

2005

# West Valley City v. Fieeiki : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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WEST VALLEY CITY,

PLAINTIFF/APPELLEE,

v.

STANLEY FIEEIKI,

DEFENDANT/APPELLEE.

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: Not Incarcerated

Case No. ~~20050549-CA~~ 20050459-CA

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OPENING BRIEF OF APPELLANT

This is an appeal from a conviction for simple assault, a class B misdemeanor, entered in the Third District Court in and for Salt Lake County, West Valley Department, State of Utah, the Honorable Terry Christiansen, Judge, presiding.

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WEST VALLEY CITY,	:	
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	:	
DEFENDANT/APPELLEE.	:	
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JURISDICTION

Utah Code Ann. § 78-2a-3(2)(e) provides this Court's jurisdiction over this misdemeanor appeal from a court of record.

STATEMENT OF ISSUE

Did the trial court err in admitting Mr. Fieeiki's statement made during the course of plea bargaining?

Standard of review: This Court will review the trial court's rulings on the admission of this evidence for an abuse of discretion. See, e.g., Green v. Louder, 2001 UT 62, ¶ 19; 29 P.3d 638. Legal questions are reviewed without deference, for correctness. E.g., Canon v. Salt Lake Regional Medical Center, Inc., 2005 Ut App 252, ¶ 7, 121 P.3d 74.

This issue was preserved by trial counsel (R. 96-105; R. 328: 1-105).

## GOVERNING RULES

### Utah Rule of Evidence 408

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

### Utah Rule of Evidence 410

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.



## STATEMENT OF THE CASE

### NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION

West Valley City charged Fieeiki with domestic assault on his wife, Fusina Fieeiki, a class A misdemeanor violation of Utah Code Ann. § 76-5-102, and domestic violence in the presence of a child, a class B misdemeanor violation of Utah Code Ann. § 76-5-109.1 (R. 2-3). The city later filed an amended information, and then dismissed the second charge of domestic violence in the presence of a child (R. 172-73; R. 325: 63).

The jury convicted Fieeiki of class B misdemeanor simple assault, a lesser included offense (R. 197).

Judge Christiansen sentenced Fieeiki to 180 days in jail and to pay a \$1,000 fine, suspending all jail time and \$700 of the fine (R. 233).

After the trial court denied a motion for new trial (R. 299-304), Fieeiki filed a timely notice of appeal (R. 305).

## STATEMENT OF FACTS

On Sunday, August 4, 2003, Stanley Fieeiki and his wife, Fusina, were living in West Valley City with their six children, who were between the ages of one and nine (R. 325: 166-71). He worked as a Highway Patrol Officer, assigned as a Detective on the Metro Gang Unit (R. 325: 167-68). He was known as a fine officer, who was patient, honest, family oriented, and a “gentle giant” (R. 325: 148-53, 160-61, 165).

She ran a daycare out of their home, taking care of six children in addition to their

six (R. 325: 170-71).

During the week prior to August 4, 2003, Stanley Fieeiki attended "Hell Week." Hell Week is a five day course of stress and exhaustion training for police officers, wherein they go for five days with one to two hours of sleep a day, and spend all waking hours performing harsh physical drills, such as dragging telephone poles up stairs and running for miles (R. 325: 152, 162-64). During Fieeiki's Hell Week, the temperature was over one hundred degrees, and the officers were required to wear full tactical gear, including a helmet and raid vest, long sleeves, pads and gloves, while performing SWAT exercises (R. 325: 162-63).

While Fieeiki was attending Hell Week, Fusina was home alone caring for twelve children (R. 325: 169-70).

He testified that after this week, on Sunday night, he could tell she wanted to argue, so he went downstairs to give her time to cool down (R. 325: 172). When he came upstairs to shower, he found that she had thrown things around the bathroom and left a mess, and after they exchanged words, he cleaned up (R. 325: 172-73). After his shower, he found her in the walk-in closet, where she was swearing at him and had made another mess (R. 325: 173). He told her not to tear up the family pictures, and went to bed, because he had POST defense tactics courses to teach at 7:00 a.m. the next morning (R. 325: 169, 173).

After he had been sleeping for about an hour and a half, he awoke feeling extreme

pain in his left leg (R. 325: 174). Both his feet were bruised from the previous week's training (R. 325: 175). He did not know what caused the pain, and woke up in the dark,<sup>1</sup> confused and frightened (R. 325: 175). He slapped Fusina three or four times, initially not knowing who she was (R. 325: 175-77). During the course of the altercation, she urinated on the bed (R. 325: 184). When Fieeiki realized what was going on, he apologized to his wife (R. 325: 177).

Officers John Dietrich and Chris Dowland responded to a 911 hangup call from the Fieeiki home, and Fusina Fieeiki responded to their knock (R. 325: 88, 91). She was crying and soft-spoken and looked down as she told them that she had called the police (R. 325: 90-91). The police separated the Fieeikis (R. 325: 91). She said her back hurt (R. 325: 94).

After Officer Dietrich spoke with Fusina, he talked with Stanley Fieeiki, who did not appear to be injured or complain of injury (R. 325: 94, 109). Fieeiki was cooperative and calm (R. 325: 116, 102).

Fieeiki told Officer Dietrich that his wife suffered from depression, that he and his wife had been arguing, and that after he went to sleep, she woke him up to argue more (R. 325: 96). Fieeiki gave a written statement to the same effect (R. 325: 99). Three to five minutes later, after talking with Fusina, Dietrich approached Stanley Fieeiki, who said

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<sup>1</sup>Their neighbor, Martin Siller, attested to how dark the Fieeiki bedroom is (R. 325: 146-147).

things had escalated, and that he had pushed and restrained Fusina, who had inflicted the injuries on herself (R. 325: 100). He denied hitting or hurting her (R. 325: 100).

When Fieeiki talked to officer Dowland, Fieeiki said that he and his wife, who was depressed, were arguing, that he went to sleep, that she woke him up to argue more, and that he got upset and pushed her out of the way (R. 325: 112-113).

Dowland saw a one inch scratch under Fusina's jawbone, and swelling on her left temple (R. 325: 114). Dietrich photographed bruises and swelling areas on Fusina's face and neck, and noted that she was walking slowly and carefully (R. 325: 92; Exhibits 1 and 2). Dr. Seduck Kim examined Fusina and found bruises on her face, neck, back of head, back of chest, below the shoulder blade, and lower back (R. 325: 117-121). His report did not document the age of the bruises (R. 325: 121-22). Detective Kevin Nudd saw Fusina on August 6, and photographed her injuries again (R. 325: 124).

At the office of the West Valley Prosecutor, Sean Torriente, Torriente and Detective Nudd interviewed Fieeiki with Fieeiki's lawyer, Ed Brass, present (R. 325: 127). The jurors heard a portion of the interview, and read a transcript of the same (R. 325: 132; Exhibit 6). The transcript, Exhibit 6, is copied and included at the back of the transcript of the trial (R. 325), and is included in the addendum to this brief.

During the course of the interview, Fieeiki said he was exhausted and lost control when Fusina attacked him in his sleep, and he admitted to slapping her in the face and punching her on her back three or four times in self defense and anger, knowing he was

hitting Fusina (Exhibit 6, pages 8, 16 and 19). He explained that he had held his temper when she tried to argue with him, made a mess of the bathroom and closet and photographs, and he admitted that his anger kicked in when she attacked him in his sleep, and that he was not sure if he continued hitting her out of a need to defend himself or out of anger (Exhibit 6, page 17). He thought he might have been able to control his anger if he had not been so sleep-deprived from participating in Hell Week, and was ashamed of himself (Exhibit 16, page 17). He admitted that he did not want to incriminate himself when he was first interviewed by the other officers and denied physical contact, and then only admitted to restraining Fusina (Exhibit 6, pages 9 and 13).

During the interview, Fieeiki demonstrated delivering “roundhouses” on the back Mr. Brass, and said he had hit Fusina’s back with three or four such hits (R. 325: 133).

Stanley attended and completed anger management and domestic violence courses (R. 331: 3). The Fieeikis completed marriage counseling, and obtained medication for Fusina’s depression (R. 325: 177-78).

As a result of this conviction, Mr. Fieeiki lost his job as a Highway Patrol Officer and Metro Gang Detective (R. 331: 3).

### SUMMARY OF ARGUMENTS

Fieeiki’s statements made to a prosecutor and a police detective in the course of plea negotiations should have been excluded under Utah Rules of Evidence 408 and 410.

The trial court’s rulings admitting Fieeiki’s statements made during the course of

plea negotiations are rife with clearly erroneous factual findings, and are legally incorrect under the rules of evidence.

The admission of the statements was prejudicial both structurally and evidentially.

This Court should publish an opinion reversing Fieeiki's conviction and explaining the proper application of Utah Rules of Evidence 408 and 410 in this context, to insure the continued efficient functioning of the plea bargaining system in all criminal cases.

### ARGUMENTS

#### I.

THE RULINGS ADMITTING FIEEIKI'S STATEMENTS  
MADE DURING THE COURSE OF PLEA NEGOTIATIONS  
WERE PREMISED ON SIGNIFICANT FACTUAL AND LEGAL ERRORS.

#### A. Background Facts

Prior to trial, the defense moved to exclude Fieeiki's statements made during the course of plea negotiations, and the defense filed with the motion an affidavit of Edward K. Brass. The affidavit averred that Fieeiki's statements were made after Brass and prosecutor John Huber had discussed settling the charges before they were filed, that the statements were made with the intent to settle the case, and that a settlement offer was extended after the statements were made (R. 96-105).

At the evidentiary hearing, Brass testified that he had been hired to represent Fieeiki, and attended the September 9, 2003, interview in an effort to obtain the plea bargain he had been discussing with John Huber, the West Valley City Prosecutor (R. 328: 5).

Brass and Fieeiki initially hoped to avoid the filing of charges altogether, and then, prior to September 9, Huber proposed that Fieeiki would obtain a plea in abeyance (R. 328: 6-7). Brass believed that the interview was to provide Fieeiki a chance to tell his side of the story and hopefully improve on the plea in abeyance offer (R. 328: 7).

Brass testified that the only purpose for Fieeiki making the statements was to settle the case (R. 328: 8). Having worked as a defense lawyer for 28 years, Brass would not have taken Fieeiki in for a police interview unless it was for purposes of settling the case (R. 328: 25-26).

Fieeiki told Brass that he was giving his statements for two purposes – to see if he could avoid charges all together, and to help the prosecution understand the impact even a plea in abeyance would have on his life (R. 328: 12). This was a very important meeting to Fieeiki, because his job was in jeopardy (R. 328: 14).

Sean Torriente, a prosecutor, was present during the interview, which occurred at the prosecutor's office (R. 328: 10). During the interview, Fieeiki was speaking to the prosecutor and the detective and Brass, and the prosecutor directed the detective's inquiry and asked several questions himself (Trial Exhibit 16, pages 24-30).

After the statement was taken, Huber told Brass that the offer of a plea in abeyance would not improve (R. 328: 15). Brass believed that Huber was the final decision maker (R. 18-19).

The unredacted transcript of Fieeiki's statements was admitted at the evidentiary

hearing as Exhibit 1, and includes a recording of Brass and the detective discussing the negotiations between Brass and Huber (R. 328: 9-10; Hearing Exhibit 1 page 38):

Nudd: While those things are all things that I'm sure you will be bringing up and you can talk to Mr. Huber about.

Brass: Right. I figured you guys would do that so, do you know what time frame you guys are working with?

Nudd: Hopefully I'll have a decision on this rather quick now that we got a statement.

Brass: All right, then. Thanks.

Nudd: I would suggest Ed, maybe you call him by Monday, see if he's got a final decision.

Brass: Good enough.

Nudd: Thanks. Okay if there is nothing else we'll go ahead and conclude.

(Hearing Exhibit 1).

Prosecutor John Huber agreed that he talked to Brass about the case before it was ever charged, but Huber initially maintained that he was not open to negotiating the case and that there was "no offer, no negotiation going on at that time." (R. 328: 28, 31). He contended that Brass said something like Fieeiki was repentant and wanted to make a full statement to honor his profession, that Brass was hoping for a plea in abeyance, and that Huber told Brass that was not in the cards at that point (R. 328: 30-31).

In contrast to his initial testimony that there was no offer and no negotiation prior to Fieeiki's interview with Torriente and Nudd (R. 328: 28, 31), Huber testified that Fieeiki's only offer was to plead to the assault charge and then maybe the prosecution would extend considerations at sentencing (R. 328: 37). Then, Huber reviewed the file and claimed to have a "vivid memory" that the offer was to plead to the assault and the



domestic violence in front of a child charge would be dismissed (R. 328: 47). Huber then testified that prior to September 9, he may have offered to drop the lesser charge if Fieeiki pled guilty to the assault (R. 328: 50).

Huber conceded that he is always open to new evidence changing the course of the prosecution (R. 328: 41). When asked about a letter from Brass to Fieeiki indicating that charges would not be filed until Fieeiki met with a detective and Huber, Huber indicated that he had agreed not to charge the case until that further meeting (R. 328: 43).

Fieeiki testified that he hired Brass with the understanding that a plea in abeyance was not good enough (R. 328:62). About a week after their initial meeting, Brass called and said that Huber offered a plea in abeyance (R. 328: 63). Fieeiki went to the meeting with Torriente and Nudd to improve on the offer of a plea in abeyance, but did not want to attend the meeting, and went after Brass repeatedly assured him that it was a settlement negotiation, and that what was said would not go outside that meeting (R. 328: 65-68). Brass said everything would be okay and that Fieeiki's statements would not be used against him, and that Brass would take care of everything (R. 328: 68).

Trial counsel argued that Fieeiki could not enjoy effective assistance at trial if the statement were admitted, and that Fieeiki did not knowingly waive that right (R. 328: 86). The prosecutor argued that Huber wanted to know the full story before making a charging decision (R. 328: 90), and argued that Fieeiki and Brass participated in the interview with Torriente and Nudd to "sway the decision maker" (R. 238: 93).

B. The Trial Court's Findings of Fact were Clearly Erroneous.

After the evidentiary hearing, the court found that Fieeiki's statements were made in the course of an on-going investigation in an effort to gain leniency, but were not made in the course of plea negotiations, and admitted them (R. 328: 100, R. 155-158). The trial court's oral and written rulings are in the addendum to this brief.

It is critical to note that the trial court did not expressly find Brass or Huber more credible, but recognized his "greatest respect" for both Brass and Huber, his personal knowledge of both attorneys for many years, and his opinion that they are the "highest quality of attorneys." (R. 328: 97).

In ruling the statements admissible, the trial court made clearly erroneous factual findings.

Normally, in challenging a trial court's finding of fact, a party is required to marshal the evidence in support of that finding and then demonstrate why, as a legal matter, the finding cannot stand. See, e.g., Heber City Corp. v. Simpson, 942 P.2d 307, 312 (Utah 1997). The trial court in this case made several factual findings phrased in the negative, indicating the total lack of evidence on certain points. Marshaling the evidence in support of any negative finding such as these is problematic, because it requires one to amass evidence to prove the absence of something.

For instance, the trial court repeatedly found, and relied heavily on the finding, that the recorded interview was devoid of any reference to plea bargaining (R. 157-58; R. 328:

98, 100).

While it is true that the record of the interview does not contain explicit use of the terms such as “plea bargain,” the exchange between Brass and Nudd at the end of the interview refers to a decision being made by Huber as a result of the interview, and confirms that the statement was given in the course of negotiating a plea bargain with the charging prosecutor.<sup>2</sup>

The court found that Ed Brass indicated that Fieeiki felt like the interview was the “honorable thing to do,” and that Ed Brass “testified” that Fieeiki “felt like it was the honorable thing to do in his profession, to come clean, to explain his side of the story.” (R. 238: 97, 99). Brass never testified to that effect, and the only evidence to be marshaled in support of the finding that Brass indicated that Fieeiki was interviewed to be honorable is the testimony of John Huber, that Brass said something like Fieeiki was repentant and wanted to make a full statement to honor his profession, that Brass was

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<sup>2</sup>Nudd: While those things are all things that I’m sure you will be bringing up and you can talk to Mr. Huber about.

Brass: Right. I figured you guys would do that so, do you know what time frame you guys are working with?

Nudd: Hopefully I’ll have a decision on this rather quick now that we got a statement.

Brass: All right, then. Thanks.

Nudd: I would suggest Ed, maybe you call him by Monday, see if he’s got a final decision.

Brass: Good enough.

Nudd: Thanks. Okay if there is nothing else we’ll go ahead and conclude.

(Hearing Exhibit 1).

hoping for a plea in abeyance, and that Huber told Brass that was not in the cards at that point (R. 328: 30-31).

In contrast to Huber's testimony and the trial court's finding regarding Brass's testimony on this point, Brass testified that the only purpose for Fieeiki making the statement was to settle the case (R. 328: 8), and that having worked as a defense lawyer for 28 years, Brass would not have taken Fieeiki in to make a statement unless it was for purposes of settling the case (R. 328: 25-26).

The trial court's factual misunderstanding of Brass's testimony likely played heavily in his factual finding 13, which states:

It appears as though Mr. Fieeiki felt that "coming clean" was the honorable thing to do in this case due to his profession. Before this meeting, Mr. Fieeiki had not have an opportunity to clarify the record and explain his side of the story. This meeting gave Mr. Fieeiki that opportunity.

(R. 158).

The only evidence to be marshaled in support of this finding is the testimony of Huber, that Brass said something like Fieeiki was repentant and wanted to come give his version of what happened in an effort to obtain a plea in abeyance (R. 328: 30), testimony which demonstrates that the statement was made in the course of plea negotiations.

There is nothing in the record to support the negative finding that Fieeiki had no prior opportunity to give his side of the story, for he was repeatedly interviewed by the police on the night of the incident, and gave a written statement (R. 325: 96, 99-100, 112-113).

The trial court found that Brass's testimony was consistent with the notion that the statement "simply appears to be an opportunity for Mr. Fieeiki to explain his side of the incident." (R. 158). This finding is supported by Brass's testimony that laying out everything Fieeiki wanted the prosecution to know was definitely one of the purposes of the interview (R. 328: 20). However, the finding is incomplete, because it does not reflect Brass's repeated contentions under oath that he would never have taken Fieeiki to the interview unless it was to settle the case (R. 328: 5-8, 25-26; R. 96-105).

The trial court found that Huber "indicated that there was no plea negotiation discussed" and that he did not offer a plea in abeyance, as Brass contended (R. 328: 95-96). There is certainly evidence to marshal in support of this finding, for Huber initially maintained that he was not open to negotiating the case and that there was "no offer, no negotiation going on at that time," and that this did not change prior to the September 9 interview (R. 328: 31). However, Huber later testified that Fieeiki's only offer was to plead to the assault charge and then maybe the prosecution would extend considerations at sentencing (R. 328: 37), but then reviewed the file and claimed to have a "vivid memory" that the offer was to plead to the assault and the domestic violence in front of a child charge would be dismissed (R. 328: 47). Huber then testified that prior to September 9, he may have offered to drop the lesser charge if Fieeiki pled guilty to the assault (R. 328: 50).

While the trial court was correct that Huber never agreed that he offered a plea in

abeyance, the sum total of Huber's testimony supports Brass's testimony that these two lawyers were in the midst of plea negotiations at the time of the interview, which was conducted for the purpose of resolving the case (R. 328: 8, 25-26), as does the discussion between Brass and Nudd at the end of the interview, indicating that a decision from Huber would be forthcoming since the statement had been given (Exhibit 1, page 38).

The court found that the interview was conducted by a police officer who had no power to settle the case, and that the prosecutor, Sean Torriente, "was present, but have very little statements, if any, during the interview itself." (R. 155; R. 328: 95). The negative finding that Torriente had "very little statements, if any, during the interview" is clearly erroneous, and there is no evidence to marshal in support of it. Torriente contributed to Nudd's questions (Exhibit 16 page 22), and asked several key questions himself (Exhibit 16, pages 24-30).

This was a significant error, because rule 410<sup>3</sup> excludes from "any" civil or

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<sup>3</sup> Utah Rule of Evidence 410 provides:

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

criminal proceeding “any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.” Torriente was a prosecutor who directed Nudd during the interview and who asked many questions himself (Exhibit 16, 22-30), and both Torriente and Nudd were meeting with Fieeiki at the behest of Huber, and were both acting as his agents in taking Fieeiki’s statement to complete the plea bargaining or compromise process. See Exhibit 1, page 38, and further discussion of Melina, *infra*. Because all of Fieeiki’s statements were made to Torriente, they should have been suppressed under 410. See *id*.

The trial court found that Nudd “testified that there were no plea discussions with Mr. Brass on or before the September 9<sup>th</sup> interview.” (R. 156). This finding was partially clearly erroneous, because Nudd did not testify that there were no plea discussions at all, but testified instead, that he was not a party to the plea discussions, and that plea negotiations were not discussed with Nudd before or after the recorded interview (R. 328: 57). The transcript of the statements reflects Nudd’s knowledge that plea negotiations

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However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

were ongoing.<sup>4</sup>

The trial court found that Nudd “advised Mr. Fieeiki and his attorney that any statements given by Mr. Fieeiki were free and voluntary.” (R. 155). This finding is clearly erroneous and there is no evidence to marshal in support of it. At the outset of the interview, Nudd told Fieeiki that he had already reviewed Miranda with him, that Fieeiki had a right to talk to Brass, and then asked Fieeiki if he was giving the statement “willingly and of your own,” or “on your own” and Fieeiki agreed (Exhibit 16, page 1; hearing Exhibit 1, page 1).

The trial court found that Fieeiki’s testimony that he was reluctant to attend the interview and only did so after Brass encouraged him to do so contradicts Brass’s testimony (R. 157). This finding is clearly erroneous and there is no evidence to marshal in support of it, because no one ever asked Brass if Fieeiki was reluctant to attend the interview (R. 328: 5-26). Fieeiki’s reluctance to go give an incriminating taped statement

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Nudd: While those things are all things that I’m sure you will be bringing up and you can talk to Mr. Huber about.

Brass: Right. I figured you guys would do that so, do you know what time frame you guys are working with?

Nudd: Hopefully I’ll have a decision on this rather quick now that we got a statement.

Brass: All right, then. Thanks.

Nudd: I would suggest Ed, maybe you call him by Monday, see if he’s got a final decision.

Brass: Good enough.

Nudd: Thanks. Okay if there is nothing else we’ll go ahead and conclude.

(Hearing Exhibit 1).



to the prosecution, until his lawyer explained that it was strictly for purposes of settling the case (R. 328: 65-68), was entirely reasonable and is not inconsistent with Brass's testimony that Fieeiki went to the interview in an effort to settle the case and save his job (R. 328: 12, 14).

After reviewing the trial court's oral and written rulings admitting Fieeiki's statements, this Court should conclude that these many clear factual errors in the trial court's ruling render the ruling unreliable as a matter of law, and require reversal.

C. The Trial Court's Ruling was Legally Incorrect.

The trial court's ultimate conclusion was that Brass took Fieeiki to the interview with Torriente and Nudd in an effort to gain leniency, and that this was properly viewed as part of the investigation, rather than as part of the plea bargaining process (R. 158). This ruling largely hinged on the trial court's repeatedly expressed belief that if the interview were indeed part of the plea bargaining process, Mr. Brass should have duly noted this on the record and indicated that all statements made therein would be privileged (R. 328: 99; R. 158).

This conclusion and reasoning were incorrect as a matter of law, because the rules of evidence presumptively exclude such evidence and do not require defense attorneys to expressly invoke the rules or privileges during the course of plea negotiations and attempts to compromise cases. See Utah Rule of Evidence 408 (excluding "[e]vidence of

conduct or statements made in compromise negotiations”),<sup>5</sup> and rule 410 (excluding from “any” civil or criminal proceeding “any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.”).<sup>6</sup>

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<sup>5</sup> Utah Rule of Evidence 408 provides:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

<sup>6</sup> Utah Rule of Evidence 410 provides:

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or

The Utah rules are identical to their federal counterparts and it is appropriate to refer to federal sources in interpreting the Utah rules. See e.g., State v. Pearson, 818 P.2d 581, 583 (Utah App. 1991).

By reviewing United States v. Mezzanatto, 513 U.S. 196 (1995), this Court can readily confirm that, contrary to the trial court's reasoning that Brass should have invoked some privilege at the outset of the interview with Torriente and Nudd, the rules of evidence presumptively exclude such statements from evidence. In Mezzanatto, prior to cooperating with a prosecutor in a drug sting, the defendant agreed to waive the benefits of Fed. R. Evid. 410 and its identical counterpart in Fed. R. Crim. P. 11(e)(6) (since repealed), and thereby agreed that the statements he made could be used against him for impeachment purposes at trial. Mezzanatto, 513 U.S. at 198. The Ninth Circuit held that the protection of the rules could not be waived, but the United States Supreme Court reversed, recognizing that while the rules gave the defendant "the right" not to be impeached, he could waive that right if he did so in knowing and voluntary fashion. 513 U.S. at 200 and n.2, and 210. The Court recognized that early in criminal investigations, prosecutors may be in a delicate position of choosing which suspects to prosecute and which leads to follow, and in such situations may properly condition cooperation discussions on the defendants' waiving the right not to be impeached with the statements

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false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

they make during such discussions. Id. at 207-08. The Court noted that such agreements might encourage plea bargaining that might otherwise not occur. Id. at 209.

The Mezzanatto case demonstrates that the trial court was in error in his thinking that Brass had some obligation to overtly assert Fieeiki's rights under the rules of evidence in order to effectuate Fieeiki's rights, because the case indicates that there must be a voluntary waiver of the right not to be impeached. See id.

Review of the rules, their motivating policies, and case law from Utah and other jurisdictions confirms that Fieeiki's statement to Torriente and Nudd, made in the course of efforts to compromise and plea bargain the case, should have been excluded by Utah Rules of Evidence 408 and 410.

Rule 410 is designed to encourage candor and free dialogue in plea negotiations, which benefit both the government and the accused. E.g., United States v. Robertson, 582 F.2d 1356, 1365-66 (5<sup>th</sup> Cir. 1978).

Similarly, rule 408 is designed to save judicial resources by encouraging compromises and settlement of disputes. See Advisory Committee Notes to Fed. R. Evid. 408.<sup>7</sup>

A primary reason for excluding evidence of a compromise is to encourage non-litigious solutions to disputes. Admission of evidence of the settlement could work to discourage plaintiffs and defendants from settling with one or

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<sup>7</sup>Both of the Utah Rules mirror their federal counterparts, and it is appropriate to refer to federal sources in interpreting the Utah Rules. See, e.g., State v. Pearson, 818 P.2d 581, 583 (Utah App. 1991).

more of several codefendants. With today's burgeoning dockets and the absolute impossibility of Courts ever beginning to think that they might even be able to hear every case, the cause of justice is advanced by settlement compromises sheparded by competent counsel, whose experience as advocates makes them reliable predictors of litigation were it pursued to the bitter end.

Reichenbach v. Smith, 528 F.2d 1072, 1074 (5<sup>th</sup> Cir. 1976).

The need for efficient negotiation and compromise is nowhere greater than in the context of criminal law, where plea bargaining resolves the vast majority of all cases. As the court explained in People v. Brown, 177 Cal. App.3d 537 (Cal. App. 3d Dist. 1986),

"Plea bargaining has become an accepted practice in American criminal procedure, 'an integral part of the administration of justice in the United States [citation], 'essential to the expeditious and fair administration of justice.' [Citation.] The great majority of criminal cases are disposed of by pleas of guilty, and a substantial number of these pleas are the result of prior dealings between the prosecutor and the defendant or his attorney.' [Citation.] "Both the state and the defendant may profit from a plea bargain. The benefit to the defendant from a lessened punishment does not need elaboration; the benefit to the state lies in the savings in costs of trial, the increased efficiency of the procedure, and the further flexibility of the criminal process. Numerous courts, commissions, and writers have recognized that the plea bargain has become indispensable to the efficient administration of criminal justice. Professor Newman, in his study of plea bargaining, notes that 'A steady flow of guilty pleas and the corresponding avoidance of the time, expense, and uncertainty of trials is important to the smooth functioning of most criminal courts.... Plea negotiations, with bargains duly honored, is a device necessary to administration if a steady flow of guilty pleas is to maintained.' [Citation.]

"Plea bargaining also permits the courts to treat the defendant as an individual, to analyze his emotional and physical characteristics, and to adapt the punishment to the facts of the particular offense. [Citation.] In some cases, only the bargained reduction in the charge can enable the judge to exercise his discretion as to meaningful sentencing alternatives. The [American Bar Association, Standards Relating to Pleas of Guilty] note that

'Conviction of the offense actually committed may result in severe restrictions on the sentencing judge's discretion; for example, the offense may carry a high mandatory minimum sentence or may not be probationable. Trial judges are extremely critical of such restrictions, as they feel that by "accepting lesser pleas ... [there may result] a finer adjustment to the particular crime and offender than the straight application of the rules would permit." ' ' "

Brown at 546-47 (citations omitted).

The Tenth Circuit has recognized that the policy rationale behind rule 408 and the rule itself are properly applied in criminal prosecutions. See United States v. Bailey, 327 F.3d 1131, 1146 (10<sup>th</sup> Cir. 2003). The court explained the basis for this ruling:

The Federal Rules of Evidence apply generally to both civil and criminal proceedings; nothing in Rule 408 explicitly states that it is inapplicable to criminal proceedings; the final sentence is arguably unnecessary if the Rule does not apply to criminal proceedings at all; and the potential prejudicial effect of the admission of evidence of a settlement can be more devastating to a criminal defendant than to a civil litigant.

Id.

Given the importance of the plea bargaining process to the functioning of our criminal justice system, e.g. Brown, supra, Utah R. Evid. 408 should be applied in conjunction with rule 410 to block the admission of statements and conduct during the plea negotiation process in criminal cases. Compare State v. Mead, 2001 UT 58, ¶ 46, 27 P.3d 1115 (statements made in the course of efforts to settle a civil claim may be introduced in a criminal trial under Utah R. Evid. 408 on the theory that public interest in settling civil disputes is less important than public interest in criminal prosecutions) with

State v. Pearson, 818 P.2d 581 (Utah App. 1991), *infra*.

In State v. Pearson, 818 P.2d 581 (Utah App. 1991), this Court held that a criminal defendant was barred by Utah R. Evid. 410 from introducing evidence that the prosecution had extended a plea bargain offer to him, which he had rejected. Id. at 582-84. The Court reached this holding, despite the fact that the plain language of the rule only prohibits the introduction of evidence “against the defendant,” because fairness requires that both parties be prohibited from introducing evidence regarding plea negotiations, in order to serve the public policy of encouraging plea bargaining in criminal cases. Id. The Court relied on United States v. Verdoorn, 528 F.2d 103, 107 (8<sup>th</sup> Cir. 1976), which reached the same conclusion on similar facts under Federal Rule 408 and language parallel to that in Utah R. Evid. 410 found in a federal rule of criminal procedure. Pearson, 818 P.2d at 583 nn. 3 and 4.

Pearson supports excluding Fieeiki’s statements made during the course of efforts to compromise this criminal case in a plea bargain under Rules 408 and 410, because plea negotiations would otherwise surely be discouraged. See id.

In State v. Smedley, 2003 UT App 79, 67 P.3d 1005, in the course of finding a waiver of an issue regarding a defendant’s inquiries to police officers about potential plea bargains, the Court intimated that if there is evidence of an agency relationship between the prosecutors and interviewing police officers, the Court might consider excluding statement made to the police under Rule 410, which is normally only to apply to statement

made between defendants and prosecutors. Smedley, 2003 UT App 79 at ¶ 11 n.2.

This reasoning is correct and should be applied in this case, wherein the record shows that Fieeiki and his lawyer met with, and provided many answers to a prosecutor and a police officer, both of whom asked many questions, in order to obtain a decision from the prosecutor who arranged for the interview and would ultimately decide how to charge the case, when Fieeiki's lawyer and the charging prosecutor were in the midst of settlement negotiations (Exhibit 16, pages 22-30, Hearing Exhibit 1, page 38; R. 328 at 7-8, 25-26, 50). The mere facts that a police officer asked questions during the interview, with one prosecutor listening, and the lead prosecutor waiting for the interview, should not foreclose the application of Rule 410. See Smedley. Compare United States v. Melina, 868 F. Supp. 1178 (D. Minn. 1994) (finding that the defendant had an objectively reasonable subjective belief that the police officer he was speaking with was authorized to participate in plea bargaining), *infra*.

Detective Nudd is properly viewed as an agent of the prosecutors, because he was acting at their behest and under their direction in conducting the Fieeiki interview. See, e.g., Ivie v. Hickman, 2004 UT App 469, ¶ 11, 105 P.3d 946 (to be an agent, a person must be authorized to act on behalf of, and controlled by, the principal). John Huber required the interview as part of his negotiations with Brass, and absent Huber's making these arrangements, Brass would never have had Fieeiki attend an interview with Detective Nudd or any other officer (R. 328: 8, 25-26). These facts confirm the agency



nature of the relationship between Nudd and the prosecutors. See id.

It is well established in the law that a principal is liable for the acts of his agent within the scope of the agent's authority, irrespective of whether the principal is disclosed or undisclosed. The fact that an agent acts in his own name without disclosing his principal does not preclude liability on the part of the principal when he is discovered to be such by a third party who has dealt with the agent. This is true even though the third person dealing with the agent did not learn of the existence of the principal until after the bargain was completed.

Peterson v. Coco-Cola U.S.A., 2002 UT 42, ¶ 14, 48 P.3d 941 (citations omitted).

The mere facts that Mr. Huber routinely avoids talking directly to defendants to avoid making himself a witness, and had Brass and Fieeiki speak with Torriente and Detective Nudd (R. 328: 32), do not transmogrify the statements, which were clearly made in an effort to compromise the case with a plea bargain, into a standard police-suspect interview. Rather, this Court should hold that because Fieeiki provided his complete statement to both Torriente and Nudd, because Torriente asked many questions, and because both Nudd and Torriente were taking Fieeiki's statements in order for Huber to make the decision, Fieeiki's statement is excluded under both rules 408 and 410. See Smedley and Ivie, supra. Cf. Peterson, supra.

In assessing the admissibility of Fieeiki's statement under rule 410, this Court may find United States v. Melina, 868 F. Supp. 1178 (D. Minn. 1994), to be a useful guide. The Melina court began its analysis by explaining a two part test used to determine whether statement are properly viewed as part of a plea bargain process and excluded under federal rule 410:

A statement is made in the course of plea discussions if: (1) the suspect exhibits an actual subjective expectation that he is negotiating a plea at the time of the discussion; and (2) the suspect's expectation was reasonable given the totality of the circumstances.

Melina at 1181.

The Melina court considered the totality of the circumstances, and concluded that, given the information given to the defendant, that the officer was authorized to participate in the plea negotiations, it was objectively reasonable for the defendant to believe that his conversation with a police officer was part of the plea bargaining process. Id. at 1182-83.

In the instant matter, at the evidentiary hearing, Fieeiki expressed his subjective belief that his statement was strictly for plea bargaining purposes (R. 328: 65-68), and the record of that hearing and the transcript of the interview both demonstrate the objective reasonableness of this belief. During the interview, Detective Nudd was obviously acting with the prosecutor, Torriente, and Fieeiki came to the interview with his lawyer, Ed Brass, who told him beforehand that his statement was strictly going to be used in the negotiation process (R. 328: 65-68). The record demonstrates that the entire interview was conducted by Torriente, a prosecutor, and Nudd, in order to obtain a decision in the plea bargaining process from the charging prosecutor, Huber (e.g. Exhibit 1, page 38). In such circumstances, this Court should conclude that Fieeiki had a subjective belief that his statement would not be used outside of the plea bargaining process, which belief was objectively reasonable, given all facts and circumstances in the record. See Melina and Smedley, supra. See also United States v. Smith, 525 F.2d 1017, 1019-1022 (10<sup>th</sup> Cir.

1975) (explaining law requiring exclusion of defendant's plea negotiation statements to police officer before rule 410 was enacted).

Accordingly, and to insure the continuing efficiency and integrity of the plea bargaining process upon which our criminal courts so heavily rely, Fieeiki's statements should be excluded under rules 408 and 410. See Pearson, *supra*.

## II. THE ERRONEOUS ADMISSION OF FIEEIKI'S STATEMENTS REQUIRES A NEW TRIAL.

The trial court's error in admitting Fieeiki's statements was prejudicial. The prosecutor relied very heavily on Fieeiki's plea bargaining statements in opening statement (R. 325: 74-77), in cross-examining Fieeiki (R. 325: 182-94), and in closing argument (R. 325: 209-220).

By reviewing the statements in the addendum to this brief, this Court can readily understand why the prosecutor relied so heavily thereon: the settlement interview was by far the most damaging evidence presented against Fieeiki, and effectively required him to testify to ameliorate the statements. See Addendum.

Errors which affect the overall framework of a trial, rather than the evidentiary balance, which involve basic protections essential to fair and reliable criminal trial and punishment, and do not lend themselves to traditional evidence-based prejudice analysis, are properly characterized and treated as structural errors. See, e.g., Arizona v. Fulminante, 499 U.S. 279, 309-10 (1991)).

The error in this case is properly characterized as structural, because it involved Fieeiki's unknowing waiver of his rights against self-incrimination and to effective assistance of counsel, because he made the damning statement while under the belief that the statement would be used solely for plea bargaining purposes (R. 325: 65-68), and then it was used as the key evidence in his prosecution, which severely limited what trial counsel was able to do in his defense. As argued by trial counsel and acknowledged by the prosecutor, the admission of the statements tied the hands of trial counsel and interfered with Fieeiki's right to effective assistance (R. 328: 42, 86). As recognized by the prosecutor, the statement converted a questionable case with an alleged victim who was not cooperating with the prosecution into a "slam dunk" for the prosecution (R. 328: 40). See Fulminante, supra.

The jurors, who convicted Fieeiki of the lesser included class B misdemeanor assault (R. 197), which was erroneously defined in the exact same terms as the class A misdemeanor assault (R. 212, 217), were clearly sympathetic to Fieeiki. Had they not been improperly exposed to Fieeiki's admissions made during the course of plea bargaining, and had the defense case not been necessarily shaped around that statement, the jurors may have weighed weaknesses in the government's case against the benefit to the Fieeiki family and our community of Fieeiki keeping his job as a Metro Gang Detective and Highway Patrol Officer, and acquitted Fieeiki altogether.


Accordingly, this Court should hold that the error was structurally and evidentially

prejudicial.

CONCLUSION

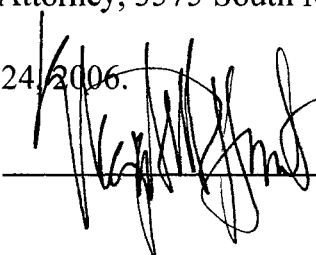
This Court should order a new trial wherein Fieeiki's statements to Torriente and Nudd are not admitted.

Respectfully submitted this April 24, 2006.

  
\_\_\_\_\_  
Elizabeth Nunt  
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing, first class postage pre-paid to the West Valley City Attorney, 3575 South Market Street, 2<sup>nd</sup> Floor, West Valley City, Utah 84119, this April 24, 2006.

  
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## ADDENDUM

## TRIAL COURT'S ORAL RULING

1     there's no attorney with Ed Brass's experience that I  
2     can think of that would ever come in and give this  
3     kind of a statement without the reason of a plea  
4     negotiation. And, therefore, the motion in limine  
5     should be granted.

6             THE COURT: Okay. Thank you, Counsel.  
7     I'm going to make some findings of fact. And I'll  
8     make a finding that on September 9, 2003 the  
9     Defendant appeared with Mr. Brass at the office of  
10    the West Valley City Prosecutor's office in  
11    connection with a domestic violence assault. He was  
12    interviewed by Detective Kevin Nudd of the West  
13    Valley City Prosecutor's office. Mr. Brass was  
14    present and accompanied the Defendant during the  
15    entire interview. That interview was conducted in  
16    the office of, I believe, Mr. Sean Torriente, who was  
17    a prosecutor at West Valley City.

18            At the time the interview was conducted on  
19    September 9th, 2003, no criminal charges had been  
20    filed. And, in fact, the testimony from Mr. Huber is  
21    that he was contacted by Mr. Brass and asked for this  
22    meeting before charges were filed.

23            Detective Nudd interviewed Mr. Fieeiki.  
24    He was not empowered, didn't have authority to enter  
25    into any plea bargain or compromise on behalf of the



1     Prosecutor's office. Mr. Torriente was present, but  
2     had very little statements, if any, during the  
3     interview itself. The interview was recorded. And  
4     there was an agreement that it could be recorded.

5             When Detective Nudd asked if he understood  
6     he had the right to talk to his attorney and he was  
7     giving his statement willingly and of his free accord  
8     the Defendant responded affirmatively. He was not in  
9     custody during the interview and he was free to leave  
10    at any time. The recording was transcribed.

11            And the question for this Court is whether  
12    or not the interview, which is the subject of this  
13    motion, was part of a plea negotiation process or  
14    whether it was part of the investigation.

15            As I listened to the testimony today, I  
16    have a lot of conflicting evidence. Mr. Brass  
17    indicated the purpose of the meeting was for the  
18    Defendant to present his side so the prosecution  
19    could determine what they were going to do, whether  
20    they would improve the plea in abeyance offer that he  
21    said had previously been given.

22            Mr. Huber indicated that as a courtesy to  
23    Mr. Brass, he agreed to have the interview before he  
24    made a final charging decision in this case. He  
25    indicated that there was no plea negotiation

1 discussed, did not offer a plea in abeyance, which  
2 was contradictory to by the statements of Mr. Brass  
3 and Mr. Fieeiki, although I don't know that that  
4 really is a point that is all that germane as to  
5 whether or not a plea bargain had been offered at the  
6 time the interview itself was conducted.

7 By stipulation there was no plea  
8 discussion with Mr. Brass and Mr. Torriente prior to  
9 the interview on September 9th, 2003. Mr. Nudd also  
10 testified there was no plea negotiation, ever  
11 discussed before or after the interview. And in  
12 reading through the interview itself, the Court finds  
13 there was nothing discussed in the interview itself  
14 that was recorded about plea negotiations.

15 Mr. Fieeiki testified that it was not his  
16 desire to have the interview, and Mr. Brass was the  
17 one that encouraged that, which is in contradiction  
18 to what Mr. Brass indicated.

19 In essence, as I listened to Mr. Drake,  
20 his argument is that Mr. Brass, with his knowledge  
21 and experience, would not take Mr. Fieeiki into the,  
22 quote, lion's den to make the statement go from a  
23 reasonable probability of success to a "slam dunk"  
24 case, or questionable success into a "slam dunk"  
25 case.

1           After being in the criminal justice system  
2 on one side or the other for almost three decades,  
3 there are a lot of reasons why defense attorneys meet  
4 with prosecutors. And in all my years, almost 30, I  
5 can't recall a single incident where anyone has  
6 challenged the discussions between a Defendant and a  
7 police officer as part of a plea negotiation  
8 situation, that it should be excluded from evidence  
9 on the basis that it was a plea negotiation or  
10 discussion.

11           Mr. Huber testified that in his eight  
12 years as a prosecutor, I believe he said that about  
13 three times a year someone will come in and want to  
14 make a statement, as was done in this case. And in  
15 this Court's opinion, based on this Court's  
16 experience, a lot of times defendants want to come in  
17 for the very reasons Mr. Brass indicated, and that is  
18 they think it's the honorable thing to do. They want  
19 to put their side of the case on the record. They  
20 feel that if they cooperate that there will be  
21 leniency demonstrated by the prosecutorial authority.

22           I have the greatest respect for both  
23 Mr. Brass and Mr. Huber. I know both of them and  
24 have known both of them for many, many years. And  
25 they are the highest quality of attorney. And there

1 are simply reasons why attorneys do things. They  
2 have their strategies. They have their reasons for  
3 doing things. And sometimes they work and sometimes  
4 they don't.

5 But as I make a decision whether or not  
6 this interview on September 9th was for purposes of  
7 plea negotiations or simply for further  
8 investigation, I have to look primarily at the  
9 recording of the interview itself. And looking at  
10 that, there are a number of factors that I find most  
11 persuasive.

12 First of all, there is nothing - and I've  
13 read through the entire interview - that I can find  
14 where there is any indication whatsoever that there  
15 was an expectation of a negotiated plea during the  
16 interview. There is nothing in terms of language  
17 that one would expect to see during the interview if,  
18 in fact, it was for the purpose of plea negotiation.  
19 Reduced charge, negotiated settlement, plea  
20 agreement, plea offer, deal, plea in abeyance, there  
21 is none of that language that is part of the  
22 interview itself. It just simply is nonexistent.

23 And I would certainly expect that if this  
24 were, in fact, part of a plea negotiation statement,  
25 the first thing that would happen is when the parties

1 got together there would be a statement that this  
2 interview is conducted pursuant to plea negotiation,  
3 and all and any representations made will be  
4 protected and privileged. And that was not done in  
5 case. In fact, nothing was ever said about any plea  
6 negotiations.

7 This appears, to this Court, from reading  
8 the interview, that it is simply an opportunity given  
9 to Mr. Fieeiki to explain his side of this incident  
10 and where he's coming from, which is certainly  
11 consistent with Mr. Brass's testimony that his client  
12 felt like it was the honorable thing to do in his  
13 profession, to come clean, to explain his side of the  
14 story. He hadn't had an opportunity to do so prior  
15 to the time this interview took place, and he wanted  
16 to clarify the record.

17 And, again, I think that it's a strategy  
18 that did not work in this case, but on many occasions  
19 it is a very successful strategy. If you have an  
20 attorney that is well regarded and has a lot of  
21 credibility, and I think a lot of times leniency is  
22 afforded under those circumstances. In this setting  
23 it wasn't, but that doesn't mean it was part of a  
24 negotiation.

25 I think it was simply part of the

1 investigation that was conducted by West Valley City  
2 and, I do not find that it, in fact, is part of the  
3 plea negotiation process. The record is completely  
4 devoid of anything that would indicate that would be  
5 the fact.

6 Accordingly, I'm going to deny the motion  
7 to exclude Defendant's statements of September 9,  
8 2003.

9 Mr. Robinson, I'm going to ask that you  
10 prepare findings and an order to that effect.

11 Mr. Drake, I know that you were not the  
12 counsel when we argued the prior motions in this  
13 case, but there were motions previously made  
14 regarding hearsay statements as it related to the  
15 physician who treated Mrs. Fieeiki. And I ruled that  
16 those statements were, in fact, privileged.

17 And on two occasions Mr. Skordas indicated  
18 that he would prepare the findings and the order.  
19 And on May 20th, the docket reflects -- yeah, May  
20 20th, the Court orders Defendant to prepare an order.

21 Then on August 23rd of 2004, this time  
22 there had been a motion to reconsider the Court's  
23 position filed by the City, I again ruled against the  
24 City on August 23rd. And I again asked that  
25 Mr. Skordas prepare the findings of fact and

## TRIAL COURT'S WRITTEN RULING

12  
11/6  
8:30

Ryan Robinson (8507)  
West Valley City Prosecutor's Office  
3575 South Market Street, 2<sup>nd</sup> Floor  
West Valley City, Utah 84119  
(801) 963-3331 Fax: (801) 963-3528

FILED  
04 DEC -1 PM 2:40  
THIRD DISTRICT COURT  
WEST VALLEY DEPT.

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**IN THE THIRD DISTRICT COURT, STATE OF UTAH**  
**SALT LAKE COUNTY, WEST VALLEY DEPARTMENT**

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<b>WEST VALLEY CITY</b>	)	<b>FINDINGS AND CONCLUSIONS</b>
	)	<b>TO DEFENDANT'S MOTION</b>
Plaintiff,	)	<b>TO EXCLUDE STATEMENTS</b>
	)	<b>GIVEN DURING</b>
vs.	)	<b>INVESTIGATIVE INTERVIEW</b>
	)	
<b>STANLEY FIEEIKI</b>	)	Case No. 041100172
	)	
Defendant	)	Judge Terry Christiansen
	)	

---

**INTRODUCTORY STATEMENT OF FACTS**

On September 9<sup>th</sup>, 2003, Stanley Fieeiki and his attorney, Edward Brass, met with West Valley City Detective Kevin Nudd at the West Valley City Prosecutor's Office. Prior to this date, Mr. Brass had arranged a meeting between Mr. Fieeiki and Detective Nudd, in connection with a domestic violence assault that Mr. Fieeiki had been involved in. At the time of the meeting, Mr. Fieeiki had not been formally charged with the assault.

The meeting between Mr. Fieeiki and Detective Nudd took place in Shawn Toriente's office. Mr. Toriente, who at the time was a West Valley City Prosecutor, was also present during the meeting, but made very few statements, if any. Mr. Brass accompanied his client throughout the entire interview.

Prior to Mr. Fieeiki's statements, Detective Nudd advised Mr. Fieeiki and his attorney that any statements given by Mr. Fieeiki were free and voluntary. Detective

**000155**



Nudd also advised Mr. Fieeiki that he could stop the meeting and speak with Mr. Brass at any time. Detective Nudd also reminded Mr. Fieeiki and Mr. Brass that the interview was going to be recorded, per their agreement with the City Prosecutor's Office. Although Detective Nudd conducted the interview, he did not have the authority to enter into any plea bargains or compromises on behalf of the West Valley City Prosecutor's Office.

During this interview, Mr. Fieeiki made numerous incriminating statements. The question for this court is whether the statements made by Mr. Fieeiki were part of a plea negotiation, or whether the statements were simply part of an ongoing investigation that was being conducted by West Valley City.

#### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. Mr. Brass testified that the purpose of the September 9<sup>th</sup> meeting was to give Mr. Fieeiki the opportunity to explain his side of the story so the prosecution could make an appropriate charging decision. Mr. Brass thought Mr. Fieeiki's statements may have improved a plea in abeyance offer that was previously given.
2. In contrast, Mr. Huber testified that as a courtesy to Mr. Brass, Mr. Huber agreed to have the interview before he made a final charging decision on the case, but that he had never discussed a plea in abeyance with Mr. Brass.
3. By stipulation, Mr. Toriente did not discuss the possibility of a plea in abeyance with Mr. Brass prior to September 9<sup>th</sup> interview.
4. Detective Nudd further testified that there were no plea discussions with Mr. Brass on or before the September 9<sup>th</sup> interview.

5. Mr. Fieeiki testified that it was not his desire to have the interview with Detective Nudd. He testified that he only did so because Mr. Brass encouraged him to do so. This fact contradicts Mr. Brass' testimony.
6. In essence, Mr. Drake's argument is that Mr. Brass, with all of his knowledge and experience, would not have taken his client into the "lion's den" and let his client make incriminating statements unless he thought they were being made as part of a plea negotiation.
7. Mr. Huber testified that in his eight years of experience as a prosecutor, that approximately three defendants per year will go to the City Prosecutor's Office and make a statement regarding their case. In the court's opinion, defendants usually do this because they feel that if they cooperate with the City Prosecutor's Office, that leniency will be demonstrated in return
8. In making a decision as to whether or not this interview was for the purpose of a plea negotiation or for further investigation, the court has to look primarily to the recording of the interview itself. In looking at the record, the court finds a number of factors persuasive.
9. First, after reading through the transcripts of the interview, there are no terms in the transcripts that would indicate that a plea agreement was taking place or that a plea agreement was anticipated.
10. If this interview were indeed a plea agreement, there are certain terms one would expect to see. These terms include "reduced charge," "negotiated settlement," "plea agreement," "deal," or "plea in abeyance." In this case, none of these terms are present.

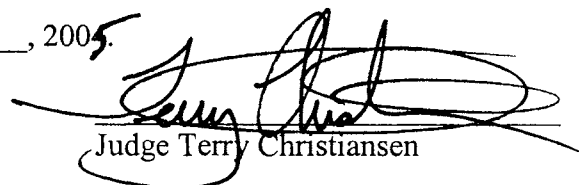
11. Additionally, it is expected that the parties would clearly state that a plea negotiation was taking place, and that all statements made during the course of the negotiation were protected and privileged. This was not done in this case. In fact, nothing was said about a plea negotiation at all.
12. This meeting simply appears to be an opportunity for Mr. Fieeiki to explain his side of the incident, which is consistent with Mr. Brass' testimony.
13. It appears as though Mr. Fieeiki felt that "coming clean" was the honorable thing to do in this case due to his profession. Before this meeting, Mr. Fieeiki had not have an opportunity to clarify the record and explain his side of the story. This meeting gave Mr. Fieeiki that opportunity
14. Often, if you have an attorney that is well regarded and that has a lot of credibility, leniency is afforded to a defendant that is represented by such an attorney if the defendant comes forward. In this case, leniency was not afforded, but that does not mean that the meeting was a plea negotiation.
15. I do not find that the statements made by the defendant were made as part of a plea negotiation. Rather, I find that the defendant's statements were made during an ongoing criminal investigation, which was conducted by West Valley City.

### **ORDER**

ACCORDINGLY, the court having made its Findings of Fact and Conclusions of Law, orders the following;

1. That the defendant's motion to exclude evidence is denied.

Dated this 6 day of Jan., 2005.

  
Judge Terry Christiansen

**000158**

## **CERTIFICATE OF MAILING**

I certify that a true and correct copy of the foregoing was mailed postage prepaid to the following addresses on December 1<sup>st</sup>, 2004.

**David Drake**  
**6905 South 1300 East #248**  
**Midvale, Utah 84047**

**David Brown**  
**2880 West 4700 South #F**  
**West Valley City, Utah 84118**

**Greg Skordas**  
**9 Exchange Place #1104**  
**Salt Lake City, Utah 84111**

RESPECTFULLY SUBMITTED:

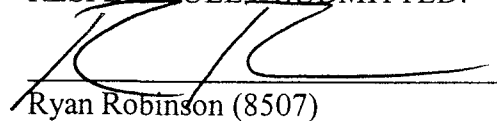
  
Ryan Robinson (8507)

EXHIBIT 6 - FIEEIKI'S STATEMENT TO THE PROSECUTOR AND  
DETECTIVE

September 9, 2003

WVPD Case No. 03I056524

Interviewer: Kevin Nudd

Suspect: Stanley Faeiki

Others Present: Sean Torriente, Deputy City Prosecutor

Ed Brass, Attorney for Defendant

NUDD: OKAY THIS IS UH, SEPTEMBER 9, 2003 THE TIME IS JUST AFTER 9:30 IN THE MORNING THIS. IS KEVIN NUDD FROM THE WEST VALLEY CITY ATTORNEY'S OFFICE. WE'RE IN THE OFFICE OF SEAN TORRIENTE A CITY PROSECUTOR. AND WITH US THIS MORNING IS ED BRASS REPRESENTING STANLEY IS IT... FAEEKI? OKAY. AND UH, STAN IS HERE TO GIVE A STATEMENT REGARDING AN INCIDENT WHICH OCCURRED HERE IN WEST VALLEY CITY.

STAN YOU UNDERSTAND THIS IS BEING RECORDED THIS MORNING?

FAEEIKI: YES I DO.

NUDD: OKAY  
UM, HAVING ALREADY REVIEWED WITH YOU AND YOUR ATTORNEY, MR. BRASS. I'M NOT GOING TO READ THE MIRANDA RIGHTS TO YOU. DO YOU UNDERSTAND THAT UH, YOU HAVE THE RIGHT TO TALK TO HIM AND THAT YOU'RE GIVING THIS UH STATEMENT WILLINGLY AND OF YOUR OWN.

FAEEIKI; I DO.

1 NUDD: OKAY.

2 ANYBODY COERCED YOU OR MAKING YOU GIVE THIS STATEMENT  
3 THIS MORNING?  
4

5 FAEEIKI: NO.  
6

7 NUDD: OKAY.

8 WHAT WE WOULD LIKE TO DO IS HAVE YOU REVIEW WITH US UH,  
9 BASICALLY GIVE YOUR SIDE OF THE STORY. THE INCIDENT THAT  
10 TOOK PLACE BACK UH, THE EXACT DATE WAS AUGUST 4<sup>TH</sup>. UM,  
11 WHERE WEST VALLEY CITY POLICE OFFICER'S RESPONDED TO  
12 \* YOUR HOUSE. THEY TOOK A REPORT THAT EVENING, WEST<sup>valley</sup>CASE  
13 NUMBER 03I0056524. UM, DO YOU REMEMBER OFFICER'S MAKING  
14 CONTACT WITH YOU THAT NIGHT?  
15

16 FAEEIKI: YES.  
17

18 NUDD: OKAY. WHAT I'D LIKE YOU TO DO, WITHOUT ME ASKING A LOT OF  
19 QUESTIONS IS JUST UH, REVIEW THE DETAILS OF WHAT YOU  
20 REMEMBER THAT NIGHT, FROM THE POINT YOU ARRIVED HOME  
21 UNTIL OFFICERS UH MADE CONTACT WITH YOU. CAN YOU DO THAT  
22 FOR US?  
23

24 FAEEIKI: SURE.  
25

26 NUDD: OKAY. JUST GO AHEAD AND TELL US WHAT YOU REMEMBER THAT  
27 EVENING ABOUT THE TIME YOU ARRIVED HOME UNTIL THE  
28 OFFICERS ARRIVED.  
29

FAEEIKI: I WAS IN MY BEDROOM ABOUT UH 9:30 ISH UH WATCHING A  
MOVING. UM, THE NEIGHBORS HAD CAME OVER WITH A MOVIE  
AND UH, HE JUST LEFT. IT WAS ALMIGHTY, BRUCE ALMIGHTY.  
AND UH, I JUST BARELY PUT IN THE MOVIE AND I WATCHING IT AND  
HE UH, ABOUT MAYBE UH ABOUT TEN, FIFTEEN MINUTES INTO THE  
MOVIE. UM, MY WIFE COMES IN THE ROOM, SITS TO THE LEFT OF ME  
ON THE FLOOR, I'M ALSO SITTING ON THE FLOOR. STATES, WELL  
SHE MAKES THE REMARK UH, THAT WHY DIDN'T WE WATCH THE  
MOVIE WITH HER UM, OF COURSE <sup>it was somewhat of a</sup> ~~(INAUDIBLE)~~ THE WAY OR. WE  
JUST STARTED ARGUING BECAUSE UH, SHE DIDN'T KNOW THE  
NEIGHBOR CAME OVER AT ALL. UM WE DIDN'T GO PICK UP THE  
VIDEO FROM BLOCKBUSTER SO I TOLD HER "WELL OKAY, I'M  
SORRY." AND SHE WENT FROM THAT THERE TO SAYING THAT SHE  
WAS DEPRESSED AND UH PROBLEMS IN THE PAST THAT WE'VE HAD.

I TOLD HER THAT UM, I KNEW WHERE THIS WAS GOING JUST FROM  
PAST EXPERIENCES AND HAVING TO TALK ABOUT <sup>this certain problem and</sup> ~~(INAUDIBLE)~~  
ISSUES. UM LET'S SEE IT WAS ABOUT 9:30 I HAD TO BE AT TRAINING  
THE NEXT MORNING ABOUT 7:00 <sup>over at</sup> ~~FOR~~ P.O.S.T. I TEACH UH,  
DEFENSIVE TACTICS <sup>Instructor school</sup> UM, I HAD ~~also~~ <sup>gone</sup> WOKEN UP EARLY THAT  
MORNING TO ATTEND UH SCHOOL ALSO THAT  
MORNING...TRAINING. AND I GUESS MY WIFE WAS JUST A LITTLE  
OVERWHELMED BECAUSE THE WEEK PRIOR, JUST THAT WEEK  
PRIOR I WAS GONE. I WENT UP TO THE OGDEN S.W.A.T. TRAINING. I  
WAS UP THERE FOR ABOUT A WEEK. UM, I'M SURE YOU'RE  
FAMILIAR WITH THAT TRAINING IT'S PRETTY <sup>a lot of sleep</sup> ~~(INAUDIBLE)~~  
DEPREVATION. I AVERAGED ABOUT, THE WHOLE ENTIRE WEEK I  
GOT ABOUT SEVEN HOURS OF SLEEP. SEVEN TO EIGHT HOURS OF  
SLEEP. SO WHEN I HAD RETURNED BACK, I WAS PRETTY MUCH



EXHAUSTED AND, UM, WE HAVE SIX CHILDREN SO SHE WAS AT  
HOME WITH THE CHILDREN AND PRIOR TO MYSELF, PRIOR TO SIGN  
UP FOR ALL THIS TRAINING I HAD SPOKEN TO HER...ABOUT, OKAY  
I'M GOING TO BE GONE THIS ENTIRE WEEK. <sup>that</sup> ~~SHE~~ HELL WEEK WHICH  
IS IN OGDEN WHEN I COME BACK <sup>I'll</sup> I'M GOING TO BE GOING TO  
INSTRUCTOR'S SCHOOL FOR ANOTHER WEEK, AND UH, WE KIND OF  
TALKED ABOUT, ABOUT THAT THERE'S NO OTHER TIME THAT I CAN  
ATTEND IT, UH THESE TRAININGS, AND SHE SAID YEAH,  
EVERYTHING IS FINE, BECAUSE WE WERE PLANNING ON TAKING A  
VACATION AT THE END OF THE MONTH WHEN THE TRAININGS  
DONE. SO...UM...I GUESS WITH HER JUST BEING ALONE AT HOME  
WITH THE SIX KIDS, HER STRESS LEVEL WENT UP, AND UM, WE  
DIDN'T GET TO TALK MUCH A FEW DAYS UNTIL MONDAY NIGHT,  
CAME BACK FROM TRAINING, CAME HOME UM, SHE WAS DOING  
DAYCARE SO SHE WAS PRETTY BUSY. <sup>So after</sup> ~~(INAUDIBLE)~~ DAY CARE I  
CAN'T REMEMBER IF I WENT OFF SOMEWHERE, SHE WENT OFF  
SOMEWHERE BUT UH, IT WAS THE FIRST CHANCE SHE GOT TO TALK  
TO ME UH SINCE <sup>Coming back</sup> ~~(INAUDIBLE)~~ WAS THAT INCIDENT. IT WAS THAT  
MONDAY...MONDAY NIGHT ABOUT 9:30. AND UH...UM, JUST FROM  
MY PAST EXPERIENCE, I DIDN'T WANT TO ARGUE I, I DIDN'T WANT  
DIDN'T WANT TO STAY UP THE WHOLE NIGHT SO I LET HER KNOW  
THAT I DIDN'T WANT TO ARGUE SO I TURNED OFF THE VIDEO AND I  
WENT DOWNSTAIRS TO MY OFFICE. I WAS THERE FOR MAYBE HALF  
AN HOUR. I DID THAT TO SEPARATE MYSELF UM, I THOUGHT IT  
WOULD HELP, AND UH, ABOUT A HALF AN HOUR LATER MAYBE  
ABOUT 10 ISH, I CAME BACK UPSTAIRS, UM, BACK INTO OUR  
BEDROOM. AND WHEN I WALKED INTO THE BEDROOM SHE WAS  
SITTING DOWN STILL. RIGHT THERE IN THE SAME SPOT ON THE  
FLOOR. I COULD FEEL THAT SHE WAS STILL UPSET. SO I DIDN'T SAY

A WORD TO HER. I PROCEEDED TO OUR BATHROOM, WHICH IS JUST OFF THE... MASTER BATH, WHICH IS JUST OFF THE MASTER BEDROOM. WHEN I WALKED IN, I HAD NOTICED QUITE A MESS THAT HAD OCCURRED. SHE HAD THROWN A LOT OF STUFF AROUND, UM, REAL BIG MESS.

NUDD: IN YOUR ROOM, OR...

FAEEKI: IN THE BATHROOM. IN THE BATHROOM. I WAS WALKING INTO THE BATHROOM TO TAKE A SHOWER. <sup>Saw her</sup> I WALK INTO THE BATHROOM, I NOTICED THE MESS... SHE <sup>the</sup> COUNTERTOP, THE COUNTERTOP, <sup>everything on the</sup> SHAMPOO BOTTLE, GLASS, RAZORS, EVERYTHING <sup>all over the trash can empties,</sup> ON THE FLOOR. (INAUDIBLE), LAUNDRY BASKET, JUST EVERYTHING. UH, OUR STUFF THAT WE HAD IN THE TUB WAS ALL SWUNG AROUND AND SO, SHE WAS TRYING TO GET MY ATTENTION. UH, I GUESS MAYBE TO ARGUE OR TALK.

I CAME OUT OF THE UH, BATHROOM AND UH SOMEWHAT YELLED AT HER. I SAID "AREN'T YOU GOING TO CLEAN THIS UP"? AND THAT'S WHEN SHE STARTED TO SWEARING. UM, AND AGAIN, I TRIED TO CONTROL MYSELF (INAUDIBLE) YOU KNOW, I CAN DO THIS I TURNED RIGHT BACK AROUND WENT BACK INTO THE BATHROOM, CLEANED UP THE MESS. IT TOOK ME ABOUT HALF AN HOUR. AND, TOOK MY SHOWER.

AFTER MY SHOWER I GOT OUT OF THE BATHROOM, WALKED OUT INTO OUR BEDROOM. AND WAS WALKING INTO OUR WALK-IN CLOSET. THAT'S WHERE I KEEP ALL MY CLOTHES. I WAS WALKING INTO THE WALK-IN CLOSET AND I NOTICED THAT SHE HAD MOVED

1 INTO THE CLOSET.

2  
3 THE DOOR WAS CRACKED OPEN AND SHE WAS INSIDE. AND I  
4 COULD SEE THAT SHE WAS SITTING ON THE GROUND. AND SHE WAS  
5 GOING THROUGH A BOX OF FAMILY PICTURES. UH, WELL SHE  
6 KNOWS...SHE WAS TRYING TO PUSH ALL MY BUTTONS AGAIN. SO,  
7 ~~it~~ AGAIN WITH THE MESS IN THE A BATHROOM AND <sup>with</sup> THE FAMILY  
8 PICTURES...UH...IN THE PAST WHEN WE HAVE GOT INTO  
9 ARGUMENTS, SHE WOULD GET INTO OUR FAMILY PICTURES WHICH  
10 IS VERY PERSONAL TO ME, BECAUSE I HAVE TAKEN A LOT OF THOSE  
11 PICTURES OF OUR CHILDREN AND US.

12  
13 SHE WOULD PRETTY MUCH DESTROY OUR FAMILY PICTURES. SHE  
14 HAS IN THE PAST. AND SO SHE HAD ALL OUR PICTURES ON THE  
15 GROUND AND I WAS LIKE...YOU KNOW, AND THEN I JUST ASKED HER  
16 YOU...YOU KNOW...DON'T RUIN THE PICTURES, PLEASE DON'T RUIN  
17 THE PICTURES. THEN I ALSO NOTICED THAT SHE HAD ALSO TORE  
18 DOWN UM, SOME OF MY CLOTHES, A TIE RACK THAT WE HAD...SHE  
19 HAD PULLED THEM DOWN. UM...AGAIN SHE WAS CUSSING,  
20 SWEARING. CALLING ME A LOT OF BAD NAMES. I CAREFULLY  
21 COLLECTED MY CLOTHES FROM THE CLOSET AND CLOSED THE  
22 DOOR, AND WALKED BACK INTO THE BATHROOM AND GOT READY.  
23 DRESSED MYSELF. AND THEN AFTER THAT I CAME BACK INTO THE  
24 ~~UH~~ <sup>Master</sup> ~~BASTER~~ BEDROOM AND TURNED ON THE ALARM. THE LIGHTS  
25 WERE ALREADY OFF AND UM, I LIED DOWN IN MY BED, AND FELL  
26 ASLEEP.

27  
28 I WAS ON THE RIGHT SIDE OF THE BACK LAYING ON MY BACK, AND I  
29 WOULD SAY I WAS ASLEEP FOR ABOUT TWENTY, THIRTY

1 MINUTES...MY WIFE SAYS...IT WAS PROBABLY ABOUT THAT TIME  
2 UM, SHE STATES THAT SHE CAME OUT. SHE TOLD ME SHE TOLD THE  
3 DETECTIVE, YOU CAN FOLLOW-UP ANY OF THAT...THAT SHE CAME  
4 ~~✱~~ OUT FROM THE CLOSET AND SAT ON THE BED...<sup>I was lying</sup> ~~(INAUDIBLE)~~ LIKE  
5 THIS AND I WAS A SLEEP. SHE CAME ACROSS THE LINE AND SAT  
6 JUST RIGHT BY MY FEET. AND WHAT I REMEMBER WAS UM,  
7 WAKING UP TO PAIN. AND I HONESTLY CAN'T SAY WHAT...WHAT...IT  
8 WAS...A KICK, HIT, SCRATCH OR WHAT CAUSE I WAS ASLEEP. I  
9 CAN'T REMEMBER...I JUST REMEMBER WAKING UP TO PAIN AND  
10 WHEN I WOKEN UP, THE ROOM WAS DARK AND I SAW MY WIFE,  
11 KIND OF LIKE LUNGING OVER ME. I FELT THREATENED. I FELT I  
12 WAS GOING TO BE ATTACKED.

13  
14 SHE WAS SWEARING STILL, YELLING AT THE TOP OF HER VOICE AND  
15 MY IMMEDIATE RESPONSE WAS TO PROTECT MYSELF. THAT'S  
16 WHAT I DID. SO I SLAPPED MY WIFE WITH AN OPEN HAND, WITH MY  
17 RIGHT...MY RIGHT HAND. SLAPPED HER ACROSS THE FACE AND  
18 THEN I JUST GOT UP LIKE THIS, A SLAP ON THE FACE AND SHE A  
19 ~~✱~~ FALLS. TO <sup>the left side of where her head is at</sup> ~~(INAUDIBLE)~~ AND I PROCEED TO WHERE SHE IS AT, AND I  
20 GUESS MY NATURAL INSTINCTS JUST KIND OF KICK IN UM, I'M  
21 EXHAUSTED, IT'S DARK, AND MY NATURAL INSTINCTS IS..."HEY  
22 YOU'RE BEING THREATENED." AND, JUST BEING A POLICE OFFICER  
23 UM, FIRST UM, THING THAT YOU LOOK FOR IS THE PERSON'S HANDS.  
24 GET THEIR HANDS OUT. SO I WAS TRYING TO GET HER HANDS OUT  
25 ~~✱~~ AND SHE <sup>wasn't</sup> ~~WAS~~ REALLY LIKE COMPLYING. AT THE SAME TIME I SAID  
26 I WAS EXHAUSTED I WAS COMING UP FROM MY SLEEP.

27  
28 I PUNCHED HER THREE OR FOUR TIMES ON THE BACK, UM, AND AS  
29 ~~✱~~ YOU CAN SEE HOW ~~IF~~ IS...SHE WAS KIND OF LIKE THAT. SO...I

Ed

1 DIDN'T WANT TO HIT HER...I THINK I SLAPPED HER MAYBE ONE  
2 MORE TIME IN THE FACE. I DIDN'T WANT TO LIKE HIT HER AGAIN IN  
3 LIKE THE FACE OR LIKE IN THE STOMACH ANYWHERE SO I WAS  
4 TRYING TO CAUSE MINIMAL DAMAGE TO HER. SO IF I PUNCH HER IN  
5 THE BACK...KIND OF LIKE...IF I WERE TO PUNCH ED NOW FROM THE  
6 BACK, FROM THE SIDE UH, I SAY ON THE THIRD OR FOURTH TIME I  
7 STRUCK HER UM, SHE URINATED. THAT'S WHEN I FELT UH...THAT  
8 SHE HAD URINATED. AND I JUMPED OFF THE BED AND AT THIS  
9 TIME, THE ROLES KIND OF CHANGED. OF COURSE I WAS MAD. I  
10 \* WAS ~~NOT~~<sup>now</sup> SWEARING. I WAS SAYING "GOSH YOU KNOW I TRY, I  
11 TRIED MY BEST. I CAME UPSTAIRS I CAME IN THE ROOM AND YOU  
12 WERE PRETTY MUCH, WITH THE VIDEO INCIDENT, THEN THE  
13 BATHROOM AND THE CLOSET INCIDENT AND THEN ATTACKING ME  
14 IN BED, UH THAT'S FOUR TIMES AND I'M ONLY HUMAN AND I TRIED  
15 MY BEST THE OTHER THREE TIMES. I DID CONTROL MYSELF, I  
16 DIDN'T SWEAR AT HER, I DIDN'T YELL AT HER...BUT WHEN SHE  
17 ATTACKED ME IN MY SLEEP. I'M SORRY, BUT I DIDN'T HAVE  
18 CONTROL OF MYSELF BECAUSE I WAS ASLEEP. WHEN I WOKE UP, I  
19 DIDN'T HAVE...I WAS STILL ASLEEP, AND EXHAUSTED BECAUSE  
20 LIKE I SAID, I WAS GONE THE WEEK PRIOR FOR THAT HELL WEEK...I  
21 WAS VERY EXHAUSTED.

22  
23 SO I WAS SWEARING AND YELLING AND CUSSING AT HER AND SHE  
24 WAS PRETTY MUCH IN UM, CRYING AT THE TIME AND I TOLD HER  
25 YOU KNOW WE GOT YOU INTO THIS MESS. AND AGAIN I WAS JUST  
26 LOOKING AT...OKAY LET'S JUST GET BACK TO SLEEP. SO, I GO AND  
27 GET OUR UH, UH, CARPET CLEANER MACHINE A, PORTABLE ONE  
28 THAT WE USE, AND I BRING THAT, AND I TELL HER TO CLEAN UP UH,  
29 THE MESS ON THE BED. AND WHILE SHE'S DOING THAT, I GRAB ALL

1 THE SHEETS...THE SHEETS AND THE COMFORTER, I TAKE THAT...I  
2 TAKE THAT AND I PUT THAT INTO UH, THE WASHING MACHINE, AND  
3 I START IT UP, AND THEN I NOTICED THAT THERE'S NOT ANY  
4 SOFTENER SO I GO DOWNSTAIRS AND I GET SOME SOFTENER AND  
5 AS I'M COMING UPSTAIRS WITH THE SOFTENER I HEAR THE PHONE  
6 RING, AND... AND AS IT RANG, I WORKED MY WAY TOWARDS THE  
7 BEDROOM. AS I GOT MYSELF TO THE BEDROOM IT STOPPED  
8 RINGING.

9  
10 UM, MY HOPES WAS TO GET TO THE PHONE AND ANSWER IT  
11 BECAUSE I...WHEN I SAW UM, WHO HAD CALLED, IT SAID V.E.C.C.  
12 AND I ASKED MY WIFE WHAT HAD HAPPENED...SHE...I ASKED IF SHE  
13 HAD CALLED THE POLICE AND SHE SAID YES SHE DID. SO I SAID... I  
14 KNEW THAT THEY WERE GOING TO COME. I DIDN'T WANT TO TAKE  
15 OFF...RUN OR HIDE SO I JUST TOLD HER OKAY YOU JUST GO TAKE A  
16 SHOWER, I'LL... CLEAN UP HERE IN THE BEDROOM. SO I CLEANED UP  
17 IN THE BEDROOM, I CLEANED UP THE BED AND UM SHE TOOK HER  
18 SHOWER.

19  
20 AFTER HER SHOWER, THAT WOULD HAVE BEEN TEN...TEN MINUTES,  
21 THERE IS A KNOCK AT THE DOOR. TWO WEST VALLEY OFFICERS  
22 WERE THERE AT THE DOOR. I'M, THEY CAME INSIDE, SEPARATED  
23 \* US. ONE TALKED TO MY WIFE, <sup>down in the livingroom area,</sup> ~~THAT~~ <sup>ONE</sup> ~~DIDN'T~~ <sup>TALKED</sup> ~~MAYBE WE'RE~~  
24 ~~MARRIED, THEY (WANTED/DIDN'T WANT???) TO TALK~~ TO ME, UP IN  
25 THE KITCHEN AREA. AND UH, I KNOW I WROTE A STATEMENT UH  
26 THEY ASKED ME TWO OR THREE TIMES IF IT WAS PHYSICAL. I  
27 DIDN'T WANT TO INCRIMINATE MYSELF SO I JUST TOLD THEM NO. I  
28 THINK THE THIRD TIME I TOLD...WELL I RESTRAINED HER. I SAID  
29 WHAT I REMEMBERED.

1  
2 I TOLD THEM I WAS A POLICE OFFICER AND I GAVE THEM THE  
3 NUMBER FOR MY SUPERVISOR. THEY CONTACTED MY SUPERVISOR  
4 AND ASKED HER TO CONTACT MY SUPERVISOR WHO IS CHIEF  
5 INVESTIGATOR LARRY MARKS. THE OFFICERS CAME BACK, SAID  
6 THAT UH, HE WAS GOING TO ARREST ME FOR DOMESTIC VIOLENCE  
7 ~~✱~~ <sup>placed me under arrest</sup> (INAUDIBLE) THE SERGEANT CAME AND HE WAS  
8 THERE..TRANSPORT ME OVER TO HERE AND THEY MADE  
9 ARRANGEMENTS WITH THE JAIL, THEY CALLED OVER THERE AND  
10 UM, I ASKED THEM WHY THEY HAD TO BOOK ME IN, IF THEY COULD  
11 JUST ISSUE A "NO CONTACT" ORDER AND I WOULD JUST GO. UH,  
12 ~~✱~~ BUTT (INAUDIBLE) ANYWAYS.  
13 <sup>they took me to jail</sup>  
14 NUDD: OKAY. DO YOU UH, UH, GIVEN STATEMENTS TO ANYBODY ELSE  
5 BESIDES THOSE OFFICERS THAT NIGHT?  
16  
17 FAEEKI: SPOKE TO MY INTERNAL AFFAIRS DEPARTMENT, GAVE THEM A  
18 STATEMENT OF WHAT HAPPENED. AND THIS WOULD HAVE BEEN A  
19 WEEK AND A HALF AGO.  
20  
21 NUDD: OKAY  
22  
23 FAEEKI: MAYBE TWO WEEKS.  
24  
25 NUDD: DID YOU TALK TO ANY OTHER POLICE OFFICERS?  
26  
27 FAEEKI: NO.  
28  
29 NUDD: ANY OTHER DETECTIVES?

1 FAEEKI: NO

2  
3 NUDD: SO THE ONLY STATEMENT THAT YOU GAVE WAS THE NIGHT OF THE  
4 INCIDENT.

5  
6 FAEEIKI: THAT'S CORRECT

7  
8 NUDD: OKAY. LET ME JUST ASK YOU A COUPLE OF QUESTIONS. UM. YOU  
9 SAID THAT THIS IS 9:30...ABOUT. YOU HAD COME HOME, AND  
10 SOMEONE BROUGHT SOME VIDEO OVER.

11  
12 FAEEIKI; UH HUH.

13  
14 NUDD: UM, AND YOUR WIFE DIDN'T KNOW THAT SOMEBODY HAD  
15 BROUGHT THIS OVER.

16  
17 FAEEIKI: THAT'S CORRECT.

18  
19 NUDD: OKAY. SO YOU WERE STARTING TO WATCH A MOVIE THEN.

20  
21 FAEEIKI: YEA, I WOULD SAY, I WAS ABOUT FIFTEEN, TEN MINUTES INTO THE  
22 MOVIE. AND I COULD NOT UNDERSTAND IF WE HAD WENT AND  
23 GOT THE VIDEO TOGETHER AT BLOCKBUSTER.

24  
25 FAEEIKI: I COULD UNDERSTAND HER CONCERNS. BUT FOR HER TO JUST TO  
26 WALK INTO THE ROOM AND KIND OF LIKE, WATCH A MOVIE, "WHY  
27 DIDN'T YOU WAIT FOR ME!" "YOU KNOW I WANT TO SEE A MOVIE  
28 WITH YOU." MORE LIKE THAT AND I'M LIKE "OKAY" YOU DIDN'T  
29 KNOW THAT THE NEIGHBORS CAME OVER, BROUGHT A VIDEO OVER



1 AND...

2

3 NUDD: OKAY. DID YOU TELL THE OFFICERS ANYTHING ABOUT WATCHING  
4 A MOVIE THAT NIGHT? OR STARTING TO WATCH A MOVIE?

5

6 FAEEIKI: I DON'T THINK SO.

7

8 NUDD: I DON'T RECALL READING IT IN THE REPORT THAT ANYTHING  
9 ABOUT...

10

11 FAEEIKI: THERE'S A LOT OF THINGS IN THE REPORT, A LOT OF THINGS I DID  
12 NOT TELL THE OFFICER. UNDER THE SITUATION THERE IS A LOT OF  
13 THINGS I LEAVE OUT. NOT INTENTIONALLY BUT UNDER THE  
14 CIRCUMSTANCES, NOT THINKING STRAIGHT KNOWING THE COPS  
15 ARE COMING OVER. JUST THINKING "WOW"! "WOW"! I THINK THAT  
16 THE FIRST THING THAT WAS ON MY MIND WAS "WOW"! I'M GOING  
17 TO GET ARRESTED RIGHT HERE IN MY NEIGHBORHOOD IN FRONT OF  
18 ALL MY NEIGHBORS AND THAT WAS PROBABLY THE FIRST THINGS  
19 ON MY MIND I WASN'T REALLY THINKING ABOUT...WELL I WAS ,  
20 BUT IT WASN'T ON MY MIND. SO, YOUR MIND JUST KIND OF  
21 NARROWS DOWN UH...

22

23 NUDD: WHY DID YOU THINK YOU WERE GOING TO GET ARRESTED?

24

25 FAEEIKI: UNDER THE CIRCUMSTANCES UM, DOMESTIC VIOLENCE IS , IS  
26 *pretty much, right here*  
~~(INAUDIBLE)~~ IT'S A...POLICE OFFICERS DON'T HAVE THE DISCRETION  
27 YOU KNOW MY BUDDY COULD HAVE BEEN THERE. BOTH OF THOSE  
28 GUYS COULD HAVE BEEN MY BUDDIES. THEY MAY MAY NOT HAVE,  
29 BUT THE LAW STATES THAT IF YOU COME WITH PROBABLE CAUSE

1 YOU HAVE TO MAKE THE ARREST. YOU KNOW IF IT WAS MY  
2 BUDDY, HEY WHO KNOWS, I DON'T KNOW.

3  
4 NUDD: DID YOU FEEL THE OFFICERS HAD PROBABLE CAUSE TO MAKE AN  
5 ARREST.

6  
7 FAEEIKI: I'M NOT GOING TO ANSWER THAT. I DON'T KNOW. MAYBE THEY  
8 \* DID, THEY DIDN'T, DID THEY <sup>Investigate every detail and</sup> INVESTIGATORS AND I ALREADY TELL  
9 <sup>of</sup> THEM MY SIDE OF THE STORY WHAT HAPPENED, WAS I AT FAULT?  
10 SHE WAS THE ONE WHO ATTACKED ME I DIDN'T TELL THEM THAT.  
11 IF THEY PROBABLY KNEW NOW WHAT I'M TELLING YOU, MAYBE  
12 THEY WOULDN'T HAVE.

13  
14 NUDD: SO WHY DIDN'T YOU TELL THEM THAT?

15  
16 FAEEIKI: I DIDN'T WANT TO INCRIMINATE MYSELF.

17  
18 NUDD: OKAY. YOU UNDERSTAND THE DOMESTIC VIOLENCE LAWS?

19  
20 FAEEIKI: SOMEWHAT. I'M NOT SAYING THAT UH I DIDN'T HAVE AN  
21 UNDERSTANDING.

22  
23 NUDD: ONE OF THE THINGS THEY'RE REQUIRED TO DO IS TO DETERMINE  
24 \* YOU KNOW, <sup>Predominant</sup> IF THE (INAUDIBLE) AGGRESSIVE. OKAY, DETERMINE IF  
25 SELF DEFENSE WAS <sup>you know</sup> AN ISSUE. IT'S IN THE LAW,  
26 THEY'RE SUPPOSED TO DO THOSE THINGS. YOU DIDN'T GIVE THEM  
27 ANY INFORMATION ABOUT HER ATTACKING YOU.

28  
29 FAEEIKI: I KNOW. I UNDERSTAND.

1 NUDD: OKAY. UM...YOU SAID THAT YOU CAME OUT AFTER FEELING PAIN.  
2 YOU DON'T REMEMBER WHERE YOU FELT PAIN?

3  
4 \* FAEEIKI: IN MY LEG. IT'S MY <sup>Left Leg right here</sup> ~~LEG (INAUDIBLE) KIND OF LIKE THIS.~~

5  
6 NUDD: OKAY. AND IF YOU THINK ABOUT THAT WAS IT FROM BEING HIT,  
7 SAT UPON, UM...CAN YOU THINK OF HOW THAT MAY HAVE BEEN  
8 CAUSED.

9  
10 FAEEIKI: I'M GONNA SAY...BEING PUNCHED, OR HIT WITH A HANGER OR  
11 \* SOMETHING. I REALLY CAN'T ANSWER THAT. <sup>without me speculating</sup> RESPECTFULLY ALL I  
12 KNOW IS THAT I WAS WOKEN BY PAIN IN MY...AND AGAIN SOME OF  
13 MY (INAUDIBLE) WAS RIGHT HERE AND HERE.

14  
15 NUDD: OKAY. ON YOUR LEFT LEG?

16  
17 FAEEIKI: ON MY LEFT LEG.

18  
19 NUDD: WHAT SIDE OF THE BED DO YOU LAY ON?

20  
21 FAEEIKI: ON THE RIGHT SIDE.

22  
23 NUDD: OKAY, WERE ON THE...WERE YOU LAYING ON YOUR STOMACH, SIDE  
24 OR BACK?

25  
26 FAEEIKI: MY BACK. UH HUH.

27  
28 NUDD: SO THE PAIN WOULD HAVE BEEN ON YOUR LEFT LEG. DO YOU  
29 KNOW WHERE SHE WAS AT?

FAEEIKI: SHE WOULD HAVE BEEN LIKE IN THE MIDDLE.

2

3 NUDD: MIDDLE OF THE BED?

4

5 FAEEIKI: MIDDLE OF THE BED. I WAS LYING TO THE VERY...HERE'S THE BED  
6 HERE LIKE...I'M LYING DOWN IN THE BED. I'M SORRY TO THE RIGHT.  
7 TO WHAT DID I SAY, THAT SHE WAS TO THE UH LEFT. I WAS ON THE  
8 \* RIGHT OF THE <sup>bed</sup> ON MY BACK, AND SHE HAD COME TO THE MIDDLE.  
9 AND UH, AS I STATED EARLIER WHEN I HAD SLAPPED HER SHE FELL  
10 \* TO THE OTHER SIDE. TO THE ~~OTHER~~ SIDE.

Left

11

12 NUDD: OKAY. WHEN YOU WAKE UP TO THIS PAIN YOU SAY THAT YOU SEE  
13 HER COMING AT YOU. TELL ME ABOUT THAT.

14

15 FAEEIKI: I WAKE UP AND I HEAR YELLING, SCREAMING, SWEARING, AND  
16 AGAIN I WAS COMING OUT OF MY SLEEP AND SOMEONE W-WOULD  
17 HAVE AWAKENED YOU IT WOULD PROBABLY... MIDDLE OF THE  
18 NIGHT, WAKE YOU UP AND YOU'RE KIND OF LIKE IN SHOCK AND  
19 YOU DIDN'T KNOW WHAT WAS GOING ON AND...THAT'S WHAT IT  
20 WAS. UH, I FELT THREATENED.

21

22 NUDD: AND HOW WAS SHE COMING AT YOU?

23

24 FAEEIKI: WELL AFTER SHE... AFTER SHE...AFTER I HAD FELT THE PAIN IN MY  
25 LEG SHE WAS KIND OF LIKE LUNGING OVER LIKE THIS. SO IF I'M ON  
26 MY BACK, SHE WOULD BE LIKE SHE WAS LUNGING OVER. SO I'M  
27 THINKING OKAY...WHAT HAPPENS NEXT.

28

29 NUDD: COULD SHE HAVE JUST BEEN LEANING OVER YOU?

1 \* FAEEIKI: I CAN'T ANSWER THAT ~~RESPECTFULLY~~. *I'd be speculating*

2

3 NUDD: OKAY BUT YOU FELT SHE WAS LUNGING AT YOU.

4

5 FAEEIKI: UH HUH.

6

7 NUDD: SO YOUR FIRST REACTION IS TO STRIKE OUT AND DEFEND  
8 YOURSELF.

9

10 FAEEIKI: YES.

11

12 NUDD: AT WHAT POINT DID YOU RECALL OR RECOGNIZE WHO SHE WAS, OR  
13 WHO IT WAS THAT WAS DOING THIS?

14

15 FAEEIKI: I DID...AT THE TIME WHEN I WAS PROBABLY SLAPPING HER. WHEN I  
16 WOKE UP AND SLAPPED HER.

17

18 NUDD: OKAY, WHEN YOU SLAPPED HER DID SHE CONTINUE TO LUNGE AT  
19 YOU?

20

21 FAEEIKI: OF COURSE NO. CUZ BEING AS I SLAPPED HER AND I CAUGHT HER  
22 TO MOVE BACK.

23

24 NUDD: OKAY. SO AT THAT POINT UH YOU SAID THAT YOU THEN BEGAN  
25 HITTING HER THREE FOUR TIMES WHATEVER.

26

27 FAEEIKI: YES.

28

29 NUDD: UH

1 ~~\*~~ RAEEIKI: *that's where the anger kicks in.* YES ~~WITH A HANGER (INAUDIBLE)~~ I UNDERSTAND YOUR CONCERNS  
2 THAT'S WHERE THE ~~HANGER CAME FROM~~ *anger kicked in*. UH, I'M SORRY. LIKE I  
3 SAID, AFTER TRYING MY BEST TO CONTROL THE SITUATION THREE  
4 OR FOUR TIMES, THE BATHROOM INCIDENT, THE PICTURES, AND  
5 THE BEDROOM AND BEING WOKEN IN BED UM, I CAN HONESTLY  
6 SAY I WASN'T THINKING PROPERLY. I WAS NOT THINKING  
7 PROPERLY AFTER BEING AT TRAINING FOR A WEEK AND A HALF,  
8 FOR BEING AWAY AND BEING OVER EXHAUSTED. I WAS NOT  
9 THINKING PROPERLY. SO MY ANGER KICKED IN AND MAYBE IF I  
10 HADN'T HAD GONE TO THAT TRAINING I WOULD HAVE BEEN ABLE  
11 TO CONTROL ANGER BETTER, BUT I LOST MY, I LOST CONTROL OF  
12 MY ANGER AND I WAS WRONG. IT WAS WRONG FOR ME TO PUNCH  
13 MY WIFE THREE OR FOUR TIMES ON THE BED, AND I'M NOT PROUD  
14 OF IT. IT'S BAD AND I'M ASHAMED OF IT. I'M VERY ASHAMED OF IT.  
15 CAUSING HER TO URINATE.  
16  
17 NUDD: UH, BECAUSE OF BEING HIT IN THE BACK DO YOU FEEL THAT'S  
18 WHAT CAUSED HER TO URINATE?  
19  
20 FAEEIKI: YES. WELL NO, I... COMBINATION OF THAT AND MAYBE FEAR, I  
21 ~~\*~~ GUESS. YEA, I THINK I ANSWERED THAT RESPECTFULLY.  
22 *that I'd be speculating*  
23 NUDD: OKAY. WAS THERE A NEED ON YOUR PART, AFTER THE FIRST SLAP  
24 TO CONTINUE TO HIT HER IN DEFENDING YOURSELF?  
25  
26 FAEEIKI: I CAN'T ANSWER THAT. I FELT I WAS BEING THREATENED. AND  
27 THERE, IT WAS A POSSIBILITY YES, MAYBE NOT, MAYBE MY ANGER  
28 WAS KICKING IN. UM...  
29

1 NUDD: OKAY. SO YOU HIT HER THREE OR FOUR TIMES. WHEN I  
2 INTERVIEWED HER SHE HAD A BRUISE RIGHT HERE ON THE SIDE OF  
3 THIS PORTION OF HER EYE AND TEMPLE AREA. UM, WAS THAT  
4 CAUSED BY A HIT, OR WHEN YOU SLAPPED HER.

5  
6 FAEEIKI: THAT WOULD HAVE BEEN BY A SLAP.

7  
8 NUDD: OKAY SO A SLAP RIGHT HERE.

9  
10 FAEEIKI: UH HUH.

11  
12 NUDD: OKAY. YOU SAID YOU HIT HER IN THE BACK.

13  
14 FAEEIKI: YES

15  
16 NUDD: OKAY. CAN YOU KIND OF TELL ME HOW IT WENT? IF YOU WERE ON  
17 THE BED HERE, AND YOU GET UP AND YOU SLAP HER, WHERE YOU  
18 WENT. DID YOU GET BEHIND HER?

19  
20 FAEEIKI: NO. I WAS ON THE BED THE ENTIRE TIME. WHEN I SLAPPED HER I  
21 WAS STILL ON THE BED. I WAS LYING ON THE BED AS I AM RIGHT  
22 NOW, AND I'M AWAKENED BY PAIN, SHE'S JUST RIGHT LIKE WHERE  
23 ~~ED'S AT, OR (INAUDIBLE) THE BED CLOSER~~ <sup>basically a bit closer</sup>, AND THEN I DIDN'T  
24 HAVE TO GET OFF THE BED OR MOVE, I DID HAVE TO WAKE UP, SIT  
25 UP AND FROM WHERE I WAS I JUST SLAPPED HER. AND THEN SHE  
26 FELL OVER TO THE LEFT SIDE OF THE BED AND THEN...

27  
28 NUDD: ON THE BED OR ON THE FLOOR?

29

1     FAEEIKI:     ON THE BED.

2

3     NUDD:       OKAY.

4

5     FAEEIKI:     THIS WHOLE THING, WHOLE ENTIRE INCIDENT HAPPENED ON THE  
6                   BED. I DID NOT GET OFF THE BED UNTIL SHE URINATED. THAT'S  
7                   WHEN I GOT OFF THE BED.

8

9     NUDD:       OKAY. SO WHEN SHE FELL, WAS SHE LIKE FACE FORWARD ON THE  
10                  BED?

11

12    FAEEIKI:     SHE WAS LIKE, AS ED WAS, SHE WAS SOMEWHAT FACING ON HER  
13                  SIDE, JUST HOW ED IS. LYING ON THE, LYING ON THE BED.

14

      NUDD:       SO SHE'S LAYING ON HER SIDE.

16

17    FAEEIKI:     ON HER SIDE. OKAY, SO WHEN I PUNCHED HER I WOULD HAVE BEEN  
18                  PUNCHING HER ON THE LEFT SIDE?

19

20    NUDD:       OKAY.

21

22    FAEEIKI:     LEFT SIDE SOMEWHAT. LEFT SIDE.

23

24    NUDD:       OKAY WERE ~~YOU~~ LIKE SWINGING.

25

26    FAEEIKI:     YEAH.

27

28    NUDD:       ROUND OUTSIDE (INAUDIBLE)

29



1 ~~\*~~ FAEEIKI: *Round House*  
~~INAUDIBLE~~

2

3 ~~\*~~ NUDD: OKAY. WERE MOST OF THE HITS THEN RIGHT IN THIS *area* ~~AREA?~~

4

5 FAEEIKI: YES.

6

7 NUDD: OKAY. ANY OTHER AREAS OF HER BODY?

8

9 FAEEIKI: JUST MAINLY THAT AREA.

10

11 NUDD: OKAY. DO YOU REMEMBER HITTING HER IN THE BACK OF THE

12 NECK.

13

14 FAEEIKI: I DO NOT.

15

16 NUDD: OKAY.

17

18 FAEEIKI: I (INAUDIBLE)

19

20 NUDD: OKAY. AT WHAT POINT DO YOU RECOGNIZE THAT SHE URINATES.

21

22 ~~\*~~ FAEEIKI: AFTER THE THIRD OR FOURTH BLOW. AND, SHE URINATES AND I *Then I*

23 COULD FEEL...

24

25 NUDD: BECAUSE THE BED IS WET.

26

27 FAEEIKI: YEAH, YEAH. AND ITS COOL. I FEEL...YEAH... WET.

28

29 ~~\*~~ NUDD: OKAY. AT THAT POINT UM, ~~YES~~ YOU JUST TELL HER TO GET

1 CLEANED UP?

2

3 FAEEIKI: AT THAT POINT, I JUMP OFF THE BED AND I WAS STARTING TO YELL

4 AND SWEAR ABOUT WHAT HAD HAPPENED. AND AFTER I HAD

5 \* DONE THAT <sup>I felt ok</sup> ~~(INAUDIBLE)~~ LET'S CLEAN UP SO <sup>and so, we had to clean</sup> ~~(INAUDIBLE)~~ THE BED

6 I TOLD HER, SO I WENT AND GOT THE UH CARPET CLEANING

7 MACHINE...CARPET CLEANING MACHINE, AND TOLD HER TO CLEAN

8 THAT UP WHILE I TOOK OFF ALL THE SHEETS.

9

10 NUDD: OKAY. YOU HAD NO IDEA THAT THE POLICE HAD BEEN CALLED.

11

12 FAEEIKI: NO

13

14 NUDD: RIGHT?

15

16 FAEEIKI: THATS CORRECT.

17

18 NUDD: SO YOU HEAR THE PHONE RINGING, YOU SEE IT'S...YOU HAVE  
19 CALLER I.D.?

20

21 FAEEIKI: YES.

22

23 NUDD: YOU SEE THAT IT'S V.E.C.C.

24

25 FAEEIKI: YES.

26

27 NUDD: WHY DO YOU THINK SHE CALLED 911?

28

29 \* FAEEIKI: <sup>Because of the</sup> ~~THE OTHER~~ INCIDENT THAT OCCURRED.

1 \* NUDD: OKAY. YOU THINK THAT SHE WAS IN PAIN, <sup>Had</sup> BEEN INJURED?  
2  
3 \* FAEEIKI: COULD HAVE BEEN. <sup>Cause</sup> SHE FELT SCARED, OR THREATENED SO SHE  
4 CALLED THE POLICE.  
5  
6 NUDD: OKAY. ALRIGHT, UM,  
7  
8 FAEEIKI: BUT IT WASN'T SOMETHING THAT I WAS TRYING TO COVER UP OR  
9 HIDE. I MEAN I HAD THE OPPORTUNITY TO I MEAN, TELL HER TO  
10 LEAVE. GO IN THE VAN AND JUST LEAVE OR I COULD HAVE LEFT.  
11 THAT DECISION WASN'T THERE.  
12  
13 NUDD: YOU STAYED THERE UNTIL OFFICERS GOT THERE. UH...AT THIS  
14 POINT...UM I DON'T HAVE ANY OTHER QUESTIONS. DO YOU HAVE  
ANY OTHER QUESTIONS SEAN? (SEAN TORRIENTE)  
16  
17 SEAN: UM, YOU PROBABLY COVERED IT. UH, DID YOU GO INTO...BETWEEN  
18 THE SLAPS AND PUNCHES IN THE BACK IF SHE HAD DONE  
19 ANYTHING?  
20  
21 NUDD: UM, I DIDN'T REALLY PURSUE THAT. DID SHE...AFTER YOU SLAPPED  
22 HER DID SHE ATTEMPT TO STRIKE YOU OR HIT YOU?  
23  
24 FIEEIKI: WELL THERE WAS A LOT OF... SHE WAS STILL SWEARING, BEING  
25 AGGRESSIVE UM, LIKE I SAID MY MIND FIT WAS NOT THERE. I WAS  
26 NOT THINKING PROPER. UH, HAVING ONLY SEVEN HOURS OF SLEEP  
27 THE WEEK BEFORE, WAKING UP THAT MORNING AT 7:00, BEING  
28 EXHAUSTED GOING TO SLEEP AND BEING WOKEN UP UNDER THE UH  
29 CIRCUMSTANCES, UM...I'M SORRY WHAT WAS YOUR QUESTION

1 AGAIN?

2

3 NUDD: IF SHE DID ANYTHING BUT TO FIGHT BACK

4

5 FIEEIKI: OKAY.

6

7 NUDD: AFTER YOU SLAPPED HER.

8

9 FIEEIKI: UNDER THE CIRCUMSTANCES UM, MY NATURAL RESPONSE WAS TO  
10 ACT THE WAY I'M TRAINED. IT'S JUST LIKE WHEN YOU GO TO THE  
11 SHOOTING RANGE, YOU SHOOT THE WAY YOU'RE TAUGHT THE  
12 WAY YOU'RE TAUGHT AT THE SHOOTING RANGE. YOU HEAR  
13 PEOPLE, COPS GET INVOLVED IN THE INCIDENTS WHERE THEY DO A  
14 ~~tap-rack-bang~~ (INAUDIBLE) OUT WHEN THEY'RE SHOOTING SOMEBODY. AND IT'S  
15 JUST IT'S THE NATURAL MOTOR SKILLS AND THAT'S WHAT  
16 HAPPENED TO ME THAT NIGHT. MY NATURAL MOTOR SKILLS WAS  
17 TO GET HER HANDS...AND TO GET HER HANDS OUT AND RESTRAIN  
18 HER HANDS, AND I'M SORRY. BUT, PART OF IT WAS ANGER, PART OF  
19 IT WAS THE NATURAL MOTOR SKILLS THAT WAS IN ME THAT SAID  
20 GET HER HANDS UP, HER HANDS, BECAUSE SHE WASN'T  
21 COMPLYING.

22

23 NUDD: DID YOU TELL HER TO GET HER HANDS OUT?

24

25 FIEEKE: I THINK I DID. I CAN NOT REMEMBER. BUT, WHEN I'M IN A FIGHT,  
26 AND UM....UM... WHEN I'M RESTRAINING PEOPLE ON THE STREETS  
27 ~~AND UM...NUMEROUS OFFICERS...I WENT TO GANG UNIT SO~~ <sup>I'm with the</sup>  
28 EVERYDAY WE'RE GETTING TO FIGHT WITH LITTLE GANG KIDS AND  
29 UM, FIRST THING YOU WANT TO DO IS GET THE HANDS OUT. AND IF

1 YOU HAVE A CHANCE TO SAY "GET YOUR HANDS UP"! WE'RE JUST  
2 GOING FOR THE HANDS AND GETTING THE HANDS OUT AND THAT'S  
3 HOW WE ACTED. UM, JUST MY NATURAL MOTOR SKILLS WAS TO  
4 GET THE HANDS OUT, SHE WASN'T COMPLYING SO UH, I HIT HER  
5 THREE OR FOUR TIMES. SO JUST A COMBINATION OF BEING  
6 \* EXHAUSTED, MY NATURAL MOTOR SKILLS, <sup>and anger</sup> ~~AND ANY~~ COMBINATION  
7 OF THE THREE. I'M NOT PROUD OF IT, AFTER THINKING AND LIKE I  
8 SAY, MAYBE UNDER BETTER CIRCUMSTANCES MAYBE, IF I WAS NOT  
9 EXHAUSTED, MAYBE IF I HAD NOT GONE TO THAT TRAINING AND  
10 ONLY HAD SEVEN HOURS OF SLEEP, GOSH! I MEAN ANY MAN  
11 UNDER THE CIRCUMSTANCES...I'M NOT SAYING POSSIBLE, BUT IT'S  
12 POSSIBLE TO ANY PERSON UNDER THE CIRCUMSTANCES I WAS PUT  
13 UNDER. AFTER BEING SLEEP DEPRESSED FOR SEVEN DAYS AND  
14 \* JUST BEING TIRED, PROBABLY WOULD HAVE <sup>reacted</sup> ~~ACTED~~ THE SAME  
WAY. UM, COMBINATION WITH ANGER AND FRUSTRATION, I  
16 CAN...ALL I CAN SAY IS I'M NOT PROUD OF WHAT I DID TO MY WIFE,  
17 BUT MAYBE IF I HAD MORE SLEEP, MAYBE IF I HADN'T GONE TO  
18 THAT TRAINING UH, I PROBABLY WOULD HAVE JUST SLAPPED HER.

19  
20 SEAN: DID YOU UM, MIND IF I ASK A COUPLE OF QUESTIONS

21  
22 BRASS: GO AHEAD.

23  
24 \* SEAN: YOU TALKED ABOUT, <sup>Dealing with</sup> ~~ILLEGAL~~ POLICE PURSUITS AND UH <sup>Arrests</sup>  
25 RESTRAINING PEOPLE, DID ~~YOU~~, YOU REALIZE THAT YOU WERE  
26 DEALING WITH YOUR WIFE HERE INSTEAD OF...

27  
28 FIEEIKI YES I DID, YES I DID.

1 SEAN: SOMEBODY YOU WERE TRYING TO ARREST?

2 OKAY. AND JUST TO CLARIFY WHEN YOU SAID AFTER YOU SLAPPED  
3 HER IN THE FACE, UH, DID SHE COME AFTER YOU AT ALL OR NOT?

4

5 FIEEIKI: NO.

6

7 SEAN: AFTER THE SLAP. OKAY.

8

9 \* FIEEIKI: I SLAPPED HER AND SHE KIND OF WENT DOWN TO THE (INAUDIBLE) *side just like Ed*

10 *the* LEFT SIDE OF THE BED.

11

12 SEAN: SHE CONTINUED YELLING, BUT SHE DIDN'T COME AFTER YOU  
13 WITH...

14

15 FIEEIKI: YEA, YES.

16

17 SEAN: OKAY. ANY TYPE OF FORCE.

18

19 FIEEIKI: AND THEN AGAIN...IT WAS DARK, I DIDN'T KNOW WHAT SHE HAD IN  
20 HER HANDS. *Sean* WERE YOU AFRAID SHE HAD SOME KIND OF...

21

22 FIEEIKI: IT'S A POSSIBILITY.

23

24 \* SEAN: DOES SHE HAVE WEAPONS OR DOES SHE KNOW WHERE YOU KEEP  
25 (INAUDIBLE) *Yours?*

26

27 FIEEIKI: SHE'S GOT KNIVES, SHE KNOWS WHERE I KEEP THE GUN AT, YES  
28 SHE DOES. SO YOU KNOW, THERE WAS THAT THOUGHT IN MY  
29 HEAD, AND ALL I WAS THINKING WAS HEY, MY LIFE IS

1 THREATENED, I'M BEING ATTACKED, YES IT'S MY WIFE, I HAVE TO  
2 CONTROL MYSELF. BECAUSE, IF IT WASN'T MY WIFE, YES I WOULD  
3 \* HAVE <sup>Punched that guy in the face, in the</sup> ~~(INAUDIBLE) GUN TO FACE INTO~~ STOMACH BUT IT'S MY WIFE.  
4 SO I'M USING LIMITED FORCE ~~ON THE~~, UNDER THE CIRCUMSTANCES.  
5 THAT'S WHY I'M DOING ROUND HOUSES AROUND THE BACK AND I  
6 WANT TO SEE WHAT'S IN HER HAND. BECAUSE I'M SORRY THAT'S  
7 MY NATURAL MOTOR SKILLS I'VE BEEN TAUGHT. I'VE HAVEN'T  
8 BEEN A COP AS LONG AS YOU HAVE, JUST FIVE YEARS, BUT MY  
9 NATURAL MOTOR SKILLS IS TO GET THE HANDS, AND TO SEE  
10 WHAT'S IN THEIR HANDS. IF THERE'S A WEAPON THERE THAT CAN  
11 CAUSE FURTHER THREAT TO ME, OR DAMAGE, OR TO KILL ME. SHE  
12 DOES KNOW WHERE MY GUNS ARE AT, SHE HAS A KEY SHE KNOWS  
13 WHERE THEY'RE AT. SO...

14  
15 \$EAN: BASED ON PRIOR EXPERIENCES IS THERE ANYTHING ALONG THOSE  
16 LINES WHICH YOU WOULD HAVE REASON TO BELIEVE THAT SHE  
17 WOULD USE ANY TYPE OF WEAPON AGAINST YOU.

18  
19 FIEEIKI: I WOULD BE SPECULATING. UM, SHE HAS UH, TRIED TO COMMIT  
20 SUICIDE IN THE PAST.

21  
22 \$EAN: IN ANY OF THOSE INCIDENCES DID SHE THREATEN FORCE AGAINST  
23 YOU OR ANYONE ELSE, OR WAS IT JUST AGAINST HERSELF?

24  
25 FIEEIKI: AGAINST HERSELF.

26  
27 \$EAN: OKAY.

28  
29 FIEEIKI: I WAS...SHE WAS AT HER SISTER'S HOUSE WHEN THIS HAPPENED.

1 LIKE I SAID SHE TRIED TO COMMIT SUICIDE ONCE. I TOOK HER  
2 DOWN TO THE HOSPITAL, AND THEN FROM THE HOSPITAL SHE WAS  
3 TAKEN UP TO THE U OF U PSYCH WARD. SHE STAYED THERE FOR A  
4 WEEK AND I CALLED UP HER FAMILY, RELATIVE, FAMILY,  
5 BROTHERS AND SISTERS, AND NONE OF THEM WANTED TO COME  
6 AND HELP...AND SOMETIMES YOU FEEL BAD IT'S LIKE "WOW"! SO,  
7 EVEN THE DOCTOR'S UP THERE, THEY JUST PRETTY MUCH KICKED  
8 US LOOSE. THEY DIDN'T ASK FOR A FOLLOW UP INTERVIEW OR PUT  
9 HER ON MEDICATION, OR ANY COUNSELING.

10  
11 AFTER SHE HAD TRIED TO COMMIT SUICIDE AND THEN THEY PUT  
12 HER IN THE PSYCH WARD, IT WAS JUST FRUSTRATING...THEY DIDN'T  
13 \* CALL ME BACK??2222(CAN'T TELL WHAT HE SAID)AND THEN, <sup>Just</sup> THIS IS  
14 A LOT OF ANGER, LOT OF PROBLEMS WITH MY WIFE. UM, PAST  
15 PROBLEMS, PAST PROBLEMS BEFORE SHE EVEN MET ME. UM, THIS  
16 WAS THE SECOND TIME SHE HAD TRIED TO COMMIT SUICIDE. UM,  
17 \* SHE HAD <sup>arguments with</sup> (INAUDIBLE) HER PARENTS AND SHE DOESN'T GET HER  
18 WAY AND, UM, THIS WILL BE THE SECOND TIME. SO WHEN I GOT  
19 OUT OF JAIL, TUESDAY...UM, AFTER THE NO CONTACT ORDER WAS  
20 ENDED AT 5:30 ON WEDNESDAY, THAT WOULD HAVE BEEN AT LIKE  
21 6:00, I CALLED MY WIFE AT ABOUT SIX O'CLOCK. I GAVE IT HALF AN  
22 HOUR. PHONE RANG THREE TIMES, SHE PICKED UP THE PHONE, AND  
23 UH, I TOLD HER I WAS SORRY, AND COME PICK ME UP. SHE CAME  
24 DOWN AND PICKED ME UP UH, FROM THE MOTEL. THE MOTEL ON  
25 STATE STREET. CAME HOME, THAT WAS WEDNESDAY AT  
26 ABOUT...GOT HOME THURSDAY MORNING WHEN I WAKE UP AT 9:00,  
27 FIRST THING I DO IS GO DOWN IN MY OFFICE GET OUT MY UH, IHC  
28 MEDICAL PROVIDER LIST, AND I LOOKED FOR A DOCTOR FOR MY  
29 WIFE, CAUSE I LOVE MY WIFE AND I WANT TO GET HER SOME HELP.



1 SO I GO THROUGH THE LIST AND I FIND HER A DOCTOR UH, TO GET  
2 HER ON MEDICATION. I CALLED THE DOCTOR AND WE MAKE THE  
3 APPOINTMENT, I TAKE HER DOWN. WE GET HER ON LEXAPRO UM,  
4 I'M ONLY FAMILIAR WITH LIKE PROZAC AND PAXIL. UM, SO THAT'S  
5 WHAT, I WAS SUPPOSED TO ASK HIM FOR. <sup>Pretty much asking for</sup> ~~(INAUDIBLE)~~ <sup>But apparently Paxil</sup> AND  
6 PROZAC TAKES ABOUT A MONTH TO KICK IN. SO LEXAPRO HAS AN  
7 IMMEDIATE EFFECT SO WE GET HER ON THE LEXAPRO AND I SEE  
8 THE CHANGE. OF COURSE WITH THE COUNSELING THAT WE'RE  
9 ATTENDING...WE'RE , WE'RE GOING TO A, SHE'S GOING TO A  
10 THERAPIST FOR <sup>her</sup> ~~X~~ DEPRESSION AND I'M ALSO GOING THROUGH  
11 MARRIAGE COUNSELING TO A SUPER MARRIAGE COUNSELOR  
12 WE'RE GOING TO , UM I SEE THE DIFFERENCE AND I KNOW IT, IT'S  
13 NOT GOING TO JUST WORK...HAPPEN OVERNIGHT, BUT UH, THESE  
14 ARE JUST STEPS THAT I HAD TAKEN EVER SINCE GETTING OUT OF  
15 JAIL.

16  
17 I'VE ALSO VOLUNTEERED, VOLUNTARY ENROLLED MYSELF IN  
18 ANGER MANAGEMENT COURSE THROUGH PRE-TRIAL SERVICES. UH,  
19 AND I CAN SEE THE STEPS THAT WE'RE TAKING TO KEEP THIS  
20 FAMILY TOGETHER. I GUESS THERE ARE A LOT OF RED FLAGS IN  
21 THE PAST THAT UH, MAYBE I IGNORED THEM, MAYBE I DIDN'T SEE.  
22 WELL, I DID SEE.  
23 YOU KNOW. BUT I'M NOT YOUR TYPICAL DIRT BACK YOU GO ON A  
24 DOMESTIC VIOLENCE THINGY, AND HE'S PUNCHING HIS WIFE WITH  
25 A CLOSED FIST TO THE FACE, BLACK EYES AND EVERYTHING OKAY.  
26 NO! I LOVE MY WIFE AND (TAPE CHANGE) SO LIKE I SAID. I HAD  
27 SOMEWHAT THE KNOWLEDGE AND CONTROL OF MYSELF SO, I  
28 KNEW THAT SHE WAS MY WIFE, I LOVE HER AND I REALLY DIDN'T  
29 WANT TO...IT WAS SOMEWHAT STOPPING HER FROM WHAT SHE WAS

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1 WENT INTO THE CLOSET, PICTURES OF EVERYTHING...STARTS

2 ~~W~~ SWEARING AT ME AGAIN IN THE BED, SO, THAT'S SIX OR SEVEN *times*

3 ~~W~~ THAT SHE WAS <sup>*pressing my button*</sup> (INAUDIBLE) IN MY MIND. AND I'M JUST ~~DON'T~~...A

4 HUMAN BEING.

5  
6 NUDD: WHAT WAS SHE WANTING. STAN? WHAT WAS SHE WANTING FROM  
7 YOU?

8  
9 FIEEIKI: TO TALK. AND I'M SORRY. MAYBE THAT WAS MY FAULT. MAYBE IF  
10 I DIDN'T SIGN UP FOR ALL THAT TRAINING AND I WANTED TO GO TO  
11 SLEEP. SHE WANTED TO TALK...SHE WANTED TO TALK AND UH...

12  
13 NUDD: WHY DID SHE WANT TO TALK? DID SHE TELL YOU?

14  
15 FIEEIKE: YEAH, SHE TOLD ME. SHE HAD PROBLEMS. SHE HAD PROBLEMS  
16 AND SHE JUST WANTED TO TALK ABOUT PROBLEMS IN THE PAST.  
17 ABOUT SITUATIONS, AND THEN...I JUST DIDN'T WANNA...LIKE I SAID  
18 I HAD TO WAKE UP IN THE MORNING AND BE AT TRAINING. I JUST  
19 DIDN'T WANNA GET MYSELF MAD... AND BEING ALL FRUSTRATED.  
20 SHE HAD PROMISED IT'S IT'S LIKE, SHE HAD PROMISED OF A  
21 ~~\*~~ <sup>*Just Various*</sup> (INAUDIBLE) THINGS. ABOUT, FORGETTING THINGS AND MOVING  
22 ON.

23  
24 NUDD: SHE TOLD US OF SOME OF THOSE THINGS, THINGS THAT BOTHERED  
25 HER. BUT ONE OF THE MAIN CONCERNS SHE SAID THAT SHE TRIED  
26 TO TALK TO YOU ABOUT IS THE FACT THAT YOU'VE GOT SIX KIDS,  
27 SHE BABYSITS UP TO SIX MORE, SO ITS BETWEEN EVERYDAY SHE'S  
28 GOT BETWEEN SIX AND TWELVE KIDS THAT SHE BABYSITS. AND  
29 DOESN'T GET HELP FROM ANYBODY. YOU'VE BEEN GONE, SO SHE

1                   SAYS SHE WAS REALLY STRESSED OUT AND WANTED TO JUST TALK  
2                   TO YOU ABOUT IT.

3

4       RIEIKI:     UH HUH

5