a towel given to him by Zaborsky to apply pressure to Robert Wone's wounds, (JP-TR-5), at one point claiming that when he did so [Robert Wone] actually moaned a little bit. (JP-TR-122). He also described to detectives how he checked for a pulse at both Robert Wone's wrist and neck. (JP-TR-80).

What is most striking about these accounts is Price's demeanor as he described for the detectives these efforts he undertook to assist his dying friend. On the video, Price nonchalantly scrolls through his Blackberry, while describing putting pressure on his good friend's bleeding

chest – actually gesturing causally with his left hand as if to mimic putting a hand on Robert Wone’s chest. What should have been a profoundly harrowing and disturbing experience, just a few hours earlier, has become almost an afterthought. (JP-TR-76-79; video time stamp 52:50-54:35) It is nearly impossible to imagine that someone could re-tell such a horrifying event without some semblance of an emotional reaction if it actually happened in the manner described. Similarly, he described noticing a small amount of blood on one of his fingers, while at the 7-11 with the transport detective. Again, he nonchalantly glanced at his finger, and gestured to the finger that once held the blood of his dear friend, supposing that he must have washed it off during one of his trips to the bathroom at the Violent Crimes Branch. He did not cry, he did not tremble, he did not so much as grimace in the re-telling of his ultimately unsuccessful efforts to save his friend’s life. As with so many of his actions and reactions that day, his demeanor was wholly incompatible with a reasonable response to such stressors, and is reflective of a man in control of the situation and of the fabricated story being told.

11. Statements regarding possible suspects

Further evidence that Price attempted to mislead the investigation originates in some of the first statements he made about the murder to the first officers on the scene. Before the detectives had even arrived at the house, Price provided just a few details to the responding officers, notably that he thought an intruder had entered their home through the back door, and that there is a “black guy who lives in the alley out back.” (5/24/10 Patrick testimony)

However, he never repeated this inferential suggestion that the man in the alley might be responsible to any of the homicide detectives. Indeed, quite to the contrary, he discounted the danger he posed to the neighborhood in a discussion with Detective Norris of burglaries in the

neighborhood. “You know, the one thing we ever worried about was the guy living in the van behind the house. We called the police about that, because we saw the guy getting in the van and we thought someone’s breaking into the van. And then the cops came and they said, oh, no, they talked to some people , they came over, they said actually the guy has permission or something to live there. So that’s what – that was the one and only time I ever felt unsafe.” (JP-TR-16).

These statements demonstrate that from the earliest moments of the conspiracy, the stories Price and his co-defendants were telling were still evolving. Indeed, it is likely that by the time Price was talking to Detective Norris, he had forgotten completely his earlier, ugly claim about the “black guy in the alley.” When Price told the officers about him it was one of many efforts to deflect suspicion from the Swann Street family, and/or individuals known to them, and towards a mythic “intruder,” and is yet another example of his efforts to obstruct justice.

12. Statements regarding keys to 1509 Swann Street/door must have been unlocked

In a discussion of whether the back door was unlocked, Sergeant Wagner posited: “maybe somebody had a key.”(JP-TR-14) Price replied: “That’s possible. I mean, but there – I mean, other than us and our tenants there, there’s a few contractors who have keys and that’s it.” He cavalierly dismissed that someone may have entered the house with a key, instead clinging to the completely ridiculous notion that “it must have been an intruder.” Nor did he, as detailed previously, bother to mention that his own brother, a man with substance abuse and mental health problems, had a key – a material fact that he withheld from the police. This omission, alone, is proof that he obstructed justice, and is reflected in Overt Act 12.

Indeed, Price continued this obstruction in a conversation with Kathy Wone in November of 2007, during which he told her that he gave a list of the people who had keys to the police, a list which contained the names of contractors, but which did not include Michael Price. At the time of the lunch, Price knew full-well that Mrs. Wone was represented by counsel who were actively seeking to aid in the investigation, even holding a press conference on the first anniversary of Robert Wone's death, in an effort to raise awareness of the crime, and hopefully bring about new leads. Price was attempting both to appear cooperative with the investigation in the eyes of Mrs. Wone, and also to plant information that should would relay to her attorneys and ultimately the police.

Similarly, Price and his co-defendants took great pains to explain how the back door must have been unlocked. Price told Detective Norris that sometimes he checks to be sure the back door is locked before going to bed, and sometimes he doesn't. And then he offered, again unprompted – as so many of his comments that night were – “And in fact, while Dylan, Robert, and I were talking around the sink standing in the kitchen, I was looking out – the back door is all glass. And I – it's two big glass panels, and I looked out and there's a light in one of the tree boxes – well, they're in both. And I could see something, like, crawling around on top of it. It looked to me like a big bug. Anyway, I walked outside and looked at it and then came back in.” (JP-TR-15) The absurdity of this self-serving attempt to offer an explanation for the unlocked back door is self-evident.

13. Efforts to get information

Another category of evidence demonstrating that Price was attempting to obstruct the investigation comes from his interactions with Kathy Wone in the days after the murder of her husband. Shortly after the murder, Detective Bryan Waid interviewed Mrs. Wone regarding what she knew about her husband's death. Within a few days, Price contacted Jason Torchinsky, a lawyer and friend of Robert Wone's who was representing Kathy Wone at the time. Price told Mr. Torchinsky that his attorney was going to call him to see if Mrs. Wone would be willing to waive any attorney-client privilege and discuss with Price's lawyer what she told the police. This is yet another example of Price trying to gain information and stay ahead of the investigation – even in the investigation's earliest days, before Robert Wone's body was even buried. It is a reflection of consciousness of guilt.

B. Specific Evidence against Dylan Ward

1. Opportunity

Mr. Ward was home at the time Robert Wone was murdered by someone known to Ward, and thus had the opportunity to participate in a cover-up of certain aspects of the crime – and thus tamper with evidence, obstruct justice, and conspire with Price and Zaborsky to obstruct justice – prior to the arrival of the police.

2. Interaction with EMS Jeff Baker

When Baker asked Ward: "what's going on?" He did not give a verbal response. Indeed, he gave no response at all, aside from perhaps pointing in the general direction of the room holding a dying man, rather just walked into his bedroom. Ward made eye-contact with Baker, clear evidence that he heard and understood the question, but did not respond appropriately for

someone who was uninvolved in the crime. Further, Baker observed him coming from the direction of the bathroom, a place Ward never claimed to have gone. Rather, he claimed in his statement to Detective Norris and Sergeant Wagner that he came out of his room, saw what was going on, and then sat down on the couch in the TV/family room until the paramedics arrived. If he believed a murderous intruder might be in the house, sitting on the couch is an absurd course of conduct.

3. Statements regarding taking Robert Wone upstairs

In his initial interview at the Violent Crimes Branch, Ward told Detective Kasul that he walked Robert upstairs, and showed him where his bedroom was, and where the shower was, and that Joe had already gone upstairs at that point. However, later, he told Detective Norris and Sergeant Wagner that he and Joe together brought Robert upstairs and showed him around (DW-TR-6). Further, later in the same interview, when Detective Kasul returned to speak with Ward, in the presence of Norris and Wagner, Ward said: “[w]hen I went to bed, Joe was showing Robert the shower because Robert wanted to take a shower. And that’s when – that is the last I saw of either of them. That is when I went into my room and, you know, started reading and went to bed.” (DW-TR-60). These statements about such a simple detail should not be difficult to recall. The fact that Robert Wone showered seems to be a detail that both Ward and Price were pushing, although all evidence points to the fact that he did not, in fact, take a shower. (*See* shower discussion *supra*).

4. Statements regarding hearing Robert Wone take a shower and the door latch

Ward told Detective Waid that he heard Robert Wone take a shower (DW-TR-73), and that he heard him go into his room. However, there is no evidence that Robert actually took a shower, and in fact all the evidence demonstrates that he did not shower that night. (see shower discussion *supra*). In addition, if it was so loud in his room due to the air-conditioning unit that he could not hear an intruder go up and down the steps outside his door, and indeed walk right past his door, it is at best implausible that he could somehow hear the door latch 20 feet away, on the other side of his closed door, but yet not hear a murderous rampage those same 20 feet away.

5. Statements regarding life-saving measures

Detective Norris asked Ward whether he observed anyone performing life-saving attempts on Robert. His response: "I honestly don't remember seeing -- I saw Joe was sitting next to Robert and Victor was on the phone with 9-1-1. And that is all that I saw. I never saw them, like trying to do any lifesaving." (DW-TR-11) When prompted by the follow-up question: "And you never saw anybody applying a towel to the victim's chest?" Mr. Ward responded: "I saw -- I didn't see Robert for very long -- I remember seeing him sort of lying down, face up. I did see some blood and I think that I did see some sort of -- it looked like a pad, but I couldn't, I didn't get into the room -- I didn't get close enough to really see what it was. But I think I remember seeing some sort of pad." (DW-TR-11-12). He demonstrated on the videotape with his hands in the shape and size of a kitchen sponge. Similarly, when specifically asked by Detective Waid whether he saw anyone holding a towel on Mr. Wone, Ward said "I seem to remember that there was some sort of -- it looked like a square -- that was being pressed on his chest. But I didn't really --" (DW-TR-80).

These statements conflict with Price's statement that he applied pressure with the towel that Zaborsky gave him, and with Zaborsky's statements that he gave a towel to Price, who used it to apply pressure to Robert Wone's chest. Finally, this version is undercut by the evidence recovered from the scene – not only is the towel (and a very large towel at that) recovered inconsistent with being applied to a bloody chest (see analysis of blood evidence *supra*), but there is nothing remotely resembling a “pad” or a “square” recovered from that room. If you see your partner trying to save the life of your houseguest, it is extremely unlikely that you would forget the details. It is also unlikely that you would just sit down in a nearby room and not try to help in some way.

6. Statements regarding blood in the guestroom

When he was asked where the blood was that he observed, Ward stated: “The blood was on his chest.” He was then asked to describe it. His response: “I didn't get into the room, but what I remember is, like, two spots of blood and then some blood that looked like it had maybe dripped under the sheet or something. . . . I mean, it looked like there was blood around his body – I didn't really see it that well, but I do remember it looked like blood on him. . . . It didn't seem like a lot of blood. It wasn't, like, all sorts of blood – it was sort of like spots of blood.” (DW-TR-12-13). When he made this statement, he motioned to his torso. This conflicts with the testimony of Jeff Baker that there was only a thin film of dried blood on Robert's chest, no “spots.” If the defense were to argue that the spots were cleaned off by Price's use of the towel to “apply pressure” to the wounds, this argument is undercut by the appearance of the towel on the scene, which is inconsistent with having been used in the manner Price described. (See analysis of blood evidence *supra*). Further, specifically as to this statement, if there were, in fact,

two spots of blood on Robert's chest, and the on-scene towel was, in fact, the towel that Price used to apply pressure – and not “some sort of pad” – there should be two distinct spots of blood on the towel, when in fact there are several.

7. Statements regarding the knife

Detective Waid asked Ward whether he ever saw the knife, and Ward replied that he had not. Ward said that Price said he had moved the knife, which prompted Detective Waid's question: “Do you know why he would move the knife?” Ward replied: “I don't know if it was on Robert or – I have no idea. I didn't ask him.” (DW-TR-79). This is an unreasonable response, strongly indicative of collusion and coordination. A natural response would be the latter part of that statement: “I have no idea, I didn't ask him.” Instead, however, Ward began with “I don't know if it was on Robert,” which is precisely what Price told the detectives – that the knife was on Mr. Wone's body. In any scenario, it makes no sense for the knife to be left on the victim's chest by the assailant – still protruding from the victim, cast aside, or taken by the assailant, perhaps – and thus “I don't know if it was on Robert” would not be a natural thing for Ward to say. This is further evidence of coordination of their stories to cover up the true circumstances of the murder, with Ward subtly reinforcing Price's description of events to the detectives in a manner inconsistent with common sense.

8. Statements regarding the “scream”

Mr. Ward was asked how he was awoken that night. He replied that he heard some sort of noise that he thought might be a scream. “I thought, oh maybe the guys are fighting or maybe it's something in the alley.” (DW-TR-13) Later, he described the scream further: “it wasn't like a blood-curdling scream or anything. It was just sort of a short, high-pitched sound.” (DW-TR-15-

16) And then: “it was, like, a short, kind of high-pitched scream or laugh, or I don’t know. It was just – but it was a short sound.” (DW-TR-16). These descriptions conflict with the statements of Joe Price, who described the sound coming from Robert’s room variously as screams, yelling, grunting, and guttural moans, and the statements of Victor Zaborsky, who described the sound initially as “screams,”(VZ-TR1-13), but then later (after meeting with Price in the parking lot) as “like a breathy kind of uh, uh, uh,” (VZ-TR3-18-19), and “grunts.” (VZ-TR3-19).

Again, the Credibility of Witnesses jury instruction notes that people occasionally recall the same event in different ways. However, such a qualitative difference on such an important point is unreasonable. As noted in the discussion of the scream in the Price section, there was an evolution in Price’s thinking about how to describe the sound they heard that did not reach Ward, because he was separated from Price all morning.

9. Statements regarding his actions immediately after leaving his room

Ward stated that he came out of his room and Zaborsky was standing in the doorway of the guestroom on the phone with 9-1-1. (DW-TR-17). He said he sat down on the couch because he didn’t know what to do, “and then a few moments later the people came.” (DW-TR-17)

Notably, he did not say that he rushed over to ask what had happened. When prompted by Detective Norris: “You didn’t say ‘what happened?’” Mr. Ward replied, “yes, I probably just said, like, oh my god, what’s going on?” (DW-TR-20-21) Similarly, when he explained the evening’s events to Detective Waid in a later interview that morning, Ward omitted any reference to a conversation, stating simply: “Victor was already talking to 911, so I just sort of went and sat down on the couch in the living room for a second.” (DW-TR-69). Again, his reported behavior

is inconsistent with what a reasonable person would do under the circumstances, just sitting there, not asking about what had happened, not trying to help, just sitting on the couch.

Further, Ward's claim that when he emerged from his room, Zaborsky was standing in the doorway of the guestroom is inconsistent with Zaborsky's description of the timeline. Zaborsky told Detective Lewis that "when I was coming down the stairs [after calling 9-1-1], Dylan was in the doorway. And when I came he backed up a bit and let me in. I gave Joe the towel." (VZ-TR1-10). When describing this situation to Detective Waid, Zaborsky similarly stated: "at that point I walked down the stairs to where Joe was and Dylan was in the doorway, he was wearing a bathrobe. Joe was over Robert and he was applying pressure to the wound already." (VZ-TR3-14). Both Ward's and Zaborsky's statements cannot be correct, and are evidence that Ward could not keep the false details of his story perfectly straight.

10. Statements regarding fear:

Mr. Ward told Detective Norris that he was afraid to go downstairs because he thought the intruder might still be down there, so he just sat on the couch in the TV room. "We were afraid that someone might still be in the house." (DW-TR-18-20) To Detective Waid he said "we had – we didn't want to go downstairs beforehand because we thought there wasn't – you know, there might be somebody down there." (DW-TR-69-70). These statements are suspicious for two reasons. First, they make clear that there was, in fact, conversation taking place among the defendants before the police arrived. Second, as with other statements by Ward, this is not a reasonable response to fear that there is a murderer in your home. If he was afraid, why didn't he go back into his room and lock the door? Why didn't he go back into his room and get the large carving knife in the box above his bed, which presumably he kept there – as opposed to in the

kitchen – for his own protection? Why didn't he run up to the third floor and lock himself in the bathroom, in the room furthest from the stairwell? At the very least, why didn't he huddle up with Price and Zaborsky, who was on the phone with 9-1-1?

11. Statements regarding discovering the back door unlocked

Ward told Detective Norris that when “the fire people came . . . they had the cot . . . and then they told us to go downstairs and wait on the couch.” He then added, unprompted, “[s]o as I was going downstairs the – first thing, you know, I looked around because – and then I noticed that the door – the back door to the kitchen – was unlocked. So I immediately thought, ‘oh my gosh, somebody did come in.’ . . . It was unlocked because the latch, if it’s vertical, means that the deadbolt is unlocked.” (DW-TR-22). Later in the interview, he explained further: “[y]es, I saw the door. I was leaning over the stairs when people started to come in. They were telling us to go downstairs. I looked around the stairs and I could see that the backdoor was unlocked.”

(DW-TR-40). Similarly, to Detective Waid, Ward stated “[t]hey came upstairs, took the stretcher to get Robert. We had to go downstairs. I remember as I was going downstairs kind of looking around the corner to view the room and noticing that the lock on the door was vertical, which means that it was not bolted.” (DW-TR-70).

There are a number of problems with this statement. First, as noted, every time he discussed seeing the lock, it was unprompted by any question. Second, it would be difficult, if not impossible, for Mr. Ward to see the position of the deadbolt on the back door while descending the staircase because it is a brushed silver knob on a white door. Third, if in fact the kitchen were dark – as would be expected based on Sarah Morgan’s testimony that they always turned off

the lights before heading upstairs for the night [Sarah Morgan transcript] – it would be absolutely impossible to make that observation.

In addition, in Zaborsky's statement to Detective Waid, he states that when he was downstairs in the living room after the paramedics had gone upstairs, Ward came halfway down the stairs and asked him whether the back door was open – indicating that Ward could not make that observation from his vantage point on the stairs. According to Zaborsky, he said he didn't know because he was "just in the living room. And so I walked over to the dining room and I could see that it was unlocked, that it was vertical, but I didn't see that it was ajar. I just saw that it was unlocked." (VZ-TR3-16). This statement by Zaborsky makes clear that Ward did not, indeed could not, see the lock from his vantage point on the steps. Finally, it is clear from the 9-1-1 call that Mr. Zaborsky is the first to "notice" this "fact," as he is heard making this claim that the door is unlocked no fewer than four times to an official on the scene.

As with certain other facts (for example, that Robert Wone took a shower), the fact that the door was "unlocked" – thus explaining the lack of evidence of forced entry – was such an important fact to the defendants that they repeatedly emphasized this point. However, even with their efforts at coordination, there are inevitable discrepancies.

12. Bizarre narrative at the end of the interview with Detective Waid

Towards the end of the interview with Detective Waid, when Ward was describing the screaming and commotion that he heard which caused him to really wake up and go out of his room to see what happened, Waid asked whether the screaming was from Price or Zaborsky. Ward's response starts began as responsive to that question, but then inexplicably became a completely non-responsive narrative, just as Detective Waid's body language made clear that he

was wrapping up the interview: “I think it was Victor that screamed. But I really don’t know. I mean, I think it was Victor’s voice. But then there was -- you know, commotion and I heard it going on, and I got up out of my bed and I listened for a minute, got my robe and went out. But, I mean, I don’t even remember – I may have, like, you know, shook Robert’s hand when he came in. But I – you know. The last thing that I saw Robert before then was when he was going in to look at the bathroom, and then I heard him take a shower. And I heard the door close – his door close. My door was already closed. But I heard, like, that latch.” (DW-TR-90) Detective Waid asked him one follow-up question to this unusual narrative, and then ended the interview.

This final narrative is bizarre for a number of reasons. First, it is not responsive in any way to the question from Waid and the context of the conversation at that point, which was about the immediate aftermath of his hearing screaming from his partners. In addition, again, Ward appeared to be emphasizing certain facts – that Mr. Wone had taken a shower, in particular – and providing an explanation for why his DNA may be on Mr. Wone’s body: “I may have, like, you know, shook Robert’s hand when he came in.” There is simply no explanation for why Ward would have made this statement other than that he was attempting to account for certain evidence he feared may be recovered.

13. Behavior at Kathy Wone’s house on August 4, 2006

On the evening of Friday, August 4, 2006, a number of Kathy Wone’s friends came over to her home, to support her as she was preparing for Robert’s funeral. The defendants showed up and accompanied Kathy to the basement to speak in private. During this conversation, Ward and Zaborsky were completely silent, as Mr. Price did all the talking about what had happened in their home, that resulted in the death of Robert Wone. Even during an approximately five minute

period when Price took a phone call and left the room, Ward and Zaborsky remained completely silent regarding the events of that evening. Certainly they may have felt uncomfortable given the stress of the situation, but as they each described, they knew Kathy, were friends with her, had even visited her with a care package when she was recovering from surgery. To not say a word to her throughout the entire conversation, even when Price was absent, suggests that Price had been designated to do all the talking, and they were afraid to say anything that was off-message in any way, or would lead her to be suspicious of their story.

C. Specific Evidence against Victor Zaborsky

1. Opportunity

Mr. Zaborsky was home at the time Robert Wone was murdered by someone known to Zaborsky, and thus had the opportunity to participate in a cover-up of certain aspects of the crime – and thus tamper with evidence, obstruct justice, and conspire with Price and Ward to obstruct justice – prior to the arrival of the police.

2. 9-1-1 call

- At the very beginning of the call, at 00:23, Zaborsky blurted out “We heard . . .” before the 9-1-1 operator cut him off with a question. From all of the re-telling of events, it is clear that he was about to say “We heard a chime.” A short time later, at 1:24, when asked by the operator who stabbed the victim, Zaborsky completed the thought: “we think it was somebody . . . an intruder in the house, we heard a chime of the door.” These statements are evidence that Zaborsky and Price spoke before he called 9-1-1 about what they heard and what they suspected; however, both Zaborsky and Price stated that Zaborsky ran upstairs “immediately” upon discovery of Robert’s body – at Price’s insistence – to call 9-1-1.
- By 2:45 into the call, he was clearly in the same room as Price, where he remained for the duration of the call, until he went downstairs to meet the arriving paramedics, and thus he was in a position to observe the same things that Price was observing from that point forward.

- At approximately the 3:00 mark, Zaborsky stated that Robert Wone was still breathing – a claim that, if true, directly undercuts the defense notion of “cardiac tamponade”; and that, if false, is a material false statement in connection with a homicide investigation, and is clear evidence of obstruction of justice.
- Zaborsky’s conversations with Price were very calm, while his nearly-simultaneous conversations with the operator were agitated and freaked out, as if he was carrying on two very distinct conversations at once.
- In fact, the 9-1-1 operator had to repeat a number of questions to Zaborsky, because he was distracted by his ongoing conversation with Price.
- Zaborsky asked the operator what time it is, again seemingly prompted by Price. He then relays the answer – “11:54” – to Price. It makes no sense to ask a 9-1-1 operator the time for a number of reasons. First, it is completely out of place in both tone and substance in a frantic, panicked 9-1-1 call begging for help for a friend stabbed in one’s home. This is echoed in the 9-1-1 operator’s tone of surprise at the question, as she inquires “what time is it at the moment” (911-TR-6). Further, according to his own statement, he was standing in or near the doorway of the guestroom, when he asked for the time. However, on the wall immediately adjacent to the guestroom door is a thermostat with a clock on it. In addition, in the re-telling of the story, both Zaborsky and Price state that it was “11:43,” which was off by 11 minutes. The only explanation is that Price and Zaborsky were attempting to establish a more condensed timeline for the evening’s events. Finally, Price seems to distance himself from this effort when he stated that he didn’t learn what time it was from Zaborsky until they were seated on the couch – a statement completely undercut by the 9-1-1 call itself where Zaborsky is heard repeating the time to Price, and by Zaborsky’s statement to Detective Lewis that “Joe was saying ‘what time is it? It’s taking so long.’” (VZ-TR1-10).

3. Statements about the “scream”

On the 9-1-1 call, Zaborsky stated “we heard our friend scream,” and later said “We heard the chime and . . . and some screams from our friend.” (911-TR-5). In his initial interview at the Violent Crimes Branch with Detective Gail Brown, he again used the word “screams” to describe the sound that awakened him and sent him running down the stairs to investigate. At no time during that interview did he ever describe this sound as a grunt, or a moan, or breathy, or anything other than a scream.

Later, in his interview with Detective Lewis, he stated “and then we woke up – I woke up to screams. And Joe and I both jumped out of bed and ran to the door. And when we got to the door, Joe went out and flipped the light on and we heard another kind of low scream while we were at the – at our doorway.” (VZ-TR1-8). Further on in the Lewis interview, Zaborsky again used the word scream: “I was asleep. I woke up to the screams. And I just – I remember hearing the screams and jumping – startling up and I could feel Joe doing the same thing.” (VZ-TR1-13). And again later to Detective Lewis: “I was scared to death when I realized that the screams were in our house, and then when I saw what had happened.” (VZ-TR-19-20). At no point during this interview did Zaborsky ever describe this sound as a grunt, or a moan, or breathy, or anything other than a scream.

Similarly, in his next interview, with Detective Kasul, Zaborsky described hearing a **scream**: “I know because Joe and I were together when we heard the screams.” (VZ-TR2-11). At no point during that interview did Zaborsky ever describe this sound as a grunt, or a moan, or breathy, or anything other than a scream.

It was not until Zaborsky’s interview with Detective Waid – notably after he had spent a considerable amount of time out in the parking lot of the Violent Crimes Branch with Price – that he changed his description of the sound to match the version being offered by Price. In his initial narrative of the evening’s events to Detective Waid, Zaborsky said: “The next thing I know I woke up with the screams. I did not hear the chime.¹² I was sound asleep. So I heard – I heard these set of like, like a really low breathy grunt kind of sound, but it was loud. . . . We run to the

¹² As a separate matter, this is inconsistent with Zaborsky’s report to the 9-1-1 operator that “we heard a chime” – which is further evidence that Price and Zaborsky discussed the “chime” angle prior to the 9-1-1 call.

door of our bedroom and open the door and we heard another kind of grunt.” (VZ-TR3-12). Again later to Detective Waid he said: “I heard the cry or the – the screams or whatever they were. They were very low, I mean like when I screamed, when I got hysterical I was like pretty high pitched screaming and loud screaming. What I heard that woke me was like a breathy kind of uh, uh, uh. So it was different from –.” (VZ-TR3-18-19). Followed by: “We were – we heard the grunts and we were in bed. . . . And then we heard another kind of grunt. . . . It was at – it stopped – I mean literally like we opened the door and that was the last sort of – grunt that I heard.” (VZ-TR3-19-20).

When compared to Price’s descriptions of the sound, the parallels are stunning, and are clear evidence that Zaborsky changed his description of the sound to mirror how Price described the sound, calling it at first a scream, but later amending the descriptor to “grunts” and “guttural moans.”

4. Statements about the knife

Zaborsky made a number of statements regarding the knife. First, Zaborsky offered to the 9-1-1 operator – in response to her question: “That’s 1509 Swann Street, Northwest?” – “yes. The person has one of our – our knives.” When the operator followed up with the question “[t]he person that stabbed him ran out the door with a knife?”, Zaborsky replied: “I – I think so.” (911-TR-5) At this point, Zaborsky was clearly standing within a few feet of Price, as evidenced by the exchange immediately prior to this, where Zaborsky had to ask the operator to repeat her question, because he was distracted by a conversation with Price.

Zaborsky next described the knife in his interview with Detective Gail Brown at the Violent Crimes Branch. In her notebook, Detective Brown drew a sketch of Robert Wone's body, as described by Zaborsky, depicting Mr. Wone's hands folded on his abdomen, and the knife lying on his chest. Zaborsky looked at the sketch and agreed that it depicted the appearance of Robert Wone and the knife when he first saw them.

In his statement to Detective Lewis, Zaborsky affirmed that what he thought had happened was that someone scaled their fence, "okay, nine-foot, wood fence. In through [their] back door, took a knife out of [their] butcher's block off the counter of [their] kitchen, went up to the second floor and stabbed Robert and left the knife there and then left." (VZ-TR1-16). In these statements to Detectives Brown and Lewis – which occurred after the 9-1-1 call, but prior to his conversation with Price in the parking lot at the Violent Crimes Branch – Zaborsky appeared to be on-message in a way that he wasn't to the 9-1-1 operator. His statements to Brown and Lewis, effectively that "Robert was stabbed in the guestroom, and the intruder left the knife on Robert's body," appear to match Price's statement to the police that he moved the knife from Mr. Wone's body – although it is inconsistent with Price's later statements to Scott Hixson and Tara Ragone that he had to remove the knife from Robert's chest – and of course is consistent with the recovery of the knife from the guest bedroom.

Finally, in his initial recounting of events to Detective Waid, he did not mention seeing a knife at all. When prompted by a question from Detective Waid about whether he had seen the knife, he replied: "I'm confused now because I think I saw the knife the first time I came down the steps. But I really looked so quickly and was hysterical, that I don't know whether I did or not. I thought I saw a black handle and I thought I saw it – see, when I was telling one of the

other detectives I was – I remember he had – I thought I saw one hand on his stomach and then I remember he had – his one hand was weird, because it was like standing up and sort of twisted. And so I thought I saw the handle of the knife resting against him.” (VZ-TR3-15-16). He later explained: “And I don’t – and I also – that’s when I think I saw the knife because I – but I’m cloudy on that now. But I remember – I thought that when I first – my first glance at him was with the knife sort of by him or on him, just sort of leaning up against him.” (VZ-TR3-17).

These varying statements regarding the knife are powerful evidence both that Zaborsky personally obstructed the investigation, and also that he conspired with Price to do so. As an initial matter, what he told the 9-1-1 operator on the fly varied dramatically from what he told the detectives just a few hours later. In an answer non-responsive to the operator’s question regarding the address of the home, he offered up that the intruder “has” – in the present tense – “one of our knives.” And he then affirmed the operator’s question whether “the person that stabbed him ran out the door with the knife?” At the point at which he made this call, Zaborsky could not possibly know that the knife allegedly used to stab Robert Wone was from the set in their kitchen. By all accounts, no one had been downstairs and seen that the knife was missing. Further, there is nothing particularly distinctive about a black-handled knife – if indeed he saw it at all – that would lead to the conclusion that it was a knife from the home. Finally, it is entirely too specific a detail in a call that lacks specificity and detail.

From these circumstances, it is clear that Zaborsky was repeating to the 9-1-1 operator what Price was telling him to say – the non-sequitur “the person has one of our knives,” in the present tense – and wasn’t perfectly on-script, as he affirmed that the culprit had left with the knife, when later they both stated to various people that the knife was in the room the whole time, either in or

on Robert Wone's body. In addition, according to both Price and Zaborsky, Zaborsky "immediately" ran upstairs to call 9-1-1 -- at Price's prompting -- upon discovery of the body. So the use of the word "we" in this context is particularly damaging, evidencing that either (a) he and Price had discussed it before he went to call 9-1-1; or (b) he was repeating what Price told him to say.

Finally, both of these statements -- each of which was uttered by Zaborsky within the first five hours following the murder -- can't both be true: (1) "an intruder has one of our knives and ran out the door with it," and (2) "I saw the knife on Robert Wone's body in our second floor guestroom." The logical inference is that once the panic of the initial event had subsided, Zaborsky had to account for the fact there was a knife on the scene. Thus, he explained to the police that he thought he saw the knife when he came down the stairs the first time, but is confused about that, and just really can't be sure.

4. Statements about towels/life-saving efforts

In the 9-1-1 call, the operator gave Zaborsky detailed instructions regarding how to administer first aid to Robert Wone, as he and Price waited for the paramedics to arrive. She told him to get a dry cloth and give it to his partner, who should apply pressure to the wounds. "Even if the rag or towel is saturated with blood, just get another towel and put it on top, but never lift the first towel off the area. Hold it on. Once it get filled up with blood, just put another towel on top of that, just apply pressure until the paramedics arrive." (911-TR-3). A short time later, Zaborsky stated: "My partner's holding the -- is holding it on there." (911-TR-4). When he described these events to Detective Lewis, Zaborsky stated: "And she told me to apply pressure to the wound. So I grabbed a towel and I grabbed my robe and I went downstairs. At that point,

Joe was already applying pressure to the wound. I gave him another towel.” (VZ-TR1-9).

Similarly, to Detective Waid, Zaborsky recounted that: “Joe was over Robert and he was applying pressure to the wound already. The 9-1-1 operator had told me to take a towel and apply pressure to the wound. So I had gone into the bathroom and grabbed a towel and my robe, when I came downstairs, gave the towel to Joe.” (VZ-TR3-14).

The evidence is clear that there was one, and only one, towel with any blood on it whatsoever recovered from the guestroom at 1509 Swann Street. Indeed, the only evidence of blood anywhere in that house was on the towel, the bed sheet, the pillow case, and the knife, all found in the guestroom. Zaborsky did not give Price “another towel.” Even Price’s statement suggests that he did not begin to apply pressure to Mr. Wone until Zaborsky gave him this singular towel. This discrepancy is glaring proof that the defendants concocted a story in a relatively short period of time in an effort to account for the evidence and circumstances of the scene. However, as with their statements about the knife, the scream, and other facts, they didn’t get it quite right. Specifically, on this issue, Zaborsky didn’t get it quite right – and this is powerful evidence of Zaborsky’s involvement in the conspiracy to obstruct justice.

5. Behavior at Kathy Wone’s house on August 4, 2006

On the evening of Friday, August 4, 2006, a number of Kathy Wone’s friends came over to her home, to support her as she was preparing for Robert’s funeral. The defendants showed up and accompanied Kathy to the basement to speak in private. During this conversation, Ward and Zaborsky were completely silent, as Mr. Price did all the talking about what had happened in their home, that resulted in the death of Robert Wone. Even during an approximately five minute period when Price took a phone call and left the room, Ward and Zaborsky remained completely


silent regarding the events of that evening. Certainly they may have felt uncomfortable given the stress of the situation, but as they each described, they knew Kathy, were friends with her, had even visited her with a care package when she was recovering from surgery. To not say a word to her throughout the entire conversation, even when Price was absent, suggests that Price had been designated to do all the talking, and they were afraid to say anything that was off-message in any way, or would lead her to be suspicious of their story.

CONCLUSION

As set forth in the analysis above, there is more than sufficient evidence for the Court to find each of the defendants guilty on each count beyond a reasonable doubt.

WHEREFORE, the United States respectfully requests that the Court deny defendants' motions to suppress their statements.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing to be served by electronic mail and by hand on June 16, 2010, upon Bernard Grimm, Esq., Cozen O'Connor, The Army and Navy Building, 1627 I Street, NW, Suite 1100, Washington, DC 20006, counsel for defendant Price, Thomas G. Connolly, Esq., Wiltshire & Grannis, LLP, 1200 Eighteenth Street, N.W., 12th Floor, Washington, DC 20036-2506, counsel for defendant Zaborsky, and David Schertler, Esq., Schertler & Onorato, LLP, 601 Pennsylvania Avenue NW, North Building, 9th Floor, Washington, DC 20004-2601, counsel for defendant Ward.



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