To Be Argued By
MICHAEL BLAKEY
Time Requested: Ten Minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

A.D. Case No.
2005-01161

- against -

Suffolk Co. Ind. No.
746-04

DANIEL J. PELOSI,

Defendant-Appellant.

----------X

# RESPONDENT'S BRIEF

THOMAS J. SPOTA
District Attorney of Suffolk County
Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2500

MICHAEL BLAKEY
Assistant District Attorney
Of Counsel

## TABLE OF CONTENTS

**Page**


PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 3
- Background ..... 3
- Indictment ..... 4
- Motion to dismiss ..... 4
- *Sandoval* hearing ..... 4
- *Cardona* hearing ..... 8
  - Det. Vincent Daly ..... 8
  - Eric Naiburg ..... 10
  - ADA Emily Constant ..... 10
  - Peter Dayton ..... 11
  - Raul Gonzalez ..... 11
  - Clayton Moultrie ..... 11
- Prosecution's direct case ..... 13
  - Cathy Powell ..... 14
  - Sandra Williams ..... 15
  - Milton Macias ..... 16
  - Mark Angelson ..... 19
  - Det. Anthony Long ..... 20
  - Det. Anthony Piazza ..... 21
  - Donald Doller ..... 22
  - Det. John Kerry (stipulated) ..... 26
  - Robert Fein ..... 26
  - George Krivosta ..... 26
  - John Kundle ..... 27
  - Gregory Carter ..... 30
  - Dennis Sackett ..... 31
  - James Nicolino ..... 32
  - Lori Finkel ..... 33
  - David Egan ..... 36
  - Alessandro Osborne ..... 36
  - Ruth Vanasco ..... 36
  - Edward Bumbly ..... 36

Jessica Mikan ..... 36
Fred Lieberman ..... 37
Krista Zvanitjas ..... 37
Barbara Lukert ..... 40
Karen Evans ..... 45
John Anninos ..... 46
Tracy Riebenfeld ..... 50
Robert Pelosi ..... 53
Debbie Barrette ..... 54
Ronald Barrette ..... 54
Robert Hendershott ..... 56
Kathryn Mayne ..... 56
Helaine Hauser ..... 60
Kenneth Moltner ..... 63
Christine Lusak ..... 64
Richard Maag ..... 66
Joseph Galdi ..... 66
Clayton Moultrie ..... 67
Richard Lia ..... 69
Dr. James Wilson ..... 69
Dr. Robert Stratbucker ..... 72
Dr. Michael Doberson ..... 74
Defense case ..... 75
James Thompson ..... 75
Sam Wagner ..... 75
Kelly Lukert ..... 76
Richard Lia ..... 78
Dr. Werner Spitz ..... 78
Edward Pugsley ..... 82
Dr. Robert Shaler ..... 84
Janice Harrington ..... 85
Appellant ..... 85
Rebuttal case ..... 98
Dr. Charles Wetli ..... 98
Conclusion of trial ..... 100
Sentence ..... 101

POINT ONE ..... 103

THE WEIGHT OF THE EVIDENCE AMPLY SUPPORTED APPELLANT'S GUILTY VERDICT

POINT TWO ..... 107

BOTH CROSS-EXAMINATION OF APPELLANT AND THE PROSECUTOR'S SUMMATION WERE WELL WITHIN THE BOUNDS OF DUE PROCESS AND MOST OF THE ALLEGED MISCONDUCT WAS UNPRESERVED FOR APPELLATE REVIEW

POINT THREE ..... 114

EVEN IF A COURT ORDER SHOULD HAVE BEEN OBTAINED PRIOR TO DISCLOSURE OF GRAND JURY TESTIMONY TO AN EXPERT RETAINED BY THE PROSECUTION, THAT EXPERT DID NOT TESTIFY IN THE GRAND JURY SO THERE WAS NO EFFECT ON THE INTEGRITY OF THE GRAND JURY PROCESS NOR ANY POSSIBILITY OF PREJUDICE

CONCLUSION ..... 125

Certificate Of Compliance With 22 NYCRR 670.10.3(a)(3) ..... 126

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

A.D. Case No. 2005-01161

- against -

Suffolk Co. Ind. No. 746-04

DANIEL J. PELOSI,

Defendant-Appellant.

----------X

**PRELIMINARY STATEMENT**

This is an appeal by appellant, Daniel J. Pelosi, from a judgment of conviction imposed in the Supreme Court of Suffolk County (Doyle, J.) on January 25, 2005. Following a jury trial, appellant was convicted for one count of murder in the second degree as charged in Suffolk County Indictment No. 746-04. On January 25, 2005, appellant was sentenced to an indeterminate term of imprisonment from twenty-five years to life. There were no codefendants.

Although not joined to this appeal, appellant has two other 2005 convictions by guilty pleas for which he received additional imprisonment. On April 5, 2005, appellant pled guilty to attempted grand larceny in the third degree (stealing electricity from LIPA) and was sentenced to an indeterminate term of imprisonment from one and one-half years to three years under Suffolk County Indictment No. 2074-03. On May 4, 2005, appellant pled guilty to intimidating a

victim or witness in the first degree and was sentenced to a determinate term of imprisonment for three years under Suffolk County Indictment No. 2371-04.

Appellant is currently incarcerated at the Great Meadow Correctional Facility serving a minimum sentence of 27 years, 6 months, and 24 days. The New York State Department of Corrections and Community Supervision has appellant eligible for parole in 2031.

## STATEMENT OF FACTS

**Background**

In the early morning hours of October 21, 2001, appellant entered 59 Middle Lane in East Hampton, unplugged the hidden video security system he arranged to be installed, and attacked Robert Theodore Ammon while he slept. Appellant used a stun gun to subdue Ammon and then hit Ammon 35 times with a hard object like a flashlight or a baseball bat, killing him. Appellant's motive for murder was greed.

The timing of the murder dovetailed with failed settlement talks in a contentious divorce proceeding between Ammon and his wife Generosa. Appellant had been Generosa's paramour for almost a year and had already obtained huge sums of money. He and Generosa incorrectly believed Ammon was worth over 300 million dollars. When a divorce settlement offer for only 23.5 million structured over three years was proposed on October 19, 2001, Generosa and appellant's financial situation was untenable. They had already blown through the proceeds of her 3 million dollar loan and the one year note was due in weeks. Once Ammon was dead, Generosa inherited the entire estate thereby ensuring appellant continued access to her money. He married Generosa on January 10, 2002. In just a few years, appellant spent millions before he was arrested for

murder. Meanwhile, he spoke about the murder to numerous people so this case is based on direct and circumstantial evidence.

**Indictment**

On March 22, 2004, the Grand Jury of Suffolk County indicted appellant for one count of murder in the second degree (intentional).

**Motion to dismiss**

During discovery, defense counsel were informed that the trial prosecutor had shared the Grand Jury testimony of Dr. Wilson and Dr. Stratbucker with Dr. Doberson, another expert retained by the prosecution. Defense counsel filed a motion to dismiss alleging impairment of the integrity of the Grand Jury. Our affirmation in opposition argued disclosure without a court order can be done in furtherance of prosecutorial duties and that there was no prejudice since Doberson had no contact with the Grand Jury. On July 21, 2004, the court held disclosure should have been by court order but there was no prejudice so the motion to dismiss was denied.

***Sandoval* hearing**

On September 28, 2004, the prosecution put appellant's criminal history on the record for the court to determine what would be admissible during cross-examination, if appellant testified.

Appellant had received youthful offender treatment in 1980, so there was no conviction but inquiry into the underlying act was requested.

Three separate arrests in 1981 (for assault third, burglary third, and unauthorized use of a motor vehicle) resulted in guilty pleas on December 19, 1981 to assault third and petit larceny. Appellant was sentenced to thirty days in jail and three years probation.

In 1983, appellant was arrested for driving while intoxicated twice, in June and November. In 1984, he was charged with violation of probation. On January 24, 1985, appellant pled guilty to the first driving while intoxicated as charged and the second charge was dismissed. He was sentenced to ninety days in jail and three years probation.

In 1985, appellant was arrested for possession of burglars' tools and he pled guilty to disorderly conduct on February 5, 1986. On May 3, 1986, appellant pled guilty to aggravated unlicensed operation of a motor vehicle.

In October 1986, appellant was arrested for driving while intoxicated for the third time. On October 16, 1987, he pled guilty to that misdemeanor and was sentenced to probation.

In 1987, appellant was arrested for unauthorized use of a motor vehicle and for leaving the scene of an accident. On February 2, 1989, he pled guilty to unauthorized use of a motor vehicle in the second degree in satisfaction.

On December 13, 1987, appellant was drunk in a bar and was asked to leave. He hit the bartender in the head with a beer glass and was arrested for assault in the second degree (weapon). In July 1988, appellant was arrested for felony driving while intoxicated and falsely gave police his brother's name as his own. In October 1988, appellant was involved in a road rage incident. He forced the victim off the road and started a verbal argument. As the victim walked away, appellant sucker punched him and put him into a chokehold. There was a police pursuit and appellant was arrested for assault in the third degree. On February 2, 1989, appellant pled guilty to assault in the third degree as reduced from the 1987 assault in the second degree. He also pled guilty to felony driving while intoxicated. The 1988 assault in the third degree was dismissed in satisfaction. Appellant was sentenced to six months jail and five years probation.

On April 16, 1988, appellant was arrested for assault second (police officer victim) and felony driving while intoxicated. On June 29, 1989, he was sentenced to six months jail and five years probation.

On September 16, 2001, appellant was arrested for felony driving while intoxicated even though he tried to switch seats with his friend Christopher Parrino. On November 15, 2002, appellant pled guilty as charged and was sentenced to one year in jail, concurrent to one year in jail on his violation of probation.

When his murder trial began, appellant also had pending criminal cases. On June 13, 2003, he had been arrested in Suffolk County for grand larceny in the third degree because he evaded over $1,000.00 in LIPA metered rates. On January 16, 2004, appellant had been charged with assault in the first degree in Hawaii.

Pursuant to Criminal Procedure Law §240.43, the prosecution also sought inquiry, if appellant testified, into four examples of prior bad acts: (1) illegal eavesdropping, (2) domestic violence against Generosa Ammon while he was drunk, (3) a shotgun menacing in New York City, and (4) a domestic violence incident on June 17, 1996 against Tamara Pelosi (his first wife) where he slapped her in front of their children, threatened to kill her, warned her he could ruin her career, and told her to watch her back.

Defense counsel argued that some of these prior cases did not involve credibility, that inquiry should be limited to the fact of conviction, and that staleness should preclude more distant inquiries. The prosecution noted that the proof of appellant's stun gun possession and stun gun use prior to the murder would be part of their direct case. The court reserved decision.

On September 29, 2004, defense counsel argued *Sandoval* only applied to convictions and since there had been no *Molineux*/*Ventimiglia* motion for prior uncharged acts, that application was untimely. The prosecution argued that the uncharged crimes were circumstantial evidence of guilt and that they had been

brought to the court's attention as soon as practicable under the trial court's highly unusual procedure of finishing jury selection prior to holding pretrial hearings.

***Cardona* hearing**

On September 29, 2004, a search warrant was executed in appellant's jail cell as part of an investigation into appellant's conspiracy to intimidate and assault witnesses and for possible jury tampering. ADA Emily Constant was directing this new investigation. The trial prosecutor, ADA Janet Albertson, was not aware of any details other than that appellant had made a threat about her children. Multiple inmates had heard appellant speak about the Ammon murder. One inmate, Clayton Moultrie, agreed to wear a wire and he recorded forty hours of conversation with appellant. Defense counsel moved for a mistrial. The prosecution argued that appellant had caused the entire situation. The court agreed to hold a *Cardona* hearing on October 7, 2004.

Detective Vincent Daly testified as the lead detective in the Ammon murder investigation. He was assigned in April 2002, six months after the murder. He interviewed inmate Robert Hitt twice, on March 18 and 24, 2003. Hitt said appellant told him he planned to flee after he was released from his driving while intoxicated sentence. On June 16, 2003, inmate Robert Santiago told Detective Daly that appellant had admitted to the murder and also wanted to start doing drug deals. Detective Daly checked the jail commissary records and determined that

Joseph Pelosi deposited $100.00 in Santiago's account. Inmate Keith Kalmus (appellant's cousin) also deposited $100.00 in Santiago's account. Both deposits were made on February 25, 2003. Inmate Peter Dayton wrote a letter to "DA Mrs. Shargel" on July 7, 2004 saying he had information about appellant. Inmate Raul Gonzalez claimed appellant had given him a piece of paper with information on how to get a gun and how to hire a hit man. The information on that piece of paper was not corroborated (234-261).

Detective Daly took three written statements from inmate Clayton Moultrie. Moultrie described two meetings with appellant, on September 12 and 21, 2004. Appellant wanted Moultrie to physically harm inmates that were willing to testify against him. Appellant would pay $100.00 for a knocked out tooth. Appellant also admitted to the Ammon murder. Moultrie said appellant told him he used a baseball bat to break bones in Ammon's fingers, toes, and head. Appellant told him the dead guy was an asshole and he should have shot him in the head. Appellant also wanted inmate Richard "Malik" Faulk excluded from the prison Muslim community for being an informant (262-268).

On cross, Detective Daly agreed Moultrie had been a registered narcotics informant for the Suffolk County District Attorney in the past but cooperation terminated when Moultrie was arrested in early 2004. Detective Daly also said Santiago had told him appellant used a cousin to get rid of bloody clothes.

Moultrie was released from custody on September 29, 2004. On redirect, Detective Daly stated he never solicited any inmates to provide information and they each came forward on their own (269-328).

Eric Naiburg testified as the defense lawyer who represented Raul Gonzalez. Gonzalez had told Naiburg he had information about Pelosi's involvement in the Ammon murder. Naiburg set up a meeting with prosecutors. A proffer agreement was signed but no cooperation agreement was reached. ADA Janet Albertson was not involved in this process (331-345).

ADA Emily Constant first learned about Raul Gonzalez on September 15 or 16, 2004, when she read the letter Gonzalez had written about appellant. She instructed ADA Hector LaSalle to look for corroboration of what Gonzalez had written. She also reviewed the written statement from Clayton Moultrie. On Saturday, September 25, 2004, Moultrie agreed to wear a wire in the Suffolk County jail. After explicit instruction not to initiate any conversation about the Ammon murder, Moultrie recorded conversations for three to four hours that day. Then he was rewired for Saturday evening and overnight. He was rewired a third time for Sunday afternoon but not for Sunday night. Finally, he wore the wire from Monday 600 pm until Tuesday morning. Although Moultrie had been a registered informant for the Suffolk County District Attorney's Office Narcotics Bureau, that status was terminated when Moultrie was arrested in early 2004.

ADA Emily Constant testified Moultrie only became their agent again on Saturday September 25, 2004. Gonzalez never became an agent of law enforcement (389-412).

Peter Dayton testified he wrote a letter to the District Attorney's Office on June 16, 2004, from jail where he was being held on a robbery charge. Two weeks later, Detective Daly visited him and they spoke for an hour. Detective Daly did not give Dayton any directions about what to do. After a second meeting, Detective Daly told Dayton to report any threats. On October 6, 2004, Dayton was transferred from Riverhead to Yaphank for safety. Dayton had only met appellant once (476-479).

Raul Gonzalez testified he was in jail for selling marijuana. Although not a registered informant, he had previously provided information from jail to authorities. Gonzalez first met appellant on July 6, 2004. He knew nothing about him before they were both in the common holding cell known as the bullpen. Gonzalez heard appellant complain loudly about people seeking to testify against him. Later, Gonzalez learned appellant was charged with murder. Gonzalez did not know either Clayton ("Country") Moultrie or Richard ("Malik") Faulk (505-535).

Clayton Jerome Moultrie testified about wearing a wire to record appellant. He had signed cooperation agreements with the Suffolk County District Attorney's

Office in 2001 and 2003. He had served time in prison for a 1989 drug sale and a 1992 arson. In early September 2004, he wrote a letter to the District Attorney because he had heard "Malik" had decided to lie on the stand about appellant. This was after Malik and appellant had a fight in jail. On September 13, 2004, Moultrie met appellant briefly while being transported to court. He met appellant again on September 21, 2004. Moultrie did not know Gonzalez. This testimony concluded the *Cardona* hearing (538-544).

On October 12, 2004, defense counsel asked that appellant's new indictment (No. 2371-04) be sealed and the arraignment delayed so no one would hear about the allegations of jury tampering and witness intimidation. Defense counsel were also concerned about prospective jurors hearing appellant had made a threat about the trial prosecutor's children. Defense counsel also sought to clarify which defense lawyer was alleged to have spoken to Jennifer Kozlowski (appellant's current girlfriend) about her attempt to pay a $500.00 bribe to a witness. We maintained that the indictment was a public document and that any resultant prejudice was attributable to appellant and not the prosecution. The court ruled that the indictment would not be sealed, the motion for a mistrial with prejudice was denied, and the motion for a mistrial without prejudice for a retrial was also denied. Appellant was arraigned on the new indictment (437-479).

On October 18, 2004, the court issued its *Sandoval* ruling. Events that occurred between 1981 and 1988 were too remote in time to be relevant to appellant's credibility if he testified. However, inquiry about the two driving while intoxicated convictions, based on the 1998 and 2001 arrests, was indicative of appellant's willingness to place his own interests above society. Cross-examination of appellant could include these convictions. Use of the four prior bad acts was denied as untimely. As for the new indictment, it could be part of the People's direct case to show consciousness of guilt and was not properly the subject of a *Sandoval* hearing which examines prior convictions.

On October 31, 2004, the court issued a *Cardona* ruling and held that Moultrie had not deliberately elicited information from appellant about the Ammon murder so appellant's recorded statements were voluntary and admissible.

**Prosecution's direct case**

Prior to openings, the court obtained assurances from the jurors that no one had read or heard anything about the case (580-590).

During the prosecution opening statement, defense counsel made two objections. One objection was for referring to appellant as a drinker, a gambler, and a womanizer. The second objection was for referring to appellant having telephoned a friend who would not be testifying because the friend had his own separate trial. Both these objections were overruled (630, 650-651).

Cathy Powell testified she had worked for Ammon as an executive assistant since 1984. In 1992, she went with him when he left Kohlberg, Kravis and Roberts to become chairman of Treasure Chest Advertising, a printing company. In 2001, that company became Big Flower Holdings. Powell continued on as his personal assistant. In 1986, Ammon married Generosa. In 1992, they adopted two Ukranian children, Grego and Alexa. Powell got along well with Generosa but knew she had a volatile temperament. In the summer of 2001, Generosa and the children stayed at 59 Middle Lane in East Hampton. After Labor Day, they moved out of that beach house and Ammon moved in. The only contact Powell ever had with appellant was when he called her once to confirm whether she had transferred the monthly amount of $20,000.00 to Generosa. Another time, appellant left a voice mail about some water damage at the beach house so she told Ammon. She never met appellant in person (726-736).

On Friday, October 19, 2001, Powell saw appellant come to work very upset around 10:00 am. His driver, Milton Macias, had dropped off a bag with soccer gear at Generosa's apartment but it also contained some personal stuff which Ammon wanted back. Macias had been unable to retrieve that bag, even with police assistance. After Ammon had a meeting with Bill Clinton, he called Powell about the bag again. Generosa's refusal was unchanged. Ammon went to dinner that night at Lincoln Center. Around 5:30 pm, he called Powell once more about

the bag. She told him the bag was still not returned. Powell and appellant never spoke again (736-743).

On Monday, October 22, 2001, Ammon did not show for his 9:00 am meeting. Powell made several phone calls. When she learned that the children had not been picked up Monday morning as per the custody arrangement, she knew something was wrong. She made arrangements for the nanny and the housekeeper to get the children at noon. Mark Angelson told her that he and Macias would take a helicopter to East Hampton around 2:30 pm. Around 5:30 pm, Macias called Powell and told her Ammon had been killed. As for Ammon's reputation, Powell knew him to be a well-respected businessman. His only enemy, as far as she knew, was Generosa. Powell knew Lori Finkel as a woman who called Ammon from time to time. Powell had no doubt about Ammon's heterosexual orientation (736-750).

Sandra Williams, Ammon's only sister, testified about her brother's education, business, and personal life. His first marriage ended in divorce in 1983. He married Generosa in 1986. Later, they adopted two children. Williams spoke regularly with both her brother and with Generosa. While the Ammons were at the Coverwood estate in England, things seemed to be going well. Then in May 2000, Generosa called Williams to say she was coming back to the United States with the children and filing for divorce. In July 2000, Generosa was back in New York.

Ammon bought himself a place at 1125 Fifth Ave and a building on 87th Street for Generosa and the children. While the building on 87th Street was being remodeled, Generosa and the children stayed at the Stanhope hotel (850-859).

The last time Williams saw Ammon was during an August weekend in Nantucket for his 52nd birthday. The last time she spoke to him was around 3:30 pm on Saturday, October 20, 2001. Sounding upbeat, Ammon told Williams he intended to go shopping and later take the dogs for a walk on the beach. On Sunday, October 21, 2001, Williams called her brother's cell three times and left messages but to no avail. She flew to New York immediately after Mark Angelson told her Ammon had been killed. Generosa had Stephen Guderian bring the children to Williams so they could learn about their father's death from Williams. Thereafter, her relationship with Generosa was strained (859-873, 879-881).

Milton Macias testified he had been Ammon's driver since 1996. Sometimes he would drive Generosa but usually he took Ammon to and from work. Sometimes he also drove Ammon around town in the evening. Macias had met several of Ammon's girlfriends over the years. Thursday, October 18, 2001, was a typical day. Macias drove Ammon to work, out at lunchtime, and then back home alone after work. On Friday, October 19, 2001, Macias arrived at 8:30 am but Ammon called down and said he would be jogging in the park so Macias should drive two briefcases to work. Powell called Macias to tell him to drop off a

Big Flower bag with the children's soccer gear over at Generosa's place. At 9:20 am, Macias handed the Big Flower bag to the doorman at 30 E 85th Street Then he took two briefcases to Ammon's office at 3 E. 54th Street (954-969).

Minutes after receiving the briefcases, Ammon called Macias about the Big Flower bag. Macias told him he did what Powell had told him to do. Ammon became angry and said "She is wrong". Ammon told Macias to go retrieve the bag right away. Macias did not know what was in the bag and did not ask. Upon returning there, Generosa refused to give him the bag. Macias even called police but they could not force her to give him the bag. At 3:00 pm, Ammon called Macias and told him to bring him the Audi station wagon so he could drive the dogs out to East Hampton. Ammon said he would call Macias Sunday evening or Monday morning so Macias had the weekend off (970-977, 1019-1023).

On Monday, October 22, 2001, Macias began calling Ammon at 8:30 am. After he spoke with Powell and Angelson, he learned Ammon did not go to work. At 2:00 pm, Angelson called Macias and told him they were going to 34th St. to take a helicopter to East Hampton. Macias drove the BMW to the helipad. After the flight, he and Angelson took a taxi to 59 Middle Lane. They could hear the dogs in the backyard. Looking into the open garage, they could see the kitchen door was open a half inch so they knew the alarm was off. Macias had a pair of latex gloves with him because sometimes he had to walk the dogs and pick up

feces. He gave one glove to Angelson and they decided to go inside. Angelson led the way and told Macias not to touch anything. As they walked through the kitchen, Angelson saw Ammon's cell phone on the counter and put it in his pocket. They are both calling out "Ted? Ted?" through the house as they go upstairs. At the top of the stairs, they can see into the bedroom. Ammons' head is visible and they know he is dead without going into the bedroom. While Macias fed the dogs, Angelson called the police who arrived in five minutes. Macias gave the police the gloves and never went back inside the house (978-990, 1000, 1024, 1040-1045).

Macias only met appellant twice. In February 2001, he drove Ammon to the Stanhope. Generosa brought down Grego and began shouting. Ammon silently got out of the car. He told Macias to pick him up on 80th and Madison and not to speak with Generosa. Appellant was watching this whole scene. In the summer of 2001, Macias drove out to East Hampton to pick up the children. Generosa and appellant came outside. Appellant stood staring with his arms folded while Generosa cursed at Macias and tried to get him out of the car. Finally, the children came out and Macias was able to leave. He never saw appellant again (991-1000, 1005-1010, 1049-1050).

On cross, Macias said Angelson told him "I am a lawyer, I know about crime scenes". Angelson used Macias' cell phone to call police. East Hampton is almost three hours from New York City by car (1031-1032, 1038, 1051).

Mark Angelson was hired by Ammon in 1995 to be general counsel for the printing company Big Flower Press. Within a year he was more of a businessman than an attorney. When the company was sold four years later, Angelson joined Ammon at Chancery Lane Capital where they directed investments. Angelson knew Cathy Powell, Ammon's secretary and office manager. He knew Milton Macias, Ammon's personal driver. He saw Generosa infrequently, like at a Christmas party. When the divorce began, Angelson acted like a matrimonial co-counsel. On Friday, October 19, 2001, Angelson saw Ammon leave work for a weekend in the Hamptons. The next morning, they spoke by phone and messaged each other about business matters (3005-3015).

On Monday, October 22, 2001, Cathy Powell phoned Angelson to let him know Ammon had missed a morning meeting and no one picked up the children. Angelson called several people to find out where Ammon might be. He knew Lori Finkel was Ammon's girlfriend so he found her number and called her for the first time ever. Finkel told him she had seen him on Saturday but had been unable to reach him since then. Angelson decided to use the company helicopter to go out to East Hampton right away. Macias picked him up and they flew out together. At 4:45 pm, they took a taxi from East Hampton airport to 59 Middle Lane (3015-3020).

Angelson and Macias entered the house through the open garage. Macias had a pair of latex gloves so they each put one glove on. Dogs were barking excitedly in the backyard. In the kitchen, Angelson saw Ammon's cell phone on the counter so he put it in his pocket. They called out "Ted? Ted?" as they walked further inside and up the stairs. Without entering the bedroom, they could see Ammon was obviously dead. Downstairs, Angelson used Macias' cell phone to call police. Macias fed the dogs (3020-3024).

Later, at the police station, Angelson remembered he had Ammon's cell phone so he gave it to police. He hoped a superior officer would be discrete with it. However, he did not know the access pin code and did not check any information on that phone (3026-3031).

Detective Anthony Long testified he worked for the East Hampton Village Police Department. On Monday, October 22, 2001, he responded to 59 Middle Lane and met Angelson and Macias at the top of the driveway. Sergeant Mamay, Angelson, and Detective Long entered the home through the open garage door. They walked through the kitchen and into the living room. Upstairs, Angelson pointed them to Ammon's body and then he left the crime scene. Other officers helped search the house and secure the perimeter. No one touched Ammon until Lieutenant Larsen rolled the body to check for a weapon. One golden retriever had what appeared to be a spot of blood on his neck. An Audi and a Porsche were

parked in the driveway. The Suffolk County police took over the crime scene after about an hour (883-908).

Detective Anthony Piazza testified as a member of the Suffolk County Police Department Identification Section. He arrived at 59 Middle Lane at 7:41 pm on Monday, October 22, 2004. Along with Sergeant Feeney and Detective Karen Kealy, they did an initial walk through. Ammon's body had not been removed yet when he made a crime scene videotape from 10:15 to 10:49 pm. After taking photos, the body was moved on to a white blanket. Ammon's wristwatch was recovered as evidence. The next day, Detective Piazza processed the scene for nine more hours. He looked for possible fingerprints in many places including a cell phone, a tennis ball container, and the Audi (10/18/04: 41-59).

On October 24, 2004, he did another walk through with the security company employee at 3:38 pm. Investigators had learned about a video surveillance system where the recording equipment and the power connection were separately hidden. The unit had been installed above an I-beam in a crawlspace behind a triangular wooden panel. Now the unit was missing with unconnected wires remaining. The power source was connected by a cord from a plug in a stereo cabinet in another room. The only white plug in that set of outlets, it had been unplugged. One latent print was recovered from the stereo unit and two latent

prints were recovered from the outside of the playroom door where the stereo unit was located (10/18/04: 59-64).

On Thursday, October 25, 2004, Detective Piazza recovered 24 more latent prints from the scene of which 21 were able to be identified. The jury watched the crime scene video (10/18/04: 64-82).

Twenty-one prints were identified by comparison to prints from Ammon's family and acquaintances, including appellant. Appellant's prints were found underneath the stereo (left middle finger), on the door between the playroom and the sitting room (left middle finger), and on the interior of a window screen in Ammon's bedroom that had been left open (left palm). Since appellant had lived in the house from June to September that summer, the relevance came from the location of the prints rather than their mere presence. Of the four unidentified prints, three were from the nanny's room. Blood on one bed sheet came from Alexa. Other items examined back at the lab included a dog food bag with reddish spots on it, the wires from behind the I-beam, and the triangular piece of wood. No blood or latent fingerprints were found on these three items. Ammon's wristwatch also had no latent prints (10/19/04: 1068-1164; 3-5, 55, 70-73).

Donald Doller was a forensic scientist working for the Suffolk County Crime Lab. Starting on October 22, 2001, for four days, he processed the scene at 59 Middle Lane with Thomas Saveski, Jeannie Eberhart, Jeffrey Luber, and Peter

Tracy. After noting the known prior entries (Macias, Angelson, and two East Hampton police officers), they walked through the crime scene. Ammon's body was processed so the body could go to the ME office. Ammon was nude and lying on the floor. He had noticeable injuries to his head and midsection. Loose hairs were recovered from next to the left thumb and next to the right index finger. One hair on Ammon's left shoulder was actually still connected to the body so it was not recovered. Swabs were taken from the mouth, the penis, and the anus. Under the body, a rug was soaked in blood. Besides numerous abrasions, the body had evidence of blunt force trauma, too. All three dogs were examined. One golden retriever had a reddish brown stain on the back of his neck so a sample was taken. Doller took possession of the gloves from Macias (2054-2080).

On October 23, 2001, Doller helped examine the outside of the house in daylight. An open window for the second floor master bedroom had no screen but there were no signs of disturbance in the dense shrubbery underneath. Ammon's wallet was found on a shelf in the master bedroom. A pair of jeans and a pair of shoes were on the floor of the master bedroom. Most of the blood was in the master bedroom but there was also blood found on a throw rug outside the master bedroom, on the east staircase between the first and second floor, and also in the kitchen, the living room, the mud room, and the garage (2081-2095).

On October 24, 2001, Doller was shown the location of the hidden security system. Under the eave in the playroom on the other side of the house, there was one red stain on the left side of the shelf wall as one stepped down into the playroom. Doller also examined the triangular wood panel, the screws, and the broken wires from the missing hard drive. The plug for the security system was recovered for testing in another room near an entertainment system. Doller took many measurements (2096-2104).

On October 25, 2001, the unsuccessful search for a possible murder weapon included the pool and a pond. The washer and dryer had no stains. Lots of dust in the house indicated that candlesticks and fireplace tools were unmoved. Generosa's used tampon was found under the bed in the master bedroom. Ammon's bed had only the mattress pad with no sheets or blankets. Two reddish stains were observed on the upper right corner of the mattress pad. Chemical testing did not reveal any invisible blood stains. A laptop computer and some new bed linens were recovered from the sun room. The blood stains in the kitchen, mud room and garage appeared to be left by the golden retriever. One blood stain, item # 35, was determined to contain appellant's DNA. That was found in the garage on the steps to the mudroom. It had fallen straight down. A stain in the first floor hallway near the staircase came from Generosa. Alexa left a blood stain in the east bedroom. Ammon's blood was found in the hallway leading to the east

bedroom upstairs. The source of the blood stain in the playroom by the eave was never identified (2105-2121, 2286).

Analysis of the blood spatter was consistent with appellant hitting Ammon repeatedly with something swung through the air, casting off the blood it contacted. Blood spatter on the window sill indicated the screen was not in the window during the attack. A void of blood spatter on the west double door was created by the presence of appellant. There was no headboard and no blood north of the bed. Contact blood stains were consistent with appellant starting the attack at Ammon's head on the mattress. Absence of blood on some parts of Ammon's body was probably due to being covered by a bed sheet but there was fine blood spatter on the left leg. Appellant also struck blows to Ammon's head while Ammon was on the floor (2122-2181).

On April 9, 2002, Doller examined the 1995 Buick station wagon. The beach car had been thoroughly cleaned and detailed. He could see vacuuming marks and there was still some water underneath the carpet. No visible blood-like stains could be seen in visible light. Chemical testing did not reveal the presence of blood. Blood is water soluble and can also be broken down by cleansing agents (2182-2186).

On October 27, 2004, the court read into the record a consent stipulation that if Detective John Kerry testified, he would establish that: (1) he is a detective investigator assigned to the District Attorney's Office of Suffolk County in the Computer Crimes Unit of the Economic Crimes Bureau; (2) his duties in that unit include forensic examination of digital evidence; (3) in connection with his duties, he examined the forensic copy image of a laptop computer system hard disk drive recovered from 59 Middle Lane belonging to Robert Theodore Ammon; and (4) during his examination, he determined that the latest date and time associated with any files stored on the hard disk drive of the laptop was October 20, 2001, at 6:59:06 pm (1969-1971).

Robert Fein testified as graphic arts director for WMA Graphics. Using police photos and videotapes, plus his own measurements taken on June 8, 2004, he created a model of 59 Middle Lane for $7,500.00. He also made a diagram for the crawlspace behind the children's room. His testimony fee was $100.00 per hour (10/18/04: 3-38).

George Krivosta was a Suffolk County forensic scientist who examined the wood panel with two broken screw heads. He could not discern the type of tool used to pry open the panel but it was probably not a Phillips-head screwdriver (3085-3102).

John Kundle testified as a security system installer. Greg Carter introduced him to appellant. In the fall of 2000, appellant wanted to install three floors of cameras and alarms in the 87th Street building. The entire building was undergoing complete renovation and the walls were open for electrical wiring. Kundle worked there for a few months. Payment came from Generosa's company Skypad until the money ran out. Later appellant hired Kundle to upgrade the alarm system and install cameras at 59 Middle Lane. Kundle and Carter evaluated what was needed and the work was done in March 2001. A key pad monitored multiple users and passcodes. Doors were wired for alarms. There were motion detectors in the kitchen and rear hallway. Kundle was aware that appellant and Generosa were in a relationship but he did not know if they lived together. He did not speak to Generosa about the 59 Middle Lane job, only to appellant. As far as Kundle knew, Ammon was unaware of the security upgrade (1170-1187, 1221).

If the alarm was triggered and not turned off, the police were notified. There was also a paging system for an activated alarm. Initially the pages were set to go to Carter but in May 2001 they were reset to go to appellant. In October 2001, appellant still had the original and unchanged access codes. Eight digital cameras installed inside the existing motion detectors were each hardwired to a computer. Every camera view was visible online and stored in the hard drive for a few months. Specific software called RapidEye was needed to access these videos.

The hard drive unit was on the second floor hidden under an eave behind an I-beam inside a closet in a crawlspace. Anyone in there would have to already know the exact location to find it because a triangular wood panel was screwed in over the hiding spot. Other than appellant, only Carter and two other workers knew about this hiding place. During installation, appellant told them where to access a power source and they fed an extension cord to the stereo unit in the second floor closet (1187-1197).

Maintenance for the security system was paid by Generosa through Skypad. Kundle periodically checked the system by phone. Kundle showed both Carter and appellant how to dial up access. Kundle installed the RapidEye program on appellant's computer and showed him how to save video clips, switch cameras, and add time/date information. Appellant liked to view multiple camera viewpoints at the same time. Two months after installation, Kundle came back to repair the hard drive unit. The phone line had become disconnected and one screw was missing on the triangular wood panel. Kundle renumbered the cameras, switched the wires and re-screwed the wood panel. Appellant told Kundle he had unplugged the unit once when he was at the house. He told Kundle he believed Ammon was worth half a billion dollars and that he planned to live in the Hamptons after her divorce (1198-1221).

On Friday, October 19, 2001, appellant had an appointment with Kundle in Massapequa to discuss billing for work done in Manhattan and East Hampton. Kundle verified that the system at 59 Middle Lane was working. Appellant did not show but called to reschedule for Monday morning. On Monday, Kundle checked the system again but now access was denied due to "phone line failure" and "system powered down" (1222-1225).

On Tuesday, October 23, 2001, appellant told Kundle about Ammon's death. Homicide detectives contacted Kundle around 4:00 p.m. He went out to 59 Middle Lane but did not go inside. He gave them a written statement. The next day, he returned and showed police where the security system had been hidden and where the plug had been unplugged. Later Kundle told appellant the system had been unplugged and appellant responded "you have got to be kidding". When appellant and Generosa moved in, Kundle was asked to replace the hard drive in the same spot but with a different plug. Kundle only spoke to Ammon once about the alarm system to explain how to turn off the alarm. He did not change the passcode so any new codes would have been supplied by appellant. According to the system records, the alarm was set on September 24, 2001 and no one entered for a month. On October 24, 2001, at 11:28 a.m., user #5 turned off the alarm. This would have caused appellant to receive a notification. Kundle never showed appellant how to turn off the cameras remotely by laptop so unplugging was the

easiest way appellant knew to disable the system (1226-1245, 1248-1255, 1319-1320).

In 2001, Gregory Carter owned Victory Communications, a company that installed cable networks and phone systems. He had known appellant for fifteen years when appellant hired him to work on the 87th Street project. At first, Carter worked three days a week. Later he came to New York City to work fulltime. He was paid by Generosa through Skypad. He ended up doing more than just wiring, but the money ran out in May.

While construction was ongoing, Carter knew appellant and Generosa were a couple living at the Stanhope hotel. Sometimes coworkers and friends of appellant stayed there too (1405-1418).

When appellant asked Carter to install a security system at 59 Middle Lane, Carter and Kundle did the job in one day. A fan outlet was not working so Carter poked a hole in the wall and snaked a cord down to the outlet by the stereo. Appellant approved the hole in the wall by telephone. Initially camera access was available to both Kundle and Carter. After appellant and Generosa moved in for the summer, notifications went only to appellant. Once during the 87th Street construction, Carter saw appellant using a laptop to view activity at 59 Middle Lane. Carter once heard appellant say he believed Ammon had 80 million dollars

and that a possible divorce settlement for Generosa could involve four houses and 12 million dollars (1419-1434, 1452-1460).

Appellant told Carter that Generosa was paranoid about Ammon spying on her. On March 12, 2001, appellant and Carter went to an electronics shop in New York City to find equipment to sweep for listening devices. While there, appellant noticed a stun gun and decided to buy that as well. The miniature digital recorder cost $995.00, the bug sweeper cost $40.00 and the Taser cost $395.00 so the total charge was over $1,400.00. Appellant paid by credit card. Stun guns are illegal to possess in New York so that item had to be mailed out of state. Appellant used his sister's address because she lived in New Jersey but he did not tell her first. Later, appellant told Carter delivery never occurred so Carter agreed to call the store and have them mail out another stun gun. One month later, appellant brought a stun gun to the 87th Street project. He had opened the package and started fooling around with it, zapping some of the guys on the job by surprise. Carter saw one guy get zapped so he immediately left. He never saw appellant's stun gun again (1435-1451, 1468-1471, 1475).

Dennis Sackett was an employee of Victory Communications who ran cable for Greg Carter. In March 2001, he lived in New Jersey with his girlfriend. Carter called him and asked for his address so he could send a package by mail. Carter did not say what would be inside the package. When the package arrived, he did

not open it. He brought it to work at 87th Street and gave it to appellant. He saw appellant offer people $100.00 to get stunned. One guy agreed and appellant stunned him twice in the arm (1479-1484).

James Nicolino was an estate property manager who was hired to take care of 59 Middle Lane in April 2000 while the Ammons were in England. Nicolino was working at the Ross School in East Hampton when appellant came from Cornachio Electric to check on some work done by a prior electrician. In July 2000, Generosa told Nicolino she was getting divorced. In October 2000, Generosa hired Nicolino to do electrical and security work at the 87th Street building. Appellant was also hired in October 2000. During Nicolino's time on that job, he recalled being worried about appellant's rambunctious behavior and he told him to go easy so as not to bother the other workers (81-91).

When the money dried up, Nicolino and appellant met near LIE Exit 63 at a bar to talk. Over some beers during a three hour conversation, appellant did most of the talking. Outside by their cars, they spoke the following words:

| | |
|---|---|
| APPELLANT: | I have a plan. |
| NICOLINO: | What's your plan? |
| APPELLANT: | I will leave my wife, marry Generosa, get all the money, and go back to my wife |
| NICOLINO: | Well it's not much of a plan because Generosa doesn't have the money. Ted has the money. |
| APPELLANT: | Well, then I'll have to kill Ted. |
| NICOLINO: | What? |

| | |
|---|---|
| APPELLANT: | I'll bash his brains in while he's sleeping. |
| NICOLINO: | Danny, they'll be at your house. That's ridiculous. They will be at your house the next morning. |
| APPELLANT: | I'll make it look like an accident. I'll throw the body in the pool. |
| NICOLINO: | Danny, you are drunk man. Go home. Go to sleep. That's ridiculous. |
| APPELLANT: | No. I can do this. I'll tell my wife. I can make this happen. I can do this. I'll tell Tami I need a year and I will make this happen. |
| NICOLINO: | Go home and go to sleep. It ain't happening (95-96). |

A week later, Generosa fired Nicolino from the 87th Street project because now she could rely on appellant. Appellant had wanted Nicolino to stay on but Nicolino wanted to leave anyway. Nicolino went back to working at the Ross School (96-97).

On cross, Nicolino said he found out appellant had slept with his wife but he only learned that after the murder trial had started (125-128).

Lori Finkel was a banker who met Ammon as a customer in 1992 or 1993. A few years later, they began a more intimate relationship although she knew he was married to Generosa. In 2001, she was visiting him at his apartment on 94th

and Fifth Avenue about once a week. They spoke often by phone, too. (1850-1853).

On Friday, October 19, 2001, Finkel and Ammon spoke in the early evening about both going out to the Hamptons that weekend. She was visiting family and going out on Friday. They made plans to meet on Saturday. Ammon called her on Saturday morning to confirm he was coming out there. She knew he also had a place in Bridgehampton. They met at 2:00 pm at 59 Middle Lane in East Hampton. She stayed about an hour. This was not the first time she had been at the beach house. No one visited while she was there. She was in three different rooms: the kitchen, the sunroom, and his bedroom, where they had sex. She remembered him commenting on the yellow flannel sheets being too hot and that he was going to buy new sheets. After she left, he called her again while he was shopping (1853-1860).

On Saturday night, Finkel had plans to eat dinner in Wainscott. Ammon phoned her to say he was going to dinner at the Farmhouse. After her dinner, she went home and watched the 9/11 memorial on television until midnight. Around 10:00 pm, she retrieved a voice mail message from Ammon saying he had gone out to dinner, was at a beach that seemed gay and there were some guys there that scared him so he was going home. She did not save this message on her phone.

She tried to call him back around 12:30 am on his cell, but she got no answer (1861-1863).

On Sunday morning, Finkel called both Ammon's cell and landline without reaching him. She and a friend named Howard Axel drove to 59 Middle Lane around 10:45 am. Axel walked up the driveway but did not go inside the house. She stayed with the car parked on Middle Lane. They guessed Ammon was out walking the dogs so they left. She returned to Manhattan by Sunday evening and kept trying to call Ammon without success (1863-1866).

On Monday, Mark Angelson called Finkel at her work to see if she had spoken to Ammon recently. He told her the children were not picked up that morning as per his custody arrangement. She told him about her efforts to reach Ammon for two days. After Angelson went out to East Hampton, he told her Ammon was dead (1866-1867).

Cell phone records for Lori Finkel showed she called Ammon at 11:02 pm on Friday; at 8:53 am, 11:17 am, 1:49 pm, 3:22 pm and 3:31 pm on Saturday; that at 9:44 pm, she retrieved the voice mail Ammon left on her phone at 9:54 pm; and that she called his phone on Sunday at 12:27 am and 11:34 am (1868-1873).

Finkel admitted she lived with Andrew Cogan, the father of her child, for ten years but they never married. She remembered Ammon wore jeans and a blue and white shirt when she last saw him. She did not remember if he had worn

underwear. She remembered he was angry about a missing bag. She cooperated with police. To her knowledge, Ammon did not fear anyone. Lori Finkel had no reason to believe Ammon had any homosexual orientation. She knew he slept in the nude. She did not recall spending an entire night with him (1874-1925).

David Egan was a Verizon executive who testified about Ammon's cell phone records. The last call, incoming or outgoing, occurred on October 20, 2001 at 9:44 pm and went from Ammon's phone to Finkel's cell. Unanswered calls would not be reflected on the billing record. Access to voicemail would require a use of special PIN number and unaccessed voicemail messages would automatically delete in three weeks (2860-2865).

Three witnesses testified about Ammon's shopping activities on Saturday October 20, 2001. Alessandro Osborne sold him three sweaters and two belts at the Ralph Lauren store at 4:07 pm (789-799). Ruth Vanasco did not make a sale but she helped Ammon select luxury linens in English Country Antiques at 4:22 pm (800-809). Edward Bumbly sold some tools and cleaning equipment at Village Hardware at 4:39 pm. Bumbly knew Ammon as an acquaintance. He did not see anyone shopping with Ammon (813-820, 825).

Jessika Mikan testified as the manager at the Farmhouse in East Hampton on October 20, 2001. The restaurant was very busy that evening due to the East Hampton Film Festival. She recalled Ammon arriving between 7:30 and 8:00 pm.

She served him dinner at the bar because he was alone and seats were scarce. She opened his check at 8:25 pm and closed it at 10:29 pm. These times on the receipt would only indicate when she used the cash register and did not necessarily reflect when a customer arrived or left. Ammon ordered the tuna with asparagus and wild rice and also drank three glasses of Chardonnay. He paid in cash and asked her to give him three $100.00 bills for fifteen $20.00 bills. This took about fifteen minutes because she had to go upstairs to find the larger denominations. Mikan estimated Ammon spent about two hours in the restaurant and left around 10:00 pm (829-836, 845).

Fred Lieberman testified as the owner of the Farmhouse restaurant. He recognized Ammon as a regular customer but did not know him by name. On October 20, 2001, Lieberman saw Ammon drinking wine at the bar. Ammon was served tuna, asparagus, and wild rice sometime after 9:00 pm. Ammon was the only person who ate dinner at the bar near that time (926-930).

Krista Zvanitjas became the Ammon's nanny at Coverwood in January 2000. While living nearby, she took care of Grego and Alexa from 3:30 to 8:00 pm. When the divorce began, Generosa asked her to move to New York with them and continue working with the children. That summer, she lived in the Hamptons. In September, she stayed at the Stanhope. Later she had a place in Brooklyn. Krista met appellant at a Halloween party at the 87th Street building which was still

under construction. Generosa told Krista appellant was more than just her electrician. After that, appellant began staying at the Stanhope every night with Generosa. Krista met many of appellant's friends during this time at the Stanhope (1732-1745, 1753).

Krista remembered Generosa being paranoid about her husband having people spy on her. Generosa did not trust the Stanhope hotel staff. Appellant helped Generosa with some counter-surveillance technology. There was a laptop with a sticker that said "Do not touch". Generosa showed Krista how the laptop could be used to provide video access to the beach house in East Hampton. Generosa sighed when she saw her husband there with another woman. Krista did not look that time but another time she viewed Ammon with a woman Generosa said was his girlfriend (1745-1748).

In the summer of 2001, Grego was looking for the cameras in the motion detectors and Krista asked him what he was doing. Then appellant came into the kitchen and told them they were pinhole cameras and not to touch them. Appellant told them Ammon did not know about the cameras. Appellant was basically living with Generosa and the children that summer. Krista lived in Sag Harbor and had the use of the beach car all summer (1751-1752).

After Ammon moved back into 59 Middle Lane that fall, Generosa was spending a lot of time with appellant so Krista was staying with the children later

into the evening. Krista heard Generosa complain about her husband on a regular basis, even in front of the children. Generosa would say how much she hated him. She believed he was worth 500 million dollars and was only offering her a settlement worth 40 million. She intended to get half of all the money he was hiding from her. Krista never knew Generosa to be employed (1752-1756).

On Saturday, October 20, 2001, Krista was off because her schedule was Monday to Friday. She planned to spend the weekend with a friend from Australia and drive to Canada on Monday. Appellant called her cell that Saturday morning and asked her to take the kids out of the apartment. He said Generosa was a drunken mess and being very aggressive so he did not want to leave her alone, Generosa's assistant, Stephen Guderian was too busy to come. Krista agreed to help and she brought her friend with her. At Generosa's apartment, appellant was pacing back and forth and smoking. He seemed very angry and frustrated. He told Krista that "Ted was at it again, that he wasn't giving Generosa half of the money, and that Ammon needed to be a man." He also said "this has to end" and "somebody needs to knock some sense into him". Krista asked where Generosa was and appellant said "Don't worry, I slipped her a Xanax and she is sleeping". Krista asked how he gave her a Xanax and appellant explained that he crushed a pill and put it in Generosa's beer. Krista took the children to soccer (1756-1761, 1764).

Krista brought the children back around 4:00 pm. She asked appellant about Generosa and he said she was doing better and had just gone out to buy more beer. When Generosa came back, she looked awfully tired. Generosa said nothing, gave Krista a cold look, and went into the bedroom. Krista left to enjoy her vacation with her friend (1762-1764).

On Sunday, she was in Manhattan when she saw appellant's cell phone number dialing in to her phone. She did not answer because she did not want to work both weekend days. Appellant left a message wondering where he could find Generosa. On Tuesday, around 9:00 am, Alexa called Krista but she could not speak. Grego told Krista that Ammon was dead. The children were with Aunt Sandy at Ammon's apartment on 85th Street. Krista cut short her vacation and arrived back in New York around 4:00 pm. After dropping her friend off in Brooklyn, Krista went to Alexa and Grego. Both appellant and Generosa were there. Krista remained employed through November. She took an extended Christmas vacation but ended up not returning to be their nanny in 2002 (1764-1770).

Barbara Lukert was appellant's older sister. In August 2001, she separated from her husband and moved to Center Moriches. On New Year's Eve 2000/2001, she met Generosa at the Stanhope. Appellant told Barbara he had been dating Generosa for a few weeks. He said he had been doing some work for her and she

was wealthy. Two months later, Generosa offered Barbara secretarial employment to do bill payments, record keeping, and organization of architectural drawings. For a few months, Generosa paid Barbara $800.00 for working two days a week. She would usually sleep over at the Stanhope one night a week. While there, she saw many of appellant's friends who were working at the 87th Street project. The secretarial job ended when the money ran out but Barbara continued to help Generosa without pay upon a promise to be paid later after the divorce was settled. Barbara had seen Generosa write a check to appellant in the amount of $100,000.00 for payroll. Barbara heard Generosa angrily say she believed Ammon was cheating her out of her share of 300 million dollars (11/3/01: 3-18).

One time, appellant asked Barbara for their sister Janet's address in New Jersey. Later he told her he was mailing a stun gun to New Jersey so he could give it to his ex-wife. Barbara never spoke to Tamara Pelosi about that. Janet called Barbara, angry about the stun gun, and said she did not want anything from that bitch (meaning Generosa). When Barbara spoke to appellant about it, he asked her to bring the stun gun from New Jersey to Center Moriches. Barbara refused. She never saw any stun gun but later she heard about a second stun gun (11/3/01: 20-29, 34-35).

Barbara knew about the security system at 59 Middle Lane and the laptop program for remote viewing. One time, she went there and entered the wrong pass

code setting off the alarm. Greg Carter helped her reset the alarm. She did not know about the hidden cameras until later (11/3/01: 30-32, 35).

When Generosa needed to prepare 59 Middle Lane for summer, Barbara helped interview housekeepers. Generosa wanted to make sure whomever they hired was unknown to her husband. Barbara chose her friend and neighbor Joanne Matheson. Appellant lived with Generosa that summer. Arnie Cherubino was a part-time chauffer for Generosa. When Generosa moved back to New York City in September, Barbara, Reidner, Parrino, Jeffrey Jr., Matheson and appellant all helped pack up Generosa's possessions. Generosa was not there for the move. Most things were taken to Barbara's house for temporary storage, including the laptop with the Rapideye program. The beach car was parked at Barbara's house too. Appellant stored some boxes in Barbara's attic. That fall, Barbara typed letters of recorded phone conversations between Ammon and Grego. She researched Ammon's business assets and sent emails to appellant about what she could find out (11/3/01: 36-41, 28-80).

On Saturday, October 20, 2001, around 9:00 am, appellant asked Barbara to access the laptop. She knew appellant and Generosa did not live there anymore. Barbara logged on for 71 minutes but did not see anything to report to appellant. She did not ask why she was checking the laptop. He also asked her to check back again over the weekend. She knew how to use the RapidEye program because

Generosa had asked her to watch for Ammon's reaction to his missing and destroyed possessions. Later, when she saw Ammon sitting on the ottoman reviewing paperwork, she thought she saw someone or something on the patio behind him. It could have been a tree or a person. Her children, Jeff and Kelly, both looked at the computer screen but had no opinion of what could be seen on the patio. Barbara told appellant that Ammon was possibly with another person that afternoon. Appellant told her he was coming to Long Island that night for the wedding on Sunday but Generosa was not coming (11/3/01: 81-101; 11/4/01: 2426-2427, 2434-2438).

On Sunday, October 21, 2001, at 1:20 am, appellant arrived at Barbara's house in Center Moriches. Barbara and Kelly were dozing on the couch. Jeff Jr. was out with friends. Appellant had a Big Flower bag with him. He had asked Barbara to get something from the attic for him and leave it outside but she told him to get it himself. She did not want appellant bringing his friends to her house late at night. Together they accessed the laptop at 1:38 am for sixteen and a half minutes. Appellant went back in time to see the image she had described earlier. Appellant said it was Lori and closed the laptop. Then he went up to the attic. A few minutes later, Parrino arrived in his Bronco. Appellant had driven out from New York City in the Audi. For the murder, they decided to take the beach car. As appellant was leaving, he hugged Barbara goodbye and she felt something hard

in the pocket of his leather jacket. She asked "What's going on, Danny?" He told her "Just go to fucking bed, Barbara. Mind your own business." Appellant and Parrino left around 2:00 am. Barbara called Jeff Jr. to tell him not to lock the door when he came home because appellant would be returning (11/3/01: 101-116; 11/4/01: 2445-2453, 2457-2461, 2465-2469, 2510).

Barbara and Kelly were asleep in the upstairs master bedroom when appellant returned early Sunday morning. He told Barbara he was going to his son's birthday party. He left around 9:00 am. The beach car was not out front. Later that day, Barbara tried to access the RapidEye program but she could not get a connection. The computer told her to "check modem". She even switched phone lines but could not get the program to work. Appellant returned before noon to get ready for the wedding. Appellant drove the Audi to the wedding. During the cocktail hour, appellant kept trying to reach Generosa by phone.

On Monday or Tuesday, Barbara and appellant spoke. She told him she could no longer access the RapidEye program. He said, "Don't worry about it." He asked her to call the catering hall to see if they had his leather jacket. Barbara did not recall defendant wearing a leather jacket over his suit. The coat check person said they had no leather jackets and she relayed this information to appellant by phone (11/3/01: 122-137).

On cross, Barbara Lukert admitted appellant helped her financially during her divorce and afterwards. She knew her brother to be generous and had seen him give a $1,000.00 tip to a doorman in Atlantic City. She also knew appellant used money from Generosa to pay child support to his ex-wife. Barbara explained that Generosa was a controlling perfectionist who always knew where appellant could be located. She also agreed that appellant had a drinking problem that led to "run-ins with the law". She acknowledged that appellant was a known "B.S.er" (2398-2401, 2414-2418, 2464, 2476-2478).

Karen Evans testified as a Verizon investigator to explain phone subscriber reports that showed the time and duration of phone calls from Barbara Lukert's two home phone numbers to 59 Middle Lane on Saturday, October 20 and 21, 2001.

CALLS MADE THROUGH RAPIDEYE

| CALLER | DATE | TIME | DURATION | RECIPIENT |
|---|---|---|---|---|
| B. Lukert | OCT 20 | 9:09am | 71min 34sec | 59 Middle Lane |
| B. Lukert | OCT 20 | 6:00pm | 22min 34sec | 59 Middle Lane |
| B. Lukert | OCT 20 | 7:10pm | 20min 40sec | 59 Middle Lane |
| B. Lukert | OCT 21 | 1:38am | 1min 59sec | 59 Middle Lane |
| B. Lukert | OCT 21 | 1:40am | 16min 29sec | 59 Middle Lane |

Calls from the Lukert home to Cherubino between October 19 and October 22 were also set forth (2833-2849, 2853-2855).

John Anninos was a manager for Sprint who explained appellant's cell phone billing records. Between October 20 and 22, 2001, appellant's cell phone was in use over 60 times (3125-3152).

OUTGOING & INCOMING CALLS FOR
APPELLANT'S CELL PHONE

| CALLER + LOCATION | TIME | DURATION | CALLED # + SUBSCRIBER |
|---|---|---|---|
| SATURDAY OCTOBER 20, 2001 | | | |
| D. Pelosi cell (NYC[1]) | 10:27pm | 297sec | 631-878-8332 B. Lukert |
| D. Pelosi cell (NYC) | 10:32pm | 121sec | 631-929-0948 C. Parrino |
| D. Pelosi cell (NYC) | 10:33pm | 100sec | 631-929-0948 C. Parrino |
| D. Pelosi cell (NYC) | 11:36pm | 254sec | 631-878-8332 B. Lukert |
| SUNDAY OCTOBER 21, 2001 | | | |
| J. Giammatteo (CM) | 12:02am | 37sec | D. Pelosi cell |

[1] Abbreviations for caller location are C=Calverton, CM=Center Moriches, E=Eastport, EQ = East Quogue, L=Lindenhurst, Manorville, Mel=Melville, Msp=Massapequa, NYC= New York City, S=Shirley, WR= Wading River.

| | | | |
|---|---|---|---|
| D. Pelosi cell (WR) | 12:08am | 11sec | 631-874-5117 J. Giammatteo |
| D. Pelosi cell (Mel) | 12:54am | 120sec | 631-929-0948 C. Parrino |
| D. Pelosi cell (E) | 1:28am | 60sec | 631-929-0948 C. Parrino |
| D. Pelosi cell (S) | 8:28am | 34sec | 212-535-1129 G. Ammon |
| D. Pelosi cell (S) | 8:30am | 97sec | 917-749-3244 S. Guderian |
| D. Pelosi cell (S) | 8:34am | 41sec | 212-787-9495 S. Guderian |
| D. Pelosi cell (S) | 8:57am | 51sec | 631-878-1676 J. Pelosi |
| D. Pelosi cell (S) | 8:58am | 45sec | 516-658-9914 L. Pelosi |
| S. Guderian (NYC) | 9:35am | 46sec | D. Pelosi cell |
| C. Parrino (WR) | 10:14am | 28sec | D. Pelosi cell |
| T. Pelosi (C) | 10:30am | 64sec | D. Pelosi cell |
| D. Pelosi cell (Man) | 10:31am | 46sec | 212-535-1129 G. Ammon |
| D. Pelosi cell (Man) | 10:35am | 62sec | 631-929-0948 C. Parrino |
| T. Riebenfeld (Man) | 10:36am | 4sec | D. Pelosi cell |
| D. Pelosi cell (Man) | 10:54am | 28sec | 631-874-8621 T. Pelosi |
| T. Riebenfeld (Man) | 11:34am | 41sec | D. Pelosi cell |
| J. Giammatteo (CM) | 11:39am | 46sec | D. Pelosi cell |
| D. Pelosi cell (Man) | 11:50am | 26sec | 631-874-8621 T. Pelosi |
| D. Pelosi cell (Man) | 12:02pm | 268sec | 631-874-5117 J. Giammatteo |
| D. Pelosi cell (Man) | 12:11pm | 41sec | 212-535-1129 G. Ammon |
| T. Riebenfeld (Man) | 12:24pm | 54sec | D. Pelosi cell |
| D. Pelosi cell (Man) | 12:25pm | 15sec | 516-658-5155 T. Riebenfeld |

| | | | |
|---|---|---|---|
| D. Pelosi cell (Man) | 12:27pm | 7sec | 212-787-9495 S. Guderian |
| D. Pelosi cell (Man) | 12:28pm | 41sec | 212-787-9495 S. Guderian |
| D. Pelosi cell (Man) | 12:29pm | 89sec | 917-749-3244 S. Guderian |
| D. Pelosi cell (E) | 2:41pm | 409sec | 917-822-1861 F. Perrone |
| D. Pelosi cell (E) | 2:48pm | 39sec | 212-535-1129 G. Ammon |
| D. Pelosi cell (E) | 2:50pm | 40sec | 212-879-9495 S. Guderian |
| D. Pelosi cell (EQ) | 2:51pm | 6sec | 917-749-3244 S. Guderian |
| D. Pelosi cell (EQ) | 2:51pm | 43sec | 917-749-5299 G. Ammon |
| D. Pelosi cell (EQ) | 2:52pm | 27sec | 917-450-1837 G. Ammon |
| S. Guderian (NYC) | 2:54pm | 467sec | D. Pelosi cell |
| D. Pelosi cell (EQ) | 3:04pm | 290sec | 516-384-7543 A. Cherubino |
| D. Pelosi cell (EQ) | 3:09pm | 119sec | 516-906-5572 C. Parrino |
| G. Ammon (NYC) | 3:42pm | 57sec | D. Pelosi cell |
| D. Pelosi cell (EQ) | 5:48pm | 73sec | 631-874-8621 T. Pelosi |
| A. Cherubino (L) | 6:05pm | 42sec | D. Pelosi cell |
| A. Cherubino (L) | 7:37pm | 53sec | D. Pelosi cell |
| A. Cherubino (L) | 8:36pm | 30sec | D. Pelosi cell |
| Dr. Manuel Ferer (NYC) | 9:33pm | 481sec | D. Pelosi cell |

MONDAY OCTOBER 22, 2001

| | | | |
|---|---|---|---|
| D. Pelosi cell (NYC) | 12:03pm | 35sec | 631-878-8332 B. Lukert |
| B. Lukert (CM) | 12:04am | 26sec | D. Pelosi cell |

| | | | |
|---|---|---|---|
| B. Lukert (CM) | 12:05am | 30sec | D. Pelosi cell |
| D. Pelosi cell (NYC) | 12:06am | 61sec | 631-878-8332 B. Lukert |
| D. Pelosi cell (NYC) | 12:10am | 62sec | 631-878-8332 B. Lukert |
| D. Pelosi cell (NYC) | 12:11am | 130sec | 631-288-6577 Atlantica Rest. |
| J. Kundle (Msp) | 10:54am | 49sec | D. Pelosi cell |
| D. Pelosi cell (NYC) | 11:22am | 419sec | 631-878-8332 B. Lukert |
| D. Pelosi cell (NYC) | 11:49am | 28sec | 516-694-6025 J. Kundle |
| D. Pelosi cell (NYC) | 11:51am | 48sec | 516-694-6025 J. Kundle |
| D. Pelosi cell (NYC) | 12:15pm | 120sec | 917-749-3244 S. Guderian |
| D. Pelosi cell (NYC) | 12:30pm | 341sec | 631-878-8332 B. Lukert |
| D. Pelosi cell (NYC) | 12:56pm | 42sec | 631-929-0948 C. Parrino |
| J. Kundle (Msp) | 4:37pm | 108sec | D. Pelosi cell |
| J. Giammatteo (CM) | 5:37pm | 15sec | D. Pelosi cell |
| D. Pelosi cell (NYC) | 6:37pm | 211sec | 631-878-8332 B. Lukert |
| B. Lukert (CM) | 6:45pm | 117sec | D. Pelosi cell |
| D. Pelosi cell (NYC) | 7:21pm | 189sec | 631-878-8332 B. Lukert |
| D. Pelosi cell (NYC) | 7:25pm | 232sec | 631-288-6577 Atlantica Rest. |

The general location of a cell phone user can be determined when cell phones use particular cell towers to transmit calls. One call with Parrino began using the Shoreham cell tower and then switched to a Coram cell tower. This indicated appellant was moving south and west from Shoreham. The call made at

1:28 am on October 21 was made near Manorville, not in Manorville. Appellant's cell phone was not used between 1:28 am and 8:28 am on Sunday October 21, 2001 (3155-3166, 3199-3192).

Just after midnight, on Monday, October 22, 2001, appellant's cell phone used a cell tower in Lindenhurst near the Cherubino home in West Babylon. Then four more calls placed appellant back in New York City. Between 12:11 and 8:35 am on Monday, appellant did not use his cell phone. Between 8:35 and 9:58 am, all of appellant's calls were made from the upper east side of Manhattan (3167-3170).

Tracy Riebenfeld testified about appellant asking her to lie to police and to support a false alibi soon after the murder. In January 2002, she heard appellant confess to the murder. After Riebenfeld got divorced, she had moved in with her brother, Guy Giammatteo. His wife, Joan Pelosi, was appellant's sister. For a short time, Riebenfeld lived in a basement apartment in the Giammatteo home in Center Moriches. On Saturday, October 20, 2001, appellant asked Riebenfeld to go to the wedding with him. She agreed even though she knew appellant was in a relationship with Generosa. On Sunday, appellant called her around 10:00 am and said they might not go because he was having an argument with his ex-wife about his son's birthday. They decided to go but not stay late. He picked her up around 1:00 pm and drove her to Westhampton in the Audi. While there, Riebenfeld sat

with Pelosi family members but appellant basically disappeared on her. Appellant was on the phone most of the time. After she complained to appellant's father, appellant became a little more attentive. She remembered seeing Barbara Lukert crying. Appellant and Riebenfeld left around 7:00 pm. He dropped her off at home before going to see his son (1613-1629).

On Wednesday, October 24, 2001, appellant came to Riebenfeld's apartment and asked her to lie and tell police she saw him bring a leather jacket to the wedding. He explained that Generosa was framing him for the murder. She agreed to lie for appellant. A week later, he returned and asked her to also give him an alibi. He wanted her to tell police they were having sex in the Bronco after midnight that Sunday morning. He repeated that he needed an alibi because Generosa was framing him. Riebenfeld agreed to support an alibi. Two weeks later, investigators came to her but she decided not to lie for appellant about the jacket or the false alibi. It was about that time that appellant and Riebenfeld began an intimate relationship. He never called her but he would visit her apartment. Appellant told her he had to stay with Generosa to watch her next move. He had mentioned she was worth millions but he never spoke about marrying her (1630-1638, 1718).

On January 10, 2002, appellant married Generosa. Riebenfeld only found out when her brother pointed to the wedding ring on appellant's finger. She

became very upset. Appellant followed her down to her apartment and promised they would talk later. Three hours later, he returned and they talked through the night. She asked him if he had done the murder and he nodded his head yes with his finger in front of his mouth to indicate silence while he said "I didn't do nothing kid". Later he told her "I bashed his fucking brains in and he cried like a bitch and begged for his life". When she asked him why, he pounded his chest and told her "Because I have a monster inside of me". He spoke in a serious tone which scared her. He also told her Arnold Cherubino had gotten rid of clothing for him (1638-1643, 1699-1700, 1724).

Appellant told Riebenfeld he had to be careful with the police watching him. He told her Jeffrey Lukert and Christopher Parrino went with him when he did the murder. Appellant told her Jeff drove the beach car. Appellant said he used a lamp and a flashlight when he beat Ammon to death. Before he left that morning, appellant twisted her arm behind her back and warned her "If you ever tell anybody any of the things I told you, you will never see your kids again". Riebenfeld decided to move out of her brother's basement apartment that week (1644-1649).

In February 2002, homicide detectives met with her at her father's house. She did not want to be a witness so she did not tell police what appellant had said. Meanwhile, she had told members of her family. One time appellant saw her at

Guy and Joan's house. He asked her what the police had wanted. She told him she had kept his secret. He told her he would come back but she decided not to wait for him. The next time she saw appellant was in April at James Pelosi's wake. Appellant was standing outside and she said sorry. He said "thank you" and "I'm counting on you, kid". They both said I love you. The next time she saw appellant was at the trial (1650-1658).

Two months after the funeral, Riebenfeld met with homicide detectives at the Hampton Bays Diner on June 9, 2002. Her written statement that day did not contain appellant's admissions. Three days later she gave another written statement again without repeating appellant's admissions. She finally told police about appellant's chest thumping confession on August 14, 2001. That incident had always remained clear in her mind and she knew she would never forget it (1669-1674, 1677-1681, 1690-1692, 1721-1724).

Appellant's father, Robert Pelosi, testified that on October 21, 2011, at the wedding reception for the daughter of his brother-in-law, he had a brief conversation with appellant. Appellant asked him "if someone wanted to get rid of something, what could they do?" Robert Pelosi answered that with today's technology and DNA, it's not really possible. In the ocean, fisherman could dredge it up; in the ground, it can be dug up. Use of fire means smoke and ashes for the fire department. Appellant did not respond to this answer. Robert Pelosi

learned about Ammon's murder two days later. Later, Robert Pelosi asked appellant whatever happened to the stuff appellant wanted to get rid of. Appellant told him "Arnie took care of it", referring to Arnold Cherubino. Robert Pelosi did not ask for any additional details (1338-1345, 1384).

On cross, defense counsel asked about the change in appellant's relationship with his father after appellant's older brother Jimbo died suddenly on March 30, 2002 (1346-1372).

Debbie Barrette and her husband, Ron Barrette, owned Ron's Truck and Auto Repair at 60 Clinton Avenue in Center Moriches. She knew appellant as a customer. On Monday, November 5, 2001, appellant brought a 1995 Buick station wagon (the beach car) and left it on their property. The next day he called to say the keys were under the mat and it needed service for tires pulling to the right, broken power seat control, and a rear passenger window that would not close all the way. He also wanted four new tires with alignment, replacement of the rear window, an oil change, and for the car to be washed, shampooed, and waxed, both inside and out. The bill on November 13, 2001 totaled $599.95. The cleaning job had been sent out to Dun-Rite Detailing and cost $150.00.

In 2001, Ronald Barrette, from Ron's Truck and Auto Repair, had known appellant as a friend and customer for seven years. He saw the beach car parked at his shop on Monday, October 22, 2001 but did not recognize it. When he ran the

license plate through his computer for any prior work orders, he determined that he had never serviced the car. The next day, his wife gave him the keys and explained what appellant had requested. The car was clean and he suggested detailing was not needed but appellant told him to do it anyway. Barrette outsourced the detailing work to Dun-Rite Detailing (1976-1984).

In conversations prior to the Ammon murder, appellant had told Barrette Generosa was his girlfriend and that he loved her. He also told Barrette that she was loaded, so he felt like he hit the jackpot. After the murder, appellant asked Barrette if one of his friends in law enforcement could find out what was going on in the homicide investigation. Barrette agreed to make an inquiry but never learned anything. Appellant told Barrette a lamp and the security system were missing from the crime scene. Appellant also expressed his desire to travel to England even though he had no passport. He asked Barrette if he knew anyone that could fly him out of the country (1985-1994, 2003, 2017-2019).

After appellant told Barette the surveillance cameras were not working when Ammon was killed, they used to joke about appellant avoiding other surveillance cameras. Barrette never read anything in Newsday about non-working cameras and did not know how appellant knew that but appellant had moved into 59 Middle Lane after the murder (1993, 2019-2021, 2033).

Robert Hendershott used to be a part owner of Dun-Rite Detailing. On November 14, 2001, they did a full detail job on the 1995 Buick with a shampoo and grinder for the interior and a wash and wax for the exterior. One of his employees complained that he could not remove some brownish-red stains on the floor rug in the front passenger compartment. Hendershott thought he could do a better job of cleaning those stains but he could not completely remove them. He agreed it looked like blood and wondered if someone had been killed. Months later, detectives asked about the car. The stains had been mostly on the passenger side but there had also been some sporadic staining on the floor of the driver's side. Hendershott had never met appellant (2026-2042).

In 1999, Kathryn Mayne was hired as a housekeeper for the Coverwood estate, a five story mansion on twenty-two acres in England. She did not live with the Ammons. In May 2001, she came to the United States for the 25th anniversary of Stephen Guderian and Bruce Reidner. She already knew Generosa was seeing appellant but this was the first time she had met him. After a week at the Stanhope, she returned to Coverwood. In July 2001, Ammon took his children to England for a week (2878-2884).

On Tuesday, October 23, 2001, Steven Guderian phoned Mayne and told her Ammon had been murdered. Later Mayne visited New York for a week around Thanksgiving, staying at the apartment of Guderian and Reidner (2883-2886).

In January 2002, Generosa brought the children to England and asked Mayne to live with them. The children were enrolled in school. Guderian and Reidner lived nearby, as Generosa's personal assistant and chef, respectively. Appellant also flew over in January but only stayed a few weeks. On the ride from the airport to Coverwood, appellant told Mayne he had married Generosa. That evening, Generosa apologized to Mayne for not telling her about the marriage. In February, Generosa flew back to the United States, leaving her children under Mayne's care. The plan was for the children to come to New York in the summer and return to school in England in the fall. Once Generosa realized she had terminal cancer, she decided the children should go to school in Center Moriches. Generosa asked Mayne to stay with them and provide full-time care (2887-2895).

Mayne observed close hand that Generosa and appellant had a very chaotic relationship. On a daily basis, they alternated between huge fights and everlasting love. They often argued about money. Generosa once told Mayne she felt trapped. Mayne frankly told Generosa her body may be rotting but her brain was fine. Mayne advised Generosa to make sure the children would be provided for after Generosa died (2895-2899).

Mayne remembered one argument between appellant and Generosa that lasted several days. Appellant had gone to Las Vegas with his friends and spent a lot of money. When he came back, he told Generosa that he still had a huge debt

which needed to get paid by Generosa or else somebody would stab appellant. Generosa refused. Appellant was very angry for several days. Eventually Generosa wrote out another check (2899-2900).

Mayne and appellant spoke about Ammon's murder twice. One time, before February 2003, she was on the couch sleeping when appellant, who had been out drinking, came home. She sat up and he sat next to her. He whispered to her how he had beaten Ammon, that there was a lot of blood, and that Ammon had begged for his life. Mayne was horrified as she realized appellant was trying to scare her. Finally, she asked him "did Ted know it was you?" and he answered "You fucking hard bitch". Then he stormed off. The next day, in the garage, Mayne was next to the washing machine when appellant threatened "I have talked to my lawyer about you and he agrees with me. You are a fucking hard bitch and I'm going to kill you". She warned him to be sure about what he was doing because, as a woman, she would only get one hit (2900-2902, 2915-2917, 2933-2935).

Another time, after a big argument between appellant and Generosa had calmed down, appellant again mentioned he did the murder. Mayne was in the garden reading a book. Appellant approached and said "I gave this woman money. I killed her husband. And now she won't give me a few hundred thousand dollars." She told him Generosa never walked out on anybody and would see him all right (2902-2903).

In February 2003, appellant went to jail for four months on his driving while intoxicated conviction. Mayne remembered him calling from jail about five times a day. Generosa would sometimes answer his calls. Back in January, Generosa had asked Mayne to become the guardian of the two children. Mayne went to Surrogate's Court and became standby guardian. After appellant was released from jail, Generosa demanded that he contribute to the household. She did not want to pay him or his ex-wife money without appellant working. He would work three or four days a week and get drunk on the weekends. On Saturdays, there was usually a big argument and then he would still go out at night. Sunday mornings would be for apologizing and asking for more money. Appellant had asked Mayne about who was provided for in Generosa's will but she had no idea. Eventually, Generosa, Mayne and the kids moved from 42 Inwood Road back to East Hampton. Once appellant was trying to tell the kids he would be there for them and Mayne interrupted to tell the kids to get in the car. She did not want appellant to make them start crying. Appellant said "Who the fuck do you think you are?" She responded she was their legal guardian and she was keeping them safe. He responded "You fucking bitch. I am going to kill you". After that, appellant was not allowed to come to 59 Middle Lane in East Hampton. Generosa died on August 22, 2003 (2904-2913, 2916, 2937).

Mayne's original contract salary from the Ammons was $3,500.00 per month. In July 2002, Generosa gave her $100,000.00 to pay off a mortgage in England. In her will, Generosa gave Mayne a life estate in 59 Middle Lane and one million dollars (2914, 2944-2945, 2952).

Originally, Mayne did not believe appellant's admission to murdering Ammon. Later on, the evidence of stun gun use and appellant's other admissions changed her mind (2935-2936, 2969-2970, 2979-2981).

Helaine Hauser was a matrimonial lawyer who represented Ammon after Generosa filed for divorce in 2000. Forensic accountants initially assessed his net worth at around 80 million but this went down to 46 million as the matrimonial action was pending. The Ammons owned several properties. The 87th Street building cost 10 million and Ammon also set aside $750,000.00 for renovation. Generosa wanted more but Ammon refused. In November of 2000, Generosa took out a one year loan for $3,000,000.00 at 12% APR. On April 25, 2001, there was less than $100,000.00 left from those loan proceeds. The building on 87th Street was gutted and uninhabitable. Generosa wanted $8,800,000.00 more to complete the renovation. Meanwhile, Ammon was voluntarily paying her over $100,000.00 per month in support with $21,000.00 per month for Generosa herself. The Stanhope hotel bills were a point of contention. The issue of appellant's

relationship with Generosa and its effect on the ultimate custody arrangement was also never resolved (1490-1521).

In March 2001, David Pikus, Geneosa's matrimonial lawyer, submitted a request for monthly support totaling $181,838.00. In June 2001, Generosa and the children were given exclusive access to 59 Middle Lane but there would be no returning to a New York City hotel in the fall. After Labor Day, Ammon was back in 59 Middle Lane. Generosa had destroyed a desk, a grandfather clock, and some of Ammon's clothing. On September 24, 2001, Hauser mailed a letter to Pikus about these items. With the 87th Street building still unusable, Generosa and the children moved into a Manhattan apartment on the Upper East Side (1522-1536).

On Thursday, October 18, 2001, the matrimonial case was on before Judge Marilyn Diamond. The Coverwood estate in England had 45 rooms and cost almost $18,000.00 per month in upkeep. Ammon's attorney sought court approval for a sale. Generosa's attorney objected because $200,000.00 worth of furniture should be factored into the selling price. Judge Diamond approved the sale and directed that a list of personal property be compiled. Generosa wanted her three million dollar loan paid off before November or rolled over into a new loan. Ammon refused to pay for that loan. The lawyers for both sides crafted a settlement offer worth $23,500,000.00. Three properties would go to Generosa: her Manhattan apartment, 10 E. 87th Street, and the Pantigo Road lot in East

Hampton (total value $12,242,763.00). Cash in the amount of $11,257,237.00 would be paid with five million paid upon Generosa signing the settlement. One million would be in escrow, followed by installment payments over two years and $199,237 due the third year. This also included $628,000 in tax free maintenance payments during those two years but those would stop if Generosa remarried or cohabitated. Ammon would not help re-finance the three million dollar loan. Basic child support would be $6,000.00 per month plus additional money for medical, dental, educational and camp expenses. The lawyers agreed to seek approval of the proposed settlement from their clients on Friday, October 19, 2001. An attorney named Adria Hillman gave appellant the proposed terms of the settlement over the phone so he could relay them to Generosa (1536-1556).

Upon specific request from Ammon, Hausner wrote a letter to Kenneth Moltner, an associate attorney working with Pikus, and explained that if the personal items in the Big Flower bag (shoes, belt, $1,000.00 cash, and business papers) were not returned, there would be no settlement agreement. The bag was not returned. No one signed off on the proposed settlement (1554-1559).

Hausner expected to meet with Ammon on the morning of October 23, 2001. She learned about his death around 5:00 pm. Ammon had not changed his will during the matrimonial proceedings. His death terminated the divorce action so Generosa inherited the entire estate. Hausner described the interaction between the

Ammons as adversarial with a consistent pattern. Generosa would be angry and verbally abusive, even in the courtroom. Ammon would walk away and refuse to engage in loud arguments (1559-1562).

On redirect, Hausner agreed that Generosa used appellant as an intermediary for all communications to and from Ammon's attorneys. Generosa had already fired three matrimonial attorneys and hired a fourth. Judge Diamond had taken notice that Generosa was wasting marital assets. The forensic psychologist April Kutchik had expressed concern about Generosa's relationship with appellant affecting the children (10/25/04: 54-63, 68-69).

Kenneth Moltner was an attorney working with David Pickus to represent Generosa in the divorce. He often spoke with appellant about the case because appellant was her boyfriend. He recalled receiving the letter from Elaine Hausner about the return of the Big Flower bag. On Friday, October 19, 2001, he spoke to appellant twice by phone. The next day they spoke by phone twice more. Although he did not recall these phone conversations specifically, based on his notes, he believed they discussed the proposed settlement. Appellant's counter proposal was for Generosa to get three properties plus $16,500,000.00 cash on the table with no installment payments. Appellant denied there were any items to return from the bag other than soccer gear. He also indicated that if no settlement was reached, there had to be an immediate advance from her eventual equitable

distribution. On Monday, October 22, 2001, Moltner spoke to appellant again by phone. They discussed the new understanding that Generosa was okay with the Coverwood sale provided the personal property issues were handled. The next day, Moltner wrote a letter to Elaine Hausner about the Coverwood sale (1935-1948).

Christine Lusak was an investigative auditor for the Suffolk County District Attorney's Office who testified about financial records. On November 14, 2000, Generosa took out a three million dollar loan for one year at 12% APR. After deductions for fees and interest escrow, the net proceeds were $2,298,444.00. These monies were deposited into accounts Generosa had with Bear Sterns, HSBC bank, Citibank, and Lincoln Partners. Over two million was spent by April 25, 2001. Appellant and his company had received $589,000.00. Between October 2000 and May 2001, appellant set up six joint checking accounts and one savings account for himself so he could distribute funds to himself, to Tamara Pelosi, to Barbara Lukert, to Janet Pelosi, and to Joanne Matheson. Numerous expenses were related to the 87th Street project but there were also large amounts received by appellant with only a vague explanation on the check. For example, on December 28, 2000, Generosa wrote a Bear Sterns check for $35,000.00 to appellant to pay for "security". On January 10, 2001, she wrote a Bear Sterns check to appellant to pay for "employment contracts". On February 5, 2001, she wrote a Bear Sterns

check to appellant for $10,000.00 to pay for a "salary advance". On March 6, 2001, she wrote a Bear Sterns check for $100,000.00 to appellant for "payroll 87th Street". By June 2001, only $6,000.00 was left from the loan proceeds (2552-2565, 2568, 2571, 2576, 2580-2582, 2590-2591, 2607, 2631).

After the murder, Generosa became liquid again and appellant benefited directly. On January 11, 2002, the day after she married appellant, Generosa put $1,200,000.00 into his account. He would receive another $395,500.00 from Generosa in 2002. His total withdrawals in cash that year added up to $544,877.00, including $50,000.00 on one day in February 2002. His total casino charges were $728,976.00. Miscellaneous checks in 2002 totaling $451,727.00 included $15,000.00 to Frank Petrone for "cigars", $30,000.00 to Lenny Moultner for "boat", $11,000.00 to All Island Marine, and $24,000.00 for a Jeep Cherokee. Also in 2002, appellant opened up four more joint checking accounts plus a second savings account for himself. He kept the only debit card for these twelve HSBC accounts. Generosa did not have access to these funds for which she had written only three checks to appellant. Between October 2000 and April 2004, his cash withdrawals totalled $939,400.00. By April 2004, over 6.7 million dollars had flowed into and out of appellant's accounts, of which $222,030.00 went to Barbara Lukert, $212,826.00 went to Tamara Pelosi, and $14,180.00 went to Christopher

Parrino (2566-2568, 2571-2576,2582, 2593-2597, 2608-2611, 2620-2623, 2633-2639).

On cross, Lusak agreed that a check dated January 15, 2002 to Christopher Parrino for $3,380.00 had a notation for "back pay and wages" (2713).

On redirect, Lusak stated that the last wire money transfer from Generosa to appellant was for $2,000,000.00 on July 2, 2003 (2819).

Richard Maag worked at Rico's clothing store in Center Moriches. He knew both appellant and his brother Jimbo. During the winter of 2001, appellant brought in several used suits to be tailored to fit appellant. They were good quality suits that had been previously tailored. Appellant also bought two suits. Maag did not know from where appellant had gotten the used suits (2993-3001).

As supervisor of biological sciences at the Suffolk County Crime Lab, Joseph Galdi had expertise in DNA testing. He tested stains for human and non-human blood. Eleven questioned stains came back as non-human and were presumably canine blood. Four questioned stains, from a mattress cover, from the carpet outside of a bedroom, from the stairway and from the hallway, were all from Generosa. The blood on the tampon also came from Generosa. Six other questioned stains, from a mattress cover, three on the walls in Ammon's bedroom, one from the carpet outside the bedroom, and one in the hallway, were all from Ammon. His blood was also on his watch. No semen was found on the anal and

oral swabs. DNA confirmed the semen found on the penile swab was from Ammon. There was no blood or saliva on the penile swab. Four questioned hairs were also analyzed. Two hairs, one from Ammon's head and one from his pubic area, were both consistent with Ammon's DNA profile. One hair from Ammon's head showed partial DNA consistent with Ammon. One hair from Ammon's head did not produce any DNA profile. None of the three hairs with a DNA profile were consistent with any of the other known DNA profiles in this investigation (3209-3221, 3277-3281).

Blood on the wires under the eave was found to be consistent with an admixture of blood, mostly from forensic scientist Peter Tracy but also from an unidentified person. Other blood from under the eave was compared to the known DNA samples in this case and to federal and state DNA databases. No match was found (3271-3273, 3278-3281).

Clayton Moultrie testified about his prior criminal record and his conversations with appellant in jail. On June 21, 2004, he was arrested and charged with criminal possession of stolen property, reckless driving, criminal possession of a controlled substance in the seventh degree, criminal possession of a weapon in the fourth degree, menacing, and tampering with physical evidence. His prior convictions included a 1985 attempted robbery, a 1989 criminal sale of a controlled substance, and a 1993 arson for which he did state time (3321-3324).

On Monday, September 13, 2004, Moultrie met appellant in a holding pen on the way to court. Appellant was complaining loudly about Richard Faulk ("Malik"). Moultrie wrote a letter to appellant about how he heard Malik say he intended to lie at appellant's trial to get revenge for a fight between Malik and appellant. Moultrie offered to testify for appellant in return for help with his own legal case. Appellant told him his attorney would come see him in a couple of days (3322-3330).

On Tuesday, September 21, 2004, Moultrie and appellant met again in the jail. Appellant offered to hire Moultrie to deliver messages to people like Malik and Dayton who wanted to testify against him. Appellant would pay $100.00 for each tooth knocked out and $500.00 for a broken jaw. Eventually appellant spoke about the Ammon murder. Appellant told Moultrie "I was trying to break every fucking bone in the asshole's body" and "If I had known what I known today, I would have just put one in the head. But I had to do it the way I did it because of my size. No one would believe that a person my size could do something to a man who was 6'2" or 6'3" (3331-3335).

Appellant told Moultrie his lawyer told him to smoke crack to lose weight and look smaller. Appellant promised to get names and descriptions for Moultrie later. Moultrie offered appellant protection while he was in jail. On Wednesday, September 22, 2004, Moultrie contacted the District Attorney's Office about

appellant soliciting him to do crimes. On October 22, 2004, Moultrie gave a written statement to Detective Daly (3335-3340).

On cross, Moultrie said appellant told him he had murdered Ammon with a taser and a baseball bat but Moultrie did not know what appellant actually used (3413-3419, 3421).

Richard Lia testified as a private investigator who had been hired by appellant. On March 8, 2002, he drove the beach car from the home of attorney Edward Burke, Jr. to his own home in East Hampton. He left it parked in his driveway where it was not visible from the road. For one month, no one drove the car. On March 28, 2002, Lia went to the District Attorney's Office to let them know he had the car and the keys. Suffolk County police picked the car up on April 7, 2002 (3437-3459).

Dr. James Wilson testified as a Suffolk County deputy medical examiner with eight years experience. He had performed over 3,500 autopsies. He signed into the crime scene at 1:44 am on October 23, 3001. He observed the deceased naked on the floor. The mattress was askew. The sheets and bedding were missing. Ammon had a severe head injury with abrasions and contusions on his face. There was skin damage on his neck. His chest and sides exhibited signs of blunt force trauma. The blood was dry. Lividity was fixed and rigor mortis had passed. He estimated Ammon had been dead more than two days (3461-3475).

Dr. Wilson performed the Ammon autopsy at 10:30 am on October 23, 2001. Internal examination involved the condition of organs and tissue from the head, neck, and torso. Toxicological testings of various bodily fluids were requested in writing after the autopsy. No drugs or controlled substances were detected. Alcohol, in differing amounts, was found in femoral blood (.02%), urine (.05%), brain (<.01%), and gastric fluid (.05%).

Further examination of the stomach contents revealed between 400 and 450 cubic centimeters of dark material including partially digested asparagus and wild rice hulls. The absence of tuna was not significant because although the digestive process stops upon death, stomach acid can still dissolve softer food. Ammon weighed 184 pounds and was 6'2" tall (3475-3478, 3545-3546).

External examination revealed numerous injuries. Both eyelids were bruised black with the right being more swollen. Contusions and abrasions on the bridge of the nose were accompanied by swelling and other relatively minor lesions on the face. The right side of the head towards the scalp had numerous criss-crossing lacerations. These types of injuries were even more numerous on the back of the head. Dr. Wilson estimated there was evidence for over thirty-five blows to the head. The biggest injury was behind the left ear with tears in the skin to the bone. These head injuries were consistent with being made by a hard smooth object like a metal bat or a flashlight (3480-3481, 3520-3522).

There was an unusually symmetrical Y-shaped injury on the neck with two dark reddish brown marks like burns. Maggots had hatched in the skin lesion (3482-3483, 3493-3495, 3491-3498).

The left side of the torso was discolored from bruising and multiple rib fractures. There was a prominent contusion on the right breast. The lower back had multiple tiny pinkish abrasions. The right arm was more bruised than the left arm. The left buttock and both elbows had rash-like abrasions. The third finger on the left hand was fractured. X-rays revealed a fractured metacarpal bone in the right wrist. There were also abrasions on the knees and thighs. The feet were bruised on the top. The larynx was broken and pushed back into the spine. In Dr. Wilson's opinion, the tremendous amount of force needed to cause ribs to puncture the lung could not have been generated by a woman weighing 120 pounds (3404-3490, 3495-3525).

Dr. Wilson testified the cause of death was blunt force trauma. Ammon also had small punctate injuries on his back without blood or bruising. At the time of the autopsy, Dr. Wilson was unfamiliar with stun gun injuries. After the body was released for cremation, the small punctate injuries were still visible in the autopsy photographs. Dr. Wilson did not know the origin of these injuries but they did not seem to be caused by blunt force trauma. The Y-shaped injury on the neck was not

a typical blunt force injury. All of these injuries were inflicted before death (3534-3544, 3551-3553).

Assuming the Farmhouse meal was consumed around 9:30 pm, Dr. Wilson estimated the murder occurred suddenly sometime between 1:30 am and 7:30 am. The three glasses of wine Ammon drank could delay gastric emptying. The alcohol content measured in the toxicological tests was consistent with recent consumption rather than post-mortem decay (3546-3550).

Dr. Robert Stratbucker testified as a self-employed biomedical engineer with expertise in electrical phenomena. He was familiar with cardiological therapeutic devices, nuclear medicine and aerospace physiology. Stratbucker was also the medical director for Taser International, a stun gun manufacturer and distributor. He became interested in the effects of stun guns during the 1980's. Experiments on pigs indicated they did not cause lethal cardiac arrest. In 1987-1988, he also studied the physiological effects on human skin using thirty volunteers. The electrical effect of a stun gun on skin can be reproduced. Over time, upon living skin, a circle of redness grows and then fades. If death occurs shortly after the stun gun wound, the red circle will not fade. After death, since there is no more blood circulation, no mark will be created. In 2004, the Department of Defense conducted experiments that showed higher energy stun guns could induce cardiac arrest so the weapons now are made with a power limitation. The Taser 34000

bought by appellant could function as either a stun gun with the prongs contacting the skin or as a Taser, used at a distance from target, subject to wire length. The electrical impulse is brief but repeated at ten to twenty times per second. Low intensity produces pain. Higher intensity will stimulate muscle nerves to cause physical immobilization without losing consciousness. The first effect is for the target to fall to the ground, due to loss of muscle control, even without muscle spasms. Some Tasers have four prongs but the Taser 34000 model has two prongs one and one-half inches apart. Movement of the target can create a less distinct circle. Electrical arcs can cause the stun gun to work without contact if it is very close. Applying the stun gun longer will increase the size of the circle. If the target struggles, skin can be scraped. Translucent epidermis serves as insulation but is easily disturbed. If the person remains alive, there will be no permanent scarring (3701-3747).

After speaking with Dr. Wilson and observing the autopsy photographs, Stratbucker's opinion, with a reasonable degree of medical certainty, was that the unusual marks on Ammon's back and neck were consistant with the application of a stun gun. Multiple pairs of circles exactly one and one-half inches apart matched the distance between the two prongs on the stun gun appellant bought. The Y-shaped mark on the neck appeared to be caused by prolonged contact while

appellant and Ammon were struggling. Larvae took advantage of that skin opening but did not create it (3748-3760, 3853).

On November 24, 2004, there were two stipulations: nine phone numbers were matched to various subscribers and the US currency in the money clip left on Ammon's kitchen counter totaled $1, 835.00 (3909-3912).

Dr. Michael Doberson was a physician and pathologist from Arapaho County in Colorado. He had been involved in at least six cases involving stun gun injuries, including the investigation into the murder of Jon Benet Ramsey. He was retained by the Suffolk County District Attorney's Office in October 2003. After reviewing the autopsy report and photos, the crime scene photos, and the Grand Jury transcripts of Stratbucker and Wilson, Dr. Doberson came to the opinion that the unusual marks were consistent with the use of a stun gun. Dr. Doberson had been involved in the pig experiments with Dr. Stratbucker. Close contact with the skin produced well-circumscribed red marks, in line and exactly one and one-half inch apart. The Y-shaped injury on the neck reflected the movement of one electrode while the other remained fixed, suggested Ammon was struggling to get away. Dr. Doberson could recognize stun gun wounds from photos alone. The Taser 34000 puts out between 50,000 and 100,000 volts (3913-3935, 3958-3960, 3968).

The Y-shaped injury was close to the fractured larynx so both could have been caused by the same act of pressure. Stun gun injuries are not the same as a burn injury but they are similar. Maggots will only feed on damaged or open skin areas. Although Dr. Doberson agreed with Dr. Stratbucker about the injuries being caused by a stun gun, his opinion was solely his own (3970-3976, 3979-3981).

After the People rested, defense counsel moved for a judgment of acquittal under Criminal Procedure Law § 290.10. Other than relying on the record, no additional arguments were made in support of a trial order of dismissal. The court denied that motion on December 1, 2004 (3985-3988).

**Defense Case**

James Thompson testified as a licensed private investigator. On September 21, 2004, he did a test drive from 70 Surrey Drive in Center Moriches to 59 Middle Lane in East Hampton as quickly as possible. Starting at 2:10 am, the ride took him 43 minutes. Although he exceeded the posted speed limit, he did not pass any cars. He also looked for gas stations that might show appellant buying beer on videotape. He never viewed any of these seven videotapes (4010-4025).

Sam Wagner testified as one of Ammon's neighbors in East Hampton. Wagner lived at 52 Middle Lane which was across the street and three houses down from 59 Middle Lane. He recalled seeing Ammon jogging down their street several times. One Saturday morning in 1999, they said hi and Wagner noticed

Ammon had an erection under his sweat pants. Without remembering what he said exactly, he offered to "get busy" and they went nearby where Wagner gave Ammon fellatio without learning his identity. Several months later, Wagner saw Ammon walking up his own driveway but they did not speak. Wagner was initially only 75% sure he had sex with Ammon. The encounter lasted only 15 minutes and Wagner was not looking at Ammon's face. He did not mention this incident to police when they first spoke with him. Later, the NY Post journalist Kieran Crowley interviewed Wagner for a book and got Wagner's story out to the public. Wagner admitted to having similar encounters with thirty other men other than Ammon over the course of two and one-half years. The Three Mile Hollow Beach which gay men featured was a twenty minute walk from Middle Lane (4026-4053).

Kelly Lukert testified as appellant's fifteen year old niece. Her mother was Barbara Lukert. She knew Grego and Alexa like they were her siblings. On October 20, 2001, she and her mother had been living at 70 Surrey Drive in Center Moriches for about two months. After dinner, the only people in the house were her, her mother, and her brother Jeff, Jr. Kelly knew about the laptop being used to see if Ammon was removing any property from 59 Middle Lane but, until that evening, she had never viewed any surveillance. Around 7:00 pm, her mother was checking the laptop and thought she saw someone or something behind Ammon on

the patio. Kelly saw the image but could not discern if it was a person or a tree. They both thought it was no big deal. After dinner, her brother left the house but Kelly did not know where he went. She and her mother watched the 9-11 tribute special on television. Kelly fell asleep on the couch very late, after Paul McCartney started to play (4058-4066).

Around 1:00 am, the barking of Elvis the dog woke her up when appellant arrived. She heard her mother tell appellant about what they had seen on the laptop. Appellant guessed it was "Lori" and viewed other images on the laptop, too. After appellant left, she and her mother went upstairs to sleep in the master bedroom. Her mother called Jeff, Jr. to remind him not to lock the front door when he came home because appellant would be coming back (4066-4069).

Kelly woke up again to Elvis barking when appellant returned and came into the master bedroom. He asked for some blankets. Kelly tried to wake up her mother but it was easier to tell her uncle where he could get a blanket. Kelly remembered looking at a digital clock and the first number was a 3. She did not remember how many minutes after 3:00 so it could have been as late as 3:59 am. She dozed off again. Later she got up, without looking at the clock, and walked down the hall to check on her brother. She saw Jeff was downstairs so she went back to bed. She got up for good that morning at 7:00 am. Appellant said he was going to see his son Tony, for Tony's birthday, and he declined to eat breakfast.

Kelly did not go to the wedding on Sunday. Her brother Jeff babysat her (4069-4075).

On cross, Kelly said appellant visited her mother a lot. She heard Chris Parrino come over that night, too. Appellant told her he and Parrino went out to buy beer. Asked why she checked the clock, Kelly said she liked to notice when her siblings came and went because maybe she could get them in trouble the next day. The reason she went to check on her brother was because she heard her mother say Parrino was not allowed to sleep over. She had no particular reason to remember what time appellant came and went. No adult ever talked to her about the Ammon murder except her uncle Jimbo. What she knew about the case came from newspapers (4075-4088, 4095-4116).

Richard Lia was recalled to testify about picking up the beach car from attorney Ed Burke Jr.'s driveway in Noyac. Using a map of East Hampton, he indicated where 59 Middle Lane, Two Mile Hollow Beach, and the Farmhouse restaurant were located. Ammon's house was .7 mile from the restaurant. Lia was aware that gay men had been using that beach for thirty years (4129-4140).

Dr. Werner Spitz testified as a forensic pathologist who had performed over 60,000 autopsies in fifty years of practice. Now he was a professional witness who testified over 60 times per year. He agreed that calculating a time of death was an estimate, not a determination. One factor for estimating time of death is rigidity.

For thirty minutes after death the corpse is not yet rigid. In the next eight to twelve hours, rigidity sets in quickly. Then for the next ten to twelve hours, rigidity slowly dissipates. Other factors for estimating time of death include blood settling, post-mortem maggot activity, pre-mortem stomach contents, and tests of the blood and urine. In the Ammon case, he reviewed crime scene photos, autopsy photos, toxicology reports, and excerpts of testimony from Dr. Wilson, Dr. Stratbucker, and Dr. Doberson (4172-4188).

Using the 9:44 pm call from Ammon to Finkel as a reference point, being after the beach visit, Dr. Spitz estimated Ammon's death to have occurred three to four hours after Ammon's dinner, based on the amount of partially digested food (15 oz) plus the levels of alcohol in the femoral artery (.02%) and the stomach (.05%). Dr. Spitz said that represented about two and one-half servings of wine. Only 20% of alcohol is absorbed in the stomach while most goes to the small intestine. He thought death occurring eight to ten hours after the meal had been consumed was highly unlikely but not impossible (4189-4196).

Dr. Spitz believed that the injury on the right side of Ammon's neck was not caused by a stun gun. He suggested that both the Y-shaped injury was caused by maggots eating epidermis, the membrane that covers skin. Maggots eat blood or skin. He opined that the Y-shaped injury was created during strangulation and made more round later by maggots nibbling. Use of a magnifying glass for the

photo of the Y-shaped injury revealed small hairs so he did not think it was a burn injury. He considered stun gun injuries to be burn injuries. The dislodging of epidermis from an existing wound can also be done accidentally during transport or when the body is washed off at the morgue prior to the autopsy. He discerned no apparent burn marks in the Y-shaped injury (4204-4221, 4256).

Dr. Spitz found evidence of strangulation on both sides of the neck and from the broken larynx. He believed strangulation did not occur from behind Ammon. He could not say if appellant used his left or right hand to strangle. The absence of petechial hemorages was inconsistent with a neck chokehold (4222-4226, 4256).

In Dr. Spitz's opinion, the smaller punctate injuries on the back were also not caused by a stun gun. He thought they looked fresh and post-mortem. He could not say two small round wounds were related to each other just by their proximity. He guessed these smaller injuries were also caused by maggots. Dr. Spitz referred to a book that he wrote to show a comparable injury caused by insects. However, he could not explain why maggots would create pairs of equidistant circles (4229-4244, 4360-4370).

Dr. Spitz believed a woman only 5'2" could stomp on the hollow rib cage and break ribs. However, he agreed it was unlikely that a woman caused all of Ammon's injuries (4245-4248, 4286).

Based on the skull fragmentation, Dr. Spitz guessed that the weapon used to inflict blunt force trauma was elongated, heavy and probably metal. Strike marks on Ammon's thigh, the strangulation marks, and the scrapes on the knees and elbows all were all caused during the pre-mortem struggle. Dr. Spitz agreed that about 35 blows were struck. The cause of death was the blow to the head which caused brain tissue to come out (4248-4255, 4257-4259).

On cross, Dr. Spitz agreed he was being paid $400.00 per hour for his testimony plus $5,000.00 for each day he was gone from his office. He agreed it was not unusual for a medical examiner to review prior testimony, either trial or Grand Jury. Although he had observed stun gun injuries in other cases, appellant's case was the first time he testified about them (4266-4269 4272-4277).

Asked about his textbook for forensic pathology, which he described as a "classic", Dr. Spitz could think of only two similar books, one from Vincent DeMaio in Texas and one from Charles Wetli in Suffolk County. Using Dr. Spitz's book, the prosecutor asked about a scale for light to medium to heavy meals which indicated, respectively, under two hours, three to four hours, or four to six hours elapsing prior to death. Dr. Spitz did not consider Ammon's dinner to be heavy. Dr. Spitz's book indicated that gastric emptying can be delayed by stomach constriction if alcohol takes up more than 30% of the stomach contents. However, Dr. Spitz ruled out Ammon consuming more alcohol after he left the

restaurant because he felt the amount in the stomach corresponded to the three glasses of wine Ammon drank at the restaurant. Although stress and fear can interfere with normal digestion, Dr. Spitz explained these emotions must be sustained at an extreme level to have a discernible effect. Dr Spitz admitted he knew nothing about Generosa or her effect on Ammon. In his opinion, he was 80% certain death occurred less than four hours after the food and wine were consumed. He maintained more than six hours was contrary to science, even after he was shown a 1989 quote from one Dr. Jaffe that indicated there was controversy over using the four to six hour time period as a hard limit. Dr. Spitz did agree that sleep reduces metabolic functions (4270-4271, 4287-4300, 4311-4332, 4336-4342, 4387-4349, 4391).

Dr. Spitz admitted he was mistaken when he indicated that parallel marks on the legs were caused by the weapon used to inflict blunt force trauma. These marks turned out to only be blood stains that washed off at the autopsy. He also agreed his testimony had been found incredible in prior unrelated criminal cases (4350-4358).

Edward Pugsley testified as Generosa's accountant. He did her taxes and helped her pay bills. Steve Guderian was already a signatory to pay her bills. The three million dollar loan proceeds went into Generosa's Bear Stearns account on January 1, 2001. A review of disbursements showed many examples of non-

construction expenditures. Generosa had six different accounts and appellant was not a signatory on any of them. In April 2003, Pugsley also became a signatory for paying her bills. In May 2001, $50,000 was wired from the Bear Sterns account to the Citibank account for operating expenses (4407-4421, 4427-4430).

In August and September 2001, a series of checks were written on the Citibank account for appellant ($2,000.00), for Guderian ($5,000.00), for David Meaves ($5,000.00), for appellant ($4,000.00), for cash ($6,000.00), and for cash ($6,000.00). The Meaves payment was for Krista's Sag Harbor rental. One check for $4,000.00 had a notation for "moving expenses from E.H.". Pugsley also received his payments by check. On November 23, 2001, Guderian was issued a check for $10,000.00 which said "reimbursement". Pugsley was aware that Guderian earned $5,000.00 per month. On December 6, 2001, a check went to Tamara Pelosi ($6,000.00). On December 26, 2001, a check went to appellant ($10,000.00) for ski trip expenses (4431-4436).

In January 2002, the Ammons estate paid Generosa $1,000,000.00 as the sole distributee. The Pantigo Road property was sold for $3,200,000.00. On January 11, 2002, $1,200,000.00 was wired into the HSBC joint account for Generosa and appellant. In May 2002, Coverwood was sold for $6,200,000.00. In June 2002, $1,000,000.00 was wired from Generosa's Middlefield account to Guderian and Reidner. All these money transfers were approved by Generosa.

Appellant did not have authority to transfer moneys from accounts that belonged to Generosa. However, a total of $4,200,000.00 would eventually be transferred into the joint account of Generosa and appellant (4437-4445, 4454).

On cross, Pugsley agreed there was nothing sinister about Guderian's role as Generosa's personal assistant. Pugsley had no knowledge of the nine HSBC accounts appellant used to funnel money to his friends and family. Before Generosa died in August 2003, she wired $2,000,000.00 to appellant because her second will gave everything to the two children and the Ammon charitable foundation. Appellant also received their marital home at 42 Inwood Road as per their post-nuptial agreement (4450-4460, 4464-4466, 4474-4476).

Dr. Robert Charles Shaler testified as a DNA expert from the Office of the Chief Medical Examiner in New York City. He explained that DNA results could be compromised by degradation, exposure to heat or water, and copying errors during the PCR method. In appellant's case, item 2.1.1, a pubic hair taken with a tape lift, was microscopically dissimilar to Ammon. Based on inconsistent peaks in the electropherograms, Dr. Shaler believed it did not come from Ammon (4491-4528).

On cross, Dr. Shaler agreed item 2.9.1, another hair, had some dissimilar characteristics but DNA proved it did come from Ammon. He also agreed that due

to the limited amount of DNA tested and possible allelic dropout, Ammon could not be excluded as the donor of item 2.1.1 (4528-4565).

Janice Harrington was a retired East Hampton detective who testified she took a complaint report from appellant that someone was stealing wine from 59 Middle Lane on June 11, 2001. Appellant told her he witnessed the theft on video from Manhattan. When he declined to provide a copy of the video, the investigation went no further. She never told Ammon he had cameras in his home (4566-4577).

Appellant began his testimony by denying he had any participation in Ammon's murder. He also denied going out to East Hampton when the murder happened (4586).

Cross-examination was lengthy. Appellant and his wife Tamara Pelosi had filed for bankruptcy in 1995. In a 1997 bankruptcy filing, he had referred to himself as a handyman. Appellant always worked under someone else's electrical contractor's license because he never got one. Basically he was self-employed and often worked off the books without declaring his income to the IRS. In the summer of 2000, Nicolino hired appellant to do electrical work at 59 Middle Lane. Appellant learned Generosa was getting a divorce. He started dating her after Thanksgiving. When she learned he had been sleeping in his truck, she moved him into the Stanhope with her (4591-4606).

Generosa wrote appellant a check for $100,000.00 so he would work exclusively for her, providing security systems. He did not have any expertise in that area but he knew how to subcontract. Appellant also acted as a liason to Generosa's matrimonial lawyers. He discussed with them funding for the 87th Street project, settlement offers and other aspects of the divorce (4607-4617).

Appellant believed that Ammon was not admitting to his true net worth. Before the murder, appellant believed Ammon had between 300 and 500 million dollars. After the murder, appellant realized there was much less. On March 27, 2002, appellant acknowledged that his attorneys put out a press release under the heading "Statement of Daniel Pelosi" which referred to a piece of paper he said he found in a book in the Porsche at 59 Middle Lane. That writing appeared to be Ammon's calculation of his financial worth at 300 million. Appellant had no witnesses to his supposed discovery of this document (4617-4625).

Appellant said he heard about the Big Flower bag Ammon wanted to retrieve but he never saw it. Ammon's lawyers told him about it on Saturday, October 20, 2001. He admitted he may have carried a similar bag into his sister's house later that night but there were at least thirty such bags available. He denied finding the handwritten estimate of Ammon's net worth on a piece of paper from the Big Flower bag. He denied his mistaken belief that Ammon was worth 300

million dollars came from a written estimate he found in the Big Flower bag (4625-4630, 4798-4800).

Appellant admitted telling his sister Barbara that he hit lotto because of Generosa's money. Asked about his conversation with Nicolino, appellant testified he did not believe he said he would have to bash Ammon's brains in while he slept (4630-4631).

Appellant hired Kundle to do the electrical system for 59 Middle Lane. Kundle gave the security codes to both appellant and Generosa. Carter got the notifications at first but he left Kundle's employment in June 2001. Appellant denied ever receiving security notifications from 59 Middle Lane. He said Kundle was mistaken about that (4632-4634).

In his first call to Parrino, he told him to meet at his sister Barbara's house. He called him a few more times, including at 1:28 am, which was shortly before the murder. Then he also drove up to Parrino's house early on Sunday morning. After the wedding, he went to Parrino's house a second time that day and they both went to Cherubino's house in the evening. Generosa and the children were in New York City all weekend without appellant (4698-4699, 4777-4780).

In 1995, as part of a disability claim, appellant spoke with a Dr. Michael Melvid about needing to take out his anger on his peers in Alcoholics Anonymous. Appellant claimed he was a drunk during the interview. Appellant said he was full

of bravado and liked to tell stories. Appellant admitted telling Dr. Melvid about his sadistic tendencies and getting enjoyment out of other people's pain and suffering. Appellant also told Dr. Melvid about getting in trouble for fighting in school and on the street. At bars, he said he would avoid drinking so he could take girls from drunk men. Appellant readily described how he used boxing skills when he was in a fight. Appellant even agreed he enjoyed using the stun gun on people because he liked when they jumped and called him an asshole (4688-4696).

Purchasing the stun gun was appellant's idea. He described using it as a "neat little thing, great for protection". He paid a coworker $100.00 to get Tasered and he used it on others, too. Appellant said he was just fooling around all in fun (4657-4658).

Appellant denied trying to buy a second stun gun. He agreed his phone was used to call the Detective's Store in New York City at 11:00 am on March 29, 2001, seventeen days after the initial purchase. Appellant suggested he had given his phone to Carter to make that phone call. Appellant learned that stun guns had to be shipped to an out-of-state address when he visited the store back on March 12, 2001. When Generosa told him having a stun gun was absurd he gave it to his ex-wife, replacing a shotgun she had for protection. Eventually that stun gun was removed from Jimbo's closet by appellant and turned over to the police (4791-4798, 4802-4804, 4856-4859).

Appellant admitted using the microcassette recorder he bought in New York City to record Generosa and her attorneys. He denied being worried about getting cut out of Generosa's will but he admitted suing in Surrogate's Court to set aside the post-nuptial financial agreement. After his marriage to Generosa on January 10, 2002, Generosa wired him $1,200,000.00. He spent all of that money but did not recall how fast he did so. In her first will dated June 5, 2002, shortly after her cancer diagnosis, Generosa designated Mayne as guardian for the children. Appellant's history of driving while intoxicated convictions made him unsuitable to take care of the children. That will also gave $500,000.00 to Barbara Lukert and the remainder of the estate to appellant. Later, in order to set up a criminal defense fund, appellant signed a post-nuptial agreement which only gave appellant $2,000,000.00 and the house on Inwood Road. He said he felt forced to waive his claim on Generosa's estate because his criminal attorneys needed to be paid. On the same day everybody signed the post-nuptial, Generosa signed her second will which cut appellant out entirely. Appellant claimed he was trying to challenge the second will, not for himself, but because that money belonged to the children. Appellant testified, "I never in my life wanted the dead man's money." He also admitted that Generosa's final will from July 2003, which he was challenging in Surrogate's Court, already gave money to the children. That last two million was gone now so he was broke during his murder trial (4634-4657, 4671-4652).

Barbara Lukert and appellant had a joint account so he could more easily give her money. Generosa even told appellant to pay off his sister's mortgage. Generosa knew all about all of appellant's joint accounts and had no problem with them. One time appellant expressed his opinion that $8,000.00 monthly maintenance for Tamara Pelosi was too high but Generosa insisted that appellant's ex-wife not be treated the way Ammon had treated her. Appellant claimed he had nothing to hide from the prosecutor's questions (4783-4784, 4787-4790).

On Saturday, October 20, 2001, Generosa was out of her mind about the proposed settlement offer from Ammon's attorneys. Appellant was aware of the terms. He told Generosa she should just take 10 million and end the negotiations. However, he did not agree with the proposed custody arrangement. He denied being aware that her marriage or cohabitation with appellant would terminate Ammon's maintenance obligation to her. He did agree he usually went along with whatever Generosa wanted him to do (4673-4678).

Appellant called Krista that Saturday afternoon because he needed help watching Generosa who was already drunk. He denied Krista saw him very angry and stressed out. He admitted telling Krista that "Ted was up to his old tricks", "This has got to stop", and "He is not giving her half", "Ted needs to be a man and take care of his responsibilities" and "Somebody needs to knock some sense into him". This last phrase meant to wake someone up. He denied that he was ever

angry with or had any problems with Ammon. Appellant admitted putting a crushed up Xanax in Generosa's beer around 10:00 am but said it did not help. He denied telling Krista it worked and Generosa was sleeping. Appellant agreed he called his sister Barbara and told her to use the laptop to see if Ammon was at 59 Middle Lane that Saturday (4678-4684, 4686, 4704).

Generosa went out for more beer around 3:00 pm. By 6:00 pm, Generosa was slamming doors and threatening to commit suicide. She wanted to throw out the soccer gear Ammon had bought the children. Generosa insisted the children go to bed around 10:00 pm. She told him she was going to the apartment of Guderian and Reidner. Appellant left the apartment around 11:30 pm and was in Center Moriches two hours later (4829-4834).

Appellant denied bringing Ammon's Big Flower bag with him to Center Moriches. One of the first things appellant did at Barbara Lukert's house was check the laptop. He looked back at 11:53 pm and saw a woman he thought was Lori Finkel. He also agreed he used the laptop for sixteen and one half minutes while his sister was cleaning up. He agreed Barbara refused to get something for him out of the attic (4698-4700, 4703, 4714-4715).

Before appellant left his sister's house, he went up into the attic and got Parrino's marijuana which was in a can in a box. When he said good night to Barbara at the front door, she felt something hard in his coat pocket. Maybe she

felt his cell phone. Maybe she felt the marijuana container that Parrino had previously left in the Audi. Appellant did not know what she felt in his jacket. He explained he hid Parrino's marijuana in his sister's attic a few weeks before because the bridge crossings to New York City had heightened security after September 11. Barbara sent Jimbo to the attic and he found the marijuana. Once Barbara knew what was up there, she did not want to retrieve it for appellant (4715-4718, 4721-4725).

Appellant had driven the Audi out to Long Island. Both the Audi and the Bronco were available for a "beer run" but appellant weakly explained they took the beach car because the Audi had a flat tire on Friday in New York City and Parrino had a bunch of tools in the front seat of the Bronco. In the beach car, appellant became annoyed by a fishy smell which the car heater had exacerbated. Appellant claimed Parrino bought a six pack of beer at a Metro gas station in Eastport on Route 51. This was after he and Parrino went to Buckley's bar which was too crowded. They tried Ali's, the Metro by Kaler's pond, and the Metro by Atlantic Avenue but they were all closed. Parrino first came out with a six pack of Bud Ice but appellant made him go back in and switch it for Bud Light. They also bought three packs of cigarettes. After they bought beer, appellant told Parrino to get the car cleaned. Appellant did not say he wanted to drive it to the wedding.

According to appellant, Parrino drove the beach car to his home in Wading River at 2:45 am (4726-4729, 4775-4777, 4719-4721).

Appellant agreed he took the beach car to get repaired and cleaned with a full detail on the Monday morning after the murder. He also agreed that he and Parrino left Barbara's house in the beach car around 2:00 am. He also agreed that he was already gone when his sister called Jeff, Jr. at 2:03 am. As for driving to East Hampton, appellant said that was only a police scenario. Appellant said he had waited three years to testify and had nothing to hide. He even claimed he had wanted to testify in the Grand Jury. However, he admitted he only wanted to testify there with immunity (4697, 4708-4714).

Appellant said he called Parrino at 10:14 am on Sunday morning because he needed to get the key to the Audi from the beach car. At first, on the stand, he guessed the key fell from the pocket of his leather jacket. Then he corrected himself and "remembered" he had left the key on the dashboard of the beach car. He had hoped Parrino had cleaned the car already. Parrino told him he had taken it to a car wash. Appellant called Parrino again from the wedding because he wanted to ask for a ride to New York City and did not want to be arrested for driving while intoxicated again. However, he did drive to Center Moriches and Wading River that night (4739, 4744-4745, 4749-4754).

On Sunday, October 21, 2001, appellant made numerous phone calls trying to reach Generosa. Steve Guderian finally called him at 2:54 pm (4834-4838).

Appellant called Arnie Cherubino three times from the wedding because of bad reception, the first call being at 3:04 pm. He was bored because he mistakenly thought the 4:00 pm wedding started at 2:00 pm. This annoyed him because his son's fourteenth birthday party started at 6:00 pm. However, he decided not to leave the wedding early. Tamara Pelosi was upset when appellant showed up at 7:00 pm. Appellant spent an hour and a half with his son and his daughter before driving up to Wading River in the Audi. Instead of Parrino driving the beach car back to Center Moriches or appellant taking the Bronco back to Wading River, appellant had Parrino drive him to New York City, leaving the Bronco in Center Moriches and the beach car in Wading River (4742-4744, 4750-4756).

Parrino did not drive appellant directly back to Generosa that night. Appellant said he needed to see Cherubino about an electrical diagram that Cherubino needed for a job in Pennsylvania. They all watched some of the Yankee game at Cherubino's house (4751-4753).

Appellant remembered wearing his leather jacket when he left his sister's house with Parrino. Later he asked Riebenfeld if she remembered him wearing it to the wedding. He denied asking her to say she saw him wear it to the wedding. He also denied asking his sister Joan to say she saw him wear it to the wedding.

Appellant believed a valet at the wedding stole his leather jacket from the back seat of the Audi (4737-4738).

Appellant denied making any of the statements of future intent attributed to him by Nicolino (4735).

Appellant recalled having a brief conversation with his father about how to get rid of something but he insisted it occurred two weeks before the wedding on October 20, 2001. He did not recall his father's subsequent inquiry or answering that "Arnie took care of it (4734-4735, 4741-4742).

Appellant's relationship with his father deteriorated after Jimbo died. His father blamed appellant for the stress that contributed to Jimbo's heart failure. Appellant also resented that his father had left his mother for his secretary, continued to live in a million dollar home and left his mother in a flooded basement with only $400.00 per month. Appellant also did not get along with Guy and Joan Giammateo. He had a big argument with them after Jimbo's funeral (4820-4824, 4827-4829).

Appellant first met Kaye Mayne in February 2001 at the Stanhope. She was part of Generosa's team. Ammon was angry that Mayne padlocked the wine cellar at 59 Middle Lane. Appellant and Mayne had a big disagreement on whether Generosa should consider euthanasia. Appellant was adamantly opposed to an intentional overdose. Appellant agreed he threatened Mayne's life over this issue.

Appellant was also unhappy that Generosa gave Mayne $1,000,000.00 after Ammon died. Mayne warned him not to interfere with that transfer or he would be sorry. Therefore he threatened her right back. Appellant understood he could not be the children's guardian due to his prior driving while intoxicated convictions. Appellant's main problem with Generosa's will was that too much money was going to the attorneys (4804-4820).

Appellant denied telling Riebenfeld that Ammon cried like a bitch getting his brains bashed in. He also denied telling her Ammon begged for his life. He also denied telling her he had a monster inside of him. He remembered having sex with her and calling himself Tarzan. That was his only recollection of pounding on his chest when he was with her (4658-4659, 4696-4697, 4735-4736).

Appellant denied telling Riebenfeld that he brought bloody clothing back from the murder. He also denied telling her that he told Cherubino to get rid of bloody clothing (4730-4731, 4740).

In March 2002, Generosa learned she had cancer. Mayne brought the kids to New York later when school ended. During 2002, appellant took his friends on several gambling vacations. On February 21, 2002, he went to Mandalay Bay in Las Vegas. On July 13, 2002, he cashed a $25,000.00 check at Tropicana Resorts in Atlantic City. From September 12-16, 2002, he was in Las Vegas again. On September 27, 2002, he cashed another check for $25,000.00 at Tropicana Resorts.

He did that again on November 12, 2002. Appellant estimated he lost over $600,000.00 on gambling in 2002. Appellant denied that he and Generosa ever argued about money. He also denied that Generosa ever refused to give him money. He even testified Generosa told him to make a bet for $500,000.00 (4767-4774).

Appellant admitted to boxing for about three months but denied he had a lot of street fights under his belt. He did admit to telling a thousand stories about himself. He agreed he was sometimes full of rage, just like anyone, including the prosecutor. She asked him how he knew anything about her. He said he read about her in the newspaper. The prosecutor asked if appellant had made any statements about her children when he read about her in the newspaper. Defense counsel objected on the grounds of relevance and unfair prejudice and moved for a mistrial. The prosecutor argued that appellant's consciousness of guilt had probative value and that appellant had opened the door by talking about knowing her. Defense counsel maintained that it would be unethical for her to be an unsworn witness during summation. She argued her questions were proper based on appellant's nonresponsive answer. However, she agreed not to pursue the issue of appellant talking about her children. The Court agreed appellant had been providing nonresponsive answers and had already been instructed by the Court about this five times. Defense counsel agreed to instruct his client to just answer

the questions being asked. No ruling on the motion for a mistrial was given or asked for on the record so it was denied (4659-4670).

Appellant admitted knowing the separate locations, within 59 Middle Lane, of both the hard drive and the outlet plug. He was familiar with the alarm system, too. He knew that nothing could be viewed or recorded if the unit was unplugged. He claimed that many other people could have known the location of the hard drive and the plug because he had a real big mouth (4731-4733).

Appellant testified that Generosa asked him to murder Ammon or hire someone to do it but he refused. He again insisted he had nothing to do with the murder and had nothing to hide (4840, 4843-4844).

On recross, appellant admitted he continued to use alcohol and drugs during psychotherapy and "lie his ass off". He testified he had a "habit of telling stories" which were lies. On redirect, appellant readily admitted to being a boaster and a bragger. He denied he was bullshitting the jury (4884, 4886-4889). The defense rested (4892).

**Rebuttal case**

Dr. Charles Wetli testified as the Chief Medical Examiner for Suffolk County. He had reviewed Dr. Spitz's testimony along with the other evidence in the case and disagreed that Ammon had two and one-half glasses of wine in his stomach at the time of death. The alcoholic content of .05% in the stomach was

per 100 cc of gastric material. Since there was 400 ccs of gastric contents, the actual amount of alcohol present was very little. .05% in the blood would represent consumption of more than two glasses of wine but the alcohol measurements for blood and gastric contents are not interchangeable. Accordingly, Dr. Wetli also disagreed with Dr. Spitz that death occurred less than four hours after the meal was consumed. With basically all the alcohol gone from the stomach, Wetli estimated death to have occurred up to eight hours after the meal (4899-4903, 4917, 4948-4969).

Dr. Wetli also explained that Dr. Spitz was mistaken about being able to determine the size or shape of the weapon used based on pattern injuries on the body. Instead of contusions on the legs which might have so indicated, Dr. Spitz had been relying on mere blood staining that washed off completely at the autopsy. The injuries on the skull also did not reveal any distinct pattern (4903-4906, 4910-4911, 4914-4917).

Dr. Wetli also disagreed that the distinctive marks on Ammon's neck and back were caused by larval feeding. Lesions are not created by those insects without some pre-existing necrosis. Furthermore, larvae make holes, not abrasions. The Y-shaped injury was not consistent with a fingernail scrape. Wetli found these injuries to be remarkably consistent with stun gun injuries (4907-4912, 4924-4926,4936-4946). The People rested (4969).

**Conclusion of trial**

After a charge conference (4973-4977), defense counsel gave a summation in which he argued, *inter alia*, that appellant was courageous to take the witness stand and this was consistent with what an innocent person would do, that perhaps a gay man from the beach followed Ammon home and committed this murder, that nonuse of a cell phone was consistent with appellant being asleep, that Generosa's location at the time of the murder was never verified, that Generosa, Mayne, and Guderian also had financial motives to murder Ammon, and that even if appellant was a gold-digger, a bullshitter, and an alcoholic, that did not make him a murderer. He also argued that appellant did not have enough time to get to East Hampton, murder Ammon, and return to Center Moriches by 3:00 am. He also argued that none of the numerous statements appellant made to Nicolino, Riebenfeld, Mayne, Moultrie and appellant's father were worthy of belief (4978-5132).

The prosecutor's summation was delivered with few defense objections. One overruled objection dealt with the inference that Jeffrey Lukert. may have returned with appellant and Parrino after the murder. This was ruled to be fair comment on the evidence. The nonuse of Jeffrey Lukert as a possible alibi witness was also a permissible topic (6191-5192). Mentioning the Grand Jury investigation caused an objection to be sustained but the unfinished thought was

left unexpressed (5220). However, describing the long delay between the murder and appellant's arrest was proper to counter the defense claim of a rush to judgment about the proof of appellant's guilt. A second overruled objection dealt with referring to appellant's CNN interview in which he said he did not know how to turn off the surveillance cameras except by pulling the plug (5233).

After the prosecutor's summation, defense counsel renewed his objection to drawing any inference from the defense decision not to call Jeffrey Lukert as a witness. The prosecution pointed out that once a defendant proceeds with a defense case, his failure to call an available witness is subject to commentary. The defense also objected to any mention that Dayton had been on the witness list. The court decided to charge that Jeffrey Lukert was available to both sides and no one had a duty to call him. The court also recognized that Moultrie had testified about Dayton so that fact had been presented to the jury (5270-5276).

The jury began deliberating on Saturday, December 11, 2004. After six notes from the jury, they returned a verdict of guilty as charged on December 13, 2004(5323-5368).

**Sentence**

On January 25, 3005, appellant appeared in the Supreme Court of Suffolk County (Doyle, J.) for sentencing. A defense motion for acquittal pursuant to Criminal Procedure Law § 290.10 was denied. After hearing from all the relevant

parties, the court imposed the maximum sentence for murder in the second degree, an indeterminate term of imprisonment from twenty-five years to life.

## POINT ONE

THE WEIGHT OF THE EVIDENCE AMPLY SUPPORTED APPELLANT'S GUILTY VERDICT

Despite counsel's skewed analysis, there was motive, means, and opportunity for appellant to have murdered Theodore Ammon. Add to that all the admissions appellant made on different occasions to various persons before and after his arrest, all the credible testimony fit together. The absence of any particular type of evidence does not support a theory of innocence. Ascribing motive to Generosa provides no relief for appellant since his financial interests were inextricably tied to hers. Ascribing concurrent motives to Mayne or Guderian was mere speculation that did not diminish the financial motive for appellant. Appellant had no alibi. Indeed all his actions were consistent with getting help from his friends and relatives to get away with murder. On appellate review, this Court should easily recognize that guilt was proven beyond a reasonable doubt and this jury verdict was not against the weight of the evidence.

Viewing the evidence in a light most favorable to the prosecution who prevailed at trial, numerous direct admissions by appellant and a web of circumstantial evidence all pointed to no one other than appellant solely murdering Ammon, although he did receive assistance from Barbara Lukert and Christopher

Parrino before the crime as well as assistance from Christopher Parrino and Arnold Cherubino after the crime.

Weight of the evidence review by the Appellate Division involves a two-step process. First, this Court must assess whether an acquittal would not have been unreasonable. We submit that appellant has failed to meet this initial requirement. Nonetheless, the second step will also be elusive for appellant. After weighing any conflicting testimony, based on the rational inferences that may be drawn from the evidence and evaluating the strength of such conclusions, this Court may assess whether the weight of the credible evidence justified the jury's verdict of guilt beyond a reasonable doubt. *People v Danielson*, 9 NY3d 342 (2007); *People v Romero*, 7 NY3d 633 (2006); *People v Mateo*, 2 NY3d 383, *cert denied*, 542 U.S. 946 (2004).

The jury was clearly entitled to reject appellant's testimony and give credence to the parade of witnesses that heard him open his concededly big mouth. The jury saw and heard each witness and was quite able to evaluate witness demeanor, their motives for giving testimony and any possible reasons for committing perjury. *People v Bleakley*, 69 NY2d 290 (1987); *People v McCarthy*, 111 AD3d 764 (2d Dept), *lv denied*, 22 NY3d 1089 (2014); *People v Pordy*, 88 AD3d 746 (2d Dept 2013).

Many testified they heard appellant talk about murdering Ammon. Nicolino heard him hatch the plan. Krista saw appellant very angry on Saturday morning and he told her someone has to beat some sense into Ammon. Robert Pelosi heard appellant ask about getting rid of something and was later told "Arnie took care of it". Riebenfeld's testimony about the confession was riveting. Truly appellant did have a monster inside of him. She also heard him ask her for false alibis. Barbara Lukert suspected appellant was up to something when he asked her to check the laptop, retrieved a hard object from her attic, and took the beach car out after 2:00 am. The obvious reason to use the beach car that night was because that car was more familiar on Middle Lane. Indeed Lukert was seen crying at the wedding, likely from recognizing her unwitting role in the murder. Mayne heard direct admissions twice. Moultrie heard appellant's direct admissions, too. Both the quantity and the quality of the prosecution witnesses overwhelmed appellant's facile explanations.

Appellant's access to one stun gun was conceded and he probably bought a second one. The credible medical testimony was that Ammon had numerous stun gun injuries. Dr. Spitz's opinion that red circles equidistant apart were caused by insects was frankly preposterous. A time of death around 3:00 am fit all the known evidence, including the gastric alcohol content as well as the time needed to get to and from East Hampton. Appellant's palm print in Ammon's bedroom and his

drop of blood in the garage also had relevance to him being in Ammon's bedroom and having an injury at 59 Middle Lane. Appellant's stolen leather jacket scenario was utterly unconvincing.

Surmising how many people other than appellant knew about the hidden video surveillance did not change the secrecy surrounding its use because Ammon never knew he was being watched. None of the actual installers was a murder suspect. Indeed the sinister purpose in having the videos checked five times totaling over two hours on Saturday, including at 1:28 am shortly before committing the murder, was unambiguous.

Of course, the final nail in appellant's conviction was his own belligerent and defiant testimony. He repeatedly gave nonresponsive answers (4642, 4646, 4651, 4655, 4677, 4688, 4736, 4740, 4774, 4779, 4808, 4824-4826, 4853, 4819, and 4839). The jury observed his faux performance and properly rejected his portrayal as some innocent dupe. Appellant mistakenly believed he was smarter than everyone in that courtroom but he fooled nobody. Any rational juror would have found him guilty. The weight of the evidence supporting guilt beyond a reasonable doubt in this case is quite compelling.

## POINT TWO

BOTH CROSS-EXAMINATION OF APPELLANT AND THE PROSECUTOR'S SUMMATION WERE WELL WITHIN THE BOUNDS OF DUE PROCESS AND MOST OF THE ALLEGED MISCONDUCT WAS UNPRESERVED FOR APPELLATE REVIEW

Building on the matrix of evidence that established appellant's factual guilt for intentional murder, the prosecution was entitled to go beyond the elements of the crime and provide possible explanations for such a brutal attack. Rather than mere exhortations to propensity, showing appellant's sadistic and antisocial activities helped the jury understand whether appellant was capable of committing this crime of overkill. And once appellant took the stand, his willingness to go beyond any question asked opened the door to much of what came out. Numerous times appellant conceded he had credibility issues, to put it mildly. The prosecutor only used what appellant gave to her. There are very few examples where timely objection was overruled to preserve an issue for appellate review.

As explained in Point One, this was not a close case. Appellant had his sister check for Ammon's presence in East Hampton five times on Saturday. He admitted to using the beach car after 2:00 am about an hour before the murder. Early Sunday morning, he had Parrino wash it right away but then he ordered it detailed anyway on Monday. Those cleaners were unable to fully remove dark

brown spots which looked like blood. This same beach car was then hidden from police scrutiny for months. Thus appellant's use of and control over the video security combined with the use of and control over the beach car helped establish his consciousness of guilt before and after the murder.

Appellant's cell phone use showed both his travels around Long Island and to whom he was speaking and when. The pattern that emerges is remarkably consistent with appellant enlisting several people to help him before and after the murder. Appellant's ability to get to East Hampton, commit the murder, remove evidence and get back to Center Moriches was conclusively established, even if Kelly Lukert testimony is credited that appellant returned before 3:59am. Testimony about appellant's stun gun use was admissible to establish that appellant had the ability to use a stun gun during the murder. Notwithstanding the wild assertions of Dr. Spitz, the other experts were convinced that a stun gun with two prongs one and one-half inches apart was used to immobilize Ammon before he was beaten to death. Also, appellant's second phone call to the detective store (which he did not know the prosecution had a record of) permitted the inference that he bought the second stun gun which Barbara Lukert had heard about.

Asking appellant about anger issues and prior fighting was not outside permissible boundaries, particularly where appellant was so willing to discuss anything. Twice he insisted he had nothing to hide. In view of his favorable

*Sandoval* ruling, the jury never heard the worst. In addition, the prosecution never used the new indictment for witness intimidation at the murder trial. We submit the statements appellant made in the Dr. Medvid interview were appropriate areas of inquiry since they involved appellant's self-analysis only six years before the murder. Questions about rage were fair because other witnesses had seen appellant's anger and potential to erupt in violence. Krista's testimony that when she saw appellant on Saturday, October 20, 2001, he was the angriest she had ever seen him was illuminating evidence. Riebenfeld's testimony that appellant scared her when he said he had a monster inside him was remarkably similar to Mayne's reaction to appellant's admissions. The inference here is not that angry people are more likely to commit murder, but rather, that murders involving overkill (all experts agreed Ammon received over thirty-five blows) usually indicate a killer with personal animus towards his victim. Appellant's rage issues helped explain why the murder was so brutal.

Summations by the prosecution must be based on the evidence and merely resorting to juror's emotions is considered improper. However, the purported examples of this type of error cited by appellant on appeal were not without relevance. Rooted in the record, the summation remarks were deserving of juror attention. Appellant's frivolous gambling trips while Generosa was dying of cancer and the staggering amounts of money he lost were both examples of

appellant's willingness to place his own interests above anyone else's needs. Noting that Generosa, being dead, was now unable to counter any suggestions of her involvement in wanting Ammon dead was entirely fair comment (4848). Describing Ammon as an above average person who did not deserve to be murdered was unnecessary but did not cause unfair prejudice to be created in the juror's minds. Describing appellant's relationship with his own father was relevant to their conversation about appellant needing to hid evidence. Appellant's sexual involvement with Riebenfeld was clearly relevant to her credibility about hearing appellant's confession. That his relationship with her turned out to be manipulative was also relevant to him trying to establish a false alibi.

Use of the pronoun "I" during summation should be discouraged but not every rhetorical phrase is a personal vouching by the prosecutor. In the eight examples listed on page 109 of appellant's brief, not once was there any contemporaneous objection (5139, 5144, 5145, 5190, 5223-24, 5251, 5254). None of these personal pronouns should be the basis for a reversal, either on due process grounds or in the interests of justice. *People v Moye*, 12 NY3d 743 (2009); *People v Hughes*, 111 AD3d 1170 (3d Dept 2013); *People v D'Alessandro*, 184 AD3d 114 (1st Dept 1992), *lv denied*, 81 NY2d 884 (1993).

The idea that alcohol can relax one's inhibitions and lead to truthful revelations is hardly a psychological secret. *In vino veritas* may not be a

universally known aphorism but the idea behind it is commonly known. The question about lying sober or just when drunk was in direct response to appellant conceding he told stories when he was drunk (4692). Nonetheless, objection was sustained so there should be no finding of reversible error. And once alcohol abuse was conceded, the subject was fair comment in summation.

The exchanges between appellant and the prosecutor during cross-examination were contentious but the court kept everything under control. When appellant mentioned that the prosecutor herself also had rage issues, questioning veered toward how he knew about her. A question about appellant's reaction to a newspaper article about the prosecutor and her children was never answered because objection was sustained (4661). On this record, the court actually prevented the introduction of overly prejudicial testimony so possible reversible error was avoided.

Inquiry about appellant's lack of a professional license to do electrical work was relevant to the absence of true value given for the amounts of money he received. The use of sarcasm and ridicule, if done to excess, can contribute to an unfair trial but, based on the snarling testimony appellant gave, some incredulity was appropriate.

The contemptible theory that some homosexual murdered Ammon was simply undeserving of courteous treatment. Wagner's testimony about

anonymously giving fellatio to a man he thought was Ammon was quite far-fetched. None of the people that really knew Ammon had any doubt about his heterosexual orientation. On appeal, appellant's desire for privacy is also no basis for sexual innuendo.

As for the uncollected hair that turned out to be growing out of Ammon and therefore was never missing, the willingness of the defense to use nonevidence to advance false claims was laid bare. These types of defense arguments actually deserve scorn. However, even if an outlandish defense theory might be unfairly attributed to lack of integrity by defense counsel, the rhetoric in this case did not go that far. Disparagement of a frivolous defense is not the same as denigration of opposing counsel. Appellant's verdict was not based on such red herring issues.

Similarly, when appellant claimed he had wanted to testify in the Grand Jury, thereby creating a false impression he had been completely forthcoming, he opened the door to the fact he would not testify in the Grand Jury without immunity. The Fifth Amendment is a shield, not a sword. *Harris v New York*, 401 U.S. 222 (1971); *People v Kulis*, 18 NY2d 318 (1966).

Complaints about shifting the burden of proof to the defense are entirely misplaced. Once a criminal defendant decides to put evidence before the jury, missing witnesses or the absence of available testimony can be the subject of fair comment. *People v Tankleff*, 84 NY2d 992 (1994); *People v Rodriguez*, 38 NY2d

95 (1974); *People v Taylor*, 68 AD3d 1728 (4th Dept 2009); *lv denied*, 14 NY3d 845 (2010; *People v Sunter*, 57 AD3d 226 (1st Dept 2008); *lv denied*, 12 NY3d 762 (2009); *People v Dillon*, 157 AD2d 742 (2d Dept); *lv denied* 75 NY2d 965 (1990).

In conclusion, the allegation of egregious prosecutor misconduct is ephemeral. Many times there was no contemporaneous objection. Sometimes, objection was sustained but there was no request for further ameliorative action like a cautionary instruction. Criminal Procedure Law § 470.05(2); *People v Bellman*, 112 AD3d 732 (2d Dept 2013); *People v Santos*, 105 AD3d 1064 (2d Dept), *lv denied*, 21 NY3d 1019 (2013); *People v Prowse*, 60 AD3d 703 (2d Dept), *lv denied*, 12 NY3d 858 (2009); *People v Materon*, 276 AD2d 718 (2d Dept), *lv denied*, 95 NY2d 966 (2000).

The majority of remarks challenged on appeal were fair response to a wide-ranging defense summation, were within the bounds of permissible rhetoric, and did not deprive appellant of a fair trial. *People v Galloway*, 54 NY2d 396 (1981); *People v Ashwal*, 39 NY2d 105 (1976); *People v Roscher*, 114 AD3d 812 (2d Dept 2014). This case does not call for the exercise of interests of justice jurisdiction to overlook defense failure to preserve issues for appellate review. *People v Rogha*, 213 AD2d 266 (1st Dept), *lv denied*, 86 NY2d 801 (1995).

## POINT THREE

EVEN IF A COURT ORDER SHOULD HAVE BEEN OBTAINED PRIOR TO DISCLOSURE OF GRAND JURY TESTIMONY TO AN EXPERT RETAINED BY THE PROSECUTION, THAT EXPERT DID NOT TESTIFY IN THE GRAND JURY SO THERE WAS NO EFFECT ON THE INTEGRITY OF THE GRAND JURY PROCESS NOR ANY POSSIBILITY OF PREJUDICE

While unlawful disclosure of secret grand jury testimony is a felony under Penal Law § 215.70, there are exceptions which have no significant impact on the integrity of the grand jury process. For example, a witness in the grand jury may disclose the substance of his or her own testimony. Another exception exists for a public employee engaged in the proper discharge of his or her official duties. Even if a court order should have been obtained before showing the testimony of two retained prosecution experts to a third retained prosecution expert, this minor oversight had absolutely no effect upon appellant's prosecution or conviction.

On June 17, 2003, a Suffolk County Grand Jury was empanelled to investigate the Ammon murder. Our office retained expert witnesses. Dr. Michael Doberson was a forensic pathologist from Colorado. Dr. Robert Stratbucker was the medical director of Taser International and he resided in Nebraska. Both these men had expertise in evaluating stun gun injuries. On October 8, 2003, Dr. James C. Wilson, a Deputy Medical Examiner testified in the Grand Jury. On October 22, 2003, Dr. Stratbucker testified in the Grand Jury. Thereafter, the trial

prosecutor spoke to Dr. Doberson by phone and advised him to keep Grand Jury transcripts secret and then she sent him copies of the Grand Jury testimony of Wilson and Stratbucker. Doberson was consulted but never scheduled to be a witness in the Grand Jury. He set forth his expert opinion about the stun gun injuries on Ammon's body in a letter dated December 3, 2003. This letter was subsequently provided to the defense as part of discovery on April 20, 2004. On May 14, 2004, we informed the court that no disclosure order was sought because the use of the Grand Jury transcripts with a retained expert was done in the lawful discharge of prosecutorial duties.

Defense counsel moved to dismiss arguing unlawful disclosure impaired the integrity of the Grand Jury. We argued (1) disclosure to a retained expert was lawful; (2) even if there was a violation of Criminal Procedure Law § 190.25 (4)(a), there was no effect upon the Grand Jury proceeding since Doberson never testified there; (3) there was no specific example given of how the integrity of the Grand Jury was impaired; (4) dismissal of the indictment was not a proper remedy; (5) release of all the Grand Jury minutes to the defense was wholly unwarranted; and (6) no evidentiary hearing was needed to resolve a question of law.

On July 21, 2004, the trial court denied the motion to dismiss. Without deciding whether an application for judicial release of the Grand Jury minutes would have been granted for use by Doberson, the court agreed that disclosure

should have been done pursuant to a court order. We maintain that the lawful discharge of prosecutorial duties is a separate basis for the use of Grand Jury minutes by District Attorney staff and retained experts. However, that issue need not be reached on this appeal. The court decision went on to conclude that there was no effect upon either the integrity of the Grand Jury and no prejudice to appellant in any way. Doberson not only did not testify in the Grand Jury, but he had no contact with any witness that testified before the Grand Jury. Therefore there was no basis to dismiss the indictment and no basis now to grant a retrial.

Defendant claims that providing the Wilson and Stratbucker transcripts to Doberson was in violation of both Criminal Procedure Law § 190.25(4)(a) and Penal Law § 215.70 because Doberson was neither a member of the District Attorney's staff nor a police officer assigned to the investigation. However, there is case law distinguishing between proper preparation of a witness and improperly attempting to influence the testimony of a witness. Secrecy for Grand Jury proceedings is paramount but not absolute. The confidentiality of the testimony was not transgressed when it was reviewed by a retained expert who was specifically reminded to maintain secrecy. The use of the word "or" in Criminal Procedure Law Section 190.25(4) means that "lawful discharge of duties" and "written order of court" are separate bases for disclosing Grand Jury testimony. To maintain that a retained expert is a member of the District Attorney's staff is a

reasonable statutory interpretation. There was no intentional violation of statute nor was there any improper purpose underlying the challenged disclosure. Criminal Procedure Law § 190.25(4)(a) reads, in pertinent part, as follows:

> "Grand jury proceedings are secret, and no grand juror, or other person specified in subdivision three of this section or section 215.70 of the penal law, may, *except in the lawful discharge of his duties or* upon written order of the court, disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding. For the purpose of assisting the grand jury in conducting its investigation, evidence obtained by a grand jury may be independently examined by the district attorney, *members of his staff*, police officers specifically assigned to the investigation, and such other persons as the court may specifically authorize" (emphasis added).

If there could be no lawful disclosure without a court order, there would be no need to provide "in the lawful discharge of his duties" as an alternative. Expert witness preparation properly includes provision of all facts pertaining to the issue in question. The murder investigation was ongoing and the Assistant District Attorney wanted Doberson to evaluate the findings of two medical experts on the specific issue of stun gun injuries. She was not doing so to influence his opinion because Doberson was never even scheduled to be a witness in the Grand Jury. If Doberson agreed with Wilson and Stratbucker, then she could proffer Wilson

and/or Stratbucker with a higher degree of confidence at trial. This was in all respects proper.

Similarly, the term "members of his staff" should be given its plain meaning. Penal Law § 5.00; *People v Ditta*, 52 NY2d 657 (1981). Since the term "district attorney" includes both the elected official and all his appointed assistants, Criminal Procedure Law § 1.20(32); *People v Kotler*, 143 Misc2d 287 (Crim Ct NY Co 1989), the term "members of his staff" must mean something more than Assistant District Attorney. "Staff" can be defined as the personnel responsible for carrying out an assigned task. The permanent or temporary nature of that assignment does not necessarily preclude someone from being included in the term "staff." The fact that Doberson was not just consulted but retained for his opinion should militate against excluding him from the term "staff."

Appellant's motion to dismiss relied principally on two Fourth Department cases to argue that the disclosure to Doberson was prosecutorial misconduct. *People v Brockway*, 255 AD2d 988 (4th Dept 1998); *People v Seymour*, 255 AD2d 866 (4th Dept 1998). However, both those case also held that the improper disclosure did not deprive those defendants of a fair trial. While *Seymour* specifically rejected the "lawful discharge of duties" exception, dicta in *Brockway* from Judge Wisner found the argument acceptable, citing *Geders v United States*, 425 U.S. 80, 90, n 3 (1976) (discussion of testimony of another witness is not

necessarily attempting to improperly influence) and *United States v Bazzano*, 570 F2d 1120, 1125 (3rd Cir 1977), *cert denied*, 436 U.S. 917 (1978) (disclosure of testimony without naming witness during trial preparation of second witness protects secrecy; attempting to shape second witness' testimony is a separate inquiry).

Use of the word "or" can also be found in Penal Law § 215.70, which provides, in pertinent part, that

> "A person is guilty of unlawful grand jury disclosure when, being a…public prosecutor,…he intentionally discloses to another the nature or substance of any grand jury testimony…which is required by law to be kept secret, *except in the proper discharge of his official duties or* upon written order of the court." (emphasis added)

Again, if the only lawful disclosure is court ordered disclosure, then using the word "or" is superfluous. The fair import of the alternative construction means that there exists a lawful disclosure without court order. This exception does not swallow the rule of secrecy because the disclosure must be in furtherance of a prosecutorial duty. Retaining medical experts and giving them all the available evidence to evaluate prior to rendering an opinion is how investigations are done.

Indeed, if court approval had been sought prior to disclosure, there would be no compelling reason to deny the application.

Periodically, the legislature has expanded the list of authorized persons who can examine Grand Jury evidence. Criminal Procedure Law § 190.25(3); Penal Law § 215.70; *Application of Kinsella*, 95 Misc2d 915 (Sup Ct Onondaga Co 1978). Obviously, the prosecutorial practice of encouraging a witness to review his own Grand Jury testimony before trial is also lawful disclosure without court order. In that context, the transcript loses some secrecy but remains confidential. *Ruggerio v Fahey*, 103 AD2d 65 (2d Dept 1984). Prosecutors have a duty to provide exculpatory Grand Jury testimony even without a court order. These factual scenarios are examples of lawful disclosure so court orders are not the exclusive method for lawful disclosure.

In *People v Beckwith*, 289 AD2d 956 (4th Dept 2001), it was recognized that Criminal Procedure Law § 190.25(1) permitted a prosecutor to reveal Grand Jury testimony of a nine year old rape victim to an investigator involved in the case. While Doberson was not a police officer, he was officially helping the Ammon murder investigation. To share clinical medical descriptions in an official capacity should not be considered egregious where the statute clearly allows the intensely personal account of a raped child to be shared in the course of the investigation.

These examples of lawful disclosure without court order are based on a realistic assessment of the prosecutorial function. Numerous cases discussing the necessity of a court order before public dissemination of Grand Jury testimony involve a completely different scenario in which all confidentiality is removed. *People v DiNapoli*, 27 NY2d 229 (1970); *Matter of Hynes v PBA*, 179 AD2d 760 (2d Dept 1992); *Notey v HEW*, 120 AD2d 586 (2d Dept. 1986).

The reasons for confidentiality of Grand Jury minutes were eloquently set forth by Chief Judge Fuld forty-four years ago:

> (1) prevention of flight by a defendant who is about to be indicted;
> (2) protection of the grand jurors from interference from those under investigation;
> (3) prevention of subornation of perjury and tampering with prospective witnesses at the trial to be held as a result of any indictment the grand jury returns;
> (4) protection of an innocent accused from unfounded accusations if in fact no indictment is returned; and
> (5) assurance to prospective witnesses that there testimony will be kept secret so that they will be willing to testify freely. *People v DiNapoli*, 27 NY2d 229, 235 (1970).

The first four reasons have no application to the Doberson disclosure. Defendant was not made more likely to flee, Doberson had no interaction with any grand jurors, there is no basis to believe a retained expert living in Colorado is going to be involved in any perjury or witness tampering at a New York trial, and

the information Doberson received is not based on a presentation that resulted in a no true bill. Only the fifth reason has any possible relevance, however, consultants retained by the prosecution could hardly have any chilling effect upon other prospective witnesses. *Application of FOJP Service Corp*, 119 Misc2d 287 (Sup Ct NY Co 1983). Secrecy is an integral feature of Grand Jury proceedings, but it is not absolute. *People v DiNapoli*, *id*.

Even if getting a prior court order is the preferred procedure, disclosure to Doberson in Colorado had no possible effect upon the Grand Jury process in New York. The court even made sure that these same Grand Jury minutes would be made available to any defense expert prior to giving testimony. There was simply no potential for prejudice.

Criminal Procedure Law § 210.35(5) provides that a Grand Jury proceeding is defective if it fails to conform to the requirements of article one hundred and ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result. This standard is very precise and very high. While not requiring actual prejudice, the alleged misconduct must be pervasive and not an isolated incident before the extraordinary remedy of dismissal can be justified. The key factor is the degree of inappropriate prosecutorial influence on the Grand Jury's function. Here, the disclosure to Doberson had no effect upon the presentation because they never heard from him. Nor did he have any interaction

with Wilson. Doberson only spoke with Stratbucker about this case after Stratbucker had testified. *People v Huston*, 88 NY2d 400 (1996); *People v Sayavong*, 83 NY2d 702 (1994).

The idea that the Grand Jury itself is offended when its cloak of secrecy is lifted in any way is too peculiar to be addressed at length. Long ago, even a single mistake used to result in automatic dismissal, *People v Minet*, 296 NY 315 (1947), but now some possibility of prejudice must be demonstrated. *People v Di Falco*, 44 NY2d 482 (1978); *People v Williams*, 284 AD2d 564 (3rd Dept 2001).

In *Williams*, the prosecutor shared information about a Binghamton robbery with Endicott investigators outside the Binghamton jurisdiction. Dismissal of the indictment was denied because there was no prosecutorial wrongdoing, no fraudulent conduct, and no error which could potentially prejudice the ultimate decision of the Grand Jury. Even if disclosure to Doberson without prior judicial approval was considered a violation of statute, the only fitting remedy would be to admonish the prosecutor. Since the Grand Jury was completely unaware of Doberson and Doberson had no interaction with any testifying witness, cases talking about unauthorized persons being present in the Grand Jury are completely inapposite.

At worse, defendant has found one isolated instance of misconduct that had zero effect upon the integrity of the Grand Jury proceedings. Both the Grand Jury

and the witnesses it heard remained shielded from any improper influence. *People v Thompson*, ____ NY3d____(2014) (2014 WL 641537) The outcome of the Grand Jury's vote simply had no connection to Doberson whatsoever. Dismissal of the indictment was properly denied. *People v Felix*, 272 AD2d 410 (2d Dept), *lv denied*, 96 NY2d 918 (2001).

Finally, the request for a *Frye* hearing was properly denied. Experts can testify based on their own experience. *People v Oddone*, 22 NY3d 369 (2013). Observing stun gun injuries and viewing photographs are not scientific tests or procedures which need to be evaluated for acceptance in the scientific community. There was no basis for such a hearing and the pretrial withdrawal of the defense request for a *Frye* hearing on September 7, 2004 (3-21) should have been binding upon appellant. The attempt to get a *Frye* hearing on September 27, 2004 (2-13) should be considered sandbagging and a failure to preserve issues for appellate review. Admission of the stun gun testimony without holding a *Frye* hearing was not an abuse of discretion. Appellant has utterly failed to show any basis to reverse his conviction with regard to the stun gun testimony.

## CONCLUSION

BASED UPON THE FOREGOING, THE JUDGMENT OF CONVICTION SHOULD BE AFFIRMED.

DATED MAY 13, 2014
Riverhead, New York

Respectfully submit,

THOMAS J. SPOTA
District Attorney of Suffolk County

By: _____
MICHAEL BLAKEY
Assistant District Attorney
Of Counsel

Criminal Courts Building
200 Center Drive
Riverhead, New York 11901
(631) 852-2438

**Certificate Of Compliance With 22 NYCRR 670.10.3(a)(3)**

MICHAEL BLAKEY, an attorney duly admit to practice in the courts of this State and of counsel to THOMAS J. SPOTA, District Attorney of Suffolk County, attorney of record for Respondent in this case, certifies that the within Brief is double-spaced and uses 14 and 12 point Times New Roman font for text and footnotes respectively. According to the word count function of Microsoft Word 2010, which was used to prepare it, the Brief contains 29,290 words, not including the Table of Contents, Table of Citations, proof of service, Certificate of Compliance, or any authorized addendum.

_____
MICHAEL BLAKEY
Assistant District Attorney