

No. S270723

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
ANDRES QUINONEZ REYES,
Defendant and Appellant.

Fourth Appellate District, Division Three, Case No. G059251
Orange County Superior Court, Case No. 04CF2780
The Honorable Richard M. King, Judge

**EXHIBIT B PART 1 OF 3 IN SUPPORT OF RESPONDENT'S
REQUEST FOR JUDICIAL NOTICE**

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION III

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF AND RESPONDENT,

VS.

ANDRES QUINONEZ REYES,

DEFENDANT AND APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE CARLA M. SINGER, JUDGE PRESIDING

REPORTER'S TRANSCRIPTS ON APPEAL

MAY 24 AND 25, 2006

A P P E A R A N C E S

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VOLUME 1 OF 3
PAGES 1 TO 220, INCLUSIVE

LYNN PETERSON, CSR NO. 7706
OFFICIAL COURT REPORTER

M A S T E R					
C H R O N O L O G I C A L			W I T N E S S I N D E X		
WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
<u>DAVID RONDOU (402)</u>					1
BY MR. GELLER	18				
BY MR. BROTT		22			
<u>DAVID RONDOU (402)</u>					1
BY MR. BROTT	61				
<u>DAVID RONDOU</u>					1
BY MR. GELLER	101				
BY MR. BROTT		128			
<u>STEVEN GARCIA</u>					1
BY MR. GELLER	132				
BY MR. BROTT		159			
<u>MATTHEW SELINSKE</u>					1
BY MR. GELLER	168				
BY MR. BROTT		190			
BY MR. GELLER			204		
<u>DAVID RONDOU</u>					1
BY MR. GELLER	205				
BY MR. BROTT		209			
<u>FELIX J. NIEVES</u>					1
BY MR. GELLER	211				
<u>FELIX J. NIEVES</u>					2
BY MR. GELLER	224				
BY MR. BROTT		234			
BY MR. GELLER			248		
<u>JEFF LAUNI</u>					2
BY MR. GELLER	256				
<u>RICHARD ASHBY</u>					2
BY MR. GELLER	265				
BY MR. BROTT		269			
<u>MICHAEL CONTRERAS</u>					2
BY MR. GELLER	288				
BY MR. BROTT		293			

M A S T E R					
C H R O N O L O G I C A L			W I T N E S S I N D E X		
WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
<u>MICHAEL CONTRERAS</u>					2
MR. GELLER	298				
<u>MICHAEL CONTRERAS</u>					2
BY MR. GELLER	322				
BY MR. BROTT		336			
BY MR. GELLER			344		
<u>RICHARD ASHBY</u>					2
BY MR. GELLER	355				
BY MR. BROTT		363			
BY MR. GELLER			372		
BY MR. BROTT				373	
BY MR. GELLER			376		
<u>DAVID RONDOU</u>					2
BY MR. GELLER	379				
BY MR. BROTT		445			

M A S T E R				
A L P H A B E T I C A L		W I T N E S S I N D E X		
WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS VOL#
<u>ASHBY, RICHARD</u>				2
BY MR. GELLER	265			
BY MR. BROTT		269		
<u>ASHBY, RICHARD</u>				2
BY MR. GELLER	355			
BY MR. BROTT		363		
BY MR. GELLER			372	
BY MR. BROTT				373
BY MR. GELLER			376	
<u>CONTRERAS, MICHAEL</u>				2
BY MR. GELLER	288			
BY MR. BROTT		293		
<u>CONTRERAS, MICHAEL</u>				2
MR. GELLER	298			
<u>CONTRERAS, MICHAEL</u>				2
BY MR. GELLER	322			
BY MR. BROTT		336		
BY MR. GELLER			344	
<u>GARCIA, STEVEN</u>				1
BY MR. GELLER	132			
BY MR. BROTT		159		
<u>LAUNI, JEFF</u>				2
BY MR. GELLER	256			
<u>NIEVES, FELIX J.</u>				1
BY MR. GELLER	211			
<u>NIEVES, FELIX J.</u>				2
BY MR. GELLER	224			
BY MR. BROTT		234		
BY MR. GELLER			248	
<u>RONDOU, DAVID (402)</u>				1
BY MR. GELLER	18			
BY MR. BROTT		22		

MASTER

ALPHABETICAL WITNESS INDEX

WITNESSES:	DIRECT	CROSS REDIRECT RECROSS	VOL#
<u>RONDOU, DAVID (402)</u>			1
BY MR. BROTT	61		
<u>RONDOU, DAVID</u>			1
BY MR. GELLER	101		
BY MR. BROTT		128	
<u>RONDOU, DAVID</u>			1
BY MR. GELLER	205		
BY MR. BROTT		209	
<u>RONDOU, DAVID</u>			2
BY MR. GELLER	379		
BY MR. BROTT		445	
<u>SELINSKE, MATTHEW</u>			1
BY MR. GELLER	168		
BY MR. BROTT		190	
BY MR. GELLER		204	

M A S T E R E X H I B I T L I S T

PEOPLE'S:		I.D./VOL.	EVID/VOL.
1	LARGE MAP OF SECTION OF SANTA ANA	102/1	466/2
2	LARGE AERIAL MAP OF WILLITS AND SULLIVAN STREETS	103/1	466/2
3	LARGE COLOR CARICATURE OF WILLITS AND SULLIVAN STREETS	104/1	466/2
4	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN SOUTHBOUND DIRECTION AND SHOWING VICTIM'S HONDA CIVIC	107/1	466/2
5	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN NORTHBOUND DIRECTION SHOWING SCHOOL AND STOP SIGN	108/1	466/2
6	8.5X11" COLOR PHOTO: VICTIM'S CAR COVERED BY YELLOW TARP	108/1	466/2
7	8.5X11" COLOR PHOTO: FRONT WINDSHIELD OF VICTIM'S CAR	111/1	466/2
8	8.5X11" COLOR PHOTO: REAR VIEW OF VICTIM'S CAR	111/1	466/2
9	8.5X11" COLOR PHOTO: SHATTERED REAR WINDOW OF VICTIM'S CAR	112/1	466/2
10	8.5X11" COLOR PHOTO: SIDE VIEW OF VICTIM'S CAR	112/1	466/2
11	8.5X11" COLOR PHOTO: VICTIM IN CAR, VIEWED FROM THE FRONT	113/1	121/1
12	8.5X11" COLOR PHOTO: VICTIM IN CAR, SIDE VIEW	113/1	121/1

M A S T E R E X H I B I T L I S T

<u>PEOPLE'S:</u>	<u>I.D./VOL.</u>	<u>EVID/VOL.</u>
13 8.5X11" COLOR PHOTO OF REVOLVER WITH OPEN CHAMBER, SHOWING BULLETS	113/1	466/2
14 .357 MAGNUM BLUE-STEEL REVOLVER IN EVIDENCE BOX (SERIAL #843143 VISIBLE ONLY BY REMOVING HANDLE GRIPS	115/1	466/2
14A ENVELOPE CONTAINING BULLET	470/2	**
14B ENVELOPE CONTAINING BULLET	470/2	**
14C ENVELOPE CONTAINING BULLET	470/2	**
14D ENVELOPE CONTAINING BULLET	470/2	**
14E ENVELOPE CONTAINING BULLET	470/2	**
15 EVIDENCE ENVELOPE CONTAINING BULLET FROM AUTOPSY	258/2	466/2
16 STIPULATION RE FIREARMS EXAMINER'S TESTIMONY	263/2	466/2
17 12 POLAROID SNAPSHOTS OF VICTIM	266/2	466/2
18 SINGLE SHEET PHOTOCOPY WITH 3 BLACK AND WHITE PHOTOS	333/2	466/2
19 CERTIFIED COPY OF PREDICATE ACTS CASE #02CF0135	412/2	466/2

** INDICATES EXHIBITS THAT WERE NOT RECEIVED INTO EVIDENCE

C H R O N O L O G I C A L		W I T N E S S I N D E X			
WITNESS:		DIRECT	CROSS	REDIRECT	RECROSS VOIR DIRE
<u>DAVID RONDOU (402)</u>					
BY MR. GELLER		18			
BY MR. BROTT			22		
<u>DAVID RONDOU (402)</u>					
BY MR. BROTT		61			

A L P H A B E T I C A L W I T N E S S I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS REDIRECT RECROSS</u>	<u>VOIR DIRE</u>
<u>RONDOU, DAVID (402)</u>			
BY MR. GELLER	18		
BY MR. BROTT		22	
<u>RONDOU, DAVID (402)</u>			
BY MR. BROTT	61		

E X H I B I T S

<u>PEOPLE'S:</u>	FOR IDENTIFICATION IN EVIDENCE
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NONE

DEFENDANT'S:

1 SANTA ANA, CALIFORNIA - WEDNESDAY, MAY 24, 2006

2 MORNING SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

7 THE COURT: GOOD MORNING. WE ARE IN PRE-TRIAL HEARINGS
8 IN PEOPLE VS. ANDRES QUINONEZ REYES, CASE NUMBER 04CF2780.
9 RECORD SHOULD REFLECT DEFENDANT IS PRESENT WITH HIS COUNSEL,
10 MR. BROTT. THE PEOPLE ARE REPRESENTED BY MR. GELLER. WE'RE
11 OUTSIDE THE PRESENCE OF THE JURY TODAY.

12 AND I THINK THE RECORD SHOULD REFLECT THAT BEFORE
13 WE BEGAN JURY SELECTION YESTERDAY THE COURT DID CONFER WITH
14 COUNSEL TO IDENTIFY SOME OF THE PRE-TRIAL ISSUES THAT WE
15 WOULD NEED TO ADDRESS THIS MORNING. IT SEEMS TO ME, IN
16 LIGHT OF THE FACT THAT YOU, OBVIOUSLY, HAVE YOUR
17 INVESTIGATING OFFICER HERE, THAT THE FIRST ISSUE TO ADDRESS
18 WOULD BE THE ADMISSIBILITY OF STATEMENTS THE DEFENDANT MADE
19 FOLLOWING HIS ARREST.

20 IS THAT HOW YOU WOULD LIKE TO PROCEED, MR. BROTT?

21 MR. BROTT: THAT'S A GOOD WAY TO START.

22 THE COURT: MR. GELLER?

23 MR. GELLER: THAT'S FINE, YOUR HONOR.

24 I HAVE A COUPLE OF HOUSEKEEPING MATTERS I'D LIKE
25 TO ADDRESS BEFORE PUTTING ON THE WITNESS, IF THAT'S ALL
26 RIGHT.

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 THE COURT: CERTAINLY.

2 MR. GELLER: WITH RESPECT TO THE INFORMATION, AS I
3 MENTIONED BRIEFLY INFORMALLY YESTERDAY, ON THE SECOND PAGE
4 WHERE IT REFERS TO "OTHER ALLEGATIONS," THE CODE SECTION
5 THAT GIVES THIS COURT JURISDICTION OVER THIS CASE IS
6 ACTUALLY 707(D) (2) OF THE WELFARE AND INSTITUTIONS CODE. I
7 WOULD ASK TO AMEND TO CONFORM AT THIS TIME.

8 THE COURT: ANY OBJECTION?

9 MR. BROTT: NO.

10 THE COURT: ALL RIGHT. I'M GOING TO AMEND BY
11 INTERLINEATION TO INDICATE 707(D) (2) AT LINES 20 THROUGH 22
12 ON PAGE 2 THE INFORMATION.

13 MR. GELLER: ACTUALLY, I HAVE IT AS LINE 14.

14 THE COURT: WELL, THEN MAYBE I'M LOOKING AT THE WRONG
15 INFORMATION. WAS THERE AN AMENDMENT NO. 1 TO THE
16 INFORMATION?

17 MR. GELLER: I HAVE A CONSOLIDATED INFORMATION. IT
18 DOES NOT SHOW AN AMENDMENT 1, SO MAYBE THE COURT DOES HAVE A
19 DIFFERENT INFORMATION.

20 THE COURT: COULD YOU APPROACH AND SHOW ME WHAT YOU'RE
21 LOOKING AT, BECAUSE THAT'S INCONSISTENT WITH WHAT I SEE.

22 MR. BROTT: I HAVE CONSOLIDATED -- FILED MAY 9TH; IS
23 THAT THE ONE YOU HAVE?

24 THE COURT: MAY 9. AND I'M LOOKING AT PAGE 2. I'M
25 LOOKING AT LINES 20 THROUGH 22 AND THE 707(D) REFERENCE WAS
26 THERE. BUT LET ME SEE WHAT MR. GELLER HAS.

1 OFF THE RECORD.

2 (OFF THE RECORD.)

3 THE COURT: BACK ON THE RECORD.

4 AT THIS POINT WE'VE PROVIDED MR. GELLER A COPY OF
5 THE INFORMATION THAT'S CONTAINED IN THE FILE, AND THAT
6 APPEARS TO BE THE INFORMATION THAT MR. BROTT HAS. SO I
7 THINK NOW WE'RE ALL ON THE SAME PAGE.

8 MR. GELLER: THEN, YOUR HONOR, WITH THE COURT'S
9 PERMISSION, THE ONLY OTHER CHANGE I WOULD MAKE IS THAT AFTER
10 IT SAYS "707(D)" AND NOW SAYS "(2)" IT SHOULD SAY THAT THE
11 MINOR WAS 14 YEARS OF AGE OR OLDER WHEN THE MINOR COMMITTED
12 187, BECAUSE THAT CORRESPONDS TO THAT 707(D)(2).

13 THE COURT: ANY OBJECTION TO THAT AMENDMENT?

14 MR. BROTT: NO.

15 THE COURT: IT'S NOW AMENDED BY INTERLINEATION TO SO
16 REFLECT.

17 MR. GELLER: THANK YOU.

18 THE COURT: LET ME JUST ASK YOU A QUESTION, BECAUSE
19 THIS INFORMATION IS AS TO MULTIPLE DEFENDANTS. AND THERE
20 REALLY ISN'T ANY SPECIFICITY IN THE JURISDICTIONAL
21 ALLEGATION THAT THE ALLEGATION RELATES TO MR. REYES
22 PRESENTLY BEFORE THE COURT. WERE THE OTHERS JUVENILES ALSO?

23 MR. GELLER: WELL, IT LOOKS LIKE MR. DE LA RIVA AND
24 MR. PEREZ ARE ALSO JUVENILES. BUT 707(D)(2) WOULD QUALIFY
25 TO WORK FOR BOTH OF THEM ALSO.

26 THE COURT: WELL, MY CONCERN IS YOUR AMENDMENT WITH

1 RESPECT TO THE AGE. WERE THEY ALL 14?

2 MR. GELLER: THEY'RE ALL OVER 14, YES.

3 THE COURT: OVER 14. OKAY.

4 MR. GELLER: ESSENTIALLY, THE WAY THE WELFARE AND
5 INSTITUTIONS CODE READS IS ON CERTAIN TYPES OF CRIMES,
6 MURDER BEING ONE OF THEM, THAT A PROSECUTOR CAN DIRECT FILE
7 ON SOMEBODY WHO WAS 14 YEARS OF AGE OR OLDER. THERE'S OTHER
8 LESSER TYPES OF CRIMES THAT A PROSECUTOR CAN DIRECT FILE AS
9 LONG AS THE MINOR IS 16 YEARS OF AGE OR OLDER.

10 THE COURT: I SEE. SO THE ALLEGATION IS THAT
11 PREVIOUSLY READ RELATED TO MINORS 16 YEARS OR OLDER. WHEN
12 YOU WERE AMENDING YOU WERE AMENDING NOT JUST TO CHANGE A
13 MISTYPE ON THE WELFARE AND INSTITUTIONS CODE SECTION, BUT
14 AMENDING TO REFLECT THAT THEY'RE OLDER THAN 14?

15 MR. GELLER: THAT'S CORRECT.

16 THE COURT: OKAY. DID YOU HAVE ANYTHING ELSE
17 PRELIMINARILY?

18 MR. GELLER: I JUST ASK TO NAME INVESTIGATOR RONDOU AS
19 MY INVESTIGATING OFFICER THROUGHOUT THE PENDENCY OF THE
20 CASE. AND I CAN INTRODUCE HIM TO THE JURY TOMORROW, IF
21 THAT'S ALL RIGHT WITH YOU.

22 THE COURT: ANY OBJECTION?

23 MR. BROTT: NO.

24 THE COURT: FINE.

25 I DO HAVE ONE OTHER QUESTION BEFORE WE MOVE ON,
26 BECAUSE NOW I THINK I'LL BE WORKING FROM A COPY OF THE

1 INFORMATION THAT I CAN ACTUALLY MARK ON. IS IT YOUR
2 EXPECTATION THAT THE COURT WOULD READ THE JURISDICTIONAL
3 ALLEGATION TO THE JURY?

4 MR. GELLER: NO, I DON'T THINK THAT'S NECESSARY.

5 THE COURT: I DON'T EITHER. BUT DO YOU WANT THE COURT
6 TO READ IT, MR. BROTT? WE IDENTIFIED YOUR CLIENT AS 15
7 YEARS OLD AT THE TIME THE CRIME WAS COMMITTED. THERE MAY BE
8 FURTHER EVIDENCE OF THAT COMING IN AT TRIAL. JUST TO TELL
9 THEM HOW WE GET JURISDICTION, DOESN'T SEEM TO MAKE A LOT OF
10 SENSE TO ME.

11 MR. BROTT: I DON'T SEE THAT -- THE BELL IS RUNG. I
12 DON'T SEE THAT WE NEED TO RING IT ANYMORE.

13 THE COURT: OKAY. HOLD ON ONE SECOND.

14 MR. BROTT: WELL, WE MAY NEED TO RING THE BELL, BUT NOT
15 THAT BELL.

16 THE COURT: OKAY. LET ME JUST MAKE SOME NOTES ON THE
17 INFORMATION I'M GOING TO WORK FROM.

18 MR. GELLER: I CAN CLARIFY FOR THE COURT, IF YOU LIKE.

19 THE COURT: CLARIFY WHAT?

20 MR. GELLER: WITH RESPECT TO THE AGE. IT'S AKIN TO AN
21 ELEMENT OF MY DEFENSE. IT'S SOMETHING I NEED TO PROVE UP.
22 WHENEVER WE'RE PROSECUTING A MINOR IN ADULT COURT, I HAVE TO
23 PROVE THAT THE JURISDICTIONAL ELEMENT, ESSENTIALLY, JUST
24 LIKE YOU HAVE TO PROVE THE CRIME, OCCURRED IN ORANGE COUNTY;
25 I HAVE TO PROVE THAT HE WAS OVER 14 YEARS OF AGE.

26 THE COURT: BUT THE JURY DOESN'T HAVE TO MAKE A

1 DETERMINATION ON THAT ISSUE.

2 MR. GELLER: NO, THERE'S NO FINDING FOR THEM. IT'S
3 JUST LIKE THERE'S NO FINDING THAT IT OCCURRED IN ORANGE
4 COUNTY. I'M NOT REALLY CERTAIN WHY THAT IS, BUT,
5 NEVERTHELESS, IT IS.

6 THE COURT: I'M JUST MARKING MY COPY OF THE INFORMATION
7 TO INDICATE THAT WHEN WE DO READ THE INFORMATION TO THE JURY
8 WE'LL BE READING COUNT 1, BUT WE'LL ONLY BE IDENTIFYING
9 MR. REYES IN THE READING, NOT THE OTHERS. AND WE'LL BE
10 READING COUNT 2 IN THE SAME WAY. AND THEN WE WILL READ THE
11 186.22(B) ALLEGATION, AGAIN, IDENTIFYING ONLY MR. REYES.
12 AND THEN WE WILL READ THE 12022.53(D) ALLEGATION,
13 IDENTIFYING ONLY MR. REYES.

14 MR. GELLER: IT WOULD ACTUALLY BE THE SECOND OF THE TWO
15 PARAGRAPHS, BECAUSE ONLY MR. LOPEZ IS CHARGED WITH THE
16 12022.53(D).

17 THE COURT: YEAH, I HAVE IT RIGHT. IT'S ALLEGED IN
18 BOTH PARAGRAPHS AS 12022.53 SUBDIVISION (D), BUT IF YOU'RE
19 GOING TO CHANGE THAT, I SUPPOSE YOU'LL CHANGE IT WHEN YOU GO
20 TO THE NEXT TRIAL.

21 MR. GELLER: NO. ACTUALLY, WHAT IT IS IS FRANK LOPEZ
22 IS CHARGED WITH PERSONAL DISCHARGE, THE OTHERS ARE CHARGED
23 WITH VICARIOUS DISCHARGE UNDER 12022.53(D)(E) AND (1).

24 THE COURT: OKAY. I HAVE YOU.

25 CAN I HAVE A MINUTE.

26 (CONFERENCE BETWEEN THE COURT AND

1 COUNSEL WAS HAD OUT OF THE HEARING OF THE
2 REPORTER AND THE JURY:)

3 THE COURT: I APOLOGIZE.

4 MR. GELLER: I THINK THAT'S IT.

5 THE COURT: THAT'S IT ON PRELIMINARY MATTERS?

6 MR. GELLER: YES.

7 THE COURT: ALL RIGHT. LET'S SEE IF WE CAN MAKE
8 SOMETHING OF A RECORD OF WHAT WE'RE DOING BEFORE WE TAKE
9 TESTIMONY. IT'S MY UNDERSTANDING THAT INVESTIGATOR RONDOU
10 IS GOING TO BE TESTIFYING ABOUT TWO STATEMENTS THE DEFENDANT
11 MADE. LET ME JUST TELL YOU FROM MY NOTES WHAT I BELIEVE THE
12 EVIDENCE WILL BE SHOWING IN THE TRIAL.

13 IT WAS REPORTED TO ME IN OUR CONFERENCE THAT THE
14 DEFENDANT GAVE THREE TAPED INTERVIEWS POST-MIRANDA. THE
15 FIRST OCCURRED AFTER HE WAS ARRESTED FOR A CRIMINAL THREAT
16 THAT WAS MADE AS TO AN INDIVIDUAL NAMED FELIX NIEVES.
17 DURING THAT INTERVIEW THE DEFENDANT, ACCORDING TO YOUR
18 REPRESENTATIONS, COUNSEL, INVOKED HIS RIGHT TO COUNSEL AND
19 ENDED THE INTERVIEW.

20 IT WAS ALSO REPRESENTED TO ME THAT APPROXIMATELY
21 THREE HOURS LATER THE DEFENDANT WAS IDENTIFIED AS THE PERSON
22 WHO TOOK THE GUN IN THIS HOMICIDE AND FLED ON A BICYCLE.
23 ONCE THAT IDENTIFICATION WAS CLEAR TO LAW ENFORCEMENT,
24 INTERVIEW NO. 2 TOOK PLACE. THE PEOPLE ARE WILLING TO
25 STIPULATE THAT THE STATEMENTS THE DEFENDANT MADE IN
26 INTERVIEW NO. 2 ARE NOT ADMISSIBLE AND THEY ARE NOT SEEKING

1 TO INTRODUCE THOSE STATEMENTS IN THEIR CASE-IN-CHIEF.

2 IT WAS REPRESENTED TO ME THAT INTERVIEW NO. 3, IF
3 IT WAS AN INTERVIEW, MAY HAVE OCCURRED WHEN THE DEFENDANT
4 WAS SUBSEQUENTLY BEING DRIVEN TO JUVENILE HALL BY
5 INVESTIGATOR RONDOU AND PERHAPS ANOTHER OFFICER. IT WAS
6 REPRESENTED TO ME THAT DURING THE COURSE OF THAT DRIVE THE
7 DEFENDANT ASKED THE OFFICERS A QUESTION, AND MAY HAVE ASKED
8 A QUESTION BELIEVING THE OFFICERS TO BE PROBATION OFFICERS
9 RATHER THAN POLICE OFFICERS, AND FOLLOWING AN ANSWER TO THE
10 QUESTION, MADE THE STATEMENT SPONTANEOUSLY, ACCORDING TO
11 YOUR REPRESENTATION, MR. GELLER, THAT HE WAS FACING MURDER 2
12 CHARGES. AND, IF I MAY, I'LL GIVE IT A LITTLE MORE CONTEXT.
13 I DIDN'T MAKE A NOTE, BUT MY RECOLLECTION IS YOU TOLD ME
14 THAT HE ASKED THE OFFICERS WHO WERE DRIVING HIM WHAT'S HE
15 BEING HELD FOR. AND THEY RESPONDED WITH SOMETHING. AND
16 THEN HE SUGGESTED THAT THEY WEREN'T GIVING HIM ACCURATE
17 INFORMATION BECAUSE HE MADE A STATEMENT TO THE EFFECT OF
18 YOU'RE GETTING ME ON MURDER 2.

19 THE PEOPLE ARE SEEKING TO INTRODUCE THAT
20 STATEMENT THAT WAS MADE IN THE CAR. FOLLOWING THAT
21 STATEMENT, FOLLOWING THE TRANSPORTATION TO JUVENILE HALL,
22 THERE WAS APPARENTLY ANOTHER INTERVIEW, AND THAT IS A TAPED
23 INTERVIEW. AND WHEN I SAY TAPED, I DON'T KNOW IF WE'RE
24 TALKING VIDEOTAPE OR AUDIOTAPE, BUT IT WAS AN INTERVIEW THAT
25 WAS CONDUCTED WITH THE DEFENDANT, AND THE DEFENDANT WAS NOT,
26 AGAIN, INFORMED OF MIRANDA RIGHTS. AND I DO BELIEVE THE

1 PEOPLE ARE SEEKING TO INTRODUCE THE STATEMENTS THE DEFENDANT
2 MADE IN THAT INTERVIEW.

3 SO, IF I HAVE MY NOTES CORRECTLY REFRESHING MY
4 RECOLLECTION, WE'RE GOING TO HEAR FROM INVESTIGATOR RONDOU
5 ON THE SUBJECT MATTER OF THE DRIVE TO JUVENILE HALL AND THE
6 SUBSEQUENT INTERVIEW.

7 IS THERE ANYTHING I'VE SAID THAT YOU WANT TO
8 CORRECT OR CHALLENGE OR ADD TO?

9 MR. BROTT: NO, YOUR NOTES ARE PRETTY ACCURATE.

10 MR. GELLER: I HAVE A COUPLE THINGS, IF I MAY.

11 THE COURT: GO AHEAD.

12 MR. GELLER: THE COURT MENTIONED THAT IN THE INITIAL
13 INTERVIEW WITH INVESTIGATOR ASHBY AND INVESTIGATOR HERTER
14 THE DEFENDANT INVOKED HIS RIGHT TO COUNSEL; AND IT WAS
15 ACTUALLY THE SILENCE. SO HE SAID, ESSENTIALLY, OR EVEN
16 QUOTE, "I DON'T WANT TO TALK ANYMORE." "I DON'T WANT TO
17 SPEAK ANYMORE." THERE'S NOTHING MENTIONED ABOUT ASKING FOR
18 AN ATTORNEY AT THAT POINT.

19 THE COURT: IF I SAID SO, THEN I WILL STAND CORRECTED.
20 YOUR REPRESENTATION -- I'M JUST TRYING TO GET A PROFFER SO
21 THE RECORD WILL BE ABLE TO EASILY TELL THE READER WHERE IT'S
22 GOING. BUT YOUR REPRESENTATION IS THAT HE DID SAY HE DIDN'T
23 WANT TO TALK AND HE DID END THE INTERVIEW, HOWEVER, HE DID
24 NOT REQUEST COUNSEL. AND IF I SAID THAT HE REQUESTED
25 COUNSEL, I WOULD HAVE BEEN IN ERROR.

26 MR. GELLER: THAT'S CORRECT.

1 THE COURT: OKAY.

2 MR. GELLER: AND THEN, ADDITIONALLY, I DON'T BELIEVE
3 THERE'S A LEGAL AVENUE FOR ME TO GET THE THIRD TAPE RECORDED
4 INTERVIEW AT THE JUVENILE HALL INTO EVIDENCE IN LIGHT OF THE
5 RESEARCH THAT I HAVE DONE, BECAUSE THE DEFENDANT WAS NOT
6 READVISED OF HIS MIRANDA RIGHTS. EVEN THOUGH IT'S THE
7 PEOPLE'S POSITION THAT HE DID VOLUNTARILY GIVE THE OFFICERS
8 SPONTANEOUS STATEMENTS. AND THOSE I DO INTEND TO ELICIT
9 FROM INVESTIGATOR RONDOU THIS MORNING, AND I INTEND TO HAVE
10 THE JURY HEAR WHEN WE GET TO THAT POINT IN THE TRIAL.

11 THE COURT: I HERETOFORE IDENTIFIED THAT EVENT AS
12 INTERVIEW NO. 3. JUST FOR THE SAKE OF THE RECORD, I'M GOING
13 TO CONTINUE TO REFER TO IT AS INTERVIEW NO. 3. AND THE
14 INTERVIEW NO. 4 THAT WAS TAPED AT JUVENILE HALL IS,
15 ACCORDING TO YOUR STATEMENT NOW, MR. GELLER, NOT GOING TO BE
16 OFFERED IN THE PEOPLE'S CASE-IN-CHIEF.

17 MR. GELLER: IT'S NOT THAT I DON'T WANT TO OFFER IT. I
18 JUST DON'T THINK IT'S ADMISSIBLE. I'VE DONE THE RESEARCH
19 AND I DON'T THINK THAT IT IS ADMISSIBLE, UNLESS OF COURSE
20 THE DEFENSE WANTS TO GET IN A PORTION OF THAT INTERVIEW IN
21 LIGHT OF ANY RULINGS THE COURT HAS TODAY WITH RESPECT TO
22 INTERVIEW 3. AND THEN I THINK UNDER 356 THE WHOLE INTERVIEW
23 WOULD COME IN. BUT WE CAN GET THERE IF WE GET THERE.

24 THE COURT: WHEN WE DISCUSSED THE MATTER INFORMALLY,
25 MR. BROTT DID TELL THE COURT THAT HE WANTED TO CHALLENGE THE
26 ADMISSIBILITY OF THAT INTERVIEW ON THE BASIS THAT THERE WAS

1 NO NEW MIRANDA ADVISEMENT GIVEN. I EXPRESSED MY
2 UNDERSTANDING OF THE LAW THAT THE DEFENDANT WOULD BE
3 ENTITLED TO A NEW MIRANDA ADVISEMENT IF THE INTERVIEW WAS
4 GOING TO BE OFFERED. BUT WE WANTED TO LITIGATE IT HERE
5 TODAY.

6 AND NOW WHAT I'M HEARING, MR. BROTT, FROM
7 MR. GELLER IS THAT HE IS NO LONGER SEEKING TO INTRODUCE
8 INTERVIEW NO. 4, THE TAPED INTERVIEW AT JUVENILE HALL, IN
9 HIS CASE-IN-CHIEF. AND, CONSEQUENTLY, THERE DOESN'T SEEM TO
10 BE THE NEED FOR TESTIMONY ON THAT POINT, UNLESS YOU FEEL
11 THAT YOU NEED IT FOR SOME OTHER REASON.

12 MR. BROTT: NO, I ALERTED MR. GELLER TO MY CONCERNS
13 ABOUT ALL THESE INTERVIEWS LAST WEEK. AND UNTIL THIS MOMENT
14 I DIDN'T KNOW WHAT EXACTLY HIS POSITION ON INTERVIEW NO. 4
15 WOULD BE. I NEED A COURT RULING ON INTERVIEW NO. 3 BEFORE I
16 CAN MAKE MY DECISION ABOUT WHAT I WANT TO DO ABOUT INTERVIEW
17 NO. 4.

18 THE COURT: OKAY. THAT'S FAIR. THAT'S VERY FAIR.

19 BUT WE'RE GOING TO BE CALLING -- APPARENTLY,
20 MR. GELLER IS GOING TO BE CALLING INVESTIGATOR RONDOU TO
21 TESTIFY CONCERNING THE CIRCUMSTANCE OF INTERVIEW NO. 3,
22 WHICH IS THE CAR INTERVIEW OR THE DRIVE TO JUVENILE HALL.
23 AND I BELIEVE THE INVESTIGATOR IS ALSO HERE AT YOUR REQUEST
24 TO TESTIFY ABOUT THE OPINION HE INTENDS TO GIVE AT TRIAL
25 CONCERNING YOUR CLIENT'S MEMBERSHIP IN A GANG. AND YOU
26 WANTED TO KNOW WHAT HIS ULTIMATE OPINION IN TRIAL WOULD BE

1 AND ON WHAT THAT ULTIMATE OPINION IS BASED.

2 IS THAT FAIR TO SAY?

3 MR. BROTT: THAT'S FAIR TO SAY. ESPECIALLY, IN LIGHT
4 OF THE FACT THAT MY PREDECESSOR, I'D LIKE TO PUT ON THE
5 RECORD, DID NOT ASK ANY QUESTIONS AT THE PRELIMINARY
6 HEARING, NOT ONLY OF THE GANG EXPERT, BUT OF NO WITNESSES.
7 SO I'M FLYING BLIND HERE. AND WE HAVE HAD AN INFORMAL
8 DISCUSSION BEFORE THESE PROCEEDINGS. I THINK WE CAN
9 STREAMLINE IT, BECAUSE I KNOW NOW A GOOD DEAL OF THE
10 INFORMATION THAT I DID NOT KNOW AND WHAT HE INTENDS TO SAY.
11 AND SO I THINK WE CAN STREAMLINE THAT TOO.

12 THE COURT: ALL RIGHT. SO ONCE HE IS ON THE STAND AND
13 TESTIFYING, YOU WANT TO INQUIRE, MR. GELLER, I THINK, INTO
14 BOTH AREAS, THE INTERVIEW NO. 3 THAT OCCURRED ON THE DRIVE
15 TO JUVENILE HALL, AND YOUR INVESTIGATOR'S EXPERT OPINION AND
16 THE BASES THEREFORE.

17 MR. GELLER: ACTUALLY, YOUR HONOR, IF IT WOULD BE OKAY
18 WITH YOU, I'LL DO THE MIRANDA DIRECT. AND I THINK IN THE
19 INTEREST OF TIME I'LL LET MR. BROTT HANDLE THE INVESTIGATOR
20 ON THE GANG INFORMATION. THERE'S REALLY NO REASON FOR ME TO
21 DIRECT IT AND THEN HIM TO CROSS-EXAMINE THE OFFICER. I
22 DON'T HAVE A PROBLEM WITH HIM JUST ASKING THE QUESTIONS HE
23 NEEDS TO GET OUT.

24 MR. BROTT: AND, FOR THE PURPOSES OF THE 402, I'LL
25 STIPULATE TO HIS EXPERTISE.

26 THE COURT: ALL RIGHT. AS LONG AS YOU'RE AGREEING, NO

1 PROBLEM.

2 READY TO PROCEED WITH THE TESTIMONY?

3 MR. GELLER: I AM.

4 I'D INVITE THE COURT'S ATTENTION, I HAVE A COPY
5 OF A CASE. I APOLOGIZE I ONLY HAVE ONE COPY. BUT I FOUND A
6 CASE THAT'S VERY, VERY MUCH ON POINT WITH RESPECT TO THIS
7 VERY NARROW MIRANDA ISSUE. IT'S PEOPLE VS. OWENS, IT'S AT
8 106 CAL.APP.3D 23.

9 THE COURT: WHAT YEAR WAS THAT?

10 MR. GELLER: SOMETIME IN THE 20TH CENTURY.

11 THE COURT: OKAY. WE'LL HANG ON JUST ONE SECOND. I'M
12 GOING TO ASK TO GET THE BOOK, AND THEN WE CAN GIVE A COPY TO
13 MR. BROTT.

14 (PAUSE IN PROCEEDINGS.)

15 THE COURT: OKAY. WE'RE BACK ON THE RECORD, AND YOU
16 CAN CALL YOUR WITNESS.

17 MR. GELLER: THANK YOU. WITH THE COURT'S PERMISSION,
18 PEOPLE CALL INVESTIGATOR DAVID RONDOU.

19 THE BAILIFF: RAISE YOUR RIGHT HAND, SIR.

20 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
21 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
22 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
23 TRUTH, SO HELP YOU GOD?

24 THE WITNESS: YES, I DO.

25 THE CLERK: PLEASE STATE YOUR NAME.

26 THE WITNESS: DAVID RONDOU: R-O-N-D-U-O.

1 THE CLERK: THANK YOU, SIR. YOU CAN TAKE THE STAND.

2 THE COURT: WHENEVER YOU'RE READY, MR. GELLER, YOU MAY
3 INQUIRE.

4 MR. GELLER: THANK YOU, YOUR HONOR.

5 DAVID RONDOU,

6 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
7 EXAMINED AND TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. GELLER:

10 Q INVESTIGATOR RONDOU, YOU'RE PRESENTLY EMPLOYED BY
11 THE SANTA ANA POLICE DEPARTMENT AS A GANG HOMICIDE
12 INVESTIGATOR?

13 A YES.

14 Q HOW LONG HAVE YOU BEEN EMPLOYED?

15 A AS A GANG HOMICIDE, FOR ABOUT FOUR YEARS.

16 Q HOW LONG TOTAL WITH SANTA ANA?

17 A TOTAL AS A POLICE OFFICER, COMING ON 13.

18 Q VERY WELL. I'D LIKE TO TALK TO YOU ABOUT YOUR
19 ACTIVITIES ON AUGUST 12TH OF 2004 WITH RESPECT TO THE
20 DEFENDANT WHO IS SEATED HERE IN COURT. DO YOU KNOW WHO THAT
21 PERSON IS?

22 A YES.

23 Q WHO IS THAT?

24 A ANDRES REYES OR ANDY REYES.

25 Q BEFORE AUGUST 12TH OF '04 HAD YOU EVER MET HIM?

26 A NO, NOT THAT I KNOW OF.

1 Q YOU'RE FAMILIAR WITH INVESTIGATOR HERTER AND
2 INVESTIGATOR ASHBY FROM YOUR OFFICE?

3 A I AM.

4 Q AND IN THE AFTERNOON OF AUGUST 12TH, THURSDAY,
5 AUGUST 12TH OF 2004, WERE YOU ASKED BY INVESTIGATOR HERTER
6 TO TRANSPORT MR. REYES TO THE JUVENILE HALL FROM YOUR POLICE
7 DEPARTMENT?

8 A YES.

9 Q AND WAS INVESTIGATOR ZEPEDA WITH YOU AT THE TIME?

10 A YES.

11 Q WERE YOU OR INVESTIGATOR -- WELL, FIRST, WERE YOU
12 INVOLVED IN THE INTERVIEW PROCESS OF ANDY REYES AT THE
13 POLICE DEPARTMENT PRIOR TO YOU TAKING HIM TO JUVENILE HALL?

14 A NO.

15 Q DO YOU KNOW IF INVESTIGATOR ZEPEDA WAS?

16 A HE WAS NOT.

17 Q SO WHERE DID YOU FIRST PICK UP THE DEFENDANT
18 PRIOR TO TAKING HIM TO THE HALL?

19 A FROM THE INTERVIEW ROOM WHERE THE INTERVIEW HAD
20 TERMINATED.

21 Q AND AT THE TIME WERE YOU WEARING A UNIFORM OR
22 WERE YOU JUST WEARING PLAIN CLOTHES?

23 A BASICALLY, WHAT I'M WEARING TODAY. MAYBE EVEN
24 THE SAME SHIRT.

25 Q WHICH IS KIND OF AN OLD BLUE SHIRT WITH AN OLD
26 WHITE T-SHIRT?

1 A T-SHIRT AND JEANS.

2 Q VERY WELL.

3 THE COURT: THANKS FOR DRESSING UP.

4 GO AHEAD, MR. GELLER.

5 BY MR. GELLER:

6 Q AND DID YOU TAKE MR. REYES IN A POLICE CAR OR AN
7 UNMARKED POLICE CAR?

8 A WELL, IT'S A POLICE CAR, BUT IT'S UNMARKED.

9 Q VERY WELL. TOUCHE.

10 DURING YOUR INITIAL DEPARTURE FROM THE SANTA ANA
11 POLICE DEPARTMENT DID YOU ENGAGE THE DEFENDANT IN ANY
12 CONVERSATION?

13 A OTHER THAN, COME ON, YOU KNOW, JUST DIRECTING HIM
14 OUT TO THE CAR AND INTO THE CAR.

15 Q AND I PRESUME YOUR ROUTE WAS DOWN CIVIC CENTER TO
16 BRISTOL, NORTH ON BRISTOL, GOING TOWARDS MEMORY LANE, LEFT
17 ON MEMORY LANE, RIGHT ON CITY DRIVE?

18 A CORRECT.

19 Q AT SOME POINT IN TIME IN THAT TRIP DID THE
20 DEFENDANT MAKE ANY STATEMENTS TO YOU?

21 A YES.

22 Q WHAT DID HE SAY?

23 A AS WE WERE DRIVING -- DETECTIVE ZEPEDA WAS
24 DRIVING AND I WAS A PASSENGER AND ANDY WAS SITTING IN THE
25 BACK -- HE ASKED WHAT HIS CHARGES WERE GOING TO BE, WHAT IS
26 HE BEING CHARGED WITH. I HELD UP AND SHOWED HIM -- HE WAS

1 SITTING BEHIND ME. I HELD UP AND SHOWED HIM THE BOOKING
2 ENTRANCE FORM AND I TOLD HIM, "IT LOOKS LIKE A PROBATION
3 VIOLATION." HE SAID, "NO, THEY'RE GOING TO CHARGE ME WITH
4 MURDER TOO, BECAUSE ME AND MY HOMIES WERE DOWN AT WILLITS
5 AND SULLIVAN AT A SHOOTING AND EVEN THOUGH I DIDN'T SHOOT
6 BECAUSE I WAS THERE I'M STILL GOING TO GET CHARGED WITH
7 MURDER."

8 Q PRIOR TO THAT STATEMENT, TO ANDY REYES MAKING
9 THAT STATEMENT TO YOU, OTHER THAN SHOWING HIM THE BOOKING
10 FORM AND SAYING, "IT LOOKS LIKE A PROBATION VIOLATION," HAD
11 YOU ENGAGED THE DEFENDANT IN ANY CONVERSATION?

12 A NO, OTHER THAN, LIKE I SAID, WALKING HIM TO THE
13 CAR, JUST DIRECTIONS TO GET TO THE CAR.

14 Q IN RESPONSE TO HIS STATEMENT, HIS VOLUNTEERED
15 STATEMENT AT THAT POINT, WHAT DID YOU DO?

16 A WELL, BASED ON HIM SAYING, "ME AND MY HOMIES," I
17 SAID, WELL, WHERE ARE YOU FROM? AND ASKED HIM ABOUT HIS
18 GANG MEMBERSHIP.

19 Q VERY WELL.

20 MR. GELLER: I DON'T THINK I HAVE ANYTHING FURTHER AT
21 THIS POINT.

22 THE COURT: LET ME BE CLEAR. IN YOUR CASE-IN-CHIEF
23 YOU'RE SEEKING TO INTRODUCE THE WHOLE OF THE STATEMENT THAT
24 THE DEFENDANT MADE TO THE OFFICER, BUT NOT THE PORTION THAT
25 HAD TO DO WITH GANG MEMBERSHIP, JUST THE ONE STATEMENT ABOUT
26 WHICH THE OFFICER JUST TESTIFIED.

1 MR. GELLER: YES. I THINK THAT ONCE
2 INVESTIGATOR RONDOU ASKS HIM WHERE HE'S FROM, WHO ARE YOUR
3 HOMIES, I THINK AT THAT POINT HE IS --

4 THE COURT: INTERROGATING.

5 MR. GELLER: -- INTERROGATING HIM. HE'S SEEKING, YOU
6 KNOW, ELICITING OR TRYING TO ELICIT A RESPONSE FROM HIM, AND
7 THAT'S TO BE DISTINGUISHED FROM WHAT HAD OCCURRED
8 IMMEDIATELY PRIOR TO THAT. AND THAT'S WHY I PRESENTED THAT
9 CASE TO THE COURT.

10 THE COURT: AND WERE I TO OVERRULE THE FORTHCOMING
11 OBJECTION, WOULD YOU BE OFFERING THE ENTIRE STATEMENT WHERE
12 THE DEFENDANT SAYS HE WAS THERE BUT HE WASN'T THE SHOOTER,
13 OR ARE YOU SEEKING TO JUST INTRODUCE SOME PORTION OF IT?

14 MR. GELLER: NO, I THINK IT WOULD ALL COME IN UNDER
15 356. I DON'T THINK I COULD DRAW THE LINE THAT I WAS THERE
16 AND THEN NOTHING MORE.

17 THE COURT: OKAY. I JUST WANTED TO BE CLEAR.

18 MR. BROTT, YOU MAY CROSS-EXAMINE.

19 MR. BROTT: YES.

20 CROSS-EXAMINATION

21 BY MR. BROTT:

22 Q YOU PICKED UP -- WHAT TIME DID YOU PICK ANDY UP?

23 A I THINK IT WAS ABOUT TEN TO 5:00. HE WAS IN THE
24 STATION. WE GOT HIM FROM THE INTERVIEW ROOM, WALKED HIM
25 DOWN ONE FLIGHT ONTO THE SECOND FLOOR. WE WERE ON THE THIRD
26 FLOOR. WALKED HIM DOWN ONE FLIGHT, BECAUSE OUR CARS ARE

1 PARKED ON A BACK RAMP ON THE SECOND FLOOR. SO IT'S ABOUT
2 TEN TO 5:00.

3 Q HOW WERE YOU ALERTED TO WHERE TO GO AND GET HIM?

4 A DETECTIVE HERTER.

5 Q HE CALLED YOU AND SAID, COME GET ANDY?

6 A NO. WE WORK IN THE SAME OFFICE. THEY FINISHED
7 THE INTERVIEW WITH ANDY AND HE CAME OUT AND SAID, "HEY, WILL
8 YOU AND ZEPEDA TRANSPORT HIM TO THE HALL?" I SAID, "NO
9 PROBLEM."

10 Q IS THIS WHAT WE'RE NOW -- THE INTERVIEW THAT THEY
11 FINISHED, IS THIS WHAT WE'RE NOW CALLING INTERVIEW NO. 2?

12 A CORRECT.

13 Q AND HOW LONG FROM THE TERMINATION OF INTERVIEW
14 NO. 2 DID YOU GET ANDY AND TAKE HIM TO JUVENILE HALL, PUT
15 HIM IN THE CAR?

16 A I DON'T KNOW.

17 Q OKAY. WAS HE HANDCUFFED IN THE CAR?

18 A YES.

19 Q AND ANY OTHER CONSTRAINTS?

20 A SEATBELT.

21 Q SHACKLES?

22 A NO, NO. JUST HANDS BEHIND HIS BACK, SINGLE SET
23 OF HANDCUFFS.

24 Q WERE YOU AWARE THAT HE HAD ASKED TO REMAIN SILENT
25 AT ANY POINT PRIOR TO YOUR CONTACT WITH HIM?

26 A NOT THAT I RECALL, NO.

1 Q NOBODY TOLD YOU THAT?

2 A NO. I WAS PART OF THE INVESTIGATION. AFTER THE
3 FIRST INTERVIEW, DETECTIVE ZEPEDA AND I WENT OUT AND
4 INTERVIEWED THE VICTIM FROM THE 12TH STREET ASSAULT
5 FOLLOWING THE MURDER. AND DETECTIVES ASHBY AND HERTER WENT
6 OUT AND, I BELIEVE, INTERVIEWED THE COSTA MESA POLICE
7 OFFICER. WE ALL CAME BACK TO THE STATION. DETECTIVE ASHBY
8 AND HERTER CONTINUED TO INTERVIEW ANDY. AND WHEN THE SECOND
9 INTERVIEW -- WHAT WE'RE CALLING THE SECOND INTERVIEW -- WAS
10 OVER IS WHEN HE CAME OUT AND SAID, "HEY, WILL YOU TRANSPORT
11 HIM TO THE HALL FOR US?"

12 Q WOULD I BE CORRECT THEN IN ASSUMING THAT IF WE
13 BELIEVE THE POLICE REPORTS OF HERTER, THE FIRST INTERVIEW,
14 MIRANDA INTERVIEW, INTERVIEW NO. 1, TOOK PLACE ABOUT 9:35 IN
15 THE MORNING?

16 A (NO AUDIBLE RESPONSE.)

17 Q YOU DON'T KNOW?

18 A I DON'T KNOW.

19 Q WELL, YOUR REPORT -- I GUESS THIS IS YOUR
20 REPORT -- SAYS THAT ON THURSDAY 8/12, AT APPROXIMATELY 16:50
21 HOURS, HERTER AND ZEPEDA REQUESTED THAT YOU TRANSPORT
22 ANDY REYES.

23 A HERTER AND ASHBY. 16:50 IS TEN TO 5:00, THAT'S
24 4:50, YEAH.

25 Q SO HOW FAR HAD YOU GOTTEN IN THE VEHICLE -- HOW
26 FAR HAD YOU GONE BEFORE THIS, HE ASKED THE QUESTION?

1 A YOU KNOW WHERE THE IN-N-OUT IS?

2 Q I KNOW WHERE THE IN-N-OUT IS.

3 A RIGHT AS WE'RE PASSING THE IN-N-OUT, NORTH ON
4 BRISTOL.

5 MR. BROTT: APPELLATE COURT PROBABLY DOESN'T KNOW --

6 THE COURT: THE TRIAL COURT PROBABLY DOES.

7 THE WITNESS: CIVIC CENTER AND BRISTOL.

8 BY MR. BROTT:

9 Q I'M GOING TO GUESS ABOUT A QUARTER MILE WEST OF
10 THE SANTA ANA POLICE DEPARTMENT?

11 A ROUGHLY.

12 Q AND SO IT WOULD BE JUST A FEW MINUTES, JUST A
13 MATTER OF A MINUTE OR TWO, TO DRIVE FROM SANTA ANA P.D. TO
14 THE POINT WHERE THE IN-N-OUT IS?

15 A YES.

16 Q AND DID YOU TELL HIM, ANDY, WHEN YOU GOT IN WHERE
17 HE WAS GOING?

18 A I DON'T REMEMBER IF I DID OR NOT.

19 Q DID YOU INTRODUCE YOURSELF TO HIM AT ANY POINT
20 PRIOR TO THIS STATEMENT?

21 A I DON'T BELIEVE I DID.

22 Q DID YOU INTRODUCE YOUR PARTNER?

23 A NOT THAT I RECALL.

24 Q HOW WAS YOUR PARTNER DRESSED?

25 A WELL, HE'S BIGGER AND UGLIER THAN I AM, BUT
26 DRESSED THE SAME.

1 Q SO YOU WEREN'T IN FULL REGALIA UNIFORM?

2 A WE WERE BOTH DRESSED IN JEANS AND -- THIS IS OUR
3 REGULAR WORKDAY CLOTHES.

4 Q BUT NO BADGE OF POLICE AUTHORITY IN YOUR DRESS?

5 A NO.

6 Q AND IN THE INTERIOR OF THE VEHICLE IS THERE A
7 SHOTGUN ON THE DASH?

8 A NO.

9 Q IS THERE ANYTHING INSIDE THE VEHICLE THAT WOULD
10 TELL THE PERSON THAT IS RIDING IN IT THAT IT'S A POLICE
11 VEHICLE?

12 A PROBABLY NOT, NO.

13 Q IS THERE A CAGE?

14 A NO.

15 Q HOW ABOUT A RADIO?

16 A THERE'S A POLICE RADIO, BUT IT'S IN THE GLOVE
17 BOX. SO UNLESS YOU OPEN THE GLOVE BOX, A REGULAR PERSON
18 GETTING IN WOULDN'T SEE IT.

19 Q AND YOU DON'T RECALL IF ANYBODY TOLD HIM, WE'RE
20 TAKING YOU TO JUVENILE HALL?

21 A I DON'T REMEMBER IF WHEN I FIRST GOT HIM OUT OF
22 THE INTERVIEW ROOM I SAID, COME ON, WE'RE GOING TO JUVI
23 HALL. I MAY HAVE. THAT'S SOMETHING I DO, BUT I CAN'T TELL
24 YOU FOR SURE IF I SAID THAT.

25 Q DID YOU TELL HIM HE WAS GOING THERE BECAUSE IT
26 WAS A PROBATION VIOLATION?

1 A NO. THE FIRST TIME THAT CAME UP IS WHEN HE ASKED
2 ME WHAT HE WAS GOING TO JUVI HALL FOR. "WHAT ARE MY
3 CHARGES?" AND THAT'S WHEN I SHOWED HIM.

4 Q BUT YOU HAD A DOCKET -- I'M SORRY.

5 A SORRY.

6 Q THAT'S MY FAULT.

7 BUT YOU HAD A DOCUMENT WITH YOU THAT PURPORTED TO
8 SAY THIS IS A PROBATION VIOLATION?

9 A NO, IT WAS THE -- WHEN YOU BOOK A JUVI INTO THE
10 HALL, YOU DO AN ENTRANCE FORM WITH HIS NAME, HIS BIRTHDAY,
11 ALL THAT STUFF. AND PART THAT FORM IS THE CHARGES. AND,
12 YES, I HAD THAT DOCUMENT.

13 Q THAT FORM HAD BEEN FILLED OUT BEFORE YOU GOT IN
14 THE CAR?

15 A YES.

16 Q WHO FILLED IT OUT?

17 A I BELIEVE HERTER DID, BUT I'M NOT SURE ON THAT
18 EITHER.

19 Q SOMEBODY GAVE IT TO YOU?

20 A I HAD IT WITH ME, YEAH, YOU HAVE TO TAKE IT WITH
21 YOU WHEN YOU'RE BOOKING THEM IN.

22 Q BUT YOU DON'T HAVE A MEMORY OF PREPARING IT
23 YOURSELF?

24 A I MAY HAVE. I DON'T RECALL. I'M ASSUMING HERTER
25 DID IT, BUT I'M NOT 100 PERCENT SURE ON THAT.

26 Q SO IS IT YOUR TESTIMONY THAT, OTHER THAN GETTING

1 IN THE CAR OR SOMETHING ABOUT -- SOMETHING SIMILAR, YOU HAD
2 NO CONVERSATION WITH HIM BEFORE HE SAID WHAT AM I -- WHAT
3 DID HE SAY EXACTLY?

4 A WHAT ARE MY CHARGES? SOMETHING TO THAT EFFECT.
5 "WHAT ARE MY CHARGES?"

6 Q AND YOU SAID, I THINK IT'S A PROBATION VIOLATION?

7 A I SHOWED HIM IT SAYS, "PROBATION VIOLATION."

8 Q AND HOW LONG AFTER THAT DID HE MAKE THE STATEMENT
9 THAT YOU'RE TALKING ABOUT?

10 A RIGHT THEN.

11 Q NEXT, IN -- IMMEDIATELY AFTER HE SAID THAT -- I
12 MEAN YOU SAID THAT, HE SAID EXACTLY WHAT?

13 A TO MY BEST RECOLLECTION, IT WAS, "NO, THEY'RE
14 GOING TO CHARGE ME WITH MURDER TOO BECAUSE I WAS WITH SOME
15 HOMIES DOWN AT SULLIVAN AND WILLITS AND THERE WAS A
16 SHOOTING, AND EVEN THOUGH I DIDN'T SHOOT, BECAUSE I WAS
17 THERE I'M GOING TO GET A MURDER TOO."

18 Q A MURDER "ALSO" OR A MURDER 2, THE NUMBER "2"?

19 A NO. ALSO. I DON'T KNOW WHAT A MURDER 2 IS.

20 Q WELL, I'M LOOK AT YOUR POLICE REPORT. YOU
21 PREPARED A POLICE REPORT, DID YOU NOT?

22 A I DID.

23 Q FOR THE RECORD, IT IS PAGE 51 OF OUR NUMBERED
24 DISCOVERY. BUT IT APPEARS TO BE PAGE 2 OF YOUR POLICE
25 REPORT THAT'S DATED, WELL, IT'S TYPED 8/24/04. AND IT SAYS
26 HERE -- FOUNDATION. IS THIS PARAPHRASED IN THIS POLICE

1 REPORT OR IS THAT YOUR BEST ACCURATE RECOLLECTION OF WHAT HE
2 SAID?

3 A THAT WOULD BE THE BEST ACCURATE RECOLLECTION OF
4 WHAT HE SAID.

5 Q OKAY. NOTHING IN THIS POLICE REPORT MENTIONS THE
6 WORD "TOO." IS THAT BECAUSE HE DIDN'T SAY THAT, OR IS THAT
7 BECAUSE YOU JUST REMEMBERED IT?

8 A NO. TO MY BEST RECOLLECTION, HE ENDED IT WITH,
9 "I'M GOING TO GET A MURDER TOO," ALSO. AS IN, NOT JUST THIS
10 PROBATION VIOLATION, IS WHAT I TOOK IT AS.

11 Q MURDER ALSO?

12 A ALSO, YEAH. NOT THE NUMBER 2.

13 Q ALL RIGHT. THE POLICE REPORT SAYS, QUOTE, "REYES
14 STATED TO INVESTIGATOR ZEPEDA AND ME THAT HE WAS ALSO BEING
15 CHARGED WITH MURDER." TRUE OR FALSE, DID HE SAY THAT?

16 A DID THE REPORT SAY THAT?

17 Q NO. DID HE SAY THAT?

18 A YES.

19 Q FURTHER, THE POLICE REPORT SAYS, QUOTE, "REYES
20 FURTHER ADVISED US THAT HE WAS WITH FIVE OF HIS HOMIES,"
21 QUOTE, UNQUOTE, HOMIES, "ON SULLIVAN STREET WHEN A SHOOTING
22 TOOK PLACE. REYES TOLD US HE WAS NOT THE ONE THAT SHOT, BUT
23 DUE TO THE FACT THAT HE WAS THERE WITH HIS, QUOTE, UNQUOTE,
24 HOMIES HE WAS BEING CHARGED WITH MURDER."

25 A CORRECT.

26 Q IS THAT A PARAPHRASE OF WHAT HE SAID OR IS THAT

1 EXACTLY WHAT HE SAID?

2 A WELL, I DON'T KNOW IF THAT'S EXACTLY WHAT HE
3 SAID, BUT THAT -- TO MY BEST RECOLLECTION, THAT IS WHAT HE
4 SAID.

5 Q AND AT THAT POINT THEN YOU START ASKING HIM
6 QUESTIONS?

7 A YEAH. THAT'S WHEN I SAY, "WELL, WHERE ARE YOU
8 FROM?"

9 MR. BROTT: I DON'T HAVE ANYMORE QUESTIONS ABOUT THAT.

10 THE COURT: REDIRECT ON THIS?

11 MR. GELLER: NO.

12 THE COURT: DETECTIVE?

13 THE WITNESS: YES, MA'AM.

14 THE COURT: YOU WERE TRANSPORTING THE DEFENDANT FROM
15 THE POLICE STATION TO JUVENILE HALL IN AN UNMARKED POLICE
16 CAR. WHERE WAS HE SEATED IN THE CAR?

17 THE WITNESS: HE'S IN THE BACK.

18 THE COURT: AND WAS HE IN HANDCUFFS?

19 THE WITNESS: YES.

20 THE COURT: AND WERE HIS HANDS CUFFED BEHIND HIS BACK
21 OR IN FRONT OF HIM?

22 THE WITNESS: BEHIND HIS BACK.

23 THE COURT: DO YOU HAVE ANY ADDITIONAL QUESTIONS BASED
24 ON THE COURT'S INQUIRY?

25 MR. BROTT: NO.

26 THE COURT: DO YOU?

1 MR. GELLER: NO.

2 THE COURT: OKAY. STAY WHERE YOU ARE.

3 DID YOU WANT ME TO ADDRESS THIS ISSUE BEFORE YOU
4 MOVE ON, OR DO YOU WISH TO INQUIRE OF HIM AS TO HIS OPINION?

5 MR. BROTT: I MEAN, I'D LIKE TO KNOW WHAT THE COURT'S
6 RULING IS. IF THE COURT IS PREPARED TO MAKE A RULING, THEN,
7 I'D LIKE TO HEAR IT.

8 THE COURT: MR. GELLER IS CITING THE COURT TO PEOPLE
9 VERSUS OWENS, 106 CAL.APP.3D, 23, IN SUPPORT OF HIS POSITION
10 THAT THE STATEMENT THE DEFENDANT MADE IS ADMISSIBLE. I'VE
11 SCANNED THAT CASE.

12 MR. BROTT: I'D LIKE TO BE HEARD.

13 THE COURT: I HAVE NOT LOOKED UP ANY OTHER AUTHORITY.
14 BUT IF YOU'RE ASKING WHAT MY OPINION IS AT THIS POINT, WITH
15 RESPECT TO THIS ISSUE, I WILL TELL YOU, MR. BROTT, THAT THE
16 DEFENDANT KNEW THAT HE WAS GOING FROM A POLICE DEPARTMENT TO
17 JUVENILE HALL, ACCORDING TO THE TESTIMONY I'VE HEARD. HE
18 KNEW HE WAS IN CUSTODY. ALL THE INDICIA OF CUSTODY WAS
19 PRESENT. HE INITIATED THE CONVERSATION BY ASKING THE
20 DETECTIVE WHAT HE WAS GOING TO BE BOOKED FOR. HE CAN'T
21 POSSIBLY HAVE AN EXPECTATION OF PRIVACY IN A CONVERSATION
22 WITH THESE OFFICERS, EVEN ASSUMING YOUR REPRESENTATIONS TO
23 ME ARE ACCURATE THAT HE THOUGHT HE WAS TALKING TO PROBATION
24 OFFICERS RATHER THAN POLICE OFFICERS. SO, I DON'T HAVE ANY
25 PLACE TO GO BUT TO CONSIDER THE STATEMENT A BLURT-OUT BY THE
26 DEFENDANT THAT WAS MADE VOLUNTARILY AND, THEREFORE, WOULD BE

1 ADMISSIBLE IN TRIAL AGAINST HIM.

2 BUT, AS I STARTED TO ANSWER YOUR QUESTION ABOUT
3 WHAT MY RULING WOULD BE, YOU SAID YOU WANTED TO BE HEARD.

4 MR. BROTT: I'D LIKE TO JUST MAKE A RECORD, IF I COULD,
5 BEFORE OR AFTER THE COURT'S RULING.

6 OKAY. I'M RELYING PRINCIPALLY ON EDWARD VERSUS
7 ARIZONA WHERE THEY SAID SUBSEQUENT INTERVIEWS CAN BE -- THE
8 INVOCATION CAN BE DISSIPATED IN SUBSEQUENT INTERVIEWS BY A
9 BREAK IN THE CHAIN OF CUSTODY. WELL, CLEARLY, WE DON'T HAVE
10 A BREAK IN THE CHAIN OF CUSTODY HERE. HE WAS IN CONTINUOUS
11 CUSTODY FROM THROUGHOUT. THEREFORE, I THINK THE PRESUMPTION
12 IS THAT ANYTHING POST-INVOCATION HAS TO BE AN EXTRAORDINARY
13 CIRCUMSTANCE TO MAKE IT ADMISSIBLE.

14 THE PEOPLE HAVE CITED THIS PEOPLE VS. OWENS CASE.
15 IN THE OWENS CASE WHAT HAPPENS IS HE'S INVOKING REPEATEDLY,
16 MR. OWENS IS, AND THEN SAYS, BUT I WANT TO SAY THIS, ON OR
17 OFF THE RECORD, THAT I DIDN'T MEAN TO KILL THAT DUDE. BUT
18 THAT IS, I BELIEVE IT WAS MADE ADMISSIBLE IN THAT CASE, BUT
19 I THINK THE DISSENT QUITE PROPERLY POINTED OUT THAT IT WAS
20 ALL PART OF THE CONVERSATION IN WHICH HE WAS CONTINUOUSLY
21 INVOKING. AND I'M SAYING THAT, IN SPITE OF OWENS, THAT
22 MR. REYES IS 15 YEARS OLD. HE'S HOOKED UP IN THE BACK SEAT
23 OF THE CAR. THE OFFICER, IF HE DIDN'T KNOW THAT HE INVOKED,
24 HE'S CHARGED WITH IT UNDER THE LAW TO KNOW THAT HE HAD
25 INVOKED AND THAT THERE SHOULDN'T HAVE BEEN ANY CONVERSATION
26 WITH HIM. AND, THAT ANY CONVERSATION THAT HE HAD OUTSIDE OF

1 THE QUESTION OF WHAT AM I BEING CHARGED WITH, EVERYTHING
2 AFTER THAT SHOULD GO OUT, BECAUSE THE OFFICERS SHOULD BE OR
3 ARE ON -- REQUIRED NOT TO DISCUSS THE CIRCUMSTANCES OF THE
4 INCIDENT BECAUSE HE HAD PREVIOUSLY INVOKED.

5 AND I'LL SUBMIT IT ON THAT.

6 THE COURT: HELP ME WITH A LITTLE MORE SPECIFICITY.
7 YOU SAID EDWARD VERSUS?

8 MR. BROTT: EDWARDS VERSUS ARIZONA, 451 U.S. 477. IT'S
9 THE SEMINAL CASE ON POST-INVOCATION INTERVIEWS.

10 AND THE ONE THAT'S PROBABLY CLOSEST, WHICH I WAS
11 GOING TO CITE FOR THE SUBSEQUENT INTERVIEW THAT THE PEOPLE
12 NOW AGREE IS NOT PROBABLY ADMISSIBLE, WAS PEOPLE VS. NEAL AT
13 31 CAL.4TH, 63.

14 THE COURT: BUT WE'RE NOT REALLY AT THAT ISSUE.

15 MR. BROTT: I DON'T THINK WE'RE AT THAT CASE. I DON'T
16 HAVE TO WAVE THAT CASE AROUND ANYMORE.

17 THE COURT: OKAY. YOU MAKE A GOOD POINT. AND I DO
18 THINK I'M GOING TO NEED TO TAKE A FEW MINUTES AT LEAST TO
19 LOOK AT SOME TREATISES ON MIRANDA BEFORE I CAN BE SURE THAT
20 THE STATEMENT WOULD BE ADMISSIBLE. YOU'RE RIGHT. BUT THE
21 CONCERN THAT THE COURT OUGHT TO HAVE IS THE FACT THAT HE WAS
22 IN CONTINUOUS CUSTODY. BUT, BY THE SAME TOKEN, ONCE HE
23 INITIATES A CONVERSATION, IT SEEMS TO ME THAT HE MAY BE
24 WITHDRAWING HIS INVOCATION NOT TO TALK.

25 MR. GELLER: MAY I BE HEARD ON THAT BRIEFLY?

26 THE COURT: HAVE YOU GOT MORE CASES?

1 MR. GELLER: WELL, I JUST WANT TO CLARIFY SOMETHING.
2 MAYBE I CAN HELP THE COURT FOCUS ON ITS OWN SEARCH.

3 WHAT WE'RE NOT CONTENDING -- AND WE'RE AGREEING
4 WITH MR. BROTT THAT THERE WAS ABSOLUTELY A CONTINUOUS CHAIN
5 OF CUSTODY. AND THAT'S WHY I'M NOT SEEKING TO GET IN EVEN
6 THE FOLLOW-UP STATEMENTS THAT INVESTIGATOR RONDOU ELICITED,
7 BECAUSE THEY WERE ELICITED. THEY WERE ASKED BY A POLICE
8 OFFICER. AND WHETHER HE INTENDED TO OR NOT, IT'S THE KIND
9 OF A STATEMENT THAT IS MEANT TO ELICIT AN INCRIMINATING
10 RESPONSE. I'M NOT ASKING TO DO THAT.

11 THE COURT REFERRED TO THE TYPE OF STATEMENT THAT
12 MR. REYES ENGAGED IN AS WHAT'S CALLED A, "VOLUNTEERED
13 STATEMENT." AND THERE'S NO QUESTION HE'S IN CUSTODY.
14 THERE'S NO QUESTION HE'S A MINOR. THERE'S NO QUESTION THAT
15 HE'S BEING BROUGHT TO A DIFFERENT DETENTION FACILITY. BUT,
16 AS I MENTIONED IN MY ARGUMENT, AND WITH OWENS, THE FACT THAT
17 HE IS VOLUNTEERING THIS INFORMATION, AND THE RESPONSE -- SO
18 I'M VERY CLEAR ON THIS, THE RESPONSE BY RONDOU SHOWING UP
19 THE BOOKING FORM AND SAYING, "IT LOOKS LIKE A PROBATION
20 VIOLATION" -- WOULD NOT PRECLUDE THE COURT ADMITTING THE
21 SUBSEQUENT VOLUNTEERED STATEMENT. THAT RESPONSE, IT WOULD
22 NOT BE AN ANSWER MEANT TO ELICIT INCRIMINATING A RESPONSE.

23 SO I'M HOPING THAT THE COURT DOESN'T RELY ON THAT
24 TO EXCLUDE THE STATEMENT, THE VERY FACT THAT RONDOU SAYS
25 SOMETHING TO THE EFFECT OF, "IT LOOKS LIKE A PROBATION
26 VIOLATION," AS HE'S HOLDING UP A BOOKING SLIP. BUT ONCE

1 AGAIN, ONCE RONDOU DOES ASK HIM WHERE HE'S FROM, WE'RE DONE.
2 I DON'T GET THOSE STATEMENTS IN TO MY CASE-IN-CHIEF. I
3 THINK THE CASE LAW IS EXTREMELY CLEAR ON THAT.

4 THE COURT: WELL, I UNDERSTAND YOUR POSITION. I DON'T
5 KNOW ABOUT THE CLARITY, SO GIVE ME A SECOND HERE.

6 MR. GELLER: AND I DO HAVE ONE MORE CALIFORNIA SUPREME
7 CASE, IF YOU'D LIKE. IT'S NEWER THAN THE ONE I PROVIDED.

8 THE COURT: OKAY.

9 MR. GELLER: PEOPLE VS. BRADFORD, A 1997 CASE, AT
10 14 CAL.4TH, 1005. I HAVE NOT READ BRADFORD, BUT THE BODY OF
11 LAW THAT I'M RELYING ON HERE IS PUBLISHED BY THE CALIFORNIA
12 DISTRICT ATTORNEY'S ASSOCIATION, SO I'M CONFIDENT THAT IT'S
13 ACCURATE. BUT I'LL ALLOW THE COURT, IF THE COURT WANTS TO
14 READ BRADFORD, I THINK IT'S RIGHT ON POINT.

15 MR. BROTT: I SHARE NO SUCH CONFIDENCE, FOR THE RECORD,
16 YOUR HONOR.

17 THE COURT: ALL RIGHT. TELL YOU WHAT WE'RE GOING TO
18 DO, WE'LL GIVE THE REPORTER A 15-MINUTE BREAK AND I'M GOING
19 TO GO IN THE BACK AND TAKE A LOOK. IF ANY OF YOU WANT TO
20 USE MY LIBRARY ALSO, FEEL FREE TO COME IN.

21 (RECESS TAKEN.)

22 THE COURT: ALL RIGHT. WE'RE RESUMING IN PEOPLE VS.
23 REYES. DEFENDANT IS PRESENT WITH COUNSEL. THE PEOPLE ARE
24 REPRESENTED. THERE ARE A COUPLE OF FACTUAL AVERMENTS THAT
25 YOU MADE THAT I WANT TO MAKE SURE THAT ARE INDEED THE FACTS
26 IN THIS CASE.

1 MAY I HAVE A STIPULATION BY AND BETWEEN COUNSEL
2 THAT WHEN THE DEFENDANT WAS INTERVIEWED AT THE POLICE
3 STATION BY DETECTIVE HERTER AND DETECTIVE -- I THINK IT'S
4 ASHBY -- THAT HE WAS GIVEN HIS MIRANDA RIGHTS AT THAT TIME.

5 MR. BROTT: THE INITIAL INTERVIEW, YES.

6 THE COURT: YOU'LL STIPULATE?

7 MR. BROTT: YES.

8 THE COURT: SO STIPULATED?

9 MR. GELLER: YES.

10 THE COURT: STIPULATION IS ACCEPTED.

11 IS IT ALSO STIPULATED BY AND BETWEEN COUNSEL THAT
12 WHEN THE DEFENDANT STOPPED THE INTERVIEW HE WAS INVOKING HIS
13 RIGHT TO REMAIN SILENT AND NOT HIS RIGHT TO COUNSEL.

14 MR. BROTT: I WOULD -- THAT'S WHAT THE RECORD REFLECTS,
15 SO I WILL STIPULATE TO THAT. HE WAS INVOKING HIS RIGHT TO
16 REMAIN SILENT.

17 THE COURT: HE SAID HE DIDN'T WANT TO TALK ANYMORE. HE
18 DIDN'T SAY THAT HE WANTED A LAWYER.

19 MR. BROTT: THAT'S TRUE.

20 THE COURT: OKAY. SO STIPULATED?

21 MR. GELLER: YES. THAT WOULD BE THE END OF THE FIRST
22 INTERVIEW.

23 THE COURT: AT THE END OF THE FIRST INTERVIEW BY HERTER
24 AND ASHBY AND BEFORE THE TRANSPORTATION TO JUVENILE HALL.

25 MR. GELLER: YES. AND THE INTERVIEW WAS IMMEDIATELY
26 TERMINATED. WITHIN A MINUTE IT WAS DONE.

1 THE COURT: OKAY. THAT'S --

2 MR. BROTT: ALL TRUE.

3 THE COURT: THEN I'LL ACCEPT THAT STIPULATION AS WELL.

4 THE COURT: ALL RIGHT. IN THE SHORT TIME I ALLOTTED
5 MYSELF I WASN'T ABLE TO FIND A CASE DIRECTLY ON POINT. I DO
6 THINK THAT PEOPLE VS. BRADFORD, 14 CAL 41005 IS EDUCATIONAL
7 BUT YOU GAVE ME A 65-PAGE CASE, MR. GELLER, WITHOUT AN
8 INTERNAL CITATION. AND FROM WHAT I CAN TELL OF THE FACTS AS
9 TO A NUMBER OF INTERVIEWS THAT TOOK PLACE IN BRADFORD, I'M
10 NOT CERTAIN THAT THIS CASE IS ON POINT WITH THE SITUATION WE
11 HAVE HERE. I WOULD LIKE TO HAVE SPENT SOME TIME TO STUDY IT
12 BECAUSE I'M NOT NECESSARILY SEEING A CONNECTION THOUGH I
13 THINK THAT BRADFORD DOES GIVE GREATER EFFECT TO AN
14 INVOCATION OF RIGHT TO COUNSEL THAN TO AN INVOCATION OF
15 RIGHT TO REMAIN SILENT. I THINK TOO THAT IF I TAKE BRADFORD
16 AT FACE VALUE HAD THE DEFENDANT ASKED FOR A LAWYER,
17 MR. BROTT MIGHT BE IN DIFFERENT STEAD WITH THE COURT AT THIS
18 POINT BUT HE DIDN'T. HE JUST SAID HE DIDN'T WANT TO TALK.
19 SO THE FACT THAT MR. REYES SUBSEQUENTLY INITIATED A
20 CONVERSATION, I THINK, COULD REASONABLY BE VIEWED AS A
21 WITHDRAWAL OF THAT DECISION NOT TO TALK. NOW HE'S IN THE
22 CAR. HE'S ON HIS WAY TO JUVENILE. NOW HE WANTS TO TALK.
23 AT THE VERY LEAST ABOUT WHAT HE'S INCARCERATED FOR AND WHEN
24 HE FINDS OUT OR THE POLICE OFFICER SUGGEST INNOCENTLY THAT
25 IT MAY BE SOMETHING MINOR, HE TAKES ISSUE WITH IT.
26 MR. BROTT: CAN I SAY SOMETHING?

1 THE COURT: HANG ON ONE SECOND. EVEN THOUGH I'M
2 PROBABLY RULING RIGHT NOW, GO AHEAD.

3 MR. BROTT: I WANT TO STOP YOU BEFORE YOU MAKE A
4 MISTAKE.

5 THE COURT: I APPRECIATE YOUR CONCERN.

6 MR. BROTT: MIRANDA HAS TWO ELEMENTS: A 5TH AMENDMENT
7 ELEMENT, AND A 6TH AMENDMENT ELEMENT; A RIGHT TO REMAIN
8 SILENT, AND A RIGHT TO COUNSEL. I DON'T THINK THAT THE
9 STANDARD SHOULD BE DIFFERENT FOR THE INVOCATION OF EITHER OF
10 THOSE RIGHTS. THAT'S WHAT I WANT TO SAY.

11 THE COURT: YOUR POINTS ARE VERY WELL MADE, BUT I'M
12 CONSIDERING ALL OF THE CIRCUMSTANCES THAT WE HAVE IN THIS
13 PARTICULAR CASE. HE SAID, I DON'T WANT TO TALK. TALKING
14 STOPPED.

15 HE GETS INTO THE POLICE CAR. THE COPS AREN'T
16 TALKING TO HIM. HE INITIATES. HE SAYS, WHAT AM I GOING TO
17 JUVENILE FOR? THE POLICE OFFICER SAYS IN GOOD FAITH,
18 "PROBATION VIOLATION." HE HAS A DOCUMENT IN HIS HAND TO
19 SUPPORT THAT. AND THEN THE DEFENDANT MAKES HIS ADMISSION.

20 IT JUST SEEMS TO ME THAT THE STATEMENT WAS
21 VOLUNTARILY. MADE, THE PROTECTIONS THAT WE AFFORD
22 DEFENDANTS SHOULD NOT NECESSARILY APPLY WHEN THE DEFENDANT,
23 OR, AT THE TIME, SUSPECT, MAKES AN APPARENTLY
24 INTELLIGENTLY-MADE DECISION TO TALK.

25 HE HAD BEEN PREVIOUSLY ADVISED OF MIRANDA. AND
26 HE KNEW IT WOULD WORK TO SAY HE DIDN'T WANT TO TALK, BECAUSE

1 HE DID SAY THAT. AND IT DID WORK. AND, SUBSEQUENTLY, HE'S
2 PUT IN A CAR AND TRANSPORTED. SO I CANNOT SEE THAT THIS
3 STATEMENT WAS INVOLUNTARILY MADE OR THAT THE POLICE ENGAGED
4 IN SOME MISCONDUCT THAT WOULD WARRANT ITS EXCLUSION FROM
5 TRIAL. IT WASN'T A VERY SMART THING TO DO. AND I GRANT
6 YOU, MR. BROTT, YOUR CLIENT WAS A TEENAGER AND NOT A
7 SOPHISTICATED ADULT AT THE TIME THAT HE MADE THE STATEMENT.
8 BUT IT WAS NOT COERCED. IT WASN'T EVEN ELICITED. AND THE
9 DEFENDANT HAD BEEN ADVISED AND, APPARENTLY, UNDERSTOOD HIS
10 RIGHTS WHEN HE WAS GIVEN THEM AT THE STATION BECAUSE HE SAID
11 HE DIDN'T WANT TO TALK AND THE TALKING STOPPED.

12 SO, IN CONSIDERATION OF ALL THOSE FACTS, EVEN
13 THOUGH I DON'T FIND IN THIS REVIEW SPECIFIC AUTHORITY TO THE
14 CONTRARY, I AM GOING TO OVERRULE YOUR OBJECTION TO THE
15 ADMISSIBILITY OF THE STATEMENT THAT THE DEFENDANT MADE IN
16 THE CAR. AND THAT IS THE ONLY STATEMENT, BASED ON
17 MR. GELLER'S REPRESENTATIONS, THAT I EXPECT THE PEOPLE TO
18 OFFER IN THEIR CASE-IN-CHIEF.

19 MR. GELLER: WELL, WITH THE EXCEPTION OF THE INITIAL
20 MIRANDIZED INTERVIEW PRIOR TO HIM -- "HIM" BEING THE
21 DEFENDANT -- TERMINATING IT.

22 THE COURT: I'M SORRY. THEN I MISUNDERSTOOD. YOU'RE
23 REFERRING TO WHAT WE'RE CALLING INTERVIEW NO. 1, WHICH WOULD
24 BE A TAPED INTERVIEW BY ASHBY AND HERTER AND THE DEFENDANT
25 ENDED THE INTERVIEW. SO HE MADE ADMISSIONS BEFORE HE ENDED
26 THE INTERVIEW?

1 MR. GELLER: YES, HE SPOKE FOR PROBABLY THE BETTER PART
2 OF AN HOUR BEFORE THE INTERVIEW WAS ENDED ON HIS BEHALF.

3 THE COURT: ALL RIGHT. WERE YOU UNDER THE IMPRESSION
4 THAT THE PEOPLE WOULD BE OFFERING THOSE IN THEIR
5 CASE-IN-CHIEF?

6 MR. BROTT: YES.

7 THE COURT: OKAY. AND WE DIDN'T AGREE THAT YOU WANTED
8 TESTIMONY ON THAT POINT.

9 MR. BROTT: I DON'T HAVE ANY -- WELL, I HAVE AN
10 OBJECTION, BUT I DON'T THINK THAT THE OBJECTION "NOT FAIR"
11 IS IN THE EVIDENCE CODE. SO I'M GOING TO HAVE TO JUST BITE
12 THE BULLET AND CONCEDE THAT THE PEOPLE CAN PROBABLY GET THAT
13 IN.

14 THE COURT: I'M SORRY, I DIDN'T MAKE A NOTE THAT THERE
15 WERE STATEMENTS BEFORE THE INVOCATION OF RIGHT TO REMAIN
16 SILENT, SO YOU KIND OF CAUGHT ME A LITTLE OFF GUARD. BUT,
17 APPARENTLY, HE MADE STATEMENTS. THEN, HE ENDED THE
18 INTERVIEW. RIGHT?

19 MR. GELLER: YES. HE MADE STATEMENTS ABOUT THE
20 SUBSEQUENT CONDUCT, THE, AS THE COURT REFERRED TO IT, THE
21 CRIMINAL THREAT OR THE TERRORIST THREAT.

22 THE COURT: OKAY. WELL, THAT'S ANOTHER ISSUE THEN, I
23 GUESS, WE HAVE TO RESOLVE.

24 MR. BROTT: YES.

25 THE COURT: HOLD ON JUST A MOMENT.

26 HOWEVER, YOUR PROPOSAL ON THAT ISSUE WOULD BE

1 THAT DETECTIVE HERTER WOULD BE TESTIFYING ON THE STATEMENTS
2 THE DEFENDANT MADE, OR ASHBY, OR BOTH?

3 MR. GELLER: ACTUALLY, NONE OF THE ABOVE. I'M GOING TO
4 BE ELICITING THOSE STATEMENTS THROUGH DETECTIVE RONDOU AS IT
5 RELATES TO THE DEFENDANT'S INVOLVEMENT IN THE F-TROOP
6 CRIMINAL STREET GANG. THOSE ARE RELIABLE HEARSAY SOURCES
7 THAT HE CAN RELY ON TO PROFFER AN OPINION.

8 THE COURT: WELL BUT THERE'S A LIMITATION TO THE JURY'S
9 CONSIDERATION OF THAT HEARSAY.

10 MR. GELLER: I UNDERSTAND.

11 THE COURT: AND IF YOU'RE INTENDING TO INTRODUCE IT FOR
12 ALL PURPOSES, THEN YOU'RE NOT GOING TO GET IT IN THROUGH
13 DETECTIVE RONDOU. AND YOU KNOW THAT. IF YOU'RE INTENDING
14 TO INTRODUCE THOSE STATEMENTS, THE ADMISSIONS, THEY ONLY
15 COME IN THROUGH THE PERSONS WHO HEARD THEM. THAT WOULD BE
16 HERTER AND/OR ASHBY. AND MY QUESTION WAS WHICH OF THOSE TWO
17 WOULD BE TESTIFYING.

18 IF YOU'RE GOING TO HAVE RONDOU TESTIFY THAT THE
19 DEFENDANT MADE STATEMENTS TO HERTER AND ASHBY THAT HE WAS IN
20 A GANG, THEN I'M GOING TO LIMIT THE JURY'S CONSIDERATION OF
21 THOSE STATEMENTS AS A BASIS ONLY FOR OPINION AND NOT FOR THE
22 TRUTH OF THE CONTENT OF THE STATEMENTS. THEY WOULD NOT BE
23 COMING IN AS AN ADMISSION.

24 BUT I DON'T KNOW IF I'M PUTTING THE CART BEFORE
25 HORSE, MR. BROTT, BECAUSE WE HAVE DETECTIVE RONDOU ON THE
26 STAND. YOU WANTED MY RULING ON THE CAR STATEMENT BEFORE YOU

1 MADE AN INQUIRY OF HIM AS TO THE OPINION HE WAS GOING TO
2 RENDER AND THE BASIS THEREFORE.

3 MR. BROTT: CORRECT.

4 THE COURT: SO IF YOU WANT TO GO TO THAT AT THIS POINT,
5 GO AHEAD.

6 MR. BROTT: WELL, I THINK WE NEED TO ADDRESS THE ISSUE
7 THAT I BROUGHT UP THE OTHER DAY, AND THAT IS MY GENERALIZED
8 352 OBJECTION TO THE WHOLE INCIDENT, THE 422 INCIDENT THAT
9 WE'RE CALLING THIS, THE HITTING UP OF THE OTHER PERSON, THE
10 POSSESSION OF THE GUN, THE GUN COMING INTO THE PEOPLE'S
11 POSSESSION. I'M JUST MAKING A RECORD THAT I'M OBJECTING TO
12 THAT BEING PROVEN UP IN THE PEOPLE'S CASE-IN-CHIEF, BECAUSE
13 IT'S AN UNCHARGED OFFENSE AND I THINK THE PREJUDICE OF IT
14 OUTWEIGHS THE PROBATIVE VALUE.

15 THE COURT: OKAY. THEN LET ME STOP YOU, BECAUSE I WANT
16 TO MAKE A GOOD RECORD ABOUT WHAT YOU'VE JUST SAID. AND I'M
17 LOOKING FOR A STIPULATION.

18 WHEN WE CONFERRED INFORMALLY IN CHAMBERS ON
19 MONDAY, BOTH OF YOU REPRESENTED TO ME THAT, ACCORDING TO THE
20 POLICE REPORTS YOU HAVE, 39 MINUTES AFTER THE HOMICIDE
21 OCCURRED THE DEFENDANT REYES WAS AT ANOTHER LOCATION. AND
22 HE REMOVED A GUN WHICH ULTIMATELY WAS FOUND TO BE THE MURDER
23 WEAPON. AND HE THREATENED A NON-GANG MEMBER WITH THE GUN.
24 AND THE PERSON WHO WAS THREATENED, ACCORDING TO YOUR
25 REPRESENTATIONS TO ME, WAS FELIX NIEVES, WHO IS EXPECTED TO
26 TESTIFY HERE THROUGH A SPANISH INTERPRETER, WAS ABLE TO TAKE

1 THE GUN AWAY FROM MR. REYES, AND MR. NIEVES SUBSEQUENTLY
2 REPORTED THE 422 TO THE POLICE AND SURRENDERED THE GUN.

3 NOW WILL YOU STIPULATE TO THOSE FACTS FOR THE
4 PURPOSE OF THIS HEARING?

5 MR. BROTT: I WILL STIPULATE TO MOST OF THOSE FACTS. I
6 DON'T KNOW THAT I CAN STIPULATE TO THE FACT OF THE 39-MINUTE
7 TIME FRAME, BUT IT WAS WITHIN AN HOUR OR SO, I BELIEVE,
8 AFTER THE INCIDENT. AND I CAN STIPULATE THAT THE GUN WAS
9 TAKEN FROM HIM, MR. -- MY UNDERSTANDING WAS THAT MR. NIEVES
10 AND MR. REYES WERE INVOLVED IN A FIGHT, AND THAT THE GUN
11 FELL OUT, AND THAT MR. NIEVES PICKED IT UP.

12 I'M NOT PREPARED TO STIPULATE THAT MR. NIEVES WAS
13 THREATENED WITH IT. BUT I KNOW THAT MR. NIEVES MAY TESTIFY
14 TO THAT. BUT I DON'T WANT TO LIMIT MY -- BUT IF YOU WANT ME
15 TO TESTIFY -- THOSE ARE MY GENERAL BELIEFS OF THE FACTS.

16 I DO NOT STIPULATE FOR THE RECORD THAT HE WAS
17 THREATENED WITH IT. BUT I DO STIPULATE THAT HE DID COME
18 INTO POSSESSION OF IT AFTER MR. -- ANDY DROPPED IT.

19 THE COURT: OKAY. MAYBE I MISUNDERSTOOD WHAT WAS SAID
20 TO ME IN OUR CHAMBERS CONFERENCE.

21 BUT, IF I UNDERSTAND CORRECTLY, THERE WOULD BE A
22 STIPULATION BY AND BETWEEN COUNSEL THAT WITHIN AN HOUR OF
23 THE HOMICIDE THAT'S THE SUBJECT MATTER OF THIS INFORMATION,
24 THE DEFENDANT WAS IN CONTACT WITH FELIX NIEVES, A NON-GANG
25 MEMBER AND A PERSON WHO WAS NOT ACQUAINTED WITH THE
26 DEFENDANT; IS THAT FAIR TO SAY?

1 MR. BROTT: WE'RE NOT SURE. I'M NOT SURE.

2 THE COURT: ALL RIGHT. -- WITH FELIX NIEVES, A
3 NON-GANG MEMBER, AT WHICH TIME, AND DURING THIS ENCOUNTER,
4 FELIX NIEVES RETRIEVED FROM MR. REYES THE GUN THAT WAS
5 ULTIMATELY FOUND TO BE THE MURDER WEAPON.

6 MR. BROTT: FOR THE PURPOSES OF THIS HEARING, I WILL
7 STIPULATE TO THAT.

8 THE COURT: SO STIPULATED?

9 MR. GELLER: NO, I CAN'T STIPULATE TO THAT. THERE'S
10 WAY MORE FACTS THAT I INTEND TO BRING OUT THAT ARE IMPORTANT
11 FOR THE COURT'S CONSIDERATION IF THE DEFENSE IS TRYING TO
12 EXCLUDE THIS VERY RELEVANT AND PROBATIVE EVIDENCE. AND I
13 CAN GIVE A PROFFER. I DON'T NEED TO DO IT VIA STIPULATION.
14 I CAN TELL YOU WHAT MY WITNESSES ARE GOING TO SAY. AND I
15 CAN BE VERY SPECIFIC ABOUT THAT.

16 THE COURT: ALL RIGHT. MR. BROTT, THE ONLY OTHER WAY
17 TO PROCEED, OTHER THAN BY WAY OF PROFFER, IF THE COURT
18 DOESN'T HAVE A STIPULATION, IF YOU AGREE, WOULD BE BY WAY OF
19 SOME TESTIMONY. AND I DON'T THINK EITHER ONE OF YOU WANTS
20 TO TAKE THE TIME TODAY TO GET MR. NIEVES IN HERE.

21 MR. BROTT: WELL, AS LONG AS I'M JUST STIPULATING FOR
22 THE PURPOSES OF THIS HEARING SO THAT THE COURT CAN MAKE A
23 RULING, AND NOT TYING MYSELF INTO SOME STIPULATION THAT THE
24 JURY IS GOING TO HEAR --

25 THE COURT: OH, OF COURSE NOT. I'M TRYING --

26 MR. BROTT: FINE.

1 THE COURT: -- I'M TRYING TO GET A FACTUAL.

2 MR. BROTT: LET ME HEAR HIS PROFFER, AND I MAY WELL
3 STIPULATE TO IT.

4 THE COURT: OKAY. GO AHEAD.

5 MR. GELLER: THE 39 MINUTES OCCURS, OR, THE EVIDENCE TO
6 SUPPORT 39 MINUTES IS THE CALLS TO 911 THAT COME IN TO THE
7 SANTA ANA POLICE DEPARTMENT. THERE'S AN INITIAL CALL AFTER
8 THE HOMICIDE. THIRTY-NINE MINUTES LATER THERE'S A CALL
9 REGARDING THE -- I CALL IT A 245. WE'LL CALL IT A 417, A
10 422, WHATEVER IT IS. IT'S A SUBSEQUENT INCIDENT WITH THAT
11 WEAPON AND MR. REYES.

12 FELIX NIEVES, I BELIEVE, WILL COME IN AND TESTIFY
13 THAT HE'S BEEN HIT-UP BY THE DEFENDANT BEFORE. AND "HIT-UP"
14 IS A TERM OF ART USED IN THE GANG SUBCULTURE. ON THIS DAY
15 HE WAS HIT-UP BY THE DEFENDANT. THE DEFENDANT GOT INTO A
16 FIGHT WITH HIM. THE DEFENDANT TOOK THE GUN OUT AND PUT THE
17 GUN UP TO HIS NECK.

18 THE COURT: MR. NIEVES' NECK?

19 MR. GELLER: TO NIEVES' NECK.

20 MR. NIEVES GOT THE GUN AWAY FROM -- HIT -- USED
21 HIS ARM TO SWING AT THE GUN, AND THE GUN DROPPED TO THE
22 GROUND. MR. NIEVES PICKED UP THE GUN FROM MR. REYES, AND
23 MR. NIEVES CALLED THE POLICE. AND AS THE COURT ALREADY
24 MENTIONED, THE GUN WAS SUBSEQUENTLY TESTED FOR BALLISTICS
25 MATCHES, AND IT WAS FOUND TO BE THE WEAPON THAT KILLED THE
26 DECEDENT IN THIS CASE.

1 MR. BROTT: I WOULD STIPULATE THAT THAT'S WHAT I
2 BELIEVE THEY WILL TESTIFY TO.

3 THE COURT: FOR THE PURPOSE OF THIS PROCEEDING ONLY?

4 MR. BROTT: FOR THE PURPOSE OF THIS PROCEEDING ONLY.

5 THE COURT: OKAY. AND THE PEOPLE SEEK TO INTRODUCE
6 THROUGH MR. NIEVES WHAT HAPPENED IN -- WAS IT A PARK?

7 MR. GELLER: NO, IT WAS JUST OUT IN A RESIDENTIAL
8 NEIGHBORHOOD.

9 THE COURT: OKAY.

10 AND, MR. BROTT, YOUR POSITION WITH RESPECT TO
11 THAT EVIDENCE IS THAT THE COURT SHOULD EXCLUDE IT BECAUSE IT
12 IS EVIDENCE OF ANOTHER CRIME AND, THEREFORE, IT IS MORE
13 PREJUDICIAL TO MR. REYES THAN PROBATIVE OF ANY ISSUE IN THIS
14 CASE, RIGHT?

15 MR. BROTT: AND WE CAN FASHION A STIPULATION OR AN
16 AGREEMENT THAT HE WAS IN POSSESSION OF THE FIREARM AT SOME
17 SUBSEQUENT TIME AND THAT IT WAS ULTIMATELY LINKED TO THE
18 KILLING. I THINK THAT THAT PROBABLY IS RELEVANT AND
19 ADMISSIBLE. BUT THE WHOLE FIGHTING INCIDENT AND PUTTING IT
20 TO HIS HEAD AND HITTING UP OF -- I'M ASKING TO EXCLUDE ALL
21 THAT.

22 MR. GELLER: IF I MAY BE HEARD ON THAT?

23 THE COURT: WELL, I'M GUESSING, MR. GELLER, THAT YOU'RE
24 NOT GOING TO ENTER INTO THAT STIPULATION.

25 MR. GELLER: NOT FOR A SECOND.

26 THE COURT: SO THERE'S NOTHING LEFT TO SAY.

1 MR. GELLER: BUT I CAN OFFER THE -- I CAN OFFER THE
2 COURT SOME GUIDANCE AS TO WHERE I FEEL THE EVIDENCE IS
3 PROBATIVE AND WHY I'M SEEKING TO ADMIT IT, IF YOU LIKE.

4 THE COURT: YEAH, I SUPPOSE YOU COULD. GO AHEAD.

5 MR. GELLER: I THINK MR. BROTT IS GOING TO PROFFER A
6 DEFENSE THAT HIS CLIENT WAS MERELY PRESENT AT THE SCENE OF
7 THE HOMICIDE AND HAD NOTHING TO DO WITH IT, DIDN'T KNOW
8 ANYTHING WAS GOING TO HAPPEN, AND WAS A VERY PERIPHERAL
9 MEMBER OF THIS CRIMINAL STREET GANG. AND I THINK WHEN THE
10 COURT HEARS -- WHEN THE JURY HEARS THIS EVIDENCE WITH
11 RESPECT TO HIS CONDUCT 39 MINUTES LATER, THAT HE'S OUT
12 COMMITTING ANOTHER VIOLENT GANG-RELATED OFFENSE WITH THE
13 MURDER WEAPON, IT GOES TO THE IDENTITY OF -- GOES TO HIS
14 IDENTITY AT THE SCENE OF THE CRIME, IT GOES TO HIS
15 MOTIVATION, AND IT GOES TO THE FACT THAT HE'S AN ACTIVE
16 PARTICIPANT IN A CRIMINAL STREET GANG AND THAT THE MURDER
17 WAS DONE FOR THE BENEFIT OF A CRIMINAL STREET GANG. IT IS
18 VERY CLOSE IN TIME. AND THERE'S JUST NO CHANCE THAT THE
19 PREJUDICIAL EFFECT SUBSTANTIALLY OUTWEIGHS THE PROBATIVE
20 VALUE OF THAT EVIDENCE.

21 THE COURT: BUT YOU'RE NOT GOING TO BE RESERVING THIS
22 EVIDENCE FOR REBUTTAL TO A PURPORTED DEFENSE. YOU WANT TO
23 OFFER IT IN YOUR CASE-IN-CHIEF; THAT'S FAIR TO SAY, IS IT
24 NOT?

25 MR. GELLER: OH, YEAH, I DON'T KNOW THAT THERE'S GOING
26 TO BE REBUTTAL EVIDENCE. I'M NOT CERTAIN IF THERE WILL BE A

1 DEFENSE CASE. I THINK IT'S A CASE THAT MR. BROTT WILL
2 PROBABLY JUST ARGUE TO THE JURY.

3 THE COURT: BUT YOUR ARGUMENT IS THAT MR. BROTT IS
4 GOING TO PRESENT A DEFENSE THAT HIS CLIENT DIDN'T KNOW WHAT
5 WAS GOING ON. HE WAS THERE, BUT HE DIDN'T KNOW WHAT WAS
6 GOING ON.

7 MR. GELLER: I THINK THAT WILL BE THE DEFENSE PRESENTED
8 BY MR. BROTT IN HIS ARGUMENT. I DON'T BELIEVE IT WILL COME
9 IN THROUGH WITNESSES, UNLESS, OF COURSE, HIS CLIENT TAKES
10 THE STAND.

11 THE COURT: WELL, ANYTHING ELSE?

12 MR. BROTT: NO, SUBMITTED.

13 THE COURT: EVIDENCE OF WHAT HAPPENED WITH MR. NIEVES
14 IS STRONG EVIDENCE THAT THE DEFENDANT WAS AN ACTIVE
15 PARTICIPANT IN THE MURDER OF PEDRO JAVIER ROSARIO, BECAUSE
16 IT IS EVIDENCE THAT HE REMOVED THE GUN FROM THE CRIME SCENE
17 SHORTLY BEFORE HIS ENCOUNTER WITH MR. NIEVES, AND THAT HE
18 ACTED AGGRESSIVELY WITH A GUN DURING HIS ENCOUNTER WITH
19 MR. NIEVES. THIS WASN'T A SITUATION WHERE THE GUN WAS
20 TOSSED TO HIM, HE THREW HIS HANDS UP, DIDN'T TAKE IT, RAN
21 AWAY. HE HAD POSSESSION OF THE MURDER WEAPON AND THEN USED
22 IT AGAIN WITHIN A RELATIVELY SHORT PERIOD OF TIME. WHETHER
23 IT WAS 39 MINUTES OR AN HOUR, I DON'T THINK, MAKES MUCH OF A
24 DIFFERENCE. IT IS, THEREFORE, HIGHLY PROBATIVE TO THE
25 DEFENDANT'S MENTAL STATE WITH RESPECT TO HIS PARTICIPATION
26 IN THE CRIME. AND I THINK THE PROBATIVE VALUE OF THAT

1 EVIDENCE CLEARLY OUTWEIGHS THE PREJUDICIAL EFFECT ON THE
2 JURY THAT THE DEFENDANT WAS COMMITTING OR COULD HAVE BEEN
3 COMMITTING ANOTHER CRIME WITHIN SHORT ORDER.

4 MR. BROTT: THEN THE NEXT ISSUE WE NEED TO RESOLVE IS
5 ONE WHICH I HAVE RAISED IN OUR BRIEF TRIAL CONFERENCE, AND
6 THAT IS MY CONCERN ABOUT THE PEOPLE'S --

7 THE COURT: DON'T YOU WANT TO GO TO THE OFFICER'S
8 EXPERT OPINION FIRST? BECAUSE HE'S BEEN SITTING THERE.

9 MR. BROTT: WELL, I KIND OF NEED TO HAVE THE COURT GIVE
10 ME SOME GUIDANCE ON THIS NEXT ISSUE BEFORE I GO INTO WHAT
11 I'M GOING TO ASK HIM.

12 THE COURT: OKAY. BUT HE'S BEEN SITTING HERE.

13 MR. BROTT: HE DOESN'T MIND. HE'S HAVING FUN.

14 THE WITNESS: I'M FINE. THANK YOU.

15 MR. BROTT: THAT IS, THAT THE CASE I CITED TO THE
16 PEOPLE -- TO THE COURT AND COUNSEL, IN RE SAKARIAS,
17 CONCERNING INCONSISTENT THEORIES OF LIABILITY, AND THAT
18 BEING THAT IN THE SUBSEQUENT TRIAL I ANTICIPATE THAT
19 MR. GELLER OR SOMEONE FROM HIS OFFICE WILL ARGUE THAT
20 FRANK LOPEZ IS THE ACTUAL GUNMAN IN THIS CASE. I DON'T
21 THINK THAT -- BASED ON THAT READING OF SAKARIAS, IN WHICH IT
22 WAS A KNIFE, BUT IT WAS THE SAME SITUATION, IT WAS A MURDER
23 WITH A KNIFE WITH TWO DEFENDANTS, WHERE THE PEOPLE ARGUED
24 THAT BOTH OF THEM DID THE STABBING, WHERE THEY KNEW IN FACT
25 ONLY ONE STABBING HAD OCCURRED -- THAT THE PEOPLE SHOULD BE
26 PREVENTED FROM PRESENTING EVIDENCE OR ARGUING TO THIS JURY

1 THAT, OR SUGGESTING IN ANY WAY TO THIS JURY, THAT MY CLIENT
2 SHOT THE VICTIM IN THIS CASE IF THEY ARE GOING TO IN FACT
3 ARGUE TO A SUBSEQUENT JURY THAT FRANK LOPEZ SHOT THE VICTIM.
4 AND I NEED A GUIDANCE ON THAT SO THAT THE STATEMENTS THAT
5 THIS OFFICER WILL BE RELYING UPON TO MAKE HIS JUDGMENT ABOUT
6 THE GANGS MAY INDEED IMPACT WHO SAID WHAT ABOUT WHO SHOT THE
7 VICTIM. THAT'S WHY I NEED THE COURT TO CLARIFY THAT
8 SITUATION.

9 THE COURT: ALL RIGHT. IF I MAY ATTEMPT TO CLARIFY
10 YOUR RECORD A LITTLE BIT.

11 MR. BROTT: OKAY.

12 THE COURT: WHEN WE SPOKE INFORMALLY AND OFF THE RECORD
13 ON MONDAY CONCERNING THE ISSUES THAT THE COURT ASKED COUNSEL
14 TO IDENTIFY, MR. BROTT SAID THAT HE EXPECTED MR. GELLER TO
15 ARGUE THAT THE DEFENDANT REYES WAS THE SHOOTER. MR. GELLER
16 SAID THAT HE DID NOT INTEND TO MAKE THAT ARGUMENT, BUT HE
17 DID INTEND TO ARGUE THAT IT DOESN'T MATTER WHO THE SHOOTER
18 WAS, OR WORDS TO THE EFFECT, OF HE DOESN'T KNOW WHO THE
19 SHOOTER WAS. MR. BROTT WAS CONCERNED THAT SUCH AN ARGUMENT
20 WOULD RAISE AN INFERENCE ON THE PART OF THE JURY THAT THE
21 DEFENDANT REYES WAS THE SHOOTER. IN OUR INFORMAL
22 DISCUSSIONS MR. GELLER, I BELIEVE, CONCEDED THAT THERE WAS A
23 NON-ACCOMPLICE WITNESS, AND THAT WITNESS IS ON OUR WITNESS
24 LIST. I JUST AT THE MOMENT DON'T RECALL WHO HE IS.

25 MR. GELLER: EDDIE REYES, THE DEFENDANT'S BROTHER.

26 THE COURT: AND EDDIE REYES WAS AN EYEWITNESS, OR HE

1 HEARD AN ADMISSION.

2 MR. GELLER: HE WAS AN EYEWITNESS TO AT LEAST THE
3 IMMEDIATE AFTERMATH OF THE SHOOTING, MAYBE THE SHOOTING
4 ALSO. BUT HE WASN'T -- HE WAS IN THE BACK OF AN EXTENDED
5 CAB PICKUP TRUCK AT THE TIME.

6 THE COURT: WHAT DID HE SEE AND/OR HEAR?

7 MR. GELLER: WELL, HE APPARENTLY SAW A SHOOTING AND HE
8 HEARD A GUNSHOT. AND HE DOESN'T -- HE, EDDIE REYES, DOESN'T
9 BELIEVE HIS BROTHER IS THE SHOOTER. THAT'S HIS STATEMENT.
10 I CAN'T VOUCH FOR THE CREDIBILITY OF THAT STATEMENT, BUT
11 THAT'S WHAT HE SAID.

12 THE COURT: IS HE GOING TO IDENTIFY THE SHOOTER, AS YOU
13 INDICATED, THE SHOOTER WAS, I THINK YOU SAID, FRANCISCO?

14 MR. GELLER: I -- I'M NOT TRYING TO BE EVASIVE IN MY
15 ANSWER, BUT THE WAY I NEED TO ANSWER THAT QUESTION,
16 YOUR HONOR, IS SIMPLY THAT THE CHARGE THAT I HAVE BEFORE
17 THIS JURY AND THE ELEMENT OF MY OFFENSE WITH RESPECT TO
18 VICARIOUS USE OF A FIREARM, IT MAKES NO DIFFERENCE, IT IS
19 NOT A DETERMINATION THAT A JURY HAS TO MAKE, WHICH, OF THE
20 FIVE OR SIX INDIVIDUALS THAT WERE OUT THERE AT THE SCENE
21 THAT DAY, PULLED THE TRIGGER. IT MAKES NO DIFFERENCE. AND
22 THAT'S EXACTLY THE WAY I INTEND TO ARGUE THE CASE TO THE
23 JURY. I'M NOT GOING TO SUGGEST ANDY REYES IS THE SHOOTER
24 IMPLIEDLY OR EXPRESSLY.

25 THE COURT: YOU MEANT "ANDRES"?

26 MR. GELLER: ANDRES REYES, EXCUSE ME.

1 THE COURT: WELL, HERE IS WHAT I UNDERSTAND THE
2 SITUATION TO BE: THIS IS A FIVE-DEFENDANT CASE ASSIGNED FOR
3 ALL PURPOSES TO JUDGE BRISENO. THIS IS THE FIRST TRIAL OF A
4 DEFENDANT SEVERED FROM THE REMAINING DEFENDANTS. AND IT WAS
5 MY IMPRESSION, CERTAINLY, MR. GELLER, FROM OUR DISCUSSIONS,
6 THAT WHEN YOU GO TO TRIAL WITH FRANCISCO THAT YOU INTENDED
7 TO ARGUE THAT THE EVIDENCE YOU PRESENT IN THAT TRIAL WOULD
8 SUPPORT A CONCLUSION THAT FRANCISCO WAS THE SHOOTER.

9 MR. GELLER: I CERTAINLY DO.

10 THE COURT: AND IT WAS MY IMPRESSION THAT YOU INTENDED
11 TO SUGGEST IN THAT TRIAL THAT FRANCISCO WAS THE SHOOTER AND
12 THEN HANDED THE GUN OFF, OR TOSSED THE GUN, TO ANDRES REYES,
13 WHO DEPARTED THE AREA WITH THE GUN AND WAS FOUND IN
14 POSSESSION OF IT WITHIN A SHORT TIME LATER.

15 MR. GELLER: THAT IS CERTAINLY CONSISTENT WITH THE
16 TESTIMONY I EXPECT TO GET FROM DETECTIVE SELINSKE FROM THE
17 COSTA MESA POLICE DEPARTMENT. NOT THAT SELINSKE KNOWS WHO
18 SHOT THE GUN, BUT THAT SELINSKE IDENTIFIED ANDY REYES AS
19 PUTTING A GUN IN HIS WAISTBAND IMMEDIATELY AFTER THE
20 SHOOTING AND THEN PEDDLING AWAY.

21 THE COURT: ALL RIGHT. YOU'RE STARTING TO CONFUSE MY
22 RECORD A LITTLE BIT. YOU'RE SAYING SELINSKE IS GOING TO
23 TESTIFY HERE, ACCORDING TO WHAT YOU'VE JUST REPRESENTED?

24 MR. GELLER: YES. BUT SELINSKE CAN'T I.D. THE SHOOTER.
25 HE DOESN'T KNOW WHO THE SHOOTER WAS. SELINSKE MADE ONE
26 IDENTIFICATION IN THIS CASE, AND IT'S ANDY REYES.

1 THE COURT: BUT YOU HAVE EDDIE REYES WAITING IN THE
2 WINGS IN FRANCISCO'S TRIAL TO TESTIFY THAT HE THINKS IT WAS
3 FRANCISCO.

4 MR. GELLER: CERTAINLY.

5 THE COURT: SO ALL THE EVIDENCE THAT YOU HAVE REVIEWED
6 WOULD SUGGEST TO A REASONABLE TRIER OF FACT IN DETERMINING
7 CULPABILITY THAT FRANCISCO WAS THE SHOOTER, AND THE OTHERS,
8 WHO WERE THERE WERE AIDERS AND ABETTERS; IS THAT FAIR TO
9 SAY?

10 MR. GELLER: EITHER AIDERS AND ABETTERS OR
11 CO-CONSPIRATORS ON A LESSER TARGET OFFENSE, YES.

12 THE COURT: SO MR. BROTT, IT SEEMS TO ME, HAS A
13 LEGITIMATE CONCERN THAT YOU COULD CONCEIVABLY ARGUE TO THIS
14 JURY WE DON'T KNOW WHO THE SHOOTER IS. AND, THEREFORE, THE
15 JURY COULD INFER IT COULD HAVE BEEN THE DEFENDANT, BECAUSE
16 YOU HAVE STRONG EVIDENCE AGAINST THIS DEFENDANT THAT HE LEFT
17 THE SCENE WITH THE GUN AND HE WAS STILL IN POSSESSION OF THE
18 GUN WITHIN AN HOUR LATER; FAIR TO SAY?

19 MR. GELLER: IT IS FAIR TO SAY THAT, YOUR HONOR. IT IS
20 FAIR TO SAY THAT.

21 THE COURT: BUT THAT WOULD BE INCONSISTENT WITH WHAT
22 YOU INTEND TO ARGUE AT FRANCISCO'S TRIAL, WHETHER FRANCISCO
23 IS TRIED WITH THE REMAINING CO-DEFENDANTS OR NOT THAT WOULD,
24 BECAUSE YOU INTEND TO ARGUE THAT THE EVIDENCE IS STRONG THAT
25 FRANCISCO WAS THE SHOOTER AND DUMPED THE GUN ON REYES.

26 MR. GELLER: RESPECTFULLY, YOUR HONOR, I DON'T THINK IT

1 IS INCONSISTENT FOR ME TO GET UP TO THIS JURY AND TELL THEM
2 THAT IT IS NOT SOMETHING THEY NEED TO DECIDE. IT IS NOT AN
3 ELEMENT THEY NEED TO DECIDE, WHO OF THESE FIVE INDIVIDUALS
4 WAS THE SHOOTER. THAT IS NOT INCONSISTENT WITH, IN A
5 SUBSEQUENT TRIAL AGAINST FRANK LOPEZ, SAYING FRANK LOPEZ IS
6 THE SHOOTER.

7 I'M TRYING TO MAKE IT AS SIMPLE AS POSSIBLE FOR
8 THE JURY. IF THEY FIND THAT THERE WAS A MURDER, THAT
9 ANDY REYES WAS A PRINCIPAL, AND THE CRIME WAS DONE -- AND
10 THE SHOOTING WAS DONE FOR THE BENEFIT OF A CRIMINAL STREET
11 GANG, THOSE ARE MY ELEMENTS FOR 12022.53(D) AND (E). AND
12 AND THEY DON'T HAVE TO DECIDE WHO THE SHOOTER WAS. THEY
13 NEED TO SHOW THAT REYES WAS A PRINCIPAL, THAT THE MURDER
14 OCCURRED, AND IT WAS DONE FOR THE BENEFIT OF A GANG.

15 THE COURT: ON THIS ISSUE MR. BROTT CITED TO THE COURT
16 IN RE: SAKARIAS, S-A-K-A-R-I-A-S, 35 CAL 4, 140. THE CASE
17 FAIRLY RECENTLY DECIDED BY THE CALIFORNIA SUPREME COURT.
18 AND I REMEMBER READING THE FACTS OF THIS CASE IN A NUMBER OF
19 NEWSPAPERS BECAUSE THIS WAS, IF I REMEMBER, A CASE THAT
20 CAUGHT THE ATTENTION OF MANY MEMBERS OF THE PRINT MEDIA.

21 MR. BROTT'S CONCERN, MR. GELLER, IS LEGITIMATE
22 BASED ON YOUR REPRESENTATIONS HERE. WHAT TRIALS ARE ABOUT
23 IS TRUTH. WHAT TRIALS ARE ABOUT IS AN HONEST PRESENTATION
24 OF EVIDENCE AND FACTS TO A JURY. WHEN WE DEAL WITH A JURY
25 WITH A WINK AND A NOD AND SUGGEST FACTS THAT WE KNOW NOT TO
26 EXIST, IT SEEMS TO ME THAT WE UNDERMINE THE INTEGRITY OF THE

1 PROCESS.

2 CERTAINLY WHEN WE HAD DISCUSSED THIS MATTER IN
3 CHAMBERS I HAD A STRONGER IMPRESSION THAN I HAVE NOW THAT
4 YOU WERE GOING TO LEAVE THE JURY WITH THE THOUGHT THAT
5 MR. REYES COULD HAVE BEEN THE SHOOTER WHEN INDEED YOU INTEND
6 TO ARGUE IN A SUBSEQUENT TRIAL THAT MR. REYES WAS DEFINITELY
7 NOT THE SHOOTER BASED ON THE EVIDENCE THAT YOU POSSESS. AND
8 THAT GIVES ME GREAT CONCERN. I THINK THAT IF YOU'RE GOING
9 TO PRESENT WHAT THE FACTS ARE AS YOU KNOW AND UNDERSTAND
10 THEM, THEN, YOU'RE GOING TO PRESENT FACTS THAT THE DEFENDANT
11 WAS A PRINCIPAL BY VIRTUE OF HIS GANG MEMBERSHIP; THAT HE
12 WAS AN AIDER AND ABETTER; THE GUN WAS HANDED OFF TO HIM; HE
13 RECEIVED THE GUN; HE FLED WITH THE GUN; AND HE USED THE GUN
14 WITHIN A SHORT PERIOD OF TIME LATER.

15 THE FACTS AS YOU PLAN TO ARGUE THEM IN THE
16 FRANCISCO LOPEZ TRIAL ARE THAT LOPEZ WAS, IN ALL LIKELIHOOD,
17 THE SHOOTER IN THIS PARTICULAR CASE. NOW YOUR CONCLUSION
18 THAT IT'S SAFE TO ARGUE TO THE JURY THAT THEY SHOULDN'T BE
19 CONCERNED WITH WHO THE SHOOTER IS IS A LITTLE DIFFERENT FROM
20 YOUR REPRESENTATION TO THE COURT WHEN WE SPOKE IN CHAMBERS
21 THAT IT DOESN'T MATTER WHO THE SHOOTER IS. NONETHELESS,
22 BOTH STATEMENTS LEAVE ROOM FOR THE IMPLICATION AND,
23 THEREFORE, THE INFERENCE THAT MR. REYES WAS THE SHOOTER.
24 AND I THINK THAT IF YOU GO THAT WAY, YOU RISK THE WHOLE
25 CASE. AND I THINK THAT IF YOU GO THAT WAY, YOU TAKE AN
26 UNNECESSARY RISK.

1 YOU HAVE STRONG EVIDENCE THAT MR. REYES WAS AN
2 ACTIVE GANG MEMBER PARTICIPATING IN A MURDER. YOU MAY EVEN,
3 I DON'T KNOW, I HAVEN'T HEARD ANYTHING, STRONG EVIDENCE OF
4 PREMEDITATION AND DELIBERATION THAT WOULD SUPPORT A MURDER
5 ONE VERDICT. YOU HAVE, THOUGH I HAVEN'T HEARD ANYTHING, IF
6 NOT STRONG EVIDENCE FOR PREMEDITATION DELIBERATION, YOU
7 MIGHT HAVE STRONG EVIDENCE FOR A MURDER SECOND. BUT IF YOU
8 STRETCH THE TRUTH WITH THE JURY, I THINK, YOU RISK THE
9 RESULT.

10 MOREOVER, I THINK THAT BASED ON THE AUTHORITY IN
11 SAKARIAS, IF YOU MAKE AN ARGUMENT THAT IS DELIBERATELY
12 CONTRARY TO THE EVIDENCE AS YOU KNOW IT, YOU ARE ENGAGING,
13 ACCORDING TO THIS AUTHORITY, IN PROSECUTORIAL MISCONDUCT,
14 AND I DON'T KNOW WHERE ELSE TO GO FROM THERE.

15 YOU ARE MAKING AN OBJECTION IN ADVANCE OF AN
16 ARGUMENT THAT HAS NOT BEEN MADE, MR. BROTT. AND EVEN THOUGH
17 I FELT ON MONDAY WHEN WE DISCUSSED THIS CASE THAT IT WAS
18 CLEAR TO ME THAT MR. GELLER INTENDED TO MAKE THE ARGUMENT AS
19 YOU LAID IT OUT, LETTING THE JURY THINK THAT REYES WAS THE
20 SHOOTER, IT'S NOT QUITE SO CLEAR TO ME NOW. IF IT HAPPENS
21 IN LIGHT OF WHAT I'M SAYING, I WON'T KNOW HOW TO PROCEED IN
22 TERMS OF SANCTION. I WON'T KNOW IF I COULD CURE THE PROBLEM
23 WITH AN ADMONISHMENT. I WON'T KNOW WHETHER YOUR APPELLATE
24 ARGUMENT, SHOULD YOU GO THAT FAR, WOULD BE ON PROSECUTORIAL
25 MISCONDUCT. I DON'T KNOW WHAT TO DO WITH WHAT YOU'RE
26 PRESENTING TO ME NOW.

1 MR. BROTT: I'M ASKING THE COURT TO DIRECT MR. GELLER
2 NOT TO IN ANY WAY LEAVE THE IMPRESSION OR SUGGEST TO THIS
3 JURY, EITHER THROUGH THE NATURE OF ARGUMENT OR THE
4 PRESENTATION OF EVIDENCE, THAT MY CLIENT IS THE SHOOTER;
5 THAT HE SHOULD BE PREVENTED FROM DOING SO. AND IF THAT
6 MEANS HE HAS TO AFFIRMATIVELY PROVE, BRING IN EVIDENCE THAT
7 HE DOESN'T WANT TO BRING IN IN HIS CASE-IN-CHIEF THAT
8 SUPPORTS THAT POSITION, THEN I THINK HE SHOULD BE DIRECTED
9 TO DO THAT.

10 MR. GELLER: MAY I BE HEARD?

11 MR. BROTT: OR I SHOULD BE GIVEN LEEWAY TO BRING IN
12 EVIDENCE OF THAT THROUGH THE PEOPLE'S CASE-IN-CHIEF THROUGH
13 CROSS-EXAMINATION OR WHATEVER MEANS I CAN.

14 THE COURT: I'M SORRY. I'M NOT SURE WHAT YOU'RE
15 SUGGESTING.

16 MR. BROTT: I'M SUGGESTING THAT ANYTHING THAT THE COURT
17 SHOULD -- I'LL BACK UP.

18 I AGREE WITH THE COURT. YOU CAN'T MAKE A RULING
19 ON AN ARGUMENT THAT HASN'T BEEN MADE. I'M ALERTING THE
20 COURT TO A CONCERN THAT I HAVE, AND THAT WE SHOULD BE VERY,
21 VERY CAREFUL AND TO LIMIT THE SCOPE OF THE PROSECUTOR'S
22 ABILITY TO PRESENT EVIDENCE OR LEAVE AN IMPRESSION THAT MY
23 CLIENT PULLED THE TRIGGER. THE PEOPLE RIGHTLY ASSUME THAT
24 MY ARGUMENT PROBABLY IS GOING TO BE THAT HE IS NOT AN AIDER
25 AND ABETTER, HE'S RIDING HIS BIKE AROUND AND SOMEBODY SHOOTS
26 SOMEBODY, AND THAT HE IS NOT THE TRIGGER PULLER. AND I

1 DON'T THINK THAT THE JURY SHOULD BE LEFT WITH ANY EVEN
2 REMOTE SUGGESTION THAT MY CLIENT IS TRIGGER PULLER IF THE
3 PEOPLE'S THEORY IN FRANK LOPEZ'S CASE IS THAT HE IS NOT.

4 THE COURT: I AGREE.

5 WHAT DID YOU WANT TO SAY?

6 MR. GELLER: I THINK WE TRULY ARE PUTTING THE CART
7 BEFORE THE HORSE HERE, BECAUSE I HAVE NO IDEA WHAT THE
8 EVIDENCE IS GOING TO BE. WE HAVE TO WAIT AND HEAR WHAT THE
9 EVIDENCE IS GOING TO BE. I'M NOT GOING TO GO THERE IN MY
10 OPENING STATEMENT. I'M GOING TO STATE IN MY OPENING
11 STATEMENT EXACTLY WHAT I SAID IN COURT HERE; THAT IT MAKES
12 NO DIFFERENCE WHICH ONE OF THESE FIVE GANG MEMBERS WERE THE
13 ACTUAL SHOOTER IN THIS CASE. YOU'RE GOING TO HEAR THAT ONE
14 F-TROOP GANG MEMBER SHOT AN INDIVIDUAL AS HE WAS DRIVING BY
15 IN THE COURSE OF LIKELY A GANG HIT-UP.

16 THE COURT: WELL, SEE, I THINK THAT'S MISLEADING IF YOU
17 KNOW FOR A CERTAINTY THAT MR. REYES WAS NOT.

18 MR. GELLER: I DON'T KNOW THAT FOR A CERTAINTY.

19 THE COURT: BUT YOU'RE GOING TO PRESENT THAT IN THE
20 FRANCISCO LOPEZ TRIAL. THAT'S WHAT YOU SAID. IN
21 FRANCISCO LOPEZ YOU'RE GOING TO SAY THAT FRANCISCO -- ALL
22 FINGERS POINT TO FRANCISCO LOPEZ AS THE SHOOTER, THAT
23 EDDIE REYES IS GOING TO TESTIFY THAT BASED ON WHAT HE SAW HE
24 BELIEVES HE WAS THE SHOOTER. YOUR OFFICER FROM THE
25 COSTA MESA POLICE DEPARTMENT IS GOING TO SAY HE CAN ONLY SAY
26 THAT HE SAW REYES TAKE THE GUN AFTER A SHOT WAS FIRED.

1 MR. GELLER: I NEED TO INTERRUPT YOU THERE, BECAUSE HE
2 DIDN'T SEE REYES TAKE THE GUN. HE SEES REYES SHOVE THE GUN
3 IN HIS WAISTBAND.

4 TO THE CONTRARY, OTHER THAN THE POLICE OFFICER
5 IDENTIFYING -- THE COSTA MESA POLICE OFFICER IDENTIFYING THE
6 GUY WITH THE GUN AS BEING 6'2" TALL, ALL INDICATION ACTUALLY
7 SAYS THAT ANDY REYES IS THE SHOOTER. THE ONLY THING THAT
8 WE'RE --

9 THE COURT: BUT YOU'RE NOT GOING TO SAY THAT IN THE
10 LOPEZ TRIAL. IF YOU WERE GOING ON THAT THEORY IN ALL OF THE
11 TRIALS THAT YOU INTEND TO DO, WE WOULDN'T BE HAVING THIS
12 DILEMMA. AND MY CONCERN IS THAT I DON'T SEE WHY YOU HAVE TO
13 IMPLY THAT REYES IS THE SHOOTER IF YOU CAN SAY FOR A
14 CERTAINTY THAT YOU'RE GOING TO GO INTO LOPEZ'S CASE IMPLYING
15 THAT LOPEZ IS THE SHOOTER. AND THERE COULD ONLY BE ONE
16 SHOOTER. YOU'RE ON ALL FOURS WITH THIS CASE OF IN RE
17 SAKARIAS. AND IF YOU'RE ON ALL FOURS WITH IN RE SAKARIAS,
18 THEN YOU RISK, NOT ONLY REVERSAL ON APPEAL, BUT YOU COULD
19 RISK MISTRIAL HERE, IF YOU SHOULD BE LUCKY ENOUGH TO GET
20 ONE, OR A WRIT OF HABEAS CORPUS. IT SOUNDS LIKE YOU'RE ON
21 ALL FOURS WITH THIS CASE.

22 HAVE YOU READ IT?

23 MR. GELLER: I HAVEN'T READ IT. I WILL READ IT.

24 THE COURT: YOU DON'T READ CASES, AND THAT CONCERNS ME,
25 MR. GELLER. WE'VE BEEN THROUGH THIS TIME AND TIME AGAIN.
26 I'VE HAD THIS CITATION SINCE MONDAY. THIS CASE IS

1 ABSOLUTELY CLEAR. ABSOLUTELY CLEAR.

2 MR. GELLER: BUT THE DIFFERENCE IS --

3 THE COURT: IT'S VERY IMPORTANT THAT YOU UNDERSTAND
4 WHAT'S IN HERE, BECAUSE YOU'RE TENDING TO MAKE AN ARGUMENT
5 THAT'S DIRECTLY IN CONTRAVENTION WITH WHAT THE CALIFORNIA
6 SUPREME COURT HAS DIRECTED IN THAT MATTER. AND I DON'T -- I
7 CANNOT -- I CAN'T MAKE YOU READ THE CASES, BUT I CAN
8 PRECLUDE YOU FROM MISLEADING THE JURY. AND BASED ON --
9 BASED ON YOUR REPRESENTATION ABOUT WHAT YOU INTEND TO DO IN
10 THE LOPEZ TRIAL, IT SEEMS TO ME THAT ANY HINT OR SUGGESTION
11 THAT REYES IS THE SHOOTER IS INCONSISTENT WITH WHAT YOU PLAN
12 TO DO, AND UNDERMINES THE INTEGRITY OF THIS TRIAL AS CLEARLY
13 AS THE SAKARIAS MATTER WAS UNDERMINED. YOU DON'T EVEN KNOW
14 THE FACTS OF THAT CASE THOUGH, BECAUSE YOU HAVEN'T READ THE
15 OPINION.

16 SO MR. BROTT'S POINT IS WELL TAKEN, AND I'M IN A
17 POSITION OF HAVING TO MAKE A DIRECT ORDER THAT YOU NOT MAKE
18 ANY STATEMENT IN OPENING STATEMENT, IN CLOSING ARGUMENT, OR
19 IMPLICATION BY ANY OF YOUR QUESTIONS THAT REYES WAS THE
20 SHOOTER BECAUSE THAT'S NOT THE THEORY THAT YOUR ADOPTING
21 WITH RESPECT TO THE OTHER DEFENDANTS. AND I THINK THAT YOU
22 WOULD UNDERSTAND THE POSITION I'M IN IF YOU WOULD READ THE
23 CASE THAT WE'VE BEEN TALKING ABOUT SINCE MONDAY.

24 THAT'S AS FAR AS I CAN GO AT THIS POINT,
25 MR. BROTT, WITH THAT. DID YOU WANT TO PRESS ON?

26 MR. BROTT: THAT'S FINE.

1 MR. GELLER: MAY I CLARIFY SOMETHING?

2 THE COURT: I'VE HAD ENOUGH CLARIFICATION. I REALLY
3 HAVE. UNTIL YOU'RE ON THE SAME PAGE AS THE REST OF US, I'VE
4 HAD ENOUGH CLARIFICATION AND WE'RE GOING TO MOVE ON.

5 LET'S GO ON TO THE SUBJECT MATTER THAT YOU WANT
6 TO ADDRESS WITH RESPECT TO THE EXPERT OPINION.

7 MR. BROTT: THANK YOU.

8 MAY I BEGIN DIRECT TESTIMONY?

9 THE COURT: CERTAINLY.

10 MR. BROTT: ALL RIGHT.

11 DIRECT EXAMINATION

12 BY MR. BROTT:

13 Q OFFICER -- DETECTIVE?

14 A I'M COOL EITHER WAY.

15 Q DETECTIVE, TELL ME UPON WHAT BASIS YOU ARE
16 PREPARED TO TESTIFY THAT MR. -- THAT MR. REYES IS, WITHIN
17 THE MEANING OF SECTION 186.22 (A), THAT HE IS A MEMBER OR
18 PARTICIPANT OR ASSOCIATE OF F-TROOP?

19 A BASED ON?

20 Q HOW YOU WOULD SO TESTIFY?

21 A BASED ON HIS BACKGROUND, PRIOR CONTACTS, HIS
22 SELF-ADMISSION, OTHER F-TROOP GANG MEMBERS OR ASSOCIATES
23 CALLING HIM AN F-TROOP GANG MEMBER, FAMILY MEMBERS OF HIS
24 CALLING HIM AN F-TROOP GANG MEMBER, AND WHO HE WAS WITH AT
25 THE TIME OF THIS INCIDENT, AND THE FACTS BEHIND THIS CASE,
26 COUPLED WITH HIS CONDUCT FOLLOWING THE MURDER.

1 Q WHAT CO-DEFENDANTS IN THIS CASE TOLD YOU THAT?

2 A CO-DEFENDANT-WISE, LUIS PEREZ.

3 Q WHAT DID HE SAY?

4 A ANDY'S A TROOPER.

5 Q AND HOW DOES HE KNOW?

6 A HE HANGS OUT WITH HIM. HE'S A TROOPER HIMSELF.

7 LUIS PEREZ IS ALSO A TROOPER.

8 Q PEREZ IS A SELF-ADMITTED TROOPER?

9 A YES.

10 THE COURT: IS HE A CO-DEFENDANT IN THIS CASE?

11 THE WITNESS: YES.

12 THE COURT: THANK YOU. SORRY TO INTERRUPT.

13 MR. BROTT: IT'S ALL RIGHT.

14 Q ANY OTHER OF THE CO-DEFENDANTS IN THIS CASE TELL
15 YOU THAT ANDY IS A TROOPER?

16 A I THINK JUST LUIS.

17 Q IS IT YOUR INTENTION TO RELY UPON THAT STATEMENT
18 IN EXPRESSING YOUR OPINION THAT MY CLIENT IS A TROOPER IN
19 FRONT OF THE JURY?

20 A YES.

21 Q AND WHAT OTHER PEOPLE HAVE TOLD YOU THAT
22 ANDY REYES IS A GANG MEMBER?

23 A TOLD ME SPECIFICALLY OR TOLD OFFICERS DURING THIS
24 INVESTIGATION?

25 Q ANYBODY YOU ARE GOING TO RELY ON THEIR TESTIMONY.

26 A MICHAEL CONTRERAS, EDDIE REYES, HIS BROTHER,

1 AND -- AND THEN HIS SELF-ADMISSION.

2 Q TELL ME ABOUT THE SELF-ADMISSIONS.

3 A DURING THE INITIAL, WHICH WE WERE CALLING
4 INTERVIEW NO. 1 WITH ASHBY AND HERTER, THEY ASKED HIM ABOUT
5 HIS GANG MEMBERSHIP. TOLD HIM THAT HE HAD BEEN WITH F-TROOP
6 SINCE HE GOT IN TROUBLE FOR A TAGGING INCIDENT, WHICH WAS
7 ROUGHLY ABOUT SIX MONTHS OR SO PRIOR TO THE MURDER.

8 Q AND YOU'RE GOING TO PROVIDE ME AND COUNSEL WITH
9 THE REPORT ON THAT BEFORE YOU TESTIFY?

10 A NO, YOU HAVE THAT. YOU HAVE THE SELF-ADMITTED
11 TOO.

12 Q I HAVE THE SELF-ADMITTED. I DON'T HAVE THE
13 TAGGING.

14 THE COURT: FIRST OF ALL --

15 THE WITNESS: SORRY.

16 THE COURT: SLOW DOWN A MINUTE. I'M WORKING HER LONGER
17 THAN AN HOUR SESSION SO WE CAN GET THIS DONE, SO MR. GELLER
18 CAN GET ON WITH HIS BUSINESS TODAY. SO TRY NOT TO MAKE HER
19 RESIGN.

20 MR. BROTT: I'M SORRY.

21 THE COURT: GO AHEAD.

22 BY MR. BROTT:

23 Q YOU'RE GOING TO PROVIDE US WITH THE TAGGING
24 INCIDENT PRIOR TO YOUR TESTIMONY?

25 A YES, SIR.

26 Q ALL RIGHT. ANY OTHER FAMILY MEMBERS, OTHER THAN

1 EDDIE, TELL YOU THAT HE'S A GANG MEMBER?

2 A AGAIN, AS FAR AS FAMILY, I DON'T THINK HE'S -- I
3 DON'T KNOW IF HE IS COUSINS WITH MICHAEL CONTRERAS OR NOT.
4 BUT AS FAR AS IMMEDIATE FAMILY, JUST EDDIE.

5 Q OKAY. AND I THINK THEN YOU ALSO SAID CONDUCT IN
6 THIS CASE?

7 A CORRECT.

8 Q SUPPORTS AN ACTIVE PARTICIPATION IN A GANG?

9 A CONDUCT, WHO HE WAS WITH, THE FACTS BEHIND THIS
10 CASE.

11 Q ANY F.I.'S OR FIELD INTERROGATION CARDS THAT YOU
12 WERE GOING TO RELY ON?

13 A THAT WAS PART OF THE BACKGROUND I TOLD YOU ABOUT,
14 HIS PRIOR CONTACTS WITH POLICE. I BELIEVE THERE'S TWO
15 F.I.'S, TWO OR THREE POLICE REPORTS, AND 186 NOTICE OF
16 DETERMINATION.

17 Q I HAVE THOSE.

18 A YOU HAVE EVERYTHING I JUST TALKED ABOUT, LESS THE
19 TAGGING INCIDENT THAT HE WAS PUT ON PROBATION FOR.

20 Q OKAY. DO YOU INTEND TO EXPRESS AN OPINION
21 CONCERNING WHO FIRED THE GUN IN THIS CASE?

22 A NO. UNLESS I'M ASKED.

23 Q THAT ISN'T PART OF YOUR OPINION THAT THIS IS A
24 GANG ACTIVITY?

25 A WELL, I WANT TO BE ABLE TO RELY ON THE FACT THAT
26 AN F-TROOP GANG MEMBER FIRED THAT HANDGUN. AS FAR AS

1 SPECIFICALLY WHETHER IT BE FRANK LOPEZ OR ANDY REYES,
2 THEY'RE BOTH F-TROOP GANG MEMBERS, ACTIVE PARTICIPANTS IN
3 THAT GANG, SO I DON'T NEED TO USE GANGS. I WANT TO BE ABLE
4 TO RELY ON THAT AN F-TROOP GANG MEMBER FIRED A HANDGUN.

5 Q IF YOU WERE GOING TO EXPRESS AN OPINION THAT AN
6 F-TROOP GANG MEMBER FIRED A WEAPON IN THIS CASE AND KILLED
7 THE VICTIM, WHAT INFORMATION DO YOU HAVE AS TO WHO THAT
8 PERSON WAS THAT FIRED THE WEAPON?

9 A THE INFORMATION THAT I'M AWARE OF IS TWO
10 CO-DEFENDANTS, I BELIEVE LUIS PEREZ AND -- WHEN I SAY
11 "CO-DEFENDANTS," LUIS PEREZ AND ANDY REYES WERE THE TWO
12 PEOPLE INVOLVED IN THIS CASE WITHIN ALL THE INTERVIEWS THAT
13 I'M AWARE OF THAT SAID FRANK LOPEZ WAS THE SHOOTER. THERE'S
14 A POLICE OFFICER THAT HEARD A SHOT, LOOKED UP, AND SEES
15 ANDY REYES SHOVING A GUN IN HIS WAIST.

16 Q THERE'S A POLICE OFFICER?

17 A THOSE ARE THE FACTS.

18 Q THERE'S A POLICE OFFICER WHO LOOKS UP AND SEES A
19 6'2" 175-POUND INDIVIDUAL THAT LOOKS LIKE ANDY REYES, WHO HE
20 IDENTIFIED AS ANDY REYES, AS PUTTING A GUN IN HIS POCKET?

21 A CORRECT, IN HIS WAIST.

22 Q IN HIS WAIST?

23 A YES, SIR.

24 Q AND IS IT NOT CLEAR THAT MR. REYES IS NOT 6'2"
25 NOR HAS HE EVER BEEN, AND HE IS NOT 165 TO 175 POUNDS?

26 A I WOULD AGREE.

1 Q AND WOULD YOU AGREE THEN THAT, THEREFORE,
2 DETECTIVE SELINSKE'S IDENTIFICATION IS WRONG IN SOME REGARD?

3 MR. GELLER: OBJECTION; THAT CALLS FOR SPECULATION.

4 THE COURT: WELL, NOT REALLY. OVERRULED.

5 THE WITNESS: IF DETECTIVE SELINSKE --

6 MR. GELLER: MAY I BE HEARD ON THAT, YOUR HONOR?

7 THE COURT: NO. YOU CAN ANSWER THE QUESTION.

8 THE WITNESS: IF DETECTIVE SELINSKE IS SAYING
9 ANDY REYES IS 6'2", MY OPINION IS HE'S NOT 6'2". BUT
10 COUPLED WITH THE FACT THAT DETECTIVE SELINSKE WAS VIEWING
11 THE PERSON THAT HE IDENTIFIED AS ANDY REYES. THAT PERSON
12 WAS STRADDLING A BICYCLE. THEY WEREN'T STANDING UP RIGHT
13 DIRECTLY IN FRONT OF THEM, THEY'RE STRADDLING A BICYCLE SO.
14 BY MR. BROTT:

15 Q WELL, IT'S YOUR TESTIMONY OR YOU WANT TO TESTIFY
16 THAT AN F-TROOP GANG MEMBER FIRED THE WEAPON IN THIS CASE?

17 A CORRECT.

18 Q WHAT EVIDENCE DO YOU HAVE THAT THIS DEFENDANT
19 ANDY REYES FIRED THE WEAPON IN THIS CASE?

20 A NONE.

21 Q THEREFORE, UPON WHAT BASIS COULD YOU TESTIFY THAT
22 ANYBODY OTHER THAN MR. REYES COULD HAVE FIRED THIS WEAPON?
23 I MEAN -- STRIKE THAT.

24 A I HAVE NO IDEA WHAT YOU JUST ASKED ME.

25 Q I DON'T EITHER. I'M GETTING THERE.

26 BUT YOU HAVE EVIDENCE FROM VARIOUS SOURCES THAT

1 FRANK LOPEZ FIRED THE GUN?

2 A FROM TWO PEOPLE THAT -- TWO DEFENDANTS WITHIN THE
3 CASE. AND I BELIEVE EDDIE REYES, ANDY'S BROTHER, SAID HE
4 BELIEVED IT WAS FRANK, AND THAT HE DID NOT BELIEVE THAT HIS
5 BROTHER WAS THE ONE THAT SHOT.

6 Q AND YOU HAVE NO EVIDENCE WHATSOEVER THAT
7 MR. REYES, ANDY, FIRED THE FIREARM, CORRECT?

8 A WELL, I DON'T KNOW ABOUT NO EVIDENCE WHATSOEVER.
9 DETECTIVE SELINSKE HEARS A SHOT, IMMEDIATELY LOOKS UP AND
10 SEES ANDY REYES SHOVING A GUN IN HIS WAIST, IN THE DIRECT
11 LINE OF WHERE THE SHOOTING HAPPENED.

12 THE COURT: I GOT TO STOP YOU HERE, MR. BROTT, BECAUSE
13 I'M NOT SURE WHAT YOU'RE ATTEMPTING TO ELICIT FROM THIS
14 EXPERT. I THOUGHT HE'S GOING TO BE OFFERED BY THE PEOPLE TO
15 ESTABLISH THAT THE DEFENDANT IS A GANG MEMBER. BUT IF
16 YOU'RE ASKING HIM TO GIVE AN OPINION AS TO WHAT HAPPENED AT
17 THE CRIME, I MEAN, EVEN THE PEOPLE ARE PRECLUDED FROM
18 ELICITING THAT.

19 MR. BROTT: I KNOW. BUT IF HE'S GOING TO EXPRESS AN
20 OPINION, AS I UNDERSTOOD IT, THAT AN F-TROOP GANG MEMBER
21 SHOT SOMEBODY IN THIS CASE --

22 THE COURT: WELL, WE DON'T KNOW THAT THAT'S THE OPINION
23 THAT MR. GELLER IS GOING TO ELICIT, BECAUSE YOU DECIDED TO
24 TAKE THE WITNESS ON DIRECT. I WOULD ASSUME, BASED ON WHAT I
25 UNDERSTAND LIMITATIONS IN THE CASE LAW TO BE, THAT HE'S NOT
26 GOING TO GO BEYOND THOSE LIMITATIONS, AND HE'S NOT GOING TO

1 BE ASKING HIS EXPERT ABOUT HIS OPINION ABOUT THIS CRIME AND
2 WHAT HAPPENED.

3 MR. BROTT: GOOD. THEN I'LL MOVE.

4 THE COURT: THAT'S THE ULTIMATE FACT FOR THE JURY TO
5 DECIDE.

6 MR. BROTT: THEN LET'S MOVE ON.

7 THE COURT: WOULD THAT BE A FAIR ASSUMPTION,
8 MR. GELLER?

9 MR. GELLER: I CAN'T ASK ULTIMATE OPINIONS. THE
10 OPINIONS HE'S ASKING HIM RIGHT NOW, I CAN'T GET ANYWHERE
11 NEAR THAT. THAT'S WHY I OBJECTED.

12 MR. BROTT: GOOD. THEN LET'S STAY AWAY.

13 THE COURT: AS LONG AS YOU KNOW, AND I KNOW, AND NOW
14 MR. BROTT KNOWS. WE'RE ON A TIME CRUNCH.

15 MR. BROTT: I KNOW. WE'RE ALMOST DONE.

16 Q SECOND PRONG OF THE INQUIRY: UPON WHAT BASIS DO
17 YOU HAVE THAT WOULD CONNECT -- WOULD HAVE MR. REYES FALL
18 WITHIN THE PURVIEW OF 186.22(B)?

19 A HIS CONDUCT PRIOR TO FIVE TO SIX ACTIVE GANG
20 MEMBERS MEETING, SHOWING A GUN TO EACH OTHER, PASSING A GUN
21 AROUND, AGREEING TO GO THROUGH RIVAL GANG TERRITORY ON
22 BICYCLES. A HIT-UP OCCURS. THERE'S STATEMENTS FROM A
23 WITNESS, I BELIEVE IT'S STEVEN GARCIA, THAT THEY'RE YELLING
24 AT OTHER CARS. SOMEBODY IN THE GROUP IS YELLING, THAT WAS
25 ON THE BIKE, "STOP THAT CAR." THAT TURNS OUT TO BE OUR
26 SHOOTING VICTIM. THERE'S HIT-UP IN THE CAR, FOLLOWED BY A

1 HOMICIDE. THEY ALL FLEE. AND THEN, AGAIN, MR. REYES'
2 CONDUCT FOLLOWING THE MURDER; TAKES THE MURDER WEAPON AND
3 COMMITS ANOTHER VIOLENT CRIME WITH IT.

4 MR. BROTT: OKAY. THAT'S WHAT I WANTED TO KNOW. NO
5 FURTHER QUESTIONS.

6 THE COURT: DO YOU HAVE ANYTHING YOU WANT TO ASK?

7 MR. GELLER: NO.

8 THE COURT: IF YOU CAN EVEN FIGURE OUT WHAT DIRECTION
9 TO GO IN HERE.

10 MR. GELLER: NO.

11 THE COURT: WHAT IS IT YOU'RE TRYING TO ESTABLISH?

12 MR. BROTT: YOUR HONOR, AGAIN, I WAS IN A TREMENDOUS
13 DISADVANTAGE. MY PREDECESSOR AT THE PRELIMINARY DIDN'T ASK
14 ANY QUESTIONS CONCERNING GANG -- HE DIDN'T CROSS-EXAMINE THE
15 GANG EXPERT. UNTIL JUST NOW, I DIDN'T KNOW SPECIFICALLY
16 WHAT THE PEOPLE WERE GOING TO -- WHAT THE PEOPLE'S EXPERT
17 WAS GOING TO SAY WITH RESPECT TO MY CLIENT'S EXPOSURE UNDER
18 186.22 (A) AND (B). NOW I KNOW.

19 THE COURT: OKAY.

20 MR. BROTT: THAT'S WHAT I WANTED TO KNOW.

21 THE COURT: SO WE DON'T HAVE AN ISSUE HERE?

22 MR. BROTT: I DON'T THINK SO.

23 THE COURT: OKAY. THEN WE CAN END THIS RECORD?

24 MR. BROTT: YES.

25 THE COURT: OKAY WITH YOU?

26 MR. GELLER: THAT'S FINE.

1 THE COURT: THANK YOU, DETECTIVE. YOU'RE EXCUSED.

2 HAVE WE COVERED EVERYTHING WE NEED TO COVER?

3 MR. BROTT: I THINK SO.

4 MR. GELLER: THERE'S ONLY ONE THING I NEED TO COVER
5 WITH THE COURT, AND I KNOW THE COURT DOESN'T WANT TO REVISIT
6 IT. BUT I'M MAKING AN OPENING STATEMENT IN LESS THAN 24
7 HOURS AND I NEED TO KNOW WHAT I CAN AND CAN NOT SAY TO
8 COMPLY WITH THE COURT'S ORDER.

9 THE COURT: YOU CANNOT IMPLY THAT THE DEFENDANT IS OR
10 MAY HAVE BEEN THE SHOOTER, NOT AS LONG AS YOU TAKE THE
11 POSITION THAT THE SHOOTER WAS FRANCISCO OR FRANK LOPEZ.

12 MR. GELLER: SO WHEN I GET UP AND SAY THAT IT IS NOT AN
13 ISSUE FOR THEM TO RESOLVE AS TO WHO IS THE SHOOTER IN THIS
14 CASE, IS THAT, IN THE COURT'S EYES, IMPLYING THAT ANDY REYES
15 IS THE SHOOTER?

16 THE COURT: I THINK UNLESS YOU SAY, "WE'RE NOT
17 SUGGESTING THAT MR. REYES IS THE SHOOTER," IT WOULD BE AN
18 IMPLICATION IN THAT REGARD. I THINK THAT YOU NEED TO ACT
19 CONSISTENTLY WITH THE IN RE SAKARIAS, CASE DECIDED IN 2005,
20 35 CAL 4, 140, AND THE OPINION THEREIN.

21 THE EVIDENCE THAT YOU'RE GOING TO PRESENT, IT
22 SEEMS TO ME -- AND AN OPENING STATEMENT IS TO TELL THE JURY
23 WHAT THE EVIDENCE WILL BE -- IS THAT A POLICE OFFICER WHO
24 WAS AN EYEWITNESS SAW THE DEFENDANT SHOVE THE GUN IN HIS
25 PANTS AND, WITHIN AN HOUR, THE DEFENDANT WAS IN POSSESSION
26 OF THAT GUN, ACCORDING TO A CIVILIAN WHO HE ENCOUNTERED IN A

1 RESIDENTIAL NEIGHBORHOOD, WHATEVER DISTANCE AWAY, AND THE
2 GUN WAS SUBSEQUENTLY RECOVERED AND TURNED OUT TO BE THE
3 MURDER WEAPON. THOSE ARE THE FACTS. AND, THEREFORE, THE
4 DEFENDANT IS A PRINCIPAL AND AN AIDER AND ABETTER IN A
5 MURDER, THEREFORE, INCLUDING THE FACT OF HIS GANG MEMBERSHIP
6 AND WHAT ALL OF THAT MEANS, WHAT YOUR EXPERT IS GOING TO SAY
7 WITH RESPECT TO THAT.

8 BUT I WOULD STRONGLY URGE YOU, I DON'T KNOW HOW
9 MANY WAYS TO SAY THIS, TO READ THE CITATION AND TO SEE THE
10 RISK IN, YOU KNOW, KEEPING YOUR FINGERS CROSSED BEHIND YOUR
11 BACK WHEN YOU'RE TALKING TO THE JURY. BECAUSE, CLEARLY, IF
12 YOU INTENTIONALLY LEAVE THEM WITH THE IMPRESSION THAT
13 MR. REYES WAS THE SHOOTER WHEN YOU KNOW IN SUBSEQUENT TRIAL
14 YOU'RE GOING TO BE SAYING THAT THE EVIDENCE POINTS TOWARDS
15 FRANCISCO LOPEZ AS THE SHOOTER, THEN YOU HAVE THE
16 CONSEQUENCES THAT THIS CASE DEFINES. I DON'T KNOW HOW ELSE
17 TO SAY THAT.

18 MR. GELLER: OKAY.

19 THE COURT: BUT I DO WANT TO CHAT WITH YOU FOR A FEW
20 MOMENTS BEFORE YOU LEAVE OFF THE RECORD. AND SO LET'S SEE
21 IF WE CAN HASH THIS OUT ANY BETTER BEFORE YOU GO.

22

23 (OFF THE RECORD.)

24

25 (EVENING RECESS.)

26 -000-

586

C H R O N O L O G I C A L		W I T N E S S I N D E X			
<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>DAVID RONDOU</u>					
BY MR. GELLER	101				
BY MR. BROTT		128			
<u>STEVEN GARCIA</u>					
BY MR. GELLER	132				
BY MR. BROTT		159			
<u>MATTHEW SELINSKE</u>					
BY MR. GELLER	168				
BY MR. BROTT		190			
BY MR. GELLER			204		
<u>DAVID RONDOU</u>					
BY MR. GELLER	205				
BY MR. BROTT		209			
<u>FELIX NIEVES</u>					
BY MR. GELLER	211				

A L P H A B E T I C A L W I T N E S S I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>GARCIA, STEVEN</u>					
BY MR. GELLER	132				
BY MR. BROTT		159			
<u>NIEVES, FELIX</u>					
BY MR. GELLER	211				
<u>RONDOU, DAVID</u>					
BY MR. GELLER	101				
BY MR. BROTT		128			
<u>RONDOU, DAVID</u>					
BY MR. GELLER	205				
BY MR. BROTT		209			
<u>SELINSKE, MATTHEW</u>					
BY MR. GELLER	168				
BY MR. BROTT		190			
BY MR. GELLER			204		

EXHIBITS

PEOPLE'S:		FOR IDENTIFICATION	IN EVIDENCE
1	LARGE MAP OF SECTION OF SANTA ANA	102	
2	LARGE AERIAL MAP OF WILLITS AND SULLIVAN STREETS	103	
3	LARGE COLOR CARICATURE OF WILLITS AND SULLIVAN STREETS	104	
4	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN SOUTHBOUND DIRECTION AND SHOWING VICTIM'S HONDA CIVIC	107	
5	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN NORTHBOUND DIRECTION SHOWING SCHOOL AND STOP SIGN	108	
6	8.5X11" COLOR PHOTO: VICTIM'S CAR COVERED BY YELLOW TARP	108	
7	8.5X11" COLOR PHOTO: FRONT WINDSHIELD OF VICTIM'S CAR	111	
8	8.5X11" COLOR PHOTO: REAR VIEW OF VICTIM'S CAR	111	
9	8.5X11" COLOR PHOTO: SHATTERED REAR WINDOW OF VICTIM'S CAR	112	
10	8.5X11" COLOR PHOTO: SIDE VIEW OF VICTIM'S CAR	112	
11	8.5X11" COLOR PHOTO: VICTIM IN CAR, VIEWED FROM THE FRONT	113	121
12	8.5X11" COLOR PHOTO: VICTIM IN CAR, SIDE VIEW	113	121

LYNN O. PETERSON, OFFICIAL COURT REPORTER

E X H I B I T S

<u>PEOPLE'S:</u>		<u>FOR</u> <u>IDENTIFICATION</u>	<u>IN</u> <u>EVIDENCE</u>
13	8.5X11" COLOR PHOTO OF REVOLVER WITH OPEN CHAMBER, SHOWING BULLETS	113	
14	.357 MAGNUM BLUE-STEEL REVOLVER IN EVIDENCE BOX (SER IAL #843143 BIDINLR ONLY BY REMOVING HANDLE GRIPS	115	

1 SANTA ANA, CALIFORNIA - THURSDAY, MAY 25, 2006

2 MORNING SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

7 THE COURT: THE COURT IS CALLING THE MATTER OF
8 ANDRES QUINONEZ REYES, CASE NUMBER 04CF2780. WE'RE A LITTLE
9 LATE GETTING STARTED THIS MORNING. APPARENTLY, WE HAD SOME
10 TRANSPORTATION PROBLEMS WITH THE DEFENDANT. THE JURORS HAVE
11 BEEN RELEASED UNTIL 9:30. AND, I'M INFORMED THAT SOMEONE
12 NEEDS TO BE HEARD ON THE RECORD.

13 RECORD SHOULD REFLECT DEFENDANT IS PRESENT WITH
14 COUNSEL. THE PEOPLE ARE REPRESENTED.

15 WHO ASKED FOR A CONFERENCE?

16 MR. GELLER: I DID, YOUR HONOR.

17 YOUR HONOR, WITH THE COURT'S PERMISSION, I THINK
18 THAT THE DEFENSE AND I ARE GOING TO ENTER INTO A STIPULATION
19 WITH RESPECT TO SOME OF THE BALLISTICS EVIDENCE THAT I
20 INTENDED TO PRESENT IN THE COURSE OF THIS TRIAL. I SHARED
21 WITH MR. BROTT THAT ROCKY EDWARDS, FROM THE SANTA ANA POLICE
22 DEPARTMENT, HIS MOTHER IS EITHER DYING OR HAS ALREADY PASSED
23 AWAY. HE GOT ON AN AIRPLANE BACK EAST ON TUESDAY EVENING
24 AND MAY NOT RETURN RIGHT AWAY, MAYBE NOT THROUGHOUT THE
25 COURSE OF THIS TRIAL.

26 I DON'T BELIEVE THAT EVIDENCE IS IN DISPUTE.

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 MR. EDWARDS WAS GOING TO TESTIFY THAT THE WEAPON THAT WAS
2 USED TO KILL THE DECEDENT IN THIS CASE WAS THE SAME WEAPON
3 THAT WAS TAKEN FROM ANDRES REYES LATER -- LEFT, LATER ON
4 THAT AFTERNOON. I THINK IT'S IMPORTANT TO PUT ON THE RECORD
5 THE REASONS WE'RE GOING TO DO THIS. I'D INVITE MR. BROTT TO
6 AUGMENT THIS ANYWAY HE WANTS TO, AND I WILL WRITE UP A
7 WRITTEN STIPULATION BEFORE WE PRESENT IT TO THE JURY. BUT I
8 JUST WANTED TO LET THE COURT KNOW WHAT WAS GOING ON.

9 MR. BROTT: YOUR HONOR, THE EVIDENCE THAT ROCKY WOULD
10 HAVE -- ROCKY EDWARDS WOULD HAVE PRESENTED IS NOT IN
11 DISPUTE. I THINK, FOR BASIC HUMANITARIAN REASONS, TO BRING
12 HIM BACK JUST TO SAY THAT WOULD BE UNNECESSARY. AND I WILL
13 STIPULATE TO THE FACT THAT HE DID ANALYZE THE BULLET AND
14 THAT IT IS THE SAME BULLET THAT CAME FROM THE WEAPON
15 INVOLVED.

16 THE COURT: OKAY. THANK YOU VERY MUCH FOR THE
17 INFORMATION.

18 AS LONG AS WE HAVE A MOMENT OR TWO BEFORE WE
19 ACTUALLY BEGIN, I DID NEGLECT YESTERDAY TO DO ONE THING I
20 INTENDED TO DO, MR. BROTT; THAT'S TO INFORM YOUR CLIENT ON
21 THE RECORD OF HIS RIGHTS WITH RESPECT TO TESTIFYING OR NOT
22 TESTIFYING IN THIS TRIAL. SO I'M GOING TO TAKE JUST A
23 MOMENT TO DO THAT.

24 MR. REYES.

25 THE DEFENDANT: YES.

26 THE COURT: HOW ARE YOU THIS MORNING?

1 THE DEFENDANT: GREAT. YOU?

2 THE COURT: OKAY. WE'RE GOING TO BEGIN THE TRIAL NOW.
3 I'M GOING TO PRE-INSTRUCT THE JURY. I'M GOING TO THEN GIVE
4 THE ATTORNEYS AN OPPORTUNITY TO MAKE OPENING STATEMENTS.
5 THEN THE PEOPLE ARE GOING TO CALL WITNESSES WHO ARE GOING TO
6 TESTIFY AGAINST YOU.

7 DO YOU UNDERSTAND?

8 THE DEFENDANT: YES.

9 THE COURT: THAT MAY TAKE A FEW DAYS. AND AT SOME
10 POINT IN TIME THE PROSECUTOR WILL REST HIS CASE. AND, THEN,
11 I WILL TURN TO THE DEFENSE SIDE OF THE TABLE AND INVITE ANY
12 TESTIMONY THAT THE DEFENSE WANTS TO PRESENT.

13 DO YOU UNDERSTAND?

14 THE DEFENDANT: YES.

15 THE COURT: YOU HAVE AN ABSOLUTE RIGHT IN THIS TRIAL TO
16 TESTIFY IN YOUR OWN DEFENSE IF YOU WANT.

17 DO YOU UNDERSTAND THAT?

18 THE DEFENDANT: YES.

19 THE COURT: YOU ALSO HAVE AN ABSOLUTE RIGHT IN THIS
20 TRIAL TO REMAIN SILENT AND SAY NOTHING AT ALL.

21 DO YOU UNDERSTAND THAT?

22 THE DEFENDANT: YES.

23 THE COURT: THE DECISION TO TESTIFY OR NOT TESTIFY
24 SHOULD BE TAKEN VERY SERIOUSLY. AND YOU SHOULD GIVE CAREFUL
25 THOUGHT TO YOUR DECISION.

26 DO YOU UNDERSTAND?

1 THE DEFENDANT: YES.

2 THE COURT: AND YOU SHOULD NOT MAKE YOUR DECISION
3 WITHOUT SPENDING SOME TIME WITH MR. BROTT AND LISTENING TO
4 WHAT HE HAS TO SAY ABOUT THAT.

5 DO YOU UNDERSTAND?

6 THE DEFENDANT: YES.

7 THE COURT: HE'S A VERY EXPERIENCED LAWYER. I'VE BEEN
8 WORKING WITH HIM FOR 20 YEARS OR MORE. I HATE TO EVEN THINK
9 ABOUT HOW LONG IT'S ACTUALLY BEEN. THE FACT IS THAT HE
10 KNOWS WHAT HE'S DOING. HE'S TRIED A NUMBER OF THESE CASES
11 BEFORE, AND YOU SHOULD LISTEN TO HIS OPINION. BUT THE
12 DECISION THAT YOU MAKE ABOUT TESTIFYING OR NOT IS YOUR
13 DECISION. IT'S NOT MR. BROTT'S.

14 DO YOU UNDERSTAND THIS?

15 THE DEFENDANT: YES.

16 THE COURT: SO AFTER YOU LISTEN TO WHAT HE HAS TO SAY,
17 YOU HAVE TO MAKE UP YOUR OWN MIND TO TESTIFY.

18 DO YOU UNDERSTAND?

19 THE DEFENDANT: YES.

20 THE COURT: AND IF YOU CHOOSE TO TESTIFY IN THIS TRIAL
21 AND THINGS DO NOT GO WELL FOR YOU, YOU CAN'T COMPLAIN LATER
22 THAT YOU DIDN'T KNOW YOU COULD REMAIN SILENT AND NOT SAY
23 ANYTHING AT ALL. WHY? BECAUSE YOU AND I ARE HAVING THIS
24 TALK RIGHT NOW.

25 DO YOU UNDERSTAND THAT?

26 THE DEFENDANT: UNDERSTOOD.

1 THE COURT: BY THE SAME TOKEN, IF YOU DECIDE YOU DON'T
2 WANT TO TESTIFY IN THIS TRIAL AND YOU ARE ULTIMATELY
3 CONVICTED NONETHELESS, YOU CANNOT COMPLAIN LATER THAT YOU
4 DIDN'T KNOW YOU COULD TAKE THE STAND AND TELL YOUR SIDE OF
5 THE STORY.

6 DO YOU UNDERSTAND THIS?

7 THE DEFENDANT: YES.

8 THE COURT: IT'S BECAUSE YOU AND I ARE DISCUSSING THIS
9 NOW. THERE WILL BE A RECORD OF THIS DISCUSSION.

10 SO, I WANT YOU TO MAKE YOUR OWN DECISION NO
11 MATTER WHAT MR. BROTT SAYS. BUT, I DON'T WANT YOU TO MAKE A
12 DECISION UNTIL YOU'VE TALKED TO HIM FOR A CONSIDERABLE
13 LENGTH OF TIME ABOUT IT AND YOU'VE HAD PLENTY OF OPPORTUNITY
14 TO ASK HIM ANY QUESTIONS YOU WANT TO ASK HIM ON THIS
15 SUBJECT. OKAY?

16 THE DEFENDANT: OKAY.

17 THE COURT: DO I HAVE YOUR WORD THAT YOU WILL DO THAT?

18 THE DEFENDANT: YES.

19 THE COURT: OKAY. THANK YOU VERY MUCH.

20 MR. BROTT: MAY I HAVE JUST A MOMENT, YOUR HONOR?

21 THE COURT: SURE.

22 (DISCUSSION HELD OFF THE RECORD
23 BETWEEN DEFENDANT AND COUNSEL.)

24 THE COURT: GO AHEAD.

25 MR. BROTT: YOUR HONOR, I HAVE DISCUSSED THIS AT LENGTH
26 WITH MR. REYES, AND I TOLD HIM EXACTLY WHAT YOU TOLD HIM.

1 AND I'VE DISCUSSED -- HE'S DISCUSSED IT WITH MY
2 INVESTIGATOR, WITH HIS MOTHER. I'VE DISCUSSED IT WITH HIS
3 MOTHER, WHO IS HERE NOW. AND MR. REYES UNDERSTANDS HIS
4 ABSOLUTE RIGHT TO TESTIFY. AND AT THIS TIME WE'D LIKE TO
5 TELL THE COURT THAT HE IS CHOOSING NOT TO TESTIFY.

6 THE COURT: OKAY. IS THAT RIGHT?

7 THE DEFENDANT: YES, IT IS.

8 THE COURT: YOU DON'T HAVE TO STICK TO THAT DECISION IF
9 YOU DON'T WANT TO, OKAY?

10 THE DEFENDANT: IT'S MY DECISION.

11 THE COURT: IT'S YOUR DECISION NOW.

12 THE DEFENDANT: YES.

13 THE COURT: BUT I'M TELLING YOU, IF YOU THINK
14 DIFFERENTLY ABOUT IT, YOU'RE NOT LOCKED-IN. YOU CAN CHANGE
15 YOUR MIND ANY TIME, ANY TIME UP TO WHEN I TURN TO MR. BROTT
16 AND ASK HIM IF HE'S GOING TO PRESENT WITNESSES. OKAY?

17 THE DEFENDANT: OKAY.

18 THE COURT: OKAY.

19 MR. BROTT: THANK YOU.

20 THE COURT: THANK YOU.

21 (PAUSE IN PROCEEDINGS.)

22 (THE FOLLOWING PROCEEDINGS WERE HAD IN
23 OPEN COURT IN THE PRESENCE OF THE JURY:)

24 THE COURT: GOOD MORNING. I APOLOGIZE TO YOU FOR THE
25 LATE START, BUT CIRCUMSTANCES WERE SIMPLY UNAVOIDABLE.
26 THINGS HAPPEN. THEY GENERALLY HAPPEN ALL THE TIME. BUT I

1 DO HOPE DURING THE COURSE OF THE TRIAL TO START ON TIME AT
2 LEAST ONCE. IF WE HAVE TOO MANY OF THESE DELAYS I'LL BE
3 WATCHING THE CLOCK, SO I'LL BE ABLE TO TELL YOU WHEN WE HAVE
4 STARTED ON TIME. BUT, AGAIN, I APOLOGIZE. WE HAD UNUSUAL
5 CIRCUMSTANCES THIS MORNING AND THERE WAS ABSOLUTELY NOTHING
6 WE COULD DO ABOUT IT. SO THANK YOU VERY MUCH FOR YOUR
7 PATIENCE.

8 WE ARE RESUMING TRIAL IN PEOPLE VS.
9 ANDRES QUINONEZ REYES, CASE NUMBER 04CF2780. THE RECORD
10 SHOULD REFLECT THAT THE DEFENDANT, MR. REYES, IS PRESENT
11 WITH HIS COUNSEL, MR. BROTT. THE PEOPLE ARE REPRESENTED BY
12 MR. GELLER. AND OUR FIFTEEN JURORS HAVE RETURNED TO THE
13 COURTROOM AT THIS HOUR.

14 AS I INDICATED TO YOU ON TUESDAY, LADIES AND
15 GENTLEMEN, THE FIRST ORDER OF BUSINESS IS FOR ME TO READ THE
16 INFORMATION TO YOU. THE INFORMATION IS THE CHARGING
17 DOCUMENT. IT IS, ENTITLED: "SUPERIOR COURT OF CALIFORNIA,
18 COUNTY OF ORANGE. PEOPLE OF THE STATE OF CALIFORNIA,
19 PLAINTIFF, VERSUS ANDRES QUINONEZ REYES, DEFENDANT."

20 "THE DISTRICT ATTORNEY OF ORANGE
21 COUNTY HEREBY ACCUSES THE AFORENAMED
22 DEFENDANT OF VIOLATING THE LAW AT AND WITHIN
23 THE COUNTY OF ORANGE AS FOLLOWS:

24 "COUNT 1: ON OR ABOUT AUGUST 10,
25 2004, IN VIOLATION OF SECTION 187
26 SUBDIVISION (A) OF THE PENAL CODE (MURDER),

1 A FELONY, ANDRES QUINONEZ REYES DID
2 UNLAWFULLY AND WITH MALICE AFORETHOUGHT
3 MURDER PEDRO JAVIER ROSARIO, A HUMAN BEING.

4 "COUNT 2: ON OR ABOUT AUGUST 10,
5 2004, IN VIOLATION OF SECTION 186.22
6 SUBDIVISION (A) OF THE PENAL CODE (STREET
7 TERRORISM), A FELONY, ANDRES QUINONEZ REYES
8 DID UNLAWFULLY ACTIVELY PARTICIPATE IN
9 F-TROOP, A CRIMINAL STREET GANG, WITH
10 KNOWLEDGE THAT ITS MEMBERS ENGAGE IN AND
11 HAVE ENGAGED IN A PATTERN OF CRIMINAL GANG
12 ACTIVITY, AND DID WILLFULLY AND UNLAWFULLY
13 PROMOTE, FURTHER, AND ASSIST IN FELONY
14 CRIMINAL CONDUCT BY MEMBERS OF THAT GANG.

15 "AS TO COUNT 1, IT IS FURTHER ALLEGED
16 PURSUANT TO PENAL CODE SECTION 186.22
17 SUBDIVISION (B) SUBDIVISION (1) (CRIMINAL
18 STREET GANG ACTIVITY), DEFENDANT ANDRES
19 QUINONEZ REYES COMMITTED THE ABOVE-OFFENSE
20 FOR THE BENEFIT OF, AT THE DIRECTION OF, AND
21 IN ASSOCIATION WITH F-TROOP, A CRIMINAL
22 STREET GANG, WITH THE SPECIFIC INTENT TO
23 PROMOTE, FURTHER, AND ASSIST IN CRIMINAL
24 CONDUCT BY MEMBERS OF THAT GANG.

25 "AS TO COUNT 1, IT IS FURTHER ALLEGED,
26 PURSUANT TO PENAL CODE SECTIONS 12022.53

1 SUBDIVISION (D) SUBDIVISION (E)
2 SUBDIVISION (1) (GANG MEMBER VICARIOUS
3 DISCHARGE OF FIREARM CAUSING DEATH), AND
4 WITHIN THE MEANING OF PENAL CODE SECTIONS
5 1192.AND 667.5, DEFENDANT ANDRES QUINONEZ
6 REYES WAS A PRINCIPAL IN THE COMMISSION OF A
7 FELONY, WHICH THE DEFENDANT COMMITTED FOR
8 THE BENEFIT OF, AT THE DIRECTION OF, AND IN
9 ASSOCIATION WITH A CRIMINAL STREET GANG,
10 WITH THE SPECIFIC INTENT TO PROMOTE,
11 FURTHER, AND ASSIST IN CRIMINAL CONDUCT BY
12 GANG MEMBERS, WITHIN THE MEANING OF
13 PENAL CODE SECTION 186.22 SUBDIVISION (B),
14 AND THAT DURING THE COMMISSION AND ATTEMPTED
15 COMMISSION OF THE ABOVE-OFFENSE, ANOTHER
16 PRINCIPAL INTENTIONALLY DISCHARGED A FIREARM
17 CAUSING GREAT BODILY INJURY AND DEATH TO
18 PEDRO JAVIER ROSARIO, WHO WAS NOT AN
19 ACCOMPLICE."

20 JURY SERVICE IS VERY IMPORTANT, AND I WOULD LIKE
21 TO WELCOME YOU AND THANK YOU FOR YOUR SERVICE. BEFORE WE
22 BEGIN I'M GOING TO DESCRIBE FOR YOU HOW THE TRIAL WILL BE
23 CONDUCTED AND EXPLAIN WHAT YOU AND THE LAWYERS AND I WILL BE
24 DOING.

25 WHEN I REFER TO "THE PEOPLE," I MEAN THE ATTORNEY
26 FROM THE DISTRICT ATTORNEY'S OFFICE WHO IS TRYING THE CASE

1 ON BEHALF OF THE PEOPLE OF THE STATE OF CALIFORNIA.

2 WHEN I REFER TO "DEFENSE COUNSEL," I MEAN THE
3 ATTORNEY WHO IS REPRESENTING THE DEFENDANT.

4 THE FIRST STEP IN THE TRIAL IS THE PEOPLE'S
5 OPENING STATEMENT. THE DEFENSE MAY CHOOSE TO GIVE AN
6 OPENING STATEMENT THEN OR AT THE BEGINNING OF THE DEFENSE
7 CASE. THE PURPOSE OF AN OPENING STATEMENT IS TO GIVE YOU AN
8 OVERVIEW OF WHAT THE ATTORNEYS' EXPECT THE EVIDENCE WILL
9 SHOW.

10 NEXT, THE PEOPLE WILL OFFER THEIR EVIDENCE.
11 EVIDENCE USUALLY INCLUDES WITNESS TESTIMONY AND EXHIBITS.
12 AFTER THE PEOPLE PRESENT THEIR EVIDENCE THE DEFENSE MAY ALSO
13 PRESENT EVIDENCE, BUT IS NOT REQUIRED TO DO SO. BECAUSE HE
14 IS PRESUMED INNOCENT, THE DEFENDANT DOES NOT HAVE TO PROVE
15 THAT HE IS NOT GUILTY.

16 AFTER YOU HAVE HEARD ALL THE EVIDENCE, AND BEFORE
17 THE ATTORNEYS GIVE THEIR FINAL ARGUMENTS, I WILL INSTRUCT
18 YOU ON THE LAW THAT APPLIES TO THE CASE. AFTER YOU HAVE
19 HEARD THE ARGUMENTS AND INSTRUCTIONS, YOU WILL GO TO THE
20 JURY ROOM AND DELIBERATE.

21 I WILL NOW EXPLAIN SOME BASIC RULES OF LAW AND
22 PROCEDURE. THESE RULES INSURE THAT BOTH SIDES RECEIVE A
23 FAIR TRIAL.

24 DURING THE TRIAL DO NOT TALK ABOUT THE CASE OR
25 ABOUT ANY OF THE PEOPLE OR ANY SUBJECT INVOLVED IN THE CASE
26 WITH ANYONE, NOT EVEN YOUR FAMILY, FRIENDS, SPIRITUAL

1 ADVISORS OR THERAPISTS. YOU MUST NOT TALK ABOUT THESE
2 THINGS WITH THE OTHER JURORS EITHER UNTIL THE TIME COMES FOR
3 YOU TO BEGIN YOUR DELIBERATIONS.

4 AS JURORS YOU MAY DISCUSS THE CASE TOGETHER ONLY
5 AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED, THE ATTORNEYS
6 HAVE COMPLETED THEIR ARGUMENTS AND I HAVE INSTRUCTED YOU ON
7 THE LAW. AFTER I TELL YOU TO BEGIN YOUR DELIBERATIONS, YOU
8 MAY DISCUSS THE CASE ONLY IN THE JURY ROOM AND ONLY WHEN ALL
9 JURORS ARE PRESENT. YOU MUST NOT ALLOW ANYTHING THAT
10 HAPPENS OUTSIDE OF THE COURTROOM TO AFFECT YOUR DECISION
11 UNLESS I TELL YOU OTHERWISE.

12 DURING THE TRIAL DO NOT READ, LISTEN TO OR WATCH
13 ANY NEWS REPORTS OR COMMENTARY ABOUT THE CASE. DO NOT DO
14 ANY RESEARCH ON YOUR OWN OR AS A GROUP. DO NOT USE A
15 DICTIONARY OR OTHER REFERENCE MATERIALS, INVESTIGATE THE
16 FACTS OR LAW, CONDUCT ANY TESTS OR EXPERIMENTS, OR VISIT THE
17 SCENE OF ANY EVENT INVOLVED IN THIS CASE. IF YOU HAPPEN TO
18 PASS BY THE SCENE, DO NOT STOP OR INVESTIGATE.

19 DURING THE TRIAL DO NOT SPEAK TO ANY PARTY,
20 WITNESS OR LAWYER INVOLVED IN THE TRIAL. DO NOT LISTEN TO
21 ANYONE WHO TRIES TO TALK TO YOU ABOUT THE CASE OR ABOUT ANY
22 OF THE PEOPLE OR SUBJECTS INVOLVED IN IT. IF SOMEONE ASKS
23 YOU ABOUT THE CASE, TELL HIM OR HER THAT YOU CANNOT DISCUSS
24 IT. IF THAT PERSONS KEEPS TALKING TO YOU ABOUT THE CASE,
25 YOU MUST END THE CONVERSATION.

26 WHEN THE TRIAL IS ENDED AND YOU'VE BEEN RELEASED

1 AS JURORS YOU CAN DISCUSS THE CASE WITH ANYONE. BUT UNDER
2 CALIFORNIA LAW YOU MUST WAIT AT LEAST 90 DAYS BEFORE
3 NEGOTIATING OR AGREEING TO ACCEPT ANY PAYMENT FOR
4 INFORMATION ABOUT THE CASE. IF YOU RECEIVE ANY INFORMATION
5 ABOUT THIS CASE FROM ANY SOURCE OUTSIDE OF THE TRIAL, EVEN
6 UNINTENTIONALLY, DO NOT SHARE THAT INFORMATION WITH ANY
7 OTHER JUROR. IF YOU DO RECEIVE SUCH INFORMATION OR IF
8 ANYONE TRIES TO INFLUENCE YOU OR ANY JUROR, YOU MUST
9 IMMEDIATELY TELL THE BAILIFF.

10 SOME WORDS OR PHRASES THAT MAY BE USED DURING
11 THIS TRIAL HAVE LEGAL MEANINGS THAT ARE DIFFERENT FROM THEIR
12 MEANINGS IN EVERY DAY USE. THESE WORDS AND PHRASES WILL BE
13 SPECIFICALLY DEFINED IN THE INSTRUCTIONS. PLEASE BE SURE TO
14 LISTEN CAREFULLY AND FOLLOW THE DEFINITIONS THAT I GIVE YOU.
15 WORDS AND PHRASES NOT SPECIFICALLY DEFINED IN THE
16 INSTRUCTIONS ARE TO BE APPLIED USING THEIR ORDINARY EVERY
17 DAY MEANINGS.

18 KEEP AN OPEN MIND THROUGHOUT THE TRIAL. DO NOT
19 MAKE UP YOUR MIND ABOUT THE VERDICT OR ANY ISSUE UNTIL AFTER
20 YOU HAVE DISCUSSED THE CASE WITH THE OTHER JURORS DURING
21 DELIBERATIONS. DO NOT TAKE ANYTHING I SAY OR DO DURING THE
22 TRIAL AS AN INDICATION OF WHAT I THINK ABOUT THE FACTS, THE
23 WITNESSES OR WHAT YOUR VERDICT SHOULD BE.

24 DO NOT LET BIAS, SYMPATHY, PREJUDICE OR PUBLIC
25 OPINION INFLUENCE YOUR DECISION.

26 YOU'VE BEEN GIVEN NOTEBOOKS AND MAY TAKE NOTES

1 DURING THE TRIAL. DO NOT REMOVE THEM FROM THE COURTROOM.
2 YOU MAY TAKE YOUR NOTES INTO THE JURY ROOM DURING
3 DELIBERATIONS.

4 HERE ARE SOME POINTS TO CONSIDER IF YOU TAKE
5 NOTES: NOTE-TAKING MAY TEND TO DISTRACT YOU. IT MAY AFFECT
6 YOUR ABILITY TO LISTEN CAREFULLY TO ALL THE TESTIMONY AND TO
7 WATCH THE WITNESSES AS THEY TESTIFY. AND YOU MAY USE YOUR
8 NOTES ONLY TO REMIND YOURSELF OF WHAT HAPPENED DURING THE
9 TRIAL. BUT REMEMBER, YOUR NOTES MAY BE INACCURATE OR
10 INCOMPLETE. I DO NOT MEAN TO DISCOURAGE YOU FROM TAKING
11 NOTES. I BELIEVE YOU WILL FIND IT HELPFUL.

12 I WILL NOW EXPLAIN THE PRESUMPTION OF INNOCENCE
13 AND THE PEOPLE'S BURDEN OF PROOF.

14 THE DEFENDANT HAS PLEADED NOT GUILTY TO THE
15 CHARGES. THE FACT THAT A CRIMINAL CHARGE HAS BEEN FILED
16 AGAINST THE DEFENDANT IS NOT EVIDENCE THAT THE CHARGE IS
17 TRUE. YOU MUST NOT BE BIASED AGAINST THE DEFENDANT JUST
18 BECAUSE HE HAS BEEN ARRESTED, CHARGED WITH A CRIME OR
19 BROUGHT TO TRIAL. A DEFENDANT IN A CRIMINAL CASE IS
20 PRESUMED TO BE INNOCENT. THIS PRESUMPTION REQUIRES THAT THE
21 PEOPLE PROVE EACH ELEMENT OF A CRIME AND SPECIAL ALLEGATION
22 BEYOND A REASONABLE DOUBT.

23 WHENEVER I TELL YOU THE PEOPLE MUST PROVE
24 SOMETHING, I MEAN THEY MUST PROVE IT BEYOND A REASONABLE
25 DOUBT, UNLESS I SPECIFICALLY TELL YOU OTHERWISE.

26 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT

1 LEAVES YOU WITH AN ABIDING CONVICTION THAT THE CHARGE IS
2 TRUE. THE EVIDENCE NEED NOT ELIMINATE ALL POSSIBLE DOUBT,
3 BECAUSE EVERYTHING IN LIFE IS OPEN TO SOME POSSIBLE OR
4 IMAGINARY DOUBT. IN DECIDING WHETHER THE PEOPLE HAVE PROVED
5 THEIR CASE BEYOND A REASONABLE DOUBT, YOU MUST IMPARTIALLY
6 COMPARE AND CONSIDER ALL THE EVIDENCE THAT WAS RECEIVED
7 THROUGHOUT THE ENTIRE TRIAL. UNLESS THE EVIDENCE PROVES THE
8 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, HE IS ENTITLED
9 TO AN ACQUITTAL AND YOU MUST FIND HIM NOT GUILTY.

10 YOU MUST DECIDE WHAT THE FACTS ARE IN THIS CASE.
11 YOU MUST USE ONLY THE EVIDENCE THAT IS PRESENTED IN THE
12 COURTROOM -- YOU MUST USE ONLY THE EVIDENCE THAT IS
13 PRESENTED IN THE COURTROOM. EVIDENCE IS THE SWORN TESTIMONY
14 OF WITNESSES, THE EXHIBITS ADMITTED INTO EVIDENCE, AND
15 ANYTHING ELSE I TELL YOU TO CONSIDER AS EVIDENCE. NOTHING
16 THAT THE ATTORNEYS SAY IS EVIDENCE.

17 IN THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS
18 THE ATTORNEYS WILL DISCUSS THE CASE, BUT THEIR REMARKS ARE
19 NOT EVIDENCE. THEIR QUESTIONS ARE NOT EVIDENCE. ONLY THE
20 WITNESSES' ANSWERS ARE EVIDENCE. THE ATTORNEYS' QUESTIONS
21 ARE SIGNIFICANT ONLY IF THEY HELP YOU TO UNDERSTAND THE
22 WITNESSES' ANSWERS. DO NOT ASSUME THAT SOMETHING IS TRUE
23 JUST BECAUSE ONE OF THE ATTORNEYS ASKS A QUESTION THAT
24 SUGGESTS IT IS TRUE.

25 DURING THE TRIAL THE ATTORNEYS MAY OBJECT TO
26 QUESTIONS ASKED OF A WITNESS. I WILL RULE ON THE OBJECTIONS

1 ACCORDING TO THE LAW. IF I SUSTAIN AN OBJECTION, THE
2 WITNESS WILL NOT BE PERMITTED TO ANSWER AND YOU MUST IGNORE
3 THE QUESTION. IF THE WITNESS DOES NOT ANSWER, DO NOT GUESS
4 WHAT THE ANSWER MIGHT HAVE BEEN OR WHY I RULED AS I DID. IF
5 I ORDER TESTIMONY STRICKEN FROM THE RECORD, YOU MUST
6 DISREGARD IT AND MUST NOT CONSIDER THAT TESTIMONY FOR ANY
7 PURPOSE. YOU MUST DISREGARD ANYTHING YOU SEE OR HEAR WHEN
8 THE COURT IS NOT IN SESSION, EVEN IF IT IS DONE OR SAID BY
9 ONE OF THE PARTIES OR WITNESSES.

10 THE COURT REPORTER IS MAKING A RECORD OF
11 EVERYTHING SAID DURING THE TRIAL. IF YOU DECIDE THAT IT IS
12 NECESSARY, YOU MAY ASK THAT THE COURT REPORTER'S NOTES BE
13 READ TO YOU. YOU MUST ACCEPT THE COURT REPORTER'S NOTES AS
14 ACCURATE.

15 YOU ALONE MUST JUDGE THE CREDIBILITY OR
16 BELIEVABILITY OF THE WITNESSES. IN DECIDING WHETHER
17 TESTIMONY IS TRUE AND ACCURATE, USE YOUR COMMON SENSE AND
18 EXPERIENCE. THE TESTIMONY OF EACH WITNESS MUST BE JUDGED BY
19 THE SAME STANDARD. YOU MUST SET ASIDE ANY BIAS OR PREJUDICE
20 YOU MAY HAVE, INCLUDING ANY BASED ON THE WITNESS'S GENDER,
21 RACE, RELIGION OR NATIONAL ORIGIN. YOU MAY BELIEVE ALL,
22 PART, OR NONE OF ANY WITNESS'S TESTIMONY. CONSIDER THE
23 TESTIMONY OF EACH WITNESS AND DECIDE HOW MUCH OF IT YOU
24 BELIEVE.

25 IN EVALUATING A WITNESS'S TESTIMONY, YOU MAY
26 CONSIDER ANYTHING THAT REASONABLY TENDS TO PROVE OR DISPROVE

1 THE TRUTH OR ACCURACY OF THAT TESTIMONY. AMONG THE FACTORS
2 THAT YOU MAY CONSIDER ARE:

3 HOW WELL COULD THE WITNESS SEE, HEAR OR OTHERWISE
4 PERCEIVE THE THINGS ABOUT WHICH THE WITNESS TESTIFIED?

5 HOW WELL WAS THE WITNESS ABLE TO REMEMBER AND
6 DESCRIBE WHAT HAPPENED?

7 WHAT WAS THE WITNESS'S BEHAVIOR WHILE TESTIFYING?

8 DID THE WITNESS UNDERSTAND THE QUESTIONS AND
9 ANSWER THEM DIRECTLY?

10 WAS THE WITNESS'S TESTIMONY INFLUENCED BY A
11 FACTOR SUCH AS BIAS OR PREJUDICE, A PERSONAL RELATIONSHIP
12 WITH SOMEONE INVOLVED IN THE CASE OR A PERSONAL INTEREST IN
13 HOW THE CASE IS DECIDED?

14 WHAT WAS THE WITNESS'S ATTITUDE ABOUT THE CASE OR
15 ABOUT TESTIFYING?

16 DID THE WITNESS MAKE A STATEMENT IN THE PAST THAT
17 IS CONSISTENT OR INCONSISTENT WITH HIS OR HER TESTIMONY?

18 HOW REASONABLE IS THE TESTIMONY WHEN YOU CONSIDER
19 ALL THE OTHER EVIDENCE IN THE CASE?

20 DID OTHER EVIDENCE PROVE OR DISPROVE ANY FACT
21 ABOUT WHICH THE WITNESS TESTIFIED?

22 DID THE WITNESS ADMIT TO BEING UNTRUTHFUL?

23 WHAT IS THE WITNESS'S CHARACTER FOR TRUTHFULNESS?

24 HAS THE WITNESS BEEN CONVICTED OF A FELONY?

25 HAS THE WITNESS ENGAGED IN OTHER CONDUCT THAT
26 REFLECTS ON HIS OR HER BELIEVABILITY?

1 WAS THE WITNESS PROMISED IMMUNITY OR LENIENCY IN
2 EXCHANGE FOR HIS OR HER TESTIMONY?

3 DO NOT AUTOMATICALLY REJECT TESTIMONY JUST
4 BECAUSE OF INCONSISTENCIES OR CONFLICTS. CONSIDER WHETHER
5 THE DIFFERENCES ARE IMPORTANT OR NOT.

6 PEOPLE SOMETIMES HONESTLY FORGET THINGS OR MAKE
7 MISTAKES ABOUT WHAT THEY REMEMBER. ALSO, TWO PEOPLE MAY
8 WITNESS THE SAME EVENT YET SEE OR HEAR IT DIFFERENTLY. IF
9 THE EVIDENCE ESTABLISHES THAT A WITNESS'S CHARACTER FOR
10 TRUTHFULNESS -- I DON'T EXPECT CHARACTER TESTIMONY. I'M
11 GOING TO STRIKE THAT.

12 IF YOU DO NOT BELIEVE THAT A WITNESS'S TESTIMONY
13 THAT HE OR SHE REMEMBERS SOMETHING, THAT TESTIMONY IS
14 INCONSISTENT WITH THE WITNESS'S EARLIER STATEMENT ON THAT
15 SUBJECT. IF YOU DECIDE THAT A WITNESS DELIBERATELY LIED
16 ABOUT SOMETHING SIGNIFICANT IN THIS CASE, YOU SHOULD
17 CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAYS. OR, IF
18 YOU THINK THE WITNESS LIED ABOUT SOME THINGS BUT TOLD THE
19 TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART THAT YOU
20 THINK IS TRUE AND IGNORE THE REST.

21 IF DURING THE TRIAL YOU HAVE A QUESTION THAT YOU
22 BELIEVE SHOULD -- I'M SORRY. STRIKE THAT. COURT DECLINES
23 TO GIVE 106.

24 SOME TESTIMONY MAY BE GIVEN IN SPANISH. AN
25 INTERPRETER WILL PROVIDE A TRANSLATION FOR YOU AT THE TIME
26 THE TESTIMONY IS GIVEN. YOU MUST RELY ON THE TRANSLATION

1 PROVIDED BY THE INTERPRETER, EVEN IF YOU UNDERSTAND THE
2 LANGUAGE SPOKEN BY THE WITNESS. DO NOT RETRANSLATE ANY
3 TESTIMONY FOR OTHER JURORS. IF YOU BELIEVE THE COURT
4 INTERPRETER TRANSLATED THE TESTIMONY INCORRECTLY, LET ME
5 KNOW IMMEDIATELY BY WRITING A NOTE AND GIVING IT TO THE
6 CLERK OR BAILIFF.

7 YOU MAY BE PERMITTED TO SEPARATE DURING RECESSES
8 AND AT THE END OF THE DAY. I WILL TELL YOU WHEN TO RETURN.
9 PLEASE REMEMBER WE CANNOT BEGIN THE TRIAL UNTIL ALL OF YOU
10 ARE IN PLACE, SO IT IS IMPORTANT TO BE ON TIME.

11 REMEMBER, DO NOT TALK ABOUT THE CASE OR ABOUT ANY
12 OF THE PEOPLE OR ANY SUBJECT INVOLVED IN IT WITH ANYONE,
13 INCLUDING THE OTHER JURORS. DO NOT MAKE UP YOUR MIND ABOUT
14 THE VERDICT OR ANY ISSUE UNTIL AFTER YOU HAVE DISCUSSED THE
15 CASE WITH THE OTHER JURORS DURING DELIBERATIONS.

16 COUPLE EXTRA WORDS ABOUT THOSE NOTEBOOKS:

17 THE REASON THAT WE WANT YOU TO USE THOSE
18 NOTEBOOKS EXCLUSIVELY FOR YOUR TRIAL NOTES AND NOT FOR YOUR
19 GROCERY LISTS, AND TO LEAVE THEM HERE WHENEVER YOU DEPART
20 THE COURTROOM, IS BECAUSE IF YOU WERE TO TAKE YOUR TRIAL
21 NOTES OUT OF THE COURTROOM AND SOMETHING WERE TO HAPPEN TO
22 THEM, IF YOU WERE TO LOSE THEM OR IF YOUR DOG WERE TO EAT
23 THEM, THAT WOULD CREATE A PROBLEM FOR US WITH RESPECT TO THE
24 INTEGRITY OF THE TRIAL THAT WE WOULD NEED TO ADDRESS. SO TO
25 AVOID ANY PROBLEM, WE DO ASK YOU TO USE THE NOTEBOOKS
26 EXCLUSIVELY FOR TRIAL NOTES AND TO NOT TAKE THEM OUT OF

1 HERE.

2 THERE IS AN EXCEPTION TO THAT. I WANT YOU TO
3 WRITE A FEW THINGS DOWN THIS MORNING ON A BLANK PIECE OF
4 PAPER IN YOUR NOTEBOOKS AND TAKE THAT PAPER WITH YOU.

5 FIRST AND FOREMOST, WE GAVE YOU A LITTLE POST-IT
6 NOTE YESTERDAY, BUT IF YOU'RE ANYTHING LIKE ME I'M SURE IT'S
7 GONE NOW. SO WE WANT YOU TO WRITE DOWN OUR PHONE NUMBER.
8 JURY ASSEMBLY HAS BEEN ADVISED THAT YOU ARE OUR JURORS.
9 AND, IF A PROBLEM COMES UP WITH YOU DURING THE COURSE OF THE
10 TRIAL, WE WANT YOU TO TELEPHONE US DIRECTLY. AND I THINK
11 IT'S POSTED IN A COUPLE OF PLACES IN THE BOX, BUT I WILL
12 STATE IT IF YOU CAN'T SEE IT, AND I'M GOING TO REPEAT
13 MYSELF.

14 WE ARE AT AREA CODE: (714) 834-3680.
15 (714) 834-3680.

16 NOW, WE'VE BEEN IN THIS COURTROOM ABOUT THREE OR
17 FOUR WEEKS. AND THE FIRST THING I DID WHEN WE GOT HERE WAS
18 TO ORDER VOICE MAIL ON THAT LINE. AND I'M PRETTY SURE WE
19 ACTUALLY GOT IT. MY CLERK IS NODDING YES, WE DID. AND THE
20 REASON THAT I WANT VOICE MAIL ON OUR COURTROOM PHONE NUMBER
21 IS NOT SO MUCH TO ACCOMMODATE THE LAWYERS, THOUGH THEY MAKE
22 PLENTY GOOD USE OF OUR VOICE MAIL, BUT I WANTED TO BE
23 AVAILABLE TO TRIAL JURORS DURING NON-COURT HOURS IN CASE YOU
24 HAVE TO COMMUNICATE WITH US THAT SOME EMERGENCY HAS ARISEN
25 FOR YOU. HOWEVER, I'VE BEEN USING VOICE MAIL FOR YEARS NOW
26 AND I REMEMBER MY FIRST EXPERIENCE WITH IT AS IT RELATED TO

1 A JURY. IT WAS PRETTY DISTRESSING.

2 WE GOT A CALL EARLY IN THE MORNING FROM A JUROR
3 WHO SAID HE WAS HAVING A CAR PROBLEM AND HE WAS TAKING HIS
4 CAR -- WAS GOING TO THE MECHANIC. AND THAT WAS ALL THE
5 INFORMATION THAT HE GAVE US. HE DIDN'T TELL US THE NATURE
6 OF THE CAR PROBLEM. HE DIDN'T GIVE US THE NAME OR LOCATION
7 OF THE MECHANIC SO WE HAD NO WAY TO CALL AND CHECK ON HIM
8 THERE. AND, OF COURSE, NATURALLY WHEN WE TRIED TO CALL THE
9 PHONE NUMBER THAT WAS ON FILE FOR HIM, WE GOT HIS VOICE
10 MAIL. SO, WE WERE IN EXACTLY THE SAME POSITION AS WE WOULD
11 HAVE BEEN IF HE HADN'T CALLED AT ALL, BECAUSE WE DIDN'T KNOW
12 IF HE WAS DEALING WITH A DEAD BATTERY THAT WOULD RESOLVE IN
13 AN HOUR OR TWO, OR IF HE WAS GOING TO BE WITHOUT
14 TRANSPORTATION IN ORANGE COUNTY FOR THE REST OF HIS NATURAL
15 LIFE. SO, IF YOU DO NEED TO CALL US DURING NON-COURT HOURS
16 AND YOU GET THE VOICE MAIL, PLEASE GIVE US AS MUCH DETAIL AS
17 YOU POSSIBLY CAN ABOUT THE PROBLEM THAT YOU'RE HAVING. AND
18 PLEASE GIVE US A CALL-BACK NUMBER.

19 NOW, IF YOU DON'T HAVE A CALL-BACK NUMBER BECAUSE
20 YOU'RE TAKING THE NEXT FLIGHT OUT TO PARIS, MAYBE YOU COULD
21 GIVE US THE NAME AND PHONE NUMBER OF SOMEBODY WHO WILL BE IN
22 CONTACT WITH YOU, SO WE CAN MAKE SURE THAT WE HAVE ALL OF
23 OUR QUESTIONS ANSWERED BEFORE THE DECISION IS MADE TO EXCUSE
24 YOU AND REPLACE YOU WITH AN ALTERNATE JUROR. BECAUSE WE
25 HAVE VERY LIMITED CIRCUMSTANCES UNDER THE LAW IN WHICH WE
26 CAN DO THAT, SO WE REALLY NEED A LOT OF INFORMATION.

1 GENERALLY SPEAKING, MY CLERK AND I ARE HERE AT
2 EIGHT O'CLOCK IN THE MORNING. WHEN SHE'S HERE IN THE FRONT,
3 SHE'LL ANSWER THE PHONE. SOMETIMES SHE LEAVES; SHE MAY HAVE
4 TO GO TO A MEETING OR SHE MAY GO TO THE CAFETERIA FOR A
5 MOMENT OR TWO. AND IF I DON'T SEE THE LIGHT FLASH ON MY
6 CHAMBERS PHONE BACK THERE OR HEAR SOMETHING, AND IT'S VERY
7 HARD TO HEAR FROM BACK THERE, THEN YOUR CALL WILL GO INTO
8 VOICE MAIL. SHE ALSO IS ON THE PHONE WITH A LOT OF
9 ATTORNEYS DURING THE FIRST PART OF THE MORNING, AND IF SHE'S
10 ON HER LINE YOUR CALL WILL GO INTO VOICE MAIL. SO, IF
11 YOU'RE CALLING AT ABOUT EIGHT O'CLOCK OR SOMETIME AFTER
12 EIGHT O'CLOCK AND YOU GET THE VOICE MAIL, IT WOULD BE
13 HELPFUL TO US IF YOU'D WAIT A COUPLE OF MINUTES AND TRY US
14 AGAIN. WE REALLY WOULD RATHER SPEAK TO YOU DIRECTLY SO THAT
15 WE CAN ASK FOLLOW-UP QUESTIONS AND GET THE ANSWERS THAT WE
16 THINK WE NEED ABOUT WHAT'S GOING ON. I'D APPRECIATE THAT.

17 I WANTED TO TELL YOU AGAIN OUR SCHEDULE. AND
18 FIRST I'M GOING TO TELL YOU THE DATES THAT YOU'RE GOING TO
19 BE WITH US.

20 NEXT WEEK IT'S TUESDAY AND WEDNESDAY, MAY 30 AND
21 31ST.

22 THE FOLLOWING WEEK YOU WILL BE WITH US STARTING
23 MONDAY, JUNE 5, AND WORKING WITH US THROUGH TO CONCLUSION OF
24 THE TRIAL, WHICH I ESTIMATE AT THE OUTSIDE TO BE THURSDAY,
25 JUNE 8. WE THINK IT WILL END BEFORE THEN, BUT JUST AT THE
26 OUTSIDE, THAT WILL BE THE DATE THAT SHOULD INCLUDE YOUR

1 DELIBERATIONS.

2 WE GENERALLY START WITH THE JURY AT NINE O'CLOCK
3 IN THE MORNING. WE GENERALLY WORK UNTIL NOON, AND RECESS
4 UNTIL 1:30. WE GENERALLY WORK WITH THE JURY FROM 1:30 TO
5 4:30. YOU CAN TAKE IT TO THE BANK THAT YOU WON'T BE HERE
6 BEFORE NINE AND YOU WON'T BE HERE LATER THAN 4:30. MY STAFF
7 HAS TO DO OTHER THINGS BETWEEN 8:00 AND 9:00 AND BETWEEN
8 4:30 AND 5:00. AND UNLESS THERE'S AN ABSOLUTE EMERGENCY, WE
9 DO NOT AUTHORIZE OVER-TIME ANYMORE BECAUSE OF THE FINANCIAL
10 CRISIS THAT WE'VE BEEN GOING THROUGH. SO YOU WILL NOT BE
11 HERE ANY LATER THAN 4:30.

12 SOMETIMES I HAVE OTHER MATTERS ON MY CALENDAR. I
13 WILL BE LOOKING AT MY TUESDAY CALENDAR THIS AFTERNOON
14 SOMETIME, AND I WILL BE ADJUSTING YOUR START TIME BASED ON
15 MY ESTIMATE OF HOW LONG IT WILL TAKE TO GET THROUGH THOSE
16 OTHER MATTERS. AND THE ATTORNEYS KNOW THAT IT'S MY BIGGEST
17 PET PEEVE TO KEEP JURORS WAITING UNNECESSARILY. SO IF THEY
18 HAVE AN ISSUE THAT THEY NEED TO ADDRESS OUTSIDE YOUR
19 PRESENCE AND THEY KNOW OF IT IN ADVANCE, THEY'RE GOING TO
20 TRY TO GIVE ME THE HIGH SIGN SO I CAN FACTOR IT INTO A LATE
21 START FOR YOU, OR A LONGER LUNCH FOR YOU, OR AN EARLY RECESS
22 FOR YOU SO THAT WE CAN KEEP THE TRIAL ON TRACK WITH RESPECT
23 TO THE TIME ESTIMATE AND NOT INCONVENIENCE YOU ANY MORE THAN
24 WE ABSOLUTELY HAVE TO. BUT YOU WON'T BE HERE LATER THAN
25 4:30.

26 THERE ARE, AS YOU SAW THIS MORNING, INEVITABLE

1 TRIAL DELAYS. IT HAPPENS ALL THE TIME. IT'S NOT COURT TV
2 WHERE THEY CAN REPLAY PARTS OF THE TRIAL FOR YOU WHILE
3 THEY'RE DEALING WITH OTHER THINGS. AND WE ARE SORRY ABOUT
4 THAT. WE DO TRY TO KEEP THEM TO A MINIMUM. AND WHEN WE DO
5 HAVE A DELAY, LIKE WE DID THIS MORNING, I'LL HAVE MY STAFF
6 LET YOU KNOW THE TIME ESTIMATE FOR THE DELAY SO THAT YOU CAN
7 LEAVE THE FLOOR, GO USE THE CAFETERIA, GET SOME FRESH AIR OR
8 BE ELSEWHERE, IF YOU CHOOSE TO.

9 MY SUGGESTION, HOWEVER, IS THAT YOU BRING SOME
10 READING MATERIAL WITH YOU, BOOKS OR MAGAZINES, CROSS-WORD
11 PUZZLES, IF YOU LIKE TO DO THEM. I USED TO SUGGEST THAT
12 PEOPLE BRING KNITTING OR NEEDLEPOINT, BUT THEN WE GOT A
13 SECURITY SYSTEM DOWNSTAIRS AND THEY DON'T LET YOU BRING ANY
14 SHARP OBJECTS THROUGH SECURITY.

15 WE DO HAVE A SERVICE IN PLACE, AND MAY STILL HAVE
16 IT IN PLACE, EVEN THOUGH WE HAD SOME FINANCIAL PROBLEMS FOR
17 JURORS WITH RESPECT TO WHAT COMES THROUGH SECURITY. IF YOU
18 INADVERTENTLY BRING THROUGH SECURITY AN ITEM THAT YOU SHOULD
19 NOT HAVE BROUGHT IN, LIKE ONE OF THOSE FOLD-UP POCKET KNIVES
20 OR, YOU KNOW, YOU PACKED YOUR LUNCH AND THROWN IN A METAL
21 FORK, THEY WILL ORDINARILY TAKE THE ITEM IF THEY DISCOVER IT
22 FROM YOU AND TELL YOU THAT YOU CAN EITHER RETURN IT TO YOUR
23 CAR OR FORFEIT IT. IF THAT HAPPENS, PLEASE TELL THEM THAT
24 YOU'RE A JUROR. YOU SHOULD BE WEARING YOUR BADGES -- I HOPE
25 THAT YOU DO -- AND SAY THAT YOU'RE ON A JURY IN MY
26 COURTROOM, JUDGE SINGER'S COURTROOM. AND IF YOU'RE IDENTIFY

1 AS A JUROR, WHAT THEY WILL GENERALLY DO IS CALL JURY
2 ASSEMBLY AND HAVE SOMEONE FROM JURY ASSEMBLY RETRIEVE THE
3 ITEM AND HOLD IT FOR YOU UNTIL THE END OF THE DAY. SO DON'T
4 BE MARCHING ALL THE WAY BACK TO YOUR CAR UNLESS YOU
5 ABSOLUTELY HAVE TO. TRY TO AVOID THAT.

6 AS I INDICATED YESTERDAY, I RUN A VERY INFORMAL
7 COURTROOM. I WANT YOU TO DRESS COMFORTABLY. KEEP APPRISE
8 TO THE TEMPERATURE IN THE COURTROOM. THIS COURTROOM IS A
9 LOT LARGER THAN THE ONE I HAD UPSTAIRS, SO I THINK THERE'S
10 SOME MORE TEMPERATURE FLUCTUATIONS THAN WHAT I EXPERIENCED
11 IN MY OTHER COURTROOM. ALSO, IT'S VERY WARM HERE THE FIRST
12 DAY OF THE WEEK, BECAUSE THEY GENERALLY SHUT THINGS DOWN
13 OVER WEEKENDS, WHICH MAKES IT ENORMOUSLY UNPLEASANT FOR
14 JUDGES, LIKE MYSELF, TO LIKE TO COME IN ON WEEKENDS AND DO
15 SOME WORK IN THE LIBRARY. BUT IF YOU ARE UNCOMFORTABLE, LET
16 US KNOW SO WE CAN MAKE THAT PHONE CALL AND MAKE AN
17 ADJUSTMENT, AND WE WILL TRY TO KEEP IT AS COMFORTABLE IN THE
18 COURTROOM AS WE POSSIBLY CAN.

19 ALSO, AS I INDICATED YESTERDAY, FEEL FREE TO
20 BRING YOUR LIQUID REFRESHMENTS IN. YOU'LL SEE ME DRINKING
21 FROM MY HERBAL TEA CUP EVERYTHING MORNING. AND I DRINK A
22 LOT OF WATER. FEEL FREE TO DO THE SAME THING. THE ONLY
23 THING I ASK OF YOU, IF I FAILED TO MENTION IT YESTERDAY, IS
24 WHATEVER YOU BRING INTO THE COURTROOM, PLEASE BE SURE YOU
25 TAKE OUT.

26 EVER SINCE THE BANKRUPTCY, WHICH WAS NOW OVER A

1 DECADE AGO, THE JANITORIAL SERVICES IN THE COURTHOUSE HAVE
2 BEEN JUST TERRIBLE. AND I WANT TO CONTINUE THIS PRACTICE OF
3 ALLOWING PEOPLE TO BRING THINGS IN, IF I DON'T HAVE TO DEAL
4 WITH TRASH ACCUMULATIONS IN THE JURY BOX.

5 BUT I DON'T THINK THEY CLEAN VERY WELL. IN FACT,
6 I BOUGHT A DUST BUSTER FROM TARGET A COUPLE OF YEARS AGO AND
7 OCCASIONALLY I WILL GO IN THERE MYSELF AND VACUUM IT OUT.

8 I SERVE ON THE EXECUTIVE COMMITTEE OF OUR COURT.
9 WE'VE DECIDED RECENTLY THAT WE CAN DO IT BETTER THAN THE
10 COUNTY, SO THE JUDGES HAVE DECIDED TO TAKE OVER JANITORIAL
11 SERVICES AND WE'RE IN THE PROCESS OF HIRING OUR OWN PEOPLE.
12 WE THINK WE CAN DO IT BETTER, WE CAN DO IT CHEAPER. I'LL
13 SEE WHAT HAPPENS AND GET BACK TO YOU ON THAT.

14 WE WANT TO REMIND YOU TO BE SURE YOU TURN OFF
15 YOUR CELL PHONES AND PAGERS WHEN YOU COME INTO THE
16 COURTROOM. THOSE ITEMS CAN BE EXTRAORDINARILY DISRUPTIVE IF
17 THEY RING. SOME OF THE TESTIMONY THAT YOU'LL BE HEARING MAY
18 BE OF AN EMOTIONAL NATURE, AND WE REALLY WANT TO AVOID THOSE
19 KINDS OF DISRUPTIONS. SO, PLEASE BE SURE THAT YOU TAKE THE
20 PHONE NUMBER HOME AND THAT YOU GIVE IT TO YOUR HUSBANDS,
21 WIVES AND KIDS, WHOEVER MAY HAVE A REASON TO CALL YOU DURING
22 THE DAY. WHEN WE'RE IN SESSION THE PHONE IS ALWAYS
23 ANSWERED. AND IF ANY OF YOU ARE NOTIFIED OF AN EMERGENCY,
24 THE TRIAL WILL STOP. WE WILL GET YOU TO A PHONE, SO YOU CAN
25 ATTEND TO IT. BUT PLEASE BE VIGILANT ABOUT YOUR CELL
26 PHONES. THIS DIDN'T USED TO BE A PROBLEM WHEN THE ONLY

1 PEOPLE WHO HAD CELL PHONES WERE MOVIE MOGULS OR DRUG
2 DEALERS, BUT I DON'T KNOW ANYBODY NOW WHO CAN'T LIVE WITHOUT
3 ONE.

4 ONCE AGAIN, WE NEED TO ADVISE YOU THAT WHENEVER
5 WE CALL A RECESS, YOU NEED TO ACTUALLY LEAVE THE COURTROOM
6 SO THAT I CAN CONTINUE TO WORK WITH STAFF AND ALSO THE
7 LAWYERS ON THIS CASE. WE DON'T WANT YOU HEARING ANYTHING
8 THAT YOU SHOULD NOT HEAR. AND, SO, WE DO HAVE EVERYONE EXIT
9 THE COURTROOM AND WAIT FOR THE BAILIFF TO INVITE YOU BACK
10 IN.

11 THE JURY BADGES THAT MOST OF YOU ARE WEARING ARE
12 VERY IMPORTANT BECAUSE THEY IDENTIFY YOU TO THE REST OF THE
13 WORLD AS A TRIAL JUROR. YOU'RE GOING TO NOTICE,
14 PARTICULARLY ON THESE FLOORS, 10 AND 11, THERE ARE A LOT OF
15 CRIMINAL CASES GOING ON. SOMETIMES THERE ARE HIGH-PROFILE
16 CASES. THERE ARE PRESS OUT THERE. THERE ARE SPECTATORS.
17 THERE ARE WITNESSES. POLICE OFFICERS ARE TALKING TO
18 PROSECUTORS. REPORTERS ARE TALKING TO PEOPLE. EVERYBODY IS
19 TALKING TO EVERYBODY ELSE. BUT WE'VE FOUND THAT PEOPLE ARE
20 MORE CIRCUMSPECT ABOUT WHAT THEY SAY IN THE HALLWAYS AND THE
21 PUBLIC AREAS AND THEY'RE MORE CAREFUL ABOUT THEIR VOICE
22 LEVEL IF THEY KNOW THERE'S A JUROR AROUND. IN FACT, IF YOU
23 GET IN ON AN ELEVATOR AND YOU'RE WEARING YOUR JUROR BADGE
24 AND SOME ATTORNEYS ARE HAVING A CONVERSATION, MAYBE AN
25 ANIMATED ONE, THEY MAY SHUT UP. IT'S NOTHING YOU'VE SAID.
26 THEY JUST WANT TO BE SURE THAT YOU DON'T HEAR ANYTHING THAT

1 YOU SHOULD NOT HEAR.

2 AND, IF YOU THINK YOU'VE HEARD SOMETHING, WHETHER
3 IT RELATES TO THIS CASE OR ANOTHER, WHICH COULD CONCEIVABLY
4 CAUSE YOU TO THINK IN SOME WAY AS A RESULT OF WHAT YOU'VE
5 HEARD, CAUSE ANY BIAS, COULD CONCEIVABLY AFFECT YOU IN ANY
6 WAY, PLEASE, TELL A MEMBER OF MY STAFF IMMEDIATELY SO WE CAN
7 AT LEAST TALK TO YOU ABOUT IT AND FIND OUT WHAT IT WAS AND
8 IF THERE IS AN EFFECT. WE NEVER WANT TO FIND OUT LATER,
9 AFTER THE TRIAL IS ALL OVER AND DONE, THAT A JUROR HAD A
10 PROBLEM BECAUSE OF SOMETHING HE OR SHE HEARD AND DIDN'T
11 REPORT IT TO THE COURT SO WE COULD TAKE CARE OF THE PROBLEM
12 AND ADDRESS THE ISSUE AT THE TIME THAT IT HAPPENED. SO,
13 PLEASE, BE VIGILANT. AND IF YOU HEAR SOMETHING THAT
14 CONCERNS YOU, TELL US RIGHT AWAY.

15 AND, ONCE AGAIN, THE WAY YOU COMMUNICATE TO ME IS
16 ALWAYS THROUGH THE BAILIFF OR A MEMBER OF MY STAFF, NOT
17 THROUGH THE LAWYERS.

18 I THINK I'VE GOT EVERYTHING COVERED THAT I
19 INTENDED TO COVER.

20 AND SO, THAT BEING SAID, MR. GELLER, WHENEVER
21 YOU'RE READY, YOU MAY PROCEED.

22 MR. GELLER: THANK YOU, YOUR HONOR.

23 (OPENING STATEMENT BY MR. GELLER.)

24 THE COURT: THANK YOU, MR. GELLER.

25 MR. BROTT?

26 MR. BROTT: I'LL RESERVE.

1 THE COURT: OKAY.

2 ONE MORE THING I FORGOT TO MENTION. WE GENERALLY
3 RUN SESSIONS OF APPROXIMATELY 60 MINUTES, MAYBE A LITTLE
4 LONGER. I HATE TO GO MUCH PAST 60 MINUTES, MOSTLY FOR THE
5 SAKE OF MY COURT REPORTER, WHO IS REALLY GOOD AT HER JOB AND
6 I DON'T WANT TO LOSE HER. AND IT'S A PHYSICALLY DEMANDING
7 TASK THAT SHE PERFORMS EVERY DAY. BUT WE DO HAVE A TENDENCY
8 TO SOMETIMES GO OVER THAT 60 MINUTES. I'M ALWAYS WATCHING
9 THE CLOCK. AND IF WE GO OVER, IT'S BECAUSE I'M THINKING WE
10 CAN FINISH SOME TESTIMONY BEFORE WE TAKE A BREAK. SO THESE
11 ARE LONG SESSIONS. THEY'RE NOT DESIGNED TO MAKE ANYONE
12 UNCOMFORTABLE. IF ANY OF YOU BECOMES UNCOMFORTABLE AT ANY
13 TIME, YOU GOT TO JUST LET ME KNOW THAT YOU NEED A BREAK.

14 NOW, IF YOU WAVE AT ME AND I'M NOT RESPONDING,
15 IT'S PROBABLY BECAUSE I'M NOT WATCHING YOU. I WORK FROM
16 BOTH OF THESE COMPUTER MONITORS HERE AND I GET DIFFERENT
17 INFORMATION FROM EACH. SO, IF YOU'RE WAVING AND I DON'T SEE
18 YOU, AND JAY DOESN'T SEE YOU, JUST SHOUT OUT, JUDGE, I NEED
19 A BREAK. IT'S NOT A PROBLEM FOR ME. PLEASE DON'T BE
20 HESITANT OR EMBARRASSED ABOUT ASKING FOR ONE. YOU CANNOT BE
21 CONCENTRATING ON THE EVIDENCE THAT'S BEING PRESENTED IF
22 YOU'RE LOOKING AT YOUR WATCH WONDERING WHEN IS SHE GOING TO
23 LET ME OUT OF THIS COURTROOM. DON'T PUT YOURSELF THROUGH
24 IT.

25 WE ARE GOING TO TAKE A RECESS AT THIS POINT UNTIL
26 A QUARTER TO ELEVEN. AND, THEN, WHEN WE COME BACK, WE'LL

1 WORK UNTIL NOON AND WE'LL BEGIN THE EVIDENCE WHEN YOU
2 RETURN.

3 DON'T DISCUSS THE CASE, FORM OR EXPRESS AN
4 OPINION ON IT. AND I'LL SEE YOU IN A LITTLE MORE THAN 15
5 MINUTES.

6 (RECESS TAKEN.)

7 THE COURT: IT'S A GOOD THING THAT I MENTIONED ABOUT
8 LONG SESSIONS BECAUSE I HAVE FORGOTTEN THAT WE NEED TO BREAK
9 WITH YOU AT THREE O'CLOCK TODAY. SO, WHEN WE COME BACK FROM
10 LUNCH AT 1:30 OUR PLAN IS TO WORK FROM 1:30 TO 3:00, AND
11 THEN LET YOU GO FOR THE AFTERNOON. BUT, AGAIN, FEEL FREE,
12 IF YOU NEED A BREAK, YOU'VE GOT TO LET ME KNOW.

13 THAT BEING SAID, MR. BROTT HAS RESERVED HIS
14 OPENING STATEMENT FOR THE DEFENSE CASE.

15 MR. GELLER, YOU MAY PROCEED. CALL YOUR FIRST
16 WITNESS.

17 MR. GELLER: THANK YOU. WITH THE COURT'S PERMISSION,
18 THE PEOPLE VERSUS INVESTIGATOR DAVID RONDOU.

19 THE BAILIFF: STEP TO THE EDGE OF COUNSEL TABLE, RAISE
20 YOUR RIGHT HAND AND FACE THE CLERK.

21 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
22 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
23 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
24 TRUTH, SO HELP YOU GOD?

25 THE WITNESS: YES, I DO.

26 THE CLERK: STATE YOUR NAME, PLEASE.

1 THE WITNESS: DAVID RONDOU: R-O-N-D-O-U.

2 THE CLERK: THANK YOU, SIR. YOU MAY TAKE THE STAND.

3 THE COURT: YOU MAY INQUIRE..

4 MR. GELLER: THANK YOU.

5 DAVID RONDOU,

6 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS

7 EXAMINED AND TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. GELLER:

10 Q MORNING, INVESTIGATOR RONDOU.

11 A MORNING.

12 Q WHAT WE'RE GOING TO TALK ABOUT TODAY AT THIS
13 POINT IN TIME IS SIMPLY AUTHENTICATING SOME DIAGRAMS,
14 AUTHENTICATING SOME PICTURES, AUTHENTICATING THE GUN, AND
15 WE'RE GOING TO PICK UP WITH YOUR GANG EXPERTISE LATER ON IN
16 THE TRIAL, OKAY?

17 A OKAY.

18 Q FIRST OFF, LET'S JUST GET SOME BASICS. HOW LONG
19 HAVE YOU BEEN A POLICE OFFICER?

20 A COMING ON 13 YEARS.

21 Q AND YOU'RE PRESENTLY A GANG HOMICIDE DETECTIVE?

22 A FOR THE LAST FOUR.

23 Q AND THAT'S WITH SANTA ANA; IS THAT CORRECT?

24 A CORRECT.

25 Q AND HOW MUCH TIME DID YOU SPEND AT LONG BEACH
26 OR -- I'M SORRY, LOS ANGELES POLICE DEPARTMENT?

1 A ABOUT SEVEN YEARS.

2 Q AND THEN THE REMAINDER HERE?

3 A WITH ABOUT TEN YEARS WITHIN A GANG UNIT.

4 Q VERY WELL. YOU WERE CALLED OUT TO THE SCENE OF
5 THE SHOOTING ON AUGUST 10TH OF 2004?

6 A YES.

7 Q AND YOU WENT TO THE SCENE?

8 A CORRECT.

9 MR. GELLER: DO I NEED TO ASK TO APPROACH EACH TIME?

10 THE COURT: NO. BOTH COUNSEL HAVE CONTINUING
11 PERMISSION TO APPROACH EXHIBITS, DISPLAYS AND THE WITNESS
12 WITH MATERIALS.

13 MR. GELLER: WITH THE COURT'S PERMISSION, I'D LIKE TO
14 MARK THIS CHART AS PEOPLE'S EXHIBIT 1 FOR IDENTIFICATION.
15 I'LL PUT A "1" IN THE UPPER RIGHT-HAND CORNER.

16 THE COURT: VERY WELL.

17 (WHEREUPON, EXHIBIT NO. 1 IS MARKED

18 FOR IDENTIFICATION.)

19 BY MR. GELLER:

20 Q INVESTIGATOR RONDOU, IT APPEARS TO BE A MAP OF,
21 AT LEAST, OF A PORTION OF THE CITY OF SANTA ANA; IS THAT
22 CORRECT?

23 A CORRECT.

24 Q AND YOU'VE GOT EL SALVADOR PARK, WHICH IS IN THE
25 MIDDLE; IN THE UPPER PORTION OF THE MAP IS CIVIC CENTER
26 DRIVE RUNNING EAST/WEST; RAITT STREET RUNNING NORTH/SOUTH;

1 FIRST STREET RUNNING EAST/WEST; SULLIVAN RUNNING
2 NORTH/SOUTH, WILLITS RUNNING EAST/WEST.

3 WHETHER THIS IS OR IS NOT TO SCALE, DOES THIS
4 LOOK LIKE AN ACCURATE MAP OF THE CITY OF SANTA ANA AS YOU
5 KNOW?

6 A IT DOES.

7 Q ALL RIGHT.

8 MR. GELLER: ASK THAT THE NEXT EXHIBIT BE MARKED AS
9 PEOPLE'S 2 FOR IDENTIFICATION. I'LL PUT A "2" IN THE UPPER
10 RIGHT-HAND CORNER.

11 (WHEREUPON, EXHIBIT NO. 2 IS MARKED
12 FOR IDENTIFICATION.)

13 Q WHAT WE HAVE HERE IS PROBABLY A PHOTO TAKEN FROM
14 EITHER A HELICOPTER, AIRPLANE OR MAYBE A SATELLITE. YOU
15 RECOGNIZE THIS INTERSECTION?

16 A I DO.

17 Q WHAT IS IT?

18 A IT'S THE INTERSECTION OF WILLITS AND SULLIVAN
19 WITHIN THE CITY OF SANTA ANA WHERE THE HOMICIDE TOOK PLACE.

20 Q OKAY. THERE IS A NORTH ON THE LOWER RIGHT-HAND
21 PORTION OF THE DIAGRAM INDICATING THE TOP OF THE MAP WOULD
22 BE NORTH; IS THAT ACCURATE?

23 A CORRECT.

24 Q THIS IS AN ELEMENTARY SCHOOL OVER HERE IN THE
25 NORTHEAST CORNER?

26 A CORRECT.

1 Q RESIDENTIAL NEIGHBORHOOD IN THE REMAINING THREE
2 CORNERS; IS THAT CORRECT?

3 A CORRECT.

4 Q KIND OF A HIGH DENSITY AREA, A LOT OF PEOPLE LIVE
5 IN THAT AREA?

6 A YES.

7 Q ALL RIGHT. ALL OF THE STRUCTURES THAT YOU SEE IN
8 THIS DIAGRAM WERE ALL PRESENT, AND I'M EXCLUDING ANY VEHICLE
9 TRAFFIC, BUT ALL THE STRUCTURES WERE ALL PRESENT ABOUT TWO
10 YEARS AGO, SUMMER OF 2004; IS THAT CORRECT?

11 A IT APPEARED -- I'VE NEVER BEEN UP IN THE
12 HELICOPTER TO LOOK AT THAT, BUT IT LOOKS RIGHT TO ME.

13 Q FAIR ENOUGH?

14 A I'VE BEEN IN THE TRAILER PARK AND STUFF.

15 Q PEOPLE'S EXHIBIT 3. ASK THAT THIS BE MARKED AS
16 PEOPLE'S 3 FOR IDENTIFICATION. PUTTING A "3" IN THE UPPER
17 RIGHT-HAND CORNER.

18 (WHEREUPON, EXHIBIT NO. 3 IS MARKED
19 FOR IDENTIFICATION.)

20 Q DO YOU RECOGNIZE THAT, SIR?

21 A YES.

22 Q BASICALLY, JUST KIND OF A, I DON'T KNOW, ALMOST A
23 CARICATURE OF THE SAME OVERHEAD VIEW WE JUST HAD?

24 A COLORFUL.

25 Q THANK YOU. I DIDN'T DO THAT.

26 GOT A SERIES OF PHOTOGRAPHS I'M GOING TO TALK TO

1 YOU ABOUT. BY THE WAY, WHAT TIME DID YOU GET CALLED OUT TO
2 THE SCENE THAT DAY?

3 A PROBABLY ABOUT 30 TO 40 MINUTES FOLLOWING THE
4 HOMICIDE, MAYBE AN HOUR, IS WHEN I ARRIVED.

5 MR. BROTT: OBJECTION; NO FOUNDATION. MOVE TO STRIKE
6 IT.

7 THE COURT: I'LL RECEIVE IT SUBJECT TO FOUNDATION. CAN
8 YOU LAY THAT?

9 MR. GELLER: I'LL DO MY BEST.

10 Q WHAT TIME DID YOU ARRIVE, IF YOU RECALL?

11 A I DON'T RECALL THE EXACT TIME I ARRIVED. IT'S
12 WRITTEN IN THE POLICE REPORTS. I DON'T REMEMBER THE EXACT
13 TIME.

14 Q IF I SHOWED YOU POLICE REPORTS, WOULD THAT HELP
15 YOU REFRESH YOUR MEMORY?

16 A SURE.

17 MR. GELLER: WITH THE COURT'S PERMISSION?

18 THE COURT: CERTAINLY.

19 BY MR. GELLER:

20 Q DO YOU WANT YOURS OR MINE?

21 A YOURS.

22 Q TAKE A LOOK THROUGH THIS BOOK. IF THERE'S
23 ANYTHING SPECIFIC THAT YOU'RE USING TO REFRESH YOUR MEMORY,
24 GO AHEAD AND TELL US WHAT PAGE NUMBER OF DISCOVERY YOU'RE
25 LOOKING AT. AND THEN GO AHEAD AND ANSWER, IF YOU CAN.

26 A THE WAY YOURS IS WRITTEN IT'S NOT GOING TO HELP

1 ME FIND IT REAL FAST.

2 THE COURT: WHILE HE DOES THAT, CAN YOU APPROACH OVER
3 HERE.

4 (CONFERENCE BETWEEN THE COURT AND
5 COUNSEL WAS HAD OUT OF THE HEARING OF THE
6 REPORTER AND THE JURY:)

7 BY MR. GELLER:

8 Q NOT JUMPING OUT AT YOU?

9 A IT'S NOT, NOT THE WAY YOU HAVE THIS -- THE
10 HOMICIDE HAPPENED AT ABOUT 6:20 --

11 MR. BROTT: OBJECTION, YOUR HONOR, NO FOUNDATION. MOVE
12 TO STRIKE; NO QUESTION PENDING.

13 THE COURT: I THINK THERE'S A FOUNDATION PROBLEM AND
14 I'LL SUSTAIN THAT OBJECTION.

15 BY MR. GELLER:

16 Q LET ME GO AT IT THIS WAY, IF YOU WOULDN'T MIND
17 DETECTIVE RONDOU: WHEN YOU ARRIVED AT THE SCENE WAS IT
18 STILL LIGHT OUTSIDE?

19 A NO.

20 Q IT WAS ALREADY DARK?

21 A YES.

22 Q OKAY. WHEN YOU ARRIVED AT THE SCENE WAS THE
23 DECEDENT IN HIS VEHICLE?

24 A YES, HE WAS STILL -- THE DECEDENT WAS STILL AT
25 THE SCENE.

26 Q OKAY. AND THE VEHICLE WAS AT THE SCENE TOO; IS

1 THAT CORRECT?

2 A CORRECT.

3 Q ALL RIGHT. WHAT I'D LIKE TO SHOW YOU IS SOME
4 PHOTOGRAPHS. I REALIZE THAT WHEN YOU SAW THIS SCENE IT WAS
5 DARK. IF YOU CAN AUTHENTICATE THESE PHOTOGRAPHS, GREAT. IF
6 YOU CAN'T, THAT'S ALL RIGHT TOO.

7 A IT WASN'T PITCH DARK. THERE'S LIGHTING OUT
8 THERE. AND WE HAD FLASHLIGHTS AND STUFF. I COULD SEE.

9 Q OKAY. FIRST ONE -- AND THESE HAVE ALL BEEN SHOWN
10 TO DEFENSE COUNSEL. I'LL HAVE TO WRITE IT ON THE BACK.
11 PEOPLE'S 4 FOR IDENTIFICATION.

12 DO YOU WANT TO SEE THESE REAL QUICK?

13 MR. BROTT: NO. I'LL WATCH THEM AS YOU NUMBER THEM.

14 MR. GELLER: OKAY.

15 (WHEREUPON, EXHIBIT NO. 4 IS MARKED

16 FOR IDENTIFICATION.)

17 Q TAKE A LOOK AT PEOPLE'S 4 FOR IDENTIFICATION AND
18 TELL US WHAT'S IN THAT PHOTOGRAPH.

19 A THAT IS THE INTERSECTION OF WILLITS AND SULLIVAN
20 FACING SOUTHBOUND. AND IN THE DISTANCE YOU CAN SEE THE
21 VICTIM'S VEHICLE, WHICH WAS A HONDA CIVIC.

22 Q AND AT LEAST WHERE THE PHOTOGRAPH -- WHERE THE
23 PHOTOGRAPHER WAS, BASED UPON THAT PHOTOGRAPH, AND BASED UPON
24 PEOPLE'S EXHIBIT 3, IT KIND OF LOOKS LIKE THE PHOTOGRAPHER
25 WAS JUST NORTH OF THE WORD "STOP" IN THE ROADWAY; IS THAT
26 ABOUT RIGHT?

1 A YES.

2 Q OKAY. AND THAT'S PEOPLE'S 4; IS THAT RIGHT?

3 A YES.

4 Q GO AHEAD AND ASK YOU ABOUT THIS NEXT PHOTOGRAPH.

5 ALL THESE ARE 8X10 PHOTOGRAPHS. PEOPLE'S 5 FOR
6 IDENTIFICATION. IF YOU COULD TELL US, WHAT'S THAT
7 PHOTOGRAPH.

8 (WHEREUPON, EXHIBIT NO. 5 IS MARKED
9 FOR IDENTIFICATION.)

10 A THE PHOTOGRAPHER IS STANDING, LOOKS LIKE, RIGHT
11 DEAD CENTER CLOSE TO IT IN THE INTERSECTION OF WILLITS AND
12 SULLIVAN FACING NORTHBOUND.

13 Q SO YOU'VE GOT A SCHOOL ON YOUR RIGHT OF THE
14 PHOTOGRAPH, STOP SIGN ON THE LEFT OF THE PHOTOGRAPH?

15 A CORRECT.

16 Q OKAY. SO THE PHOTOGRAPHER, AS I'M PLACING MY
17 FINGER IN ABOUT THE MIDDLE OF THE INTERSECTION OF WILLITS
18 AND SULLIVAN, IS LOOKING NORTHBOUND?

19 A WHICH WOULD BE TOWARDS FIRST STREET, CORRECT.

20 Q VERY WELL.

21 PEOPLE'S 6 FOR IDENTIFICATION.

22 (WHEREUPON, EXHIBIT NO. 6 IS MARKED
23 FOR IDENTIFICATION.)

24 WHAT'S IN THAT PHOTO, SIR?

25 A THAT IS THE VICTIM'S VEHICLE, COVERED BY A YELLOW
26 TARP. THE PHOTOGRAPHER IS STANDING FACING NORTH --

1 Q OKAY.

2 A -- JUST SOUTH OF THE INTERSECTION OF WILLITS AND
3 SULLIVAN.

4 Q SO THE PHOTOGRAPHER NOW IS SOMEWHERE MAYBE
5 BETWEEN THE LIMIT LINE FOR THE STOP SIGN AND THE "T" IN
6 "STREET," FACING IN A NORTHBOUND DIRECTION, WITH THE
7 VICTIM'S VEHICLE ON THE SOUTHBOUND LANES ON THE WEST SIDE OF
8 THE STREET; IS THAT ACCURATE?

9 A CORRECT.

10 Q OKAY. NOW, THERE'S -- IF YOU TAKE A LOOK AT THAT
11 PHOTO, THERE'S SOME YELLOW POLICE TAPE, WHICH SEEMS TO
12 STRETCH ACROSS SULLIVAN EAST AND WEST THERE FROM THE STOP
13 SIGN TO MAYBE SOMETHING ON THE WEST SIDEWALK; IS THAT
14 ACCURATE?

15 A THAT'S CORRECT. CRIME SCENE TAPE PLACED BY THE
16 RESPONDING OFFICERS WHEN THEY RESPONDED TO THE SCENE OF THE
17 MURDER.

18 Q OKAY. YOU'VE INVESTIGATED A NUMBER OF HOMICIDES
19 LIKE THIS?

20 A YES.

21 Q IS THAT STANDARD PROCEDURE BY THE -- FOR THE
22 SANTA ANA POLICE DEPARTMENT TO, ESSENTIALLY, SECURE THE
23 CRIME SCENE ONCE THE RESPONDING OFFICER ARRIVES?

24 A YES.

25 Q OKAY. SO, THERE'S SOME VEHICLES THAT ARE SHOWN
26 IN PEOPLE'S 6; SPECIFICALLY, IT LOOKS LIKE A PRODUCE TRUCK

1 JUST TO THE WEST OF THE DECEDENT'S CAR AND A NUMBER OF OTHER
2 VEHICLES ALONG THAT WEST CURB LINE.

3 WOULD IT BE ACCURATE TO SAY, BASED UPON YOUR

4 TRAINING AND EXPERIENCE, THAT ALL OF THOSE VEHICLES WERE

5 PRESENT, AT LEAST, AT THE TIME THE FIRST OFFICER ARRIVED, AT

6 THE SCENE?

7 A THAT'S CORRECT.

8 MR. BROTT: OBJECTION; NO FOUNDATION.

9 THE COURT: SUSTAINED.

10 BY MR. GELLER:

11 Q WELL, HOW MANY HOMICIDE SCENES HAVE YOU BEEN

12 INVOLVED IN IN THE COURSE OF YOUR CAREER?

13 MR. BROTT: OBJECTION; IRRELEVANT.

14 THE COURT: SUSTAINED.

15 BY MR. GELLER:

16 Q YOU DON'T KNOW WHICH CARS WERE THERE; IS THAT

17 IT?

18 A WHICH CARS ARE IN THE PICTURE?

19 Q WHICH CARS WERE THERE AT THE EXACT TIME OF THE

20 MURDER?

21 A NO, I CAN'T SAY THAT FOR SURE.

22 Q OKAY. ARE YOU FAMILIAR WITH THE TRAINING OF THE

23 SANTA ANA POLICE DEPARTMENT AS IT DEALS WITH CRIME SCENE

24 SECURITY?

25 MR. BROTT: OBJECTION; IRRELEVANT.

26 THE COURT: SUSTAINED.

1 BY MR. GELLER:

2 Q IF I MAY HAVE THIS NEXT PHOTO MARKED AS PEOPLE'S
3 7 FOR IDENTIFICATION.

4 (WHEREUPON, EXHIBIT NO. 7 IS MARKED
5 FOR IDENTIFICATION.)

6 TELL US WHAT'S IN THAT.

7 A THAT IS, AGAIN, THE VICTIM'S VEHICLE COVERED WITH
8 THE FRONT WINDSHIELD WHERE HE WAS SEATED IN THE CAR IS
9 COVERED WITH THE YELLOW TARP. THE PHOTOGRAPHER IS ON THE
10 EAST SIDE OF SULLIVAN SOUTH OF WILLITS SHOOTING A PICTURE
11 WESTBOUND TOWARDS WHAT WOULD BE THE TRAILER PARK.

12 Q EAST SIDE OF SULLIVAN SHOOTING, WHAT?
13 PHOTOGRAPHING WESTBOUND, WITH THE PRODUCE TRUCK AND THE
14 DECEDENT'S VEHICLE IN THE MIDDLE OF THE STREET?

15 A CORRECT.

16 MR. BROTT: COULD I SEE THAT PICTURE?

17 MR. GELLER: NEXT PHOTO WILL BE PEOPLE'S 8.

18 (WHEREUPON, EXHIBIT NO. 8 IS MARKED
19 FOR IDENTIFICATION.)

20 Q WHAT'S IN 8, SIR?

21 A THIS IS, AGAIN, SOUTHBOUND. THE PHOTOGRAPHER IS
22 SHOOTING SOUTHBOUND, THE REAR OF THE VICTIM'S VEHICLE
23 SOUTHBOUND ON SULLIVAN. JUST, THEY'RE STANDING. THE
24 PHOTOGRAPHER IS JUST NORTH OF THE INTERSECTION.

25 Q ALL RIGHT. PHOTOGRAPHER IS BASICALLY STANDING AT
26 THE STOP SIGN LIMIT LINE LOOKING SOUTH; IS THAT ACCURATE?

1 A CORRECT.

2 Q AND YOU SEE MR. ROSARIO'S VEHICLE?

3 A RIGHT.

4 Q THAT WAS 8.

5 PEOPLE'S 9. WHAT DO YOU HAVE IN 9?

6 (WHEREUPON, EXHIBIT NO. 9 IS MARKED
7 FOR IDENTIFICATION.)

8 A THAT'S A CLOSE-UP OF THE REAR OF THE VICTIM'S
9 VEHICLE, INCLUDING THE WINDSHIELD OR THE BACK WINDOW THAT
10 WAS SHATTERED.

11 Q WHEN YOU WERE OUT AT THE SCENE THAT EVENING IS
12 THAT THE CONDITION THE VEHICLE WAS IN?

13 A YES.

14 Q OKAY. YOU SEE HOW THE BRAKE LIGHTS ARE ON?

15 A I DO.

16 Q WERE THE BRAKE LIGHTS ON WHEN YOU GOT THERE?

17 A YES.

18 Q THIS IS NO. 10. WHAT'S IN 10, SIR?

19 (WHEREUPON, EXHIBIT NO. 10 IS MARKED
20 FOR IDENTIFICATION.)

21 A THIS IS A CLOSE-UP SIDE VIEW OF THE DRIVER'S SIDE
22 OF THE VICTIM'S VEHICLE. YOU CAN SEE A PORTION OF THE
23 VICTIM SEATED IN THE DRIVER'S SEAT.

24 Q OKAY. AND DID YOU SEE THE VICTIM IN HIS CAR THAT
25 NIGHT?

26 A YES.

1 Q PEOPLE'S 11 WILL BE THE NEXT ONE.

2 (WHEREUPON, EXHIBIT NO. 11 IS MARKED
3 FOR IDENTIFICATION.)

4 A THAT'S A FRONT VIEW OF THE VICTIM SLOUCHED OVER,
5 KIND OF LEANING INTO THE DRIVER'S DOOR, SEAT BUCKLED IN WITH
6 BLOOD ON THE FRONT OF HIM. AND THAT WAS THE POSITION I SAW
7 HIM IN.

8 Q OKAY. WERE ANY WEAPONS FOUND IN THE VICTIM'S
9 VEHICLE DURING THE COURSE OF THE EVENING?

10 A NO.

11 Q NO. 12, PLEASE, WILL BE THE NEXT PHOTOGRAPH.

12 (WHEREUPON, EXHIBIT NO. 12 IS MARKED
13 FOR IDENTIFICATION.)

14 A THAT IS THE VICTIM AGAIN, A SIDE SHOT, GOING INTO
15 THE DRIVER'S DOOR WITH THE VICTIM SLOUCHED OVER, BLOOD.

16 Q OKAY. AND THEN FINALLY, 13.

17 (WHEREUPON, EXHIBIT NO. 13 IS MARKED
18 FOR IDENTIFICATION.)

19 WHAT IS 13, SIR?

20 A THAT'S THE HANDGUN THAT YOU SHOWED, THE REVOLVER
21 HANDGUN THAT YOU HAD SHOWED IN YOUR OPENING STATEMENT THAT
22 WAS USED TO KILL PEDRO ROSARIO.

23 Q AND YOU -- WHILE YOU WERE OUT AT SULLIVAN AND
24 WILLITS, DID YOU GET CALLED UP TO GO TO ENGLISH AND 12TH?

25 A WELL, I DIDN'T GET CALLED UP. WHEN WE ARRIVED,
26 MYSELF AND OTHER HOMICIDE DETECTIVES ARRIVED AT THE HOMICIDE

1 SCENE, DURING THE BRIEFING WE WERE INFORMED THAT THERE WAS A
2 SEPARATE INCIDENT THAT OCCURRED THAT MAY OR MAY NOT HAVE
3 BEEN INVOLVED. AND THAT HAD OCCURRED UP NEAR 12TH AND
4 ENGLISH. AND, THAT DURING THAT INCIDENT THE VICTIM OF THAT
5 CRIME TOOK THE GUN FROM THE ASSAILANT. AND BASED ON THE
6 FACT THAT OUR HOMICIDE HERE --

7 MR. BROTT: THIS IS NOT RESPONSIVE AT THIS POINT.

8 THE COURT: SUSTAINED. WE'LL STOP THE ANSWER AT THIS
9 POINT.

10 BY MR. GELLER:

11 Q YOU SEE HOW THERE IS A PICTURE OF THE CYLINDER
12 WHERE THE BULLET GOES IN THAT REVOLVER?

13 A YES.

14 Q YOU HAVE FAMILIARITY WITH REVOLVERS; IS THAT
15 CORRECT?

16 A YEAH.

17 Q YOU KNOW WHAT IT LOOKS LIKE WHEN ONE BULLET HAS
18 BEEN FIRED FROM A REVOLVER; IS THAT RIGHT?

19 A YES.

20 Q AND FROM A REVOLVER, AS OPPOSED TO A
21 SEMI-AUTOMATIC GUN, THE BULLET CASING STAYS IN THE CYLINDER,
22 DOESN'T GET EJECTED OUT; IS THAT ACCURATE?

23 A CORRECT.

24 Q HOW MANY OF THOSE BULLETS HAVE BEEN FIRED, SIR?

25 A ONE.

26 Q AND THERE'S ONE THAT'S COMPLETELY MISSING,

1 THERE'S NO SHELL CASING, NO BULLET; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q ALL RIGHT. AND SO WE'RE CLEAR, BECAUSE IT GOT
4 LEFT OFF THE MAP, I'M GOING TO WRITE "ENGLISH."

5 IS THIS ENGLISH STREET, AS I'M GOING TO WRITE IT
6 ON THE MAP HERE --

7 A YES.

8 Q -- ON PEOPLE'S 1?

9 AND THEN, FINALLY, I'LL SHOW YOU THE GUN, MAKE
10 SURE IT IS IN FACT THE SAME GUN THAT WAS RECOVERED ON 12TH
11 AND ENGLISH THAT DAY. PEOPLE'S 14, I BELIEVE.

12 THE COURT: I HAVE TO CHECK WITH THE --

13 THE CLERK: YES, IT WOULD BE 14, JUDGE.

14 THE COURT: 14.

15 (WHEREUPON, EXHIBIT NO. 14 IS MARKED
16 FOR IDENTIFICATION.)

17 THE WITNESS: THAT LOOKS LIKE THE ONE TO ME.

18 BY MR. GELLER:

19 Q BACK IN ITS BOX.

20 PEOPLE'S 14 FOR IDENTIFICATION WOULD BE THE
21 FIREARM. DOES IT APPEAR TO YOU TO BE THE SAME GUN THAT WAS
22 IN PEOPLE'S 13?

23 A CORRECT.

24 Q IS THIS THE GUN THAT YOU SAW AT 12TH AND ENGLISH
25 ON THE NIGHT OF THE MURDER?

26 A THAT'S CORRECT.

1 Q ALL RIGHT.

2 MR. GELLER: MAY WE APPROACH REAL BRIEFLY, YOUR HONOR?

3 THE COURT: YES.

4 (CONFERENCE BETWEEN THE COURT AND
5 COUNSEL WAS HAD OUT OF THE HEARING OF THE
6 REPORTER AND THE JURY:)

7 THE COURT: ALL RIGHT. MR. GELLER HAS ASKED TO DISPLAY
8 THE PHOTOGRAPHS FOR THE JURY. AND THERE'S AN AGREEMENT THAT
9 HE CAN DISPLAY THE ITEMS THAT HAVE BEEN MARKED -- 4 THROUGH
10 12?

11 MR. BROTT: YES.

12 MR. GELLER: MAY I JUST GIVE THEM TO ONE OF THE JURORS,
13 YOUR HONOR?

14 THE COURT: SURE. DO YOU WANT TO PUT THEM IN ORDER,
15 BECAUSE THEY HAVEN'T BEEN TAGGED YET AND YOUR NUMBERS ARE ON
16 THE BACK.

17 MR. GELLER: SURE.

18 MR. BROTT: YOUR HONOR, BEFORE WE DO THAT, I THINK I DO
19 NEED TO MAKE A RECORD ON SOMETHING CONCERNING THE PHOTO.

20 THE COURT: ALL RIGHT. CHAMBERS WITH THE REPORTER.

21 (THE FOLLOWING PROCEEDINGS WERE HAD IN
22 CHAMBERS:)

23 THE COURT: WE'RE IN CHAMBERS, OUTSIDE THE PRESENCE OF
24 THE JURY.

25 AT THE UNRECORDED SIDEBAR MR. GELLER ASKED
26 PERMISSION TO PUBLISH THE PHOTOGRAPHS, AND I DEFERRED TO

1 YOU, MR. BROTT, BECAUSE IF YOU HAD AN OBJECTION I WANTED TO
2 HEAR IT. YOU ONLY HAD AN OBJECTION TO THE GUN, WHICH IS
3 DEPICTED IN PEOPLE'S 13 AT THE TIME, BUT --

4 MR. BROTT: CHANGED MY MIND.

5 THE COURT: OKAY.

6 MR. BROTT: 11 AND 12, YOUR HONOR, WHICH I AM GOING TO
7 HAND YOU, ARE -- SHOW THE VICTIM IN THE CAR, SLUMPED OVER,
8 BLOOD, FAIRLY GRAPHIC. IN FACT, QUITE GRAPHIC, AS OPPOSED
9 TO NO. -- IS THAT A "10"?

10 MR. GELLER: YEAH, MY PEN WASN'T WRITING TOO WELL.

11 MR. BROTT: AS OPPOSED TO NO. 10, WHICH DOES IN FACT
12 SHOW THE VICTIM SLUMPED OVER IN THE CAR BUT WITHOUT THE
13 GRAPHIC ADDITIONS. SO, I WOULD OBJECT TO 12 AND 13 UNDER
14 352 AS BEING UNNECESSARILY GRAPHIC AND DEPICTING SOMETHING
15 THAT THE PEOPLE CAN PROVE OTHERWISE. SO I'LL OBJECT TO
16 THOSE TWO.

17 THE COURT: LET ME MAKE SURE I KNOW WHAT WE'RE DOING
18 BACK HERE. ARE YOU MOVING THESE PHOTOGRAPHS INTO EVIDENCE
19 AT THIS TIME, MR. GELLER? ALL OF THEM?

20 MR. GELLER: I DON'T NECESSARILY HAVE TO MOVE THEM IN,
21 BUT I WOULD LIKE TO PUBLISH THEM.

22 THE COURT: WELL, IF THEY'RE NOT GOING TO BE ADMITTED
23 THEN YOU WOULDN'T BE PERMITTED TO PUBLISH THEM. SO AS LONG
24 AS -- I MEAN, WERE YOU INTENDING TO PRESENT ADDITIONAL
25 EVIDENCE ABOUT THE PHOTOGRAPHS THAT WOULD ESTABLISH MORE
26 FOUNDATION AS TO WHEN THEY WERE TAKEN AND WHO TOOK THEM OR

1 ANYTHING LIKE THAT?

2 MR. GELLER: NO.

3 THE COURT: THIS IS AS FAR AS YOU'RE GOING TO GO WITH
4 RESPECT TO THE FOUNDATION FOR THE ADMISSIBILITY OF THE
5 PICTURES.

6 MR. GELLER: THE ONLY THING I'M GOING TO ASK
7 ADDITIONALLY IS WHEN DETECTIVE SELINSKE COMES I'M GOING TO
8 ASK HIM IF THE LIGHTING CONDITIONS WHEN HE OBSERVED THE
9 CRIME ARE SIMILAR TO THE ONES IN THE PHOTOGRAPHS BECAUSE
10 RONDOU HAS ALREADY TESTIFIED THAT IT WAS DARKER OUT, SO THAT
11 WOULD PROBABLY BE THE ONLY ADDITIONAL FOUNDATION I WOULD
12 LAY.

13 THE COURT: ALL RIGHT. WITH THAT BEING SAID, IT'S MY
14 UNDERSTANDING THAT YOU ARE NOT OBJECTING TO THE ADMISSION OF
15 4 THROUGH 9, WHICH WERE THE CRIME SCENE PHOTOGRAPHS.

16 MR. BROTT: WELL, AGAIN, I WAS ASSUMING THAT AT SOME
17 POINT SOMEBODY WAS GOING TO COME ALONG AND SAY THAT THIS IS
18 WHAT IT LOOKED LIKE AT THE TIME THE CRIME OCCURRED, BECAUSE
19 RIGHT NOW ALL WE GOT TO KNOW IS THAT THIS LOOKS LIKE IT WHEN
20 I GOT THERE, BUT IT WAS DARK. AND SO I WASN'T ANTICIPATING
21 THAT YOU WERE THINKING ABOUT ADMITTING THEM RIGHT THIS
22 MINUTE. WHAT I WAS MAINLY CONCERNED WITH -- YES, I WOULD
23 HAVE FOUNDATIONAL OBJECTIONS AT THIS POINT.

24 THE COURT: ALL RIGHT. SO AT THIS POINT YOU ARE
25 AGREEING NONETHELESS THAT THESE PHOTOGRAPHS IN 4 THROUGH 9
26 CAN BE SHOWN TO THE JURY?

1 MR. BROTT: WELL, NOW THAT I THINK ABOUT IT, I GUESS I
2 CAN'T REALLY DO THAT BECAUSE IF THEY'RE NOT GOING TO BE
3 ADMITTED ULTIMATELY, UNLESS THERE'S SOME FURTHER FOUNDATION,
4 I'M GOING TO -- I MAY SOUND LIKE I'M EQUIVOCATING, BUT I AM.
5 I THINK THAT THAT WOULD PROBABLY BE INAPPROPRIATE AT THIS
6 POINT IF THEY'RE NOT NECESSARILY GOING TO HAVE FOUNDATION
7 FOR THEM LAID LATER.

8 THE COURT: OKAY. IF YOU'RE OBJECTING, I'M GOING TO
9 DENY MR. GELLER'S REQUEST TO PUBLISH. AND IF I'M DENYING
10 HIS REQUEST TO PUBLISH, THEN I WOULD PREFER TO ADDRESS YOUR
11 352 OBJECTION TO NO.S 11 AND 12 LATER. BUT LET ME JUST SAY
12 PRELIMINARILY THAT WHILE YOU DESCRIBED THESE PHOTOGRAPHS AS
13 GRAPHIC, THE MERE FACT THAT THERE IS BLOOD SHOWN ON A PERSON
14 REPRESENTED TO US TO BE DECEASED DOES NOT MAKE THE
15 PHOTOGRAPH GRUESOME. AND THIS DOES NOT APPEAR TO BE A
16 PHOTOGRAPH THAT IS SO INFLAMMATORY THAT IT NEEDS TO BE
17 EXCLUDED. IT GOES TO SHOW THE CRIME SCENE, THE FACT THAT
18 THE VICTIM IS STILL LOCKED IN HIS SEAT BELT. IT GOES TO
19 DEMONSTRATE THE PORTION OF HIS BODY ON WHICH THE FATAL WOUND
20 WAS INFLICTED. AND IT SEEMS TO ME IT IS FAR MORE PROBATIVE
21 ON A NUMBER OF ISSUES IN THIS CASE THAN THIS IS PREJUDICIAL.

22 SO, THAT BEING SAID, I WOULD INTEND TO SAY THAT
23 LATER WHEN THERE IS A MOTION TO ADMIT AND WE ADDRESS THAT.

24 MR. BROTT: JUST SO THE RECORD IS CLEAR. YOU'RE
25 TALKING ABOUT BOTH OF THOSE PICTURES, NOT -- YOU SAID "IT."
26 AND I PRESUME YOU MEAN --

1 THE COURT: I MEANT BOTH.

2 MR. BROTT: -- BOTH.

3 THE COURT: I'M LOOKING AT BOTH OF THEM. EVEN THOUGH
4 THERE'S A CLOSER VIEW OF THE VICTIM IN NO. 11, YOU DON'T SEE
5 AS MUCH BLOOD IN NO. 11 AS YOU DO IN NO. 12. BUT,
6 NONETHELESS, NEITHER PHOTOGRAPH IS SO OFFENSIVE OR OF
7 CONCERN TO THE COURT THAT I WOULD SUSTAIN AN OBJECTION.

8 MR. GELLER: MAY I BE HEARD?

9 THE COURT: WELL, WE'RE NOT RULING ON IT NOW. I'M JUST
10 INDICATING THAT THEY'LL PROBABLY COME IN. SO WHAT DID YOU
11 WANT TO BE HEARD ABOUT?

12 MR. GELLER: I'M GOING TO ASK THE COURT THEN, IF THE
13 COURT IS NOT GOING TO ADMIT THEM ON FOUNDATIONAL GROUNDS, I
14 HAVE NO FURTHER FOUNDATION TO LAY WITH RESPECT TO AT LEAST
15 THE TWO PICTURES YOU HAVE IN YOUR HAND. THAT'S HOW RONDOU
16 SAW THE BODY THAT DAY. I DON'T THINK THERE'S ANY FOUNDATION
17 LACKING.

18 THE COURT: NOW I GUESS I HAVE A MOTION TO ADMIT 11 AND
19 12. I'VE HEARD YOUR OBJECTION TO PUBLISHING THEM. I ASSUME
20 YOUR SAME OBJECTION APPLIES TO THE ADMISSION OF THESE
21 PHOTOGRAPHS?

22 MR. BROTT: YES.

23 THE COURT: IS THERE ANY OTHER?

24 MR. BROTT: NO. WELL, THE -- IF I RECALL, THE
25 FOUNDATION WAS LAID THAT, IS THAT WHAT IT LOOKED LIKE WHEN
26 YOU GOT THERE? I THINK THAT'S WHAT HE SAID. YES, THEN I

1 WOULD -- YOU'VE HEARD MY OBJECTIONS.

2 THE COURT: OKAY. THEN YOUR OBJECTIONS ARE OVERRULED
3 AS TO THOSE TWO PICTURES.

4 (WHEREUPON, EXHIBIT NO.S 11 AND 12 ARE
5 RECEIVED IN EVIDENCE.)

6 THE COURT: NOW, WE STILL HAVE NO. 13. AND AT SIDEBAR
7 YOU INDICATED THAT YOUR PROBLEM WITH PUBLISHING NO. 13 WAS
8 THAT THERE MAY BE SOME CHAIN OF CUSTODY QUESTIONS THAT HAVE
9 YET TO BE RESOLVED WITH RESPECT TO THE GUN.

10 MR. BROTT: I WAS GOING TO COVER THAT ON CROSS WITH
11 RONDOU ABOUT WHETHER HE'S THE ONE WHO PICKED UP THAT GUN AND
12 HOW HE KNOWS THAT'S THE SAME GUN AND THAT STUFF I HAVEN'T
13 DONE YET, SO I CAN'T REALLY ARGUE THAT UNTIL I HEAR WHAT HE
14 HAS TO SAY.

15 THE COURT: ALL RIGHT. SO AT THIS POINT, I GUESS,
16 SINCE NO.S 11 AND 12 ARE ADMITTED, THEY MAY BE PUBLISHED.

17 MR. GELLER: THAT'S FINE. I'LL JUST GO WITH THOSE TWO
18 AT THIS POINT.

19 THE COURT: AND THE REST HAVE NOT BEEN ADMITTED INTO
20 EVIDENCE AND THERE'S AN OBJECTION TO SHOWING THEM TO THE
21 JURY AT THIS TIME.

22 MR. BROTT: YES.

23 THE COURT: THAT OBJECTION IS SUSTAINED.

24 MR. GELLER: THEN MAY I FINALLY INQUIRE WHERE THE COURT
25 FEELS MY FOUNDATION IS LACKING WITH RESPECT TO THE REST OF
26 MY PICTURES?

1 THE COURT: WELL, YOU ALREADY VOLUNTEERED THAT IT WAS
2 YOUR INTENTION TO LAY FOUNDATION FOR THE TIME OF DAY, THAT
3 THE TIME OF DAY WAS, IN WHICH THE PHOTOS WERE TAKEN, WAS
4 CONSISTENT WITH THE TIME OF THE HOMICIDE, OR AT LEAST THE
5 REPORT OF THE HOMICIDE.

6 MR. GELLER: SO IN SEEKING GUIDANCE, ONCE I LAY THAT
7 FOUNDATION IS THE COURT GOING -- DOES THE COURT FEEL THERE'S
8 ANY FURTHER FOUNDATION THAT WOULD BE LACKING?

9 THE COURT: I HAVE NO FEELINGS WHATSOEVER, BUT I WOULD
10 CERTAINLY INVITE MR. BROTT TO MAKE FURTHER OBJECTION IF HE
11 DEEMS IT APPROPRIATE TO DO SO.

12 MR. BROTT: I'LL DO THAT.

13 MR. GELLER: SO RIGHT NOW JUST THE JURY ONLY GETS TO
14 SEE 11 AND 12?

15 THE COURT: RIGHT.

16 (END OF CHAMBERS DISCUSSION.)

17 (THE FOLLOWING PROCEEDINGS WERE HAD IN
18 OPEN COURT IN THE PRESENCE OF THE JURY:)

19 THE COURT: ALL RIGHT. CONSISTENT WITH THE COURT'S
20 RULING, YOU MAY PROCEED.

21 MR. GELLER: ALL RIGHT. WITH THE COURT'S PERMISSION,
22 I'M GOING TO PUBLISH PEOPLE'S 11 AND 12 TO THE JURY AT THIS
23 TIME.

24 THE COURT: ALL RIGHT.

25 IF YOU WOULDN'T MIND MOVING THE REMAINDER OF THE
26 PHOTOGRAPHS TO MY CLERK FOR TAGGING, I WOULD APPRECIATE IT.

1 THE BAILIFF: JUST TAKE ONE AND PASS IT AROUND; IT WILL
2 PROBABLY GO A LITTLE FASTER.

3 MR. GELLER: MAY I PROCEED, YOUR HONOR?

4 THE COURT: YES.

5 BY MR. GELLER:

6 Q INVESTIGATOR RONDOU, JUST A LITTLE BIT MORE.
7 WITH RESPECT TO THE GUN THAT I SHOWED YOU, HOW CAN YOU BE
8 CERTAIN, SIR, THAT THAT'S THE GUN THAT WAS TAKEN FROM THE
9 SCENE AT 12TH AND ENGLISH THAT DAY?

10 A IT APPEARS TO BE THE SAME ONE I SAW THAT NIGHT.

11 Q IS IT BOXED IN ANY SUCH FASHION SUCH THAT YOU
12 RECOGNIZE IT TO BE THE GUN TAKEN FROM THE SCENE?

13 A IT'S BOOKED UNDER THE SAME CASE NUMBER AND IT
14 LOOKED LIKE THE SAME GUN I SAW UP ON 12TH STREET. I DIDN'T
15 MEMORIZE THE SERIAL NUMBER, BUT IT'S PACKAGED ACCORDINGLY
16 AND BOOKED UNDER THE CASE NUMBER THAT COINCIDES WITH THE
17 INCIDENT.

18 Q WHEN YOU SAY, "PACKAGED ACCORDINGLY," WHAT
19 SPECIFICALLY DO YOU MEAN?

20 A IN A GUN BOX, SEALED.

21 Q DOES IT HAVE A SANTA ANA POLICE REPORT NUMBER ON
22 IT?

23 A CORRECT.

24 Q IS THE SANTA ANA POLICE REPORT NUMBER CONSISTENT
25 WITH, I BELIEVE, IT'S THE INCIDENT THAT WAS UP AT 12TH AND
26 ENGLISH THAT DAY; IS THAT CORRECT?

1 A CORRECT.

2 Q THAT'S A DIFFERENT POLICE REPORT NUMBER THAN THE
3 HOMICIDE; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q OKAY. AND YOU YOURSELF SIGNED THIS GUN OUT OF
6 EVIDENCE AT THE SANTA ANA POLICE DEPARTMENT ON MAY 25TH OF
7 2006?

8 A THAT'S TODAY.

9 Q THAT WOULD BE TODAY. AT 8:50 THIS MORNING?

10 A CORRECT.

11 Q IF I MAY APPROACH YOU WITH THE BOX THAT HOLDS THE
12 GUN, THERE'S AN EVIDENCE TAG ON HERE ADDITIONALLY. WHY
13 DON'T YOU TELL US SOME OF THE INFORMATION THAT'S ON THAT
14 EVIDENCE TAG.

15 AND I CAN ASK THAT THIS WHOLE THING REMAIN AS
16 PEOPLE'S 14, NOT JUST THE GUN, BUT THE BOX THAT IT
17 ENCOMPASSES.

18 A WELL, THE EVIDENCE TAG IS JUST THAT; IT'S AN
19 EVIDENCE TAG THAT LISTS THE DATE OF WHATEVER THE ITEM THAT
20 YOU HAVE IS RECOVERED, WHO RECOVERED IT, IF IT'S EVIDENCE,
21 AND THEN LISTS OF ARTICLES AND SERIAL NUMBERS, THINGS OF
22 THAT NATURE. AND THE COINCIDING CASE NUMBER THAT THE
23 INCIDENT -- THAT THE EVIDENCE GOES WITH IS WHAT WE WERE
24 TALKING ABOUT.

25 Q OKAY. THERE'S SOME IDENTIFYING INFORMATION ON
26 THE TAG, FOR INSTANCE, THERE'S A DATE, WHICH IS AUGUST 10TH

1 OF 2004; IS THAT CORRECT?

2 A CORRECT.

3 Q THERE'S AN OFFICER'S NAME ON THE TOP OF THE
4 EVIDENCE TAG, "L. CORREA"; IS THAT CORRECT?

5 A HE'S OUR CSI OFFICER.

6 Q AND THAT'S THE KIND OF PERSON, AT LEAST, THE JOB
7 OF THE PERSON, WHO WOULD COLLECT THE GUN IN A CASE LIKE
8 THIS; IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q HE WOULD ACTUALLY BOOK THE GUN?

11 A CORRECT.

12 Q THERE'S A BADGE NUMBER; IS THAT RIGHT?

13 A CORRECT.

14 Q AND THAT BADGE NUMBER WOULD CORRESPOND TO CSI
15 OFFICER CORREA?

16 A CORRECT.

17 Q YOU'VE GOT SOME INFORMATION ON THE TAG,
18 SPECIFICALLY THE DESCRIPTION OF THE GUN; IS THAT RIGHT?

19 A CORRECT.

20 Q WHY DON'T YOU TELL US WHAT'S ON THAT DESCRIPTION?

21 A "ONE LLAMA COMANCHE III .357 MAGNUM BLUE STEEL,"
22 WHICH IS A TERM USED FOR BLACK OR BLUE STEEL, "REVOLVER
23 NO. 5843143, SIX SHOT."

24 Q THE GUN IN THAT BOX, DOES THAT SEEM TO CORRESPOND
25 TO WHAT'S ON THE EVIDENCE TAG?

26 A THAT'S A .357 BLUE STEEL REVOLVER. I CAN VERIFY

1 THE SERIAL NUMBERS IF YOU WANT.

2 Q WOULD YOU MIND?

3 A SURE.

4 NOW IT'S STUCK IN THERE. OH, NO YOU DON'T.

5 IT'S A LLAMA COMANCHE III .357 MAGNUM. AND I
6 DON'T MEAN TO BE POINTING THIS AROUND. I DON'T SEE THE
7 SERIAL NUMBERS. I THINK IT'S USUALLY ON THE INSIDE OF THE
8 REVOLVERS. I DON'T SEE A SERIAL NUMBER.

9 Q THAT'S NOT THAT IMPORTANT. THANK YOU.

10 A OKAY.

11 Q YOU CAN THROW IT BACK IN THERE.

12 ADDITIONALLY ON THE EVIDENCE TAG, THE GUN LOOKS
13 LIKE IT WAS SIGNED OUT BY SOMEONE BY THE NAME OF,
14 "R. EDWARDS."

15 A ROCKY EDWARDS. HE'S OUR FIREARM EXAMINER AT
16 SANTA ANA POLICE DEPARTMENT.

17 Q NOW, I'M ASSUMING, AS YOU'VE DONE YOURSELF TODAY
18 AT 8:50 THIS MORNING, IT'S IMPORTANT FOR YOU AND YOUR
19 COLLEAGUES TO FILL OUT THESE EVIDENCE TAGS WHEN YOU REMOVE
20 SOMETHING THAT'S BEEN BOOKED INTO EVIDENCE FOR SOME FURTHER
21 INVESTIGATION; IS THAT RIGHT?

22 A THAT'S CORRECT.

23 Q YOU RECOGNIZE MR. EDWARDS' HANDWRITING, MAYBE
24 BADGE NUMBER, ANYTHING LIKE THAT?

25 A HIS NAME.

26 Q AND WHEN, ACCORDING TO THAT TAG, WHEN DID

1 MR. EDWARDS TAKE THE GUN OUT OF EVIDENCE?

2 A 8/11/04 AT APPROXIMATELY 00:40 HOURS.

3 Q SO?

4 A WHICH WOULD BE --

5 Q SO SHORTLY AFTER MIDNIGHT, MAYBE SIX HOURS, LESS
6 THAN SIX HOURS AFTER THE SHOOTING?

7 A CORRECT.

8 Q AND WHAT DOES MR. EDWARDS DO FOR YOU FOLKS?

9 A HE IS OUR FIREARMS EXAMINER. AND IT'S ABOVE ME
10 THE SCIENTIFIC STUFF HE DOES, BUT HE MATCHES FIREARMS,
11 CASINGS, BULLETS TO SPECIFIC GUNS.

12 Q THEN, ULTIMATELY, MR. EDWARDS IN FACT BOOKED THE
13 GUN BACK IN EVIDENCE?

14 A CORRECT.

15 Q THAT'S REPRESENTED ON THE TAG THERE?

16 A CORRECT.

17 Q AND IT'S PART OF THE KIND OF BUSINESS RECORDS OF
18 THE SANTA ANA POLICE DEPARTMENT TO MAINTAIN THESE EVIDENCE
19 TAGS; IS THAT RIGHT?

20 A WELL, IT'S A CHAIN OF CUSTODY. YOU WANT TO KNOW
21 WHO HAS IT AT ALL TIMES AND KEEP A CHAIN OF CUSTODY SO THE
22 INTEGRITY OF WHATEVER YOU HAVE IS SAFE.

23 Q AND THE INFORMATION ON THESE EVIDENCE TAGS, FOR
24 INSTANCE, WHAT YOU WROTE THERE TODAY, THAT IS WRITTEN DOWN
25 ON THE TAGS, LIKE NAME, TIME, BADGE NUMBER, AT OR NEAR THE
26 TIME YOU ACTUALLY TAKE SOMETHING OUT OF EVIDENCE, RIGHT?

1 A WHO YOU'RE GETTING IT FROM, WHO IS RECEIVING IT,
2 AND DATE AND TIME, CORRECT.

3 Q SO AFTER MR. EDWARDS BOOKED IT BACK INTO EVIDENCE
4 ARE YOU THE NEXT RECIPIENT?

5 A I BELIEVE I WAS NEXT.

6 Q OKAY.

7 MR. GELLER: THEN I HAVE NOTHING FURTHER.

8 THE COURT: CROSS EXAMINATION.

9 CROSS-EXAMINATION

10 BY MR. BROTT:

11 Q OFFICER, WHAT TIME DID YOU GET TO THE SCENE?

12 A 8:52.

13 Q HOW DID YOU MEMORIALIZE THAT?

14 A I LOOKED AT THE CRIME SCENE LOG THAT WAS
15 COMPLETED BY OFFICER PARK.

16 Q AND THAT REFRESHES YOUR RECOLLECTION, OR DID YOU
17 REMEMBER THAT IT WAS 8:52.

18 A I KNEW IT WAS DARK. I DIDN'T KNOW IT WAS EXACTLY
19 8:52. I KNEW IT WAS WITHIN A COUPLE HOURS AFTER THE MURDER.
20 AND ONCE I LOOKED AT THE LOG, IT SHOWED I GOT THERE AT 8:52
21 AND I LEFT AT ABOUT 9:20.

22 Q NOW, IS THAT -- DID YOU SAY YOU WENT TO 12TH AND
23 ENGLISH?

24 A I DID.

25 Q IS THAT BEFORE YOU GOT THERE OR AFTER?

26 A AFTER I WENT TO WILLITS AND SULLIVAN.

1 Q SO, YOU WENT TO WILLITS AND SULLIVAN, AND LEFT
2 THERE AT 9:20. THEN YOU WENT UP TO 12TH AND ENGLISH?

3 A CORRECT.

4 Q AND YOU SAID YOU SAW A GUN UP THERE?

5 A YES.

6 Q AND WHAT CIRCUMSTANCES DID YOU SEE IT?

7 A THE CSI OFFICER CORREA WAS UP THERE AND TOLD ME
8 ABOUT THE INCIDENT, ALONG WITH, I BELIEVE, OFFICER GOMEZ
9 SHOWED ME THE HANDGUN. AND THEN CORREA TOOK IT, BOOKED IT,
10 AND I WENT BACK TO THE STATION AND STARTED ASSISTING WITH
11 THE HOMICIDE.

12 Q SO WHEN YOU SAW IT, IT WAS IN THE HANDS OF THE
13 POLICE?

14 A YES.

15 Q AND YOU DIDN'T WITNESS THE INCIDENT AT 12TH AND
16 ENGLISH?

17 A NO.

18 Q AND THE ONLY THING YOU KNEW ABOUT IT WAS WHAT
19 SOMEBODY TOLD YOU?

20 A CORRECT.

21 Q AND YOU DIDN'T INTERVIEW ANY OF THE WITNESSES UP
22 THERE, DID YOU?

23 A RIGHT THEN OR ULTIMATELY.

24 Q RIGHT THEN.

25 A NOT RIGHT THEN.

26 Q DO YOU HAVE A MEMORY AS TO WHAT TIME IT GOT DARK

1 THAT NIGHT?

2 A NO.

3 Q WHERE WERE YOU BEFORE YOU GOT TO THE CRIME SCENE
4 AT 8:50?

5 A YOU MEAN MY WHOLE DAY OR?

6 Q NO, JUST IMMEDIATELY BEFORE.

7 A THE POLICE STATION.

8 Q SO YOU GOT CALLED OUT TO GO THERE, AND YOU HAD
9 NOT BEEN CALLED OUT BEFORE, FIVE MINUTES MAYBE BEFORE,
10 THE -- YOUR ARRIVAL?

11 A I DON'T KNOW WHAT YOU JUST ASKED ME.

12 Q WHEN WERE YOU FIRST TOLD TO GO TO THE SCENE?

13 A I GOT CALLED AT HOME.

14 Q OKAY.

15 A I WAS AT HOME, GOT CALLED, TOLD THERE WAS A
16 GANG-RELATED HOMICIDE IN THE CITY AND I NEEDED TO COME IN
17 AND ASSIST.

18 Q SO THE INCIDENT HAD OCCURRED BEFORE YOU EVER GOT
19 CALLED AT HOME?

20 A YES.

21 MR. BROT: I HAVE NOTHING FURTHER.

22 THE COURT: REDIRECT?

23 MR. GELLER: NO, NOT AT THIS TIME.

24 THE COURT: ALL RIGHT. DETECTIVE RONDOU, YOU ARE NOT
25 EXCUSED AS A WITNESS. YOU'RE PROBABLY GOING TO BE HERE.
26 YOU'RE ON-CALL FOR THE DURATION OF THE TRIAL. AND I WAS

1 GOING TO ASK YOU TO RETURN THE FIREARM TO THE BAILIFF, BUT
2 HE'S ONE STEP AHEAD OF ME. YOU CAN RETURN TO YOUR SEAT AT
3 COUNSEL TABLE.

4 MR. GELLER, YOU CAN CALL YOUR NEXT WITNESS.

5 MR. GELLER: THANK YOU, YOUR HONOR. WITH THE COURT'S
6 PERMISSION, THE PEOPLE CALL STEVE GARCIA.

7 THE BAILIFF: MR. GARCIA, STAND NEXT TO THE TABLE.
8 PLEASE FACE THE CLERK ON YOUR LEFT AND RAISE YOUR RIGHT HAND
9 TO BE SWORN.

10 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
11 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
12 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
13 TRUTH, SO HELP YOU GOD?

14 THE WITNESS: YES.

15 THE CLERK: STATE YOUR NAME, PLEASE.

16 THE WITNESS: STEVEN GARCIA.

17 THE CLERK: WILL YOU SPELL YOUR FULL NAME, PLEASE.

18 THE WITNESS: S-T-E-V-E-N G-A-R-C-I-A.

19 THE CLERK: THANK YOU. YOU CAN TAKE THE STAND.

20 THE BAILIFF: HAVE A SEAT UP IN THE WOODEN CHAIR.

21 THE COURT: MR. GARCIA, I THINK YOU MAY HAVE A VERY
22 SOFT VOICE. SPEAK SLOWLY, SPEAK LOUDLY.

23 AND WHENEVER YOU'RE READY, MR. GELLER, YOU MAY
24 INQUIRE.

25 MR. GELLER: THANK YOU.

26 /////

1 STEVEN GARCIA,
2 CALLED AS A WITNESS, HAVING BEEN FIRST DULY WAS, SWORN
3 EXAMINED AND TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. GELLER:

6 Q GOOD MORNING.

7 A GOOD MORNING.

8 Q WHAT I WANT TO DO IS LAY OUT A FEW GROUND RULES
9 FOR YOU SO THAT YOU CAN ASSIST ALL OF THESE FOLKS HERE WHO
10 NEED TO HEAR WHAT YOU HAVE TO SAY. YOU ALSO NEED TO SPEAK
11 LOUD AND SLOWLY SO THAT THE COURT REPORTER CAN TAKE DOWN
12 EVERYTHING YOU HAVE TO SAY. AND PLEASE ALLOW ME AND THE
13 DEFENSE ATTORNEY TO FINISH OUR QUESTIONS BEFORE YOU ANSWER,
14 BECAUSE, AGAIN, THE COURT REPORTER HAS TO TAKE DOWN
15 EVERYTHING THAT'S SAID HERE IN COURT.

16 DO YOU UNDERSTAND ME?

17 A YEAH.

18 Q AND YOU ALSO NEED TO ANSWER "YES" OR "NO," IF IT
19 CALLS FOR IT. DON'T SHAKE YOUR HEAD OR ANSWER "UH-HUH" OR
20 "HUH-UH." ALL RIGHT?

21 A OKAY.

22 Q YES?

23 A OKAY.

24 Q WOULD YOU PRACTICE ON KEEPING THAT VOICE UP
25 BECAUSE, AGAIN, EVERYBODY IN HERE NEEDS TO HEAR WHAT YOU
26 HAVE TO SAY.

1 HOW OLD ARE YOU?

2 A FIFTEEN.

3 Q SPEAK RIGHT INTO THAT MICROPHONE IF YOU HAVE TO.
4 YOU GO TO SCHOOL?

5 A YES.

6 Q WHERE DO YOU GO TO SCHOOL?

7 A VALLEY HIGH SCHOOL.

8 Q IS THAT IN SANTA ANA?

9 A YEAH. YES.

10 Q WHAT GRADE ARE YOU IN?

11 A 10TH.

12 Q YOU LIVE WITH YOUR FOLKS?

13 A YES.

14 Q WHAT I'D LIKE TO TALK TO YOU ABOUT IS SOMETHING
15 THAT YOU WITNESSED ALMOST TWO YEARS AGO. IT HAPPENED IN THE
16 SUMMER OF 2004, SPECIFICALLY AUGUST 10TH, 2004. OKAY.

17 A OKAY.

18 Q DO YOU REMEMBER WHERE YOU WERE -- IT WAS A
19 TUESDAY EVENING, IT WAS ABOUT 6:30 P.M. ON THAT TUESDAY
20 EVENING -- ON AUGUST 10TH, 2004?

21 A UM, I WAS WITH, UM, MY MOM.

22 Q DO YOU REMEMBER WHERE YOU WERE?

23 A ON, UM, SULLIVAN.

24 Q I STILL NEED YOU TO PLEASE TALK AS LOUD AS YOU
25 CAN. IF YOU HAVE TO, JUST LEAN RIGHT INTO THAT MICROPHONE.

26 MR. BROTT: CAN HE MOVE HIS CHAIR CLOSER?

1 THE COURT: WE'RE GOING TO TRY TO MAKE AN ADJUSTMENT
2 RIGHT NOW. THE ANSWER WAS, "ON SULLIVAN."

3 BY MR. GELLER:

4 Q WHERE WERE YOU?

5 A ON SULLIVAN.

6 Q DO YOU REMEMBER WHERE ON SULLIVAN YOU WERE?

7 A NO, JUST ON SULLIVAN.

8 Q YOUR FOLKS, DO THEY HAVE A PRODUCE TRUCK?

9 A THEY HAD.

10 Q THEY HAD ONE BACK IN THE SUMMER OF 2004. DID
11 THEY HAVE A PRODUCE TRUCK?

12 A YES. WE JUST HAD GOT THE TRUCK WHEN IT HAPPENED.

13 Q IF I SHOWED YOU A PHOTOGRAPH DO YOU THINK YOU'D
14 RECOGNIZE THAT TRUCK?

15 A YES.

16 Q SIR, I'D LIKE TO SHOW YOU WHAT'S BEEN PREVIOUSLY
17 MARKED AS PEOPLE'S 6 AND PEOPLE'S 7 FOR IDENTIFICATION. I'M
18 GOING TO ASK YOU IF YOU RECOGNIZE WHAT'S IN THE PHOTOGRAPHS.

19 A THAT IS THE CAR.

20 Q THERE'S A TRUCK IN THE PHOTOS ON PEOPLE'S 6.
21 THERE'S, LOOKS LIKE, A LARGE MAYBE BLUE FORD PICKUP TRUCK
22 WITH KIND OF A SHELL ON THE BACK WITH, LOOKS LIKE, SOME
23 FRUIT INSIDE. IS THAT YOUR PARENTS' PRODUCE TRUCK?

24 A NO.

25 Q WAS THAT A PRODUCE TRUCK THAT YOU SAW OUT AT THE
26 SCENE OF THIS CRIME?

1 A IT WAS BEHIND US.

2 Q OKAY. BUT THAT'S NOT YOUR FOLKS' TRUCK?

3 A NO.

4 Q ALL RIGHT. YOU MENTIONED A BLUE CAR IN THE
5 PHOTO. THERE'S BOTH ONE SHOWN IN 6 AND 7, IN EACH ONE OF
6 THOSE TWO PHOTOS. DID YOU SEE THAT BLUE CAR OUT THERE THAT
7 DAY?

8 A YES.

9 Q YOU SEE HOW THERE'S A YELLOW TARP COVERING THE
10 BLUE CAR ON EACH ONE OF THOSE PHOTOGRAPHS?

11 A YES.

12 Q DID YOU SEE THE CAR BEFORE THE YELLOW TARP WAS
13 PUT ON IT OR AFTER THE YELLOW TARP WAS PUT ON IT?

14 A BEFORE.

15 Q OKAY. DID YOU SEE ANYBODY DRIVING THAT CAR THAT
16 DAY?

17 A YES.

18 Q DID YOU KNOW THAT PERSON?

19 A NO.

20 Q WHAT WERE YOU DOING OUT AT THAT LOCATION THAT DAY
21 BEFORE ANYTHING HAPPENED?

22 A I WAS HELPING MY MOM GET THE TRUCK CLEANED,
23 BECAUSE SHE WAS SELLING RIGHT THERE ON SULLIVAN.

24 Q SELLING RIGHT THERE ON SULLIVAN?

25 A YEAH, WITH THE TRUCK THAT SHE HAD.

26 Q WHAT WAS YOUR MOM SELLING?

1 A UM, TACOS AND STUFF.

2 Q BUT YOUR MOM'S TRUCK WAS NOT SHOWN IN EITHER OF
3 THE TWO PICTURES THAT I JUST HAD IN FRONT OF YOU?

4 A NO.

5 Q DID YOU SEE ANYBODY ON BICYCLES THAT DAY PRIOR TO
6 SEEING THAT BLUE CAR?

7 A UM, YES.

8 Q HOW MANY PEOPLE DID YOU THINK YOU SAW ON BICYCLES
9 THAT DAY IMMEDIATELY BEFORE YOU SAW THE BLUE CAR?

10 A LIKE SEVEN ABOUT.

11 Q AND WHERE -- WHICH DIRECTION WERE THEY GOING?

12 YOU KNOW WHAT, LET ME SHOW YOU THIS DIAGRAM. IT
13 WILL PROBABLY HELP YOU.

14 WHY DON'T YOU TAKE A LOOK AT PEOPLE'S EXHIBIT 2
15 FOR IDENTIFICATION. IT'S ALREADY BEEN IDENTIFIED AS KIND OF
16 AN OVERHEAD VIEW OF THE INTERSECTION OF SULLIVAN AND
17 WILLITS. TAKE AS LONG AS YOU NEED TO KIND OF GET YOUR
18 BEARINGS HERE.

19 DO YOU SEE IT?

20 A YEP.

21 Q DO YOU SEE THERE'S AN ELEMENTARY SCHOOL UP
22 HERE --

23 A YES.

24 Q -- IN THE NORTHEAST CORNER?

25 DO YOU SEE THAT, SIR?

26 A YES.

1 Q OKAY. YOU KNOW WHERE THAT WAS IN RELATIONSHIP TO
2 WHERE YOU WERE AND YOUR MOM WAS THAT DAY?

3 A YEAH, WE WERE RIGHT HERE ON THE BOTTOM.

4 Q OKAY. MAYBE, WITH THE COURT'S PERMISSION, YOU
5 COULD COME OFF THE WITNESS STAND AND POINT TO EXACTLY WHERE
6 YOU AND YOUR MOM WERE.

7 THE COURT: SURE.

8 MR. BROTT: AT WHAT POINT IN TIME?

9 MR. GELLER: THIS WOULD BE BEFORE ANYTHING HAPPENED.
10 THIS IS BEFORE YOU SAW THE BLUE CAR, BUT YOU SAW THE SEVEN
11 PEOPLE ON BIKES.

12 THE WITNESS: RIGHT HERE. (INDICATING.)

13 BY MR. GELLER:

14 Q WHAT YOU'VE NOW INDICATED IS THE WEST CURB LINE
15 OF SULLIVAN STREET, IMMEDIATELY ADJACENT TO WHERE IT
16 ACTUALLY SAYS "SULLIVAN STREET" ON THE DIAGRAM; IS THAT
17 RIGHT?

18 A YEAH.

19 Q OKAY. YOU CAN HAVE A SEAT.

20 SO YOU AND YOUR MOM ARE OUT THERE. AND YOU SEE
21 WHAT YOU JUST SAID WAS SEVEN GUYS RIDING ON BIKES. WHICH
22 DIRECTION DID YOU SEE THEM TRAVELING?

23 A THEY WERE GOING UP SULLIVAN.

24 Q SO WERE THEY GOING TOWARDS THE SCHOOL OR AWAY
25 FROM THE SCHOOL?

26 A TO THE SCHOOL.

1 Q WERE THEY IN THE STREET OR WERE THEY ON THE
2 SIDEWALK?

3 A SIDEWALK.

4 Q WHICH SIDEWALK?

5 A THE LEFT SIDE.

6 Q SO THEY WOULD BE ON THE SIDE CLOSEST TO YOU ON
7 THE PICTURE; IS THAT CORRECT?

8 A YES.

9 Q AND WHAT, IF ANYTHING, DID YOU SEE THEM DO?

10 MR. BROTT: OBJECTION; IT'S VAGUE, "THEM."

11 THE COURT: OVERRULED. THE PEOPLE ON THE BICYCLES,
12 WHAT DID YOU SEE THEM DO, IF ANYTHING?

13 THE WITNESS: WELL, I JUST SAW THEM RIDING THE BIKES
14 DOWN SULLIVAN.

15 THE COURT: NEXT QUESTION.

16 BY MR. GELLER:

17 Q WERE THESE PEOPLE YOUR AGE, WERE THEY OLDER THAN
18 YOU, WERE THEY YOUNGER THAN YOU?

19 A I THINK THEY WERE OLDER.

20 Q WERE THEY BOYS, MEN? WHAT DO YOU THINK THEY
21 WERE?

22 A I'M NOT SURE. I KNOW THEY WERE MALES, BUT.

23 Q THEY WERE MALE. DO YOU KNOW HOW OLD THEY WERE?

24 A NO.

25 Q DID YOU RECOGNIZE ANY OF THEM?

26 A NO.

1 Q HAD YOU EVER SEEN ANY OF THEM IN THE
2 NEIGHBORHOOD?

3 A NO.

4 Q DID YOU LIVE IN THAT NEIGHBORHOOD ON SULLIVAN AND
5 WILLITS BACK THEN IN AUGUST --

6 A NO.

7 Q -- 2004.

8 WERE THEY ALL IN A SINGLE LINE GOING UP SULLIVAN
9 STREET TOWARDS THE SCHOOL, OR HOW WERE THEY SEPARATED, IF AT
10 ALL, WHEN YOU SAW THEM?

11 A THEY WERE ALL TOGETHER.

12 Q AND THEN WHAT HAPPENED?

13 A THE CAR, UM, THEN I SAW THE CAR GOING UP
14 SULLIVAN; THAT'S WHEN I HEARD THEM, LIKE, SCREAMING TO THE
15 CAR.

16 Q YOU SAW A CAR HEADING UP SULLIVAN?

17 A YES.

18 Q SO THAT AGAIN IS FROM WHERE YOU WERE GOING
19 TOWARDS THE SCHOOL?

20 A YES.

21 Q IS THAT WHAT YOU MEAN BY "UP"?

22 A YES.

23 Q WHAT KIND OF CAR WAS THAT?

24 A BLUE HONDA.

25 Q SO WHAT HAPPENED NEXT?

26 A THE GUYS ON THE BIKES STARTED SCREAMING AT THE

1 CAR TO SLOW DOWN.

2 MR. BROTT: OBJECTION; NO FOUNDATION.

3 THE COURT: OVERRULED. NEXT QUESTION.

4 BY MR. GELLER:

5 Q WHERE WAS THE CAR COMPARED TO WHERE THE BIKES
6 WERE AT THE TIME YOU HEARD THEM YELLING THAT?

7 A THEY WERE ON THE SIDEWALK, AND THE CAR WAS JUST
8 DRIVING BY.

9 Q SO IT WAS RIGHT NEXT TO THEM, BASICALLY, ON THEIR
10 RIGHT?

11 A YES.

12 Q SO WHAT HAPPENED NEXT?

13 A WELL, THEY -- THE CAR KEPT GOING FAST DOWN THE
14 STREET, SO THEY ALL TRIED TO FOLLOW HIM.

15 MR. BROTT: OBJECTION; NO FOUNDATION. MOVE TO STRIKE
16 IT.

17 THE COURT: OVERRULED. DENIED.

18 BY MR. GELLER:

19 Q WHEN YOU SAY THAT THEY STARTED TO FOLLOW THE CAR,
20 WHAT EXACTLY DID YOU SEE THEM DO?

21 A THEY WERE JUST SCREAMING OUT FOR HIM TO SLOW DOWN
22 BECAUSE THEY WANTED TO TALK TO HIM, AND THE CAR JUST DID A
23 U-TURN LIKE DOWN BY WILLITS TRYING TO GO DOWN BACK.

24 Q WHAT IS THE LAST THING YOU SAID?

25 A WELL, THE CAR MADE A U-TURN TRYING TO GO BACK
26 DOWN SULLIVAN INSTEAD OF GOING UP.

1 Q DID YOU HEAR THE INDIVIDUALS ON THE BICYCLES SAY
2 ANYTHING ELSE TO THE PERSON IN THE CAR?

3 MR. BROT: OBJECTION; IT'S VAGUE, "THEY."

4 THE COURT: OVERRULED.

5 MR. BROT: THERE'S NO FOUNDATION AS TO WHO THEY WERE
6 SPEAKING TO.

7 THE COURT: OVERRULED.

8 MR. GELLER: YOU CAN ANSWER.

9 THE WITNESS: HUH?

10 BY MR. GELLER:

11 Q DID YOU HEAR THEM SAY ANYTHING ELSE TO THE PERSON
12 IN THE CAR?

13 A JUST TO SLOW DOWN, THAT WAS IT.

14 Q DID YOU HEAR THEM SAY, "HEY, HOMEY, STOP. WE
15 WANT TO TALK TO YOU"?

16 A SOMETHING LIKE THAT.

17 Q WELL, THAT'S DIFFERENT THAN WHAT YOU JUST SAID,
18 RIGHT? THAT'S DIFFERENT THAN JUST, "HEY, SLOW DOWN."

19 A WELL, I JUST HEARD THEM SAYING, LIKE, SCREAMING
20 OUT -- THEY WERE JUST SCREAMING TO HIM TO SLOW DOWN BECAUSE
21 THEY WANTED TO TALK TO HIM.

22 Q LET ME ASK YOU THIS, MR. GARCIA: YOU WERE
23 INTERVIEWED BY THE POLICE THAT NIGHT, RIGHT?

24 A YES.

25 Q AND WERE YOU TRUTHFUL WHEN YOU SPOKE WITH THE
26 POLICE OFFICERS THAT NIGHT?

1 A YES.

2 Q DID YOU HAVE ANYTHING TO HIDE FROM THE POLICE
3 OFFICERS THAT NIGHT?

4 A NO.

5 Q HAD YOU DONE ANYTHING WRONG THAT NIGHT?

6 A NO.

7 Q WAS EVERYTHING A LOT FRESHER IN YOUR MIND THAT
8 NIGHT THAN IT IS RIGHT NOW?

9 A UM --

10 Q DO YOU UNDERSTAND WHAT I'M ASKING YOU?

11 A NO, NOT REALLY.

12 Q DO YOU REMEMBER THINGS BETTER RIGHT NOW OR DO YOU
13 REMEMBER WHAT YOU WERE TALKING TO THE POLICE ABOUT BETTER
14 WHEN YOU WERE ACTUALLY SPEAKING WITH THE COPS?

15 A WHEN I FIRST TALKED TO THEM -- WELL, I CAN'T
16 REALLY REMEMBER MUCH RIGHT NOW.

17 Q SO EVERYTHING WAS A LOT CLEARER IN YOUR MIND BACK
18 THEN?

19 A YES.

20 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
21 INTERVIEWED YOU, "HEY, HOMEY, STOP. WE WANT TO TALK TO
22 YOU," THAT'S WHAT THE BICYCLIST SAID TO THAT GUY IN THE BLUE
23 HONDA?

24 A UM, YES.

25 Q DO YOU REMEMBER TELLING HIM WHETHER THAT WAS SAID
26 IN ENGLISH OR IN SPANISH?

1 A IN ENGLISH.

2 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
3 THE BIKES WERE SEPARATED INTO TWO GROUPS?

4 A UM, YES.

5 Q IS THAT TRUE?

6 A YES.

7 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
8 THE GROUP IN THE BACK WAS YELLING UP TO THE PEOPLE IN THE
9 FRONT TO STOP THE CAR?

10 MR. BROTT: OBJECTION; THIS IS LEADING.

11 THE WITNESS: UM, YES.

12 THE COURT: HOLD ON. HOLD ON JUST A SECOND. IT IS
13 LEADING. SUSTAINED.

14 MR. GELLER: MAY I BE HEARD, YOUR HONOR?

15 THE COURT: NO.

16 BY MR. GELLER:

17 Q WHAT ELSE DID YOU TELL THE POLICE?

18 WHAT ELSE HAPPENED THAT NIGHT? WE'LL START THAT
19 WAY.

20 A UM, I DON'T KNOW. AFTER THAT, THE CAR JUST LEFT.
21 THEN I HEARD THE GUNSHOT. I SAW --

22 Q YOU NEED TO KEEP YOUR VOICE UP.

23 A WELL, AFTER THE CAR TURNED AROUND, ALL I HEARD
24 WAS A GUNSHOT FROM THE CORNER, THAT'S ALL.

25 Q YOU JUST TESTIFIED YOU SAW THE CAR MAKE A U-TURN,
26 RIGHT?

1 A YEAH.

2 Q OKAY. YOU NEVER TOLD THE POLICE THAT YOU SAW THE
3 CAR MAKE A U-TURN.

4 MR. BROTT: OBJECTION; THAT ASSUMES FACTS NOT IN
5 EVIDENCE.

6 THE COURT: I DON'T KNOW THAT IT'S A QUESTION. SO IF
7 YOU COULD REPHRASE.

8 BY MR. GELLER:

9 Q DID YOU TELL THE POLICE YOU SAW THE CAR MAKE A
10 U-TURN?

11 A UM, I DON'T REALLY REMEMBER.

12 Q OKAY. I HAD AN OPPORTUNITY -- WELL, DO YOU WANT
13 TO TAKE A LOOK AT THE POLICE REPORT. I DON'T THINK YOU'VE
14 EVER SEEN THAT. DO YOU WANT TO TAKE A LOOK AT THE POLICE
15 REPORT TO HELP YOU REMEMBER THIS?

16 A UM, OKAY.

17 MR. BROTT: YOUR HONOR I DON'T KNOW THAT HE'S SAID HE
18 DOESN'T REMEMBER.

19 MR. GELLER: HE JUST DID.

20 THE COURT: HE HAS SAID HE DOESN'T REMEMBER, MR. BROTT.

21 OKAY. MR. GELLER IS GOING TO SHOW YOU WHAT THE
22 POLICE WROTE DOWN. BUT HE'S ONLY GOING TO SHOW YOU THE
23 POLICE REPORT SO THAT YOU CAN READ IT SILENTLY TO YOURSELF
24 AND SEE IF WHAT'S IN THERE HELPS YOU REMEMBER WHAT YOU SAW
25 THAT NIGHT. OKAY?

26 THE WITNESS: OKAY.

1 MR. GELLER: 145 --

2 MR. BROTT: I BELIEVE IT WOULD BE MORE TECHNICALLY
3 CORRECT IF IT HELPS HIM REMEMBER WHAT HE TOLD THE POLICE
4 THAT NIGHT RATHER THAN WHAT HE SAW THAT NIGHT.

5 THE COURT: OKAY. AS YOU LIKE IT. BUT HE'S LOOKING AT
6 THE REPORT.

7 MR. BROTT: OKAY. I SEE WHERE YOU'RE GOING.

8 MR. GELLER: 145 AND 146 OF DISCOVERY.

9 MR. GARCIA, GO AHEAD AND READ THE POLICE REPORT.
10 I KNOW YOU'VE NEVER SEEN IT. TAKE AS LONG AS YOU NEED.
11 WE'RE GOING TO ASK YOU SOME QUESTIONS, WHETHER OR NOT THAT
12 REFRESHES YOUR MEMORY?

13 THE COURT: HOW LONG A REPORT DID YOU GIVE HIM?

14 MR. GELLER: PAGE AND A HALF.

15 READY?

16 THE WITNESS: YEAH.

17 BY MR. GELLER:

18 Q DOES THAT HELP YOU REFRESH YOUR MEMORY TO ALL
19 THIS?

20 A YES.

21 Q KIND OF HAVE TO FOLLOW THE RULES OF EVIDENCE
22 HERE, SO I'M FIRST GOING TO ASK YOU SOME QUESTIONS. AND
23 THEN, IF YOU DON'T REMEMBER, YOU CAN ASK TO SEE THIS AGAIN.
24 AND THEN I GOT TO ASK YOU SOME MORE QUESTIONS, ALL RIGHT?

25 A OKAY.

26 Q SO LET'S BACK UP. LET'S TALK ABOUT WHAT HAPPENED

1 THAT NIGHT. WHAT WE'VE GOT OUT FROM YOU IS YOU'RE OVER
2 THERE OFF OF SULLIVAN STREET, NEAR THE WORD "SULLIVAN" ON
3 PEOPLE'S 2; IS THAT RIGHT?

4 A YES.

5 Q YOU'RE HELPING YOUR MOM?

6 A YES.

7 Q YOU NOTICE SOME BICYCLISTS?

8 A YES.

9 Q TELL US WHAT HAPPENED NEXT.

10 A WELL, CUZ I WAS, LIKE, FIXING THE THING ON THE
11 TRUCK, THE BIKES PASSED BY ME, LIKE, THEY ALMOST HIT ME
12 BECAUSE THEY HAD JUST PASSED THROUGH -- THEY PASSED THROUGH,
13 LIKE, WHERE I WAS AT. AND THAT'S WHEN, UM, THEN AFTER I SAW
14 THE BLUE CAR PASS BY AND THEY STARTED LOOKING AT EACH OTHER
15 AND THEY WERE SCREAMING OUT FOR THE CAR TO STOP BECAUSE THEY
16 WANTED TO TALK TO HIM, AND THE CAR JUST SPEEDED UP AND SO
17 THEY WOULDN'T CATCH HIM. THE BIKES WENT AFTER HIM. AND
18 GETTING TO WILLITS IS WHEN HE DID THE U-TURN. AND WHEN I
19 SAW THEY WERE LIKE -- I JUST HEARD THE GUNSHOT. AND WHEN I
20 LOOKED OVER TO WHERE THEY WERE AT, I JUST SAW THEM STANDING
21 ON THE CORNER, AND THE CAR WAS STOPPED LIKE RIGHT NEXT TO MY
22 MOM'S TRUCK.

23 Q HOW MANY BICYCLISTS DO YOU REMEMBER SEEING?

24 A THERE WERE ABOUT, LIKE, SEVEN.

25 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
26 INTERVIEWED YOU THAT NIGHT THAT YOU REMEMBER SEEING SEVEN TO

1 TEN BIKES?

2 A YES.

3 Q WERE THE BIKES GROUPED TOGETHER OR WERE THEY
4 SEPARATED?

5 A WHEN I FIRST SAW THEM THEY WERE ALL TOGETHER.

6 Q OKAY. DID THAT GROUPING CHANGE?

7 A AFTER I HEARD THE GUNSHOT IS WHEN THEY LEFT IN
8 DIFFERENT WAYS.

9 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
10 THE BIKES WERE KIND OF IN TWO GROUPS?

11 A AFTER THE SHOOTING, YES.

12 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
13 BEFORE THE SHOOTING THE BIKES WERE IN TWO GROUPS?

14 A I TOLD HIM THEY WERE ALL TOGETHER AT FIRST.

15 Q DO YOU REMEMBER WHETHER EITHER OF THE GROUPS
16 YELLED UP ANYTHING TO -- WELL, DOESN'T MAKE ANY SENSE.

17 DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
18 ONE OF THE GROUPS YELLED TO THE OTHER GROUP AS THE CAR
19 PASSED.

20 A UM, WELL, YES, THEY TOLD HIM TO HURRY UP, BECAUSE
21 SOME OF THEM WERE SLOWING DOWN AND THE ONES IN FRONT TOLD
22 THEM TO KEEP UP.

23 Q SO NOW YOU DO HAVE THEM IN TWO GROUPS; IS THAT
24 RIGHT?

25 A YEAH, AS THEY WERE GETTING TO THE CORNER, ALMOST.

26 Q AND THESE ARE TWO GROUPS LONG BEFORE ANY

1 SHOOTING?

2 A AT FIRST THEY WERE TOGETHER. BUT ONCE THEY WERE
3 GOING TO, LIKE, WILLITS IS WHEN SOMEONE WAS SLOWED DOWN, THE
4 ONES THAT WERE IN THE BACK.

5 Q I WANT TO MAKE SURE THAT WE'RE ALL PERFECTLY
6 CLEAR ABOUT THIS. DO YOU HAVE THE GROUPS SEPARATED INTO TWO
7 GROUPS BEFORE THE SHOOTING?

8 A UM, YES. WHEN THEY WERE BARELY GETTING TO THE
9 CORNER IS WHEN THEY KIND OF SEPARATED.

10 Q DO YOU REMEMBER TELLING THE POLICE OFFICER THAT
11 AT LEAST FIVE OF THE BIKES WERE IN ONE GROUP?

12 A YES, I REMEMBER THAT.

13 Q DO YOU REMEMBER SPECIFICALLY WHAT ONE OF THE
14 GROUPS SAID TO THE CAR AS IT PASSED BY THEM?

15 MR. BROTT: OBJECTION; IT'S VAGUE AS TO WHAT. A GROUP
16 CAN'T SAY ANYTHING.

17 THE WITNESS: THERE WAS --

18 THE COURT: HOLD ON JUST A SECOND. I'LL SUSTAIN. IT'S
19 VAGUE. REPHRASE.

20 BY MR. GELLER:

21 Q DO YOU REMEMBER TELLING THE POLICE OFFICER WHAT
22 YOU HEARD ONE OF THE MEMBERS STATE AS THE CAR DROVE PAST?

23 A YES.

24 Q WHAT?

25 A ONE OF THEM THAT WAS GOING WAS SCREAMING AT THE
26 CAR.

1 Q WHAT DID HE SAY?

2 A WELL, THAT TO SLOW DOWN BECAUSE THEY WANTED TO
3 TALK TO HIM.

4 Q DO YOU REMEMBER TELLING THE OFFICER, "HEY, HOMEY,
5 STOP. WE WANT TO TALK TO YOU"?

6 A YES.

7 Q YOU ALREADY TESTIFIED THAT THE CAR MADE A U-TURN
8 IN THE INTERSECTION OF SULLIVAN AND WILLITS; IS THAT RIGHT?

9 A YES.

10 Q DID YOU SEE THAT HAPPEN?

11 A YES.

12 Q YOU ACTUALLY SAW THE CAR ENTER THE INTERSECTION
13 OF WILLITS AND TURN ALL THE WAY AROUND AND COME BACK NOW
14 TOWARDS YOU?

15 A YES.

16 Q DID YOU TELL THE OFFICER THAT INTERVIEWED YOU
17 THAT NIGHT THAT YOU DIDN'T SEE THAT, YOU DON'T KNOW THAT,
18 AND YOU'RE NOT EVEN SURE IF IT'S THE SAME BLUE CAR?

19 A YES, IT WAS THE SAME CAR.

20 Q SO AS YOU SIT HERE IN COURT RIGHT NOW, YOU THINK
21 IT'S THE SAME CAR?

22 A IT WAS THE SAME CAR.

23 Q DID YOU TELL THE OFFICER WHEN YOU WERE
24 INTERVIEWED AN HOUR OR TWO AFTER THIS CRIME, A FEW HOURS
25 AFTER THE CRIME, THAT YOU THOUGHT THE CAR MADE A U-TURN IN
26 THE INTERSECTION, YOU DIDN'T SEE THAT, YOU DON'T KNOW THAT,

1 AND YOU DON'T EVEN KNOW IF IT'S THE SAME BLUE CAR?

2 A WELL, YES, IT WAS THE SAME BLUE CAR.

3 Q THAT'S NOT WHAT I'M ASKING YOU.

4 A AND I DID SEE IT.

5 Q WHAT'S THAT?

6 A AND I DID SEE IT AND TELL HIM.

7 Q WERE YOU LYING TO THE POLICE OFFICER AT THE TIME?

8 A NO.

9 Q NO REASON TO LIE, RIGHT?

10 A NO.

11 Q DID YOU ACTUALLY SEE ANYBODY SHOOT?

12 A UM, I DIDN'T REALLY SEE THE FACE OF THE PERSON
13 BUT I SAW THEM LIKE WHEN -- ONCE I HEARD -- I JUST HEARD THE
14 GUNSHOT, THAT'S WHEN I TURNED AROUND.

15 Q I'M NOT TRYING TO TRICK YOU HERE, BUT I CAN'T ASK
16 THE QUESTION ANYMORE SIMPLE. DID YOU SEE SOMEBODY SHOOT A
17 GUN THAT NIGHT?

18 A I JUST SAW HIM WITH THE GUN, BUT I DIDN'T SEE
19 HIM --

20 Q YOU SAW SOMEBODY WITH A GUN?

21 A WELL, YEAH.

22 Q DID YOU SEE HIM PULL THE TRIGGER?

23 A NO.

24 Q DID YOU SEE LIKE A MUZZLE FLASH COME OUT OF THE
25 END OF THE GUN?

26 A NO, I DIDN'T SEE THAT.

1 Q SO THE PERSON WITH THE GUN, WHAT DID YOU SEE THAT
2 PERSON DO?

3 A WELL, CUZ I WASN'T PAYING ATTENTION TO THEM.
4 JUST ONE SECOND WHEN I HEARD THE GUNSHOT IS WHEN I TURNED
5 AROUND.

6 Q DID YOU TELL THE POLICE OFFICER THAT INTERVIEWED
7 YOU THAT NIGHT THAT YOU HEARD THE SHOOTING BUT YOU DIDN'T
8 SEE IT?

9 A UM, YES, I TOLD HIM THAT I HEARD THE GUNSHOT AND
10 THAT'S WHEN I TURNED AROUND.

11 Q WHERE WERE THE BIKES WITH RESPECT TO THAT
12 INTERSECTION, SULLIVAN AND WILLITS, AT THE TIME OF THE
13 SHOOTING?

14 A THEY WERE RIGHT IN THE CORNER ON WILLITS.

15 Q WHY DON'T YOU SHOW US.

16 WITH THE COURT'S PERMISSION, GO AHEAD AND GET UP
17 AND POINT TO WHERE THE BIKES WERE.

18 THE COURT: GO AHEAD.

19 THE WITNESS: RIGHT HERE. (INDICATING.)

20 BY MR. GELLER:

21 Q WHAT YOU NOW POINTED TO IS THE NORTHWEST CORNER
22 OF SULLIVAN AND WILLITS; IS THAT RIGHT?

23 A YES.

24 Q OKAY. ALL SEVEN BIKES WERE IN THAT AREA?

25 A YES, THEY WERE ALL THERE.

26 Q THEY WEREN'T IN TWO GROUPS ANYMORE OR WERE THEY

1 EVER IN TWO GROUPS?

2 A WELL, THEY WERE ALL TOGETHER RIGHT THERE.

3 Q WERE THEY ON THE SIDEWALK OR ON THE STREET?

4 A ON THE SIDEWALK.

5 Q THE PERSON YOU SAW WITH THE GUN, WHERE WAS HE, ON
6 THE SIDEWALK OR IN THE STREET?

7 A ON THE SIDEWALK.

8 Q SO YOU NEVER SAW ANY BIKES IN THE STREET?

9 A NO, THEY WERE JUST -- LIKE, THEY WERE ALL ON THE
10 SIDEWALK.

11 Q DID YOU SEE THE CAR, THE CAR THAT GOT SHOT?

12 A YES, I SAW. AFTER I HEARD THE GUNSHOT I TURNED
13 AND LOOKED AT THE CAR.

14 Q IS THE CAR NOW COMING BACK AT YOU TOWARDS YOUR
15 LOCATION ON SULLIVAN?

16 A YES, BECAUSE IT WAS RIGHT BEHIND US, SO THAT'S
17 WHEN I SAW IT JUST BEHIND US.

18 Q FROM WHERE YOU WERE STANDING, WHICH WAY DID YOU
19 HAVE TO LOOK WITH RESPECT TO SULLIVAN STREET TO SEE WHERE
20 THAT CAR WAS? DID YOU HAVE TO LOOK SOUTH TO YOUR RIGHT OR
21 NORTH TO YOUR LEFT TOWARDS THE SCHOOL?

22 A I LOOKED TO MY RIGHT AND THAT'S WHEN I SAW THE
23 CAR.

24 Q SO WE'RE CLEAR, WHAT YOU'RE SAYING IS AS YOU'RE
25 STANDING HERE ON THE WEST SIDEWALK NEAR THE WORD "SULLIVAN,"
26 YOU'RE LOOKING THAT DIRECTION TO SEE WHERE THE CAR THAT GOT

1 HIT WITH THE BULLET IS?

2 A I WAS WHERE THE RED CAR IS AT. I WAS LOOKING.

3 MR. BROTT: I CAN'T HEAR HIM.

4 THE WITNESS: WHERE THE RED CAR IS AT IS WHERE I WAS
5 AT. AND WHEN I TURNED TO MY RIGHT IS WHEN I SAW THE CAR
6 THAT WAS RIGHT BEHIND MY MOM'S TRUCK.

7 BY MR. GELLER:

8 Q SO THE CAR THAT I JUST SHOWED YOU IN THE
9 PHOTOGRAPHS, WHERE IT WAS LOCATED, IF YOU'RE HERE, OVER HERE
10 BY WHAT'S SHOWN AS THE RED CAR NEXT TO THE WORD "SULLIVAN"
11 IN PEOPLE'S 2, WHICH WAY DID YOU LOOKING; TO YOUR RIGHT OR
12 LEFT?

13 A MY RIGHT.

14 Q SO IT'S FARTHER DOWN SULLIVAN; IS THAT IT?

15 A UP, BECAUSE I FIRST LOOKED UP TO WILLITS WHERE
16 THEY WERE AT. WHEN I TURNED RIGHT IS WHEN I SAW THE BLUE
17 CAR.

18 Q WHERE IS THE BLUE CAR? JUST SHOW ME. POINT TO
19 SOMETHING ON HERE WHERE THE BLUE CAR IS.

20 MR. BROTT: AT WHAT POINT IN TIME?

21 THE COURT: WE'RE GOING TO STOP NOW WITH THE JURY.

22 LADIES AND GENTLEMEN, I'M GOING TO LET YOU GO TO
23 LUNCH. PLEASE DON'T CONVERSE AMONG YOURSELVES OR WITH
24 ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THE TRIAL. PLEASE
25 DON'T FORM OR EXPRESS ANY OPINION ON THE CASE. PLEASE
26 ASSEMBLE OUTSIDE THE COURTROOM DOORS AT 1:30, AND WE'LL

1 START BACK WITH YOU THEN.

2 MR. GARCIA, YOU STAY WHERE YOU ARE FOR A MOMENT.

3 (THE FOLLOWING PROCEEDINGS WERE HAD IN
4 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

5 THE COURT: ALL RIGHT. MR. GARCIA, I'M KIND OF
6 GUESSING THAT MAYBE MR. GELLER HASN'T HAD ENOUGH TIME TO
7 TALK TO YOU BEFORE YOU TESTIFIED. BUT, IN ANY EVENT, WE
8 HAVEN'T FINISHED WITH YOUR TESTIMONY, AND SO I'M ORDERING
9 YOU TO COME BACK HERE AT 1:30 THIS AFTERNOON SO WE CAN DO
10 THAT.

11 IN THE MEANTIME, I WOULD SUGGEST YOU STEP INTO
12 THE HALLWAY AND WAIT FOR MR. GELLER, BECAUSE HE MAY WANT TO
13 CHAT WITH YOU A LITTLE BIT AND HE MIGHT TRY TO HELP REMIND
14 YOU ABOUT WHAT HAPPENED THAT NIGHT A LITTLE MORE.

15 ALSO, DURING LUNCH IT WOULD BE GOOD IF YOU WOULD
16 PRACTICE SPEAKING LOUDLY, BUT DON'T SCARE ANYONE, OKAY, IF
17 YOU'RE GOING TO STAY IN THE BUILDING OR BE ON THE GROUNDS.
18 BUT YOU NEED TO KEEP YOUR VOICE UP AND YOU NEED TO SPEAK
19 SLOWLY BECAUSE WE'RE HAVING TROUBLE HEARING YOU. WE'RE
20 HAVING TROUBLE UNDERSTANDING YOU. AND WHAT YOU HAVE TO SAY
21 IN THIS COURTROOM IS VERY, VERY IMPORTANT. SO I'LL SEE YOU
22 AT 1:30. YOU CAN GO OUT IN THE HALLWAY NOW.

23 MR. BROTT: YOUR HONOR, I STRENUOUSLY OBJECT TO THE
24 COURT INSTRUCTING THIS WITNESS THAT IT'S OKAY FOR MR. GELLER
25 TO REMIND HIM AS TO WHAT HE SAW THAT NIGHT.

26 THE COURT: OKAY. I UNDERSTAND YOUR OBJECTION. AND

1 I'M ONLY SUGGESTING THAT IF MR. GELLER WANTS TO TALK TO THE
2 WITNESS HE CAN DO SO. I'M NOT SUGGESTING THAT HE PUT WORDS
3 IN MR. GARCIA'S MOUTH NOR AM I SUGGESTING THAT MR. GARCIA
4 GET ANY INFORMATION ABOUT WHAT HE SAW. I AM SUGGESTING THAT
5 IF YOU WANT TO TAKE ANOTHER LOOK AT THE REPORTS AND IF THAT
6 WOULD HELP YOU REMEMBER, THAT'S OKAY TO DO.

7 AND I APOLOGIZE TO YOU, MR. BROTT, IF I
8 MISCOMMUNICATED THAT TO MR. GARCIA.

9 BUT YOU CAN STEP DOWN NOW, MR. GARCIA.

10 MR. GELLER: AND, YOUR HONOR, MAY I?

11 FOR THE RECORD, I HAVE NO INTENTION OF SPEAKING
12 TO THE WITNESS OVER THE LUNCH HOUR. I HAVE NO INTENTION OF
13 HELPING HIM WITH HIS TESTIMONY. I'M TRYING TO LAY
14 FOUNDATION SO THAT WHEN DETECTIVE ASHBY COMES IN, WHO IS THE
15 INTERVIEWING OFFICER, WE CAN CLEAR ALL OF THIS UP.

16 THE COURT: OKAY. WELL, I'M HAVING DIFFICULTY
17 UNDERSTANDING MR. GARCIA. I THINK MR. GARCIA MAY BE
18 SOMEWHAT CONFUSED. IN ANY EVENT, GO TO LUNCH. WE'LL SEE
19 YOU AT 1:30. OKAY.

20

21 (NOON RECESS TAKEN.)

22 -000-

23

24

25

26

1 SANTA ANA, CALIFORNIA - THURSDAY, MAY 25, 2006

2 AFTERNOON SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT IN THE PRESENCE OF THE JURY:)

7 THE COURT: ALL RIGHT. WE ARE RESUMING IN PEOPLE VS.
8 ANDRES REYES, CASE NUMBER 04CF2780. RECORD SHOULD REFLECT
9 THE PEOPLE ARE REPRESENTED, THE DEFENDANT IS PRESENT WITH
10 HIS COUNSEL, FIFTEEN JURORS HAVE RETURNED TO THE COURTROOM
11 AT THIS TIME. MR. GARCIA HAS RESUMED HIS PLACE ON THE
12 WITNESS STAND.

13 AND, MR. GELLER, WHENEVER YOU'RE READY, YOU MAY
14 CONTINUE YOUR DIRECT EXAMINATION.

15 DIRECT EXAMINATION

16 (CONTINUED.)

17 BY MR. GELLER:

18 Q MR. GARCIA, WE DON'T HAVE TOO MUCH MORE. I'M
19 GOING TO TRY TO MAKE IT AS EASY AS I POSSIBLY CAN FOR YOU.
20 I'M NOT TRYING TO GET YOU UPSET OR ANYTHING LIKE THAT. I'M
21 JUST TRYING TO GET THROUGH THIS, OKAY?

22 A OKAY.

23 Q I WANT TO TALK ABOUT SPECIFICALLY THE SHOOTING AT
24 THIS POINT IN TIME. DID YOU OR DID YOU NOT SEE SOMEBODY
25 SHOOT A GUN?

26 A NO.

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 Q AND SO WE'RE CLEAR, SO THE JURY IS CLEAR, YOU AND
2 I, WHAT? WE MET MAYBE FOR FIVE MINUTES THIS MORNING BEFORE
3 YOU TESTIFIED. THAT'S THE EXTENT OF TIME WE EVER SPOKE
4 BEFORE THIS CASE; IS THAT RIGHT?

5 A YES.

6 Q WE DIDN'T SPEAK OVER THE LUNCH HOUR AT ALL?

7 A NO.

8 Q WHEN I WAS TALKING TO YOU BEFORE THE BREAK ABOUT
9 TWO GROUPS OF BICYCLES, I WANT TO MAKE SURE THAT I WAS
10 CLEAR. WERE THE BICYCLISTS ALL RIGHT NEXT TO ONE ANOTHER OR
11 WAS THERE SOME DISTANCE THAT SEPARATED THE INDIVIDUAL
12 BICYCLES?

13 A THEY WERE TOGETHER.

14 Q AFTER YOU HEARD THE SHOT DID YOU SEE WHERE THIS
15 BLUE CAR ENDED UP?

16 A YEAH, WHEN I LOOKED OVER TO THE SIDE IS WHEN I
17 SAW THE CAR. IT JUST STOPPED.

18 Q DID IT COME TO A STOP ON SULLIVAN STREET?

19 A YES.

20 Q DID YOU GO UP TO THE CAR TO SEE WHO WAS IN IT?

21 A YES.

22 Q DID YOU SEE SOMEBODY IN THE DRIVER'S SEAT?

23 A YES.

24 Q WAS HE BLEEDING?

25 A YES.

26 Q DID HE SAY ANYTHING TO YOU?

1 A NO.

2 Q DID YOU SEE WHERE THE BICYCLISTS WENT AFTER THE
3 SHOT WAS FIRED?

4 A NO, THEY JUST GOT, LIKE, SEPARATED.

5 Q WHEN YOU SAY "SEPARATED" CAN YOU BE A LITTLE MORE
6 SPECIFIC?

7 A LIKE, UM, THEY WENT DIFFERENT DIRECTIONS.

8 Q THAT MEANS SOME OF THEM WENT ON WILLITS?

9 A YEAH.

10 Q SOME OF THEM WENT ON SULLIVAN?

11 A YES.

12 Q YOU DIDN'T RECOGNIZE ANY OF THE BICYCLISTS; IS
13 THAT CORRECT?

14 A NO, I DIDN'T RECOGNIZE.

15 Q THE CAR THAT YOU SAW GOING NORTHBOUND ON SULLIVAN
16 STREET TOWARDS THE ELEMENTARY SCHOOL, AWAY FROM WHERE YOU
17 AND YOUR MOTHER'S TRUCK WAS, DO YOU KNOW WHAT KIND OF CAR
18 THAT WAS?

19 A IT WAS A HONDA.

20 Q IT'S YOUR OPINION THAT THE CAR THAT YOU SAW GOING
21 NORTHBOUND SULLIVAN WAS THE SAME CAR THAT GOT SHOT AT NOW
22 GOING SOUTHBOUND SULLIVAN, RIGHT?

23 A YES, IT WAS THE SAME CAR.

24 MR. GELLER: I HAVE NOTHING FURTHER.

25 THE COURT: CROSS-EXAMINATION.

26 MR. BROTT: THANK YOU.

CROSS-EXAMINATION

1
2 BY MR. BROTT:

3 Q I'M REFERRING NOW TO PEOPLE'S NO. 3, THIS
4 EXHIBIT.

5 DO YOU RECOGNIZE THIS, MR. GARCIA?

6 A YES.

7 Q YES?

8 A YEAH.

9 Q AND DOES THAT LOOK LIKE A HAND-DRAWN VERSION OF
10 THIS PICTURE?

11 THE COURT: "OF THIS PICTURE"?

12 MR. BROTT: OF PEOPLE'S 1, THAT PHOTO WE'VE BEEN
13 TALKING ABOUT BEFORE, JUST A DIFFERENT WAY OF LOOKING --

14 THE WITNESS: YEAH.

15 MR. BROTT: -- AT IT?

16 THE WITNESS: YEAH.

17 MR. BROTT: WOULD THAT BE FAIR TO SAY?

18 THE WITNESS: YEAH.

19 MR. BROTT: COULD YOU STEP UP HERE, PLEASE, AND SHOW ME
20 ABOUT WHERE YOUR MOM'S PRODUCE TRUCK WAS WHEN YOU SAW ALL
21 THIS.

22 THE COURT: HE'S GOING TO SHOW YOU ON PEOPLE'S 3?

23 MR. BROTT: ON PEOPLE'S 3. I'M TALKING ABOUT 3. AND
24 I'LL BE JUST USING THAT.

25 THE WITNESS: RIGHT HERE. THE TRUCK WAS LIKE RIGHT
26 HERE, PARKED. (INDICATING.)

1 BY MR. BROTT:

2 Q THE TRUCK WAS PARKED DOWN HERE?

3 A YEAH.

4 Q AND WHERE WAS THE OTHER PRODUCE TRUCK YOU SAID
5 YOU SAW ON THE PICTURES?

6 A OURS WAS, LIKE, RIGHT HERE. IT WAS, LIKE, RIGHT
7 HERE. (INDICATING.)

8 Q SO THE OTHER PRODUCE TRUCK THAT YOU SAW IN THE
9 PICTURE WAS --

10 A YEAH.

11 Q -- NORTH OF YOUR -- CLOSER TO WILLITS THAN TO
12 YOU, RIGHT?

13 A YES.

14 Q YOU CAN SIT DOWN.

15 NOW, WHERE WERE YOU IN RELATION TO YOUR MOM'S
16 TRUCK WHEN YOU FIRST NOTICED THE GUYS ON THE BIKES?

17 A I WAS ON THE SIDE OF THE TRUCK.

18 Q WHICH SIDE OF THE TRUCK WERE YOU ON?

19 A THE SIDEWALK.

20 Q ON THE SIDEWALK SIDE?

21 A YEAH.

22 Q SO THE TRUCK WOULD HAVE BEEN BETWEEN YOU AND THE
23 STREET?

24 A CUZ -- THE TRUCK WAS ON THE LEFT SIDE. AND THE
25 DOORS ARE ON THE SIDE OF THE TRUCK. SO, I WAS STANDING
26 RIGHT ON THE SIDEWALK.

1 Q SO YOU WERE -- IS THE PRODUCE ON YOUR TRUCK ON
2 BOTH SIDES OF THE TRUCK?

3 A SINCE THE FRONT OF THE TRUCK WAS -- IT'S FACING
4 THIS WAY. AND THE DOORS WERE OVER HERE. AND WE OPENED
5 THEM. (INDICATING.)

6 Q SO IT WAS PARKED ON THE WEST SIDE OF THE --

7 A YEAH, FACING THIS WAY. (INDICATING.)

8 Q SO IT WAS FACING -- WAS IT FACING THE WRONG
9 DIRECTION, LIKE AS IF IT WAS GOING TO DRIVE UP THERE?

10 A NO, IT WAS LIKE -- LIKE IT WAS COMING THIS WAY.
11 (INDICATING.)

12 Q I CAN'T HEAR YOU.

13 A LIKE, IT WAS GOING TO COME DRIVING THIS WAY.
14 (INDICATING.) BECAUSE THE TRUCK WAS RIGHT HERE. IT WAS
15 LIKE GOING THIS WAY. (INDICATING.)

16 Q YOU SEE MY PEN. IF THIS IS THE FRONT OF YOUR
17 MOM'S TRUCK, WHICH WAY IS THAT TRUCK POINTING; UP OR DOWN?

18 A DOWN.

19 Q DOWN?

20 A YEAH, IN THE FRONT. SO I WAS ON THE SIDE.

21 Q ALL RIGHT. NOW, YOU ARE ON THE SIDEWALK SIDE AND
22 WHERE, WHEN YOU FIRST SEE THESE BICYCLISTS, ARE THEY ON THAT
23 PHOTO OR ON THAT DIAGRAM?

24 A THEY PASSED THROUGH THE SIDEWALK.

25 Q THEY CAME RIGHT BY THE SIDEWALK --

26 A YES.

1 Q -- THAT YOU'RE STANDING ON?

2 A YES.

3 Q IS THIS THE SIDEWALK, THE GRAY AREA I'M POINTING
4 TO? (INDICATING.)

5 A YES.

6 Q AND WERE YOU STANDING ON THE SIDEWALK?

7 A YES.

8 Q AND DID THEY GO BY ONE BY ONE OR?

9 A NO, THEY --

10 Q OR DID THEY GO BY IN A GROUP?

11 A THEY PASSED ALL TOGETHER.

12 Q PASSED ALL TOGETHER?

13 A YEAH.

14 Q ABOUT SEVEN OF THEM OR SO?

15 A YEAH.

16 Q AND THEN DID THEY -- WHERE WERE THEY IN RELATION
17 TO YOU WHEN YOU SAY YOU HEARD THEM SAY SOMETHING FOR THE
18 FIRST TIME?

19 A WELL, THEY HAD ALREADY PASSED ME WHEN I HEARD
20 THEM.

21 Q THEY HAD ALREADY GONE BY?

22 A YEAH.

23 Q AND THE CAR YOU SAY THAT THEY WERE SPEAKING AT,
24 HAD IT ALREADY GONE BY YOUR LOCATION WHEN YOU FIRST HEARD
25 THEM SAYING THESE THINGS?

26 A YES, IT HAD PASSED ME TOO.

1 Q AND FROM THE TIME YOU HEARD THEM FIRST SAY
2 SOMETHING UNTIL THE TIME YOU HEARD THE SHOT, HOW LONG A TIME
3 WAS THAT?

4 A NOT SURE.

5 Q WELL, WAS IT MORE THAN A MINUTE, 30 SECONDS, OR
6 DID IT HAPPEN JUST REALLY FAST?

7 A JUST LIKE A MINUTE AFTER, SOMETHING LIKE THAT.
8 LIKE A MINUTE AFTER THEY PASSED ME.

9 Q AND DID, AT ANY POINT BEFORE THE SHOOTING, DID
10 THE GROUP OF SEVEN KIND OF SEPARATE?

11 A ONCE THEY WERE GETTING TO THE CORNER RIGHT THERE,
12 WILLITS.

13 Q RIGHT. AND THEY'RE SAYING, OR SOMEBODY IN THE
14 GROUP THAT'S CLOSEST TO YOU IS SAYING, HEY, SLOW DOWN; ISN'T
15 THAT WHAT THEY WERE SAYING?

16 A ONE OF THEM HAD SCREAMED TO THE CAR TO SLOW
17 DOWN.

18 Q WELL, HOW DO YOU KNOW HE WAS TALKING TO THE CAR
19 AND NOT THE GROUP AHEAD?

20 A WELL, THEN AFTER I HEARD, LIKE, THE ONE THAT WAS
21 IN FRONT SCREAM TO THE GUYS THAT WERE BEHIND HIM TO KEEP UP,
22 LIKE, WITH THEM SO THEY COULD STAY ALL TOGETHER.

23 Q BUT AT THAT POINT, RIGHT BEFORE THAT, THE GUYS IN
24 THE BACK HAD BEEN SAYING, HEY, SLOW DOWN, RIGHT?

25 A YES.

26 Q NOW, YOU DIDN'T SEE THOSE GUYS TALKING TO ANY

1 OTHER CAR, DID YOU?

2 A NO.

3 Q AND YOU DIDN'T SEE THOSE GUYS TALKING TO A CAR
4 THAT WAS COMING THIS DIRECTION ON SULLIVAN, DID YOU?

5 A NO.

6 Q NOW YOU SAY THAT YOU -- YOU LOOKED UP AFTER YOU
7 HEARD THE SOUND OF THE SHOT; IS THAT TRUE?

8 A YES.

9 Q WHAT WERE YOU LOOKING AT AT THE TIME OF THE
10 SHOT?

11 A I WAS -- SINCE I WAS FIXING THE THINGS IN THE
12 TRUCK, WHEN I HEARD THE GUNSHOT IS WHEN I TURNED AROUND.

13 Q SO YOU HAD GONE BACK TO DOING WHAT YOU WERE DOING
14 BEFORE THE GUYS ROAD BY?

15 A YES. LIKE, THEY PASSED ME. I WAS JUST LIKE
16 FIXING THE THINGS ON THE TRUCK. AND WHEN I HEARD THE
17 GUNSHOT IS WHEN I TURNED AROUND AND I SAW THEM OVER BY,
18 LIKE, THE CORNER.

19 Q WHEN THEY WENT BY AND YOU HEARD THESE THINGS, YOU
20 WENT RIGHT BACK TO WORK; YOU DIDN'T THINK ANYTHING WAS GOING
21 TO HAPPEN, RIGHT?

22 A I DIDN'T THINK NOTHING WAS GOING TO HAPPEN LIKE.

23 Q THERE WAS NOTHING PARTICULARLY DANGEROUS OR
24 EXCITING ABOUT GUYS RIDING BY ON A BIKE, WAS THERE?

25 A NO.

26 Q THEY DIDN'T SAY ANYTHING ABOUT A GANG, DID THEY?

1 A NO.

2 Q THEY DIDN'T YELL OUT THE NAME OF ANY GANG OR
3 ANYTHING?

4 A NO.

5 Q THEY DIDN'T USE ANY HAND SIGNS, DID THEY?

6 A NO, NOT THAT I SAW.

7 Q HAVE YOU EVER SEEN SOMEBODY USE HAND SIGNS, GANG
8 HAND SIGNS?

9 A I'VE SEEN PEOPLE.

10 Q AND YOU DIDN'T SEE ANY OF THOSE GUYS DO THAT, DID
11 YOU?

12 A NO.

13 Q DID YOU SEE ANYBODY IN THE GROUP OF SEVEN RIDERS
14 THAT WAS -- THAT STOOD OUT, IN TERMS OF BEING TALL, SHORT,
15 FAT, SKINNY, DIFFERENT FROM THE OTHERS?

16 A I DIDN'T SEE IT.

17 Q YOU WEREN'T REALLY PAYING TO ATTENTION WHAT THEY
18 LOOKED LIKE?

19 A NO.

20 Q BECAUSE UNTIL THE GUNSHOT NOTHING THEY DID
21 SOUNDED SCARY, RIGHT?

22 A UM, NO, IT WAS --

23 Q IS THAT TRUE?

24 A YEP.

25 Q DID YOU SEE ANYBODY WITH A HAT ON?

26 A NO.

1 Q DID YOU EVER SEE ANYBODY ELSE BESIDES YOU AND
2 YOUR BUDDY RUN UP TO THE CAR?

3 A NO.

4 Q WHEN YOU LOOKED UP AFTER THE SHOT, ALL YOU SAW
5 WAS SOME BICYCLISTS UP THERE AT THE CORNER; IS THAT TRUE?

6 A YES.

7 Q THAT'S ALL YOU SAW?

8 A THAT'S ALL I SAW.

9 Q AND THEN THEY KIND OF SCATTERED?

10 A YES.

11 Q WHERE WAS YOUR MOM WHEN ALL THIS HAPPENED?

12 A SHE WAS IN THE TRUCK FEEDING MY SISTER.

13 Q YOU JUST SAW THE ONE CAR GO NORTH, GO TOWARDS THE
14 TOP OF THE CHART THAT DAY BEFORE THIS EVENT HAPPENED,
15 RIGHT?

16 A YES.

17 Q BUT YOU DIDN'T SEE THE U-TURN, CORRECT?

18 A NO, I DIDN'T REALLY SEE HIM WHEN HE TURNED, BUT I
19 NOTICED THAT HE WAS COMING BACK.

20 Q SO IT HAD DONE A COMPLETE REVERSAL OF ITS
21 DIRECTION, CORRECT?

22 A YES.

23 MR. BROTT: NO FURTHER QUESTIONS.

24 THE COURT: REDIRECT?

25 MR. GELLER: NO, THANK YOU.

26 THE COURT: MAY THE WITNESS BE EXCUSED?

1 MR. GELLER: YES.

2 MR. BROTT: YES.

3 THE COURT: THANK YOU VERY MUCH.

4 MR. GARCIA, YOU'RE EXCUSED FROM THIS TRIAL NOW.
5 YOU'VE FREE TO LEAVE. AND THANK YOU FOR COMING TO COURT.
6 YOU CAN GO.

7 YOUR NEXT WITNESS?

8 MR. GELLER: THANK YOU. WITH THE COURT'S PERMISSION,
9 DETECTIVE SELINSKE.

10 THE BAILIFF: STEP TO THE EDGE OF COUNSEL TABLE, RAISE
11 YOUR RIGHT HAND AND FACE THE CLERK.

12 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
13 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
14 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
15 TRUTH, SO HELP YOU GOD?

16 THE WITNESS: I DO.

17 THE CLERK: STATE YOUR NAME, PLEASE.

18 THE WITNESS: MATTHEW SELINSKE.

19 THE CLERK: WILL YOU PLEASE SPELL YOUR LAST NAME FOR
20 THE RECORD.

21 THE WITNESS: S-E-L-I-N-S-K-E.

22 THE CLERK: MATTHEW HAS TWO "T"'S OR ONE?

23 THE WITNESS: TWO "T"'S.

24 THE CLERK: THANK YOU, SIR. YOU CAN TAKE THE STAND.

25 THE COURT: YOU MAY INQUIRE.

26 MR. GELLER: THANK YOU.

1 MATTHEW SELINSKE,
2 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
3 EXAMINED AND TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. GELLER:

6 Q GOOD AFTERNOON, DETECTIVE SELINSKE.

7 A GOOD AFTERNOON.

8 Q BY WHOM ARE YOU EMPLOYED?

9 A CITY OF COSTA MESA POLICE DEPARTMENT.

10 Q AND HOW LONG HAVE YOU BEEN A COSTA MESA POLICE
11 OFFICER?

12 A NINE YEARS.

13 Q DO YOU HAVE ANY PRIOR LAW ENFORCEMENT EXPERIENCE?

14 A YES, I DID.

15 Q WHAT WAS THAT?

16 A POLICE CADET WITH THE CITY OF ANAHEIM.

17 Q HOW LONG WAS THAT?

18 A ABOUT A YEAR AND A HALF.

19 Q YOUR PRESENT ASSIGNMENT WITH COSTA MESA IS WHAT?

20 A I'M ASSIGNED AS AN INVESTIGATOR WITH THE
21 NARCOTICS AND VICE INVESTIGATION UNIT.

22 Q IS THAT THE SAME POSITION YOU HELD ABOUT TWO
23 YEARS AGO IN AUGUST OF 2004?

24 A YES, IT WAS.

25 Q NORMALLY WHEN YOU'RE OUT INVESTIGATING THE TYPES
26 OF CRIMES THAT YOU DO ON A REGULAR BASIS ARE YOU DRESSED IN

1 A SUIT AS YOU ARE HERE IN COURT TODAY?

2 A NO, I'M NOT.

3 Q WHAT'S YOUR NORMAL ATTIRE?

4 A T-SHIRTS, JEANS, SHORTS, HAT BACKWARDS.

5 Q WHY IS THAT?

6 A WE'RE AN UNDERCOVER-TYPE UNIT AND WE NEED TO
7 BLEND IN WITH OUR ENVIRONMENT. WE DRIVE UNMARKED VEHICLES.
8 THEREFORE, A SUIT WOULDN'T ALLOW US TO BLEND IN.

9 Q WHAT I WANT TO TALK TO YOU ABOUT IS AUGUST 10TH
10 OF 2004. YOU WERE WORKING THAT DAY?

11 A YES, I WAS.

12 Q AND YOU WERE WORKING AN UNDERCOVER OPERATION IN
13 THE CITY OF SANTA ANA?

14 A YES, WE WERE.

15 Q JUST BRIEFLY TELL US THE NATURE OF WHAT YOU WERE
16 DOING IN SANTA ANA THAT DAY?

17 A WE WERE WORKING AN UNDERCOVER INVESTIGATION IN
18 THAT AREA INVOLVING A MAJOR NARCOTICS TRAFFICKER. THE
19 SURVEILLANCE WAS CENTERED ON A LOCATION WITHIN THE CITY OF
20 SANTA ANA, AND WE WERE BASICALLY IN THE INITIAL STAGES OF
21 SETTING UP THE SURVEILLANCE FOR THAT INVESTIGATION.

22 Q AND YOU SAY "WE." WHO ARE YOU REFERRING TO?

23 A MYSELF AND THE OTHER MEMBERS OF MY TEAM.

24 Q NOW YOU WERE IN AN UNMARKED COSTA MESA POLICE CAR
25 THAT DAY?

26 A YES.

1 Q DID YOU HAVE ANYBODY IN THE CAR WITH YOU AT THAT
2 TIME?

3 A NO, I DID NOT.

4 Q AT SOME POINT IN TIME YOU WERE HEADING SOUTHBOUND
5 SULLIVAN STREET FROM FIRST STREET; IS THAT CORRECT?

6 A YES.

7 Q AND ABOUT WHAT TIME OF DAY WAS THAT?

8 A ABOUT 20 MINUTES AFTER 6:00 P.M.

9 Q I'D LIKE TO SHOW YOU A SERIES OF PHOTOGRAPHS.
10 6:20 P.M. ON AUGUST 10TH, STILL LIGHT OUTSIDE; IS
11 THAT CORRECT?

12 A YES, IT IS.

13 Q ARE YOU FAMILIAR WITH THE INTERSECTION OF
14 SULLIVAN AND WILLITS?

15 A YES, I AM.

16 Q ALL RIGHT. WE'VE GOT A COUPLE DIAGRAMS HERE. I
17 DON'T THINK WE NEED TO MENTION THAT ONE. BUT LET'S TAKE A
18 LOOK AT THE OVERHEAD.

19 THIS HAS BEEN MARKED AS PEOPLE'S 2 FOR
20 IDENTIFICATION. DO YOU SEE THAT?

21 A YES, I DO.

22 Q DOES IT SEEM TO ACCURATELY REPRESENT THE
23 INTERSECTION OF SULLIVAN AND WILLITS AS YOU REMEMBER IT
24 ALMOST TWO YEARS AGO?

25 A YES, IT DOES.

26 Q I REALIZE THERE'S -- WE DON'T KNOW WHEN THIS

1 OVERHEAD WAS TAKEN. THERE'S A WHOLE BUNCH OF VEHICLES ON
2 BOTH STREETS. PROBABLY NONE OF THOSE WERE PRESENT, NONE OF
3 THOSE SPECIFIC VEHICLES WERE PRESENT ON AUGUST 10TH OF 2004;
4 WOULD THAT BE RIGHT?

5 A I THINK SO.

6 Q OKAY. I'D LIKE YOU TO TAKE A LOOK AT A BUNCH OF
7 PHOTOGRAPHS, A SERIES OF PHOTOGRAPHS.

8 SEE HOW THERE'S A SCHOOL UP HERE ON THE NORTHEAST
9 CORNER?

10 A YES.

11 Q THIS HAS BEEN MARKED AS PEOPLE'S 5 FOR
12 IDENTIFICATION. DO YOU RECOGNIZE WHAT'S IN THE PHOTOGRAPH?

13 A YES, I DO.

14 Q OKAY. WHAT'S THAT A PICTURE OF?

15 A THAT'S A PICTURE OF THE NORTH PART OF THE
16 INTERSECTION, LOOKING NORTH TOWARDS FIRST STREET, FROM,
17 BASICALLY, THE MIDDLE OF THE INTERSECTION.

18 Q THE LIGHTING CONDITIONS THAT YOU SEE IN THIS
19 PHOTOGRAPH KIND OF APPROXIMATE THE LIGHTING CONDITIONS THAT
20 YOU SAW AT 6:20 P.M. ON AUGUST 10TH?

21 A YES, ABOUT THAT.

22 Q AND I'M ASSUMING THERE'S A SERIES OF FOUR ORANGE
23 CONES AND YELLOW POLICE TAPE GOING ACROSS EAST TO WEST THE
24 INTERSECTION, OR, ABOVE THE INTERSECTION THERE. THOSE
25 WEREN'T PRESENT PRIOR TO ANYBODY FROM SANTA ANA ARRIVING AT
26 THE SCENE; IS THAT RIGHT?

1 A THAT'S CORRECT.

2 Q OKAY. SAME KIND OF FOUNDATIONAL QUESTIONS HERE
3 WITH RESPECT TO PEOPLE'S 4. DO YOU RECOGNIZE THAT?

4 A YES, I DO.

5 Q OKAY. THAT'S ALREADY BEEN IDENTIFIED AS A VIEW
6 LOOKING SOUTHBOUND FROM THE NORTH PART OF THE INTERSECTION,
7 LOOKING SOUTH ON SULLIVAN. YOU CAN KIND OF SEE THE WILLITS
8 INTERSECTION. IS THAT, AGAIN, KIND OF APPROXIMATE THE
9 LIGHTING CONDITIONS THAT YOU SAW THAT DAY?

10 A YES, IT DOES.

11 Q OKAY. SUN IS PROBABLY AN HOUR FARTHER ALONG IN
12 ITS DESCENT TO THE HORIZON BUT, ESSENTIALLY, THAT'S HOW IT
13 LOOKED?

14 A YES.

15 Q SAME KIND OF FOUNDATIONAL QUESTIONS WITH
16 PEOPLE'S 7.

17 A YES.

18 Q NOW THERE'S A BLUE CAR WITH A YELLOW TARP OVER
19 THE FRONT DRIVER'S SIDE OF THE CAR. ULTIMATELY, YOU SAW THE
20 BLUE CAR THAT DAY; IS THAT CORRECT?

21 A YES.

22 Q WHEN YOU FIRST SAW IT THE YELLOW TARP WAS NOT
23 THERE?

24 A THAT'S CORRECT.

25 Q YOU SAW WHERE THE CAR CAME TO REST?

26 A YES, I DID.

1 Q OKAY. AND THAT APPROXIMATES WHERE IT'S SHOWN ON
2 THAT PHOTOGRAPH?

3 A YES, IT DOES.

4 Q AND YOU SAW THAT, I KNOW WE'RE KIND OF PUTTING
5 THE CART BEFORE THE HORSE HERE, BUT YOU HEARD A SHOOTING AND
6 YOU SAW THE CAR COME TO THAT POSITION SHORTLY AFTER THE
7 SHOOTING, RIGHT?

8 A YES.

9 Q OKAY. SAME THING WITH RESPECT TO PEOPLE'S 6.

10 A YES.

11 Q OKAY. CAR -- JUST KIND OF A DIFFERENT ANGLE OF
12 THE SAME CAR, SAME LOCATION THAT IT CAME TO REST IN?

13 A YES, IT IS.

14 Q OKAY. SAME THING WITH RESPECT TO PEOPLE'S 10.
15 DO YOU SEE THAT?

16 A YES, I DO.

17 Q JUST KIND OF A CLOSE-UP OF THE CAR?

18 A YES, IT IS.

19 Q OKAY. THEN ALSO WITH RESPECT TO PEOPLE'S 9,
20 ANOTHER CLOSE-UP OF THE REAR OF THE SAME VEHICLE THAT YOU
21 SAW OUT ON THE SCENE THAT DAY AT ABOUT THAT TIME?

22 A YES, IT IS.

23 Q OKAY. SAME THING WITH RESPECT TO PEOPLE'S 8?

24 A YES, IT IS.

25 Q OKAY. GREAT.

26 SO LET'S TALK ABOUT YOUR OBSERVATIONS THAT DAY.

1 YOU'VE ALREADY TESTIFIED YOU'RE WORKING UNDERCOVER. YOU'RE
2 DRIVING SOUTHBOUND SULLIVAN STREET. PRIOR TO GETTING ON
3 SULLIVAN, DO YOU KNOW WHERE YOU WERE COMING FROM?

4 A YES, I DO.

5 Q LET'S USE THE MAP HERE, PEOPLE'S 1. WHERE WERE
6 YOU COMING FROM?

7 A I WAS COMING SOUTHBOUND FROM FIRST STREET.

8 Q THAT WOULD BE INDICATED AS THIS INTERSECTION,
9 WHICH IS NEAR THE LOWER LEFT-HAND CORNER OF THE DIAGRAM?

10 A CORRECT.

11 Q OKAY. LET'S TALK ABOUT AS YOU'RE TRAVELING
12 SOUTHBOUND SULLIVAN STREET. WERE THERE PEDESTRIANS OUT IN
13 THAT AREA AT THAT TIME?

14 A YES, THERE WAS QUITE A FEW, QUITE A BIT.

15 Q AS YOU'RE APPROACHING THE INTERSECTION OF WILLITS
16 STREET -- PEOPLE'S 2 IS AN OVERHEAD -- CARS ARE KIND OF
17 SPARSELY SHOWN HERE. THERE'S ONLY MAYBE TWO CARS PARKED ON
18 THE WEST SIDE OF SULLIVAN STREET, TWO OR THREE, MAYBE FOUR
19 CARS ON THE EAST SIDE. IS THAT KIND OF HOW THE CARS WERE
20 PARKED WHEN YOU SAW IT ON AUGUST 10TH?

21 A NO, IT WAS NOT.

22 Q WHAT'S DIFFERENT?

23 A BOTH SIDES OF THE STREET --

24 THE COURT: WATCH THE MIC, DETECTIVE.

25 THE WITNESS: SORRY.

26 BOTH SIDES OF THE STREET, BOTH NORTH AND SOUTH OF

1 THE INTERSECTION, WERE LINED WITH PARKED CARS. THERE WAS,
2 ESSENTIALLY, NO PLACE TO PARK.

3 BY MR. GELLER:

4 Q OKAY. PEDESTRIAN TRAFFIC, ARE THERE PEOPLE ON
5 FOOT NEAR THE INTERSECTION ON THE SIDEWALKS, IF YOU RECALL?

6 A YES, THERE WAS QUITE A BIT OF FOOT TRAFFIC.

7 Q OKAY. WHERE WAS THE -- AS YOU WERE TRAVELING
8 SOUTHBOUND, YOU SAW SOME PHOTOGRAPHS OF A BLUE HONDA CAR,
9 WHERE WAS THE FIRST POINT THAT YOU NOTICED THAT HONDA THAT
10 DAY?

11 A THAT WOULD HAVE BEEN JUST SOUTH OF THE CROSSWALK,
12 FACING SOUTHBOUND INTO THE INTERSECTION.

13 Q OKAY. THERE'S A WHITE, LOOKS LIKE PROBABLY A
14 TRUCK SHOWN ON THAT DIAGRAM, PEOPLE'S 2, EXCUSE ME. IT
15 SEEMS TO BE JUST SHORT OF THE LIMIT LINE FOR THE STOP SIGN
16 THERE. WAS THE HONDA CAR, WHAT? MAYBE A CAR LENGTH OR TWO
17 SOUTH OF THAT? WAS IT STILL IN THE CROSSWALK, IF YOU
18 RECALL?

19 A YEAH, IT WAS DEFINITELY INTO THE INTERSECTION
20 APPROXIMATELY TWO CAR LINKS.

21 Q OKAY. WHAT WAS IT ABOUT THAT CAR THAT ATTRACTED
22 YOUR ATTENTION TO IT?

23 A WELL, I HEARD A LOUD NOISE THAT I RECOGNIZED WAS
24 A GUNSHOT. WHEN I LOOKED DIRECTLY IN FRONT OF ME, I SAW THE
25 REAR WINDOW OF THAT VEHICLE EXPLODE OUT ON THE DRIVER'S
26 SIDE, AND THE REST OF IT SHATTERED IN A SPIDER WEB FASHION;

1 AND THAT'S WHAT DREW MY ATTENTION TO THE VEHICLE.

2 Q HOW FAR BACK NORTH ON SULLIVAN STREET WERE YOU
3 FROM THE CAR AT THE TIME YOU MADE THOSE OBSERVATIONS?

4 A APPROXIMATELY 40 YARDS.

5 Q IT'S KIND OF HARD TO TELL WHAT 40 YARDS IS ON
6 THIS OVERHEAD. I DON'T KNOW IF ANY OF THESE DIAGRAMS WILL
7 ASSIST WITH THAT. MAYBE WE'LL START WITH PEOPLE'S 2.
8 THERE'S A BIG SCHOOL BUILDING OFF TO THE EAST. WOULD YOU BE
9 ABLE TO APPROXIMATE FOR US IN RELATIONSHIP TO MAYBE THE
10 SCHOOL BUILDING OR, JUST, IF YOU NEED TO, GO AHEAD AND POINT
11 TO THE MAP WHERE YOU THINK YOU PROBABLY WERE AT THE TIME YOU
12 MADE THESE OBSERVATIONS?

13 A IT WOULD HAVE BEEN, ESSENTIALLY, BETWEEN THIS
14 WHITE VEHICLE HERE AND THIS DARKER-COLORED VEHICLE HERE,
15 JUST ABOUT RIGHT IN THE MIDDLE. (INDICATING.)

16 Q AND THERE IS A WHITE VEHICLE -- IT LOOKS LIKE
17 IT'S HEADING SOUTHBOUND ON THE WEST SIDE OF SULLIVAN -- AND
18 A DARKER VEHICLE PRETTY MUCH ADJACENT TO THE END OF THE
19 SCHOOL BUILDING, ALSO HEADING SOUTHBOUND WEST SIDE OF
20 SULLIVAN; IS THAT CORRECT?

21 A YES.

22 Q WAS THERE ANYTHING BETWEEN YOU AND THE BLUE CAR
23 AT THE TIME YOU MADE THOSE OBSERVATIONS?

24 A THERE WERE NO OTHER VEHICLES BETWEEN US.

25 Q DID YOU SEE THE BLUE CAR MAKE A U-TURN IN THE
26 SULLIVAN/WILLITS INTERSECTION?

1 A NO, I DID NOT.

2 Q WAS THE BLUE CAR WHEN YOU FIRST OBSERVED IT IN A
3 POSITION WHERE IT COULD HAVE MADE A U-TURN IN THE
4 INTERSECTION OF SULLIVAN AND WILLITS, OR, WAS IT JUST COMING
5 STRAIGHT SOUTHBOUND SULLIVAN?

6 A I BELIEVE IT WAS COMING DIRECTLY SOUTHBOUND.

7 Q AND WHAT DO YOU BASE THAT UPON?

8 A JUST THE POSITION IN THE INTERSECTION. I DIDN'T
9 THINK THAT IN THAT SMALL AREA IT COULD HAVE MADE A U-TURN OR
10 COME FROM ANY OTHER DIRECTION.

11 Q DO YOU RECALL SEEING IT, SAY, NORTH OF THE LIMIT
12 LINE HERE, OR, WAS YOUR ATTENTION JUST -- YOU JUST WEREN'T
13 PAYING ATTENTION TO THAT CAR AT THAT POINT?

14 A CORRECT, I WAS NOT PAYING ATTENTION TO THE
15 VEHICLE BEFORE I HEARD THE SOUND.

16 Q NOTHING UNUSUAL WAS GOING ON PRIOR TO HEARING A
17 GUNSHOT?

18 A NO.

19 Q YOU SEE ANY BICYCLISTS ON THE SIDEWALK OR ON THE
20 STREET PRIOR TO HEARING A GUNSHOT?

21 A NO.

22 Q SO WHAT DID YOU DO NEXT?

23 A I NOTICED SOMETHING ELSE BETWEEN MYSELF AND THE
24 VEHICLE THAT I HAD NOTICED WHEN I HEARD THE SHOT.

25 Q OKAY. WHAT WAS THAT?

26 A THAT WAS AN INDIVIDUAL STANDING IN THE MIDDLE OF

1 THIS CROSSWALK HERE, STRADDLING A BICYCLE. HE HAD AN OBJECT
2 IN HIS RIGHT HAND THAT I RECOGNIZED AS A HANDGUN, A
3 REVOLVER. HE TOOK THAT AND HE STUFFED IT INTO THE PANTS HE
4 WAS WEARING.

5 Q OKAY. WHEN YOU SAID "THIS CROSSWALK," WHAT
6 YOU'RE REFERRING TO IS THE CROSSWALK, THE EAST/WEST
7 CROSSWALK ON THE NORTH SIDE OF THE INTERSECTION; IS THAT
8 CORRECT?

9 A YES, IT IS.

10 Q OKAY. THE INDIVIDUAL THAT YOU SAW WITH THE
11 HANDGUN, WHERE SPECIFICALLY WAS HE? JUST RIGHT IN THE
12 MIDDLE OF THE STREET, RIGHT IN THE MIDDLE OF THE CROSSWALK,
13 CLOSER TO ONE SIDE OF THE SULLIVAN CURB, WHERE WAS HE?

14 A RIGHT IN THE MIDDLE OF THE CROSSWALK.

15 Q AND WAS HE ON A BICYCLE AT THE TIME?

16 A HE HAD A BICYCLE. HE WAS STRADDLING IT, STANDING
17 ON THE GROUND WITH ONE LEG ON EACH SIDE OF THE FRAME.

18 Q WHAT KIND OF BICYCLE WAS THAT?

19 A BEACH CRUISER TYPE OF BICYCLE.

20 Q DID YOU SEE ANY OTHER INDIVIDUALS ON BICYCLES IN
21 THE IMMEDIATE PROXIMITY TO THAT PERSON UP SAW WITH THE GUN?

22 A YES, I BELIEVE I SAW TWO OTHER PEOPLE.

23 Q AND WHERE WERE THEY IN RELATIONSHIP TO THAT
24 PERSON?

25 A THEY WERE BEHIND HIM.

26 Q "BEHIND HIM" MEANING WHERE?

1 A I'M SORRY. ON HIS EAST SIDE. MORE TOWARDS THE
2 SCHOOL.

3 Q CLOSER TO THE SCHOOL?

4 A CORRECT.

5 Q HOW FAR A PART WERE THEY?

6 A I DON'T RECALL THAT.

7 Q CAN YOU APPROXIMATE FOR US, IF YOU CAN?

8 A JUST WITHIN A FEW FEET.

9 Q OKAY.

10 A NOTHING TOO FAR.

11 Q SO NOW YOU'VE IDENTIFIED THREE BICYCLISTS. WAS
12 THERE ANYTHING ABOUT THESE OTHER TWO BICYCLISTS THAT
13 INDICATED TO YOU THAT THEY WERE WITH THE PERSON WITH THE
14 GUN?

15 A YES.

16 Q WHAT?

17 A WHEN THE INDIVIDUAL THAT I SAW WITH THE HANDGUN
18 GOT ON THE BIKE AND BEGAN TRAVELING, THEY APPEARED TO TRAVEL
19 WITH HIM.

20 Q WHERE DID THEY TRAVEL TO, IF YOU KNOW?

21 A I BELIEVE THAT THEY -- WHEN HE TRAVELED HE WENT
22 NORTHBOUND ON SULLIVAN STREET ON THE STREET. I BELIEVE I
23 SAW THEM OUT OF THE CORNER OF MY EYE GETTING ONTO THE
24 SIDEWALK AND RIDING IN THE SAME DIRECTION.

25 Q WHICH SIDEWALK WOULD THAT BE ON THE WEST SIDE OR
26 EAST SIDE OF SULLIVAN?

1 A THE WEST SIDE.

2 Q SO THE GUY WITH THE GUN IS TRAVELING UP THE
3 MIDDLE OF THE STREET TOWARDS YOU?

4 A TOWARDS ME, BUT NOT IN THE MIDDLE OF THE STREET.

5 Q WHERE IS HE?

6 A HE'S MORE ON THE WEST SIDE RIDING, BASICALLY,
7 BETWEEN MY VEHICLE AND THE PARKED VEHICLES ON THE WEST
8 SIDE.

9 Q AND THE OTHER TWO ARE ON THE SIDEWALK ACTUALLY?

10 A CORRECT.

11 Q DID YOU SEE ANY OTHER BICYCLISTS THAT YOU
12 ATTRIBUTED TO THOSE THREE INDIVIDUALS?

13 A NO, I DO NOT RECALL.

14 Q HOW FAR WERE YOU INITIALLY WHEN YOU SAW THE
15 PERSON IN THE INTER -- IN THE CROSSWALK SHOVING THE GUN IN
16 HIS WAISTBAND?

17 A APPROXIMATELY 40 YARDS.

18 Q THIS ALL HAPPENED RELATIVELY QUICKLY, I WOULD
19 IMAGINE?

20 A YES, IT DID.

21 Q WERE YOU EXPECTING TO SEE A SHOOTING AT THAT
22 POINT IN TIME?

23 A NO, I WAS NOT.

24 Q THE ETHNICITY OF THE PERSON WHO WAS SHOVING THE
25 GUN IN HIS WAISTBAND WAS WHAT?

26 A HISPANIC.

1 Q MALE OR FEMALE?

2 A MALE.

3 Q APPROXIMATELY HOW OLD?

4 A BETWEEN 17 AND 20 YEARS OLD.

5 Q PHYSICAL DESCRIPTION?

6 A APPROXIMATELY 6'2" TALL, WEIGHED APPROXIMATELY
7 165 POUNDS.

8 Q DID YOU RECALL WHAT TYPE OF GUN YOU WERE ABLE TO
9 SEE?

10 A YES.

11 Q WHAT WAS IT?

12 A IT WAS A REVOLVER.

13 Q OBVIOUSLY YOU KNOW THE DIFFERENCE BETWEEN A
14 REVOLVER AND A SEMI-AUTO?

15 A YES, I DO.

16 Q WHAT WAS IT THAT MADE YOU BELIEVE IT WAS A
17 REVOLVER?

18 A I JUST -- I SAW IT. SIMPLY SAW IT AND I
19 RECOGNIZED IT AS A REVOLVER.

20 Q TWO GUNS DON'T LOOK ANYTHING ALIKE, RIGHT?

21 A WELL, BETWEEN A REVOLVER AND A SEMI-AUTO HANDGUN,
22 YEAH, THEY DON'T LOOK ALIKE.

23 Q AND YOU WERE NOT PRESENT WHEN ANY GUNS WERE
24 RECOVERED LATER ON THAT EVENING; IS THAT CORRECT?

25 A THAT'S CORRECT.

26 Q HAVE YOU EVER SEEN ANY GUNS ASSOCIATED WITH THIS

1 CASE?

2 A I'VE SEEN PHOTOGRAPHS AND THAT'S IT.

3 Q YOU'VE NEVER ACTUALLY SEEN A GUN?

4 A NO.

5 Q ALL RIGHT. PERSON THAT YOU SAW WITH THE HANDGUN,
6 DID YOU GET A GOOD LOOK AT HIS FACE?

7 A YES.

8 Q AND DID YOU RECOGNIZE THAT PERSON?

9 A DO I RECOGNIZE THAT PERSON?

10 Q DID YOU RECOGNIZE THAT PERSON?

11 A YES.

12 Q YOU DID RECOGNIZE THAT PERSON; YOU HAD SEEN HIM
13 BEFORE THAT?

14 A I APOLOGIZE. NO, I MISUNDERSTOOD YOUR QUESTION.
15 NO, I HAD NEVER SEEN HIM BEFORE.

16 Q WHAT ABOUT THE OTHER TWO INDIVIDUALS?

17 A NO.

18 Q PERSON THAT YOU SAW WITH THE GUN, DO YOU BELIEVE
19 THAT PERSON IS HERE IN COURT RIGHT NOW?

20 A YES, I DO.

21 Q WOULD YOU POINT HIM OUT FOR US.

22 A HE'S SEATED AT THE DEFENDANT'S TABLE, WEARING A
23 DARK BLUE SHIRT.

24 MR. GELLER: INDICATING THE DEFENDANT, MR. REYES,
25 PLEASE.

26 THE COURT: YES.

1 BY MR. GELLER:

2 Q SO WE'RE CLEAR YOU DID NOT SEE THIS DEFENDANT
3 SHOOT A GUN THAT DAY, DID YOU?

4 A I THOUGHT I JUST SAID I DID.

5 Q DID YOU SEE HIM SHOOT THE GUN?

6 A OH, I APOLOGIZE. NO, I DID NOT.

7 Q WITH MR. BROTT'S PERMISSION, AND THE COURT'S
8 PERMISSION, I'D ASK THAT MR. REYES STAND UP.

9 THE COURT: ALL RIGHT. MR. REYES, PLEASE STAND.

10 BY MR. GELLER:

11 Q CAN YOU GIVE US AN ESTIMATE OF HOW TALL YOU THINK
12 HE IS?

13 A OH, 5'8."

14 Q HE CAN SIT DOWN.

15 CLEARLY, NOT 6'2"; IS THAT CORRECT?

16 A CORRECT.

17 Q WERE YOU PRESENT OR WERE YOU CLOSE ENOUGH -- BACK
18 UP.

19 WERE YOU DRIVING WITH YOUR WINDOW OPEN?

20 A NO.

21 Q WERE YOU ABLE TO HEAR ANY WORDS EXCHANGED FROM
22 ANY OF THOSE THREE BICYCLISTS PRIOR TO THE SHOOTING DIRECTED
23 TOWARDS ANYBODY?

24 A NO.

25 Q DO YOU REMEMBER THE REMAINDER OF THE PHYSICAL
26 DESCRIPTION YOU HAD GIVEN THE SANTA ANA POLICE DEPARTMENT

1 WITH RESPECT TO THE PERSON YOU SAW WITH THE GUN THAT DAY?

2 A YES, I DO.

3 Q WHY DON'T YOU SHARE THAT WITH US.

4 A LIGHT-SKINNED, WEARING A RED ANGELS BASEBALL CAP,
5 BLACK T-SHIRT, WITH WHITE WRITING ON THE FRONT, AND LIGHT
6 BLUE JEANS, LIGHT-COLORED BLUE JEANS.

7 Q HOW FAR WAS THE DEFENDANT TO YOU WHEN HE RODE
8 PAST YOU ON THAT BIKE AFTER PUTTING A GUN IN HIS WAISTBAND?
9 HOW FAR WAS HE FROM YOU AT THE CLOSEST POINT?

10 A APPROXIMATELY FIVE FEET.

11 Q WERE YOU LOOKING AT HIS FACE AS HE RODE PAST YOU?

12 A YES, I TRIED TO.

13 Q WHY DIDN'T YOU DO SOMETHING ABOUT IT AT THAT
14 POINT IN TIME?

15 A WELL, MY HANDGUN THAT I CARRY, MY FIREARM, WAS IN
16 MY BAG IN THE BACK SEAT OF MY CAR. I WAS TRYING TO REACH
17 BACK TO GET IT.

18 Q WHY DIDN'T YOU JUST GET OUT OF YOUR CAR AT THAT
19 POINT WITH OR WITHOUT YOUR HANDGUN?

20 A I WASN'T GOING TO TAKE ON SOMEBODY THAT WAS ARMED
21 WITHOUT A HANDGUN.

22 Q OKAY. SO WHAT DID YOU DO?

23 A AS I WAS LEANING BACK TRYING TO GET THE HANDGUN
24 IS WHEN THE SUSPECT PASSED ME. I TRIED TO GET MY HANDGUN
25 OUT AND I TRIED TO GET THE BEST LOOK I COULD AT HIM.

26 Q THEN WHAT HAPPENED?

1 A I TRAVELED TO THE INTERSECTION WHERE I MADE A
2 U-TURN. I CAME BACK NORTHBOUND AND WENT ALL THE WAY TO
3 FIRST STREET LOOKING FOR THE SUSPECT, BUT I DID NOT LOCATE
4 HIM.

5 Q SO YOU CAME TO THE INTERSECTION OF SULLIVAN AND
6 WILLITS, WHICH MEANS YOU HAD TO TRAVEL ANOTHER 40 YARDS OR
7 SO, AND YOU MADE A U-TURN. I'M ASSUMING YOU DID THAT PRETTY
8 QUICKLY?

9 A YES.

10 Q AND BY THE TIME THAT YOU WERE NOW HEADING BACK
11 NORTHBOUND SULLIVAN, TOWARDS FIRST STREET, YOU WERE NOT ABLE
12 TO FIND ANY OF THE THREE BICYCLISTS?

13 A CORRECT.

14 Q SO WHAT DID YOU DO AT THAT POINT?

15 A I MADE ANOTHER U-TURN AND I TRAVELED BACK TO THE
16 INTERSECTION OF WILLITS AND SULLIVAN TO CHECK ON THE
17 OCCUPANTS OF THE VEHICLE.

18 Q AND DID YOU DO THAT?

19 A YES, I DID.

20 Q AND WHAT DID YOU SEE WHEN YOU GOT TO THE VEHICLE?

21 A WHEN I -- I PARKED AND I WALKED UP TO THE VEHICLE
22 ON THE DRIVER'S SIDE. I SAW A MALE SEATED IN THE DRIVER'S
23 SEAT, WHO WAS SLUMPED BACK TOWARDS HIS LEFT TOWARDS, THE
24 DRIVER'S DOOR. I SAW A LARGE BULGE IN HIS FOREHEAD JUST
25 ABOVE HIS RIGHT EYE.

26 Q I'D LIKE YOU TO TAKE A LOOK AT PEOPLE'S 11 AND

1 12. PEOPLE'S 11 IS FIRST. DO YOU RECOGNIZE WHAT'S IN THAT
2 PHOTOGRAPH?

3 A YES, I DO.

4 Q WHAT'S THAT?

5 A THAT'S THE MAN THAT I SAW SITTING IN THE DRIVER'S
6 SEAT OF THE VEHICLE.

7 Q OKAY. DID YOU TRY TO DETERMINE WHETHER HE WAS
8 DEAD OR ALIVE AT THAT POINT IN TIME?

9 A NO, I DID NOT.

10 Q WAS HE MOVING?

11 A NO, HE WAS NOT.

12 Q WAS HE SAYING ANYTHING?

13 A NO, HE WAS NOT.

14 Q OKAY. DID HE APPEAR TO BE IN PRETTY MUCH THE
15 SAME POSITION THAT YOU SEE HIM THERE IN PEOPLE'S 11?

16 A YES, IT IS.

17 Q YOU DON'T KNOW WHEN PEOPLE'S 11 WAS TAKEN YOU
18 DON'T KNOW HOW LONG AFTER THE SHOOTING OCCURRED THAT THAT
19 PHOTO WAS ACTUALLY TAKEN, DO YOU?

20 A NO, I DO NOT.

21 Q NOW, PEOPLE'S 12 IS A SIMILAR PHOTOGRAPH, THE
22 PASSENGER DOOR -- I'M SORRY -- THE DRIVER'S DOOR IS OPEN
23 THERE. DID YOU OPEN THE DRIVER'S DOOR?

24 A NO, I DID NOT.

25 Q SO THAT'S NOT HOW YOU OBSERVED THE CAR ANYWAYS.
26 IT MAY BE HOW YOU OBSERVED THE BODY, BUT NOT HOW YOU

1 OBSERVED THE CAR?

2 A CORRECT.

3 Q SO WHAT DID YOU DO NOW?

4 A AT THAT TIME I WAS ALREADY ON THE PHONE. DIALED.
5 9-1-1 WAS CONTACTING SANTA ANA POLICE AND FIRE DEPARTMENT.
6 SEVERAL OF MY PARTNERS WHO WERE IN THE AREA WORKING WITH ME
7 HAD JOINED ME. I TRIED TO GIVE THEM THE BEST DESCRIPTION I
8 COULD OF THE SUSPECT. AND WHEN THE FIRST OFFICERS ARRIVED
9 ON SCENE I TRANSMITTED THAT SAME INFORMATION TO THEM.

10 Q YOU'VE ALREADY IDENTIFIED THE DEFENDANT HERE IN
11 COURT TODAY. WERE YOU EVER SHOWN WHAT'S CALLED A SIX-PACK
12 PHOTO ARRAY?

13 A YES, I WAS.

14 Q WHAT DOES THAT MEAN TO YOU?

15 A A SIX-PACK PHOTO ARRAY IS A SERIES OF SIX
16 PHOTOGRAPHS WHERE A PERSON SUSPECTED OF A CRIME MAY OR MAY
17 NOT BE IN THERE, AND THE PERSON BEING SHOWN THE PHOTOGRAPH
18 IS ASKED TO IDENTIFY A PERSON TO SEE IF THAT PERSON -- IF
19 ONE OF THOSE PEOPLE MAY BE THE PERSON THAT YOU SAW COMMIT
20 THE CRIME.

21 Q THAT'S SOMETHING, A TOOL THAT YOU USE IN YOUR JOB
22 AS A POLICE OFFICER WITH THE COSTA MESA POLICE DEPARTMENT?

23 A YES.

24 Q AND SOMETHING THAT YOU USE TO TRY TO IDENTIFY A
25 SUSPECT WHEN SOMEBODY MAYBE WAS A WITNESS TO A CRIME?

26 A YES.

1 Q KIND OF LIKE YOU WERE ON THAT DAY?

2 A YES.

3 Q AND WERE YOU SHOWN THE PHOTO SIX-PACK IN THIS
4 CASE?

5 A YES, I WAS.

6 Q INVESTIGATOR RONDOU WAS ONE OF THE OFFICERS THAT
7 SHOWED THAT TO YOU?

8 A YES, IT WAS.

9 Q DO YOU KNOW WHEN THAT WAS IN RELATIONSHIP TO THE
10 SHOOTING?

11 A YES, I DO.

12 Q WHEN WAS THAT?

13 A WAS TWO DAYS AFTER.

14 Q SO THAT WOULD BE THE 12TH OF AUGUST?

15 A CORRECT.

16 Q I'M NOT GOING TO ASK YOU ABOUT THE RESULTS OF
17 THAT SIX-PACK AT THIS POINT IN TIME. BUT WHAT I WANT TO
18 TALK TO YOU ABOUT IS WHAT INFORMATION, IF ANY, YOU KNEW
19 ABOUT THE CRIME PRIOR TO LOOKING AT THE PHOTOGRAPHS?

20 A THE ONLY INFORMATION THAT I KNEW OR THAT I HAD
21 WAS MY OWN EYEWITNESS ACCOUNT OF WHAT OCCURRED.

22 Q OKAY. ANY OF THE SANTA ANA INVESTIGATORS -- I
23 BELIEVE THERE WERE TWO OF THEM THAT CAME TO SPEAK WITH YOU;
24 IS THAT CORRECT?

25 A THAT'S CORRECT.

26 Q DID ANY OF THEM TALK TO YOU THAT THEY HAD A

1 SUSPECT IN CUSTODY OR ANYTHING LIKE THAT?

2 A NO, THEY DID NOT.

3 Q OKAY. DID THEY SHARE ANY INFORMATION WITH YOU
4 ABOUT -- AT THE TIME YOU LOOKED AT THE ARRAY, THAT THERE WAS
5 A GUN THAT THEY HAD RECOVERED OR ANYTHING OF THAT NATURE?

6 A NOT BEFORE I LOOKED AT IT, NO.

7 Q AND YOU WERE GIVEN KIND OF AN ADMONISHMENT
8 BEFOREHAND?

9 A YES, I WAS.

10 Q IS THAT THE SAME KIND OF ADMONISHMENT THAT YOU
11 GIVE WITNESSES?

12 A YES, IT IS.

13 Q WHY DON'T YOU SUMMARIZE FOR US THAT ADMONISHMENT?

14 A GENERALLY THE ADMONISHMENT FOR THE COSTA MESA
15 POLICE DEPARTMENT IS THAT YOU'RE BEING SHOWN AN ARRAY OF SIX
16 PHOTOGRAPHS, THAT THE SUSPECT MAY OR MAY NOT BE ONE OF THE
17 PERSONS IN THE PHOTOGRAPHS, AND THAT IT IS JUST AS IMPORTANT
18 TO IDENTIFY A SUSPECT AS TO NOT IDENTIFY ONE SO THAT
19 INNOCENT PERSONS ARE NOT ARRESTED OR PROSECUTED FOR A CRIME.

20 Q AND WITH THAT IN MIND, YOU DID LOOK AT THE
21 PHOTOS; IS THAT CORRECT?

22 A YES.

23 Q AND, AGAIN, WITHOUT GIVING US THE RESULTS, WERE
24 YOU ABLE TO IDENTIFY -- WERE YOU ABLE TO MAKE AN
25 IDENTIFICATION FROM THOSE PHOTOGRAPHS OF IF THE SOMEBODY
26 THAT YOU SAW RIDE PAST YOU AFTER SHOVING A GUN IN THEIR

1 WAISTBAND WAS IN FACT IN THAT ARRAY?

2 A YES.

3 Q SO NOW WHAT THAT LEAVES US WITH IS YOUR INITIAL
4 AND WHAT YOU SAID HERE IN COURT, THAT THE PERSON THAT YOU
5 SAW SHOVING THE GUN IN HIS WAISTBAND WAS 6'2" TO 6'3," 165
6 POUNDS. CLEARLY THAT DOESN'T MATCH THE PHYSICAL DESCRIPTION
7 OF THIS INDIVIDUAL; IS THAT CORRECT?

8 A YES.

9 Q WOULD YOU AGREE WITH THAT?

10 A YES, I DO.

11 Q DO YOU HAVE AN EXPLANATION?

12 A MY ONLY EXPLANATION COULD BE THAT IT WAS
13 SOMETHING THAT HAPPENED VERY FAST. I HAD A VERY SHORT LOOK
14 IN TERMS OF TIME AT THE DEFENDANT WHILE HE WAS -- OR THE
15 PERSON WHILE HE WAS STRADDLING THE BICYCLE BEFORE HE GOT ON
16 THE BICYCLE AND BEGAN RIDING THE BICYCLE RIGHT TOWARDS ME.

17 MR. GELLER: MAY I HAVE JUST A MOMENT, PLEASE.

18 THE COURT: YES.

19 MR. GELLER: I HAVE NOTHING FURTHER.

20 THE COURT: CROSS-EXAMINATION.

21 CROSS-EXAMINATION

22 BY MR. BROTT:

23 Q DETECTIVE, YOU WERE DRIVING SOUTHBOUND ON
24 SULLIVAN. AND WHAT WERE YOU DOING? I MEAN, WERE YOU
25 LOOKING FOR SOMETHING OR YOU JUST HAPPENED TO BE DRIVING
26 DOWN THAT STREET?

1 A NO, I WAS -- I WAS PART OF THE SURVEILLANCE. I
2 WAS LOOKING FOR A PLACE TO PARK TO HANDLE THE OUTSIDE OF THE
3 SURVEILLANCE, BASICALLY.

4 Q AND YOU HAD TURNED ON FIRST STREET TO COME DOWN
5 SULLIVAN; IS THAT TRUE?

6 A THAT'S CORRECT.

7 Q AND IS FIRST STREET THE NEXT MAJOR INTERSECTION
8 UP ABOVE WILLITS?

9 A YES, NORTH OF WILLITS.

10 Q SO, THEORETICALLY, YOU'RE LOOKING FORWARD AS
11 YOU'RE DRIVING?

12 A CORRECT.

13 Q YOU'RE NOT LOOKING DOWN?

14 A CORRECT.

15 Q YOU'RE KEEPING YOUR ATTENTION DIRECTED AHEAD OF
16 YOU, BUT MAYBE NOT NECESSARILY PAYING ATTENTION TO WHAT'S
17 GOING ON?

18 A CORRECT.

19 Q OTHER THAN YOU'RE KEEPING IN YOUR LANE AND NOT
20 GOING TO HIT A PARKED CAR, ETC.?

21 A YES.

22 Q IS THAT TRUE?

23 A YES.

24 Q SO HOW LONG DO YOU THINK IT TOOK YOU TO DRIVE
25 FROM FIRST STREET DOWN SULLIVAN TO THE POINT WHERE YOU HEARD
26 THE GUNSHOT?

1 A OH, I WOULD GUESS 15 SECONDS.

2 Q AND YOU LOOKED UP WHEN YOU SAW THE GUNSHOT --
3 HEARD THE GUNSHOT, RIGHT?

4 A YES.

5 Q YOU LOOKED UP IMMEDIATELY?

6 A YES.

7 Q AND IMMEDIATELY YOU SAW THIS PERSON?

8 A YES.

9 Q AND WOULD YOU SAY IT WAS A MATTER OF A SECOND OR
10 TWO AFTER THE SHOT THAT YOU LOOKED UP AND SAW THIS PERSON?

11 A YES, I WOULD SAY WITHIN A SECOND.

12 Q AND IT WOULDN'T -- THERE WOULDN'T HAVE BEEN TIME
13 IN THAT SECOND TO HAVE HANDED OFF THE GUN TO SOMEBODY; IS
14 THAT TRUE?

15 MR. GELLER: OBJECTION; THAT CALLS FOR SPECULATION.

16 THE COURT: GIVE ME A MINUTE ON THIS.

17 THE COURT: OVERRULE THE OBJECTION.

18 DO YOU HAVE THE QUESTION IN MIND?

19 THE WITNESS: YES.

20 I DON'T THINK SO.

21 BY MR. BROTT:

22 Q THERE WOULDN'T HAVE BEEN TIME TO SWITCH GUNS --

23 A I DON'T THINK SO.

24 Q -- WITH SOMEBODY ELSE?

25 A I DON'T THINK SO.

26 Q AND YOU'RE A POLICE OFFICER, KNOWING THAT YOU'VE

1 JUST WITNESSED A SHOOTING, CORRECT?

2 A YES.

3 Q AND YOU WANT TO TAKE CAREFUL CONSIDERATION ABOUT
4 IDENTIFYING THE PERSON YOU JUST SAW DO THIS GUN JOB, RIGHT?

5 A YES.

6 Q AND AS YOU JUST TOLD US ABOUT THE ADMONISHMENT
7 THAT PEOPLE GET WHEN THEY LOOK AT PHOTOS, IT'S IMPORTANT
8 THAT YOU IDENTIFY A PERSON CORRECTLY AND NOT INCORRECTLY; IS
9 THAT TRUE?

10 A THAT'S TRUE.

11 Q AND AS A POLICE OFFICER YOU'RE ESPECIALLY AWARE
12 OF THAT?

13 A YES.

14 Q AND YOU, IN YOUR OWN MIND, MADE AN OBSERVATION
15 FROM 40 YARDS AWAY, AND YOU START CLICKING OFF THINGS THAT
16 YOU KNOW THAT YOU'RE SUPPOSED TO LOOK AND RECOGNIZE,
17 CORRECT?

18 A CORRECT.

19 Q AND CERTAINLY THE FACIAL FEATURES OF SOMEONE IS
20 VERY IMPORTANT?

21 A YES.

22 Q BUT THEIR PHYSICAL FEATURES ARE VERY IMPORTANT
23 TOO; IS THAT TRUE?

24 A THAT'S TRUE.

25 Q AND THINGS LIKE TATTOOS, HAIR COLOR, CLOTHING,
26 HEIGHT, WEIGHT, ANYTHING YOU CAN OBSERVE THAT WILL HELP TIE

1 DOWN THAT PERSON'S IDENTIFICATION IS THE KIND OF STUFF THAT
2 YOU'RE LOOKING FOR, CORRECT?

3 A YES.

4 Q AND AS A POLICE OFFICER YOU'RE PROBABLY THINKING
5 A LITTLE QUICKER THAN THE AVERAGE CITIZEN ABOUT WHAT YOU
6 WANT TO SEE AND WHAT YOU WANT TO REMEMBER; IS THAT TRUE?

7 A I THINK THAT'S TRUE.

8 Q AND YOU WANTED TO GET THAT INFORMATION OUT TO THE
9 POLICE OFFICERS THAT WOULD BE INVESTIGATING THIS OR THE
10 PARAMEDICS AND YOUR PARTNERS AND ANYBODY ELSE THAT WAS
11 INTERESTED AS QUICKLY AS POSSIBLE AND AS ACCURATELY AS
12 POSSIBLE; IS THAT TRUE?

13 A YES.

14 Q SO YOU CALLED 9-1-1 AND YOU GAVE THEM A
15 DESCRIPTION OF THE PEOPLE, DID YOU NOT?

16 A YES, I DID.

17 Q AND THEN YOU GAVE THE SAME DESCRIPTION TO THE
18 POLICE THAT YOU WERE WITH, CORRECT?

19 A YES.

20 Q SO THEY COULD HELP YOU?

21 A YES.

22 Q AND THEN YOU GAVE OFFICER YETTAW THAT SAME
23 DESCRIPTION --

24 A YES.

25 Q -- WHEN HE ASKED YOU RIGHT THERE AT THE SCENE
26 WITHIN MINUTES --

1 A YES.

2 Q -- OF THE EVENT.

3 AND YOU TOLD HIM, DID YOU NOT, THAT THE PERSON
4 WAS 6'2" TO 6'3", 165 POUNDS AND SKINNY, WEARING A RED ANGEL
5 HAT? DID YOU TELL HIM THAT?

6 A YES, I DID.

7 Q AND YOU BELIEVED THAT TO BE TRUE WHEN YOU SAID
8 THAT?

9 A YES, I DID.

10 Q AND YOU TOLD THAT TO YOUR PARTNERS, TO THE 9-1-1,
11 TO YETTAW, AND THEN YOU TOLD THE OFFICERS THAT CAME AND
12 INTERVIEWED SUBSEQUENTLY, THE DETECTIVES, TOLD THEM THAT
13 SAME DESCRIPTION, ABOUT 6'2" TO 6'3", AND SKINNY, AND 165
14 POUNDS, TRUE?

15 A YES.

16 Q IN FACT, YOU ALSO WROTE A REPORT OF YOUR OWN ON
17 COSTA MESA POLICE DEPARTMENT POLICE REPORT FORM AND YOU GAVE
18 THAT SAME DESCRIPTION IN THAT REPORT TOO, DIDN'T YOU?

19 A YES, I DID.

20 Q NOW, HOW TALL TO YOU DO YOU THINK I AM?

21 A 6'4", 6'5."

22 Q ME?

23 A YES.

24 Q REALLY?

25 SKINNY?

26 A DO I HAVE TO ANSWER THAT ONE?

1 Q WELL, THIS GENTLEMAN OVER HERE IS NOWHERE NEAR
2 6'2" TO 6'3" IS HE?

3 A I DON'T THINK SO.

4 Q AND ASSUMING HE HASN'T LOST A LOT OF WEIGHT, HE
5 DOESN'T LOOK LIKE HE WEIGHS 165 TO 175 POUNDS, DOES HE?

6 A NO.

7 Q AS YOU'RE COMING DOWN WILLITS -- EXCUSE ME. AS
8 YOU'RE COMING DOWN SULLIVAN, THERE'S NO OTHER CARS IN FRONT
9 OF YOU BESIDES THIS ONE; IS THAT TRUE?

10 A THAT'S TRUE.

11 Q AND DID YOU SEE ANYBODY AROUND THAT CAR ON
12 BICYCLES YELLING AT THAT CAR OR SAYING ANYTHING TO THAT CAR?

13 A NO.

14 Q IN FACT, THE FIRST THING THAT YOU SAW IN RELATION
15 TO THAT CAR WAS WHEN YOU LOOKED UP AND SAW THE GLASS SHATTER
16 IN THE BACK OF THE CAR, CORRECT?

17 A YES.

18 Q DID YOU EVER HEAR ANYBODY OUT THERE THAT DAY YELL
19 ANY GANG SLOGANS?

20 A NO.

21 Q DO YOU KNOW WHAT GANG SLOGANS ARE?

22 A I THINK I KNOW ONE WHEN I HEAR ONE, BUT,
23 SPECIFICALLY --

24 Q YOU DIDN'T HEAR ANY?

25 A NO.

26 Q AND DID YOU SEE ANYBODY THROWING HAND SIGNS OR

1 GANG SIGNS?

2 A NO, NO.

3 Q AND YOU SPECIFICALLY DIDN'T SEE ANYBODY COMING UP
4 TO THAT CAR BEFOREHAND, HITTING THAT CAR UP -- YOU KNOW WHAT
5 A HIT-UP IS, DON'T YOU?

6 A YES, I DO.

7 Q YOU DIDN'T SEE ANYTHING LIKE THAT HAPPEN, DID
8 YOU?

9 A NO, I DID NOT.

10 Q NOW, THE PERSON THAT YOU SAY FIRED THIS WEAPON
11 STUFFED IT IN HIS WAISTBAND?

12 A YES.

13 Q WELL, IS HE -- WHEN YOU LOOK UP, THIS PERSON, IS
14 HIS BACK TO YOU OR IS HE FACING YOU?

15 A HIS BACK IS TO ME.

16 Q AND WHERE IS THE GUN?

17 A IN HIS RIGHT HAND.

18 Q AND SO IF I'M TURNING AROUND -- NOW I'M NOT QUITE
19 40 YARDS AWAY, AM I?

20 A NO, YOU'RE NOT.

21 Q OKAY. CAN WE GET TO THE BACK OF THE COURTROOM;
22 WOULD THAT BE ABOUT AS FAR AS YOU ARE AWAY?

23 A NO, FARTHER.

24 Q FARTHER.

25 TO THE EDGE OF THE BUILDING OUT THERE?

26 A I THINK YOU'D HAVE TO BE STANDING IN AIR.

1 Q STANDING ON THIN AIR?

2 A YES.

3 Q AND YOU SEE THIS PERSON WITH THEIR RIGHT HAND
4 EXTENDED? DOWN TO THEIR BODY? WHAT DO YOU SEE?

5 A IT WAS EXTENDED.

6 Q AND THE GUN HAD ALREADY GONE OFF --

7 A YES.

8 Q -- CORRECT?

9 AND THEN THAT PERSON WITH THEIR BACK TO YOU DOES
10 WHAT WITH THE GUN?

11 A WITH THEIR BACK TO ME, THEY TURN, COMING TOWARDS
12 ME, NOT ALL THE WAY. AND AS THEY'RE TURNING, THEY'RE
13 STUFFING THE GUN INTO THEIR WAISTBAND.

14 Q WELL, WHERE IS THE BICYCLE WHILE THIS PERSON IS
15 TURNING?

16 A MAY I STAND TO DEMONSTRATE?

17 Q SURE.

18 A THE INDIVIDUAL WAS STANDING, STRADDLING THE FRAME
19 OF THE BICYCLE, STANDING LIKE THIS. AND WHEN HE STARTED TO
20 TURN TOWARDS ME, HE TURNED AROUND, WENT LIKE THIS, AND PUT
21 THE WEAPON INTO HIS WAISTBAND.

22 Q DID YOU SEE -- YOU CAN SIT DOWN.

23 MR. GELLER: CAN WE DESCRIBE THAT FOR THE RECORD?

24 MR. BROTT: OH, YES. FOR THE RECORD -- I BETTER DO
25 THAT. FOR THE RECORD, IT APPEARED THAT THE WITNESS TOOK HIS
26 RIGHT HAND, DID A SLOW PIVOT CLOCKWISE.

1 THE WITNESS: TO MY RIGHT, YES.

2 MR. BROTT: TO YOUR RIGHT. AND DURING THE PIVOT PUTS
3 THE GUN IN A WAISTBAND AREA; IS THAT CORRECT?

4 THE WITNESS: THAT'S CORRECT.

5 BY MR. BROTT:

6 Q OKAY. DID YOU SEE HIM PULL UP HIS SHIRT OR
7 ANYTHING LIKE THAT?

8 A YES, I DID.

9 Q WHAT DID HE DO?

10 A PULLED UP HIS SHIRT AND STUFFED THE FIREARM INTO
11 HIS WAISTBAND.

12 Q DID YOU SEE ANYTHING UNDERNEATH HIS SHIRT?

13 A YES, I DID.

14 Q WHAT DID YOU SEE?

15 A I SAW THAT HE WAS WEARING LIGHT BLUE AND WHITE
16 BOXER SHORTS.

17 Q HOW COULD YOU TELL THEY WERE BOXER SHORTS AND NOT
18 BRIEFS?

19 A I'VE NEVER SEEN BRIEFS THAT COLOR.

20 Q NOT EVEN ON MICHAEL JORDAN ON THOSE ADS ON TV,
21 YOU NEVER SEEN THEM?

22 A NO.

23 Q AND THEN, THEN THAT PERSON GOT ON THE BIKE AND
24 STARTED RIDING TOWARDS YOU?

25 A YES.

26 Q AND YOU'RE IN THE STREET, CORRECT?

1 A CORRECT.

2 Q AND THAT -- WHERE YOU ARE? IF I UNDERSTAND,
3 YOU'RE -- EVERYBODY SEE? YOU'RE UP IN HERE,
4 APPROXIMATELY -- AM I CORRECT? I'LL DESCRIBE IT FOR THE
5 RECORD IF I'M RIGHT.

6 A YES, APPROXIMATELY.

7 Q OKAY. SO IT WOULD BE -- I'M GOING TO GUESS IT'S
8 ABOUT, AS MY FINGERS GO, ABOUT THREE INCHES BELOW THIS TOP
9 WHITE CAR ON SULLIVAN? (INDICATING.)

10 A THAT WOULD BE APPROXIMATELY.

11 Q OKAY. AND THE CROSSWALK THAT THAT PERSON STARTED
12 OUT IN IS IN THIS AREA RIGHT DOWN HERE ON THE PICTURE,
13 CORRECT, THE CROSSWALK? (INDICATING.)

14 A YES.

15 Q AND THAT PERSON RIDES WHERE? ON THE SIDEWALK?

16 A NO.

17 Q WHERE?

18 A HE RODE ON THE STREET NORTHBOUND BETWEEN THE
19 VEHICLES THAT ARE TRAVELING AND THE VEHICLES THAT ARE
20 PARKED.

21 Q AND YOU ARE LOOKING FOR YOUR GUN, CORRECT?

22 A YES.

23 Q AND SO HOW LONG DO YOU THINK IT TOOK HIM TO RIDE
24 HIS BIKE FROM THE CROSSWALK UP TO WHERE YOU WERE?

25 A FOUR SECONDS AT THE MOST.

26 Q AND DURING THAT FOUR SECONDS YOU WERE -- STRIKE

1 THAT.

2 AT WHAT POINT DURING THAT FOUR SECONDS DID YOU
3 ATTEMPT TO RETRIEVE YOUR WEAPON?

4 A THE ENTIRE TIME.

5 Q OKAY. DID YOU TURN AROUND?

6 IT WAS IN THE BACK SEAT, WASN'T IT?

7 A IT WAS BEHIND THE FRONT PASSENGER'S SEAT ON THE
8 FLOORBOARD.

9 Q IT WAS IN A BAG?

10 A YES.

11 Q ZIPPER BAG?

12 A YES.

13 Q CLOSED?

14 A THE ZIPPER WAS NOT CLOSED, NO.

15 Q WAS THE GUN IN A HOLSTER?

16 A YES, IT WAS.

17 Q DOES IT HAVE A SNAP ON IT?

18 A NO.

19 Q AND IT'S A HANDGUN, I TAKE IT?

20 A YES.

21 Q AND SO YOU'RE SITTING IN YOUR DRIVER'S SEAT AND
22 YOU'RE REACHING DOWN TO GET YOUR GUN, CORRECT?

23 A CORRECT.

24 Q AND SO YOU HAVE TO LOOK DOWN TO KNOW WHERE YOU'RE
25 REACHING, DON'T YOU?

26 A NO.

1 Q YOU NEVER LOOKED AT THE BAG?

2 A NO.

3 Q YOU KEPT LOOKING UP?

4 A YES.

5 Q SO THE WHOLE FOUR SECONDS YOU NEVER TOOK YOUR
6 EYES OFF OF THAT PERSON WHILE YOU'RE REACHING FOR A GUN?

7 A WELL I DIDN'T SAY I DIDN'T TAKE MY EYES OFF HIM
8 BUT I WASN'T LOOKING DOWN FOR MY GUN.

9 Q WELL HOW MUCH OF THAT FOUR SECONDS WERE YOU
10 LOOKING AT HIM -- THAT'S IT. HOW MUCH OF THAT FOUR SECONDS
11 WERE YOU LOOKING AT HIM?

12 A I WOULD SAY MOST OF IT.

13 Q WHAT'S MOST OF IT?

14 A THE MAJORITY OF THE FOUR SECONDS.

15 Q WELL, YOU SAID OUT OF THE CORNER OF YOUR EYE YOU
16 WERE LOOKING AT THOSE OTHER PEOPLE; ISN'T THAT TRUE?

17 A THAT'S TRUE.

18 Q SO YOU WERE LOOKING AT THEM AS WELL; ISN'T THAT
19 TRUE?

20 A OUT OF THE CORNER OF MY EYE I WAS, YES.

21 Q WHERE WERE THEY?

22 A THEY WERE ON THE SIDEWALK.

23 Q WHICH SIDEWALK?

24 A THE WEST SIDEWALK OF THE INTERSECTION OR OF THE
25 STREET.

26 Q ARE THEY BEHIND HIM?

1 A YES.

2 Q ARE THEY -- DID THEY SAY ANYTHING AS THEY GO BY?

3 A I DON'T KNOW.

4 Q THEY DIDN'T SAY ANYTHING TO YOU?

5 A I DON'T KNOW. I DIDN'T HEAR ANYTHING.

6 Q WERE YOUR WINDOWS ROLLED UP OR DOWN?

7 A THEY WERE UP.

8 Q YOUR RADIO, WAS IT ON OR OFF?

9 A MY POLICE RADIO WAS ON. MY STEREO WAS ON. AND
10 MY NEXTEL WAS ON.

11 Q AND SO AS THIS GUY GOES BY YOU, YOU GET A GOOD
12 LOOK AT HIS BODY, DON'T YOU?

13 A YES.

14 Q AND YOU GET A GOOD LOOK AT HOW MUCH YOU THINK HE
15 WEIGHS; IS THAT TRUE?

16 A YES.

17 Q AND YOU WERE PRETTY CERTAIN THAT IT WAS 6'2" TO
18 6'3"?

19 A CORRECT.

20 Q YOU TOLD EVERYBODY THAT, CORRECT?

21 A CORRECT.

22 Q DO YOU REMEMBER HOW THE OTHER PEOPLE WERE
23 DRESSED?

24 A NO.

25 Q IS THAT BECAUSE YOU DIDN'T GET A GOOD LOOK AT
26 THEM OR YOU WEREN'T PAYING ATTENTION TO THEM?

1 A I THINK IT WAS PROBABLY A COMBINATION OF BOTH.

2 Q BUT IN YOUR MIND THAT CAR, THE ONE AHEAD OF YOU,
3 THE ONE THAT GOT SHOT AT WAS THE ONE THAT WAS AHEAD OF YOU
4 COMING SOUTHBOUND ON SULLIVAN THE WHOLE TIME YOU WERE ON
5 SULLIVAN; IS THAT YOUR -- IS THAT TRUE?

6 A YES, IT IS.

7 MR. BROTT: NOTHING FURTHER.

8 THE COURT: REDIRECT?

9 MR. GELLER: VERY BRIEFLY.

10 REDIRECT EXAMINATION

11 BY MR. GELLER:

12 Q DETECTIVE SELINSKE, WHEN THE INDIVIDUAL THAT YOU
13 SAW PUT THE GUN IN HIS WAISTBAND WAS STRADDLING THE BICYCLE,
14 WAS THE FRONT OF THE BICYCLE FACING WESTBOUND IN THAT
15 CROSSWALK AREA AND HE HAD HIS BODY TURNED FACING A LITTLE
16 BIT SOUTHBOUND, IS THAT ABOUT RIGHT?

17 A THAT'S CORRECT.

18 Q OKAY. AND SO WHEN HE TURNED BACK, WHICH WOULD BE
19 CLOCKWISE TO GIVE YOU A PROFILE OF HIM, IS THAT WHEN YOU SAW
20 HIM SHOVING THE GUN IN HIS WAISTBAND?

21 A YES, IT IS.

22 Q OKAY.

23 MR. GELLER: I HAVE NOTHING FURTHER.

24 MR. BROTT: NOTHING FURTHER.

25 THE COURT: MAY THE WITNESS BE EXCUSED?

26 MR. GELLER: YES.

1 MR. BROTT: YES.

2 THE COURT: OKAY. THANK YOU VERY MUCH,
3 DETECTIVE SELINSKE. YOU ARE EXCUSED FROM THIS TRIAL.

4 THE WITNESS: THANK YOU.

5 THE COURT: CALL YOUR NEXT WITNESS.

6 MR. GELLER: I'D LIKE TO RECALL INVESTIGATOR RONDOU, IF
7 I MAY.

8 THE COURT: ALL RIGHT. INVESTIGATOR RONDOU IS STILL
9 SWORN.

10 YOU MAY INQUIRE.

11 DAVID RONDOU,

12 CALLED AS A WITNESS, HAVING BEEN PREVIOUSLY DULY SWORN, WAS
13 EXAMINED AND TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. GELLER:

16 Q INVESTIGATOR RONDOU, ON AUGUST 10TH -- I'M SORRY
17 ON AUGUST 12TH, 2004, WAS THE DEFENDANT ANDRES REYES IN THE
18 SANTA ANA POLICE DEPARTMENT?

19 A YES.

20 Q I DON'T THINK WE'VE GOTTEN THIS OUT. SULLIVAN
21 AND WILLITS, THAT'S IN THE COUNTY OF ORANGE, RIGHT?

22 A AND THE CITY OF SANTA ANA.

23 Q VERY WELL.

24 DID INVESTIGATOR HERTER AND ASHEY ASK YOU AND
25 YOUR PARTNER INVESTIGATOR ZEPEDA TO TRANSPORT THE DEFENDANT
26 TO JUVENILE HALL FROM THE SANTA ANA DETENTION FACILITY?

1 A YES.

2 Q AND DID YOU DO THAT?

3 A YES.

4 Q AND THE REASON YOU WERE TAKING THE DEFENDANT TO
5 JUVENILE HALL WAS BECAUSE HE WAS 15 YEARS OLD AT THAT TIME;
6 IS THAT CORRECT?

7 A THAT'S WHY HE WOULD GO TO JUVENILE HALL. THAT'S
8 NOT WHY I WAS TAKING HIM. BUT HE WOULD END UP AT
9 JUVENILE HALL BECAUSE HE'S 15.

10 Q AS OPPOSED TO TAKING HIM TO JAIL BECAUSE HE WAS
11 UNDER THE AGE OF 18, RIGHT?

12 A YES.

13 Q I MEAN, THAT'S WHERE YOU TAKE MINORS VERSUS WHERE
14 YOU TAKE ADULTS?

15 A CORRECT.

16 Q ALL RIGHT. AND SO YOU AND INVESTIGATOR ZEPEDA
17 WERE NOT DRESSED IN UNIFORM LIKE YOU ARE HERE IN COURT
18 TODAY; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q AND HERE IN COURT WHAT YOU HAVE IS A STANDARD
21 SANTA ANA POLICE UNIFORM. YOU'VE GOT SANTA ANA POLICE
22 BADGES ON YOUR SHOULDERS. YOU'VE GOT CORPORAL STRIPES ON
23 YOUR ARMS. YOU'VE GOT A BADGE ON YOUR CHEST AND YOUR NAME
24 TAG. IS THAT RIGHT?

25 A CORRECT.

26 Q AND AT THAT POINT IN TIME YOU WERE PROBABLY

1 WEARING JUST JEANS AND T-SHIRT?

2 A OUR NORMAL ATTIRE IS JEANS AND A T-SHIRT.

3 Q AND WHILE YOU WERE IN THE CAR -- WELL, LET ME ASK
4 YOU THIS: YOU AND ZEPEDA ARE IN THE FRONT SEAT AND YOU PUT
5 MR. REYES IN THE BACK SEAT; IS THAT RIGHT?

6 A CORRECT.

7 Q AND IT'S KIND OF AN UNMARKED POLICE CAR SIMILAR
8 TO WHAT DETECTIVE SELINSKI WAS DRIVING?

9 A NOT KIND OF. IT IS UNMARK.

10 Q BUT SIMILAR TYPE OF VEHICLE, RIGHT?

11 A I BELIEVE HE HAD AN SUV. OURS IS A SEDAN.

12 Q OKAY. AND YOU STARTED FROM THE POLICE
13 DEPARTMENT. YOU PROBABLY HEADED WESTBOUND ON CIVIC CENTER
14 TO MAKE A RIGHT TURN ON BRISTOL, AND HEADED -- YOU WERE
15 GOING TO HEAD UP BRISTOL, TO MEMORY LANE, TO CITY DRIVE, TO
16 THE JUVENILE HALL; IS THAT CORRECT?

17 A CORRECT.

18 Q AT SOME POINT IN TIME WHILE YOU WERE DRIVING THE
19 DEFENDANT TO JUVENILE HALL DID HE INITIATE A CONVERSATION
20 WITH YOU?

21 A YES.

22 Q AND SO WE'RE CLEAR, YOU WERE -- OKAY. WELL, YOU
23 WERE NOT PRIVY TO ANY STATEMENTS HE MAY OR MAY NOT HAVE MADE
24 PRIOR TO HIM GETTING IN YOUR VEHICLE AT THAT POINT IN TIME?

25 A THIS WAS THE FIRST TIME I HAD COME FACE-TO-FACE
26 WITH HIM.

1 Q OKAY.

2 A "HIM" BEING ANDY REYES.

3 Q VERY WELL.

4 AND WHAT IS IT THAT MR. REYES SAID TO YOU AND
5 INVESTIGATOR ZEPEDA FROM THE BACK SEAT OF THAT CAR AS YOU
6 WERE DRIVING TO JUVI?

7 MR. BROTT: RENEW MY OBJECTION, YOUR HONOR.
8 CONTINUING.

9 THE COURT: OBJECTION IS OVERRULED.

10 THE WITNESS: HE ASKED ME AND DETECTIVE ZEPEDA WHAT HE
11 WAS -- WHAT HIS CHARGES WERE.

12 BY MR. GELLER:

13 Q WHAT DID DO YOU IN RESPONSE TO THAT INQUIRY?

14 A I SHOWED HIM THE -- THERE'S AN ENTRANCE BOOKING.
15 IT'S A BOOKING SLIP, BASICALLY, WITH THE PERSON'S NAME, AND
16 THEIR DATE OF BIRTH, AND WHERE THEY LIVE, AND THE BOOKING
17 CHARGES AND SOME OTHER IDENTIFYING INFORMATION. I HELD IT
18 UP AND SHOWED IT TO HIM. I SAID, "IT LOOKS LIKE IT'S A
19 PROBATION VIOLATION. YOU'RE CHARGES ARE PROBATION
20 VIOLATION."

21 Q WHAT HAPPENED NEXT?

22 A HE TOLD ME, "NO, I'M GOING TO BE CHARGED WITH
23 MURDER, BECAUSE ME AND FIVE OF MY HOMIES WERE DOWN ON
24 SULLIVAN AT A SHOOTING. AND I DIDN'T SHOOT, BUT BECAUSE I
25 WAS THERE WITH MY HOMIES, I'M GOING TO GET CHARGED WITH
26 MURDER TOO." ALSO.

1 Q NOW ULTIMATELY YOU ENDED UP GOING TO
2 JUVENILE HALL; IS THAT CORRECT?

3 A THAT'S CORRECT.

4 Q AND YOU MEMORIALIZED THAT PORTION OF THAT
5 STATEMENT, NOT THAT EXACT STATEMENT, BUT THAT PORTION OF THE
6 STATEMENT ON AUDIOTAPE; IS THAT CORRECT?

7 A THAT'S CORRECT.

8 MR. GELLER: I HAVE NOTHING FURTHER.

9 THE COURT: CROSS-EXAMINATION.

10 CROSS-EXAMINATION

11 BY MR. BROTT:

12 Q WHEN HE SAID WHAT YOU JUST REPORTED, HE WAS VERY
13 CLEAR ABOUT THE FACT THAT HE DIDN'T SHOOT ANYBODY?

14 A YES.

15 MR. BROTT: NOTHING FURTHER.

16 THE COURT: REDIRECT?

17 MR. GELLER: NO.

18 THE COURT: THANK YOU, INVESTIGATOR RONDOU. YOU MAY
19 RESUME YOUR SEAT AT COUNSEL TABLE.

20 MR. GELLER: I HAVE ANOTHER WITNESS NEEDING THE SPANISH
21 LANGUAGE INTERPRETER.

22 THE INTERPRETER: THE INTERPRETER IS PRESENT,
23 YOUR HONOR. DANIELLA MCGOVERN.

24 THE BAILIFF: SIR, PLEASE STAND OVER THERE NEXT TO THE
25 TABLE, TURN, FACE THE CLERK, AND RAISE YOUR RIGHT HAND.

26 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE

1 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
2 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
3 TRUTH, SO HELP YOU GOD?

4 THE WITNESS: YES.

5 THE CLERK: STATE YOUR NAME, PLEASE.

6 THE WITNESS: FELIX NIEVES.

7 THE CLERK: WOULD YOU SPELL YOUR FULL NAME, PLEASE.

8 THE WITNESS: THE ENTIRE NAME?

9 THE CLERK: YES, PLEASE.

10 THE WITNESS: FELIX JAIMES NIEVES.

11 THE CLERK: YOUR HONOR, DO YOU WANT ME AGAIN TO HAVE IT
12 SPELLED.

13 THE COURT: MR. JAIMES NIEVES, WE NEED TO KNOW HOW TO
14 WRITE YOUR FULL NAME. PLEASE SPELL "FELIX," THEN SPELL
15 "JAIMES," THEN SPELL "NIEVES," AND ALLOW THE INTERPRETER TO
16 TRANSLATE FOR US.

17 THE WITNESS: YES. FELIX JAIMES NIEVES.

18 THE COURT: LET ME ASK YOU, DO YOU SPELL "FELIX":
19 F-E-L-I-X?

20 THE WITNESS: YES.

21 THE COURT: DO YOU SPELL "JAIMES": J-A-I-M-E-S?

22 THE WITNESS: YES.

23 THE COURT: DO YOU SPELL "NIEVES": N-I-E-V-E-S?

24 THE WITNESS: YES.

25 THE COURT: OKAY.

26 THE CLERK: THANK YOU, JUDGE.

1 THE COURT: YOU MAY INQUIRE.

2 FELIX NIEVES,

3 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
4 EXAMINED AND TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. GELLER:

7 Q MR. NIEVES, HOW OLD ARE YOU?

8 A TWENTY.

9 Q DO YOU WORK?

10 A NO.

11 Q DO YOU GO TO SCHOOL?

12 A NO.

13 Q DO YOU LIVE IN SANTA ANA?

14 A YES.

15 Q I DON'T WANT TO KNOW YOUR ADDRESS, BUT WHERE IN
16 SANTA ANA? WHAT STREET DO YOU LIVE ON?

17 A 12TH.

18 Q NEAR ENGLISH STREET?

19 A YES.

20 Q I'D LIKE TO SHOW YOU A DIAGRAM OF SANTA ANA. YOU
21 SEE EL SALVADOR PARK HERE?

22 THE COURT: PEOPLE'S?

23 MR. GELLER: NO. 1.

24 THE WITNESS: YES.

25 BY MR. GELLER:

26 Q CIVIC CENTER DRIVE RUNNING EAST/WEST?

1 A UH-HUH.

2 Q ENGLISH STREET RUNNING NORTH/SOUTH?

3 A UH-HUH.

4 Q 12TH STREET RUNNING EAST/WEST?

5 A YES.

6 Q DOES THAT LOOK FAMILIAR TO YOU?

7 A AND THE ADDRESS IS 2010.

8 MR. GELLER: YOUR HONOR, I'D ASK TO STRIKE THE ADDRESS;
9 IT'S NONRESPONSIVE TO MY QUESTION.

10 THE COURT: OKAY. THE ADDRESS IS STRICKEN.

11 YOU WANT TO RESTATE YOUR QUESTION, PLEASE.

12 BY MR. GELLER:

13 Q AGAIN, MR. NIEVES, I JUST WANT TO CONFIRM YOU
14 LIVE NEAR ENGLISH AND 12TH STREET.

15 A YES.

16 Q I WANT TO TALK TO YOU ABOUT SOMETHING THAT
17 HAPPENED TO YOU ALMOST TWO YEARS AGO, AUGUST OF 2004.

18 A UH-HUH.

19 Q DO YOU RECALL WHERE YOU WERE ON AUGUST 10TH,
20 2004, AT ABOUT 7:00 P.M.?

21 A HOW DO YOU SAY THAT?

22 Q DO YOU REMEMBER WHERE YOU WERE ON AUGUST 10TH,
23 2004, AT ABOUT SEVEN O'CLOCK IN THE EVENING?

24 A YES.

25 Q WHERE WERE YOU?

26 A UM, WALKING.

1 Q DO YOU REMEMBER WHERE YOU WERE WALKING?

2 A ON ENGLISH AND ARRIVING AT 10TH.

3 Q WHEN YOU WERE AT ENGLISH AND 10TH STREET, ON THAT
4 DATE, ON THAT TIME, DID YOU SEE ANYBODY THAT YOU SEE HERE IN
5 COURT RIGHT NOW?

6 A YES.

7 Q WHO IS THAT?

8 A HE IS. (INDICATING.)

9 Q COULD YOU TELL US WHAT COLOR SHIRT HE'S WEARING?

10 A TRUTHFULLY, I DON'T REMEMBER.

11 Q DO YOU REMEMBER WHAT COLOR SHIRT HE'S WEARING
12 RIGHT NOW OR DO YOU NOT REMEMBER?

13 A YES.

14 Q I'M SORRY, MAY I HAVE A MOMENT?

15 I'M NOT ASKING YOU -- LET ME ASK YOU: THE PERSON
16 THAT YOU LOOKED OVER AND YOU SAID "HIM," SO WE'RE CLEAR, I'M
17 STANDING BEHIND THE PERSON WHO IS SEATED IN COURT IN A BLUE
18 SHIRT. DID YOU SEE THIS PERSON ON ENGLISH AND 10TH STREET
19 AT SEVEN O'CLOCK AT NIGHT ON AUGUST 10, 2004?

20 A YES.

21 Q WAS THAT THE FIRST TIME IN YOUR LIFE YOU HAD EVER
22 SEEN HIM?

23 A NO.

24 Q ABOUT HOW MANY TIMES PRIOR TO THAT NIGHT HAD YOU
25 SEEN HIM?

26 A LIKE EIGHT OR SEVEN TIMES.

1 Q OKAY. AND I'D ASK THE RECORD TO REFLECT HE'S
2 IDENTIFIED THE DEFENDANT AS SOMEBODY HE SAW THAT NIGHT?

3 THE COURT: YES, IT WILL SO REFLECT.

4 MR. GELLER: THANK YOU.

5 Q WHEN YOU SAW DEFENDANT, THE PERSON WHO IS HERE IN
6 COURT IN THE BLUE SHIRT, WAS HE ALONE OR DID HE HAVE ANYBODY
7 WITH HIM?

8 A UM, SOMETIMES HE WAS ALONE AND SOMETIMES WITH
9 SOME FRIENDS.

10 Q I'M NOT ASKING ABOUT OTHER TIMES. I'M ONLY ASK
11 ABOUT AUGUST 10TH OF 2004.

12 A OH, YES. HE WAS WITH ANOTHER -- THREE OTHER
13 PERSONS.

14 Q WAS THE DEFENDANT RIDING A BICYCLE THAT EVENING?

15 A YES.

16 Q DID HE SAY ANYTHING TO YOU?

17 A UH-HUH.

18 Q WHAT DID HE SAY TO YOU?

19 A HE -- WHAT KIND OF A BARRIO DID I BELONG TO.

20 THE INTERPRETER: B-A-R-R-I-O.

21 BY MR. GELLER:

22 Q DID HE SAY THAT TO YOU IN ENGLISH OR IN SPANISH?

23 A HE JUST SAID, WHICH ONE IS YOUR BARRIO?

24 Q WHAT I'M ASKING YOU, SIR, THOUGH, IS, DID HE
25 SPEAK TO YOU IN ENGLISH OR IN SPANISH?

26 A SPANISH.

1 Q DID HE ASK YOU IN SPANISH WORDS TO THE EFFECT OF
2 WHERE ARE YOU FROM?

3 MR. BROTT: OBJECTION; IT'S LEADING.

4 THE COURT: SUSTAINED.

5 THE WITNESS: UH-HUH.

6 MR. BROTT: MOVE TO STRIKE IT.

7 THE COURT: ANSWER IS STRICKEN.

8 BY MR. GELLER:

9 Q WHEN YOU SPOKE WITH THE POLICE ABOUT THIS
10 INCIDENT WERE YOU BEING TRUTHFUL WITH THEM?

11 A YES.

12 Q AND YOU SPOKE TO THE POLICE THAT NIGHT; IS THAT
13 CORRECT?

14 A YES.

15 Q PRETTY MUCH RIGHT AFTER EVERYTHING HAPPENED?

16 A THE POLICE?

17 Q YES.

18 A YES.

19 Q YOU HAD NO REASON TO LIE TO THEM AT THAT POINT?

20 A AND THERE WAS AN INVESTIGATION.

21 Q DID YOU HAVE ANY REASON TO LIE TO THE OFFICERS?

22 A NO.

23 Q AND WAS EVERYTHING FRESHER IN YOUR MIND THEN THAN
24 IT IS NOW, ALMOST TWO YEARS LATER?

25 A YES.

26 Q DO YOU REMEMBER SPECIFICALLY WHAT IT WAS THAT YOU

1 TOLD THE OFFICER THE DEFENDANT SAID TO YOU WHEN HE FIRST SAW
2 YOU THAT DAY?

3 MR. BROTT: OBJECTION; ASKED AND ANSWERED.

4 THE COURT: OVERRULED.

5 THE WITNESS: THEY HAD STOPPED ME.

6 MR. GELLER: I BEG YOUR PARDON?

7 THE COURT: "THEY HAD STOPPED ME."

8 BY MR. GELLER:

9 Q DID YOU TELL THE OFFICER THAT THE DEFENDANT ASKED
10 YOU WHERE YOU WERE FROM?

11 MR. BROTT: OBJECTION; LEADING.

12 THE COURT: SUSTAINED. I DON'T THINK HE UNDERSTOOD
13 YOUR LAST QUESTION, MR. GELLER.

14 MR. GELLER: YOUR HONOR, MAY WE APPROACH?

15 (CONFERENCE BETWEEN THE COURT AND
16 COUNSEL WAS HAD OUT OF THE HEARING OF THE
17 REPORTER AND THE JURY:)

18 THE COURT: OKAY. NEXT QUESTION.

19 BY MR. GELLER:

20 Q MR. NIEVES, THE FIRST TIME THAT THE DEFENDANT
21 SPOKE WITH YOU OUT ON 10TH AND ENGLISH, DID HE SPEAK WITH
22 YOU IN ENGLISH OR IN SPANISH?

23 A SPANISH.

24 Q AND THAT'S WHEN YOU ALREADY TESTIFIED HE SAID
25 WHAT BARRIO ARE YOU FROM?

26 A IF HE ASKED ME WHICH BARRIO?

1 Q IS THAT WHAT HE ASKED YOU?

2 A YES.

3 Q WHAT DID THAT MEAN TO YOU, SIR?

4 MR. BROTT: OBJECTION; IRRELEVANT.

5 THE COURT: OVERRULED.

6 THE WITNESS: UM, WELL, WHICH GANG I WAS FROM OR WHICH
7 AREA WAS I FROM.

8 MR. BROTT: OBJECTION; NO FOUNDATION. MOVE TO STRIKE.

9 THE COURT: OVERRULED.

10 BY MR. GELLER:

11 Q IS THAT THE FIRST TIME THAT THE DEFENDANT HAD
12 ASKED YOU THAT?

13 A NO.

14 Q HAD HE ASKED YOU THAT ON PRIOR OCCASIONS?

15 A YES.

16 Q ABOUT HOW MANY PRIOR OCCASIONS HAD THE DEFENDANT
17 ASKED YOU THAT QUESTION?

18 A ABOUT EIGHT OR SEVEN TIMES.

19 Q DID YOU CLAIM A GANG BACK THEN?

20 A ME?

21 Q YES, YOU.

22 A NO, I DID NOT BELONG TO ANY.

23 Q DO YOU CLAIM A GANG NOW?

24 A NO.

25 Q HOW DID YOU RESPOND TO THE DEFENDANT?

26 MR. BROTT: OBJECTION; VAGUE AS TO TIME.

1 BY MR. GELLER:

2 Q HOW DID YOU RESPOND TO THE DEFENDANT ON THAT
3 NIGHT?

4 A THAT I DID NOT BELONG TO ANY, ANY ONE OF THOSE,
5 AND I DID NOT WANT ANY PROBLEMS.

6 Q THEN WHAT HAPPENED?

7 A WELL, HE BECAME AN AGGRESSOR. HE SAID IF HE
8 WANTED TO, UM, YOU KNOW, PUNCHES, LIKE THAT.

9 Q YES? THEN WHAT HAPPENED?

10 A WELL, I SAID, "NO." AND WHEN I SAW HIM, HE
11 ALREADY HAD HIS HANDS OVER HERE. (INDICATING.)

12 Q OVER WHERE?

13 A OVER HERE ON HIS WAIST. (INDICATING.)

14 Q SO INDICATING FOR THE RECORD WHAT YOU DID AS YOU
15 WERE SITTING WAS YOU CROSSED YOUR LEFT ARM ACROSS YOUR WAIST
16 AND YOU HAD YOUR RIGHT ARM SORT OF TOWARDS YOUR BELT AREA?

17 A YES. I TURNED TO LOOK AT HIM AND HE HAD -- AND
18 THEN I RAN.

19 Q DID YOU SEE ANYTHING IN HIS WAISTBAND?

20 A I DID NOT SEE ANYTHING AT THAT TIME.

21 Q PRIOR TO YOU RUNNING FROM HIM DID HE SAY ANYTHING
22 ELSE TO YOU WITH RESPECT TO A PARTICULAR GANG?

23 A NO, HE ONLY -- NO, HE RAN AFTER ME.

24 THE COURT: I NEED TO STOP YOU AT THIS POINT,
25 MR. GELLER, BECAUSE WE'VE RUN OUT OF TIME FOR YOU -- TO BE
26 WITH YOU TODAY.

1 WE'RE GOING TO BE APART NOW FOR FOUR DAYS. FEEL
2 FREE TO EXPRESS YOUR DISAPPOINTMENT. OR NOT.

3 IN ANY EVENT, YOU'RE GOING TO BE WITH YOUR
4 FRIENDS AND FAMILY OVER THIS LONG HOLIDAY WEEKEND. YOU MAY
5 BE TEMPTED TO TALK ABOUT THIS CASE. PLEASE DO NOT.

6 PLEASE DO NOT CONVERSE AMONG YOURSELVES OR WITH
7 ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THE TRIAL. PLEASE
8 DON'T FORM OR EXPRESS ANY OPINION ON THE CASE UNTIL IT IS
9 SUBMITTED TO YOU.

10 TUESDAY MORNING IS THE DAY AFTER A HOLIDAY.
11 THOSE ARE TRADITIONALLY VERY BUSY MORNINGS. I DO HAVE SOME
12 CASES THAT I NEED TO HANDLE. WE ARE GOING TO BE OPENING AT
13 8:30. AND I THINK I CAN BE DONE WITH EVERYTHING I NEED TO
14 FINISH BY 10:00. SO IF YOU REMEMBER NOTHING ELSE, REMEMBER
15 THAT MY HANDS ARE BOTH UP AND SPREAD, AND I'M DISPLAYING 10
16 FINGERS. AND I WOULD ASK THAT YOU REASSEMBLE OUTSIDE THE
17 COURTROOM DOORS AT TEN O'CLOCK TUESDAY MORNING, THE DAY
18 AFTER MEMORIAL DAY. HALF A GOOD WEEKEND, AND I WILL SEE YOU
19 THEN.

20 THANK YOU. YOU'RE FREE TO GO.

21 MR. NIEVES, WAIT ONE MOMENT, PLEASE.

22 (JURY EXCUSED.)

23 (THE FOLLOWING PROCEEDINGS WERE HAD IN
24 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

25 THE COURT: MR. JAIMES NIEVES, UNFORTUNATELY, WE CANNOT
26 FINISH YOUR TESTIMONY TODAY. WE ARE GOING TO START WITH THE

1 TRIAL AGAIN NEXT TUESDAY MORNING, AT TEN A.M. THAT'S
2 TUESDAY MORNING, MAY 30TH, 2006, AT 10:00 P.M. BECAUSE YOU
3 HAVE BEGUN YOUR TESTIMONY AND WE NEED TO FINISH YOUR
4 TESTIMONY, I MUST ORDER YOU TO RETURN TO THIS COURTROOM AT
5 THAT TIME.

6 IF YOU WERE TO FAIL TO APPEAR, I WOULD BE IN A
7 POSITION OF HAVING TO ISSUE A WARRANT FOR YOUR ARREST. SO,
8 BEFORE YOU DEPART TODAY, PLEASE BE SURE THAT YOU HAVE
9 MR. GELLER'S PHONE NUMBER OR THE PHONE NUMBER OF HIS
10 INVESTIGATOR SO, SHOULD AN EMERGENCY ARISE, YOU CAN GET IN
11 TOUCH WITH THEM.

12 I WOULD ALSO SUGGEST THAT YOU TAKE THE PHONE
13 NUMBER FOR THE COURT, AND THE INTERPRETER WILL HELP YOU.
14 BUT IF YOU SPEAK NO ENGLISH AT ALL, IT MIGHT BE DIFFICULT TO
15 COMMUNICATE WITH US. YOU HAVE TO BE HERE TUESDAY MORNING AT
16 TEN. LET SOMEONE KNOW IF AN EMERGENCY COMES UP THAT WOULD
17 PREVENT YOU FROM BEING HERE ON TIME. OKAY?

18 THE WITNESS: UH-HUH.

19 THE COURT: DO YOU UNDERSTAND EVERYTHING?

20 THE WITNESS: YES.

21 THE COURT: OKAY. THANK YOU VERY MUCH. YOU'RE FREE TO
22 GO FOR TODAY. TEN A.M. TEN O'CLOCK TUESDAY MORNING. TEN
23 O'CLOCK.

24

25 (EVENING RECESS.)

26 -000-

ATTORNEY GENERAL
SAN DIEGO

2006 SEP 20 PM 2:47

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION III

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF AND RESPONDENT,

VS.

ANDRES QUINONEZ REYES,

DEFENDANT AND APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY
HONORABLE CARLA M. SINGER, JUDGE PRESIDING
REPORTER'S TRANSCRIPTS ON APPEAL

MAY 30 AND 31, 2006

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

ATTORNEY GENERAL
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SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

APPELLATE DEFENDERS, INC.
555 W. BEECH STREET, #300
SAN DIEGO, CA 92101

VOLUME 2 OF 3
PAGES 221 TO 471, INCLUSIVE

LYNN PETERSON, CSR NO. 7706
OFFICIAL COURT REPORTER

M A S T E R					
C H R O N O L O G I C A L			W I T N E S S I N D E X		
WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
<u>DAVID RONDOU (402)</u>					1
BY MR. GELLER	18				
BY MR. BROTT		22			
<u>DAVID RONDOU (402)</u>					1
BY MR. BROTT	61				
<u>DAVID RONDOU</u>					1
BY MR. GELLER	101				
BY MR. BROTT		128			
<u>STEVEN GARCIA</u>					1
BY MR. GELLER	132				
BY MR. BROTT		159			
<u>MATTHEW SELINSKE</u>					1
BY MR. GELLER	168				
BY MR. BROTT		190			
BY MR. GELLER			204		
<u>DAVID RONDOU</u>					1
BY MR. GELLER	205				
BY MR. BROTT		209			
<u>FELIX J. NIEVES</u>					1
BY MR. GELLER	211				
<u>FELIX J. NIEVES</u>					2
BY MR. GELLER	224				
BY MR. BROTT		234			
BY MR. GELLER			248		
<u>JEFF LAUNI</u>					2
BY MR. GELLER	256				
<u>RICHARD ASHBY</u>					2
BY MR. GELLER	265				
BY MR. BROTT		269			
<u>MICHAEL CONTRERAS</u>					2
BY MR. GELLER	288				
BY MR. BROTT		293			

M A S T E R

C H R O N O L O G I C A L

W I T N E S S I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS	VOL.
<u>MICHAEL CONTRERAS</u>					2
MR. GELLER	298				
<u>MICHAEL CONTRERAS</u>					2
BY MR. GELLER	322				
BY MR. BROTT		336			
BY MR. GELLER			344		
<u>RICHARD ASHBY</u>					2
BY MR. GELLER	355				
BY MR. BROTT		363			
BY MR. GELLER			372		
BY MR. BROTT				373	
BY MR. GELLER			376		
<u>DAVID RONDOU</u>					2
BY MR. GELLER	379				
BY MR. BROTT		445			

MASTER

ALPHABETICAL WITNESS INDEX

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOL#
<u>ASHBY, RICHARD</u>					2
BY MR. GELLER	265				
BY MR. BROTT		269			
<u>ASHBY, RICHARD</u>					2
BY MR. GELLER	355				
BY MR. BROTT		363			
BY MR. GELLER			372		
BY MR. BROTT				373	
BY MR. GELLER			376		
<u>CONTRERAS, MICHAEL</u>					2
BY MR. GELLER	288				
BY MR. BROTT		293			
<u>CONTRERAS, MICHAEL</u>					2
MR. GELLER	298				
<u>CONTRERAS, MICHAEL</u>					2
BY MR. GELLER	322				
BY MR. BROTT		336			
BY MR. GELLER			344		
<u>GARCIA, STEVEN</u>					1
BY MR. GELLER	132				
BY MR. BROTT		159			
<u>LAUNI, JEFF</u>					2
BY MR. GELLER	256				
<u>NIEVES, FELIX J.</u>					1
BY MR. GELLER	211				
<u>NIEVES, FELIX J.</u>					2
BY MR. GELLER	224				
BY MR. BROTT		234			
BY MR. GELLER			248		
<u>RONDOU, DAVID (402)</u>					1
BY MR. GELLER	18				
BY MR. BROTT		22			

M A S T E R

A L P H A B E T I C A L W I T N E S S I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOL#
<u>RONDOU, DAVID (402)</u>					1
BY MR. BROTT	61				
<u>RONDOU, DAVID</u>					1
BY MR. GELLER	101				
BY MR. BROTT		128			
<u>RONDOU, DAVID</u>					1
BY MR. GELLER	205				
BY MR. BROTT		209			
<u>RONDOU, DAVID</u>					2
BY MR. GELLER	379				
BY MR. BROTT		445			
<u>SELINSKE, MATTHEW</u>					1
BY MR. GELLER	168				
BY MR. BROTT		190			
BY MR. GELLER			204		

MASTER EXHIBIT LIST

PEOPLE'S:		I.D./VOL.	EVID/VOL.
1	LARGE MAP OF SECTION OF SANTA ANA	102/1	466/2
2	LARGE AERIAL MAP OF WILLITS AND SULLIVAN STREETS	103/1	466/2
3	LARGE COLOR CARICATURE OF WILLITS AND SULLIVAN STREETS	104/1	466/2
4	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN SOUTHBOUND DIRECTION AND SHOWING VICTIM'S HONDA CIVIC	107/1	466/2
5	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN NORTHBOUND DIRECTION SHOWING SCHOOL AND STOP SIGN	108/1	466/2
6	8.5X11" COLOR PHOTO: VICTIM'S CAR COVERED BY YELLOW TARP	108/1	466/2
7	8.5X11" COLOR PHOTO: FRONT WINDSHIELD OF VICTIM'S CAR	111/1	466/2
8	8.5X11" COLOR PHOTO: REAR VIEW OF VICTIM'S CAR	111/1	466/2
9	8.5X11" COLOR PHOTO: SHATTERED REAR WINDOW OF VICTIM'S CAR	112/1	466/2
10	8.5X11" COLOR PHOTO: SIDE VIEW OF VICTIM'S CAR	112/1	466/2
11	8.5X11" COLOR PHOTO: VICTIM IN CAR, VIEWED FROM THE FRONT	113/1	121/1
12	8.5X11" COLOR PHOTO: VICTIM IN CAR, SIDE VIEW	113/1	121/1

M A S T E R E X H I B I T L I S T

<u>PEOPLE'S:</u>	<u>I.D./VOL.</u>	<u>EVID/VOL.</u>
13 8.5X11" COLOR PHOTO OF REVOLVER WITH OPEN CHAMBER, SHOWING BULLETS	113/1	466/2
14 .357 MAGNUM BLUE-STEEL REVOLVER IN EVIDENCE BOX (SERIAL #843143 VISIBLE ONLY BY REMOVING HANDLE GRIPS	115/1	466/2
14A ENVELOPE CONTAINING BULLET	470/2	**
14B ENVELOPE CONTAINING BULLET	470/2	**
14C ENVELOPE CONTAINING BULLET	470/2	**
14D ENVELOPE CONTAINING BULLET	470/2	**
14E ENVELOPE CONTAINING BULLET	470/2	**
15 EVIDENCE ENVELOPE CONTAINING BULLET FROM AUTOPSY	258/2	466/2
16 STIPULATION RE FIREARMS EXAMINER'S TESTIMONY	263/2	466/2
17 12 POLAROID SNAPSHOTS OF VICTIM	266/2	466/2
18 SINGLE SHEET PHOTOCOPY WITH 3 BLACK AND WHITE PHOTOS	333/2	466/2
19 CERTIFIED COPY OF PREDICATE ACTS CASE #02CF0135	412/2	466/2

** INDICATES EXHIBITS THAT WERE NOT RECEIVED INTO EVIDENCE

748

C H R O N O L O G I C A L		W I T N E S S I N D E X			
WITNESS:		DIRECT	CROSS	REDIRECT	RECROSS VOIR DIRE
<u>FELIX NIEVES</u>					
BY MR. GELLER	224				
BY MR. BROTT			234		
BY MR. GELLER				248	
<u>JEFF LAUNI</u>					
BY MR. GELLER	256				
<u>RICHARD ASHBY</u>					
BY MR. GELLER	265				
BY MR. BROTT			269		
<u>MICHAEL CONTRERAS</u>					
BY MR. GELLER	288				
BY MR. BROTT			293		
<u>MICHAEL CONTRERAS</u>					
MR. GELLER	298				

A L P H A B E T I C A L W I T N E S S I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
<u>ASHBY, RICHARD</u>					
BY MR. GELLER	265				
BY MR. BROTT		269			
<u>CONTRERAS, MICHAEL</u>					
BY MR. GELLER	288				
BY MR. BROTT		293			
<u>CONTRERAS, MICHAEL</u>					
MR. GELLER	298				
<u>LAUNI, JEFF</u>					
BY MR. GELLER	256				
<u>NIEVES, FELIX</u>					
BY MR. GELLER	224				
BY MR. BROTT		234			
BY MR. GELLER			248		

E X H I B I T S

<u>PEOPLE'S:</u>		FOR IDENTIFICATION	IN EVIDENCE
15	EVIDENCE ENVELOPE CONTAINING BULLET FROM AUTOPSY	258	
16	STIPULATION RE FIREARMS EXAMINER'S TESTIMONY	263	
17	12 POLAROID SNAPSHOTS OF VICTIM	266	

1 SANTA ANA, CALIFORNIA - TUESDAY, MAY 30, 2006

2 MORNING SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

7 THE COURT: WE'RE RESUMING IN PEOPLE VS. ANDRES REYES,
8 CASE NUMBER 04CF2780. I'M INFORMED THE JURORS ARE ASSEMBLED
9 OUTSIDE. SOMEBODY REQUESTED AN OPPORTUNITY ON THE RECORD.
10 WHICH ONE OF YOU MADE THAT REQUEST?

11 MR. GELLER: I DID, YOUR HONOR.

12 THE COURT: AND WHAT'S GOING ON.

13 MR. GELLER: YOUR HONOR, I HAVE -- THIS MORNING I'LL BE
14 CALLING INVESTIGATOR ASHBY TO CLEAR UP SOME OF
15 STEVE GARCIA'S TESTIMONY. INVESTIGATOR ASHBY WAS PRESENT,
16 OR, ACTUALLY, DID SEARCH THE VICTIM'S RESIDENCE SHORTLY
17 AFTER THE HOMICIDE. AND SOME POLAROID PHOTOS WERE FOUND IN
18 THE VICTIM'S POSSESSION THAT SHOW THE VICTIM THROWING, AMONG
19 OTHER THINGS, SOME GANG SIGNS. IT'S -- I BELIEVE, MR. BROTT
20 HAS AN OBJECTION TO THE ADMISSION OF THESE EXHIBITS. I'LL
21 BE OFFERING THEM TO ASSIST INVESTIGATOR RONDOU IN HIS GANG
22 TESTIMONY ON THIS CASE.

23 THE COURT: WELL, ARE YOU GOING TO BE INQUIRING OF YOUR
24 WITNESS AS TO THE SEARCH OF THE VICTIM'S RESIDENCE; IS THAT
25 WHAT YOU'RE SAYING HERE?

26 MR. GELLER: I'M GOING TO BE ASKING INVESTIGATOR ASHBY

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 TO AUTHENTICATE THESE PHOTOGRAPHS THAT I HAVE IN MY HAND
2 THAT, AGAIN, INVESTIGATOR RONDOU IS GOING TO USE IN HIS
3 TESTIMONY TO SUPPORT THE GANG MOTIVATION BEHIND THIS CRIME.

4 THE COURT: OKAY. HE WON'T BE MOVING THEM INTO
5 EVIDENCE, JUST LAYING THE FOUNDATION FOR ADMISSIBILITY.

6 MR. BROTT: I THOUGHT IT MIGHT BE CONVENIENT FOR US TO
7 DEAL WITH THE ISSUE NOW.

8 THE COURT: GO AHEAD.

9 MR. BROTT: I HAVE A 352 OBJECTION, YOUR HONOR. WE
10 DON'T HAVE ANY TESTIMONY NOR DO I ANTICIPATE THERE BEING ANY
11 TESTIMONY AS TO WHAT, IF ANYTHING, THE VICTIM SAID TO THESE
12 INDIVIDUALS. THE FACT THAT HE MAY HAVE SOME GANG
13 AFFILIATIONS IS IRRELEVANT TO THESE PROCEEDINGS BECAUSE WE
14 DON'T KNOW HE RESPONDED IN A GANG FASHION. AND, I JUST -- I
15 HAVE A 352 OBJECTION TO IT. THEY'RE IRRELEVANT WHETHER HE
16 WAS IN A GANG OR NOT. IT WOULD BE LIKE ME SAYING, YOU KNOW,
17 HE WAS LOADED UP ON COKE. WHAT DIFFERENCE DOES IT MAKE?

18 THE COURT: POINT WELL TAKEN. NOT SO MUCH BECAUSE OF
19 THAT COKE ANALOGY, BUT.

20 MR. GELLER: YOUR HONOR, MAY I BE HEARD ON THAT?

21 THE COURT: ALL RIGHT.

22 MR. GELLER: WE DID GET INTO EVIDENCE THROUGH
23 STEVE GARCIA THAT THE INDIVIDUALS ON BICYCLES, WHICH INCLUDE
24 THE SHOOTER, WERE SAYING THINGS TO PASSING MOTORISTS,
25 CLEARLY. AND I THINK IT'S NOT UNREASONABLE TO INFER THAT
26 SOMETHING OCCURRED BETWEEN THIS PARTICULAR MOTORIST AND THE

1 GROUP, INCLUDING THE SHOOTER, FRANK LOPEZ, SUCH THAT
2 FRANK LOPEZ SHOT THIS GUY IN THE BACK OF THE HEAD. WHETHER
3 THAT INFERENCE IS THAT THE VICTIM IN THE VEHICLE WITH THE
4 CAR WINDOWS DOWN YELLED OUT WEST MYRTLE IN RESPONSE TO A
5 HIT-UP OR WHETHER HE THREW A GANG SIGN, I DO NOT THINK THOSE
6 ARE REASONABLE INFERENCES OR CAUSING A JURY TO SPECULATE AS
7 TO WHAT OCCURRED. BUT SOMETHING DID OCCUR CAUSING
8 FRANK LOPEZ TO SHOOT THIS GUY IN THE BACK OF THE HEAD.

9 MR. BROTT: WELL, WE DON'T EVEN KNOW IF THIS IS THE
10 SAME CAR. DETECTIVE SELINSKE SAYS THE CAR THAT GOT SHOT WAS
11 GOING SOUTHBOUND IN FRONT OF HIM ON SULLIVAN. THIS WITNESS
12 SAYS HE THINKS THIS CAR MADE A U-TURN. THIS -- SELINSKE
13 SAID HE DIDN'T SEE ANYBODY YELLING AT THE CAR AHEAD OF HIM
14 THAT GOT SHOT ULTIMATELY. THE YELLING AT THE CAR IS
15 PROBABLY THE WRONG CAR. IT'S NOT EVEN THE SAME CAR.

16 THE COURT: I THINK IT'S INTERESTING THAT THE PEOPLE
17 WANT TO DEMONSTRATE THAT THE VICTIM MAY BE AFFILIATED WITH A
18 GANG AND THE DEFENSE DOES NOT. BUT, IT DOES APPEAR TO ME AT
19 THIS POINT IN TIME THAT WHETHER THE VICTIM WAS THROWING GANG
20 SIGNS IN SOME -- IN HIS LIFE WOULD BE IRRELEVANT TO THE
21 DEFENDANT'S CHARGES OF HAVING MURDERED HIM.

22 I WANT TO SEE THE PICTURES. WE HAVE MR. NIEVES
23 ON THE STAND. HE'LL BE CONCLUDING HIS TESTIMONY. WE
24 HAVEN'T EVEN GOTTEN TO CROSS-EXAMINATION ON THAT. AND I'LL
25 TAKE SOME TIME TO THINK THIS ONE THROUGH. I'LL CERTAINLY
26 MAKE A DECISION BEFORE OFFICER ASHBY TESTIFIES IN THIS AREA,

1 BUT LET'S NOT KEEP THE JURORS WAITING ANYMORE AT THIS POINT.

2 (THE FOLLOWING PROCEEDINGS WERE HAD IN

3 OPEN COURT IN THE PRESENCE OF THE JURY:)

4 THE COURT: WELCOME BACK. WE ARE RESUMING IN

5 ANDRES QUINONEZ REYES, CASE NUMBER 04CF2780. RECORD SHOULD

6 REFLECT MR. REYES IS PRESENT WITH HIS COUNSEL, MR. BROTT

7 THIS MORNING; THE PEOPLE ARE REPRESENTED BY MR. GELLER;

8 FIFTEEN JURORS HAVE RETURNED TO THE COURTROOM AT THIS HOUR.

9 LADIES AND GENTLEMEN, WHEN WE RECESSED WITH YOU

10 LAST WEEK MR. JAIMES NIEVES WAS ON THE STAND, RECEIVING THE

11 SERVICES OF A COURT-CERTIFIED INTERPRETER. HE HAS RESUMED

12 THE STAND. WE HAVE A NEW INTERPRETER WORKING WITH HIM THIS

13 MORNING. AND WE HAD INTERRUPTED THE PEOPLE'S DIRECT

14 EXAMINATION.

15 LET ME JUST REMIND MR. JAIMES NIEVES, YOU ARE

16 STILL UNDER OATH TO TELL THE TRUTH, SIR.

17 THE WITNESS: YES.

18 THE COURT: AND, MR. GELLER, WHENEVER YOU'RE READY, YOU

19 MAY RESUME.

20 MR. GELLER: THANK YOU, YOUR HONOR.

21 JAIMES NIEVES,

22 CALLED AS A WITNESS, HAVING BEEN PREVIOUSLY DULY SWORN, WAS

23 EXAMINED AND TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. GELLER:

26 Q GOOD MORNING, MR. NIEVES.

1 A GOOD MORNING.

2 Q I DON'T HAVE A LOT MORE WITH YOU TODAY. THERE'S
3 A COUPLE THINGS WE NEED TO TALK ABOUT.

4 A THAT'S FINE.

5 Q PRIOR TO ANY FIGHT WITH THE DEFENDANT, DID HE
6 STATE ANYTHING TO YOU?

7 A HE ONLY ASKED ME WHERE I WAS FROM, AND I TOLD HIM
8 FROM "NOWHERE."

9 Q OKAY. DID THE DEFENDANT IDENTIFY HIMSELF TO YOU
10 AS BEING FROM ANYWHERE?

11 MR. BROT: OBJECTION; ASKED AND ANSWERED.

12 THE COURT: OVERRULED.

13 THE WITNESS: YES.

14 BY MR. GELLER:

15 Q WHAT DID HE SAY?

16 A THAT HE WAS FROM THE TROOP.

17 PROSPECTIVE JUROR 11: JUDGE, THEY'RE GOING TO HAVE TO
18 SPEAK UP A LITTLE BIT.

19 THE COURT: THE INTERPRETER?

20 PROSPECTIVE JUROR 11: YES.

21 THE COURT: OKAY. WHY DON'T YOU MOVE THE MIC CLOSER TO
22 YOU.

23 THE INTERPRETER: IS THIS BETTER?

24 MR. GELLER: IN AN ABUNDANCE OF CAUTION, I'M GOING TO
25 REASK THAT QUESTION.

26 Q WHERE DID THE DEFENDANT TELL YOU HE WAS FROM?

1 A FROM THE TROOP.

2 Q IS THIS THE FIRST TIME THAT HE HAD IDENTIFIED
3 HIMSELF AS BEING FROM THE TROOP TO YOU?

4 A SOMETIMES HE WOULD TELL ME WHAT NEIGHBORHOOD HE
5 WAS FROM AND SOMETIMES JUST THE TROOP.

6 Q ABOUT HOW MANY TIMES HAS HE IDENTIFIED HIMSELF TO
7 YOU AS BEING FROM THE TROOP?

8 A I DON'T REMEMBER VERY WELL.

9 Q WOULD IT BE FIVE TIMES, MORE OR LESS?

10 MR. BROTT: LEADING, NO FOUNDATION.

11 THE COURT: SUSTAINED.

12 DON'T ANSWER.

13 NEXT QUESTION.

14 BY MR. GELLER:

15 Q CAN YOU GIVE US AN APPROXIMATION ABOUT HOW MANY
16 TIMES HE HAD IDENTIFIED HIMSELF AS BEING FROM THE TROOP TO
17 YOU?

18 A MAYBE THREE.

19 Q OKAY. SO THE DEFENDANT IS HOW CLOSE TO YOU WHEN
20 HE'S ASKING YOU WHERE YOU'RE FROM?

21 A ABOUT A YARD'S DISTANCE.

22 Q AND ARE YOU BY YOURSELF OR DO YOU HAVE ANY
23 FRIENDS WITH YOU AT THAT TIME?

24 A BY MYSELF. I WAS ALWAYS ALONE.

25 Q DID THE DEFENDANT APPEAR TO HAVE ANYBODY WITH HIM
26 AT THAT TIME?

1 A SOMETIMES HE WAS WITH FRIENDS, SOMETIMES HE WAS
2 ALONE.

3 Q I WANT TO TALK TO YOU ABOUT THIS PARTICULAR DATE.
4 ON THE DATE THAT HE WAS A YARD FROM YOU AND HE HAD ASKED YOU
5 WHERE YOU WERE FROM, DID HE HAVE ANYBODY ELSE WITH HIM?

6 A THE LAST DAY?

7 Q LAST DAY.

8 A YES. THERE WERE FOUR.

9 Q WOULD THAT MAKE A TOTAL OF FIVE PEOPLE OR A TOTAL
10 OF FOUR PEOPLE?

11 A FOUR.

12 Q OKAY. DID YOU KNOW EITHER OF THE OTHER THREE
13 PEOPLE?

14 A NONE OF THEM. I DON'T LIVE IN THE AREA, WAS JUST
15 THERE VISITING MY GIRLFRIEND.

16 Q SO WHAT HAPPENED NEXT?

17 A AFTER WHAT?

18 Q AFTER HE HAD ASKED YOU WHERE YOU WERE FROM AND HE
19 WAS ABOUT A YARD AWAY FROM YOU.

20 A I TOLD HIM THAT I WANTED NO PROBLEMS.

21 Q WHAT, IF ANYTHING, HAPPENED NEXT?

22 A THEN HE ASKED ME IF I WANTED TO FIGHT HIM OR
23 SOMETHING LIKE THAT.

24 Q WHAT DID YOU DO IN RESPONSE?

25 A NOTHING. WHEN I TURNED AROUND HE WAS ALREADY
26 SHOWING ME SOMETHING; LIKE HE WAS GOING TO PULL SOMETHING

1 OUT OF HIS WAIST.

2 Q DID YOU SEE ANYTHING IN HIS WAISTBAND?

3 A NO, BECAUSE I RAN. AND THEY RAN AFTER ME.

4 Q WHERE WERE YOU WHEN YOU FIRST STARTED RUNNING
5 AWAY FROM THE DEFENDANT?

6 A RIGHT THERE ON 10TH AND ENGLISH.

7 Q IMMEDIATELY BEFORE YOU STARTED RUNNING FROM THE
8 CORNER OF 10TH AND ENGLISH, DID YOU TAKE A LOOK AT THE
9 DEFENDANT'S WAISTBAND AREA?

10 A YES.

11 Q WHERE WAS THE DEFENDANT'S HAND IN RELATIONSHIP TO
12 HIS WAIST?

13 A RIGHT THERE ON HIS WAISTBAND.

14 Q DID HE HAVE A SHIRT COVERING, LIKE, HIS BELT
15 AREA?

16 A YES, BUT I DON'T REMEMBER WHAT COLOR IT WAS.

17 Q THAT'S FINE.

18 IF THE DEFENDANT DID HAVE SOMETHING IN HIS WAIST
19 WOULD THE SHIRT HAVE BEEN COVERING IT?

20 MR. BROTT: OBJECTION; SPECULATION, NO FOUNDATION.

21 THE COURT: OVERRULED. YOU CAN ANSWER?

22 THE WITNESS: I COULDN'T SEE. I JUST SAW THAT HE
23 PULLED SOMETHING, AND I STARTED RUNNING.

24 BY MR. GELLER:

25 Q WHERE WERE YOU RUNNING TO?

26 A TO MY GIRLFRIEND'S HOUSE.

1 Q WHERE WAS THAT?

2 A ON ENGLISH AND 2010.

3 Q 2010?

4 A YES.

5 Q IS THAT NEAR THE CORNER OF 12TH AND ENGLISH?

6 A YES.

7 Q SO NOW WHAT HAPPENED?

8 A HE PUSHED ME AND I WAS ABLE TO HOLD ON TO THE
9 FENCE.

10 Q DID THE TWO OF YOU GET INTO A FIGHT?

11 A YES, BECAUSE WHEN I TURNED AROUND HE HIT ME, AND
12 SO WE STARTED FIGHTING.

13 Q DID THIS START OUT AS JUST A FIST FIGHT?

14 A YES.

15 Q THEN WHAT HAPPENED?

16 A THEN THE ONES THAT WERE WITH HIM GOT THERE AND
17 STARTED HITTING ME.

18 Q SO NOW IT'S FOUR AGAINST ONE; IS THAT ABOUT
19 RIGHT?

20 A YES.

21 Q THEN WHAT HAPPENED?

22 A THEN A CAR PASSED BY AND MORE GOT OFF AND STARTED
23 HITTING ME.

24 Q SO HOW MANY PEOPLE WERE THERE NOW?

25 A TO TELL YOU THE TRUTH, I DON'T KNOW. I WAS
26 TRYING TO DEFEND MYSELF. THERE WAS A LOT OF THEM.

1 Q NOW WHAT HAPPENED?

2 A THEN I FELT THE WEAPON RIGHT HERE AND I TOLD HIM
3 AGAIN I WANTED NO PROBLEMS, BUT I WAS IN THAT SITUATION SO I
4 HAD TO DEFEND MYSELF. (INDICATING.)

5 Q WHEN YOU SAY, "RIGHT HERE," WHAT ARE YOU
6 REFERRING TO?

7 A RIGHT HERE, BEHIND. (INDICATING.)

8 Q OKAY. AND, FOR THE RECORD, THE WITNESS, WITH HIS
9 LEFT HAND, KIND OF REACHED OVER HIS RIGHT SHOULDER AND
10 POINTED TO THE AREA BEHIND HIS NECK.

11 DID YOU SEE THE TYPE OF WEAPON IT WAS?

12 A I JUST SAW THE CANNON. I DIDN'T SEE WHAT IT WAS.

13 Q WHEN YOU SAY CANNON, WHAT DOES THAT MEAN?

14 A THE TIP OF THE WEAPON.

15 Q OKAY. WELL, "WEAPON" CAN MEAN A LOT OF THINGS.
16 WAS THIS A KNIFE? WAS THIS A GUN?

17 A A GUN.

18 Q OKAY. DID YOU SEE WHERE THE GUN CAME FROM BEFORE
19 IT WAS NEAR THE BACK OF YOUR NECK THERE?

20 A NO, NO, BECAUSE I WAS DEFENDING MYSELF IN THE
21 FRONT.

22 Q WHO WAS HOLDING THE GUN AT THAT TIME?

23 A I DEFENDED MYSELF AND I HIT HIM AND HE FELL DOWN.

24 Q MR. NIEVES, WHAT I'M ASKING YOU IS WHO WAS
25 HOLDING THE GUN NEAR THE BACK OF YOUR NECK AT THE POINT
26 WHERE YOU WERE DEFENDING YOURSELF?

1 A THE DEFENDANT.

2 Q DID YOU SEE WHERE THE DEFENDANT TOOK THE GUN FROM
3 PRIOR TO IT GETTING TOWARDS THE BACK OF YOUR NECK?

4 A NO.

5 Q WHAT WAS THE DEFENDANT DOING WITH THE GUN AT THE
6 POINT WHERE IT WAS TOWARDS THE BACK OF YOUR NECK?

7 A I COULDN'T SEE.

8 Q SO WHAT DID YOU DO?

9 A I HIT HIM WITH MY HAND.

10 Q THEN WHAT HAPPENED?

11 A HE FELL DOWN AND THE GUN FELL DOWN TOO.

12 Q NOW WHAT DID YOU DO?

13 A HE FELL IN BETWEEN MY FEET.

14 Q SO THEN WHAT HAPPENED?

15 A I PICKED UP THE GUN AND HE GRABBED IT FROM THE
16 FRONT.

17 Q NOW WHAT HAPPENED?

18 A I TOLD HIM TO LET IT GO AND TO STEP BACK. AND
19 THEN MY GIRLFRIEND'S DAD GOT THERE.

20 Q SO YOU WERE ACTUALLY HOLDING THE GUN AT THAT
21 POINT IN TIME?

22 A YES.

23 Q I'D LIKE YOU TO TAKE A LOOK AT WHAT'S BEEN MARKED
24 AS PEOPLE'S EXHIBIT 14 FOR IDENTIFICATION. IF YOU NEED ME
25 TO COME CLOSER, I'D BE HAPPY TO. BUT I'M HOLDING IT UP TO
26 YOU. DOES THIS LOOK LIKE THE GUN THAT YOU WERE HOLDING?

1 A YES.

2 Q OKAY. AND SO WE'RE PERFECTLY CLEAR, WHEN YOU
3 SAID THAT PART OF THE CANNON, I GUESS IT WAS NEAR THE BACK
4 OF YOUR NECK AREA. WOULD THAT BE THE BARREL PORTION OF THE
5 GUN THAT I'M HOLDING UP RIGHT NOW?

6 A YES.

7 Q NOW WHAT HAPPENED?

8 A MY GIRLFRIEND'S DAD TOOK IT AWAY FROM ME AND THEY
9 KEPT ASKING HIM FOR IT, OR, IF NOT, THAT THERE WERE GOING TO
10 BE PROBLEMS.

11 Q AND THEN WHAT HAPPENED?

12 MR. BROT: OBJECTION; MOVE TO STRIKE THAT AS
13 NONRESPONSIVE AND IS VAGUE AS TO "THEY" AND --

14 THE COURT: OVERRULED. IT IS RESPONSIVE. BUT YOU CAN
15 CLEAR UP ANY MISUNDERSTANDING ON CROSS-EXAMINATION.

16 THE INTERPRETER: WAS THERE A QUESTION PENDING? I'M
17 SORRY.

18 THE COURT: THE NEXT QUESTION WAS, "AND THEN WHAT
19 HAPPENED," AFTER THAT, AFTER YOUR GIRLFRIEND'S DAD TOOK IT
20 AWAY FROM YOU?

21 THE WITNESS: HE GAVE IT BACK TO ME AND I THREW IT IN
22 THE YARD.

23 BY MR. GELLER:

24 Q THE DEFENDANT AND THE PEOPLE THAT HE WAS WITH AT
25 THIS POINT IN TIME, DID HE STAY OVER THERE WITH YOU AT 12TH
26 AND ENGLISH OR DID HE LEAVE?

1 A THEY LEFT. THEY LEFT BECAUSE THE POLICE WAS ON
2 THEIR WAY.

3 Q DID YOU CALL THE POLICE?

4 A NO.

5 Q YOU MENTIONED SOMETHING ABOUT THEY WERE ASKING
6 HIM FOR THE GUN. CAN YOU CLARIFY FOR US WHO IT WAS THAT WAS
7 ASKING YOU FOR THE GUN BACK?

8 A I DON'T KNOW THEM.

9 Q DO YOU RECALL WHETHER THE DEFENDANT WAS ASKING
10 YOU FOR THE GUN BACK?

11 A NO, HE LEFT RIGHT AWAY.

12 MR. BROTT: MOVE TO STRIKE IT AS HEARSAY, ALL OF IT.

13 THE COURT: OVERRULED.

14 MR. GELLER: MAY I HAVE JUST A MOMENT, YOUR HONOR?

15 THE COURT: YES.

16 (PAUSE IN PROCEEDINGS.)

17 BY MR. GELLER:

18 Q WHEN THE PERSON WAS ASKING YOU FOR THE GUN BACK
19 DID YOU HAVE IT OR DID YOUR UNCLE HAVE IT AT THAT POINT --
20 OR, I'M SORRY, YOUR GIRLFRIEND'S FATHER?

21 A MY GIRLFRIEND'S FATHER.

22 Q AND WERE YOU STANDING NEXT TO HIM AT THAT TIME?

23 A YES.

24 Q AND WERE THERE STILL A FEW OF THIS ORIGINAL GROUP
25 AROUND YOU AT THAT POINT?

26 A AT FIRST, YES. BUT ONCE THEY SAW THAT THE POLICE

1 WERE ON THEIR WAY, THEY LEFT.

2 Q PRIOR TO THE POLICE BEING ON THEIR WAY, WHILE
3 THERE WAS AT LEAST A COUPLE OF THEM STANDING IN YOUR
4 IMMEDIATE PRESENCE, AND AFTER ASKING FOR THE GUN BACK, DID
5 ANY OF THESE INDIVIDUALS MENTION ANYTHING ABOUT THE GUN TO
6 YOU?

7 A NO.

8 MR. GELLER: I HAVE NOTHING FURTHER. THANK YOU.

9 THE COURT: CROSS-EXAMINATION.

10 CROSS-EXAMINATION

11 BY MR. BROTT:

12 Q MR. NIEVES, WHERE WERE YOU COMING FROM AT THE
13 TIME OF THIS EVENT?

14 A FROM THE BEGINNING?

15 Q FROM THE -- YOU WERE GOING TO YOUR GIRLFRIEND'S
16 HOUSE, CORRECT?

17 A YES.

18 Q WHERE WERE YOU COMING FROM?

19 A FROM MY HOUSE, WHERE I LIVED.

20 Q HOW FAR AWAY IS THAT?

21 A WALNUT AND BRISTOL.

22 Q IS THAT -- HOW LONG DOES IT TAKE YOU TO WALK TO
23 YOUR GIRLFRIEND'S HOUSE FROM YOUR HOUSE?

24 A ABOUT 45 MINUTES. IT'S FAR.

25 Q IS THAT A TRIP THAT YOU TAKE OFTEN?

26 A WHAT DO YOU MEAN?

1 Q WELL, HOW OFTEN DO YOU WALK THAT DISTANCE TO
2 VISIT YOUR GIRLFRIEND?

3 A RIGHT NOW SHE'S MY WIFE.

4 Q ALL RIGHT. BACK THEN IN 2004, IN AUGUST OF 2004,
5 LET'S SAY FOR THE THREE MONTHS BEFORE THAT, HOW OFTEN DID
6 YOU WALK FROM BRISTOL OVER TO YOUR GIRLFRIEND'S HOUSE?

7 A THAT WAS THE ONLY DAY I WAS WALKING. I USUALLY
8 WOULD RIDE MY BIKE.

9 Q THAT DAY YOU WERE ON FOOT?

10 A YES, THAT DAY.

11 Q AND DID YOU COME TO SEE HER ALMOST EVERY DAY?

12 A EVERY OTHER DAY.

13 Q AND DID YOU HAVE ANY FEARS ABOUT WALKING IN THAT
14 NEIGHBORHOOD?

15 A TO TELL YOU THE TRUTH, YES.

16 Q BUT NOT SO MUCH THAT YOU DIDN'T COME THERE EVERY
17 OTHER DAY, CORRECT?

18 A NO, BECAUSE SOMETIMES I WOULD RIDE MY BIKE AND
19 SOMETIMES SHE WOULD GO GET ME.

20 Q WELL, YOU SAID THAT YOU HAD MET THIS DEFENDANT ON
21 SEVEN OR EIGHT PRIOR OCCASIONS; IS THAT TRUE?

22 A TRUE.

23 Q WHEN, IN RELATION TO THIS AUGUST FIGHT THAT YOU
24 HAD WITH HIM, WERE THOSE SEVEN TO EIGHT TIMES?

25 A WHEN I STARTED VISITING MY GIRLFRIEND.

26 Q AND WAS IT ALWAYS IN THE NEIGHBORHOOD OR WAS IT

1 AT A SCHOOL OR A DIFFERENT LOCATION?

2 A IT WAS AT DIFFERENT PLACES. I WOULDN'T BE ABLE
3 TO TELL YOU. I DON'T REMEMBER. IT'S BEEN TWO YEARS.

4 Q DID YOU EVER CALL THE POLICE OR REPORT THESE
5 INCIDENTS?

6 A NONE, BECAUSE NOTHING EVER HAPPENED LIKE THIS.

7 Q HE WOULD JUST SAY HELLO TO YOU OR ASK YOU HOW YOU
8 DOING? WHERE YOU FROM? ARE THOSE THE KINDS OF CONTACTS YOU
9 HAD?

10 A YES, WHERE I WAS FROM.

11 Q SO THESE OTHER INCIDENTS THAT YOU MET HIM OR SAW
12 HIM ON PRIOR OCCASIONS, THESE WERE NON-THREATENING,
13 NONVIOLENT EVENTS, CORRECT?

14 A NO, NOT AT FIRST.

15 Q THEY WERE NOT THREATENING OR VIOLENT, WERE THEY?

16 A NO, THEY WOULD JUST TELL ME THAT WAS THEIR
17 NEIGHBORHOOD AND THAT THEY WERE FROM TROOPS.

18 Q JUST TELLING YOU WHERE THEY WERE FROM, BUT NOT
19 ATTACKING YOU?

20 A NO -- YES.

21 Q SO YOU FELT SAFE ENOUGH TO COME BACK EVERY OTHER
22 DAY THROUGH THE NEIGHBORHOOD, DIDN'T YOU?

23 A YES, BUT I DIDN'T FEEL VERY SAFE.

24 Q WELL, WHAT WAS DIFFERENT ABOUT THIS DAY AS
25 OPPOSED TO ALL THE OTHER DAYS WHEN THERE WAS NO THREAT?

26 A UM, AFTER THAT WHEN THEY WOULD TALK TO ME THEY

1 WOULD BE ANGERED.

2 Q THAT WAS THIS DAY WE'RE TALKING ABOUT?

3 A WHICH DAY? THE DAY THAT THAT HAPPENED?

4 Q YES, THE DAY THAT THIS HAPPENED. THAT WAS THE
5 FIRST DAY THAT ANY VIOLENCE HAPPENED, TRUE?

6 A YES.

7 Q AND WHEN MR. -- WHEN THE DEFENDANT ASKED YOU THAT
8 DAY -- I'M NOW TALKING ABOUT THE DAY OF THE FIGHT. THAT'S
9 ALL I'M GOING TO TALK ABOUT RIGHT NOW. WHEN HE ASKED YOU
10 WHAT BARRIO YOU BELONGED TO, WHAT DID YOU SAY?

11 A FROM NOWHERE, THAT I WANTED NO PROBLEMS.

12 Q BUT A FIGHT DEVELOPED IMMEDIATELY AFTER YOU SAID
13 SOMETHING TO HIM; ISN'T THAT TRUE?

14 A NO, JUST WHEN I SAW HIM, THAT HE HAD HIS HAND ON
15 HIS WAISTBAND; THAT'S WHEN I RAN AND HE RAN AFTER ME.

16 Q BUT DIDN'T HE ASK YOU TO FIGHT?

17 A YES, YES, HE --

18 Q HE ASKED YOU TO FIGHT HIM BEFORE HE DID ANYTHING,
19 CORRECT?

20 A YES, YES. BUT WHEN HE SAID, "BUT I WANT SOME
21 BLOWS," AND I TURNED AROUND, HE ALREADY HAD HIS HAND ON HIS
22 WAISTBAND AND THAT'S WHEN I STARTED RUNNING.

23 Q BUT YOU DIDN'T SEE ANYTHING IN HIS WAISTBAND?

24 A NO, I DIDN'T SEE ANYTHING.

25 Q OR HIS HAND?

26 A NO.

1 Q AND LAST WEEK, BEFORE YOU GOT OFF THE STAND, I
2 BELIEVE YOU SAID YOU DIDN'T HEAR ANY MENTION OF A GANG,
3 DIDN'T YOU?

4 A NO.

5 Q YOU NEVER DID?

6 A ABOUT WHAT? THAT I'M FROM SOMEWHERE?

7 Q NO, THAT HE IS A MEMBER OF A GANG.

8 A HE TOLD ME HE WAS FROM TROOP.

9 Q BUT DIDN'T YOU SAY LAST WEEK WHEN YOU TESTIFIED
10 THAT NOBODY MENTIONED THE WORD "GANG" OR A GANG, INCLUDING
11 F-TROOP?

12 A LIKE WHEN? HIM?

13 Q HIM.

14 A ARE YOU TALKING ABOUT THE WEEK THAT THAT
15 HAPPENED?

16 Q THE DAY THAT HAPPENED?

17 A THE DAY THAT THAT HAPPENED, THAT PARTICULAR DAY
18 HE DIDN'T SAY ANYTHING ABOUT THAT.

19 Q NOW, WHEN YOU WERE HAVING THIS CONVERSATION ABOUT
20 THROWING BLOWS, WHERE WERE THE OTHER PEOPLE THAT YOU SAY
21 WERE WITH HIM?

22 A WHEN THEY STOPPED ME THEY WERE WITH HIM. AND
23 WHEN HE CHASED ME, HE WAS THE FIRST ONE THAT CHASED ME AND
24 THEN THE OTHERS.

25 Q WERE THEY ALL -- WERE THEY MEN OR WOMEN?

26 A MEN.

1 Q WERE THEY YOUNG MEN?

2 A YES.

3 Q YOUNGER THAN YOU?

4 A I WOULDN'T BE ABLE TO TELL YOU. I WAS TRYING TO
5 DEFEND MYSELF.

6 Q YOU WEREN'T DEFENDING YOURSELF FROM THEM, WERE
7 YOU?

8 A YES.

9 Q AT THE VERY FIRST CONFRONTATION BEFORE YOU RAN
10 AWAY?

11 A YES, I SAW THEM. AND I GUESS YOU COULD SAY THEY
12 WERE YOUNGER THAN I AM.

13 Q WELL, WHERE WERE YOU WHEN YOU WERE HAVING A
14 CONVERSATION WITH HIM BEFORE YOU RAN AWAY?

15 A BESIDE HIM.

16 Q HOW CLOSE TO HIM?

17 A LIKE MAYBE HALF A YARD.

18 Q CAN YOU DESCRIBE THEM?

19 A NO.

20 Q CAN YOU -- DO YOU REMEMBER WHAT ANY OF THEM HAD
21 ON?

22 A NO.

23 Q HOW LONG DID THE CONVERSATION TAKE BEFORE YOU RAN
24 AWAY?

25 A PROBABLY LESS THAN THREE MINUTES.

26 Q DID YOU EVER SEE ANY WOMEN IN THAT GROUP?

1 A NO.

2 Q WHEN YOU GOT BACK TO WHERE THE FIGHT ULTIMATELY
3 TOOK PLACE, DID YOU EVER SEE ANY FEMALES?

4 A NO.

5 Q HOW DID THE FIGHT START WHEN YOU GOT TO YOUR
6 GIRLFRIEND'S HOUSE?

7 A THEY PUSHED ME.

8 Q HE DID OR THEY DID?

9 A HE PUSHED ME. I WAS GOING TO FALL DOWN AND I WAS
10 ABLE TO HOLD ON TO THE FENCE.

11 Q AND YOU HIT HIM?

12 A WHEN I TURNED AROUND HE HIT ME, AND THEN WE
13 STARTED FIGHTING.

14 Q SO YOU'RE TRADING BLOWS?

15 A YES. BUT THEN THE OTHER ONES GOT THERE.

16 Q ARE THEY THE SAME PEOPLE WHO WERE BEFORE, WITH
17 HIM BEFORE?

18 A YES.

19 Q SO IT'S FOUR PEOPLE FIGHTING WITH YOU?

20 A YES.

21 Q ARE YOU ON THE GROUND OR ARE YOU STANDING UP?

22 A I WAS STANDING UP.

23 Q AND WERE YOU -- DID YOU GET HURT IN THIS FIGHT
24 YOU SAID TOOK PLACE BETWEEN YOU AND MANY OTHER PEOPLE?

25 A YES, FROM MY WAIST.

26 Q FROM YOUR WAIST?

1 A YES.

2 Q DID YOU TELL THE POLICE YOU WERE INJURED?

3 A YES, I TOLD THEM I WAS HURT ON THIS SIDE. I
4 ASKED THEM TO CALL MY JOB TO INFORM THEM THAT I WOULDN'T BE
5 ABLE TO GO TO WORK THE NEXT DAY.

6 Q DID THEY TAKE ANY PICTURES OF YOU?

7 A NO, THEY DIDN'T TAKE ANY PHOTOS FROM HERE.

8 Q HOW LONG HAD THE FIGHT BEEN GOING ON BEFORE YOU
9 SAY YOU FELT SOMETHING AT YOUR NECK?

10 A ABOUT A HALF-HOUR.

11 Q HALF AN HOUR?

12 A YEAH. I DON'T REMEMBER. THERE WERE A LOT OF
13 THEM. I WASN'T TIMING THEM.

14 Q WELL, DID THE OTHERS -- DID A SEPARATE GROUP JOIN
15 THE THREE THAT WERE ALREADY THERE?

16 A YES, A CAR GOT THERE AND THEY GOT OFF THE CAR.

17 Q THAT CAR GET THERE BEFORE OR AFTER YOU FELT
18 SOMETHING AT YOUR NECK?

19 A BEFORE I FELT SOMETHING.

20 Q SO, ALL IN ALL, HOW MANY PEOPLE DO YOU SAY WERE
21 FIGHTING WITH YOU?

22 A WHEN THE OTHERS ARRIVED I DIDN'T EVEN NOTICE HOW
23 MANY THERE WERE.

24 Q WELL, YOU SAY THAT SOMETHING WAS PRESSED AGAINST
25 YOUR NECK. IT WAS PRESSED AGAINST YOUR NECK FROM BEHIND
26 YOU, WASN'T IT?

1 A YES.

2 Q AND IT WAS ALL HAPPENING VERY QUICKLY, WASN'T IT?

3 A YES, EVERYTHING HAPPENED VERY QUICKLY. HAD I
4 WAITED LONGER, THEY PROBABLY WOULD HAVE SHOT ME.

5 Q WELL, YOU SAY THAT YOU KNOCKED THE GUN OUT OF
6 SOMEBODY'S HAND?

7 A YES.

8 Q BUT THAT PERSON WAS STANDING BEHIND YOU, WEREN'T
9 THEY?

10 A YES, THAT PERSON WAS BEHIND ME.

11 Q SO YOU DON'T REALLY KNOW WHO THAT WAS; ISN'T THAT
12 TRUE?

13 A IT WAS HIM. HE IS THE ONE THAT FELL DOWN.

14 Q WELL, IF HE FELL DOWN --

15 A THERE WAS NO ONE ELSE BEHIND ME.

16 Q WHEN DID YOU LOOK AT HIM AFTER YOU FELT SOMETHING
17 ON YOUR NECK?

18 A WHEN I HIT HIM AND HE FELL BACKWARDS.

19 Q YOU HIT HIM WITH YOUR FIST?

20 A YES.

21 Q WHICH FIST?

22 A THIS ONE. (INDICATING.)

23 Q ARE YOU RIGHT OR LEFT-HANDED?

24 A AT THAT MOMENT THE ONLY THING I WANTED TO DO WAS
25 TO DEFEND MYSELF.

26 Q I UNDERSTAND. BUT A PERSON IS STANDING BEHIND

1 YOU AND YOU HIT HIM WITH YOUR RIGHT FIST?

2 A I WENT LIKE THIS. (INDICATING.)

3 Q "LIKE THIS." FOR THE RECORD --

4 A I TURNED AROUND.

5 Q -- HE APPEARS TO BE MAKING AN EFFORT WITH HIS
6 ELBOW -- I MEAN A THRUSTING MOTION OUTWARD WITH HIS ELBOW;
7 WOULD THAT BE FAIR?

8 THE COURT: I THINK SO.

9 BY MR. BROTT:

10 Q SO YOU ELBOWED HIM?

11 A NO. I TURNED AROUND.

12 HOW WOULD I HAVE BEEN ABLE TO HIT HIM? HE WAS
13 BEHIND ME NOT NEXT TO ME.

14 Q THAT'S WHAT I'M ASKING. HOW COULD YOU HIT HIM IF
15 HE WAS BEHIND YOU?

16 A BECAUSE I TURNED AROUND QUICKLY.

17 Q SO YOU NEVER ACTUALLY SAW A GUN BEFORE -- WHEN IT
18 WAS POINTED AT YOUR NECK; IS THAT TRUE?

19 A NO, I DIDN'T SEE IT. I FELT IT.

20 Q YOU JUST FELT SOMETHING ON YOUR NECK?

21 A YES, I FELT IT BEHIND ME.

22 Q AND THEN AFTERWARDS, WHEN YOU HIT THAT PERSON,
23 YOU LOOKED DOWN AND SAW A GUN ON THE GROUND; IS THAT TRUE?

24 A YES, ON THE GROUND.

25 Q AND YOU PICKED IT UP?

26 A I PICKED IT UP. WE BOTH DID.

1 Q BUT YOU GOT THE BUTT -- THE HANDLE END?

2 A YES.

3 Q AND THE -- HE HAD THE PISTOL -- THE BARREL END?

4 A YES.

5 Q YOU TOLD HIM TO LET GO AND STEP BACK?

6 A YES.

7 Q DID YOU PUT YOUR FINGER ON THE TRIGGER?

8 A NO.

9 Q BUT HE STEPPED BACK?

10 A YES.

11 Q DID YOU YELL AT HIM TO STEP BACK, GET AWAY?

12 A YES.

13 Q WHO ELSE DID YOU POINT THE GUN AT?

14 A THEY WERE ALL ON THAT SIDE, AND THEN THEY ALL
15 STEPPED BACK, AND THEN MY WIFE'S DAD ARRIVED.

16 Q SO WERE YOU POINTING THE GUN AT THE WHOLE GROUP
17 WHEN YOUR WIFE'S DAD ARRIVED?

18 A YES, BECAUSE HE ARRIVED FROM BEHIND ME.

19 Q AND DID YOU HAVE YOUR FINGER ON THE TRIGGER AT
20 THIS POINT?

21 A YES.

22 Q AND WHAT WERE YOU SAYING TO THESE PEOPLE AS YOU
23 POINTED THE GUN AT THEM?

24 A TO STEP BACK.

25 Q YOU SAID THAT TO EVERYBODY?

26 A YES.

1 Q AND YOUR GIRLFRIEND'S FATHER CAME, AND HOW DID HE
2 GET THE GUN AWAY FROM YOU?

3 A I HAD IT LIKE THIS, AND HE GOT THERE AND PULLED
4 IT OFF MY HAND. (INDICATING.)

5 Q YOU DIDN'T HAND IT TO HIM VOLUNTARILY, DID YOU?

6 A NO.

7 Q HE HAD TO TAKE IT AWAY FROM YOU?

8 A YES.

9 Q WERE YOU PLANNING TO SHOOT SOMEBODY?

10 A NO.

11 Q HAD THE DEFENDANT RUN AWAY WHEN YOUR GIRLFRIEND'S
12 FATHER GOT THERE?

13 A YES.

14 Q HE WAS ALREADY GONE?

15 A YES. I DIDN'T SEE HIM THERE ANYMORE.

16 Q HOW ABOUT THE FRIENDS THAT HE WAS -- THE PEOPLE
17 THAT HE WAS WITH WHEN THEY FIRST CONFRONTED YOU, WERE THEY
18 STILL THERE?

19 A NO, I DIDN'T SEE THEM. I DON'T REMEMBER. THEY
20 ALL RAN AFTERWARDS.

21 Q SO THESE WERE THE PEOPLE THAT CAME UP IN THE
22 TRUCK THAT WERE STILL THERE?

23 THE INTERPRETER: I'M SORRY, CAN YOU REPEAT THE
24 QUESTION?

25 BY MR. BROTT:

26 Q THE PEOPLE THAT WERE STILL THERE WHEN YOUR

1 GIRLFRIEND'S FATHER TOOK THE GUN FROM YOU, WERE THOSE THE
2 PEOPLE THAT ARRIVED IN THE TRUCK?

3 A YES.

4 Q THAT WAS A COMPLETELY SEPARATE GROUP OF PEOPLE
5 FROM THE PEOPLE YOU FIRST CONFRONTED?

6 A YES.

7 Q YOU SAID THAT YOUR GIRLFRIEND'S FATHER THEN GAVE
8 YOU THE GUN BACK?

9 A GAVE IT TO ME?

10 Q DID HE GIVE IT TO YOU?

11 A HE GAVE IT TO ME AND I THREW IT IN THE YARD.

12 Q DID YOU ASK HIM FOR IT BACK?

13 A NO. HE TOLD ME TO THROW IT IN THE YARD AT THAT
14 HOUSE.

15 Q HE HANDED YOU THE GUN AND SAID, "THROW IT"?

16 A YES.

17 Q HE DIDN'T THROW IT HIMSELF?

18 A YES, BECAUSE THE POLICE WERE THERE.

19 NO, I THREW IT.

20 Q YOU DIDN'T WANT THE POLICE TO SEE YOU WITH A GUN?

21 A WELL, SUPPOSEDLY NOT, BECAUSE IF THE POLICE GETS
22 THERE THE ONE WHO HAS THE GUN --

23 Q THE ONE WHO HAS THE GUN, WHAT?

24 A IF THEY SEE THAT PERSON POINTING.

25 Q THEY MIGHT THINK THAT THAT'S THE PERSON THAT'S
26 DANGEROUS, TRUE?

1 MR. GELLER: OBJECTION; THAT CALLS FOR SPECULATION.

2 THE COURT: OVERRULED.

3 IS THAT WHAT YOU WERE THINKING?

4 THE WITNESS: YES.

5 BY MR. BROTT:

6 Q BECAUSE RIGHT BEFORE THEN YOU HAD BEEN HOLDING
7 THIS GUN ON A LARGE GROUP OF PEOPLE WITH YOUR FINGER --

8 A YEAH, THEY WANTED THE GUN.

9 Q WITH YOUR FINGER ON THE TRIGGER.

10 A NOT AT FIRST. BUT LATER I DID BECAUSE THEY
11 WANTED TO COME FORWARD AND TAKE IT AWAY FROM ME.

12 Q WELL, WEREN'T YOU AFRAID IF YOU THREW IT AWAY IN
13 THE YARD THEY MIGHT GO GET IT?

14 A NO, THEY HAD ALREADY LEFT, THE POLICE WAS ON
15 THEIR WAY.

16 Q YOU DIDN'T WANT THE POLICE TO THINK THAT YOU WERE
17 THE AGGRESSOR, DID YOU?

18 A NO, OF COURSE NOT, BECAUSE AS SOON AS WHEN THEY
19 GOT THERE WHOEVER THEY SEE WITH THE GUN THEY'RE GOING TO
20 ARREST.

21 Q BUT AFTER YOU THREW THE GUN AWAY THEY DIDN'T
22 ARREST YOU, DID THEY?

23 A NO, THEY TOOK ME TO INVESTIGATION.

24 Q SO INSTEAD OF BECOMING -- STRIKE THAT.

25 SO INSTEAD OF GETTING INTO TROUBLE, YOU BECAME A
26 WITNESS.

1 A A WITNESS WHERE?

2 Q YOU TOLD THEM THAT YOU SAW ALL THESE THINGS
3 HAPPEN, CORRECT?

4 A YES.

5 Q AND THAT YOU HAD NOTHING WHATEVER TO DO STARTING
6 THIS FIGHT?

7 A NO.

8 Q AND EVEN THOUGH YOU ENDED UP WITH THE POINTING OF
9 IT AT EVERYBODY, YOU WERE NOT THE AGGRESSOR?

10 A NO.

11 Q THAT'S WHAT YOU TOLD THEM THOUGH, RIGHT?

12 A YES, THAT -- YES, THAT HAD JUST HAPPENED BACK
13 THEN. AND I TOLD THEM EVERYTHING THAT I SAW. RIGHT NOW
14 IT'S BEEN TWO YEARS. I DON'T KNOW IF I AM SAYING EVERYTHING
15 THAT I TOLD THEM.

16 MR. BROT: I DON'T HAVE ANYMORE QUESTIONS.

17 THE COURT: REDIRECT?

18 MR. GELLER: THANK YOU.

19 REDIRECT EXAMINATION

20 BY MR. GELLER:

21 Q MR. NIEVES, AT THE TIME THAT YOU SPOKE WITH THE
22 POLICE, WHICH WAS THE NIGHT THAT THIS ALL HAPPENED, WAS
23 EVERYTHING FRESHER IN YOUR MIND THAN IT IS HERE IN COURT
24 RIGHT NOW?

25 A YES.

26 Q WERE YOU BEING TRUTHFUL WITH THE POLICE OFFICERS

1 WHEN YOU TOLD THEM ABOUT WHAT HAPPENED?

2 A I TOLD THEM ALL THE TRUTH.

3 Q OKAY. SO THAT WE'RE PERFECTLY CLEAR, DID YOU SEE
4 THIS PERSON SEATED HERE, THE DEFENDANT IN THE BLUE SHIRT,
5 POINTING THE GUN AT YOUR NECK DURING THIS FIGHT?

6 MR. BROTT: OBJECTION; ASKED AND ANSWERED.

7 THE COURT: OVERRULED.

8 THE WITNESS: YES.

9 BY MR. GELLER:

10 Q WERE YOU OUT THERE BY YOURSELF? IN OTHER WORDS,
11 DID YOU HAVE ANYBODY TO HELP YOU AGAINST THIS GROUP OF
12 PEOPLE?

13 A NOT AT THAT TIME.

14 THE COURT: SEE, I DON'T KNOW WHAT QUESTION HE
15 ANSWERED, THE QUESTION "BY YOURSELF" OR THE "DID YOU HAVE
16 ANYBODY TO HELP YOU?" BUT IT'S YOUR RECORD, MR. GELLER.

17 THE WITNESS: NOT AT THAT MOMENT UNTIL MY FATHER-IN-LAW
18 GOT THERE.

19 BY MR. GELLER:

20 Q WAS IT WHEN YOUR FATHER-IN-LAW ARRIVED BY YOUR
21 SIDE WAS THAT THE POINT WHERE YOU NOW HAD SOME HELP?

22 A YES.

23 Q DID YOU OR DID YOU NOT TELL ONE OF THE POLICE
24 OFFICERS THAT INTERVIEWED YOU ON THE NIGHT OF THE INCIDENT
25 THAT THE DEFENDANT TOLD YOU IN SPANISH THAT HE WAS FROM
26 LA TROPA?

1 A YES.

2 Q HAD THE DEFENDANT RUN AWAY BEFORE OR AFTER
3 SOMEBODY WAS ASKING YOU FOR THE GUN BACK?

4 MR. BROTT: OBJECTION; ASKED AND ANSWERED THREE TIMES.

5 THE COURT: SUSTAINED.

6 MR. GELLER: I HAVE NOTHING FURTHER.

7 MR. BROTT: NOTHING FURTHER.

8 THE COURT: MAY THE WITNESS BE EXCUSED?

9 MR. BROTT: YES.

10 THE COURT: ALL RIGHT WITH YOU, MR. GELLER?

11 MR. GELLER: THAT'S FINE.

12 THE COURT: ALL RIGHT. MR. JAIMES NIEVES, THANK YOU
13 VERY MUCH FOR YOUR TESTIMONY. YOU'RE EXCUSED FROM THIS
14 TRIAL.

15 LADIES AND GENTLEMEN, I'M GOING TO RECESS WITH
16 YOU. I NEED ABOUT 20 MINUTES, BECAUSE I HAVE TO USE TEN OF
17 THEM WITH THE LAWYERS. PLEASE, DURING THIS PERIOD OF
18 RECESS, DO NOT CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE
19 ON ANY SUBJECT CONNECTED WITH THE TRIAL. PLEASE DON'T FORM
20 OR EXPRESS AN OPINION ON THE CASE.

21 I WANT TO BE SURE TO FACTOR IN A BREAK FOR THE
22 REPORTER. SO, IF YOU COME BACK AT 11:25, WE'LL WORK UNTIL
23 NOON STARTING THEN.

24 (JURY EXCUSED.)

25 (THE FOLLOWING PROCEEDINGS WERE HAD IN
26 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

1 THE COURT: MR. JAIMES NIEVES, BOTH ATTORNEYS ARE
2 AGREEING THAT YOU CAN BE EXCUSED NOW. SO, THEY'RE TELLING
3 ME THEY DON'T EXPECT TO NEED YOU BACK. IF THEY WANT YOU TO
4 COME BACK, THEY'LL CONTACT YOU AGAIN AND PROBABLY SERVE YOU
5 WITH A NEW SUBPOENA. I THINK YOU HAVE FINISHED YOUR
6 TESTIMONY. SO, ABSENT SOMETHING UNUSUAL HAPPENING THAT I
7 CANNOT FORESEE, YOU'RE FREE TO GO.

8 THE WITNESS: JUST, IF THEY NEED ME AGAIN, IF THEY CAN
9 GIVE ME ABOUT THREE DAYS NOTICE.

10 THE COURT: I DON'T KNOW THAT THEY'D BE ABLE TO DO
11 THAT. BUT WE'RE NOT GOING TO WORRY ABOUT IT RIGHT NOW. YOU
12 CAN GO BACK TO WORK.

13 THE WITNESS: THANK YOU.

14 THE COURT: THANK YOU.

15 (PAUSE IN PROCEEDINGS.)

16 THE COURT: ALL RIGHT. BEFORE WE BROUGHT THE JURY IN,
17 MR. GELLER, YOU GAVE ME 12 POLAROID PHOTOGRAPHS, MOST OF
18 THEM LOOK TO BE TAKEN AT THE SAME TIME AND PLACE. YOU WERE
19 PLANNING TO MARK EACH AND EVERY ONE OF THESE?

20 MR. GELLER: I WAS.

21 THE COURT: ALL RIGHT. THE COURT WAS CONFUSED BECAUSE
22 IN OUR CONFERENCE BEFORE WE BEGAN THE TRIAL WHEN I ASKED YOU
23 FOR A SUMMARY OF THE FACTS OF THIS CASE SO THAT WE COULD
24 THEN IDENTIFY THE ISSUES THAT NEEDED TO BE ADDRESSED BEFORE
25 TRIAL, YOU TOLD ME THAT THIS INVOLVED THE SHOOTING OF A
26 DRIVER OF A VEHICLE IN THE BACK OF THE HEAD AND YOU

1 SPECIFICALLY SAID THAT THE DRIVER WASN'T A GANG MEMBER.

2 DO YOU RECALL THAT CONVERSATION.

3 MR. GELLER: I DO.

4 THE COURT: AND SO CERTAINLY I WAS A LITTLE TAKEN ABACK
5 WHEN NOW YOU ARE SEEKING TO INTRODUCE EVIDENCE THAT THE
6 VICTIM IN THIS CASE IS A GANG MEMBER. CAN YOU EXPLAIN AND
7 HELP ME UNDERSTAND THAT A LITTLE BIT.

8 MR. GELLER: I'M NOT SEEKING TO INTRODUCE EVIDENCE THAT
9 HE'S A GANG MEMBER OR AN ACTIVE PARTICIPANT IN A CRIMINAL
10 STREET GANG.

11 THE COURT: THEN WHAT WOULD BE THE RELEVANCE OF THESE
12 PHOTOGRAPHS?

13 MR. GELLER: I BELIEVE THAT INVESTIGATOR RONDOU, IF
14 ALLOWED TO TESTIFY TO THE FACTS CONCERNING THE VICTIM, WOULD
15 STATE THAT THE VICTIM MAY, BASED UPON FINDING THOSE
16 PHOTOGRAPHS IN HIS ROOM, IN THE VICTIM'S ROOM, BE A WANNABE
17 WEST MYRTLE GANGSTER, ASSOCIATE WITH WEST MYRTLE. CLEARLY,
18 HE'S THROWING WEST MYRTLE GANG SIGNS IN THE PHOTOGRAPHS THAT
19 HE CHOSE TO MEMORIALIZE BY KEEPING THEM IN HIS BEDROOM.
20 THIS CRIME OCCURRED IN WEST MYRTLE-TERRITORY. AND CLEARLY
21 THERE WAS SOME INTERACTION BETWEEN THE SHOOTER AND THE
22 VICTIM PRIOR TO THE VICTIM BEING SHOT.

23 THE COURT: SO WHEN YOU TOLD ME THAT THE VICTIM WAS NOT
24 A GANG MEMBER YOU MEANT HE WAS REALLY A WANNABE?

25 MR. GELLER: WELL, I USE --

26 THE COURT: I'M TRYING TO UNDERSTAND WHY I WAS GIVEN TO

1 BELIEVE THAT WE WERE DEALING WITH A VICTIM WHO WAS NOT
2 RELATED TO ANY GANG.

3 MR. GELLER: WELL, IF I MISLED THE COURT, I APOLOGIZE.
4 BUT I USE "GANG MEMBER" OR "ACTIVE PARTICIPANT" AS A TERM OF
5 ART. WHEN I DO THAT, I'M GOING TO ASK A GANG INVESTIGATOR
6 WHETHER THE VICTIM OR WITNESS IS A GANG MEMBER OR ACTIVE
7 PARTICIPANT.

8 THE COURT: WHAT IS THE RELEVANCE TO ANY ISSUE OF THIS
9 TRIAL OF THE VICTIM THROWING WEST MYRTLE GANG SIGNS?

10 MR. GELLER: THAT WOULD PROVIDE THE MOTIVATION FOR THE
11 SHOOTING; THAT THE CRIME WAS CONDUCTED FOR THE BENEFIT OF,
12 AT THE DIRECTION OF, OR IN ASSOCIATION WITH; AND, WITH A
13 SPECIFIC INTENT TO PROMOTE, FURTHER, OR ASSIST CRIMINAL
14 CONDUCT ON BEHALF OF F-TROOP. IN OTHER WORDS, SHOOTING AT
15 SOMEBODY WHO AT LEAST ASSOCIATES WITH A RIVAL GANG IS PRETTY
16 STRONG EVIDENCE THAT THIS WAS A GANG-MOTIVATED CRIME.

17 THE COURT: DO YOU WANT TO BE HEARD FURTHER?

18 MR. BROT: WELL, FIRST OF ALL, THEY'D HAVE TO KNOW
19 ABOUT THESE PICTURES, I SUPPOSE, IN HIS BEDROOM. AND WHICH
20 CLEARLY THEY WOULDN'T. SECOND OF ALL, I THINK MY OBJECTIONS
21 WERE THEY'RE IRRELEVANT AND 352. I'LL SUBMIT IT ON WHAT I
22 ALREADY SAID.

23 THE COURT: MR. GELLER, DOING A TRIAL WITH YOU IS LIKE
24 A VISIT TO DISNEYLAND FOR ME. THERE'S TOMORROW LAND, WHICH
25 IS THE ONLY PLACE I EXPECT YOU TO READ THE EVIDENCE CODE OR
26 CASE LAW. THERE'S MIND FIELDS AND ADVENTURE LAND. AND

1 SOMETIMES I FEEL LIKE I'M IN FANTASY LAND ON MR. TOAD'S WILD
2 RIDE BECAUSE I DID NOT EXPECT THIS. IT WAS CERTAINLY NOT
3 WHAT WAS REPRESENTED TO ME.

4 ON THE OTHER HAND, MR. BROTT, IF THE VICTIM IN
5 THIS CASE WAS IN SOME WAY AFFILIATED WITH A GANG, THEN
6 EVIDENCE OF THAT AFFILIATION WOULD GO TO, I THINK,
7 PREMEDITATION AND DELIBERATION. NOW, MR. GELLER DOESN'T
8 MAKE THAT ARGUMENT, BUT THAT IS CERTAINLY AN ISSUE IN THIS
9 CASE.

10 AND, CERTAINLY, IF THE VICTIM WERE IDENTIFYING
11 HIMSELF WITH WHAT THE EXPERT IS EXPECTED TO TESTIFY IS A
12 RIVAL GANG, THEN THE EVIDENCE OF THAT IDENTIFICATION WOULD
13 BE COMPELLING IN TERMS OF DETERMINING THE DEFENDANT'S GUILT
14 WITH RESPECT TO THE 186.22 ALLEGATIONS IN THE INFORMATION.

15 THE FACTS THAT WERE REPRESENTED TO ME WHEN WE
16 SPOKE IN CHAMBERS WERE THAT F-TROOPERS ON BICYCLES WERE
17 GOING TO WEST F-TROOP TERRITORY, THROUGH WEST MYRTLE. I
18 DON'T KNOW IF THAT'S ACCURATE OR NOT BECAUSE WE HAVEN'T HAD
19 THE TESTIMONY YET ABOUT WHAT THE VARIOUS TERRITORIES ARE AND
20 WHERE THE STREETS FALL, OR, IF WE HAVE, I MIGHT HAVE PUT IT
21 OUT OF MY MIND OVER THE LONG WEEKEND.

22 BUT, IN ANY EVENT, THE PHOTOGRAPHS DO APPEAR TO
23 BE RELEVANT TO THE ISSUES IN THIS CASE AS I HAVE HERETOFORE
24 SAID. AND, THEREFORE, I DO FIND THAT THEY ARE MORE
25 PROBATIVE ON THE ISSUES OF THE DEFENDANT'S GUILT OR
26 INNOCENCE THAN PREJUDICIAL. AND IF THE FOUNDATION FOR

1 ADMISSIBILITY IS PROPERLY LAID, I THINK THAT THEY ARE
2 ADMISSIBLE.

3 SO, THAT BEING SAID, I WOULD EXPECT MR. GELLER --
4 AND I WILL RETURN THESE PHOTOGRAPHS TO HIM -- TO INQUIRE OF
5 HIS NEXT EXPERT CONCERNING THE SEARCH OF THE VICTIM'S HOME.

6 WE'RE IN RECESS UNTIL 11:25.

7 (RECESS.)

8 (THE FOLLOWING PROCEEDINGS WERE HAD IN
9 OPEN COURT IN THE PRESENCE OF THE JURY:)

10 THE COURT: WE'RE ALL TOGETHER ONCE AGAIN.

11 MR. GELLER, YOU MAY CALL YOUR NEXT WITNESS.

12 MR. GELLER: THANK YOU. WITH THE COURT'S PERMISSION,
13 THE PEOPLE CALL DETECTIVE JEFF LAUNI WITH THE SANTA ANA
14 POLICE DEPARTMENT.

15 THE BAILIFF: STEP TO THE EDGE OF COUNSEL TABLE, RAISE
16 YOUR RIGHT HAND AND FACE THE CLERK.

17 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
18 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
19 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
20 TRUTH, SO HELP YOU GOD?

21 THE WITNESS: I DO.

22 THE CLERK: PLEASE STATE YOUR NAME FOR THE RECORD.

23 THE WITNESS: JEFF LAUNI: L-A-U-N-I.

24 THE CLERK: THANK YOU.

25 THE COURT: YOU MAY INQUIRE.

26 MR. GELLER: THANK YOU.

1 JEFF LAUNI,
2 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
3 EXAMINED AND TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. GELLER:

6 Q GOOD MORNING, DETECTIVE LAUNI.

7 HOW LONG HAVE YOU BEEN A SANTA ANA POLICE
8 OFFICER?

9 A OVER 20 YEARS.

10 Q PRESENTLY ASSIGNED TO WHAT?

11 A THE INVESTIGATIONS DIVISION, CRIMES AGAINST
12 PERSONS UNIT, WORKING THE GANG DETAIL.

13 Q PART OF YOUR JOB AS A GANG INVESTIGATOR IS TO
14 ATTEND AUTOPSIES; IS THAT CORRECT?

15 A YES, QUITE OFTEN.

16 Q OKAY. WHAT I WANT TO TALK TO YOU ABOUT
17 SPECIFICALLY IS ATTENDING THE AUTOPSY RELATING TO THIS CASE.
18 YOU WENT TO THE SHERIFF-CORONER'S OFFICE ON AUGUST 11TH; IS
19 THAT CORRECT?

20 A YEAH.

21 Q THAT WOULD BE OF 2004?

22 A YES.

23 Q AND YOU ATTENDED THE AUTOPSY OF THE DECEDENT IN
24 THIS CASE A GENTLEMAN BY THE NAME OF JAVIER ROSARIO; IS THAT
25 CORRECT?

26 A YES.

1 Q WHAT TIME DID THAT AUTOPSY TAKE PLACE?

2 A WAS IN THE MORNING, APPROXIMATELY NINE A.M. OR
3 THEREABOUTS.

4 Q YOU AS A POLICE OFFICER, WHY DO YOU GO TO
5 AUTOPSIES?

6 A WE TYPICALLY ATTEND AND WITNESS AUTOPSIES TO DO
7 JUST THAT, WITNESS ANY UNUSUAL PHENOMENON ON OR ABOUT THE
8 BODY, TO WITNESS THE REMOVAL OR RECOVERY OF ANY EVIDENCE
9 POSSIBLY FROM A BODY, AND TO OBTAIN CAUSE OF DEATH FROM THE
10 FORENSIC PATHOLOGIST.

11 Q AND IN THIS CASE YOU DID OBSERVE THE AUTOPSY.

12 ARE YOU DOING IT FROM, LIKE, AN OBSERVATION AREA
13 UP ABOVE OR ARE YOU STANDING NEXT TO THE PATHOLOGIST; HOW
14 DOES THAT TAKE PLACE?

15 A AT THIS PARTICULAR FACILITY AT THE TIME, IN 2004,
16 WE WERE BASICALLY NEXT TO THE AUTOPSY TABLE. THERE WAS A
17 GLASS PARTITION BETWEEN US. SO, BASICALLY, ABOUT FROM ME TO
18 THE COURT REPORTER, AND IN FULL COMMUNICATION WITH THE
19 AUTOPSY TEAM.

20 Q FOR THE RECORD, THAT'S PROBABLY THREE OR FOUR
21 FEET AWAY; IS THAT ABOUT RIGHT?

22 A MORE OR LESS, YES.

23 Q OKAY. AND YOU HAD AN OPPORTUNITY TO OBSERVE
24 WHICH DOCTOR CONDUCTED THIS AUTOPSY?

25 A I MAY HAVE TO LOOK AT MY REPORT. AS I RECALL, IT
26 WAS DR. HALAKA. H-A-L-A-K-A, I THINK, IS HOW HE SPELLS HIS

1 NAME.

2 Q DID YOU HAVE AN OPPORTUNITY TO OBSERVE -- I THINK
3 IT'S DR. HALKA, ACTUALLY.

4 A ACTUALLY, YES, I THINK IT IS. I MISPRONOUNCED
5 IT.

6 Q DR. HALKA EXAMINED MR. ROSARIO'S HEAD?

7 A EVENTUALLY, YES.

8 Q AND DID YOU SEE THE DOCTOR TAKE ANYTHING OUT OF
9 THE DEFENDANT'S HEAD, ANY FOREIGN MATERIAL?

10 A YES.

11 MR. GELLER: YOUR HONOR, WITH THE COURT'S PERMISSION,
12 I'D LIKE TO MARK THIS NEXT EXHIBIT AS PEOPLE'S 15 FOR
13 IDENTIFICATION.

14 THE COURT: ALL RIGHT.

15 (WHEREUPON, EXHIBIT NO. 15 IS MARKED
16 FOR IDENTIFICATION.)

17 BY MR. GELLER:

18 Q INVESTIGATOR LAUNI, I'M GOING TO GIVE YOU AN
19 ENVELOPE HERE, ALREADY BEEN OPENED ON THE VERY BOTTOM. I'D
20 LIKE YOU TO DESCRIBE THE ENVELOPE FIRST. YOU CAN GO AHEAD
21 AND OPEN IT UP AND TELL US WHAT'S IN IT AND WHETHER OR NOT
22 YOU RECALL WHAT THAT IS.

23 A THIS IS AN ORANGE COUNTY SHERIFF'S EVIDENCE
24 ENVELOPE, NOTHING MORE THAN A SMALL MANILA ENVELOPE WITH
25 PARTICULAR MARKINGS ON IT. IT'S AN EVIDENCE ENVELOPE
26 ORIGINALLY SEALED WITH EVIDENCE TAPE. IT'S UPSIDE DOWN HERE

1 AND, IN THIS CASE, A BIO-HAZARD STICKER BECAUSE OF WHAT WAS
2 PACKAGED IN IT.

3 ON THE REVERSE SIDE THERE'S AN EVIDENCE TAG, A
4 SHERIFF'S EVIDENCE TAG, SHERIFF'S DEPARTMENT EVIDENCE TAG,
5 AND THEN A SANTA ANA P.D. EVIDENCE TAG. THE EVIDENCE TAG OR
6 TAGS LIST WHAT THE ENVELOPE CONTAINS AND A CHAIN OF CUSTODY.
7 THE EVIDENCE CHAIN OF CUSTODY IS RECORDED EVERY TIME IT
8 CHANGES HANDS OR SOMEBODY ELSE HANDLES IT, DATE, TIME, AND
9 THAT KIND OF THING.

10 Q ON THE EVIDENCE TAG ITSELF IS YOUR NAME LISTED
11 ANYWHERE?

12 A YES.

13 Q WHERE IS THAT?

14 A MY NAME IS ON THE SHERIFF'S TAG RIGHT HERE. AND
15 IT HAS MY NAME, WHO I RECEIVED THE ENVELOPE FROM ORIGINALLY,
16 DATE AND TIME, AND THEN WHO I EVENTUALLY REMANDED THE
17 ENVELOPE TO ONCE I BROUGHT IT BACK TO THE SANTA ANA POLICE
18 DEPARTMENT FROM THE SHERIFF'S DEPARTMENT.

19 Q WHEN YOU SAY "RIGHT HERE," WHAT YOU'VE DONE IS
20 TAKEN THE SECOND TAG CLOSEST TO THE ENVELOPE AND I THINK
21 YOUR NAME IS PROBABLY ON THE FIRST LINE; IS THAT ACCURATE?

22 A YES.

23 Q SO, ESSENTIALLY, WHAT THAT MEANS IS YOU'RE THE
24 FIRST PERSON TO OBTAIN THE EVIDENCE; IS THAT RIGHT?

25 A WELL, FROM THE EVIDENCE TECHNICIAN OF THE
26 SHERIFF'S DEPARTMENT, YES.

1 Q SO, IN OTHER WORDS, THE DOCTOR GIVES --
2 ULTIMATELY WHAT'S INSIDE THAT IS A BULLET, RIGHT?

3 A YES.

4 Q THE DOCTOR GIVES THE BULLET TO A SHERIFF'S
5 CRIMINALIST WHO, IN TURN, THEN ULTIMATELY GAVE IT TO YOU ON
6 THE DATE OF THE AUTOPSY?

7 A THE DOCTOR RETRIEVES THE BULLET FROM THE VICTIM,
8 REMANDS IT TO THE CUSTODY OF THE CRIMINALIST, WHO IS A
9 MEMBER OF THE AUTOPSY TEAM. THE CRIMINALIST PACKAGES IT
10 RIGHT THERE IN THE AUTOPSY, OR, DURING THOSE PROCESSES,
11 BOOKS IT INTO THE EVIDENCE SECTION AT THE
12 SHERIFF'S DEPARTMENT. AND, THEN, I WENT TO THE SHERIFF'S
13 EVIDENCE SECTION AND OBTAINED THIS ENVELOPE FROM AN EVIDENCE
14 TECHNICIAN.

15 Q AND WHEN THE INITIAL FORENSIC SCIENTIST FROM THE
16 SHERIFF'S DEPARTMENT BOOKED THE BULLET WERE YOU PRESENT?

17 A NOT WHEN HE PHYSICALLY BOOKED IT. I WAS PRESENT
18 WHEN HE SEALED IT, PACKAGED IT. I DID NOT WITNESS HIM DROP
19 IT IN AN EVIDENCE LOCKER OR ANYTHING LIKE THAT.

20 Q AND YOU SAW THE BULLET ACTUALLY COME OUT OF THE
21 BODY?

22 A YES.

23 Q IF YOU WOULDN'T MIND OPENING IT UP, PLEASE, AND
24 CONFIRMING THAT THAT IS IN FACT THE BULLET THAT YOU SAW COME
25 OUT OF MR. ROSARIO.

26 A (WITNESS COMPLIES.)

1 WE HAVE A SMALL ENVELOPE INSIDE THE LARGE
2 ENVELOPE. AND THE BULLET IN THE ORIGINAL -- I'M NOT SURE
3 WHAT YOU WOULD CALL IT -- BUT THIS ROUND PIECE OF PAPER THAT
4 THEY ACTUALLY PLACE IT IN IN THE AUTOPSY ROOM. AND IT
5 APPEARS TO BE THE SAME BULLET THAT I SAW ON THE DAY OF THE
6 AUTOPSY.

7 Q OKAY. WOULD YOU MIND HOLDING IT UP, PLEASE. GO
8 AHEAD AND DESCRIBE WHAT YOU SEE THERE FOR THE RECORD.

9 A IT'S A BULLET THAT, IN MY BEST ESTIMATE AT THE
10 TIME OF THE AUTOPSY, APPEARED TO BE OF A .38 OR .357
11 CALIBER.

12 MR. BROTT: OBJECTION; NO FOUNDATION.

13 THE COURT: SUSTAINED.

14 BY MR. GELLER:

15 Q YOU CAN AVOID THE CALIBER AND JUST TALK ABOUT
16 WHAT YOU SEE. JUST DESCRIBE IT.

17 MR. BROTT: MOVE TO STRIKE.

18 THE WITNESS: COPPER JACKETED -- ROUND COPPER JACKETED
19 LEAD ROUND AND IT'S MUSHROOMED SOMEWHAT. THIS IS THE -- I'M
20 HOLDING UP THE BASE OF THE BULLET THAT SHOWS THE COPPER.

21 THE HEAD OF THE BULLET IS MUSHROOMED BACK AND
22 SHOWS LEAD. THERE ARE LANDS AND GROOVES VISIBLE ON THE BASE
23 PORTION OF THE BULLET. SOMEWHAT DISTORTED BUT AN
24 INSPECTABLE ROUND, I WOULD SAY, COMPARED TO A LOT OF OTHERS
25 I'VE SEEN.

26 THE COURT: ALL RIGHT. AT THIS POINT I DO NEED TO

1 GRANT THE MOTION TO STRIKE TESTIMONY CONCERNING THE CALIBER
2 OF THE BULLET. IF THE INVESTIGATOR SAID IT WAS A .38 OR
3 .357 CALIBER THAT IS STRICKEN NOW.

4 NEXT QUESTION, PLEASE.

5 BY MR. GELLER:

6 Q AND YOU'VE SEEN BULLETS IN THIS CONDITION MANY
7 TIMES IN THE PAST, INVESTIGATOR LAUNI?

8 A YES. NOT ONLY REMOVED FROM VICTIMS, BUT BULLETS
9 ON THE STREET OR AT CRIME SCENES THAT HAVE IMPACTED THINGS
10 AND FALLEN DOWN THAT WE'VE RECOVERED AS EVIDENCE, I WOULD
11 SAY, SEVERAL HUNDRED TIMES.

12 Q VERY WELL. THANK YOU.

13 THE COURT: CROSS-EXAMINATION?

14 MR. BROTT: NO QUESTIONS.

15 THE COURT: MAY THE WITNESS BE EXCUSED?

16 MR. GELLER: YES.

17 THE COURT: ALL RIGHT WITH YOU, MR. BROTT?

18 MR. BROTT: YES.

19 THE COURT: THANK YOU VERY MUCH, INVESTIGATOR, FOR YOUR
20 TESTIMONY. AND YOU ARE EXCUSED FROM THE TRIAL.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 THE COURT: DO YOU WANT TO HAND ME THE EXHIBIT, PLEASE,
23 AND I'LL PASS IT TO THE CLERK.

24 THANKS.

25 NEXT WITNESS.

26 MR. GELLER: YOUR HONOR, I HAVE A STIPULATION TO ENTER

1 INTO. I'D ASK THIS BE MARKED AS PEOPLE'S 16 FOR
2 IDENTIFICATION.

3 THE COURT: VERY WELL.

4 (WHEREUPON EXHIBIT NO. 16 IS MARKED
5 FOR IDENTIFICATION.)

6 MR. GELLER: MAY I READ IT TO THE JURY AT THIS TIME?

7 THE COURT: ANY OBJECTION?

8 MR. BROTT: NO.

9 THE COURT: GO AHEAD.

10 MR. GELLER: LADIES AND GENTLEMEN, IT IS HEREBY
11 STIPULATED BY THE PARTIES THAT:

12 "IF CALLED AS A WITNESS IN THIS CASE,
13 ROCKY EDWARDS, A FIREARMS EXAMINER EMPLOYED
14 BY THE SANTA ANA POLICE DEPARTMENT, WOULD
15 TESTIFY THAT HE IS A QUALIFIED FIREARMS AND
16 BALLISTICS EXPERT, HE'S TESTIFIED IN
17 NUMEROUS SUPERIOR COURT CASES AND IS
18 QUALIFIED TO PROVIDE EXPERT OPINION
19 TESTIMONY.

20 "HE EXAMINED THE FIREARM, A LLAMA .357
21 REVOLVER, RECOVERED ON 8/10/04 BY SANTA ANA
22 POLICE DEPARTMENT CSI OFFICER L. CORREA, AT
23 2010 WEST 12TH STREET, AND BOOKED INTO
24 EVIDENCE UNDER CASE NO. 04-34210.
25 ADDITIONALLY, HE EXAMINED THE BULLET THAT
26 WAS REMOVED FROM PEDRO ROSARIO'S HEAD DURING

1 AN AUTOPSY THAT WAS CONDUCTED AT THE ORANGE
2 COUNTY SHERIFF-CORONER'S OFFICE, WITNESSED
3 BY SANTA ANA POLICE INVESTIGATOR JEFF LAUNI,
4 WHO BOOKED THE BULLET INTO EVIDENCE UNDER
5 CASE NUMBER 0434206. AFTER CONDUCTING THE
6 APPROPRIATE TESTS, BASED UPON HIS TRAINING
7 AND EXPERIENCE, HE HAS THE OPINION THAT THE
8 BULLET RECOVERED BY INVESTIGATOR LAUNI WAS
9 FIRED FROM THE LLAMA .357 REVOLVER RECOVERED
10 BY CSI OFFICER CORREA."

11 STIPULATED BY THE PEOPLE.

12 MR. BROTT: STIPULATED BY THE DEFENSE.

13 THE COURT: COURT ACCEPTS THE STIPULATION.

14 NEXT WITNESS.

15 MR. GELLER: THANK YOU. WE CALL INVESTIGATOR ASHBY,
16 WITH THE COURT'S PERMISSION.

17 THE BAILIFF: FACE THE CLERK ON YOUR LEFT, RAISE YOUR
18 RIGHT HAND TO BE SWORN.

19 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
20 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
21 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
22 TRUTH, SO HELP YOU GOD.

23 THE WITNESS: YES.

24 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

25 THE WITNESS: RICHARD A. ASHBY: A-S-H-B-Y.

26 THE COURT: YOU MAY INQUIRE.

1 MR. GELLER: THANK YOU.

2 RICHARD ASHBY,

3 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
4 EXAMINED AND TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. GELLER:

7 Q INVESTIGATOR ASHBY, HOW LONG HAVE YOU BEEN A
8 SANTA ANA POLICE OFFICER?

9 A IT'S DETECTIVE ASHBY.

10 I'VE BEEN A POLICE OFFICER FOR 20 YEARS.

11 Q WHAT IS -- YOUR PRESENT ASSIGNMENT IS WHAT, SIR?

12 A PRESENTLY SUPERVISOR IN CHARGE OF THE GRAFFITI
13 TASK FORCE.

14 Q IS THAT ASSOCIATED WITH THE GANG UNIT?

15 A SOMEWHAT, YEAH.

16 Q HAVE YOU WORKED IN THE GANG UNIT IN THE PAST?

17 A YES, I HAVE.

18 Q HOW LONG DID YOU WORK AS A GANG DETECTIVE?

19 A ALMOST 12 YEARS.

20 Q WHEN DID YOU START WORKING IN THE GRAFFITI TASK
21 FORCE?

22 A LAST MONTH, I BELIEVE IT WAS.

23 Q WHAT I'D LIKE TO TALK TO YOU ABOUT, SIR, IS YOUR
24 ROLE IN AN INVESTIGATION OF A HOMICIDE THAT OCCURRED ON
25 AUGUST 10TH, 2004. ALL RIGHT?

26 DID YOU ASSIST IN SEARCHING THE VICTIM'S HOUSE?

1 THE VICTIM WAS PEDRO ROSARIO.

2 A YES, I ASSISTED IN SEARCHING HIS ROOM. HE WAS
3 RENTING A ROOM IN A TRAILER, A TRAILER PARK, NEXT TO WHERE
4 THE INCIDENT OCCURRED.

5 Q WHEN DID THAT SEARCH TAKE PLACE?

6 A THAT NIGHT.

7 Q AND DID YOU FIND SOME POLAROID PHOTOGRAPHS IN THE
8 VICTIM'S ROOM?

9 A YES, WE DID.

10 Q DO YOU REMEMBER HOW MANY THERE WERE?

11 A I DON'T REMEMBER HOW MANY.

12 Q IF I SHOWED THEM TO YOU, DO YOU THINK YOU WOULD
13 BE ABLE TO AUTHENTICATE THEM?

14 A YES.

15 Q WITH THE COURT'S PERMISSION, I'D LIKE TO MARK
16 THESE AS PEOPLE'S 17A THROUGH M, IF THAT'S OKAY. UNLESS
17 YOU'D PREFER 17 THROUGH 28?

18 THE COURT: DOESN'T MATTER. "A" THROUGH "M" IS FINE.

19 MR. GELLER: OKAY.

20 (WHEREUPON, EXHIBIT NO. 17A THROUGH M
21 IS MARKED FOR IDENTIFICATION.)

22 BY MR. GELLER:

23 Q I'M NOT GOING TO PUT ALL THE NUMBERS ON IT RIGHT
24 NOW, DETECTIVE ASHBY. I'D LIKE YOU TO TAKE A LOOK AT THOSE.
25 TAKE AS MUCH TIME AS YOU NEED TO REFRESH YOUR MEMORY.

26 Q DID YOU RECOVER THOSE POLAROID FROM THE VICTIM'S

1 BEDROOM?

2 A YES.

3 Q DO YOU RECALL SPECIFICALLY WHERE THEY WERE IN THE
4 ROOM?

5 A I DON'T RECALL SPECIFICALLY, BUT IT WAS IN THE
6 ROOM THAT HE RENTED. AND HE LIVED THERE. HE OCCUPIED THAT
7 ROOM BY HIMSELF, ACCORDING TO THE PEOPLE HE RENTED THE ROOM
8 FROM.

9 MR. BROT: OBJECTION; HEARSAY. MOVE TO STRIKE IT AS
10 WITHOUT FOUNDATION.

11 THE COURT: YES, SUSTAINED. AND THE -- THAT PART OF
12 THE ANSWER ABOUT INFORMATION FROM THE PEOPLE HE RENTED THE
13 ROOM FROM, THAT'S STRICKEN. THE JURY WILL DISREGARD IT.

14 AS TO THE FIRST PART OF THE ANSWER WHERE THE
15 INVESTIGATOR DOESN'T RECALL SPECIFICALLY WHERE IN THE ROOM
16 HE RECOVERED THE ITEM -- THE ITEMS, THAT REMAINS.
17 BY MR. GELLER:

18 Q HOW DID YOU FIND YOUR WAY TO THIS PARTICULAR
19 BEDROOM THAT DAY, IF YOU RECALL?

20 A WE WERE DIRECTED THERE BY THE PEOPLE THAT LIVED
21 IN THE TRAILER.

22 Q AND WAS THERE ANY OTHER INDICIA OF OCCUPANCY FOR
23 THAT SPECIFIC BEDROOM THAT TIED IN TO THE VICTIM IN THIS
24 CASE PEDRO ROSARIO, OTHER THAN THESE PHOTOGRAPHS?

25 A I DON'T RECALL.

26 Q WHAT I'D FINALLY LIKE TO TALK TO YOU ABOUT IS A

1 BRIEF INTERVIEW YOU HAD OR AN INTERVIEW YOU HAD WITH A
2 STEVE GARCIA THAT TOOK PLACE ON AUGUST 10TH OF 2004, THE DAY
3 OF THE HOMICIDE.

4 DO YOU RECALL THAT INTERVIEW?

5 A YES.

6 Q DO YOU REMEMBER WHERE THAT INTERVIEW TOOK PLACE?

7 A I'D HAVE TO LOOK AT THE REPORT. I BELIEVE IT WAS
8 AT THE POLICE STATION.

9 Q OKAY. I JUST WANT TO FOCUS YOUR ATTENTION ON ONE
10 SPECIFIC PORTION OF THE INTERVIEW, AND THAT DEALT WITH WHEN
11 MR. GARCIA WAS TALKING TO YOU ABOUT WHETHER OR NOT HE SAW A
12 VEHICLE, A SMALL BLUE VEHICLE, MAKE A U-TURN AS IT WAS
13 HEADING NORTHBOUND ON SULLIVAN STREET THROUGH THE WILLITS
14 INTERSECTION.

15 DO YOU RECALL THAT PORTION OF THE INTERVIEW?

16 A YES.

17 Q WHAT SPECIFICALLY DID MR. GARCIA TELL YOU ABOUT
18 THAT?

19 A TOLD ME HE SAW A SMALL BLUE VEHICLE NORTHBOUND ON
20 SULLIVAN. TOLD ME HE WAS STANDING AT THE FRONT OF HIS
21 PARENTS' LUNCH TRUCK THAT WAS PARKED ON SULLIVAN SOUTH OF
22 WILLITS ALONG THE WEST CURB. AND AS THE CAR WENT BY HIM HE
23 HEARD A SINGLE GUNSHOT AND RAN TO THE BACK OF THE TRUCK TO
24 SEE WHAT HAPPENED. AND HE SAID THE BLUE CAR MADE A U-TURN
25 AND WAS HEADED SOUTHBOUND ON SULLIVAN.

26 AND I CLARIFIED THAT AND ASKED HIM IF HE ACTUALLY

1 SAW THE CAR MAKE THE U-TURN. AND HE SAID, NO, THAT HE WAS
2 ASSUMING IT WAS THE SAME CAR BECAUSE THE DRIVER LOOKED LIKE
3 THE SAME GUY.

4 MR. GELLER: THANK YOU. I HAVE NOTHING FURTHER.

5 THE COURT: CROSS-EXAMINATION.

6 CROSS-EXAMINATION

7 BY MR. BROTT:

8 Q WITH RESPECT TO THE SEARCH OF THE TRAILER ROOM,
9 DID I HEAR YOU CORRECTLY YOU DON'T RECALL WHERE YOU FOUND
10 THOSE PICTURES?

11 A I DON'T RECALL SPECIFICALLY IN THE ROOM WHERE I
12 FOUND THEM, OTHER THAN THEY WERE IN THE ROOM.

13 Q THEY WEREN'T SOMEWHERE IN THE TRAILER THEY WERE
14 IN THAT ROOM?

15 A YES.

16 Q SKIP NOW TO THE SECOND PART OF YOUR TESTIMONY.
17 WHEN YOU INTERVIEWED MR. GARCIA, YOU ASK HIM -- HE INITIALLY
18 SAID IT APPEARED -- IT APPEARED THAT THE CAR HAD MADE A
19 U-TURN AND WAS NOW HEADED SOUTHBOUND; IS THAT WHAT HE SAID
20 INITIALLY?

21 A YES, I BELIEVE SO.

22 Q BUT NOW YOUR TESTIMONY IS THAT HE SAID HE DIDN'T
23 ACTUALLY SEE THE U-TURN; IS THAT TRUE?

24 A YES, SIR.

25 Q BUT HE WASN'T COMPLETELY SURE THAT THE CAR THAT
26 HE SAW GOING NORTH WAS THE SAME CAR THAT ENDED UP WITH THE

1 VICTIM IN IT; ISN'T THAT TRUE?

2 A I THINK YOU'D HAVE TO ASK MR. GARCIA.

3 THE IMPRESSION I GOT WAS THAT HE WAS ASSUMING IT
4 WAS THE SAME CAR BASED ON TELLING ME THAT THE DRIVER LOOKED
5 LIKE THE SAME PERSON.

6 Q BUT HE COULDN'T EXPLAIN HOW IT GOT TO BE GOING
7 THE OPPOSITE DIRECTION THAT HE THOUGHT IT SHOULD BE GOING;
8 ISN'T THAT TRUE?

9 A OTHER THAN HE ASSUMED THAT IT MADE A U-TURN.

10 Q JUST ASSUMED IT?

11 A YES.

12 MR. BROTT: NOTHING FURTHER.

13 THE COURT: REDIRECT?

14 MR. GELLER: NO THANK YOU.

15 THE COURT: MAY THE WITNESS BE EXCUSED?

16 MR. GELLER: YES.

17 THE COURT: ALL RIGHT WITH YOU, MR. BROTT?

18 MR. BROTT: YES.

19 THE COURT: THANK YOU VERY MUCH, DETECTIVE ASHBY, FOR
20 YOUR TESTIMONY. YOU'RE EXCUSED.

21 WOULD YOU HAND ME THE PHOTOGRAPHS BEFORE YOU GO.

22 THE WITNESS: YES.

23 THE COURT: AND I'LL PASS THEM TO MY CLERK.

24 THANK YOU VERY MUCH.

25 DO YOU HAVE ANOTHER WITNESS THIS MORNING?

26 MR. GELLER: I'LL HAVE A WITNESS AT 1:30, YOUR HONOR.

1 AND WE NEED TO DISCUSS SOMETHING OUTSIDE OF THE JURY'S
2 PRESENCE.

3 THE COURT: LADIES AND GENTLEMEN, I'LL LET YOU GO TO
4 LUNCH. I AM PROBABLY GOING TO NEED A COUPLE OF MINUTES ON
5 THE OTHER END. I HAVE AN OFF-SITE MEETING AT LUNCH. IT
6 MIGHT BE A PROBLEM GETTING BACK. I'LL RECESS WITH YOU UNTIL
7 1:45. PLEASE DON'T TALK ABOUT THE CASE, DISCUSS OR EXPRESS
8 AN OPINION ON IT. AND I'LL SEE YOU THEN.

9 (JURY EXCUSED.)

10 (THE FOLLOWING PROCEEDINGS WERE HAD IN
11 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

12 MR. GELLER: YOUR HONOR, MY NEXT WITNESS IS
13 MICHAEL CONTRERAS. I'VE DISCUSSED HIS TESTIMONY WITH
14 MR. BROTT. I DON'T BELIEVE, AS AN OFFICER OF THE COURT,
15 THAT HE HAS ANY FIFTH AMENDMENT RIGHTS WITH RESPECT TO THE
16 TESTIMONY THAT I'M GOING TO BE SEEKING TO ELICIT FROM HIM,
17 BUT I WANTED TO ALERT THE COURT TO THAT AHEAD OF TIME. HE
18 WAS INVOLVED IN THE FIGHT THAT MR. NIEVES TESTIFIED TO, BUT
19 THAT FIGHT OCCURRED ALMOST TWO YEARS AGO. THAT WOULD BE A
20 MISDEMEANOR 242 IN MY ESTIMATION. I DON'T BELIEVE THERE WAS
21 ANY FELONIOUS CONDUCT ON HIS PART THAT DATE. SO, IF HE HAD
22 ANY FIFTH AMENDMENT RIGHTS, THOSE WOULD HAVE LAPSED AFTER
23 ONE YEAR FROM THE DATE OF THAT INCIDENT.

24 THE COURT: I CAN'T TELL IF YOU'RE HAVING A
25 CONVERSATION AMONG YOURSELVES OR --

26 MR. BROTT: WE ARE DOING BOTH. LET'S TALK TO YOU.

1 THE COURT: CERTAINLY, MR. BROTT, I'M VERY CONCERNED
2 ABOUT A WITNESS WHO MR. GELLER EXPECTS TO ADMIT TO CRIMINAL
3 BEHAVIOR COMING IN TO TESTIFY WITHOUT THE BENEFIT OF HAVING
4 HAD A DISCUSSION WITH COUNSEL. BUT, MR. GELLER IS
5 REPRESENTING TO THE COURT NO PROBLEM BECAUSE IT COULD ONLY
6 BE A MISDEMEANOR AND THE STATUTE OF LIMITATIONS ON A
7 MISDEMEANOR CHARGE HAS EXPIRED.

8 DO I NEED TO BE CONCERNED?

9 MR. BROTT: WELL, I TOLD MR. GELLER WHEN HE PRESENTED
10 IT THAT WAY THIS MORNING THAT I WOULD AGREE WITH THAT
11 ANALYSIS IF ALL HE THINKS HE'S GOING TO TESTIFY TO IS HIS
12 POSSIBLE EXPOSURE TO A MISDEMEANOR. THAT'S TRUE, THE
13 STATUTE WOULD HAVE RUN.

14 AS I THINK ABOUT IT NOW, IF HE -- DEPENDING UPON
15 HOW MUCH DETAIL -- AND I DON'T WANT TO THINK THAT -- HAVE
16 MR. GELLER THINK I'VE SANDBAGGED HIM -- OR MAYBE I HAVE
17 CHANGED MY MIND. BUT I SUPPOSE IF HE TESTIFIES THAT HE
18 ACTIVELY PARTICIPATED IN THIS BEATING, AND THAT IT MIGHT BE
19 CONSTRUED AS AN ADW WITH A GUN, WITH A 186 TAG ON IT, THE
20 STATUTE OF LIMITATIONS WOULD NOT HAVE RUN ON SUCH A CRIME.

21 MR. GELLER: IN LIGHT OF THAT, THEN, I WOULD ASK THE
22 COURT TO ALERT -- AGAIN, ALERT THE COURT THAT I INTEND TO
23 CALL HIM. I'VE NEVER SPOKEN WITH HIM ABOUT THIS INCIDENT
24 AND, THEREFORE, IT MIGHT BE PRUDENT TO HAVE COUNSEL FOR HIM.

25 THE COURT: PRUDENT WOULD BE AN UNDERSTATEMENT.

26 AND HOW MUCH OF A HEADS UP ARE YOU GIVING US?

1 BECAUSE IF YOU PLAN TO DO THIS AT 1:30, I DON'T
2 THINK WE CAN ACCOMMODATE IT THAT QUICKLY. I'M SURE YOU HAVE
3 OTHER WITNESS, HOWEVER, THAT YOU CAN CALL WHILE WE TRY TO
4 FIND COUNSEL FOR THIS WITNESS AND HAVE COUNSEL MEET WITH THE
5 COURT AND WITH THE TWO OF YOU AND CONFER WITH THE WITNESS.

6 MR. GELLER: I WOULD HAVE DONE IT AT NINE, BUT I DIDN'T
7 THINK THIS WAS GOING TO BE A PROBLEM.

8 THE COURT: WELL, I THINK THAT MR. BROTT'S POINT IS
9 WELL TAKEN. CERTAINLY, THE CONDUCT THAT MR. NIEVES
10 DESCRIBED HERE THAT HAPPENED IN THE PARK WAS FELONIOUS. AND
11 I'M JUST CURIOUS WHETHER ANYONE WAS EVER ULTIMATELY CHARGED
12 WITH THAT.

13 MR. GELLER: NO. OR I CAN GIVE HIM USE IMMUNITY AND
14 THEN WE'RE DONE.

15 THE COURT: WELL THEN YOU CAN DRAFT THE PAPERS FOR
16 THAT. I'D APPRECIATE IT IF YOU CAN HAVE THOSE HERE AT 1:30.
17 AND WE'LL SEE WHAT WE CAN DO ABOUT GETTING A FRIEND OF THE
18 COURT.

19 THANK YOU.

20 MR. BROTT: YOUR HONOR, I DON'T WANT YOU TO THINK THAT
21 MR. GELLER IN ANYWAY POSTPONED THIS INTENTIONALLY OR THAT HE
22 WAS ANYWAY NEGLIGENT IN THIS. IT WAS MY FAULT. OKAY. IT
23 WAS.

24 THE COURT: OKAY.

25 (NOON RECESS TAKEN.)

26 -000-

1 SANTA ANA, CALIFORNIA - TUESDAY, MAY 30, 2006

2 AFTERNOON SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT:)

7 THE COURT: ISN'T IT A BEAUTIFUL DAY? AND, APPARENTLY,
8 I'M GOING TO GIVE YOU AN OPPORTUNITY TO ENJOY IT.

9 WE ARE RESUMING IN PEOPLE VS. REYES, CASE NUMBER
10 04CF2780. RECORD SHOULD REFLECT DEFENDANT IS PRESENT WITH
11 HIS COUNSEL, THE PEOPLE ARE REPRESENTED, AND OUR FIFTEEN
12 JURORS HAVE RETURNED TO THE COURTROOM.

13 LADIES AND GENTLEMEN, AS I INDICATED TO YOU WHEN
14 WE STARTED, THERE ARE ALWAYS UNEXPECTED DELAYS IN A TRIAL..
15 AND I AM EXPERIENCING ONE RIGHT NOW. WE ARE UNABLE TO
16 PROCEED WITH YOU FOR THIS AFTERNOON AND WE'RE GOING TO BRING
17 YOU BACK IN TOMORROW MORNING AT NINE.

18 DO NOT ASSUME THAT BECAUSE WE'RE HAVING THIS
19 LENGTHY DELAY AT THIS POINT IN THE TRIAL THAT WE'RE OFF
20 TRACK WITH RESPECT TO THE TIME ESTIMATE WE'VE GIVEN YOU. TO
21 THE CONTRARY, I THINK THAT WE ARE VERY MUCH ON TRACK. BUT
22 THERE IS SOMETHING THAT I HAVE TO DO THIS AFTERNOON ON THIS
23 MATTER THAT I CAN'T DO IN YOUR PRESENCE, AND THE ISSUE THAT
24 I'M ADDRESSING HAS TO BE RESOLVED BEFORE YOU CAN HEAR
25 ADDITIONAL TESTIMONY IN THE TRIAL.

26 I DIDN'T KNOW ABOUT THIS WHEN WE RECESSED FOR

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 LUNCH. BELIEVE ME, IF I HAD I WOULD HAVE LET YOU GO THEN
2 AND YOU COULD HAVE STARTED YOUR SHOPPING TWO HOURS EARLIER.
3 SO, I DO APOLOGIZE TO YOU. AND I'M GREATFUL TO YOU FOR YOUR
4 PATIENCE.

5 DURING THIS PERIOD OF RECESS PLEASE DO NOT
6 CONVERSE AMONG YOURSELVES OR ANYONE ELSE ON ANY SUBJECT
7 CONNECTED WITH THE TRIAL. PLEASE DON'T FORM OR EXPRESS AN
8 OPINION ON THE CASE. THERE MAY BE A LITTLE BIT OF BEACH
9 TIME YET. OPRAH IS IN REPEATS, SO NO POINT IN GOING THERE.

10 JUROR 11: WOULD YOU REITERATE THE SCHEDULE FOR THE
11 REST OF THE WEEK.

12 THE COURT: I'D BE HAPPY TO.

13 YOU ARE WITH US TOMORROW ONLY. TOMORROW. I HOPE
14 A FULL DAY, FROM 9:00 UNTIL 4:30 IN THE AFTERNOON. THAT'S
15 WEDNESDAY.

16 WE WILL NOT BE IN SESSION WITH YOU THE REST OF
17 THIS WEEK. YOU'LL BE ELSEWHERE ENJOYING YOUR LIVES ON
18 THURSDAY AND FRIDAY.

19 AND THEN THE ADDITIONAL DAYS WE EXPECT THE TRIAL
20 WILL TAKE IS NEXT WEEK. AND I EXPECT, AT THE OUTSIDE, MOST
21 OF NEXT WEEK, 5, 6, 7 AND 8. MONDAY, TUESDAY, WEDNESDAY AND
22 THURSDAY. AND WE SHOULD HAVE IT ALL WRAPPED UP BY THEN.

23 ANY OTHER QUESTIONS?

24 SO, TOMORROW MORNING -- I'M SORRY?

25 MR. BROTT: MAY I, JUST BRIEFLY?

26 THE COURT: APPARENTLY, THERE'S SOMETHING ELSE I DON'T

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
REYES**

Case Number: **S270723**

Lower Court Case Number: **G059251**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Jennifer.Truong@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
EXHIBITS	Exhibit A _Part 1 of 2
EXHIBITS	Exhibit A _Part 2 of 2
EXHIBITS	Exhibit B _Part 1 of 3
EXHIBITS	Exhibit B _Part 2 of 3
EXHIBITS	Exhibit B _Part 3 of 3

Service Recipients:

Person Served	Email Address	Type	Date / Time
Jennifer Truong Department of Justice, Office of the Attorney General-San Diego 285868	Jennifer.Truong@doj.ca.gov	e-Serve	4/7/2022 4:48:48 PM
Gerald Miller Court Added 120030	miller120030@gmail.com	e-Serve	4/7/2022 4:48:48 PM
Richard Levy Richard A. Levy 126824	rlevy@richardalevy.com	e-Serve	4/7/2022 4:48:48 PM
Lindsey Schiller Department of Justice, Office of the Attorney General-San Diego	lindsey.schiller@doj.ca.gov	e-Serve	4/7/2022 4:48:48 PM
Richard Levy Attorney at Law	levy@richardalevy.com	e-Serve	4/7/2022 4:48:48 PM
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District Attorney, Orange County	appellate@da.ocgov.com	e-Serve	4/7/2022 4:48:48 PM
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/7/2022

 Date

/s/Liza Nickolas

 Signature

Truong, Jennifer (285868)

 Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

 Law Firm