

## **PETITION APPENDIX**

## **APPENDIX A**

17CA1929 Peo v Moshrefi 05-27-2021

COLORADO COURT OF APPEALS

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Court of Appeals No. 17CA1929  
Jefferson County District Court No. 16CR3088  
Honorable Christie A. Bachmeyer, Judge

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The People of the State of Colorado,

Plaintiff-Appellee,

v.

Nahid Kadir Moshrefi,

Defendant-Appellant.

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JUDGMENT AFFIRMED

Division VII  
Opinion by JUDGE FOX  
Dunn and Pawar, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**

Announced May 27, 2021

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Philip J. Weiser, Attorney General, Jennifer L. Carty, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Meghan M. Morris, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Nahid Kadir Moshrefi, appeals the judgment of conviction finding her guilty of theft and exploitation of an at-risk adult. Specifically, she argues that (1) the trial court should have suppressed statements she gave to detectives in her home because she made them involuntarily and the detectives obtained them in violation of her Fourth, Fifth, and Sixth Amendment rights; (2) the trial court improperly admitted evidence under CRE 404(b) that she received money from another man for a claimed illness; and (3) cumulative error requires reversal. We reject her claims and affirm.

### I. Background

¶ 2 Moshrefi met the victim, W.M., through a dating service in 2013. W.M. was seventy-seven (Moshrefi was in her mid-forties at the time) and suffered from mild memory loss and confusion; W.M. was later diagnosed with dementia. The two began dating, and shortly thereafter Moshrefi told W.M. that she needed money to treat her cancer. W.M. told others about Moshrefi's cancer and transferred large sums of money to her.

¶ 3 In July 2015, W.M.'s bank became concerned about his large transfers to Moshrefi and reported those suspicions to the police. W.M.'s therapist made a similar report.



¶ 4 In April 2016, Detectives Jessica Beren and Matt Calhoun of the Westminster Police Department interviewed Moshrefi in her home. Moshrefi said that W.M. had given her money for medical bills and miscellaneous expenses. She initially denied telling W.M. she had cancer, but when Beren suggested there was a recording of Moshrefi's conversation with W.M. and asked why she would lie about having cancer, Moshrefi responded, "I don't know. Maybe to get attention." W.M. spoke with Beren later that day and asked that Moshrefi not be prosecuted.

¶ 5 Moshrefi was charged with theft and criminal exploitation of an at-risk adult, and the case proceeded to trial in July of 2017. W.M. and Moshrefi testified that she never told him she had cancer. The prosecution presented evidence that Moshrefi had dated and received money from another man, purportedly for cancer treatment. The jury convicted Moshrefi as charged, and this appeal followed.

## II. The April Interview

¶ 6 Moshrefi first argues that the trial court erred by admitting statements she made to Beren and Calhoun in her home in April 2016. She argues the trial court should not have admitted those

statements because she made them involuntarily and the detectives violated her Fourth, Fifth, and Sixth Amendment rights in obtaining them. We disagree.

#### A. Additional Background

¶ 7 When Beren and Calhoun arrived at Moshrefi's home one morning, they first encountered her husband, Joseph Zalewski. The detectives said they wanted to speak with Moshrefi, and Zalewski allowed them in and called for Moshrefi. When Moshrefi appeared, the detectives asked Zalewski to step away so they could talk with her privately, and they sat at a kitchen table near the home's door. The detectives were in plainclothes and armed, though Beren's weapon was concealed around her ankle.

¶ 8 Beren questioned Moshrefi about her relationship with W.M., and Calhoun asked Moshrefi if she wanted to sit down "to feel more comfortable talking to us." Moshrefi agreed.

¶ 9 Beren continued questioning Moshrefi, and when she asked about the money W.M. had given her, Moshrefi asked if she was under criminal investigation. Beren confirmed that she was under investigation regarding the money W.M. gave her, prompting Moshrefi to ask if the detectives had a warrant for her arrest. Beren

said, “No, not yet,” and Moshrefi responded, “Ok, then please get one and I’ll obtain an attorney and talk to you at that point.”

¶ 10 Beren stopped her questioning, but Calhoun volunteered that they already knew how much money W.M. had given her and that they wanted to give her an opportunity to explain the transfers. Calhoun added that “if you don’t want to talk about [it], that’s fine but . . . we already [kind of] know the answers.” He also said that they had been trying to contact her for about a month and would not give her another opportunity to explain herself before referring the case to the district attorney. After Moshrefi asked about their previous attempts to contact her, Calhoun said, “[I]f you’re done answering questions, then . . . that’s all I’ve got for now.” He also added that he thought it would be helpful if she explained “where some of the money came from.”

¶ 11 Moshrefi initially claimed that she needed the money to cover business expenses. When Calhoun pressed her on that assertion, Moshrefi denied that W.M. gave her money for her business. Calhoun then said, “[Y]ou said before you were done talking, I just want to make sure that you’re talking because you want to, I’m not

trying to bully [you] into anything. You understand that, right?”

Moshrefi responded, “Well . . . this is all kind of blind-sid[ing] me.”

¶ 12 The conversation continued, and Moshrefi later said the money was for medical bills and other miscellaneous expenses, such as car maintenance. The detectives asked if she had documentation that would support her assertions, and Moshrefi responded, “[M]y head is in water and you think I have . . . tracking for everything?” She expressed surprise and confusion over the situation, prompting Beren to again ask, “Do you want us to leave or do you want to talk a little bit more about it?” Moshrefi again suggested confusion, and Beren said that they knew W.M. had given her “tens of thousands” of dollars and that she was either exploiting him or had a legitimate illness that justified the transfers.

¶ 13 As Moshrefi continued to explain the transfers, she disclosed her history of breast lumps. But when Beren asked if she had seen a doctor regarding the lumps recently, she said she had not because she wanted to treat the lumps holistically. Beren then explained that Moshrefi was being accused of faking cancer to extract money from W.M. and requested proof of her illness.

Moshrefi said she was not sure whether she had cancer and denied

telling W.M. that she did. Beren said, “What if I told you there’s a recording of a conversation between the two of you and you’re explaining that you’re extremely ill and will die if you don’t have treatment?” Beren then asked Moshrefi, given her uncertainty about having cancer, why she would tell W.M. she was seeing a doctor and needed treatment to survive. Moshrefi responded, “I don’t know. Maybe to get attention.”

¶ 14 The conversation continued for a few more minutes and concluded when Moshrefi repeatedly said she wanted to speak with an attorney. The entire conversation lasted approximately thirty-two minutes.

¶ 15 Before trial, Moshrefi moved to suppress the statements she made to the detectives, arguing that the officers failed to honor her request for an attorney and that any statements she made after Beren misrepresented that there was a recording of a conversation between her and W.M. were involuntary. During a hearing on the motion, Moshrefi’s counsel stipulated that she was not in custody “for the purposes of this motion” and argued that (1) under the Fifth and Sixth Amendments, the detectives should have ceased their questioning once Moshrefi said she wanted to retain an attorney

before talking with the detectives and (2) Moshrefi's statements were involuntary under the totality of the circumstances. The trial court denied Moshrefi's motion, finding that her Sixth Amendment rights had not yet attached, that the detectives did not violate her Fifth Amendment rights, and that her statements were voluntary.

#### B. Standard of Review

¶ 16 In reviewing a ruling on a motion to suppress, we defer to a trial court's factual findings if they enjoy record support but review its legal conclusions de novo. *People v. Coke*, 2020 CO 28, ¶ 10.

Further,

“[w]here the statements sought to be suppressed are audio- and video-recorded, and there are no disputed facts outside the recording controlling the issue of suppression, we are in a similar position as the trial court to determine whether the statements should be suppressed.” Thus, we may undertake an independent review of the audio or video recording to determine whether the statements were properly suppressed in light of the controlling law.

*People v. Kutlak*, 2016 CO 1, ¶ 13 (quoting *People v. Madrid*, 179 P.3d 1010, 1014 (Colo. 2008)).

#### C. Voluntariness

¶ 17 The People contend that Moshrefi only preserved the issue of voluntariness with respect to statements she made after Beren's fabrication regarding a recording of a conversation between Moshrefi and W.M. We need not consider this argument because, as discussed below, all of Moshrefi's statements to the detectives during the April interview were voluntary under the totality of the circumstances.

¶ 18 Under the Due Process Clauses of the United States and Colorado Constitutions, a defendant's statements must be voluntary to be admissible as evidence. *People v. Ramadan*, 2013 CO 68, ¶ 18. Courts determine voluntariness by considering the totality of the circumstances under which the defendant spoke, balancing the defendant's ability to resist coercive pressure and the nature of the police conduct. *Id.* at ¶ 20.

¶ 19 The supreme court has identified a nonexclusive list of factors to consider in making the voluntariness determination, including (1) whether the defendant was in custody; (2) whether the defendant was free to leave; (3) whether the defendant was aware of the situation; (4) whether the police read *Miranda* rights to the defendant; (5) whether the defendant understood and waived

*Miranda* rights; (6) whether the defendant had an opportunity to confer with counsel or anyone else before or during the interrogation; (7) whether the statement was made during the interrogation or volunteered later; (8) whether the police threatened the defendant or promised anything directly or impliedly; (9) the method or style of the interrogation; (10) the defendant's mental and physical condition just before the interrogation; (11) the length of the interrogation; (12) the location of the interrogation; and (13) the physical conditions of the location where the interrogation occurred. *Id.*

¶ 20 Considering these factors, we conclude that Moshrefi's statements during the interview in her home were voluntary. At a pretrial hearing, Moshrefi's counsel conceded that she was not in custody. The detectives told Moshrefi several times that she did not have to speak with them. And while *some* of the detectives' questions and statements were accusatory,<sup>1</sup> they never raised their voices or became aggressive with Moshrefi, and they made no

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<sup>1</sup> The detectives stated they were willing to clear Moshrefi of any wrongdoing if she could justify, with documentation, the money W.M. gave her.



threats or promises. Moshrefi spoke softly throughout the conversation and, while she sounded emotional at times and expressed confusion, she was responsive to the detectives' questions and was not so emotional or distraught as to have misunderstood the nature of the interview.

¶ 21 Moshrefi argues her statements were involuntary because the detectives (1) isolated her; (2) established physical control over her by sitting between her and the door, displaying their weapons, and ordering her to sit down; (3) ignored her requests to end the discussion; and (4) lied to her about the existence of incriminating evidence. These arguments do not persuade us that, under the totality of the circumstances, Moshrefi's statements were involuntary.

¶ 22 The record shows that, while the detectives were armed, asked Zalewski to leave, and sat roughly between Moshrefi and the door, the detectives did not brandish their weapons, directly block the door, or otherwise physically coerce or intimidate Moshrefi into speaking with them. Contrary to Moshrefi's assertion, the detectives did not order her to sit down; rather, Calhoun asked if she would be more comfortable sitting. And while Calhoun

continued talking after Moshrefi said she wanted an attorney before talking to them, she did not then insist on ending the conversation. Further, Calhoun indicated several times that he would end the conversation if Moshrefi so desired and specifically asked her to confirm that she was speaking with them voluntarily.

¶ 23 Lastly, while the People concede that Beren misrepresented the existence of an incriminating recording to Moshrefi, deceptive tactics, standing alone, are not enough to render a suspect's statements involuntary. *See Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (stating that while misrepresentation by police is relevant, it is insufficient to make an otherwise voluntary confession inadmissible); *People v. Speer*, 216 P.3d 18, 23 (Colo. App. 2007) ("It is true the officers here made false statements regarding the evidence, but the record supports the trial court's finding that the effect of the statements did not make defendant's statements involuntary."), *rev'd on other grounds*, 255 P.3d 1115 (Colo. 2011).

¶ 24 Thus, we conclude that Moshrefi's statements during the interrogation were voluntary. *See Ramadan*, ¶ 20.

#### D. Fourth Amendment Claim

¶ 25 The People argue that Moshrefi waived her Fourth Amendment argument. Specifically, the People argue that, when the trial court asked Moshrefi's counsel whether he was moving under the Fourth or Fifth Amendment, he responded that he was moving for suppression under the Sixth Amendment, thereby waiving his right to argue under the Fourth (and Fifth) Amendment on appeal. However, we need not consider the People's waiver argument because even if Moshrefi did not waive her Fourth Amendment argument, the detectives did not unlawfully search or seize Moshrefi in violation of her Fourth Amendment rights.

¶ 26 Under the Fourth Amendment to the United States Constitution, the government may not conduct unreasonable searches or seizures. U.S. Const. amend. IV; *see also* Colo. Const. art. II, § 7. If a government has no warrant to search, a search is per se unreasonable unless an exception to the warrant requirement applies. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

¶ 27 One such exception is a search conducted pursuant to consent. *Id.* Where a residence is jointly occupied by more than one person, the consent of one occupant with common authority

over the premises is sufficient to permit a warrantless search.

*People v. Peluso*, 2021 CO 16, ¶ 13. This is true even if, after one occupant consents to a search and invites officers inside the residence, another occupant later objects. *Williams v. People*, 2019 CO 108, ¶¶ 3, 42.

¶ 28 There are three types of “[e]ncounters between police officers and citizens in the context of suppression . . . : (1) consensual interviews; (2) investigative stops; and (3) arrests.” *People v. Padgett*, 932 P.2d 810, 813 (Colo. 1997). “A consensual interview between a citizen and law enforcement personnel is not subject to Fourth Amendment protection.” *Id.* “The test for determining if the encounter is a consensual one is whether a reasonable person under the circumstances would believe . . . she was free to leave . . . or to disregard the official’s request for information.” *Id.* (quoting *People v. Thomas*, 839 P.2d 1174, 1177–78 (Colo. 1992)). “Taking into account all of the circumstances surrounding the encounter, a consensual encounter is negated if ‘the police conduct would “have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.”’” *Id.* at 814 (quoting *Florida v. Bostick*, 501 U.S. 429, 437 (1991)).

¶ 29 Moshrefi first argues that the detectives acted unlawfully by remaining in her home after she revoked her consent to their presence. However, Zalewski — a co-occupant with common authority over Moshrefi’s home — consented to the detectives’ entry. Moshrefi initially did not challenge their presence in the residence. It was only after speaking with them for over ten minutes that she exhibited discomfort. Because Moshrefi did not object when Zalewski “allowed the [detectives] inside,” her subsequent objection during the interview “could not vitiate [Zalewski’s] previously given consent.” *Williams*, ¶ 3.

¶ 30 Further, even if Moshrefi’s objection had been timely, she never directed the detectives to leave her home. Rather, she suggested that she would “talk to [them] later” after they obtained a warrant and she spoke with an attorney. *See United States v. Lopez–Mendoza*, 601 F.3d 861, 867 (8th Cir. 2010) (holding that, although a suspect may withdraw consent during a search, such a withdrawal must be “clearly inconsistent with the apparent consent,” “an unambiguous statement challenging the officer’s authority to conduct the search,” or both (quoting *United States v. Sanders*, 424 F.3d 768, 774 (8th Cir. 2005))). And she did not

insist that the detectives leave her home after Calhoun continued talking. Instead, she continued speaking with them. Thus, the detectives did not unlawfully remain in the home.

¶ 31 Moshrefi also argues that the detectives unlawfully seized her by refusing to honor her request to end the conversation. However, the detectives gave Moshrefi multiple chances to end the conversation and, as discussed, did not threaten, intimidate, physically seize, or coerce her. Thus, a reasonable person in this situation would have felt free to terminate the conversation or disregard the detectives' questions. *See Padgett*, 932 P.2d at 813; *see also Bostick*, 501 U.S. at 434 ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968))). Moshrefi did not insist that the detectives leave her home and continued answering their questions after stating that she would "talk to [them] later," indicating that the encounter remained a consensual interview.

¶ 32 Accordingly, we conclude that the detectives did not unlawfully search or seize Moshrefi under the Fourth Amendment. *See Padgett*, 932 P.2d at 813; *Williams*, ¶ 3.

#### E. Fifth and Sixth Amendment Claims

¶ 33 The Fifth Amendment of the United States Constitution guarantees that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amends. V & XIV, § 1. The Sixth Amendment guarantees a criminal defendant the right to have counsel present at interviews with law enforcement authorities after an adversary judicial process has been initiated. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009).

¶ 34 However, the Fifth Amendment privilege does not apply outside of “the context of some legal proceeding in which an individual is being asked to testify against herself” or a “custodial interrogation,” which occurs when “a reasonable person in the suspect’s position would have felt that her freedom of action had been curtailed to a degree associated with formal arrest.” *Coke*, ¶¶ 12-14 (quoting *People v. Garcia*, 2017 CO 106, ¶ 20). Similarly, the Sixth Amendment right to counsel attaches only when charges have been filed. *Id.* at ¶ 14 n.2.

¶ 35 Moshrefi does not dispute that she was not in custody when speaking with the detectives and that charges had not yet been filed against her. Because Moshrefi's Fifth and Sixth Amendment rights had not attached, the detectives could not have violated them. See *id.* at ¶ 14.

¶ 36 Accordingly, the trial court did not err in denying Moshrefi's motion to suppress the statements she made to the detectives during the April interview in her home.

### III. CRE 404(b)

¶ 37 Moshrefi next argues that the trial court abused its discretion by admitting evidence under CRE 404(b) that another man, T.H., gave her money because the prosecution used the evidence to prove that she had a bad character and acted in conformity therewith. We disagree.

#### A. Additional Background

¶ 38 Before trial, the prosecution gave notice that it intended to introduce other acts evidence pursuant to CRE 404(b). The evidence — that Moshrefi accepted money from T.H. after telling him that she had cancer — was offered to prove intent and knowledge and to rebut defenses. The trial court later issued an



order finding the evidence admissible to show that Moshrefi acted knowingly when she deceived W.M. into giving her money and to rebut Moshrefi's defense that she did not make false statements to W.M.

¶ 39 During trial, T.H. testified that he met Moshrefi in 2012 or 2013, and they went on a few dates. At first, they saw each other about once per month, but less frequently later. In 2014 or 2015, Moshrefi told T.H. that she had cancer, her treatment was expensive, her business was struggling, and she was getting divorced. When T.H. asked if he could "help in any way," Moshrefi was receptive. On April 3, 2016, T.H. gave her a check for \$5,000, which Moshrefi requested be made out to cash. Although they had not spoken since 2016, T.H. considered Moshrefi a friend.

¶ 40 While preparing the jury for its deliberation, the court gave the following limiting instruction:

The evidence and testimony of [T.H.], which you heard concerning other acts by the defendant, was admitted for the limited purpose of showing the defendant acted knowingly as it relates to the crime of theft from an at-risk victim and criminal exploitation of an at-risk elder. The evidence can be used to rebut her defense that she did not make any false statements to [W.M]. . . .

The court gave a similar instruction before T.H. testified.

B. Standard of Review and Applicable Law

¶ 41 We review the trial court’s admission of CRE 404(b) evidence for an abuse of discretion. *Yusem v. People*, 210 P.3d 458, 463 (Colo. 2009). A trial court abuses its discretion if its ruling is manifestly arbitrary, unreasonable, or unfair, or is based on a misapplication of the law. *See People v. Kendrick*, 2017 CO 82, ¶ 36.

¶ 42 CRE 404(b) provides in pertinent part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . .

¶ 43 Before admitting other acts evidence under CRE 404(b), a trial court must determine if it is admissible by considering if the evidence (1) “relates to a material fact”; (2) is “logically relevant”; (3) has such relevance “independent of the intermediate inference . . . that the defendant has a bad character”; and (4) has probative

value that is not “substantially outweighed by the danger of unfair prejudice.” *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990).

### C. Analysis

¶ 44 Moshrefi argues that the other acts evidence is inadmissible under CRE 404(b) because (1) it lacks logical relevance to a material fact as it occurred after W.M. stopped giving her money; (2) its inference is dependent on propensity since it is otherwise unrelated to the crime; and (3) the danger of unfair prejudice substantially outweighs its probative value.

#### 1. Material Fact

¶ 45 The first prong of the *Spoto* test, requiring that the evidence relate to a material fact, “only requires the court to decide whether the fact is of consequence to the determination of the action.” *Yusem*, 210 P.3d at 464. If the purposes for which the other acts evidence is offered are probative of an ultimate fact — such as an element of the charged offense — the first prong is satisfied. *See id.*

¶ 46 “A person commits criminal exploitation of an at-risk person when he or she knowingly uses deception, harassment, intimidation, or undue influence to permanently or temporarily

deprive an at-risk person of the use, benefit, or possession of any thing of value.” § 18-6.5-103(7.5)(a), C.R.S. 2020.

¶ 47 A person commits theft from an at-risk victim when she knowingly obtains anything of value from an at-risk person by deception and intends to deprive them permanently of the use or benefit of the thing of value. § 18-6.5-103(5); § 18-4-401(1)(a), C.R.S. 2020.

¶ 48 For each charge, the prosecution had to prove, beyond a reasonable doubt, that Moshrefi knowingly used deception to deprive W.M. of his money. § 18-4-401(1)(a); § 18-6.5-103(7.5)(a). The other acts evidence was admitted to show Moshrefi’s intent — that she knowingly used deception to elicit gifts from W.M., a material element of the charges. Thus, as the trial court concluded, the other acts evidence was properly offered to meet that material element, satisfying the first prong of *Spoto*. 795 P.2d at 1318.

## 2. Logical Relevance

¶ 49 *Spoto* next requires that the court ensure that the evidence logically relates to a material element. *Id.* Other acts evidence is logically relevant if it has any tendency to make the existence of the material fact more or less probable than it would be without the

evidence. CRE 401. In assessing relevance, we consider the similarity of the other acts to the charged acts. *People v. Villa*, 240 P.3d 343, 351 (Colo. App. 2009).

¶ 50 The record establishes substantial similarity between Moshrefi's interactions with T.H. and W.M. There is evidence that she lied to both men about having cancer, needing expensive medical treatment, and struggling financially. The similarity between the false information Moshrefi told T.H. and W.M. made it more probable that she intentionally deceived W.M. into giving her money.

¶ 51 Moshrefi's argument — that the other acts evidence is not logically relevant because T.H. gave her money three days after W.M. had ceased his giving — fails because the deceptive interactions must logically relate to her intent, not the timing of the gifts. *See Spoto*, 795 P.2d at 1318; § 18-6.5-103(7.5)(a).

¶ 52 Since these deceptions continued over much of the same time period leading up to the gifts and were substantially similar, the other acts evidence is logically relevant. *See Spoto*, 795 P.2d at 1318; *Villa*, 240 P.3d at 351.

### 3. Independent of Propensity Inference

¶ 53 Next, *Spoto* requires assurance that the other acts evidence is admissible independent of the inference that the defendant committed the crime charged because she acted in conformity with her bad character. *Spoto*, 795 P.2d at 1318. This prong does not demand the absence of a propensity inference, “but merely requires that the proffered evidence be logically relevant independent of that inference.” *Villa*, 240 P.3d at 352 (quoting *People v. Snyder*, 874 P.2d 1076, 1080 (Colo. 1994)).

¶ 54 Here, the other acts evidence is logically relevant independent of the inference that Moshrefi has a bad character and acted in conformity therewith. An important fact in determining whether Moshrefi knowingly deceived W.M. was whether she told him that she had cancer. Defense counsel recognized the importance of this fact by telling the jury in closing argument, “This case is about one thing and one thing only. Did Nahid Moshrefi tell [W.M.] she had cancer?” Based on Moshrefi’s interaction with T.H., the jury could logically infer that Moshrefi intentionally lied about having cancer to men she dated to receive money from them. T.H.’s and W.M.’s interactions with Moshrefi were similar enough that the inference “arises not from the criminal character of the accused but from the

demonstration of [her] pattern of using a particular technique to accomplish a particular end.” *People v. Rath*, 44 P.3d 1033, 1041 (Colo. 2002).

¶ 55 The third *Spoto* prong is satisfied because Moshrefi’s interaction with T.H. made it more probable that she acted with the requisite intent. 795 P.2d at 1318.

#### 4. CRE 403

¶ 56 Finally, the fourth prong of the *Spoto* test requires the court to determine whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *Id.*; CRE 403. In deference to the trial court’s discretion, “we must assume the maximum probative value and the minimum unfair prejudice to be given the evidence.” *Yusem*, 210 P.3d at 467.

¶ 57 Evidence is not unfairly prejudicial simply because it is damaging since “[a]ll effective evidence is prejudicial in the sense of being damaging . . . to the party against whom it is offered.” *People v. Dist. Ct.*, 785 P.2d 141, 147 (Colo. 1990). Unfair prejudice occurs if “otherwise admissible evidence has ‘an undue tendency to suggest a decision [made] on an improper basis,’ which is ‘commonly but not necessarily an emotional one, such as sympathy, hatred,

contempt, retribution, or horror.” *People v. Cousins*, 181 P.3d 365, 370 (Colo. App. 2007) (quoting *Dist. Ct.*, 785 P.2d at 147).

¶ 58 We are not persuaded by Moshrefi’s argument that the other acts evidence lacked probative value based on the timing of T.H.’s gift, which was made three days after W.M. stopped giving her money. The deceptive interaction between Moshrefi and T.H. — the most relevant portion of the evidence — occurred concurrently with the charged criminal acts. The other acts evidence is highly probative because its similarity to the charged crime evinces Moshrefi’s intent.

¶ 59 We also reject Moshrefi’s argument that the evidence was unfairly prejudicial because it resulted in an inference that she had a bad character and acted in conformity therewith. Any prejudice is limited by T.H.’s positive characterizations of her. Moshrefi never asked for any money, and T.H. considered Moshrefi a friend. Thus, the danger of the jury making an emotional decision out of hatred, contempt, or another improper basis is low and does not substantially outweigh the evidence’s probative value. Also, any prejudice was mitigated by the court’s limiting instructions. See *Villa*, 240 P.3d at 352.



¶ 60 Ultimately, given the court’s substantial discretion under CRE 403, *see Yusem*, 210 P.3d at 463, and because CRE 403’s balancing test strongly favors the admission of evidence, *see People v. Dist. Ct.*, 869 P.2d 1281, 1286 (Colo. 1994), we cannot conclude that the trial court abused its discretion in admitting this other acts evidence.

#### IV. Cumulative Error

¶ 61 Moshrefi last argues that the doctrine of cumulative error requires reversal because, when analyzed in the aggregate, the alleged errors undermined the fundamental fairness of the proceedings. Under the doctrine of cumulative error, reversal is required when numerous errors “collectively prejudice the substantial rights of the defendant.” *Howard-Walker v. People*, 2019 CO 69, ¶ 25. A conviction will not be reversed unless the cumulative effect of multiple errors created “cumulative prejudice” and “substantially affected the fairness of the trial proceedings and the integrity of the fact-finding process.” *Id.* at ¶¶ 24-25 (citation omitted).

¶ 62 We have identified no individual trial court errors, and thus Moshrefi is not entitled to relief under the cumulative error

doctrine. *People v. Phillips*, 91 P.3d 476, 484 (Colo. App. 2004) (If “there is no individual error or when the individual errors do not show an absence of a fair trial, reversal for cumulative error is not justified.”).

## V. Conclusion

¶ 63 The judgment is affirmed.

JUDGE DUNN and JUDGE PAWAR concur.

## **APPENDIX B**

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 22, 2021 CASE NUMBER: 2021SC503
Certiorari to the Court of Appeals, 2017CA1929 District Court, Jefferson County, 2016CR3088	
<b>Petitioner:</b>  Nahid Kadir Moshrefi,  <b>v.</b>  <b>Respondent:</b>  The People of the State of Colorado.	Supreme Court Case No: 2021SC503
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 22, 2021.  
JUSTICE BERKENKOTTER does not participate.

## **APPENDIX C**

JURY INSTRUCTION 17

The elements for the crime of THEFT FROM AN AT-RISK VICTIM are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. obtained, retained or exercised control over anything of value of another,
5. without authorization or by threat or deception, and
6. intended to deprive William Maruca permanently of the use or benefit of the thing of value.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of THEFT FROM AN AT-RISK VICTIM.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of THEFT FROM AN AT-RISK VICTIM.

JURY INSTRUCTION 19

The elements of the crime of CRIMINAL EXPLOITATION OF AN AT-RISK ELDER are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. used deception or undue influence,
5. to permanently or temporarily deprive an at-risk elder of the use, benefit, or possession of anything of value.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of CRIMINAL EXPLOITATION OF AN AT-RISK ELDER.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of CRIMINAL EXPLOITATION OF AN AT-RISK ELDER.

## **APPENDIX D**



DISTRICT COURT  
COUNTY OF JEFFERSON  
STATE OF COLORADO  
100 JEFFERSON COUNTY PARKWAY  
GOLDEN, COLORADO 80401

PEOPLE OF THE STATE OF COLORADO,

V.

NAHID MOSHREFI,  
DEFENDANT.

^FOR COURT USE ONLY^

Case No. 16CR3088

Division 2

REPORTER'S TRANSCRIPT

This matter came on for Trial on the 18th day of  
July, 2017, before the Honorable Christie Bachmeyer, Judge  
of the District Court.

A-P-P-E-A-R-A-N-C-E-S

FOR THE PEOPLE:

CHARLES TINGLE, ESQ.  
*Registration No. 14329*

JESSICA RADKE, ESQ.  
*Registration No. 40248*

FOR THE DEFENDANT:

RANDALL PAULSEN, ESQ.  
*Registration No. 10643*

1 the name of Joe Zalewski, who is the defendant's husband.

2 She asked Mr. Zalewski: Do you know William  
3 Maruca? Nope, I don't know who he is. Venus has been  
4 spending a lot of time in Denver.

5 Well, she goes to see a friend, Shelly, in  
6 Westminster. Does Venus have cancer? No. No cancer. No  
7 treatments.

8 And he would have known. He lived with her at  
9 their home in Monument. He had a health savings account,  
10 which all medical expenses were paid through.

11 No treatment for cancer. She wasn't sick. That  
12 is what Investigator Beren discovered. She continued her  
13 investigation and confronted the defendant on April 20,  
14 2016. She talked about cancer. She asked the defendant  
15 about treatment. Defendant's response: I don't know if I  
16 have cancer. I know I have lumps in my breasts.

17 Investigator Beren asked if she told Bill she  
18 had cancer. Her response: I never told Bill that. But  
19 later on, she admits that she told Bill she was paying a  
20 doctor for treatment, if she didn't get treatment, she was  
21 going to die.

22 Investigator Beren asked her: Why did you say  
23 this to Bill? Her response, she doesn't know. Maybe to  
24 give attention. You'll hear that conversation. That  
25 conversation was recorded. You'll hear that the defendant

1 states maybe it wasn't the best way to get money. And it  
2 wasn't the best way to get money because it's against the  
3 law. It was deception.

4 It wasn't the only time she told someone that  
5 she had cancer. That wasn't the only time she told a  
6 gentleman friend that she had cancer. Enter Timothy  
7 Harris. Timothy Harris is an acquaintance that she met at  
8 a bar out in Castle Pines. She told Timothy she had  
9 cancer.

10 In April of 2016, she texted Mr. Harris. She  
11 said she was stressed; she was in financial trouble; she  
12 needed help. Mr. Harris gives her \$5,000. She tells him  
13 to write the check out to cash, and he does. What does  
14 she do? A few weeks later, she deposits \$20,000 into her  
15 Charles Schwab IRA account.

16 John Bunting, who you'll hear from, is an  
17 expert. He is a forensic accountant who was formerly with  
18 the U.S. Department of Commerce as an auditor. He held  
19 that position for nearly 30 years. He now works as a  
20 volunteer doing forensic accounting on financial elder  
21 abuse cases.

22 He reviewed over 2500 pages of bank records  
23 involving Mr. Maruca and Ms. Moshrefi. He came to the  
24 conclusion that, between October of 2013 and June of 2016,  
25 William Maruca gave Venus more than \$68,000. He also

1 has with him on April 20th: You better record this  
2 because she's going to lie to you, Bill. She's just going  
3 to lie to you, Bill. None of that is true.

4 And then there is emails from cousins, Ed  
5 Anderson. There is emails from Rich Borinsky talking  
6 about: I think about Bill is convinced he's been taken  
7 for a ride.

8 Every time they talk to him, they tell him:  
9 Bill, you're being taken for a ride. No, I don't think  
10 so. But then at times when William Maruca is broken up  
11 with Nahid Moshrefi, he will say things to family members:  
12 Well, maybe she took me for a ride. I don't know.

13 But I met him, and the day after I met him, I  
14 took a statement from him. I said: Bill, did Nahid  
15 Moshrefi ever tell you she had cancer? No, she didn't. I  
16 just sort of concluded she had cancer. That's what he's  
17 telling everybody.

18 William Maruca calls me all the time. I get ten  
19 calls a week from William Maruca. He's not cooperating  
20 with the prosecuting attorney's office because he's tried  
21 to tell them time and time and time and time again: I did  
22 this of my own volition. I want to give her the money. I  
23 don't want her prosecuted. I want you to back off.

24 Now, Bill tends sometimes to shade the truth to  
25 effect a result. If he thinks by telling you something

1 as they currently exist in Colorado requiring certain  
2 individuals to report suspected abuse of elder adults?

3 A I am.

4 Q And as part of or within your treatment of Bill,  
5 did you make a mandatory report to law enforcement  
6 regarding suspected exploitation?

7 A Yes, I did.

8 Q Okay.

9 Do you recall, how long after you started  
10 treating or seeing Bill, did you make this report?

11 A It was about two to three weeks.

12 Q Do you recall at all -- this is if you recall --  
13 the date that you made that report?

14 A I believe it was August 17th, 2015.

15 Q So what specifically was it that Bill told you  
16 that initially raised your concerns?

17 A He told me that he was seeing -- that he had a  
18 girlfriend who he was giving money to because she had  
19 stage 3 cancer, that she only had five months to live.

20 And then over the next couple of weeks he talked  
21 increasingly about how upset he was about that, and there  
22 was pressure on him to give her more and he kept giving  
23 her more in addition to the \$4,000 a month that he  
24 reported to me.

25 Q Okay.

1           So he actually explained to you that he had felt  
2   pressure to give her additional funds?

3           A     Yes.

4           Q     And he initially told you that he was giving  
5   her, you said, about \$4,000 a month?

6           A     That was what he told me he'd been giving her on  
7   a regular basis.

8           Q     Did he tell you what the \$4,000 was for?

9           A     It was to pay for her cancer treatment. And he  
10   told me as part of that that he didn't see any symptoms  
11   other than possible weight gain, and that was one of the  
12   things that made me concerned.

13          Q     Okay.

14                Did he give you the ex-girlfriend's name?

15          A     He called her Dr. Venus.

16          Q     Now, did he explain -- or I know he had told you  
17   this was an ex-girlfriend -- explain how he met her?

18          A     He told Owell, actually, I think it was his  
19   girlfriend. When he first came in the very first day, he  
20   came in and he said that she'd just dumped him.

21                So he viewed it as actively girlfriend. For the  
22   period of time I was seeing him, they were still engaged  
23   with each other.

24          Q     What described as kind of on-again, off-again  
25   relationship?

1           A     During that time, yes, off once, but then on  
2     until I didn't see him any longer.

3           Q     Okay.

4                     And I don't know if I asked you this. I don't  
5     know if you know the answer. Did he explain how they met  
6     or where they met?

7           A     It was on a dating website, life chat maybe, or  
8     life something.

9           Q     Livelinks?

10          A     Livelinks.

11          Q     When you were talking about this Dr. Venus, did  
12     he say how long he'd known her?

13          A     18 months.

14          Q     Did he give you any indication of how old  
15     Dr. Venus was?

16          A     Seems like he told me approximately 25 years  
17     younger than him.

18          Q     I know you already touched briefly on this, but  
19     when this information was being provided to you, what kind  
20     of red flags were going off on your head?

21          A     He -- like one of the last times I had seen him  
22     before I reported, he had told me that he had given her  
23     another \$2,600.

24                     But he wasn't sure if he gave her that, but if  
25     he gave her that much, but didn't know if he gave her

1 more, and that was just the day before. And then he told  
2 me she was pressuring him for another wedding ring and  
3 things like that.

4 Q Okay.

5 Based upon the information, you thought it was  
6 important to reach out to law enforcement?

7 A Correct.

8 Q Did you call -- which police agency did you call  
9 to make this report?

10 A Arvada P.D.

11 Q And why was it specifically Arvada P.D.?

12 A Because that is where he resided.

13 MS. RADKE: If I may have one moment, Judge?

14 THE COURT: You may.

15 (Pause in the proceedings.)

16 Q (By Ms. Radke) Do you know an individual by the  
17 name of Richard Borinsky?

18 A I don't believe so.

19 Q Do you know an individual by the name of Ed  
20 Anderson?

21 A No.

22 Q What about Lucille Anderson?

23 A No, I don't believe so.

24 MS. RADKE: I have no further questions.

25 THE COURT: Cross?



DISTRICT COURT  
COUNTY OF JEFFERSON  
STATE OF COLORADO  
100 Jefferson County Parkway  
Golden, Colorado 80401

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Plaintiff:  
PEOPLE OF THE STATE OF COLORADO

v.

Defendant:  
NAHID KADIR MOSHREFI

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^FOR COURT USE ONLY^

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Case No. 2016CR3088  
Division 2

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REPORTER'S TRANSCRIPT  
July 21, 2017

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The trial in the above-entitled matter commenced on Friday, July 21, 2017, before The HONORABLE CHRISTIE A. BACHMEYER, Judge of the District Court.

This is a full and complete transcript of the proceedings had on this date in the aforementioned matter.

---

A P P E A R A N C E S

For the People:  
Charles Tingle, Esq.  
Jessica Radke, Esq.  
Deputy District Attorneys, First Judicial District  
500 Jefferson County Parkway  
Golden, Colorado 80401  
(303) 271-6800

For the Defendant:  
Randall J. Paulsen, Esq.  
Randall J. Paulsen & Associates, P.C.  
8704 Yates Drive, Suite 100  
Westminster, Colorado 80031  
(303) 426-7336

1 believes you -- you have more information?

2 A Absolutely.

3 MR. PAULSEN: Objection. Leading.

4 THE COURT: Sustained as to leading.

5 Q (By Mr. Tingle) So is it similar -- I'm just trying  
6 to think of another example.

7 Would it be similar to a situation where there was  
8 a -- say, a burglary. I think you said you were a burglary  
9 detective at one time. Where you'd ask a suspect in a  
10 burglary, it's like, explain to me why did I find your DNA or  
11 fingerprints on a window? When early in the investigation,  
12 maybe you didn't have the information.

13 A Yes.

14 Q Is it similar to something like that?

15 A Correct. And I use that all the time.

16 Q And is that an investigative technique that you use  
17 and other detectives use?

18 A Yes.

19 Q All right. With regard to the statement -- I want to  
20 show you what is marked for identification purposes as  
21 People's Exhibit 3A.

22 MR. PAULSEN: No objection. No objection to it being  
23 played and published.

24 MR. TINGLE: And I will move to admit 3A. It sounds  
25 like there's no objection.

1 THE COURT: All right. 3A will be admitted.

2 Q (By Mr. Tingle) And I would like to have the  
3 detective follow along with People's Exhibit 3B. Was there a  
4 transcript prepared?

5 A There was.

6 Q And I would like to, during the publishing of 3A,  
7 distribute a copy of the transcript, just to follow along. We  
8 won't seek to have it go back with the jury, if that's  
9 permissible.

10 THE COURT: The Court will admit 3A. And you can  
11 play it. The jury can be given a transcript to follow along.  
12 And it's not admitted unless the tape is unclear.

13 (Copies of People's Exhibit 3B being handed to the  
14 jury.)

15 THE COURT: Do you plan on playing it right now?

16 MR. TINGLE: If that is acceptable.

17 Would you like to take a break first, Judge?

18 THE COURT: Why don't we take a break. The tape is  
19 how long?

20 MS. RADKE: About 40 minutes.

21 THE WITNESS: Forty-seven.

22 THE COURT: So why don't we take a break. About 15  
23 minutes. We'll come and find you and listen to that tape.

24 (The jury leaving the courtroom.)

25 (The following proceedings were had in open court

1           Good afternoon, Ms. Moshrefi.

2           A     Good afternoon, Mr. Paulsen.

3           Q     Please state your name, spelling your last name for  
4 the record.

5           A     Nahid Kadir Moshrefi, M-o-s-h-r-e-f-i.

6           Q     Do you know Bill Maruca?

7           A     I do.

8           Q     Tell the jury, please, how you came to know  
9 Mr. Maruca.

10          A     I met Bill Maruca, I think, right in September, late  
11 September of 2013 on a phone line called Live Links. My  
12 marriage was -- had been pretty much dissolved at the time.  
13 I -- we had a two-level home. I lived upstairs.

14          Q     Let me stop you there because I'll get to that.

15          A     Okay. Sorry.

16          Q     That's okay. I just want to take this in an orderly  
17 fashion.

18          A     I met him on a phone dating line.

19          Q     And what was that called? Do you remember?

20          A     Live Links.

21          Q     And do you recall Mr. Maruca giving you his age?

22          A     Well, he first told me several messages, and I wasn't  
23 reply back to him. And because you can choose to respond or  
24 not respond.

25               And then he send me a very nice message and asked me,

DISTRICT COURT  
COUNTY OF JEFFERSON  
STATE OF COLORADO  
100 Jefferson County Parkway  
Golden, Colorado 80401

Plaintiff:  
PEOPLE OF THE STATE OF COLORADO

v.

Defendant:  
NAHID KADIR MOSHREFI

^FOR COURT USE ONLY^

Case No. 2016CR3088  
Division 2

REPORTER'S TRANSCRIPT  
July 24, 2017

The trial in the above-entitled matter commenced  
on Monday, July 24, 2017, before The HONORABLE  
CHRISTIE A. BACHMEYER, Judge of the District Court.

This is a full and complete transcript of the  
proceedings had on this date in the aforementioned matter.

A P P E A R A N C E S

For the People:  
Charles Tingle, Esq.  
Jessica Radke, Esq.  
Deputy District Attorneys, First Judicial District  
500 Jefferson County Parkway  
Golden, Colorado 80401  
(303) 271-6800

For the Defendant:  
Randall J. Paulsen, Esq.  
Randall J. Paulsen & Associates, P.C.  
8704 Yates Drive, Suite 100  
Westminster, Colorado 80031  
(303) 426-7336

1 about cancer.

2 Bill told all of these individuals that  
3 Venus Moshrefi had cancer. Over and over again, Bill talked  
4 to Richard Borinsky, Ed Anderson. It was the topic of almost  
5 every single conversation.

6 And it wasn't because he just wanted to get everyone  
7 off his back. No, he told people that she was going to die  
8 because she led him to believe that. He believed it. You  
9 heard his statement to Investigator Beren on April 20 of 2016.

10 You heard that surprise when Investigator Beren told  
11 him, She said she doesn't have cancer.

12 What?

13 She had convinced him that she only had five to six  
14 months to live. It wasn't a conclusion that Bill came up with  
15 on his own. He used words like metastasized and Stage 3.  
16 Technical terms that, how would he have known unless she  
17 explained that to him?

18 It's not something Bill came up to on his own because  
19 there's another layer of deception. She told Bill that the  
20 cancer treatment she was receiving was expensive, and she  
21 couldn't afford it. And he told all of these individuals.

22 Ms. Moshrefi even pressured him to give her more. He  
23 told Dr. Neil Cannon. He was depressed about this. He  
24 couldn't afford it. He had to cut back the amount of money he  
25 was giving her because it was too much for him.

1 Another layer of deception.

2 So let's move on and talk about the statements that  
3 Ms. Moshrefi made to Investigator Beren.

4 One of the first things she said, Well, all the  
5 services he gets are at no charge. Well, let's think about  
6 that for a second. John Bunting testified that he reviewed  
7 the invoices from the business that -- that were obtained  
8 after the search warrant. The search warrant was executed  
9 after this conversation with Ms. Moshrefi.

10 So what does she do? She goes back and zeros out  
11 those accounts. She admits some of the invoices that Bill was  
12 charged. She had to go back and cover her tracks, because she  
13 said he was not being charged. But we know from  
14 John Bunting's findings that almost \$175,000 changed hands  
15 between Mr. Maruca and Ms. Moshrefi, a staggering amount of  
16 money that she needed to hide.

17 What else does she say in that interview? From time  
18 to time, Bill helped me. Another layer of deception, this  
19 issue of whether or not she needed help.

20 She talked about, Well, what kinds of things do you  
21 need help with? A question Investigator Beren posed.

22 Well, I -- who knows. I mean, yeah, Bill was giving  
23 me money. This is about if I have a medical bill that I can't  
24 cover, you know. But it would be something like my car, my  
25 car tires are worn out and I don't have the funds to do it.

1     them. The important thing to remember is that everyone  
2     deserves protection under the law. Everyone.

3             We represent the People of the State of Colorado.  
4     This case is the People versus Venus Nahid Moshrefi. It's not  
5     William Maruca versus Ms. Moshrefi. He's not our client. Our  
6     client is the People of the State of Colorado.

7             And if we -- every single case that walked through  
8     this door, a domestic violence case where the victim didn't  
9     want to prosecute, none of those crimes would be prosecuted.  
10    Bill deserves the same protections as everyone.

11            For criminal exploitation, again, you're going to  
12    have to answer a verdict question also known as an  
13    interrogatory. This is just one question this time. And  
14    again, the answer is, "Yes."

15            Was the thing involved in the defendant's theft from  
16    an at-risk -- or excuse me -- the defendant's criminal  
17    exploitation of an at-risk elder \$500 or more? Yes. That's  
18    People's 13.

19            I don't want to confuse you because this has  
20    different date ranges. And we heard that this crime did not  
21    become effective until July 1, 2014. That's why there's fewer  
22    checks; there's fewer transactions. And that's why the amount  
23    is only \$54,872.03. That's just for Count 2. Clearly, over  
24    our threshold of \$500.

25            I want to talk to you about the defendant's



1 statements, her initial statements to Investigator Beren on  
2 April 20, 2016.

3 INVESTIGATOR BEREN: So you don't have cancer?

4 I don't know if I do. I know I have lumps in my  
5 breasts.

6 So why would you tell him that you have cancer?

7 I never told Bill that.

8 When asked, Well, why did you tell him you needed  
9 treatment? Why did you tell him it was expensive and you were  
10 going to die if you didn't get the treatment?

11 I don't know. Maybe to get attention.

12 But one of the final things she says is, Bill, I  
13 don't want money.

14 She may not want money, but she told Bill she needed  
15 money. There's a difference. The inference is, Bill thought  
16 she needed it and she was going to die if she didn't get it.  
17 She couldn't cover her treatment. She needed it. And what's  
18 more, she may not have wanted it, but she took it.

19 She -- they -- Charles Tingle went through this with  
20 her on her cross-examination. You drove to the bank with the  
21 check. You walked to the teller station, you filled out a  
22 deposit slip, you signed over the check, and you took the  
23 cash.

24 Yeah, she agreed. I did that.

25 She didn't want Bill's money. All of these checks in

1 Defendant would say the only issue in this case is,  
2 did the defendant tell Venus, she had cancer? Did  
3 Ms. Moshrefi tell the -- Bill Maruca, pardon me, she had  
4 cancer? Again, no. That's not the issue.

5 Because the statements were many. Venus had cancer.  
6 Venus needs treatment. Couldn't afford -- she only had a  
7 short time to live. Venus needed help. Any one of those, any  
8 one of them is deception. Any one of them is undue influence.

9 Let's take cancer off the board. Assume you go back.  
10 You say, We don't know if she said she had cancer. Doesn't  
11 matter. If she led Bill to believe she needed help, that's  
12 deception. That's exploitation. That's undue influence.  
13 Bill, I need help because I have these issues. My business,  
14 my divorce. My cancer. My illness. My fear of having  
15 cancer. I need help.

16 What's the implication when you say, I need help to  
17 someone who's close to you? Help me. She didn't have to ask.  
18 Bill was vulnerable.

19 Look at the defendant's statements. Ms. Radke went  
20 over some of these, but I think they're worth talking about  
21 just briefly and then I will sit down. They give you insight  
22 into her state of mind.

23 Oh, the other question Mr. Paulsen wanted me to ask  
24 you, Is it okay for investigators to lie? Well, as a matter  
25 of fact, it is an investigative technique. And I work with

1 undercover cops when they go and pretend to be buyers of dope.  
2 The whole point of statements and any misrepresentation is, to  
3 get a truthful statement.

4 When you have experience talking to people, when are  
5 they more likely to tell you the truth? When they think you  
6 already know it.

7 Now, Nahid Moshrefi, well, all the service he gets,  
8 no, no. No charge. The only thing Bill pays, like other  
9 patients, is if there's labs that needs to be done. Well, we  
10 know that's not true.

11 Detective Beren, Oh, does Bill give you any money?  
12 Oh, from time to time, Bill has helped me. She knows what  
13 she's told Bill. I need help. Bill's help.

14 She didn't say, Bill just loved giving me money for  
15 no reason. I'm his girlfriend. He's generous. She didn't  
16 say that. He's a generous guy. He's given me tens of  
17 thousands of dollars out of the goodness of his heart. No,  
18 every time. Repeated again and again and again. He's helped  
19 me. I've needed help. She let him know her belief she needed  
20 help. That is deception. That is exploitation.

21 Nahid. No. Not two or three months. Lately what's  
22 happened because of our divorce and such, I have been hit with  
23 a lot of medical bills. I've had surgeries, a lot of medical  
24 bills.

25 And what? He's helped me. Yeah, a lot of it has

1     been toward medical bills.

2             Medical bills?   Yeah.

3             Is that consistent with, Bill never said any of these  
4     things.   Nahid never said any in these things.   Bill, rather.  
5     Or is that consistent with, yeah, it's exactly what was going  
6     on between the two of them.   Exactly what Ms. Moshrefi was  
7     telling Bill.

8             Nahid:   So if I needed help, you know, we are in a  
9     situation, I'm running a business, trying to manage a  
10    business.   Consistent being, if I needed help, he'd help me.

11            Ms. Moshrefi is taken off guard by this interview.  
12    She doesn't know what Investigator Beren has at this point.  
13    She's scrambling.

14            Nahid:   Yeah.   Really, this is not about an ongoing  
15    thing.   This is about, if I have a medical bill I can't cover.

16            Did you or somebody tell him it was, yeah, because of  
17    a medical bill?

18            Oh, yeah.   Bill's known every penny he's given me.  
19    Bill has helped me.   So I'm not going to sit here and say, No.  
20    Bill's helped me.   Medical bills.

21            How much is he helping you with?

22            Well, not regular medical bills.   I had the surgeries  
23    and stuff and things like that.

24            How much are your deductibles?

25            I don't know because I'm still trying to pay off last

1 year's.

2 She couldn't answer directly. She didn't want to  
3 answer directly because that would be an admission.

4 Investigator Beren: Did you tell him what medical  
5 issues? What was needed that you're needing help with to pay  
6 off?

7 Yeah. I've had history of breast lumps.

8 Did you tell him what medical issues you needed help  
9 with?

10 Yeah. I've had issues with breast lumps.

11 What's all that related to? Is that a direct  
12 statement from Nahid Moshrefi to Bill Maruca? I have cancer?  
13 Or is it, I'm afraid of having cancer? I've had issues.

14 Does it matter? It doesn't matter. It's part of the  
15 scheme, part of the plan. I need help. I have got medical  
16 issues that I can't cover. I can't afford.

17 Detective Beren: What if I told you, there's a  
18 recording of a conversation between the two of you explaining  
19 you're extremely ill and will die if you don't have treatment?

20 Between me and Bill?

21 Detective Beren: Uh-huh. How do you explain that?

22 She doesn't say, I never said that. That never  
23 happened. What are you talking about? That's crazy talk.  
24 She says, Well, there are days I feel like dying.

25 Detective Beren: Yet you're telling him you've seen

1 a doctor. You're paying a doctor for your treatment or you  
2 die if you don't receive treatments. So help me understand.  
3 How do we explain to a jury? Why would you say that to him?

4 I don't know. Maybe to get attention.

5 Her attention came in the form of tens of thousands  
6 of dollars. Why? I don't know. Motive is not an element,  
7 but it's our human nature to always wonder about motive. It's  
8 not an element.

9 So finding one and two. To simplify this case, we've  
10 extracted, pulled out all the supplement dollars. We pulled  
11 out the travel dollars. Let's assume for the sake of  
12 argument, those supplements are really helping Bill. It  
13 doesn't matter. We'll pull those out. You don't even need to  
14 consider that. You don't need to consider the travel. The  
15 fact of the matter is, she took Bill for tens of thousands of  
16 dollars.

17 What's your common sense tell you about what  
18 Nahid Moshrefi really told Bill? Mr. Paulsen stood up here  
19 and told you, She never told Bill she had cancer. What's your  
20 common sense tell you about what really happened with that?

21 You were given evidence from Tim Harris and a  
22 limiting instruction. Tim Harris. Right here. She had  
23 cancer. She needed help. Five thousand bucks.

24 As Ms. Radke said, He's got nothing at stake. Did he  
25 make it up? Did he jump to a conclusion? Was this all

## **APPENDIX E**

DISTRICT COURT  
COUNTY OF JEFFERSON  
STATE OF COLORADO  
100 Jefferson County Parkway  
Golden, Colorado 80401

---

Plaintiff:  
PEOPLE OF THE STATE OF COLORADO

v.

Defendant:  
NAHID KADIR MOSHREFI

---

^FOR COURT USE ONLY^

---

Case No. 2016CR3088  
Division 2

---

REPORTER'S TRANSCRIPT  
March 9, 2017

---

The hearing on motions in the above-entitled matter commenced on Thursday, March 9, 2017, before The HONORABLE CHRISTIE A. BACHMEYER, Judge of the District Court.

This is a full and complete transcript of the proceedings had on this date in the aforementioned matter.

---

A P P E A R A N C E S

For the People:

Jessica Radke, Esq.  
Deputy District Attorney, First Judicial District  
500 Jefferson County Parkway  
Golden, Colorado 80401  
(303) 271-6800

For the Defendant:

Randall J. Paulsen, Esq.  
Randall J. Paulsen & Associates, P.C.  
8704 Yates Drive, Suite 100  
Westminster, Colorado 80031  
(303) 426-7336



1 Monument.

2 Q And Mr. Maruca, where was he living at the time?

3 A He was living in Westminster off of 87th Drive.

4 Q Is that within the county of Jefferson, state of  
5 Colorado?

6 A Yes.

7 Q Were you ever able to make contact with Ms. Moshrefi?

8 A Yes. On April 20, 2016.

9 Q Okay. So explain to us where you located her, where  
10 you spoke with Ms. Moshrefi.

11 A I spoke to her at her residence on Martingale, which  
12 was in Monument. And it was morning hours, I believe, roughly  
13 around 8:00.

14 Q When you arrived at this residence, was anyone else  
15 home?

16 A Yes. Actually, I spoke with Joseph Zolewski in the  
17 driveway prior to going on inside, and he was identified as  
18 her cousin.

19 Q And Mr. Zolewski, did he also reside at that house?

20 A Yes.

21 Q What did Mr. Zolewski do when you arrived?

22 A I asked him if Venus was home. He said he believed  
23 so and that he would go in to get her. He opened the garage  
24 door and we walked together to an interior garage, into the  
25 residence door, at which point, he went in and announced for

1 her. And we stood at that door.

2 Q Okay. When he went inside to check if Ms. Moshrefi  
3 was home, where were you standing or where were you waiting?

4 A In the kitchen area by that door from the garage to  
5 the interior of the residence.

6 Q Was anyone with you at the time?

7 A Detective Matt Calhoun.

8 Q And which agency does he work for?

9 A Westminster PD.

10 Q Okay. Was he also -- you said he was the -- also a  
11 detective --

12 A Yes.

13 Q -- with Westminster?

14 Was he assisting you on the case?

15 A He was.

16 Q On that day, how were you and Mr. -- or excuse me,  
17 Detective Calhoun dressed?

18 A In plain clothes and in an unmarked vehicle.

19 Q Okay. So not an officer's uniform?

20 A No.

21 Q Okay. Do you carry a service weapon?

22 A I do.

23 Q Were you wearing it on April 20, 2016?

24 A I was.

25 Q How do you usually have it holstered?

1           Q     Okay. Did you identify yourselves as police  
2 officers?

3           A     Yes.

4           Q     Okay. Did you ask her if she was willing to speak  
5 with you?

6           A     Yes.

7           Q     Okay. Where did that conversation take place?

8           A     At the kitchen table right off of the door to that  
9 garage that we entered through.

10          Q     Okay. So the garage door kind of opens into the  
11 kitchen area?

12          A     Yes. When you walk in, it's a very open-concept  
13 residence as I would describe it. And to the right is a wall  
14 that runs adjacent to another wall into the living room, and  
15 there's a table that sets kind of in the nook of the L of  
16 that -- of those two walls.

17          Q     Okay.

18          A     And the rest of it was open.

19          Q     Did you sit at the table?

20          A     Yes.

21          Q     Where were you all positioned when you sat at the  
22 table?

23          A     Detective Calhoun sat with his back towards the wall  
24 that was in line with the door that we entered through. And I  
25 sat on the opposite side of the table with my back to the

1 secondary wall that ran between the kitchen to the living  
2 room.

3 Q Where did Ms. Moshrefi or where was she in the room  
4 when you sat down at the table?

5 A She actually stood in the kitchen for a few minutes  
6 after we sat down. Not even a few minutes. It was probably  
7 several seconds. And then she sat down at the head of the  
8 table, which was, as I described, the entry or with her back  
9 to the open access area of the kitchen/living room.

10 Q So there was no wall behind her?

11 A No.

12 Q Was there anything impeding her from being able to  
13 get up from the table?

14 A No.

15 Q Was there anything positioned behind where she was  
16 seated that would prevent her from getting up from her chair?

17 A No.

18 Q Did you have her in any sort of restraint?

19 A No.

20 Q Did you have her in any -- did you handcuff her?

21 A No.

22 Q When you sat down to --

23 MR. PAULSEN: Your Honor, I would stipulate  
24 Ms. Moshrefi was not in custody.

25 THE COURT: Okay. For purposes of the Fifth

1 THE COURT: Any other witnesses?

2 MS. RADKE: No, Your Honor.

3 THE COURT: All right. Any witnesses for the  
4 defense?

5 MR. PAULSEN: No, Judge.

6 THE COURT: All right. Argument from defense.

7 MR. PAULSEN: Yes, Judge.

8 Judge, I believe this is a question of first  
9 impression in the state of Colorado.

10 This is a case where the issue was presented. And  
11 that case is Effland v. The People, which is 240 P.3d 868.  
12 And in that case, the Court dealt with the issue this way.  
13 Petitioner next contends that even if he was not in custody  
14 for Miranda purposes at the time of the interrogation, the  
15 Fifth and Sixth Amendments to the United States Constitution  
16 require that once an individual has invoked his rights to  
17 remain silent and to counsel, questioning of individual must  
18 cease. Having determined that petitioner was in custody under  
19 Miranda, we need not address this issue.

20 I can find no other Colorado cases where it has been  
21 addressed. I can find no Supreme Court cases where it has  
22 been addressed either. But The Sixth amendment clearly  
23 provides every defendant the right to counsel.

24 Amendment No. 6, in all criminal prosecutions, the  
25 accused shall enjoy the right to a speedy and public trial by

1 an impartial jury of the state and district wherein the crime  
2 shall have been committed, which district shall have been  
3 previously ascertained by law and to be informed of the nature  
4 and cause of the accusation to be confronted with the  
5 witnesses against, to have a compulsory process for obtaining  
6 witnesses in his favor, and to have the assistance of counsel  
7 for his defense.

8 The assistance of counsel for defense is no more  
9 important in any other stage of the proceedings than the  
10 investigatory stage. That is the stage at which every  
11 attorney I know, unless they were absolutely convinced of  
12 their client's intelligence and innocence, would tell their  
13 client, Don't talk to the investigating officer or the police.

14 Now, what is a bit misleading in this case is the  
15 notion that it should be determined analytically under Miranda  
16 v. Arizona. Miranda v. Arizona obviously involves custodial  
17 interrogation, but the rules there are very clear. When  
18 someone is in custody, he must be advised of his Miranda  
19 rights, of his right to remain silent, the right that anything  
20 he says can and will be used against him in a court of law,  
21 the right to an attorney of his choosing. Very simple and  
22 straightforward.

23 If after that full advisement, a defendant chooses to  
24 waive that advisement and talk to an investigating officer or  
25 police officer, he does so at his peril. But he is given the

1 opportunity to have a lawyer.

2 The law does not require that a police officer  
3 instruct a noncustodial defendant of those rights. That  
4 doesn't mean those rights don't exist. It just means that the  
5 law enforcement officer does not have to advise the defendant  
6 of those rights.

7 However, when a defendant, on her own motion, says,  
8 I'm going to get an attorney and then I'll talk to you, they  
9 have invoked their Sixth Amendment right to counsel.

10 And to look at it under the lens of Miranda, skews  
11 the issue, because I think it would be absolutely clear if  
12 Ms. Moshrefi had been in custody and had been given her  
13 Miranda rights.

14 THE COURT: But you're not arguing that, right?

15 MR. PAULSEN: No, I'm not.

16 But my argument logically extends to the next part of  
17 it.

18 Let's assume Ms. Moshrefi had been arrested, she'd  
19 been in custody. She had been given her Miranda rights, and  
20 she invoked her Miranda rights and said, I'm going to get a  
21 lawyer. And then she made bail.

22 Could the police officer in the parking lot, walk up  
23 and say, you know, Ms. Moshrefi, I've got a couple questions  
24 for you? No, he couldn't. Even though she wasn't in custody,  
25 she had invoked her Sixth Amendment right to have a lawyer.

1           That is no different than here except fortuitously, I  
2 will grant you, Ms. Moshrefi said, You get a warrant, I'll get  
3 a lawyer, then we'll talk. That can't have more than one  
4 meaning. I want to get a lawyer. You just told me, this is a  
5 criminal investigation. You just told me you don't have a  
6 warrant. I told you, you need to get a warrant. I need to  
7 get a lawyer. Then we'll talk. Then we'll talk.

8           So I think to analyze this under Miranda is a  
9 mistake. This needs to be analyzed under the Sixth Amendment.

10          Do you have a right to counsel? Absolutely.

11          When does that right become effective? The second  
12 you invoke it.

13          Ms. Moshrefi invoked her right to a lawyer at 11  
14 minutes and 28 seconds into this statement, and she was  
15 ignored. And they went on for another 20-some minutes to ask  
16 a number of different questions.

17          So understanding that it is a question of first  
18 impression and understanding that it does not involve Miranda,  
19 I think the answer is obvious. If you have a right to a  
20 lawyer at every critical stage of a proceeding and you invoke  
21 your right to that lawyer, however fortuitously, the  
22 prosecution and the police department have to honor that and  
23 get you one.

24          There is no logical distinction that would separate  
25 that request for a counsel from the requests made after a



1     Miranda advisement. The only difference being custody.

2             But once you're in custody, once you've been  
3     Mirandized, once you've invoked that right, a police officer  
4     calls you on the phone and says, Hey, I heard you made bail.  
5     Did you kill that guy? Not going to cut it. He -- that  
6     person has invoked their right under the Sixth Amendment to  
7     counsel, and they should be given a lawyer and given the  
8     opportunity to get a lawyer before any more conversation takes  
9     place.

10            Now, with respect to voluntariness. I understand  
11     that some case law suggests that what has been so generously  
12     characterized as a ruse is not approved conduct by any court  
13     that I'm aware of. But this was much more than a ruse. This  
14     was a statement on two separate occasions to Ms. Moshrefi that  
15     they had been monitoring her phone calls and Mr. Maruca's  
16     phone calls. And they had heard her say that she had cancer  
17     and that she was going to die without treatment. That was not  
18     true. It was absolutely false.

19            And if you look at the circumstances, the totality of  
20     the circumstances of this episode quoted under People v.  
21     Miranda-Olivas and the Jennings case, as quoted in the motion  
22     of the prosecution, there were no Miranda rights given in this  
23     case because she wasn't in custody, which means that she did  
24     not have the benefit of knowing what those rights were, and  
25     she, not fortuitously, invoked her right to a lawyer.

1           Whether the defendant had the opportunity to confer  
2 with counsel or anyone else prior to the interrogation.  
3 Wasn't given that right. The police officer showed up at her  
4 door, started asking her a bunch of questions. Eleven minutes  
5 and 28 seconds, later, she says, You get a warrant. I'll get  
6 a lawyer. Then we'll talk you. That was ignored. She was  
7 not given an opportunity to get a lawyer before that  
8 conversation continued.

9           Whether the challenged statement was made during the  
10 course of an interrogation or was, instead, volunteered. It  
11 was absolutely made during the course of an interrogation and  
12 it was made upon information which was, by the admission of  
13 Investigator Berens, a lie. It simply wasn't true. This  
14 wasn't information that she volunteered.

15           Whether any overt or implied threat or promise was  
16 directed to the defendant. If you listen to the comments of  
17 Detective Calhoun, he said, Hey, we get it, you know. Times  
18 are tough. You're hard up for money, but, hey, we all know  
19 you lied. If you look at the -- whether the manner and style  
20 employed by the interrogator in questioning the defendant, the  
21 method in this case was poor. They lied to the defendant.

22           She was specifically told things that were not true.  
23 Her phone calls were never recorded. Mr. Maruca's phone calls  
24 were never recorded. She indicated that she never talked with  
25 Mr. Maruca and then she said they'd been in contact with

1 Mr. Maruca.

2 The length and place of the interrogation. It was a  
3 lengthy interrogation. Thirty-eight minutes is a long time.

4 The defendant's mental and physical condition  
5 immediately prior to and during the interrogation. She said,  
6 My head is spinning. I don't know why you're here. I'm  
7 confused.

8 The defendant's educational background, employment  
9 status, prior experience with law enforcement. We don't  
10 really know. But under the totality of the circumstances in  
11 light of the fact that the defendant was lied to on multiple  
12 occasions. And the statement itself wasn't maybe or she may  
13 have done this to get attention. The statement was, I don't  
14 know. Maybe to get attention. That's the equivalent to a  
15 guess. I don't know why she would say that.

16 In fact, she hadn't said it, and there was no  
17 recording indicating otherwise. So it's my position that  
18 every statement she made after 11 minutes and 28 seconds into  
19 this interrogation when she said, You get a warrant, I'll get  
20 a lawyer, and then we'll talk. Needs to be suppressed.

21 It will not all be suppressed for all purposes, but  
22 every statement made after the point where Investigator Berens  
23 lied to her on multiple occasions is involuntary and should be  
24 suppressed for all purposes. Thank you.

25 THE COURT: Thank you, Mr. Paulsen.

1 after doing so, asked them to leave. So clearly she  
2 understood that she was at the point where she no longer  
3 wanted to speak with the detectives. And at that point, they  
4 left.

5 The rest of the 38-minute conversation was voluntary  
6 because at any point, she could have told them to leave. That  
7 is her remedy in this case.

8 THE COURT: All right. We're here on defendant's  
9 motion to suppress statements. His motion cites cases that  
10 are Miranda based, so the Court was under the impression this  
11 was going to be regarding Miranda. Defense counsel stated  
12 halfway through the testimony of the detective that he's not  
13 going under the Fourth or Fifth Amendment; he was actually  
14 going under the Sixth Amendment on his motion. The Court will  
15 analyze both of those, the case law regarding the Fifth and  
16 Sixth Amendments.

17 Obviously, the Fifth Amendment doesn't explicitly  
18 provide a right to counsel, but the Fifth Amendment right  
19 under Miranda v. Arizona, the Fifth Amendment to counsel  
20 applies when the defendant is subjected to a custodial  
21 interrogation. Once a defendant invokes his Fifth Amendment  
22 right to counsel, all questionings must cease.

23 The Fifth Amendment right to counsel applies to any  
24 individuals subjected to a custodial interrogation regardless  
25 of whether he or she has been charged with a crime, citing

1 assessment depends on the objective circumstances of the  
2 interrogation, not any subjective case law held by anyone  
3 else.

4 So based on that, based under Matheny, the Court  
5 would find that she was not in custody for Fifth Amendment  
6 purposes. The Court doesn't find -- and I forgot to put down,  
7 police officers left, and she was never taken into custody.

8 The Court doesn't find that there's any factors that  
9 support custodial interrogation, and defense counsel has  
10 agreed with the Court.

11 As to the voluntariness of the statements.  
12 Voluntariness under Medina at 25 P.3d 1216, Colorado 2001, it  
13 doesn't matter whether the defendant was in custody or not or  
14 if the statement was inculpatory or a confession or whether  
15 Miranda was given or waived. Any statement that the district  
16 attorney wants to admit at trial must be voluntary.

17 An example would be -- of not in custody would be  
18 telephone calls. An interrogation conducted without custody  
19 is not illegal as long as the statement is voluntary.

20 Defense counsel argues on today's date, that it's not  
21 voluntary, citing the factors set forth by the Supreme Court.

22 The Court is mindful of Theander, T-h-e-a-n-d-e-r,  
23 295 P.2d -- actually, it was P.3d 960, Colorado 2013.  
24 Noncustodial hospital questioning statements must be  
25 voluntary. They did a large, long analysis of voluntary

## **APPENDIX F**

COUNTY COURT, JEFFERSON COUNTY, COLORADO  100 Jefferson County Parkway Golden, CO 80401	<div style="text-align: right; color: blue;">DATE FILED: February 17, 2017 2:23 PM</div> <div style="text-align: center; margin-top: 100px;"><b>▲ COURT USE ONLY ▲</b></div>
<b>PLAINTIFF: People of the State of Colorado</b>  <b>vs.</b>  <b>DEFENDANT: Nahid Moshrefi</b>	
<b>Attorneys for Defendant:</b> Randall J. Paulsen #10643 RANDALL J. PAULSEN & ASSOC., P.C. 8704 Yates Drive, Suite 100 Westminster, CO 80031 Phone: (303) 426-7336 Fax: (303) 426-7411 E-mail <a href="mailto:randy@rjpaulsenlaw.com">randy@rjpaulsenlaw.com</a>	Case No. 16CR3088  Division
<b>DEFENDANT'S MOTION TO SUPPRESS</b>	

COMES NOW the Defendant, by and through her attorneys, RANDALL J. PAULSEN & ASSOCIATES, P.C., and moves this Court to suppress evidence against the Defendant as unconstitutionally obtained and involuntary.

AS GROUNDS THEREFOR, the Defendant advises the Court as follows:

#### FACTUAL BACKGROUND

1. On April 20, 2016, Detectives Beren and Calhoon interviewed the Defendant, Nahid Moshrefi, at her home in Colorado Springs.
2. The interview was recorded and took approximately 38 minutes.

3. At approximately 11:23 into the interview, Ms. Moshrefi asked Detective Beren whether this was a “criminal investigation.” Detective Beren advised Ms. Moshrefi it was, at which point, Ms. Moshrefi told Detective Beren that she should get a warrant and Ms. Moshrefi would get an attorney.
4. Despite this clear indication that Ms. Moshrefi would be asserting her Constitutional right to counsel, the interview continued and both Detectives Calhoon and Beren interrogated the Defendant.
5. At one point during the interview, the detectives asked Ms. Moshrefi why she would tell Bill Maruca she had cancer if she didn’t, at which point she stated, “I never told him I had cancer.” At approximately 29:20 of the interview, Detective Beren stated as follows:

What if I told you we have a recording of a conversation between you and that you’re explaining that you’re extremely ill and gonna die if you don’t have treatment; how do you explain that?

Ms. Moshrefi’s response was, “there are times I feel like dying.”

6. Detective Beren went on to state:

I have been aware of this for some time. We have been monitoring you guys without either one knowing it and there have been several conversations and I don’t understand why you are telling me you haven’t seen a doctor but you are telling him that you have seen a doctor, that you are paying the doctor for treatment and that you will die without treatment; why would you say that?

Ms. Moshrefi responded, “I don’t know, maybe to get attention.”

7. Ms. Moshrefi questioned the detectives and said, well if you’ve been listening into our conversations, “have you heard me tell Bill that I didn’t need his money or want his money.” Detective Beren’s paraphrased response was, I have heard you say such things in the context of “how sick you are, how you’re gonna die, how you are terminal, and



how you are doubling over with pain,” to which Ms. Moshrefi responded, “sometimes I am doubled over in pain.”

8. The foregoing statements to Ms. Moshrefi by Detective Beren regarding recorded telephone conversations between her and Mr. Maruca do not exist and never took place. There is no recording of any conversations between Mr. Maruca and Ms. Moshrefi, and Detective Beren was never monitoring phone conversations. She never heard Ms. Moshrefi say she has seen a doctor, she was paying her doctor for treatment, she would die without treatment, she was horribly sick, or terminal. All of these facts alleged by Detective Beren to Ms. Moshrefi are figments of Detective Beren’s imagination.
9. At the preliminary hearing in this matter, Detective Beren admitted there were no recorded conversations of Mr. Maruca and Ms. Moshrefi and that this fabrication was a technique she had acquired in her education as a detective.
10. Subsequently, at 32:50 of the conversation, Ms. Moshrefi reiterated that she wanted to have representation. At 37:00 of the conversation, she stated bluntly, I want an attorney.

#### **AUTHORITY**

**A. The Detectives Failed to Honor the Defendant’s Request for an Attorney.**

11. Pursuant to *People v. Harris*, 191 Colo. 234, 552 P.2d 10 (1976), “Once the accused has requested counsel, the police officers must cease interrogation immediately and must, within a reasonable period of time, provide the accused with an opportunity to talk to an attorney.” Where the request for an attorney is not ambiguous, all questioning must cease and an accused’s post request or responses to further interrogation may not be used to cast doubt on the clarity of his initial request for counsel. *Smith v. Illinois*, 469 U.S. 91, 105

S.C. 490 (1984). “Once an accused person requests an attorney, police must scrupulously honor the request and cease all interrogation until the person has consulted with counsel. *People v. Lynn*, 278 P.3d 365 (2012).

12. Although the Defendant, Ms. Moshrefi, was not in custody at the time of the interrogation, the interrogation was accusatory, and Ms. Moshrefi clearly articulated her desire for representation before questioning continued. Accordingly, whether she was in custody at the time she made the request or not, all interrogation must cease.
13. Accordingly, all information gleaned from Ms. Moshrefi after 11:23 of the tape-recorded interrogation should be suppressed.

**B. Any Statements Made by Ms. Moshrefi After Detective Beren’s Fabrications are Involuntary.**

14. To be voluntary, a statement must be “the product of an essentially free and uncontested choice by its maker, uninfluenced by coercive police conduct.” *Colorado v. Connelly*, 479 U.S. 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986); *People v. Raffaelli*, 647 P.2d 230 (Colo. 1982); *People v. Mounts*, 784 P.2d 792 (Colo. 1990); *People v. Gennings*, 808 P.2d 839 (Colo. 1991).
15. Involuntary statements are inadmissible for any purpose. *Michigan v. Tucker*, 417 U.S. 433, 448 N.23; S.C. 2357, 2366 N.23; 41 L.Ed.2d 182 (1974). A statement is deemed involuntary when the existence of coercive governmental conduct, whether physical or mental, plays a significant role in inducing a statement. *Connelly, supra.*; *People v. Dist.Ct.*, 785 P.2d 141, 144 (Colo. 1990).

16. A statement by a defendant which is induced by direct or implied threats, promises, coercion or offers of reward or mitigation of punishment, however slight, is not voluntary. *People v. Quintana*, 601 P.2d 350 (1979).
17. Deceit on the part of a police officer, including misrepresentations to the defendant, may render statements by the defendant to be involuntary. *People v. Freeman*, 668 P.2d 1371 (Colo. 1983). Deceit can include misrepresentations that the police have incriminating evidence when in fact they do not have such evidence as well as intentional misrepresentations of the legal consequences, either by exaggeration or minimization of the seriousness of the suspect's situation. *Freeman, supra*.
18. Here, Detective Beren fabricated a number of different alleged phone recordings between Bill Maruca, the alleged victim in this case, and Ms. Moshrefi. None of those conversations ever occurred and none of those statements were ever made. Nonetheless, on several occasions, Detective Beren asserted they had been made and the evidence did exist. Although Ms. Moshrefi never indicated she acknowledged having made those statements, when asked, "why would say that," she stated, "I don't know, maybe to get attention." While this is not an admission, it was nonetheless involuntarily obtained and should be suppressed by this court for any purpose.

WHEREFORE, the Defendant respectfully requests this Court exclude from the prosecution's case in chief, any statements of Ms. Moshrefi made after her initial request for an attorney in the recorded interview by Detectives Beren and Calhoon. Additionally, for all statements made in response to fabrications by Detective Beren, those statements should be suppressed as involuntary, and be inadmissible for any purpose, including impeachment.

Dated: February 17, 2017.

Respectfully submitted,

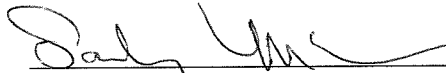
*/s/Randall J. Paulsen*

By: \_\_\_\_\_  
Randall J. Paulsen

**CERTIFICATE OF SERVICE**

I hereby certify that I e-filed a true and correct copy of the foregoing DEFENDANT'S MOTION TO SUPPRESS to the following, on the date hereinafter listed.

Office of the District Attorney  
County of Jefferson  
500 Jefferson County Parkway  
Golden, CO 80401

 \_\_\_\_\_

Date: 2-17-17

## **APPENDIX G**



# WESTMINSTER

DATE FILED: August 15, 2017 10:08 AM

## POLICE DEPARTMENT INVESTIGATIONS SECTION

<b>Taped Interview with Nahid Moshrefi</b>	<b>WPD Case Report 2015-13753</b>
<b>By Det. Jessica Beren #0401 and Det. Matt Calhoon #0304</b>	
<b>Date: April 20, 2016</b>	<b>Page 1 of 32</b>

Det. Beren: Hi

Joseph: How're you doin'?

Det. Beren: Ok. Are you Venus?

Nahid: I am.

Det. Beren: Hi, I'm Detective Beren, Westminster Police Department.

Nahid: Ok

Det. Beren: This is Detective Calhoon.

Det. Calhoon: Nice to meet you.

Nahid: Ok.

Det. Beren: Um I need to talk to her in private, so...

Nahid: That's my husband.

Det. Beren: Ok

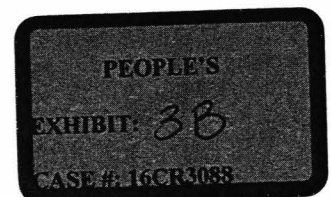
Det. Calhoon: Do you want him here? That's fine.

Nahid: Yeah, I do want him in here.

Det. Beren: Actually, Joe, I'm going to have you step out ok? I just want to talk to her...

Nahid: I want to have a witness to our conversation other than the two of...

Det. Beren: Oh, it's being recorded, don't worry.



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Nahid: Ok. Go ahead and sit down.

Det. Beren: Ok, thank you Joe, we're good. Alright, some of the matters, the reason why I'm talking to you is because I don't think it's appropriate for your husband to hear some of the investigation I have going. Um, do you know Bill Maruca?

Nahid: Yeah.

Det. Beren: Yeah, what is your relationship with him?

Nahid: We've been friends for quite a while.

Det. Beren: For how long?

Nahid: Uh, about a little over two years.

Det. Beren: Two years?

Nahid: Yeah

Det. Beren: How did you guys meet?

Nahid: We met uh online.

Det. Beren: Do you remember how online?

Nahid: On the phone.

Det. Beren: On a phone line?

Nahid: Yeah

Det. Beren: Was it a program or...?

Nahid: Huh? It was a place called Live Link.

Det. Beren: Live Links?

Nahid: Yeah

Det. Calhoon: Do you want to sit down? To feel more comfortable talking to us?

Nahid: Yeah

Det. Beren: A little over two years? And you met on Live Links?



Nahid: Yeah

Det. Beren:               How often do you see him?

Nahid: Well right now he's in California, so I go see him when I can get a weekend off.

Det. Beren: Ok. Did you just come back from California?

**Nahid:** I did a couple weeks ago.

Det. Beren:               With him?

**Nahid:** He, he didn't come back with me.

Det. Beren: No, but I mean you went to California and visited with him?

Nahid:                      Yeah

Det. Beren: Yeah? Uh, you know he lives in Westminster?

Nahid: Yeah, Arvada.

Det. Beren: Arvada?

Nahid: Yeah

Det. Beren: Ok. You guys are friends, so what kind of threshold does that friendship have?

Nahid: We've intimate.

Det. Beren:            You're intimate?

Nahid: Yeah, we are in the process... My husband has already filed a divorce um and we're in the process of getting divorced.

Det. Beren: How long have you guys been in the process of a divorce?

Nahid: It's been several years. He actually, I live upstairs predominantly and he lives downstairs. We have separate bedrooms.

Det. Beren: How long has that been? The separation in the home?

Nahid: Before. Before I met Bill, before I met Bill. We actually put the house on sale, on the market and tried to see it.

Det. Beren: Put this house on this market?

Nahid: Yeah.

Det. Beren: Oh, really?

Nahid: And tried to sell it so we each could go our own way.

Det. Beren: Is it on the market now?

Nahid: Uh, not right now because if you look behind there is a... We had a huge leak downstairs and uh when they came they cut into the concrete and they fixed the foundation. There was the water that was coming into the house was leaking into the foundation so they cut into the foundation, they fixed that problem but that if you look in the backyard it's open now so we have to get the repairs done.

Det. Calhoon: To finish it.

Nahid: And we can't get it done when it's snowing.

Det. Beren: When did you try to sell it?

Nahid: This was, this was several years ago. When the market was bad we had...

Det. Beren: So not recently?

Nahid: No. We had it on the , we had it on the market and we had no bites, no bites, we took it, I think, don't hold me to that, I think we took it off the market, put it back on the market, and didn't sell so we took it off the market and um... Also at that time then my kids were in high school.

Det. Beren: Ok

Nahid: So we stayed because of the kids. And uh now you're welcome to come and look at my living space.

Det. Calhoon: Oops, sorry.

Nahid: I live upstairs, he lives downstairs. I have my own bedroom.

Det. Beren: Does uh...

Nahid: We don't share a bedroom.

Det. Beren: ...your husband know about your relationship with Bill?

Nahid: I'm not sure, but we kinda, we are at the point, he's a, my husband is a nice guy. Um we don't have, you know, we don't have fights and arguments and things other than the fact that we have realized, this second marriage for me, that we are entirely different people.

Det. Beren: How long have you guys been married?

Nahid: (sigh) I think eleven years. Yeah, yeah.

Det. Beren: Does...

Nahid: So what, what is going on with Bill? I mean I don't know, did he file a complaint against me?

Det. Beren: No, he didn't.

Nahid: So why, so why are you guys here if he didn't? Who filed, somebody must've said something.

Det. Beren: Does anybody else in your life know about your relationship with Bill?

Nahid: My friends, my personal adult friends do.

Det. Beren: Do, do you have any children?

Nahid: I have two.

Det. Beren: Are they...

Nahid: From my first marriage.

Det. Beren: ...adults now?

Nahid: Um hum

Det. Beren: Do, have they met him?

Nahid: No, they have not.

Det. Beren: No?

Nahid: I haven't met anybody from Bill's family except for his cousin Sharon.

Det. Beren: Does she live here in Colorado?

Nahid: She, no Sharon lives in Palm Springs. And I have met this guy named Rich who's supposed to be, I'm, I'm really not sure, I think Rich is like uh a property manager something like that for Bill. But I haven't met anybody from his side, he hasn't met anybody from my side er if you're aware, there's a huge age gap between the two of us.

Det. Beren: How many years?

Nahid: Thirty two, something...

Det. Beren: Is the only person that you're involved with outside of your husband?

Nahid: Yeah

Det. Beren: Yeah? Uh, you...

Nahid: Can you guys tell me what is going on?

Det. Beren: Yeah, I'll let you know in just a minute.

Nahid: Ok

Det. Beren: Um, you own Holistic Health and Healing?

Nahid: Healing Health

Det. Beren: Healing Health?

Nahid: Yeah

Det. Beren: Is Bill a, a customer of your business?

Nahid: Bill, Bill and I met first.

Det. Beren: You met first.

Nahid: We met first. Bill wasn't my patient.

Det. Beren: Is he a patient now?

Nahid: Well not really officially... I mean yeah.

Det. Beren: So he gets services from you, at the business?

Nahid: Um hum

Det. Beren: What kind of services does he...?

Nahid: Well all the services that he gets are no, at no charge. Um the only thing Bill pays is just like other patients, if, if there is labs that need to be done. Anything that I send funds outside of my office, then Bill pays for it.

Det. Beren: Ok.

Nahid: Things that a person you know...

Det. Beren: What kind of things...

Nahid: ...have appointments, things like that.

Det. Beren: Has he had any illnesses or issues?

Nahid: Uh, well that's HIPPA regulated and I can't talk to you...

Det. Beren: Ok

Nahid: ...about it.

Det. Beren: How old is Bill? Sorry.

Nahid: Bill was...

Det. Beren: Do you know his age?

Nahid: Yeah, Bill was born in 1936.

Det. Beren: Do you know his birthday?

Nahid: Yeah, October thirteenth.

Det. Beren: October Thirteenth, thirty six.

Nahid: Or sixteenth. Either October thirteenth or October sixteenth

Det. Beren: So when you guys have been together, obviously you say that you're in an intimate relationship.

Nahid: Yeah

Det. Beren: So I assume that's a sexual relationship like you're a boyfriend girlfriend correct?

Nahid: Yeah

Det. Beren: What kind of things do you guys do? DO you go to visit him in Westminster? Does he come her to visit you?

Nahid: Um both has happened.

Det. Beren: Both has happened?

Nahid: Yeah

Det. Beren: Where do you stay at when you visit him?

Nahid: At his place.

Det. Beren: And where do you stay at when he comes here?

Nahid: Sometimes we stay here, um if we are traveling we've gone on weekend getaways to wherever.

Det. Beren: He's stayed in this house?

Nahid: Yeah

Det. Beren: With?

Nahid: With me.

Det. Beren: With Joe though?

Nahid: Joe wasn't here.

Det. Beren: Oh, so when he was gone?

Nahid: I, I'm not you know um... Bill is very well aware of what is going on with me and Joe. Joe and I have had an understanding that I don't want to know anything about, personally what's happening with him and I don't...and he doesn't want to know about mine. But I'm not one of those individuals you know to rub it into his face. So no... but Bill's been here.

Det. Beren: Ok, uh does Bill give you any money?

Nahid: From time to time Bill has helped me.

Det. Beren: Like, what do you mean time to time?

Nahid: If I've needed help.

Det. Beren: What kind of things would you need help with?

Nahid: I've, who knows. I mean, yeah Bill has given me money.

Det. Beren: How much?

Nahid: I don't know.

Det. Beren: You don't know?

Nahid: No I don't.

Det. Beren: Ever?

Nahid: Well it's not that EVER. I know Bill has given me money but I don't have like a running...

Det. Beren: How often would he give you money?

Nahid: Two to three, two three months.

Det. Beren: Every two to three months, or...?

Nahid: No, not, so every two to three months. Lately what has happened is because of our divorce and such I have been hit with a lot of medical bills. I had surgeries last year and a lot of medical bills and

what he's helped me, a lot of it has been towards, you know, medical bills.

Det. Beren: Medical bills?

Nahid: Yeah

Det. Beren: What are you medical bills for? What kind of surgeries?

Nahid: Uh, well I don't want to share my...you haven't told me what, what it is. And I'm not going to share my medical history with you.

Det. Beren: Ok

Nahid: Is this a criminal investigation? Am I under investigation, what is this?

Det. Beren: Yes it's a criminal investigation...

Nahid: So...

Det. Beren: into the money that Bill has given to you.

Nahid: ..do you have a... Ok, do you have a warrant for my arrest?

Det. Beren: No, not yet.

Nahid: Ok, then please get one and I'll obtain an attorney and talk to you at that point.

Det. Beren: Ok. Um the, let's see. Alrighty...

Nahid: Yeah.

Det. Calhoon: So we already know about how much money Bill's been sending your way.

Nahid: Ok

Det. Calhoon: And for basically for what, how do you explain that? So that's not a mystery to us, we just want to give you an opportunity to talk about that. And if you don't want to talk about, that's fine but uh, a lot of these things we're talking to you about we already kinda know the answers to. We just wanted to kinda see where you're at.



Nahid: Ok

Det. Calhoon: Cause sometimes these things have legitimate explanations...

Nahid: Uh huh

Det. Calhoon: ...and sometimes they're criminal.

Nahid: Ok

Det. Calhoon: And so that's why we're here talking to you. That's why we drove all the way from Westminster to talk to you.

Nahid: Ok

Det. Calhoon: And to give you that opportunity so...

Nahid: Yeah

Det. Calhoon: And we're not going to do that again.

Nahid: Ok

Det. Calhoon: Cause we've been down here twice already, we're not going to come back.

Nahid: Why were you? When were you here the first time?

Det. Calhoon: It was just like uh last week.

Det. Beren: Uh two weeks ago and then about a month ago or so.

Nahid: Ok

Det. Beren: So...

Det. Calhoon: So...

Nahid: But I haven't talked to you guys?

Det. Beren: No

Nahid: So you guys came and knocked on the door and we weren't home or?

Det. Beren: Nobody answered so I'm assuming so.

Nahid: Yeah

Det. Beren: Ok. Alright, if you're done answering questions then um that's all I've got for now.

Nahid: Ok

Det. Calhoon: I think it would be helpful for you to explain where some of the money came from. And, that he gave you...

Nahid: I don't know where...

Det. Calhoon: ...or where it went.

Nahid: I don't know where it came from.

Det. Calhoon: Oh we know where it came from, it came from Bill.

Nahid: Yeah

Det. Calhoon: But I think it would be helpful to explain where...

Nahid: I told you.

Det. Calhoon: ...that money went. Like what it was put towards. Because that's basically where this investigation is. Cause we have basically we have the dollar figures but because of the amount of money that it is, it looks really bad. To be honest with you, ok? SO we give people an opportunity to explain because it's not that people can't give other people money...

Nahid: Yeah

Det. Calhoon: ...we, we understand that.

Nahid: Yeah

Det. Calhoon: But...

Nahid: We are, we are boyfriend girlfriend...

Det. Calhoon: Yeah but when you...

Nahid: ...so if I needed help, you know we are in a, I'm in a situation that I'm running my business and trying to manage a business, I'm uh

Det. Calhoon: So is he helping with business expenses?

Nahid: No

Det. Calhoon: Ok, business is doing ok?

Nahid: Business, you know my business is staying afloat, I'm in transition right now and trying to move the office.

Det. Calhoon: And I'm not, you said before you were done talking, I just want to make sure that you're talking because you want to, I'm not trying to bully into anything. You understand that, right?

Nahid: Well I just, I mean this is all kinda blind-sided me.

Det. Calhoon: Sure

Nahid: Cause I talk to him...

Det. Calhoon: I imagine two cops showing up at your house is pretty...

Nahid: Yeah I talked to him last night

Det. Calhoon: Yeah

Nahid: right before I went to sleep.

Det. Calhoon: So basically...

Nahid: And then to have you guys show up and to tell me that this has been going on for an entire month and that you've made two visits to my house.

Det. Calhoon: This has been going on for like two years.

Nahid: For two years?

Det. Calhoon: Yeah. So that's what we, the reason why we're here...

Nahid: And Bill has been aware of it the whole two years?

Det. Beren: I haven't talked to Bill.

Det. Calhoon: Bill doesn't know anything about this. So do you know, do you understand like mandatory reporting and that sort of thing? For elderly folks?

Nahid: No, I don't.

Det. Calhoon: So basically when people are taken advantage of, and people take money out of certain at risk categories, they're mandatorily...

Nahid: This is not...

Det. Calhoon: ...required by law to report that to us. And so...

Nahid: Yeah this is not what happened here.

Det. Calhoon: Which is exactly why we're here talking to you.

Nahid: This is not...

Det. Calhoon: So because we gave, we gave an outside, we were given an outside glimpse on what's happened. So we see a big dollar figure that, that went to you on regular, in regular payments and we can track that.

Nahid: Um hum

Det. Calhoon: And so we're here to talk to you to find out...

Nahid: (inaudible)

Det. Calhoon: well how that happened. Do you understand? So we're trying to determine if...

Nahid: Yeah

Det. Calhoon: ...you're taking advantage of him or not.

Nahid: Yeah. I really, this is not about ongoing thing. This is about if I have medical bill that I can't cover, you know...

Det. Beren: Did you...

Nahid: ...or something then.

Det. Beren: tell him it was...

Nahid: Yeah

Det. Beren: ...because of a medical bill?

Nahid: Oh yeah, Bill has known every penny that he has given me but Bill has helped me, I'm not going to sit here and say no.

Det. Calhoon: Sure.

Nahid: But it would be something like if my car, my car tires have worn out...

Det. Beren: Um hum

Det. Calhoon: Would you...

Nahid: ...and I don't have the funds to do it.

Det. Calhoon: Would you be willing to show us some of that, just so we can clarify things on our end?

Nahid: I know, but I don't have, I never kept like a, this this track of it because...

Det. Calhoon: But you have a ballpark idea where that money went cause it's...

Nahid: Well that's what I'm...

Det. Calhoon: Cause it's a substantial amount of money.

Nahid: ...that's what I'm telling you, it wasn't like he gave me one gigantic chunk of money...

Det. Calhoon: We understand that.

Nahid: ...it was like...

Det. Beren: Over a period of time?

Nahid: Yeah

Det. Beren: Right.

Nahid: Yeah and so...

Det. Calhoon: Which builds up to a big chunk of money.

Det. Beren: So is there a way...

Nahid: Yeah so... What does a chunk build up to, I swear to God I don't know what it, what it is.

Det. Calhoon: How much was he giving you?

Nahid: Uh he has helped me.

Det. Calhoon: What does that mean?

Nahid: I mean it's been several thousand

Det. Calhoon: Like five thousand, ten thousand?

Nahid: No. More, probably a little more than ten thousand but we've talking about over a two and a half years period of time.

Det. Calhoon: How much, what if, he was helping you with regular, regular medical bills right?

Nahid: Well not regular medical bills but what I've had with it you know last year towards the end of the year. I had uh I had surgeries and stuff and things like that and deductibles...

Det. Calhoon: Sure

Nahid: ...and things like that.

Det. Calhoon: How much are your deductibles?

Nahid: Uh, right now I don't know because I'm still trying to pay off my last years...

Det. Calhoon: Sure

Nahid: ...one of the surgeries I had, none of it, pretty much all of it was out of pocket.

Det. Calhoon: Did he give you kind of regular monthly payments?

**Nahid:** **Predominantly**

Det. Beren: Predominantly?

Nahid: Yeah

Det. Calhoon: Would you be willing to help us cause we, honestly are trying to maybe clear you too....

Nahid: Well I just want...

Det. Calhoon: ...of this, of this accusation.

Nahid: ...I want...

Det. Calhoon: It would be helpful...

Nahid: Here's the thing...

Det. Calhoon: It would be helpful for you.

Nahid: I want Bill

Det. Calhoon: I'm sorry, hold on a second, one second

Nahid: I want Bill to sit here.

Det. Calhoon: Yeah, we can do that.

Nahid: and tell you guys.

Det. Calhoon: But it would be helpful to clear the air...

Nahid: This is just...

Det. Calhoon: ...kinda just show, we can, we know you got x amount of money on x dates but it would be really helpful to show that there's no...uh there's, there's no malice or, or, or scam or whatever. If we can show where that money went like if you went to a particular doctor or if it went to, you know what I'm saying? So and that's why we're...

Nahid: I don't have tracking of that, I didn't make Bill write a check to the doctor...

Det. Calhoon: Right, that went to you.



Nahid: Yeah, and then I...

Det. Beren: Well how did you pay your doctors?

Nahid: Well, through my credit card or through my debit...

Det. Beren: So can you show the inflow of the money and then the output from you?

Nahid: I, you know you guys are showing up, my head is in water and you think I have all tracking for everything?

Det. Beren: Well not right this second. We're asking if that's something that you're willing to, to find and produce.

Nahid: I just, I first want to know what's going on. Uh because...

Det. Calhoon: I think we pretty clearly explained it.

Nahid: ...this is, this is like the last thing on Earth that I expected and the fact that you know somebody's been telling this been going on for two years and we've been...

Det. Calhoon: Well you know that, you just said that it was going on for two years.

Nahid: My relationship with Bill...

Det. Calhoon: Yeah

Nahid: ...has been going on for two years.

Det. Calhoon: And him giving you money

Nahid: I didn't know that there is a criminal investigation on me going on...

Det. Calhoon: Well it hasn't been.

Nahid: ...for two years.

Det. Calhoon: This hasn't been going on for two years, we just know that the relationship has been going on for two years, so...

Nahid: You know...

Det. Beren: Do you want us to leave or do you want us to talk a little bit more about it?

Nahid: I just, I'm you know it's like the, the more you guys are talking, the more confused I'm getting.

Det. Calhoon: Sure

Det. Beren: Well let me put it plain and simple.

Nahid: Sure

Det. Beren: Ok, there's been thousands of dollars...

Nahid: Um hum

Det. Beren: ...given to you. Tens of thousands, not just thousands of dollars given to you by Bill in the form of either a check, a transfer into an account or cash.

Nahid: Um hum

Det. Beren: And um, it's been brought to our attention that, that money was given to you by Bill under an exploitation by you. Taking advantage of him um under the preface of having medical bills to pay. And playing off of the need for him to want to help you because of some medical uh illnesses. So with that being said, there's, there's one of two things that are happening here. You are exploiting Bill and you are using a medical illness in order to basically get, manipulate him into helping you um because he cares about you.

Nahid: Um hum

Det. Beren: Or you have a medical illness that you're able to prove to us that does exist and that money is going towards it and we have no criminal case.

Nahid: Yeah

Det. Beren: So...

Nahid: I mean all the money was in medical bills.

Det. Beren: Ok, medical bills for what?

Nahid: I said all of the money WASN'T medical bills.

Det. Beren: What else was it for?

Nahid: But I told you, if my car...

Det. Beren: Car broke down

Nahid: ...you know my car broke down or the tires on my car went out or...

Det. Beren: Well that wouldn't equal thousands of dollars though.

Det. Calhoon: Tens of thousands of dollars.

Nahid: But, not but I'm talking, I, and I don't really know all of it. In fact Bill was on the phone with me last night, was saying he was sending me money and I said Bill I'm ok. Can you please get on the phone and ask him what is (inaudible).

Det. Beren: Did you tell him what you're medical issues was that he needed, that you were needing the help with to pay off?

Nahid: Yeah, I've had bouts of, I have history of breast lumps before and I've, between 2001 and 1999 I had surgeries for that and you know I've had a scare of that coming back. And this time around, Bill is aware of it, this time around I decided I don't want to go the route of conventional medicine because I've already been that route before. Um so I've been, I've been treating it with everything I've got and I'll be happy to show you guys next to my bed where all, everything thing that I take are.

Det. Beren: Do you see a doctor?

Nahid: For this, not anymore.

Det. Beren: When was the last time you saw a doctor for it?

Nahid: The last time I saw a doctor was December of last year and I had appointments again uh coming up but I couldn't because again the deductible and I couldn't meet it. I call, I called the doctor's office and they told me uh basically my visit, I asked them how much my visit would be and they said, you know what they think, is the minimum is two ninety-five and but that doesn't, if anything else is they couldn't tell me. Um...

Det. Beren: So did you have breast cancer, or you just found lumps and...?

Nahid: Well no what's happening is, my breast tissue, and that's why this time around I decided I don't want to go that route. My breast tissue is changing into pre-cancerous tissue so what they would do is they would keep going and removing lumps. So every, they had me at one point in every six months mammography and it was a nightmare living through it. So after 2001 I made a decision to change everything about my life.

Det. Beren: So that would all be between 99 and 2001?

Nahid: One, was the surgeries that I have and since then, this time around when I'm being, you know I started feeling the lumps in my breast and pains...

Det. Beren: Right

Nahid: ...and things like that. I went and I've been getting my kind of basic blood work done and this time I just kinda knew um the scaring of my breasts and everything that has happened.

Det. Beren: Who did your...who did you basic blood work?

Nahid: Hum?

Det. Beren: Who?

Nahid: Well, the primary care doctor did, but I also ran blood work through my own office.

Det. Beren: So within the last eighteen months

Nahid: Yeah

Det. Beren: ...the doctor you're seeing now would be aware your current lump issues and...?

Nahid: No. No, I don't know. That's a good thing, I don't know. Because when I went and talked to her in December, um I was faced with the situation that Joe (sigh), wanted to file divorce and the mortgage and this house is too high for me and I had to, I've been looking for a place to move out of here and I just I was just completely stressed out of my mind. So I discussed money things with her, and I can't tell you specifically I talked, because my breast

lumps came back, it was the beginning of like last year I think. It's that I noticed that I'm having them and I just like kinda also knew that this time around I'm not gonna go that route.

Det. Beren: So what kind of treatment are you doing this round?

Nahid: Would you like to see it?

Det. Beren: This time around?

Nahid: It's all holistic.

Det. Beren: Do you see somebody that does that or is that just through your knowledge of...?

Nahid: It's, it's through my own office.

Det. Beren: Through your knowledge?

Nahid: Through my own office. But it's still you know the supplements I still have, cost a lot of money and...

Det. Beren: So in... oh, sorry.

Det. Calhoon: What does that mean?

Det. Beren: Oh, sorry.

Det. Calhoon: What's a lot of money?

Nahid: Supplements range you know anywhere from thirty dollars a bottle to eighty dollars a bottle.

Det. Calhoon: Ok

Nahid: So then, well I take a lot of them.. But I've just been able to manage it and what it is is really my pain frequency and such. And this time around my kids are aware of it, that I kinda have made my decision. I'm not sure how aware my kids are and uh the extent of my breast cancer.

Det. Beren: What have you told them?

Nahid: (sigh) They know that this time around if anything happened I'm not going the route again.

Det. Beren: Are they aware that you haven't been feeling well? And that you've found lumps again?

Nahid: Uh, probably, yeah, probably.

Det. Beren: So is it terminal?

Nahid: I don't think...I hope not. I hope not.

Det. Beren: At what point would you see a doctor about it?

Nahid: That's a very good question. You know when I ran my blood work through um you know the, in December, but also the ones that I've been doing, I've been running my markers and I feel like if I can't manage it the way I've been going...

Det. Beren: So who does? So the running your markers and your blood work, that goes through your primary care doctor?

Nahid: It can go through them but I do it predominantly through my own office because of the fact that if we do it through my office I pay cash for it and it's a lot cheaper.

Det. Beren: Do you keep, do you keep those results?

Nahid: Yeah, they should be. I actually have a requisition that I have on my desk to go get more.

Det. Beren: So I'll lay it out just even a little bit further.

Nahid: Sure

Det. Beren: The accusation is, is that you're faking cancer in order to get money from Bill and that you're using this um big elaborate story that you're gonna die and it's terminal and that uh the money is for the treatment and so in order for me not to criminally prosecute you...

Nahid: Ok

Det. Beren: ...which is where this is going.

Nahid: Um hum

Det. Beren: I would need full disclosure from you, with showing that you've had the cancer, where they money is going to, that it's paying for, I

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mean receipts, the blood work. I mean I can't, I can't, a court isn't just gonna say well just believe Venus, she says she has a lumps and she's just gonna treat it on her own. That's not how it works.

Nahid: Well I didn't know that I was being criminally prosecuted.

Det. Beren: You're not being criminally prosecuted yet, I'm giving you an opportunity...

Nahid: Yeah

Det. Beren: ...to prove to me that you have cancer. Or the markers of it like you've just described on your blood work.

Nahid: But my markers are not out of range. You know and that's why I haven't gone.

Det. Beren: So you don't have cancer?

Nahid: I don't know if I do, I know that I have lumps in my breasts.

Det. Beren: So why would you tell him that you have cancer?

Nahid: I never told Bill that.

Det. Beren: What if I told you that there's a recording of a conversation between the two of you and you're...

Nahid: That I'm saying...

Det. Beren: ...explaining that you're extremely ill and will die if you don't have treatment?

Nahid: Between me and Bill?

Det. Beren: Um hum. How do you explain that?

Nahid: There are days that I feel like dying. Last night I came in and I just sat on that couch and I went and I slept and I talked to Bill and I woke up and I went right back to sleep. There are times that I do feel like it.

Det. Beren: Ok.

Nahid: Yeah

Det. Beren: I've been aware of this for some time, and we've been monitoring you guys without either one of you knowing it. And like I said there's been several conversations, like I don't understand how here you're saying well I haven't ever seen a doctor, I am just doing these marker tests on my own to make sure I'm not out of range, but yet you're telling him that you have seen a doctor, that you're paying a doctor for your treatment and that you will die if you don't receive this treatment so help me understand how we explain that to a jury. Why would you say that to him?

Nahid: I don't know. Maybe to get attention.

Det. Calhoon: Well we understand things are tight with your divorce coming and you're in need of money. But that wasn't the best way to go about doing it right?

Nahid: Probably not.

Det. Calhoon: So...

Nahid: Probably not, but a lot it did go, a lot of it did go.

Det. Calhoon: To what?

Nahid: Into you know, care.

Det. Calhoon: Supplements?

Nahid: Yeah

Det. Calhoon: But probably not tens of thousands of dollars. It's a, we get it, you're stressed out about money and getting divorced and trying to find a place to live but I think we all know that you kinda took advantage of Bill with some of this money, right?

Nahid: I have tried, you know if you have been monitoring any of the conversations and all of that how often have you heard me say no Bill I don't want money? Bill I don't want money. Have you heard any of those?

Det. Beren: I have heard you say that but I've also heard in the context of it is the whole well I'm not asking him for money but I'm telling him how sick I am and that...



Nahid: That was...

Det. Beren: ...and that I'm gonna die and that it's terminal and I'm doubled over with stomach pains.

Nahid: There are times that I am. The things that I can show you is, come, come to me, with me so I can show you what it is that I take.

Det. Calhoon: Well let's, let's finish up here real quick...

Nahid: Yeah

Det. Calhoon: ...and then we can do that. So...

Nahid: What I take on daily basis.

Det. Calhoon: I think, I think we can all pretty comfortably say that Bill has helped you out because he cares about you.

Nahid: And I...

Det. Calhoon: And I'm sure that you do too.

Nahid: And I care about Bill.

Det. Calhoon: But I think we can also say that you lied to Bill for him to give you money. I mean, let's be honest, it is what it is right? This is all out on the table here, just come up front with it and we'll deal with it, I mean we get it, people have stressful lives. You're looking at a divorce, you're looking at needing a place to say, we understand that.

Nahid: I, and I also understand that you know this conversation is recorded, right? You told me it's recorded.

Det. Beren: Um hum

Nahid: And but you guys, I want to have some representation for me.

Det. Beren: Ok

Nahid: You guys are blind siding me uh and there is a lot of accusation and there is all of these thigs going on and I have you on recording and all of that and you expect things that like I am, my head is spinning over right now.

Det. Calhoon: Sure

Det. Beren: Well its spinning over because...

Nahid: Well you guys, no you guys are accusing me...

Det. Calhoon: We're, we're telling you the truth.

Nahid: No. Well if that's the truth then let it come out.

Det. Calhoon: I think it just did.

Nahid: Also uh that you know that you, you guys showing up at my door without a warning.

Det. Beren: I've tried to call you, I've tried to give warning, I went to your business, I've been here so it's...

Nahid: When did you go to my business?

Det. Beren: ...this isn't the first time.

Det. Calhoon: A month ago.

Nahid: What time did you go to my business?

Det. Beren: Well we've made two attempts at eight and nine o'clock.

Det. Calhoon: Yeah

Det. Beren: Um after we had come here so this isn't...

Nahid: Ok, but I have no...

Det. Beren: I have tried calling you...

Nahid: ...I have no warning.

Det. Beren: ...you never answer your phone.

Nahid: You called my cell phone?

Det. Beren: Um hum

Nahid: You left a message on my cell phone?

Det. Beren: No because it went straight to a, the subscriber does not have something...

Nahid: What cell phone number did you call?

Det. Beren: 7-1-9-6-4-8-5-6-2-6

Nahid: That went to a subscriber doesn't have (inaudible) my phone?

Det. Beren: Doesn't have a voicemail. It had a voice mail today when I tried to call.

Nahid: It has never been that a subscriber never had a voicemail.

Det. Beren: Well anyway, all of that's irrelevant, if you're done talking, we are too um...

Nahid: That's fine.

Det. Beren: I will uh...

Nahid: That's fine.

Det. Beren: ...leave you a message and let you know this will go to the district attorney for criminal charges.

Nahid: Ok

Det. Beren: And it really shouldn't surprise you if you would like an opportunity before it goes to the district attorney to prove the records um from medical bills, doctors, whoever you've visited that would know of these conditions you can feel free to submit them to me and we can clear it up. If it doesn't get cleared up then it goes to the DA for a filing decision.

Nahid: But I need to, I need time, I need all of those things, you guys are...

Det. Beren: Ok

Nahid: ...like I said I haven't had a voicemail from you. Nobody in my office has told me probably you guys showed up.

Det. Beren: Well nobody was there.

Nahid: Yeah, before the office opened or I'm not home and I'm not...

Det. Beren: Um, again that's not relevant so I will give you...

Nahid: Well what, it is relevant to me is that you know, you're sitting here you're telling me I'm not aware and Bill is not aware. Has Bill filed...

Det. Beren: It doesn't matter what Bill filed.

Nahid: ...complaints against me? No, because if Bill is aware of it, it's one thing, that Bill is aware of it and I'm you know, that I wasn't aware of it. But if Bill is not aware of it and I'm not aware of it then you guys are recording our private conversations that you just told me you have our recorded conversations. I think I have a lot more questions too. And that's where I need to sit down because...

Det. Beren: Well Bill is aware of it, I'll tell you that. He's not the one who filed the complaint...

Nahid: Ok

Det. Beren: ...but I've been working with him since last July in the matter.

Nahid: Ok

Det. Beren: Um which poses a great problem for you but regardless...

Nahid: Yeah

Det. Beren: ...nothing else matters if you are going to prove to me that you have been using the tens of thousands of dollars that he has given you over the last eighteen to twenty months...

Nahid: Um hum

Det. Beren: ...for medical treatment for this cancer, non-cancer, I have a lump, I don't know what it is problem.

Nahid: Ok

Det. Berne: I will wait for you to submit that to give you the benefit of the doubt um so how long do you think it would take for you to come up with those documents?

Nahid: I want to call an attorney.

Det. Beren: Ok, perfect.

Nahid: I want to call my attorney.

Det. Calhoon Good deal

Nahid: And see what it is.

(37:09)

*Transcribed by M. Irwin 4/27/16*