
No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD SANDERS, Petitioner

vs.

DOMINGO URIBE, WARDEN, Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 30 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DONALD SANDERS,

Petitioner-Appellant,

v.

DOMINGO URIBE, Jr., Warden,

Respondent-Appellee.

No. 16-55120

D.C. No.
2:12-cv-08339-GW-JEM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted August 9, 2018
Pasadena, California

Before: TASHIMA and CHRISTEN, Circuit Judges, and RUFE,** District Judge.

Petitioner Donald Sanders appeals the district court's dismissal of his 28 U.S.C. § 2254 habeas corpus petition. This Court granted a certificate of appealability on the following question: whether the state trial court's refusal to strike the testimony of an eyewitness, Lanny Thomas, who declined to answer

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Cynthia M. Rufe, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

certain questions, violated the Confrontation Clause. At trial, Thomas unequivocally identified Petitioner as one of two gunmen who shot Joel and Rodney Mason shortly after Rare Breed Motorcycle Club's grand opening of its clubhouse in Gardena, California. Thomas also testified that although he had originally identified the second shooter, referred to as S-1, he realized that he was mistaken at a police line-up and was unable to identify the individual. During re-cross examination, Thomas refused to disclose the name or names of persons who had informed him that his original identification of S-1 was incorrect. Petitioner asserts that his right to confrontation was violated when the trial court failed to strike Thomas's testimony in light of his refusal to answer these questions. We have jurisdiction pursuant to 28 U.S.C. § 1291 and § 2253, and we affirm the district court's dismissal of the habeas petition.

1. Denial of a habeas petition is reviewed de novo, and its factual findings are reviewed for clear error. *Poyson v. Ryan*, 879 F.3d 875, 887 (9th Cir. 2018). Under AEDPA, federal courts may grant relief only where the state-court adjudication of a claim on the merits was either (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," or (2) "based on an unreasonable determination of the facts in light of the evidence presented." 28 U.S.C. § 2254(d). Petitioner argues that the California Court of Appeal erred in both respects. We disagree.

2. The California Court of Appeal reasonably concluded that Petitioner's right to confrontation was not violated by the trial court's failure to strike Thomas's testimony after he refused to answer certain questions. The Sixth Amendment's Confrontation Clause affords a criminal defendant the right to be "confronted with the witnesses against him." *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (citation omitted). "This has long been read as securing an adequate opportunity to cross-examine adverse witnesses." *United States v. Owens*, 484 U.S. 554, 557 (1988). Here, defense counsel was given "wide latitude" to extensively cross-examine Thomas on his observations during the shooting, on his identification of Petitioner, on any inconsistencies in his testimony, and on his refusal to answer certain questions, thus exposing any potential bias and casting doubt on his credibility.¹ Therefore, the state appellate court's decision was not contrary to or an unreasonable application of clearly established federal law.

3. Even if there had been a Confrontation Clause violation, any error was harmless. Petitioner is "not entitled to habeas relief based on trial error unless [he] can establish that it resulted in actual prejudice." *Brecht v. Abrahamson*, 507 U.S.

¹ Petitioner takes issue with the California Court of Appeal's conclusion that no constitutional violation occurred in part because the questions Thomas refused to answer were collateral to the determination of guilt. The Court of Appeal relied on *United States v. Cardillo*, 316 F.2d 606, 611 (2d Cir. 1963), which held that a trial court is not required to strike the entirety of a witness's testimony if the question he refuses to answer pertains to a collateral matter. Because the state appellate court reasonably concluded that counsel had an adequate opportunity to cross-examine Thomas, it is not necessary to determine whether its collateral matters analysis, standing alone, would satisfy the Confrontation Clause.

619, 637 (1993) (internal quotation marks and citations omitted). Relevant factors in determining prejudice include “the importance of the witness’ testimony in the prosecution’s case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution’s case.” *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986).

Thomas’s testimony was in large part either corroborated, cumulative, or probed extensively on cross-examination. Furthermore, the trial court issued a limiting instruction directing that jurors could reject Thomas’s testimony if they believed that he had refused to answer questions or had attempted to conceal evidence. Most significantly, the prosecution’s case was strong. Both Joel and Rodney Mason placed Petitioner in the clubroom at the time of the shooting and Rodney unequivocally identified Petitioner as one of the shooters. Based on this record, any error was harmless.

4. Petitioner also has not established by clear and convincing evidence that the California Court of Appeal’s factual determinations were unreasonable.² *Burt v.*

² Appellee asserts Petitioner waived this claim because he failed to assert it in the district court. Petitioner’s *pro se* petition is to be liberally construed, and seeks relief based on a violation of his right to confront the witnesses against him. In his reply brief, he cites to both § 2254(d)(1) and (d)(2), and notes that the state appellate court’s decision was “based upon an unreasonable determination of the facts.” This claim under § 2254(d)(2) is not waived.

Titlow, 571 U.S. 12, 18 (2013). While the state appellate court referred to Thomas's refusal to answer only one question, this statement was not objectively unreasonable because at issue was a single *line* of questioning on "the identity of persons who" provided information about the other shooter that Thomas did not answer. The state appellate court then reasonably rejected Petitioner's unsupported assumptions that had Thomas named his sources, it would have led to additional eyewitnesses or undermined the identification of Petitioner.

5. Because Petitioner failed to establish that the California Court of Appeal's decision was contrary to or an unreasonable application of clearly established law, or based on an unreasonable determination of facts, the district court's denial of his habeas petition will be **AFFIRMED**.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
 95 Seventh Street
 San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

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- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

Form 10. Bill of Costs(Rev. 12-1-09)

United States Court of Appeals for the Ninth Circuit**BILL OF COSTS**

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
Excerpt of Record			\$				\$		
Opening Brief			\$				\$		
Answering Brief			\$				\$		
Reply Brief			\$				\$		
Other**			\$				\$		
TOTAL:					TOTAL:				

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD SANDERS,

Petitioner,

v.

DOMINGO URIBE, JR., Warden,

Respondent.

Case No. CV 12-8339-GW (JEM)

ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the pleadings, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Petitioner has filed Objections, and the Court has engaged in a de novo review of those portions of the Report and Recommendation to which Petitioner has objected. The Court accepts the findings and recommendations of the Magistrate Judge.

IT IS ORDERED that: (1) the First Amended Petition for Writ of Habeas Corpus is denied; and (2) Judgment shall be entered dismissing the action with prejudice.

DATED: December 18, 2015



GEORGE H. WU
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD SANDERS,

Petitioner,

V.

DOMINGO URIBE, JR., Warden,

Respondent.

Case No. CV 12-8339-GW (JEM)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

The Court submits this Report and Recommendation to the Honorable George H. Wu, United States District Judge, pursuant to 28 U.S.C. Section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

On September 27, 2012, Donald Sanders ("Petitioner"), a prisoner in state custody, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254 ("Petition"). On October 11, 2012, Petitioner filed an unsigned First Amended Petition. On February 15, 2013, Warden Domingo Uribe, Jr. ("Respondent") filed an Answer to the original Petition.

1 On December 20, 2013, after Petitioner had signed the First Amended Petition, Respondent
2 filed a motion to dismiss the First Amended Petition as partially unexhausted.

3 On June 3, 2014, the Court found that some of the claims in the First Amended
4 Petition were unexhausted and advised Petitioner of his options. On June 18, 2014,
5 Petitioner withdrew his unexhausted claims and elected to proceed only on his exhausted
6 claim, *i.e.*, the Confrontation Clause claim, asserted in Grounds One and Eight, directed at
7 the trial court's refusal to strike a prosecution witness's testimony after the witness refused
8 to answer certain questions on cross-examination.

9 On August 13, 2014, Respondent filed an Answer to the First Amended Petition. On
10 September 5, 2014, Petitioner filed a Reply.

11 The matter is ready for decision.

12 **PRIOR PROCEEDINGS**

13 On March 23, 2007, a Los Angeles County Superior Court jury found Petitioner guilty
14 of two counts of attempted murder (California Penal Code § 187 and § 664) and two counts
15 of assault with a firearm (California Penal Code § 245). The jury found firearm
16 enhancements (California Penal Code § 12022.53(b),(c),(d)) and great bodily injury
17 enhancements (California Penal Code § 12022.7(a)) to be true. (Respondent's Lodgment
18 ["Lodg."] O, 2 Clerk's Transcript ["CT"] 230-35.) On March 12, 2008, the trial court
19 sentenced Petitioner to an indeterminate term of 64 years to life in state prison. (2 CT 350-
20 56.)

21 Petitioner filed an appeal in the California Court of Appeal. (Lodg. B-D.) On
22 September 27, 2010, the California Court of Appeal affirmed Petitioner's conviction, but
23 reversed his sentence on one of the attempted murder counts and remanded the matter to
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1 the trial court for resentencing.¹ (Lodg. E.) The opinion was initially certified for partial
 2 publication but was later published in full. (Lodg. I, Appendix B.) Upon remand, Petitioner
 3 was resentenced to an indeterminate term of 59 years and four months in state prison.
 4 (Lodg. N.)

5 Petitioner filed a petition for rehearing in the California Court of Appeal, which was
 6 denied. (Lodg. F-H.) Petitioner then filed a petition for review in the California Supreme
 7 Court. (Lodg. I.) On February 15, 2011, the California Supreme Court summarily denied
 8 review. (Lodg. J.)

9 Petitioner also filed a petition for writ of certiorari in the United States Supreme Court,
 10 which was denied on October 3, 2011. (Lodg. K, L.)

11 SUMMARY OF EVIDENCE AT TRIAL

12 Based on its independent review of the record, the Court adopts the following factual
 13 summary from the California Court of Appeal's unpublished opinion as a fair and accurate
 14 summary of the evidence presented at trial:

15 I. Prosecution Evidence

16 A. Background

17 Lanny [Thomas] was one of the cofounders of Rare Breed when the
 18 motorcycle club began in 1989. He was still active in the club in 2005, when
 19 the incident occurred. The club had over 100 members at that time. Some of
 20 them were law enforcement officers, and some were members of the Crips
 21 and Bloods street gangs.

22 Starting at 3:00 p.m. on September 11, 2005, Rare Breed held a huge
 23 party in Gardena to celebrate the grand opening of its clubhouse. The party
 24 was open to the public and to the members of various motorcycle clubs. Food

25
 26 ¹ The Court of Appeal initially issued an unpublished decision on February 24, 2010, and modified
 27 it on March 23, 2010. On April 22, 2010, the Court of Appeal vacated its initial decision in order to
 28 permit the parties and amicus curiae to address the sentencing claim. (Lodg. No. M.)

1 and beverages, including alcoholic drinks, were served. There was music and
2 dancing inside the clubhouse, and motorcycles were displayed outside.

3 *B. Joel's Description of the Incident*

4 Joel [Mason], who was in his mid-20's, was not a member of Rare
5 Breed, but his father, Rodney [Mason], had been a member for years. Joel
6 and Rodney assisted with providing and serving the food and beverages
7 during the party. At some point, Joel noticed [Petitioner], a bald-headed guest
8 who was talking with other guests. [Petitioner] was of Rodney's generation.
9 Joel had never seen him before.

10 Around 10:30 or 11:00 p.m., the party was winding down. Joel, Lanny,
11 Joel's girlfriend, and a female cousin of Joel's were among the 10 or so people
12 still inside the club room. Joel was sweeping the floor. He had drunk alcoholic
13 beverages during the party, but he did not consider himself drunk. He heard
14 an unidentified man (S-1) say the word "blood" and use loud, profane
15 language to the two young women. S-1 was accompanied by an unidentified
16 companion, S-2. Like Joel, S-1 and S-2 were young males in their mid-20's.

17 The club room was separated from the bar room by a wall that had a
18 door and a window through which drinks were passed. Rodney came into the
19 club room from the bar room and said something to S-1 and S-2. Joel told
20 S-1 the women were his girlfriend and cousin, and there was no need for
21 hostility. He offered to get drinks for S-1 and S-2. S-1 responded with a
22 profane insult. He hiked "up his pants with his fists" and stepped toward Joel
23 as if preparing to fight. Joel was five feet seven inches tall and weighed 148
24 pounds. S-1 was much larger than that. Joel decided he had better hit first.
25 He struck S-1, who fell to the ground on his back. Joel got on top of S-1 and
26 repeatedly hit him in the face.

1 Although Joel's attention was focused on S-1, he saw [Petitioner]
2 approach him quickly from the "left front." Within seconds, Joel was lifted up
3 from behind and shot in the chest. He did not see who shot him and did not
4 know how close [Petitioner] was to him at that time. He fell to the ground,
5 heard more gunshots, and saw Rodney hunched over with his hands on his
6 stomach.

7 Joel spent several weeks in the hospital recovering from three gunshot
8 wounds. He did not recall receiving the second and third shot. The first shot,
9 to the middle of his chest, caused a collapsed lung. The second shot hit his
10 thigh and testicles. The third shot went across his forehead. While he was in
11 the hospital, he was shown two six-packs by Detective Pohl. He circled
12 [Petitioner]'s photo in one six-pack because he recognized [Petitioner] as the
13 person who approached him before he was shot. From the other six-pack he
14 selected another man as S-1.

15 After Joel and Rodney left the hospital, they drove together to see two
16 live lineups. While en route, Rodney told Joel that the wrong man might have
17 been selected as S-1. The six-packs had shown only faces, but the live
18 lineups showed entire people. At the first live lineup, which included Johnny
19 [Clark], Joel did not identify anyone as S-1. All the men in that lineup were
20 approximately his size, but S-1 was much bigger. At the second live lineup,
21 which included [Petitioner], Joel again identified [Petitioner].

22 *C. Rodney's Description of the Incident*

23 As the party was ending, Rodney was cleaning up in the bar room when
24 he heard arguing in the club room. Leaning out the drinks window, he saw
25 that S-1 and S-2, whom he had never seen before, were speaking
26 disrespectfully to Joel's cousin and his girlfriend. S-1 and S-2 became more
27 aggressive when he offered them drinks. He left the bar area, went into the
28

1 club room, and spoke with them. At some point, one of them said "blood" or
2 "Blood, blood," which could be a gang communication. Joel approached and
3 told S-1 and S-2 that the women were his girlfriend and cousin. S-1 cursed
4 and said he did not care. Lanny, who was nearby, attempted "to calm them
5 down." Joel started fighting with S-1 and pinned him to the ground. Rodney
6 grabbed S-2 and hit him in the head, as it looked like S-2 also wanted to fight.

7 At that point, Rodney saw [Petitioner], whom he knew as "Duck," a
8 member of another motorcycle club. Rodney had previously noticed
9 [Petitioner] at the party. He first met [Petitioner] two years earlier at another
10 Rare Breed dance and had seen him at other motorcycle group functions since
11 then. Rodney thought [Petitioner] would help him to stop the younger men
12 from fighting. Instead, [Petitioner] lifted up Joel from the back of the neck and
13 shoulders and shot him in the chest.

14 Rodney charged at [Petitioner], trying to save his son. [Petitioner]
15 pointed the gun at Rodney and fired. Rodney did not realize he had been
16 shot. He kept moving toward [Petitioner], heard another shot, and felt a bullet
17 hit his knee. Falling to one knee, he saw that S-1 had risen from the ground
18 and fired another gun, which then jammed. [Petitioner] grabbed S-1 and ran
19 outside with him. Rodney started to follow them, became aware that he was
20 wounded in the stomach, and collapsed. He spent almost three months in the
21 hospital and needed several operations.

22 Once Rodney was able to communicate at the hospital, Detective Pohl
23 visited him and showed him a six-pack. Rodney circled [Petitioner]'s photo on
24 the six-pack and wrote, "He shot me." He was positive about that
25 identification, as he knew [Petitioner].

26 At the trial, Rodney also testified that he selected Johnny as S-1 when
27 he was shown the other six-pack. Detective Pohl's testimony showed that
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1 Rodney was confused about that point. Pohl did not show Rodney the
2 six-pack with Johnny's photo because Rodney told Pohl he focused his
3 attention on [Petitioner] and did not believe he could identify the other gunman.
4 Joel and Lanny, but not Rodney, identified Johnny as S-1 from the six-pack
5 that contained Johnny's photo.

6 Rodney further testified that, after he was released from the hospital,
7 the "older guys" in the neighborhood told him that the wrong person had been
8 identified as S-1, as Johnny did not attend the party. Rodney wanted to be
9 absolutely sure, to avoid having an innocent person incarcerated. People in
10 the neighborhood also told him that his identification of [Petitioner] was wrong,
11 but he rejected that information because he was acquainted with [Petitioner]
12 and knew he had seen him.

13 Rodney told Joel prior to the live lineups that the six-pack identifications
14 of S-1 might be incorrect. At the live lineups, Rodney did not recognize
15 anyone in the first lineup, but he again selected [Petitioner] from the second
16 lineup. He had no feud or "beef" with [Petitioner] prior to the shooting.

17 *D. Detective Pohl*

18 Detective Pohl obtained descriptions of the incident from Rodney, Joel
19 and Lanny. Rodney told Pohl that [Petitioner] shot him, he had spoken with
20 [Petitioner] at previous motorcycle events, [Petitioner] was known as "Duck,"
21 and he belonged to a motorcycle club called "Divided Times." When Pohl
22 showed the three witnesses the six-pack with [Petitioner]'s photo, Rodney and
23 Lanny identified [Petitioner] as one of the two shooters, and Joel said he had
24 seen [Petitioner] at the party. Joel and Lanny identified Johnny as the other
25 suspect, S-1, from the other six-pack. When Pohl told Rodney that a live
26 lineup was scheduled, Rodney said there were concerns about the
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1 identifications of S-1, but not of [Petitioner]. At the live lineups, the three
2 witnesses identified [Petitioner], and none of them identified Johnny.

3 On cross-examination, after the court overruled the prosecutor's
4 relevancy objections, Detective Pohl explained that he put Johnny's picture
5 into a six-pack because (1) Rodney, Lanny and Joel told him that S-1 was a
6 local Blood gang member known as "J"; and (2) he learned from police gang
7 records and a confidential reliable informant that J or "J-Wac" was the gang
8 name of Johnny, who belonged to a local Blood gang. After Pohl learned that
9 Johnny was not S-1, Johnny was released, and Pohl never found out the real
10 identity of S-1. Pohl tried to get club membership information from Lanny, but
11 Lanny would not provide it.

12 *E. Lanny's Description of the Incident*

13 Lanny drank no alcoholic beverages at the party. He was in the club
14 room cleaning up when he saw [Petitioner], whom he knew, enter the room
15 with S-1 and S-2, whom he did not know. Lanny and Rodney were the only
16 club members in the building at that time. S-1 was tall and wore a red sports
17 jersey. S-1 and S-2 said "blood" while speaking to each other. S-1 spoke
18 offensively to the two young women standing at the drinks window. Rodney
19 told S-1 not to be disrespectful to females. Joel approached S-1.

20 At that point, Lanny positioned himself between Joel and S-1, hoping to
21 stop a fight. [Petitioner] stood off to the side. S-1 spoke aggressively and
22 showed Lanny a gun in his waistband. Lanny tried to calm S-1. Joel stepped
23 from behind Lanny and hit S-1, who fell to the ground. Joel continued fighting
24 him while on top of him. S-1 pulled out his gun. [Petitioner], now also holding
25 a gun, pulled Joel up by the collar. That action by [Petitioner] put Joel in a
26 position to be shot by S-1. S-1 had trouble with his gun, but he shot Joel once.
27 [Petitioner] then shot Joel twice. The two women ran from the room. Rodney
28

1 ran toward [Petitioner], who shot Rodney twice. [Petitioner] and S-1 ran
2 outside. Lanny and Rodney followed them part of the way. S-1 and S-2 drove
3 off together in a car. [Petitioner] rode off on his motorcycle. Lanny then
4 assisted Rodney, who was wounded.

5 When the police arrived, Lanny told them about the incident, identified
6 [Petitioner] as one of the shooters, and indicated where [Petitioner] could be
7 found. Lanny later selected a photo of [Petitioner] from a six-pack. Lanny also
8 picked out, from another six-pack, a photo of a man who looked like S-1.
9 When he saw a live lineup with that man in it, he realized that man was not S-
10 1. Lanny was absolutely certain that [Petitioner] shot Rodney and Joel.

11 Lanny was extensively cross-examined about all of his direct testimony,
12 including the incident, his previous identifications of the two shooters, and his
13 preliminary hearing testimony. He insisted that the only people in the room
14 were the ones he had already named. He explained that, even though
15 members of motorcycle clubs do not like to come to court, he had been willing
16 to do so because he witnessed the shootings and did not want the problem to
17 “escalate to another level” on the street. In response to questions from
18 defense counsel, he added that a couple of members of Rare Breed, whose
19 names he refused to divulge, told him that S-1 was a Blood gang member
20 whose nickname was J. He gave that information to the police. When he saw
21 Johnny in a six-pack, he identified Johnny as S-1, because Johnny looked
22 “similar” to S-1. He learned from unidentified people, prior to the live lineup,
23 that he had mistakenly selected Johnny in the six-pack. He personally
24 realized that mistake when he saw Johnny in a live lineup.

25 . . .

26 *F. Deputy Vizcarra*

1 Deputy Vizcarra arrived at the club room, saw paramedics treating Joel
2 and Rodney, and interviewed Lanny. Lanny's description of the incident
3 included the fact that one of the two shooters was "Duck," the president of
4 another motorcycle club, "Divided Times."

5 **2. Defense Evidence**

6 *A. Don C.*

7 Don belonged to another motorcycle club and was a longtime friend of
8 [Petitioner]'s. When he arrived at the party about 9:15 p.m., he saw
9 [Petitioner] across the street from the clubhouse building. Don went inside and
10 saw about 60 people drinking and dancing in the club room. He later noticed a
11 crowd in a corner, heard a gunshot, ran outside, and heard another gunshot
12 inside the building. [Petitioner] was still outside, across the street.

13 *B. The Defense Criminalist*

14 The hospital medical records of Joel and Rodney showed their blood
15 alcohol levels after they were shot. Joel's blood alcohol level was 0.22
16 percent. In the opinion of the expert, that level meant that Joel would have
17 been impaired, mentally and physically. Rodney's blood alcohol level was
18 0.12 percent, which the expert believed was enough to impair Rodney's
19 observations and memory.

20 *C. Gary Austin*

21 Austin, who was Johnny's defense attorney, gave the former prosecutor
22 on the case the names of Johnny's alibi witnesses. Rodney approached
23 Austin at the live lineup and apologized for his prior misidentification of
24 Johnny.

25 *D. Latanya G.*

26 Latanya went to the Rare Breed party while Johnny, who was her
27 neighbor, babysat for her at their apartment complex. Latanya arrived at the
28

1 party around 9:00 p.m. Fifteen or 20 minutes later, she heard men arguing.
 2 One of the arguers was a tall man in a red jersey. The clubhouse was filled
 3 with people. Latanya left because the man in the red jersey raised his shirt at
 4 his waistband, as if he had a weapon. She saw [Petitioner] outside the
 5 building when she arrived at the party and when she left it. She heard
 6 gunshots as she was driving home. When she got there, she saw Johnny,
 7 whose nickname was J.²

8 *E. Lori-Ann Jones*

9 Jones was the former prosecutor on this case. Johnny was dismissed
 10 from it after the live lineup because the eyewitnesses said that Johnny was not
 11 S-1. Law enforcement officers later had information about S-1's real identity,
 12 but no one else was prosecuted as S-1 due to the past misidentification of
 13 S-1.

14 *F. Detective Pohl*

15 During his investigation, Detective Pohl spoke on the telephone with
 16 Detective Lewis, who belonged to Rare Breed. Lewis told Pohl that he was
 17 inside the building, in a bathroom, when he heard a popping noise that could
 18 have been gunshots.

19 **3. Prosecution Rebuttal Evidence**

20 *Regina M.*

21 Regina was Joel's girlfriend. Late in the party, as people were leaving,
 22 she was standing at the drinks window with a female friend. Someone behind
 23 her repeated the word "blood." She said, "Oh, s—," as she was concerned
 24 about gang trouble. One of the men cursed at her. Rodney came out from the
 25

26 ² The prosecutor argued to the jury that the defense witnesses Don and Latanya
 27 were wrong when they testified that [Petitioner] was not in the club room when the
 28 shootings occurred.

1 bar area and Joel walked over. A fight started. Regina heard shots, so she
2 ran with her girlfriend into the bar room. When she came out, she saw that
3 Joel and Rodney were wounded. She left with Joel in the ambulance. She
4 could not identify anyone.
5 (Lodg. E at 2-9.)

6 PETITIONER'S HABEAS CLAIM

7 Petitioner's Sixth Amendment right to confrontation was violated when the trial court
8 refused to strike the testimony of a prosecution witness who refused to answer certain
9 questions on cross-examination.

10 STANDARD OF REVIEW

11 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") governs the
12 Court's consideration of Petitioner's cognizable federal claims. 28 U.S.C. § 2254(d), as
13 amended by AEDPA, states:

14 An application for a writ of habeas corpus on behalf of a person in custody
15 pursuant to the judgment of a State court shall not be granted with respect to
16 any claim that was adjudicated on the merits in State court proceedings unless
17 the adjudication of the claim – (1) resulted in a decision that was contrary to, or
18 involved an unreasonable application of, clearly established Federal law, as
19 determined by the Supreme Court of the United States; or (2) resulted in a
20 decision that was based on an unreasonable determination of the facts in light
21 of the evidence presented in the State court proceeding.

22 In Williams v. Taylor, 529 U.S. 362 (2000), the United States Supreme Court held
23 that a state court's decision can be contrary to federal law if it either (1) fails to apply the
24 correct controlling authority, or (2) applies the controlling authority to a case involving facts
25 materially indistinguishable from those in a controlling case, but nonetheless reaches a
26 different result. Id. at 405-06. A state court's decision can involve an unreasonable
27 application of federal law if it either (1) correctly identifies the governing rule but then applies
28

1 it to a new set of facts in a way that is objectively unreasonable, or (2) extends or fails to
 2 extend a clearly established legal principle to a new context in a way that is objectively
 3 unreasonable. Id. at 407-08. The Supreme Court has admonished courts against equating
 4 the term “unreasonable application” with “clear error.” “These two standards . . . are not the
 5 same. The gloss of clear error fails to give proper deference to state courts by conflating
 6 error (even clear error) with unreasonableness.” Lockyer v. Andrade, 538 U.S. 63, 75
 7 (2003). Instead, in this context, habeas relief may issue only if the state court's application
 8 of federal law was “objectively unreasonable.” Id. “A state court's determination that a claim
 9 lacks merit precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on
 10 the correctness of the state court's decision.” Harrington v. Richter, ___ U.S. ___, ___, 131 S.
 11 Ct. 770, 786 (2011).

12 Under AEDPA, the “clearly established Federal law” that controls federal habeas
 13 review of state court decisions consists of holdings (as opposed to dicta) of Supreme Court
 14 decisions “as of the time of the relevant state-court decision.” Williams, 529 U.S. at 412 (“§
 15 2254(d)(1) restricts the source of clearly established law to this Court's jurisprudence”); see
 16 also Andrade, 538 U.S. at 71. If there is no Supreme Court precedent that controls a legal
 17 issue raised by a habeas petitioner in state court, the state court's decision cannot be
 18 contrary to, or an unreasonable application of, clearly established federal law. Wright v. Van
 19 Patten, 552 U.S. 120, 125-26 (2008) (per curiam); see also Carey v. Musladin, 549 U.S. 70,
 20 76-77 (2006). A state court need not cite or even be aware of the controlling Supreme Court
 21 cases, “so long as neither the reasoning nor the result of the state-court decision contradicts
 22 them.” Early v. Packer, 537 U.S. 3, 8 (2002) (per curiam); see also Bell v. Cone, 543 U.S.
 23 447, 455 (2005) (per curiam).

24 A state court's silent denial of federal claims constitutes a denial “on the merits” for
 25 purposes of federal habeas review, and the AEDPA deferential standard of review applies.
 26 Richter, 131 S. Ct. at 784-85. Under the “look through” doctrine, federal habeas courts look
 27 through a state court's silent decision to the last reasoned decision of a state court, and
 28

1 apply the AEDPA standard to that decision. See Ylst v. Nunnemaker, 501 U.S. 797, 803
 2 (1991) (“Where there has been one reasoned state judgment rejecting a federal claim, later
 3 unexplained orders upholding the judgment or rejecting the same claim rest upon the same
 4 ground.”). Where no reasoned decision is available, the habeas petitioner has the burden of
 5 “showing there was no reasonable basis for the state court to deny relief.” Richter, 131 S.
 6 Ct. at 784.

7 Petitioner presented his claim in this proceeding to the state courts on direct appeal.
 8 (Lodg. B, I.) The California Court of Appeal denied it in a reasoned decision and the
 9 California Supreme Court summarily denied review. (Lodg. E, J.) The Court, therefore, will
 10 look through the California Supreme Court’s silent denial of review to the Court of Appeal’s
 11 reasoned decision and will apply the AEDPA standard to that decision. Ylst, 501 U.S. at
 12 803.

13 DISCUSSION

14 I. PETITIONER’S CONFRONTATION CLAIM DOES NOT WARRANT FEDERAL 15 HABEAS RELIEF.

16 Petitioner contends that his confrontation rights under the Sixth Amendment were
 17 violated when the trial court refused to strike the testimony of Lanny Thomas after he
 18 refused to answer certain questions on recross-examination. For the reasons set forth
 19 below, the California Court of Appeal’s rejection of this claim in a reasoned decision was not
 20 contrary to, or an unreasonable application of, clearly established federal law as set forth by
 21 the United States Supreme Court. 28 U.S.C. § 2254(d)(1).

22 A. Background

23 Lanny Thomas, one of the founders of the Rare Breed motorcycle club, testified for
 24 the prosecution. (Lodg. P, 4 Reporter’s Transcript [“RT”] 1051.) Thomas testified that he
 25 saw Petitioner shoot Joel and Rodney Mason. (4 RT 1053, 1066-72, 1076.) Thomas was
 26 familiar with Petitioner because he had seen him at previous motorcycle events. (4 RT
 27 1054-55.) He identified Petitioner as the shooter immediately after the shooting, and also
 28

1 picked out Petitioner's photograph from a photographic lineup. (2 RT 1073-76.) Thomas
2 also testified that at a separate photographic lineup he identified Johnny Clark as S-1, who
3 also shot Joel, but when he saw Clark at a live lineup, Clark did not look like S-1. (4 RT
4 1076-79; see also 4 RT 964-67.)

5 On cross-examination, Thomas testified that "a couple of members" of the Rare
6 Breed motorcycle club told him that S-1 was a man nicknamed "J," and he gave that
7 information to the police. (5 RT 1237.) This information subsequently led to Clark's arrest.
8 (5 RT 1243-47.) Later Thomas received information that Clark was not at the party. (5 RT
9 1248.) Thomas refused to name the persons who gave him the information about "J." (5 RT
10 1237.)

11 On redirect examination, Thomas testified that he had been informed that S-1's
12 nickname was "J" and that he belonged to a Blood gang. (5 RT 1357-58.) On recross-
13 examination, Thomas testified that he received "pretty reliable" information that the shooter
14 was "J" from "friends who knew this person," but he refused to identify them. (3 RT 1385.)
15 The prosecutor objected to questions about Thomas's sources on relevance grounds, but
16 the trial court overruled the objections. (5 RT 1386-87.) Nevertheless, Thomas refused to
17 name his sources. (5 RT 1387.)

18 The trial court ordered the jurors to go to the jury room. (5 RT 1387.) It told Thomas
19 that it would hold him in contempt of court if he continued to refuse to answer the questions.
20 (5 RT 1388-90.) The prosecutor wondered whether answering the questions could put
21 Thomas in physical danger. (5 RT 1390.) The courtroom was cleared, and Thomas
22 testified on voir dire that he had received the information in confidence and was not
23 supposed to pass it on to the police. It was possible that he could be harmed or even killed
24 if he named his sources, who were "criminal types." He said that his sources lived in the
25 area of Compton and Gardena, and had sought him out. (5 RT 1391-95.) After further
26 discussion, the proceedings were adjourned to the following Monday. (5 RT 1396-1401.)
27 Before adjourning, the trial court advised Thomas that its tentative ruling was to order him to
28

1 divulge "the identity of those individuals that were involved in any way in either the initial
2 identification or the secondary misidentification." (5 RT 1401.)

3 When the proceedings resumed the following Monday, Thomas still refused to name
4 his sources. (6 RT 1501.) The prosecutor argued that what Thomas had learned from other
5 people about S-1's identity was unreliable and irrelevant hearsay, but that if the trial court
6 decided to compel him to provide the information, Thomas needed counsel. (5 RT 1501-
7 02.) Trial counsel argued that if Thomas refused to identify his sources, his entire testimony
8 should be struck. (5 RT 1507-09.) The trial court stated that it was in a quandary as to the
9 appropriate action, but that striking Thomas's entire testimony would be the most extreme
10 remedy. (5 RT 1513.)

11 The trial court again ordered Thomas to name his sources and Thomas maintained
12 his refusal. (6 RT 1524, 1527.) The trial court then ruled that since Thomas had already
13 given extensive testimony and had provided information potentially helpful to both sides, it
14 would not be appropriate to strike his entire testimony. (6 RT 1528.) It stated that it would
15 give the defense wide latitude to question Thomas about his reluctance to identify his
16 sources, and would give a special instruction regarding the issue. (6 RT 1528-30.) Trial
17 counsel moved for a mistrial and the trial court denied the motion. (6 RT 1530-31.)

18 Trial counsel then continued his recross-examination. Thomas testified that there
19 had been a meeting of about a hundred Rare Breed members the previous day, at which he
20 assured the members that he had not given out information about them. The same club
21 members who originally told him about "J" later approached him and told him that a mistake
22 had been made, since S-1 was not Clark but was a different Blood gang member also
23 known as "J". Thomas passed on that additional information to Detective Pohl without
24 disclosing who gave it to him. The primary person who told him S-1's true identity was at
25 the club meeting the previous day. Thomas insisted that Petitioner knew who S-1 was,
26 since Petitioner entered the club room with S-1 and S-2 before he shot Joel and Rodney.
27 (6 RT 1532-93, 1596-1611.)

1 The trial court's instructions included this special instruction about Thomas's
2 testimony:

3 If you find that Lanny Thomas attempted to suppress evidence in any manner,
4 such as by concealing potential evidence, or refusing to answer questions
5 despite being ordered to do so by the court, you may consider this attempt as
6 a circumstance tending to distrust the entirety of his testimony. You may reject
7 the whole testimony of Lanny Thomas as a result, unless, from all of the
8 evidence, you believe the probability of truth favors his testimony in other
9 particulars.

10 (2 CT 190.)

11 **B. California Court of Appeal's Decision**

12 The California Court of Appeal reviewed applicable law and concluded that there is
13 "solid support, both judicial and scholarly, for the proposition that when one or two questions
14 asked during cross-examination are at stake and those questions relate to a collateral
15 matter such as the nonparty witness's credibility, the trial court need not strike the entirety of
16 that witness's direct testimony." (Lodg. 6 at 14.) It then applied this principle to Thomas's
17 testimony:

18 Lanny's, Joel's and Rodney's identifications of [Petitioner] were firm and
19 unequivocal. In fact, Lanny testified that he was absolutely certain that
20 [Petitioner] shot Joel and Rodney. It is also true that the account these three
21 witnesses gave of the shooting and what led up to it was consistent.
22 Importantly, Lanny was extensively and exhaustively cross-examined about
23 what he himself did and observed at the time of the incident.³

25 ³ [Petitioner]'s briefing states that Lanny "absolutely refused to be cross-examined
26 about the detailed testimonial observations he had related on direct examination."
27 Actually, there was extremely detailed and repetitive cross-examination of Lanny on that
28 subject.

1 Regarding S-1, Lanny testified that he had never seen that person
2 before, that he mistakenly identified Johnny as S-1 from a six-pack, and that
3 he corrected that mistake when he saw Johnny in person at the live lineup.
4 Lanny also stated that his undisclosed sources told him that he mistakenly
5 identified Johnny as S-1, the other shooter. These sources never suggested
6 that they themselves witnessed the incident or that Lanny's identification of
7 [Petitioner] was mistaken.

8 The one question Lanny refused to answer was the identity of the
9 persons who told him that S-1 was not Johnny and that S-1 was a Blood gang
10 member named J.

11 It is important to note that the identities of the persons who told Lanny
12 about S-1 stand in isolation from the facts of this case. These identities have
13 no relationship to Lanny's account of the shootings and his unequivocal
14 identification of [Petitioner]. (While these identities may bear on the
15 identification of S-1 as gang member J, the fact is that it does not matter
16 whether S-1 was J or was not J.)

17 [Petitioner] argues, however, that if he had known who spoke to Lanny
18 about S-1, that information might have led him to S-1, S-2 and other
19 percipient witnesses, who might have provided information to impeach the
20 identifications of him that were made by Lanny, Joel and Rodney. He
21 analogizes this case to other types of witness problems, such as informers
22 who are material witnesses. [citations omitted]

23 The abstract possibility that the people who told Lanny about S-1 knew
24 of witnesses who could show that Lanny, Joel and Rodney were wrong rests
25 on two assumptions that have no bases in the facts of this case.

26 The first assumption is that there are undisclosed eyewitnesses to the
27 melee and the shootings. There is simply nothing to support this. Lanny, for
28

1 one, insisted that he had identified all the persons who were present in the
2 room when the shooting occurred. It is also to be kept in mind that several
3 parties investigated the circumstances of these shootings and apparently none
4 produced any witnesses other than those already identified. Had these
5 investigations uncovered other witnesses, particularly witnesses who had
6 different versions from that provided by Lanny, Joel and Rodney, it is almost
7 certain that they would have been called as witnesses.

8 The second assumption is that these undisclosed eyewitnesses would
9 contradict Lanny, Joel's and Rodney's testimony. Although we grant that
10 anything is possible, there must at least be some indication that these
11 (unknown, unidentified and anonymous) persons would contradict the
12 witnesses who testified. We see no indication of this. In fact, indications are
13 to the contrary because the various accounts were largely consistent, which is
14 notable when various people witness quickly unfolding, dramatic events.

15 The instruction that the court gave about Lanny's testimony empowered
16 the jury to wholly disregard Lanny's testimony. This handed the defense a
17 potent weapon vis-à-vis a very important witness at the cost of not learning the
18 identities of two people who were completely marginal to this case.

19 We conclude that the trial court did not err in proceeding as it did in
20 response to Lanny's refusal to identify his sources.

21 (Lodg. E at 14-16.)

22 **C. Applicable Clearly Established Federal Law**

23 The Confrontation Clause of the Sixth Amendment provides that, in criminal cases,
24 the accused has the right "to be confronted with the witnesses against him." U.S. Const.
25 amend. VI. "The central concern of the Confrontation Clause is to ensure the reliability of
26 the evidence against a criminal defendant by subjecting it to rigorous testing in the context
27 of an adversary proceeding before the trier of fact." Maryland v. Craig, 497 U.S. 836, 845

(1990). In other words, the main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. Delaware v. Van Arsdall, 475 U.S. 673, 678 (1986); Davis v. Alaska, 415 U.S. 308, 315-16 (1974). The Confrontation Clause, however, guarantees only “an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (emphasis in original).

A Confrontation Clause claim is subject to harmless error analysis under the standard of Brecht v. Abrahamson, 507 U.S. 619 (1993). Ocampo v. Vail, 649 F.3d 1098, 1114 (9th Cir. 2011), cert. denied, ___ U.S. ___, 133 S. Ct. 62 (2012). Under Brecht, a habeas petitioner is not entitled to relief unless the constitutional error had a substantial and injurious effect or influence in determining the jury’s verdict. Brecht, 501 U.S. at 637.

D. Analysis

In general, when a witness testifies on direct examination but refuses to answer when cross-examined, the direct testimony will be stricken unless the refusal to answer affects only collateral matters. United States v. Wilmore, 381 F.3d 868, 873 (9th Cir. 2004); Denham v. Deeds, 954 F.2d 1501, 1503 (9th Cir. 1992); United States v. Cardillo, 316 F.2d 606, 611 (2d Cir. 1963). Striking a witness’s entire testimony is a drastic measure and is not merited when the witness refuses to answer questions regarding collateral matters. United States v. Negrete-Gonzalez, 966 F.2d 1277, 1280 (9th Cir. 1991).

The Court concurs with the California Court of Appeal that the questions which Lanny Thomas refused to answer related to a collateral issue. Thomas testified that there were two shooters: S-1, who shot Joel once, and Petitioner, who shot Joel twice and also shot Rodney twice. (4 RT 1066-71.) Thomas refused to identify the persons who told him that S-1 was not Clark but was another gang member called “J.” (5 RT 1237, 1385, 1387; 6 RT 1524.) However, Thomas expressed no doubts about his identification of Petitioner, whom he had seen at motorcycle club gatherings on prior occasions. (4 RT 1054-55, 1076.) Moreover, Thomas was thoroughly cross-examined about his identification of Petitioner, the

1 events surrounding the shooting, and his preliminary hearing testimony, and he answered
2 those questions. He also answered questions about his initial identification of Clark and the
3 reason why he was unable to identify Clark as S-1 at the live lineup. (5 RT 1203-1343; 6 RT
4 1531-1611.) The questions that Thomas refused to answer had little bearing on Petitioner's
5 own culpability. As the Court of Appeal explained, for purposes of Petitioner's trial, it did not
6 matter whether S-1 was or was not "J", and the identities of Thomas's sources were
7 "marginal to this case." (Lodg. E at 15.) Although Petitioner argues that Thomas's sources
8 were percipient witnesses who might have provided testimony favorable to his
9 misidentification defense, the Court of Appeal reasonably dismissed this argument as
10 without factual foundation. (*Id.* at 15-16.)

11 This is not a case like *Wilmore*, *supra*, where a prosecution witness's grand jury
12 testimony was the only direct evidence that the defendant possessed the gun found near
13 him, and the witness invoked her privilege against self-incrimination when defendant sought
14 to cross-examine her regarding whether she had lied to the grand jury. The Ninth Circuit
15 found that cross-examination about the witness's grand jury testimony was vital to the issue
16 of whether defendant possessed the gun, which was a substantive element of the charged
17 offense. This was not a collateral issue and the district court's failure to strike the witness's
18 direct testimony violated the defendant's confrontation rights. *Wilmore*, 381 F.3d at 873. In
19 contrast, the identity of S-1 – and by extension the identity of people who knew S-1's identity
20 – was peripheral to the issue of whether Petitioner had fired at the victims.

21 Moreover, the trial court allowed Petitioner wide latitude to cross-examine Thomas
22 regarding his refusal to identify his sources, and instructed the jury that it could, if it chose,
23 view Thomas's refusal to answer as a reason to reject his entire testimony. (6 RT 1531-
24 1611; 2 CT 190.) Thus, Petitioner was able to use Thomas's refusal to answer to impugn
25 his credibility and cast doubt on his testimony. Under these circumstances, the trial court's
26 refusal to strike Thomas's testimony did not violate Petitioner's confrontation rights.

1 Moreover, even assuming a violation of Petitioner's confrontation rights, the error was
2 harmless. In assessing whether a confrontation violation had a "substantial and injurious
3 effect" on the jury's verdict under Brecht, the Ninth Circuit applies the five non-exclusive
4 factors set forth in Van Arsdall. Ortiz v. Yates, 704 F.3d 1026, 1039 (9th Cir. 2012). These
5 factors are: (1) the importance of the witness's testimony to the prosecution's case; (2) the
6 presence or absence of evidence corroborating or contradicting the testimony of the witness
7 on material points; (3) the extent of cross-examination otherwise permitted, and (4) the
8 overall strength of the prosecution's case. Id. (citing Van Arsdall, 475 U.S. at 684).

9 As explained above, Thomas was cross-examined about the events at the Rare
10 Breed club, his identification of Petitioner, and his preliminary hearing testimony. He was
11 also extensively cross-examined about his refusal to identify his sources, and the jury was
12 provided with a special instruction authorizing it to reject Thomas's entire testimony on
13 account of his refusal to answer questions. (5 RT 1203-1343; 6 RT 1531-1611; 2 CT 190.)
14 Thomas's refusal to answer likely cast a significantly greater cloud on his credibility than any
15 use the defense could have made of the names of the persons who told him about "J."
16 Finally, regardless of S-1's true identity, the evidence identifying Petitioner as the shooter
17 was strong. He was identified not only by Thomas, but also by victim Rodney, who picked
18 Petitioner out of a photographic lineup and identified him at trial as the man who shot both
19 him and his son. (3 RT 682, 685-87; 4 RT 907-09.) Rodney was certain of his identification
20 because he had seen Petitioner at previous motorcycle club-related events and had spoken
21 to him. (3 RT 682-83.) There is no reasonable likelihood that any confrontation error had a
22 substantial and injurious effect on the jury's verdict. See Brecht, 501 U.S. at 637.

23 Accordingly, Petitioner has not shown that the Court of Appeal's rejection of his
24 confrontation claim was contrary to, or an unreasonable application of, clearly established
25 federal law as set forth by the United States Supreme Court. 28 U.S.C. § 2254(d)(1).
26 Petitioner, therefore, is not entitled to habeas relief.

27 ///

1 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING.**

2 Petitioner requests an evidentiary hearing. (Reply at 3-4.) The United States
3 Supreme Court has held that federal habeas review under 28 U.S.C. § 2254(d)(1) "is limited
4 to the record that was before the state court that adjudicated the claim on the merits."
5 Cullen v. Pinholster, ___ U.S. ___, 131 S. Ct. 1388, 1398 (2011). Moreover, an evidentiary
6 hearing is not warranted where, as here, "the record refutes the applicant's factual
7 allegations or otherwise precludes habeas relief." Schriro v. Landrigan, 550 U.S. 465, 474
8 (2007). Accordingly, Petitioner's request for an evidentiary hearing is denied.

9 **RECOMMENDATION**

10 THE COURT, THEREFORE, RECOMMENDS that the District Court issue an Order:
11 (1) accepting this Report and Recommendation; (2) denying the First Amended Petition; and
12 (3) directing that Judgment be entered dismissing this action with prejudice.

13
14 DATED: June 9, 2015

15 */s/ John E. McDermott*
16 JOHN E. MCDERMOTT
17 UNITED STATES MAGISTRATE JUDGE
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PROPOSED

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

DONALD SANDERS,

Petitioner,

v.

DOMINGO URIBE, JR., Warden,

Respondent.

Case No. CV 12-8339-GW (JEM)

ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the pleadings, the records on file, and the Report and Recommendation of the United States Magistrate Judge. The Court accepts the findings and recommendations of the Magistrate Judge.

IT IS ORDERED that: (1) the First Amended Petition for Writ of Habeas Corpus is denied; and (2) Judgment shall be entered dismissing the action with prejudice.

DATED: _____

GEORGE H. WU
UNITED STATES DISTRICT JUDGE

PROPOSED

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

DONALD SANDERS,

Petitioner,

v.

DOMINGO URIBE, JR., Warden,

Respondent.

Case No. CV 12-8339-GW (JEM)

J U D G M E N T

In accordance with the Report and Recommendation of the United States Magistrate Judge filed concurrently herewith,

IT IS HEREBY ADJUDGED that the action is dismissed with prejudice.

DATED: _____

GEORGE H. WU
UNITED STATES DISTRICT JUDGE

FEB 22 2011
BY J. SANTOS
NO.

Court of Appeal, Second Appellate District, Division Eight - No. B206569

S188600

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

DONALD SANDERS, Defendant and Appellant.

The petition for review is denied.

2013 FEB 13 PM 5:01
FILED
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
FEB 13 2011
Frederick K. Ohlrich Clerk
Deputy

LODGED

CANTIL-SAKAUYE

Chief Justice

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD SANDERS,

Defendant and Appellant.

B206569

(Los Angeles County
Super. Ct. No. TA081670)

COURT OF APPEAL - SECOND DIS
FILED
SEP 22 2010
JOSEPH A. LANE
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WILLIAM R. CHIDSEY
JUDGE

APPEAL from a judgment of the Superior Court of Los Angeles County. William R. Chidsey, Judge. Affirmed in part; reversed in part and remanded.

Steven Graff Levine; Law Offices of Dennis A. Fischer, Dennis A. Fischer and John M. Bishop, for Defendant and Appellant.

Bonnie M. Dumanis, District Attorney (San Diego), Valerie Summer, Deputy District Attorney; Jan Scully, District Attorney (Sacramento), and Albert Locher, Assistant District Attorney as Amici Curiae on behalf Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Steven D. Matthews, Timothy M. Weiner and Richard S. Moslcowitz, Deputy Attorneys General, for Plaintiff and Respondent.

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of the Facts and part 1 of the Discussion.

Appellant Donald Sanders shot two men, Joel M. and Joel's father, Rodney M., during a fight at a party of the Rare Breed Motorcycle Club (Rare Breed). We will refer to the victims as Joel and Rodney, to avoid confusion. They survived and testified against appellant, as did a third eyewitness, Lanny T. (Lanny). Appellant was convicted of two counts of attempted murder and two counts of assault with a firearm, plus firearms discharge and great bodily injury enhancements. He was sentenced to 64 years to life in prison.

Rodney and Lanny knew appellant, and they identified him as one of two shooters. Joel did not see who shot him, but he saw appellant running toward him before he was shot. As to the other shooter (S-1), Joel and Lanny erroneously selected another man, Johnny C., when they were shown a six-pack photographic lineup (six-pack). They corrected that mistake when they saw Johnny in a live lineup. Johnny was dismissed from the case prior to appellant's trial, and no one was tried as S-1. On the other hand, all three eyewitnesses were positive that appellant was one of the two shooters.

Appellant contends that his federal constitutional rights to due process of law and to confront and cross-examine witnesses were violated because the trial court did not strike all of Lanny's testimony or grant a motion for mistrial after Lanny refused to disclose the names of club members who approached him after the shootings and gave him information about S-1's identity. Appellant also contends that the trial court erred in imposing sentence. We agree that the sentence is erroneous and remand with directions to enter a sentence that conforms to law. In all other respects, the judgment is affirmed.

FACTS*

1. Prosecution Evidence

A. Background

Lanny was one of the cofounders of Rare Breed when the motorcycle club began in 1989. He was still active in the club in 2005, when the incident occurred. The club had

* See footnote, *ante*, page 1.

over 100 members at that time. Some of them were law enforcement officers, and some were members of the Crips and Bloods street gangs.

Starting at 3:00 p.m. on September 11, 2005, Rare Breed held a huge party in Gardena to celebrate the grand opening of its clubhouse. The party was open to the public and to the members of various motorcycle clubs. Food and beverages, including alcoholic drinks, were served. There was music and dancing inside the clubhouse, and motorcycles were displayed outside.

B. Joel's Description of the Incident

Joel, who was in his mid-20's, was not a member of Rare Breed, but his father, Rodney, had been a member for years. Joel and Rodney assisted with providing and serving the food and beverages during the party. At some point, Joel noticed appellant, a bald-headed guest who was talking with other guests. Appellant was of Rodney's generation. Joel had never seen him before.

Around 10:30 or 11:00 p.m., the party was winding down. Joel, Lanny, Joel's girlfriend, and a female cousin of Joel's were among the 10 or so people still inside the club room. Joel was sweeping the floor. He had drunk alcoholic beverages during the party, but he did not consider himself drunk. He heard an unidentified man (S-1) say the word "blood" and use loud, profane language to the two young women. S-1 was accompanied by an unidentified companion, S-2. Like Joel, S-1 and S-2 were young males in their mid-20's.

The club room was separated from the bar room by a wall that had a door and a window through which drinks were passed. Rodney came into the club room from the bar room and said something to S-1 and S-2. Joel told S-1 the women were his girlfriend and cousin, and there was no need for hostility. He offered to get drinks for S-1 and S-2. S-1 responded with a profane insult. He hiked "up his pants with his fists" and stepped toward Joel as if preparing to fight. Joel was five feet seven inches tall and weighed 148 pounds. S-1 was much larger than that. Joel decided he had better hit first. He struck S-1, who fell to the ground on his back. Joel got on top of S-1 and repeatedly hit him in the face.

Although Joel's attention was focused on S-1, he saw appellant approach him quickly from the "left front." Within seconds, Joel was lifted up from behind and shot in the chest.

He did not see who shot him and did not know how close appellant was to him at that time. He fell to the ground, heard more gunshots, and saw Rodney hunched over with his hands on his stomach.

Joel spent several weeks in the hospital recovering from three gunshot wounds. He did not recall receiving the second and third shot. The first shot, to the middle of his chest, caused a collapsed lung. The second shot hit his thigh and testicles. The third shot went across his forehead. While he was in the hospital, he was shown two six-packs by Detective Pohl. He circled appellant's photo in one six-pack because he recognized appellant as the person who approached him before he was shot. From the other six-pack he selected another man as S-1.

After Joel and Rodney left the hospital, they drove together to see two live lineups. While en route, Rodney told Joel that the wrong man might have been selected as S-1. The six-packs had shown only faces, but the live lineups showed entire people. At the first live lineup, which included Johnny, Joel did not identify anyone as S-1. All the men in that lineup were approximately his size, but S-1 was much bigger. At the second live lineup, which included appellant, Joel again identified appellant.

C. Rodney's Description of the Incident

As the party was ending, Rodney was cleaning up in the bar room when he heard arguing in the club room. Leaning out the drinks window, he saw that S-1 and S-2, whom he had never seen before, were speaking disrespectfully to Joel's cousin and his girlfriend. S-1 and S-2 became more aggressive when he offered them drinks. He left the bar area, went into the club room, and spoke with them. At some point, one of them said "blood" or "Blood, blood," which could be a gang communication. Joel approached and told S-1 and S-2 that the women were his girlfriend and cousin. S-1 cursed and said he did not care. Lanny, who was nearby, attempted "to calm them down." Joel started fighting with S-1 and pinned him to the ground. Rodney grabbed S-2 and hit him in the head, as it looked like S-2 also wanted to fight.

At that point, Rodney saw appellant, whom he knew as "Duck," a member of another motorcycle club. Rodney had previously noticed appellant at the party. He first met

appellant two years earlier at another Rare Breed dance and had seen him at other motorcycle group functions since then. Rodney thought appellant would help him to stop the younger men from fighting. Instead, appellant lifted up Joel from the back of the neck and shoulders and shot him in the chest.

Rodney charged at appellant, trying to save his son. Appellant pointed the gun at Rodney and fired. Rodney did not realize he had been shot. He kept moving toward appellant, heard another shot, and felt a bullet hit his knee. Falling to one knee, he saw that S-1 had risen from the ground and fired another gun, which then jammed. Appellant grabbed S-1 and ran outside with him. Rodney started to follow them, became aware that he was wounded in the stomach, and collapsed. He spent almost three months in the hospital and needed several operations.

Once Rodney was able to communicate at the hospital, Detective Pohl visited him and showed him a six-pack. Rodney circled appellant's photo on the six-pack and wrote, "He shot me." He was positive about that identification, as he knew appellant.

At the trial, Rodney also testified that he selected Johnny as S-1 when he was shown the other six-pack. Detective Pohl's testimony showed that Rodney was confused about that point. Pohl did not show Rodney the six-pack with Johnny's photo because Rodney told Pohl he focused his attention on appellant and did not believe he could identify the other gunman. Joel and Lanny, but not Rodney, identified Johnny as S-1 from the six-pack that contained Johnny's photo.

Rodney further testified that, after he was released from the hospital, the "older guys" in the neighborhood told him that the wrong person had been identified as S-1, as Johnny did not attend the party. Rodney wanted to be absolutely sure, to avoid having an innocent person incarcerated. People in the neighborhood also told him that his identification of appellant was wrong, but he rejected that information because he was acquainted with appellant and knew he had seen him.

Rodney told Joel prior to the live lineups that the six-pack identifications of S-1 might be incorrect. At the live lineups, Rodney did not recognize anyone in the first lineup,

but he again selected appellant from the second lineup. He had no feud or “beef” with appellant prior to the shooting.

D. Detective Pohl

Detective Pohl obtained descriptions of the incident from Rodney, Joel and Lanny. Rodney told Pohl that appellant shot him. he had spoken with appellant at previous motorcycle events. appellant was known as “Duck.” and he belonged to a motorcycle club called “Divided Times.” When Pohl showed the three witnesses the six-pack with appellant’s photo, Rodney and Lanny identified appellant as one of the two shooters, and Joel said he had seen appellant at the party. Joel and Lanny identified Johnny as the other suspect, S-1, from the other six-pack. When Pohl told Rodney that a live lineup was scheduled, Rodney said there were concerns about the identifications of S-1, but not of appellant. At the live lineups, the three witnesses identified appellant, and none of them identified Johnny.

On cross-examination, after the court overruled the prosecutor’s relevancy objections, Detective Pohl explained that he put Johnny’s picture into a six-pack because (1) Rodney, Lanny and Joel told him that S-1 was a local Blood gang member known as “J”; and (2) he learned from police gang records and a confidential reliable informant that J or “J-Wac” was the gang name of Johnny, who belonged to a local Blood gang. After Pohl learned that Johnny was not S-1, Johnny was released, and Pohl never found out the real identity of S-1. Pohl tried to get club membership information from Lanny, but Lanny would not provide it.

E. Lanny’s Description of the Incident

Lanny drank no alcoholic beverages at the party. He was in the club room cleaning up when he saw appellant, whom he knew, enter the room with S-1 and S-2, whom he did not know. Lanny and Rodney were the only club members in the building at that time. S-1 was tall and wore a red sports jersey. S-1 and S-2 said “blood” while speaking to each other. S-1 spoke offensively to the two young women standing at the drinks window. Rodney told S-1 not to be disrespectful to females. Joel approached S-1.

At that point, Lanny positioned himself between Joel and S-1, hoping to stop a fight. Appellant stood off to the side. S-1 spoke aggressively and showed Lanny a gun in his waistband. Lanny tried to calm S-1. Joel stepped from behind Lanny and hit S-1, who fell to the ground. Joel continued fighting him while on top of him. S-1 pulled out his gun. Appellant, now also holding a gun, pulled Joel up by the collar. That action by appellant put Joel in a position to be shot by S-1. S-1 had trouble with his gun, but he shot Joel once. Appellant then shot Joel twice. The two women ran from the room. Rodney ran toward appellant, who shot Rodney twice. Appellant and S-1 ran outside. Lanny and Rodney followed them part of the way. S-1 and S-2 drove off together in a car. Appellant rode off on his motorcycle. Lanny then assisted Rodney, who was wounded.

When the police arrived, Lanny told them about the incident, identified appellant as one of the shooters, and indicated where appellant could be found. Lanny later selected a photo of appellant from a six-pack. Lanny also picked out, from another six-pack, a photo of a man who looked like S-1. When he saw a live lineup with that man in it, he realized that man was not S-1. Lanny was absolutely certain that appellant shot Rodney and Joel.

Lanny was extensively cross-examined about all of his direct testimony, including the incident, his previous identifications of the two shooters, and his preliminary hearing testimony. He insisted that the only people in the room were the ones he had already named. He explained that, even though members of motorcycle clubs do not like to come to court, he had been willing to do so because he witnessed the shootings and did not want the problem to “escalate to another level” on the street. In response to questions from defense counsel, he added that a couple of members of Rare Breed, whose names he refused to divulge, told him that S-1 was a Blood gang member whose nickname was J. He gave that information to the police. When he saw Johnny in a six-pack, he identified Johnny as S-1, because Johnny looked “similar” to S-1. He learned from unidentified people, prior to the live lineup, that he had mistakenly selected Johnny in the six-pack. He personally realized that mistake when he saw Johnny in a live lineup.

We will discuss, *post*, the problems during Lanny’s recross-examination when defense counsel asked for the source of Lanny’s information about S-1.

F. Deputy Vizcarra

Deputy Vizcarra arrived at the club room, saw paramedics treating Joel and Rodney, and interviewed Lanny. Lanny's description of the incident included the fact that one of the two shooters was "Duck," the president of another motorcycle club, "Divided Times."

2. Defense Evidence

A. Don C.

Don belonged to another motorcycle club and was a longtime friend of appellant's. When he arrived at the party about 9:15 p.m., he saw appellant across the street from the clubhouse building. Don went inside and saw about 60 people drinking and dancing in the club room. He later noticed a crowd in a corner, heard a gunshot, ran outside, and heard another gunshot inside the building. Appellant was still outside, across the street.

B. The Defense Criminalist

The hospital medical records of Joel and Rodney showed their blood alcohol levels after they were shot. Joel's blood alcohol level was 0.22 percent. In the opinion of the expert, that level meant that Joel would have been impaired, mentally and physically. Rodney's blood alcohol level was 0.12 percent, which the expert believed was enough to impair Rodney's observations and memory.

C. Gary Austin

Austin, who was Johnny's defense attorney, gave the former prosecutor on the case the names of Johnny's alibi witnesses. Rodney approached Austin at the live lineup and apologized for his prior misidentification of Johnny.

D. Latanya G.

Latanya went to the Rare Breed party while Johnny, who was her neighbor, babysat for her at their apartment complex. Latanya arrived at the party around 9:00 p.m. Fifteen or 20 minutes later, she heard men arguing. One of the arguers was a tall man in a red jersey. The clubhouse was filled with people. Latanya left because the man in the red jersey raised his shirt at his waistband, as if he had a weapon. She saw appellant outside the building

when she arrived at the party and when she left it. She heard gunshots as she was driving home. When she got there, she saw Johnny, whose nickname was J.¹

E. Lori-Ann Jones

Jones was the former prosecutor on this case. Johnny was dismissed from it after the live lineup because the eyewitnesses said that Johnny was not S-1. Law enforcement officers later had information about S-1's real identity, but no one else was prosecuted as S-1 due to the past misidentification of S-1.

F. Detective Pohl

During his investigation, Detective Pohl spoke on the telephone with Detective Lewis, who belonged to Rare Breed. Lewis told Pohl that he was inside the building, in a bathroom, when he heard a popping noise that could have been gunshots.

3. Prosecution Rebuttal Evidence

Regina M.

Regina was Joel's girlfriend. Late in the party, as people were leaving, she was standing at the drinks window with a female friend. Someone behind her repeated the word "blood." She said, "Oh, s---," as she was concerned about gang trouble. One of the men cursed at her. Rodney came out from the bar area and Joel walked over. A fight started. Regina heard shots, so she ran with her girlfriend into the bar room. When she came out, she saw that Joel and Rodney were wounded. She left with Joel in the ambulance. She could not identify anyone.

DISCUSSION

1. Refusal to Strike Lanny's Testimony*

During recross-examination, Lanny would not answer questions about who originally told him that a gang member named J was S-1, who later told him that Johnny had wrongly

¹ The prosecutor argued to the jury that the defense witnesses Don and Latanya were wrong when they testified that appellant was not in the club room when the shootings occurred.

* See footnote, *ante*, page 1.

been identified as S-1, and who told him S-1's real identity. The trial court allowed very broad questioning on that issue and gave the jury a special instruction about it, but it refused to strike Lanny's testimony or grant a mistrial. Appellant contends that those rulings deprived him of his Sixth and Fourteenth Amendment rights to due process of law and to confront and cross-examine witnesses. (U.S. Const., 6th & 14th Amends.)

A. The Record

During recross-examination, defense counsel repeatedly asked for the source of Lanny's information that S-1 was a Blood gang member named J. Lanny said a couple of friends of his who knew J gave him that information, it "was pretty reliable," and he passed it on to law enforcement. He would not divulge who told him about J, as those people were "not involved in this." Defense counsel argued that the information led to "the identification [of] an innocent man," and it was needed to "understand the quality of the information you got from these people." The prosecutor made a relevancy objection. The court overruled the objection, finding that the questions were relevant because they concerned credibility and Lanny's ability to identify appellant. Lanny steadfastly refused to name his sources.

The court had the jurors go to the jury room. It told Lanny that he could be held in contempt of court if he continued to refuse to answer the questions. The prosecutor wondered whether answering the questions could put Lanny in physical danger. The courtroom was cleared. Lanny testified, on voir dire, that he had received the information in confidence, and not so that he could pass it on to the police. It was possible that he could be killed if he named his sources, as they were criminal types who possessed weapons and had reputedly engaged in harm. They had sought him out. They lived in the area of Compton and Gardena. He would refuse to disclose his sources even if the court ordered him to do that. After further discussion, the proceedings were adjourned to the following Monday.

When the proceedings resumed that Monday, Lanny still refused to name his sources. The prosecutor argued that Lanny needed counsel, the proceedings had become a trial of Johnny rather than of appellant, and what Lanny learned from other people about S-1's identity was unreliable, irrelevant hearsay. The defense maintained that there had been a

denial of the rights to due process and cross-examination that required the striking of Lanny's testimony. The court ordered Lanny to name his sources. He refused. The court was concerned that the issue arose after Lanny had already given extensive testimony, and when the defense intended to call witnesses who would testify that appellant was not in the clubhouse when the shooting occurred. It believed Lanny's refusal to name his sources resulted from the "credo" of motorcycle clubs rather than a real fear of harm. After carefully considering its options, it decided that it would not strike Lanny's testimony but would give a special instruction and allow the defense wide latitude in further questioning of Lanny. A defense motion for mistrial was denied.

During further broad-ranging recross-examination, Lanny explained that there had been a meeting of about 100 Rare Breed members the previous day, at which he assured the members that he had not given out information about them. The same club members who originally told him about J later approached him and told him a mistake had been made, as S-1 was not Johnny but was a different Blood gang member who was also known as J. Lanny passed on that additional information to Detective Pohl without disclosing who gave it to him. He testified that his sources would have come to court themselves if they wanted their names known. The primary person who told him S-1's true identity had been at the club meeting the previous day. Lanny insisted that appellant knew who S-1 was, since appellant entered the club room with S-1 and S-2 before he shot Joel and Rodney.

The court's final instructions included this special instruction about Lanny's testimony: "If you find that Lanny . . . attempted to suppress evidence in any manner, such as by concealing potential evidence, or refusing to answer questions despite being ordered to do so by the court, you may consider this attempt as a circumstance tending to distrust the entirety of his testimony. You may reject the whole testimony of Lanny . . . as a result, unless, from all of the evidence, you believe the probability of truth favors his testimony in other particulars."

B. Analysis

In addressing the question whether the trial court's ruling and instruction were correct,² it is well to place the situation encountered here into a broader context.

At one end of the spectrum are cases when the party testifying on his or her own behalf unjustifiably refuses to answer questions necessary to complete the cross-examination. 1 McCormick on Evidence (6th ed. 2006) Cross-examination, section 19, page 110, states that in such cases the consensus is that the direct testimony must be stricken. One of the cases cited by McCormick in support of this proposition is *People v. McGowan* (1926) 80 Cal.App. 293, 297-298, where the defendant on direct examination testified as an alibi that on the night of the crime he took a woman home but on cross-examination refused to give her name and address. A more recent case that also involves a testifying defendant whose entire testimony was stricken is *People v. Seminoff* (2008) 159 Cal.App.4th 518, 525-528.

At the other end of the spectrum are cases where a nonparty witness has testified on direct examination and where he or she is asked a question on cross-examination that relates only to the witnesses' credibility and the witness refuses to answer. Here, McCormick notes the direct testimony should not be stricken, "or at the least the judge ought to have a measure of discretion in ruling on the matter." (1 McCormick on Evidence, *supra*, Cross-examination, § 19, p. 111.) Among other cases, McCormick cites in support of what he states is the leading case, *United States v. Cardillo* (2d Cir. 1963) 316 F.2d 606 (*Cardillo*). *Cardillo* has characterized such cases as ones where the testimony involves "collateral matters or cumulative testimony concerning credibility which would not require a direction to strike and which could be handled (in a jury case) by the judge's charge if questions as to the weight to be ascribed to such testimony arose." (*Id.* at p. 613.)

² Respondent asks us to utilize an abuse of discretion standard and find that no abuse of discretion occurred. We cannot analyze the case on that basis, as the issue of federal constitutional error was raised below and has been repeated on appeal. We utilize independent review in analyzing the issue. (*People v. Cromer* (2001) 24 Cal.4th 889, 901-902 [independent review, not abuse of discretion, standard applicable to whether witness was legally unavailable].)

Between these extremes are cases where a nonparty witness refuses to be cross-examined on the merits. McCormick states that the proper remedy is to strike the direct examination, although the judge should have some discretion in the matter. (1 McCormick on Evidence, *supra*, Cross-examination, § 19, pp. 110-111.)

There is California precedent for what *Cardillo* characterizes as testimony about collateral matters.

In *People v. Robinson* (1961) 196 Cal.App.2d 384 (*Robinson*), Marvin Lee had pleaded guilty to burglary and was testifying at the preliminary hearing of Robinson who had participated in the burglary. Lee refused to answer on cross-examination the question that inquired to whom Lee had sold the stolen property. Although Robinson's lawyer moved to strike all of Lee's testimony, the magistrate struck only that portion of the testimony that related to the disposition of the stolen merchandise. (*Id.* at pp. 387-388.) Relying largely on what is now 5 Wigmore, Evidence (Chadbourn rev. 1974) Conduct on Cross-examination, section 1391 at pages 137-140, the court noted that where the witness completely refuses to be cross-examined the direct testimony should be struck but the refusal to answer one or two questions on cross-examination need not lead to this result. Here, the matter should be left to the trial judge, who should look to the "motive of the witness and the materiality of the answer." (*Robinson, supra*, at p. 390.) (It is noteworthy that Wigmore cites *Cardillo* in support of this proposition, i.e., 5 Wigmore, *supra*, pp. 137-138, fn. 2.)

People v. Reynolds (1984) 152 Cal.App.3d 42 (*Reynolds*) was a case where the defendant was charged with attempted escape from jail. He testified that he broke the window glass to his cell in order to smuggle drugs into the jail after he had been pressured to do so by other inmates. On cross-examination he refused to give the names of the inmates who had pressured him. (*Id.* at p. 45.) The appellate court upheld the order striking his entire testimony. (*Id.* at p. 47.)

Citing *Robinson*, the *Reynolds* court observed: "In light of the critical right involved, the trial court should also realize that striking a defendant's entire testimony is a drastic solution, which is to be used after less severe means are considered. For example, a partial

strike is within the discretion of the trial court.” (*Reynolds, supra*, 152 Cal.App.3d at pp. 47-48.) The court also noted that “[a]nother option to be considered is that the defendant’s failure to respond to cross-examination may be considered by the jury in evaluating his or her credibility.” (*Id.* at p. 48.) This was the option chosen by the trial court in this case.

At least two relatively recent cases have recognized that striking a witness’s entire testimony is a drastic solution and that there are alternatives when the witness has refused to answer one or two questions on cross-examination on matters that are collateral, such as credibility. (E.g., *People v. Seminoff, supra*, 159 Cal.App.4th at pp. 525-526; *People v. Hecker* (1990) 219 Cal.App.3d 1238, 1247-1248.)

The aforesaid rule makes sense in terms of the constitutional values that are implicated. While cross-examination is curtailed because the question will not be answered, there is a compensating benefit in that the jury is empowered to conclude that the witness is not credible, or is not entirely credible; that might well have been the whole point of the unanswered question. On the other hand, the wholesale striking of otherwise admissible testimony is avoided, which is a plus in the search for the truth.

In sum, there is solid support, both judicial and scholarly, for the proposition that when one or two questions asked during cross-examination are at stake and those questions relate to a collateral matter such as the nonparty’s witness’s credibility, the trial court need not strike the entirety of that witness’s direct testimony.

We proceed to apply the foregoing to Lanny’s testimony and the evidence.

Lanny’s, Joel’s and Rodney’s identification of appellant was firm and unequivocal. In fact, Lanny testified that he was absolutely certain that appellant shot Joel and Rodney. It is also true that the account these three witnesses gave of the shooting and what led up to it

was consistent. Importantly, Lanny was extensively and exhaustively cross-examined about what he himself did and observed at the time of the incident.³

Regarding S-1, Lanny testified that he had never seen that person before, that he mistakenly identified Johnny as S-1 from a six-pack, and that he corrected that mistake when he saw Johnny in person at the live lineup. Lanny also stated that his undisclosed sources told him that he mistakenly identified Johnny as S-1, the other shooter. These sources never suggested that they themselves witnessed the incident or that Lanny's identification of appellant was mistaken.

The one question Lanny refused to answer was the identity of the persons who told him that S-1 was not Johnny and that S-1 was a Blood gang member named J.

It is important to note that the identities of the persons who told Lanny about S-1 stand in isolation from the facts of this case. These identities have no relationship to Lanny's account of the shootings and his unequivocal identification of appellant. (While these identities may bear on the identification of S-1 as gang member J, the fact is that it does not matter whether S-1 was J or was not J.)

Appellant argues, however, that if he had known who spoke to Lanny about S-1, that information *might* have led him to S-1, S-2 and other percipient witnesses, who *might* have provided information to impeach the identifications of him that were made by Lanny, Joel and Rodney. He analogizes this case to other types of witness problems, such as informers who are material witnesses (*Eleazer v. Superior Court* (1970) 1 Cal.3d 847, 849) and percipient witnesses whose safety is in danger. (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1146-1147.)

The abstract possibility that the people who told Lanny about S-1 knew of witnesses who could show that Lanny, Joel and Rodney were wrong rests on two assumptions that have no bases in the facts of this case.

³ Appellant's briefing states that Lanny "absolutely refused to be cross-examined about the detailed testimonial observations he had related on direct examination." Actually, there was extremely detailed and repetitive cross-examination of Lanny on that subject.

The first assumption is that there are undisclosed eyewitnesses to the melee and the shootings. There is simply nothing to support this. Lanny, for one, insisted that he had identified all the persons who were present in the room when the shooting occurred. It is also to be kept in mind that several parties investigated the circumstances of these shootings and apparently none produced any witnesses other than those already identified. Had these investigations uncovered other witnesses, particularly witnesses who had different versions from that provided by Lanny, Joel and Rodney, it is almost certain that they would have been called as witnesses.

The second assumption is that these undisclosed eyewitnesses would contradict Lanny, Joel's and Rodney's testimony. Although we grant that anything is possible, there must at least be some indication that these (unknown, unidentified and anonymous) persons would contradict the witnesses who testified. We see no indication of this. In fact, indications are to the contrary because the various accounts were largely consistent, which is notable when various people witness quickly unfolding, dramatic events.

The instruction that the court gave about Lanny's testimony empowered the jury to wholly disregard Lanny's testimony. This handed the defense a potent weapon vis-à-vis a very important witness at the cost of not learning the identities of two people who were completely marginal to this case.

We conclude that the trial court did not err in proceeding as it did in response to Lanny's refusal to identify his sources.

2. The Sentencing Issue

There was no finding of premeditation. The penalty for the attempted murders in counts 1 and 2 was therefore a determinate term of five, seven or nine years (Pen. Code, § 664, subd. (a)), plus applicable enhancements.⁴

On count 1, the court imposed the middle term of seven years, plus 25 years to life for a firearms enhancement under section 12022.53, subdivision (d). On count 2, the court added a full consecutive sentence of seven years, plus 25 years for the firearms

⁴ All further statutory references are to the Penal Code.

enhancement. It stayed the two other counts and the great bodily injury enhancements, resulting in a total sentence of 64 years to life.

Appellant contends that the penalty for the offense in count 2 should have been two and one-third years, one-third of the midterm, instead of the full middle term. In other words, appellant seeks to invoke the provision of the Determinate Sentencing Act (DSA; § 1170 et seq.) that mandates a subordinate term to consist of one-third of the middle term. (§ 1170.1, subd. (a).) We agree.

The decisive point is that an indeterminate enhancement does not merge with the determinate offense to make the entire term encompassed by the indeterminate sentencing law. (*People v. Montes* (2003) 31 Cal.4th 350, 358-359 (*Montes*).) That is, the sentence imposed for the offense does not merge with the sentence on the enhancement. (*Ibid.*) In legal contemplation, the count and the enhancement remain distinct.

Respondent contends that *Montes* does not apply because it addresses only section 186.22, a provision contained in the California Street Terrorism Enforcement and Prevention Act. (§ 186.20 et seq.)

Montes addressed the question whether it was error to apply the mandatory minimum life sentence set forth in section 186.22, subdivision (b)(5)⁵ when the defendant was sentenced to seven years on the base term, plus a consecutive term of 10 years under section 186.22, subdivision (b)(1)(C) and a further consecutive term of 25 years to life for a firearm enhancement under section 12022.53, subdivision (d). The Court of Appeal in *Montes* had concluded that the firearm enhancement under section 12022.53, subdivision (d) rendered the entire sentence as one for imprisonment for life, thus invoking section 186.22, subdivision (b)(5). (*Montes, supra*, 31 Cal.4th at pp. 354-355.)

The Supreme Court disagreed, explaining: “The Court of Appeal in the present case looked to a *different* section of the Penal Code (section 12022.53(d)), not incorporated in the

⁵ “Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.” (§ 186.22, subd. (b)(5).)

language of the felony provision itself (attempted murder), in order to find that the felony provided for a life term. We decline to interpret the attempted murder statute in the manner suggested by the Court of Appeal because the enactment of a statute that provides for a term of life imprisonment is best left within the province of the Legislature. As we stated in *People v. Wims* (1995) 10 Cal.4th 293, 307: “Nor does [the dissent] explain why, if our Legislature intended a sentence enhancement to be “part of the criminal offense to which it is attached” [citation], it did not simply say so. When the Legislature wishes to create a substantive offense having as one of its elements another substantive offense, it knows how to do so.”” (*Montes, supra*, 31 Cal.4th at pp. 358-359.) *Montes* went on to point out that when the Legislature intended to fuse the enhancement with the base term, it expressly did so, pointing as an example to subdivision (b)(4)(A) of section 186.22.⁶ (*Montes, supra*, at p. 360.)

We disagree with respondent’s claim that *Montes* does not apply for two reasons.

First, *Montes* holds that one must look to the sentence of the base term and not an enhancement to decide whether the term is determinate or indeterminate. This is so, according to *Montes*, “because the enactment of a statute that provides for a term of life imprisonment is best left within the province of the Legislature.” (*Montes, supra*, 31 Cal.4th at p. 359.) It is also true, again according to *Montes*, that when the Legislature decides to merge the base term and the enhancement, it will say so. These are general principles that are not limited to section 186.22.

Second, the enhancement the Court of Appeal in *Montes* decided made the entire sentence indeterminate was section 12022.5, subdivision (d). That is the same section that

⁶ “Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of: [¶] (A) The term determined by the court pursuant to Section 1170 for the underlying conviction, *including any enhancement* applicable under Chapter 4.5” (§ 186.22, subd. (b)(4)(A), italics added.)

respondent contends in this case makes the entire sentence indeterminate. *Montes* rejected this suggestion. In other words, *Montes* speaks directly to the issue before us.

Given that the sentence on the enhancement does not affect the sentence on the base term, the text of section 1170.1 takes us the rest of the way. Under subdivision (a) of section 1170.1, there is a principal term and one or more subordinate terms. “The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes” (§ 1170.1, subd. (a).) Subdivision (a) of section 1170.1 goes on to provide that the “subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed”

The foregoing represents a legislative judgment that, if the principal term is a determinative term, consecutive subordinate terms generally should be of lesser duration than the principal term. In order to carry this into effect, one needs to look only to the principal term and not to the enhancements, if any, of the principal term. In other words, the subordinate term is related to the principal term and not to an enhancement of the principal term. Section 1170.1 therefore applies, provided that the principal term is a determinate term.

People v. Mason (2002) 96 Cal.App.4th 1 is consistent with the foregoing. In that case, even though the principal term of five years was enhanced with a 25 years-to-life enhancement, the five subordinate, consecutive terms were one-third of the midterm sentences for those offenses. (*Id.* at pp. 3-4, 14-15.) In our opinion, however, one passage in *Mason* requires some clarification. That passage is: “Thus, the DSA sentencing scheme only applies when *all* the terms of imprisonment are ‘determinate,’ i.e., of specified duration. [Citation.] Where there are both determinate and indeterminate sentences, the provisions of the DSA, and more particularly section 1170.1, do not apply.” (*Id.* at p. 15.) The phrase “*all* the terms of imprisonment” must be understood to refer to terms of imprisonment imposed for offenses.

In light of the foregoing, the case must be remanded with directions to modify the sentence and to issue a corrected abstract of judgment.

DISPOSITION

The judgment is reversed to the extent that it imposes a term of seven years on count 2 and the case is remanded with directions to impose one-third of the midterm for this offense. In all other respects, the judgment is affirmed.

FLIER, J.

We concur:

BIGELOW, P. J.

RUBIN, J.

20

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD SANDERS,

Defendant and Appellant.

B206569

(Los Angeles County
Super. Ct. No. TA081670)

ORDER CERTIFYING OPINION
FOR PUBLICATION

COURT OF APPEAL - SECOND DISTRICT

FILED

OCT 22 2010

THE COURT:*

JOSEPH A. LANE

Clerk

Deputy Clerk

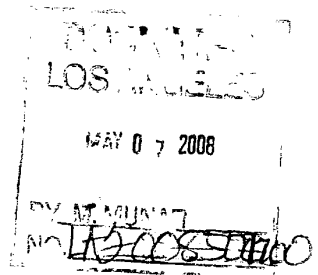
The opinion in the above-entitled matter filed on September 22, 2010, was certified for partial publication. For good cause it now appears that the full opinion should be published in the Official Reports, and it is so ordered.

* BIGELOW, P. J.

RUBIN, J.

FLIER, J.

LODGED DOC. NO. P
CV 12-8339 GW (JEM)



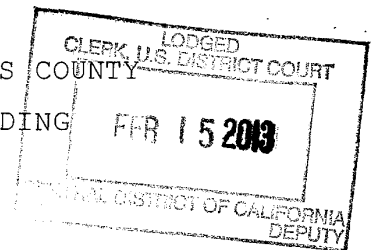
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF-RESPONDENT,
VS.
DONALD SANDERS, AKA RAY HUFF,
AKA BILL JOHNSON,
DEFENDANT-APPELLANT.

NO. TA081670

APR 29 2008

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE WILLIAM CHIDSEY, JR., JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
MARCH 15, 2007



APPEARANCES:

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COPY

VOLUME 4 OF 9 VOLUMES
PAGES 901 TO 1087-1200

DAWSHA LAYLAND, CSR #5166
OFFICIAL REPORTER

1 THAN NORMAL BREAK. ANYBODY WANT TO TAKE A TEN-MINUTE
2 RECESS NOW AND THEN COME BACK? ONE JUROR IS SHAKING NO.
3 ANYBODY -- DO YOU WANT TO GO AHEAD? ALL RIGHT. LET'S DO
4 THAT. THE PEOPLE MAY CALL THEIR NEXT WITNESS.

5 THE COURT: PLEASE COME FORWARD. RAISE YOUR RIGHT
6 HAND AND FACE THE CLERK OF THE COURT.

7
8 LANNY THOMAS,
9 CALLED BY THE PEOPLE AS A WITNESS, WAS SWORN AND
10 TESTIFIED AS FOLLOWS:

11
12 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
13 TESTIMONY YOU WILL GIVE IN THE CAUSE NOW PENDING BEFORE
14 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND
15 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

16 THE WITNESS: I DO.

17 THE COURT: THANK YOU, SIR. PLEASE HAVE A SEAT UP
18 HERE. MAKE YOURSELF COMFORTABLE. AFTER YOU'RE
19 COMFORTABLE, SLIDE THE CHAIR AS CLOSE AS YOU CAN TO THE
20 MICROPHONE. IT IS IMPORTANT THAT YOU SPEAK UP LOUDLY AND
21 CLEARLY. IT IS IMPORTANT THAT YOU WAIT UNTIL THE
22 ATTORNEY'S QUESTION IS FULLY ASKED BEFORE RESPONDING.

23 BEFORE WE START WE'D LIKE TO KNOW YOUR FIRST
24 AND LAST NAME AND WOULD YOU BE SO KIND AS TO SPELL BOTH.

25 THE WITNESS: OKAY. MY FIRST NAME IS LANNY,
26 L-A-N-N-Y, LAST NAME THOMAS, T-H-O-M-A-S.

27 THE COURT: THANK YOU. THE PEOPLE MAY INQUIRE.

28 MR. SIMS: THANK YOU.

DIRECT EXAMINATION

BY MR. SIMS:

Q MR. THOMAS, I'LL DIRECT YOUR ATTENTION BACK
TO SEPTEMBER 11TH OF 2005. ON THAT DATE DO YOU RECALL
WHERE YOU WERE?

A RARE BREED'S CLUBHOUSE ON BROADWAY, 15320.

Q AND IS THAT IN THE COUNTY OF LOS ANGELES,
SIR?

A YES, IT IS.

Q AND WHEN YOU SAY YOU WERE AT RARE BREED'S
CLUBHOUSE, IS THAT A PLACE THAT YOU FREQUENT?

A YES, IT IS.

Q OKAY. AND ARE YOU A MEMBER OF THE RARE
BREED MOTORCYCLE CLUB?

A I'M ONE OF THE FOUNDERS.

Q AND ON THAT DATE, ON SEPTEMBER 11TH, 2005,
WAS THERE A CELEBRATION GOING ON?

A YES. WE WERE HAVING OUR GRAND OPENING FOR
OUR CLUBHOUSE.

Q OKAY. AND IN HAVING THAT GRAND OPENING,
WERE THERE A NUMBER OF PEOPLE THERE?

A QUITE A FEW.

Q TO YOUR BEST ESTIMATE, HOW MANY PEOPLE
DURING THE DAY?

A WE PROBABLY HAD A COUPLE THOUSAND PEOPLE
COME THROUGH THERE.

Q AND AT ANY POINT IN TIME DO YOU RECALL
SEEING ANYONE AT THE PARTY WHO YOU SEE HERE TODAY IN

1 COURT?

2 A YES.

3 Q CAN YOU POINT TO THAT PERSON AND DESCRIBE
4 WHAT THEY'RE WEARING TODAY FOR THE RECORD.

5 A DUCK, BROWN -- WHATEVER COLOR SUIT THAT
6 IS -- WITH A YELLOW SHIRT AND TIE.

7 MR. DAVIS: I'M SORRY, FOR THE RECORD, MY CLIENT
8 IS NOT WEARING A DUCK.

THE COURT: NO, I THINK HE REFERRED TO HIM --

9 THE WITNESS: BY HIS MOTORCYCLE NAME, DUCK, ALL
10 RIGHT.
11

12 THE COURT: FOR THE WRITTEN RECORD, REFERRING TO
13 THE DEFENDANT IN COURT.

14 MR. SIMS: THANK YOU.

15 Q AND NOW YOU REFERRED TO HIM BY A NICKNAME.
16 PRIOR TO SEPTEMBER 11TH, 2005, HAD YOU EVER MET HIM
17 BEFORE?

18 A QUITE A FEW TIMES. LIKE I SAID, I'VE BEEN
19 ON THE SET SINCE '89.

20 MR. DAVIS: MOTION TO STRIKE AFTER "A FEW TIMES,"
21 NONRESPONSIVE.

22 THE COURT: SUSTAINED. MOTION GRANTED. "QUITE A
23 FEW TIMES" TO REMAIN.

24 MR. SIMS: AND IF I COULD JUST APPROACH FOR ONE
25 MOMENT, YOUR HONOR, THERE WAS AN ISSUE AND I FORGOT TO
26 INSTRUCT MR. THOMAS WITH REGARD TO THAT ISSUE.

27 THE COURT: GO AHEAD.

28 MR. DAVIS: EXCUSE ME. I WOULD LIKE --

1 MR. SIMS: YOU CAN COME FORWARD.

2 THE COURT: WHY DON'T YOU TELL HIM FIRST WHAT
3 YOU'RE ABOUT TO DO.

4 MR. SIMS: COUNSEL WOULD PREFER I WRITE YOU A
5 NOTE, SO I'LL WRITE YOU A NOTE.

6 MR. DAVIS: IF HE DOESN'T WANT US TO HEAR.
7 BY MR. SIMS:

8 Q MR. THOMAS, IF YOU CAN UNDERSTAND MY CRYPTIC
9 HANDWRITING, IT'S SOMETHING THAT'S BEEN DISCUSSED
10 EARLIER. JUST LET ME KNOW IF YOU UNDERSTAND WHAT I'M
11 TALKING ABOUT.

12 (BRIEF PAUSE IN THE PROCEEDINGS.)

13 THE WITNESS: OKAY.

14 BY MR. SIMS:

15 Q YOU UNDERSTAND?

16 A YES.

17 Q OKAY. THANK YOU. NOW, YOU INDICATED YOU
18 WERE FAMILIAR WITH THE DEFENDANT, CORRECT?

19 A YES.

20 Q AND HAD YOU SEEN HIM ON PRIOR OCCASIONS?

21 A YES.

22 Q AND WHAT TYPES OF PRIOR OCCASIONS DO YOU
23 RECALL SEEING THE DEFENDANT BEFORE?

24 A OKAY. WE DO QUITE A FEW MOTORCYCLE TRIPS
25 DURING THE YEAR, AND ALL THE DIFFERENT CLUBS GO, SO I
26 WOULD SEE HIM OUT THERE ON THE SET.

27 Q AND WHEN YOU SAY "THE SET," IS THAT THE
28 MOTORCYCLE SCENE?

1 A THE MOTORCYCLE SET, YES.

2 Q AND HAD YOU EVER HAD ANY DISCUSSIONS WITH
3 HIM IN THE PAST, TALKED TO HIM?

4 A NO, NO.

5 Q YOU HAD NEVER SPOKEN TO HIM BEFORE?

6 A JUST IN PASSING SPEAKING, THAT'S IT.

7 Q NOW, AS FAR AS YOUR EXPERIENCE WITH
8 MOTORCYCLE CLUBS, OFTENTIMES DO PEOPLE WEAR THE INSIGNIA
OF THEIR MOTORCYCLE CLUB THAT THEY BELONG TO?

9 A YES, THEY DO.

10 Q AT ANY POINT HAD YOU EVER SEEN THE DEFENDANT
11 IN SOMETHING THAT HAD THE INSIGNIA OF A MOTORCYCLE CLUB?

12 A YES, QUITE A FEW TIMES.

13 Q AND DO YOU RECALL WHAT THAT INSIGNIA WAS?

14 A UM, HIS CLUB -- THEY CALL THEMSELVES THE
15 DT'S, YES.

16 Q DO YOU KNOW THAT THEY HAVE ANOTHER NAME?

17 A NO, THAT'S ABOUT IT.

18 Q SO YOU'VE SEEN HIM WEAR CLOTHING WITH THE
19 INSIGNIA OF THE DT'S ON IT?

20 A RIGHT.

21 MR. DAVIS: OBJECTION, LEADING.

22 THE COURT: OVERRULED, CLARIFICATION. THAT'S WHAT
23 HE PREVIOUSLY TESTIFIED TO.

24 BY MR. SIMS:

25 Q NOW, ON SEPTEMBER THE 11TH OF 2005,
26 APPROXIMATELY TOWARDS THE END OF THE PARTY DID SOMETHING
27 HAPPEN?
28

1 A YES, IT DID.

2 Q AND DO YOU RECALL WHAT --

3 MR. DAVIS: OBJECTION, LEADING, "TOWARDS THE END
4 OF THE PARTY."

5 THE COURT: SUSTAINED. RESTATE YOUR QUESTION.

6 BY MR. SIMS:

7 Q SURE. DO YOU RECALL SOMETHING HAPPENING
8 AROUND 10:30 IN THE EVENING?

9 A I'M NOT SURE WHAT TIME IT WAS --

10 MR. DAVIS: OBJECTION, LEADING, TIME.

11 THE COURT: OVERRULED. DID SOMETHING UNUSUAL
12 HAPPEN ON 9-11-05?

13 THE WITNESS: YES.

14 THE COURT: NEXT QUESTION.

15 MR. DAVIS: THANK YOU, YOUR HONOR.

16 BY MR. SIMS:

17 Q DO YOU REMEMBER WHAT TIME IT WAS?

18 A I DON'T.

19 Q DO YOU REMEMBER WHAT WAS TAKING PLACE WHEN
20 THAT UNUSUAL EVENT HAPPENED?

21 A YES.

22 Q WHAT WAS HAPPENING?

23 A YOU WANT ME TO TELL YOU EVERYTHING THAT WENT
24 ON?

25 Q LET ME BACK UP.

26 MR. DAVIS: I DO.

27 BY MR. SIMS:

28 Q LET ME BACK UP. WAS THE PARTY OVER OR WAS

1 IT STILL ONGOING?

2 A THE PARTY WAS OVER. WE WERE CLEANING UP.
3 THERE WAS A SMALL CREW LEFT THERE TO CLEAN UP.

4 MR. DAVIS: AFTER "OVER," MOTION TO STRIKE.

5 THE COURT: MOTION GRANTED.

6 BY MR. SIMS:

7 Q THE PARTY WAS OVER. WHAT WAS HAPPENING WHEN
8 THE PARTY WAS OVER?

9 A WE WERE CLEANING UP, COLLECTING FUNDS,
10 COUNTING MONEY, THAT TYPE OF THING.

11 Q OKAY. AND AS THIS WAS TAKING PLACE, DID YOU
12 HEAR A COMMOTION?

13 A YES.

14 Q AND WHERE WAS THE COMMOTION COMING -- WHERE
15 WERE YOU STANDING AS YOU HEARD THE COMMOTION?

16 A OKAY. I WAS STANDING ON ONE SIDE OF THE
17 BAR. WE HAVE A ROOM THAT WE CALL THE VIP ROOM, AND I WAS
18 STANDING ON THE OUTSIDE OF THE BAR.

19 Q ONE MOMENT.

20 SIR, I'M SHOWING YOU WHAT'S BEEN PREVIOUSLY
21 MARKED AS PEOPLE'S 10. I'LL GIVE YOU THIS PHOTOGRAPH AND
22 ASK YOU IF IT APPEARS TO BE THE SAME PHOTOGRAPH THAT
23 APPEARS TO BE ON THE LARGE SCREEN UP THERE?

24 A YES, IT IS.

25 Q AND DO YOU RECOGNIZE THAT AREA?

26 A YES, I DO.

27 Q AND WHERE IS THAT AREA?

28 A THAT'S THE BAR AREA, WHICH WE CALL OUR VIP

1 ROOM.

2 Q OKAY. AND AS YOU HEARD THIS COMMOTION, WERE
3 YOU IN THAT AREA?

4 A YES, I WAS.

5 Q AND WHEN YOU HEARD THE COMMOTION, DESCRIBE
6 FOR US WHAT IT IS YOU RECALL HEARING.

7 A OKAY. YOU HAVE TWO WINDOWS RIGHT HERE. WE
8 HAD ONE THAT WAS OPEN --

MR. DAVIS: OBJECTION, NONRESPONSIVE.

10 THE COURT: SUSTAINED. TO THE EXTENT POSSIBLE,
11 JUST DIRECT YOUR ANSWERS TO THE QUESTION. I THINK THE
12 QUESTION HAD TO DO WITH WHAT DID YOU HEAR.

13 MR. SIMS: CORRECT.

14 MR. DAVIS: MOTION TO STRIKE THE ANSWER.

15 THE COURT: MOTION GRANTED. WHAT DID YOU HEAR,
16 SIR?

17 BY MR. SIMS:

18 Q WHAT DID YOU HEAR?

19 A AN ARGUMENT BETWEEN TWO FEMALES AND ONE OF
20 THE GUYS THAT WAS WITH DUCK.

21 Q NOW, WHERE -- IF YOU CAN SHOW US ON THAT
22 PHOTOGRAPH, WHERE WAS IT THAT YOU WERE STANDING WHEN YOU
23 HEARD THAT COMMOTION? I'LL GIVE YOU A PEN, SIR. JUST
24 POINT OUT THE AREA ON THE LARGE PHOTOGRAPH AS TO WHERE IT
25 IS YOU WERE STANDING?

26 A DID YOU WANT ME TO GET UP?

27 Q YES, IF YOU CAN.

28 THE COURT: DON'T USE THE PEN TO MARK THE SCREEN.

1 THAT'S WHAT YOU ASKED HIM TO DO.

2 THE WITNESS: RIGHT HERE.

3 BY MR. SIMS:

4 Q YOU WERE RIGHT THERE?

5 A RIGHT.

6 Q AND FOR THE RECORD, THAT'S APPROXIMATELY ON
7 THE -- NOT BEHIND THE BAR, BUT IN FRONT OF THE BAR NEAR
8 THE WINDOW AREA?

9 A RIGHT.

10 Q OKAY. THANK YOU. YOU CAN TAKE YOUR SEAT.
11 AND WHEN YOU HEARD THIS COMMOTION, COULD YOU HEAR THE
12 LANGUAGE THAT WAS BEING USED?

13 A YES, I COULD.

14 Q AND DO YOU RECALL WHAT WAS BEING SAID?

15 A PRETTY MUCH.

16 Q OKAY. AND AS FAR AS YOU REMEMBER, CAN YOU
17 TELL US WHAT WAS BEING SAID?

18 A OKAY. ONE OF THE FEMALES WAS STANDING ON
19 ONE SIDE OF THE WINDOW AND THE GUY -- ONE OF THE GUYS
20 THAT WAS WITH DUCK WALKED UP AND SHE MADE A COMMENT --
21 SHE SAID "AH-H," AND THAT'S WHEN HE PROCEEDED TO CALL HER
22 ALL KIND OF --

23 Q MR. THOMAS, YOU'VE GOT PROBABLY 20 ADULTS IN
24 THIS ROOM. PLEASE GO RIGHT AHEAD AND SAY WHAT THEY
25 SAID.

26 A OKAY. THAT'S WHEN HE PROCEEDED TO CALL HER
27 ALL KIND OF BITCHES AND STUFF, OKAY.

28 Q AND WHEN YOU HEARD THAT, DID YOU DO

1 ANYTHING?

2 A PRETTY MUCH RODNEY HAD --

3 Q MY QUESTION IS DID YOU DO ANYTHING?

4 A NO. I WAS JUST LISTENING TO THE
5 CONVERSATION.

6 Q AND DO YOU KNOW WHO RODNEY MASON IS?

7 A YES, I DO.

8 Q AND HE IS ALSO A MEMBER OF YOUR CLUB?

A YES, HE IS.

10 Q AND WAS HE THERE ON SEPTEMBER 11TH DURING
11 THE POINT IN TIME IN WHICH YOU HEARD THIS COMMOTION
12 OUTSIDE OF THE BAR VIP AREA?

13 A HE WAS. HE WAS ON THE OTHER SIDE OF THE
14 BAR.

15 Q AND FOR THE RECORD, THERE'S A PHOTOGRAPH OF
16 THE BAR UP THERE.

17 YOU INDICATED THAT YOU WERE ON THE FRONT
18 SIDE, THE OUTSIDE OF THE BAR. WAS MR. MASON ON THE
OPPOSITE SIDE?

20 A HE WAS ON THE OPPOSITE SIDE.

21 Q DID YOU SEE IF MR. MASON DID ANYTHING WHILE
22 THIS COMMOTION OR THESE WORDS YOU WERE HEARING WERE
23 TAKING PLACE?

24 A PRETTY MUCH HE WAS LIKE ME. HE JUST
25 LISTENED TO WHAT WAS GOING ON, AND HE MADE A COMMENT
26 "DON'T DISRESPECT THE FEMALES LIKE THAT."

27 Q NOW, HOW DID HE MAKE THAT COMMENT? DID YOU
28 SEE HIM PLACE HIMSELF OUTSIDE OR HOW IS IT THAT HE MADE

1 THAT COMMENT?

2 A NO. HE JUST TOLD THEM "DON'T DISRESPECT
3 THEM LIKE THAT."

4 Q DID HE DO THAT THROUGH THE WINDOW?

5 A YES, HE DID.

6 Q AND WHEN HE MADE THOSE COMMENTS, WHAT WAS
7 THE NEXT THING YOU RECALL TAKING PLACE?

8 A JOEL, WHICH IS RODNEY'S SON, HAD COME OVER
9 ON THE OUTSIDE OF THE WINDOW, SO WHEN I -- WHEN I SAW
10 THAT, I CAME OUT FROM BEHIND THE -- FROM OUT OF THE VIP
11 TO STOP THE COMMOTION THAT WAS GETTING READY TO START.

12 Q SO YOU ACTUALLY LEAVE THIS ROOM THAT'S ON
13 THE SCREEN AND GO OUT -- DO YOU GO OUT THE DOOR THAT IS
14 MARKED "EXIT" THERE?

15 A RIGHT.

16 Q OKAY. AND YOU GO OUT, AND IS THE
17 ALTERCATION BASICALLY TAKING PLACE IN FRONT OF THOSE
18 WINDOWS?

19 A YES, IT IS.

20 Q AND WHAT HAPPENS NEXT WHEN YOU GO OUT?

21 A OKAY. I GO OUT AND AT THE TIME JOEL WAS
22 ON -- JOEL WAS ON MY RIGHT SIDE, AND THE OTHER TWO
23 GENTLEMEN WERE ON MY LEFT SIDE. WE WERE TRYING TO --
24 THERE WAS ANOTHER YOUNGSTER THERE THAT WAS TRYING TO STOP
25 WHAT WAS GETTING READY TO TAKE PLACE.

26 Q OKAY. LET ME ASK YOU THIS: WHEN YOU
27 STEPPED OUTSIDE, AND YOU SAW THAT JOEL WAS THERE, WERE
28 THE GIRLS STILL THERE?

1 A THE GIRLS HAD STEPPED TO THE SIDE PRETTY
2 MUCH.

3 Q OKAY. AND OTHER THAN THE GIRLS AND
4 YOURSELF, WHO WAS THERE INVOLVED IN THIS ALTERCATION?

5 A OKAY. UM, JOEL, ONE OF THE SHOOTERS, THE
6 FIRST SHOOTER, AND THEN I GUESS A FRIEND OF HIS.

7 Q AND AT THAT POINT, DID YOU SEE THE
8 DEFENDANT? WAS HE THERE?

9 A YES, HE WAS.

10 Q AND WHERE WAS HE STANDING?

11 A HE WAS STANDING LIKE OFF TO THE SIDE.

12 Q AT ANY TIME, ANY POINT DURING THAT DAY HAD
13 YOU SEEN THE DEFENDANT WITH ANY OF THE OTHER TWO PEOPLE
14 WHO YOU MENTIONED THAT WERE INVOLVED IN THIS ALTERCATION?

15 A NO. I WAS INSIDE MOST OF THE DAY.

16 Q OKAY.

17 DID YOU EVER SEE THEM WALK IN TOGETHER?

18 A YES, I DID.

19 Q WHEN DID YOU SEE THE DEFENDANT WALK IN WITH
20 THE OTHER GUYS?

21 A RIGHT BEFORE THEY GOT INTO THE VERBAL
22 CONTACT.

23 Q AND DID YOU SEE WHERE THEY CAME FROM?

24 A YES. THEY CAME FROM -- WE HAVE A MAIN DOOR
25 RIGHT TO THE LEFT OF THE EXIT.

26 MR. SIMS: YOU'VE INDICATED THAT YOU HAVE A MAIN
27 DOOR TO THE LEFT OF THE EXIT. ONE MOMENT.

28 MAY I HAVE A MOMENT, YOUR HONOR? I THINK

1 WE'RE AT PEOPLE'S 14, I BELIEVE IT IS.

2 THE COURT: 14 IS NEXT.

3 (MARKED FOR IDENTIFICATION

4 PEOPLE'S EXHIBIT 14.)

5 BY MR. SIMS:

6 Q SIR, I'M SHOWING YOU WHAT'S JUST BEEN MARKED
7 AS PEOPLE'S 14. DO YOU RECOGNIZE THAT PHOTOGRAPH, SIR?

8 A THAT'S THE MAIN DOOR.

9 Q WELL, LET ME ASK YOU THIS QUESTION: DOES IT
10 APPEAR TO BE THE SAME PHOTOGRAPH THAT'S UP ON THE LARGE
11 SCREEN?

12 A YES, IT IS.

13 Q WHEN YOU'RE TALKING ABOUT THAT REAR MAIN
14 DOOR, IS THAT THE DOOR YOU'RE REFERRING TO THAT'S ON THE
15 SCREEN?

16 A YES, IT IS.

17 Q AND WHEN YOU INDICATED THAT YOU SAW THE
18 DEFENDANT WALK IN TOWARDS THE -- TO GET DRINKS, IS THIS
19 THE DOOR YOU SAW HIM COME THROUGH?

20 A YES.

21 MR. DAVIS: OBJECTION, MISSTATES THE EVIDENCE, "TO
22 GET DRINKS."

23 THE COURT: SUSTAINED AS TO THE LATTER PORTION.
24 THIS IS WHERE YOU SAW THOSE INDIVIDUALS?

25 THE WITNESS: YES, MM-HMM.

26 THE COURT: NEXT QUESTION.

27 BY MR. SIMS:

28 Q FOR THE RECORD, WITH REGARDS TO THIS

1 PHOTOGRAPH, THERE'S A -- IF YOU WERE TO GO THROUGH THE
2 DOOR, THERE'S TWO WINDOWS THERE; IS THAT CORRECT?

3 A RIGHT.

4 Q AND THERE'S ALSO A DOOR THAT APPEARS TO BE
5 TRIMMED IN WHITE. IS THAT FAIR TO SAY?

6 A YES.

7 Q OKAY. THE DOOR AREA WHERE IT'S TRIMMED IN
8 WHITE, IS THAT WHERE YOU WERE STANDING, SIR?

9 A RIGHT.

10 Q AND THE WINDOW AREA, IS THAT WHERE THE
11 DRINKS WERE BEING SERVED?

12 A RIGHT.

13 Q AND DID YOU SEE THE DEFENDANT AND THE OTHER
14 INDIVIDUAL APPROACH THAT WINDOW?

15 A YES.

16 Q YOU INDICATED THAT JOEL CAME UP, CORRECT?

17 A RIGHT.

18 Q AND WHAT HAPPENED WHEN JOEL CAME UP?

19 A THEY HAD A FEW WORDS.

20 Q LET ME STOP YOU THERE. DO YOU RECALL WHAT
21 THE WORDS WERE?

22 A NO, I DON'T.

23 Q DID THEY SOUND TO YOU TO BE AGGRESSIVE
24 WORDS?

25 A YES, THEY WERE.

26 Q AND DID THE WORDS THAT JOEL HAD LEAD TO A
27 FIGHT?

28 A WELL, YES, IT DID.

1 Q AND IF YOU RECALL, WHOM WAS JOEL HAVING THE
2 WORDS WITH?

3 A THE FIRST SHOOTER.

4 Q SOMEONE YOU DESCRIBED AS THE FIRST SHOOTER?

5 A RIGHT.

6 Q WE'LL GET TO WHAT HAPPENED A LITTLE BIT
7 LATER, BUT THERE WAS AN INDIVIDUAL THAT IS OTHER THAN
8 THIS DEFENDANT THAT JOEL WAS HAVING WORDS WITH, CORRECT?

A RIGHT.

10 Q DO YOU RECALL WHAT THAT PERSON LOOKS LIKE?

11 A HE WAS MAYBE FIVE-EIGHT, FIVE-NINE, ABOUT
12 180, -75, -80 POUNDS, DARK-SKINNED, CLOSE HAIRCUT. HE
13 HAD A SCAR ON HIS FACE, RIGHT ABOVE HIS LIP ON THE -- AS
14 A MATTER OF FACT, THE RIGHT SIDE.

15 Q AND HAD YOU EVER SEEN THAT PERSON BEFORE THE
16 EVENING OF SEPTEMBER 11TH?

17 A NEVER SEEN HIM BEFORE.

18 Q OKAY. NOW, AT SOME POINT DID THE WORDS THAT
19 WERE BEING HAD BETWEEN JOEL AND THIS OTHER GUY, DID IT
20 LEAD TO A PHYSICAL FIGHT?

21 A YES, IT DID.

22 Q AND WHERE WERE YOU STANDING AS THEY WERE
23 FIGHTING?

24 A WELL, WHAT HAPPENED WAS I WAS BETWEEN THE
25 TWO, AND WHEN I LOOKED AT THE FIRST SHOOTER, AND I LOOKED
26 BACK TOWARDS JOEL, HE HAD COME AROUND ME, AND THAT'S WHEN
27 THEY BEGAN TO FIGHT.

28 Q WHEN YOU SAY JOEL HAD COME AROUND YOU, CAN

1 YOU TELL US WHERE JOEL CAME FROM, IF YOU KNOW?

2 A YES. LIKE I SAID, WE WERE STANDING -- ALL
3 OF US WERE STANDING RIGHT IN FRONT OF THE WINDOWS RIGHT
4 THERE, AND I WAS IN BETWEEN THE FIRST SHOOTER, HIS
5 FRIEND, AND JOEL, BECAUSE BASICALLY WE WERE TRYING TO
6 STOP ANYTHING FROM HAPPENING.

7 Q NOW, DO YOU KNOW WHETHER OR NOT JOEL HAD
8 BEEN IN THE ROOM WHERE THE VIP AREA IS OR HE CAME FROM
SOMEWHERE ELSE?

10 A NO. HE CAME FROM OUTSIDE.

11 Q WHEN YOU SAY "OUTSIDE," DID HE COME FROM
12 OUTSIDE WHERE THAT CONCRETE AREA IS?

13 A THE CONCRETE, YEAH.

14 Q ALL RIGHT. AND SO HE COMES INSIDE, AND THEN
15 AT SOME POINT THE FIGHT IS ON, CORRECT?

16 A RIGHT.

17 Q ALL RIGHT. AND WHAT DO YOU RECALL HAPPENING
18 AS THE TWO ARE FIGHTING?

19 A JOEL IS ON TOP OF HIM, YOU KNOW, AND ALL OF
20 A SUDDEN THE GUY PULLS A GUN, HE WAS TRYING TO RACK HIS
21 GUN AND COULDN'T GET IT RACKED PROPERLY.

22 Q LET ME STOP YOU FOR A MOMENT. JOEL IS ON
23 TOP OF THE GUY, THE GUY HE'S FIGHTING WITH, AND YOU SEE
24 SOMEONE DISPLAY A GUN; IS THAT RIGHT?

25 A RIGHT.

26 Q AND WHO IS THAT PERSON YOU SEE DISPLAY A
27 GUN?

28 A THAT'S THE FIRST SHOOTER.

1 Q OKAY. AND IS THAT THE PERSON JOEL WAS
2 FIGHTING WITH?

3 A YES.

4 Q DID YOU SEE WHERE THIS GUY PRODUCED THIS GUN
5 FROM?

6 A UM, YES, IT --

7 Q LET ME ASK YOU. WHERE DID IT COME FROM?

8 A IT CAME FROM HIS WAIST.

9 Q OKAY. AND DO YOU RECALL WHAT THE WEAPON
10 LOOKED LIKE?

11 A IT WAS CHROME. IT WAS A NINE MILLIMETER OF
12 SOME TYPE.

13 Q AT THAT POINT IN TIME IS JOEL STILL FIGHTING
14 WITH THIS PERSON?

15 A JOEL WAS FIGHTING, HE WAS TRYING TO RACK THE
16 GUN AND THEN ALL OF A SUDDEN HE GETS OFF ONE SHOT.

17 Q OKAY. AND DO YOU KNOW WHERE THE DEFENDANT
18 WAS AT THAT TIME?

19 A AT THAT POINT WHILE HE'S TRYING TO RACK THE
20 GUN, DUCK IS ON THE TOP OF JOEL, TRYING TO PULL HIM OFF
21 OF HIM.

22 Q WHEN YOU SAY "TRYING TO PULL HIM OFF OF
23 HIM," WHAT IS IT THAT YOU SAW THE DEFENDANT DOING?

24 A HE HAD HIM BY THE -- HIS COLLAR, AND HE WAS
25 PULLING UP ON HIM. AT THAT POINT HE HAD A GUN IN HIS
26 HAND.

27 Q AT THAT POINT DID YOU SEE THE DEFENDANT WITH
28 A GUN IN HIS HAND; IS THAT CORRECT?

1 A YES, YES.

2 Q DO YOU RECALL ANYTHING ABOUT WHAT THAT GUN
3 LOOKED LIKE?

4 A IT WAS BLACK, AUTOMATIC -- SEMIAUTOMATIC,
5 EXCUSE ME.

6 Q IS IT POSSIBLE IT WAS ANY OTHER COLOR BUT
7 BLACK?

8 A NO, IT WAS BLACK.

9 Q OKAY. NOW, WHEN THE DEFENDANT DISPLAYED HIS
10 WEAPON, HAD JOEL ALREADY BEEN SHOT?

11 A HE HAD ALREADY BEEN SHOT.

12 Q AND WHAT WERE YOU DOING AT THAT TIME?

13 A TRYING TO FIGURE OUT WHAT WAS GOING ON.

14 Q OKAY. AND WERE YOU GOING TO DIVE IN AND
15 COME TO JOEL'S ASSISTANCE?

16 MR. DAVIS: OBJECTION, IRRELEVANT.

17 THE COURT: SUSTAINED.

18 BY MR. SIMS:

19 Q DID YOU DIVE IN AND COME TO JOEL'S
20 ASSISTANCE?

21 A NO, I DIDN'T.

22 Q IS THERE A REASON YOU DIDN'T DO THAT?

23 A BECAUSE AT THAT POINT JOEL HAD BEEN SHOT BY
24 THE FIRST SHOOTER, AND THEN BY THE SECOND SHOOTER TWICE,
25 SO I JUST STOOD THERE AND WATCHED IT PRETTY MUCH.

26 Q NOW, YOU SAID A "SECOND SHOOTER." WHO ARE
27 YOU TALKING ABOUT WHEN YOU'RE SAYING THE "SECOND
28 SHOOTER"?

1 A DUCK.

2 Q IS THAT THE DEFENDANT THAT'S HERE?

3 A YES, IT IS.

4 Q AS FAR AS YOU COULD TELL, JUST TAKING YOU
5 BACK A MOMENT, AS FAR AS YOU COULD TELL, WHEN THE
6 ALTERCATION AND THE FIGHT -- THE PHYSICAL FIGHT BETWEEN
7 JOEL AND THE OTHER GUY TAKES PLACE, WHERE WERE THE GIRLS?

8 MR. DAVIS: SPECULATION.

THE COURT: IF YOU KNOW.

10 THE WITNESS: THEY WERE TRYING TO GET INTO THE VIP
11 ROOM AT THAT TIME.

12 BY MR. SIMS:

13 Q DID THEY RUN BEHIND YOU?

14 A YES, THEY DID.

15 Q AND THE VIP ROOM IS THAT AREA THAT'S INSIDE
16 THE POINT IN WHICH THERE'S THAT WHITE TRIMMED DOOR,
17 CORRECT?

18 A YES, IT IS.

19 Q AND WHEN THE SHOTS WERE FIRED, DID YOU SEE
20 THE GIRLS?

21 A YES.

22 Q OKAY. AND WERE THEY STILL IN THAT AREA
23 WHERE THAT WHITE TRIMMED DOOR IS?

24 A THEY WERE RUNNING PAST ME, YEAH.

25 Q DID THEY DO ANYTHING?

26 A NO.

27 Q DID THEY GO INTO THE ROOM?

28 A THEY WENT INTO THE ROOM.

1 Q NOW, YOU INDICATED THAT THE DEFENDANT SHOT
2 JOEL AS WELL, CORRECT?

3 A RIGHT.

4 Q DO YOU RECALL HOW MANY TIMES YOU SAW THE
5 DEFENDANT SHOOT JOEL?

6 A I THINK HE DISCHARGED TWICE.

7 Q AT ANY POINT DO YOU RECALL SEEING JOEL'S
8 FATHER, RODNEY, COME INTO THE FRAY?

9 A ONCE HE SHOT JOEL TWICE, RODNEY CAME FROM
10 THE REAR OF THE KITCHEN, AND THAT'S --

11 Q NOW, AS A POINT OF DESCRIPTION, THERE'S THE
12 DOOR YOU INDICATED THAT YOU HAD EXITED TO COME OUT INTO
13 THE AREA. DID RODNEY COME OUT THAT SAME DOOR?

14 A NO.

15 Q DID HE COME ANOTHER WAY?

16 A HE CAME ANOTHER WAY.

17 Q IF YOU COULD SHOW US WHICH WAY ON THE
18 PHOTOGRAPH -- YOU CAN EVEN STAND UP. SHOW US WHICH WAY
1 HE CAME OUT.

20 A WELL, HE CAME FROM THIS AREA RIGHT HERE.

21 Q OKAY. IS THERE A DOOR THAT LEADS TO A
22 KITCHEN AREA THAT ULTIMATELY LEADS TO THE BAR ON THAT
23 SIDE?

24 A YES, IT IS.

25 Q HAVE A SEAT. NOW, WHEN RODNEY CAME IN,
26 WHAT, IF ANYTHING, COULD YOU SEE RODNEY DOING?

27 A RODNEY JUST CAME OUT AND RAN TOWARDS HIM,
28 AND AS HE RAN TOWARDS HIM, HE WAS SHOT TWICE.

1 Q WHEN YOU SAY "HE RAN TOWARDS HIM," WHO ARE
2 YOU REFERRING TO?

3 A DUCK.

4 Q THE GENTLEMAN THAT'S HERE IN COURT?

5 A YES.

6 Q AND AS RODNEY RAN TOWARDS THE DEFENDANT, DID
7 YOU SEE SOMETHING HAPPEN TO RODNEY?

8 A IT WAS REALLY FUNNY BECAUSE I DIDN'T THINK
HE WAS SHOT BECAUSE HE WALKED OUT WITH ME.

10 MR. DAVIS: OBJECTION. NONRESPONSIVE. MOTION TO
11 STRIKE.

12 THE COURT: OVERRULED.

13 MR. SIMS: WE'LL GET TO THAT.

14 Q DID YOU SEE THE DEFENDANT DISCHARGE HIS
15 WEAPON AS RODNEY WAS RUNNING TOWARDS HIM?

16 A YES.

17 Q AND DID YOU ALSO HEAR THE SHOTS?

18 A YES.

19 Q AND DO YOU RECALL HEARING ONE OR MORE THAN
20 ONE SHOT?

21 A THERE WERE TWO SHOTS.

22 Q AND AFTER YOU RECALL HEARING THOSE SHOTS AND
23 SEEING THE WEAPON DISCHARGED, WHAT WAS THE NEXT THING YOU
24 REMEMBER TAKING PLACE?

25 A AT THAT POINT, JOEL WAS LAYING ON THE
26 GROUND, AND THE FIRST SHOOTER HAD GOTTEN UP AND WAS
27 HEADING OUT, AND AS HE WAS HEADING OUT THE DOOR, THAT'S
28 WHEN THE TWO FEMALES GRABBED ME BY MY SHIRT AND PULLED ME

1 BACK INTO THE ROOM, BECAUSE IT LOOKED LIKE HE WAS GETTING
2 READY TO SHOOT ME.

3 Q AND DID YOU SEE THE DEFENDANT LEAVE?

4 A HE STOOD THERE FOR A WHILE, AND THEN HE
5 TURNED AND LEFT.

6 Q DID HE LEAVE IN THE SAME DIRECTION AS THE
7 OTHER GUY -- THE GUY YOU DESCRIBED AS THE FIRST SHOOTER?

8 A THEY CAME OUT OF THE SAME DOOR, BUT THEY
WENT IN DIFFERENT DIRECTIONS.

10 Q AND NOW AT THE TIME IN WHICH THIS IS ALL
11 TAKING PLACE, APPROXIMATELY HOW MANY PEOPLE WERE IN THE
12 INTERIOR OF THE BUILDING?

13 A IT WAS JUST RODNEY, HIS SON, THE TWO
14 SHOOTERS, THE TWO FEMALES AND ME. THAT WAS IT.

15 Q AND OBVIOUSLY YOU DON'T KNOW IF SOMEBODY
16 ELSE WAS IN THE BATHROOM OR UPSTAIRS?

17 A THERE WAS NOBODY ELSE IN THE BUILDING. LIKE
18 I SAID, WE WERE CLOSING UP.

19 Q NOW, WERE THERE PEOPLE OUTSIDE?

20 A THERE WERE PEOPLE OUTSIDE, BUT I DON'T KNOW
21 WHO THEY WERE.

22 Q NOW, WHEN YOU SEE THE DEFENDANT LEAVE AND
23 COME OUT THAT DOOR YOU DESCRIBED, DID YOU SEE JOEL -- OR
24 RODNEY STILL COMING AFTER THE DEFENDANT OR MOVING IN THAT
25 DIRECTION AS WELL?

26 A WELL, HE WAS MOVING -- AS A MATTER OF FACT,
27 WE WALKED OUT TOGETHER.

28 Q AND THEN DID SOMETHING CATCH YOUR ATTENTION

1 ABOUT RODNEY?

2 A WELL, WE WALKED OUT TOGETHER, AND ONE OF THE
3 GUYS -- THE FIRST SHOOTER WENT ONE WAY, DUCK GOT ON HIS
4 MOTORCYCLE, AND AS WE WERE COMING BACK IN, THAT'S WHEN I
5 REALIZED RODNEY HAD BEEN SHOT, BECAUSE HE TOOK A DEEP
6 BREATH, AND THEN HE STARTED LEAN -- HE LEANED UP AGAINST
7 THE WALL AND WAS COMING DOWN THE WALL, SO I KIND OF
8 GRABBED HIM AND HELPED HIM TO THE FLOOR.

9 Q DO YOU SEE AN AREA ON THAT PHOTOGRAPH WHERE
10 RODNEY ULTIMATELY CAME TO REST?

11 A YES.

12 Q CAN YOU POINT THAT OUT FOR US.

13 A OKAY. IT WAS RIGHT HERE, IN THIS AREA RIGHT
14 HERE.

15 Q AND THAT IS THE AREA PRETTY MUCH ADJACENT TO
16 THE LARGE GARAGE DOOR OPENING, CORRECT?

17 A RIGHT.

18 Q YOU CAN HAVE A SEAT. THANK YOU, SIR. NOW,
19 YOU INDICATED THAT YOU OBSERVED THE DEFENDANT LEAVE ON A
20 MOTORCYCLE; IS THAT CORRECT?

21 A RIGHT.

22 Q AND HOW LONG AFTER THE SHOOTING HAD TAKEN
23 PLACE DID HE LEAVE?

24 A IT WAS A FEW MINUTES. HE SAT ON HIS
25 MOTORCYCLE, THOUGHT ABOUT IT FOR A SECOND AND THEN LEFT.

26 Q TO YOU IT APPEARED TO YOU HE WAS THINKING?

27 A YES.

28 Q OKAY. AND THEN HOW LONG AFTER THAT DID THE

1 POLICE ARRIVE, IF YOU RECALL?

2 A MAYBE ABOUT TEN MINUTES.

3 Q TEN MINUTES LATER?

4 A YEAH.

5 Q AND WHILE THE POLICE WERE THERE, DID YOU

6 SPEAK TO THE POLICE?

7 A YES, I DID.

8 Q AND DID YOU GIVE THEM A DESCRIPTION OF WHO

9 IT WAS THAT YOU BELIEVED DID THE SHOOTING?

10 A YES, I DID.

11 Q AND AT THE TIME IN WHICH THE POLICE HAD

12 ARRIVED JUST AFTER THE SHOOTING, DID YOU TELL THEM THAT

13 AT LEAST AS FAR AS YOU KNOW, THE NAME OF THE PERSON THAT

14 HAD SHOT RODNEY AND JOEL?

15 A YES, I DID.

16 Q AND WHAT NAME DID YOU GIVE THEM?

17 A DUCK.

18 Q IS THAT THE ONLY NAME YOU KNEW AT THE TIME?

19 A THAT'S THE ONLY NAME I KNEW, REALLY.

20 Q DID YOU ALSO TELL THEM YOU KNEW HE WAS A

21 MEMBER OF ANOTHER MOTORCYCLE CLUB?

22 A YES, I DID.

23 Q DID YOU GIVE THEM A PHYSICAL DESCRIPTION?

24 A YES, I DID.

25 Q DID YOU TELL THEM YOU KNEW ANYTHING ABOUT

26 WHAT DUCK DID FOR A LIVING IN TERMS OF "YOU MIGHT FIND

27 HIM AT THIS PLACE"?

28 A YES, I DID.

1 Q AND WHAT DID YOU TELL THEM?

2 MR. DAVIS: HEARSAY.

3 THE COURT: OVERRULED.

4 BY MR. SIMS:

5 Q WHAT DID YOU TELL THEM?

6 A HE OWNS A CARWASH ON LONG BEACH BOULEVARD.

7 Q NOW, LATER ON AT SOME POINT DID YOU HAVE
8 DISCUSSIONS WITH DETECTIVE POHL, WHO IS HERE TODAY IN
COURT?

10 A YES, I DID.

11 Q AND AT ANY POINT DID DETECTIVE POHL SHOW YOU
12 A GROUP OF PHOTOGRAPHS?

13 A YES, HE DID.

14 THE COURT: FOR PLANNING PURPOSES, WE'RE GOING TO
15 RECESS AT 4:15. I HAVE ANOTHER MATTER I WANT TO HEAR
16 BEFORE THE CLOSE OF THE DAY.

17 BY MR. SIMS:

18 Q AND WHEN DETECTIVE POHL SHOWED YOU THAT
19 GROUP OF PHOTOGRAPHS, DID YOU IDENTIFY ANYONE FROM THAT
20 GROUP OF PHOTOGRAPHS?

21 A YES, I DID.

22 MR. SIMS: YOUR HONOR, I HAVE IN MY HAND A COLOR
23 SIX-PACK. MAY IT BE MARKED AS PEOPLE'S 15.

24 (MARKED FOR IDENTIFICATION
25 PEOPLE'S EXHIBIT 15.)

26 MR. SIMS: ONE MOMENT.

27 Q SIR, I'M SHOWING YOU WHAT HAS BEEN MARKED AS
28 PEOPLE'S 15. DO YOU RECOGNIZE THAT DOCUMENT, SIR?

1 A YES, I DO.

2 Q AND WHAT'S DEPICTED IN PEOPLE'S 15?

3 A IT'S A PICTURE OF DUCK.

4 Q AND WERE YOU SHOWN THAT GROUP OF PHOTOGRAPHS
5 BY DETECTIVE POHL?

6 A YES, I WAS.

7 Q AND WHEN YOU WERE SHOWN THAT GROUP OF
8 PHOTOGRAPHS, DID YOU PICK OUT ANYONE IN THAT GROUP OF
PHOTOGRAPHS?

10 A YES.

11 Q AND WHOM DID YOU PICK OUT?

12 A DUCK.

13 Q AND IS HE POSITIONED IN THAT GROUP OF
14 PHOTOGRAPHS?

15 A YES, HE IS.

16 Q AND DID YOU CIRCLE HIS PHOTOGRAPH?

17 A YES, I DID.

18 Q AND IN CIRCLING HIS PHOTOGRAPH, WERE YOU
19 INDICATING SOMETHING TO DETECTIVE POHL?

20 A HE WAS THE SHOOTER.

21 Q AT SOME POINT WERE YOU SHOWN ANOTHER GROUP
22 OF PHOTOGRAPHS WITH A DIFFERENT SET OF MEN IN IT?

23 A RIGHT.

24 Q AND WERE YOU ABLE TO PICK OUT SOMEBODY IN
25 THAT GROUP OF PHOTOGRAPHS?

26 A YES, I WAS.

27 Q AND DID YOU INDICATE TO DETECTIVE POHL WHO
28 IT WAS YOU WERE PICKING OUT IN THAT GROUP OF PHOTOGRAPHS?

1 A NO, JUST LIKE I SAID, I DIDN'T KNOW -- IT
2 LOOKED LIKE THE FIRST SHOOTER.

3 Q OKAY. SO WHEN YOU MADE THAT IDENTIFICATION
4 TO DETECTIVE POHL, YOU INDICATED TO HIM THAT IT LOOKED
5 LIKE THE GUY THAT WAS THE FIRST SHOOTER?

6 A RIGHT.

7 Q OKAY. PRIOR TO SEPTEMBER 11TH, 2005, DID
8 YOU HAVE ANY BEEFS WITH THE DEFENDANT?

9 A NO.

10 Q DID YOU GUYS HAVE ANY ONGOING ARGUMENTS OR
11 ANYTHING OF THAT NATURE?

12 A NONE WHATSOEVER.

13 Q AND AT SOME POINT YOU WERE ASKED TO ATTEND A
14 LIVE LINEUP; IS THAT FAIR?

15 A YES.

16 Q AND DID YOU TRAVEL TO THAT LIVE LINEUP WITH
17 RODNEY AND JOEL MASON, OR DID YOU TRAVEL SEPARATELY FROM
18 THEM?

19 A SEPARATELY.

20 Q SO YOU DIDN'T SPEAK WITH THEM WHILE YOU WERE
21 TRAVELING; IS THAT CORRECT?

22 A NO, I DIDN'T.

23 Q WHEN YOU GOT TO THE LIVE LINEUP, DID YOU
24 VIEW ONE LINEUP OR TWO LINEUPS?

25 A ONE.

26 Q AND DID YOU EXPECT TO VIEW TWO?

27 A YES.

28 Q AND IS THERE SOMETHING THAT PREVENTED YOU

1 FROM SEEING MORE THAN ONE LINEUP THAT DAY?

2 A I HAD SEEN DUCK AND HIS ATTORNEY IN THE
3 LOBBY.

4 Q SO WHEN YOU SAW THE DEFENDANT AND HIS
5 ATTORNEY IN THE LOBBY, THEN YOU COULDN'T PARTICIPATE IN
6 THE LINEUP INVOLVING HIM; IS THAT CORRECT?

7 A NO, I COULDN'T.

8 Q BUT YOU DID PARTICIPATE IN THE OTHER LINEUP,
CORRECT?

10 A YES, I DID.

11 Q AND FROM THAT LINEUP, WERE YOU ABLE TO
12 IDENTIFY ANYONE THAT YOU BELIEVED WAS THE FIRST SHOOTER?

13 A NO.

14 Q AND UNDERSTANDING THAT YOU HAD IDENTIFIED
15 SOMEONE IN THE PHOTOGRAPH AS BEING THE FIRST SHOOTER --

16 MR. DAVIS: EXCUSE ME, THAT MISSTATES THE
17 EVIDENCE, "IDENTIFIED."

18 THE COURT: WHICH PHOTOGRAPH ARE YOU REFERRING
TO?

20 MR. DAVIS: THE FIRST SHOOTER.

21 THE COURT: IN THE PHOTOGRAPH AS BEING WHICH
22 PHOTOGRAPH YOU'RE REFERRING TO? THE SIX-PACK?

23 BY MR. SIMS:

24 Q YES, THE SIX-PACK OF THE FIRST SHOOTER,
25 UNDERSTANDING THAT YOU CIRCLED SOMEONE IN THAT PACKAGE OF
26 PHOTOGRAPHS, CORRECT?

27 A YES, I DID.

28 Q AND YOU WERE UNABLE TO IDENTIFY SOMEONE IN

1 THE LIVE LINEUP, CORRECT?

2 A RIGHT, IT WASN'T THE SAME PERSON.

3 Q THAT WAS GOING TO BE MY QUESTION. DID IT
4 APPEAR TO YOU THAT THE PERSON YOU SAW IN THE GROUP OF
5 PHOTOGRAPHS WAS THE SAME -- DID YOU SEE THAT PERSON
6 AMONGST THOSE PEOPLE IN THE LIVE LINEUP?

7 A I SAW HIM, BUT HE WASN'T THE ONE. HE WASN'T
8 THE FIRST SHOOTER.

9 Q WELL, YOU SAW THE PERSON THAT YOU SAW IN THE
10 PHOTOGRAPH IN THE LINEUP?

11 A RIGHT.

12 Q OKAY. BUT WAS THERE SOMETHING THAT GAVE YOU
13 THE IMPRESSION THAT HE WAS NOT THE SHOOTER?

14 A HE DIDN'T LOOK THE SAME. ON THE
15 PHOTOGRAPHS, ON THE SIX-PACK, IT LOOKED LIKE HIM, JUST
16 LIKE I TOLD DETECTIVE POHL, IT LOOKED LIKE HIM, BUT ONCE
17 I SAW THE LINEUP, IT WASN'T HIM.

18 Q AND WHAT WAS DIFFERENT ABOUT HIM IN PERSON
19 SUCH THAT YOU COULD TELL IT WASN'T THE SAME GUY THAT DID
20 THE SHOOTING?

21 A PRETTY MUCH HIS SIZE, HIS COLOR. IT JUST
22 DIDN'T LOOK LIKE THE SAME PERSON.

23 Q AND DID THE PERSON THAT WAS IN THE LIVE
24 LINEUP, DID THAT PERSON HAVE THE SCAR OVER THEIR LIP?

25 A YOU KNOW, I COULDN'T EVEN TELL YOU.

26 Q WELL, YOU CERTAINLY NOTICED THE SCAR ON THE
27 LIP THE NIGHT OF THE SHOOTING, CORRECT?

28 A EXACTLY.

1 Q TO SOME DEGREE IT WAS NOTICEABLE TO YOU?

2 A EXACTLY.

3 Q SO NOTICEABLE THAT YOU REMEMBER IT TODAY?

4 A EXACTLY.

5 Q BUT WHEN YOU WENT TO THE LIVE LINEUP, YOU
6 DID NOT SEE THAT SCAR, DID YOU?

7 A YOU KNOW, I DON'T THINK SO. LIKE I SAID,
8 IT'S BEEN A WHILE AGO, SO I DON'T THINK SO.

9 Q NOW, YOU ARE THE -- ONE OF THE CO-FOUNDERS
10 OF THE RARE BREED, CORRECT?

11 A YES.

12 Q AND IN BEING ONE OF THE CO-FOUNDERS, YOU'RE
13 FAMILIAR WITH THE LARGE MAJORITY OF THE MEMBERS, CORRECT?

14 A YES.

15 Q DO YOU MAINTAIN THEIR MEMBERSHIP LOGS OR
16 ANYTHING LIKE AT THAT?

17 A DO I?

18 Q YES.

19 A NO, I DON'T.

20 Q OKAY. YOU SIMPLY KNOW WHO PEOPLE ARE,
21 CORRECT?

22 A YES.

23 Q AND AT SOME POINT WERE YOU REQUESTED TO GIVE
24 INFORMATION ABOUT THE PEOPLE WHO WERE MEMBERS OF THE
25 GROUP OVER TO THE DEFENSE COUNSEL?

26 A YES, I WAS.

27 Q AND DID YOU DO THAT?

28 A NO, I DIDN'T.

1 Q AND IS THERE A REASON YOU DID NOT DO THAT?

2 A I CAN'T DO THAT. I DON'T HAVE THAT
3 INFORMATION TO GIVE.

4 Q OKAY. DID YOU AT THAT TIME HAVE INFORMATION
5 TO GIVE TO THE DEFENSE ATTORNEY WITH REGARDS TO OTHER
6 MEMBERS OF RARE BREED WHO WERE PRESENT WHEN THE SHOOTING
7 TOOK PLACE, OTHER THAN RODNEY AND JOEL?

8 A I DIDN'T KNOW WHO ELSE WAS PRESENT AT THE
9 TIME, BECAUSE LIKE I SAID, I WAS INSIDE, SO I DON'T KNOW
10 WHO WAS OUTSIDE. THERE WERE NO OTHER MEMBERS INSIDE, BUT
11 ME AND RODNEY.

12 Q OKAY. SO, IN OTHER WORDS, WHILE YOU WERE
13 INSIDE AND THE INCIDENT WAS TAKING PLACE, THERE WERE NO
14 OTHER MEMBERS FOR YOU TO GIVE TO THE DEFENSE ATTORNEY?

15 A EXACTLY.

16 Q TO DO THAT, YOU'D BE GIVING OVER OTHER
17 PEOPLE'S PERSONAL INFORMATION, CORRECT?

18 A EXACTLY.

19 Q DID YOU FEEL IT WAS THE RIGHT THING TO DO TO
20 GIVE OTHER PEOPLE'S PERSONAL INFORMATION?

21 A NO.

22 Q NOW, WHAT ABOUT ACCESS TO THE RARE BREED
23 MOTORCYCLE CLUB, THERE WAS A REQUEST FOR YOU TO LET THEM
24 COME IN, CORRECT?

25 A RIGHT.

26 Q AND DID YOU ALLOW THAT TO HAPPEN?

27 A NO, I DIDN'T.

28 Q AND WHY DIDN'T YOU ALLOW THAT TO HAPPEN?

1 A BECAUSE I DIDN'T FEEL IT WAS NECESSARY, YOU
2 KNOW.

3 Q WHY DIDN'T YOU FEEL IT WAS NECESSARY?

4 A THERE'S CERTAIN THINGS THAT WE JUST DON'T DO
5 AS FAR AS THE MOTORCYCLE CLUB, OKAY?

6 Q LET ME BACK UP FOR A MOMENT.

7 DO YOU OWN THAT PHYSICAL STRUCTURE, THAT
8 LOCATION?

9 A NO, I JUST -- MY POSITION IN THE CLUB IS TO
10 OPERATE THAT AND HANDLE ALL THE FUNDS AND STUFF.

11 Q AND YOU HAD THE KEYS, CORRECT?

12 A YES, I DO.

13 Q SO YOU WERE THE PARTY MOST INTIMATELY
14 RELATED WITH THE CONTROL OF THAT PLACE?

15 A YES.

16 Q AT SOME POINT WERE YOU PRESENT WHEN PICTURES
17 OF THE LOCATION WERE TAKEN?

18 A AFTER THE SHOOTING?

19 Q YES.

20 A YES.

21 Q SO YOU DO KNOW THAT THERE WERE SOME PICTURES
22 OF WHAT THE CLUB LOOKED LIKE ON THAT NIGHT TAKEN?

23 A YES.

24 Q AND YOU ALLOWED THAT TO HAPPEN?

25 A I COULDN'T STOP IT.

26 Q NOW, FOR -- IS THERE ANY REASON YOU CAN
27 THINK OF THAT YOU MIGHT BE MISTAKEN AS TO WHETHER OR NOT
28 IT WAS THIS DEFENDANT WHO SHOT RODNEY AND SHOT JOEL?

1 A NO.

2 Q ARE YOU ABSOLUTELY CERTAIN?

3 A ABSOLUTELY.

4 Q AND ON THAT EVENING HAD YOU HAD SOMETHING TO
5 DRINK?

6 A I DON'T DRINK.

7 Q SO YOUR MIND WAS CLEAR AT THAT POINT IN
8 TIME?

A YES, IT WAS.

10 Q AND WAS THERE ANYTHING WRONG WITH YOUR
11 VISION THAT EVENING?

12 A NO, THERE WASN'T.

13 Q YOU DON'T WEAR GLASSES, DO YOU?

14 A NO -- WELL, TO READ, YES.

15 Q DID YOU WEAR YOUR READING GLASSES THAT
16 NIGHT?

17 A NO, I DIDN'T.

18 Q OKAY. AND IF YOU NEED SOME READING GLASSES,
I THINK WE'VE GOT SOMEBODY THAT CAN HELP YOU, BUT YOU
20 DIDN'T WEAR YOUR GLASSES THAT NIGHT?

21 A NO.

22 Q DID YOU HAVE ANY PROBLEMS SEEING WHO IT WAS
23 THAT SHOT RODNEY AND JOEL?

24 A NO, I DIDN'T HAVE ANY PROBLEMS.

25 MR. SIMS: THANK YOU. I HAVE NO FURTHER QUESTIONS
26 OF THIS WITNESS.

27 THE COURT: ALL RIGHT. NEARLY PERFECT. IT'S 14
28 AFTER. WE WERE GOING TO RECESS AT 15 AFTER. WE WILL

1 RECESS NOW. WE'LL COME BACK TOMORROW MORNING AT 9:00
2 O'CLOCK.

3 AGAIN I WANT THE JURY TO GO AWAY TONIGHT
4 WITH MY ADMONITION IN MIND. PLEASE DO NOT DISCUSS THIS
5 CASE WITH ANYONE, INCLUDING A FELLOW JUROR, UNTIL IT'S
6 SUBMITTED TO YOU. IT WON'T BE DEEMED SUBMITTED UNTIL YOU
7 HEAR ALL THE EVIDENCE, UNTIL YOU HEAR THE ARGUMENTS OF
8 THE ATTORNEYS AND UNTIL YOU'RE INSTRUCTED ON THE LAW.

9 WITH THAT IN MIND, YOU'RE EXCUSED FOR THE
10 DAY. LEAVE YOUR PENCILS AND NOTEBOOKS THERE. WE'LL SEE
11 TO IT THAT SHARP PENCILS ARE THERE FOR YOU. ENJOY YOUR
12 EVENING. SIR, YOU ARE EXCUSED AS WELL. YOU ARE ORDERED
13 BACK AT 9:00 O'CLOCK TOMORROW MORNING.

14 PLEASE NOTE IT TAKES A PERIOD OF TIME TO GET
15 INTO THE BUILDING SO BE HERE WELL BEFORE 9:00 O'CLOCK.
16 IT'S OKAY IF YOU WANT TO BRING IN A SOFT DRINK OR CUP OF
17 COFFEE WHILE YOU TESTIFY.

18 THE WITNESS: THANK YOU.

19 THE COURT: MR. SANDERS, YOU'RE ORDERED TO RETURN
20 TOMORROW AT 9:00 AS WELL.

21
22 (THE FOLLOWING PROCEEDINGS
23 WERE HELD IN OPEN COURT
24 OUTSIDE THE PRESENCE OF
25 THE JURY:)

26
27 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
28 TO THE SANDERS MATTER.

LODGED DOC. NO. P
CV 12-8339 GW (JEM)

LOS ANGELES

MAY 17 2008

CV 12-8339
NO. 2008-501-700

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.)
)
 DONALD SANDERS, AKA RAY HUFF,)
 AKA BILL JOHNSON,)
 DEFENDANT-APPELLANT.)

NO. TA081670

APR 29 2008

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE WILLIAM CHIDSEY, JR., JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
MARCH 16, 2007

LODGED
CLERK, U.S. DISTRICT COURT
FEB 15 2013
CENTRAL DISTRICT OF CALIFORNIA

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: EDMUND G. BROWN, JR.
STATE ATTORNEY GENERAL
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DAWSHA LAYLAND, CSR #5166
OFFICIAL REPORTER

1201

1 CASE NUMBER: TA081670
2 CASE NAME: PEOPLE VS. SANDERS
3 COMPTON, CALIFORNIA FRIDAY, MARCH 16, 2007
4 DEPT. 10 HON. WILLIAM CHIDSEY, JR., JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: DAWSHA LAYLAND, CSR #5166
7 TIME: A.M. SESSION

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT
OUTSIDE THE PRESENCE OF
THE JURY:)

MR. LEVINE: IT'S OUR INTENT TO CALL A CRIMINALIST
IN THIS CASE. WE HAD DISCUSSED WITH MR. SIMS STIPULATING
TO THE MEDICAL RECORDS. IT'S MY UNDERSTANDING THIS
MORNING HE'S AGREED TO STIPULATE THEY WOULD COME IN AS A
BUSINESS RECORD. I WANT TO MAKE SURE THAT'S ON THE
RECORD BECAUSE IF IT'S NOT, THEN I HAVE TO GO GET THE
CUSTODIAN OF RECORDS TO COME IN.

MR. SIMS: THE PEOPLE WOULD AGREE THE MEDICAL
RECORDS CAN COME IN AS BUSINESS RECORDS.

THE COURT: ARE THOSE THE RECORDS MR. DAVIS HAD IN
HIS POSSESSION THE OTHER DAY?

MR. SIMS: YES, AS LONG AS IT'S CLEAR BOTH MEDICAL
RECORDS OF BOTH VICTIMS COME IN. I DON'T KNOW WHAT VALUE
THEY'LL BE, BUT BOTH RECORDS SHOULD COME IN.

MR. LEVINE: MY SUGGESTION TO COUNSEL, WHAT I'VE

1 DONE IN THE PAST, HE PICKS OUT THE REPORTS HE WANTS. I
2 KNOW THERE'S A CORROBORATIVE REPORT, THAT'S NO PROBLEM,
3 AND WE CAN LIMIT IT TO WHAT'S RELEVANT.

4 THE COURT: YOU NEED TO TALK TO MR. SIMS.

5 MR. DAVIS: I'LL MAKE THIS PROPOSAL: WE STIPULATE
6 TO ALL THE RECORDS. WE DON'T WANT TO DUMP THEM ALL ON
7 THE JURY, SO THAT EACH COUNSEL WILL SELECT AND SHARE WITH
8 FELLOW COUNSEL EXACTLY WHAT WE WANT. IF THERE'S ANY
ISSUE, I'D BE SURPRISED. THE DEFENSE ESSENTIALLY, IF
10 COUNSEL AGREES, WE CAN DO THAT.

11 MR. SIMS: YES.

12 THE COURT: WHAT I ALSO DO: I'M NOT SURE EXACTLY
13 WHAT'S IN THOSE RECORDS. AT SOME POINT IN TIME WE'LL
14 HAVE TO READ THAT STIPULATION IN THE RECORD IN FRONT OF
15 THE JURY AND EXPLAIN TO THEM WHAT A STIPULATION IS.

16 MR. LEVINE: THANK YOU, YOUR HONOR. THANK YOU,
17 MR. SIMS.

18 THE COURT: I THINK WE'RE READY TO PROCEED UNLESS
19 WE HAVE OTHER MATTERS. THEY MAY BE BROUGHT IN.

20
21 (THE FOLLOWING PROCEEDINGS
22 WERE HELD IN OPEN COURT IN
23 THE PRESENCE OF THE JURY:)

24
25 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
26 EVERYBODY LOOKS BRIGHT-EYED AND BUSHY-TAILED AND READY TO
27 GO. WE ARE READY TO PROCEED. I'LL ASK MR. SIMS TO FIND
28 MR. THOMAS.

1 MR. SIMS: HE'S ON HIS WAY IN.

2 THE COURT: PLEASE COME FORWARD, SIR. PLEASE HAVE
3 A SEAT. A REMINDER THAT YOU ARE STILL SUBJECT TO THE
4 OATH THAT YOU PREVIOUSLY TOOK. BEFORE I TURN IT OVER TO
5 MR. DAVIS, MR. SIMS, DID YOU HAVE ANY FOLLOW-UP
6 QUESTIONS?

7 MR. SIMS: NO FOLLOW-UPS.

8 THE COURT: MR. DAVIS, YOU MAY INQUIRE.

MR. DAVIS: THANK YOU, YOUR HONOR.

10
11 CROSS-EXAMINATION

12 BY MR. DAVIS:

13 Q GOOD MORNING, MR. THOMAS.

14 A GOOD MORNING.

15 Q WE HAVE HAD THIS KIND OF AN EXCHANGE ONCE
16 BEFORE AT THE PRELIMINARY HEARING, CORRECT?

17 A YES, WE HAVE.

18 Q ALL RIGHT. AND HAVE YOU HAD AN OPPORTUNITY
19 TO READ YOUR TESTIMONY OF THE PRELIMINARY HEARING?

20 A NO, I HAVEN'T.

21 Q ALL RIGHT. DID ANYONE, FOR EXAMPLE, SHOW
22 YOU THE POLICE REPORT WRITTEN BY AN OFFICER DANIEL
23 VIZCARRA, WHERE HE MEMORIALIZED THINGS YOU TOLD HIM ON
24 THE EVENING AFTER THE INCIDENT?

25 A NO, I HAVEN'T.

26 Q AND HAVE YOU TALKED WITH ANYBODY IN DETAIL
27 ABOUT THIS CASE SINCE THE PRELIMINARY HEARING?

28 A NO, NOT REALLY.

1 Q ALL RIGHT. HAVE YOU RECEIVED ANY
2 INFORMATION FROM ANY SOURCE THAT HAS MATERIALLY CHANGED
3 YOUR MEMORY OF WHAT OCCURRED, OTHER THAN THIS LINEUP
4 SIX-PACK WITH JOHNNY COCHRAN -- CLARK?

5 A NO.

6 Q I WANT TO START BY ASKING YOU TO TELL THE
7 JURY A LITTLE BIT ABOUT WHAT YOUR ROLE AT THE TIME OF THE
8 SHOOTING INCIDENT, NOT IN WITNESSING IT, BUT IN THE CLUB
WAS, WHAT YOUR POSITION IN THAT CLUB WAS?

10 A I'M ONE OF THE CO-FOUNDERS AND MY POSITION
11 IN THE CLUB AT THE TIME WAS TO HANDLE THE CLUBHOUSE, MAKE
12 SURE ALL THE FUNDS WERE COLLECTED, MAKE SURE EVERYTHING
13 WENT RIGHT THAT DAY SINCE IT WAS OUR GRAND OPENING,
14 PRETTY MUCH.

15 Q ALL RIGHT. AND HOW MANY CO-FOUNDERS ARE WE
16 TALKING ABOUT AT THAT TIME?

17 A FOUR.

18 Q FOUR. WERE YOU AND THE OTHER THREE
19 GENTLEMEN ESSENTIALLY THE ONES THAT STARTED THIS CLUB?

20 A IT WAS ACTUALLY NINE OF US.

21 Q ALL RIGHT. AND WHEN WAS THAT THAT YOU
22 STARTED IT?

23 A '89.

24 Q ALL RIGHT. AND IT GREW IN SIZE SINCE '89?

25 A YES.

26 Q WE'RE LOOKING AT '05. BY THE TIME YOU'RE IN
27 SEPTEMBER '05, WHAT'S YOUR BEST GOOD FAITH ESTIMATE OF
28 THE NUMBER OF MEMBERSHIP YOU HAVE?

1205

1 A 104.

2 Q AND AT THAT TIME YOU SAY YOU WERE IN CHARGE
3 OF THE CLUBHOUSE. I TAKE IT YOU ARRIVED THERE AT THE
4 BEGINNING OF THE PARTY?

5 A YES.

6 Q PERHAPS A LITTLE EARLIER?

7 A YES.

8 Q AND WHAT TIME WOULD THAT HAVE BEEN, PLEASE?

9 A I COULDN'T TELL YOU AT THIS TIME REALLY. I
10 KNOW I WAS THERE BEFORE EVERYTHING STARTED.

11 Q OKAY. AND DURING THE DAY UP UNTIL AND
12 INCLUDING THE TIME OF THE SHOOTING, PLEASE GENERALLY TELL
13 US THE KINDS OF THINGS YOU DID IN CONNECTION WITH BEING
14 AT THE PARTY AND IN YOUR ROLE AS BEING IN CHARGE OF THE
15 CLUBHOUSE.

16 A JUST PRETTY MUCH MAKING SURE EVERYBODY DID
17 WHAT THEY WERE SUPPOSED TO DO, HAVE BEEN -- ALL OUR
18 GUESTS WERE TAKEN CARE OF, BECAUSE WE HAD QUITE A FEW OF
19 THEM. PRETTY MUCH THAT'S IT.

20 Q ALL RIGHT. A BULLETIN OR A FLIER WAS
21 PRODUCED TO ANNOUNCE TO PEOPLE THAT IT WAS GOING ON?

22 A YES.

23 Q WERE YOU IN CHARGE OF PREPARING THAT?

24 A NO.

25 Q ALL RIGHT. WERE YOU IN CHARGE OF
26 DISTRIBUTING OR DISSEMINATING THAT?

27 A NO.

28 Q TO YOUR KNOWLEDGE, THE MANNER OF

1 COMMUNICATING THAT THIS CELEBRATION WOULD BE HAD, WAS
2 LARGELY BY WORD OF MOUTH?

3 A PRETTY MUCH.

4 Q LEADERS IN ONE CLUB COULD BE CALLED AND
5 THEY'D BRING THEIR OWN?

6 A EXACTLY. JUST LIKE I SAID, IT WASN'T JUST
7 OTHER CLUBS. IT WAS THE COMMUNITY PRETTY MUCH.

8 Q IT WAS OPEN TO THE PUBLIC?

A RIGHT.

10 Q AND SO LITERALLY ANYBODY COULD COME?

11 A EXACTLY.

12 Q THERE WAS NO RESTRICTION, FOR EXAMPLE, AT
13 THE DOOR THAT ONLY CLUB MEMBERS OR PEOPLE WEARING
14 COLORS --

5 A NO.

16 Q NO RESTRICTION AS TO AGE OR SEX?

17 A NO.

18 Q THIS IS NOT EASY TO QUANTIFY, BUT I WANT YOU
19 TO GIVE US SOME ASSESSMENT. WHAT DO YOU THINK THE
20 NUMBER, THE HEAD, MIGHT HAVE BEEN OF PEOPLE WHO CAME IN
21 AND OUT OF THERE THAT DAY, NOT REPEATING THE SAME
22 PEOPLE? DO YOU UNDERSTAND WHAT I'M SAYING?

23 A RIGHT.

24 Q THEY'RE COMING, THEY'RE GOING, THEY'RE
25 COMING, THEY'RE STAYING, BUT OVERALL DO YOU HAVE ANY
26 REASONABLE SENSE OF THE TOTAL NUMBER OF DIFFERENT PEOPLE
27 THAT WERE THERE THAT DAY DURING THE FLOW OF THE DAY?

28 A BETWEEN 2,002 AND 2,500, SOMETHING LIKE

1207

1 THAT. THERE WAS QUITE A FEW PEOPLE.

2 Q THERE WAS A COVER CHARGE?

3 A NO, THERE WASN'T.

4 Q ALL RIGHT. WAS THE CLUB PRETTY MUCH
5 CARRYING THE TAB ON THIS?

6 A YES.

7 Q YOU WERE GOING TO LOSE MONEY BUT YOU WERE
8 GOING TO GAIN FRIENDS?

A EXACTLY.

10 Q YOU WERE GOING TO PUBLICIZE YOUR
11 ORGANIZATION?

12 A EXACTLY.

13 Q AND THEN WITHOUT FIXING IT AT THE TIME OF
14 SHOOTING, IN THE DAYLIGHT HOURS, WOULD IT BE FAIR TO SAY
15 THAT A LOT OF MOTORCYCLES WERE IN PLACE IN THAT
16 NEIGHBORHOOD?

17 A YES.

18 Q WITH THE IDEA OF BEING, AMONG OTHER THINGS,
19 THAT THEY WERE SAFE TO PARK, AND PEOPLE WERE FREE TO GO
20 LOOK AT THEM?

21 A YES.

22 Q AND MY MEMORY IS A LITTLE ACCUMULATED OF
23 SEVERAL WITNESSES, SO DID YOU SAY THAT THERE WAS A CHARGE
24 FOR THE DRINKS?

25 A YES, THERE WAS.

26 Q AND WHAT WAS THE CHARGE?

27 A I COULDN'T TELL YOU. IT WAS JUST A
28 DONATION. THAT'S ALL, YEAH.

1 Q OKAY. SO IF A GUY WANTED TO GET IN FOR A
2 DOLLAR DRINK, HE COULD DO IT?

3 A THAT'S FINE.

4 Q ALL RIGHT. DID YOU RUN OUT OF ALCOHOL?

5 A I COULDN'T TELL YOU. I DON'T KNOW. I
6 WASN'T OVER THAT REALLY.

7 Q WHO WAS SUPERVISING THAT? WAS IT MR. MASON?

8 A YES.

9 Q AND SO FOR WHAT YOU SAW, HE WAS PRETTY MUCH
10 RUNNING THE BAR FOR MOST OF THE PARTY?

11 A YES.

12 Q AND IN RUNNING THAT CLUB, WAS IT ALSO
13 ALLOWED THAT THE WORKING PEOPLE ON THAT CLUB COULD HAVE A
14 DRINK OR TWO WHILE THEY WERE WORKING?

15 A NO. YOU'RE TALKING ABOUT MY CLUB MEMBERS?

16 Q RIGHT.

17 A NO.

18 Q AND HOW DID THAT WORK, CLUB MEMBERS THAT
19 WERE WORKING THE PARTY?

20 A CLUB MEMBERS USUALLY WORKING THE PARTY, THEY
21 CAN'T DRINK.

22 Q ALL RIGHT.

23 A DURING A PARTY.

24 Q THAT WAS UNDERSTOOD AND IN OPERATION --

25 A RIGHT.

26 THE COURT: SIR, IT IS IMPORTANT THAT YOU WAIT
27 UNTIL THE ATTORNEY FINISHES HIS QUESTION. YOU'RE
28 ANTICIPATING WHAT THE QUESTION IS GOING TO BE. AS A

1 RESULT THERE'S TWO STATEMENTS BEING MADE AT THE SAME
2 TIME. THE COURT REPORTER CAN'T TAKE IT DOWN.

3 THE WITNESS: SORRY.

4 BY MR. DAVIS:

5 Q MY APOLOGIES, TOO. IT'S IMPORTANT THE
6 ATTORNEY NOT BUTT IN ON YOUR ANSWER WITH THE NEXT
7 QUESTION. IT'S A JOINT EFFORT. I APOLOGIZE.

8 HOW MANY PEOPLE, MEMBERS OF YOUR CLUB, DID
YOU HAVE WORKING THE PARTY?

10 A I COULDN'T TELL YOU REALLY. I DON'T HAVE A
11 CLUE.

12 Q RIGHT. WELL --

13 A EXCUSE ME.

14 Q GO AHEAD, PLEASE.

15 A THE MAJORITY OF THEM WERE THERE.

16 Q OKAY. MEANING YOU HAD A DESIGNATED TEAM OF
17 PEOPLE FOR THIS PARTY?

18 A YES.

19 Q AND OF THE, SAY, A HUNDRED OR 104 MEMBERS,
20 DO YOU HAVE A SENSE THAT THE MAJORITY OF THE MEMBERS DID
21 SHOW UP FOR THIS PARTY?

22 A YES.

23 Q THEY BROUGHT FRIENDS AS WELL?

24 A YES.

25 Q OR GIRLFRIENDS, DATES, THAT SORT OF THING?

26 A YES.

27 Q ALL RIGHT. NOW, I WANT TO GET A FIX IF YOU
28 CAN HELP ME, WHAT INFLUENCE, IF ANY, THE MUSIC HAD ON

1210

1 PEOPLE HEARING THE GUNSHOT? ARE YOU WITH ME ON THAT?

2 A NO.

3 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

4 BY MR. DAVIS:

5 Q WAS THERE --

6 THE COURT: WAIT A MINUTE. THERE'S AN OBJECTION,
7 COUNSEL. IT WOULD CALL FOR SPECULATION, LACK OF
8 FOUNDATION.

9 BY MR. DAVIS:

10 Q WAS THERE ANY MUSIC ON WHEN THE SHOOTING
11 OCCURRED?

12 A NO.

13 Q HAD THERE BEEN MUSIC ON EARLIER?

14 A EARLIER.

15 Q AND THAT MUSIC, DID IT COME FROM A SINGLE
16 SOURCE WITHIN THE CLUBHOUSE?

17 A YES, IT DID.

18 Q WHAT WAS THE NATURE OF THAT MUSICAL SOURCE?

19 A WELL, WE HAVE OUR OWN SOUND SYSTEM AND A DJ.

20 Q ALL RIGHT. AND THE DJ WAS OPERATING OFF A
21 TURN TABLE?

22 A YES.

23 Q OKAY. AND AT ANY TIME DURING THE PARTY, WAS
24 MUSIC PLAYED WITHOUT THE ASSISTANCE OF A DJ?

25 A YES.

26 Q OFF THE SAME SYSTEM?

27 A YES.

28 Q AND THAT'S A CD I GUESS?

1211

1 A YES, MM-HMM.

2 Q ALL RIGHT. DID YOU OPERATE THAT FROM TIME
3 TO TIME?

4 A NO.

5 Q TO THE EXTENT THAT THE SHOOTING OCCURRED AND
6 THERE WAS NO MUSIC, DO YOU KNOW PERSONALLY, OR DID YOU
7 TURN OFF THAT MUSIC?

8 A IT WAS OFF. IT HAD BEEN OFF FOR A COUPLE OF
9 HOURS.

10 Q OKAY. SO EVEN PRIOR TO THE SHOOTING, THERE
11 WAS NO MUSIC?

12 A RIGHT.

13 Q WERE YOU PERSONALLY INVOLVED OR DID YOU SEE
14 SOMEONE TURN OFF THE MUSIC?

15 A NO. I WASN'T INVOLVED, BUT IT WAS OFF.

16 Q OKAY. WELL, IF YOU TURNED IT OFF, THAT
17 WOULD HELP US TO KNOW.

18 A NO, I DIDN'T.

19 Q AND YOU DON'T KNOW WHO DID?

20 A NO.

21 Q DURING THE CLEANUP THAT YOU'VE DESCRIBED,
22 DID SOMEBODY GO OVER AND TURN ON THE MUSIC?

23 A DURING THE CLEANUP?

24 Q YES.

25 A NO.

26 Q I'M GOING TO TRY AND SIMPLY IDENTIFY THE
27 PEOPLE WHO WERE THERE WITH YOU AT THE TIME OF THE FIGHT
28 AND THEN THROUGH THE SHOOTING AND PEOPLE LEAVING, OKAY?

1212

1 A OKAY.

2 Q AND TO THE EXTENT THAT WE'VE HEARD ABOUT A
3 FIRST INDIVIDUAL AMONG OTHERS WHO WAS RUDE AND OBNOXIOUS
4 JUST TO TWO WOMEN, I'M GOING TO ASK THAT WE USE A TERM IF
5 WE CAN, SUSPECT ONE, ALL RIGHT?

6 A OKAY.

7 Q WHEN YOU START TELLING ME HE'S A SHOOTER,
8 WE'RE WITH YOU.

A OKAY.

10 Q ALL RIGHT. AND IF YOU TELL US HE'S THE
11 FIRST SHOOTER, WE'RE NOT DISPUTING THAT.

12 A OKAY.

13 Q I'M GOING TO USE THE WORD SUSPECT ONE,
14 BECAUSE THERE'S ALSO ANOTHER PARTY WITH HIM, AN APPARENT
15 COMPANION, WHO IS CLOSE TO THE ACTION. YOU MIGHT HAVE
16 SAID HE TRIED TO BREAK UP THE FIGHT A LITTLE, DO YOU
17 REMEMBER THAT?

18 A YES.

19 Q WE'LL CALL HIM SUSPECT TWO. ALTHOUGH HE MAY
20 NOT BE A SUSPECT, WE'RE GOING TO GIVE HIM SUSPECT TWO.

21 A OKAY.

22 Q WHEN WE TALK ABOUT SUSPECT ONE AND SUSPECT
23 TWO, SUSPECT ONE WILL BE THE MAN THAT YOU SAW THAT HAD A
24 GUN AND MIGHT HAVE USED IT THAT EVENING, OKAY?

25 A RIGHT.

26 Q AND SUSPECT TWO IS HIS CLOSEST COMPANION TO
27 THAT KIND OF ACTION. WE'LL DESCRIBE WHAT HE DID AND
28 DIDN'T DO, OKAY?

1213

1 A OKAY.

2 Q AND THEN OBVIOUSLY YOURSELF, THAT'S THREE,
3 WITH THE TWO YOUNG WOMEN, THAT'S FIVE, AND THEN THE TWO
4 MASONS, RODNEY AND JOEL.

5 A RIGHT.

6 Q THAT LOOKS LIKE SEVEN, A TOTAL OF SEVEN
7 PEOPLE.

8 A OKAY.

9 Q ALL RIGHT. NOW, AT THE TIME OF THE
10 SHOOTING, WERE THERE ANY MORE PEOPLE INSIDE THE CLUBHOUSE
11 THAN THOSE SEVEN?

12 A YES.

13 Q WHO?

14 A DUCK.

15 Q EIGHT. WERE THERE ANY MORE THAN THOSE
16 EIGHT?

17 A NO.

18 Q NOW, YOU SEEM PRETTY CONFIDENT ABOUT THAT?

19 A VERY.

20 Q WAS THE FRONT DOOR CLOSED BY THEN?

21 A FRONT DOOR HAD STAYED CLOSED.

22 Q THE WHOLE TIME?

23 A YES.

24 Q NOW, THE FRONT ON BROADWAY HAS A GARAGE AND
25 A DOOR, CORRECT?

26 A YES.

27 Q WAS THE GARAGE DOOR, NOT AT THE TIME OF THE
28 SHOOTING, BUT ANY TIME DURING THE PARTY, OPEN?

1214

1 A YES, IT WAS.

2 Q AND DO YOU KNOW PERSONALLY WHEN IT WAS
3 FINALLY CLOSED AND NOT OPENED AGAIN THAT EVENING?

4 A PRETTY MUCH, YES.

5 Q WHAT WAS THAT? WHAT WAS GOING ON ABOUT THAT
6 TIME?

7 A JUST LIKE I SAID, WE WERE CLEANING UP, AND
8 WE LOCKED DOWN EVERYTHING EXCEPT FOR THE BACK, THE BACK
AREA.

10 Q ALL RIGHT. SO AT THE TIME OF THE SHOOTING,
11 THE FRONT DOOR WAS ALSO LOCKED?

12 A YES.

13 Q AND DURING THE PARTY, WAS THE FRONT DOOR
14 EVER OPEN?

15 A THE FRONT DOOR, NO.

16 Q ALL RIGHT. SO THE PRIMARY PARTY DOOR WAS
17 THE BACK, CORRECT?

18 A YES.

19 Q AND AS EVIDENCED BY SOME OF THESE PICTURES,
20 THE WHOLE GARAGE DOOR WAS LIFTED?

21 A YES.

22 Q SO THE ONLY WAY OUT, AT THE TIME OF THE
23 SHOOTING, IF SOMEBODY IS GOING TO RUN OUT OR WALK OUT, IS
24 THAT BACK GARAGE?

25 A YES.

26 Q AND THAT'S A GARAGE LOCATED ON THE EAST
27 SIDE?

28 A YES.

1 Q GOING INTO AN ALLEY?

2 A YES.

3 Q WITH A CEMENT FACTORY ON THE OTHER SIDE OF
4 THE ALLEY BEHIND THE CLUBHOUSE?

5 A YES, IT IS.

6 Q S-1, SHORT FOR SUSPECT ONE, YOU DESCRIBED
7 INDICATING THAT HE HAD A SCAR. IF I RECALL, YOU DREW
8 YOUR RIGHT HAND AND FINGER ON THE RIGHT SIDE OF HIS FACE,
CORRECT?

10 A YES.

11 Q SO YOU WERE CLOSE ENOUGH TO SEE THIS SCAR?

12 A YES, I WAS.

13 Q AND IN FACT YOU REPORTED IT TO THE FIRST
14 REPORTING OFFICER ON THE SCENE, CORRECT?

15 A YES, I DID.

16 Q AND THAT OFFICER YOU SPOKE WITH AT
17 CONSIDERABLE LENGTH, CORRECT?

18 A YES.

19 Q DO YOU REMEMBER THE NAME OF VIZCARRA? DOES
20 THAT RING A BELL?

21 A NO, BUT I CAN RECOGNIZE HIM IF I SAW HIM.

22 Q ALL RIGHT. WELL, THIS ISN'T A MEMORY TEST
23 ABOUT NAMES. I'M JUST TRYING TO THINK. DID ANYONE ELSE
24 TALK TO YOU OTHER THAN A SINGLE OFFICER?

25 A THERE WAS QUITE A FEW, BUT HE WAS THE ONLY
26 ONE THAT WAS TAKING NOTES.

27 Q RIGHT. FOR WHAT YOU PERCEIVED, HE WAS THE
28 MAN THAT WAS GETTING YOUR ACCOUNT OF WHAT YOU CLAIMED YOU

1216

1 SAW?

2 A EXACTLY.

3 Q AND HE WAS TAKING NOTES AT THE SAME TIME?

4 A YES.

5 Q ALL RIGHT. GIVE US, IF YOU CAN, IF I MIGHT
6 PROPOSE AS THOUGH YOU WERE GIVING AN IDENTIFICATION TO A
7 POLICE OFFICER AS BEST YOU COULD, ALL THE DETAILS ABOUT
8 THE SCAR ON THE RIGHT SIDE OF THE LIP OF S-1?

A JUST A SCAR.

10 Q HOW LONG?

11 A I COULDN'T TELL YOU. ALL I COULD TELL YOU,
12 IT WAS A SCAR ON HIS RIGHT SIDE.

13 Q OKAY.

14 A ABOVE HIS LIP.

15 Q I'M SORRY?

16 A ABOVE HIS LIP.

17 Q DID IT LOOK LIKE IT HAD BEEN A PRETTY
18 SERIOUS WOUND PREVIOUSLY? I'M ASKING YOUR LAY COMMON
19 SENSE.

20 A I COULDN'T TELL YOU. I JUST KNOW IT WAS A
21 SCAR.

22 Q ALL RIGHT. AND IS IT A SCAR THAT YOU
23 OBSERVED AT A DISTANCE, AND THEN AS HE GOT CLOSER,
24 OBSERVED AT A CLOSER DISTANCE?

25 A NO. I WAS CLOSE TO HIM AT THE TIME.

26 Q ALL RIGHT. APPROXIMATELY WHAT WAS THE
27 DISTANCE YOU'RE HEAD TO HEAD WHEN YOU SAW THAT SCAR?

28 A PROBABLY FROM WHERE I AM SITTING NOW TO THE

1217

1 DESK.

2 Q OKAY. TO THE EDGE OF THE DESK NEARER YOU?

3 A YES.

4 Q ALL RIGHT. WE'RE TALKING TWO OR THREE FEET?

5 A EXACTLY.

6 Q ALL RIGHT. AND DID THE SCAR INTERRUPT THE
7 LINE OF THE LIP, A DETAIL, BUT I'M JUST ASKING?

8 A YES.

9 Q YOU SAW HIM TALKING?

10 A YES.

11 Q THE TONE OF HIS VOICE?

12 A PRETTY MUCH.

13 Q YOU HAVE, IF WE COULD AGREE, A DEEP VOICE,
14 CORRECT?

15 A I GUESS.

16 Q DID HE, OR WAS IT A LIGHT, LIMITED VOICE?
17 CAN YOU REMEMBER ANYTHING ABOUT IT?

18 A NO, I DON'T REMEMBER ANYTHING ABOUT HIS
19 VOICE.

20 Q DID IT APPEAR THAT THE SCAR AFFECTED HIS
21 SPEECH?

22 A NO.

23 Q ALL RIGHT. THE SCAR WAS A DIFFERENT COLOR
24 THAN HIS FACE AND LIPS AROUND IT?

25 A SLIGHTLY DARKER.

26 Q AND CAN YOU GIVE US AN ESTIMATE OF THE
27 LENGTH?

28 A NO, I CAN'T.

1 Q ALL RIGHT. WELL, BUT I MEAN TINY
2 MICROPORTIONS OF AN INCH OR AN INCH OR LONGER?

3 A MAYBE A HALF AN INCH.

4 Q OKAY. AND WHEN YOU SAY "MAYBE," THAT'S YOUR
5 BEST ESTIMATE, CORRECT?

6 A YES.

7 Q NOW, WHEN WE TALK ABOUT THAT SCAR, I JUST
8 WANT TO BE SURE IT'S NOT SOMETHING YOU MIGHT HAVE SEEN ON
S-2 OR ANYBODY ELSE, CORRECT?

10 A NO.

11 Q ALL RIGHT. NOW, TELL US, IF YOU WOULD,
12 ABOUT S-2, WHAT YOU REMEMBER ABOUT HIM. LET ME ASK YOU:
13 HE WAS A BALD-HEADED MAN, RIGHT, S-2?

14 A S-2?

15 Q YES.

16 A NO. S-2 WAS TALL, LIGHT-SKINNED WITH HIS
17 HAIR PULLED BACK INTO LIKE A BUN.

18 Q TO BE SURE, THIS IS THE MAN WHO SEEMED TO BE
19 MOST IN THE COMPANY OF S-1, CORRECT?

20 A YES.

21 Q NOT A BALD PERSON?

22 A NO.

23 Q DID YOU SEE ANY OTHER BALD PEOPLE THERE AT
24 THAT PARTY OTHER THAN MY CLIENT, MR. SANDERS?

25 A S-1.

26 Q S-1 WAS BALD?

27 A YES.

28 Q OKAY. AND WITHOUT WANTING TO FLIP BACK AND

1 FORTH HERE, WHY DON'T WE FINISH WITH S-2 AND WE'LL COME
2 BACK TO S-1, ALL RIGHT?

3 A OKAY.

4 Q WHAT ELSE CAN YOU TELL US ABOUT S-2'S
5 PHYSICAL APPEARANCE?

6 A PRETTY MUCH HE WAS TALLER THAN I AND
7 LIGHT-SKINNED, SLENDER BUILD, WITH HIS HAIR PULLED BACK
8 INTO A BUN. THAT'S IT.

9 Q HE WAS NOT A MEMBER OF THE MOTORCYCLE SET,
10 CORRECT?

11 A NO, HE WASN'T, NOT THAT I KNOW OF.

12 Q RIGHT. BECAUSE HE COULD HAVE BEEN AND YOU
13 WOULDN'T KNOW, I UNDERSTAND.

14 A RIGHT.

15 Q HE WASN'T DRESSED IN COLORS?

16 A NO.

17 Q AND BRIEFLY TELL THE JURY SO WE DON'T
18 CONFUSE COLORS WITH, SAY, STREET VIOLENT GANGS AND
19 MOTORCYCLE CLUBS, WHAT "COLORS" FOR A MOTORCYCLE CLUB MEANS
20 WHEN YOU USE THAT TERM.

21 A PRETTY MUCH COLORS ARE WHAT A CLUB
22 ESTABLISHES IN THE BEGINNING, WHAT THEY'RE GOING TO WEAR,
23 WHAT THEIR CLUB REPRESENTS. THAT'S IT.

24 Q AND ARE THERE CERTAIN TYPES OF CLOTHING THAT
25 ARE CUSTOMARILY OR FREQUENTLY WORN WHEN YOU TALK ABOUT
26 COLORS?

27 A USUALLY A LEATHER VEST WITH YOUR COLORS ON THE
28 BACK.

1220

1 Q ALL RIGHT. ANYTHING ELSE COMMONLY WORN BY
2 MEMBERS OF MOTORCYCLE CLUBS AS PART OF THEIR CLOTHING?

3 A SOMETIMES THEY WEAR T-SHIRTS WITH THEIR
4 COLORS ON, OR SYMBOLS OF THEIR COLORS, AND SWEATSHIRTS.
5 IT DEPENDS ON THE CLUB.

6 Q ALL RIGHT. AND TO THE EXTENT S-2 WASN'T
7 WEARING COLORS, WHAT WAS HE WEARING?

8 A I THINK HE HAD A LEATHER COAT ON, A
9 WAISTLINE LEATHER COAT -- NO, EXCUSE ME, IT WAS A LITTLE
10 BIT LONGER THAN WAISTLINE.

11 Q ALL RIGHT. SOMETHING ON THE ORDER OF --

12 A EXACTLY.

13 Q -- A SUIT JACKET?

14 A YES.

15 Q THE COLOR?

16 A BLACK.

17 Q ANYTHING ON HIS HEAD?

18 A NO.

19 Q YOU WERE STANDING IN THE DOORWAY OR NEAR THE
20 DOORWAY OF THE VIP ROOM WHEN THESE PEOPLE WERE BROUGHT TO
21 YOUR ATTENTION BY THEIR CONDUCT, CORRECT?

22 A YES.

23 Q TAKE US THROUGH WHAT YOU SAW S-2 DO RELATIVE
24 TO THE ACTION IN THIS CASE. WHAT ARE THE THINGS YOU SAW
25 HIM DOING?

26 A PRETTY MUCH HE STEPPED IN BETWEEN, JUST LIKE
27 I DID, THE TWO, S-1 AND JOEL, TO TRY TO STOP THE -- KEEP
28 IT FROM ESCALATING ANY FURTHER THAN WHAT IT DID.

1 Q AND TO THE EXTENT HE DID THAT, DID YOU GO IN
2 THERE FIRST AND HE SORT OF JUST CAME OVER TO HELP YOU?

3 A NO, WE BOTH WERE PRETTY MUCH AT THE SAME
4 TIME.

5 Q ALL RIGHT. SO AS A COMPANION TO S-1 FOR
6 WHAT YOU PERCEIVE, HE DIFFERED WITH THE CONDUCT OF HIS
7 COMPANION?

8 A YES.

Q AND TRIED TO STOP WHAT WAS KICKING UP HERE?

10 A YES.

11 Q AND YOU, IN YOUR CAPACITY, SAID "I'M GOING
12 TO GET IN THERE AND TRY AND SEPARATE THEM PHYSICALLY AND
13 TALK THEM DOWN OUT OF THIS"?

14 A EXACTLY.

15 Q ALL RIGHT. SO YOU TWO WERE PERFORMING A
16 VERY SIMILAR FUNCTION, YOU AND S-2?

17 A YES.

18 Q AND THEN WHAT DID YOU SEE HIM DO NEXT?

19 A S-2?

20 Q RIGHT.

21 A WELL, HE DIDN'T DO ANYTHING UNTIL JOEL CAME
22 AROUND ME AND S-1 AND JOEL PROCEEDED TO FIGHT. THEN
23 THAT'S WHEN HE LEFT.

24 Q TELL ME ABOUT THAT. THIS IS THE SLENDER,
25 SLICK-HAIRED BUN GUY WITH THE LEATHER JACKET.

26 A RIGHT.

27 Q HE LEFT?

28 A HE LEFT.

1222

1 Q ALL THE DOORS ARE CLOSED EXCEPT THE BACK
2 ONE, SO HE OBVIOUSLY WENT OUT THE EAST GARAGE?

3 A EXACTLY.

4 Q AND THIS IS SOMETHING YOU PERSONALLY SAW?

5 A YES.

6 Q SO TO WHATEVER EXTENT HE WAS GOING TO HELP
7 OR BE INVOLVED, HE CUT IT OFF AND WAS OUT OF THE SCENE?

8 A EXACTLY.

9 Q DID YOU SEE BEYOND THAT WHERE HE WENT?

10 A NO.

11 Q BECAUSE BY THEN YOU'RE LOOKING AT THE
12 ACTION, RIGHT?

13 A EXACTLY.

14 Q ALL RIGHT. SO NOW ONE OF THE EIGHT IS GONE,
15 RIGHT?

16 A YES.

17 Q OKAY. DID S-2 PHYSICALLY INTERACT WITH ANY
18 OF THE PEOPLE THAT YOU'VE IDENTIFIED THAT WERE IN THAT
19 CLUB AT THE TIME OF THIS COMMOTION?

20 A PHYSICALLY INTERACT?

21 Q RIGHT.

22 A WHAT DO YOU MEAN?

23 Q WELL, LIKE GET IN A FIGHT WITH SOMEBODY.

24 A NO.

25 Q YOU'RE CERTAIN?

26 A NOT THAT I SAW.

27 Q YOU WOULD HAVE SEEN IT IF, FOR EXAMPLE, HE
28 STARTED BEATING UP ON SOMEBODY ELSE, RIGHT?

1223

1 A IN THAT AREA, YES, I WOULD HAVE.

2 Q YOU WOULD HAVE SEEN IT IF, FOR EXAMPLE,
3 JOEL, INSTEAD OF TAKING ON S-1, WENT AFTER S-2, YOU WOULD
4 HAVE SEEN SOMETHING LIKE THAT?

5 A RIGHT.

6 Q OKAY. AND SO HE'S OUT OF THE PICTURE, HE
7 DIDN'T PHYSICALLY INTERACT EXCEPT TO STEP IN BETWEEN?

8 A EXACTLY.

9 Q AND AM I CORRECT GENERALLY THAT WHEN HE
10 STEPPED IN BETWEEN JOEL AND S-1, HE CAME FROM THAT EAST
11 OPENING, WEST INTO THE CLUB?

12 A YES.

13 Q DID HE HAVE WORDS, HARSH WORDS, INSULTING
14 WORDS WITH ANYBODY, S-2?

15 A NO.

16 Q DID HE IN ANY WAY, FOR WHAT YOU HEARD OR SAW
17 OF HIM, APPEAR TO BE SUPPORTING OR ENCOURAGING WHAT S-1
18 WAS DOING?

19 A NO.

20 Q DID S-2, IN ANY WAY, FOR WHAT YOU SAW AND
21 HEARD OF HIS CONDUCT, APPEAR TO BE A THREAT, A SERIOUS
22 THREAT, TO ANYONE WHO YOU SAY WAS IN THAT CLUB?

23 A NO.

24 Q DID YOU PHYSICALLY INTERACT TO ANY CAPACITY
25 WITH S-2?

26 A NO.

27 Q JUST TO BE SURE, YOU'RE RIGHT-HANDED?

28 A I'M RIGHT-HANDED.

1224

1 Q ALL RIGHT. I'M RIGHT-HANDED TOO. NOTHING
2 MEANT BY THIS. DID YOU HAUL OFF AND HIT S-2 IN THE HEAD?

3 A NO, I DIDN'T.

4 Q TO NEUTRALIZE HIM SO THAT HE WOULD FALL DOWN
5 AND GET OUT OF THIS COMMOTION?

6 A NO, NO.

7 Q ALL RIGHT. DID ANYONE ELSE DO THAT?

8 A JOEL.

Q JOEL HIT S-2?

10 A NO, EXCUSE ME, S-1, I'M SORRY. NO ONE HIT
11 S-2.

12 Q ALL RIGHT. NO ONE CAME UP AND HIT HIM ON
13 THE HEAD AS HE APPEARED TO BE JOINING IN THE COMMOTION?

14 A NO.

15 Q ALL RIGHT. HOW ABOUT A NEUTRALIZING BEAR
16 HUG SO THAT HE WAS IMMOBILIZED --

17 A NO.

18 Q YOU'RE SURE OF THAT?

19 THE COURT: WAIT UNTIL HE FINISHES HIS QUESTION.

20 THE WITNESS: I'M SORRY.

21 BY MR. DAVIS:

22 Q ALL RIGHT. I THINK I WAS TALKING TO HIM
23 BETWEEN ONE OF YOUR NO'S.

24 A NO.

25 Q AND IF YOU GOT THREE NO'S, I DON'T WANT TO
26 CUT YOU OFF, BECAUSE THAT SOUNDS A LITTLE MORE CERTAIN,
27 CORRECT?

28 A YES.

1225

1 Q I'M GOING TO DEMONSTRATE SOMETHING. DID
2 RODNEY, THE FATHER, COME AROUND FROM BEHIND THE BAR, GRAB
3 S-2 IN ANY PHYSICAL MANNER?

4 A NO.

5 Q NO, NO, NO?

6 A NO, NO, NO.

7 Q ALL RIGHT. DID RODNEY, THE FATHER, INTERACT
WITH S-2 TO HIT HIM ON THE HEAD?

8 A NO.

10 Q AND PUT HIM ON THE FLOOR?

11 A NO.

12 Q NO, NO, NO?

13 A NO.

14 Q YOU'RE SURE OF THAT?

15 A YES.

16 Q ALL RIGHT. DID HE SAY ANYTHING WHEN HE LEFT
17 LIKE "I'M OUT OF HERE"?

18 A NO. HE JUST LEFT.

19 Q ALL RIGHT. DID HE LEAVE AT A TIME WHEN
20 SOMEBODY PRODUCED A GUN?

21 A PROBABLY.

22 Q CERTAINLY IT'S A REASONABLE TIME TO LEAVE,
23 RIGHT?

24 A EXACTLY.

25 Q AND THAT WOULD BE A GUESS ON YOUR PART AS TO
26 WHAT WAS IN HIS MIND, CORRECT?

27 A YES.

28 Q BUT IF WE MEASURED SOME APPROXIMATE TIME

1 BETWEEN THE TIME HE LEFT AND THE FIGHT STARTED, DID HE
2 LEAVE BEFORE THE FIGHT STARTED OR AS IT WAS KICKING UP?

3 A AS THE FIGHT BEGAN, HE LEFT.

4 Q OKAY. BECAUSE AS IT TURNS OUT, S-1 PRODUCED
5 A GUN, BUT IT WOULDN'T BE OBVIOUS TO EVERYBODY AT THE
6 TIME IN THAT CLUB, CORRECT?

7 A YES.

8 Q WHEN S-1 CAME IN, YOU DIDN'T SEE A GUN ON
HIM, DID YOU?

10 A NO, I DIDN'T.

11 Q IT WAS CONCEALED, CORRECT?

12 A YES.

13 Q WHAT WAS S-1 WEARING?

14 A BLUE JEANS, T-SHIRT WITH A RED BASKETBALL
15 TANK TOP.

16 Q OKAY. TANK MEANING NO SHORT SLEEVES; IT WAS
17 STRAPS?

18 A YES.

19 Q AND A BIG BLACK TEN ON IT?

20 A YES, I THINK.

21 Q THAT --

22 A IT'S BEEN A WHILE.

23 Q ALL RIGHT.

24 A YEAH.

25 Q THAT MESH FABRIC?

26 A RIGHT.

27 Q THE BREATHING OR COOLING FABRIC?

28 A YES.

1227

1 Q S-1 IS WEARING RED?

2 A YES.

3 Q S-2 IS WEARING BLACK?

4 A YES.

5 Q S-1 IS BALD?

6 A YES.

7 Q AND BEFORE THAT PARTY, DID YOU PERSONALLY
8 KNOW THE TWO WOMEN THAT WERE THERE?

A NO, I DIDN'T.

10 Q HAD YOU SEEN THEM BEFORE?

11 A NO.

12 Q WERE THEY WHAT YOU WOULD CALL ABSOLUTE
13 STRANGERS TO YOU?

14 A TO ME, YES.

15 Q ALL RIGHT. AND S-1, S-2, HAD YOU SEEN THEM
16 BEFORE?

17 A NO.

18 Q IS THERE A POSSIBILITY YOU MIGHT HAVE?

19 A NOT THAT I COULD REMEMBER, NO.

20 Q ALL RIGHT. WERE THEY ALSO, THEREFORE,
21 STRANGERS TO YOU?

22 A YES.

23 Q IS THERE A POSSIBILITY, THINKING BACK ON
24 THAT, THAT YOU MIGHT HAVE RECOGNIZED ONE OF THEM?

25 A NO, I DIDN'T KNOW THEM. I HAD NEVER SEEN
26 THEM.

27 Q NOW, I WANT TO SHOW YOU A PICTURE OR TWO TO
28 GET YOUR HELP ON IT.

1 I HAVE A BULLETIN "A." I JUST WANTED TO
2 SHOW YOU THAT BRIEFLY. THE TIME WAS 3:00 UNTIL, CORRECT?

3 A YES.

4 Q AND DID YOU OR ANYBODY IN YOUR PRESENCE
5 ANNOUNCE THE END OF THE PARTY, LIKE "IT'S TIME TO GO
6 HOME" OR "WE'RE CLOSING UP," ANYTHING LIKE THAT HAPPEN
7 THAT EVENING?

8 A PRETTY MUCH THE CROWD HAD STARTED TO THIN
9 OUT, SO WE DECIDED TO SHUT IT DOWN.

10 Q AND YOU SAW THEM THIN OUT?

11 A YES.

12 Q DID YOU SEE THEM GO OUT THE BACK GATE?

13 A YES.

14 Q AND WHEN YOU WENT OUT THE BACK GATE TO SEE
15 THIS, THAT PEOPLE WERE THINNING OUT, YOU SAW SOME
16 MOTORCYCLES STILL THERE, CORRECT?

17 A YES.

18 Q YOU SAW SOME PEOPLE STILL CHATTING OUT
19 THERE?

20 A YES.

21 Q AND WHAT, TO THE BEST OF YOUR GOOD FAITH
22 ESTIMATE, WOULD HAVE BEEN THE NUMBER OF PEOPLE OUTSIDE
23 THE CLUB IMMEDIATELY PRIOR TO THIS SHOOTING?

24 A PRIOR TO THE SHOOTING, I CAN'T TELL YOU,
25 BECAUSE I HAD GONE OUT EARLIER. PRIOR TO THE SHOOTING, I
26 WAS INSIDE TRYING TO GET THINGS SQUARED AWAY.

27 Q SO, THEN, TO BE SURE, YOU HAVE NO ESTIMATE?

28 A I HAVEN'T A CLUE.

1229

1 Q THERE COULD HAVE BEEN 20 OR 30? IT WOULD BE
2 A GUESS?

3 A YES, COULD HAVE BEEN.

4 Q AND THEN WHEN JOEL WAS DOWN ON THE GROUND,
5 AFTER HE HAD BEEN SHOT, DID YOU COME BACK TO SEE THIS,
6 THAT HE WAS THERE IN THAT CONDITION?

7 A YES.

8 Q AND WOULD IT BE FAIR THAT HIS BEING RENDERED
HELPLESS FROM BEING SHOT OCCURRED LITERALLY WITHIN
10 SECONDS, SMALL PORTIONS OF A MINUTE?

11 A YES.

12 Q THIS THING WAS PRETTY FAST, RIGHT?

13 A YES, IT WAS.

14 Q AND HOW MANY SHOTS WOULD YOU ESTIMATE WERE
15 FIRED?

16 A THE FIRST TIME? FROM THE FIRST SHOOTER?

17 Q FROM BEGINNING TO END, YES.

18 A OKAY --

19 Q TOTAL SHOTS. YOU HEAR HOW MANY POPS?

20 A PROBABLY FIVE.

21 Q ALL RIGHT. AND FROM THE BEGINNING SHOT TO
22 THE END SHOT, FAIRLY HOW MUCH TIME ELAPSED?

23 A IT WAS SECONDS.

24 Q OKAY. AND AS THAT WAS HAPPENING, PEOPLE
25 DUCKED, PEOPLE DOVE, PEOPLE GOT OUT OF THE WAY, RIGHT?

26 A THERE WAS NOBODY IN THERE BUT US.

27 Q AS THAT SHOOTING WAS OCCURRING, PEOPLE
28 STARTED RUNNING, OLD-FASHIONED HAULING BUTT OUT OF THAT

1 GATE, DIDN'T THEY?

2 A PROBABLY. I DIDN'T SEE ANY OF THAT.

3 Q AND IN FACT EVEN WHILE JOEL WAS DOWN, THERE
4 WERE PEOPLE STEPPING OVER AND RUNNING BY HIM TO GET THE
5 HECK OUT OF THERE?

6 A NO, THERE WAS NOBODY IN THERE BUT US.

7 Q NOW, YOU WOULD AGREE, WOULDN'T YOU, THAT
8 EXCEPT FOR THE TWO HELPLESS VICTIMS, YOU'RE THE ONLY
9 WITNESS TO COME FROM THIS PARTY AND TALK ABOUT WHAT THEY
10 SAW INSIDE, CORRECT?

11 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

12 THE COURT: IF YOU KNOW.

13 THE WITNESS: PRETTY MUCH, I WAS INSIDE, I SAW
14 EVERYTHING, SO THAT'S THE REASON WHY I'M A WITNESS HERE.
15 BY MR. DAVIS:

16 Q YOU ARE EFFECTIVELY THE ONLY EYES AND EARS
17 OF ANY MEMBER OF YOUR CLUB AS TO WHAT HAPPENED EXCEPT FOR
18 THE SHOT VICTIMS, RIGHT?

19 A YES.

20 Q AND IT'S YOUR TESTIMONY THAT THERE WEREN'T,
21 SAY, AS MANY AS 20 OR 30 PEOPLE WHEN THE SHOOTING
22 OCCURRED INSIDE THE CLUB?

23 A NO.

24 Q IT IS YOUR TESTIMONY THAT IT'S NOT THAT
25 MANY, RIGHT?

26 A NO. LIKE I SAID, IT'S THE EIGHT INSIDE THE
27 CLUB.

28 Q RIGHT. IT COULDN'T BE THAT WHEN THE

1 SHOOTING WENT ON, THERE WERE AS MANY AS SAY 50, 60 OR 70
2 INSIDE THAT CLUB, CORRECT?

3 A RIGHT.

4 Q AND BEING THE MEMBER THAT SAW AND HEARD THE
5 THINGS YOU'VE TOLD US, YOU ARE CERTAIN THAT WHEN THAT
6 SHOOTING OCCURRED, THERE WAS NO MUSIC GOING ON AT ALL,
7 CORRECT?

8 A NO MUSIC.

MR. SIMS: OBJECTION. ASKED AND ANSWERED.

10 THE COURT: CLARIFICATION. OVERRULED.

11 THE WITNESS: NO MUSIC.

12 BY MR. DAVIS:

13 Q YOU'RE CERTAIN OF THAT --

14 A POSITIVE.

15 Q -- YOU SAID HOURS BEFORE IT HAD BEEN CUT
16 OFF?

17 A YES.

18 Q DID YOU SEE ANYBODY OTHER THAN THE TWO
19 GIRLS, THE SHOOTER, S-1, S-2, MY CLIENT, YOURSELF AND THE
20 MASONS IN THERE AT ANY TIME BEFORE THE SHOOTING STARTED?

21 A NO. EVERYBODY HAD CLEARED OUT.

22 Q YOU HAVE LAW ENFORCEMENT AT THE TIME IN YOUR
23 MEMBERSHIP, CORRECT?

24 A YES, WE DO.

25 Q AND THEY WERE THERE THAT NIGHT, CORRECT?

26 A NO, THEY WEREN'T.

27 Q THEY WEREN'T INVITED?

28 A THEY WERE INVITED, BUT THEY HAD LEFT EARLY.

1 Q SO ALL OF THE LAW ENFORCEMENT MEMBERS OF
2 RARE BREED WERE GONE FROM THE PARTY BEFORE THE SHOOTING
3 STARTED, RIGHT?

4 A YES.

5 Q THERE WAS NO ONE WHO WAS A LAW ENFORCEMENT
6 MEMBER OF RARE BREED THAT WAS THERE AT THE CLUB THAT
7 MIGHT HAVE HEARD OR SEEN WHAT YOU ARE TELLING US
8 HAPPENED?

9 A THEY HAD ONE OUTSIDE, NOT INSIDE. WE'RE
10 TALKING ABOUT INSIDE.

11 Q WHO WAS THAT?

12 A I CAN'T GIVE YOU THAT INFORMATION.

13 Q YOU DON'T KNOW?

14 A NO.

15 Q YOU DO KNOW?

16 A NO.

17 Q WELL, WHERE DID YOU COME UP WITH YOUR
18 STATEMENT THERE WAS ONE OUTSIDE?

19 A BECAUSE I WAS TOLD THAT.

20 Q JUST YESTERDAY?

21 A NO.

22 Q WHEN WERE YOU TOLD THAT?

23 A THE NIGHT OF THE INCIDENT.

24 Q WHO TOLD YOU THERE WAS A LAW ENFORCEMENT
25 MEMBER OUTSIDE WHEN THE SHOOTING WENT ON?

26 A IT WAS QUITE A FEW PEOPLE.

27 Q WELL, WHO WAS IT?

28 A I DON'T KNOW. IT WAS QUITE A FEW PEOPLE.

1 Q NO, WHO WAS THE OFFICER?

2 A WHO WAS THE OFFICER? I DON'T KNOW.

3 Q NOT EVEN A FIRST NAME?

4 A NOT EVEN A FIRST NAME.

5 Q WELL, WHAT WAS HE DOING?

6 A I THINK HE WAS LEAVING.

7 Q SO HE MIGHT HAVE SEEN PEOPLE LEAVING ABOUT
8 THE SAME TIME, RIGHT?

MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

10 THE COURT: SUSTAINED.

11 BY MR. DAVIS:

12 Q HAVE YOU EVER TOLD THE PROSECUTOR THIS, THAT
13 A MEMBER OF LAW ENFORCEMENT WAS THERE AT ABOUT THE TIME
14 OF THE SHOOTING, BUT OUTSIDE?

15 A NO.

16 Q HE MIGHT HAVE BEEN A WITNESS, CORRECT?

17 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

THE COURT: WELL, SUSTAINED.

19 BY MR. DAVIS:

20 Q HOW ABOUT INSIDE, HAVE YOU EVER BEEN TOLD
21 THAT THERE WAS AN OFFICER INSIDE WHEN THE SHOOTING WENT
22 ON?

23 A I WAS INSIDE.

24 Q THAT'S YOUR ANSWER TO ANOTHER QUESTION. I
25 KNOW YOU'RE INSIDE, BUT WAS AN OFFICER INSIDE?

26 A NO, THERE WEREN'T.

27 Q HOW ABOUT IN THE WOMEN'S BATHROOM, WAS THERE
28 AN OFFICER INSIDE MAYBE THAT BATHROOM?

1 A NO.

2 Q IF SOMEONE WAS IN THAT BATHROOM -- THERE'S A
3 WOMEN'S BATHROOM INSIDE, RIGHT?

4 A YES.

5 Q IF SOMEONE WAS IN THAT BATHROOM DURING THE
6 SHOOTING, FOR WHAT YOU KNOW WHERE THAT BATHROOM IS,
7 HEARING THE SHOTS YOU DID, REASONABLY COULD THEY HEAR THE
8 SHOTS GO OFF?

A YES.

10 Q BUT YOU'D AGREE IF THE MUSIC WAS UP REAL
11 LOUD, THEY MAY NOT HEAR IT?

12 A THERE WAS NO MUSIC.

13 Q AND THERE WAS NO ONE IN THE WOMEN'S BATHROOM
14 WHEN THE SHOOTING OCCURRED, CORRECT?

15 A THERE WAS NO ONE INSIDE WHEN THE SHOOTING
16 OCCURRED, BUT THE EIGHT.

17 Q PARDON?

18 A BUT THE EIGHT.

19 Q GOT YOU. NOW, AS A FOUNDER OF THE CLUB
20 HONESTLY YOU WOULD HAVE SOME CONCERN, WOULDN'T YOU, ABOUT
21 A SHOOTING COMING DOWN, PARTICULARLY TWO VICTIMS AT YOUR
22 PARTY?

23 A YES.

24 Q THAT WOULD CONCERN YOU, CORRECT?

25 A YES.

26 Q AND TO THE EXTENT YOU HAVE MEMBERS OF LAW
27 ENFORCEMENT IN YOUR CLUB, YOU WOULD BE CONCERNED ABOUT
28 THE REACTION ABOUT THAT LEVEL OF VIOLENCE WITHIN THE

1235

1 CLUB, CORRECT?

2 A YES.

3 Q NOW, IN YOUR CLUB YOU HAVE MEMBERS WHO ARE
4 GANG MEMBERS, RIGHT, BLACK GANG MEMBERS?

5 A YES.

6 Q AND YOU HAVE MEMBERS WHO ARE REPUTED DRUG
7 DEALERS, CORRECT?

8 A YES.

9 Q AND THEY WERE NOT EXCLUDED FROM THIS PARTY,
10 WERE THEY?

11 A NO, THEY WEREN'T.

12 Q SO AT YOUR PARTY, WITHIN YOUR OWN
13 MEMBERSHIP, THERE WERE PEOPLE WHO WERE FROM THE CRIPS AND
14 THE BLOODS, RIGHT?

15 A YES.

16 Q AND WERE ANY OF THOSE PEOPLE IN THE
17 CLUBHOUSE WHEN THE SHOOTING CAME DOWN?

18 A NO.

19 Q WELL, EXCEPT THE STRANGER AND HIS FRIEND,
20 THEY MAY HAVE BEEN PEOPLE WHO WERE MEMBERS, RIGHT?

21 A YES. I DON'T KNOW WHAT THEY WERE.

22 Q WELL, YOU CERTAINLY PERSONALLY REACHED THE
23 CONCLUSION THAT WHEN THEY CAME IN AND ONE OF THEM SAID
24 "BLOOD, BLOOD," THAT ALERTED YOU TO CONCERN THAT THIS
25 WAS GOING TO BE A PROBLEMATIC GANG SITUATION, RIGHT?

26 A EXACTLY.

27 Q AND COULD YOU, BY HOW THEY -- BY HOW S-1
28 BEHAVED, DETERMINE WHAT CLUB HE MIGHT BE FROM?

1 A YOU MEAN WHAT GANG HE MIGHT BE FROM?

2 Q EXCUSE ME. I APOLOGIZE.

3 A YES.

4 Q WHAT GANG?

5 A YES.

6 Q "YES" WHAT?

7 A YES, YOU COULD -- YOU COULD DETERMINE HE WAS

8 A BLOOD, PRETTY MUCH.

 Q OKAY. HOW WAS THAT?

10 A BECAUSE OF THE STATEMENTS THAT HE MADE.

11 Q WHAT WERE THEY, TO THE BEST OF YOUR MEMORY?

12 A WELL, THEY WERE "BLOODING" EACH OTHER BACK

13 AND FORTH.

14 Q WHO IS THE "THEY" YOU JUST MENTIONED?

15 A RODNEY ON ONE SIDE, S-1 ON THE OTHER SIDE.

16 Q TELL US WHAT THEY WERE SAYING.

17 A THEY WERE JUST "BLOODING" EACH OTHER BACK

18 AND FORTH. THAT'S ALL I CAN TELL YOU. I DON'T REMEMBER

19 EXACTLY WHAT WAS SAID. ALL I CAN SAY -- ALL I CAN TELL

20 YOU IS THEY WERE "BLOODING" EACH OTHER BACK AND FORTH.

21 THAT'S IT.

22 Q SO S-1 IS "BLOODING" JOEL?

23 A RIGHT.

24 Q AND JOEL IS "BLOODING" HIM?

25 A RIGHT.

26 Q IS JOEL A MEMBER?

27 A I COULDN'T TELL YOU. I DON'T KNOW.

28 Q WAS HIS CONDUCT CONSISTENT WITH SOMEBODY WHO

1 WAS A BLOOD MEMBER?

2 MR. SIMS: OBJECTION, LACKS FOUNDATION.

3 THE COURT: SUSTAINED.

4 BY MR. DAVIS:

5 Q HOW ABOUT S-2, WAS HE "BLOODING", LIKE S-1?

6 A NO.

7 Q BUT YOU KNEW SOMETHING ABOUT S-1, DIDN'T

8 YOU?

A NO.

10 Q DIDN'T YOU GIVE LAW ENFORCEMENT A LITTLE
11 MORE INFORMATION THAN JUST HIS PHYSICAL DESCRIPTION, WHAT
12 THEY DID, TO BETTER IDENTIFY HIM?

13 A I GAVE THEM A NICKNAME, J.

14 Q AND WHERE DID YOU COME BY THAT?

15 A THAT'S WHAT I WAS TOLD BY A COUPLE OF
16 MEMBERS IN MY CLUB.

17 Q BY WHOM?

18 A A COUPLE OF MEMBERS IN MY CLUB.

19 Q THEIR NAMES?

20 A I DON'T KNOW THEIR NAMES.

21 Q YOU FORGOT?

22 A NO.

23 Q YOU REFUSE TO GIVE THE NAMES?

24 A YES.

25 Q THAT'S MORE LIKE IT. WE WANT TO UNDERSTAND
26 THAT, OKAY?

27 A OKAY.

28 Q AND I WOULD NOT DISPARAGE YOUR CLUB IN THESE

1 QUESTIONS, BUT I WANT TO UNDERSTAND A FEW THINGS, SO THAT
2 WE KNOW SOME OF THE RULES WE'RE TALKING ABOUT, OKAY.
3 WHEN I ASK A QUESTION, YOU MAY NOT WANT TO ANSWER ALL OF
4 THEM, CORRECT?

5 A YES.

6 Q AND I'M GOING TO RESPECT THAT, BUT WE NEED
7 TO KNOW THOSE THAT ARE SET OUT HERE WITHIN THE TRADITION
8 OF PRIVACY AND BROTHERHOOD AND THOSE THAT, OVER HERE,
MIGHT AFFECT THIS CASE, OKAY?

10 A OKAY.

11 Q AND SO WHEN YOU CONSCIOUSLY DON'T WANT TO
12 GIVE UP MEMBERSHIP INFORMATION OR CLUB TRADITION
13 INFORMATION, I'M GOING TO TRY AND WORK WITH THAT IN THESE
14 QUESTIONS, BUT WE WANT TO KNOW THAT THEY'RE OVER THERE IN
15 THAT AREA, OKAY?

16 A OKAY.

17 Q FAIR TO SAY YOU WOULD NOT WANT TO IDENTIFY
18 LAW ENFORCEMENT MEMBERS THAT WERE THERE THAT NIGHT,
19 CORRECT?

20 A THERE WERE LAW ENFORCEMENT MEMBERS THERE
21 THAT NIGHT EARLIER.

22 Q I UNDERSTAND.

23 A OKAY.

24 Q BUT YOU WOULDN'T WANT TO GIVE THEM UP UNDER
25 ANY CIRCUMSTANCES?

26 A NO, I'M NOT.

27 Q ALL RIGHT. AND IT'S FAIR TO SAY, ISN'T IT,
28 THAT PEOPLE WHO WOULD SAY TO YOU "I KNOW THAT GUY, OR AT

1 LEAST I KNOW HIM, HE'S CAMPANELLA PIRU," WORDS LIKE THAT,
2 YOU WOULDN'T WANT TO GIVE THEM UP, CORRECT?

3 A NO.

4 Q THAT'S NOT CORRECT OR "YES, I WOULDN'T WANT
5 TO GIVE THEM UP"?

6 A I WOULDN'T WANT TO GIVE THEM UP.

7 Q BECAUSE IT COULD APPEAR THAT YOU HAD
8 FORGOTTEN, AND JUST COULDN'T PROVIDE THE INFORMATION. DO
YOU UNDERSTAND THE DIFFERENCE?

10 A NO, EXPLAIN IT TO ME.

11 Q ALL RIGHT. FOR EXAMPLE, YOU TOLD US THERE
12 WAS A POLICEMAN OUTSIDE THAT A COUPLE OF PEOPLE TOLD YOU
13 ABOUT THAT MIGHT HAVE BEEN THERE ABOUT THE TIME THIS
14 OCCURRED, BUT OUTSIDE, CORRECT?

15 A RIGHT.

16 Q IS THAT SOMEBODY YOU'D RATHER NOT REVEAL OR
17 SOMEBODY YOU JUST FORGOT WHO IT WAS?

18 A PUT IT LIKE THIS: IF THEY'RE NOT HERE
19 TODAY, APPARENTLY THEY WOULDN'T DO WHAT I'M DOING, SO
20 I'LL LEAVE IT LIKE THAT, OKAY.

21 Q I UNDERSTAND, I UNDERSTAND. BECAUSE TO AN
22 EXTENT, DISAGREE WITH ME IF YOU WILL OR CLARIFY IT, THAT
23 A REAL BIKER WOULD NOT BE IN COURT, CORRECT?

24 A TRUE.

25 MR. SIMS: OBJECTION, RELEVANCE.

26 THE COURT: OVERRULED.

27 BY MR. DAVIS:

28 Q TRUE?

1 A TRUE.

2 Q SO YOU HAVE PUT YOURSELF OUT HERE SOMEWHAT
3 IN CONTRADICTION WITH THAT VALUE, AGREED?

4 A YES, I HAVE.

5 Q IT'S UNCOMFORTABLE FOR YOU?

6 A VERY MUCH SO.

7 Q ALL RIGHT. SO IN A SENSE, YOU'VE COME HERE
8 TO REPRESENT WHAT YOU SAW AND DEAL WITH THE LEGAL SYSTEM
AS BEST YOU CAN, CORRECT?

10 A EXACTLY.

11 Q IF YOU HAD YOUR DRUTHERS, YOU WOULDN'T BE
12 HERE?

13 A IF I HAD MY WHAT?

14 Q IF YOU HAD YOUR CHOICE, YOU'D RATHER NOT BE
15 HERE?

16 A YES.

17 Q THAT'S NOT UNIQUE TO ANY WITNESS, BUT IN
YOUR CASE IT'S ALSO BECAUSE THAT'S JUST NOT WHAT YOU WANT
19 TO DO AS A FOUNDER OF YOUR MOTORCYCLE CLUB, CORRECT?

20 A IT'S WHAT I NEED TO DO AS A FOUNDER OF THE
21 MOTORCYCLE CLUB.

22 Q OKAY.

23 A OKAY.

24 Q IF IT HADN'T BECOME LEGAL, IT COULD HAVE
25 BEEN SETTLED PROPERLY AND INFORMALLY?

26 A RIGHT.

27 Q THAT'S A BETTER WAY IN THE TRADITION,
28 CORRECT?

1241

1 A EXACTLY.

2 Q SO IT'S EASIER FOR YOU AND I TO TALK ABOUT
3 THIS SUBPOENA, CORRECT?

4 A WHICH ONE IS THAT?

5 Q THE ONE I GAVE YOU AT THE LINEUP.

6 A OKAY.

7 Q ALL RIGHT. BECAUSE THAT STARTED TO INFRINGE
8 ON TRADITIONS THAT AFFECTED YOUR CLUB, CORRECT, FOR ME TO
9 BE ASKING FOR MEMBERSHIP?

10 A IT'S NOT TRADITIONS THAT AFFECT OUR CLUB.
11 IT'S JUST ANY MOTORCYCLE CLUB, NOT JUST OUR CLUB, THE
12 MOTORCYCLE SET, PERIOD.

13 MR. DAVIS: ALL RIGHT. MAY I ASK FOR THE NEXT
14 LETTER FOR THE DEFENSE, PLEASE.

15 THE COURT: THE NEXT LETTER FOR THE DEFENSE WOULD
16 BE O LIKE IN OPRAH, SO DOUBLE O.

17 MR. DAVIS: DOUBLE O, THANK YOU.

18 (MARKED FOR IDENTIFICATION
19 DEFENDANT'S EXHIBIT OO.)

20 BY MR. DAVIS:

21 Q SIR, I'M GOING TO SHOW YOU WHAT I'LL CALL A
22 SUBPOENA. THIS IS NOT GOING TO BE A MEMORY TEST OF WHAT
23 IS ON IT, BUT I GAVE YOU SOMETHING LIKE THAT AT THE
24 LINEUP, CORRECT?

25 A YES.

26 Q AND THEN LATER ON WHEN THERE WAS A
27 PRELIMINARY HEARING, I AGAIN ASKED FOR MEMBERSHIP
28 INFORMATION, CORRECT?

1 A RIGHT.

2 Q AND AS A LAWYER, I PRESENTED A KIND OF AN
3 OBNOXIOUS THREAT IN THAT REGARD TO YOUR MEMBERSHIP
4 IDENTITY, CORRECT?

5 A I THINK SO.

6 Q ALL RIGHT. I'M SORRY IF I WAS OBNOXIOUS,
7 BUT I WAS TRYING TO FIND PEOPLE, YOU CAN UNDERSTAND,
8 DON'T YOU --

A OKAY.

10 Q -- THAT MIGHT HAVE SEEN THESE THINGS,
11 CORRECT?

12 A CORRECT.

13 Q AND IF YOU HAD GIVEN UP MEMBERSHIPS, THEN
14 YOU WOULD EXPECT I'D START TO GO TALK TO THEM, CORRECT?

15 A PRETTY MUCH.

16 Q BUT IF I UNDERSTAND WHAT YOU'RE SAYING, IT
17 WOULD BE A COLD DAY IN HELL BEFORE I TALK TO ANY OF THEM,
18 RIGHT?

19 MR. SIMS: OBJECTION.

20 THE WITNESS: THEY WEREN'T THERE.

21 MR. SIMS: ARGUMENTATIVE.

22 THE COURT: I'LL SUSTAIN AS TO THE FORM OF THE
23 QUESTION. YOU MAY RESTATE THE QUESTION.

24 BY MR. DAVIS:

25 Q ALL RIGHT.

26 THE COURT: LET'S DELETE "COLD DAY IN HELL."

27 BY MR. DAVIS:

28 Q ALL RIGHT. IT WOULD BE A LONG, LONG WALK TO

1 TEXAS BEFORE I COULD TALK TO ANY OF THOSE MEMBERS, RIGHT?

2 A LONG.

3 Q AND I'D BE WALKING, WOULDN'T I?

4 A YOU WOULD BE.

5 Q NOBODY WOULD BE GIVING ME A RIDE, WOULD
6 THEY?

7 A EXACTLY.

8 Q ALL RIGHT. ENOUGH OF THE SUBPOENA.

A RIGHT.

10 Q I WASN'T THERE, BUT THERE WAS A JOKE ABOUT
11 TOILET PAPER, RIGHT, SOMETHING LIKE THAT?

12 MR. SIMS: OBJECTION, HEARSAY.

13 BY MR. DAVIS:

14 Q OR ROLLING IT UP?

15 THE COURT: THERE'S AN OBJECTION. SUSTAINED.

16 BY MR. DAVIS:

17 Q SO YOU UNDERSTAND, THEN, THAT WHEN YOU GAVE
18 THE INFORMATION ABOUT A J IN A BLOOD CLUB, THAT LED
19 EVENTUALLY TO THE PICKING OF JOHNNY CLARK AND PUTTING HIM
20 IN THAT SIX-PACK?

21 A CORRECT.

22 Q AND THAT WAS A SERIOUS MISTAKE, CORRECT?

23 A IT WAS.

24 Q AND WITHOUT BEGGING THE ISSUE, YOU TAKE
25 RESPONSIBILITY FOR THAT, DON'T YOU?

26 A YES, I DO.

27 Q NOW, WHEN DID YOU FIRST -- YOU PICKED HIM
28 OUT IN THE SIX-PACK, RIGHT?

1244

1 A ON THE PAPER, ON THE PICTURES, YES, YES.

2 Q ALL RIGHT. AND IS THAT BECAUSE YOU KNEW WHO

3 JOHNNY CLARK WAS?

4 A NO.

5 Q IS THAT BECAUSE YOU KNEW WHO J WAS?

6 A NO.

7 Q HOW WOULD YOU PICK HIS FACE OUT? HE DOESN'T

8 EVEN LOOK LIKE THE SHOOTER, S-1?

 A HE LOOKS SIMILAR.

10 Q WHAT, HE'S A YOUNG BLACK MAN?

11 A PRETTY MUCH.

12 Q WHERE IS THE SCAR?

13 A I DIDN'T SEE THE SCAR, BUT HE LOOKED IN THE

14 SIX-PACK, HE WAS THE CLOSEST ONE TO --

15 Q FOR WHAT REASON?

16 A HE WAS THE CLOSEST ONE.

17 Q LET ME ASK YOU SOMETHING. BY THE TIME YOU

18 GAVE J UP AND SAID HE WAS IN A BLOOD CLUB, YOU WERE

19 ESSENTIALLY SENDING POHL OVER TO THE PARK, WEREN'T YOU?

20 A WHAT PARK?

21 Q CAMPANELLA PARK PIRU.

22 A I DON'T HAVE A CLUE WHERE DETECTIVE POHL

23 PICKED UP J OR JOHNNY CLARK.

24 Q HE GOT IT FROM YOU?

25 A NO, HE DIDN'T GET THAT FROM ME.

26 Q OH, HE GOT THAT FROM YOU.

27 A HE DIDN'T GET THAT FROM ME.

28 Q YOU TOLD HIM THAT THE SHOOTER, S-1, WAS J

1 FROM A LOCAL BLOOD CLUB.

2 A I TOLD HIM HIS NAME WAS J. I DIDN'T TELL
3 HIM WHERE HE WAS, WHAT PARK, WHAT NEIGHBORHOOD, NONE OF
4 THAT, OKAY?

5 Q WE NEED TO KNOW.

6 A I JUST SAID -- TOLD YOU.

7 Q WE NEED TO KNOW.

8 MR. SIMS: NEED TO KNOW WHAT? OBJECTION.

BY MR. DAVIS:

10 Q WE NEED TO KNOW THAT YOU DIDN'T TELL HIM
11 THAT.

12 A I TOLD YOU I DIDN'T TELL HIM THAT.

13 Q OKAY. THE REASON IS IS THAT HE TOLD US YOU
14 GAVE HIM THAT INFORMATION.

15 A OKAY.

16 Q AND HE TOLD US THAT YOU PERSONALLY KNEW S-1
17 AS J AND THAT HE WAS A BLOOD GANG MEMBER.

18 MR. SIMS: OBJECTION, MISSTATES THE TESTIMONY.

19 THE COURT: ARE WE TALKING ABOUT DETECTIVE POHL?

20 MR. DAVIS: YES, SIR.

21 THE COURT: OVERRULED. I THINK IT'S BEEN
22 ESTABLISHED BY WAY OF THE AFFIDAVIT AS WELL AS
23 TESTIMONY.

24 BY MR. DAVIS:

25 Q INDEED, WOULD IT SURPRISE YOU IF POHL, UNDER
26 OATH, IN AN AFFIDAVIT, ASSIGNED YOU THE RESPONSIBILITY OF
27 GIVING HIM THE NAME J AND TELLING HIM THAT HE'S A MEMBER
28 OF A LOCAL GANG IN THAT AREA?

1 A I TOLD HIM THAT HE WAS -- HIS NAME WAS J.

2 Q RIGHT.

3 A AND I TOLD HIM HE WAS A GANG MEMBER. THAT'S
4 ALL I TOLD HIM, OKAY. WHERE THE OTHER COMES FROM, I
5 DON'T KNOW.

6 Q ALL RIGHT. AND THEN YOU POSITIVELY
7 IDENTIFIED JOHNNY CLARK?

8 A I DIDN'T POSITIVELY IDENTIFY HIM. HE WAS
THE CLOSEST ONE TO S-1 ON THAT SHEET.

10 Q BEAR WITH ME JUST A MINUTE, PLEASE. AS I
11 RECALL, YOU PUT "THAT'S HIM," RIGHT, AND CIRCLED THE
12 PICTURE?

13 A EXACTLY.

14 Q I'M NOT LIMITING YOU TO WHAT YOU WRITE ON
15 THE PAPER, BUT WHEN YOU SAY "THAT'S HIM," THAT'S IMPLICIT
16 OF THE POSITIVE IDENTIFICATION; WOULDN'T YOU AGREE?

17 A WELL, ON THE SHEET --

18 Q RIGHT. BUT YOU HAD A DIALOGUE WITH POHL
19 ABOUT THIS, RIGHT?

20 A WHAT DO YOU MEAN?

21 Q YOU EXPLAINED THAT IT LOOKS LIKE HIM, OR --

22 A PRETTY MUCH.

23 Q YOU MADE THAT CLEAR TO HIM?

24 A YES.

25 Q WHAT IS THE BEST SUMMARY OF WHAT YOU TOLD
26 HIM, IF YOU DON'T KNOW EXACTLY WHAT YOU TOLD HIM ABOUT
27 THAT, THIS IS A MAN THAT SAID YOU POSITIVELY ID'D HIM,
28 THIS IS A MAN THAT SAID YOU GAVE UP THE NAME J AND TOLD

1247

1 HIM HE WAS A MEMBER OF A LOCAL BLOOD GANG?

2 A I GAVE UP J. I TOLD HIM HE WAS A GANG
3 MEMBER. ON THAT SIX-PACK HE WAS THE CLOSEST ONE TO IT
4 UNTIL WE GOT TO THE LINEUP, AND IT WAS NO PLACE CLOSE TO
5 THE SAME PERSON.

6 Q YOU CAME UP WITH THE NAME J BECAUSE PEOPLE
7 TOLD YOU ABOUT IT?

8 A EXACTLY.

9 Q THEY IN SOME FASHION LED YOU TO BELIEVE THEY
10 HAD CERTAIN KNOWLEDGE THAT THIS GUY, J, WAS S-1?

11 A EXACTLY.

12 Q PEOPLE YOU TRUSTED?

13 A NO, PEOPLE I KNEW.

14 Q I'M NOT GOING TO ASK YOU NAMES, BUT I'M JUST
15 SAYING THAT'S REALLY WHY YOU TOLD POHL ABOUT J?

16 A EXACTLY.

17 Q DID YOU KNOW ANYBODY THEN BY THE NAME J
18 YOURSELF?

19 A NO, I DIDN'T.

20 Q DID YOU KNOW THAT POHL WOULD TAKE THAT
21 INFORMATION AND END UP WITH JOHNNY CLARK?

22 A NO. I KNEW HE WOULD TAKE THE INFORMATION
23 AND FIND HOPEFULLY THE RIGHT PERSON.

24 Q OKAY. AND IF I UNDERSTAND WHAT YOU'RE
25 SAYING IS THAT YOU KNOW YOU MADE A MISTAKE IN PICKING
26 JOHNNY CLARK, BECAUSE HE WASN'T THERE; THAT'S ONE REASON,
27 RIGHT?

28 A EXACTLY.

1 Q AND YOU HAD GOTTEN WHAT YOU THOUGHT WAS,
2 AGAIN, INFORMATION THAT HE WAS ACTUALLY NOT AT THE PARTY,
3 CORRECT?

4 A RIGHT.

5 Q AND WAS IT INFORMATION THAT HE HAD ACTUALLY
6 BEEN BABY-SITTING SOMEBODY'S KID AT THE TIME?

7 A I DON'T HAVE A CLUE.

8 Q WHAT WERE YOU TOLD?

9 A I WAS TOLD THAT HE WASN'T THERE, THAT HE
10 DIDN'T HAVE ANYTHING TO DO WITH IT, AND JUST LIKE I SAID,
11 ONCE I SAW THE LINEUP, A TOTALLY DIFFERENT PERSON.

12 Q NOBODY IN THAT LINEUP LOOKED ANYTHING LIKE
13 S-1, RIGHT?

14 A EXACTLY.

15 Q NOBODY LOOKED LIKE S-2?

16 A NO.

17 Q YOU WENT -- MEANING "YES," NOBODY LOOKED
18 LIKE S-2?

19 A NOBODY LOOKED LIKE S-2.

20 Q WHEN YOU WENT TO LOOK FOR S-1, THE FIRST
21 THING YOU WERE LOOKING FOR WAS A BALD-HEADED GUY?

22 A A BALD CLOSE-CUT HAIRCUT, YES.

23 Q OKAY. 1100, NN.

24 I'M GOING TO SHOW YOU A PHOTOGRAPH HERE.
25 LOOKING AT THIS PHOTOGRAPH, CAN YOU SEE IT -- YOU SEE IT
26 RIGHT IN FRONT OF YOU? IT APPEARS TO BE THE SAME ON THE
27 SCREEN?

28 A YES.

1 Q DID YOU SEE THAT MAN THERE AT THE LINEUP?

2 A YOU KNOW, IT'S BEEN A LONG TIME.

3 Q RIGHT.

4 A I CAN'T REMEMBER.

5 Q WOULD IT BE FAIR TO SAY THAT TODAY IF YOU
6 LOOKED AT THE MOUTH OF THAT MAN FOR A SCAR, THAT YOU
7 MIGHT BEGIN TO THINK HE MAY NOT BE S-1?

8 A NO, HE'S NOT S-1.

9 Q HE'S NOT. BUT HE LOOKS A LOT LIKE HIM OR
10 NOTHING LIKE HIM?

11 A NOTHING LIKE HIM.

12 Q ALL RIGHT. S-1 WAS STOUT, YOKED OUT, RIGHT?

13 A NO, HE WAS SHORT AND STOCKY.

14 Q ARE WE TALKING CHUBBY LIKE ME OR BUILT LIKE
15 AN ATHLETE?

16 A ATHLETIC BUILD.

17 Q NOT ANYTHING LIKE THIS MAN?

18 A NO.

19 Q YOU LOOKED AT ALL SIX, AND YOU SAID "WHY ARE
20 WE HERE"? NONE OF THESE PEOPLE --

21 A ON THE --

22 Q -- THE LINEUP --

23 A EXACTLY.

24 Q OKAY. WHEN YOU WERE TALKING TO THE FIRST
25 REPORTING OFFICER -- WE CAN TAKE THAT OFF, THANK YOU --
26 DID YOU TALK TO HIM FOR A WHILE ABOUT WHETHER YOU KNEW
27 DUCK OR WHETHER YOU DIDN'T KNOW DUCK, WHETHER HE WAS A
28 STRANGER OR SOMEBODY YOU WERE FAMILIAR WITH? DID HE ASK

1250

1 YOU QUESTIONS LIKE THAT?

2 A NO. HE JUST ASKED ME ABOUT THE SHOOTER.

3 Q OKAY.

4 A AND I TOLD HIM WHAT I KNEW.

5 Q AND HAD YOU EVER BEFORE SEEN RODNEY MASON IN
6 THE IMMEDIATE COMPANY OF DONALD SANDERS, OR AS HE HAS
7 BEEN NICKNAMED, DUCK?

8 A NO.

9 Q OR, SAY, HIS SON, JOEL, IN THE IMMEDIATE
10 COMPANY OF DONALD SANDERS?

11 A NO.

12 Q HAVE YOU EVER SEEN THAT BEFORE?

13 A NO.

14 Q SAY AT OTHER PARTIES OR ANYTHING?

15 A NO.

16 Q SO AT THE TIME YOU WERE BEING INTERVIEWED,
17 UP TO THAT POINT IN TIME, YOU HAD NEVER SEEN EITHER OF
18 THE MASONS INTERACT SOCIALLY WITH MR. SANDERS, CORRECT?

19 A NO, I HADN'T.

20 Q WAS JOEL A REGULAR AT MOTORCYCLE CLUB
21 PARTIES OR WAS HE JUST INVOLVED IN THIS ONE AND RARE
22 BREED PARTIES?

23 A WELL, THIS WAS THE FIRST TIME HE WAS
24 INVOLVED WITH RARE BREED, BECAUSE HE WAS HELPING GET THE
25 CLUB TOGETHER FOR THE PARTY, SO THIS WAS THE FIRST TIME.

26 Q BUT NOT A MEMBER, CORRECT?

27 A NO.

28 Q HOW IS IT YOU CAME TO CONTACT THE INITIAL

1251

1 OFFICER THAT EVENING?

2 A WHAT -- I DON'T UNDERSTAND WHAT YOU'RE
3 SAYING.

4 Q WELL, HOW DID YOU TWO END UP TALKING TO EACH
5 OTHER? WHAT BROUGHT YOU TOGETHER?

6 A WELL, AT THE TIME WHEN THEY ARRIVED, THEY
7 WERE GETTING JOEL TOGETHER FOR THE AMBULANCE, AND HE
8 ASKED IF ANYBODY SAW WHAT HAPPENED, AND I TOLD HIM I DID,
AND HE -- HE BEGAN TO QUESTION ME FROM THERE.

10 Q SO HE WALKED UP TO YOU?

11 A PRETTY MUCH.

12 Q AND WHERE DID THAT OCCUR?

13 A IN THE -- RIGHT IN THE ENTRYWAY, THE EAST
14 ENTRYWAY.

15 Q JUST AS YOU STEP INSIDE THAT BACK GARAGE
16 DOOR?

17 A RIGHT, RIGHT.

18 Q AND DID HE ASK YOU IF THERE MIGHT BE OTHER
19 WITNESSES WHO SAW THIS?

20 A HE DID.

21 Q AND WHAT DID YOU TELL HIM?

22 A I TOLD HIM I DIDN'T KNOW.

23 Q BUT YOU KNEW THERE WERE OTHER WITNESSES,
24 RIGHT?

25 A I TOLD HIM I DIDN'T KNOW.

26 Q ALL RIGHT. IS THAT PART OF THE TRADITION
27 OVER HERE? YOU'RE SMILING. IT LOOKS LIKE WE'RE IN THAT
28 AREA?

1252

1 A I DIDN'T KNOW. OKAY. I DIDN'T KNOW.

2 Q MEANING YOU WEREN'T GOING TO GIVE THEM
3 ADDITIONAL WITNESSES' NAMES, FAIR?

4 A I DIDN'T KNOW WHO WITNESSED IT. I KNOW I
5 WITNESSED IT, BUT I DON'T KNOW WHO ELSE DID, SO I GAVE
6 HIM MY INFORMATION.

7 Q RIGHT.

8 A OKAY.

Q ALL RIGHT. THE TWO WOMEN SAW IT ALL, RIGHT?

10 A PRETTY MUCH.

11 Q YES. IF I UNDERSTAND IT, AT ONE POINT
12 THEY'RE TRYING TO GET INTO THE VIP ROOM RIGHT BY YOU,
13 RIGHT?

14 A EXACTLY.

15 Q THAT OFFICER ASKED YOU WHAT S-1 AND S-2 DID
16 THAT NIGHT, CORRECT?

17 A YES.

18 Q AND IN CONNECTION WITH S-2, YOU TOLD HIM
19 THAT YOU THOUGHT THAT HE HAD ACTUALLY BEEN INVOLVED IN
20 THE FIGHT, CORRECT?

21 A NO, NOT S-2.

22 Q YOU'RE CERTAIN OF THAT?

23 A PRETTY MUCH.

24 Q WELL, HE'S THE GUY THAT TRIED TO HELP YOU
25 OUT, RIGHT?

26 A EXACTLY.

27 Q SO YOU WOULDN'T SUGGEST TO THE OFFICER HE
28 WAS INVOLVED, WOULD YOU?

1253

1 A NO.

2 Q DID YOU KNOW HIM?

3 A NO, I DIDN'T KNOW HIM.

4 Q ALL RIGHT. THERE WOULD BE NO REASON FOR YOU

5 TO COVER FOR HIM, RIGHT?

6 A NONE WHATSOEVER.

7 Q BECAUSE IN A WAY YOU'RE MAKING HIM LOOK

8 GOOD, RIGHT?

 A I DON'T MEAN TO, BUT HE DID THE RIGHT THING.

10 Q HE MIGHT HAVE STUCK AROUND A LITTLE LONGER

11 AND HELPED YOU?

12 A THAT WOULD HAVE BEEN GREAT.

13 Q ALL RIGHT. AND YOU TOLD POHL -- EXCUSE ME.

14 YOU TOLD THE OFFICER THAT YOU FELT YOU COULD POSITIVELY

15 IDENTIFY S-1 AND S-2, CORRECT?

16 A YES, AT THE TIME, YES.

17 Q OTHER THAN THE PICTURE INCLUDING JOHNNY

18 CLARK, WERE YOU EVER BROUGHT SIX-PACKS TO LOOK AT OTHER

19 SUSPECTS?

20 A NO.

21 Q PERHAPS EVEN AFTER JOHNNY CLARK WAS

22 RELEASED, EVER BROUGHT SIX-PACKS?

23 A NO.

24 Q EVER FIND OUT, SAY, FROM YOUR INFORMAL

25 SOURCES WHO S-1 AND S-2 ARE?

26 A NO. WE DROPPED IT.

27 Q PARDON?

28 A WE DROPPED THE WHOLE THING.

1254

1 Q ARE YOU SURE SOMETHING WASN'T SETTLED
2 INFORMALLY?

3 A NO.

4 Q WITHIN MOTORCYCLE RULES?

5 A NO.

6 Q ALL RIGHT. IS THERE ANY MOTOR VEHICLE THAT
7 YOU WERE ABLE REASONABLY TO ASSOCIATE WITH S-1 AND S-2?

8 A THEY LEFT IN -- I THINK IT WAS A 2000, 2001
IMPALA. THAT'S IT.

10 Q WHAT COLOR?

11 A I THINK BLACK. IT'S BEEN A WHILE.

12 Q TINTED WINDOWS?

13 A UM, I COULDN'T TELL YOU.

14 Q WHO WAS DRIVING?

15 A S-1.

16 Q AND S-2, THE PASSENGER?

17 A YES.

18 Q DID ONE OF THEM DRIVE IT UP TO THE BACK?

19 A NO. THEY BOTH CAME AROUND THE BACK ENTRANCE
20 AND THEN THEY SPED AWAY.

21 Q WHO WAS -- S-1 WAS DRIVING?

22 A YES.

23 Q HE WAS DEFINITELY THE SHOOTER, RIGHT?

24 A YES.

25 Q AND S-2 WAS WITH HIM?

26 A YES.

27 Q AND THEY SPED AWAY AS THOUGH THEY WERE
28 TRYING TO GET OUT OF THERE, RIGHT?

1255

1 A EXACTLY.

2 Q COULD YOU SEE IN THE BACK?

3 A NO.

4 Q TINTED WINDOWS?

5 A I DON'T KNOW. I JUST -- THE WINDOW WAS DOWN
6 IN THE FRONT ON THE DRIVER'S SIDE.

7 Q AND WHERE WAS THAT CAR WHEN YOU FIRST SAW
8 IT?

9 A WHEN THEY CAME TO THE BACK AND SPED AWAY.
10 THAT -- THAT WAS THE FIRST TIME I SAW THE CAR.

11 Q ALL RIGHT. SO THEY PULLED UP TO THE ALLEY
12 RIGHT BEHIND THE GATE?

13 A RIGHT.

14 Q AND S-1 JUMPED IN?

15 A NO. HE WAS DRIVING THE CAR.

16 Q SO THEY EVIDENTLY HAD GONE SOMEWHERE ELSE TO
17 PICK UP THE CAR?

18 A AND CAME BACK.

19 Q BUT CHOSE TO DRIVE THROUGH THE ALLEY?

20 A EXACTLY.

21 Q OKAY. DID YOU SEE JOEL DRINK ANYTHING THAT
22 NIGHT?

23 A NO.

24 Q IS HE A DRINKER?

25 A I DON'T KNOW.

26 Q DID YOU SEE HIS FATHER DRINK ANYTHING THAT
27 NIGHT?

28 A I DIDN'T SEE HIM DRINK ANYTHING. I WASN'T

1256

1 PAYING ATTENTION TO THAT.

2 Q ALL RIGHT. HOW ABOUT THE GIRLS, DID THEY
3 SEEM INTOXICATED?

4 A I DON'T HAVE A CLUE.

5 Q RODNEY, THE FATHER, DID HE SEEM INTOXICATED?

6 A NOT THAT I KNOW OF.

7 Q EXCUSE ME, RODNEY, THE SON, I MISSPOKE.

8 A NOT THAT I KNOW OF.

9 Q WHERE WAS JOEL WHEN THE COMMOTION STARTED?

10 A WHERE WAS JOEL?

11 Q YES, SIR.

12 A HE WAS STANDING NEXT TO ME.

13 Q INSIDE THE VIP?

14 A NO, NO. ARE YOU TALKING ABOUT THE FIGHT OR
15 THE COMMOTION?

16 Q THE COMMOTION.

17 A OKAY. THE COMMOTION, I GUESS HE WAS
18 OUTSIDE. I DON'T KNOW. I WAS INSIDE. I DON'T KNOW
19 WHERE JOEL WAS.

20 Q BUT HE'S NOT IN THE VIP WITH YOU?

21 A NO.

22 Q HE'S NOT IN THE BAR WITH HIS FATHER?

23 A NO.

24 Q HE'S SOMEWHERE BEYOND THAT, AND YOU DON'T
25 KNOW WHERE?

26 A RIGHT.

27 Q AND WHAT, TO THE BEST OF YOUR RECOLLECTION,
28 WAS IT THAT WAS SAID TO THOSE GIRLS, THAT YOU OVERHEARD?

1 A WELL, WHAT HAPPENED WAS WHEN S-1 STEPPED TO
2 THE WINDOW, THE TWO YOUNG LADIES WERE STANDING THERE, AND
3 THE FIRST ONE SAID "AHH," AND THAT'S WHEN HE PROCEEDED TO
4 CALL THEM BITCHES.

5 Q DID HE INSULT HER WHEN HE DID THAT?

6 A I THINK SO.

7 Q AND THEY REACTED?

8 A NO.

9 Q DIDN'T APPEAR TO BOTHER THEM AT THAT POINT?

10 A WELL, THEY JUST STEPPED AWAY FROM THE WINDOW
11 AT THAT POINT.

12 Q AND HE CALLS THESE GIRLS BITCHES?

13 A RIGHT.

14 Q WHAT ELSE DID HE SAY THAT WAS UNFLATTERING
15 OR INSULTING?

16 A WELL, BY THAT TIME JOEL HAD CAME UP AND THEN
17 I CAME FROM AROUND FROM THE INSIDE, OUTSIDE TO STEP
18 BETWEEN THEM.

19 Q DID ONE OF THE GIRLS SAY SOMETHING LIKE "WHY
20 ARE YOU LOOKING AT ME"?

21 A NOT THAT I HEARD.

22 Q EITHER OF THOSE MEN SAY TO THE GIRLS "YOU'RE
23 A HAS-BEEN"?

24 A I COULDN'T TELL YOU. I DIDN'T HEAR ANY OF
25 THAT.

26 Q "FUCK YOU, BITCH"?

27 A I HEARD A FEW OF THOSE.

28 Q AND ANYTHING OF SIMILAR ILK TO JOEL HIMSELF?

1 A UM, NO, I DIDN'T HEAR ANY OF THAT.

2 Q SO WHAT WERE THE WORDS THAT YOU DESCRIBED AS
3 "BLOODING" BACK AND FORTH?

4 A WHEN THEY CAME TO THE WINDOW TO GET A DRINK,
5 THAT'S WHAT THEY WERE DOING, TALKING BACK AND FORTH,
6 "BLOOD" THIS, "BLOOD" THAT.

7 Q WHERE WAS JOEL WHEN THAT WAS HAPPENING?

8 A HE WASN'T INSIDE. HE WAS OUTSIDE.

Q YOU COULD JUST HEAR HIM TALKING?

10 A NO. JOEL WASN'T INSIDE, BECAUSE WHAT HAD
11 HAPPENED BEFORE THE COMMOTION STARTED, THEY WERE TRYING
12 TO GET A DRINK, OKAY, AND THAT'S WHEN THEY WERE USING THE
13 "BLOOD" BACK AND FORTH.

14 Q TO RODNEY?

15 A RODNEY, SR.

16 Q AND WAS HE, FOR WHAT YOU SAW AND HEARD,
17 OFFENDED BY THAT?

18 A NO.

19 Q ANYBODY CALL ONE ANOTHER A "NIGGER" OR "A
20 HAS-BEEN NIGGER"?

21 A NO, NOT THAT I HEARD.

22 Q NOT THAT YOU HEARD. WHAT CAUSED THE FIGHT,
23 FROM WHAT YOU SAW?

24 A THE DISRESPECT TO THE TWO FEMALES. RODNEY,
25 SR. FELT THAT S-1 HAD DISRESPECTED THEM, SO AT THAT POINT
26 HE TOLD THEM "HOLD ON ONE SECOND. LET ME TALK TO YOU."
27 JOEL CAME UP, I CAME OUT, AND THEN IT PROCEEDED FROM
28 THERE.

1 Q YOU CAME OUT THROUGH THE DOOR, THE FATHER
2 WENT AROUND THROUGH THE KITCHEN DOOR?

3 A RIGHT, BUT HE DIDN'T COME STRAIGHT OUT. I
4 DON'T KNOW WHAT HAPPENED, BUT HE DIDN'T COME RIGHT OUT.

5 Q WAS JOEL OUT THERE BEFORE HE WAS?

6 A YES, HE WAS.

7 Q AND WHAT WAS JOEL SAYING?

8 A JOEL DIDN'T SAY TOO MUCH OF ANYTHING; LIKE I
SAID, I WAS TRYING TO CALM THE FIRST SHOOTER, AND THE
10 NEXT THING I LOOKED AT JOEL AND HE HAD COME AROUND ME,
11 AND THAT'S WHEN THE FIGHT STARTED.

12 Q AND TELL US HOW THAT HAPPENED.

13 A OKAY. S-2 AND I WERE STANDING IN BETWEEN
14 S-1 AND JOEL. S-1 SHOWED ME THAT HE HAD A GUN IN HIS
15 WAIST, SO I PUT MY HAND ON THE GUN AND TOLD HIM WE DIDN'T
16 NEED TO DO THIS HERE, SO S-1 SAID "WELL, IT'S HIM, IT'S
17 NOT ME," AND WHEN I LOOKED AT JOEL, JOEL HAD CAME AROUND
18 ME AND PROCEEDED TO JUMP S-1.

19 Q ALL RIGHT. AND WHO SHOT THE FIRST ROUND?

20 A S-1.

21 Q AND WAS THAT WHILE HE WAS ON THE GROUND?

22 A THEY WERE ON THE GROUND. JOEL WAS ON TOP.
23 DUCK HAD GRABBED JOEL BY THE BACK OF HIS COLLAR, PULLING
24 HIM UP WITH HIS GUN IN HIS HAND, AND ALLOWED S-1 TO GET
25 OFF, AND THEN DUCK SHOT TWICE AND RODNEY CAME OUT AND
26 TURNED AND SHOT HIM TWICE.

27 Q LET ME ASK YOU: HOW MANY TIMES DID THE S-1
28 GUN GO OFF?

1 A ONCE.

2 MR. DAVIS: MAY I HAVE A MINUTE, YOUR HONOR?

3 THE COURT: YOU MAY.

4 (BRIEF PAUSE IN THE PROCEEDINGS.)

5 BY MR. DAVIS:

6 Q HAVE YOU EVER TALKED TO RODNEY ABOUT A GUN
7 JAMMING IN THIS CASE?

8 A YES -- WELL, WAIT A MINUTE. WHOSE GUN
JAMMING?

10 Q ANY GUN.

11 A YES, S-1.

12 Q ALL RIGHT.

13 A YES.

14 Q AND WHAT DID HE TELL YOU HE SAW?

15 MR. SIMS: OBJECTION, HEARSAY.

16 THE WITNESS: I DON'T THINK HE SAW ANYTHING --

17 THE COURT: WAIT A MINUTE. THERE'S AN OBJECTION.

18 THE WITNESS: EXCUSE ME.

19 THE COURT: OVERRULED.

20 BY MR. DAVIS:

21 Q WHAT DID RODNEY TELL YOU THAT HE SAW ABOUT A
22 GUN JAMMING?

23 A AS FAR AS I KNOW, HE DIDN'T SEE ANY OF THAT,
24 AS FAR AS I KNOW. I SAW THE GUN JAM.

25 Q BUT WHEN YOU TALKED TO HIM ABOUT IT, DID HE
26 SAY HE SAW IT OR DIDN'T SEE IT?

27 A WE REALLY NEVER TALKED ABOUT THAT, PRETTY
28 MUCH. I REALLY NEVER GOT INTO A DEEP DISCUSSION WITH

1 RODNEY ABOUT WHAT -- HOW EVERYTHING TOOK PLACE.

2 Q WELL, WHEN YOU TALKED TO THE FIRST REPORTING
3 OFFICER, YOU DIDN'T MENTION ANYTHING ABOUT A GUN JAMMING,
4 DID YOU?

5 A I'M NOT SURE. I PROBABLY DID, BUT I'M NOT
6 SURE.

7 Q WHERE DID THE GUN COME FROM?

8 A S-1'S GUN?

9 Q YES.

10 A IT CAME FROM HIS WAIST. HE PULLED IT AS HE
11 WAS GOING DOWN TO THE GROUND, AND HE TRIED TO RACK IT,
12 AND IT COULDN'T -- HE PULLED THE TRIGGER SEVERAL TIMES;
13 AND IT DIDN'T GO OFF, AND THEN FINALLY IT DID.

14 Q ALL RIGHT. SO WOULD IT BE TRUE THAT FROM
15 WHAT YOU SAW, S-1 REMOVED THE HANDGUN FROM HIS WAISTBAND
16 AND FIRED A ROUND STRIKING RODNEY AND CAUSING HIM TO FALL
17 TO THE GROUND? IS THAT HOW THE GUN OPERATED?

18 A HE SHOT JOEL.

19 Q OH, EXCUSE ME. I MISSPOKE. I'M SORRY.
20 WOULD IT BE TRUE THAT WHAT YOU SAW OF THE SHOOTING
21 INVOLVING JOEL AND S-1 WAS THAT S-1 REMOVED THE HANDGUN
22 FROM HIS WAISTBAND AND FIRED ONE ROUND AT JOEL, STRIKING
23 HIM AND CAUSING HIM TO FALL TO THE FLOOR? THAT'S THE WAY
24 IT REALLY HAPPENED, RIGHT?

25 A RIGHT.

26 Q THERE WAS NO JAMMING INVOLVED, WAS THERE?

27 A YES, THE GUN JAMMED. LIKE I SAID, HE WAS ON
28 THE GROUND TRYING TO RACK THE GUN AND ALL OF A SUDDEN HE

1 RACKED IT AND HE PULLED THE TRIGGER, AND HE WENT TO THE
2 GROUND.

3 Q AND THAT'S THE MAN WHO FIRST SHOT JOEL,
4 CORRECT?

5 A FIRST SHOT.

6 Q AND HE NEVER FIRED ANOTHER ROUND AFTER THAT?

7 A NO. THE GUN JAMMED.

8 Q DID YOU EVER TELL ANYONE ABOUT THE GUN
JAMMING ASSOCIATED WITH LAW ENFORCEMENT, LIKE POHL --

10 A YES, POHL.

11 Q THE FIRST OFFICER?

12 A PROBABLY THE FIRST OFFICER. I'M NOT SURE,
13 BUT PROBABLY SO.

14 Q S-1, AFTER HE SHOT JOEL, THEN POINTED HIS
15 HANDGUN AT RODNEY AND SHOT HIM ONCE, STRIKING HIM IN THE
16 LEG, TRUE?

17 A NO.

18 Q S-1 SHOT JOEL TWO TIMES, DIDN'T HE?

19 A NO. I ONLY SAW ONE TIME.

20 Q I'M GOING TO READ YOU THIS STATEMENT, AND
21 THEN TELL ME WHEN I FINISH WHETHER OR NOT IT'S TRUE,
22 FALSE OR PARTIALLY TRUE AND FALSE AND WE'LL DICE IT UP,
23 OKAY?

24 A OKAY.

25 Q WE'LL TAKE OUR TIME LOOKING AT IT. "S-1
26 POINTED HIS HANDGUN AT RODNEY AND HE SHOT HIM ONCE,
27 STRIKING HIM IN THE LEG AREA," TRUE OR FALSE?

28 A FALSE.

1 Q "S-1 THEN SHOT JOEL ONE MORE TIME BEFORE HE
2 FLED THE LOCATION," TRUE OR FALSE?

3 A FALSE.

4 Q NOW, I'M GOING TO READ THE WHOLE THING, AND
5 THEN ASK YOU A QUESTION. "S-1 POINTED THE HANDGUN AT
6 RODNEY AND SHOT HIM ONCE, STRIKING HIM IN THE LEG. S-1
7 THEN SHOT JOEL ONE MORE TIME BEFORE HE FLED THE
8 LOCATION."

THAT WHOLE STATEMENT IS ABSOLUTELY FALSE?

10 A IT'S FALSE.

11 Q BUT I WANT TO ASK YOU A QUESTION ABOUT IT.

12 A OKAY.

13 Q DIDN'T YOU PERSONALLY TELL DETECTIVE JEFFREY
14 POHL THAT'S EXACTLY HOW IT HAPPENED?

15 A NO.

16 Q ARE YOU SURE ABOUT THAT?

17 A IT WAS WRONG.

18 Q NOT EVEN CLOSE TO THE TRUTH?

19 A NOT EVEN CLOSE TO THE TRUTH.

20 Q I'M GOING TO SHOW YOU, REFERRING COURT AND
21 COUNSEL, TO THE END OF THE SEARCH WARRANT OF DETECTIVE
22 POHL, PAGE 11, LINES 1 THROUGH 4. WE'RE GOING TO LOOK AT
23 THAT.

24 NOW, SOME OF IT HAS CODES, SUSPECT ONE, THAT
25 SORT OF THING. IT'S NOT MY INTENTION TO READ YOU THE
26 ENTIRE SEARCH WARRANT, THAT'S PAGES AND PAGES. IT'S
27 CERTAINLY NOT MY INTENTION TO MISLEAD YOU ABOUT HOW I'M
28 FRAMING THIS, OKAY?

1 A OKAY.

2 Q WE'LL BE VERY CAREFUL OF THAT. THE TOP
3 LINES UP THERE, I DON'T KNOW IF YOU CAN CONVENIENTLY SEE
4 THAT. LET ME SEE IF I HAVE A CLEAN COPY HERE.

5 THE COURT: IF YOU WISH, SIR, YOU CAN STEP DOWN
6 AND EVEN SIT IN ONE OF THOSE EMPTY CHAIRS SO YOU CAN GET
7 A BETTER VIEW OF WHAT'S BEING PROJECTED ON THE SCREEN.

8 THE WITNESS: OKAY.

BY MR. DAVIS:

10 Q WHAT YOU'RE LOOKING AT IS SOMETHING SOMEBODY
11 SAID UNDER OATH YOU TOLD THEM, OKAY?

12 A OKAY.

13 Q WE WANT TO BE SURE --

14 A OKAY.

15 Q I'M SORRY. I HAVE THE WRONG STATEMENT.
16 COUNSEL HAS JUST ADVISED ME. I'M SORRY, SIR. OH, LET ME
17 GO BACK. LET'S PUT IT BACK UP.

18 THANK YOU, MR. LEVINE. IF WE COULD FRAME IT
19 UP.

20 ALL RIGHT. THIS IS NOT A STATEMENT
21 ATTRIBUTED TO YOU. I APOLOGIZE. THE PROPER QUESTION
22 IS: IS THIS HOW IT HAPPENED, WHAT YOU'RE SEEING THERE,
23 THAT SUSPECT ONE POINTED HIS HANDGUN AT RODNEY, THE "HIM"
24 THERE, AND PROCEEDED TO SHOOT HIM ONCE, STRIKING HIM IN
25 THE LEG AREA. THEN SUSPECT ONE SHOT RODNEY ONE MORE TIME
26 BEFORE ALL THE SUSPECTS FLED THE LOCATION. I'M TRYING
27 NOT TO SCREW THIS UP WORSE THAN I HAVE. LET ME CONSULT
28 WITH COUNSEL. I APOLOGIZE FOR THE TIME BEING.

1 MR. LEVINE: YOUR HONOR --

2 THE COURT: YOU KNOW, I'LL TELL YOU WHAT WE'LL
3 DO. THIS IS ABOUT THE TIME WE NORMALLY TAKE A RECESS, SO
4 WHY DON'T WE RECESS FOR 20 MINUTES AND YOU CAN GET YOUR
5 THOUGHTS TOGETHER. LET'S COME BACK AT -- LET'S COME BACK
6 AT A QUARTER TO 11:00, A LITTLE MORE THAN 20 MINUTES.

7 WE'LL STAND IN RECESS UNTIL A QUARTER TO
8 11:00. THE JURY IS ADMONISHED NOT TO DISCUSS THIS CASE
9 WITH ANYBODY, INCLUDING A FELLOW JUROR. LEAVE YOUR
10 NOTEBOOKS AND PENCILS HERE, AND PLEASE REASSEMBLE AT A
11 QUARTER TO.

12 YOU'RE ORDERED BACK AT A QUARTER TO. DO NOT
13 HAVE ANY CONTACT WITH ANY OF THE JURORS. DO NOT DISCUSS
14 YOUR TESTIMONY WITH ANYBODY ELSE.

15 (RECESS TAKEN.)

16
17 (THE FOLLOWING PROCEEDINGS
18 WERE HELD IN OPEN COURT OUTSIDE
19 THE PRESENCE OF THE JURY:)

20
21 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
22 TO THE SANDERS MATTER. MR. SANDERS IS PRESENT WITH HIS
23 COUNSEL AS IS THE PEOPLE'S. WE ARE READY TO PROCEED.
24 MR. DAVIS, ARE YOU READY TO PROCEED?

25 MR. DAVIS: YES, YOUR HONOR.

26 THE COURT: THE WITNESS MAY BE BROUGHT IN, AS WELL
27 AS THE JURY.
28

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1 THE COURT: YOU MAY STEP DOWN.

2 BY MR. DAVIS:

3 Q SURE, PLEASE STEP DOWN.

4 A OKAY. NOW, WHERE ARE WE TALKING ABOUT?

5 Q THE LAST FOUR LINES THERE.

6 A OKAY. NO, WHAT I'M --

7 Q I'M GOING TO ASK YOU A QUESTION. YOU READ
8 IT, RIGHT?

A YES.

10 Q YOU SEEM TO BE BETWEEN -- WHEN IT COMES
11 AFTER THE FIRST SHOT, BETWEEN SHOOTER ONE SHOOTING JOEL
12 WHILE HE'S DOWN, OR DUCK SHOOTING HIM WHILE HE'S DOWN,
13 CORRECT, DO YOU AGREE?

14 A RIGHT.

15 Q AND AFTER THESE EVENTS, THEN RODNEY GOT
16 SHOT, RIGHT?

17 A EXACTLY.

18 Q AND WHO SHOT RODNEY?

19 A DUCK.

20 Q ARE YOU CONFUSED ABOUT WHO SHOT RODNEY, SIR?

21 A NO, I'M NOT, NOT AT ALL.

22 Q WELL, DID MORE THAN ONE PERSON SHOOT RODNEY?

23 A NO, JUST ONE.

24 Q HOW ABOUT TWO? DID TWO PEOPLE SHOOT RODNEY?

25 A NO, JUST ONE.

26 Q DID MORE THAN TWO SHOOT RODNEY?

27 A NO, JUST ONE.

28 Q I WANT TO REFER COURT AND COUNSEL TO PAGE

1 107 OF THE PRELIMINARY HEARING, LINES 1 THROUGH 12 --
2 EXCUSE ME, 1 THROUGH 8.

3 MR. SIMS: WHAT PAGE AGAIN, COUNSEL?

4 MR. DAVIS: I'M SORRY, COUNSEL, 107.

5 MR. SIMS: LINES 1 THROUGH 8?

6 MR. DAVIS: YES, SIR.

7 MR. SIMS: OKAY.

8 THE COURT: THAT PORTION MAY BE PUBLISHED.

BY MR. DAVIS:

10 Q ALL RIGHT.

11 "QUESTION BY MR. DAVIS: THE FATHER CAME
12 AROUND AND TRIED TO BREAK IT UP, DIDN'T HE?

13 "ANSWER: NO. PRETTY MUCH I TRIED TO
14 DIFFUSE IT BEFORE IT EVER GOT STARTED. SENIOR DIDN'T
15 COME UNTIL HE HEARD THE SHOOTING, AND THAT IS WHEN HE
16 CAME OUT.

17 "QUESTION: AND WHAT DID HE DO?

18 "ANSWER: WELL, HE CAME TOWARDS THEM AND
19 THEY SHOT HIM."

20 DO YOU DENY THAT THAT WAS YOUR TESTIMONY AT
21 PRELIMINARY HEARING?

22 A THAT'S NOT WHAT I SAID, AND WHO IS
23 MR. DAVIS?

24 Q WELL, IT'S NOT MY FATHER, BUT IT'S HIS
25 FAVORITE SON, MYSELF.

26 A OKAY.

27 Q I'M SORRY IF THAT CONFUSED YOU.

28 A IT DID.

1 Q I SHOULD HAVE REINTRODUCED MYSELF.

2 A EXACTLY.

3 Q I'M DANNY DAVIS, THE GUY YOU DIDN'T WANT TO
4 GIVE A MEMBERSHIP TO --

5 MR. SIMS: OBJECTION, ARGUMENTATIVE.

6 THE COURT: SUSTAINED.

7 BY MR. DAVIS:

8 Q WHEN YOU SAID "HE CAME TOWARDS THEM AND THEY
SHOT HIM," WHO ARE THE "THEY" YOU'RE TALKING ABOUT?

10 A I PROBABLY SAID -- I MOST DEFINITELY SAID
11 THAT DUCK SHOT HIM WHEN HE CAME TOWARDS HIM. I DIDN'T
12 SAY "THEY"; I SAID DUCK SHOT HIM.

13 Q OR YOU WERE SAYING HE CAME TOWARDS THEM, AND
14 GOT -- AND DONALD SANDERS SHOT HIM? ARE YOU TRY --

15 A I'M TRYING TO SAY WHEN HE CAME TOWARDS THEM,
16 DUCK SHOT HIM.

17 Q AT A PRELIMINARY HEARING SOMETIME BACK, YOU
18 SAID "THEY" SHOT HIM, RIGHT?

19 A NO.

20 Q THAT'S INCORRECT, THE PRINT UP THERE?

21 A THAT'S INCORRECT.

22 Q ALL RIGHT. DID THE JAM YOU TALK ABOUT, THIS
23 MALFUNCTION, OCCUR MORE THAN ONE TIME DURING THESE
24 SHOOTINGS?

25 A YES, IT DID.

26 Q THE SAME GUN OR A DIFFERENT GUN?

27 A THE SAME GUN.

28 Q SO IT DIDN'T JUST SHOOT, JAM?

1 A NO, IT JAMMED, JAMMED, AND THEN IT SHOT, AND
2 THEN IT JAMMED AGAIN. AS A MATTER OF FACT, HE HAD A
3 PROBLEM WITH THAT GUN ALL THE WAY OUT OF THE DOOR.

4 Q WHAT WAS THAT?

5 A HE WAS TRYING TO RACK IT AGAIN TO SHOOT
6 AGAIN, BUT HE COULDN'T.

7 Q SO IT WENT JAM, JAM, SHOOT, JAM -- IT WENT
8 JAM, SHOOT, JAM, RIGHT?

9 A PUT IT LIKE THIS: IT JAMMED. I'M NOT SURE
10 HOW MANY TIMES IT JAMMED BUT IT DID JAM. HE GOT OFF ONE
11 SHOT, AND THEN IT CONTINUOUSLY JAMMED ON HIS WAY OUT.

12 Q WOULD IT BE FAIR TO SAY YOU'RE NOT SURE HOW
13 MANY TIMES IT JAMMED?

14 A YES, IT WOULD BE.

15 Q I'M SORRY?

16 A YES, IT WOULD BE.

17 Q DO YOU HAVE FAMILIARITY YOURSELF WITH
18 HANDGUNS?

19 A A LITTLE BIT.

20 Q ALL RIGHT. EVER HAD ONE JAM ON YOU?

21 A NO.

22 Q EVER HAVE A GUN SHOOT AND THEN JAM?

23 MR. SIMS: OBJECTION, RELEVANCE.

24 THE COURT: SUSTAINED.

25 BY MR. DAVIS:

26 Q ISN'T THAT WHAT HAPPENED, IT SHOT AND
27 JAMMED?

28 A YES, BUT IT HAD JAMMED BEFORE.

1 Q AND THEN IT SHOT AGAIN, DIDN'T IT?

2 A NO, IT ONLY SHOT ONE TIME.

3 Q ONE OF THE THINGS THAT YOU HEARD RODNEY SAY
4 TO THESE MEN WAS NOT TO DISRESPECT THE GIRLS, RIGHT?

5 A EXACTLY.

6 Q HE SAID "THEY'RE FAMILY," OR WORDS TO THAT
7 EFFECT?

8 A EXACTLY.

Q "THEY'RE MINE," OR WORDS TO THAT EFFECT?

10 A HE SAID "THEY'RE FAMILY."

11 Q AND THEN HE ALSO SAID THAT THE GIRLS DIDN'T
12 HAVE ANYTHING TO DO WITH THIS DISPUTE, DIDN'T HE?

13 A PROBABLY. I JUST HEARD HIM SAY "DON'T
14 DISRESPECT THE FEMALES."

15 Q RIGHT.

16 A OKAY.

17 Q BUT HE ALSO SAID THEY DON'T HAVE ANYTHING TO
18 DO WITH THIS BEEF BETWEEN YOU TWO, RIGHT?

19 A I DIDN'T HEAR ANY OF THAT.

20 Q DID YOU HEAR ANYTHING LIKE RODNEY SAY "THEY
21 DON'T HAVE ANYTHING TO DO WITH IT, DON'T DISRESPECT
22 THEM"?

23 A I DIDN'T HEAR ANYTHING -- I HEARD RODNEY SAY
24 "DON'T DISRESPECT THEM."

25 Q YOU DON'T KNOW WHETHER OR NOT THERE WAS A
26 BEEF BETWEEN JOEL AND SHOOTER ONE AND TWO, DO YOU?

27 A NO, I DON'T KNOW.

28 Q DIDN'T YOU SAY IT AT PRELIMINARY HEARING,

1 THAT YOU OVERHEARD RODNEY SAY "THEY DIDN'T HAVE ANYTHING
2 TO DO WITH IT," REFERRING TO THE GIRLS?

3 A NO.

4 Q 104, 18 TO 23.

5 MR. SIMS: OKAY, THAT'S FINE.

6 THE COURT: THOSE PORTIONS MAY BE PUBLISHED.

7 BY MR. DAVIS:

8 Q "QUESTION: NOW, WHEN RODNEY, THE FATHER,
9 SAID OR DID SOMETHING, WHAT DID HE SAY OR DO ABOUT THIS
10 DISRESPECTING THE GIRLS, THE FEMALES?

11 "ANSWER: HE TOLD THEM NOT TO DISRESPECT
12 THEM, THAT THEY DIDN'T HAVE ANYTHING TO DO WITH IT. HE
13 FELT IT WAS WRONG."

14 LOOKING BACK TO THE INTERACTION BETWEEN JOEL
15 AND THESE TWO MEN, WOULD IT BE FAIR THAT YOUR TRUE
16 OPINION OF S-1 AND S-2 RIGHT BEFORE THE FIGHT WAS THAT
17 THEY WEREN'T MEMBERS OF THE MOTORCYCLE SET, BUT THEY
18 WEREN'T EXACTLY STRANGERS EITHER, WERE THEY?

19 A I COULDN'T TELL YOU THAT. I DON'T HAVE A
20 CLUE.

21 Q WELL, DIDN'T YOU SAY AT PRELIMINARY HEARING
22 WHEN TALKING ABOUT THE APPARENT RELATIONSHIP, THAT YOU
23 SAID YOU WOULDN'T CALL THEM STRANGERS?

24 A I MAY HAVE.

25 Q YOU KNEW SOMETHING ABOUT THEM, DIDN'T YOU?

26 A NO, NOT REALLY.

27 Q WELL, WOULD THE TRADITIONS OF YOUR
28 MOTORCYCLE CLUB PERMIT YOU TO SNITCH OUT A GANG MEMBER?

1 MR. SIMS: OBJECTION, VAGUE.

2 THE COURT: OVERRULED, BASED UPON HIS PRIOR
3 COMMENTS.

4 THE WITNESS: COULD YOU EXPLAIN WHAT YOU SAID?
5 BY MR. DAVIS:

6 Q YES. IF A RIGHTEOUS BLOOD CAME IN AND HAD A
7 PREVIOUS DISPUTE WITH SOMEBODY AT YOUR PARTY, THE
8 TRADITION WITHIN YOUR CLUB WOULD BE THAT AT ALL COSTS YOU
WOULD AVOID SNITCHING OUT THAT GANG MEMBER, TRUE?

10 A NOT REALLY, BECAUSE I'M A FOUNDER. I DON'T
11 GO BY TRADITIONS AS PERTAINING TO WHAT GOES ON IN THE
12 CLUBHOUSE AND WHAT HAPPENS IN THE CLUBHOUSE. DO YOU
13 UNDERSTAND WHAT I'M SAYING?

14 Q I UNDERSTAND YOUR ANSWER.

15 A OKAY.

16 Q BUT WHY IS IT THAT YOU WOULD SAY AT
17 PRELIMINARY HEARING THAT THESE TWO MEN -- LET ME WITHDRAW
18 THAT. THERE'S NO QUESTION THAT WHAT THEY DID WITHIN YOUR
19 CLUB TO INSULT THE GIRLS, TO IGNORE RODNEY'S EFFORTS, TO
20 PROCEED AND GET INTO A FIGHT AND THEN A SHOOTING IS AN
21 OUTRAGEOUS EFFRONTERY TO YOUR CLUBHOUSE, ISN'T IT?

22 A EXACTLY.

23 Q AND YET WE KNOW TODAY THOSE TWO MEN ARE NOT
24 INVOLVED IN THIS CASE, CORRECT?

25 A YES.

26 Q THEY'RE STILL OUT THERE, RIGHT?

27 A YES.

28 Q AND I WANT TO KNOW WHAT YOU MEANT WHEN YOU

1 SAID THAT THESE TWO MEN WEREN'T WHAT YOU'D CALL
2 STRANGERS?

3 A EXPLAIN TO ME.

4 Q YOU HAD SOME FAMILIARITY WITH THEM, DIDN'T
5 YOU?

6 A NO, I DIDN'T KNOW THOSE TWO; NEVER SEEN THEM
7 BEFORE -- BEFORE THAT INCIDENT.

8 Q 113, LINES 5 THROUGH 13.

9 MR. SIMS: THAT'S FINE.

10 THE COURT: THAT PORTION MAY BE PUBLISHED.
11 BY MR. DAVIS:

12 Q "QUESTION: AND FOR WHAT YOU SAW BEING A
13 MEMBER AND FOUNDER OF RARE BREED, YOU DETERMINED THAT
14 EVENING THAT SHOOTER ONE AND HIS FRIEND WERE NOT
15 MOTORCYCLE CLUB MEMBERS, CORRECT?

16 "ANSWER: YES.

17 "QUESTION: THAT THEY WERE NOT REGULARS,
18 THEY WERE STRANGERS?

19 "ANSWER: I WOULDN'T SAY STRANGERS, BUT I
20 NEVER SEEN THEM ON THE MOTORCYCLE SET."

21 PAGE 111, THROUGH 19, THE INTENT IS LINES 17
22 THROUGH 19.

23 MR. SIMS: GO AHEAD.

24 THE COURT: THAT PORTION MAY BE PUBLISHED.

25 MR. DAVIS: THANK YOU.

26 Q "QUESTION: AND THE TALL, SLENDER GUY, THE
27 FRIEND THAT CAME IN WITH SHOOTER ONE, HOW TALL WAS HE?

28 "ANSWER: HE'S ABOUT SIX FEET.

1 "QUESTION: AND WAS HE THERE WHEN THE FIGHT
2 WAS GOING ON?

3 "ANSWER: NO, HE LEFT.

4 "QUESTION: AND DID YOU SEE HIM LEAVE?

5 "ANSWER: YES, I DID, IN A CAR. I SAW HIM
6 WALK OUT THE GATE. THAT'S IT. I DON'T KNOW HOW HE
7 LEFT."

8 NOW, AFTER THIS SHOOTING HAD SUBSIDED, DID
9 YOU LEAVE THE IMMEDIATE AREA OF THE SHOOTING AND WALK
10 OUTSIDE?

11 YOU CAN DROP THAT, PLEASE. I'M SORRY. I
12 DIDN'T WANT TO CUT THE JURY OFF ON THAT. LET ME CONSULT
13 WITH MR. CHRISMAN.

14 THE COURT: GO AHEAD.

15 (BRIEF PAUSE IN THE PROCEEDINGS.)

16 BY MR. DAVIS:

17 Q WHERE IS JOEL WHEN YOU WALKED OUTSIDE THAT
18 CLUB?

19 A OKAY. AT WHAT POINT?

20 Q WELL, THE SHOOTING IS DONE?

21 A THE SHOOTING IS DONE.

22 Q THE PEOPLE ARE DOWN?

23 A OKAY.

24 Q AND YOU WALK OUTSIDE, RIGHT?

25 A I WALK OUTSIDE WITH SENIOR -- WE WALK
26 OUTSIDE TOGETHER. WE WALK RIGHT BEYOND THE DOOR, AND WE
27 TURNED AND COME BACK, AND AS WE COME BACK, THAT'S WHEN I
28 REALIZED THAT SENIOR HAD BEEN SHOT.

1 Q BECAUSE YOU DIDN'T SEE HIM GET SHOT, DID
2 YOU?

3 A I SAW HIM SHOOT IN THE DIRECTION. I THOUGHT
4 HE WAS SHOT, I REALLY DID. I DIDN'T REALIZE HE WAS
5 SHOT. AT FIRST I THOUGHT HE HAD MISSED HIM BECAUSE HE
6 WALKED OUT WITH ME, AND THEN I REALIZED HE HADN'T MISSED
7 HIM, WHEN I WAS HELPING HIM TO THE GROUND.

8 Q YOU SAY "HE." IS THAT SHOOTER ONE OR
SOMEBODY ELSE?

10 A I'M TALKING ABOUT DUCK SHOOTING SENIOR. HE
11 SHOT IN THAT DIRECTION TWICE, OKAY. I THOUGHT HE WAS
12 SHOT, BUT WHEN HE WALKED OUT OF THE DOOR WITH ME, I SAID
13 "OKAY, APPARENTLY HE MISSED HIM," BUT WHEN HE CAME BACK
IN, THAT'S WHEN HE WENT DOWN TO THE FLOOR.

15 Q ALL RIGHT. AT ANY TIME THAT EVENING DID YOU
16 EVER HEAR DONALD SANDERS SAY ANYTHING DISRESPECTFUL?

17 A TO --

18 Q TO THE GIRLS OR ANYBODY.

19 A NO.

20 MR. DAVIS: ALL RIGHT. I WANT YOU, IF YOU COULD,
21 TO GIVE US SOME IDEA WHERE IT WAS THAT JOEL WAS LOCATED.
22 I'M GOING TO ASK TO MARK ANOTHER EXHIBIT, IF I COULD,
23 YOUR HONOR. IT MIGHT BE DOUBLE P AT THIS POINT.

24 THE COURT: IT IS DOUBLE P.

25 MR. DAVIS: THANK YOU.

26 (MARKED FOR IDENTIFICATION
27 DEFENDANT'S EXHIBIT PP.)

28 MR. DAVIS: ALL RIGHT. APPROACHING YOU WITH THIS,

1 COULD WE DISPLAY IT ON THE SCREEN, PLEASE. I WANT YOU TO
2 LOOK AT THAT, AND I'M GOING TO GIVE YOU A FELT PEN.
3 MAYBE IF I COULD BE PERMITTED, YOUR HONOR, TO STAND
4 CLOSELY SO I CAN LOOK AT THIS.

5 THE COURT: YOU MAY.

6 BY MR. DAVIS:

7 Q IN THAT VIEW, DO WE SEE ANY AREA WHERE JOEL
8 GOT IN A FIGHT?

9 A OKAY.

10 Q AN X WILL DO IF YOU CAN.

11 A OKAY. WHERE HE GOT INTO THE FIGHT?

12 Q WHERE THE FIGHT WAS.

13 A THE FIGHT WAS HERE.

14 Q OKAY. AND GENERALLY YOU'RE INDICATING IN
15 THIS AREA HERE, RIGHT?

16 A RIGHT.

17 Q I INDICATED ON THE SCREEN PICTURE, BUT YOU
18 MADE AN X IN THAT AREA?

19 A MM-HMM.

20 Q AND THEN WHILE HE WAS FIGHTING, HE WAS ON
21 TOP OF SHOOTER ONE?

22 A RIGHT.

23 Q WERE THEY FACE TO FACE?

24 A YES.

25 Q ALL RIGHT. AND LOOKING AT THIS PHOTOGRAPH
26 AND THE SCREEN HERE, THAT DEBRIS THERE IS A PRETTY GOOD
27 MARKER WHERE JOEL WAS IN THE FIGHT, RIGHT?

28 A RIGHT.

1 Q AND IN GENERAL WHERE HE WAS SHOT, CORRECT?

2 A EXACTLY.

3 Q NOW, WHERE WAS HIS HEAD -- WHICH DIRECTION,

4 AND AGAIN WE CAN ORIENT THE JURY THAT THIS OPENING IS

5 REALLY LOOKING AT THE WEST END, RIGHT?

6 A RIGHT.

7 Q IF YOU'RE WALKING OUT, YOU'D GO EAST?

8 A YES.

9 Q OUT TO THE ALLEY?

10 A RIGHT.

11 Q ALL RIGHT. SO IF THIS END IS EAST, AND I'M

12 DRAWING THROUGH THE BUILDING TO THE WEST SIDE, THEN WE'VE

13 GOT NORTH -- NORTH UP HERE AND SOUTH DOWN HERE, RIGHT?

14 A NO, THAT'S WRONG.

15 Q DID I MIX IT UP?

16 A RIGHT. SOUTH IS THIS WAY. NORTH IS THIS

17 WAY.

18 Q NORTH IS THIS WAY?

19 A YES.

20 Q GOING NORTH ON BROADWAY TO DOWNTOWN?

21 A YES.

22 Q OKAY. SO WITH THIS AREA BEING NORTH, THIS

23 AREA BEING SOUTH, THE AREA OF THE DEBRIS BEING MORE WEST

24 AND THE FRONT OF THE DOOR BEING EAST, WHICH DIRECTION

25 WERE THE HEADS OF THESE TWO MEN WHEN THEY WERE IN THIS

26 FIGHT?

27 A OKAY. THEY WERE FACING PRETTY MUCH WEST

28 WHERE THEY WERE FIGHTING. AFTER THE SHOT -- THE FIRST

1 SHOT, HE KIND OF FELL TO THE SOUTH, AND HE LAID THERE.

2 Q OKAY. SO WHERE WE'RE LOOKING AT IT, IF THIS
3 AREA IS WEST, THAT'S WHEN THEY WERE ON THE GROUND, THEIR
4 HEADS WERE ON THAT END?

5 A RIGHT.

6 Q AND THEIR FEET WOULD BE MORE EASTERLY?

7 A YES.

8 Q NOW, THIS IS A VERY CRUDE ATTEMPT, BUT COULD
YOU DRAW A STICK MAN WITH A HEAD AND TWO LEGS AND WE
10 UNDERSTAND THAT'S NOT PRECISE. I JUST WANT TO KNOW THE
11 DIRECTION OF THEIR HEADS AT THE TIME THEY WERE FIGHTING?

12 A ON HERE?

13 Q YES, SIR.

14 A OKAY.

15 Q NOW, YOU'RE SMILING, BUT I AM NOT MESSING
16 WITH YOU OR PUTTING YOU ON. I NEED YOUR HELP.

17 A IT'S KIND OF HARD TO DRAW TWO STICK MEN ON
18 TOP OF EACH OTHER.

19 Q ONE WILL DO.

20 A OKAY.

21 Q LET ME APPROACH AND JUST SEE IF I HAVEN'T
22 ONCE AGAIN TOTALLY SCREWED THIS UP. NO, YOU -- SO IT'S
23 LIKE TWO STICK SPIDERS NOW.

24 A OKAY.

25 Q BUT WE GET THE IDEA. AND THEN ON THIS
26 PHOTOGRAPH AGAIN, AT SOME POINT RODNEY COMES AROUND THE
27 CORNER?

28 A RIGHT.

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1 Q NOW, THEY'RE FIGHTING, AND THE SHOT GOES OFF
2 WHILE S-1 IS ON TOP OF JOEL?

3 A RIGHT -- NO, NO. JOEL IS ON TOP OF S-1.

4 Q EXCUSE ME. JOEL -- THANK YOU. WHILE JOEL
5 IS ON TOP OF S-1, WHERE ARE THE GIRLS WHEN THIS IS GOING
6 ON?

7 A THEY HAD RUN DOWN THE SIDE AND INTO THE --

8 Q THROUGH THE KITCHEN WAY?

9 A RIGHT -- NO, NO, NO.

10 Q THIS WAY?

11 A THROUGH THAT DOOR RIGHT THERE.

12 Q THERE'S A KITCHEN DOOR AND THERE'S A VIP
13 DIRECT DOOR?

14 A RIGHT.

15 Q THE GIRLS GO VIP DIRECT DOOR?

16 A RIGHT.

17 Q OUT OF THE SCENE INTO THE VIP AREA?

18 A EXACTLY.

19 Q OKAY. AND WHEN THIS FIGHT IS GOING ON,
20 GIVEN THIS WHOLE AREA HERE THAT I'M ENCIRCLING, AND THEIR
21 HEADS ARE WESTBOUND, WHERE ARE YOU, SIR?

22 A I'M RIGHT ON THE OUTSIDE, RIGHT THERE.

23 Q RIGHT HERE?

24 A RIGHT THERE, IN THAT AREA.

25 Q OKAY. AND WHAT HAD YOU BEEN DOING BEFORE
26 THAT?

27 A BEFORE?

28 Q THE COMMOTION, BEFORE LIFE WAS NOT

1 WONDERFUL.

2 A JUST LIKE I SAID, I WAS TRYING TO SEPARATE
3 THE TWO.

4 Q OH, BECAUSE THEY WERE STANDING BEFOREHAND,
5 AND YOU HAD MOVED IN BETWEEN THEM?

6 A I WAS RIGHT THERE AT THE WINDOW. I HAD
7 MOVED IN BETWEEN THEM.

8 Q AT THIS POINT?

A YES.

10 Q ALL RIGHT. IT STARTS HERE?

11 A RIGHT.

12 Q YOU GET IN BETWEEN THEM?

13 A RIGHT.

14 Q BUT THEY ACTUALLY END UP TUSSLING WESTWARD?

15 A RIGHT.

16 Q ALL RIGHT. AND THEN AT SOME POINT RODNEY
17 COMES OUT FROM THAT KITCHEN DOOR ON THE OTHER SIDE?

A EXACTLY.

19 Q AND HE GETS SHOT?

20 A EXACTLY.

21 Q WHERE DOES HE GET SHOT, IF WE CAN SEE IN
22 THIS AREA AT ALL? IS IT IN THIS PICTURE?

23 A OKAY, JUST RIGHT AT THE CORNER.

24 Q ALL RIGHT.

25 A RIGHT THERE.

26 Q RIGHT THERE?

27 A MM-HMM.

28 Q ALL RIGHT. LET'S SEE HOW MUCH BACKGROUND WE

1 HAVE TO MAKE A FEW MARKS HERE.

2 COULD YOU PUT AN "R" MAYBE IN THAT LIGHTER
3 AREA IF IT'S GENERALLY ACCURATE TO SHOW WHERE RODNEY
4 GENERALLY GOT SHOT.

5 A (WITNESS COMPLIES.)

6 Q OKAY. AND COULD YOU DRAW A LINE TO THAT SO
7 THAT LATER WHEN WE LOOK AT IT AND YOU'RE GONE, THANK GOD,
8 JUST PUT AN "R" SO THAT WE SEE THAT'S IN THE WHITE
LEADING UP TO IT HERE.

10 A (WITNESS COMPLIES.)

11 Q THANKS. OKAY. AND THEN ON THIS ONE, WHERE
12 THE TWO MEN ARE ACTUALLY ON THE GROUND, DRAW A LINE AND
13 PUT, IF I MIGHT SUGGEST, S-1 SLASH JM, SO WE KNOW IT'S
14 JOEL MASON.

15 A (WITNESS COMPLIES.)

16 Q ALL RIGHT, SIR. AND IT'S YOUR TESTIMONY
17 THAT MR. SANDERS CAME IN WITH S-1 AND S-2; THEY CAME IN
ALTOGETHER?

19 A YES.

20 Q LIKE THEY WERE A GROUP?

21 A THEY CAME IN TOGETHER.

22 Q RIGHT?

23 A YES.

24 Q AND TO THE EXTENT YOU SAY THAT THEY ALSO
25 CAME IN WITH WHAT YOU MIGHT CALL SOME BACKS, SOME OTHER
26 PEOPLE WITH THEM?

27 A NO.

28 Q ARE YOU SURE OF THAT?

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1 A POSITIVE.
2 Q AND ALL THE TALKING BEFORE THERE IS A FIGHT
3 IS DONE BY S-1, RIGHT?
4 A PRETTY MUCH.
5 Q AND S-2 IS STANDING RIGHT NEXT TO HIM?
6 A YES.
7 Q WAS THERE ANY TALK ABOUT GETTING DRINKS --
8 A NO, S-2 WAS STANDING RIGHT BEHIND HIM.
9 Q BEHIND HIM?
10 A YES.
11 Q LIKE A BACK?
12 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.
13 THE COURT: SUSTAINED.
14 BY MR. DAVIS:
15 Q S-1 IS BEING RUDE AND DISRESPECTFUL?
16 A RIGHT.
17 Q PEOPLE ARE ASKING HIM NOT TO DO THAT, RIGHT?
18 A YES.
19 Q AND S-2 IS RIGHT BEHIND HIM?
20 A YES.
21 Q ALL RIGHT. MR. SANDERS IS THERE, BUT HE'S
22 NOT SAYING ANYTHING?
23 A HE'S STANDING OFF TO THE SIDE.
24 Q OKAY. WHERE IS HE, MR. SANDERS? YOU SAY
25 OFF TO THE SIDE, IN THIS PICTURE?
26 A HE'S ON THE OTHER SIDE OF THE WINDOW.
27 Q OVER HERE?
28 A RIGHT, IN THAT AREA.

1 Q ALL RIGHT. SO WE'LL HAVE A RECORD OF IT,
2 HE'S ON THE LEFT SIDE OF THE WINDOW. IF YOU'RE ASKING
3 FOR DRINKS --

4 A RIGHT.

5 Q OKAY. THAT SETS US UP HERE. THANK YOU.
6 NOW, IF I'M CORRECT, YOU MOVE FROM THE BAR
7 AREA NEARER THE BIG EAST DOOR, WEST, TO WHERE THEY WERE
8 ON THE GROUND, CORRECT, ULTIMATELY?

A NO, NO.

10 Q YOU DIDN'T?

11 A NO. I STOOD RIGHT THERE BY THE WINDOW.

12 Q BY THE WINDOW ITSELF?

13 A YES.

14 Q THE DOUBLE SERVING WINDOW THERE?

15 A YES.

16 Q OKAY. AND SO YOU WATCHED THE FIGHT FROM
17 APPROXIMATELY WHAT DISTANCE?

A MAYBE ABOUT TWO OR THREE FEET.

19 Q AND WHEN RODNEY WAS SHOT, WHERE WERE YOU?

20 A I HAD STEPPED BACK TO THE DOOR AT THAT TIME.

21 Q TO THE BIG DOOR?

22 A NO, TO THIS DOOR.

23 Q TO THE VIP DOOR?

24 A YES.

25 Q THAT'S WHERE YOU SAW RODNEY GETTING SHOT?

26 A YES.

27 Q YOU WERE LOOKING THAT DIRECTION?

28 A YES.

1 Q WAS THERE ANYONE BEHIND YOU?

2 A THE TWO FEMALES HAD RUN BEHIND ME.

3 Q ALL RIGHT. HOW ABOUT MALES?

4 A NO.

5 Q ONE OR TWO MORE MALES?

6 A NONE, NONE.

7 Q IN TERMS OF PUNCHING OR HITTING ANYBODY, IS
8 IT YOUR MEMORY THAT THE ONLY PUNCHING AND HITTING WENT ON
BETWEEN RODNEY AND S-1?

10 A JOEL AND S-1.

11 Q I'M SORRY, JOEL AND S-1. THANKS FOR
12 CORRECTING ME. AND LOOKING AT THIS ROOM, IT'S EMPTY NOW
13 AND IT'S AFTER EVERYTHING HAS BEEN CLEARED OUT, EXCEPT
14 FOR THE DEBRIS AND THINGS, IS IT YOUR TESTIMONY THAT
15 WHILE YOU WATCHED THIS FIGHT, YOU WATCHED RODNEY GET
16 SHOT, JOEL GET SHOT, THAT EXCEPT FOR THOSE PEOPLE YOU'VE
17 IDENTIFIED, THERE WERE NOT TEN, 20, 30 MORE PEOPLE IN
1 THERE?

19 A NO.

20 Q NO MUSIC GOING ON?

21 A NO MUSIC.

22 Q AND SO IN LINE WITH YOUR TESTIMONY, YOU
23 WOULD ALSO SAY THAT THERE WERE NO PEOPLE FURTHER WEST
24 THAT CAME RUNNING AND SCURRYING OUT WHEN THE SHOOTING
25 STARTED?

26 A NO.

27 Q YOU'RE CERTAIN OF THAT?

28 A POSITIVE.

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1 Q WAS THERE ANY DISCUSSION ABOUT DRINKS IN
2 CONNECTION WITH THESE MEN WHO CAME IN?

3 A YES.

4 Q WHAT WAS THAT?

5 A THEY SAID THEY JUST WANT A DRINK, THAT'S IT.

6 Q WERE THEY REFUSED?

7 A NO, THEY WEREN'T.

8 Q WHAT HAPPENED IN RESPONSE TO THEIR REQUEST?

9 A THAT'S WHEN EVERYTHING STARTED TO TAKE
10 PLACE, SO AT THAT POINT RODNEY COULDN'T GIVE THEM A
11 DRINK.

12 Q RIGHT. SO WHAT MIGHT HAVE STARTED WAS ONE
13 OF THE WOMEN SAYING "AHH" OR SOMETHING LIKE THAT, RIGHT?

14 A YES.

15 Q DID SHE SAY SOMETHING LIKE "WHAT YOU LOOKING
16 AT, NIGGER"?

17 A NO.

18 Q "WHAT YOU LOOKING AT, BOY?"

19 A NOT THAT I HEARD.

20 Q OKAY. JUST "AHH"?

21 A THAT'S WHAT I HEARD.

22 Q LOOKING AT SOMEBODY WHILE SHE'S SAYING IT?

23 A YES.

24 Q ALL RIGHT. SO THERE WERE NO DRINKS?

25 A NO.

26 Q NO TALK ABOUT DRINKS THEREAFTER?

27 A NOT AFTER THAT.

28 Q THERE WAS -- IF YOU'LL PLEASE TAKE IT OFF.

1 THANKS FOR YOUR HELP ON THAT PHOTOGRAPH.

2 THERE WAS A STATEMENT YOU MADE ABOUT DONALD
3 SANDERS LEAVING AND GETTING ON HIS MOTORCYCLE; DO YOU
4 REMEMBER THAT PART OF YOUR TESTIMONY?

5 A YES.

6 Q WALK US THROUGH THAT. WHAT DID YOU SEE HIM
7 DO AS HE LEFT?

8 A HE GOT ON HIS MOTORCYCLE. HE SAT THERE FOR
9 A WHILE, AND THEN HE FIRED UP AND RODE OFF.

10 Q ALL RIGHT. IT WAS YOUR ESTIMATE FOR AS MUCH
11 AS A MINUTE LIKE HE WAS THINKING ABOUT SOMETHING?

12 A I DON'T THINK IT WAS THAT LONG, BUT HE SAT
13 THERE FOR A WHILE.

14 Q WHERE WAS THE MOTORCYCLE?

15 A IT WAS PARKED ON THE OUTSIDE OF THE GATE.

16 Q LET ME SEE IF I CAN GET A PICTURE THAT
17 DEPICTS THAT. 1099, SIR. DO YOU SEE THAT AREA, SIR?
18 I'LL BRING YOU A PICTURE UP THERE. I'M NOT MEANING TO
19 IMPLY THAT'S WHERE HIS MOTORCYCLE WAS AT ALL.

20 DO YOU RECOGNIZE THAT?

21 A YES, I DO.

22 Q ALL RIGHT. WAS HIS MOTORCYCLE IN THAT AREA
23 AT ALL?

24 A NO, IT WASN'T.

25 Q ALL RIGHT. CLOSER TO THE CLUBHOUSE?

26 A UM, I WOULD HAVE TO SHOW YOU ON HERE.

27 Q OH, IN THAT AREA?

28 A NO, IT WAS ALONG THE SIDE.

1 Q I'VE GOT OTHER PICTURES, BUT LOOKING AT
2 THIS -- I TAKE THIS POINTER HOME EVERY NIGHT AND I DON'T
3 USE IT WHEN I'M IN COURT. LOOKING AT THIS, THIS IS THE
4 SOUTH TO MEXICO SIDE, RIGHT, YOUR CLUBHOUSE IS OVER HERE
5 AND --

6 A SOUTH, RIGHT.

7 Q IT'S A PARKING LOT REALLY, I GUESS, DESIGNED
8 FOR THE BUSINESS NEXT DOOR, RIGHT?

A EXACTLY.

10 Q AND IF ONE WERE TO WALK AROUND YOU'D GET
11 THAT BACK GATE OVER HERE?

12 A EXACTLY.

13 Q THE EAST, THE NEW YORK SIDE?

14 A RIGHT.

15 Q WAS THE MOTORCYCLE PARKED ANYWHERE IN THAT
16 AREA? WE'RE TALKING ABOUT MR. SANDERS'?

17 A NO.

18 Q EARLY IN THE DAY MOTORCYCLES WERE PARKED IN
19 ALL THIS AREA, RIGHT?

20 A YES.

21 Q NOW, WHERE, RELATIVE TO THIS PICTURE, WAS
22 MR. SANDERS' MOTORCYCLE?

23 A IT WAS DOWN THE SIDE, RIGHT DOWN THE SIDE.

24 Q OVER THIS WAY?

25 A NO, ON THE OTHER -- OVER HERE, BUT DOWN THE
26 SIDE.

27 Q WHY DON'T I GIVE YOU A POINTER AND QUIT
28 SPASING ALL OVER THE SCREEN. YOU PUSH IT. THERE'S A

1 LITTLE BUTTON THERE, AND -- THERE YOU GO.

2 A OKAY. HE WAS DOWN THE SIDE IN THAT AREA.

3 Q OKAY. I THINK WE CAN GET A BETTER SHOT OF
4 THAT. WAS HE RIGHT IN FRONT OF THE GATE?

5 A NOT RIGHT IN FRONT.

6 Q FURTHER NORTH OF THE GATE?

7 A NORTH OF THE GATE.

8 Q OKAY. I CAN GET A PICTURE FOR THAT. I
9 THINK I HAVE SAMPLES WE MIGHT BE ABLE TO WORK WITH. DO
10 YOU STILL HAVE A FELT-TIP PEN UP THERE?

11 A YES.

12 Q ALL RIGHT. THANK YOU. 1035, PLEASE, SIR.

13 NOW, WHEN I SHOW YOU THESE PICTURES, NEITHER
14 TO YOU OR TO THE JURY ARE WE TRYING TO IMPLY THAT'S WHAT
15 THESE THINGS LOOKED LIKE AT THE TIME.

16 A YES.

17 Q GENERALLY IT'S THE STRUCTURE, BUT IT'S
18 DAYTIME, THE GATE IS CLOSED, YOU HAVE A DUMPSTER THERE.
19 THAT WAS NOT THE WAY IT LOOKED AT THE PARTY, CORRECT?

20 A NO.

21 Q OKAY. DOES THAT PROVIDE YOU ANY SPACE TO
22 MARK WHERE HIS MOTORCYCLE WAS PARKED?

23 A YES.

24 Q OKAY. FELT-TIP PEN, IF YOU WOULD.

25 A (WITNESS COMPLIES.)

26 Q YOU PUT AN X DOWN?

27 A YES.

28 Q AND I'LL GIVE YOU THE POINTER SO THAT YOU

1 MIGHT -- HERE. I'LL JUST LOOK -- THERE YOU GO.

2 SOMEWHERE IN THIS AREA RIGHT HERE, RIGHT?

3 A DOWN A LITTLE BIT FURTHER.

4 Q DOWN A LITTLE BIT FURTHER?

5 A YES.

6 Q OKAY. YOU MARKED IT -- OH, DOWN HERE YOU'RE
7 SAYING A LITTLE BIT FURTHER?

8 A A LITTLE FURTHER DOWN.

9 Q OKAY. NOW, WHEN WE TALK ABOUT HIM LEAVING,
10 DID ANYONE LEAVE WITH HIM?

11 A NO.

12 Q OKAY. AND HAD THE OTHER TWO PULLED OFF IN
13 THAT BLACK IMPALA ALREADY?

14 A YES.

15 Q OKAY. WHILE HE WAS SITTING THERE, DID YOU
16 WALK UP TO THE GATE AND ACTUALLY LOOK OUT AND SEE HIM
17 THERE?

18 A NO. I WALKED TO THE -- RIGHT WHERE THE
19 DUMPSTER IS, I WALKED TO THAT AREA RIGHT THERE, AND AT
20 THE TIME WE DIDN'T HAVE THESE WHITE PIECES UP THERE. IT
21 WAS JUST ALL GATE.

22 Q YOU COULD SEE THROUGH IT?

23 A YES.

24 Q OKAY. DID YOU SAY ANYTHING TO HIM?

25 A NO.

26 Q THERE WERE OTHER PEOPLE OUT THERE TOO,
27 RIGHT?

28 A YES.

1 Q SO WHAT HE DID WAS HE WALKED OUT, HE GOT ON
2 HIS MOTORCYCLE, HE ACTUALLY SAT THERE FOR A WHILE, HE
3 STARTED HIS MOTORCYCLE AND DROVE AWAY?

4 A YES.

5 Q IN YOUR PRESENCE?

6 A YES.

7 Q AND IN THE PRESENCE OF OTHER PEOPLE?

8 A YES.

9 Q EXCUSE ME.

10 I WANT TO GO BACK TO THIS PHOTOGRAPH AND BE
11 SURE THAT WE'RE CORRECT ABOUT WHAT WE'RE SEEING HERE
12 TODAY. THESE WOOD PANELS WERE NOT THERE?

13 A NO.

14 Q THIS CAUTION RAZOR WIRE WASN'T THERE?

15 A THE RAZOR WIRE WAS THERE.

16 Q BUT THE WOOD WAS NOT?

17 A NO.

18 Q OKAY. SO YOU DIDN'T NEED TO COME OUT TO THE
19 ALLEYWAY AND SEE THAT HE WAS THERE?

20 A NO.

21 Q YOU COULD SEE HIM RIGHT FROM THE BACK,
22 INSIDE OF THE PATIO?

23 A RIGHT.

24 Q ANYBODY OUT THERE WITH YOU TO SEE THAT?

25 A JUST RODNEY.

26 Q OH, HE CAME OUT AND WAS IN THE SAME POSITION
27 YOU WERE?

28 A THAT'S -- LIKE I SAID, RIGHT WHERE THE

1295

1 DUMPSTER IS. THAT'S THE REASON WHY I DIDN'T THINK HE WAS
2 SHOT, UNTIL WE TURNED AND WALKED AWAY.

3 Q ALL RIGHT. SO THE DUMPSTER -- RODNEY IS NOT
4 OUT BY THE DUMPSTER, IS HE? HE DIDN'T COME OUT AS FAR AS
5 THAT DUMPSTER IS?

6 A YES.

7 Q HE WALKED BACK AND THAT'S WHERE HE
8 COLLAPSED?

9 A HE COLLAPSED RIGHT AT THE ENTRYWAY.

10 Q OKAY. AND SO ONE REASON YOU MIGHT NOT HAVE
11 GONE ALL THE WAY TO THE ALLEY TO MAKE THIS OBSERVATION OF
12 MR. SANDERS WAS BECAUSE BEFORE YOU EVEN GOT THERE, RODNEY
13 HAD A PROBLEM?

14 A I'M NOT UNDERSTANDING WHAT YOU'RE SAYING.

15 Q ALL RIGHT. WELL, YOU'RE SAYING THAT WHEN
16 YOU SAW SANDERS, YOU WEREN'T OUTSIDE OF THE PATIO -- OR
17 THE BACKYARD ENCLOSURE THERE, BECAUSE YOU COULD SEE
18 THROUGH THE GATE?

19 A RIGHT.

20 Q AND AT THE SAME TIME OR ABOUT THE SAME TIME
21 RODNEY THEN HAD A PROBLEM, YOU DISCOVERED?

22 A RIGHT. WHEN WE TURNED TO WALK BACK IN TO
23 SEE HOW HIS SON WAS DOING, THAT'S WHEN I REALIZED HE HAD
24 A PROBLEM.

25 Q OKAY. HOW ABOUT ANYTHING LIKE THAT GRAFFITI
26 THERE, WAS THAT GRAFFITI THERE ON THE NIGHT OF THE PARTY?

27 A I COULDN'T TELL YOU.

28 Q WELL, THE WOOD WAS THERE. YOU COULDN'T SEE

1 THROUGH TO THE ALLEY, COULD YOU?

2 A EXACTLY.

3 MR. DAVIS: I'D LIKE TO MARK AS AN ADDITIONAL
4 EXHIBIT, DOUBLE Q.

5 THE COURT: IT MAY BE SO MARKED.

6 MR. DAVIS: THANK YOU.

7 (MARKED FOR IDENTIFICATION
8 DEFENDANT'S EXHIBIT QQ.)

9 BY MR. DAVIS:

10 Q I'M GOING TO SHOW YOU DOUBLE Q HERE, IF YOU
11 WOULD. THIS APPEARS TO BE A NIGHTTIME SHOT, CORRECT?

12 A MM-HMM.

13 Q IS THAT A "YES", SIR?

14 A YES, IT IS.

15 Q AND THAT APPEARS TO BE A NIGHTTIME SHOT OF
16 THE BACK ALLEYWAY OF THE CLUB, RIGHT?

17 A EXACTLY.

18 Q DOES IT APPEAR TO YOU THAT THE FENCE IS IN
19 PLACE AT THE TIME?

20 A THE FENCE IS IN PLACE.

21 Q AND YOU CERTAINLY DIDN'T SEE THROUGH THE
22 FENCE, DID YOU?

23 A YES, I DID, THIS AREA RIGHT HERE.

24 Q THE FENCE AREA RIGHT NEXT TO IT?

25 A RIGHT. LIKE I SAID, THE DUMPSTERS WERE
26 OUT. I DIDN'T REALIZE -- I THOUGHT THAT WAS DOWN, BUT IF
27 YOU LOOK AT THE DUMPSTER, THE DUMPSTER IS A LITTLE BIT
28 FURTHER OUT. IT WAS RIGHT HERE, SO I COULD SEE THE

1 MOTORCYCLE HERE, BECAUSE I WAS HERE.

2 Q ALL RIGHT. AND THEN IF I COULD SHOW 1035
3 AGAIN.

4 YOU WILL AGREE THAT AFTER YOU SAID "FURTHER
5 DOWN" AND MARKED THAT PHOTOGRAPH, YOU MARKED THE
6 MOTORCYCLE IN THIS PORTION OF THE PICTURE, DIDN'T YOU?

7 A A LITTLE BIT FURTHER DOWN.

8 Q A LITTLE FURTHER DOWN?

9 A YES.

10 Q AND THAT'S HOW YOU SAW, THROUGH THE GATE,
11 THIS MOTORCYCLE?

12 A YES.

13 Q BECAUSE THE WOOD WASN'T THERE ON THE NIGHT
14 OF THE SHOOTING, WAS IT?

15 A APPARENTLY THE WOOD WAS THERE.

16 Q WAS IT OR WASN'T IT?

17 A ON THE PICTURE IT'S SHOWING IT WAS THERE. I
18 DIDN'T THINK IT WAS THERE BECAUSE I DID HAVE A PLAIN VIEW
19 OF THE MOTORCYCLE.

20 Q YOU DO REMEMBER YOUR EARLIER TESTIMONY THAT
21 IT WASN'T THERE, CORRECT?

22 A YES.

23 Q AND YOU DO REMEMBER YOUR EARLIER TESTIMONY
24 THAT YOU COULD SEE THROUGH THE GATE BECAUSE THE WOOD
25 WASN'T THERE?

26 A EXACTLY.

27 Q DO YOU STILL STAND BY THAT?

28 A WELL, IF YOU LOOK AT THE PICTURE RIGHT HERE,

1 YOU CAN SEE THAT I COULD SEE THROUGH THE GATE IF I --
2 WHERE THE DUMPSTER WAS, I COULD SEE THROUGH THE GATE.

3 Q DO YOU KNOW A TIFFANY MONIQUE?

4 A NO, I DON'T.

5 Q COURTNEY EDWIN?

6 A COURTNEY?

7 Q COURTNEY, DO YOU KNOW A COURTNEY THAT WAS
8 THERE?

9 A HE'S AN EX-MEMBER.

10 Q AND DUANA?

11 A NO.

12 Q DUANA HERMAN BOWEN?

13 A NO.

14 Q DO YOU KNOW A LATAYNA GRAHAM?

15 A NO.

16 Q A DONALD CANNON?

17 A NO.

18 Q AN ALBERT LEE RIGGS?

19 A NO.

20 Q A CHANTELE STAR PARKER?

21 A NO.

22 Q OKAY. THESE ARE PARENTS NAMING THEIR
23 CHILDREN, ALL RIGHT?

24 A OKAY.

25 Q I WANT YOU TO TELL ME WHETHER AS MANY AS
26 FIVE TO SEVEN OTHER PEOPLE WERE ACTUALLY AT THAT LOCATION
27 WHEN THE SHOOTING OCCURRED?

28 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

1 THE COURT: SUSTAINED. I THINK HE'S PREVIOUSLY
2 INDICATED THERE WERE EIGHT.

3 BY MR. DAVIS:

4 Q WELL, THESE AREN'T THE EIGHT WE WERE TALKING
5 ABOUT THOUGH, ARE THEY, THE ONES I NAMED?

6 A I DON'T KNOW WHO THE TWO FEMALES ARE. I
7 COULDN'T TELL YOU. I DON'T KNOW THEIR NAMES.

Q BUT YOU KNOW COURTNEY?

A I KNOW COURTNEY.

10 Q SHE WAS THERE THAT NIGHT?

11 A NO, COURTNEY IS A MALE.

12 Q OH, EXCUSE ME.

13 A YES.

14 Q EXCUSE ME. COURTNEY.

15 A YES.

16 Q ALL RIGHT. BECAUSE IT'S COURTNEY EDWIN.
17 ALL RIGHT. HE WAS THERE, RIGHT?

A YES.

19 Q WHAT CLUB IS HE WITH?

20 A HE WAS WITH RARE BREED.

21 Q RIGHT. AND ARE YOU SAYING THAT HE WASN'T
22 THERE AT THE TIME OF THE SHOOTING?

23 A HE PROBABLY WAS, BUT HE WASN'T INSIDE WITH
24 ME.

25 MR. DAVIS: OKAY. I'M GOING TO SHOW YOU A COUPLE
26 OF PHOTOGRAPHS TO ENLIST YOUR ASSISTANCE IN GIVING US A
27 LITTLE ORIENTATION. 1053, PLEASE.

28 ACTUALLY IF I COULD, 1056.

1300

1 ALL RIGHT. SHOWING YOU THIS, IT WOULD BE
2 DOUBLE R.

3 (MARKED FOR IDENTIFICATION

4 DEFENDANT'S EXHIBIT RR.)

5 BY MR. DAVIS:

6 Q ALL RIGHT. YOU'RE FAMILIAR WITH THE
7 INTERSECTION OF THOSE TWO STREETS, RIGHT, BROADWAY AND
154TH?

A YES.

10 Q 154TH RUNS PARALLEL TO REDONDO BEACH
11 BOULEVARD, CORRECT?

12 A YES.

13 Q AND AS IT HITS BROADWAY, IT DOESN'T GO ON
THROUGH BROADWAY; IT DEAD ENDS ON THE -- I GUESS IT WOULD
15 BE THE WEST SIDE OF BROADWAY, CORRECT?

16 A YES.

17 Q AND DOES THIS APPEAR TO BE THAT WEST SIDE OF
BROADWAY, WHERE IT DEAD ENDS?

19 A YES, IT LOOKS LIKE IT.

20 MR. DAVIS: THANK YOU. AND I'M GOING TO SHOW YOU
21 ANOTHER PICTURE NOW, 1053; DOUBLE S.

22 (MARKED FOR IDENTIFICATION

23 DEFENDANT'S EXHIBIT SS.)

24 BY MR. DAVIS:

25 Q DOES THAT APPEAR TO BE THE NORTH SIDE OF
26 BROADWAY RUNNING SOUTH AND NORTH, NORTH AND SOUTH?

27 A THAT'S THE WEST SIDE.

28 Q AND THEN THAT SIGN IS RIGHT OVER THE SAME

1301

1 TRUCK, SHOWING -- THANK YOU -- 154TH AND BROADWAY, WHERE
2 THEY INTERSECT -- WHERE THEY T OFF, WHERE 154TH T'S OFF
3 INTO BROADWAY?

4 A RIGHT.

5 Q AND THAT NIGHT, AGAIN THIS IS DAYTIME --
6 IT'S NOT WHAT IT WAS WHEN THE PARTY WAS ON -- BUT THERE
7 WERE CARS PARKED ON BOTH SIDES OF BROADWAY BY PEOPLE WHO
8 HAD CARS AND CAME INTO THE PARTY, RIGHT?

9 A YES.

10 Q OKAY. AND THEN I'M GOING TO SHOW YOU
11 ANOTHER PHOTOGRAPH OF 1082.

12 THAT IS A PICTURE OF THAT ADJACENT BACK LOT
13 WE WERE TALKING ABOUT EARLIER, CORRECT?

14 A YES.

15 Q AND LOOKING AT IT ON THE BIG SCREEN HERE,
16 I'M MOVING IT IN THAT AREA, THAT WAS AT ONE TIME OR
17 ANOTHER DURING THE PARTY, NOT AT THE TIME OF THE
18 SHOOTING, BUT THAT WAS COVERED WITH MOTORCYCLES, RIGHT?

19 A YES.

20 Q AND PEOPLE ALSO, IF YOU LOOK AT THE ALLEY
21 WITH ME GOING NORTH ON THAT ALLEYWAY, PEOPLE HAD THEIR
22 MOTORCYCLES ON BOTH SIDES OF THAT ALLEYWAY, TOO, DIDN'T
23 THEY --

24 A YES.

25 Q -- PARKED IN THERE. BUT NO CARS; IT WAS
26 JUST MOTORCYCLES?

27 A JUST MOTORCYCLES.

28 Q IT WAS UNDERSTOOD YOU PUT YOUR CARS ON THE

1 STREET?

2 A EXACTLY.

3 Q LEAVE ROOM FOR THE BIKES. WE'RE SHOWING
4 THEM. WE WANT TO BE CLOSE TO THEM. WE DON'T WANT TO BE
5 OUT THERE ON BROADWAY WITH OUR BIKES, RIGHT?

6 A RIGHT.

7 Q OKAY. AND AT ONE TIME WOULD IT BE FAIR TO
8 SAY THAT VIRTUALLY ALL OF THAT AREA HAD BIKES IN IT WITH
SOME WALKING ROOM?

10 A YES.

11 Q I'LL SHOW YOU ANOTHER PHOTOGRAPH, 1078.
12 LOOKING AT THAT, THAT IS A VIEW FROM
13 BROADWAY GOING NORTH AND SOUTH, NORTH BEING TO THE LEFT
14 OF THE SCREEN, CORRECT?

15 A YES.

16 Q I'M -- YES, THIS IS BROADWAY, AND THEN 154TH
17 GOING EAST, WEST END TO THE EAST END, CORRECT?

18 A RIGHT.

19 Q AND THERE WERE ALSO VEHICLES PARKED IN THAT
20 AREA, TOO?

21 A MOTORCYCLES.

22 Q PARDON?

23 A MOTORCYCLES.

24 Q RIGHT.

25 A BOTH SIDES.

26 Q NOT EVEN CARS?

27 A MOTORCYCLES.

28 Q RIGHT.

1 A YES.

2 Q NOW, IF YOU SEE, WE HAVE ONE LONELY CAR
3 THERE?

4 A YES.

5 Q THAT WAS WHERE MOTORCYCLES PARKED, CORRECT?

6 A YES.

7 Q ANGLED OUT?

8 A YES.

9 Q ALL RIGHT. AND ON THE OTHER SIDE, THE SAME
10 THING?

11 A THE SAME THING.

12 Q AND IT WAS NO PROBLEM, BECAUSE THIS IS
13 COMMERCIAL AND NOBODY IS WORKING ON SUNDAY?

14 A EXACTLY.

15 Q ALL RIGHT. AND THEN IF YOU LOOK BACK
16 FURTHER BEYOND THE ALLEY, THIS IS THE ALLEY BEHIND THE
17 CLUB THAT I'M GESTURING, RIGHT?

18 A YES.

19 Q ON THAT SIDE, THAT IS, THE NORTH SIDE OF
20 154TH, AGAIN, MOTORCYCLES?

21 A MOTORCYCLES.

22 Q SOME OF THEM ON THE SIDEWALK?

23 A SOME ON THE SIDEWALK.

24 Q WOULD YOU DO ME A FAVOR AND CIRCLE THAT
25 LIGHT BULB WITH YOUR FELT TIP BECAUSE I'M GOING TO ASK
26 YOU SOME QUESTIONS ABOUT THAT.

27 A (WITNESS COMPLIES.)

28 Q IN THE DAYTIME WE COULD BE MISLED TO THINK

1 YOU COULD SEE THIS WELL. THAT WAS NOT THE CASE, RIGHT?

2 A RIGHT.

3 Q AND YET THERE'S A LOT OF LIGHT OUT THERE,
4 ISN'T THERE?

5 A YES.

6 Q THEY HAVE SOME PRETTY STRONG LIGHTS OUT
7 THERE?

8 A YES.

9 Q AND THE ONE WE JUST CIRCLED RIGHT HERE,
10 THAT'S A STRONG, BRIGHT LIGHT, CORRECT?

11 A YES.

12 Q 1085, PLEASE.

13 THIS IS THE SOUTH SIDE OF 154TH, CORRECT, A
14 BIG WAREHOUSE AND LOTS OF PARKING IN FRONT OF IT, OR IF
15 IT'S TOO STRANGE, LET ME GIVE YOU ANOTHER ONE.

16 A GIVE ME ANOTHER ONE, PLEASE.

17 MR. DAVIS: I'LL COME BACK TO THAT, YOUR HONOR. I
18 DIDN'T GIVE IT A LETTER. MAYBE THIS WOULD BE A BETTER
19 SEQUENCE IF I COULD SWITCH WITH YOUR PERMISSION.

20 THE COURT: YOU MAY.

21 MR. DAVIS: I'LL COME BACK TO THIS AND GET AN
22 APPROPRIATE DESIGNATION.

23 DOUBLE T.

24 THE COURT: NEXT IN ORDER IS DOUBLE T.

25 (MARKED FOR IDENTIFICATION

26 DEFENDANT'S EXHIBIT TT.)

27 BY MR. DAVIS:

28 Q ALL RIGHT. THAT NUMBER IS 1079. FORGIVE ME

1305

1 FOR HUNKERING IN OVER HERE BUT I WANT TO GET TWO OF THESE
2 BACK TO BACK BEFORE I GO AWAY FROM YOU. THAT'S A PRETTY
3 GOOD PICTURE OF ANOTHER VIEW OF BROADWAY AND 154TH?

4 A RIGHT.

5 Q WHERE IT IS THERE, RIGHT?

6 A MM-HMM, YES.

7 Q AND CAN -- YOU CAN SEE ON THE RIGHT-HAND
8 SIDE WHAT LOOKS -- I'LL BE GENERAL ABOUT IT -- WAREHOUSE
9 OR PRODUCTION AND THEN LOADING OR PARKING AREA IN FRONT
10 OF IT?

11 A YES.

12 Q THAT WAS COVERED WITH MOTORCYCLES, CORRECT?

13 A WELL, CARS AND MOTORCYCLES ON THAT PARKING
14 AREA.

15 Q OKAY. BEFORE WE MOVE FROM THAT, DO YOU SEE
16 THAT SAME LIGHT BULB THERE?

17 A YES.

18 Q WOULD YOU DO ME THE FAVOR OF CIRCLING IT FOR
19 ME.

20 A (WITNESS COMPLIES.)

21 MR. DAVIS: AND THEN I'M GOING TO SHOW YOU ANOTHER
22 VIEW. IT KIND OF STOPPED US FOR A WHILE, BECAUSE IT
23 SEEMED TO COME FROM NOWHERE, UU.

24 (MARKED FOR IDENTIFICATION

25 DEFENDANT'S EXHIBIT UU.)

26 BY MR. DAVIS:

27 Q THAT IS THE AREA WHERE YOU'RE SAYING THERE
28 WERE BOTH CARS AND MOTORCYCLES, RIGHT?

1 A YES.

2 Q BUT THEY'RE KIND OF SEGREGATED, OR ARE THEY
3 MIXED UP?

4 A THE CARS ARE ON THE OUTSIDE ON THE CURB --

5 Q EXCUSE ME. CAN YOU GIVE ME THE NUMBER ON
6 THAT MARGIN, SIR. YOU DON'T HAVE A NUMBER -- 1085.
7 THANK YOU.

8 SHOWING YOU THAT, WE STARTED WITH IT
EARLIER, BUT THIS PARTICULAR PHOTOGRAPH SHOWS THAT SPACE,
10 AREA COVERED WITH EITHER CARS, MOTORCYCLES OR BOTH,
11 CORRECT?

12 A WELL, LIKE I SAID, CARS AT THE CURB,
13 MOTORCYCLES AND CARS IN THE PARKING AREA.

14 Q OKAY. THERE WERE CARS OR MOTORCYCLES ON THE
15 CURB?

16 A MOTORCYCLES ON THE CURB.

17 MR. DAVIS: AND DOUBLE V, A PHOTOGRAPH.

(MARKED FOR IDENTIFICATION
19 DEFENDANT'S EXHIBIT VV.)

20 BY MR. DAVIS:

21 Q THIS WOULD BE NOT ALL OF IT, BUT A PORTION
22 OF THAT SAME AREA ILLUMINATED, CORRECT?

23 A EXACTLY.

24 Q I'M GIVING THE JURY A CHANCE TO LOOK AT THE
25 LEVEL OF LIGHTING THAT MAY HAVE BEEN PRESENT. I'LL
26 REPRESENT THESE WERE TAKEN ON THAT EVENING BY LAW
27 ENFORCEMENT, BUT IT'S A PHOTOGRAPH.

28 THOSE LIGHTS WERE ON TO THE BEST OF YOUR

1 MEMORY, CORRECT?

2 A YES.

3 MR. DAVIS: YOUR HONOR, COULD I HAVE A COUPLE OF
4 MINUTES HERE?

5 THE COURT: YOU MAY.

6 MR. DAVIS: WE'VE GOT TWO LAWYERS WHO ARE LOOKING
7 FOR ONE PICTURE, AND THAT'S THE PROBLEM.

8 THE COURT: THAT'S PROBLEM NUMBER ONE.

(BRIEF PAUSE IN THE PROCEEDINGS.)

10 BY MR. DAVIS:

11 Q WHAT WAS DONALD SANDERS WEARING THAT NIGHT,
12 IF YOU RECALL?

13 A THE ONLY THING I REMEMBER IS A HOODIE WITH
14 "DT" ON THE BACK.

15 Q "DT," LIKE THAT?

16 A WELL, IT'S COLORS, DT'S, YEAH.

17 Q WELL, I SEE A "D" AND I SEE A "T." IS THAT
18 WHAT HE HAD ON HIS BACK?

19 A I DON'T KNOW HOW THEY DO IT. IT'S DT'S.
20 THAT'S HIS CLUB.

21 Q OKAY.

22 A YES.

23 Q ANYTHING ELSE YOU REMEMBER ABOUT HOW HE'S
24 DRESSED THE NIGHT THAT HE GRABBED THIS YOUNG MAN AND SHOT
25 THIS MAN AND SHOT HIS FATHER, ANYTHING ELSE YOU REMEMBER
26 AT ALL ABOUT HIS CLOTHING THAT NIGHT?

27 A IT'S BEEN A WHILE, NO.

28 MR. DAVIS: I'M GOING TO SHOW YOU ANOTHER EXHIBIT,

1308

1 WW.

2 (MARKED FOR IDENTIFICATION

3 DEFENDANT'S EXHIBIT WW.)

4 BY MR. DAVIS:

5 Q THIS IS A PHOTOCOPY, ISN'T IT, SIR, OF THAT
6 FORM THAT YOU'VE MARKED WHEN JOHNNY CLARK WAS IN A LIVE
7 LINEUP THAT YOU WERE UNABLE TO IDENTIFY ANYONE?

8 A YES.

9 Q ALL RIGHT. AND VERY BRIEFLY, TO BE CLEAR,
10 WHEN YOU LOOKED AT THAT LINEUP, YOU NOT ONLY DIDN'T SEE
11 S-1, YOU DIDN'T EVEN SEE A GUY WHO MIGHT HAVE BEEN JOHNNY
12 CLARK, BECAUSE YOU DIDN'T KNOW WHAT JOHNNY CLARK LOOKED
13 LIKE, RIGHT?

14 A EXACTLY.

15 Q YOU WERE LOOKING AT SIX STRANGERS?

16 A EXACTLY.

17 MR. DAVIS: WOULD THIS BE A GOOD TIME, YOUR
18 HONOR?

19 THE COURT: IF IT'S A GOOD TIME FOR YOU, WE COULD
20 DO IT.

21 IS THE JURY READY TO TAKE A LUNCH BREAK?
22 THEY'RE ALL NODDING THEIR HEADS.

23 MR. DAVIS: VERY STRONGLY.

24 THE COURT: WE'LL RECESS FOR THE LUNCH HOUR.
25 WE'LL COME BACK AS NORMAL AT 1:30, AND GO AWAY WITH MY
26 ADMONITION: DO NOT DISCUSS THIS CASE WITH ANYBODY,
27 INCLUDING A FELLOW JUROR. KEEP AN OPEN MIND UNTIL THE
28 CASE HAS BEEN SUBMITTED TO YOU.

1309

1 LEAVE YOUR NOTEBOOKS AND PENCILS HERE.
2 ENJOY YOUR LUNCH.

3 YOU'RE ORDERED TO BE BACK AT 1:30.
4 THE WITNESS: OKAY.

5
6 (THE NOON RECESS WAS TAKEN
7 UNTIL 1:30 P.M. OF THE SAME DAY.)
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1310

1 CASE NUMBER: TA081670
2 CASE NAME: PEOPLE VS. SANDERS
3 COMPTON, CALIFORNIA FRIDAY, MARCH 16, 2007
4 DEPT. 10 HON. WILLIAM CHIDSEY, JR., JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: DAWSHA LAYLAND, CSR #5166
7 TIME: P.M. SESSION

8
9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT
11 OUTSIDE THE PRESENCE OF
12 THE JURY:)
13

14 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
15 TO THE SANDERS MATTER. MR. SANDERS IS PRESENT WITH
16 COUNSEL. ANYTHING TO BE DISCUSSED BEFORE WE BRING IN THE
17 JURY?

18 MR. DAVIS: NO. JUST TO ALERT YOU, WE ANTICIPATE
19 FINISHING WITH THIS WITNESS AND WE MAY HAVE ANOTHER,
20 VIZCARRA.

21 MR. LEVINE: WE HAVE A WITNESS HERE, TOO.

22 THE COURT: OKAY.

23 MR. LEVINE: WE KNOW THE COURT LIKES TO FILL ITS
24 DAY.

25 THE COURT: I DO. I PRETEND THAT I'M PAYING THE
26 BILLS.

27 LET'S BRING IN THE JURY.
28

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT IN
3 THE PRESENCE OF THE JURY:)

4
5 THE COURT: LET THE RECORD REFLECT WE ARE IN THE
6 PRESENCE OF THE 12 JURORS PLUS TWO ALTERNATE JURORS. THE
7 WITNESS MAY BE BROUGHT IN. HE IS HERE.

8 PLEASE COME FORWARD, SIR.

9 YOU'RE STILL SUBJECT TO THE OATH PREVIOUSLY
10 TAKEN. WE MAY OR NOT HAVE HAD SOME MISMARKINGS OF
11 EXHIBITS AND IT'S IMPORTANT TO US TO TRACK THE EXHIBITS,
12 BECAUSE LOTS OF TIMES WITNESSES ARE REFERRING TO CERTAIN
13 EXHIBITS AND WE WANT TO KNOW WHAT THEY'RE REFERRING TO.

14 COUNSEL, HAVE WE RESOLVED THE ISSUE?

15 MR. DAVIS: WE HAVE, AND IF THE COURT WOULD PERMIT
16 VERY BRIEFLY WE'LL BROADCAST IT. I'LL ADDRESS AND
17 DESCRIBE IT, AND THEN WE'LL MAKE THE CHANGE BY AGREEMENT
18 AMONG COUNSEL.

19 THE COURT: OKAY.

20 MR. DAVIS: THIS IS 1078. THE ACTUAL PHOTOGRAPH
21 HAS AN ENCIRCLED LIGHT BULB IN IT. THE BROADCAST
22 DOESN'T. IT FORMERLY MAY HAVE BEEN REFERRED TO AS VV. I
23 TAKE THE RESPONSIBILITY. WE ENDED UP WITH TWO VV'S, SO
24 BY AGREEMENT OF COUNSEL, WE WOULD CHANGE IT TO XX, SO
25 WHAT MIGHT HAVE BEEN A VV, ENCIRCLED LIGHT BULB, WILL BE
26 AN XX, COUNSEL.

27 MR. SIMS: YES.

28 MR. DAVIS: SORRY ABOUT THAT.

1 (MARKED FOR IDENTIFICATION

2 DEFENDANT'S EXHIBIT XX.)

3 MR. DAVIS: I'VE MARKED THE CLERK'S LABEL ON THE
4 BACK OUT AND PUT IN AN XX.

5 SIR, I'M SHOWING YOU A SIX-PACK OF
6 PHOTOGRAPHS, YY NEXT IN ORDER.

7 (MARKED FOR IDENTIFICATION

8 DEFENDANT'S EXHIBIT YY.)

9 BY MR. DAVIS:

10 Q AND WHEN WE CAN, WE'RE GOING TO BROADCAST
11 THAT OR PUT IT UP THERE FOR THE JURY.

12 A VERY BRIEF QUESTION: LOOKING AT THOSE
13 PHOTOGRAPHS, DO YOU, FOR ANY OF THE FACES, SEE A SCAR,
14 SAY, ON THE RIGHT UPPER LIP OF ANY OF THOSE INDIVIDUALS?

15 A NO, I DON'T.

16 MR. DAVIS: THANK YOU. I'M GOING TO SHOW YOU ALSO
17 A PHOTOGRAPH, ZZ FOR IDENTIFICATION.

18 (MARKED FOR IDENTIFICATION

19 DEFENDANT'S EXHIBIT ZZ.)

20 BY MR. DAVIS:

21 Q IT'S A NIGHT SHOT. I JUST WANT TO ASK YOU
22 SOME QUESTIONS IF I COULD.

23 DOES THAT LOOK LIKE LOOKING SOUTH ACROSS THE
24 STREET, AS IT WERE, FROM THE ALLEY?

25 A YES.

26 Q ACROSS 154TH. WE'LL NEED A NUMBER HERE.
27 NO, WE DON'T.

28 DOES THAT APPEAR TO BE THE SAME PHOTOGRAPH?

1313

1 A YES, IT IS.

2 Q I WANT TO DIRECT YOUR ATTENTION TO A COUPLE
3 OF THINGS. THESE VEHICLES, WERE THEY THERE, IF YOU KNOW,
4 AT OR ABOUT THE TIME OF THE SHOOTING, OR ARE THOSE
5 PERHAPS OTHER VEHICLES THAT CAME AFTER THE SHOOTING, IF
6 YOU KNOW?

7 A THOSE VEHICLES CAME AFTER THE SHOOTING.

8 Q OKAY. CERTAINLY MOTORCYCLES MORE THAN
LIKELY ARE THERE?

10 A YES.

11 Q AND GOING UP THIS TELEPHONE POLE, YOU CAN
12 SEE A LIGHT UP THERE?

13 A YES.

14 Q YOU SEE IT ON THE PHOTOGRAPH AS WELL?

15 A YES.

16 Q THAT WAS ILLUMINATED ON THAT EVENING,
17 CORRECT?

18 A YES.

19 Q LOOKING AT THE PHOTOGRAPH ITSELF -- YOU WERE
20 THERE MORE OFTEN THAN ANY OF US -- DOES THAT SEEM TO BE A
21 FAIR REPRODUCTION OF THE QUANTITY OF LIGHT IN THAT AREA?

22 A YES.

23 MR. DAVIS: ALL RIGHT. THEN I'LL SHOW YOU ANOTHER
24 PHOTOGRAPH. ARE WE AT TRIPLE A, YOUR HONOR?

25 THE COURT: WE ARE NOW AT TRIPLE A.

26 MR. DAVIS: APPROPRIATELY TALKING ABOUT LIGHTING.

27 (MARKED FOR IDENTIFICATION

28 DEFENDANT'S EXHIBIT AAA.)

1 BY MR. DAVIS:

2 Q I'M GOING TO SHOW YOU TRIPLE A THERE.
3 LOOKING AT THE SMALL PHOTOGRAPH, CAN YOU ORIENT US, IF
4 YOU FEEL COMFORTABLE DOING THAT, WHAT THAT'S DEPICTING?

5 A IT'S THE -- SOUTH OF THE PARKING LOT FROM
6 THE CLUBHOUSE.

7 Q SO THE STREET IN THERE IS 154TH?

8 A YES.

9 Q AND WE SEE A WALL TO THE BUILDING ACROSS THE
10 STREET THERE?

11 A YES.

12 Q DO YOU FEEL, REASONABLY, THE PICTURE DEPICTS
13 THE QUALITY AND NATURE OF LIGHTING IN THE EVENING IN THAT
14 LOCATION?

15 A YES.

16 Q ALL RIGHT. AND AGAIN DURING THE PARTY THAT
17 LOT WAS FILLED WITH MOTORCYCLES, CORRECT?

18 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

19 THE COURT: OVERRULED.

20 BY MR. DAVIS:

21 Q I'M POINTING TO THE LOT HERE. WAS THAT
22 FILLED WITH MOTORCYCLES?

23 A YES.

24 Q YOU WOULD DISAGREE WITH THE ESTIMATE THAT AT
25 THE TIME OF THE SHOOTING THERE WERE 20 OR 30 PEOPLE,
26 CORRECT --

27 A I COULDN'T TELL YOU.

28 Q -- INSIDE THE CLUB?

1315

1 A THERE WERE EIGHT PEOPLE INSIDE THE CLUB.

2 Q FOR WHAT YOU SAW OF THE TWO GIRLS, THEY CAME
3 BY YOU AND THROUGH THE DOOR ON THEIR OWN VOLITION?

4 A YES.

5 Q YOU DIDN'T SUMMONS THEM OVER?

6 A NO.

7 Q NOBODY DIRECTED THEM OVER?

8 A NO.

9 Q THEY JUST GOT OUT OF THE ACTION?

10 A THE LINE OF FIRE.

11 Q WHILE THE SHOOTER ONE, S-1, WAS FIGHTING
12 JOEL MASON ON THE FLOOR, AND JOEL WAS ON TOP OF HIM,
13 SHOOTER ONE, S-1, WAS ABLE TO GET JOEL OFF OF HIM, RIGHT?

14 A NO.

15 Q SHOOTER ONE, S-1, SHOT JOEL AND THAT GOT HIM
16 OFF OF HIM?

17 A NO. DUCK HAD PULLED JOEL OFF OF HIM, GAVE
18 HIM THE RIGHT POSITION TO GET THE SHOT OFF.

19 Q ACTUALLY BY YOUR ACCOUNT THIS IS WHERE DUCK
20 CAME INTO THE SHOOTING AND KILLING BUSINESS, RIGHT?

21 A RIGHT.

22 Q WHEN YOU TALKED TO THE FIRST OFFICER ON THE
23 SCENE, DANIEL VIZCARRA, YOU DIDN'T TELL HIM ANYTHING
24 ABOUT DUCK GRABBING ANYBODY BY THE COLLAR, DID YOU?

25 A I'M NOT SURE. IT'S BEEN A LONG TIME.

26 Q DIDN'T YOU TELL HIM THAT WHILE SHOOTER ONE
27 WAS ON THE FLOOR FIGHTING WITH JOEL, THAT SHOOTER ONE WAS
28 ABLE TO KICK HIM OFF?

1 A I SAID HE WAS KICKING AT HIM. I DIDN'T SAY
2 HE KICKED HIM OFF.

3 Q MEANING THE GUY IS UNDERNEATH AND HE'S
4 KICKING AND STRUGGLING TO GET OUT FROM UNDERNEATH?

5 A YES, WITH HIS GUN DRAWN.

6 Q AND SO WHAT YOU'RE SAYING IS THAT TO THE
7 EXTENT JOEL WAS WINNING THIS FIGHT, EVERYTHING WAS GOING
8 IN HIS FAVOR UNTIL DUCK CAME OVER AND GOT NASTY WITH A
GUN, RIGHT?

10 A NO. I TOLD YOU S-1 GOT OFF THE SHOT FIRST,
11 AND THEN THAT'S WHEN HE LAID TO THE SIDE, BUT AT THAT
12 TIME DUCK STILL HAD HIM BY THE COLLAR.

13 Q BUT THE NIGHT AFTER THAT SHOOTING, THIS
14 ACCOUNT ABOUT GETTING JOEL BY THE COLLAR, YOU DIDN'T TELL
15 THAT OFFICER ANYTHING LIKE THAT AT ALL, DID YOU?

16 A WHICH OFFICER?

17 Q THE FIRST MAN, THE ONLY MAN, THE MAIN
18 INTERVIEWING MAN YOU TALKED TO WHEN HE WAS ON THE SCENE.

19 A I TOLD HIM AT THAT POINT WHAT I KNEW. I
20 GAVE MORE INFORMATION TO DETECTIVE POHL THE NEXT DAY.

21 Q THAT WAS ON THE 11TH, SO YOU WERE TALKING TO
22 DETECTIVE POHL ON THE 12TH, CORRECT?

23 A I THINK SO.

24 Q SO NOW IS IT YOUR MEMORY THAT ON THE FIRST
25 STATEMENT YOU MADE OF WHAT HAPPENED IN THIS PARTICULAR
26 ACTION, YOU DIDN'T TELL THE FIRST OFFICER ANYTHING ABOUT
27 DUCK BEING INVOLVED PULLING UP JOEL, CORRECT?

28 A I TOLD HIM ABOUT DUCK, BUT HE DIDN'T

1 QUESTION ME LIKE THE SECOND OFFICER.

2 Q DID YOU TELL THE FIRST OFFICER THE
3 FOLLOWING: "WHILE S-1 WAS ON THE GROUND FIGHTING
4 UNDERNEATH JOEL, S-1 KICKED HIM OFF, AT WHICH POINT S-1
5 REMOVED A HANDGUN FROM HIS WAISTBAND AND FIRED ONE ROUND
6 AT JOEL, STRIKING JOEL AND CAUSING HIM TO FALL ON THE
7 FLOOR"?

8 DID YOU TELL HIM THAT, SIR, SOMETHING
9 SIMILAR TO THAT, YOU WOULD CONCEDE, FAIRLY, WOULDN'T
10 YOU? WHAT'S MISSING IN YOUR PRESENT ACCOUNT IS THERE'S
11 NOTHING ABOUT DUCK PULLING ANYONE BY THE COLLAR, CORRECT?

12 A I TOLD THE SECOND OFFICER THAT DUCK HAD HIM
13 BY THE COLLAR. LIKE I SAID, HE COULDN'T GET JOEL OFF OF
14 HIM. THE ONLY WAY HE COULD GET JOEL OFF OF HIM IS FOR
15 DUCK TO PULL HIM AND THEN GET OFF THAT ONE ROUND.

16 Q UNLESS, OF COURSE, THE MAN UNDERNEATH DUCK
17 KICKED HIM OFF?

18 A HE DIDN'T KICK HIM OFF.

19 Q BUT --

20 A HE WAS KICKING AT HIM. HE DIDN'T KICK HIM
21 OFF.

22 THE COURT: LET'S STOP RIGHT THERE. WE'RE GETTING
23 INTO AN ARGUMENT PHASE. THIS IS QUESTIONS AND ANSWERS.
24 SIR, ANSWER THE QUESTION TO THE EXTENT OF YOUR ABILITY
25 AND PLEASE DON'T VOLUNTEER ANY INFORMATION.

26 NEXT QUESTION, COUNSEL.

27 BY MR. DAVIS:

28 Q ALL RIGHT. YOU TOLD OFFICER VIZCARRA THE

1 EVENING OF THE EVENT THAT THE WAY THAT SHOOTER ONE WAS
2 ABLE TO FREE HIMSELF FROM JOEL ON TOP OF HIM WAS TO KICK
3 HIM OFF, TRUE OR FALSE?

4 A TRUE.

5 Q SO NOW THE EVENT, AS YOU REPORTED IT AFTER
6 THE SHOOTING ON THE EVENING OF THE SAME DAY, WAS THAT
7 SHOOTER ONE, UNDERNEATH JOEL, KICKED HIM OFF TO GET HIM
8 OFF HIS BODY, RIGHT?

A WITH HELP.

10 Q WELL, YOU DIDN'T TELL THE FIRST OFFICER
11 THAT, DID YOU?

12 A I'M NOT SURE. IT'S BEEN A LONG TIME.

13 Q ALL RIGHT. NOW, IT HAS BEEN A LONG TIME,
14 AND DURING THIS LONG TIME, AS YOU'VE INDICATED IN YOUR
15 EARLIER TESTIMONY, YOU HAVE TALKED TO RODNEY ABOUT THE
16 FACTS OF THIS CASE, RIGHT?

17 A TO A DEGREE.

18 Q I UNDERSTAND TO A DEGREE. AT SOME POINT YOU
19 STOPPED TALKING, RIGHT?

20 A EXACTLY.

21 Q AND SOME OTHER TIMES YOU TALK A LITTLE MORE
22 ABOUT IT, RIGHT?

23 A ONLY WHEN IT'S TIME TO GO TO COURT.

24 Q LIKE BEFORE PRELIMINARY HEARING?

25 A NO.

26 Q AFTER PRELIMINARY HEARING?

27 A WE HAD A FEW WORDS AFTERWARDS.

28 Q BEFORE TRIAL?

1 A THIS IS THE FIRST TIME. I HAVEN'T GOT A
2 CHANCE TO TALK TO RODNEY. I HAVEN'T SEEN RODNEY.

3 Q YOU VISITED HIM FREQUENTLY IN THE HOSPITAL?

4 A YES, I DID.

5 Q HE WAS ABLE TO TALK THEN WHEN YOU VISITED
6 HIM?

7 A NO.

8 Q NOT --

9 A ONLY ONE VISIT HE WAS ABLE TO TALK, AND WE
10 DIDN'T DISCUSS ANYTHING ABOUT THE SHOOTING.

11 Q IS IT POSSIBLE THEN, TO THE EXTENT THAT YOU
12 DIDN'T TELL THE FIRST REPORTING OFFICER ANYTHING ABOUT
13 DUCK PULLING JOEL BY THE COLLAR, THAT YOU JUST FORGOT TO
14 TELL HIM THAT EVENING?

15 A COULD YOU SAY THAT AGAIN, PLEASE.

16 Q SURE. YOU WOULD ADMIT NOW THAT YOU DID NOT
17 TELL THE FIRST OFFICER THAT EVENING THAT DUCK PULLED JOEL
18 OFF OF SHOOTER ONE TO GET HIM OFF?

19 A PRETTY MUCH I CAN'T REMEMBER. LIKE I SAID,
20 IT'S BEEN A WHILE.

21 Q WELL, LET ME -- WHAT WE DO IS SHOW YOU A
22 PIECE OF PAPER, AND IN SHOWING YOU THAT PIECE OF PAPER,
23 ASK YOU IF THAT WILL HELP TO REFRESH YOUR MEMORY. I
24 MIGHT GET A CLEAN COPY. THIS IS SO MARKED UP.

25 SIR, I'M GOING TO SHOW YOU A PIECE OF PAPER,
26 AND YOU'RE SAYING YOU DON'T REMEMBER WHETHER OR NOT YOU
27 TOLD THE FIRST OFFICER THIS ACCOUNT ABOUT SOMEONE PULLING
28 HIM UP FROM THE COLLAR AND SHOOTING HIM, RIGHT?

1320

1 A I DON'T REMEMBER, BUT I PROBABLY DID. HE
2 MAY NOT HAVE WROTE EVERYTHING DOWN, BECAUSE LIKE I SAID,
3 THEY WERE INTERVIEWING QUITE A FEW PEOPLE.

4 Q RIGHT.

5 A OKAY.

6 Q BUT NOT UNLIKE THE TRANSCRIPT WHERE THEY HAD
7 "THEY SHOT AT THE FATHER," AND YOU ACTUALLY SAID "DUCK
8 SHOT AT THE FATHER," SOMETHING LIKE THAT, RIGHT?

9 A EXACTLY.

10 Q OKAY. SO THIS OFFICER MIGHT HAVE MADE A
11 MISTAKE ABOUT WHAT YOU TOLD HIM, RIGHT?

12 A POSSIBLE.

13 Q OKAY. SO I'M GOING TO SHOW YOU THIS TO SEE
14 IF IT HELPS REFRESH YOUR MEMORY ABOUT WHAT YOU TOLD THE
15 FIRST OFFICER, PARTICULARLY ABOUT HOW SHOOTER ONE GOT OFF
16 OF JOEL. S-1, I'LL REFER IN GOOD FAITH, IS SHOOTER ONE;
17 V FOR VICTIM, ONE IS JOEL.

18 A OKAY.

19 MR. SIMS: WHAT PAGE ARE YOU REFERRING TO?

20 MR. DAVIS: IT'S ON VIZCARRA'S REPORT, FIRST PAGE
21 NARRATIVE I THINK. IT'S ABOUT -- IF I COULD, 4.

22 THE WITNESS: THIS IS WRONG.

23 BY MR. DAVIS:

24 Q ALL RIGHT.

25 A HIS HANDGUN WAS ALREADY OUT.

26 Q I'M SORRY?

27 A HIS HANDGUN WAS ALREADY OUT. HE WAS KICKING
28 AT HIM, BUT HIS HANDGUN WAS ALREADY OUT.

1321

1 Q ALL RIGHT. I WANT TO READ THIS: "WHILE ON
2 THE FLOOR, S-1 WAS ABLE TO KICK V-1 OFF HIM, AT WHICH
3 POINT HE REMOVED THE HANDGUN FROM HIS WAISTBAND AND FIRED
4 ONE ROUND AT V-1, STRIKING HIM AND CAUSING HIM TO FALL TO
5 THE FLOOR."

6 IS ANY PART OF THAT, FROM WHAT YOU RECALL,
7 INCORRECT?

8 A YES.

9 Q AND WHAT PARTS COME TO MIND? CERTAINLY YOU
10 SHOULD GIVE A LOOK AT THIS TO BE PRECISE.

11 WHAT PARTS OF THAT ARE NOT THE WAY YOU
12 REMEMBER IT HAPPENING?

13 A OKAY. FOR THE FIRST THING, HIS HANDGUN WAS
14 ALREADY OUT WHILE THEY WERE ON THE FLOOR. HE WAS KICKING
15 AT HIM TRYING TO GET HIM OFF, BUT WITH DUCK'S HELP, HE
16 GOT HIM UP JUST ENOUGH WHERE HE COULD GET A ROUND OFF.
17 THAT'S NOT CORRECT.

18 Q ALL RIGHT. SO THEN THE NEXT QUESTION WOULD
19 BE: HAVING READ THIS, DID YOU TELL THAT TO OFFICER
20 VIZCARRA?

21 A SOMEWHAT, SOMETHING SIMILAR TO THAT, BUT
22 EVERYTHING IS NOT THERE.

23 Q WHAT'S MISSING, PLEASE?

24 A LIKE I SAID, DUCK PULLING HIM BY HIS COLLAR,
25 GETTING HIM UP, AND THEN ALSO THE GUN BEING DRAWN
26 ALREADY. HE DIDN'T PULL IT; HE ALREADY HAD IT OUT WHEN
27 THEY WERE TUSSLING ON THE GROUND.

28 Q ALL RIGHT. HOW ABOUT THE PART WHERE IT SAYS

1322

1 THAT "S-1 FIRED ONE ROUND AT JOEL"; IS THAT TRUE?

2 A HE FIRED ONE ROUND.

3 Q OKAY. NOW, CAN YOU OFFER US ANY EXPLANATION
4 TODAY WHY IT IS YOU MAY HAVE TOLD HIM A DIFFERENT ACCOUNT
5 THAN YOU'VE TOLD HERE IN COURT?

6 A IF YOU REMEMBER, I TOLD THE SAME THING IN
7 THE PRELIMINARY, OKAY. I DON'T KNOW WHAT THEY WROTE, BUT
8 I -- I'VE ALREADY -- I'M TELLING YOU THE SAME THING I
9 TOLD YOU IN THE PRELIMINARY TRIAL.

10 Q THE PRELIMINARY HEARING, RIGHT?

11 A IN THE HEARING, YES.

12 Q BUT YOU DO UNDERSTAND THAT THAT WOULD BE A
13 DIFFERENT ACCOUNT THAN YOU TOLD ON THE NIGHT OF YOUR
14 FIRST INTERVIEW, CORRECT?

15 MR. SIMS: OBJECTION, MISSTATES THE TESTIMONY.

16 THE COURT: OVERRULED.

17 BY MR. DAVIS:

18 Q I MEAN TALKING ABOUT DUCK PULLING ON THE
19 COLLAR ISN'T WHAT YOU ARE TELLING THE OFFICER THE NIGHT
20 OF, IS IT?

21 A I'M MORE THAN SURE I TOLD HIM THAT.
22 APPARENTLY HE DIDN'T WRITE IT.

23 Q THAT WOULD BE THE EXPLANATION YOU'RE GIVING
24 ME, RIGHT?

25 A YES.

26 Q HE MADE A MISTAKE?

27 A (WITNESS NODS.)

28 Q ALL RIGHT. DID HE MAKE A --

1 THE COURT: WE DIDN'T GET AN AUDIBLE RESPONSE.

2 THE WITNESS: YES, HE MADE THE MISTAKE.

3 BY MR. DAVIS:

4 Q HE MADE THE MISTAKE. JUST TO BE SURE, AFTER
5 HE MADE THIS MISTAKE ON THE EVENING YOU WERE INTERVIEWED,
6 YOU DID SEE RODNEY MASON BEFORE THE PRELIMINARY HEARING,
7 CORRECT?

8 A BEFORE THE PRELIMINARY HEARING? IN THE
HOSPITAL, YES.

10 Q OKAY. AND HOW DID RODNEY'S ACCOUNT GO? DO
11 YOU KNOW?

12 A I DON'T HAVE A CLUE.

13 Q DOES HE HAVE DUCK GRABBING SOMEBODY BY THE
14 COLLAR IN HIS ACCOUNT?

15 A I DON'T KNOW.

16 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

17 THE COURT: SUSTAINED.

18 BY MR. DAVIS:

19 Q ALL RIGHT. THOSE WORDS, THOSE INSULTING
20 WORDS THAT YOU TOLD US ABOUT, THEY WERE SAID DURING THE
21 COURSE OF THE PARTY; ISN'T THAT TRUE?

22 A WHAT WORDS?

23 Q WHERE S-1 THEN STARTED COMING IN AND
24 INSULTING THE GIRLS AND ENDED UP INSULTING OTHER PEOPLE
25 THERE.

26 A NO, THE PARTY WAS OVER.

27 Q TO BE SURE, YOU'RE SAYING IT WAS NOT DURING
28 THE PARTY?

1324

1 A IT WASN'T DURING THE PARTY.

2 Q OKAY. THEN THE PHYSICAL FIGHT BETWEEN JOEL
3 AND SHOOTER ONE, S-1, THAT OCCURRED, ISN'T IT THE TRUTH,
4 DURING THE PARTY?

5 A NO, AFTER THE PARTY.

6 Q AND THEN YOU'RE SEEING HANDGUNS THAT YOU ARE
7 STATING WERE USED TO SHOOT AT OTHER PEOPLE, THAT EVENT,
8 THE USE OF HANDGUNS, THAT OCCURRED DURING THE PARTY;
9 ISN'T THAT THE TRUTH?

10 A NO, IT ISN'T.

11 Q BEFORE THE FIGHT STARTED, WHAT DID S-1 DO
12 THAT YOU RECALL?

13 A HE WAS TELLING ME THAT JOEL WAS STARTING
14 THIS, AND ALL HE'S TRYING TO DO IS JUST GET OUT.

15 Q S-1, THE SHOOTER?

16 A YES.

17 Q THE GUY WITH THE SCAR ON HIS LIP?

18 A YES.

19 Q SO YOU WERE TALKING TO EACH OTHER?

20 A WE SAID A COUPLE OF WORDS.

21 Q WHAT DID YOU SAY?

22 A I TOLD HIM TO CALM DOWN. I TOLD HIM "WE
23 DON'T NEED THIS IN THE CLUBHOUSE."

24 Q WHAT DID HE SAY?

25 A HE SAID "THIS IS JOEL'S FAULT, AND I'M
26 TRYING TO GET OUT."

27 Q DID JOEL HEAR THAT?

28 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

1 THE COURT: WELL, SUSTAINED BASED UPON THE FORM OF
2 THE QUESTION.

3 BY MR. DAVIS:

4 Q ALL RIGHT. WAS JOEL, IN YOUR OPINION, CLOSE
5 ENOUGH THAT HE MIGHT HAVE HEARD THAT?

6 A I THINK HE WAS SO UPSET THAT WHATEVER HE
7 WOULD HAVE SAID, IT WOULDN'T HAVE MATTERED AT THAT POINT.

8 Q RIGHT. AND DID S-1 EXPLAIN WHY HE SAID IT'S
JOEL'S FAULT?

10 A NO, HE DIDN'T.

11 Q AND THEN WHAT HAPPENED NEXT? WHAT DID S-1
12 DO NEXT AFTER HE SAID "IT'S JOEL'S FAULT"?

13 A JOEL CAME AROUND ME, AND THEY PROCEEDED TO
14 FIGHT.

15 Q HOW ABOUT S-1, DID HE DO ANY GESTURES THAT
16 WOULD COMMUNICATE HIS STATE OF MIND AT THAT TIME?

17 A HE LET ME KNOW THAT HE HAD A GUN AND THAT HE
18 WOULD USE IT.

19 Q HE SAID SOMETHING TO YOU?

20 A NO. HE LIFTED HIS SHIRT AND SHOWED ME THAT
21 HE HAD A GUN.

22 Q WHERE WAS THAT GUN?

23 A IT WAS IN HIS WAIST.

24 Q IN HIS POCKET?

25 A IN HIS WAIST.

26 Q MEANING SOMEPLACE OTHER THAN HIS POCKET?

27 A YES.

28 Q UNDERNEATH HIS WAISTBAND?

1 A IT WAS IN HIS WAIST.

2 Q WELL, I'VE GOT A WAIST HERE, A BELT, PANTS.

3 WAS IT TUCKED UNDERNEATH THE PANTS?

4 A YES, IT WAS.

5 Q AND WHAT KIND OF SHIRT DID HE LIFT?

6 A HIS T-SHIRT AND HIS JERSEY.

7 Q AND WHAT HAND DID HE LIFT IT WITH?

8 A HIS RIGHT HAND.

9 Q SO HE LIFTED THE SHIRT WITH HIS RIGHT HAND,
10 AND WHAT DID YOU SEE?

11 A I SAW A CHROME -- CHROME AUTOMATIC.

12 Q AND YOU JUMPED ON HIM?

13 A NO, I DIDN'T JUMP ON HIM.

14 Q YOU REACHED FOR IT?

15 A NO, I DIDN'T. I PUT MY HAND ON HIS HAND.

16 Q ON HIS HAND?

17 A YES.

18 Q WHICH --

19 A HE HAD HIS HAND ON THE GUN. I PUT MY HAND
20 ON HIS HAND, MY LEFT HAND.

21 Q ALL RIGHT. SO HE'S LIFTING IT WITH HIS
22 RIGHT HAND, AS I'M DEMONSTRATING WITH MY RIGHT HAND?

23 A YES.

24 Q AND HE PUT HIS HAND, HIS LEFT HAND --

25 A NO, NO. I PUT MY LEFT HAND ON HIS RIGHT
26 HAND.

27 Q THAT WAS HOLDING THE SHIRT?

28 A THAT WAS HOLDING THE SHIRT AND THE GUN.

1327

1 Q ALL RIGHT. AND DID HE SAY SOMETHING AT THAT
2 POINT?

3 A NO, HE DIDN'T SAY ANYTHING AT ALL.

4 Q YOU'RE GETTING PRETTY CLOSE HERE. HE DIDN'T
5 SAY ANYTHING?

6 A HE DIDN'T SAY ANYTHING AT ALL. HE JUST LET
7 ME KNOW BY DOING THAT, THAT IT WAS GOING TO GO TO THAT
8 NEXT LEVEL.

9 Q AND WHAT HAPPENED IMMEDIATELY AFTER YOU PUT
10 YOUR HAND ON HIS HAND?

11 A I TURNED TO SAY SOMETHING TO JOEL, AND HE
12 CAME AROUND ME.

13 Q AND THE GUN, WHAT HAPPENED TO THE GUN?

14 A HE PULLED IT AS THEY WENT TO THE GROUND.

15 Q WITH WHICH HAND?

16 A PROBABLY HIS RIGHT HAND.

17 Q GUESSING, ARE YOU?

18 A HIS RIGHT HAND. I'M NOT GUESSING.

19 Q SO IT'S NO LONGER PROBABLY HIS RIGHT HAND --

20 A HIS RIGHT HAND.

21 Q YOU'RE SURE IT'S HIS RIGHT HAND?

22 A POSITIVE.

23 Q I SEE. AND THAT WAS THE BLACK OR THE CHROME
24 GUN?

25 A IT'S CHROME.

26 Q ANYBODY ELSE HAVE A CHROME GUN THAT NIGHT?

27 A NOT THAT I KNOW OF.

28 Q DUCK HAVE A CHROME GUN?

1 A HE HAD A BLACK ONE.

2 Q DID YOU EVER GRAB FOR THAT GUN AGAIN?

3 A NO.

4 Q YOU WEREN'T REALLY GRABBING FOR THE GUN,
5 WERE YOU?

6 A NO, I JUST PUT MY HAND ON HIS HAND.

7 Q ALL RIGHT. AND WHY DIDN'T YOU GRAB THE GUN?

8 A YOU NEVER GRAB ANOTHER MAN'S GUN. YOU KNOW
THAT.

10 Q WELL, I'VE DONE IT.

11 MR. SIMS: OBJECTION, RELEVANCE.

12 THE COURT: I'M SORRY, THE GROUNDS?

13 MR. SIMS: RELEVANCE.

14 THE COURT: SUSTAINED.

15 BY MR. DAVIS:

16 Q WELL, YOU SAID "I KNOW THAT," RIGHT?

17 A YOU SHOULD.

18 Q BUT I'VE DONE IT.

19 A THAT'S GOOD.

20 MR. SIMS: OBJECTION, RELEVANCE, ALSO

21 ARGUMENTATIVE.

22 THE COURT: ARGUMENTATIVE BOTH SIDES.

23 BY MR. DAVIS:

24 Q SO I DON'T MEAN TO ARGUE WITH YOU, BUT WE
25 CAN'T ASSUME EVERYTHING ABOUT EACH OTHER, CAN WE?

26 A THAT'S TRUE.

27 Q WERE YOU EVER IN THE ARMED SERVICE?

28 A NO.

1 MR. SIMS: OBJECTION, RELEVANCE.

2 THE COURT: OVERRULED.

3 BY MR. DAVIS:

4 Q ALL RIGHT. SO YOU DIDN'T GRAB THE GUN?

5 A NO, I DIDN'T.

6 Q AND THAT'S THE GUN THAT ENDED UP SHOOTING
7 SOMEBODY --

8 A EXACTLY.

9 Q -- REGRETTABLY, AND THAT WAS SHOOTER ONE,
10 AND JOEL COMES AROUND YOU?

11 A EXACTLY.

12 Q SO YOU HAD TO KIND OF MOVE OUT OF THE WAY TO
13 LET THEM FIGHT, RIGHT?

14 A NO. I DIDN'T MOVE OUT OF THE WAY. HE CAME
15 AROUND ME. I LOOKED TOWARDS HIM. THE NEXT THING I KNOW,
16 HE WAS ON MY OTHER SIDE FIGHTING WITH S-1.

17 Q AND DID S-1 HAVE THAT GUN OUT BEFORE HE WENT
18 DOWN TO THE GROUND?

19 A YES, HE DID.

20 Q SO HE'S HOLDING A GUN WITH ONE HAND
21 POSSIBLY, NOW CERTAINLY THE RIGHT HAND?

22 A YES.

23 Q AND HE'S DOING WHAT WITH THE OTHER HAND?

24 A TRYING TO RACK THE GUN WITH THE LEFT HAND.

25 Q WHILE JOEL IS POUNDING HIM?

26 A EXACTLY.

27 Q AND DOES HE RACK THE GUN?

28 A AFTER A FEW TIMES, HE GETS IT RACKED.

1330

1 Q MEANING HE PULLS THE SLIDE?
2 A YES.
3 Q RIGHT. DID IT JAM?
4 A IT JAMMED.
5 Q SO HE NEVER GOT A SHOT OFF?
6 A NO, HE GOT A SHOT OFF.
7 Q WHEN DID THAT HAPPEN?
8 A AFTER A FEW TIMES OF RACKING THE GUN, HE GOT
9 A SHOT OFF.
10 Q SO IT RACKED, RACKED, JAMMED?
11 A NO, RACKED, JAMMED, HE RACKED IT, JAMMED. I
12 DON'T KNOW HOW MANY TIMES HE RACKED IT, BUT HE FINALLY
13 GOT ONE SHOT OFF.
14 Q AND THIS IS WHILE JOEL IS MAKING A PUNCHING
15 BAG OUT OF HIM?
16 A EXACTLY.
17 Q AND WHEN HE GOT THAT SHOT OFF, THAT ENTERED,
18 FOR WHAT YOU SAW, JOEL'S BODY SOMEWHERE?
19 A RIGHT.
20 Q JOEL WAS ON THE GROUND WHEN THIS HAPPENED?
21 A AFTER HE WAS SHOT?
22 Q YES.
23 A YES.
24 Q NOW, WHEN HE GOT SHOT, WAS JOEL ON THE
25 GROUND, ON TOP OF THIS GUY?
26 A HE WAS ON HIM. THEY WEREN'T ON THE GROUND.
27 THEY WERE FIGHTING, BUT AFTER HE GOT THE SHOT OFF, JOEL
28 WENT TO THE GROUND.

1 Q BUT DIDN'T JOEL GET HIM DOWN TO THE GROUND
2 TO BEGIN WITH?

3 A YES, HE DID.

4 Q AND THIS IS WHEN HE'S RACKING AND JAMMING
5 THE GUN AND TRYING TO SHOOT IT?

6 A RIGHT.

7 Q HE GETS THE SHOT OFF AND THEY'RE ON THE
8 GROUND, RIGHT?

9 A HE GETS A SHOT OFF AND THEN JOEL GOES TO THE
10 GROUND.

11 Q WHEN HE SHOT HIM, WHAT WAS THE POSITION OF
12 S-1? ON THE GROUND OR STANDING UP?

13 A HE WAS ON THE GROUND.

14 Q SO HE'S LAYING DOWN WITH HIS RIGHT HAND --

15 A RIGHT.

16 Q HE SHOOTS HIM?

17 A RIGHT.

18 Q WHILE JOEL IS STANDING?

19 A RIGHT, WHILE JOEL WAS OVER THE TOP OF HIM.

20 Q WHEN DID DUCK COME INTO THE PICTURE?

21 A DUCK HAD HIM BY THE COLLAR, TRYING TO HOLD
22 HIM OFF OF S-1.

23 Q WHILE THIS GUY WAS RACKING THE GUN?

24 A YES.

25 Q WHILE JOEL WAS POUNDING THE GUY?

26 A YES.

27 Q NOW, THAT PART ABOUT DUCK PULLING HIM BY THE
28 COLLAR IS NOT THE TRUTH, IS IT?

1 A YES, IT IS.

2 Q SO I GUESS JOEL GOT UP WHILE DUCK WAS
3 PULLING HIM BY THE COLLAR; IS THAT WHAT YOU'RE SAYING?

4 A NO, HE DIDN'T GET UP. HE NEVER GOT UP. HE
5 HAD HIM BY HIS COLLAR, TRYING TO PULL HIM OFF OF S-1.
6 S-1 GETS ONE ROUND OFF. HE GOES TO THE GROUND, AND
7 THAT'S WHEN DUCK GETS A COUPLE OF ROUNDS OFF AS HE'S ON
8 THE GROUND.

Q ON TOP OF THIS GUY?

10 A NO, HE WAS LAYING TO THE SIDE.

11 Q I MISUNDERSTOOD. DIDN'T YOU TESTIFY EARLIER
12 THAT THEY'RE BOTH ON THE GROUND AND DUCK PICKS JOEL UP BY
13 THE COLLAR AND SHOOTS JOEL?

14 A NO. THIS IS WHAT I SAID: S-1 IS ON THE
15 GROUND, HE'S TRYING TO RACK THE GUN. JOEL IS ON TOP OF
16 HIM. HE'S STANDING UP ON TOP OF HIM POUNDING ON HIM.
17 DUCK HAS HIM BY THE COLLAR. HE'S TRYING TO PULL HIM OFF
18 OF S-1. S-1 GETS A SHOT OFF. HE FALLS BESIDE -- JOEL
19 FALLS BESIDE S-1, AND AS HE DOES, JOEL -- DUCK STILL HAS
20 HIM BY THE COLLAR, HE HITS -- HE GETS OFF TWO ROUNDS AS
21 HE'S GOING DOWN.

22 Q SO WHAT YOU'RE SAYING IS THAT DUCK HAD HIM
23 BY THE COLLAR WHILE THE OTHER GUY SHOT HIM?

24 A IN THE BACK OF HIS COLLAR.

25 Q WHILE -- HE HAD HIM BY THE COLLAR WHEN THE
26 GUY SHOT HIM, RIGHT?

27 A EXACTLY.

28 Q AND AT THE TIME HE HAD HIM BY THE COLLAR AND

1 HE WAS SHOT, THE OTHER -- JOEL WAS STANDING UP?

2 A JOEL WAS STANDING, BENT OVER HIM.

3 Q OKAY. ANY YELLING OR SCREAMING GOING ON
4 INSIDE WHILE THESE SHOTS WERE BEING FIRED?

5 A NO.

6 Q WHEN THE POLICE WERE THERE INTERVIEWING YOU,
7 WOULD IT BE ACCURATE TO ESTIMATE THAT THERE WERE AS MANY
8 AS 40 PEOPLE THERE AT THE SCENE WHEN THE POLICE WERE
THERE?

10 A I COULDN'T TELL YOU.

11 Q WHAT WOULD YOU ESTIMATE WAS THE NUMBER OF
12 TOTAL PEOPLE INSIDE THE CLUB WHEN YOU WERE BEING
13 INTERVIEWED BY THIS POLICEMAN?

14 A THERE WAS NOBODY IN THE CLUB.

15 Q WHERE WERE YOU INTERVIEWED?

16 A PRETTY MUCH IN THE OUTER AREA.

17 Q AND WHEN THE POLICE WERE THERE -- WHEN THE
18 POLICE ARRIVED, WERE PEOPLE WHO HAD BEEN AT THE PARTY
19 STILL THERE?

20 A NO. THEY WERE LEAVING.

21 Q WHEN DUCK WAS SHOT, WAS HE, TO WHAT YOU
22 OBSERVED, SHOT BY MORE THAN ONE ROUND?

23 A DUCK WASN'T SHOT.

24 Q EXCUSE ME. WHEN RODNEY WAS SHOT, WAS HE
25 SHOT, FROM WHAT YOU COULD SEE, BY MORE THAN ONE ROUND?

26 A AT THE TIME HE WAS SHOT, I KNEW HE HAD --
27 TWO ROUNDS HAD GOTTEN OFF, BUT I DIDN'T KNOW IF BOTH HAD
28 HIT HIM.

1 Q WHAT PHYSICALLY DID YOU SEE RODNEY DO WHEN
2 HE WAS SHOT?

3 A RODNEY WAS MORE CONCERNED ABOUT HIS SON.

4 Q I UNDERSTAND HIS STATE OF MIND IN YOUR
5 OPINION, BUT PHYSICALLY WHEN HE GOT SHOT, WHEN YOU SAW
6 TWO SHOTS OR HEARD TWO SHOTS IN HIS DIRECTION, DID HE
7 CHANGE HIS PHYSICAL POSTURE?

8 A I DON'T KNOW.

Q DID HE, LIKE, FALL TO THE GROUND?

10 A I DON'T KNOW.

11 Q WELL, YOU SAW HIM GET SHOT?

12 A I SAW HIM GET SHOT.

13 Q AND YOU DON'T KNOW IF HE FELL TO THE GROUND?

14 A NO, I DON'T.

15 Q DID HE CONTINUE TO GO FORWARD?

16 A I DON'T KNOW.

17 Q WHERE WAS YOUR FOCUS AT THAT POINT WHEN
18 RODNEY WAS SHOT?

19 A AT THAT POINT I HAD MOVED INTO THE DOORWAY
20 OF THE VIP ROOM. HE WAS ON THE OTHER END BY THE KITCHEN
21 DOOR, SO I SAW HIM GET SHOT, BUT I DON'T KNOW WHAT
22 HAPPENED. I DON'T KNOW IF HE WENT DOWN OR WHAT.

23 Q AEL RIGHT. HE MUST HAVE GOTTEN UP TO JOIN
24 YOU LATER, CORRECT?

25 A YES.

26 Q WHAT WERE YOU TOLD WAS THE REASON THAT THE
27 SELECTION OF JOHNNY CLARK MAY HAVE BEEN THE WRONG GUY?

28 MR. SIMS: OBJECTION, HEARSAY.

1 THE COURT: SUSTAINED, AND AS TO THE FORM OF THE
2 QUESTION, AMBIGUOUS. BY WHO?

3 BY MR. DAVIS:

4 Q ALL RIGHT. PEOPLE GAVE YOU INFORMATION,
5 RIGHT?

6 A YES.

7 Q AND BASED ON THAT INFORMATION, YOU CONCLUDED
8 YOU HAD THE WRONG GUY, CORRECT?

9 A NO, NOT UNTIL WE DID THE LINEUP.

10 Q HAD YOU SEEN MR. SANDERS AT THE PARTY BEFORE
11 THE SHOOTING?

12 A NO.

13 Q IT'S TRUE, ISN'T IT, THAT WHEN HE WENT OUT
14 ON HIS MOTORCYCLE, FOR WHAT YOU CLAIMED TO HAVE SEEN, HE
15 WAS THERE FOR ABOUT A MINUTE OR TWO?

16 A I DON'T THINK IT WAS THAT LONG.

17 Q WELL, THAT'S WHAT YOU TESTIFIED AT THE
18 PRELIMINARY HEARING, ISN'T IT?

19 A OKAY.

20 Q WELL, DO YOU REMEMBER AT THIS POINT?

21 A I'M NOT SURE, BUT IT WASN'T A LONG PERIOD.

22 Q WOULD A MINUTE OR TWO SEEM LIKE A LONG
23 PERIOD TO YOU?

24 A QUITE A LONG TIME.

25 Q IT WOULD BE FOR A GUY WHO HAD JUST SHOT
26 PEOPLE, RIGHT?

27 A EXACTLY.

28 Q REFERRING COURT AND COUNSEL TO PAGE 87,

1 ADVISIBLY LINE 26 THROUGH 28, AND THEN 88, 1 THROUGH 7.

2 MR. SIMS: OKAY.

3 THE COURT: IT MAY BE PUBLISHED.

4 MR. DAVIS: DO WE HAVE THAT TO DIAL UP?

5 Q "QUESTION: YOU LOST SIGHT OF HIM?

6 "ANSWER: I LOST SIGHT OF HIM. DUCK CALL
7 OUT AND GOT ON HIS MOTORCYCLE AND SAT THERE FOR A WHILE
8 AND THEN LEFT.

9 "QUESTION: OKAY. WHEN YOU SAY 'FOR A
10 WHILE' --

11 "ANSWER: HE SAT THERE FOR ABOUT A MINUTE
12 OR TWO. I THINK HE WAS THINKING ABOUT WHAT HAD HAPPENED,
13 YOU KNOW.

14 "QUESTION: BUT HE DIDN'T LEAVE
15 IMMEDIATELY?

16 "ANSWER: NO, HE DIDN'T, A MINUTE OR TWO."

17 IS THAT A TRUTHFUL ANSWER?

18 A IT MAY HAVE BEEN. TAKE INTO CONSIDERATION
19 THIS HAS BEEN A YEAR AND SOME MONTHS.

20 Q ALL RIGHT. IS IT LIKELY THAT YOUR MEMORY
21 REGARDING THINGS LIKE ESTIMATES OF TIME REASONABLY MAY
22 HAVE BEEN MORE ACCURATE BACK AT THE PRELIM?

23 A YES.

24 Q DID THE FIRST SHOOTER, WHEN HE LEFT, GO
25 AROUND THE BUILDING AND COME OUT THE GATE?

26 A I'M NOT UNDERSTANDING WHAT YOU'RE SAYING.

27 Q WELL, YOU'VE TOLD US THAT THE OTHER SUSPECT
28 LEFT --

1 MR. SIMS: IF WE'RE DONE WITH THIS INQUIRY, CAN WE
2 REMOVE THE PHOTOGRAPH?

3 MR. DAVIS: CERTAINLY. I'M SORRY. THANK YOU,
4 COUNSEL.

5 Q S-1 LEFT BEFORE DUCK OR MR. SANDERS?

6 A YES, HE DID.

7 Q AND THE FIRST SHOOTER, DID HE GO AROUND THE
8 BUILDING AND COME OUT THE GATE?

A HE RAN OUTSIDE THE GATE.

10 Q OKAY. WENT STRAIGHT OUT, RIGHT?

11 A YES.

12 Q AT PRELIMINARY HEARING, WHEN YOU WERE ASKED
13 WHO WAS THERE WHEN THE SHOOTING OCCURRED, YOU HAD A
14 SMALLER NUMBER OF PEOPLE THERE THAN YOU DO TODAY THAT
15 YOU'VE TOLD THE JURY, DIDN'T YOU?

16 A WHAT -- I DON'T UNDERSTAND WHAT YOU'RE
17 SAYING.

18 Q AT PRELIMINARY HEARING YOU TESTIFIED AS TO
19 WHO WAS THERE, THAT THERE WERE TWO SHOOTERS, RODNEY, THE
20 SON, AND YOURSELF, AND THAT EVERYBODY ELSE WAS OUTSIDE.
21 YOU WERE THE ONLY ONES IN THE BUILDING?

22 A AND THE TWO FEMALES.

23 Q YOU DIDN'T MENTION THEM.

24 A I DID.

25 Q AT PRELIMINARY HEARING?

26 A YES, I DID.

27 Q REFERRING COURT AND COUNSEL TO PAGE 97,
28 LINES 16 THROUGH 21.

1 MR. SIMS: GO AHEAD.

2 MR. DAVIS: DO WE HAVE THAT TO BROADCAST?

3 MR. CHRISMAN: WHAT PAGE?

4 MR. DAVIS: 97, 17 THROUGH 21.

5 Q "QUESTION BY MR. DAVIS: WHO WAS THERE WHEN
6 THE SHOOTING OCCURRED?

7 "ANSWER: IT WAS TWO SHOOTERS, RODNEY, THE
8 SON, AND I. EVERYBODY ELSE WAS OUTSIDE. WE WERE THE
ONLY ONES IN THE BUILDING."

10 THANK YOU.

11 AT PRELIMINARY HEARING WHEN YOU WERE ASKED
12 WHERE THE SHOOTER'S GUN WAS, YOU TOLD US BACK THEN IT WAS
13 IN HIS POCKET, NOT HIS WAISTBAND, CORRECT?

14 A I'M NOT SURE. LIKE I SAID, IT WAS IN HIS
15 WAIST. THAT'S WHAT I REMEMBER. IT COULD HAVE BEEN IN
16 HIS POCKET. THAT'S A YEAR AND A HALF AGO.

17 Q BACK THEN YOU HAD NO MEMORY OF REALLY WHAT
18 HE WAS WEARING, DID YOU?

19 A YES, I DID.

20 Q HAVE YOU TALKED TO ANYBODY SINCE PRELIMINARY
21 HEARING --

22 A NO.

23 Q EXCUSE ME. MY QUESTION FIRST, PLEASE,
24 PLEASE.

25 HAVE YOU TALKED TO ANYBODY SINCE PRELIMINARY
26 HEARING ABOUT WHAT THE COLOR OF THE TOP GARMENT WAS?

27 A NO.

28 Q HAVE YOU REVIEWED ANYTHING TO PERHAPS

1 REFRESH YOUR RECOLLECTION FROM ANY RECORDS OR NOTES AS TO
2 WHAT THE COLOR OF THE TOP GARMENT OF THAT SHOOTER WAS?

3 A NO.

4 Q REFERRING COURT AND COUNSEL TO PAGE 107,
5 LINES 24 THROUGH 28. THEN CONTINUING, 108, LINES 1
6 THROUGH 10.

7 MR. SIMS: ONE MOMENT. WHICH LINES, COUNSEL?

8 MR. DAVIS: THE LINES ARE 107, 24 THROUGH 28, AND
108, LINES 1 THROUGH 10.

10 MR. SIMS: THAT'S FINE.

11 THE COURT: IT MAY BE PUBLISHED.

12 BY MR. DAVIS:

13 Q WELL, COULD WE WAIT -- YES.

14 "QUESTION: WHAT DID SHOOTER ONE DO TO
15 COMMUNICATE THAT HE HAD A GUN?

16 "ANSWER: HE SHOWED IT TO ME.

17 "QUESTION: HOW DID HE DO THAT?

18 "ANSWER: HE JUST LIFTED HIS SHIRT AND
19 SHOWED IT TO ME.

20 "QUESTION: AND WHERE WAS THE GUN?

21 "ANSWER: IT WAS IN HIS POCKET.

22 "QUESTION: ALL RIGHT. AND WHAT COLOR
23 SHIRT WAS HE WEARING?

24 "ANSWER: I DON'T HAVE THE SLIGHTEST IDEA.

25 "QUESTION: WAS IT A FOOTBALL NUMBER, A
26 JERSEY, SOMETHING LIKE THAT?

27 "ANSWER: I THINK IT WAS A T-SHIRT WITH A
28 JERSEY. I'M NOT SURE, THOUGH. IT HAS BEEN A WHILE."

1 BEFORE YOU WENT TO THE LIVE LINEUP, YOU
2 TALKED TO DETECTIVE POHL ABOUT YOUR BELIEF THAT THE MAN
3 YOU HAD IDENTIFIED AS SHOOTER ONE WAS NOT THE ACTUAL
4 SHOOTER, CORRECT?

5 A SAY THAT AGAIN, PLEASE.

6 Q YES, SIR. BEFORE THE LIVE LINEUP, YOU TOLD
7 DETECTIVE POHL THAT YOU BELIEVED THE MAN YOU HAD
8 IDENTIFIED AS THE SHOOTER WAS ACTUALLY NOT THE RIGHT GUY,
WORDS TO THAT EFFECT?

10 A YES.

11 Q AND WHAT DID YOU TELL HIM ABOUT THAT,
12 DETECTIVE POHL?

13 A I TOLD HIM THAT I WAS TOLD "THAT THAT WASN'T
14 THE SHOOTER, BUT ONCE WE DO THE LINEUP, I'LL KNOW FOR
15 SURE."

16 Q WHO TOLD YOU THAT, THAT IT WASN'T THE
17 SHOOTER?

18 MR. SIMS: OBJECTION, ASKED AND ANSWERED, ALSO
19 CALLS FOR HEARSAY.

20 MR. DAVIS: STATE OF MIND, NOT FOR THE TRUTH.

21 THE COURT: SUSTAINED.

22 SOMEBODY TOLD YOU SOMETHING, CORRECT?

23 THE WITNESS: YES.

24 THE COURT: THAT'S THE STATE OF MIND.

25 BY MR. DAVIS:

26 Q DID YOU SEE DONALD SANDERS DRINK ANYTHING
27 THAT EVENING?

28 A NO, I DIDN'T.

1 Q DID YOU EVER RECEIVE INFORMATION THAT DONALD
2 SANDERS WAS NOT A SHOOTER IN THIS EVENT?

3 A NO.

4 Q AS FAR AS YOU CAN TELL, YOU HAD NO HISTORIC
5 FEUD, OR THE CLUB HAD NO HISTORIC FEUD, WITH DONALD
6 SANDERS, CORRECT?

7 A NO.

8 Q HE WAS WELCOMED TO BE THERE?

A EXACTLY.

10 Q IS IT YOUR TESTIMONY THAT DONALD SANDERS
11 LIFTED JOEL AND SIMULTANEOUSLY SHOT HIM?

12 A NO. HE LIFTED JOEL, SHOOTER ONE SHOT HIM,
13 AND THEN AS HE WAS GOING DOWN, AS HE WAS HOLDING HIM
14 GOING DOWN, HE SHOT HIM TWICE.

15 Q YOU'RE SAYING DONALD SANDERS SHOT JOEL TWICE
16 AS HE'S GOING DOWN?

17 A YES.

18 Q DURING THE CLEANUP, EVEN THOUGH, AS YOU'VE
19 TESTIFIED, THE PARTY WAS CLOSING, WOULD IT BE AN ACCURATE
20 ESTIMATE IN YOUR OPINION THAT AS MANY PEOPLE WERE STILL
21 THERE AS 40 DURING THE CLEANUP?

22 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

23 THE COURT: OVERRULED.

24 THE WITNESS: WHERE? NOT INSIDE.

25 BY MR. DAVIS:

26 Q OUTSIDE, AS MANY AS 40?

27 A I COULDN'T TELL YOU.

28 Q YOUR CLUB HAS HAD PARTIES BEFORE THIS ONE,

1 CORRECT?

2 A NOT BEFORE THAT ONE, NO.

3 Q THAT WAS THEIR FIRST PARTY?

4 A GRAND OPENING, YES.

5 Q YOU WOULD GO TO OTHER CLUBS' PARTIES
6 PERHAPS?

7 A YES.

8 Q OR HAVE PARTIES AT HOMES?

A NO, NOT AT HOMES.

10 Q THE FIRST PARTY EVER?

11 A AT THAT CLUBHOUSE, YES.

12 Q YOU HAD ANOTHER CLUBHOUSE BEFORE?

13 A YES, WE DID.

14 Q WHERE PARTIES OCCURRED?

15 A YES.

16 Q ALL RIGHT. AND AT YOUR PARTIES, THE SAME
17 SORT OF SET, THAT IS, BIKE RIDERS AND MUSIC AND --

18 A YES.

19 Q -- DRINKS?

20 A YES.

21 Q OKAY. AND AMONG YOUR YOUNGER MEMBERS,
22 OCCASIONALLY SOME SCUFFLES?

23 A NO.

24 Q AFTER YOUR EXPERIENCE AT THE LINEUP, DID YOU
25 EVER EXPLAIN TO ANYONE IN LAW ENFORCEMENT THAT YOU
26 COULDN'T EVEN SEE ANYBODY THAT EVEN LOOKED LIKE SHOOTER
27 ONE, AS OPPOSED TO UNABLE TO IDENTIFY?

28 A I TOLD DETECTIVE POHL THAT IT WASN'T ANY OF

1 THE LINEUP.

2 Q ALL RIGHT. NOW, THAT LINEUP WAS BEFORE THE
3 PRELIMINARY HEARING, CORRECT?

4 A UM, I THINK SO. I'M NOT SURE.

5 Q DID YOU TELL THE LADY DISTRICT ATTORNEY
6 THAT, THAT "WE WENT TO THE LINEUP, AND THESE PEOPLE DON'T
7 EVEN LOOK LIKE THE SHOOTER"?

8 A I NEVER TALKED TO HER ABOUT THAT.

9 MR. DAVIS: ALL RIGHT. THANK YOU, SIR. THANK YOU
10 FOR YOUR PATIENCE AND YOUR ENDURANCE IN MY LENGTHY
11 QUESTIONING. I APPRECIATE IT.

12 THE COURT: MR. SIMS.

13
14 REDIRECT EXAMINATION

15 BY MR. SIMS:

16 Q MR. THOMAS, SPEAKING OF ENDURANCE, IT'S KIND
17 OF HARD BEING UP THERE THAT LONG, ISN'T IT?

18 A VERY DIFFICULT.

19 Q AND WHEN YOU WERE AT THE PRELIMINARY
20 HEARING, WERE YOU ON THE STAND FOR AS LONG AS YOU'VE BEEN
21 ON DURING THESE TWO DAYS?

22 A NO.

23 Q NOW, WERE -- THERE HAVE BEEN SOME QUESTIONS
24 PROPOSED TO YOU BASED ON WHAT WAS IN THE PRELIMINARY
25 HEARING, AND WERE THE QUESTIONS THAT WERE POSED TO YOU AT
26 THE PRELIMINARY HEARING THE SAME AS THE ONES THAT WERE
27 POSED TO YOU TODAY?

28 MR. DAVIS: SPECULATION, VAGUE.

1 THE COURT: WELL, IF HE CAN SAY "YES" OR "NO,"
2 THEN HE CAN ANSWER.

3 THE WITNESS: SIMILAR.

4 BY MR. SIMS:

5 Q SIMILAR. OKAY. BUT WITH REGARDS TO, LET'S
6 SAY, TAKING THE PORTION OF THE TESTIMONY WITH REGARDS TO
7 WHETHER OR NOT YOU OBSERVED THIS DEFENDANT PULL JOEL UP,
8 DO YOU RECALL ANY QUESTIONS ALONG THOSE LINES AT THE
PRELIMINARY HEARING?

10 A I CAN'T REMEMBER. I COULDN'T TELL YOU.

11 Q WELL, THE POINT I'M ACTUALLY JUST TRYING TO
12 MAKE, AND WITHOUT GOING INTO TOO GREAT A DETAIL ABOUT THE
13 THINGS THAT WERE IN THE PRELIMINARY HEARING, IS YOUR
14 TESTIMONY TODAY, AS FAR AS YOU BELIEVE AND UNDERSTAND,
15 LARGELY THE SAME AS IT WAS IN THE PRELIMINARY HEARING?

16 A YES.

17 Q AND CONSISTENTLY HAVE YOU EVER HAD ANY
18 DOUBTS AS TO WHO IT WAS THAT SHOT JOEL AND SHOT RODNEY?

19 A NO.

20 Q IN THE PRELIMINARY HEARING YOU INDICATED
21 THIS DEFENDANT SHOT JOEL, CORRECT?

22 A YES.

23 MR. DAVIS: LEADING.

24 THE COURT: OVERRULED.

25 BY MR. SIMS:

26 Q AND AT THE PRELIMINARY HEARING YOU INDICATED
27 THAT THIS DEFENDANT SHOT RODNEY, CORRECT?

28 A YES.

1345

1 Q AND THERE WAS SOME QUESTION POSED TO YOU
2 WITH REGARDS TO THE DEFENDANT BEING ON THE MOTORCYCLE
3 AFTER THE SHOOTING, AND TAKING OFF, AND, AS YOU TESTIFIED
4 TODAY, YOU INDICATED THAT THERE WAS A PERIOD OF TIME THEN
5 AT THE PRELIMINARY HEARING YOU WERE SHOWN SOME DOCUMENTS
6 THAT INDICATED THAT YOU MIGHT HAVE SAID IT WAS A MINUTE
7 OR TWO. DO YOU RECALL THAT?

8 A YES, MM-HMM.

9 Q AS YOU RECALL IT, WAS IT AS LONG WHEN THE
10 DEFENDANT WAS ON THE MOTORCYCLE AFTER THE SHOOTING -- WAS
11 IT AS LONG AS 60 SECONDS OR 120 SECONDS OR SHORTER?

12 A I KNOW HE SAT THERE FOR A MINUTE -- EXCUSE
13 ME -- I CAN'T SAY A MINUTE. I KNOW HE SAT THERE FOR A
14 WHILE. TIMEWISE, I CAN'T TELL YOU.

15 Q OKAY. AND THAT SORT OF CRYSTALLIZES WHAT
16 I'M ABOUT TO ASK YOU. DO YOU USE THE TERM A MINUTE --

17 MR. DAVIS: OBJECTION, ARGUMENTATIVE, "SORT OF
18 CRYSTALLIZES."

19 THE COURT: SUSTAINED.

20 BY MR. SIMS:

21 Q DO YOU SOMETIMES INDICATE A MINUTE TO
22 INDICATE A SHORT PERIOD OF TIME?

23 A YES.

24 Q IS THAT HOW YOU COMMONLY SPEAK?

25 A YES.

26 Q NOW, TAKING YOU BACK TO THE DAY OF -- TAKING
27 YOU BACK TO THE DAY OF THE SHOOTING, YOU INDICATED THAT
28 RODNEY WAS WORKING THE BAR, CORRECT?

1 A YES.

2 Q DID RODNEY WORK THE BAR THROUGHOUT THE
3 ENTIRETY OF THE DAY?

4 A NO, HE DIDN'T.

5 Q SO THERE WAS A PERIOD OF TIME WHEN SOMEONE
6 ELSE WAS WORKING THE BAR?

7 A EXACTLY.

8 Q WAS IT MORE THAN ONE PERSON?

A YES, IT WAS.

10 Q ROTATING SHIFTS?

11 A PRETTY MUCH.

12 Q OKAY. AND YOU INDICATED THAT YOU DIDN'T SEE
13 RODNEY TAKE ANY DRINKS, CORRECT?

14 A NO.

15 Q DO YOU KNOW IF HE TOOK ANY?

16 A NOT THAT I KNOW OF.

17 Q BUT YOU DIDN'T SEE HIM THROUGHOUT THE
18 ENTIRETY OF THE DAY, CORRECT?

19 A NO, I DIDN'T.

20 Q AND THERE WAS FOOD THERE, CORRECT?

21 A YES, THERE WAS.

22 Q AND YOU INDICATED THAT YOUR MEMBERS, OR AT
23 LEAST YOUR ELDERS, WERE RESPONSIBLE FOR PUTTING ON THE
24 PARTY AND WORKING THE PARTY. AT SOME POINT IN TIME DO
25 YOU KNOW IF ANY OF THEM TOOK A BREAK AND HAD DINNER?

26 A NO, I DON'T KNOW.

27 Q BUT THEY -- IT WAS AVAILABLE TO THEM IF THEY
28 CHOSE TO DO THAT?

1347

1 A EXACTLY.

2 Q NOW, THERE WAS A DJ AT THE PARTY DURING THE
3 THRUST OF THE PARTY, CORRECT?

4 A YES.

5 Q AND AT SOME POINT DID THE DJ SHUT DOWN AND
6 GO HOME?

7 A YES, HE PACKED UP AND LEFT.

8 Q DO YOU RECALL APPROXIMATELY WHAT TIME THAT
WAS?

10 A I DON'T HAVE A CLUE.

11 Q AND DO YOU KNOW WHETHER OR NOT THERE WERE
12 STILL A NUMBER OF PEOPLE STILL INSIDE AT THAT TIME, OR IF
13 THE PARTY WAS DWINDLING DOWN?

14 A WE WERE CLEANING UP. WE WERE GETTING FUNDS
15 TOGETHER. THEY CAME THROUGH THE BACK, AND THAT'S HOW
16 THAT HAPPENED. THERE WAS NOBODY ELSE IN THE CLUBHOUSE AT
17 THAT POINT.

18 Q BUT WHAT I'M KIND OF ASKING YOU IS: AT SOME
19 POINT THE DJ LEAVES, CORRECT?

20 A RIGHT.

21 Q THIS WAS BEFORE THE SHOOTING TOOK PLACE?

22 A QUITE -- UM, IT WAS QUITE A LONG TIME,
23 BECAUSE LIKE I SAID, WE WERE GETTING EVERYTHING
24 TOGETHER. WE HAD CLEANED UP THE CLUBHOUSE AND WE WERE
25 JUST FINALIZING EVERYTHING, AND THEN THEY CAME IN.

26 Q NOW, DURING THE PARTY, YOU SAID THERE WAS AT
27 MOST MAYBE AT SOME POINT DURING THE DAY, NOT AT ONE
28 CONSISTENT POINT IN TIME, BUT DURING THE DAY, THERE WERE

1 ABOUT 2,500 PEOPLE THERE?

2 A RIGHT.

3 Q DID THAT CREATE A LOT OF TRASH?

4 A YES, IT DID.

5 Q CUPS AND PLATES AND THINGS OF THAT NATURE?

6 A YES.

7 Q AND WERE THEY ON THE FLOOR OF THE CLUBHOUSE

8 WHEN -- DURING THE DAY?

9 A THEY WERE INSIDE, OUTSIDE, ALL UP AND DOWN
10 THE STREET.

11 Q SO WHEN YOU SAY THAT YOU AND YOUR PEOPLE
12 WERE CLEANING UP, DID YOU CLEAN UP ALL THOSE CUPS AND
13 TRASH?

14 A EVERYTHING WAS CLEANED UP.

15 Q SO THE FLOOR WAS CLEAR?

16 A THE FLOOR WAS CLEAR.

17 Q AND YOU ALSO INDICATED THAT THE FRONT DOOR,
18 WHAT WE'VE CALLED, I SUPPOSE, THE WEST DOOR, THERE'S A
19 GATE THERE, AND THEN THERE'S ALSO A FRONT DOOR THERE,
20 CORRECT?

21 A RIGHT.

22 Q THOSE WERE CLOSED THROUGHOUT THE PARTY?

23 A THEY WERE CLOSED EXCEPT FOR THE ONE BIG
24 DOOR, IT WAS UP, PARTIALLY UP, BUT THEN IT WAS CLOSED
25 AFTER THE CLEANUP.

26 Q AND HOW DO YOU KNOW IT WAS CLOSED?

27 A BECAUSE I TOLD ONE OF THE GUYS TO SHUT
28 EVERYTHING DOWN.

1 Q AND DID YOU SEE IT CLOSE?

2 A YES.

3 Q NOW, YOU INDICATED THAT YOU SAW THE GUY
4 WE'VE BEEN CALLING SHOOTER ONE OR SUSPECT ONE COME UP TO
5 THE WINDOW OF THE BAR, RIGHT?

6 A YES.

7 Q AND WHEN HE CAME UP TO THE WINDOW OF THE
8 BAR, DID HE COME ALONE, OR DID HE COME WITH WHAT APPEARED
TO YOU TO BE OTHER PEOPLE?

10 A HE WAS WITH TWO OTHER PEOPLE.

11 Q WHO WERE THOSE TWO OTHER PEOPLE?

12 A THAT WAS S-2 AND DUCK.

13 Q OKAY. AND THAT'S THE MAN THAT'S HERE IN
14 COURT?

15 A YES.

16 Q NOW, YOU DESCRIBED THEM EACH AS HAVING A
17 PARTICULAR HAIRSTYLE. IF YOU CAN, SO WE'RE CLEAR,
18 SUSPECT ONE, WHAT WAS HIS HAIRSTYLE?

19 A UM, CLOSE HAIRCUT, BALD. THEY CALL IT A QUO
20 VADIS.

21 Q WITHOUT EMBARRASSING MYSELF, CLOSER THAN
22 MINE?

23 A CLOSER THAN YOURS.

24 Q BUT NOT AS CLOSE AS THE DEFENDANT'S?

25 A NO.

26 Q SO --

27 MR. DAVIS: GORGEOUS LOOKING?

28 THE WITNESS: YES.

1350

1 BY MR. SIMS:

2 Q AND SUSPECT TWO, HOW WAS HIS HAIR?

3 A UM, IT WAS PULLED BACK INTO A BUN.

4 Q NOW, IS THERE ANY WAY IN YOUR PERSONAL
5 OPINION YOU COULD CONFUSE THE PERSON DESCRIBED AS SUSPECT ONE,
6 THE PERSON DESCRIBED AS SUSPECT TWO AND THE
7 DEFENDANT?

8 A NO.

9 Q ALL THREE LOOKED DIFFERENT?

10 A ALL THREE LOOKED DIFFERENT.

11 Q DID YOU EVER SEE SUSPECT TWO WITH A GUN?

12 A NO, I DIDN'T.

13 Q OKAY. DID YOU EVER SEE HIM SHOOT ANYONE?

14 A NO.

15 Q AND YOU CAN'T CONFUSE SUSPECT TWO WITH THIS
16 DEFENDANT, CAN YOU?

17 A NO.

18 Q SUSPECT TWO, TALL, WITH THE PONYTAIL, THE
19 DEFENDANT QUITE A DIFFERENT LOOK?

20 A YES.

21 Q NOW, YOU INDICATED THAT THERE WAS A POINT IN
22 TIME IN WHICH YOU WERE ENTERING THE FRAY, TRYING TO BREAK
23 THINGS UP, SUSPECT TWO WAS THERE WITH YOU BEING, IN YOUR
24 OPINION, POSSIBLY A PEACEMAKER, CORRECT?

25 A YES.

26 Q AT SOME POINT HE LEAVES, CORRECT?

27 A AFTER THE FIGHT STARTS.

28 Q SO THE TWO -- SO JOEL AND SUSPECT ONE START

1 FIGHTING, CORRECT?

2 A YES.

3 Q WHAT IS IT EXACTLY YOU SEE SUSPECT TWO DO?

4 A RUN OUT THE BACK DOOR.

5 Q OKAY. NOW, DID YOU EVER ACTUALLY SEE HIM
6 LEAVE AND GO OUT THAT DOOR OR RUN IN THAT DIRECTION?

7 A RUN IN THAT DIRECTION.

8 Q MY QUESTION TO YOU IS: DID YOU TURN YOUR
HEAD AND LOOK AND SEE HE'S GOING OUT THE WEST -- I GUESS
10 THAT WOULD BE THE EAST GATE, OR DID YOU JUST NOTICE HE
11 WAS RUNNING IN THAT DIRECTION?

12 A NOTICED HE WAS RUNNING IN THAT DIRECTION.

13 Q SO YOU DON'T KNOW IF HE WAS ACTUALLY OUT IN
14 THAT OUTSIDE CONCRETE AREA AS THINGS WERE TAKING PLACE,
15 OR WHERE HE WENT?

16 A NO, I DON'T KNOW WHERE HE WENT.

17 Q NOW, YOU INDICATED THAT THE ONLY TWO PEOPLE
18 YOU SAW FIGHTING WERE JOEL AND SUSPECT ONE. DID YOU EVER
19 SEE RODNEY HIT ANYBODY?

20 A NO.

21 Q DURING THE TIME IN WHICH THE ARGUMENT BEGAN
22 AND JOEL CAME UP, DID YOU SEE RODNEY AT ALL TIMES?

23 A NO. I DIDN'T SEE RODNEY UNTIL HE STEPPED
24 OUT, AND HE WAS SHOT. THAT'S WHEN I SAW RODNEY.

25 Q SO THERE'S A PERIOD OF TIME IN WHICH YOU
26 DON'T KNOW WHAT RODNEY WAS DOING?

27 A EXACTLY.

28 Q NOW, YOU ALSO INDICATED AFTER JOEL WAS SHOT,

1 THERE WERE SOME PEOPLE THAT WENT TO JOEL'S AID, CORRECT?

2 A YES.

3 Q ALL RIGHT. AND IF YOU REMEMBER, WHO WENT TO
4 JOEL'S AID?

5 A AFTER THEY HAD ALL LEFT, I WENT TO HIS AID,
6 AND THERE WAS ANOTHER BLACK FEMALE. SHE SAID SHE WAS A
7 NURSE.

8 Q AND DO YOU KNOW WHERE SHE CAME FROM? DID
9 YOU SEE WHERE SHE CAME FROM?

10 A NO.

11 Q DO YOU KNOW IF SHE WAS ONE OF THOSE PEOPLE
12 THAT HAD BEEN OUTSIDE AND MAYBE CAME IN?

13 A APPARENTLY SHE WAS.

14 MR. DAVIS: MOTION TO STRIKE, SPECULATION.

15 THE COURT: SUSTAINED.

16 BY MR. SIMS:

17 Q BUT YOU DIDN'T SEE HER INSIDE DURING THE
18 FIGHT?

19 A NO, SHE WASN'T INSIDE.

20 Q YOU DIDN'T SEE HER INSIDE THE VIP AREA
21 BEFORE THE FIGHT?

22 A NO.

23 Q SO IF I CAN UNDERSTAND WHAT YOU'RE
24 DESCRIBING, JOEL IS ON THE GROUND AND THERE ARE PEOPLE
25 WALKING TOWARDS HIM; IS THAT CORRECT?

26 A WELL, JOEL WAS ON THE GROUND. THERE WAS
27 ONLY MAYBE AT THAT POINT TWO PEOPLE. JOEL WAS LAYING ON
28 THE GROUND, SENIOR WAS LAYING UP AGAINST THE WALL, AND

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1 THEN ME AND THIS YOUNG LADY, WE WERE THE ONLY TWO THAT
2 CAME INSIDE.

3 Q DO YOU RECALL SEEING A CROWD OF PEOPLE RUN
4 OVER JOEL'S BODY?

5 A NO.

6 Q NOW, SOMEBODY AT SOME POINT CALLED THE
7 AMBULANCE AND THE POLICE, CORRECT?

8 A YES.

9 Q DID YOU DO THAT?

10 A NO.

11 Q DO YOU KNOW WHO DID THAT?

12 A NO.

13 Q BUT SOMEONE DID SOMETHING SUCH THAT THESE
14 POLICE PERSONNEL AND THE PARAMEDICS CAME, CORRECT?

15 A RIGHT. WELL, PRETTY MUCH THERE'S A FIRE
16 DEPARTMENT --

17 MR. DAVIS: OBJECTION, NONRESPONSIVE.

18 THE COURT: SUSTAINED.

19 BY MR. SIMS:

20 Q IS THERE A FIRE DEPARTMENT CLOSE TO THE
21 CLUBHOUSE?

22 A RIGHT ACROSS THE STREET.

23 Q NOW, YOU DON'T KNOW IF SOMEBODY WENT OVER
24 THERE, BUT HOW SOON DID THE PARAMEDICS RESPOND AFTER THE
25 SHOOTING?

26 A THEY CAME RIGHT AWAY. I'M NOT SURE WHAT
27 TIME.

28 Q AND IN YOUR CLUB, YOU INDICATED THERE'S NOW

1 ABOUT 105 MEMBERS, CORRECT?

2 A IT'S MORE NOW.

3 Q MORE THAN THAT. LET'S TRY TO STICK WITH THE
4 DATE OF THE EVENTS, SEPTEMBER 11TH. DO YOU KNOW
5 APPROXIMATELY HOW MANY PEOPLE WERE IN THE CLUB?

6 A ONE -- ABOUT 104.

7 Q OKAY. AND PERSONALLY IN YOUR OWN PERSONAL
8 KNOWLEDGE, DO YOU KNOW WHAT EVERY SINGLE PERSON IN THAT
CLUB DOES FOR A LIVING?

10 A NO, I DON'T.

11 Q DO YOU KNOW THE NAMES OF EVERY SINGLE PERSON
12 IN THAT CLUB?

13 A PRETTY MUCH.

14 Q OKAY. AND DO YOU INTERACT CLOSELY WITH
15 EVERY SINGLE MEMBER OR ARE YOU CLOSE TO SOME MEMBERS AND
16 NOT AS CLOSE TO OTHER MEMBERS?

17 A CLOSE TO SOME, NOT AS CLOSE TO OTHERS.

18 Q IS THERE ANYTHING TO GAIN FOR THE RARE BREED
19 MOTORCYCLE CLUB BY MISIDENTIFYING THIS DEFENDANT AS THE
20 SHOOTER?

21 MR. DAVIS: ARGUMENTATIVE.

22 THE COURT: SUSTAINED.

23 BY MR. SIMS:

24 Q THERE WERE SOME QUESTIONS POSED TO YOU WITH
25 REGARDS TO THE PROCEDURES OF THE MOTORCYCLE CLUB AND
26 WHAT'S PART OF YOUR CREDO AS MOTORCYCLE RIDERS. DOES IT
27 DAMAGE THE CREDO OR THE REPUTATION OF RARE BREED TO
28 MISIDENTIFY THIS DEFENDANT?

1 A NO.

2 MR. DAVIS: I'M SORRY. THE ANSWER WAS NO?

3 THE COURT: "NO." THAT'S CORRECT.

4 BY MR. SIMS:

5 Q ARE YOU TRYING TO PROTECT ANY OF YOUR
6 MEMBERS, ANY OF THE PEOPLE WHO WERE PART OF THE RARE
7 BREED AND AT THE PARTY THAT NIGHT, BY MISIDENTIFYING THIS
8 DEFENDANT?

9 A NO.

10 Q NOW, YOU INDICATED YOU WEREN'T COMFORTABLE
11 WITH GIVING OVER THE NAMES OF SOME OR ALL OF THE MEMBERS
12 OF THE MOTORCYCLE CLUB. TELL ME WHY NOT.

13 A PRETTY MUCH AS A LEADER AND BEING THERE AT
14 THE TIME, I DIDN'T FEEL IT WAS NECESSARY FOR ME TO GIVE
15 UP ANYBODY, BECAUSE I SAW EVERYTHING THAT HAPPENED, SO I
16 WOULD STEP FORWARD AND DO WHAT I NEEDED TO DO.

17 Q AS YOU OBSERVED IT, WAS THERE ANYBODY ELSE
18 OF THE MEMBERS WHO WERE ABLE TO SEE THINGS -- WELL, WAS
19 THERE ANYBODY ELSE WHO WAS A MEMBER THAT SAW THE
20 SHOOTINGS TAKE PLACE?

21 MR. DAVIS: SPECULATION OTHER THAN RODNEY.

22 THE COURT: HE'S PREVIOUSLY TESTIFIED THAT THERE
23 WERE ONLY EIGHT PEOPLE THERE, AND HE AND RODNEY AND HIS
24 SON WERE THE ONLY ONES, I BELIEVE, THAT WERE ACTIVELY
25 INVOLVED WITH THE CLUB.

26 BY MR. SIMS:

27 Q ANY OTHER MEMBERS THERE THAT SAW THE
28 SHOOTING TAKE PLACE?

1356

1 A NOT THAT I KNOW OF.

2 MR. DAVIS: SAME OBJECTION, SPECULATION.

3 THE COURT: SUSTAINED AS TO THAT, OTHER THAN WHAT
4 HE'S PREVIOUSLY TESTIFIED TO -- WELL, I'LL RECONSIDER.
5 BASED UPON THE FACT THAT HE'S INDICATED HE WAS RELUCTANT
6 TO GIVE UP MEMBER NAMES, I'LL RECONSIDER.

7 BY MR. SIMS:

8 Q WERE THERE ANY OTHER MEMBERS THAT WERE
9 PRESENT, AS FAR AS YOU COULD SEE, AS THE SHOOTING WAS
10 TAKING PLACE?

11 A NOT THAT I COULD SEE.

12 Q OKAY. LIKE YOU SAID, YOU DON'T KNOW IF
13 THERE WERE OTHER MEMBERS OUTSIDE?

14 A RIGHT.

15 Q BUT NOT RIGHT THERE IN FRONT OF YOU?

16 A NO.

17 Q NOW, THE SHOOTINGS TAKE PLACE, SUSPECT ONE
18 RUNS OUT THAT EAST DOOR, CORRECT?

19 A YES.

20 Q AT SOME POINT LATER THE DEFENDANT EVEN GOES
21 OUT THAT SAME DOOR?

22 A YES.

23 Q AT THAT POINT IN TIME, DO YOU KNOW, IF YOU
24 KNOW, OUTSIDE WERE PEOPLE LEAVING?

25 A UM, WITH ALL THE SHOOTING, THEY WERE
26 RUNNING, SO I DON'T KNOW.

27 Q THAT'S MY POINT. TO THE EXTENT THAT YOU
28 COULD -- THAT YOU KNOW THAT THERE WERE PEOPLE OUTSIDE --

1357

1 A YES.

2 Q SHOOTINGS TAKE PLACE, PEOPLE TAKE OFF?

3 A EXACTLY.

4 Q ALL RIGHT. YOU INDICATED THAT YOU DIDN'T
5 FEEL IT WAS NECESSARY FOR OTHER PEOPLE TO GET INVOLVED.
6 WHAT ABOUT YOU, WHY ARE YOU INVOLVED?

7 A I DIDN'T WANT IT TO ESCALATE TO ANOTHER
8 LEVEL. IF I LET IT GO, THERE'S A POSSIBILITY THAT
9 INNOCENT PEOPLE WOULD GET HURT, SO THIS IS THE EASIEST
10 WAY TO DO IT.

11 Q AND YOU MEAN COMING TO COURT RATHER THAN
12 HAVING SOMETHING OUT ON THE STREETS TAKE PLACE?

13 A YES.

14 Q NOW, YOU INDICATED THAT YOU WERE GIVEN THE
15 NAME J TO THE POLICE AS BEING THE GUY, SUSPECT ONE,
16 CORRECT?

17 A YES.

18 Q AND DID YOU KNOW HIS NAME AT THAT TIME, J?

19 A AT THE TIMES OF THE SHOOTING?

20 Q YES.

21 A NO, I DIDN'T.

22 Q SOMEONE GAVE YOU THAT INFORMATION, CORRECT?

23 A YES.

24 Q DID YOU HAVE INFORMATION THAT HE HAD BEEN IN
25 A GANG?

26 A THEY TOLD ME HE HAD BEEN.

27 Q RIGHT. DID YOU KNOW WHAT GANG?

28 A NO.

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1 Q SO THE EVENING OF SEPTEMBER 11TH, 2005, WERE
2 YOU ABLE TO RELATE TO THE OFFICER THAT SPOKE TO YOU
3 EXACTLY WHAT GANG THAT PARTY MIGHT HAVE BEEN IN?

4 A UM, PRETTY MUCH -- SORRY -- THEY HAD TOLD ME
5 THAT HE WAS A BLOOD, OKAY.

6 Q ALL RIGHT. NOW, DID THEY TELL YOU WHAT --
7 WHICH FACTION OR WHICH SET OF BLOODS --

8 A NO, THEY DIDN'T TELL ME ANY OF THAT.

9 Q AND THEN YOU WERE SHOWN THE SIX-PACK OF
10 PHOTOGRAPHS, AND YOU CIRCLED SOMEONE'S PHOTOGRAPH. AT
11 THAT POINT DID YOU KNOW WHO J WAS?

12 A NO. IT LOOKED SIMILAR TO THE S-1, BUT I
13 WASN'T --

14 MR. DAVIS: OBJECTION AFTER "NO," NONRESPONSIVE.

15 THE COURT: SUSTAINED.

16 BY MR. SIMS:

17 Q NOW, YOU INDICATED --

18 THE COURT: LET ME ASK YOU A QUESTION, MR. SIMS:
19 HOW LONG ARE YOU GOING TO TAKE?

20 MR. SIMS: BEFORE THE BREAK?

21 THE COURT: BEFORE YOU TURN IT OVER TO
22 MR. DAVIS?

23 MR. SIMS: A LITTLE BIT MORE TIME.

24 THE COURT: OKAY. I'M CONFIDENT THAT MR. DAVIS IS
25 GOING TO TAKE SOME TIME ASKING SOME QUESTIONS.

26 MR. DAVIS: I PROMISE YOU LESS.

27 THE COURT: THIS WOULD BE A GOOD TIME TO TAKE A
28 BREAK. DAWSHA IS REAL GOOD ABOUT IT, BUT SHE SHOULD

1 ALERT ME MORE OFTEN. SHE'S THE ONE WHO IS DOING MOST OF
2 THE WORK. SHE'S WORKING HARD. HER FINGERS CAN ONLY GO
3 SO FAR. WE'RE A DIFFERENT STORY. WE CAN PUSH OURSELVES
4 BUT WE CAN'T PUSH THE COURT REPORTER. SHE HAS A VERY
5 IMPORTANT FUNCTION AND LET ME TELL YOU, IT'S VERY
6 TIRING. IT'S TIRING, I'M SURE TO YOU -- JUST TO LISTEN
7 TO WHAT PEOPLE SAY IS A TIRING EXPERIENCE. IT DOESN'T
8 SOUND LIKE IT SHOULD BE, BUT IT IS, SO WE NEED TO TAKE
9 CARE OF HER. THAT'S WHY WE BREAK FOR 20 MINUTES.

10 SO WE'RE GOING TO RECESS UNTIL TEN MINUTES
11 AFTER 3:00. AGAIN, GO AWAY WITH THE ADMONITION: PLEASE
12 DO NOT DISCUSS YOUR TESTIMONY WITH ANYBODY, INCLUDING A
13 FELLOW JUROR.

14 NOW, HERE'S ONE THING: WHAT WE MIGHT DO,
15 AND DEPENDING UPON HOW MUCH LONGER IT TAKES, WE MIGHT
16 RECESS AFTER THIS WITNESS IS CONCLUDED, MEANING THAT WE
17 MIGHT GET OUT OF HERE A LITTLE BIT EARLIER TODAY, IF YOU
18 FOLKS WANT TO LEAVE.

19 IT'S BEEN A LONG WEEK. MAYBE WE OUGHT TO DO
20 THAT. SO LET'S CONCLUDE -- AFTER WE CONCLUDE THIS
21 PERSON'S TESTIMONY, WE'LL SEE WHAT TIME IT IS, AND WE'LL
22 RECONSIDER.

23 (RECESS TAKEN.)

24
25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN OPEN COURT
27 OUTSIDE THE PRESENCE OF
28 THE JURY:)

1360

1
2 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
3 TO THE SANDERS MATTER. MR. SANDERS IS PRESENT WITH
4 COUNSEL. WE ARE READY TO PROCEED. THE JURY MAY BE
5 BROUGHT IN.

6
7 (THE FOLLOWING PROCEEDINGS
8 WERE HELD IN OPEN COURT IN
9 THE PRESENCE OF THE JURY:)

10
11 THE COURT: WE'RE BACK ON THE RECORD. LET THE
12 RECORD REFLECT ALL 12 JURORS PLUS THE TWO ALTERNATES ARE
13 PRESENT. WE ARE READY TO PROCEED. THE WITNESS HAS
14 RETAKEN THE STAND. AS IS MY PRACTICE, SIR, A REMINDER,
15 YOU'RE STILL SUBJECT TO THE OATH PREVIOUSLY TAKEN.
16 MR. SIMS.

17 BY MR. SIMS:

1 Q WHEN YOU WERE LOOKING AT THE SIX-PACK OF
19 WHAT WAS PURPORTED TO BE SUSPECT ONE OR SHOOTER ONE, DID
20 YOU NOTICE A SCAR ON THE LIP OF ANY OF THOSE PEOPLE IN
21 THE PHOTOGRAPHS?

22 A NO, I DIDN'T.

23 Q OKAY. AND YOU INDICATED THAT ONE OF THE
24 THINGS THAT MIGHT HAVE HELPED YOU REMEMBER WHO SUSPECT
25 ONE OR THE SHOOTER WAS, WAS THAT HE HAD A SCAR OVER HIS
26 LIP, CORRECT?

27 A YES.

28 Q ALL RIGHT. WHEN YOU LOOKED AT THE

1 PHOTOGRAPHS, UNDERSTANDING THAT THERE MIGHT HAVE BEEN A
2 SCAR ON THE PERSON YOU SAW FIGHTING WITH JOEL, DID YOU
3 LOOK FOR A SCAR?

4 A ON THE SIX-PACK?

5 Q YES.

6 A YES, I DID.

7 Q AND DID YOU SEE ONE?

8 A NO.

9 Q BUT EVEN THOUGH YOU DIDN'T SEE ONE, YOU
10 STILL CIRCLED A PERSON IN THOSE PHOTOGRAPHS, CORRECT?

11 MR. DAVIS: EXCUSE ME. THIS IS BECOMING LEADING.

12 THE COURT: SUSTAINED.

13 BY MR. SIMS:

14 Q EVEN THOUGH YOU DIDN'T SEE ONE, DID YOU
15 IDENTIFY ANYONE IN THOSE PHOTOGRAPHS?

16 A YES.

17 Q AND DESPITE SEEING THE SCAR, WHAT WAS IT
18 THAT LED YOU TO IDENTIFY THAT PERSON IN THOSE
19 PHOTOGRAPHS?

20 A I THOUGHT WELL, IT'S A POSSIBILITY THAT THE
21 SCAR WOULDN'T SHOW UP IN THE PHOTOGRAPH, AND HE LOOKED
22 CLOSE TO THE S-1, THE SHOOTER.

23 Q OKAY. THEN LATER YOU GO TO THE LIVE LINEUP,
24 CORRECT?

25 A YES.

26 Q AND IS THERE SOMETHING DIFFERENT ABOUT THE
27 MEN IN THE LIVE LINEUP AS OPPOSED TO THE PEOPLE IN THE
28 PHOTOGRAPHS?

1 A YES. NONE OF THEM LOOKED LIKE S-1.

2 Q OKAY. AND LATER BEFORE THE LINEUP, BUT
3 AFTER YOU HAD LOOKED AT THE SIX-PACKS, YOU GOT SOME
4 INFORMATION FROM PEOPLE, YOU KNOW, THAT THE PERSON IN
5 THOSE SIX-PACKS WASN'T THE PERSON AT THE PARTY?

6 A YES.

7 Q ALL RIGHT. DID THEY GIVE YOU A NAME?

8 A OF THE PERSON IN THE SIX-PACK?

Q YES.

10 A NO, THEY DIDN'T.

11 Q DID YOU KNOW THE NAME JOHNNY CLARK AT THAT
12 TIME?

13 A NOT UNTIL AFTERWARDS.

14 Q AND YOU GOT THAT INFORMATION WHEN YOU WENT
15 TO THE LIVE LINEUP. DID YOU EVER GET ANY INFORMATION
16 FROM THE SAME SOURCES, THAT THIS DEFENDANT WASN'T THE
17 RIGHT GUY?

1 A NO.

19 MR. DAVIS: MOTION TO STRIKE. IRRELEVANT, "THE
20 SAME SOURCES."

21 THE COURT: OVERRULED.

22 BY MR. SIMS:

23 Q THE NIGHT OF THE SHOOTING YOU SPOKE TO
24 POLICE OFFICERS AND YOU GAVE THEM WHATEVER INFORMATION
25 YOU COULD GIVE THEM, INCLUDING WHATEVER NAMES YOU KNEW,
26 CORRECT?

27 A YES.

28 Q ALL RIGHT. AND YOU INDICATED THAT YOU GAVE

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1 THEM THE NAME OF J AND HE MIGHT BE A BLOOD?

2 A NOT -- NOT AT THE SHOOTING, NO, NOT THE
3 NIGHT OF THE SHOOTING, NO.

4 Q WHEN DID YOU GIVE THAT INFORMATION OVER?

5 A IT WAS AFTER THAT, DETECTIVE POHL HAD COME
6 AND INTERVIEWED ME A COUPLE OF TIMES AFTER THAT.

7 Q SO THE NIGHT OF THE SHOOTING, WHEN THE FIRST
OFFICER ARRIVES, YOU SPOKE WITH THAT PERSON, CORRECT?

8 A YES.

9 Q AND YOU WERE UNABLE TO GIVE A NAME
10 ATTRIBUTABLE TO SUSPECT ONE, CORRECT?

11 A TRUE.

12 Q BUT THAT NIGHT YOU DID GIVE SOMEONE'S NAME,
13 CORRECT?

14 A YES.

15 Q AND WHOSE NAME DID YOU GIVE?

16 A THAT WAS DUCK.

17 Q AND YOU DIDN'T NEED TO HEAR HIS NAME FROM
18 THE STREETS OR SOURCES OR ANYTHING LIKE THAT?

19 A NO, NO.

20 Q AND WHY IS THAT?

21 A BECAUSE HE HAD BEEN ON THE SET QUITE A FEW
22 YEARS.

23 Q BECAUSE YOU KNEW HIM?

24 A YES.

25 Q NOW, YOU INDICATED THAT THE SUSPECT ONE AND
26 SUSPECT TWO SOMETIME PRIOR TO THAT GO OUT THAT EAST DOOR,
27 CORRECT?
28

1 A YES.

2 Q THEN SOME POINT LATER YOU SEE AN IMPALA COME
3 INTO YOUR VIEW, CORRECT?

4 A YES.

5 Q NOW, HOW IS IT THAT YOU SAW THAT?

6 A WE WERE STANDING THERE, AND WE HAD TURNED TO
7 WALK BACK IN, ME AND RODNEY, AND ALL OF A SUDDEN IT
8 APPEARED, AND LOOKED ON THE INSIDE, AND HE JUST TOOK OFF.

9 Q DID YOU SEE WHERE THE IMPALA CAME FROM?

10 A UM, IT CAME FROM -- NO, I COULDN'T SEE -- I
11 JUST SAW WHERE IT PULLED UP IN THE ALLEY.

12 Q OKAY. AND WE'VE ALREADY DESCRIBED AS NORTH
13 TOWARDS L.A. AND SOUTH TOWARDS MEXICO. WHICH WAY WAS THE
14 IMPALA GOING?

15 A IT WAS HEADING NORTH.

16 Q UP THE ALLEYWAY?

17 A UP THE ALLEYWAY.

18 Q AND WAS THERE ENOUGH ROOM FOR THAT IMPALA TO
19 GO UP THAT ALLEYWAY?

20 A YES, BECAUSE THERE WASN'T ANYBODY THERE.

21 Q THE BIKES THAT HAD BEEN THERE EARLIER, AS
22 YOU DESCRIBED, LINING THE ALLEYWAY AND LINING BROADWAY
23 AND THINGS OF THAT NATURE, AND 154TH, THEY WERE GONE?

24 A THEY WERE GONE.

25 Q SO THE IMPALA WASN'T IMPEDED IN ANY WAY FROM
26 GOING UP THAT ALLEY?

27 A NO.

28 Q AND YOU ALSO INDICATED THAT THE DEFENDANT AT

1 SOME POINT GOT ON HIS MOTORCYCLE AND -- WHICH WAS IN THAT
2 ALLEY AS WELL, CORRECT?

3 A YES.

4 Q AND HE TOOK OFF TOO?

5 A YES.

6 Q DO YOU KNOW WHICH DIRECTION HE WENT?

7 A UM, HEADED OUT THE ALLEY, HEADING NORTH. I
DON'T KNOW WHICH WAY HE WENT AFTER THAT.

Q HE WENT NORTH AS WELL?

10 A YES.

11 Q DO YOU KNOW HOW LONG AFTER THE IMPALA WENT
12 UP THE ALLEYWAY THAT THE DEFENDANT ON HIS MOTORCYCLE WENT
13 UP THE ALLEYWAY?

14 A NO, I DON'T.

15 Q YOU INDICATED THAT THE IMPALA WENT NORTH UP
16 THE ALLEYWAY, CORRECT?

17 A YES.

18 Q AND THAT WOULD PUT THE DRIVER'S SIDE DOOR
19 CLOSEST TO THE ALLEY OR THE CONCRETE AREA YOU WERE
20 STANDING IN, CORRECT?

21 A YES.

22 Q ALL RIGHT. AND IS THAT WHEN YOU NOTICED
23 THAT THE DRIVER'S WINDOW WAS DOWN?

24 A YES.

25 Q WHEN THESE GUYS ARE MAKING THESE RUDE
26 COMMENTS TO THE GIRLS -- AND THAT'S AT THE DRINK WINDOW,
27 CORRECT -- DID YOU KNOW WHERE JOEL WAS AT THAT TIME?

28 A NO, I DIDN'T.

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1 Q WAS HE NEAR YOU IN THE VIP AREA?

2 A NO, HE WASN'T.

3 Q THERE WAS SOME CLEANING UP TAKING PLACE AT
4 THAT TIME, RIGHT?

5 A IN -- AT THAT TIME, NO, THERE WAS NO
6 CLEANING UP TAKING PLACE AT THAT TIME.

7 Q WAS THERE NO ONE SWEEPING UP OUT IN THE OPEN
8 AREA OR ANYTHING LIKE THAT?

A NO.

10 Q SO YOU DON'T KNOW WHAT JOEL WAS DOING,
11 CORRECT?

12 A NO, I DON'T.

13 Q BUT YOU BELIEVED THERE WAS NO MORE CLEANING
14 UP THAT NEEDED TO TAKE PLACE?

15 A CLEANING UP HAD BEEN DONE AT THAT POINT.

16 Q NOW, YOU INDICATED THAT THE GIRLS SAID
17 SOMETHING LIKE "AHH," CORRECT? I DON'T KNOW HOW THE
18 COURT REPORTER IS GOING TO WRITE DOWN "AHH," BUT YOU KNOW
19 SOMEBODY SAID SOMETHING TO THAT EFFECT?

20 A YES.

21 Q WHEN THEY SAID THAT, DID YOU GET THE
22 IMPRESSION THE GIRLS WERE MAKING A COMMENT ABOUT THE WAY
23 THE GUYS LOOKED ON THE LINE, LIKE THEY WERE SAYING "THESE
24 THREE WERE UGLY" OR SOMETHING?

25 MR. DAVIS: SPECULATION.

26 THE COURT: SUSTAINED.

27 BY MR. SIMS:

28 Q THERE WAS A REACTION BY THE GENTLEMEN -- OR

1 THE GUYS WHEN THE GIRLS SAID "AHH," CORRECT?

2 A YES.

3 Q AND THEIR REACTION WAS WHAT, IF YOU RECALL
4 ARE?

5 A IT WAS NEGATIVE.

6 Q AND DO YOU RECALL IF THE GUYS SAID ANYTHING?

7 A YES.

8 Q WHAT DID THEY SAY?

MR. DAVIS: EXCUSE ME. "THE GUYS," "THEY," NOW
10 VAGUE.

11 THE COURT: SUSTAINED, VAGUE.

12 BY MR. SIMS:

13 Q DID SOMEONE SPEAK?

14 A YES.

15 Q WHEN THE GIRLS MADE THAT SOUND, DID SOMEONE
16 SPEAK?

17 A YES.

18 Q WHO SPOKE?

19 A S-1.

20 Q AND WHAT DID HE SAY?

21 A UM, HE CALLED HER A BITCH, SEVERAL OF THEM.

22 Q HE CALLED HER SEVERAL BITCHES?

23 A YES.

24 Q THEN YOU INDICATED THAT AT SOME POINT -- AND
25 YOU DESCRIBED IT AS THERE WAS SOME "BLOODING" GOING BACK
26 AND FORTH -- AND RODNEY WAS AT THE WINDOW, CORRECT?

27 A YES.

28 Q I WANT TO BE CLEAR. WAS THE "BLOODING"

1 GOING BACK AND FORTH BETWEEN SUSPECT ONE AND RODNEY, OR
2 WAS SUSPECT ONE USING THE TERM "BLOOD"?

3 A UM --

4 MR. DAVIS: LEADING, COMPOUND.

5 THE COURT: SUSTAINED.

6 BY MR. SIMS:

7 Q WHO WAS USING THE TERM "BLOOD"?

8 A THE SUSPECT.

Q DID YOU HEAR RODNEY USING THE TERM?

10 A NO.

11 Q SO WHEN YOU INDICATE THAT THERE WAS THAT
12 "BLOODING" GOING BACK AND FORTH, WHAT ARE YOU TALKING
13 ABOUT?

14 A EXPLAIN.

15 Q WHEN YOU INDICATED THAT YOU SAID THAT THERE
16 WAS -- THE TERM "BLOOD" GOING BACK AND FORTH, WHAT DID
17 YOU MEAN BY THAT?

18 A OKAY. BASICALLY WHAT THEY WERE SAYING IS
19 "BLOOD, GIVE ME A DRINK. CAN YOU GIVE ME A DRINK,
20 BLOOD," THAT TYPE OF THING.

21 Q SO YOU WEREN'T INDICATING THAT SUSPECT ONE
22 WAS SAYING "BLOOD" TO RODNEY AND RODNEY WAS SAYING
23 "BLOOD" BACK TO SUSPECT ONE?

24 A RIGHT.

25 Q WERE YOU INDICATING THAT SUSPECT ONE WAS
26 USING THE TERM "BLOOD" OVER AND OVER AGAIN?

27 A YES.

28 Q NOW, THERE WERE SOME QUESTIONS PUT FORTH TO

1 YOU AS TO WHETHER OR NOT YOU REMEMBER TELLING THE FIRST
2 OFFICER ON THE SCENE, OFFICER VIZCARRA, WHETHER OR NOT
3 THE GUN THAT SUSPECT ONE WAS USING HAD JAMMED AT SOME
4 POINT. DO YOU REMEMBER COUNSEL ASKING YOU THAT?

5 A YES.

6 Q AND YOU REMEMBER THAT YOU WERE SHOWN SOME
7 PAPERS AND I'M NOT SURE HOW COUNSEL MARKED IT, BUT I'M
8 GOING TO SHOW IT -- I'LL GO AHEAD AND MARK IT MYSELF,
JUST SO WE ARE CLEAR.

10 MR. SIMS: I THINK THIS IS PEOPLE'S 15.

11 THE COURT: 16.

12 MR. SIMS: PEOPLE'S 16.

13 (MARKED FOR IDENTIFICATION

14 PEOPLE'S EXHIBIT 16.)

15 BY MR. SIMS:

16 Q SHOWING YOU WHAT HAS BEEN MARKED AS PEOPLE'S
17 EXHIBIT 16, AND THERE'S THE AREA AT THE BOTTOM OF THE
18 PAGE, BOTTOM PARAGRAPH, THAT INDICATES THAT JOEL WAS ABLE
19 TO KICK OFF SUSPECT ONE. DO YOU REMEMBER COUNSEL ASKING
20 YOU ABOUT THAT?

21 A YES.

22 Q OKAY. AND DO YOU REMEMBER SAYING THAT JOEL
23 WAS ABLE TO KICK OFF SUSPECT ONE TO THE OFFICER THAT MAY
24 HAVE WRITTEN THAT REPORT?

25 A I SAID -- YES, YES, OKAY -- OKAY.

26 Q AND WHAT WERE YOU CONVEYING TO THE OFFICER
27 AT THAT TIME WHEN YOU HAD THAT CONVERSATION?

28 A OKAY. PRETTY MUCH HE KICKED HIM OFF, BUT

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1 WITH DUCK'S HELP, PULLING UP HIS COLLAR, PULLING THE BACK
2 OF HIS COLLAR.

3 Q NOW, KEEPING IN MIND THAT DOCUMENT THAT'S
4 JUST BEEN MARKED AS PEOPLE'S 16. IT'S ALSO BEEN
5 PREVIOUSLY MARKED BY THE DEFENSE --

6 MR. DAVIS: MISSTATES THE RECORD. I DID NOT MARK
7 IT AS AN EXHIBIT. I DISPLAYED IT TO REFRESH HIS
8 RECOLLECTION.

THE COURT: SUSTAINED.

10 BY MR. SIMS:

11 Q YOU DIDN'T WRITE THAT DOCUMENT, DID YOU?

12 A NO, I DIDN'T.

13 Q AND AS FAR AS YOU READING THAT BRIEF
14 PARAGRAPH, THAT IS AN INTERPRETATION OF WHAT YOU SAID TO
15 THAT OFFICER, CORRECT?

16 A YES.

17 MR. DAVIS: OBJECTION. SPECULATION.

THE COURT: SUSTAINED.

19 MR. DAVIS: MOTION TO STRIKE THE ANSWER.

20 THE COURT: MOTION GRANTED.

21 BY MR. SIMS:

22 Q WELL, IT ISN'T VERBATIM WHAT YOU SAID TO
23 THAT OFFICER, IS IT?

24 A YES.

25 Q IF YOU READ IT, IS IT VERBATIM?

26 A NOT THERE, NO.

27 Q IT'S NOT VERBATIM WHAT YOU SAID?

28 A NO.

1 Q NOW, YOU INDICATED THAT YOU WENT TO VISIT
2 RODNEY IN THE HOSPITAL?

3 A YES.

4 Q AND FOR A PERIOD OF TIME WHEN YOU WENT TO
5 VISIT HIM, HE WAS UNABLE TO COMMUNICATE WITH YOU; ISN'T
6 THAT TRUE?

7 A TRUE.

8 Q HOW LONG WAS IT BEFORE YOU WERE ABLE TO
COMMUNICATE WITH RODNEY?

10 A IT WAS ABOUT THREE TO FOUR WEEKS.

11 Q AND WHEN YOU WERE FINALLY ABLE TO
12 COMMUNICATE WITH HIM, DID YOU HAVE LONG CONVERSATIONS
13 WITH HIM OR HOW WAS IT HE WAS ABLE TO CONVERSE WITH YOU?

14 A NO, IT WAS -- AT THE TIME THERE WAS TOO MANY
15 PEOPLE, AND THEY WERE ONLY ALLOWED SO MUCH TIME, BECAUSE
16 HE WAS STILL IN PRETTY CRITICAL CONDITION.

17 Q DID HE SPEAK --

18 MR. DAVIS: EXCUSE ME. MOTION TO STRIKE,
19 NONRESPONSIVE, HOW LONG.

20 THE COURT: SUSTAINED.

21 MR. DAVIS: MOTION TO STRIKE.

22 THE COURT: MOTION GRANTED.

23 BY MR. SIMS:

24 Q DID YOU SPEAK --

25 THE COURT: HOLD ON A MINUTE.

26 SUSTAINED AS TO THE WHOLE RESPONSE.

27 BY MR. SIMS:

28 Q DID HE SPEAK IN LONG, FULL SENTENCES WITH

1 YOU, OR WERE HIS RESPONSES SHORT AND CURT?

2 A PRETTY MUCH SHORT. WE WERE BASICALLY
3 TALKING ABOUT HOW HE WAS FEELING. THAT'S IT.

4 Q NOW, DO YOU KNOW, OR WERE YOU ABLE TO SEE
5 WHAT HIS INJURIES WERE?

6 A YES.

7 Q OKAY. AND AS FAR AS YOU COULD SEE, NOT TO
8 THE EXTENT OR HOW GRAPHIC THEY WERE, BUT AS FAR AS YOU
9 COULD SEE, WHERE WERE HIS INJURIES?

10 MR. DAVIS: OBJECTION, 352, CUMULATIVE.

11 THE COURT: OVERRULED. I'VE GIVEN BOTH SIDES
12 REASONABLE LATITUDE.

13 BY MR. SIMS:

14 Q WHERE WERE HIS INJURIES?

15 A TO THE MID-SECTION.

16 Q DO YOU KNOW WHETHER OR NOT HE HAD ANY
17 INJURIES TO HIS LEG?

18 A HE WAS SHOT IN HIS KNEE. I THINK THE BULLET
19 PASSED STRAIGHT THROUGH OR SOMETHING LIKE THAT.

20 Q WELL, YOU KNOW HE --

21 MR. DAVIS: MOTION TO STRIKE, SPECULATION.

22 THE COURT: AS TO "STRAIGHT THROUGH OR SOMETHING
23 LIKE THAT," MOTION GRANTED.

24 BY MR. SIMS:

25 Q MY QUESTION IS: YOU KNOW HE HAD AN INJURY
26 TO HIS CHEST, CORRECT?

27 A YES.

28 Q AND YOU ALSO KNEW HE HAD AN INJURY TO HIS

1 KNEE, CORRECT?

2 A TO HIS STOMACH, NOT HIS CHEST.

3 Q HIS STOMACH, AND THERE WAS AN INJURY TO HIS
4 KNEE?

5 A YES.

6 Q AND DO YOU KNOW IF RODNEY -- AS FAR AS YOU
7 SAW, ON SEPTEMBER 11TH, DO YOU KNOW HOW MANY TIMES HE WAS
8 SHOT?

A TWICE.

10 Q NOW, SUSPECT ONE AND SUSPECT TWO, YOU
11 INDICATED THAT YOU HADN'T SEEN THEM BEFORE, PRIOR TO THAT
12 NIGHT?

13 A NO.

14 Q NOW, THERE WAS A --
15 THE COURT: THAT WAS A DOUBLE NEGATIVE.
16 BY MR. SIMS:

17 Q SUSPECT ONE AND SUSPECT TWO, HAD YOU SEEN
18 THEM BEFORE SEPTEMBER 11TH, THAT EVENING?

19 A NO, I HADN'T.

20 Q AND YOU INDICATED IN THE PRELIMINARY HEARING
21 TRANSCRIPT, AND COUNSEL MIGHT HAVE ASKED YOU ABOUT IT,
22 WHETHER OR NOT THAT THEY -- YOU DIDN'T KNOW THEM, BUT
23 THEY WEREN'T EXACTLY STRANGERS TO YOU OR SOMETHING TO
24 THAT EFFECT. DO YOU REMEMBER THAT?

25 A I DIDN'T KNOW THEM. I HAD NEVER SEEN THEM
26 BEFORE THE NIGHT.

27 MR. DAVIS: OBJECTION, NONRESPONSIVE, "DO YOU
28 REMEMBER."

1 THE COURT: OVERRULED.

2 MR. DAVIS: MOTION TO STRIKE.

3 THE COURT: THE OBJECTION IS OVERRULED.

4 BY MR. SIMS:

5 Q TO THE EXTENT THAT YOU MIGHT HAVE SAID THAT
6 THEY WEREN'T STRANGERS TO YOU, WHAT DID YOU MEAN BY THAT?

7 A I DON'T REMEMBER SAYING THAT.

8 Q OKAY. AS FAR AS YOU KNOW, YOU DIDN'T KNOW
THEM AT ALL?

10 A I DIDN'T KNOW THEM AT ALL.

11 Q NOW, YOU INDICATED THAT THE DEFENDANT WAS ON
12 THE MOTORCYCLE, AND HE WAS TAKING THOSE MOMENTS ON THE
13 MOTORCYCLE BEFORE IT TOOK OFF. DID YOU TRY TO STOP HIM?

14 A NO, I DIDN'T.

15 Q AND YOU'VE KNOWN RODNEY FOR HOW LONG?

16 A RODNEY?

17 Q YES.

18 A OR DUCK?

19 Q RODNEY, HOW LONG?

20 A ABOUT SEVEN YEARS.

21 Q YOU KNOW JOEL IS RODNEY'S SON, CORRECT?

22 A I HAD JUST MET HIM.

23 Q AND YOU SAW THAT YOUR FRIEND OF AT LEAST
24 SEVEN YEARS WAS SHOT AND HIS SON WAS SHOT, CORRECT?

25 A YES.

26 Q AND THERE'S THIS MAN SITTING ON THIS
27 MOTORCYCLE FOR AT LEAST SOME PERIOD OF TIME, CORRECT?

28 A YES.

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1 Q ANY REASON WHY YOU DIDN'T STOP HIM?

2 A HE HAD A GUN.

3 Q IN YOUR MIND WAS THERE A POSSIBILITY YOU TOO
4 COULD GET SHOT?

5 A EXACTLY.

6 Q NOW, YOU INDICATED THAT YOU SAW THE
7 DEFENDANT ON HIS MOTORCYCLE, AND AS YOU RECALLED IT,
8 THERE WEREN'T THOSE WHITE WOODEN SLATS THERE THAT DAY?

A CORRECT.

10 Q BUT YOU WERE SHOWN THE PHOTOGRAPH AND IT
11 APPEARED TO YOU IN FACT THERE WERE THOSE WHITE WOODEN
12 SLATS?

13 A YES.

14 Q AT THE POINT IN TIME IN WHICH YOU ORIGINALLY
15 TESTIFIED THAT THERE WEREN'T THOSE SLATS, WERE YOU TRYING
16 TO MISLEAD ANYONE?

17 A NO.

18 Q WERE YOU MISTAKEN ABOUT THE FACT THAT THERE
19 WERE SLATS THERE?

20 A MISTAKEN.

21 Q YOUR ORIGINAL MEMORY WAS THAT THERE WEREN'T
22 THOSE SLATS, CORRECT?

23 MR. DAVIS: LEADING.

24 THE WITNESS: WHAT ARE WE TALKING ABOUT, THIS TIME
25 OR THE PRIOR?

26 THE COURT: DID I HEAR AN OBJECTION?

27 MR. DAVIS: LEADING.

28 THE COURT: OVERRULED.

1 BY MR. SIMS:

2 Q WHEN THERE WAS THE ORIGINAL DISCUSSION
3 BETWEEN YOU AND COUNSEL WITH REGARDS TO THOSE WOODEN
4 PLANKS OR SLATS BEING THERE, YOUR FIRST RECOLLECTION WAS
5 THAT THEY WEREN'T THERE, CORRECT?

6 A RIGHT.

7 Q BUT THE PHOTOGRAPH SOMEHOW CHANGED YOUR
8 RECOLLECTION, CORRECT?

9 A RIGHT.

10 Q AND JUST SO I CAN UNDERSTAND, WHEN THERE
11 WERE THE ORIGINAL WORDS BEING PASSED BETWEEN SUSPECT ONE
12 AND THEN JOEL STEPS INTO IT, AS YOU INDICATED, YOU WERE
13 BETWEEN SUSPECT ONE AND JOEL, CORRECT?

14 A YES.

15 Q AND THEN THERE'S A POINT IN TIME IN WHICH
16 YOU RECOGNIZE THAT SUSPECT ONE HAS THIS GUN EITHER IN HIS
17 POCKET OR WAISTBAND BUT DISPLAYED IN SOME DEGREE?

18 A YES.

19 MR. DAVIS: OBJECTION, THREE ALTERNATIVES,
20 COMPOUND, MISSTATES THE EVIDENCE.

21 THE COURT: SUSTAINED.

22 MR. DAVIS: MOTION TO STRIKE.

23 THE COURT: MOTION GRANTED.

24 BY MR. SIMS:

25 Q YOU RECALL TODAY IT WAS IN HIS WAISTBAND,
26 CORRECT?

27 A EITHER THE WAISTBAND OR POCKET. LIKE I
28 SAID, IT'S BEEN A WHILE. I KNEW HE HAD THE GUN ON THAT

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1 RIGHT SIDE.

2 Q AND AT SOME POINT YOU SAW HIM DISPLAY THE
3 GUN, CORRECT?

4 A YES.

5 Q WHERE IS JOEL WHEN YOU SEE HIM DISPLAY THE
6 GUN?

7 A HE'S STANDING TO MY RIGHT.

8 Q ARE YOU IN BETWEEN THE GUY WITH THE GUN AND
JOEL?

10 A YES.

11 Q AND YOU DESCRIBED THE MOTION, IN ORDER FOR
12 YOU TO SEE THE GUN, IS THE GUY WAS LIFTING SOME PART OF
13 HIS CLOTHING UP, CORRECT?

14 A YES.

15 Q AND AS THE GUY LIFTED THAT PART OF HIS
16 CLOTHING UP AND YOU PUT YOUR HAND ON THE GUN OR ON HIS
17 HAND WHICH WAS ON THE GUN, DID YOU TURN TO JOEL?

18 A I TURNED TO JOEL. AT THAT POINT HE WENT
19 AROUND ME.

20 Q OKAY. WERE YOU GOING TO SAY SOMETHING TO
21 HIM?

22 A I WAS GOING TO SAY SOMETHING TO HIM.

23 Q DID YOU GET A CHANCE TO SAY SOMETHING TO
24 JOEL?

25 A NO, I DIDN'T.

26 Q BEFORE YOU COULD SAY SOMETHING TO JOEL, DID
27 JOEL DO SOMETHING?

28 A YES.

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1 Q WHAT DID HE DO?

2 A HE ATTACKED S-1.

3 Q WERE S-1'S HANDS STILL ON THE GUN WHEN JOEL
4 ATTACKED HIM?

5 A HE HAD PULLED IT OUT AT THAT TIME.

6 Q DID HE PULL IT OUT COMPLETELY OR WAS IT
7 STILL TO SOME DEGREE TUCKED IN HIS CLOTHING?

8 MR. DAVIS: OBJECTION. LEADING AND COMPOUND.

THE COURT: COMPOUND. SUSTAINED.

10 BY MR. SIMS:

11 Q DID HE PULL IT OUT COMPLETELY?

12 A COMPLETELY.

13 Q WERE BOTH OF HIS HANDS ON THE GUN?

14 A YEAH, RIGHT HAND WAS ON THE TRIGGER, AND THE
15 LEFT HAND WAS TRYING TO RACK THE GUN.

16 Q SO WAS SUSPECT ONE THROWING ANY PUNCHES TO
17 JOEL?

18 A NO.

19 Q NOW, SUSPECT ONE WAS BIGGER THAN JOEL,
20 CORRECT?

21 A YES.

22 Q AND JOEL WAS ABLE TO GET SUSPECT ONE DOWN ON
23 THE GROUND?

24 A YES.

25 Q AS SUSPECT ONE IS ON THE GROUND, YOU
26 INDICATED JOEL IS STILL PUNCHING AT HIM, CORRECT?

27 A YES.

28 Q NOW, IS JOEL STANDING OR -- IF YOU COULD

1 STEP DOWN AND SHOW US, HOW WAS JOEL STANDING?

2 A OKAY. SUSPECT ONE WAS ON THE GROUND, JOEL
3 WAS STANDING OVER HIM LIKE THIS, THROWING BLOWS TO HIM.

4 MR. SIMS: OKAY. AND FOR THE RECORD, YOUR HONOR,
5 THE WITNESS HAS INDICATED THAT HE HAD HIS LEGS SPREAD --

6 THE COURT: I'D LIKE TO DO -- IT'S GOOD PRACTICE,
7 SINCE HE'S THE ONLY ONE UNDER OATH, LET HIM DESCRIBE WHAT
8 HE JUST DEMONSTRATED.

9 MR. SIMS: SOMETIMES WE DO IT. IF THE COURT WOULD
10 PREFER.

11 Q DESCRIBE IN YOUR WORDS, SIR, HOW JOEL WAS
12 POSITIONED.

13 A OKAY. SUSPECT ONE WAS ON THE GROUND, TRYING
14 TO RACK THE GUN, JOEL WAS OVER THE TOP OF HIM, THROWING
15 BLOWS AT HIM IN A DOWNWARD MOTION.

16 Q AND HOW WERE JOEL'S LEGS?

17 A THEY WERE SPREAD OVER THE TOP OF HIM.

18 Q AND HOW WAS JOEL'S BACK POSITIONED?

19 A HE WAS BENT OVER.

20 Q OKAY. THANK YOU. AND AS JOEL WAS IN THAT
21 POSITION THAT YOU DESCRIBED, IS THAT -- YOU CAN TAKE YOUR
22 SEAT, SIR. I'M SORRY. WAS THAT WHEN THE DEFENDANT
23 GRABBED JOEL BY THE COLLAR?

24 A YES.

25 Q OKAY. AND DID HE RAISE HIM UP TO ANY
26 DEGREE?

27 A YES.

28 Q WHEN YOU MADE YOUR DESCRIPTIONS OF THE THREE

1 PEOPLE, SUSPECT ONE, SUSPECT TWO AND THE DEFENDANT, DID
2 YOU GIVE PHYSICAL DESCRIPTIONS OF EACH ONE?

3 A YES.

4 Q OKAY. AND DID YOU MAKE COMMENTS ABOUT THIS
5 DEFENDANTS HAIRSTYLE OR HAIR OR ANYTHING OF THAT NATURE?

6 A I'M NOT SURE.

7 Q AND DO YOU RECALL WHETHER OR NOT HE WAS
8 WEARING A CAP OR ANYTHING ON HIS HEAD AT THAT TIME?

9 A HE WAS WEARING A CAP.

10 Q IF YOU RECALL, WHAT KIND OF CAP?

11 A IT WAS JUST A BLACK CAP, WHAT HARLEY RIDERS
12 WEAR, THEY PUT THEIR HELMET OVER THE TOP OF THAT CAP.

13 Q DO YOU RECALL WHAT KIND OF MATERIAL THE CAP
14 WAS MADE OF?

15 A NO, I DON'T.

16 Q TO THE EXTENT THAT YOU'VE BEEN SHOWN
17 PORTIONS OF TESTIMONY GIVEN AT A PRELIMINARY HEARING
18 PRIOR TO TODAY'S DATE THAT MAY HAVE BEEN DIFFERENT THAN
19 YOU RECALL THEM OR SAID THEM TODAY, IS THERE ANY DOUBT IN
20 YOUR MIND WHO SHOT JOEL?

21 A NO.

22 Q OKAY. DID THE DEFENDANT SHOOT JOEL?

23 A YES.

24 Q IS THERE ANY DOUBT IN YOUR MIND, OR ARE YOU
25 INCORRECT IN ANY WAY, ABOUT WHO SHOT RODNEY?

26 A NO.

27 Q DID THE DEFENDANT SHOOT RODNEY?

28 A YES.

1 MR. SIMS: THANK YOU. I HAVE NO FURTHER
2 QUESTIONS.

3 THE COURT: MR. DAVIS, DO YOU HAVE ANY
4 QUESTIONS?

5 MR. DAVIS: YES, YOUR HONOR.
6

7 RECROSS-EXAMINATION

8 BY MR. DAVIS:

9 Q WELL, IT'S NOT TIME FOR ME TO NOT HAVE ANY
10 QUESTIONS. AND YOU WERE CERTAIN, WHEN YOU PICKED JOHNNY
11 CLARK IN THE SIX-PACK, WEREN'T YOU, SIR?

12 A NO, I WASN'T SIR. IT LOOKED LIKE HIM.

13 Q YOU POSITIVELY IDENTIFIED HIM, AND
14 COMMUNICATED THAT TO DETECTIVE POHL, THAT JOHNNY CLARK,
15 THE CIRCLED MAN, WAS S-1; ISN'T THAT TRUE?

16 A YES.

17 Q YOU LOOKED POHL IN THE EYE AFTER YOU CIRCLED
18 THAT YOUNG MAN'S FACE, AND DIDN'T SAY ONE THING TO HIM TO
19 HAVE HIM FEEL LIKE YOU WEREN'T POINTING AT AND PICKING
20 THE S-1; ISN'T THAT WHAT YOU DID?

21 A YES.

22 MR. DAVIS: I HEARD YOU GIVE ANSWERS TO QUESTIONS
23 ABOUT YOUR TESTIMONY AT PRELIMINARY HEARING, AND I'M NOT
24 GOING OVER THAT, BUT I WOULD ASK IF IT'S APPROPRIATE THAT
25 IT BE TAKEN PERHAPS BY JUDICIAL NOTICE THAT THAT
26 PRELIMINARY HEARING OCCURRED ON MONDAY, MARCH 6TH, 2006
27 IF A CONVENIENT RECORD IS AVAILABLE FOR THE COURT.

28 I HAVE A VOLUME, IF THAT MIGHT ASSIST.

1 THE COURT: NO. I HAVE THE TRANSCRIPT, BUT THE
2 TRANSCRIPT ITSELF REFLECTS A DATE. I'M LOOKING TO THE
3 MINUTE ORDERS OF THE COURT WHICH ARE INCLUDED IN THE
4 FILE, SINCE YOU ARE ASKING ME TO TAKE JUDICIAL NOTICE OF
5 THE COURT'S RECORDS.

6 THE COURT DOES NOTE BOTH BY WAY OF THE
7 SIGNED HOLDING ORDER AND THE COURT'S OWN RECORD THAT THE
8 PRELIMINARY HEARING AS IT PERTAINED TO MR. SANDERS WAS
CONDUCTED ON MARCH 6TH OF 2006.

10 MR. DAVIS: THANK YOU, YOUR HONOR.

11 Q AND REMARKABLY WE FINISHED IT IN LESS THAN A
12 DAY, DIDN'T WE?

13 A YES, WE DID.

14 Q RIGHT. IT WAS LIKE FAST FOOD COMPARED TO
15 TRIAL, WASN'T IT?

16 A YES, IT WAS.

17 Q SO WHEN YOU SAID GENERALLY TO MR. SIMS THAT
18 YOU WERE ASKED THE SAME QUESTIONS AT PRELIM, AND YOU GAVE
19 SIMILAR ANSWERS AT PRELIM AS YOU HAVE AT TRIAL, THAT WAS
20 A GENERAL RESPONSE TO A GENERAL QUESTION, AGREED?

21 A YES.

22 Q AND IF I'M CORRECT, ONE OF THE THINGS THAT I
23 JUST BROUGHT TO YOUR ATTENTION TODAY WAS THAT AT
24 PRELIMINARY HEARING, YOU HAD INDICATED THAT THE GUN FOR
25 S-1 WAS IN HIS POCKET, RIGHT?

26 A RIGHT.

27 Q AND HERE AT TRIAL YOU HAD SAID IT WAS IN HIS
28 WAISTBAND, CORRECT?

1 A YES.

2 Q NO BIG DEAL, RIGHT?

3 A NO.

4 Q NO. BUT DIDN'T YOU JUST NOW, IN ANSWERING
5 MR. SIMS' QUESTIONS, SAY THAT THE GUN WAS EITHER IN HIS
6 WAIST OR HIS POCKET? DIDN'T YOU JUST SAY THAT?

7 A I SAID IT WAS ON HIS RIGHT SIDE.

8 Q BUT YOU SAID EITHER IN HIS WAIST OR POCKET,
RIGHT HERE UNDER OATH TO MR. SIMS, RIGHT?

10 A YES, I DID.

11 Q SO YOU WOULD ACKNOWLEDGE THAT ALTHOUGH YOU
12 SAID "POCKET" AT PRELIM AND INITIALLY "WAIST" HERE, THE
13 PRELIM RECORD BROUGHT TO YOUR ATTENTION MODIFIED YOUR
14 TESTIMONY, DIDN'T IT, CHANGED IT A LITTLE?

15 A NO, NOT AT ALL.

16 Q AND THEN HERE IN TRIAL, IF I MIGHT, YOU WERE
17 SHOWN PHOTOGRAPHS OF THE BACK ALLEY AREA, WHERE YOU SAID,
18 UNDER OATH, THAT YOU HAD COME OUT AND SEEN MY CLIENT GET
19 ON A MOTORCYCLE, CONTEMPLATE SOMETHING, AND DRIVE AWAY.

20 YOU REMEMBER THAT TESTIMONY, RIGHT?

21 A YES, I DO.

22 Q AND YOU SAID BOARDS THAT WERE IN THAT
23 PHOTOGRAPH I SHOWED YOU WERE NOT THERE ON THE NIGHT IN
24 QUESTION. YOU DID SAY THAT UNDER OATH, DIDN'T YOU?

25 A YES, I DID.

26 Q AND THEN YOU SAW PHOTOGRAPHS, AND HAVING
27 SEEN THE PHOTOGRAPHS, THAT CHANGED YOUR TESTIMONY
28 SOMEWHAT, DIDN'T IT?

1 A NO, IT DIDN'T.

2 Q I UNDERSTAND. AND IN YOUR VIEW IT DIDN'T
3 CHANGE YOUR TESTIMONY AT ALL, DID IT?

4 A NOT AT ALL.

5 Q BECAUSE YOU WEREN'T ABOUT TO SAY YOU COULD
6 SEE THROUGH BOARDS, RIGHT?

7 A APPARENTLY I STEPPED A LITTLE BIT FURTHER
8 OUT SO I COULD SEE THROUGH THE GATE.

9 Q THAT'S YOUR NEW TESTIMONY SINCE THE
10 PHOTOGRAPH, ISN'T IT, A LITTLE FURTHER OUT?

11 A A LITTLE FURTHER OUT.

12 Q JUST MOVING IT OUT A LITTLE MORE, RIGHT?

13 A YES.

14 Q IF I UNDERSTAND WHAT YOU'VE TOLD US TODAY
15 ABOUT THE IDENTIFICATION OF JOHNNY CLARK IN THE SIX-PACK,
16 YOU HAD INFORMATION FROM THE STREET BEFOREHAND THAT IT
17 WAS SOMEBODY J, RIGHT?

18 A YES.

19 Q AND YOU COMMUNICATED THAT TO DETECTIVE POHL,
20 J?

21 A YES.

22 Q BUT YOU DIDN'T TELL HIM THAT IT CAME FROM
23 THE STREET; YOU TOLD HIM IN A MANNER TO INTEND FOR HIM TO
24 THINK IT CAME FROM YOUR PERSONAL KNOWLEDGE, DIDN'T YOU?

25 A NO.

26 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

27 THE COURT: OVERRULED.

28

1385

1 BY MR. DAVIS:

2 Q YOUR INTENTION IN TELLING HIM J IN THE
3 MANNER YOU DID WAS TO MAKE HIM THINK YOU HAD PERSONAL
4 KNOWLEDGE THAT THE SHOOTER'S NAME WAS J?

5 A I HAD PERSONAL KNOWLEDGE, FROM A COUPLE OF
6 FRIENDS AND IT WASN'T FROM THE STREET. IT WAS FRIENDS
7 THAT KNEW THIS PERSON.

8 Q ALL RIGHT. AND WHO ARE THEY? WHAT WAS THE
9 QUALITY OF THEIR INFORMATION THAT WOULD MAKE YOU IDENTIFY
10 THIS MAN?

11 A THEY TOLD ME HIS NAME WAS J.

12 Q FINE. WHO ARE THEY? WHAT IS THE QUALITY OF
13 THE INFORMATION YOU RELIED ON TO GIVE THAT TO LAW
14 ENFORCEMENT?

15 A IT WAS PRETTY RELIABLE.

16 Q WHO ARE THEY?

17 A I CAN'T TELL YOU THAT.

18 Q THEY CHANGED THE IDENTIFICATION TO AN
19 INNOCENT MAN, DIDN'T THEY?

20 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
21 CONCLUSION. ARGUMENTATIVE.

22 THE WITNESS: NO --

23 THE COURT: THERE'S AN OBJECTION. SUSTAINED.

24 BY MR. DAVIS:

25 Q ALL RIGHT. I'M ASKING YOU IN FRONT OF THIS
26 JURY, SO WE CAN UNDERSTAND THE QUALITY OF THE INFORMATION
27 YOU GOT FROM THESE PEOPLE, WHO ARE THEY?

28 MR. SIMS: OBJECTION, RELEVANCE.

1 THE COURT: OVERRULED.

2 BY MR. DAVIS:

3 Q THEIR NAMES, SIR.

4 A I CAN'T GIVE YOU THEIR NAMES.

5 Q WHY NOT?

6 A I JUST CAN'T.

7 Q THE REASON IS?

8 A THEY'RE NOT INVOLVED IN THIS. I AM.

9 Q BUT YOU HAVE COME INTO THIS COURTROOM AND
10 YOU'VE SAID THAT YOU HEARD NO WORD ON THE STREET THAT MY
11 CLIENT WASN'T A SHOOTER, AND THAT YOU HEARD WORD ON THE
12 STREET THAT A GUY NAMED J WAS THE SHOOTER, AND THEN YOU
13 HEARD WORD ON THE STREET THAT THAT WAS WRONG; HE WASN'T
14 THE SHOOTER, AND THAT AFFECTS IDENTITY EVIDENCE IN THIS
15 CASE. YOU APPRECIATE THAT, DON'T YOU?

16 A PUT IT LIKE THIS: I KNOW DUCK. DUCK WAS
17 THE SHOOTER.

18 Q YOU'VE MADE THAT POINT.

19 A OKAY.

20 Q BUT YOU HAVEN'T ANSWERED MY QUESTION.

21 A WHAT'S THAT?

22 Q WHAT IS THE QUALITY OF THE INFORMATION YOU
23 RELIED ON TO ACCUSE AN INNOCENT MAN, AND THEN CHANGE IT
24 MONTHS AFTER HE'S IN JAIL TO SAY IT WASN'T HE? WHAT'S
25 THE QUALITY OF THAT INFORMATION?

26 A WE --

27 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
28 CONCLUSION. ARGUMENTATIVE.

THE COURT: WELL, OVERRULED. IT'S RELEVANT. IT
GOES TO THE IDENTIFICATION.

THE WITNESS: COULD YOU EXPLAIN THAT, PLEASE,
AGAIN.

BY MR. DAVIS:

Q WHAT ARE THEIR NAMES, THE PEOPLE ON THE STREET
THAT HAD INFLUENCE ON YOU TO PICK JOHNNY CLARK, AND IF
IT'S NOT A DIFFERENT GROUP, TO UNPICK JOHNNY CLARK?

MR. SIMS: OBJECTION, CALLS FOR DISCOVERY.

THE COURT: OVERRULED.

BY MR. DAVIS:

Q IT'S NOT FORTHCOMING, IS IT? YOU'RE NOT GOING
TO TELL US, ARE YOU?

A I'M NOT GOING TO GIVE YOU THE NAMES --

Q YOU'RE NOT GOING --

A -- UNDER ANY CIRCUMSTANCES TO GIVE YOU THE
NAMES.

MR. DAVIS: RIGHT. THEN I WOULD ASK THAT THE
COURT ORDER HIM TO RESPOND.

THE COURT: I'LL TELL YOU WHAT WE'RE GOING TO DO:
LET'S EXCUSE THE JURY BACK TO THE JURY ROOM. CLOSE THE
DOOR, THE LAST PERSON IN. THE ALTERNATE JURORS, IF
YOU'LL PLEASE GO OUT TO THE HALLWAY AND STAY CLOSE.

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT OUTSIDE

THE PRESENCE OF THE JURY:)

///

1388

1 THE COURT: SIR, LET ME EXPLAIN JUST A COUPLE OF
2 THINGS TO YOU. SO LONG AS THE COURT FINDS THAT WHATEVER
3 INFORMATION IS BEING SOLICITED BY EITHER ONE OF THE
4 ATTORNEYS IS RELEVANT TO THIS PARTICULAR CASE, THEN IT
5 IS WITHIN THE COURT'S POWER, IF A WITNESS REFUSED TO
6 ANSWER, TO FIND THAT PERSON IN CONTEMPT.

7 THE WITNESS: YES.

8 THE COURT: AND THE COURT HAS VARIOUS POWERS,
9 VARIOUS CONTEMPT POWERS. IT CAN FINE YOU. IT CAN
1 INCARCERATE YOU UNTIL SUCH TIME AS YOU ARE PREPARED TO
11 ANSWER THE QUESTION.

12 LET ME EXPLAIN FURTHER TO YOU THAT IT IS
13 RELEVANT. THIS CASE, BASED UPON WHAT I'VE HEARD OVER
14 THE LAST FOUR OR FIVE DAYS, REALLY GOES TO
IDENTIFICATION, AND IT GOES TO THE CREDIBILITY OF THE
16 PEOPLE WHO HAVE TESTIFIED WITH RESPECT TO EITHER AN
17 IDENTIFICATION OR THE INABILITY TO MAKE THAT
18 IDENTIFICATION.

1 MR. DAVIS PREVIOUSLY LET IT SLIDE. I WAS
20 WAITING FOR A REQUEST EITHER YESTERDAY -- PROBABLY WAS
21 YESTERDAY -- WITH RESPECT TO THE INFORMATION. YOU DID
22 INDICATE YESTERDAY THAT YOU DIDN'T WANT TO DISCLOSE
23 ANYBODY.

24 THE WITNESS: YES.

25 THE COURT: AND THERE'S A REASON FOR IT, AND IT
26 GOES TO YOUR CREDIBILITY, THE CREDIBILITY OF YOUR
27 MOTORCYCLE CLUB, AND IT SOUNDS TO ME LIKE IT ALSO GOES
28 TO THE RULES WHICH ARE PROMULGATED WITHIN YOUR CIRCLE OF

1 FRIENDS, THAT YOU DON'T GET SOMEBODY INVOLVED UNLESS
2 THEY THEMSELVES WANT TO GET INVOLVED.

3 WE'RE PAST THAT STAGE. WE'RE SITTING IN A
4 CRIMINAL COURT, TRYING TO MAKE A DETERMINATION AS TO
5 WHAT OCCURRED ON OR ABOUT 9-11 OF 2005. THE MERE FACT
6 THAT YOU MAY SAY THE INFORMATION IS IRRELEVANT DOESN'T
7 MAKE IT IRRELEVANT.

8 THE WITNESS: OKAY.

9 THE COURT: BECAUSE THERE ARE OTHER FACTORS THAT
10 GO INTO THAT. THE DEFENSE NEEDS A REASONABLE
11 OPPORTUNITY TO DEVELOP THEIR DEFENSE.

12 THE WITNESS: OKAY.

13 THE COURT: AND CERTAINLY ONE OF THEIR DEFENSES
14 IS, A, MISIDENTIFICATION, SO IT IS IMPORTANT THAT THEY
KNOW, AND THE FACT-FINDERS KNOW, BECAUSE THEY'RE GOING
16 TO HAVE TO FACTOR THIS INTO THEIR ASSESSMENT OF
17 CREDIBILITY, ALL RELEVANT INFORMATION.

18 I THINK IT'S RELEVANT BASED UPON WHAT'S BEEN
19 ESTABLISHED UP TO THIS POINT IN TIME THAT THERE WAS A
20 MISIDENTIFICATION IN THE FIRST INSTANCE, THAT YOU
21 RECEIVED INFORMATION THAT THE PERSON THAT YOU
22 IDENTIFIED, AND THERE'S A QUESTION WHETHER OR NOT YOU
23 ABSOLUTELY IDENTIFIED HIM, OR YOU GAVE A QUALIFYING
24 IDENTIFICATION, BUT NONETHELESS, THAT THAT PERSON WAS
25 NOT THE PERSON WHO WAS PRESENT AT THAT PARTICULAR TIME,
26 I.E., SUSPECT NUMBER ONE.

27 I THINK IT IS IMPORTANT, AND, THEREFORE, BASED
28 UPON THE REQUEST -- BEFORE I MAKE THE ORDER, MR. SIMS,

1390

1 DO YOU HAVE ANYTHING TO SAY?

2 MR. SIMS: I WOULD ACTUALLY INQUIRE JUST
3 BRIEFLY -- BECAUSE I DON'T KNOW THE ANSWER TO ONE OF THE
4 ARGUMENTS I WOULD MAKE -- BUT I WOULD INQUIRE IF THE
5 COURT WOULD ALLOW ME OF THE WITNESS, AS TO WHETHER OR
6 NOT THIS COULD BE PHYSICALLY DANGEROUS TO HIM TO REVEAL
7 THIS INFORMATION.

8 THE COURT: NOW, YOU CAN INQUIRE, BUT UP TO THIS
9 POINT IN TIME HE HASN'T INDICATED THAT. WHAT HE'S
10 INDICATED, THAT THERE'S A CERTAIN CODE, A CERTAIN CREDO,
11 IF THAT'S THE CORRECT WORD, WHICH WOULD MAKE HIM
12 UNCOMFORTABLE TO GET OTHER PEOPLE INVOLVED WHO HAVE NOT
13 VOLUNTARILY COME FORWARD.

14 MR. SIMS: I WOULD AGREE THAT'S THE STATE OF THE
15 TESTIMONY AT THIS POINT. I DON'T THINK ANYBODY HAS
16 EXPLORED THE ISSUE I JUST RAISED.

17 THE COURT: EVEN IF IT IS, AND IT GOES TO
18 DEFENSE --

19 MR. SIMS: WELL, MY ARGUMENT WOULD BE IF IT IS,
20 THEN THERE MAY BE CERTAIN EVIDENCE CODE SECTIONS THAT
21 MAY PREVENT THIS DISCOVERY.

22 THE COURT: SUCH AS?

23 MR. SIMS: I DON'T HAVE THE CODE IN FRONT OF ME,
24 BUT I KNOW AS IT RELATES TO POLICE OFFICERS, THERE ARE
25 OFTENTIMES -- THERE'S AN EVIDENCE CODE THAT DOESN'T
26 ALLOW -- ALLOWS FOR THEM TO KEEP CERTAIN INFORMATION
27 PRIVATE.

28 THE COURT: THAT'S PRIVILEGED WORK PRODUCT-TYPE

1391

1 OF INFORMATION, I.E., WHAT WAS THE LOCATION OF THE
2 OBSERVATION, WHO WAS YOUR CONFIDENTIAL INFORMANT.
3 UNLESS IT GOES TO THE CRUX OF THE CASE, I.E., THE GUILT
4 OR INNOCENCE OF THE INDIVIDUAL, THEY'RE NOT REQUIRED TO
5 GIVE UP THAT INFORMATION.

6 I THINK IT PERTAINS SOLELY TO POLICE OFFICERS,
7 AND IT PERTAINS TO A PRIVILEGE THAT THEY RETAIN.

8 MR. SIMS: AND THE COURT IS LIKELY CORRECT ABOUT
9 THAT, ALTHOUGH I DON'T HAVE IT IN FRONT OF ME. MY GUT
1 REACTION TENDS TO AGREE WITH THE COURT. HOWEVER, IN
11 THIS INSTANCE, IN ORDER TO BE -- IN ORDER TO PUT
12 MR. THOMAS IN THE BEST POSITION, WITHOUT JEOPARDIZING
13 HIM PHYSICALLY, I THINK I NEED TO KNOW THAT INFORMATION,
14 AS TO WHETHER OR NOT THAT MAKES HIM UNCOMFORTABLE.

MR. THOMAS --

16 THE COURT: BEFORE YOU GO ANY FURTHER, THERE
17 ARE -- OTHER THAN COURT PERSONNEL AND PARTIES AND
18 ASSISTANTS TO THE PARTIES PRESENT IN COURT, THERE
1 APPEARS TO BE MR. SANDERS' FAMILY, AT LEAST I'VE SEEN
20 PEOPLE COME IN AND OUT.

21 MR. DAVIS: IT'S HIS MOTHER AND IMMEDIATE FAMILY.

22 THE COURT: ANY OBJECTION?

23 MR. SIMS: THERE WOULD BE AN OBJECTION IF HE IS TO
24 REVEAL A NAME, NOT TO THE QUESTIONS I'M GOING TO ASK
25 HIM, BUT TO THE NAMES BEING REVEALED.

26 THE COURT: I WOULD FEEL COMFORTABLE FOR THE
27 LIMITED PURPOSE OF THIS INQUIRY IN FACT MAKING IT AN --
28 NOT IN CAMERA, PER SAY, BUT IN CAMERA INVOLVING THOSE

1392

1 PERCIPIENT. IF YOU'LL STEP OUTSIDE, AND WHEN WE'RE
2 READY TO CONTINUE, WE'LL INVITE YOU BACK IN.

3 MR. DAVIS: MY TECH EXPERT --

4 THE COURT: HE CAN STAY. HE'S A MEMBER OF YOUR
5 STAFF.

6 MR. DAVIS: TO THAT EXTENT I WANT TO MAKE A
7 STATEMENT IN COURT, BECAUSE OF THE CARE WE'RE TAKING,
8 I'M INSTRUCTING UNEQUIVOCALLY MEMBERS OF MY STAFF TO
9 KEEP IT CONFIDENTIAL UNTO THEMSELVES.

1 THE COURT: NOTED. MR. SIMS.

11
12 VOIR DIRE EXAMINATION

13 BY MR. SIMS:

14 Q MR. THOMAS, THE INFORMATION YOU'VE DISCUSSED
AND HAVE INDICATED THAT YOU'RE RELUCTANT TO GIVE, IS
16 THAT INFORMATION THAT SHOULD YOU REVEAL IT, COULD
17 POTENTIALLY CAUSE SOME HARM TO YOU?

18 A YES.

1 Q AND IF YOU COULD JUST BRIEFLY DISCUSS WHY IT IS
20 YOU FEEL YOU COULD BE HARMED BY RELATING THIS
21 INFORMATION.

22 A OKAY. I RECEIVED THIS INFORMATION JUST BECAUSE
23 IT WAS ME, OKAY, AND I WASN'T SUPPOSED TO GIVE OUT THIS
24 INFORMATION, AND IF I DID SO, THE PEOPLE THAT GAVE ME
25 THE INFORMATION, THERE'S A POSSIBILITY I COULD HAVE A
26 LITTLE PROBLEM WITH THAT.

27 Q WHEN YOU SAY "A LITTLE PROBLEM," COULD YOU BE
28 PHYSICALLY HARMED?

1393

1 A IT CAN GO FURTHER THAN THAT.

2 Q CAN YOU BE KILLED, SIR?

3 A POSSIBLY.

4 MS. SIMS: THANK YOU. I HAVE NO FURTHER INQUIRY
5 AS TO THAT.

6 THE COURT: DO YOU HAVE ANY QUESTIONS, MR. DAVIS?

7
8 VOIR DIRE EXAMINATION

9 BY MR. DAVIS:

10 Q YES. ARE THESE INDIVIDUALS MEMBERS OF LAW
11 ENFORCEMENT?

12 A NO.

13 Q ARE THEY, FROM WHAT YOU KNOW, MEMBERS OF
14 CRIMINAL ACTIVITY?

A POSSIBLY.

16 Q HAVE THEY EVER THREATENED YOU IN CONNECTION
17 WITH THAT INFORMATION THEY GAVE YOU?

18 A NO.

19 Q WERE THERE CONDITIONS OF THREATS WHEN THEY GAVE
20 IT TO YOU?

21 A NO.

22 Q AND WHAT WAS IT THAT YOUR UNDERSTANDING WAS
23 WITH THEM WHEN THEY IMPARTED THE INFORMATION TO YOU?

24 A THEY GAVE ME THE INFORMATION, NOT FOR ME TO
25 TELL DETECTIVE POHL. THEY JUST GAVE ME THE INFORMATION.

26 Q TO KEEP IT IN YOUR HAT AND GO ON?

27 A EXACTLY.

28 Q AND ASIDE FROM ANYONE TAKING STEPS TO INFORM

1394

1 PEOPLE, SAY, OUT OF THIS TRIAL PROCEEDING, IS THERE ANY
2 LIKELY WAY THEY WOULD UNDERSTAND YOU MAY HAVE REVEALED
3 THE QUALITY AND NAMES OF THE INFORMATION YOU RELIED ON?

4 A COULD YOU --

5 Q YES. YOU COULD GIVE IT HERE IN COURT AND
6 NOTHING COULD HAPPEN? IT'S NOT BEING MONITORED HEAVILY,
7 I WOULD OFFER, FOR THE FEW PEOPLE WHO HAVE BEEN WATCHING
8 IT?

9 A NO, I COULDN'T GIVE THAT INFORMATION.

10 Q ARE THESE PEOPLE WHO LIVE IN THE IMMEDIATE
11 AREA?

12 A WHAT AREA?

13 Q COMPTON, GARDENA.

14 A YES.

Q MORE THAN ONE?

16 A YES.

17 Q MEMBERS OF AN ORGANIZATION?

18 A I DON'T KNOW. I COULDN'T TELL YOU.

19 Q THEY CAME TO YOU?

20 A PRETTY MUCH.

21 THE COURT: WHEN YOU SAY "PRETTY MUCH," WHAT DO
22 YOU MEAN?

23 THE WITNESS: WE -- THEY CAME TO WHERE I WAS AND
24 WE --

25 THE COURT: THEY SOUGHT YOU OUT?

26 THE WITNESS: YES.

27 BY MR. DAVIS:

28 Q ONE WAY THAT YOU MIGHT AVOID HAVING TO REVEAL

1395

1 NAMES WOULD BE TO CLAIM, AFTER HEARING THE PROSECUTION,
2 YOU COULD BE HARMED, CORRECT?

3 A YES.

4 Q IF THAT STOPPED IT, "I MIGHT BE HARMED" IS YOUR
5 RESPONSE, MIGHT END THE INQUIRY, CORRECT?

6 A EXPLAIN THAT TO ME AGAIN. I DON'T UNDERSTAND
7 WHAT YOU'RE SAYING.

8 Q YOU'RE CLAIMING YOU MIGHT BE HARMED, BUT YOU
9 CONTROL THE ENTIRETY OF THAT CLAIM, DON'T YOU? NO ONE
10 ELSE IN THIS COURTROOM WOULD KNOW HOW IT WOULD BE THAT
11 YOU WOULD BE HARMED.

12 ARE THESE CRIMINAL TYPES WHO HAVE ENGAGED IN
13 HARM BEFORE, HAVE WEAPONS AND THE WHEREWITHAL AND THE
14 ENERGY TO DO IT, IF THEY WANT?

A YES.

16 Q WORD IS, ON THE STREET, THEY'RE THAT TYPE OF
17 PEOPLE?

18 A I KNOW THEY'RE THAT TYPE OF PEOPLE.

19 Q YOU'VE SEEN THEM DO CRIMINAL --

20 A I HAVEN'T SEEN THEM DO ANYTHING.

21 MR. DAVIS: ALL RIGHT.

22 THE COURT: IS IT STILL YOUR REQUEST, MR. DAVIS,
23 TO ORDER --

24 MR. DAVIS: IT IS. I THINK THIS WITNESS CONTINUES
25 TO TRY AND CONTROL INFORMATION, AND PREVENT THE DEFENSE
26 FROM OBTAINING A CLEAR UNDERSTANDING OF THE QUALITY OR
27 LACK OF QUALITY OF WHAT HE AND OTHERS RELIED ON IN
28 MISIDENTIFYING A FORMER CODEFENDANT AND CO-SUSPECT IN

1396

THIS CASE.

THE COURT: MR. SIMS.

MR. SIMS: MY RESPONSE, YOUR HONOR, WOULD BE THAT MR. THOMAS HAS BEEN VERY FORTHCOMING IN THE VAST MAJORITY OF THE TESTIMONY HERE. THIS IS TESTIMONY THAT, IN THE PEOPLE'S OPINION, IS FRANKLY IRRELEVANT. WE'RE GOING DOWN A FIELD, AND I UNDERSTAND THE COURT'S -- HOW THE COURT HAS POSTURED THE RELEVANCY OF THIS PARTICULAR PIECE OF INFORMATION, BUT THE PEOPLE'S POSITION IS THAT, AS I FELT AT THE BEGINNING, WE ARE TRYING THE CASE OF JOHNNY CLARK, AND MR. JOHNNY CLARK IS NOT HERE. HE'S NOT A PARTY TO THESE PROCEEDINGS, AND I THINK IF WE ARE OPENING THIS DOOR, IT'S IRRELEVANT TO PUT MR. THOMAS IN THIS POSITION, TO OPEN A DOOR WHEN WE KNOW MR. CLARK ISN'T THE PERSON. HE'S NOT GOING TO BE HERE.

THE COURT: I DISAGREE WITH YOU THAT JOHNNY CLARK IS NOT HERE. HE IS HERE. HE IS HERE, BECAUSE THERE'S BEEN AN ABUNDANCE OF TESTIMONY PERTAINING TO HIS IDENTIFICATION, THE MISIDENTIFICATION, CONVERSATIONS WITH OTHERS PERTAINING TO HIS IDENTIFICATION.

AGAIN, THIS CASE -- AND BASED UPON WHAT I SEE UP TO THIS POINT IN TIME, AND THE POSITIONS TAKEN BY EACH SIDE -- REALLY RELATES TO WHETHER OR NOT THE JURY BELIEVES THE TESTIMONY OF THE MASONS, AND WHETHER OR NOT THEY BELIEVE THE TESTIMONY OF THIS WITNESS. THAT'S THE CASE.

I MEAN, UP TO THIS POINT IN TIME I HAVEN'T SEEN ANY BALLISTICS. I HAVEN'T SEEN ANY VIDEOTAPES. I

1397

1 HAVEN'T SEEN ANY OTHER PEOPLE WHO HAVE COME IN WHO
2 CONTRADICT, PER SAY, THE OBSERVATIONS. THAT CONCEIVABLY
3 COULD HAPPEN. THERE CERTAINLY HAS BEEN TESTIMONY TO THE
4 EFFECT, AND A DISPUTE, AS TO HOW MANY PEOPLE MIGHT HAVE
5 BEEN THERE. WAS IT EIGHT, WAS IT 30, IF OTHER PEOPLE
6 WERE THERE, SO CREDIBILITY IS THE KEY TO THIS PARTICULAR
7 CASE, AND I THINK I'M OBLIGATED TO SEE TO IT THAT ALL
8 REASONABLE AVENUES TO LITIGATE THE AREA OF CREDIBILITY
9 ARE AVAILABLE TO THE DEFENSE.

10 THAT'S MY OBLIGATION, SO -- THE REAL CONCERN
11 THAT I DO HAVE, AND I'VE HEARD MR. THOMAS SAY SOMETHING
12 TO THE EFFECT "I SAW IT, SO, THEREFORE, IT'S NOT
13 NECESSARY FOR ANYBODY ELSE TO GET INVOLVED, EXCEPT MY
14 TESTIMONY ALONE. I'LL BE THE JUDGE AND JURY OF THE
15 IDENTIFICATION." WHEN I HEARD IT, I DIDN'T HEAR ANY
16 OBJECTIONS, BUT WHEN I HEARD IT, THE HAIRS ON THE BACK
17 OF MY NECK KIND OF WENT UP A LITTLE BIT. I DON'T THINK
18 I'VE HEARD A WITNESS SAY THAT IN SUCH DIRECT LANGUAGE,
19 AND I THINK I NEED TO GIVE THE DEFENSE AN OPPORTUNITY TO
20 EXPLORE.

21 IT MAY NOT GO ANYWHERE. IT MAY GO INTO A
22 DEAD-END ALLEY, BUT THEN IT MAY BE RELEVANT. I MEAN
23 THERE ARE ISSUES -- I'M NOT THE FACT-FINDER IN THIS
24 CASE, BUT I STARTED THINKING ABOUT IT BASED UPON THE
25 LIMITED NATURE OF WHAT I KNOW, WHO IS INVOLVED. IT
26 APPEARS THERE MIGHT HAVE BEEN A GANG MEMBER WHO WAS
27 INVOLVED. HOW ACTIVE ARE THE GANG MEMBERS IN COMING TO
28 THE DEFENSE OF THEM? ARE THEY TRYING TO DIRECT

1398

ATTENTION AWAY FROM THEM, I.E., SUSPECT ONE, SUSPECT TWO, AND DIRECT IT TOWARDS WHAT HAS BEEN IDENTIFIED AS SUSPECT THREE, THE DEFENDANT? I DON'T KNOW THE ANSWERS TO ALL OF THOSE QUESTIONS, AND I JUST -- I JUST THINK IN GOOD CONSCIENCE THAT I HAVE TO GIVE THEM THAT OPPORTUNITY.

THIS IS WHAT MY TENTATIVE ORDER IS: I'M GOING TO ORDER THE WITNESS TO DISCLOSE TO THE DEFENSE THOSE INDIVIDUALS WHO PROVIDED HIM THE INFORMATION WHICH SUGGESTED THAT THE MASON IDENTIFICATION AND HIS IDENTIFICATION, IN THE FIRST INSTANCE, WAS INCORRECT. I'M GOING TO ORDER THAT. I HAVEN'T ORDERED IT YET.

TWO THINGS THAT I WILL DO. I'M GOING TO, FIRST OF ALL, INQUIRE OF MR. THOMAS. SIR, THAT'S GOING TO BE MY ORDER. I HAVEN'T ORDERED YOU TO DO THAT JUST YET. WHAT IS YOUR RESPONSE GOING TO BE?

THE WITNESS: SIR, I'M AFRAID TO TELL YOU I CAN'T DO THAT.

THE COURT: ALL RIGHT. DO THE PEOPLE THINK THAT THERE MIGHT BE A LEGAL DEFENSE OF NECESSITY WHICH WOULD PRECLUDE THE COURT FROM ORDERING HIM TO PROVIDE THAT INFORMATION BASED UPON THE ARGUMENT THAT HE MAY BE EXPOSED TO THE RISK OF HARM?

MR. SIMS: AT THIS POINT -- MY RESPONSE AT THIS POINT, IT'S A CASE OF FIRST IMPRESSION FOR ME. I'M -- MAYBE THE COURT HAS EXPERIENCED THIS BEFORE, BUT I HAVEN'T, AND GIVEN MR. THOMAS' OTHERWISE WILLINGNESS TO BE HERE, AND THIS IS AN ISSUE THAT'S COME UP AT 3:35,

1399

ALMOST 4:00 O'CLOCK IN THE AFTERNOON ON A FRIDAY. WE
COULD, AND I DON'T KNOW THAT THERE IS A DEFENSE, BECAUSE
I HAVEN'T DEALT WITH THIS ISSUE, PERHAPS THERE IS, I
WOULD ASK THE COURT FOR AT LEAST UNTIL MONDAY TO EXPLORE
AS TO WHETHER OR NOT THERE IS A DEFENSE TO THIS.

THE COURT: I WAS THINKING THE SAME THING. WE'LL
ORDER HIM BACK, GIVE EACH SIDE AN OPPORTUNITY TO BRIEF,
OR AT LEAST LOOK AT THE ISSUE. I DON'T KNOW OF ANY
DEFENSE, AND I'LL TELL YOU THE REASON WHY, BECAUSE IF
THAT DEFENSE WAS RAISED IN MOST OF OUR CASES, WE WOULD
NEVER HAVE A CASE, BECAUSE MOST OF OUR CASES ARE GANG
RELATED. MOST OF OUR CASES ARE CASES OF A SERIOUS
NATURE, I.E., FROM MURDER ON DOWN, AND THERE IS LOTS OF
INTIMIDATION IN MANY OF OUR CASES.

I THINK GIVEN THOSE CIRCUMSTANCES, AND I KNOW
OF A COUPLE INCIDENTS WITHIN THE BUILDING, THAT THE
PEOPLE AND THE LOCAL POLICE AGENCY INVOLVED IN THE CASE
HAS PROVIDED PROTECTION, AND/OR HAS PROVIDED OTHER
ASSISTANCE, SO THERE'S ALWAYS AN OPTION.

WHETHER OR NOT IT'S NECESSARY, I DON'T KNOW,
BUT LET ME JUST SAY THIS: IF I HEARD THROUGHOUT THE
COURSE OF THE CASE "I'M NOT PROVIDING THIS INFORMATION
BECAUSE I'M FEARFUL," BUT I DIDN'T HEAR THAT. I'VE
HEARD "I AM NOT PROVIDING THIS INFORMATION BECAUSE, AS
ONE OF THE FOUNDERS OF THE CLUB, THERE'S A CERTAIN
RESPECT, A CERTAIN TYPE OF UNWRITTEN CODE THAT YOU DON'T
GET PEOPLE INVOLVED UNLESS THEY ARE WILLING TO GET
INVOLVED," IN OTHER WORDS, YOU DON'T SNITCH SOMEBODY

1400

1 OFF. THAT'S WHAT I'VE HEARD. THIS IS THE FIRST TIME
2 WITHIN THE LAST FIVE MINUTES THAT I HEARD SOMETHING TO
3 THE EFFECT THAT HIS RELUCTANCE TO TESTIFY IS PREDICATED
4 UPON A REASONABLE FEAR OF BEING INJURED.

5 UNLESS I HEAR ANYTHING ELSE, IT'S MY INTENTION
6 TO GET THE JURY BACK, RECESS THE MATTER UNTIL 9:00, GIVE
7 EACH SIDE AN OPPORTUNITY TO ARGUE THAT ISSUE. THE
8 TENTATIVE WOULD BE -- AND I HAVEN'T DONE IT YET -- HE
9 WOULD BE ORDERED TO DISCLOSE THE NAMES OF THOSE
1 INDIVIDUALS TO THE DEFENSE.

11 MR. DAVIS: THE ROAD HAS A FEW MORE BLOCKS, IF I
12 COULD BRIEFLY BUILD THAT ROAD; THAT THERE WERE TWO SETS
13 OF COMMUNICATIONS THAT AFFECT IDENTIFICATION IN THIS
14 CASE, ONE THAT SUGGESTED J WAS IT, AND THEN A TURN-ABOUT
WHEN THE COMMUNICATION SUGGESTED HE WAS NOT, AND THAT
16 INFORMATION NOT ONLY AFFECTED THIS GENTLEMAN, BUT ALSO
17 RODNEY MASON.

18 HE SUGGESTED HE TALKED TO SOME OGS AND THE LIKE
19 IN THE NEIGHBORHOOD, SO IF THEY'RE, IN THIS GENTLEMAN'S
20 EXPERIENCE, TWO SETS OF SOURCES OF THAT CONFIDENTIAL
21 INFORMATION, THE NEXT STEP IS TO ASK WHAT ABOUT THE
22 SECOND CHANGE, WHEN YOU GOT OFF IDENTIFYING J WITH
23 INFORMATION THAT HE WASN'T THE GUY.

24 IF THEY'RE DIFFERENT, I'M GOING TO BE ASKING,
25 AS RESPECTFULLY AS I CAN, TO KNOW IF THEY TOO ARE
26 VIOLENT, THREATENING CRIMINAL TYPES, AS THE QUALITY AND
27 SOURCE OF WHAT AFFECTED IDENTIFICATION EVIDENCE IN THIS
28 CASE. IF THEY ARE, AND THEY'RE GANGS, THEY RELATE

1401

1 DIRECTLY TO THE THRESHOLD ISSUE IN THIS CASE: IS THE
2 IDENTIFICATION AND BLAME ON MY CLIENT, AFTER YOU LOOK AT
3 ALL THE EVIDENCE, REALLY THE PRODUCT OF SCAPEGOATING FOR
4 GANGS, S-1, -2 AND THE LIKE, WHO WERE NOT SNITCHED OUT
5 BY A GROUP OF MOTORCYCLE MEMBERS WHO DON'T SNITCH OUT.
6 THEY TAKE CARE OF IT THEMSELVES. THAT'S THE PATH.
7 THAT'S THE ROAD.

8 THE COURT: OKAY. MR. SIMS, ANYTHING TO ADD?

9 MR. SIMS: NOTHING TO ADD TO THAT.

1 THE COURT: ALL RIGHT. SO THAT WE UNDERSTAND,
11 MR. THOMAS, MY TENTATIVE ORDER -- AND I HAVEN'T ISSUED
12 THE ORDER YET -- BUT IT WILL BE, UNLESS I'M CONVINCED
13 FROM A LEGAL POINT OF VIEW, I CAN'T ORDER YOU TO DIVULGE
14 THAT INFORMATION, IS THAT I WILL ORDER YOU TO DIVULGE
THE IDENTITY OF THOSE INDIVIDUALS THAT WERE INVOLVED IN
16 ANY WAY IN EITHER THE INITIAL IDENTIFICATION OR THE
17 SECONDARY MISIDENTIFICATION.

18 I'M GOING TO GIVE MR. SIMS AN OPPORTUNITY TO
1 ARGUE THAT MY ORDER WOULD BE INAPPROPRIATE. WE CAN WORK
20 ON IT. WE HAVE A LITTLE MORE TIME THAN WE NORMALLY DO.
21 NORMALLY IT'S FROM 4:30 TO 9:00 O'CLOCK THE FOLLOWING
22 DAY.

23 I WANT TO MAKE IT ABUNDANTLY CLEAR AS WELL THAT
24 YOU ARE ORDERED -- THIS IS A DIRECT ORDER OF THE
25 COURT -- TO RETURN TO THIS COURTROOM, AND WHY DON'T WE
26 SAY 8:30, SO WE CAN GET AN EARLIER START, SO WE CAN
27 DISCUSS THE MATTER IN OPEN COURT PRIOR TO THE ARRIVAL OF
28 THE JURY, SO IT IS THE ORDER OF THE COURT THAT YOU

1402

1 REPORT BACK HERE TO DEPARMENT 10 AT 8:30 IN THE
2 MORNING.

3 IF FOR WHATEVER REASON YOU HAVE DIFFICULTY
4 GETTING INTO THE BUILDING, IT ALSO IS THE ORDER OF THE
5 COURT TO GO TO THE FRONT OF THE LINE, EXPLAIN TO THEM
6 THAT YOU'VE BEEN ORDERED BACK BY THE JUDGE FOR 8:30 IN
7 THE MORNING, AND THE JUDGE HAS INSTRUCTED YOU TO TELL
8 THEM THAT YOU ARE TO BE GIVEN PRIORITY IN BEING SCREENED
9 THROUGH SECURITY.

10 THE WITNESS: OKAY.

11 THE COURT: SIR, DO YOU UNDERSTAND MY ORDER?

12 THE WITNESS: YES, I DO.

13 THE COURT: I DON'T MEAN TO BE CONDESCENDING.
14 THIS IS SOMETHING I'VE LEARNED FROM MY WIFE, WHO IS IN
EDUCATION. IT'S CALLED CHECKING FOR UNDERSTANDING.

15 WHAT DID I TELL YOU YOU NEED TO DO?

16 THE WITNESS: BE HERE AT 8:30.

17 MR. DAVIS: MIGHT HE BE GIVEN THE STANDARD
18 ADMONITION OF WITNESSES.

19 THE COURT: THE ADMONITION IS YOU'RE ORDERED NOT
20 TO DISCUSS YOUR TESTIMONY WITH ANYBODY EXCEPT PERHAPS
21 MR. SIMS, AND YOU MAY NEED TO CONSULT WITH HIM
22 PERTAINING TO THE ISSUES THAT ARE BEFORE THE COURT BUT
23 YOU'RE NOT TO CONTACT RODNEY NOR JOEL NOR ANYBODY ELSE
24 WHO IS INVOLVED IN THIS CASE, INCLUDING -- WELL, I DON'T
25 KNOW, MAYBE YOU MIGHT WANT TO -- THEY'RE NOT BEFORE THE
26 COURT, BUT THOSE CONFIDENTIAL --

27 MR. DAVIS: SOURCES.
28

1403

1 THE COURT: -- SOURCES. YOU MAY WANT TO CONSULT
2 WITH THEM AND SAY "HEY, I'M GOING TO BE PUT BETWEEN A
3 ROCK AND A HARD PLACE, SO TO SPEAK, AND DO YOU MIND IF I
4 SHARE THOSE NAMES?" THAT MAY BECOME A MOOT POINT IF
5 THEY SAY "SURE, GO AHEAD. I DON'T CARE," BUT THAT'S UP
6 TO YOU. I DON'T HAVE ANY CONTROL OVER THAT. I DON'T
7 THINK MR. SIMS HAS ANY CONTROL OVER THAT. OBVIOUSLY
8 NEITHER ONE OF THE DEFENSE ATTORNEYS HAS ANY CONTROL
9 OVER THAT. THAT'S UP TO YOU TO DECIDE.

1 THE WITNESS: OKAY.

11 THE COURT: BUT THE PURPOSE OF MY ADMONITION IS
12 THAT YOU'RE NOT TO DISCUSS THIS CASE WITH ANYBODY
13 INVOLVED IN THIS CASE, SO, IN OTHER WORDS, THERE'S NO
14 SWAPPING OF INFORMATION, NO PROSPECT OF GETTING THE
STORY STRAIGHT, ET CETERA.

16 DO YOU UNDERSTAND WHAT I'M TELLING YOU?

17 THE WITNESS: YES, I DO.

18 MR. DAVIS: THROUGH THE COURT, MAY I ASSURE THIS
1 WITNESS THAT I AND OUR STAFF WILL NOT DISCUSS THIS WITH
20 ANYONE THROUGHOUT PERPETUITY. THIS IS A MATTER TO BE
21 RESOLVED WITHIN THIS COURT. EVEN THOUGH IT'S A PUBLIC
22 FORUM, WE WON'T DISCUSS IT WITH ANYONE, EVER.

23 THE COURT: WELL, MAYBE YOU CAN WORK OUT SOMETHING
24 THAT DOESN'T QUITE RISE TO THE LEVEL WHERE IN OPEN COURT
25 HE WOULD HAVE TO DISCLOSE THOSE NAMES.

26 MR. DAVIS: I HAVE NOT BEEN CONVINCED THERE'S
27 SUFFICIENT RECORD OF THAT FACTOR IN THIS CASE, AND
28 THAT'S MY POSITION.

1404

1 THE COURT: OKAY. WELL, WHAT I'M SUGGESTING,
2 MAYBE THERE'S SOMETHING THAT YOU CAN DO WHERE YOU CAN
3 GET THAT INFORMATION BUT IT MAY NOT BE A PUBLIC RECORD.
4 ALL RIGHT. THANK YOU, SIR. I'M GOING TO EXCUSE YOU.
5 AGAIN YOU'RE ORDERED BACK AT 8:30. WE'LL BE HERE AT
6 8:30 MONDAY MORNING. I'M GOING TO ASK THE JURY TO COME
7 BACK IN.

8
9 (THE FOLLOWING PROCEEDINGS
1 WERE HELD IN OPEN COURT IN
11 THE PRESENCE OF THE JURY:)

12
13 THE COURT: ALL RIGHT. WE'RE BACK IN FRONT OF THE
14 12 JURORS PLUS THE TWO ALTERNATE JURORS. WE'VE REACHED
A POINT WHERE WE'RE GOING TO RECESS FOR THE WEEKEND, SO
16 WE'RE GOING TO RELEASE YOU. IT'S NOW TEN AFTER 4:00. I
17 WISH I COULD HAVE DONE IT MAYBE 45 MINUTES AGO SO YOU
18 HAD A HEAD START ON TRAFFIC, ALTHOUGH BASED UPON MY
1 EXPERIENCE, I GO WESTBOUND, SO IF YOU'RE GOING
20 EASTBOUND, THE 91 IS PRETTY TOUGH, BUT THE WESTBOUND IS
21 USUALLY PRETTY GOOD. WE'RE RECESSING FOR TODAY. WE'RE
22 COMING BACK AT 9:00 O'CLOCK MONDAY MORNING. MONDAYS ARE
23 TYPICALLY A HEAVY DAY GETTING IN, SO PLEASE COME EARLY.

24 AGAIN, IF YOU WANT TO, BRING IN SOFT DRINKS,
25 BRING IN COFFEE, DO WHAT YOU WANT TO DO. THERE'S
26 SOMEBODY -- YES, SIR? DO YOU HAVE A QUESTION?

27 JUROR NO. 10: YES, SIR. YOU KNOW, DO YOU HAVE AN
28 ESTIMATE OF HOW LONG THIS MIGHT DRAG OUT?

1405

1 THE COURT: I THINK FROM THE PEOPLE'S PERSPECTIVE,
2 WE HAVE ONE MORE POLICE OFFICER WITNESS. I DON'T THINK
3 IT'S GOING TO TAKE TOO LONG, BUT THEN WE GO INTO THE
4 DEFENSE.

5 MR. DAVIS: ACTUALLY I'M SHORTER ON MY OWN
6 WITNESSES. I'D SAY A DAY AND A HALF, TWO, MAX.

7 JUROR NO. 10: OH, THAT'S NICE. I LIKE THAT. ALL
8 RIGHT. OKAY.

9 THE COURT: SO I WOULD -- BASED UPON WHAT I SAID
10 AND BASED UPON WHAT MR. DAVIS SAID, YOU MIGHT HAVE THE
11 CASE WEDNESDAY, YOU MIGHT, BUT WHY DON'T YOU COUNT ON
12 THE REST OF THE WEEK YOU CAN ALLOCATE TO THIS CASE,
13 HEARING EVIDENCE, A REASONABLE PERIOD OF TIME TO
14 DELIBERATE, ET CETERA, SO IT SHOULDN'T GO ANY LONGER
THAN THAT.

16 JUROR NO. 10: I THANK YOU ALL VERY MUCH.

17 THE COURT: KEEP IN MIND MY ADMONITION: DO NOT
18 DISCUSS THIS CASE WITH ANYBODY, INCLUDING A FELLOW
19 JUROR, UNTIL ALL 12 OF YOU ARE TOGETHER, UNTIL THE CASE
20 IS SUBMITTED TO YOU. THERE ARE STILL WITNESSES TO BE
21 HEARD FROM. THERE'S STILL THE ARGUMENTS OF THE
22 ATTORNEYS UPON THE CLOSE OF THE EVIDENTIARY PHASE, AND
23 THERE ARE MY INSTRUCTIONS ON THE LAW.

24 EVERYTHING WHICH I HAVE SAID GOES TO ONE
25 POINT: KEEP AN OPEN MIND, AND FORGET ABOUT IT THIS
26 WEEKEND. DON'T THINK ABOUT IT. GO HOME. WHEN YOU COME
27 BACK, THEN YOU'LL HEAR MORE EVIDENCE AND THE ATTORNEYS
28 WILL MAKE SURE -- AND THEY'VE BEEN PRETTY GOOD TO THIS

1406 -1500

1 POINT IN TIME -- TO GIVE YOU WHATEVER INFORMATION THEY BELIEVE
2 IS RELEVANT FOR YOUR DECISION, SO WITH THAT IN MIND, YOU'RE
3 EXCUSED FOR THE DAY, AND WE'LL SEE EVERYBODY BACK AT 9:00 A.M.
4 ON MONDAY MORNING. AS TO THE ATTORNEYS, WE'LL STAND IN RECESS
5 UNTIL 8:30.

6 SIR, YOU'RE ORDERED BACK AT 8:30 AS WELL.

7 THE WITNESS: YES.

8
9 (THE MATTER WAS CONTINUED
10 TO MONDAY, MARCH 19, 2007,
11 AT 8:30 A.M.)

12
13 (THE NEXT PAGE NUMBER IS 1501.)
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LODGED DOC. NO. P
CV 12-8339 GW (JEM)

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF-RESPONDENT,

VS.

DONALD SANDERS, AKA RAY HUFF,
AKA BILL JOHNSON,

DEFENDANT-APPELLANT.

NO. TA081670

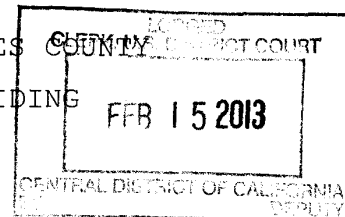
APR 29 2008

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE WILLIAM CHIDSEY, JR., JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

MARCH 19, 2007



APPEARANCES:

FOR PLAINTIFF-RESPONDENT:

EDMUND G. BROWN, JR.
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CALIFORNIA 90013

FOR DEFENDANT-APPELLANT:

DENNIS A. FISCHER
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SANTA MONICA, CALIFORNIA 90404

COPY

VOLUME 6 OF 9 VOLUMES
PAGES 1501 TO 1702-1800

DAWSHA LAYLAND, CSR #5166
OFFICIAL REPORTER

1501

1 CASE NUMBER: TA081670
2 CASE NAME: PEOPLE VS. SANDERS
3 COMPTON, CALIFORNIA MONDAY, MARCH 19, 2007
4 DEPT. 10 HON. WILLIAM CHIDSEY, JR., JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: DAWSHA LAYLAND, CSR #5166
7 TIME: A.M. SESSION.
8

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT
OUTSIDE THE PRESENCE OF
THE JURY:)

THE COURT: WE'RE ON THE RECORD WITH RESPECT TO
THE SANDERS MATTER. MR. SANDERS IS PRESENT WITH COUNSEL
AS IS THE PEOPLE'S REPRESENTATIVE. IT'S 8:30. IS --
THERE HE IS. MR. THOMAS, IF YOU'LL PLEASE COME FORWARD.

MR. THOMAS, YOU'RE STILL SUBJECT TO THE OATH
TAKEN ON FRIDAY. WHEN WE LEFT FRIDAY AFTERNOON, WE WERE
DISCUSSING YOU DIVULGING TO THE DEFENSE THE PERSON OR
PERSONS THAT YOU RECEIVED INFORMATION THAT PERHAPS
SUSPECT ONE, THE PERSON YOU INITIALLY IDENTIFIED, WAS NOT
IN FACT THE PERSON WHO WAS THERE.

I GAVE YOU A WEEKEND TO THINK THROUGH OR TO
RETHINK THE ISSUES THAT WERE PRESENTED.

ARE YOU PREPARED TO GIVE UP THOSE NAMES?

THE WITNESS: NO.

MR. SIMS: BEFORE WE GO DOWN THAT ROAD, TWO THINGS

1 THAT COME TO MIND. THE PEOPLE WANT TO MAKE ONE COMMENT.
2 UNDERSTANDING THE COURT'S TENTATIVE RULING AND THE
3 POTENTIAL CONSEQUENCES THE COURT MENTIONED, I THINK
4 MR. THOMAS MAY NEED COUNSEL APPOINTED FOR HIM.

5 THE COURT: FOR WHAT REASON?

6 MR. SIMS: MY FIRST COMMENT WOULD BE THE PEOPLE'S
7 ARGUMENT IN THIS MATTER WITH REGARDS TO THESE PARTICULAR
8 ISSUES IS STILL THAT THESE STATEMENTS WOULD BE HEARSAY.
THEY'RE NOT RELEVANT. THE REASON I MAKE THAT COMMENT IS
10 BECAUSE FROM WHAT WE CAN ALL GATHER, THERE ARE TWO SETS
11 OF STATEMENTS. THEY SEEM TO -- TWO SETS OF THINGS TOLD
12 TO MR. THOMAS THAT MAKES THEM INHERENTLY UNRELIABLE, SUCH
13 THAT THEY SHOULD NOT BE COMPELLED IN THIS SITUATION.
14 THERE'S ONE SET THAT SAID IT MAY HAVE BEEN THIS
15 INDIVIDUAL. THERE'S A SECOND SET OF INFORMATION THAT
16 SAYS IT'S NOT. WE DON'T KNOW HOW RELIABLE ANY OF THIS
17 INFORMATION IS AND RELIABILITY --

18 THE COURT: FOR THAT REASON --

19 MR. SIMS: THE CONVERSE ARGUMENT IS FOR THAT
20 REASON, ARE THEY RELEVANT SUCH THAT THEY SHOULD BE
21 ADMITTED. UNDERSTANDING THE COURT'S RULING, THAT'S AN
22 ADDITIONAL ARGUMENT THE PEOPLE ARE MAKING WITH REGARDS TO
23 PREVENTING THIS COMPULSION.

24 SECONDARILY, IF THAT'S THE COURT'S DECISION
25 IS TO COMPEL THIS INFORMATION, I THINK MR. THOMAS NEEDS
26 AN ATTORNEY.

27 THE COURT: OKAY. DEFENSE CARE TO BE HEARD?

28 MR. DAVIS: I'M SORRY?

1 THE COURT: DOES THE DEFENSE CARE TO BE HEARD?

2 MR. DAVIS: I REVIEWED HIS TESTIMONY DURING
3 CROSS-EXAMINATION, AND FEEL THAT THIS IS BEDROCK
4 INFORMATION AT THIS POINT. HE REVEALED AMONG OTHER
5 THINGS THAT INFORMATION HE RECEIVED REGARDING J CAME FROM
6 MEMBERS OF HIS OWN CLUB, AND --

7 THE COURT: REPEAT WHAT YOU SAID.

8 MR. DAVIS: CAME FROM MEMBERS OF HIS OWN CLUB,
9 AMONG OTHERS, AND HE INDICATED HE WOULD NOT GIVE UP THOSE
10 NAMES AND AGAIN WHEN I MAKE THIS OFFER, I DON'T MEAN TO
11 CONFRONT THE WITNESS HERE, BECAUSE HE'S SITTING ON THE
12 STAND.

13 I THINK THESE OFFERS PROBABLY MORE PROPERLY
14 WOULD BE OUT OF HIS PRESENCE, BUT WE ALSO RECEIVED FAIR
15 INFORMATION FROM HIM IMPLICATING THAT THE SOURCES,
16 WITHOUT DISCRIMINATING BETWEEN THOSE THAT GAVE UP J AS A
17 BLOOD GANG MEMBER OR THOSE THAT CAME BACK AND SAID
18 "YOU'VE GOT THE WRONG GUY, HE WASN'T THERE," THE SOURCES
19 MIXED, AS THEY MAY BE, WITHOUT DISCRIMINATING WHICH OF
20 THE INPUTS WE'RE LOOKING AT, THEY ALSO APPEAR TO BE
21 PEOPLE WHO ARE CAPABLE OF VIOLENCE, WHO HAVE READY ACCESS
22 TO ARMS, WHO MAY DO HARM, AND REPUTEDLY ARE ENGAGED IN
23 SOME CRIMINAL ACTIVITY.

24 AT THIS POINT THE REFUSAL TO GIVE NAMES AND
25 FURTHER INFORMATION ONLY DEEPENS THE BEDROCK CREDIBILITY
26 OF THIS CASE. WHEN YOU GET IT FROM SOURCES LIKE THAT,
27 AND ACCUSE SOMEONE AND UNACCUSE SOMEONE DIRECTLY WITH THE
28 LINEUP -- THE SIX-PACK PROCESS, POSITIVE IDENTIFICATION,

1 SEARCH WARRANTS THAT FOLLOW, ARRESTS THAT FOLLOW,
2 PROSECUTIONS THAT FOLLOW, PRELIMINARY HEARINGS THAT ARE
3 IMBUED WITH THAT SECRET SOURCE AND INFLUENCE NOW A JURY
4 TRIAL, HOWEVER THIS GENTLEMAN CAME TO THE POSITION HE'S
5 IN, WHATEVER CONFLICTS HE HAS, HE REPRESENTS THE KEY TO
6 THE FAILED CREDIBILITY OF THE ENTIRE PROSECUTION,
7 INCLUDING HIS INTERACTION CLAIMED BY OTHERS THERE AT THE
8 SCENE, THE TWO VICTIMS, INCLUDING STATEMENTS IN EVIDENCE
PROFFERED BY POHL TEND TO INCRIMINATE MY CLIENT WITHOUT A
10 CLEAR UNDERSTANDING OF THE INFLUENCES.

11 BECAUSE HE DID REVEAL THE SOURCES, AGAIN,
12 MIXED AS TO WHICH IMPACT ON THE IDENTIFICATION PROCEDURES
13 THEY WERE, THAT THESE SOURCES WERE MEMBERS OF HIS OWN
14 CLUB, AMONG OTHERS, THAT THERE WAS A POLICEMAN KNOWN TO
15 BE OUTSIDE, WHOSE NAME HE WOULD NOT REVEAL, THAT THESE
16 MEMBERS WHOSE NAMES HE WOULD NOT REVEAL, HAVE ESSENTIALLY
17 LOOMED TO CONTROL INQUIRY AS TO WHETHER IN THE FINAL
18 STEP, THAT THERE WAS A BEEF BETWEEN MEMBERS OF BLACK
GANGS AT THE HEART OF WHAT OCCURRED, THAT S-1 AND S-2
20 WERE ESSENTIALLY PERMITTED TO LEAVE BY A DECISION WITHIN
21 THE INFORMAL CREDO OF MOTORCYCLE GANGS, PARTICULARLY
22 THOSE WHO HAVE MEMBERSHIPS IN BLACK GANGS LIKE THE BLOODS
23 AND THE CRIPS, WE SHOULD BE ABLE TO GET TO THE HEART OF
24 THIS.

25 WE HAVE THREE BODIES OF INFORMATION, A
26 POLICEMAN WHO WAS OUTSIDE, WHOSE NAME HE WON'T GIVE UP,
27 WE HAVE PEOPLE WHO GUIDED AND AFFECT INFORMATION ON
28 IDENTITY. WE HAVE THOSE SAME PEOPLE WHO APPARENTLY DID

1 NOT GIVE MY CLIENT, AS IT WERE, DUCK, CLEARANCE, LIKE
2 THEY DID J, AND MAY WELL BE AT THE HEART OF SCAPEGOATING
3 MY CLIENT.

4 AS THE COURT KNOWS, WE'LL BE PROFFERING
5 EVIDENCE HE, TOO, WAS OUTSIDE QUITE POSSIBLY WITH THE
6 SAME POLICEMAN. WE HAVE EVIDENCE THROUGH DISCOVERY THAT
7 THERE WAS ANOTHER POLICEMAN MEMBER IN THE LADIES' ROOM AT
8 THE TIME THAT THE SHOOTING OCCURRED, WHO WROTE A REPORT
9 INDICATING THE MUSIC WAS ON, HE HEARD SOME POPS BUT
10 COULDN'T BE SURE IT WAS GUNSHOTS, AND THEN CAME OUT TO
11 SEE TWO MEMBERS ONLY, AND THAT IS, RODNEY AND HIS SON,
12 JOEL.

13 IT'S AT THE HEART OF THE ACCUSATION IN THIS
14 CASE THAT WE KNOW HIS SOURCES, AND IF HE DOESN'T WANT TO
15 REVEAL THOSE SOURCES, THE NET EFFECT IS TO DISABLE US
16 FROM GOING TO THE CORE OF WHAT HE REPRESENTS, THE
17 GATEKEEPER OF TRUE EVIDENCE OF WHO WAS THERE, WHAT THEY
18 KNEW AND HOW, THEREAFTER, FELLOW MEMBERS AFFECTED HIS
19 TESTIMONY HERE IN TRIAL IN EMPHASIZING OVER AND OVER
20 AGAIN MANY TIMES, NEVER SOLICITED BY THE QUESTION.

21 SO IT'S OUR POSITION IT MUST BE COMPELLED,
22 AND IF HE WANTS COUNSEL, HE HAD PLENTY OF TIME TO GET
23 COUNSEL. WE HAVE NO FURTHER EVIDENCE OF SOME OF THE
24 ALLEGATIONS THAT HE MADE SO GENERALLY IN OUR CLOSED
25 HEARING LAST FRIDAY. OUR POSITION IS, ADAMANTLY, HE IS
26 THE KEY TO THE PROSECUTION'S CASE AND, ONCE AGAIN, HE'S
27 DECIDED TO LOCK THE DOOR.

28 THE COURT: MR. SIMS, ANY RESPONSE?

1 MR. SIMS: THE PEOPLE'S POSITION IS THAT THE
2 COMPULSION IN THIS PARTICULAR SET OF CIRCUMSTANCES WOULD
3 BE INAPPROPRIATE IN THAT CONSISTENTLY THE PEOPLE HAVE
4 ARGUED THAT WE ARE GOING AFIELD IN TRYING THE CASE OF
5 JOHNNY CLARK. THERE IS NO EVIDENCE --

6 THE COURT: AREN'T WE TRYING THE CASE OF
7 BELIEVABILITY AND CREDIBILITY?

8 MR. SIMS: I UNDERSTAND THAT, YOUR HONOR. THERE'S
BEEN NO INDICIA THAT ANY OF THIS INFORMATION WOULD
10 EXONERATE THIS DEFENDANT. THAT BEING THE CASE, THE
11 PEOPLE WOULD FEEL IT'S SORT OF BEYOND THE SCOPE TO COMPEL
12 THIS INFORMATION GIVEN THE SET OF CIRCUMSTANCES
13 MR. THOMAS HAS CLAIMED IT WOULD PUT HIM IN.

14 THE COURT: THE CRITERIA IS NOT TO EXONERATE. THE
15 CRITERIA IS WHETHER OR NOT THERE'S REASONABLE DOUBT. I
16 MEAN, WE DON'T HAVE TO EXONERATE AN INDIVIDUAL FOR THE
17 EVIDENCE TO BE RELEVANT.

18 LET ME ASK YOU THIS QUESTION: CLEARLY I CAN
FIND MR. THOMAS IN CONTEMPT IF I ORDER HIM -- I HAVEN'T
20 ORDERED HIM YET. I CAN INCARCERATE HIM, BUT WHAT OTHER
21 OPTIONS DO I HAVE AT MY DISPOSAL?

22 MR. SIMS: IN TERMS OF --

23 THE COURT: IF HE REFUSES.

24 MR. SIMS: AS THE COURT HAS INDICATED, THE COURT
25 CAN FINE. I'M NOT -- I THINK THOSE ARE THE OPTIONS THAT
26 THE COURT -- THAT ARE AVAILABLE TO THE COURT.

27 THE COURT: WHAT ABOUT STRIKING HIS ENTIRE
28 TESTIMONY?

1 MR. SIMS: I DON'T THINK STRIKING HIS ENTIRE
2 TESTIMONY WOULD BE APPROPRIATE IN THIS SET OF
3 CIRCUMSTANCES. I THINK WE'RE TALKING ABOUT A LIMITED
4 PORTION OF HIS TESTIMONY THAT IS TO BE COMPELLED, AND I
5 THINK THE VAST MAJORITY OF IT GOES TO THE HEART OF THIS
6 MATTER.

7 AGAIN, I RESPECTFULLY DISAGREE WITH REGARDS
8 TO HOW IT IMPACTS HIS IDENTIFICATION OF THIS DEFENDANT,
AND I DON'T THINK STRIKING THE ENTIRETY OF IT IS
10 APPROPRIATE.

11 THE COURT: WHAT ABOUT ALLOWING ADDITIONAL
12 EVIDENCE TO THE EFFECT THAT HE REFUSES TO GIVE UP THE
13 NAMES OF THOSE INDIVIDUALS WHO MAY HAVE CONTACTED HIM IN
14 THE FIRST INSTANCE AND PRIOR TO THE TIME THAT HE
15 PRESENTED HIMSELF FOR THE LIVE LINEUP AND INDICATED TO
16 THE AUTHORITIES THAT THE INDIVIDUAL THEY HAD IN CUSTODY
17 WAS NOT THE INDIVIDUAL THAT HE PREVIOUSLY IDENTIFIED AS
18 S-1?

19 MR. SIMS: I THINK THAT'S WITHIN THE COURT'S
20 PURVIEW. I THINK AN INSTRUCTION -- I WON'T CALL IT A
21 LIMITED INSTRUCTION -- BUT IT COULD BE A BROAD
22 INSTRUCTION THAT INDICATES JUST WHAT THE COURT POINTED
23 OUT WOULD ALSO BE AN OPTION.

24 THE COURT: ALL RIGHT. AS TO THE DEFENSE, WHAT DO
25 YOU SEE MY ALTERNATIVES TO BE?

26 MR. DAVIS: I THINK THE LESSER ALTERNATIVE OF
27 PERMITTING ADDITIONAL EVIDENCE WILL LEAD US TO WHERE THIS
28 CASE MAY HAVE STARTED, AND THAT IS THAT THE TRUTH OF WHAT

1 OCCURRED WAS EARLY ON, DECIDEDLY TO BE A MYSTERY CREATED
2 AND CONTROLLED BY THE CREDO OF THE CLUB, AND REPRESENTED
3 AND MISPLACED BY THIS WITNESS.

4 IT DOES NOT ANSWER WHAT MY CLIENT'S DUE
5 PROCESS RIGHTS ARE. HE MUST GIVE THE ANSWERS, AND IF HE
6 DOESN'T GIVE THE ANSWERS, TO TEST THE CREDIBILITY, EVEN
7 OF WHAT HE'S CLAIMED TO THIS COURT, AND WHAT HE CLAIMED
8 TO THE JURY, WHO THE PEOPLE ARE, WHAT THEY TOLD THEM,
WHAT THEIR STATION AND POSITION IS, FOR ALL WE KNOW THEY
10 MAY BE LAW ENFORCEMENT THEMSELVES, AND IT LEAVES THE JURY
11 IN THE SAME MYSTERY WE'RE IN RIGHT NOW, AND YOU GIVE BACK
12 CONTROL TO YOUR CASE, HE BECOMES THE STAR WITNESS, HE
13 BECOMES THE JUDGE WHO DECIDES WHAT THE JURY IS ENTITLED
14 TO.

15 I FEEL THAT HIM BEING PERMITTED TO DO THAT
16 IS A FUNDAMENTAL DENIAL OF DUE PROCESS AND THE RIGHT OF
17 CROSS-EXAMINATION ON THE PART OF MY CLIENT. NOTHING --

18 THE COURT: DID YOU ANSWER MY QUESTION?

19 MR. DAVIS: YES, NOTHING SHORT OF A MOTION TO
20 STRIKE WOULD BE CONSTITUTIONALLY APPROPRIATE UNDER THESE
21 CONDITIONS. I DO NOT BLAME MR. SIMS. HE INHERITED THE
22 HANDIWORK THAT HE GOT IN THIS CASE, BUT TO MARSHAL IT
23 WITH THE CONTINUED MYSTERY HE INHERITED I THINK IS
24 INAPPROPRIATE AND INADEQUATE CONSTITUTIONALLY, SO WE
25 WOULD MOVE, IF HE FAILED TO DO THAT, AND A CERTAIN AMOUNT
26 OF SANCTIONS DIRECTLY ON THE WITNESS FAILED TO PRODUCE
27 ANSWERS, THAT IT BE STRICKEN IN ITS ENTIRETY, AND ASK THE
28 JURY NOT BE PERMITTED TO CONSIDER ANYTHING BY A MAN WHO

1 HAS DECIDED TO COME IN AND TAKE THE OATH AND TELL YOU AND
2 THE JURY AND MY CLIENT WHEN THEY GET NO MORE INFORMATION,
3 PARTICULARLY AT THE HEART OF HIS OWN PERSONAL
4 CREDIBILITY.

5 THE COURT: GOING, THROUGH, MENTALLY THE EVIDENCE
6 THAT HAS PREVIOUSLY BEEN RECEIVED WITH RESPECT TO THIS
7 ISSUE -- SUPPLEMENT WHAT I'M ABOUT TO SAY, IF NEED BE, OR
8 POINT OUT TO ME THAT MY RECOLLECTION MAY BE INCONSISTENT
WITH THE EVIDENCE.

10 MR. THOMAS WAS PRESENT. IT WAS THE LATTER
11 PART OF THE EVENING OF THE DAY IN QUESTION. IT WAS
12 DURING THE PROCESS OF CLEANING UP THE CLUBHOUSE. HE
13 OBSERVED AN ALTERCATION BETWEEN -- FIRST OF ALL, HE
14 OBSERVED TWO INDIVIDUALS, TWO, I THINK, YOUNG BLACKS, AND
15 OVERHEARD SOME CONVERSATION TO THE EFFECT THAT THE TERM
16 "BLOOD" WAS BEING USED.

17 HE OBSERVED AT LEAST ONE OF THOSE
18 INDIVIDUALS INTERACTING WITH TWO FEMALES, AS WELL AS THE
YOUNGER MASON, JOEL. HE OBSERVED A FIGHT ENSUE -- A
20 PHYSICAL FIGHT, AND AT THAT POINT IN TIME NO WEAPONS WERE
21 SEEN.

22 DURING THE COURSE OF THE FIGHT, HE OBSERVED
23 JOEL GETTING THE BETTER OF THE OTHER INDIVIDUAL, I.E.,
24 S-1, AT WHICH TIME I BELIEVE HE TESTIFIED THAT HE SAW
25 DUCK PULL JOEL OFF OF S-1. AM I CORRECT UP TO THIS POINT
26 IN TIME?

27 MR. SIMS: YES.

28 MR. DAVIS: YES.

1 THE COURT: AT WHICH TIME, S-1 RETRIEVED A WEAPON,
2 AND I BELIEVE FIRED SOMETIME SOON THEREAFTER. THE
3 TESTIMONY IS THAT DUCK ALSO DREW A WEAPON AND FIRED, AND
4 THAT JOEL'S FATHER, RODNEY, CAME TO HIS AID, AT WHICH
5 TIME HE WAS SHOT AS WELL.

6 SOON THEREAFTER, THE TWO YOUNG BLACKS, AS
7 WELL AS DUCK, ACCORDING TO MR. THOMAS' TESTIMONY, WERE
8 SEEN FLEEING. TWO INDIVIDUALS GOT INTO A VEHICLE AND
9 DROVE OFF. DUCK GOT ON A MOTORCYCLE, REMAINED THERE FOR A
10 MINUTE OR SO, AND THEN DROVE OFF AS WELL.

11 SOON AFTER THE EVENTS, MR. THOMAS WAS SHOWN A
12 SIX-PACK, FROM WHICH HE IDENTIFIED AN INDIVIDUAL. THAT
13 INDIVIDUAL I BELIEVE WAS SUBSEQUENTLY ARRESTED. I THINK
14 THE TESTIMONY WAS THAT HE WAS IN JAIL FOR APPROXIMATELY
15 THREE, THREE AND A HALF MONTHS; IS THAT CORRECT?

16 MR. SIMS: SOMETHING LIKE THAT.

17 THE COURT: AND DURING THAT PERIOD OF TIME, THAT
18 MR. THOMAS RECEIVED INFORMATION FROM SOURCES UNKNOWN THAT
19 THE INDIVIDUAL WHO WAS ARRESTED WAS IN CUSTODY, WAS IN
20 FACT, AND I REPEAT, NOT THE INDIVIDUAL THAT HE -- WELL,
21 WAS THE INDIVIDUAL HE PREVIOUSLY IDENTIFIED, BUT WAS NOT
22 THE INDIVIDUAL WHO WAS PHYSICALLY PRESENT AT THE
23 CLUBHOUSE PREVIOUSLY IDENTIFIED AS S-1.

24 IT'S NOT CLEAR TO ME WHETHER OR NOT THE
25 PHYSICAL LINEUP AT THAT POINT IN TIME WAS COMMENCED
26 PURSUANT TO INFORMATION PROVIDED BY MR. THOMAS TO THE
27 INVESTIGATING OFFICER OR WHETHER OR NOT IT WAS SCHEDULED
28 ANYWAY.

1 MR. DAVIS: THERE WAS A DEFENSE MOTION.

2 MR. SIMS: FROM MY UNDERSTANDING IT WAS
3 MR. CLARK'S ATTORNEY WHO INITIATED IT.

4 THE COURT: SO IT WASN'T INITIATED PURSUANT TO
5 INFORMATION RECEIVED FROM EITHER ONE OF THE MASONS OR
6 MR. THOMAS. IN ANY EVENT, A PHYSICAL LIVE LINEUP WAS
7 SCHEDULED, AT WHICH TIME BOTH THE MASONS AND MR. THOMAS
8 WERE INFORMED TO PRESENT THEMSELVES, BUT THE INFORMATION
9 THAT THEY RECEIVED PRIOR TO THAT TIME, AND APPARENTLY WAS
10 SHARED BY THE MASONS AND MR. THOMAS, WAS TO THE EFFECT
11 THAT THE INDIVIDUAL WHO HAD BEEN ARRESTED WAS IN FACT NOT
12 THE INDIVIDUAL THAT THEY OBSERVED ON THE DAY IN
13 QUESTION. THEY WENT TO THE PHYSICAL LINEUP. I DON'T
14 THINK MR. THOMAS ACTUALLY WAS AT THE -- WAS AT THE
15 LINEUP, BUT HE NEVER -- DID HE EVER SEE THE INDIVIDUAL?

16 MR. SIMS: YES, HE PARTICIPATED IN THE "A" LINEUP,
17 JUST NOT IN THE LINEUP RELATED TO THIS DEFENDANT.

18 THE COURT: OKAY. THAT'S RIGHT, BECAUSE I THINK
HE TESTIFIED THAT HE SAW HIM IN THE HALLWAY OR SOMETHING
20 OF THAT NATURE.

21 MR. DAVIS: THAT'S CORRECT.

22 THE COURT: AND THEN AT THAT POINT IN TIME, HE
23 TOLD THE INVESTIGATING OFFICERS THAT THIS WAS NOT THE
24 INDIVIDUAL, AND HIS VERSION OF THE EVENTS WAS THAT A
25 PHYSICAL SHOWUP SHOWED MORE THE CHARACTERISTICS OF THAT
26 PARTICULAR INDIVIDUAL, INCLUDING THE ABSENCE OF
27 APPARENTLY A DISTINGUISHABLE SCAR ON HIS FACE. S-1
28 SUSPECT, J, WAS THEN RELEASED.

1 THE ISSUE PERTAINS TO THE IDENTITY OF THOSE
2 INDIVIDUALS, OR INDIVIDUAL, WHO PROVIDED THE INFORMATION
3 IN THE FIRST PLACE, AND I THINK THERE WERE TWO ASPECTS OF
4 IT; ONE, THAT S-1 WAS A MEMBER OF THE LOCAL PIRU GANG
5 AND, TWO, THE INFORMATION PERTAINING TO THE REASONS WHY
6 HE COULD NOT HAVE BEEN THE SHOOTER, BECAUSE ALLEGEDLY HE
7 WAS BABY-SITTING AND THERE WAS SOME SECONDARY EVIDENCE TO
8 SUGGEST THAT.

DID I SUMMARIZE BASICALLY THE FACTS?

MR. SIMS: YES, YOUR HONOR.

MR. DAVIS: WITH SOME VARIANCES. THIS PARTICULAR
WITNESS DIDN'T INDICATE THAT HE WAS PRIVY TO THE
BABY-SITTING FACTS. MORE GENERALLY, ALL WE'VE GOT, HE
WAS ALERTED THIS WAS THE WRONG MAN, HE WASN'T THERE.
THEN SECONDLY, I --

THE COURT: DIDN'T I HEAR THAT HE HAD AN ALIBI?

MR. SIMS: I BELIEVE THE COURT MIGHT BE RIGHT
ABOUT THAT. I THINK MR. THOMAS DID INDICATE THAT HE HAD
HEARD TO SOME DEGREE THAT --

THE COURT: MAYBE NOT BABY-SITTING, BUT HE HAD AN
ALIBI AND IT WAS SUBSTANTIATED BY OTHERS THAT HE WAS NOT
THERE AT THE TIME IN QUESTION.

MR. SIMS: THAT IS CORRECT.

MR. DAVIS: AND I THINK, FAIRLY, THE EVIDENCE FROM
THIS PARTICULAR WITNESS IS -- IF I COULD USE THE TERM --
ON THE FENCE, WHEN AT THE LINEUP INVOLVING JOHNNY CLARK,
HE SAW HIM AND RECOGNIZED HIM FROM A SIX-PACK, AND THEN
CONCLUDED, WHEN SEEING HIM LIVE, HE WASN'T SHOOTER ONE;

1 THAT IT MAY HAVE BEEN WHEN HE LOOKED AT ALL OF THEM, NONE
2 OF THEM LOOKED ANYTHING LIKE SHOOTER ONE. I THINK WE'RE
3 ON THE FENCE ON THAT IN TERMS OF THIS PARTICULAR WITNESS'
4 BASIS FOR BEING UNABLE TO IDENTIFY.

5 THE COURT: I CAN HONESTLY SAY I'VE NEVER BEEN
6 PRESENTED WITH A SITUATION LIKE THIS. I'VE BEEN
7 PRESENTED WITH SITUATIONS IN WHICH SOMEBODY HAS TAKEN THE
8 STAND AND REFUSED TO TESTIFY, AND THAT'S AN EASY CALL.
I'VE NEVER BEEN PRESENTED WITH A SITUATION WHERE A
10 WITNESS HAS BEEN QUESTIONED FOR AN EXTENSIVE PERIOD OF
11 TIME, AND IN THIS CASE, A FULL DAY, PERHAPS A LITTLE BIT
12 LONGER, AND ONLY AT THE END OF HIS TESTIMONY, HAS IT COME
13 TO LIGHT HE MAY HAVE SOME INFORMATION IN WHICH HE DOES
14 NOT WISH TO DISCLOSE. I'M IN A QUANDARY AS TO WHAT THE
15 APPROPRIATE ACTION SHOULD BE BY THE COURT.

16 IT RANGES FROM CONTEMPT AS TO THIS WITNESS,
17 WHICH I THINK IS CLEAR, IF I ORDER HIM, AND IF HE STILL
18 REFUSES TO DISCLOSE THAT INFORMATION, TO A LIMITING
INSTRUCTION, OR AN ALTERNATIVE, TO PRESENT OTHER EVIDENCE
20 OR TO CLARIFY HIS RESISTANCE TO DISCLOSE THAT
21 INFORMATION, AND CERTAINLY WE WOULD INCORPORATE THAT INTO
22 THE CREDIBILITY AND BELIEVABILITY INSTRUCTION COUPLED
23 WITH A LIMITING INSTRUCTION TO THE RANGE OF STRIKING HIS
24 TESTIMONY. STRIKING HIS TESTIMONY, I THINK, IS THE MOST
25 EXTREME OF ALL THE REMEDIES, AND THE QUESTION IS WHETHER
26 OR NOT IT'S WARRANTED --

27 MR. DAVIS: MAY I MAKE --

28 THE COURT: -- IN THIS SITUATION.

1 MR. DAVIS: MAY I MAKE A SUGGESTION HERE? ONE, TO
2 MAKE OUR RECORD COMPLETE, HE ALSO DECLINED TO IDENTIFY A
3 MEMBER OF LAW ENFORCEMENT AND A MEMBER OF HIS CLUB WHO
4 WERE OUTSIDE AT OR ABOUT THE TIME OF THE SHOOTING WHO MAY
5 WELL HAVE BEEN OUTSIDE THERE WITH MY CLIENT, AND TO QUOTE
6 THIS PARTICULAR WITNESS, AND QUOTE, "QUITE A FEW MORE
7 PEOPLE OUTSIDE," AND THE REASON HE STATED WAS, QUOTE, "I
8 CAN'T GIVE YOU THAT INFORMATION," END QUOTE. "WHERE DID
9 YOU COME UP WITH YOUR INFORMATION THERE WAS SOMEONE
10 OUTSIDE?" "BECAUSE I WAS TOLD THAT," AGAIN A QUOTED
11 STATEMENT, QUOTE, "THE NIGHT OF THE INCIDENT," END
12 QUOTE.

13 NOW, THIS IS NOT MERELY DISCOVERY. THIS IS
14 HIM SAYING "THERE WAS A COP OUTSIDE AND I'M NOT GOING TO
15 TELL YOU WHO IT IS." THERE WAS A COP OUTSIDE THAT MAY
16 HAVE NOT BEEN ABLE TO SEE WHAT HE SAW ABOUT MY CLIENT
17 AFTER THE SHOOTING, CONTEMPLATING ON HIS MOTORCYCLE, OUT
18 THERE IN THE ALLEY. HE MAY HAVE A VERY DIFFERENT MEMORY,
19 BUT MORE THAN ONE, HE SAID, OF HIS MEMBERS TOLD HIM THAT
20 INFORMATION, AND SO THERE'S THAT PART.

21 SECONDLY, WE'RE SITTING HERE ASSUMING THIS
22 PARTICULAR WITNESS IS GOING TO CONTINUE TO TESTIFY AT
23 ALL, AND I'D LIKE TO KNOW IF HE INTENDS TO GIVE ONE MORE
24 WORD UNDER OATH IN THIS CASE OR HE'S MADE A DIFFERENT
25 DECISION AND NOT ONLY IS HE NOT GOING TO GIVE UP THE
26 NAMES, BUT HE'S GOING TO CHERRY-PICK FROM HERE ON OUT WHAT
27 HE'S GOING TO DO FOR THE BALANCE OF HIS TESTIMONY.

28 MR. SIMS: WELL, THE PEOPLE SORT OF DISAGREE WITH

1 COUNSEL'S RECITEMENT OF WHAT TOOK PLACE THAT DATE. I
2 THINK MR. THOMAS HAS INDICATED THAT THERE'S INFORMATION
3 THAT THERE ARE OTHER PEOPLE OUT THERE. HE DID NOT SAY
4 ALL OF THE PEOPLE WHO HAD BEEN OUTSIDE AFTER THE SHOOTING
5 WERE MEMBERS.

6 THERE WERE PEOPLE OUT THERE, TO BE SURE, IS
7 WHAT HE SAID, BUT HE DID NOT SAY THEY WERE ALL MEMBERS,
8 OR IF ANY WERE MEMBERS. HE INDICATED THERE WERE PEOPLE
OUT THERE. HE INDICATED THAT THERE WAS A PERSON WHO WAS A
10 POLICE OFFICER WHO WAS OUT THERE, BUT HE DOESN'T
11 DISTINGUISH HOW HE MIGHT KNOW THAT INFORMATION. I THINK
12 WE STILL FIND OURSELVES IN THE SAME SITUATION. I DON'T
13 THINK THE INFORMATION THAT COUNSEL HAS JUST PROVIDED THE
14 COURT CHANGES THE FACTS IN ANY WAY.

15 IT'S STILL ESTABLISHED THERE HAD BEEN PEOPLE
16 OUT THERE, AND THEN THE INFORMATION THAT WE'RE SIMPLY
17 TRYING TO GLEAN AT THIS POINT AS IT RELATES TO THE FIRST
18 SHOOTER AND THE INFORMATION WITH REGARDS TO WHO THAT
PERSON MAY HAVE BEEN OR WHO HE MAY NOT HAVE BEEN STILL
20 RESIDES IN THE SAME POSITION AS IT HAD BEFORE.

21 NOTHING HAS CHANGED WITH REGARDS TO THAT. I
22 DON'T -- I HAVEN'T SPOKEN TO MR. THOMAS THIS MORNING, BUT
23 I'VE SPOKEN TO HIM IN THE PAST AND HE'S BEEN A WILLING
24 PARTICIPANT. HE'S BEEN ON TIME. HE'S COME. HE WAS ON
25 THE STAND FOR WELL OVER A DAY, AS THE COURT HAS
26 INDICATED, AND HE INTERACTED WITH BOTH COUNSEL. HIS
27 DEMEANOR WAS CANDID. I DON'T THINK THIS ONE PARTICULAR
28 ISSUE AS HE'S STATED WHICH JEOPARDIZED HIM PERSONALLY AND

1 GOES AGAINST THE PERSONAL CREDOS OF THOSE WHO RIDE
2 MOTORCYCLES, IN ITS LIMITED FASHION, SHOULD EXCISE THE
3 VAST MAJORITY OF HIS DAY AND A HALF OF TESTIMONY.

4 THE COURT: WELL, THERE'S TWO THINGS THAT STRUCK
5 ME, AND I THINK I'VE ALREADY ADDRESSED THEM. THE FIRST
6 WAS HIS STATEMENT TO THE EFFECT "ANYBODY ELSE WHO MIGHT
7 HAVE BEEN PERCIPIENT IS IRRELEVANT BECAUSE I SAW WHAT I
8 SAW AND THAT SHOULD BE GOOD ENOUGH," WORDS TO THAT
EFFECT. I DON'T THINK HE SAID IT QUITE THE WAY I SAID
IT, BUT I THINK THE ESSENCE OF HIS TESTIMONY WAS THAT.

11 THE SECOND THING IS I HEARD -- AND I DON'T
12 KNOW WHETHER OR NOT IT WAS BY WAY OF OTHER STATEMENTS
13 PRIOR TO OPENING STATEMENT -- TO THE EFFECT THAT THE
14 DEFENSE WAS PREPARED TO CALL WITNESSES WHO WOULD PLACE
15 THE DEFENDANT OUTSIDE OF THE CLUBHOUSE AT THE TIME OF THE
16 SHOOTING.

17 IF THERE WERE OTHERS WHO CAN CORROBORATE
18 THAT, I MEAN, THAT'S COMPELLING EVIDENCE THAT HE COULD
NOT HAVE BEEN INSIDE AT THE TIME OF THE ALLEGED SHOOTING
20 AS CONVEYED BY MR. THOMAS AND THE MASONS, AND THAT'S MY
21 CONCERN. MY CONCERN IS NOT EXCULPABILITY, PER SE, BUT
22 REASONABLE DOUBT.

23 I THINK THE STANDARD AT THIS STAGE OF THE
24 PROCEEDINGS IS THAT ANYTHING THAT'S RELEVANT TO ESTABLISH
25 REASONABLE DOUBT IS RELEVANT FOR THE COURT, AND WOULDN'T
26 IT CONSTITUTE REASONABLE DOUBT IF THERE WERE OTHERS
27 OUTSIDE WHO COULD CORROBORATE A DEFENSE THEORY THAT IN
28 FACT HE WAS NOT PHYSICALLY PRESENT INSIDE AT THE TIME OF

1 THE SHOOTING AND THAT THEY COULD ESTABLISH THAT BY, ONE,
2 SAYING "YES, I SAW HIM, TOO, AND THEN I HEARD SHOTS, AND
3 AT THE TIME THAT I HEARD SHOTS, HE WAS OUTSIDE SITTING ON
4 HIS MOTORCYCLE, STANDING UP AGAINST THE WALL, WALKING
5 DOWN THE ALLEY," WHATEVER IT MIGHT BE, AND THAT'S MY REAL
6 CONCERN, AND TO A LIMITED EXTENT, IT IS ALSO THE
7 IDENTIFICATION OF THE INDIVIDUALS WHO HE RELIED UPON
8 PRIOR TO THE TIME THAT HE WENT TO THE PHYSICAL LINEUP TO
INDICATE PERHAPS THIS WAS NOT THE GUY WHO WAS THERE, AND
10 THAT HE MISIDENTIFIED HIM IN THE FIRST INSTANCE WHEN HE
11 PICKED HIM UP OUT OF THE SIX-PACK. THAT GOES TO THE
12 BELIEVABILITY AND CREDIBILITY.

13 IF HE'S WRONG IN ONE INSTANCE, CAN HE BE
14 WRONG IN ANOTHER INSTANCE, AND THE QUANTUM OF EVIDENCE I
15 DON'T THINK IS HIGHLY RELEVANT. IT IS EVIDENCE, AND IT'S
16 UP TO THE JURY, THE FACT-FINDERS, TO MAKE THAT
17 DETERMINATION, AND SHOULD THEY NOT HAVE INFORMATION,
18 THAT'S PERTINENT TO ASSESSING HIS CREDIBILITY. I MEAN,
WE GIVE THEM A NUMBER OF FACTORS TO LOOK TO, INCLUDING
20 BIAS AND PREJUDICE, BIAS IN SOME INSTANCE -- AND I'M
21 CONCERNED ALSO WITH THE FACT THAT THERE'S EVIDENCE TO
22 SUGGEST THAT THE TWO YOUNG MEN THAT WERE THERE WERE
23 GANG-AFFILIATED IN SOME WAY OR ANOTHER, IN ALL LIKELIHOOD
24 BLOOD-AFFILIATED, IN ALL LIKELIHOOD BLOOD-AFFILIATED WITH A
25 LOCAL GANG, AND IS THERE SOMETHING THAT SOMEHOW OR
26 ANOTHER WE'VE HAD WITHIN THAT, THAT THAT IS RELEVANT,
27 AGAIN TO REASONABLE DOUBT.

28 THESE ARE THINGS I THINK THE DEFENSE IS

1 ENTITLED TO. THAT'S MY TAKE ON IT, AND I'M NOT -- I HAVE
2 NOTHING IN THIS LITIGATION. I'M JUST SITTING HERE AS AN
3 INDEPENDENT EVALUATOR OF THE LAW AND OF THE FACTS, AND
4 TRYING TO DO WHAT THE LAW REQUIRES ME TO DO. THAT'S ALL
5 I CAN DO, BUT THAT'S A CONCERN THAT I HAVE.

6 MR. SIMS: THE DEFENSE HAS INDICATED THAT THEY
7 HAVE THESE PEOPLE, SO IN TERMS OF REASONABLE DOUBT
8 ARGUMENTS OR ISSUES RELATED TO REASONABLE DOUBT, THEY'VE
9 INDICATED THAT THEY HAVE THESE PEOPLE THAT WERE -- THAT
10 ARE OUTSIDE, AND SO THEY'RE CERTAINLY NOT PREVENTED FROM
11 PUTTING FORWARD AN ARGUMENT PUTTING FORWARD SOME EVIDENCE
12 THAT RELATES TO THAT ARGUMENT.

13 THE COURT: I AGREE, BUT WOULDN'T IT BE MUCH MORE
14 COMPELLING, BASED UPON YOUR EXPERIENCE, IF THEY CALL
15 THEIR WITNESSES AND THEIR WITNESSES SAY "YES," AND MAYBE
16 THEIR WITNESSES ARE TAINTED IN SOME WAY OR ANOTHER. I
17 HEARD SOMETHING TO THE EFFECT THAT THE FEMALE THAT MIGHT
18 HAVE BEEN OUTSIDE MIGHT BE -- I DON'T WANT TO MISCONSTRUE
19 WHAT WAS SAID -- BUT A LITTLE BIT DIFFERENT, A SPIRIT,
20 SOMETHING OF --

21 MR. DAVIS: COLORFUL.

22 THE COURT: COLORFUL. THAT'S THE TERM THAT WAS
23 USED, SO THE JURY MAY SAY "WELL, SHE'S A LITTLE
24 WISHY-WASHY. SHE'S A LITTLE WEIRD." WOULDN'T IT BE
25 COMPELLING IF YOU HAD A SECOND WITNESS WHO HAPPENS TO BE A
26 POLICE OFFICER THAT SAID "YEAH, I SAW THE SAME THING
27 SHE SAW"?

28 MR. DAVIS: WHAT IF SHE SAID "A GREAT DEAL OF WHAT

1 I'M TELLING YOU IS BASED ON INFORMATION I GOT ON THE
2 STREETS, PEOPLE I KNOW, PEOPLE I'VE KNOWN FOR A LONG
3 TIME"?

4 THE COURT: YOU'RE TALKING ABOUT THE FEMALE THAT
5 MIGHT BE CALLED?

6 MR. DAVIS: RIGHT, "THAT ARE TIGHT WITH ME IN MY
7 NEIGHBORHOOD AND IF THEY WERE HERE, THEY'D BE SAYING THE
8 SAME THING. THEY'D SAY 'J DID IT, J DID IT,' BUT THEY'RE
ALL SAYING 'DUCK DIDN'T DO IT.'" THAT'S WHAT WE'RE
-J LOOKING AT. IT WOULD BE PREPOSTEROUS. YOU WOULD THEN
11 SAY "WELL, LET'S TAKE A PASS BECAUSE YOUR NEIGHBORHOOD
12 HAS A CREDO AND WE COULD CONTEMPLATE THOSE SOURCES WHO
13 DID THIS AND DID THAT, AND YOU WON'T TELL US ABOUT IT
14 AFFECTING YOUR TESTIMONY, MAKE YOU A LITTLE MORE THAN
15 COLORFUL."

16 THE COURT: THE OTHER THING THAT I NEED TO SAY --
17 I'M NOT SAYING ANYTHING DEROGATORY TOWARDS MR. THOMAS.
18 THIS IS WHAT I THINK HIS RELUCTANCE TO TESTIFY IS
PREDICATED UPON: HIS RELATIONSHIP WITH A MULTITUDE OF
20 OTHERS IN THE COMMUNITY, WHETHER THEY BE GANG MEMBERS,
21 MOTORCYCLE MEMBERS, JUST PEOPLE THAT HE KNOWS, AND A
22 CERTAIN CREDO OR CODE OF HONOR THAT HAS BEEN DEVELOPED
23 OVER A PERIOD OF TIME, WHICH REQUIRES THAT YOU DON'T
24 INTENTIONALLY GET SOMEBODY ELSE INVOLVED WHO DOESN'T WANT
25 TO BE INVOLVED. I MEAN I THINK THAT'S THE BASIS. HE DID
26 ALLUDE TO THE FACT, BASED UPON YOUR QUESTIONING ON
27 FRIDAY, THAT PERHAPS HE MAY BE FEARFUL FOR HIS OWN
28 PERSONAL SAFETY, BUT THAT'S TRUE IN ANY CASE, OR MOST

1 CASES ANYWAY THAT WE HEAR IN THIS PARTICULAR COURTHOUSE.

2 I DON'T BELIEVE THAT. I BELIEVE THAT HE --
3 WHOEVER HE IS PROTECTING, HE HAS A RELATIONSHIP WITH, AND
4 I DON'T THINK THAT THEY WOULD INTENTIONALLY ATTEMPT TO
5 HARM HIM. I DON'T KNOW FOR A FACT, BUT I MEAN I'M NOT AS
6 CONCERNED, BASED UPON WHAT I'VE HEARD IN THIS CASE, AS I
7 MIGHT BE IN OTHER CASES, BASED UPON INFORMATION THAT I'VE
8 HEARD IN THOSE CASES. I THINK IT'S JUST A CREDO. THIS
IS SOMETHING THAT YOU JUST DON'T DO; TO A LARGE EXTENT
IT'S TRUE WITH GANG TYPES OF SITUATIONS. WE DON'T WANT
11 TO GET THE POLICE INVOLVED. WE'LL HANDLE IT OURSELVES,
12 THE SAME TYPE OF THING, AND I THINK HE ALLUDED TO THAT AS
13 WELL. "WE WOULD HANDLE THESE TYPES OF SITUATIONS
14 INTERNALLY."

15 MR. DAVIS: LET ME BRIEFLY MAKE THIS A PART OF MY
16 RECORD: FIRST OF ALL, IF I IMPLIED OR SAID IT WAS MY
17 ASSESSMENT OF THE EVIDENCE, PARTIAL AS IT IS, BECAUSE OF
18 THE POSITION THIS WITNESS TAKES, THAT PEOPLE OUTSIDE,
ACCORDING TO THIS WITNESS, WERE EXCLUSIVELY CLUB MEMBERS,
20 I DIDN'T MEAN TO SAY THAT. THERE WERE QUITE A FEW PEOPLE
21 OUTSIDE, IS WHAT HE SAID. I WASN'T JUMPING TO THE
22 ARGUMENT ON THAT EVIDENCE. I WASN'T SAYING IT WAS
23 EXCLUSIVELY CLUB MEMBERS, BUT IN CONNECTION WITH MY
24 ASKING HIM THE NATURE OF THE INFORMATION, PARTICULARLY
25 REGARDING THE NICKNAME J, I ASKED HIM WHERE HE CAME BY
26 THAT, AND HE SAID, QUOTE, "THAT'S WHAT I WAS TOLD BY A
27 COUPLE OF MEMBERS OF MY CLUB." "BY WHOM?" "A COUPLE OF
28 MEMBERS IN MY CLUB." "THEIR NAMES?" "I DON'T KNOW THEIR

1 NAMES." "YOU FORGOT?" "NO." "YOU REFUSE TO GIVE THE
2 NAMES?" "YES."

3 THAT IS A MAN WHO HAS NOT ONLY CHOSEN TO
4 CONCEAL THE NAMES, HE'S CHOSEN, IN DEFERENCE TO THE
5 LANGUAGE THAT'S TYPED ON THE PAGE, TO LIE ABOUT IT, TO
6 SAY "I FORGOT" AND SAY "I DIDN'T FORGET" AND HAVE US
7 SUFFER THE DUE PROCESS CONSEQUENCES WITH NO INFORMATION.

8 WHEN I ASKED HIM ABOUT THE INFORMATION
REGARDING A POLICEMAN WHO WAS OUTSIDE AT THE TIME OF THE
-- SHOOTING, WE HAD THIS EXCHANGE:

11 "QUESTION: IS THAT SOMEBODY YOU'D
12 RATHER NOT REVEAL OR SOMEBODY YOU JUST FORGOT
13 WHO IT WAS?

14 "ANSWER: PUT IT LIKE THIS, IF THEY'RE
15 NOT HERE TODAY, APPARENTLY THEY WOULDN'T DO
16 WHAT I'M DOING, SO I'LL LEAVE IT LIKE THAT,
17 OKAY."

18 THAT'S WHAT HE'S DONE. HE'S CHOSEN TO BE
THE TOTALITY OF THE UNINJURED WITNESS OF THE ENTIRETY OF
20 THE EVENT, TO LEAVE THE JURY RATIONALIZING THE POOR MEN
21 WERE SHOT, MAY BE INTOXICATED TO SOME REASONABLE DEGREE,
22 AND DIDN'T HAVE THE RECOLLECTION COMPARED TO HIS PERFECT
23 CINEMAGRAPHIC RECALL OF EVERYTHING THE WAY IT FITS, AND
24 NOW DOESN'T WANT TO SAY TO WHAT HUGE EXTENT ALL OF THIS
25 IS MANIPULATED BY UNKNOWN SOURCES AND ALL OF THIS IS AT
26 THE BEHEST OF PEOPLE WHO CHOOSE NOT TO BE HERE AND DO
27 WHAT HE'S DOING.

28 THIS HAS A MONUMENTAL IMPACT ON MY CLIENT'S

1 DEFENSE. IT'S A MONUMENTAL CONTROL BY UNKNOWN AND HIGHLY
2 SPECIOUS SOURCES ON THE QUALITY OF EVIDENCE THAT MY
3 CLIENT CAN MARSHAL FORWARD. IT'S AN ATTEMPT TO CONTROL
4 THE PROCEEDINGS BY THAT SAME GROUP.

5 THE COURT: ANYTHING ELSE TO ADD?

6 MR. SIMS: NO, SUBMIT IT.

7 THE COURT: ALL RIGHT. I WANT TO THINK IT
8 THROUGH, BECAUSE I DON'T KNOW THE REAL ANSWER. I KNOW IT
RANGES ANYWHERE FROM CONTEMPT ON ONE HAND WITH NO DIRECT
10 ACTION IN THIS PARTICULAR CASE, TO STRIKING HIS TESTIMONY
11 ON THE OTHER HAND. I'M GOING TO THINK IT THROUGH. MY
12 INCLINATION IS TO FIND SOME MIDDLE GROUND. I'M NOT QUITE
13 SURE EXACTLY WHAT THAT MIDDLE GROUND WOULD BE, BUT I'M
14 THINKING THAT IT WOULD BE FURTHER INQUIRY OF MR. THOMAS
15 AS TO HIS REASONS, SO THAT THE JURY FULLY UNDERSTANDS,
16 AND PERHAPS A LIMITING INSTRUCTION AS WELL.

17 I'M NOT QUITE SURE WHAT THE LANGUAGE WOULD
18 BE, BUT SOMETHING TO THE EFFECT THAT IT MAY AFFECT HIS
CREDIBILITY WITH RESPECT TO THE INFORMATION THAT HE HAS
20 PROVIDED AND HIS RELUCTANCE TO GET OTHERS INVOLVED. I'M
21 NOT SURE WHAT THE LANGUAGE IS.

22 I DON'T -- I'M NOT SURE WHAT THE LAW WOULD
23 ACTUALLY COMPEL ME TO DO. I'VE NEVER DONE ANY RESEARCH
24 IN THIS PARTICULAR AREA. I DON'T KNOW WHETHER OR NOT
25 APPELLATE COURTS HAVE EVER HAD AN OPPORTUNITY TO ADDRESS
26 THE DISCRETIONARY RANGES THAT A JUDGE HAS. I HAVE
27 ALREADY EXPRESSED MY CONCERNS. IT IS A CONCERN. I THINK
28 IT'S A BONA FIDE CONCERN. THERE'S VERY LITTLE DOUBT IN

1 MY MIND IF WE WENT FORWARD AND IF MR. SANDERS WAS
2 CONVICTED, IT WOULD RAISE A SIGNIFICANT ISSUE ON APPEAL,
3 PERHAPS RESULTING IN A REVERSAL. I'M PRETTY CONFIDENT AS
4 TO THAT. I DON'T KNOW WHAT AN APPELLATE COURT WOULD DO,
5 BUT I'M CONFIDENT THAT WOULD BE AN INAPPROPRIATE ACTION
6 OF THIS PARTICULAR COURT AND IT WOULD RAISE JUDICIAL
7 ERROR.

8 LET'S DO THIS: LET'S RECESS UNTIL
10:00 O'CLOCK --

10 MR. DAVIS: YOUR HONOR, I HATE TO INTERRUPT YOU.
11 I DON'T MEAN TO PROLONG THIS. WE'VE ACCEPTED OUR RECORD,
12 AND I THINK IT'S ADEQUATE, BUT I STILL WOULD LIKE TO
13 KNOW, THROUGH THIS WITNESS, IF HE INTENDS TO TESTIFY AT
14 ALL ANY FURTHER.

15 THE COURT: I WAS GOING TO DO THAT BEFORE WE
16 RECESSED. THE TENTATIVE WOULD BE TO RECESS TO 10:00. IT
17 GIVES ME A CHANCE TO THINK IT THROUGH AND DO SOME
18 INDEPENDENT RESEARCH. LET ME ASK A COUPLE OF
FOUNDATIONAL QUESTIONS.

20 MR. THOMAS, YOU HEARD WHAT I HAD TO SAY ON
21 FRIDAY, YOU HEARD WHAT I HAD TO SAY AS TO, IN THE COURT'S
22 VIEW, HOW IMPORTANT IT IS TO KNOW ABOUT THESE OTHER
23 INDIVIDUALS. IT MAY NOT CHANGE ANYTHING, BUT IN THE
24 CONTEXT OF LITIGATION, BOTH SIDES NEED TO HAVE ALL
25 RELEVANT INFORMATION, EVEN MORE SO FOR THE DEFENSE,
26 BECAUSE THE DEFENSE DOESN'T HAVE TO PROVE ANYTHING.

27 ALL THEY HAVE TO DO IS RAISE REASONABLE
28 DOUBT IN THE MINDS OF THE TRIERS OF FACT, AND THERE'S

1 LOTS OF WAYS THAT THEY CAN DO THAT, AND I THINK THEY
2 PERHAPS CAN DO IT -- MAYBE THEY COULD DO IT IF THEY HAD
3 ADDITIONAL INFORMATION INCLUDING THE NAMES OF THE
4 INDIVIDUALS YOU'VE TALKED TO OR THOSE INDIVIDUALS YOU
5 BELIEVE HAD INFORMATION WITH RESPECT TO THE
6 IDENTIFICATION OF SUSPECT ONE OR THOSE INDIVIDUALS WHO
7 MAY HAVE BEEN PRESENT THAT YOU HEARD ABOUT WHO WERE
8 OUTSIDE AT OR ABOUT THE TIME OF THE SHOOTING. I THINK I
9 MADE MYSELF REAL CLEAR AS TO THE REASONS WHY, AND I'M
10 JUST MAKING SURE THAT YOU UNDERSTAND WHAT I'M ABOUT TO DO
11 FOR THE REASONS THAT I HAVE STATED.

12 IT IS THE ORDER OF THE COURT, AND THE COURT
13 DOES ORDER YOU, TO DIVULGE THAT INFORMATION. YOU'VE
14 INDICATED TO ME PREVIOUSLY THAT YOU'RE NOT UNDER ANY
15 CIRCUMSTANCES GOING TO DIVULGE THE NAMES OF THOSE
16 PARTICULAR INDIVIDUALS. IS THAT STILL YOUR POSITION?

17 THE WITNESS: THAT'S STILL MY POSITION.

18 THE COURT: NOW, THE SECOND QUESTION WOULD BE:
19 YOU'RE STILL ON THE STAND, YOU ARE SUBJECT TO I THINK
20 RE-CROSS AT THE TIME THAT WE RECESSED FRIDAY AFTERNOON.
21 IT WOULD BE MY INTENTION TO ALLOW THE ATTORNEYS TO HAVE
22 SOME SIGNIFICANT LATITUDE WITH RESPECT TO THOSE
23 PARTICULAR ISSUES, AND IF I ALLOW THAT, ARE YOU GOING TO
24 BE PREPARED TO TESTIFY OR ARE YOU GOING TO ASSERT SOME
25 SORT OF PRIVILEGE OR INDICATE TO THE JURY THAT YOU'VE
26 SAID ALL THAT YOU HAVE TO SAY IN THIS REGARD?

27 THE WITNESS: NO, I WILL CONTINUE, NO PROBLEM.

28 THE COURT: LET'S RECESS UNTIL 10:00 O'CLOCK.

1 YOU'RE ORDERED BACK AT THAT TIME.

2 THE WITNESS: THANK YOU.

3 THE COURT: INFORM THE JURY WE'RE GOING TO HAVE TO
4 RECESS UNTIL 10:00, AND THEY'RE EXCUSED UNTIL THEN.

5 (RECESS TAKEN.)

6
7 (THE FOLLOWING PROCEEDINGS
8 WERE HELD IN OPEN COURT
- OUTSIDE THE PRESENCE OF
10 THE JURY:)

11
12 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
13 TO THE SANDERS MATTER. MR. SANDERS IS PRESENT WITH
14 COUNSEL, AS IS THE PEOPLE'S REPRESENTATIVE. THE CLERK
15 INDICATED THAT MR. DAVIS WISHED TO HAVE A SIDEBAR.

16 MR. DAVIS: YES, YOUR HONOR.

17 THE COURT: YOU MAY.

18
19 (THE FOLLOWING PROCEEDINGS
20 WERE HELD AT SIDEBAR:)

21
22 MR. DAVIS: WHEN I ATTENDED THE PRELIMINARY
23 HEARING AND REPRESENTED MR. SANDERS, WE OBSERVED
24 INDIVIDUALS COME INTO THE COMPANY OF THIS WITNESS AND
25 THEY ARE BACK AGAIN TODAY, AND I WOULD OFFER THAT IF THEY
26 RETURN -- WE NEED TO CONSIDER THAT POSSIBILITY -- I'M
27 MAKING THESE REPRESENTATIONS IN GOOD FAITH -- THAT ONE IS A
28 MEMBER OF LAW ENFORCEMENT, AND HE IS A MEMBER OF THE LOS

1 ANGELES SHERIFF'S DEPARTMENT, AND HE IS A MEMBER OF
2 THE RARE BREED CLUB.

3 HIS FIRST NAME I KNOW TO BE PRESTON, AND THE
4 OTHER GENTLEMAN IS A FELLOW MEMBER. I ONLY RAISE THIS
5 WITH NOTHING MORE THAN THAT, THAT HE MAY BE MONITORED BY
6 OR SUPERVISED BY OR CERTAINLY ATTENDED BY PEOPLE WHO CAME
7 WITH HIM TODAY IN TERMS OF WHAT HE SAYS OR DOESN'T SAY
8 TODAY. I DON'T SAY THAT HE'S AT RISK OF HARM, BUT I MAY
9 TAKE THE OPPORTUNITY IF THEY'RE HERE IN COURT TO TURN
10 AROUND AND HAVE HIM IDENTIFY THEM.

11 THE COURT: DO YOU HAVE ANY INFORMATION,
12 MR. SIMS?

13 MR. SIMS: I KNOW THAT MR. THOMAS CAME WITH PEOPLE
14 TODAY. THAT WAS THE FIRST TIME I'VE EVER SEEN THESE
15 PEOPLE. THAT'S ALL I CAN SAY.

16 THE COURT: THEY WERE HERE EARLIER TODAY. THERE
17 WAS ONE BIG, BURLY GUY THAT I SAW.

18 MR. SIMS: THE COURT PROBABLY SAW MORE THAN I DID,
19 BECAUSE MY BACK WAS TURNED. ONLY WHEN I EXITED THE COURT
20 DID I SEE MR. THOMAS LEAVE WITH THESE GENTLEMEN. THAT'S
21 WHAT I CAN RELATE TO THE COURT.

22 MR. DAVIS: ONE IS CARRYING A RADIO CONSISTENT
23 WITH LAW ENFORCEMENT OR SOMEBODY THAT LIKES RADIOS ON
24 THEIR HIP. NOW, WE CAN ASK TO HAVE THEM IDENTIFIED BY
25 THE WITNESS IF THEY'RE NOT HERE IN COURT.

26 IT WOULDN'T RAISE AN ISSUE WITH THEIR
27 PRESENCE WHILE HE'S IN COURT, BUT APPELLATE PROCEEDINGS.
28 CERTAINLY ALL PEOPLE HAVE A RIGHT TO BE HERE. I'M JUST

1 CAUTIOUS.

2 THE COURT: ALL RIGHT. WE'LL PROCEED
3 ACCORDINGLY.

4
5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN OPEN COURT
7 OUTSIDE THE PRESENCE OF
8 THE JURY:)

-- THE COURT: IS MR. THOMAS STILL AVAILABLE?

11 MR. SIMS: HE'S IN THE HALLWAY.

12 THE COURT: LET'S BRING HIM BACK.

13 LET THE RECORD REFLECT THAT MR. THOMAS IS
14 PRESENT. HE HAS RETAKEN THE STAND. A REMINDER, SIR,
15 YOU'RE STILL SUBJECT TO THE OATH TAKEN LAST WEEK. BEFORE
16 YOU COMMENCE YOUR TESTIMONY, AGAIN OUTSIDE THE PRESENCE
17 OF THE JURY I'LL GIVE YOU ONE MORE OPPORTUNITY TO DIVULGE
18 THE INFORMATION THAT WAS PREVIOUSLY REQUESTED. I'M
ORDERING YOU TO DO SO, AND YOUR RESPONSE, SIR?

20 THE WITNESS: NO, SIR.

21 THE COURT: IS ANYTHING ELSE TO BE SAID WITH
22 RESPECT TO THE ISSUES THAT WE DISCUSSED BEFORE WE BROKE?

23 MR. SIMS: I DON'T HAVE ANYTHING FURTHER.

24 MR. DAVIS: NOTHING, THANK YOU.

25 THE COURT: ALL RIGHT. I'VE SAT AND I'VE THOUGHT
26 IT THROUGH. I BELIEVE, BASED UPON THE TOTALITY OF THE
27 CASE UP TO POINT IN TIME, GIVEN THE FACT THAT WE HAVE
28 BEEN IN TRIAL FOR APPROXIMATELY A WEEK, GIVEN THE FACT

1 THAT WE HAVE HEARD FROM THE PRIMARY PERCIPIENT WITNESSES,
2 I.E., THE TWO ALLEGED VICTIMS PLUS MR. THOMAS, GIVEN THE
3 FACT THAT A LOT OF INFORMATION HAS BEEN DEVELOPED, SOME
4 IMPORTANT TO THE PEOPLE, SOME IMPORTANT TO THE DEFENSE,
5 ESPECIALLY IN THE CONTEXT OF REASONABLE DOUBT, AND THAT
6 THERE ARE A LOT OF RESOURCES INVESTED IN THIS PARTICULAR
7 CASE, AND THE LATTER IS NOT REAL RELEVANT TO WHAT I'M
8 ABOUT TO SAY, I THINK AT THIS POINT IN TIME IT WOULD BE
~ INAPPROPRIATE TO DISMISS THE ENTIRE TESTIMONY OF
MR. THOMAS.

11 MR. DAVIS: MEANING TO STRIKE?

12 THE COURT: HIS TESTIMONY.

13 MR. DAVIS: YOU SAID "DISMISS."

14 THE COURT: I'M SORRY, TO STRIKE HIS TESTIMONY --
15 TO STRIKE HIS TESTIMONY. AS I INDICATED, THERE'S LOTS OF
16 INFORMATION. SOME IS FAVORABLE TO THE PEOPLE, SOME IS
17 FAVORABLE TO THE DEFENSE AS WELL. HE HAS PROVIDED AT
18 LEAST HIS VERSION OF THE EVENTS AS THEY OCCURRED ON THAT
PARTICULAR DAY.

20 THE OTHER THING THAT IS SIGNIFICANT,
21 ALTHOUGH WE HAVE YET TO HEAR ANY OTHER WITNESSES OTHER
22 THAN THE THREE WITNESSES THAT I'VE ALLUDED TO, THERE'S
23 BEEN SOME REPRESENTATIONS TO THE EFFECT THAT THERE WILL
24 BE OTHER WITNESSES WHO WILL BE TESTIFYING THAT WILL
25 EITHER SUPPORT OR NOT SUPPORT THE TESTIMONY OF ANY OF THE
26 THREE WITNESSES WHO HAVE PREVIOUSLY TESTIFIED.

27 I BELIEVE THAT IF I GIVE THE DEFENSE AN
28 OPPORTUNITY TO INQUIRE FURTHER AS TO MR. THOMAS'

1 RELUCTANCE TO TESTIFY, COUPLED WITH AN EXPANDED
2 INSTRUCTION, WHETHER IT'S A LIMITING INSTRUCTION OR
3 WHETHER IT'S AN AUGMENTATION TO EITHER THE CREDIBILITY OR
4 THE EYEWITNESS IDENTIFICATION INSTRUCTIONS, THAT WE COULD
5 COMPENSATE FOR ANY INADEQUACIES THAT MIGHT EXIST BASED
6 UPON THE FACT THAT WE MAY NOT KNOW WITH ANY SORT OF
7 CERTAINTY AS TO WHO THESE OTHER INDIVIDUALS ARE.

8 I COME TO THAT CONCLUSION BASED UPON THE
9 FOLLOWING: IT WOULD SERVE NO PURPOSE TO PUT MR. THOMAS
10 IN JAIL FOR UP TO FIVE DAYS OR UP TO THE CONCLUSION OF
11 THIS PARTICULAR CASE. I THINK I WOULD LOSE JURISDICTION
12 AFTER THAT IF I ORDERED HIM TO TESTIFY, AND IF HE REFUSED
13 TO DO SO, FIND HIM IN CONTEMPT.

14 I THINK STRIKING HIS TESTIMONY IS EXTREME
15 FOR THE REASONS THAT I'VE INDICATED. IT'S NOT AS IF IT'S
16 THE FIRST FEW MINUTES INTO AN INDIVIDUAL'S TESTIMONY
17 WHERE HE GIVES RATHER INCRIMINATING EVIDENCE AGAINST A
18 DEFENDANT AND THEN ELECTS NOT TO PROCEED. AS I ALLUDED
19 TO, HE'S BEEN UNDER EXAMINATION FOR OVER A DAY. THE
20 ISSUE AROSE BY WAY OF RECROSS, SO THERE WERE -- WAS A
21 LARGE -- STRIKE THAT -- THERE WAS SUBSTANTIAL TIME FOR
22 EACH SIDE TO INQUIRE, AND LOTS OF INFORMATION WAS
23 SOLICITED.

24 I THINK THAT THERE'S ENOUGH INFORMATION WITH
25 RESPECT TO WHAT HAS BEEN SAID AND WITH RESPECT TO WHAT
26 MAY BE SAID. GIVEN THAT, I'M GOING TO GIVE THE DEFENSE
27 RATHER WIDE LATITUDE TO DEVELOP THE RELUCTANCE OF
28 MR. THOMAS TO IDENTIFY THOSE WHO APPARENTLY HAVE SOME

1 KNOWLEDGE AS TO SOME OF THE EVENTS, AND THAT COUPLED WITH
2 ANY LIMITING OR EXPANDED INSTRUCTION EITHER BY WAY OF THE
3 BELIEVABILITY INSTRUCTION OR THE EYEWITNESS
4 IDENTIFICATION INSTRUCTION I THINK SHOULD BE SUFFICIENT,
5 AGAIN, WITH THE KNOWLEDGE THAT EACH SIDE WILL HAVE AN
6 EXPANDED OPPORTUNITY BY WAY OF ARGUMENT TO EXPLORE THE
7 RELATIVE MERITS OR NONMERITS OF THAT INFORMATION, SO I
8 THINK WE'RE READY TO PROCEED, AND THE JURY MAY BE BROUGHT
IN, AND, MR. DAVIS, YOU WILL HAVE AN OPPORTUNITY TO
10 INQUIRE FURTHER.

11 MR. DAVIS: THANK YOU. IF I MIGHT BRIEFLY, IT'S
12 IN TOTAL RESPECT WITH WHAT YOU WERE CONFRONTED WITH, HOW
13 YOU RULED AND REASONED IT. OUT OF AN EXCESSIVE AMOUNT OF
14 PRECAUTION, I WOULD RESPECTFULLY MOVE FOR A MISTRIAL AT
15 THIS POINT.

16 THE COURT: MR. SIMS, DO YOU WISH TO BE HEARD?

17 MR. SIMS: NO. I THINK THE ISSUE HAS BEEN
18 FRAMED. THE COURT HAS IDENTIFIED THE ISSUES. WE'D
SUBMIT IT.

20 THE COURT: I DON'T THINK AT THIS POINT IN TIME IT
21 WOULD RISE TO THE LEVEL IN WHICH I WOULD BE REQUIRED TO
22 GRANT THE MISTRIAL. I THINK IT'S STILL A LITIGABLE
23 ISSUE. CERTAINLY THE GUILT OR INNOCENCE OF THE DEFENDANT
24 IS CLEARLY LITIGABLE. I DON'T THINK IT HAS BEEN
25 PREJUDICED.

26 ALSO KEEP IN MIND THAT THE DEFENSE -- ALL
27 THEY HAVE TO DO IS RAISE REASONABLE DOUBT, AND I THINK
28 SOMETIMES WE LOSE SIGHT OF THAT. MR. SIMS, I THINK, LOST

1 SIGHT OF THAT WHEN HE SAID, "WELL, THE INFORMATION DID
2 NOT GO TO CULPABILITY." WELL, IT DOES GO TO, IN THE
3 COURT'S VIEW, RAISING REASONABLE DOUBT, AND I THINK
4 THERE'S SUFFICIENT INFORMATION WITHIN THE GUIDELINES THAT
5 I HOPEFULLY HAVE ESTABLISHED THAT GIVES THE DEFENSE THAT
6 OPPORTUNITY. WHETHER OR NOT IT RISES TO THAT LEVEL
7 REMAINS TO BE SEEN. IT'S UP TO THE JURORS TO DECIDE.

8 MR. DAVIS: THANK YOU FOR YOUR CONSIDERATION. MY
BET IS STILL ON REASONABLE DOUBT.

10 THE COURT: ALL RIGHT. THE JURY MAY BE BROUGHT
11 IN.

12
13 (THE FOLLOWING PROCEEDINGS
14 WERE HELD IN OPEN COURT IN
15 THE PRESENCE OF THE JURY:)

16
17 RECROSS-EXAMINATION (CONTINUED)
18 BY MR. DAVIS:

19 Q REFERRING TO AN OPPORTUNITY OVER THE
20 WEEKEND, YOU DID SOME THINKING ABOUT THIS CASE OVER THE
21 WEEKEND, DIDN'T YOU, MR. THOMAS?

22 A YES, I DID.

23 Q AND AFTER THINKING OVER THE WEEKEND, YOU
24 DECIDED THAT THERE WAS GOING TO BE SOME EVIDENCE AND
25 TESTIMONY YOU WILL GIVE US, AND SOME EVIDENCE AND
26 TESTIMONY YOU WON'T GIVE US; THAT'S THE TRUTH, ISN'T IT?

27 A YES, IT IS.

28 Q NOW, TODAY YOU CAME IN THE COMPANY OF SOME

1 FRIENDS OF YOURS, CORRECT?

2 A YES.

3 Q AND ONE OF THEM WAS A MEMBER OF LAW
4 ENFORCEMENT?

5 A YES.

6 Q WHAT IS HIS NAME?

7 A PRESTON HARRIS.

8 Q HE'S ALSO A MEMBER OF THE RARE BREED,
CORRECT?

10 A YES, HE IS.

11 Q AND THE OTHER GENTLEMAN, WHAT WAS HIS NAME?

12 A KENNETH WILLIAMS.

13 Q AND HE'S A MEMBER OF RARE BREED, CORRECT?

14 A YES, HE IS.

15 Q DID YOU TALK TO THOSE GENTLEMEN ABOUT YOUR
16 DECISION AFFECTING THE EVIDENCE IN THIS CASE, AND WHETHER
17 YOU WOULD TELL US SOME THINGS AND WHETHER YOU WOULDN'T
18 TELL US OTHER THINGS?

A YES, I DID.

20 Q WHOM ELSE DID YOU TALK TO ABOUT THAT
21 DECISION YOU MADE OVER THE WEEKEND?

22 A THE REST OF MY CLUB MEMBERS.

23 Q YOU HAD A MEETING?

24 A YES, WE DID.

25 Q AND WHEN DID THAT MEETING TAKE PLACE?

26 A SUNDAY.

27 Q WHERE DID IT TAKE PLACE?

28 A AT OUR CLUBHOUSE.

1 Q AND HOW MANY WERE PRESENT?

2 A I COULDN'T TELL YOU.

3 Q WELL, YOU CAN, AND I'M GOING TO ASK YOU TO.
4 HOW MANY WERE THERE?

5 A I CAN'T TELL YOU. THERE WAS QUITE A FEW OF
6 US THERE, BUT I CAN'T TELL YOU THE NUMBER.

7 Q I KNOW. "QUITE A FEW" IS THE SAME NUMBER
8 YOU GAVE US AS TO HOW MANY WERE OUTSIDE WHEN THE SHOOTING
OCCURRED; REMEMBER THAT TESTIMONY?

-- A EXACTLY.

11 Q "QUITE A FEW"?

12 A RIGHT.

13 Q BUT YOU WEREN'T OUTSIDE WHEN THE SHOOTING
14 OCCURRED, CORRECT?

15 A YES, I WAS INSIDE.

16 Q SO YOU COULDN'T ESTIMATE WHAT "QUITE A FEW"
17 WAS FOR THOSE OUTSIDE, RIGHT?

18 A YES.

Q BUT YOU WERE INSIDE RARE BREED THIS WEEKEND
20 WITH FELLOW MEMBERS. WHAT IS THE ESTIMATE OF THE NUMBER
21 OF PEOPLE THAT WERE THERE?

22 A A HUNDRED.

23 Q WITH 104 MEMBERSHIP?

24 A YES.

25 Q WHO WAS MISSING?

26 A I COULDN'T TELL YOU. I DON'T KNOW.

27 Q WHO CALLED IT?

28 A WHO CALLED THE MEETING?

1 Q YES.

2 A IT WAS OUR REGULAR SCHEDULED MEETING. WE
3 HAVE TWO MEETINGS A MONTH, AND IT WAS SCHEDULED.

4 Q AND WHEN WAS THE LAST MEETING?

5 A THE FIRST OF THE MONTH.

6 Q DID YOU DISCUSS THIS CASE AMONG YOUR MEMBERS
7 IN YOUR LAST PRIOR MEETING?

8 A NO, I WAS OUT OF TOWN.

Q SO THIS MEETING, HOW LONG WAS THE MEETING?

10 A UM, FOR THE FIRST THING, I WAS LATE FOR THE
11 MEETING. I CAME IN AND SAID WHAT I HAD TO SAY, AND I
12 LEFT.

13 Q WHAT DID YOU SAY?

14 A WHAT DID I SAY?

15 Q YES.

16 MR. SIMS: OBJECTION, HEARSAY.

17 THE COURT: OVERRULED.

18 MR. DAVIS: I'LL OFFER IT FOR THE LIMITED PURPOSE
OF PROVING BIAS, YOUR HONOR.

20 THE COURT: SO ACCEPTED.

21 BY MR. DAVIS:

22 Q WHAT DID YOU SAY TO YOUR MEMBERS SUNDAY
23 ABOUT THIS CASE AND YOUR TESTIFYING OR NOT TESTIFYING?

24 A WELL, THERE WERE QUITE A FEW RUMORS ON THE
25 STREET, AND I JUST HAD TO LET THEM KNOW WHAT WAS GOING ON
26 WITH THE CASE; PRETTY MUCH THAT'S IT.

27 Q WHAT WERE THE RUMORS?

28 MR. SIMS: OBJECTION, HEARSAY.

1 THE COURT: OVERRULED. STATE OF MIND.

2 BY MR. DAVIS:

3 Q THAT WAS A QUESTION. WHAT WERE THE RUMORS?

4 A THE RUMORS WERE THAT THEY HAD MEMBERS OF
5 DUCK'S PARTY IN THE COURTROOM, AND THEY HAD PHONES ON AND
6 THEY COULD HEAR MY TESTIMONY AND CERTAIN THINGS THAT I
7 SAID IN THE COURTROOM, A LOT OF NEGATIVE THINGS, YOU
8 KNOW. PRETTY MUCH NONE OF THE THINGS THAT THEY SAID OUT
THERE WAS TRUE.

10 Q SO THE RUMORS WERE THAT MY CLIENT HAD A
11 PARTY OF PEOPLE HERE IN THE COURTROOM?

12 A THAT -- YES.

13 Q HIS MOTHER, HIS GIRLFRIEND, HIS SISTER.
14 WERE THOSE THE PARTIES THAT HAD THEIR PHONES ON
15 BROADCASTING YOUR TESTIMONY?

16 MR. SIMS: OBJECTION, MISSTATES THE TESTIMONY.
17 CALLS FOR SPECULATION.

18 THE COURT: CALLS FOR SPECULATION. SUSTAINED.
YOU USED THE TERM "DUCK'S PARTY," "PARTY" MEANING PEOPLE
20 THAT HE KNEW?

21 THE WITNESS: YES.

22 THE COURT: NEXT QUESTION.

23 BY MR. DAVIS:

24 Q ANY DETAILS AS TO WHO THESE PEOPLE WERE THAT
25 WERE MEMBERS OF DUCK'S PARTY AS YOU CALL IT?

26 A NO, NO DETAILS ON THAT.

27 Q AND SO THE RUMORS GOT TO YOU, RIGHT?

28 A YES.

1 Q YOU HEARD THE RUMORS?

2 A YES.

3 Q AND PART OF THE RUMORS WERE THAT SOME OF THE
4 THINGS YOU SAID WERE NOT POSITIVE; THEY WERE NEGATIVE
5 THINGS?

6 A YES.

7 Q ABOUT WHOM? ABOUT MY CLIENT?

8 A NO.

Q ABOUT WHOM?

10 A ABOUT MY CLUB MEMBERS.

11 Q AND WHAT WAS THE RUMOR OF WHAT YOU HAD SAID
12 THAT WAS NEGATIVE ABOUT YOUR CLUB MEMBERS?

13 A THAT I PRETTY MUCH HAD GIVEN UP ALL THE
14 INFORMATION ON THEM.

15 Q YOU HAVE, HAVEN'T YOU?

16 A HAVE I GIVEN UP --

17 Q ALL THE INFORMATION ON THEM.

18 A WHAT DO YOU MEAN?

Q HAVEN'T YOU DONE THAT IN THIS CASE?

20 A GIVEN UP INFORMATION ON THEM?

21 Q RIGHT.

22 A NO, I HAVEN'T.

23 Q YOU HAVEN'T?

24 A NO.

25 Q ALL RIGHT. ARE YOU GOING TO?

26 A NO, I'M NOT.

27 Q YOU'RE NOT GOING TO GIVE NAMES, ARE YOU?

28 A NO, I'M NOT.

1 Q BUT YOU ARE GOING TO BE HERE TO TESTIFY
2 AGAINST MY CLIENT, CORRECT?

3 A YES, I AM.

4 Q AND THIS POSITION YOU HAVE TAKEN TO ACCUSE
5 SOMEONE STARTED WAY BACK, DIDN'T IT, WHEN YOU WOULDN'T
6 PROVIDE A MEMBERSHIP LIST TO THE DEFENSE; THAT WAS PART
7 OF YOUR POSITION NOT TO GIVE UP NAMES OF YOUR CLUB,
8 CORRECT?

A COULD YOU REPHRASE THAT, PLEASE.

10 Q SURE. THIS POSITION THAT YOU'RE TAKING
11 WHERE YOU'LL COME IN AND MAKE AN ACCUSATION, BUT YOU
12 WON'T GIVE UP EVIDENCE, WAS A PLAN THAT YOU'VE HAD FOR A
13 WHILE, WASN'T IT?

14 A NO, SIR.

15 Q IT WAS A DECISION AND A POSITION YOU TOOK
16 EARLY ON IN THIS CASE, CORRECT?

17 A NO.

18 Q DETECTIVE JAMES LEWIS IS A MEMBER OF THE
RARE BREED, ISN'T HE?

20 A YES, HE IS.

21 Q WAS HE THERE THAT NIGHT INSIDE OR OUTSIDE OF
22 THE RARE BREED CLUB ABOUT THE TIME OF THE SHOOTING?

23 A HE WASN'T INSIDE.

24 Q WHERE WAS HE?

25 A I COULDN'T TELL YOU, BUT HE WASN'T INSIDE.

26 Q WAS HE THERE?

27 A HE WAS THERE.

28 Q WHERE WAS HE?

1 A I COULDN'T TELL YOU. HE WASN'T INSIDE.

2 Q HOW WOULD YOU KNOW THAT?

3 A BECAUSE I WAS INSIDE. WE WERE CLOSING UP.

4 I KNOW WHO WAS INSIDE AND WHO WASN'T INSIDE.

5 Q HOW DID YOU FIND OUT THAT DETECTIVE JAMES
6 LEWIS WAS AT THE CLUB AT ABOUT THE TIME OF THE SHOOTING?
7 HOW DID YOU FIND THAT OUT?

8 A I DIDN'T KNOW -- I DON'T KNOW.

Q YOU JUST RESPONDED THAT HE WAS THERE.

10 A AT THE TIME OF THE SHOOTING?

11 Q YES.

12 A I DIDN'T SAY THAT.

13 Q WHAT DID YOU SAY?

14 A I SAID HE WAS THERE. I DIDN'T SAY HE WAS
15 THERE AT THE TIME OF THE SHOOTING.

16 Q WHAT DO YOU MEAN WHEN YOU SAY "HE WAS
17 THERE"?

18 A QUITE A FEW OF OUR MEMBERS WERE THERE THAT
DAY, OKAY? IF HE WAS THERE AT THE TIME OF THE SHOOTING,
20 I CAN'T TELL YOU.

21 Q NOW, THE GENTLEMAN IN THE SUIT, THE COMPTON
22 DEPUTY THAT WAS HERE TODAY, PRESTON -- WHAT WAS HIS LAST
23 NAME?

24 A PRESTON HARRIS.

25 Q WAS HE THERE?

26 A NO, HE WASN'T.

27 Q WAS HE THERE AT THE MEETING THIS WEEKEND?

28 A YES, HE WAS.

1 Q AND WAS DETECTIVE JAMES LEWIS AT THE MEETING
2 THIS WEEKEND?

3 A I DON'T KNOW. I DON'T THINK SO, BUT I'M NOT
4 SURE.

5 Q YOU DON'T THINK SO. YOU ESTIMATED A HUNDRED
6 PEOPLE WITH A MEMBERSHIP OF 104, AND NOW YOU'RE TELLING
7 THE JURY YOU DON'T THINK HE WAS THERE; IS THAT YOUR
8 TESTIMONY?

9 A I SAID I DON'T THINK SO. I'M NOT SURE,
10 THOUGH.

11 Q HE COULD HAVE BEEN THERE, RIGHT?

12 A HE COULD HAVE.

13 Q THERE WERE LOTS OF LAW ENFORCEMENT THERE
14 THIS WEEKEND, WEREN'T THERE?

15 A NO.

16 Q HOW MANY MEMBERS OF YOUR CLUB ARE IN LAW
17 ENFORCEMENT?

18 A I CAN'T REALLY TELL YOU THE EXACT NUMBER,
BECAUSE I DON'T KNOW THAT.

20 Q WHAT IS YOUR BEST KNOWLEDGE AS TO THE NUMBER
21 OF LAW ENFORCEMENT IN YOUR CLUB?

22 A WE MAY HAVE ABOUT FIVE OR SIX.

23 Q OR MORE?

24 A NO.

25 Q WHO ARE THEY?

26 A I CAN'T TELL YOU THAT.

27 Q YOU WON'T, IS WHAT YOU'RE SAYING?

28 A I'M NOT GOING TO TELL YOU THAT. IF THEY'RE

1 NOT HERE, I'M NOT GOING TO TELL YOU THAT.

2 Q SO SITTING DOWN HERE, IF I WERE PRESTON
3 HARRIS WATCHING YOU WHILE YOU'RE GIVING THIS TESTIMONY,
4 BRINGING YOU TO COURT AND THEN LEAVING AS YOU GOT TO THE
5 STAND, IF I WERE THAT KIND OF A PERSON SITTING HERE, IF I
6 WERE PRESTON HARRIS, WOULD YOU NAME ME, EVEN IF I WAS
7 SITTING IN THE COURTROOM? WOULD YOU SAY "YES, THAT'S
8 PRESTON HARRIS; HE'S A MEMBER OF MY CLUB"? WOULD YOU DO
THAT?

10 A NO.

11 Q AND IF I WERE SITTING OVER ON THE OTHER
12 SIDE, AND I WAS DETECTIVE JAMES LEWIS, SITTING HERE
13 WATCHING AND LISTENING, EVEN IN THE COURTROOM, WOULD YOU
14 POINT TO ME AND NAME ME AS A MEMBER OF YOUR CLUB?

15 A NO, I WOULDN'T.

16 Q THREE OR FOUR MORE MEMBERS OF LAW
17 ENFORCEMENT, WHO ARE THE REST?

18 A I CAN'T TELL YOU THAT.

Q NO. YOU CAN TELL ME.

20 A NO, I CAN'T.

21 Q YOU FORGOT THEM?

22 A PUT IT LIKE THIS: I'M NOT GOING TO TELL
23 YOU.

24 Q THERE WE GO.

25 A OKAY.

26 Q YOU KNOW, THERE'S A DIFFERENCE BETWEEN "I
27 CAN'T" AND "I'M NOT GOING TO," ALL RIGHT? RIGHT?

28 A YES.

1 Q ALL RIGHT. SO WE WANT TO KNOW WHEN YOU'RE
2 NOT GOING TO TELL US SOMETHING.

3 A OKAY.

4 Q AND IN TERMS OF GETTING THE TRUTH ABOUT
5 THIS, IS IT YOUR TESTIMONY THAT YOUR BEST ESTIMATE IS
6 THERE ARE NO MORE THAN FIVE MEMBERS OF LAW ENFORCEMENT IN
7 THE PURE BREED CLUB?

8 A RARE BREED CLUB.

Q RARE BREED, EXCUSE ME.

10 A WHAT I KNOW. I CAN ONLY TELL YOU WHAT I
11 KNOW.

12 Q YOU HAVEN'T BEEN DOING THAT.

13 A YES, I HAVE.

14 Q YOU'VE BEEN TELLING US WHAT YOU CARE TO LET
15 US KNOW, AND YOU'VE BEEN REFUSING OTHER AREAS WHICH YOU
16 DON'T WANT US TO KNOW; ISN'T THAT THE TRUTH OF WHAT'S
17 GOING ON?

18 A NO, IT'S NOT.

Q DO YOU HAVE A DIFFERENT VERSION OF WHAT'S
20 GOING ON IN THIS COURTROOM?

21 A PUT IT LIKE THIS: IF THEY'RE NOT HERE, I
22 CAN'T SAY ANYTHING ABOUT IT. I'M HERE. I CAN ONLY TELL
23 YOU WHAT I KNOW, AND THAT'S WHAT I'M DOING.

24 Q THAT KIND OF CONFLICTS WITH THE
25 DEMONSTRATION WE JUST WENT THROUGH WITH THOSE TWO LAW
26 ENFORCEMENT OFFICERS BEING IN COURT. YOU WOULDN'T EVEN
27 NAME THEM THEN, WOULD YOU?

28 A NO, BUT IF -- I NAMED PRESTON HARRIS. HE

1 WAS HERE. I DID DO THAT, BECAUSE HE WAS HERE. JAMES
2 LEWIS HASN'T BEEN HERE, OKAY.

3 Q AND HE WAS THERE ON THE NIGHT OF THE
4 SHOOTING, WASN'T HE?

5 A I COULDN'T TELL YOU THAT.

6 Q DOES THAT MEAN YOU'RE NOT GOING TO, OR YOU
7 DON'T KNOW?

8 A I DON'T KNOW.

9 Q DID YOU SEARCH THE BATHROOMS OF THAT CLUB
10 THAT EVENING?

11 A PUT IT LIKE THIS: WE HAD CLOSED PRETTY MUCH
12 EVERYTHING DOWN. WE HAD TURNED OFF ALL THE FRONT
13 LIGHTS. WE WERE GETTING READY TO RACK THE DOORS, SO, NO,
14 I DIDN'T SEARCH THE RESTROOMS.

15 Q WHAT DID YOU TELL YOUR FELLOW MEMBERS AFTER
16 YOU WENT TO MEET AND DEAL WITH RUMORS ABOUT YOU?

17 A I JUST EXPLAINED WHAT THEY HAD HEARD ON THE
18 STREETS WASN'T TRUE.

19 Q THAT'S ALL YOU TOLD THEM?

20 A PRETTY MUCH.

21 Q PRETTY MUCH. LET ME PUT IT LIKE THIS:

22 "THAT'S ALL I CAN SAY." THOSE ARE PHRASES I'VE HEARD IN
23 YOUR ANSWERS, SIR. WHAT DO YOU MEAN, FOR EXAMPLE, WHEN
24 YOU SAY "PRETTY MUCH THAT'S ALL I SAID"? TWO SENTENCES?
25 IS THAT ALL YOU SAID?

26 A PRETTY MUCH.

27 Q WHAT ELSE DID YOU SAY?

28 A I JUST TOLD YOU WHAT I SAID.

1 Q ANYBODY ASK YOU ANY QUESTIONS?

2 A NO, THEY DIDN'T.

3 Q ANYBODY SAY "THAT'S ALL RIGHT, YOU'RE COOL,
4 NO PROBLEMS WITH US"?

5 A PRETTY MUCH THAT'S WHAT THEY TOLD ME.

6 Q ANYBODY ASK YOU ANY QUESTIONS ABOUT WHAT YOU
7 DID AND DIDN'T DO IN COURT?

8 A I DIDN'T GIVE THEM A CHANCE TO ASK ME ANY
QUESTIONS.

9 Q HOW DID YOU AVOID THAT CHANCE?

10 A I'M A LEADER. I LEFT, OKAY. CERTAIN
11 QUESTIONS I JUST DON'T HAVE TO ASK.

12 Q YOU MEAN ANSWER?

13 A ANSWER, EXCUSE ME.

14 Q LIKE YOU'RE DOING HERE IN COURT; CERTAIN
15 ONES YOU DON'T HAVE TO ANSWER, RIGHT?

16 A WHAT I CAN TELL YOU IS I WAS THERE, OKAY.

17 Q NOW, THE COURT ORDERED YOU TO GIVE ANSWERS,
18 AND IDENTIFY THESE SO-CALLED SOURCES THAT YOU RELIED ON,
20 CORRECT?

21 A YES.

22 Q AND YOU DON'T RESPECT THE COURT, DO YOU?

23 A I RESPECT THE COURT.

24 MR. SIMS: OBJECTION, OBJECTION. ARGUMENTATIVE.

25 THE COURT: SUSTAINED -- WELL, HE INDICATED THAT
26 HE DID. I'M GOING TO LEAVE IT. THAT WAS AN ISSUE. HE
27 RESPONDED TO IT.

28

1 BY MR. DAVIS:

2 Q AND WHEN YOU TOOK YOUR OATH AS A WITNESS
3 HERE IN COURT, WAS IT YOUR INTENTION TO COME IN AND TELL
4 THE TRUTH?

5 A YES.

6 Q AND YOU HAVEN'T, HAVE YOU?

7 A YES, I HAVE.

8 Q YOU HAVEN'T TOLD US ABOUT THESE SOURCES,
HAVE YOU? YOU'VE DECIDED NOT TO, HAVEN'T YOU?

10 A THAT'S NOT A PART OF THIS CASE. I TOLD YOU
11 WHAT I KNOW.

12 Q "THAT'S NOT A PART OF THIS CASE." PLEASE
13 EXPLAIN WHAT THAT MEANS.

14 A WHAT I MEAN BY THAT IS IF THEY MEANT -- IF
15 THEY WANTED TO BE HERE TO TESTIFY LIKE I'M DOING, THEY
16 WOULD BE HERE. THEY'RE NOT HERE. I CAN ONLY TELL YOU
17 WHAT I KNOW, OKAY, WHAT I WITNESSED.

18 Q WHEN I ASKED YOU ABOUT THE NAME OF THE
POLICEMAN WHO WAS THERE OUTSIDE, YOUR ANSWER EARLIER WAS
20 "PUT IT LIKE THIS: IF THEY'RE NOT HERE TODAY,
21 APPARENTLY THEY WOULDN'T DO WHAT I'M DOING SO I'LL LEAVE
22 IT LIKE THAT, OKAY?" REMEMBER THAT ANSWER?

23 A EXACTLY.

24 Q NOW, WHAT'S THE NAME OF THAT POLICEMAN WHO
25 WAS THERE AT OR ABOUT THE TIME OF THE SHOOTING?

26 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

27 THE COURT: OVERRULED.

28 THE WITNESS: JAMES LEWIS.

1 BY MR. DAVIS:

2 Q YOU JUST GAVE ME A NAME.

3 A YES, I DID.

4 Q AND HOW DID YOU FIND OUT HE WAS THERE?

5 A I DON'T KNOW HE WAS THERE AT THE TIME OF THE
6 SHOOTING. I KNOW HE WAS THERE THAT DAY, BUT AT THE TIME
7 OF THE SHOOTING, I DON'T KNOW THAT.

8 Q DO YOU REMEMBER TELLING ME IN YOUR TESTIMONY
9 THAT IF THIS CASE HADN'T BECOME LEGAL, IT COULD HAVE BEEN
10 SETTLED INFORMALLY? DO YOU REMEMBER GIVING ME TESTIMONY
11 TO THAT EFFECT?

12 A YES, I DO.

13 Q WHAT DID YOU MEAN BY THAT?

14 A IT WOULD HAVE TO GO TO THE STREETS.

15 Q WHAT DOES THAT MEAN?

16 A SOMEBODY IS GOING TO GET HURT.

17 Q WHAT DOES THAT MEAN, "SOMEBODY IS GOING TO
18 GET HURT"? WHO IS GOING TO GET HURT?

19 A I DON'T HAVE A CLUE, BUT IN MOST CASES A LOT
20 OF INNOCENT PEOPLE WOULD GET HURT IF THIS ESCALATED TO
21 THE STREETS.

22 Q YOU TESTIFIED EARLIER AS WELL THAT THE
23 INFORMATION YOU GOT FROM YOUR SOURCE OR SOURCES WAS THAT
24 S-1 WAS NICKNAMED J, AND YOU LEARNED THAT BECAUSE PEOPLE
25 TOLD YOU THAT, CORRECT?

26 A EXACTLY.

27 Q BUT DID ANY OF THOSE PEOPLE TELL YOU THAT
28 THE MAN'S STREET NAME WAS NOT J BUT WAS J-WAC?

1 A NO, I DON'T KNOW ANYTHING ABOUT THAT.

2 Q YOU DIDN'T PASS ON THE NAME J-WAC TO
3 DETECTIVE POHL, THE MAN WHO IS AGAIN NOW SITTING IN
4 COURT, DID YOU?

5 A NO, I DIDN'T.

6 Q AND YOUR PEOPLE DIDN'T GIVE YOU THE NICKNAME
7 OR STREET NAME OF J-WAC, DID THEY?

8 A NO, THEY DIDN'T.

9 Q THESE PEOPLE THAT GAVE YOU THE NAME -- THE
10 NICKNAME J, THESE ARE PEOPLE YOU PERSONALLY KNOW,
11 CORRECT?

12 A YES, I DO.

13 Q AND AT THE TIME YOU PERSONALLY KNEW THEM,
14 CORRECT?

15 A YES.

16 Q HAVE YOU BEEN IN CONTACT WITH THEM IN THE
17 LAST FIVE DAYS OR SO?

18 A NO, I HAVEN'T.

19 Q AND THEN LATER ON YOU GOT INFORMATION FROM
20 PEOPLE THAT TOLD YOU THAT J WASN'T THERE AND DIDN'T HAVE
21 ANYTHING TO DO WITH IT. DO YOU REMEMBER TESTIFYING ABOUT
22 THAT?

23 A YES.

24 Q THESE ARE PEOPLE YOU KNOW, CORRECT?

25 A YES.

26 Q THESE ARE PEOPLE YOU KNEW BACK THEN, RIGHT?

27 A YES.

28 Q AND WHEN I TALK ABOUT "THESE ARE PEOPLE,"

1 ARE THESE THE SAME PEOPLE WHO ALSO TOLD YOU THAT THERE
2 WAS A POLICEMAN OUTSIDE AT OR ABOUT THE TIME OF THE
3 SHOOTING?

4 A NO.

5 Q ALL RIGHT. SO LET'S TAKE IT ONE AT A TIME.
6 THE PEOPLE WHO TOLD YOU THERE WAS A POLICEMAN THERE THAT
7 EVENING, WHO ARE THEY? WHAT ARE THEIR NAMES?

8 A I DON'T KNOW.

Q ARE THEY CLUB MEMBERS?

10 A NOBODY TOLD ME. THAT'S WHAT I KEEP TRYING
11 TO TELL YOU. NOBODY TOLD ME THERE WAS SOMEBODY THERE AT
12 THE TIME.

13 MR. DAVIS: YOUR HONOR, I'M REFERRING TO THE TRIAL
14 TRANSCRIPT, PAGE 540, LINES 1 THROUGH 10.

15 THE COURT: I DON'T THINK EITHER MR. SIMS NOR I
16 HAVE ACCESS TO THAT.

17 MR. DAVIS: MY INTENT IS TO BROADCAST IT AND HAVE
18 HIM ADMIT OR DENY HE GAVE THAT TESTIMONY. I'LL REPRESENT
IN GOOD FAITH IT IS A TRANSCRIPT THAT I RECEIVED.

20 MR. SIMS: BASED ON THE FACT THAT I'M NOT ABLE TO
21 ACCESS THAT TRANSCRIPT, I WOULD OBJECT TO THE
22 BROADCASTING.

23 THE COURT: SHOW MR. SIMS. AND LET'S HEAR FROM
24 HIM.

25 MR. SIMS.

26 MR. SIMS: I STILL OBJECT TO THE PUBLICATION, BUT
27 I THINK COUNSEL CAN ASK HIM QUESTIONS ABOUT IT.

28 THE COURT: IS IT CERTIFIED?

1 THE REPORTER: YES.

2 THE COURT: OVERRULED. IT MAY BE PUBLISHED. THE
3 COURT IS APPRISED THAT IT DOES CONSTITUTE CERTIFICATION
4 OF THE TRIAL TRANSCRIPT.

5 BY MR. DAVIS:

6 Q "BY MR. DAVIS: QUESTION: ALL RIGHT.
7 FOR EXAMPLE, YOU TOLD US THERE WAS A POLICEMAN
8 OUTSIDE THAT A COUPLE OF PEOPLE TOLD YOU ABOUT
MIGHT HAVE BEEN THERE ABOUT THE TIME THIS
10 OCCURRED BUT OUTSIDE, CORRECT?

11 "ANSWER: RIGHT.

12 "QUESTION: IS THAT SOMEBODY YOU'D
13 RATHER NOT REVEAL OR SOMEBODY YOU JUST FORGOT
14 WHO IT WAS?

15 "ANSWER: PUT IT LIKE THIS: IF THEY'RE
16 NOT HERE TODAY, APPARENTLY THEY WOULDN'T DO
17 WHAT I'M DOING SO I'LL LEAVE IT LIKE THAT,
18 OKAY?"

DO YOU REMEMBER THAT TESTIMONY HERE UNDER
20 OATH, SIR?

21 A YES, I DO.

22 Q WHAT YOU'RE REALLY SAYING IS YOU KNOW WHO
23 THIS COP IS, YOU KNOW WHO THE PEOPLE I'VE TOLD YOU ARE,
24 BUT YOU DON'T WANT TO TELL US. ISN'T THAT WHAT IT MEANS
25 WHEN YOU SAY "PUT IT LIKE THIS"?

26 A I JUST TOLD YOU IT WAS JAMES LEWIS. I'M NOT
27 UNDERSTANDING WHAT YOU'RE SAYING.

28 Q WHO GAVE UP HIS NAME THAT SAID THEY KNEW HE

1 WAS OUTSIDE?

2 A I DON'T KNOW.

3 Q ALL RIGHT. THANK YOU. NOW, JUST FOR SAKE
4 OF TRYING TO ORGANIZE MY QUESTIONING, ASIDE FROM THE
5 PEOPLE WHO WERE A SOURCE OF MR. LEWIS' NAME, THERE WERE
6 PEOPLE WHO WERE A SOURCE OF THE INFORMATION ABOUT J AND
7 HIS MEMBERSHIP IN A BLOOD GANG. ARE THESE PEOPLE THAT
8 YOU CURRENTLY ARE IN CONTACT WITH?

A NO.

10 Q ARE ANY OF THEM MEMBERS OF YOUR CLUB?

11 A YES.

12 Q HOW MANY?

13 A THERE'S A FEW.

14 Q THERE WAS A SMILE. IS THERE AN UNDERLYING
15 JOKE ABOUT THIS?

16 A NO, IT'S NO JOKE.

17 Q DID SOMETHING HUMOROUS OCCUR TO YOU WHEN YOU
18 SAID "THERE'S A FEW"?

A THERE'S A FEW PEOPLE IN OUR CLUB THAT KNOWS
20 THE FIRST SHOOTER.

21 Q I'M SORRY?

22 A THERE'S A FEW PEOPLE IN OUR CLUB THAT KNOWS
23 THE FIRST SHOOTER. I'M NOT GOING TO GIVE YOU THAT
24 INFORMATION.

25 Q ALL RIGHT. NOW, THE FIRST SHOOTER IS
26 SOMEBODY OTHER THAN JOHNNY CLARK, CORRECT? *

27 A YES.

28 Q AND WHEN YOU TALK ABOUT THE FIRST SHOOTER,

1 YOU'RE TALKING ABOUT THE MAN WITH THE SCAR ON THE LIP?

2 A YES.

3 Q WHEN YOU'RE TALKING ABOUT PEOPLE IN YOUR
4 CLUB WHO KNOW THE FIRST SHOOTER, YOU'RE TALKING ABOUT THE
5 MAN WHO INSULTED THE TWO GIRLS ON THE EVENING IN
6 QUESTION?

7 A YES.

8 Q WHO "BLOODED" BACK AND FORTH WITH JOEL
MASON?

10 A NOT WITH JOEL MASON, NO.

11 Q WITH RODNEY?

12 A YES.

13 Q ALL RIGHT. AND TO THE EXTENT THAT THESE
14 PEOPLE KNOW WHO THE SHOOTER ONE IS, ARE YOU REASONABLY
15 CONFIDENT THEY'RE ACCURATE THIS TIME?

16 A YES.

17 Q BECAUSE WE ALL AGREE THAT THEY MADE A
18 MISTAKE WITH JOHNNY CLARK, CORRECT?

19 A NO, I MADE THE MISTAKE. THEY DIDN'T MAKE
20 THE MISTAKE. I MADE THE MISTAKE.

21 Q LET'S TALK ABOUT THAT, IF I COULD.

22 I SIT HERE -- STAND HERE AS A DEFENSE
23 ATTORNEY. YOU HAVE TO DEAL WITH THESE QUESTIONS BACK AND
24 FORTH, BUT DO YOU FEEL YOU HAVE TO TAKE THE
25 RESPONSIBILITY FOR ALL OF THIS JOHNNY CLARK MISTAKE?

26 A YES, I DO, BECAUSE I MADE THE MISTAKE.

27 Q BUT DID YOU PUT JOHNNY CLARK IN THAT
28 SIX-PACK?

1 A NO, I DIDN'T.

2 Q DID YOU --

3 A OH, EXCUSE ME, YES, I DID.

4 Q YOU PUT HIM IN THE SIX-PACK?

5 A I IDENTIFIED HIM FROM THE SIX-PACK.

6 Q ALL RIGHT. BUT POHL PUT HIM IN THE
7 SIX-PACK, DIDN'T HE?

8 A YES.

9 Q ALL YOU DID WAS LOOK FOR THE PERSON WHO
10 LOOKED MOST LIKE SHOOTER ONE, CORRECT?

11 A EXACTLY.

12 Q YOU DIDN'T INTEND TO GO OUT AND THROW SOME
13 INNOCENT MAN THREE AND A HALF MONTHS INTO JAIL FACING
14 SERIOUS CHARGES, DID YOU?

15 A NO, I DIDN'T.

16 Q ALL RIGHT. AND WE CLARIFIED THAT WHEN YOU
17 TALKED TO POHL, ALL YOU DID WAS PASS ON THE NICKNAME J,
18 CORRECT?

A EXACTLY.

20 Q IN FACT, THE TRUTH IS YOU DIDN'T EVEN TELL
21 POHL THAT J WAS ACTUALLY A MEMBER OF, FOR EXAMPLE,
22 CAMPANELLA PARK PIRUS? YOU DIDN'T TELL HIM THAT, DID
23 YOU?

24 A I DON'T REMEMBER. I DON'T THINK SO.

25 Q YOU DIDN'T GET THAT INFORMATION, DID YOU?

26 A NO, I DIDN'T.

27 Q ALL RIGHT. AND SO THE PEOPLE WHO WERE THE
28 SOURCE FOR THE, QUOTE, J, NOT J-WAC, J, THAT YOU PASSED

1 ON, ARE THESE SOME OF THE SAME PEOPLE WHO NOW ARE GIVING
2 YOU INFORMATION ABOUT THE IDENTITY OF THE TRUE SHOOTER?

3 A YES.

4 Q ALL RIGHT. IF REASON FOLLOWED THAT
5 INFORMATION, IT IS NOT UNREASONABLE, IS IT, SIR, THAT IF
6 ONE KNOWS THE IDENTITY OF THE TRUE SHOOTER, THE TRUE
7 SHOOTER IN TURN MAY KNOW THE IDENTITY OF S-1, HIS
8 COMPANION, CORRECT?

A THE TRUE SHOOTER?

10 Q YES.

11 A THE TRUE SHOOTER IS S-1.

12 Q RIGHT. I'M SORRY, I MISSPOKE. HE WOULD
13 LOGICALLY KNOW WHO S-2, IS, RIGHT?

14 A YES.

15 Q AND RELYING ON YOUR BEST MEMORY OF S-1 AND
16 S-2, THESE TWO -- WE DON'T CALL THEM GENTLEMEN -- THESE
17 TWO MEN WHO CAME IN AND CONFRONTED YOUR CLUB, DROVE OFF
18 IN A 2001, THEREABOUTS, BLACK CHEVROLET IMPALA, CORRECT?

A YES.

20 Q ONE OF THEM, S-1, HAD A SCAR ON THE RIGHT
21 SIDE OF HIS LIP, CORRECT?

22 A YES.

23 Q AND IS YOUR INFORMATION THAT S-1 IS A MEMBER
24 OF A GANG?

25 A YES.

26 Q THAT HE'S A RIGHTEOUS GANGBANGER?

27 A YES, HE IS.

28 Q WHAT GANG?

1 A A BLOOD GANG.

2 Q WHICH BLOOD?

3 A BLOODS, YES.

4 Q WHICH BLOOD?

5 A I DON'T KNOW.

6 Q NOW, ONE OF THE THINGS IN ADDITION TO A SCAR

7 AND HIS APPARENT MEMBERSHIP IN A BLOOD GANG S-1 HAS THAT

8 WE CAN LOOK AT IS THAT AUTOMOBILE. ARE YOUR SOURCES NOW

9 SAYING THEY CAN TIE THE S-1 THEY'VE IDENTIFIED FOR YOU TO

10 THINGS LIKE THAT, THE SCAR, THE CAR, SOMETHING LIKE THAT?

11 A NO.

12 Q ARE THEY --

13 A I DIDN'T GET -- I DIDN'T GO INTO THAT DETAIL

14 WITH THEM.

15 Q OKAY. WHAT DID THEY TELL YOU? WHAT

16 INFORMATION DID THEY TELL YOU?

17 A OKAY. WHAT INFORMATION ON WHAT?

18 Q ON THE IDENTITY OF S-1. I'M NOT ASKING

19 THEIR NAMES. I JUST WANT TO KNOW THE INFORMATION.

20 A I'M STILL NOT UNDERSTANDING WHAT YOU'RE

21 TRYING TO ASK ME HERE.

22 Q ALL RIGHT. I'M TRYING TO GET SOME MORE

23 INFORMATION ON THE TRUE SHOOTER, ALL RIGHT? YOU NOW

24 HAVE, CORRECT ME IF I'M WRONG, TESTIFIED THAT YOUR

25 SOURCES HAVE COME AND TOLD YOU "WE NOW KNOW WHO SHOOTER

26 ONE REALLY WAS," CORRECT?

27 A THEY KNEW FROM DAY ONE WHO HE WAS.

28 Q MEANING WHEN YOU WERE LOOKING AT THAT

1 SIX-PACK WITH JOHNNY CLARK IN IT, THESE PEOPLE KNEW WHO
2 THE REAL SHOOTER ONE WAS?

3 A YES.

4 Q DID YOU?

5 A NO, I DIDN'T.

6 Q SO THEY MUST HAVE COME AT A LATER TIME AND
7 TOLD YOU WHO THE REAL SHOOTER ONE WAS, RIGHT?

8 A COULD YOU REPHRASE THAT, PLEASE.

9 Q YES. YOU'RE CIRCLING A PICTURE THAT POHL
10 STICKS IN A SIX-PACK.

11 A RIGHT.

12 Q YOU, AT THE TIME, DON'T KNOW WHO THE TRUE
13 SHOOTER ONE IS?

14 A RIGHT.

15 Q SOMETIME LATER YOU GET SOME INFORMATION THAT
16 SAYS JOHNNY CLARK, OR THE GUY YOU PICKED, WASN'T THERE;
17 HE DIDN'T DO IT. REMEMBER TELLING US THAT?

18 A EXACTLY.

19 Q IS THAT WHEN THEY ALSO TOLD YOU "BY THE WAY,
20 WE KNOW WHO THE TRUE SHOOTER ONE IS"?

21 A YES, THEY DID.

22 Q AND WHAT NAME DID THEY GIVE YOU?

23 A J.

24 Q J-WAC?

25 A J.

26 Q ALL RIGHT. AND DID YOU LEARN LATER ON THAT
27 JOHNNY CLARK WAS NOT THE J THEY WERE TALKING ABOUT?

28 A EXACTLY.

1 Q OKAY. OKAY. DID YOU TELL MR. POHL THAT?

2 A YES, I DID.

3 Q YOU SAID "THERE'S ANOTHER J OUT THERE, IT
4 ISN'T THIS JOHNNY WALKER," CORRECT?

5 A YES.

6 Q JOHNNY CLARK. EXCUSE ME.

7 A YES.

8 THE COURT: YOU SURE HAVE JOHNNY WALKER ON YOUR
MIND. THE OTHER DAY YOU HAD JOHNNY COCHRAN AS WELL.

10 MR. DAVIS: I'M LOOKING FOR JOHNNY B. GOODE. I
11 APOLOGIZE.

12 Q SO I TAKE IT THAT THERE WAS A TIME WHEN
13 DETECTIVE POHL KNEW THAT YOU HAD LEARNED THE J THAT YOU
14 WERE GIVEN INFORMATION ABOUT WAS NOT JOHNNY CLARK,
15 CORRECT?

16 A YES.

17 Q AND DID DETECTIVE POHL ASK YOU "WELL, WHERE
18 ARE YOU GETTING THIS INFORMATION? I'D LIKE TO GO FIND
S-1 AND MAYBE S-2"?

20 A YES.

21 Q AND WHAT DID YOU SAY?

22 A I COULDN'T GIVE HIM THAT INFORMATION.

23 Q IS THAT SORT OF LIKE WE'RE DOING HERE IN
24 COURT, THAT IS, "I WON'T GIVE YOU THAT INFORMATION"?

25 A EXACTLY.

26 Q ALL RIGHT. WHAT DID HE SAY AFTER THAT?

27 A HE SAID HE WOULD HAVE TO GO THROUGH HIS
28 COMPUTER BANK.

1 Q THIS WAS BEFORE THE LINEUP WHEN YOU HAD THIS
2 CONVERSATION WITH POHL?

3 A YES.

4 Q THIS WAS BEFORE THE PRELIMINARY HEARING,
5 WHEN YOU HAD THIS CONVERSATION WITH DETECTIVE POHL?

6 A YES.

7 Q AND THIS WAS AT A POINT IN TIME WHEN JOHNNY
8 CLARK WAS STILL IN CUSTODY, IN JAIL?

A I'M NOT SURE. I'M NOT SURE.

10 Q WHERE WERE YOU WHEN YOU GAVE THIS
11 INFORMATION TO DETECTIVE POHL, YOU AND HE?

12 A WHAT INFORMATION ARE WE TALKING ABOUT?

13 Q THE INFORMATION WHERE YOU SAY "MY SOURCES IN
14 EFFECT HAVE SAID THAT THE GUY YOU GOT, JOHNNY CLARK, IS
15 NOT THE REAL SHOOTER ONE OR S-1; THEY KNOW IT'S SOMEBODY
16 ELSE"? WHERE WAS THAT TAKING PLACE?

17 A I'M NOT SURE. I DON'T REMEMBER.

18 Q WELL, LOOKING AT DETECTIVE POHL HERE IN HIS
19 GREEN SHERIFF'S JACKET, THAT'S THE FACE YOU WERE TALKING
20 TO, RIGHT?

21 A YES, IT WAS.

22 Q NOBODY ELSE, RIGHT?

23 A NO.

24 Q HE WAS THE OFFICER ON THE CASE, RIGHT?

25 A EXACTLY.

26 Q AND YOU WERE GIVING HIM THIS INFORMATION?

27 A YES, I WAS.

28 Q NOW, WHEN I ASKED YOU ABOUT GIVING

1 INFORMATION ABOUT J, WHEN WE WERE LAST IN COURT, YOU
2 INDICATED THAT THE PEOPLE WHO GAVE YOU THAT INFORMATION
3 JUST GAVE IT TO YOU, RIGHT?

4 A YES.

5 Q AND WHEN THEY GAVE YOU THAT INFORMATION, YOU
6 AND THEY HAD A CLEAR UNDERSTANDING YOU WERE NOT TO GIVE
7 IT UP, RIGHT?

8 A YES.

9 Q THAT INFORMATION WAS GIVEN TO YOU FOR YOUR
10 OWN INFORMAL USE AND CONSIDERATION, NOT LEGAL, RIGHT?

11 A YES.

12 Q ALL RIGHT. AND THAT WHEN YOU GAVE UP THE
13 INFORMATION OF J TO DETECTIVE POHL, LET'S BE STRAIGHT
14 ABOUT THIS, YOU VIOLATED THAT UNDERSTANDING; YOU BROKE
15 IT, RIGHT?

16 A YES, I DID.

17 Q AND THEN WHEN THEY CORRECTED THE SITUATION
18 AND GAVE YOU INFORMATION THAT S-1 WAS REALLY SOMEBODY
19 ELSE AND THEY KNEW WHO THIS PERSON WAS, YOU TOLD POHL
20 THAT ALSO, RIGHT?

21 A YES, I DID.

22 Q AND YOU VIOLATED THAT CONFIDENCE FOR A
23 SECOND TIME, DIDN'T YOU?

24 A NO, I DIDN'T.

25 Q THE FIRST TIME --

26 A THE FIRST TIME I DID. THE SECOND TIME I
27 DIDN'T.

28 Q THEY SAID "GO TELL POHL, LET'S STRAIGHTEN

1 THIS OUT"?

2 A THE FIRST TIME I VIOLATED. THE SECOND TIME
3 THEY TOLD ME "WE NEED TO GET THIS STRAIGHT," AND THAT'S
4 WHAT I HAD TO DO.

5 Q OKAY. SO YOU HAD AN UNDERSTANDING THAT WAS
6 DIFFERENT; YOU COULD TELL POHL THAT, RIGHT, ABOUT THE
7 WRONG GUY?

8 A I TOLD POHL, BUT I HAD TO -- THEY HAD A
9 LINEUP, I HAD TO DEAL WITH THE LINEUP. I DIDN'T SEE S-1
10 IN THE LINEUP. I DIDN'T HAVE ANY IDEA WHO JOHNNY CLARK
11 WAS. TO THIS DAY I STILL DON'T KNOW WHO HE IS.

12 Q ALL RIGHT. YOU DIDN'T SEE S-1 IN THE
13 LINEUP; I MEAN THE REAL ONE, THE ONE WITH THE SCAR?

14 A YES.

15 Q HE WASN'T THERE, RIGHT?

16 A NO, HE WASN'T.

17 Q IF HE HAD BEEN, WHAT WOULD YOU HAVE DONE?

18 A I WOULD HAVE IDENTIFIED HIM.

19 Q ALL RIGHT. SO YOU'D KNOW HIM IF YOU SAW HIM
20 AGAIN?

21 A NO, I DON'T -- I WOULDN'T.

22 Q WOOPS. LET'S SEE.

23 A WE'RE TALKING ABOUT A YEAR AND A HALF AGO.

24 Q RIGHT.

25 A IF YOU --

26 THE COURT: COUNSEL, LET'S TAKE A BREAK NOW. THE
27 COURT REPORTER HAS BEEN WORKING LONGER THAN WE HAVE AND
28 SHE NEEDS TO HAVE A REASONABLE OPPORTUNITY TO FLEX HER

1 FINGERS, SO LET'S TAKE A 15-MINUTE RECESS, FROM 10 TO.
2 LET'S COME BACK AT FIVE MINUTES AFTER 11:00. WE'LL STAND
3 IN RECESS UNTIL THEN.

4 THE JURY IS ADMONISHED NOT TO DISCUSS THIS
5 CASE WITH ANYBODY INCLUDING A FELLOW JUROR, AND, SIR,
6 YOU'RE ORDERED BACK AT THAT TIME.

7 (RECESS TAKEN.)
8

9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT
11 OUTSIDE THE PRESENCE OF
12 THE JURY:)
13

14 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
15 TO THE SANDERS MATTER. MR. SANDERS IS PRESENT, AS IS THE
16 PEOPLE'S REPRESENTATIVE, OUTSIDE THE PRESENCE OF THE
17 JURY.

18 MR. DAVIS: THIS IS JUST A HOUSEKEEPING MATTER.
19 WE LEARNED THERE WERE TWO EXHIBIT I'S, AND THEN THERE WAS
20 AN EXTRA EXHIBIT JJ. THE EXTRA EXHIBIT JJ IS THE ONE I
21 MENTIONED ALLUDING TO THE SEARCH WARRANT WHEN IT WAS, IN
22 TRUTH, II, SO TO WHATEVER EXTENT THE SEARCH WARRANT
23 ITSELF COMES IN AS EVIDENCE, THAT'S A MATTER FOR LATER
24 DETERMINATION, BUT I HAVE NOW AN ORPHAN "I." WE HAVE TWO
25 "I'S," AND THIS ORPHAN "I" COULD, IF COUNSEL IS
26 AGREEABLE, BE PLACED IN THE SLOT FOR JJ, WHICH HAS NO
27 CORRESPONDING EXHIBIT.

28 THE COURT: THAT'S A SEARCH WARRANT, ACCORDING TO

1 MY NOTES, JJ.

2 THE CLERK: IT WAS MARKED TWICE, II AND JJ.

3 THE COURT: OKAY. SO "I" NOW BECOMES JJ?

4 MR. DAVIS: YES, IF IT'S AGREEABLE.

5 MR. SIMS: THAT'S FINE.

6 THE COURT: AS LONG AS WE KNOW WHAT WE'RE TALKING
7 ABOUT.

8 MR. DAVIS: SECONDLY, THIS PARTICULAR WITNESS HAS
SAID A NUMBER OF TIMES WHAT THE COURT REPORTER REPORTED
10 AT PRELIMINARY HEARING HE DID NOT SAY, AND I DON'T KNOW
11 IF IT'S NECESSARY FOR ME TO TAKE IT TO THE NEXT STEP,
12 BRING IN THE REPORTER, SWEAR HER IN AND SAY "THIS IS WHAT
13 I REPORTED AND HEARD." THAT'S WHEN HE'S CONFRONTED, FOR
14 EXAMPLE, HE SAID AT PRELIMINARY HEARING, REGARDING THE
15 SHOOTING OF RODNEY MASON, HE, REFERRING TO RODNEY, CAME
16 TOWARDS THEM AND THEY SHOT HIM. HE CONTENDED HERE IN
17 TRIAL THAT THAT'S NOT WHAT HE SAID.

18 THE COURT: ONE, I WOULD DOUBT SERIOUSLY WHETHER
OR NOT THE COURT REPORTER WOULD HAVE AN INDEPENDENT
20 RECOLLECTION OF WHAT WAS HEARD AT A PRELIMINARY HEARING
21 ALMOST A YEAR AGO.

22 MR. DAVIS: RIGHT.

23 THE COURT: NUMBER TWO, I'LL HAVE TO VERIFY THIS,
24 BUT THE COURT REPORTER ON ALL HER TRANSCRIPTS SIGNS A
25 DECLARATION, AND IN THIS PARTICULAR CASE IT READS AS
26 FOLLOWS: "I HEREBY CERTIFY I'M THE OFFICIAL SHORTHAND
27 REPORTER IN THE ABOVE-ENTITLED COURT, AND I DID CORRECTLY
28 REPORT THE PROCEEDINGS CONTAINED HEREIN, AND THAT THE

1 FOREGOING IS A TRUE AND CORRECT TRANSCRIPTION OF MY SAID
2 NOTES AND A TRUE AND CORRECT STATEMENT OF SAID TESTIMONY
3 AND PROCEEDINGS."

4 MR. DAVIS: I MIGHT HAVE TO GET THAT BY WAY OF
5 JUDICIAL NOTICE OR STIPULATION FROM COUNSEL TO DRAW A
6 BOTTOM LINE ON IT. AS YOU CAN SEE, I HAVE EARLIER
7 TESTIMONY OF MULTIPLE SHOOTERS ON RODNEY, AND I DO WANT
8 THAT TO COME IN AS SACROSANCT AS I CAN.

9 MR. SIMS: I DON'T THINK IT REQUIRES A
10 STIPULATION. I THINK IT IS UNDER CERTIFIED SEAL, AND I
11 THINK THE COURT IS RIGHT. I DOUBT THERE WOULD BE AN
12 INDEPENDENT RECOLLECTION, AND THE WITNESS' RECOLLECTION
13 IS THAT EITHER IT ISN'T THE WAY HE SAID IT OR ISN'T WHAT
14 HE SAID. I DON'T KNOW THAT WE NEED TO GO INTO A DEEP
15 INQUIRY ABOUT IT. THERE'S ALWAYS AN ARGUMENT THAT'S
16 AVAILABLE THAT THERE WAS AN INCONSISTENCY SO I DON'T
17 THINK WE NEED A STIPULATION.

18 THE COURT: I'VE NEVER HAD IT CHALLENGED BEFORE,
19 AND THE ONLY TIMES THAT I'M AWARE THAT IT IS CHALLENGED
20 IS ON DEATH PENALTY CASES, IN WHICH THE TRIAL RECORD IS
21 BEING CERTIFIED TO THE SUPREME COURT, OCCASIONALLY THERE
22 WILL BE DISPUTES AS TO EXACTLY WHAT WAS SAID AND WHAT WAS
23 RECORDED.

24 IF THE PEOPLE WILL STIPULATE THAT IT
25 REFLECTS A TRUE AND ACCURATE STATEMENT CONSISTENT WITH
26 THE CERTIFICATION OF THE COURT REPORTER, I THINK THAT
27 THAT WOULD RESOLVE THE MATTER FOR OUR PURPOSES.

28 MR. SIMS: WELL, WHAT I'M RELUCTANT TO STIPULATE

1 IS THAT IS EXACTLY WHAT WAS -- ESPECIALLY SINCE I WAS NOT
2 THERE, SO I'M NOT GOING TO BE ABLE TO STIPULATE AS TO
3 WHETHER OR NOT THIS WAS AN INACCURATE REPORTING OR WHAT
4 TOOK PLACE. I THINK THAT THE ARGUMENT IS STILL AVAILABLE
5 THAT THERE WAS A RECORDING AND CERTAINLY THE RECORDING
6 MAY BE IN OPPOSITION TO SOME OF THE THINGS THAT THE
7 WITNESS SAID AND ULTIMATELY I BELIEVE THAT'S ALWAYS GOING
8 TO BE THE ARGUMENT, IS ONE THING WAS SAID BEFORE, AND ONE
9 THING WAS SAID AT THIS POINT, BUT ESPECIALLY SINCE I DID
10 NOT DO THE PRELIMINARY HEARING, I'M NOT GOING TO
11 STIPULATE, BECAUSE THERE IS THE POSSIBILITY THAT THERE
12 WAS A MISTAKE.

13 MR. DAVIS: WOULD IT BE THE PROPER SUBJECT OF
14 JUDICIAL NOTICE?

15 THE COURT: I'M THINKING NOT, BUT I KNOW I CAN
16 TAKE JUDICIAL NOTICE OF THE COURT'S OWN RECORDS. THIS IS
17 NOT THE COURT'S OWN RECORDS. IT'S AN INDEPENDENT
18 CERTIFICATION FROM A CERTIFIED COURT REPORTER.

19 MR. LEVINE: IF I MAY --

20 MR. DAVIS: I COULD MAKE A COPY AND SUBMIT IT AS
21 AN EXHIBIT.

22 THE COURT: WELL, I HAVE THE ORIGINAL.

23 MR. DAVIS: NO, I'M SAYING TO THE JURY.

24 THE COURT: WELL, LET'S HEAR FROM CO-COUNSEL.

25 MR. LEVINE: I WOULD SUGGEST IF THE COURT JUST
26 READS WHAT SHE WROTE, THE CERTIFICATION, THAT DOESN'T
27 PRECLUDE EITHER SIDE FROM ARGUING THAT WELL, SHE STILL --
28 THIS IS --

1 THE COURT: I'M NOT SAYING THAT.

2 MR. LEVINE: THE CERTIFICATION IS RELEVANT IN THE
3 SENSE THIS IS WHAT SHE REPORTED.

4 THE COURT: IF IT BECOMES AN ISSUE, I SUPPOSE YOU
5 COULD CALL HER, BUT WHAT I'M SAYING IS THE LIKELIHOOD IS
6 -- AND THIS WAS JUDGE MORGAN'S COURT REPORTER -- THE
7 LIKELIHOOD IS THAT SHE WOULD NOT HAVE ANY INDEPENDENT
8 RECOLLECTION AS TO A PARTICULAR WORD OR SENTENCE OR
9 PARAGRAPH OF ANY PARTICULAR CASE IN LIGHT OF THE FACT
10 IT'S OLD AND IN LIGHT OF THE FACT THAT SHE MAY DO
11 HUNDREDS OF THESE. I DON'T KNOW WHERE THAT LEAVES US.
12 WE CAN TAKE A LOOK AT THE ISSUE AND WE CAN ARGUE IT.

13 MR. DAVIS: I'M SORRY I TOOK YOURS AND THE JURY'S
14 TIME, BUT THERE'S A NUMBER OF TIMES HE SAID "I DIDN'T SAY
15 THAT."

16 THE COURT: I UNDERSTAND. YOU WOULD LIKE TO
17 PUBLISH TO THE EXTENT POSSIBLE THE PRELIMINARY HEARING
18 TRANSCRIPT AS A TRUE AND ACCURATE REFLECTION OF WHAT HE
19 DID SAY ON THAT PARTICULAR DAY?

20 MR. DAVIS: YES, IN SOME FORM OTHER THAN LEAVING
21 IT OUT THERE. I COULD OFFER THE DECLARATION OF THE
22 REPORTER AND INVITE COUNSEL TO STIPULATE THAT IT'S A TRUE
23 COPY OF THE DECLARATION.

24 THE COURT: I THINK, IF I'M NOT MISTAKEN, THAT
25 THAT'S WHAT I SUGGESTED. LET ME JUST SEE WHAT I SAID.
26 WHAT I SAID: "IF THE PEOPLE WILL STIPULATE IT REFLECTS A
27 TRUE AND ACCURATE STATEMENT CONSISTENT WITH THE
28 CERTIFICATION OF THE COURT REPORTER, I THINK THAT THAT

1 WOULD RESOLVE THE MATTER FOR OUR PURPOSES," IN OTHER
2 WORDS, CERTIFY AND STIPULATE THAT THIS IS A CERTIFICATION
3 OF THE COURT REPORTER, AT LEAST IN HER VIEW IT'S A TRUE
4 AND ACCURATE REFLECTION OF WHAT WAS SAID.

5 MR. SIMS: UNFORTUNATELY I'M STILL RELUCTANT TO
6 STIPULATE, IN THAT IF IT WERE MY PRELIM AND I HAD BEEN
7 THERE, THE ACCURACY WOULD BE A LITTLE BIT FRESHER IN MY
8 MIND PERHAPS, BUT SINCE I WASN'T THERE --

9 THE COURT: THAT'S NOT WHAT I'M ASKING YOU. I'M
10 ASKING YOU TO IN EFFECT STIPULATE AS TO THE
11 CERTIFICATION.

12 MR. SIMS: AND AGAIN MY RELUCTANCE IS I KNOW WHAT
13 THE COURT IS ASKING ME, AND I'M NOT GOING TO DO THAT.

14 THE COURT: ALL RIGHT. I DON'T KNOW WHERE THAT
15 LEAVES US.

16 MR. DAVIS: IT PROBABLY LEAVES US WHERE WE'RE
17 GOING, THE NEXT STEP.

18 THE COURT: IN CASE YOU'RE INTERESTED, THE COURT
REPORTER IS REBECCA MC KINNEY. I DON'T KNOW WHETHER OR
20 NOT MS. MC KINNEY IS STILL IN THE BUILDING.

21 MR. DAVIS: I CAN SAY THIS: I WAS THERE, AND I
22 HAVE NO INDEPENDENT RECOLLECTION OF WHAT WAS SAID. I
23 HAVE TO RELY ON THE TRANSCRIPT AND HER CERTIFICATION.

24 MR. LEVINE: AT LEAST SHE WON'T BE FAR TO BRING TO
25 THIS COURTROOM.

26 THE COURT: NO, IF SHE'S AVAILABLE.

27 THE CLERK: DEPARTMENT 11.

28 THE COURT: SHE'S IN DEPARTMENT 11. I SUPPOSE YOU

1 COULD PUT HER ON THE STAND: "YES, I WAS THE COURT
2 REPORTER. MY RECORDS REFLECT THAT."

3 MR. DAVIS: LET ME PROVIDE NOTICE THAT'S THE NEXT
4 STEP WITHOUT A STIPULATION.

5 THE COURT: ARE WE READY?

6 MR. DAVIS: YES.

7 THE COURT: THE JURY MAY BE BROUGHT IN.

8
(THE FOLLOWING PROCEEDINGS
9 WERE HELD IN OPEN COURT IN
10 THE PRESENCE OF THE JURY:)

11
12
13 THE COURT: LET THE RECORD REFLECT THAT WE ARE IN
14 THE PRESENCE OF THE 12 JURORS PLUS THE TWO ALTERNATE
15 JURORS. MR. THOMAS HAS RETAKEN THE STAND AND, MR. DAVIS,
16 YOU MAY CONTINUE YOUR INQUIRY.

17 MR. DAVIS: THANK YOU, YOUR HONOR.

18 Q MR. THOMAS, TO UNDERSTAND YOUR STATE OF MIND
19 ABOUT THE IDENTIFICATIONS IN THIS CASE, AS YOU SIT HERE
20 AND TESTIFY, IT'S YOUR UNDERSTANDING THAT YOU, RODNEY
21 MASON AND JOEL MASON HAVE ALL, IN SOME FASHION,
22 IDENTIFIED MR. SANDERS AS ONE OF THE SHOOTERS INVOLVED,
23 CORRECT?

24 A YES.

25 Q AND AGAIN TO UNDERSTAND YOUR STATE OF MIND,
26 IT'S ALSO YOUR UNDERSTANDING THAT YOURSELF, RODNEY MASON
27 AND JOEL MASON ALL AT ONE TIME IDENTIFIED JOHNNY CLARK AS A
28 SHOOTER, CORRECT?

1 A I'M NOT SURE ABOUT THAT. I DON'T KNOW ABOUT
2 THAT. I KNOW I DID, BUT I DON'T KNOW ABOUT THEM.

3 Q OH, YOU DON'T?

4 A NO.

5 Q NOW, THE JOHNNY CLARK PICTURE WE'VE
6 DISCUSSED DOESN'T HAVE THE SCAR ON THE LIP?

7 A HE LOOKS TOTALLY DIFFERENT, RIGHT.

8 Q RIGHT. WOULD THERE BE ANY WAY IN YOUR MIND
9 THAT YOUR HAVING SEPARATELY SELECTED JOHNNY CLARK, THAT
10 RODNEY AND JOEL WOULD HAVE ALSO SEPARATELY SELECTED, NOT?

11 A MAN WITH A SCAR, BUT JOHNNY CLARK, DO YOU KNOW HOW
12 THAT COULD HAVE HAPPENED?

13 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

14 THE COURT: SUSTAINED.

15 BY MR. DAVIS:

16 Q WELL, DID YOU TALK ABOUT IT WITH THEM?

17 A BEFORE OR AFTER? I'M NOT UNDERSTANDING.

18 Q AT ANY TIME, SAY, BEFORE THE LINEUP, DID YOU
19 TALK ABOUT THE WRONG GUY BEING PICKED?

20 A YES.

21 Q AND DID EITHER OF THEM COMMUNICATE WITH YOU
22 THAT, "WELL, I PICKED NUMBER THREE, THE TOP RIGHT; WHICH
23 ONE DID YOU PICK"?

24 A NO.

25 Q DID YOU HAVE ANY CONVERSATION LIKE THAT?

26 A NO, WE NEVER HAD A CONVERSATION LIKE THAT.

27 Q ALL RIGHT.

28 ARE YOU, SIR, IN PROVIDING YOUR

1 TESTIMONY IN THIS CASE, PROTECTING A KNOWN SHOOTER OR
2 SHOOTERS IN THIS INCIDENT?

3 A NO, I DON'T KNOW HIM.

4 Q AND HAVE YOU, SIR, IN THIS CASE, ATTEMPTED
5 TO SET UP INNOCENT -- AN INNOCENT MAN OR INNOCENT PEOPLE
6 AS SHOOTERS IN THIS CASE?

7 A NO.

8 Q YOU'VE TESTIFIED BEFORE THIS JURY THAT MY
9 CLIENT WAS NOT PART OF THE INSULTING REMARKS TO THOSE
10 GIRLS, REMEMBER?

11 A YES.

12 Q YOU'VE TESTIFIED THAT MY CLIENT DID NOT SAY
13 ANYTHING TO ANYONE THAT YOU HEARD BEFORE THE FIGHT
14 STARTED, CORRECT?

15 A YES.

16 Q AND YOU'VE TESTIFIED THAT MY CLIENT DIDN'T
17 SAY ANYTHING BEFORE THE SHOOTING OCCURRED, RIGHT?

18 A YES.

19 Q BUT YOU'VE ALSO TESTIFIED THAT S-2, NOT S-1,
20 ACTUALLY ATTEMPTED TO DIFFUSE THE SITUATION WHEN IT WAS
21 AT THE VERBAL STAGE, CORRECT?

22 A YES.

23 Q AND YOU WOULD CONCEDE WHEN YOU SAY THAT
24 ABOUT S-2, YOU'RE SAYING SOMETHING POSITIVE ABOUT HIS
25 CONDUCT, CORRECT?

26 A YES.

27 Q AND I DON'T MEAN THAT'S COVERING UP A
28 SHOOTER WHEN I ASK YOU THAT. YOU'RE TELLING THIS JURY

1 THAT S-2 ACTUALLY, INSTEAD OF BEING A SHOOTING COMPANION,
2 OR A THREATENING COMPANION OF S-1, WAS ACTUALLY HELPING,
3 CORRECT?

4 A YES.

5 Q BUT, SIR, THAT STATEMENT, THAT S-2 HELPED,
6 THAT'S A LIE, ISN'T IT?

7 A NO, IT ISN'T.

8 Q YOU ACTUALLY HAD PREVIOUSLY TOLD OFFICER
VIZCARRA THAT YOU BELIEVED S-2 WAS INVOLVED IN THE FIGHT,
10 DIDN'T YOU?

11 A NO, I DIDN'T.

12 Q YOU TOLD OFFICER VIZCARRA THAT YOU BELIEVED
13 THAT S-2 MAY HAVE ACTUALLY BEEN INVOLVED IN THE PHYSICAL
14 FIGHT BETWEEN JOEL AND SHOOTER ONE, DIDN'T YOU?

15 A NO, I DIDN'T.

16 Q THAT WOULD BE A VERY DIFFERENT STATEMENT,
17 WOULDN'T IT, THAN TELLING US THAT HE HELPED OUT IN TRYING
18 TO DIFFUSE THE SITUATION, CORRECT?

A YES, IT WOULD.

20 Q AND IF YOU HAD SAID ON THE EVENING OF THIS
21 EVENT THAT YOU BELIEVED THAT S-2 MAY HAVE BEEN INVOLVED
22 IN THE FIGHT BETWEEN THOSE TWO MEN, AND THEN CHANGED IT
23 TO SAY HE HELPED, IT WOULD APPEAR, WOULDN'T IT, THAT
24 YOU'RE COVERING A BIT FOR S-2, AGREED?

25 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
26 CONCLUSION.

27 THE COURT: SUSTAINED.
28

1 BY MR. DAVIS:

2 Q HAVE YOU EVER TOLD LAW ENFORCEMENT, UNLIKE
3 YOUR TESTIMONY HERE IN COURT, THAT DONALD SANDERS WAS
4 INVOLVED IN THE INSULTING STATEMENTS MADE TO THESE WOMEN?

5 A NO, I DIDN'T.

6 Q BECAUSE IF YOU DID, THAT WOULD BE A LIE,
7 RIGHT?

8 A YES, IT WOULD.

9 Q ON THE EVENING IN QUESTION, DID YOU TELL
10 DETECTIVE -- OR OFFICER VIZCARRA THAT YOU PERSONALLY
11 HEARD DONALD SANDERS YELLING OUT "BLOOD, BLOOD, BLOOD"
12 SEVERAL TIMES? DID YOU TELL HIM THAT?

13 A YES, I DID.

14 Q DID YOU TELL HIM THAT WHEN THE GIRLS WERE
15 BEING YELLED AT, DONALD SANDERS WAS ONE OF THE MEN
16 YELLING AT THEM?

17 A NO, I DIDN'T.

18 Q EXCUSE ME, SIR. I'M GOING TO ASK YOU
SOMETHING ABOUT THE TYPE OF PEOPLE WHOSE STATEMENTS YOU
20 HAVE RELIED ON, AND I'M NOT TALKING ABOUT RECENT RUMORS
21 ABOUT PARTIES ASSOCIATED WITH MY CLIENT AUDITING YOUR
22 TESTIMONY IN COURT WITH CELL PHONES, OKAY?

23 A OKAY.

24 Q I'M NOT TALKING ABOUT THAT. I'M TALKING
25 ABOUT -- I'M NOT TALKING ABOUT WHO IT WAS THAT TOLD YOU
26 ABOUT A POLICEMAN POSSIBLY BEING AT THE CLUB AT OR ABOUT
27 THE TIME OF THE SHOOTING. WHAT I'M GOING TO GO TO FIRST
28 IS THAT SOURCE OF PEOPLE WHO PROVIDED YOU INFORMATION

1 THAT LED TO THE FALSE IDENTIFICATION OF JOHNNY CLARK.

2 OKAY?

3 A OKAY.

4 Q ALL RIGHT. NOW, FIRST OF ALL, YOU'VE SAID
5 THEY'RE MEMBERS OF YOUR CLUB, CORRECT?

6 A YES.

7 Q AND YOU'VE SAID THAT YOU KNOW THEM
8 PERSONALLY, CORRECT?

9 A YES.

10 Q AND THESE ARE PEOPLE YOU TRUST, CORRECT?

11 A YES.

12 Q ARE THESE PEOPLE WHO ARE VIOLENT PEOPLE?

13 A I DON'T KNOW.

14 Q DO YOU KNOW THAT THEY DO HAVE ACCESS TO
15 GUNS?

16 A I DON'T KNOW. I DON'T KNOW ANYTHING ABOUT
17 THAT.

18 Q ARE THEY MEMBERS OF A GANG?

19 A I DON'T KNOW.

20 Q ARE YOU AFRAID FOR YOUR WELL-BEING IF YOU
21 WERE TO DIVULGE THEIR NAMES?

22 A PRETTY MUCH.

23 Q YOU'VE PROVIDED TESTIMONY ON THIS SUBJECT
24 BEFORE, HAVEN'T YOU?

25 A YES, I HAVE.

26 Q DO YOU HAVE THAT TESTIMONY IN MIND?

27 A I'M NOT UNDERSTANDING WHAT YOU'RE SAYING.

28 Q THESE PEOPLE THAT WERE THE SOURCE OF THAT

1 INFORMATION, DO THEY LIVE IN THE IMMEDIATE AREA OF
2 COMPTON, GARDENA?

3 A I DON'T KNOW.

4 Q DIDN'T YOU PROVIDE TESTIMONY ON THIS SUBJECT
5 JUST LAST FRIDAY?

6 A ON WHAT SUBJECT ARE WE TALKING?

7 Q WHERE THEY LIVED, COMPTON OR GARDENA.

8 A THEY PROBABLY DO. I DON'T KNOW EXACTLY
^ WHERE THEY LIVE.

Q THEY COULD FIND YOU IF THEY WANTED?

11 A YES, THEY COULD.

12 Q DO YOU HAVE ANY FEAR FOR YOUR SAFETY IF YOU
13 DIVULGE THESE NAMES FROM THOSE PEOPLE, YOUR SOURCES?

14 A POSSIBLY.

15 Q DO YOU BELIEVE THAT THEY MIGHT HARM YOU IF
16 YOU DIVULGED THIS INFORMATION?

17 A POSSIBLY.

18 Q AND ARE THEY THE TYPE OF PEOPLE IN YOUR
OPINION THAT MAY BRING HARM TO YOU IF YOU DIVULGED THIS
20 INFORMATION?

21 A PUT IT LIKE THIS: I DON'T KNOW AT THIS
22 TIME. I REALLY DON'T KNOW.

23 Q AND WERE YOU TRYING TO DIFFUSE THAT
24 POSSIBILITY BY WHAT YOU SAID TO YOUR CLUB MEMBERS ON
25 SUNDAY?

26 A PRETTY MUCH WHAT I WAS DOING WITH MY CLUB
27 MEMBERS ON SUNDAY IS LETTING THEM KNOW THAT I WAS
28 TESTIFYING. IT DIDN'T HAVE ANYTHING TO DO WITH THEM.

1 Q IN YOUR PREVIOUS TESTIMONY I ASKED YOU ABOUT
2 SHOOTER ONE AND SOME OF THE DETAILS ABOUT WHAT THIS MAN
3 DID AND SAID, THE MAN WITH THE SCAR ON HIS LIP. AT ONE
4 POINT IN TIME IN YOUR TESTIMONY YOU EARLIER SAID THAT S-1
5 TOLD YOU, QUOTE, "THIS IS JOEL'S FAULT, AND I'M TRYING TO
6 GET OUT."

7 DO YOU REMEMBER GIVING THAT TESTIMONY?

8 A YES, I DO.

9 Q AND THAT WAS A STATEMENT THAT S-1 GAVE?

10 A YES.

11 Q AND WHERE WAS S-2 WHEN S-1 SAID THAT?

12 A HE WAS RIGHT DIRECTLY IN FRONT OF ME.

13 Q HELPING OUT IN THE MANNER IN WHICH YOU'VE
14 TESTIFIED?

15 A YES.

16 Q WAS IT EVIDENT TO YOU, ALTHOUGH YOU MAY OR
17 MAY NOT HAVE KNOWN S-1, THAT JOEL AND S-1 HAD A PERSONAL
18 BEEF INVOLVED IN THIS?

19 A I DON'T HAVE -- I DON'T KNOW. I DON'T KNOW
20 ANYTHING ABOUT THAT.

21 Q DID IT SURPRISE YOU WHEN S-1 SAID "THIS IS
22 JOEL'S FAULT"?

23 A NO.

24 Q ACCEPTING FOR PURPOSES OF MY EXAMINING YOUR
25 CREDIBILITY, THAT YOU PERSONALLY KNOW PEOPLE WITHIN YOUR
26 CLUB WHO COULD PROVIDE IDENTIFYING INFORMATION ABOUT S-1,
27 WOULD YOU AGREE, SIR, THAT BY NOT PROVIDING THE NAMES OF
28 PEOPLE THAT GAVE YOU THAT, YOU ARE ESSENTIALLY PROTECTING

1 S-1 FROM INVESTIGATION AND POSSIBLE PROSECUTION?

2 A NO --

3 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
4 CONCLUSION.

5 THE COURT: SUSTAINED.

6 BY MR. DAVIS:

7 Q AREN'T YOU IN EFFECT PROTECTING S-1 BY WHAT
8 YOU'RE DOING AND THE MANNER IN WHICH YOU'RE TESTIFYING?

9 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
CONCLUSION.

11 THE COURT: WELL, OVERRULED.

12 MR. DAVIS: I'M SORRY?

13 THE COURT: OVERRULED.

14 YOU MAY ANSWER.

15 BY MR. DAVIS:

16 Q YOU ARE, AREN'T YOU?

17 A NO, I'M NOT.

18 Q AREN'T YOU, BY WHAT YOU'RE TESTIFYING -- THE
MANNER IN WHICH YOU'RE TESTIFYING HERE, ESSENTIALLY
20 PROTECTING S-1?

21 A NO.

22 Q AREN'T YOU, BY THE MANNER IN WHICH YOU'RE
23 TESTIFYING, ESSENTIALLY PROTECTING THE BLOOD GANG --

24 A NO, I'M NOT.

25 Q -- OF WHICH THEY MIGHT BE MEMBERS?

26 A NO, I'M NOT.

27 Q AREN'T YOU, BY NOT DIVULGING THOSE NAMES,
28 ESSENTIALLY PREVENTING DETECTIVE POHL HERE FROM PURSUING

1 THE IDENTITY OF THE TRUE SHOOTER ONE IN THIS CASE?

2 A THE TRUE SHOOTER IS HERE.

3 Q SHOOTER ONE IS HERE?

4 A THE TRUE SHOOTER IS HERE.

5 Q IS SHOOTER ONE HERE?

6 A NO, HE ISN'T.

7 Q IS S-2 HERE?

8 A NO, THEY'RE NOT.

9 Q AND AREN'T YOU, BY NOT DIVULGING THE NAMES
10 OF YOUR SOURCES, PREVENTING DETECTIVE POHL FROM PURSUING
11 S-1 AND S-2?

12 A NO, I'M NOT.

13 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
14 CONCLUSION.

15 THE COURT: HAVE WE EVER ESTABLISHED THAT
16 DETECTIVE POHL EVER ASKED THE QUESTION AND RECEIVED OR
17 DID NOT RECEIVE ANY INFORMATION?

18 MR. SIMS: I DON'T BELIEVE WE HAVE.

THE COURT: SUSTAINED. YOU MAY FOLLOW UP.

20 MR. DAVIS: ASSOCIATE COUNSEL JUST BROUGHT
21 SOMETHING TO MY ATTENTION THAT I WANT TO BRIEFLY ASK YOU
22 AGAIN ABOUT.

23 Q SIR, ISN'T IT TRUE THAT YOU TOLD DETECTIVE
24 POHL THAT ONLY ONE OF THE SUSPECTS AT THE SCENE USED THE
25 TERMS "BLOOD, BLOOD"? DIDN'T YOU TELL HIM THAT?

26 A YES, I DID.

27 Q AND THAT WASN'T DONALD SANDERS, TRUE?

28 A NO, IT WAS DONALD SANDERS AND S-1.

1 Q THAT MAKES ONE PLUS ONE EQUALS ONE?

2 A NO, IT DOESN'T.

3 Q SO IF I UNDERSTAND IT, YOU TOLD POHL THAT
4 ONLY ONE OF THE SUSPECTS SAID "BLOOD, BLOOD" OR WORDS TO
5 THAT EFFECT, BUT NOW YOU'RE SAYING TWO ACTUALLY DID, S-1
6 AND DONALD SANDERS?

7 A YES.

8 Q IS THAT --

9 A BUT S-1, HE WAS MORE -- HE CONTINUED TO USE
10 IT.

11 Q IS THIS A TRUE STATEMENT: "LANNY THOMAS
12 TOLD ME THAT HE HEARD ONLY ONE OF THE SUSPECTS SAY
13 'BLOOD, BLOOD,' AND THAT WAS NOT DONALD SANDERS," TRUE
14 OR FALSE?

15 A I COULDN'T TELL YOU, BECAUSE I KNOW -- LIKE
16 I SAID AT THE BEGINNING OF THE CONVERSATION, WHEN HE
17 FIRST WALKED UP, HE APPROACHED RODNEY MASON, CALLING HIM?

18 A BLOOD, AND THEN AFTER THAT, THE S-1 CONTINUED TO
19 CALL HIM "BLOOD, BLOOD, BLOOD" OVER AND OVER AND OVER.

20 Q ALL RIGHT. NOW, WAS THAT DISRESPECTFUL?

21 A I DON'T KNOW.

22 Q DID RODNEY TAKE IT AS BEING DISRESPECTFUL IN
23 YOUR PRESENCE?

24 A I COULDN'T TELL YOU.

25 MR. SIMS: OBJECTION, CALLS FOR SPECULATION.

26 THE COURT: SUSTAINED.

27

28

1 BY MR. DAVIS:

2 Q DIDN'T HE IN YOUR PRESENCE SAY "THAT'S NOT
3 RIGHT, WE DON'T DO THAT HERE," OR WORDS TO THAT EFFECT?

4 A PRETTY MUCH.

5 Q AND THAT WAS HIS RESPONSE TO WHAT STATEMENT?

6 A "BLOOD."

7 MR. DAVIS: SHOWING COURT AND COUNSEL PRELIMINARY
8 HEARING, PAGE 104, LINES 24 THROUGH 25, 105, LINES 1
9 THROUGH 7.

THE COURT: IT MAY BE PUBLISHED.

11 BY MR. DAVIS:

12 Q "QUESTION: WAS RODNEY, THE FATHER,
13 INSIDE THAT BAR AREA?

14 "ANSWER: HE WAS AROUND THAT AREA.

15 "QUESTION: HE'S TALKING THROUGH THE
16 WINDOW?

17 "ANSWER: THROUGH THE WINDOW.

18 "QUESTION: AND WHO IS HE TALKING TO?

19 "ANSWER: HE'S TALKING TO DUCK AND THE
20 OTHER SHOOTER. OH, NO. HE WAS TALKING
21 ACTUALLY TO THE SHOOTER. DUCK DIDN'T SAY
22 ANYTHING.

23 "QUESTION: YOU DIDN'T HEAR HIM SAY
24 ANYTHING DISRESPECTFUL, DID YOU?

25 "ANSWER: NO, I DIDN'T."

26 HAVING HEARD THAT TESTIMONY YOU GAVE AT
27 PRELIMINARY HEARING, SIR, HAVE YOU CHANGED YOUR TESTIMONY
28 ABOUT THAT SUBJECT SINCE?

1 A NO, I HAVEN'T.

2 Q AND TO THE EXTENT THAT YOU TOLD DETECTIVE
3 POHL YOU HEARD ONE OF THE SUSPECTS SAY "BLOOD, BLOOD,"
4 HAVE YOU CHANGED THAT STATEMENT WITH RESPECT TO YOUR
5 TESTIMONY SINCE?

6 A NO, I HAVEN'T.

7 Q AND YOU'RE NOT TRYING TO FRAME DUCK, ARE
8 YOU?

9 A NO, I'M NOT.

10 Q YOU'RE NOT TRYING TO PROTECT THE TRUE
11 SHOOTERS IN THIS CASE, ARE YOU?

12 A I DON'T KNOW THE TRUE SHOOTERS -- THE FIRST
13 SHOOTER. I KNOW WHO THE TRUE SHOOTER WAS. I'M NOT
14 TRYING TO PROTECT THE FIRST SHOOTER.

15 Q THANK YOU FOR YOUR ANSWER.

16 NOW, THE PEOPLE WHO TOLD YOU THAT S-1 WAS A
17 J, ARE THEY THE SAME PEOPLE WHO TOLD YOU THEY UNDERSTOOD A
18 MEMBER POLICE OFFICER WAS AT THE CLUB AREA AT THE TIME
OF THE SHOOTING?

20 A NO.

21 Q THESE ARE DIFFERENT PEOPLE?

22 A YES.

23 Q AND THE ONES THAT TOLD YOU ABOUT THE
24 OFFICER, THEY'RE MEMBERS, RIGHT?

25 A THE ONE WHO TOLD ME WHAT NOW?

26 Q ABOUT THE OFFICER BEING THERE, THOSE ARE
27 MEMBERS OF RARE BREED?

28 A YES.

1 Q AND THE ONES THAT TOLD YOU ABOUT J, THOSE
2 ARE MEMBERS OF RARE BREED OR NOT?

3 A YES.

4 Q THEN THE PEOPLE WHO TOLD YOU THAT IN
5 SELECTING J AND IT LEADING TO JOHNNY CLARK BEING
6 ARRESTED, THAT WAS A MISTAKE, THEY TELL YOU, HE'S THE
7 WRONG GUY, HE WASN'T THERE, ARE THESE THE SAME PEOPLE IN
8 EITHER OF THOSE OTHER UNNAMED SOURCES WE'VE IDENTIFIED,
9 THAT IS THE ONE THAT TOLD YOU ABOUT POLICE BEING IN THE
10 CLUB, AND THOSE THAT TOLD YOU ABOUT THE SHOOTER ONE BEING
11 J?

12 A PUT IT LIKE THIS: IT WAS CLUB MEMBERS AND
13 THEN PEOPLE ON THE OUTSIDE THAT TOLD ME THAT I HAD THE
14 WRONG PERSON. IT WAS TWO DIFFERENT SETS -- TWO DIFFERENT
15 SETS OF PEOPLE.

16 Q ALL RIGHT. AND YOU'RE NOT GOING TO TELL US
17 ANY OF THOSE PEOPLE'S IDENTITIES, CORRECT?

18 A NO, I'M NOT.

19 Q ALL RIGHT. AND THIS THIRD GROUP THAT WE'RE
20 TALKING ABOUT, THE PEOPLE WHO TOLD YOU IT WAS A MISTAKE
21 TO HAVE -- TO DO ANYTHING TO LEAD TO JOHNNY WALKER BEING
22 ARRESTED, THEY'RE CLUB MEMBERS AND THEY'RE OUT OF CLUB --
23 EXCUSE ME, JOHNNY CLARK -- LET ME START AGAIN. WITH MY
24 APOLOGIES NOT ONLY TO MR. CLARK, TO THE JURY, THE
25 COURTROOM AND THE HORRIBLE EMPHASIS IT HAS ABOUT ME AND
26 DRINKING SCOTCH.

27 THE COURT: I HAVE A QUESTION. THIS IS PROBABLY A
28 QUESTION MANY MEMBERS OF THE JURY WOULD ASK: IS YOUR

1 DRINK OF CHOICE JOHNNY WALKER?

2 MR. DAVIS: WELL, I'VE HEARD SOMEBODY IN THIS
3 COURTROOM SAY THEY DON'T DRINK, BUT I CAN'T PROVE IT.

4 THE COURT: OKAY.

5 MR. DAVIS: NOT SCOTCH. I CAN'T HANDLE IT. IT
6 MAKES ME CRAZY LIKE AN INDIAN.

7 Q IN ANY EVENT, COMING BACK TO THE LAST
8 GROUPS, TWO DIFFERENT SETS, THERE'S NOTHING LOST IN YOUR
9 TELLING US THOSE OUT OF THE CLUB, ARE THERE? YOU CAN
10 GIVE US NAMES OF PEOPLE OUT IN THE STREET THAT SAID, "YOU
11 KNOW, YOU HAVE THE WRONG GUY"?

12 A NO, I CAN'T.

13 Q THEY MIGHT BE PEOPLE THAT COULD GIVE
14 EVIDENCE ABOUT AN ALIBI AND THE LIKE, WOULDN'T YOU AGREE?

15 A I DON'T KNOW.

16 Q WELL, WHY DON'T YOU GIVE US NAMES OF PEOPLE
17 WHO AREN'T YOUR MEMBERS?

18 A I CAN'T DO THAT.

Q THE QUESTION IS WHY WON'T YOU DO THAT?

20 A BECAUSE IT'S LIKE I CONTINUE TO TELL YOU, IF
21 THEY WANTED TO BE HERE, THEY WOULD BE HERE. I'M HERE.

22 Q WELL, FINE. LET'S SUPPOSE WE FOLLOW THAT
23 UP.

24 YOU GIVE US THEIR NAMES, POHL HAS AN
25 OPPORTUNITY TO ASK THEM WHAT THEY KNOW ABOUT THE TRUE
26 IDENTITY OF S-1, S-2 AND ANYBODY ELSE THAT WAS WITH
27 THEM. WE GET THEIR NAMES AND THEY COME IN AND THEY TELL
28 US WHAT THEY KNOW. THEY MAY SAY "DUCK DIDN'T HAVE A

1 THING TO DO WITH IT"?

2 A I DOUBT THAT.

3 Q I LIKE THAT ANSWER, BECAUSE THAT DOUBT IN
4 YOUR MIND IS EXACTLY WHAT I'M EXPLORING WITH YOU.

5 A OKAY.

6 Q HOW DO WE KNOW YOU'RE TELLING THE TRUTH
7 ABOUT ANYTHING?

8 A YOU KNOW --

9 MR. SIMS: OBJECTION, CALLS FOR A LEGAL
10 CONCLUSION.

11 MR. DAVIS: HE SAID --

12 THE COURT: OVERRULED.

13 BY MR. DAVIS:

14 Q IS THAT YOUR ANSWER, RIGHT?

15 A WHAT'S THAT?

16 Q WE DON'T KNOW WHETHER YOU'RE TELLING THE
17 TRUTH?

18 A YOU DON'T. YOU REALLY DON'T.

19 Q I'M SORRY. WE REALLY DON'T?

20 A EXACTLY.

21 Q EXACTLY, WE REALLY DON'T KNOW; IS THAT YOUR
22 STATEMENT?

23 A BUT YOU HAVE THREE OTHER PEOPLE THAT SAID
24 THE SAME THING -- TWO OTHER PEOPLE.

25 Q HOW WOULD YOU KNOW THAT?

26 A BECAUSE THEY WERE THERE. THEY'RE THE
27 VICTIMS.

28 Q AND THEY'RE SAYING WHAT YOU'RE SAYING?

1 A PRETTY MUCH.

2 Q ALL RIGHT. "PRETTY MUCH" ABOUT S-2?

3 A NO, ABOUT THE SHOOTER, THE MAIN SHOOTER.

4 Q ABOUT --

5 A DUCK.

6 Q OH, I SEE, THAT PART OF IT, THEY'RE SAYING
7 THE SAME THING?

8 A YES.

9 Q AND YOU'RE SURE THEY'RE SAYING THE SAME
10 THING, RIGHT?

11 A I'M SURE THEY ARE.

12 Q ALL RIGHT. SO LET ME ASK YOU THIS TO BE
13 SURE ABOUT THAT. AS YOU'VE TOLD US, DUCK WAS WEARING A
14 RED ATHLETIC JERSEY, RIGHT?

15 A NO.

16 Q WELL, I MEAN IF SOMEBODY ELSE WHO WAS A
17 VICTIM SAID HE HAD A JERSEY ON, WHICH IS RIGHT, YOU OR
18 THE OTHER MAN?

A I KNOW WHAT I SAW.

20 Q AND YOU SAW MY CLIENT IN A RED JERSEY WITH A
21 10 ON IT, DIDN'T YOU?

22 A NO, I DIDN'T.

23 Q WOULD THAT BE THE SAME THING AS SAYING HE
24 DIDN'T HAVE A RED JERSEY ON?

25 A HE DIDN'T HAVE A RED JERSEY ON.

26 Q DUCK, ACCORDING TO YOUR ACCOUNT, WAS HOLDING A
27 CHROME SEMIAUTOMATIC, RIGHT?

28 A NO, HE HAD A BLACK AUTOMATIC.

1 Q WELL, BUT IF PEOPLE ARE SAYING THE SAME
2 THING YOU'RE SAYING, IF SOMEBODY SAYS "DUCK HAD A CHROME
3 WEAPON," THAT WOULDN'T BE WHAT YOU'RE SAYING, IS IT?
4 YOU'RE SAYING HE HAD A BLACK GUN, RIGHT?

5 A EXACTLY.

6 Q WERE THERE TWO CHROME GUNS THERE?

7 A THERE WAS ONE.

8 Q WAIT A MINUTE. DID YOU COUNT THE GUNS THAT
9 WERE THERE THAT NIGHT WHEN THE SHOOTING WENT ON?

10 A S-1 HAD THE CHROME; DUCK HAD THE BLACK.

11 Q DID YOU COUNT THE GUNS THAT NIGHT WHEN THE
12 SHOOTING WENT ON?

13 A JUST LIKE I SAID.

14 Q PRETTY MUCH?

15 A DUCK HAD THE BLACK, S-1 HAD THE CHROME.

16 Q DID YOU COUNT THE NUMBER OF GUNS THAT WERE
17 IN THAT ROOM WHEN THE SHOOTING CAME DOWN?

18 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

THE COURT: OVERRULED.

20 BY MR. DAVIS:

21 Q GIVE ME AN ANSWER, "YES" OR "NO."

22 A THERE WAS TWO GUNS.

23 Q SO YOU DID COUNT THEM?

24 A IT'S ONLY OBVIOUS.

25 THE COURT: LET'S MOVE ON, COUNSEL.

26 BY MR. DAVIS:

27 Q NOW, THIS GROUP THAT HAS RECENTLY TOLD
28 YOU -- EXCUSE ME. THIS GROUP THAT TOLD YOU IT WASN'T

1 JOHNNY CLARK, S-1 IS A DIFFERENT PERSON -- WHO ARE NOT
2 MEMBERS -- ARE THESE DANGEROUS PERSONALITIES?

3 A I DON'T KNOW. POSSIBLY.

4 Q YOU'VE SEEN THEM FACE TO FACE, RIGHT?

5 A YES, I HAVE.

6 Q DO YOU HAVE THE SAME AGREEMENT THAT THEY
7 GIVE YOU THIS INFORMATION?

8 A PUT IT LIKE THIS: IF THEY WANTED TO GIVE
9 YOU THAT INFORMATION, THEY WOULD BE HERE TODAY.

10 Q WE HAVE TO KNOW THEIR NAMES THOUGH, RIGHT?

11 A I'M NOT GOING TO GIVE YOU THEIR NAMES.

12 Q SO THE REASON YOU'RE NOT GOING TO GIVE US
13 THE NAMES OF THOSE OUTSIDE THE CLUB, WHOM, AS YOU'VE
14 REPRESENTED, KNOW WHO SHOOTER ONE IS, IS BECAUSE IT'S
15 YOUR BOND WITH THEM, CORRECT?

16 A NO. IF THEY WOULD HAVE WANTED THE COURT TO
17 KNOW, THEY WOULD HAVE BEEN HERE.

18 Q THAT'S "THEY." I WANT TO KNOW WHY YOU DON'T
19 TELL US. ARE YOU AFRAID OF THEM?

20 A NO.

21 Q HAVE THEY MADE THREATS ON YOU?

22 A NO.

23 Q ARE THESE PEOPLE WHO HAVE A CRIMINAL
24 BACKGROUND THAT YOU'RE AWARE OF?

25 A I DON'T KNOW.

26 Q ARE THEY MEMBERS OF A GANG?

27 A I DON'T KNOW.

28 Q BUT IF YOU SAW THEM, YOU'D RECOGNIZE THEM?

1 A YES.

2 Q YOU KNOW HOW TO GET IN TOUCH WITH THEM IF
3 YOU NEED TO?

4 A NO, I DON'T.

5 Q THEY KNOW HOW TO GET IN TOUCH WITH YOU?

6 A YES.

7 Q HOW DID THEY COME TO YOU IN THE INSTANCE
8 WHEN THEY SAID "IT'S NOT JOHNNY CLARK, IT'S SOMEBODY ELSE
9 WE REALLY KNOW, THE GUY WITH THE SCAR ON THE LIP"? HOW
10 DID THEY GET AHOLD OF YOU?

11 A THEY CAME TO MY BUSINESS.

12 Q WHAT IS THAT BUSINESS? WHERE IS IT LOCATED?

13 A I HAVE A COLLISION REPAIR SHOP IN GARDENA.

14 Q ALL RIGHT. AND THEY OBVIOUSLY KNEW WHERE
15 YOU WORKED?

16 A YES.

17 Q THEY CAME DAYTIME OR NIGHTTIME?

18 A I -- AT THIS TIME I DON'T KNOW. I DON'T
REMEMBER.

20 Q HOW MANY? HOW MANY WERE THERE?

21 A I DON'T REMEMBER THAT.

22 Q 10?

23 A I DON'T KNOW.

24 Q ONE?

25 A I DON'T REMEMBER.

26 Q ONE?

27 A IT'S BEEN A YEAR AND A HALF. I DON'T
28 REMEMBER.

1 THE COURT: COUNSEL, HE'S INDICATED HE DOESN'T
2 REMEMBER.

3 BY MR. DAVIS:

4 Q ALL RIGHT. I JUST WANT TO BE SURE. YOU
5 DON'T REMEMBER WHETHER THERE WAS EVEN ONE PERSON
6 COMMUNICATING WITH YOU IN THAT CONTEXT IN YOUR BODY SHOP?

7 A THERE WAS ONE PERSON, OF COURSE. HOW MANY
8 WERE THERE, I COULDN'T TELL YOU AT THIS TIME. I DON'T
9 REMEMBER.

10 Q ALL RIGHT. ONE AT LEAST PRIMARY SPEAKER,
11 RIGHT?

12 A YES.

13 Q A MALE?

14 A MAY HAVE BEEN MORE. I DON'T KNOW.

15 Q ALL RIGHT. THIS PRIMARY SPEAKER IS A MALE,
16 CORRECT?

17 A YES.

18 Q AND HE'S, IF I COULD, BLACK OR
AFRICAN-AMERICAN?

20 A YES.

21 Q SOMEBODY YOU KNEW BEFORE?

22 A YES.

23 Q AND HOW LONG WAS HE THERE GIVING YOU THIS
24 INFORMATION?

25 A I DON'T REMEMBER.

26 Q I'M TALKING ABOUT WHEN YOU FOUND OUT HE KNEW
27 WHO THE REAL S-1 WAS, HOW LONG WAS THAT CONVERSATION?

28 A I DON'T REMEMBER. I DON'T REMEMBER.

1 Q THERE ARE ALSO, IF I UNDERSTAND YOUR
2 TESTIMONY, PRESENT MEMBERS OF THE PURE BREED MOTORCYCLE
3 CLUB --

4 A RARE BREED.

5 Q EXCUSE ME, RARE BREED MOTORCYCLE CLUB WHO
6 ALSO KNOW THE TRUE IDENTITY OF S-1, CORRECT?

7 A YES.

8 Q HOW MANY OF YOUR MEMBERS HAVE THAT
9 INFORMATION?

10 A I DON'T KNOW.

11 Q AT LEAST ONE?

12 A YES.

13 Q AND YOU KNOW THERE ARE MORE THAN ONE,
14 CORRECT?

15 A YES.

16 Q YOU'VE TALKED WITH THESE INDIVIDUALS ABOUT
17 THAT SUBJECT, CORRECT?

18 A NO.

19 Q WHO TOLD YOU?

20 A THEY TOLD ME, BUT I MEAN I HAVEN'T TALKED IN
21 DETAIL ABOUT IT, NO.

22 Q ALL RIGHT. "THEY" BEING HOW MANY MEMBERS OF
23 YOUR CLUB DO YOU KNOW THAT KNOW THE TRUE IDENTITY OF
24 S-1? HOW MANY?

25 A I COULDN'T TELL YOU.

26 Q YOU WON'T TELL ME IS WHAT YOU'RE SAYING?

27 A I CAN'T TELL YOU. I KNOW THERE'S A FEW OF
28 THEM. I CAN'T TELL YOU HOW MANY.

1 Q ALL RIGHT. MORE THAN TWO, CORRECT?

2 A YES.

3 Q AND IS THERE, LIKE THERE WAS AT THE BODY
4 SHOP, FROM THE STREETS, MORE THAN ONE PRIMARY SPEAKER ON
5 THAT SUBJECT IN YOUR MEMBERSHIP?

6 A I DON'T REMEMBER.

7 Q THE MAIN GUY WHO TOLD YOU THIS --

8 A IT'S BEEN A YEAR AND A HALF. I DON'T
REMEMBER.

Q WAS HE THERE LAST NIGHT?

11 A WAS WHO THERE LAST NIGHT?

12 Q WAS THE MAN WHO IS A MEMBER OF YOUR
13 MOTORCYCLE CLUB THERE AT THE MEETING LAST NIGHT WHEN YOU
14 GOT UP AND SAID THE THINGS YOU SAID?

15 A OH, YES.

16 Q SO A MAN WHO KNEW THE TRUE IDENTITY OF S-1
17 WAS THERE LAST NIGHT?

18 A YES.

Q WHO WAS THAT?

20 A I'M NOT GOING TO TELL YOU.

21 Q ALL RIGHT. SO IT'S NOT THAT YOU DON'T
22 REMEMBER; YOU'RE NOT GOING TO TELL US?

23 A I'M NOT GOING TO TELL YOU.

24 Q ALL RIGHT. I SAY "ALL RIGHT." NOW, GIVEN
25 WHAT YOU'VE TOLD US ABOUT YOUR RESPONSE TO THE COURTROOM
26 AND THE LEGAL SYSTEM, AND HOW OFTEN A CLUB MAY HANDLE
27 SOMETHING INFORMALLY, I WANT TO ASK YOU SOMETHING: NOW
28 THAT SOMEONE IN YOUR CLUB KNOWS S-1, KNOWS THAT HE CAME

1 IN AND AFFRONTED WOMEN GUESTS, DISRESPECTED MEMBERS AND
2 THEN PULLED OUT A WEAPON AND SHOT A MEMBER AND HIS SON,
3 HAS YOUR CLUB DONE ANYTHING INFORMALLY TO SETTLE THAT?

4 A NO.

5 Q WHY NOT?

6 A WE'RE LEAVING IT UP TO THE COURT SYSTEM
7 PRETTY MUCH.

8 Q TO FIND OUT WHO S-1, IS YOU'RE LEAVING IT TO
THE COURT SYSTEM?

A NO -- YES, THAT'S YOUR JOB.

11 Q TO FIND OUT WHO S-2 IS, YOU'RE LEAVING IT TO
12 THE COURT SYSTEM?

13 A THAT'S YOUR JOB.

14 Q WELL, OKAY. HELP ME. WHO ARE THEY?

15 A YOU HAVE THE MAIN ONE. YOU HAVE THE MAIN
16 ONE SITTING RIGHT NEXT TO YOU.

17 Q MEANING MY CLIENT?

18 A YES. HAVE YOUR CLIENT TELL YOU WHO HE IS.

Q SO YOU'RE SAYING THAT MY CLIENT KNOWS S-1?

20 A AND TWO.

21 Q AND TWO?

22 A YES.

23 Q HOW WOULD YOU KNOW THAT?

24 A BECAUSE THEY CAME IN TOGETHER.

25 Q MY CLIENT CAME IN WITH THESE TWO?

26 A YES.

27 Q AND THIS IS SOMETHING YOU KNOW, THAT HE
28 KNOWS S-1 AND S-2?

1 A THEY CAME IN HOLDING A CONVERSATION.
2 APPARENTLY THEY DO KNOW EACH OTHER.

3 Q AND IS THAT THE BASIS --

4 A HE PULLED JOEL OFF OF S-1. I MEAN IF HE
5 DIDN'T KNOW HIM, HEY, THERE WOULD BE A PROBLEM WITH THE
6 OTHER ONE HAVING A GUN TOO, THERE WOULD HAVE BEEN A
7 PROBLEM.

8 Q BUT WHEN IT COMES TO THIS ACCOUNT YOU'VE
9 GIVEN US ABOUT SOMEBODY PULLING JOEL OFF, YOU NEVER TOLD
10 THE FIRST REPORTING OFFICER ANYTHING ABOUT ANYBODY
11 PULLING ANYBODY OFF, DID YOU?

12 A AT THIS TIME I DON'T REMEMBER. IT'S BEEN A
13 WHILE, BUT I GAVE HIM ALL OF HIS INFORMATION.

14 Q WHO ELSE OTHER THAN YOU CAN PROVIDE
15 TESTIMONY OR EVIDENCE TO THIS JURY THAT MY CLIENT GRABBED
16 JOEL'S COLLAR AND PULLED HIM UP, JUST THAT SINGLE ACT?
17 WHO ELSE DO YOU KNOW OTHER THAN YOU AND YOU ALONE?

18 A I WAS THE ONLY ONE IN THERE.

 Q AND YOUR ANSWER IS ZERO?

20 A I WAS THE ONLY ONE IN THERE.

21 Q SO NOBODY CAN CORROBORATE WHAT YOU'RE
22 SAYING, RIGHT?

23 A NO, BUT THEY CAN TELL YOU THAT HE SHOT HIM.

24 Q WHO ARE "THEY"?

25 A HE SHOT BOTH OF THEM.

26 Q WHO ARE "THEY," THE "THEY" YOU'RE TALKING
27 ABOUT?

28 A THE WITNESS -- VICTIMS ONE AND TWO. THEY

1 CAN TELL YOU DUCK IS THE ONE WHO SHOT THEM, OKAY?

2 Q YOU'RE SAYING JOEL KNOWS WHO SHOT HIM?

3 A WELL, JOEL MAY NOT, BUT RODNEY DOES.

4 Q HOW DO YOU KNOW RODNEY KNOWS? BECAUSE YOU
5 HAD TALKED TO HIM, RIGHT?

6 A NO, BECAUSE HE TURNED AND HE SHOT HIM
7 TWICE. THAT'S THE REASON WHY I KNOW.

8 Q THAT'S WHAT YOU'VE BEEN TELLING US, RIGHT?

9 A YES.

10 Q AND ARE YOU SAYING THERE'S SOMEBODY WHO
11 COULD COME IN AND CORROBORATE THAT MY CLIENT SHOT RODNEY
12 TWICE?

13 A NO.

14 Q JUST YOU, RIGHT?

15 A PRETTY MUCH. HE HAD TWO BULLET HOLES IN
16 HIM.

17 Q BUT YOU TESTIFIED --

18 A AND --

19 Q YOU TESTIFIED AT PRELIMINARY HEARING THAT
20 THEY, PLURAL, "THEY SHOT RODNEY," DIDN'T YOU?

21 A NO. I SAID "DUCK SHOT RODNEY."

22 Q YOU SAID "RODNEY," QUOTE, "CAME TOWARDS THEM
23 AND THEY SHOT HIM," END QUOTE.

24 WASN'T THAT YOUR TESTIMONY AT PRELIMINARY
25 HEARING?

26 A MEANING DUCK.

27 Q YOU MEAN DUCKS LIKE A SMALL FLOCK, DON'T
28 YOU?

1 A DUCK, ONE PERSON.

2 Q "THEY" IS ONE PERSON? IS THAT WHAT YOU'RE
3 SAYING?

4 A ONE PERSON SHOT RODNEY, DUCK.

5 Q WHAT YOU'RE DOING, IN EFFECT, IS DECIDING,
6 BY CONCEALING THIS INFORMATION, TO LET S-1 AND S-2 GO
7 FREE; ISN'T THAT WHAT YOU'RE DOING?

8 A NO.

~ MR. SIMS: OBJECTION, CALLS FOR A LEGAL
CONCLUSION.

11 THE COURT: SUSTAINED.

12 BY MR. DAVIS:

13 Q BECAUSE YOU CONTROL THEIR IDENTITY
14 INFORMATION, YOU'RE HERE IN A COURTROOM, NOT OUT IN THE
15 STREETS, AND YOU REFUSE TO GIVE LINKING INFORMATION TO
16 THEIR IDENTITY; ISN'T THAT TRUE?

17 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

18 THE COURT: OVERRULED.

 THE WITNESS: DUCK COULD GIVE YOU THAT
20 INFORMATION.

21 MR. DAVIS: MAY HE BE ORDERED TO ANSWER THE
22 QUESTION I ASKED.

23 THE COURT: AT THIS TIME YOU'RE ORDERED TO ANSWER
24 THE QUESTION IF YOU CAN ANSWER THE QUESTION.

25 THE WITNESS: COULD YOU GIVE ME THAT AGAIN.

26 MR. DAVIS: MAY IT BE REREAD?

27 THE COURT: IT MAY.

28 (RECORD READ.)

1 THE WITNESS: COULD YOU READ THAT AGAIN.

2 (RECORD READ.)

3 THE WITNESS: I DON'T KNOW THEIR IDENTITY, THE
4 BOTTOM LINE.

5 BY MR. DAVIS:

6 Q YOU REFUSE TO GIVE LINKING IDENTIFICATION
7 INFORMATION, DON'T YOU?

8 A I DON'T KNOW THEIR IDENTITY.

9 Q BUT YOU COULD LINK US TO THE PEOPLE THAT DO
10 IF YOU PROVIDED THEIR IDENTITY.

11 A AND YOUR CLIENT COULD DO THE SAME THING.

12 Q I'M NOT GETTING AN ANSWER TO MY QUESTION.

13 A THAT'S THE ANSWER I HAVE FOR YOUR QUESTION.
14 YOUR CLIENT CAN DO THE SAME THING.

15 Q HERE'S THE QUESTION: MAYBE YOU'RE UNAWARE
16 OF A DEFENDANT'S RIGHTS IN A COURTROOM, BUT MY CLIENT CAN
17 CHOOSE TO DO WHAT HE WANTS AS A CHARGED DEFENDANT. YOU
18 UNDERSTAND THAT, DON'T YOU?

A YES, I DO.

20 Q YOU'RE NOT GOING TO DICTATE MY CLIENT'S
21 DEFENSE IN THIS CASE, ARE YOU?

22 A I'M NOT TRYING TO.

23 Q ALL RIGHT. AND YOU'RE NOT GOING TO ARGUE TO
24 THIS JURY LIKE YOU'RE SOME KIND OF A PROSECUTOR AS TO
25 WHAT MY CLIENT WOULD DO. YOU'RE NOT DOING THAT, ARE YOU?

26 A NO, I'M NOT.

27 Q ALL RIGHT. WHAT YOU'RE DOING IS YOU'RE
28 REFUSING TO PROVIDE LINKING INFORMATION TO THE IDENTITY

1 OF S-1 AND S-2? THAT'S MY QUESTION.

2 A PRETTY MUCH THAT'S WHAT I'M DOING.

3 Q "PRETTY MUCH." YOU MEAN A HUNDRED PERCENT
4 EXACTLY THAT'S WHAT YOU'RE DOING?

5 A BECAUSE YOU HAVE THE PERSON THAT CAN GIVE
6 YOU THAT INFORMATION. YOU HAVE THE PERSON.

7 THE COURT: ALL RIGHT. AT THIS POINT IN TIME THE
8 COURT WILL DECLARE IT'S BECOMING ARGUMENTATIVE. I THINK
^ YOU'VE COVERED THE AREAS YOU NEED TO COVER, AND I'M
DIRECTING YOU TO MOVE ON.

11 MR. DAVIS: THANK YOU, YOUR HONOR.

12 Q BEFORE YOU CAME TO TESTIFY, YOU, AS A
13 LEADER, FOUNDER IN YOUR GROUP AND OTHER MEMBERS OF YOUR
14 GROUP, DECIDED INFORMALLY THAT YOU WOULD NOT TAKE ANY
15 ACTION AS A CLUB AGAINST S-1 AND S-2; ISN'T THAT TRUE?

16 A NO, THAT'S NOT TRUE.

17 Q THE TRIAL TRANSCRIPT --

18 THE COURT: BEFORE YOU DO THAT, COUNSEL, HOW MUCH
MORE TIME DO YOU THINK IT WILL TAKE TO CONCLUDE YOUR
20 EXAMINATION?

21 MR. DAVIS: I HAVE TO CONSULT WITH COUNSEL. WE
22 HAVE A BATCH OF MATERIAL I HAVEN'T LOOKED OVER, BUT I'D
23 SAY 20 IS EASILY WHAT I'D DO, 20 MINUTES.

24 THE COURT: THAT BEING THE CASE, IT'S
25 12:00 O'CLOCK. LET'S RECESS FOR THE NOON HOUR. WE'RE
26 GOING TO RECESS THROUGH THE NOON HOUR. THE JURY IS TO GO
27 AWAY WITH MY ADMONITION. PLEASE DO NOT DISCUSS THIS CASE
28 WITH ANYONE, INCLUDING A FELLOW JUROR, UNTIL SUCH TIME AS

1 ALL 12 OF YOU ARE TOGETHER IN THE JURY ROOM. ENJOY YOUR
2 LUNCH AND PLEASE REASSEMBLE AT 1:30.

3 SIR, YOU'RE ORDERED BACK AT 1:30 AS WELL.

4 MR. DAVIS: YOUR HONOR, MAY HE BE ADMONISHED AS WE
5 DO --

6 THE COURT: I THINK I'VE ADMONISHED HIM TO NOT
7 DISCUSS HIS TESTIMONY WITH ANYBODY, INCLUDING ANYBODY WHO
8 HAS PREVIOUSLY TESTIFIED IN THIS PARTICULAR CASE.

^ (THE NOON RECESS WAS TAKEN
/ UNTIL 1:30 P.M. OF THE SAME DAY.)

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1 CASE NUMBER: TA081670
2 CASE NAME: PEOPLE VS. SANDERS
3 COMPTON, CALIFORNIA MONDAY, MARCH 19, 2007
4 DEPT. 10 HON. WILLIAM CHIDSEY, JR., JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: DAWSHA LAYLAND, CSR #5166
7 TIME: P.M. SESSION

8
9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT
11 OUTSIDE THE PRESENCE OF
12 THE JURY:)

13
14 THE COURT: WE'RE BACK ON THE RECORD WITH RESPECT
15 TO THE SANDERS MATTER. MR. SANDERS IS PRESENT WITH
16 COUNSEL AS IS THE PEOPLE'S REPRESENTATIVE. WE ARE READY
17 TO PROCEED?

18 MR. DAVIS: YES, YOUR HONOR.

MR. LEVINE: YES.

20 THE COURT: YOU INDICATED THAT YOU HAD A LIST OF
21 INSTRUCTIONS. WHY DON'T --

22 MR. LEVINE: I HAD A LIST OF --

23 THE COURT: PROPOSED INSTRUCTIONS.

24 MR. LEVINE: RIGHT.

25 THE COURT: WHY DON'T YOU GIVE THE CLERK A COPY.
26 I'LL START LOOKING AT THEM, SO THAT WHEN THE TIME COMES,
27 WE WON'T HAVE TO SPEND A LOT OF TIME PUTTING THEM
28 TOGETHER.

1 MR. LEVINE: OKAY.

2
3 (THE FOLLOWING PROCEEDINGS
4 WERE HELD IN OPEN COURT IN
5 THE PRESENCE OF THE JURY:)
6

7 THE COURT: LET THE RECORD REFLECT THAT WE ARE IN
8 THE PRESENCE OF THE 12 JURORS PLUS TWO ALTERNATE JURORS.
9 MR. THOMAS HAS RETAKEN THE STAND. AS IS MY PRACTICE, A
10 REMINDER, SIR, YOU'RE STILL SUBJECT TO THE OATH
11 PREVIOUSLY TAKEN.

12 MR. DAVIS, YOU MAY CONTINUE YOUR INQUIRY.

13 MR. DAVIS: YES, YOUR HONOR. RIGHT AT THE RECESS
14 I WAS GOING TO PROJECT MR. THOMAS' PREVIOUS TESTIMONY,
15 AND PERHAPS IT WOULD BE APPROPRIATE IF NOT TOO
16 INCONVENIENT TO HAVE MY LAST QUESTION READ. I HAVE IT IN
17 MIND, BUT I DON'T WANT TO RECONSTRUCT IT BECAUSE I DON'T
18 HAVE IT IN MY MIND AS WELL AS I DID THEN.

(RECORD READ.)

20 MR. DAVIS: I'D LIKE TO BROADCAST 554, LINES 7
21 THROUGH 23.

22 THE COURT: OKAY.

23 MR. DAVIS: PRIOR TESTIMONY IN THIS TRIAL.

24 THE COURT: MR. SIMS IS LOOKING AT THAT PORTION.

25 MR. SIMS: I DON'T HAVE THAT. I THOUGHT COUNSEL
26 WAS REFERRING TO THE PRELIM TRANSCRIPT, BUT I DON'T HAVE
27 THAT.

28 THE COURT: THE PRELIM TRANSCRIPT ISN'T 500 PAGES

1 LONG, CERTAINLY NOT IN MY COURTROOM.

2 MR. SIMS: I DIDN'T THINK IT WAS.

3 OKAY.

4 THE COURT: YOU MAY PUBLISH THAT PORTION.

5 MR. DAVIS: THANK YOU.

6 Q LINES 7 THROUGH 21, PARTICULARLY:

7 "QUESTION: OTHER THAN THE PICTURE
8 INCLUDING JOHNNY CLARK, WERE YOU EVER BROUGHT
9 SIX-PACKS TO LOOK AT OTHER SUSPECTS?

10 "ANSWER: NO.

11 "QUESTION: PERHAPS EVEN AFTER
12 JOHNNY CLARK WAS RELEASED, EVER BROUGHT
13 SIX-PACKS?

14 "ANSWER: NO.

15 "QUESTION: EVER FIND OUT, SAY,
16 FROM YOUR INFORMAL SOURCES WHO S-1 AND S-2
17 ARE?

18 "ANSWER: NO. WE DROPPED IT.

19 "QUESTION: PARDON?

20 "ANSWER: WE DROPPED THE WHOLE
21 THING.

22 "QUESTION: ARE YOU SURE SOMETHING
23 WASN'T SETTLED INFORMALLY?

24 "ANSWER: NO."

25 DO YOU REMEMBER THAT TESTIMONY, SIR?

26 A YES, I DO.

27 Q WOULD YOU EXPLAIN TO THE JURY WHO IT WAS YOU
28 WERE TALKING ABOUT WHEN YOU SAY "WE DROPPED IT, WE

1 DROPPED THE WHOLE THING"?

2 A PRETTY MUCH THE CLUB MEMBERS LET ME DECIDE
3 WHAT WAS GOING TO TAKE PLACE. I DECIDED THAT IT WASN'T
4 THE RIGHT THING TO DO TO HANDLE IT IN THE STREET, SO THEY
5 TOLD ME "WELL, WE'RE GOING TO LET YOU DO WHAT YOU FEEL
6 YOU HAVE TO DO," AND THAT'S THE REASON WHY I'M HERE.

7 Q ALL RIGHT. AND SO YOU FELT NO OBLIGATION
8 LIKE WHAT YOU HAVE TO DO TO GO OUT AND CONFRONT S-1 AND
S-2 ABOUT COMING INTO YOUR CLUB AND DOING THE THINGS THEY
DID IN YOUR CLUB?

11 A NO.

12 Q AND THAT WAS REALLY NOT "WE"; IT WAS YOUR
13 DECISION, CORRECT?

14 A PRETTY MUCH.

15 Q NO ONE ELSE PARTICIPATED IN IT EXCEPT TO SAY
16 TO YOU "YOU DECIDE," RIGHT?

17 A EXACTLY.

18 Q AND SO TO THE EXTENT THAT SOMEONE MIGHT COME
IN AND DISRESPECT YOUR GRAND OPENING AND SHOOT UP YOUR
20 CLUBHOUSE, YOUR DECISION WAS TO LET THEM GO, CORRECT?

21 A NO.

22 Q S-1 YOU LET GO, RIGHT?

23 A I LET S-1 GO BECAUSE THE OTHER SHOOTER KNOWS
24 WHO HE IS.

25 Q ALL RIGHT. NOW, WHEN WE'RE TALKING ABOUT
26 S-2, WE'RE NOT TALKING ABOUT MR. SANDERS, CORRECT?

27 A CORRECT.

28 Q YOU LET S-2 GO TOO, DIDN'T YOU?

1 A I LET S-2 GO AND S-1 GO BECAUSE IT WAS
2 DUCK'S PEOPLE.

3 Q WHO WAS DUCK'S PEOPLE?

4 A S-1 AND S-2.

5 Q YOU'RE SAYING HE OWNS THEM IN SOME WAY?

6 MR. SIMS: OBJECTION, ARGUMENTATIVE.

7 THE COURT: SUSTAINED AS TO THE FORM OF THE
8 QUESTION.

9 BY MR. DAVIS:

10 Q WHAT DO YOU MEAN "DUCK'S PEOPLE"?

11 A THOSE WERE HIS PEOPLE.

12 Q THEY'RE IN THE SAME CLUB WITH DUCK?

13 A I DON'T KNOW.

14 Q THAT YOU DON'T KNOW. THEY'RE IN THE SAME
15 FAMILY AS DUCK --

16 A I DON'T KNOW. I DON'T KNOW.

17 Q THAT YOU DON'T KNOW. ARE THEY IN THE SAME
18 BUSINESS ORGANIZATION WITH DUCK?

19 A I DON'T KNOW.

20 Q ALL RIGHT. THAT YOU DON'T KNOW. WHAT DO
21 YOU KNOW THAT CONNECTS THEM TO MY CLIENT, S-1 AND S-2?

22 A I KNOW THEY CAME IN TOGETHER. I DO KNOW
23 THAT.

24 Q AND THEY LEFT TOGETHER TOO, RIGHT?

25 A NO. THE FIRST TWO LEFT -- WELL, THE FIRST
26 ONE LEFT, THEN THE SECOND ONE LEFT AND THEN DUCK LEFT.

27 Q ALL RIGHT. S-2 LEFT FIRST, AND YOU SAW
28 THAT?

1600

1 A YES.

2 Q DID HE GO RUNNING OUT?

3 A I'M NOT SURE. I JUST KNOW HE LEFT.

4 Q DID YOU SEE HIM LEAVE?

5 A YES, I DID.

6 Q DID HE GO RUNNING?

7 A I DON'T KNOW.

8 Q DID HE WALK OUT SLOWLY?

9 A I SAW HIM PASS BY ME. THAT'S ALL I CAN TELL
YOU. HE WASN'T RUNNING. I JUST SAW HIM PASS.

11 Q WHEN S-2 WENT OUT, WAS HE RUBBING HIS HEAD
12 LIKE HE'D BEEN HIT REAL HARD IN THE HEAD?

13 A NO, HE WASN'T.

14 Q AND S-1 LEFT SOMETIME AFTER HIM, RIGHT?

15 A HE LEFT A SHORT TIME AFTER THE SHOOTING,
16 YES.

17 Q AND YOU SAW HIM LEAVE?

18 A YES.

19 Q AND WHEN S-2 LEFT, HE WAS WEARING A RED
20 SHIRT, CORRECT?

21 A NO.

22 Q EXCUSE ME. WHEN S-1 LEFT, HE WAS WEARING A
23 RED SHIRT?

24 A YES.

25 Q I'M SORRY. I GOT THE GUYS MIXED UP WITH
26 THEIR SHIRTS. IT'S YOUR ACCOUNT THAT S-1 HAD THE RED
27 SHIRT, RIGHT?

28 A YES.

1 Q THOSE TWO MEN LEAVE, AND IT'S YOUR TESTIMONY
2 THAT THEY DIDN'T LEAVE AT THE SAME TIME, CORRECT?

3 A EXACTLY.

4 Q BUT THAT'S NOT WHAT YOU TOLD THE FIRST
5 REPORTING OFFICER, VIZCARRA, IS IT?

6 A YES, IT WAS.

7 Q ACTUALLY YOU TOLD HIM THEY LEFT TOGETHER,
8 DIDN'T YOU?

9 A THEY LEFT TOGETHER IN THE CAR, YES, BUT THEY
LEFT AT SEPARATE TIMES.

11 Q NOW, DID MR. SANDERS GET IN THE CAR WITH
12 THEM?

13 A HE -- HE GOT ON HIS MOTORCYCLE.

14 Q I KNOW. THAT'S WHAT YOU SAID, ISN'T IT?

15 A RIGHT.

16 Q NOW, CAN YOU THINK OF ANYONE ELSE WHO WOULD
17 BE ABLE TO INDEPENDENTLY CORROBORATE WHAT YOU CLAIM ABOUT
18 MY CLIENT SITTING AND THINKING ON THE MOTORCYCLE LIKE
YOU'VE TESTIFIED?

20 MR. SIMS: OBJECTION, ASKED AND ANSWERED, CALLS
21 FOR SPECULATION.

22 THE COURT: WELL, ONE MORE TIME.
23 BY MR. DAVIS:

24 Q ANYBODY WHO CAN CORROBORATE THAT ACCOUNT?

25 A YES.

26 Q WHO?

27 A I COULDN'T TELL YOU. I DON'T KNOW. THERE
28 WERE PEOPLE OUT THERE. I DON'T KNOW.

1 Q SO THEY COULD?

2 A YES.

3 Q WERE SOME OF THEM MEMBERS OF YOUR CLUB?

4 A I'M NOT SURE WHO WAS OUT THERE AT THE TIME.

5 Q SO IF I UNDERSTAND IT, FIRST OUT IS S-2,

6 FOLLOWED BY S-1, AND THEN MY CLIENT, CORRECT?

7 A YES.

8 Q BUT THAT'S NOT WHAT YOU TOLD THE FIRST

9 REPORTING OFFICER, IS IT, SIR?

A YES, IT WAS.

11 Q YOU TOLD HIM THAT THEY ALL LEFT TOGETHER,

12 ALL THREE OF THEM; DIDN'T YOU TELL HIM THAT?

13 A NO, I DIDN'T.

14 Q SO IF HE SAYS HIS REPORT SAYS THAT, HIS

15 REPORT MUST BE MISTAKEN, RIGHT?

16 A IT'S MISTAKEN.

17 Q LIKE THE COURT REPORTER MADE SOME MISTAKES

18 ABOUT WHAT YOU SAID AT PRELIM, RIGHT?

MR. SIMS: OBJECTION, ARGUMENTATIVE.

20 THE COURT: SUSTAINED.

21 BY MR. DAVIS:

22 Q AND WHEN YOU DROPPED THE WHOLE THING AND

23 DECIDED NOT TO PURSUE S-1 AND S-2, YOU ALSO PERSONALLY

24 DECIDED NOT TO GIVE ANY FURTHER INFORMATION TO LAW

25 ENFORCEMENT ON S-1 AND S-2; ISN'T THAT THE TRUTH?

26 A I DIDN'T KNOW ANYTHING ELSE.

27 Q WELL, YOU KNEW PEOPLE WHO COULD IDENTIFY

28 HIM?

1 A YES, I DO.

2 Q YOU KNEW PEOPLE WHO KNEW THE MAN WITH THE
3 SCAR ON HIS LIP, AND COULD TELL LAW ENFORCEMENT WHERE
4 THEY WERE?

5 A BUT YOUR CLIENT CAN TELL THEM WHERE THEY
6 ARE.

7 Q I'M DIZZY. I THINK I'VE HEARD THAT BEFORE.

8 A I'VE HEARD WHAT YOU SAID QUITE A FEW TIMES
~ TOO.

THE COURT: COUNSEL, LET ME JUST SAY THIS: LET'S
11 NOT GET INTO AN ARGUMENT. LET'S NOT BE SARCASTIC. LET'S
12 ASK QUESTIONS SO WE CAN SOLICIT INFORMATION.

13 NEXT QUESTION.

14 MR. DAVIS: ALL RIGHT. I'M SORRY. I WASN'T
15 REALLY DIZZY.

16 Q IF I COULD, YOUR DESCRIPTION OF THE FIGHT
17 BETWEEN S-1 ON THE GROUND AND JOEL ON TOP OF HIM,
18 INCLUDES THAT S-1 DREW IT OUT OF HIS WAISTBAND AND
STARTED TRYING TO SHOOT IT WHEN HE WAS STANDING UP,
20 RIGHT?

21 A NO. HE WAS ON THE GROUND.

22 Q HE WAS ON THE GROUND WORKING THE GUN WITH
23 BOTH HANDS, RIGHT, S-1 --

24 A YES.

25 Q AND ON TOP OF HIM OR OVER HIM LIKE YOU
26 DEMONSTRATED WAS JOEL, RIGHT?

27 A EXACTLY.

28 Q LOOKING RIGHT AT THE GUY, TRYING TO CRANK

1 OFF A ROUND IN HIS DIRECTION, RIGHT?

2 A EXACTLY.

3 Q YOU COULD SEE JOEL RIGHT OVER THAT MAN WITH
4 THAT MAN POINTING A GUN AT HIM, RIGHT?

5 A YES.

6 Q HE HAD HIS RIGHT HAND ON THE TRIGGER AND HIS
7 LEFT-HAND TRYING TO RACK THE GUN, RIGHT?

8 A YES.

9 Q CORRECT ME IF I'M WRONG, THAT'S ABOUT THE
10 TIME THAT JOEL STOPPED SWINGING AND STARTED RUNNING,
11 ISN'T IT?

12 A NO. HE NEVER STARTED TO RUN. HE NEVER RAN.

13 Q THE --

14 A HE NEVER GOT OFF OF HIM.

15 Q THE GUN BEING RACKED IN FRONT OF HIM AND HE
16 DIDN'T JUST HIGH-TAIL IT OUT OF THERE?

17 A NO.

18 Q HE MUST NOT HAVE SEEN IT?

MR. SIMS: OBJECTION. CALLS FOR SPECULATION.

20 THE COURT: SUSTAINED.

21 BY MR. DAVIS:

22 Q WAS THERE ANYTHING OBSTRUCTING JOEL'S LINE
23 OF VISION RIGHT OVER THAT MAN FROM HIM TO THE MAN AND HIS
24 GUN?

25 A NOT THAT I KNOW OF.

26 Q APPEARED, FROM WHAT YOU SAW, TO BE A PLAIN,
27 DIRECT VIEW BY JOEL OF THE GUN, RIGHT?

28 A HE SHOULD HAVE SEEN IT.

1 Q IT JAMMED, RIGHT?

2 A YES.

3 Q THAT'S WHAT YOU'VE TESTIFIED, RIGHT?

4 A YES.

5 Q BUT YOU DIDN'T TELL THE INITIAL REPORTING
6 OFFICER ANYTHING ABOUT A GUN BEING JAMMED, DID YOU, SIR?

7 A I THINK I DID.

8 Q JUST LIKE YOU TOLD THEM ABOUT SOMEBODY
9 GRABBING JOEL BY THE COLLAR, YOU TOLD THEM THAT TOO?

10 A I THINK SO, BUT I'M NOT SURE.

11 Q SO IN ORDER TO FOLLOW HOW S-1 -- HOW S-2
12 GOES OUT AND THEN S-1 FOLLOWS HIM, FOR WHAT YOU SAW WHEN
13 THEY CAME BACK, S-1 EVIDENTLY GOT INTO THE DRIVER'S SEAT
14 OF THAT CAR, RIGHT?

15 A YES.

16 Q AND WHEN THEY TOOK OFF IN THAT CAR, WHERE
17 WAS MY CLIENT?

18 A HE WAS ON HIS MOTORCYCLE AT THE TIME.

19 Q CONTEMPLATING FOR A MINUTE OR TWO?

20 A YES.

21 Q THERE IN THE ALLEY?

22 A YES.

23 Q ON THE OTHER SIDE OF THAT FENCE WE'VE TALKED
24 ABOUT?

25 A YES.

26 Q SO MY CLIENT CLEARLY WENT OUT AFTER S-2 AND
27 S-1 LEFT, CORRECT?

28 A YES.

1 Q DID HE WALK OUT?

2 A YES, HE DID.

3 Q DIDN'T SEEM TO BE IN A HURRY, DID HE?

4 A HE WAS THE ONLY ONE WITH A GUN.

5 Q IS THAT AN ANSWER?

6 A YES.

7 Q LET ME TRY THE SENTENCE AGAIN.

8 DID MY CLIENT SEEM TO BE IN A HURRY WHEN HE
~ LEFT?

A NO.

11 Q DID HE LIKE LOOK AROUND UP AND DOWN THE
12 ALLEY WHEN HE LEFT?

13 A I DON'T KNOW ABOUT THAT.

14 Q WELL, YOU SAW HIM WALK OUT TO THE ALLEY,
15 RIGHT?

16 A YES, I DID; YES, I DID.

17 Q AND YOU SAW HIM, YOU'VE TESTIFIED, SIT ON
18 THE MOTORCYCLE, RIGHT?

A EXACTLY.

20 Q AND YOU SAID YOU SAW HIM START IT UP TOO,
21 RIGHT?

22 A YES, I DID.

23 Q WHEN YOU SAW HIM ON THAT MOTORCYCLE, JUST TO
24 BE SURE, HAD THE SHOOTING ALREADY OCCURRED?

25 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

26 THE COURT: OVERRULED.

27 MR. DAVIS: I'M SORRY?

28 THE COURT: THE OBJECTION IS OVERRULED.

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1 MR. DAVIS: YES.

2 Q WHEN YOU SAW MY CLIENT THE WAY YOU DESCRIBED
3 YOU SAW HIM, HAD THE SHOOTING ALREADY OCCURRED?

4 A YES, IT HAD.

5 Q LET ME ASK YOU: COULD IT HAVE BEEN THAT MY
6 CLIENT WAS ON THAT MOTORCYCLE AT A DIFFERENT LOCATION
7 THAN YOU INDICATED EARLIER IN YOUR TESTIMONY?

8 A NO.

9 Q LIKE MAYBE ACROSS THE STREET SOMEWHERE?

10 A NO.

11 Q YOU NEVER SAW HIM OVER THERE, DID YOU?

12 A I SAW HIM WHERE I TOLD YOU I SAW HIM.

13 Q AND THAT'S THE ONLY PLACE YOU REMEMBER
14 SEEING HIM?

15 A WHEN HE WAS LEAVING THE SCENE, YES.

16 Q WHAT DID HE DO WHILE HE WAS ON THE
17 MOTORCYCLE?

18 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

THE COURT: OVERRULED.

20 THE WITNESS: HE SAT THERE FOR A SECOND.

21 BY MR. DAVIS:

22 Q A SECOND. YOU SAID MINUTES?

23 A A SECOND, A MINUTE, WHATEVER. THAT'S MY
24 TERMINOLOGY.

25 Q IT GOT FASTER, RIGHT?

26 A HE SAT THERE FOR A WHILE.

27 Q RIGHT.

28 A AND HE PROCEEDED TO LEAVE AFTER THAT.

1 Q BUT I THOUGHT HE HAD A CAP ON.

2 A HE HAD A CAP ON AND HE PUT THE HELMET ON
3 OVER HIS CAP.

4 Q YOU REMEMBER SEEING THAT?

5 A YES.

6 Q THROUGH THE BOARDS BETWEEN THE FENCE, YOU
7 COULD SEE THAT?

8 A I TOLD YOU, I WAS A LITTLE BIT CLOSER THAN
9 THE DUMPSTER; I COULD SEE THROUGH THAT FENCE AREA.

10 Q SO WHEN YOU TELL THE FIRST REPORTING OFFICER
11 THAT JOEL KICKED OFF S-1, THAT ALSO INCLUDES THAT JOEL
12 WAS PULLED OFF OF S-1, RIGHT?

13 A PRETTY MUCH HE WAS PULLED OFF TO A CERTAIN
14 POINT.

15 Q WHAT YOU'RE SAYING IS WHEN A MAN KICKS
16 ANOTHER MAN OFF OF HIM, THAT'S ALSO PART OF A THIRD MAN
17 PULLING THAT MAN BY THE COLLAR, RIGHT?

18 A HELPING HIM OFF, YES.

19 Q OKAY. AND WHEN YOU'RE SAYING THAT THE MAN
20 ON THE GROUND KICKS ANOTHER MAN OFF OF HIM, YOU'RE ALSO
21 INCLUDING THAT THAT MAN ON THE GROUND WAS -- WAS TRYING
22 TO SHOOT HIM WITH A JAMMED GUN, RIGHT?

23 A YES.

24 Q YOU TOLD THAT TO THE FIRST REPORTING
25 OFFICER?

26 A WHAT?

27 Q THAT WHEN HE KICKED HIM OFF, HE WAS TRYING
28 TO SHOOT HIM?

1 A TRYING TO RACK HIS GUN, YES, I DID.

2 Q AND IF I UNDERSTAND IT, THE ACCOUNT YOU GIVE
3 IS THAT WHOEVER WAS PULLING JOEL OFF BY THE COLLAR WAS
4 ALSO TRYING TO HELP THE MAN DOWN BELOW SHOOT HIM, RIGHT?

5 A HE WAS PULLING HIM UP AND HE HAD A GUN IN
6 HIS HAND TOO.

7 Q WELL, AREN'T YOU TRYING TO TELL THIS JURY
8 THAT WHOEVER PICKED THAT MAN UP BY THE COLLAR THE WAY YOU
9 SAY IT WAS ALSO TRYING TO HELP THE MAN ON THE GROUND
10 SHOOT HIM?

11 MR. SIMS: OBJECTION, LACKS FOUNDATION.

12 THE COURT: OVERRULED.

13 BY MR. DAVIS:

14 Q ARE YOU TRYING TO SAY THAT?

15 A THAT HE WAS TRYING TO HELP THE MAN ON THE
16 GROUND SHOOT JOEL?

17 Q YES.

18 A YES, I AM.

19 Q THESE TWO GUYS, S-1 AND THE MAN THAT PULLS
20 HIM BY THE COLLAR ARE CLEARLY IN A TEAM TRYING TO KILL
21 THIS MAN, AREN'T THEY?

22 A EXACTLY.

23 Q ONE LAST EFFORT. CAN YOU GIVE UP THE NAMES
24 OF THE PEOPLE WHO COULD IDENTIFY S-1?

25 MR. SIMS: OBJECTION, ASKED AND ANSWERED.

26 THE COURT: LAST TIME.

27 THE WITNESS: NO.

28

1 BY MR. DAVIS:

2 Q AND YOU REFUSE TOO, CORRECT?

3 A YES.

4 MR. DAVIS: I HAVE NO FURTHER QUESTIONS.

5 THE COURT: MR. SIMS.

6 MR. SIMS: THANK YOU. NO QUESTIONS.

7 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY
8 STEP DOWN. YOU ARE SUBJECT TO FURTHER RECALL IN THE
9 EVENT EITHER ONE OF THE ATTORNEYS WOULD LIKE TO ASK SOME
10 ADDITIONAL QUESTIONS, SO MAKE SURE THAT MR. SIMS HAS A
11 CONTACT NUMBER IN THE EVENT WE NEED YOU TO COME BACK.

12 THE WITNESS: OKAY. THANK YOU.

13 THE COURT: ALL RIGHT. THE PEOPLE MAY CALL THEIR
14 NEXT WITNESS.

15 MR. SIMS: LET ME STEP OUTSIDE AND MAKE SURE HE'S
16 OUTSIDE.

17 (BRIEF PAUSE IN THE PROCEEDINGS.)

18 THE COURT: PLEASE COME FORWARD, DEPUTY.

20 DANIEL VIZCARRA,
21 CALLED BY THE PEOPLE AS A WITNESS, WAS SWORN AND
22 TESTIFIED AS FOLLOWS:

23
24 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
25 TESTIMONY YOU WILL GIVE IN THE CAUSE NOW PENDING BEFORE
26 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND
27 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

28 THE WITNESS: I DO.

No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD SANDERS, Petitioner

vs.

DOMINGO URIBE, WARDEN, Respondent

CERTIFICATE OF SERVICE

I, MORIAH S. RADIN, a Deputy Federal Public Defender in the Office of the Federal Public Defender who was appointed as counsel for Petitioner under the Criminal Justice Act, 18 U.S.C. § 3006(A)(b), hereby certify that on November 28, 2018, a copy of **APPENDIX TO PETITION FOR WRIT OF CERTIORARI** was mailed postage prepaid to:

Stephanie Chu Santoro
Deputy Attorney General
California Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1256
DocketingLAAWT@doj.ca.gov
stephanie.santoro@doj.ca.gov
Counsel for Respondent

All parties required to have been served have been served. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 28, 2018 at Los Angeles, California.

/s/ *Moriah S. Radin*

MORIAH S. RADIN*

*Counsel of Record for Petitioner