

DC9BKURT1 Trial

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 UNITED STATES OF AMERICA,

4 v.

S1 12 Cr. 376(RMB)

5 RUDY KURNIAWAN, a/k/a "Dr. Conti,"
5 a/k/a "Mr. 47,"

6 Defendant.

7 -----x

8 December 9, 2013
8 4:04 p.m.

9 Before:

10 HON. RICHARD M. BERMAN,
11 District Judge

12 APPEARANCES

13 PREET BHARARA,
14 United States Attorney for the
15 Southern District of New York
16 JASON P. HERNANDEZ,
16 JOSEPH FACCIPONTI,
16 Assistant United States Attorneys

17 WESTON, GARROU & MOONEY JEROME MOONEY
18 Attorneys for defendant
18 BY: JEROME MOONEY

19 VERDIRAMO & VERDIRAMO, P.A.
20 Attorneys for defendant
20 BY: VINCENT S. VERDIRAMO

21 - also present -

22 JAMES WYNNE, Special Agent FBI
23 ARIEL PLATT, Paralegal
23 ADAM ROESER, Special Agent FBI

24
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1 (In open court; jury present)

2 THE COURT: While we're waiting, I'm going to ask the
3 jurors to raise their right hands and Christine will give you
4 an oath as to the performance of your duty as jurors.

5 (A jury of 12 and two alternates was impanelled and
6 sworn)

7 THE COURT: So, jurors, what I'm planning to do is I'm
8 going to give you some preliminary jury instructions and then
9 I'll have one or two more for you before you leave today. And
10 then I think we'll at least begin with opening statements. So
11 we're moving along quite nicely.

12 So now that you've been sworn in as jurors, let me
13 tell you briefly about your duty and give you these, what we
14 call preliminary instructions. It's at the end of the
15 presentation of the evidence, hopefully next week, toward the
16 end of next week, that it will be my responsibility to give you
17 the final charges and it will be your duty to decide from the
18 evidence what the facts are. You and you alone are the judges
19 or the determiners of the facts in this case. So you'll hear
20 the evidence, decide what the facts are, and then apply those
21 facts to the law which I will give you. And that's how you
22 reach your verdict. In doing so, you must follow the law
23 whether you agree with it or not.

24 As I said before, earlier, and you probably know,
25 under the law a defendant is presumed to be innocent and he or

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1 she cannot be found guilty of the crimes charged in the
2 indictment unless a jury, having heard all of the evidence in
3 the case, unanimously decides that the evidence proves his or
4 her guilt beyond a reasonable doubt.

5 In a criminal case, such as this one, the burden of
6 proof remains with the prosecution. In order for the jury to
7 return a verdict of guilty, the prosecution must prove beyond a
8 reasonable doubt that a defendant is guilty. A person charged
9 with a crime has absolutely no burden to prove that he or she
10 is not guilty. And you must not take anything that I saw or do
11 during the trial as indicating what your verdict should be.
12 For example, don't be influenced by my taking notes. What I
13 write down may have nothing to do with this trial or with what
14 you'll be concerned with at the trial.

15 And, by the way, I have no problem with the jury
16 taking notes. And, in fact, we'll be handing out pads for you
17 and pens if you need to take notes a little bit later.

18 So let's talk a little bit about evidence and what is
19 not evidence, and then a little bit about burden of proof and
20 then we'll start. So you decide what the facts are from the
21 evidence that will be presented here in court. And that
22 evidence may consist of the testimony of witnesses, documents,
23 and other things received into evidence as exhibits and any
24 facts on which the lawyers may agree or stipulate or that I may
25 instruct you to find.

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1 There's two kinds of evidence: One is called direct,
2 and the other is called circumstantial evidence. Direct
3 evidence is testimony by a witness about what that witness
4 personally saw or heard or did, and circumstantial evidence is
5 indirect evidence; that is, it is proof of one or more facts by
6 which you can find another fact.

7 You may consider, by the way, both direct and
8 circumstantial evidence in deciding this case. The law permits
9 you to give equal weight to both kinds of evidence, or no
10 weight if that's what you determine, because it's up to you to
11 decide how much weight, if any, to give any particular
12 evidence. As the sole determiners of the facts, you, the
13 jurors, must determine which of the witnesses you believe, what
14 portion of their testimony you accept, and what weight you
15 attach to it.

16 At times during the trial, I may sustain objections to
17 questions asked. And when that happens, I will not permit the
18 witness to answer; or if the witness, as sometimes happens, has
19 already answered, I will instruct that the answer be stricken
20 from the record and that you, the jurors, disregard it and
21 dismiss it from your minds.

22 In reaching your decision, you may not draw any
23 inference from an unanswered question where an objection has
24 been sustained, nor may you consider testimony that I have
25 ordered stricken from the record if that happens. The law

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1 requires that your decision be made solely upon the evidence
2 before you. The items I exclude from your consideration will
3 be excluded because they are not legally admissible as
4 evidence.

5 The law does not, however, require you to accept all
6 of the evidence that I do admit. In determining what evidence
7 you will accept, you must make your own evaluation of the
8 testimony given by each of the witnesses and each of the
9 documents presented to you and you determine the weight you
10 choose to give each witness's testimony or to an exhibit.
11 There's no magical formula by which you should evaluate
12 testimony or exhibits. I will, however, give you some
13 guidelines for determining the credibility of witnesses at the
14 end of the case.

15 At this time, suffice it to say that you bring with
16 you to this courtroom all of the experience and background of
17 your lives. You do not leave your common sense outside the
18 courtroom. And so the same types of assessments that you use
19 in everyday dealings are the same assessments or the same type
20 of assessments that you apply in your deliberations.

21 Just a minute on what is not evidence. The questions
22 and objections of the attorneys are not evidence and neither is
23 any testimony that I may instruct you to disregard.

24 The statements and arguments of the attorneys during
25 any part of the trial are also not evidence. And, further,

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1 anything that you may see or hear when the Court is not in
2 session, even if what you see or hear were to be done or said
3 by one of the parties or one of the witnesses, that would not
4 be evidence. Only what is admitted into evidence here in
5 court, when court is in session and when all of the parties and
6 all of the jurors are present, is competent evidence.

7 So I'm going to have a few more instructions for you.
8 Well, I'll give you one more now. We talked about this before.
9 We talked about burden of proof. So now I'll just ask you to
10 remember that this is a criminal case. The standard by which
11 you will assess the evidence is proof beyond a reasonable
12 doubt, and I will in my final charges or instructions to you
13 instruct you more fully on the meaning of the phrase "burden of
14 proof beyond a reasonable doubt."

15 So just a word about how the trial will unfold, the
16 stages. First, we'll hear from counsel first for the
17 government and then for the defense. Opening statements. They
18 don't have to make opening statements, but they usually do. An
19 opening statement is not evidence. It's an outline of what
20 that party intends to prove at trial and it's offered to help
21 you follow the evidence that is presented.

22 Next, the prosecutor will present witnesses and the
23 defense may cross-examine those witnesses, and then the defense
24 may, but does not have to, present witnesses and the prosecutor
25 may cross-examine those witnesses if the defense does call

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1 witnesses.

2 Possibly, but not necessarily, I may permit the
3 prosecutor to present additional witnesses to rebut the
4 defendant's evidence, if any. And after that the attorneys
5 will make their closing arguments to summarize and give you
6 their interpretation of what the evidence showed. The
7 prosecutor will go first, defense counsel second, and then the
8 prosecutor may get a brief reply to the defense. And like
9 opening statements, closing statements are not evidence. And
10 after those final closing statements or summations, I will give
11 you instructions on the law and then you will retire to
12 deliberate on your verdict.

13 So please don't make up your mind about what the
14 verdict should be until after I have instructed you on the law
15 at the very end of the case and you have gone to the jury room
16 and you and your fellow jurors have discussed the evidence. So
17 please keep an open mind until then. Both parties deserve, and
18 the law requires, that you give them an opportunity to be fully
19 heard.

20 And so now I'll turn to the government for their
21 opening statement.

22 MR. HERNANDEZ: Your Honor, may we move the podium to
23 the middle of the jury box?

24 THE COURT: Absolutely. Can you do it?

25 MR. HERNANDEZ: I think we can manage.

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1 (Pause)

2 MR. HERNANDEZ: Judge, none of this is plugged in, so
3 I can speak loudly. That's not a problem unless your Honor
4 wants to take the time to have it connected.

5 THE COURT: It's up to you. If you're comfortable
6 without it, that's fine. And, incidentally-- well, we'll talk
7 about that later.

8 MR. HERNANDEZ: May I, your Honor?

9 THE COURT: Yes, sure.

10 MR. HERNANDEZ: This is a case about greed. For
11 years, Rudy Kurniawan, the defendant, the man who's sitting
12 right there, made millions of dollars selling what he claimed
13 were some of the rarest and most expensive wines in the world.
14 He claimed the wines were very old, very special, and made by
15 famous winemakers in France. But those were lies.

16 Many of the wines that Kurniawan sold weren't rare
17 wines from famous French winemakers as he said they were, but
18 phony knockoffs that Kurniawan made in his own kitchen in a
19 suburb of Los Angeles. There, in his house, he took old, empty
20 wine bottles and he made them look like old, rare bottles.
21 Using a computer and a laser printer, Kurniawan created what
22 looked like antique labels from some of the most famous
23 wineries in France, and he put them on empty bottles in his
24 kitchen and then he filled those bottles with cheap wine and he
25 sold them for thousands of dollars each by tricking people into

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Opening - Mr. Hernandez

1 Kurniawan created an assembly line in his kitchen
2 where bottles passed through different stages of being made
3 into counterfeit bottles. He even blocked the kitchen window
4 so that no one could see him soaking the labels off of bottles
5 that he put into the sink and so that no one could see what he
6 was doing. There, in his kitchen, he produced worthless
7 bottles that later he claimed falsely were precious rare wines.

8 After Kurniawan soaked the labels off of the bottles,
9 he used his computer and printer to make fake wine labels.
10 Kurniawan even perfected the process by taking notes on how to
11 make them look more authentic. Kurniawan had hundreds of
12 custom rubber stamps made that he used to make fake wine corks
13 to dupe anyone who opened one of his bogus wine bottles and
14 examined or looked at the cork.

15 After preparing the fake bottles, Kurniawan blended
16 the fake wine to go into the bottles. He used old, low-quality
17 French wines and a blend of younger wines from places like
18 California to make the wines that he thought could pass for
19 very expensive, authentic wines. And to help him keep track of
20 what he was making, he took notes on the actual bottles. He
21 wrote formulas for mixing up different wines to trick his
22 victims into thinking they were drinking genuine fine wines.
23 And Kurniawan used a classic bait-and-switch scam to gain his
24 victims' trust. He regularly opened tens of thousands of
25 dollars of wine, authentic wine, for other collectors at

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Opening - Mr. Hernandez

1 dinners and at tastings. Kurniawan also paid huge wine bills
2 worth tens of thousands of dollars at restaurants for other
3 collectors.

4 Kurniawan's victims trusted him so much that when
5 Kurniawan told collectors that some of his rare wines came from
6 a quote/unquote magic cellar in Europe, they believed him.
7 Kurniawan's seeming generosity, however, was just part of the
8 scam. The magic cellar was just another lie. Kurniawan then
9 sold these fake bottles at wine auctions held here in Manhattan
10 and in other places, and he also sold fake wine directly to his
11 own friends. Over time, however, more and more people were
12 figuring out that Kurniawan was the source of a huge amount of
13 fake wine. People got smart and they figured out that any wine
14 that came from him had to be looked at very carefully.

15 So what did he do? What did Mr. Kurniawan do? He
16 figured out a new way to deceive his victims: By paying
17 another person to sell his counterfeit wines for him at
18 auctions.

19 Now, why did he do it? Greed. Kurniawan loved living
20 the high life and he loved the attention that came from having
21 such a supposedly incredible wine collection, even if it meant
22 defrauding his own friends and collectors. He had an
23 unquenchable thirst for luxury cars, designer clothes, and the
24 finest food and drink in the world. And despite raking in
25 millions from his fake wine sales, it wasn't enough.

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Opening - Mr. Hernandez

1 In Count One, he's charged with committing mail fraud by
2 creating, selling, and trying to sell counterfeit wines. Count
3 Two charges him with committing wire fraud for defrauding Fine
4 Art Capital, by lying to them and omitting important
5 information to them when he applied for a \$3 million loan.

6 We are going to prove to you that Rudy Kurniawan was
7 making counterfeit wine with evidence from his house. As I
8 mentioned previously, you will get to see, and you will get to
9 hold in your hands, thousands of wine labels, corks, stamps and
10 other things that he used to make counterfeit bottles that was
11 retrieved from his home. Kurniawan's computers, you will see,
12 were full of hundreds of scanned and manipulated images of wine
13 labels. The images show how Kurniawan airbrushed or
14 Photoshopped aspects of labels so that he could print them at
15 will and use them to deceive buyers to make them think they
16 were buying authentic rare wines.

17 We will show you how Kurniawan turned his computer and
18 printer into a virtual ATM machine that printed out thousand
19 dollar bills in the form of fake wine labels. The evidence in
20 this trial will also include several of the fake bottles that
21 Kurniawan sold and tried to sell at wine auctions here in
22 Manhattan and in other places.

23 You're also going to hear from several witnesses
24 during this trial, such as the victims who bought Kurniawan's
25 fake wines. And you're going to hear from some French

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Opening - Mr. Hernandez

1 winemakers who will tell you why the wines that Kurniawan sold
2 are fake. I expect one of those winemakers to tell you that
3 Kurniawan even tried to sell dozens of bottles of wine that his
4 winery never even made. I expect this witness will tell you
5 that when he confronted the defendant, Rudy Kurniawan, and
6 asked Kurniawan where he got the obvious fakes from, Kurniawan
7 told another bald-faced lie. Kurniawan told the winemaker that
8 he got the bottles from a collector in Indonesia and that he
9 gave the winemaker two phone numbers in Indonesia for this
10 supposed winemaker, for this supposed collector. The numbers,
11 however, were a dead end. There was no Indonesian collector.
12 The bottles didn't come from Indonesia. They came from
13 Southern California. It was just another one of Kurniawan's
14 lies. It was more of the magic.

15 I also expect a witness from Fine Art Capital to say
16 that Fine Art Capital would not have approved the \$3 million
17 loan if Fine Art Capital had known that Rudy Kurniawan was
18 lying. I expect that witness will tell you that Kurniawan
19 defaulted on the loan and Fine Art Capital had to sell their
20 collateral, the collateral it had, to get its money back.

21 The charges in this case are also going to be
22 supported by documents. We'll present to you e-mails that show
23 just how desperate Rudy Kurniawan was for money and how he
24 ordered supplies, like wax to seal the tops of wine bottles,
25 for his counterfeiting enterprise. There are going to be

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Opening - Mr. Mooney

1 Indonesia, he starts life as kind of an outsider. It's very
2 difficult to be a Chinese person in that country, and his
3 family has always had certain problems. Even though they've
4 always been successful, they've always been outsiders in
5 Indonesia. So he grew up being an outsider.
6 He came to the United States to get an education, got
7 his education, and in the course of what he was doing here
8 became acquainted with fine wines. And wine is something which
9 is meant to be drunk. It's designed. It's a biological
10 product that's created for the purposes of being consumed.
11 Because unlike a Picasso that you may hang up on your wall and
12 sit back and enjoy, it's not going to last forever. It needs
13 to be consumed and it needs to be consumed within a certain
14 period of time.
15 Now, some of us have better palates with regard to
16 this than others. It turns out that Rudy had a very good
17 palate. As he started to experience and taste wines, he found
18 out that he could really distinguish between different tastes,
19 that he could really appreciate the differences in wines. You
20 hear about some of those people that can taste a wine and they
21 can tell you where it came from and tell you what the year is
22 and tell you all about what's in the bottle. And he's one of
23 those people. I'm not. I know some of it, but I can't do
24 that. But he can.
25 So because he had a pretty good palate, he suddenly

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Opening - Mr. Mooney

1 starts getting introduced to other people, people who are very
2 much into this whole thing of drinking and consuming and having
3 these very, very fine wines.

4 Now, he comes from a wealthy family. So he came over
5 here, he's got money, but he started to meet these people and
6 he wants to belong. He's always wanted to belong. Now here's
7 this group of people that are enjoying something that he really
8 likes too.

9 So he starts to be able to go to some places where
10 these people are. He starts to be able to taste and drink some
11 of the wines that they've got. And we're talking about some of
12 the richest people in the world because some of these wines
13 cost a great deal of money. If you're going to spend a
14 thousand dollars on something, a bottle of wine, you open it
15 up, you pour it and drink it, that's not normal people. Those
16 are people with lots of money. And he meets these people.
17 Now, they're richer than he is, they're older than he is, and
18 for the most part they're more successful than he is. He's
19 just a young man. He comes from a rich family. He's graduated
20 from college.

21 But he wants to be part of what they are, so he starts
22 to go places where he can be with them. He starts to do things
23 to try to figure out how he can be a part of this group.
24 You'll hear that he takes these people to fancy, expensive
25 restaurants and he buys expensive wines for them to drink and

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Opening - Mr. Mooney

1 them. Because for most of the time it was just really about
2 drinking it. And you're going to hear that that goes on. And
3 you're going to hear even from the people that come in from the
4 French chateaus, yeah, there's an awful lot of bottles out
5 there that are counterfeit. And if you're out there buying a
6 lot, if you're buying a lot of wine, you're going to buy a lot
7 of counterfeits. It's just going to happen.

8 Now, Mr. Kurniawan, Rudy, who first starts getting
9 involved in any capacity in wines in the early 2000s, starts
10 to-- he's going to tell people, Oh, I know the difference, I
11 can tell. And probably when it comes to opening a bottle and
12 tasting it, he can. But you're going to have experts that are
13 going to come in here and these experts are going to talk to
14 you about all of these bottles. And just wait and see how much
15 time and energy some of these people have put into it and how
16 complicated and difficult it is sometimes to figure out all of
17 the differences.

18 So, what Mr. Hernandez told you to do, I'm going to
19 ask you to do as well. Pay attention. Pay close attention to
20 what's going on and listen to things. Try not to reach any
21 quick conclusions, because you need to get the whole big
22 picture of what's happening before you can really start to put
23 it in the right perspective, before you can see that this poor
24 guy ends up being the one who suddenly gets blamed for
25 everything. When people get embarrassed, when all of this

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Opening - Mr. Mooney

1 begins to come out in the press, when people start making a big
2 thing about the fact of, oh, look at all these counterfeits.
3 Yes, there are lots and lots of counterfeits. He bought
4 counterfeits, he sold counterfeits. Everybody else bought
5 counterfeits and sold counterfeits. But because he's not one
6 of the insiders, we're here. And he's the one that some of
7 these people are going to want you to believe is responsible
8 for all of the awful, horrible things that have happened with
9 regards to the wine market.

10 And I think at the end of the case you're going to be
11 able to look at it and you're going to be able to see it and
12 you're going to be able to see that everything that has been
13 put together with regards to this so-called case is just a
14 house of cards and it doesn't really stand up.

15 I'm going to thank you now. I don't get a chance-- we
16 don't get a chance to address you now until after all of the
17 evidence is in and we get to the end of the case.

18 I want to mention one other thing. We'll, a lot of
19 times as we go on, I know this is going to get really boring
20 for you and you're going to hear us ask a lot of questions
21 sometimes and say, Why on earth is he asking that question? We
22 certainly know that already.

23 One of the really frustrating things that happens in a
24 trial, and it's frustrating for both of us, the frustrating
25 part for you guys is you're sitting there, the witness is up

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Opening - Mr. Mooney

1 there and the witness is talking about something and you want
2 to know something from that witness. Well, you don't get to
3 raise your hand and say, Well, what about this? And that's
4 going to be really frustrating for you.

5 I'm going to tell you right now that's going to be
6 really, really frustrating. But you know what? It's really,
7 really frustrating for us, too, because we're sitting here
8 thinking what's that question that they want answered? So
9 we're trying to figure that out and we're trying to remember
10 what it is.

11 Sometimes we'll get it right. Sometimes we'll think
12 about it and we'll ask the question and we'll get you the
13 information that you need. Sometimes we won't and the witness
14 will be done and the witness will be gone and you'll be mad at
15 us because we never asked the question.

16 So I'm going to apologize for that right now. And
17 especially because we'll probably ask about 15 other questions
18 that you wish we didn't ask because you say that's obvious.
19 because we're asking all those questions because we're trying
20 to get to the one that we think that's the one that you're
21 really trying to hear about.

22 So let me apologize for all of those sorts of things
23 that are going to happen right now. I mean I could just tell
24 you that's going to happen. It's frustrating for all of us.
25 We'll do the best that we can to try to figure out what those

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Opening - Mr. Mooney

1 questions are. We'll do our best to try to ask those
2 questions. We'll do the best that we can to try to get you
3 that information.

4 Then, when all of the evidence is in and we're done,
5 we'll get a chance to do this again. And at that point in
6 time, I can try to tie it altogether and bring it together so
7 you can at least see what I think I saw and hopefully that will
8 be the same thing that you will see.

9 So, once again, thank you very much. Thank you.

10 THE COURT: Okay, ladies and gentlemen. I'm going to
11 let you go in a couple of minutes. I want to give you some
12 instructions and also about conducting yourselves as jurors and
13 also about tomorrow, because starting tomorrow we're going to
14 do all this trial in Room 12D. So it's a smaller courtroom.
15 It's a little warmer, in fact, and I see people are happy about
16 that. It's 12D.

17 So here are the conduct instructions. First, I ask
18 that you not talk to each other about this case or about anyone
19 who has anything to do to do with it until the very end of the
20 case when you go to the jury room to decide or to deliberate on
21 your verdict.

22 Second, I asked you not to talk with anyone else about
23 the case or about anyone who has anything to do with it until
24 the trial has ended and you have been discharged as jurors.

25 And, by the way, when I say "talk," I mean e-mailing,

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DC9BKURT1 Opening - Mr. Mooney

1 (In open court; jury not present)

2 THE COURT: Okay, folks. Good start. We'll see you
3 at around 8:45, if that's okay.

4 MR. HERNANDEZ: Judge, just a couple of things before
5 we start in the morning.

6 THE COURT: Yes.

7 MR. HERNANDEZ: Obviously Jim Wynne, the case agent,
8 is going to be sitting at counsel table. I assume that's okay,
9 given normal practice.

10 And then Michael Egan, who's our expert, we'd like to
11 be able to sit through the trial, listen to the evidence, and
12 then testify at the end.

13 THE COURT: I have no problem with that.

14 MR. MOONEY: We would like all other witnesses to be
15 excluded, though, your Honor.

16 MR. HERNANDEZ: We told all other witnesses not to
17 attend and watch. Now, some of the witnesses have asked if
18 they could watch the trial after they've testified.

19 THE COURT: That's fine with me.

20 MR. MOONEY: I think after they've been released.

21 MR. HERNANDEZ: Right.

22 MR. MOONEY: There are some of the witnesses -- what I
23 anticipate is we're going to ask that they not be released
24 because there may be things that we may need to call them back
25 for later.

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1 THE COURT: Okay.

2 MR. MOONEY: A good example right now would be Truly
3 Hardy. We'll try to get in what we can, but there may be a
4 possibility that we may need him back.

5 MR. HERNANDEZ: That's definitely something that we
6 should talk about. We're calling Truly Hardy early --

7 MR. MOONEY: Oh, to get him out of here? Okay.

8 MR. HERNANDEZ: Well, we're not getting him out. He's
9 going to an auction in Hong Kong.

10 MR. MOONEY: Well, that's out. Hong Kong is very out.

11 THE COURT: I think you guys will work that out
12 yourselves. If there's any problem, you'll let me know. I
13 think you'll be able to work it out.

14 MR. MOONEY: We'll figure it out. We can go to Hong
15 Kong.

16 THE COURT: All right. We'll see you tomorrow.

17 MR. MOONEY: Thank you, your Honor.

18 (Adjourned to December 10, 2013, at 9:00 a.m.)

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