

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
CASE NUMBER CRC2014CF005586CFAXWS

STATE OF FLORIDA,

Plaintiff,

vs.

ADAM MATOS,

Defendant.

PROCEEDINGS: MOTION

BEFORE: THE HONORABLE PAT SIRACUSA, JR.
Circuit Court Judge

DATE: August 25, 2016

PLACE: Courtroom 2-A
West Pasco Judicial Center
7530 Little Road
New Port Richey, Florida 3465

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I N D E XPAGEWITNESS CALLED BY THE STATE OF FLORIDA:

CHET COUGILL

Direct by Mr. Sarabia

8

Cross by Mr. Vizcarra

40

Redirect by Mr. Sarabia

50

ARGUMENT

By Mr. Sarabia

52

By Mr. Michailos

78

By Mr. Vizcarra

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COURT'S RULING

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P R O C E E D I N G S

1
2 (OPEN COURT.)

3 (Defendant present.)

4 THE COURT: All right. We're here in State of
5 Florida versus Adam Matos. The case number is
6 2014-5586. The charge is four counts of capital
7 murder in the first degree.

8 The State is present and represented by
9 Mr. Sarabia. And, I'm sorry, I'm drawing a blank.

10 MR. LAWHORNE: Joseph Lawhorne.

11 THE COURT: All right. And, Mr. Longhorn --
12 Lawhorne, excuse me.

13 And then the Defense is present, represented
14 by Mr. Michailos, Mr. Livermore, and --

15 MR. VIZCARRA: Vizcarra.

16 THE COURT: Mr. Vizcarra.

17 It's that camera in my face; it distracts me.
18 Anyway.

19 Mr. Matos is present. He is in custody. And
20 we've bifurcated a hearing. Does either side wish
21 to give an opening or a recap of what they believe
22 they established during the first portion of the
23 hearing or do you want to just go straight into it?

24 MR. SARABIA: Judge, I would note, we did file
25 an addendum as requested by the Court. A courtesy

1 copy should have been delivered to you last week.
2 And Defense Counsel has received a copy of that. I
3 just want to make sure the Court had that to
4 review.

5 THE COURT: Addendum to the memorandum on
6 motion to admit hearsay statements. Yes, I have
7 it. I've had a chance to review it. All right.

8 MR. SARABIA: Correct. And just a brief
9 recap, Judge, we called Dustin Brooks who testified
10 as the 911 operator. The 911 call was admitted
11 into evidence which Your Honor heard, which is the
12 subject of the motion.

13 Two family members of Megan Brown testified
14 that she was excited, as well as some other
15 circumstances regarding the house, I believe. And
16 then Deputy Heidgerken testified regarding his
17 investigation and some photographs were admitted
18 through him.

19 And actually I'd request from the clerk some
20 of those photographs because we may be using some
21 of those in Detective Cougill's testimony.

22 THE COURT: All right. And besides Detective
23 Cougill, how many other witnesses do you have?

24 MR. SARABIA: He is the only one, Judge.

25 THE COURT: And, Mr. Vizcarra, or Mister -- do

1 you know if Defense is going to be doing any
2 witnesses today?

3 MR. VIZCARRA: No witnesses, Judge.

4 THE COURT: No witnesses. All right. All
5 right. Great.

6 And did you want to give any recap or address
7 any issues before we got started?

8 MR. VIZCARRA: Judge, I just wanted to bring
9 to your attention what the State is asking to be
10 included as collateral evidence is an agg. assault
11 charge that happened August 28th, around 5:50 in
12 the morning. So -- it was not charged. The State
13 did not file charges on that, entered a no-Info and
14 they're seeking to enter that into the murder case.
15 So that's what -- that's what they're trying to get
16 in, Judge.

17 THE COURT: All right. And I've been provided
18 a note by the clerk indicating that they're going
19 to need to request evidence, meaning that you've
20 got stuff downstairs and it's got to be brought up?

21 THE CLERK: I just need to get it --

22 THE COURT: All right. How long would that
23 take approximately?

24 THE CLERK: I'll know in just a second, Judge.

25 THE COURT: Okay.

1 MR. SARABIA: Judge, I think we'll probably be
2 able to get started prior to receiving that.

3 THE COURT: Okay. Has a transcript already
4 been done from the first hearing?

5 MR. SARABIA: No, Judge.

6 THE COURT: Neither side requested it?

7 MR. SARABIA: No.

8 THE COURT: Okay. All right. That's fine. I
9 just wanted to make sure if it was in here anyplace
10 that I'd have a chance to refer to it. Okay.

11 (Staff conversation.)

12 THE COURT: All right. Well, we'll get an
13 update in a minute to see when we'll be able to get
14 the evidence. But if you're saying that we can
15 proceed without it, then we'll get started.

16 Who do you wish to call as your witness?

17 MR. SARABIA: The State would call Detective
18 Cougill.

19 THE COURT: Detective Cougill, come on up.
20 Oh, is he outside?

21 MR. SARABIA: Yes, Judge.

22 THE COURT: All right. Mr. Matos, if at any
23 point you have any questions or concerns that
24 Mr. Livermore's not able to address for you, let me
25 know and I'll talk to you about it. Okay?

1 THE DEFENDANT: Okay.

2 THE COURT: All right.

3 THE BAILIFF: Detective, if I could get you to
4 stand right here. Face the Judge and raise your
5 right hand, please.

6 THE WITNESS: Yes.

7 THEREUPON,

8 CHET COUGILL,

9 the witness herein, having been first duly sworn, was
10 examined and testified as follows:

11 THE WITNESS: Yes, sir.

12 THE COURT: Come on up and have a seat please.
13 State, you may inquire.

14 MR. SARABIA: Thank you, Judge. Defense
15 Counsel.

16 DIRECT EXAMINATION

17 BY MR. SARABIA:

18 Q Could you please introduce yourself to the
19 Court.

20 A My name is Chet Cougill, C-o-u-g-i-l-l. I'm a
21 detective with the Pasco Sheriff's Office.

22 Q And how long have you been with the Pasco
23 County Sheriff's Office?

24 A Since March of 2006.

25 Q And what is your current assignment there?

1 A I'm a Major Crimes detective.

2 Q How long have you been with the Major Crimes
3 Unit?

4 A Since January of 2013.

5 Q And what sort of crimes do you investigate in
6 the Major Crimes Unit?

7 A Any crime that's against a person like
8 homicide, robbery and like sexual assaults.

9 Q Are you familiar with the homicide
10 investigation in which Adam Matos was ultimately
11 arrested and charged?

12 A Yes, sir.

13 Q And what was your role in that investigation?

14 A I was the lead investigator.

15 Q What were your duties as the lead investigator
16 in that investigation?

17 A Just overall in charge of the investigation,
18 hand out assignments to other detectives, and just
19 oversee the investigation.

20 Q Were you the only detective involved in that
21 investigation?

22 A No, sir.

23 Q Were you -- were there other deputies and
24 detectives who assisted you in conducting the
25 investigation?

1 A Yes, sir.

2 Q As the lead investigator, have you had an
3 opportunity to review all the reports authored by other
4 deputies and detectives who authored reports in this
5 investigation?

6 A Yes, sir. I did.

7 Q Did you get updates either face-to-face,
8 verbally, over the phone from them as the investigation
9 was ongoing?

10 A Yes.

11 Q Did you give them assignments based on what
12 you were hearing and the information you were collecting
13 as the investigation was ongoing?

14 A Yes, sir. I did.

15 Q Are you aware that there were several hundred
16 photographs taken in conjunction with this
17 investigation?

18 A Yes, sir.

19 Q Have you reviewed all of those?

20 A Yes, sir. I did.

21 Q And are you aware that there was other
22 evidence collected in the form of surveillance videos,
23 surveillance stills and records from banks, cell phone
24 companies, Internet companies and the like?

25 A Yes, sir.

1 Q And have you had an opportunity to review
2 those --

3 A Yes, sir. I did.

4 Q -- as lead investigator?

5 Now, when did you first become involved in this
6 investigation?

7 A On September 4, 2014.

8 Q And was that pursuant to a welfare call --
9 welfare check called in by a Linda Thomas earlier that
10 same day?

11 A Yes, sir. It was.

12 Q And approximately what time did you get
13 involved?

14 A At approximately 11:30 AM.

15 Q And at the time you first become involved,
16 were you aware that this was a homicide investigation?

17 A No, sir. I was not.

18 Q When did you become aware -- when did this
19 become a homicide investigation?

20 A At approximately 1:30 on the same day we
21 discovered homicide victims.

22 Q Okay. And, now, the welfare check, did that
23 correspond to 7719 Hatteras Drive?

24 A Yes, sir.

25 Q And did you respond to that location prior to

1 the bodies being discovered?

2 A Yes, I did.

3 Q And your cursory observations at the scene,
4 did it give you concern about what may have happened to
5 those occupants?

6 A Yes, sir.

7 Q Did you pursue a search warrant for 7719
8 Hatteras Drive?

9 A Yes.

10 Q And did you obtain one?

11 A Yes, sir.

12 Q Were you one of the first law enforcement
13 officers to go into the residence subsequent to the
14 obtaining of the search warrant?

15 A Yes, sir.

16 Q And did you observe the scene there at that
17 time?

18 A Yes, I did.

19 Q When the bodies were discovered on
20 September 4, 2014, around 1:30 in the afternoon, did you
21 also go to that location?

22 A Yes, sir.

23 Q And did you make observations about what was
24 present at that location?

25 A Yes, I did.

1 Q Now, I want to go through with you some of the
2 things in your investigation as they touch on this
3 motion. I want to start on some surveillance videos and
4 stills.

5 As part of your investigation, did you receive a
6 surveillance still from NAPA Auto Parts that was taken
7 on or about August 28, 2014, at about 12:02 in the
8 afternoon?

9 A Yes, sir. I did.

10 Q What was the significance, if any, of this
11 surveillance still?

12 A It showed a photograph of Gregory Brown as he
13 was making a purchase at the auto parts store.

14 Q And did you get -- were you able to obtain
15 records of a receipt that corresponded with his
16 purchase?

17 A Yes.

18 Q And are you aware of what he purchased at
19 12:02 from NAPA Auto Parts?

20 A Yes, I was.

21 Q What did he purchase?

22 A He purchased a spark plug and a spark plug
23 gauge.

24 Q And as part of that transaction, were you --
25 did you become aware through the records of how he paid

1 for those items?

2 A Yes.

3 Q Did he use a credit card in Margaret Brown's
4 name ending in 9616?

5 A Yes, he did.

6 Q Did you also obtain and review a surveillance
7 video from Walgreens from that same day, August 28,
8 2014, depicting a time at approximately 12:07 in the
9 afternoon?

10 A Yes, I did.

11 Q Did you observe anything of significance on
12 that surveillance video?

13 A Yes.

14 Q And what did you observe in relation to that
15 surveillance video?

16 A I also observed Gregory Brown making another
17 purchase at the Walgreens store.

18 Q Did you see how he arrived at the Walgreens
19 store?

20 A Yes. It showed him arriving in a silver
21 minivan.

22 Q And I'm sorry. As part of your investigation,
23 did you also review Deputy Heidgerken's investigation
24 into the aggravated assault that the 911 tape we're here
25 about today ties into?

1 A Yes, sir.

2 Q Did you review the photographs of -- that were
3 taken by Deputy Heidgerken in that investigation?

4 A Yes, sir.

5 Q And I don't think we have it just yet, but
6 I'll show it to you when we get it. It's already been
7 entered into evidence.

8 A Are you familiar with the photograph taken of the
9 house by Deputy Heidgerken of 7719 Hatteras Drive?

10 A Yes, sir.

11 Q And is there a silver van depicted in the
12 garage of that house at that time?

13 A Yes.

14 Q Does that appear to be the same silver van or
15 grey van that you observed on the surveillance video
16 from Walgreens?

17 A Yes, sir.

18 Q What was Gregory Brown wearing in the
19 Walgreens surveillance video?

20 A He was wearing a white T-shirt and what
21 appeared to be like a plaid, multi-colored shorts.

22 Q Now, when the bodies were discovered, were
23 they identified as Gregory Brown, Margaret Brown, Megan
24 Brown and Nicholas Leonard eventually?

25 A Yes.

1 Q In particular, the body that was discovered on
2 September 4, 2014 and identified as Gregory Brown, what
3 clothing was Gregory Brown wearing?

4 A He appeared to be wearing the same clothes, a
5 white T-shirt and plaid, multi-colored shorts.

6 Q Was there anything in the pockets of those
7 plaid shorts at the time the body was discovered?

8 A Yes, sir. There was.

9 Q And what did you discover in those packets?

10 A We discovered a spark plug gauge and a credit
11 card that appeared to be the same one he used at the
12 NAPA Auto Parts store.

13 Q In the name of Margaret Brown, ending in the
14 numbers 9616?

15 A Yes, sir.

16 Q And as far as the discovery of the bodies, can
17 you describe very briefly, were they in different
18 locations when you discovered them or how were they
19 discovered?

20 A They were all discovered in the same location
21 approximately 20 feet off the roadway and they were --
22 appeared to be piled up in a pile.

23 Q Did you become aware through your
24 investigation whether or not Margaret Brown was employed
25 at the end of August of 2014?

1 A Yes, sir.

2 Q Where was she employed?

3 A The Wawa gas station.

4 Q And did you obtain video -- well, strike that.

5 Were you aware or did you become aware that she had
6 worked a shift at the Wawa gas station on August 28th of
7 2014, between 3:00 in the afternoon and 11:00 at night?

8 A Yes, sir. I was.

9 Q Do you know what location Wawa that was?

10 A It was at the U.S. 19 and off Ridge Road at
11 that intersection.

12 Q And did you obtain video surveillance from
13 that location?

14 A Yes, sir.

15 Q Did you review that video surveillance?

16 A Yes.

17 Q On that video surveillance -- did you obtain
18 some video surveillance that depicted Margaret Brown
19 making a purchase while she was there?

20 A Yes.

21 Q And what did she use to make that purchase?

22 A She used her debit card.

23 Q And did you obtain the records from Walgreens
24 and records from Margaret Brown's bank account to
25 indicate what credit card she used in order to make that

1 purchase?

2 A Yes.

3 Q And was it a credit card ending in the numbers
4 7785?

5 A Yes, sir. It was.

6 Q Did you see when Margaret Brown left the Wawa
7 that evening?

8 A Yes, I did.

9 Q And what was the -- what was the time that she
10 left the Wawa pursuant to this video surveillance?

11 A Approximately 11:10 PM.

12 Q And that would have been August 28, 2014?

13 A Yes, sir.

14 Q Which is the same day that the 911 call that
15 we're here on today came into the Pasco Sheriff's
16 Office?

17 A Yes, sir.

18 Q How did she leave?

19 A She left, it appears to be the same silver
20 minivan.

21 Q Okay. The same silver minivan that was in the
22 Walgreens surveillance video with Greg Brown and is
23 depicted in Deputy Heidgerken's photos that we referred
24 to earlier?

25 A Yes.

1 Q Have you had the opportunity to drive the
2 distance between that Wawa and 7719 Hatteras Drive?

3 A Yes, sir.

4 Q Approximately how long does that drive take?

5 A Approximately 15 minutes.

6 Q Have you or any of the other deputies or
7 detectives whose reports you've reviewed and who you've
8 spoken to been able to find anyone who spoke to or saw
9 Margaret Brown, Greg Brown, Nicholas Leonard or Megan
10 Brown after that Wawa surveillance video at 11:10 PM on
11 August 28, 2014?

12 A No, sir.

13 Q Did Margaret Brown have a work shift at Wawa
14 for August 29th of 2014?

15 A Yes, sir. She was scheduled.

16 Q And what work shift did she have for
17 August 29?

18 A The same shift, 3:00 to 11:00 PM.

19 Q And as part of your investigation, did you
20 find out whether she showed up for that work shift?

21 A She did not show up.

22 Q Did she call in to alert anyone she wasn't
23 coming?

24 A No, sir.

25 Q Now, we talked about Margaret Brown's body

1 also being found with Greg Brown's body. What was
2 Margaret Brown's body clothed in?

3 A She was wearing what appeared to be a Wawa
4 uniform with an apron, long pants and a shirt
5 underneath.

6 Q Was it consistent with the uniform that she
7 was wearing in the surveillance video that you observed
8 from the Wawa of August 28, 2014?

9 A Yes, sir.

10 Q Approximately how far from 7719 Hatteras Drive
11 were the bodies discovered?

12 A Approximately a mile to the north.

13 Q And is it a location that essentially if you
14 take the road right next to that house and drive
15 straight until the dead end, at that dead end off in the
16 woods a little ways is where the bodies were located?

17 A Yes, sir.

18 Q As part of your investigation, did you obtain
19 and have a chance to review a 911 call made on
20 August 28, 2014, at approximately 9:04 in the morning
21 made by Nicholas Leonard?

22 A Yes.

23 Q In that 911 call, did Nicholas Leonard express
24 awareness of the incident that is being reported in
25 Megan Brown's 911 call at 6:00 that morning?

1 A Yes, he did.

2 Q Through the course of your investigation, did
3 you learn whether Nicholas Leonard had a vehicle?

4 A Yes, I did.

5 Q And what are the basics of that vehicle?

6 A It's a blue Ford pickup.

7 Q And can you tell me or can you tell the Court
8 about Billie Earl's parking spot?

9 A Billie Earl lives in a condominium community,
10 so every condominium is assigned a parking spot and she
11 had one that was in a covered area.

12 Q How far is Billie Earl's condominium parking
13 spot from 7719 Hatteras Drive approximately?

14 A Approximately a mile.

15 Q Within walking distance?

16 A Yes, sir.

17 Q Now, Billie Earl has assigned parking spot?

18 A Yes.

19 Q Does she have a car that she generally parked
20 there?

21 A Yes, she does.

22 Q What happened to her car on August 28, 2014?

23 A She let her granddaughter borrow that vehicle.

24 Q And approximately what time was that parking
25 spot vacated?

1 A Approximately 3:00, 3:30.

2 Q And that would be the afternoon of August 28,
3 2014?

4 A Yes.

5 Q Did you learn -- or did you learn of any
6 witnesses who observed Nicholas Leonard's truck take
7 that parking spot subsequent to that time?

8 A Yes.

9 Q And approximately when was Nicholas Leonard's
10 truck first spotted in that parking spot?

11 A Approximately 5:00 AM in the morning on August
12 29th.

13 Q And what eventually happened to Nicholas
14 Leonard's truck?

15 A It was towed by a company called Tatum's
16 Towing to their lot.

17 Q And do you know, was it towed immediately that
18 day or did it take them some days to do that?

19 A It took them a couple of days.

20 Q As part of your investigation, once you
21 identified that Nicholas Leonard was one of the bodies
22 that was recovered, did you -- was his house -- did you
23 go to his house or some detectives go to his house?

24 A Yes.

25 Q How far is his house from the offense

1 location?

2 A Approximately eight to ten miles, maybe.

3 Q In a different area then?

4 A Yes.

5 Q Nowhere near Billie Earl's parking spot?

6 A No.

7 Q In Nicholas Leonard's house, in the bedroom,
8 did you locate any empty boxes of interest to you?

9 A Yes, we did.

10 Q And can you describe what that was for the
11 Court?

12 A We located an empty gun case that belonged to
13 a Kel-Tec .380 semiautomatic.

14 Q And jumping ahead a little bit, when you were
15 executing the search warrant for 7719 Hatteras Drive,
16 did part of that include you or other detectives and
17 deputies diving into the canal right behind that
18 address?

19 A Yes, it did.

20 Q And was there any firearm recovered that
21 seemed to coordinate with that box?

22 A Yes, sir.

23 Q What firearm was that?

24 A We located a Kel-Tec .380 semiautomatic
25 weapon.

1 Q We spoke about phone records earlier. Did you
2 obtain and review some phone records from Sprint that
3 coordinated to the phone number that you have identified
4 as belonging to Adam Matos?

5 A Yes.

6 Q And in terms of those phone records, between
7 about 6:11 in the morning, which would have been after
8 the incident with Deputy Heidgerken had already started
9 and finished, and 8:00 that same morning, August 28,
10 2014, did Adam Matos's phone attempt to contact the
11 phone number that you are aware belonged to Megan Brown?

12 A Yes, sir.

13 Q Approximately how many times?

14 A Approximately 200.

15 Q And prior to that time -- prior to August 28,
16 2014, at around 6:00 in the morning, did you see phone
17 records for Adam Matos's phone before that August 28th
18 period?

19 A Yes.

20 Q Was it common for Adam Matos's phone to try
21 and contact Megan Brown's phone?

22 A Yes.

23 Q When was the last time that Adam Matos's phone
24 ever tried to contact Megan Brown's phone?

25 A I believe it was a little after 4:00 PM on the

1 28th, August 28.

2 Q Okay. And then after that period, between
3 August 28 at about 4:15 in the afternoon until Adam
4 Matos was eventually apprehended by you on September
5 5th, did he ever once attempt to contact Megan Brown's
6 phone ever again?

7 A No.

8 Q Did you learn through your investigation
9 whether Megan Brown was employed?

10 A Yes.

11 Q Where was she employed?

12 A It's a bar restaurant called the Fisherman's
13 Shack in Hudson.

14 Q And did you -- do you know whether or not she
15 had a work shift on August 29th of 2014?

16 A Yes.

17 Q And did she show up for that work shift?

18 A No, sir.

19 Q Did she call in on the 29th to report that she
20 wasn't going to be at that work shift?

21 A No, sir.

22 Q Now, are you familiar with Ryan McCann?

23 A Yes, sir.

24 Q Where does Ryan McCann live in relation to
25 7719 Hatteras Drive?

1 A He's the next-door neighbor. That's his
2 residence just to the west. As you're looking at the
3 house -- if you're looking at the Hatteras Drive house,
4 it's on the left.

5 Q Okay. And if you're standing in front of 7719
6 Hatteras Drive looking at the front door and garage,
7 would you be facing north?

8 A Yes.

9 Q So, Ryan McCann's residence would be to your
10 left?

11 A Yes.

12 Q And did Ryan McCann provide information to law
13 enforcement?

14 A Yes, he did.

15 Q And what did Ryan McCann say in regards to
16 visitors that he had coming into town the late night of
17 August 28th and very early morning hours of August 29,
18 2014?

19 A He indicated that his brother Allen and
20 Allen's wife, Lori, were coming to visit him and they
21 arrived late on August 28th. It was actually just after
22 midnight into the early hours of August 29.

23 Q And did you have an opportunity to speak with
24 Allen McCann and Lori McCann?

25 A Yes.

1 Q And Ryan McCann, Allen McCann and Lori McCann,
2 what did they describe in relation to when they -- when
3 Allen and Lori arrived at Ryan McCann's residence just
4 after midnight on August 29, 2014?

5 A They informed me just after they arrived, a
6 subject who they indicated was Adam Matos walked over
7 from 7719 Hatteras Drive and there was introductions
8 between Allen and Ryan.

9 Q And did they indicate that he was acting
10 unusually?

11 A Yes.

12 Q As part of your investigation, did you obtain
13 records from Craigslist?

14 A Yes, I did.

15 Q Is there a particular account that you tied to
16 Adam Matos through the phone number listed and through
17 an e-mail address that indicated Adam Matos's name that
18 you obtained records for?

19 A Yes.

20 Q And were there any -- were there any records
21 reflecting posts that Adam Matos's account made starting
22 on August 29, 2014?

23 A Yes, there were.

24 Q Can you describe some of those for the Court?

25 A They were posts for items that he was posting

1 for sale, such as a TV and some dogs and other household
2 items.

3 Q Okay.

4 THE COURT: Did you say dogs?

5 THE WITNESS: Yes, sir. Puppies.

6 THE COURT: Okay.

7 Q (By Mr. Sarabia) Detective Cougill, through
8 your investigation, did you learn whose dogs those were?

9 A Yes. We received indication from Margaret
10 Brown's family that they belonged to Margaret and
11 Gregory Brown.

12 Q And the television, did that belong to Adam
13 Matos or was there indication that belonged to Margaret
14 and Gregory Brown also?

15 A Yes. Also belonged to Margaret and Gregory
16 Brown.

17 Q As part of your investigation, did you learn
18 about a James Smith and a Brandon Derry?

19 A Yes, sir.

20 Q And what information did they have to provide
21 regarding this investigation?

22 A Those two individuals reported that they
23 responded to a Craigslist ad and then eventually made
24 contact with the subject they said his name was Adam
25 Matos. They scheduled a meeting to meet at the

1 residence to purchase some items that he had for sale on
2 Craigslist.

3 Q Were they interested in purchasing a large TV?

4 A Yes, sir.

5 Q And did they go to the residence on August 29,
6 2014, at approximately 2:00 in the afternoon?

7 A Yes, sir. They did.

8 Q And did they interact with Adam Matos?

9 A Yes.

10 Q And did Adam Matos not let them into the
11 house?

12 A That's what they said, yes.

13 Q And as part of your investigation, did you
14 become aware of a Patrick Duarte?

15 A Yes.

16 Q And what information did Patrick Duarte have?

17 A He also responded to a Craigslist ad in
18 regards to the puppies that were for sale. And he also
19 went to the residence on August 29 to purchase a puppy.

20 Q And did he respond to the 7719 Hatteras Drive
21 at approximately 4:15 in the afternoon --

22 A Yes.

23 Q -- according to him?

24 Did you become aware of a Paige Steele?

25 A Yes, sir.

1 Q And what information did Paige Steele have
2 regarding the investigation?

3 A Paige also indicated that she responded to the
4 Craigslist ad in regards to the puppies. She did
5 schedule a meeting and did meet at the 7719 Hatteras
6 Drive and she purchased a puppy from Adam Matos.

7 Q Was that about 4:30 in the afternoon of August
8 29, 2014?

9 A Yes, sir.

10 Q Did you become aware of a Michael Hall?

11 A Yes.

12 Q And what information, if any, did Michael
13 have?

14 A Michael Hall also responded to a Craigslist ad
15 and responded to the residence -- or, excuse me. I'm
16 sorry. Michael Hall, if I can recall, was a pizza
17 delivery guy.

18 Q Did he work for Pizza Hut?

19 A Yes, he worked for Pizza Hut.

20 Q And did he respond on August 29, 2014, about
21 6:30 in the afternoon?

22 A Yes, sir.

23 Q And delivered pizza to Adam Matos?

24 A Yes, sir. He did.

25 Q Now, of those people we just discussed: James

1 Smith, Brandon Derry, Patrick Duarte, Paige Steele and
2 Michael Hall, did any of them indicate that they saw
3 anyone other than Adam Matos at that residence?

4 A They did not see anyone else. They did not
5 indicate.

6 Q Did you have occasion to receive some
7 surveillance video from the Wal-Mart in Hudson for the
8 time period of the late night of August 29, 2014, around
9 11:30 PM vicinity?

10 A Yes, sir.

11 Q And did you review that surveillance video?

12 A Yes, sir. I did.

13 Q Did you observe anything of value to your
14 investigation?

15 A Yes, sir. I did.

16 Q What did you observe?

17 A I observed what appeared to be Adam Matos
18 arriving in a silver Dodge minivan. He entered the
19 Wal-Mart store, went to the garden section, selected a
20 shovel, a long-handled shovel, and then went to the
21 electronics section where he selected several items in
22 the electronics area and attempted -- it looked like he
23 was going to be trying to purchase those items in the
24 electronics area.

25 Q Okay. And was he able to purchase the

1 electronics items?

2 A It did not appear to me that he was able to
3 purchase them. And then he eventually did purchase the
4 shovel.

5 Q And you were you able to obtain records from
6 Wal-Mart regarding the method of payment that Adam Matos
7 used to purchase the shovel?

8 A Yes, we did.

9 Q And was that method of payment the same credit
10 card that Margaret Brown had used August 28, 2014, for
11 her purchase at Wawa the day before?

12 A Yes, sir. It was.

13 Q I'm going to refer to some photographs. I'm
14 going to put them up on the overhead.

15 Can you see that okay from where you are?

16 A Yes.

17 Q Now, when you arrived on September 4, 2014, is
18 this a fair and accurate depiction of what you observed
19 in the living room area, the entertainment center?

20 A Yes, sir. It is.

21 Q And there was no TV in that giant area for a
22 TV and all the wires that look like they would connect
23 to a TV?

24 A That's correct.

25 Q And are you aware that Deputy Heidgerken when

1 he had been there on August 28, 2014, had seen a TV in
2 that location?

3 A Yes.

4 MR. SARABIA: And for the record I'm referring
5 to State's 13 for the motion.

6 Q (By Mr. Sarabia) Now, I'm putting on the
7 overhead State's 2 for the motion.

8 Is this 7719 Hatteras Drive?

9 A Yes, sir.

10 Q I'm pointing to the window in the right -- the
11 second -- I guess, second story window on the right of
12 the photograph.

13 Whose bedroom does that bed window coordinate to?

14 A We received information that belonged to Megan
15 Brown.

16 Q Okay. And when you arrived on September 4th,
17 and went in to do a search warrant -- I'm showing you
18 State's 14 -- is that what the bedroom looked like on
19 the other side of that window?

20 A Yes, sir.

21 Q That would be Megan Brown's bedroom?

22 A Yes, sir.

23 Q And was there a bed in this bedroom when you
24 arrived on September 4, 2014?

25 A No, sir.

1 Q And referring to this picture again later. I
2 can finish up now I'm still referring to State's 14.

3 Not depicted in this photograph, but if you were to
4 go in this door and go to the left, is there a big
5 puddle of or a big stain on the floor?

6 A Yes, sir. There is.

7 Q Were there additional stains on the wall and
8 on items in the room to the left of what's depicted in
9 this photograph?

10 A Yes, sir.

11 Q Now, were swabs taken of those stains?

12 A Yes.

13 Q And did you send those to the Florida
14 Department of Law Enforcement for testing?

15 A Yes, I did.

16 Q And whose DNA matched those bloodstains?

17 A They matched Nicholas Leonard.

18 Q Now, when you arrived at 7719 Hatteras Drive,
19 was this silver van that's depicted in the center of
20 State's 2 located here in this parking garage?

21 A When I arrived, it was not in that location.

22 Q Okay. And where was that located, that silver
23 van?

24 A As you're looking at the picture to the right,
25 there's another driveway behind that small palm tree.

1 There's another driveway and there's another garage door
2 a bay garage door.

3 Q Would that be right below the window of Megan
4 Brown's room?

5 A Yes. That's correct. It was located -- the
6 silver van was located in that garage and it was backed
7 in.

8 Q Okay. And was there -- were there any seats
9 in the back of that van set up so that people could ride
10 in it?

11 A No, sir. There were not.

12 Q Was there a large amount of stains and either
13 blood or fluid of some sort that smelled terrible in
14 that van?

15 A Yes, sir.

16 Q Were there maggots in that van?

17 A Yes, sir.

18 Q Was it -- did it indicate to you that that van
19 may have been used at some point to transport the
20 bodies?

21 A Yes, sir.

22 Q What else was in that van in the back area?

23 A There was a long handled shovel, a green
24 handle.

25 Q Was the shovel consistent with the shovel that

1 you observed on the surveillance video from Wal-Mart
2 that Adam Matos purchased?

3 A Yes.

4 Q Was there a mattress located in the garage
5 area -- the west garage?

6 A Yes, sir. There was.

7 Q And was that mattress located in approximately
8 the area where the silver van is depicted in this
9 particular photo, State's 2?

10 A Yes.

11 Q Was there anything unusual about that
12 mattress?

13 A Yes, there was.

14 Q What was that?

15 A It appeared to have the top of it cut off,
16 like the pillow top, and there were some bloodstains on
17 it.

18 Q Now, the pillow top with the bloodstains, were
19 you able to locate that?

20 A Yes.

21 Q Where was that?

22 A That was in a -- it was inside a white garbage
23 bag in the same area of the west garage.

24 Q And on that pillow top, did you -- were there
25 samples taken of that bloodstain and sent to FDLE?

1 A Yes, sir.

2 Q And who did that match?

3 A Nicholas Leonard.

4 Q Now, as you -- in State's 2, as you see the
5 silver van there now, if you were to exit the driver's
6 door, walk around the front of the van and head towards
7 the door leading into the house beyond where that van is
8 parked, which would be to the east, did you locate any
9 bloodstains?

10 A Yes, sir. We did.

11 Q And whereabouts did you locate those?

12 A Along the wall leading into the house.

13 Q And did you take samples of that and send them
14 off to be tested?

15 A Yes, sir. We did.

16 Q And that went to FDLE as well?

17 A Yes.

18 Q And who did those come back to?

19 A Margaret Brown.

20 Q Now, did you eventually come into contact with
21 the defendant in this case?

22 A Yes, sir. I did.

23 Q Adam Matos?

24 A Yes, sir.

25 Q Do you see him in the courtroom here today?

1 A Yes, sir. I do.

2 Q Can you please point him out and identify
3 something he's wearing?

4 A He's sitting right over here (indicating).
5 He's wearing a white and orange shirt.

6 Q And when you came into contact with the
7 defendant, did you -- where was he?

8 A He was at the Floridan Hotel in Tampa,
9 Florida.

10 Q Did you have information that he had checked
11 in hours ago?

12 A Yes, sir.

13 Q And when you came into contact with him, was
14 there anybody with him?

15 A Yes.

16 Q Who was with him?

17 A His son, [REDACTED]

18 Q And he's approximately four years of age at
19 the time?

20 A Yes, sir.

21 Q And did you have an opportunity to have a
22 conversation with this defendant?

23 A Yes, sir. I did.

24 Q Did you read him his Miranda?

25 A Yes.

1 Q Did you ask him about the morning of
2 August 28, 2014, in the 6:00 time period?

3 A Yes, sir. I did.

4 Q Did he indicate that he had an argument with
5 Megan Brown?

6 A Yes.

7 Q And did he indicate that he was asked to leave
8 by Megan Brown?

9 A Yes, he did.

10 Q Did he indicate that he had also been asked to
11 leave by Margaret Brown on another occasion?

12 A Yes, sir.

13 MR. SARABIA: Judge, may I have a moment?

14 THE COURT: You may.

15 Q (MR. SARABIA) In terms of when you spoke to
16 this defendant, did you ask him whether he had gone back
17 to 7719 Hatteras Drive following the argument the
18 morning of August 28, 2014 on August 28, 2014,
19 August 29, 2014 and August 30th of 2014?

20 A Yes, I did.

21 Q And what did he indicate?

22 A He said he never returned to the house.

23 Q Now, in terms of Deputy Heidgerken's
24 investigation, you indicated earlier that you reviewed
25 those reports and those photographs.

1 A Yes.

2 Q Did you find them relevant to your
3 investigation?

4 A Yes, I did.

5 Q How so?

6 A It just indicated that there was an incident
7 that occurred that morning. It kind of gave us an idea
8 of what was going on with Megan and the rest of her
9 family that day.

10 MR. SARABIA: I don't have any more questions
11 at this time, Judge.

12 THE COURT: Okay. Who's going to question for
13 the Defense?

14 MR. VIZCARRA: I am, Judge.

15 THE COURT: Mr. Vizcarra.

16 Do you need a moment or are you ready to go?

17 MR. VIZCARRA: I'm ready to go, Judge.

18 THE COURT: All right. You may inquire.

19 CROSS-EXAMINATION

20 BY MR. VIZCARRA:

21 Q Detective Cougill, you're the lead detective
22 in this four-count homicide case, right?

23 A Yes, sir.

24 Q And obviously the State's charged Mr. Adam
25 Matos with the murders of Megan Brown, Margaret Brown,

1 Gregory Brown and Nicholas Leonard, correct?

2 A Yes, sir.

3 Q Before I talk to your about the investigation
4 of those murders, I want to talk to you about the
5 incident that allegedly occurred early morning hours of
6 August 28, 2016 (sic).

7 You're familiar with that incident, right?

8 A Are you talking about 2014, sir?

9 Q 2014, yes. Did I say '16? '14.

10 A Yes.

11 Q 5:50 in the morning Megan Brown calls 911?

12 A Yes, sir.

13 Q And this was at the 7719 Hatteras Drive in
14 Hudson, Florida?

15 A Yes, sir.

16 Q And some time she had said that this
17 altercation had occurred I think about ten minutes
18 prior?

19 A Yes, sir.

20 Q Something like that?

21 And she called 911 and reported that the father of
22 her child, Adam Matos, had held a knife to her throat,
23 correct?

24 A Yes, sir.

25 Q Okay. And you did not -- you were not

1 involved in this case at that point in time?

2 A No, sir.

3 Q Okay. And she had said that he had threatened
4 to kill her?

5 A Yes, sir.

6 Q Right? But that he had left the house on his
7 bicycle?

8 A I don't know if she mentioned "bicycle." She
9 may have. But I know she mentioned he left.

10 Q He was either on foot or on a bike, right?

11 A Yes, sir.

12 Q Okay. All right. And Deputy Heidgerken
13 responded to the scene?

14 A Yes, sir.

15 Q Okay. And he spoke to Megan Brown?

16 A Yes.

17 Q He saw where her thumb was cut?

18 A Yes.

19 Q And he was given a steak knife which he
20 recovered and put into evidence?

21 A That's correct.

22 Q And according to Megan Brown, that was the
23 weapon that was used on her that morning?

24 A That's correct.

25 Q Okay. And he took some photographs?

1 A Yes.

2 Q And Mr. Matos was not at the house, so
3 Heidgerken left the scene?

4 A Yes. That's correct.

5 Q And, in fact, he kind of looked around the
6 neighborhood, cased it, tried to find if he could locate
7 Adam Matos?

8 A Yes.

9 Q Okay. And he was unsuccessful?

10 A Correct.

11 Q Okay. And he had left information with Megan
12 Brown to let him know if Mr. Matos had returned to that
13 scene; is that right?

14 A That's correct.

15 Q And, in fact, he even recruited some other
16 deputies to try to locate Mr. Matos but was unable to
17 locate him?

18 A That's correct.

19 Q Now, between this first incident, the
20 aggravated assault in the morning of August 28,
21 supposedly, at around 5:50 in the morning, and the times
22 of the alleged murders, there was a clear break between
23 that earlier incident and the time when Megan Brown,
24 Gregory Brown, Nicholas Leonard and Margaret Brown were
25 murdered, correct?

1 A I believe so, yes.

2 Q At least three hours, right? Because Megan
3 Brown had called at 5:50 or 6:00 in the morning, and
4 then at some point about six -- about 9:00 AM, this guy
5 Nicholas Leonard reported this aggravate assault a
6 second time; is that right?

7 A Yes, sir. That's correct.

8 Q So during this time, Matos is not there. He's
9 not at any point at the 7719 Hatteras Drive?

10 A I don't believe so.

11 Q Okay. So at least between 6:00 AM and 9:00 AM
12 he's never at that address, right?

13 A Correct.

14 Q Okay. Now, one of the reasons they know
15 there's a break in this time period is Megan -- Margaret
16 Brown, she was last seen alive around 11:00 PM,
17 August 28, 2014, right?

18 A Yes.

19 Q Okay. So from 6:00 AM until past 11:00 PM, a
20 lot of time has gone by, pretty much the whole day?

21 A Yes.

22 Q All right. And as you had said earlier, I
23 think she was working a shift at Wawa convenience store
24 and she finish the shift around 11:00, that's what your
25 investigation revealed?

1 A Yes, sir.

2 Q Okay. And Megan Brown, she was last talked to
3 August 28, at 15:09 hours by her boss, Mr. James Sigler;
4 is that right?

5 A Yes, sir.

6 Q Okay. And as far as your investigation goes,
7 that was the last time that anybody had spoken to her
8 was that 15:09 hours at 8/28?

9 A Yes.

10 Q Okay. And then Nicholas Leonard, he was
11 talked to by Detective Krause August 28th, at 14:30
12 hours; are you aware of that?

13 A I believe so. Yes, sir. I am.

14 Q And that was over a phone call regarding an
15 unrelated case?

16 A Yes.

17 Q Was that the case -- what was that case about
18 that he was being talked to?

19 A I believe that was a case where he believed he
20 was being stalked by another person.

21 Q And that other person he was being stalked by
22 was an old girlfriend of his, right?

23 A Yes.

24 Q And that's Ms. Stinson, right?

25 A Michelle, yes.

1 Q Michelle Stinson.

2 And, apparently, Ms. Stinson had been flattening
3 his tires and had been stalking him, and that was the
4 information you got from your investigation at the time;
5 is that --

6 MR. SARABIA: Objection, Judge. No personal
7 knowledge.

8 A That's correct. I'm not sure who's --

9 THE COURT: Overruled. He can answer.

10 A I'm not sure. He was alleging that, so I
11 don't know if she was or wasn't.

12 Q (By Mr. Vizcarra) All right. And some of his
13 family members also expressed concern to you about this
14 girl stalking him?

15 A Yes.

16 Q Gregory Brown, he was last seen alive about --
17 on August 28, 2014, it looks like around 12:00, noon or
18 some time after that at the Walgreens store, the NAPA
19 store that you talked about?

20 A That wasn't the last time he was seen by
21 someone that indicated to us.

22 Q Let me just ask you that way.

23 A Okay.

24 Q When was the last time, as far as your
25 investigation, Gregory Brown was last seen alive?

1 A It was approximately 18:00, the next-door
2 neighbor Ryan McCann loaned him a tool, like a tool to
3 work on his vehicle -- on Gregory's vehicle.

4 Q And those are the same McCanns that you spoke
5 about previously in direct examination with Mr. Sarabia,
6 correct?

7 A Yes.

8 Q Okay. Now, this incident that happened in the
9 morning, at 5:50 hours, that was an incident involving a
10 knife, correct?

11 A Yes.

12 Q And that was a knife supposedly held to Megan
13 Brown's throat; is that right?

14 A Yes, sir.

15 Q Okay. When you had the bodies examined by the
16 Medical Examiner's Office, I think Dr. Noel Palma
17 advised you that Megan Brown's cause of death was a
18 gunshot wound to the head and the manner of death being
19 homicide; is that correct?

20 A Yes, sir.

21 Q Margaret Brown's cause of death was blunt head
22 trauma and contributory condition of asphyxiation, with
23 the manner of death being homicide; is that correct?

24 A Yes.

25 Q The victim Gregory Brown's cause of death was

1 a gunshot wound to the torso, with the manner of death
2 being homicide, correct?

3 A Yes, sir.

4 Q And Nicholas Leonard's cause of death was
5 blunt force trauma to his head, with the manner of death
6 being homicide; is that right?

7 A Yes. Yes, sir. It was.

8 Q And they were able to positively identify
9 those four victims?

10 A Yes.

11 Q None of the victims' manner of death involved
12 a cutting motion to their throat, correct?

13 A Correct.

14 Q None of them involved a stabbing motion by a
15 knife, correct?

16 A Correct.

17 Q Without the earlier aggravated assault, is it
18 your investigation -- it's your thought that the deaths
19 of these four victims occurred inside that residence
20 from your investigation at 7719 Hatteras Drive in
21 Hudson, Florida?

22 A Can you say that again?

23 Q From your investigation, did you conclude that
24 the deaths of these four individuals occurred at 7719
25 Hatteras Drive in Hudson, Florida?

1 A Yes, sir.

2 Q Okay. And it was some time, from your
3 investigation, from the circumstances, that it occurred
4 on the late hours or afternoon and evening of August 28,
5 2014, right?

6 A Yes, sir.

7 Q And that's a circumstantial situation in that
8 these people didn't show up for their work on the 29th,
9 right?

10 A Correct.

11 Q Okay. So regardless of the August 28, agg.
12 assault charge that morning, from the circumstantial
13 evidence that you have, you believe that -- the
14 investigation points to them being murdered inside that
15 house on August 28, 2014?

16 A Yes.

17 MR. VIZCARRA: Just a moment, Judge?

18 THE COURT: Of course.

19 MR. VIZCARRA: No more questions, Judge.

20 THE COURT: Thank you.

21 State, do you have any further questions for
22 this witness?

23 MR. SARABIA: Just briefly, Judge.

24

25

1 REDIRECT EXAMINATION

2 BY MR. SARABIA:

3 Q Defense Counsel brought up Michelle Stinson.
4 Where did Michelle Stinson live during the period
5 between August 28, 2014, and September 5, 2014?

6 A She lived in Kansas.

7 Q And did you have detectives go out and speak
8 with her coworkers in Kansas?

9 A Yes, sir.

10 Q And did they place her there during that
11 period of time?

12 A Yes, sir.

13 MR. SARABIA: I don't have any more questions,
14 Judge.

15 THE COURT: Okay. All right.

16 Thank you for coming in, Detective. You are
17 excused.

18 THE WITNESS: Thank you, sir.

19 THE COURT: State, did you have any other
20 witnesses you wanted to call?

21 MR. SARABIA: No, Judge.

22 THE COURT: And, Defense, you didn't have any
23 witnesses you wanted to call for this motion?

24 MR. VIZCARRA: No, Judge.

25 THE COURT: I'm going to take a five-minute

1 recess before we do summations.

2 Are you going to -- is either side planning a
3 long oral summation or do you want me to give you
4 an opportunity to provide any additional
5 information in writing?

6 Do you want to do it oral or do you want to do
7 it written?

8 MR. SARABIA: Judge, I already provided a
9 written memorandum. I have --

10 THE COURT: I have both of them.

11 MR. SARABIA: I have some oral points to go
12 over. It would probably been easier to do orally.

13 THE COURT: Okay.

14 MR. VIZCARRA: I agree, Judge. I've got some
15 case law.

16 MR. SARABIA: My memorandum basically really
17 lays out my argument. I think that that is the sum
18 and substance of it, but there are some other
19 points to go over.

20 THE COURT: All right. Let's take a
21 five-minute comfort break and we'll be back in five
22 minutes then.

23 (RECESS.)

24 (OPEN COURT.)

25 (Defendant present.)

1 THE COURT: Okay. All right. Let's do
2 summation in the motion.

3 State, you wish to go first?

4 MR. SARABIA: Yes, Judge.

5 THE COURT: All right. Tell me about it.

6 MR. SARABIA: Judge, as my memorandum
7 indicates, there are three legal issues before the
8 Court. And while two of them have some similarity
9 to each other, the third is a little bit different
10 and I want to take those one at a time.

11 I'm going to start first with -- as far as the
12 911 tape goes, that it is an excited utterance. In
13 order for it to be admitted as an excited
14 utterance, the Court must find by a preponderance
15 of the evidence three things:

16 One. It must -- the statements must have been
17 made regarding events startling enough to cause
18 nervous excitement.

19 Two. The statements must have been made
20 before there was time to contrive or misrepresent.

21 And, three. The statements must have been
22 made while the person was under the stress or
23 excitement caused by the event.

24 And I point out, I believe I cited *Tucker v.*
25 *State* in regards to those three elements. They're

1 in many other cases. The interesting thing about
2 *Tucker v. State* was a 911 call is that although
3 they found that the court did not make those
4 findings, they never said in that case that the
5 statements were not excited utterances. They just
6 said that the court did not go through the proper
7 analysis in order to admit them as excited
8 utterances.

9 I just wanted to point that out to the Court
10 and that's one of the reasons I'm laying out these
11 three elements and going through them more or less
12 one at a time.

13 In regards to this first element, this violent
14 encounter that Megan Brown describes in which the
15 knife was held to her throat and her finger was cut
16 deeply and her life was threatened is absolutely a
17 startling event. It was easily a preponderance of
18 the evidence that it occurred in that Deputy
19 Heidgerken also made observations the knife itself,
20 the injury, and her statements to Deputy Heidgerken
21 that it had occurred, in addition to Megan Brown's
22 statements in the 911 call.

23 So there's a preponderance evidence that the
24 startling event occurred. And having a knife held
25 to your throat by a man who you have a child with

1 and him threatening to kill you is absolutely
2 startling.

3 And I would compare it, although it is
4 slightly different, another case that I cited
5 largely for a different reason, *Bell v. State*. The
6 incident in that involved a man trying to drag the
7 victim in that case into a van and holding a gun to
8 her head and she escaped and ran off. In that was
9 case, there was an assault with a deadly weapon.
10 In this case there's assault with a deadly weapon.
11 It's definitely a startling event enough to cause
12 nervous excitement. So the Court should find that
13 by a preponderance of the evidence.

14 The other two elements are closely related, so
15 I'm going to try to address them one at a time, but
16 as the court's even note, they're very related to
17 each other. The second one being: That statements
18 must have been made before there was time to
19 contrive or misrepresent.

20 Well, in the call, Dustin Brooks asked Megan
21 Brown what's the time delay, I think are his words,
22 and she indicates ten minutes. And that occurs
23 about three minutes into the call. So using simple
24 addition, about seven minutes before the call was
25 placed is an estimate of when we would expect that

1 this event occurred. And that is a short period of
2 time. Megan Brown is obviously still upset about
3 the incident. So it's not a sufficient time
4 interval to contrive or misrepresent under the
5 circumstances.

6 And, again, *Bell v. State*, that case indicated
7 it was 50 minutes between when that victim made the
8 statements to law enforcement and when the event
9 had occurred. It took them about 20 minutes to
10 calm the victim down before she could start talking
11 to them. And the 50-minute time gap was not too
12 great. And the courts have said there is no bright
13 line in terms of when's too long, when's too short.
14 But certainly a brief seven-minute at best interval
15 is not a lengthy amount of time and is not long
16 enough for her to contrive.

17 And, again, it goes hand-in-hand with the --
18 there are statements that Megan Brown makes within
19 the call itself that indicate that she has not
20 fully processed this event and that she is
21 processing it to some extent as she's describing
22 it.

23 She says -- and this is all towards the end of
24 the call, by the way. She says things like, "Sir,
25 I am like so scared. Oh, my God. I can't believe

1 this happened. If I knew he was going to do that,
2 I wouldn't have even went out." These are all
3 statements indicating she's still -- she hasn't had
4 time to contrive this. She hasn't had time to even
5 really process it.

6 And throughout the call you can hear her --
7 hear her excitement, her stress, her inability at
8 some points to get the answers to the questions
9 out.

10 And then the third factor must have been made
11 while the person was under the stress or excitement
12 caused by the event.

13 Again, that plays into the second factor and a
14 lot of the same things that I already stated. Her
15 voice is quivering. She's intermittently crying,
16 sobbing, moaning. There's heavy breathing. The
17 contents of her statements, as I've reviewed to
18 some degree.

19 Moreover, two witnesses, Linda Thomas and Jim
20 Thomas, testified that they've listened to the
21 tape, they've heard Megan Brown in the past. In
22 fact, I think it was within two months of this
23 incident and they said she absolutely sounded
24 excited and under the stress of this situation.

25 So these are absolutely excited utterances. I

1 would note within the call itself -- and this is
2 about between two and three minutes into the call,
3 Dustin Brooks is having to console Megan Brown.
4 He's telling her, "It's going to be okay, ma'am.
5 It's going to be okay", which comes while she's
6 trying to get answers out and having difficulty
7 doing so. He later tells her, between the four and
8 five-minute mark, "Megan. Megan, you need to calm
9 down, ma'am. Does he does he still have the knife
10 on him?" He's still trying to get information to
11 allow assistance.

12 And I would note too, Judge, I don't know that
13 I focused a whole lot on the -- focused a lot of
14 the memorandum on this, but there are a variety of
15 these statements that while also excited
16 utterances, they're also spontaneous statements,
17 meaning, Ms. Brown is describing what is occurring
18 as it's occurring, which is a different hearsay
19 exception. Some of those include, she says, "I'm
20 bleeding everywhere. My son's freaking out.
21 Blood's bleeding everywhere." Referring to the
22 knife, she says, "It's in my son's room right now
23 and I'm trying to get him out of there. I can't
24 even look at it. It's so full of blood. I'm
25 putting the knife in my kitchen. Oh, man. My

1 finger hurts. I'm cleaning it off now." In
2 regards to her thumb, "It's just very swollen. I
3 can see everything." Again, in regards to her
4 thumb. She says, "I'm in my room with my son. I'm
5 locking my son into my room. He's looking around."
6 She's referring to the deputy. "He's looking
7 around. He's here, but he's going up the road.
8 Yeah, he just turned right. Yeah, he's turning
9 around." All of these -- there's a variety of
10 statements that are spontaneous throughout the call
11 that would qualify for the additional hearsay
12 exception.

13 The second legal issue before the Court, in
14 addition to the excited utterance issue is the
15 Crawford confrontation issue. And that issue
16 hinges on whether or not this call -- the
17 statements within this call are testimonial
18 statements or non-testimonial statements. And I
19 submit to the Court that they are absolutely
20 non-testimonial statements and there's a variety of
21 case law that has been provided and I'll go over
22 some of it briefly.

23 One of the factors in regards to whether the
24 statement's non-testimonial is the primary purpose
25 of this conversation to resolve an ongoing

1 emergency. And I think that's absolutely what we
2 have in this situation, as supported by the case
3 law and the facts.

4 The conversation was informal, meaning it
5 wasn't -- nobody swore to tell the truth and was in
6 a deposition setting. Nobody was sitting down
7 filling out an affidavit. It wasn't even a
8 face-to-face police interview with somebody taking
9 notes. This was an initial call and attempt to
10 generate a response to what they did not know was
11 going to -- what it was yet.

12 But the -- it was an emergency situation. The
13 emergency was ongoing. She was bleeding. She was
14 scared. The threat was not neutralized. This
15 defendant was still out and active, and he was
16 ultimately out and active long enough to kill all
17 of these people and escape for a few days.

18 It's very clear that Megan Brown's purpose
19 throughout these statements is not to establish or
20 prove the events that occurred, but to enable
21 police or emergency assistance to meet her
22 emergency.

23 And, again, referring to the call, between the
24 two and three-minute mark Megan Brown indicates,
25 after she's clearly talking to her son, she says,

1 "You need to have someone come out here as soon as
2 possible. He literally tried to kill me." That's
3 indicating that that's what she's trying to do is
4 get emergency assistance.

5 She later says -- shortly after the
6 four-minute mark, she says, "I don't know. I just
7 want somebody to come here right now. I can see
8 the meat in my finger." Later in the call, after
9 the six minute mark, she says, "I just want
10 somebody to come here."

11 And it's very clear by her statements and by
12 the whole conversation that the primary purpose of
13 this conversation is for her to get emergency
14 assistance. And Dustin Brooks testified, and I
15 asked him a lot of questions in regards to, "Why
16 you are you asking these questions? What is the
17 value of these questions. What do these questions
18 do?" And he indicated, "This is how we get
19 information to law enforcement so that they can
20 appropriately respond. Do we need an ambulance?
21 Do we need a SWAT team? Do we need guns drawn? Do
22 we know where the defendant is."

23 And, Judge, in that regard, I would point out
24 a set of facts that I know Your Honor's familiar
25 with, and I'm not going to mention any names, but

1 an example of what happens when you don't have that
2 information. And I'll frame it in terms of a
3 hypothetical. But four people go into a house and
4 beat the occupants and hold them at gunpoint, steal
5 some of their items and flee. The bag guys
6 realized they've be recognized, go back into -- try
7 to go back into the residence to kill the occupants
8 and a firefight occurs. The occupants of the house
9 who were attacked have difficulty reaching 911, and
10 as law enforcement is responding, they don't know
11 what's going on. So when they first get there and
12 they see a car drive off and they have very limited
13 information, they don't realize that three of the
14 perpetrators are still shooting at the people in
15 the house as they begin to chase the vehicle and it
16 shows that law enforcement needs to have some
17 context to know what they're responding to in order
18 to best respond to it a given situation,
19 particularly emergency situations such as this.

20 As far as Dustin Brooks goes, and we went over
21 this a lot in his testimony, but he needs to find
22 out the nature of the emergency, why is this person
23 calling, to be able to dispatch whoever is
24 appropriate to go to the emergency. He's trying to
25 gauge what the extent of any injuries, if any

1 injuries, are. Is there somebody who's going to
2 need an ambulance or airlifted or what is the
3 situation? The nature of the weapon assists in
4 that. If there is no weapon, the injuries may not
5 be as serious as if there's a machine gun involved.
6 Is the victim currently in danger? Is law
7 enforcement going to be in danger? Are paramedics
8 going to be in danger when they respond? These are
9 all questions that -- that his questions -- Dustin
10 Brooks's questions are designed to try and answer
11 so they can tailor their response appropriately.

12 And things that go into that are: Who's the
13 perpetrator? Where is he located? Is he still
14 there? What does he look like? What's the
15 relationship of the perpetrator to the caller? Is
16 he likely to return? Is he not likely to return?
17 Is he still armed? Is the victim in a secure
18 location? And there's some conversation in the 911
19 call where Dustin Brooks is asking Megan Brown if
20 she can lock her door, if she can lock herself in.
21 Again, showing his focus is assisting her with her
22 ongoing emergency.

23 How much time has passed? And that helps to
24 show how far could the perpetrator be, if he's not
25 on scene. How long fresh is the injury? How long

1 has this person been bleeding?

2 Hitting on some of the highlights of the cases
3 that I cited, *Davis v. Washington* involved a 911
4 call. The court observed that 911 calls -- 911
5 call is not ordinarily designed primarily to
6 establish or prove some past act, but to describe
7 current circumstances requiring police assistance.

8 And they even -- I think they were quoting
9 *Crawford* in regards to this. But they referred to
10 testimony -- as far as testimonial statements, in
11 terms of the 1820 American dictionary that was
12 quoted is: A solemn declaration or affirmation
13 made for the purpose of establishing or proving
14 some fact. And that was clearly not what Megan
15 Brown was doing. There was no solemn declaration.
16 There was a crying, stressed, I dare say hysterical
17 attempt to get emergency assistance.

18 *Michigan v. Bryant*. And I would note the
19 facts of that involve law enforcement already on
20 scene when the person is making the statements,
21 which is one step closer to testimonial than what
22 we have here where law enforcement is not present.

23 And *Michigan v. Bryant* indicates that a
24 shooting victim shot 25 minutes earlier makes
25 statements to the first responding deputies. They

1 say that those statements are not testimonial.

2 Some highlights from that case: The existence
3 of an emergency or the party's perception that an
4 emergency is ongoing is among the most important
5 circumstances -- and an aside, it's not the only
6 circumstance -- but among the most important
7 circumstances that courts must take into account in
8 determining whether an interrogation is testimonial
9 because statements made to assist police in
10 addressing an ongoing emergency presumably lack the
11 testimonial purpose that would subject them to the
12 requirement of confrontation.

13 And, again, they go on to say: An emergency
14 does not last only for the time between when the
15 assailant pulls the trigger and the bullet hits the
16 victim. It can last beyond. And, certainly, in
17 this circumstance where tragically all of these
18 people were later killed by this defendant, we can
19 see that the emergency was definitely ongoing.

20 And *Michigan v. Bryant* observes that the
21 questions the police asked are, what had happened,
22 who had shot him and where the shooting occurred
23 were the exact type of questions necessary to allow
24 the police to assess the situation, the threat to
25 their own safety, and the possible danger to the

1 potential victim and to the public, including to
2 allow them to ascertain whether they would be
3 encountering a violent felon. In other words, they
4 solicited the information necessary to enable them
5 to meet an ongoing emergency.

6 I also cited *Petit v. State*. I'm not going to
7 go into great deal on that, but it discussed
8 *Michigan v. Bryant* a great deal in that case. It
9 involved four different 911 calls. Those four
10 calls were all found to be non-testimonial and
11 equate largely with the call in this case.

12 I recently provided the Court, as well, this
13 is not in the memorandum, *Delhall v. State* and
14 *Squire v. State*. Now, *Delhall v. State* involves
15 facts that are similar to *Bryant*. Again, law
16 enforcement is already on scene. When they speak
17 with this victim who is shot and eventually dies
18 and he identifies the perpetrator and they found
19 those statements to be non-testimonial. And,
20 again, that would be following some sort of 911
21 call by somebody alerting them to the situation so
22 that they could arrive on scene.

23 Moreover I provided *Squire v. State*. And the
24 interesting thing about *Squire v. State*, Judge, and
25 this is not obvious. I was discussing it with

1 Defense Counsel earlier. *Squire v. State*, the
2 first opinion was released, I think, right after
3 this motion was originally scheduled or right
4 before and it found the other way. And it relied
5 on a case that is discussed within the current
6 opinion. I think *Heyward*. But it found that a 911
7 call was testimonial. Now, there was a rehearing
8 and that opinion was subsequently withdrawn and the
9 opinion that's been provided to the Court was
10 substituted for it. And they said, now, we hadn't
11 considered this 911 call in terms of *Michigan v.*
12 *Bryant* or in terms of *Delhall* and we were wrong to
13 do so. Once we do that and we evaluate it in terms
14 of the ongoing emergency and whether this -- the
15 statements were made for police assistance, then it
16 is clear that it is not testimonial.

17 And, in particular, they say, "We come to the
18 same conclusion regarding the 911 call placed by
19 the worker at the shelter where the victim fled.
20 The call was for the purposes of reporting an
21 emergency as it was occurring and to help the
22 police responding." So it was not testimonial.

23 And so, again, as the -- as the call itself
24 bears out, as Deputy Brooks -- well now Deputy
25 Brooks, but previously the 911 Operator Brooks's

1 testimony bears out and as the case law bears out,
2 the statements are clearly not testimonial as they
3 are made with the primary purpose of enabling
4 police assistance to Megan Brown's emergency.

5 Judge, the third legal issue is -- and I'm
6 sorry. Actually, before I move on to the third,
7 Defense Counsel did provide me two cases, *Sandon v.*
8 *State* (phonetic) and *State v. Lopez*. I wanted to
9 address with the Court. Both of these cases are
10 decided before *Michigan v. Bryant*. One is 2008 and
11 the other one is 2008. So I would submit to the
12 Court that they are -- they are largely obsolete in
13 that regard. The subsequent cases, *Michigan v.*
14 *Bryant* and the ones that I've already cited are
15 much more persuasive. There's also distinguishable
16 facts.

17 In *Sandon v. State*, law enforcement actually
18 approaches a witness and has a face-to-face
19 contact, which is not the same as a person or
20 witness or victim contacting 911 to try and obtain
21 police assistance. Law enforcement was there, so
22 the facts are different in that.

23 And also in *State v. Lopez*, the statements
24 dealt with in *Lopez* involved statements to
25 responding law enforcement after a 911 had already

1 been made and responded to. So, again, we're one
2 step closers in both these cases to testimonial
3 statements than we are here in the case before you
4 today.

5 Moving on to the third issue, which is
6 basically is this -- is the bad act described in
7 the 911 call which does precede the homicides, is
8 it relevant and whether it's relevant -- whether
9 it's either inextricably intertwined, whether it's
10 admissible under *Williams* Rule or a simple
11 relevancy standard, I'll leave for the Court to
12 decide. But I submit under any of the standards
13 that it is relevant and admissible, but I have
14 several cases -- I'm not sure that it fits as well
15 under *Williams* Rule as it does under inextricably
16 intertwined.

17 The cases cited indicate that the primary test
18 for admissibility of collateral crimes evidence is
19 relevancy. Is this incident relevant to the
20 homicides that are charged with that set of facts?

21 And Detective Cougill's testimony dealt
22 largely with that. We wanted to lay out some of
23 the facts so Your Honor could understand sort of
24 the timetable that occurs here, which is -- and I'm
25 going to review it briefly -- that Megan Brown is

1 out late at night. The defendant is upset with her
2 when she returns, attacks her, threatens her life
3 with a knife. Her son wakes up, as indicated in
4 the 911 call, and he flees. Law enforcement
5 arrives. Later that same day, as indicated by the
6 facts, that two of the victims are in the same
7 clothes that we know they were in on the 28th, one
8 of them has the same items in his pockets that we
9 would expect him to have based on what he was doing
10 on August 28, and that none of them show up for
11 work the next day. Also that Nicholas Leonard's
12 car is -- or truck is dumped a short distance away
13 in the early hours of the morning in between the
14 28th and the 29th. It all indicates that all four
15 of these people were killed prior to when the
16 defendant is seen by the McCann's at 12:30 just
17 into the 29th.

18 And so it helps us shape the time frame that
19 the assault on Megan Brown, the aggravated assault
20 on Megan Brown came in very close proximity, and
21 while the defendant was still eluding law
22 enforcement, to when the homicides occur.

23 And then, of course, the next day when he's
24 seen, none of the rest of them are seen and he's
25 seen by quite a number of people selling all of

1 their belongings or many of their belongings and
2 using their credit cards.

3 And just in terms of evidence, observations
4 Deputy Hidgerken makes during his investigation
5 assists greatly in the homicide investigation
6 because just the photographs that he took that we
7 displayed on the ELMO today, the photograph of the
8 house tells us a lot of information about the way
9 the house looked that morning and what we would
10 have expected the house looked like when the
11 homicides occurred. That is no longer the case
12 after the defendant's had a week to try and clean
13 up the scene and manipulate the scene.

14 We know some things about the bed, where there
15 was a bed found in the garage. Which we can place,
16 thanks to Deputy Hidgerken, in the bedroom earlier
17 that day, which helps us place where Nicholas
18 Leonard was attacked, which allows us to more fully
19 prosecute the case. It also helps us see where we
20 would expect Margaret Brown to have parked her
21 vehicle, which fits in perfectly since we know that
22 Margaret Brown is found still in her work uniform
23 that she was attacked by the defendant as she was
24 arriving home from work in that garage area.

25 So there's a lot of relevance to what Deputy

1 Hidgerken did, what he observed, the fact that
2 there was a TV there and the fact that [REDACTED] the
3 four year old, whose formal name at the time was
4 [REDACTED], that he was present at the
5 residence at 6:00 in the morning, as was Margaret
6 Brown, and that the next time that ultimately
7 [REDACTED] ends up with this defendant, who does claim
8 that he had never been back at the residence and it
9 does not make sense.

10 So Deputy Hidgerken's investigation is
11 relevant. And without the full information of why
12 he was there, it makes it difficult to explain why
13 he made his observations.

14 Moreover, and perhaps more compelling, and I
15 would note that, "Evidence is inextricably
16 intertwined if it is necessary to, one, adequately
17 describe the deed or, two, establish the entire
18 context out of which the charged crimes arose, or,
19 three, provide an intelligent account of the crimes
20 charged, or, four, adequately describe the events
21 leading up to the crimes."

22 And I submit that Deputy Hidgerken's
23 investigation and the events of the morning
24 themselves which the 911 call is evidence to, fit
25 at least two of the three of -- two of the four of

1 those things, probably all of them. It definitely
2 describes the events leading up to the crimes. It
3 definitely provides an intelligent account of the
4 crimes charged. It also helps -- we know that
5 Nicholas Leonard became aware of this offense and
6 it helps explains his presence at the location as
7 everybody was apparently afraid of this defendant,
8 rightfully so since he killed them.

9 And I would note that one of the cases I cited
10 indicates that, "To prove its case, the State is
11 entitled to present evidence which paints an
12 accurate picture of the events surrounding the
13 crimes charged."

14 And the there's a case, the *Rambaran* case,
15 Judge, that we cited that I can't think of a more
16 unusual set of facts than in that set of cases.
17 The interesting thing is that it wasn't even really
18 disputed that the domestic incident with one of the
19 victims of -- let me back up.

20 In *Rambaran*, there was six counts charged.
21 The first three involved murder of one of the
22 victims' cousins and attempted murder of the
23 victim. Counts IV and V were a shooting at two of
24 the friends of one of the victims. And Count VI
25 involved a domestic incident prior with the victim.

1 Now, the domestic incident prior with the
2 victim wasn't really even challenged. What
3 happened in that case was Counts IV and V were
4 severed, which was a shooting at the two friends of
5 the victim, and they said they're different victims
6 than the ultimate homicide victim and the
7 girlfriend of the defendant who is one -- really
8 the crux of the whole thing. And that the court
9 said, no, the evidence is absolutely admissible of
10 what happened in the day before or -- I don't
11 remember if it was the day before or a few hours
12 before with the shooting at them because it tied
13 into the whole set of circumstances of -- in which
14 *Ramberin* was violently going after his girlfriend
15 and her friends or family.

16 But the interesting thing there is that the
17 domestic violence situation with his girlfriend was
18 never really attacked and was fine the whole way
19 through, which is what we have here. The
20 aggravated assault in the morning is -- of the
21 28th, is a domestic violence situation with Megan
22 Brown who is the ultimate victim -- one of the
23 victims of the homicide.

24 *Torres v. State* indicates that a prior threat
25 to kill the victim of the homicide was admissible

1 as similar fact evidence in a murder trial.

2 *Dennis v. State* indicates that a prior threat
3 to kill the victim, aiming of a firearm was
4 admissible.

5 *Brown v. State*, a prior threat to kill was
6 admissible in attempted first-degree murder trial.

7 And *State v. Wright*, prior domestic violence
8 issues relevant in a kidnapping.

9 Again, I don't believe any of these were as
10 close in time as the defendant's attack on Megan
11 Brown was to when the homicides would have
12 occurred.

13 Again, my motion -- or my memorandum details
14 that a little bit more and it goes to show his
15 intent, the motivation, and, again, the
16 circumstances surrounding the how the homicide came
17 about.

18 Now, Defense also provided me some cases in
19 regards to this issue, Judge.

20 In particular, *Billy v. State*, I'm kind of
21 fond of that one because I almost cited it myself,
22 but I thought the fact pattern was a little bit too
23 complicated and convoluted to really be necessary.

24 But the interesting thing about this case that
25 Defense has provided me is it supports my position

1 that it should be admitted as similar fact
2 evidence. And the facts are unusual. The
3 defendant in that case, Mr. Billy, --

4 THE COURT: I've read it. It's the Indian
5 reservation case. I'm familiar with it.

6 MR. SARABIA: Yes. Okay.

7 But there was different things that they were
8 trying to admit as prior fact evidence. And the
9 incidents that involved other victims at other
10 times, because they said, no, they can't admit
11 those. And that is not what we have in the instant
12 case before Your Honor.

13 We have a case where the prior act of violence
14 involves one of the same victims as the homicide,
15 which, in the *Billy* case, they said that was okay.
16 And, in fact, the threat in the *Billy* case was
17 very, very vague, and the case even alluded to, it
18 might have been a threat, might not have been. But
19 he held a hammer at one of the kids that he later
20 drove into a lake. So the attack wasn't similar in
21 nature. I mean, driving the kids into the lake in
22 a car versus holding a hammer over their heads are
23 two completely different ways in which to attack
24 somebody. But that part was able to come in. And
25 also it separated in time by a much greater

1 distance than what you have here, which is, at
2 best, 18, 18-and-a-half hours.

3 And particularly, the Court specifically noted
4 that the cases regarding admissible *Williams* Rule
5 evidence involved either prior crimes against the
6 same victim as the charged offense, which is what
7 we have here, or the charge offenses and the prior
8 offenses involve similar completed crimes of
9 violence. So we don't even need to get to that
10 second prong because Megan Brown is the victim of
11 both the homicide and of the -- and of the
12 aggravated assault.

13 And, again, they keep saying, with the
14 exception of the hammer incident -- with respect to
15 the hammer incident, the matter is relevant to the
16 extent that the threat was directed at one of the
17 victims and as a result raises a jury issue as to
18 what that defendant intended by his actions, et
19 cetera. So that case actually supports our
20 position regarding the admission as relevant
21 evidence.

22 *Thompson v. State* was also provided to me by
23 the Defense. And this is distinguishable. It's a
24 very different set of facts. The defendant
25 committed different offenses against a different

1 victim the day before the shooting -- before a
2 shooting of the victim in this case.

3 Quite frankly, in regards to the facts, it's
4 unclear what they were even arguing was the
5 relevance in a situation where a drug dealer
6 eventually kills a person. The drug dealer had an
7 issue with completely different people, where there
8 was no connection to the victim that he eventually
9 shot indicated in the case, and that was said to be
10 not relevant.

11 And, again, completely different than what we
12 have here, which is the same victims -- or the same
13 victim, Megan Brown, and the same location.

14 The Defense Counsel also provided *Burgos v.*
15 *State*, which again is very distinguishable. This
16 set of facts was not terribly complicated. Law
17 enforcement responds for a domestic violence
18 incident against a domestic violence victim and
19 then the defendant gets into a fight with law
20 enforcement and law enforcement becomes the
21 victims. The crime against the domestic violence
22 victim is ultimately not charged, not prosecuted,
23 not tried. And they try the offenses against the
24 law enforcement officers, but the State admitted
25 all of the evidence of what occurred and the

1 injuries to the domestic violence victim, which
2 really didn't have any bearing on the different
3 victims, basically the resisting of the law
4 enforcement officers.

5 So, again, that case has little, if any,
6 bearing on the Court's -- the issue before the
7 Court today.

8 And other than that, Judge, we would rest on
9 our memorandum which I believe details a lot of
10 these arguments in greater detail. Thank you.

11 THE COURT: Who's going to argue for the
12 Defense? Mr. Michailos?

13 MR. MICHAIILOS: Judge, I'm going to argue the
14 two different issues, but Mr. Vizcarra will finish,
15 if that's okay.

16 THE COURT: That's fine.

17 MR. MICHAIILOS: May it please the Court.
18 Counsel.

19 THE COURT: All right. So which are your two
20 issues?

21 MR. MICHAIILOS: I'm going to begin with the
22 excited utterance, Judge.

23 With regard to the excited utterance, as
24 Mr. Sarabia indicated, in order for excited
25 utterance to be admitted into evidence as an

1 exception to hearsay, the State must show that the
2 statement was made before there was time to
3 contrive or misrepresent.

4 I submit that the State has failed to
5 establish that to be the case. The State's
6 position is there was 10 minutes. I think the
7 testimony shows more like 17 to 20 minutes. But
8 regardless, there is no bright line rule as the
9 State indicated. And 10 minutes or 17 minutes or
10 20 minutes would be enough time between the alleged
11 occurrence and the statements that the State seeks
12 to introduce into evidence to -- for someone to
13 contrive or make this whole incident up.

14 With regard to the *Crawford* issue, Your Honor,
15 Megan Brown's statements in the 911 tape are
16 hearsay and testimonial, and introducing them would
17 result in a Sixth Amendment confrontation clause
18 violation under *Crawford v. Washington*.

19 In spite of Megan Brown's apparent excitement,
20 there was no ongoing emergency, and the primary
21 purpose of the questioning by Deputy Brooks was to
22 establish past events, not to meet an ongoing
23 emergency. His questioning begins with, "Tell me
24 exactly what happened", past tense, "Megan." Not
25 the usual, "What is your emergency?"

1 Now, *Davis v. Washington*, the Supreme Court
2 case -- the U.S. Supreme Court case that the State
3 uses to begin its argument in its memorandum to
4 admit hearsay statements actually deals with two
5 separate cases involving witness statements. It
6 deals with State versus *Davis from Washington*, and
7 *Hammon versus State* from Indiana.

8 Mr. Sarabia in his memorandum references only
9 the *Davis* portion of the opinion in his argument.
10 In *Davis*, you actually had an ongoing emergency.
11 The victim in that case was actually speaking to
12 the 911 dispatcher while she was being attacked by
13 the defendant. The dispatcher in that case asked,
14 "What's going on", present tense. The victim
15 responded, "He's here jumping on me again. He's
16 using his fists." Those statements were deemed by
17 the Supreme Court to be non-testimonial.

18 But with regard to the *Hammon* case, the
19 statements were made after the actual crime in
20 response to law enforcement questions regarding
21 what had just occurred moments before, similar to
22 our scenario here today. In *Hammon* the Supreme
23 Court ruled that the statements were testimonial
24 and not admissible.

25 All the cases cited by the State do not make a

1 bright line distinction that if statements are made
2 during a 911 call, they are automatically
3 non-testimonial. And if they're made to law
4 enforcement outside of a 911 call, they are
5 automatically testimonial. The Court has to look
6 at the context of the statements to determine
7 whether or not they are testimonial.

8 In *Davis v. Washington*, at the end of Page
9 828, start of Page 829, the Supreme Court makes
10 clear that even in the *Davis* case where the
11 statements were non-testimonial, quote, "After the
12 operator gave the information needed to address the
13 exigency of the moment, the emergency appears to
14 have ended when Davis drove away from the premises.
15 It could readily be maintained that from that point
16 on, the cotries, the suspect's statements, were
17 testimonial."

18 In on your case, Your Honor, the person
19 purported to have been Mr. Matos had long left the
20 residence on a bike, was nowhere in sight and
21 nowhere to be found long before Megan Brown called
22 911. The 911 call was made after the emergency was
23 over. I submit, Your Honor, that her statements
24 were clearly testimonial.

25 Now, this is exactly the way the Supreme Court

1 of Florida ruled in *State versus Lopez*. And I've
2 previously given copies of these opinions to the
3 State.

4 If I may approach, Your Honor?

5 THE COURT: You may. Thank you.

6 MR. MICHAÏLOS: Now, Mr. Sarabia characterized
7 these cases as obsolete, but I want to point out to
8 Your Honor they are post the *Davis versus*
9 *Washington* case and good case law.

10 In the *Lopez* case, the police were responding
11 to a kidnapping and assault. The victim in that
12 case was nervous and excited, told them that he had
13 just been abducted by gunpoint by Defendant Lopez
14 was who was nearby in a parking lot.

15 As far as exigencies go, I submit to Your
16 Honor, there was much more of an exigency in that
17 case than in ours. The officers in that case even
18 found a .38 caliber Smith and Wesson revolver used
19 in the reported abduction, and Lopez admitted that
20 the gun was his and that he had hid it in the car
21 before they arrived. And still the court there
22 found that because there was no ongoing emergency,
23 no immediate danger when the statements were made,
24 they were testimonial and inadmissible.

25 *Davis versus Washington* makes clear whether

1 there was an on going emergency has to be
2 determined objectively not subjectively.
3 Regardless whether Ms. Brown gave the impression in
4 her demeanor that she was in an ongoing emergency,
5 it is absolutely clear that objectively she was
6 not. Her statements were testimonial and their
7 admission into evidence would violate the Sixth
8 Amendment.

9 Now, in *Michigan v. Bryant*, which Mr. Sarabia
10 also quotes, involved an ongoing emergency, an
11 armed shooter. Similar to the other case that he
12 is Mr. Sarabia sites, *Squire*, which is a Fourth DCA
13 case and *Delhall*, Supreme Court of Florida case.
14 An arm shooter who had mortally wounded a victim
15 within a few blocks and a few minutes. The
16 disputes potential scope in the emergency encompass
17 a potential threat to the police and to the public.
18 And since this case involved a gun, the physical
19 separation that was sufficient to end the emergency
20 in cases like *Hammon* and our case here today did
21 not apply.

22 *Michigan versus Bryant* insisted that
23 determining whether an emergency existing and is
24 ongoing is a highly context dependent inquiry and
25 provided a laundry list of factors to consider.

1 Among them:

2 One. Whether an armed assailant poses a
3 substantial threat to the public at large, whether
4 you have a public versus a private domestic
5 dispute.

6 Two. The type of weapon used by the
7 assailant.

8 Three. The severity of the victim's injuries.
9 All these factors are lacking in our case. No gun
10 or weapon of any kind. The kitchen knife in our
11 case was abandoned before the 911 call. No severe
12 injuries to the alleged victim or medical
13 emergency.

14 If you recall, the injury that the victim
15 clearly exaggerated about was a small nick that
16 could and probably was treated with a bandaid
17 according to the State's witnesses. She actually
18 refused medical treatment. It was clearly a
19 private dispute with no reason to think that it
20 would threaten the public at large.

21 In *Michigan versus Bryant*, unlike in our case,
22 there was no motive for the shooting. The police
23 did not know whether the threat was limited to the
24 victim or extended to the general public. Here in
25 our case, according to the State's evidence, a

1 boyfriend is alleged to have been upset because his
2 girlfriend went to a bar and stayed out all night
3 and he allegedly confronted her upon her return in
4 the early morning hours. No evidence of a public
5 threat whatsoever.

6 Quickly, with regard to the State's final case
7 in their memorandum to admit hearsay statements,
8 *Petit versus State*, there you clearly have ongoing
9 emergencies transpiring in real time. Victims of a
10 robbery were pursuing a vehicle containing multiple
11 armed subjects down an interstate highway. And
12 even there, the court found that some of the
13 statements were inadmissible.

14 Our case is a far cry from all of the State's
15 cases. It is more like *Hammon* than *Davis*. It is
16 synonymous with *Sandon versus State*, the Fourth DCA
17 case I just gave you, 2008 case, where police came
18 across a crying young boy outside his house and did
19 an informal welfare check responding to an apparent
20 emergency, not trying to investigate any alleged
21 crime. The boy spontaneously made excited
22 utterances that his dad had just thrown his dog off
23 a balcony, showed the dog's body to law
24 enforcement. But the Court found that at that
25 point the emergency was over and not ongoing and,

1 thus, the boy's excited utterances were testimonial
2 and not admissible under *Crawford*.

3 Finally, Your Honor, the State here is trying
4 to introduce this evidence to -- is not trying to
5 introduce this evidence to prove an aggravated
6 assault. Here, the State is trying to use evidence
7 of an alleged aggravated assault to prove
8 completely different crimes. They're focused on a
9 crime that is one crime removed from the crimes
10 they're prosecuting. They are improperly trying to
11 introduce inadmissible evidence.

12 And I will yield the podium to Mr. Vizcarra
13 for final argument on that last issue, Your Honor.
14 Thank you.

15 THE COURT: Thank you.

16 MR. VIZCARRA: Judge, for Florida courts have
17 held that before admitting collateral crime
18 evidence and the State has elicited this as
19 collateral crime evidence, the trial court was must
20 make four determinations:

21 Whether the defendant committed the collateral
22 crime, the State's got to prove that he committed
23 the crime by clear and convincing evidence; whether
24 the collateral crime meets the similarity
25 requirements necessary to be relevant; and whether

1 the collateral crime was too remote as to admit its
2 relevant. And then the fourth issue, whether
3 pursuant to Section 90.403 Florida Statutes, the
4 probative value of the evidence is substantially
5 outweighed by the danger of unfair prejudice.
6 That's the *Robertson* case, 829 So.2d 901. That's a
7 Supreme Court 2002 case.

8 Judge, I don't think the State's made the
9 first showing that they've proven this case has
10 been proved by clear and convincing evidence. The
11 State did not file the actions -- the charges
12 against Mr. Matos. And just to charge him would be
13 probable cause. And those charges have been
14 no-Infoed.

15 Getting past that, Judge, if the State's able
16 to get past that and you feel they have proved
17 their case that Mr. Matos committed this aggravated
18 assault that they have not filed by clear and
19 convincing evidence, you've got to address whether
20 the collateral crime meets the similarity
21 requirements necessary to be relevant.

22 The State is seeking to admit the collateral
23 crime to prove motive, intent and premeditation.
24 Let me tell you right now that Section 90.404 does
25 not list premeditation as a basis to admit

1 collateral crimes evidence or *Williams* Rule
2 evidence.

3 We argue, Judge, that the State has not shown
4 that the collateral evidence is proof of anything
5 other than propensity or bad character on behalf of
6 the defendant, Adam Matos. It certainly has not
7 shown to be as required when proving identity or
8 the similarity requirements. It's not only
9 strikingly similar, but they must also share some
10 unique characteristic or combination of
11 characteristics which sets them apart from the
12 other offenses.

13 If you recall, I talked to the lead detective
14 and asked him about the collateral crime. And the
15 collateral crime involved the use of a knife to the
16 throat of Megan Brown. However, when we asked him
17 about the cause of death to Megan Brown, it was a
18 gunshot wound to the head. Margaret Brown was
19 blunt head trauma with a contributing --
20 contributory condition being asphyxiation. The
21 cause of death to Nicholas Leonard was blunt force
22 trauma. And the cause of death to Gregory Brown
23 was gunshot wounds of the torso.

24 I would argue that motive is not an issue that
25 this evidence is being offered to prove. To

1 illustrate and bring home where motive is at issue
2 for us, Ehrhardt, and as Florida Rules of Evidence
3 states that, for example, in defendant's murder
4 prosecution, evidence that the defendant had been
5 stealing cattle from a ranch was admissible to show
6 the defendant's motive in killing the ranch owner
7 employee that discovered the thefts.

8 Similarly, evidence of criminal charges
9 against a defendant are admissible to a charge of
10 witness tampering to show motive. There's no basis
11 for introduction -- or introducing the collateral
12 crime evidence in this case to show motive on the
13 part of the defendant.

14 I would argue that, in short, this is only
15 propensity evidence disguised as motive. Mr. Matos
16 is charged with killing four people. The evidence
17 of this prior crime, holding a knife to the throat
18 of Megan Brown is not necessary to prove intent.
19 To kill by inflicting gunshot wounds, blunt force
20 trauma or asphyxiation, these are not things that
21 happen accidentally. The State does not need this
22 unrelated crime to prove intent.

23 Professor Ehrhardt states that: Among the
24 factors that can be considered in determining
25 whether the probative value in Section 90.404(2),

1 evidence is substantially outweighed by the Section
2 90.403 concerns as a strength of other evidence
3 available to the prosecution to prove that fact.

4 And in this case, Judge, this prior crime is
5 outweighed -- the need for it is outweighed by the
6 prejudice to the Defense and it does very little to
7 show the defendant's intent was to harm those
8 victims. Definitely these blunt force trauma,
9 shootings, asphyxiation, these things do not
10 require this earlier incident of holding a knife to
11 the throat of Megan Brown to prove intent. Simply
12 put, Judge, clearly, this is propensity disguised
13 as intent.

14 Preparation, premeditation is very similar.
15 Ehrhardt -- Professor Ehrhardt talks about where an
16 arsonist steals gas or explosives at some point
17 prior to burning down or blowing up a building, the
18 theft of the gas or explosives can be used as
19 evidence in the arson for the murder trial later
20 on. Nothing like this exists in this case.

21 Judge, I have listed some cases for you to
22 consider. The *Billy* case. The Third District
23 reversed and remanded a first-degree murder
24 conviction and granted a new trial. The court had
25 to -- appellate court granted this new trial and

1 they had to retry the murder case saying the
2 prosecution went too far when it sought to
3 introduce prior bad acts into the murder trial
4 alleging that the defendant drove his two children
5 into a canal to die. And although this is
6 relevant, the probative value of the evidence was
7 outweighed by its undue prejudicial effect when the
8 State sought to introduce at the trial prior
9 violence and acts of violence towards the
10 children's mom and others. And over objection in
11 that case, the State sought to introduce evidence
12 of Billy's violent tendencies towards the
13 children's mother, including acts of violence
14 against her while she was pregnant, threatened to
15 take her vehicle without her consent, those prior
16 acts were sought to be introduced and they had to
17 retry that case.

18 Additionally, Judge, in the *Burgos* case,
19 *Burgos versus State*, 865 So.2d 622, a Florida Third
20 District case, the District Court of Appeal held
21 that: The evidence of defendant's infliction of
22 domestic violence on his girlfriend, which was
23 actually observed by law enforcement officers prior
24 to the commission of charged offenses, was not
25 admissible.

1 Now, the State's here is arguing that it's
2 inextricably intertwined. It's kind of a dual
3 argument. It's collateral evidence; it's also
4 inextricably intertwined. But the evidence was not
5 in the *Burgos* case inextricably intertwined with
6 the defendant's altercation with the officers as
7 there was a clear break between the domestic
8 violence incident and the defendant's confrontation
9 with officers.

10 In that case, Mr. Burgos appealed his
11 convictions for resisting arrest without violence
12 and the court reversed. Police were dispatched to
13 a local trailer park. When they arrived at the
14 trailer park, they spoke to the woman who was
15 crying hysterically and whose face was lacerated,
16 swollen and bleeding. The woman said that Burgos,
17 who was standing 25 feet away, caused her injuries.
18 After Burgos refused to respond to the officers'
19 inquiries, they attempted to arrest him. Burgos
20 struggled and kicked and punched them, tried to get
21 one of their handguns, tried to use one of the
22 officer's radio as a weapon.

23 Now, the state, as in this case, argued that
24 they needed that prior incident to tell why they
25 were there leading up to the arrest, but the court

1 said that that was improper. When Burgos was
2 finally subdued and arrested, they charged him with
3 resisting an officer with violence, depriving an
4 officer with means of protection --

5 (Thereupon, the court reporter interrupted.)

6 THE COURT: Slow down. It's okay. And I am
7 familiar with that case. I've actually read it.

8 MR. VIZCARRA: Okay.

9 THE COURT: You can keep going if you want to
10 make the record.

11 MR. VIZCARRA: Yes, Judge.

12 And although the State argued that it was
13 inextricably intertwined, as in this case, and it
14 happened immediately right before, the charges of
15 which Burgos was arrested and charged and
16 convicted, the appellate court held that this
17 testimony regarding the uncharged domestic battery
18 was not inextricably intertwined with the
19 defendant's altercation with officers because there
20 was a clear break between the incident and the
21 defendant's confrontation with the officers.

22 Further, they say that it certainly was
23 possible to give a complete and intelligent account
24 of the altercation between Burgos and the officers
25 without delving into the details of the domestic

1 battery.

2 And that's what we have in this case before
3 us. There's a complete clear break and it's
4 clearly possible to give a complete and intelligent
5 account of the charged crime without delving into
6 this prior incident that happened, it looks like,
7 wee early morning hours of August 28th.

8 Last, Judge, *Thompson versus State*, 76 So.3d
9 1050, the District Court Of Appeal held that the
10 defendant's other crimes on the day of the shooting
11 is not relevant as being inextricably intertwined
12 with the defendant's charged offenses.

13 I'm not going to go into that. I'm just going
14 to ask you to read it. In that case, the State's
15 arguing that the day before, the night before, and
16 earlier in the day of the shooting, the State
17 sought to introduce the fact that Thompson sold
18 drugs and pointed a gun at a different individual.
19 And the State said that the prior kidnapping and
20 drug transaction and threat was inextricably
21 intertwined with the charged offenses. And the
22 appellate court held that that testimony regarding
23 that uncharged kidnapping and drug sale was not
24 inextricably intertwined with the defendant's
25 charged offenses and held that the improper use of

1 evidence of bad acts, that required a new trial.

2 Judge, if you find that some of the sought to
3 be introduced collateral crimes evidence is
4 admissible at trial, I'm going to ask you to redact
5 and --

6 THE COURT: I was wondering when somebody was
7 going to get to that because there's statements in
8 there that absolutely can't come in.

9 MR. VIZCARRA: Right, Judge. And I'll go
10 through those really quickly, if you do decide that
11 way. I'm not going to argue that you should.

12 THE COURT: Well, let's not -- let's not
13 defuse a bomb that hasn't gone off.

14 MR. VIZCARRA: Okay.

15 THE COURT: If I rule in your favor, we don't
16 need to cut through it. But if I did rule in your
17 favor, I'd expect at some point to hear what your
18 proposed redactions would be. I saw the part about
19 seven prior felonies. "I think he's got a gun."
20 Obviously stuff like that can't be in there. Yeah.

21 MR. VIZCARRA: Automatic weapons. Those
22 things, Judge, I'll put that in writing to you.

23 THE COURT: If I rule against you, we'll deal
24 with that and I think both sides would acknowledge
25 that that will have to be dealt with.

1 MR. SARABIA: Yes, Judge.

2 THE COURT: Mr. Sarabia, you wouldn't have any
3 problem with trying to address that.

4 MR. SARABIA: And I believe it was
5 Mr. Michailos. It might have been Mr. Hendry I
6 spoke to. But there's -- I do have some
7 highlighted statements. I was going to bring those
8 up, if you gave me a moment, but I forgot to.

9 But the seven prior felonies and some of the
10 distant assault allegations, we would be happy to
11 work with the Defense on in redacting.

12 THE COURT: And there's even now a special
13 Supreme Court instruction on redacted tapes that's
14 been approved, so we've that going for us as well
15 if we have to do this.

16 Anything more towards the substance of the
17 motion?

18 MR. VIZCARRA: Judge, I would just close with
19 this: If the collateral crime testimony is
20 admitted, it's going to deny Mr. Matos a fair
21 trial. It's going to violate his Fifth, Sixth and
22 Fourteenth Amendment rights under the United States
23 Constitution.

24 I'm also asking that should the Court find
25 that any of this evidence is allowed at trial, I'm

1 going to ask that the Court limit that testimony so
2 it does not constitute a feature of the case. I'm
3 asking the Court not allow it to be mentioned
4 during opening statement or closing argument. I'm
5 asking the limiting instruction be given at the
6 time that the prosecution seeks to enter it into
7 evidence, the collateral crimes evidence. I'm
8 asking the Defense to be allowed to discuss it
9 during voir dire. And, of course, I'm asking that
10 the 911 tape be redacted accordingly.

11 Thank you.

12 THE COURT: Before you leave the opening and
13 closing issue, I'm obviously familiar with not to
14 be a feature of the trial and I'm familiar with the
15 idea of timing it when it does come up and that the
16 State draws a distinction that these are the times
17 that they'll be addressing this evidence so that I
18 can mark it in my review of the trial so I know how
19 much time was spent on it.

20 So I'm familiar with the idea of it not
21 becoming a feature, but not being used in open or
22 close, where's that coming from? Is that something
23 new that I have not heard before or is that a
24 creative thing that you've come up with?

25 MR. VIZCARRA: And, Judge, my argument would

1 be that just to ensure that it's not a feature of
2 the trial. He's not charged with that crime. I
3 would ask that that not be brought about in opening
4 or closing. I know that in past, when these things
5 are allowed, the prosecutor pretty much does 50
6 percent or more of their closing on the collateral
7 crime evidence.

8 So I think that to assure Mr. Matos a fair
9 trial, I think that's fair that we would limit that
10 use at opening or closing.

11 THE COURT: Okay. All right. Here's my
12 ruling on it:

13 Taking into consideration the testimony I
14 heard today, as well as at the previous hearing,
15 taking into consideration the 911 call which I did
16 listen to -- I'm not really sure actually how much
17 those photographs are relevant to my decision in
18 this matter but they were introduced -- I'm going
19 to grant the motion to admit the hearsay statement.
20 It is going to be subject to redactions, which are
21 obviously going to be necessary. I would never
22 introduce that entire 911 call.

23 You can try and get together on redactions and
24 make reasonable redactions. By agreeing to
25 reasonable redactions, the State does not -- or the

1 Defense does not in any way concede the
2 admissibility. It's just so that it's coherent and
3 the two sides can work on it beforehand. So your
4 objection's still preserved as potential error.
5 However, if the two sides can't come to an
6 agreement, I'm going to direct that a hearing be
7 set prior to, say, 30 days prior to the trial, so
8 that the judge that's handling the trial can
9 actually supervise the redactions. Even though I'm
10 admitting the substance of the tape, it obviously
11 all can't come in. And I think both sides already
12 acknowledged the lines that are obviously
13 completely inadmissible.

14 I'm going to give you a written order.
15 Obviously, I don't have a written order on me right
16 now granting the hearsay admission.

17 State, clearly, a feature of the order is
18 going to be the instruction to you not to make the
19 hearsay statements a feature of the trial.

20 As far as the opening and closing and
21 Mr. Vizcarra's request that they not be in the
22 opening or closing, you know, that's novel. I
23 don't think I've ever heard that before. I know
24 that I can give you an ongoing objection such that
25 it's not necessarily to make one contemporaneous to

1 the opening. You can make it before the opening
2 begins in the event that this will be used. The
3 defense objects and then it will preserve your
4 objection for appellate purposes, and you can do
5 the same for closing. And, if you want, you can
6 even make it contemporaneous to the first time they
7 bring it up in opening and it will be the same
8 ruling. You're going to have to bring that up to
9 the judge that's going to be trying the case,
10 though. Of course, I'll try and to cover some of
11 that in my written order. I'll try and get you a
12 written order within the next two weeks, certainly,
13 before I'm no longer on this bench.

14 I think that covers everything.

15 Mr. Matos, all of these issues are now very
16 clearly preserved for purposes of appeal, should
17 the jury find you guilty in this matter.

18 We're here on a pre-trial as well as the
19 conclusion of this motion or is there already a
20 pre-trial set?

21 MR. SARABIA: Yes, Judge. We are here on a
22 pre-trial as well.

23 THE COURT: Okay. We're already set for trial
24 is my recollection. We picked a February date; is
25 that correct?

1 MR. SARABIA: Set for jury selection
2 February 20th and start the trial February 27th.

3 I would be interested if Your Honor is not the
4 one who is going to be conducting the trial, I
5 think that we ought to find out.

6 THE COURT: I'm going to set a pre-trial in
7 December so that the judge that takes this bench
8 will have the opportunity to address it.

9 Now, what I'm going to do is I'm going to set
10 a pre-trial in December. Again, I don't know who's
11 going to be taking this bench. We all have our
12 suspicions. But until the Chief Judge says who's
13 assigned, then we won't know for sure. And whoever
14 is assigned, if they're not capital qualified, and
15 if we still have a death penalty at that point in
16 Florida's future, obviously then a circuit court
17 judge who is willing to do it and who is
18 death-penalty qualified will have to be assigned.

19 So that leaves a lot of questions out there; a
20 lot more questions than I would have liked. But we
21 pretty much all know for sure that I won't be the
22 judge on this bench in February of next year.

23 So I'll try and write a reasonably detailed
24 order to bring whatever judge will have this case
25 up to speed on my ruling on the admission of the

1 hearsay statement.

2 And then -- is there a better day of the week
3 for a pre-trial to bring the new judge up to speed
4 and to review the circumstances in setting for the
5 trial set for February?

6 Mr. Vizcarra, I know you travel over from Dade
7 City. Is there Monday, Friday, does it matter?

8 MR. VIZCARRA: It doesn't matter, Judge.

9 THE COURT: All right. Afternoon's obviously
10 going to be better.

11 MR. VIZCARRA: Yes.

12 THE COURT: And I have trial weeks for the
13 first two weeks of December and then I have
14 pre-trial and motion weeks for the last two weeks
15 in December. I know the holidays fall at the very
16 end.

17 I could do December 19th, which is a Monday,
18 at 3:00. I don't know if people are -- I don't
19 know if the new judge is going to have any holiday
20 between Christmas and New Years. So maybe December
21 19th would be the best as far as the next pre-trial
22 with the understanding that whoever takes this
23 division will probably contact you.

24 Now, here's the thing: If it's the judge
25 that's been talked about as the person that's going

1 to replace me, they're not capital qualified, so
2 this might go to Judge Handsel. I don't have any
3 problem, if you want me to, to coordinate with
4 Judge Handsel to make sure that that's an
5 appropriate day. I haven't talked to her to see if
6 she's going to be available December 19th, but I
7 could set it December 19th and I'll send an order
8 updating, if necessary. Maybe that's the best way
9 to leave it.

10 So it will be December 19 at 3:00 for a
11 pre-trial. I'll mail each side a copy of the order
12 granting the motion to admit hearsay.

13 If you can get an idea on redactions between
14 now and December 19th, which is still three months
15 away, that would be great. And I'm pretty sure
16 whichever judge inherits this case will be willing
17 to go along with your redactions if you can agree
18 to them. If you can't agree to them, then set an
19 appropriate amount of time after December 1st with
20 whoever takes over the division to have the hearing
21 on the redactions.

22 MR. SARABIA: Judge, I can -- for the record,
23 I believe there are three instances where Megan
24 Brown refers to incidents that are not a part of
25 the August 28th. One of them, she indicates, "He

1 did assault me like three years ago." The next one
2 is, "He has like seven freakin felonies, one of
3 them is a gun charge. He stole a gun from cops
4 before."

5 THE COURT: Yeah. I'd say all three of those
6 are pretty clearly out.

7 MR. SARABIA: And then the last one, I'd
8 probably redact the question as well as the answer
9 just for continuity. But the operator asks, "Has
10 he ever done anything like this in the past to
11 you?" And Megan Brown says, "He assaulted me and
12 busted my lip."

13 Those are the ones I think that Your Honor is
14 referring to. I would agree to redact those. I
15 don't believe there are any others. So we could
16 address that now. I think it would be --

17 THE COURT: I didn't look -- I didn't look at
18 it closely, but as far as where you're going to
19 make the cut in the 911 call, as well as the
20 question and the answer so that it flows reasonably
21 and doesn't look awkward and obvious would be
22 beneficial.

23 Again, we don't want to do it on the fly.
24 So -- I just admitted it. I don't expect you to
25 have the answers to that question just now. It

1 should be relatively simple and I've observed both
2 sides to be very reasonable in the practice of law.
3 So I don't think you're going to have problems
4 coming to an agreement on this.

5 And, as I said before, I don't find that the
6 Defense agreeing to the reasonable redaction in any
7 way waives Mr. Matos's the right to appeal the
8 issue, should it be error and should a conviction
9 be obtained.

10 All right. Then December 19th at 3:00 for a
11 pre-trial.

12 State, is there anything else we can do to
13 advance this case today?

14 MR. SARABIA: I don't believe so, Judge.

15 The depositions are continuing. I can say
16 that a large portion, thus far, of the witnesses
17 that I intend to call at trial have been deposed.
18 Many more are set. So even the large chunk of
19 depositions that may not yet be done, a lot of them
20 are not witnesses that we would intend to call for
21 trial. So that appears to be going well.

22 THE COURT: Okay. And, Defense, is there
23 anything we can do to advance the case today?
24 Anything left that we can do to advance the case
25 today?

1 MR. MICHAÏLOS: No, Your Honor.

2 THE COURT: And, Mr. Livermore, you're
3 handling penalty phase, correct?

4 MR. LIVERMORE: Correct.

5 THE COURT: Are you on track to have
6 everything you need for penalty phase should that
7 occur in February or are we on pace here?

8 MR. LIVERMORE: We have -- we are conducting
9 ongoing investigation into evidence, yes.

10 THE COURT: Okay. I'm just making sure that
11 we're on track.

12 MR. LIVERMORE: Yes. We have a mitigation
13 specialist. We've been working. Right now, we're
14 kind of on hold. Supreme Court issued opinions
15 today and there's nothing.

16 THE COURT: I got the alert while we were
17 sitting here and I looked and I didn't see that
18 they covered anything that would be relevant to
19 this situation.

20 Mr. Matos, do you have any questions or
21 concerns I can address before we break today?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. And, State, I've asked
24 in the past if the victim family wanted to make any
25 type of a statement. I know that you want to wait

1 until we get to the trial phase, but I figured as a
2 courtesy since they're all here yet again if there
3 was anything that needed to be covered. And I see
4 there's heads shaking in the international sign of
5 no.

6 So we'll be in recess until tomorrow morning
7 at 9:00 AM.

8 (Proceedings concluded.)

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1 CERTIFICATE OF REPORTER

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3 STATE OF FLORIDA)4 COUNTY OF PASCO)
56
7 I, Victoria L. Campbell, Registered
8 Professional Reporter, certify that I was authorized
9 to and did stenographically report the foregoing
10 proceedings and that the transcript is a true
11 record.12 DATED this 2nd day of July, 2018.
1314 /S VICTORIA CAMPBELL
15 Victoria Campbell
16 Registered Professional Reporter
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