

1 or somewhere and get a lunch with everybody else.

2 All right?

3 All right, guys, we'll see you at 8:20 in the  
4 morning. You be careful. Mr. Preston, you'll show  
5 them the way.

6 (PROCEEDINGS ADJOURNED)

7 (3-1-23)

8 THE COURT: Anything that we need to put on the  
record from the parties before we start today?

9 MS. RICH: No, sir.

10 THE COURT: Mr. Knizley, Mr. Jaffe, Mr.  
11 Whisonant? Mr. Walsh, you're not a party, but you  
12 wanted to say something?

13 MR. WALSH: I do, Your Honor. I represent  
14 Said Nakhla, the father of the Defendant and also  
15 Sally Nakhla, the spouse. I think the issue with  
16 the wife has been addressed, but I just want to  
17 make sure that it was on the record. The wife has  
18 been subpoenaed. She plans to invoke her spousal  
19 privilege which under Rule 12-21227 she has an  
20 absolute right to do so.

21 THE COURT: Let me see it.

22 MR. WALSH: Yes, sir. There's that and what  
23 Ms. Rich had discussed the other day, what you  
24 have. Then there's the Rule 504 which protects the  
25 communication, but she has an absolute right not to

1           testify by statute, Judge.

2           And I think it would be improper -- I think  
3           the State has said that it's okay if she is in  
4           here, but I think that it would be improper for  
5           them to call her to the stand simply to invoke her  
6           spousal privilege. I think it goes in line with  
7           calling someone to the stand simply to invoke a  
8           Fifth Amendment privilege. I know there's some  
9           kind of case law here, and there's plenty of case  
10          law out there. Thomas Versus State --

11          THE COURT: Ms. Rich, were you planning to  
12          call the spouse today if you were going to call  
13          her?

14          MS. RICH: No.

15          THE COURT: Let's save this for a break. I  
16          appreciate your argument, but we need to be making  
17          some progress. I respect what you're saying, but I  
18          want to get the case going. What else you got?

19          MR. WALSH: I would ask this Judge, I know  
20          the phones are not allowed to be on in here.  
21          However, I know the Defendant, Dr. Nakhla and Sally  
22          Nakhla have two children in school. I would ask  
23          that she be allowed to have it on vibrate just in  
24          case there's an emergency at school.

25          THE COURT: The wife?

1 MR. WALSH: The wife, yes.

2 THE COURT: Well, the Defendant, okay. MR.

3 WALSH: Ms. Nakhla.

4 THE COURT: I understand. All right.

5 Anything else?

6 MR. WALSH: Yes, sir, Judge. The other thing  
7 is they've called Said Nakhla which is the father  
8 of the Defendant or they subpoenaed him, Judge. He  
9 has never been interviewed or given a statement in  
10 any fashion in this case that I am aware of.

11 Judge, since the beginning, he's been an  
12 integral part of the Defense in this case. He has  
13 a background in engineering, has worked in the auto  
14 industry and he has been part of the Defense. We  
15 would ask that he be allowed to stay in the  
16 courtroom instead of having him subject to the rule  
17 in this case. I can't imagine in a case of this  
18 magnitude that the State would call somebody to the  
19 stand, particularly the father of the Defendant and  
20 somebody that has some sort of background like that  
21 which has never given a statement or they wouldn't  
22 know what he would say once he got up there.

23 I believe that the Court has the discretion  
24 to allow him to stay in the courtroom during these  
25 proceedings to show support for his son which he

1           has been by his side the entire time.

2           THE COURT:   Ms. Rich?

3           MS. RICH:   Your Honor, there's no exception  
4           for the father of the Defendant to remain in the  
5           courtroom.   And we have no idea what is going to  
6           happen in this particular trial, and we are  
7           reserving the right to call him if we need to.   But  
8           if there should be something that comes up in this  
9           trial, that we may need him to testify.   And  
10          therefore, he's a witness and he's subject to the  
11          rule just like any other witness.

12          MR. WALSH:   Judge, I would simply say that I  
13          think it's a point -- it keeps a family member out  
14          of the courtroom that we'd have him sitting there  
15          showing support for his son and he's been party  
16          assistant in the Defense of this case.

17          THE COURT:   I understand.   I will say that the  
18          Court exercises discretion to allow the Defendant's  
19          father to remain in the courtroom during voir dire.  
20          Didn't have to do that, but he is subpoenaed as a  
21          witness.   I have no way to wire into the brain of  
22          Ms. Rich and determine whether it's a ploy or not.

23          I hear what you say and you say it is that.  
24          She says it is not.   I have no ability to discern  
25          whether's it's a ploy or not. I never have that

1       ability with any lawyers unless I catch them in a  
2       misrepresentation to me.

3               That has not happened in this case or in any  
4       other case with Ms. Rich or Mr. Jaffe or Mr.  
5       Knizley. All counsel on both sides have always  
6       been people of integrity and very honorable with  
7       me.

8               That being the case, I cannot treat the  
9       Defendant's father any different than I would treat  
10      any other person. I am required by law to treat  
11      all people the same from whatever background,  
12      whatever connection they have. I'm required to  
13      treat everybody the same.

14              And so the rule is what it is. I don't have  
15      a compelling reason at this point to exercise  
16      discretion to allow him to be in here in violation  
17      of the rule which is a standard rule in all trials.  
18      For over 40 years I've recognized that rule.

19              If you have evidence that it's a ploy, if you  
20      have something bearing on that other than your  
21      argument, I'm not demeaning your position. You're  
22      advocating for your client and that's your  
23      professional job and I respect that.

24              But if you've got evidence that it's a ploy,  
25      some evidence of that, then I'll consider that.

1 But absent that, all I've got is argument and I  
2 have a subpoena to a person who's subpoenaed as a  
3 witness.

4 MR. WALSH: Give me one second, Judge.  
5 Judge, I may be incorrect in this, but my client  
6 tells me that their eight-year-old son was also on  
7 a subpoena list for this trial. I can't image -- I  
8 don't know if he ever got served with it, but I  
9 don't know.

10 MS. RICH: He shouldn't have gotten served  
11 with it.

12 MR. WALSH: I mean, it's that kind of thing.  
13 What possibly could the eight-year-old son be  
14 called to testify at trial --

15 MS. RICH: We have not.

16 MR. WALSH: -- to subpoena the entire family  
17 that nobody has ever given any type of statement  
18 simply to keep them out of the courtroom.

19 MS. RICH: We did not subpoena the entire  
20 family. We did not subpoena the mother. And if  
21 there was a subpoena issued to the son, that's in  
22 error. That was not ever an objective for the  
23 State, Your Honor.

24 THE COURT: Well, again, at this point I don't  
25 have any basis to treat either side's witnesses any

1 different than any other case I've ever had. I  
2 have to treat everybody the same in every case. If  
3 the State had a witness here, if you had subpoenaed  
4 somebody on their side, then I'd have to apply the  
5 rule, you know.

6 There's a statute dealing with the right of  
7 the victim's family to be present, but outside of  
8 that and the parties and the attorneys, I have to  
9 apply the rule the same to everybody. So I'm going  
10 to require the father to have to leave the  
11 courtroom during the testimony.

12 MR. WALSH: Will he have to leave during  
13 opening?

14 THE COURT: Yes, because both sides are going  
15 to be arguing. That's the way the rule is  
16 typically enforced. You know that. You know that.  
17 I mean, it's typically enforced from the start --  
18 it's actually enforced during voir dire as well,  
19 and I let that go because I knew that it was going  
20 to be an extended process, a minimum of facts, but  
21 the opening for each side will be inherently  
22 fact-based, you know.

23 And the point of the rule is so that when  
24 witnesses testify, if they testify, they have not  
25 heard what other witnesses said or other witnesses

1 are allegedly going to say. It's a way of testing  
2 the accuracy, the credibility, the voracity of the  
3 witnesses. It's a very traditional, long-standing  
4 rule in Alabama courts.

5 So I'm going to apply the rule to the  
6 Defendant's father and it's not with any ill will.  
7 I still think he's always been very respectful and  
8 well-mannered and timely at all hearings. And I  
9 know that he's been here every time, but the law is  
10 the law. I'm bound by the law. I can give no more  
11 or no less than what it says. I have to treat  
12 everybody the same.

13 MR. WALSH: Thank you, Judge.

14 MR. KNIZLEY: Just point of clarity, we are  
15 invoking the rule as to any other witnesses that  
16 may be --

17 THE COURT: Yes. So anybody that's in the  
18 courtroom that is subpoenaed as a witness in the  
19 case, you'll have to wait outside in the hallway.  
20 That's called the rule. It applies equally to both  
21 sides in the case. It's nothing personal to you.  
22 It's simply a rule that governs the proceedings in  
23 trials.

24 (OFF THE RECORD)

25 MS. RICH: Your Honor, of course the victim's