

1 Thank you, your Honor.

2 Good morning, ladies and gentlemen.

3 I would like to start by saying on behalf
4 of my client, his family and myself I do want to
5 thank you for your efforts in sitting here as a
6 juror. It's going to be a long, medium length in
7 some ways, but a long difficult trial, so I do
8 thank you for that.

9 The purpose of my opening statement right
10 now, because of what I say is not evidence, what
11 the prosecutor just said is not evidence, the
12 purposes are that you understand what all of the
13 evidence is going to show you. That you understand
14 that when you keep your promise that you made in
15 voir dire that you will listen to all the evidence,
16 that you will wait until all of the evidence is in,
17 listen to the law and then form your opinions, that
18 when you do that this is what the evidence is going
19 to show. That's why opening statements are
20 important.

21 Opening statements are important so when
22 you hear a prosecutor stand up here and say she
23 knew him for 20 years that you also hear the truth
24 and the rest of the story. That you hear that
25 Ms. Rhoads had not seen Nathan Medina in over four
26 years. Had not seen him in four years. And that
27 this intimate relationship that she has with the
28 family, that Mr. Medina was already grown at that

1 point and that the vast majority of time that she
2 spent with the Latteris was not with Nathan Medina,
3 but was with the Latteris. And this case is not
4 about her ability to identify the Latteris, this is
5 about her ability to identify Nathan Medina.

6 Also, what you did not hear about this is
7 the circumstances, the real circumstances under
8 which Ms. Rhoads made this identification. She
9 made this identification within a fraction of a
10 second.

11 What you will hear occurs is that she comes
12 around the corner and as she is starting to see the
13 person she is being pepper sprayed; that this
14 person who she originally described as wearing a
15 mask, who she gives a variety of different
16 descriptions of, this person immediately, the
17 intruder immediately pepper sprays her. As soon as
18 she walks in, she is -- or as soon as she walks in
19 to the room the intruder is there, she is pepper
20 sprayed and as I will comment later tells the
21 police who do not listen that she couldn't see.

22 What we are going to find out is whether
23 Mrs. Rhoads was there or not, she would have told
24 the police she was absolutely certain it was Nathan
25 Medina. If it had happened in other situations,
26 Sean Mendell knows that it had happened, the Walnut
27 Creek Police know it had happened, and, in fact,
28 Ms. Rhoads herself explains that it had happened.

1 We get a flavor for how outdated her
2 observations of Mr. Medina are, because she
3 explains to the police and describes things that
4 were all in effect four years ago, five years ago.
5 The vehicle that she describes as Mr. Medina's
6 being involved is -- was a vehicle that was -- he
7 had not driven for years. Her reference point is
8 from years and years and years ago.

9 And yet as she said, and you'll hear a tape
10 of her, her very first interview, and those words
11 are worth their weight in gold in your ability to
12 try to determine what really happened. She tells
13 you in that tape what really happened.

14 What we learn and fortunately, and
15 partially on that tape is exactly what her
16 identification means, when she says I'm positive.
17 What she says is, I know it's him, I know it was
18 time. That is the language you hear her say. The
19 first thing she says when she is being interviewed.
20 The Walnut Creek detective comes to her, extremely
21 chaotic and horrific situation. And I am not for a
22 moment, no one on the defense for a moment is going
23 to say that Ms. Rhoads isn't attempting anything
24 but to be honest when she comes in here and
25 testifies about who she believes that intruder is.
26 But this isn't about what her beliefs are, this is
27 about what the evidence is going to show when the
28 totality of the evidence is looked at.

1 And what we know is from the moment, from
2 the split second the police start to talk to her,
3 before they almost even begin to ask the question,
4 she says "I couldn't see, I couldn't see". She
5 says that twice to the detective at the very
6 beginning of the interview.

7 Also, what we learn is she explains to the
8 detective that the person never said a word. She
9 describes the person, and there will be some
10 testimony on this from an expert, your -- your own
11 common sense analysis of a witness, and what she
12 can't say is whether the person had some gloves on
13 or not, whether the person was wearing a mask or
14 not, at one point saying that he was. What she
15 explains is that the intruder does not say a word
16 and immediately pepper sprays her as soon as she
17 comes into contact with him.

18 You'll hear her say in that interview over
19 and over, "it happened so fast. I couldn't see. I
20 couldn't see. I don't know if he was carrying
21 anything. I don't think so". At one point she
22 says he might have been and at another point she
23 says he wasn't.

24 You'll hear the detective listen to what
25 she is saying and say, well, how -- if he had a
26 mask on how do you know it was him? And you'll
27 hear her say "I just know it was him, I know it was
28 him".

1 And then what we'll find out is that there
2 is a pattern here, that there has been other
3 instances where absolutely no evidence, anything at
4 all connecting Mr. Medina with bad thing that have
5 happened to Ms. Rhoads and her reaction, her
6 response is that "it's Nathan Medina".

7 There was an incident several months before
8 this where there was a vandalism, some rocks were
9 thrown through a window of her house, maybe a car
10 vandalized out front. And when the police arrived
11 Mr. Mendell was there and talked about it. She
12 tells the police "I know it was him. I know it's
13 Nathan".

14 Now, that conversation wasn't recorded,
15 unfortunately, but what we know from what
16 Mr. Mendell told us when he testified at a
17 preliminary hearing and what we know from what
18 Ms. Rhoads told us and what the Walnut Creek Police
19 told us is that she was just as certain, just as
20 certain those few months earlier that it was Nathan
21 Medina as she is on our incident, even though there
22 was absolutely no evidence he was involved in any
23 way.

24 You will hear others say, comment that he
25 was her boogie man, that if something happened it
26 was Nathan Medina.

27 What we are going to see is, unfortunately,
28 just what the prosecutor said. What the evidence

1 is really going to show is it all started, and,
2 unfortunately, it all ended with that 911 tape.
3 That 911 tape from the moment she says "it's Nathan
4 Medina" after seeing someone that she did not have
5 the extensive interaction with that you will --
6 initially heard, and someone who she had not seen
7 in over four years who is covered with dark glasses
8 on, with a hat or mask, a dark jacket, portions of
9 himself covered for not even a second, that is the
10 time she had to observe him, not even that
11 fast before she is pepper sprayed and can't see.

12 That her certainty as to who it was shaped
13 contaminated the entire investigation and the
14 manner in which this evidence was collected. It
15 affected the Walnut Creek Police Department, it
16 affected the other civilian witnesses, and it
17 affected the way the physical evidence was
18 collected, evidence that wasn't collected, things
19 that weren't done, and it affected the way the
20 Walnut Creek Police Department talked to witnesses
21 and unfortunately contaminated that evidence that
22 is going to come here before you. Some of this,
23 some of this on tape. Some of this that you will
24 hear in this trial is absolutely inappropriate,
25 suggestive, way out of line conduct which forever
26 tainted the evidence in this case. And the reason
27 what ends up happening is that the emotion and
28 power of what you just heard there on that 911

1 tape, the case was over. WE got a 911 tape saying
2 that it was Nathan Medina. That is what the
3 evidence is going to show.

4 You're going to learn that law
5 enforcement's reliance on that fact, their reliance
6 on the fact that Beverly Rhoads is certain affected
7 the quality and the reliability of the evidence,
8 the people that they should have interviewed that
9 they didn't, items they should have collected and
10 analyzed that they didn't. Unbelievable places
11 that were not searched because this case was
12 resolved.

13 In fact, you're going to hear the detective
14 again on tape, fortunately, tell Ms. Rhoads even
15 when she is saying, well, he had a mask, that he
16 goes, right, but even though you knew it was him,
17 right, but you knew -- that's how you know. You
18 can hear the detective convincing Ms. Rhodes that
19 she really knows who it is.

20 You can even hear the detective when
21 Ms. Rhoads is trying to tell him that she couldn't
22 see telling -- talking over her and another officer
23 saying she was pepper sprayed, she was pepper
24 sprayed as she said I couldn't see, I couldn't see,
25 and he is going now who is it, you are sure who it
26 was.

27 You'll find out that there is certainly in
28 the person of who the person was who was the

1 intruder affected the very beginning of the
2 investigation. Law enforcement shows up and one of
3 the key witnesses, the witness who had the longest
4 exposure to the intruder comes out of the house and
5 the first thing that is done is they show him a
6 picture of Nathan Medina.

7 Here is an eyewitness, a person we are
8 going to rely upon walks out and the evidence will
9 show sheriff's deputies come up and say is this the
10 guy? Come on over to our car and look at the
11 picture. Show him a picture of Nathan Medina, a
12 person, no lineup, not here are six similar
13 pictures and we are going to talk about the lineup
14 that they showed. The quality of that lineup, the
15 suggestiveness of that lineup, but here is this
16 lineup, is this the guy, is that the guy, Nathan
17 Medina, from the very beginning.

18 We are also going to learn again on tape,
19 even though it is -- I shouldn't say on tape, on
20 the audio of the tape we hear, fortunately,
21 fortunately because the tape keeps running after
22 Mr. Mendell finishes his interview, we hear him go
23 into the hallway. We hear a Walnut Creek detective
24 walk up to him and say "do you know Nathan Medina"?

25 And when Mendell is trying to explain the
26 reasons why, you know what, I don't think it was
27 Mr. Medina, the detective stops him on tape, and
28 you'll hear this, "no, no, no, it was Nathan

1 Median, he has been positively identified".

2 That is the power of this 911 tape. That is
3 the power of Ms. Rhoads saying I'm sure it's him,
4 that a seasoned detective has a witness trying to
5 explain to him why he thinks it may not be someone
6 and he stops that person. He tells him you're
7 absolutely wrong. A witness has positively
8 identified him, and it's him, there is no doubt.

9 They then show him a lineup. They then
10 take this witness who they have told who it is, who
11 they have previously shown a picture of Nathan
12 Medina, and then show him a lineup where Nathan
13 Medina is because of the coloring of the lineup
14 highlighted, so that when you look at the six of
15 them, and you will view this lineup for yourself
16 and you can make your own conclusions, but what
17 this evidence is going to show is this lineup in
18 itself is suggestive, not to mention that they have
19 shown previously this witness a picture of Nathan
20 Medina, then told him it's positively Nathan
21 Medina, and then shown him a lineup and said,
22 basically, can you pick Nathan Medina out of it.

23 All of the witnesses that we will hear from
24 who identify Mr. Medina, all of the percipient
25 witnesses of this were told inappropriate things.
26 Were shepherded towards what testimony to say by
27 the police department. The only one we don't have
28 any evidence on that something inappropriate on is

1 Ms. Longfellow, the roommate of the person in the
2 back, an on her interview the audio erased or
3 somehow malfunctioned and we have no idea of what
4 was said.

5 Now, the good news is for your task here is
6 that the vast majority of the evidence is not going
7 to be in dispute. This -- the evidence is going to
8 show that it isn't about what happened on that day,
9 it's about who was that intruder.

10 And, in fact, what the evidence is going to
11 show that what happened on that date is exactly why
12 we don't know who the intruder was. The evidence
13 is going to show that this was such a horrific,
14 difficult, traumatic event that happens in a split
15 second, when you listen to what these witnesses
16 say, the evidence doesn't support their
17 conclusions. These brutal conditions of these
18 observations are why the eyewitnesses you are going
19 to hear from can't tell you whether or not a person
20 was wearing a mask. We get different answers on
21 that. Can't tell you if the person is wearing a
22 glove. We get different answers on that. Can't
23 tell you if the person was wearing sunglasses. We
24 get different answers on that.
25 Can't tell you if the person was carrying anything.
26 We get different answers on that.

27 Moreover, I don't know how much we are
28 going to go into the civil lawsuit, but you will

1 find out, the evidence is going to show you that
2 this wasn't a motive, that certainly Mr. Medina had
3 nothing at all against Josh, and that this lawsuit,
4 he was completely uninvolved in it, had never been
5 served a single piece of paper, had never been
6 deposed. His life was not going to change one way
7 or another no matter how this case resolved. And,
8 in fact, what we are going to learn is that the
9 person obsessed with this lawsuit was Ms. Rhoads.

10 We are going to learn that she spoke about
11 this three, four multiple times a week; that she
12 was constantly focused on this; that she had
13 initially been unsuccessful in her prior claims
14 against the bond, trying to seek action against the
15 Latteris, and then ultimately filed this lawsuit.
16 And that in relation to that lawsuit when something
17 bad happened, was Nathan Medina's fault.

18 Now, you're going to hear from an expert
19 witness in this case. This expert witness is going
20 to talk about eyewitness identification. They are
21 going to talk about it in general. What the
22 frailties of eyewitness identification are. How it
23 is subject to all of the different concerns that we
24 have talked about. That how the human mind and
25 eyes really work in a split fraction of a second
26 when they are sprayed with pepper spray.

27 We are going to learn about
28 predispositions. About what it means when

1 something happens and in your mind something bad
2 happens and that's the guy.

3 We are going to learn about suggestive
4 lineups.

5 You are going to learn about what the
6 effect is of showing someone a picture saying this
7 is the guy, and then showing him a lineup where
8 that very picture is highlighted, and then in
9 between you tell the guy that that is the guy.

10 We are going to learn about things called
11 weapon focus. When you have a witness that can
12 describe the gun much better than he can describe
13 the witness, what does that mean he was focusing on
14 during his two seconds of interaction with someone.

15 And this isn't rocket science, but you are
16 going to learn when you have a witness who admits
17 that he couldn't remember if the person had
18 sunglasses on or not, when an eyewitness whom the
19 government is going to come in here and rely on,
20 that witness in fact couldn't remember if the
21 person was even wearing sunglasses. And was told
22 by someone else that, yeah, I think he was and
23 that's why he incorporated it.

24 The physical evidence that you are going to
25 see, we -- and I talked about the suggestive
26 lineup, you're going to learn that some of the
27 things the witnesses say are not proven by the
28 evidence.

1 One of the witnesses is going to describe
2 this person in great detail and say that he had a
3 shriveled up face like a meth addict, that I am
4 sure he was a meth addict. He even implies that
5 the person was probably under the influence at the
6 time. This is some crazy, outlandish conduct,
7 I'm sure it was part of his analysis, but that's
8 what he said.

9 Well, Mr. Medina turned himself in. He
10 surrendered himself to the police. And when they
11 tested him for toxicology, absolutely clean,
12 nothing in his system.

13 This jacket, this jacket will tell us
14 quite a bit. This jacket that has some chemicals
15 on it, that in some situations is consistent with
16 or maybe indicative of different compounds, one of
17 which could be gunpowder is the testimony you are
18 going to hear. That's what the evidence is going
19 to show, is there are some particles on a jacket
20 that are found in a bunch of different chemicals
21 and a bunch of different situations, certainly with
22 someone who is in the construction field, and they
23 are consistent, though, or I guess not even
24 consistent, but indicative of gunpowder.

25 But what we are going to learn is that
26 isn't on that jacket. This was a brutal event.
27 There was an unbelievable amount of interaction
28 with this intruder and the home, the people, he's

1 grabbing Ms. Rhodes, he has interaction with
2 Joshua Rhodes. He is pounding on, kicking,
3 punching in a door No fingerprint evidence. No DNA
4 evidence.

5 And in relation to the jacket there is no
6 blood or anything on the jacket. There is blood
7 splatter all over the room from the shooting, from
8 when the person leans over. It is a brutal
9 circumstance, brutal case. Weapon is discharged
10 inches from someone, maybe even in contact.
11 Absolutely no blood anywhere on this jacket.
12 Absolutely no OC or pepper spray anywhere on this
13 jacket. No fiber evidence, no trace evidence, no
14 physical evidence whatsoever connecting Mr. Medina
15 to scene.

16 And what the evidence is going to show is
17 that if this jacket was used, if this is the jacket
18 that was used in the crime, and then driven back to
19 Mr. Medina's house and left there for the police to
20 find, but we'll know from what is not on the jacket
21 that that could not be the jacket. It's not how
22 unreasonable that proposal is about those facts, it
23 is that the evidence shows us that if this jacket
24 was used, regardless of whether or not it's
25 reasonable that someone is going to come back and
26 leave a jacket for the police, with the theory
27 being they destroyed other evidence, we are going
28 to know from the jacket it is not the jacket

1 used.

2 In short, ladies and gentlemen, as I said,
3 ~~there is no~~ physical evidence, no DNA evidence, no
4 realistic ~~real evidence connecting Mr. Medina to~~
5 this crime.

6 There is no real motive here for this type
7 of crime. And, in fact, the only motivation we are
8 going to see is a motivation to blame Mr. Medina
9 for anything negative that happens in their life.

10 Now, I want to thank you in advance for
11 your patience. There will be some days we will
12 finish early, there will be some days we work late.
13 There will be some days that there are some delays,
14 they are inevitable, maybe I'm wrong, but I do
15 thank you in advance for your patience. I know it
16 isn't easy to do that, but when all of the evidence
17 is in, all of the evidence and you have sat through
18 and listened to the government's case, listened to
19 the defense case, listen to the Court instructing
20 you on the law, you will come to the conclusion as
21 the D.A. said, this case started with that 911
22 tape, unfortunately it ended with that 911 tape,
23 but I will come before you in my closing argument
24 to ask you for the right and appropriate verdicts
25 of not guilty.

26 Thank you very much.

27 THE COURT: Thank you.

28 Mr. Moawad, do you need a moment to set up