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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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:
UNITED STATES OF AMERICA :
:
vs. : No. 2008 CF1 26996
:
DYLAN WARD, :
:
Defendant. :
-----X

UNITED STATES OF AMERICA :
:
vs. : No. 2008 CF1 27068
:
JOSEPH PRICE, :
:
Codefendant :
-----X

UNITED STATES OF AMERICA :
:
vs. : No. 2008 CF1 26997
:
VICTOR ZABORSKY, :
:
Codefendant :
-----X

Washington, D.C.
Monday, May 17, 2010

The above-entitled matter came on for trial
before the HONORABLE LYNN LEIBOVITZ, Associate Judge, in
courtroom number 310, at approximately 10:30 a.m.

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OF THE CASE AS RECORDED.

MARIA M. ALLISON, RPR Telephone: (202) 879-1050
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1 MR. KIRSCHNER: And that's all for the
2 government.

3 THE COURT: So I will permit the amendment of
4 count one as you've described.

5 THE COURT: You're ready to open?

6 MR. KIRSCHNER: Yes.

7 THE COURT: Please do.

8

9 OPENING STATEMENT ON BEHALF OF THE GOVERNMENT:

10 MR. KIRSCHNER: May it please the Court and
11 counsel for the defense, and back to the Court as we are
12 now at a bench trial rather than a jury trial. Good
13 morning, Your Honor. Beginning on the 2nd of August of
14 2006, these three defendants agreed to cover up,
15 orchestrate and misdirect with respect to the homicide of
16 Robert Wone. They arranged the crime scene, they
17 coordinated a story that they would then go on to tell to
18 law enforcement; and when they spoke with law enforcement,
19 they misdirected, they misguided and they misinformed the
20 police in so many ways to their own ends. And, Your
21 Honor, at least in the short term, they seemed to have
22 gotten with it because this murder has never been solved,
23 this murder case has never closed. There are so many
24 interesting, inexplicable, strange circumstances that were
25 found in that house on the night of August 2, 2006, and

1 all of those strange, inexplicable circumstances are a
2 direct product of, and attribute to the cover up that
3 these three men have orchestrated.

4 Now, Your Honor, this is a bench trial, as you
5 well know, and the government perhaps need not even say
6 this, but I will. This case is not about sexual
7 orientation. This case is not about the lifestyle choices
8 that these three defendants made because in our country
9 and in our criminal justice system, consenting adults get
10 to enter into relationships that they choose to enter
11 into, whether it's two or three. And as long as nobody
12 gets assaulted in the process, there is nothing negative
13 that can or should be drawn or will be drawn by Your Honor
14 based on sexual orientation or based on an unusual or an
15 unorthodox lifestyle choice among the three defendants.

16 However, the relationship among and between the
17 three defendants is important because it will inform the
18 Court about the powerful bond that these three men have,
19 Joe Price as the leader of this three-way relationship by
20 all accounts. You will hear friends and associates of
21 Mr. Price testify that he was the leader. He had a
22 committed intimate relationship with defendant Victor
23 Zaborsky, and at the same time he had a committed intimate
24 relationship with defendant Ward, and they all lived
25 together in Mr. Price's home. He made this work.

1 It's no secret that it takes a lot of work and
2 it's sometimes impossible just when two people are in a
3 relationship. But as the leader of the relationship,
4 Mr. Price made this relationship work, and these men had
5 powerful bonds between and among them. And you will hear
6 over and over -- you've already heard it in the motions
7 hearings, you will hear it in the testimony, you've heard
8 it in the statements of the defendants -- they considered
9 themselves a family, a very tight, cohesive unit. And
10 sadly, Robert Wone was not a member of their family. And
11 when Robert Wone was killed on the night of August 2,
12 2006, there was a choice to be made. It was either
13 protect the family, including the perpetrator or
14 perpetrators, or break the family apart by bringing
15 immediately and truthfully to the authorities' attention
16 the true circumstances concerning what happened in that
17 house on August the 2nd.

18 And every family member doesn't have to be the
19 most enthusiastic participant in the cover-up. Some
20 defendant might have been unhappy that he was being called
21 upon to participate in this cover-up to misdirect the
22 authorities. But, you know, once each and every defendant
23 made the decision to get on board, they stayed on board,
24 and they did it for the family.

25 Now, before I start talking about the evidence

1 that you are going to see over the next few weeks, I
2 wanted to just, so the Court doesn't sort of consider this
3 in isolation, set out the floor plan of 1509 Swann Street,
4 Northwest. And then as we work through the photographs,
5 hopefully Your Honor will have a better sense of where
6 these photographs are in the house. And the FBI actually
7 produced a scale model, which at some point with Your
8 Honor's permission we'll drag into the well of the court,
9 we'll set right against the bar, and you will actually
10 have an opportunity to see the layout of Swann Street.
11 And the government suggests that it's important because of
12 the defendants repeated assertions that this was an
13 intruder who came through the back door and did what he
14 did and then fled unheard, unseen and undetected. It
15 really becomes important to sort of see what the floor
16 plan was like, there at 1509 Swann Street. And when we
17 bring the model in, Your Honor, you are going to see that
18 there is a backyard area which has about a seven-foot
19 security fence that separates the alley, little car park
20 area and the alley from the backward proper. And this is
21 on the first level or the main level of 1509 Swann Street.
22 And these are townhomes connected down the 1500 block of
23 Swann Street.

24 And then if you were to walk in through the back
25 door after accessing the backyard, you would walk into the

1 kitchen and through the kitchen. You would then walk
2 through the dining room. You would then walk through the
3 living room. And right off to your right would be the
4 front door, and if you walked out the front door, you
5 would exit on to Swann Street proper. However, if you
6 turn and begin to mount what are 16 hardwood steps,
7 uncarpeted, you would make your way up to then the second
8 floor. And as you can imagine, the steps ran all the way
9 to the back of the townhome again.

10 When you are on the second floor, the first
11 thing you will encounter when you are at the top of the
12 steps is Dylan Ward's bedroom door. It's right smack in
13 front of you as you arrive on the second floor. If you
14 turn 90 degrees, there is a small hallway that leads to a
15 full bath. If you turn 180 degrees after coming up the
16 stairs, you're going to walk through like a family room
17 with some couches and a flat screen TV mounted on the
18 wall. And if you continue through that open area sitting
19 room, then you are going to be right in front of the guest
20 room door. This is a guest room that doubled as Joe
21 Price's home office and had a pull-out couch, and it was
22 on that pull-out couch that Mr. Wone was found by the
23 authorities when they arrived.

24 And then if you again mount the stairs to the
25 third floor, up on the third floor is the master bedroom

1 and the master bath, I guess. And that master bedroom on
2 the third floor was shared by Joe Price and Victor
3 Zaborsky. And then there was a large master bath right
4 off that third floor master bedroom.

5 There was also a basement apartment, Your Honor,
6 that was rented at the time by a young woman named Sarah
7 Morgan. She will testify. And she had known the
8 defendants for a long period of time. She had been living
9 in the basement apartment for about a year and a half, I
10 think, at the time of the homicide, and she never did go
11 back to the house after the homicide, although she did
12 eventually collect up her things and move out.

13 She would access her basement apartment by an
14 interior door that was just off the dining room on the
15 main level. So, you will hear her testify that even
16 though there was sort of a basement well entrance in the
17 backyard, it was gated and she didn't use it. Instead,
18 she would come in the front door, and she would then
19 access her apartment from an interior door just off the
20 dining room. So, very loosely, Your Honor, that's the
21 set-up of the floor plan of 1509 Swann Street.

22 And what you will hear about from the first
23 witness, Kathy Wone, and many other witnesses who will
24 testify during the course of the trial is who Robert Wone
25 was, and he was the son of Kathy Wone and the son of Bill

1 and Amy Wone. You will hear he attended William & Mary.
2 He went on to law school. He clerked for one year after
3 he graduated law school, and he went on to be a lawyer at
4 Covington. After being at Covington a number of years, he
5 decided to make a career change, and he took a job as
6 general counsel at Radio Free Asia. You will hear that he
7 was very enthusiastic about his new position and the
8 mission of Radio Free Asia, spreading truth and hopefully
9 democracy to other parts of the world that did not receive
10 uncensored news and information from around the world. He
11 was very excited to be with Radio Free Asia.

12 You will hear that Robert and defendant Price
13 were friends at William & Mary and actually were both
14 members of what was called the 13 Club of -- Club 13,
15 which was a club that was dedicated to practicing
16 anonymous acts of kindness for the students at William &
17 Mary. And you will hear that, I believe when Robert Wone
18 was a freshman, Joe Price was a senior, and he had also
19 hosted Robert Wone when Robert was a high school senior
20 and he was touring William & Mary to see if he wanted to
21 attend. And by all accounts, they had a friendship that
22 endured over the years. And we may hear the refrain over
23 and over again, as Your Honor has already heard in some of
24 the videotape statements of the defendant, "There is no
25 way on God's green earth that we could ever do this to

1 Robert," Mr. Price would say. "He was one of my dearest
2 friends. There is just no way."

3 well, I don't think anybody in here needs to
4 articulate that motive and murder don't always go hand in
5 hand. Loved ones, unfortunately, kill loved ones, family
6 members kill family members. And then sometimes there are
7 those murders, and sadly there are many in our city, where
8 motive is just absolutely inexplicable if not
9 counterintuitive.

10 You will hear that Robert had some plans for the
11 night of August 2nd, 2006. He really wanted to meet the
12 night shift because Radio Free Asia is a 24/7 operation,
13 and it was important to him that he meet the night workers
14 at Radio Free Asia, and he decided to do that on the night
15 much August 2nd, 2006. It happened to coincide with a CLE
16 course that he wanted to attend that was going to run from
17 6:00 p.m. till 9:00 p.m., and he attended it with a
18 friend, a gentleman by the name of John Lindburg, who will
19 testify, and I believe Mr. Lindburg is general counsel for
20 Radio Free Europe, and Mr. Lindburg will tell you about
21 his experience attending the CLE with Robert, having
22 dinner with him in a Subway sandwich shop before they
23 attended the CLE, and he will tell you about the last
24 moments when he sort of waved goodbye to Robert, as Robert
25 headed over to Radio Free Asia shortly after 9:00 p.m. to

1 meet the night shift.

2 You will also hear from one of the night shift
3 workers at Radio Free Asia, who will indeed talk about how
4 he met, I think he says, you know, one of the bigwigs, the
5 general counsel, while he was in there running the board,
6 the radio board. And he will talk about Robert Wone's
7 mood and how he seemed engaged, and he was interested in
8 what they were doing, and he seemed supportive of what
9 they did.

10 And then some time shortly after 10:00 p.m.,
11 Robert Wone left Radio Free Asia. And you will see some
12 documents concerning card swipes, and there was a system
13 at Radio Free Asia, as we now have almost every year,
14 where you swipe your card to get into certain areas or out
15 of certain areas, and I believe the last card swipe of
16 Robert Wone was at 10:18 p.m. on the evening of
17 August 2nd, 2006. There will then be some phone records,
18 where Mr. Wone called Mr. Price's phone at about, I
19 believe, 10:25 p.m. in essence to communicate, hey, I'm on
20 my way.

21 And as best the evidence suggests, Mr. Wone
22 seems to get to Swann Street at about 10:30 p.m., give or
23 take. Of course, the exact time is of little consequence
24 with respect to what would unfold in that house after he
25 arrived.

1 You will hear that Robert Wone was happily
2 married, was exclusively heterosexual, was a thoughtful,
3 polite, civil, cordial, gentlemanly young man. And you
4 will also hear a little bit -- a bit about his personal
5 habits and practices, how neat he was, how fastidious he
6 was, how his college roommate and his wife will testify
7 that Robert was not the kind of person who would come home
8 from work and throw his work clothes on the floor.
9 Indeed, he had a very meticulous system for what he did
10 with his clothes when he got home. He had a system for
11 what he did with his gym clothes if he went to the gym and
12 got all sweaty. He didn't throw them in the hamper or
13 leave them on the floor. His wife will tell us that he
14 bought a drying rack that he kept in his bathroom; he
15 would take his sweaty gym clothes off, he would hang them
16 over the drying rack so they would dry before would then
17 place them in the hamper. He was a meticulous young man.
18 And that will become relevant as we move into the evidence
19 that was found in Mr. Price, Mr. Zaborsky and Mr. Ward's
20 home.

21 The facts show that Mr. Wone got to the house at
22 or about 10:30 p.m. on August the 2nd, and what I want to
23 do, even though it's perhaps out of order and maybe even a
24 little counterintuitive is talk about what -- because once
25 he arrives, the evidence doesn't clearly show exactly what

1 happened because the three defendants were in control of
2 the message of exactly what happened from the moment he
3 arrived, and they told the police what they told the
4 police. So we have to try to glean -- given the cover-up,
5 we have to try to glean from, by and large the physical
6 evidence, what it was that went on that resulted in Mr.
7 Wone being murdered that night. So what I want to do is
8 jump ahead a little bit to the defendants' statements in
9 very summary fashion what they told law enforcement.

10 THE COURT: Mr. Kirschner, can you, when you're
11 talking about statements, make clear to me anything that
12 is being offered for its truth. In other words, instruct
13 me like you would want me to instruct a jury; that what I
14 am hearing right now is something that I am being asked to
15 consider for its truth. And if you don't tell me that,
16 I'm going to assume that it's not something I would
17 consider for its truth.

18 MR. KIRSCHNER: And, Your Honor, that's
19 something that we were intending to revisit with the
20 Court, and I think Your Honor raised it, albeit briefly
21 this morning, when you said the whole confusion in the
22 minds of the jurors with respect to how to handle certain
23 statements is no longer an issue. And I realize we
24 litigated it and we made some concessions and some
25 accommodations based on the fact that we believed it was

1 going to be a jury trial. So, it may be that --

2 THE COURT: Are you changing your minds about
3 some things?

4 MR. KIRSCHNER: Well, it may be that we submit
5 some things in writing down the road with respect to how
6 the evidence comes in, but --

7 THE COURT: I need to know when you are saying
8 it to me. That's all I'm saying. I want to know what you
9 are offering for its truth, and anything that you don't
10 specifically tell me that about, I'm going to assume I am
11 not considering for its truth.

12 MR. KIRSCHNER: All right, Your Honor.

13 THE COURT: And I guess we can -- I mean, none
14 of this is evidence right now.

15 MR. KIRSCHNER: It is not.

16 THE COURT: But I guess we are getting notice
17 right now how you are changing things.

18 MR. KIRSCHNER: And let me just try to say this,
19 Your Honor. But for the facts that we already articulated
20 earlier that he arrived and that they were there at the
21 time he arrive, "they" being the three defendants, what
22 I'm about discuss, Your Honor need consider none of it for
23 the truth.

24 THE COURT: Okay.

25 MR. KIRSCHNER: As I work through the

1 defendants' statements just for purposes of opening
2 statement.

3 THE COURT: Okay.

4 MR. KIRSCHNER: What you will hear, Your Honor,
5 is that Joe Price takes control of the agenda from the
6 moment enforcement arrives. And you haven't heard from
7 all of the officers who overheard statements by the
8 defendants on the scene. We didn't go into the substance
9 of all those statements because that wasn't necessary for
10 Your Honor to resolve the motions, but you will hear that
11 when they are down in the living room area, Joe Price is
12 doing all the talking; and indeed, officers note that when
13 one or the other of the then witnesses, now defendants,
14 tried to say something, Joe Price would look at them as if
15 to shut them down, glare them down, keep them quiet so he
16 could control the message that was being presented to law
17 enforcement. And you're going to hear that the officers
18 took note of that on the scene when they were dealing with
19 the immediate aftermath of this incident being reported to
20 the police.

21 And at one point, Joe Price threw out there for
22 the officers' consumption, "well, you know there's a black
23 guy who stays out in the back alley" and didn't go back to
24 that but certainly seemed like he was trying to suggest
25 that the gentleman who, I think you may have heard

1 evidence about it on the videotapes, lived out in the back
2 in a van in the backyard of a neighbor of Mr. Price's and
3 Mr. Zaborsky's and Mr. Ward's, with the authority of the
4 permission of the homeowner. Had nothing to do with
5 anything, but Mr. Price did offer for the police on the
6 scene, "Hey, you know there's a black guy who lives out
7 there, who stays out in the back alley."

8 However, there was relatively little that was
9 said at 1509 Swann Street before they were taken to the
10 violent crimes branch and before the interviews began with
11 the homicide detectives. And the story that emerged from
12 these three statements, all three not for the truth, said
13 essentially the same thing with respect to the gross
14 features of what happened that night. Robert comes over,
15 we -- meaning Joseph Price and Dylan Ward -- stand around
16 the island in the kitchen chitchatting and having a glass
17 of water. Your Honor will see and has seen that both
18 Mr. Price and Mr. Ward then throw in the fact that, well,
19 yeah, while we're doing that, Mr. Price sees a bug on the
20 light in the backyard, and he goes out to investigate or
21 he goes out to see what a bug is doing on the light in the
22 backyard, and then he comes back in, which the government
23 suggests is sort of a contrivance to explain why it is
24 they may have inadvertently left the back door unopened.
25 That they both kind of feature that fact in the retelling

1 of the murder of Robert Wone is, I will say, curious at
2 worst.

3 They then say that they show Robert the guest
4 room, they show him the towels that they have laid out for
5 his shower, and they all go to their respective bedrooms.
6 Mr. Ward goes into his bedroom, Mr. Price goes up to the
7 third floor to the master bedroom, where Mr. Zaborsky by
8 all accounts has been the whole time. He didn't come down
9 to greet Robert, he didn't interact with Robert, he didn't
10 see Robert until noises was heard and they ran downstairs
11 and found Robert. Those are the gross features of -- and
12 all three, of course, say "I know the other two, and they
13 couldn't possibly have done this." They are all giving
14 rousing defenses for one another, even where they were in
15 no position to see whether the others could have done it.
16 By their own accounts, when this happens, Mr. Price and
17 Mr. Zaborsky say they are upstairs and they don't know
18 what Mr. Ward is doing downstairs. Mr. Ward says he hears
19 them; he hears a commotion, he waits a few minutes, and
20 when he comes out, they are over by Mr. Wone's body, so he
21 can't really say. But they all give an ironclad,
22 steadfast, rousing defense of one another. Joe Price
23 repeatedly says, "I know the other two better than I know
24 my own mother, and they didn't do this."

25 Now, Mr. Price in particular, breaking out the

1 individual statements that they give to the police.
2 Mr. Price says that after Robert comes over and everybody
3 goes to their respective bedrooms, he says that he goes
4 upstairs, he watches some TV, Mr. Zaborsky is already up
5 there going to sleep. He says that he knows that Robert
6 wone took a shower. He then says he hears the door chime,
7 sort of a beep-beep sound, as when you have an alarm
8 system at your house and the door opens and the seal
9 breaks, it goes beep-beep. Now, they say the alarm wasn't
10 engaged, but they say nevertheless, you hear that beep,
11 beep when the seal to the door is open. He says he hears
12 that, and he says that it doesn't really concern him
13 because maybe it's just Sarah, their tenant, coming home
14 for the evening, even though she indicated she would
15 likely stay over her friend's house that night. He
16 doesn't go down and investigate; it doesn't seem to phase
17 him. And he says, importantly, that I never fall back to
18 sleep after that. And then he says a few minutes later,
19 he hears some low grunts, at which point he and Mr.
20 Zaborsky run downstairs to investigate. He says that he
21 sees Robert wone, and he is clear about this over and
22 over, with a knife lying on his chest. Mr. Zaborsky
23 starts screaming, and Mr. Price tells him go upstairs and
24 call 911.

25 Mr. Price says he moves the knife off of

1 Robert's chest. In Mr. Price's words, "There was blood
2 everywhere." That's a quote. And "there was a lot of
3 blood on his chest." Those are both quotes from his
4 interviews with the police. He then says he uses a towel
5 to apply pressure to Robert's wounds, and he waits there,
6 right there for the paramedics to arrive.

7 When he is asked during the interview -- fast
8 forwarding because there's no forced entry here, and I'll
9 talk about the intruder theory in a moment. When he is
10 asked in the interview, "Okay, who has keys to your
11 house?" He says, and the words that I will now echo, it's
12 almost dismissively, "well, you know, just us and some
13 contractors and our tenant." That's who he tells the
14 police has keys in almost a dismissive, off-hand manner,
15 casually tossed aside like, well, it's none of that, just
16 some contractors.

17 When he is asked how the intruder got into the
18 house, he says, as a matter of fact, quote, "They came
19 through the back door. I heard the chime. The front door
20 of the house was definitely locked." And make no mistake
21 about it, Your Honor, and you've already alluded to it in
22 your resolution of motions, Joseph Price is in control of
23 this interview. He says repeatedly and in different ways,
24 "This is the worst thing that's ever happened to me."
25 well, we would suggest it's probably the worst thing

1 that's ever happened to Robert, but he repeatedly says.
2 "This is the worst night of my life." When the detectives
3 say something that he disagrees with, he says, "No, I
4 didn't say that." When he is offended, he tells the
5 detectives, "That's offensive to me."

6 When Milton Norris asks him, as Mr. Price is
7 working the Blackberry, "You want me to tell you what
8 burglars do, because --" he goes, "No, I really don't want
9 you to tell me what burglars do." He's dismissive, he's
10 cavalier, he's in control of that interview. And then he
11 says at one point, "Oh, you guys are killing me, and I've
12 had enough of this." And as Your Honor has said, he votes
13 with his feet, and he leaves.

14 Victor Zaborsky's story to the police. Again,
15 he never indicates that he comes down to see Robert Wone,
16 but rather, he stays up in that third-floor bedroom. He
17 says he is awakened by "screams," and he also goes on to
18 describe them as "reppy grunts." He sort of goes back and
19 forth between those two descriptions. He says that they
20 proceed downstairs, and he sees Robert lying on the bed
21 and he, Mr. Zaborsky, starts screaming.

22 He is asked about a door chime, but he never
23 says that he heard a door chime, as Mr. Price said he
24 heard upstairs. He does at one point say, "well, I think
25 as I'm screaming, I might hear a chime." He says that the

1 911 operator tells him to get -- we're going to play the
2 911 call in a moment. It's only about five minutes long.
3 He says the 911 operator tells him to go get a towel, to
4 place it on the wounds, apply pressure; it's going to
5 become blood soaked. Do not remove it. Take a second
6 towel, apply it over the top and continue to apply
7 pressure until the emergency workers arrive.

8 And Mr. Zaborsky, as you will hear on the 911
9 tape and as he tells the detectives, quote -- this is
10 actually from the detectives -- "I grabbed my towel, and I
11 grabbed my robe, and I went downstairs. And at that
12 point, Joe was already applying pressure to the wound. I
13 gave him another towel." And at that point in the 911
14 call, Your Honor, you're going to hear Mr. Zaborsky ask
15 the 911 operator: "what time is it?" And the 911
16 operator, I think, says, "You mean what time is it right
17 now?" And he says, "Yeah." And then the 911 operator
18 tells him that I believe it's 11:54.

19 Your Honor, we have to ask ourselves, you know,
20 how about: How long is it going to take for help to
21 arrive? When are they going to be here? We need help
22 now. But what time is it?

23 You will hear the words of Mr. Zaborsky on the
24 911 call when he says, "I think the intruder has one of
25 our knives." And then when he is asked in the interview

1 with the detectives about the knife and whether he saw the
2 knife, he says -- he's asked, "Did you see the knife?" and
3 he says, "I am confused now because I think I saw the
4 knife the first time I came down the steps, but I really
5 looked so quickly and was hysterical, and I don't know
6 whether I did or not." And then when he continues to
7 address whether he saw the knife, he says, "And I don't --
8 and I also -- that's when I think I saw the knife because
9 I -- but I'm cloudy on that right now." He then goes on
10 to talk about the knife was by him or it was on him, it
11 was leaning somehow, and yet he tells the 911 operator
12 pretty definitively that "I think the intruder has one of
13 our knives."

14 You know, Judge, that's a contrivance. And you
15 could tell it was a danger zone for Mr. Zaborsky when he
16 was talking to the police because all of a sudden -- "I'm
17 cloudy on that. I don't know. I was hysterical, so I
18 can't be sure." But as we'll learn as we walk through
19 this, the knife was an important feature of the cover-up,
20 of the orchestration. And, again, Mr. Zaborsky also tells
21 the detectives over and over again that there's just no
22 way Joe or Dylan could have done this; we are family.

23 Dylan Ward's story to the police. He says that
24 after Robert arrives, he and Joe chitchat, glass of water,
25 the spider on the light, and then they take Robert

1 upstairs to show him the guest room, they show him the
2 towels laid out. And Robert takes a shower, and Mr. Ward
3 at this point says he's in his own bedroom, which again is
4 on the second floor closest to the guest room. He says,
5 "I hear a high-pitched scream or laugh," but it doesn't
6 fully wake him up. And he says he doesn't even know if
7 it's coming from the back alley or from inside the house,
8 and the next thing he knows, he hears Joe and Victor
9 running downstairs, and he hears screaming and he hears a
10 commotion, and he waits a few minutes and then he emerges
11 from his bedroom to see Victor on the 911 call -- Mr.
12 Zaborsky, excuse me, on the 911 call, and Mr. Price next
13 to Robert Wone.

14 Importantly, when he is asked, well, is
15 Mr. Price applying pressure? Is there anything on his
16 chest? He says not once but twice, "I saw a small
17 square" -- and he demonstrates on the tape just like this.
18 "I saw a small square or a pad on Mr. Wone's chest." And
19 we'll look at the towel in a minute, but there is
20 absolutely no way that that towel could ever, in anybody's
21 estimation, be a small square or a pad on Mr. Wone's
22 chest.

23 He says he never sees the knife. He says that
24 as he is coming down the stairs, he kind of looks all the
25 way through the first floor of the house back to the back

1 door, and he says, "Hey, the door is unlocked." Pretty
2 good eyesight from that vantage point. And he, similarly,
3 says there is no way that Joe or Victor could have done
4 this.

5 Now, none of the defendants hear an intruder
6 entering the house, hear the intruder mounting those 16
7 uncarpeted hardwood steps, hear an intruder after having
8 stabbed Mr. Wone running back through the hardwood floor
9 that would have taken him from the guest room at the front
10 of the house to the top of the stairwell at the back of
11 the house. You've got to believe that if a random
12 intruder did this, he's taking the stairs two or three at
13 a time, making some considerable noise. They hear
14 nothing, nothing.

15 And then what I want to do is kind of walk
16 through the scene with the random intruder here in mind,
17 Your Honor, but one of the telling things that Joe Price
18 says comes not inside of VCB but outside VCB in that
19 interim period when he goes out before Detective Waid
20 invites him back in. He has given the statement to the
21 police over and over and over again that the knife was on
22 Robert's chest and I moved it. And he's got all the
23 answers because they said, "well then, you know, the
24 killer's DNA ought to be on that knife; right?" He said,
25 "well, maybe the killer wore gloves." He had all the

1 answers. But he said over and over again the knife was on
2 his chest, and he moved it.

3 He then leaves VCB, he gets into a car with Mr.
4 Zaborsky and with a witness that you will hear from, Scott
5 Hixson, who is also a friend and more than a friend at
6 times with respect to Mr. Price, and he tells Mr. Hixson,
7 among other things, "I had to pull the knife out of
8 Robert's chest." And, Your Honor, when he is back there
9 trying to sell to the police over and over again that I
10 simply moved it from off his chest, and yet when he gets
11 in that zone of comfort with his friends, with his -- with
12 his friends, he can't help but tell his friend, "I had to
13 pull the knife out of Robert's chest." Well, then, that's
14 obstruction what he was telling the police right back then
15 in VCB, when he maintained he simply moved it off his
16 chest.

17 Now, Your Honor, if we walk through the scene
18 briefly, in light of the story that the defendants have
19 told the police -- and Your Honor will see that in life
20 photo, that of Kathy Wone and Robert Wone as they were in
21 happier times. And I'm going to run through these fairly
22 quickly, Your Honor, but if we start with --

23 THE COURT: Can I just interrupt you before you
24 get the pictures?

25 MR. KIRSCHNER: Yes.

1 THE COURT: And this is mainly to address an
2 issue that I'm sure will come up a number of times. In
3 your presentation of statements, assuming that the only
4 thing that I can take for the proposition that it's true
5 is each of them saying, essentially, I was home and I was
6 there when Mr. Wone got there, the rest of it is a vacuum.
7 The rest of it proves nothing, other than that there may
8 be internal inconsistency among statements and that that's
9 something you're suggesting indicates consciousness of
10 guilt. It would not, however, prove as a factual matter
11 that anyone in particular handled the knife, for instance.

12 MR. KIRSCHNER: I would agree with that, and we
13 bring that to the Court's attention because he's
14 maintained one thing to the police, and then he
15 immediately tells -- we don't know which one is true.
16 We're not offering --

17 THE COURT: So that you, you will not be asking
18 me to find, based on those statements, and you will not be
19 proving to me that anyone in particular ever touched the
20 knife, ever moved it, ever handled it, was even near it,
21 et cetera, because that statement will not come in to
22 prove that point?

23 MR. KIRSCHNER: And we don't otherwise know
24 because we don't have eyewitnesses to that. That's right,
25 Your Honor. If we briefly walk through the scene, just to

1 give Your Honor context, this is the front of 1509 Swann
2 Street, this is the entrance to the home of the
3 defendants. As you step in the front door, I think this
4 may have come in on the motions, this would be looking at
5 the front door. And then taken from a vantage point
6 slightly farther back, sort of that you're now in the
7 kitchen, you're looking through the dinning room area into
8 the living room area to the front door.

9 And now if the photographer had pivoted a
10 180 degrees, we're now looking from the front door through
11 the living room, dining room area into the kitchen, and we
12 begin to see the back door. It is from this vantage point
13 that Mr. Ward, while on the scene, says he comes down the
14 stairs and he says, "Hey, the back door is unlocked."

15 There is -- if you walk in the front door and
16 you look to your immediate left, you will see these items
17 that are kind of perched on this shelving, and this would
18 be the bottom of the stairs that lead up to the second
19 floor. And then, Your Honor, we begin to see -- and this
20 is going to become important on this random intruder
21 theory. You begin to see some of what the defendants had
22 in this very well appointed, very expensive high-end home
23 that would have been impossible for a burglar to have
24 resisted. But if we start with what a burglar would have
25 had to have done, this is the security fence and the

1 security gate that has a key lock from the outside and a
2 turn lock from the inside. And you will hear testimony
3 that if you were inside the backyard and you used that
4 turn lock to open the gate, you could push it open and you
5 could run through it if you were a burglar trying to
6 escape. But that gate doesn't swing close. It wasn't on
7 a swing, it was a heavy sort of gate that stayed open,
8 unless you turned around and then pushed it all the way
9 closed. And once you are outside the gate, unless you
10 have a key, you can't even lock it.

11 Here is their, I guess, BMW in the backyard
12 parked in this little parking area adjacent to the rear
13 alley of the 1500 block of Swann Street, and I think
14 you'll hear from one of the defendants in their statements
15 that, well, the intruder could have stepped up on the hood
16 of our car and sort of hurled himself over the fence.
17 That's, I guess, possible. Of course, they processed the
18 hood of that car. There wasn't a scrape or a smudge or a
19 footprint or a handprint or any indication that anybody
20 had stood up on the front portion of that vehicle and
21 hurled themselves over this fence.

22 And, Your Honor, this fence is going to become
23 important because this fence has a three-inch -- there's a
24 three-inch top rail encircling the entire backyard but for
25 this area which is even higher, where the iron gate is.

1 And you are going to hear that not one but two detectives
2 that night were out there trying to see if anybody had
3 come over that fence, and one of whom had burglary
4 experience, and he will tell you, "I climbed up on the
5 metal trellis that is inside their backyard area without
6 touching the top rail, and I shined my flashlight down it,
7 and what I saw was uninterrupted sort of pollen and dirt
8 and tree debris, little leaves. And two detectives went
9 all the way around that three-inch top rail to see if
10 there was anything disturbed, any sort of handprints or
11 pollen swept away, and they will tell you that it was just
12 absolutely untouched all the way around. So, the random
13 intruder would have somehow hurdled that fence without
14 even disturbing anything on that top rail.

15 Now, once the intruder made his way over the
16 fence, he would have happened upon an inadvertently
17 unlocked back door, courtesy of the spider on the light.
18 Lucky him. He walks in, and of course before the intruder
19 walks -- or as the intruder is walking in, he would hear
20 the chime too, wouldn't he? He breaks the seal; it goes
21 beep, beep. One might think an intruder would turn tail
22 and run if he heard the beep, beep, as an indication of an
23 alarm system -- I'm outta here. But, of course, he
24 doesn't. He comes in 11:00, 11:30. The time is
25 absolutely unclear, but regular people are watching the 11

1 o'clock news or Letterman or whatever, just kind of --
2 that's when he chooses to enter this townhome. And as he
3 enters the kitchen, Your Honor, the first thing on his
4 immediate right is going to be a nice, bite-size flat
5 screen TV and a cordless phone. And I guess the intruder
6 wouldn't want to grab those items, head out, pawn them and
7 use the money for his own purposes. Foregoes that
8 entirely.

9 And this is simply to show that you're
10 continuing, when you walk in the back door, you look to
11 the right, flat-screen TV and phone, then there's a
12 refrigerator, and then we get over to the counter on the
13 other side of the refrigerator. And then as you walk
14 through the door, if you look to your left, refrigerator
15 on the right, stove on the left. Now we begin to see the
16 knife set, which becomes not only important but just an
17 absolute dead giveaway that this is an orchestration. And
18 not only is there a knife set there, but there are
19 kitchen-aid mixers and Cuisinart food processors, and one
20 might suspect if you open a drawer, if you are an
21 intruder, you're going to find any number of silverware
22 sets or who knows? Makes some sense for the intruder,
23 again, to sweep up these, what I'm told are high-end
24 kitchen items, and make good his escape. But he doesn't.
25 No.

1 Instead, what he does is he makes a pit stop at
2 the butcher block. And, Your Honor, you will see the
3 knife that was found upstairs, what I will refer to as the
4 plant knife because that's what the evidence will show it
5 was, and where it came out of and the butcher block. I
6 have already cleared this with the marshals. I don't know
7 if they were thrilled about it, but they said it was okay.
8 We have that butcher block, Your Honor, and it's kind of
9 wedged in there next to this sort of marble container and
10 another marble thing to hold your utensils. And what the
11 intruder does, foregoing the flat tops and the phones and
12 the Cuisinarts, is he goes over and he takes out from
13 underneath, a smallish knife, and then proceeds through
14 the house.

15 The intruder doesn't go like this
16 (demonstrating) and get the knife that can do some damage
17 and perhaps inspire fear. Rather, what he does is he goes
18 like this, and then he goes underneath, and he takes out a
19 smallish knife, a replica of what you will see -- strike
20 that -- the actual knife you will see. It's been
21 processed, and the government has also secured a replica
22 knife that would go to that set. Just happens -- and,
23 Your Honor, I'm not going to pull them out, but if you
24 look at these other knives, what knife is this closest to
25 in size, in dimensions? Happens to be closest to the one

1 that's missing from Mr. Ward's cutlery set up in his room.
2 A coincidence that the intruder took that one? Does it
3 make sense that the intruder would take that one? Your
4 Honor, it doesn't.

5 Nevertheless, he takes the smallest kitchen
6 knife out from underneath, and he proceeds through the
7 first floor of the home. You're going to see photos, Your
8 Honor. I don't know if I brought that one here where
9 there's a -- that's right, I brought a duplicate. You can
10 see a laptop computer right on the first floor. There is
11 a laptop computer in a computer bag leaning up against the
12 back of the couch, and the intruder inferentially would
13 have taken a path right here, right by the laptop
14 computer, with the smallish kitchen knife. Again, what
15 burglar is going to forego that opportunity?

16 And, Judge, as he mounts the 16 hardwood steps
17 without being heard and he gets to the top of the stairs,
18 he is right smack in front of Dylan Ward's bedroom door,
19 which if there's some wild theory that the intruder wanted
20 to go upstairs to rummage through rooms, this is the first
21 room that he has the opportunity to open the door and see
22 what he can get. He doesn't do that. Instead, here's the
23 -- off to the far right are the stairs going from the
24 second floor down to the first floor.

25 Instead, he gets here, he turns 180 degrees and

1 he starts his way down the hall to the guest room, some 25
2 or 30 feet on, again, hardwood floors unheard. And then
3 he opens, inferentially opens the guest room door, and
4 right smack in front of him, what he sees is Mr. Wone
5 lying on the bed. Undeterred, he doesn't turn around and
6 leave nor does he steal anything nor does he stab Mr. Wone
7 where he lay. Instead, he comes in the room, he actually
8 has to walk past a wallet, a second wallet which Kathy
9 Wone will tell you was a dummy wallet that Robert carried
10 in case he was ever robbed, so he could give the robber
11 his dummy wallet instead of his real wallet. You can see
12 his RFA little retractible thing for his ID. You can see
13 a Blackberry, you can see credit cards peaking out from --
14 you can see the clothes that someone put there that he was
15 intending to wear the next day, and Kathy Wone will tell
16 you more about that.

17 He walks past all this stuff, not wanting to
18 take any of it, inferentially. There is also a computer
19 in that room, there's another cordless phone. Takes none
20 of it, but walks around this side of the bed. And why do
21 I say that? I'm going to -- this is an autopsy photo, and
22 I'm not going to display it to the audience at this
23 moment, but, Your Honor, if you -- if Mr. Wone is lying in
24 the bed like this, and if our intruder with the smallish
25 kitchen knife walks through the door and begins plunging a

1 knife into Mr. Wone thusly, well then he is also holding
2 the knife upside down because you've got a blunt edge,
3 sharp edge orientation that suggests -- we don't know but
4 suggests -- that the intruder would have had to have
5 walked all the way around the bed, positioned himself like
6 this, and then with a blunt edge, sharp edge -- sharp edge
7 ten o'clock, blunt edge four o'clock -- inserted the knife
8 three times into Mr. Wone and leaving the knife either on
9 his chest, in his chest, and then making the sort of
10 pilgrimage back out of the house, again foregoing the
11 wallet, the watch, Movado watch I believe, making his way
12 all the way back the hardwood floors, all the way
13 downstairs, all the way through the house and back out the
14 back door and over the fence without disturbing the
15 pollen. To say that the random intruder dog don't hunt is
16 an understatement. There is just no credible evidence
17 that this was a random intruder.

18 Court's indulgence. (Pause.) And if we talk a
19 little bit about the injuries to Mr. Wone and what they
20 tell us and what they contradict, those three stab wounds
21 to his torso were uniform in depth, were uniform in
22 orientation, were virtually uniform in width. And when
23 you consider that he was stabbed three times and each one
24 of those stab wounds went about four and a half inches
25 deep -- you'll hear Dr. Goslinoski talk about how she

1 measures wounds. She does it first with a sound -- I
2 forget what she called it, but like a metal rod that will
3 drop down as far as it will go. She measures that. She
4 then takes resections. She measures those, and she comes
5 up with an estimate of how deep the wounds are. And the
6 wounds are uniformly four to five inches in depth, which
7 she will say is she measures them to about four and a half
8 and then gives it a half inch on either side, given the
9 elasticity and the give that we all know the body has.

10 So, they are all the same depth, and yet one
11 goes through the cartilage, where it connects to the
12 sternum. It takes considerably more force to force a
13 knife through cartilage than it does through soft tissues,
14 and yet they are all identical. This is not a random,
15 haphazard, thoughtless, spur-of-the-moment three stab
16 wounds by any stretch of the imagination. And, Your
17 Honor, there is no evidence this was some assassin who
18 entered and took a small kitchen knife and did what he did
19 to Robert. There is no disgruntled business partner;
20 there is no angry friend or lover or paramour. There is
21 no evidence to suggest any of that. This is a cover-up.

22 I'd like to briefly play, Your Honor, the 911
23 call.

24 THE COURT: Honestly, I don't think you need to
25 right now. I'll hear it during the evidence. So, why

1 don't you keep going?

2 MR. KIRSCHNER: All right. Then let me just
3 highlight a couple of features from the 911 call.

4 THE COURT: Because you already have.

5 MR. KIRSCHNER: Because I already have, and I'm
6 going to do it again, unless the Court stops me.

7 THE COURT: If I have heard it once, I don't
8 need to hear it again.

9 MR. KIRSCHNER: Okay. There are a few things
10 that I don't know if you've heard before, and those are as
11 follow. When Mr. Zaborsky calls at 11:49, before he's
12 even asked what happens, he wants to launch into the story
13 that -- when he's asked is there anybody in the home right
14 now, he says, "I don't know. We heard a --" and he stops.
15 And you know by the context of what comes thereafter that
16 he's about to say "We heard a chime." Even by his own
17 admission, he never heard a chime when he was upstairs
18 with Joe Price.

19 He then says that my partner is applying
20 pressure; he is applying pressure right now. And, Your
21 Honor, when the first responder gets there not two minutes
22 or three minutes after he is actually saying that, because
23 the responders get there about five minutes and 40 seconds
24 or six minutes, it's a very quick response time, Mr. Price
25 is not applying pressure. There's no towel on the chest,

1 there's no pad, there's no square. There is Mr. Price
2 sitting with his sort of side to Mr. Wone, with one foot
3 tucked up underneath him -- Mr. Price has one foot tucked
4 up underneath him -- and he is not touching the body, he's
5 not applying pressure, and there's nothing on Mr. Wone's
6 chest.

7 And -- trying to sift through the 911 call, Your
8 Honor.

9 THE COURT: I'm not saying you have to leave
10 anything out. You'll play it later, and so no need to do
11 it twice.

12 MR. KIRSCHNER: It's interesting because when
13 the 911 operator asks him: "Is it a home? Is it 1509
14 Swann Street?" There's some back-and-forth between Mr.
15 Zaborsky and the 911 operator, leading her to the point
16 where she's saying: "Is it a home, 1509 Swann Street?"
17 He says, in unresponsive fashion, "The person had one of
18 our -- our knives," which, again, is a script, the
19 government suggests, because he's cloudy on whether he has
20 ever seen the knife, and yet he volunteers in
21 nonresponsive fashion the person had one of our knives.

22 And then he asks: "What time is it?" And the
23 operator says, "What time is it at the moment?" Unusual
24 question. He says yes, and that's when she gives the time
25 as 2354. 11:54 is what she says.

1 EMS arrives promptly, Your Honor, and here is
2 what the first ambulance worker -- and if Your Honor needs
3 to take a break --

4 THE COURT: No. I'm just noting that you've
5 been talking for an hour and five minutes, and you know
6 what they say about, you know, 45 minutes ago. And I am
7 listening carefully, and I know that you want to give the
8 full story, but --

9 MR. KIRSCHNER: I'm a little more than
10 two-thirds of the way through, if that helps.

11 THE COURT: I am paying full attention, and I
12 will keep listening.

13 MR. KIRSCHNER: I appreciate that. If Your
14 Honor needs a break, let me know.

15 THE COURT: I don't need a break.

16 MR. KIRSCHNER: The first EMS workers who arrive
17 are important. A gentleman by the name of Jeff Baker has
18 been with the EMS and Fire Department for many, many
19 years, says he arrives at the home, and he sees,
20 inferentially, Mr. Zaborsky in his white robe talking on
21 the phone, standing on the front. And he overhears him
22 say stabbing, second floor, or words to that effect. And
23 interestingly, on the 911 call, itself, you can hear Jeff
24 Baker mounting those 16 uncarpeted hardwood stairs,
25 something that nobody heard at the time of the attack.

1 And then when he gets to the top of the stairs,
2 he sees Mr. Ward coming out of that small hallway,
3 inferentially from the bathroom. He looks at him, and he
4 says, "What's going on?" And Mr. Ward says nothing, he
5 turns and he walks into his bedroom. There is some
6 suggestion he made gesture toward the guest room, but
7 that's unclear. He says nothing, and he walks into his
8 bedroom.

9 Jeff Baker turns, he now heads down to the guest
10 room, he sees Mr. Price again sitting as I've described
11 with his back or his side toward the body not putting
12 pressure, nothing on the chest. And Jeff Baker says, "I
13 see this man in the bed. His chest is exposed." He can't
14 remember if the shirt is pulled up or if it was an open
15 shirt, but he remembers the chest is exposed, there are
16 three gaping torso wounds and there's no blood on the
17 torso. He said there were like very thin striations,
18 maybe as if somebody had wiped it down, but there's no
19 blood on this man. And he says he was concerned. He was
20 so concerned that he didn't walk right up to --

21 MR. SCHERTLER: Your Honor, we'd interpose an
22 objection.

23 MR. KIRSCHNER: That's all I'm going to say
24 about his subjective --

25 THE COURT: The openings are not evidence. I

1 understand that you object to state of mind at that point,
2 and I will give his state of mind to no weight.

3 MR. KIRSCHNER: Here's what he says he does. He
4 walks in, Your Honor, and he is not going to go and work
5 on Mr. Wone with his back turned to Mr. Price. He says he
6 looks at Mr. Price's hands to see if he's got anything in
7 his hands; he proceeds around the other side of the bed,
8 and he keeps Mr. Price in his line of sight as he works on
9 Robert Wone, and he did that because of what he found.

10 He will tell you that it is not his job to
11 pronounce death, but Mr. Wone was lifeless, pulseless. He
12 had no respiration. His pupils were fixed. He was dead.
13 Can't say how long, but he will say the man was dead.
14 Nevertheless, he gets him out of there, and he's going to
15 try to revive him, even though there's no reviving him.
16 He puts him on a Reeves stretcher, takes him down to the
17 ambulance, loads him into the ambulance and gets him over
18 to GW Hospital.

19 I should also note when he comes into the room,
20 and he asks Mr. Price, "What's going on?" same question he
21 asked Mr. Ward. Mr. Price says, simply, "I heard a
22 scream," and he gets up and sort of moves away from the
23 bed.

24 You will hear that they, in the ambulance, tried
25 to start a line in his left arm, and you will see sort of

1 the typical needle puncture marks there right along the
2 vein of the left arm. But those weren't the only needle
3 puncture marks to Mr. Wone's body that would be found by
4 the medical examiner. She found a series of needle
5 puncture marks, some of which appeared pre-mortem. And if
6 Mr. Wone was dead on the scene, emergency workers can't
7 inflict pre-mortem needle puncture marks even if it's
8 warranted. There were three needle puncture marks to the
9 left side of his neck; there were two to the top of his
10 ankle; there were a few to his torso that you will see in
11 the photographs, Your Honor. Who put them there, what the
12 intent was, what the purpose was is not something that
13 will become clear, courtesy of the cover-up.

14 You will hear from his wife, however, that Mr.
15 Wone had no medical appointments, had no injections
16 administered to him. He wasn't into acupuncture. I mean
17 there's no other reason for those pre-mortem puncture
18 marks to be on Mr. Wone.

19 And you may hear, Your Honor, testimony about
20 what's called PEA, pulseless electrical activity, which is
21 the electrical activity that could linger in the heart for
22 some time before somebody is actually pronounced. You may
23 hear about the cardiac tamponade and those sorts of
24 things, but we will await the defense evidence on those
25 fronts and present rebuttal evidence and witnesses as

1 appropriate. I think those things become largely
2 distractions, but we will await presentation by the
3 defense on those topics rather than trying to get into
4 them at this point.

5 Again, Dr. Goslinoski will tell you she unzipped
6 the body bag, and what she saw, in her word, was absurd -
7 the uniformity, the precision, the almost surgical aspect
8 of these three uniformed wounds. No defensive marks on
9 this man's hands or arms, no significant blood on his
10 hands as if he could even clutch his chest as he was being
11 stabbed. Blood had been pumped into all sorts of
12 different parts of his body, and some as you've seen was
13 pumped right on to the bed, itself, and yet there is no
14 indication the man was able to move when these wounds were
15 being inflicted, none. The wounds were perfect -- no
16 tears, no defects, no fishtailing, no jagged edges. I
17 mean, three perfect, uniformed incisions to his chest.
18 It's not just Dr. Goslinoski, Dr. David Fowler, Chief
19 Medical Examiner for Maryland, has reviewed this case and
20 will similarly conclude and opine that it is inexplicable
21 that this man was unable to move at the time these wounds
22 were being inflicted. Again, this is not a quick,
23 careless, spontaneous stabbing that occurred in that house
24 that night.

25 THE COURT: Mr. Kirschner, you think you can

1 finish up in 15 minutes?

2 MR. KIRSCHNER: I think I can, Your Honor.

3 THE COURT: All right.

4 MR. KIRSCHNER: Let's go back to the guest room
5 and talk a little bit about the other findings of the
6 evidence recovered therefrom. First of all, the knife.
7 Your Honor, and this doesn't go to experiment, it simply
8 goes to the findings of the trace evidence examiner.

9 The knife that was recovered from the
10 nightstand, which I think Your Honor can see in this
11 photograph, the nightstand kind of standing behind the
12 door, the knife is back here and there's actually a
13 close-up of it both here and much closer there. That
14 knife has a blade that's about five and a half inches in
15 length. The depth of the wounds, four to five inches,
16 which is basically four and a half, with a half inch on
17 either side, will come right up to about here, and yet the
18 blood has traveled the full five and a half inches up to
19 the very -- I think that's the hilt or the choil, I'm
20 told, up to this part of the knife with these little sort
21 of looped pattern imprints up here that are consistent
22 with a towel, kind of, with blood on it being pressed
23 against that area.

24 You are going to hear from Doug Deedrick that
25 when he examined the trace evidence on that knife, it was

1 virtually covered in white cotton fibers. I think he'll
2 say he stopped counting at some point, he was pulling so
3 many off, and yet he will tell you that there were no grey
4 shirt fibers or grey fibers consistent with the grey
5 william & Mary sweatshirt that Robert Wone was wearing.
6 He can talk about how you can -- there are a number of
7 different tests, including you see how they fluoresce.
8 Not surprisingly, white fibers fluoresce differently than
9 grey fibers. He found no grey fibers on the knife, but he
10 found oodles of white cotton fibers on the knife,
11 consistent with the towel. Consistent, Your Honor, with
12 this towel (indicating).

13 And if this is a towel that was used to put
14 pressure on three gaping torso wounds and it produced only
15 that smallish patterned area of blood by my left hand,
16 well, you talk about a mystery? You look at the reverse
17 side of the towel, Your Honor, and it's got what common
18 sense -- we don't need blood pattern experts -- what
19 common sense says are bleed-through pressure points, and
20 it's just not that difficult or doesn't require that much
21 expertise to envision a knife being swiped through there,
22 blood bleeding through the other side of the towel as
23 you're applying pressure with your fingertips after you
24 have dabbed this in the blood on Mr. Wone's chest.

25 Everything is consistent with that scenario.

1 And if this can be described as a small pad or towel on
2 Mr. Wone's chest, we think that strains credulity, and
3 that, of course, is how Mr. Ward described what he claimed
4 he saw. This is not a towel that was used to staunch
5 three open, gaping torso wounds. And is it a surprise
6 that white cotton fibers were all over that knife in the
7 blood?

8 And of course, Your Honor, there is a knife that
9 was four and a half inches in length, and that was a knife
10 that was missing from Mr. Ward's cutlery set in his room.
11 You will hear that that cutlery set box, which contained a
12 large carving knife, a large carving fork and a smaller
13 knife with a blade, considering the replica that we
14 acquired, a blade that was four and a half inches in
15 length, more consistent with the depth of the wounds, was
16 recovered from Mr. Ward's room. And that can't be a
17 coincidence. It can't be. It's further evidence of the
18 cover-up and of the orchestration.

19 Almost done, Your Honor. Just briefly.
20 Robert's things that were recovered from the room. If we
21 look at his items that were taken from the floor, this is
22 the towel that I was just holding up. One towel. Not a
23 second towel as Mr. Zaborsky said, one towel, and it's not
24 on his chest, it's not applying pressure to the wounds,
25 it's on the floor, off to the side of the bed down by

1 where the desk is. And then underneath here, you'll see
2 there's a white cotton dress shirt that Mr. Wone had worn
3 that day. His pants and his belt are actually underneath
4 that.

5 This pillow case, which seems interesting till
6 Kathy Wone indicates that when she packs for Robert when
7 he goes away, she folds up his clothes, she slides them in
8 a pillow case to keep them from getting wrinkled, and
9 that's the way she packs when he travels, and that pillow
10 case comes from her house and she has and she will
11 identify.

12 This is Mr. Wone's toiletry bag. And if there
13 is one thing you're going to learn from Mr. Wone, if he
14 took his work clothes off, he would put them right on a
15 hanger to go to the dry cleaners the next day or he might
16 fold them up and put them on a chair, but he didn't toss
17 them on his own floor, and I'm sure he didn't toss them on
18 a friend's floor, when he is a guest in their house.
19 Could they have been knocked over at some point by
20 emergency responders? Sure, could have, but unlikely.

21 Court's indulgence. (Pause.)

22 And then just one other point, Your Honor, with
23 respect to the room. Mr. Ward says he hears Robert taking
24 a shower, he then hears Robert go into the guest room
25 door, he hears the door closed and he hears the door

1 latched. And Joe Price says the same thing. He says, "I
2 know Robert took a shower." And yet, Your Honor -- and
3 they admit that they put towels out for Mr. Wone to use
4 when he took his shower, and yet there are the towels dry
5 (indicating), one stacked on top of the other right over
6 the back of a chair that's in the very guest room in which
7 he's staying. He didn't shower. These were the towels
8 they put out for him to shower. He never showered nor,
9 Your Honor, did he go to bed, we would assert, by folding
10 these covers down at a 45-degree angle and then lying on
11 top of them as he was found by the EMS workers. Who goes
12 to bed like that lying on top of a comforter folded under
13 your back?

14 And, Your Honor, I am not going to go through
15 the burglary chapter and verse, subsequent burglary on
16 October 30 by Michael Price and the defendants came to
17 learn an associate of Michael Price, who also assisted in
18 that burglary, but you are going to hear the evidence of
19 the delayed reporting, once they discovered that it was
20 Michael Price who entered their home and took the
21 electronics equipment on October 30th. They decided to
22 rally around Michael; they didn't report that Michael had
23 committed the burglary. Indeed, you are going to hear
24 evidence from Michael's partner, Lewis Hinton, who said
25 rather than report the burglary, Lewis Hinton called the

1 Maryland authorities and said that Michael Price had taken
2 his car because Lewis Hinton said we have to get Michael
3 off the streets, so I am going to call and report my car
4 stolen, even though I gave him permission to use it. And
5 that was the ruse that they employed to get Michael Price
6 off the street after the burglary.

7 That delayed reporting, Your Honor, is a
8 powerful indicator of how they respond when a family
9 member is in trouble, when a family member has done wrong,
10 when a family member needs to be helped and protected.
11 That delayed reporting is an important state of mind
12 evidence for these defendants. And then finally, it's
13 after the burglary that defendant Price, for the first
14 time, tells the police, oh, well, by the way, my brother
15 Michael Price has a key to 1509 Swann Street.

16 And you will also hear, Your Honor, that Michael
17 Price attended the funeral of Robert Wone, even though
18 Kathy Wone had never met him before. You will hear about
19 how he was acting at that funeral. You will hear that he
20 missed his phlebotomy class that he was enrolled in for
21 the first time on the evening of August 2nd, 2006. You
22 will hear some things about Michael Price that certainly
23 fueled the fire of covering up for a family member. And
24 then you will hear about a couple of conversations that
25 Mr. Price, Joseph Price, had with Kathy Wone, including

1 one where he goes to Kathy's home after the homicide prior
2 to the funeral, and he is actually inquiring whether Kathy
3 wone would waive any attorney-client privilege she may
4 have with her lawyer, so that Mr. Price's lawyer can ask
5 Kathy what the police -- what she is telling the police
6 and what they are asking about them, about Mr. Price and
7 his family.

8 And, Your Honor, I think I have probably
9 overstayed my welcome, so I will just conclude by saying
10 that the defendants really worked hard and fast to cover
11 this up. They have steadfastly kept the conspiracy
12 intact, and the fact that there are so many unanswered
13 questions, inexplicable circumstances is exactly what the
14 defendants were banking on, in order to help protect the
15 perpetrator or perpetrators of this crime, and the
16 government believes that Your Honor will conclude that
17 they covered this crime up and will hold them accountable.
18 Thank you.

19 THE COURT: I am going to break until 2:15, and
20 that's because I have another case I have to call right
21 now, and I want to make sure the courtroom staff gets a
22 good lunch break. So, see you all at 2:15.

23 (Proceedings recessed. 12:55 p.m.)

24 (Proceedings resumed. 2:25 p.m.)

25 AFTERNOON SESSION