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FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RAYMOND LEQUAN GIBBS,
Petitioner-Appellant,

v.

PATRICK COVELLO,
Respondent-Appellee.

No. 17-55456

D.C. No.
2:15-cv-00949-
AB-DFM

DEYAA KHALILL,
Petitioner-Appellant,

v.

W. L. MONTGOMERY, Acting
Warden,
Respondent-Appellee.

No. 18-55130

D.C. No.
2:15-cv-04947-
AB-DFM

OPINION

Appeal from the United States District Court
for the Central District of California
André Birotte, Jr., District Judge, Presiding

Argued and Submitted April 27, 2020
Pasadena, California

Filed April 28, 2021

Before: Kim McLane Wardlaw, Mary H. Murguia, and
Eric D. Miller, Circuit Judges.

Opinion by Judge Miller

SUMMARY*

Habeas Corpus

The panel affirmed the district court's denials of Raymond Gibbs's and Deyaa Khalill's habeas corpus petitions challenging their California state-court murder convictions after a trial at which the key prosecution witness, an informant, invoked the Fifth Amendment and refused to testify, so the court read to the jury a transcript of the informant's preliminary-hearing testimony.

This court granted a certificate of appealability as to whether the admission of the informant's preliminary-hearing testimony violated the petitioners' Sixth Amendment right to confrontation.

The panel explained that the adequacy of a defendant's opportunity for cross-examination turns on the scope of the cross-examination that the trial court permitted; a restriction on cross-examination cannot be justified by reference to other evidence presented. The panel therefore evaluated the Confrontation Clause claim on the basis of the cross-

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

examination that the magistrate permitted at the preliminary hearing.

Applying AEDPA review, the panel considered the petitioners' two theories of why they did not have an adequate opportunity to cross-examine the informant at the preliminary hearing. First, the petitioners claimed that they were prevented from asking the informant some of the questions they wanted to ask. Reviewing the questions to which the magistrate sustained objections—as well as the question to which the informant invoked the Fifth Amendment—the panel concluded that it was not unreasonable for the California Court of Appeal to determine that the questions would not have given the jury a significantly different impression of the informant's credibility. Second, the petitioners claimed that they did not know to ask other questions because the prosecution did not turn over all of the relevant information about the informant until after the preliminary hearing. The panel wrote that even assuming that the timing of the disclosures implicated the Confrontation Clause, the California Court of Appeal could reasonably conclude that questioning based on those disclosures would not have materially enhanced the effectiveness of the cross-examination.

COUNSEL

Tracy Casadio (argued) and Mark R. Drozdowski, Deputy Federal Public Defenders; Amy M. Karlin, Interim Federal Public Defender; Office of the Federal Public Defender, Los Angeles, California; for Petitioner-Appellant Raymond Lequan Gibbs.

Fay Arfa (argued), Fay Arfa A Law Corporation, Los Angeles, California, for Petitioner-Appellant Deyaa Khalill.

Lindsay Boyd (argued), Deputy Attorney General; Stephanie C. Brennan, Supervising Deputy Attorney General; Susan Sullivan Pithey, Senior Assistant Attorney General; Lance E. Winters, Chief Assistant Attorney General; Los Angeles, California, for Respondents-Appellees.

OPINION

MILLER, Circuit Judge:

Raymond Gibbs and Deyaa Khalill were charged with murder in California state court. The key prosecution witness was Samuel Feissa, an informant who said that both men had confessed to the crime. At trial, Feissa invoked the Fifth Amendment and refused to testify, so the court read to the jury a transcript of Feissa's preliminary-hearing testimony. The jury found Gibbs and Khalill guilty, and the California Court of Appeal affirmed their convictions. It held that Gibbs and Khalill had an adequate opportunity to cross-examine Feissa when he testified at the preliminary hearing, so the introduction of his testimony at trial did not violate their Sixth Amendment right to confront the witnesses against them. Gibbs and Khalill separately petitioned for a writ of habeas corpus, and the district court denied their petitions. Because the state court's decision was not an unreasonable application of clearly established federal law, we affirm.

I

On the evening of July 25, 2008, Adiel Quezada was found shot to death in Los Angeles. Gibbs, Khalill, and a

third defendant were charged with Quezada's murder. No eyewitnesses identified the defendants, and no physical evidence linked them to the crime. At the preliminary hearing, the prosecution presented the testimony of Feissa, who said that he was a former member of a criminal street gang called the 135 Piru and that Gibbs and Khalill were also members of the gang. According to Feissa, Khalill had admitted that he and Gibbs killed Quezada. In a separate conversation, Feissa said, Gibbs too had admitted that he and Khalill killed Quezada. Feissa also testified that he visited Khalill's house and saw guns of the same caliber as those used in the murder.

Counsel for Gibbs and Khalill cross-examined Feissa. They asked Feissa a series of questions about his motive to lie and his potential biases. Under cross-examination, Feissa testified about the leniency he had received from prosecutors for crimes he had committed, about cash payments and other benefits he had received from police officers, and about his history of drug use and memory problems. During some of those lines of inquiry, however, the magistrate cut off or limited the cross-examination. In doing so, the magistrate emphasized that "[t]here are limitations on cross examination at a preliminary hearing," stating that the proceeding "is not a trial and there is not a jury here."

Later in the cross-examination, Khalill's counsel inquired about a pending investigation into Feissa as a suspect in another murder. The magistrate stated that "a limited number of questions" would be allowed on the subject, so that the proceeding did not "start going into a lot of extraneous things." Feissa invoked the Fifth Amendment and did not respond to any further questions about the investigation. Gibbs's counsel asked about Feissa's activities with the gang, and Feissa again invoked the Fifth

Amendment. The magistrate denied the defendants' motion to strike all of Feissa's testimony.

After Feissa finished testifying, the defendants argued that the prosecution had not timely disclosed certain promises it had made to Feissa in exchange for his testimony. The prosecution provided additional information about its promises. Defense counsel objected that they were not permitted to cross-examine Feissa on those points. The magistrate did not recall Feissa as a witness.

At trial, Feissa invoked the Fifth Amendment and did not answer any questions. The court upheld Feissa's assertion of the privilege and determined that Feissa was unavailable as a witness. The court then ordered Feissa's preliminary-hearing testimony read to the jury. During the trial, the prosecution turned over Feissa's informant file to the defense. Using that file, the defense presented evidence of additional cash payments from the police to Feissa (beyond those they had asked Feissa about at the preliminary hearing), as well as evidence that the police had determined Feissa to be an unreliable informant.

At the conclusion of the trial, the jury requested a readback of Feissa's preliminary-hearing testimony, along with that of two other witnesses. After the court asked the jury to narrow its request, the jury decided to start with Feissa's testimony. The next day, the jury returned a verdict of guilty. The court sentenced Gibbs to imprisonment for 50 years to life. It sentenced Khalill to life in prison without the possibility of parole.

The California Court of Appeal affirmed. The court held that Gibbs and Khalill "had an adequate opportunity to cross-examine Feissa" at the preliminary hearing, and therefore the trial court did not violate the Sixth

Amendment's Confrontation Clause when it admitted Feissa's preliminary-hearing testimony at trial. The court explained that Gibbs and Khalill "were allowed to question [Feissa] about a variety of topics related to his credibility and his possible motives to be untruthful." As examples of the topics that defense counsel had been able to explore, the court cited "the leniency agreement [Feissa] had entered into, . . . the length of the sentence he was facing, his failure to complete community service in another case, his memory problems and whether those problems were caused by drug usage, . . . the money he had received for giving information to law enforcement, [and] his membership in the 135 Piru gang." The court acknowledged that the cross-examination had been limited, but it determined that "[t]he restrictions on the questioning imposed by the magistrate primarily related to redundant questioning on matters already covered or questioning on irrelevant or minor topics."

After the California Supreme Court denied review, Gibbs and Khalill each petitioned for a writ of habeas corpus. The district court denied their petitions. The district court agreed with the California Court of Appeal that the "defendants had an adequate opportunity to cross-examine Feissa at the preliminary hearing" and that the "limitations on cross-examination during the preliminary hearing were minor."

We granted a certificate of appealability limited to the question "whether the admission of Samuel Feissa's preliminary hearing testimony violated [the defendants'] Sixth Amendment right to confrontation."

II

The Confrontation Clause of the Sixth Amendment, made applicable to the States by the Fourteenth Amendment,

guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI; *Pointer v. Texas*, 380 U.S. 400, 406 (1965). The Clause prohibits the government from introducing “testimonial” hearsay against the defendant, including “prior testimony at a preliminary hearing.” *Crawford v. Washington*, 541 U.S. 36, 68 (2004).

But the government may introduce preliminary-hearing testimony if the witness is unavailable at trial, so long as the defendant had “a prior opportunity for cross-examination.” *Crawford*, 541 U.S. at 68; *accord California v. Green*, 399 U.S. 149, 165 (1970) (prosecution may introduce preliminary-hearing testimony from an unavailable witness if the testimony was “given under circumstances closely approximating those that surround the typical trial,” including the “opportunity to cross-examine”). A witness is “unavailable” if he invokes the Fifth Amendment to avoid testifying, as Feissa did here. *Green*, 399 U.S. at 168 n.17; *United States v. Shayota*, 934 F.3d 1049, 1052 (9th Cir. 2019). The admissibility of Feissa’s preliminary-hearing testimony therefore turns on whether Gibbs and Khalil had a prior opportunity for cross-examination.

The right to cross-examine guaranteed by the Confrontation Clause includes not only the right “to delve into the witness’ story to test the witness’ perceptions and memory,” but also the right to impeach the witness by “cross-examination directed toward revealing possible biases, prejudices, or ulterior motives.” *Davis v. Alaska*, 415 U.S. 308, 316 (1974). “[T]he exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Id.* at 316–17; *accord Pennsylvania v. Ritchie*, 480 U.S. 39, 51–52 (1987) (plurality opinion). Cross-examination need

not be “certain to affect the jury’s assessment of the witness’s reliability or credibility” to implicate the Sixth Amendment. *Fowler v. Sacramento Cnty. Sheriff’s Dep’t*, 421 F.3d 1027, 1036 (9th Cir. 2005). Rather, the Confrontation Clause protects the right to engage in cross-examination that “might reasonably” lead a jury to “question[] the witness’s reliability or credibility.” *Id.* (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).

Even so, the Confrontation Clause does not confer an unlimited right to “cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *Van Arsdall*, 475 U.S. at 679 (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam)). Instead, the right to cross-examine is “[s]ubject . . . to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation.” *Davis*, 415 U.S. at 316. The Supreme Court has held that “trial judges retain wide latitude . . . to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Van Arsdall*, 475 U.S. at 679; see *Alford v. United States*, 282 U.S. 687, 694 (1931) (A trial court “may exercise a reasonable judgment in determining when [a] subject is exhausted” and should “protect [a witness] from questions which go beyond the bonds of proper cross-examination merely to harass, annoy or humiliate him.”).

Of course, any “restrictions on a criminal defendant’s rights to confront adverse witnesses . . . may not be arbitrary or disproportionate to the purposes they are designed to serve.” *Ortiz v. Yates*, 704 F.3d 1026, 1035 (9th Cir. 2012) (alteration and internal quotation marks omitted) (quoting

Michigan v. Lucas, 500 U.S. 145, 151 (1991)). We have held that when a reviewing court evaluates a trial court's restrictions on cross-examination, it must consider the relevance of the excluded evidence, the weight of the interests justifying exclusion, and "whether the exclusion of evidence left the jury with sufficient information to assess the credibility of the witness." *United States v. Larson*, 495 F.3d 1094, 1103 (9th Cir. 2007) (en banc) (alteration omitted) (quoting *United States v. Beardslee*, 197 F.3d 378, 383 (9th Cir. 1999)).

The State urges us to evaluate the trial court's restrictions on cross-examination not just within the context of that examination, but rather "in the context of all the trial evidence bearing on the witness's credibility." Employing similar reasoning, the California Court of Appeal relied in part on the fact that "at trial, the trial court allowed the defense to attack Feissa's credibility with information that was 'not within the four corners of the preliminary hearing transcript.'" Therefore, the court concluded, the defendants had an adequate opportunity to impugn Feissa's credibility as a witness. That approach finds support in the language of some of our cases, but we conclude that it is not consistent with the Confrontation Clause.

In *Larson*, for example, we said that a limitation on cross-examination could be justified if the jury had "sufficient information to assess the credibility of the witness." 495 F.3d at 1103 (quoting *Beardslee*, 197 F.3d at 383). But we think that that phrase is best understood to refer to information adduced through cross-examination, not information that might be presented through other means. The Sixth Amendment "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination."

Crawford, 541 U.S. at 61. Consistent with that principle, we have observed that “the fact that defense counsel impeached other witnesses bears no relevance in the confrontation right analysis.” *Slovik v. Yates*, 556 F.3d 747, 754 (9th Cir. 2009). The adequacy of a defendant’s opportunity for cross-examination therefore turns on the scope of the cross-examination that the trial court permitted; a restriction on cross-examination cannot be justified by reference to other evidence a defendant presented. *Van Arsdall*, 475 U.S. at 680; *cf. Hayes v. Ayers*, 632 F.3d 500, 518 (9th Cir. 2011) (holding that the Confrontation Clause guarantees “the opportunity to question [a witness] about . . . potential bias,” but not “to put on an additional witness to refute [the] responses”).

To be sure, Confrontation Clause errors, like most trial errors, are subject to harmless-error analysis. *Van Arsdall*, 475 U.S. at 684; *Shayota*, 934 F.3d at 1052. If evidence impeaching a witness were introduced through some other means, that might be a basis for concluding that a restriction on cross-examination was harmless. But it would not mean that there was no error. We must evaluate the Confrontation Clause claim on the basis of the cross-examination that the magistrate permitted at the preliminary hearing, and it is to that issue that we now turn.

III

Gibbs and Khalill advance two theories of why they did not have an adequate opportunity to cross-examine Feissa at the preliminary hearing. First, they point out that they were prevented from asking some of the questions they wanted to ask, either because the magistrate cut off questioning or because Feissa invoked the Fifth Amendment. Second, they say that they did not know to ask other questions because the

prosecution had not yet turned over all of the relevant information about Feissa. We consider each theory in turn.

At the outset, we emphasize that our review is limited by the standards prescribed in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214. As relevant here, AEDPA provides that when a claim has been “adjudicated on the merits in State court proceedings,” a federal court may grant relief only if the state court’s decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1).

AEDPA prescribes a “highly deferential standard for evaluating state-court rulings.” *Lindh v. Murphy*, 521 U.S. 320, 333 n.7 (1997). To obtain relief, a petitioner “must show far more than that the state court’s decision was ‘merely wrong’ or ‘even clear error.’” *Shinn v. Kayer*, 141 S. Ct. 517, 523 (2020) (per curiam) (quoting *Virginia v. LeBlanc*, 137 S. Ct. 1726, 1728 (2017) (per curiam)). Rather, a petitioner “must show that the state court’s decision [was] so obviously wrong that its error lies ‘beyond any possibility for fairminded disagreement.’” *Id.* (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). That standard is “difficult to meet” because AEDPA “reflects the view that habeas corpus is a ‘guard against extreme malfunctions in the state criminal justice systems,’ not a substitute for ordinary error correction through appeal.” *Richter*, 562 U.S. at 102–03 (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979) (Stevens, J., concurring in the judgment)).

Under AEDPA, “the range of reasonable judgment can depend in part on the nature of the relevant rule.” *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004). In other words, “[t]he more general the rule’ at issue—and thus the

greater the potential for reasoned disagreement among fair-minded judges—“the more leeway [state] courts have in reaching outcomes in case-by-case determinations.”” *Renico v. Lett*, 559 U.S. 766, 776 (2010) (alterations in original) (quoting *Yarborough*, 541 U.S. at 664). Here, the relevant standard is a general one: “[T]rial judges retain wide latitude . . . to impose reasonable limits on . . . cross-examination,” and a defendant seeking to establish a Confrontation Clause violation must show that the trial court exceeded that latitude. *Van Arsdall*, 475 U.S. at 679. It follows that “a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard.” *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009); accord *Watson v. Greene*, 640 F.3d 501, 508–09 (2d Cir. 2011).

AEDPA’s deferential standard of review is particularly important in this case. On the merits, the Confrontation Clause question is a close one, and if we were answering that question de novo, we might not reach the same conclusion as the California Court of Appeal. But that does not mean that the state court’s decision was unreasonable.

First, we consider Gibbs and Khalill’s claim that they were prevented from asking Feissa some of the questions they wanted to ask. As the California Court of Appeal explained, defense counsel “were allowed to question [Feissa] about a variety of topics related to his credibility and his possible motives to be untruthful.” For example, they were permitted to ask a series of questions about Feissa’s criminal history and the leniency he had obtained from prosecutors. Feissa admitted that he had pleaded guilty to a burglary charge under an agreement that provided for his release from custody after he testified in this case. He also admitted that he had pleaded guilty to a drug offense and had promised to perform community service, but that he had not

in fact performed any service. And he admitted that he was facing an impending hearing for a probation violation. The magistrate allowed defense counsel to ask whether Feissa had talked to prosecutors “about being helped out on [the] probation violation matter” based on his testimony, but Feissa said, “I don’t know what that means.”

Counsel asked Feissa about cash rewards and other favorable treatment that the police had provided to him. Feissa admitted that a police detective paid him \$2,700 in August 2008—the month following Quezada’s murder—and another \$300 a few months later. He admitted that he had faced a potential prosecution for a firearms offense but that the detective had made the case “disappear.” And he admitted that the same detective had given him a car and had provided him with a phone number to call so that, as Feissa described it, “when I got pulled over by sheriffs they would let me go.”

Counsel also asked Feissa about his drug use and his memory problems. Feissa admitted that he had told others that he forgets things because of his history of drug use. He described his history of using marijuana and cocaine, and he answered a question about using PCP, which he denied. He also said that he was not taking medication to treat memory loss.

To be sure, the magistrate repeatedly cut off lines of inquiry that defense counsel attempted to pursue. Often, he did so by pointing out that the proceeding was only a preliminary hearing, not a trial, and that “[t]here are limitations on cross examination at a preliminary hearing.” Of course, once the prosecution sought to introduce the testimony at trial, any limits on cross-examination could not be justified on the ground that the testimony was initially given at a preliminary hearing. Feissa’s testimony could be

admitted at trial only if Gibbs and Khalill had an adequate opportunity to cross-examine him.

Although some of the magistrate's stated justifications may have been inapt, the magistrate also pointed out that many of the proposed lines of cross-examination were duplicative of questions that Feissa had already answered or had answers that were otherwise obvious. For example, when asked about his potential criminal exposure, Feissa first responded that he faced "a couple of years" of imprisonment. When pressed further, he said "five, six or seven" years. Then he admitted it was seven. Khalill's counsel asked, "Okay. Seven years is more than a couple years, right?" The magistrate sustained an objection to that question, noting that "we don't need a discussion if seven is more than two."

In another instance, counsel inquired about the drug charge for which Feissa had promised the district attorney that he would perform community service in exchange for leniency. After Feissa admitted that he broke that promise by not performing the community service, counsel asked Feissa whether he had also promised the judge that he would perform the service. The magistrate sustained an objection to that question, reasoning that "the fact that [Feissa] told one person as opposed to another person" amounted to "harping on the same thing."

Counsel's desire to repeat some questions was understandable; Feissa was a remarkably evasive witness. Arguably, the magistrate should have allowed counsel greater freedom to try to pin him down. But the question before us is not whether we would have permitted more cross-examination, nor is it even whether the magistrate abused his "wide latitude . . . to impose reasonable limits on . . . cross-examination." *Van Arsdall*, 475 U.S. at 679.

Instead, the question is whether the California Court of Appeal unreasonably applied clearly established federal law in holding that the introduction of the preliminary-hearing transcript at trial did not violate the Confrontation Clause. Reviewing the questions to which the magistrate sustained objections—as well as the questions to which Feissa invoked the Fifth Amendment—we conclude that it was not unreasonable for the California Court of Appeal to determine that the questions would not have given the jury “a significantly different impression of [Feissa’s] credibility.” *Id.* at 680. There were indeed many reasons to doubt Feissa’s credibility, but the jury learned those reasons when it heard the transcript of his cross-examination.

Second, we consider those questions defense counsel were unable to ask because the prosecution’s disclosures about Feissa came only after the preliminary hearing. Gibbs and Khalill do not argue that the timing of the disclosures violated the rule of *Brady v. Maryland*, 373 U.S. 83 (1963), and they do not explain why the timing of the prosecution’s disclosures is relevant to the Sixth Amendment issue presented here. Still less do they point to any “clearly established Federal law, as determined by the Supreme Court of the United States” supporting their position. 28 U.S.C. § 2254(d)(1). To the contrary, a plurality of the Supreme Court has stated that “[t]he ability to question adverse witnesses . . . does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony.” *Ritchie*, 480 U.S. at 53 (plurality opinion); see *Williams v. Bauman*, 759 F.3d 630, 636 (6th Cir. 2014); *Martir v. Lizarraga*, 183 F. Supp. 3d 1064, 1076 (N.D. Cal. 2016).

But even assuming that the timing of the disclosures implicated the Confrontation Clause, the California Court of

Appeal could reasonably conclude that questioning based on those disclosures would not have materially enhanced the effectiveness of the cross-examination. *See Van Arsdall*, 475 U.S. at 680. First, the disclosures revealed cash payments from the police to Feissa of about \$4,000, in addition to the \$3,000 that counsel had asked about at the preliminary hearing. But counsel were already able to question Feissa about his cash payments, and it is unclear how asking about a somewhat higher dollar amount would have made any difference. Second, the disclosures revealed that police detectives ultimately determined Feissa to be an unreliable informant. Defense counsel presented that fact at trial through a police officer's testimony, and Gibbs and Khalill do not explain what foundation there would have been for asking Feissa about it—indeed, they do not argue that Feissa was even aware of the detectives' opinion. Nor have they shown how it would have been a fruitful avenue for cross-examination. Accordingly, we cannot say that no fair-minded jurist could come to the conclusion reached by the California Court of Appeal, namely, that Gibbs and Khalill “had an adequate opportunity to cross-examine Feissa.” *See Richter*, 562 U.S. at 102.

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.

- 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

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- 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:
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 - ▶ 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.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 14 2020

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

RAYMOND LEQUAN GIBBS,

Petitioner-Appellant,

v.

PATRICK COVELLO,

Respondent-Appellee.

No. 17-55456

D.C. No.

2:15-cv-00949-AB-DFM

Central District of California,
Los Angeles

ORDER

DEYAA KHALILL,

Petitioner-Appellant,

v.

W. L. MONTGOMERY, Acting Warden,

Respondent-Appellee.

No. 18-55130

D.C. No.

2:15-cv-04947-AB-DFM

Before: WARDLAW, MURGUIA, and MILLER, Circuit Judges.

The parties are ordered to file simultaneous supplemental briefs addressing whether, and to what extent, any information that the State disclosed after the preliminary hearing related to Samuel Feissa’s credibility—and which was introduced at trial—bears on either the alleged violation of the Confrontation Clause or the harmless error analysis.

These supplemental briefs shall be no longer than 3,000 words and shall be

submitted no later than Thursday, April 23, 2020. Parties who are registered for Appellate ECF must file the supplemental brief electronically. No hard copies of the supplemental brief are required at this time.

UNITED STATES COURT OF APPEALS

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JUN 25 2018

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U.S. COURT OF APPEALS

RAYMOND LEQUAN GIBBS,

Petitioner-Appellant,

v.

W. L. MONTGOMERY, Acting Warden,

Respondent-Appellee.

No. 17-55456

D.C. No.

2:15-cv-00949-AB-DFM

Central District of California,
Los Angeles

ORDER

Before: PAEZ and RAWLINSON, Circuit Judges.

In light of the grant of a certificate of appealability in counseled appeal No. 18-55130, we sua sponte grant reconsideration of this court's November 8, 2017, order. The November 8, 2017, order is vacated. The Clerk shall reopen this appeal.

The request for a certificate of appealability is granted with respect to the whether the admission of Samuel Feissa's preliminary hearing testimony violated appellant's Sixth Amendment right to confrontation, including whether the preliminary hearing provided the defense an adequate opportunity for cross-examination. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e). This issue has also been certified for appeal in *Khalill v. Montgomery*, No. 18-55130.

Appellant's motion for leave to proceed in forma pauperis (Docket Entry No. 2) is granted. The Clerk shall change the docket to reflect appellant's in forma

pauperis status.

Counsel is appointed sua sponte for purposes of this appeal. *See* 18 U.S.C. § 3006A(a)(2)(B); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Counsel will be appointed by separate order.

If appellant does not wish to have appointed counsel, appellant shall file a motion asking to proceed pro se within 14 days of the date of this order.

The Clerk shall electronically serve this order on the appointing authority for the Central District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

The opening brief is due August 22, 2018; the answering brief is due September 21, 2018; the optional reply brief is due within 21 days after service of the answering brief.

The Clerk shall serve on appellant a copy of the “After Opening a Case - Counseled Cases” document.

If W.L. Montgomery is no longer the appropriate appellee in this case, counsel for appellee shall notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. *See* Fed. R. App. P. 43(c).

UNITED STATES COURT OF APPEALS for the NINTH CIRCUIT**Office of the Clerk****After Opening a Case – Counseled Cases**
(revised January 2015)**Court Address – San Francisco Headquarters**

<i>Mailing Address for U.S. Postal Service</i>	<i>Mailing Address for Overnight Delivery (FedEx, UPS, etc.)</i>	<i>Street Address</i>
Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals P.O. Box 193939 San Francisco, CA 94119-3939	Office of the Clerk James R. Browning Courthouse U.S. Court of Appeals 95 Seventh Street San Francisco, CA 94103-1526	95 Seventh Street San Francisco, CA 94103

Court Addresses – Divisional Courthouses

<i>Pasadena</i>	<i>Portland</i>	<i>Seattle</i>
Richard H. Chambers Courthouse 125 South Grand Avenue Pasadena, CA 91105	The Pioneer Courthouse 700 SW 6th Ave, Ste 110 Portland, OR 97204	William K. Nakamura Courthouse 1010 Fifth Avenue Seattle, WA 98104

Court Website – www.ca9.uscourts.gov

The Court's website contains the Court's Rules and General Orders, information about electronic filing of documents, answers to frequently asked questions, directions to the courthouses, forms necessary to gain admission to the bar of the Court, opinions and memoranda, recordings of oral arguments, links to practice manuals, and an invitation to join our Pro Bono Program.

Court Phone List

Main Phone Number.	(415) 355-8000
Attorney Admissions.	(415) 355-7800
Calendar Unit.	(415) 355-8190
CJA Matters (Operations Unit)	(415) 355-7920
Docketing.	(415) 355-7840
Death Penalty.	(415) 355-8197
Electronic Filing – CM/ECF.	Submit form at http://www.ca9.uscourts.gov/cmecf/feedback
Library.	(415) 355-8650
Mediation Unit.	(415) 355-7900
Motions Attorney Unit.	(415) 355-8020
Procedural Motions Unit.	(415) 355-7860
Records Unit.	(415) 355-7820
Divisional Court Offices:	
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Portland.	(503) 833-5300
Seattle.	(206) 224-2200

Electronic Filing - CM/ECF

The Ninth Circuit’s CM/ECF (Case Management/Electronic Case Files) system is mandatory for all attorneys filing in the Court, unless they are granted an exemption. All non-exempted attorneys who appear in an ongoing case are required to register for and to use CM/ECF. Registration and information about CM/ECF is available on the Court’s website at www.ca9.uscourts.gov under *Electronic Filing–CM/ECF*. Read the [Circuit Rules](#), especially Ninth Circuit Rule 25-5, for guidance on CM/ECF, including which documents can and cannot be filed electronically.

Rules of Practice

The Federal Rules of Appellate Procedure (Fed. R. App. P.), the Ninth Circuit Rules (9th Cir. R.) and the General Orders govern practice before this Court. The rules are available on the Court's website at www.ca9.uscourts.gov under *Rules*.

Practice Resources

The [Appellate Lawyer Representatives' Guide to Practice in the United States Court of Appeals for the Ninth Circuit](http://www.ca9.uscourts.gov) is available on the Court's website www.ca9.uscourts.gov at *Guides and Legal Outlines > Appellate Practice Guide*. The Court provides other resources in *Guides and Legal Outlines*.

Admission to the Bar of the Ninth Circuit

All attorneys practicing before the Court must be admitted to the Bar of the Ninth Circuit. Fed. R. App. P. 46(a); 9th Cir. R. 46-1.1 & 46-1.2.

For instructions on how to apply for bar admission, go to www.ca9.uscourts.gov and click on the *Attorneys* tab > *Attorney Admissions > Instructions*.

Notice of Change of Address

Counsel who are registered for CM/ECF must update their personal information, including street addresses and email addresses, online at: <https://pacer.psc.uscourts.gov/pscof/login.jsf> 9th Cir. R. 46-3.

Counsel who have been granted an exemption from using CM/ECF must file a written change of address with the Court. 9th Cir. R. 46-3.

Motions Practice

Following are some of the basic points of motion practice, governed by Fed. R. App. P. 27 and 9th Cir. R. 27-1 through 27-14.

- Neither a notice of motion nor a proposed order is required. Fed. R. App. P. 27(a)(2)(C)(ii), (iii).
- Motions may be supported by an affidavit or declaration. 28 U.S.C. § 1746.

- Each motion should provide the position of the opposing party. Circuit Advisory Committee Note to Rule 27-1(5); 9th Cir. R. 31-2.2(b)(6).
- A response to a motion is due 10 days from the service of the motion. Fed. R. App. P. 27(a)(3)(A). The reply is due 7 days from service of the response. Fed. R. App. P. 27(a)(4); Fed. R. App. P. 26(c).
- A response requesting affirmative relief must include that request in the caption. Fed. R. App. P. 27(a)(3)(B).
- A motion filed after a case has been scheduled for oral argument, has been argued, is under submission or has been decided by a panel, must include on the initial page and/or cover the date of argument, submission or decision and, if known, the names of the judges on the panel. 9th Cir. R. 25-4.

Emergency or Urgent Motions

All emergency and urgent motions must conform with the provisions of 9th Cir. R. 27-3. Note that a motion requesting procedural relief (e.g., an extension of time to file a brief) is *not* the type of matter contemplated by 9th Cir. R. 27-3. Circuit Advisory Committee Note to 27-3(3).

Prior to filing an emergency motion, the moving party *must* contact an attorney in the Motions Unit in San Francisco at (415) 355-8020.

When it is absolutely necessary to notify the Court of an emergency outside of standard office hours, the moving party shall call (415) 355-8000. Keep in mind that this line is for true emergencies that cannot wait until the next business day (e.g., an imminent execution or removal from the United States).

Briefing Schedule

The Court issues the briefing schedule at the time the appeal is docketed.

Certain motions (e.g., a motion for dismissal) automatically stay the briefing schedule. 9th Cir. R. 27-11.

The opening and answering brief due dates are not subject to the additional time described in Fed. R. App. P. 26(c). 9th Cir. R. 31-2.1. The early filing of appellant's opening brief does not advance the due date for appellee's answering brief. *Id.*

Extensions of Time to File a Brief

Streamlined Request

Subject to the conditions described at 9th Cir. R. 31-2.2(a), you may request one streamlined extension of up to 30 days from the brief's existing due date. Submit your request via CM/ECF using the "File Streamlined Request to Extend Time to File Brief" event on or before your brief's existing due date. No form or written motion is required.

Written Extension

Requests for extensions of more than 30 days will be granted only upon a written motion supported by a showing of diligence and substantial need. This motion shall be filed at least 7 days before the due date for the brief. The motion shall be accompanied by an affidavit or declaration that includes all of the information listed at 9th Cir. R. 31-2.2(b).

The Court will ordinarily adjust the schedule in response to an initial motion. Circuit Advisory Committee Note to Rule 31-2.2. The Court expects that the brief will be filed within the requested period of time. *Id.*

Contents of Briefs

The required components of a brief are set out at Fed. R. App. P. 28 and 32, and 9th Cir. R. 28-2, 32-1 and 32-2.

Excerpts of Record

The Court requires Excerpts of Record rather than an Appendix. 9th Cir. R. 30-1.1(a). Please review 9th Cir. R. 30-1.3 through 30-1.6 to see a list of the specific contents and format. For Excerpts that exceed 75 pages, the first volume must comply with 9th Cir. R. 30-1.6(a). Excerpts exceeding 300 pages must be filed in multiple volumes. 9th Cir. R. 30-1.6(a).

Appellee may file supplemental Excerpts and appellant may file further Excerpts. 9th Cir. R. 30-1.7 and 30-1.8. If you are an appellee responding to a pro se brief that did not come with Excerpts, then your Excerpts need only include the contents set out at 9th Cir. R. 30-1.7.

Excerpts must be submitted in PDF format on CM/ECF on the same day the filer submits the brief, unless the Excerpts contain sealed materials. If the Excerpts contain sealed materials, please electronically submit only the unsealed volumes. The filer shall serve a paper copy of the Excerpts on any party not registered for CM/ECF.

After electronic submission, the Court will direct the filer to file 4 separately-bound excerpts of record with white covers in paper copy.

Mediation Program

Mediation Questionnaires are required in all civil cases except cases in which the appellant is proceeding pro se, habeas cases (28 U.S.C. §§ 2241, 2254 and 2255) and petitions for writs (28 U.S.C. § 1651). 9th Cir. R. 3-4.

The Mediation Questionnaire is available on the Court's website at www.ca9.uscourts.gov under *Forms*. The Mediation Questionnaire should be filed within 7 days of the docketing of a civil appeal. The Mediation Questionnaire is used only to assess settlement potential.

If you are interested in requesting a conference with a mediator, you may call the Mediation Unit at (415) 355-7900, email ca09_mediation@ca9.uscourts.gov or make a written request to the Chief Circuit Mediator. You may request conferences confidentially. More information about the Court's mediation program is available at <http://www.ca9.uscourts.gov/mediation>.

Oral Hearings

Notices of the oral hearing calendars are distributed approximately 10 weeks before the hearing date.

The Court will change the date or location of an oral hearing only for good cause, and requests to continue a hearing filed within 14 days of the hearing will be granted only upon a showing of exceptional circumstances. 9th Cir. R. 34-2.

Oral hearing will be conducted in all cases unless all members of the panel agree that the decisional process would not be significantly aided by oral argument. Fed. R. App. P. 34(a)(2).

Ninth Circuit Appellate Lawyer Representatives APPELLATE MENTORING PROGRAM

1. Purpose

The Appellate Mentoring Program is intended to provide mentoring on a voluntary basis to attorneys who are new to federal appellate practice or would benefit from guidance at the appellate level. In addition to general assistance regarding federal appellate practice, the project will provide special focus on two substantive areas of practice - immigration law and habeas corpus petitions. Mentors will be volunteers who have experience in immigration, habeas corpus, and/or appellate practice in general. The project is limited to counseled cases.

2. Coordination, recruitment of volunteer attorneys, disseminating information about the program, and requests for mentoring

Current or former Appellate Lawyer Representatives (ALRs) will serve as coordinators for the Appellate Mentoring Program. The coordinators will recruit volunteer attorneys with appellate expertise, particularly in the project's areas of focus, and will maintain a list of those volunteers. The coordinators will ask the volunteer attorneys to describe their particular strengths in terms of mentoring experience, substantive expertise, and appellate experience, and will maintain a record of this information as well.

The Court will include information about the Appellate Mentoring Program in the case opening materials sent to counsel and will post information about it on the Court's website. Where appropriate in specific cases, the Court may also suggest that counsel seek mentoring on a voluntary basis.

Counsel who desire mentoring should contact the court at mentoring@ca9.uscourts.gov, and staff will notify the program coordinators. The coordinators will match the counsel seeking mentoring with a mentor, taking into account the mentor's particular strengths.

3. The mentoring process

The extent of the mentor's guidance may vary depending on the nature of the case, the mentee's needs, and the mentor's availability. In general, the mentee should initiate contact with the mentor, and the mentee and mentor should determine

together how best to proceed. For example, the areas of guidance may range from basic questions about the mechanics of perfecting an appeal to more sophisticated matters such as effective research, how to access available resources, identification of issues, strategy, appellate motion practice, and feedback on writing.

4. Responsibility/liability statement

The mentee is solely responsible for handling the appeal and any other aspects of the client's case, including all decisions on whether to present an issue, how to present it in briefing and at oral argument, and how to counsel the client. By participating in the program, the mentee agrees that the mentor shall not be liable for any suggestions made. In all events, the mentee is deemed to waive and is estopped from asserting any claim for legal malpractice against the mentor.

The mentor's role is to provide guidance and feedback to the mentee. The mentor will not enter an appearance in the case and is not responsible for handling the case, including determining which issues to raise and how to present them and ensuring that the client is notified of proceedings in the case and receives appropriate counsel. The mentor accepts no professional liability for any advice given.

5. Confidentiality statement

The mentee alone will have contact with the client, and the mentee must maintain client confidences, as appropriate, with respect to non-public information.

JS-6

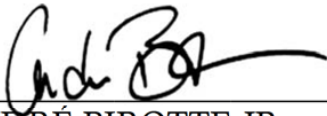
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RAYMOND LEQUAN GIBBS,	}	No. CV 15-0949-AB (DFM)
Petitioner,	}	
v.	}	JUDGMENT
W.L. MONTGOMERY,	}	
Respondent.	}	

Pursuant to the Order Accepting Findings and Recommendations of the
United States Magistrate Judge,

IT IS ADJUDGED that that the petition is denied and this action is
dismissed with prejudice.

Dated: February 28, 2017



ANDRÉ BIROTTE JR.
United States District Judge

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 RAYMOND LEQUAN GIBBS,	}	Case No. CV 15-0949-AB (DFM)	
12 Petitioner,		}	
13 v.			Order Accepting Findings and
14 W.L. MONTGOMERY,			Recommendation of United States
15 Respondent.			Magistrate Judge
16	}		
17	}		

18
19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the petition, the
20 other records on file herein, and the Final Report and Recommendation of the
21 United States Magistrate Judge. Further, the Court has engaged in a de novo
22 review of those portions of the Final Report and Recommendation to which
23 objections have been made. The Court accepts the findings and
24 recommendation of the Magistrate Judge.

25 ///

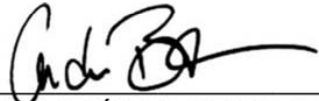
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1 IT IS THEREFORE ORDERED that Judgment be entered denying the
2 petition and dismissing this action with prejudice.

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4 Dated: February 28, 2017

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6 _____
7 ANDRÉ BIROTTE JR.
8 United States District Judge
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 RAYMOND LEQUAN GIBBS,
12 Petitioner,
13 v.
14 W.L. MONTGOMERY,
15 Respondent.
16

Case No. CV 15-0949-AB (DFM)
Final Report and Recommendation
of United States Magistrate Judge

17
18 This Report and Recommendation is submitted to the Honorable André
19 Birotte Jr., United States District Judge, under the provisions of 28 U.S.C.
20 § 636 and General Order 05-07 of the United States District Court for the
21 Central District of California.¹
22
23
24

25 ¹ This Final Report and Recommendation has been issued to address
26 arguments presented in Petitioner's Objections (Dkt. 27, "Objections") to the
27 original Report and Recommendation filed on October 28, 2016 (Dkt. 26).
28 Because these changes do not affect the Court's conclusions, Petitioner has not
been given an opportunity to file additional objections.

I.

BACKGROUND

A. Procedural History

In December 2011, a jury convicted Raymond Lequan Gibbs (“Petitioner”) and his codefendants, Dennis Wallace and Deeya Khalill, of the first-degree murder of Adiel Quezada. See 4 Clerk’s Transcript (“CT”) 834-42; 16 Reporter’s Transcript (“RT”) 4805-14. It also found true a firearm allegation and that the murder was committed for the benefit of, at the direction of, and in association with, a criminal street gang. See 4 CT 834-42; 16 RT 4805-14. On August 8, 2012, Petitioner was sentenced to state prison for 50 years to life. 4 CT 1046-48; 16 RT 5432-33.²

Petitioner and his codefendants appealed. Lodged Document (“LD”) 4, 5, 6, 7. On January 8, 2014, the California Court of Appeal ordered that Petitioner’s judgment be amended to show a 15-year parole eligibility term and that defendants were jointly and severally liable for victim restitution, but it affirmed in all other respects. See LD 12. Petitioner and his codefendants filed petitions for review in the California Supreme Court, which summarily denied them on April 30, 2014. LD 15, 16, 17, 18. Petitioner did not file any state habeas petitions. Dkt. 1 (“Petition”) at 3.

On February 10, 2015, Petitioner filed in this Court a Petition for Writ of Habeas Corpus by a Person in State Custody, raising seven claims:

- Ground One: The trial court’s denial of Petitioner’s motion to

² Wallace and Khalill were also convicted of the first-degree murder of Tyronn Bickham and premeditated attempted murder of Emond Taylor. See 4 CT 834-41; 16 RT 4805-12. As to those crimes, the jury found true firearm and gang allegations and a multiple-murder special allegation. 4 CT 834-41; 16 RT 4805-12. The trial court sentenced Wallace and Khalill to life in prison without the possibility of parole plus two terms of 25 years to life plus 11 years. 4 CT 1034-45; 16 RT 5430-32.

1 sever his trial from his codefendants' deprived him of due
2 process and a fundamentally fair trial.

- 3 • Ground Two: The trial court violated Petitioner's constitutional
4 rights to confrontation and cross-examination by admitting at
5 trial the preliminary-hearing testimony of Samuel Feissa, a paid
6 police informant.
- 7 • Ground Three: The trial court violated Petitioner's
8 constitutional right to due process and to present evidence by
9 refusing to allow the defense to play for the jury Feissa's
10 recorded interview with homicide detectives.
- 11 • Ground Four: The trial court violated Petitioner's due process
12 rights by denying his motion for mistrial "based upon improper
13 testimony that Feissa's information led to convictions in
14 another murder."
- 15 • Ground Five: Petitioner's conviction violated due process
16 because it was based on the testimony of an "inherently
17 unreliable" informant.
- 18 • Ground Six: The trial court violated Petitioner's right to due
19 process and a jury trial by removing juror number six before
20 deliberations.
- 21 • Ground Seven: The cumulative effect of the errors alleged in
22 Grounds One through Six requires reversal.³

23 See Petition.

24 On April 6, 2015, Respondent moved to dismiss the Petition as "mixed"
25 because Ground Seven was unexhausted. Dkt. 10. On April 9, 2015, the Court
26

27 ³ Ground Seven was mislabeled Ground Eight in the Petition. See
28 Petition at 50.

1 issued an Order to Show Cause finding that Ground Seven was unexhausted
 2 and directing Petitioner to either move to stay and abey the Petition under
 3 Rhines v. Weber, 544 U.S. 269 (2005), withdraw Ground Seven, or show
 4 cause in writing why the action should not be dismissed for failure to exhaust
 5 state remedies. Dkt. 12. On April 20, 2015, Petitioner filed a Notice of
 6 Withdrawal of Ground Seven, stating that he “concede[d]” that Respondent
 7 had accurately recounted the “procedural history” and that he was
 8 “withdraw[ing]” Ground Seven and would “proceed with his exhausted
 9 claims.” Dkt. 13. On April 22, 2015, the Court discharged the Order to Show
 10 Cause, denied the motion to dismiss as moot, and ordered Respondent to file
 11 an answer to the remaining grounds in the Petition. Dkt. 14.⁴

12 On June 4, 2015, Respondent filed an Answer and Memorandum of
 13 Points and Authorities. Dkt. 16 (“Answer”). On July 17, 2015, Petitioner filed
 14 a Traverse. Dkt. 23 (“Traverse”).

15 **B. Summary of the Evidence Presented at Trial**

16 The underlying facts are taken from the California Court of Appeal’s
 17 opinion on direct review. Because Petitioner has not challenged these factual
 18 findings, they are presumed to be correct. See Crittenden v. Chappell, 804 F.3d
 19 998, 1011 (9th Cir. 2015) (finding that state court’s factual findings are
 20 presumed correct unless “overcome . . . by clear and convincing evidence”); 28

21
 22 ⁴ In addition to the findings and recommendations in this Report and
 23 Recommendation, the District Judge should accept the findings in the April 9,
 24 2015 Order to Show Cause. See Mitchell v. Valenzuela, 791 F.3d 1166, 1173-
 25 74 (9th Cir. 2015). Petitioner stated that he was withdrawing Ground Seven
 26 because he agreed with Respondent that it was unexhausted. But, in any event,
 27 if either party disagrees with any part of the April 2015 order, he may file
 28 objections to it within the time for objecting to this Report and
 Recommendation. See Bastidas v. Chappell, 791 F.3d 1155, 1162 (9th Cir.
 2015).

1 U.S.C. § 2254(e)(1).

2 I. *Prosecution Evidence*

3 A. Evidence Related to Counts Two and Three (the
4 Attempted Murder of Taylor and the Murder of Bickham)

5 On August 10, 2001, at approximately 10:30 p.m., Taylor
6 was living in a duplex on San Pedro Street, which was frequented
7 by the 135 Piru gang. Taylor was at home with his brother and his
8 friend, Bickham.

9 Taylor had seen Khalill and Wallace in the neighborhood
10 during the five years he had lived there. On several occasions,
11 Wallace had asked Taylor where he was from, and Taylor
12 responded that he did not “gangbang” and was “from nowhere.”
13 Taylor and Bickham were not gang members, and Taylor did not
14 associate with a gang.

15 At some point, Taylor and Bickham went outside to the
16 front yard and walked towards Bickham’s brown Caprice. A
17 female joined them. As Taylor, Bickham, and the woman stood
18 near the trunk of the car, Taylor saw a white Nissan Altima that
19 he had seen “all the time.” The Altima was coming from Piru
20 Street and slowed down as it passed Taylor and Bickham.

21 Taylor saw four people in the car. Taylor could not clearly
22 see the two people in the back of the car, but he could see the two
23 people sitting in the front seat: Wallace was the driver and Khalill,
24 known as “K-9,” was in the passenger seat.

25 As the Altima drove by, Taylor heard someone in the car
26 say, ““They get a pass”” or ““Hey, you straight.”” The car drove
27 past Taylor and his friends and continued down the street.

28 Several minutes later, after the female had departed, Taylor

1 saw the Altima again. The Altima went across San Pedro Street
2 and stopped near an alley. Taylor could see that Wallace and
3 Khalil were still in the front seat of the car.

4 A person wearing a black hoodie got out of the back seat
5 and walked to the corner. The person began shooting. Taylor ran
6 towards his house, and Bickham ran in another direction. Taylor
7 jumped over his fence, ran into the back, and entered his house.
8 Taylor told his brother that someone was shooting at him.

9 A short time later, Taylor heard a knock on the door. When
10 Taylor opened the door, he saw Bickham, who had been hit by
11 gunshots. Bickham fell to the ground. Taylor called 9-1-1.

12 Bickham later died from his gunshot wounds.

13 Los Angeles County Sheriff's Deputy Richard White
14 responded to the area. At the time, Bickham was being treated by
15 paramedics. Deputy White attempted to speak to Bickham, but he
16 was unable to do so.

17 Deputy White surveyed the area and observed bullet strikes
18 to a nearby white Caprice and a fence. He also found 18 expended
19 shell casings that were "spread out a little bit" in a yard. The
20 recovered casings were from "7.62 by 39-millimeter" rounds and
21 were all fired from the same weapon.

22 Deputy White questioned Taylor, who was distraught and
23 said that he had seen four African-American males in a car and
24 then he saw the shooter, who was also an African-American male.
25 Taylor said that he turned and ran.

26 When Taylor spoke with the police, he did not tell them that
27 he saw Wallace's Altima or that he had seen Wallace driving the
28 Altima. Taylor did not mention the identities of the suspects

1 because he still lived in the neighborhood and feared that they
2 might return and kill him.

3 The following day, Wallace and Khalill, along with two
4 others, went to Taylor's house in a white Caprice. Wallace asked
5 Taylor what had happened the previous day. Taylor said that he
6 did not know what had happened. The men suggested that perhaps
7 "the Mexicans" had been involved in the shooting. Taylor was
8 uncomfortable because he knew who had committed the shooting.

9 Taylor moved from the area after the shooting. He believed
10 that "snitches" who talked to the police got "beat up or killed."

11 On August 13, 2001, Detective Frank Salerno interviewed
12 Taylor over the telephone. At that time, Taylor indicated that
13 someone named "Dennis" was the person who drove the Altima.
14 Taylor had not seen anyone else drive that car.

15 On August 14, 2001, Detective Salerno again interviewed
16 Taylor, who said that he had seen the Altima on prior occasions.
17 Taylor stated that he saw the Altima a second time when it crossed
18 San Pedro Street. The shooter exited the backseat of the car.

19 Taylor further relayed to Detective Salerno what had
20 occurred on the day after the shooting.

21 At some point later, Taylor mentioned to Detective Salerno
22 that the other person in the car was "K-9." Taylor said that
23 Wallace and Khalill were members of "1 Tray 5," which meant
24 that they were members of the 135 Piru gang. Taylor said that
25 Wallace was the driver and that Khalill had been the passenger in
26 the front seat. Detective Salerno checked "department resources"
27 and uncovered one person in the 135 Piru gang named Dennis and
28 someone else in the gang, Khalill, with the nickname of K-9.

1 Based on the information that he was given, Detective
2 Salerno attempted to ascertain whether Khalill drove a white
3 Caprice. He found that there was a release of liability in Khalill's
4 name on that type of car. He then found the Caprice in an
5 impound tow yard. Detective Salerno searched the vehicle and
6 recovered a dark Nike hooded jacket from the trunk.

7 Detective Salerno also investigated whether Wallace had
8 any connection to a white Nissan. He discovered that a white
9 Nissan was registered to Wallace's mother.

10 Detective Salerno located photographs of Wallace and
11 Khalill and placed them into photographic lineups. . . . Taylor
12 identified Wallace as the owner of the Nissan Altima and one of
13 the people he had seen on the night of the shooting.

14 . . . Taylor identified Khalill as the passenger in the Altima.
15 Taylor was "[c]ertain" of his identifications.

16 On September 5, 2001, . . . the sheriff's department
17 conducted a search of Wallace's residence, which was
18 approximately four blocks south of where the shooting had
19 occurred. At that time, Khalill was also in the residence. In a
20 bedroom closet, deputies recovered a magazine for an AK-47 that
21 was loaded with "7.62 by 39-millimeter" rounds. A fingerprint
22 analysis was conducted on the magazine and rounds, but no
23 fingerprints were recovered. A white Nissan Altima was located at
24 the residence and impounded.

25 The murder went unsolved until 2010.

26 At the preliminary hearing in July 2010, Taylor identified
27 Wallace and Khalill as being in the front seat of the Altima. Taylor
28 again was "[c]ertain" of his identifications.

1 B. Evidence Related to Count One (Murder of Quezada)

2 1. *Quezada is shot to death*

3 On July 25, 2008, Steven Buchanan (Buchanan) lived near
4 the area of 139th Street and Avalon Boulevard in the City of Los
5 Angeles. Khalill, whom Buchanan knew as K-9, lived nearby.

6 At approximately 8:30 p.m., Buchanan heard something
7 that sounded like gunshots. He went outside and got into a vehicle
8 with his friend.

9 Three to five minutes later, Buchanan saw a male clad in a
10 hoodie running past the car as if “he had done something.” The
11 male ran across the street and stood on the sidewalk. The man
12 eventually got into a black Chevy Tahoe that was driving by, and
13 the Chevy then drove away.

14 Los Angeles County Sheriff’s Deputy Jerry Montenegro
15 went to Avalon Boulevard in response to a 9-1-1 call. Deputy
16 Montenegro saw a male Hispanic, Quezada, bleeding from
17 apparent gunshot wounds to his body. Paramedics unsuccessfully
18 tried to resuscitate Quezada, who was pronounced dead at the
19 scene.

20 Deputy Montenegro saw 12 nine-millimeter and five .40-
21 caliber shell casings “spread about the scene” near Quezada. He
22 also found five expended bullets.

23 The casings were examined, and it was determined that the
24 12 nine-millimeter casings were all fired from the same firearm.
25 The .40-caliber casings were all fired from another firearm.

26 Quezada died from multiple gunshot wounds. He had 13
27 gunshot wounds that resulted in 22 holes in his body. Out of the
28 13 gunshot wounds, three of them were fatal. The nature of the

1 bullet wounds was consistent with the shooter or shooters standing
2 over the victim while firing the shots.

3 Eight projectiles were recovered from Quezada's body. Four
4 of the projectiles were nine-millimeter and could have been fired
5 from the same weapon, such as a Glock. The remaining four
6 projectiles were all .40-caliber Smith and Wesson ammunition that
7 was fired from the same firearm. Israeli Military Industries
8 manufactured a firearm, the Desert Eagle or Baby Eagle, with the
9 same general rifling characteristics found on the .40-caliber
10 projectiles.

11 Quezada belonged to the South Side Players gang and used
12 the moniker Stomper. The place where Quezada lived and was
13 killed was claimed by the Barrio 13 gang.

14 Detective Michael Valento responded to the area where
15 Quezada was killed and noticed gang graffiti, including graffiti by
16 the South Side Players and the B-13 gang, on the walls of an alley
17 behind the apartment complex where Quezada was killed. There
18 was no graffiti by the 135 Piru gang.

19 *2. Information from Samuel Feissa (Feissa)*

20 Feissa was a former member of the 135 Piru gang.[FN4]
21 Appellants were also members of the 135 Piru gang. Wallace had
22 the moniker "Poke"; Khalill had the moniker "K-9"; [Petitioner]
23 had the moniker "Peanut."

24 [FN4] Feissa was deemed unavailable and his
25 preliminary hearing testimony was read at the trial. He had
26 a prior conviction for felony possession of marijuana and
27 was on probation at the time of the preliminary hearing.
28 Feissa lived "[f]airly close" to where Quezada was killed and

1 could get there by car in approximately five to seven minutes.

2 Feissa had been to Khalill's house and had seen several
3 guns, including a nine-millimeter handgun, a "Desert Eagle 40,"
4 and a nine-millimeter with an "extended clip."

5 Feissa worked as an informant for Sheriff Detective Sean
6 Shaw, who gave Feissa "a couple of thousand" in "[i]ncrements."
7 Detective Shaw also gave Feissa a Toyota Tercel to drive. Feissa
8 received other benefits for being an informant, such as having one
9 case that "disappear[ed]" and being released when he was pulled
10 over by sheriff's deputies.

11 On July 28, 2008, Feissa was arrested for possessing a
12 firearm. At that time, he told Detective Shaw about a murder that
13 took place on July 25, 2008, on Avalon Boulevard.[FN5] In
14 August 2008, Detective Shaw told Detective Valento that Feissa
15 had information about Quezada's murder.

16 [FN5] Feissa also had information on the murder of
17 Juan Llanos (Llanos) a "shot-caller member" of the Barrio
18 13 gang, committed by Marcellous Prothro (Prothro) and
19 Shawn Simpson (Simpson). Prior to Feissa's information,
20 the murder of Llanos was unsolved. Feissa received \$7,250
21 for the information he gave in the Llanos murder and
22 Quezada's murder; Feissa did not receive a reward that was
23 put up by Llanos's family. Prothro was arrested on July 31,
24 2009, in the Llanos murder.

25 On August 7, 2008, Detective Valento interviewed Feissa.
26 He investigated Feissa's case and determined that the gun that
27 Feissa possessed was not the weapon that had been used to kill
28 Quezada. Feissa was not prosecuted in the firearm case. Feissa

1 was paid for the information he provided in appellants' case.

2 Although generic information about Quezada's murder had
3 been publicized, the police had not released information that two
4 guns were used to kill Quezada, that one of the weapons was a
5 nine-millimeter, that the other weapon was a .40-caliber, that an
6 eyewitness had seen a Chevy Tahoe leaving the area shortly after
7 the shooting, or that Quezada was a South Side Player gang
8 member.

9 Feissa said that he had previously met Quezada, who stated
10 that he was from the South Side Players. He had warned Quezada
11 that people might think that he belonged to the Barrio 13 gang.

12 Feissa was not present when Quezada was shot, but had
13 heard about the crime during several conversations. On one
14 occasion, Feissa had been at Khalill's house.[FN6] In addition to
15 Khalill, [Petitioner] and others were there. Feissa asked Khalill
16 about what had happened and told Khalill that the victim did not
17 belong to a rival gang. Khalill responded, "Kick Mexicans."

18 [FN6] Prior to arriving, Feissa had smoked a "[c]ouple
19 of blunts" of marijuana.

20 At some point during the event, Feissa had a conversation
21 with [Petitioner]. Feissa mentioned that the victim was not a rival
22 gang member. [Petitioner] replied, "Fuck Sarrios." [FN7]

23 [FN7] According to Feissa, "Sarrio" is a derogatory
24 name for a member of the rival Barrio 13 gang.

25 During a telephone conversation, Khalill told Feissa that
26 "they caught a Sarrio slipping." According to Feissa, Khalill said
27 that he and Wallace had seen a rival gang member. They drove to
28 Khalill's house on 139th Street. They retrieved "burners" (guns).

1 They walked down the street and returned to Quezada, asked him
2 where he was from, and then Khalill and [Petitioner] “dumped
3 him out,” meaning they shot Quezada. Appellants ran back to
4 139th Street. Wallace got into a dark blue Chevy Tahoe and left.

5 Approximately two or three months after the murder, Feissa
6 had another conversation with [Petitioner] while they were
7 attending a “function.” [Petitioner] said that he and Khalill had
8 walked over to Quezada, that Khalill had asked Quezada where he
9 was from, and that Khalill and [Petitioner] had shot him while
10 Wallace waited across the street as a “lookout and cover.”
11 [Petitioner] told Feissa that a “nine and 40” were used in the
12 murder.[FN8] [Petitioner] then ran back to Khalill’s house.

13 [FN8] Feissa later testified that he did not know what
14 type of weapons were used in the murder.

15 [Petitioner] said that Jerrod Taylor (Jerrod), known as
16 “Baby Spoke,” was supposed to do the murder and that he
17 “bitched out” and became “[s]cared to put in work.” Jerrod then
18 joined the conversation. He said that “he had trucked it” (run fast),
19 that “the homeys” had given him the guns (a “nine and 40”), and
20 “that he had to hit the wall and . . . go [to] his house and put the
21 guns up.” Feissa told Jerrod that he was “fucked up for beating up
22 Drip,” Jerrod’s neighbor, who had placed the guns in a trash can.

23 After obtaining information from Feissa, Detective Valento
24 attempted to corroborate that information. He believed that the
25 case was a “prime candidate for wiretap.”

26 On November 29, 2008, Detective John Duncan showed
27 photographs of Wallace’s Chevy Tahoe to Buchanan. Buchanan
28 said that the vehicle depicted in the photographs looked similar to

1 the one he saw on the night of Quezada's murder, but thought that
2 the vehicle was darker.

3 C. Wiretaps of Appellants

4 Detective Duncan participated in a wiretap investigation
5 involving the 135 Piru gang. The 135 Piru gang was targeted
6 because it was suspected in some murders and shootings. As part
7 of the wiretap investigation, appellants' telephone calls were
8 monitored and recorded. Detective Duncan knew appellants and
9 was familiar with their voices.

10 Also as part of the wiretap investigation, the police
11 sometimes engaged in "stimulation tactics," such as serving search
12 warrants or placing something in the media. All of these tactics
13 were designed to "stimulate" gang members to converse with each
14 other on the telephone.

15 Detective Duncan listened to a number of calls that were
16 recorded pursuant to the wiretaps of 135 Piru gang members. In
17 those calls, appellants never said anything to indicate that they
18 were shocked that they were being charged with the murder; nor
19 did they say that Feissa had murdered Quezada.

20 1. *Recorded telephone call between Khalill and Krystal*
21 *Woolard (Woolard) on October 9, 2008*

22 On October 9, 2008, Woolard was incarcerated in jail for
23 prostitution. During a recorded telephone call, Khalill said that he
24 was "killing" people "out here."

25 2. *Telephone call between [Petitioner] and an unidentified*
26 *female on February 17, 2009*

27 During the recorded telephone call, [Petitioner] and an
28 unidentified female discussed death. [Petitioner] stated that some

1 people at his funeral might say that he “‘shot like [two]’” people.

2 *3. Recorded telephone calls on February 21, 2009*

3 On February 21, 2009, a stimulation was done using the
4 television show, “L.A.’s Most Wanted.” The show aired at 10:30
5 p.m. The sheriff’s department gave the show some information on
6 three different homicides to stimulate the suspected individuals
7 involved in those crimes to have telephone conversations about the
8 offenses. During the show, composite drawings of Wallace and
9 Khalill were televised.

10 Shortly after the program aired, a telephone conversation
11 was recorded between Wallace, someone named “Evil,” and an
12 unidentified male. During the conversation, Evil told Wallace that
13 he heard that Wallace and K-9 had been on “America’s Most
14 Wanted” for “some shit” that had happened on “February 8th and
15 the other day.” Wallace said that he did not know “what the fuck
16 they’re talking about.”

17 An unidentified male then came on the line. He stated that
18 “whatever” or “wherever” Wallace went, he should let the
19 unidentified male know so that he could get Wallace “some kind
20 of little change to have in [his] pocket when [he] get[s] to where
21 [he is] going.”

22 At 10:47 p.m., [Petitioner] called Wallace and asked if Evil
23 had called. When Wallace stated that he had “just heard,”
24 [Petitioner] responded: “Ain’t that some crazy shit?”

25 At 10:50 p.m., [Petitioner] and Khalill also had a telephone
26 conversation. When [Petitioner] asked if Evil had called, Khalill
27 replied, “Yea, blood well I’m outta here!” Khalill stated that he
28 needed to “figure some shit out” and to see “what the fuck [was]

1 going on.” He added that he would be dropped off at “the
2 whooptie.”[FN9]

3 [FN9] According to Detective Duncan, “whooptie”
4 replaces the noun that is being discussed and could be used
5 instead of saying “car” or “neighborhood” or “gun.”

6 *4. Recorded telephone calls on February 24, 2009*

7 On February 24, 2009, another stimulation was done in
8 which the police conducted searches on certain residences,
9 including those of Khalill and Jerrod.

10 During a recorded telephone conversation, Khalill told
11 Wallace that the police threw him in the car and went “through
12 [his] shit.” Khalill said that a homicide detective asked “a gang of
13 questions” about Wallace. Khalill denied knowing Wallace.

14 Khalill stated that the police had confiscated 30 photographs
15 and “ransacked” his belongings. The police told him that they had
16 “aired that shit” and that they had received 40 telephone calls.
17 Khalill said that the police had found [Petitioner]’s identification
18 and wanted to know where he was.

19 Wallace asked Khalill if he had called “the baby.” Khalill
20 replied, “I called you first blood.” Wallace said that he was going
21 to school and advised Khalill to “keep [him] posted.”

22 Khalill then stated that the “good thing [was] they obviously
23 ain’t got shit.” He added that someone was talking to the police.

24 Wallace responded that he was surprised that the police had
25 not searched his residence and said that he was going to call home
26 to see if a search had begun, noting that “when they do shit like
27 that, they hit everybody at the same time.”

28 At 7:10 p.m., [Petitioner] called Jerrod, who stated that the

1 police had “hit” his house. Jerrod said that the police had asked
2 for [Petitioner] and Khalill’s location. Jerrod denied knowing
3 [Petitioner].

4 [Petitioner] advised Jerrod that the police “ain’t got shit”
5 and that the police could not do anything. Jerrod replied that he
6 had heard that the police had “just hit” the houses of two other
7 135 Piru gang members. Jerrod stated that the police had found
8 “the thirty odd box,” which, according to Detective Duncan, was
9 a rifle. Jerrod said that “they took the gun” and that he had “seen
10 the burner.”

11 Jerrod then said that the police had searched his house for
12 two hours and brought in a dog. [Petitioner] said that he was
13 “fucked if they find that whooptie.”

14 Jerrod reiterated that someone was “snitching.” He denied
15 doing anything or knowing anything.

16 Finally, Jerrod said that when the police arrived at his
17 house, he ran to the back door and said, ““Poke, it’s the police!””
18 Poke “took off running.”

19 *5. Recorded telephone conversation between Khalill and*
20 *“Fat Dog” on February 28, 2009*

21 During the conversation, Khalill asserted that “somebody’s
22 telling” and that the identity of the person would “come to light”
23 during any court proceeding. Fat Dog asserted that the person who
24 was talking to the police would not want to testify because “we’re
25 going to be in that court waiting.”

26 *6. Recorded telephone conversations on March 3, 2009*

27 On March 3, 2009, at approximately 4:00 p.m., another
28 stimulation was done in which members of the sheriff’s

1 department went to Wallace's residence and obtained his DNA
2 sample. Wallace was told that the DNA sample was being
3 obtained so that it could be compared to an expended casing at the
4 scene of the 2001 homicide.

5 After the stimulation, at 4:38 p.m., Wallace called Khalill
6 and told him to leave wherever he was because the police just
7 "hit" him in Pasadena and took a DNA sample. Wallace stated
8 that the police suspected that they had committed "that 2001 shit."
9 Wallace further said that the police told him that they would
10 obtain Khalill's DNA.

11 Wallace said that the police told him that his boat was
12 "'sinking'" and that he was on "'borrowed time.'" Khalill said that
13 things were "getting worse and worse."

14 At 5:36 p.m., [Petitioner] told Khalill that Wallace had just
15 called him to tell him that the police had taken his DNA.

16 *7. Recorded telephone call between Wallace and his mother*
17 *on March 3, 2009*

18 During a recorded telephone conversation, Wallace's
19 mother told Wallace that if the police had enough evidence, they
20 would have arrested him. Wallace said that the police were
21 "workin' on it" and that the police were "gettin' ready" for a trial.
22 Wallace advised his mother to call an attorney, tell the attorney
23 that the police had taken his DNA, and that Wallace wanted to
24 hire him.

25 *8. Recorded telephone conversation between Khalill and his*
26 *mother on August 3, 2009*

27 Khalill told his mother that he had just been charged with
28 two murders and was "tryin['] to just soak it all in." When

1 Khalill's mother asked him if he was "even there," he responded
2 that he had been "there," but that he did not know "what the fuck
3 they [were] talkin' about." Khalill complained that people were
4 "tryin['] to ruin [his] life."

5

6 E. Feissa's Proffer Interview and Proffer Agreement

7 In March 2009, Feissa was arrested and charged with
8 burglary, narcotic sales, and gang conspiracy. In August 2009,
9 Detective Valento conducted a proffer interview with Feissa and a
10 prosecutor. As part of that procedure, Feissa entered into a proffer
11 agreement, which promised that the information Feissa gave
12 during the interview would not be used against him.

13 In the proffer interview, Feissa stated that on the night of
14 Quezada's murder, Feissa told appellants that Quezada was not a
15 member of the rival gang, Barrio 13. He also told Detective
16 Valento: "'K-9 said that he's fitting to be gone for [the] rest of his
17 life. He's about to be gone for the rest of his life.'" When Detective
18 Valento asked Feissa what Khalill was referring to when he said
19 that, Feissa answered, "'the little kid that got killed.'" Feissa
20 indicated that sometimes he could not remember whether the
21 information he received from Khalill was in person or on the
22 telephone.

23 During the proffer interview, Feissa also said that, at some
24 point, he got into Wallace's Chevy Tahoe and had a conversation
25 with Wallace, who said that "it had to be done." Feissa believed
26 that Wallace was referring to Quezada's murder.

27 Feissa was consistent that he spoke to Khalill and
28 [Petitioner] about the murder. He was also consistent in reporting

1 that Khalill and Wallace drove by and “saw a Sarrio slipping,”
2 that Khalill and Wallace returned to Khalill’s house and “talked to
3 the homeys,” that appellants walked to Avalon Boulevard, that
4 Khalill asked Quezada where he was from, that Khalill and
5 [Petitioner] were the shooters and that Wallace was the lookout,
6 that a nine-millimeter and a Desert Eagle 40 were used, that
7 appellants ran back to Khalill’s house, and that Wallace got into
8 his Chevy Tahoe and drove away.

9 Approximately one month later, Feissa entered into a
10 leniency agreement. Under the terms of the agreement, Feissa pled
11 guilty to the charges against him and agreed to testify in
12 appellants’ case, as well as in Simpson and Prothro’s case (for the
13 Llanos murder). Feissa would remain in custody until the
14 preliminary hearings in both cases had occurred. Feissa would not
15 be sentenced until the conclusion of both trials, and the sentence
16 would be left to the trial court’s discretion.

17 Once Feissa was released from custody, he was relocated. In
18 July 2011, he was arrested for the murder of Daveon Childs.
19 Feissa received no leniency in that case. The parties stipulated that
20 Feissa was guilty of the murder of Daveon Childs, who was killed
21 in a drive-by shooting on January 3, 2008.

22 F. Events Occurring After Feissa’s Proffer Agreement

23 Appellants were arrested on July 31, 2009. On that date,
24 Detective Duncan looked at the cellular telephone recovered from
25 Wallace and found a video from “L.A.’s Most Wanted” that had
26 been aired as a stimulation.

27 Wallace’s phone also had a photograph of Jerrod and
28 Khalill. In the photograph, Khalill and Jerrod appeared to be

1 “throwing . . . gang signs.”

2 In the contacts section of Wallace’s phone were listings for
3 “B Spoke,” “Peanut,” “K-9,” and “Ethie” (Feissa’s moniker).

4 G. Gang Expert Testimony

5 Detective Duncan testified as a gang expert. He opined that
6 appellants, Jerrod, and Feissa were all members of the 135 Piru
7 gang. In August 2001, one rival of the Piru gang included the
8 Nutty Block Crips. Bickham was a legacy member of the Nutty
9 Block Crips, as he was the son of a well-known Nutty Block gang
10 member, Michael Tresvant. Detective Duncan believed that it
11 would have been “a pretty good score for a 135 Piru gang member
12 to kill the son of Michael Tresvant.”

13 In July 2008, the number one rival of the Piru 135 gang was
14 the Barrio 13 gang. Detective Duncan did not believe that
15 Quezada was a member of the Barrio 13 gang.

16 According to Detective Duncan, gang members sometimes
17 went on missions together.

18 In Detective Duncan’s experience, people were reluctant to
19 report gang crimes. Thus, law enforcement commonly used
20 informants to gain gang information and obtain information about
21 a particular crime. Informants sometimes got paid. They were
22 often gang members who had criminal histories.

23 The prosecutor gave Detective Duncan two hypotheticals
24 based on the 2001 and 2008 murders. He opined that both crimes
25 were committed in association with a criminal street gang.

26 *II. Defense Evidence*

27 A. [Petitioner’s] Evidence

28 *1. Jolon Gordon (Gordon)*

1 On July 25, 2008, at approximately 8:30 p.m., Gordon was
2 near 139th Street and Avalon Boulevard to go to the mailbox for
3 his mother. He had a clear view of the apartment across the street.
4 As he approached the mailbox, he saw one male walking on
5 Avalon Boulevard; he did not recognize the person. He also saw
6 three people jaywalking at an angle across the street.

7 While Gordon was at the mailbox, a “[g]uy got shot.” When
8 Gordon heard the gunshots, he ducked behind the mailbox. While
9 he was ducking behind the mailbox for approximately 12 seconds,
10 he saw a black Toyota Camry drive by. The car was “burning
11 rubber” and was going fast. Gordon also saw the three jaywalkers
12 running back across the street.

13 One of the three jaywalkers looked at Gordon as he ran back
14 across the street. Gordon got a good look at the person, who was a
15 tall African-American male with braids.

16 Gordon was familiar with appellants from the
17 neighborhood. He did not see them when the shooting occurred.
18 He was “100 percent sure” that Khalill was not anyone he had
19 seen on the night of the shooting. When he was interviewed by
20 Detectives Gene Morse, Valento, and Duncan, he never
21 mentioned [Petitioner] as being one of the people he had seen on
22 the night of the shooting.

23 Gordon spoke to Detectives Valento and Duncan in 2011 in
24 Texas. He was shown three photographic lineups. He identified
25 Wallace as someone he recognized from the neighborhood, but
26 not as someone he had seen on the night of the murder. He also
27 recognized Khalill in one of the lineups.

28 Later, Gordon told detectives that if Khalill had been

1 involved in the shooting, he (Gordon) would have said so. But he
2 also told Detective Valento that he was nervous because Khalill
3 knew “everything” about his family and that his family still lived
4 in the area. He had no doubt that “the person,” who the parties
5 stipulated was Khalill, would retaliate.

6 In a later conversation between Gordon and Detective
7 Morse, Gordon did not tell Detective Morse that he was too
8 scared to identify Khalill or that he was afraid for his safety for
9 being a snitch.

10 Appellants never threatened Gordon.

11 *2. Feissa*

12 On March 3, 2009, Detective John Duncan was working
13 with Detective Ty Labbe in investigating the July 25, 2008,
14 murder. They interviewed Feissa, who was in custody. During the
15 interview, Feissa blamed someone named Matrell for logging onto
16 his (Feissa’s) home computer and accessing certain data, as well as
17 handling a package. Detective Labbe believed that Feissa was
18 lying.

19 Detective Labbe also accused Feissa of “playing [law
20 enforcement].”

21 Detective Duncan believed that Feissa was being dishonest
22 about whether he was a drug trafficker.

23 Detectives Duncan and Labbe learned that Feissa was a
24 suspect in the murder of Daveon Childs. When they questioned
25 him about his involvement, he lied and attempted to blame
26 someone else for that murder.

27 After the interview with Feissa, Detective Labbe filled out a
28 card indicating that Feissa was an unreliable informant. Detective

1 Labbe explained that because there was a threat against Feissa and
2 Detective Labbe could not control him, Feissa was a “liability.”
3 Also, Feissa was not truthful about his whereabouts or his
4 activities. Although Detective Labbe completed a card indicating
5 that Feissa was unreliable, that did not mean that he was being
6 dishonest in regards to the information he provided in the Llanos
7 murder or the Quezada murder.

8 In fact, the information provided in the Llanos and Quezada
9 murder investigations was corroborated.

10 B. Khalill’s Evidence

11

12 2. *Feissa*

13 On July 29, 2008, at approximately 10:30 p.m., Deputy
14 Gregory Campbell and his partner, Mark Antrim, conducted a
15 traffic stop of a black Toyota Camry in which Feissa was a
16 passenger. Deputy Campbell detained the occupants of the vehicle.
17 While the occupants were being removed from the vehicle, Deputy
18 Campbell discovered a loaded nine-millimeter handgun at Feissa’s
19 feet. Feissa was arrested. Deputy Campbell considered the
20 weapons possession to be gang-related. But, he did not believe that
21 they were going to do a drive-by shooting because there were two
22 females in the car.

23 Elvie Porter (Porter) was in custody in a case in which he
24 was charged with attempted murder and a gang allegation. Feissa
25 and Porter were housed in adjoining cells. At some point, Feissa
26 threatened to testify falsely in Porter’s case. He told Porter that he
27 had testified falsely in several other cases, including one involving
28 K-9. Feissa also mentioned that the detectives in the case made

1 him read the murder books and that he had memorized them.

2

3 III. *Rebuttal Evidence*

4 A. Detective Valento's Interviews with Gordon

5 Detective Valento interviewed Gordon on several occasions.
6 During an interview in August 2008, Gordon did not mention that
7 he had seen three people running across the street. He did mention
8 that he had seen a black Camry. Gordon said that he was unsure
9 whether the Camry was involved in the shooting and that the
10 occupants may have been trying to drive away from the area
11 because they had heard the gunshots and were afraid.

12 In May 2011, Detective Valento flew to Texas to interview
13 Gordon because Gordon had told Detective Morse that he had
14 additional information regarding the murder. During the May
15 2011 interview, Gordon stated that he had seen three individuals
16 walk across the street; then he heard gunshots and ducked behind
17 a mailbox; then he saw the same three people running back in his
18 direction. Gordon said that one of the three had stopped and
19 looked at him. Gordon also said that he had seen a person walking
20 down the street, but that that person was not responsible for the
21 shooting.

22 Detective Valento showed Gordon some photographic
23 lineups. When Detective Valento showed Gordon the
24 photographic lineup containing Khalill's photograph, Gordon did
25 not make any identifications. In another lineup containing
26 Wallace's photograph, Gordon mentioned Wallace's gang
27 moniker, but did not specifically identify Wallace's photograph.
28 He did not identify [Petitioner] in a third photographic lineup.

1 After the interview, Gordon called Detective Valento and
2 said that he had more information to disclose. Detective Valento
3 asked Gordon if he had originally been reluctant to speak to
4 detectives due to fear, and Gordon replied, ““Something like that,
5 bro.””

6 Detective Valento later interviewed Gordon in a car outside
7 of Dallas. Gordon said that he recognized someone in one of the
8 lineups, but that he was nervous to make an identification.
9 Gordon stated that he recognized “K-9 from 135.” He also said
10 that Khalill knew Gordon and his family. And, Gordon stated that
11 someone had thrown something at his vehicle, and when Gordon
12 stopped and got out of his car, Khalill confronted him and said “I
13 know where you live.””

14 Gordon called Khalill a “ringleader.” When Detective
15 Valento asked if Gordon meant that Khalill was a “shot-caller,”
16 Gordon agreed that that was a better description. Khalill’s position
17 in the gang was one reason why Gordon was fearful of retaliation.

18 B. Search of Feissa’s Computer

19 At some point, Feissa’s computer was searched. On the
20 computer was a photograph of Llanos, with his face crossed out;
21 the number 135 appeared below the face. Feissa was in jail at the
22 time Llanos was murdered.

23 Feissa told Detective Valento that Simpson used the paint
24 brush function on the computer to cross out the photograph of
25 Llanos. Simpson was subsequently convicted of murdering Llanos.

26 Feissa’s computer also contained a photograph of a hand
27 holding a handgun. The weapon appeared to be a “small caliber
28 handgun, probably .380 or [a] .25 auto.”

1 LD 1 at 3-23 (some footnotes omitted).

2 **II.**

3 **STANDARD OF REVIEW**

4 Petitioner's claims are subject to the provisions of the Antiterrorism and
5 Effective Death Penalty Act ("AEDPA"). Under AEDPA, federal courts may
6 grant habeas relief to a state prisoner "with respect to any claim that was
7 adjudicated on the merits in State court proceedings" only if that adjudication:

8 (1) resulted in a decision that was contrary to, or involved an
9 unreasonable application of, clearly established Federal law, as
10 determined by the Supreme Court of the United States; or (2)
11 resulted in a decision that was based on an unreasonable
12 determination of the facts in light of the evidence presented in the
13 State court proceeding.

14 28 U.S.C. § 2254(d).

15 Overall, AEDPA presents "a formidable barrier to federal habeas relief
16 for prisoners whose claims have been adjudicated in state court." Burt v.
17 Titlow, __ U.S. __, 134 S. Ct. 10, 16 (2013). AEDPA presents "a 'difficult to
18 meet' and 'highly deferential standard for evaluating state court rulings, which
19 demands that state-court decisions be given the benefit of the doubt.'" Cullen
20 v. Pinholster, 563 U.S. 170, 181 (2011) (citations omitted). The prisoner bears
21 the burden to show that the state court's decision "was so lacking in
22 justification that there was an error well understood and comprehended in
23 existing law beyond any possibility for fairminded disagreement." Harrington
24 v. Richter, 562 U.S. 86, 103 (2011). In other words, a state-court
25 "determination that a claim lacks merit precludes federal habeas relief so long
26 as 'fairminded jurists could disagree' on the correctness" of that ruling. Id. at
27 101 (quoting Yarborough v. Alvarado, 541 U.S. 652, 664 (2004)). Federal
28 habeas corpus review therefore serves as a "guard against extreme

malfunctions in the state criminal justice systems,’ not a substitute for ordinary error correction through appeal.” Id. at 102-03 (citation omitted).

Here, Petitioner raised Grounds One through Five on direct appeal. See LD 4. Petitioner also joined the brief filed by his codefendant Khalill, which raised Ground Six. LD 5, 6. The California Court of Appeal denied all six claims in a reasoned decision. LD 12. Petitioner then raised Grounds One through Five in his petition for review filed in the California Supreme Court, and he joined Khalill’s petition for review, which raised Ground Six. LD 15, 16. The California Supreme Court summarily denied the petitions for review. LD 18. The Court therefore looks through the California Supreme Court’s silent denial to the Court of Appeal’s reasoned decision and applies AEDPA deference to it. See Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991); see also Johnson v. Williams, ___ U.S. ___, 133 S. Ct. 1088, 1094 n.1 (2013) (noting that federal habeas court “look[s] through” summary denial of claim to last reasoned decision from the state courts to address the claim).

III.

DISCUSSION

A. Petitioner’s Severance Claim

Petitioner argues that the trial court’s denial of his motion to sever his trial from his codefendants’ deprived him of due process and a fundamentally fair trial. Petition at 5, 12-15; Traverse at 2-7.

1. **Background**

Before trial, Petitioner moved to sever count one—charging Petitioner and his codefendants with Quezada’s 2008 murder—from counts two and three—charging only his codefendants with the 2001 murder of Bickham and attempted murder of Taylor. 2 CT 495-505. The trial court denied the motion, finding that the evidence was cross-admissible and that joining count one with counts two and three was not unduly prejudicial. 2 RT A-12.

On appeal, the state appellate court concluded that the trial court's refusal to sever did not violate due process. See LD 11 at 26-28. The court noted that the evidence related to count one and the evidence related to counts two and three were "simple and distinct," enabling the jury to compartmentalize the separate charges. Id. at 26. The court also noted that the prosecutor and the trial court repeatedly reminded the jury that Petitioner was not charged in counts two and three and the trial court instructed the jury that each defendant and each charge must be considered separately. Id. at 26-27.

2. Analysis

The state appellate court's rejection of Petitioner's claim was not objectively unreasonable. First, the Supreme Court has never held that a trial court's failure to sever trials may violate the Constitution. See Grajeda v. Scribner, 541 F. App'x 776, 778 (9th Cir. 2013) (recognizing as much); see also Collins v. Uribe, 564 F. App'x 343, 343 (9th Cir. 2014) (same); Hollie v. Hedgpeth, 456 F. App'x 685, 685 (9th Cir. 2011) (same). In United States v. Lane, 474 U.S. 438 (1986), the Supreme Court stated:

Improper joinder does not, in itself, violate the Constitution.

Rather, misjoinder would rise to the level of a constitutional violation only if it results in prejudice so great as to deny a defendant his Fifth Amendment right to a fair trial.

Id. at 446 n.8.

The Ninth Circuit has held that this language was dictum because the case concerned joinder under the Federal Rules of Criminal Procedure, not the Constitution. See Collins v. Runnels, 603 F.3d 1127, 1132 (9th Cir. 2010). Thus, the statement does not constitute clearly established federal law for purposes of § 2254(d)(1). Id.; accord Runnigeagle v. Ryan, 686 F.3d 758, 776-77 (9th Cir. 2012); see generally Williams v. Taylor, 529 U.S. 362, 412 (2000) (explaining that clearly established federal law "refers to the holdings, as

1 opposed to the dicta,” of Supreme Court decisions). Because there is no clearly
2 established Supreme Court precedent regarding joinder, the California Court
3 of Appeal’s rejection of Petitioner’s claim cannot be contrary to, or an
4 unreasonable application of, clearly established federal law.

5 In any event, a habeas petitioner asserting a due process violation based
6 on a joint trial would have to show that the failure to sever rendered his trial
7 fundamentally unfair. See Grisby v. Blodgett, 130 F.3d 365, 370 (9th Cir.
8 1997); see also Lambright v. Stewart, 191 F.3d 1181, 1185 (9th Cir. 1999) (en
9 banc) (holding that prejudice from joint trial must be so “clear, manifest or
10 undue” that defendant was denied fair trial). In addition, the impermissible
11 joinder must have had a substantial and injurious effect or influence in
12 determining the jury’s verdict. See Davis v. Woodford, 384 F.3d 628, 638 (9th
13 Cir. 2004). The reviewing court “focuses particularly on cross-admissibility of
14 evidence and the danger of ‘spillover’ from one charge to another, especially
15 where one charge or set of charges is weaker than another.” Id.

16 Petitioner has not made the required showing. First, the evidence of the
17 2008 and 2001 crimes was “simple and distinct”—it involved different victims,
18 weapons, and witnesses and the crimes occurred several years apart. See Bean
19 v. Calderon, 163 F.3d 1073, 1085 (9th Cir. 1998) (finding that “prejudice
20 generally does not arise from joinder when the evidence of each crime is
21 simple and distinct”); Diaz v. Gower, No. 15-05181, 2016 WL 1697327, at *6
22 (C.D. Cal. Mar. 29, 2016) (finding that failure to sever did not render trial
23 fundamentally unfair when “the evidence admissible to [the codefendant] only
24 was distinct, as it did not reasonably involve [p]etitioner”). As such, the danger
25 of “spillover” from the 2001 to the 2008 charges was minimal. See Davis 384
26 F.3d at 638-39.

27 Moreover, the jury was properly instructed to consider the evidence of
28 the 2001 crimes only as to Wallace and Khalill, and not as to Petitioner. See

1 Bean, 163 F.3d at 1085 (finding that “if properly instructed, a jury can
2 compartmentalize the evidence, rather than considering it cumulatively”);
3 Diaz, 2016 WL 1697327 at *6 (finding that failure to sever did not render trial
4 fundamentally unfair when “the jury was given instructions to consider [the
5 evidence of the codefendant’s crimes] as to [the codefendant] only”). The
6 prosecutor emphasized during opening statements that she “want[ed] to be
7 clear” that Quezada’s murder was “charged against all three Defendants” but
8 that Bickham’s murder and Taylor’s attempted murder related only to Wallace
9 and Khalill and did “not pertain to [Petitioner].” 6 RT 1313; see also 6 RT at
10 1314 (reiterating that Bickham’s murder was charged “against Wallace and
11 Khalill”). During testimony regarding the 2001 crimes, the trial court reminded
12 the jury “that [Petitioner] is not charged in this offense, is not suspected in this
13 offense. And nothing regarding the testimony of this witness or the allegations
14 on this case are to be used against [Petitioner] for any purpose.” 7 RT 1642.
15 And, at the close of evidence, the court instructed the jury that “[a]ll three
16 Defendants are charged in count 1” with “the murder of Adiel Quezada”; that
17 “Defendants Wallace and Khalill, not [Petitioner], are charged in count 2”
18 with “the murder of Tyronn Bickham”; that “Defendants Wallace and Khalill,
19 not [Petitioner], are charged in count 3” with “the attempted murder of
20 Emond Taylor”; and that “Defendants Wallace and Khalill, not [Petitioner],
21 are charged with the special circumstances of multiple murder.” 15 RT 3990-
22 91. The court further instructed that the jury “must separately consider the
23 evidence as it applies to each Defendant” and “must decide each charge for
24 each Defendant separately.” Id. at 3991-92; see also id. at 4022. The jury is
25 presumed to have followed those instructions. See Weeks v. Angelone, 528
26 U.S. 225, 234 (2000).⁵

27 ⁵ Petitioner argues in his Objections that the jury instructions in this case
28

1 In addition, at least some of the evidence would have been cross-
2 admissible at separate trials. The wiretap evidence showed a connection
3 between Petitioner, Khalill, and Wallace. See, e.g., 3 CT 640-45, 670-71.
4 Moreover, the gang expert's testimony concerning the history, culture, and
5 territory of the Piru 135 gang, the types of crimes the gang members commit,
6 and the three defendants' gang tattoos, monikers, and membership in Piru 135
7 was relevant to all three charges given that all three crimes were alleged to
8 have been committed for the benefit of a gang. See 12 RT 3020-21, 3030-33,
9 3037-48, 3052-58, 3070-71.

10 Finally, the 2001 murder of Bickham and attempted murder of Taylor
11 were not more inflammatory than the 2008 murder of Quezada. Bickham was

12
13 were similar to those in Bean, which the Ninth Circuit found to be insufficient
14 to dispel the prejudicial effect of the joinder of a weak charge with a strong
15 one. Objections at 4-5. But in Bean, a pre-AEDPA case, see 163 F.3d at 1077,
the Ninth Circuit found that the

16 sole instruction that addressed the existence of multiple counts
17 read as follows: "Each count charges a distinct offense. You must
18 decide each count separately. The defendant must be found guilty
19 or not guilty of any or all of the offenses charged. Your findings as
to each count must be stated in a separate verdict."

20 163 F.3d at 1083. The Ninth Circuit found that such "general instructions"
21 failed to ameliorate the prejudice from the joinder because they "did not
22 specifically admonish the jurors that they could not consider evidence of one
23 set of offenses as evidence establishing the other" and because they were given
24 "in the waning moments of the trial," which further diminished their impact.
25 Id. at 1084-85. As previously discussed, however, here the trial court instructed
26 the jury during testimony that the evidence regarding the 2001 crimes could
27 not be used against Petitioner for any purpose. Moreover, at the close of
28 evidence, the court clearly set out which counts pertained to which defendant,
instructed the jury to separately consider the evidence as it pertained to each
defendant, and instructed the jury to separately decide the charges against each
defendant. As such, the Ninth Circuit's reasoning in Bean is inapplicable here.

1 killed and Taylor was shot at during a drive-by shooting, after which a
 2 detective found 18 shell casings that were all fired from the same weapon.
 3 Quezada was shot 13 times by two different guns, and the wounds were
 4 consistent with his being shot while lying on the ground with the shooters
 5 standing over him. 10 RT 2417, 2426, 2429-30, 2433-34.⁶ Three of the gunshot
 6 wounds were fatal. *Id.* at 2417, 2426, 2430. The failure to sever Petitioner's
 7 trial from Khalil and Wallace's did not render his trial fundamentally unfair.
 8 See Grisby, 130 F.3d at 370.

9 Accordingly, for all these reasons, Petitioner is not entitled to habeas
 10 relief on this claim.

11 **B. Petitioner's Confrontation Clause Claim**

12 Petitioner contends that the trial court violated his constitutional rights
 13 to confrontation and cross-examination by admitting at trial the preliminary-
 14 hearing testimony of Samuel Feissa, a paid police informant. Petition at 5, 16-
 15 27; Traverse at 7-16.

16 **1. Applicable Law**

17 The Confrontation Clause of the Sixth Amendment provides that "[i]n
 18 all criminal prosecutions, the accused shall enjoy the right . . . to be confronted

19
 20 ⁶ In his Objections, Petitioner argues that the medical examiner testified
 21 that "[t]here was no soot and/or stippling found on the victim that would've
 22 been indicative of someone standing over or within a two feet parameter of the
 23 victim." Objections at 20. The medical examiner in fact testified that he found
 24 no soot or stippling that would indicate how close the shooter stood to the
 25 victim, but that the gunshot wounds themselves were "consistent . . . with
 26 somebody being shot on the ground with the shooter over them." 10 RT 2431-
 27 34. When asked whether there was "something about the irregular shape of the
 28 bullet wounds that was consistent or inconsistent with bullets bouncing off the
 ground," the medical examiner testified that there were "target injuries that I
 found which would be consistent with bullets breaking up and causing wound
 [sic] on the body." *Id.* at 2434.

1 with the witnesses against him.” U.S. Const. Amend. VI. In Crawford v.
2 Washington, the Supreme Court held that the Confrontation Clause bars
3 “admission of testimonial statements of a witness who did not appear at trial
4 unless he was unavailable to testify, and the defendant had had a prior
5 opportunity for cross-examination.” 541 U.S. 36, 53-54 (2004); accord Giles v.
6 California, 554 U.S. 353, 358 (2008). Prior testimony given at a preliminary
7 hearing is considered “testimonial.” Crawford, 541 U.S. at 51-52, 68.

8 **2. Background**

9 The California Court of Appeal summarized the relevant facts as
10 follows:

11 **A. Events at the preliminary hearing**

12 Prior to the preliminary hearing, Khalill’s attorney told the
13 trial court that there was “uncharged conduct on behalf of [Feissa]
14 regarding [a] shooting incident.” The prosecutor stated that there
15 was “a pending investigation” into the matter. Khalill’s attorney
16 responded that he needed the information because Feissa was an
17 informant and the information might relate to “motive and biases
18 and those kind[s] of things.”

19 Wallace’s counsel then noted that Feissa was “apparently
20 making deals to testify against [appellants] in return for something
21 from the prosecutor for a case that he has pending.” He opined
22 that “this might be one of those incidents” and that Feissa was
23 “testifying not only in this case but in other cases.” Wallace’s
24 attorney then informed the trial court that Wallace did not want to
25 “waive any more time.” He suggested that the information on
26 Feissa be “flushed out some other time.”

27 The trial court declared a recess until the following morning
28 and requested that [Petitioner] and Khalill’s attorneys determine

1 whether they wanted to proceed with the preliminary hearing or
2 conduct a hearing into the investigation of Feissa.

3 The next day, Khalill's counsel stated that he was requesting
4 "all of the information" law enforcement had regarding the
5 incident in which Feissa was a suspect. Counsel argued that the
6 information was relevant to Feissa's "potential bias and/or motive
7 to cooperate with the police." [Petitioner] and Wallace joined in
8 the request.

9 The trial court denied the motion, finding that the attorneys
10 could cross-examine Feissa on bias and "prior investigation." The
11 preliminary hearing then began. Feissa was called as a witness.

12 1. *Cross-examination by Khalill*

13 Feissa admitted that he had spoken with the police about
14 this case "[a] few" times; the conversations were always recorded.

15 He testified that he had a criminal case involving a burglary.
16 Under a leniency agreement, Feissa would be sentenced after trial,
17 but would be released from custody after testifying at the
18 preliminary hearing. He was facing prison time for the crimes and
19 was "scared of prison."

20 Feissa further testified that he wanted to go home as soon as
21 he could.[FN14] At first he stated that he was facing "a couple of
22 years" in state prison due to his plea, but then eventually admitted
23 that he was facing five to seven years.[FN15]

24 [FN14] The magistrate did not allow defense
25 counsel to pose questions about whether Feissa
26 wanted to be in jail during the summer, asking counsel
27 to "move through this."

28 [FN15] The magistrate stopped questions about

1 whether seven years was more than two years,
2 commenting that he did not want to “waste time” and
3 did not want any “drama.”

4 Khalill’s attorney then asked Feissa if he had been convicted
5 in a narcotics case. Feissa replied that he had, that he went to
6 court in March 2008, and that he pled guilty in a marijuana case.
7 He said that he was told by the prosecutor that the crime would be
8 a misdemeanor if he did community service. Feissa promised to do
9 the community service. When Khalill’s attorney pushed questions
10 about whether Feissa “gave [his] word,” the trial court sustained
11 the prosecutor’s objections on relevance grounds; the trial court
12 also found the question to be argumentative. Khalill’s attorney did
13 ask Feissa whether he had performed the community service; he
14 replied that he did not.

15 Khalill’s attorney was allowed to ask Feissa whether he was
16 having problems with his memory. He admitted that he did not
17 “remember things,” and he admitted that he had told someone
18 that he forgot things as a result of past drug use.[FN16]

19 [FN16] The trial court did not allow questions
20 about which drugs he had used and the length of drug
21 use.

22 Feissa invoked his Fifth Amendment privilege when asked
23 questions about a murder and two attempted murders that had
24 occurred on Tarrant Street (the Tarrant Street murder) and when
25 asked whether there were any other criminal investigations
26 pending.

27 Feissa testified that he was paid for information he provided
28 in this case, but he did not recall the amount; the trial court

1 sustained an objection to questions about whether he was paid in
2 cash and whether he was going to pay taxes on those monies.

3 Feissa was not present during the 2008 murder and had not
4 been a witness to it. His knowledge was limited to what Khalill,
5 [Petitioner], and others had told him. He denied that he was giving
6 information to the police to get out of jail.

7 Throughout his questioning of Feissa, Khalill's attorney
8 repeatedly argued with the trial court, contending that he was not
9 being allowed to cross-examine Feissa meaningfully.

10 *2. Cross-examination by [Petitioner]*

11 Feissa testified that he joined the 135 Piru gang in 2006, but
12 he was no longer in the gang. [Petitioner] was a member of the
13 gang, and Feissa had talked to him in the past.

14 Feissa stated that he had "hit . . . up" Quezada once in front
15 of Quezada's house. Feissa knew it was dangerous to hit up
16 Quezada while in another gang's territory.

17 On July 28, 2008, Feissa was at home. He went to Khalill's
18 house at night at some point after the murder. While there, Feissa
19 also talked to [Petitioner].

20 Feissa had smoked a "[c]ouple of blunts" of marijuana that
21 day, one in the morning and one in the evening. Feissa said that
22 they did not make him high.

23 Feissa used cocaine before he went to jail. Although he did
24 not know the date that he last used cocaine, he did not use cocaine
25 on the day of the murder.

26 He received money for information on this case.

27 The proffer agreement required Feissa to be truthful. If he
28 lied or someone thought he was lying, the deal would "go away."

1 Later, Feissa testified that he drove a car in 2008. When
2 asked what type of car he had been driving, Feissa initially
3 invoked the Fifth Amendment. Later, he answered that he did not
4 own a car, but he drove a white 2001 Volkswagen Jetta.

5 Feissa testified that he was familiar with the area of 139th
6 Street and Avalon Boulevard. There was a mailbox on the
7 northwest corner and, if a person was standing at that mailbox, he
8 could see the location where the murder occurred on July 28,
9 2008.

10 Feissa testified that [Petitioner] told him that he walked
11 across Avalon Boulevard to shoot Quezada. He ran away after the
12 shooting and went to Khalill's house.

13 [Petitioner] told Feissa about the murder while he was at a
14 pool party. [Petitioner], Feissa, and Jerrod were in the backyard
15 when Feissa asked [Petitioner] about the murder. Although
16 [Petitioner] said that a "nine and 40" were used in the murder,
17 Feissa admitted that he told the police that one of the guns was a
18 Desert Eagle.[FN17] He believed what [Petitioner] said about the
19 incident.

20 [FN17] [Petitioner] did not mention the Desert
21 Eagle to Feissa. And later, Feissa testified that he did
22 not know what kind of guns were used in the shooting
23 of Quezada. But, he had been told that the two most
24 common weapons that the 135 Piru gang used were
25 the nine-millimeter and the Desert Eagle.

26 Feissa asserted the Fifth Amendment when asked if he had
27 to put in work for the gang.

28 Feissa was given a Toyota Tercel by Detective Shaw.

1 Sheriff's deputies would let Feissa go if they pulled him over.

2 *3. Cross-examination by Wallace*

3 Wallace did not cross-examine Feissa.

4 *4. Further cross-examination by Khalill*

5 Feissa testified that he was not given an unmarked police car
6 to drive. He had told the police that the first name of Peanut was
7 Trayvon or Laquon. He also told them that Khalill did not say that
8 he had shot anyone. Feissa was not close to anyone in the 135 Piru
9 gang, but he did not tell the police that.

10 After Feissa received money from Detective Shaw, Feissa
11 continued to "hang[] around" the neighborhood. He never
12 smoked PCP. In 2008, he had a fist fight with someone in the 135
13 Piru gang.

14 *5. Further cross-examination by [Petitioner]*

15 Since high school, Feissa had arguments with [Petitioner].

16 B. Events at trial

17 Prior to trial, the prosecutor moved to admit Feissa's
18 preliminary hearing testimony because Feissa was unavailable
19 (Evid.Code, §§ 240, 1291). In the motion, the prosecutor stated
20 that she anticipated that Feissa would assert his Fifth Amendment
21 rights if called to testify in appellants' case.

22 The prosecutor argued that at the time of the preliminary
23 hearing, Feissa had been in custody on two counts of second
24 degree burglary, one count of transporting a controlled substance,
25 and one count of criminal street gang conspiracy. Pursuant to a
26 "leniency agreement," Feissa pled guilty to the charges and
27 testified at the preliminary hearing in this matter, as well as in a
28 preliminary hearing in a case against Prothro and Simpson.

1 Feissa's sentence for his case would be determined by the trial
2 court and could range from time served to seven years. Prior to
3 entering into the leniency agreement, Feissa gave a "Proffer
4 Interview,' which necessitated a 'proffer agreement' granting him
5 protection against his proffer statements being used against him."
6 The prosecutor further asserted that, pursuant to the leniency
7 agreement, Feissa had been released on his own recognizance after
8 his testimony at the preliminary hearing and had relocated out of
9 state.

10 The prosecutor then pointed out that on July 7, 2011, Feissa
11 had been charged with the Tarrant Street murder. Feissa's case
12 also involved "relevant gun and gang allegations," such as section
13 186.22. The prosecutor argued that, in light of the pending charges
14 against Feissa, she reasonably anticipated that he would assert his
15 Fifth Amendment privilege if called to testify. After all, "[a]ny
16 testimony by Feissa" in appellants' case regarding statements
17 made to him by appellants would be "incriminating to Feissa
18 because it [would] demonstrate[] his membership and status level
19 within the 135 Piru criminal street gang."

20 Prior to trial, the court held a hearing. The prosecutor called
21 Feissa, who invoked his Fifth Amendment rights and refused to
22 answer the prosecutor's questions. After taking judicial notice of
23 the fact that Feissa was being prosecuted for murder and that there
24 was a section 186.22 allegation the trial court sustained Feissa's
25 assertion of his Fifth Amendment privilege.

26 The prosecutor then asked Feissa if he intended to invoke
27 his Fifth Amendment privilege to any questions about Quezada's
28 murder. He replied, "Yes."

1 Feissa also invoked the Fifth Amendment when
2 [Petitioner's] attorney asked him questions about whether he knew
3 or recognized [Petitioner], whether he had signed a document in
4 which the Los Angeles Sheriff's Department had found him an
5 unreliable informant, or had any conversations with [Petitioner].
6 [Petitioner's] attorney argued that Feissa's invocation of the Fifth
7 Amendment was "inappropriate" and that Feissa should be
8 directed to answer the questions because they did not relate to any
9 charges against him. Wallace and Khalill joined in [Petitioner's]
10 argument.

11 Feissa's attorney argued that anything Feissa said about any
12 relationship he had with appellants would potentially incriminate
13 him in his pending case because the case involved gang
14 allegations. The trial court sustained Feissa's assertion of privilege.

15 In response to questions from Khalill's attorney about
16 whether he grew up on the streets of Compton, whether he
17 received money from the sheriff's department, the shooting on
18 Tarrant Street, receipt of leniency, and whether he knew Khalill,
19 Feissa again asserted the Fifth Amendment. Khalill's counsel
20 objected. The trial court sustained Feissa's invocation of the Fifth
21 Amendment to each question.

22 Based upon what had transpired, Wallace's attorney elected
23 not to cross-examine Feissa. The prosecutor had no further
24 questions.

25 After hearing argument from counsel, the trial court found
26 that Feissa was unavailable due to the assertion of his Fifth
27 Amendment privilege. It found that he had legitimately invoked
28 the Fifth Amendment to the questions asked. It also determined

1 that, after reviewing the preliminary hearing transcript, appellants
2 had had the opportunity to “fully cross-examine” Feissa at the
3 preliminary hearing. Thus, his preliminary hearing testimony
4 could be read to the jury.

5 With respect to due process, the trial court noted that
6 appellants had the right to attack Feissa’s credibility with
7 information that was “not within the four corners of the
8 preliminary hearing transcript.” In other words, if the defense had
9 any documents or witnesses that “would shed light” on Feissa’s
10 credibility, they could “bring it on.” Likewise, if there was
11 information that “on prior occasions [he had] admitted to being
12 untruthful, that [he had] given false testimony, or that [he had]
13 engaged in other criminal conduct [that was] not addressed within
14 the four corners of the preliminary hearing transcript,” the defense
15 would be allowed to admit such evidence. Later, the trial court
16 reiterated that it was going to allow the defense to “use other
17 collateral impeachment within the scope of [Evidence Code
18 section] 352” to impeach Feissa and as not limiting them solely to
19 the impeachment that occurred during the preliminary hearing.

20 Later in the proceedings, the trial court warned defense
21 counsel that they would be “really limited on the Tarrant Street
22 murder as far as what information” they sought to admit. But, it
23 was not, and would not, preclude the defense from impeaching
24 Feissa “on other bad crimes . . . or prior convictions involving
25 moral turpitude, et cetera.” The trial court agreed that the defense
26 was allowed to admit evidence of various instances in which
27 Feissa had lied and the knowledge of the police that Feissa had
28 lied.

1 LD 12 at 28-34.

2 On appeal, the California Court of Appeal found that the trial court did
3 not violate Petitioner's constitutional rights by admitting Feissa's preliminary-
4 hearing testimony. LD 12 at 35-40. The state appellate court found that
5 Petitioner and his codefendants had an adequate opportunity to cross-examine
6 Feissa at the preliminary hearing by questioning him about a variety topics
7 relating to his credibility and possible motives to be untruthful. Id. at 35. It also
8 found that the trial court imposed only minor restrictions on cross-
9 examination—mainly limiting redundant or marginally relevant questioning—
10 and it permitted counsel to attack Feissa's credibility at trial with additional
11 evidence not related to his preliminary-hearing testimony. Id. at 35-36.

12 **3. Analysis**

13 The state appellate court did not unreasonably apply federal law in
14 rejecting Petitioner's confrontation claim. The Confrontation Clause
15 guarantees only an opportunity for effective cross-examination—not “cross-
16 examination that is effective in whatever way, and to whatever extent, the
17 defense might wish.” Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)
18 (citation omitted). The Supreme Court has observed that, although a
19 preliminary hearing “is ordinarily a less searching exploration into the merits
20 of a case than a trial,” the opportunity for cross-examination of a witness at a
21 preliminary hearing may still satisfy the Confrontation Clause's requirements.
22 California v. Green, 399 U.S. 149, 166 (1970) (citing Barber v. Page, 390 U.S.
23 719, 725-26 (1968)). According to the Supreme Court in Green, when a
24 defendant's attorney was not “significantly limited in any way in the scope or
25 nature of his cross-examination of the witness . . . at the preliminary hearing,”
26 “the right of cross-examination then afforded provides substantial compliance
27 with the purposes behind the confrontation requirement.” Id. at 166; see also
28 Jackson v. Brown, 513 F.3d 1057, 1083 (9th Cir. 2008) (noting in considering

1 Crawford claim that petitioner had opportunity to cross-examine witness at
2 preliminary hearing).⁷

3 As the state appellate court found, defendants had an adequate
4 opportunity to cross-examine Feissa at the preliminary hearing. Khalill's
5 attorney questioned Feissa about his criminal history, 1 CT 146-47, 152-53,
6 the leniency agreement in his then-pending burglary case, id. at 142-43, and the
7 amount of prison time he faced as a result of his burglary charges, id. at 144-
8 45. Khalill's counsel also elicited Feissa's testimony that he did not want to go
9 to prison and would be released from custody after he testified at the
10 preliminary hearing, id. at 143-44, had memory problems because of his drug
11 use, id. at 154-55, 166-67, and had been paid by the police for information
12 regarding this case and others, id. at 161, 163. Petitioner's attorney elicited

13 _____
14 ⁷ Petitioner argues for the first time in his Traverse that "law
15 enforcement and the prosecution created the situation for Feissa's
16 unavailability by choosing to file 187 charges against him prior to trial,"
17 Traverse at 10; see also id. at 13, and the prosecution therefore did not
18 "exercise[] its good faith and due diligence in procuring" Feissa's presence at
19 trial, id. at 10. As an initial matter, Petitioner's claim must be rejected because
20 "[a] [t]raverse is not the proper pleading to raise additional grounds for relief."
21 Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994). And in any
22 event, Petitioner points to nothing in the record showing that the prosecution
23 engaged in any misconduct in charging Feissa with murder in July 2011, 12
24 RT 3182-83, more than a year after he testified at the June 2010 preliminary
25 hearing, 1 CT 1, and five months before the December 2011 trial. And it is
26 well-established that a witness's invocation of his Fifth Amendment privilege
27 against self-incrimination renders him legally unavailable. See Green, 399 U.S.
28 at 167-68 (finding that Confrontation Clause did not prohibit prosecution from
introducing preliminary-hearing testimony when witness appeared for trial but
"claimed his privilege against compulsory self-incrimination"); Whelchel v.
Washington, 232 F.3d 1197, 1204 (9th Cir. 2000) (finding that when two
witnesses "invoked their Fifth Amendment privilege against self-incrimination
and refused to testify at [petitioner's] trial" they were "legally unavailable"). As
a result, this claim fails.

1 Feissa's testimony that he had "hit up" Quezada before he was murdered, id.
2 at 171, smoked marijuana before talking to Khalill and Petitioner on the day of
3 the murder, id. at 175-77, and previously used cocaine, id. at 179. Counsel also
4 elicited Feissa's testimony that in exchange for information, the police paid
5 him thousands of dollars, id. at 180-01, 186-89, gave him a Toyota Tercel to
6 drive, id. at 212, and told him that his gun case would "disappear," id. at 186.
7 Feissa further testified on cross-examination that "when [he] got pulled over by
8 sheriffs," he called Detective Shaw and the sheriffs would let him go, id. at
9 213, and that he never found out what guns were used in Quezada's murder,
10 id. at 210-11, and had been having arguments with Petitioner "since high
11 school," id. at 220. Petitioner's counsel also extensively questioned Feissa
12 about his conversation with Petitioner regarding Quezada's murder. Id. at 198-
13 206.

14 As the state appellate court found, LD 12 at 35, the court's limitations
15 on cross-examination during the preliminary hearing were minor. The court
16 mainly limited counsel's questions about subjects that were only marginally
17 relevant, see 1 CT 146 (asking how old Feissa would have been when he got
18 out of prison if he had gone to prison on burglary charges when he was 21),
19 152-53 (asking why Feissa didn't complete community service in previous
20 case), 155 (asking what drugs Feissa had used), 161-62 (asking whether police
21 had paid Feissa in cash and whether he was going to pay taxes on money), and
22 it curtailed repetitive questions about, for example, whether Feissa wanted to
23 be in jail, see id. at 143-44, whether he had told both the district attorney and
24 the judge that he would do community service in a marijuana case, id. at 147-
25 49, and whether his drug use affected his memory, id. at 156. Because
26 Petitioner had an ample opportunity to effectively cross-examine Feissa at the
27 preliminary hearing, the state appellate court was not objectively unreasonable
28 in denying this claim. See Cogswell v. Kernan, 648 F. App'x 624, 625-26 (9th

1 Cir. 2016) (finding that opportunity to cross-examine witness at preliminary
2 hearing was sufficient to satisfy confrontation requirement); Blackwell v. Biter,
3 No. 12-0624, 2012 WL 5989892, at *8 (C.D. Cal. Sept. 28, 2012) (denying
4 Confrontation Clause claim when cross-examination at preliminary hearing
5 was “substantial and impeaching” and “not so ‘truncated’ or otherwise
6 abbreviated as to deprive [p]etitioner of a meaningful opportunity for an
7 effective cross-examination”).

8 The California Court of Appeal also observed that during the trial, the
9 trial court permitted defense counsel to introduce additional “documents or
10 witnesses” that would “shed light” on Feissa’s credibility. LD 12 at 36-37; 2
11 RT B-28 to B-29. Accordingly, the jury heard, among other things, the parties’
12 stipulation that Feissa was guilty of murdering Daveon Childs during a drive-
13 by shooting on January 3, 2008, and that Feissa had been charged with that
14 Childs’s murder on July 7, 2011, 12 RT 3182-83, more than a year after the
15 June 2010 preliminary hearing. The jury also heard testimony that Feissa
16 received no leniency in his murder case. 10 RT 2524. In addition, defense
17 counsel introduced Detective John Duncan’s testimony that Feissa repeatedly
18 lied during a police interview, 13 RT 3473-74, 3481, 3495-96; 14 RT 3630-31;
19 and that an in-custody gang-member informant who was charged with a crime
20 sometimes had a motive to lie or give police false information, 13 RT 3493.
21 Duncan and Detective Ty Labbe both testified that Feissa had denied
22 murdering Childs and had tried to blame someone else, 14 RT 3628, 3630-31,
23 3666, 3669-70, and that Labbe had filled out a card stating that Feissa was an
24 “unreliable informant” and could no longer be controlled, 13 RT 3493; 14 RT
25 3676-80. The defense also called jail inmate Elvie Porter, who testified that he
26 had been housed in the cell next to Feissa’s and that Feissa had recently
27 threatened to testify falsely in Porter’s case and said he had already testified
28 falsely against his fellow gang members, including “K-9” (Khalil). 15 RT

1 3963-65. Porter testified that Feissa had claimed that detectives had “made
2 him read the murder books” on Piru gang members, including K-9, and that if
3 Feissa did not get a deal from the prosecution, he would “expose that he read
4 the murder books.” Id. at 3968, 3974-75.

5 Petitioner complains that he was not able to confront Feissa during the
6 preliminary hearing with the additional impeachment evidence introduced at
7 trial. Traverse at 15. But the fact that additional impeachment evidence came
8 to light after the preliminary hearing did not render Feissa’s cross-examination
9 ineffective for the purposes of the Confrontation Clause. See Martir v.
10 Lizarraga, __ F. Supp. 3d __, 2016 WL 1729979, at *9 (N.D. Cal. May 2,
11 2016) (“That [p]etitioner was unable to impeach [the witness] with evidence
12 that he obtained after the preliminary hearing does not render the cross-
13 examination ineffective for purposes of the Confrontation Clause: the
14 testimony the jury actually heard was fully subject to cross-examination at the
15 preliminary hearing.”). Because the testimony the jury heard was subjected to
16 full cross-examination at the preliminary hearing, the state courts were not
17 objectively unreasonable in rejecting Petitioner’s Confrontation Clause claim.⁸

18 For all of these reasons, habeas relief is not warranted on this ground.
19

20 ⁸ Petitioner cites Greene v. Wainwright, 634 F.2d 272 (5th Cir. 1981), for
21 the proposition that a defendant has an “absolute right” to present a witness’s
22 “actual or threatened criminal charges” “so that the jury will be fully apprised
23 as to the witness’s possible motive or self-interest.” Traverse at 12. But the
24 Fifth Circuit cited only Florida state law for that proposition; moreover, in that
25 case, the trial court prohibited “any exploratory inquiry by defense counsel
26 into [the witness’s] possible bias or motive.” Greene, 634 F.2d at 274-75. The
27 Fifth Circuit held that such a “complete bar” on impeachment violated the
28 Sixth Amendment. Id. at 275. Here, by contrast, Petitioner had ample
opportunity to cross-examine Feissa at the preliminary hearing and to
introduce additional impeachment evidence at trial—including evidence
regarding the murder charges against him.

C. Petitioner's Right to Present a Defense

Petitioner argues that the trial court violated his constitutional right to due process and to present evidence by refusing to allow him to play for the jury a 42-minute recording of homicide detectives' interview of Feissa. Petition at 5-6, 28-30; Traverse at 16-22.

1. Relevant Law

It is well settled that a criminal defendant has a constitutional right to present witnesses, testimony, and other evidence in his defense. See Holmes v. South Carolina, 547 U.S. 319, 324 (2006); see Moses v. Payne, 555 F.3d 742, 757 (9th Cir. 2009) (as amended) (finding that defendant's right to present defense stems from both Fourteenth Amendment right to due process and Sixth Amendment right to compel witnesses). But "[t]he accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." Taylor v. Illinois, 484 U.S. 400, 410 (1988). Rather, states have "broad latitude" under the Constitution to establish rules excluding evidence from criminal trials, Holmes, 547 U.S. at 324, and such rules do not abridge a criminal defendant's right to present a defense unless they are "arbitrary" or "disproportionate to the purposes they were designed to serve" and "infringe[] upon a weighty interest of the accused." United States v. Scheffer, 523 U.S. 303, 308 (1998). Judges, moreover, have considerable discretion to exclude evidence that is repetitive, marginally relevant, or poses an undue risk of harassment, prejudice, or confusion of the issues. Crane v. Kentucky, 476 U.S. 683, 689-90 (1986); Menendez v. Terhune, 422 F.3d 1012, 1033 (9th Cir. 2005); see also Montana v. Egelhoff, 518 U.S. 37, 42-43 (1996) (noting that due process rights are not violated by exclusion of relevant evidence when probative value is outweighed by danger of prejudice, confusion, misleading jury, undue delay, waste of time, or needless presentation of cumulative evidence).

1 **2. Background**

2 At trial, Petitioner sought to play an entire 42-minute recording of
3 detectives' interview of Feissa, during which the detectives "brought up
4 'various' incidents in which they accused Feissa of lying or 'being
5 disingenuous.'" LD 12 at 41-42. The trial court denied Petitioner's request,
6 finding that much of the interview related to a different murder and other
7 issues that were not relevant to Petitioner's case. Id. The trial court said the
8 defense could play any "specific portions" of the tape that showed Feissa was
9 untruthful and it could call any witnesses necessary to show that Feissa had
10 lied to law enforcement. Id. But it would not allow the defense "to play a 40-
11 minute tape for the purposes of being able to try and have the jury figure out
12 how in effect this guy lied." Id. at 42. Thus, under Evidence Code § 352, while
13 the defense could "address any issues that [were] prior inconsistent statements
14 or [related to Feissa's] bad character," it could not play the entire tape. Id.

15 On appeal, the California Court of Appeal found that the trial court did
16 not err in disallowing Petitioner from playing the entire 42-minute taped
17 interview. Id. at 43-44. The state appellate court noted that the trial court
18 "apparently listened to the entire recording or read a transcript and concluded
19 that the 42-minute interview contained a number of issues that were not
20 relevant to [Petitioner's] case or to Feissa's credibility." Id. at 43. The state
21 appellate court also noted that the trial court would have allowed Petitioner to
22 play specific portions of the tape showing that Feissa was untruthful, but
23 counsel chose not to do so, and it allowed the defense to present witnesses
24 showing that Feissa had lied. Id.

25 The state appellate court further found that the application of state
26 evidentiary rules such as Evidence Code § 352 generally does not infringe on a
27 defendant's constitutional rights, and that excluding evidence on a minor point
28 does not infringe on a defendant's right to present a defense. Id. Finally, it

1 found that even if the tape had been played for the jury, a different result was
2 not reasonably probable because substantial other evidence was introduced to
3 impeach Feissa's credibility. Id. at 43-44.

4 **3. Analysis**

5 The state appellate court was not objectively unreasonable in denying
6 Petitioner's claim. California Evidence Code § 352—which gives the court
7 discretion to exclude evidence when its probative value is outweighed by the
8 risk that its admission will consume undue time, mislead the jury, or result in
9 prejudice or confusion—is not arbitrary or disproportionate to the purpose it
10 was designed to serve. See Scheffer, 523 U.S. at 308-09. Rather, the Supreme
11 Court has specifically found that “well-established rules of evidence permit
12 trial judges to exclude evidence if its probative value is outweighed by certain
13 other factors such as unfair prejudice, confusion of the issues, or potential to
14 mislead the jury.” Holmes, 547 U.S. at 326; see also Egelhoff, 518 U.S. at 42-
15 43; Spillman v. Cullen, 587 F. App'x 412, 412 (9th Cir. 2014) (finding that
16 California Evidence Code § 352 is “a neutral evidentiary rule . . . that is neither
17 facially arbitrary nor disproportionate to the purpose it seeks to serve”).

18 Moreover, the Supreme Court has not yet “squarely addressed” whether
19 a state court's discretionary exclusion of evidence under a valid evidentiary
20 rule can ever violate a defendant's right to present a defense, nor has it set forth
21 a “controlling legal standard” for evaluating such claims. See Moses, 555 F.3d
22 at 758-59; see also Brown v. Horell, 644 F.3d 969, 983 (9th Cir. 2011)
23 (“Between the issuance of Moses and the present, the Supreme Court has not
24 decided any case either ‘squarely address[ing]’ the discretionary exclusion of
25 evidence and the right to present a complete defense or ‘establish[ing] a
26 controlling legal standard’ for evaluating such exclusions.” (alterations in
27 original)). In the absence of Supreme Court precedent, the state courts’
28 conclusion that Petitioner was not deprived of his right to present a defense

1 could not have been contrary to, or an unreasonable of, clearly established
 2 federal law. See Wright v. Van Patten, 552 U.S. 120, 125-26 (2008); Hale v.
 3 Holland, __ F. App'x __, 2016 WL 3974190, at *1 (9th Cir. July 25, 2016)
 4 (finding that state court “permissibly evaluated” probative value and potential
 5 adverse effects of admitting impeachment evidence and that “[t]his
 6 discretionary balancing was neither contrary to, nor an unreasonable
 7 application of, clearly established federal law” (citing Moses, 555 F.3d at 758-
 8 59)).

9 In any event, the California Court of Appeal reasonably concluded that
 10 exclusion of the proffered recording did not curtail Petitioner’s right to present
 11 a defense. The trial court found that the 42-minute recording “involv[ed] a
 12 number of subjects that [were not] relevant” to the crimes at issue in
 13 Petitioner’s trial.⁹ 13 RT 3301-04 (trial court stating that it was “not going to
 14 spend 40 minutes playing a tape that has questions and answers that aren’t
 15 relevant to the issues before the jury in the trial”), 3318. And the trial court

16 ⁹ Petitioner attached to his Petition what appears to be a transcript of the
 17 interview. See Petition, Exh. A (transcript of detective’s Mar. 3, 2009 interview
 18 with Feissa). This document was not included in the lodged documents, and
 19 thus the original Report and Recommendation noted that it “appear[ed] that
 20 this evidence was not presented to the California Court of Appeal or Supreme
 21 Court on direct review.” See Dkt. 26 at 50 n.6. In his Objections, Petitioner
 22 asserts that his appellate counsel successfully moved to augment the record on
 23 appeal to include the transcript from that interview, Objections at 12-13, which
 24 appears to have in fact been the case, see Appellate Cts. Case Information
 25 website, <http://appellatecases.courtinfo.ca.gov/search.cfm?dist=2> (search for
 26 case no. B243535) (showing that mot. to augment record was granted on Mar.
 27 12, 2013, and the record on appeal was “augmented with transcript of 3-3-09
 28 as attached”). But in any event, as the original Report and Recommendation
 concluded, Dkt. 26 at 50 n.6, the transcript confirms the trial court’s finding
 that the interview pertained to subjects that were not relevant to Petitioner’s
 and his codefendants’ crimes—rather, most of it focused on Feissa’s drug
 trafficking and Childs’s murder. See Petition, Exh. A.

1 reasonably found that the tape had only a limited and attenuated relevance to
2 Feissa's credibility, stating that it was

3 not going to play a 40-minute tape for the purposes of being able to
4 try to have the jury find out how in effect this guy lied. They don't
5 know enough information about the other cases [discussed in the
6 recording], and we're not going to have a trial within a trial so they
7 can connect the dots on their own.

8 13 RT 3305. See Hale, 2016 WL 3974190, at *1 (finding that state court "did
9 not commit constitutional error by excluding the impeachment evidence" but
10 rather "permissibly evaluated the 'probative value [and] the potential adverse
11 effects of admitting the defense evidence'" (alteration in original, citing
12 Holmes, 547 U.S. at 329)). Moreover, as the California Court of Appeal noted,
13 LD 12 at 43, the trial court stated that it would allow defense counsel to play
14 specific portions of the recording showing that Feissa was untruthful, 13 RT
15 3318, but counsel declined to do so.

16 Even assuming some sort of constitutional error, Petitioner has failed to
17 show that the trial court's exclusion of the entire 42-minute recording had a
18 substantial or injurious effect or influence in determining the jury's verdict. See
19 Brecht v. Abrahamson, 507 U.S. 619, 623 (1993); see also Moses, 555 F.3d at
20 760 (finding that even if trial court's exclusion of evidence was constitutional
21 error, it did not have "substantial and injurious" effect on jury verdict). As
22 noted above, the trial court would have permitted Petitioner to play specific
23 portions of the recording showing that Feissa was untruthful, 13 RT 3318, but
24 counsel declined to do so. And, as discussed in Section III.B., the jury heard
25 extensive evidence showing that Feissa lacked credibility. During cross-
26 examination at the preliminary hearing, defense counsel elicited Feissa's
27 testimony regarding, for example, his criminal history, leniency agreement,
28 potential prison time, memory problems, payments for information, and drug

1 use. At trial, the defense introduced additional evidence bearing on Feissa's
2 credibility, including, for example, the stipulation that he had murdered Childs
3 and testimony that he had tried to blame Childs's murder on someone else,
4 lied to police investigators, and told a fellow inmate that he would testify
5 falsely in his case and had done so in other cases. Because it is not reasonably
6 likely that the jury would have formed a different view of Feissa's credibility
7 had the entire 42-minute recording been played at trial, the trial court's refusal
8 to allow the recording could not have had substantially affected the jury's
9 verdict. See Spillman, 587 F. App'x at 412 (finding that petitioner was not
10 denied right to present defense when "he was able to present other evidence in
11 support of his third-party culpability defense"); Packard v. Cash, No. 11-1589,
12 2012 WL 1616964, at *8 (C.D. Cal. Apr. 11, 2012) (finding that trial court's
13 exclusion of additional impeachment evidence was unlikely to have affected
14 verdict given that jury found petitioner guilty even after hearing two accounts
15 of witness's alleged misconduct); Jones v. Kramer, No. 08-03827, 2010 WL
16 2180481, at *10 (C.D. Cal. Apr. 22, 2010) (finding that any constitutional error
17 in excluding impeachment evidence was harmless in part because "the jury
18 was given ample opportunity to determine the credibility of the investigating
19 detectives").

20 Habeas relief is not warranted on this claim.

21 **D. Petitioner's Motion for Mistrial**

22 Petitioner argues that trial court violated his due process rights by
23 denying his motion for mistrial "based upon improper testimony that Feissa's
24 information led to convictions in another murder." Petition at 6, 31-33;
25 Traverse at 22-25.

26 **1. Background**

27 The California Court of Appeal summarized the relevant facts as
28 follows:

1 During the prosecution's case-in-chief, Detective Valento
2 testified that Feissa had information on two murders that he was
3 investigating: the murder of Quezada and the murder of Llanos.
4 Prior to the information from Feissa, the murder of Llanos was
5 unsolved.

6 During a sidebar discussion, [Petitioner's] attorney argued
7 that the information regarding the Llanos murder was not
8 relevant. The prosecutor argued that there had already been a
9 "great attack" on Feissa as being unreliable and that Feissa had
10 been "paid an absurd amount of money for being an informant."
11 Thus, she wanted to counteract the defense effort with evidence
12 that Feissa helped to solve "an additional homicide," resulting in
13 convictions. The prosecutor believed that the evidence would
14 show that Feissa was reliable.

15 The prosecutor then stated that she did not intend to spend a
16 "lot of time on that murder" and could "streamline" the evidence
17 by showing that Feissa's information "resulted in a conviction."
18 The prosecutor noted that Feissa did not even testify in the other
19 case, which established that other evidence corroborated Feissa's
20 information.

21 Wallace's counsel then objected to the evidence, arguing
22 that there were a "lot of so-called reliable informants that have
23 succeeded in obtaining convictions for the People, who [have]
24 later . . . been reversed." He asserted that the proffered evidence
25 did not establish that Feissa was reliable. [Petitioner's] attorney
26 joined in the objection.

27 Pursuant to Evidence Code section 352, the trial court
28 excluded evidence regarding the conviction in the other case.

1 While the evidence might be relevant in rebuttal, it was not
2 relevant in the prosecution's case-in-chief.

3 During direct examination of Detective Valento, the
4 prosecutor asked about the arrest of the defendants in the Llanos
5 case. He responded: "The driver, Marcellous Prothro, was arrested
6 on July 31, 2009. The shooter, alleged shooter at the time, now
7 convicted, was the passenger in that vehicle, which—."

8 [Petitioner's] attorney objected and moved to strike the
9 answer. During a sidebar discussion, [Petitioner's] attorney
10 asserted that what had happened was "just what the court stated
11 should not happen." Counsel moved for a mistrial.

12 After hearing argument from the prosecutor, the trial court
13 denied the motion. Back in front of the jury, the trial court stated:
14 "With regards to the last portion of the answer that the witness
15 gave as to whether or not a conviction occurred in some other
16 case, that's stricken as being irrelevant to the issues in this case."

17 [Petitioner] subsequently called Detective Duncan as a
18 witness. He had interviewed Feissa on March 3, 2009, while
19 Feissa was in custody. [Petitioner's] attorney attempted to show
20 that Detective Duncan believed that Feissa had been untruthful
21 during that interview. He was examined about an affidavit in
22 another matter in which he stated that he was unaware of any
23 gang member confidential informants who provided "'100 percent
24 truthful information.'" He conceded that an in-custody gang
25 member informant had a motive to lie or give false information.

26 During cross-examination by Khalill, Detective Duncan
27 testified that Feissa had denied being involved in the murder of
28 Daveon Childs and denied being a drug trafficker between

1 California and Texas.

2 During cross-examination by the prosecutor, Detective
3 Duncan stated that the information Feissa provided in the Llanos
4 murder had been corroborated. When she asked if the case had
5 resulted in a conviction, Detective Duncan replied affirmatively.
6 Defense counsel did not object.

7 During recross-examination, Khalill's attorney asked: "You
8 said that basically, Mr. Feissa's information about the Juan Llanos
9 case led to a conviction, essentially?" Detective Duncan replied, "I
10 believe so, yes." He then testified that Feissa did not testify at that
11 trial. He denied looking at Feissa as a suspect in the Llanos case,
12 but said that investigators "did things to make sure he wasn't
13 pawning that murder off on someone else."

14 The prosecutor then called Detective Valento as a rebuttal
15 witness. After he verified that Feissa had identified suspects in the
16 Llanos case, he testified that other witnesses corroborated Feissa's
17 identifications. The prosecutor then asked if the trial resulted in a
18 conviction, and Khalill's attorney objected. The trial court
19 overruled the objection, but Detective Valento did not answer the
20 question.

21 LD 12 at 44-45.

22 On appeal, the California Court of Appeal found that the trial court did
23 not abuse its discretion in finding that Detective Valento's volunteered
24 statement did not result in incurable prejudice necessitating a new trial. *Id.* at
25 46-47. The state appellate court found that the comment was "brief and
26 isolated" and "easily cured by striking the evidence and admonishing the jury
27 to disregard it." *Id.* at 47. The court also noted that Detective Duncan later
28 testified, without objection, that the Llanos case resulted in a conviction, and

1 that Khalill's attorney reiterated that point on cross-examination. LD 12 at 47
2 n.26.

3 **2. Analysis**

4 A trial court has "broad discretion" in determining whether to grant a
5 mistrial. Illinois v. Somerville, 410 U.S. 458, 462 (1973). To establish a
6 constitutional violation from a trial error such as the denial of a mistrial
7 motion, a petition must show that the error rendered his trial fundamentally
8 unfair. Estelle v. McGuire, 502 U.S. 62, 70-71, 75 (1991) (noting that "the Due
9 Process Clause guarantees the fundamental elements of fairness in a criminal
10 trial"). The Supreme Court has defined the category of infractions that violate
11 fundamental fairness very narrowly. See id. at 72-73.

12 The state court's denial of Petitioner's mistrial motion did not render his
13 trial fundamentally unfair. As the California Court of Appeal found, LD 12 at
14 46-47, Valento only briefly indicated that the shooter in the Llanos murder had
15 been convicted, and the trial court immediately struck that testimony as "being
16 irrelevant to the issues in the case," 10 RT 2513. And, at the close of evidence,
17 the trial court further instructed the jury that if "testimony [was] stricken from
18 the record, you must disregard it, and must not consider that testimony for any
19 purpose." 15 RT 3994-95. The jury is presumed to have followed those
20 instructions. Weeks, 528 U.S. at 234; see Hayes v. Ayers, 632 F.3d 500, 514-16
21 (9th Cir. 2011) (finding no due process violation from denial of mistrial based
22 on witness's testimony that petitioner had offered \$25,000 in exchange for her
23 murder, when trial court sustained an objection and ordered the jury to
24 disregard statement); see also United States v. Lemus, 815 F.3d 583, 591 (9th
25 Cir. 2016) (stating that trial court's "cautionary instruction . . . is generally
26 sufficient to cure any prejudice from the introduction of inadmissible evidence"
27 and "is the preferred alternative to declaring mistrial when a witness makes
28 inappropriate or prejudicial remarks" (citation omitted)).

Moreover, the trial court specifically noted that evidence that Feissa's information in the Llanos case was corroborated and had resulted in a conviction "may be relevant in [the prosecution's rebuttal]," just "not in [its] case in chief." 10 RT 2502-03. Indeed, after the defense called Detective Duncan and elicited his testimony that Feissa lied and was found to be an unreliable informant, the prosecutor elicited, without objection, Duncan's testimony that he had not "caught [Feissa] lying" about the Quezada and Llanos murders, that Feissa was "corroborated on the Llanos murder case," and that "after a jury trial, [the Llanos] case resulted in a conviction." 14 RT 3624-25. Khalill's attorney reiterated that point on cross-examination. *Id.* at 3632 (counsel asking Duncan on recross-examination, "You said that basically, Mr. Feissa's information about the Juan Llanos case led to a conviction, essentially?").

In sum, nothing indicates that the trial court's instructions were unlikely to cure any harm from Valento's brief statement during the prosecution's direct examination. *See United States v. Valdez-Soto*, 31 F.3d 1467, 1473 (9th Cir. 1994) (finding on direct review that "[d]eclaring a mistrial is appropriate only where a cautionary instruction is unlikely to cure the prejudicial effect of an error" (citation omitted)). Habeas relief therefore is not warranted on this ground.

E. Petitioner's Due Process Claim Based on Feissa's Testimony

Petitioner contends that his conviction violated due process because it was based on the testimony of Feissa, an "inherently unreliable" informant. Petition at 6, 34-41; Traverse at 25-29.

1. The California Court of Appeal's Decision

The California Court of Appeal denied this claim on direct review:

Appellants argue that their constitutional rights were violated by the admission of Feissa's testimony because he was an

1 “inherently unreliable” informant. As [Petitioner] acknowledges,
 2 the California Supreme Court has repeatedly rejected such claims.
 3 (See, e.g., People v. Hovarter (2008) 44 Cal.4th 983, 997; People v.
 4 Jenkins (2000) 22 Cal.4th 900, 1007-1008; People v. Ramos (1997)
 5 15 Cal.4th 1133, 1165.) We therefore deny this contention. (Auto
 6 Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455.)

7 Khalil takes it one step further—he claims that because
 8 Feissa’s testimony was inherently unreliable, it did not constitute
 9 sufficient evidence. This argument fails as well. When a claim of
 10 insufficient evidence is raised, the appellate court reviews the
 11 entire record in the light most favorable to the judgment to
 12 determine whether there was reasonable and credible evidence
 13 from which a trier of fact could find a defendant guilty beyond a
 14 reasonable doubt. (People v. Lee (2011) 51 Cal.4th 620, 632.) In
 15 making this determination, the reviewing court presumes in
 16 support of the judgment the existence of every fact the jury could
 17 reasonably deduce from the evidence. (Ibid.) “[E]ven testimony
 18 which is subject to justifiable suspicion do[es] not justify the
 19 reversal of a judgment, for it is the exclusive province of the . . .
 20 jury to determine the credibility of a witness.” (Ibid.) In other
 21 words, we do not resolve issues of credibility. (Ibid.)

22 Here, the jury heard a variety of factors affecting Feissa’s
 23 credibility and determined his testimony to be credible. We
 24 cannot, and will not, reassess his credibility.

25 LD 12 at 47-48.

26 **2. Analysis**

27 The California Court of Appeal’s rejection of this was not contrary to,
 28 or an unreasonable application of, federal law. As an initial matter, the state

1 court had no obligation to sua sponte exclude Feissa's testimony. "The
2 Constitution[] . . . protects a defendant against a conviction based on evidence
3 of questionable reliability, not by prohibiting introduction of the evidence, but
4 by affording the defendant means to persuade the jury that the evidence should
5 be discounted as unworthy of credit." Perry v. New Hampshire, __ U.S. __,
6 132 S. Ct. 716, 723 (2012). Apart from constitutional guarantees such as the
7 right to counsel, compulsory process, and confrontation, "state and federal
8 statutes and rules ordinarily govern the admissibility of evidence, and juries are
9 assigned the task of determining the reliability of the evidence presented at
10 trial." Id.

11 Thus, the admission of evidence violates due process only when
12 evidence "is so extremely unfair that its admission violates fundamental
13 conceptions of justice." Id. (citation omitted); Randolph v. People of the State
14 of Cal., 380 F.3d 1133, 1147-48 (9th Cir. 2004) (holding that due process
15 violated only if admission of evidence rendered trial "fundamentally unfair").
16 "[T]he potential unreliability of a type of evidence does not alone render its
17 introduction at the defendant's trial fundamentally unfair." Perry, 132 S. Ct. at
18 728; see also Randolph, 380 F.3d at 1148 ("[T]he use of a government
19 informant does not automatically render a trial unfair.").

20 Here, the admission of Feissa's testimony did not render Petitioner's trial
21 fundamentally unfair. As discussed in Section III.B., the defense had a
22 sufficient opportunity to cross-examine Feissa at the preliminary hearing and
23 to introduce at trial extensive evidence bearing on his credibility. Moreover,
24 there was considerable evidence to support Feissa's account of Quezada's
25 murder. Feissa testified that Khalill said that he and Petitioner shot Quezada
26 and then ran back to 139th Street, and that Wallace got into a dark blue Chevy
27 Tahoe and left. 8 RT 1954-56. Feissa also testified that Petitioner said he and
28 Khalill shot Quezada while Wallace stood watch across the street, id. at 1962-

1 64, and that another gang member said, in front of Petitioner, that a “nine and
2 40” were used in the murder, id. 1966-68.

3 Consistent with those accounts, Steven Buchanan testified that on the
4 night of Quezada’s murder, he heard something that sounded like gunshots
5 and saw a person who was about six feet tall and wearing a black hoodie run
6 by. 10 RT at 2454-59, 2466-68. He told detectives that he saw the runner get
7 into a dark-colored SUV and the SUV drove away. Id. at 2460, 2463. Detective
8 Valento testified that in an interview, Buchanan said he heard gunshots and
9 saw a male wearing a hooded sweatshirt running “as if he had done
10 something” before getting into a black Chevy Tahoe, which drove away. Id. at
11 2526-30. Detective Duncan testified that he showed Buchanan a photograph of
12 Wallace’s blue SUV, and Buchanan said the vehicle looked similar to the one
13 he saw that night, except he thought the vehicle that night was a little darker
14 than the one in the photograph. 11 RT 2819-20. Criminalist Manuel Munoz
15 testified that nine-millimeter and .40 caliber bullets were recovered from
16 Quezada’s body. 9 RT 2293-95. Given that the jury heard significant evidence
17 bearing on Feissa’s credibility and that at least some evidence supported
18 Feissa’s account of the murder, the introduction of his preliminary-hearing
19 testimony did not render Petitioner’s trial fundamentally unfair.

20 To the extent Petitioner claims that his conviction was unsupported by
21 substantial evidence because Feissa’s testimony was unreliable, that argument
22 fails. The Supreme Court has held that “it is the responsibility of the jury—not
23 the court—to decide what conclusions should be drawn from evidence
24 admitted at trial.” Cavazos v. Smith, ___ U.S. ___, 132 S. Ct. 2, 3-4 (2011) (per
25 curiam). Thus, the reviewing court “cannot second-guess the jury’s credibility
26 assessments”; such determinations are “generally beyond the scope of review.”
27 Kyzar v. Ryan, 780 F.3d 940, 943 (9th Cir.) (citation omitted), cert. denied,
28 136 S. Ct. 108 (2015). Here, the jury was presented with extensive evidence

1 bearing on Feissa's credibility and apparently credited his testimony anyway.

2 The Court cannot revisit that credibility determination on habeas review.

3 Habeas relief is not warranted on this claim.

4 **F. Petitioner's Juror Discharge Claim**

5 Petitioner argues that the trial court violated his right to due process and
6 a jury trial by discharging juror number six before deliberations. Petition at 42-
7 49; Traverse at 29-35.

8 **1. Background**

9 On Friday, December 16, 2011, juror number six sent the trial judge a
10 note indicating that she had a flight to Connecticut on December 18, 2011. The
11 juror stated that she booked the flight after learning that the trial "would go
12 through December 16th." LD 12 at 51. After some discussion with the trial
13 judge, juror number six booked a later flight for 1 a.m. on Thursday,
14 December 22, 2011. Id. at 51-52. The trial court instructed the jury on Monday,
15 December 19, 2011. Id. at 52. The parties finished their closing arguments on
16 Tuesday, December 20, 2011. Id. at 52-53. After closing argument, the trial
17 court asked the parties whether juror number six should be replaced with an
18 alternate juror, noting that if the jury did not "reach a verdict by the close of
19 business tomorrow [Wednesday]," then the jury would have to begin
20 deliberations anew. Id. at 53. The trial court remarked that it was "incredibly
21 unlikely" that the jury would reach a verdict by the next day due to the "extent
22 of the testimony in the case and the number of exhibits." Id. Petitioner's
23 counsel opposed replacing juror number six. Id. at 53-54.

24 Nevertheless, the trial court found that there was "a manifest need to
25 release Juror Number 6" due to "the scheduling conflict she alerted us to a
26 long time ago." Id. at 54. Thus, the trial judge discharged juror number six
27 and replaced her with an alternate. Id.

28 On December 22, 2011, the jury reached verdicts. See id. On appeal, the

1 California Court of Appeal concluded that the trial court's discharge of juror
2 number six was not erroneous. Id. at 55-56.

3 **2. Analysis**

4 A criminal defendant is entitled to "a fair trial by a panel of impartial,
5 'indifferent' jurors." Irvin v. Dowd, 366 U.S. 717, 722 (1961). Due process
6 requires "a jury capable and willing to decide the case solely on the evidence
7 before it, and a trial judge ever watchful to prevent prejudicial occurrences and
8 to determine the effect of such occurrences when they happen." Smith v.
9 Phillips, 455 U.S. 209, 217 (1982). An impartial jury consists of "jurors who
10 will conscientiously apply the law and find the facts." Wainwright v. Witt, 469
11 U.S. 412, 423 (1985).

12 California Penal Code § 1089 provides for the substitution of jurors as
13 follows:

14 If at any time, whether before or after the final submission of the
15 case to the jury, a juror dies or becomes ill, or upon other good
16 cause shown to the court is found to be unable to perform his or
17 her duty, . . . the court may order the juror to be discharged

18 The juror-substitution procedure outlined in § 1089 protects a criminal
19 defendant's Sixth Amendment right to an impartial jury, even when it is
20 "invoked to remove holdout jurors who represent the lone vote for acquittal."
21 Bell v. Uribe, 748 F.3d 857, 868 (9th Cir. 2013) (as amended); see Perez v.
22 Marshall, 119 F.3d 1422, 1426 (9th Cir. 1997); Miller v. Stagner, 757 F.2d 988,
23 995 & n.3 (9th Cir.), amended by 768 F.2d 1090 (9th Cir. 1985). A criminal
24 defendant's rights under the Sixth Amendment are generally intertwined with
25 his rights under § 1089, and thus a state court's ruling that a juror was properly
26 removed is presumptively an adjudication of any federal claim and is entitled
27 to AEDPA deference. Bell, 748 F.3d at 863-64; see Williams, 133 S. Ct. at
28 1091-92. In addition, a trial court's finding that good cause existed to remove a

1 juror is a factual finding entitled to “special deference” on habeas review.
2 Perez, 119 F.3d at 1426; see Patton v. Yount, 467 U.S. 1025, 1036-38 & n.12
3 (1984) (whether juror can render impartial verdict is question of fact entitled to
4 special deference).

5 Because Petitioner relies on the state-court record in support of his claim,
6 the Court reviews under § 2254(d)(2) the state courts’ finding that juror number
7 six became unable to perform her duty. See Taylor v. Maddox, 366 F.3d 992,
8 999-1000 (9th Cir. 2004). A petitioner is entitled to relief under § 2254(d)(2)
9 only if the court, after reviewing the state-court record, determines that the
10 state court was not merely wrong but actually unreasonable in its fact-
11 finding—a “substantially higher threshold.” Schriro v. Landrigan, 550 U.S.
12 465, 473 (2007); Hibbler v. Benedetti, 693 F.3d 1140, 1146 (9th Cir. 2012).
13 “[A] state-court factual determination is not unreasonable merely because the
14 federal habeas court would have reached a different conclusion in the first
15 instance.” Wood v. Allen, 558 U.S. 290, 301 (2010); see Maddox, 366 F.3d at
16 1000 (holding that “it is not enough” that reviewing court would have reversed
17 “in similar circumstances” on direct appeal; court “must be convinced that an
18 appellate panel[] . . . could not reasonably conclude that the finding is
19 supported by the record”).

20 The California Court of Appeal’s denial of Petitioner’s claim was not
21 objectively reasonable. As an initial matter, Petitioner cites no Supreme Court
22 case holding that dismissal of a juror before deliberations is unconstitutional.
23 See, e.g. Williams v. Johnson, 824 F.3d 814, 817 (9th Cir. 2016) (finding no
24 “Supreme Court case imposing (or even hinting at)” Ninth Circuit rule that
25 dismissal of juror violates Constitution when it is reasonably possible impetus
26 for dismissal came from juror’s position on case’s merits); Bell, 748 F.3d at 865
27 (denying habeas relief on juror-dismissal claim when petitioners did not
28 reference “any authority to support their contention that the California Court

1 of Appeal's opinion is contrary to or based on an unreasonable application of
2 clearly established federal law as announced by the United States Supreme
3 Court"); Victorian v. Singh, 584 F. App'x 742, 743 (9th Cir. 2014) (denying
4 habeas petition when petitioner cited no Supreme Court case "holding that
5 dismissal of a juror, holdout or otherwise, is unconstitutional"), cert. denied
6 sub nom. Victorian v. Soto, 135 S. Ct. 1177 (2015). Thus, the state court's
7 decision could not have contravened clearly established law under AEDPA.
8 See Knowles v. Mirzayance, 556 U.S. 111, 122 (2009) ("[I]t is not an
9 "unreasonable application of clearly established Federal law" for a state court
10 to decline to apply a specific legal rule that has not been squarely established
11 by [the Supreme] Court." (citation omitted)).

12 Nor was the state courts' rejection of this claim based on an
13 unreasonable determination of the facts. To the contrary, the record supports
14 the California Court of Appeal's finding that good cause existed for juror
15 number six's removal because her holiday travel plans prevented her from
16 performing her duties as a juror.

17 Before being excused, juror number six, at the trial court's request, had
18 already changed her cross-country flight from Sunday, December 18, 2011, to
19 1 a.m. on Thursday, December 22. 14 RT 3603, 3703-04; 15 RT 4033-34. But
20 closing arguments did not conclude until December 20, 2011; at that point, the
21 trial court found that it was "incredibly unlikely" that the jury would be able to
22 reach a verdict by close of business the next day. 16 RT 4309. Given the length
23 of the trial—which spanned about three weeks, from opening statements on
24 December 5, 2011, to closing statements on December 20—and the quantity of
25 exhibits and witnesses introduced, the trial court's conclusion was not
26 unreasonable. Indeed, after juror number six was excused and replaced by an
27 alternate, the jury twice requested readbacks of parts of the transcript, see 16
28 RT 4502-13; 3 CT 764; 4 CT 843, and it did not return a verdict until 3:24 p.m.

on Thursday, December 22, 2011. 16 RT 4801-14; 4 CT 845. Moreover, the substitution did not affect Petitioner's right to an impartial jury: juror number six was discharged before deliberations, nothing suggests that she had formed an opinion on the case's merits, and nothing shows that the substitution had any effect on the jury's deliberations. As such, the trial court did not violate Petitioner's constitutional rights by excusing juror number six. See Jurcoane v. Ollison, No. 05-08677, 2010 WL 5559602, at *7-11 (C.D. Cal. Jan. 28, 2010) (finding that state court's finding of good cause to excuse deliberating juror due to scheduled vacation was not unreasonable), accepted as modified on other grounds by 2010 WL 5559409 (C.D. Cal. Dec. 31, 2010); see also Sims v. Adams, No. 07-6888, 2011 WL 835806, at *8 (C.D. Cal. Jan. 31, 2011) (finding that state court reasonably found juror's childcare problems sufficient to render her unable to perform duties).

Habeas relief is not warranted on this claim.

G. Petitioner's Request for an Evidentiary Hearing

In his Objections to the original Report and Recommendation, Petitioner argues that he is entitled to an evidentiary hearing. Objections at 2. But an evidentiary hearing is not required on issues that can be resolved by reference to the state-court record under § 2254(d), as all of Petitioner's claims can be. Pinholster, 563 U.S. at 183 ("[W]hen the state-court record 'precludes habeas relief' under the limitations of § 2254(d), a district court is 'not required to hold an evidentiary hearing.'" (quoting Schriro v. Landrigan, 550 U.S. 465, 474 (2007))). Thus, Petitioner's request for an evidentiary hearing should be denied.

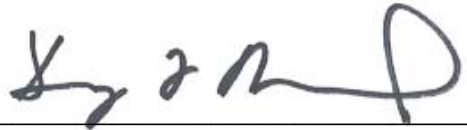
IV.

CONCLUSION

IT THEREFORE IS RECOMMENDED that the District Judge issue an Order (1) accepting this Report and Recommendation and the findings in

1 the April 9, 2015 Order to Show Cause, (2) denying Petitioner's request for an
2 evidentiary hearing, and (3) directing that Judgment be entered denying the
3 Petition and dismissing this action with prejudice.

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5 Dated: December 5, 2016

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8 DOUGLAS F. McCORMICK
9 United States Magistrate Judge
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STEPHANIE MIYOSHI

CLERK

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Court of Appeal, Second Appellate District, Division Two - No. B243535

LA 201260573

S215954

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT

FILED

THE PEOPLE, Plaintiff and Respondent,

APR 30 2014

v.

DENNIS WALLACE et al., Defendants and Appellants.

Frank A. McGuire Clerk

Deputy

The petitions for review are denied.

CANTIL-SAKAUYE

Chief Justice

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS WALLACE et al.,

Defendants and Appellants.

B243535

(Los Angeles County
Super. Ct. No. YA075709)

APPEALS from judgments of the Superior Court of Los Angeles County.
James R. Brandlin, Judge. Affirmed as modified.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant Dennis Wallace.

John G. Steinberg, under appointment by the Court of Appeal, for Defendant and Appellant Raymond Gibbs.

Joshua C. Needle, under appointment by the Court of Appeal, for Defendant and Appellant Deeya Khalill.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

In an amended information filed by the Los Angeles District Attorney, appellants Dennis Wallace (Wallace), Raymond Gibbs (Gibbs), and Deeya Khalill (Khalill) were charged in count one with the murder of Adiel Quezada (Quezada; Pen. Code, § 187, subd. (a)).¹ In count two, Wallace and Khalill were charged with the murder of Tyronn Bickham (Bickham, § 187, subd. (a)). As to both counts, it was further alleged that a principal personally and intentionally discharged a firearm proximately causing the deaths. (§ 12022.53, subds. (d) & (e)(1).) A special circumstance of multiple murder was also alleged. (§ 190.2, subd. (a)(3).) In count three, Wallace and Khalill were charged with the attempted murder of Emond Taylor (Taylor; §§ 187, subd. (a), 664.) Pursuant to section 664, it was further alleged that the attempted murder was committed willfully, deliberately, and with premeditation. As to count three, it was also alleged that a principal was armed with a firearm. (§ 12022, subd. (a)(1).) And, pursuant to section 186.22, subdivision (b)(1)(C), it was alleged that the charged offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang.

Appellants pled not guilty and denied the allegations. A jury convicted appellants of the charged offenses, found the murders in counts one and two to be first degree murders, and found the allegations to be true.

The trial court sentenced Wallace and Khalill to life in prison without the possibility of parole for counts one and two, plus two terms of 25 years to life for the section 12022.53 allegations. The 10-year sentences for the section 186.22 allegations as to counts one and two were stayed. For count three, Wallace was sentenced to state prison for life, plus 11 years (one year for the section 12022 allegations and 10 years for the section 186.22 allegation).

Gibbs was sentenced to 50 years to life for count one, consisting of 25 years to life for the murder and 25 years to life for the section 12022.53 allegation.

Appellants timely appealed.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

We agree that the trial court improperly imposed a 10-year gang enhancement on count three against Wallace and Khalill. As such, the 10-year sentence on count three is stricken and replaced with a 15-year minimum parole eligibility term. (§ 186.22, subd. (b)(5).) It follows that Gibbs is entitled to the 15-year minimum term for his sentence on count one. We also agree that all of the appellants are jointly and severally liable for victim restitution on count one and that Khalill and Wallace are jointly and severally liable for victim restitution in count two. Thus, the abstracts of judgment must also be modified to so reflect. In all other respects, the judgments are affirmed.

FACTUAL BACKGROUND

I. Prosecution Evidence

A. Evidence Related to Counts Two and Three (the Attempted Murder of Taylor and the Murder of Bickham)

On August 10, 2001, at approximately 10:30 p.m., Taylor was living in a duplex on San Pedro Street, which was frequented by the 135 Piru gang. Taylor was at home with his brother and his friend, Bickham.

Taylor had seen Khalill and Wallace in the neighborhood during the five years he had lived there. On several occasions, Wallace had asked Taylor where he was from, and Taylor responded that he did not “gangbang” and was “from nowhere.” Taylor and Bickham were not gang members, and Taylor did not associate with a gang.

At some point, Taylor and Bickham went outside to the front yard and walked towards Bickham’s brown Caprice. A female joined them. As Taylor, Bickham, and the woman stood near the trunk of the car, Taylor saw a white Nissan Altima that he had seen “all the time.” The Altima was coming from Piru Street and slowed down as it passed Taylor and Bickham.

Taylor saw four people in the car. Taylor could not clearly see the two people in the back of the car, but he could see the two people sitting in the front seat: Wallace was the driver and Khalill, known as “K-9,” was in the passenger seat.²

As the Altima drove by, Taylor heard someone in the car say, ““They get a pass”” or ““Hey, you straight.”” The car drove past Taylor and his friends and continued down the street.

Several minutes later, after the female had departed, Taylor saw the Altima again. The Altima went across San Pedro Street and stopped near an alley. Taylor could see that Wallace and Khalill were still in the front seat of the car.

A person wearing a black hoodie got out of the back seat and walked to the corner. The person began shooting. Taylor ran towards his house, and Bickham ran in another direction. Taylor jumped over his fence, ran into the back, and entered his house. Taylor told his brother that someone was shooting at him.

A short time later, Taylor heard a knock on the door. When Taylor opened the door, he saw Bickham, who had been hit by gunshots. Bickham fell to the ground. Taylor called 9-1-1.

Bickham later died from his gunshot wounds.

Los Angeles County Sheriff’s Deputy Richard White responded to the area. At the time, Bickham was being treated by paramedics. Deputy White attempted to speak to Bickham, but he was unable to do so.

Deputy White surveyed the area and observed bullet strikes to a nearby white Caprice and a fence. He also found 18 expended shell casings that were “spread out a little bit” in a yard. The recovered casings were from “7.62 by 39-millimeter” rounds and were all fired from the same weapon.

² Taylor initially testified that Khalill was the driver and Wallace was the passenger, but then he realized that he had erred. Taylor also testified that Wallace was associated with the 135 Piru gang and that he had seen Wallace driving the Altima on prior occasions. Taylor sometimes saw Khalill in the car with Wallace. Taylor never saw Wallace’s mother driving the Altima.

Deputy White questioned Taylor, who was distraught and said that he had seen four African-American males in a car and then he saw the shooter, who was also an African-American male. Taylor said that he turned and ran.

When Taylor spoke with the police, he did not tell them that he saw Wallace's Altima or that he had seen Wallace driving the Altima. Taylor did not mention the identities of the suspects because he still lived in the neighborhood and feared that they might return and kill him.

The following day, Wallace and Khalill, along with two others, went to Taylor's house in a white Caprice. Wallace asked Taylor what had happened the previous day. Taylor said that he did not know what had happened. The men suggested that perhaps "the Mexicans" had been involved in the shooting. Taylor was uncomfortable because he knew who had committed the shooting.

Taylor moved from the area after the shooting. He believed that "snitches" who talked to the police got "beat up or killed."

On August 13, 2001, Detective Frank Salerno interviewed Taylor over the telephone. At that time, Taylor indicated that someone named "Dennis" was the person who drove the Altima. Taylor had not seen anyone else drive that car.

On August 14, 2001, Detective Salerno again interviewed Taylor, who said that he had seen the Altima on prior occasions. Taylor stated that he saw the Altima a second time when it crossed San Pedro Street. The shooter exited the backseat of the car.

Taylor further relayed to Detective Salerno what had occurred on the day after the shooting.

At some point later, Taylor mentioned to Detective Salerno that the other person in the car was "K-9." Taylor said that Wallace and Khalill were members of "1 Tray 5," which meant that they were members of the 135 Piru gang. Taylor said that Wallace was the driver and that Khalill had been the passenger in the front seat. Detective Salerno checked "department resources" and uncovered one person in the 135 Piru gang named Dennis and someone else in the gang, Khalill, with the nickname of K-9.

Based on the information that he was given, Detective Salerno attempted to ascertain whether Khalill drove a white Caprice. He found that there was a release of liability in Khalill's name on that type of car. He then found the Caprice in an impound tow yard. Detective Salerno searched the vehicle and recovered a dark Nike hooded jacket from the trunk.

Detective Salerno also investigated whether Wallace had any connection to a white Nissan. He discovered that a white Nissan was registered to Wallace's mother.

Detective Salerno located photographs of Wallace and Khalill and placed them into photographic lineups. He then showed them to Taylor. In one photographic lineup, Taylor identified Wallace as the owner of the Nissan Altima and one of the people he had seen on the night of the shooting.

In another photographic lineup, Taylor identified Khalill as the passenger in the Altima. Taylor was "[c]ertain" of his identifications.

On September 5, 2001, Detective Salerno and his partner, Detective Robinson, notified Wallace and Khalill that they were under investigation for the murder of Bickham. On that date, the sheriff's department conducted a search of Wallace's residence, which was approximately four blocks south of where the shooting had occurred. At that time, Khalill was also in the residence. In a bedroom closet, deputies recovered a magazine for an AK-47 that was loaded with "7.62 by 39-millimeter" rounds. A fingerprint analysis was conducted on the magazine and rounds, but no fingerprints were recovered. A white Nissan Altima was located at the residence and impounded.

The murder went unsolved until 2010.

At the preliminary hearing in July 2010, Taylor identified Wallace and Khalill as being in the front seat of the Altima. Taylor again was "[c]ertain" of his identifications.

B. Evidence Related to Count One (Murder of Quezada)

1. *Quezada is shot to death*

On July 25, 2008, Steven Buchanan³ (Buchanan) lived near the area of 139th Street and Avalon Boulevard in the City of Los Angeles. Khalill, whom Buchanan knew as K-9, lived nearby.

At approximately 8:30 p.m., Buchanan heard something that sounded like gunshots. He went outside and got into a vehicle with his friend.

Three to five minutes later, Buchanan saw a male clad in a hoodie running past the car as if “he had done something.” The male ran across the street and stood on the sidewalk. The man eventually got into a black Chevy Tahoe that was driving by, and the Chevy then drove away.

Los Angeles County Sheriff’s Deputy Jerry Montenegro went to Avalon Boulevard in response to a 9-1-1 call. Deputy Montenegro saw a male Hispanic, Quezada, bleeding from apparent gunshot wounds to his body. Paramedics unsuccessfully tried to resuscitate Quezada, who was pronounced dead at the scene.

Deputy Montenegro saw 12 nine-millimeter and five .40-caliber shell casings “spread about the scene” near Quezada. He also found five expended bullets.

The casings were examined, and it was determined that the 12 nine-millimeter casings were all fired from the same firearm. The .40-caliber casings were all fired from another firearm.

Quezada died from multiple gunshot wounds. He had 13 gunshot wounds that resulted in 22 holes in his body. Out of the 13 gunshot wounds, three of them were fatal. The nature of the bullet wounds was consistent with the shooter or shooters standing over the victim while firing the shots.

³ At the time of trial, Buchanan was serving a sentence for criminal threats. In 1996, he had suffered a conviction for petty theft with a prior. Buchanan’s family still lived in the area and he did not want to testify. During trial, Los Angeles County Sheriff’s Deputy Richard Hartley saw Buchanan in the “general population male Black tank” at the courthouse; Buchanan and appellants were seated on the same bench and were having lunch.

Eight projectiles were recovered from Quezada's body. Four of the projectiles were nine-millimeter and could have been fired from the same weapon, such as a Glock. The remaining four projectiles were all .40-caliber Smith and Wesson ammunition that was fired from the same firearm. Israeli Military Industries manufactured a firearm, the Desert Eagle or Baby Eagle, with the same general rifling characteristics found on the .40-caliber projectiles.

Quezada belonged to the South Side Players gang and used the moniker Stomper. The place where Quezada lived and was killed was claimed by the Barrio 13 gang.

Detective Michael Valento responded to the area where Quezada was killed and noticed gang graffiti, including graffiti by the South Side Players and the B-13 gang, on the walls of an alley behind the apartment complex where Quezada was killed. There was no graffiti by the 135 Piru gang.

2. Information from Samuel Feissa (Feissa)

Feissa was a former member of the 135 Piru gang.⁴ Appellants were also members of the 135 Piru gang. Wallace had the moniker "Poke"; Khalill had the moniker "K-9"; Gibbs had the moniker "Peanut."

Feissa lived "[f]airly close" to where Quezada was killed and could get there by car in approximately five to seven minutes.

Feissa had been to Khalill's house and had seen several guns, including a nine-millimeter handgun, a "Desert Eagle 40," and a nine-millimeter with an "extended clip."

Feissa worked as an informant for Sheriff Detective Sean Shaw, who gave Feissa "a couple of thousand" in "[i]ncrements." Detective Shaw also gave Feissa a Toyota Tercel to drive. Feissa received other benefits for being an informant, such as having one case that "disappear[ed]" and being released when he was pulled over by sheriff's deputies.

⁴ Feissa was deemed unavailable and his preliminary hearing testimony was read at the trial. He had a prior conviction for felony possession of marijuana and was on probation at the time of the preliminary hearing.

On July 28, 2008, Feissa was arrested for possessing a firearm. At that time, he told Detective Shaw about a murder that took place on July 25, 2008, on Avalon Boulevard.⁵ In August 2008, Detective Shaw told Detective Valento that Feissa had information about Quezada's murder.

On August 7, 2008, Detective Valento interviewed Feissa. He investigated Feissa's case and determined that the gun that Feissa possessed was not the weapon that had been used to kill Quezada. Feissa was not prosecuted in the firearm case. Feissa was paid for the information he provided in appellants' case.

Although generic information about Quezada's murder had been publicized, the police had not released information that two guns were used to kill Quezada, that one of the weapons was a nine-millimeter, that the other weapon was a .40-caliber, that an eyewitness had seen a Chevy Tahoe leaving the area shortly after the shooting, or that Quezada was a South Side Player gang member.

Feissa said that he had previously met Quezada, who stated that he was from the South Side Players. He had warned Quezada that people might think that he belonged to the Barrio 13 gang.

Feissa was not present when Quezada was shot, but had heard about the crime during several conversations. On one occasion, Feissa had been at Khalill's house.⁶ In addition to Khalill, Gibbs and others were there. Feissa asked Khalill about what had happened and told Khalill that the victim did not belong to a rival gang. Khalill responded, "Kick Mexicans."

⁵ Feissa also had information on the murder of Juan Llanos (Llanos) a "shot-caller member" of the Barrio 13 gang, committed by Marcellous Prothro (Prothro) and Shawn Simpson (Simpson). Prior to Feissa's information, the murder of Llanos was unsolved. Feissa received \$7,250 for the information he gave in the Llanos murder and Quezada's murder; Feissa did not receive a reward that was put up by Llanos's family. Prothro was arrested on July 31, 2009, in the Llanos murder.

⁶ Prior to arriving, Feissa had smoked a "[c]ouple of blunts" of marijuana.

At some point during the event, Feissa had a conversation with Gibbs. Feissa mentioned that the victim was not a rival gang member. Gibbs replied, “‘Fuck Sarrios.’”⁷

During a telephone conversation, Khalill told Feissa that “they caught a Sarrio slipping.” According to Feissa, Khalill said that he and Wallace had seen a rival gang member. They drove to Khalill’s house on 139th Street. They retrieved “burners” (guns). They walked down the street and returned to Quezada, asked him where he was from, and then Khalill and Gibbs “dumped him out,” meaning they shot Quezada. Appellants ran back to 139th Street. Wallace got into a dark blue Chevy Tahoe and left.

Approximately two or three months after the murder, Feissa had another conversation with Gibbs while they were attending a “function.” Gibbs said that he and Khalill had walked over to Quezada, that Khalill had asked Quezada where he was from, and that Khalill and Gibbs had shot him while Wallace waited across the street as a “lookout and cover.” Gibbs told Feissa that a “nine and 40” were used in the murder.⁸ Gibbs then ran back to Khalill’s house.

Gibbs said that Jerrod Taylor (Jerrod), known as “Baby Spoke,” was supposed to do the murder and that he “bitched out” and became “[s]cared to put in work.” Jerrod then joined the conversation. He said that “he had trucked it” (run fast), that “the homeys” had given him the guns (a “nine and 40”), and “that he had to hit the wall and . . . go [to] his house and put the guns up.” Feissa told Jerrod that he was “fucked up for beating up Drip,” Jerrod’s neighbor, who had placed the guns in a trash can.

After obtaining information from Feissa, Detective Valento attempted to corroborate that information. He believed that the case was a “prime candidate for wiretap.”

⁷ According to Feissa, “Sarrio” is a derogatory name for a member of the rival Barrio 13 gang.

⁸ Feissa later testified that he did not know what type of weapons were used in the murder.

On November 29, 2008, Detective John Duncan showed photographs of Wallace's Chevy Tahoe to Buchanan. Buchanan said that the vehicle depicted in the photographs looked similar to the one he saw on the night of Quezada's murder, but thought that the vehicle was darker.

C. Wiretaps of Appellants

Detective Duncan participated in a wiretap investigation involving the 135 Piru gang. The 135 Piru gang was targeted because it was suspected in some murders and shootings. As part of the wiretap investigation, appellants' telephone calls were monitored and recorded. Detective Duncan knew appellants and was familiar with their voices.

Also as part of the wiretap investigation, the police sometimes engaged in "stimulation tactics," such as serving search warrants or placing something in the media. All of these tactics were designed to "stimulate" gang members to converse with each other on the telephone.

Detective Duncan listened to a number of calls that were recorded pursuant to the wiretaps of 135 Piru gang members. In those calls, appellants never said anything to indicate that they were shocked that they were being charged with the murder; nor did they say that Feissa had murdered Quezada.

1. *Recorded telephone call between Khalill and Krystal Woolard (Woolard) on October 9, 2008*

On October 9, 2008, Woolard was incarcerated in jail for prostitution. During a recorded telephone call, Khalill said that he was "killing" people "out here."

2. *Telephone call between Gibbs and an unidentified female on February 17, 2009*

During the recorded telephone call, Gibbs and an unidentified female discussed death. Gibbs stated that some people at his funeral might say that he "'shot like [two]'" people.

3. *Recorded telephone calls on February 21, 2009*

On February 21, 2009, a stimulation was done using the television show, “L.A.’s Most Wanted.” The show aired at 10:30 p.m. The sheriff’s department gave the show some information on three different homicides to stimulate the suspected individuals involved in those crimes to have telephone conversations about the offenses. During the show, composite drawings of Wallace and Khalill were televised.

Shortly after the program aired, a telephone conversation was recorded between Wallace, someone named “Evil,” and an unidentified male. During the conversation, Evil told Wallace that he heard that Wallace and K-9 had been on “America’s Most Wanted” for “some shit” that had happened on “February 8th and the other day.” Wallace said that he did not know “what the fuck they’re talking about.”

An unidentified male then came on the line. He stated that “whatever” or “wherever” Wallace went, he should let the unidentified male know so that he could get Wallace “some kind of little change to have in [his] pocket when [he] get[s] to where [he is] going.”

At 10:47 p.m., Gibbs called Wallace and asked if Evil had called. When Wallace stated that he had “just heard,” Gibbs responded: “Ain’t that some crazy shit?”

At 10:50 p.m., Gibbs and Khalill also had a telephone conversation. When Gibbs asked if Evil had called, Khalill replied, “Yea, blood well I’m outta here!” Khalill stated that he needed to “figure some shit out” and to see “what the fuck [was] going on.” He added that he would be dropped off at “the whooptie.”⁹

4. *Recorded telephone calls on February 24, 2009*

On February 24, 2009, another stimulation was done in which the police conducted searches on certain residences, including those of Khalill and Jerrod.

⁹ According to Detective Duncan, “wheetie” replaces the noun that is being discussed and could be used instead of saying “car” or “neighborhood” or “gun.”

During a recorded telephone conversation, Khalill told Wallace that the police threw him in the car and went “through [his] shit.” Khalill said that a homicide detective asked “a gang of questions” about Wallace. Khalill denied knowing Wallace.

Khalill stated that the police had confiscated 30 photographs and “ransacked” his belongings. The police told him that they had “aired that shit” and that they had received 40 telephone calls. Khalill said that the police had found Gibbs’s identification and wanted to know where he was.

Wallace asked Khalill if he had called “the baby.” Khalill replied, “I called you first blood.” Wallace said that he was going to school and advised Khalill to “keep [him] posted.”

Khalill then stated that the “good thing [was] they obviously ain’t got shit.” He added that someone was talking to the police.

Wallace responded that he was surprised that the police had not searched his residence and said that he was going to call home to see if a search had begun, noting that “when they do shit like that, they hit everybody at the same time.”

At 7:10 p.m., Gibbs called Jerrod, who stated that the police had “hit” his house. Jerrod said that the police had asked for Gibbs and Khalill’s location. Jerrod denied knowing Gibbs.

Gibbs advised Jerrod that the police “ain’t got shit” and that the police could not do anything. Jerrod replied that he had heard that the police had “just hit” the houses of two other 135 Piru gang members. Jerrod stated that the police had found “the thirty odd box,” which, according to Detective Duncan, was a rifle. Jerrod said that “they took the gun” and that he had “seen the burner.”

Jerrod then said that the police had searched his house for two hours and brought in a dog. Gibbs said that he was “fucked if they find that whooptie.”

Jerrod reiterated that someone was “snitching.” He denied doing anything or knowing anything.

Finally, Jerrod said that when the police arrived at his house, he ran to the back door and said, “‘Poke, it’s the police!’” Poke “took off running.”

5. *Recorded telephone conversation between Khalill and “Fat Dog” on February 28, 2009*

During the conversation, Khalill asserted that “somebody’s telling” and that the identity of the person would “come to light” during any court proceeding. Fat Dog asserted that the person who was talking to the police would not want to testify because “we’re going to be in that court waiting.”

6. *Recorded telephone conversations on March 3, 2009*

On March 3, 2009, at approximately 4:00 p.m., another stimulation was done in which members of the sheriff’s department went to Wallace’s residence and obtained his DNA sample. Wallace was told that the DNA sample was being obtained so that it could be compared to an expended casing at the scene of the 2001 homicide.

After the stimulation, at 4:38 p.m., Wallace called Khalill and told him to leave wherever he was because the police just “hit” him in Pasadena and took a DNA sample. Wallace stated that the police suspected that they had committed “that 2001 shit.” Wallace further said that the police told him that they would obtain Khalill’s DNA.

Wallace said that the police told him that his boat was “sinking” and that he was on “borrowed time.” Khalill said that things were “getting worse and worse.”

At 5:36 p.m., Gibbs told Khalill that Wallace had just called him to tell him that the police had taken his DNA.

7. *Recorded telephone call between Wallace and his mother on March 3, 2009*

During a recorded telephone conversation, Wallace’s mother told Wallace that if the police had enough evidence, they would have arrested him. Wallace said that the police were “workin’ on it” and that the police were “gettin’ ready” for a trial. Wallace advised his mother to call an attorney, tell the attorney that the police had taken his DNA, and that Wallace wanted to hire him.

8. *Recorded telephone conversation between Khalill and his mother on August 3, 2009*

Khalill told his mother that he had just been charged with two murders and was “tryin['] to just soak it all in.” When Khalill’s mother asked him if he was “even there,” he responded that he had been “there,” but that he did not know “what the fuck they [were] talkin’ about.” Khalill complained that people were “tryin['] to ruin [his] life.”

D. YouTube Video of Khalill

As part of the investigation into the 135 Piru gang, Detective Duncan searched YouTube for any videos by the gang. During the search, Detective Duncan recognized Khalill in a video. The video had been placed on YouTube in 2007.

In the video, Khalill performed a rap song. At the start of the video, Khalill asks: “That kid on San Pedro?” Then, he adds that that person is “dead.” Khalill then states that he could “back mine, or spray it out and stack mine.” He said that he burned “trees like a torch” and that he “roll[ed] with gutless gunners” and “Glock cockers.” Khalill says that there was “blood in the drain” and that “[n]o witness, no name equal no one to blame.” He also states that “[d]ue to repercussions, neighbors scared to speak.” At another point, Khalill says, “Welcome to my murder show.” He adds: “One Glock, two pops, two drops.” He concludes with: “a rider causing more casualties than Al Queda.”¹⁰

E. Feissa’s Proffer Interview and Proffer Agreement

In March 2009, Feissa was arrested and charged with burglary, narcotic sales, and gang conspiracy. In August 2009, Detective Valento conducted a proffer interview with Feissa and a prosecutor. As part of that procedure, Feissa entered into a proffer agreement, which promised that the information Feissa gave during the interview would not be used against him.

¹⁰ According to Detective Duncan, a “rider” is someone who puts in work for the gang.

In the proffer interview, Feissa stated that on the night of Quezada's murder, Feissa told appellants that Quezada was not a member of the rival gang, Barrio 13. He also told Detective Valento: "'K-9 said that he's fitting to be gone for [the] rest of his life. He's about to be gone for the rest of his life.'" When Detective Valento asked Feissa what Khalill was referring to when he said that, Feissa answered, "'the little kid that got killed.'" Feissa indicated that sometimes he could not remember whether the information he received from Khalill was in person or on the telephone.

During the proffer interview, Feissa also said that, at some point, he got into Wallace's Chevy Tahoe and had a conversation with Wallace, who said that "it had to be done." Feissa believed that Wallace was referring to Quezada's murder.

Feissa was consistent that he spoke to Khalill and Gibbs about the murder. He was also consistent in reporting that Khalill and Wallace drove by and "saw a Sarrio slipping," that Khalill and Wallace returned to Khalill's house and "talked to the homeys," that appellants walked to Avalon Boulevard, that Khalill asked Quezada where he was from, that Khalill and Gibbs were the shooters and that Wallace was the lookout, that a nine-millimeter and a Desert Eagle 40 were used, that appellants ran back to Khalill's house, and that Wallace got into his Chevy Tahoe and drove away.

Approximately one month later, Feissa entered into a leniency agreement. Under the terms of the agreement, Feissa pled guilty to the charges against him and agreed to testify in appellants' case, as well as in Simpson and Prothro's case (for the Llanos murder). Feissa would remain in custody until the preliminary hearings in both cases had occurred. Feissa would not be sentenced until the conclusion of both trials, and the sentence would be left to the trial court's discretion.

Once Feissa was released from custody, he was relocated. In July 2011, he was arrested for the murder of Daveon Childs. Feissa received no leniency in that case. The parties stipulated that Feissa was guilty of the murder of Daveon Childs, who was killed in a drive-by shooting on January 3, 2008.

F. Events Occurring After Feissa's Proffer Agreement

Appellants were arrested on July 31, 2009. On that date, Detective Duncan looked at the cellular telephone recovered from Wallace and found a video from "L.A.'s Most Wanted" that had been aired as a stimulation.

Wallace's phone also had a photograph of Jerrod and Khalill. In the photograph, Khalill and Jerrod appeared to be "throwing . . . gang signs."

In the contacts section of Wallace's phone were listings for "B Spoke," "Peanut," "K-9," and "Ethie" (Feissa's moniker).

G. Gang Expert Testimony

Detective Duncan testified as a gang expert. He opined that appellants, Jerrod, and Feissa were all members of the 135 Piru gang. In August 2001, one rival of the Piru gang included the Nutty Block Crips. Bickham was a legacy member of the Nutty Block Crips, as he was the son of a well-known Nutty Block gang member, Michael Tresvant. Detective Duncan believed that it would have been "a pretty good score for a 135 Piru gang member to kill the son of Michael Tresvant."

In July 2008, the number one rival of the Piru 135 gang was the Barrio 13 gang. Detective Duncan did not believe that Quezada was a member of the Barrio 13 gang.

According to Detective Duncan, gang members sometimes went on missions together.

In Detective Duncan's experience, people were reluctant to report gang crimes. Thus, law enforcement commonly used informants to gain gang information and obtain information about a particular crime. Informants sometimes got paid. They were often gang members who had criminal histories.

The prosecutor gave Detective Duncan two hypotheticals based on the 2001 and 2008 murders. He opined that both crimes were committed in association with a criminal street gang.

II. *Defense Evidence*

A. Gibbs's Evidence

1. *Jolon Gordon (Gordon)*

On July 25, 2008, at approximately 8:30 p.m., Gordon was near 139th Street and Avalon Boulevard to go to the mailbox for his mother. He had a clear view of the apartment across the street. As he approached the mailbox, he saw one male walking on Avalon Boulevard; he did not recognize the person. He also saw three people jaywalking at an angle across the street.

While Gordon was at the mailbox, a “[g]uy got shot.” When Gordon heard the gunshots, he ducked behind the mailbox. While he was ducking behind the mailbox for approximately 12 seconds, he saw a black Toyota Camry drive by. The car was “burning rubber” and was going fast. Gordon also saw the three jaywalkers running back across the street.

One of the three jaywalkers looked at Gordon as he ran back across the street. Gordon got a good look at the person, who was a tall African-American male with braids.

Gordon was familiar with appellants from the neighborhood. He did not see them when the shooting occurred. He was “100 percent sure” that Khalill was not anyone he had seen on the night of the shooting. When he was interviewed by Detectives Gene Morse, Valento, and Duncan, he never mentioned Gibbs as being one of the people he had seen on the night of the shooting.

Gordon spoke to Detectives Valento and Duncan in 2011 in Texas. He was shown three photographic lineups. He identified Wallace as someone he recognized from the neighborhood, but not as someone he had seen on the night of the murder. He also recognized Khalill in one of the lineups.

Later, Gordon told detectives that if Khalill had been involved in the shooting, he (Gordon) would have said so. But he also told Detective Valento that he was nervous because Khalill knew “everything” about his family and that his family still lived in the area. He had no doubt that “the person,” who the parties stipulated was Khalill, would retaliate.

In a later conversation between Gordon and Detective Morse, Gordon did not tell Detective Morse that he was too scared to identify Khalill or that he was afraid for his safety for being a snitch.

Appellants never threatened Gordon.

2. *Feissa*

On March 3, 2009, Detective John Duncan was working with Detective Ty Labbe in investigating the July 25, 2008, murder. They interviewed Feissa, who was in custody. During the interview, Feissa blamed someone named Matrell for logging onto his (Feissa's) home computer and accessing certain data, as well as handling a package. Detective Labbe believed that Feissa was lying.

Detective Labbe also accused Feissa of ““playing [law enforcement].”

Detective Duncan believed that Feissa was being dishonest about whether he was a drug trafficker.

Detectives Duncan and Labbe learned that Feissa was a suspect in the murder of Daveon Childs. When they questioned him about his involvement, he lied and attempted to blame someone else for that murder.

After the interview with Feissa, Detective Labbe filled out a card indicating that Feissa was an unreliable informant. Detective Labbe explained that because there was a threat against Feissa and Detective Labbe could not control him, Feissa was a “liability.” Also, Feissa was not truthful about his whereabouts or his activities. Although Detective Labbe completed a card indicating that Feissa was unreliable, that did not mean that he was being dishonest in regards to the information he provided in the Llanos murder or the Quezada murder.

In fact, the information provided in the Llanos and Quezada murder investigations was corroborated.

B. Khalill's Evidence

1. *Jackie Kidd (Kidd)*

Kidd, Khalill's aunt, testified that Khalill lived in Atlanta in the 1990's with his mother and father. He did not move back to Los Angeles until after October 13, 2001, and she could not recall a time prior to that date when he had visited Los Angeles. (Kidd had not told law enforcement this information, even though she knew that Khalill had been arrested.

2. *Feissa*

On July 29, 2008, at approximately 10:30 p.m., Deputy Gregory Campbell and his partner, Mark Antrim, conducted a traffic stop of a black Toyota Camry in which Feissa was a passenger. Deputy Campbell detained the occupants of the vehicle. While the occupants were being removed from the vehicle, Deputy Campbell discovered a loaded nine-millimeter handgun at Feissa's feet. Feissa was arrested. Deputy Campbell considered the weapons possession to be gang-related. But, he did not believe that they were going to do a drive-by shooting because there were two females in the car.

Elvie Porter (Porter) was in custody in a case in which he was charged with attempted murder and a gang allegation. Feissa and Porter were housed in adjoining cells. At some point, Feissa threatened to testify falsely in Porter's case. He told Porter that he had testified falsely in several other cases, including one involving K-9. Feissa also mentioned that the detectives in the case made him read the murder books and that he had memorized them.

3. *Martin Flores (Flores)*

Flores, a court-appointed gang expert, testified that if Quezada was writing graffiti on the walls in the neighborhood, it would be considered disrespectful to Barrio 13 and could result in the person being shot or killed. He believed that it was "unheard of" for a gang member to kill the son of another gang member merely because he was the son of a

gang member.¹¹ He was unaware of any conflict between Michael Tresvant and appellants.

In 2001, in urban low-income neighborhoods, Caprices and Impalas were popular cars among young people. The Caprice was a popular car with gang members.

From 1999 to 2001, Taylor was “at peace” with Wallace. Flores was unaware of any conflict between Khalill and either Taylor or Bickham.

When asked a hypothetical question similar to the facts of the Quezada murder, Flores opined that it was “less likely” that an older gang member would have committed the crime, and “more likely” that younger gang members would be committing such crimes.

Finally, Flores testified that he was familiar with cases in which an informant in a gang used his role as an informant to retaliate against certain gang members. Because informants were given “incentives,” they had a motive to lie against the gang. Based on the information he had reviewed, Flores believed that Feissa “at one point was an active member from 135.”

C. Wallace’s Evidence

Robert Shomer (Shomer), a psychologist who specializes in eyewitness identification, testified extensively that eyewitness identification is “the least reliable means of identification we have,” even “under the very best conditions.” Even if a witness is “very confident,” his identification could “not [be] accurate at all.”

¹¹ According to Flores, shooting Michael Tresvant’s son would not have given anyone “bragging rights” because the son was not a documented gang member.

III. *Rebuttal Evidence*

A. Detective Valento's Interviews with Gordon

Detective Valento interviewed Gordon on several occasions. During an interview in August 2008, Gordon did not mention that he had seen three people running across the street. He did mention that he had seen a black Camry. Gordon said that he was unsure whether the Camry was involved in the shooting and that the occupants may have been trying to drive away from the area because they had heard the gunshots and were afraid.

In May 2011, Detective Valento flew to Texas to interview Gordon because Gordon had told Detective Morse that he had additional information regarding the murder. During the May 2011 interview, Gordon stated that he had seen three individuals walk across the street; then he heard gunshots and ducked behind a mailbox; then he saw the same three people running back in his direction. Gordon said that one of the three had stopped and looked at him. Gordon also said that he had seen a person walking down the street, but that that person was not responsible for the shooting.

Detective Valento showed Gordon some photographic lineups. When Detective Valento showed Gordon the photographic lineup containing Khalill's photograph, Gordon did not make any identifications. In another lineup containing Wallace's photograph, Gordon mentioned Wallace's gang moniker, but did not specifically identify Wallace's photograph. He did not identify Gibbs in a third photographic lineup.

After the interview, Gordon called Detective Valento and said that he had more information to disclose. Detective Valento asked Gordon if he had originally been reluctant to speak to detectives due to fear, and Gordon replied, "Something like that, bro."

Detective Valento later interviewed Gordon in a car outside of Dallas. Gordon said that he recognized someone in one of the lineups, but that he was nervous to make an identification. Gordon stated that he recognized "K-9 from 135." He also said that Khalill knew Gordon and his family. And, Gordon stated that someone had thrown something at his vehicle, and when Gordon stopped and got out of his car, Khalill confronted him and said "I know where you live."

Gordon called Khalill a “ringleader.” When Detective Valento asked if Gordon meant that Khalill was a “shot-caller,” Gordon agreed that that was a better description. Khalill’s position in the gang was one reason why Gordon was fearful of retaliation.

B. Search of Feissa’s Computer

At some point, Feissa’s computer was searched. On the computer was a photograph of Llanos, with his face crossed out; the number 135 appeared below the face. Feissa was in jail at the time Llanos was murdered.

Feissa told Detective Valento that Simpson used the paint brush function on the computer to cross out the photograph of Llanos. Simpson was subsequently convicted of murdering Llanos.

Feissa’s computer also contained a photograph of a hand holding a handgun. The weapon appeared to be a “small caliber handgun, probably .380 or [a] .25 auto.”

DISCUSSION

I. *The trial court did not err in denying the severance motions*

Gibbs argues that the trial court erred in denying his motion to sever count one from the other counts.¹²

Section 954 permits the joinder of “two or more different offenses of the same class of crimes or offenses.” (*People v. Myles* (2012) 53 Cal.4th 1181, 1200; see also *People v. McKinnon* (2011) 52 Cal.4th 610, 630.) “The law favors the joinder of counts because such a course of action promotes efficiency.” (*People v. Myles, supra*, at p. 1200.)

¹² Below, Wallace filed a motion to sever his case from that of his codefendants; that motion was also denied by the trial court. On appeal, Wallace joins in the argument raised by Gibbs. But, Wallace’s “reliance solely on [Gibbs’s] arguments and reasoning is insufficient to satisfy his burden” of showing error and prejudice. (*People v. Nero* (2010) 181 Cal.App.4th 504, 510, fn. 11.) After all, their positions are completely different—Gibbs argues that count one should have been severed from the trial; Wallace argued that his case should have been severed from that of his codefendants. Because Wallace raised a different claim in the trial court, and because that claim is governed by a different test than the one raised by Gibbs on appeal (*People v. Homick* (2012) 55 Cal.4th 816, 848), Wallace’s contention fails.

Here, counts one through three were of the same class of crimes or offenses because they alleged murder and attempted murder. (*People v. Thomas* (2011) 52 Cal.4th 336, 350; *People v. Soper* (2009) 45 Cal.4th 759, 771.) Thus, the statutory requirements of joinder were met.

When the statutory requirements for joinder are satisfied, a trial court has the discretion to sever the counts; however, “there must be a ‘clear showing of prejudice to establish that the trial court abused its discretion in denying the defendant’s severance motion.’” (*People v. Myles, supra*, 53 Cal.4th at p. 1200.) An abuse of discretion occurs when the ruling by the trial court exceeds the bounds of reason. (*People v. Hartsch* (2010) 49 Cal.4th 472, 493.)

A refusal to sever charges may be an abuse of discretion when: (1) evidence on the charges would not be cross-admissible in separate trials; (2) certain charges are likely to inflame the jury against the defendant; (3) a weak case is joined with a strong case, or two weak cases are joined together; and (4) any of the charges carries the death penalty or the joinder of them turns the matter into a capital case. (*People v. Myles, supra*, 53 Cal.4th at p. 1201.)

Here, some of the evidence related to the wiretapped recordings would have been cross-admissible if the charges based on the 2001 murder and attempted murder had been tried separately from the 2008 murder charge. For example, many of the recorded telephone calls showed a connection among all three appellants or a connection between Wallace and Khalill. Because the evidence was cross-admissible, that alone was sufficient for the trial court to refuse to sever the charged offenses. (*People v. Hartsch, supra*, 49 Cal.4th at p. 493; *People v. Soper, supra*, 45 Cal.4th at pp. 774–775.)

Even if the evidence were not cross-admissible, other factors confirm that the trial court did not abuse its discretion in rejecting Gibbs’s severance motion. Because the charges related to the 2001 and 2008 incidents both involved senseless and unprovoked murders, one was not more likely to inflame the jury than the other. (*People v. Soper, supra*, 45 Cal.4th at p. 780.) If anything, the 2008 murder was more offensive than the 2001 incident because the 2001 incident involved a drive-by shooting, in which Bickham

was killed and gunshots were fired at Taylor, whereas the 2008 incident involved numerous gunshots fired at Quezada while he was on the ground. Although Gibbs argues that the gang evidence related to the 2001 crime was unduly inflammatory, this evidence “paled in comparison to the evidence of the most prejudicial facet” of the 2008 murder—“its absolute senselessness,” its utter brutality, and the extreme amount of overkill. (*People v. McKinnon, supra*, 52 Cal.4th at p. 631.) Thus, there was little likelihood that the joinder of the charges would inflame the jury.

Contrary to Gibbs’s assertion, the evidence related to the 2008 murder was not weak compared to the evidence of the 2001 charges. The 2001 charges were supported by the testimony of Taylor, who identified Khalill and Wallace as being involved in the crimes, as well as evidence that the police found ammunition at Wallace’s house that was the same caliber as casings found at the murder scene. The 2008 charge was supported by Feissa’s testimony. The recorded telephone conversations further established the connection among appellants.

Although Gibbs claims that the evidence related to the 2008 murder was weak because it relied on Feissa’s testimony, Feissa’s background actually buttressed his testimony because it supported an inference that he would have had access to appellants and that they would have been willing to make incriminating statements to him. Even if the 2001 evidence may have appeared somewhat stronger than the 2008 evidence at the time of the severance motion, “the salient point is that the proffered evidence was sufficiently strong in both cases.” (*People v. Soper, supra*, 45 Cal.4th at p. 781.) Moreover, the evidence related to the 2001 charges and the evidence related to the 2008 murder were sufficiently distinct “as to render the likelihood of prejudice minimal.” (*People v. Mendoza* (2000) 24 Cal.4th 130, 162.) In light of these factors, there is little likelihood that the jury was improperly influenced by evidence of one murder in determining guilty on the other.

Notably, “it [is] always . . . possible to point to individual aspects of one case and argue that one is stronger than the other.” (*People v. Soper, supra*, 45 Cal.4th at p. 781.) “A mere imbalance in the evidence, however, will not indicate a risk of prejudicial

‘spillover effect,’ militating against the benefits of joinder and warranting severance of properly joined charges.” (*Ibid.*) “Furthermore, the benefits of joinder are not outweighed—and severance is not required—merely because properly joined charges might make it more difficult for a defendant to avoid conviction compared with his or her chances were the charges to be separately tried.” (*Ibid.*)

Gibbs further argues that the denial of his severance motion resulted in a due process violation. We are not convinced.

“Even if a trial court’s severance of joinder ruling is correct at the time it was made, a reviewing court must reverse the judgment if the ‘defendant shows that joinder actually resulted in “gross unfairness” amounting to a denial of due process.’” (*People v. Mendoza, supra*, 24 Cal.4th at p. 162; see also *People v. Myles, supra*, 53 Cal.4th at p. 1202.) Here, there was no due process violation.

First, the evidence related to the 2001 offenses and the evidence relating to the 2008 murder were “simple and distinct.” (*People v. Soper, supra*, 45 Cal.4th at p. 784.) Thus, the jury would have been able to “compartmentalize the evidence presented in the two cases,” thereby insuring that there would be “no improper spillover effect” or gross unfairness by the joinder of the charges. (*Ibid.*)

Second, the separate nature of the 2001 offenses and 2008 murder was highlighted by the prosecutor and the trial court. For example, the prosecutor made clear during opening statement that count one (the murder of Quezada) was “charged against all three defendants,” while counts two and three (relating to the murder of Bickham and the attempted murder of Taylor) applied “only to defendants Wallace and Khalill.” The prosecutor reiterated that counts two and three “do not pertain to defendant Gibbs. I want to be clear about that.” The trial court also emphasized that Gibbs was not charged in counts two and three, noting, after Taylor’s testimony, that Gibbs was “not charged in this offense, is not suspected in his offense,” and that “nothing regarding the testimony of this witness or the allegations on this case are to be used against Mr. Gibbs for any purpose.”

Moreover, the trial court instructed the jury that “[a]ll three defendants are charged in count 1,” which involved the murder of Quezada, but that only Khalill and Wallace were charged in counts two and three. The trial court also instructed the jury that it “must separately consider the evidence as it applie[d] to each defendant” and that it “must decide each charge for each defendant separately.” And, the trial court instructed the jury that Wallace and Khalill, but not Gibbs, were charged with the special circumstance of having been convicted of more than one murder in this case. The statements by the prosecutor and the trial court instructions “mitigated the risk of any prejudicial spillover.” (*People v. Soper, supra*, 45 Cal.4th at p. 784.)

Citing *U.S. v. Bradley* (9th Cir. 1993) 5 F.3d 1317 (*Bradley*) and *Bean v. Calderon* (9th Cir. 1998) 163 F.3d 1073 (*Bean*), Gibbs contends that the jury would have disregarded the instructions. However, decisions by federal courts are not binding on this court. (*People v. Beltran* (2013) 56 Cal.4th 935, 953.) And, Gibbs failed to provide any evidence to overcome the presumption that the jurors followed the trial court’s instructions. (*People v. Racklin* (2011) 195 Cal.App.4th 872, 877.)

In any event, the two cases are distinguishable. *Bradley* did not involve a severance motion. (*Bradley, supra*, 5 F.3d at pp. 1319–1321.) And, in that case, the challenged evidence showed a propensity for violent crime and became the focus of latter stages of trial and the prosecutor’s closing argument. (*Id.* at p. 1322.) In contrast, the evidence here related to two distinct incidents and the instructions made clear that Gibbs was not charged in connection with the 2001 crimes.

Likewise, *Bean* is inapposite. In that case, the defendant moved to sever two cases in which he was charged. The prosecutor urged the jury to consider evidence of the defendant’s modus operandi to determine the defendant’s guilt in both cases and the instructions given only stated that each count charged a distinct offense and had to be decided separately. (*Bean, supra*, 163 F.3d at pp. 1083–1084.) In contrast, here it was made clear by both the prosecutor and the trial court’s instructions that only count one applied to Gibbs.

Gibbs's reliance upon *People v. Albarran* (2007) 149 Cal.App.4th 214 is also misplaced. That case did not involve a severance motion; instead, it considered the admission of gang evidence that was deemed irrelevant to the charges. (*Id.* at pp. 227–228.)

Finally, for the same reasons already discussed, a more favorable result for Gibbs was not reasonably probable even if count one had been tried separately from counts two and three. (*People v. Tafoya* (2007) 42 Cal.4th 147, 162.) Accordingly, we conclude that the trial court did not err in denying Gibbs's severance motion.

II. *The trial court properly admitted Feissa's preliminary hearing testimony*

Gibbs and Khalill argue that the trial court erred by admitting Feissa's preliminary hearing testimony.¹³

A. Events at the preliminary hearing

Prior to the preliminary hearing, Khalill's attorney told the trial court that there was "uncharged conduct on behalf of [Feissa] regarding [a] shooting incident." The prosecutor stated that there was "a pending investigation" into the matter. Khalill's attorney responded that he needed the information because Feissa was an informant and the information might relate to "motive and biases and those kind[s] of things."

Wallace's counsel then noted that Feissa was "apparently making deals to testify against [appellants] in return for something from the prosecutor for a case that he has pending." He opined that "this might be one of those incidents" and that Feissa was "testifying not only in this case but in other cases." Wallace's attorney then informed the trial court that Wallace did not want to "waive any more time." He suggested that the information on Feissa be "flushed] out some other time."

¹³ Wallace attempts to join in their arguments. However, his "reliance solely on [Gibbs's and Khalill's] arguments and reasoning is insufficient to satisfy his burden" of showing error and prejudice. (*People v. Nero, supra*, 181 Cal.App.4th at p. 510, fn. 11.) Unlike Gibbs and Khalill, Wallace decided not to cross-examine Feissa during the preliminary hearing. Thus, their arguments do not necessarily establish error or prejudice in his case.

The trial court declared a recess until the following morning and requested that Gibbs and Khalill’s attorneys determine whether they wanted to proceed with the preliminary hearing or conduct a hearing into the investigation of Feissa.

The next day, Khalill’s counsel stated that he was requesting “all of the information” law enforcement had regarding the incident in which Feissa was a suspect. Counsel argued that the information was relevant to Feissa’s “potential bias and/or motive to cooperate with the police.” Gibbs and Wallace joined in the request.

The trial court denied the motion, finding that the attorneys could cross-examine Feissa on bias and “prior investigation.” The preliminary hearing then began. Feissa was called as a witness.

1. *Cross-examination by Khalill*

Feissa admitted that he had spoken with the police about this case “[a] few” times; the conversations were always recorded.

He testified that he had a criminal case involving a burglary. Under a leniency agreement, Feissa would be sentenced after trial, but would be released from custody after testifying at the preliminary hearing. He was facing prison time for the crimes and was “scared of prison.”

Feissa further testified that he wanted to go home as soon as he could.¹⁴ At first he stated that he was facing “a couple of years” in state prison due to his plea, but then eventually admitted that he was facing five to seven years.¹⁵

Khalill’s attorney then asked Feissa if he had been convicted in a narcotics case. Feissa replied that he had, that he went to court in March 2008, and that he pled guilty in a marijuana case. He said that he was told by the prosecutor that the crime would be a misdemeanor if he did community service. Feissa promised to do the community service.

¹⁴ The magistrate did not allow defense counsel to pose questions about whether Feissa wanted to be in jail during the summer, asking counsel to “move through this.”

¹⁵ The magistrate stopped questions about whether seven years was more than two years, commenting that he did not want to “waste time” and did not want any “drama.”

When Khalill's attorney pushed questions about whether Feissa "gave [his] word," the trial court sustained the prosecutor's objections on relevance grounds; the trial court also found the question to be argumentative. Khalill's attorney did ask Feissa whether he had performed the community service; he replied that he did not.

Khalill's attorney was allowed to ask Feissa whether he was having problems with his memory. He admitted that he did not "remember things," and he admitted that he had told someone that he forgot things as a result of past drug use.¹⁶

Feissa invoked his Fifth Amendment privilege when asked questions about a murder and two attempted murders that had occurred on Tarrant Street (the Tarrant Street murder) and when asked whether there were any other criminal investigations pending.

Feissa testified that he was paid for information he provided in this case, but he did not recall the amount; the trial court sustained an objection to questions about whether he was paid in cash and whether he was going to pay taxes on those monies.

Feissa was not present during the 2008 murder and had not been a witness to it. His knowledge was limited to what Khalill, Gibbs, and others had told him. He denied that he was giving information to the police to get out of jail.

Throughout his questioning of Feissa, Khalill's attorney repeatedly argued with the trial court, contending that he was not being allowed to cross-examine Feissa meaningfully.

2. Cross-examination by Gibbs

Feissa testified that he joined the 135 Piru gang in 2006, but he was no longer in the gang. Gibbs was a member of the gang, and Feissa had talked to him in the past.

Feissa stated that he had "hit . . . up" Quezada once in front of Quezada's house. Feissa knew it was dangerous to hit up Quezada while in another gang's territory.

On July 28, 2008, Feissa was at home. He went to Khalill's house at night at some point after the murder. While there, Feissa also talked to Gibbs.

¹⁶ The trial court did not allow questions about which drugs he had used and the length of drug use.

Feissa had smoked a “[c]ouple of blunts” of marijuana that day, one in the morning and one in the evening. Feissa said that they did not make him high.

Feissa used cocaine before he went to jail. Although he did not know the date that he last used cocaine, he did not use cocaine on the day of the murder.

He received money for information on this case.

The proffer agreement required Feissa to be truthful. If he lied or someone thought he was lying, the deal would “go away.”

Later, Feissa testified that he drove a car in 2008. When asked what type of car he had been driving, Feissa initially invoked the Fifth Amendment. Later, he answered that he did not own a car, but he drove a white 2001 Volkswagen Jetta.

Feissa testified that he was familiar with the area of 139th Street and Avalon Boulevard. There was a mailbox on the northwest corner and, if a person was standing at that mailbox, he could see the location where the murder occurred on July 28, 2008.

Feissa testified that Gibbs told him that he walked across Avalon Boulevard to shoot Quezada. He ran away after the shooting and went to Khalill’s house.

Gibbs told Feissa about the murder while he was at a pool party. Gibbs, Feissa, and Jerrod were in the backyard when Feissa asked Gibbs about the murder. Although Gibbs said that a “nine and 40” were used in the murder, Feissa admitted that he told the police that one of the guns was a Desert Eagle.¹⁷ He believed what Gibbs said about the incident.

Feissa asserted the Fifth Amendment when asked if he had to put in work for the gang.

Feissa was given a Toyota Tercel by Detective Shaw. Sheriff’s deputies would let Feissa go if they pulled him over.

¹⁷ Gibbs did not mention the Desert Eagle to Feissa. And later, Feissa testified that he did not know what kind of guns were used in the shooting of Quezada. But, he had been told that the two most common weapons that the 135 Piru gang used were the nine-millimeter and the Desert Eagle.

3. Cross-examination by Wallace

Wallace did not cross-examine Feissa.

4. Further cross-examination by Khalill

Feissa testified that he was not given an unmarked police car to drive. He had told the police that the first name of Peanut was Trayvon or Laquon. He also told them that Khalill did not say that he had shot anyone. Feissa was not close to anyone in the 135 Piru gang, but he did not tell the police that.

After Feissa received money from Detective Shaw, Feissa continued to “hang[] around” the neighborhood. He never smoked PCP. In 2008, he had a fist fight with someone in the 135 Piru gang.

5. Further cross-examination by Gibbs

Since high school, Feissa had arguments with Gibbs.

B. Events at trial

Prior to trial, the prosecutor moved to admit Feissa’s preliminary hearing testimony because Feissa was unavailable (Evid. Code, §§ 240, 1291). In the motion, the prosecutor stated that she anticipated that Feissa would assert his Fifth Amendment rights if called to testify in appellants’ case.

The prosecutor argued that at the time of the preliminary hearing, Feissa had been in custody on two counts of second degree burglary, one count of transporting a controlled substance, and one count of criminal street gang conspiracy. Pursuant to a “leniency agreement,” Feissa pled guilty to the charges and testified at the preliminary hearing in this matter, as well as in a preliminary hearing in a case against Prothro and Simpson. Feissa’s sentence for his case would be determined by the trial court and could range from time served to seven years. Prior to entering into the leniency agreement, Feissa gave a “‘Proffer Interview,’ which necessitated a ‘proffer agreement’ granting him protection against his proffer statements being used against him.” The prosecutor further asserted that, pursuant to the leniency agreement, Feissa had been released on his own recognizance after his testimony at the preliminary hearing and had relocated out of state.

The prosecutor then pointed out that on July 7, 2011, Feissa had been charged with the Tarrant Street murder. Feissa's case also involved "relevant gun and gang allegations," such as section 186.22. The prosecutor argued that, in light of the pending charges against Feissa, she reasonably anticipated that he would assert his Fifth Amendment privilege if called to testify. After all, "[a]ny testimony by Feissa" in appellants' case regarding statements made to him by appellants would be "incriminating to Feissa because it [would] demonstrate[] his membership and status level within the 135 Piru criminal street gang."

Prior to trial, the court held a hearing. The prosecutor called Feissa, who invoked his Fifth Amendment rights and refused to answer the prosecutor's questions. After taking judicial notice of the fact that Feissa was being prosecuted for murder and that there was a section 186.22 allegation the trial court sustained Feissa's assertion of his Fifth Amendment privilege.

The prosecutor then asked Feissa if he intended to invoke his Fifth Amendment privilege to any questions about Quezada's murder. He replied, "Yes."

Feissa also invoked the Fifth Amendment when Gibbs's attorney asked him questions about whether he knew or recognized Gibbs, whether he had signed a document in which the Los Angeles Sheriff's Department had found him an unreliable informant, or had any conversations with Gibbs. Gibbs's attorney argued that Feissa's invocation of the Fifth Amendment was "inappropriate" and that Feissa should be directed to answer the questions because they did not relate to any charges against him. Wallace and Khalill joined in Gibbs's argument.

Feissa's attorney argued that anything Feissa said about any relationship he had with appellants would potentially incriminate him in his pending case because the case involved gang allegations. The trial court sustained Feissa's assertion of privilege.

In response to questions from Khalill's attorney about whether he grew up on the streets of Compton, whether he received money from the sheriff's department, the shooting on Tarrant Street, receipt of leniency, and whether he knew Khalill, Feissa again

asserted the Fifth Amendment. Khalill's counsel objected. The trial court sustained Feissa's invocation of the Fifth Amendment to each question.

Based upon what had transpired, Wallace's attorney elected not to cross-examine Feissa. The prosecutor had no further questions.

After hearing argument from counsel, the trial court found that Feissa was unavailable due to the assertion of his Fifth Amendment privilege. It found that he had legitimately invoked the Fifth Amendment to the questions asked. It also determined that, after reviewing the preliminary hearing transcript, appellants had had the opportunity to "fully cross-examine" Feissa at the preliminary hearing. Thus, his preliminary hearing testimony could be read to the jury.

With respect to due process, the trial court noted that appellants had the right to attack Feissa's credibility with information that was "not within the four corners of the preliminary hearing transcript." In other words, if the defense had any documents or witnesses that "would shed light" on Feissa's credibility, they could "bring it on." Likewise, if there was information that "on prior occasions [he had] admitted to being untruthful, that [he had] given false testimony, or that [he had] engaged in other criminal conduct [that was] not addressed within the four corners of the preliminary hearing transcript," the defense would be allowed to admit such evidence. Later, the trial court reiterated that it was going to allow the defense to "use other collateral impeachment within the scope of [Evidence Code section] 352" to impeach Feissa and as not limiting them solely to the impeachment that occurred during the preliminary hearing.

Later in the proceedings, the trial court warned defense counsel that they would be "really limited on the Tarrant Street murder as far as what information" they sought to admit. But, it was not, and would not, preclude the defense from impeaching Feissa "on other bad crimes . . . or prior convictions involving moral turpitude, et cetera." The trial court agreed that the defense was allowed to admit evidence of various instances in which Feissa had lied and the knowledge of the police that Feissa had lied.

C. Appellants had an adequate opportunity to cross-examine Feissa at the preliminary hearing

“Although defendants generally have the right to confront their accusers at trial, this right is not absolute.” (*People v. Seijas* (2005) 36 Cal.4th 291, 303; *People v. Harris* (2005) 37 Cal.4th 310, 332.) “‘If a witness is unavailable a trial and has testified at a previous judicial proceeding against the same defendant and was subject to cross-examination by that defendant, the previous testimony may be admitted at trial.’” (*People v. Seijas, supra*, at p. 303; see also *People v. Harris, supra*, at p. 332; Evid. Code, § 1291.)

“To admit prior testimony of an unavailable witness, the party against whom it is offered . . . must not only have had the *opportunity* to cross-examine the witness at the previous hearing, he must also have had ‘an interest and motive similar to that which he has at the [subsequent] hearing.’” (*People v. Smith* (2003) 30 Cal.4th 581, 611; *People v. Harris, supra*, 37 Cal.4th at pp. 332–333.) “[I]t is the opportunity and motive to cross-examine that matters, not the actual cross-examination.” (*People v. Smith, supra*, at p. 611.)

Here, appellants had an adequate opportunity to cross-examine Feissa. They were allowed to question him about a variety of topics related to his credibility and his possible motives to be untruthful, including the leniency agreement he had entered into, his fear of being incarcerated and the length of the sentence he was facing, his failure to complete community service in another case, his memory problems and whether those problems were caused by drug usage, the fact that he had been arrested when he decided to give information to the police about the Quezada murder, the money he had received for giving information to law enforcement, his membership in the 135 Piru gang, his concession that he had “hit . . . up” Quezada prior to Quezada’s murder, the type of car he drove in July 2008, and the fact that he had not been present during the 2008 murder.

The restrictions on the questioning imposed by the magistrate primarily related to redundant questioning on matters already covered or questioning on irrelevant or minor topics. For example, the magistrate refused questions regarding whether Feissa wanted to

be incarcerated in the summer, whether seven years in state prison was more than two years in state prison, whether seven years in state prison was a long time, whether Feissa had told a judge that he would do community service, the reasons why Feissa had not completed his community service and why he believed that there had been a probation violation hearing, the type of drugs Feissa had ingested that led to his memory problems and the length of that drug use, whether he gave the police information on another homicide case, and whether he was paid in cash for the information he provided to law enforcement and whether he paid taxes on that money. Thus, the magistrate imposed only minor limitations during the cross-examination of Feissa; he did not unduly restrict appellants' ability to fully cross-examine him. (*People v. Valencia* (2008) 43 Cal.4th 268, 294.)

Moreover, at trial, the trial court allowed the defense to attack Feissa's credibility with information that was "not within the four corners of the preliminary hearing transcript." As a result, appellants presented testimony to the jury that two detectives believed that Feissa had been untruthful in a number of situations, including lying about his lack of involvement in the murder of Daveon Childs. The defense also presented evidence that Feissa threatened to testify falsely in Porter's trial; that Feissa had stated that he had testified falsely in other trials, including a trial involving someone named K-9; and that Feissa claimed that he had read the murder books in appellants' case and had memorized them. The jury also learned that Feissa sometimes attempted to blame other people to divert suspicion from himself and that he was involved in an incident with Llanos prior to Llanos's murder.¹⁸ Finally, the defense presented evidence that Feissa had been arrested on July 29, 2008, in a black Camry after a loaded nine-millimeter

¹⁸ The jury also heard that Feissa had given information in the Llanos case and had received \$7,250 for that information.

handgun was found at his feet.¹⁹ Thus, the jury heard substantial evidence related to Feissa’s credibility and his possible involvement in Quezada’s murder.

In sum, appellants “undertook a thorough and effective cross-examination” of Feissa and were able to comprehensively question him about his motives to testify falsely and about factors that affected his credibility. (*People v. Hollinquest* (2010) 190 Cal.App.4th 1534, 1549.) Appellants were also allowed to impeach Feissa’s credibility through evidence that had not been presented at the preliminary hearing. As such, the trial court did not err or violate appellants’ constitutional rights in admitting the preliminary hearing transcript. (*People v. Valencia, supra*, 43 Cal.4th at p. 294.)

Khalill’s reliance upon *Davis v. Alaska* (1974) 415 U.S. 308 (*Davis*), *People v. Brock* (1985) 38 Cal.3d 180 (*Brock*), and *Smith v. Illinois* (1968) 390 U.S. 129 (*Smith*) is misplaced. In *Davis*, the defendant was allowed only a limited cross-examination of the witness (*Davis, supra*, at p. 318); in contrast, as set forth above, appellants were allowed to extensively cross-examine Feissa about his credibility and motives. In *Brock*, the preliminary hearing examination of a witness occurred in a hospital room because the witness had been hospitalized for terminal diseases; during the examination, he was on a number of medications and showed signs of discomfort, disorientation, and confusion. (*Brock, supra*, at pp. 191–192.) Contrariwise, here, appellants engaged in an extensive cross-examination of Feissa, and Feissa was not unable to answer the questions. Finally, in *Smith*, the defendant was unable to question a witness about his true name and the location of his residence. (*Smith, supra*, at pp. 130–131.) Here, the defense was able to question Feissa about topics that impacted his credibility and motives for identifying appellants as the individuals who committed the Quezada murder.

¹⁹ Gordon testified that he saw a black Toyota Camry drive by when Quezada was shot.

D. Feissa’s infrequent invocation of his Fifth Amendment rights did not prevent appellants from an adequate opportunity to cross-examine him

Gibbs and Khalill argue that Feissa’s invocation of his Fifth Amendment rights at the preliminary hearing prevented them from having an adequate opportunity to cross-examine Feissa; therefore, his preliminary hearing testimony should have been stricken.

“It is a bedrock principle of American (and California) law, embedded in various state and federal constitutional and statutory provisions, that witnesses may not be compelled to incriminate themselves.” (*People v. Seijas*, *supra*, 36 Cal.4th at p. 304; see also *People v. Williams* (2008) 43 Cal.4th 584, 613.) “‘To invoke the privilege, a witness need not be guilty of any offense; rather, the privilege is properly invoked whenever the witness’s answers ‘would furnish a link in the chain of evidence needed to prosecute’ the witness for a criminal offense.’” (*People v. Williams*, *supra*, at pp. 613–614.) “A witness may assert the privilege who has ‘reasonable cause to apprehend danger from a direct answer.’” (*People v. Seijas*, *supra*, at p. 304; see also *People v. Williams*, *supra*, at p. 614.) “‘To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.’” (*People v. Seijas*, *supra*, at p. 304; accord *People v. Williams*, *supra*, at p. 614.)

A witness’s refusal to answer questions based on his right against self-incrimination may curtail a party’s ability to adequately cross-examine that witness. (*People v. Seminoff* (2008) 159 Cal.App.4th 518, 525.) Courts “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.” (*People v. Sanders* (2010) 189 Cal.App.4th 543, 556; see also *People v. Seminoff*, *supra*, at pp. 525–526.) “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 witness’s credibility, the trial court need not strike

the entirety of that witness’s direct testimony.” (*People v. Sanders, supra*, at p. 556; accord *People v. Seminoff, supra*, at p. 527.)

Here, striking Feissa’s preliminary hearing testimony was not required because the questions only related to collateral matters. For example, Feissa asserted his Fifth Amendment privilege to questions related to the police investigation of Feissa’s possible involvement in the Tarrant Street murder, a case unrelated to the one against appellants. Feissa also invoked the privilege when asked whether he had put in work for the gang. He also invoked the Fifth Amendment privilege when asked about the type of car he drove in 2008. While this question might have related to whether Feissa was involved in Quezada’s murder, he subsequently answered the question.²⁰ Because all of the questions Feissa refused to answer related to collateral matters, the trial court did not err in refusing to strike all of his preliminary hearing testimony. For the same reason, appellants’ ability to cross-examine Feissa was not curtailed.²¹

Khalill urges reversal pursuant to *Lawson v. Murray* (4th Cir. 1988) 837 F.2d 653 (*Lawson*). As previously set forth, decisions of the federal district or appellate courts are not binding on state courts. (*People v. Racklin, supra*, 195 Cal.App.4th at p. 877.) In any event, that case is distinguishable. In *Lawson*, the defense witness who invoked the Fifth Amendment “was clearly attempting to say just enough to exonerate” the defendant “without implicating himself,” and was, thus, “trifling with the truth” on matters that

²⁰ And, during trial, the defense presented evidence that Feissa had been arrested on July 29, 2009, in a black Toyota Camry after a loaded nine-millimeter handgun was found at his feet.

²¹ It follows that *People v. Hathcock* (1973) 8 Cal.3d 599 is distinguishable. In that case, the witness asserted the Fifth Amendment privilege to questions asking her to “repudiate specific portions of her prior testimony relating to defendant’s participation in the crime.” (*Id.* at p. 616.) Collateral matters were not at stake. (*Ibid.*) And, in any event, the Court of Appeal did not reach the merits of the question of whether her refusal to answer these questions was proper as it found the issue forfeited on appeal. (*Ibid.*)

were “so relevant and pertinent.” (*Lawson, supra*, at p. 656.) In contrast, Feissa only invoked the privilege to questions on collateral matters.

E. The motion for new trial was properly denied

After appellants were convicted, Gibbs filed a motion for new trial asserting that his constitutional rights had been violated when Feissa’s preliminary hearing testimony was read to the jury. Wallace and Khalill joined in Gibbs’s motion. The trial court denied the motion. On appeal, Khalill argues that the trial court erred because the prosecution made Feissa an unavailable witness by charging him with the murder of Daveon Childs.

We review the trial court’s order for abuse of discretion. (*People v. Lightsey* (2012) 54 Cal.4th 668, 729.)

Under Evidence Code section 240, subdivision (b), “[a] declarant is not available as a witness if the exemption, preclusion, disqualification, death, inability, or absence of the declarant was brought about by the procurement or wrongdoing of the proponent of his or her statement for the purpose of preventing the declarant from attending or testifying.” (See *People v. Hollinquest, supra*, 190 Cal.App.4th at p. 1551.) To establish a violation of a defendant’s confrontation rights due to misconduct by the prosecutor that resulted in the unavailability of a witness, the defendant must prove three elements: (1) the prosecutorial misconduct “was entirely unnecessary to the proper performance of the prosecutor’s duties and was of such a nature as to transform” a “witness willing to testify into one unwilling to testify”; (2) “the prosecutor’s misconduct was a substantial cause in depriving the defendant of the witness’s testimony”; and (3) the testimony the defendant was unable to present was material to his defense.²² (*People v. Hollinquest, supra*, at p. 1552.)

²² Because Khalill is asserting that the prosecutor procured Feissa’s absence, *People v. Roldan* (2012) 205 Cal.App.4th 969 does not apply. In that case, the prosecutor did nothing to prevent the victim from being deported. (*Id.* at pp. 976–985.)

Here, the trial court did not abuse its discretion in denying the motion for new trial because appellants have not provided any evidence that the prosecutor had an improper motive or otherwise engaged in misconduct that resulted in Feissa's assertion of his privilege against self-incrimination. Although Khalill argues that the prosecution should have granted immunity to Feissa, delayed charging him, or held his trial more quickly, there is no evidence that the prosecutor acted improperly. The prosecution is not obligated to confer immunity to a witness. (*People v. Williams*, *supra*, 43 Cal.4th at p. 622; *People v. Hollinquest*, *supra*, 190 Cal.App.4th at p. 1551.) There is no evidence that the prosecution purposely delayed the start of trial until after Feissa was charged in the Daveon Childs case. And, there is nothing in the appellate record indicating that the prosecution intentionally made Feissa unavailable for trial. "In the absence of any evidence" of improper motive or misconduct, appellants have failed to establish that "the prosecutor acted with the specific objective of preventing the witness from testifying within the meaning of [Evidence Code] section 240, subdivision (b)" or that she violated appellants' confrontation rights. (*People v. Hollinquest*, *supra*, 190 Cal.App.4th at p. 1553.) Thus, the trial court properly denied appellants' motion for new trial.

III. *The trial court did not abuse its discretion in refusing to allow Gibbs to play Feissa's entire recorded statement*

Gibbs contends that the trial court erred when it refused to allow him to play a 42-minute recording of an interview of Feissa by law enforcement.²³

A. Relevant facts and proceedings

During the trial, the trial court told Gibbs that it was "disinclined" to allow him to "play the entire transcript" of an interview with Feissa because "much of it [was] not relevant to the issues in the case." The trial court stated that it would allow the defense to

²³ Again, Wallace joins in Gibbs's argument. In the trial court, Wallace noted that he "would just like to hear Mr. Feissa's voice, to put voice to the transcript," but he did not join in Gibbs's motion to play the entire recorded interview. The failure to join in a motion of a codefendant constitutes a waiver of the issue on appeal. (*People v. Wilson* (2008) 44 Cal.4th 758, 793.)

“call whatever witnesses” were necessary “to establish whether or not on a prior occasion Mr. Feissa lied to law enforcement.” But, the trial court found issues related to another murder and “a lot of other things” in the recording irrelevant.

Gibbs responded that Feissa had been “deemed to be a confidential, reliable informant,” but that detectives “throughout the course of that 42-minute interview,” brought up “various” incidents in which they accused Feissa of lying or “being disingenuous.”

The trial court reiterated that the defense could call witnesses and ask if Feissa had lied and, if so, how he had lied. However, the trial court would not allow the defense “to play a 40-minute tape for the purposes of being able to try and have the jury figure out how in effect this guy lied.”

Later, the trial court stated again that defense counsel could “ask the investigator any of those questions [relating to Feissa’s honesty].” The trial court added that if there were “specific portions” of the tape that involved a statement by Feissa that was “untruthful,” then it would allow counsel to play those portions of the tape. But, “the entirety of the tape involves a number of subjects that aren’t relevant to the trial.” Thus, under Evidence Code section 352, while the defense could “address any issues that [were] prior inconsistent statements or [related to Feissa’s] bad character,” it could not play the entire tape.

B. Analysis

“Under Evidence Code section 352, a trial court has ‘broad power to control the presentation of proposed impeachment evidence ““to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues.” [Citation.]’” [Citation.]’ [Citation.]” (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1089–1090; see also *People v. Harris* (2008) 43 Cal.4th 1269, 1291.) “““Within the confines of the confrontation clause, the trial court retains wide latitude in restricting cross-examination that is repetitive, prejudicial, confusing of the issues, or of marginal relevance.’ [Citation.]” [Citations.]’ [Citation.]” (*People v. Mendoza, supra*, at p. 1090; see also *People v. Harris, supra*, at p. 1292.) “A trial court’s exercise of discretion under

[Evidence Code] section 352 will be upheld on appeal unless the court abused its discretion, that is, unless it exercised its discretion in an arbitrary, capricious, or patently absurd manner.” (*People v. Thomas* (2012) 53 Cal.4th 771, 806.)

With these principles in mind, we conclude that the trial court did not abuse its discretion in disallowing Gibbs from playing the entire 42-minute taped interview of Feissa. The trial court apparently listened to the entire recording or read a transcript and concluded that the 42-minute interview contained a number of issues that were not relevant to appellants’ case or to Feissa’s credibility. Gibbs has not presented anything to contradict the trial court’s conclusion.

Moreover, the trial court specifically allowed Gibbs to present portions of the tape-recorded interview involving untruthful statements by Feissa, but counsel chose not to do so. The trial court also allowed the defense to present witnesses to establish that Feissa had been untruthful. Under these circumstances, although hearing Feissa’s “manner of speaking” during the interview “might have assisted the jury in determining credibility, the trial court acted well within its discretion in precluding the defense” from playing the entire taped interview. (*People v. Avila* (2006) 38 Cal.4th 491, 592.)

Even if the trial court had erred, reversal is not required because any alleged error was harmless. (*People v. Boyette* (2002) 29 Cal.4th 381, 428.) The application of ordinary rules of evidence, such as Evidence Code section 352, does not generally infringe on a defendant’s constitutional rights. (*People v. Boyette, supra*, at pp. 427–428.) While the complete exclusion of defense evidence could rise to the level of a constitutional violation, that is not what occurred here. And, the exclusion of evidence on a minor or subsidiary point does not infringe on a defendant’s right to present a defense. (*People v. Boyette*, at p. 428.)

And, a different result was not reasonably probable. Substantial evidence was submitted to impeach Feissa’s credibility, including Detective Labbe’s conclusion that Feissa was unreliable, the two detectives’ belief that Feissa had been untruthful on a number of occasions, Feissa’s threat to testify falsely in Porter’s case, and Feissa’s statement that he had testified falsely in trials. Although Gibbs contends that the jury’s

request for a readback of Feissa’s testimony indicates that it was struggling with that testimony, such a conclusion is merely speculative and could just “as easily [have been] reconciled with the jury’s conscientious performance of its civic duty.” (*People v. Houston* (2005) 130 Cal.App.4th 279, 301.) It follows that any alleged error was harmless and does not compel reversal.

IV. *The trial court did not abuse its discretion in denying the motion for mistrial*

Gibbs contends that the trial court erred when it denied his motion for a mistrial after a detective testified that Feissa’s information led to a conviction in another murder case.²⁴

A. Relevant facts and proceedings

During the prosecution’s case-in-chief, Detective Valento testified that Feissa had information on two murders that he was investigating: the murder of Quezada and the murder of Llanos. Prior to the information from Feissa, the murder of Llanos was unsolved.

During a sidebar discussion, Gibbs’s attorney argued that the information regarding the Llanos murder was not relevant. The prosecutor argued that there had already been a “great attack” on Feissa as being unreliable and that Feissa had been “paid an absurd amount of money for being an informant.” Thus, she wanted to counteract the defense effort with evidence that Feissa helped to solve “an additional homicide,” resulting in convictions. The prosecutor believed that the evidence would show that Feissa was reliable.

The prosecutor then stated that she did not intend to spend a “lot of time on that murder” and could “streamline” the evidence by showing that Feissa’s information “resulted in a conviction.” The prosecutor noted that Feissa did not even testify in the other case, which established that other evidence corroborated Feissa’s information.

²⁴ Again, Wallace attempts to join this argument. At the risk of sounding redundant, his “reliance solely on [Gibbs’s] arguments and reasoning is insufficient to satisfy his burden” of showing error and prejudice. (*People v. Nero, supra*, 181 Cal.App.4th at p. 510, fn. 11.)

Wallace's counsel then objected to the evidence, arguing that there were a "lot of so-called reliable informants that have succeeded in obtaining convictions for the People, who [have] later . . . been reversed." He asserted that the proffered evidence did not establish that Feissa was reliable. Gibbs's attorney joined in the objection.

Pursuant to Evidence Code section 352, the trial court excluded evidence regarding the conviction in the other case. While the evidence might be relevant in rebuttal, it was not relevant in the prosecution's case-in-chief.

During direct examination of Detective Valento, the prosecutor asked about the arrest of the defendants in the Llanos case. He responded: "The driver, Marcellous Prothro, was arrested on July 31, 2009. The shooter, alleged shooter at the time, now convicted, was the passenger in that vehicle, which—."

Gibbs's attorney objected and moved to strike the answer. During a sidebar discussion, Gibbs's attorney asserted that what had happened was "just what the court stated should not happen." Counsel moved for a mistrial.

After hearing argument from the prosecutor, the trial court denied the motion. Back in front of the jury, the trial court stated: "With regards to the last portion of the answer that the witness gave as to whether or not a conviction occurred in some other case, that's stricken as being irrelevant to the issues in this case."

Gibbs subsequently called Detective Duncan as a witness. He had interviewed Feissa on March 3, 2009, while Feissa was in custody. Gibbs's attorney attempted to show that Detective Duncan believed that Feissa had been untruthful during that interview. He was examined about an affidavit in another matter in which he stated that he was unaware of any gang member confidential informants who provided "'100 percent truthful information.'" He conceded that an in-custody gang member informant had a motive to lie or give false information.

During cross-examination by Khalill, Detective Duncan testified that Feissa had denied being involved in the murder of Daveon Childs and denied being a drug trafficker between California and Texas.

During cross-examination by the prosecutor, Detective Duncan stated that the information Feissa provided in the Llanos murder had been corroborated. When she asked if the case had resulted in a conviction, Detective Duncan replied affirmatively. Defense counsel did not object.

During recross-examination, Khalill's attorney asked: "You said that basically, Mr. Feissa's information about the Juan Llanos case led to a conviction, essentially?" Detective Duncan replied, "I believe so, yes." He then testified that Feissa did not testify at that trial. He denied looking at Feissa as a suspect in the Llanos case, but said that investigators "did things to make sure he wasn't pawning that murder off on someone else."

The prosecutor then called Detective Valento as a rebuttal witness. After he verified that Feissa had identified suspects in the Llanos case, he testified that other witnesses corroborated Feissa's identifications. The prosecutor then asked if the trial resulted in a conviction, and Khalill's attorney objected. The trial court overruled the objection, but Detective Valento did not answer the question.

B. Analysis

““A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction.”” (*People v. Dement* (2011) 53 Cal.4th 1, 39; see also *People v. Collins* (2010) 49 Cal.4th 175, 198.) ““Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.”” (*People v. Dement, supra*, at pp. 39–40; see also *People v. Collins, supra*, at p. 198.) A mistrial motion should be granted when a defendant's ““chances of receiving a fair trial have been irreparably damaged.”” (*Ibid.*)

Here, the trial court did not abuse its discretion in determining that Detective Valento's volunteered statement did not result in incurable prejudice necessitating a new

trial.²⁵ His comment about the conviction in the Llanos case was “brief and isolated.” (*People v. Dement, supra*, 53 Cal.4th at p. 40.) The isolated reference was “easily cured by striking the evidence and admonishing the jury to disregard it.” (*People v. Leavel* (2012) 203 Cal.App.4th 823, 825.) We presume that the jury followed the trial court’s admonishment, and Gibbs has not rebutted that presumption. (*Ibid.*) It follows that the trial court acted well within its discretion in denying the motion for mistrial.²⁶

V. *The admission of Feissa’s testimony was not improper merely because he was an informant*

Appellants argue that their constitutional rights were violated by the admission of Feissa’s testimony because he was an “inherently unreliable” informant. As Gibbs acknowledges, the California Supreme Court has repeatedly rejected such claims. (See, e.g., *People v. Hovarter* (2008) 44 Cal.4th 983, 997; *People v. Jenkins* (2000) 22 Cal.4th 900, 1007–1008; *People v. Ramos* (1997) 15 Cal.4th 1133, 1165.) We therefore deny this contention. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Khalill takes it one step further—he claims that because Feissa’s testimony was inherently unreliable, it did not constitute sufficient evidence. This argument fails as well. When a claim of insufficient evidence is raised, the appellate court reviews the entire record in the light most favorable to the judgment to determine whether there was reasonable and credible evidence from which a trier of fact could find a defendant guilty beyond a reasonable doubt. (*People v. Lee* (2011) 51 Cal.4th 620, 632.) In making this

²⁵ Although Gibbs asserts that the prosecutor committed misconduct, the appellate record does not support such a conclusion. The prosecutor did not attempt to elicit inadmissible evidence in violation of a court order; and the record does not show that she failed to control her witness. The prosecutor merely asked about the arrests of the defendants in the Llanos case, and the detective nonresponsively mentioned the conviction. Thus, there was no prosecutorial misconduct. (*People v. Collins, supra*, 49 Cal.4th at pp. 196–199.)

²⁶ And, we acknowledge that Detective Duncan subsequently testified, without objection, that the Llanos case resulted in a conviction, a point reiterated during cross-examination by Khalill.

determination, the reviewing court presumes in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*Ibid.*) “[E]ven testimony which is subject to justifiable suspicion do[es] not justify the reversal of a judgment, for it is the exclusive province of the . . . jury to determine the credibility of a witness.” (*Ibid.*) In other words, we do not resolve issues of credibility. (*Ibid.*)

Here, the jury heard a variety of factors affecting Feissa’s credibility and determined his testimony to be credible. We cannot, and will not, reassess his credibility.

VI. *Alleged prosecutorial misconduct*

Khalill contends that the prosecutor committed misconduct by using a puzzle analogy during closing argument.²⁷

A. Relevant facts

Both before and after the presentation of evidence, the trial court instructed the jury with CALCRIM No. 220, which states that a criminal defendant is “presumed to be innocent” and that the prosecution has the burden of proving each defendant guilty “beyond a reasonable doubt.” The instruction explains that “[p]roof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.” The instruction further cautions that “[u]nless the evidence proves the defendants guilty beyond a reasonable doubt, they are entitled to an acquittal and you must find them not guilty.”

The trial court also instructed the jury with CALCRIM No. 200, which provides: “You must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys’ comments on the law conflict with my instructions, you must follow my instructions.”

The trial court further instructed the jury with CALCRIM No. 222: “Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence.”

²⁷ Gibbs joins in this argument.

During the closing argument, the prosecutor stated: “Ladies and gentlemen, jury trials, and the evidence is sort of like a puzzle. We give you all the pieces . . . through witnesses, through exhibits. And your job as a juror is to put them together and determine if you can see the picture on the front of the box. [¶] So because jury trials are a combination of human beings and not a science project or [a] math problem, it’s not like buying a new Jigsaw puzzle, where all the pieces are there. [¶] It’s like buying a Jigsaw puzzle at a garage sale, where you get it home, and maybe some of the pieces are missing. Or a dog chewed on one piece, so it doesn’t fit anywhere, or there’s marinara sauce on another piece. [¶] But at the end of the day, even though that Jigsaw puzzle isn’t brand new, the question is, can you see the picture on the front of the box. Is it a hot air balloon with kittens in it, or whatever it may be.”

The prosecutor then discussed the evidence in the case and the law, and applied the evidence to the law.

She concluded with the following: “And that at the end of the day, when you add up all the pieces, when you put that Jigsaw puzzle together, and you add everything up in totality and look at it in its whole, it is clear to you that those defendants are guilty as charged, and responsible for the murders that they are charged with.”

B. Forfeiture

A prosecutor’s conduct violates the federal Constitution if his actions so infect the trial with unfairness that it results in a denial of due process. (*People v. Whalen* (2013) 56 Cal.4th 1, 52; *People v. Thompson* (2010) 49 Cal.4th 79, 120.) If the conduct is below this level, it violates California law if it involves the use of “deceptive or reprehensible methods” to persuade the jury. (*People v. Whalen, supra*, at p. 52; *People v. Thompson, supra*, at p. 120.)

To preserve a claim of prosecutorial misconduct, a defendant must make a timely objection to the alleged misconduct and ask the trial court to admonish the jury, unless an admonishment would not have cured the harm. (*People v. Whalen, supra*, 56 Cal.4th at p. 52; *People v. Thompson, supra*, 49 Cal.4th at pp. 120–121.)

Here, as Khalill concedes, there was no objection to the prosecutor's allegedly improper statements. Thus, he has forfeited on appeal any claim of misconduct. (*People v. Houston* (2012) 54 Cal.4th 1186, 1223.)

C. Even if appellants had not forfeited this argument on appeal, it still fails because the prosecutor's comments were not improper

Even if this argument had not been forfeited on appeal, it still fails. It is misconduct for a prosecutor to misstate the law and to absolve the prosecution from its duty to prove its case beyond a reasonable doubt. (*People v. Boyette, supra*, 29 Cal.4th at p. 435; *People v. Marshall* (1996) 13 Cal.4th 799, 831.) Khalill contends that, under *People v. Katzenberger* (2009) 178 Cal.App.4th 1260 (*Katzenberger*) and *People v. Otero* (2012) 210 Cal.App.4th 865 (*Otero*), the prosecutor misstated the reasonable doubt standard by using a puzzle analogy. We are not convinced. In both of those cases, the prosecutor used a Power Point presentation as a visual aid to explain reasonable doubt. (*Katzenberger, supra*, at p. 1264; *Otero, supra*, at p. 873.) That is a far cry from the simple jigsaw puzzle analogy employed by the prosecutor here. And, unlike the prosecutor in *Katzenberger* and *Otero*, she certainly did not suggest that the reasonable doubt standard could be based upon a few pieces of evidence or by a quantitative measurement of evidence. (*Katzenberger*, at p. 1264; *Otero*, at p. 873.)

Even if the prosecutor committed misconduct, reversal would not be required because any misconduct was harmless. (*Katzenberger, supra*, 178 Cal.App.4th at p. 1269.) As set forth above, the evidence against appellants was strong. And, the jury was instructed on the reasonable doubt standard and was told that it must follow the trial court's instructions, including if the attorneys' comments on the law conflicted with the trial court's instructions. We presume the jury followed the trial court's instructions. (*People v. Anzalone* (2013) 56 Cal.4th 545, 557.)

VII. *The trial court properly discharged Juror No. 6*

Khalill contends that the trial court improperly discharged Juror No. 6. Khalill and Wallace forfeited this claim. Even on the merits, this claim must be rejected because the trial court properly discharged Juror No. 6; she had a scheduled vacation.

A. Relevant facts and proceedings

During the middle of trial, on Friday, December 16, 2011, the trial court received a note from Juror No. 6, which indicated that the juror had “travel plans,” namely to depart for Connecticut on December 18, 2011. The juror stated that she had not mentioned the travel plans during the “hardship segment” of jury selection because the flight had not been booked at that time. The juror booked the flight after learning that the trial “would go through December 16th” and that the court calendar indicated that it would be “dark” after that. The juror purchased a “low cost ticket” on November 30, 2011, and stated that it would cost her at least \$100 to change her ticket or purchase a new one.

When the trial court asked the parties how they wanted to address the issue of Juror No. 6’s vacation plans, Gibbs’s and Khalill’s counsel responded that they did not know.

The trial court deferred the issue until later in the day, when it became clearer whether they were going to be able to close evidence that day.

In the presence of the jury, the trial court told Juror No. 6 that it had received her note and intended to address it later that day. The trial court then informed the jury that the “best-case scenario” was that the evidence portion of the case would conclude that day, but that the “worst-case scenario” was that the evidence presentation would end on Monday. It asked the jurors to assume the “worst-case scenario” and wanted to know whether any jurors had a scheduling conflict.

Juror No. 4 stated that he was planning to go on a family vacation from December 21, 2011, through December 30, 2011. But, he had made “back-up plans” and could meet his family later.

In the afternoon of December 16, 2011, the trial court held an additional proceeding regarding Juror No. 6. During a sidebar discussion, Juror No. 6 stated that she had checked into flights for “late Wednesday [December 21, 2011] evening” and Thursday (December 22, 2011); both flights would cost her additional monies. When asked about whether it was possible to take the Thursday flight, Juror No. 6 stated that it

was “a lot of money” that she would prefer not to spend. However, if the trial court wanted her to book the Thursday flight, she would comply.

The trial court asked Juror No. 6 to “stick it out,” especially since the trial had lasted “almost three weeks.” She replied that she would, since she wanted “to see it to the outcome.” The attorneys did not have any questions for her.

The trial court decided to keep the juror because she was “still willing to serve.” No one objected.

After jury instructions on Monday, December 19, 2011, the trial court asked Juror No. 6 if she was able to reschedule her flight. She said that she had obtained a ticket for a flight on Thursday morning at 1:00 a.m. Juror No. 4 stated that his flight was the same day as Juror No. 6’s flight and would be able to return whenever he needed to do so.

The trial court told the jurors to “meet and confer” and “[g]o over scheduling” because it did not want the jury to “feel rushed to reach a verdict.” It instructed the jury that it wanted it to “carefully consider the evidence.” It stated that if the jury had not reached a verdict by Wednesday evening, it needed to know what day the jury would be able to return and continue deliberations. The trial court was willing to consider having the jury return after the New Year’s Day, rather than the week between Christmas and New Year’s Day. The trial court added: “I don’t want you to feel like you’ve got a deadline, and you’ve got to rush to meet that deadline. Okay?”

Wallace’s attorney requested that the two jurors be replaced with alternate jurors or that closing argument not be done until January 2012. Gibbs’s attorney joined in the argument. The trial court denied their request.

The trial court then stated that the jury might be able to reach a verdict before breaking for the holidays. It noted that it would not “penalize the jurors by not allowing them to spend time with their family members during the holidays.” It then stated that it could authorize a “short break” and that the jury could return to deliberate “the week after Christmas.”

Wallace's attorney then stated that there were two alternate jurors and two jurors that had scheduled vacations. He requested that the trial court "substitute the alternates in, have them continue to deliberate." Again the trial court denied Wallace's request.

On Tuesday, December 20, 2011, the trial court stated that it had researched the issue regarding the possible continuation of jury deliberations and, pursuant to *People v. Santamaria* (1991) 229 Cal.App.3d 269 (*Santamaria*), concluded that it could not put the matter over until after the first of the year.

Wallace's attorney then stated that he was "not too thrilled about the alternates" available. But, he added: "No other choice but to sub them in if we release two jurors. And we go with those twelve, and hope that they survive." Khalill's attorney agreed, stating: "I don't like any of the choices, really." Gibbs's attorney agreed with Wallace's counsel.

The trial court decided to clarify the vacation schedules of Juror Nos. 4 and 6. During a sidebar discussion, Juror No. 6 said that she would return on December 29, 2011. Juror No. 4 stated that he was scheduled to leave on Thursday (December 22, 2011) and would return at any time from his trip. When asked if he would be able to leave later in the week, Juror No. 4 replied that he wanted to leave by "Friday morning" (December 23, 2011) at the latest.

After closing argument, the trial court indicated that it was considering releasing Juror No. 6 because if the jury did not "reach a verdict by the close of business tomorrow [Wednesday]," then the jury would have to begin deliberations anew, which would be a "horrible waste of time." The trial court believed that it was "incredibly unlikely" that the jury would reach a verdict by the next day due to the "extent of the testimony in the case and the number of exhibits." It asked if there was a request that Juror No. 6 be replaced with an alternate juror.

Gibbs's attorney stated that he had no such request because he believed that it was possible for the jury to reach a verdict on the 2008 murder by the next day. Thus, he wanted Juror No. 6 to remain.

Wallace's attorney requested that Juror No. 6 be replaced with an alternate because he believed the possibility of the jury reaching a verdict by the next day was "slim," he did not want there to be a "waste," and he did not want to cause "more problems with the jurors to start all over."

Khalill's attorney indicated that he was "not making a request." When asked if he was opposed to replacing Juror No. 6, he replied that he was "ambivalent."

The trial court found that there was "a manifest need to release Juror Number 6" due to "the scheduling conflict she alerted us to a long time ago." It had expected a consent to a recess during the holidays. Since it could not force the parties to agree to a recess, the trial court believed that it would constitute reversible error to recess the case for such a length of time. Thus, it decided to replace Juror No. 6 with an alternate.

Gibbs's attorney objected.

The trial court then excused Juror No. 6, and she was replaced with an alternate. On December 22, 2011, the jury reached verdicts.

B. Forfeiture

A defendant may properly raise an argument regarding the allegedly improper discharge of a juror only if he raised the issue in the trial court. (*People v. Lucas* (1995) 12 Cal.4th 415, 488.) "'The requirement of a contemporaneous and specific objection promotes the fair and correct resolution of a claim of error both at trial and on appeal, and thereby furthers the interests of reliability and finality.'" (*Id.* at pp. 488–489.)

On two occasions, Wallace specifically requested that Juror No. 6 be replaced with an alternate. Because Wallace supported the trial court's decision to discharge Juror No. 6 and replace her with an alternate, he has forfeited any claim that the trial court erred in discharging that juror. (*People v. Lucas, supra*, 12 Cal.4th at pp. 488–489.)

Khalill also forfeited any claim regarding the allegedly erroneous discharge of Juror No. 6. In response to the trial court's question regarding whether there was a request that Juror No. 6 be replaced with an alternate, Khalill's attorney initially stated that he was "not making a request." The trial court attempted to clarify Khalill's position by asking defense counsel if he was opposed to replacing Juror No. 6 with an alternate.

Khalill’s attorney replied that he was “ambivalent” about replacing the juror. Because he did not specifically object to the discharge of Juror No. 6, he has forfeited any contention that the trial court erred in doing so. (*People v. Lucas, supra*, 12 Cal.4th at pp. 488–489.)

C. The trial court properly discharged Juror No. 6

Even on the merits, the claim fails. “A juror may be discharged if, at any time before or after final submission of the case, the court upon good cause finds the juror ‘unable to perform his or her duty.’” (*People v. Virgil* (2011) 51 Cal.4th 1210, 1242; see also § 1089; *People v. Zamudio* (2008) 43 Cal.4th 327, 349.) A trial court’s decision to discharge a juror is upheld if there is substantial evidence to support the trial court’s ruling and the juror’s inability to perform appears on the record as a demonstrable reality. (*People v. Virgil, supra*, at p. 1242; *People v. Zamudio, supra*, at p. 349.)

With these principles in mind, we conclude that the trial court did not err in discharging Juror No. 6. The record establishes that she had airline tickets for a flight at 1:00 a.m. on Thursday, December 22, 2011, which meant the last day that she was available to deliberate was Wednesday, December 21, 2011. As the trial court reasonably noted, the jurors would not begin to deliberate until December 20, 2011, and, due to the amount of evidence that had been presented and the nature of the charges, it was highly unlikely that the jurors would be able to reach verdicts before Juror No. 6’s scheduled flight. Because the record amply supports the trial court’s conclusion that Juror No. 6 would not be able to perform her duties as a juror, the discharge of Juror No. 6 was not erroneous.²⁸

Khalill argues that the trial court treated Juror No. 6 in a “disparate manner” from Juror No. 4, who was “almost identically situated.” However, they were not in the same position—Juror No. 4 indicated that he could leave for his vacation as late as Friday morning, which meant that he was available for deliberations through December 22,

²⁸ For the first time on appeal, Khalill argues that the trial court’s discharge of Juror No. 6 violated the Jury Management Benchbook. This is not legal authority. Regardless, this belated contention is forfeited. (*People v. Lucas, supra*, 12 Cal.4th at pp. 488–489.) Regardless, Juror No. 6 was physically unable to serve as a juror.

2011. Because Juror No. 4 was available for a longer period, the trial court could reasonably have concluded that it was possible for the jurors to reach verdicts by that point.

Khalill also contends that the trial court could have suspended the proceedings to allow the jurors to enjoy the holidays. In *People v. Bolden* (2002) 29 Cal.4th 515, 561–562, the California Supreme Court held that the trial court in that case did not abuse its discretion in suspending deliberations for four court days during the winter holidays. However, in that case, the defense did not object to the suspension of deliberations. (*Id.* at p. 561; see also *People v. Johnson* (1993) 19 Cal.App.4th 778, 790–793.) Here, Wallace requested that Juror Nos. 4 and 6 be replaced with alternates rather than breaking for the holidays. Under such circumstances, *People v. Bolden* does not dictate that the trial court was required to suspend deliberations rather than discharge Juror No. 6.

Finally, Khalill contends that the trial court improperly relied on *Santamaria*, *supra*, 229 Cal.App.3d 269 in determining that a suspension for the holidays was inappropriate. As the trial court noted, *Santamaria* was not directly on point because it involved a suspension of proceedings due to the trial court’s planned absence. (*Santamaria*, *supra*, at p. 278.) But, it was reasonable for the trial court to rely on the case because, like Wallace here, at least one of the parties in *Santamaria* indicated opposition to the suspension of proceedings. (*Ibid.*)

VIII. *No cumulative prejudice*

Appellants contend that the foregoing alleged errors resulted in cumulative prejudice. In light of our conclusion that none of the asserted claims of error is meritorious, there was no cumulative prejudice. (*People v. Homick* (2012) 55 Cal.4th 816, 869.)

IX. *Wallace's motion to discharge his retained attorney was untimely*

Wallace argues that the trial court erred in denying his request to discharge his retained counsel.

A. Relevant facts and proceedings

On April 13, 2012, almost four months after appellants were convicted by the jury, the trial court received a letter from Wallace stating that he would be filing a motion for a new trial on the grounds of ineffective assistance of counsel. Wallace delineated nine instances of alleged ineffectiveness. He requested that another attorney be appointed to investigate and file a motion for new trial.

On June 20, 2012, Wallace's attorney filed a notice of motion to declare conflict of interest by counsel.

In response to the motions, the trial court stated that it would ascertain whether Wallace's attorney would declare a conflict and whether it was satisfied that there was a sufficient showing to grant withdrawal "at this point in the proceedings, given the fact that this is a post-trial motion."

After Wallace's attorney stated that he was declaring a conflict, the trial court held an in camera proceeding. During the proceeding, the trial court stated that it had "concerns about the timing of the declaration of a conflict . . . given the fact that it's occurred after a very long and protracted trial."

Wallace's attorney agreed that such a motion was "unusual at this stage of the proceedings." He confirmed that there had been a breakdown in communication between them, and he believed that he could not continue in the case. In addition, counsel represented that there was a difference of opinion regarding tactical issues and motions. And, the attorney was retained counsel; because the family was not willing to continue to pay for his services, he could not continue to represent Wallace. But, in response to the trial court's query, counsel did state, in spite of the alleged conflict, that he could represent Wallace's best interests.

When asked whether he had contacted another attorney, Wallace indicated that he was still looking for the right one—"[m]aybe a few weeks" or "[m]aybe less."

After the in camera hearing, the trial court asked the prosecutor what the potential impact would be if Wallace’s counsel was permitted to withdraw and new counsel was appointed or retained. She stated that there were “at least six boxes” and several notebooks that were approximately four inches thick that contained discovery. Moreover, there was a wiretap that lasted more than a year and that collected “thousands and thousands of calls.” Thus, she believed it would be “quite a cumbersome task” for a new attorney to “get up to speed on this case.” She estimated that it would take at least six months to a year for another attorney to be adequately prepared. Wallace’s attorney agreed that a minimum of six months would be needed for a new attorney to be adequately prepared.

Thereafter, the trial court denied the motions, noting that it had taken time to research the issue because the case was “very serious” and Wallace’s right to counsel was “significant”; it did not want to “just have a knee-jerk reaction to the motion.” After conducting legal research, the trial court concluded that it had the discretion to deny an untimely motion. It also found no conflict of interest based upon Wallace’s failure to communicate with counsel and the family’s refusal to pay. Because (1) counsel was “capable of continuing in the case and competently representing” Wallace; (2) terminating counsel at this late stage of the proceedings would cause “tremendous prejudice to the orderly administration of justice”; (3) it would take a competent attorney “close to a year” to prepare for the proceedings that remained in the case; and (4) the “timing of the request for termination of the attorney” had been “dilatory,” the trial court denied Wallace’s motion to discharge counsel and counsel’s motion regarding the alleged conflict.

B. Analysis

“The right to retained counsel of choice is—subject to certain limitations—guaranteed under the Sixth Amendment to the federal Constitution.” (*People v. Verdugo* (2010) 50 Cal.4th 263, 310.) However, the right to discharge retained counsel is not absolute. (*Id.* at p. 311.) A trial court has the discretion to deny a motion to discharge retained counsel if the discharge will result in ““significant prejudice”” to the defendant

or if the motion is untimely in that it would disrupt ““the orderly processes of justice.”” (Ibid.)

Here, the trial court did not abuse its discretion in denying Wallace’s motion as untimely. He filed his letter nearly four months after he was convicted by the jury. By that point, Wallace’s attorney had already filed a motion for new trial and a motion to unseal the jurors’ contact information.

Moreover, as the trial court noted, there was a voluminous amount of information that a newly appointed or retained attorney would need to review in order to determine what motions to file or what steps to take.²⁹ Although Wallace contends that all of the information would not necessarily need to be reviewed and that the trial record could be reviewed in about a week and a half, based on the six-month to one year estimates provided by the prosecutor and Wallace’s trial counsel, the trial court reasonably concluded that a new attorney would need substantial time to become appropriately familiar with the case; the six months to a year required would have significantly disrupted the orderly process of justice. (*People v. Verdugo, supra*, 50 Cal.4th at p. 311.) This conclusion is particularly true given the fact that Wallace had not even hired a new attorney at the time of the hearing and estimated that it would take several weeks to do so.

Wallace claims that any disruption to the proceedings could have been “mitigated” or “eliminated” if the trial court had held a hearing on his motion when he filed his letter. But, given the amount of time that it would have taken a new attorney to become familiar with the case (compounded by the fact that he still had not yet hired a new attorney), the delay in holding the hearing does not establish that the trial court abused its discretion in determining that granting Wallace’s request would have resulted in a significant disruption of the proceedings.

²⁹ Wallace contends that all of the wiretap evidence would not need to be reviewed because “a new attorney could simply ask his client about the relevant facts.” But that assumes that Wallace would be aware of all of the relevant facts and that counsel would be competent in merely accepting his client’s assessment of the relevant facts.

Wallace's reliance upon *People v. Munoz* (2006) 138 Cal.App.4th 860 and *People v. Ortiz* (1990) 51 Cal.3d 975, 987 is misplaced. In both of those cases, the trial courts erroneously required the defendants to establish, under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) that the attorney was providing inadequate representation or that the defendants and their attorneys were involved in an irreconcilable conflict. (*People v. Ortiz, supra*, at pp. 979–980, 987; *People v. Munoz, supra*, at pp. 864–866.) In contrast, the trial court here understood that Wallace was not required to make the showing specified in *Marsden*. Moreover, the *Ortiz* court found that the defendant's motion was timely because it was made “after the mistrial and well before any second trial” (*People v. Ortiz*, at p. 987); and the *Munoz* court found that the motion was timely because the trial had only lasted two days, the case was not complicated, and it was unlikely a new attorney would need a significant amount of time to become familiar with the case (*People v. Munoz*, at pp. 868, 870). Contrariwise, this case involved two murders and an attempted murder and there was a voluminous amount of information that a new attorney would have to review in order to become familiar with the case and make tactical decisions.

X. *Wallace's claim regarding the lack of a Marsden-like hearing*

Wallace contends that the trial court erred when it failed to hold a *Marsden*-like hearing on his motion to discharge his retained attorney because it was based on the alleged ineffectiveness of that attorney.

Preliminarily, we hold that Wallace forfeited this claim on appeal. He never objected when the trial court declined to hold a *Marsden*-like hearing, never requested such a hearing, and acquiesced in the procedure adopted by the trial court. (*People v. Braxton* (2004) 34 Cal.4th 798, 813–814; *People v. Jones* (2012) 210 Cal.App.4th 355, 361–362.)

Even on the merits, the claim fails. The California Supreme Court has held that, when counsel is retained, it is inappropriate to hold a *Marsden*-type hearing. (*People v. Ortiz, supra*, 51 Cal.3d at p. 984.) Thus, the trial court did not err in failing to hold such a hearing. (*People v. Hernandez* (2006) 139 Cal.App.4th 101, 108–109.) And, as

Wallace concedes, there is no legal authority to support his contention that a *Marsden*-type hearing should be required in situations in which a defendant makes an untimely motion to discharge his retained counsel and bases his motion on the alleged ineffectiveness of his attorney.

In support of his claim, Wallace directs us to *People v. Frierson* (1979) 25 Cal.3d 142 and *People v. Smith* (1993) 6 Cal.4th 684. These cases do not aid Wallace as neither involves the question of whether *Marsden*-like hearings are required for untimely motions to discharge retained counsel.

To the extent Wallace contends that the right to the effective assistance of counsel cannot be adequately protected if a *Marsden*-like hearing is not mandatory, he could have raised that argument on appeal had he argued ineffective assistance of counsel (which he did not); or, he can make this assertion in a habeas petition.

XI. The trial court properly sentenced Wallace to two terms of life without the possibility of parole

Wallace contends that he could only receive one sentence of life without the possibility of parole because the multiple murder special circumstance could only apply to one of the murders he committed.

The California Supreme Court has held that when the prosecution alleges more than one multiple murder special circumstance, and the jury in a capital case finds more than one of those circumstances to be true, all but one of the findings should be stricken. (*People v. Danks* (2004) 32 Cal.4th 269, 315.) Here, the prosecutor did not charge more than one multiple murder special circumstance, and the jury made only one multiple special circumstance finding. Thus, no finding on a multiple murder special circumstance needs to be stricken.

Moreover, it was proper for the trial court to impose sentences of life without the possibility of parole for counts one and two. Although the multiple murder special circumstance can be alleged and found true only once in a case, it may be used to impose multiple sentences of life without parole in a single proceeding. (*People v. DeSimone*

(1998) 62 Cal.App.4th 693, 701; *People v. Garnica* (1994) 29 Cal.App.4th 1558, 1563–1564.)

XII. *The trial court properly imposed 10-year gang enhancements on counts one and two, but improperly imposed it on count three*

Wallace contends that the trial court erred in imposing 10-year gang enhancements on counts one through three instead of sentencing him to a 15-year minimum parole eligibility on those counts. The People concede that he is correct and that the trial court should have imposed the 15-year minimum parole eligibility on count three (attempted murder) only.

Under section 186.22, subdivision (b)(1)(C), a prison term of 10 years “shall” be imposed on a defendant convicted of committing a gang-related felony. However, section 186.22, subdivision (b)(5), provides that “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.”

Courts have held that “[w]here, as here, a defendant is sentenced to an indeterminate life term for attempted murder, the 15-year parole eligibility provision of section 186.22, subdivision (b)(5) applies rather than the 10-year gang enhancement. [Citation.]” (*People v. Arauz* (2012) 210 Cal.App.4th 1394, 1404–1405; see also *People v. Campos* (2011) 196 Cal.App.4th 438, 447.) Thus, Wallace and Khalill should have received the 15-year minimum parole eligibility term for count three (attempted murder). As such, the 10-year sentence enhancement imposed against Wallace and Khalill for count three is stricken and the trial court is instructed to replace it with the 15-year minimum parole eligibility term. (*People v. Arauz, supra*, at pp. 1404–1405; *People v. Campos, supra*, at p. 447.) Gibbs too is entitled to the 15-year minimum term for his sentence on count one, since he received a sentence of 25 years to life. (*People v. Lopez* (2005) 34 Cal.4th 1002, 1004, 1007–1011.)

However, Wallace and Khalill are not entitled to the 15-year minimum parole eligibility term for counts one and two. The California Supreme Court has suggested in dicta that the minimum parole eligibility provision was never intended to apply to

defendants sentenced to life without the possibility of parole. (*People v. Lopez, supra*, 34 Cal.4th at p. 1010; *People v. Montes* (2003) 31 Cal.4th 350, 358, fn. 10.) And, unlike the defendant in *People v. Lopez, supra*, 34 Cal.4th at pages 1004 through 1005, who was sentenced to a term of 25 years to life for first degree murder, Wallace and Khalill were sentenced to life without parole in counts one and two. It makes no sense, and would serve no purpose, to include minimum parole eligibility dates on such terms.

XIII. *Appellants are jointly and severally liable for victim restitution in count one; Wallace and Khalill are jointly and severally liable for victim restitution in count two*

Wallace contends that all appellants should be jointly and severally liable for victim restitution in count one and that he and Khalill should be jointly and severally liable for victim restitution in count two. The People agree that he is correct. To avoid “unjust enrichment” to the Victim Compensation and Government Claims Board, the abstract of judgment must be corrected to reflect that all three appellants are jointly and severally liable for the \$7,500 owed on count one, and that Khalill and Wallace are jointly and severally liable for the remaining \$7,747 owed on count two. (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1535; *People v. Neely* (2009) 176 Cal.App.4th 787, 800; *People v. Madrana* (1997) 55 Cal.App.4th 1044, 1049–1052.)

DISPOSITION

The judgments are affirmed as modified. The matter is remanded to the trial court with directions to strike the 10-year sentence on count three (Wallace and Khalill) from the abstracts of judgment and replace it with the 15-year minimum parole eligibility term. The abstract of judgment against Gibbs must also be amended to allow for a 15-year minimum parole eligibility term. The abstracts of judgment must also be modified to reflect appellants' joint and several liability on count one, and Khalill and Wallace's joint and several liability on count two. In all other respects, the judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ

ATTORNEY GENERAL

COURT OF APPEAL SECOND APPELLATE DISTRICT STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and **RESPONDENT**

No. YA075709-01-02-03

Vs

**WALLACE, DENNIS-01
KHALILL, DEYAA-02
GIBBS, RAYMOND-03,**

Volume 1 of 4 Volumes
Notice of appeal filing date:
08/08/12-01-02-03

Defendant(s) and **APPELLANT**

CLERK'S TRANSCRIPT

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Appearances:

Counsel for Plaintiff:

THE ATTORNEY GENERAL

Counsel for Defendant:

C/O C.A.P.

**Appeal from the Superior Court,
County of Los Angeles**

Honorable JAMES R. BRANDLIN, Judge

Date Mailed to:
Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

SEP 14 2012



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Pet. App. I 169

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 2 HON. EUDON FERRELL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

NO. YA075709

VS.

RAYMOND GIBBS,
DEYAA KHALILL,
DENNIS WALLACE,

AND

DEFENDANTS.

ORIGINAL

REPORTER'S TRANSCRIPT

PRELIMINARY HEARING

JUNE 9TH & 10TH, 2010

VOLUME I OF III

APPEARANCES:

FOR THE PEOPLE:

STEVE COOLEY,
DISTRICT ATTORNEY
BY: CYNTHIA BARNES,
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT GIBBS:

RONALD HIGGINS,
ATTORNEY AT LAW

FOR DEFENDANT KHALILL:

GARY OLIVE,
ATTORNEY AT LAW

FOR DEFENDANT WALLACE:

WALTER NEWMAN,
ATTORNEY AT LAW

ALSO PRESENT:

ANTONY MYERS,
ATTORNEY AT LAW

HTA:

JUNE 28TH, 2010

DEPARTMENT:

SOUTHWEST - L

REPORTED BY:

RENEE D. SMITH, C.S.R. NO.8915

000002

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
SAMUEL FEISSA	29, 91			
EMOND TAYLOR	36			
(BY MR. NEWMAN)		55		
(BY MR. OLIVE)		71		
FRANK SALERNO	80			
(BY MR. NEWMAN)		86		90
(BY MR. OLIVE)		88		

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000003

1 CASE NUMBER: YA075709
2 CASE NAME: PEOPLE VS. GIBBS, KHALILL AND
3 WALLACE
4 INGLEWOOD, CALIFORNIA WEDNESDAY, JUNE 9TH, 2010
5 DIVISION NO. II HON. EUDON FERRELL, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: RENEE D. SMITH, CSR NO. 8915
8 TIME: 4:35 P.M.
9

10 THE COURT: RAYMOND GIBBS, DEYAA KHALILL AND DENNIS
11 WALLACE. WHAT ARE WE DOING, TRAILING UNTIL TOMORROW OR
12 WHAT?

13 MR. OLIVE: IT'S TEN OF TEN TODAY I THINK.

14 THE COURT: WELL, I KNOW BUT IT'S ALSO 4:35. I'M
15 JUST INQUIRING IF EVERYONE IS AVAILABLE FOR TOMORROW?

16 MR. HIGGINS: I CAN GET HERE AT 1:00 O'CLOCK.

17 THE COURT: YOU WERE ORDERED TO BE HERE AT 8:30
18 TODAY.

19 MR. HIGGINS: YOUR HONOR, IT WASN'T MY FAULT.

20 THE COURT: I UNDERSTAND. I WASN'T GOING TO DWELL ON
21 THAT. AT THIS POINT IS THERE A REASON YOU CAN'T BE HERE AT
22 9:00 TOMORROW?

23 MR. HIGGINS: THE ONLY THING I HAVE IS A MOTION.
24 THAT SHOULDN'T TAKE BUT 15 MINUTES IN TORRANCE. AND I
25 FIGURE THE COURT WOULD GET STARTED BY 9:00 AND I WOULD BE
26 THERE AT 8:45 AND AT 9:00 COME DIRECTLY HERE.

27 THE COURT: HOW IS OUR CALENDAR FOR TOMORROW?

28 THE CLERK: WE HAVE FOUR PRELIMS. ON.

000004

1 MR. OLIVE: I HAVE A SCHEDULING ISSUE TOMORROW. I'M
2 NINE OF TEN ON TRIAL IN DEPARTMENT G. IT'S A POSSIBILITY
3 IT COULD BE SETTLED, BUT I HAVE TO GO THERE FIRST.

4 THE COURT: WELL, OKAY. COUNSEL, STATE YOUR
5 APPEARANCES.

6 MR. HIGGINS: RONALD HIGGINS FOR MR. GIBBS, WHO IS
7 PRESENT IN CUSTODY.

8 MR. NEWMAN: RAY NEWMAN FOR MR. WALLACE, WHO IS
9 PRESENT IN CUSTODY.

10 MR. OLIVE: GARY OLIVE FOR MR. KHALILL, WHO IS
11 PRESENT.

12 MS. BARNES: CYNTHIA BARNES FOR THE PEOPLE.

13 THE COURT: THANK YOU. THE MATTERS ARE HERE FOR
14 PRELIMINARY HEARING. ALL COUNSEL ARE READY?

15 MR. HIGGINS: WELL, YOUR HONOR, I'VE JUST BEEN
16 ADVISED OF THIS NEW DISCOVERY. I DON'T HAVE SEEM TO HAVE
17 THAT.

18 THE COURT: WERE THE PEOPLE PLANNING ON GIVING
19 SOMETHING TO MR. HIGGINS?

20 MS. BARNES: I'M GOING TO GIVE HIM IT WHEN WE FINISH
21 THIS PROCEEDING. I GOT DOWN HERE BEFORE HE GOT HERE SO I
22 FORGOT TO BRING IT WITH ME. I CAN GIVE IT TO HIM AS SOON
23 AS WE'RE DONE. IT'S IN MY OFFICE. IT'S THE SAME THING I
24 GAVE TO THE TWO DEFENSE ATTORNEYS. AND LIKE I SAID
25 EARLIER, THE MAJORITY IS NOT NEW DISCOVERY. IT'S JUST
26 THINGS THAT I PRINTED OUT FOR THEM. THEY EITHER HAVE THE
27 VIDEO FORMAT OR TRANSCRIPTS OF THE RECORDINGS THEY ALREADY
28 HAVE, OR COMPOSITE SKETCHES FROM THE VIDEOS AND PICTURES

1 DESCRIBED IN THE POLICE REPORTS.

2 THERE IS A COUPLE OR THREE MAPS FROM GOOGLE THAT
3 JUST HAVE ADDRESSES AND THINGS LIKE THAT. CAR REGISTRATION
4 DOCUMENTS FOR THE CLIENTS THAT I AM NOT USING IN THE
5 PRELIMINARY HEARING, BUT I GOT THEM SO I TURNED THEM OVER
6 WHEN I GET DISCOVERY. I DON'T WANT TO WAIT UNTIL WE'RE 30
7 DAYS FROM TRIAL SO.

8 THE COURT: OKAY. WELL.

9 MR. HIGGINS: IN ADDITION, YOUR HONOR, I WAS INFORMED
10 THAT THERE MAY BE SOME ADDITIONAL INFORMATION REGARDING A
11 KEY WITNESS IN THE CASE AND -- I DON'T WHAT IT IS. I'M
12 TOLD BY CO-COUNSEL.

13 THE COURT: MR. OLIVE, I THINK YOU WERE ABOUT TO SAY
14 SOMETHING ABOUT THAT EARLIER, SO WHAT DO YOU WISH TO SAY
15 ABOUT THAT?

16 MR. OLIVE: YES, YOUR HONOR. APPARENTLY, AND IT'S
17 BEEN VERIFIED, THERE IS UNCHARGED CONDUCT ON BEHALF OF THE
18 INFORMANT MR. FEISSA REGARDING THE SHOOTING INCIDENT.

19 THE COURT: UNCHARGED CONDUCT CONCERNING THIS CASE?

20 MR. OLIVE: NO. IT'S REGARDING THE WITNESS IN THIS
21 CASE.

22 THE COURT: OH, BUT IT'S INVOLVING SOME OTHER --

23 MR. OLIVE: SOME INCIDENT.

24 THE COURT: AND THAT PERSON WAS INVOLVED IN SOMETHING
25 WHERE THEY WEREN'T CHARGED?

26 MR. OLIVE: THAT'S WHAT I'M LED TO BELIEVE, YES. AND
27 I BELIEVE MISS BARNES KNOWS ABOUT THIS AND I HAVE ASKED FOR
28 IT TO BE TURNED OVER AND REPORTS AND THINGS LIKE THAT. SHE

1 CLAIMS THERE IS A PRIVILEGE. I DON'T KNOW WHAT THE
2 PRIVILEGE CAN BE THAT WOULD JUSTIFY WITHHOLDING THAT. I
3 DON'T BELIEVE THAT SHE HAS STANDING TO ASSERT A PRIVILEGE
4 ON BEHALF OF THE SHERIFF'S DEPARTMENT EITHER.

5 THE COURT: WELL, IS THERE ANYTHING THE PEOPLE WISH
6 TO SAY IN THAT REGARD?

7 MS. BARNES: IT'S A PENDING INVESTIGATION. HE HAS
8 NOT BEEN IDENTIFIED AS COMMITTING ANYTHING. HE WAS A
9 SUSPECT AND THEY ARE INVESTIGATING.

10 COUNSEL IS RIGHT, I DON'T HAVE STANDING. IF
11 COUNSEL WANTS THE INFORMATION THEY NEED TO FILE A FORMAL
12 DISCOVERY MOTION AND THE SHERIFF'S DEPARTMENT WOULD COME
13 AND THEY CAN HAVE A MOTION. THEY WOULD CLAIM PRIVILEGE.
14 THERE WOULD BE POTENTIALLY AN INCAMERA HEARING AND THAT'S
15 ALSO NOT MY PRIVILEGE. NOT MY RESPONSIBILITY.

16 AND ALL OF THAT WOULD BE SOMETHING THEY NEED TO
17 DO, BUT THEY HAVE TO FILE THE PROPER MOTION AND THE
18 SHERIFF'S DEPARTMENT WOULD RESPOND TO THAT.

19 SO IT ISN'T AN UNCHARGED ACT THAT -- THERE IS
20 INSUFFICIENT EVIDENCE TO PROVE IT OR FILE IT SO I DON'T
21 EVEN THINK WE CAN USE IT IN COURT THE INFORMATION THEY
22 WOULD BE GIVEN. BUT IN ANY EVENT IT'S A PENDING
23 INVESTIGATION AND THE SHERIFF'S DEPARTMENT IS NOT GOING TO
24 RELEASE A PENDING INVESTIGATION TO ANYONE, INCLUDING
25 MYSELF. I DON'T HAVE IT.

26 I MEAN IF THEY WANT TO FILE A MOTION, THAT'S
27 FINE. AND I TOLD COUNSEL THAT IN THE EMAIL. I'M NOT
28 SKIRTING THE ISSUE. IF THEY WANT TO FILE THE MOTION WE CAN

1 HANDLE THAT IN SUPERIOR COURT. BUT I DON'T HAVE THE
 2 INFORMATION AND I DON'T HAVE THE ABILITY TO CLAIM PRIVILEGE
 3 ON IT EITHER. SO IT'S SOMETHING THAT HE NEEDS TO TAKE UP
 4 WITH THE SHERIFF'S DEPARTMENT. AND IF HE WANTS TO DO THAT
 5 HERE HE NEEDS TO FILE THE PROPER MOTIONS AND WE'LL GO
 6 THROUGH THE APPROPRIATE STEPS, BUT IT'S NOT --

7 THE COURT: IS THAT SOMETHING NORMALLY WHERE YOUR
 8 OFFICE WOULD REPRESENT THE SHERIFF'S DEPARTMENT OR WOULD
 9 THAT BE COUNTY COUNSEL IN TERMS OF SAY RESISTING TURNING
 10 WHATEVER THAT IS OVER?

11 MS. BARNES: IT'S THE LAW ENFORCEMENT PRIVILEGE.
 12 IT'S IN THE EVIDENCE CODE OR THE PENAL CODE, I'M NOT QUITE
 13 SURE OFF THE TOP OF MY MIND. IT'S ACTUALLY A STATUTORY
 14 PRIVILEGE THEY HAVE.

15 THE COURT: I UNDERSTAND. BUT I'M JUST SAYING WHO
 16 WOULD REPRESENT THAT TO THE COURT? WOULD YOU OR COUNTY
 17 COUNSEL?

18 MS. BARNES: IT IS WOULD BE A REPRESENTATIVE OF THE
 19 SHERIFF'S DEPARTMENT SO THAT WOULD BE COUNTY COUNSEL. IT'S
 20 NOT MY PRIVILEGE TO CLAIM.

21 THE COURT: OKAY. WELL, WHERE DOES THAT LEAVE US?
 22 DO YOU ALL WANT TO DELAY THE PRELIMINARY HEARING TO ADDRESS
 23 SOMETHING LIKE THAT, OR DID YOU WANT TO DEAL WITH IT SOME
 24 OTHER WAY?

25 MR. OLIVE: NO. WE NEED THE INFORMATION BEFORE -- WE
 26 NEED THAT INFORMATION BEFORE THIS WITNESS TAKES THE STAND
 27 SO WE CAN MEANINGFULLY CROSS-EXAMINE HIM.

28 THE COURT: WELL, THAT IS SOMETHING THAT THE COURT

1 MIGHT HAVE TO RESEARCH ALSO, BECAUSE IT'S AN UNCHARGED
2 OFFENSE. I MEAN AN UNCHARGED INCIDENT. SO CERTAINLY IT'S
3 NOT CRIMINAL CONDUCT THAT ORDINARILY THE PEOPLE WOULD BE
4 REQUIRED TO TURN OVER, IF THEY HAD IT.

5 I'M NOT CERTAIN THAT IS CLEARLY -- AND I'M JUST
6 SPEAKING OFF THE TOP OF MY HEAD RIGHT NOW. I'M NOT SO
7 CERTAIN CLEARLY THAT IS SOMETHING YOU WOULD BE ENTITLED TO
8 PRIOR TO PRELIMINARY HEARING. ASIDE FROM THE FACT THAT WE
9 ALL KNOW THAT ALL DISCOVERY IS NOT NECESSARILY REQUIRED AT
10 A PRELIMINARY HEARING. THAT'S MORE OF A TRIAL RIGHT.

11 MR. OLIVE: WELL, IN THIS CASE I DID FILE A MOTION
12 FOR DISCOVERY. I FILED MORE THAN ONE.

13 THE COURT: I UNDERSTAND.

14 MR. OLIVE: I BELIEVE THAT'S IN THE COURT FILE.

15 THE COURT: YOU SEE THE DEEPER ISSUE IS NOT A REGULAR
16 DISCOVERY ISSUE.

17 MR. OLIVE: BUT THIS IS A SLIGHTLY DIFFERENT ISSUE.
18 WE'RE DEALING WITH INFORMANTS AND TO GET TO THE MOTIVE AND
19 BIASES AND THOSE KIND OF THINGS. WITHOUT THAT INFORMATION
20 WE CAN'T CROSS-EXAMINE HIM. THAT'S A SIGNIFICANT ISSUE.
21 THAT'S NOT A LIGHT ISSUE. THAT'S AN UNCHARGED, SERIOUS
22 CRIME.

23 THE COURT: HOW DO YOU KNOW THAT?

24 MR. OLIVE: COUNSEL, MISS BARNES, DID SAY THAT
25 APPARENTLY SHE KNOWS THAT HE WAS A SUSPECT. NOT THAT --
26 THAT'S A FAIRLY STRONG TERM.

27 THE COURT: WELL, THAT'S MY QUESTION THEN. WHENEVER
28 A WITNESS IS BEING CALLED IS THE DEFENSE ENTITLED TO

1 ANYTHING THAT'S INVOLVING THAT PERSON EVEN IF THEY ARE JUST
2 A SUSPECT IN SOME INVESTIGATION WITH THE SHERIFF'S
3 DEPARTMENT OR ANY AGENCY, IS THAT SOMETHING YOU ARE
4 ENTITLED TO?

5 MR. OLIVE: WELL, THE EVIDENCE CODE WE CAN
6 CROSS-EXAMINE FOR BIAS AND MOTIVE FOR CERTAIN.

7 THE COURT: BUT HOW FAR DOES THAT TAKE US? THAT'S MY
8 POINT. ORDINARILY WE DEAL WITH CRIMES OF MORAL TURPITUDE
9 AND FELONY CONVICTIONS. AND THIS IS GOING BEYOND THAT.

10 MR. NEWMAN: I THINK ONE PROBLEM WE HAVE THE INFORMANT
11 IS APPARENTLY MAKING DEALS TO TESTIFY AGAINST THE
12 DEFENDANTS IN RETURN FOR SOMETHING FROM THE PROSECUTOR FOR
13 A CASE THAT HE HAS PENDING.

14 AND THIS MIGHT BE ONE OF THOSE INCIDENTS. WHY
15 IT'S STILL UNCHARGED, MAYBE IT'S A WINK UNDER THE TABLE TO
16 NOT PROSECUTE ON THIS. WE'LL HOLD IT IN ABEYANCE IF YOU
17 TESTIFY IN THESE MATTERS.

18 AND AS I UNDERSTAND THIS IS AN INFORMANT
19 TESTIFYING NOT ONLY IN THIS CASE BUT IN OTHER CASES.

20 THE COURT: WELL, ASSUMING THAT IS THE CASE, I THINK
21 THE ONLY THING YOU CAN DO IS JUST QUESTION THE DEFENDANT IN
22 THIS REGARD. I MEAN NOT THE DEFENDANT, BUT THAT WITNESS.
23 WHEN THE WITNESS TAKES THE STAND YOU QUESTION THEM IN THAT
24 REGARD AND IF HE SAYS YES, IT'S ONE THING. IF THEY SAY NO,
25 IT'S SOMETHING ELSE. BUT I DON'T KNOW IF WE CAN ALLOW
26 THINGS TO TAKE US TOO FAR AWAY FROM THE PRELIMINARY HEARING
27 PARTICULARLY IF IT'S CONDUCT NOT CONCERNING THIS INCIDENT.

28 MR. NEWMAN: ONE THING IN THAT REGARD, IN THE REPORTS

1 IF IT'S INDICATED HE'S A SUSPECT THERE MIGHT BE WITNESSES
2 IN THE REPORTS THAT MAY IMPEACH HIS TESTIMONY AS TO WHAT HE
3 HAS HERE.

4 THE COURT: WELL, THAT'S MY POINT EXACTLY SEE. HOW
5 FAR DO WE ALLOW US TO BE TAKEN AWAY FROM THE PRELIMINARY
6 HEARING ALREADY? YOU ARE TALKING ABOUT WELL MAYBE THERE IS
7 SOMEONE IN THAT CASE THAT MIGHT HAVE SOME INFORMATION OR
8 SOMETHING. BUT THE PRELIMINARY HEARING IS NOT DESIGNED TO
9 BE DISTRACTED LIKE THAT. WE'VE NEVER -- ESPECIALLY IN
10 MULTIPLE DEFENDANT CASES WE WOULD GET NEVER OFF FIRST BASE.

11 MR. NEWMAN: I UNDERSTAND THAT IS ONE PROBLEM. THE
12 WHOLE CASE CENTERS AROUND THIS INFORMANT AND --

13 THE COURT: WELL --

14 MR. NEWMAN: IN FACT IN A PARTICULAR CASE LIKE THIS WE
15 HAVE VERY SERIOUS CHARGES PENDING HERE. AND IN ORDER TO
16 TEST THIS INFORMANT'S CREDIBILITY I THINK THAT WOULD BE
17 HELPFUL TO THE COURT TO HAVE ALL THE INFORMATION IT CAN
18 REGARDING THIS INFORMANT.

19 THE COURT: WELL --

20 MR. NEWMAN: WHAT YOU HAVE TO DO IS MAKE A DECISION
21 WHETHER OR NOT ANYTHING HE SAID CAN BE TRUSTWORTHY AND
22 WHETHER YOU CAN BELIEVE ANYTHING HE SAID OR WHAT HE SAYS
23 ABOUT THIS PARTICULAR INCIDENT HAS NO TRUSTWORTHINESS.

24 THE COURT: THE ONLY DECISION THAT I HAVE TO MAKE IS
25 WHETHER OR NOT THAT IS PERMISSIBLE OR REQUIRED DISCOVERY.
26 AND THE BEYOND THAT, YOU KNOW, WE DO WHAT WE HAVE TO DO.

27 BUT THE ONLY ISSUE RIGHT NOW IS WHETHER IT'S
28 PERMISSIBLE DISCOVERY AND WHETHER WE NEED TO HAVE A

1 SEPARATE HEARING IN THIS REGARD AND JUST SET THE
2 PRELIMINARY HEARING ASIDE FOR THE MOMENT AND GIVE EVERYONE
3 A CHANCE TO BRIEF THAT ISSUE.

4 AND MAYBE WE CAN DO THAT, BUT OTHERWISE I'M
5 INCLINED TO PROCEED WITH THE PRELIMINARY HEARING. BECAUSE
6 I THINK IT'S GOING TO TAKE TOO LONG TO FLUSH OUT THAT KIND
7 OF INFORMATION WHEN -- I HATE TO CALL IT A FISHING
8 EXPEDITION, BUT IT CERTAINLY -- YOU'RE LOOKING FOR
9 SOMETHING THAT MIGHT BE USEFUL.

10 MR. OLIVE: I'M NOT LOOKING -- AT LEAST I'M NOT
11 LOOKING FOR ANYTHING THAT MIGHT BE USEFUL, I THINK I'M
12 PRECISE.

13 THE COURT: WELL, YOU ARE NOT PRECISE. I UNDERSTAND
14 YOUR DEFINITE ON THE QUESTION OF THE FACT THAT SOMETHING
15 EXISTS. BUT THE BEYOND THAT WE DON'T KNOW ABOUT THE
16 IMPLICATIONS OF THAT.

17 MR. OLIVE: YES. AND I JUST FOUND OUT TODAY HE WAS A
18 SUSPECT SO.

19 THE COURT: WELL, THAT'S MY PROBLEM, YOU KNOW, SIMPLY
20 BECAUSE SOMEONE IS A SUSPECT IN A CRIME THAT IS UNRELATED
21 TO THE ISSUE BEFORE THE -- NOT ISSUE, BUT INCIDENT BEFORE
22 THE COURT IS THAT REALLY DISCOVERABLE?

23 MR. HIGGINS: AT MINIMUM COULD THE COURT AT LEAST
24 HAVE A HEARING AND THE COURT AT LEAST REVIEW IT AND MAKE
25 SOME KIND OF DECISION. OTHERWISE, WE'RE SHOOTING IN THE
26 DARK BECAUSE WE'RE TALKING ABOUT POTENTIALLY MORAL
27 TURPITUDE AND TALKING ABOUT POTENTIALLY FELONIOUS CONDUCT.
28 AND ONLY PERSON THAT HAS INFORMATION IS THE SHERIFF'S

1 DEPARTMENT AND THE PROSECUTOR.

2 MS. BARNES: I DON'T HAVE THE INFORMATION.

3 MR. HIGGINS: SHE HAS MORE THAN WE HAVE. AND SO IF
4 THE COURT CAN AT LEAST LOOK AT THAT AND PUT THE PRELIMINARY
5 HEARING ON HOLD FOR A SHORT PERIOD OF TIME.

6 THE COURT: SEE, ONCE AGAIN THAT'S WHY I SEE A BIT OF
7 A PROBLEM ALTHOUGH I'M NOT NECESSARILY OPPOSED TO HAVING A
8 HEARING. IT'S JUST HAT WE HAVE TO PUT THE PRELIMINARY
9 HEARING ASIDE FOR THE MOMENT.

10 BUT WE'VE GOT TO HAVE A HEARING OF SOME TYPE INTO
11 AN INVESTIGATION THAT SIMPLY IS IN PROGRESS. HOW DO WE
12 DETERMINE OTHER THAN THE FACT THAT THERE IS AN ALLEGATION
13 MAYBE OF MORAL TURPITUDE ACTIVITY? WHAT DOES THAT GET US?
14 YOU KNOW, IT WOULDN'T BE PROVEN. HE OR SHE CAN DENY IT.

15 SO WHAT DOES THAT GET US?

16 MR. NEWMAN: MAYBE I CAN ASSIST THE COURT. AS FAR AS
17 MY CLIENT MR. WALLACE HE DOESN'T WANT TO WAIVE ANY MORE
18 TIME AND WE WANT TO DO THE PRELIM. TOMORROW. WHATEVER
19 INFORMATION WE HAVE ON MR. FEISSA OR FEESSA, WHATEVER THE
20 NAME IS, WE CAN WE'LL FLUSH OUT AT SOME OTHER TIME.

21 THE COURT: WHAT ABOUT THE OTHER DEFENDANTS?

22 MR. HIGGINS: YOUR HONOR, FOR PURPOSES OF THIS I
23 HAVEN'T SPOKEN TO MY CLIENT YET, BUT FOR PURPOSES OF
24 REPRESENTING HIM I WOULD CERTAINLY WANT THE COURT TO TAKE A
25 LOOK AT THIS SO WE CAN DO A MEANINGFUL PRELIMINARY HEARING.
26 IT IS POSSIBLY IMPEACHMENT TESTIMONY FROM MY REVIEW OF
27 THIS.

28 THE COURT: AM I COMPLETELY OFF BASE IN THIS OR DOES

1 ANYONE SEE THAT THIS IS A BIT DIFFERENT THAN ACTUAL PROVEN
2 CONDUCT AS OPPOSED TO SOMEONE BEING UNDER INVESTIGATION?

3 MS. BARNES: I DO.

4 MR. HIGGINS: IT COULD BE.

5 THE COURT: I'M SORRY?

6 MR. HIGGINS: IT COULD REFER TO ACTS.

7 THE COURT: HOW DO WE PROVE THAT CALL, CALL
8 WITNESSES?

9 MR. OLIVE: I'M NOT TRYING TO PROVE ACTS. I WANT TO
10 ASK HIM REGARDING THE MOTIVE AND BIAS ON ONE INCIDENT. I
11 THINK THAT IS PROPER CROSS-EXAMINATION.

12 THE COURT: NORMALLY THAT KIND OF INQUIRY DEALS WITH
13 PROVEN FELONY CONVICTIONS OR CERTAIN MISDEMEANORS THAT
14 INVOLVE MORAL TURPITUDE. THIS IS NEITHER ONE OF THESE,
15 THAT'S SOMETHING ELSE. IT'S SOMETHING IN PROGRESS. THAT'S
16 THE PROBLEM.

17 MR. OLIVE: BUT --

18 MS. BARNES: THAT'S THE POINT. THEY WOULD HAVE TO
19 PROVE HE'S GOT MOTIVE AND THEN THEY WOULD HAVE TO PROVE
20 THAT HE IS GETTING A BENEFIT ON THAT CASE BY NOT BEING
21 CHARGED WITH IT, WHICH WOULD REQUIRE THEM TO BASICALLY
22 PROVE AN ENTIRE CASE AND THEN PROVE THAT SOMEHOW HE'S
23 GETTING A BENEFIT THAT WE'RE NOT CHARGING HIM WITH THAT
24 CRIME. AND IT'S A PENDING INVESTIGATION THAT THE SHERIFF'S
25 DEPARTMENT HAS A PRIVILEGE AGAINST DISCLOSING FOR OBVIOUS
26 REASONS. WE DON'T WANT TO TURN OVER POLICE REPORTS OF A
27 PENDING INVESTIGATION TO A BUNCH OF GANG MEMBERS SO.

28 MR. OLIVE: HUH?

1 MS. BARNES: I MEAN, FOR PURPOSES OF PRELIMINARY
2 HEARING IT SEEMS VERY, VERY EXCESSIVE AND IT'S SOMETHING
3 THAT I CAN'T ADDRESS. IT'S NOT MY PRIVILEGE. I DON'T HAVE
4 THE CASE. AND I SAID THE WORD "SUSPECT". I DON'T KNOW IF
5 THAT'S THAT THE RIGHT WORD TO USE, BUT NOW THEY ARE
6 GRABBING ONTO THAT SAYING HE'S A SUSPECT.

7 THE COURT: OKAY. WE'LL DO THIS. IS IT POSSIBLE,
8 MR. OLIVE AND MR. HIGGINS, THAT YOU CAN TAKE SOME TIME OVER
9 THE EVENING OR SIMPLY BETWEEN NOW AND TOMORROW IN TERMS OF
10 WHETHER OR NOT THE DEFENDANTS ARE COMFORTABLE GOING FORWARD
11 NOW? AS MR. NEWMAN HAS INDICATED HE CAN MOVE FORWARD.

12 BECAUSE I SEE IT AS BEING PROBLEMATIC ANYWAY EVEN
13 IF THERE AREN'T. I SEE A PROBLEM WITH COMPELLING DISCOVERY
14 THAT IS STILL TOO VAGUE.

15 MR. OLIVE: I WOULD LIKE TO SEE A CASE THAT COUNSEL
16 CAN CITE THAT SUPPORTS HER POSITION.

17 THE COURT: HER POSITION OF WHAT?

18 MR. OLIVE: OF THAT, BECAUSE --

19 THE COURT: SHE DOESN'T HAVE -- WHICH THAT DOESN'T
20 HAVE TO BE DISCLOSED?

21 MR. OLIVE: YES, UNCHARGED CONDUCT.

22 THE COURT: I WOULD RATHER SEE -- NOT RATHER, BUT I
23 WOULD LIKE TO SEE A CASE FROM THE DEFENSE OF SOMETHING THAT
24 REALLY DOESN'T EXIST OR ALMOST HAVE A HEARING TO PROVE THAT
25 SOMETHING EXISTS, HAS TO BE DISCOVERED, PARTICULARLY AT A
26 PRELIMINARY HEARING.

27 MR. OLIVE: WE HAVE THE RIGHT TO DISCOVERY BEFORE
28 PRELIMINARY HEARING.

1 THE COURT: YOU HAVE THE RIGHT TO DISCOVER WHAT?

2 MR. OLIVE: RELEVANT MATERIAL INFORMATION.

3 THE COURT: AND WE'RE TALKING ABOUT INFORMATION THAT
4 CAN BE USED TO POSSIBLY IMPEACH A WITNESS.

5 MR. OLIVE: YES.

6 THE COURT: AND ORDINARILY THAT IS INVOLVING FELONY
7 CONVICTIONS AND MISDEMEANOR OF MORAL TURPITUDE.

8 MR. OLIVE: BUT IT'S NOT LIMITED ONLY --

9 THE COURT: BUT ORDINARILY IT WOULD INVOLVE THAT.
10 BUT I NEED TO SEE SOME CASES THAT MAYBE GO BEYOND THAT
11 WHICH TALKS ABOUT A WITNESS WHO IS UNDER INVESTIGATION FOR
12 SOMETHING. THAT WITNESS HAS A RIGHT TO DENY THAT, RIGHT,
13 UNTIL IT'S PROVEN?

14 MR. OLIVE: BUT THE DAVIS CASE ADDRESSED THAT POINT.

15 THE COURT: WHAT'S THAT?

16 MR. OLIVE: DAVIS VERSUS ALASKA ADDRESSED THE SAME
17 POINT REGARDING A JUVENILE, AND THESE WERE -- THEY WERE
18 ALLOWED TO GET INTO THE FACT THIS MINOR WAS ON PROBATION
19 AND BECAUSE OF THE FACT HE WAS ON PROBATION.

20 THE COURT: ON PROBATION? THAT WOULD SEEM TO
21 INDICATE HE'S BEEN CONVICTED OF SOMETHING OR A SUSTAINED
22 PETITION.

23 MR. OLIVE: THE ISSUE WAS NOT A CONVICTION OR
24 SUSTAINED PETITION. IT WAS ONLY THE ISSUE OF THE FACT THEY
25 HAD THE RIGHT TO DISCOVER THAT HE WAS UNDER PROBATION.

26 THE COURT: WELL, I DON'T SEE THE RELEVANCE OF THAT.

27 MR. OLIVE: WELL, I THINK DAVIS V. ALASKA IS ON
28 POINT.

1 THE COURT: HAVE YOU GOT A CITE FOR THAT?

2 MR. OLIVE: I DON'T HAVE AN EXACT CITE.

3 THE COURT: GIVE ME THAT. AND I DON'T KNOW IF YOU
4 CAN GET THAT TO THE CLERK BETWEEN NOW AND TOMORROW.

5 IN EITHER CASE I THINK WE ARE GOING TO RECESS ON
6 THIS TODAY AND I WOULD AGAIN TELL COUNSEL MR. HIGGINS AND
7 MR. OLIVE, TO EXPLORE WHETHER OR NOT YOU WANT TO GO FORWARD
8 ON THIS RIGHT NOW OR YOU WANT TO SET IT ASIDE AND CONDUCT
9 SOME KIND OF HEARING WITH AN UNDERSTANDING RIGHT NOW THAT
10 THE COURT IS LOOKING AT THAT SOMEWHAT ASKANCE.

11 AND I WOULD REALLY HAVE TO SEE SOME CASE LAW
12 THAT COMPELS DISCOVERY UNDER THOSE KIND OF CIRCUMSTANCES.

13 NOW, IS TOMORROW GOOD AND WHAT TIME CAN WE GET
14 STARTED TOMORROW?

15 MR. HIGGINS: AS I SAID 10:00 O'CLOCK. THAT'S THE
16 ONLY THING I HAVE.

17 THE COURT: MR. OLIVE?

18 MR. OLIVE: 10:00 O'CLOCK WOULD BE FINE. I DO HAVE A
19 NINE OF TEN MATTER IN DEPARTMENT G, WHICH I HAVE A FEELING
20 THE TRIAL IS NOT GOING TO GO, BUT I HAVE TO GO THERE FIRST.

21 MS. BARNES: YOUR HONOR, THAT'S WHAT HAPPENED TODAY
22 SO EITHER --

23 MR. OLIVE: I WAS HERE ALL DAY.

24 MS. BARNES: I AM NOT SAYING IT WAS ANYONE'S FAULT,
25 BUT IF HE GOES TO TORRANCE AND WE BRING ALL THE WITNESSES
26 AGAIN AND WE SIT HERE AND WAIT AND IT TAKES TWO HOURS IN
27 TORRANCE AND IT'S NOT HIS FAULT, AND THEN HE STARTS A
28 TRIAL, WE --

1 THE COURT: WELL, IS IT BETTER TO TRY TO CONTINUE?

2 MR. OLIVE: I BELIEVE SO.

3 MS. BARNES: I AM READY TO START, BUT MAYBE WE CAN
4 COME HERE AND JUST TELL TORRANCE HE'S GOT TO DO A PRELIM.
5 BEFORE HE GOES TO TORRANCE.

6 THE COURT: I THINK I WOULD PREFER TO CONTINUE. AND
7 I'M SORRY THAT WITNESSES HAVE TO BE INCONVENIENCED ONCE
8 MORE, BUT I THINK IT WOULD GIVE EVERYONE SOME TIME TO TRY
9 TO FLUSH OUT SOME ISSUES AND ANY REMAINING DISCOVERY CAN BE
10 TURNED OVER, IF THERE IS ANY.

11 AND IF SOMEONE CAN GET SOME CASE AUTHORITY TO
12 THE COURT THEN I CAN LOOK AT SOME THINGS AND WE CAN DISPOSE
13 OF THAT ISSUE AND BE READY TO GO ON THIS MATTER IN A WEEK
14 OR SO.

15 MR. NEWMAN: WE'RE READY TOMORROW IN THE MORNING ANY
16 TIME YOU SAY.

17 THE COURT: I UNDERSTAND.

18 MR. NEWMAN: IN SPEAKING TO HIM HE DOESN'T WANT TO
19 WAIVE ANY MORE TIME.

20 THE COURT: OKAY. WE'LL DO THIS THEN. IF WE GET PUT
21 INTO A SITUATION WHERE IT HAS TO BE PUT OVER FOR GOOD CAUSE
22 OR WHATEVER I WILL HAVE TO DO THAT. WE'LL SET IT FOR
23 TOMORROW AT 10:00 O'CLOCK. AND WE'LL CONSIDER THE
24 PRELIMINARY HEARING HAVING GOTTEN STARTED TODAY AT ROUGHLY
25 4:30. WE'LL RECESS AT ON 5:00 O'CLOCK AND WE'LL PROCEED
26 AGAIN AT 10:00 O'CLOCK TOMORROW MORNING.

27 MS. BARNES: DOES THAT MEAN MR. OLIVE IS ENGAGED AND
28 CAN'T START A TRIAL IN TORRANCE? BECAUSE I DON'T WANT

18
1 BRING MY WITNESSES. I CAN GO INTO CHAMBERS AND EXPLAIN THE
2 WITNESS SITUATION TO THE COURT, BUT IT'S A SIGNIFICANT --
3 THE COURT: MR. OLIVE, YOU'RE SAYING YOU MIGHT END UP
4 GOING TO TRIAL?
5 MR. NEWMAN: IF HE'S ENGAGED I DON'T THINK HE CAN.
6 MR. OLIVE: I'M TELLING THE COURT, I'M NINE OF TEN
7 FOR TRIAL TOMORROW IN JUDGE ARNOLD'S COURT.
8 THE COURT: COUNSEL, YOU ARE ENGAGED AT THIS TIME SO
9 WE'LL CONTINUE UNTIL TOMORROW AT 10:00 AND YOU CAN JUST
10 TELL THE JUDGE OVER THERE THAT YOU ARE ENGAGED HERE AND YOU
11 ARE ORDERED TO BE HERE AT 10:00 O'CLOCK.
12 MR. OLIVE: I DO HAVE THE DAVIS CASE CITE WHICH I
13 THINK IS APPROPRIATE, 415 U.S. 308.
14 THE COURT: ALL RIGHT. THANK YOU. COURT IS IN
15 RECESS.
16
17 (EVENING RECESS TAKEN.)
18
19
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28

1 CASE NUMBER: YA075709
2 CASE NAME: PEOPLE VS. GIBBS, KHALILL AND
3 WALLACE
4 INGLEWOOD, CALIFORNIA THURSDAY, JUNE 10TH, 2010
5 DIVISION NO. II HON. EUDON FERRELL, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: RENEE D. SMITH, CSR NO. 8915
8 TIME: 11:15 A.M.

9
10 THE COURT: RAYMOND GIBBS, DEYAA KHALILL AND DENNIS
11 WALLACE. COUNSEL, STATE YOUR APPEARANCES.

12 MR. NEWMAN: RAY NEWMAN APPEARING WITH MR. WALLACE
13 WHO IS PRESENT IN COURT IN CUSTODY.

14 MR. HIGGINS: RONALD HIGGINS WITH MR. GIBBS WHO IS
15 PRESENT IN CUSTODY.

16 MR. OLIVE: GARY OLIVE FOR DEYAA KHALILL WHO IS
17 PRESENT IN CUSTODY.

18 THE COURT: THANK YOU. THE MATTER IS HERE FOR
19 PRELIMINARY HEARING. FOR THE PEOPLE?

20 MS. BARNES: CYNTHIA BARNES. THE PEOPLE ARE READY.

21 THE COURT: ALL COUNSEL ARE READY?

22 MR. OLIVE: WELL, YOUR HONOR, WE LEFT WITH THE ISSUE
23 OF THE SHOOTING INCIDENT INVOLVING MR. FEISSA AND OUR
24 RIGHTS.

25 THE COURT: THIS IS THE FIRST TIME I'VE HEARD ABOUT A
26 SHOOTING INCIDENT. WAS IT CHARACTERIZED AS THAT YESTERDAY?
27 WELL, IT DOESN'T MATTER. I JUST DIDN'T REALIZE IT WAS A
28 SHOOTING INCIDENT.

1 MR. OLIVE: I DON'T KNOW, BUT I BELIEVE IT'S A
2 SHOOTING INCIDENT. I DON'T KNOW.

3 THE COURT: WE'LL ADDRESS THAT IN A MOMENT.

4 LET ME ADDRESS THE AUDIENCE IN THE MATTER. IT
5 DOES APPEAR THERE ARE A NUMBER OF PEOPLE IN THE COURT TODAY
6 THAT HAVE AN INTEREST IN THE CASE. AND I WANT TO ADVISE
7 ALL OF YOU THAT YOU ARE CERTAINLY WELCOME TO BE IN THE
8 COURT, BUT CANNOT DO ANYTHING THAT WILL DISTURB THE COURT,
9 MEANING THE JUDGE, THE ATTORNEYS THE WITNESS, THE
10 DEFENDANTS, ANYONE.

11 YOU ARE NOT TO ATTEMPT ANY KIND OF CONTACT
12 CERTAINLY WITH THE DEFENDANTS IN THE CASE. IF ANYONE HAS A
13 CELL PHONE OR A DIGITAL CAMERA OR SOMETHING THAT MIGHT HAVE
14 A PHOTO CAPABILITY, YOU MUST TURN THOSE THINGS OFF
15 REGARDLESS OF WHETHER YOU PLAN TO USE IT OR NOT. YOU HAVE
16 TO TURN THOSE OFF. BECAUSE IF IT GOES OFF IN THE COURTROOM
17 YOU WILL BE ASKED TO LEAVE THE COURTROOM AND THOSE ITEMS
18 WILL BE CONFISCATED.

19 YOU CERTAINLY ARE ORDERED AT THIS TIME NOT TO
20 MAKE ANY ATTEMPT TO PHOTOGRAPH ANYTHING INSIDE OF THE
21 COURTROOM.

22 ONCE AGAIN, YOU ARE WELCOME TO BE HERE, BUT IF
23 ANY OF THOSE THINGS ARE VIOLATED YOU WILL BE ESCORTED OUT
24 OF THE COURTROOM. THANK YOU.

25 MR. OLIVE, I DID REVIEW THAT CASE OF DAVIS VERSUS
26 ALASKA AND FOR A NUMBER OF REASONS I DO NOT FEEL THAT IS ON
27 POINT IN THIS CASE.

28 FOR ONE THING, IT IS A TRIAL AS OPPOSED TO A

1 PRELIMINARY HEARING. AND I'M SURE YOU ARE AWARE ONE OF THE
2 MOST RECENT PRONOUNCEMENTS ON THIS ISSUE OF CROSS
3 EXAMINATION IS CONFRONTATION OF WITNESSES, WHICH IS THE
4 CASE OF CRAWFORD.

5 AND AS YOU MAY BE AWARE OR UNAWARE, I DON'T
6 KNOW, THAT IS NOT APPLICABLE TO A PRELIMINARY HEARING.
7 THAT IS CRAWFORD ITSELF. I THINK THAT WE'RE ALMOST ON THE
8 SAME ISSUE.

9 AND IN ADDITION TO THAT, CRAWFORD AND EVEN THE
10 DAVIS CASE DEALS WITH AN ACTUAL RECORD OF SOME TYPE OF A
11 RECORD OF CONVICTION. IN THE DAVIS CASE IT WAS A JUVENILE
12 WHO HAD A SUSTAINED PETITION AND WAS ON PROBATION IN THE
13 CASE.

14 AND THE COURT FOUND ON THE SPECIFIC FACTS OF THAT
15 CASE THAT THE DEFENSE SHOULD HAVE BEEN GIVEN THE RIGHT TO
16 HAVE CROSS EXAMINATION FOR WHATEVER REASON. BUT I DON'T
17 FIND IT REALLY ON POINT IN THIS CASE.

18 SO YOU CAN MAKE A RECORD IF YOU WISH, BUT I'M
19 GOING TO CERTAINLY FIND THAT THE COURT WILL NOT COMPEL --
20 WELL, BEFORE I DO THAT I WANTED JUST SHARE WITH YOU WHAT MY
21 THINKING IS UP TO THIS POINT. NOW, YOU CAN TELL ME EXACTLY
22 WHAT YOU ARE ASKING FOR IN TERMS OF THAT PERSON.

23 MR. OLIVE: WELL, I'M ASKING FOR THE -- ALL OF THE
24 INFORMATION LAW ENFORCEMENT HAS REGARDING THE INCIDENT
25 RELATED TO MR. FEISSA: ARREST REPORTS, INTERVIEWS,
26 SUPPLEMENTAL REPORTS, INVESTIGATION REPORTS.

27 THE COURT: YOU DO AGREE THAT IS CERTAINLY UNUSUAL
28 FROM THE NORMAL CIRCUMSTANCE WHERE IF AN INCIDENT IS IN AN

1 ARREST STAGE AND AN INVESTIGATION STAGE WHERE YOU REALLY
2 DON'T EVEN HAVE A CONVICTION ON THE RECORD IT'S KIND OF
3 DIFFICULT TO SAY YOU COULD POINT TO THAT AND TRY TO MAKE AN
4 ARGUMENT OF BIAS, ET CETERA.

5 MR. OLIVE: NO, I WOULD NOT AGREE WITH THAT, BECAUSE
6 IT COULD GO TO BIAS.

7 THE COURT: JUST THE FACT THAT SOMEONE IS UNDER
8 INVESTIGATION OR HAVE BEEN ARRESTED WITHOUT ANY CONVICTION?

9 MR. OLIVE: WELL, BECAUSE THE BIAS GOES TO
10 MR. FEISSA'S POTENTIAL BIAS AND/OR MOTIVE TO COOPERATE WITH
11 THE POLICE BECAUSE HE HAS A PENDING INVESTIGATION. AND
12 DAVIS DID ADDRESS THE PROBATION ISSUE WITH THE JUVENILE
13 BECAUSE HE WAS UNDER THE COURT'S UMBRELLA BECAUSE OF THE
14 MERE FACT HE WAS ON THE PROBATION. HE WAS UNDER THE
15 COURT'S UMBRELLA WHICH COULD GIVE A WITNESS OR IN THAT CASE
16 JUVENILE THE MOTIVE. SO I WOULDN'T AGREE WITH THAT.

17 IN ADDITION THE INVESTIGATION REPORTS,
18 SUPPLEMENTAL REPORTS, NOTES, ALSO PERTAIN TO THE
19 INVESTIGATING OFFICER'S MOTIVE AND BIAS TO TESTIFY IN THIS
20 CASE.

21 THE COURT: OKAY.

22 MR. OLIVE: I THINK WE ARE AT LEAST ENTITLED TO THAT
23 INFORMATION. NOT THAT I WANT TO GO ON A FISHING EXPEDITION
24 WHAT WITNESS AND WHO ELSE COULD TESTIFY, BUT TO EXAMINE
25 MOTIVE OR BIAS OF MR. FEISSA AND THE INVESTIGATING
26 OFFICERS.

27 THE COURT: LET ME ASK THIS: AT THIS POINT IS THIS A
28 PERSON THAT WILL BE CALLED AS A WITNESS AT THE PRELIMINARY

1 HEARING?

2 MR. OLIVE: MR. FEISSA?

3 THE COURT: YES.

4 MR. OLIVE: I BELIEVE SO. I DON'T KNOW FOR SURE, BUT
5 I BELIEVE SO.

6 THE COURT: WELL, AT THIS POINT THIS IS GOING TO BE
7 THE COURT'S RULING.

8 MR. HIGGINS: MAY I ADD ON A REQUEST, YOUR HONOR?

9 THE COURT: SURE.

10 MR. HIGGINS: I'M ALSO JOINING IN THAT MOTION. BUT
11 WHAT I WOULD ASK AND WHAT I BELIEVE THE -- EVEN IF WE DON'T
12 GET TO THE CASE LAW BUT JUST STRICTLY ON THE 1054, WE ARE
13 ENTITLED TO STATEMENTS OF WITNESSES IF IN THE COURSE OF
14 INVESTIGATION.

15 THE COURT: STATEMENTS WITNESSES CONCERNING THIS
16 CASE?

17 MR. HIGGINS: WELL, WE DON'T KNOW IF IT'S CONCERNING
18 THIS CASE. THAT'S WHAT I WOULD ASK THE COURT.

19 THE COURT: THAT'S WHAT I WAS LEAD TO BELIEVE THAT IT
20 DOESN'T CONCERN THIS CASE.

21 MR. HIGGINS: BUT YOU DON'T KNOW -- WE DON'T KNOW.
22 THE DISTRICT ATTORNEY SAYS SHE DOESN'T KNOW. SHE SAYS IT'S
23 AN INVESTIGATION.

24 BUT IF THERE IS STATEMENTS OF THE WITNESS THAT
25 IS OF THE NATURE WHICH HE COULD BE IMPEACHED BASED BEFORE
26 HIS CREDIBILITY, WHETHER IT'S ON THE CASE OR SOME OTHER
27 CASE, I THINK THAT IS WHAT WE ARE ENTITLED TO.

28 I THINK WE ARE ENTITLED TO IT UNDER 1054 AND

1 ENTITLED TO IT UNDER BRADY ALSO.

2 THE COURT: EVEN THOUGH WE'RE ONLY DEALING WITH THE
3 INVESTIGATION?

4 MR. HIGGINS: WE -- I WANT TO GET AWAY FROM WORD OF
5 THE INVESTIGATION. I'M TALK ABOUT A STATEMENT THAT A
6 WITNESS HAS MADE. WHETHER OR NOT --

7 THE COURT: CONCERNING AN INVESTIGATION IN ANOTHER
8 CASE, NOT DEALING WITH THIS CASE?

9 MR. HIGGINS: CONCERNING HIS POTENTIAL FELONIOUS
10 CONDUCT AND BAD ACTS. THAT'S WHAT I THINK WE'RE ENTITLED
11 TO. WHETHER OR NOT IT'S IN THIS CASE OR SOME OTHER CASE,
12 IF IT DEALS WITH ISSUES THAT WILL AFFECT HIS CREDIBILITY ON
13 WHICH THIS COURT HAS TO MAKE A RULING, IF HE IS THE MAIN
14 WITNESS AGAINST MY CLIENT, WE NEED TO EFFECTIVELY IMPEACH
15 OR CROSS-EXAMINE HIM.

16 THE COURT: I WILL ASK YOU HOW FAR SHOULD WE GO BACK
17 TO THE REQUEST THAT? LET'S SUPPOSE THAT HE WAS
18 INVESTIGATED TWO YEARS AGO ON SOMETHING, SHOULD WE ALSO TRY
19 AND DIG THAT UP?

20 MR. HIGGINS: YOUR HONOR, THE INFORMATION THAT WE
21 HAVE IS THIS IS A CURRENT INVESTIGATION.

22 THE COURT: I UNDERSTAND. MY QUESTION THOUGH IS
23 SINCE IT IS JUST AN INVESTIGATION AT THIS STAGE, HOW FAR
24 BACK DO WE GO? IT SEEMS TO ME THAT YOUR ARGUMENT WOULD
25 APPLY TO ANY INVESTIGATION IN THE PAST.

26 MR. HIGGINS: I THINK A REASONABLE TIME, NOT TEN
27 YEARS OR WHATEVER.

28 THE COURT: HOW MANY YEARS?

1 MR. HIGGINS: A REASONABLE TIME, TWO OR THREE.

2 THE COURT: OKAY.

3 MR. HIGGINS: AND SO I THINK IF THE COURT WOULD AT
4 LEAST LOOK AT WHAT THE SHERIFF'S DEPARTMENT HAS IT CAN MAKE
5 A DETERMINATION AS TO WHETHER OR NOT WE WOULD BE ENTITLED
6 TO IT.

7 BUT FOR THE COURT TO JUST SAY WE ARE NOT ENTITLED
8 TO SOMETHING THAT WE ARE SHOOTING IN THE DARK OR WHATEVER
9 THE TERMINOLOGY WOULD BE, I THINK THAT'S A DISSERVICE TO US
10 AND IT CERTAINLY WOULD AFFECT OUR ABILITY TO CROSS-EXAMINE
11 A PERSON ON POTENTIALLY IMPEACHABLE STATEMENTS THAT HE MAY
12 HAVE MADE. SO I WOULD JOIN IN THAT.

13 THE COURT: OKAY. MR. NEWMAN?

14 MR. NEWMAN: I'LL JOIN.

15 THE COURT: OKAY. THE COURT IS GOING TO DENY THE
16 REQUEST AT THIS TIME. NOW, IF AND WHEN THAT WITNESS
17 TESTIFIES ALL COUNSEL CAN CROSS-EXAMINE THAT WITNESS ON ANY
18 BIAS OR WHAT HAVE YOU THAT HE MIGHT HAVE. HE CAN BE ASKED
19 ABOUT PRIOR INVESTIGATIONS WHATEVER. I'M NOT GOING TO AT
20 THIS TIME THOUGH COMPEL THE PEOPLE EVEN IF THEY HAD IT,
21 WHICH THEY SAY THEY DON'T NECESSARILY, I'M NOT GOING TO
22 COMPEL THE PEOPLE TO PRODUCE SOMETHING THIS VAGUE AT THIS
23 TIME.

24 MR. OLIVE: YOUR HONOR?

25 THE COURT: GO AHEAD.

26 MR. OLIVE: IF I CAN SPEAK TO THAT. TO SAY BECAUSE
27 THE PROSECUTION DOESN'T HAVE IT IN THEIR PHYSICAL
28 POSSESSION I THINK IS --

1 THE COURT: WELL, I UNDERSTAND THAT.

2 MR. OLIVE: -- NOT ACCURATE. IN 514 U.S. 419
3 ADDRESSES THAT ON POINT.

4 THE COURT: I UNDERSTAND IF THEY ARE WORKING WITH LAW
5 ENFORCEMENT THAT DOES HAVE IT I UNDERSTAND. THAT COULD
6 ENCOMPASS THAT.

7 MR. OLIVE: YES.

8 THE COURT: ANYTHING ELSE?

9 MR. OLIVE: ON THAT POINT, NO.

10 THE COURT: OKAY.

11 MR. OLIVE: AND THE COURT HAS READ MY PRETRIAL MOTION
12 FOR DISCOVERY?

13 THE COURT: WHEN WAS THAT PRESENTED?

14 MR. OLIVE: IT WAS FILED IN APRIL, YOUR HONOR. NOT
15 WITH THIS COURT, IN DEPARTMENT FIVE, BUT NEVER ADDRESSED.

16 THE COURT: IF I READ IT WAS REALLY A LONG TIME AGO.
17 I DON'T HAVE ANY INFORMATION. I DON'T HAVE A RECOLLECTION
18 OF THAT. I DON'T THINK I HAVE IT.

19 IS THIS ON THE SAME ISSUE OR SOME OTHER
20 DISCOVERY?

21 MR. OLIVE: WELL, IT WAS FILED PREEMPTIVELY, YOUR
22 HONOR, BUT I THINK IT'S VERY TIMELY AND PRECISELY ON POINT.

23 THE COURT: BUT ON THE SAME ISSUE?

24 MR. OLIVE: NO, BUT IT DOES ENCOMPASS THIS ISSUE FOR
25 SURE.

26 THE COURT: WELL, IS THERE SOME OTHER KIND OF
27 DISCOVERY THAT YOU ARE REQUESTING?

28 MR. OLIVE: AT THIS POINT, NO.

1 THE COURT: OKAY. WELL, I DON'T KNOW. TODAY I DON'T
2 THINK I'LL BE ABLE TO REVIEW THAT BEFORE THE LUNCH BECAUSE
3 OF A MEETING THAT I HAVE TO GO TO. SO I'LL READ IT WHEN I
4 CAN. AND WE CAN ALWAYS RAISE IT AT SOME LATER POINT. IT
5 APPEARS THAT THIS HEARING WILL BE OF SOME DURATION SO MAYBE
6 WE CAN RAISE THAT ISSUE AT ANOTHER TIME.

7 BUT FOR THE REASONS THE COURT STATED THE COURT
8 WILL NOT MAKE ANY ORDERS IN THAT REGARD AT THIS TIME. I
9 WILL INVITE COUNSEL TO RAISE IT AGAIN AT SOME LATER POINT
10 IF YOU SEE THAT SOMETHING HAS BEEN REVEALED THAT MIGHT MAKE
11 IT MORE CLEAR TO THE COURT.

12 OKAY. SO THAT WILL DISPOSE OF IT AT THIS TIME.
13 WE HAVE A COMPLAINT FILED ON JULY 30, 2009. HAS THERE BEEN
14 AN AMENDMENT OR IS THIS THE COMPLAINT WE'RE OPERATING
15 UNDER?

16 ALL COUNSEL UNDERSTAND THAT IS THE COMPLAINT
17 WE'RE DEALING WITH JULY 30, 2009? COUNT ONE SHOWS
18 VIOLATION OF 187(A) OF THE PENAL CODE, WILLFUL, DELIBERATE,
19 PREMEDITATED MURDER. ALONG WITH 186.22 ALLEGATION.

20 COUNT TWO ALSO 187(A), WILLFUL, DELIBERATE AND
21 PREMEDITATED MURDER.

22 COUNT THREE 664/187(A) ATTEMPTED MURDER.

23 ALL COUNSEL, WAIVE FURTHER READING OF THE
24 COMPLAINT AND ADVISEMENT OF RIGHTS AND ENTER A NOT GUILTY
25 PLEA?

26 MR. OLIVE: YES.

27 MR. HIGGINS: YES, ON BEHALF MR. GIBBS.

28 MR. NEWMAN: YES, YOUR HONOR.

1 THE COURT: WE'LL CALL THE FIRST WITNESS. LET ME
2 INDICATE TO YOU COUNSEL THOUGH THAT I HAVE TO RECESS AT
3 ABOUT 20 TIL 12:0. SO WE'LL GET STARTED, BUT WE'LL GO ON
4 IN A FEW MINUTES AND HAVE TO RECESS UNTIL 1:30.

5 THE COURT: PEOPLE MAY CALL THE FIRST WITNESS.

6 MS. BARNES: PEOPLE CALL SAMUEL FEISSA.

7 MR. HIGGINS: MOVE TO EXCLUDE ALL WITNESSES.

8 THE COURT: THE MOTION TO EXCLUDE IS GRANTED. ALL
9 WITNESSES IN THE COURT ON THIS MATTER WILL HAVE TO REMAIN
10 OUTSIDE UNTIL SUMMONED.

11 MS. BARNES: PEOPLE CALL SAMUEL FEISSA. HE IS
12 REPRESENTED BY COUNSEL, WHO IS IN THE JURY ROOM.

13
14 SAMUEL FEISSA,

15 CALLED BY THE PEOPLE AS A WITNESS, WAS SWORN

16 AND TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU ARE
19 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
20 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
21 TRUTH SO HELP YOU GOD?

22 THE WITNESS: YES.

23 THE CLERK: PLEASE BE SEATED.

24 STATE YOUR FULL NAME, SPELLING YOUR FIRST NAME
25 AND YOUR LAST NAME.

26 THE WITNESS: SAMUEL FEISSA, S-A-M-U-E-L.
27 F-E-I-S-S-A.

28 THE COURT: THANK YOU.

1 GO AHEAD, COUNSEL.

2
3 DIRECT EXAMINATION

4 BY MS. BARNES:

5 Q MR. FEISSA, I'M GOING TO START BY ASKING YOU
6 SOME GENERAL QUESTIONS ABOUT THE 135 PIRU GANG. ARE YOU
7 FAMILIAR WITH THAT GANG?

8 A YES.

9 Q AND WERE YOU A MEMBER OF THAT GANG?

10 A YES.

11 Q DO YOU CONSIDER YOURSELF TO STILL BE A MEMBER OF
12 THAT GANG?

13 A NOPE.

14 Q AND HOW LONG WERE YOU A MEMBER OF THE 135 PIRU
15 GANG?

16 A OFFICIALLY A MEMBER, ABOUT TWO OR THREE YEARS.

17 Q AND WHAT TERRITORY DO THEY HAVE?

18 A LOS ANGELES, GARDENA, COMPTON, WHATEVER IT'S
19 CALLED OVER THERE.

20 Q AND ARE THERE ANY STREETS OR NEIGHBORHOOD THAT
21 YOU GUYS HANG OUT IN?

22 A FROM MAIN TO AVALON, ROSECRANS TO 135TH.

23 Q WHAT RIVALS DO THEY HAVE?

24 A B13'S.

25 Q IS THAT BARRIO 13?

26 A BARRIO TRECE, SHOTGUN CRIPS, PAY BACK CRIPS,
27 TRAYGON PARK.

28 Q 135 PIRU, THAT IS A BLOOD GANG; IS THAT RIGHT?

1 YOU GUYS ARE AFFILIATED WITH BLOOD GANGS?

2 A PIRUS.

3 Q OKAY. AND SO ARE CRIP GANGS GENERALLY YOUR
4 RIVALS?

5 A YES.

6 Q THE BARRIO 13 DO YOU GUYS EVER CALL THEM -- DO
7 YOU HAVE ANY KIND OF DEROGATORY NICKNAMES FOR THEM?

8 A BURRITOS, SARRIOS.

9 Q DID YOU SAY SARRIOS?

10 A SARRIOS LIKE S-A-R-R-I-O-S.

11 Q AND ANYTHING ELSE?

12 A NOT THAT COMES TO THE HEAD RIGHT NOW.

13 Q AND IN THE COURTROOM TODAY DO YOU SEE ANY PEOPLE
14 THAT YOU KNEW FROM THE 135 PIRU GANG?

15 A NO.

16 Q DO YOU SEE --

17 MR. HIGGINS: ASKED AND ANSWER, YOUR HONOR.

18 THE COURT: JUST A MOMENT.

19 THE WITNESS: IN THE WHOLE COURTHOUSE?

20 BY MS. BARNES:

21 Q IN THE WHOLE COURTROOM.

22 A YEAH. I SEE THREE RIGHT HERE.

23 Q CAN YOU DESCRIBE WHO YOU SEE PLEASE?

24 A WALLACE, KHALILL AND GIBBS.

25 THE COURT: INDICATING ALL THREE DEFENDANTS.

26 BY MS. BARNES:

27 Q AND IS MR. WALLACE ALSO A MEMBER OF THE 135 PIRU
28 GANG?

1 A YES.

2 Q AND DO YOU KNOW HOW LONG HE'S BEEN INVOLVED WITH
3 135 PIRUS?

4 A SINCE THE 90'S.

5 Q WHAT IS A SHOT CALLER?

6 A A SHOT CALLER? SOMEBODY WHO WOULD SAY I SAY SO.

7 Q WOULD YOU SAY THAT MR. WALLACE WAS A SHOT CALLER
8 AT LEAST WHEN YOU WERE IN THE GANG?

9 A NOT A SHOT CALLER, BUT FOR THE -- I WOULDN'T SAY
10 NECESSARILY A SHOT CALLER.

11 Q DID HE HAVE RESPECT WITHIN THE GANG?

12 A YES.

13 Q AND WAS HE ONE OF THE OLDER ONES OR YOUNG
14 MEMBERS OF THE GANG?

15 A YOUNGER SLASH OLDER.

16 Q WHAT DOES THAT MEAN?

17 A I MEAN HE IS NOT OLD SO I WOULDN'T SAY OLDER. I
18 DON'T KNOW.

19 Q WAS HE ONE OF THE NEW ONES OR OLD GUYS WHO HAD
20 BEEN AROUND FOR A WHILE?

21 A ONE OF THE OLD ONES.

22 Q WHAT ABOUT THE OTHER, MR. KHALILL WAS HE A
23 MEMBER OF THE 135 PIRU GANG?

24 A YES.

25 Q AND WHAT ABOUT HIM, DID HE HAVE RESPECT WITHIN
26 THE GANG?

27 A YES.

28 Q AND HOW ABOUT MR. GIBBS, WAS HE ALSO A MEMBER OF

1 THE 135 PIRU GANG?

2 A YES.

3 Q AND WAS HE ONE OF THE OLDER OR ONE OF THE
4 YOUNGER ONES?

5 A YOUNGER.

6 Q I'M GOING TO TALK -- I'LL WAIT A FEW MINUTES.
7 WE'RE BREAKING FOR LUNCH SO I WILL ASK A FEW QUESTIONS
8 ABOUT YOUR CRIMINAL HISTORY.

9 YOU HAVE A PRIOR CONVICTION; IS THAT TRUE?

10 A YES.

11 Q AND THAT'S OUT OF AIRPORT COURT FOR A CHARGE OF
12 FELONY POSSESSION OF MARIJUANA CHARGE; IS THAT RIGHT?

13 A YES.

14 Q YOU'RE ON PROBATION FOR THAT?

15 A YES.

16 Q AND IN ADDITION TO THAT YOU WERE ARRESTED AND
17 CHARGED WITH SOME CHARGES HERE IN INGLEWOOD COURT; IS THAT
18 CORRECT?

19 A YES.

20 Q AT SOME POINT DID YOU COME TO COURT AND SETTLE
21 THAT CASE?

22 A YES.

23 Q YOU PLED GUILTY TO ALL CHARGES?

24 A YES. I PLED GUILTY TO EVERYTHING.

25 Q AND DID YOU SIGN WHAT IS CALLED A PLEA FORM, A
26 FELONY GUILTY PLEA IN THE SUPERIOR COURT, DID YOU READ
27 EVERYTHING ON IT AND INITIAL ALL THE BOXES AND THEN SIGN IT
28 ON THE BACK?

1 A YES.

2 Q AND WE DID THAT HERE IN COURT?

3 A YES.

4 Q AND THE CHARGES THAT YOU WERE CHARGED WITH AND
5 YOU AGREED UPON THE SENTENCE WERE ALL INCLUDED ON THE FORM;
6 IS THAT CORRECT?

7 A YES, IT WAS.

8 MS. BARNES: YOUR HONOR, THIS IS A FELONY CONVICTION.

9 MR. OLIVE: I'LL OBJECT. IS COUNSEL TALKING ABOUT
10 THE SAME CASE OR A NEW CASE? SHE MENTIONED ANOTHER CASE.
11 IS THIS A DIFFERENT CASE?

12 THE COURT: MAYBE THE PEOPLE CAN CLARIFY.

13 MS. BARNES: SURE.

14 BY MS. BARNES:

15 Q YOU HAD A MARIJUANA CASE AT AIRPORT COURT; IS
16 THAT RIGHT?

17 A YES.

18 Q AND THAT'S ON -- WELL, THEN YOU HAVE A CASE OUT
19 OF THE INGLEWOOD COURT WHICH IS CASE YA075725; IS THAT
20 CORRECT?

21 A YES.

22 Q AND THIS GUILTY PLEA FORM I'M HOLDING IN MY HAND
23 FOR THE INGLEWOOD CASE, THAT TOOK PLACE HERE WITH YOURSELF
24 AND YOUR ATTORNEY MR. MYERS AND WITH ME; IS THAT CORRECT?

25 A YES, IT WAS.

26 MS. BARNES: YOUR HONOR, I'M MARK THIS AS PEOPLE'S
27 ONE. IT'S THREE PAGES AND A PHOTOCOPY OF A FELONY GUILTY
28 PLEA IN THE SUPERIOR COURT.

1 THE COURT: YES.

2 MR. NEWMAN: WHAT WAS THE PLEA TO?

3 MS. BARNES: ALL COUNSEL WERE PROVIDED DISCOVERY.

4 IT'S PAGE WKG203, 204 AND 205 AND IT ACTUALLY LISTED OUT
5 EXACTLY WHAT THE PLEA WAS FOR AND THEY HAVE IT HAD FOR SOME
6 TIME NOW. I DON'T KNOW IF THE COURT WANTS ME TO TAKE A
7 BREAK SO YOU CAN LOOK AT THAT.

8 THE COURT: THE COURT IS GOING TO RECESS AT THIS
9 TIME. WE'LL RESUME AT 1:30. THE WITNESS IS ORDERED BACK
10 AT 1:30.

11 (LUNCH RECESS TAKEN.)

12
13 THE COURT: WE'RE BACK ON THE RECORD IN THE GIBBS,
14 KHALILL AND WALLACE MATTERS.

15 MS. BARNES: YOUR HONOR, WITH THE COURT'S PERMISSION
16 I'D LIKE TO CALL A WITNESS OUT OF ORDER. I WON'T CALL
17 FEISSA. I HAVE A CIVILIAN WITNESS I WANT TO GET DONE
18 BECAUSE HE HAD TO TAKE WORK OFF TO COME TO COURT, BUT I
19 DON'T WANT TO POTENTIALLY NOT BE ABLE TO PUT HIM ON THIS
20 AFTERNOON. HE'S READY NOW IF IT'S OKAY WITH THE COURT. I
21 WANT TO CALL HIM TO GET HIM OUT OF HERE. I DON'T WANT TO
22 RISK NOT HAVING HIM TAKE ANOTHER DAY OFF WORK.

23 THE COURT: OKAY. ANY DEFENSE COUNSEL HAVE ANY
24 PROBLEM WITH THAT?

25 MR. OLIVE: I OBJECT, YOUR HONOR, NO NOTICE. LAST
26 MINUTE. WE WERE ALL PREPARED FOR THIS WITNESS OVER LUNCH.

27 THE COURT: I MEAN ANY LEGAL OBJECTION OTHER THAN THE
28 FACT IT IS AN INCONVENIENCE AND A LITTLE BIT UNUSUAL, BUT

1 THE PEOPLE DID GIVE AN EXPLANATION AND HOPEFULLY YOU ALL
2 HAVE TAKEN APPROPRIATE NOTES SO THAT WHEN WE GET BACK TO
3 THAT WITNESS CAN YOU DO IT.

4 IS THERE ANY OTHER OBJECTIONS THAT IMPINGE ON
5 THE RIGHT OF YOUR CLIENT?

6 MR. OLIVE: YES.

7 THE COURT: WHAT IS THAT?

8 MR. OLIVE: NOT THAT -- NOT PER SE ON THE CLIENT, BUT
9 IT'S A LACK OF COURTESY. WE'VE BEEN SITTING HERE AN HOUR
10 AND IT'S YOU KNOW --

11 THE COURT: WELL, I AGREE YOU PROBABLY COULD HAVE
12 BEEN GIVEN A HEADS-UP. BUT IT'S AN ADVERSARIAL POSITION
13 UNFORTUNATELY, OR PROCEEDING, I SHOULD SAY.

14 THE COURT WILL PERMIT THE PEOPLE TO INTERRUPT THE
15 TESTIMONY OF MR. FEISSA AT THIS TIME AND THE PEOPLE CAN
16 CALL THE OTHER WITNESS.

17 MS. BARNES: PEOPLE CALL EMOND TAYLOR. I THINK THE
18 DETECTIVE IS GETTING HIM. I WOULD ASK -- JUST SO THE COURT
19 KNOWS, THIS GOES TO THE 2001 MURDER CHARGE. I WOULD ASK
20 THAT THE INVESTIGATING OFFICER FOR THAT CHARGE DETECTIVE
21 SALERNO SIT AS THE INVESTIGATING OFFICER.

22 THE COURT: WHO IS THAT DETECTIVE?

23 MS. BARNES: SALERNO.

24 THE COURT: DETECTIVE SALERNO WILL BE INVESTIGATING
25 OFFICER AND CAN REMAIN.

26
27
28

1 THE COURT: WE'RE BACK ON THE RECORD IN THE GIBBS,
2 KHALILL AND WALLACE MATTER. THE PEOPLE ARE RETURNING TO
3 THE DIRECT EXAMINATION OF WITNESS SAMUEL FEISSA. GO AHEAD.
4

5 DIRECT EXAMINATION (RESUMED)

6 BY MS. BARNES:

7 Q I'LL GO BACK A MINUTE. I ASKED YOU IF EACH OF
8 THE THREE DEFENDANTS WHETHER OR NOT THEY WERE IN THE 135TH
9 PIRU GANG AND I WANT TO ASK YOU THEIR MONIKERS OR
10 NICKNAMES.

11 WHAT IS THE MONIKER OR NICKNAME FOR DENNIS
12 WALLACE?

13 A POKE.

14 Q AND WHAT ABOUT MR. KHALILL?

15 A K-9.

16 Q AND THEN WHAT ABOUT MR. GIBBS?

17 A PEANUT.

18 Q AND WE'LL GO BACK TO YOUR CHARGE OUT OF THE
19 COURTHOUSE IN PEOPLE'S ONE.

20 MS. BARNES: YOUR HONOR, MAY I APPROACH?

21 THE COURT: YES.

22 BY MS. BARNES:

23 Q IS THIS THE FELONY GUILTY PLEA FORM THREE PAGES
24 THAT YOU SIGNED AND DATED AND INITIALLED ON EACH OF THE
25 BOXES THAT HAVE YOUR INITIALS?

26 A YES.

27 Q AND WAS THAT YOUR -- AND I'LL READ THIS TO YOU.

28 "SENTENCING IN YA075725 WILL NOT BE IMPOSED

1 UNTIL CASE YA075709 WALLACE, KHALILL AND GIBBS; AND
2 YA075724 PROTHRO AND SIMPSON ARE COMPLETE. AND I HAVE
3 COMPLIED WITH THE TERMS OF THE ATTACHED 8-26-09 LENIENCY
4 AGREEMENT. I WILL BE RELEASE O.R. PENDING SENTENCING ONCE
5 I'VE TESTIFIED AT THE PRELIMINARY HEARING ON THE ABOVE
6 REFERENCED CASE."

7 AND THEN IT SAYS, "SENTENCE TO BE BETWEEN TIME
8 SERVED AND SEVEN YEARS, WHICH IS THE MAXIMUM SENTENCE,
9 SEVEN YEARS STATE PRISON."

10 IS THAT YOUR UNDERSTANDING OF THE PLEA AGREEMENT
11 IN THE CASE?

12 A YES.

13 Q AND IS IT YOUR UNDERSTANDING THAT -- HOW MUCH
14 TIME YOU GET WILL BE DECIDED BY THE JUDGE IN THE CASE?

15 A YES.

16 MS. BARNES: YOUR HONOR, I HAVE A SECOND DOCUMENT.
17 IF I COULD MARK IT PEOPLE'S NEXT IN ORDER, I THINK IT'S
18 PEOPLE'S SIX.

19 THE COURT: SO MARKED PEOPLE'S SIX.

20 MS. BARNES: FOR THE RECORD IT'S THREE PAGES THE
21 IMMUNITY AND LENIENCY AGREEMENT DATED AUGUST 26, 2009.

22 MAY I APPROACH THE WITNESS AGAIN?

23 THE COURT: YES.

24 BY MS. BARNES:

25 Q I'M GOING TO SHOW YOU WHAT I JUST MARKED AS
26 PEOPLE'S SIX, WHICH IS A THREE PAGE TYPED IMMUNITY AND
27 LENIENCY AGREEMENT.

28 DO YOU RECOGNIZE THIS?

1 A YES, I DO.

2 Q AND AT THE TOP IT HAS YOUR NAME, SIGNATURE AND A
3 DATE IS; IS THAT CORRECT?

4 A YES.

5 Q AND THEN HERE ON THE THIRD PAGE IS THAT ALSO
6 YOUR SIGNATURE AND THE DATE 8-26-09?

7 A YES.

8 Q AND IS THIS DOCUMENT ACCURATE TO YOUR
9 UNDERSTANDING OF YOUR AGREEMENT WITH THE DISTRICT
10 ATTORNEY'S OFFICE?

11 A YES.

12 Q AND ONE OTHER THING I WILL ASK YOU ABOUT IS
13 CALLED A PROFFER. AT SOME POINT BEFORE YOU PLED TO THE
14 CHARGES AND TESTIFIED, DID YOU GO DOWNTOWN TO A ROOM AND IN
15 THE COURTHOUSE DOWNTOWN WITH YOUR LAWYER AND MYSELF AND THE
16 DETECTIVE VALENTINO AND SOME OTHER DETECTIVES; DO YOU
17 REMEMBER THAT?

18 A YES, I DO.

19 Q AT THAT TIME DID YOU GIVE US A TAPED STATEMENT
20 ABOUT EVERYTHING THAT YOU KNEW ABOUT THIS MURDER OR YOU
21 KNOW OF THE MURDER OF MR. QUEZADA ON JULY 25, 2008, AND
22 ALSO ANOTHER MURDER WITH SEAN SIMPSON AND MR. PROTHRO?

23 A YES.

24 Q AND PRIOR TO THAT STATEMENT DID YOU SIGN
25 SOMETHING CALLED A PROFFER AGREEMENT, A THREE PAGE
26 DOCUMENT; DO YOU REMEMBER THAT?

27 A YES, I DO.

28 MS. BARNES: CAN I MARK THIS NEXT IN ORDER AS

1 PEOPLE'S SEVEN?

2 THE COURT: SO MARKED.

3 MS. BARNES: MAY I APPROACH?

4 THE COURT: YES.

5 BY MS. BARNES:

6 Q OKAY. I'M GOING TO SHOW YOU A THREE PAGE
7 PROFFER AGREEMENT DATED AUGUST 21, 2009. AND ON THE THIRD
8 PAGE IS THAT YOUR NAME AND YOUR SIGNATURE?

9 A YES.

10 Q AND IS THAT YOUR UNDERSTANDING OF THE AGREEMENT
11 WITH THE DISTRICT ATTORNEY'S OFFICE AT THE TIME THAT YOU
12 GAVE THE TAPED STATEMENT ON AUGUST 21?

13 A YES.

14 Q SO WE'LL TALK ABOUT THIS CASE. AT SOME POINT
15 WERE YOU WORKING WITH A DETECTIVE BY THE NAME OF SEAN SHAW?

16 A YES.

17 Q AND WHERE DID HE WORK OUT OF; DO YOU KNOW?

18 A I THINK LYNWOOD, COMPTON, ONE OF THOSE.

19 Q WAS HE A SHERIFF DEPUTY?

20 A YES.

21 Q AND DID YOU WORK AS AN INFORMANT FOR HIM, DID
22 YOU GIVE HIM INFORMATION?

23 A YES.

24 Q DID HE SOMETIMES GIVE YOU MONEY FOR THAT
25 INFORMATION?

26 A YES.

27 Q AND DO YOU KNOW HOW MUCH MONEY HE GAVE YOU?

28 A IT WAS COUPLE OF THOUSAND.

1 Q AND WAS IT ALL AT ONCE OR OVER A PERIOD OF TIME?

2 A INCREMENTS.

3 Q AND AT ANY POINT DID YOU TELL SEAN SHAW THAT YOU
4 HAD INFORMATION ABOUT A MURDER THAT TOOK PLACE ON JULY 25,
5 2008, ON AVALON BOULEVARD?

6 A YES.

7 Q HOW DID THAT HAPPEN? DID YOU CALL HIM UP OR
8 WHAT HAPPENED?

9 A I TOLD THE DEPUTY TO GO GET SOMEBODY AND I SPOKE
10 TO HIM.

11 Q AND TOLD HIM WHAT?

12 A I TOLD THEM -- I TOLD I THINK IT WAS I WANT TO
13 SPEAK TO HOMICIDE OR SOMETHING LIKE THAT.

14 Q AND DID YOU END UP SPEAKING TO DETECTIVE VALENTINO
15 AND HIS PARTNER DETECTIVE ANDERSON?

16 A YES.

17 Q AND DID YOU TELL THEM WHAT YOU KNEW?

18 A YES.

19 Q WERE YOU PRESENT WHEN MR. QUEZADA WAS SHOT?

20 A NO.

21 Q DID YOU HEAR ABOUT IT FROM OTHER PEOPLE?

22 A YES.

23 Q DID YOU ABOUT THE SHOOTING OF MR. QUEZADA FROM
24 ANY OF THE THREE DEFENDANTS IN THE CASE?

25 A YES.

26 Q FROM ONE OR MORE THAN ONE?

27 A TWO.

28 Q WHICH ONE DID YOU TALK TO FIRST?

1 A I TALKED ABOUT THE DETAILS OF THE MURDER WITH
2 K-9.

3 Q MR. KHALIL?

4 A YES.

5 Q AND WHERE DID THIS CONVERSATION TAKE PLACE: WAS
6 IT IN PERSON OR WAS IT ON THE PHONE?

7 A IN DETAIL OVER THE PHONE.

8 Q TELL ME WHAT YOU RECALL ABOUT THAT PHONE
9 CONVERSATION?

10 A I CALLED HIM. I TOLD "WHAT'S UP?" AND A LITTLE
11 CHIT-CHAT AND I ASKED HIM WHAT HAPPENED. AND --

12 MR. NEWMAN: I WAS GOING TO ASK THAT ANY STATEMENTS
13 BE LIMITED TO THE DECLARANT WHO IS SPEAKING ONLY, NOT TO
14 ANY OTHER PERSON.

15 THE COURT: OKAY. WELL, WE'LL SEE. YOU CAN ONLY
16 MAKE YOUR OBJECTION WHEN IT COMES UP.

17 MR. NEWMAN: ALL RIGHT.

18 THE COURT: THANK YOU.

19 BY MS. BARNES:

20 Q WHEN DID THE CONVERSATION TAKE PLACE ON THE
21 PHONE?

22 A I WANT TO SAY A WEEK PRIOR, A WEEK AFTER THAT
23 MURDER.

24 Q OKAY. SO YOU TALKED TO K-9 AND HE TELLS YOU
25 --WHAT WAS SAID?

26 A HE SAID THEY CAUGHT A SORIO SLIPPING AND HE SAID
27 --

28 MR. OLIVE: MOTION TO STRIKE AS HEARSAY.

1 THE COURT: YOU'RE SAYING YOU'RE OBJECTING TO WHAT?

2 MR. OLIVE: HEARSAY.

3 THE COURT: AND HE'S SAYING THAT THE DEFENDANT SAID A
4 CERTAIN THING? WELL, THAT'S A STATEMENT BY THE DEFENDANT.
5 ORDINARILY IT WOULD BE PERMISSIBLE UNDER 1220 OF THE
6 EVIDENCE CODE.

7 MR. OLIVE: I HAVE A CONTINUING OBJECTION TO IT.

8 THE COURT: OKAY. OVERRULED.

9 MR. NEWMAN: MY OBJECTION IS THAT IT BE ONLY LIMITED
10 AS TO THE DEFENDANT WHO IS SPEAKING AND NOT TO BE APPLIED
11 AS TO ANY OTHER DEFENDANT IN THIS MATTER.

12 THE COURT: WHAT IS THE GROUND?

13 MR. NEWMAN: HEARSAY AS TO THE OTHER DEFENDANTS.

14 THE COURT: WELL, I'M GOING TO OVERRULE THAT. I
15 THINK YOU'RE SPEAKING OF -- I FORGET THE NAME OF THE LINE
16 OF CASES, BUT IT'S NOT APPLICABLE AT A PRELIMINARY HEARING.
17 GIVE ME JUST A MOMENT.

18 MS. BARNES: ARANDA/BRUTON.

19 THE COURT: ON THAT LINE OF CASE IT'S NOT APPLICABLE
20 AT A PRELIMINARY HEARING. OVERRULED.

21 BY MS. BARNES:

22 Q OKAY. SO DEYAA KHALILL SAID HE, "I CAUGHT A
23 SARIO SLIPPING"?

24 A YEAH, HE SAID THAT.

25 Q I'LL ASK YOU THIS: WHAT IS A SARIO?

26 A A B-13.

27 Q BARIO 13 GANG MEMBER?

28 A YES.

1 Q AND WHEN HE SAID "I GOT A SARIO SLIPPING" WHAT
2 DOES THAT MEAN TO YOU?

3 A EITHER HE SHOT OR KILLED HIM.

4 Q K-9 SHOT OR KILLED HIM?

5 A CAUGHT SOMEBODY OFF GUARD AND HE SHOT OR KILLED
6 SOMEBODY WHO WAS OFF GUARD HANGING OUT.

7 MR. HIGGINS: I OBJECT TO HIS INTERPRETATION, CALLS
8 FOR SPECULATION AS TO WHAT SOMEONE ELSE MEANT.

9 THE COURT: NO. HE'S GIVING HIS IMPRESSION OF WHAT
10 IT MEANS TO HIM. OVERRULED.

11 BY MS. BARNES:

12 Q AND SO WHAT WAS SAID AFTER K-9 SAID "I CAUGHT A
13 SARIO SLIPPING"?

14 A HE SAID HE SEEN HIM, HIM AND WALLACE, AND THEY
15 DROVE AND WENT BACK TO 139 AND WALKED OVER AND THEY DUMPED
16 HIM OUT. THEY ASKED WHERE HE WAS FROM AND HE SAID THAT HIM
17 AND PEANUT SHOT AND KILLED HIM.

18 Q WHAT'S ON 139TH STREET?

19 A THERE WAS A HOUSE ON THE EAST SIDE OF AVALON.
20 THERE IS A LITTLE CORNER HOUSE WHERE SOME MEXICANS USED TO
21 LIVE AND THERE WAS A DUDE THAT HANGS OUT RIGHT THERE.

22 Q NOW, THE PERSON THAT WAS SHOT DID YOU KNOW THAT
23 PERSON?

24 A I DIDN'T KNOW HIM PERSONALLY BUT I RAN INTO HIM
25 A COUPLE OF MONTHS BEFORE THAT.

26 Q DID YOU GO UP TO HIM AND ASK WHAT GANG HE WAS
27 FROM?

28 A YEAH. I SEEN HIM AND I ASKED HIM -- I TOLD HIM

1 WHAT THAT ATHENS PARK LIKE SO I CAN TRICK HIM TO SEE IF HE
2 WAS B-13 AND THEN HE THREW UP A (P). AND THEN I ASKED HIM
3 "WHAT'S THAT?" AND HE SAID, "SOUTH SIDE PLAYERS."

4 AND THEN I TOLD HIM LIKE, "MOTHER FUCKERS GONNA
5 KILL YOU CAUSE THEY THINK YOU FROM B-13." AND HE JUST
6 NODDED HIS HEAD.

7 I WENT IN THE ALLEY AND THEN I SAW THAT SOUTH
8 SIDE PLAYERS HIT IT UP AND MADE A U-TURN AND WENT BACK TO
9 142ND AND I TOLD A COUPLE OF THE EX-HOMEBOYS WHAT I SAW AND
10 I TOLD THEM WHAT HAPPENED.

11 Q AND YOU SAID YOU SAW THE SOUTH SIDE PLAYERS HIT
12 UP, DOES THAT MEAN YOU SAW GRAFFITI ON THE WALL?

13 A IN THE ALLEY ON THE SIDE OF THE HOUSE THERE WAS
14 SS PLAYERS.

15 Q AND NOW, YOU SAID THAT HE THREW UP A (P). DID
16 THROW UP A GANG SIGN?

17 A HE WENT LIKE THIS.

18 Q OKAY.

19 A I THOUGHT HE WAS PIRU OR SOMETHING JUST TRYING
20 TO BE FUNNY OR SOMETHING. I ASKED, "WHAT'S THAT?" HE TOLD
21 ME, "IT'S SOUTH SIDE PLAYERS."

22 Q AND ARE YOU FAMILIAR SOUTH SIDE PLAYERS?

23 A I HEARD OF THEM, BUT I DON'T KNOW WHERE THEY ARE
24 AT LIKE THAT.

25 Q BUT THEY ARE A RIVAL TO YOUR GANG?

26 A NO.

27 Q AND DID YOU WARN HIM THAT HE APPEARS TO BE A
28 RIVAL TO YOUR GANG?

1 A YEAH. I GAVE HIM A FAIR WARNING.

2 Q WHAT DID YOU SAY?

3 A I TOLD HIM "HOMEYS GONNA GET YOU BECAUSE THEY
4 THINK YOU B-13. STOP HANGING OUT LIKE THIS." AND HE JUST
5 NODDED HIS HEAD LIKE I GUESS HE WAS SCARED AND "OKAY."

6 Q AND DO YOU KNOW WHEN THAT HAPPENED?

7 A IT WAS EARLIER. I CAN'T SAY. IT WAS A COUPLE
8 MONTHS BEFORE THAT, TWO MONTHS OR SOMETHING.

9 Q SO WE'LL GO BACK TO YOUR CONVERSATION WITH K-9.
10 K-9 TOLD YOU THAT HE WAS DRIVING BY 139TH AND HE SAW AND --
11 DID YOU KNOW THAT KID'S NAME?

12 A NO, I DIDN'T KNOW THE NAME.

13 MR. OLIVE: OBJECTION. THE QUESTION WAS
14 INCOMPREHENSIBLE. OBJECTION TO THE FORM OF THE QUESTION.

15 THE COURT: WE'LL HAVE THE PEOPLE REPHRASE.
16 BY MS. BARNES:

17 Q GOING BACK TO THE CONVERSATION WITH K-9 YOU SAID
18 AT ONE POINT K-9 SAID THAT HE AND WALLACE DROVE BY
19 SOMEWHERE; IS THAT RIGHT?

20 A YES.

21 Q AND THEY SAW SOMETHING?

22 A YES.

23 Q WHAT DID THEY SEE?

24 A THEY SAW A SARIO HANGING OUT.

25 MR. OLIVE: OBJECTION, CALLS FOR SPECULATION, MOTION
26 TO STRIKE.

27 MR. HIGGINS: OBJECTION TO THE FORM OF THE QUESTION.

28 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

1 ONCE AGAIN, HE CAN STATE WHAT K-9 TOLD HIM.

2 BY MS. BARNES:

3 Q AND JUST -- OKAY. YOU ALREADY TOLD US BEFORE
4 WHEN THEY DROVE -- YOU SAID THAT YOU TALKED TO THE K-9 AND
5 HE SAID THAT HE DROVE BY AND SAW SOMEONE STANDING THERE?

6 A YES.

7 Q WHAT DID K-9 TELL YOU THAT HE SAW?

8 A HE SAID HE SAW A SARIO.

9 Q AND SO SOMEONE HE BELIEVED TO BE A BARRIO 13?

10 A YES.

11 Q WHO WAS HE WITH AT THAT TIME ACCORDING TO WHAT
12 HE TOLD YOU?

13 A WITH POKE.

14 Q AND DID HE TELL YOU WHAT CAR THEY WERE DRIVING
15 IN?

16 A NO, I DON'T THINK HE DID.

17 Q AND THEN WHERE DID HE TELL YOU THEY -- WHAT DID
18 HE TELL YOU THAT THEY DID, K-9 AND POKE, WHAT DID K-9 TELL
19 YOU THEY DID AFTER HE DROVE BY AND SAW THE SARIO?

20 A WENT BACK TO THE HOUSE ON 139TH AND TOLD THE
21 HOMEYS AND I GUESS --

22 MR. HIGGINS: MOTION TO STRIKE IN TERMS OF GUESSING.

23 THE COURT: SUSTAINED.

24 BY MS. BARNES:

25 Q THEY WENT TO K-9'S HOUSE?

26 A YES.

27 Q AND DID HE LIVE ON 139TH?

28 A YES.

1 Q AND DID K-9 TELL YOU WHAT HAPPENED ONCE THEY
2 WENT BACK TO THE HOUSE?

3 A HE DIDN'T SAY WHAT THEY WERE TALKING ABOUT OR
4 NOTHING, BUT HE JUST SAID --

5 MR. OLIVE: OBJECTION. I'M SORRY, GO AHEAD.

6 THE COURT: GO AHEAD.

7 THE WITNESS: HE DIDN'T SAY WHAT THEY WERE TALKING
8 ABOUT, HE JUST SAID THAT --

9 MR. HIGGINS: OBJECTION, NONRESPONSIVE.

10 THE COURT: OVERRULED. SHE HAD ASKED THE QUESTION.
11 OVERRULED.

12 BY MS. BARNES:

13 Q GO AHEAD.

14 A HE SAID THAT THEY GOT BURNERS AND WALKED OVER.

15 Q WHAT IS A BURNER?

16 A A GUN.

17 Q DID K-9 TELL YOU HOW MANY?

18 MR. OLIVE: OBJECTION, LEADING.

19 THE COURT: SUSTAINED.

20 MS. BARNES: I DIDN'T HEAR THE OBJECTION.

21 THE COURT: LEADING.

22 MS. BARNES: I AM ASKING HIM ABOUT THE CONVERSATION
23 WITH K-9. I HAVE TO ASK HIM.

24 THE COURT: WELL, IT SEEMS TO ME YOU WERE ABOUT TO
25 ASK HIM DID HE TELL HIM SOMETHING SPECIFIC AS OPPOSED TO
26 WHAT ELSE DID HE TELL YOU OR WHATEVER.

27 WHY DON'T ASK HIM THE QUESTION AND WE'LL LET YOU
28 FINISH AND SEE IF IT'S OBJECTIONABLE.

1 BY MS. BARNES:

2 Q YOU SAID K-9 SAID THEY GOT THE BURNERS. DID K-9
3 TELL YOU HOW MANY BURNERS THEY GOT?

4 A I CAN'T REMEMBER THAT.

5 Q AND DID I ASK YOU WHAT A BURNER IS?

6 A YES, A GUN.

7 Q DID K-9 TELL YOU WHO GOT THE BURNERS?

8 A WHO GOT THEM?

9 Q WHO HAD THE GUNS? DID HE TELL YOU WHO HAD THE
10 GUNS?

11 MR. HIGGINS: YOUR HONOR, I MOVE TO STRIKE THAT AS
12 MISSTATES THE TESTIMONY.

13 THE COURT: I'LL SUSTAINED THE USE OF THE WORD
14 "GUNS".

15 MS. BARNES: HIS EXACT WORDS WERE "WE GOT THE
16 BURNERS," SO I'M TRYING NOT TO --

17 THE COURT: CLARIFY IF HE SAID BURNERS OR BURNER.

18 BY MS. BARNES:

19 Q DID YOU SAY BURNER OR BURNERS?

20 A BURNERS WITH A (S).

21 Q PLURAL?

22 A YES.

23 Q DID K-9 SAY WHO GOT THE BURNERS? OR DID HE JUST
24 SAY WE GOT THE BURNERS?

25 A HE SAID "WE GOT THE BURNERS".

26 Q AND WHAT DID K-9 SAY NEXT?

27 A THAT THEY WALKED DOWN THE STREET GOING TOWARDS
28 AVALON, HIM AND PEANUT. K-9 ASKED HIM WHERE HE WAS FROM

1 AND THEY SHOT HIM.

2 Q K-9 ASKED WHO WHERE HE WAS FROM?

3 A THE SOUTH SIDE PLAYER KID.

4 Q AND WHAT DOES "WHERE YOU FROM MEAN"?

5 A WHAT HOOD YOU'RE FROM.

6 Q WHAT GANG?

7 A YES.

8 Q AND DID K-9 TELL YOU WHO WENT WITH THEM WHEN
9 THEY LEFT THE HOUSE TO GO TO THE SOUTH SIDE PLAYER KID, WHO
10 WAS THERE?

11 A HE DIDN'T LIKE EXACTLY SAY THE NAMES, BUT HE
12 SAID "WE".

13 Q AND DID K-9 TELL YOU WHO SHOT THE SOUTH SIDE
14 PLAYER KID, WHO ACTUALLY FIRED THE GUN?

15 A HE SAID HIM AND PEANUT.

16 Q WHAT DID HE SAY ABOUT THAT?

17 A HE SAID THAT THEY DUMPED HIM OUT.

18 Q WHAT DOES THAT MEAN?

19 A DUMPED MEANS SHOT ROUNDS IN HIM.

20 MR. HIGGINS: YOUR HONOR, I OBJECT AS TO HIS
21 INTERPRETATION.

22 THE COURT: ONCE AGAIN, I'LL OVERRULE THAT. HE IS
23 MERELY GIVING HIS INTERPRETATION OF WHAT HE UNDERSTANDS THE
24 TERM TO MEAN.

25 MR. HIGGINS: OBJECTION, RELEVANCE.

26 THE COURT: OVERRULED.

27 BY MS. BARNES:

28 Q WHAT DID K-9 TELL YOU AFTER THAT?

1 A HE SAID THEY RAN BACK TO 139TH AND HE SAID THAT
2 THEY WENT BACK TO THE NINE AND POKE HOPPED INTO THE TRUCK
3 AND LEFT.

4 Q DO YOU KNOW KIND OF TRUCK POKE HAD AT THE TIME?

5 A TAHOE.

6 Q A CHEVY TAHOE?

7 A YES.

8 Q WHAT COLOR?

9 A DARK BLUE.

10 Q DID K-9 TELL YOU ANYTHING ELSE ON THAT PHONE
11 CONVERSATION?

12 MR. HIGGINS: OBJECTION, OVER BROAD.

13 THE COURT: OVERRULED.

14 THE WITNESS: I DON'T THINK SO.

15 BY MS. BARNES:

16 Q DID YOU DESCRIBE THE PHONE CONVERSATION TO
17 DETECTIVE VALENTO WHEN HE INTERVIEWED YOU THE FIRST TIME?

18 A YES, I DID.

19 Q AND DO YOU REMEMBER WHEN WE WERE DOWNTOWN IN
20 THAT COURTHOUSE AND WE WERE ALL IN THE ROOM TOGETHER AND WE
21 ASKED ABOUT THAT PHONE CONVERSATION?

22 A AND I SAID I COULDN'T REMEMBER.

23 Q DID YOU JUST NOT REMEMBER IT THEN OR WHAT
24 HAPPENED THEN?

25 A I JUST -- MY MIND, YOU KNOW. LIKE WHERE I GOT
26 HOUSED AT AND ALL THAT STRESS, I GOT -- I HAD A GANG PHONE
27 CONVERSATION ABOUT SHOOTINGS AND THAT KIND OF STUFF.

28 Q HAVE YOU HAD ANY OTHER CONVERSATION WITH K-9

1 BESIDES THE ONE ON THE PHONE REGARDING THE SHOOTING OF THE
2 SOUTH SIDE PLAYER KID?

3 A THAT SAME NIGHT WHEN -- NOT IN DETAIL, JUST ON
4 THE SAME NIGHT THAT HE GOT KILLED.

5 Q THE SOUTH SIDE PLAYER KID?

6 A YES.

7 Q WHERE DID THAT CONVERSATION TAKE PLACE?

8 A ON 139TH.

9 Q AT K-9'S HOUSE?

10 A YES.

11 Q WERE YOU AT K-9'S HOUSE WHEN -- YOU WERE AT
12 K-9'S HOUSE THAT DAY BEFORE THE KID WAS SHOT?

13 A WHEN THE KID WAS SHOT? I WASN'T.

14 Q WHEN DID YOU GET THERE?

15 A I DON'T KNOW EXACTLY WHAT TIME I GOT THERE. I
16 SEEN ALL THE POLICE AND IT WAS NIGHT TIME BECAUSE I WAS
17 OVER THERE EARLIER THAT DAY. AND THE SUN WAS STILL UP AND
18 I LEFT AND CAME BACK AND THE SUN WAS DOWN, AND IT WAS TAPED
19 UP AND COPS EVERYWHERE.

20 Q WHY DID YOU GO BACK THERE?

21 A BECAUSE I GOT A -- SOMEBODY WAS WITH ME AND GOT
22 A TEXT MESSAGE THAT SAID THEY WAS SHOOTING OVER HERE. SO I
23 THOUGHT IT WAS A REASON TO GO OVER THERE.

24 Q SO WHAT HAPPENED WHEN YOU WENT OVER THE NIGHT OF
25 THE INCIDENT ON JULY 25, 2008? DO YOU KNOW WHAT TIME YOU
26 GOT THERE?

27 A NO, I DON'T REMEMBER WHAT TIME. IT WAS NIGHT
28 TIME.

1 Q AND YOU'RE SAYING THE POLICE TAPE WAS ALREADY
2 UP?

3 A THE CARS WERE EVERYWHERE AND TAPE EVERYWHERE.

4 Q WHERE DID YOU GO WHEN YOU GOT THERE?

5 A TO K-9'S HOUSE.

6 Q HOW DID YOU GET THERE?

7 A THIS GIRL DROPPED ME OFF.

8 Q AND WHAT DID YOU DO WHEN YOU GOT THERE?

9 A I WALKED THROUGH THE BACK AND I WENT IN THE
10 HOUSE.

11 Q AND WHO WAS THERE?

12 A IF I REMEMBER CORRECTLY IT WAS K-9, PEANUT,
13 KNIFE, AND I THINK THAT GIRL, HIS GIRL NAMED CHARLENE.

14 Q WHO'S CHARLENE?

15 A THEY CALL HER PIRU PRINCESS.

16 Q WAS SHE RELATED TO SOMEONE OR?

17 A SHE LIVED ON THAT STREET.

18 Q SO YOU GO IN THE HOUSE AND WHAT HAPPENED THEN,
19 DOES ANYONE TALK ABOUT THE INCIDENT?

20 A IN DETAILS, NO. BUT I ASKED K-9 WHAT HAPPENED.
21 AND HE ASKED ME ABOUT STUPID OR SOMETHING. AND I TOLD HIM
22 THAT THE -- I TOLD HIM THAT KID WAS NOT A SARIO, AND HE
23 JUST SAID, "KICK MEXICANS."

24 Q DID YOU HAVE ANY OTHER CONVERSATIONS WITH K-9
25 ABOUT THE INCIDENT THAT YOU CAN RECALL TODAY?

26 A YOU MEAN AT ANY TIME AT ALL, RIGHT?

27 Q ANY TIME AT ALL THAT YOU CAN REMEMBER THAT YOU
28 HAVE NOT TOLD US ABOUT ALREADY?

1 A NO.

2 Q WE'LL TALK ABOUT PEANUT. YOU SAID PEANUT, MR.
3 GIBBS, SAID SOME THINGS TO YOU; IS THAT CORRECT?

4 A YES.

5 Q AND WHEN WAS THE FIRST TIME YOU TALKED TO PEANUT
6 ABOUT THE SHOOTING?

7 A IN DETAIL LIKE?

8 Q WELL, WHAT WAS THE FIRST TIME YOU TALKED TO HIM
9 ABOUT IT AT ALL?

10 A IT WAS THAT NIGHT.

11 Q THE NIGHT THAT YOU WENT TO THE HOUSE?

12 A YES.

13 Q AND WHERE DID THAT CONVERSATION TAKE PLACE?

14 A WE WERE IN THE LITTLE -- WE CALL IT THE LITTLE
15 BACK HOUSE, WHATEVER BACK PART OF THE HOUSE PATIO.

16 Q WAS THIS ALSO AT K-9'S HOUSE?

17 A YES.

18 Q AND WHAT WAS THAT CONVERSATION?

19 A I TOLD HIM -- AFTER I TOLD K-9 LIKE I SAID
20 SOMETHING -- I FORGOT WHAT I SAID, BUT I SAID, "HOMEBODY
21 WASN'T NO BARRIO." AND HE WAS LIKE "FUCK SARIOS," AND THEN
22 THAT WAS ABOUT IT.

23 Q AND DID YOU EVER TALK TO PEANUT AGAIN ABOUT THE
24 INCIDENT?

25 A YEAH. IT WAS ABOUT PROBABLY, SHIT, TWO, OR THREE
26 MONTHS LATER. TWO MONTHS LATER.

27 Q WHERE DID THAT TAKE PLACE?

28 A I DON'T KNOW, SOMEWHERE IN COMPTON AT SOME

1 LITTLE WHAT WE CALL A FUNCTION.

2 Q OKAY. AND WAS THIS IN PERSON?

3 A YES.

4 Q AND WERE THERE OTHER PEOPLE THERE OR JUST THE
5 TWO OF YOU?

6 A IT WAS FROM OUR NEIGHBORHOOD. JUST ME, PEANUT,
7 AND BABY SPOKE.

8 Q IS IT SPOKE, S-P-O-K-E, OR SMOKE LIKE YOU SMOKE?

9 A SPOKE, S-P-O-K-E.

10 Q OKAY. AND WAS IT AT SOMEONE'S HOUSE OR A BAR OR
11 RESTAURANT?

12 A NO. THE COMPTON CRIPS HAD A HOUSE THAT HAD LIKE
13 A POOL OR SOMETHING. IT WAS A LITTLE LIKE SUMMER
14 GET-TOGETHER.

15 Q AND WHAT HAPPENED THAT DATE? WHAT WAS THE
16 CONVERSATION?

17 A I NEVER GOT TO TALK TO PEANUT ABOUT IT TRYING TO
18 FIND OUT WHAT HAPPENED. AND THEN I TOLD HIM, I ASKED HIM
19 WHAT HAPPENED. I FORGOT HOW I ASKED HIM, BUT HE SAID
20 B.A.'S HOMEY DUMPED HIM OUT. HE SAID THAT HIM AND K-9
21 WALKED OVER THERE AND K-9 ASKED HIM WHERE HE'S FROM AND HE
22 SHOT HIM. AND THEN HE SAID THAT HE WAS STILL ON TOP OF HIM
23 SHOOTING HIM AND POKE WAS ACROSS THE STREET.

24 Q WHEN YOU SAY HE WAS ON TOP OF HIM SHOOTING HIM,
25 PEANUT SAID PEANUT WAS ON TOP OF HIM OR K-9 WAS ON TOP OF
26 HIM?

27 A PEANUT WAS ON TOP OF HIM AND THEN TOLD HIM HE
28 WAS EXTRAED OUT. BECAUSE I WAS WONDERING LIKE TWO PEOPLE

1 AND TWO GUNS, ALL THESE BULLETS FOR THAT ONE KID. I MEAN I
2 DIDN'T SAY IT, BUT I WAS THINKING THAT HE WAS TOLD EXTRAED
3 OUT.

4 Q WHAT IS EXTRAED OUT?

5 A PUTTING TWO CENTS IN, PUTTING TOO MUCH --
6 PUTTING EXTRAS ON IT. PUTTING MORE IN THE STORY THAN IT
7 WAS.

8 Q EXAGGERATING?

9 A YES.

10 Q OKAY. WHAT DID HE SAY WHEN YOU TOLD HIM THAT HE
11 WAS EXTRAED OUT?

12 A I CAN'T REMEMBER WHAT HE SAID, BUT HE TOLD ME
13 SOMETHING.

14 MR. OLIVE: OBJECTION. HE CAN'T REMEMBER WHAT HE
15 SAID.

16 THE COURT: SUSTAINED.

17 BY MS. BARNES:

18 Q WHAT HAPPENED NEXT? WHAT DID HE SAY NEXT?

19 A THAT'S WHEN BABY SPOKE CAME IN THE CONVERSATION
20 AND HE WALKED OVER THERE, AND BABY SPOKE CAME OVER AND I
21 THINK HE SAID --

22 MR. OLIVE: I OBJECT TO WHAT HE THINKS HE SAID. IT'S
23 A LACK OF FOUNDATION.

24 MR. NEWMAN: CALLS FOR SPECULATION ALSO.

25 THE COURT: I'M GOING TO OVERRULE IT. COUNSEL CAN
26 CROSS-EXAMINE ON THAT POINT AS TO WHETHER OR NOT HE'S CLEAR
27 ON THE LANGUAGE. GO AHEAD.

28 BY MS. BARNES:

1 Q WHAT DID BABY SPOKE SAY?

2 A HE SAID --

3 Q BEFORE I DO THAT, I'LL ASK YOU THIS. BEFORE WE
4 MOVE ON TOO FAR, WHEN YOU TALKED TO PEANUT YOU MENTIONED --
5 DID PEANUT MENTION POKE?

6 A YES.

7 Q WHAT DID PEANUT SAY ABOUT POKE?

8 A HE SAID POKE WAS ACROSS THE STREET ON OUR SIDE
9 OF AVALON.

10 Q OKAY.

11 A JUST POSTED UP.

12 Q WHAT DOES MEAN POSTED UP MEAN?

13 A FOR THAT SITUATION FROM MY KNOWLEDGE AND HOW IT
14 WOULD WORK, POSTED UP HE WAS THERE WATCHING JUST TO WATCH,
15 POSTED UP WITH THE GUN TO MAKE SURE IF ANYBODY TRY TO DO
16 SOMETHING YOU JUMP IN AND START SHOOTING OR WHATEVER.

17 Q LIKE A LOOK-OUT?

18 A A LOOK-OUT AND COVER, YOU KNOW.

19 Q OKAY. DID PEANUT SAY ANYTHING ELSE ABOUT POKE?

20 A NO. I CAN'T REMEMBER.

21 Q OKAY. SO YOU SAID BABY SPOKE CAME OVER; IS THAT
22 CORRECT?

23 A YES.

24 Q WAS PEANUT STILL THERE WHEN BABY SPOKE CAME
25 OVER?

26 A YES.

27 Q WAS THERE A CONVERSATION BETWEEN YOURSELF AND
28 PEANUT AND BABY SPOKE?

1 A YES.

2 Q WHAT DID BABY SPOKE SAY?

3 MR. NEWMAN: I OBJECT TO WHAT BABY SPOKE SAID.

4 THE COURT: IS THE STATEMENT THE WITNESSES IS ABOUT
5 TO SAY PEANUT TOLD HIM SOMETHING BABY SPOKE SAID OR DID THE
6 WITNESS HEAR BABY SPOKE SAY SOMETHING?

7 MS. BARNES: THE WITNESS HEARD BABY SPOKE SAY THINGS
8 REGARDING THE INCIDENT.

9 THE COURT: CLARIFY THAT.
10 BY MS. BARNES:

11 Q WHAT DID YOU HEAR BABY SPOKE SAY?

12 A HE SAID --

13 MR. HIGGINS: OBJECTION, HEARSAY.

14 THE COURT: I'M SORRY?

15 MR. HIGGINS: HEARSAY. THIS IS A THIRD PARTY, NOT AN
16 ADMISSION OF ANYBODY HERE.

17 THE COURT: WELL, IT'S NOT A THIRD PARTY NOW. I
18 THINK THAT IS HEARSAY THOUGH.

19 MS. BARNES: WELL, YOUR HONOR, IF BABY SPOKE TALKS
20 ABOUT THE INCIDENT IN FRONT OF MR. GIBBS AND MR. GIBBS
21 DOESN'T DENY IT OR MR. GIBBS IS ANSWERING A QUESTION
22 REGARDING THE INCIDENT IN FRONT OF BABY SPOKE AND IN FRONT
23 OF THIS WITNESS, THEN IT'S NOT HEARSAY.

24 IT CAN BE A PARTY ADMISSION OR ADOPTED
25 ADMISSION. IF THERE IS A CONVERSATION IN WHICH MR. GIBBS
26 IS TAKING PLACE AND DISCUSSING THE INCIDENT THEN THAT WOULD
27 COME IN AS A HEARSAY EXCEPTION AS AN ADOPTED ADMISSION OR
28 PARTY ADMISSION.

1 IN ADDITION TO THAT I WOULD ALSO INFORM THE COURT
2 THAT BABY SPOKE WAS INVOLVED WITH GETTING RID OF THE GUN
3 AND THIS WAS ALSO DISCUSSED I THINK IN FRONT OF PEANUT, I
4 MEAN I HAVE TO ASK THE WITNESS TO SEE WHAT HE'S GOING TO
5 SAY FIRST.

6 MR. OLIVE: IS COUNSEL TESTIFYING?

7 THE COURT: EVERYONE'S TRYING TO TALK AT ONCE.

8 GO AHEAD, ONE OF YOU.

9 MR. HIGGINS: YOUR HONOR, WE CAN'T HAVE A GENERAL
10 CONVERSATION AS TO WHAT BABY SPOKE SAID. SHE SAID WHAT DID
11 HE SAY. THAT IS OVER BROAD IF HE SAID SOMETHING SPECIFIC.

12 THE COURT: I'LL INQUIRE.

13 MR. HIGGINS: IF THAT PERSON KNOWS, THAT'S DIFFERENT.

14 THE COURT: WHEN YOU MAKE THE STATEMENT THAT BABY
15 SPOKE MADE CERTAIN STATEMENTS IN THE PRESENCE OF DEFENDANT
16 GIBBS, WERE THESE ACCUSATIONS AS OPPOSED TO JUST A GENERAL
17 STATEMENT?

18 MR. HIGGINS: PER THE WITNESS.

19 THE COURT: JUST A MOMENT. IF IT'S AN ACCUSATION
20 THEN I THINK YOUR STATEMENTS CONCERNING THE HEARSAY
21 EXCEPTION WILL APPLY. BUT IF IT'S SIMPLY A STATEMENT AND
22 IT'S NOT AN ACCUSATION AGAINST DEFENDANT GIBBS, THEN
23 DEFENDANT GIBBS DOES NOT HAVE AN OBLIGATION TO OBJECT TO
24 THAT.

25 MS. BARNES: WELL, I -- I MEAN I CAN GIVE THE COURT
26 AN OFFER OF PROOF OF WHAT WAS STATED IN PRIVATE IN PREVIOUS
27 INTERVIEWS. BUT UNTIL THE WITNESS ACTUALLY SAYS WHAT THE
28 CONVERSATION WAS I CAN'T TELL THE COURT THE NATURE OF THE

1 STATEMENTS.

2 MY SUGGESTION WOULD BE WE GO STATEMENT BY
3 STATEMENT, AND IF HE WANTS TO OBJECTS THEN WE CAN STRIKE
4 IT. BUT I MEAN THERE WAS A CONVERSATION AND MR. GIBBS WAS
5 THERE. I DON'T WANT TO GO INTO DETAILS BECAUSE THEY ARE
6 GOING TO FREAK OUT AND SAY I'M TELLING THE WITNESS WHAT TO
7 SAY. SO I CAN'T --

8 THE COURT: OKAY.

9 MS. BARNES: I SUGGEST WE GO STATEMENT BY STATEMENT
10 AND IF IT'S HEARSAY WE'LL STRIKE IT.

11 MR. HIGGINS: MY SUGGESTION WOULD BE HAVE THE WITNESS
12 OUT OF THE COURTROOM, BECAUSE THIS IS PRECISELY WHAT SHE IS
13 DOING. SHE IS EDUCATING THIS WITNESS ON WHAT HE SHOULD BE
14 SAYING AND IT'S NOT DIRECTLY COMING FROM HIM.

15 SO IF SHE WANTS TO OFFER TO THE COURT AND US
16 WHAT SHE EXPECTS IT TO BE, THAT'S ONE THING. BUT NOT IN
17 FRONT OF THE WITNESS HERE, UNDER THE CIRCUMSTANCES OF THE
18 WAY HE IS TESTIFYING.

19 MR. OLIVE: I JOIN.

20 MS. BARNES: I DIDN'T OFFER ANYTHING. THAT'S WHY I
21 SAID THAT HE HAS TO SAY THE STATEMENT FIRST. I DON'T KNOW
22 WHAT HE'S GOING TO SAY UNTIL HE SAYS IT.

23 THE COURT: I GUESS THE DEFENSE POSITIONS ARE WELL
24 TAKEN THEN. LET'S HAVE WITNESS TAKEN OUT SO THAT WE CAN
25 HAVE THE PEOPLE GIVE AN OFFER OF PROOF. IF THEY DON'T, I
26 DON'T KNOW WHERE THAT WILL GET US.

27 MS. BARNES: WE CAN EXPLORE THAT.

28 (PAUSE IN PROCEEDINGS.)

1 THE COURT: DO THE PEOPLE HAVE AN OFFER OF PROOF AS
2 TO WHAT YOU EXPECT THE WITNESS TO SAY IN TERMS WHAT WAS
3 SAID IN FRONT OF DEFENDANT GIBBS?

4 MS. BARNES: I DO, YOUR HONOR. THERE WERE A NUMBER
5 OF STATEMENTS MADE. THERE WAS A CONVERSATION BETWEEN THE
6 THREE OF THEM. AND THAT'S WHY I'M SAYING LIKE HE GAVE A
7 STATEMENT AND INTERVIEW. HE GAVE TWO DIFFERENT STATEMENTS
8 AND TWO DIFFERENT INTERVIEWS SO I CAN READ THE COURT
9 EVERYTHING THAT WAS SAID, BUT I CAN'T SAY FOR SURE WHAT
10 HE'LL SAY AT THIS EXACT MOMENT. AND THAT'S WHY I DIDN'T
11 WANT TO SAY HIS PRIOR STATEMENTS, BECAUSE I DON'T WANT
12 COUNSEL SAY I'M LEADING HIM.

13 THAT'S WHY I MADE THE SUGGESTION THAT HE MAKE
14 THE STATEMENT AND THE COURT ALLOWS OR DOESN'T ALLOW IT. IF
15 YOU WANT ME TO TELL YOU WHAT WAS SAID IN THE INTERVIEWS I
16 CAN. BUT I MEAN, I'M HAPPY TO DO THAT. I CAN READ FROM
17 THE POLICE REPORT.

18 MR. OLIVE: THAT'S THE OFFER OF PROOF? SHE NEEDS
19 WHAT?

20 MR. HIGGINS: WE NEED TO KNOW WHAT SHE'S TALKING
21 ABOUT OTHER THAN THOSE STATEMENTS.

22 THE COURT: I'LL GET BACK TO MY INQUIRY ABOUT I GUESS
23 THE COURT'S CONCERN AS TO WHETHER THIS ADOPTED ADMISSION,
24 IF WE CAN CALL IT THAT, THAT THE PEOPLE ARE EXPECTING TO
25 USE TO GET IN THE HEARSAY STATEMENT SAID IN THE PRESENCE OF
26 DEFENDANT GIBBS.

27 NOW, IS IT TO BE AN ADMISSION OR SIMPLY A
28 STATEMENT THAT DOES NOT AMOUNT TO AN ADMISSION? I HAVE

1 DISTINGUISHED THAT FROM EVIDENCE CODE 1220, BECAUSE IT
2 CALLS FOR ANY STATEMENT AND ADMISSION. BUT I THINK IN THIS
3 CASE IT REALLY HAS TO BE AN ADMISSION.

4 MS. BARNES: I THINK THERE IS BOTH. AND IF WE CAN
5 KEEP GOING WE CAN REVISIT THIS TOMORROW MORNING. I HAVE
6 CASE LAW WHERE, FOR EXAMPLE, THREE PEOPLE ARE PLACED INTO A
7 JAIL CELL TOGETHER. THEY DISCUSS AN INCIDENT. AND ONE
8 PERSON BASICALLY IS SITTING THERE AND THE TWO ARE TALKING
9 ABOUT IT. THE APPELLATE COURTS HAVE SAID IT COMES IN AS AN
10 ADOPTED ADMISSION OR ADMISSION AS TO ALL OF THEM IF YOU ARE
11 SITTING IN A ROOM WITH TWO PEOPLE AND THEY ARE TALKING
12 ABOUT YOUR INVOLVEMENT WITH THE MURDER AND THEY DON'T SAY,
13 HEY, I DIDN'T DO THAT, THEN THAT IS AN ADOPTED ADMISSION.

14 THE COURT: THAT'S CLEARLY AN ADMISSION.

15 MS. BARNES: SO WHAT I'M TRYING TO SAY IS THAT I CAN
16 SIT HERE RIGHT NOW AND READ PORTIONS FROM POLICE REPORTS
17 AND TRANSCRIPTS AS TO WHAT WAS PREVIOUSLY SAID BY THE
18 WITNESS. BUT IN ALL HONESTLY I DON'T KNOW WHAT HE'S GOING
19 TO REMEMBER OR NOT REMEMBER. AND UNTIL HE SAYS IT I DON'T
20 THINK ANYONE CAN JUDGE WHETHER OR NOT IT'S HEARSAY.

21 MR. NEWMAN: WHAT'S THE OFFER OF PROOF THAT'S WHAT
22 BABY SPOKE SAID?

23 MS. BARNES: THEY ARE IN THE POLICE REPORTS IF YOU
24 WANT ME TO GO THROUGH THEM.

25 THE COURT: WE'LL DO THIS.

26 MR. NEWMAN: WE HAVE TO GO THROUGH IT NOW.

27 THE COURT: I WILL PROCEED ALONG THE LINES THE PEOPLE
28 ARE SUGGESTING SINCE SHE'S NOT EXACTLY CLEAR ON WHAT THE

1 WITNESS WILL SAY.

2 MR. OLIVE: WELL, IF SHE'S CLEAR ON THE QUESTION SHE
3 IS ASKING HIM.

4 THE COURT: SHE IS CLEAR ON THE QUESTION, BUT NOT
5 CLEAR ON WHAT THE ANSWER WILL BE.

6 MS. BARNES: IF YOU WANT ME TO LEAD HIM, I'LL LEAD
7 HIM, BUT THEN I'LL GET A LEADING OBJECTION.

8 THE COURT: SO WE'LL HAVE THE WITNESS BROUGHT BACK
9 IN.

10 MR. NEWMAN: WHAT IS THE OFFER OF THE PROOF?

11 MR. OLIVE: WE DIDN'T GET AN OFFER OF PROOF.

12 THE COURT: SHE IS SAYING THAT IT'S POSSIBLY BOTH.

13 MR. NEWMAN: BOTH OF THEM ARE WHAT?

14 MR. HIGGINS: WE NEED A STATEMENT, YOUR HONOR.

15 THE COURT: RATHER THAN GUESSWORK WE'LL HAVE THE
16 WITNESS COME BACK AND YOU CAN MAKE THE OBJECTIONS BASED ON
17 WHAT YOU MIGHT HEAR.

18 (PAUSE IN PROCEEDINGS.)

19 THE COURT: JUST SO WE'RE CLEAR, COUNSEL FOR THE
20 PEOPLE, THESE ARE STATEMENTS MADE BY WHO IS PRESENT AT THE
21 TIME?

22 MS. BARNES: WELL, I'LL DIRECT COUNSEL TO PAGE 86 OF
23 PROFFER FROM THE WITNESS WHO IS TESTIFYING TODAY THAT HE
24 WAS TALKING TO K-9 AND BABY SPOKE CAME AND STARTED TALKING
25 ABOUT THE INCIDENT.

26 SO THAT'S WHY I ASKED HIM I THINK AT LEAST TWICE
27 IF PEANUT WAS PRESENT WHEN HE TALKED TO BABY SPOKE.

28 THE COURT: SO WE HAVE GIBBS AND BABY SPOKE MAKING

1 STATEMENTS IN THE PRESENCE OF THE WITNESS?

2 MS. BARNES: YES.

3 THE COURT: OKAY. WE'LL PROCEED.

4 BY MS. BARNES:

5 Q I'LL RE-ASK THE QUESTION. THEY ARE TALKING TO
6 PEANUT AT SOME POINT; IS THAT CORRECT?

7 A YES.

8 Q AND I'M TALKING ABOUT THE PARTY WHERE THERE WAS
9 A POOL, OKAY?

10 A YES.

11 Q AND AT SOME POINT YOU SAID BABY SPOKE CAME UP;
12 IS THAT CORRECT?

13 A YES.

14 Q DID BABY SPOKE SPEAK ABOUT THE INCIDENT AT ALL?

15 A YES, HE SAID --

16 Q WELL, YOU TELL ME WHAT HE SAID WHEN BABY SPOKE
17 TALKED ABOUT THE INCIDENT THAT NIGHT WHEN YOU WERE STILL
18 STANDING THERE?

19 MR. HIGGINS: OBJECTION, VAGUE.

20 THE COURT: IN TERMS OF WHAT?

21 MR. HIGGINS: THE INCIDENT.

22 THE COURT: WELL, CLARIFY WHAT INCIDENT. I PRESUME
23 THAT YOU ARE SPEAKING OF A CERTAIN SHOOTING SO WE'LL
24 PROCEED.

25 MS. BARNES: THIS IS WHAT I'VE BEEN TALKING ABOUT THE
26 WHOLE TIME, THE INCIDENT WHERE THE SOUTH SIDE PLAYER GOT
27 KILLED.

28 BY MS. BARNES:

1 Q YOU JUST TESTIFIED THAT YOU WERE HAVING A
2 CONVERSATION WITH PEANUT ABOUT WHEN THE SOUTH SIDE PLAYER
3 GOT KILLED; IS THAT CORRECT?

4 A YES.

5 Q THAT'S WHAT I'M TALKING ABOUT. SO YOU'RE
6 TALKING TO PEANUT AND YOU TESTIFIED THAT BABY SPOKE COMES
7 UP?

8 A YES.

9 Q AND DID BABY SPOKE ALSO START TO TALK ABOUT THE
10 SHOOTING OF THE SOUTH SIDE PLAYER KID?

11 A YES.

12 Q AND WHEN BABY SPOKE MADE STATEMENTS WAS PEANUT
13 STILL STANDING THERE?

14 A YES. PEANUT WAS RIGHT NEXT TO ME.

15 Q AND WHAT DID BABY SPOKE SAY?

16 A HE SAID THAT HE HAD TRUCKED IT. THAT THE HOMEYS
17 GAVE HIM THE GUNS AND THAT HE HAD TO HIT THE WALL AND GO TO
18 HIS HOUSE AND PUT THE GUNS UP.

19 MR. HIGGINS: MOTION TO STRIKE, YOUR HONOR.

20 THE COURT: ON WHAT BASIS?

21 MR. HIGGINS: IT'S NOT AN ADMISSION OF ANYTHING. IT
22 DOESN'T REFER TO MY CLIENT AT ALL IF THAT'S WHAT HE SAID.

23 THE COURT: WELL, THAT'S A LOT OF GANG SPEAK IN
24 THERE. LET THE PEOPLE TRY TO GET AN UNDERSTANDING WHERE WE
25 KNOW WHAT EXACTLY HE IS SAYING. OVERRULED AT THIS TIME.

26 BY MS. BARNES:

27 Q WHAT DOES "TRUCK IT" MEAN?

28 A RUN FAST, RUN.

1 Q AND WHAT DID HE HAVE?

2 A HE HAD THE NINE AND .40.

3 MR. HIGGINS: OBJECTION, SPECULATION.

4 THE COURT: THIS IS VAGUE AS TO WHEN YOU SAY "HE
5 HAD".

6 BY MS. BARNES:

7 Q BABY SPOKE SAID HE HAD TO TRUCK IT; IS THAT
8 CORRECT?

9 A YES.

10 Q AND DID HE HAVE SOMETHING WITH HIM WHEN HE SAID
11 HE HAD TO TRUCK IT?

12 A HE HAD A --

13 MR. HIGGINS: OBJECTION, FOUNDATION.

14 THE COURT: SUSTAINED.

15 MS. BARNES: I'LL GO BACK TO THE ORIGINAL ANSWER,
16 BECAUSE THE COURT SAID IT WANTED CLARIFICATION ON WHAT WAS
17 SAID. I'M TRYING TO CLARIFY THAT RIGHT NOW. SO I MEAN IF
18 I SAY IT IN MY OWN WORDS THEY'LL OBJECT.

19 MR. HIGGINS: NOW THIS IS SPEAKING OBJECTIONS?

20 THE COURT: OVERRULED.

21 MS. BARNES: I'M ASKING FOR READ BACK. UNLESS YOU
22 WANT ME TO RE-ASK THE QUESTION FROM THE BEGINNING.

23 THE COURT: NO. WE'LL GO AHEAD AND TRY TO DECIPHER
24 THE WITNESS' STATEMENT THAT HAD A LOT OF GANG SPEAK.

25 BY MS. BARNES:

26 Q SO I DIDN'T WRITE IT DOWN AND I DON'T WANT TO
27 MISSTATE WHAT IT WAS, SO SHOULD WE HAVE THE COURT REPORTER
28 READ IT BACK OR SHOULD I ASK HIM AGAIN?

1 THE COURT: WE'LL ASK HIM AGAIN.

2 BY MS. BARNES:

3 Q WHAT DID BABY SPOKE SAY ABOUT TRUCK IT?

4 A HE SAID -- DO YOU WANT ME TO BREAK IT DOWN TO
5 LAYMAN'S TERMS?

6 Q THAT YOU WOULD BE GREAT.

7 A THAT HE HAD TO -- THAT THE HOMEYS GAVE HIM THE
8 GUNS, A NINE AND 40, AND HE HAD TO JUMP OVER K-9'S BACK
9 WALL THAT LEADS TO 138TH WHICH IS WHERE BABY SPOKE LIVES.

10 Q AND DID BABY SPOKE SAY WHICH HOMEYS GAVE HIM THE
11 GUNS, OR DID HE SAY HOMEYS? WHAT WERE THE EXACT WORDS?

12 A HE SAID THE HOMEYS.

13 Q AND DID YOU ASK HIM WHO GAVE HIM THE GUNS?

14 A NO, BECAUSE IT WAS OBVIOUS TO ME.

15 MR. HIGGINS: OBJECTION, MOTION TO STRIKE EVERYTHING
16 AFTER "NO" AS NONRESPONSIVE.

17 THE COURT: OVERRULED. GO ON.

18 THE WITNESS: NO. IT WAS OBVIOUS WHO HE WAS TALKING
19 ABOUT.

20 MR. HIGGINS: OBJECTION, SPECULATION.

21 THE COURT: SUSTAINED.

22 BY MS. BARNES:

23 Q WAS BABY SPOKE PRESENT WHEN YOU WERE TALKING TO
24 PEANUT ABOUT THE INCIDENT?

25 A WAS HE EXACTLY LIKE BY ME?

26 Q WAS HE PARTICIPATING IN THE CONVERSATION ABOUT
27 THE INCIDENT WHEN YOU WERE TALKING TO PEANUT?

28 A NO, NOT REALLY.

1 Q OKAY. SO WHEN HE WALKED UP WHAT WAS THE FIRST
2 THING THAT BABY SPOKE SAID WHEN HE WALKED UP?

3 A WELL, THEN HE -- WHEN HE WALKED UP ME AND PEANUT
4 WAS TALKING ABOUT IT AND HE KNEW --

5 MR. HIGGINS: OBJECTION, NONRESPONSIVE.

6 THE COURT: OVERRULED. GO ON.

7 BY MS. BARNES:

8 Q WERE YOU AND PEANUT TALKING ABOUT THE SHOOTING
9 OF THE SOUTH SIDE PLAYER?

10 A I DON'T KNOW WHAT THE STATEMENT WAS SAYING BACK
11 AND FORTH, BUT BABY SPOKE KNEW OUR CONVERSATION.

12 MR. HIGGINS: OBJECTION, SPECULATION.

13 THE COURT: I'LL SUSTAIN THAT.

14 BY MS. BARNES:

15 Q DID BABY SPOKE WALK UP WHILE YOU WERE STILL
16 TALKING TO PEANUT ABOUT THE SHOOTING OF THE SOUTH SIDE
17 PLAYER?

18 A YES.

19 Q AND WHILE TALKING TO PEANUT DID BABY SPOKE THEN
20 SAY SOMETHING?

21 A YES.

22 Q AND WAS THAT THE STATEMENT JUST SAID ABOUT TRUCK
23 IT WITH THE --

24 A YES. RUN WITH THE NINE AND 40.

25 Q DID BABY SPOKE SAY ANYTHING ELSE DURING THE
26 INFORMATION BETWEEN YOURSELF AND BABY SPOKE AND PEANUT?

27 A I ASKED HIM -- I TOLD HIM HE WAS -- I TOLD HIM
28 HE WAS FUCKED UP FOR BEATING UP DRIP.

1 Q AND WHO IS DRIP?

2 A HIS NEXT DOOR -- BABY SPOKE'S NEXT DOOR
3 NEIGHBOR.

4 Q DID THAT HAVE ANYTHING TO DO WITH THIS INCIDENT?

5 A YES. I MEAN.

6 Q WHY DID HE BEAT UP DRIP?

7 A BECAUSE BABY SPOKE SAID HE PUT THE GUNS IN THE
8 TRASH CAN AND THEN DRIP TOLD HIS MOTHER.

9 MR. OLIVE: OBJECTION, SPECULATION.

10 MR. HIGGINS: RELEVANCE, YOUR HONOR.

11 THE COURT: SUSTAINED.

12 MR. HIGGINS: MOTION TO STRIKE.

13 THE COURT: WHAT PART OF THAT?

14 MR. HIGGINS: ANYTHING ABOUT DRIP, BEATING UP DRIP.

15 THE COURT: NO. I THINK HE -- WE'LL LEAVE EVERYTHING
16 UP TO THE TRASH CANS. AFTER THAT IT'S STRICKEN.

17 BY MS. BARNES:

18 Q WHEN YOU WERE TALKING TO PEANUT DID HE TELL
19 YOU -- DID HE TELL YOU WHETHER OR NOT BABY SPOKE WAS
20 INVOLVED IN THE ACTUAL SHOOTING INCIDENT?

21 A CAN'T REMEMBER.

22 Q WOULD IT REFRESH YOUR RECOLLECTION TO LOOK AT
23 YOUR STATEMENT BACK WHEN YOU WERE DOWN AT COUNTY JAIL BACK
24 ON AUGUST 21, 2009?

25 A WOULD IT REFRESH ME TO LOOK AT IT?

26 Q WOULD IT HELP YOU REMEMBER?

27 A YES, I MEAN.

28 Q OKAY.

1 MS. BARNES: MAY I APPROACH?

2 THE COURT: YES.

3 MS. BARNES: I'M ON PAGE 83.

4 (PAUSE IN PROCEEDINGS.)

5 BY MS. BARNES:

6 Q DID THAT HELP YOU REMEMBER?

7 A YES.

8 Q SO WHEN YOU WERE TALKING TO PEANUT DID YOU GUYS
9 TALK ABOUT BABY SPOKE AT ALL IN RELATION TO THE SHOOTING?

10 A WELL, WE DIDN'T REFRESH THAT. HE SAID THAT BABY
11 SPOKE WAS SUPPOSED TO GO DO IT, DO THE SHOOTING OR MURDER,
12 AND THAT HE BITCHED OUT.

13 Q WHAT DOES "BITCHED OUT" MEAN?

14 A SCARED TO GO DO IT. SCARED TO PUT IN WORK.

15 Q AND WHAT DID PEANUT SAY NEXT?

16 A HE SAID THAT THOSE THREE POKE, K-9 AND PEANUT
17 THEY WALKED OVER THERE.

18 MS. BARNES: CAN I HAVE A MINUTE, YOUR HONOR? ARE WE
19 GOING TO 4:30?

20 THE COURT: AT LEAST 4:30.

21 BY MS. BARNES:

22 Q AROUND THE TIME OF THE INCIDENT BACK IN JULY OF
23 2008, AROUND THAT TIME, HAD YOU HAD EVER SEEN ANYONE AT
24 K-9'S HOUSE WITH ANY KIND OF GUN?

25 A YES.

26 MR. OLIVE: OBJECTION, VAGUE.

27 THE COURT: OVERRULED.

28 MR. OLIVE: RELEVANCE.

1 THE COURT: OVERRULED.

2 BY MS. BARNES:

3 Q TELL US WHAT YOU SAW?

4 A I SAW -- CAN YOU ASK THE QUESTION AGAIN?

5 Q BACK AROUND IN 2008 AROUND THE TIME OF THE
6 INCIDENT DID YOU EVER SEE ANYONE AT K-9'S HOUSE WITH A GUN?

7 A YES. I SAW IT WAS A COUPLE HANDGUNS OVER THERE.
8 I SAW A NINE MILLIMETER. IT WAS TWO OF THEM THAT LOOKED
9 THE SAME. THEY WERE -- I THINK THEY WERE A LITTLE BLACK
10 AND GRAY SMITH AND WESSONS.

11 AND THEN I SAW THE DESERT EAGLE 40 THAT SOMEBODY
12 BROUGHT OVER THERE AND IT WAS KIND OF DARK GRAY, BLACK ONE.
13 IT WAS REAL HEAVY. I GRABBED IT AND I FELT IT. AND ONE OF
14 THE NINE'S, I SEEN ONE OF THE NINE'S AND A SMITH AND WESSON
15 THAT HAD A REAL LONG CLIP IN IT. I THINK IT WAS A .32
16 SHOT.

17 Q AN EXTENDED CLIP?

18 A YES, AN EXTENDED CLIP.

19 Q I'LL SHOW YOU SOME PICTURES NOW.

20 MS. BARNES: I AM, YOUR HONOR, UP TO PEOPLE'S EIGHT?

21 THE COURT: YES.

22 MS. BARNES: YOUR HONOR, I HAVE PHOTOGRAPHS. IF I
23 CAN MARK THEM AS PEOPLE'S EIGHT.

24 THE COURT: SO MARKED.

25 MS. BARNES: PEOPLE'S NINE, PEOPLE'S TEN, PEOPLE'S 11
26 AND PEOPLE'S 12, AND FINALLY PEOPLE'S 13.

27 THE COURT: SO MARKED.

28 MS. BARNES: MAY I APPROACH?

1 THE COURT: YES.

2 MR. NEWMAN: CAN I SEE THE EXHIBITS BEFORE SHE SHOWS
3 THEM TO THE WITNESS?

4 THE COURT: GO AHEAD.

5 (PAUSE IN PROCEEDINGS.)

6 MS. BARNES: MAY I PROCEED?

7 THE COURT: YES.

8 BY MS. BARNES:

9 Q I'M GOING TO SHOW YOU A PHOTOGRAPH MARKED
10 PEOPLE'S EIGHT, ONE PAGE SHEET OF PAPER, WITH A PHOTOGRAPH
11 ON IT.

12 DO YOU RECOGNIZE THE PICTURE?

13 A YES.

14 Q WHO IS THAT?

15 A BABY SPOKE.

16 Q AND I'M GOING TO SHOW YOU A PICTURE THAT I
17 MARKED AS PEOPLE'S NINE.

18 DO YOU RECOGNIZE THAT PICTURE?

19 A YES.

20 Q WHO IS THAT?

21 A THAT'S PEANUT.

22 Q DEFENDANT GIBBS?

23 A YES.

24 Q AND DID YOU IDENTIFY HIM IN THE PICTURE TO
25 DETECTIVE VALENTO IN AN INTERVIEW?

26 A YEAH. I TOLD HIM IT WAS A MY SPACE PICTURE AND
27 IT WAS RIGHT DOWN ON 142ND.

28 Q SO THE PICTURE WAS TAKEN ON 142ND?

1 A YES.

2 Q AND SHOWING YOU WHAT I HAVE MARKED AS PEOPLE'S
3 TEN.

4 DO YOU RECOGNIZE THAT PHOTOGRAPH?

5 A YES.

6 Q AND WHO IS THAT?

7 A THAT'S POKE.

8 Q AND IS THIS A PICTURE THAT YOU IDENTIFIED WHEN
9 WE HAD THE PROFFERED STATEMENT BACK IN AUGUST 21, 2009?

10 A THAT'S ONE I SEEN IN AUGUST.

11 Q AND WHAT ABOUT PEOPLE'S 11, DO YOU RECOGNIZE
12 THAT PICTURE?

13 A THAT'S K-9.

14 Q MR. KHALILL?

15 A YES.

16 Q AND DID YOU IDENTIFY THIS IN AN INTERVIEW?

17 A YES.

18 Q PEOPLE'S 12, DO YOU RECOGNIZE THAT PICTURE?

19 A YES.

20 Q AND WHO IS THAT?

21 A THAT'S PEANUT.

22 Q IS THIS ALSO A PHOTOGRAPH FROM THAT DAY?

23 A YES.

24 Q AND PEOPLE'S 13, DO YOU RECOGNIZE WHO IS SHOWN
25 IN THAT PICTURE?

26 A THAT'S THE LITTLE KID I SEEN THAT DAY.

27 Q THE SOUTH SIDE PLAYER?

28 A YES.

1 MS. BARNES: NO FURTHER QUESTIONS.

2 THE COURT: THANK YOU. I THINK WE'LL RECESS AT THIS
3 TIME UNTIL TOMORROW.

4 HOW IS EVERYONE'S CALENDAR FOR TOMORROW?

5 MR. OLIVE: I WOULD ASK --

6 THE COURT: THE WITNESS CAN STEP DOWN.

7 MR. OLIVE: -- THE COURT TO START AT 1:30.

8 THE COURT: WHY IS THAT?

9 MR. OLIVE: WELL, I'VE GOT AN APPEARANCE IN SAN
10 FERNANDO.

11 MR. NEWMAN: I HAVE AN APPEARANCE IN RIVERSIDE IN THE
12 MORNING. IT'S ALWAYS A MESS TO GET IN AND OUT OF THERE.

13 THE COURT: 1:30 IS GOOD FOR THE PEOPLE?

14 MS. BARNES: WELL, I CAN BE HERE ANY TIME. MY ONLY
15 CONCERN IS I DON'T HOW LONG CROSS EXAMINATION WILL BE AND
16 WE STILL HAVE THREE OTHER WITNESSES. SO I DON'T THINK
17 WE'RE GOING TO FINISH IF WE ONLY DO ONE IN THE AFTERNOON IN
18 ALL HONESTY.

19 THE COURT: WELL, IF COUNSEL ARE HAVING PROBLEMS
20 BEING HERE AT THAT TIME WE'LL JUST HAVE IT AT 1:30.

21 MR. HIGGINS: THANK YOU, YOUR HONOR.

22 THE COURT: WE'LL RECESS ON THIS MATTER UNTIL 1:30
23 TOMORROW.

24 COUNSEL, I WILL DO THIS, GET A WAIVER OF
25 CONTINUOUS PRELIMINARY HEARING WITH EACH DEFENDANT.

26 MR. GIBBS, MR. -- ALL COUNSEL, HAVE THE
27 DEFENDANTS PAY ATTENTION TO THE COURT.

28 MR. KHALILL, MR. WALLACE AND MR. GIBBS, YOU ARE

000130

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DIVISION II

HON. EUDON FERRELL, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

RAYMOND GIBBS,
DEYAA KHALILL,
DENNIS WALLACE,

AND)

DEFENDANTS.)

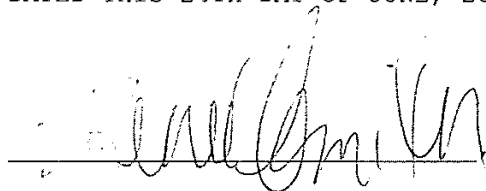
NO. YAO75709

REPORTER'S
CERTIFICATE

I, RENEE D. SMITH, CSR #8915, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES 1 THROUGH 129 COMPRISE A FULL, TRUE AND COMPLETE
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-MENTIONED
MATTER ON JUNE 9TH & 10TH, 2010.

THIS TRANSCRIPT COMPLIES WITH 237(A)(2) OF THE
CODE OF CIVIL PROCEDURE.

DATED THIS 24TH DAY OF JUNE, 2010.



CSR. #8915

OFFICIAL REPORTER

000131

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 2 HON. EUDON FERRELL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,
VS.
RAYMOND GIBBS,
DEYAA KHALILL,
DENNIS WALLACE,
AND
DEFENDANTS.

NO. YA075709
ORIGINAL

REPORTER'S TRANSCRIPT

PRELIMINARY HEARING

JUNE 11TH, 2010

FILED

VOLUME II OF III LOS ANGELES SUPERIOR COURT

JUN 24 2010

JOHN A. CLARKE, CLERK

BY REBECCA FRANCO, DEPUTY

APPEARANCES:

FOR THE PEOPLE:

STEVE COOLEY,
DISTRICT ATTORNEY
BY: CYNTHIA BARNES,
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT GIBBS: RONALD HIGGINS,
ATTORNEY AT LAW

FOR DEFENDANT KHALILL: GARY OLIVE,
ATTORNEY AT LAW

FOR DEFENDANT WALLACE: WALTER NEWMAN,
ATTORNEY AT LAW

ALSO PRESENT: ANTONY MYERS,
ATTORNEY AT LAW

HTA: JUNE 28TH, 2010
DEPARTMENT: SOUTHWEST - L
REPORTED BY: RENEE D. SMITH, C.S.R. NO.8915

000132

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

SAMUEL FEISSA				
(BY MR. OLIVE)		10		87
(BY MR. HIGGINS)		39, 62		90

E X H I B I T S

<u>PEOPLE'S</u>	<u>MARKED</u>	<u>RECEIVED</u>

14: TRANSCRIPT, OF WIRE TAPS	91	--

1 ADMISSION, BUT I THINK THAT'S HEARSAY. I DON'T SEE THAT AS
2 A PARTICULAR EXCEPTION.

3 THE PROPER PROCEDURE WOULD BE BRING BABY SPOKE IN
4 IF HE'S THE ONE THAT THE MADE THE STATEMENT THAT THE PERSON
5 WAS TALKING ABOUT.

6 I'M OBJECTING AND ASK THE COURT TO STRIKE ANY
7 STATEMENT MY CLIENT WAS SUPPOSED TO HAVE MADE IN RESPONSE
8 TO WHAT BABY SPOKE SAID.

9 THE COURT: DID I RULE ON THAT ALREADY?

10 MR. HIGGINS: WELL, YOU ALLOWED --

11 THE COURT: IF I DID, I'M NOT GOING TO ADDRESS IT
12 AGAIN.

13 MR. HIGGINS: I AM ASKING YOU TO RECONSIDER THAT.

14 THE COURT: THE COURT WILL DENY THE REQUEST TO
15 RECONSIDER. I MADE THE RULING ON IT ALREADY. THAT WILL BE
16 THE RULING AND THAT IS THE RULING. OKAY.

17 READY FOR MR. FEISSA?

18 CAN WE HAVE MR. FEISSA.

19 THE BAILIFF: YES, YOUR HONOR.

20 (PAUSE IN PROCEEDINGS.)

21 SAMUEL FEISSA,

22 CALLED BY THE PEOPLE AS A WITNESS, WAS SWORN

23 AND TESTIFIED AS FOLLOWS:

24 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

25 YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU ARE
26 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
27 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
28 TRUTH SO HELP YOU GOD?

1 THE WITNESS: YES.

2 THE CLERK: PLEASE BE SEATED.

3 STATE YOUR FULL NAME, SPELLING YOUR FIRST NAME
4 AND YOUR LAST NAME.

5 THE WITNESS: SAMUEL FEISSA, S-A-M-U-E-L F-E-I-S-S-A.

6 THE COURT: THANK YOU.

7 GO AHEAD, COUNSEL.

8 THE COURT: LET ME AGAIN REMIND ALL MEMBERS OF THE
9 PUBLIC IN THE COURTROOM, AS I INDICATED PREVIOUSLY YOU ARE
10 CERTAINLY WELCOME TO BE IN THE COURTROOM, BUT WE CANNOT
11 TOLERATE ANY KIND OF INTERRUPTIONS IN THE COURTROOM.

12 AND THAT MEANS TALKING AND ATTEMPTING TO
13 COMMUNICATE WITH ANY WITNESS OR DEFENDANT IN THE CASE OR IN
14 ANY WAY DISTURBING THE COURT OR THE ATTORNEYS OR WITNESSES
15 OR ANYONE.

16 YOU ARE WELCOME TO STAY, BUT IF YOU DO SO YOU'LL
17 BE ESCORTED OUT OF THE COURTROOM. THANK YOU.

18 GO AHEAD, MR. NEWMAN.

19 THE COURT: I BELIEVE WE ENDED THE PEOPLE'S DIRECT?
20 MS. BARNES: THAT'S TRUE.

21 MR. NEWMAN: I WILL DEFER TO COUNSEL.

22 THE COURT: WHO WANTS TO START?

23 MR. OLIVE: I WILL START.

24

25 CROSS EXAMINATION

26 BY MR. OLIVE:

27 Q GOOD AFTERNOON, MR. FEISSA.

28 A AFTERNOON.

000141

1 Q NOW, YOU SPOKE WITH THE POLICE A FEW TIMES
2 REGARDING THIS CASE; IS THAT RIGHT?

3 A YES.

4 Q WERE YOU HONEST WITH THEM ALWAYS?

5 A YES, I WAS.

6 Q ARE YOU AN HONEST PERSON?

7 THE COURT: SPEAK UP SO EVERYONE CAN HEAR YOU.

8 THE WITNESS: YES.

9 BY MR. OLIVE:

10 Q AND WOULD YOU CONSIDER YOURSELF AN HONEST
11 PERSON?

12 A YES, I AM.

13 Q AND HOW MANY TIMES HAVE YOU TALKED WITH THE
14 POLICE ABOUT THIS CASE?

15 A A FEW.

16 Q A FEW. MORE THAN TWO?

17 A I MEAN MORE THAN TWO I THINK.

18 Q AND DO YOU RECALL WHEN YOU WERE SPEAKING WITH
19 THE POLICE WAS THIS ALWAYS RECORDED?

20 MS. BARNES: CALLS FOR SPECULATION.

21 THE COURT: HE CAN ANSWER IF HE KNOWS.

22 BY MR. OLIVE:

23 Q IF YOU KNOW?

24 A YES.

25 Q WOULD YOU SAY THAT YOU WOULD AT ALL DESCRIBE
26 YOURSELF AS DECEITFUL?

27 A DECEITFUL?

28 Q DISHONEST?

1 A NO.

2 Q NOW, I KNOW MISS BARNES ASKED ABOUT THE CRIMINAL
3 CASES AND I HAD A COUPLE OF QUESTIONS. YOU HAD A CRIMINAL
4 CASE YA075725 WITH BURGLARIES; DO YOU REMEMBER THAT CASE?

5 A YEAH. THAT'S MY CURRENT CASE.

6 Q AND THAT -- AND THIS CASE HAS TWO BURGLARIES; IS
7 THAT RIGHT?

8 A YES.

9 Q AND DO YOU RECALL WHAT YOU PLED TO THAT YOU PLED
10 GUILTY TO?

11 A YEP.

12 Q WHAT DID YOU PLEAD GUILTY TO?

13 A LIKE CONSPIRACY, POSSESSION OF DEADLY SUBSTANCE
14 OR SOMETHING LIKE THAT. TWO BURGLARIES AND TWO TYPES OF
15 GANG ALLEGATIONS, BUT ONE WAS KNOCKED OFF.

16 Q YOU SAID POSSESSION OF A DEADLY SUBSTANCE?

17 A CONSPIRACY IS ONE OF THOSE TWO. 11352 I THINK.

18 Q OKAY. I DON'T THINK THAT IS CONSPIRACY.

19 DO YOU RECALL YOUR PLEA AGREEMENT SHEET?

20 MR. OLIVE: MAY I APPROACH?

21 THE COURT: FOR WHAT PURPOSE?

22 MR. OLIVE: I WILL ASK THE QUESTION FIRST.

23 BY MR. OLIVE:

24 Q ON PEOPLE'S ONE DO YOU RECALL SEEING THAT
25 EXHIBIT, FELONY GUILT PLEA FORM?

26 A THE ONE I WAS SHOWED YESTERDAY, RIGHT?

27 Q YES?

28 A YES.

1 Q AND DO YOU RECALL ON PAGE TWO OF THAT FORM WHERE
2 IT SAYS THAT YOUR SENTENCE WILL NOT BE IMPOSED, YOU KNOW,
3 UNTIL YOU COMPLY WITH THE TERMS OF THE LENIENCY AGREEMENT;
4 DO YOU UNDERSTAND THAT?

5 A MEANING I'M NOT GOING TO BE SENTENCED UNTIL
6 AFTER TRIAL.

7 Q IS THAT YOUR UNDERSTANDING?

8 A I WAS -- I WAS TOLD I WOULD BE SENTENCED BY A
9 TRIAL JUDGE.

10 Q OKAY. AND IS IT YOUR UNDERSTANDING THAT YOU'LL
11 BE RELEASED FROM CUSTODY AFTER YOU TESTIFY AT THIS
12 PRELIMINARY HEARING?

13 A YES.

14 Q IT'S TRUE THAT YOU ARE FACING PRISON TIME AS A
15 RESULT OF THESE CRIMES; IS THAT TRUE?

16 A YEP, YES.

17 Q AND YOU DON'T WANT TO GO TO PRISON?

18 A NOPE.

19 Q YOU EVER BEEN TO PRISON?

20 A NO.

21 Q AND YOU DON'T WANT TO?

22 A I'M SCARED OF PRISON.

23 Q YOU DON'T WANT TO BE IN CUSTODY ANY MORE WHILE
24 YOU AWAITING SENTENCING, RIGHT?

25 A I MEAN -- CAN YOU ASK THAT AGAIN?

26 Q I MEAN YOU DON'T WANT TO BE IN CUSTODY ANY MORE
27 PAST THIS PRELIMINARY HEARING EITHER, RIGHT?

28 A I MEAN MY CHOICE? NO.

1 Q IT'S SUMMER TIME, YOU DON'T WANT TO BE IN JAIL,
2 RIGHT?

3 THE COURT: COUNSEL, THIS IS NOT A TRIAL AND THERE IS
4 NOT A JURY HERE. LET'S TRY TO MOVE THROUGH THIS. MAYBE
5 YOU CAN ASK HIM IF HE WANTS TO BE IN ANY CUSTODY ANY LONGER
6 THAN HE HAS TO SO WE CAN MOVE ON FROM THIS POINT.

7 MR. OLIVE: WELL, I'M DOING MY BEST, YOUR HONOR.

8 THE COURT: WELL, IT DOESN'T SOUND LIKE IT, COUNSEL.
9 I MEAN WE DON'T NEED TO DWELL ON THIS, COUNSEL.

10 MR. OLIVE: I'VE GOT A LOT OF MATERIAL TO GO THROUGH,
11 YOUR HONOR. I DON'T THINK IT'S A QUICK CROSS EXAMINATION.

12 THE COURT: IT MIGHT NOT BE QUICK, BUT THIS IS A
13 PRELIMINARY HEARING AND YOU MIGHT NOT GET TO GO THROUGH
14 EVERYTHING THAT YOU THINK YOU WANT TO GO THROUGH.

15 MR. OLIVE: WELL, I WANT TO GO THROUGH THINGS THAT
16 ARE RELATED TO MOTIVE AND BIAS REGARDING THIS WITNESS.

17 THE COURT: SO LET'S GET TO THAT THEN AND WHETHER
18 IT -- GO AHEAD, COUNSEL.

19 BY MR. OLIVE:

20 Q YOU WANT TO GO HOME AS SOON AS YOU CAN, RIGHT?
21 IS THAT CORRECT, TO BE OUT OF CUSTODY?

22 A YES.

23 Q DO YOU KNOW HOW MUCH TIME PRISON TIME YOU ARE
24 FACING AS A RESULT OF YOUR GUILTY PLEA IN YOUR OPEN CASE?

25 A JUST A COUPLE OF YEARS.

26 Q COUPLE YEARS?

27 A FIVE, SIX OR SEVEN.

28 Q SEVEN YEARS?

1 A YEAH, SEVEN.

2 Q YOU THINK IT'S SEVEN?

3 A YES.

4 Q ARE YOU SURE? DOES YOUR MEMORY NEED TO BE
5 REFRESHED?

6 A IT'S SEVEN.

7 Q OKAY. SEVEN YEARS IS MORE THAN A COUPLE OF
8 YEARS, RIGHT?

9 MS. BARNES: OBJECTION.

10 THE WITNESS: NO DEFINITION FOR THE WORD "COUPLE".

11 BY MR. OLIVE:

12 Q OKAY. SEVEN IS MORE THAN TWO?

13 THE COURT: COUNSEL, DO I NEED TO HAVE ALL COUNSEL
14 APPROACH SO WE CAN FIGURE OUT A WAY TO GET THROUGH WITHOUT
15 THE DRAMA?

16 MR. OLIVE: AS LONG AS IT'S ON THE RECORD.

17 THE COURT: I'M SORRY?

18 MR. OLIVE: AS LONG AS IT'S ON THE RECORD.

19 THE COURT: WELL, I'M MAY HAVE TO DO IT IN OPEN
20 COURT, COUNSEL. WE DON'T NEED TO WASTE TIME ANY MORE THAN
21 WE HAVE TO. WE ALL UNDERSTAND THAT IT IS A COMPLEX CASE
22 WITH THREE DEFENDANTS IN IT AND IT CAN BE REALLY TIME
23 CONSUMING, SO WE DON'T NEED A DISCUSSION IF SEVEN IS MORE
24 THAN TWO.

25 MR. OLIVE: BUT THE WITNESS DIDN'T ANSWER.

26 THE COURT: WELL, COUNSEL, DO YOU WANT ME TO TAKE
27 JUDICIAL NOTICE OF THE FACT THAT SEVEN IS MORE THAN TWO?

28 MR. OLIVE: NO, BECAUSE I CAN'T CROSS-EXAMINE THE

1 COURT LATER, BUT I CAN GET A TRANSCRIPT FOR THE WITNESS AND
2 CROSS EXAMINE HIM ON THIS POINT LATER ON. AND I THINK --

3 THE COURT: OF WHETHER IS SEVEN MORE THAN TWO?

4 MR. OLIVE: I THINK HE IS STARTING TO ENGAGE IN A
5 PATTERN OF BEING NONRESPONSIVE.

6 THE COURT: OKAY. GO ON, COUNSEL.

7 BY MR. OLIVE:

8 Q SEVEN YEARS OF PRISON WOULD BE A LONG TIME,
9 RIGHT?

10 MS. BARNES: OBJECTION.

11 THE COURT: SUSTAINED.

12 BY MR. OLIVE:

13 Q HOW OLD ARE YOU, SIR?

14 A 22.

15 Q WHEN YOU ENTERED THE PLEA YOU WERE 21; IS THAT
16 RIGHT?

17 A YES.

18 Q AND SO IF YOU WOULD HAVE GONE TO PRISON THAT DAY
19 YOU WOULD HAVE BEEN 25 OR 26 YEARS OLD BY THE TIME YOU GOT
20 OUT OF PRISON?

21 MS. BARNES: OBJECTION, CALLS FOR SPECULATION AS TO
22 WHEN HE --

23 THE COURT: SUSTAINED. AND RELEVANCE.

24 BY MR. OLIVE:

25 Q MR. FEISSA, THERE IS ANOTHER CASE THAT YOU HAVE
26 YOU WERE CONVICTED OF SA066407 INVOLVING NARCOTICS; DO YOU
27 RECALL THAT CASE?

28 A I'VE HAD A COUPLE NARCOTICS CASES.

1 Q AND THIS CASE WAS FILED ON FEBRUARY 25, 2008 AT
2 AIRPORT COURT; DO YOU RECALL THAT?

3 A YES.

4 Q DO YOU RECALL GOING TO AIRPORT COURT?

5 A YES.

6 Q SOMETIME IN MARCH 2008?

7 A YES.

8 Q AND IN FACT, YOU PLED GUILTY TO SOME FELONY
9 CHARGES; IS THAT RIGHT?

10 MS. BARNES: OBJECTION, MISSTATES THE EVIDENCE.

11 THE COURT: OVERRULED. HE CAN ANSWER IF IT'S TRUE OR
12 FALSE.

13 THE WITNESS: IT WAS A MARIJUANA CASE.

14 BY MR. OLIVE:

15 Q WAS THAT A FELONY?

16 A IT WAS I THINK A MISDEMEANOR.

17 Q YOU'RE NOT SURE?

18 A IT WAS A -- I MEAN, I DON'T KNOW, MAN. IT'S A
19 MISDEMEANOR.

20 Q OKAY. IF YOU ARE NOT SURE YOU CAN SAY YOU ARE
21 NOT SURE.

22 NOW, IN THAT CASE DO YOU RECALL WHAT HAPPENED?

23 A YEAH. THE D.A. TOLD ME TO DO SOME COMMUNITY
24 SERVICE AND IT WOULD BE A MISDEMEANOR.

25 Q AND DID YOU PROMISE HER YOU WOULD DO THAT?

26 A YEAH.

27 Q SO YOU GAVE YOUR WORD THAT YOU WERE GOING TO DO
28 THE COMMUNITY SERVICE WORK?

1 A I DIDN'T GIVE HER MY WORD. I SAID YES.

2 Q SO YOU DID SAY YES, THAT'S NOT GIVING YOUR WORD?

3 MS. BARNES: OBJECTION, RELEVANCE.

4 THE COURT: SUSTAINED. AND ARGUMENTATIVE.

5 BY MR. OLIVE:

6 Q DID YOU DO THE COMMUNITY SERVICE WORK?

7 A NO.

8 Q DID YOU ALSO TELL THE JUDGE YOU WERE GOING TO DO
9 THAT?

10 MS. BARNES: OBJECTION, RELEVANCE.

11 THE COURT: SUSTAINED.

12 MR. OLIVE: GOES TO CREDIBILITY, YOUR HONOR.

13 THE COURT: SUSTAINED, COUNSEL.

14 MR. OLIVE: GOES TO CREDIBILITY AND BIAS.

15 THE COURT: COUNSEL, I'M NOT HARD OF HEARING. ARE
16 YOU GOING TO TELL ME THE SAME THING YOU JUST TOLD ME?

17 MR. OLIVE: YOUR HONOR?

18 THE COURT: SUSTAINED. MOVE ON TO YOUR NEXT
19 QUESTION.

20 MR. OLIVE: I THINK THE COURT IS UNFAIRLY LIMITING MY
21 RIGHT TO CROSS-EXAMINE.

22 THE COURT: WELL, COUNSEL, THAT'S BECAUSE YOU ARE
23 ASKING THE SAME QUESTION. HOW MANY TIMES DO YOU WANT THE
24 ANSWER?

25 MR. OLIVE: I DIDN'T ASK THE SAME QUESTION.

26 THE COURT: COUNSEL, THE FACT THAT HE TOLD ONE PERSON
27 AS OPPOSED TO ANOTHER PERSON THAT HE WAS GOING TO DO IT AND
28 HE DIDN'T DO IT?

1 MR. OLIVE: THAT'S TWO DIFFERENT QUESTIONS.

2 THE COURT: TWO DIFFERENT QUESTIONS, COUNSEL, BUT THE
3 SAME QUESTION. IT'S SIMPLY GOES TO WHETHER OR NOT HE WENT
4 BACK ON HIS WORD. AND I THINK THAT IT DOES BECOME A 352
5 ISSUE FOR YOU TO KEEP HARPING ON THE SAME THING.

6 MR. OLIVE: WELL, IT'S A VERY IMPORTANT POINT, YOUR
7 HONOR. I DISAGREE WITH THAT.

8 THE COURT: WELL, GO AHEAD WITH THE NEXT QUESTION,
9 COUNSEL.

10 BY MR. OLIVE:

11 Q DID YOU TELL THE JUDGE THAT YOU ARE GOING TO
12 FOLLOW -- THAT YOU ARE GOING TO OBEY ALL LAWS?

13 MS. BARNES: OBJECTION, RELEVANCE.

14 THE COURT: SUSTAINED.

15 MR. OLIVE: MAY I BE HEARD ON THAT?

16 THE COURT: YES.

17 MR. OLIVE: IT IS RELEVANT BECAUSE IT GOES TO
18 CREDIBILITY AND BIAS. IT GOES TO CREDIBILITY.

19 THE COURT: SUBMITTED?

20 MR. OLIVE: YES. I WOULD LIKE TO BE HEARD, YOUR
21 HONOR.

22 THE COURT: WELL, GO AHEAD, COUNSEL. I'VE GIVEN YOU
23 THE OPPORTUNITY TO BE HEARD.

24 MR. OLIVE: WE ARE NOT GOING TO GET A MEANINGFUL
25 CROSS EXAMINATION FOR THIS WITNESS IF MY CLIENT IS NOT
26 BEING ABLE TO CONFRONT AND CROSS-EXAMINE THE WITNESS UNDER
27 THE SIXTH AMENDMENT RIGHT TO CROSS-EXAMINE WITNESSES IF I
28 CAN'T ASK THE QUESTIONS ABOUT CREDIBILITY.

1 THE COURT: COUNSEL, I THINK YOU'VE SPENT THE LAST
2 TEN MINUTES TALKING ABOUT CREDIBILITY.

3 MR. OLIVE: CREDIBILITY IS A BIG POINT.

4 THE COURT: I UNDERSTAND. IS IT SUBMITTED?

5 MR. OLIVE: I'D LIKE THE WITNESS TO BE ABLE TO ANSWER
6 IF HE PROMISED THE COURT, JUDGE ONEAL, AT AIRPORT COURT HE
7 WAS GOING TO OBEY ALL LAWS.

8 THE COURT: COUNSEL, IF YOU CAN -- I WILL PERMIT
9 THAT. LET'S GET PAST THIS POINT. THE OBJECTION IS
10 OVERRULED.

11 GO AHEAD AND ASK THE QUESTION.
12 BY MR. OLIVE:

13 Q DID YOU PROMISE THE AIRPORT COURT THAT YOU WERE
14 GOING TO OBEY ALL LAWS WHEN YOU WERE SENTENCED IN THAT
15 CASE?

16 A YES.

17 Q DID YOU BREAK THAT PROMISE?

18 MS. BARNES: OBJECTION, RELEVANCE. THE PEOPLE WILL
19 STIPULATE HE WAS ON PROBATION WHEN HE PICKED UP THE NEW
20 CASE. THIS IS --

21 THE COURT: THE OBJECTION IS SUSTAINED.

22 MR. OLIVE: WELL, I HAVEN'T GOT THE WITNESS' ANSWER.

23 THE COURT: WE ALREADY KNOW THE ANSWER, COUNSEL
24 BECAUSE HE --

25 MR. OLIVE: I DON'T.

26 THE COURT: HE ADMITTED THAT HE COMMITTED OFFENSES
27 AFTER THAT.

28 MR. OLIVE: I DIDN'T HEAR THAT.

1 THE COURT: I DID HEAR HIM ADMIT THAT. GO AHEAD,
2 COUNSEL. THE EVIDENCE THAT IS IN THE RECORD.

3 MR. OLIVE: WELL, I'D LIKE THE WITNESS TO ANSWER THE
4 QUESTION AND THEN I MIGHT HAVE A FOLLOW-UP OR MY CO-COUNSEL
5 MIGHT HAVE A FOLLOW-UP QUESTION.

6 THE COURT: THE OBJECTION IS SUSTAINED.

7 MR. OLIVE: WHAT QUESTIONS CAN I ASK THE WITNESS IF I
8 CAN'T ASK QUESTIONS OF CREDIBILITY?

9 THE COURT: COUNSEL, I DON'T KNOW WHAT QUESTIONS YOU
10 CAN ASK. THAT'S WHAT I INDICATED ABOUT THREE MINUTES AGO.
11 I FOUND THAT YOU SPENT TEN MINUTES PRIOR TO THAT ON
12 CREDIBILITY.

13 SO I CERTAINLY HAVE PERMITTED YOU TO ASK
14 QUESTIONS ABOUT CREDIBILITY, RIGHT? IT BECOMES A 352 ISSUE
15 WHEN YOU JUST WANT TO SPENT THE FIRST 30 MINUTES OF YOUR
16 CROSS EXAMINATION ON CREDIBILITY, ON JUST THAT ONE PART OF
17 CREDIBILITY.

18 MR. OLIVE: I ASKED --

19 THE COURT: I DON'T THINK WE MAKE THE STATEMENT THAT
20 YOU AREN'T BEING PERMITTED TO ASK QUESTIONS ON CREDIBILITY.

21 MR. OLIVE: NO.

22 THE COURT: IT'S JUST OVER KILL, COUNSEL.

23 MR. OLIVE: I THINK I CAN ASK -- I THINK THE WITNESS
24 CAN ANSWER THE QUESTION WHETHER OR NOT HE BROKE A PROMISE
25 AND WHETHER OR NOT HE COMMITTED THE OFFENSE AFTER.

26 THE COURT: WE'VE GOTTEN THAT ANSWER ALREADY.

27 MR. OLIVE: I HAVE NOT HEARD HIM SAY ANYTHING.

28 THE COURT: GO ON TO YOUR NEXT QUESTION. THE LAST

1 OBJECTION IS SUSTAINED.

2 BY MR. OLIVE:

3 Q WHY DID YOU NOT COMPLETE YOUR WORK ASSIGNMENT?

4 MS. BARNES: RELEVANCE.

5 THE COURT: SUSTAINED.

6 MR. OLIVE: IT GOES TO CREDIBILITY, YOUR HONOR.

7 OFFER OF PROOF?

8 THE COURT: THE OBJECTION IS SUSTAINED.

9 MR. OLIVE: MAY I?

10 THE COURT: THE COURT DOES NOT NEED AN OFFER OF
11 PROOF.

12 BY MR. OLIVE:

13 Q DO YOU REALIZE -- I'LL ASK YOU THIS, MR. FEISSA,
14 DO YOU HAVE ANYTHING TO GO BACK TO THAT COURT FOR THAT
15 CASE?

16 A TO --

17 MS. BARNES: OBJECTION, VAGUE.

18 THE COURT: SUSTAINED.

19 BY MR. OLIVE:

20 Q DO YOU KNOW IF YOU'VE GOT A PROBATION VIOLATION
21 HEARING PENDING IN THAT CASE?

22 A TO MY KNOWLEDGE IT'S BEEN TRANSFERRED TO THIS
23 COURTHOUSE. I DON'T THINK I AM GOING BACK TO THAT
24 COURTHOUSE.

25 Q BUT AS FAR AS THAT CASE GOES DO YOU KNOW IF YOU
26 HAVE A PROBATION VIOLATION HEARING COMING UP?

27 A YES.

28 Q YES, WHAT?

1 A YES.

2 Q YOUR ANSWER IS YES, YOU HAVE A PROBATION
3 VIOLATION HEARING?

4 MS. BARNES: OBJECTION, ARGUMENTATIVE. HE ANSWERED
5 THE QUESTION.

6 THE COURT: GO AHEAD WITH THE NEXT QUESTION, COUNSEL.
7 BY MR. OLIVE:

8 Q DO YOU HAVE A PROBATION VIOLATION HEARING COMING
9 UP?

10 A YES, I DO.

11 Q WHY DO YOU THINK THAT YOU HAVE A PROBATION
12 VIOLATION HEARING?

13 MS. BARNES: OBJECTION, RELEVANCE.

14 THE COURT: SUSTAINED.

15 BY MR. OLIVE:

16 Q HAVE YOU TALKED AT ALL WITH THE DISTRICT
17 ATTORNEY ABOUT BEING HELPED OUT ON YOUR PROBATION VIOLATION
18 MATTER WITH REGARD TO YOUR TESTIMONY IN THIS CASE?

19 A BEING HELPED OUT?

20 Q YES.

21 A I DON'T KNOW WHAT THAT MEANS.

22 Q OKAY. MAYBE NOT BEING VIOLATED ON YOUR
23 PROBATION?

24 A I MEAN -- I DON'T KNOW WHAT YOU MEAN. WE'LL SEE
25 ON MY COURT DATE. I DON'T KNOW.

26 Q DID YOU TELL THE COURT THAT YOU STOPPED DOING
27 THE WORK ASSIGNMENT BECAUSE THE AREA WAS TOO DANGEROUS?

28 MS. BARNES: OBJECTION, RELEVANCE.

1 THE COURT: SUSTAINED.

2 BY MR. OLIVE:

3 Q DO YOU HAVE ANY PROBLEMS WITH YOUR MEMORY, MR.
4 FEISSA?

5 A I THINK WE ALL DO.

6 MR. OLIVE: I'D ASK THE COURT TO DIRECT THE WITNESS
7 TO ANSWER AND MOTION TO STRIKE THE NONRESPONSIVE.

8 THE COURT: MR. FEISSA, ANSWER THE QUESTION DIRECTLY
9 AS TO WHETHER YOU DO OR NOT?

10 THE WITNESS: A LITTLE BIT.

11 BY MR. OLIVE:

12 Q A LITTLE BIT. WHY DO YOU SAY THAT?

13 MS. BARNES: OBJECTION.

14 THE COURT: SUSTAINED, ARGUMENTATIVE.

15 BY MR. OLIVE:

16 Q WHAT I MEAN IS THIS A MEDICAL CONDITION OR IS IT
17 FROM SOME OTHER REASON? DID YOU SUFFER A BLOW TO THE HEAD?
18 WHY DO YOU HAVE A LITTLE MENTAL ISSUE?

19 A I MEAN I DON'T REMEMBER THINGS WHEN I WAS
20 TWO-YEARS-OLD AND I DON'T KNOW REMEMBER THINGS -- CERTAINLY
21 THING I DON'T I DON'T REMEMBER.

22 Q YOU DIDN'T SUFFER A BLOW TO THE HEAD TO CAUSE A
23 MEMORY LOSS; IS THAT TRUE?

24 MS. BARNES: RELEVANCE, OUTSIDE THE SCOPE.

25 THE COURT: OVERRULED. I'LL PERMIT THAT.

26 THE WITNESS: WHAT DO YOU MEAN BLOW TO THE HEAD?

27 BY MR. OLIVE:

28 Q DID YOU SUFFER SOME INJURIES TO YOUR HEAD AREA

1 THAT CAUSED YOU TO FORGET THINGS?

2 A LIKE WHAT?

3 THE COURT: MR. FEISSA, JUST ANSWER THE QUESTION
4 WITHOUT TRYING TO THINK ABOUT WHAT THE MOTIVATION IS FOR
5 THE QUESTION, OKAY?

6 THE WITNESS: ALL RIGHT.

7 NO.

8 BY MR. OLIVE:

9 Q DO YOU TAKE ANY MEDICATION FOR MEMORY LOSS?

10 A NO.

11 Q HOW ABOUT YOU DRINK ALCOHOL, DOES THAT --

12 MS. BARNES: CALLS FOR SPECULATION, AND RELEVANCE,
13 AND ASSUMES FACTS NOT IN EVIDENCE.

14 THE COURT: SUSTAINED AS ASSUMES FACTS NOT IN
15 EVIDENCE.

16 THE WITNESS: WHAT WAS THE QUESTION?

17 BY MR. OLIVE:

18 Q DID YOU EVER TELL ANYONE THAT BECAUSE OF YOUR
19 PAST DRUG USE HISTORY THAT YOU FORGET THINGS?

20 A YES.

21 Q WHAT DRUGS WERE YOU USING?

22 THE COURT: COUNSEL, WHAT IS THE RELEVANCE?

23 MR. OLIVE: IT GOES TO HIS MEMORY AND CREDIBILITY.
24 HE MADE THE STATEMENT.

25 THE COURT: HE ALREADY ANSWERED THE QUESTION. NOW,
26 COUNSEL, YOU WANT TO GO INTO THE TYPE OF DRUG AND I SUPPOSE
27 THEN WHEN IT WAS TAKEN, ET CETERA, ET CETERA? WHETHER OR
28 NOT A DOCTOR EVER GAVE HIM A DIAGNOSIS OF THAT? HOW FAR DO

1 YOU WANT TO GO ON THAT?

2 MR. OLIVE: I WANT TO EFFECTIVELY CROSS-EXAMINE.

3 THE COURT: WITHIN THE PARAMETERS OF A PRELIMINARY
4 HEARING, RIGHT?

5 MR. OLIVE: DID THE COURT READ MY MOTION THOUGH?

6 THE COURT: I'M SORRY?

7 MR. OLIVE: DID YOU READ MY MOTION THAT I PREVIOUSLY
8 FILED?

9 THE COURT: I DON'T KNOW IF I HAVE OR NOT, COUNSEL.
10 IT'S BEEN QUITE A FEW DOCUMENTS IN THIS CASE, BUT MAYBE I
11 DIDN'T.

12 MAY YOU CAN TELL ME HOW SOME PART OF YOUR MOTION
13 RELATES TO THAT QUESTION.

14 MR. OLIVE: WELL, MY RESEARCH, YOUR HONOR, DOES --
15 THERE IS NOT ANY CASE THAT SAYS YOUR RIGHT TO CROSS
16 EXAMINATION IS LIMITED BY THE FACTS. THIS IS A PRELIMINARY
17 HEARING.

18 THE COURT: WELL, IT IS. THERE ARE LIMITATIONS ON
19 CROSS EXAMINATION AT A PRELIMINARY HEARING.

20 MR. OLIVE: OKAY. AND MAYBE THE PEOPLE HAVE A CASE,
21 BUT I HAVEN'T SEEN A CASE LIKE THAT.

22 BY MR. OLIVE:

23 Q SO YOUR DRUG USED CAUSE PROBLEMS IN MEMORY; IS
24 THAT RIGHT?

25 THE COURT: COUNSEL, THE QUESTION HAS BEEN ASKED AND
26 ANSWERED.

27 MR. OLIVE: OKAY.

28 BY MR. OLIVE:

1 Q WAS THIS DRUG USE ONGOING, OR IS THIS DRUG USE
2 AS A JUVENILE OR WHEN DID THE DRUG USE OCCUR?

3 MS. BARNES: OBJECTION, RELEVANCE.

4 THE COURT: SUSTAINED.

5 BY MR. OLIVE:

6 Q IS THERE A CASE THAT YOU'RE UNDER INVESTIGATION
7 FOR OR QUESTIONED ABOUT THAT HAPPENED ON TERENT STREET?

8 MS. BARNES: OBJECTION, RELEVANCE, OUTSIDE OF THE
9 SCOPE. I ASSUMING HIS ATTORNEY IS NOT GOING TO LET HIM
10 ANSWER THAT.

11 MR. OLIVE: HE'S MAKING A HAND SIGNAL. I DON'T KNOW
12 WHAT THAT MEANS.

13 MR. MYERS: THAT MEANS FIVE FINGERS. I'M TAKING THE
14 FIFTH.

15 MR. OLIVE: COUNSEL CAN MAKE AN OBJECTION.

16 THE COURT: SUSTAINED.

17 MR. OLIVE: I THINK COUNSEL KNOWS HE SHOULD MAKE AN
18 OBJECTION RATHER THAN MAKE SOME KIND OF HAND SIGNAL. WE
19 TALKED ABOUT THE ISSUE BEFORE THE COURT. I'M POSITIVE THE
20 COURT SAID WE CAN ASK QUESTIONS ABOUT THIS, BECAUSE OF THE
21 DISCOVERY ISSUE THE PEOPLE WOULD GIVE US ANY REPORTS ON
22 THIS. THE COURT SAID --

23 THE COURT: COUNSEL, I WILL PERMIT A LIMITED NUMBER
24 OF QUESTIONS IN THAT REGARD AND IT WILL BE PRETTY MUCH
25 LIMITED TO YES OR NO ANSWERS. AND REGARDLESS OF WHETHER
26 IT'S YES OR NO, WE WON'T PROCEED VERY FAR BEYOND THAT.

27 I'LL PERMIT THE ANSWER, ASSUMING COUNSEL IS NOT
28 ADVISING HIM TO TAKE THE FIFTH.

1 MR. OLIVE: IF THE COURT RECALLS YOU ALLOWED US TO
2 TALK ABOUT THIS ISSUE.

3 THE COURT: I AGREED TO ALLOW YOU TO ASK QUESTIONS.
4 I DIDN'T SAY HOW LONG YOU WOULD BE PERMITTED TO ASK
5 QUESTIONS, BECAUSE IF I PERMIT YOU, ASSUMING THERE IS A YES
6 ANSWER, THEN WE START GOING INTO A LOT OF EXTRANEIOUS THINGS
7 AND WE'RE RIGHT BACK AT THE AREA WHERE I FELT WE SHOULDN'T
8 GO IN THE FIRST PLACE.

9 NOW, YOU CAN RE-ASK THE QUESTION IF YOU WOULD
10 LIKE AND WE'LL SEE WHAT THE WITNESS' COUNSEL IS GOING TO
11 SAY.

12 GO AHEAD AND ASK THE QUESTION.

13 BY MR. OLIVE:

14 Q IS THERE ANOTHER INCIDENT, A SHOOTING INCIDENT
15 THAT HAPPENED ON TERENCE STREET THAT YOU HAVE BEEN
16 QUESTIONED ABOUT BY LOS ANGELES SHERIFF'S DEPARTMENT?

17 A I WANT TO EXERCISE MY FIFTH AMENDMENT RIGHT NOT
18 TO SAY NOTHING.

19 MR. HIGGINS: I OBJECT.

20 MR. OLIVE: IS HE BEING ADVISED BY COUNSEL?

21 MR. HIGGINS: I'M OBJECTING ON THAT PARTICULAR
22 ANSWER. I DON'T THINK THAT PARTICULAR QUESTION IS
23 INCRIMINATING. HE SIMPLY WAS ASKED A QUESTION. AND I
24 DON'T BELIEVE THE FIFTH AMENDMENT IS APPROPRIATE.

25 THE COURT: IT'S NOT YOUR DECISION THOUGH. THE
26 OBJECTION IS SUSTAINED.

27 MR. MYERS: IF I MAY SO THE RECORD IS CLEAR. MY NAME
28 IS ANTONY MYERS, BAR NUMBER 121919. I WAS RETAINED TO

1 REPRESENT MR. FEISSA IN THIS MATTER. I HAVE INDICATED TO
2 HIM THIS IS A LINE OF QUESTIONING WHICH HE SHOULD ASSERT
3 THE FIFTH AMENDMENT PRIVILEGE.

4 I'VE INDICATED RATHER THAN ME JUMPING UP AND
5 INTERRUPTING THE COURT, I WOULD SIGNAL HIM WHEN TO ASSERT
6 THE PRIVILEGE. AND IF THE COURT WOULD LIKE TO MAKE INQUIRY
7 OF ME I'M SURE THE COURT WOULD DO SO.

8 THE COURT: THANK YOU.

9 MR. OLIVE: I SPOKE WITH COUNSEL.
10 BY MR. OLIVE:

11 Q NOW, IN TERMS OF -- DO YOU RECALL THE PROFFER
12 AGREEMENT THAT YOU SIGNED?

13 A YES.

14 Q AND YOU GOT YOUR ATTORNEY, HE'S HERE, DID YOU
15 CONFIRM YOUR UNDERSTANDING OF THE PROFFER AGREEMENT WITH
16 HIM?

17 A YES.

18 Q NOW, IN TERMS OF TALKING TO THE POLICE ABOUT
19 THIS HOMICIDE IN 2008 OF THE SOUTH SIDER, WERE YOU ALREADY
20 UNDER ARREST ON ANOTHER CASE WHEN YOU TALKED TO THE POLICE?

21 MS. BARNES: OBJECTION, VAGUE.

22 THE COURT: OVERRULED.

23 THE WITNESS: YES AND NO.

24 BY MR. OLIVE:

25 Q OKAY. WHY DO YOU SAY YES?

26 A BECAUSE THE FIRST TIME -- THERE HAVE BEEN
27 SEVERAL CASES WHERE I TALKED ABOUT THE MURDER. SOMETIMES I
28 WAS UNDER ARREST AND SOMETIMES I WASN'T.

000360

1 Q OKAY. I'M SPEAKING OF WHEN I BELIEVE YOU SAID
2 -- YOU TOLD MISS BARNES ON DIRECT EXAMINATION THAT YOU SAID
3 YOU WANT TO TALK TO HOMICIDE DETECTIVES?
4 A I WAS UNDER ARREST. I WAS IN CUSTODY.
5 Q OKAY. ARE THERE ANY OTHER CASES THAT WE HAVE
6 NOT TALKED ABOUT, CRIMINAL CASES, THAT YOU ARE UNDER
7 INVESTIGATION FOR?
8 MR. MYERS: OBJECTION, CALLS -- SORRY.
9 MS. BARNES: YES, WHAT HE SAID. CALLS FOR
10 SPECULATION.
11 THE COURT: IS HE BEING ADVISED TO TAKE THE FIFTH ON
12 THIS?
13 MR. MYERS: HE WILL INVOKE THE FIFTH ON THIS ONE.
14 MR. OLIVE: I WOULD LIKE TO BE HEARD ON THAT ISSUE.
15 THAT'S NOT APPROPRIATE. THAT'S --
16 THE COURT: COUNSEL, IT'S NOT UP TO YOU AS TO WHAT IS
17 APPROPRIATE. HIS ATTORNEY IS GIVING HIS ADVICE AND THE
18 COURT ABIDES BY IT.
19 MR. OLIVE: I THOUGHT THE COURT COULD MAKE A RULING
20 ON IT AFTER CONSIDERING THE MERITS OF THE ARGUMENT.
21 THE COURT: WELL, I THINK THAT'S VERY MUCH IN LINE
22 WITH THE LENGTH OF THE DISCUSSIONS BEFORE WE GOT STARTED IN
23 THE CASE THAT IT'S GOING TO LEAD TO A SITUATION WHERE YOU
24 WANT TO MAKE INQUIRY ABOUT SOME INCIDENT THAT WHO KNOWS
25 WHAT STAGE IT'S IN AND IT'S CERTAINLY NOT IN A CONVICTION
26 STAGE.
27 MR. OLIVE: WELL, I KNOW THE COURT IS READING MY
28 MIND, BUT NOT NECESSARILY, YOUR HONOR.

1 THE COURT: WELL, I WILL SUSTAIN THE OBJECTION. GO 000161
2 AHEAD TO THE NEXT QUESTION.
3 BY MR. OLIVE:
4 Q YOU GAVE THE POLICE INFORMATION ABOUT ANOTHER
5 MURDER ALSO; IS THAT RIGHT, MR. FEISSA?
6 MS. BARNES: OBJECTION, RELEVANCE, OUTSIDE OF THE
7 SCOPE OF DIRECT.
8 THE COURT: SUSTAINED.
9 BY MR. OLIVE:
10 Q WERE YOU PAID FOR ANY INFORMATION THAT YOU GOT
11 IN THIS CASE?
12 A YES.
13 Q DO YOU RECALL HOW MUCH MONEY?
14 A I DON'T RECALL THAT.
15 Q WERE YOU PAID BY THE POLICE FOR INFORMATION IN
16 ANY OTHER CASE?
17 MS. BARNES: OBJECTION, RELEVANCE.
18 THE COURT: SUSTAINED.
19 MR. OLIVE: IT GOES TO BIAS, YOUR HONOR.
20 THE COURT: I'LL PERMIT A YES OR NO ANSWER, BUT
21 WITHOUT GOING INTO DETAILS, COUNSEL. THE OBJECTION IS
22 OVERRULED.
23 THE WITNESS: YES.
24 BY MR. OLIVE:
25 Q THE MONEY THAT YOU GOT FOR THIS CASE ARE YOU
26 GOING TO PAY TAXES ON THAT MONEY?
27 MS. BARNES: OBJECTION, RELEVANCE.
28 THE COURT: SUSTAINED.

1 BY MR. OLIVE:

2 Q WAS THAT MONEY GIVEN TO YOU IN CASH?

3 MS. BARNES: OBJECTION, RELEVANCE.

4 THE COURT: SUSTAINED.

5 BY MR. OLIVE:

6 Q IF I SHOW YOU A SHEET OF PAPER WOULD THAT
7 REFRESH YOUR MEMORY?

8 THE COURT: THERE IS NO --

9 MR. OLIVE: IN TERMS OF HE SAID HE DIDN'T KNOW HOW
10 MUCH MONEY HE WAS PAID. I WOULD LIKE TO SUPPORT THE ISSUE
11 AND I WOULD LIKE TO ASK HIM OR SHOW HIM THIS. SHOW IT TO
12 HIS COUNSEL TO REFRESH HIS MEMORY. HE SAID HE DIDN'T KNOW
13 HOW MUCH HE WAS PAID ON THIS CASE.

14 MR. OLIVE: HE DIDN'T REMEMBER.

15 THE COURT: IS THAT THE INQUIRY THAT YOU ARE STILL
16 PURSUING AS TO WHAT HE WAS PAID ON THIS CASE?

17 MR. OLIVE: YES.

18 MS. BARNES: I WOULD OBJECT.

19 THE COURT: GO AHEAD.

20 MS. BARNES: THAT DOESN'T INDICATE WHAT HE WAS PAID
21 ON THIS CASE. IT INDICATES WHAT HE WAS PAID FOR A TOTAL OF
22 ALL THE CASES SO IT CAN'T ASSIST HIM.

23 THE COURT: WELL, I'LL PERMIT IT.

24 GO AHEAD, COUNSEL.

25 MR. OLIVE: THANK YOU.

26 (PAUSE IN PROCEEDINGS.)

27 THE WITNESS: YES.

28 BY MR. OLIVE:

1 Q WELL, I'LL ASK YOU, I'LL ASK YOU FOR THE RECORD
2 IT SAYS \$500 ON AUGUST 4TH, 2008 BY SHAW, \$500 ON AUGUST
3 12TH BY SHAW.

4 I'M SORRY, \$800 ON THE FIRST ONE.

5 THE COURT: COUNSEL, I DON'T UNDERSTAND WHY WE'RE
6 READING ALL OF THIS INTO THE RECORD. YOUR OFFER OF PROOF
7 IS TO SHOW HIM SOMETHING TO HOPEFULLY STIR HIS RECOLLECTION
8 AS TO WHAT HE WAS PAID ON THIS CASE.

9 MR. OLIVE: OKAY.

10 BY MR. OLIVE:

11 Q DOES THIS REFRESH YOUR MEMORY?

12 A YES, IT DOES.

13 Q AND IS THIS ACCURATE?

14 A YEP, YES.

15 Q HAVE YOU RECEIVED ANY MONEY THIS YEAR?

16 A NO.

17 Q THE LAST PAYMENT THAT YOU RECEIVED WAS JANUARY
18 5, 2009; IS THAT CORRECT?

19 A YES.

20 Q HAVE YOU RECEIVED ANY MONEY AFTER THAT?

21 A NO.

22 Q NOW, THE PROFFER WAS SIGNED IN AUGUST OF 2009,
23 RIGHT?

24 A YES.

25 Q AND IN THAT SESSION YOU WERE ASKED ABOUT DEYAA
26 KHALILL'S INVOLVEMENT IN THAT MURDER OF THE SOUTH SIDE
27 MURDER, RIGHT?

28 A YES.

1 Q AND YOU HAD PREVIOUSLY TALKED TO THE POLICE
2 BEFORE THIS; IS THAT RIGHT?

3 A YES.

4 Q IT'S TRUE THAT WHEN YOU FIRST TALKED WITH THE
5 POLICE YOU TOLD THEM DEYAA KHALILL -- THERE WAS A PHONE
6 CALL BETWEEN YOU AND DEYAA KHALILL; IS THAT RIGHT?

7 A YES.

8 Q AND IT'S TRUE IN THAT SESSION SPEAKING OF THE
9 FIRST TIME THAT DAY DEYAA KHALILL TALKED ABOUT THE MURDER
10 ON AUGUST 21ST, 2009, AND YOU SAID THAT YOU WENT TO DEYAA
11 KHALILL'S HOUSE?

12 A YES.

13 Q AND DEYAA KHALILL NEVER TOLD YOU THAT HE SHOT
14 ANYONE, TRUE?

15 A FALSE.

16 Q ON AUGUST 21, 2009, DID YOU TELL POLICE DEYAA
17 KHALILL NEVER SAID THAT HE SHOT ANYONE, RIGHT?

18 A THAT'S THE PROFFER DAY, RIGHT?

19 Q WHAT'S THAT?

20 A THE DISTRICT ATTORNEY, THAT'S THE DAY OF THE
21 PROFFER?

22 Q WOULD THE WITNESS SPEAK UP?

23 A THE DAY OF THE PROFFER, RIGHT?

24 Q YES?

25 A YES.

26 Q YES, THAT'S ON THAT DAY. YOU WERE ASKED ABOUT
27 DEYAA KHALILL AND YOU NEVER SAID THAT HE SHOT ANYONE, DID
28 YOU?

1 MS. BARNES: MAYBE I'M CONFUSED, BUT I THINK THAT'S
2 VAGUE. MAYBE WE NEED TO HAVE A READ BACK. I DIDN'T
3 UNDERSTAND THAT QUESTION.

4 MR. OLIVE: I WILL REPHRASE THAT QUESTION.
5 BY MR. OLIVE:

6 Q DEYAA KHALILL NEVER DESCRIBED THE MURDER TO
7 YOU -- WELL, I WILL ASK YOU THIS: ON AUGUST 21, 2009 WHEN
8 YOU TALKED WITH THE POLICE IN THE PROFFER SECTION YOU NEVER
9 TOLD THE POLICE DEYAA KHALILL DESCRIBED THE MURDER TO YOU,
10 CORRECT?

11 A THAT'S CORRECT.

12 Q IT'S ALSO TRUE THAT YOU DID TELL THE POLICE THAT
13 DEYAA KHALILL WAS VERY CONCERNED THERE WAS A MOLE GIVING
14 INFORMATION TO THE POLICE?

15 A YES.

16 Q AND DURING THAT TIME PERIOD WHAT WAS YOUR
17 RELATIONSHIP WITH DEYAA KHALILL, WERE YOU BEST FRIENDS OR?

18 MS. BARNES: VAGUE AS TO WHICH TIME PERIOD.

19 THE COURT: COUNSEL WHAT?

20 MR. OLIVE: THE TIME PERIOD AFTER THE SOUTH SIDE
21 MURDER?

22 THE COURT: WELL.

23 MR. OLIVE: THOSE THREE OR FOUR MONTHS IN THAT TIME,
24 YOU AND DEYAA KHALILL WERE HANGING OUT A LOT?

25 THE WITNESS: I WOULDN'T SAY A LOT, BUT ENOUGH TO
26 WHERE --

27 MR. OLIVE: MOTION TO STRIKE. IT'S JUST A YES OR NO.

28 THE COURT: DENIED.

1 MR. OLIVE: HE CAN KEEP TALKING?

2 THE COURT: HE IS NOT TALKING NOW, COUNSEL.

3 MR. OLIVE: WELL, OKAY.

4 BY MR. OLIVE:

5 Q IN 2008 DID YOU AND DEYAA KHALILL GO PLACES
6 TOGETHER?

7 A YES.

8 Q HOW OFTEN WOULD YOU GUYS GO OUT?

9 A I'M NOT POSITIVE. I'M NOT SURE.

10 Q I'M SORRY?

11 A I SAID I'M NOT TOO SURE.

12 Q DO YOU RECALL ANY PLACES -- SORRY. DID YOU EVER
13 TELL THE POLICE AT ANY TIME REGARDING THIS SOUTH SIDE
14 MURDER THAT RAYMOND GIBBS WAS LIMPING AROUND AND HURT HIS
15 ANGLE IN A BASKETBALL GAME?

16 A YES.

17 Q YOU NEVER QUESTIONED DEYAA KHALILL ABOUT HIS
18 INVOLVEMENT, THE ALLEGED INVOLVEMENT, IN THE SOUTH SIDE
19 MURDER, DID YOU?

20 A YES, I DID.

21 Q YOU QUESTIONED HIM? WHAT DID YOU ASK HIM?

22 A I HAD A CONVERSATION WITH HIM ON THE PHONE.

23 Q AND DO YOU RECALL TELLING THE POLICE DURING THE
24 PROFFER SECTION THAT THE REASON YOU HAD TROUBLE WITH YOUR
25 MEMORY IS BECAUSE OF YOUR DRUG USE?

26 MS. BARNES: ASKED AND ANSWERED.

27 THE COURT: OVERRULED. SINCE IT'S SPECIFIC TO THAT
28 SESSION.

1 THE WITNESS: YES.

2 BY MR. OLIVE:

3 Q IS YOUR MEMORY OF THE INCIDENT BETTER NOW OR WAS
4 YOUR MEMORY OF THE INCIDENT BETTER THEN?

5 MS. BARNES: VAGUE AS TO WHEN. HE HAS BEEN
6 INTERVIEWED THREE TIMES.

7 THE COURT: COUNSEL, WHAT PERIOD ARE YOU SPEAKING OF?
8 BY MR. OLIVE:

9 Q IS YOUR MEMORY OF THE INCIDENT ON THE 2008
10 MURDER, WAS IT BETTER THEN IN 2008 OR IS YOUR MEMORY OF THE
11 INCIDENT BETTER NOW?

12 THE COURT: COUNSEL, YOU MEAN THE ENTIRE YEAR 2008?
13 BY MR. OLIVE:

14 Q AROUND THE TIME OF THE MURDER?

15 A IT WAS MORE FRESH IN MY MIND, YES.

16 Q MORE FRESH IN YOUR MIND THEN?

17 A YES.

18 Q DID YOU HAVE AN IDEA IN YOUR HEAD THAT MAYBE YOU
19 WOULD ACT LIKE DEYAA'S FRIEND AND THEN MAYBE YOU USE THE
20 INFORMATION TO HELP ME OUT, MEANING YOU, IN CASE YOU GOT IN
21 TROUBLE? DID YOU EVER HAVE THAT IDEA IN YOUR HEAD BEFORE?

22 MS. BARNES: OBJECTION, RELEVANCE.

23 THE COURT: OVERRULED.

24 THE WITNESS: ASK THAT ONE MORE TIME.

25 BY MR. OLIVE:

26 Q I WILL ASK IT THIS WAY: DID YOU EVER BEFRIEND
27 DEYAA KHALILL IN AN ATTEMPT TO GAIN INFORMATION ABOUT
28 ALLEGED CRIMES SO THAT YOU CAN GIVE THE POLICE INFORMATION

1 TO HELP YOU OUT?

2 A NO.

3 Q NOW, IT'S TRUE REGARDING THIS 2008 MURDER THAT
4 YOU WERE NOT PRESENT; IS THAT TRUE?

5 A I WASN'T.

6 Q YOU DIDN'T SEE IT?

7 A NO, I DIDN'T.

8 Q YOU ARE ONLY TELLING THE MURDER BASED ON WHAT
9 OTHER PEOPLE HAVE ALLEGEDLY TOLD YOU; IS THAT CORRECT?

10 A WHAT K-9 AND PEANUT TOLD ME.

11 Q AND WHAT OTHER PEOPLE TOLD YOU, THAT'S WHAT YOU
12 ARE --

13 A YES.

14 Q YOU'RE DOING THIS IN AN ATTEMPT TO GET OUT OF
15 JAIL, TRUE?

16 MS. BARNES: VAGUE AS TO "DOING THIS".

17 THE COURT: OVERRULED.

18 YOU MAY ANSWER.

19 THE WITNESS: CAN YOU ASK THAT AGAIN?

20 BY MR. OLIVE:

21 Q YOU ARE ONLY GIVING THE INFORMATION TO THE
22 POLICE, COOPERATING WITH THE POLICE, IN AN ATTEMPT TO GET
23 OUT OF JAIL; IS THAT TRUE?

24 A NO.

25 MR. OLIVE: NO FURTHER QUESTIONS AT THIS TIME.

26 THE COURT: THANK YOU.

27 CROSS EXAMINATION, MR. HIGGINS.

28

CROSS EXAMINATION

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BY MR. HIGGINS:

Q GOOD AFTERNOON, MR. FEISSA.

A AFTERNOON TO YOU.

Q MR. FEISSA, YOU'RE A GANG MEMBER; IS THAT
CORRECT?

A WAS A GANG MEMBER.

Q WHAT GANG DID YOU BELONG TO?

A 135 PIRU.

Q AND WHEN DID YOU FIRST JOIN THAT GANG?

A LATE '06.

Q '06. AND HOW OLD WERE YOU THEN?

A 19.

Q BEFORE JOINING THE GANG DID YOU ASSOCIATE WITH
PEOPLE FROM THAT GANG?

A YES.

Q AND WOULD YOU CONSIDER YOURSELF BEFORE YOU GOT
OUT A FULLY ACCEPTED MEMBER OF THAT GANG?

A NO.

Q WELL, DID YOU -- WAS MY CLIENT A FULLY ACCEPTED
MEMBER OF THE GANG, THAT IS MR. GIBBS?

A YES.

Q HE WAS YOUR FRIEND?

A MY ASSOCIATE.

Q YOU TALKED TO HIM?

A YES.

Q AND HE TALKED TO YOU?

A YES.

1 Q DID YOU EVER DO A MISSION?

2 MS. BARNES: OBJECTION.

3 BY MR. HIGGINS:

4 Q IS THAT YES OR NO?

5 MS. BARNES: OBJECTION, VAGUE IN TERMS OF "MISSION".

6 THE COURT: SUSTAINED.

7 BY MR. HIGGINS:

8 Q DO YOU KNOW WHAT A MISSION MEANS?

9 A MISSION TO THE STORE, MISSION TO A GIRL'S HOUSE,
10 MISSION --

11 Q THAT'S WHAT MISSION MEANS TO YOU, GO TO A GIRL'S
12 HOUSE IS THAT WHAT YOU SAID?

13 MS. BARNES: OBJECTION, MISSTATES THE TESTIMONY. HE
14 STARTED TO -- WELL --

15 THE COURT: WHAT WAS THAT?

16 MS. BARNES: MISSTATES THE TESTIMONY.

17 MR. HIGGINS: I'LL REPHRASE IT. WITHDRAW THAT
18 QUESTION.

19 THE COURT: GO AHEAD.

20 BY MR. HIGGINS:

21 Q WHEN YOU JOINED THE GANG DID YOU GANG BANG?

22 A DID I WHAT?

23 Q GANG BANG?

24 A YES.

25 Q DID YOU HIT PEOPLE UP?

26 MS. BARNES: OBJECTION, RELEVANCE.

27 THE COURT: SUSTAINED.

28 BY MR. HIGGINS:

1 Q YOU KNOW WHAT "HITTING UP" MEANS?

2 A YES.

3 Q MR. QUEZADA, THE VICTIM SHOT IN JULY 2808, DID
4 YOU HIT HIM UP AT ANY TIME?

5 A YES.

6 Q HOW MANY TIMES DID YOU HIT HIM UP BEFORE HE WAS
7 KILLED?

8 A ONCE.

9 Q AND AT THE TIME THAT YOU HIT HIM UP WERE YOU
10 ALONE?

11 A YES.

12 Q IN YOUR MIND IS IT DANGEROUS TO HIT SOMEONE UP?

13 A YES AND NO.

14 Q ALL RIGHT. WHERE DID YOU HIT HIM UP AT?

15 A IN FRONT OF HIS HOUSE.

16 Q THAT'S THE OTHER SIDE OF -- THAT'S THE SIDE OF
17 AVALON THAT DOES NOT BELONG OR IS NOT CLAIMED BY 135TH; IS
18 THAT CORRECT?

19 A YES.

20 Q SO YOU WERE IN ANOTHER GANG'S TERRITORY WHEN YOU
21 DID THAT, WHEN YOU HIT MR. QUEZADA UP?

22 A YES.

23 Q AND YOU KNEW THAT WAS DANGEROUS; IS THAT
24 CORRECT?

25 A YES.

26 Q WERE YOU ARMED AT THE TIME?

27 MS. BARNES: OBJECTION, RELEVANCE.

28 THE COURT: SUSTAINED.

1 BY MR. HIGGINS:

2 Q SINCE YOU WERE A MEMBER OF 135TH DID YOU KNOW
3 WHERE THE GUNS WERE IN THE AREA?

4 A YES.

5 Q AND DID YOU KNOW HOW MANY GUNS THERE WERE?

6 A MOST OF THEM.

7 Q MOST OF THEM. CAN YOU TELL HOW MANY -- CAN YOU
8 TELL US HOW MANY GUNS THAT YOU HAVE SEEN 135 PIRU HAVE?

9 MS. BARNES: OBJECTION, VAGUE AS TO TIME.

10 THE COURT: SUSTAINED.

11 BY MR. HIGGINS:

12 Q WITHIN THE LAST TWO YEARS?

13 A A LOT.

14 Q ALL RIGHT. DID IT INCLUDE A NINE MILLIMETER?

15 A YES.

16 Q AND DID IT INCLUDE A DESERT EAGLE?

17 A YES.

18 Q .40 CALIBERS?

19 A YES.

20 Q AND ANY OTHER TYPE OF WEAPONS INCLUDED?

21 A YES.

22 Q AND HOW MANY DIFFERENT OTHER THAN THE ONES THAT
23 I MENTIONED?

24 A YOU WANT ME TO NAME THEM?

25 Q THE TYPES, YES.

26 A 25'S, 22'S, TWO RIFLES, 380'S, 38'S, 357'S,
27 FO-FO.

28 Q I'M SORRY?

1 A WHAT PART DID YOU HEAR?

2 Q WHAT WAS THE LAST ONE YOU SAID AFTER 357'S?

3 A FO-FO, FOUR-FOUR MAGNUM.

4 Q AND PEOPLE WOULD DISPLAY THE GUNS IN FRONT OF
5 YOU?

6 A YES.

7 Q SO THEY TRUSTED YOU; IS THAT CORRECT?

8 A YEAH.

9 Q IS THAT CORRECT?

10 A YES.

11 Q GANG MEMBERS WOULDN'T TRUST SOMEBODY IF THEY
12 DIDN'T THEMSELVES PUT IN WORK; IS THAT RIGHT?

13 A THAT'S WRONG.

14 Q THEY WOULDN'T TRUST YOU IF THEY WEREN'T SURE
15 ABOUT YOU, RIGHT?

16 A YES AND NO.

17 Q WELL, ARE YOU SAYING THAT SOME PEOPLE WHO
18 WOULD -- I'LL ASK YOU THIS.

19 THE 135TH PIRU GANG MEMBERS WHO YOU KNOW OR YOU
20 BELIEVE TO HAVE COMMITTED SERIOUS CRIMES, WOULD THEY TRUST
21 YOU IF YOU HAD NOT PUT IN WORK?

22 MS. BARNES: CALLS FOR SPECULATION.

23 THE COURT: SUSTAINED.

24 BY MR. HIGGINS:

25 Q NOW, WAS THE NINE MILLIMETER A COMMON TYPE OF
26 WEAPON THAT WAS HELD BY 135TH PIRU?

27 A IT WASN'T COMMON BUT.

28 Q YOU HAVE SEEN THAT A NUMBER OF TIMES; IS THAT

1 CORRECT?

2 A BY THE SAME INDIVIDUALS.

3 Q YOU HAVE SEEN THAT SEVERAL TIMES?

4 A YES.

5 Q YOU HAVE SEEN THE DESERT EAGLE BY THE SAME
6 INDIVIDUALS SEVERAL TIMES?

7 A I ONLY SEEN THE DESERT EAGLE ONCE.

8 Q AND BEFORE JULY 28, '08, HOW LONG -- WHEN WAS
9 THE LAST TIME BEFORE THAT DATE THAT YOU SAW A DESERT EAGLE?

10 I WILL REPHRASE THE QUESTION. HOW LONG BEFORE
11 QUEZADA WAS KILLED ON 138TH OUTSIDE OF HIS HOME, HOW LONG
12 BEFORE THAT -- WHAT IS THE LAST TIME BEFORE THAT YOU SAW A
13 DESERT EAGLE?

14 A WITHIN A COUPLE OF DAYS.

15 Q COUPLE OF DAYS?

16 A COULD HAVE BEEN SAME THE DAY OR THE DAY BEFORE.

17 Q OKAY. AND THE DAY THAT MR. QUEZADA WAS KILLED
18 ON 7-28, 2008, WERE YOU NOT IN CUSTODY; IS THAT RIGHT?

19 A NO, I WASN'T.

20 Q WHERE WERE YOU -- WHERE WERE YOU ON THAT DATE
21 ABOUT 8:30?

22 A I WAS AT THE HOUSE.

23 Q WHAT HOUSE?

24 A MY HOUSE.

25 Q AND DID YOU KNOW -- HOW FAR AWAY WAS YOUR HOME
26 FROM 138TH AND 139TH AND AVALON?

27 A NOT THAT FAR.

28 Q FIVE MINUTES?

1 A DEPENDS ON HOW FAST YOU WERE GOING.

2 Q YOU KNOW WHAT I'M TALKING ABOUT, GIVE ME A
3 DISTANCE, SIR?

4 A ABOUT SEVEN MINUTES.

5 Q SEVEN MINUTES. OKAY.

6 DID MR. KHALILL -- DID HE LIVE ON 139TH STREET?

7 A YES.

8 Q AND HE LIVED ON 139TH STREET WEST OF AVALON; IS
9 THAT CORRECT?

10 A YES.

11 Q AND DO YOU KNOW HOW MANY HOUSES FROM THE CORNER
12 THAT HE LIVED?

13 A SEVEN OR EIGHT, NINE, TEN HOUSES.

14 Q AND DID YOU GO OVER TO HIS HOME AFTER THIS
15 INCIDENT OCCURRED?

16 A YES.

17 Q AND HOW SOON AFTER THIS INCIDENT OCCURRED DID
18 YOU ARRIVE THERE?

19 A IT WAS AT NIGHT. IT WAS WHEN EVERYTHING WAS
20 TAPED UP AND THE COPS WAS EVERYWHERE.

21 Q THE COPS WAS EVERYWHERE. DID YOU SPEAK TO ANY
22 POLICE OFFICER THAT NIGHT?

23 A NOPE.

24 Q DID YOU GO THERE TO MR. KHALILL'S HOUSE BY
25 YOURSELF?

26 A YEAH.

27 Q AND DID YOU SPEAK TO ANYBODY OTHER THAN MR.
28 KHALILL, THE GENTLEMEN BEHIND ME?

1 A I TALKED TO MR. GIBBS.
2 Q NOW, I SAID OTHER THAN THESE PEOPLE DID YOU
3 SPEAK TO ANYBODY ELSE?
4 A SAY WHAT'S UP.
5 Q AND WHO DID YOU GO THERE WITH?
6 A TO MR. KHALILL'S HOUSE?
7 Q YES.
8 A BY MYSELF.
9 Q YOU WENT BY YOURSELF?
10 A YES.
11 Q AND NO ONE TOOK YOU THERE?
12 A YES.
13 Q SOMEONE DID TAKE YOU THERE?
14 A TO THE STREET, YES.
15 Q BUT NOT TO THE HOME?
16 A NO.
17 Q SO DID YOU GIVE THAT INFORMATION TO THE POLICE
18 OR THE DETECTIVES THAT SOMEONE ELSE TOOK YOU OVER TO
19 MR. KHALILL'S HOUSE?
20 A TOOK ME TO 139TH, YES.
21 Q AND APPROXIMATELY WHAT TIME DID YOU ARRIVE?
22 A I DON'T REMEMBER THE TIME, BUT IT WAS NIGHT
23 TIME.
24 Q SO IT'S YOUR TESTIMONY THAT YOU WERE NOT IN THAT
25 AREA AROUND BETWEEN 8:00 AND 8:30; IS THAT CORRECT?
26 A I WAS THERE AT NIGHT.
27 Q COULD HAVE BEEN AROUND 8:00, 8:30 THAT NIGHT YOU
28 WERE AROUND 139TH AND AVALON?

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1 A WHATEVER TIME THE SUN GOES DOWN, AROUND THAT
2 TIME TILL MIDNIGHT I WAS IN THE AREA.

3 Q OKAY. AND ON THAT PARTICULAR DAY HAD YOU BEEN
4 SMOKING ANY MARIJUANA?

5 A YEAH.

6 Q HOW MUCH?

7 MS. BARNES: OBJECTION, RELEVANCE.

8 MR. HIGGINS: GOES TO THE ABILITY TO RECALL.

9 THE COURT: OVERRULED. GIVE ME A CHANCE TO RULE,
10 COUNSEL.

11 MR. HIGGINS: THANK YOU.

12 THE WITNESS: COUPLE OF BLUNTS.

13 BY MR. HIGGINS:

14 Q COUPLE OF BLUNTS. WERE THEY GOOD BLUNTS, STRONG
15 BLUNTS?

16 A IT WAS WHAT WE CALL CUSH OR CHRONIC.

17 Q CHRONIC?

18 A YES.

19 Q GOT A GOOD HIGH OFF THAT?

20 A NOT TO ME.

21 Q NOT TO YOU?

22 A NO.

23 Q HOW LONG BEFORE 8:00 O'CLOCK THAT YOU SMOKED THE
24 TWO BLUNTS?

25 A I'M NOT TOO POSITIVE. I SMOKED ONE IN THE
26 MORNING AND SMOKED ONE IN THE EVENING.

27 Q YOU SMOKED ONE IN THE EVENING, WAS IT AROUND
28 7:30 QUARTER TO 8:00?

1 A I'M NOT SURE, MAN.

2 Q COULD HAVE BEEN?

3 A I'M NOT TOO SURE.

4 Q ALL RIGHT. NOW, YOU ALSO USE COCAINE; IS THAT
5 RIGHT?

6 MS. BARNES: OBJECTION, RELEVANCE.

7 THE COURT: OVERRULED.

8 MS. BARNES: WELL, MAY I BE HEARD AS TO JUST THE TIME
9 LINE? I UNDERSTAND IF HE USED IT RIGHT BEFORE HE SPOKE
10 WITH ONE OF THE DEFENDANTS.

11 MR. HIGGINS: I WILL FOLLOW-UP, YOUR HONOR.

12 THE COURT: GO AHEAD.

13 BY MR. HIGGINS:

14 Q YOU ALSO USE COCAINE, RIGHT?

15 MS. BARNES: WELL, I OBJECT TO THAT, IF HE USED
16 COCAINE.

17 THE COURT: COUNSEL, IT'S VAGUE AS TO TIME. ARE YOU
18 SPEAKING OF THE SAME DAY?

19 MR. HIGGINS: NO. I'LL SAY THIS, JUDGE.

20 BY MR. HIGGINS:

21 Q PRIOR TO JULY OF 2008 HAD YOU HAD A HABIT OF
22 USING COCAINE WITHIN A YEAR OF THAT DATE?

23 MS. BARNES: OBJECTION, RELEVANCE.

24 THE COURT: OVERRULED.

25 MS. BARNES: WELL, OBJECTION, VAGUE AS TO HABIT. HE
26 COULD HAVE BEEN A DRUG ADDICT, BUT IT'S TOTALLY IRRELEVANT.

27 THE COURT: COUNSEL, I'LL SUSTAIN THAT. MAYBE YOU
28 CAN ASCERTAIN IF HE WAS A USER AND MAYBE YOU CAN INQUIRE AS

1 TO THE FREQUENCY.

2 BY MR. HIGGINS:

3 Q DURING THE COURSE OF YOUR STATEMENT GIVEN THE
4 DAY OF YOUR PROFFER DIDN'T YOU TELL COUNSEL AT THE END OF
5 TABLE AND THIS DETECTIVE THAT YOU USED POWDER?

6 A YES.

7 Q AND WHAT IS "POWDER"?

8 A IT'S COCAINE.

9 Q RIGHT. HAD YOU BEEN USING COCAINE FOR ABOUT A
10 YEAR BEFORE JULY 28, 2008?

11 MS. BARNES: OBJECTION, RELEVANCE.

12 THE COURT: I'LL SUSTAIN AS BEING VAGUE, COUNSEL.

13 BY MR. HIGGINS:

14 Q HAD YOU USED ANY COCAINE ON THE DATE OF JULY 28,
15 2008?

16 A NO, I DID NOT.

17 Q HOW DO YOU KNOW THAT?

18 A BECAUSE AT THIS TIME WHEN I USED COCAINE I COULD
19 REMEMBER EVERY DAY THAT I DID.

20 Q WELL, WHEN WAS THE LAST TIME YOU USED COCAINE
21 PRIOR TO JULY 25, 2008?

22 MS. BARNES: OBJECTION, RELEVANCE.

23 THE COURT: OVERRULED.

24 THE WITNESS: IT WAS BEFORE I CAME TO JAIL. IT WAS
25 TWO WEEKS BEFORE I GOT LOCKED UP FOR THIS STUFF AND I WAS
26 IN MY CAR DRIVING ON MANCHESTER, GOT A ROOM, GOT SOME
27 POWDER AND STARTED SNIFFING.

28 BY MR. HIGGINS:

1 Q DID YOU HEAR THE QUESTION?

2 A YOU SAID WHEN IS THE LAST TIME PRIOR TO THAT
3 DATE THAT I SNIFFED COCAINE.

4 Q BEFORE JULY 25TH, 2008, THE DATE THAT THIS YOUNG
5 MAN WAS KILLED ON 139TH, WHAT DATE DID YOU USE COCAINE?
6 WHAT IS THE DATE THAT YOU USED COCAINE BEFORE THEN?

7 A WHAT WAS THE DATE? I DON'T KNOW.

8 Q SO YOU DON'T KNOW. DO YOU KEEP A RECORD OF THE
9 DATES YOU USE COCAINE?

10 A NO.

11 Q SO AS FAR AS A PARTICULAR DATE IS CONCERNED JULY
12 25, 2008 IS POSSIBLE, YOU COULD HAVE USED THAT DAY ALSO; IS
13 THAT RIGHT?

14 A NO.

15 Q YOU HAVE A RECORD YOU DID NOT USE IT THAT DAY?

16 A I DIDN'T USE COCAINE THAT DAY.

17 Q ALL RIGHT. NOW, COUNSEL WAS ASKING YOU ABOUT
18 THE MONEY THAT YOU RECEIVED.

19 DO YOU RECALL HOW MUCH MONEY YOU RECEIVED FOR
20 THIS CASE?

21 MS. BARNES: OBJECTION, ASKED AND ANSWERED.

22 THE COURT: OVERRULED.

23 THE WITNESS: LIKE 800.

24 BY MR. HIGGINS:

25 Q THAT'S YOUR BEST ESTIMATE OR IS THAT AN AMOUNT
26 CERTAIN THAT YOU REMEMBER AS YOU SIT HERE RIGHT NOW AS TO
27 HOW MUCH YOU RECEIVED FOR THIS CASE FOR INFORMATION FOR
28 THIS CASE?

1 A I WAS NEVER TOLD THAT THE MONEY I WAS GETTING
2 WAS DIRECTLY FOR THIS CASE. IT WAS JUST -- NO.

3 Q SO WHAT MADE YOU SAY THAT YOU GOT 800 FOR THIS
4 CASE THEN?

5 A BECAUSE AFTER I SPOKE TO HOMICIDE WITHIN A
6 COUPLE OF DAYS I GOT PAID.

7 Q WAS THAT THE FIRST TIME THAT YOU EVER GOT PAID
8 FOR GIVING -- AFTER SPEAKING TO HOMICIDE ABOUT A CASE?

9 A I THINK SO, YES.

10 Q SO THE FIRST TIME YOU EVER -- WELL, WHEN YOU
11 SPOKE ABOUT THIS CASE THAT'S THE FIRST TIME YOU EVER
12 RECEIVED MONEY FROM A DETECTIVE FOR GIVING INFORMATION; IS
13 THAT WHAT YOU ARE SAYING?

14 MS. BARNES: I DIDN'T HEAR THE QUESTION.

15 THE COURT: I'M SORRY?

16 MS. BARNES: I DIDN'T HEAR THE QUESTION. I
17 APOLOGIZE.

18 (PAUSE IN PROCEEDINGS.)

19 THE COURT: YOU MAY ANSWER.

20 THE WITNESS: I'M NOT 100 PERCENT SURE.

21 BY MR. HIGGINS:

22 Q WELL, WHEN YOU -- WELL, LET'S SEE. YOU WERE OUT
23 OF CUSTODY WHEN THIS INCIDENT HAPPENED; IS THAT CORRECT?

24 A YES.

25 Q AND THEN YOU WERE ARRESTED FOR SOMETHING, RIGHT,
26 YOUR CURRENT CASE?

27 A YES.

28 Q AND WHEN YOU WERE ARRESTED FOR YOUR CURRENT CASE

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1 YOU WERE IN THE COUNTY JAIL, YOU WERE IN THE COUNTY JAIL?

2 A FOR THIS CASE?

3 Q YOUR CURRENT CASE, YES?

4 A YES.

5 Q AND IS THAT WHEN YOU DECIDED TO MAKE A CALL OR

6 ASK SOMEONE TO -- OR TELL SOMEONE THAT YOU WANTED TO SPEAK

7 TO HOMICIDE?

8 A I'M CONFUSED.

9 Q WELL, I'LL SEE IF I CAN UNCONFUSE YOU. LET ME

10 REPEAT IT.

11 ON JULY 25 YOU WERE NOT IN CUSTODY BUT AT SOME

12 POINT AFTER THE 25TH OF JULY 2008 YOU DID GET IN CUSTODY,

13 RIGHT?

14 A YES.

15 Q AND WHILE IN CUSTODY YOU ASKED TO SPEAK TO

16 HOMICIDE; IS THAT RIGHT?

17 A WHILE IN CUSTODY RIGHT NOW I DID ASK SPEAK TO

18 HOMICIDE.

19 Q I WILL REPHRASE. WHEN YOU FIRST ASKED TO SPEAK

20 TO HOMICIDE DETECTIVES?

21 A THE FIRST TIME I SPOKE IN 2008.

22 Q IN 2008. WERE YOU IN CUSTODY AT THAT TIME?

23 A YES.

24 Q WHAT WERE YOU IN CUSTODY FOR AT THAT TIME?

25 A FOR A GUN.

26 Q AND APPROXIMATELY WHAT MONTH WAS THAT WHEN YOU

27 ASKED TO SPEAK TO THE DETECTIVE?

28 A SUMMER TIME.

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1 Q SO IT WAS SUMMER TIME. WAS IT AUGUST OR
2 SEPTEMBER; DO YOU RECALL?

3 A IT WAS AFTER JULY 4TH. I KNOW THAT FOR A FACT.

4 Q IT WAS AFTER JULY 4TH AND IT WAS AFTER JULY 25TH
5 WHEN THIS YOUNG MAN QUEZADA WAS KILLED; IS THAT RIGHT?

6 A CAN YOU ASK THAT AGAIN?

7 Q YOU SAID THAT IT WAS AFTER JULY 4TH?

8 A YES.

9 Q BUT IT WAS ALSO AFTER QUEZADA WAS KILLED ON JULY
10 25TH, 2008; IS THAT RIGHT?

11 A YES.

12 Q SO COULD IT HAVE BEEN AUGUST OF 2008?

13 A NO. I THINK IT WAS JULY. IT WAS EITHER JUNE,
14 JULY OR AUGUST.

15 Q ALL RIGHT. NOW, WHEN YOU PUT -- WHO DID YOU
16 TELL YOU WANTED TO SPEAK TO HOMICIDE DETECTIVES?

17 A TO THE ARRESTING OFFICER.

18 Q THE OFFICER THAT ARRESTED YOU?

19 A YES.

20 Q AND DO YOU REMEMBER HIS NAME?

21 A NO.

22 Q WHEN YOU TOLD THE ARRESTING OFFICER THAT YOU
23 WANTED TO SPEAK TO HOMICIDE DETECTIVES DID YOU GIVE HIM A
24 NAME OF A DETECTIVE?

25 A NO.

26 Q WHEN YOU TOLD HIM THAT YOU WANTED TO SPEAK TO
27 THE HOMICIDE DETECTIVE DID YOU HAVE -- DID YOU BELIEVE THAT
28 YOU WERE GOING TO GET SOME MONEY?

1 A NO.

2 Q HOW SOON AFTER YOU ASKED TO SPEAK TO HOMICIDE
3 DETECTIVES DID YOU GET TO TALK TO HOMICIDE DETECTIVES?

4 A COUPLE OF WEEKS, I DON'T KNOW.

5 Q COUPLE OF WEEKS?

6 A YEAH.

7 Q WHEN YOU FIRST SAW THAT HOMICIDE DETECTIVE DID
8 YOU ASK HIM FOR SOME MONEY?

9 A NO.

10 Q WHEN YOU FIRST SAW THAT HOMICIDE DETECTIVE DID
11 HE OFFER TO GIVE YOU SOME MONEY?

12 A NO.

13 Q WAS THAT THE FIRST TIME YOU EVER ASKED TO SPEAK
14 TO A HOMICIDE DETECTIVE?

15 A YES.

16 Q AND IT'S YOUR TESTIMONY THAT AFTER YOU SPOKE TO
17 THEM THAT FIRST TIME ALL OF A SUDDEN YOU GOT \$800?

18 MS. BARNES: I WILL OBJECT TO THE TERM "ALL OF A
19 SUDDEN" AS BEING ARGUMENTATIVE.

20 THE COURT: SUSTAINED.

21 BY MR. HIGGINS:

22 Q WELL, AFTER YOU SPOKE TO THAT DETECTIVE THE
23 FIRST TIME, AND THAT'S THE FIRST TIME YOU EVER SPOKE TO A
24 HOMICIDE DETECTIVE, IS THAT WHEN YOU RECEIVED \$800 AFTER
25 THAT?

26 A POSSIBLY.

27 Q WELL, IS IT TRUE OR NOT TRUE? IS THAT WHEN YOU
28 FIRST RECEIVED \$800?

1 A COULD HAVE BEEN BEFORE OR COULD HAVE BEEN AFTER.

2 Q COULD HAVE BEEN BEFORE WHAT? BEFORE YOU SPOKE
3 TO THE DETECTIVE?

4 A COULD HAVE BEEN BEFORE I SPOKE TO HOMICIDE OR
5 AFTER I SPOKE TO HOMICIDE.

6 Q SO NOW YOU'RE SAYING THE DETECTIVE WOULD GIVE
7 YOU \$800 WITHOUT EVEN SPEAKING TO HIM?

8 MS. BARNES: I WILL OBJECT AS MISSTATES THE
9 TESTIMONY.

10 MR. HIGGINS: I'M TRYING FIND OUT WHAT HIS TESTIMONY
11 IS, YOUR HONOR.

12 THE COURT: OVERRULED.

13 MS. BARNES: YOUR HONOR, MAY I SPEAK WITH COUNSEL? I
14 MIGHT BE ABLE TO CLEAR SOMETHING UP.

15 MR. HIGGINS: YOUR HONOR, I WANT HIM TO CLEAR IT UP.

16 THE COURT: MAYBE HE CAN ANSWER THE QUESTION.

17 OVERRULED.

18 BY MR. HIGGINS:

19 Q SO?

20 A WHEN I ASKED TO SPEAK HOMICIDE I SPOKE TO SEAN
21 SHAW. AND I TOLD HIM SOME INFORMATION. HE TOLD ME I CAN
22 DO THINGS FOR HIM TO GET MONEY. I SAID OKAY. AND THEN I
23 POINTED SOME STUFF OUT AND THEN I DON'T KNOW IF THE MONEY
24 CAME BECAUSE OF THAT OR.

25 Q ALL RIGHT. WHEN YOU SPOKE TO SEAN SHAW THAT'S A
26 DIFFERENT DEPUTY; IS THAT RIGHT?

27 A YES.

28 Q IS HE A DETECTIVE?

1 A HE'S O.S.S. I THINK THEY CALL IT.
2 Q AND YOU'VE BEEN WORKING WITH HIM A WHILE?
3 A NO. THAT IS THE FIRST TIME.
4 Q HAD YOU WORKED WITH HIM BEFORE YOU WERE ARRESTED
5 IN 2008?
6 A NO.
7 Q SO YOU WERE IN CUSTODY WHEN YOU FIRST SPOKE TO
8 SEAN SHAW?
9 A YES.
10 Q AND DID YOU SPEAK TO SEAN SHAW BEFORE YOU SPOKE
11 TO A HOMICIDE DETECTIVE WHILE YOU WERE IN CUSTODY; IS THAT
12 RIGHT?
13 A YES.
14 Q AND AT THAT TIME SEAN SHAW TOLD YOU THAT YOU CAN
15 GET SOME MONEY POSSIBLY?
16 A I THINK HE DID.
17 Q WHAT PROMISES DID HE MAKE TO YOU OTHER THAN THE
18 MONEY?
19 A THAT I WOULD HAVE A GUN CASE THAT WOULD BE
20 DISAPPEAR.
21 Q ALL RIGHT. YOU LIKED THAT, RIGHT?
22 A YEAH.
23 Q AND THE GUN CASE DID DISAPPEAR?
24 A I HAVEN'T HEARD ABOUT IT TILL TO THIS DAY.
25 Q THE GUN CASE DISAPPEARED AND YOU GOT \$800 AND
26 YOU GOT OUT OF JAIL, RIGHT?
27 A YEAH.
28 Q NOW, WHEN WAS THE NEXT TIME THAT YOU RECEIVED

1 MONEY?

2 A I'M NOT TOO SURE.

3 Q WELL, WERE YOU IN JAIL THE NEXT TIME YOU
4 RECEIVED MONEY OR OUT?

5 A I WAS ON THE STREETS.

6 Q OUT ON THE STREET. AND AFTER YOU GOT OUT OF
7 JAIL DID YOU CONTINUE TO TALK TO SEAN SHAW OR SOME OTHER
8 DETECTIVE?

9 A IT WAS QUITE A FEW OF THEM.

10 Q WHAT IS THAT?

11 A I SPOKE TO QUITE A FEW DETECTIVES.

12 Q WOULD IT BE FAIR TO SAY THAT YOU RECEIVED \$800
13 AT FIRST ABOUT AUGUST THE 4TH, 2008?

14 A I'M NOT SURE.

15 Q AND DO YOU REMEMBER HOW SOON AFTER YOU RECEIVED
16 \$800 THAT YOU RECEIVED ADDITIONAL MONEY?

17 A CAN YOU ASK THAT AGAIN.

18 Q AFTER YOU RECEIVED \$800 HOW SOON AFTER THAT DID
19 YOU RECEIVE SOME MORE MONEY?

20 A AS SOON AS I GAVE THEM THE INFORMATION.

21 Q WAS THAT AROUND AUGUST 12TH, 2008?

22 A SOMETIMES AROUND THERE.

23 Q AND HOW MUCH DID YOU GET THEN?

24 A I'M NOT TOO SURE.

25 Q DOES \$500 SOUND ACCURATE?

26 A \$500 TO \$1200.

27 Q FOR GIVING THE INFORMATION WHAT DID SEAN SHAW
28 TELL YOU THAT YOU HAD TO DO?

1 A WHAT DO YOU MEAN BY THAT?

2 Q WELL, DID HE SAY THAT YOU HAD TO GIVE HIM GOOD
3 INFORMATION, THAT YOU HAD TO BE RELIABLE? WHAT DID HE TELL
4 YOU?

5 A HE SAID RELIABLE CRIMINAL INFORMATION.

6 Q RELIABLE CRIMINAL INFORMATION. OKAY.

7 LET ME -- I'LL GO ON WITH THIS. AND THEN AGAIN
8 IN AUGUST OF 2008 YOU RECEIVED A ANOTHER \$600 FROM SEAN
9 SHAW; IS THAT RIGHT.

10 A I'M NOT TOO SURE ABOUT THE DATE, BUT YES.

11 Q BUT YOU DO REMEMBER RECEIVING \$600 AFTER YOU
12 RECEIVED \$500; IS THAT RIGHT?

13 A I'M NOT 100 PERCENT SURE.

14 Q IF I SHOWED YOU A DOCUMENT OF MONEY THAT WAS
15 PAID TO YOU WOULD THAT REFRESH YOUR MEMORY AS TO WHAT YOU
16 RECEIVED AND THE DATES YOU RECEIVED IT; WOULD IT HELP YOU?

17 A I MEAN.

18 MR. HIGGINS: MAY I APPROACH?

19 THE COURT: YES.

20 MR. HIGGINS: FOR COURT AND COUNSEL I'M SHOWING HIM
21 IT LOOKS LIKE A SUPPLEMENTAL REPORT DATED AUGUST 8TH, 2008.
22 BY MR. HIGGINS:

23 Q WOULD YOU TAKE A LOOK AT THOSE DATES AND THOSE
24 AMOUNTS, PLEASE.

25 (PAUSE IN PROCEEDINGS.)

26 THE WITNESS: YES.

27 BY MR. HIGGINS:

28 Q DOES IT HELP YOU REFRESH YOUR RECOLLECTION AS TO

000189

1 HOW MUCH MONEY YOU RECEIVED AND WHEN YOU RECEIVED IT?

2 A YEP.

3 Q SO AUGUST 28 YOU RECEIVED \$800 AND AUGUST 28,

4 2008, YOU RECEIVED \$800, RIGHT?

5 A YES.

6 Q AND AUGUST 24TH YOU RECEIVED \$600, RIGHT?

7 A YES.

8 Q SO IN AUGUST OF 2008 YOU RECEIVED ABOUT \$2700

9 THAT MONTH; IS THAT RIGHT?

10 MS. BARNES: ASKED AND ANSWERED.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES.

13 BY MR. HIGGINS:

14 Q \$2700 IN AUGUST IN 2008; IS THAT RIGHT?

15 A THAT'S ABOUT RIGHT.

16 Q HAD YOU BEEN WORKING AND HAD YOU EARNED \$2700

17 BEFORE THAT IN ONE MONTH?

18 MS. BARNES: OBJECTION, RELEVANCE.

19 THE COURT: SUSTAINED.

20 BY MR. HIGGINS:

21 Q AND JANUARY OF 5TH, 2009, YOU RECEIVED ANOTHER

22 \$300 FROM DETECTIVE DUNCAN AND MORRIS; ISN'T THAT RIGHT?

23 A YES.

24 Q WHAT DID YOU RECEIVE THE \$300 FOR IN JANUARY

25 2009?

26 A I'M NOT -- I WAS NEVER TOO SURE ABOUT THAT ONE.

27 Q YOU JUST GOT SOME MONEY IN JANUARY 2009 AND YOU

28 DON'T KNOW WHY?

000190

1 A NO.

2 Q DO YOU REMEMBER TALKING TO DUNCAN AND MORRIS?

3 A YES.

4 Q WHAT DID YOU TALK TO THEM ABOUT?

5 A I THINK I ASKED THEM FOR SOME MONEY.

6 Q YOU ASKED THEM FOR SOME MONEY?

7 A YES, I DID.

8 Q AND WHAT DID YOU PROMISE THEM IF THEY WOULD GIVE

9 YOU SOME MONEY?

10 MS. BARNES: ASSUMES FACTS NOT IN EVIDENCE.

11 THE COURT: I'M SORRY?

12 MS. BARNES: ASSUMES FACTS NOT IN EVIDENCE.

13 THE COURT: SUSTAINED.

14 MR. HIGGINS: I'LL REPHRASE.

15 BY MR. HIGGINS:

16 Q DID YOU PROMISE -- DID YOU PROMISE THEM ANYTHING

17 IF THEY WOULD GIVE YOU SOME MONEY?

18 A I DON'T THINK I DID.

19 Q HAD YOU MET DETECTIVE DUNCAN BEFORE JANUARY 5,

20 2009?

21 A YES.

22 Q HAD YOU MET DETECTIVE MORRIS BEFORE JANUARY 5,

23 2009?

24 A YES.

25 Q ON HOW MANY OCCASIONS HAD YOU MET EITHER OR BOTH

26 OF THOSE INDIVIDUALS?

27 A I'VE MET MORRIS QUITE A FEW TIMES AND DUNCAN

28 QUITE A FEW TIMES.

000191

1 Q AND ON THOSE QUITE A FEW TIMES DID YOU GIVE THEM
2 ANY INFORMATION?

3 A YES.

4 Q NOW, IN -- ON DIRECT EXAMINATION YOU SAID THAT
5 YOU WERE SCARED TO GO TO JAIL; IS THAT RIGHT?

6 A YES.

7 Q NOW, THE DETECTIVES TOLD YOU BEFORE THAT YOU HAD
8 TO GIVE THEM GOOD RELIABLE INFORMATION; IS THAT RIGHT?

9 A YES.

10 Q SO WHEN YOU TOLD THEM ABOUT MY CLIENT YOU WANTED
11 TO MAKE SURE THEY BELIEVED WHAT YOU WERE TELLING THEM;
12 ISN'T THAT RIGHT?

13 A YES.

14 Q IT'S VERY IMPORTANT TO YOU THAT THEY BELIEVED
15 WHAT YOU ARE SAYING; IS THAT CORRECT?

16 A YES.

17 Q AS A MATTER OF FACT, YOUR CASE, YOUR PENDING
18 CASE IS IMPORTANT THAT SOMEONE BELIEVES WHAT YOU ARE
19 SAYING; ISN'T THAT RIGHT?

20 MS. BARNES: OBJECTION, VAGUE AS TO SOMEONE.

21 THE COURT: SUSTAINED.

22 BY MR. HIGGINS:

23 Q IN THE AGREEMENT THAT YOU PROFFERED, THE
24 AGREEMENT SAID BASICALLY IT SAID THAT YOU HAD TO BE
25 TRUTHFUL, RIGHT?

26 A YES.

27 Q AND IF YOU MADE ANY -- IF YOU TOLD A LIE OR IF
28 SOMEBODY THOUGHT YOU WERE TELLING A LIE ON THE STAND THAT

1 DEAL WOULD GO AWAY; IS THAT RIGHT?

2 A YES.

3 Q SO YOU WANT TO MAKE SURE THEY BELIEVED WHAT YOU
4 ARE SAYING; ISN'T THAT CORRECT?

5 MS. BARNES: WELL, OBJECTION, MISSTATES THE
6 TESTIMONY.

7 THE COURT: COUNSEL, I AM GOING TO SUSTAIN THAT,
8 BECAUSE YOU'VE ESTABLISHED THAT PREMISE A FEW TIMES.

9 MR. HIGGINS: I WANT TO MAKE SURE FOR THE RECORD,
10 YOUR HONOR.

11 MR. HIGGINS: COUNSEL, WE'LL TAKE A FIVE MINUTE
12 RECESS.

13 MR. HIGGINS: THANK YOU, YOUR HONOR.

14 (RECESS TAKEN.)

15 THE COURT: WE'RE BACK ON THE RECORD IN THE GIBBS,
16 KHALILL AND WALLACE MATTER.

17 MR. OLIVE: ONE SECOND. MR. NEWMAN IS NOT HERE.

18 (PAUSE IN PROCEEDINGS.)

19 THE COURT: GO AHEAD, MR. HIGGINS.

20

21 CROSS EXAMINATION (RESUMED)

22 BY MR. HIGGINS:

23 Q MR. FEISSA, DID YOU TALK TO ANYBODY DURING THE
24 BREAK?

25 A I TALKED TO MY ATTORNEY.

26 Q DID YOU TALK ABOUT HOW YOU MIGHT ANSWER SOME OF
27 THE QUESTIONS?

28 MS. BARNES: WELL, VAGUE AS CALLS FOR ATTORNEY AND

1 CLIENT PRIVILEGE.

2 THE COURT: SUSTAINED.

3 BY MR. HIGGINS:

4 Q MR. FEISSA, LET ME ASK YOU THIS. DID YOU HAVE A
5 CAR IN 2008?

6 MS. BARNES: OBJECTION, RELEVANCE.

7 THE COURT: OVERRULED.

8 THE WITNESS: YES.

9 BY MR. HIGGINS:

10 Q WHAT KIND OF CAR WERE YOU DRIVING IN 2008?

11 MS. BARNES: OBJECTION, RELEVANCE.

12 THE COURT: OVERRULED.

13 MR. MYERS: FOR THIS TESTIMONY I'LL ADVISE MY CLIENT
14 TO TAKE THE FIFTH ON THIS ONE UNLESS WE HAVE AN OFFER OF
15 PROOF.

16 THE COURT: WELL, I'LL HEAR THE WITNESS MAKE A
17 STATEMENT OF SOME TYPE.

18 MR. MYERS: I'LL ADVISE HIM TO TAKE THE FIFTH.

19 THE WITNESS: I'D LIKE TO TAKE THE FIFTH ON THIS.

20 MR. HIGGINS: I THINK IT'S A SIMPLE QUESTION, DID HE
21 HAVE A CAR. IF THIS WITNESSES IS GOING TAKE THE FIFTH I
22 WOULD ASK THAT ALL OF HIS TESTIMONY BE STRICKEN. WE CAN'T
23 EFFECTIVELY CROSS-EXAMINE HIM IF HE PICKS AND CHOOSES WHAT
24 QUESTIONS HE WANTS TO ANSWER.

25 THE COURT: DENIED.

26 BY MR. HIGGINS:

27 Q IN JULY 2008 WERE YOU DRIVING ANY PARTICULAR
28 TYPE OF CAR?

1 MS. BARNES: OBJECTION, RELEVANCE. AND COUNSEL STILL
2 HAS NOT GIVEN US AN OFFER OF PROOF WHY IT'S RELEVANT.

3 THE COURT: OVERRULED.

4 THE WITNESS: I DON'T OWN A CAR, NO.

5 BY MR. HIGGINS:

6 Q DID YOU DRIVE A PARTICULAR TYPE OF CAR, WHETHER
7 OR NOT YOU OWNED THAT OR NOT?

8 MS. BARNES: OBJECTION, RELEVANCE.

9 THE COURT: OVERRULED.

10 THE WITNESS: YES.

11 BY MR. HIGGINS:

12 Q WHAT KIND OF CAR?

13 MS. BARNES: OBJECTION, RELEVANCE.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DROVE A 2001 VOLKSWAGEN JETTA.

16 BY MR. HIGGINS:

17 Q WHAT COLOR?

18 A WHITE.

19 MS. BARNES: OBJECTION, RELEVANCE.

20 THE COURT: COUNSEL, THERE ARE CARS THAT WERE AT
21 ISSUE IN THE CASE SO I THINK THEY ARE ENTITLED TO INQUIRE
22 AS TO WHAT KIND OF CAR HE MAY HAVE HAD.

23 MS. BARNES: ON THE 2001 SHOOTING THERE WERE CARS
24 DISCUSSED, BUT NOT ON THE 2008 SHOOTING AND HE ASKED HIM
25 ABOUT THE 2008.

26 MR. HIGGINS: I THOUGHT A TAHOE WAS SUPPOSED TO PICK
27 UP SOME PEOPLE.

28 THE COURT: YOU THOUGHT WHAT?

1 MR. HIGGINS: THERE WAS A TAHOE MENTIONED. THERE IS
2 ANOTHER SMALL CAR MENTIONED.

3 THE COURT: OVERRULED. YOU MAY ANSWER.
4 BY MR. HIGGINS:

5 Q SO YOU'RE SAYING A WHITE CAR?

6 A YES.

7 Q YOU ARE FAMILIAR WITH THE AREA OF 139TH AND
8 AVALON, RIGHT?

9 A YES.

10 Q AND AVALON IS A MAJOR STREET; IS THAT CORRECT?

11 A YES.

12 Q AND I BELIEVE YOU SAID MR. KHALILL LIVED EIGHT
13 HOUSES WEST OF AVALON; IS THAT RIGHT?

14 A YES.

15 Q AND IS THAT A CURVE -- DOES THAT STREET CURVE
16 BEFORE YOU GET TO HIS HOUSE OR AFTER HIS HOUSE? IF YOU'RE
17 GOING WEST FROM AVALON ON 139TH I BELIEVE THE STREET
18 CURVES; IS THAT CORRECT?

19 A A LITTLE SIDE STREET CURVE.

20 Q AND IS MR. KHALILL'S HOUSE IN THE CURVE OR
21 BEFORE YOU GET TO THE CURVE OF 139TH STREET WEST OF AVALON?

22 A IT'S ON 139TH.

23 Q IS IT IN THE CURVE OF 139TH STREET?

24 A THAT CURVE IS HIS OWN STREET.

25 Q OKAY. THERE IS -- DO YOU RECALL OR DO YOU
26 REMEMBER IF THERE IS A MAIL BOX ON THE CORNER OF 139TH AND
27 AVALON, THAT WOULD BE THE NORTHWEST CORNER?

28 A YES.

1 Q YOU HAVE SEEN THAT MAIL BOX QUITE YOU A FEW
2 TIMES; IS THAT RIGHT?

3 A YES.

4 Q AND HOW CLOSE IS THE CORNER OF 139TH AND AVALON?

5 MS. BARNES: OBJECTION, RELEVANCE, OUTSIDE OF THE
6 SCOPE OF DIRECT.

7 THE COURT: DO YOU WISH TO BE HEARD AS TO THE
8 RELEVANCE OF THAT?

9 MR. HIGGINS: WELL, WE'RE ABOUT TO GET THE SPECIFICS
10 OF THE SHOOTING THAT MY CLIENT SAYS OR SUPPOSEDLY TOLD HIM
11 ABOUT?

12 THE COURT: OVERRULED. GO AHEAD.
13 BY MR. HIGGINS:

14 Q HOW CLOSE WAS THAT TO THE CORNER?

15 A PRETTY CLOSE.

16 Q FROM THAT MAIL BOX CAN YOU SEE THE LOCATION
17 WHERE YOU SAID MY CLIENT SAID THAT HE SHOT OR SOMEONE SHOT
18 MR. QUEZADA ON JULY OF 2008?

19 A CAN YOU ASK THAT AGAIN?

20 Q I CAN.

21 A CAN YOU PLEASE ASK THAT AGAIN?

22 Q IF YOU'RE STANDING AT THE MAIL BOX THAT YOU
23 DESCRIBED ON THE NORTHWEST CORNER ARE YOU ABLE TO SEE THE
24 LOCATION WHERE THE YOUNG MAN WAS SHOT ON JULY 28, 2008?

25 A YES.

26 Q ARE THERE ANY -- DO YOU RECALL WHETHER OR NOT
27 THERE ARE ANY OVERHEAD LIGHTS ON EITHER OF THE FOUR CORNERS
28 OF 139TH AND AVALON?

000197

1 A WHAT DO YOU MEAN OVERHEAD LIGHTS?

2 Q ARE THERE STREET LIGHTS?

3 A I THINK SO, YES.

4 Q NOW, IS AVALON BOULEVARD A FAIRLY HEAVILY
5 TRAFFICKED STREET NORTH AND SOUTH?

6 MS. BARNES: I AM GOING TO OBJECT TO THAT ON
7 RELEVANCE. AND I'D LIKE TO BE HEARD.

8 THE COURT: AND YOU WISH TO BE HEARD?

9 MS. BARNES: YES, PLEASE.

10 THE COURT: GO AHEAD.

11 MS. BARNES: THIS WITNESS NEVER TESTIFIED THAT HE WAS
12 THERE. SO HIS CREDIBILITY AS TO WHAT STREETS LIKE THE
13 CURB, THE LOCATION OF THE HOUSE, THE MAIL BOX, ALL OF THAT
14 IS COMPLETELY IRRELEVANT.

15 HIS TESTIMONY REGARDING THE 2008 MURDER WAS
16 SIMPLY STATEMENTS WERE MADE TO HIM BY THE DEFENDANTS. SO
17 COUNSEL IS ASKING HIM A NUMBER OF QUESTIONS ABOUT THE
18 STREET AND THE STREET LIGHTS AND THINGS OF THAT NATURE,
19 WHICH NUMBER ONE HE NEVER TESTIFIED TO ON DIRECT. SO IT'S
20 OUTSIDE OF THE SCOPE OF DIRECT AND IT'S ALSO IRRELEVANT TO
21 HIS TESTIMONY.

22 THE COURT: OVERRULED.

23 BY MR. HIGGINS:

24 Q IS IT A FAIRLY HEAVILY TRAVELED NORTH AND SOUTH
25 BY CARS, VEHICLE TRAFFIC?

26 MS. BARNES: CALLS FOR SPECULATION. ALSO WE DON'T
27 KNOW HOW OFTEN HE'S THERE.

28 THE COURT: SUSTAINED.

1 BY MR. HIGGINS:

2 Q DID MY CLIENT TELL YOU THAT HE RAN ACROSS --
3 FIRST OF ALL, DID HE TELL YOU THAT HE WALKED ACROSS AVALON
4 FROM THE WEST SIDE TO THE EAST SIDE TO SHOOT THIS YOUNG
5 MAN?

6 A YES.

7 Q DID HE TELL YOU WHETHER OR NOT THEY HAD ANY
8 TRAFFIC WHEN HE WAS WALKING ACROSS THE STREET TO SHOOT THE
9 GENTLEMAN?

10 A HE DIDN'T SAY NOTHING ABOUT TRAFFIC.

11 Q HE DIDN'T SAY ANYTHING ABOUT TRAFFIC. OKAY.

12 DID TELL YOU THAT -- WELL, I'LL ASK YOU: DID HE
13 SAY HE WALKED ALONE OR WITH SOMEBODY ELSE?

14 A WITH SOMEBODY ELSE.

15 Q YOU BELIEVE EVERYTHING MY CLIENT TELLS YOU?

16 A YES AND NO.

17 Q YES AND NO. WHAT PART IS NO?

18 A ABOUT THE INCIDENT?

19 Q ABOUT THE INCIDENT, YES.

20 A I MEAN I BELIEVE EVERYTHING ABOUT THE INCIDENT.

21 Q EVERYTHING? WELL, DIDN'T YOU TESTIFY THAT HE
22 PUT IN EXTRAS TO USE YOUR WORDS?

23 A YES.

24 Q ALSO, DID YOU TELL US DURING THE COURSE OF YOUR
25 PROFFER THAT YOU DIDN'T THINK MY CLIENT HAD THE GUTS, AND
26 THAT'S MY WORDS, TO STAND OVER SOMEBODY AND SHOOT?

27 A YES.

28 Q AND HAD YOU EVER KNOWN HIM -- WELL, STRIKE THAT.

1 SO YOU BELIEVE IN THAT PART OF THE STATEMENT
2 THAT HE WAS LYING; IS THAT RIGHT?

3 MS. BARNES: MISSTATES THE TESTIMONY.

4 THE COURT: SUSTAINED.

5 BY MR. HIGGINS:

6 Q WELL, YOU SAID THAT HE SAID THAT HE STOOD OVER
7 THE GUY AND SHOT HIM, RIGHT?

8 A YES.

9 Q AND YOU DIDN'T BELIEVE HIM, RIGHT?

10 A I BELIEVED HIM. I DIDN'T BELIEVE THAT HE DUMPED
11 OUT THE WHOLE CLIP ON HIM.

12 Q YOU THOUGHT HE WAS LYING ABOUT THAT; ISN'T THAT
13 CORRECT?

14 MS. BARNES: MISSTATES THE TESTIMONY.

15 THE COURT: SUSTAINED.

16 BY MR. HIGGINS:

17 Q DID HE TELL YOU HOW LONG HE STOOD THERE TO DO
18 THAT?

19 A NO.

20 Q DID HE TELL YOU HE RAN AWAY?

21 A HE SAID THAT, YES.

22 Q WHICH WAY DID HE TELL YOU THAT HE RAN?

23 A BACK TOWARDS 139TH.

24 Q WHAT DID HE DO WHEN HE GOT -- WELL, HE WAS
25 ALREADY ON 139TH?

26 A WELL, TOWARDS OUR SIDE.

27 Q SO HE RAN TOWARDS AVALON?

28 A HE RAN TOWARD THE WEST SIDE GOING TOWARDS --

000200

1 Q HE RAN FROM THE SITE OF THE SHOOTING TO AVALON
2 BOULEVARD FIRST; IS THAT RIGHT?

3 A HE RAN THE ACROSS THE STREET AVALON AND
4 PROCEEDED TOWARDS MR. KHALILL'S HOUSE.

5 Q HE CAME FROM THE EAST SIDE OF AVALON OF 139TH
6 AND HE RAN ACROSS TO THE WEST SIDE; IS THAT RIGHT?

7 A YES.

8 Q DID HE TELL YOU THAT HE WAS HOLDING A GUN WHEN
9 HE DID THAT?

10 A HE SAID -- CAN YOU ASK THAT AGAIN.

11 Q DID HE TELL YOU THAT HE WAS HOLDING A GUN IN HIS
12 HAND WHEN HE DID THAT?

13 A WHEN HE DID WHAT?

14 Q WHEN HE RAN ACROSS AVALON?

15 A HE SAID WE --

16 Q I'M ASKING YOU DID HE TELL YOU?

17 A YES.

18 Q DID MY CLIENT TELL YOU THAT HE HIMSELF, I'M NOT
19 TALKING ABOUT ANY OTHER PERSON. DID HE TELL YOU THAT HE
20 WAS HOLDING A GUN IN HIS HAND WHEN HE RAN BACK ACROSS
21 AVALON --

22 A YES.

23 Q -- BOULEVARD?

24 DID HE TELL YOU WHAT HAND HE WAS HOLDING IT?

25 A NO.

26 Q DO YOU KNOW IF HE IS RIGHT HAND OR LEFT HANDED?

27 A NO.

28 Q DID HE TELL YOU WHAT KIND OF GUN THAT HE HAD?

000201

1 A YES.

2 Q WHAT KIND OF GUN DID HE SAY HE HAD?

3 A WELL, HE DIDN'T SAY WHAT KIND THAT HE HAD, BUT
4 THE KIND OF GUN WAS USED.

5 Q DID HE TELL YOU WHAT KIND OF GUN WAS USED?

6 A YES.

7 Q WHAT KIND OF GUNS WERE USED?

8 A A NINE AND 40.

9 Q I THOUGHT YOU TOLD THE POLICE OFFICER IT WAS A
10 DESERT EAGLE?

11 A IT WAS A DESERT EAGLE 40.

12 Q YOU DIDN'T SAY 40, YOU SAID DESERT EAGLE WHEN
13 YOU SPOKE TO THE POLICE OFFICERS, DIDN'T YOU?

14 MS. BARNES: VAGUE AS TO WHICH CONVERSATION. HE WAS
15 INTERVIEWED MULTIPLE TIMES.

16 THE COURT: SUSTAINED.

17 BY MR. HIGGINS:

18 Q AT ANY TIME IN ANY CONVERSATION WITH THE POLICE
19 OFFICERS DID YOU MENTION A 40 OR DID YOU JUST SAY A DESERT
20 EAGLE?

21 A I SAID ON ONE OCCASION I SAID DESERT EAGLE.

22 Q AND DID MY CLIENT USE THE WORD DESERT EAGLE WHEN
23 YOU HAD THE CONVERSATION WITH HIM?

24 A NO.

25 Q DID MY CLIENT USE THE WORD NINE MILLIMETER WHEN
26 YOU HAD THE CONVERSATION WITH HIM?

27 A YES.

28 Q YOU SAY THAT HE HAD A NINE MILLIMETER OR SOMEONE

000202

1 ELSE?

2 A I SAID -- HE DIDN'T SAY THAT HE HAD A NINE
3 MILLIMETER.

4 Q I WILL ASK YOU THIS. WHEN YOU FIRST GOT YOUR
5 \$800 IN AUGUST OF 4TH, 2008, IS WHEN YOU TOLD THE POLICE
6 OFFICERS ABOUT A NINE MILLIMETER OR DESERT EAGLE?

7 MS. BARNES: THAT'S COMPOUND AND TWO DIFFERENT
8 QUESTIONS THERE.

9 THE COURT: OVERRULED.

10 THE WITNESS: I CAN'T RECALL. I DON'T THINK SO.

11 BY MR. HIGGINS:

12 Q DID YOU TELL THEM ANY KIND OF WEAPON WHEN YOU
13 FIRST RECEIVED JUST BEFORE YOU RECEIVED \$800 ON AUGUST 4,
14 2008?

15 A CAN YOU ASK THAT AGAIN?

16 Q DID YOU MENTION ANY KIND OF WEAPON BEFORE YOU
17 RECEIVED THE \$800 THAT YOU RECEIVED ON AUGUST 4, 2008?

18 A I'M NOT TOO SURE.

19 Q WHAT ABOUT ON AUGUST 12, WHEN YOU RECEIVED \$500,
20 HAD YOU MENTIONED ANY KIND OF WEAPON AT THAT TIME?

21 A NO.

22 Q DID YOU THINK YOU WOULD RECEIVE MORE MONEY IF
23 YOU WOULD BE MORE SPECIFIC ABOUT WEAPONS?

24 A NO.

25 Q WELL, YOU WANTED TO BE AS ACCURATE AS POSSIBLE;
26 IS THAT CORRECT?

27 A YES.

28 Q AND YOU WANTED THE POLICE OFFICERS TO THINK THAT

000203

1 YOU WERE ACCURATE AS POSSIBLE; IS THAT RIGHT?

2 A YES.

3 Q IS THAT WHY YOU SAID THAT YOU USED THE TERM
4 DESERT EAGLE WHEN YOU TALKED TO THE POLICE OFFICERS?

5 A YES.

6 Q AND YOU HAD JUST SEEN A DESERT EAGLE I THINK YOU
7 TESTIFIED EARLIER IT WAS ONE OF THE WEAPONS THAT YOU
8 REMEMBER SEEING WAS THE DESERT EAGLE; IS THAT RIGHT?

9 A YES.

10 Q AND THAT'S WHY YOU TOLD THE POLICE OFFICERS
11 DESERT EAGLE; IS THAT RIGHT?

12 A YES.

13 Q NOW, SO IT'S YOUR TESTIMONY MY CLIENT THEN RAN
14 BACK ACROSS AVALON AND WHERE DID HE GO? WHERE DID HE TELL
15 YOU THAT HE WENT AFTER HE RAN BACK ACROSS AVALON AFTER THE
16 SHOOTING OCCURRED?

17 A MR. KHALILL'S HOUSE.

18 Q KHALILL'S HOUSE. KHALILL'S HOUSE WAS ABOUT HALF
19 A BLOCK AWAY FROM THAT INCIDENT?

20 A SEVEN OR EIGHT HOUSES.

21 Q SEVEN OR EIGHT HOUSES. OKAY.

22 THOSE GUNS THAT YOU TALKED ABOUT THEY MAKE A LOT
23 OF NOISE, DON'T THEY?

24 A YEAH.

25 Q AND SO IT'S YOUR TESTIMONY THAT YOU SAY HE RAN
26 ON FOOT ABOUT SEVEN OR EIGHT HOUSES DOWN ON THE OTHER SIDE
27 OF AVALON IN ORDER TO GET AWAY?

28 A YES.

1 Q WHO WAS AROUND WHEN THAT CONVERSATION TOOK
2 PLACE?

3 MS. BARNES: OBJECTION, VAGUE AS TO WHICH
4 CONVERSATION.

5 THE COURT: SUSTAINED.

6 BY MR. HIGGINS:

7 Q I'LL BE MORE SPECIFIC. WHEN DID HE GIVE YOU
8 THIS INFORMATION?

9 A AT A FUNCTION.

10 Q WHERE?

11 A IN THE SOUTH SIDE OFF MAY IF I THINK ABOUT.

12 Q WHOSE HOUSE WAS IT, OR WHAT KIND OF STRUCTURE
13 WAS THAT?

14 A IT WAS A FRIEND OF A FRIEND'S HOUSE.

15 Q YOU DON'T KNOW WHOSE HOUSE IT WAS?

16 A IT WAS A LADY'S HOUSE.

17 Q DO YOU RECALL THE ADDRESS OF THAT HOUSE?

18 A I DON'T KNOW THE ADDRESS, I KNOW THE STREETS.

19 Q CAN YOU POINT IT OUT TO THE DETECTIVES IF YOU --
20 IF HE ASKED YOU TO?

21 A YES.

22 Q AND HAD YOU POINTED IT OUT TO THE DETECTIVES
23 BEFORE?

24 A NO.

25 Q YOU NEVER TOLD THEM WHERE THE CONVERSATION TOOK
26 PLACE?

27 A I TOLD THEM IT HAPPENED IN HUNTINGTON PARK AT A
28 POOL PARTY IN THE SOUTH SIDE COMPTON CRIPS.

1 Q YOU NEVER GAVE THEM A SPECIFIC ADDRESS?

2 A NO.

3 Q AND WHERE WERE YOU AND MY CLIENT WHEN THIS
4 CONVERSATION TOOK PLACE?

5 A IN THE BACK OF THE HOUSE.

6 Q AND IS IT YOUR TESTIMONY THAT HE TOLD YOU THAT
7 HE MURDERED SOMEBODY OR KILLED SOMEBODY, HE JUST TOLD YOU
8 THAT?

9 MS. BARNES: WELL, MISSTATES THE TESTIMONY.

10 MR. HIGGINS: I'M TO TRYING FIND OUT --

11 THE COURT: SUSTAINED.

12 BY MR. HIGGINS:

13 Q WELL, WERE YOU AND HE ALONE WHEN THIS
14 CONVERSATION TOOK PLACE? WERE YOU AND HE THE ONLY PEOPLE
15 PRESENT WHEN HE MENTIONED TO YOU THAT HE KILLED SOMEBODY?

16 A YES.

17 Q WAS THERE ANYBODY -- NOBODY ELSE WAS PRESENT?

18 A AT THE HOUSE?

19 Q NO. RIGHT WHEN HE WAS TALKING TO YOU ABOUT THAT
20 SHOOTING?

21 A WE HAD A COUPLE OF PEOPLE WITHIN -- COUPLE OF
22 PEOPLE NEAR US.

23 Q WHO WERE THOSE OTHER TWO PEOPLE?

24 MS. BARNES: OBJECTION, RELEVANCE.

25 THE COURT: OVERRULED.

26 THE WITNESS: WE HAD BABY SPOKE, AND WHATEVER GIRL HE
27 WAS TALKING TO.

28 BY MR. HIGGINS:

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1 Q AND WAS MY CLIENT TALKING OUT LOUD?

2 A NO.

3 Q WAS HE WHISPERING SO ONLY YOU CAN HEAR?

4 A HE WASN'T WHISPERING. BABY SPOKE WAS HERE. HE
5 CAN HEAR THE CONVERSATION IF YOU KNOW.

6 MS. BARNES: CALLS FOR SPECULATION.

7 THE COURT: SUSTAINED.

8 BY MR. HIGGINS:

9 Q HOW CLOSE WAS BABY SPOKE WHEN YOU AND MY CLIENT
10 WAS TELLING YOU THIS?

11 A PROBABLY HALF A FOOT, HALFWAY BETWEEN YOU AND
12 ME.

13 THE COURT: YOU ARE ABOUT 14 FEET AWAY, COUNSEL.

14 MR. HIGGINS: ABOUT SEVEN FEET.

15 BY MR. HIGGINS:

16 Q AND DID HE TELL YOU THIS IN RESPONSE TO A
17 QUESTION THAT YOU ASKED? IN OTHER WORDS, DID YOU ASK HIM
18 ABOUT THAT SHOOTING OR DID HE JUST COME UP TO YOU AND START
19 TALKING TO YOU ABOUT THIS INCIDENT?

20 A I ASKED HIM ABOUT IT.

21 Q AND SO YOU WERE A PRETTY RESPECTED GANG MA'AM AT
22 THAT TIME; IS THAT RIGHT?

23 A IF THAT'S WHAT YOU CALL IT.

24 Q YOU HAD GONE ON MISSIONS BEFORE, RIGHT?

25 MS. BARNES: OBJECTION, ASKED AND ANSWERED.

26 THE COURT: SUSTAINED.

27 BY MR. HIGGINS:

28 Q WELL, IS IT -- I'LL ASK YOU THIS. YOU ARE VERY

000207

1 FAMILIAR WITH THE 135 PIRUS; IS THAT CORRECT?

2 A YES.

3 Q AND IT'S NOT COMMON OR IT WOULDN'T BE THE HABIT
4 OF 135TH PIRU WHO SHOT SOMEBODY TO MENTION THAT IN A PUBLIC
5 PLACE TO SOMEBODY WHO HIMSELF DID NOT PUT IN ANY WORK;
6 ISN'T THAT RIGHT?

7 MS. BARNES: OBJECTION, CALLS FOR SPECULATION AND
8 RELEVANCE.

9 THE COURT: SUSTAINED.

10 MR. HIGGINS: DO I HAVE TO LAY MORE FOUNDATION, YOUR
11 HONOR?

12 THE COURT: WELL, IT CALLS FOR SPECULATION EITHER
13 WAY, COUNSEL. NOW, MAYBE YOU CAN ASK HIM WHETHER OR NOT IT
14 WOULD BE UNUSUAL FOR THAT TO OCCUR. BUT IT'S STILL
15 SPECULATION AS TO WHETHER THIS ONE PERSON WOULD HAVE DONE
16 IT.

17 BY MR. HIGGINS:

18 Q YOU'RE FAMILIAR WITH ACTIVITIES OF THE 135TH
19 STREET PIRU; IS THAT RIGHT?

20 A YES.

21 Q AND YOU'RE FAMILIAR WITH THE WAY THE GANG
22 OPERATES; IS THAT RIGHT?

23 A YES.

24 Q THEY DON'T GO ABOUT TALKING ABOUT SERIOUS CRIMES
25 WITH PEOPLE THEY DON'T TRUST; IS THAT RIGHT?

26 A I'VE SEEN IT PERSONALLY ON SEVERAL OCCASIONS.

27 Q IS IT REQUIRED IN ORDER TO GAIN RESPECT AND
28 TRUST THAT PEOPLE PUT IN WORK?

1 MS. BARNES: OBJECTION, RELEVANCE, ASKED AND
2 ANSWERED.

3 MR. HIGGINS: YOUR HONOR, HE'S A GANG MEMBER AND HE
4 KNOWS THAT.

5 THE COURT: COUNSEL, WHAT'S THE RELEVANCE OF THAT?

6 MR. HIGGINS: YOUR HONOR, IT CERTAINLY GOES TO HIS
7 CREDIBILITY, HOW MUCH HE KNOWS, WHETHER OR NOT HE IS
8 TELLING THE TRUTH ABOUT WHAT MY CLIENT TOLD HIM IN A PUBLIC
9 PLACE WHERE SOMEONE ELSE CAN OVER HEAR. IF THAT'S THE CASE
10 I'M SURE HE HAD THAT TYPE RESPECT, SO IT IS RELEVANT TO
11 THIS PARTICULAR WITNESS.

12 THE COURT: WELL, YOU ALREADY ASKED HIM WHETHER HE
13 WAS A RESPECTED MEMBER AND HE SAID YES. I THINK YOU ASKED
14 HIM WHETHER OR NOT HE HAD PUT IN WORK AND HE SAID YES.

15 MR. HIGGINS: THANK YOU. I DON'T THINK HE ANSWERED
16 THAT.

17 THE COURT: THE LAST ONE?

18 MR. HIGGINS: WHETHER OR NOT HE PUT IN WORK.

19 BY MR. HIGGINS:

20 Q DID YOU SAY THAT YOU PUT IN WORK, SIR?

21 A NO.

22 Q DID YOU EVER PUT IF IN WORK?

23 MS. BARNES: OBJECTION, RELEVANCE. HE'S TRYING TO
24 ASK HIM IF HE'S DOING BAD DEEDS AND WE'VE ALREADY GONE OVER
25 THIS.

26 THE COURT: WELL, OVERRULED.

27 MR. MYERS: I'LL ADVISE MY CLIENT TO TAKE THE FIFTH
28 WHETHER OR NOT HE'S BEEN INVOLVED IN CRIMINAL ACTIVITY.

1 MR. HIGGINS: YOUR HONOR, HE'S ALSO INCRIMINATING
2 HIMSELF, BUT GIVEN IMMUNITY.

3 THE COURT: WELL.

4 MS. BARNES: I GAVE --

5 THE COURT: THE WITNESS HAS TAKEN OR EXERCISED THE
6 PRIVILEGE, SO NEXT QUESTION.

7 MR. HIGGINS: FOR THE RECORD, AGAIN IT IMPEDES MY
8 ABILITY TO EFFECTIVELY CROSS EXAMINE THIS WITNESS AND I
9 MOVE ALL OF HIS TESTIMONY BE STRICKEN.

10 MR. OLIVE: JOIN.

11 THE COURT: DENIED.

12 MS. BARNES: MAY I CLARIFY ONE THING FOR THE RECORD?

13 THE COURT: YES.

14 MS. BARNES: HE HAS NOT BEEN GIVEN IMMUNITY. HE WAS
15 ONLY GIVEN IMMUNITY ON HIS CASE THAT HAS ALREADY BEEN
16 FILED. SO HE'S NOT GIVEN IMMUNITY ON ANY OTHER CHARGES,
17 ALLEGATIONS OR CRIMES, PAST OR PRESENT.

18 THE COURT: GO AHEAD, COUNSEL.

19 BY MR. HIGGINS:

20 Q ARE YOU AWARE THAT YOU WERE BEING INVESTIGATED
21 FOR OTHER CRIMES AT THE TIME THAT YOU SIGNED THE IMMUNITY
22 AGREEMENT?

23 MS. BARNES: OBJECTION, CALLS FOR SPECULATION,
24 RELEVANCE.

25 THE COURT: SUSTAINED.

26 MR. HIGGINS: IT'S NOT SPECULATIVE IF HE KNOWS. IT'S
27 YES OR NO.

28 THE COURT: SUSTAINED.

000210

1 BY MR. HIGGINS:

2 Q YOU MADE A STATEMENT TO A -- STRIKE THAT. WHO
3 IS BABY BELL?

4 A WHO?

5 Q BABY BELL, BELLY BELL?

6 A THAT'S A MEMBER FROM 135 PIRU.

7 Q AND ACCORDING TO YOUR STATEMENT HE NEVER PUT IN
8 WORK; IS THAT RIGHT?

9 A YES.

10 Q SO YOU DO KNOW WHAT PUTTING IN WORK MEANS,
11 RIGHT?

12 A YES.

13 Q BUT YOU'RE NOT GOING TO ANSWER WHETHER OR NOT
14 YOU PUT IN WORK?

15 MR. MYERS: OBJECTION. HE'S ALREADY TAKEN THE 5TH ON
16 THIS.

17 THE COURT: SUSTAINED.

18 BY MR. HIGGINS:

19 Q AT WHAT POINT IN TIME DID YOU FIND OUT THAT --
20 WELL, I WILL ASK YOU THIS: DID YOU EVER FIND OUT THAT A
21 DEADLY WEAPON WAS NOT USED IN THE SHOOTING OF MR. QUEZADA?

22 MS. BARNES: OBJECTION, ASSUMES FACTS NOT IN
23 EVIDENCE.

24 THE COURT: SUSTAINED.

25 BY MR. HIGGINS:

26 Q DID YOU EVER FIND OUT WHAT KIND OF GUNS WAS USED
27 IN THE SHOOTING WITH QUEZADA?

28 A TO THIS DAY I STILL DON'T KNOW.

1 Q I'M SORRY?

2 A I DON'T KNOW.

3 Q BUT WHEN YOU TOLD POLICE OFFICERS THAT A NINE
4 MILLIMETER AND DESERT EAGLE WERE YOU USED THOSE TERMS
5 BECAUSE, IT WAS TWO OF THE MOST COMMON WEAPONS THAT YOU HAD
6 SEEN WITH THE 135 PIRU; IS THAT RIGHT?

7 A CAN YOU SAY THAT AGAIN?

8 Q WHEN YOU TOLD THE POLICE OFFICERS THAT IT WAS A
9 NINE MILLIMETER AND A DESERT EAGLE YOU SAID THAT BECAUSE
10 THEY WERE THE TWO MOST COMMON WEAPONS THAT YOU HAD SEEN
11 WITH THE 135 PIRUS; IS THAT RIGHT?

12 A I WAS TOLD.

13 Q NOW, OTHER THAN THE MONEY, YOUR GUN CASE GOING
14 AWAY, AND YOUR DRUG CASE THAT'S YOUR PRESENT CASE; IS THAT
15 RIGHT, THE DRUG CASE, AND TO GET OUT OF JAIL ON THIS AS
16 SOON AS THIS PRELIM. IS OVER, IS THERE ANY OTHER TYPE OF
17 PAYMENT THAT YOU RECEIVED?

18 A NOPE.

19 Q WELL, WHAT ABOUT HAS THE SHERIFF'S DEPARTMENT
20 AGREEMENT TO RELOCATE YOU AND PUT YOU IN ANOTHER APARTMENT
21 OR HOUSE?

22 MS. BARNES: I WILL OBJECT TO ANYTHING OF THAT NATURE
23 DISCLOSED IN OPEN COURT.

24 THE COURT: SUSTAINED.

25 MR. HIGGINS: WE'RE --

26 MR. OLIVE: WE'RE NOT ASKING THE LOCATION, WE'RE
27 ASKING -- I'M SORRY.

28 MR. HIGGINS: IF IT'S OCCURRED, YOUR HONOR, IT'S A

000212

1 PERK.

2 MS. BARNES: HE'S IN CUSTODY.

3 THE COURT: SUSTAINED.

4 BY MR. HIGGINS:

5 Q OKAY. WERE YOU EVER PROMISED THAT YOU WOULD BE
6 GIVEN FREE RENT?

7 A I WAS NEVER PROMISED.

8 Q WERE YOU EVER PROVIDED ANY TYPE OF VEHICLE AS A
9 RESULT OF YOUR GIVING INFORMATION?

10 A YES, I WAS.

11 Q WHAT KIND OF VEHICLE WERE YOU GIVEN?

12 MS. BARNES: CAN I A MINUTE BEFORE HE ANSWERS THAT?
13 I NEED TO TALK TO --

14 MR. OLIVE: FOR WHAT PURPOSE?

15 MS. BARNES: I NEED TO TALK TO HIS LAWYER. I'M
16 CONFUSED.

17 (PAUSE IN PROCEEDINGS.)

18 MS. BARNES: I'M DONE.

19 THE COURT: YOU MAY ANSWER.

20 THE WITNESS: IT WAS A TERCEL.

21 BY MR. HIGGINS:

22 Q WHO GAVE THAT TO YOU?

23 A SHAW.

24 Q DETECTIVE SHAW GAVE YOU A CAR ALSO, RIGHT?

25 A YES.

26 Q AND WHAT YEAR WAS THE CAR?

27 A I NEVER SAW THE PAPERWORK.

28 Q YOU JUST SAW THE VEHICLE, RIGHT?

000213

1 A IT'S ONLY A VEHICLE.

2 Q EVER TRANSFERRED IN YOUR NAME?

3 A NO.

4 Q YOU WERE JUST GIVE THE KEYS TO THE CAR AND THE
5 CAR?

6 A YES.

7 Q AND HE GAVE YOU GASOLINE MONEY?

8 A NO.

9 Q WHEN DID HE GIVE YOU THAT?

10 A SOMETIME IN LATE '08.

11 Q NOW, OTHER THAN THE CAR AND THE MONEY AND THE
12 GET OUT OF JAIL TICKET, AND ANYTHING ELSE YOU DID NOT
13 MENTION THAT YOU WERE GIVEN BY THE POLICE?

14 A THAT'S ABOUT IT.

15 Q IS THAT ABOUT IT OR IS THAT IT? IS THERE SOME
16 OTHER THINGS THAT YOU CAN'T REMEMBER AT THIS TIME?

17 A AND WHEN I GOT PULLED OVER BY SHERIFFS THEY
18 WOULD LET ME GO.

19 Q ANY TIME THE SHERIFF'S STOP YOU WHATEVER?

20 A YEAH.

21 Q WHAT WOULD YOU HAVE TO TELL THE SHERIFFS?

22 A I WOULD PLUG MY PHONE UP TO SPEAKERS AND HAVE
23 SHAW ON SPEAKER PHONE AND LET THEM KNOW TO LET ME GO OR
24 WHATEVER.

25 Q NO MATTER WHAT YOU WERE PULLED OVER FOR; IS THAT
26 RIGHT?

27 MS. BARNES: OBJECTION, CALLS FOR SPECULATION.

28 THE COURT: OVERRULED.

1 THE WITNESS: NO.

2 BY MR. HIGGINS:

3 Q YOU DON'T WANT TO LET DETECTIVE SHAW DOWN, DO
4 YOU?

5 A UP TO THIS MOMENT? I MEAN I DON'T KNOW WHAT YOU
6 MEAN BY THAT.

7 Q WELL, YOU WANT TO MAKE SURE THAT YOU SAY ON THIS
8 STAND WHAT HE EXPECTS YOU TO SAY; IS THAT RIGHT?

9 A I'M HERE TO TELL THE TRUTH.

10 Q WELL, BEFORE YOU GOT ANY MONEY DID YOU GO TO THE
11 POLICE STATION AND SAY YOU KNOW I WANT TO TELL THE TRUTH, I
12 DON'T WANT ANY MONEY?

13 MS. BARNES: OBJECTION, ARGUMENTATIVE, ASKED AND
14 ANSWERED.

15 THE COURT: SUSTAINED.

16 BY MR. HIGGINS:

17 Q DID YOU EVER RETURN ANY MONEY THAT WAS GIVEN TO
18 YOU?

19 MS. BARNES: OBJECTION, ARGUMENTATIVE AND RELEVANCE.

20 THE COURT: SUSTAINED.

21 MR. HIGGINS: ONE MOMENT, YOUR HONOR.

22 (A CONFERENCE WAS HELD BETWEEN COUNSEL
23 AND THE DEFENDANT NOT REPORTED.)

24 BY MR. HIGGINS:

25 Q ONE OTHER QUESTION. NOW, THIS PARTY THAT YOU
26 SAID THAT MY CLIENT HE SPOKE TO YOU ABOUT THIS?

27 THE COURT: COUNSEL, JUST A MOMENT.

28 GENTLEMEN, THE DEFENDANTS, YOU ARE NOT TO TALK TO

1 EACH OTHER. NOW, IF I SEE THAT AGAIN YOU WILL BE MOVED
2 OVER HERE ON THIS SIDE.

3 DEPUTY, WOULD YOU MAKE SURE IF YOU SEE THAT, WE
4 ADDRESS THAT ONE WAY OR THE OTHER?

5 THANK YOU. GO AHEAD, COUNSEL.

6 BY MR. HIGGINS:

7 Q THE PARTY WHERE THIS INCIDENT OCCURRED YOU SAID
8 WAS A POOL PARTY WHERE YOU SPOKE TO MY CLIENT AND HE
9 REVEALED ALL OF THE INFORMATION TO YOU; IS THAT RIGHT?

10 A YES.

11 Q IS THAT IN COMPTON?

12 A I WOULD SAY YES.

13 Q AND WHOSE TERRITORY WAS THAT?

14 A FROM WHAT I KNOW THAT WOULD BE THE COMPTON
15 CRIPS.

16 Q AND PIRU, IS THAT A CRIP OR A BLOOD GANG?

17 A PIRU IS PIRU.

18 Q AND WHAT SET OF THE CRIPS WAS THIS PART -- WHAT
19 SET OF CRIP'S TERRITORY WAS THIS PARTY IN?

20 A TO MY KNOWLEDGE IT WOULD BE SOUTH SIDE COMPTON
21 CRIPS.

22 Q WAS THAT AN ENEMY OF 135 PIRU?

23 A NO.

24 Q YOU CAN GO THERE FREELY, RIGHT?

25 A THAT'S NOT AN ENEMY OF 135 PIRU.

26 Q THEY KNEW YOU WERE 135, RIGHT?

27 A WHO DID?

28 Q THE PEOPLE AT THE PARTY WHERE YOU WENT TO, THEY

1 KNEW YOU; IS THAT CORRECT?

2 MS. BARNES: CALLS FOR SPECULATION AS TO WHAT THEY
3 KNEW AND DIDN'T KNOW.

4 THE COURT: SUSTAINED.

5 BY MR. HIGGINS:

6 Q DID YOU HAVE A PROBLEM WHEN YOU WENT OVER TO
7 THAT PARTY?

8 MS. BARNES: OBJECTION, RELEVANCE AND THIS IS OUTSIDE
9 OF THE SCOPE OF DIRECT.

10 THE COURT: OVERRULED.

11 BY MR. HIGGINS:

12 Q DID YOU HAVE ANY PROBLEMS WHEN YOU WENT TO THAT
13 PARTY?

14 A AT THE END, YES.

15 Q WAS IT WITH SOME SOUTH SIDE CRIPS?

16 A YES.

17 Q AND YOU DIDN'T HAVE PROBLEM GOING IN THERE,
18 RIGHT?

19 A NO.

20 MS. BARNES: OBJECTION, RELEVANCE, OUTSIDE OF THE
21 SCOPE.

22 THE COURT: OVERRULED.

23 MR. HIGGINS: NO FURTHER QUESTIONS AT THIS TIME, YOUR
24 HONOR

25 THE COURT: THANK YOU.

26 CROSS EXAMINATION, MR. NEWMAN.

27 MR. NEWMAN: NO QUESTIONS.

28 THE COURT: REDIRECT?

1 MS. BARNES: NO.

2 MR. OLIVE: I HAVE A FEW QUESTIONS, YOUR HONOR BASED
3 ON WHAT COUNSEL ASKED.

4 THE COURT: GO AHEAD.

5
6 RE CROSS EXAMINATION

7 BY MR. OLIVE:

8 Q MR. FEISSA, WERE YOU PROVIDED WITH AN UNMARKED
9 POLICE CAR BY THE SHERIFF'S DEPARTMENT TO DRIVE AROUND IN
10 2008?

11 A NO.

12 Q 2009?

13 A NO.

14 Q 2007?

15 A NO.

16 Q DID YOU EVER TELL THE POLICE THAT THE PERSON
17 PEANUT WAS TRAYVON OR LAQUON?

18 A EXCUSE ME?

19 Q DID YOU EVER TELL THE POLICE THAT THE FIRST NAME
20 OF PEANUT WAS TRAYVON OR LAQUON?

21 A YEAH.

22 Q AFTER YOU RECEIVED THE MONEY FROM MR. SHAW YOU
23 WERE STILL HANGING AROUND THE NEIGHBORHOOD?

24 A YES.

25 Q IN THE PROFFER SECTION YOU DID TELL POLICE WHEN
26 YOU WERE ASKED ABOUT DEYAA KHALILL SHOOTING SOMEONE THAT
27 DAY KHALILL DID NOT SPECIFICALLY SAY HE DID SHOOT SOMEONE;
28 YOU DID TELL THE POLICE THAT ON AUGUST 21, 2009; IS THAT

1 RIGHT?

2 A YES.

3 Q DID YOU ALSO TELL THE POLICE THAT YOU DON'T TALK
4 A LOT TO -- YOU AREN'T A PERSON WHO TALKS A LOT IN 135?

5 A SAY WHAT?

6 Q DID YOU EVER TELL THAT POLICE YOU DON'T TALK A
7 LOT TO ANYONE IN 135?

8 A I'M NOT CLOSE TO ANYONE.

9 Q DID YOU EVER TELL THE POLICE THAT?

10 A I DON'T THINK I DID.

11 Q WHO WOULD YOU SAY AT THAT TIME PERIOD 2008 THAT
12 WAS A PERSON YOU ASSOCIATED WITH THE MOST?

13 MS. BARNES: OBJECTION, RELEVANCE, OUTSIDE OF THE
14 SCOPE OF DIRECT.

15 MR. OLIVE: WITHDRAW THE QUESTION.

16 BY MR. OLIVE:

17 Q MR. FEISSA, DO YOU HAVE EVER SMOKE P.C.P.?

18 MS. BARNES: OBJECTION, RELEVANCE.

19 THE COURT: OVERRULED.

20 MS. BARNES: VAGUE AS -- EVER? I MEAN WHAT IF HE WAS
21 14 AND HE SMOKED IT?

22 THE COURT: WELL, LET'S GET AN ANSWER AND THEN WE CAN
23 GET A TIME FRAME. OVERRULED.

24 THE WITNESS: WHAT'S P.C.P.?

25 BY MR. OLIVE:

26 Q YOU DON'T KNOW WHAT P.C.P. IS? SHERM, WET ONE.
27 YOU KNOW WHAT IS THAT?

28 A YEAH, I HEARD WHAT THAT IS. I NEVER SMOKED

1 THAT.

2 Q ALSO CALLED ANGEL DUST?

3 A NO.

4 Q IN 2008 DID YOU HAVE A PHYSICAL CONFRONTATION
5 WITH ANYONE IN 135?

6 A OF COURSE.

7 Q HOW ABOUT WITH MR. KHALILL?

8 MS. BARNES: OBJECTION, RELEVANCE AND OUTSIDE OF THE
9 SCOPE. I MEAN THIS IS COMPLETELY --

10 MR. OLIVE: IT GOES TO MOTIVE AND BIAS, YOUR HONOR.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES, I DID.

13 BY MR. OLIVE:

14 Q WAS THIS SOME FIST FIGHT?

15 A I MEAN IF THAT'S WHAT YOU WANT TO CALL IT, YEAH.

16 Q AGAIN, ON AUGUST 21, 2009 YOU DID TELL THE
17 POLICE THAT YOU DID HAVE A CONVERSATION WITH DEYAA KHALILL
18 ON THE TELEPHONE ABOUT THIS MURDER ABOUT A WEEK AFTER THE
19 MURDER?

20 MS. BARNES: OBJECTION, ASKED AND ANSWERED.

21 THE COURT: SUSTAINED.

22 MR. OLIVE: DID HE ANSWER THAT QUESTION?

23 THE COURT: WE'VE BEEN TALKING ABOUT IT FOR SOME
24 TIME.

25 MR. OLIVE: I DON'T RECALL AN ANSWER TO THE QUESTION.
26 THANK YOU.

27 THE COURT: THANK YOU. YOU MAY STEP DOWN.

28 MR. HIGGINS: CAN I ASK ONE QUESTION?

1 THE COURT: IS THIS GOING TO BE SOMETHING NEW,
2 COUNSEL?

3 MR. HIGGINS: IT'S JUST ONE OR TWO QUESTIONS, YOUR
4 HONOR.

5 THE COURT: OKAY.

6

7 RECRSS EXAMINATION

8 BY MR. HIGGINS:

9 Q HAVE YOU EVER HAD A CONFRONTATION WITH MY CLIENT
10 PEANUT?

11 A CONFRONTATION?

12 Q EVER HAD AN ARGUMENT, FIGHT WITH HIM, ANYTHING
13 LIKE THAT?

14 A OF COURSE I HAD ARGUMENTS.

15 Q WHEN?

16 MS. BARNES: OBJECTION, RELEVANCE.

17 THE COURT: OVERRULED.

18 THE WITNESS: SINCE HIGH SCHOOL.

19 MR. HIGGINS: THANK YOU. NO FURTHER QUESTIONS.

20 THE COURT: THANK YOU. YOU MAY STEP DOWN.

21 YOU MAY CALL THE NEXT WITNESS.

22 MS. BARNES: IS THE WITNESS EXCUSED, YOUR HONOR?

23 THE COURT: YES. AS FAR AS CALLING MY NEXT WITNESS
24 WOULD THIS BE A GOOD TIME TO MARK THE TRANSCRIPT AND THEN
25 THE COURT CAN READ IT AND WE CAN BREAK FOR THE DAY?

26 THE COURT: YOU CAN DO THAT IF YOU WISH.

27 MS. BARNES: I MEAN IT'S UP TO YOU. I'M CALLING
28 DETECTIVE VALENTINO AND HE HAS TO TESTIFY TOMORROW IN A

1 HOMICIDE TRIAL DOWNTOWN -- OR I DON'T KNOW IF IT'S A
2 HOMICIDE, BUT AN OFFICER INVOLVED SHOOTING DOWNTOWN AT
3 11:00 O'CLOCK MONDAY. SO I'M GOING TO CALL HIS PARTNER
4 INSTEAD, UNLESS COUNSEL THINKS WE CAN GET DONE IN THE NEXT
5 30 MINUTES.

6 IF NOT, THEN MY SUGGESTION IS TO MARK THE
7 TRANSCRIPT AND THE COURT CAN READ IT OR I CAN CALL THE GANG
8 EXPERT. BUT SOME INFORMATION THAT HE'S GOING TO TESTIFY TO
9 NOT BEEN PUT INTO EVIDENCE. WHATEVER COURT AND COUNSEL
10 WANT TO DO.

11 THE COURT: WE'LL ADDRESS THE TRANSCRIPT.

12 MS. BARNES: OKAY.

13 THE COURT: GO AHEAD, COUNSEL.

14 MS. BARNES: YOUR HONOR, I JUST HAD THE TRANSCRIPT
15 AND I'M GOING TO MARK IT AS PEOPLE'S NEXT ORDER AND THEN
16 SUBMIT IT. I MEAN PEOPLE'S NEXT IN ORDER WHICH IS NUMBER
17 14 AND THEN SUBMIT IT TO THE COURT TO READ IT. IT IS
18 LENGTHY.

19 THE COURT: SO MARKED PEOPLE'S 14. AND DESCRIBE WHAT
20 IT IS.

21 MS. BARNES: IT'S A STACK OF TRANSCRIPTS I CLIPPED
22 TOGETHER. IT'S AN INCH THICK AND DOUBLE SIDED AND IT'S THE
23 TRANSCRIPTS OF THE WIRE TAP CALLS THAT ARE MENTIONED IN THE
24 POLICE REPORT OF DETECTIVE LABBE. AND THE POLICE REPORT
25 FOR COUNSELS' DISCOVERY PURPOSES BEING PAGES WKG 9 THROUGH
26 24.

27 AND IN ADDITION TO THAT I HAVE PROVIDED THIS
28 STACK OF TRANSCRIPTS TO DEFENSE COUNSEL ON WEDNESDAY. AND

1 THESE ARE TRANSCRIPTS OF THE WIRE TAP CALLS PROVIDED ON THE
2 DATE OF ARRAIGNMENT FOR EACH DEFENDANT.

3 MR. NEWMAN: SO I'M CLEAR, WE'RE ONLY MARKING THE
4 TRANSCRIPT OF THE WIRE TAP CALLS?

5 THE COURT: THAT'S WHAT I UNDERSTAND.

6 MR. NEWMAN: THAT'S ALL THAT IS SUBMITTED TO THE
7 COURT TO READ?

8 THE COURT: YES.

9 MR. OLIVE: THE TRANSCRIPT OF THE WIRE TAP CALLS.

10 THE COURT: YES. I MEAN YOU CAN GIVE THE COURT THE
11 CALLS AND THE COURT CAN LISTEN TO THE CALLS ALSO.

12 MS. BARNES: IF THE COURT WANTS -- JUST WHATEVER YOU
13 WANT ME TO DO I WILL DO.

14 THE COURT: THE TRANSCRIPT IS FINE. AND DEFENSE
15 COUNSEL HAS BOTH THE TRANSCRIPT AND THE C.D. OR SOMETHING?

16 MS. BARNES: IT'S A C.D. OF ALL WIRE TAP CALLS FOR
17 ALL OF THE DEFENDANTS IN THIS ENTIRE CASE AND IT WAS
18 PROVIDED ON THE DATE OF ARRAIGNMENT AS REQUIRED BY WIRE TAP
19 LAW. AND SO IT'S JUST THESE ARE JUST A FEW OF CALLS THAT
20 WERE DOWNLOADED AND TRANSCRIBED. AND AGAIN, THE CALLS ARE
21 ALL MENTIONED IN THE POLICE REPORT THAT I DISCUSSED BEFORE.

22 THE COURT: OKAY. ANY COUNSEL WISH TO BE HEARD IN
23 ANYWAY REGARDING THIS?

24 MR. OLIVE: I HAVE GOTTEN THAT DISCOVERY SO I DON'T
25 HAVE AN OBJECTION TO THAT. I HAVE MORE ISSUES THOUGH.

26 THE COURT: ANYTHING ELSE FROM THE PEOPLE ON THIS?

27 MS. BARNES: NO.

28 THE COURT: OKAY. GO AHEAD, COUNSEL.

1 MR. OLIVE: YOUR HONOR, I'D ASK THAT THE INFORMATION
2 ABOUT ANY PROMISE OF BENEFIT REGARDING MR. FEISSA'S HOUSING
3 BE GIVEN TO US. I DON'T WANT THE ADDRESS OR ANYTHING LIKE
4 THAT, BUT ANY KIND OF INFORMATION THAT THE PROSECUTION HAS
5 BE GIVEN TO US.

6 AND I'D ALSO LIKE TO BE ALLOWED TO RECALL
7 MR. FEISSA TO ASK IF HE WAS IN FACT GIVEN SOME KIND OF
8 PROMISES OR ARRANGEMENT REGARDING HOUSING.

9 THE COURT: HE ALREADY ANSWER THAT HE HASN'T.

10 MR. OLIVE: I DON'T THINK THE COURT ALLOWED HIS
11 ANSWER.

12 THE COURT: I THOUGHT I DID PERMIT THE ANSWER. I
13 KNOW NO INDICATION WAS GIVEN ABOUT LOCATION, BUT I THOUGHT
14 AT THE TIME -- UNLESS HE CLAIMED THE FIFTH. IF HE DID,
15 THEN --

16 MS. BARNES: I CAN MAYBE EXPEDITE THIS. I AM HAPPY
17 TO DISCLOSE TO COUNSEL WHAT HE HAS BEEN GIVEN AND WHAT HE
18 MAY BE GIVEN IN THE FUTURE THROUGH OUR LOCATION PROGRAM,
19 BUT I'M NOT DOING IT IN OPEN COURT. AND SO IF YOU WANT TO
20 GO INTO CHAMBERS ON THE RECORD OR IF THE COURT WANTS TO
21 CLEAR THE COURTROOM I'M FINE TO DISCLOSE THAT. BUT I'M NOT
22 GOING TO IN FRONT OF ANY OF THE AUDIENCE OR DEFENDANTS.

23 MR. HIGGINS: WE CERTAINLY WOULD LIKE DOCUMENTATION.
24 I DON'T NEED --

25 THE COURT: YOU WOULD LIKE WHAT?

26 MR. HIGGINS: A REPORT, DOCUMENTATION, AS TO WHAT HE
27 HAS BEEN GIVEN.

28 MS. BARNES: HE'S BEEN GIVEN NOTHING. NOTHING HAS

1 BEEN GIVEN YET.

2 MR. HIGGINS: PROMISES FOR THE FUTURE.

3 MS. BARNES: THERE'S NOTHING TO TURN OVER, BECAUSE
4 NOTHING HAS HAPPENED YET.

5 THE COURT: WELL, DOES ANYONE HAVE ANY OBJECTION TO
6 DOING IT THAT WAY IN LIGHT OF THE -- WELL, I THINK IT WOULD
7 BE BEST JUST TO EMPTY THE COURTROOM. WE WILL HAVE EVERYONE
8 EXIT THE COURTROOM EXCEPT FOR THE DEFENDANTS. WELL, AND
9 THE DEFENDANTS.

10 MS. BARNES: I'M GOING TO ASK THE COURT FOR A
11 PROTECTIVE ORDER THAT DEFENSE COUNSEL NOT BE ALLOWED TO
12 TELL THEIR CLIENTS WHAT I'M TELLING THEM. IT DOESN'T GO TO
13 THEIR DEFENSE AND THERE IS NO REASON FOR THE DEFENDANTS TO
14 HAVE THIS INFORMATION.

15 THE COURT: DOES ALL COUNSEL WAIVE THE PRESENCE OF
16 THE DEFENDANTS HERE FOR THAT LIMITED PURPOSE?

17 MR. HIGGINS: NO, I DON'T. YOUR HONOR, IF COUNSEL IS
18 GOING TO DISCLOSE SOMETHING I THINK IT SHOULD GIVEN IN THE
19 FORM OF A WRITTEN DOCUMENT. WE CAN GIVE IT -- CAN HAVE IT
20 AND WE CAN BE ORDERED NOT TO DISCLOSE IT TO OUR CLIENTS AND
21 MY CLIENT IS RIGHT HERE. HE HAS A -- IF THIS IS PART OF AN
22 OPEN PROCEEDINGS HE HAS A RIGHT TO BE HERE.

23 THE COURT: WELL, MAYBE THAT IS APPROPRIATE. LET'S
24 HAVE THE PEOPLE RENDER INTO WRITING WHATEVER THEY'RE GOING
25 TO DO, AND GIVE IT TO THEM AT THE NEXT HEARING.

26 MS. BARNES: I DON'T HAVE ANYTHING IN WRITING.

27 THE COURT: WELL, THEN THAT'S WHAT YOU SAY IN WRITING
28 WHATEVER YOU WERE GOING TO SAY, YOU CAN SAY NOW, WHICH IS I

1 GUESS WITHOUT A LOT OF IDENTIFYING INFORMATION YOU WERE
2 GOING TO TELL THEM WHAT HE HAD BEEN PROMISED, RIGHT?

3 MS. BARNES: WELL, I'M NOT PUTTING ANYTHING IN
4 WRITING WHERE IT CAN BE PASSED ALONG. SO I'M HAPPY TO TELL
5 THEM SOME LIMITED INFORMATION SO THAT THEY HAVE AN
6 UNDERSTANDING OF WHAT IS HAPPENING AND THAT WE ARE NOT
7 KEEPING THINGS FROM THEM.

8 BUT I TAKE THE SAFETY OF MY WITNESSES VERY
9 SERIOUSLY. I'VE HAD WITNESSES KILLED. I'VE HAD WITNESSES
10 BEAT UP, AND I'M NOT GOING TO DO ANYTHING THAT IS GOING TO
11 JEOPARDIZE THE SAFETY OF WITNESSES.

12 THE COURT: I MEAN HOW MUCH CAN YOU REVEAL IF YOU ARE
13 NOT REVEALING A LOCATION? ARE YOU ONLY REVEALING JUST THE
14 FACT THEY'VE BEEN PROMISED HOUSING SOMEWHERE OR SOME TIME?

15 MS. BARNES: HE HAS BEEN PROMISED HOUSING, I CAN TELL
16 YOU THAT.

17 THE COURT: WHAT IS IT THAT YOU ARE PLANNING TO GIVE
18 HIM EVEN IF IT'S NOT IN WRITING? IS IT ANYTHING AT ALL?

19 MS. BARNES: I POTENTIALLY MAY GIVE HIM ASSISTANCE
20 WITH THINGS. I'M NOT GIVING HIM HOUSING.

21 THE COURT: OKAY. WELL, THAT'S MY POINT. YOU CAN'T
22 SAY THAT IN WRITING?

23 MS. BARNES: I CAN SAY THAT, BUT I AM NOT GOING TO
24 SAY WHAT I'M GIVING HIM AND I'M NOT PUTTING THAT IN
25 WRITING. I DON'T TRUST THEM. I'M SORRY, BUT I DON'T.

26 THE COURT: I UNDERSTAND. LET'S DO THIS, WHATEVER
27 YOU ARE GOING TO GIVE THEM AND HOWEVER LIMITED IT IS, PUT
28 IT IN WRITING. BECAUSE I THINK I'M IN A QUANDARY IF THEY

1 DON'T WANT TO WAIVE THE PRESENCE OF THEIR CLIENTS HERE.

2 IT'S A BIT OF A PROBLEM.

3 SO AT THE NEXT HEARING GIVE THEM WHATEVER YOU
4 WERE GOING TO GIVE THEM IN WRITING AND I'LL BE HEARD AS TO
5 THEIR OBJECTIONS OR WHATEVER TO THAT.

6 MR. NEWMAN: I THINK ANY PROMISES THAT WERE MADE WE
7 SHOULD BE MADE AWARE. I DON'T CARE WHERE HE'S LOCATED.
8 THEY CAN PUT HIM IN MONTANO OR MEXICO. I CAN CARELESS. BUT
9 IF SHE'S MAKING PROMISES TO HIM THEN I THINK WE SHOULD BE
10 AWARE.

11 THE COURT: COUNSEL, THIS IS A PRELIMINARY HEARING.

12 MR. NEWMAN: YES.

13 THE COURT: AT SOME POINT IT GETS A BIT CUMULATIVE.
14 IN OTHER WORDS, HOW MUCH DO YOU NEED TO KNOW IN ORDER TO
15 MAKE AN ARGUMENT THAT THERE MIGHT BE A BASIS FOR BIAS? I
16 MEAN IF YOU'VE GOT 99 THINGS WHAT DO YOU NEED WITH ONE MORE
17 JUST TO SAY THAT HE'S BEEN PROMISED SOME HOUSING? SEE, AT
18 SOME POINT IT DOESN'T SERVE ANY PURPOSE. PARTICULARLY FOR
19 A PRELIMINARY HEARING.

20 MR. NEWMAN: I DON'T UNDERSTAND THE RELUCTANCE OF THE
21 OBJECTIONS.

22 THE COURT: THAT'S NOT THE POINT. I'M COMING TO YOU
23 FROM MY PERSPECTIVE AND THAT IS I DON'T THINK YOU'RE BEING
24 DEPRIVED OF BEING ABLE TO MAKE THE ARGUMENT THAT MAYBE THE
25 WITNESS IS BIAS BECAUSE OF SUCH AND SUCH WHEN YOU'VE
26 ALREADY GOT MORE TO COMMENT ON IN THAT REGARD. AND ONE
27 MORE MATCHSTICK ON THE PILE WON'T MAKE A WHOLE LOT OF
28 DIFFERENCE.

1 MR. NEWMAN: SINCE I CAN'T TALK TO THE DISTRICT
2 ATTORNEY, OTHER COUNSEL HAVE BEEN GIVEN A COPY OF MR.
3 FEISSA'S STATEMENT. SHE DIDN'T PROVIDE ME WITH A COPY AND
4 I WOULD LIKE A COPY OF THAT.

5 MS. BARNES: THAT'S ACTUALLY INACCURATE. THEY WERE
6 PROVIDED TRANSCRIPTS.

7 MR. NEWMAN: TRANSCRIPTS, YES.

8 MS. BARNES: THEY WERE GIVEN A COPY OF THE
9 TRANSCRIPT.

10 THE COURT: JUST GIVE HIM WHATEVER THE OTHER COUNSEL
11 HAS.

12 MS. BARNES: I WILL. BUT I WILL PUT ON THE RECORD
13 THAT HE HAS NOT BEEN PROMISED HOUSING. I'M NOT PAYING FOR
14 THE HOUSING.

15 THE COURT: WE'RE AWAY FROM THAT. YOU'RE GOING TO
16 GIVE THEM WHATEVER IN WRITING THAT YOU GIVE AND WE'LL DEAL
17 WITH IT AT THAT TIME.

18 MS. BARNES: I CAN TELL THE COURT RIGHT NOW I HAVE NO
19 IDEA HOW MUCH MONEY HE WILL BE GIVEN, SO ONCE I TURN OVER
20 ANY MONEY TO HIM I WILL PROVIDE THE DOLLAR AMOUNT TO
21 COUNSEL.

22 THE COURT: DID YOU SAY TURN OVER MONEY?

23 MS. BARNES: I'LL GIVE THE VALUE OF WHATEVER HE IS
24 GIVEN IN DOLLAR TERMS TO DEFENSE COUNSEL. WHATEVER IS
25 GIVEN TO HIM. IF SOMETHING IS GIVEN TO HIM I WILL TELL
26 THEM THE DOLLAR AMOUNT.

27 MR. HIGGINS: WELL, YOUR HONOR, THAT IS NOT
28 NECESSARILY SUFFICIENT. BECAUSE A DOLLAR AMOUNT --

1 THE COURT: WHAT IS LACKING?

2 MR. HIGGINS: WHAT IS THAT?

3 THE COURT: WHAT'S LACKING?

4 MR. HIGGINS: WHAT IS LACKING IS THE SUBSTANCE OF
5 WHAT IT IS IF IT'S NOT MONEY. IT MAY BE SOMETHING THAT HAS
6 A PARTICULAR DOLLAR AMOUNT IN MONETARY VALUE AND MAY A MUCH
7 GREATER VALUE TO THIS GENTLEMAN IF IT'S SOMETHING ELSE THAT
8 IS NOT -- THAT'S NOT MONEY ITSELF.

9 THE COURT: WELL, LET'S SEE WHAT SHE TURNS OVER. I
10 THOUGHT SHE JUST MENTIONED MONEY AS AN EXAMPLE.

11 MR. HIGGINS: SHE SAID SHE WOULD TELL US THE DOLLAR
12 AMOUNT.

13 THE COURT: THAT'S AN EXAMPLE.

14 MR. HIGGINS: BUT SHE DIDN'T SAY WHAT IT WAS.

15 MS. BARNES: I AM HAPPY TO EXPLAIN, BUT I'M NOT GOING
16 TO SAY IT IN FRONT OF THE DEFENDANTS. SO IF THAT'S YOUR
17 CHOICE THEN I WILL PROVIDE THE DOLLAR AMOUNT.

18 MR. HIGGINS: ANOTHER THING, YOUR HONOR, I CAN
19 UNDERSTAND A LITTLE BIT COUNSEL'S DISTRUST, BUT WE ARE ALL
20 PROFESSIONALS AND ALL HAVE BAR CARDS WE WANT TO PROTECT,
21 AND WE HAVE ORDERS FROM THIS COURT. PLUS WE HAVE AN
22 OBLIGATIONS UNDER THE CODE AS WHAT NOT TO REVEAL SO WE NEED
23 TO HAVE EVERYTHING.

24 AND BECAUSE THE STANDARD IS SO LOW FOR THE
25 DISTRICT ATTORNEY FOR PURPOSES OF THE PRELIMINARY HEARING
26 THAT WE ALWAYS HEAR, WE NEED AS MUCH INFORMATION AS WE CAN
27 TO UNDERSTAND TO SWAY THE COURT'S THINKING.

28 THE COURT: NOT NECESSARILY AT A PRELIMINARY HEARING.

1 ONCE AGAIN, AS I INDICATED IT GETS A BIT CUMULATIVE. AFTER
2 A WHILE IF YOU KEEP YOUR EYE ONE WHAT THE ULTIMATE GOAL IS
3 HERE WHICH IS TO BE ABLE TO MAKE AN ARGUMENT ABOUT A BASIS
4 FOR BIAS OR WHAT HAVE YOU.

5 AND AS I SAID HOW MANY -- I MEAN HOW MANY THINGS
6 DO YOU NEED TO BE ABLE TO STAND UP AND ARGUE THAT MAYBE THE
7 WITNESS HAS A REASON TO BE BIASED?

8 MR. HIGGINS: I THINK THE GREATER THE NUMBER IT IS A
9 GREATER BENEFIT TO US AND TO THE COURT IN MAKING THE
10 ACCURATE DECISION.

11 THE COURT: AND AT A PRELIMINARY HEARING IT'S NOT AS
12 CRITICAL AS IT IS AT TRIAL, BECAUSE -- WELL, I DON'T HAVE
13 TO EXPLAIN TO YOU WHAT A PRELIMINARY HEARING IS.

14 I THINK IT'S CERTAINLY NOT INTENDED TO BE A
15 PROCEEDING FOR DISCOVERY OR TO MAKE A RECORD FOR A TRIAL.
16 THAT'S NOT THE PURPOSE OF A PRELIMINARY HEARING.

17 MR. HIGGINS: I'M TRYING TO -- I'M SORRY.

18 THE COURT: YES.

19 MR. HIGGINS: I'M TRYING TO AVOID TRIAL.

20 THE COURT: THAT'S ALSO NOT A PURPOSE OF A
21 PRELIMINARY HEARING, I DON'T THINK.

22 ANYTHING ELSE WE CAN ADDRESS AT THIS TIME?
23 WE'RE RESUMING ON MONDAY MORNING?

24 MR. HIGGINS: I HAVE ONE MATTER.

25 MR. OLIVE: 10:00 O'CLOCK, YES.

26 MR. HIGGINS: 10:00, 10:15 IS FINE.

27 THE COURT: 10:00 O'CLOCK ON MONDAY MORNING.

28 MR. NEWMAN: I WOULD INDICATE ON 1:30 MONDAY I HAVE A

000230

1 MURDER PRELIMINARY HEARING IN COMPTON WHERE THEY ORDERED
2 THE INVESTIGATOR TO BE PRESENT WITH DISCOVERY.

3 THE COURT: WELL, YOU KNOW, I MAY HAVE TO MAKE AN
4 ORDER THAT YOU BE HERE NOTWITHSTANDING WHATEVER ELSE YOU
5 ARE SUPPOSED TO DO OR WHATEVER IS GOING ON.

6 IF ANYONE WANTS TO GET AROUND THAT YOU'RE GOING
7 TO HAVE TO HAVE THAT JUDGE CONTACT THE COURT. AND I'M
8 GOING MAKE THE ORDER NOW THAT ALL DEFENSE COUNSEL IS
9 ORDERED TO BE HERE AT 10:00 O'CLOCK.

10 MR. NEWMAN: MAYBE YOU CAN PHONE COMPTON AND LET THEM
11 KNOW I'M ORDERED TO STAY HERE.

12 THE COURT: I MAY OR MAY NOT PHONE ANYONE. BECAUSE
13 YOU ARE TO BE HERE AT 10:00 AND IF YOU'RE STILL ENGAGED AT
14 1:30 YOU MAY HAVE TO CONTACT THAT COURT AND TRY TO GET
15 EXCUSED FROM THAT OR SOMETHING.

16 OKAY. COURT IS IN RECESS. THANK YOU.

17 MR. NEWMAN: BEFORE WE RECESS I HAVE ONE ADDITIONAL
18 MATTER.

19 THE COURT: YES.

20 MR. NEWMAN: I BELIEVE YESTERDAY YOU ORDERED
21 MR. TAYLOR TO PROVIDE I THINK THERE WAS A NAME OF AN UNCLE
22 OR SOME INFORMATION TO THE DISTRICT ATTORNEY TO GIVE TO US.
23 I HAVE NOT RECEIVED THAT YET.

24 MS. BARNES: I DIDN'T SPEAK TO HIM. I WASN'T HERE.
25 I WILL EMAIL THE DETECTIVE AND ASK THE DETECTIVE TO ASK THE
26 WITNESS FOR IT.

27 THE COURT: OKAY.

28 MS. BARNES: I HAVE HAD NO OPPORTUNITY SPEAK WITH

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1 HIM. I DON'T HAVE ANY CONTACT INFORMATION NOW.

2 MR. NEWMAN: MAYBE IF WE CAN HAVE IT BY MONDAY.

3 THE COURT: OKAY. THANK YOU.

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000232

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DIVISION II

HON. EUDON FERRELL, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

RAYMOND GIBBS,
DEYAA KHALILL,
DENNIS WALLACE,

AND)

DEFENDANTS.)

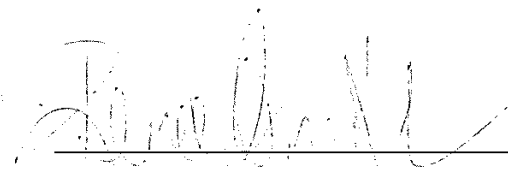
NO. YAO75709

REPORTER'S
CERTIFICATE

I, RENEE D. SMITH, CSR #8915, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES 1 THROUGH 101 COMPRISE A FULL, TRUE AND COMPLETE
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-MENTIONED
MATTER ON JUNE 11TH, 2010.

THIS TRANSCRIPT COMPLIES WITH 237(A)(2) OF THE
CODE OF CIVIL PROCEDURE.

DATED THIS 24TH DAY OF JUNE, 2010.



, CSR. #8915

OFFICIAL REPORTER

ATTORNEY GENERAL

COURT OF APPEAL SECOND APPELLATE DISTRICT STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and **RESPONDENT**

No. YA075709-01-02-03

Vs

**WALLACE, DENNIS-01
KHALILL, DEYAA-02
GIBBS, RAYMOND-03,**

Volume 2 of 4 Volumes
Notice of appeal filing date:
08/08/12-01-02-03

Defendant(s) and **APPELLANT**

CLERK'S TRANSCRIPT Page 233 to 519

Appearances:

Counsel for Plaintiff:

THE ATTORNEY GENERAL

Counsel for Defendant:

C/O C.A.P.

**Appeal from the Superior Court,
County of Los Angeles**

Honorable JAMES R. BRANDLIN, Judge

Date Mailed to:
Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

SEP 14 2012



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Pet. App. I 340

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 2 HON. EUDON FERRELL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

NO. YA075709

VS.

RAYMOND GIBBS,
DEYAA KHALILL,
DENNIS WALLACE,

AND

DEFENDANTS.

REPORTER'S TRANSCRIPT

PRELIMINARY HEARING

JUNE 14TH, 2010

VOLUME III OF III
LOS ANGELES SUPERIOR COURT

FILED

JUN 24 2010

APPEARANCES:

JOHN A. CLARKE, CLERK

FOR THE PEOPLE:

STEVE COOLEY, BY REBECCA FRANCO, DEPUTY
DISTRICT ATTORNEY
BY: CYNTHIA BARNES,
DEPUTY DISTRICT ATTORNEY

FOR DEFENDANT GIBBS: RONALD HIGGINS,
ATTORNEY AT LAW

FOR DEFENDANT KHALILL: GARY OLIVE,
ATTORNEY AT LAW

FOR DEFENDANT WALLACE: WALTER NEWMAN,
ATTORNEY AT LAW

HTA: JUNE 28TH, 2010

DEPARTMENT: SOUTHWEST - L

REPORTED BY: RENEE D. SMITH, C.S.R. NO.8915

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
TY LABBE	12		38	
(BY MR. NEWMAN)		31		39
(BY MR. HIGGINS)		35		40
(BY MR. OLIVE)		39		
TODD ANDERSON	42			
(BY MR. HIGGINS)		46		
JOHN DUNCAN	50		72	
(BY MR. NEWMAN)		61		81
(BY MR. OLIVE)		64		83
(BY MR. HIGGINS)		65		83

E X H I B I T S

<u>PEOPLE'S</u>	<u>MARKED</u>	<u>RECEIVED</u>
15 - COMPOSITE SKETCH OF MR. WALLACE	15	66
16 - COMPOSITE SKETCH OF MR. KHALILL	15	66
17 - PHOTO OF CAR	50	66
18 - CERTIFIED DOCUMENT FOR MR. BISHOP	52	66
19 - CERTIFIED DOCUMENT FOR MR. ASKINS	53	66
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1 CASE NUMBER: YA075709 000235
2 CASE NAME: PEOPLE VS. GIBBS, KHALILL AND
3 WALLACE
4 INGLEWOOD, CALIFORNIA MONDAY, JUNE 11TH, 2010
5 DIVISION NO. II HON. EUDON FERRELL, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: RENEE D. SMITH, CSR NO. 8915
8 TIME: 11:10 A.M.
9
10 THE COURT: GOOD MORNING. WE'RE BACK ON THE RECORD
11 IN THE GIBBS, KHALILL AND WALLACE MATTERS. THE COURT DID
12 REVIEW THE TRANSCRIPT FROM THE PHONE RECORDINGS. DO YOU
13 WISH TO TAKE THESE BACK AT THIS TIME?
14 MS. BARNES: YES.
15 MR. NEWMAN: PROBABLY SHOULD MARK THEM AS AN EXHIBIT.
16 MS. BARNES: THEY ARE.
17 THE COURT: THANK YOU.
18 OKAY. I BELIEVE WE WERE AT A STAGE WHERE THE
19 PEOPLE WERE TO CALL THE NEXT WITNESS.
20 MS. BARNES: YES. PEOPLE CALM DETECTIVE LABBE.
21 MR. OLIVE: BEFORE WE DO THAT, CAN WE ADDRESS COUPLE
22 OF ITEMS REGARDING DISCOVERY?
23 THE COURT: SURE.
24 MR. OLIVE: I BELIEVE WHEN HE LEFT OFF THAT MISS
25 BARNES WAS GOING TO PROVIDE THE COURT WITH A STATEMENT OR
26 SOMETHING REGARDING WHAT BENEFITS MR. FEISSA WAS GOING TO
27 RECEIVE. AND THAT WAS GOING TO BE --
28 THE COURT: DO THE PEOPLE HAVE ANYTHING IN THAT

1 REGARD?

2 MS. BARNES: I'VE BEEN GIVEN NOTHING YET. I HAVE
3 NOTHING TO TURN OVER. BUT I DO HAVE THE NAME OF THE UNCLE
4 THAT COUNSEL WANTED OF MR. EMOND TAYLOR'S UNCLE. THE COURT
5 ORDERED ME TO GIVE THEM THAT.

6 THE COURT: YES.

7 MS. BARNES: THE NAME IS NATE TILLMAN, T-I-L-L-M-A-N.

8 THE COURT: NOW BACK TO THE INFORMATION ABOUT WHAT
9 THE DEFENDANTS WOULD BE GIVEN. I DON'T THINK THERE IS A
10 QUESTION OF WHAT HE HAD BEEN GIVEN UP TO THIS POINT. THE
11 QUESTION IS I THINK WHETHER OR NOT THEY CAN EXPECT ANYTHING
12 ELSE.

13 MS. BARNES: WELL.

14 THE COURT: OR ANY PROMISES OR WHATEVER THE PEOPLE
15 ARE AWARE OF.

16 MS. BARNES: THE ONLY THING THAT HE POTENTIALLY WOULD
17 ALSO GET WOULD BE TRANSPORTATION TO WHERE HE'S GOING TO
18 LIVE. AND THEN IT MAY DEPENDING ON WHEN HE WAS RELEASED
19 FROM CUSTODY HE MAY BE GIVEN MONEY FOR INCIDENTALS SUCH AS
20 FOOD, BUT THAT'S IT. AND WHEN IT IS PROVIDED WE OF COURSE
21 DOCUMENT THIS AND THEN WILL TURN OVER THE DOLLAR AMOUNT.

22 THAT'S THE ONLY THING HE'S BEEN -- THAT'S THE
23 ONLY THING THAT HE IS GOING TO RECEIVE. I CAN'T SPECULATE
24 TO THE COST, BECAUSE I DON'T -- WE HAVEN'T FINISHED
25 RESOLVING THAT. THAT'S THE MOST THAT HE'S GOING TO GET.
26 HE'S NOT GETTING RENT OR MOVING EXPENSES OR ANYTHING LIKE
27 THAT AT THIS POINT.

28 IF THAT CHANGES THEN OBVIOUSLY I'LL TURN IT

1 OVER, BUT AT THIS POINT THAT'S ALL HE'S GETTING IS
2 TRANSPORTATION AND PROTECTION AND ALSO MONEY FOR
3 INCIDENTALS, DEPENDING ON TRANSPORTATION ISSUES.

4 THE COURT: AND THOSE THINGS WOULD BE GIVEN TO HIM AT
5 THE END OF THE PRELIMINARY HEARING?

6 MS. BARNES: NO.

7 THE COURT: AT SOME OTHER TIME?

8 MS. BARNES: AGAIN, THIS IS WHAT I DON'T WANT TO
9 DISCUSS IN OPEN COURT. IF YOU WANT TO GO IN CHAMBERS I'M
10 HAPPY TO PUT EXPLAIN IT TO THE COURT, BUT THERE IS A
11 PROCEDURE THAT WE'RE GOING TO FOLLOW TO ENSURE HIS SAFETY.
12 ONCE THAT PROCEDURE IS COMPLETED AND THE MONEY, IF ANY, HAS
13 BEEN PROVIDED FOR RELOCATION THAT ALL GOES TO THE LOCATION
14 UNDER THE WITNESS RELOCATION. ONCE THAT IS DONE I WILL
15 TURN OVER THE DOLLAR AMOUNTS.

16 BUT AS FAR AS THE PROCEDURE THAT IS GOING TO BE
17 FOLLOWED, I WOULD NOT -- I DO NOT WANT TO PUT THAT ON THE
18 RECORD. IF THE COURT WANTS TO GO IN CHAMBERS EX PARTE I
19 WILL BE HAPPY TO TELL THE COURT EVERYTHING.

20 THE COURT: YOU DON'T WANT TO REVEAL AT THIS TIME
21 WHETHER THAT WOULD BE AT THE END OF THE PRELIMINARY HEARING
22 OR AT SOME LATER TIME?

23 MS. BARNES: I DO NOT WANT ANYONE IN THE COURTROOM TO
24 KNOW HOW AND WHEN.

25 THE COURT: I'M NOT ASKING ALL OF THAT.

26 MS. BARNES: AT THIS TIME IT WILL BE AT THE
27 CONCLUSION OF THE PRELIMINARY HEARING AT SOME POINT.

28 THE COURT: OKAY.

1 MS. BARNES: BUT THE DETAILS OF WHAT IS GOING --

2 THE COURT: I UNDERSTAND.

3 MS. BARNES: OKAY.

4 THE COURT: IS THAT SUFFICIENT FOR COUNSEL AT THIS
5 TIME?

6 MR. OLIVE: NO.

7 THE COURT: WHAT MORE DO YOU WANT, COUNSEL?

8 MR. OLIVE: WELL, IT'S NOT SUFFICIENT BECAUSE UNLESS
9 THE COURT IS GOING ALLOW US TO RECALL THE WITNESS BECAUSE
10 WE WERE NOT ALLOWED TO CROSS-EXAMINE THE WITNESS ON THOSE
11 POINTS.

12 THE COURT: WELL.

13 MR. OLIVE: THESE ARE THINGS --

14 THE COURT: ASSUMING THAT THE DEFENDANTS ONE OR ALL
15 OF THEM ARE HELD TO ANSWER I PRESUME THAT THE WITNESS WILL
16 BE AVAILABLE AGAIN ANYWAY.

17 NOW, I DON'T KNOW IF THAT WOULD BE ENOUGH ON
18 JUST THAT ONE ISSUE TO HAVE THE WITNESS BROUGHT BACK OUT
19 AGAIN JUST FOR -- I'M NOT CERTAIN THAT WOULD BE ASKED OTHER
20 THAN WHAT THE PEOPLE ARE REVEALING RIGHT NOW.

21 MR. OLIVE: AND I APPRECIATE THE COURT TAKING THE
22 AMOUNT OF TIME WITH THAT.

23 THE COURT: OKAY.

24 MR. OLIVE: HOWEVER, THE COURT DID ASK FOR A WRITTEN
25 STATEMENT OR DOCUMENT FROM MISS BARNES. SHE SAID SHE WOULD
26 WRITE THAT. I DON'T THINK AN ORAL REPRESENTATION IS
27 ENOUGH.

28 THE COURT: IT CERTAINLY IS LACKING, COUNSEL, BUT IT

1 IS WHAT IT IS RIGHT NOW.

2 MR. OLIVE: OKAY.

3 THE COURT: AND THE COURT WILL SIMPLY NOTE THAT.

4 MR. OLIVE: I THINK IT'S UNTIMELY AND FURTHER --

5 THE COURT: WHAT IS UNTIMELY?

6 MR. OLIVE: BECAUSE SHE GAVE US THE INFORMATION AFTER
7 THE WITNESS HAS TESTIFIED. THAT'S WHY IT'S UNTIMELY.

8 THE COURT: WELL, OKAY.

9 MS. BARNES: I HAVE NOTHING -- HE'S BEEN GIVEN --

10 THE COURT: JUST A MOMENT, COUNSEL.

11 ANYTHING ELSE?

12 MR. OLIVE: AGAIN, YOUR HONOR, AS MR. HIGGINS SAID ON
13 FRIDAY, THERE ARE PROCEDURES THE COURT IS WELL AWARE OF TO
14 TURN OVER SENSITIVE INFORMATION AND APPROPRIATE ORDERS CAN
15 BE MADE SO THAT THINGS CANNOT BE BROADCAST THROUGH THE
16 NEWS. SO I WANT TO SAY THAT.

17 AND REGARDING THE VEHICLE WE ALSO THINK WE ARE
18 ENTITLED TO SOME KIND OF PAPERWORK OR DOCUMENTATION
19 REGARDING THE VEHICLE THAT MR. FEISSA SAID THAT HE GOT FROM
20 THE SHERIFF'S DEPARTMENT WHICH IS DETECTIVE SHAW.

21 THE COURT: DID YOU GET A DESCRIPTION OF IT?

22 MR. OLIVE: TOYOTA TERCEL I BELIEVE.

23 THE COURT: OKAY. ANYTHING ELSE?

24 MR. OLIVE: WELL.

25 MR. HIGGINS: WELL, YOUR HONOR, ONE THING THAT I'M
26 GETTING CONCERNED ABOUT NOW I KNOW OFTENTIMES THAT THE
27 WITNESS PROTECTION PROGRAMS AND RELOCATION FEES ARE
28 GENERALLY GIVEN, AND THAT OFTENTIMES INCLUDES SOME MAYBE A

1 COUPLE OF MONTHS RENT ALSO.

2 COUNSEL HAS REPRESENTED THAT HE WILL GET
3 TRANSPORTATION. WHAT I'M THINKING IS THAT IF THIS WITNESS
4 IS -- IF THE PEOPLE ARE PLANNING ON BRINGING THE WITNESS
5 OUT OF STATE AND HE IS -- HE'S NOT BEEN ORDERED TO RETURN
6 FOR THE TRIAL IN THE MATTER, AND WITHOUT THE CROSS
7 EXAMINATION THE COURT DISALLOWED WE WOULD BE STUCK WITH A
8 TRANSCRIPT, AN INCOMPLETE TRANSCRIPT.

9 THE COURT: WHAT KIND OF CROSS EXAMINATION ARE YOU
10 REFERRING TO THAT THE COURT DID NOT ALLOW?

11 MR. HIGGINS: WELL, THERE WERE A NUMBER OF AREAS. I
12 DON'T KNOW SPECIFICALLY OFF HAND, BUT A NUMBER OF AREAS
13 THAT THE COURT INDICATED -- WELL, TO ME AND OTHER COUNSEL.

14 THE COURT: WAS IT DEALING WITH SOMETHING OTHER THAN
15 THIS ISSUE?

16 MR. HIGGINS: WELL, DEALING WITH SOME OF OTHER CRIMES
17 OR SOME REASONS WHERE HE TOOK THE FIFTH AMENDMENT AND A
18 NUMBER OF THINGS THAT I PERSONALLY DIDN'T THINK THAT HE HAD
19 A RIGHT TO TAKE THE FIFTH ON, BUT THE DISAGREED. AND THE
20 THOSE WOULD BE AREAS THAT WOULD CERTAINLY GO TO HIS
21 CREDIBILITY WHICH WOULD AFFECT THIS COURT AS WELL AS A JURY
22 IN A DETERMINATION OF WHETHER THAT IS TRUTHFUL. SO THAT'S
23 MY CONCERN OF NOT BEING ABLE TO FULLY EXAMINED HIM.

24 THE COURT: THIS PERSON IS IN CUSTODY RIGHT NOW,
25 RIGHT?

26 MR. HIGGINS: WELL, HE WILL BE RELEASED IMMEDIATELY
27 FROM WHAT I'M TOLD AND WHAT HE'S REPRESENTED AT THE END OF
28 THIS PRELIMINARY HEARING. HE'S GOING TO BE GIVEN

1 TRANSPORTATION AND HOPEFULLY IT'S NOT OUT OF STATE.

2 THE COURT: WELL, I'M NOT CERTAIN WHAT AVENUES ARE
3 AVAILABLE TO DEFENSE COUNSEL IF HE'S RELEASED AND PERMITTED
4 TO GO SOMEWHERE QUICKLY. I DON'T KNOW IF YOU ARE ABLE TO
5 ONCE AGAIN, ASSUMING THIS WILL GO FORWARD TO A TRIAL COURT,
6 I DON'T KNOW IF YOU'RE ABLE TO PETITION THE COURT TO
7 SOMEHOW DO SOMETHING TO EFFECT THAT ONE WAY OR THE OTHER.

8 I'M NOT CERTAIN, BUT I DO KNOW THAT I'M NOT
9 CERTAIN HOW MUCH I CAN DO IN THAT REGARD. IF THE
10 DEFENDANTS ARE HELD TO ANSWER AND IT LOOKS LIKE YOU WILL BE
11 NEEDING THAT WITNESS IN THE FUTURE, THEN MAYBE SOME STEPS
12 CAN BE TAKEN BY PETITIONING THE NEXT COURT TO DO WHATEVER
13 YOU NEED TO DO TO ENSURE EITHER THE AVAILABILITY OF THAT
14 WITNESS OR SOME KIND OF, I DON'T KNOW, DEPOSITIONS OR
15 INTERVIEWS OR WHAT HAVE YOU.

16 MS. BARNES: I CAN MAYBE ALLEVIATE SOME CONCERNS WITH
17 THAT. AND AGAIN, I'M NOT GOING TO GO INTO DETAIL AS I SAID
18 BEFORE, BUT I'M WILLING TO DO IT IN CHAMBERS. BUT IF
19 COUNSEL REFUSES TO IT THAT WAY THEN I AM NOT ABLE TO GO
20 INTO DETAILS.

21 BUT WE HAVE ALREADY PUT INTO MOTION AN O.R.
22 AGREEMENT THAT WOULD REQUIRE THAT MR. FEISSA COMPLY WITH
23 CHECK-IN PROCEDURES TO MAINTAIN JURISDICTION OVER HIM. AND
24 I HAVE BEEN DISCUSSING THIS WITH FEISSA'S ATTORNEY AND WE
25 DON'T HAVE A FINALLY DRAFT OR ANYTHING ELSE.

26 WE'RE GOING TO GENERATE ON A WRITTEN O.R.
27 AGREEMENT THAT OBVIOUSLY WILL BECOME DISCOVERABLE; HOWEVER,
28 REDACTED AND IT WILL BE DISCOVERABLE THAT WILL REQUIRE HIM

1 TO RETURN ON CERTAIN DATES AND ALSO TO COMPLY WITH THE
2 CHECK-IN PROCEDURE.

3 IT IS IN MY INTEREST AS MUCH AS DEFENSE
4 COUNSELS' INTEREST TO ENSURE THAT MR. FEISSA RETURN FOR
5 TRIAL. I WOULD ALSO POINT OUT AS PART OF HIS PLEA
6 AGREEMENT MR. FEISSA PLED OPEN. HE DIDN'T PLEAD TO AN
7 AGREED UPON DETERMINATIVE TERM OR ANYTHING THAT WE GAVE HIM
8 AS AN OFFER. HE PLED OPEN TO THE COURT.

9 IF HE FAILS TO APPEAR FOR HIS SENTENCING, HE CAN
10 GET SENTENCED TO THE MAXIMUM SENTENCE WHICH IS EIGHT YEARS.
11 SO IT'S IN MR. FEISSA'S INTEREST TO RETURN. WE DID IT ON
12 PURPOSE FOR THAT EXACT REASON. SO HE WILL BE ORDERED BACK
13 FOR COURT, BECAUSE HE STILL HAS A PENDING SENTENCING. AND
14 WE'RE NOT GOING TO RELEASE HIM OUT OF COUNTY JAIL.

15 SO THIS IS SOMETHING THAT EVERYONE TAKES VERY
16 SERIOUSLY, AND MYSELF AND MR. FEISSA'S ATTORNEY ARE MAKING
17 SURE THERE ARE SAFE WORDS TO ENSURE MR. FEISSA WILL RETURN
18 TO COURT REGARDLESS OF WHERE HE MOVED TO.

19 SO I JUST WANTED TO PUT THAT ON THE RECORD SO
20 HOPEFULLY THAT ALLEVIATES COUNSELS' CONCERN. HE'S NOT
21 GOING TO BE RELEASED UNTIL THIS PRELIMINARY HEARING IS
22 COMPLETED.

23 THE COURT: OKAY. ANYTHING ELSE WE CAN ADDRESS?

24 MR. HIGGINS: NOT FROM MY CLIENT.

25 MR. NEWMAN: I'M STILL AWAITING DISCOVERY THAT IS A
26 TRANSCRIPT THAT I WAS PROMISED AND I HAD NOT RECEIVED.

27 MS. BARNES: I CAN GIVE YOU THAT RIGHT NOW.

28 THE COURT: ANYTHING ELSE?

1 MR. OLIVE: I THINK THE COURT CAN INQUIRE ABOUT THE
2 PAPERWORK REGARDING THE VEHICLE THAT WAS GIVEN TO
3 MR. FEISSA OR THAT HE HAD ACCESS TO.

4 THE COURT: COUNSEL, OTHER THAN THE DESCRIPTION OF
5 THE VEHICLE WHAT MORE DO YOU NEED IN THAT REGARD?

6 MR. OLIVE: THERE MUST BE SOME PROCEDURES FOR THE
7 SHERIFF'S DEPARTMENT.

8 THE COURT: I'M SURE IT IS. WHY IS THAT CRITICAL OR
9 NECESSARILY AT A PRELIMINARY HEARING?

10 MR. OLIVE: WELL, IT GOES TO THE WITNESS' MOTIVE AND
11 BIAS.

12 THE COURT: I'M GOING TO --

13 MR. OLIVE: AS WELL AS THE SHERIFF'S DEPARTMENT.

14 THE COURT: I AM GOING TO DENY THAT. IF THE PEOPLE
15 HAVE SOMETHING THEY CAN TURN OVER, FINE. BUT IF NOT,
16 COUNSEL, I THINK THE EVIDENCE IS SUFFICIENT FOR YOU TO
17 ARGUE BEFORE A COURT OF JURY WITH RESPECT TO THAT VEHICLE.

18 IS THERE ANYTHING ELSE?

19 THE COURT: OKAY. THE PEOPLE MAY CALL THE NEXT
20 WITNESS.

21 MS. BARNES: PEOPLE CALL DETECTIVE LABBE.

22
23 TY LABBE,

24 CALLED BY THE PEOPLE AS A WITNESS, WAS SWORN

25 AND TESTIFIED AS FOLLOWS:

26 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

27 YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU ARE
28 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT

000319

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CCUNTY OF LOS ANGELES

DIVISION II

HON. EUDON FERRELL, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

RAYMOND GIBBS,
DENNIS WALLACE,
DEYAA KHALILL,

AND)

DEFENDANTS.)

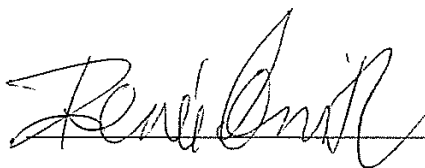
NO. YAO75709

REPORTER'S
CERTIFICATE

I, RENEE D. SMITH, CSR #8915, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES 1 THROUGH 86 COMPRISE A FULL, TRUE AND COMPLETE
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-MENTIONED
MATTER ON JUNE 14TH, 2010.

THIS TRANSCRIPT COMPLIES WITH 237(A)(2) OF THE
CODE OF CIVIL PROCEDURE.

DATED THIS 24TH DAY OF JUNE, 2010.



CSR. #8915

OFFICIAL REPORTER

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-)
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)

NO. YA075709-01/
—02/-03

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 7, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 8 OF 16 VOLUMES
PAGES 1801 TO 1975-2100

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 THE COURT: MR. GRAYSON.

2 MR. GRAYSON: NO QUESTIONS.

3 THE COURT: MR. HIGGINS.

4 MR. HIGGINS: NO QUESTIONS.

5 THE COURT: ALL RIGHT.

6 MAY THE WITNESS BE EXCUSED?

7 MS. OSTROWSKI: YES.

8 MR. NEWMAN: YES.

9 MR. GRAYSON: YES.

10 THE COURT: THANK YOU FOR JOINING US TODAY, MA'AM.
11 YOU ARE EXCUSED. PLEASE WATCH YOUR STEP AS YOU STEP
12 DOWN.

13 NEXT WITNESS FOR THE PEOPLE.

14 MS. OSTROWSKI: IT WOULD BE READING THE TESTIMONY
15 OF MR. FEISSA, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 IS MS. BRISBOIS GOING TO BE YOUR READER?

18 MS. OSTROWSKI: YES.

19 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THE
20 COURT HAS ALREADY MADE A DETERMINATION MR. FEISSA IS
21 LEGALLY UNAVAILABLE DURING THE TRIAL.

22 AND THE COURT HAS PERMITTED THE READING OF
23 THE PRELIMINARY HEARING TESTIMONY THAT WAS TAKEN
24 INVOLVING MR. FEISSA ON AN EARLIER DATE.

25 I AM GOING TO INFORM YOU THAT YOU WILL
26 RECEIVE INSTRUCTIONS AT THE END OF THE CASE. ONE OF THE
27 INSTRUCTIONS WILL TELL YOU HOW TO EVALUATE TESTIMONY OF
28 AN UNAVAILABLE WITNESS WHOSE PRELIMINARY HEARING

1 TESTIMONY WAS READ.

2 THIS IS MS. BRISBOIS. WHEN WE STARTED THIS
3 TRIAL, SHE WAS A LAW CLERK IN THE DISTRICT ATTORNEY'S
4 OFFICE. SINCE WE STARTED THIS TRIAL, SHE'S SUBSEQUENTLY
5 PASSED THE CALIFORNIA BAR EXAM, AND HAS BEEN SWORN IN AS
6 AN ATTORNEY.

7 WE CONGRATULATE YOU.

8 KEEP IN MIND THAT MS. BRISBOIS'S ROLE,
9 HERE, IS AS A READER. SHE IS NOT THE WITNESS. THE
10 NORMAL CUES THAT YOU WOULD LOOK TO TO DETERMINE IF THE
11 WITNESS IS TELLING THE TRUTH OR TELLING A LIE, SUCH AS
12 TONE OF VOICE, TIME DELAY IN ANSWERING THE QUESTION, OR
13 PHYSICAL APPEARANCE, ET CETERA, THOSE CUES DON'T APPLY
14 BECAUSE SHE'S NOT THE WITNESS.

15 SHE'S A READER.

16 NOW, IN THIS MATTER, TO ASSIST IN PROVIDING
17 SOME CHANGE IN VOICE INFLECTION, RATHER THAN HAVING ONE
18 PERSON READ QUESTIONS AND ANSWERS FOR BOTH THE
19 PROSECUTION AND THE DEFENSE, WE'RE GOING TO READ OUR
20 RESPECTIVE ROLES.

21 I'LL READ THE QUESTIONS OR COMMENTS THAT
22 WERE MADE BY THE MAGISTRATE WHO HEARD THE PRELIMINARY
23 HEARING. MS. OSTROWSKI WILL READ THE QUESTIONS THAT
24 WERE ASKED OF THE THEN PROSECUTOR, MS. BARNES.

25 MR. GRAYSON WILL BE READING THE QUESTIONS
26 THAT WERE ASKED BY MR. OLIVE, WHO REPRESENTED
27 MR. KHALILL ON AN EARLIER OCCASION, AND ALSO, AT THE
28 REQUEST OF MR. NEWMAN, WILL BE READING THE QUESTIONS

1 THAT WERE ASKED BY MR. NEWMAN.

2 MR. HIGGINS WILL READ THE QUESTIONS THAT
3 WERE ASKED BY MR. HIGGINS AT THE TIME OF THE PRELIMINARY
4 HEARING. SO WE'LL HAVE A LITTLE EASIER FLOW FOR YOU IN
5 TRACKING.

6 THE COURT TAKES JUDICIAL NOTICE THAT
7 MR. SAMUEL FEISSA WAS CALLED AS A WITNESS AND WAS SWORN
8 AND TESTIFIED AS FOLLOWS.

9 THE CLERK GAVE THE OATH.

10 "PLEASE RAISE YOUR RIGHT HAND.

11 "YOU DO SOLEMNLY STATE THAT THE TESTIMONY
12 YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
13 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
14 NOTHING BUT THE TRUTH, SO HELP YOU GOD."

15 MS. BRISBOIS: "YES."

16 THE COURT: "PLEASE BE SEATED.

17 "STATE YOUR FULL NAME, SPELLING YOUR FIRST
18 NAME AND YOUR LAST NAME."

19 MS. BRISBOIS: "SAMUEL FEISSA.

20 "S-A-M-U-E-L. F-E-I-S-S-A."

21 THE COURT: "THANK YOU.

22 "GO AHEAD, COUNSEL."

23 "Q MR. FEISSA, I'M GOING TO
24 START BY ASKING YOU SOME GENERAL
25 QUESTIONS ABOUT THE 135 PIRU GANG.
26 ARE YOU FAMILIAR WITH THAT GANG?

27 "A YES.

28 "Q AND WERE YOU A MEMBER OF

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THAT GANG?

"A YES.

"Q DO YOU CONSIDER YOURSELF TO
STILL BE A MEMBER OF THAT GANG?

"A NOPE.

"Q HOW LONG WERE YOU A MEMBER
OF THE 135 PIRU GANG?

"A OFFICIALLY A MEMBER ABOUT
TWO OR THREE YEARS.

"Q AND WHAT TERRITORY DO THEY
HAVE?

"A LOS ANGELES, GARDENA,
COMPTON, WHATEVER IT'S CALLED OVER
THERE.

"Q ARE THERE ANY STREETS OR
NEIGHBORHOOD THAT YOU GUYS HANG OUT?

"A FROM MAIN TO AVALON,
ROSECRANS TO 135TH.

"Q WHAT RIVALS DO THEY HAVE?

"A B-13'S.

"Q IS THAT BARRIO 13?

"A BARRIO TRECE. SHOTGUN
CRIPS. PAY BACK CRIPS. TRAYGON
PARK.

"Q 135 PIRU, THAT IS A BLOOD
GANG; IS THAT RIGHT? YOU GUYS ARE
AFFILIATED WITH BLOOD GANGS?

"A PIRUS.

1 "Q OKAY. AND SO ARE CRIP
2 GANGS GENERALLY YOUR RIVALS?

3 "A YES.

4 "Q THE BARRIO 13, DO YOU GUYS
5 EVER CALL THEM -- DO YOU HAVE ANY
6 KIND OF DEROGATORY NICKNAMES FOR
7 THEM?

8 "A BURRITOS. SARRIOS.

9 "Q DID YOU SAY SARRIOS?

10 "A SARRIOS, LIKE
11 S-A-R-R-I-O-S.

12 "Q AND ANYTHING ELSE?

13 "A NOT THAT COMES TO THE HEAD
14 RIGHT NOW.

15 "Q AND IN THE COURTROOM TODAY,
16 DO YOU SEE ANY PEOPLE THAT YOU KNEW
17 FROM THE 135 PIRU GANG?

18 "A NO.

19 "Q DO YOU SEE --

20 "A IN THE WHOLE COURTHOUSE?

21 "Q IN THE WHOLE COURTROOM.

22 "A YEAH, I SEE THREE RIGHT
23 HERE.

24 "Q CAN YOU DESCRIBE WHO YOU
25 SEE, PLEASE?

26 "A WALLACE, KHALILL AND GIBBS.

27 "THE COURT: INDICATING ALL THREE
28 DEFENDANTS.

1 "Q BY MS. BARNES: AND IS
2 MR. WALLACE ALSO A MEMBER OF THE 135
3 PIRU GANG?

4 "A YES.

5 "Q DO YOU KNOW HOW LONG HE'S
6 BEEN INVOLVED WITH 135 PIRUS?

7 "A SINCE THE 90'S.

8 "Q WHAT IS A SHOT-CALLER?

9 "A A SHOT-CALLER? SOMEBODY
10 WHO WOULD SAY I SAY SO.

11 "Q WOULD YOU SAY THAT
12 MR. WALLACE WAS A SHOT-CALLER AT
13 LEAST WHEN YOU WERE IN THE GANG?

14 "A NOT A SHOT-CALLER. BUT FOR
15 THE -- I WOULDN'T SAY NECESSARILY A
16 SHOT-CALLER.

17 "Q DID HE HAVE RESPECT WITHIN
18 THE GANG?

19 "A YES

20 "Q WAS HE ONE OF THE OLDER
21 ONES OR YOUNG MEMBERS OF THE GANG?

22 "A YOUNGER/OLDER.

23 "Q WHAT DOES THAT MEAN?

24 "A I MEAN HE IS NOT OLD, SO I
25 WOULDN'T SAY OLDER. I DON'T KNOW.

26 "Q WAS HE ONE OF THE NEW ONES
27 OR OLD GUYS WHO HAD BEEN AROUND FOR
28 A WHILE?

1 "A ONE OF THE OLD ONES.

2 "Q WHAT ABOUT THE OTHER,
3 MR. KHALILL? WAS HE A MEMBER OF THE
4 135 PIRU GANG?

5 "A YES.

6 "Q WHAT ABOUT HIM? DID HE
7 HAVE RESPECT WITHIN THE GANG?

8 "A YES.

9 "Q AND HOW ABOUT MR. GIBBS?
10 WAS HE ALSO A MEMBER OF THE 135 PIRU
11 GANG?

12 "A YES.

13 "Q WAS HE ONE OF THE OLDER OR
14 ONE OF THE YOUNGER ONES?

15 "A YOUNGER.

16 "Q YOU HAVE A PRIOR
17 CONVICTION; IS THAT TRUE?

18 "A YES.

19 "Q AND THAT'S OUT OF AIRPORT
20 COURT FOR A CHARGE OF FELONY
21 POSSESSION OF MARIJUANA CHARGE; IS
22 THAT RIGHT?

23 "A YES.

24 "Q YOU'RE ON PROBATION FOR
25 THAT?

26 "A YES.

27 "Q AND IN ADDITION TO THAT,
28 YOU WERE ARRESTED AND CHARGED WITH

1 SOME CHARGES HERE IN INGLEWOOD

2 COURT; IS THAT CORRECT?

3 "A YES.

4 "Q AT SOME POINT, DID YOU COME
5 TO COURT AND SETTLE THAT CASE?

6 "A YES.

7 "Q YOU PLED GUILTY TO ALL
8 CHARGES?

9 "A YES. I PLED GUILTY TO
10 EVERYTHING.

11 "Q AND DID YOU SIGN WHAT IS
12 CALLED A PLEA FORM? A FELONY GUILTY
13 PLEA IN THE SUPERIOR COURT? DID YOU
14 READ EVERYTHING ON IT AND INITIAL
15 ALL THE BOXES AND THEN SIGN ON THE
16 BACK?

17 "A YES.

18 "Q AND WE DID THAT HERE IN
19 COURT?

20 "A YES.

21 "Q THE CHARGES THAT YOU WERE
22 CHARGED WITH AND YOU AGREED UPON A
23 SENTENCE WERE ALL INCLUDED ON THE
24 FORM; IS THAT CORRECT?

25 "A YES, IT WAS.

26 "Q YOU HAD A MARIJUANA CASE AT
27 AIRPORT COURT; IS THAT RIGHT?

28 "A YES.

1 "Q THAT'S ON -- WELL, YOU HAVE
2 A CASE OUT OF THE INGLEWOOD COURT,
3 WHICH IS CASE YA075725; IS THAT
4 CORRECT?

5 "A YES.

6 "Q AND THIS GUILTY PLEA FORM
7 I'M HOLDING IN MY HAND FROM
8 INGLEWOOD CASE, THAT TOOK PLACE HERE
9 WITH YOURSELF AND YOUR ATTORNEY,
10 MR. MYERS, AND WITH ME; IS THAT
11 CORRECT?

12 "A YES, IT WAS.

13 "MS. BARNES: YOUR HONOR, I'M
14 MARKING THIS AS PEOPLE'S 1. IT'S
15 THREE PAGES. AND A PHOTOCOPY OF A
16 FELONY GUILTY PLEA IN THE SUPERIOR
17 COURT."

18 "THE COURT: YES.

19 "Q BY MS. BARNES: I'LL GO
20 BACK A MINUTE. I ASKED YOU IF EACH
21 OF THE THREE DEFENDANTS WHETHER OR
22 NOT THEY WERE IN THE 135TH PIRU
23 GANG, AND I WANT TO ASK YOU THEIR
24 MONIKERS OR NICKNAMES.

25 "WHAT IS THE MONIKER OR
26 NICKNAME FOR DENNIS WALLACE?

27 "A POKE.

28 "Q WHAT ABOUT MR. KHALILL?

1 "A K-9.

2 "Q AND THEN WHAT ABOUT
3 MR. GIBBS?

4 "A PEANUT.

5 "Q AND WE'LL GO BACK TO YOUR
6 CHARGE OUT OF THE COURTHOUSE IN
7 PEOPLE'S 1.

8 "YOUR HONOR, MAY I APPROACH?

9 "THE COURT: YES.

10 "Q IS THIS THE FELONY GUILTY
11 PLEA FORM, THREE PAGES, THAT YOU
12 SIGNED AND DATED AND INITIALED ON
13 EACH OF THE BOXES THAT HAVE YOUR
14 INITIALS?

15 "A YES.

16 "Q WAS THAT YOUR -- I'LL READ
17 THIS TO YOU. 'SENTENCING IN
18 YA075725 WILL NOT BE IMPOSED UNTIL
19 CASE YA075709, WALLACE, KHALILL, AND
20 GIBBS, AND YA075724 PROTHRO AND
21 SIMPSON, ARE COMPLETE. AND I HAVE
22 COMPLIED WITH THE TERMS OF THE
23 ATTACHED 8/26/09 LENIENCY AGREEMENT.

24 "I WILL BE RELEASED O.R.
25 PENDING SENTENCING ONCE I'VE
26 TESTIFIED AT THE PRELIMINARY HEARING
27 ON THE ABOVE REFERENCED CASE.'

28 "AND THEN IT SAYS 'SENTENCE

1 TO BE BETWEEN TIME SERVED AND
2 7 YEARS, WHICH IS THE MAXIMUM
3 SENTENCE, 7 YEARS STATE PRISON.'

4 "IS THAT YOUR UNDERSTANDING
5 OF THE PLEA AGREEMENT IN THIS CASE?

6 "A YES.

7 "Q IS IT YOUR UNDERSTANDING
8 THAT HOW MUCH TIME YOU GET WILL BE
9 DECIDED BY THE JUDGE IN THE CASE?

10 "A YES.

11 "MS. BARNES: YOUR HONOR, I HAVE A
12 SECOND DOCUMENT. IF I CAN MARK IT
13 PEOPLE'S NEXT IN ORDER. I THINK
14 IT'S PEOPLE'S 6.

15 "THE COURT: SO MARKED, PEOPLE'S 6.

16 "MS. BARNES: FOR THE RECORD, IT'S
17 THREE PAGES, THE IMMUNITY AND
18 LENIENCY AGREEMENTS DATED AUGUST 26,
19 2009."

20 "MAY I APPROACH THE WITNESS
21 AGAIN?

22 "THE COURT: YES.

23 "Q BY MS. BARNES: I'M GOING TO
24 SHOW YOU WHAT I JUST MARKED PEOPLE'S
25 6, WHICH IS THE THREE-PAGE TYPED
26 IMMUNITY AND LENIENCY AGREEMENT.

27 "DO YOU RECOGNIZE THIS?

28 "A YES, I DO.

1 "Q AT THE TOP, IT HAS YOUR
2 NAME, SIGNATURE, AND A DATE; IS THAT
3 CORRECT?

4 "A YES.

5 "Q AND HERE ON THE THIRD PAGE,
6 IS THAT ALSO YOUR SIGNATURE AND THE
7 DATE, 8/26/09?

8 "A YES.

9 "Q AND IS THIS DOCUMENT
10 ACCURATE TO YOUR UNDERSTANDING OF
11 THE AGREEMENT WITH THE DISTRICT
12 ATTORNEY'S OFFICE?

13 "A YES.

14 "Q AND ONE OTHER THING I WILL
15 ASK YOU ABOUT IS CALLED A PROFFER.

16 "AT SOME POINT BEFORE YOU
17 PLED TO THE CHARGES AND TESTIFIED,
18 DID YOU GO DOWNTOWN TO A ROOM, AND
19 IN THE COURTHOUSE DOWNTOWN WITH YOUR
20 LAWYER AND MYSELF AND DETECTIVE
21 VALENTO, AND SOME OTHER DETECTIVES,
22 DO YOU REMEMBER THAT?

23 "A YES, I DO.

24 "Q AND AT THAT TIME, DID YOU
25 GIVE US A TAPED STATEMENT ABOUT
26 EVERYTHING YOU KNEW ABOUT THIS
27 MURDER OR KNOW OF THE MURDER OF
28 MR. QUEZADA ON JULY 25, 2008, AND

1 ALSO ANOTHER MURDER WITH SEAN
2 SIMPSON AND MR. PROTHRO?

3 "A YES.

4 "Q AND PRIOR TO THAT
5 STATEMENT, DID YOU SIGN SOMETHING
6 CALLED A PROFFER AGREEMENT? A
7 THREE-PAGE DOCUMENT? DO YOU
8 REMEMBER THAT?

9 "A YES, I DO.

10 "MS. BARNES: CAN I MARK IN NEXT IN
11 ORDER AS PEOPLE'S 7?

12 "THE COURT: SO MARKED.

13 "MS. BARNES: MAY I APPROACH?

14 "THE COURT: YES.

15 "Q BY MS. BARNES: I'M GOING
16 TO SHOW YOU A THREE-PAGE PROFFER
17 AGREEMENT DATED AUGUST 21, 2009.
18 AND THE THIRD PAGE, IS THAT YOUR
19 NAME AND SIGNATURE?

20 "A YES.

21 "Q AND IS THAT YOUR
22 UNDERSTANDING OF THE AGREEMENT WITH
23 THE DISTRICT ATTORNEY'S OFFICE AT
24 THE TIME YOU GAVE THE TAPED
25 STATEMENT ON AUGUST 21ST?

26 "A YES.

27 "Q SO WE'LL TALK ABOUT THIS
28 CASE. AT SOME POINT, WERE YOU

1 WORKING WITH A DETECTIVE BY THE NAME
2 OF SEAN SHAW?

3 "A YES.

4 "Q WHERE DID HE WORK OUT OF?
5 DO YOU KNOW?

6 "A I THINK LYWOOD, COMPTON,
7 ONE OF THOSE.

8 "Q WAS HE A SHERIFF'S DEPUTY?

9 "A YES.

10 "Q DID YOU WORK AS AN
11 INFORMANT FOR HIM? DID YOU GIVE HIM
12 INFORMATION?

13 "A YES.

14 "Q DID HE SOMETIMES GIVE YOU
15 MONEY FOR THAT INFORMATION?

16 "A YES.

17 "Q AND DO YOU KNOW HOW MUCH
18 MONEY HE GAVE YOU?

19 "A IT WAS A COUPLE OF
20 THOUSAND.

21 "Q AND WAS IT ALL AT ONCE, OR
22 OVER A PERIOD OF TIME?

23 "A INCREMENTS.

24 "Q AND AT ANY POINT, DID YOU
25 TELL SEAN SHAW THAT YOU HAD
26 INFORMATION ABOUT A MURDER THAT TOOK
27 PLACE ON JULY 25, 2008, ON AVALON
28 BOULEVARD?

1 "A YES.

2 "Q HOW DID THAT HAPPEN? DID

3 YOU CALL HIM UP, OR WHAT HAPPENED?

4 "A I TOLD THE DEPUTY TO GO GET

5 SOMEBODY, AND I SPOKE TO HIM.

6 "Q AND TOLD HIM WHAT?

7 "A I TOLD THEM -- I TOLD THEM

8 (SIC) I THINK IT WAS I WANT TO SPEAK

9 TO HOMICIDE, OR SOMETHING LIKE THAT.

10 "Q AND DID YOU END UP SPEAKING

11 TO DETECTIVE VALENTO AND HIS

12 PARTNER, DETECTIVE ANDERSON?

13 "A YES.

14 "Q DID YOU TELL THEM WHAT YOU

15 KNEW?

16 "A YES.

17 "Q WERE YOU PRESENT WHEN

18 MR. QUEZADA WAS SHOT?

19 "A NO.

20 "Q DID YOU HEAR ABOUT IT FROM

21 OTHER PEOPLE?

22 "A YES.

23 "Q DID YOU -- ABOUT THE

24 SHOOTING OF MR. QUEZADA FROM ANY --"

25 EXCUSE ME.

26 "DID YOU HEAR ABOUT THE

27 SHOOTING OF MR. QUEZADA FROM ANY OF

28 THE THREE DEFENDANTS IN THIS CASE?

1 "A YES.

2 "Q FROM ONE, OR MORE THAN ONE?

3 "A TWO.

4 "Q WHICH ONE DID YOU TALK TO

5 FIRST?

6 "A I TALKED ABOUT THE DETAILS

7 OF THE MURDER WITH K-9.

8 "Q MR. KHALILL?

9 "A YES.

10 "Q WHERE DID THIS CONVERSATION

11 TAKE PLACE? WAS IT IN PERSON, OR

12 WAS IT ON THE PHONE?

13 "A IN DETAIL OVER THE PHONE.

14 "Q TELL ME WHAT YOU RECALL

15 ABOUT THE PHONE CONVERSATION.

16 "A I CALLED HIM. I TOLD

17 WHAT'S UP. AND A LITTLE CHITCHAT.

18 AND I ASKED HIM WHAT HAPPENED.

19 AND --

20 "Q WHEN DID THE CONVERSATION

21 TAKE PLACE ON THE PHONE?

22 "A I WANT TO SAY A WEEK PRIOR.

23 A WEEK AFTER THAT MURDER.

24 "Q OKAY. SO YOU TALKED TO

25 K-9, AND HE TELLS YOU WHAT WAS SAID?

26 "A HE SAID THEY CAUGHT A

27 SARRIO SLIPPING, AND HE SAID --

28 "Q OKAY. SO DEYAA KHALILL, HE

1 SAID 'I CAUGHT A SARRIO SLIPPING'?

2 "A YEAH, HE SAID THAT.

3 "Q I'LL ASK YOU THIS. WHAT IS
4 A SARRIO?

5 "A A B-13.

6 "Q BARRIO 13 GANG MEMBER?

7 "A YES.

8 "Q AND WHEN HE SAID 'I GOT A
9 SARRIO SLIPPING,' WHAT DOES THAT
10 MEAN TO YOU?

11 "A EITHER HE SHOT OR KILLED
12 HIM.

13 "Q K-9-SHOT OR KILLED HIM?

14 "A CAUGHT SOMEBODY OFF GUARD,
15 AND HE SHOT OR KILLED SOMEBODY WHO
16 WAS OFF GUARD HANGING OUT.

17 "Q AND SO WHAT WAS SAID AFTER
18 K-9 SAID 'I CAUGHT A SARRIO
19 SLIPPING'?

20 "A HE SAID HE HAD SEEN HIM.
21 HIM AND WALLACE. AND THEY DROVE AND
22 WENT BACK TO 139 AND WALKED OVER AND
23 THEY DUMPED HIM OUT. THEY ASKED
24 WHERE HE WAS FROM AND HE SAID THAT
25 HIM AND PEANUT SHOT AND KILLED HIM.

26 "Q WHAT'S ON 139TH STREET?

27 "A THERE IS A HOUSE ON THE
28 EAST SIDE OF AVALON. THERE IS A

1 LITTLE CORNER HOUSE WHERE SOME
2 MEXICANS USED TO LIVE, AND THERE'S A
3 DUDE THAT HANGS OUT RIGHT THERE.

4 "Q NOW, THE PERSON THAT WAS
5 SHOT, DID YOU KNOW THAT PERSON?

6 "A I DIDN'T KNOW HIM
7 PERSONALLY. BUT I RAN INTO HIM A
8 COUPLE OF MONTHS BEFORE THAT.

9 "Q DID YOU GO UP TO HIM AND
10 ASK HIM WHAT GANG HE WAS FROM?

11 "A YEAH. I SEEN HIM, AND I
12 ASKED HIM -- I TOLD HIM WHAT THAT
13 ATHENS PARK LIKE SO I CAN TRICK HIM
14 TO SEE IF HE WAS B-13. AND THEN HE
15 THREW UP A P.

16 "THEN I ASKED HIM 'WHAT'S
17 THAT?' AND HE SAID 'SOUTH SIDE
18 PLAYERS.'

19 "AND THEN I TOLD HIM LIKE,
20 MOTHERFUCKER'S GONNA KILL YOU
21 BECAUSE THEY THINK YOU FROM B-13.
22 AND HE JUST NODDED HIS HEAD.

23 "I WENT IN THE ALLEY AND
24 THEN I SAW THAT SOUTH SIDE PLAYERS
25 HIT IT UP AND MADE A U-TURN AND WENT
26 BACK TO 142ND AND I TOLD A COUPLE OF
27 THE EX-HOMEBOYS WHAT I SAW. AND I
28 TOLD THEM WHAT HAPPENED.

1 "Q AND YOU SAID YOU SAW THE
2 SOUTH SIDE PLAYERS HIT UP. DOES
3 THAT MEAN YOU SAW GRAFFITI ON THE
4 WALL?

5 "A IN THE ALLEY ON THE SIDE OF
6 THE HOUSE, THERE WAS 'SS PLAYERS.'

7 "Q AND NOW YOU SAID THAT HE
8 THREW UP A P. DID HE THROW UP A
9 GANG SIGN?

10 "A "HE WENT LIKE THIS.

11 "Q OKAY.

12 "A I THOUGHT HE WAS PIRU OR
13 SOMETHING. JUST TRYING TO BE FUNNY
14 OR SOMETHING. I ASKED 'WHAT'S
15 THAT?' HE TOLD ME IT'S SOUTH SIDE
16 PLAYERS.

17 "Q ARE YOU FAMILIAR WITH SOUTH
18 SIDE PLAYERS?

19 "A I HEARD OF THEM, BUT I
20 DON'T KNOW WHERE THEY ARE AT LIKE
21 THAT.

22 "Q BUT THEY ARE A RIVAL TO
23 YOUR GANG?

24 "A NO.

25 "Q AND DID YOU WARN HIM THAT
26 HE APPEARS TO BE A RIVAL TO YOUR
27 GANG?

28 "A YEAH. I GAVE HIM A FAIR

1 WARNING.

2 "Q WHAT DID YOU SAY?

3 "A I TOLD HIM 'HOMEYS GONNA
4 GET YOU BECAUSE THEY THINK YOU B-13.
5 STOP HANGING OUT LIKE THIS.' AND HE
6 JUST NODDED HIS HEAD LIKE I GUESS HE
7 WAS SCARED, AND OKAY.

8 "Q DO YOU KNOW WHEN THAT
9 HAPPENED?

10 "A IT WAS EARLIER. I CAN'T
11 SAY. IT WAS A COUPLE MONTHS BEFORE
12 THAT. TWO MONTHS OR SOMETHING.

13 "Q SO WE'LL GO BACK TO YOUR
14 CONVERSATION WITH K-9. K-9 TOLD YOU
15 THAT HE WAS DRIVING BY 139TH, AND HE
16 SAW -- AND DID YOU KNOW THAT KID'S
17 NAME?

18 "A NO, I DIDN'T KNOW THE NAME.

19 "Q GOING BACK TO THE
20 CONVERSATION WITH K-9, YOU SAID AT
21 ONE POINT K-9 SAID THAT HE AND
22 WALLACE DROVE BY SOMEWHERE; IS THAT
23 RIGHT?

24 "A YES.

25 "Q AND THEY SAW SOMETHING.

26 "A YES.

27 "Q AND JUST -- OKAY. YOU
28 ALREADY TOLD US BEFORE WHEN THEY

1 DROVE, YOU SAID THAT YOU TALKED TO
2 THE K-9, AND HE SAID THAT HE DROVE
3 BY AND SAW SOMEONE STANDING THERE?

4 "A YES.

5 "Q AND DID K-9 TELL YOU
6 THAT -- WHAT DID K-9 TELL YOU THAT
7 HE SAW?

8 "A HE SAID HE SAW A SARRIO.

9 "Q SO SOMEONE HE BELIEVED TO
10 BE A BARRIO 13?

11 "A YES.

12 "Q WHO WAS HE WITH AT THE
13 TIME, ACCORDING TO WHAT HE TOLD YOU?

14 "A WITH POKE.

15 "Q DID HE TELL YOU WHAT CAR
16 THEY WERE DRIVING IN?

17 "A NO, I DON'T THINK HE DID.

18 "Q AND THEN WHERE DID HE TELL
19 YOU THEY -- WHAT DID HE TELL YOU
20 THEY DID, K-9, POKE, AND WHAT DID
21 K-9 TELL YOU THEY DID AFTER HE DROVE
22 BY AND SAW THE SARRIO?

23 "A WENT BACK TO THE HOUSE ON
24 139TH AND TOLD THE HOMEYS, AND I
25 GUESS --

26 "Q THEY WENT TO K-9'S HOUSE?

27 "A YES.

28 "Q AND DID HE LIVE ON 139TH?

1 "A YES.

2 "Q AND DID K-9 TELL YOU WHAT
3 HAPPENED ONCE THEY WENT BACK TO THE
4 HOUSE?

5 "A HE DIDN'T SAY WHAT THEY
6 WERE TALKING ABOUT OR NOTHING. BUT
7 HE JUST SAID -- HE DIDN'T SAY WHAT
8 THEY WERE TALKING ABOUT, HE JUST
9 SAID THAT -- HE SAID THEY GOT
10 BURNERS AND WALKED OVER.

11 "Q WHAT IS A BURNER?

12 "A A GUN.

13 "Q YOU SAID K-9 SAID THEY GOT
14 BURNERS. DID K-9 TELL YOU HOW MANY
15 BURNERS THEY GOT?

16 "A I CAN'T REMEMBER THAT.

17 "Q AND DID I ASK YOU WHAT A
18 BURNER IS?

19 "A YES, A GUN.

20 "Q DID K-9 TELL YOU WHO GOT
21 THE BURNERS?

22 "A WHO GOT THEM?

23 "Q DID YOU SAY BURNER OR
24 BURNERS?

25 "A BURNERS WITH AN S.

26 "Q PLURAL?

27 "A YES.

28 "Q DID K-9 SAY WHO GOT THE

1 BURNERS, OR DID HE JUST SAY 'WE GOT
2 THE BURNERS'?

3 "A HE SAID 'WE GOT THE
4 BURNERS.'

5 "Q AND WHAT DID K-9 SAY NEXT?

6 "A THAT THEY WALKED DOWN THIS
7 STREET GOING TOWARDS AVALON. HIM
8 AND PEANUT. K-9 ASKED HIM WHERE HE
9 WAS FROM. AND THEY SHOT HIM.

10 "Q K-9 ASKED WHO WHERE HE WAS
11 FROM?

12 "A SOUTH SIDE PLAYER KID.

13 "Q AND WHAT DOES "WHERE YOU
14 FROM" MEAN?

15 "A WHAT HOOD YOU'RE FROM.

16 "Q WHAT GANG?

17 "A YES.

18 "Q AND DID K-9 TELL YOU WHO
19 WENT WITH THEM WHEN THEY LEFT THE
20 HOUSE TO GO TO THE SOUTH SIDE PLAYER
21 KID WHO WAS THERE?

22 "A HE DIDN'T LIKE EXACTLY SAY
23 THE NAMES. BUT HE SAID 'WE.'

24 "Q AND DID K-9 TELL YOU WHO
25 SHOT THE SOUTH SIDE PLAYER KID? WHO
26 ACTUALLY FIRED THE GUN?

27 "A HE SAID HIM AND PEANUT.

28 "Q WHAT DID HE SAY ABOUT THAT?

1 "A HE SAID THAT THEY DUMPED
2 HIM OUT.
3 "Q WHAT DOES THAT MEAN?
4 "A DUMPED MEANS SHOT ROUNDS IN
5 HIM.
6 "Q WHAT DID K-9 TELL YOU AFTER
7 THAT?
8 "A HE SAID THEY RAN BACK TO
9 139TH. HE SAID THAT THEY WENT BACK
10 TO THE NINE AND POKE HOPPED INTO THE
11 TRUCK AND LEFT.
12 "Q DO YOU KNOW WHAT KIND OF
13 TRUCK POKE HAD AT THE TIME?
14 "A TAHOE.
15 "Q CHEVY TAHOE?
16 "A YES.
17 "Q WHAT COLOR?
18 "A DARK BLUE.
19 "Q DID K-9 TELL YOU ANYTHING
20 ELSE ON THAT PHONE CONVERSATION?
21 "A I DON'T THINK SO.
22 "Q DID YOU DESCRIBE THE PHONE
23 CONVERSATION TO DETECTIVE VALENTO
24 WHEN HE INTERVIEWED YOU THE FIRST
25 TIME?
26 "A YES, I DID.
27 "Q AND DO YOU REMEMBER WHEN WE
28 WERE DOWNTOWN IN THAT COURTHOUSE AND

1 WE WERE ALL IN THE ROOM TOGETHER,
2 AND HE ASKED ABOUT THAT PHONE
3 CONVERSATION?

4 "A AND I SAID I COULDN'T
5 REMEMBER.

6 "Q DID YOU JUST NOT REMEMBER
7 IT THEN, OR WHAT HAPPENED?

8 "A I JUST -- MY MIND, YOU
9 KNOW. LIKE WHERE I GOT HOUSED AT
10 AND ALL THAT STRESS, I GOT -- I HAD
11 A GANG PHONE CONVERSATION ABOUT
12 SHOOTINGS AND THAT KIND OF STUFF.

13 "Q HAVE YOU HAD ANY OTHER
14 CONVERSATION WITH K-9 BESIDES THE
15 ONE ON THE PHONE REGARDING THE
16 SHOOTING OF THE SOUTH SIDE PLAYER
17 KID?

18 "A THAT SAME NIGHT WHEN -- NOT
19 IN DETAIL. JUST ON THE SAME NIGHT
20 THAT HE GOT KILLED.

21 "Q THE SOUTH SIDE PLAYER KID?

22 "A YES.

23 "Q WHERE DID THAT CONVERSATION
24 TAKE PLACE?

25 "A ON 139TH.

26 "Q AT K-9'S HOUSE?

27 "A YES.

28 "Q WERE YOU AT K-9'S HOUSE

1 WHEN -- YOU WERE AT K-9'S HOUSE THAT
2 DAY BEFORE THE KID WAS SHOT?

3 "A WHEN THE KID WAS SHOT? I
4 WASN'T.

5 "Q WHEN WHEN DID YOU GET
6 THERE?

7 "A I DON'T KNOW EXACTLY WHAT
8 TIME I GOT THERE. I SEEN ALL THE
9 POLICE, AND IT WAS NIGHTTIME,
10 BECAUSE I WAS OVER THERE EARLIER
11 THAT DAY. AND THE SUN WAS STILL UP,
12 AND I LEFT AND CAME BACK, AND THE
13 SUN WAS DOWN, AND IT WAS TAPED UP
14 AND COPS EVERYWHERE.

15 "Q WHY DID YOU GO BACK THERE?

16 "A BECAUSE I GOT A -- SOMEBODY
17 WAS WITH ME AND GOT A TEXT MESSAGE
18 THAT SAID THEY WAS SHOOTING OVER
19 HERE. SO I THOUGHT IT WAS A REASON
20 TO GO OVER THERE.

21 "Q SO WHAT HAPPENED WHEN YOU
22 WENT OVER THE NIGHT OF THE INCIDENT
23 ON JULY 25, 2008? DO YOU KNOW WHAT
24 TIME YOU GOT THERE?

25 "A NO. I DON'T REMEMBER WHAT
26 TIME. IT WAS NIGHTTIME.

27 "Q AND YOU'RE SAYING THE
28 POLICE TAPE WAS ALREADY UP?

1 "A THE CARS WERE EVERYWHERE
2 AND TAPE EVERYWHERE.
3 "Q WHERE DID YOU GO WHEN YOU
4 GOT THERE?
5 "A TO K-9'S HOUSE.
6 "Q HOW DID YOU GET THERE?
7 "A THIS GIRL DROPPED ME OFF.
8 "Q WHAT DID YOU DO WHEN YOU
9 GOT THERE?
10 "A I WALKED THROUGH THE BACK,
11 AND I WENT IN THE HOUSE.
12 "Q AND WHO WAS THERE?
13 "A IF I REMEMBER CORRECTLY, IT
14 WAS K-9, PEANUT, KNIFE, AND I THINK
15 THAT GIRL, HIS GIRL NAMED CHARLENE.
16 "Q WHO IS CHARLENE?
17 "A THEY CALL HER PIRU
18 PRINCESS.
19 "Q WAS SHE RELATED TO SOMEONE
20 OR --
21 "A SHE LIVED ON THAT STREET.
22 "Q SO YOU GO IN THE HOUSE, AND
23 WHAT HAPPENED THEN? DOES ANYONE
24 TALK ABOUT THE INCIDENT?
25 "A IN DETAILS, NO. BUT I
26 ASKED K-9 WHAT HAPPENED. AND HE
27 ASKED ME ABOUT STUPID, OR SOMETHING.
28 AND I TOLD HIM THAT THE -- I TOLD

1 HIM THAT THE KID WAS NOT A SARRIO,
2 AND HE JUST SAID 'KICK MEXICANS.'
3 "Q DID YOU HAVE ANY OTHER
4 CONVERSATIONS WITH K-9 ABOUT THE
5 INCIDENT THAT YOU CAN RECALL TODAY?

6 "A YOU MEAN ANY TIME AT ALL,
7 RIGHT?

8 "Q ANY TIME AT ALL THAT YOU
9 CAN REMEMBER THAT YOU HAVE NOT TOLD
10 US ABOUT ALREADY.

11 "A NO.

12 "Q WE'LL TALK ABOUT PEANUT.
13 YOU SAID PEANUT, MR. GIBBS, SAID
14 SOME THINGS TO YOU; IS THAT CORRECT?

15 "A YES.

16 "Q AND WHEN WAS THE FIRST TIME
17 YOU TALKED TO PEANUT ABOUT THE
18 SHOOTINGS?

19 "A IN DETAIL LIKE?

20 "Q WELL, WHAT WAS THE FIRST
21 TIME YOU TALKED TO HIM ABOUT IT AT
22 ALL?

23 "A IT WAS THAT NIGHT.

24 "Q THE NIGHT THAT YOU WENT TO
25 THE HOUSE?

26 "A YES.

27 "Q AND WHERE DID THAT
28 CONVERSATION TAKE PLACE?

1 "A WE WERE IN THE LITTLE -- WE
2 CALLED IT THE LITTLE BACK HOUSE.
3 WHATEVER BACK PART OF THE HOUSE
4 PATIO.

5 "Q WAS THIS ALSO AT K-9'S
6 HOUSE?

7 "A YES.

8 "Q WHAT WAS THAT CONVERSATION?

9 "A I TOLD HIM -- AFTER I TOLD
10 K-9 LIKE I SAID SOMETHING -- I
11 FORGOT WHAT I SAID, BUT I SAID
12 'HOMEBODY WASN'T NO BARRIO.' AND HE
13 WAS LIKE 'FUCK SARRIOS.' AND THEN
14 THAT WAS ABOUT IT.

15 "Q DID YOU EVER TALK TO PEANUT
16 AGAIN ABOUT THE INCIDENT?

17 "A YEAH. IT WAS ABOUT
18 PROBABLY -- SHIT, TWO OR
19 THREE MONTHS LATER. TWO MONTHS
20 LATER.

21 "Q WHERE DID THAT TAKE PLACE?

22 "A I DON'T KNOW. SOMEWHERE IN
23 COMPTON AT SOME LITTLE -- WHAT WE
24 CALL A FUNCTION.

25 "Q OKAY. AND WAS THIS IN
26 PERSON?

27 "A YES.

28 "Q WERE THERE OTHER PEOPLE

1 THERE, OR JUST THE TWO OF YOU?

2 "A IT WAS FROM OUR
3 NEIGHBORHOOD. JUST ME, PEANUT AND
4 BABY SPOKE.

5 "Q IS IT SPOKE? S-P-O-K-E?
6 OR SMOKE, LIKE SOMETHING YOU SMOKE?

7 "A SPOKE. S-P-O-K-E.

8 "Q OKAY. AND WAS IT AT
9 SOMEONE'S HOUSE, OR A BAR, OR A
10 RESTAURANT?

11 "A NO. THE COMPTON CRIPS HAD
12 A HOUSE THAT HAD LIKE A POOL OR
13 SOMETHING. IT WAS A LITTLE LIKE
14 SUMMER GET-TOGETHER.

15 "Q AND WHAT HAPPENED THAT DAY?
16 WHAT WAS THE CONVERSATION?

17 "A I NEVER GOT TO TALK TO
18 PEANUT ABOUT IT TRYING TO FIND OUT
19 WHAT HAPPENED. AND THEN I TOLD HIM,
20 I ASKED HIM WHAT HAPPENED. I FORGOT
21 HOW I ASKED HIM, BUT HE SAID B.A.'S
22 HOMEY DUMPED HIM OUT.

23 "HE SAID THAT HIM AND K-9
24 WALKED OVER THERE, AND K-9 ASKED HIM
25 WHERE HE'S FROM, AND HE SHOT HIM.
26 AND THEN HE SAID THAT HE WAS STILL
27 ON TOP OF HIM SHOOTING HIM. AND
28 POKE WAS ACROSS THE STREET.

1 "Q WHEN YOU SAY HE WAS ON TOP
2 OF HIM SHOOTING HIM, PEANUT SAID
3 PEANUT WAS ON TOP OF HIM OR K-9 WAS
4 ON TOP OF HIM?

5 "A PEANUT WAS ON TOP OF HIM
6 AND THEN TOLD HIM HE WAS EXTRAED
7 OUT. BECAUSE I WAS WONDERING LIKE
8 TWO PEOPLE AND TWO GUNS, ALL THESE
9 BULLETS FOR THAT ONE KID. I MEAN, I
10 DIDN'T SAY IT, BUT I WAS THINKING
11 THAT HE WAS TOLD EXTRAED OUT.

12 "Q WHAT IS EXTRAED OUT?

13 "A PUTTING TWO CENTS IN,
14 PUTTING TOO MUCH -- PUTTING EXTRAS
15 ON IT. PUTTING MORE IN THE STORY
16 THAN IT WAS.

17 "Q EXAGGERATING?

18 "A YES.

19 "Q OKAY. WHAT DID HE SAY WHEN
20 YOU TOLD HIM THAT HE WAS EXTRAED
21 OUT?

22 "A I CAN'T REMEMBER WHAT HE
23 SAID, BUT HE TOLD ME SOMETHING.

24 "Q WHAT HAPPENED NEXT? WHAT
25 DID HE SAY NEXT?

26 "A THAT'S WHEN BABY SPOKE CAME
27 IN THE CONVERSATION AND HE WALKED
28 OVER THERE, AND BABY SPOKE CAME

1 OVER. AND I THINK HE SAID --

2 "Q WHAT DID BABY SPOKE SAY?

3 "A HE SAID --

4 "Q BEFORE I DO THAT, I'LL ASK

5 YOU THIS. BEFORE WE MOVE ON TOO

6 FAR, WHEN YOU TALKED TO PEANUT, YOU

7 MENTIONED -- DID PEANUT MENTION

8 POKE?

9 "A YES.

10 "Q WHAT DID PEANUT SAY ABOUT

11 POKE?

12 "A HE SAID POKE WAS ACROSS THE

13 STREET ON OUR SIDE OF AVALON.

14 "Q OKAY.

15 "A JUST POSTED UP.

16 "Q WHAT DOES 'POSTED UP' MEAN?

17 "A FOR THAT SITUATION, FROM MY

18 KNOWLEDGE, AND HOW IT WOULD WORK,

19 POSTED UP, HE WAS THERE WATCHING

20 JUST TO WATCH. POSTED UP WITH THE

21 GUNS TO MAKE SURE IF ANYBODY TRIED

22 TO DO SOMETHING, YOU JUMP IN AND

23 START SHOOTING, OR WHATEVER.

24 "Q LIKE A LOOKOUT?

25 "A A LOOKOUT AND COVER, YOU

26 KNOW.

27 "Q OKAY. DID PEANUT SAY

28 ANYTHING ELSE ABOUT POKE?

1 "A NO. I CAN'T REMEMBER.
2 "Q OKAY. SO YOU SAID BABY
3 SPOKE CAME OVER; IS THAT CORRECT?
4 "A YES.
5 "Q WAS PEANUT STILL THERE WHEN
6 BABY SPOKE CAME OVER?
7 "A YES.
8 "Q WAS THERE A CONVERSATION
9 BETWEEN YOURSELF AND PEANUT AND BABY
10 SPOKE?
11 "A YES.
12 "Q THEY ARE TALKING TO PEANUT
13 AT SOME POINT; IS THAT CORRECT?
14 "A YES.
15 "Q I'M TALKING ABOUT THE PARTY
16 WHERE THERE WAS A POOL; OKAY?
17 "A YES.
18 "Q AT SOME POINT, YOU SAID
19 BABY SPOKE CAME UP; IS THAT CORRECT?
20 "A YES.
21 "Q DID BABY SPOKE SPEAK ABOUT
22 THE INCIDENT AT ALL?
23 "A YES. HE SAID --
24 "Q YOU JUST TESTIFIED THAT YOU
25 WERE HAVING A CONVERSATION WITH
26 PEANUT ABOUT WHEN THE SOUTH SIDE
27 PLAYER GOT KILLED; IS THAT CORRECT?
28 "A YES.

1 "Q THAT'S WHAT I'M TALKING
2 ABOUT. SO YOU'RE TALKING TO PEANUT,
3 AND YOU TESTIFIED THAT BABY SPOKE
4 COMES UP.

5 "A YES.

6 "Q AND DID BABY SPOKE ALSO
7 START TO TALK ABOUT THE SHOOTING OF
8 THE SOUTH SIDE PLAYER KID?

9 "A YES.

10 "Q AND WHEN BABY SPOKE MADE
11 STATEMENTS, WAS PEANUT STILL
12 STANDING THERE?

13 "A YES. PEANUT WAS RIGHT NEXT
14 TO ME.

15 "Q WHAT DID BABY SPOKE SAY?

16 "A HE SAID THAT HE HAD TRUCKED
17 IT. THAT THE HOMEYS GAVE HIM THE
18 GUNS AND THAT HE HAD TO HIT THE WALL
19 AND TO GO HIS HOUSE AND PUT THE GUNS
20 UP.

21 "Q WHAT DOES 'TRUCK IT' MEAN?

22 "A RUN FAST, RUN.

23 "Q AND WHAT DID HE HAVE?

24 "A HE HAD THE NINE AND 40.

25 "Q BABY SPOKE SAID HE HAD TO
26 TRUCK IT; IS THAT CORRECT?

27 "A YES.

28 "Q WHAT DID BABY SPOKE SAY

1 ABOUT TRUCK IT?

2 "A HE SAID -- DO YOU WANT ME
3 TO BREAK IT DOWN TO LAYMAN'S TERMS?

4 "Q THAT WOULD BE GREAT.

5 "A THAT HE HAD TO -- THAT THE
6 HOMEYS GAVE HIM THE GUNS. A NINE
7 AND 40, AND HE HAD TO JUMP OVER
8 K-9'S BACK WALL THAT LEADS TO 138TH,
9 WHICH IS WHERE BABY SPOKE LIVES.

10 "Q AND DID BABY SPOKE SAY
11 WHICH HOMEYS GAVE HIM THE GUNS, OR
12 DID HE SAY HOMEYS? WHAT WERE HIS
13 EXACT WORDS?

14 "A HE SAID THE HOMEYS.

15 "Q AND DID YOU ASK HIM WHO
16 GIVE HIM THE GUNS?

17 "A NO, BECAUSE IT WAS OBVIOUS
18 TO ME. NO BECAUSE IT WAS OBVIOUS
19 WHO HE WAS TALKING ABOUT.

20 "Q WAS BABY SPOKE PRESENT WHEN
21 YOU WERE TALKING TO PEANUT ABOUT THE
22 INCIDENT?

23 "A WAS HE EXACTLY LIKE BY ME?

24 "Q WAS HE PARTICIPATING IN THE
25 CONVERSATION ABOUT THE INCIDENT WHEN
26 YOU WERE TALKING TO PEANUT?

27 "A NO, NOT REALLY.

28 "Q OKAY. SO WHEN HE WALKED

1 UP, WHAT WAS THE FIRST THING THAT
2 BABY SPOKE SAID WHEN HE WALKED UP?

3 "A WELL, THEN HE -- WHEN HE
4 WALKED UP ME (SIC) AND PEANUT WAS
5 TALKING ABOUT IT AND HE KNEW --

6 "Q WERE YOU AND PEANUT TALKING
7 ABOUT THE SHOOTING OF THE SOUTH SIDE
8 PLAYER?

9 "A I DON'T KNOW WHAT THE
10 STATEMENT WAS SAYING BACK AND FORTH,
11 BUT BABY SPOKE KNEW OUR
12 CONVERSATION.

13 "Q DID BABY SPOKE WALK UP
14 WHILE YOU WERE STILL TALKING TO
15 PEANUT ABOUT THE SHOOTING OF THE
16 SOUTH SIDE PLAYER?

17 "A YES

18 "Q AND WHILE TALKING TO
19 PEANUT, DID BABY SPOKE THEN SAY
20 SOMETHING?

21 "A YES.

22 "Q AND WAS THAT THE STATEMENT
23 YOU JUST SAID ABOUT TRUCK IT WITH
24 THE --

25 "A YES. RUN WITH THE NINE AND
26 40.

27 "Q DID BABY SPOKE SAY ANYTHING
28 ELSE DURING THE INFORMATION (SIC)

1 BETWEEN YOURSELF AND BABY SPOKE AND
2 PEANUT?

3 "A I ASKED HIM. I TOLD HIM HE
4 WAS -- I TOLD HIM HE WAS FUCKED UP
5 FOR BEATING UP DRIP.

6 Q AND WHO IS DRIP?

7 A HIS NEXT DOOR -- BABY SPOKE'S NEXT DOOR
8 NEIGHBOR.

9 "Q DID HE (SIC) HAVE ANYTHING
10 TO DO WITH THIS INCIDENT?

11 "A YES. I MEAN --

12 "Q WHY DID HE BEAT UP DRIP?

13 "A BECAUSE BABY SPOKE SAID HE
14 PUT THE GUNS IN THE TRASH CAN.

15 "Q WHEN YOU WERE TALKING TO
16 PEANUT, DID HE TELL YOU -- DID HE
17 TELL YOU WHETHER OR NOT BABY SPOKE
18 WAS INVOLVED IN THE ACTUAL SHOOTING
19 INCIDENT?

20 "A CAN'T REMEMBER.

21 "Q WOULD IT REFRESH YOUR
22 RECOLLECTION TO LOOK AT YOUR
23 STATEMENT BACK WHEN YOU WERE DOWN AT
24 COUNTY JAIL BACK ON AUGUST 21, 2009?

25 "A WOULD IT REFRESH ME TO LOOK
26 AT IT?

27 "Q WOULD IT HELP YOU REMEMBER?

28 "A YES. I MEAN --

1 "Q OKAY.

2 "MS. BARNES: MAY I APPROACH?

3 "THE COURT: YES.

4 "MS. BARNES: I'M ON PAGE 83.

5 "Q DID THAT HELP YOU REMEMBER?

6 "A YES.

7 "Q SO WHEN YOU WERE TALKING TO

8 PEANUT, DID YOU GUYS TALK ABOUT BABY

9 SPOKE AT ALL IN RELATION TO THE

10 SHOOTING?

11 "A WELL, WE DIDN'T REFRESH

12 THAT. HE SAID THAT BABY SPOKE WAS

13 SUPPOSED TO GO DO IT, DO THE

14 SHOOTING OR MURDER, AND THAT HE

15 BITCHED OUT.

16 "Q WHAT DOES 'BITCHED OUT'

17 MEAN?

18 "A SCARED TO GO DO IT. SCARED

19 TO PUT IN WORK.

20 "Q WELL, WHAT DID PEANUT SAY

21 NEXT?

22 "A HE SAID THAT THOSE THREE,

23 POKE, K-9, AND PEANUT, THEY WALKED

24 OVER THERE.

25 "Q AROUND THE TIME OF THE

26 INCIDENT BACK IN JULY OF 2008,

27 AROUND THAT TIME, HAD YOU EVER SEEN

28 ANYONE AT K-9'S HOUSE WITH ANY KIND

1 OF GUN?

2 "A YES.

3 "Q TELL US WHAT YOU SAW.

4 "A I SAW -- CAN YOU ASK THE
5 QUESTION AGAIN?

6 "Q BACK AROUND IN 2008 AROUND
7 THE TIME OF THE INCIDENT, DID YOU
8 EVER SEE ANYONE AT K-9'S HOUSE WITH
9 A GUN?

10 "A YES. I SAW IT WAS A COUPLE
11 HANDGUNS OVER THERE. I SAW A
12 9-MILLIMETER. IT WAS TWO OF THEM
13 THAT LOOKED THE SAME. THEY WERE --
14 I THINK THEY WERE A LITTLE BLACK AND
15 GRAY SMITH AND WESSONS.

16 "AND THEN I SAW THE DESERT
17 EAGLE 40 THAT SOMEBODY BROUGHT OVER
18 THERE, AND IT WAS KIND OF DARK GRAY,
19 BLACK ONE. IT WAS REAL HEAVY. I
20 GRABBED IT AND I FELT IT. AND ONE
21 OF THE NINES, I SEEN ONE OF THE
22 NINES AND A SMITH AND WESSON THAT
23 HAD A REAL LONG CLIP IN IT. I THINK
24 IT WAS A 32-SHOT.

25 "Q AN EXTENDED CLIP?

26 "A YES, AN EXTENDED CLIP.

27 "Q I'LL SHOW YOU SOME PICTURES
28 NOW.

1 "MS. BARNES: I AM, YOUR HONOR, UP
2 TO PEOPLE'S 8?

3 "THE COURT: YES.

4 "MS. BARNES: YOUR HONOR, I HAVE
5 PHOTOGRAPHS. IF I CAN MARK THEM AS
6 PEOPLE'S 8.

7 "THE COURT: SO MARKED.

8 "MS. BARNES: PEOPLE'S 9, PEOPLE'S
9 10, PEOPLE'S 11, AND PEOPLE'S 12,
10 AND FINALLY PEOPLE'S 13.

11 "THE COURT: SO MARKED.

12 "MS. BARNES: MAY I APPROACH?

13 "THE COURT: YES

14 "Q BY MS. BARNES: I'M GOING
15 TO SHOW YOU A PHOTOGRAPH MARKED AS
16 PEOPLE'S 8, ONE PAGE SHEET OF PAPER
17 WITH A PHOTOGRAPH ON IT. DO YOU
18 RECOGNIZE THE PICTURE?

19 "A YES.

20 "Q WHO IS THAT?

21 "A BABY SPOKE.

22 "Q AND I'M GOING TO SHOW YOU A
23 PICTURE I MARKED AS PEOPLE'S 9. DO
24 YOU RECOGNIZE THAT PICTURE?

25 "A YES.

26 "Q WHO IS THAT?

27 "A THAT'S PEANUT.

28 "Q DEFENDANT GIBBS?

1 "A YES.

2 "Q AND DID YOU IDENTIFY HIM IN
3 THE PICTURE TO DETECTIVE VALENTO IN
4 AN INTERVIEW?

5 "A YEAH. I TOLD HIM IT WAS A
6 MYSPACE PICTURE AND IT WAS RIGHT
7 DOWN ON 142ND.

8 "Q SO THE PICTURE WAS TAKEN ON
9 142ND?

10 "A YES.

11 "Q AND SHOWING YOU WHAT I'VE
12 MARKED AS PEOPLE'S 10. DO YOU
13 RECOGNIZE THAT PHOTOGRAPH?

14 "A YES.

15 "Q WHO IS THAT?

16 "A THAT'S POKE.

17 "Q IS THIS THE PICTURE THAT
18 YOU IDENTIFIED WHEN WE HAD THE
19 PROFFERED STATEMENT BACK IN
20 AUGUST 21, 2009?

21 "A THAT'S ONE I SEEN IN
22 AUGUST.

23 "Q AND WHAT ABOUT PEOPLE'S 11?
24 DO YOU RECOGNIZE THAT PICTURE?

25 "A THAT'S K-9.

26 "Q MR. KHALILL?

27 "A YES.

28 "Q DID YOU IDENTIFY THIS IN AN

1 INTERVIEW?

2 "A YES

3 "Q PEOPLE'S 12. DO YOU
4 RECOGNIZE THAT PICTURE?

5 "A YES.

6 "Q WHO IS THAT?

7 "A THAT'S PEANUT.

8 "Q IS THIS ALSO A PHOTOGRAPH
9 FROM THAT DAY?

10 "A YES.

11 "Q AND PEOPLE'S 13. DO YOU
12 RECOGNIZE WHO IS SHOWN IN THAT
13 PICTURE?

14 "A THAT'S THE LITTLE KID I
15 SEEN THAT DAY.

16 "Q THE SOUTH SIDE PLAYER?

17 "A YES.

18 "MS. BARNES: NO FURTHER QUESTIONS."

19 THE COURT: ALL RIGHT.

20 COUNSEL, DO YOU WANT TO RECESS AT THIS
21 POINT, AT 4:25, RATHER THAN STARTING CROSS?

22 MR. GRAYSON: YES.

23 THE COURT: LADIES AND GENTLEMEN, DON'T FORM OR
24 EXPRESS ANY OPINIONS ABOUT THE CASE UNTIL THE MATTER IS
25 SUBMITTED TO YOU.

26 EACH OF YOU ARE ORDERED TO RETURN TOMORROW
27 MORNING AT 10:30 A.M. SEE YOU TOMORROW AT 10:30.

28 MS. OSTROWSKI, COULD YOU SHUT OFF THE

1 PROJECTOR LIGHT, PLEASE?

2 MS. OSTROWSKI: YES.

3

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

7

8 THE COURT: THE RECORD SHOULD REFLECT ALL THE
9 LADIES AND GENTLEMEN OF THE JURY HAVE LEFT THE
10 COURTROOM.

11 COUNSEL, EACH OF YOU ARE ORDERED BACK
12 TOMORROW AT 10:00. ANY ISSUES WE NEED TO ADDRESS
13 OUTSIDE THE PRESENCE OF THE JURY, I'LL WANT TO ADDRESS
14 THEM BEFORE THE JURORS COME IN.

15 LET'S GO OFF THE RECORD ON SCHEDULING.

16 STAFF IS EXCUSED.

17 DEFENDANTS ARE EXCUSED.

18

19 (AT 4:26 P.M., AN ADJOURNMENT
20 WAS TAKEN UNTIL THURSDAY,
21 DECEMBER 8, 2011, AT 10:30 A.M.)

22

23 (THE NEXT PAGE NUMBER IS 2101.)

24

25

26

27

28

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
)
) DENNIS WALLACE-01)
) DEYAA KHASLILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 8, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 9 OF 16 VOLUMES
PAGES 2101 TO 2310-2400

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 HERE ON THE WITNESS STAND.

2 I'D REMIND THE JURY THAT MS. BRISBOIS IS
3 NOT A WITNESS, BUT IS A READER.

4 AND WITH REGARDS TO THIS MATTER,
5 MR. NEWMAN, IS IT STILL YOUR DESIRE TO HAVE MR. GRAYSON
6 READ YOUR QUESTIONS AT THE PRELIMINARY HEARING?

7 MR. NEWMAN: YES.

8 THE COURT: OKAY.

9 MR. GRAYSON, YOU'LL BE WEARING TWO HATS
10 THIS MORNING. FIRST, IT'S MY UNDERSTANDING THAT YOU ARE
11 READING THE QUESTIONS THAT WERE ASKED BY MR. OLIVE ON
12 BEHALF OF MR. KHALILL; IS THAT CORRECT?

13 MR. GRAYSON: THAT IS CORRECT.

14 THE COURT: YOU MAY INQUIRE. ALL RIGHT.

15 AT THIS POINT, CROSS-EXAMINATION BEGAN OF
16 THE WITNESS.

17

18 "CROSS-EXAMINATION"

19 "BY MR. OLIVE:

20 "Q GOOD AFTERNOON, MR. FEISSA.

21 "A AFTERNOON.

22 "Q NOW, YOU SPOKE WITH THE
23 POLICE A FEW TIMES REGARDING THIS
24 CASE; IS THAT RIGHT?

25 "A YES.

26 "Q WERE YOU HONEST WITH THEM
27 ALWAYS?

28 "A YES, I WAS.

1 "Q ARE YOU AN HONEST PERSON?
2 "THE COURT: SPEAK UP SO EVERYONE
3 CAN HEAR YOU.
4 "THE WITNESS: YES.
5 "Q BY MR. OLIVE: AND WOULD
6 YOU CONSIDER YOURSELF AN HONEST
7 PERSON?
8 "A YES, I AM.
9 "Q AND HOW MANY TIMES HAVE YOU
10 TALKED WITH THE POLICE ABOUT THIS
11 CASE?
12 "A A FEW.
13 "Q A FEW. MORE THAN TWO?
14 "A I MEAN MORE THAN TWO, I
15 THINK.
16 "Q AND DO YOU RECALL WHEN YOU
17 WERE SPEAKING WITH THE POLICE, WAS
18 THIS ALWAYS RECORDED? IF YOU KNOW?
19 "A YES.
20 "Q WOULD YOU SAY THAT YOU
21 WOULD AT ALL DESCRIBE YOURSELF AS
22 DECEITFUL?
23 "A DECEITFUL?
24 "Q DISHONEST?
25 "A NO.
26 "Q NOW, I KNOW MISS BARNES
27 ASKED ABOUT THE CRIMINAL CASES, AND
28 I HAD A COUPLE OF QUESTIONS. YOU

1 HAD A CRIMINAL CASE YA075725 WITH
2 BURGLARIES. DO YOU REMEMBER THAT
3 CASE?

4 "A YEAH. THAT'S MY CURRENT
5 CASE.

6 "Q AND THAT -- AND THIS CASE
7 HAS TWO BURGLARIES; IS THAT RIGHT?

8 "A YES.

9 "Q AND DO YOU RECALL WHAT YOU
10 PLED TO, THAT YOU PLED GUILTY TO?

11 "A YEAH.

12 "Q WHAT DID YOU PLEAD GUILTY
13 TO?

14 "A LIKE CONSPIRACY.
15 POSSESSION OF A DEADLY SUBSTANCE, OR
16 SOMETHING LIKE THAT. TWO BURGLARIES
17 AND TWO TYPES OF GANG ALLEGATIONS,
18 BUT ONE WAS KNOCKED OFF.

19 "Q YOU SAID POSSESSION OF A
20 DEADLY SUBSTANCE?

21 "A CONSPIRACY IS ONE OF THOSE
22 TWO. 11352, I THINK.

23 "Q OKAY. I DON'T THINK THAT
24 IS CONSPIRACY. DO YOU RECALL YOUR
25 PLEA AGREEMENT SHEET? ON PEOPLE'S
26 1, HERE, ON THE -- UP ON THE BOARD.
27 DO YOU RECALL SEEING THAT EXHIBIT
28 FELONY GUILTY PLEA FORM?

1 "A THE ONE I WAS SHOWED
2 YESTERDAY; RIGHT?
3 "Q YES.
4 "A YES.
5 "Q AND AND DO YOU RECALL ON
6 PAGE 2 OF THAT FORM WHERE IT SAID
7 THAT YOUR SENTENCE WILL NOT BE
8 IMPOSED, YOU KNOW, UNTIL YOU COMPLY
9 WITH THE TERMS OF THE LENIENCY
10 AGREEMENT? DO YOU UNDERSTAND THAT?
11 "A MEANING I'M NOT GOING TO BE
12 SENTENCED UNTIL AFTER TRIAL.
13 "Q IS THAT YOUR UNDERSTANDING?
14 "A I WAS -- I WAS TOLD I WOULD
15 BE SENTENCED BY A TRIAL JUDGE.
16 "Q OKAY. AND IT IS IT YOUR
17 UNDERSTANDING THAT YOU'LL BE
18 RELEASED FROM CUSTODY AFTER YOU
19 TESTIFY AT THIS PRELIMINARY HEARING?
20 "A YES.
21 "Q IT'S TRUE THAT YOU WERE
22 FACING PRISON TIME AS A RESULT OF
23 THESE CRIMES; IS THAT TRUE?
24 "A YEAH. YES.
25 "Q AND YOU DON'T WANT TO GO TO
26 PRISON?
27 "A NO.
28 "Q YOU EVER BEEN THE PRISON?

1 "A NO.

2 "Q AND YOU DON'T WANT TO?

3 "A I'M SCARED OF PRISON.

4 "Q YOU DON'T WANT TO BE IN

5 CUSTODY ANYMORE WHILE YOU'RE

6 AWAITING SENTENCING; RIGHT?

7 "A I MEAN -- CAN YOU ASK THAT

8 AGAIN?

9 "Q I MEAN, YOU DON'T WANT TO

10 BE IN CUSTODY ANYMORE PAST THIS

11 PRELIMINARY HEARING, EITHER; RIGHT?

12 "A I MEAN MY CHOICE? NO.

13 "Q YOU WANT TO GO HOME AS SOON

14 AS YOU CAN; RIGHT? IS THAT CORRECT,

15 TO BE OUT OF CUSTODY?

16 "A YES.

17 "Q DO YOU KNOW HOW MUCH TIME,

18 PRISON TIME YOU ARE FACING AS A

19 RESULT OF YOUR GUILTY PLEA IN YOUR

20 OPEN CASE?

21 "A JUST A COUPLE OF YEARS.

22 "Q COUPLE YEARS?

23 "A FIVE, SIX, OR SEVEN.

24 "Q SEVEN YEARS?

25 "A YEAH. SEVEN.

26 "Q YOU THINK IT'S SEVEN?

27 "A YES.

28 "Q ARE YOU SURE? DOES YOUR

1 MEMORY NEED TO BE REFRESHED?

2 "A IT'S SEVEN.

3 "Q OKAY. SEVEN YEARS IS MORE

4 THAN A COUPLE OF YEARS; RIGHT?

5 "A NO DEFINITION FOR THE WORD

6 'COUPLE.'

7 "Q HOW OLD ARE YOU SIR?

8 "A 22.

9 "Q WHEN YOU ENTERED THE PLEA,

10 YOU WERE 21; IS THAT RIGHT?

11 "A YES.

12 "Q MR. FEISSA, THERE IS

13 ANOTHER CASE THAT YOU HAVE, YOU WERE

14 CONVICTED OF SA066407 INVOLVING

15 NARCOTICS. DO YOU RECALL THAT CASE?

16 "A I'VE HAD A COUPLE OF

17 NARCOTICS CASES.

18 "Q AND THIS CASE WAS FILED ON

19 FEBRUARY 25, 2008, AT AIRPORT COURT.

20 DO YOU RECALL THAT?

21 "A YES.

22 "Q DO YOU RECALL GOING TO

23 AIRPORT COURT?

24 "A YES.

25 "Q SOMETIME IN MARCH, 2008?

26 "A YES.

27 "Q IN FACT, YOU PLED GUILTY TO

28 SOME FELONY CHARGES; IS THAT RIGHT?

1 "A IT WAS A MARIJUANA CASE.
2 "Q WAS THAT A FELONY?
3 "A IT WAS IT THINK A
4 MISDEMEANOR.
5 "Q YOU'RE NOT SURE?
6 "A IT WAS A -- I MEAN, I DON'T
7 KNOW, MAN. IT'S A MISDEMEANOR.
8 "Q OKAY. IF YOU ARE NOT SURE,
9 YOU CAN SAY YOU'RE NOT SURE.
10 "NOW, IN THAT CASE, DO YOU
11 RECALL WHAT HAPPENED?
12 "A YEAH. THE D.A. TOLD ME TO
13 DO SOME COMMUNITY SERVICE AND IT
14 WOULD BE A MISDEMEANOR.
15 "Q DID YOU PROMISE HER YOU
16 WOULD DO THAT?
17 "A YEAH.
18 "Q SO YOU GAVE YOUR WORD THAT
19 YOU WERE GOING TO DO THE COMMUNITY
20 SERVICE WORK?
21 "A I DIDN'T GIVE HER MY WORD.
22 I SAID YES.
23 "Q DID YOU DO THE COMMUNITY
24 SERVICE WORK?
25 "A NO.
26 "Q DID DID YOU PROMISE THE
27 AIRPORT COURT THAT YOU WERE GOING TO
28 OBEY ALL LAWS WHEN YOU WERE

1 SENTENCED IN THAT CASE?

2 "A YES.

3 "Q DO YOU KNOW IF YOU'VE GOT A
4 PROBATION VIOLATION HEARING PENDING
5 IN THAT CASE?

6 "A TO MY KNOWLEDGE, IT'S BEEN
7 TRANSFERRED TO THIS COURTHOUSE. I
8 DON'T THINK I'M GOING BACK TO THAT
9 COURTHOUSE.

10 "Q BUT AS FAR AS THAT CASE
11 GOES, DO YOU KNOW IF YOU HAVE A
12 PROBATION VIOLATION HEARING COMING
13 UP?

14 "A YES.

15 "Q YES WHAT?

16 "A YES.

17 "Q DO YOU HAVE A PROBATION
18 VIOLATION HEARING COMING UP?

19 "A YES, I DO.

20 "Q HAVE YOU TALKED AT ALL WITH
21 THE DISTRICT ATTORNEY ABOUT BEING
22 HELPED OUT ON YOUR PROBATION
23 VIOLATION MATTER WITH REGARD TO YOUR
24 TESTIMONY IN THIS CASE?

25 "A BEING HELPED OUT?

26 "Q YES.

27 "A I DON'T KNOW WHAT THAT
28 MEANS.

1 "Q OKAY. MAYBE NOT BEING
2 VIOLATED ON YOUR PROBATION?

3 "A I MEAN -- I DON'T KNOW WHAT
4 YOU MEAN. WE'LL SEE ON MY COURT
5 DATE. I DON'T KNOW.

6 "Q DO YOU HAVE ANY PROBLEMS
7 WITH YOUR MEMORY, MR. FEISSA?

8 "A I THINK WE ALL DO.

9 "MR. OLIVE: I'D ASK THE COURT TO
10 DIRECT THE WITNESS TO ANSWER AND
11 MOTION TO STRIKE THE NONRESPONSIVE.

12 "THE COURT: MR. FEISSA, ANSWER THE
13 QUESTION DIRECTLY AS TO WHETHER YOU
14 DO OR NOT.

15 "THE WITNESS: A LITTLE BIT.

16 "Q BY MR. OLIVE: WHAT I MEAN
17 IS THIS -- WHAT I MEAN IS THIS A
18 MEDICAL CONDITION OR IS IT FROM SOME
19 OTHER REASON? DID YOU SUFFER A BLOW
20 TO THE HEAD? WHY DO YOU HAVE A
21 LITTLE MENTAL ISSUE?

22 "A I MEAN, I DON'T REMEMBER
23 THINGS WHEN I WAS 2 YEARS OLD, AND I
24 DON'T REMEMBER THINGS -- CERTAINLY
25 THING I DON'T, I DON'T REMEMBER.

26 "Q YOU DIDN'T SUFFER A BLOW TO
27 THE HEAD THAT CAUSED A MEMORY LOSS;
28 IS THAT TRUE?

1 "A WHAT DO YOU MEAN, BLOW TO
2 THE HEAD?

3 "Q DID YOU SUFFER SOME
4 INJURIES TO YOUR HEAD AREA THAT
5 CAUSED YOU TO FORGET THINGS?

6 "A LIKE WHAT?

7 "THE COURT: MR. FEISSA, JUST ANSWER
8 THE QUESTION WITHOUT TRYING TO THINK
9 ABOUT WHAT THE MOTIVATION IS FOR THE
10 QUESTION, OKAY?

11 "THE WITNESS: ALL RIGHT. NO.

12 "Q BY MR. OLIVE: DO YOU TAKE
13 ANY MEDICATION FOR MEMORY LOSS?

14 "A NO.

15 "Q DID YOU OVER TELL ANYONE
16 THAT BECAUSE OF YOUR PAST DRUG USE
17 HISTORY THAT YOU FORGET THINGS?

18 "A YES.

19 "Q NOW, IN TERMS OF -- DO YOU
20 RECALL THE PROFFER AGREEMENT THAT
21 YOU SIGNED?

22 "A YES.

23 "Q AND YOU GOT YOUR ATTORNEY,
24 HE'S HERE, DID YOU CONFIRM YOUR
25 UNDERSTANDING OF THE PROFFER
26 AGREEMENT WITH HIM?

27 "A YES.

28 "Q NOW, IN TERMS OF TALKING TO

1 THE POLICE ABOUT THIS HOMICIDE IN
2 2008 OF THE SOUTH SIDER, WERE YOU
3 ALREADY UNDER ARREST ON ANOTHER CASE
4 WHEN YOU TALKED TO THE POLICE?

5 "A YES AND NO.

6 "Q OKAY. WHY DO YOU SAY YES?

7 "A BECAUSE THE FIRST TIME --
8 THERE HAVE BEEN SEVERAL CASES WHERE
9 I TALKED ABOUT THE MURDER.
10 SOMETIMES I WAS UNDER ARREST AND
11 SOMETIMES I WASN'T.

12 "Q OKAY. I'M SPEAKING OF WHEN
13 I BELIEVE YOU SAID -- YOU TOLD MISS
14 BARNES ON DIRECT EXAMINATION THAT
15 YOU SAID YOU WANT TO TALK TO
16 HOMICIDE DETECTIVES?

17 "A I WAS UNDER ARREST. I WAS
18 IN CUSTODY.

19 "Q WERE YOU PAID FOR ANY
20 INFORMATION THAT YOU GOT IN THIS
21 CASE?

22 "A YES.

23 "Q DO YOU RECALL HOW MUCH
24 MONEY?

25 "A I DON'T RECALL THAT.

26 "Q WERE YOU PAID BY THE POLICE
27 FOR INFORMATION IN ANY OTHER CASE?

28 "A YES.

1 "Q WAS THAT MONEY GIVEN TO YOU
2 IN CASH?
3 "A YES.
4 "Q DOES THIS REFRESH YOUR
5 MEMORY?
6 "A YES, IT DOES.
7 "Q AND IS THIS ACCURATE?
8 "A YEP, YES.
9 "Q HAVE YOU RECEIVED ANY MONEY
10 THIS YEAR?
11 "A NO.
12 "Q THE LAST PAYMENT THAT YOU
13 RECEIVED WAS JANUARY 5TH, 2009; IS
14 THAT CORRECT?
15 "A YES.
16 "Q HAVE YOU RECEIVED ANY MONEY
17 AFTER THAT?
18 "A NO.
19 "Q NOW, THE PROFFER WAS SIGNED
20 IN AUGUST OF 2009; RIGHT?
21 "A YES.
22 "Q AND IN THAT SESSION YOU
23 WERE ASKED ABOUT DEYAA KHALILL'S
24 INVOLVEMENT IN THAT MURDER OF THE
25 SOUTH SIDE MURDER; RIGHT?
26 "A YES.
27 "Q AND YOU HAVE PREVIOUSLY
28 TALKED TO THE POLICE BEFORE THIS; IS

1 THAT RIGHT?

2 "A YES.

3 "Q IT'S TRUE THAT WHEN YOU
4 FIRST TALKED WITH THE POLICE, YOU
5 TOLD THEM DEYAA KHALILL -- THERE WAS
6 A PHONE CALL BETWEEN YOU AND DEYAA
7 KHALILL; IS THAT RIGHT?

8 "A YES.

9 "Q AND IT'S TRUE IN THAT
10 SESSION SPEAKING OF THE FIRST TIME
11 THAT DAY DEYAA KHALILL TALKED ABOUT
12 THE MURDER ON AUGUST 21, 2009, AND
13 YOU SAID THAT YOU WENT TO DEYAA
14 KHALILL'S HOUSE?

15 "A YES.

16 "Q AND DEYAA KHALILL NEVER
17 TOLD YOU THAT HE SHOT ANYONE; TRUE?

18 "A FALSE.

19 "Q ON AUGUST 21, 2009, DID YOU
20 TELL THE POLICE DEYAA KHALILL NEVER
21 SAID THAT HE SHOT ANYONE; RIGHT?

22 "A THAT'S THE PROFFER DAY;
23 RIGHT?

24 "Q WHAT'S THAT?

25 "A THE DISTRICT ATTORNEY,
26 THAT'S THE DAY OF THE PROFFER?

27 "Q WOULD THE WITNESS SPEAK UP?

28 "A THE DAY OF THE PROFFER;

1 RIGHT?

2 "Q YES?

3 "A YES.

4 "Q DEYAA KHALILL NEVER
5 DESCRIBED THE MURDER TO YOU -- WELL,
6 I'LL ASK YOU THIS. ON AUGUST 21,
7 2009, WHEN YOU TALKED WITH THE
8 POLICE IN THE PROFFER SESSION, YOU
9 NEVER TOLD THE POLICE DEYAA KHALILL
10 DESCRIBED THE MURDER TO YOU;
11 CORRECT?

12 "A THAT'S CORRECT.

13 "Q IT'S ALSO TRUE THAT YOU DID
14 TELL THE POLICE THAT DEYAA KHALILL
15 WAS VERY CONCERNED THERE WAS A MOLE
16 GIVING INFORMATION TO THE POLICE?

17 "A YES.

18 "Q THOSE THREE OR FOUR MONTHS
19 IN THAT TIME, YOU AND DEYAA KHALILL
20 WERE HANGING OUT A LOT?

21 "A I WOULDN'T SAY A LOT. BUT
22 ENOUGH TO WHERE --

23 "Q IN 2008, DID YOU AND DEYAA
24 KHALILL GO PLACES TOGETHER?

25 "A YES.

26 "Q HOW OFTEN WOULD YOU GUYS GO
27 OUT?

28 "A I'M NOT POSITIVE. I'M NOT

1 SURE.

2 "Q I'M SORRY?

3 "A I SAID I'M NOT TOO SURE.

4 "Q DID YOU RECALL ANY
5 PLACES -- SORRY. DID YOU EVER TELL
6 THE POLICE AT ANY TIME REGARDING THE
7 SOUTH SIDE MURDER THAT RAYMOND GIBBS
8 WAS LIMPING AROUND AND HURT HIS
9 ANKLE IN A BASKETBALL GAME?

10 "A YES.

11 "Q YOU NEVER QUESTIONED DEYAA
12 KHALILL ABOUT HIS INVOLVEMENT, THE
13 ALLEGED INVOLVEMENT, IN THE SOUTH
14 SIDE MURDER; DID YOU?

15 "A YES, I DID.

16 "Q YOU QUESTIONED HIM? WHAT
17 DID YOU ASK HIM?

18 "A I HAD A CONVERSATION WITH
19 HIM ON THE PHONE.

20 "Q DO YOU RECALL TELLING THE
21 POLICE DURING THE PROFFER SESSION
22 THAT THE REASON YOU HAD TROUBLE WITH
23 YOUR MEMORY IS BECAUSE OF YOUR DRUG
24 USE?

25 "A YES.

26 "Q IS YOUR MEMORY OF THE
27 INCIDENT ON THE 2008 MURDER, WAS IT
28 BETTER THEN IN 2008, OR IS YOUR

1 MEMORY OF THE INCIDENT BETTER NOW?

2 "THE COURT: COUNSEL, YOU MEAN THE
3 ENTIRE YEAR 2008?

4 "Q BY MR. OLIVE: AROUND THE
5 TIME OF THE MURDER.

6 "A IT WAS MORE FRESH IN MY
7 MIND, YES.

8 "Q MORE FRESH IN YOUR MIND
9 THEN?

10 "A YES.

11 "Q DID YOU HAVE AN IDEA IN
12 YOUR HEAD THAT MAYBE YOU WOULD ACT
13 LIKE DEYAA'S FRIEND, AND THEN MAYBE
14 YOU USE THE INFORMATION TO HELP ME
15 OUT, MEANING YOU, IN CASE YOU GOT IN
16 TROUBLE? DID YOU EVER HAVE THAT
17 IDEA IN YOUR HEAD BEFORE?

18 "A ASK THAT ONE MORE TIME.

19 "Q I'LL ASK IT THIS WAY. DID
20 YOU EVER BEFRIEND DEYAA KHALILL IN
21 AN ATTEMPT TO GAIN INFORMATION ABOUT
22 ALLEGED CRIMES SO THAT YOU CAN GIVE
23 THE POLICE INFORMATION TO HELP YOU
24 OUT?

25 "A NO.

26 "Q NOW, IT'S TRUE REGARDING
27 THIS 2008 MURDER THAT YOU WERE NOT
28 PRESENT; IS THAT TRUE?

1 "A I WASN'T.

2 "Q YOU DIDN'T SEE IT?

3 "A NO, I DIDN'T.

4 "Q YOU WERE ONLY TELLING THE
5 MURDER BASED ON WHAT OTHER PEOPLE
6 HAVE ALLEGEDLY TOLD YOU; IS THAT
7 CORRECT?

8 "A WHAT K-9 AND PEANUT TOLD
9 ME.

10 "Q AND WHAT OTHER PEOPLE TOLD
11 YOU, THAT'S WHAT YOU ARE --

12 "A YES.

13 "Q YOU ARE ONLY GIVING THE
14 INFORMATION TO THE POLICE,
15 COOPERATING WITH THE POLICE IN AN
16 ATTEMPT TO GET OUT OF JAIL; IS THAT
17 TRUE?

18 "A NO.

19 "MR. OLIVE: NO FURTHER QUESTIONS AT
20 THIS TIME.

21 "THE COURT: THANK YOU.

22 CROSS-EXAMINATION,
23 MR. HIGGINS.

24
25 "CROSS-EXAMINATION

26 "BY MR. HIGGINS:

27 "Q GOOD AFTERNOON, MR. FEISSA.

28 "A AFTERNOON TO YOU.

1 "Q MR. FEISSA, YOU'RE A GANG
2 MEMBER; IS THAT CORRECT?

3 "A WAS A GANG MEMBER.

4 "Q WHAT GANG DID YOU BELONG
5 TO?

6 "A 135 PIRU.

7 "Q AND WHEN DID YOU FIRST JOIN
8 THAT GANG?

9 "A LATE '06.

10 "Q '06. HOW OLD WERE YOU
11 THEN?

12 "A 19.

13 "Q BEFORE JOINING THE GANG,
14 DID YOU ASSOCIATE WITH PEOPLE FROM
15 THAT GANG?

16 "A YES.

17 "Q AND WOULD YOU CONSIDER
18 YOURSELF BEFORE YOU GOT OUT A FULLY
19 ACCEPTED" -- I'M SORRY.

20 "AND WOULD YOU CONSIDER
21 YOURSELF BEFORE YOU GOT OUT A FULLY
22 ACCEPTED MEMBER OF THAT GANG?

23 "A NO.

24 "Q WELL, DID YOU -- WAS MY
25 CLIENT A FULLY ACCEPTED MEMBER OF
26 THE GANG? THAT IS MR. GIBBS?

27 "A YES.

28 "Q HE WAS YOUR FRIEND?

1 "A MY ASSOCIATE.
2 "Q YOU TALKED TO HIM?
3 "A YES.
4 "Q AND HE TALKED TO YOU?
5 "A YES.
6 "Q DO YOU KNOW WHAT A MISSION
7 MEANS?
8 "A MISSION TO THE STORE,
9 MISSION TO A GIRL'S HOUSE,
10 MISSION --
11 "Q WHEN YOU HAD JOINED THE
12 GANG, DID YOU GANGBANG?
13 "A DID DID I WHAT?
14 "Q GANGBANG.
15 "A YES.
16 "Q YOU KNOW WHAT 'HITTING UP'
17 MEANS?
18 "A YES.
19 "Q MR. QUEZADA, THE VICTIM
20 SHOT IN JULY, 2008, DID YOU HIT HIM
21 UP AT ANY TIME?
22 "A YES.
23 "Q HOW MANY TIMES DID YOU HIT
24 HIM UP BEFORE HE WAS KILLED?
25 "A ONCE.
26 "Q AND AT THAT TIME -- AND AT
27 THE TIME THAT YOU HIT HIM UP, WERE
28 YOU ALONE?

1 "A YES.

2 "Q IN YOUR MIND, IS IT
3 DANGEROUS TO HIT SOMEONE UP?

4 "A YES AND NO.

5 "Q ALL RIGHT. WHERE DID YOU
6 HIT HIM UP AT?

7 "A IN FRONT OF HIS HOUSE.

8 "Q THAT'S THE OTHER SIDE OF --
9 THAT'S THE SIDE OF AVALON THAT DOES
10 NOT BELONG OR IS NOT CLAIMED BY
11 135TH; IS THAT CORRECT?

12 "A YES.

13 "Q SO YOU WERE IN ANOTHER
14 GANG'S TERRITORY WHEN YOU DID THAT,
15 WHEN YOU HIT MR. QUEZADA UP?

16 "A YES.

17 "Q AND YOU KNEW THAT WAS
18 DANGEROUS; IS THAT CORRECT?

19 "A YES.

20 "Q SINCE YOU WEREN'T (SIC) A
21 MEMBER OF A -- SINCE YOU WERE A
22 MEMBER OF 135TH, DID YOU KNOW WHERE
23 THE GUNS WERE IN THE AREA?

24 "A YES.

25 "Q AND DID YOU KNOW HOW MANY
26 GUNS THERE WERE?

27 "A MOST OF THEM.

28 "Q MOST OF THEM? CAN YOU TELL

1 HOW MANY -- CAN YOU TELL US HOW MANY
2 GUNS THAT YOU HAVE SEEN 135 PIRU
3 HAVE? WITHIN THE LAST 2 YEARS?

4 "A A LOT.

5 "Q ALL RIGHT. DID IT INCLUDE
6 A 9-MILLIMETER?

7 "A YES.

8 "Q DID IT INCLUDE A DESERT
9 EAGLE?

10 "A YES.

11 "Q 40 CALIBERS?

12 "A YES.

13 "Q AND ANY OTHER TYPE OF
14 WEAPON -- ANY OTHER TYPE OF WEAPONS
15 INCLUDED?

16 "A YES.

17 "Q HOW MANY DIFFERENT OTHER
18 THAN THE ONES THAT I MENTIONED?

19 "A YOU WANT ME TO NAME THEM?

20 "Q THE TYPES, YES.

21 "A 25'S, 22'S, TWO RIFLES
22 380'S, 38'S, 357'S, FO-FO.

23 "Q I'M SORRY?

24 "A WHAT PART DID YOU HEAR?

25 "Q WHAT WAS LAST ONE YOU SAID
26 AFTER 357'S?

27 "A FO-FO. 44-MAGNUM.

28 "Q AND PEOPLE WOULD DISPLAY

1 THE GUNS IN FRONT OF YOU?

2 "A YES.

3 "Q SO THEY TRUSTED YOU; IS
4 THAT CORRECT?

5 "A YEAH.

6 "Q IS THAT CORRECT?

7 "A YES.

8 "Q GANG MEMBERS WOULDN'T TRUST
9 SOMEONE (SIC) IF THEY DIDN'T
10 BELIEVE -- IF THEY DIDN'T THEMSELVES
11 PUT IN WORK; IS THAT RIGHT?

12 "A THAT'S WRONG.

13 "Q THEY WOULDN'T TRUST YOU IF
14 THEY WEREN'T SURE ABOUT YOU; RIGHT?

15 "A YES AND NO.

16 "Q NOW, WAS A 9-MILLIMETER A
17 COMMON TYPE OF WEAPON THAT WAS HELD
18 BY 135TH PIRU?

19 "A IT WASN'T COMMON, BUT --

20 "Q YOU HAVE SEEN THAT A NUMBER
21 OF TIMES; IS THAT CORRECT?

22 "A BY THE SAME INDIVIDUALS.

23 "Q HAVE YOU SEEN THAT SEVERAL
24 TIMES?

25 "A YES.

26 "Q HAVE YOU SEEN THE DESERT
27 EAGLE BY THE SAME INDIVIDUALS
28 SEVERAL TIMES?

1 "A I ONLY SEEN THE DESERT
2 EAGLE ONCE.

3 "Q AND BEFORE JULY 28, '08,
4 HOW LONG -- WHEN WAS THE LAST TIME
5 BEFORE THAT DATE THAT YOU SAW A
6 DESERT EAGLE?

7 I WILL REPHRASE THE
8 QUESTION. HOW LONG BEFORE QUEZADA
9 WAS KILLED ON 138TH OUTSIDE OF HIS
10 HOME, HOW LONG BEFORE THAT -- WHAT
11 IS THE LAST TIME BEFORE THAT YOU SAW
12 A DESERT EAGLE?

13 "A WITHIN A COUPLE OF DAYS.

14 "Q COUPLE OF DAYS?

15 "A COULD HAVE BEEN SAME -- THE
16 DAY OR THE DAY BEFORE.

17 "Q OKAY. AND THE DAY THAT
18 MR. QUEZADA WAS KILLED ON 7/28/08,
19 YOU WERE NOT CUSTODY; IS THAT RIGHT?

20 "A NO, I WASN'T.

21 "Q WHERE WERE YOU? WHERE WERE
22 YOU ON THAT DATE ABOUT 8:30?

23 "A I WAS AT THE HOUSE.

24 "Q WHAT HOUSE?

25 "A MY HOUSE.

26 "Q AND DID YOU KNOW -- HOW FAR
27 AWAY WAS YOUR HOME FROM 138TH AND
28 139TH AND AVALON?

1 "A NOT THAT FAR.
2 "Q FIVE MINUTES?
3 "A DEPENDS DEPENDS ON HOW FAST
4 YOU ARE GOING.
5 "Q YOU KNOW WHAT I'M TALKING
6 ABOUT. GIVE ME A DISTANCE, SIR.
7 "A ABOUT SEVEN MINUTES.
8 "Q SEVEN MINUTES. OKAY.
9 DID MR. KHALILL -- DID HE
10 LIVE ON 139TH STREET?
11 "A YES.
12 "Q AND HE LIVED ON 139TH
13 STREET WEST OF AVALON; IS THAT
14 CORRECT?
15 "A YES.
16 "Q AND DO YOU KNOW HOW MANY
17 HOUSES FROM THE CORNER THAT HE
18 LIVED?
19 "A SEVEN OR EIGHT, NINE, TEN
20 HOUSES.
21 "Q AND DID YOU GO OVER TO HIS
22 HOME AFTER THIS INCIDENT OCCURRED?
23 "A YES.
24 "Q HOW SOON AFTER THIS
25 INCIDENT OCCURRED DID YOU ARRIVE
26 THERE?
27 "A IT WAS AT NIGHT. IT WAS
28 WHEN EVERYTHING WAS TAPED UP AND THE

1 COPS WAS EVERYWHERE.

2 "Q THE COPS WERE EVERYWHERE.
3 DID YOU SPEAK TO ANY POLICE OFFICER
4 THAT NIGHT?

5 "A NOPE.

6 "Q DID YOU GO THERE TO
7 MR. KHALILL'S HOUSE BY YOURSELF?

8 "A YEAH.

9 "Q AND DID YOU SPEAK TO
10 ANYBODY OTHER THAN MR. KHALILL, THE
11 GENTLEMAN BEHIND ME?

12 "A I TALKED TO MR. GIBBS.

13 "Q NOW, I SAID OTHER THAN
14 THESE PEOPLE, DID YOU SPEAK TO
15 ANYBODY ELSE?

16 "A SAY WHAT'S UP.

17 "Q WHO DID YOU -- AND WHO DID
18 YOU GO THERE WITH?

19 "A TO MR. KHALILL'S HOUSE?

20 "Q YES.

21 "A BY MYSELF.

22 "Q YOU WENT BY YOURSELF?

23 "A YES.

24 "Q AND NO ONE TOOK YOU THERE?

25 "A YES.

26 "Q SOMEONE DID TAKE YOU THERE?

27 "A TO THE STREET, YES.

28 "Q BUT NOT TO THE HOME?

1 "A NO.

2 "Q SO DID YOU GIVE THAT
3 INFORMATION TO THE POLICE OR THE
4 DETECTIVES THAT SOMEONE ELSE TOOK
5 YOU OVER TO MR. KHALILL'S HOUSE?

6 "A TOOK ME TO 139TH, YES.

7 "Q AND APPROXIMATELY WHAT TIME
8 DID YOU ARRIVE?

9 "A I DON'T REMEMBER THE TIME,
10 BUT IT WAS NIGHTTIME.

11 "Q SO IT'S YOUR TESTIMONY THAT
12 YOU WERE NOT IN THAT AREA BETWEEN
13 8:30 -- 8:00 AND 8:30; IS THAT
14 CORRECT?

15 "A I WAS THERE AT NIGHT.

16 "Q COULD HAVE BEEN AROUND
17 8:00, 8:30 THAT NIGHT YOU WERE
18 AROUND 139TH AND AVALON?

19 "A WHATEVER TIME THE SUN GOES
20 DOWN, AROUND THAT TIME UNTIL
21 MIDNIGHT, I WAS IN THE AREA.

22 "Q OKAY. AND ON THAT
23 PARTICULAR DAY, HAD YOU BEEN SMOKING
24 ANY MARIJUANA?

25 "A YEAH.

26 "Q HOW MUCH?

27 "A COUPLE OF BLUNTS.

28 "Q COUPLE OF BLUNTS. WERE

1 THEY GOOD BLUNTS, STRONG BLUNTS?
2 "A IT WAS WHAT WE CALL CUSH OR
3 CHRONIC.
4 "Q CHRONIC?
5 "A YES.
6 "Q GOT A GOOD HIGH OFF THAT?
7 "A NOT TO ME
8 "Q NOT TO YOU?
9 "A NO.
10 "Q HOW LONG BEFORE 8:00 THAT
11 YOU SMOKED THE TWO BLUNTS?
12 "A I'M NOT TOO POSITIVE. I
13 SMOKED ONE IN THE MORNING AND SMOKED
14 ONE IN THE EVENING.
15 "Q YOU SMOKED ONE IN THE
16 EVENING, WAS IT AROUND 7:30, QUARTER
17 TO 8:00?
18 "A I'M NOT SURE, MAN.
19 "Q COULD HAVE BEEN?
20 "A I'M NOT TOO SURE.
21 "Q DURING THE COURSE OF YOUR
22 STATEMENT GIVEN -- DURING THE COURSE
23 OF YOUR STATEMENT GIVEN THE DAY OF
24 YOUR PROFFER, DIDN'T YOU TELL
25 COUNSEL AT THE END OF THE TABLE AND
26 THIS DETECTIVE THAT YOU USED POWDER?
27 "A YES.
28 "Q AND WHAT IS POWDER?

1 "A IT'S COCAINE.

2 "Q HAD YOU USED ANY COCAINE ON
3 THE DATE OF JULY 28, 2008?

4 "A NO, I DID NOT.

5 "Q HOW DO YOU KNOW THAT?

6 "A BECAUSE AT THIS TIME WHEN I
7 USED COCAINE, I COULD REMEMBER EVERY
8 DAY THAT I DID.

9 "Q WELL, WHEN WAS THE LAST
10 TIME YOU USED COCAINE PRIOR TO
11 JULY 25, 2008?

12 "A IT WAS BEFORE I CAME TO
13 JAIL. IT WAS TWO WEEKS BEFORE I GOT
14 LOCKED UP FOR THIS STUFF AND I WAS
15 IN MY CAR DRIVING ON MANCHESTER, GOT
16 A ROOM, GOT SOME POWDER, AND STARTED
17 SNIFFING.

18 "Q DID YOU HEAR THE QUESTION?

19 "A YOU SAID WHEN IS THE LAST
20 TIME PRIOR TO THAT DATE THAT I
21 SNIFFED COCAINE.

22 "Q BEFORE JULY 25, 2008. THE
23 DATE THAT THIS YOUNG MAN WAS KILLED
24 ON 139TH. WHAT DATE DID YOU USE
25 COCAINE? WHAT IS THE DATE THAT YOU
26 USED COCAINE BEFORE THEN?

27 "A WHAT WAS THE DATE? I DON'T
28 KNOW.

1 "Q SO YOU DON'T KNOW. DO YOU
2 KEEP A RECORD OF THE DATES YOU USE
3 COCAINE?

4 "A NO.

5 "Q SO AS FAR AS A PARTICULAR
6 DATE IS CONCERNED, JULY 25, 2008, IS
7 POSSIBLE, YOU COULD HAVE USED THAT
8 DAY ALSO; IS THAT RIGHT?

9 "A NO.

10 "Q YOU HAVE A RECORD YOU DID
11 NOT USE IT THAT DAY?

12 "A I DIDN'T USE COCAINE THAT
13 DAY.

14 "Q ALL RIGHT. NOW, COUNSEL
15 WAS ASKING ABOUT THE MONEY THAT YOU
16 RECEIVED. DO YOU RECALL HOW MUCH
17 MONEY YOU RECEIVED FOR THIS CASE?

18 "A LIKE 800.

19 "Q THAT'S YOUR BEST ESTIMATE,
20 OR IS THAT AN AMOUNT CERTAIN THAT
21 YOU REMEMBER AS YOU SIT HERE RIGHT
22 NOW AS TO HOW MUCH YOU RECEIVED FOR
23 THIS CASE, FOR INFORMATION FOR THIS
24 CASE?

25 "A I WAS NEVER TOLD THAT THE
26 MONEY I WAS GETTING WAS DIRECTLY FOR
27 THIS CASE. IT WAS JUST -- NO.

28 "Q SO WHAT MADE YOU SAY THAT

1 YOU GOT \$800 FOR THIS CASE, THEN?

2 "A BECAUSE AFTER I SPOKE TO
3 HOMICIDE, WITHIN A COUPLE OF DAYS, I
4 GOT PAID.

5 "Q WAS THAT THE FIRST TIME
6 THAT YOU EVER GOT PAID FOR GIVING --
7 AFTER SPEAKING TO HOMICIDE ABOUT A
8 CASE?

9 "A I THINK SO, YES.

10 "Q SO THE FIRST TIME YOU
11 EVER -- WELL, WHEN YOU SPOKE ABOUT
12 THIS CASE, THAT'S THE FIRST TIME YOU
13 EVER RECEIVED MONEY FROM A DETECTIVE
14 FOR GIVING INFORMATION; IS THAT WHAT
15 YOU ARE SAYING?

16 "A I'M NOT 100 PERCENT SURE.

17 "Q WELL, WHEN YOU -- WELL,
18 LET'S SEE. YOU WERE OUT OF CUSTODY
19 WHEN THIS INCIDENT HAPPENED; IS THAT
20 CORRECT?

21 "A YES.

22 "Q AND THEN YOU WERE ARRESTED
23 FOR SOMETHING; RIGHT? YOUR CURRENT
24 CASE?

25 "A YES.

26 "Q AND WHEN YOU WERE ARRESTED
27 FOR YOUR CURRENT CASE, WERE YOU IN
28 THE COUNTY JAIL, YOU WERE IN THE

1 COUNTY -- YOU WERE IN THE COUNTY
2 JAIL?

3 "A FOR FOR THIS CASE?

4 "Q YOUR CURRENT CASE, YES.

5 "A YES.

6 "Q AND IS THAT WHEN YOU
7 DECIDED TO MAKE A CALL OR ASK
8 SOMEONE TO -- OR TELL SOMEONE THAT
9 YOU WANTED TO SPEAK TO HOMICIDE?

10 "A I'M CONFUSED.

11 "Q WELL, I'LL SEE IF I CAN
12 UNCONFUSE YOU. LET ME REPEAT IT.

13 "ON JULY 25TH, YOU WERE NOT
14 IN CUSTODY, BUT AT SOME POINT AFTER
15 THE 25TH OF JULY, 2008, YOU DID GET
16 IN CUSTODY; RIGHT?

17 "A YES.

18 "Q AND WHILE IN CUSTODY, YOU
19 ASKED TO SPEAK TO HOMICIDE; IS THAT
20 RIGHT?

21 "A WHILE IN CUSTODY RIGHT NOW,
22 DID I ASK TO SPEAK TO HOMICIDE?

23 "Q I WILL REPHRASE.

24 "WHEN YOU FIRST -- WHEN YOU
25 FIRST ASKED TO SPEAK TO HOMICIDE --
26 WHEN YOU FIRST ASKED TO SPEAK TO
27 HOMICIDE DETECTIVES?

28 "A FIRST TIME I SPOKE IN 2008.

1 "Q IN 2008. WERE YOU IN
2 CUSTODY AT THAT TIME?

3 "A YES.

4 "Q WHAT WHAT WERE YOU IN
5 CUSTODY FOR AT THAT TIME?

6 "A FOR A GUN.

7 "Q AND APPROXIMATELY WHAT
8 MONTH WAS THAT WHEN YOU ASKED TO
9 SPEAK TO THE DETECTIVE?

10 "A SUMMERTIME.

11 "Q SO IT WAS SUMMERTIME. WAS
12 IT AUGUST OR SEPTEMBER, DO YOU
13 RECALL?

14 "A IT WAS AFTER JULY 4TH. I
15 KNOW THAT FOR A FACT.

16 "Q IT WAS AFTER JULY 4TH, AND
17 IT WAS AFTER JULY 25TH WHEN THIS
18 YOUNG MAN QUEZADA WAS KILLED; IS
19 THAT RIGHT?

20 "A CAN YOU ASK THAT AGAIN?

21 "Q YOU SAID THAT IT WAS AFTER
22 JULY 4TH?

23 "A YES.

24 "Q BUT IT WAS ALSO AFTER
25 QUEZADA WAS KILLED ON JULY 25TH,
26 2008; IS THAT RIGHT?

27 "A YES.

28 "Q SO COULD IT HAVE BEEN

1 AUGUST OF 2008?

2 "A NO. I THINK IT WAS JULY.
3 IT WAS EITHER JUNE, JULY, OR AUGUST.

4 "Q ALL RIGHT. NOW, WHEN YOU
5 PUT -- WHO DID YOU TELL YOU WANTED
6 TO SPEAK TO HOMICIDE DETECTIVES?

7 "A TO THE ARRESTING OFFICER.

8 "Q THE OFFICER THAT ARRESTED
9 YOU?

10 "A YES.

11 "Q DO YOU REMEMBER HIS NAME?

12 "A NO.

13 "Q WHEN YOU TOLD THE ARRESTING
14 OFFICER YOU WANTED TO SPEAK TO
15 HOMICIDE DETECTIVES, DID YOU GIVE
16 HIM A NAME OF A DETECTIVE?

17 "A NO.

18 "Q WHEN YOU TOLD HIM THAT YOU
19 WANTED TO SPEAK TO THE HOMICIDE
20 DETECTIVE, DID YOU HAVE -- DID YOU
21 BELIEVE THAT YOU WERE GOING TO GET
22 SOME MONEY?

23 "A NO.

24 "Q HOW SOON AFTER YOU ASKED TO
25 SPEAK TO HOMICIDE DETECTIVES DID YOU
26 GET TO TALK TO THE HOMICIDE
27 DETECTIVES?

28 "A COUPLE OF WEEKS. I DON'T

1 KNOW.

2 "Q COUPLE OF WEEKS?

3 "A YEAH.

4 "Q WHEN YOU FIRST SAW THE
5 HOMICIDE DETECTIVE, DID YOU ASK HIM
6 FOR SOME MONEY?

7 "A NO.

8 "Q WHEN YOU FIRST SAW THE
9 HOMICIDE DETECTIVE, DID HE OFFER TO
10 GIVE YOU SOME MONEY?

11 "A NO.

12 "Q WAS THAT THE FIRST TIME YOU
13 EVER ASKED TO SPEAK TO A HOMICIDE
14 DETECTIVE?

15 "A YES.

16 "Q WELL, AFTER YOU SPOKE TO
17 THAT DETECTIVE, THE FIRST TIME, AND
18 THAT'S THE FIRST TIME YOU EVER SPOKE
19 TO A HOMICIDE DETECTIVE, IS THAT
20 WHEN YOU RECEIVED \$800 AFTER THAT?

21 "A POSSIBLY.

22 "Q WELL, IS IT TRUE OR NOT
23 TRUE? IS THAT WHEN YOU FIRST
24 RECEIVED \$800?

25 "A COULD HAVE BEEN BEFORE, OR
26 COULD HAVE BEEN AFTER.

27 "Q COULD HAVE BEEN BEFORE
28 WHAT? BEFORE YOU SPOKE TO THE

1 DETECTIVE?

2 "A COULD HAVE BEEN BEFORE I
3 SPOKE TO HOMICIDE, OR AFTER I SPOKE
4 TO HOMICIDE.

5 "Q NOW, YOU'RE SAYING THE
6 DETECTIVE WOULD GIVE YOU \$800
7 WITHOUT EVEN SPEAKING TO HIM?

8 "A WHEN I ASKED TO SPEAK TO
9 HOMICIDE, I SPOKE TO SEAN SHAW. I
10 TOLD HIM SOME INFORMATION. HE TOLD
11 ME THAT I CAN DO THINGS FOR HIM TO
12 GET MONEY. I SAID OKAY. AND THEN I
13 POINTED SOME STUFF OUT, AND THEN I
14 DON'T KNOW IF THE MONEY CAME BECAUSE
15 OF THAT, OR --

16 "Q ALL RIGHT. WHEN YOU SPOKE
17 TO SEAN SHAW, THAT'S A DIFFERENT
18 DEPUTY; IS THAT RIGHT?

19 "A YES.

20 "Q IS HE A DETECTIVE?

21 "A HE'S O.S.S., I THINK THEY
22 CALL IT

23 "Q AND YOU'VE BEEN WORKING
24 WITH HIM A WHILE?

25 "A NO. THAT IS THE FIRST
26 TIME.

27 "Q HAD YOU WORKED WITH HIM
28 BEFORE YOU WERE ARRESTED IN 2008?

1 "A NO.

2 "Q SO YOU WERE IN CUSTODY WHEN
3 YOU FIRST SPOKE TO SEAN SHAW?

4 "A YES.

5 "Q AND DID YOU SPEAK TO SEAN
6 SAW BEFORE YOU SPOKE TO A HOMICIDE
7 DETECTIVE WHILE YOU WERE IN CUSTODY;
8 IS THAT RIGHT?

9 "A YES.

10 "Q AND AT THAT TIME, SEAN SHAW
11 TOLD YOU THAT YOU CAN GET SOME
12 MONEY, POSSIBLY?

13 "A I THINK HE DID.

14 "Q WHAT PROMISES DID HE MAKE
15 TO YOU OTHER THAN MONEY?

16 "A THAT I WOULD HAVE A GUN
17 CASE THAT WOULD BE DISAPPEAR.

18 "Q ALL RIGHT.

19 "YOU LIKED THAT; RIGHT?

20 "A YEAH.

21 "Q AND THE GUN CASE DID
22 DISAPPEAR?

23 "A I HAVEN'T HEARD ABOUT IT
24 TILL TO THIS DAY.

25 "Q THE GUN CASE DISAPPEARED
26 AND YOU GOT \$800 AND YOU GOT OUT OF
27 JAIL; RIGHT?

28 "A YEAH.

1 "Q NOW, WHEN WAS THE NEXT TIME
2 THAT YOU RECEIVED MONEY?

3 "A I'M NOT TOO SURE.

4 "Q WELL, WERE YOU IN JAIL THE
5 NEXT TIME YOU RECEIVED MONEY OR NOT?

6 "A I WAS OUT ON THE STREETS.

7 "Q OUT ON THE STREETS. AND
8 AFTER YOU GOT OUT OF JAIL, DID YOU
9 CONTINUE TO TALK TO SEAN SHAW,
10 OR SOME OTHER DETECTIVE?

11 "A IT WAS QUITE A FEW OF THEM.

12 "Q WHAT WAS THAT?

13 "A I SPOKE TO QUITE A FEW
14 DETECTIVES.

15 "Q WOULD IT BE FAIR IS SAY YOU
16 RECEIVED \$800 AT FIRST ABOUT AUGUST
17 THE 4TH, 2008?

18 "A I'M NOT SURE.

19 "Q AND DO YOU REMEMBER HOW
20 SOON AFTER YOU RECEIVED \$800 THAT
21 YOU RECEIVED ADDITIONAL MONEY?

22 "A CAN YOU ASK THAT AGAIN?

23 "Q AFTER YOU RECEIVED \$800,
24 HOW SOON AFTER THAT DID YOU RECEIVE
25 MORE MONEY?

26 "A AS SOON AS I GAVE THEM THE
27 INFORMATION.

28 "Q WAS THAT AROUND AUGUST THE

1 12TH, 2008?

2 "A SOMETIME AROUND THERE.

3 "Q AND HOW MUCH DID YOU GET
4 THEN?

5 "A I'M NOT TOO SURE.

6 "Q DOES \$500 SOUND ACCURATE?

7 "A 500 TO 1200.

8 "Q FOR GIVING THE INFORMATION,
9 WAS DOES SEAN SHAW TELL YOU THAT YOU
10 HAD TO DO?

11 "A WHAT DO YOU MEAN BY THAT?

12 "Q WELL, DID HE SAY THAT YOU
13 HAD TO GIVE HIM GOOD INFORMATION,
14 THAT YOU HAD TO BE RELIABLE? WHAT
15 DID HE TELL YOU?

16 "A HE SAID RELIABLE, CRIMINAL
17 INFORMATION.

18 "Q RELIABLE, CRIMINAL
19 INFORMATION. OKAY. LET ME -- I'LL
20 GO ON WITH THIS.

21 "AND THEN AGAIN IN AUGUST
22 OF 2008, YOU RECEIVED ANOTHER \$600
23 FROM SEAN SHAW; IS THAT RIGHT?

24 "A I'M NOT TOO SURE ABOUT THE
25 DATE, BUT YES.

26 "Q BUT YOU DO REMEMBER
27 RECEIVING \$600 AFTER YOU RECEIVED
28 \$500; IS THAT RIGHT?

1 "A I'M NOT 100 PERCENT SURE.
2 "Q IF I SHOWED YOU A DOCUMENT
3 OF MONEY THAT WAS PAID TO YOU, WOULD
4 THAT REFRESH YOUR MEMORY AS TO WHAT
5 YOU RECEIVED AND THE DATES YOU
6 RECEIVED IT? WOULD IT HELP YOU?
7 "A I MEAN --
8 "MR. HIGGINS: MAY I APPROACH?
9 "THE COURT: YES.
10 "MR. HIGGINS: FOR COURT AND
11 COUNSEL, I'M SHOWING HIM IT LOOKS
12 LIKE A SUPPLEMENTAL REPORT DATED
13 AUGUST 8, 2008.
14 "Q WOULD YOU TAKE A LOOK AT
15 THOSE DATES AND THOSE AMOUNTS,
16 PLEASE?
17 "A YES.
18 "Q DOES IT HELP YOU REFRESH
19 YOUR RECOLLECTION AS TO HOW MUCH
20 MONEY YOU RECEIVED AND WHEN YOU
21 RECEIVED IT?
22 "A YEP.
23 "Q SO AUGUST 28 YOU RECEIVED
24 \$800, AND AUGUST 28, 2008, YOU
25 RECEIVED \$800; RIGHT?
26 "A YES.
27 "Q AND AUGUST 24TH, YOU
28 RECEIVED \$600; RIGHT?

1 "A YES.

2 "Q SO IN AUGUST OF 2008 YOU
3 RECEIVED ABOUT \$2,700 THAT MONTH; IS
4 THAT RIGHT?

5 "A YES.

6 "Q \$2,700 IN AUGUST IN 2008;
7 IS THAT RIGHT?

8 "A THAT'S ABOUT RIGHT.

9 "Q AND JANUARY 5TH, '09, YOU
10 RECEIVED ANOTHER \$300 FROM DETECTIVE
11 DUNCAN AND MORRIS; ISN'T THAT RIGHT?

12 "A YES

13 "Q WHAT DID YOU RECEIVE THE
14 \$300 FOR IN JANUARY OF 2009?

15 "A I'M NOT -- I WAS NEVER TOO
16 SURE ABOUT THAT ONE.

17 "Q YOU JUST GOT SOME MONEY IN
18 JANUARY, 2009, AND YOU DON'T KNOW
19 WHY?

20 "A NO.

21 "Q DO YOU REMEMBER TALKING TO
22 DUNCAN AND MORRIS?

23 "A YES.

24 "Q WHAT DID YOU TALK TO THEM
25 ABOUT?

26 "A I THINK I ASKED THEM FOR
27 SOME MONEY.

28 "Q YOU ASKED THEM FOR SOME

1 MONEY?

2 "A YES, I DID.

3 "Q DID YOU PROMISE -- DID YOU
4 PROMISE THEM ANYTHING IF THEY WOULD
5 GIVE YOU SOME MONEY?

6 "A I DON'T THINK I DID.

7 "Q YOU HAD MET DETECTIVE
8 DUNCAN BEFORE JANUARY 5TH, 2009?

9 "A YES.

10 "Q YOU HAD MET DETECTIVE
11 MORRIS BEFORE JANUARY 5TH, 2009?

12 "A YES.

13 "Q ON HOW MANY OCCASIONS HAD
14 YOU MET EITHER OR BOTH OF THOSE
15 INDIVIDUALS?

16 "A I'VE MET MORRIS QUITE A FEW
17 TIMES, AND DUNCAN QUITE A FEW TIMES.

18 "Q AND ON THOSE QUITE A FEW
19 TIMES, DID YOU GIVE THEM ANY
20 INFORMATION?

21 "A YES.

22 "Q NOW, IN -- ON DIRECT
23 EXAMINATION, YOU SAID THAT YOU WERE
24 SCARED TO GO TO JAIL; IS THAT RIGHT?

25 "A YES.

26 "Q NOW, THE DETECTIVES TOLD
27 YOU BEFORE THAT YOU HAD TO GIVE THEM
28 GOOD, RELIABLE INFORMATION; IS THAT

1 RIGHT?

2 "A YES.

3 "Q SO WHEN YOU TOLD THEM ABOUT
4 MY CLIENT, YOU WANTED TO MAKE SURE
5 THEY BELIEVED WHAT YOU WERE TELLING
6 THEM; ISN'T THAT RIGHT?

7 "A YES.

8 "Q IT'S VERY IMPORTANT TO YOU
9 THAT THEY BELIEVE WHAT YOU ARE
10 SAYING; IS THAT CORRECT?

11 "A YES.

12 "Q AND THE AGREEMENT THAT YOU
13 PROFFERED, THE AGREEMENT SAID
14 BASICALLY, IT SAID THAT YOU HAD TO
15 BE TRUTHFUL; RIGHT?

16 "A YES.

17 "Q AND IF YOU MADE ANY -- IF
18 YOU TOLD A LIE OR IF SOMEBODY
19 THOUGHT YOU WERE TELLING A LIE ON
20 THE STAND, THAT DEAL WOULD GO AWAY;
21 IS THAT RIGHT?

22 "A YES.

23 "Q MR. FEISSA, DID YOU TALK TO
24 ANYBODY DURING THE BREAK?

25 "A I TALKED TO MY ATTORNEY.

26 "Q MR. FEISSA, LET ME ASK YOU
27 THIS. DID YOU HAVE A CAR IN 2008?

28 "A YES.

1 "Q WHAT KIND OF CAR WERE YOU
2 DRIVING IN 2008? IN JULY OF 2008,
3 WERE YOU DRIVING ANY PARTICULAR TYPE
4 OF CAR?

5 "A I DON'T OWN A CAR, NO.

6 "Q DID YOU DRIVE A PARTICULAR
7 TYPE OF CAR, WHETHER OR NOT YOU
8 OWNED THAT -- WHETHER OR NOT YOU
9 OWNED THAT OR NOT?

10 "A YES.

11 "Q WHAT KIND OF CAR?

12 "A A DROVE A 2001 VOLKSWAGEN
13 JETTA.

14 "Q WHAT COLOR?

15 "A WHITE.

16 "Q SO YOU'RE SAYING A WHITE
17 CAR?

18 "A YES.

19 "Q YOU ARE FAMILIAR WITH THE
20 AREA OF 139TH AND AVALON; RIGHT?

21 "A YES.

22 "Q AND AVALON IS A MAJOR
23 STREET; IS THAT CORRECT?

24 "A YES.

25 "Q I BELIEVE YOU SAID
26 MR. KHALILL LIVED EIGHT HOUSES WEST
27 OF AVALON; IS THAT RIGHT?

28 "A YES.

1 "Q AND IS THAT A CURVE -- DOES
2 THAT STREET CURVE OF BEFORE YOU GET
3 TO HIS HOUSE OR AFTER HIS HOUSE? IF
4 YOU'RE GOING WEST FROM AVALON ON
5 139TH, I BELIEVE THE STREET CURVES;
6 IS THAT CORRECT?

7 "A A LITTLE SIDE STREET CURVE.

8 "Q IS MR. KHALILL'S HOUSE IN
9 THE CURVE OR BEFORE YOU GET TO THE
10 CURVE OF 139TH STREET WEST OF
11 AVALON?

12 "A IT'S ON 139TH.

13 "Q IS IT IN THE CURVE OF 139TH
14 STREET?

15 "A THAT CURVE IS HIS OWN
16 STREET.

17 "Q OKAY. THERE IS -- DO YOU
18 RECALL OR DO YOU REMEMBER IF THERE
19 IS A MAILBOX ON THE CORNER OF 139TH
20 AND AVALON, THAT WOULD BE THE
21 NORTHWEST CORNER?

22 "A YES.

23 "Q YOU HAVE SEEN THAT MAILBOX
24 QUITE -- YOU HAVE SEEN THAT MAILBOX
25 QUITE A FEW TIMES; IS THAT RIGHT?

26 "A YES.

27 "Q HOW CLOSE WAS THAT TO THE
28 CORNER?

1 "A PRETTY CLOSE.

2 "Q FROM THAT MAILBOX, CAN YOU
3 SEE THE LOCATION WHERE YOU SAID MY
4 CLIENT SAID THAT HE SHOT, OR SOMEONE
5 SHOT MR. QUEZADA ON JULY OF 2008?

6 "A CAN YOU ASK THAT AGAIN?

7 "Q I CAN.

8 "A CAN YOU PLEASE ASK THAT
9 AGAIN?

10 "Q IF YOU'RE STANDING AT THE
11 MAILBOX THAT YOU DESCRIBED ON THE
12 NORTHWEST CORNER, ARE YOU ABLE TO
13 SEE THE LOCATION WHERE THE YOUNG MAN
14 WAS SHOT ON JULY 28, 2008?

15 "A YES.

16 "Q ARE THERE ANY -- DO YOU
17 RECALL WHETHER OR NOT THERE ARE ANY
18 OVERHEAD LIGHTS ON EITHER OF THE
19 FOUR CORNERS OF 139TH AND AVALON?

20 "A WHAT DO YOU MEAN, OVERHEAD
21 LIGHTS?

22 "Q ARE THERE STREET LIGHTS?

23 "A I THINK SO, YES.

24 "Q DID MY CLIENT TELL YOU THAT
25 HE RAN ACROSS -- FIRST OF ALL, DID
26 HE TELL YOU THAT HE WALKED ACROSS
27 AVALON FROM THE WEST SIDE TO THE
28 EAST SIDE TO SHOOT THIS YOUNG MAN?

1 "A YES.

2 "Q DID HE TELL YOU WHETHER OR
3 NOT THEY HAD ANY TRAFFIC WHEN HE WAS
4 WALKING ACROSS THE STREET TO SHOOT
5 THE GENTLEMAN?

6 "A HE DIDN'T SAY NOTHING ABOUT
7 TRAFFIC.

8 "Q HE DIDN'T SAY ANYTHING
9 ABOUT TRAFFIC. OKAY. DID HE TELL
10 YOU THAT -- WELL, I'LL ASK YOU, DID
11 HE SAY HE WALKED ALONE OR WITH
12 SOMEBODY ELSE?

13 "A WITH SOMEBODY ELSE.

14 "Q YOU BELIEVE EVERYTHING MY
15 CLIENT TELLS YOU?

16 "A YES AND NO.

17 "Q AND YES AND NO. WHAT PART
18 IS NO?

19 "A ABOUT ABOUT THE INCIDENT?

20 "Q ABOUT THE INCIDENT, YES.

21 "A I MEAN, I BELIEVE
22 EVERYTHING ABOUT THE INCIDENT.

23 "Q EVERYTHING? WELL, DIDN'T
24 YOU TESTIFY THAT HE PUTS IN EXTRAS,
25 TO USE YOUR WORDS?

26 "A YES.

27 "Q ALSO, DID YOU TELL US
28 DURING THE COURSE OF YOUR PROFFER

1 THAT YOU DIDN'T THINK MY CLIENT HAD
2 THE GUTS, AND THAT'S MY WORDS, TO
3 STAND OVER SOMEBODY AND SHOOT?

4 "A YES.

5 "Q WELL, YOU SAID THAT HE SAID
6 THAT HE STOOD OVER THE GUY AND SHOT
7 HIM; RIGHT?

8 "A YES.

9 "Q AND YOU DIDN'T BELIEVE HIM;
10 RIGHT?

11 "A I BELIEVED HIM. I DIDN'T
12 BELIEVE THAT HE DUMPED OUT THE WHOLE
13 CLIP ON HIM.

14 "Q DID HE TELL YOU HOW LONG HE
15 STOOD THERE TO DO THAT?

16 "A NO.

17 "Q DID HE TELL YOU HE RAN
18 AWAY?

19 "A HE SAID THAT, YES

20 "Q WHICH WAY DID HE TELL YOU
21 HE RAN?

22 "A BACK BACK TOWARDS 139TH.

23 "Q WHAT DID HE DO WHEN HE
24 GOT -- WELL, HE WAS ALREADY ON
25 139TH?

26 "A WELL, TOWARDS OUR SIDE.

27 "Q SO HE RAN TOWARDS AVALON?

28 "A HE RAN TOWARDS THE WEST

1 SIDE GOING TOWARDS --

2 "Q HE RAN FROM THE SITE OF THE
3 SHOOTING TO AVALON BOULEVARD FIRST;
4 IS THAT RIGHT?

5 "A HE RAN ACROSS THE STREET
6 AVALON AND PROCEEDED TOWARDS
7 MR. KHALILL'S HOUSE.

8 "Q HE CAME FROM THE EAST SIDE
9 OF AVALON OF 139TH AND HE RAN ACROSS
10 TO THE WEST SIDE; IS THAT RIGHT?

11 "A YES.

12 "Q DID HE TELL YOU THAT HE WAS
13 HOLDING A GUN WHEN HE DID THAT?

14 "A HE SAID -- CAN YOU ASK THAT
15 AGAIN?

16 "Q DID HE TELL YOU THAT HE WAS
17 HOLDING A GUN IN HIS HANDS WHEN HE
18 DID THAT?

19 "A WHEN HE DID WHAT?

20 "Q WHEN HE RAN ACROSS AVALON.

21 "A HE SAID WE --

22 "Q I'M ASKING YOU DID HE TELL
23 YOU?

24 "A YES.

25 "Q DID MY CLIENT TELL YOU THAT
26 HE HIMSELF, I'M NOT TALKING ABOUT
27 ANY OTHER PERSON. DID HE TELL YOU
28 THAT HE WAS HOLDING A GUN IN HIS

1 HAND WHEN HE RAN BACK ACROSS
2 AVALON --
3 "A YES.
4 "Q -- BOULEVARD? DID HE TELL
5 YOU WHAT HAND HE WAS HOLDING IT?
6 "A NO.
7 "Q DO YOU KNOW IF HE'S RIGHT
8 HAND OR LEFT-HANDED?
9 "A NO.
10 "Q DID HE TELL YOU WHAT KIND
11 OF GUN THAT HE HAD?
12 "A YES.
13 "Q WHAT KIND OF GUN DID HE SAY
14 HE HAD?
15 "A WELL, HE DIDN'T SAY WHAT
16 KIND HE HAD, BUT THE KIND OF GUN WAS
17 USED.
18 "Q DID HE TELL YOU WHAT KIND
19 OF GUN WAS USED?
20 "A YES.
21 "Q WHAT KIND OF GUNS WERE
22 USED?
23 "A A NINE AND 40.
24 "Q I THOUGHT YOU TOLD THE
25 POLICE OFFICER IT WAS A DESERT
26 EAGLE.
27 "A IT WAS A DESERT EAGLE 40.
28 "Q AT ANY TIME IN THE

1 CONVERSATION WITH THE POLICE

2 OFFICERS, DID YOU MENTION A 40, OR
3 DID YOU JUST SAY A DESERT EAGLE?

4 "A I SAID ON ONE OCCASION, I
5 SAID DESERT EAGLE.

6 "Q DID MY CLIENT USE THE WORD
7 DESERT EAGLE WHEN YOU HAD THE
8 CONVERSATION WITH HIM?

9 "A NO.

10 "Q DID MY CLIENT USE THE WORD
11 9-MILLIMETER WHEN YOU HAD THE
12 CONVERSATION WITH HIM?

13 "A YES.

14 "Q YOU HAD SAID THAT HE HAD A
15 9-MILLIMETER OR SOMEONE ELSE?

16 "A I SAID -- HE DIDN'T SAY
17 THAT HE HAD A 9-MILLIMETER.

18 "Q I WILL ASK YOU THIS. WHEN
19 YOU FIRST GOT YOUR \$800 IN
20 AUGUST 4TH, 2008, IS WHEN YOU TOLD
21 THE POLICE OFFICER ABOUT A
22 9-MILLIMETER OR A DESERT EAGLE?

23 "A I CAN'T RECALL. I DON'T
24 THINK SO.

25 "Q DID YOU TELL THEM ANY KIND
26 OF WEAPON WHEN YOU FIRST RECEIVED,
27 JUST BEFORE YOU RECEIVED \$800 ON
28 AUGUST 4TH, 2008?

1 "A CAN YOU ASK THAT AGAIN?

2 "Q DID YOU MENTION ANY KIND OF
3 WEAPON BEFORE YOU RECEIVED THE \$800
4 THAT YOU RECEIVED ON AUGUST 4TH,
5 2008?

6 "A I'M NOT TOO SURE.

7 "Q WHAT ABOUT ON AUGUST 12
8 WHEN YOU RECEIVED \$500, HAD YOU
9 MENTIONED ANY KIND OF WEAPON AT THAT
10 TIME?

11 "A NO.

12 "Q DID YOU THINK YOU WOULD
13 RECEIVE MORE MONEY IF YOU WOULD BE
14 MORE SPECIFIC ABOUT WEAPONS?

15 "A NO.

16 "Q WELL, YOU WANTED TO BE AS
17 ACCURATE AS POSSIBLE; IS THAT
18 CORRECT?

19 "A YES.

20 "Q WELL, YOU WANTED THE POLICE
21 OFFICERS TO THINK THAT YOU WERE
22 ACCURATE AS POSSIBLE; IS THAT RIGHT?

23 "A YES.

24 "Q IS THAT WHY YOU SAID THAT
25 YOU USED THE TERM DESERT EAGLE WHEN
26 YOU TALKED TO THE POLICE OFFICERS?

27 "A YES.

28 "Q AND YOU HAD JUST SEEN A

1 DESERT EAGLE, I THINK YOU TESTIFIED
2 EARLIER IT WAS ONE OF THE WEAPONS
3 THAT YOU REMEMBER SEEING WAS A
4 DESERT EAGLE; IS THAT RIGHT?

5 "A YES.

6 "Q AND AND THAT'S WHY YOU TOLD
7 THE POLICE OFFICERS DESERT EAGLE; IS
8 THAT RIGHT?

9 "A YES.

10 "Q NOW, SO IT'S YOUR TESTIMONY
11 MY CLIENT THEN RAN BACK ACROSS
12 AVALON, AND WHERE DID HE GO? WHERE
13 DID HE TELL YOU THAT HE WENT AFTER
14 HE RAN BACK ACROSS AVALON AFTER THE
15 SHOOTING OCCURRED?

16 "A MR. KHALILL'S HOUSE.

17 "Q KHALILL'S HOUSE. KHALILL'S
18 HOUSE WAS ABOUT HALF A BLOCK AWAY
19 FROM THAT INCIDENT?

20 "A SEVEN OR EIGHT HOUSES.

21 "Q SEVEN OR EIGHT HOUSES,
22 OKAY. THOSE GUNS THAT YOU TALKED
23 ABOUT -- THAT YOU TALKED ABOUT, THEY
24 MAKE A LOT OF NOISE, DON'T THEY?

25 "A YEAH.

26 "Q AND SO IT'S YOUR TESTIMONY
27 THAT YOU SAY HE RAN ON FOOT ABOUT
28 SEVEN OR EIGHT HOUSES DOWN ON THE

1 OTHER SIDE OF AVALON IN ORDER TO GET
2 AWAY?

3 "A YES.

4 "Q WHEN DID HE GIVE YOU THIS
5 INFORMATION?

6 "A AT A FUNCTION.

7 "Q WHERE?

8 "A IN THE SOUTH SIDE OFF MAY,
9 IF I THINK ABOUT -- IF I THINK
10 ABOUT.

11 "Q WHOSE HOUSE WAS IT, OR WHAT
12 KIND OF STRUCTURE WAS THAT?

13 "A IT WAS A FRIEND OF A
14 FRIEND'S HOUSE.

15 "Q YOU DON'T KNOW WHOSE HOUSE
16 IT WAS?

17 "A IT WAS A LADY'S HOUSE.

18 "Q DO YOU RECALL THE ADDRESS
19 OF THAT HOUSE?

20 "A I DON'T KNOW THE ADDRESS.
21 I KNOW THE STREETS.

22 "Q CAN YOU POINT IT OUT -- CAN
23 YOU POINT IT OUT TO THE DETECTIVES
24 IF HE ASKED YOU TO?

25 "A YES.

26 "Q HAD YOU POINTED IT OUT TO
27 THE DETECTIVES BEFORE?

28 "A NO.

1 "Q YOU'VE NEVER TOLD THEM
2 WHERE THE CONVERSATION TOOK PLACE?

3 "A I TOLD THEM IT HAPPENED IN
4 HUNTINGTON PARK AT A POOL PARTY IN
5 THE SOUTH SIDE COMPTON CRIPS.

6 "Q YOU NEVER GAVE THEM A
7 SPECIFIC ADDRESS?

8 "A NO.

9 "Q AND WHERE WERE YOU AND MY
10 CLIENT WHEN THIS CONVERSATION TOOK
11 PLACE?

12 "A IN THE BACK OF THE HOUSE.

13 "Q WELL, WERE YOU AND HE ALONE
14 WHEN THIS CONVERSATION TOOK PLACE?
15 WERE YOU AND HE THE ONLY PEOPLE
16 PRESENT WHEN HE MENTIONED TO YOU
17 THAT HE KILLED SOMEONE?

18 "A YES.

19 "Q WAS THERE ANYBODY -- NOBODY
20 ELSE WAS PRESENT?

21 "A AT THE HOUSE?

22 "Q NO. RIGHT WHEN HE WAS
23 TALKING TO YOU ABOUT THAT SHOOTING.

24 "A WE HAD A COUPLE OF PEOPLE
25 WITHIN -- COUPLE OF PEOPLE NEAR US.

26 "Q WHO WERE THOSE OTHER TWO
27 PEOPLE?

28 "A WE HAD BABY SPOKE AND

1 WHATEVER GIRL HE WAS TALKING TO.
2 "Q AND WAS MY CLIENT TALKING
3 OUT LOUD?
4 "A NO.
5 "Q WAS HE WHISPERING SO ONLY
6 YOU CAN HEAR?
7 "A HE WASN'T WHISPERING. BABY
8 SPOKE WAS HERE. HE CAN HEAR THE
9 CONVERSATION, IF YOU KNOW.
10 "Q HOW CLOSE WAS BABY SPOKE
11 WHEN YOU AND MY CLIENT WAS TELLING
12 YOU THIS?
13 "A PROBABLY HALF A FOOT.
14 HALFWAY BETWEEN YOU AND ME.
15 "THE COURT: YOU ARE ABOUT 14 FEET
16 AWAY, COUNSEL.
17 "MR. HIGGINS: ABOUT 7 FEET.
18 "Q AND DID HE TELL YOU THIS IN
19 RESPONSE TO A QUESTION THAT YOU
20 ASKED? IN OTHER WORDS, DID YOU ASK
21 HIM ABOUT THE SHOOTING, OR DID HE
22 JUST COME UP TO YOU AND START
23 TALKING TO YOU ABOUT THIS INCIDENT?
24 "A I ASKED HIM ABOUT IT.
25 "Q AND SO YOU WERE A PRETTY
26 RESPECTED GANG MEMBER AT THAT TIME;
27 IS THAT RIGHT?
28 "A IF THAT'S WHAT YOU CALL IT.

1 "Q WELL, IS IT -- I'LL ASK YOU
2 THIS. YOU ARE VERY FAMILIAR WITH
3 THE 135 PIRUS; IS THAT CORRECT?

4 "A YES.

5 "Q YOU'RE FAMILIAR WITH
6 ACTIVITIES OF THE 135TH STREET PIRU;
7 IS THAT RIGHT?

8 "A YES.

9 "Q AND AND YOU'RE FAMILIAR
10 WITH THE WAY THE GANG OPERATES; IS
11 THAT RIGHT?

12 "A YES.

13 "Q THEY THEY DON'T GO ABOUT
14 TALKING ABOUT SERIOUS CRIMES WITH
15 PEOPLE THEY DON'T TRUST; IS THAT
16 RIGHT?

17 "A I'VE SEEN IT PERSONALLY ON
18 SEVERAL OCCASIONS.

19 "Q DID YOU SAY THAT YOU PUT IN
20 WORK, SIR?

21 "A NO.

22 "Q YOU MADE A STATEMENT
23 TO A -- STRIKE THAT. WHO IS BABY
24 BELL?

25 "A WHO?

26 "Q BABY BELL, BELLY BELL?

27 "A THAT'S A MEMBER FROM 135
28 PIRU.

1 "Q AND ACCORDING TO YOUR
2 STATEMENT, HE NEVER PUT IN WORK; IS
3 THAT RIGHT?

4 "A YES.

5 "Q SO YOU DON'T -- SO YOU DO
6 KNOW WHAT PUTTING IN WORK MEANS;
7 RIGHT?

8 "A YES.

9 "Q DID YOU EVER FIND OUT WHAT
10 KINDS OF GUNS WAS USED IN THE
11 SHOOTING WITH QUEZADA?

12 "A TO THIS DAY, I STILL DON'T
13 KNOW.

14 "Q I'M SORRY?

15 "A I DON'T KNOW.

16 "Q BUT WHEN YOU TOLD POLICE
17 OFFICERS THAT A 9-MILLIMETER AND
18 DESERT EAGLE WERE, YOU USED THOSE
19 TERMS BECAUSE IT WAS TWO OF THE MOST
20 COMMON WEAPONS THAT YOU HAD SEEN
21 WITH THE 135 PIRU; IS THAT RIGHT?

22 "A CAN YOU SAY THAT AGAIN?

23 "Q WHEN YOU TOLD THE POLICE
24 OFFICERS THAT IT WAS A 9-MILLIMETER
25 AND A DESERT EAGLE, YOU SAID THAT
26 BECAUSE THEY WERE THE TWO MOST
27 COMMON WEAPONS THAT YOU HAD SEEN
28 WITH THE 135 PIRUS; IS THAT RIGHT?

1 "A I WAS TOLD.

2 "Q NOW, OTHER THAN THE MONEY,
3 YOUR GUN CASE GOING AWAY, AND YOUR
4 DRUG CASE, THAT'S YOUR PRESENT CASE,
5 IS THAT RIGHT? THE DRUG CASE, AND
6 THE GET OUT OF JAIL ON THIS AS SOON
7 AS THIS PRELIM IS OVER, IS THERE ANY
8 OTHER TYPE OF PAYMENT THAT YOU
9 RECEIVED?

10 "A NOPE.

11 "Q WERE YOU EVER PROMISED THAT
12 YOU WOULD BE GIVEN FREE RENT?

13 "A I WAS NEVER PROMISED.

14 "Q WERE YOU EVER PROMISED ANY
15 TYPE OF VEHICLE AS A RESULT OF YOUR
16 GIVING INFORMATION?

17 "A YES, I WAS

18 "Q WHAT WHAT KIND OF VEHICLE
19 WERE YOU GIVEN?

20 "A IT WAS A TERCEL.

21 "Q WHO GAVE THAT TO YOU?

22 "A SHAW.

23 "Q DETECTIVE SHAW GAVE YOU A
24 CAR ALSO; RIGHT"

25 "A YES.

26 "Q AND AND WHAT YEAR WAS THIS
27 CAR?

28 "A I NEVER SAW THE PAPERWORK.

1 "Q YOU JUST SAW THE VEHICLE;
2 RIGHT?
3 "A IT'S ONLY A VEHICLE.
4 "Q EVER TRANSFERRED IN YOUR
5 NAME?
6 "A NO.
7 "Q YOU WERE JUST GIVEN THE
8 KEYS TO THE CAR AND THE CAR?
9 "A YES.
10 "Q AND AND HE GAVE YOU GASOLINE
11 MONEY?
12 "A NO.
13 "Q WHEN DID HE GIVE YOU THAT?
14 "A SOMETIME IN LATE '08.
15 "Q NOW, OTHER THAN THE CAR AND
16 THE MONEY AND THE GET OUT OF JAIL
17 TICKET AND ANYTHING ELSE THAT -- AND
18 ANYTHING ELSE YOU DID NOT MENTION
19 THAT YOU WERE GIVEN BY THE POLICE?
20 "A THAT'S ABOUT IT.
21 "Q IS THAT ABOUT IT, OR IS
22 THAT IT? IS THERE SOME OTHER THING
23 THAT YOU CAN'T REMEMBER AT THIS
24 TIME?
25 "A AND WHEN I GOT PULLED OVER
26 SHERIFFS, THEY WOULD LET ME GO.
27 "Q ANY TIME THE SHERIFFS
28 STOPPED -- ANY TIME THE SHERIFFS

1 STOPPED YOU, WHATEVER?

2 "A YEAH.

3 "Q WHAT WOULD YOU HAVE TO TELL
4 THE SHERIFFS?

5 "A I WOULD PLUG MY PHONE UP TO
6 SPEAKERS AND HAVE SHAW ON SPEAKER
7 PHONE AND LET THEM KNOW TO LET ME GO
8 OR WHATEVER.

9 "Q NO MATTER WHAT YOU WERE
10 PULLED OVER FOR; IS THAT RIGHT?

11 "A NO.

12 "Q YOU DON'T WANT TO LET
13 DETECTIVE SHAW DOWN, DO YOU?

14 "A UP TO THIS MOMENT? I MEAN,
15 I DON'T KNOW WHAT YOU MEAN BY THAT.

16 "Q WELL, YOU WANT TO MAKE SURE
17 THAT YOU SAY ON THIS STAND WHAT HE
18 EXPECTS YOU TO SAY; IS THAT RIGHT?

19 "A I'M HERE TO TELL THE TRUTH.

20 "Q THE PARTY WHERE THIS
21 INCIDENT OCCURRED YOU SAID WAS A
22 POOL PARTY WHERE YOU SPOKE TO MY
23 CLIENT AND HE REVEALED ALL OF THE
24 INFORMATION TO YOU; IS THAT RIGHT?

25 "A YES.

26 "Q IS THAT IN COMPTON?

27 "A I WOULD SAY YES.

28 "Q WHOSE WHOSE TERRITORY WAS

1 THAT?

2 "A FROM WHAT I KNOW, THAT
3 WOULD BE THE COMPTON CRIPS.

4 "Q AND PIRU, IS THAT A CRIP OR
5 A BLOOD GANG?

6 "A PIRU IS PIRU.

7 "Q AND WHAT SET OF CRIPS WAS
8 THIS PART -- WHAT SET OF CRIPS
9 TERRITORY WAS THIS PARTY IN?

10 "A TO MY KNOWLEDGE, IT WOULD
11 BE SOUTH SIDE COMPTON CRIPS.

12 "Q WAS THAT AN ENEMY OF 135
13 PIRU?

14 "A NO.

15 "Q YOU CAN GO THERE -- YOU CAN
16 GO THERE FREELY; RIGHT?

17 "A THAT'S NOT AN ENEMY OF 135
18 PIRU.

19 "Q DID YOU HAVE ANY PROBLEMS
20 WHEN YOU WENT TO THAT PARTY?

21 "A AT THE END, YES.

22 "Q WAS IT WITH SOME SOUTH SIDE
23 CRIPS?

24 "A YES.

25 "Q YOU DIDN'T HAVE PROBLEMS
26 GOING IN THERE; RIGHT?

27 "A NO.

28 "MR. HIGGINS: NO FURTHER QUESTIONS

1 AT THIS TIME, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 AND RECROSS-EXAMINATION.

4 MR. GRAYSON.

5

6 "RECROSS-EXAMINATION"

7 "BY MR. OLIVE:

8 "Q MR. FEISSA, WERE YOU
9 PROVIDED WITH AN UNMARKED POLICE CAR
10 BY THE SHERIFF'S DEPARTMENT TO DRIVE
11 AROUND IN 2008?

12 "A NO.

13 "Q 2009?

14 "A NO.

15 "Q 2007?

16 "A NO.

17 "Q DID YOU EVER TELL THE
18 POLICE THAT THE PERSON PEANUT WAS
19 TRAYVON OR LAQUON?

20 "A EXCUSE ME?

21 "Q DID YOU EVER TELL THE
22 POLICE THAT THE FIRST NAME OF PEANUT
23 WAS TRAYVON OR LAQUON?

24 "A YEAH.

25 "Q AFTER YOU RECEIVED THE
26 MONEY FROM MR. SHAW, YOU WERE STILL
27 HANGING AROUND THE NEIGHBORHOOD?

28 "A YES.

1 "Q IN THE PROFFER SECTION YOU
2 DID TELL POLICE WHEN YOU WERE ASKED
3 ABOUT DEYAA KHALILL SHOOTING SOMEONE
4 THAT DAY, KHALILL DID NOT
5 SPECIFICALLY SAY HE DID SHOOT
6 SOMEONE. YOU DID TELL THE POLICE
7 THAT ON AUGUST 21ST OF 2009; IS THAT
8 RIGHT?

9 "A YES.

10 "Q DID YOU ALSO TELL THE
11 POLICE THAT YOU DON'T TALK A LOT
12 TO -- YOU AREN'T A PERSON WHO TALKS
13 A LOT IN 135?

14 "A SAY WHAT?

15 "Q DID YOU EVER TELL THAT
16 POLICE YOU DON'T TALK A LOT TO
17 ANYONE IN 135?

18 "A I'M NOT CLOSE TO ANYONE.

19 "Q DID YOU EVER TELL THE
20 POLICE THAT?

21 "A I DON'T THINK I DID.

22 "Q MR. FEISSA, DO YOU -- HAVE
23 YOU EVER SMOKED PCP?

24 "A WHAT'S PCP?

25 "Q YOU DON'T KNOW WHAT PCP IS?
26 SHERM, WET ONE. YOU KNOW WHAT IS
27 THAT (SIC)?

28 "A YEAH. I HEARD WHAT THAT

1 IS. I NEVER SMOKED THAT.

2 "Q ALSO CALLED ANGEL DUST?

3 "A NO.

4 "Q IN 2008, DID YOU HAVE A
5 PHYSICAL CONFRONTATION WITH ANYONE
6 IN 135?

7 "A OF COURSE.

8 "Q HOW ABOUT WITH MR. KHALILL?

9 "A YES, I DID.

10 "Q WAS THIS SOME FIST FIGHT?

11 "A I MEAN IF THAT'S WHAT YOU
12 WANT TO CALL IT, YEAH.

13 THE COURT: RECROSS-EXAMINATION BY MR. HIGGINS.

14

15 "RECROSS-EXAMINATION"

16 "BY MR. HIGGINS:

17 "Q HAVE YOU EVER HAD A
18 CONVERSATION (SIC) WITH MY CLIENT,
19 PEANUT?

20 "A CONFRONTATION?

21 "Q CONFRONTATION, YEAH. EVER
22 HAD AN ARGUMENT, FIGHT WITH HIM,
23 ANYTHING LIKE THAT?

24 "A OF COURSE I HAD ARGUMENTS.

25 "Q WHEN?

26 "A SINCE HIGH SCHOOL.

27 "MR. HIGGINS: THANK YOU. NO

28 FURTHER QUESTIONS.

1 "THE COURT: THANK YOU.

2 "YOU MAY STEP DOWN."

3 THAT CONCLUDES THE READING OF THE TESTIMONY
4 OF MR. FEISSA. MS. OSTROWSKI, DO YOU HAVE AN ADDITIONAL
5 WITNESS YOU WISH TO CALL THIS MORNING?

6 MS. OSTROWSKI: YES. DR. CARRILLO, PLEASE.

7 THE COURT: ASK THE WITNESS TO STEP IN.

8

9 JUAN CARRILLO,

10 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND
11 TESTIFIED AS FOLLOWS:

12 THE COURT: DO YOU SOLEMNLY STATE THAT THE
13 TESTIMONY YOU MAY 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: PLEASE HAVE A SEAT.

18 GIVE US YOUR FULL NAME, SPELLING FIRST AND
19 LAST NAME, PLEASE.

20 THE WITNESS: JUAN CARRILLO.

21 J-U-A-N. C-A-R-R-I-L-L-O.

22 THE COURT: THANK YOU FOR YOUR PATIENCE THIS
23 MORNING.

24 MS. OSTROWSKI, YOU MAY COMMENCE WITH DIRECT
25 EXAMINATION.

26

27

28

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 -VS-) NO. YA075709-01/
) -02/-03
 DENNIS WALLACE-01)
 DEYAA KHALILL-02)
 RAYMOND GIBBS-03)
)
 DEFENDANT-APPELLANT.)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
NOVEMBER 16, 18, 29, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 2 OF 16 VOLUMES
PAGES A-1 TO A-18
B-1 TO B-44
1 TO 105-300

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 (PAUSE IN PROCEEDINGS.)

2
3 THE COURT: AT THIS TIME, MS. OSTROWSKI, DO YOU
4 WISH TO CALL YOUR FIRST WITNESS?

5 MS. OSTROWSKI: YES. SAMUEL FEISSA.

6 THE COURT: MR. FEISSA, JUST FACE THE CLERK.

7 RAISE YOUR RIGHT HAND, PLEASE.
8

9 SAMUEL FEISSA,
10 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
13 TESTIMONY YOU MAY 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: YES.

17 THE CLERK: PLEASE STATE AND SPELL YOUR NAME
18 SLOWLY FOR THE RECORD.

19 THE WITNESS: SAMUEL FEISSA.

20 S-A-M-U-E-L. F-E-I-S-S-A.

21 THE COURT: ALL RIGHT.

22 THE RECORD WILL REFLECT THE WITNESS HAS
23 COUNSEL PRESENT.

24 YOU MAY INQUIRE.
25

26 DIRECT EXAMINATION
27 BY MS. OSTROWSKI:

28 Q GOOD AFTERNOON, SIR.

1 I'M GOING TO START OFF BY ASKING YOU SOME
2 GENERAL QUESTIONS ABOUT THE 135 PIRU GANG.

3 ARE YOU FAMILIAR WITH THAT GANG?

4 A I TAKE THE FIFTH.

5 Q SIR, WERE YOU A MEMBER OF THAT GANG?

6 A I PLEAD THE FIFTH.

7 Q CAN YOU TELL US WHAT STREETS OR
8 NEIGHBORHOODS MEMBERS OF THE 135 PIRU GANG SPENT TIME IN
9 AND HUNG OUT IN?

10 A I PLEAD THE FIFTH.

11 Q CAN YOU TELL US WHAT RIVALS THERE WERE TO
12 THE 135 PIRUS IN 2008?

13 A I PLEAD THE FIFTH.

14 Q ARE YOU FAMILIAR WITH BARRIO 13, OR BARRIO
15 TRECE?

16 A PLEAD THE FIFTH.

17 Q IN THE COURTROOM TODAY, DO YOU SEE ANYONE
18 THAT YOU KNOW FROM THE 135 PIRU CRIMINAL STREET GANG?

19 A PLEAD THE FIFTH.

20 Q ARE YOU FAMILIAR WITH DEFENDANT DENNIS
21 WALLACE AS BEING A MEMBER OF THE 135 PIRU GANG?

22 A I PLEAD THE FIFTH.

23 Q ARE YOU FAMILIAR WITH DEFENDANT DEYAA
24 KHALILL AS BEING A MEMBER OF THE 135 PIRU GANG?

25 A PLEAD THE FIFTH.

26 Q ARE YOU FAMILIAR WITH THE DEFENDANT RAYMOND
27 GIBBS AS BEING A MEMBER OF THE 195 PIRU GANG?

28 A PLEAD THE FIFTH.

1 Q DO YOU KNOW EACH OF THOSE INDIVIDUALS BY
2 THEIR MONIKERS?

3 A I PLEAD THE FIFTH.

4 Q DID YOU HAVE A CONVERSATION WITH ANY OF THE
5 DEFENDANTS REGARDING A SHOOTING THAT TOOK PLACE ON 139TH
6 AND AVALON IN 2008?

7 A I PLEAD THE FIFTH.

8 MS. OSTROWSKI: YOUR HONOR, AT THIS POINT, I
9 BELIEVE THERE HAVE BEEN SUFFICIENT QUESTIONS TO
10 ESTABLISH THAT THE WITNESS'S ANSWER WILL BE THE SAME TO
11 ALL OTHER QUESTIONS.

12 THE COURT: COUNSEL, DO YOU WISH TO BE HEARD
13 REGARDING THE AVAILABILITY OF MR. FEISSA AND/OR HIS
14 ASSERTION OF HIS FIFTH AMENDMENT PRIVILEGE REGARDING THE
15 QUESTIONS THAT HAVE BEEN ASKED OF HIM THUS FAR?

16 MR. GRAYSON: WELL, I THINK THE -- UNLESS I'M
17 MISTAKEN OR WASN'T LISTENING AS CAREFULLY AS I SHOULD
18 HAVE, IT SEEMED TO ME THE QUESTIONS ARE ALL DIRECTED
19 TOWARDS HIS GANG MEMBERSHIP ISSUES.

20 SO I THINK WE SHOULD EXPLORE SOME OTHER
21 AREAS.

22 THE COURT: WELL, I'M GOING TO TAKE JUDICIAL
23 NOTICE OF FACT THE WITNESS IS CURRENTLY BEING PROSECUTED
24 FOR MURDER; THAT THERE IS A 186.22 ALLEGATION INVOLVED
25 IN THAT PARTICULAR CASE.

26 AND THE QUESTIONS THAT HAVE BEEN ASKED OF
27 HIM DEALING WITH HIS ASSOCIATION OR KNOWLEDGE OF THESE
28 INDIVIDUALS OR THAT PARTICULAR GANG COULD LEAD TO AN

1 INCRIMINATING ANSWER IF HE WAS FORCED TO ANSWER THAT,
2 GIVEN HIS CURRENT ONGOING CRIMINAL PROSECUTION.

3 SO AS TO THE QUESTIONS THAT HE'S BEEN ASKED
4 THUS FAR, I SUSTAIN HIS ASSERTION OF HIS FIFTH AMENDMENT
5 PRIVILEGE AS TO EACH AND EVERY QUESTION THAT HAS BEEN
6 ASKED THUS FAR.

7 AND I DON'T KNOW IF YOU WANT TO ASK ANY
8 OTHER FOUNDATIONAL QUESTIONS, SUCH AS WHETHER OR NOT HE
9 INTENDS TO ASSERT HIS FIFTH AMENDMENT PRIVILEGE AS TO
10 OTHER QUESTIONS THAT ARE ASKED OF HIM; BUT IT'S PRETTY
11 CLEAR TO ME THAT HE WILL CONTINUE TO ASSERT HIS FIFTH
12 AMENDMENT PRIVILEGE UNLESS THE COURT DECIDES, FOR
13 WHATEVER REASON, TO OVERRULE THAT ASSERTION OF THE
14 PRIVILEGE.

15 MS. OSTROWSKI: I BELIEVE, CONTRARY TO WHAT
16 MR. GRAYSON JUST MENTIONED, I BELIEVE I DID ASK HIM
17 ABOUT WHETHER HE HAD ANY CONVERSATIONS ABOUT THE
18 PARTICULAR MURDER IN THIS CASE, WHICH WAS THAT THAT WAS
19 ON 139TH AND AVALON IN 2008.

20 THE COURT: YES.

21 MS. OSTROWSKI: I DID GET THAT QUESTION IN; RIGHT?

22 THE COURT: I REMEMBER HEARING IT.

23 MS. OSTROWSKI: OKAY.

24 Q SIR, IS IT YOUR INTENTION TO ASSERT YOUR
25 FIFTH AMENDMENT RIGHT IF YOU ARE ASKED ANY QUESTIONS
26 REGARDING THE FACTS THAT YOU KNOW, IF ANY, ABOUT THE
27 MURDER OF ADIEL QUEZADA?

28 A YES.

1 THE COURT: OKAY. AND IF YOU WANT TO START ON
2 CROSS-EXAMINATION, I'M PREPARED TO MAKE A FINDING THAT
3 THE WITNESS IS GOING TO CONTINUE TO REFUSE TO ANSWER
4 QUESTIONS RELATIVE TO THE CURRENT OFFENSE THAT'S BEFORE
5 THE COURT, OR HIS ASSOCIATION WITH THE DEFENDANTS, OR
6 HIS KNOWLEDGE OF THE PIRU GANG.

7 SO WHO WANTS TO BE HEARD FIRST?

8 MR. HIGGINS, DO YOU HAVE QUESTIONS OF THE
9 WITNESS?

10 MR. HIGGINS: YES, I DO.

11 THE COURT: GO AHEAD.

12

13 CROSS-EXAMINATION

14 BY MR. HIGGINS:

15 Q MR. FEISSA, DO YOU KNOW RAYMOND GIBBS?

16 A PLEAD THE FIFTH.

17 THE COURT: SUSTAINED.

18 MR. HIGGINS: I'M GOING TO OBJECT. I DIDN'T ASK
19 IF HE KNEW HIM AS A GANG MEMBER, SIMPLY WHETHER OR NOT
20 HE --

21 Q DO YOU RECOGNIZE RAYMOND GIBBS?

22 A PLEAD THE FIFTH.

23 THE COURT: SUSTAINED.

24 Q BY MR. HIGGINS: DID YOU WORK AS AN
25 INFORMANT FOR THE LOS ANGELES SHERIFF'S DEPARTMENT?

26 A PLEAD THE FIFTH.

27 Q DID YOU EVER SIGN ANY DOCUMENTS FOR THE
28 LOS ANGELES SHERIFF'S DEPARTMENT WHEREIN THEY DECLARED

1 THAT YOU WERE AN UNRELIABLE INFORMANT?

2 A I PLEAD THE FIFTH.

3 Q HAD YOU EVER HAD ANY CONVERSATIONS WITH MY
4 CLIENT, MR. GIBBS?

5 A PLEAD THE FIFTH.

6 MR. HIGGINS: YOUR HONOR, I WOULD ASK THE COURT TO
7 DIRECT THE WITNESS TO ANSWER. I DON'T THINK THAT THESE
8 PARTICULAR QUESTIONS WOULD EITHER DIRECTLY OR INDIRECTLY
9 AFFECT ANY CHARGES, MURDER CHARGES PENDING AGAINST HIM
10 FOR SOME UNRELATED CRIME I THINK HAPPENED IN 2008, TO
11 WHICH MY CLIENT IS NOT A PARTY.

12 AND I THINK THAT HIS GENERAL PLEADING OF
13 THE FIFTH AMENDMENT IN THIS PARTICULAR CASE IS UNCALLED
14 FOR. AND IT'S INAPPROPRIATE.

15 MR. GRAYSON: I JOIN IN THAT OBJECTION.

16 THE COURT: MR. NEWMAN, I ASSUME YOU JOIN AS WELL?

17 MR. NEWMAN: YES.

18 THE COURT: OKAY.

19 DOES THE WITNESS'S COUNSEL WISH TO BE
20 HEARD?

21 MS. MKRTICHIAN: YES, YOUR HONOR.

22 THE COURT: GO AHEAD.

23 MS. MKRTICHIAN: ANYTHING THAT HE SAYS WITH
24 RESPECT TO ANY RELATIONSHIP HE HAS WITH THESE THREE
25 DEFENDANTS WOULD POTENTIALLY INCRIMINATE HIM IN THE
26 PENDING CASE.

27 THE PENDING CASE IS NOT ONLY A MURDER
28 CHARGE, BUT IT ALSO HAS GANG ALLEGATIONS. AND ANY

1 CONTACT, ANY ASSOCIATION WITH THESE INDIVIDUALS WOULD
2 INCRIMINATE HIM WITH RESPECT TO THAT GANG ALLEGATION;
3 THEREFORE, HE DOES HAVE THAT RIGHT.

4 THE COURT: WHAT'S HIS CURRENT STATUS REGARDING
5 HIS CASE? WHERE IS HE AT? HAS IT BEEN THROUGH
6 PRELIMINARY HEARING? IS IT PENDING TRIAL? WHERE IS IT
7 AT?

8 MS. MKRTICHIAN: WE JUST SET THE MATTER FOR
9 PRELIMINARY HEARING ON JANUARY 12TH, AS A "GO" DATE.

10 THE COURT: MR. HIGGINS, DO YOU WISH TO BE HEARD
11 FURTHER?

12 MR. HIGGINS: YOUR HONOR, CASE LAW THAT I HAVE
13 READ DOES NOT INDICATE SIMPLE KNOWLEDGE OF A NAME OF A
14 PERSON, OR THE FACT THAT HE MAY RECOGNIZE A PERSON DOES
15 NOT NECESSARILY ASSOCIATE HIM WITH A GANG, OR THAT HE IS
16 IN A CRIMINAL STREET GANG FOR THE PURPOSES OF 186.22.

17 SUBMITTED.

18 THE COURT: WOULDN'T THAT BE A STRANGE
19 JUXTAPOSITION, MR. HIGGINS, IF IN HIS CASE WHEN IT
20 EVENTUALLY GOES TO TRIAL THEY CAN USE THE STATEMENTS
21 THAT HE GAVE IN THIS TRIAL, AND DEPENDING ON THE OUTCOME
22 OF THIS TRIAL, COULD USE THIS TRIAL AS A PREDICATE ACT,
23 DEPENDING ON THE OUTCOME OF THE CASE?

24 THE ASSERTION OF THE PRIVILEGE IS
25 SUSTAINED. DO YOU HAVE ANY OTHER QUESTIONS THAT YOU
26 WISH TO ASK THIS WITNESS?

27 MR. HIGGINS: I HAVE A BUNCH THAT I WISH TO ASK,
28 BUT I CANNOT ASK BASED ON THE FACT THAT HE IS ASSERTING

1 HIS PRIVILEGE, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. GRAYSON, DO YOU HAVE ANY QUESTIONS OF
4 THIS WITNESS?

5 MR. GRAYSON: I'D LIKE TO GIVE IT A SHOT.

6 THE COURT: GO AHEAD.

7

8 CROSS-EXAMINATION

9 BY MR. GRAYSON:

10 Q IS YOUR TRUE NAME SAMUEL FEISSA?

11 A YES.

12 Q YOU GREW UP ON THE STREETS OF COMPTON?

13 A I PLEAD THE FIFTH.

14 MR. GRAYSON: I WOULD OBJECT TO THAT. HOW COULD
15 THAT QUESTION POSSIBLY INCRIMINATE HIM?

16 THE COURT: WELL, IT'S MY UNDERSTANDING THAT THE
17 CURRENT OFFENSE THAT HE'S CHARGED WITH OCCURS WITHIN THE
18 GEOGRAPHICAL AND POLITICAL SUBDIVISION CITY OF COMPTON.

19 SO THE FACT THAT HE AT LEAST PLACED HIMSELF
20 WITHIN THE CITY OF COMPTON AT SOME POINT IN TIME COULD
21 THEORETICALLY INCRIMINATE HIM, DEPENDING ON WHETHER IT'S
22 ISSUE OF IDENTITY IN THE CASE HE'S CHARGED WITH.

23 I'M GOING TO SUSTAIN THE ASSERTION OF THE
24 PRIVILEGE.

25 MR. GRAYSON: CAN I REPLY TO THAT?

26 THE COURT: SURE.

27 MR. GRAYSON: I GREW UP ON THE STREETS OF COMPTON.
28 THAT DOESN'T AUTOMATICALLY MAKE ME A GANG MEMBER.

1 THERE'S PLENTY OF LAW-ABIDING CITIZENS WHO
2 GREW UP IN COMPTON WHO HAD NO GANG AFFILIATION
3 WHATSOEVER. I DON'T THINK THE QUESTION IN AND OF ITSELF
4 INCRIMINATES HIM AT ALL.

5 THE COURT: THERE ARE MEMBERS OF MY BENCH WHO GREW
6 UP IN COMPTON, ARE SITTING AS SUPERIOR COURT JUDGES ALSO
7 IN COMPTON, AND ELSEWHERE. I UNDERSTAND YOUR ARGUMENT.

8 HOWEVER, THE COURT IS DETERMINING WHETHER
9 OR NOT SOMETHING IS INCRIMINATING OR COULD LEAD TO OTHER
10 INCRIMINATING EVIDENCE.

11 AND I'M GOING TO SUSTAIN THE ASSERTION OF
12 THE PRIVILEGE.

13 Q BY MR. GRAYSON: DID YOU EVER RECEIVE
14 MONIES FROM A DETECTIVE SHAW OR ANY OTHER DETECTIVES OR
15 DEPUTIES OR OFFICERS WITHIN THE LOS ANGELES COUNTY
16 SHERIFF'S DEPARTMENT?

17 A PLEAD THE FIFTH.

18 MR. GRAYSON: AND AGAIN, I WOULD OBJECT, THAT I
19 DON'T BELIEVE THAT THAT IN ITSELF INCRIMINATES HIM.

20 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.

21 MR. GRAYSON: AND THIS WILL BE -- SO I DON'T HAVE
22 TO KEEP SAYING IT, PROBABLY GOING TO MAKE THIS A RUNNING
23 OBJECTION TO HIS ASSERTION OF THE FIFTH AMENDMENT.

24 THE COURT: NOTED.

25 Q BY MR. GRAYSON: DO YOU KNOW A GENTLEMAN BY
26 THE NAME OF RUFUS CROWDER?

27 A I PLEAD THE FIFTH.

28 Q DID YOU EVER GO TO A HOUSE AFTER A SHOOTING

1 ON TURRANT STREET, AND BRAG ABOUT PUTTING A BOY DOWN?

2 A PLEAD THE FIFTH.

3 Q DID YOU EVER BRAG ABOUT SHOOTING A BOY IN
4 THE HEAD TWICE FROM YOUR MOM'S VAN?

5 A PLEAD THE FIFTH.

6 Q WERE YOU INVOLVED IN A SHOOTING INVOLVING
7 YOUR MOM'S VAN?

8 A PLEAD THE FIFTH.

9 Q DID YOU TELL RUFUS CROWDER THAT YOU
10 SUFFERED SOME TYPE OF PHYSICAL DAMAGE TO YOUR VAN AS A
11 RESULT OF RETURN FIRE DURING THE TURRANT STREET
12 SHOOTING?

13 A PLEAD THE FIFTH.

14 Q DID YOU TELL RUFUS CROWDER THAT YOU COVERED
15 UP THIS BULLET HOLE THAT I JUST TALKED ABOUT, THIS
16 PHYSICAL DAMAGE TO YOUR MOM'S VAN, WITH A STICKER OF
17 JESUS?

18 A PLEAD THE FIFTH.

19 Q DID YOU EVER RECEIVE ANY LENIENCY ON ANY
20 CASE, CRIMINAL CASES OF ANY NATURE FROM THE LOS ANGELES
21 COUNTY SHERIFF'S DEPARTMENT?

22 A PLEAD THE FIFTH.

23 Q DO YOU KNOW IN ANY CAPACITY, NOT A GANG
24 CAPACITY, BUT IN TERMS OF JUST FRIENDSHIP, DO YOU KNOW
25 DEYAA KHALILL?

26 A PLEAD THE FIFTH.

27 MR. GRAYSON: IT SEEMS PRETTY CLEAR TO ME AT THIS
28 POINT HE'S GOING TO CONTINUE TO PLEAD THE FIFTH

1 REGARDSLESS OF THE NATURE OF THE QUESTION. ANYTHING
2 OTHER THAN WHAT HIS TRUE NAME IS, SAMUEL FEISSA.

3 JUST FOR THE RECORD, I'M OBJECTING THAT HE
4 SHOULD NOT BE ALLOWED TO USE THE FIFTH AMENDMENT.

5 THE COURT: WITH REGARDS TO HIS ASSERTION OF THE
6 FIFTH AMENDMENT PRIVILEGE AS TO EACH AND EVERY ONE OF
7 THE QUESTIONS THAT YOU'VE ASKED THUS FAR, I SUSTAIN IT.

8 AND IF YOU HAVE NO ADDITIONAL QUESTIONS,
9 THAT'S FINE. IF YOU HAVE ADDITIONAL QUESTIONS, FEEL
10 FREE TO ASK THEM, MR. GRAYSON.

11 MR. GRAYSON: NO, I DON'T THINK THAT'S GOING TO BE
12 NECESSARY. I THINK HE'S GOING TO CONTINUE TO ASSERT HIS
13 FIFTH AMENDMENT.

14 THE COURT: THANK YOU, MR. GRAYSON.

15 MR. NEWMAN, DO YOU WISH TO INQUIRE?

16 MR. NEWMAN: BASED ON WHAT'S TRANSPIRED SO FAR,
17 NO.

18 THE COURT: ANY REDIRECT EXAMINATION?

19 MS. OSTROWSKI: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 THE WITNESS IS EXCUSED AND ORDERED ON CALL
22 FOR THE DURATION OF THE TRIAL.

23 THANK YOU. YOU CAN STEP DOWN. THE DEPUTY
24 WILL DIRECT YOU FROM HERE.

25 COUNSEL, WITH REGARDS TO THIS MATTER, DO
26 YOU WISH TO BE HEARD AS TO WHETHER OR NOT THE WITNESS IS
27 UNAVAILABLE WITHIN THE MEANING OF EVIDENCE CODE SECTION
28 240 AND 1291?

1 MS. OSTROWSKI: JUST THAT UNDER EVIDENCE CODE 240,
2 YOUR HONOR, ASSERTING THE PRIVILEGE DOES CONSTITUTE
3 UNAVAILABILITY FOR OUR PURPOSES.

4 THE COURT: MR. HIGGINS, DO YOU WISH TO BE HEARD
5 FIRST?

6 MR. HIGGINS: YES, YOUR HONOR.

7 AS I INDICATED PREVIOUSLY, I DON'T BELIEVE
8 THAT THE PRIVILEGE HAS BEEN ASSERTED -- WELL -- I
9 DISAGREE WITH THE COURT'S RULING IN TERMS OF WHETHER OR
10 NOT THE PRIVILEGE APPLIES TO THE PARTICULAR QUESTIONS.

11 IN THAT REGARD, IT'S MY POSITION THAT AS
12 FAR AS MR. GIBBS IS CONCERNED, SINCE THIS WITNESS IS A
13 CRUCIAL WITNESS TO THE CASE, THAT WE HAVEN'T HAD AN
14 OPPORTUNITY TO CROSS-EXAMINE HIM ON PERTINENT ISSUES.

15 WE DID NOT HAVE THAT OPPORTUNITY TODAY. WE
16 WILL NOT GET THAT OPPORTUNITY IN TRIAL. WE DID NOT GET
17 THAT SAME OPPORTUNITY AT THE PRELIMINARY HEARING WITH
18 REGARD TO THIS PARTICULAR WITNESS.

19 ALTHOUGH I WAS MR. GIBBS'S COUNSEL AT THE
20 TIME OF THE PRELIMINARY HEARING, AND DID CROSS-EXAMINE
21 HIM ON ANOTHER -- ON ANY NUMBER OF OTHER SUBJECTS THAT
22 WE FOUND TO BE IMPEACHMENT EVIDENCE AGAINST HIM, I WOULD
23 BE MOVING TO STRIKE ANY AND ALL PRELIMINARY HEARING
24 TESTIMONY THAT IS A PART OF THIS PARTICULAR MOTION, FOR
25 PURPOSES OF TRIAL, BECAUSE OF OUR INABILITY TO
26 CROSS-EXAMINE HIM.

27 ALTHOUGH WE HAVE CROSS-EXAMINATION IN OTHER
28 AREAS, THIS IS PARTICULARLY IMPORTANT BECAUSE HE IS NOW

1 FACHED WITH A MURDER CHARGE. AND ALTHOUGH THE PEOPLE
2 HAVE INDICATED THAT THEY WILL STIPULATE TO A MURDER
3 CHARGE, I BELIEVE THAT IS INSUFFICIENT, BECAUSE WE HAVE
4 NO WAY OF KNOWING WHAT A JURY WOULD CONSIDER WITH REGARD
5 TO HIS CREDIBILITY. NOT SIMPLY THE FACT THAT HE IS
6 CHARGED WITH A MURDER.

7 THE COURT: NO, I THINK SHE'S WILLING TO STIPULATE
8 HE'S GUILTY OF MURDER. SHE'S NODDING HER HEAD YES FOR
9 THE RECORD.

10 MS. OSTROWSKI: THAT'S CORRECT.

11 MR. HIGGINS: SHE IS WILLING TO STIPULATE HE'S
12 GUILTY OF MURDER, BUT THAT DOESN'T NECESSARILY MEAN THAT
13 HIS PRESENCE BEFORE THE JURY WITH THE QUESTIONS THAT WE
14 WOULD WANT TO ASK HIM WOULD BE SUFFICIENT -- WELL, I
15 DON'T BELIEVE THAT THAT PARTICULAR STIPULATION THAT HE'S
16 GUILTY OF MURDER WOULD NECESSARILY BE SUFFICIENT IN THE
17 MINDS OF SOME JURORS TO DETERMINE THAT HE IS NOT
18 CREDIBLE ON THE ISSUES THAT WILL BE PRESENTED IN THIS
19 PARTICULAR CASE.

20 THE COURT: WELL, WHAT OTHER EVIDENCE WOULD YOU
21 WANT TO PUT FORTH TO THE JURY BEYOND THE FACT THAT
22 THERE'S AN AGREEMENT BETWEEN COUNSEL, THAT THERE'S A
23 STIPULATION, WHICH IS A FACT NOT IN DISPUTE, THAT THIS
24 WITNESS COMMITTED A MURDER?

25 MR. HIGGINS: WELL, YOUR HONOR, COUNSEL AND I
26 TALKED ABOUT IT. WE HAVE TO DO FURTHER RESEARCH ON IT
27 WITH REGARD TO AN AMENDED STIPULATION.

28 MYSELF IN PARTICULAR, I WOULD BE INTERESTED

1 IN AMENDING THE STIPULATION TO INCLUDE A FACTUAL BASIS
2 UPON WHICH THE DISTRICT ATTORNEY IS RELYING IN
3 STIPULATING THAT HE IS IN FACT GUILTY OF MURDER.

4 SUCH AS HIS LYING TO POLICE OFFICERS; SUCH
5 AS POLICE OFFICERS GIVING STATEMENTS THAT HE WAS TRYING
6 TO PUT OTHER MURDERS OFF, OR INCULPATE EITHER PEOPLE IN
7 MURDERS SO AS TO DIRECT ATTENTION FROM HIMSELF.

8 THE EXACT EXTENT OF IT, I DON'T KNOW AT
9 THIS PARTICULAR TIME. BUT SUFFICE IT TO SAY, DETAILS ON
10 THAT.

11 THE COURT: OKAY. I'LL KEEP AN OPEN MIND ON THOSE
12 ISSUES, BECAUSE I AGREE WITH YOU THAT MERELY STIPULATING
13 THAT HE COMMITTED A MURDER IS DIFFERENT THAN SAYING NOT
14 ONLY DID HE COMMIT A MURDER, BUT HE EITHER GAVE FALSE
15 INFORMATION IN THE PAST, OR SOME PRIOR INCONSISTENT
16 STATEMENT.

17 SO I'LL LOOK FORWARD TO HEARING WHAT YOUR
18 AMENDMENT IS TO THE STIPULATION, AS TO THE SPECIFICS OF
19 THAT.

20 I'M NOT PREVENTING YOU FROM BRINGING IN
21 OTHER INFORMATION OTHER THAN HE COMMITTED A MURDER.
22 JUST SO THAT WE'RE CLEAR.

23 MR. GRAYSON, DO YOU WISH TO BE HEARD
24 WHETHER OR NOT MR. FEISSA IS UNAVAILABLE?

25 MR. GRAYSON: WELL, I WOULD JOIN IN WHAT
26 MR. HIGGINS SAID. I WOULD JUST SAY THAT, YOU KNOW, WHEN
27 WE TALK TO JURORS IN VOIR DIRE, AND WE ASK THEM WHAT ARE
28 SOME OF THE THINGS YOU LOOK FOR TO DETERMINE WHETHER ONE

1 IS CREDIBLE OR NOT, YOU KNOW, IT'S ALWAYS SOMETHING
2 INVOLVING BODY LANGUAGE, OR -- YOU KNOW, PHYSICAL
3 THINGS, BEYOND INCONSISTENT STATEMENTS AND
4 CORROBORATION, AND THOSE KINDS OF THINGS.

5 BUT I THINK IN THIS CASE, BEYOND THE FACT
6 THAT WE'RE NOT GOING TO BE ABLE TO DEMONSTRATE ANY BODY
7 LANGUAGE OR GESTURING, OR YOU KNOW, WHAT HAVE YOU, IN
8 FRONT OF THE JURY, I THINK THAT DEPRIVES THEM OF THEIR
9 JOB OF DETERMINING CREDIBILITY, WHICH IS ONE OF THEIR
10 KEY ROLES.

11 NOT TO MENTION THAT THE OTHER ISSUE THAT
12 JURORS OFTEN BRING UP, SUCH AS CORROBORATION, THERE
13 REALLY ISN'T ANY CORROBORATION HERE. REALLY, THIS IS
14 THE CASE. FEISSA IS THE CASE AS FAR AS THE 2008 ALLEGED
15 MURDER GOES. THERE REALLY IS NOTHING ELSE.

16 SO I THINK THAT SOME OF THE VERY KEY, YOU
17 KNOW, DUTIES THAT JURORS HAVE ARE GOING TO BE COMPLETELY
18 MISSING IN THIS TRIAL.

19 AND I DON'T THINK THAT THE FIFTH AMENDMENT,
20 HIS FIFTH AMENDMENT RIGHT SHOULD TRUMP THEIR RIGHT TO A
21 FAIR TRIAL WHEN THEY'RE LOOKING AT DOING THE REST OF
22 THEIR LIVES IN PRISON.

23 I UNDERSTAND THAT HE HAS RIGHTS, BUT THEY
24 HAVE RIGHTS TO A FAIR TRIAL.

25 SO THERE'S THE ISSUE OF NOT BEING ABLE TO
26 ASSESS CREDIBILITY. THERE'S THE ISSUE OF NOT BEING ABLE
27 TO ASSESS CORROBORATION. I WAS NOT TRYING TO SOUND
28 OVERCONFIDENT, BUT I MEAN, I GOT THIS CASE AND I STARTED

1 SEEING ALL OF THE STUFF THAT THIS GUY WAS INVOLVED IN,
2 YOU KNOW, I WAS THINKING WOW, I'M GOING TO LAY WASTE TO
3 THIS GUY IN FRONT OF -- EVEN IN FRONT OF A TORRANCE
4 JURY, IS WHAT I'M THINKING. AND I DON'T OFTEN FEEL THAT
5 WAY ABOUT A WITNESS IN FRONT OF A TORRANCE JURY, THAT HE
6 COULD BE COMPLETELY DESTROYED.

7 AND I THINK THAT BY HIM BEING RULED
8 UNAVAILABLE, THAT REALLY HAMPERS MY ABILITY TO
9 DEMONSTRATE JUST HOW UNTRUSTWORTHY, NON-CREDIBLE
10 MR. FEISSA IS.

11 AND I WOULD JOIN IN WITH MR. HIGGINS IN HIS
12 ARGUMENT THAT WE SHOULD BE GIVEN TIME TO ASSESS THIS A
13 LITTLE MORE FULLY. ESPECIALLY GIVEN THE FACT THAT I WAS
14 IN TRIAL IN THE PAST WEEK, AND I'VE BEEN HAVING PROBLEMS
15 WITH MY COMPUTER AND INTERNET.

16 SO THAT I DIDN'T EVEN KNOW THAT THIS WAS A
17 402 MOTION THAT WAS SET THAT WAS E-MAILED TO ME UNTIL
18 MR. HIGGINS CALLED ME SOMETIME LAST WEEK.

19 SO I DID NOT GET A CHANCE TO FULLY DIG INTO
20 THE DOCUMENT THAT MS. OSTROWSKI E-MAILED TO ME.

21 THE COURT: IT'S A VERY DETAILED 402.

22 MR. GRAYSON: IT'S VERY DETAILED. AND IT'S LIKE I
23 DIDN'T EVEN PRINT IT OUT. I HAD TO GO TO MY BROTHER'S
24 HOUSE, BELIEVE IT OR NOT, TO PRINT THIS OUT LAST NIGHT
25 WHEN I GOT OUT OF TRIAL. TO PRINT THAT OUT.

26 AND I DIDN'T EVEN GET TO THE -- I
27 UNDERSTAND FROM MR. HIGGINS THERE'S LIKE 200 PAGES OF
28 EXHIBITS.

1 THE COURT: WELL, NOT ATTACHED TO THE MOTION.
2 THERE'S A PRELIMINARY HEARING TRANSCRIPT, WHICH IS
3 PRETTY LONG, BUT I DON'T THINK ANYWHERE NEAR 200 PAGES.

4 MR. GRAYSON: OKAY. WELL, I DON'T KNOW HOW MANY
5 PAGES IT WAS. BUT I WAS INFORMED IT WAS PRETTY LENGTHY.

6 THE COURT: IT IS.

7 MR. GRAYSON: SO I WOULD ASK FOR MORE TIME TO
8 ASSESS SOME OF THE OTHER ISSUES.

9 AND I HAD INFORMED MR. HIGGINS AND
10 MR. NEWMAN THIS MORNING THAT PERHAPS WE SHOULD JUST DEAL
11 WITH THIS ISSUE, BECAUSE -- IT WAS A BIG ISSUE IN TERMS
12 OF THE COURT'S RESOURCES AND TIME GETTING THIS WITNESS
13 IN HERE, AND THAT THE OTHER ISSUES WOULDN'T BE SO TIME-
14 CONSUMPTIVE AND RESOURCE-CONSUMPTIVE.

15 MR. HIGGINS: MAY I ADD SOMETHING ELSE?

16 THE COURT: MR. HIGGINS.

17 MR. HIGGINS: YOUR HONOR, EVEN IF THE COURT ALLOWS
18 HIM TO BECOME UNAVAILABLE, AND THE COURT STICKS TO THAT
19 RULING, I DON'T THINK THAT IT WOULD BE AN UNDUE
20 CONSUMPTION OF TIME FOR THIS WITNESS TO ASSERT THE SAME
21 PRIVILEGES THAT HE'S GOING TO ASSERT BEFORE A JURY.

22 IT WOULD NOT TAKE THAT MUCH TIME. BUT IT
23 CERTAINLY WOULD HELP TO SOME DEGREE, NOT TO EXTENT WE
24 WITH LIKE, BUT TO SOME DEGREE WITH THE JURY'S ABILITY TO
25 DO SOME ASSESSMENT OF MR. FEISSA.

26 I WOULD ALSO LIKE THE COURT TO REVIEW AND
27 TAKE A LOOK AT PEOPLE VERSUS SEMINOFF. IT'S A 2009 CASE
28 AT CITED AT 159 CAL. APP. 4TH 518, WHERE THE COURT

1 STRUCK THE TESTIMONY OF A WITNESS WHO ASSERTED THE FIFTH
2 AMENDMENT.

3 IT WAS AT A SUPPRESSION HEARING THAT THE
4 COURT DID EXERCISE ITS DISCRETION TO STRIKE THAT
5 TESTIMONY.

6 AND I AGREE WITH CO-COUNSEL THAT IT'S GOING
7 TO AFFECT MY CLIENT'S CONSTITUTIONAL RIGHT TO RECEIVE A
8 FAIR TRIAL, TO CROSS-EXAMINE THIS WITNESS. ESPECIALLY
9 THIS SOLE WITNESS, PRINCIPAL WITNESS AGAINST HIM.

10 SUBMITTED.

11 THE COURT: MR. NEWMAN.

12 MR. NEWMAN: I WOULD JOIN IN EVERYTHING CO-COUNSEL
13 SAID. ONE ADDITIONAL PROBLEM THAT STRIKES ME IS
14 REGARDING THE USE OF THE PRELIMINARY HEARING TESTIMONY.

15 IN THE OLD DAYS, THERE WERE FULL
16 PRELIMINARY HEARINGS. NOW THAT UNDER THE GUISE OF MAYBE
17 UTILIZING COURT TIME BETTER, DISCOVERY IS RESTRICTED; DO
18 NOT ALLOW FULLY -- HAVE A GOOD CROSS-EXAMINATION OF A
19 WITNESS BECAUSE THEY SAY IT'S JUST A PRELIMINARY
20 HEARING. YOU KNOW, THIS ISN'T A TIME FOR DISCOVERY.

21 SO WHAT WE END UP WITH IS A BARE BONES
22 ATTEMPT TO CONFRONT THE WITNESS. THERE HAS NOT BEEN
23 FULL CONFRONTATION AFFORDED IN THAT PRELIMINARY HEARING.
24 THEY DELAY THAT UNTIL TRIAL, IN HOPES OF SAVING TIME.

25 SO ON BEHALF OF MR. WALLACE, USING THE
26 PRELIMINARY HEARING TRANSCRIPT, WE WOULD OBJECT BECAUSE
27 HE HASN'T HAD A RIGHT TO CROSS-EXAMINE THE WITNESS
28 BECAUSE OF THE LIMITED NATURE OF PRELIMINARY HEARINGS.

1 THE COURT: ALL RIGHT. THANK YOU, MR. NEWMAN.

2 MS. OSTROWSKI, I'D LIKE TO HEAR FROM YOU.

3 MS. OSTROWSKI: YES. THANK YOU, YOUR HONOR.

4 FIRST OF ALL, I DISAGREE THERE WAS NO
5 OPPORTUNITY FOR THE DEFENSE TO CROSS-EXAMINE MR. FEISSA
6 AT THE PRELIMINARY HEARING. THE TRANSCRIPT OF
7 MR. FEISSA IS VERY LONG.

8 THERE WAS FULL CROSS-EXAMINATION BY ALL
9 ATTORNEYS. THEY CROSS-EXAMINED HIM ALL ABOUT THE MONIES
10 HE WAS PAID. HE WAS CROSS-EXAMINED ALL ABOUT ANY KIND
11 OF LENIENCY OR IMMUNITY HE RECEIVED.

12 HE WAS CROSS-EXAMINED ABOUT TURRANT STREET.
13 THEY WERE AWARE THAT HE WAS A SUSPECT IN THIS MURDER.
14 UNFORTUNATELY, HE TOOK THE FIFTH.

15 ALL THE INFORMATION THAT THEY HAD AT THE
16 PRELIMINARY HEARING IN ORDER TO CONDUCT A MEANINGFUL
17 CROSS-EXAMINATION, THEY HAD. THE ONLY NEW INFORMATION
18 IS NOW THAT HE'S BEEN OFFICIALLY CHARGED, AND THAT
19 THERE'S ADDITIONAL EVIDENCE SUPPORTING THE EVIDENCE THAT
20 MR. FEISSA IS GUILTY OF THAT MURDER ON TURRANT STREET.

21 AS I SET FORTH IN MY PAPERWORK, WHETHER
22 IT'S BY STIPULATION OR BY THEM PRESENTING EVIDENCE IN
23 THEIR CASE IN CHIEF, I'M NOT CONTENDING THAT THEY
24 WEREN'T ALLOWED TO ADVISE THIS JURY THAT MR. FEISSA IS
25 GUILTY OF MURDER. THAT'S NOT A PROBLEM, WHETHER HE
26 TAKES THE FIFTH OR NOT.

27 AND SO AT THAT PRELIMINARY HEARING, THEY
28 WERE ABLE TO EXPLORE ALL THESE ISSUES, AND THEY DID IN

1 FACT EXPLORE ALL THOSE ISSUES.

2 I DON'T KNOW IF THE COURT HAS READ THE
3 ENTIRE PRELIM TRANSCRIPT. I SEE THAT YOU'RE NODDING
4 YOUR HEAD THAT YOU DID.

5 THE COURT: YES.

6 MS. OSTROWSKI: THEN YOU'RE AWARE THAT IT WAS A
7 QUITE LENGTHY CROSS-EXAMINATION AND DIRECT EXAMINATION
8 ABOUT ALL THE ISSUES THAT GO TO HIS CREDIBILITY.

9 AS TO COUNSEL'S REPRESENTATION THAT THIS
10 JURY WON'T BE ABLE TO EVALUATE HIS CREDIBILITY BECAUSE
11 THEY WOULDN'T SEE HIM LIVE, WELL, THAT WOULD EVISCERATE
12 OUR RULE ABOUT READING A PRELIM TRANSCRIPT INTO EVIDENCE
13 EVER, AND EVIDENCE CODE SECTION 1291 WOULDN'T EVEN
14 EXIST.

15 I WOULD NOTE FOR THE RECORD IN CALCRIM 226,
16 WHICH IS THE JURY INSTRUCTION THAT SPECIFICALLY ADVISES
17 JURORS WHAT FACTORS THEY SHOULD CONSIDER, I BELIEVE
18 THERE'S ONLY ONE OF THOSE FACTORS THAT RELATES TO SEEING
19 A PERSON LIVE.

20 EVERY OTHER FACTOR HAS TO DO WITH WHAT
21 THEY'VE ACTUALLY SAID, AND THE SUBSTANCE OF THEIR
22 TESTIMONY. AND THAT WILL BE PROVIDED TO THIS JURY.

23 OBVIOUSLY, WE ALLOW IN CASES FOR A PRIOR
24 TRANSCRIPT TO BE READ. THAT'S WHY WE HAVE THE JURY
25 INSTRUCTIONS ABOUT IT. THAT'S WHY WE HAVE THE EVIDENCE
26 CODE ABOUT IT. THAT'S WHY WE HAVE HEARINGS LIKE THIS
27 ONE.

28 JUST BECAUSE THE DEFENSE FEELS THAT THIS

1 WITNESS, IF THEY HAD HIM, YOU KNOW, IN FRONT OF THEM
2 AGAIN, THEY COULD EVISCERATE HIS CREDIBILITY, THAT ISN'T
3 REASON ENOUGH THAT WE DON'T ALLOW THE TESTIMONY TO BE
4 READ IN.

5 THE OBLIGATIONS OF THE PEOPLE HAVE BEEN MET
6 TO ESTABLISH BOTH THE EVIDENCE CODE SECTIONS REGARDING
7 THIS PARTICULAR ISSUE.

8 AS TO MR. HIGGINS' SUGGESTION THAT THE JURY
9 BE ALLOWED TO SEE MR. FEISSA TAKE THE FIFTH, AS THE
10 COURT IS AWARE, UNDER EVIDENCE CODE SECTION 913, THAT'S
11 NOT ALLOWED.

12 THERE'S ALSO A CASE OF PEOPLE VERSUS
13 HOLLOWAY, WHICH IS A 2004 CASE. HOLLOWAY IS
14 H-O-L-L-O-W-A-Y. THAT'S AT 33 CAL. 4TH 96.

15 IN THAT CASE, IT ALSO PRECLUDES THE JURY
16 FROM BEING ABLE TO SEE A WITNESS TAKE THE FIFTH. IN
17 THAT CASE, THERE IS A FINGERPRINT AT THE CRIME SCENE.

18 THE DEFENSE WANTED TO CALL THE PERSON TO
19 WHOM THAT FINGERPRINT BELONGED AND ASK HIM "WELL, WHERE
20 WERE YOU?" AND PIN THE MURDER, OR THE CRIME ON HIM.

21 AND THE COURT SAID THAT INDIVIDUAL CAN TAKE
22 THE FIFTH, BUT IT'S GOING TO BE OUTSIDE THE PRESENCE OF
23 THE JURY. THE ONLY QUESTIONS THAT THAT INDIVIDUAL
24 ANSWERS IN FRONT OF THE JURY ARE THE ONES ESTABLISHING
25 HIS IDENTITY. WHAT HIS NAME IS.

26 AND THAT WAS IT. SO IT'S VERY SIMILAR IN
27 THIS CASE, WHERE JURORS DON'T GET INTO SEE SOMEBODY TAKE
28 THE FIFTH. IT'S A 402 THAT'S OUTSIDE THEIR PRESENCE.

1 I'M NOT FAMILIAR WITH THE CASE COUNSEL
2 CITED. I DON'T BELIEVE THAT WAS IN HIS MOVING PAPERS
3 THAT HE FILED ON THE 15TH. NONE OF THE DEFENSE FILED
4 ANY OPPOSITION TO MY MOTION.

5 MR. GRAYSON INDICATED THAT HE HASN'T HAD
6 INTERNET, AND HASN'T BEEN ABLE TO REVIEW IT. AND THAT
7 MAY VERY WELL BE TRUE; HOWEVER, WHEN WE WERE HERE, I
8 BELIEVE IN WHAT, OCTOBER, YOUR HONOR WAS VERY CLEAR THAT
9 YOU WANTED ANY AND ALL WRITTEN MOTIONS TO BE FILED
10 TEN DAYS BEFORE THIS 402 HEARING.

11 AND SO I WORKED VERY HARD TO GET THAT DONE.
12 THE FACT THAT DEFENSE DIDN'T REVIEW IT CAREFULLY OR
13 WANTS MORE TIME, THEY SHOULD HAVE FILED THE APPROPRIATE
14 MOTION FOR A 1050 FOR US TO DEAL WITH THAT, AND WHETHER
15 WE WOULD BE CONTINUING THIS CASE.

16 UNLESS THE COURT HAS ANY FURTHER DIRECT
17 QUESTIONS, I DON'T HAVE ANYTHING ELSE.

18 THE COURT: MATTER SUBMITTED BY BOTH SIDES?

19 MR. GRAYSON: I JUST WANTED TO ADD THAT I'VE NEVER
20 CROSS-EXAMINED MR. FEISSA. AND HAVING READ THE
21 TRANSCRIPT, QUITE FRANKLY, I WOULD HAVE WENT INTO A LOT
22 MORE DETAIL, WITH ALL DUE RESPECT TO MR. OLIVE, THAN
23 WHAT MR. OLIVE WENT INTO.

24 MY UNDERSTANDING IS THAT THERE WAS A POINT
25 WHERE THE COURT ACTUALLY CUT OFF MR. OLIVE AND TOLD HIM
26 SOMETHING TO THE EFFECT THAT THIS IS NOT A TRIAL, YOU
27 CAN ASK THOSE THINGS AT TRIAL.

28 SO I THINK THE COURT SHOULD BE AWARE OF

1 THAT IN MAKING ITS RULING.

2 THE COURT: I READ THAT IN THE PRELIMINARY HEARING
3 TRANSCRIPT, MR. GRAYSON.

4 MR. NEWMAN, ANYTHING FURTHER FROM THE
5 DEFENSE?

6 MR. NEWMAN: NO.

7 MR. HIGGINS: I DO, YOUR HONOR.

8 THE COURT: MR. HIGGINS.

9 MR. HIGGINS: ONE OTHER THING.

10 COUNSEL INDICATED THAT WE HAD EVERYTHING WE
11 COULD POSSIBLY CROSS-EXAMINE MR. FEISSA ON AT THE
12 PRELIMINARY HEARING. I DON'T BELIEVE THAT'S ACCURATE.

13 I DO HAVE FROM THE PEOPLE A CD OF A 3309
14 SAN DIMAS JAIL CELL. I GUESS IT'S A RECORDING. BUT I
15 BELIEVE -- AND I DO KNOW THAT ON THAT SAME PARTICULAR
16 DATE, THERE IS A -- I'M GOING TO BE REQUESTING IT, THERE
17 IS A CD OF AN INTERVIEW OF MR. FEISSA WHERE, AS
18 MR. FEISSA IS BEING INTERVIEWED BY THE DETECTIVES -- I
19 DON'T KNOW THE EXACT NAME, BUT I THINK MR. DUNCAN WAS
20 ONE OF THEM WHO WAS THERE -- WHERE HE IS BEING
21 INTERVIEWED ABOUT DRUGS, TRAVELING ACROSS COUNTRY;
22 GETTING SUBSTANTIAL AMOUNTS OF MONEY FOR DRUGS;
23 RETURNING TO LOS ANGELES; NOT CONTACTING THE SHERIFF'S
24 DEPARTMENT AS HE HAD AGREED TO AT THE TIMES HE HAD
25 AGREED TO;

26 QUESTIONING HIM ABOUT HIS KNOWLEDGE OF HOW
27 IT WAS A .45-CALIBER GUN THAT KILLED A CERTAIN PERSON;
28 AND FINALLY MAKING A DECLARATION, AND

1 HAVING MR. FEISSA SIGN A DECLARATION THAT HE IS AN
2 UNRELIABLE INFORMANT.

3 AND WE HAD NO KNOWLEDGE OF, OR THE
4 OPPORTUNITY TO CROSS-EXAMINE HIM ON THOSE ISSUES, WHICH
5 WOULD HAVE BEEN RIPE FOR THE COURT AT THAT PARTICULAR
6 TIME TO MAKE A DETERMINATION AT THE PRELIMINARY HEARING
7 OF WHETHER OR NOT THIS PERSON WAS A CREDIBLE WITNESS FOR
8 PURPOSES OF HOLDING MY CLIENT TO ANSWER.

9 SO I AM CERTAINLY MAKING A REQUEST AT THIS
10 TIME, AND I'M INFORMING THE COURT THAT WE DON'T HAVE AND
11 WE DID NOT HAVE EVERYTHING TO FULLY CROSS-EXAMINE
12 MR. FEISSA ON IN THAT REGARD AT THE PRELIMINARY HEARING.

13 THE COURT: MATTER SUBMITTED?

14 MR. HIGGINS: SUBMITTED.

15 THE COURT: DO THE PEOPLE WISH TO RESPOND TO THE
16 LAST --

17 MS. OSTROWSKI: JUST THAT CD WAS ACTUALLY TURNED
18 OVER. THE DEFENSE HAS BEEN GIVEN ANY AND ALL INTERVIEWS
19 OF FEISSA.

20 THERE'S QUITE A BIT OF DISCOVERY IN THIS
21 CASE. IF THEY CAN'T LOCATE THEIR COPY OF SOMETHING,
22 THEY'RE FREE TO CONTACT ME. I'LL ATTEMPT TO GET THEM A
23 DUPLICATE COPY.

24 BUT MY UNDERSTANDING FROM REVIEW OF THE
25 DISCOVERY RECEIPTS IS ALL THE FEISSA INTERVIEWS,
26 INCLUDING THAT MARCH 3RD, 2009 INTERVIEW, WAS TURNED
27 OVER.

28 AS TO WHETHER OR NOT MR. FEISSA SIGNED A

1 CARD INDICATING THAT HE IS UNRELIABLE, I BELIEVE
2 DETECTIVE LABBE AND DETECTIVE DUNCAN COULD BE CALLED AS
3 WITNESSES REGARDING THAT PARTICULAR ISSUE, AND CAN
4 DISCUSS IT THEN.

5 IF THE DEFENSE WANTS THAT INFORMATION
6 BEFORE THE JURY, THERE'S A WAY FOR THEM TO DO THAT
7 WITHOUT USING MR. FEISSA.

8 THE COURT: MATTER SUBMITTED BY ALL SIDES?

9 MS. OSTROWSKI: YES.

10 MR. NEWMAN: YES.

11 MR. GRAYSON: YES.

12 MR. HIGGINS: YES.

13 THE COURT: WITH REGARDS TO THIS MATTER, FIRST, I
14 THINK THERE'S A THREE-STEP PROCESS. THE FIRST ISSUE IS
15 DOES THE WITNESS HAVE A PRIVILEGE AGAINST
16 SELF-INCRIMINATION TO ANSWER ANY QUESTIONS THAT MAY HAVE
17 A TENDENCY TO INCRIMINATE HIM.

18 THE ANSWER TO THAT IS CLEAR AND
19 UNEQUIVOCAL. THE ANSWER IS YES. HE DOES HAVE A RIGHT
20 TO ASSERT THE FIFTH AMENDMENT PRIVILEGE. AND IN THIS
21 CASE, THE COURT HAS SUSTAINED EACH OF THE ASSERTIONS OF
22 THE PRIVILEGE.

23 THEN THE SECOND QUESTION DEALS WITH WHETHER
24 OR NOT HE'S TRULY UNAVAILABLE, AND WHETHER OR NOT THE
25 DEFENSE HAD THE OPPORTUNITY TO CONFRONT AND
26 CROSS-EXAMINE THE ACCUSER.

27 AS RELATES TO THE PRELIMINARY HEARING
28 TRANSCRIPT THAT I'VE REVIEWED, I AM SATISFIED THAT THE

1 DEFENDANTS HAVE HAD THE OPPORTUNITY TO FULLY
2 CROSS-EXAMINE THAT PARTICULAR WITNESS.

3 NOW, MR. GRAYSON, YOU MAKE AN INTERESTING
4 POINT, WHICH IS YOU WEREN'T PRESENT FOR THAT PRELIMINARY
5 HEARING. ANOTHER MEMBER OF THE BAR CONDUCTED THE
6 HEARING, AND MAY HAVE DONE IT DIFFERENTLY THAN YOU
7 WOULD.

8 I DON'T THINK THAT FACT IN AND OF ITSELF,
9 HOWEVER, MEANS THAT YOU HAVE NOT HAD, OR THAT THE CLIENT
10 HAS NOT HAD THE OPPORTUNITY TO CONFRONT AND
11 CROSS-EXAMINE THE WITNESS.

12 CERTAINLY, THERE ARE THE SAME ISSUES THAT
13 ARE INVOLVED IN THIS CASE. THE MERE FACT THAT ONE
14 LAWYER MAY HAVE DONE IT DIFFERENTLY THAN ANOTHER LAWYER
15 DOES NOT MEAN IT'S CONSTITUTIONALLY INFIRM.

16 SO I DO FIND THAT MR. FEISSA IS UNAVAILABLE
17 WITHIN THE MEANING OF EVIDENCE CODE SECTIONS 240 AND
18 1291. HIS PRELIMINARY HEARING TESTIMONY WILL BE
19 ADMITTED DURING THE COURSE OF THE TRIAL.

20 WHICH LEADS TO THE THIRD ISSUE. THE THIRD
21 ISSUE DEALS WITH WHETHER OR NOT THE DEFENSE HAS THE
22 OPPORTUNITY TO IMPEACH THE WITNESS THROUGH OTHER
23 EXTRANEOUS INFORMATION; IN OTHER WORDS, NOT WITHIN THE
24 FOUR CORNERS OF THE PRELIMINARY HEARING TRANSCRIPT.

25 I THINK AS A MATTER OF DUE PROCESS THAT THE
26 DEFENDANTS HAVE RIGHT TO BE ABLE TO ATTACK THE
27 CREDIBILITY OF THAT WITNESS.

28 IF THERE ARE ADDITIONAL DOCUMENTS OR

1 WITNESSES THAT CAN BE CALLED THAT WOULD SHED LIGHT ON
2 THAT WITNESS'S, MEANING MR. FEISSA'S CREDIBILITY, I
3 THINK YOU HAVE A RIGHT TO BRING IT ON.

4 NOW, IN THIS CASE, THE PROSECUTION HAS
5 OFFERED TO ENGAGE IN A STIPULATION, WHICH WOULD
6 STIPULATE TO THE ULTIMATE FACT AS TO WHETHER OR NOT
7 MR. FEISSA IS GUILTY OF MURDER.

8 AND I THINK TO THE EXTENT THAT SHE'S
9 WILLING TO ENGAGE IN THAT STIPULATION, THAT THE DEFENSE
10 SHOULD ACCEPT THAT STIPULATION; HOWEVER, I AM NOT
11 LIMITING THE DEFENSE IN WHAT YOU CAN BRING IN OUTSIDE OF
12 WHETHER OR NOT MR. FEISSA IS A MURDERER.

13 IF YOU HAVE OTHER INFORMATION TO THE EFFECT
14 THAT ON PRIOR OCCASIONS THAT HE HAS ADMITTED TO BEING
15 UNTRUTHFUL, THAT HE'S GIVEN FALSE TESTIMONY, OR THAT
16 HE'S ENGAGED IN OTHER CRIMINAL CONDUCT THAT'S NOT
17 ADDRESSED WITHIN THE FOUR CORNERS OF THE PRELIMINARY
18 HEARING TRANSCRIPT, I INTEND TO ALLOW YOU TO BRING IT
19 IN.

20 PRETTY SIMPLE. ALL RIGHT.

21 SO WITH REGARDS TO MR. FEISSA'S TESTIMONY,
22 I THINK THAT WE PRETTY MUCH COMPLETED OUR 402 ISSUES
23 DEALING WITH THAT.

24 THERE WERE ALSO SOME 402 ISSUES DEALING
25 WITH, FOR INSTANCE, THE TOXICOLOGY RESULTS OF VICTIM
26 QUEZADA. MS. OSTROWSKI, DO YOU WISH TO BE HEARD IN THAT
27 REGARD?

28 MS. OSTROWSKI: NOT ANYTHING IN ADDITION TO WHAT I

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 -VS-)
 DENNIS WALLACE-01)
 DEYAA KHALILL-02)
 RAYMOND GIBBS-03)
)
 DEFENDANT-APPELLANT.)
)

NO. YA075709-01/
-02/-03

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 13, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 11 OF 16 VOLUMES
PAGES 2701 TO 2862-3000

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 CASE NUMBER: NO. YA075709-01/-02/-03
2 CASE NAME: PEOPLE VS. WALLACE, KHALILL, GIBBS
3 TORRANCE, CALIFORNIA TUESDAY, DECEMBER 13, 2011
4 DEPT. SOUTHWEST L HON. JAMES R. BRANDLIN, JUDGE
5 REPORTER: WILLIAM F. BARNES, CSR #3766
6 TIME: 10:37 A.M.

7 (APPEARANCES AS HERETOFORE NOTED.)

8 ---000---

9
10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT, OUT
12 OF THE PRESENCE OF THE JURY:)

13
14 THE COURT: WE'RE BACK ON THE RECORD IN THE
15 WALLACE, KHALILL, AND GIBBS MATTER. EACH OF THE
16 DEFENDANTS ARE PRESENT WITH THEIR RESPECTIVE COUNSEL.
17 THE PEOPLE ARE PRESENT.

18 THE INVESTIGATING OFFICER IS PRESENT.

19 NONE OF THE LADIES AND GENTLEMEN OF THE
20 JURY ARE PRESENT.

21 WE HAD AN OFF-THE-RECORD DISCUSSION EARLIER
22 THIS MORNING. MS. OSTROWSKI, YOU INDICATED THAT
23 PURSUANT TO THE COURT'S ORDER, THAT DETECTIVE VALENTO
24 BROUGHT IN WHAT I'LL REFER TO AS CRI FILE, INFORMANT
25 FILE, REGARDING MR. FEISSA.

26 AND YOU SHARED THE INFORMATION CONTAINED IN
27 THAT FILE WITH DEFENSE COUNSEL.

28 MS. OSTROWSKI: YES. I PROVIDED THE FILE FOR

1 THEM. ALL THREE OF THEM WENT INTO THE JURY ROOM TO LOOK
2 AT IT.

3 MR. HIGGINS HAS INDICATED HE'S NOT YET DONE
4 LOOKING AT IT. SO HE STILL HAS IT. I'VE ADVISED HIM
5 I'D LIKE IT TO BE ON THE RECORD THAT I WENT THROUGH THAT
6 FILE THIS MORNING AS WELL.

7 AND IN FACT IT'S APPROXIMATELY 30 PAGES,
8 WHICH EXCLUDES MR. FEISSA'S RAP SHEET, WHICH OBVIOUSLY,
9 WE DID NOT TURN OVER TO THE DEFENSE BECAUSE IT WOULD BE
10 A MISDEMEANOR TO DO SO.

11 THE 30 PAGES IN THAT CRI FILE WERE BATES
12 STAMPED F AS IN FEISSA, 201 TO 230. THEY HAVE EVERY
13 SINGLE THING THAT'S IN THAT FILE OTHER THAN MR. FEISSA'S
14 PHOTO PICTURE, WHICH WAS BLOCKED OUT WHEN THE CRI FILE
15 WAS TURNED OVER, DUE TO SAFETY REASONS.

16 THE COURT: SO IT'S PRETTY CLEAR FROM YOUR
17 STATEMENT THAT THAT INFORMATION HAS ALREADY BEEN
18 PROVIDED TO THE DEFENSE.

19 THAT'S THE UPSHOT OF YOUR COMMENTS.

20 MS. OSTROWSKI: YES.

21 THE COURT: OKAY.

22 ANYTHING BEFORE WE BRING IN THE JURY?

23 MS. OSTROWSKI: YES, YOUR HONOR. DURING
24 MR. GRAYSON'S CROSS-EXAMINATION OF DETECTIVE VALENTO
25 YESTERDAY, HE ATTEMPTED TO GET INTO THE UNDERLYING FACTS
26 OF MR. FEISSA'S GUN CASE.

27 DETECTIVE VALENTO OBVIOUSLY DOESN'T HAVE
28 THE FOUNDATION TO TESTIFY ABOUT THAT.

1 MICHAEL VALENTO,
2 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
3 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

4 THE COURT: DETECTIVE VALENTO, I'D REMIND YOU
5 YOU'RE STILL UNDER OATH.

6 MR. GRAYSON, YOUR CONTINUED
7 CROSS-EXAMINATION OF THE WITNESS, PLEASE.

8
9 CROSS-EXAMINATION RESUMED
10 BY MR. GRAYSON:

11 Q GOOD MORNING, DETECTIVE.

12 A GOOD MORNING, SIR.

13 Q WHEN MR. FEISSA WAS ARRESTED IN JULY OF
14 2008, HE HAD IN HIS POSSESSION A RECEIPT FOR A
15 40-CALIBER CLIP?

16 A I'M UNAWARE IF HE HAD RECEIPT FOR 40
17 CALIBER CLIP.

18 Q MR. FEISSA TESTIFIED AT THE PRELIM THAT
19 IT'S UNCOMMON FOR 135 PIRUS TO USE 9-MILLIMETER GUNS?

20 MS. OSTROWSKI: OBJECTION. CALLS FOR HEARSAY.

21 THE PRELIM HAS ALREADY BEEN READ IN.

22 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION
23 THAT IT'S CUMULATIVE. IT'S ALREADY BEEN READ.

24 Q BY MR. GRAYSON: MR. FEISSA -- YOU KNOW
25 WHERE MR. FEISSA WAS LIVING AROUND THE TIME OF JULY OF
26 '08?

27 A YES.

28 Q HE LIVED CLOSE TO THE CRIME SCENE AT 139TH

1 A GOOD MORNING, MR. HIGGINS.

2 MS. OSTROWSKI: YOUR HONOR, I DON'T MEAN TO
3 INTERRUPT, BUT IF YOU -- BEFORE WE GET TO MR. HIGGINS,
4 I'M READY TO PROCEED ON THE ISSUE OF MR. GRAYSON. IF
5 YOU WANTED TO DO THAT NOW OR LATER.

6 THE COURT: I PREFER TO ADDRESS IT AFTER THE
7 JURORS HAVE LEFT. IF NECESSARY, I'LL ALLOW HIM TO
8 REOPEN HIS CROSS.

9 MS. OSTROWSKI: OKAY.

10 THE COURT: GO AHEAD, MR. HIGGINS.

11 Q BY MR. HIGGINS: DETECTIVE, I BELIEVE IT'S
12 BEEN ESTABLISHED THAT YOU ARE THE LEAD INVESTIGATOR ON
13 THIS CASE; IS THAT RIGHT?

14 A YES.

15 Q AND AS LEAD INVESTIGATOR, ARE YOU FAMILIAR
16 WITH -- IS IT YOUR JOB TO BE FAMILIAR WITH EVERYTHING
17 THAT OCCURS, ALL THE VARIOUS DETECTIVES AND SCIENTISTS,
18 ET CETERA WHO ARE DOING INDIVIDUAL JOBS, TO HELP SOLVE
19 THE CASE?

20 A I DON'T UNDERSTAND YOUR QUESTION, SIR.

21 Q WELL, ARE YOU FAMILIAR WITH EVERYTHING THAT
22 OCCURS IN THE COURSE OF INVESTIGATING THE CASE FROM THE
23 MOMENT YOU BECOME LEAD DETECTIVE THROUGH TRIAL?

24 MS. OSTROWSKI: CALLS FOR SPECULATION. HOW IS HE
25 TO KNOW WHAT HE DOESN'T KNOW.

26 THE COURT: I'M GOING TO OVERRULE THE OBJECTION.
27 HE'S ASKING ABOUT PRACTICE. IS IT HIS RESPONSIBILITY TO
28 DISCOVER TO LEARN THINGS THAT ARE DISCOVERED BY OTHERS.

1 IN OTHER WORDS, IN THE NORMAL COURSE OF
2 EVENTS, IF SOMEBODY ELSE IS WORKING ON THE CASE ON ONE
3 ASPECT OF IT, ARE THEY SUPPOSED TO COMMUNICATE WITH YOU?

4 THE WITNESS: THEY ARE.

5 THE COURT: NEXT QUESTION, PLEASE.

6 Q BY MR. HIGGINS: WERE YOU COMPLETELY
7 FAMILIAR WITH THE ACTIVITIES OF MR. FEISSA DURING THE
8 COURSE OF YOUR INVESTIGATION OF THIS CASE?

9 A ACTIVITIES AS -- HOW DEFINED?

10 Q WELL, LET ME COME BACK TO THAT, THEN. I'LL
11 LAY THE FOUNDATION.

12 MR. FEISSA WAS DETERMINED TO BE A
13 CONFIDENTIAL RELIABLE INFORMANT; IS THAT CORRECT?

14 A THAT'S HOW HE WAS PRESENTED TO ME, YES.

15 Q AND WHEN WAS HE PRESENTED -- WHEN WAS THAT
16 PRESENTED TO YOU?

17 A AUGUST 7TH OF 2009.

18 Q AND BY WHOM?

19 A DETECTIVE SHAWN SHAW.

20 Q NOW, DO YOU KNOW WHETHER OR NOT DETECTIVE
21 SHAW HAD WORKED WITH MR. FEISSA BEFORE?

22 A YES.

23 Q AND WHEN HAD HE WORKED WITH MR. FEISSA
24 BEFORE? OR HOW LONG HAD HE WORKED WITH HIM BEFORE
25 PRESENTING HIM TO YOU?

26 A IT WAS BETWEEN HIS ARREST ON THE 28TH AND
27 THEN ME TALKING TO HIM ON THE 7TH OF AUGUST.

28 Q SO ABOUT A WEEK?

1 A ROUGHLY, YES.

2 Q ALL RIGHT.

3 NOW, WHEN DETECTIVE SHAW PRESENTED
4 MR. FEISSA TO YOU, DID HE PRESENT HIM AS AN INFORMANT?
5 OR CONFIDENTIAL RELIABLE INFORMANT?

6 A CONFIDENTIAL RELIABLE INFORMANT.

7 Q NOW, YOU HAVE VARIOUS -- YOUR DEPARTMENT
8 HAS VARIOUS TYPES OF CATEGORIES OF INFORMANTS; IS THAT
9 RIGHT?

10 A YES.

11 Q AND ONE OF THEM IS JAILHOUSE INFORMANT.
12 ANOTHER ONE IS CONFIDENTIAL RELIABLE INFORMANT. ANOTHER
13 ONE IS A CITIZEN INFORMANT.

14 IS THAT CORRECT?

15 A THAT IS CORRECT.

16 Q ALL RIGHT.

17 NOW, IN ORDER TO BE DEEMED A CONFIDENTIAL
18 RELIABLE INFORMANT, WHAT TYPE OF POLICY DOES THE
19 DEPARTMENT HAVE FOR MAKING THAT DETERMINATION? OR IS IT
20 LEFT TO THE INDIVIDUAL DETECTIVE?

21 A THERE ARE TWO WAYS. YOU CAN MAKE AN
22 INDIVIDUAL A CONFIDENTIAL RELIABLE INFORMANT. ONE WAY
23 IS TO BRING THE INDIVIDUAL IN CHAMBERS WITH THE JUDGE.

24 THE JUDGE WILL THEN LISTEN TO WHAT THAT
25 INFORMANT HAS TO SAY. AND THEN AFTER THAT INQUIRY WITH
26 THEM, DEEM WHETHER HE BELIEVES IT TO BE A CONFIDENTIAL
27 RELIABLE INFORMANT OR NOT.

28 THE SECOND WAY IS ROUGHLY, GENERALLY

1 SPEAKING, WITH OUR DEPARTMENT, IF AN INDIVIDUAL GIVES
2 YOU THREE THINGS THAT YOU HAVE PROVEN TO BE TRUE, HE
3 THEREFORE THEN IS BUMPED FROM A CONFIDENTIAL INFORMANT
4 TO A CONFIDENTIAL RELIABLE.

5 AS FAR AS WHAT THOSE THREE THINGS ARE, IT
6 CAN BE ANYTHING FROM AN ARREST, GUNS, EVIDENCE, OR JUST
7 SIMPLY INFORMATION THAT'S CORROBORATED.

8 Q DO YOU KNOW IF MR. FEISSA WAS BROUGHT
9 BEFORE A JUDGE BEFORE HE WAS DEEMED A CONFIDENTIAL
10 RELIABLE INFORMANT?

11 A NO.

12 Q YOU DON'T KNOW?

13 A I HAVE NO INFORMATION THAT HE EVER WAS.
14 NO, I DON'T THINK HE WAS.

15 Q YOU WEREN'T TOLD THAT?

16 A I WAS NEVER TOLD THAT.

17 Q IS THAT RIGHT?

18 AND YOU SAID THAT THEY HAVE TO GIVE
19 INFORMATION; IS THAT CORRECT?

20 A CORRECT.

21 Q ALL RIGHT.

22 NOW, DON'T YOU HAVE A POLICY THAT INDICATES
23 THAT HE MUST HAVE PREVIOUSLY -- HIS RELIABILITY MUST
24 HAVE PREVIOUSLY BEEN ESTABLISHED?

25 A I'M NOT SURE I UNDERSTAND THAT. BUT IT
26 HAS -- TO MAKE HIM A CONFIDENTIAL RELIABLE INFORMANT, HE
27 HAD TO HAVE GIVEN THREE PRIORS THINGS, ROUGHLY.

28 Q AND IT TAKES THREE PRIOR THINGS?

1 A YES.

2 Q OKAY. NOW, DO YOU KNOW WHEN MR. FEISSA WAS
3 FIRST DETERMINED TO BE A CONFIDENTIAL RELIABLE
4 INFORMANT?

5 A NO.

6 Q DID YOU NOT LOOK AT -- WELL, LET ME ASK YOU
7 THIS. CONFIDENTIAL RELIABLE INFORMANTS, YOU KEEP TABS
8 ON THEM, YOUR DEPARTMENT DOES, YOU HAVE A FILE ON
9 CONFIDENTIAL RELIABLE INFORMANTS; IS THAT RIGHT?

10 A NOT JUST CONFIDENTIAL RELIABLE, BUT
11 CONFIDENTIAL INFORMANTS. ALL INFORMANTS.

12 Q ALL INFORMANTS. OKAY.
13 WITH RESPECT TO MR. FEISSA, WAS THERE A
14 FILE ON MR. FEISSA?

15 A THERE WAS.

16 Q YOU KNOW WHEN THE FILE WAS OPENED ON
17 MR. FEISSA?

18 A NO.

19 Q YOU HAVE NOT REVIEWED THE FILE?

20 MS. OSTROWSKI: OBJECTION. THIS IS ALL CALLING
21 FOR HEARSAY ABOUT THE FILE.

22 THE COURT: DO YOU WISH TO BE HEARD AT SIDE BAR?

23 MR. HIGGINS: ME? OR -- COUNSEL?

24 THE COURT: I'M INCLINED TO SUSTAIN THE OBJECTION.

25 DO YOU WISH TO BE HEARD?

26 MR. HIGGINS: YES, I WOULD.

27 THE COURT: COME ON UP.

28 //

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD AT THE BENCH:)

3
4 THE COURT: WE'RE AT SIDE BAR.

5 MR. HIGGINS.

6 MR. HIGGINS: WELL, WHAT IS THE OBJECTION?

7 MS. OSTROWSKI: IT'S HEARSAY.

8 MR. HIGGINS: WHETHER OR NOT HE'S SEEN THE FILE?

9 THE COURT: WHAT'S IN THE FILE.

10 MS. OSTROWSKI: THAT'S WHAT YOU'RE ASKING?

11 MR. HIGGINS: WELL --

12 MS. OSTROWSKI: IF HE DOESN'T KNOW THE DATES, IF
13 YOU WANT TO REFRESH HIS MEMORY. YOU'RE JUST ASKING HIM
14 TO TESTIFY ABOUT THE FILE. AND I DON'T THINK THAT'S
15 APPROPRIATE.

16 MR. HIGGINS: I'M GOING TO GO INTO THE FILE. I'M
17 GOING TO LET HIM SEE THE FILE; CAN DETERMINE WHEN THIS
18 FILE WAS OPEN.

19 HE'S THE LEAD DETECTIVE ON THE CASE. I
20 HAVE FURTHER INFORMATION THAT ACCORDING TO REPORTS THAT
21 THEY HAVE GENERATED THAT THEY HELPED TO MONITOR, SO TO
22 SPEAK -- DIDN'T USE THE EXACT TERM -- THIS
23 CONFIDENTIAL -- IT WAS FACILITATED. FACILITATED BY
24 HOMICIDE DETECTIVES.

25 SO HE SHOULD BE FAMILIAR WITH THIS
26 PARTICULAR PERSON. I WANT TO DETERMINE HIS RELIABILITY
27 AND FEISSA'S RELIABILITY. WHETHER OR NOT HE FALLS INTO
28 THE CATEGORY UNDER THE GUIDELINES BY THE SHERIFF'S

1 DEPARTMENT.

2 THE COURT: WHETHER HE DOES OR HE DOESN'T, HOW IS
3 THAT RELEVANT TO THE JURY'S DETERMINATION AS TO WHETHER
4 OR NOT HE'S CREDIBLE IN THIS CASE?

5 MR. HIGGINS: I'LL GET TO THAT IF YOU GIVE ME SOME
6 LEEWAY, YOUR HONOR. I JUST WANT ASK IF HE'S CREDIBLE.

7 THE COURT: I'M CONCERNED ABOUT THE CONSUMPTION OF
8 TIME TO DRAW THIS OUT. YOU'RE ALSO IN THE MIDDLE OF
9 CROSS-EXAMINATION OF A WITNESS. YOU'RE NORMALLY LIMITED
10 TO THE SCOPE OF THE DIRECT EXAMINATION.

11 THIS ISN'T ACTUALLY GERMANE. IF YOU WANT
12 TO RECALL THE WITNESS IN THE DEFENSE CASE IN CHIEF, I'LL
13 PERMIT YOU TO DO SO. BUT I'M CONCERNED ABOUT THE
14 PROSECUTION'S ABILITY TO CLOSE TODAY, AND HOW MUCH OF
15 THIS --

16 MR. HIGGINS: WELL, I HAVE NO PROBLEM RECALLING
17 THE WITNESS. I WAS TRYING TO SAVE TIME.

18 MS. OSTROWSKI: I WILL NOTIFY EVERYONE THAT
19 DETECTIVE VALENTO IS SCHEDULED, APPARENTLY, TO LEAVE FOR
20 THAILAND FOR SOME SHERIFF'S DEPARTMENT WORK ON THURSDAY.

21 I DON'T KNOW IF IT'S CONFIRMED. JUST
22 GIVING EVERYONE --

23 MR. HIGGINS: I CAN GO OVER FACTS OF THE CASE WITH
24 HIM. BUT I WILL CERTAINLY WANT TO RECALL HIM AS MY OWN
25 WITNESS.

26 AND IT'S GOING TO BE SOMEWHAT INTERTWINED
27 WITH WHAT HE SAYS IN TERMS OF QUESTIONS THAT I'M GOING
28 TO ASK HIM.

1 THE COURT: WHAT'S YOUR TIME ESTIMATE FOR YOUR
2 CROSS IF YOU DO IT NOW?

3 MR. HIGGINS: GOING TO BE AT LEAST AN HOUR.

4 THE COURT: OKAY.

5 MR. HIGGINS: I ANTICIPATE. 40 MINUTES TO AN
6 HOUR.

7 MS. OSTROWSKI: AGAIN, I THINK AS THE COURT JUST
8 STATED, IT'S NOT RELEVANT. WHETHER HE'S BEEN
9 CORROBORATED IN THE PAST OR NOT.

10 WHEN THIS DETECTIVE MADE CONTACT WITH HIM
11 AND TOOK A STATEMENT, WHAT HE SAID -- DEEMED TO BE A
12 CONFIDENTIAL RELIABLE INFORMANT. THIS WITNESS WASN'T IN
13 CHARGE OF MAKING HIM A CRI.

14 THIS WITNESS DIDN'T DESIGNATE HIM AS THAT.
15 AND WHETHER HE WAS DESIGNATED OR NOT DOESN'T MATTER.
16 WHAT THIS JURY NEEDS TO DECIDE IS IS FEISSA TELLING THE
17 TRUTH WHEN HE CAME FORWARD.

18 THE COURT: HANG ON A SECOND. I'M NOT SURE I
19 AGREE ENTIRELY WITH WHAT YOUR STATEMENT IS,
20 MS. OSTROWSKI.

21 AS RELATES TO WHETHER OR NOT THE WITNESS
22 QUALIFIES UNDER THE SHERIFF'S DEPARTMENT STANDARD FOR
23 RELIABILITY MAY NOT BE RELEVANT.

24 BUT IF THE DEFENSE HAS EVIDENCE THAT IN THE
25 PAST MR. FEISSA HAS NOT BEEN RELIABLE, THAT'S FAIR GAME.
26 THEY ARE ENTITLED TO GO INTO THAT INFORMATION.

27 MS. OSTROWSKI: THAT'S FINE. I DON'T BELIEVE THEY
28 HAVE ANY EVIDENCE OF THAT. I WOULD ASK FOR AN OFFER OF

1 PROOF THAT THEY CAN DEMONSTRATE WHEN MR. FEISSA WAS
2 UNRELIABLE IN SOME WAY.

3 MR. HIGGINS: WELL, LET ME JUST GIVE MY OFFER OF
4 PROOF, YOUR HONOR.

5 THE COURT: GO AHEAD.

6 MR. HIGGINS: I'M NOT TRYING TO SAY HE WAS
7 UNRELIABLE IN THE PAST. I'M TRYING TO SAY ACCORDING TO
8 DEPARTMENTAL POLICY, HE DIDN'T GIVE ANY PAST INFORMATION
9 IN ORDER TO BE DEEMED RELIABLE.

10 SO THIS FACADE OF RELIABILITY IS JUST A
11 FACADE. I WANT THE JURY TO UNDERSTAND THAT. THAT GOES
12 TO HIS CREDIBILITY, RELIABILITY, TRUTHFULNESS,
13 ET CETERA.

14 THE COURT: IF YOU CAN GET TO THAT POINT FAIRLY
15 QUICKLY, YOU HAVE A GREEN LIGHT. YOU CAN GO THERE. BUT
16 WHAT I DON'T WANT TO SPEND IS I DON'T WANT TO SPEND 15
17 OR 50 MINUTES DEVELOPING WHAT LASD'S PROTOCOL IS.

18 JUST ASK HIM THE QUESTION DIRECTLY.
19 WHETHER OR NOT THERE'S A PAST RECORD, WHETHER OR NOT HE
20 COULD HAVE BEEN DEEMED CONFIDENTIAL.

21 LET'S PROCEED.

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

26
27 THE COURT: YOU MAY RESUME, MR. HIGGINS.

28 MR. HIGGINS: THANK YOU, YOUR HONOR.

1 Q DETECTIVE, ARE YOU FAMILIAR WITH WHAT AN
2 ACTIVATION FORM IS FOR A CONFIDENTIAL RELIABLE WITNESS?

3 A FAIRLY FAMILIAR, YES.

4 Q IF I SHOWED YOU SUCH A DOCUMENT, WOULD IT
5 HELP YOU TO UNDERSTAND EXACTLY WHAT I'M TALKING ABOUT?

6 A YES.

7 Q OKAY.

8 MR. HIGGINS: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES, SIR.

10 MR. HIGGINS, YOU NEED TO STEP BACK A LITTLE
11 BIT FURTHER.

12 MR. HIGGINS: I'M SORRY.

13 THE COURT: THERE YOU GO.

14 THE WITNESS: YES.

15 Q BY MR. HIGGINS: THIS IS AN ACTIVATION FORM
16 FOR MR. FEISSA; IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q WHAT'S THE DATE ON THAT?

19 A APPEARS TO BE 7/30/08.

20 Q 7/30/08. SO THAT'S WHEN HE WAS FIRST
21 ACTIVATED AS A CONFIDENTIAL RELIABLE INFORMANT; IS THAT
22 CORRECT?

23 A BASED ON LOOKING AT THAT SHEET, I WOULD
24 ASSUME, YES.

25 Q DO YOU KNOW WHO FILLED OUT THIS SHEET ON
26 HIM?

27 A IF I CAN LOOK AT THAT SHEET AGAIN.

28 Q SURE.

1 A SUBMITTED BY DETECTIVE SHAW.

2 Q OKAY. AND IT HAD TO BE APPROVED BY A
3 LIEUTENANT; IS THAT CORRECT?

4 A THAT IS CORRECT.

5 Q ALL RIGHT.

6 YOU WEREN'T THE APPROVING PERSON ON THAT;
7 IS THAT RIGHT?

8 A NO, I HAD NOTHING TO DO WITH THAT.

9 Q NOW, DO YOU KNOW WHETHER OR NOT DETECTIVE
10 SHAW HAD ANY PRIOR RELIABLE INFORMATION PRIOR TO THIS
11 PARTICULAR DATE OF THE 30TH OF JULY, 08?

12 A I DON'T KNOW FOR SURE.

13 Q THAT WAS A DATE THIS PERSON WAS ARRESTED;
14 IS THAT RIGHT?

15 A HE WAS ARRESTED ON JULY 28TH.

16 Q OKAY. NOW, WAS IT -- YOU MENTIONED IT WAS
17 POLICY THAT THEY HAD TO GIVE AT LEAST THREE RELIABLE
18 INSTANCES OF INFORMATION; IS THAT RIGHT?

19 A THREE THINGS. DOESN'T HAVE TO BE DIFFERENT
20 INCIDENTS ON DIFFERENT DAYS, BUT JUST THREE THINGS THAT
21 YOU COULD PROVE WERE TRUE.

22 Q AND ACCORDING TO POLICY, IT HAD TO BE PRIOR
23 THINGS; IS THAT RIGHT?

24 A YES. BEFORE YOU MAKE HIM A CRI, YES.

25 Q SO IS THIS A VALID FORM -- LET ME ASK YOU
26 THIS. WOULD THIS HAVE BEEN A VALID FORM IF HE HAD NOT
27 GIVEN THREE THINGS PRIOR TO 7/30/08 THAT WAS RELIABLE ON
28 WHICH YOUR DEPARTMENT COULD RELY AND SAY THAT HE WAS A

1 RELIABLE PERSON?

2 A THAT FORM IS -- FOR BOTH CI'S AND CRI'S.
3 THERE'S NO DIFFERENCE.

4 Q WELL -- THAT'S CORRECT. WAS HE A CI, THEN?
5 DOES IT REQUIRE A CI TO GIVE AT LEAST THREE THINGS?

6 A CONFIDENTIAL INFORMANT DOES NOT PROVIDE
7 THREE THINGS, NO.

8 Q BUT YOU WERE PRESENTING HIM AS BEING A
9 CONFIDENTIAL RELIABLE INFORMANT; IS THAT RIGHT?

10 A HE WAS PRESENTED TO ME.

11 Q THAT'S THE WAY HE WAS PRESENTED TO YOU; IS
12 THAT CORRECT?

13 A THAT'S CORRECT.

14 Q OKAY.

15 AND THAT WAS BY SERGEANT SHAW; IS THAT
16 RIGHT?

17 A HE WAS A DETECTIVE AT THE TIME.
18 SERGEANT, NOW.

19 Q OKAY.

20 NOW, YOU DIDN'T ASK SERGEANT SHAW ABOUT
21 THAT?

22 A I DID NOT.

23 Q SO YOU SIMPLY ACCEPTED IT; RIGHT?

24 A CORRECT.

25 Q OKAY. NOW, DID YOU -- LET ME ASK YOU A
26 QUESTION. DO YOU KNOW HOW MUCH MONEY MR. FEISSA WAS
27 GIVEN OVER THE COURSE OF YOUR DEALING WITH HIM FROM
28 AUGUST OF '08 TO THE PRESENT?

1 A I KNOW THE TOTAL AMOUNT. I DON'T KNOW HOW
2 MUCH IT WAS JUST FOR MY TWO MURDERS WITHOUT LOOKING AT
3 THE SHEET. BUT IF YOU WANT A TOTAL AMOUNT.

4 Q OKAY. NOW, HOW MUCH IS THE TOTAL AMOUNT?

5 A \$7,250.

6 Q ALL RIGHT.

7 THAT'S SUPPOSED TO BE DOCUMENTED? ALSO?

8 A YES.

9 Q WAS IT DOCUMENTED BY DETECTIVE SHAW?

10 A YES.

11 Q WAS IT ACCURATELY DOCUMENTED BY DETECTIVE
12 SHAW?

13 MS. OSTROWSKI: OBJECTION.

14 CALLS FOR SPECULATION.

15 THE COURT: SUSTAINED.

16 Q BY MR. HIGGINS: DIDN'T YOU MEET WITH
17 DETECTIVE SHAW?

18 A YES.

19 Q WITH REGARD TO ERRORS THAT HE MADE IN THE
20 COURSE OF DOCUMENTING PAYMENTS MADE TO -- MADE TO
21 MR. FEISSA?

22 A YES.

23 Q WHEN DID YOU MEET WITH DETECTIVE SHAW IN
24 REGARD TO ERRORS THAT HE HAD MADE?

25 A I WOULD SAY ROUGHLY A YEAR AGO. I'D HAVE
26 TO REFER TO MY REPORT FOR AN EXACT DATE.

27 Q DO YOU HAVE YOUR REPORT WITH YOU?

28 A I DO. IT WILL TAKE ME A MINUTE TO LOOK UP.

1 Q GO AHEAD.

2 A IT WAS ON SEPTEMBER 22ND OF 2010.

3 Q ALL RIGHT.

4 AND WHAT WAS THE PURPOSE OF MEETING WITH
5 DETECTIVE SHAW THAT DAY?

6 A TO TRY TO CLARIFY AND CORRECT ERRORS THAT
7 WERE MADE.

8 Q BY DETECTIVE SHAW; RIGHT?

9 A CORRECT.

10 Q SO EVERYTHING THAT DETECTIVE SHAW HAD
11 STATED FOR QUITE SOME TIME WAS NOT ACCURATE WITH REGARD
12 TO PAYMENTS THAT WERE MADE TO MR. FEISSA; IS THAT RIGHT?

13 MS. OSTROWSKI: OBJECTION.

14 OVERLY BROAD AS TO EVERYTHING THAT WAS
15 SAID. COMPOUND.

16 THE COURT: SUSTAINED.

17 Q BY MR. HIGGINS: MONETARY PAYMENTS MADE BY
18 DETECTIVE SHAW TO MR. FEISSA WERE INCORRECT; IS THAT
19 RIGHT?

20 A NOT ALL PAYMENTS, NO.

21 Q DO YOU KNOW THE NATURE OF THE ERRORS THAT
22 WERE MADE?

23 A I'D HAVE TO REFRESH MY MEMORY BY THE
24 REPORT.

25 Q DID DETECTIVE SHAW -- WITHOUT REFRESHING --
26 WELL, LET ME ASK YOU THIS. GO AHEAD AND REFRESH YOUR
27 MEMORY.

28 DO YOU KNOW THE NATURE OF THE ERRORS?

1 A I WANT ME TO GO -- EACH ERROR? DOWN THE
2 LIST?

3 Q GENERALLY, THE NATURE OF THE ERRORS. YOU
4 DON'T NEED TO GO THROUGH EVERY ERROR.

5 A THERE WERE SOME ERRORS WITH THE INFORMANT
6 NUMBER GIVEN FOR MR. FEISSA. HE WAS IDENTIFIED BY A
7 CERTAIN INFORMANT NUMBER. THAT WAS TRANSPOSED WITH A
8 DIFFERENT INFORMANT NUMBER AT TIMES.

9 THERE WERE INCORRECT DATES. PAYMENT.
10 THERE WERE -- YOU FILL OUT LIKE A LEDGER FOR -- AS IF
11 YOU'RE FILLING OUT A CHECK. MONETARY AMOUNT ON ONE DID
12 NOT CORRESPOND TO THE NARRATIVE, IN WRITTEN FORM.

13 THERE WERE FILE NUMBERS THAT WERE
14 INCORRECT. I BELIEVE THAT'S ABOUT IT.

15 Q SO INFORMANT NUMBER WAS INCORRECT, AMOUNTS
16 WERE INCORRECT, AND FILE NUMBERS WERE INCORRECT?

17 A AND SOME PAYMENT DATES WERE INCORRECT.

18 Q PAYMENT DATES INCORRECT.

19 DO YOU KNOW WHETHER OR NOT THIS WAS THE
20 FIRST TIME DETECTIVE SHAW HAD EVER BEEN A HANDLER FOR A
21 CONFIDENTIAL INFORMANT?

22 MS. OSTROWSKI: OBJECTION.

23 SPECULATION AND IRRELEVANT.

24 MR. HIGGINS: IF HE KNOWS.

25 THE COURT: SUSTAINED.

26 Q BY MR. HIGGINS: NOW, YOU SAID YOU MET WITH
27 HIM ON SEPTEMBER 22ND. THIS WAS AFTER THE PRELIMINARY
28 HEARING WITH MR. FEISSA; IS THAT RIGHT?

1 A THAT'S CORRECT.

2 Q THIS IS AFTER COUNSEL QUESTIONED MR. FEISSA
3 ABOUT PAYMENTS THAT HE HAD MADE THAT HE HAD RECEIVED; IS
4 THAT RIGHT?

5 A CORRECT.

6 Q AND YOU FOUND OUT, AND YOU JUST TESTIFIED
7 HE HAD OVER \$7,000 IN PAYMENTS; IS THAT RIGHT?

8 A CORRECT.

9 Q AND MR. FEISSA TESTIFIED, AND IT'S BEEN
10 READ INTO COURT THAT HE SAID HE RECEIVED ABOUT \$2,700 IN
11 PAYMENTS; IS THAT RIGHT?

12 A THAT'S CORRECT.

13 Q WAS THAT HONEST?

14 MS. OSTROWSKI: I'M GOING TO OBJECT AS
15 ARGUMENTATIVE.

16 THE COURT: CALLS FOR SPECULATION.

17 HONEST VERSUS MISTAKEN.

18 Q BY MR. HIGGINS: ALL RIGHT. LET ME
19 REPHRASE THE QUESTION. IS IT A CRITERIA OF WORKING WITH
20 A CONFIDENTIAL INFORMANT THAT HE BE TRUTHFUL AND HONEST?

21 A YES.

22 Q ALL RIGHT.

23 HYPOTHETICALLY, IF A PERSON UNDER OATH SAYS
24 HE RECEIVES \$2,700 WHEN HE IN FACT RECEIVED OVER \$7,200,
25 WOULD THAT BE HONEST?

26 MS. OSTROWSKI: SAME OBJECTION.

27 Q BY MR. HIGGINS: OR TRUTHFUL?

28 THE COURT: SUSTAINED. CALLS FOR SPECULATION AS

1 TO WHAT'S IN SOME OTHER PERSON'S MIND.

2 Q BY MR. HIGGINS: NOW, ON JANUARY THE 3RD --
3 WELL, BEFORE I GO THERE. YOU FACILITATED THE HANDLING
4 OF MR. FEISSA AFTER HE GAVE INFORMATION THAT YOU THOUGHT
5 WAS CORRECT ABOUT THIS PARTICULAR INCIDENT THAT WE ARE
6 IN TRIAL ABOUT NOW; IS THAT RIGHT?

7 A DID I FACILITATE MR. FEISSA?

8 Q WELL, YOU WERE PART OF HOMICIDE; RIGHT?

9 A THAT'S CORRECT.

10 Q YOU'RE THE LEAD DETECTIVE ON THIS CASE; IS
11 THAT RIGHT?

12 A CORRECT.

13 Q DID YOU NOT, OR YOUR UNIT, OR WHOEVER IS
14 WORKING WITH YOU, QUOTE, "FACILITATE" THE HANDLING OF
15 MR. FEISSA?

16 A NO. IT WAS DONE BY DETECTIVE SHAW.

17 Q WELL, YOU KNOW WHO SERGEANT AUNER?

18 A AUNER? A-U-N-E-R?

19 Q YES.

20 A YES. WE WORKED THE JAILS AND PATROL
21 TOGETHER.

22 Q DID YOU HAVE AN OPPORTUNITY TO REVIEW HIS
23 REPORT OF AUGUST THE 1ST, 2010?

24 A I HAVEN'T REVIEWED IT SINCE THAT DAY.

25 Q LET ME ASK YOU --

26 MR. HIGGINS: MAY I APPROACH, YOUR HONOR?

27 THE COURT: YES.

28 Q BY MR. HIGGINS: I'D LIKE YOU TO LOOK AT

1 THE SECOND PAGE. THE FIRST PARAGRAPH. THE LAST
2 SENTENCE. THAT WOULD BE F-9, F-8 AND 9?

3 THE COURT: MR. HIGGINS?

4 THE WITNESS: DID YOU SAY FIRST PARAGRAPH, SIR?
5 OR SECOND?

6 Q BY MR. HIGGINS: FIRST PARAGRAPH, RIGHT
7 THERE.

8 A OKAY.

9 Q IS THAT ACCURATE?

10 IT SAYS AS OF THIS DATE --

11 MS. OSTROWSKI: YOUR HONOR, I'LL OBJECT AS
12 HEARSAY.

13 THE COURT: SUSTAINED.

14 Q BY MR. HIGGINS: WELL, DID YOU OR DID
15 HOMICIDE, QUOTE, FACILITATE THE HANDLING" OF MR. FEISSA?

16 MS. OSTROWSKI: YOUR HONOR, I'M GOING TO OBJECT.
17 VAGUE AS TO WHAT FACILITATE HANDLING MEANS.

18 THE COURT: OVERRULED, BASED UPON YOUR OPPORTUNITY
19 TO REVIEW THE DOCUMENT.

20 DOES THAT REFRESH YOUR MEMORY, AND DID
21 HOMICIDE FACILITATE MR. FEISSA, OR NOT?

22 THE WITNESS: I HAVE -- WITHOUT REFERRING TO WHAT
23 THE REPORT SAYS, I HAVE NO KNOWLEDGE, MY PARTNER AND I
24 HAVE NO KNOWLEDGE FROM HOMICIDE BUREAU OF FACILITATING
25 MR. FEISSA.

26 Q BY MR. HIGGINS: BUT YOU WORK IN HOMICIDE;
27 RIGHT?

28 A THAT IS CORRECT.

1 Q SO YOU'RE SAYING THAT ANOTHER SERGEANT IN
2 HOMICIDE BUREAU WOULD MAKE A STATEMENT THAT HOMICIDE
3 FACILITATED THE HANDLING OF MR. FEISSA, AND YOU KNEW
4 NOTHING ABOUT IT?

5 THE COURT: THERE'S NO EVIDENCE AS TO WHAT SOME
6 OTHER SERGEANT SAID, AND THERE'S ALREADY BEEN AN
7 OBJECTION ON HEARSAY GROUNDS.

8 MR. HIGGINS: OKAY.

9 Q NOW, WITH REGARD TO THIS CASE, DO YOU HAVE
10 ANY -- DID YOU BRING FORTH TO THE DISTRICT ATTORNEY ANY
11 SCIENTIFIC EVIDENCE THAT MR. GIBBS HAD ANYTHING TO DO
12 WITH THIS CASE?

13 A NO.

14 Q SO YOU HAVE NO FINGERPRINTS?

15 A NO.

16 Q YOU DIDN'T BRING FORTH ANY DNA EVIDENCE?

17 A NO.

18 Q WOULD IT BE FAIR TO SAY THAT -- WELL, LET
19 ME ASK YOU THIS. DID YOU EVER HEAR MR. GIBBS SAY HE
20 SHOT OR WAS INVOLVED IN THE SHOOTING OF MR. QUEZADA?

21 A NO.

22 Q AND YOU TAPPED PHONES, DIDN'T YOU?

23 A I WAS NOT ASSIGNED TO WIRETAP.

24 I DID NOT TAP PHONES.

25 Q DID YOU AUTHORIZE THE TAPPING OF PHONES?

26 A I DID NOT.

27 Q DO YOU KNOW DURING THE COURSE OF
28 INVESTIGATION THAT TELEPHONES WERE TAPPED?

1 A YES.

2 Q DID YOU BRING ANY INFORMATION TO THE
3 DISTRICT ATTORNEY THAT MR. GIBBS SAYS HE WAS INVOLVED IN
4 THE KILLING OF MR. QUEZADA?

5 A NO.

6 Q WOULD IT BE FAIR TO SAY THAT ALL THE
7 INFORMATION THAT YOU GOT BASICALLY CAME FROM THE MOUTH
8 OF MR. FEISSA?

9 MS. OSTROWSKI: OBJECTION, ARGUMENTATIVE.

10 THE COURT: SUSTAINED.

11 Q BY MR. HIGGINS: DID YOU INTERVIEW ANY
12 EYEWITNESSES?

13 A YES.

14 Q WHO DID YOU INTERVIEW?

15 A SPARKLE ROBERSON. JOLON GORDON. RUBEN
16 BUCHANAN -- EXCUSE ME, RUBEN GILLIAM. STEVEN BUCHANAN.

17 Q LET ME NARROW IT DOWN.

18 DID YOU INTERVIEW ANY EYEWITNESSES WHO
19 ACTUALLY SAW OR HAD A VIEW OF THE AREA AT THE MOMENT THE
20 SHOOTING HAPPENED?

21 A YES.

22 Q HOW MANY PEOPLE DID YOU INTERVIEW WHO HAD
23 THAT PARTICULAR VIEW?

24 A ONE.

25 Q WHO WAS THAT?

26 A JOLON GORDON.

27 Q DID MR. GORDON --

28 MS. OSTROWSKI: OBJECTION, HEARSAY.

1 THE COURT: YOU WANT TO FINISH THE QUESTION? IS
2 IT GOING TO ASK, ARE YOU GOING TO ASK THE WITNESS WHAT
3 MR. GORDON SAID?

4 MR. HIGGINS: LET ME REPHRASE IT.

5 THE COURT: GO AHEAD.

6 Q BY MR. HIGGINS: DID YOU PRESENT MR. GORDON
7 TO THE DISTRICT ATTORNEY SAYING "I HAVE AN EYEWITNESS
8 HERE THAT'S GOING TO CONFIRM THAT MR. GIBBS WAS OUT
9 THERE SHOOTING MR. QUEZADA"?

10 A NO.

11 Q DID YOU GO TO THE SCENE WITH MR. GORDON?

12 A NO.

13 Q YOU WENT TO TEXAS AND INTERVIEWED
14 MR. GORDON; DIDN'T YOU?

15 A I DID.

16 Q WAS MR. GORDON A COOPERATIVE WITNESS?

17 A YES. HE'S COOPERATIVE, BUT HESITANT.

18 Q DID MR. GORDON -- DID YOUR DEPARTMENT OR
19 ANYBODY IN YOUR DEPARTMENT SEEK OUT MR. GORDON, OR DID
20 MR. GORDON CALL YOUR DEPARTMENT WITH THE INFORMATION?

21 A HE CALLED MY DEPARTMENT.

22 Q SO HE VOLUNTEERED INFORMATION; RIGHT?

23 A YES.

24 Q HE WOULD BE A CITIZEN INFORMANT; IS THAT
25 CORRECT?

26 A ACTUALLY, MR. GORDON'S CASE, HE'S ACTUALLY
27 AN INFORMANT.

28 Q HE'S AN EYEWITNESS; RIGHT?

1 A HE IS.

2 Q DID MR. GORDON'S VERSION -- DID MR. GORDON
3 TELL YOU WHAT HE SAW?

4 MS. OSTROWSKI: I'M GOING TO OBJECT. HEARSAY.

5 MR. HIGGINS: I DIDN'T ASK WHAT HE SAID.

6 MS. OSTROWSKI: A DEFENSE WITNESS.

7 THE COURT: I'M GOING TO OVERRULE THE OBJECTION.

8 IT DOESN'T ASK FOR CONTENT. IT ONLY ASKS WHETHER OR NOT
9 THERE WAS A STATEMENT MADE.

10 THE WITNESS: YES, THERE WAS.

11 Q BY MR. HIGGINS: DO YOU KNOW WHETHER OR NOT
12 MR. GORDON'S STATEMENT, WHATEVER IT WAS, WAS IN
13 CONFORMITY WITH WHAT MR. FEISSA TOLD YOU?

14 THE COURT: NOW YOU'RE ASKING ABOUT CONTENT.

15 OBJECTION SUSTAINED.

16 Q BY MR. HIGGINS: DO YOU KNOW A DETECTIVE
17 DUNCAN?

18 A I DO. HE'S PARTNER CURRENTLY.

19 Q DO YOU KNOW A DETECTIVE LABBE?

20 A YES.

21 Q WERE YOU AWARE THAT THEY HAD A CONVERSATION
22 WITH MR. FEISSA ON THE 3RD OF MARCH, 2009?

23 MS. OSTROWSKI: YOUR HONOR, I'M GOING TO OBJECT.
24 CALLS FOR SPECULATION. DETECTIVE DUNCAN IS THE NEXT
25 WITNESS. WE CAN DO THIS WITH HIM.

26 MR. HIGGINS: JUST ASKING IF HE'S AWARE, YOUR
27 HONOR.

28 THE COURT: WELL, PERSONAL KNOWLEDGE. ARE YOU

1 ASKING WHETHER OR NOT HE WAS PRESENT FOR THE
2 CONVERSATION?

3 MR. HIGGINS: DOES HE HAVE PERSONAL KNOWLEDGE, HAS
4 HE READ ANY REPORTS TO FIND OUT WHETHER OR NOT THERE WAS
5 A -- WHETHER OR NOT THERE WAS AN INTERVIEW OF MR. FEISSA
6 BY DETECTIVE DUNCAN AND LABBE ON MARCH 3RD, 2000, I
7 BELIEVE -- NINE.

8 THE COURT: WAS THAT PART OF A QUESTION FOR THE
9 WITNESS? OR WERE YOU RESPONDING TO THE COURT'S INQUIRY
10 OF YOU AS TO WHETHER OR NOT HE HAS PERSONAL KNOWLEDGE?

11 Q BY MR. HIGGINS: DO YOU HAVE PERSONAL
12 KNOWLEDGE?

13 THE COURT: THAT'S THE QUESTION.

14 WERE YOU PRESENT?

15 THE WITNESS: I WAS NOT PRESENT.

16 THE COURT: NEXT QUESTION.

17 Q BY MR. HIGGINS: MR. FEISSA WAS ARRESTED BY
18 MEMBERS OF THE LOS ANGELES SHERIFF'S DEPARTMENT FOR THE
19 MURDER OF DAVEON CHILDS ON JANUARY 3RD, 2008. THAT WAS
20 THE DATE OF THE KILLING HE WAS ARRESTED FOR; IS THAT
21 RIGHT?

22 A YES, HE WAS.

23 Q FEBRUARY THE 25TH, 2008. WERE YOU AWARE
24 THAT MR. FEISSA HAD A CASE, CASE NUMBER SA066407, FOR
25 VIOLATION OF HEALTH AND SAFETY CODE 11359?

26 A YES.

27 Q WERE YOU AWARE THAT ON MARCH 17, 2008,
28 MR. FEISSA PLED GUILTY TO A REDUCED CHARGE OF 11357 OF

1 THE HEALTH AND SAFETY CODE, WAS GIVEN 3 YEARS FORMAL
2 PROBATION, AND HE WAS RELEASED ON HIS OWN RECOGNIZANCE?

3 A I DON'T RECALL THAT.

4 Q WOULD THAT HAVE BEEN IMPORTANT TO YOU IN
5 DEALING WITH MR. FEISSA AND IN YOUR CONSIDERATION OF HIM
6 AS BEING RELIABLE AND TRUTHFUL?

7 A NO.

8 Q WOULD IT HAVE BEEN -- ARE YOU AWARE THAT ON
9 JULY 29, 2008, AT ABOUT 10:30 IN THE EVENING, MR. FEISSA
10 WAS ARRESTED FOR BEING AN EX-CONVICT IN POSSESSION OF A
11 FIREARM?

12 A WAS THAT 2009? JULY 29, 2009?

13 Q 2008.

14 A 2008? YES, THAT WAS HIS GUN ARREST.

15 Q WOULD THAT HAVE BEEN IMPORTANT TO YOU IN
16 DETERMINING WHETHER OR NOT MR. FEISSA WAS RELIABLE,
17 HONEST, AND TRUTHFUL?

18 A NO.

19 Q WOULD IT HAVE BEEN IMPORTANT TO YOU TO FIND
20 OUT THAT ON JULY 29, 2008, THAT MR. FEISSA, AND IN THE
21 COURSE OF HIS ARREST, THAT ARRESTING OFFICERS MADE A
22 DETERMINATION THAT IT WAS GANG-RELATED?

23 WOULD THAT HAVE BEEN IMPORTANT TO YOU IN
24 MAKING A DETERMINATION THAT MR. FEISSA WAS RELIABLE AND
25 HONEST AND TRUTHFUL?

26 A IT ACTUALLY WOULD HAVE BEEN OF BENEFIT TO
27 THEM.

28 Q WOULD IT HAVE BEEN IMPORTANT TO YOU TO FIND

1 OUT THAT ON JULY 28, 2000 -- JULY 29, 2008, AT THE TIME
2 OF MR. FEISSA'S ARREST, HE WAS ARRESTED IN A BLACK
3 CAMRY?

4 A WOULD IT HAVE BEEN IMPORTANT?

5 MS. OSTROWSKI: OBJECTION.

6 ASSUMES FACTS NOT IN EVIDENCE.

7 THE COURT: SUSTAINED.

8 Q BY MR. HIGGINS: LET'S ASSUME --

9 MR. HIGGINS: MAY I ASK HIM TO ASSUME THAT FACT,
10 YOUR HONOR?

11 THE COURT: THAT IT'S A BLACK CAMRY?

12 MR. HIGGINS: YES. THAT HE WAS ARRESTED IN A
13 BLACK CAMRY. AND I CAN PROVE IT UP LATER.

14 THE COURT: OKAY. WELL, WHY DON'T WE TAKE OUR
15 NOON RECESS. LET ME THINK ABOUT THAT OFFER OF PROOF.

16 LADIES AND GENTLEMEN, DON'T FORM OR EXPRESS
17 ANY OPINIONS ABOUT THE CASE UNTIL THE MATTER IS
18 SUBMITTED TO YOU.

19 EACH OF ARE YOU ORDERED TO RETURN AT
20 1:30 P.M. THANK YOU FOR YOUR PATIENCE.

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

25
26 THE COURT: THE RECORD SHOULD REFLECT ALL THE
27 LADIES AND GENTLEMEN OF THE JURY HAVE LEFT THE
28 COURTROOM.

1 MR. HIGGINS, WHAT'S YOUR OFFER OF PROOF
2 THAT THE VEHICLE WAS BLACK AS OPPOSED TO BLUE, AND WHY
3 DOES IT MATTER?

4 MR. HIGGINS: IT MATTERS, YOUR HONOR, BECAUSE --
5 BASED UPON THE ARREST REPORT, HE WAS ARRESTED IN A BLACK
6 CAMRY.

7 MR. GORDON, THE EYEWITNESS, SAW A BLACK
8 CAMRY COME FROM THAT SAME -- RIGHT NEAR THE SCENE WHERE
9 MR. QUEZADA WAS KILLED. AND IT WAS JUST -- HIGHLY
10 COINCIDENTAL THAT THAT WOULD BE THE SAME TYPE OF CAR
11 THAT THIS PERSON WAS ARRESTED IN.

12 THE COURT: OKAY.

13 MS. OSTROWSKI.

14 MS. OSTROWSKI: SUBMITTED.

15 THE COURT: YOU'RE SUBMITTING ON THE OBJECTION?

16 MS. OSTROWSKI: YES.

17 THE COURT: THE OBJECTION, THEN, IS OVERRULED.

18 I'LL ALLOW COUNSEL TO FRAME THE QUESTION TO
19 THE JURY AT 1:30 P.M.

20 MR. HIGGINS: THANK YOU, YOUR HONOR.

21 THE COURT: YOU'RE WELCOME.

22 MS. OSTROWSKI: DO YOU WANT THE PAGE AND LINE
23 NUMBER TO THE PRELIM, YOUR HONOR?

24 THE COURT: MR. GRAYSON, THIS RELATES TO YOUR
25 ISSUE. WHAT'S THE PAGE AND LINE NUMBER?

26 MS. OSTROWSKI: IN VOLUME 1 OF THE PRELIMINARY
27 HEARING ON PAGE 105, IT WAS ACTUALLY I BELIEVE
28 QUESTIONING BY MS. BARNES.

1 AND IT WAS AT LINE 19, WHERE SHE SAYS --
2 EXCUSE ME, I'LL GO UP TO 16.

3 QUESTION: "DID YOU DESCRIBE THE PHONE
4 CONVERSATION TO DETECTIVE VALENTINO WHEN HE INTERVIEWED
5 YOU THE FIRST TIME?"

6 ANSWER: "YES, I DID."

7 QUESTION: "AND DO YOU REMEMBER WHEN WE
8 WERE DOWNTOWN IN THAT COURTHOUSE, AND WE WERE ALL IN THE
9 ROOM TOGETHER, AND WE ASKED YOU ABOUT THAT PHONE
10 CONVERSATION?"

11 ANSWER: "AND I SAID I COULDN'T REMEMBER."

12 QUESTION: "DID YOU JUST NOT REMEMBER IT
13 THEN, OR WHAT HAPPENED?"

14 ANSWER: "I JUST -- MY MIND, YOU KNOW, LIKE
15 WHERE I GOT HOUSED AT AND ALL THAT STRESS I GOT, I HAD A
16 GANG PHONE CONVERSATION ABOUT SHOOTINGS AND THAT KIND OF
17 STUFF."

18 THE COURT: OKAY.

19 MR. GRAYSON: I THINK THAT'S A SELF-SERVING
20 IMPEACHMENT. I THINK I SHOULD BE ALLOWED TO ASK IT THE
21 WAY I WANT TO ASK IT.

22 THE COURT: WELL, AS FAR AS ASKING WHETHER OR NOT
23 THE WITNESS MADE CERTAIN STATEMENTS AT THE TIME OF THE
24 PRELIMINARY HEARING, IT'S CUMULATIVE.

25 THE EVIDENCE IS ALREADY BEFORE THE JURY,
26 AND YOU'RE WELCOME TO ADDRESS THAT ISSUE IN YOUR
27 ARGUMENT.

28 WE'LL BE IN RECESS AT THIS POINT.

1 COUNSEL ARE ORDERED BACK AT 1:30 P.M.
2 OFF THE RECORD ON SCHEDULING ISSUES.
3

4 (A DISCUSSION WAS HELD
5 OFF THE RECORD.)
6

7 (AT 12:04 P.M., PROCEEDINGS
8 WERE CONTINUED TO 1:30 P.M.
9 OF THE SAME DAY.)
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1 CASE NUMBER: NO. YA075709-01/-02/-03
2 CASE NAME: PEOPLE VS. WALLACE, KHALILL, GIBBS
3 TORRANCE, CALIFORNIA TUESDAY, DECEMBER 13, 2011
4 DEPT. SOUTHWEST L HON. JAMES R. BRANDLIN, JUDGE
5 REPORTER: WILLIAM F. BARNES, CSR #3766
6 TIME: 1:41 P.M.

7 (APPEARANCES AS HERETOFORE NOTED.)

8 ---000---

9
10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT, OUT
12 OF THE PRESENCE OF THE JURY:)

13
14 THE COURT: ON THE RECORD IN THE WALLACE, KHALILL,
15 AND GIBBS MATTER. EACH OF THE DEFENDANTS ARE PRESENT
16 WITH COUNSEL. THE PEOPLE ARE PRESENT. THE
17 INVESTIGATING OFFICER IS PRESENT.

18 ANYTHING WE NEED TO ADDRESS OUTSIDE THE
19 PRESENCE OF THE JURY? BEFORE WE BRING THEM IN AT THIS
20 POINT?

21 MR. GRAYSON: NO.

22 MR. HIGGINS: NO, YOUR HONOR.

23 THE COURT: MADAM CLERK.

24 MS. OSTROWSKI: SO YOUR HONOR KNOWS, AT THE LUNCH
25 BREAK, I WENT THROUGH ALL THE WIRES TO SEE HOW LONG ALL
26 THE WIRES AND THE JAIL CALLS AND THE YOUTUBE. AND THAT
27 IN AND OF ITSELF ADDS UP TO 50 MINUTES, APPROXIMATELY.

28 THE COURT: HOW MUCH?

1 MS. OSTROWSKI: FIVE ZERO. ALMOST AN HOUR. SO MY
2 ONE AND A HALF MIGHT BE MORE LIKE TWO.

3 MR. HIGGINS: WELL, YOUR HONOR, I WOULD -- I WOULD
4 BE REQUESTING IF I COULD PUT MR. GORDON ON OUT OF ORDER.

5 THE COURT: WHERE IS HE AT?

6 MR. HIGGINS: HE'S LOCAL.

7 THE COURT: AFTER THE PROSECUTION RESTS, YOU MEAN?

8 MR. HIGGINS: NO. I WAS TALKING ABOUT TOMORROW
9 MORNING.

10 THE COURT: I'M DISINCLINED TO DO THAT BEFORE THE
11 PROSECUTION RESTS.

12
13 (THE FOLLOWING PROCEEDINGS
14 WERE HELD IN OPEN COURT, IN
15 THE PRESENCE OF THE JURY:)

16
17 THE COURT: AT THIS TIME, ALL THE LADIES AND
18 GENTLEMEN OF THE JURY ARE PRESENT, INCLUDING OUR TWO
19 ALTERNATE JURORS. EACH OF THE DEFENDANTS ARE PRESENT
20 WITH THEIR RESPECTIVE COUNSEL. THE PEOPLE ARE PRESENT.

21 THE INVESTIGATING OFFICER IS PRESENT.

22
23 MICHAEL VALENTO,
24 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
25 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

26 THE COURT: DETECTIVE VALENTO, I'D REMIND YOU
27 YOU'RE STILL UNDER OATH.

28 MR. HIGGINS, YOU MAY RESUME YOUR

1 CROSS-EXAMINATION OF THE WITNESS.

2 MR. HIGGINS: THANK YOU, YOUR HONOR.

3
4 CROSS-EXAMINATION RESUMED

5 BY MR. HIGGINS:

6 Q DETECTIVE, I BELIEVE JUST BEFORE WE BROKE,
7 I WAS ASKING YOU SOME QUESTIONS REGARDING A BLACK CAMRY.

8 I WOULD LIKE YOU TO ASSUME THAT ON JULY THE
9 29TH, 2008, THAT YOUR CONFIDENTIAL INFORMANT,
10 MR. FEISSA, WAS ARRESTED IN A BLACK CAMRY FOR POSSESSION
11 OF A FIREARM.

12 WOULD THAT HAVE BEEN IMPORTANT TO YOU IN
13 DETERMINING HIS CREDIBILITY AND/OR RELIABILITY?

14 A YES.

15 Q WHY WOULD IT HAVE BEEN IMPORTANT?

16 A IT MATCHED THE DESCRIPTION OF A VEHICLE
17 SEEN DRIVING AWAY FROM THE MURDER SCENE SHORTLY AFTER
18 THE SHOOTING.

19 Q NOW, LOS ANGELES SHERIFF'S DEPARTMENT I
20 BELIEVE -- WELL, LET ME ASK YOU THIS. IN 2008, WAS THE
21 HOMICIDE DIVISION OR BUREAU LOCATED ON RICKENBACHER
22 ROAD?

23 A YES.

24 Q SO THAT MEANT THAT ALL L.A. COUNTY HOMICIDE
25 DETECTIVES WERE OVER THERE ON RICKENBACHER ROAD; RIGHT?

26 A WITH THE EXCEPTION OF THE WIRETAP UNIT.

27 Q OKAY. AND AS PART OF THEM BEING PHYSICALLY
28 LOCATED IN THAT AREA, I WOULD SUPPOSE IT WOULD HAVE BEEN

1 EASIER TO HAVE MEETINGS OR TO CONFER WITH EACH OTHER
2 DURING THAT PERIOD; IS THAT RIGHT?

3 A BETWEEN THE WIRETAP UNIT --

4 Q NO, NO, NO. AMONG HOMICIDE DETECTIVES.

5 MS. OSTROWSKI: OBJECTION, RELEVANCE.

6 THE COURT: SUSTAINED.

7 Q BY MR. HIGGINS: LET ME ASK YOU THIS. DID
8 YOU HOLD REGULAR SQUAD MEETINGS, OR BRIEFING MEETINGS
9 WITH THE COMMANDER AND CHIEF OVER THERE TO FIND OUT
10 WHERE INDIVIDUALS WHO WERE HANDLING PARTICULAR CASES
11 ARE, WHERE THEY ARE IN THE INVESTIGATION, SHARING
12 INFORMATION AMONG EACH OTHER?

13 MS. OSTROWSKI: OBJECTION, RELEVANCE.

14 THE COURT: OVERRULED.

15 THE WITNESS: IT'S NOT SHARE WITH THE COMMANDER
16 AND CHIEF, BUT IT'S SHARED -- IF I CAN EXPLAIN.

17 BACK IN '08, WE DON'T DO IT ANYMORE, BACK
18 IN '08, EVERY WEDNESDAY, THE MURDERS THAT CAME IN
19 THAT -- FOR THAT 7-DAY PERIOD, YOU WOULD DO THAT -- YO
20 WOULD STAND UP WITH THE MICROPHONE, AND THE
21 INVESTIGATORS THAT WERE PRESENT, YOU WOULD -- GIVE A
22 BRIEF SYNOPSIS OF YOUR MURDER. KIND OF KEEP EVERYBODY
23 IN THE LOOP OF WHAT KIND OF MURDERS WERE OCCURRING IN
24 L.A. COUNTY.

25 Q BY MR. HIGGINS: OKAY. WELL, AS OF -- AS
26 OF JULY THE 29TH, 2008, I'M SURE THAT THEY THEN HAD
27 BRIEFINGS ABOUT A RECENT MURDER THAT OCCURRED ON
28 JULY 25, 2008. WOULD THAT BE FAIR TO SAY?

1 A I DON'T KNOW IF THAT WAS BRIEFED ON THAT
2 WEDNESDAY MEETING OR NOT.

3 Q WELL, WITHIN TWO WEEKS OF THAT MURDER OF
4 JULY 25, 2008, WOULD IT HAVE BEEN BRIEFED?

5 A THERE ARE LOT OF VARIABLES. IF THE
6 INVESTIGATING OFFICERS ARE IN THE FIELD DURING THE
7 WEDNESDAY MEETING INVESTIGATING A MURDER, THEY WOULDN'T
8 BE ABLE TO BRIEF IT.

9 IF THEY WERE IN COURT PROCEEDINGS,
10 WOULDN'T BE BRIEFED. SO IF THEY WERE OUT SICK. SOME
11 VARIABLES THAT WOULD -- I MEAN, WHETHER IT WAS NOT OR
12 WAS BRIEFED.

13 Q SO TO YOUR KNOWLEDGE, DETECTIVE SHAW WAS
14 NOT AWARE OF A MURDER THAT HAPPENED ON JULY 25TH? 2008?

15 MS. OSTROWSKI: OBJECTION. ASSUMES FACTS NOT IN
16 EVIDENCE THAT SHAW WAS AT THESE MEETINGS.

17 THE COURT: SUSTAINED.

18 Q BY MR. HIGGINS: WHEN YOU WERE INTRODUCED
19 TO MR. FEISSA IN AUGUST, ABOUT A WEEK LATER, WERE YOU
20 AWARE OF THE MURDER THAT OCCURRED ON JULY 25TH? SAME
21 YEAR? 2008?

22 A I WAS AWARE OF THE MURDER, YES.

23 Q NOW, WHEN DETECTIVE SHAW BROUGHT YOU
24 MR. FEISSA, DIDN'T YOUR POLICY, THAT IS, AS WRITTEN IN A
25 MEMO ENTITLED 3-01/110.60, DIDN'T THAT MEMO BASICALLY
26 STATE --

27 MS. OSTROWSKI: IT'S GOING TO BE HEARSAY. I ALSO
28 HAVEN'T BEEN PROVIDED WITH THE MEMO.

1 FOUNDATION. SPECULATION.

2 THE COURT: DO YOU WISH TO RESPOND?

3 MR. HIGGINS: YES. I'M SIMPLY ASKING HIM HIS
4 KNOWLEDGE OF THIS PARTICULAR POLICY, YOUR HONOR.

5 THE COURT: OKAY. I GUESS MY QUESTION IS --
6 THERE'S A DIFFERENCE BETWEEN WHETHER OR NOT IT SHOWS,
7 FOR INSTANCE, THE INFORMANT IS NOT RELIABLE AS OPPOSED
8 TO WHETHER OR NOT THERE'S COMPLIANCE WITH AN INTERNAL
9 POLICY.

10 MR. HIGGINS: WELL, LET ME APPROACH IT A DIFFERENT
11 WAY. LET ME APPROACH THE WITNESS AND ASK HIM TO REVIEW
12 THIS.

13 THE COURT: PLEASE.

14 MS. OSTROWSKI: MAY I HAVE A COPY, PLEASE?

15 THE COURT: SURE.

16 MR. HIGGINS: SURE.

17

18 (PAUSE IN PROCEEDINGS.)

19

20 Q BY MR. HIGGINS: WOULD YOU TAKE A LOOK AT
21 THAT MEMO? IT SAYS "INFORMANT, USE OF." AND TELL ME
22 WHETHER OR NOT YOU HAD AN OPPORTUNITY TO REVIEW IT.

23 FIRST PAGE ONLY.

24 A YOU WANT ME TO REVIEW IT RIGHT NOW?

25 Q WELL, IF YOU'VE SEEN IT BEFORE.

26 A IT'S BEEN A LONG TIME SINCE I WORKED
27 INFORMANTS. I DON'T RECALL READING THIS EXACT MEMO.

28 ALTHOUGH IT WAS ISSUED IN 1996, I DON'T RECALL READING

1 IT.

2 Q WELL, ISN'T IT TRUE THAT IN SEPTEMBER, I
3 THINK 2010, YOU REVIEWED THE ENTIRE INFORMANTS FILE OF
4 MR. FEISSA WITH DETECTIVE SHAW?

5 A YES.

6 Q WASN'T THAT PARTICULAR DOCUMENT IN THE
7 INFORMANTS FILE?

8 A I DID NOT SEE THEM BEFORE, NO.

9 Q YOU BROUGHT THE INFORMANT FILE WITH YOU
10 TODAY; DIDN'T YOU?

11 A I DID.

12 Q DID YOU TAKE A LOOK AT IT?

13 A I DID. BUT I DIDN'T SEE IT THIS MORNING,
14 EITHER.

15 Q OKAY. MAY WE HAVE THAT FILE?

16 A I'D HAVE TO GET OFF THE STAND.

17 Q I'LL GET IT, IF COUNSEL HAS IT.

18 I'LL GET IT.

19 A IT'S MY FILE.

20

21 (PAUSE IN PROCEEDINGS.)

22

23 Q BY MR. HIGGINS: I BELIEVE I STAND TO BE
24 CORRECTED. I DON'T THINK IT'S IN THERE.

25 BUT YOU CAN CHECK IT OUT.

26 SO IT'S YOUR TESTIMONY THAT YOU'VE NEVER
27 SEEN THIS PARTICULAR MEMO?

28 A I DON'T RECALL SEEING IT, NO.

1 Q BUT YOU WERE HANDLING AN INFORMANT? YOU
2 WERE ASSISTING IN HANDLING OF AN INFORMANT?

3 A I DID NOT HANDLE MR. FEISSA. THE HANDLER
4 WAS DETECTIVE SHAW.

5 Q DO YOU KNOW AS A MATTER OF POLICY THAT
6 YOU'RE SUPPOSED TO EVALUATE THE INFORMANT'S BACKGROUND?

7 MS. OSTROWSKI: YOUR HONOR, I'M GOING TO OBJECT.
8 IRRELEVANT.

9 THE COURT: SUSTAINED UNDER 352.

10 Q BY MR. HIGGINS: ASSUMING THAT AN INFORMANT
11 APPEARED IN COURT AND WAS GIVEN O.R. AND FAILED TO
12 COMPLETE THE TERMS AND CONDITIONS OF HIS O.R., IN YOUR
13 OPINION, WOULD THAT PERSON BE RELIABLE?

14 MS. OSTROWSKI: OBJECTION.

15 VAGUE AS AN INFORMANT AS A --

16 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.

17 Q BY MR. HIGGINS: NOW, DO YOU KNOW HOW MUCH
18 MONEY MR. FEISSA RECEIVED BETWEEN JULY, THE TIME THAT HE
19 WAS SIGNED UP, AND SEPTEMBER OF '08? JULY OF '08 TO
20 SEPTEMBER OF '08?

21 A NOT OFF THE TOP OF MY HEAD.

22 Q COULD YOU FIND THAT FROM THE FILE THAT YOU
23 HAVE IN FRONT OF YOU?

24 MS. OSTROWSKI: I'M GOING TO OBJECT UNDER 352.
25 THE TOTAL AMOUNT HAS ALREADY BEEN PROVIDED. THIS TIME
26 PERIOD WILL REQUIRE FLIPPING THROUGH RECEIPTS AND MATH.

27 UNDER 352, IT'S NOT RELEVANT.

28 MR. HIGGINS: TAKE A MINUTE, YOUR HONOR.

1 THE COURT: HOW LONG IS A MINUTE?

2 MR. HIGGINS: HOW LONG A MINUTE? ABOUT
3 60 SECONDS. I BELIEVE THIS OFFICER CAN DO IT.

4 THE COURT: LET'S SEE. YOU MAY.

5

6 (PAUSE IN PROCEEDINGS.)

7

8 THE WITNESS: BETWEEN WHEN TO WHEN, COUNSEL?

9 Q BY MR. HIGGINS: JULY OF '08 TO SEPTEMBER
10 OF '08.

11

12 (PAUSE IN PROCEEDINGS.)

13

14 THE COURT: HERE IS A CALCULATOR, IF YOU NEED IT.

15 THE WITNESS: THANK YOU.

16

17 (PAUSE IN PROCEEDINGS.)

18

19 Q BY MR. HIGGINS: WELL, DEPUTY --

20 A HOLD ON. 3450.

21 Q \$3,450?

22 A FROM THOSE DATES.

23 Q DID YOU KNOW AT THAT -- LET ME ASK YOU
24 THIS. DID YOU KNOW AT THAT TIME THAT MR. FEISSA WAS
25 SUSPECTED OF KILLING -- OF THE MURDER OF DAVEON CHILDS
26 IN JANUARY OF '08?

27 A NO.

28 Q BY WORKING WITH THE POLICE, THE SHERIFF'S

1 DEPARTMENT -- IS -- STRIKE THAT.

2 ONE OF THE MOTIVATIONS FOR MR. FEISSA
3 GIVING INFORMATION WAS NUMBER ONE, TO BE RELEASED FROM
4 CUSTODY UPON HIS ARREST ON JULY 29, 2008; IS THAT RIGHT?

5 MS. OSTROWSKI: SPECULATION.

6 THE COURT: SUSTAINED.

7 Q BY MR. HIGGINS: MR. FEISSA WAS RELEASED
8 FROM CUSTODY ON OR ABOUT JULY 30TH OR 31ST, 2008; IS
9 THAT CORRECT?

10 A YES.

11 Q AND HE HAS RELEASED FROM CUSTODY AFTER
12 BEING ARRESTED FOR A FELON IN POSSESSION OF A GUN; IS
13 THAT RIGHT?

14 A YES.

15 Q A FELON IN POSSESSION OF A GUN, THAT'S A
16 DANGEROUS SITUATION; IS THAT CORRECT?

17 A I DON'T KNOW IF THE SITUATION IS EXACTLY
18 DANGEROUS. BUT AN INDIVIDUAL WITH A GUN CAN BE
19 CONSIDERED DANGEROUS.

20 Q A GANG MEMBER WHO IS AN EX-FELON WITH A
21 GUN, IS THAT A DANGEROUS SITUATION?

22 A I GUESS THAT WOULD BE CONSTRUED AS ONE,
23 YES.

24 Q WOULD IT BE FAIR TO SAY THAT HIS MOTIVE
25 INITIALLY FOR GIVING INFORMATION WAS TO BE RELEASED FROM
26 CUSTODY?

27 MS. OSTROWSKI: SPECULATION.

28 THE COURT: SUSTAINED.

1 NO.

2 Q WOULD IT BE PROPER POLICY OR PROCEDURE TO
3 PUT THAT TYPE OF DOCUMENT IN AN INFORMANT'S FILE ONCE HE
4 IS DETERMINED TO BE UNRELIABLE?

5 MS. OSTROWSKI: OBJECTION, RELEVANCE.

6 THE COURT: I'D LIKE TO SEE COUNSEL AT SIDE BAR,
7 PLEASE.

8 MR. HIGGINS: IF YOU WANT ME TO WITHDRAW THE
9 QUESTION, I CAN.

10 THE COURT: NO, I WANT TO SEE YOU.

11

12 (THE FOLLOWING PROCEEDINGS
13 WERE HELD AT THE BENCH:)

14

15 THE COURT: WE'RE AT SIDE BAR OUTSIDE THE PRESENCE
16 OF THE JURY.

17 I THINK I MADE MY RULINGS FAIRLY CLEARLY ON
18 WHAT WAS RELEVANT AND WHAT WASN'T. ISSUES DEALING WITH
19 WHETHER OR NOT THE INFORMANT WAS RELIABLE, AND
20 UNDERLYING FACTS TO ESTABLISH THAT, ARE FAIR GAME.

21 ISSUES DEALING WITH WHETHER OR NOT THE
22 LOS ANGELES SHERIFF'S DEPARTMENT HAS A PARTICULAR
23 POLICY, AND WHETHER THAT POLICY WAS FOLLOWED IS NOT
24 RELEVANT.

25 WE ARE CONSUMING AN INCREDIBLE AMOUNT OF
26 TIME ON MINUTIA. I WANT YOU TO GET IN AND GET OUT ON
27 THOSE ISSUES, PLEASE.

28 DO YOU HAVE OTHER ISSUES THAT YOU WANT TO

1 ADDRESS WITH REGARDS TO FEISSA'S RELIABILITY?

2 MR. HIGGINS: I'M GOING TO DO MY BEST TO GET IN
3 AND GET OUT AS QUICKLY AS POSSIBLE. I NEED A LITTLE
4 LEEWAY WITH SOME OF THESE OFFICERS. THEY DON'T
5 NECESSARILY GIVE THE BEST ANSWERS WHEN YOU FIRST ASK
6 DIRECT QUESTIONS LIKE THAT.

7 THEY'RE EXTREMELY SLIPPERY. I'LL DO MY
8 BEST, YOUR HONOR.

9 THE COURT: IF YOU ASK THE QUESTION FIRST AND YOU
10 GET AN ANSWER THAT'S INCONSISTENT, THEN BY ALL MEANS
11 IMPEACH HIM WITH WHATEVER MATERIALS YOU NEED.

12 BUT GOING ABOUT IT IN THE WAY THAT YOU ARE
13 IS GOING AROUND THE END OF THE BUSH. LET'S GO THROUGH
14 THE BUSH FIRST, AND SEE IF YOU CAN GET THE QUARRY.

15 IF NOT, THEN DO WHAT YOU NEED TO DO.

16 MR. HIGGINS: YOUR HONOR, ONE THING THAT I HAVE TO
17 BE CONCERNED ABOUT IS THE JURORS. ALL RIGHT. AND I
18 THINK SO FAR, I DON'T SEE MY JURORS FALLING ASLEEP ON ME
19 RIGHT NOW.

20 HOWEVER, I THINK THAT IT'S IMPORTANT FOR
21 THEM TO SEE THE ENTIRE HISTORY OF WHAT'S GOING ON, AND
22 HOW THIS DEPARTMENT FAILED TO DO WHAT IT WAS SUPPOSED TO
23 HAVE DONE ACCORDING TO POLICY.

24 NOT SIMPLY THEY DID OR DIDN'T DO IT.

25 ALSO, THE ANSWER I'M GETTING FROM THIS
26 PARTICULAR PERSON, I DON'T SEE HOW I CAN GET THEM FROM
27 HIM IF I'M COMPLETELY CUT OFF, ESPECIALLY WITH REGARD TO
28 THINGS THAT DETECTIVE SHAW DID OR DIDN'T DO.

1 IT'S BECOMING MORE APPARENT THAT I NEED
2 HIM. AND I JUST WANT TO PUT THAT ON THE RECORD RIGHT
3 NOW.

4 THE COURT: WHEN WAS SHAW SERVED BY YOUR
5 INVESTIGATOR?

6 MR. HIGGINS: I THINK IT WAS THE 7TH.

7 THE COURT: WHY DID YOU WANT UNTIL THE 7TH TO
8 SUBPOENA SUCH A MATERIAL WITNESS FOR THE DEFENSE?

9 MR. HIGGINS: BECAUSE I WAS DOING MY VERY BEST
10 TRYING TO GET MY WITNESSES IN. I GAVE THEM SUFFICIENT
11 TIME TO BE THERE. THE SUBPOENA WAS ACCEPTED BY THE
12 SUBPOENA CONTROL.

13 THE COURT: L.A. SHERIFF'S DEPARTMENT IS NOT ON
14 TRIAL IN THIS CASE. THEIR ABILITY TO FOLLOW THEIR OWN
15 INTERNAL POLICIES IS NOT THE ISSUE.

16 I'M ASKING YOU TO GO DIRECTLY TO THE ISSUES
17 THAT IMPEACH FEISSA'S CREDIBILITY. IF YOU DON'T GET THE
18 ANSWERS THAT YOU'RE LOOKING FOR, THEN I'LL GIVE YOU SOME
19 LEEWAY.

20 LET'S TRY IT THE DIRECT METHOD FIRST; OKAY?

21 MR. HIGGINS: THANK YOU.

22 MS. OSTROWSKI: YOUR HONOR, BEFORE WE GO BACK
23 THERE, JUST WHILE WE'RE AT SIDE BAR, I SEE COUNSEL HAS
24 ONE OF THE ITEMS IN DISCOVERY, WHICH IS THE "UNRELIABLE"
25 CARD. DETECTIVES DUNCAN AND LABBE FILLED OUT THAT CARD
26 ON MR. FEISSA BECAUSE HE DIDN'T TELL THEM WHERE HE WAS.

27 AND WHEN THEY FOUND OUT WHERE HE WAS WAS IN
28 TEXAS SELLING DRUGS, THIS IS HIS INGLEWOOD CASE, THEY

1 FILLED OUT WHAT'S CALLED AN "UNRELIABLE INFORMANT CARD."

2 I BELIEVE THAT'S WHERE COUNSEL IS TRYING TO
3 GO WITH THIS PARTICULAR WITNESS. MY VERY NEXT WITNESS
4 IS DETECTIVE DUNCAN. THEY CAN CROSS HIM ALL THEY WANT
5 ABOUT THAT CARD AND WHAT THAT CARD MEANS.

6 HE WAS THE PERSON THAT WAS THERE, AND DEALT
7 WITH THE CARD. THIS WITNESS ISN'T.

8 MR. GRAYSON: WE SHOULDN'T BE CUT OFF FROM
9 CROSS-EXAMINATION ON THAT ISSUE.

10 THE COURT: FIRST, IT'S NOT YOUR ISSUE AT THIS
11 POINT. YOU'RE NOT THE ONE UP TO BAT. THAT'S
12 MR. HIGGINS.

13 SECONDLY, YOU CAN'T ASK A WITNESS WHO ISN'T
14 PRESENT WHAT THE UNDERLYING FACTS ARE IN THE
15 CONVERSATION, OR WHY THAT WITNESS DID WHAT HE DID.
16 THAT'S THE OTHER GUY.

17 CALL THAT OTHER PERSON, IF YOU NEED TO.
18 HE'S GOING TO BE UP NEXT TO BAT ANYWAY. ASK HIM THOSE
19 QUESTIONS.

20 MR. HIGGINS: WELL, YOUR HONOR, CAN I ASK HIM
21 THROUGH THIS WITNESS, WHO IS THE LEAD DETECTIVE, ABOUT
22 THE SIGNIFICANCE OF THIS UNRELIABLE INFORMANT CARD THAT
23 I'M GOING TO ASK TO MARK AS DEFENSE EXHIBIT A?

24 I THINK THAT HE'S THE LEAD DETECTIVE, AND I
25 SHOULD BE ABLE TO ASK HIM ABOUT THAT.

26 THE COURT: YOU CAN RECALL HIM, IF YOU NEED TO,
27 LATER. AND YOU GIVE ME A SUFFICIENT OFFER OF PROOF.
28 BUT I'M NOT GOING TO GO INTO IT WITH THIS WITNESS AND

1 THEN HAVE YOU GO INTO IT WITH THE NEXT WITNESS AS WELL,
2 ESPECIALLY SINCE THIS WITNESS WASN'T PRESENT FOR IT.

3 THE ANSWER IS NO. NOT AT THIS POINT.

4 IF YOU WANT TO RECALL HIM ON YOUR CASE IN
5 CHIEF, YOU CAN GIVE ME YOUR OFFER OF PROOF THEN.

6 LET'S PROCEED.

7 MR. HIGGINS: YOUR HONOR, ONE OTHER THING. I
8 BELIEVE WHEN YOUR HONOR WAS COMING TO THE DOOR, THERE
9 WAS A KICK ON THE DOOR, AND THERE WAS A RATHER DISGUSTED
10 EXPRESSION ON YOUR FACE.

11 I THINK THAT THAT IN FRONT OF THE JURY IS
12 GIVING THE WRONG SIGNAL IN TERMS OF THE DEFENSE. I
13 WOULD ASK IF THE COURT COULD GIVE THE JURY SOME TYPE OF
14 ADMONITION THAT ANY ACTIONS ON THE PART OF THE COURT
15 WERE NOT MEANT TO DISPARAGE THE DEFENSE IN ANY WAY.

16 I APPRECIATE THAT.

17 THE COURT: YOUR REQUEST IS NOTED. IT'S DENIED.

18 I CATEGORICALLY DENY KICKING THE DOOR. I
19 BACKED THROUGH THE DOOR. I COULDN'T SEE HOW FAR THE
20 DOOR IS BEHIND ME.

21 WE HAVE AN AIR CONDITIONING SYSTEM THAT
22 SOMETIMES KEEPS THIS DOOR PARTIALLY OPEN. I EXPECTED
23 THAT THE DOOR TO BE CLOSER TO ME THAN IT WAS. SO WHEN I
24 HIT THE DOOR WITH MY BACK, IF IT SOUNDED LIKE IT WAS
25 HARD, I APOLOGIZE TO YOU.

26 I GIVE THE STANDARD INSTRUCTION AT THE END
27 OF THE CASE. MY QUESTIONS, MY CONDUCT, WHATEVER I DO
28 DURING THE COURSE OF THE TRIAL IS NOT AN ISSUE FOR THE

1 JURORS TO RESOLVE.

2 I'D REALLY LIKE TO GET IN THERE AND FINISH
3 THE CASE. CAN WE PROCEED, PLEASE?

4 MR. HIGGINS: YES.

5 THE COURT: THANK YOU.

6

7 (THE FOLLOWING PROCEEDINGS
8 WERE HELD IN OPEN COURT, IN
9 THE PRESENCE OF THE JURY:)

10

11 THE COURT: YOU MAY RESUME, MR. HIGGINS.

12 MR. HIGGINS: THANK YOU, YOUR HONOR.

13 Q DETECTIVE VALENTO, MOVING ON TO ANOTHER
14 AREA. I BELIEVE YOU STATED THAT YOU MET WITH JOLON
15 GORDON IN TEXAS; IS THAT RIGHT?

16 A CORRECT.

17 Q THAT WAS ON ONE OCCASION?

18 A ACTUALLY MET WITH HIM TWO TIMES DURING THAT
19 TRIP.

20 Q OKAY.

21 AND DO YOU RECALL WHEN THAT TRIP WAS?

22 A MAY 10TH OF THIS YEAR.

23 Q OKAY.

24 A MAY SOMETHING OF THIS YEAR.

25 Q DO YOU RECALL WHEN HE -- WHEN HE FIRST
26 CONTACTED THE SHERIFF'S DEPARTMENT?

27 A HE WAS A WITNESS IDENTIFIED BY THE
28 RESPONDERS TO THE MURDER. AND THEN WE FOLLOWED UP WITH

1 AN INTERVIEW THAT DAY. OR A COUPLE DAYS LATER.

2 Q OKAY.

3 AND SO BETWEEN 2008 AND 2010, YOU SAY?

4 A '11.

5 Q '11.

6 HAD YOU HAD ANY OTHER INTERVIEWS WITH HIM?

7 A NO.

8 Q AND -- ALL RIGHT. THANK YOU.

9 MR. HIGGINS: NO FURTHER QUESTIONS.

10 THE COURT: THANK YOU, MR. HIGGINS.

11 MR. NEWMAN, DO YOU WISH TO INQUIRE?

12 MR. NEWMAN: A FEW QUESTIONS.

13 THE COURT: YOU MAY PROCEED.

14

15 CROSS-EXAMINATION

16 BY MR. NEWMAN:

17 Q OFFICER, JUST SO I'M CLEAR, WHEN YOU
18 RESPONDED TO THE SCENE OF THIS CRIME, YOU INDICATED
19 THERE WERE SOME GRAFFITI, SOUTH SIDE -- WHAT WERE THEY
20 CALLED? SOUTH SIDE --

21 A PLAYERS.

22 Q PLAYERS?

23 A YES.

24 Q SPRAYED THERE IN THE AREA?

25 A YES.

26 Q AND THIS AREA IS PART OF -- I GUESS ONE OF
27 THE GANGS THAT IS INVOLVED IN THIS AREA IS BARRIO 13;
28 CORRECT?

1 A CORRECT.

2 Q AND THOSE ARE TWO OPPOSING HISPANIC GANGS?
3 CORRECT?

4 A I HAVE NO KNOWLEDGE THEY'RE OPPOSING.

5 Q OKAY.

6 BUT BASICALLY, TWO HISPANIC GANGS; CORRECT?

7 A CORRECT.

8 Q YOU SAID YOU INTERVIEWED, YOU SPOKE TO A
9 NUMBER OF EYEWITNESSES IN THIS MATTER. DID ANY OF THOSE
10 EYEWITNESSES WHO WERE THERE AT THE SCENE THAT NIGHT, DID
11 ANY OF THEM IDENTIFY MY CLIENT, MR. WALLACE, AS BEING
12 PRESENT THERE THAT NIGHT?

13 MS. OSTROWSKI: OBJECTION. CALLS FOR HEARSAY.

14 THE COURT: SUSTAINED.

15 Q BY MR. HIGGINS: WELL -- DID YOU FIND ANY
16 EVIDENCE FROM PEOPLE YOU TALKED TO THAT MR. WALLACE WAS
17 PRESENT AT THE SCENE?

18 A EXCLUDING CRI, NO.

19 Q NOW, BASED -- THE CRI, MR. FEISSA, YOU
20 INDICATED THAT HE HAD TOLD YOU AT ONE TIME HE HAD BEEN
21 TAKEN BACK TO WHERE -- THAT NIGHT WHERE THIS MURDER
22 OCCURRED BY A GIRLFRIEND; CORRECT?

23 A YES.

24 Q AND YOU NEVER SPOKE TO THAT GIRLFRIEND TO
25 VERIFY THAT?

26 A NO.

27 Q NOW, MR. BUCHANAN, STEVE BUCHANAN; YOU
28 INTERVIEWED HIM; CORRECT?

1 A CORRECT.

2 Q YOU TAPE-RECORDED IT AT THE TIME?

3 A YES.

4 Q I TAKE IT AT THE TIME WHEN YOU SPOKE TO
5 HIM, HE WASN'T AWARE HE WAS BEING TAPE-RECORDED; WAS HE?

6 A HE WAS NOT.

7 Q YOU WORE SOME DEVICE IN YOUR JACKET OR
8 SOMETHING TO RECORD IT?

9 A CORRECT.

10 Q YOU REMEMBER TALKING TO MR. BUCHANAN
11 REGARDING THE SUV HE SAW? YOU REMEMBER MR. BUCHANAN
12 TELLING YOU THAT "THERE ARE SO MANY OVER THERE, SEEMED
13 LIKE FOUR OR FIVE THE SAME COLOR GREEN, BLACK, LIKE SAY
14 THERE ARE THREE OF THEM ON THE SAME STREET. THEY ALL
15 LOOK ALIKE."

16 DO YOU REMEMBER HIM TELLING YOU THAT?

17 A YES.

18 Q YOU REMEMBER HIM TELLING YOU THAT, OR YOU
19 ASKING HIM, "AT SOME POINT WHEN HE'S OUT THERE, HE'S
20 LOOKING BACK, AND HE SAW THE HEADLIGHTS OF THE SUV
21 COMING ON." AND HE INDICATED "YES"?

22 A I'D HAVE TO REVIEW THE TRANSCRIPT.

23 Q I HAVE HERE A TRANSCRIPT.

24 I DON'T KNOW IF YOU HAVE THIS?

25 MS. OSTROWSKI: I DON'T.

26

27 (A DISCUSSION WAS HELD
28 OFF THE RECORD.)

1 Q BY MR. NEWMAN: SHOWING YOU PAGE 7 OF A
2 TRANSCRIPT OF THAT INTERVIEW.

3 A YES.

4 Q MR. BUCHANAN DID TELL YOU HE WAS ABLE TO
5 LOOK BACK AND HE SAW THE SUV, THE LIGHTS OF -- THE
6 HEADLIGHTS OF THE SUV; CORRECT?

7 A HE SAW HEADLIGHTS COMING, YES.

8 Q DID HE ALSO TELL YOU THAT NIGHT THAT AFTER
9 THE SUV PASSED THERE WERE A COUPLE OF POLICE CARS THAT
10 WERE RIGHT BEHIND IT?

11 A YES.

12 Q NOW, YOU INDICATED YOU SPOKE TO A JERROD
13 TAYLOR, ALSO?

14 A YES.

15 Q HE WAS TAPE-RECORDED, TOO; CORRECT?

16 A YES.

17 Q JERROD TAYLOR IS THE INDIVIDUAL WHO WAS
18 ALSO KNOWN AS BABY SPOKE?

19 A CORRECT.

20 Q WAS HIS PICTURE ONE OF THE PICTURES YOU PUT
21 UP IN THIS "L.A.'S MOST WANTED" THING?

22 A I HAD NOTHING TO DO WITH THAT. I DON'T
23 KNOW WHOSE PICTURE WAS SELECTED OR NOT.

24 Q ALL RIGHT.

25 NOW, YOUR INFORMANT, MR. FEISSA, INDICATED
26 THAT MR. TAYLOR WAS THE PERSON WHO HAD DISPOSED OF THE
27 GUN; CORRECT?

28 A YES. THERE WAS -- DETECTIVE SHAW'S

1 INFORMANT, BUT YES.

2 Q ALL RIGHT.

3 NOW, DID YOU QUESTION MR. TAYLOR REGARDING
4 HIS DISPOSING OF ANY GUNS?

5 A I DON'T BELIEVE I DID.

6 IT WAS ON OTHER AREAS.

7 Q ALL RIGHT.

8 DID YOU QUESTION MR. TAYLOR REGARDING
9 MR. WALLACE? POKE?

10 MS. OSTROWSKI: I'M GOING TO OBJECT. CALLING FOR
11 HEARSAY REGARDING MR. TAYLOR.

12 THE COURT: IS IT BEING OFFERED FOR THE TRUTH OF
13 THE MATTER ASSERTED, OR WHETHER OR NOT THIS WITNESS TOOK
14 CERTAIN ACTS OR DIDN'T TAKE THAT ACTION?

15 MR. NEWMAN: THAT HE DIDN'T TAKE CERTAIN ACTION
16 OR -- TOOK CERTAIN ACTION. WELL, I THINK IT'S ALL
17 THREE.

18 THE COURT: WELL, IT'S HEARSAY IF IT'S OFFERED FOR
19 THE TRUTH OF THE STATEMENT OF THIS OTHER PERSON.

20 BUT IT CAN BE OFFERED FOR A NON-HEARSAY
21 PURPOSE TO EXPLAIN WHETHER THE WITNESS TOOK CERTAIN
22 ACTION OR DIDN'T OR SHOULD HAVE AND DIDN'T, ET CETERA.

23 SO IT'S LIMITED TO WHY THE WITNESS DID OR
24 DID NOT DO CERTAIN THINGS.

25 MR. NEWMAN: I'LL WITHDRAW IT. I'LL CALL HIM BACK
26 LATER AS MY WITNESS.

27 THE COURT: THAT'S FINE.

28 Q BY MR. NEWMAN: NOW, AS PART OF YOUR

1 INVESTIGATION IN THIS MATTER, WAS A DNA SAMPLE TAKEN
2 FROM MR. WALLACE?

3 A I BELIEVE THEY WERE, BUT NOT BY ME.

4 Q ALL RIGHT. THANK YOU.

5 YOU WERE IN CHARGE OF THIS INVESTIGATION;
6 WERE YOU NOT?

7 A THERE'S TWO ASPECTS OF THE INVESTIGATION.
8 THE MURDER, YES; THE WIRETAP, NO.

9 Q OKAY. WELL, I TAKE IT THE WIRETAPS INVOLVE
10 THIS INVESTIGATION?

11 A YES.

12 Q THIS MURDER?

13 A BUT THAT WAS HEADED UP BY DETECTIVES LABBE
14 AND DUNCAN.

15 Q AND AS THE LEAD DETECTIVE, DID YOU ASSIGN
16 DETECTIVES WHAT TO DO, OR TELL PEOPLE WHAT TO DO, OR --
17 IT'S YOUR RESPONSIBILITY THIS CASE; CORRECT?

18 A WITH -- ABSENT THE WIRETAP, THE
19 INVESTIGATION SIDE, YES, I DID DIRECT CERTAIN DEPUTIES
20 AND DETECTIVES TO DO CERTAIN THINGS, YES.

21 MR. NEWMAN: I HAVE NO FURTHER QUESTIONS.

22 THE COURT: DO YOU HAVE REDIRECT EXAMINATION,
23 MS. OSTROWSKI.

24 MS. OSTROWSKI: YES, PLEASE.

25

26 REDIRECT EXAMINATION

27 BY MS. OSTROWSKI:

28 Q MR. GRAYSON ASKED YOU A QUESTION ABOUT -- I

1 THINK THE WAY HE PHRASED THE QUESTION WAS IN SEQUENTIAL
2 ORDER, FEISSA PICKED UP A GUN CASE, GETS OUT OF JAIL,
3 AND WAS PAID MONEY.

4 DO YOU REMEMBER THAT QUESTION?

5 A YES.

6 Q AND YOU HAD ANSWERED, I THOUGHT, HE GOT
7 PAID BEFORE HE WENT TO JAIL. WHAT JAIL STINT ARE YOU
8 REFERRING TO WHEN YOU SAY THAT?

9 A THE MARCH OF 2009 ARREST.

10 Q SO THE INGLEWOOD CASE?

11 A YES.

12 Q MR. FEISSA WAS NEVER PAID ANY MONEY,
13 THOUGH, TO YOUR KNOWLEDGE BEFORE HE WAS ARRESTED ON THAT
14 GUN CASE IN JULY OF 2008; IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q BASED ON YOUR REVIEW OF THE INFORMANT FILE
17 AND THE QUESTIONS THE LAWYERS WERE ASKING YOU, IT
18 SOUNDED TO ME -- PLEASE CORRECT ME IF I'M WRONG --
19 ESSENTIALLY FEISSA GETS ARRESTED ON JULY 28TH, AND THEN
20 DETECTIVE SHAW ESSENTIALLY MAKES HIM AN INFORMANT ON
21 JULY 30TH.

22 IS THAT RIGHT?

23 A YES.

24 Q SO IN THAT TWO-DAY TIME PERIOD, BASED ON
25 YOUR EXPERIENCE WITH INFORMANTS, IS THAT SUFFICIENT
26 AMOUNT OF TIME IN ORDER TO GET THOSE THREE THINGS THAT
27 YOU TALKED ABOUT THAT ARE NEEDED FOR CRI?

28 MR. HIGGINS: OBJECTION, SPECULATION.

1 THE COURT: SUSTAINED.

2 Q BY MS. OSTROWSKI: DO YOU KNOW HAVE ANY
3 EXPERIENCE WORKING WITH INFORMANTS?

4 A YES.

5 Q HAVE YOU EVER MADE SOMEBODY AN INFORMANT BY
6 OBTAINING --

7 MR. HIGGINS: OBJECTION, RELEVANCE. OVERBROAD.

8 THE COURT: OVERRULED.

9 Q BY MS. OSTROWSKI: HAVE YOU EVER MADE
10 SOMEBODY AN INFORMANT BY GETTING THREE PIECES OF
11 INFORMATION?

12 A YES.

13 Q AND HOW QUICKLY IN YOUR EXPERIENCE HAVE YOU
14 OBTAINED THREE THINGS?

15 A IN A DAY.

16 Q ONE OF THE ATTORNEYS ASKED YOU IF YOU WERE
17 AWARE THAT MR. FEISSA HAD A MARIJUANA CASE OUT OF THE
18 AIRPORT COURT. DO YOU RECALL THAT?

19 A YES.

20 Q AND THE DATES THAT THEY PROVIDED YOU WERE
21 FEBRUARY OF '08, AND MARCH 17, '08.

22 DO YOU RECALL THAT?

23 A YES.

24 Q THOSE DATES, THAT'S BEFORE MR. FEISSA EVER
25 HAD CONTACT WITH YOU; IS THAT RIGHT?

26 A YES.

27 Q YOU MENTIONED THE HOMICIDE BRIEFINGS. WAS
28 DETECTIVE SHAW PRESENT AT THOSE BRIEFINGS?

1 A NO, HE'S NOT ASSIGNED TO HOMICIDE.

2 Q YOU MENTIONED THAT THIS INVESTIGATION WAS
3 UNIQUE IN THAT THERE WERE DIFFERENT DETECTIVES THAT WERE
4 IN CHARGE OF DIFFERENT THINGS; IS THAT RIGHT?

5 A YES.

6 Q YOU MENTIONED THAT THE WIRETAP
7 INVESTIGATION WAS HEADED OFF BY SOMEBODY ELSE?

8 A YES.

9 Q WHO WERE THE TWO PRIOR DETECTIVES ON THAT?

10 A DETECTIVES LABBE AND DUNCAN.

11 Q WITH RESPECT TO THE HANDGUN MR. FEISSA WAS
12 ARRESTED WITH ON JULY 28, 2008, IF I UNDERSTOOD YOU
13 CORRECTLY, YOU WERE NOTING THAT IT'S THE SAME CALIBER AS
14 ONE OF THE MURDER WEAPONS?

15 A YES.

16 Q BUT YOU CHECKED TO MAKE SURE IT WASN'T THE
17 ACTUAL MURDER WEAPON?

18 A YES.

19 Q MR. GRAYSON ASKED YOU WHETHER OR NOT
20 MR. FEISSA WAS A SUSPECT IN THE MURDER OF MR. QUEZADA
21 BASED ON THE FACT THAT HE HAD HIT UP QUEZADA IN THE
22 PAST.

23 DO YOU REMEMBER THAT QUESTION?

24 A YES.

25 Q WAS MR. FEISSA EVER INVESTIGATED AS BEING A
26 POTENTIAL SUSPECT?

27 A NOT SPECIFICALLY AS A SUSPECT, NO.

28 MR. HIGGINS: OVERBROAD. CALLS FOR HEARSAY.

1 THE COURT: I'M SORRY?

2 MR. HIGGINS: OVERBROAD. CALLS FOR HEARSAY.

3 THE COURT: SUSTAINED.

4 REFRAME IT.

5 MR. HIGGINS: MOVE TO STRIKE.

6 THE COURT: THE ANSWER IS STRICKEN.

7 Q BY MS. OSTROWSKI: WAS MR. FEISSA ONE OF
8 THE INDIVIDUALS ON WHOM THE WIRETAP WENT UP ON?

9 A YES.

10 Q MR. GRAYSON ASKED YOU WHETHER OR NOT YOU
11 FOUND OUT FROM MR. FEISSA WHEN HE HIT UP QUEZADA,
12 WHETHER -- YOU WERE ASKED THE FOLLOW-UP QUESTION "WELL,
13 WHEN DID THIS HAPPEN, THE HITTING UP OF QUEZADA?"

14 I BELIEVE YOU COULDN'T RECALL.

15 IS THAT RIGHT?

16 A THAT IS CORRECT.

17 Q WOULD IT REFRESH YOUR MEMORY IF YOU LOOKED
18 AT THE PRELIMINARY HEARING TRANSCRIPT?

19 A IT WOULD.

20 MS. OSTROWSKI: REFERRING COURT AND COUNSEL TO
21 VOLUME 1, PAGE 98, LINES 22 THROUGH 25.

22 Q WHY DON'T YOU TAKE A MOMENT TO REVIEW THAT,
23 AND LET ME KNOW IF THAT REFRESHES YOUR MEMORY.

24 A (THE WITNESS COMPLIES.)

25 Q DOES THAT REFRESH YOUR MEMORY, SIR?

26 THE COURT: HANG ON A SECOND.

27 COUNSEL, YOU NEED A MOMENT TO FIND THAT?

28 MR. GRAYSON: I DO.

1 THE COURT: PAGE 98 AT LINE?

2 MS. OSTROWSKI: 22 THROUGH 25.

3 THE COURT: THANK YOU.

4

5 (PAUSE IN PROCEEDINGS.)

6

7 THE COURT: READY, MR. GRAYSON?

8 MR. GRAYSON: I'M READY.

9 Q BY MS. OSTROWSKI: DOES THAT REFRESH YOUR
10 MEMORY?

11 A YES.

12 Q WHAT DID MR. FEISSA REPORT THE TIME FRAME
13 OF THAT INTERACTION WITH MR. QUEZADA?

14 MR. HIGGINS: OBJECTION, YOUR HONOR.

15 MR. GRAYSON: CUMULATIVE.

16 MR. HIGGINS: CUMULATIVE.

17 IT'S IN THE PRELIM TRANSCRIPT.

18 THE COURT: SUSTAINED.

19 Q BY MS. OSTROWSKI: MR. GRAYSON EXTRACTED
20 SEVERAL QUOTES FROM MR. FEISSA'S PROFFER REGARDING
21 WHETHER OR NOT MR. FEISSA SPECIFICALLY SAID THAT K-9
22 TOLD HIM HE SHOT MR. QUEZADA.

23 AND THE FIRST ONE OF THOSE WAS ON PAGE 74
24 AT LINES 11 THROUGH 15.

25 MR. GRAYSON: OBJECTION, CUMULATIVE.

26 THE COURT: LET'S WAIT UNTIL THE QUESTION IS FULLY
27 FRAMED, PLEASE, SO I CAN EVALUATE IT.

28 Q BY MS. OSTROWSKI: I'D LIKE YOU -- I'M

1 GOING TO HAND YOU THE PROFFER. OR LET ME ASK YOU THIS.
2 HAVE YOU REVIEWED THE PROFFER SINCE
3 MR. GRAYSON'S QUESTIONING?

4 A YES.

5 Q AND DID YOU READ THAT, INCLUDING THAT
6 SECTION?

7 A YES.

8 Q DURING THAT PARTICULAR QUESTION THAT
9 MR. GRAYSON HIGHLIGHTED, WHAT CONVERSATION WITH K-9 WAS
10 MR. FEISSA SPEAKING ABOUT?

11 A THE MURDER OF ADIEL QUEZADA.

12 Q THE NIGHT OF THE MURDER?

13 A YES.

14 Q SO MR. FEISSA'S ANSWER IN THAT PARTICULAR
15 QUESTION WAS ABOUT WHETHER OR NOT K-9 SAID ANYTHING
16 DIRECTLY ADMITTING THE SHOOTING ON THE NIGHT OF THE
17 MURDER?

18 A CORRECT.

19 Q IT WASN'T ABOUT SUBSEQUENT CONVERSATIONS?

20 MR. GRAYSON: OBJECTION, SPECULATION.

21 THE COURT: SUSTAINED.

22 YOU CAN ASK QUESTIONS AND ANSWERS.

23 Q BY MS. OSTROWSKI: SIR, LET ME GIVE YOU THE
24 PROFFER. AND CAN YOU TAKE A LOOK AT THE CONTEXT OF THAT
25 STATEMENT?

26 GOING BACK TO I BELIEVE PAGE 72. LET US
27 KNOW IF THAT REFRESHES YOUR MEMORY.

28 A WANT ME TO GO BACK TO PAGE 72, FROM 72 TO

1 74?

2 Q YES. TO READ THE CONTEXT OF THAT QUESTION
3 MR. GRAYSON HIGHLIGHTED.

4 MR. GRAYSON: OBJECTION, 352.

5 THE COURT: OVERRULED.

6

7 (PAUSE IN PROCEEDINGS.)

8

9 THE WITNESS: OKAY.

10 Q BY MS. OSTROWSKI: SO IN THAT PARTICULAR
11 SECTION OF THE PROFFER, WHEN YOU ASKED HIM -- WHEN YOU
12 ASKED MR. FEISSA ABOUT WHAT K-9 SAID, AND HE SAID HE
13 DIDN'T SAY ANYTHING SPECIFIC ABOUT THE MURDER, WHAT
14 CONVERSATION WERE YOU REFERRING TO?

15 A WHEN FEISSA ORIGINALLY GOT TO THE HOUSE AND
16 BEGAN TALKING TO K-9 ABOUT THE MURDER OF QUEZADA AND
17 JUST WHAT HAPPENED.

18 Q IN THAT PARTICULAR SECTION, DID MR. FEISSA
19 REPORT TO YOU THAT THE ONLY THING THEY TALKED ABOUT THAT
20 NIGHT OF THE MURDER IS THAT MR. FEISSA TOLD THE
21 DEFENDANTS "THAT KID WASN'T A SARRIO"?

22 A YES.

23 Q IN FACT, THE VERY NEXT QUESTION THAT YOU
24 ASKED MR. FEISSA AFTER THE ONE THAT MR. GRAYSON POINTED
25 OUT, DO YOU RECALL ASKING HIM, "WITH THE WAY HE WAS
26 TALKING TO YOU, DID YOU ASSUME HE WAS THE PERSON THAT
27 DID IT OR HAD INVOLVEMENT?"

28 ANSWER: "YEAH."

1 IS THAT THE QUESTION THAT YOU ASKED AT THE
2 PROFFER AND THE ANSWER MR. FEISSA GAVE?

3 A YES.

4 Q THE NEXT SECTION OF THE PROFFER THAT
5 MR. GRAYSON HIGHLIGHTED WAS PAGE 93 LINES 18 TO 23. IF
6 YOU CAN GO TO THOSE PAGES.

7 A OKAY.

8 Q AND I'D LIKE TO PROVIDE SOME CONTEXT TO
9 THAT QUOTE BY HAVING YOU LOOK BEGINNING ON PAGE 92, LINE
10 25, TO PAGE 93, LINE 5.

11 A YES.

12 Q HAVE YOU REVIEWED THAT SECTION?

13 A YES.

14 Q AND AT THAT TIME IN THE PROFFER, DID
15 MR. FEISSA REPORT TO YOU, "K-9 SAID THAT HE'S FITTING TO
16 BE GONE FOR REST OF HIS LIFE. HE'S ABOUT TO BE GONE FOR
17 THE REST OF HIS LIFE."

18 AND THEN YOU ASKED: "OKAY. AND WHAT WAS
19 HE REFERRING TO WHEN HE SAID THAT? WHAT WAS THE TOPIC
20 OF CONVERSATION AS TO WHY HE WOULD SAY THAT?"

21 AND MR. FEISSA ANSWERED: "IT WAS ABOUT THE
22 WHOLE LITTLE MURDERS."

23 AND YOU ASKED "WHAT MURDERS?"

24 AND HE ANSWERED "THE LITTLE KID THAT GOT
25 KILLED."

26 DID YOU ASK MR. FEISSA THOSE QUESTIONS AND
27 DID HE GIVE YOU THOSE ANSWERS?

28 A YES.

1 Q NOW, MISS BARNES, THE D.A. THAT WAS AT THAT
2 PROFFER AT THE TIME, SHE ALSO FOLLOWED UP WITH
3 MR. FEISSA ABOUT THE K-9 PHONE CALL; RIGHT?

4 A YES.

5 Q AND DO YOU RECALL THAT WHEN SHE WAS ASKING
6 MR. FEISSA ABOUT THAT PHONE CALL, SHE SAID TO HIM "IF
7 YOU CAN'T REMEMBER, THAT'S FINE. WE JUST WANT TO KNOW
8 IF YOU REMEMBER THE PHONE CALLS."

9 DO YOU REMEMBER THAT?

10 A YES.

11 Q DO YOU REMEMBER HOW MR. FEISSA EXPLAINED
12 HIS MEMORY ABOUT THAT PARTICULAR ISSUE?

13 A HE BASICALLY SAID HE COULDN'T SPECIFICALLY
14 RECALL BECAUSE IT WAS SO COMMON TO TALK THESE GUYS ALL
15 THE TIME, IN PERSON, IN CARS, ON THE PHONE. CAN'T
16 EXACTLY RECALL HOW IT WAS GIVEN TO HIM, THE INFORMATION.

17 Q WOULD IT BE FAIR TO SAY THAT SOMETIMES
18 MR. FEISSA HAD A HARD TIME REMEMBERING WHETHER THE
19 INFORMATION HE GOT FROM K-9 WAS ON THE PHONE OR IN
20 PERSON?

21 A YES.

22 Q AND IN ADDITION TO BEING AROUND ALL THESE
23 PEOPLE ALL THE TIME, DID MR. FEISSA ALSO INDICATE THAT
24 HE SMOKED MARIJUANA, AND MAYBE THAT AFFECTED HIS MEMORY?

25 A YES.

26 Q REGARDLESS OF WHETHER OR NOT MR. FEISSA
27 REPORTED K-9 GAVE HIM THE INFORMATION OVER THE PHONE,
28 HAS MR. FEISSA ALWAYS BEEN CONSISTENT IN REPORTING TO

1 YOU THAT HE SPOKE TO K-9 ABOUT THE MURDER?

2 A YES.

3 Q HAS HE ALWAYS BEEN CONSISTENT IN REPORTING
4 TO YOU THAT ME SPOKE TO PEANUT ABOUT THE MURDER?

5 A YES.

6 Q HAS MR. FEISSA ALWAYS BEEN CONSISTENT IN
7 REPORTING THAT IT WAS K-9 AND POKE WHO DROVE BY AND,
8 QUOTE, SAW A SARRIO SLIPPING?

9 A YES.

10 Q HAS MR. FEISSA ALWAYS BEEN CONSISTENT ABOUT
11 REPORTING K-9 AND POKE THEN WENT BACK TO K-9'S HOUSE AND
12 TALKED TO THE HOMEYS?

13 A YES.

14 Q HAS MR. FEISSA ALWAYS BEEN CONSISTENT WITH
15 REPORTING THAT K-9, POKE, AND PEANUT WALKED OVER FROM
16 K-9'S HOUSE TO AVALON?

17 A YES.

18 Q HAS MR. FEISSA ALWAYS BEEN CONSISTENT ABOUT
19 REPORTING THAT K-9 ASKED THE VICTIM "WHERE YOU FROM?"

20 MR. NEWMAN: I'LL OBJECT, YOUR HONOR, WHETHER HE'S
21 BEEN CONSISTENT. IT SEEMS MY RECOLLECTION OF THE
22 TESTIMONY AND THE TAPES IS THAT HE FLIP-FLOPS QUITE A
23 BIT. SO I THINK THAT'S A CONCLUSION ON HER PART.

24 MS. OSTROWSKI: I'LL OBJECT, MOVE TO STRIKE THE
25 SPEAKING OBJECTION OF COUNSEL.

26 MR. NEWMAN: OBJECT, CONCLUSIONARY.

27 THE COURT: THE OBJECTION IS OVERRULED.

28 COUNSEL IS ADMONISHED NOT TO MAKE SPEAKING

1 OBJECTIONS IN FRONT OF THE JURY.

2 IT IS SOMEWHAT VAGUE, HOWEVER.

3 YOU MAY PROCEED.

4 Q BY MS. OSTROWSKI: YOU INTERVIEWED
5 MR. FEISSA TWICE IN AUGUST; IS THAT RIGHT?

6 A YES.

7 Q OF '08?

8 A YES.

9 Q AND THEN AT THE PROFFER?

10 A YES.

11 Q AND THEN HE ALSO TESTIFIED AT THE PRELIM;
12 RIGHT?

13 A YES.

14 Q YOU WERE IN AND OUT OF THE PRELIM; RIGHT?

15 A YES.

16 Q AND HAVE YOU BRIEFLY OR AT ALL REVIEWED HIS
17 PRELIMINARY HEARING TRANSCRIPT?

18 A VERY BRIEFLY TODAY.

19 Q BASED ON YOUR ENTIRETY IN SPEAKING WITH
20 MR. FEISSA ABOUT THE FACTS IN THIS CASE, I'D LIKE TO
21 KNOW IF MR. FEISSA HAS ALWAYS REPORTED TO YOU THAT K-9
22 AND PEANUT WERE THE SHOOTERS?

23 A YES.

24 Q HAS HE ALWAYS REPORTED TO YOU THAT PEANUT
25 WAS THE LOOKOUT?

26 A POKE WAS THE LOOKOUT.

27 Q SORRY. EXCUSE ME. THANK YOU.

28 HAS MR. FEISSA ALWAYS REPORTED THAT POKE

1 WAS THE LOOKOUT?

2 A YES.

3 Q HAS MR. FEISSA ALWAYS REPORTED THAT AFTER
4 THE SHOOTING, THE THREE DEFENDANTS RAN BACK ACROSS
5 AVALON TOWARDS K-9'S HOUSE?

6 A YES.

7 Q HAS MR. FEISSA ALWAYS REPORTED TO YOU THAT
8 POKE GOT IN HIS TRUCK AND DROVE AWAY?

9 A YES.

10 Q HAS MR. FEISSA ALWAYS REPORTED TO YOU THAT
11 POKE DROVE A DARK-COLORED CHEVY TAHOE IN JULY OF 2008?

12 A YES.

13 Q HAS MR. FEISSA ALWAYS REPORTED TO YOU THAT
14 TWO FIREARMS WERE USED IN THIS CASE?

15 A YES.

16 Q HAS MR. FEISSA ALWAYS REPORTED TO YOU THAT
17 ONE OF THOSE FIREARMS USED IN THE MURDER WAS A
18 9-MILLIMETER?

19 A YES.

20 Q HAS MR. FEISSA ALWAYS REPORTED TO YOU THAT
21 THE OTHER HANDGUN THAT WAS USED WAS DESERT EAGLE 40?

22 A YES.

23 Q AND HAS MR. FEISSA ALWAYS TOLD YOU THAT THE
24 DEFENDANTS INCORRECTLY BELIEVED THAT MR. QUEZADA WAS A
25 BARRIO 13?

26 A YES.

27 MS. OSTROWSKI: NO FURTHER QUESTIONS.

28 THE COURT: WHO WANTS TO GO FIRST?

RECROSS-EXAMINATION

BY MR. NEWMAN:

Q AT ANY TIME, DID MR. FEISSA EVER TELL YOU
HE TALKED TO MR. WALLACE? SPOKE TO MR. WALLACE?

A YES.

O WHEN DID HE SPEAK TO MR. WALLACE?

A HE TOLD ME HE SPOKE TO HIM DURING THE FIRST INTERVIEW. AND THEN DURING THE PROFFER.

Q DID HE EVER TELL YOU THAT HE SPOKE TO
MR. WALLACE, AND MR. WALLACE GAVE HIM INFORMATION
REGARDING A MURDER?

A YES.

Q AND WHEN WAS THAT?

A DURING THE PROFFER. AND DURING MY FIRST INTERVIEW WITH HIM.

Q NOW, THIS PROFFER WAS TAPE-RECORDED;
CORRECT?

A IT WAS.

Q ONE ADDITIONAL QUESTION. WHAT DID HE SAY ABOUT SPEAKING TO MR. WALLACE?

A THAT IT WAS IN HIS CHEVY TAHOE WHEN THEY
WERE DRIVING.

Q DID HE TELL YOU MR. WALLACE NEVER TALKS
ABOUT ANYTHING?

A HE SAID HE WAS VERY CAREFUL ABOUT WHAT HE
TALKS ABOUT, YES.

Q DID HE AT ANY TIME INDICATE MR. WALLACE HAD
SAID HE WAS INVOLVED IN THIS MURDER, ACTED AS A LOOKOUT?

1 A WITH THE CONVERSATION THEY HAD IN THE CHEVY
2 TAHOE, FEISSA ASSUMED HE WAS TALKING ABOUT THE MURDER.

3 Q ASSUMED HE WAS TALKING ABOUT THE MURDER.
4 WHAT DID HE SAY MR. POKE SAID TO HIM?

5 A I CAN PARAPHRASE. BUT IT WAS BASICALLY
6 MR. WALLACE TELLING HIM THAT IT HAD TO BE DONE. AND I
7 FOLLOWED UP AND ASKED HIM WHAT HE WAS REFERRING TO. HE
8 BELIEVED IT WAS THE MURDER OF MR. QUEZADA.

9 Q WHEN DID HE SAY HE WAS IN THE SUV, OR WHEN
10 HE WAS WITH MR. WALLACE?

11 A DURING THE PROFFER.

12 Q WHAT DATE? DID HE INDICATE WHEN THAT TOOK
13 PLACE?

14 A OH. I'D HAVE TO REFER TO THE PROFFER. I
15 THINK HE HAD SOME KIND OF A TIME FRAME. IF YOU'D LIKE
16 ME TO LOOK AT IT.

17 Q ALL RIGHT.

18 A THE TIME FRAME IN WHICH HE CORRELATES THE
19 TWO WAS THE -- THE TIME HE RECEIVED DISCIPLINE. AFTER
20 BEING BEATEN BY THE FELLOW GANG MEMBERS.

21 Q WHAT TIME FRAME? WHAT DATE? WHAT ARE WE
22 TALKING ABOUT? WHEN THE DID THIS HAPPEN? WHAT DATE?

23 A I'M TRYING TO TELL YOU HE DOESN'T IDENTIFY
24 THE DATE. BUT THAT'S THE PARAMETERS IN WHICH THIS
25 CONVERSATION OCCURRED. AFTER THE BEATING.

26 THEY GOT INTO MR. WALLACE'S CHEVY TAHOE AND
27 DROVE. THAT'S WHEN THE CONVERSATION TOOK PLACE.

28 Q AND HE CLAIMED HE WAS BEAT BY SOMEONE?

1 A YES. HE RECEIVED DISCIPLINE.

2 Q DID YOU EVER VERIFY THAT?

3 A NO. I WASN'T AROUND TO GET MEDICAL RECORDS
4 AT THE TIME, NO.

5 Q DID YOU LOOK FOR ANY MEDICAL RECORDS?

6 A NO.

7 Q ANY OTHER WITNESSES SAY THAT THIS GUY WAS
8 BEAT, DISCIPLINED BY ANYONE?

9 A NO.

10 Q SO THAT'S JUST HIM SAYING THAT?

11 A THAT IS CORRECT.

12 Q AND YOU DON'T KNOW WHAT DATE THIS HAPPENED,
13 WHETHER IT WAS -- DO YOU RECALL WHETHER IT WAS JUNE,
14 JULY, AUGUST?

15 A AGAIN, COUNSEL, HE DIDN'T GIVE A DATE. HE
16 JUST SAID THAT WAS THE SIGNIFICANT EVENT THAT OCCURRED.

17 THE COURT: EXCUSE ME, MR. NEWMAN. I'M NOT SURE
18 FROM LAST QUESTION WHEN YOU WHEN YOU SAID "IT." ARE YOU
19 REFERRING TO THE ALLEGED STATEMENT, OR ARE YOU TALKING
20 ABOUT THE BEATING?

21 MR. NEWMAN: THE BEATING. I'M SORRY.

22 THE COURT: IS THAT HOW YOU UNDERSTOOD THE
23 QUESTION?

24 THE WITNESS: YES, YOUR HONOR.

25 THE COURT: THANK YOU.

26 Q BY MR. NEWMAN: DID YOU DO ANY FOLLOW-UP TO
27 SUBSTANTIATE WHAT MR. FEISSA SAID? VERIFY WHAT HE SAID,
28 THAT HE WAS BEAT, OR THAT HE HAD BEEN IN A CAR WITH

1 MR. WALLACE AT ANY TIME?

2 A NO.

3 Q NO OTHER WITNESSES THAT YOU COULD LOCATE?
4 OR DID YOU ATTEMPT TO LOCATE ANY WITNESSES TO VERIFY
5 THIS?

6 A THE ONLY WITNESS WOULD BE MR. KHALILL.
7 HE WAS THERE.

8 Q AND YOU NEVER SPOKE TO MR. FEISSA'S
9 GIRLFRIEND ABOUT ANY GIRL ABOUT DROPPING HIM OFF THAT
10 DAY?

11 MS. OSTROWSKI: ASKED AND ANSWERED. CUMULATIVE.
12 THE COURT: SUSTAINED.

13 Q BY MR. NEWMAN: DID YOU VERIFY WHETHER OR
14 NOT MR. FEISSA HAD BEEN IN THE AREA OF THIS MURDER PRIOR
15 TO SOMEONE ALLEGEDLY DROPPING HIM OFF LATER THAT
16 EVENING?

17 A I'M SORRY, REPEAT THE QUESTION.

18 Q DID YOU VERIFY WHETHER OR NOT, OR DID YOU
19 CHECK TO SEE WHETHER OR NOT MR. FEISSA HAD BEEN IN THE
20 AREA OF THIS MURDER PRIOR TO HIM INDICATING HE GOT
21 DROPPED OFF LATER THAT NIGHT?

22 A NO.

23 MR. NEWMAN: I HAVE NO FURTHER QUESTIONS.

24 THE COURT: THANK YOU, MR. NEWMAN.

25 MR. GRAYSON, DO YOU WISH TO INQUIRE?

26 MR. GRAYSON: I DO HAVE A FEW QUESTIONS.

27

28

1 RECROSS-EXAMINATION

2 BY MR. GRAYSON:

3 Q YOU JUST WENT OVER ABOUT 25, 30 THINGS WITH
4 THE D.A. ABOUT HOW WHENEVER MR. FEISSA WAS REPORTING TO
5 YOU, THAT HE WAS CONSISTENT.

6 WHAT DOES THAT MEAN, REPORTING TO YOU?

7 MS. OSTROWSKI: I'LL OBJECT.

8 IT WAS MY QUESTION. NOT THE WITNESS'S.

9 THE COURT: THE WITNESS'S ANSWER, WHAT IT MEANT TO
10 THE WITNESS. SO THE OBJECTION IS OVERRULED.

11 THE WITNESS: REPORTING. TELLING.

12 Q BY MR. GRAYSON: TO YOU?

13 A CORRECT.

14 Q THAT CAN'T BE CORROBORATED, CAN IT?

15 MS. OSTROWSKI: OBJECTION, CALLS FOR CONCLUSION.
16 IMPROPER OPINION.

17 THE COURT: OVERRULED.

18 DO YOU UNDERSTAND THE QUESTION?

19 THE WITNESS: WHAT CAN'T BE CORROBORATED?

20 Q BY MR. GRAYSON: WHAT FEISSA REPORTED TO
21 YOU CANNOT BE CORROBORATED?

22 A I DISAGREE.

23 Q HOW CAN IT BE CORROBORATED IF HE'S TELLING
24 YOU?25 A WE HAVE WITNESSES THAT -- JOLON GORDON IS
26 ONE WITNESS THAT CORROBORATES HOW MANY PEOPLE WERE
27 RUNNING FROM THE SCENE.

28 Q THAT'S ONE FACT.

1 A OKAY. WE HAVE BALLISTIC EVIDENCE THAT
2 CORROBORATES HOW MANY WEAPONS AND TYPE OF CALIBER AND
3 MODEL WERE USED. OKAY.

4 Q DOESN'T TELL US WHO IT WAS, THOUGH; RIGHT?

5 A IT'S CORROBORATION, COUNSEL.

6 MS. OSTROWSKI: OBJECTION.

7 THE COURT: HANG ON A SECOND. THERE'S AN
8 OBJECTION PENDING. MS. OSTROWSKI.

9 MS. OSTROWSKI: ARGUMENTATIVE.

10 THE COURT: SUSTAINED AS PHRASED.

11 REFRAME THE QUESTION.

12 Q BY MR. GRAYSON: YOU ARE TALKING ABOUT
13 THINGS THAT DON'T IDENTIFY WHO COMMITTED THE CRIME;
14 RIGHT? THE ABOUT HIS PARTICULARS; RIGHT?

15 A CORRECT.

16 Q LEAVE FEISSA OUT OF THE PICTURE. I'M
17 TALKING ABOUT ALL THE THINGS SHE JUST WENT OVER WITH YOU
18 ABOUT THESE GENTLEMEN BEING INVOLVED.

19 WHAT FEISSA TOLD YOU CAN'T BE CORROBORATED?

20 MS. OSTROWSKI: OBJECTION.

21 Q BY MR. GRAYSON: ON THOSE ISSUES.

22 THE COURT: THE QUESTION IS STILL VAGUE.

23 YOU'RE ASKING ABOUT JUST IDENTITY ISSUES?

24 Q BY MR. GRAYSON: WHAT I'M ASKING HIM IS --
25 WHEN HE AND MR. FEISSA ARE TALKING, IS IT JUST YOU AND
26 MR. FEISSA?

27 A ON WHAT OCCASION, COUNSEL?

28 WHETHER THE PROFFERS --

1 Q I DON'T KNOW.

2 SHE ASKED YOU 30 QUESTIONS, ROUGHLY --

3 A OKAY.

4 Q ABOUT WHAT WAS REPORTED TO YOU. WHAT WERE
5 YOU THINKING WHEN SHE ASKED YOU THOSE QUESTIONS?

6 A DURING ALL THE INTERVIEWS IN WHICH HE
7 REPORTED CONSISTENTLY THE ROLES OF EACH DEFENDANT. THEY
8 NEVER SWITCHED. THEY NEVER CHANGED. THEY WERE ALL
9 CONSISTENT.

10 POKE WAS THE LOOKOUT. K-9 AND PEANUT
11 MURDERED ADIEL QUEZADA. NEVER CHANGED.

12 Q YOU'RE TALKING ABOUT TO YOU, NOT AT
13 PROCEEDINGS. YOU'RE TALKING ABOUT CONVERSATIONS BETWEEN
14 YOU AND MR. FEISSA?

15 A CORRECT.

16 Q OKAY. THAT WASN'T -- NONE OF THOSE
17 CONVERSATIONS ARE VIDEOTAPED; RIGHT?

18 A THEY WERE AUDIO TAPED.

19 Q A LOT OF THEM ARE NOT; RIGHT?

20 A I DON'T KNOW WHAT YOU MEAN BY A LOT. EVERY
21 INTERVIEW I HAVE WITH MR. FEISSA WAS RECORDED.

22 Q YOU NEVER TALKED TO ANY WITNESSES OFF THE
23 RECORD?

24 MS. OSTROWSKI: OBJECTION. ANY WITNESSES, OR
25 MR. FEISSA.

26 Q BY MR. GRAYSON: LET'S START WITH
27 MR. FEISSA.

28 A DID I HAVE CONVERSATIONS WITH HIM? SURE.

1 OFF TAPE? SURE, WHEN I SAID HELLO TO HIM. AT A
2 RESTAURANT, STUFF LIKE THAT, YES.

3 Q WHEN YOU TALKED TO MR. GORDON, YOU TALKED
4 TO HIM OFF THE RECORD FIRST BEFORE YOU RECORDED HIM;
5 RIGHT?

6 A NO.

7 Q OTHER THAN VIDEOTAPE, WERE THERE ANY
8 WITNESSES THERE? YOU'RE TALKING TO MR. FEISSA. ANY
9 WITNESSES?

10 THE COURT: I DON'T UNDERSTAND YOUR QUESTION.

11 Q BY MR. GRAYSON: I'M ON THE TOPIC OF
12 CORROBORATION. WHEN YOU'RE TALKING TO MR. FEISSA, THIS
13 THING WHEN COUNSEL WAS ASKING YOU ABOUT REPORTING, WITH
14 WHAT HE REPORTED TO YOU, WHATEVER THAT MEANS.

15 A THAT MEANS TELLING.

16 MS. OSTROWSKI: OBJECTION, ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 Q BY MR. GRAYSON: I'M ASKING YOU. YOU JUST
19 TOLD THIS JURY WHAT YOU THOUGHT THAT MEANT; RIGHT?

20 A THAT'S CORRECT.

21 Q OKAY. WHEN YOU'RE TALKING TO HIM ONE ON
22 ONE, TO MR. FEISSA; RIGHT?

23 A YES.

24 Q THAT CANNOT BE CORROBORATED BY ANYONE; CAN
25 IT?

26 A THE FACT THAT I TALKED TO HIM?

27 Q THE CONTENT OF THAT CONVERSATION. OF THOSE
28 CONVERSATIONS.

1 A COUNSEL, IT'S RECORDED. HOW CAN IT NOT BE
2 DOCUMENTED AND VERIFIED? AND MY PARTNER WAS ALSO
3 RECORDING AND SITTING NEXT TO ME.

4 Q WHO IS YOUR PARTNER?

5 A TODD ANDERSON.

6 Q OUTSIDE OF THE SHERIFF'S DEPARTMENT, CAN
7 ANYONE ELSE CORROBORATE THOSE CONVERSATIONS WITH
8 MR. FEISSA?

9 A NO.

10 Q THANK YOU.

11 I ASKED YOU YESTERDAY ABOUT FEISSA'S
12 INCONSISTENT STATEMENTS. COUNSEL OBJECTED TO THOSE
13 QUESTIONS.

14 MS. OSTROWSKI: YOUR HONOR, I'M GOING TO OBJECT.

15 Q BY MR. GRAYSON: YOU REMEMBER THAT?

16 DO YOU REMEMBER THAT?

17 A I'D HAVE --

18 MS. OSTROWSKI: EXCUSE ME. OBJECTION.

19 INAPPROPRIATE QUESTION, ASKING TO COMMENT
20 ON A LAWYER'S OBJECTIONS.

21 THE COURT: SUSTAINED.

22 Q BY MR. GRAYSON: DO YOUR REMEMBER ME ASKING
23 YOU ABOUT INCONSISTENT STATEMENTS YESTERDAY? ABOUT
24 FEISSA?

25 A YES. I FEEL A LOT OF QUESTIONS, I HAVE TO
26 REVIEW THAT EXACT QUOTE. LINE OF QUESTIONING.

27 Q A LOT OF THE QUESTIONS I ASKED, YOU JUST
28 SAY "I DON'T RECALL THAT." FOR EXAMPLE, WHEN I ASKED

1 YOU ABOUT MR. FEISSA SAYING THAT THERE WAS A PARTY
2 THROWN OVER IN HUNTINGTON PARK, DID YOU SAY "OH, I DON'T
3 REMEMBER THAT"?

4 A I STILL HAVE NO -- IF YOU'D LIKE TO REFRESH
5 MY MEMORY, I'M MORE THAN WILLING TO READ IT AND TALK
6 ABOUT IT. I'VE NEVER HEARD THAT BEFORE.

7 Q GIVE ME A MINUTE.

8 ALL RIGHT.

9 YOU MET WITH THE D.A. BETWEEN YESTERDAY AND
10 TODAY?

11 A YES.

12 Q ABOUT WHAT YOU'RE GOING TO TESTIFY TO?

13 A YES.

14 Q HOW LONG DID YOU TALK TO HER?

15 A FIFTEEN MINUTES, PERHAPS.

16 Q PART OF IT DEALT WITH YOUR REVIEW OF THE
17 PROFFER STATEMENT?

18 A SHE DIDN'T ASK ME TO REVIEW THE PROFFER
19 STATEMENT, NO.

20 Q I DIDN'T ASK YOU THAT. I ASKED YOU IF PART
21 OF WHAT YOU DISCUSSED INCLUDED THE TOPIC OF THE PROFFER
22 TRANSCRIPT.

23 A NO.

24 Q WELL, WHAT DID IT INCLUDE?

25 A IT INCLUDED MY TESTIMONY THAT WAS GOING TO
26 BE ON REDIRECT. AREAS OF DISCUSSION.

27 Q WHEN DID THAT TAKE PLACE?

28 A LAST NIGHT, DRIVING HOME.

1 Q MR. KHALILL, ANY PERCIPIENT OR EYEWITNESSES
2 PLACE HIM AT THE SCENE OF THE MURDER?

3 MS. OSTROWSKI: I'M GOING TO OBJECT.

4 Q BY MR. GRAYSON: AT THE SCENE OF THE CRIME.
5 THE SHOOTING OF MR. QUEZADA.

6 MS. OSTROWSKI: OBJECTION, ASKED AND ANSWERED.

7 CUMULATIVE.

8 MR. GRAYSON: I'VE NEVER ASKED THAT QUESTION.

9 MS. OSTROWSKI: OUTSIDE THE SCOPE OF REDIRECT.

10 THE COURT: IF I NEED COMMENTS FROM COUNSEL, I'LL
11 ASK SPECIFICALLY. THE OBJECTION IS OVERRULED.

12 YOU MAY INQUIRE.

13 THE WITNESS: THERE WERE NO POSITIVE
14 IDENTIFICATIONS, NO.

15 Q BY MR. GRAYSON: DID YOU HEAR
16 MR. BUCHANAN'S TESTIMONY?

17 A YES.

18 Q YOU REMEMBER HIM SAYING SOMETHING ABOUT
19 MR. KHALILL GETTING JACKED UP?

20 A YES.

21 Q DID YOU KNOW WHAT THAT WAS ABOUT?

22 A NO.

23 Q YOU SAID THAT IT WAS COMMON FOR MR. FEISSA
24 TO SPEAK WITH THE DEFENDANTS, OR AT LEAST THAT'S WHAT
25 WAS REPRESENTED BY MR. FEISSA.

26 IS THAT TRUE?

27 A YES.

28 Q THERE ARE NO KNOWN RECORDS THAT YOU WERE

1 AWARE OF THAT SUBSTANTIATE MR. FEISSA TALKING TO
2 MR. KHALILL?

3 A PHONE RECORDS? ARE YOU TALKING DOWNLOADS
4 OF PHONE BOOKS FROM A PHONE? OR JUST THE ACTUAL NUMBERS
5 PRINTED OUT?

6 Q ANY EVIDENCE THAT -- WHATEVER.

7 A YES.

8 Q ANY EVIDENCE THAT SHOWS MR. FEISSA TALKED
9 ON THE PHONE TO MR. KHALILL.

10 A YES.

11 Q WHAT WAS THAT?

12 A THEY WERE IN EACH OTHER'S PHONE BOOK
13 CONTACTS.

14 Q I ASKED YOU THAT QUESTION THIS MORNING. IS
15 THAT SOMETHING YOU FOUND OUT ABOUT IN THE INTERIM?

16 A I DON'T RECALL YOU ASKING ABOUT PHONE BOOK
17 CONTACTS.

18 Q YOU DON'T REMEMBER ME ASKING YOU WHETHER OR
19 NOT MR. FEISSA'S NUMBER WAS LISTED IN MR. KHALILL'S LIST
20 OF CONTACTS FOR HIS CELL PHONE?

21 A WE WERE TALKING ABOUT LIST OF THE PHONE
22 RECORDS THAT I HAD DONE. NOT THE CONTACTS.

23 Q NO. NO. I'M ASKING YOU --

24 MS. OSTROWSKI: I'LL OBJECT.

25 THE COURT: EXCUSE ME. THERE'S AN OBJECTION.

26 MS. OSTROWSKI: COUNSEL IS TESTIFYING AND ARGUING.

27 THE COURT: THE QUESTION IS ARGUMENTATIVE AS
28 FRAMED.

1 Q BY MR. GRAYSON: LET ME REPHRASE.
2 YES OR NO. DO YOU REMEMBER ME ASKING YOU
3 ABOUT HIS CELL PHONE AND THE CONTACTS IN THE CELL PHONE?
4 A NO.
5 Q YOU DON'T REMEMBER SAYING THAT YOU NEVER
6 GOT ANY INFORMATION ABOUT HIS CELL PHONE CONTACTS?
7 A I REMEMBER DISCUSSING PHONE RECORDS. YOU
8 ASKED IF THERE WERE PHONE RECORDS, IS WHAT I RECALL.
9 Q I REMEMBER ASKING ABOUT THAT, TOO.
10 A OKAY, THAT'S THE BEST MY MEMORY SERVES.
11 THE COURT: MR. GRAYSON, JUST ASK THE QUESTIONS,
12 PLEASE.
13 Q BY MR. GRAYSON: MR. FEISSA HE TOLD YOU
14 THAT HE INFORMED MR. KHALILL THAT MR. QUEZADA WAS NOT A
15 BARRIO 13 MEMBER?
16 A CORRECT.
17 Q BEFORE HE WAS KILLED?
18 A I DON'T UNDERSTAND YOUR QUESTION.
19 Q I'M CLARIFYING WHAT I SAID.
20 MR. FEISSA, PRIOR TO THE SHOOTING OF
21 MR. QUEZADA, HAD INFORMED MR. KHALILL AND OTHERS THAT
22 MR. QUEZADA WAS NOT A B-13, OR A BARRIO 13?
23 A MY UNDERSTANDING HE DID THAT ON THE DAY OF
24 THE MURDER. WHEN HE WENT TO K-9'S HOUSE.
25 Q BUT BEFORE THE SHOOTING?
26 A AFTER THE SHOOTING. AFTER MR. QUEZADA WAS
27 KILLED, THAT'S WHEN FEISSA ROLLED TO K-9'S HOUSE AND
28 TOLD HIM THEY WERE STUPID, FOR LACK OF A BETTER TERM,

1 BECAUSE HE WAS NOT A BARRIO 13.

2 Q DIDN'T MR. FEISSA SAY THAT PRIOR TO
3 MR. QUEZADA BEING KILLED, HE ALREADY TOLD MR. KHALILL
4 AND OTHERS THAT MR. QUEZADA WAS NOT A BARRIO 13?

5 A I DON'T RECALL THAT. I RECALL MR. FEISSA
6 KNOWING WHO HE PERSONALLY WAS TWO MONTHS PRIOR.

7 Q ALL RIGHT.

8 MR. GRAYSON: CAN I HAVE ONE SECOND?

9 THE COURT: YES, SIR.

10

11 (A DISCUSSION WAS HELD
12 OFF THE RECORD.)

13

14 Q BY MR. GRAYSON: WE SPENT A LOT OF TIME --
15 I'M CLOSING UP, HERE -- TALKING ABOUT THE CREDIBILITY OF
16 MR. FEISSA.

17 AND YOU'VE BEEN STEADFAST IN MAINTAINING
18 YOUR BELIEF THAT HE IS IN FACT TRUSTWORTHY AND CREDIBLE;
19 IS THAT FAIR TO SAY?

20 A YES.

21 Q THIS IS A PERSON WHO YOU ALSO SAID HAD NO
22 MOTIVE TO LIE IN TERMS OF THE STATEMENTS THAT HE'S
23 PROVIDED YOURSELF AND YOUR HOMICIDE UNIT?

24 A CORRECT.

25 Q THIS IS A PERSON WHO RECEIVED AN O.R. AND
26 HAD A GUN CASE DISMISSED?

27 A CORRECT.

28 Q THIS IS A PERSON WHO RECEIVED ALL KINDS OF

1 LENIENCY FROM YOUR DEPARTMENT, INCLUDING \$7,250 TO A MAN
2 IN HIS EARLY 20'S; CORRECT?

3 A I WOULDN'T CONSIDER THAT LENIENCY. BUT HE
4 WAS PAID THAT, YES.

5 Q THIS IS A MAN WHO WAS PROVIDED A CAR BY
6 YOUR DEPARTMENT, THE SHERIFF'S DEPARTMENT.

7 A HE WAS PROVIDED BY DETECTIVES, A CAR.

8 Q WHO WORKS WITH THE SHERIFF'S DEPARTMENT.

9 A CORRECT.

10 Q THIS IS A PERSON WHO CERTAIN MEMBERS OF
11 YOUR SHERIFF'S DEPARTMENT KNEW WAS SELLING DOPE ACROSS
12 STATE LINES?

13 A YES.

14 Q AND YOU CAN TELL THIS JURY WITH A STRAIGHT
15 FACE THAT THIS IS A PERSON WHO HAD NO MOTIVE TO LIE?

16 MS. OSTROWSKI: OBJECTION, ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 MR. GRAYSON: NOTHING FURTHER.

19 THE COURT: MR. HIGGINS.

20 MR. HIGGINS: I JUST HAVE ONE QUESTION OR TWO.

21

22 RECROSS-EXAMINATION

23 BY MR. HIGGINS:

24 Q DID YOU PUBLISH, PRIOR TO SPEAKING TO
25 MR. FEISSA, THE FACT THAT TWO GUNS WERE USED, OR YOU
26 FOUND TWO DIFFERENT TYPES OF CARTRIDGES IN THE KILLING
27 OF MR. QUEZADA?

28 A NO.

1 Q BUT FEISSA TOLD YOU THAT TWO FIREARMS WERE
2 USED; RIGHT?

3 A CORRECT.

4 Q OKAY. AND THAT WOULD BE SOMETHING THAT
5 ONLY THE INDIVIDUALS THERE, OTHER THAN YOURSELF OR YOUR
6 DEPARTMENT WOULD KNOW?

7 A CORRECT.

8 Q IS THAT CORRECT?

9 A THAT'S CORRECT.

10 MR. HIGGINS: NO FURTHER QUESTIONS.

11 THE COURT: MAY THE WITNESS BE EXCUSED?

12 MS. OSTROWSKI: I HAVE A -- BASED ON WHAT

13 MR. NEWMAN ASKED, I HAVE A FOLLOW-UP QUESTION.

14 THE COURT: WHY DON'T YOU GIVE ME AN OFFER OF
15 PROOF AT SIDE BAR.

16

17 (THE FOLLOWING PROCEEDINGS
18 WERE HELD AT THE BENCH:)

19

20 THE COURT: THE RECORD WILL REFLECT MR. GRAYSON IS
21 HOLDING OUR DOOR CLOSED, THE ONE THAT THE AIR
22 CONDITIONING KEEPS PUSHING OPEN.

23 WHY ARE WE HERE?

24 WHY ARE YOU GOING INTO RE-REDIRECT?

25 MS. OSTROWSKI: YOUR HONOR, MR. NEWMAN I BELIEVE
26 OPENED THE DOOR ON HIS RECROSS OF THIS WITNESS ABOUT
27 WHAT MR. FEISSA TALKED ABOUT. HIS CLIENT, MR. WALLACE.
28 AND WHAT CONVERSATIONS THEY HAD.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 14, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 12 OF 16 VOLUMES
PAGES 3001 TO 3185-3300

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 JOHN DUNCAN,
2 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
3 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

4 THE COURT: DETECTIVE DUNCAN, I'D REMIND YOU
5 YOU'RE STILL UNDER OATH.

6 MS. OSTROWSKI, YOU MAY RESUME WITH YOUR
7 DIRECT EXAMINATION OF THE WITNESS.

8
9 DIRECT EXAMINATION RESUMED
10 BY MS. OSTROWSKI:

11 Q GOOD MORNING, SIR.

12 A GOOD MORNING.

13 Q WE WERE TALKING YESTERDAY ABOUT YOUR
14 WIRETAP INVESTIGATIONS, SOME OF THE CALLS.

15 AS PART OF THAT INVESTIGATION, DID YOU HAVE
16 AN OPPORTUNITY TO LISTEN TO A CALL PLACED BY DEFENDANT
17 KHALILL TO DEFENDANT GIBBS THAT WAS PLACED AT
18 APPROXIMATELY 5:26 P.M. ON MARCH 3RD, 2009, ABOUT AN
19 HOUR AFTER WE HEARD YESTERDAY MR. WALLACE WARNING
20 MR. KHALILL ABOUT THE DNA COLLECTION?

21 A YES, I DID.

22 MS. OSTROWSKI: YOUR HONOR, I'D LIKE TO MARK A CD
23 AS PEOPLE'S EXHIBIT 69, AND TRANSCRIPT AS 69-A.

24 THE COURT: SO MARKED.

25
26 (PEOPLE'S EXHIBIT 69, CD,
27 AND TRANSCRIPT, 69-A, WERE
28 MARKED FOR IDENTIFICATION.)

1 Q OKAY. ON ANY OF THE CARDS THAT YOU
2 REVIEWED FROM MR. FEISSA, THEY INDICATE THAT HE WAS A
3 112 BROADWAY CRIP?

4 A I BELIEVE IT WAS FOUR THAT I DID, SIR.

5 Q YOU'RE SAYING YOU REVIEWED FOUR CARDS?

6 A FOUR THAT SAID THAT.

7 Q THAT MR. FEISSA WAS A 112 BROADWAY CRIP?

8 A YES.

9 Q MR. FEISSA HE WAS NOT -- I THINK YOU SAID
10 HE WAS ONE OF THE YOUNGER PEOPLE; RIGHT?

11 A THAT'S CORRECT.

12 Q DO YOU NOW HOW OLD HE WOULD HAVE BEEN IN
13 2008?

14 A I CAN LOOK AT HIS DATE OF BIRTH.

15 Q IF THAT WOULD HELP REFRESH YOUR MEMORY.

16 A ON ALL MY F.I.'S, THE DATE OF THE BIRTH IS
17 CROSSED OUT.

18 Q CROSSED OUT. OKAY.

19 BUT HE WAS A YOUNGER GUY; YOU SAID THAT
20 ALREADY?

21 A YES, SIR.

22 Q HE WAS A NEWBIE? NEW PERSON TO 135?

23 A THAT'S CORRECT.

24 Q AS FAR AS YOUR KNOWLEDGE GOES?

25 A YES.

26 Q HE WASN'T SOMEBODY WHO GREW UP IN THE AREA
27 AROUND 139 AND AVALON?

28 A THAT IS CORRECT.

1 Q AND HE WASN'T, QUOTE/UNQUOTE, RESPECTED IN
2 135?

3 A HE WAS EARNING HIS RESPECT.

4 Q SORRY?

5 A HE WAS TRYING TO EARN HIS RESPECT WOULD BE
6 THE BEST WAY TO PUT IT, SIR.

7 Q TRYING TO EARN HIS RESPECT.

8 HE'S NOT IN THE SAME AGE BRACKET AS
9 MR. KHALILL?

10 A NO.

11 Q HE'S NOT IN THE SAME AGE BRACKET AS
12 MR. WALLACE?

13 A THAT IS CORRECT.

14 Q ARE YOU AWARE OF ANY F.I. CARDS THAT
15 DEMONSTRATE THAT MR. FEISSA WAS EVER IN THE COMPANY OF
16 MR. KHALILL?

17 A NO.

18 Q WHAT ABOUT MR. WALLACE?

19 A NO.

20 Q WHAT ABOUT MR. GIBBS?

21 A I BELIEVE THERE IS SOME OF MR. GIBBS.

22 Q AND MR. GIBBS, YOU SAID HE WAS -- WHAT
23 WOULD YOU TERM, ONE OF THE YOUNGSTERS, I THINK WAS THE
24 TERM YOU USED?

25 A YES. YOUNGER INDIVIDUALS, WAS THE PHRASE I
26 USED, SIR.

27 Q OKAY. AND IN THE WIRETAPS THAT WERE PLAYED
28 FOR YOU, ANY OF THEM INDICATE MR. FEISSA AS A CALLER?

1 THE COURT: WE'VE GOT A 100.

2 DO YOU HAVE THE STIPULATION?

3 MS. OSTROWSKI: YOUR HONOR, I DON'T HAVE IT HANDY
4 TO READ. I ASKED COUNSEL IF HE HAD A COPY.

5 MR. HIGGINS: LET ME SEE IF I HAVE A COPY, YOUR
6 HONOR.

7 THE COURT: DID YOU FILE THE ORIGINAL?

8 MS. OSTROWSKI: I DID.

9 MR. HIGGINS HAS HIS.

10 COUNSEL, DO YOU STIPULATE THAT SAMUEL
11 FEISSA, A WITNESS AGAINST ALL THREE DEFENDANTS IN
12 COUNT 1 OF THE INFORMATION, IS GUILTY OF THE MURDER OF
13 DAVEON CHILDS.

14 COUNSEL FOR MR. GIBBS, DO YOU STIPULATE?

15 MR. HIGGINS, DO YOU STIPULATE?

16 MR. HIGGINS: I'M SORRY. YES.

17 MS. OSTROWSKI: OKAY.

18 MR. GRAYSON, COUNSEL FOR MR. KHALILL, DO
19 YOU STIPULATE THAT SAMUEL FEISSA, A WITNESS AGAINST ALL
20 THREE DEFENDANTS IN COUNT 1 OF THE INFORMATION, IS
21 GUILTY OF THE MURDER OF DAVEON CHILDS?

22 MR. GRAYSON: SO STIPULATED.

23 THE COURT: MR. NEWMAN, DO YOU STIPULATE ON BEHALF
24 OF MR. WALLACE?

25 MR. NEWMAN: YES, I STIPULATE.

26 MS. OSTROWSKI: COUNSEL, DO YOU ALSO STIPULATE
27 THAT THE MURDER OF DAVEON CHILDS TOOK PLACE ON
28 JANUARY 3RD, 2008, AND WAS A DRIVE-BY SHOOTING?

1 COUNSEL FOR DEFENDANT GIBBS?

2 MR. HIGGINS: YES.

3 MS. OSTROWSKI: FOR DEFENDANT KHALILL?

4 MR. GRAYSON: SO STIPULATED.

5 MS. OSTROWSKI: AND DEFENDANT WALLACE?

6 MR. NEWMAN: YES. STIPULATE.

7 MS. OSTROWSKI: DO YOU FURTHER STIPULATE THAT
8 MR. FEISSA WAS ARRESTED AND CHARGED WITH THE MURDER OF
9 DAVEON CHILDS ON JULY 7, 2011?

10 DO YOU STIPULATE ON BEHALF OF MR. GIBBS?

11 MR. HIGGINS: YES.

12 MS. OSTROWSKI: ON BEHALF OF MR. KHALILL?

13 MR. GRAYSON: YES.

14 MS. OSTROWSKI: ON BEHALF OF MR. WALLACE?

15 MR. NEWMAN: YES, SO STIPULATED.

16 MS. OSTROWSKI: PEOPLE STIPULATE AS WELL.

17 WILL YOUR HONOR ACCEPT THE STIPULATION?

18 THE COURT: I DO.

19 WITH REGARDS TO THE EXHIBIT, I THINK WE
20 ALREADY HAVE A PEOPLE'S 100.

21 MR. NEWMAN: YES, WE DO.

22 THE COURT: I'LL ASK THE CLERK TO FIND THE EXHIBIT
23 NUMBER LATER. BUT IT WILL MARKED AS EXHIBIT -- IT MAY
24 BE 101.

25 MS. OSTROWSKI: I BELIEVE IT IS.

26
27 (PEOPLE'S EXHIBIT 101,
28 STIPULATION, WAS MARKED FOR

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 15, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 13 OF 16 VOLUMES
PAGES 3301 TO 3508-3600

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
2 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

3 THE COURT: I'D REMIND YOU YOU'RE STILL UNDER
4 OATH. GIVE US YOUR FIRST AND LAST NAME AGAIN FOR THE
5 RECORD.

6 THE WITNESS: YES, SIR.

7 JOHN DUNCAN. D-U-N-C-A-N.

8 THE COURT: MR. HIGGINS, YOUR DIRECT EXAMINATION,
9 PLEASE.

10
11 DIRECT EXAMINATION

12 BY MR. HIGGINS:

13 Q GOOD AFTERNOON, DETECTIVE.

14 A GOOD AFTERNOON MR. HIGGINS.

15 Q DETECTIVE, I WANT TO TURN YOUR ATTENTION TO
16 MARCH THE 3RD, 2009.

17 A OKAY.

18 Q WERE YOU -- YOU WERE ASSIGNED TO THE
19 SHERIFF'S HOMICIDE AT THAT TIME, OR GANG?

20 A I WAS ASSIGNED TO THE GANG UNIT, SIR.

21 Q WERE YOU ALSO ASSIGNED TO ASSIST IN A
22 HOMICIDE THAT OCCURRED ON JULY 25, 2008?

23 A YES, I WAS.

24 Q AND DURING THE COURSE OF THAT PARTICULAR --
25 WELL, DURING THAT TIME PERIOD, AT LEAST ON MARCH THE
26 3RD, 2009, YOU WERE WORKING WITH A DETECTIVE TY LABBE?

27 A THAT IS CORRECT.

28 Q OKAY. AND IN WORKING WITH HIM ON THAT

1 PARTICULAR DATE, DID YOU HAVE AN OPPORTUNITY TO SPEAK
2 WITH A MR. FEISSA?

3 A ON MARCH 3RD?

4 Q YES.

5 A YES, SIR.

6 Q OKAY. WHAT WAS THE REASON FOR SPEAKING
7 WITH FEISSA ON THAT PARTICULAR DAY?

8 MS. OSTROWSKI: OBJECTION. RELEVANCE. 402.

9 THE COURT: WILL YOU REFRAME THE QUESTION, PLEASE?

10 MR. HIGGINS: OKAY.

11 Q WITH REGARD TO SPEAKING TO MR. FEISSA, DID
12 YOU -- WAS HE IN CUSTODY?

13 A YES, HE WAS.

14 Q OKAY. AND DID YOU ASK HIM CERTAIN
15 QUESTIONS WITH REGARD TO -- WELL, YOU ASKED HIM
16 QUESTIONS ON A VARIETY OF SUBJECTS; IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q YOU ASKED HIM QUESTIONS DEALING WITH
19 NARCOTICS TRANSACTIONS THAT HE WAS DOING, GOING TO
20 TEXAS; IS THAT RIGHT?

21 A THAT IS CORRECT.

22 Q OKAY. AND DURING THE COURSE OF YOUR
23 QUESTIONING HIM ABOUT NARCOTICS TRANSACTIONS, DID YOU
24 GET THE IMPRESSION HE WAS BEING HONEST WITH YOU?

25 A NO.

26 Q AS A MATTER OF FACT, IT TOOK QUITE A WHILE
27 FOR HIM TO ADMIT THAT HE WAS EVEN DOING ANY TRANSACTIONS
28 IN TEXAS; IS THAT RIGHT?

1 A THAT'S CORRECT.

2 Q OKAY. NOW, YOU ALSO ASKED HIM -- WELL,
3 DURING THE COURSE OF YOUR QUESTIONING HIM ABOUT
4 TRANSACTIONS IN TEXAS, YOU QUESTIONED HIM ABOUT CERTAIN
5 MONIES HE WAS RECEIVING AND BRINGING BACK TO
6 LOS ANGELES; IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q OKAY. DID YOU GET THE TRUTH WITH REGARD TO
9 HOW MUCH MONEY HE WAS BRINGING BACK?

10 A NO, WE DID NOT.

11 Q OKAY. HE WAS CLASSIFIED AS A CONFIDENTIAL
12 RELIABLE INFORMANT WHEN YOU FIRST BEGAN THAT INTERVIEW
13 ON MARCH 3RD; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q AND AS A CONFIDENTIAL RELIABLE INFORMANT,
16 HE WAS SUPPOSED TO LET EITHER YOU OR HIS HANDLER KNOW
17 HIS WHEREABOUTS AND WHAT HE WAS DOING; IS THAT RIGHT?

18 A THAT'S CORRECT.

19 Q ONE OF THE THINGS HE WAS SUPPOSED TO DO WAS
20 TO LET YOU KNOW WHERE HE WAS GOING, WHAT HE WAS DOING,
21 AND WHEN HE WAS COMING BACK; IS THAT RIGHT?

22 A YES.

23 Q DID HE LET EVERYONE KNOW WHEN HE WAS COMING
24 BACK? FROM TEXAS?

25 A ON THAT PARTICULAR TIME?

26 Q YEAH.

27 A WE CALLED AND GOT AHOLD OF HIM, TOLD HIM WE
28 NEEDED HIM TO COME BACK FROM TEXAS.

1 Q DID HE COME BACK WHEN YOU TOLD HIM TO COME
2 BACK?

3 A NO, HE DID NOT.

4 Q AND I BELIEVE -- DURING THE COURSE OF THE
5 INTERVIEW, EITHER YOU OR DETECTIVE LABBE INDICATED THAT
6 HE DID NOT WANT TO LOSE ANY MONEY HE HAD GOTTEN TO YOU
7 GUYS; IS THAT RIGHT?

8 A THAT'S NOT WHAT HE SAID. THAT WAS WHAT, IN
9 MY RECOLLECTION, DETECTIVE LABBE TOLD HIM. AND ASKED
10 HIM. DETECTIVE LABBE DID 95 PERCENT OF THAT INTERVIEW.

11 Q OKAY. HE -- WELL, IN OTHER WORDS,
12 MR. FEISSA DIDN'T ACKNOWLEDGE THAT DETECTIVE LABBE WAS
13 CORRECT; IS THAT RIGHT?

14 A I DON'T RECALL.

15 Q OKAY. YOU ALSO FOUND PAY SLIPS, OR PAY AND
16 OWE SLIPS, OR DOCUMENTATION -- LET ME JUST SAY
17 DOCUMENTATION --

18 MS. OSTROWSKI: YOUR HONOR, OBJECT.

19 THIS IS GOING INTO THE UNDERLYING FACTS OF
20 THE FELONY CONVICTION IN THE INGLEWOOD CASE.

21 THE COURT: SUSTAINED.

22 Q BY MR. HIGGINS: ALL RIGHT.

23 DID YOU TELL MR. FEISSA TO BE HONEST? JUST
24 TO TELL THE TRUTH? WASN'T THAT YOUR REQUEST OF HIM?

25 A YES. FROM MY PORTION OF THE INTERVIEW,
26 YES.

27 Q NOW, DO YOU KNOW A PERSON NAMED LITTRELL?

28 MS. OSTROWSKI: YOUR HONOR, SAME OBJECTION AS

1 BEFORE.

2 THE COURT: DO YOU WISH TO BE HEARD AT SIDE BAR,
3 MR. HIGGINS?

4 MR. HIGGINS: YES.

5 THE COURT: COME ON UP.

6

7 (THE FOLLOWING PROCEEDINGS
8 WERE HELD AT THE BENCH:)

9

10 THE COURT: IS LITTRELL CONNECTED WITH THE TARRANT
11 STREET MURDER?

12 MS. OSTROWSKI: INGLEWOOD CASE.

13 MR. HIGGINS: THE ONLY THING I WANT TO KNOW WITH
14 REGARD TO -- LITTRELL IS HE WAS PUTTING BLAME ON
15 LITTRELL FOR CERTAIN ACTS HE WAS DOING.

16 I'M NOT GOING TO GET INTO THE UNDERLYING
17 FACTS. BUT THAT'S ONE OF THE PEOPLE THAT HE PLACED
18 BLAME ON THAT DETECTIVES ARE AWARE OF.

19 THE COURT: IS YOUR OFFER OF PROOF THAT YOU
20 BELIEVE THAT THE INVESTIGATOR WILL TESTIFY THAT THE
21 INVESTIGATOR BELIEVES THAT FEISSA LIED TO HIM ABOUT
22 SOME ISSUE DEALING WITH LITTRELL?

23 MR. HIGGINS: YES. AND THAT HE WAS PLAYING THEM,
24 SO TO SPEAK. I'M LOOKING AT PAGE 13 OF THE TRANSCRIPT
25 THAT I GAVE. LINES 10 THROUGH 20.

26 WITH REGARDS TO THE -- I HAVE COPIES FOR
27 YOU GUYS. I'M LOOKING AT PAGE 14. WHEN HE'S TALKING
28 ABOUT -- FEISSA DOING A LITTLE GANGBANGING, MAKING MONEY

1 SELLING DOPE. ALL THESE THINGS GO TO HIS CREDIBILITY.
2 MORAL TURPITUDE IN THIS TYPE CRIME.

3 THE COURT: IT'S ALREADY BEFORE THE JURY THAT HE
4 SUFFERED A CONVICTION OUT OF THE INGLEWOOD CASE.

5 MR. HIGGINS: RIGHT. BUT IT'S NOT BEFORE THE JURY
6 WITH REGARD TO HIS LYING ABOUT CERTAIN THINGS AND
7 PLACING BLAME ON OTHER PEOPLE.

8 THE COURT: I AGREE.

9 JUST GO HIT IT STRAIGHT ON.

10 JUST GO RIGHT TO IT.

11 MR. HIGGINS: ALL RIGHT.

12 THE COURT: LET'S PROCEED.

13

14 (THE FOLLOWING PROCEEDINGS
15 WERE HELD IN OPEN COURT, IN
16 THE PRESENCE OF THE JURY:)

17

18 THE COURT: YOU MAY RESUME, MR. HIGGINS.

19 MR. HIGGINS: THANK YOU.

20 Q DID YOU OR DETECTIVE LABBE, I DON'T KNOW
21 WHICH ONE, INDICATE THAT -- ONE MOMENT, PLEASE.

22 PERHAPS I CAN DO IT THIS WAY.

23 MR. HIGGINS: IF I CAN SHOW THE WITNESS A COPY.

24 THE COURT: SURE.

25 MR. HIGGINS: AND OF THE TRANSCRIPTION.

26 I'LL GIVE ONE TO COUNSEL, ALSO.

27 MS. OSTROWSKI: I'M SORRY, DID THE WITNESS
28 INDICATE HE COULDN'T REMEMBER?

1 THE COURT: NOT YET. HE'S GOING TO ASK HIM A
2 QUESTION ABOUT WHAT WAS SAID DURING THE CONVERSATION, IS
3 MY IMPRESSION.

4 MR. HIGGINS: THROUGH A VARIETY OF POINTS.

5 THE COURT: YOU CAN APPROACH.

6 Q BY MR. HIGGINS: LET ME JUST GIVE YOU THIS.

7 WOULD YOU BE SO KIND AS TO TURN TO PAGE 13?
8 THE PAGE NUMBERS ARE ON THE LOWER LEFT.

9 AND I'M LOOKING AT LINE 9.

10 STARTING AT LINE 9.

11 DO YOU SEE THAT?

12 A YES. I SEE LINE 9, YES.

13 Q IT SAYS "DETECTIVE 1." IS THAT YOU, OR
14 DETECTIVE LABBE?

15 A THAT'S GOING TO BE DETECTIVE LABBE.

16 Q YOU WERE PRESENT WHEN HE WAS TALKING,
17 THOUGH; RIGHT?

18 A YES.

19 Q OKAY. HE WAS SPEAKING ABOUT PUTTING
20 SOMETHING OFF ON LITTRELL. THE COMMENT WAS MADE, "I
21 MEAN, YOU COULD PUT IT OFF ON LITTRELL ALL YOU WANT."

22 DO YOU REMEMBER THAT CONVERSATION?

23 A YES, I REMEMBER THE INTERVIEW.

24 Q OKAY. AND WAS MR. FEISSA TRYING TO PUT THE
25 BLAME FOR SOMETHING ON A PERSON NAMED LITTRELL?

26 A NOT -- THAT'S SOMETHING YOU'RE GOING TO
27 HAVE TO ASK DETECTIVE LABBE ABOUT.

28 Q OKAY. AND WITH REGARD TO LINE 20. YOU SEE

1 LINE 20? WHERE IT SAYS "DETECTIVE 2," WAS THAT YOU?
2 WHERE IT SAYS "OKAY, SAM. EXACTLY. LOOK AT ME,"
3 ET CETERA?

4 A I DON'T REMEMBER IF THAT'S MYSELF OR NOT.
5 WHEN YOU GAVE -- WHEN I WAS GIVEN THESE TRANSCRIPTS TO
6 LOOK AT, THERE'S A LOT OF FLIP-FLOPPING BETWEEN
7 DETECTIVE 1 AND DETECTIVE 2. BETWEEN DETECTIVE LABBE
8 AND MYSELF.

9 Q SO I'M JUST -- BECAUSE THE DETECTIVES WERE
10 NOT NAMED IN THE TRANSCRIPT?

11 A THAT'S CORRECT.

12 Q BUT AS FAR AS YOU REMEMBER, DO YOU RECALL
13 WHETHER OR NOT DETECTIVE 2 IN THAT INSTANCE AT LINES 18
14 THROUGH 20, IS THAT YOU, OR DETECTIVE LABBE?

15 A I'M NOT A HUNDRED PERCENT SURE WITHOUT
16 LISTENING TO IT.

17 Q DO YOU RECALL SAYING "YOU'RE NOT GOING TO
18 PLAY US AGAIN"? WHETHER IT WAS YOU OR DETECTIVE LABBE,
19 DO YOU REMEMBER THAT?

20 A I JUST DON'T RECALL WHICH ONE OF US SAID
21 THAT, SIR.

22 Q ALL RIGHT.

23 AS ONE OF THE DETECTIVES ON THE CASE, DID
24 YOU HAVE THE IMPRESSION THAT MR. FEISSA WAS TRYING TO
25 PLAY YOU GUYS?

26 MS. OSTROWSKI: OBJECTION.

27 Q BY MR. HIGGINS: SO TO SPEAK?

28 MS. OSTROWSKI: VAGUE AS TO WHAT ISSUE.

1 THE COURT: BE A LITTLE MORE SPECIFIC.

2 MR. HIGGINS: OKAY.

3 Q WITH REGARD TO SELLING DOPE IN TEXAS, WAS
4 THE SUBSTANCE OF THAT CONVERSATION, WHEN YOU SAID
5 "YOU'RE NOT GOING TO PLAY US AGAIN," WAS THAT IN REGARD
6 TO THAT?

7 A LIKE I SAID, WITHOUT LISTENING TO IT, I
8 DON'T KNOW. I CAN'T TAKE ONE LINE OUT OF AN INTERVIEW
9 AND SAY WHAT IT'S IN REGARD TO WITHOUT LISTENING TO IT,
10 SIR.

11 Q ALL RIGHT.
12 IF YOU WOULD TURN TO PAGE 17, LINES 21
13 THROUGH 22. YOU SEE THAT?

14 A YES.

15 Q AND IT SAYS "DETECTIVE 1." DO YOU KNOW
16 WHETHER OR NOT THAT'S YOU SPEAKING AT THAT PARTICULAR
17 POINT IN TIME WITHOUT LISTENING TO IT?

18 A IT'S MY RECOLLECTION THAT THAT -- IS GOING
19 TO BE DETECTIVE LABBE.

20 Q ALL RIGHT.
21 BUT YOU WERE PRESENT; RIGHT?

22 A YES.

23 Q AND IT SAYS "AND IT WAS LIKE PULLING TEETH
24 TO GET YOU TO ADMIT THAT THIS IS WHAT THE FUCK YOU'RE
25 DOING."

26 DO YOU REMEMBER DETECTIVE LABBE SAYING
27 THAT?

28 A DO I REMEMBER WORD FOR WORD, NO.

1 Q BUT WAS IT DIFFICULT, AS YOU RECALL, TO GET
2 MR. FEISSA TO ADMIT CERTAIN THINGS?

3 MS. OSTROWSKI: ASKED AND ANSWERED.

4 THE COURT: OVERRULED.

5 THE WITNESS: YES, IT WAS.

6 Q BY MR. HIGGINS: ALL RIGHT.

7 IF YOU TURN THE PAGE, LOOK AT PAGE 18, THE
8 FIRST LINE. DETECTIVE 2. AND THAT DETECTIVE SAYS "AN
9 EXAMPLE OF YOU PLAYING GAMES WITH US. DO YOU
10 UNDERSTAND? AND WE JUST HAD A HUGE EXAMPLE RIGHT HERE,
11 A LITTLE PLAY THAT WE JUST PUT ON OF YOUR PLAYING GAMES
12 WITH US."

13 WAS THAT YOU WHO SAID THAT TO MR. FEISSA?

14 A ONCE AGAIN, WITHOUT LISTENING TO THE TAPE,
15 I CAN'T TELL YOU WHICH ONE.

16 Q WAS FEISSA PLAYING GAMES WITH YOU GUYS?

17 A HE WAS NOT BEING VERY UPFRONT DURING THAT
18 INTERVIEW, SIR.

19 Q OKAY. NOW -- FURTHER DOWN ON THE SAME
20 PAGE, AT LINE 5. AND ONE OF -- START WITH LINE 4.

21 DETECTIVE 1 SAYS "LET ME ASK YOU ABOUT
22 SOMETHING ELSE, SAM. REMEMBER WHEN YOU WERE TALKING TO
23 VALENTINO? FUCK THAT. ALL THAT BULLSHIT. REMEMBER WHEN
24 YOU WERE TALKING TO VALENTINO AND ANDERSON ABOUT THAT
25 MURDER ON TARRANT?"

26 THE CONVERSATION TURNED TO THE MURDER ON
27 TARRANT; IS THAT RIGHT?

28 A THAT'S CORRECT.

1 Q OKAY. AND AT LINE 11, IT'S ASKING HIM "HOW
2 DID YOU KNOW IT WAS A .45 THAT WAS USED?" WAS THAT --
3 YOU REMEMBER ASKING HIM, OR EITHER YOU OR MR. VALENTO
4 ASKING HIM THAT?

5 A LIKE I SAID, IT WAS DETECTIVE LABBE AND
6 MYSELF DURING THIS INTERVIEW.

7 Q I KNOW. BUT DO YOU RECALL THAT QUESTION
8 BEING ASKED?

9 A NO. I'M GOING BY THE TRANSCRIPT, HERE.
10 AND -- WITHOUT LISTENING TO THE TAPE RIGHT HERE, I
11 COULDN'T TELL YOU EXACTLY WHO THAT IS.

12 Q ALL RIGHT.

13 DO YOU RECALL MR. FEISSA SAYING "MY HOMEBOY
14 FROM CAMPANILLA SHOWED ME THE GUN, LIKE THREE OR
15 FOUR DAYS, HE WAS TRYING TO SELL IT."

16 DO YOU RECALL MR. FEISSA SAYING THAT?

17 A NOT WITHOUT LISTENING TO THE TRANSCRIPT, OR
18 LISTENING TO THE ACTUAL RECORDING.

19 Q DID YOU OR DETECTIVE VALENTO EVER TELL
20 MR. FEISSA THAT A .45 WAS USED?

21 A I NEVER -- DURING THIS INTERVIEW?

22 Q NO, AT ANY TIME BEFORE.

23 A I NEVER TOLD SAMUEL FEISSA THAT A .45 WAS
24 USED.

25 Q NOW, IF YOU LOOK AT PAGE 26, LINE 4.
26 MS. OSTROWSKI: I'M SORRY, COUNSEL.

27 COULD YOU REPEAT?

28 MR. HIGGINS: PAGE 26, LINE 4.

1 MS. OSTROWSKI: THANK YOU.

2 Q BY MR. HIGGINS: AT THAT PARTICULAR POINT,
3 YOU'RE TALKING ABOUT -- DETECTIVE 1. IT SAYS "AND WE'RE
4 TALKING ABOUT YOU KNOWING WHAT TYPE OF .45 IT WAS."

5 YOU RECALL THAT CONVERSATION WITH HIM?

6 A NO, I DO NOT.

7 Q IF YOU WOULD TURN TO PAGE 21. LOOKING
8 AT -- AND I BELIEVE IF YOU LOOK AT LINE 9, MR. FEISSA
9 SAYS -- AND THEY WERE TALKING ABOUT THE TARRANT STREET
10 KILLING.

11 "THEY WAS ALL THOSE, LIKE, THAT'S HOW I
12 REMEMBER, WHEN THEY PULLED UP, THEY WERE ALL, THEY WERE
13 ALL," SOMETHING IS INAUDIBLE. "THAT SOME DUDE HAD COME
14 UP TO THEM AND HE GOT KILLED AND THEY WERE BRAGGING
15 ABOUT IT."

16 SO HE WAS SAYING SOME OF HIS FRIENDS WERE
17 BRAGGING ABOUT THE KILLING ON TARRANT; IS THAT RIGHT?

18 A I DON'T RECALL WITHOUT LISTENING TO THE
19 INTERVIEW.

20 Q AT LINE 19. DO YOU RECALL ONE OF YOU
21 SAYING, "AND WHY WOULD THEY COME BACK TO -- WHY WOULD
22 THEY COME BACK TO THE DEUCE IN THE MIDDLE OF ONE TRAY
23 FIVE AND START BRAGGING ON HOW THEY CK'D SOMEBODY IN
24 SOMEBODY ELSE'S SET?"

25 AS A GANG EXPERT, WOULD A MEMBER OF ONE
26 GANG GO TO ANOTHER GANG'S TERRITORY AND START BRAGGING
27 ABOUT SOME MURDERS THAT THEY DID?

28 A YEAH, IT'S HAPPENED BEFORE, YES.

1 Q IS THAT HIGHLY LIKELY THAT WOULD OCCUR?

2 A IT DOESN'T HAPPEN VERY OFTEN, NO, SIR.

3 Q AND ON PAGE 22 AT THE TOP, DO YOU RECALL
4 ONE OF YOU, EITHER YOURSELF OR LABBE, ASKING MR. FEISSA,
5 "WHY DID YOU PUT THAT MURDER ON RYAN SIMPSON, THEN, IF
6 YOU CAN'T REMEMBER NOW?"

7 YOU REMEMBER THAT?

8 A ONCE AGAIN, WITHOUT LISTENING TO THE
9 INTERVIEW, I'M NOT GOING TO BE ABLE TO TELL YOU WHICH
10 ONE OF US IS IN THAT PORTION OF THE INTERVIEW.

11 Q WELL, DETECTIVE, OFTENTIMES YOU HAVE
12 REPORTS AND YOU DON'T NECESSARILY HAVE EVERYTHING
13 RECORDED.

14 AND YOU SEEM TO REMEMBER -- ARE YOU HAVING
15 SOME TYPE OF DIFFICULTY, PHYSICAL OR OTHERWISE, IN
16 REMEMBERING NOW? SIMPLY BECAUSE YOU DON'T HEAR A VOICE?

17 A AS I SAID, WHEN I WAS GIVEN THIS
18 TRANSCRIPT, LISTENING TO THIS TRANSCRIPT, THIS IS VERY
19 INACCURATE. NOT ONLY WITH THE NAMES OF THE DETECTIVES,
20 ALSO WITH THE AUDIBLE.

21 AND WITH YOU TRYING TO PORTRAY NOW THAT ALL
22 OF A SUDDEN I'M HAVING AMNESIA, IT IS NOT CORRECT. I'M
23 NOT GOING TO TESTIFY TO SOMETHING THAT I'M NOT A HUNDRED
24 PERCENT SURE ON, ESPECIALLY WHEN I'VE GOT AN INACCURATE
25 DOCUMENT HERE. THAT'S WHY THIS THING IS RECORDED.

26 Q BUT YOU DO REMEMBER THE DATE OF MARCH THE
27 3RD, 2009; RIGHT?

28 A I DO REMEMBER THAT WE INTERVIEWED SAMUEL

1 FEISSA, YES.

2 Q AND YOU REMEMBER INTERVIEWING HIM ABOUT THE
3 RYAN SIMPSON KILLING; IS THAT LIGHT? ABOUT THE TARRANT
4 STREET KILLING; IS THAT RIGHT?

5 A I REMEMBER THAT BEING PART OF THE
6 INTERVIEW. AS I SAID, DETECTIVE LABBE CONDUCTED MOST OF
7 THE INTERVIEW.

8 Q AND AS YOU SAID, YOU WERE THERE; IS THAT
9 RIGHT?

10 A THAT'S CORRECT.

11 Q SO INDEPENDENT OF THIS PARTICULAR
12 TRANSCRIPT, DO YOU RECALL EITHER ONE OF YOU GUYS TELLING
13 HIM THAT, OR ASKING HIM HOW WOULD HE KNOW IT WAS A .45
14 THAT WAS USED?

15 A NOT WITHOUT LISTENING TO THE INTERVIEW, NO.

16 Q OKAY. DO YOU RECALL TELLING HIM THAT YOU
17 KNEW THAT THERE WAS A BULLET IN THE BACK OF THE VEHICLE
18 THAT WAS BEING DRIVEN IN THAT PARTICULAR CASE?

19 A YES. I DO REMEMBER US TALKING ABOUT A
20 BULLET IN A VEHICLE, YES.

21 Q AND DO YOU RECALL TELLING HIM THAT YOU WERE
22 GOING TO GET THAT BULLET OUT THERE, AND YOU WERE GOING
23 TO TRACE IT BACK TO HIM? IS THAT RIGHT?

24 A THAT IS NOT RIGHT. BECAUSE THAT IS NOT
25 WHAT I SAID IN THE INTERVIEW.

26 Q WHAT DID YOU SAY?

27 A I DID NOT SPEAK ABOUT THAT VEHICLE IN THE
28 INTERVIEW.

1 Q DID DETECTIVE LABBE SPEAK ABOUT IT?

2 A YES, HE DID.

3 Q DO YOU RECALL WHAT HE SAID?

4 A NO, I DO NOT.

5 MS. OSTROWSKI: YOUR HONOR, I'M OBJECTING TO
6 HEARSAY. DETECTIVE LABBE IS IN THE HALL.

7 WHY DON'T WE --

8 THE COURT: THE COURT IS GOING TO SUSTAIN THE
9 OBJECTION. I'LL LET YOU RECALL DETECTIVE DUNCAN, IF
10 NECESSARY.

11 MR. HIGGINS: OKAY.

12 THE COURT: AFTER THE TESTIMONY OF THE NEXT
13 WITNESS.

14 Q BY MR. HIGGINS: DID YOU TELL MR. FEISSA
15 THAT "I THINK YOU FUCKIN' KILLED HIM. I THINK YOU WERE
16 IN THE CAR. I THINK YOU PULLED THE TRIGGER ON THAT .45
17 BECAUSE YOU SEEM TO KNOW A WHOLE LOT ABOUT THAT MURDER."

18 A NO, I DID NOT.

19 Q DO YOU RECALL DETECTIVE LABBE SAYING THAT?

20 A I RECALL DETECTIVE LABBE DOING MOST OF THIS
21 INTERVIEW, YES.

22 Q DID HE SAY THAT TO MR. FEISSA? THAT I JUST
23 MENTIONED?

24 A I BELIEVE SO.

25 Q OKAY. NOW, ISN'T IT TRUE, DETECTIVE
26 DUNCAN, THAT YOU HAVE STATED IN THE PAST THAT WHEN YOU
27 HAVE A GANG MEMBER IN CUSTODY, THAT THOSE PEOPLE ARE --
28 AND YOU'RE ASKING QUESTIONS, THAT THOSE PEOPLE ARE

1 INHERENTLY UNRELIABLE?

2 A I BELIEVE I HAVE PUT THAT IN AN AFFIDAVIT,
3 YES.

4 Q OKAY. AS A MATTER OF FACT, IN AN
5 AFFIDAVIT, YOU PUT IN THAT "CONFIDENTIAL INFORMANTS HAVE
6 BEEN USED. THE TRUTH OF THAT COOPERATION IS UNCLEAR, IS
7 UNCERTAIN. OTHER KNOWN AND ADMITTED GANG MEMBERS HAVE
8 ADMITTED IN THE PAST CERTAIN FACTS AND CORROBORATED
9 INFORMATION OBTAINED BY INVESTIGATORS.

10 "HOWEVER, YOUR AFFIANT IS UNAWARE OF ANY OF
11 THESE INDIVIDUALS PROVIDING 100 PERCENT TRUTHFUL
12 INFORMATION. THE MOTIVE FOR IN-CUSTODY GANG MEMBERS, AS
13 IN THE CASE OF THE" -- IN THIS CASE, TALKING ABOUT NUTTY
14 BLOCK CRIPS" -- IS OBVIOUS. THEY'RE COOPERATING FOR
15 THEIR OWN PRESERVATION."

16 IS THAT RIGHT?

17 A THAT IS AN AFFIDAVIT I WROTE REGARDING A
18 NUTTY BLOCK CRIP CASE, YES.

19 Q THAT DOES NOT APPLY TO PIRU GANG MEMBERS
20 WHO ARE IN CUSTODY?

21 A I DID NOT WRITE AN AFFIDAVIT WITH THAT TYPE
22 OF STATEMENT REGARDING THIS CASE, NO.

23 Q THEY'RE BOTH BLACK GANG MEMBERS; RIGHT?
24 BLACK GANGS? NUTTY BLOCK AND PIRU; RIGHT?

25 A YES, THEY ARE.

26 Q I BELIEVE YOU TESTIFIED YESTERDAY THAT
27 THERE'S NOT TOO MUCH DIFFERENCE BETWEEN THOSE GANGS
28 EXCEPT THE TERRITORY; IS THAT RIGHT?

1 A YES. THAT'S WHAT I SAID YESTERDAY
2 REGARDING YOUR QUESTIONS.

3 Q OKAY. NOW, ANOTHER COMMENT THAT YOU MADE
4 ON MAY 12TH IN AN AFFIDAVIT, 2006, IS THAT "ANY
5 CONVERSATIONS OR INTERVIEWS WITH CURRENT NUTTY BLOCK
6 CRIPS GANG MEMBERS ARE NOT LIKELY TO PROVIDE TRUTHFUL
7 INFORMATION INTO THEIR ACTIONS OR THE ACTIONS OF FELLOW
8 GANG MEMBERS."

9 DO YOU REMEMBER THAT?

10 MS. OSTROWSKI: I'LL OBJECT AS IRRELEVANT ABOUT
11 NUTTY BLOCK.

12 THE COURT: I'LL SUSTAIN THE OBJECTION.

13 Q BY MR. HIGGINS: WELL, ALTHOUGH YOU WERE
14 TALKING ABOUT NUTTY BLOCK, THAT'S A BLACK GANG; IS THAT
15 CORRECT?

16 A THAT IS A BLACK GANG, CORRECT.

17 Q AND YESTERDAY, YOU SAID THERE WASN'T MUCH
18 DIFFERENCE BETWEEN BLACK GANGS EXCEPT THE TERRITORY THAT
19 THEY CONTROL; IS THAT RIGHT?

20 MS. OSTROWSKI: YOUR HONOR, I'M GOING TO OBJECT.
21 IF HE WANTS TO ASK QUESTIONS ABOUT MR. FEISSA, THAT'S
22 RELEVANT. NOT GENERALLY SPEAKING ABOUT INFORMANTS.

23 THE COURT: I'LL DIRECT COUNSEL NOT TO MAKE
24 SPEAKING OBJECTIONS IN FRONT OF THE JURY.

25 WITH REGARDS TO THE RELEVANCE OBJECTION,
26 IT'S OVERRULED.

27 Q BY MR. HIGGINS: YOU MAY ANSWER.

28 A YOU ARE COMPARING WHAT I WAS ASKED

1 YESTERDAY REGARDING BLACK GANGS, AND YOU'RE READING
2 AFFIDAVITS THAT ARE REGARDING CASES.

3 CASES ARE DIFFERENT. AND YOU ARE TRYING TO
4 PUT AN AFFIDAVIT AND A CASE, AND TRYING TO LUMP IT IN
5 THE SAME AS THIS PARTICULAR CASE, AND IT'S NOT. IT'S AN
6 INACCURATE REPRESENTATION.

7 Q BY MR. HIGGINS: WELL, IT IS ACCURATE THAT
8 PIRU IS A BLACK GANG; IS THAT RIGHT?

9 A YES, THEY ARE A BLACK GANG.

10 Q IS IT ACCURATE THAT NUTTY BLOCK CRIPS ARE A
11 BLACK GANG? IS THAT RIGHT?

12 A THAT IS CORRECT.

13 Q OKAY. IT IS ACCURATE, BASED UPON WHAT YOU
14 TESTIFIED TO YESTERDAY, IS THAT THESE BLACK GANGS ARE
15 SIMILAR EXCEPT THAT THEY CONTROL DIFFERENT TERRITORIES;
16 IS THAT RIGHT?

17 A WELL, YOU ASKED ME ABOUT BLACK GANGS, YES.

18 Q IS THAT CORRECT? YES? OKAY.

19 AND IT IS ACCURATE THAT YOU TESTIFIED THAT
20 ALL OF THEIR VARIOUS ACTIVITIES, ROBBERIES, MURDERS,
21 NARCOTICS, SAME TYPES OF CRIMES; IS THAT CORRECT?

22 A THEY DO SIMILAR CRIMES, YES.

23 Q OKAY. AND IN THIS CASE, AT THE BEGINNING
24 OF THIS INTERVIEW WITH MR. FEISSA, HE WAS A CONFIDENTIAL
25 RELIABLE INFORMANT; THAT CORRECT?

26 A YES, HE WAS.

27 Q AND IN YOUR PARTICULAR AFFIDAVIT THAT I
28 JUST QUOTED, AND I'LL --

1 MS. OSTROWSKI: THIS ISN'T THE ACTUAL -- YOUR
2 HONOR, I'M GOING TO OBJECT. THIS IS HEARSAY.

3 IT'S NOT --

4 THE COURT: WHY DON'T YOU APPROACH SIDE BAR.

5
6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD AT THE BENCH:)

8
9 THE COURT: CAN I SEE DID AFFIDAVIT? OR --

10 MR. HIGGINS: THAT'S A QUOTATION. HERE IT IS,
11 YOUR HONOR. I HAVE TWO OF THEM. DIRECT QUOTATION FROM
12 AN AFFIDAVIT I HAVE DATED MAY 12, 2006.

13 THIS IS THE OTHER QUOTATION FROM THAT SAME
14 ONE. I DO HAVE AN AFFIDAVIT. I THINK IT WAS DATED
15 MARCH THE 6TH INSTEAD OF MAY.

16 THE COURT: OKAY.

17 MR. HIGGINS: AND I ALSO HAVE -- HERE'S ONE. JOHN
18 DUNCAN, 5/24/06, WHERE HE ALSO QUOTES -- AND HE DOES --
19 "ANY CONVERSATION WITH NUTTY BLOCK GANG MEMBERS ARE NOT
20 LIKELY TO PROVIDE TRUTHFUL INFORMATION FOR THEIR ACTIONS
21 OR THEIR ACTS OF FELLOW GANG MEMBERS."

22 I DON'T HAVE THE AFFIDAVIT BECAUSE I GAVE
23 IT TO ANOTHER ATTORNEY. ON THAT. BUT I DO HAVE MY
24 QUOTATION.

25 THE COURT: LET ME HEAR THE OBJECTION FIRST FROM
26 THE PROSECUTOR.

27 MS. OSTROWSKI: THE GROUNDS FOR THE OBJECTION IS
28 HEARSAY. THE WITNESS HASN'T DENIED MAKING THAT

1 STATEMENT IN AN AFFIDAVIT REGARDING THE NUTTY BLOCK
2 CRIPS.

3 HE ADMITTED TO MAKING THAT STATEMENT IN THE
4 AFFIDAVIT. TO NOW TAKE WHAT ISN'T THE ACTUAL AFFIDAVIT,
5 SOMETHING MR. HIGGINS JUST TYPED UP, AND SHOW IT TO THE
6 JURY IS IMPROPER.

7 HE'S NOT DENYING THE STATEMENT. HE'S
8 ADMITTING IT. SO IT'S NOT AN INCONSISTENT STATEMENT.
9 WHICH IS THE ONLY WAY THE ACTUAL AFFIDAVIT, IN
10 PRESENTING THE AFFIDAVIT TO THE JURY WOULD BE
11 ADMISSIBLE.

12 THE COURT: ALL RIGHT.

13 LET'S FAST-FORWARD TO THE BOTTOM LINE,
14 HERE. IS THE BOTTOM LINE YOU'RE GOING TO ASK THIS GUY
15 FOR HIS OPINION AS TO WHETHER OR NOT AN IN-CUSTODY
16 INFORMANT HAS A MOTIVE TO LIE?

17 IS THAT THE ULTIMATE QUESTION YOU'RE GOING
18 TO ASK?

19 MR. HIGGINS: YEAH, BUT -- HIS MEMORY IS SO BAD.

20 THE COURT: WELL, I'D RATHER NOT SPEND THE REST OF
21 THE AFTERNOON ON HIS MEMORY. I'D RATHER YOU MOVED TO
22 THE NEXT GUY WHO WAS PRESENT IN THE INTERVIEW AND SEE IF
23 HE REMEMBERS, AND IF HE CAN CONFIRM THE INFORMATION
24 CONTAINED WITHIN THE TRANSCRIPT.

25 MR. HIGGINS: I HAVE NO PROBLEM WITH THAT, YOUR
26 HONOR. BUT THIS PARTICULAR -- I CAN MOVE OUT OF THIS.
27 IF I CAN JUST GET HIM ON THIS PARTICULAR SUBJECT, I'LL
28 BE HAPPY TO GO TO DETECTIVE LABBE WITH WHATEVER ELSE IS

1 IN THE PARTICULAR TRANSCRIPT.

2 HOWEVER, I DON'T KNOW IF I'M GOING TO GET
3 THE SAME "I DON'T REMEMBER" UNLESS I HEAR FROM HIM.

4 THE COURT: I DON'T KNOW. I'VE SAID TO YOU
5 PREVIOUSLY IF YOU NEED TO RECALL THIS GUY DUNCAN, YOU
6 CAN.

7 MR. HIGGINS: ALL RIGHT.

8 THE COURT: BUT WE'RE SPINNING OUR WHEELS. HE'S
9 NOT THE INTERVIEWER. HE'S THE GUY THAT'S ALONG FOR THE
10 RIDE.

11 MY UNDERSTANDING OF HIS PORTION OF THE
12 INTERVIEW IS HE MAKES A COUPLE OF STATEMENTS IN IT, BUT
13 LABBE IS THE GUY THAT DOES THE INTERVIEW.

14 SO I JUST THINK IT'S A LOT MORE FRUITFUL
15 AND IT'S LOT MORE EFFECTIVE IF YOU CALL LABBE. IF LABBE
16 DOESN'T PROVIDE YOU WITH THE INFORMATION YOU WANT, YOU
17 CAN RECALL DUNCAN IF YOU NEED TO.

18 IF YOU NEED TO PLAY IT, I'LL CONSIDER IT AT
19 THAT POINT. BUT LET'S FIRST TRY AND GET DIRECTLY WHAT
20 YOU'RE SEEKING.

21 MR. HIGGINS: OKAY.

22 NOW, WITH REGARD TO THE OBJECTION WITH
23 REGARD TO THIS QUOTATION FROM MR. DUNCAN, WHICH HE'S
24 ADMITTED MAKING.

25 BUT HE DID NOT -- HE DOES NOT WANT TO ADMIT
26 THAT IT'S APPLICABLE TO BLACK GANG MEMBERS.

27 PARTICULARLY 135 PIRU.

28 THE COURT: ASK HIM THE QUESTION DIRECTLY. AS AN

1 EXPERT WITNESS ON 135 PIRU, ARE YOU SAYING THAT AN
2 IN-CUSTODY INFORMANT DOESN'T HAVE A MOTIVE TO LIE.

3 MR. HIGGINS: ALL RIGHT.

4 THE COURT: LET'S PROCEED.

5

6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD IN OPEN COURT, IN
8 THE PRESENCE OF THE JURY:)

9

10 THE COURT: YOU MAY PROCEED, MR. HIGGINS.

11 MR. HIGGINS: THANK YOU.

12 Q DETECTIVE, BASED UPON THE QUOTATIONS THAT I
13 JUST READ TO YOU -- AND YOU ACKNOWLEDGE MAKING; RIGHT?

14 A YES, REGARDING A 2006 AFFIDAVIT.

15 Q AS AN EXPERT WITNESS ON GANGS, DOES AN
16 IN-CUSTODY GANG MEMBER INFORMANT WHO IS ACCUSED OF A
17 CRIME HAVE A MOTIVE TO LIE OR GIVE YOU FALSE
18 INFORMATION?

19 A IN SOME INSTANCES, YES.

20 Q AT THE END OF THAT INTERVIEW ON MARCH THE
21 3RD, 2006 (SIC) --

22 THE COURT: I'M SORRY, YOU MISSPOKE.

23 Q BY MR. HIGGINS: MARCH THE 3RD, 2009. DID
24 YOU OR DETECTIVE LABBE DECLARE OR FILL OUT ANY TYPE OF
25 DOCUMENTATION THAT SAMUEL FEISSA WAS AN UNRELIABLE
26 INFORMANT?

27 A DETECTIVE LABBE DID, YES.

28 Q OKAY. THANK YOU.

1 MR. HIGGINS: I DON'T HAVE ANYTHING FURTHER OF
2 THIS WITNESS. I'D LIKE TO KEEP HIM ON CALL, HOWEVER.

3 THE COURT: DO YOU HAVE ANY EXAMINATION?

4 MR. NEWMAN: I HAVE NO QUESTIONS.

5 THE COURT: MR. GRAYSON.

6 MR. GRAYSON: I DO. VERY, VERY BRIEFLY.

7

8 CROSS-EXAMINATION

9 BY MR. GRAYSON:

10 Q MR. FEISSA DENIED -- DO YOU KNOW MR. FEISSA
11 WHEN YOU SEE HIM?

12 A YES, I DO.

13 MR. GRAYSON: CAN I APPROACH, YOUR HONOR?

14 THE COURT: YES.

15 MR. GRAYSON: CAN I GET THE NEXT DEFENSE NEXT IN
16 ORDER?

17 THE COURT: E AS IN EDWARD.

18 MR. GRAYSON: OKAY.

19 I'M GOING TO MARK THIS AS EXHIBIT E.

20

21 (DEFENSE EXHIBIT E,
22 PHOTOGRAPH, WAS MARKED FOR
23 IDENTIFICATION.)

24

25 Q BY MR. GRAYSON: I'M HANDING YOU A
26 PHOTOGRAPH THAT I JUST MARKED AS EXHIBIT E.

27 CAN YOU TAKE A LOOK AT THAT?

28 A YES.

1 Q YOU RECOGNIZE WHO'S DEPICTED IN THAT
2 PHOTOGRAPH?

3 A YES.

4 Q HOW DO YOU RECOGNIZE HIM?

5 A IT'S A PICTURE OF AN INDIVIDUAL.

6 Q WHAT'S THE INDIVIDUAL'S NAME?

7 A SAMUEL FEISSA.

8 Q OKAY. THANK YOU.

9 ARE YOU FAMILIAR WITH THIS PARTICULAR
10 PHOTOGRAPH?

11 A NO, I'M NOT.

12 Q YOU DON'T KNOW WHERE IT CAME FROM?

13 A NO, I DON'T.

14 Q ISN'T IT TRUE THAT MR. FEISSA DENIED BEING
15 THE -- BEING INVOLVED IN TARRANT STREET MURDER?

16 A YES.

17 Q ISN'T IT TRUE THAT MR. FEISSA, DURING YOUR
18 INTERVIEW, YOU AND DETECTIVE LABBE'S INTERVIEW WITH HIM,
19 TRIED TO BLAME IT ON OTHER PEOPLE ASSOCIATED WITH 135
20 PIRU?

21 A NOT DURING THAT INTERVIEW, NO.

22 Q AT SOME LATER POINT, HE DID?

23 A AT SOME LATER POINT, I HAVE NO IDEA, NO.

24 Q AND MR. FEISSA DENIED BEING A DRUG
25 TRAFFICKER BETWEEN CALIFORNIA AND TEXAS?

26 A YES.

27 Q BUT YOU CAME ACROSS OTHER EVIDENCE THAT
28 SUGGESTED HE WAS LYING ABOUT THAT?

1 A THAT'S CORRECT.

2 Q DID YOU SEIZE AND ANALYZE HIS PERSONAL
3 COMPUTER?

4 A I DID NOT, NO.

5 Q LET ME ASK IT A DIFFERENT WAY.
6 WAS HIS PERSONAL COMPUTER SEIZED AND
7 ANALYZED?

8 MS. OSTROWSKI: CALLS FOR SPECULATION.

9 THE COURT: DO YOU KNOW?

10 DO YOU HAVE PERSONAL KNOWLEDGE?

11 THE WITNESS: YES.

12 THE COURT: NEXT QUESTION.

13 Q BY MR. GRAYSON: YOUR ANSWER WAS YES?

14 A YES.

15 Q OKAY. AND WAS THAT DETECTIVE AHN WHO
16 ANALYZED THE COMPUTER?

17 A I DO NOT KNOW.

18 Q THE EVIDENCE THAT YOU UNCOVERED SUGGESTED
19 THAT MR. FEISSA WAS SHIPPING THROUGH THE MAIL --

20 MS. OSTROWSKI: YOUR HONOR, OBJECTION. THIS IS
21 THE INGLEWOOD CASE FELONY CONVICTION.

22 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION ON
23 352 GROUNDS SINCE THERE'S THE UNDERLYING CONVICTION.
24 THERE'S NO QUESTION AS TO HIS CULPABILITY.

25 MR. GRAYSON: OKAY. I BELIEVE ALL MY OTHER
26 QUESTIONS DEAL WITH UNDERLYING FACTS. SO -- I DON'T
27 THINK I HAVE ANY OTHER QUESTIONS.

28 THE COURT: ALL RIGHT, MR. GRAYSON.

1 MS. OSTROWSKI, IT'S ABOUT 4:28.

2 MS. OSTROWSKI: I THINK I CAN GET IT IN.

3 THE COURT: LET'S PROCEED.

4

5 CROSS-EXAMINATION

6 BY MS. OSTROWSKI:

7 Q SIR, IF I UNDERSTAND YOU CORRECTLY, DURING
8 THE MARCH 3RD, 2009 INTERVIEW, JUST YOU AND DETECTIVE
9 LABBE WERE THE ONLY LAW ENFORCEMENT PRESENT; IS THAT
10 RIGHT?

11 A YES.

12 Q DETECTIVE LABBE WAS ESSENTIALLY RUNNING THE
13 INTERVIEW?

14 A YES.

15 Q IT WASN'T YOUR INTERVIEW TO CONDUCT, IT WAS
16 DETECTIVES LABBE'S?

17 A CORRECT.

18 Q AND IN THAT INTERVIEW, HE MAKES REFERENCE
19 TO A STATEMENT THAT MR. HIGGINS HIGHLIGHTED ABOUT FEISSA
20 TALKING TO VALENTO AND ANDERSON ABOUT TARRANT STREET.

21 DO YOU KNOW IF THAT WAS A CORRECT STATEMENT
22 OR INCORRECT?

23 A I BELIEVE IT WAS AN INCORRECT STATEMENT.

24 Q WHY DO YOU BELIEVE THAT?

25 A BECAUSE I'VE NEVER HEARD OF THAT BEFORE,
26 SAMUEL FEISSA EVER TALKING TO VALENTO ABOUT TARRANT, UP
27 TO THAT DATE.

28 Q WITH RESPECT TO INFORMANTS AND WHETHER THEY

1 HAVE A MOTIVE TO LIE, ISN'T IT FAIR TO SAY, SIR, THAT
2 USING INFORMANTS IS KIND OF A DIRTY BUSINESS; RIGHT?

3 A YES, IT IS.

4 Q ESPECIALLY WHEN YOU'RE TALKING ABOUT GANGS;
5 RIGHT?

6 A THAT'S CORRECT.

7 Q AND SOMETIMES WHEN YOU'RE A GANG DETECTIVE,
8 YOU NEED TO GATHER INFORMATION ABOUT A GANG; RIGHT?

9 A THAT'S CORRECT.

10 Q AND WHO IS THE BEST SOURCE TO GO TO TO
11 GATHER INFORMATION ABOUT THAT PARTICULAR GANG?

12 A GANG MEMBERS.

13 Q AND WHEN YOU DO THAT, SOMETIMES DOES THE
14 SHERIFF'S DEPARTMENT CULTIVATE THOSE GANG MEMBERS AND
15 PAY THEM MONEY?

16 A THAT IS CORRECT.

17 Q WITH RESPECT TO THE UNRELIABILITY CARD,
18 THAT DETECTIVE LABBE DECLARED MR. FEISSA, IN THAT
19 CONTEXT DOES UNRELIABLE MEAN UNTRUTHFUL ABOUT
20 INFORMATION HE PROVIDED ON THE JUAN LLANOS MURDER?

21 A NO, IT DOES NOT.

22 Q DOES THE UNRELIABLE CARD REFER TO OR MEAN
23 UNTRUTHFUL ABOUT THE INFORMATION HE PROVIDED ON THE
24 QUEZADA MURDER?

25 A NO, IT DOES NOT.

26 Q DOES UNRELIABLE IN THAT SENSE MEAN THAT HE
27 WAS UNTRUTHFUL ABOUT ANY OF THE OTHER INFORMATION THAT
28 HE GAVE TO DETECTIVE SHAW?

1 A NO, IT DOES NOT.

2 MR. HIGGINS: OBJECTION.

3 OVERBROAD. CALLS FOR SPECULATION.

4 THE COURT: LAY THE FOUNDATION, PLEASE.

5 Q BY MS. OSTROWSKI: ARE YOU FAMILIAR WITH
6 DECLARING SOMEBODY UNRELIABLE?

7 A YES.

8 Q WHAT DOES UNRELIABLE MEAN IN THIS
9 PARTICULAR CONTEXT?

10 A ON THIS PARTICULAR CARD THAT DETECTIVE
11 LABBE FILLED OUT?

12 Q YES.

13 A HE MADE HIM UNRELIABLE AT THIS POINT
14 BECAUSE HE WAS NOT ELICITING (SIC) TO OR ADHERING TO OUR
15 WANTING TO KNOW HIS WHEREABOUTS, HIS THREATS FROM THE
16 GANG.

17 AND AT THAT POINT, DETECTIVE LABBE DID NOT
18 WANT TO TAKE THE LIABILITY ANYMORE OF SAMUEL FEISSA NOT
19 ADHERING TO WHERE HE WAS GOING TO BE. SO IF SOMEONE --
20 SOME HARM CAME TO HIM, DID NOT WANT THE LIABILITY.

21 Q WHEN YOU SAY THREATS ON MR. FEISSA FROM THE
22 GANG, WHAT ARE YOU REFERRING TO?

23 A AT THAT POINT, WE ORDERED HIM BACK FROM
24 TEXAS EARLIER THAN HE WANTED TO COME BACK BECAUSE WE HAD
25 INFORMATION THAT THERE WAS A THREAT TO HIS SAFETY, THAT
26 135 PIRU --

27 MR. HIGGINS: OBJECTION.

28 RELEVANCE, YOUR HONOR.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 -VS-) NO. YA075709-01/
) -02/-03
 DENNIS WALLACE-01)
 DEYAA KHALILL-02)
 RAYMOND GIBBS-03) SEP 10 2012
)
 DEFENDANT-APPELLANT.)
)

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 16, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 14 OF 16 VOLUMES
PAGES 3601 TO 3839-3900

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 MONDAY, WE COULD BE IN CLOSING ARGUMENT OR INSTRUCTIONS.
2 WE MAY STILL BE. I DON'T EXPECT YOU'LL BE IN
3 DELIBERATIONS AT 1:30.

4 SO CAN YOU CHECK WITH THE DOCTOR AND FIND
5 OUT IF IT'S POSSIBLE TO RESCHEDULE IT LATER IN THE DAY?
6 OR MUCH EARLIER IN THE DAY?

7 THE SAME IS TRUE WITH ALTERNATE NUMBER 1,
8 IF YOU WOULD, PLEASE.

9 JUROR NO. 1: I ALREADY CHANGED IT FROM THIS WEEK.

10 I DON'T KNOW.

11 THE COURT: I'M NOT SAYING YOU'RE GOING TO BE
12 SUCCESSFUL. I'M JUST ASKING YOU TO APPROACH THE
13 DOCTOR'S OFFICE AND FIND OUT IF THAT'S POSSIBLE.

14 ANYONE ELSE WITH SCHEDULING ISSUES?

15 ALL RIGHT. NO OTHER AFFIRMATIVE RESPONSE.

16 LET'S COMPLETE THE TESTIMONY OF DETECTIVE
17 DUNCAN.

18
19 JOHN DUNCAN,
20 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
21 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

22 THE COURT: DETECTIVE, I'D REMIND YOU YOU'RE STILL
23 UNDER OATH.

24
25 CROSS-EXAMINATION RESUMED
26 BY MS. OSTROWSKI:

27 Q SIR, YESTERDAY, WE LEFT OFF TALKING ABOUT
28 THE UNRELIABLE CARD. AND I JUST WANTED TO CONFIRM, WAS

1 THAT YOU OR DETECTIVE LABBE WHO FILLED THAT OUT?

2 A DETECTIVE LABBE.

3 Q YESTERDAY, MR. HIGGINS ACCUSED YOU OF
4 HAVING --

5 MR. HIGGINS: OBJECTION, FORM OF THE QUESTION.

6 THE COURT: SUSTAINED. "ACCUSED" IS HARSH.

7 Q BY MS. OSTROWSKI: MR. HIGGINS ASKED YOU IF
8 YOU HAD AMNESIA WHEN HE WAS ASKING YOU QUESTIONS ABOUT
9 WHETHER YOU OR DETECTIVE LABBE MADE CERTAIN STATEMENTS
10 IN THAT TRANSCRIPT.

11 DO YOU RECALL THAT QUESTIONING?

12 A YES, I DO.

13 Q ON WEDNESDAY OF THIS WEEK, FEW DAYS AGO,
14 DID MR. HIGGINS NOTIFY YOU THAT HE WOULD BE CALLING YOU
15 AS A WITNESS?

16 A YES.

17 Q DID HE PROVIDE YOU WITH A COPY OF THE
18 TRANSCRIPT AND ASK YOU TO BE PREPARED ON IT?

19 MR. HIGGINS: OBJECTION, YOUR HONOR.

20 RELEVANCE.

21 THE COURT: OVERRULED.

22 THE WITNESS: NOT UNTIL RIGHT BEFORE I CAME UP TO
23 THE STAND.

24 Q BY MS. OSTROWSKI: AND DID I PROVIDE YOU
25 WITH A TRANSCRIPT SOONER THAN THAT?

26 A YES.

27 Q DID YOU HAVE A CHANCE TO LISTEN TO THE
28 INTERVIEW WITH THE TRANSCRIPT?

1 A YES, I DID.

2 Q AND DID YOU INDICATE TO MR. HIGGINS THAT
3 YOU FELT THERE WERE INCONSISTENCIES, THAT THE TRANSCRIPT
4 WAS CONFUSING BECAUSE IT DIDN'T ACCURATELY REFLECT WHO
5 WAS TALKING AT THE APPROPRIATE TIMES?

6 A YES, I DID.

7 Q DID YOU OFFER TO SIT DOWN WITH MR. HIGGINS
8 AND HIS INVESTIGATOR TO LISTEN TO TAPE TOGETHER AND GO
9 OVER THE TRANSCRIPT?

10 A YES, I DID.

11 Q HOW DID HE RESPOND?

12 A HE SAID HE WOULD GET BACK TO ME.

13 Q DID HE EVER GET BACK TO YOU?

14 A NOT UNTIL HE HANDED ME THE TRANSCRIPT
15 BEFORE I TESTIFIED.

16 Q THAT WAS AS YOU WERE COMING HERE TO TESTIFY
17 WALKING UP TO THE STAND?

18 A YES, MA'AM.

19 Q NOW, MR. HIGGINS ALSO ASKED YOU ABOUT A
20 2006 AFFIDAVIT THAT YOU WROTE REGARDING A WIRETAP FOR
21 NUTTY BLOCK CRIPS. DO YOU RECALL THAT?

22 A YES.

23 Q IN THAT AFFIDAVIT, YOU TALKED ABOUT HOW
24 IN-CUSTODY GANG INFORMANTS ARE UNRELIABLE; IS THAT
25 RIGHT?

26 A THAT IS CORRECT.

27 Q NOW, HOW, IF AT ALL, WAS THAT CASE WITH
28 NUTTY BLOCK WHERE YOU WROTE THAT, DIFFERENT FROM THIS

1 CASE?

2 A IN 2006 REGARDING THE NUTTY BLOCK WIRETAP
3 AFFIDAVIT THAT I WROTE, AT THAT TIME, THERE WAS
4 IN-CUSTODY INFORMANTS THAT I HAD THAT I FOUND TO BE
5 UNTRUTHFUL. WHEN I TRIED THE CORROBORATE, I FOUND THEY
6 WERE UNTRUTHFUL.

7 Q I'LL INTERRUPT YOU FOR A MOMENT.
8 WHAT WERE THEY UNTRUTHFUL ABOUT? WHAT'S
9 RELATED TO YOUR ACTUAL CASE?

10 A IT WAS REGARDING THE -- NUMEROUS CASES
11 INCLUDED IN THAT WIRETAP AFFIDAVIT IN 2006.

12 Q SO YOU HAD PROVED THEM TO BE UNTRUTHFUL
13 ABOUT FACTS RELATING TO THE CASE YOU WERE INVESTIGATING?

14 A THAT IS CORRECT.

15 Q GO ON.

16 A REGARDING THIS --

17 MR. NEWMAN: I'M GOING TO OBJECT. CALLS FOR A
18 NARRATIVE. ALSO IRRELEVANT.

19 THE COURT: I'M GOING TO SUSTAIN ON 352 GROUNDS
20 AS TO THE LEVEL OF THE DETAIL THAT YOU'RE ASKING HIM
21 ABOUT.

22 Q BY MS. OSTROWSKI: GENERALLY SPEAKING, HOW
23 IS THAT THEN DIFFERENT FROM THIS CASE?

24 MR. NEWMAN: I'M GOING TO OBJECT.

25 HE'S ALREADY ANSWERED.

26 THE COURT: OVERRULED.

27 HAVE YOU FINISHED YOUR ANSWER?

28 THE WITNESS: REGARDING THIS WIRETAP AFFIDAVIT,

1 REGARDS THE 135 PIRU, THERE WERE IN-CUSTODY INFORMANT
2 THAT HAS BEEN FOUND TO BE TRUTHFUL.

3 Q BY MS. OSTROWSKI: REGARDS THE FACTS OF
4 THE CASE THAT WERE YOU INVESTIGATING 135 PIRU FOR?

5 A THAT'S CORRECT.

6 Q NOW, WHEN YOU USE AN INFORMANT, WHETHER
7 IT'S CONFIDENTIAL RELIABLE INFORMANT OR CITIZEN
8 INFORMANT, DO YOU LOOK AT THEIR STATEMENTS WITH CAUTION?

9 A YES, I DO.

10 Q DO YOU CONDUCT FURTHER INVESTIGATION IN
11 ORDER TO CORROBORATE THEM?

12 A YES, I DO.

13 Q WOULD YOU TRY TO CORROBORATE BY DOING
14 FURTHER INVESTIGATION ON ANY WITNESS?

15 A YES, I DO.

16 Q DOES THE FACT THAT AN INFORMANT IS DEALING
17 DRUGS AUTOMATICALLY MEAN THAT THE INFORMATION THAT THAT
18 PERSON PROVIDED YOU ON A MURDER CASE IS FALSE?

19 A NO.

20 Q DOES THE FACT THAT AN INFORMANT COMMITTED
21 HIS OWN MURDER AUTOMATICALLY MEAN THAT INFORMATION
22 PROVIDED YOU ON OTHER CASES IS FALSE?

23 A NO.

24 Q MR. FEISSA'S ARREST ON THAT DOPE CASE WAS
25 IN MARCH OF 2009; IS THAT RIGHT?

26 A THAT'S CORRECT.

27 Q SO THAT'S ABOUT 8 MONTHS AFTER HE HAD
28 PROVIDED DETECTIVE VALENTO AND YOUR COLLEAGUES WITH

1 INFORMATION ON THE LLANOS AND QUEZADA MURDERS; IS THAT
2 RIGHT?

3 A THAT'S CORRECT.

4 Q WHEN YOU AND DETECTIVE LABBE INTERROGATED
5 HIM ABOUT THAT DRUG CASE, HE WASN'T WILLING TO ADMIT HIS
6 OWN CULPABILITY; RIGHT?

7 A THAT'S CORRECT.

8 Q AND IN FACT, DETECTIVE LABBE FILED THE CASE
9 ABOUT THOSE CHARGES OUT OF THE INGLEWOOD COURT AGAINST
10 MR. FEISSA; RIGHT?

11 A THAT'S CORRECT.

12 Q AND IN FACT, THAT'S THE CASE MR. FEISSA
13 PLED GUILTY TO ON ALL CHARGES AND IS WAITING FOR
14 SENTENCING FROM THE JUDGE; RIGHT?

15 A THAT IS CORRECT.

16 Q AND THAT SENTENCE COULD BE THE MAXIMUM ON
17 THOSE CHARGES; IS THAT RIGHT?

18 A THAT'S MY UNDERSTANDING, YES.

19 Q NOW, AFTER MR. FEISSA BECAME AN INFORMANT,
20 AND AROUND THE TIME THAT HE GOT ARRESTED ON THIS DRUG
21 CASE, DID YOU AND DETECTIVE LABBE ALSO LEARN THAT HE
22 MIGHT BE A SUSPECT IN THE DAVEON CHILDS MURDER?

23 A YES.

24 Q IS THE DAVEON CHILDS MURDER THE SAME THING
25 AS WHAT WE HEARD OTHER LAWYERS REFERRING TO AS THE
26 TARRANT STREET MURDER?

27 A YES, IT IS.

28 Q WHEN YOU INTERROGATED MR. FEISSA ABOUT THAT

1 MURDER, MR. FEISSA DIDN'T ADMIT HIS INVOLVEMENT IN THE
2 DAVEON CHILDS MURDER; CORRECT?

3 A NO, HE DID NOT.

4 Q SO IT'S FAIR TO SAY THAT YOU CAUGHT
5 MR. FEISSA LYING ABOUT HIS DOPE CASE; RIGHT?

6 A YES.

7 Q FAIR TO SAY YOU CAUGHT HIM LYING ABOUT THE
8 DAVEON CHILDS MURDER; RIGHT?

9 A YES.

10 Q HAVE YOU EVER CAUGHT HIM LYING ABOUT THE
11 INFORMATION HE GAVE ON QUEZADA?

12 A NO, I HAVE NOT.

13 Q HAVE YOU EVER CAUGHT HIM LYING ABOUT THE
14 INFORMATION HE PROVIDED ON THE LLANOS MURDER?

15 A NO, I HAVE NOT.

16 Q HAVE YOU EVER CAUGHT HIM LYING ON ANY OF
17 THE OTHER INFORMATION THAT HE PROVIDED ON THE NUMEROUS
18 CASES THAT WERE LISTED OUT IN THE WIRE?

19 A NO, I HAVE NOT.

20 Q IN FACT, MR. FEISSA WAS CORROBORATED ON THE
21 LLANOS MURDER CASE; ISN'T THAT CORRECT?

22 MR. GRAYSON: OBJECTION, LEADING.

23 MS. OSTROWSKI: IT'S CROSS.

24 THE COURT: OVERRULED.

25 THE WITNESS: THAT IS CORRECT.

26 Q BY MS. OSTROWSKI: IN FACT, AFTER A JURY
27 TRIAL, THAT CASE RESULTED IN A CONVICTION; CORRECT?

28 A YES.

1 MS. OSTROWSKI: NO FURTHER QUESTIONS.

2 THE COURT: WHO WANTS TO COMMENCE WITH REDIRECT?

3 MR. HIGGINS.

4 MR. HIGGINS: YES, YOUR HONOR.

5 THAT WOULD BE FINE.

6

7 REDIRECT EXAMINATION

8 BY MR. HIGGINS:

9 Q SO YOU DID HAVE AN OPPORTUNITY TO REVIEW
10 THE TRANSCRIPT; IS THAT CORRECT?

11 A YES, SIR.

12 Q OKAY. AND LET ME ASK YOU THIS. AT THE
13 TIME -- COUNSEL JUST ASKED YOU DID YOU -- YOU DIDN'T
14 CATCH FEISSA LYING ABOUT QUEZADA.

15 WELL -- MR. GORDON'S ACCOUNT OF THE
16 INFORMATION, THE EYEWITNESS, THAT CONTRADICTED
17 MR. FEISSA; DID IT NOT?

18 MS. OSTROWSKI: OBJECTION. CALLS FOR SPECULATION.

19 THIS WITNESS WASN'T HERE FOR MR. GORDON'S
20 TESTIMONY.

21 THE COURT: SUSTAINED.

22 Q BY MR. HIGGINS: WELL, YOU INTERVIEWED
23 MR. GORDON; RIGHT?

24 A I WAS PRESENT DURING HIS INTERVIEW, YES.

25 Q AND HE TOLD YOU THAT THREE PEOPLE CAME
26 ACROSS THE STREET; RIGHT?

27 A THAT'S CORRECT.

28 Q HE TOLD YOU THAT THERE WAS A BLACK CAMRY

1 THAT CAME OUT FROM RIGHT WHERE THE INDIVIDUALS WERE --
2 WHERE MR. QUEZADA WAS SHOT; IS THAT CORRECT?

3 A YES.

4 Q OKAY. AND YOU HAD INFORMATION THAT
5 MR. FEISSA WAS IN A BLACK CAMRY, WAS ARRESTED IN A BLACK
6 CAMRY, FOUR OR FIVE DAYS AFTER THAT KILLING; IS THAT
7 CORRECT?

8 A I DID NOT HAVE THAT INFORMATION, NO.

9 Q YOU DIDN'T HAVE THAT INFORMATION, THE
10 SHERIFF'S DEPARTMENT HAD THAT INFORMATION BECAUSE A
11 SHERIFF'S DEPUTY ARRESTED MR. FEISSA; IS THAT RIGHT?

12 A MY UNDERSTANDING, YES.

13 Q OKAY. NOW, WITH RESPECT TO MR. FEISSA,
14 JUST BECAUSE HE COMMITTED A MURDER ON JANUARY 3RD,
15 DAVEON CHILDS, YOU'RE SAYING THAT DOESN'T NECESSARILY
16 MEAN HE'S NOT GIVING GOOD INFORMATION? THAT'S THE GIST
17 OF WHAT YOU'RE SAYING; IS THAT CORRECT?

18 WITH REGARD TO THIS CASE?

19 A THAT'S CORRECT.

20 Q OKAY. WELL -- BUT HE WASN'T FORTHCOMING AT
21 THE TIME THAT HE WAS SIGNED UP AS CONFIDENTIAL RELIABLE
22 INFORMANT.

23 HE DIDN'T SAY "WELL, I HAVE INFORMATION
24 ABOUT THIS PARTICULAR CASE"; IS THAT CORRECT? HE DIDN'T
25 TELL THAT TO ANYBODY, INCLUDING YOU; IS THAT RIGHT?

26 MS. OSTROWSKI: OBJECTION.

27 VAGUE ABOUT WHICH CASE.

28 Q BY MR. HIGGINS: DAVEON CHILDS.

1 JANUARY 3RD, 2008. THAT WE STIPULATED TO THAT HE IS A
2 MURDERER ON.

3 DID HE COME FORTH AND TELL YOU "I HAVE
4 INFORMATION ABOUT THAT CASE"?

5 A NOT TO ME.

6 Q OKAY.

7 AND DO YOU KNOW WHETHER HE SAID THAT TO
8 ANYBODY ELSE?

9 A NOT MY UNDERSTANDING, NO.

10 Q AS A MATTER OF FACT, HE DENIED IT; RIGHT?

11 A YES.

12 Q OKAY. AND AT THE TIME THAT HE WAS ARRESTED
13 FOR A GUN, AND HE ASKED TO SPEAK TO DETECTIVES, HOMICIDE
14 DETECTIVES, HE WAS THE ONLY ONE THAT KNEW THAT HE WAS
15 INVOLVED IN THAT JANUARY 3RD MURDER OF DAVEON CHILDS; IS
16 THAT RIGHT?

17 MS. OSTROWSKI: CALLS FOR SPECULATION IF
18 MR. FEISSA IS THE ONLY ONE THAT KNEW.

19 Q BY MR. HIGGINS: WELL, HE KNEW THAT --

20 THE COURT: SUSTAINED.

21 Q BY MR. HIGGINS: THE DETECTIVE DIDN'T KNOW;
22 IS THAT RIGHT?

23 A I DON'T KNOW EVERYTHING THAT HE KNOWS ABOUT
24 THAT MURDER NO, SIR.

25 Q OKAY.

26 BUT MR. FEISSA NEVER TOLD YOU ABOUT IT,
27 THOUGH; RIGHT?

28 A THAT'S CORRECT.

1 Q AND DURING THAT INTERVIEW OF JANUARY THE
2 3RD, YOU AND/OR DETECTIVE LABBE ASKED HIM ABOUT THAT
3 MURDER OF DAVEON -- NO, ABOUT ANOTHER MURDER, TARRANT
4 STREET; RIGHT?

5 MS. OSTROWSKI: OBJECTION.

6 IT'S THE SAME MURDER. ASSUMES FACTS NOT IN
7 EVIDENCE.

8 THE COURT: SUSTAINED.

9 Q BY MR. HIGGINS: OKAY. THE SAME MURDER,
10 TARRANT STREET? YOU ASKED HIM ABOUT TARRANT STREET?

11 A YES, WE DID.

12 Q AND HE DENIED THAT; IS THAT RIGHT?

13 A THAT'S CORRECT.

14 Q HE WAS PUTTING THAT ON SOMEBODY ELSE;
15 WASN'T HE?

16 A YES.

17 Q ALL RIGHT.

18 AND HE HIMSELF WAS INVOLVED, BUT HE WAS
19 BLAMING SOMEBODY ELSE; IS THAT CORRECT?

20 A YES.

21 Q AND YOU HAD INFORMATION AT THAT PARTICULAR
22 TIME THAT HIS MOTHER'S VAN WAS USED IN THAT MURDER; IS
23 THAT RIGHT?

24 A WE SUSPECTED THAT, YES.

25 Q OKAY. AND YOU SUSPECTED THERE WAS A HOLE
26 IN THE BACK OF THE VAN FROM A BULLET THAT WAS SHOT BY
27 SOMEBODY ELSE AT THAT VEHICLE AS IT WAS DRIVING AWAY; IS
28 THAT RIGHT?

1 A THAT'S CORRECT.

2 Q AND MR. FEISSA WAS TRYING TO COVER THAT
3 HOLE UP; WASN'T HE?

4 A WE BELIEVED SOMEONE COVERED THE HOLE UP
5 WITH A STICKER, YES.

6 Q YOU BELIEVE THAT FEISSA COVERED IT UP WITH
7 A STICKER OF JESUS; IS THAT RIGHT?

8 A YES.

9 Q YOU HAD THAT INFORMATION, SO HE WASN'T
10 BEING FORTHCOMING ON THAT; ISN'T THAT RIGHT?

11 A YES.

12 Q AND AS A RESULT, AFTER YOU TALKED TO HIM,
13 YOU PUT HIM IN A CELL THAT WAS WIRED WITH SOMEONE ELSE,
14 SO HE COULD START TALKING ABOUT THIS INFORMATION; DIDN'T
15 YOU?

16 A THAT IS CORRECT.

17 Q AND YOU DID FIND OUT THAT HE WAS WHISPERING
18 ABOUT THE FACT THAT THERE WAS A HOLE IN THE VAN; ISN'T
19 THAT RIGHT?

20 A I DID NOT LISTEN TO THAT RECORDING, NO.

21 Q YOU DON'T HAVE ANY INFORMATION HE WAS
22 WHISPERING ABOUT THAT TO HIS CELL MATE?

23 MS. OSTROWSKI: OBJECTION.

24 LACK OF PERSONAL KNOWLEDGE.

25 THE COURT: SUSTAINED.

26 Q BY MR. HIGGINS: OKAY. ALL RIGHT.

27 BUT A HOLE WAS FOUND IN THE VAN, WITH A
28 STICKER OF JESUS ON IT; RIGHT?

1 A THAT'S CORRECT.

2 Q SO HE WASN'T BEING TRUTHFUL ABOUT THAT? HE
3 WASN'T BEING FORTHCOMING ABOUT THAT; RIGHT?

4 A THAT IS CORRECT.

5 Q OKAY. AS A MATTER OF FACT, HE WAS
6 STICKING -- THROUGHOUT FROM THE TIME HE WAS SIGNED UP,
7 HE GAVE INFORMATION ABOUT OTHER PEOPLE, SO AS TO -- I'M
8 GOING TO ASK YOU THIS, BASED UPON YOUR OPINION AS A GANG
9 EXPERT, ET CETERA. ALL RIGHT?

10 WASN'T HE GIVING YOU GUYS INFORMATION SO AS
11 TO STICK CLOSE TO THE POLICE AND DIRECT ATTENTION AWAY
12 FROM HIM IN TERMS OF THE BAD THINGS? THE MURDER THAT HE
13 WAS DOING?

14 MS. OSTROWSKI: OBJECTION, SPECULATION.

15 ARGUMENTATIVE. IMPROPER OPINION.

16 Q BY MR. HIGGINS: DO YOU HAVE AN OPINION?

17 THE COURT: SUSTAINED. EVEN IF HE HAS AN OPINION,
18 IT'S NOT A PROPER ONE FOR HIM TO RENDER.

19 MR. HIGGINS: OKAY.

20 Q MR. FEISSA DENIED WHEN YOU AND/OR DETECTIVE
21 LABBE CONFRONTED HIM, HE DENIED THAT HE -- WELL, LET ME
22 REPHRASE IT.

23 YOU CONFRONTED MR. FEISSA, YOU AND
24 DETECTIVE LABBE, WITH THE INFORMATION THAT HE WAS THE
25 ONLY ONE THAT KNEW THAT A .45 WAS USED I BELIEVE -- IN
26 THE TARRANT STREET MURDER; IS THAT RIGHT?

27 A YES.

28 Q AND HE DENIED THAT; RIGHT?

1 A THAT IS CORRECT.

2 Q OKAY. SO HE WASN'T BEING TRUTHFUL ON THAT
3 OCCASION; IS THAT RIGHT?

4 A I'VE ANSWERED THAT SEVERAL TIMES. YES.

5 Q NOW, WITH RESPECT TO MR. GIBBS. DID YOU
6 GET ANY INFORMATION FROM THE WIRETAPS THAT MR. GIBBS
7 MADE ANY ADMISSIONS ABOUT BEING INVOLVED IN THE 2008
8 MURDER OF -- OR KILLING OF MR. QUEZADA?

9 A WELL, I BELIEVE THERE'S LOTS OF EVIDENCE IN
10 THE WIRETAP INVESTIGATIONS THAT HE'S -- HAS BEEN
11 INVOLVED IN KILLINGS, YES.

12 Q 2008. MR. QUEZADA.

13 A YOU'RE ASKING IF HE SAID "I SPECIFICALLY
14 KILLED SOMEONE IN 2008, MR. QUEZADA"? NO, HE DOES NOT
15 HAVE THAT VERBIAGE IN A WIRETAP.

16 Q SO YOU DON'T HAVE THAT CORROBORATION FROM
17 HIS MOUTH; IS THAT RIGHT?

18 MS. OSTROWSKI: YOUR HONOR, OBJECTION.

19 ARGUMENTATIVE. ALSO OUTSIDE THE SCOPE OF
20 CROSS.

21 THE COURT: SUSTAINED.

22 Q BY MR. HIGGINS: YOU HAVE ANY PHYSICAL
23 EVIDENCE THAT CORROBORATES MY CLIENT WAS INVOLVED IN THE
24 MURDER?

25 MS. OSTROWSKI: OBJECTION. BEYOND THE SCOPE.

26 THE COURT: SUSTAINED.

27 EXCEEDS THE SCOPE OF CROSS-EXAMINATION.

28 MR. HIGGINS: THAT'S FINE.

1 NO FURTHER QUESTIONS.

2 THE COURT: WHO WANTS TO GO NEXT?

3 MR. NEWMAN? ANY QUESTIONS?

4 MR. NEWMAN: NO QUESTIONS.

5 THE COURT: MR. GRAYSON, ANY QUESTIONS?

6 MR. GRAYSON: I THINK I DO.

7
8 RECROSS-EXAMINATION

9 BY MR. GRAYSON:

10 Q YOU SAID THAT BASICALLY, MR. FEISSA'S
11 INFORMATION ABOUT THE JUAN LLANOS CASE LED TO A
12 CONVICTION, ESSENTIALLY?

13 A I BELIEVE SO, YES.

14 Q BUT HE DIDN'T TESTIFY AT THAT HEARING, DID
15 HE? OR AT THAT TRIAL?

16 A NO, HE DID NOT.

17 Q DID YOU EVER LOOK AT MR. FEISSA AS A
18 SUSPECT IN THE JUAN LLANOS MURDER?

19 MS. OSTROWSKI: OBJECTION, IRRELEVANT.

20 OUTSIDE THE SCOPE.

21 THE COURT: OVERRULED.

22 THE WITNESS: WE LOOKED INTO -- HIM AS A SUSPECT
23 AS FAR AS WE MADE SURE WE -- DID THINGS TO PROVE THAT HE
24 WAS NOT INVOLVED IN THAT MURDER.

25 Q BY MR. GRAYSON: SO YOU LOOKED AT HIM AS A
26 SUSPECT, OR NOT?

27 A ANY TIME WE RECEIVE INFORMATION
28 INVESTIGATING A MURDER, ONE OF THE FIRST THINGS THAT I

1 WILL DO IS INVESTIGATE TO MAKE SURE THAT INDIVIDUAL WAS
2 NOT INVOLVED IN THAT.

3 SO -- IT WASN'T LIKE HE WAS ANY SUSPECT,
4 PERSON OF INTEREST. BUT WE DID THINGS TO MAKE SURE HE
5 WASN'T PAWNING THAT MURDER OFF ON SOMEONE ELSE.

6 Q BUT YOU WERE AWARE THAT HE WAS INVOLVED IN
7 AN ABORTED DRIVE-BY SHOOTING OF JUAN LLANOS?

8 A NO, I WAS NOT.

9 MR. GRAYSON: I HAVE NOTHING FURTHER.

10 THE COURT: ANYTHING FURTHER OF THE WITNESS?

11 MS. OSTROWSKI: NO.

12 THE COURT: MAY THE WITNESS BE EXCUSED?

13 MS. OSTROWSKI: YES.

14 THE COURT: ANY OBJECTION?

15 MR. HIGGINS: NO OBJECTION.

16 MR. GRAYSON: NO OBJECTION.

17 MR. NEWMAN: NO OBJECTION.

18 THE COURT: DETECTIVE, THANK YOU FOR JOINING US,
19 AND FOR YOUR PATIENCE. YOU ARE EXCUSED.

20 THE WITNESS: THANK YOU, SIR.

21 THE COURT: I'M GOING TO ALLOW CALLING A WITNESS
22 OUT OF ORDER.

23 DETECTIVE VALENTA, STEP FORWARD, PLEASE.

24
25 MICHAEL VALENTA,
26 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
27 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

28 THE COURT: I'D REMIND YOU YOU'RE STILL UNDER

1 OATH.

2 STATE YOUR FULL NAME AGAIN FOR THE RECORD.

3 THE WITNESS: MICHAEL VALENTO.

4 M-I-C-H-A-E-L. V-A-L-E-N-T-O.

5 THE COURT: YOU MAY INQUIRE.

6
7 DIRECT EXAMINATION

8 BY MS. OSTROWSKI:

9 Q DETECTIVE, HAVE YOU EVER INTERVIEWED JOLON
10 GORDON?

11 A YES, ON SEVERAL OCCASIONS.

12 Q WHEN WAS THE FIRST TIME YOU INTERVIEWED
13 MR. GORDON?

14 A EARLY AUGUST OF 2008.

15 Q AT THAT TIME, DID HE MENTION THAT HE SAW
16 THREE PEOPLE RUNNING ACROSS THE STREET?

17 A HE DID NOT.

18 Q IN MAY, 2011, APPROXIMATELY 3 YEARS LATER,
19 DID YOU FLY TO TEXAS TO INTERVIEW MR. GORDON?

20 A I DID.

21 Q WHY DID DO YOU THAT?

22 A HE WAS SAID TO HAVE HAD ADDITIONAL
23 INFORMATION REGARDING THE MURDER.

24 Q WHO CONTACTED YOU TO ADVISE YOU OF THAT?

25 A DETECTIVE GENE MORSE, M-O-R-S-E.

26 Q WHEN YOU GOT TO TEXAS, DID YOU IN FACT MEET
27 WITH MR. GORDON?

28 A I DID.

1 Q DID MR. GORDON IN FACT PROVIDE YOU WITH
2 ADDITIONAL INFORMATION THAT HE HAD NOT ORIGINALLY GIVEN
3 IN 2008?

4 A YES.

5 Q WHAT WAS THE DIFFERENCE BETWEEN
6 MR. GORDON'S TWO STATEMENTS?

7 A THE MAIN DIFFERENCE WAS THAT THREE
8 INDIVIDUALS WALKED FROM THE WEST SIDE OF ONE --
9 CORRECTION, OF AVALON BOULEVARD, USING A MAILBOX AS A
10 REFERENCE, TO THE EAST SIDE OF AVALON BOULEVARD.

11 HE THEN HEARD GUNSHOTS. DUCKED BEHIND THE
12 MAILBOX. AND THEN HE OBSERVED THESE SAME THREE
13 INDIVIDUALS RUNNING TOWARDS HIS DIRECTION, AND THEN
14 RUNNING SOUTHBOUND ON AVALON, WITH ONE OF THE THREE
15 STOPPING AND TURNING TO LOOK AT HIM.

16 Q AND THAT WAS HIS STATEMENT IN 2011?

17 A THAT IS CORRECT.

18 Q NOW, IN 2011, WHEN MR. GORDON TOLD YOU THAT
19 HE SAW THE THREE GUYS CROSS AVALON BOULEVARD BEFORE THE
20 SHOOTING, YOU MENTIONED SOMETHING ABOUT USING THE
21 MAILBOX AS A REFERENCE?

22 A YES.

23 Q EXPLAIN THAT, PLEASE.

24 A WHEN I WAS SPEAKING TO MR. GORDON, I ASKED
25 WHERE THESE INDIVIDUALS CAME FROM. AND I SAID WHEN THEY
26 WALKED FROM THE MAILBOX TOWARDS THE EAST SIDE OF THE
27 STREET, AND THAT'S WHAT HE CONCURRED WITH, AS FAR AS
28 WHERE THEY CAME FROM AND WALKED ACROSS AVALON.

1 Q SO HE DIDN'T PUT THEM UP "OH, THEY WERE ON
2 138TH, OR 139TH"? HE NEVER MENTIONED THAT THE THREE
3 INDIVIDUALS WHO WERE CROSSING THE STREET WERE FURTHER
4 NORTH THAN THE CRIME SCENE?

5 A NO. AS A MATTER OF FACT, ON A SECOND
6 OCCASION WHILE CLARIFYING WHAT THE RACE WAS OF THE
7 INDIVIDUALS THAT CAME FROM THE MAILBOX AND CROSSED THE
8 STREET AGAIN, USED IT AS A SECOND REFERENCE HE NEVER
9 MENTIONED ANYTHING, CONCURRED WITH THAT FACT THEY CAME
10 FROM THE MAILBOX. NEVER MENTIONED ANYTHING COMING FROM
11 A DIFFERENT DIRECTION.

12 Q NOW, IN 2011, WHEN MR. GORDON WAS
13 IDENTIFYING THAT HE SAW THREE PEOPLE RUNNING FROM THE
14 CRIME SCENE, WAS HE INDICATING TO YOU THAT HE BELIEVED
15 THOSE WERE THE SUSPECTS?

16 A NO.

17 Q DID HE INDICATE THAT HE BELIEVED THEY WERE
18 VICTIMS?

19 A HE DIDN'T KNOW WHAT THEY WERE INVOLVED IN,
20 THAT THEY WERE JUST RUNNING AFTER THE SHOOTING.

21 Q NOW, WHY DID YOU SHOW HIM PHOTOGRAPHIC SIX
22 PACKS?

23 A I BELIEVE HE KNEW WHO AT LEAST ONE OF THE
24 INDIVIDUALS WAS. I WANTED TO SHOW HIM THE SIX PACK, SEE
25 IF HE COULD COME ACROSS I.D.

26 Q WHY WERE YOU OF THAT BELIEF?

27 A BASED ON SPEAKING WITH DETECTIVE MORSE. IT
28 WAS, YOU KNOW, STRANGE THAT SOMEBODY --

1 MR. NEWMAN: OBJECT AS TO WHAT DETECTIVE MORSE
2 TOLD HIM.

3 THE COURT: SUSTAINED.

4 MR. NEWMAN: HEARSAY.

5 MS. OSTROWSKI: IT'S NOT OFFERED FOR ITS TRUTH.

6 IT'S WHY HE SHOWED THE SIX PACKS.

7 MR. NEWMAN: 352, THEN.

8 MR. HIGGINS: IRRELEVANT.

9 THE COURT: SUSTAINED ON 352 GROUNDS.

10 THE FACT THAT HE SHOWED SIX PACKS IS
11 RELEVANT, BUT HIS SUBJECTIVE MOTIVATION IS NOT.

12 GO AHEAD.

13 Q BY MS. OSTROWSKI: DID YOU HEAR MR. GORDON
14 TESTIFY IN COURT YESTERDAY?

15 A YES.

16 Q AND YOU SAW MR. -- ON MR. GRAYSON'S
17 EXHIBIT, WHICH I BELIEVE WAS DEFENSE EXHIBIT D, DID YOU
18 SEE HIM DRAW A RED STICK FIGURE OF AN INDIVIDUAL THAT HE
19 SAW WALKING NORTHBOUND ON AVALON JUST BEFORE THE
20 SHOOTING?

21 A YES.

22 Q DID MR. GORDON EVER INDICATE TO YOU THAT
23 THAT INDIVIDUAL MIGHT BE RESPONSIBLE FOR THE SHOOTING?

24 A HE SAID THAT HE WAS NOT.

25 Q HE SAID AFFIRMATIVELY THAT HE WAS NOT THE
26 PERSON RESPONSIBLE FOR THE SHOOTING?

27 A CORRECT.

28 Q NOW, WHEN YOU SHOWED MR. GORDON THE

1 PHOTOGRAPHIC SIX PACKS, DID YOU FIRST GIVE HIM AN
2 ADMONITION?

3 A YES.

4 Q AND WHEN YOU SHOWED HIM MR. KHALILL'S SIX
5 PACK, DID HE MAKE AN IDENTIFICATION?

6 A NO.

7 Q WHEN YOU SHOWED HIM MR. WALLACE'S SIX PACK,
8 DID HE MAKES AN IDENTIFICATION?

9 A HE MADE AN IDENTIFICATION WITH RESPECT TO
10 SEEING -- BELIEVING HE SAW THAT INDIVIDUAL FROM THE
11 NEIGHBORHOOD PRIOR.

12 Q WHEN YOU SHOWED HIM MR. KHALILL'S SIX PACK,
13 DID HE MAKE ANY KINDS OF REFERENCE TO KNOWING HIM FROM
14 THE NEIGHBORHOOD?

15 A NO.

16 Q WHEN YOU SHOWED HIM MR. GIBBS'S SIX PACK,
17 DID HE MAKE AN IDENTIFICATION?

18 A HE DID NOT.

19 Q AT SOME POINT AFTER THAT FIRST INTERVIEW IN
20 TEXAS, AFTER HE SHOWED THE SIX PACK, DID MR. GORDON THEN
21 CALL YOU?

22 A YO.

23 Q WHAT DID HE SAY WHEN HE CALLED YOU?

24 A HE BASICALLY SAID THAT HE HAD MORE
25 INFORMATION TO DIVULGE, AND WANTED TO CLEAR HIS HEAD,
26 BASICALLY.

27 Q AND DID YOU ASK WHY HE DIDN'T PROVIDE YOU
28 THE MORE INFORMATION THAT HE HAD TO DIVULGE PREVIOUSLY?

1 A I ASKED HIM -- OBVIOUSLY, IT'S A GANG CASE,
2 I ASKED HIM IF HE WAS AFRAID, IF THAT WAS THE REASON HE
3 WAS RELUCTANT TO SPEAK ORIGINALLY WITH ALL THE
4 INFORMATION HE HAD.

5 AND HIS QUOTE WAS SOMETHING TO THE EFFECT,
6 "SOMETHING LIKE THAT, BRO."

7 Q DID YOU GO BACK AND INTERVIEW HIM AGAIN?

8 A MY PARTNER AND I DID, YES.

9 Q THAT WAS IN TEXAS; RIGHT?

10 A I BELIEVE IT WAS DALLAS/FORT WORTH, OUTSIDE
11 OF DALLAS, TEXAS.

12 Q DID THAT INTERVIEW TAKE PLACE IN A VEHICLE?

13 A YES.

14 Q AND WHAT DID MR. GORDON SAY ONCE HE GOT
15 INTO THE CAR WITH YOU AND DETECTIVE DUNCAN?

16 A THAT HE KNEW AN INDIVIDUAL IN THE SIX PACKS
17 THAT WE HAD SHOWN, AND HE WAS NERVOUS IN MAKING AN
18 IDENTIFICATION.

19 Q AND WAS THAT THE CLIP WE HEARD YESTERDAY IN
20 COURT, PEOPLE'S EXHIBIT 105?

21 A IT WAS.

22 Q WHAT DID MR. GORDON TELL YOU ABOUT
23 RECOGNIZING THIS PERSON? DID HE GIVE YOU A NAME?

24 A AT THE END, YES. IT WAS K-9 FROM 135. HE
25 HAD TATTOOS ON HIS FACE. AND BRAIDS.

26 Q AND DID MR. GORDON INDICATE TO YOU THAT K-9
27 KNEW HIM AND HIS FAMILY?

28 A YES.

1 Q DID HE INDICATE ANYTHING ABOUT A PREVIOUS
2 ALTERCATION WITH K-9?

3 A YES. HE SAID HE HAD AN ALTERCATION WHERE
4 HE WAS DRIVING HIS VEHICLE, AND SOMEBODY THREW SOMETHING
5 AT IT. WHEN ME STOPPED HIS VEHICLE TO GET OUT, HE WAS
6 CONFRONTED BY --

7 MR. HIGGINS: OBJECTION, YOUR HONOR.

8 IMPROPER REBUTTAL.

9 HE HAD TESTIFIED TO THAT.

10 THE COURT: NOT IN THE SAME SPECIFICS.

11 I'M GOING TO OVERRULE THAT.

12 Q BY MS. OSTROWSKI: YOU CAN FINISH YOUR
13 ANSWER. SOMEBODY THREW SOMETHING AT THE CAR, AND?

14 A YES. AND ALTHOUGH HE DID NOT PERSONALLY
15 SEE MR. KHALILL THROW THE ITEM, HE WAS THE ONE THAT
16 CONFRONTED MR. GORDON. AND AT SOME POINT IN DIALOGUE,
17 MR. KHALILL TOLD HIM "I KNOW WHERE YOU LIVE."

18 Q NOW, HOW DID YOU RESPOND TO MR. GORDON WHEN
19 HE'S NOW GIVING YOU THIS OTHER INFORMATION THAT HE KNOWS
20 MR. KHALILL?

21 A I BASICALLY TRIED TO WALK HIM THROUGH THE
22 PROCESS OF TRYING TO MAKE HIM FEEL MORE COMFORTABLE IN
23 COMING ALL THE WAY FORWARD WITH THIS INFORMATION.

24 Q DID YOU INDICATE TO HIM THAT IT WAS -- IT
25 DIDN'T MAKE SENSE TO YOU THAT HE WAS WILLING TO IDENTIFY
26 MR. WALLACE AS SOMEBODY HE KNEW FROM THE NEIGHBORHOOD,
27 BUT NOT SOMEBODY -- BUT NOT MAKE THE SAME REFERENCE TO
28 MR. KHALILL?

1 A I DID MAKE THAT POINT TO HIM, YES.

2 Q AFTER YOU MADE THAT POINT TO HIM, HOW DID

3 HE RESPOND?

4 A I'D HAVE TO REFER TO MY REPORT FOR THE

5 EXACT --

6 Q IF THAT WILL REFRESH YOUR MEMORY, GO AHEAD.

7 A I REFRESHED MY MEMORY.

8 Q WHAT DID HE SAY?

9 A BASICALLY, INDICATED HE DID NOT WANT

10 ANYTHING TO DO WITH THE INVESTIGATION.

11 Q DID MR. GORDON EVER SAY TO YOU, "YOU GUYS

12 WANT ME TO I.D. SOMEBODY WHO WASN'T THERE"?

13 A NO.

14 Q DID MR. GORDON EVER TELL YOU K-9 WAS A

15 SHOT-CALLER FOR 135 PIRU?

16 A HE ACTUALLY CALLED HIM A RINGLEADER, FIRST.

17 Q AND THEN DID YOU FOLLOW UP USING THE WORD

18 "SHOT-CALLER"?

19 A YES, TO SEE IF THAT DEFINITION OF

20 RINGLEADER IN HIS MIND WAS THE SAME AS MINE WITH

21 SHOT-CALLER.

22 Q WHAT DID HE INDICATE IN THAT REGARD?

23 A HE CONCURRED THAT SHOT-CALLER WAS PROBABLY

24 A BETTER WORD THAN RINGLEADER.

25 Q AND DID HE INDICATE THAT WAS ONE OF THE

26 REASONS WHY HE WAS FEARFUL OF RETALIATION?

27 A YES.

28 Q IN 2008, DID MR. GORDON TELL YOU ABOUT A

1 BLACK CAMRY?

2 A YES.

3 Q WHAT SPECIFICALLY DID HE SAY?

4 A THAT AT THE TIME OF THE GUNFIRE, WHEN HE
5 DUCKED DOWN AND LOOKED BACK UP, HE DID SEE A BLACK CAMRY
6 GOING NORTHBOUND FROM 139TH, NORTHBOUND ON AVALON
7 BOULEVARD.

8 Q SO HE SAW THAT ONCE HE LOOKED BACK UP; IS
9 THAT RIGHT?

10 A YES.

11 Q IN 2011, WHEN HE TELLS YOU ABOUT THE THREE
12 INDIVIDUALS THAT HE SAW RUNNING ACROSS AVALON AFTER THE
13 SHOOTING, DID HE INDICATE WHERE IN THAT PERIOD OF TIME
14 THE BLACK CAMRY WAS LEAVING THE SCENE?

15 A AT ABOUT THE SAME TIME THE INDIVIDUALS WERE
16 RUNNING AWAY.

17 Q AND IN 2008, DID MR. GORDON TELL YOU WITH
18 RESPECT TO THE BLACK CAMRY THAT HE DIDN'T KNOW IF THE
19 CAMRY WAS INVOLVED IN THE SHOOTING, OR MAY HAVE BEEN
20 TRYING TO GET OUT OF THERE BECAUSE THEY WERE AFRAID?

21 A THAT'S CORRECT. HE DID SAY THAT.

22 Q IS IT FAIR TO SAY YOU'VE TAPE-RECORDED
23 EVERY SUBSTANTIVE INTERVIEW YOU'VE EVER HAD WITH ANY
24 WITNESS IN THIS CASE?

25 A YES.

26 Q AND IS MR. GORDON INCLUDED IN THAT?

27 A YES.

28 Q AND YOU'VE PROVIDED THOSE RECORDINGS TO THE

1 DEFENSE?

2 A I HAVE.

3 MS. OSTROWSKI: I HAVE NO FURTHER QUESTIONS.

4 THE COURT: WHO WANTS TO GO FIRST ON CROSS?

5 MR. NEWMAN.

6
7 CROSS-EXAMINATION

8 BY MR. NEWMAN:

9 Q BASICALLY, I TAKE IT MR. GORDON -- WOULD IT
10 BE FAIR TO SAY WHAT HE TOLD YOU IN 2008 WAS CLOSER TO
11 THE TIME THIS INCIDENT HAPPENED?

12 A THAT IS CORRECT.

13 Q THREE YEARS LATER, YOU GO DOWN TO TEXAS TO
14 TALK TO HIM; CORRECT?

15 A THAT IS CORRECT.

16 Q AND AT NO TIME EVER DID HE TELL YOU HE SAW
17 MR. WALLACE AT THE SCENE OF THIS INCIDENT?

18 A THAT IS CORRECT.

19 Q WHEN HE IDENTIFIED MR. WALLACE, THE ONLY
20 THING HE IDENTIFIED IS "HEY, THAT'S A GUY I KNOW FROM
21 THE NEIGHBORHOOD"?

22 A WELL, HE ACTUALLY NEVER IDENTIFIED HIS
23 PHOTOGRAPH, JUST BY CHARACTERISTIC MONIKER AND GANG
24 NAME.

25 Q OKAY.

26 THAT WAS, HE DIDN'T IDENTIFY HIS PHOTO?

27 A CORRECT.

28 Q DO YOU THINK THAT SHOWS THE INHERENT DANGER

1 OF THESE PHOTO I.D.'S?

2 A I'M NOT SURE I UNDERSTAND YOUR QUESTION,
3 SIR.

4 Q WELL, IF YOU CAN'T PICK HIM OUT IN THAT
5 PHOTOGRAPH YOU HAD OF HIM, THAT SIX PACK, YOU CAN'T PICK
6 ANYBODY OUT, DOES THAT SHOW INHERENT UNFAIRNESS OF THOSE
7 TYPES OF PHOTOGRAPHS?

8 MS. OSTROWSKI: OBJECTION.

9 ARGUMENTATIVE. IMPROPER OPINION.

10 CALLS FOR SPECULATION.

11 THE COURT: SUSTAINED.

12 Q BY MR. NEWMAN: ALL RIGHT.

13 ONE THING THAT WAS CLEAR, THOUGH. EVEN IN
14 2008, GOING BACK -- GOING FORWARD 3 YEARS FROM WHEN THIS
15 INCIDENT HAPPENED, HE PUT A BLACK CAMRY THERE AT THE
16 SCENE SPEEDING AWAY RIGHT AFTER THE SHOOTING; CORRECT?

17 A HE DID, YES.

18 Q AND MR. FEISSA WAS ARRESTED 5 DAYS LATER,
19 OR 5 DAYS BEFORE, IN A BLACK CAMRY WITH A 9-MILLIMETER
20 HANDGUN, THE SAME TYPE OF HANDGUN USED TO KILL THIS KID;
21 CORRECT?

22 MS. OSTROWSKI: OBJECTION.

23 MISSTATES THE EVIDENCE THAT IT WAS THE SAME
24 KIND OF GUN.

25 MR. NEWMAN: SAME TYPE OF GUN.

26 THE COURT: SAME CALIBER.

27 MR. NEWMAN: SAME CALIBER.

28 THE COURT: WITH THAT MODIFICATION.

1 THE WITNESS: IT WAS 4 DAYS AFTER THE MURDER WITH
2 THE SAME CALIBER, YES.

3 MR. NEWMAN: ALL RIGHT.

4 I HAVE NO MORE QUESTIONS.

5 THE COURT: MR. NEWMAN, THANK YOU.

6 MR. GRAYSON, DO YOU HAVE ANY QUESTIONS?

7 MR. GRAYSON: I'M GOING TO DEFER TO MR. HIGGINS.

8 THE COURT: MR. HIGGINS.

9
10 CROSS-EXAMINATION

11 BY MR. HIGGINS:

12 Q DETECTIVE -- YOU'RE THE LEAD DETECTIVE;
13 RIGHT?

14 A ON THIS INVESTIGATION, YES.

15 Q HOW MANY DAYS AFTER DETECTIVE MORSE
16 CONTACTED YOU DID YOU GO SEE MR. GORDON?

17 A I BELIEVE IT WAS WITHIN TWO WEEKS OF
18 TALKING TO DETECTIVE MORSE.

19 Q DID YOU GO TO THE SCENE WITH HIM?

20 A THE SCENE WITH MR. GORDON?

21 Q YES.

22 A NO.

23 Q DID YOU ASK HIM TO DRAW OUT A SKETCH?

24 A NO.

25 Q ARE THOSE THINGS THAT ARE NORMALLY DONE
26 WITH A WITNESS WHEN INVESTIGATING SUCH A HORRIFIC CRIME
27 AS THIS?

28 A I HAVE DONE IT VERY RARELY ON HORRIFIC

1 CRIMES.

2 Q THE FIRST TIME THAT YOU SPOKE TO
3 MR. GORDON, WAS THAT TAPED?

4 A IT WAS.

5 Q THAT WAS AT HIS MOTHER'S HOUSE?

6 A I'M NOT SURE. I THOUGHT IT WAS HIS
7 FATHER'S RESIDENCE.

8 Q BUT IN LOS ANGELES; IS THAT CORRECT?

9 A I BELIEVE IT -- WELL, YES.

10 Q 140TH STREET, AROUND THERE?

11 A YES.

12 Q AND SO YOU NEVER DETERMINED EXACTLY WHERE
13 THE INDIVIDUALS CROSSED THE STREET; IS THAT RIGHT?

14 A THAT IS NOT RIGHT.

15 Q WELL, YOU SAID IT WAS IN REFERENCE TO A
16 MAILBOX?

17 A CORRECT.

18 Q OKAY. AND THE MAILBOX IS WHERE MR. GORDON
19 WAS STANDING?

20 A THAT IS CORRECT.

21 Q ALL RIGHT.

22 DID HE TELL THAT YOU THE INDIVIDUALS CAME
23 FROM BEHIND HIM ON 139TH STREET?

24 A HE DID NOT.

25 Q DID HE SAY THAT INDIVIDUALS WALKED FROM
26 AVALON ACROSS ON THE WEST SIDE OF AVALON TO THE EAST
27 SIDE?

28 A HE DID.

1 Q DID YOU EVER -- DID HE TELL YOU
2 SPECIFICALLY WHERE THEY CROSSED?

3 A FROM IN FRONT OF THE MAILBOX.

4 Q IN FRONT OF THE MAILBOX?

5 A CORRECT.

6 Q OKAY. WELL, THEY HAD TO CROSS IN FRONT OF
7 THE MAILBOX BECAUSE AVALON IS IN FRONT OF THE MAILBOX;
8 IS THAT RIGHT?

9 A YES.

10 Q BUT YOU DIDN'T GO INTO DETAILS ABOUT THAT;
11 RIGHT?

12 A I THOUGHT THE FRONT OF THE MAILBOX WOULD
13 SUFFICE.

14 Q DID HE TELL YOU WHERE THEY RAN BACK TO?

15 A IN HIS DIRECTION, THEN SOUTHBOUND ON AVALON
16 ALONG THE WEST SIDEWALK.

17 Q SO HE NEVER SAID THEY WENT DOWN 139TH
18 STREET EAST; IS THAT RIGHT?

19 A THAT IS CORRECT.

20 Q DID YOU FIND ANY OTHER WITNESSES WHO
21 ACTUALLY WERE PRESENT AT THE SCENE WHEN THIS INCIDENT
22 OCCURRED, OTHER THAN MR. GORDON?

23 A NO.

24 MS. OSTROWSKI: OBJECTION, IRRELEVANT.

25 THE COURT: SUSTAINED. CALLS FOR HEARSAY.

26 Q BY MR. HIGGINS: WELL, MR. GORDON BEING THE
27 ONLY WITNESS --

28 MR. HIGGINS: I DON'T HAVE ANY FURTHER QUESTIONS

1 BASED UPON THE DIRECT EXAMINATION.

2 THE COURT: OKAY.

3 MR. HIGGINS: HOWEVER, IF MY COLLEAGUE WANTS TO GO
4 FURTHER, I MAY HAVE FURTHER QUESTIONS ON CALLING HIM AS
5 A WITNESS MYSELF.

6 THE COURT: OKAY. MY UNDERSTANDING IS THAT THIS
7 WITNESS HAS A NEED TO TRAVEL OUT OF THE COUNTRY ON WORK-
8 RELATED BUSINESS.

9 MR. HIGGINS: IT WILL BE FINISHED.

10 THE COURT: JUST WANT TO MAKE SURE WE'RE DONE
11 FAIRLY SOON.

12 MR. HIGGINS: I UNDERSTAND.

13 THE COURT: MR. GRAYSON, YOU CAN INQUIRE.

14 MR. GRAYSON: I'D LIKE TO INQUIRE, CALL HIM AS MY
15 OWN WITNESS.

16 THE COURT: ALL RIGHT.

17 BEFORE WE DO THAT, DID WE HAVE ANY
18 ADDITIONAL QUESTIONS YOU WANTED TO ASK ON REDIRECT
19 MS. OSTROWSKI?

20 MS. OSTROWSKI: BASED ON THE CROSS SO FAR?

21 THE COURT: YES.

22 MS. OSTROWSKI: JUST ONE. BUT I THINK MR. GRAYSON
23 GOES FIRST. RIGHT?

24 MR. GRAYSON: WELL, I'M DOING TWO THINGS. I WANT
25 TO DO THE CROSS, THEN I WANT TO CALL HIM AFTER -- IF SHE
26 WANTS TO DO REDIRECT, I'LL CALL HIM AFTER THAT.

27 THE COURT: MR. GRAYSON, YOU MAY INQUIRE.

28

CROSS-EXAMINATION

BY MR. GRAYSON:

Q GOOD MORNING, DETECTIVE.

A GOOD MORNING, SIR.

Q ISN'T IT TRUE THAT JOLON GORDON CONTACTED
DETECTIVE MORSE? I MEAN RIGHT AFTER THE INCIDENT, IT
WAS HE WHO CONTACTED MORSE?

A I HAVE NO KNOWLEDGE OF WHO CONTACTED WHO
AFTER THE INCIDENT.

Q NOW, THE INTERVIEW THAT YOU WERE JUST
TALKING ABOUT WITH MR. HIGGINS?

A YES.

Q THAT WAS THE DAY AFTER THE INCIDENT ON THE
26TH?

A OKAY. WE SHOULD REFRESH -- ARE WE TALKING
ABOUT AFTER FIRST INTERVIEW, AFTER THE MURDER?

Q YES.

A THAT WAS EARLY AUGUST WITH MR. GORDON OF
2008.

Q EARLY AUGUST. OKAY.

AND YOUR OFFICE OR DEPARTMENT HAD A
TRANSCRIPT PREPARED OF THAT INTERVIEW?

A IT WAS EITHER MY OFFICE OR THE DISTRICT
ATTORNEY'S OFFICE, YES.

Q AND DIDN'T MR. GORDON TELL YOU -- WELL,
WITHDRAW THAT.

YOU RECALL ASKING MR. GORDON "ARE YOU COOL
OUT HERE? I KNOW HOW PEOPLE GET WHEN TALKING TO THE

1 POLICE." AND MR. GORDON RESPONDS "MAN, I WORK FOR YOU
2 ALL."

3 YOU REMEMBER THAT?

4 A I DO.

5 MS. OSTROWSKI: OBJECT AS HEARSAY.

6 MOVE TO STRIKE. OUTSIDE THE SCOPE.

7 ALSO IRRELEVANT.

8 THE COURT: OVERRULED. IT DEALS WITH ISSUES THAT
9 WERE ASKED OF MR. GORDON DURING HIS TESTIMONY, AND HIS
10 STATE OF MIND AT THAT INTERVIEW.

11 SO I'M GOING TO OVERRULE THE OBJECTION.

12 Q BY MR. GRAYSON: SO WHEN YOU ASKED HIM "ARE
13 YOU COOL OUT HERE," YOU'RE OUT ON THE STREET; RIGHT?

14 A YES, WE ARE FRONT OF HIS RESIDENCE.

15 Q AND HE DON'T LIVE THAT FAR AWAY FROM WHERE
16 THE INCIDENT OCCURRED, THE SHOOTING OF MR. QUEZADA?

17 A HIS PARENTS DO NOT, CORRECT.

18 Q AND HE DON'T LIVE THAT FAR AWAY FROM WHERE
19 MR. KHALILL WAS LIVING AT THIS TIME, 139TH?

20 A CORRECT.

21 Q HE DIDN'T EXPRESS ANY KIND OF CONCERN OR
22 FEAR FOR HIS SAFETY; DID HE?

23 A NOT AT THIS POINT, NO.

24 Q PEOPLE OFTEN WILL CALL IN ON SOME TYPE OF
25 TIP LINE ANONYMOUSLY AND SAY HEY, WE THINK SO AND SO WAS
26 INVOLVED, AND DON'T LEAVE ANY INFORMATION.

27 ISN'T THAT TRUE?

28 A THAT CAN HAPPEN, YES.

1 Q AND THAT'S NOT WHAT HAPPENED HERE WITH
2 MR. GORDON. HE HAD NO PROBLEM; RIGHT? TALKING TO YOU
3 RIGHT OUT ON THE STREET?

4 A THAT'S CORRECT.

5 Q YOU TALKED ABOUT HOW -- LET ME WITHDRAW
6 THAT. MR. HIGGINS ASKED YOU ABOUT THIS INCIDENT WHERE
7 MR. FEISSA WAS CAUGHT IN A BLACK CAMRY WITH A GUN AT HIS
8 FEET. DO YOU REMEMBER THAT?

9 A I DO.

10 Q AND WHERE HE WAS DETAINED BY DEPUTIES
11 ANTRIM AND CAMPBELL WAS ON THE SAME STREET AVALON WHERE
12 ADIEL QUEZADA WAS KILLED; CORRECT?

13 MS. OSTROWSKI: OBJECTION.

14 MISSTATES THE EVIDENCE.

15 THE COURT: JUST LAY THE FOUNDATION.

16 JUST ASK THE QUESTION DIRECTLY.

17 Q BY MR. GRAYSON: WELL, WAS HE DETAINED ON
18 AVALON?

19 A I DO NOT KNOW WITHOUT REVIEWING THE REPORT.

20 Q OKAY. YOU DON'T KNOW ANYTHING ABOUT THE
21 DETAILS OF THAT?

22 A I KNOW HE WAS ARRESTED FOR A GUN, IN THAT
23 CAR WITH SEVERAL WOMEN ALSO INSIDE THAT CAR. THAT'S
24 ABOUT ALL I KNOW. THAT HAPPENED ABOUT 4 DAYS AFTER THE
25 MURDER.

26 Q OKAY. NOW, GIVEN THE FACT THAT MR. FEISSA
27 HIT UP THE VICTIM, ASKED HIM WHERE HE WAS FROM --

28 MS. OSTROWSKI: OBJECTION.

1 OUTSIDE THE SCOPE.

2 MR. GRAYSON: CAN I FINISH MY QUESTION, PLEASE?

3 THE COURT: SOUNDS ARGUMENTATIVE THE WAY IT'S
4 CURRENTLY PHRASED. YOU WANT TO REFRAME THE QUESTION?

5 Q BY MR. GRAYSON: YOU KNEW THAT MR. FEISSA
6 HIT UP MR. QUEZADA?

7 MS. OSTROWSKI: AGAIN, SAME OBJECTION.

8 OUTSIDE THE SCOPE.

9 THE COURT: WELL, HE'S CALLING HIM AS HIS OWN
10 WITNESS AS PART OF AN AFFIRMATIVE DEFENSE. SO IT'S NOT
11 JUST CROSS. THAT'S HOW I UNDERSTAND IT.

12 MS. OSTROWSKI: I DIDN'T THINK WE WERE DOING THAT,
13 YET. I'M SORRY. ALL RIGHT.

14 THE COURT: WELL --

15 MS. OSTROWSKI: THAT'S FINE.

16 THE COURT: ASK THE QUESTION.

17 MR. GRAYSON: ALL RIGHT.

18 Q YOU KNEW THAT MR. FEISSA HIT UP THE VICTIM?

19 A YES.

20 Q IN OTHER WORDS, ASKED HIM WHERE HE'S FROM?

21 A CORRECT.

22 Q WHICH IS A CHALLENGE?

23 A YES.

24 Q AND YOU KNEW THAT MR. FEISSA HAD BEEN IN A
25 CAMRY VERY NEAR TO WHERE THIS SHOOTING TOOK PLACE OF
26 MR. QUEZADA, IN A BLACK CAMRY.

27 YOU KNEW THAT; RIGHT?

28 A AGAIN, TALKING ABOUT THE ARREST WITH THE

1 GUN?

2 Q YES.

3 A DON'T KNOW WHERE THAT ARREST OCCURRED.

4 WITHOUT LOOKING AT THAT REPORT, I DON'T KNOW.

5 Q WELL, LET ME -- CAN YOU LOOK AT THE REPORT?

6 A SURE.

7 MS. OSTROWSKI: I'M GOING TO OBJECT. IT'S

8 IRRELEVANT IF HE KNOWS IT NOW. THE POINT OF THE

9 QUESTION.

10 THE COURT: OVERRULED.

11 YOU CAN APPROACH.

12 MR. GRAYSON: THANK YOU.

13 Q BY MR. GRAYSON: THE YELLOW TAB IS WHERE

14 THE NARRATIVE IS.

15 A OKAY. I KNOW BY READING THIS WHERE IT'S

16 AT, NOW. IT WASN'T AVALON. BUT IT WAS EASTBOUND 137TH

17 FROM PIRU STREET IN L.A.

18 Q BUT WHAT'S THE NORTH-SOUTH STREET?

19 A I NEVER PATROLLED THIS AREA. I DO NOT KNOW

20 WHERE PIRU STREET IS. NEVER PATROLLED CENTURY'S AREA.

21 Q SO YOU DON'T KNOW WHAT NORTH-SOUTH

22 CROSS-STREET IS?

23 A 137TH IS A NUMBERED STREET, SO THAT'S GOING

24 TO RUN EAST-WEST. I DO KNOW THAT.

25 Q THAT'S NOT WHAT I WANT TO KNOW. I WANT TO

26 KNOW WHAT THE NORTH-SOUTH STREET IS, IF YOU KNOW.

27 IF YOU DON'T, THEN YOU DON'T.

28 A I DON'T.

1 Q OKAY. IN ANY EVENT, YOU KNEW THAT
2 MR. FEISSA WAS CAUGHT IN A CAMRY WITH A GUN AT HIS FEET?

3 A YES.

4 Q AND YOU KNEW THAT MR. FEISSA -- I MEAN, YOU
5 KNEW THAT THERE WAS A BLACK CAMRY THAT MR. GORDON TOLD
6 YOU SPED AWAY SOMETIME AROUND THE TIME THE SHOTS WERE
7 FIRED AT MR. QUEZADA; RIGHT?

8 A YES.

9 Q AND YOU CAN TELL THIS JURY THAT YOU DON'T
10 SEE MR. FEISSA AS A SUSPECT?

11 MS. OSTROWSKI: OBJECTION, ARGUMENTATIVE.

12 THE COURT: SUSTAINED.

13 Q BY MR. GRAYSON: DID YOU EVER CONSIDER
14 MR. FEISSA A SUSPECT, GIVEN THESE FACTS?

15 A HE WAS LINKED INTO, BUT NOT AN OFFICIAL
16 SUSPECT, NO.

17 Q MR. GORDON NEVER TOLD YOU THAT THE PERSON
18 THAT HE RAN INTO HAD TATTOOS ON HIS FACE; DID HE?

19 A MR. GORDON DID TELL ME THAT. IN TEXAS.

20 Q HE TOLD YOU THAT?

21 A HE DID --

22 Q THAT THE SUSPECT -- NOT SUSPECT, ONE OF THE
23 THREE PEOPLE HAD TATTOOS ON HIS FACE?

24 A OH, I'M SORRY. NO. HE DID NOT SAY THAT.

25 Q LASTLY --

26 MR. GRAYSON: WELL, ACTUALLY, DO YOU WANT ME TO GO
27 FORWARD? OR HAVE MS. OSTROWSKI GO AHEAD AND DO HER
28 REDIRECT?

1 MS. OSTROWSKI: I THOUGHT WE WERE DOING HIS --

2 THE COURT: JUST DO IT. JUST ASK WHATEVER
3 QUESTIONS YOU GOT. WE'LL LET HER ASK WHATEVER QUESTIONS
4 SHE'S GOT. WE'RE GOING TO GET THE WITNESS OUT OF HERE.

5 Q BY MR. GRAYSON: YOU ARE AWARE THAT
6 MR. FEISSA WAS INVOLVED IN AN ABORTED DRIVE-BY SHOOTING
7 ON JUAN LLANOS?

8 MS. OSTROWSKI: I'M GOING TO OBJECT AS VAGUE.

9 ABORTED DRIVE-BY SHOOTING.

10 THE COURT: DO YOU UNDERSTAND THE QUESTION?

11 THE WITNESS: I HAD -- I WANT HIM TO DEFINE
12 "ABORTED." I'M NOT SURE WHAT HE MEANT BY "ABORTED."

13 THE COURT: REFRAME THE QUESTION, PLEASE.

14 Q BY MR. GRAYSON: LET ME START IT IN A
15 SIMPLE FASHION. ARE YOU AWARE OF AN INCIDENT WHERE
16 MR. FEISSA RAN INTO MR. LLANOS I BELIEVE AT A LIQUOR
17 STORE, AND MR. FEISSA HAD SOMEONE IN HIS CAR BY THE NAME
18 OF LITTLE Y; LITTLE Y HAD POSSESSION OF MR. FEISSA'S .38
19 HANDGUN, AND WAS GOING TO SHOOT MR. LLANOS.

20 ARE YOU AWARE OF THAT?

21 A I AM AWARE OF THAT.

22 Q ARE YOU AWARE MR. FEISSA EXPLAINED THAT THE
23 REASON WHY MR. LLANOS WASN'T SHOT THAT DAY IS BECAUSE
24 THERE WAS SOME GUYS FROM ATHENS WHO WERE IN THE LINE OF
25 FIRE?

26 A I RECALL HIM SAYING SOMETHING ABOUT ATHENS
27 MEMBERS BEING OUT THERE. BUT I THOUGHT IT WAS BECAUSE
28 MR. LLANOS RAN, AND HE WAS IN COMPANY OF HIS WIFE AND

1 CHILD, OR GIRLFRIEND AND CHILD.

2 Q I'M GETTING TO THAT.

3 A OKAY.

4 Q AND ALSO THAT THE REASON WHY HE WASN'T SHOT
5 WAS BECAUSE THERE WAS A CHILD IN A CAR THAT MR. LLANOS
6 WAS LEANING INTO?

7 A CORRECT.

8 Q AND THAT -- IN THIS INSTANCE, YOUR
9 DEPARTMENT DID CORROBORATE THIS STORY WITH MR. LLANOS'
10 FAMILY MEMBER, WHATEVER THAT IS. WHOEVER THAT IS.

11 A I WAS ACTUALLY ABLE TO CORROBORATE MYSELF
12 BY SPEAKING WITH THE WOMAN THAT WAS PRESENT WITH THE
13 BABY DURING THAT INCIDENT.

14 Q AND MR. FEISSA WAS DRIVING THE CAR DURING
15 THAT INCIDENT?

16 A YES.

17 Q AND THE INCIDENT WENT SO FAR THAT -- LITTLE
18 Y EVEN STUCK HIS HAND OUT THE WINDOW DURING THE
19 INCIDENT?

20 A I BELIEVE THAT'S CORRECT.

21 Q AND DURING THAT INCIDENT, MR. FEISSA THREW
22 UP A "P" FOR PIRU AT MR. LLANOS?

23 A YES.

24 MR. GRAYSON: I HAVE NOTHING FURTHER.

25 THE COURT: ANY ADDITIONAL QUESTIONS FROM THE
26 DEFENSE SIDE OF THE TABLE?

27 MR. HIGGINS: YES, YOUR HONOR.

28

CROSS-EXAMINATION RESUMED

BY MR. HIGGINS:

Q JUST A COUPLE THINGS, DETECTIVE.

DETECTIVE, DID MR. FEISSA TELL YOU THAT SHAW (SIC) AND RYAN SIMPSON DID THAT -- WAS SEEN IN TAPE FROM CAMPANILLA, AND HE USED A .45? TALKED ABOUT TARRANT STREET?

A MR. HIGGINS, I'M TOTALLY LOST. I DON'T UNDERSTAND. YOU SAID SHAW. DO YOU MEAN SHAWN SIMPSON?

Q YEAH.

A WOULD YOU REPEAT THE ENTIRE QUESTION, PLEASE?

Q DID HE TELL YOU THAT -- WELL, LET'S JUST SAY RYAN SIMPSON.

A OKAY.

Q DID HE TELL YOU THAT RYAN SIMPSON WAS SEEN IN TAPE WITH CAMPANILLA -- DID A SHOOTING?

A NO.

Q DIDN'T SAY THAT USED A .45?

A NO. NOT TO ME, NO.

Q OKAY. ONE OTHER THING. WERE YOU ABLE TO DECIPHER WHAT MR. FEISSA WAS TALKING ABOUT IN A CELL WITH MR. SIMPSON WITH A SUSPECT SIMPSON IN A JAIL CELL IN A REPORTED CONVERSATION?

MS. OSTROWSKI: YOUR HONOR, OBJECT. THIS IS THE 402 ABOUT TARRANT STREET, WHY WE HAD THE STIPULATION.

THE COURT: DO YOU WISH TO BE HEARD REGARDING THE OBJECTION?

1 MR. HIGGINS: YES.

2 THE COURT: COME ON UP.

3

4 (THE FOLLOWING PROCEEDINGS

5 WERE HELD AT THE BENCH:)

6

7 THE COURT: WHERE ARE YOU GOING, AND WHY?

8 MR. HIGGINS: ONLY THING I WANTED TO SHOW WITH
9 THIS QUESTION AND MY FOLLOW-UP QUESTIONS WAS THAT FEISSA
10 WAS BEING DECEITFUL. TRYING TO HIDE BY TALKING AND
11 WHISPERING. I DON'T WANT TO GO INTO THE FACTS.

12 THE COURT: I THINK THAT'S ALREADY IN THE RECORD.
13 I THINK THE FACT THAT HE ALLEGEDLY NOW LOWERED HIS VOICE
14 COULD BE INFERRED.

15 YOU ALSO HAVE THIS WITNESS AND OTHER
16 WITNESSES CLEARLY SAYING THAT WITH REGARDS TO FEISSA'S
17 INVOLVEMENT IN THE CHILDS MURDER THAT HE WAS DECEPTIVE.

18 MR. HIGGINS: BUT WE DON'T HAVE THIS PARTICULAR
19 STATEMENT THAT HE -- THAT THIS DETECTIVE WAS ABLE TO
20 DECIPHER.

21 HE SAYS I KNOW WHEN HE PASSED HIM. TALKING
22 ABOUT WHEN HE WHY DOING THE DRIVE-BY. WOULD LIKE TO
23 JUST GET THAT PARTICULAR STATEMENT IN.

24 THE COURT: OBJECTION IS SUSTAINED.

25 THIS IS COVERED BY THE STIPULATION.

26 LET'S GO.

27

28 (THE FOLLOWING PROCEEDINGS

1 WERE HELD IN OPEN COURT, IN
2 THE PRESENCE OF THE JURY:)

3
4 MR. HIGGINS: BASED ON THE COURT RULING, I DON'T
5 HAVE ANY FURTHER QUESTIONS.

6 THE COURT: ANY ADDITIONAL QUESTIONS ON THE
7 DEFENSE SIDE OF THE TABLE?

8 MR. NEWMAN: NO.

9 MR. GRAYSON: JUST ONE.

10
11 CROSS-EXAMINATION RESUMED

12 BY MR. GRAYSON:

13 Q WHO WERE THE DETECTIVES ON THE DAVEON
14 CHILDS MURDER?

15 A I BELIEVE THAT WOULD BE DETECTIVES --
16 ORIGINALLY, DETECTIVE DENKKER AND MORALES.

17 Q THEN SUBSEQUENTLY?

18 A TY LABBE.

19 MR. GRAYSON: THANK YOU.

20 THE COURT: OKAY.

21 QUESTIONS FROM THE PROSECUTION SIDE OF THE
22 TABLE?

23
24 REDIRECT EXAMINATION

25 BY MS. OSTROWSKI:

26 Q THE GUN MR. FEISSA WAS ARRESTED WITH, WAS
27 THAT RULED OUT AS THE MURDER WEAPON FOR MR. QUEZADA?

28 A YES.

1 Q IN ADDITION TO MAKING SURE THAT WAS NOT THE
2 MURDER WEAPON, YOU MENTIONED THAT MR. FEISSA WAS NOT AN
3 OFFICIAL SUSPECT, BUT HE WAS LOOKED INTO.

4 WAS THE OTHER METHOD THAT YOU LOOKED INTO
5 MR. FEISSA THROUGH THE WIRETAP?

6 A THAT WAS ONE OF THEM, YES.

7 Q WITH RESPECT TO THE LLANOS MURDER AND THIS
8 ABORTED DRIVE-BY SHOOTING MR. FEISSA, REPORTED TO YOU
9 THAT HE WAS DRIVING A VEHICLE?

10 A YES.

11 Q AND SHAWN SIMPSON WAS IN CAR WITH HIM?

12 A WHY.

13 Q AND IT WAS SHAWN SIMPSON WHO PULLED A GUN
14 ON MR. LLANOS, OR MR. FEISSA?

15 A MR. SIMPSON.

16 Q AND MR. FEISSA TOLD MR. SIMPSON "NO, NO,
17 NO, DON'T SHOOT"?

18 A YES.

19 Q AND MR. FEISSA ADVISED YOU OF THAT
20 INFORMATION WHEN HE CAME FORWARD TO YOU ORIGINALLY ABOUT
21 THE LLANOS MURDER; IS THAT RIGHT?

22 A THAT IS CORRECT.

23 Q NOW, MR. GRAYSON ASKED YOU IF MR. FEISSA
24 WAS A WITNESS IN THE TRIAL OF MR. SIMPSON AND PROTHRO.
25 YOU INDICATED HE WAS?

26 IS THAT CORRECT?

27 A THAT IS CORRECT.

28 Q OKAY. SO BUT MR. FEISSA DID IDENTIFY

1 MARCELLOUS PROTHRO AS THE DRIVER AND MR. SIMPSON AS THE
2 SHOOTER?

3 A HE DID.

4 Q AND THEN AT THAT TRIAL, THERE WERE OTHER
5 WITNESSES WHO CORROBORATED WHAT MR. FEISSA SAID?

6 A YES.

7 Q AND THOSE WERE THE WITNESSES THAT ACTUALLY
8 TESTIFIED IN THAT TRIAL?

9 A YES.

10 Q AND THAT TRIAL RESULTED IN A CONVICTION?
11 MR. HIGGINS: OBJECTION.

12 THE COURT: GROUNDS?

13 MR. HIGGINS: RELEVANCE IN TERMS OF WHAT IT
14 RESULTED IN.

15 THE COURT: THE OBJECTION IS NOTED FOR THE RECORD.

16 AT THIS POINT IT'S OVERRULED.

17 MS. OSTROWSKI: NO FURTHER QUESTIONS.

18 THE COURT: ANY ADDITIONAL EXAMINATION OF THE
19 WITNESS?

20

21 CROSS-EXAMINATION

22 BY MR. NEWMAN:

23 Q YOU DON'T HAVE ANY CORROBORATION IN THIS
24 CASE THAT YOU HAD IN THAT OTHER CASE; WOULD THAT BE A
25 FAIR STATEMENT?

26 A IF YOU'RE COMPARING CORROBORATION, THAT'S A
27 FAIR STATEMENT. BUT THERE WAS CORROBORATION.

28 Q THE OTHER THING IS, I TAKE IT MR. FEISSA

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
)
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
NOVEMBER 16, 18, 29, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 2 OF 16 VOLUMES
PAGES A-1 TO A-18
B-1 TO B-44
1 TO 105-300

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 PAPERS WE MADE PREVIOUSLY. FILED PREVIOUSLY.

2 THE COURT: MR. GRAYSON.

3 MR. GRAYSON: I ACTUALLY WANTED TO ADDRESS -- I
4 KNOW YOU MADE YOUR RULING, BUT I ACTUALLY WANTED TO JUST
5 PUT ON THE RECORD AN ADDITIONAL ARGUMENT WITH RESPECT TO
6 THE FIFTH AMENDMENT ISSUE.

7 THE COURT: GO AHEAD.

8 MR. GRAYSON: THAT WAS THAT -- WITNESSES
9 OFTENTIMES CHANGE THEIR STORY, OR GIVE A CONTRADICTIONARY
10 ANSWER FROM WHAT THEY GAVE BEFORE.

11 SOMETIMES FROM ONE EXAMINATION TO THE NEXT.
12 SOMETIMES FROM ONE SENTENCE TO THE NEXT. SO THAT WAS AN
13 ADDITIONAL ARGUMENT THAT I DON'T THINK WAS BROUGHT UP.

14 AND IF FEISSA IS ALLOWED TO INVOKE THE
15 FIFTH AMENDMENT OVER AND ABOVE OUR CLIENTS' RIGHT TO A
16 FAIR TRIAL, THEN THERE'S THAT ISSUE TO CONSIDER AS WELL.
17 WHICH I THINK IS A PRETTY IMPORTANT ISSUE.

18 THE COURT: OKAY. MATTER SUBMITTED?

19 MR. GRAYSON: YES, SUBMITTED.

20 THE COURT: MR. HIGGINS.

21 MR. HIGGINS: I'VE REVIEWED THE PRELIMINARY
22 HEARING TESTIMONY. AND ALTHOUGH THE COURT HAS INDICATED
23 IT'S GOING TO ALLOW MR. FEISSA'S PRELIM STATEMENTS IN --

24 THE COURT: COULD YOU HOLD ON FOR A MINUTE?

25

26 (A DISCUSSION WAS HELD
27 OFF THE RECORD.)

28

1 THE COURT: GO AHEAD, SIR.

2 MR. HIGGINS: THERE ARE A LOT OF ISSUES WITHIN THE
3 STATEMENTS THEMSELVES, WITHIN THE PRELIMINARY HEARING
4 TRANSCRIPT ITSELF OVER AND ABOVE WHAT COUNSEL HAS
5 INDICATED SHE WOULD WANT TO STRIKE OUT.

6 AND I THINK THAT THERE WOULD BE ADDITIONAL
7 OBJECTIONS TO SOME OF THOSE STATEMENTS THAT COUNSEL HAS
8 INDICATED THAT SHE WOULD CARE TO STRIKE OUT.

9 FOR EXAMPLE, THERE ARE EXAMPLES WHERE --
10 FOR EXAMPLE, MR. FEISSA IS BEING USED AS A GANG EXPERT,
11 WHERE HE IS LAYING A FOUNDATION. HE HAS STATED THAT HE
12 WAS NO LONGER A MEMBER OF THAT PARTICULAR GANG. BUT
13 HE'S ACTUALLY BEING USED AS A GANG EXPERT.

14 SO THERE WOULD BE STATEMENTS -- AND I THINK
15 I HAVE IN MY NOTES LIKE PAGE 29, LINE 11, TO PAGE 32,
16 LINE 5. I WOULD ALSO BE OBJECTING TO SOME OF THE THINGS
17 THAT HE'S TALKING ABOUT BASED UPON THE 6TH AMENDMENT,
18 AND OUR RIGHT TO CROSS-EXAMINE.

19 ONE ISSUE WAS THAT THEY WERE TALKING ABOUT,
20 I THINK MISS BARNES WAS ASKING ABOUT HIS CRIMINAL
21 BACKGROUND. AND SHE LEFT IT RATHER BROAD. "WHAT IS
22 YOUR CRIMINAL BACKGROUND?"

23 WELL, THAT WAS INCOMPLETE IN THAT HE DIDN'T
24 LIST ANYTHING, OR DIDN'T TALK ANYTHING ABOUT THE CRIMES
25 FOR WHICH HE WAS SUBSEQUENTLY ARRESTED AND IS BEING
26 CHARGED. THAT WAS PART OF HIS CRIMINAL BACKGROUND.

27 SO I AGAIN ASSERT THAT WE DIDN'T HAVE AN
28 OPPORTUNITY TO FULLY CROSS-EXAMINE HIM ON THAT

1 PARTICULAR ISSUE, WHICH SINCE HE IS THE MAIN WITNESS
2 AGAINST MY CLIENT ON THIS PARTICULAR -- ON COUNT 1, I
3 AGAIN ASSERTED THAT -- WE WOULD BE DENIED THAT PRIVILEGE
4 TO CROSS-EXAMINE.

5 SO I'M SAYING THAT WE'RE PROBABLY GOING TO
6 HAVE TO GO THROUGH THE TRANSCRIPT IN ADDITION TO WHAT
7 SHE HAS EXCLUDED, AND POSSIBLY MAKE SOME RULINGS ON
8 OTHER THINGS. THAT WAS JUST AN EXAMPLE.

9 SO I WOULD JOIN WITH MR. GRAYSON, AND
10 SUBMIT.

11 THE COURT: DO YOU WISH TO BE HEARD REGARDING THE
12 OTHER TWO ISSUES THE COURT HADN'T RENDERED A FILING
13 RULING ON YET?

14 MR. HIGGINS: AND WHAT WERE THOSE AGAIN, YOUR
15 HONOR? I FORGOT.

16 THE COURT: THE SCOPE OF THE POTENTIAL DEFENSE
17 IMPEACHMENT OF MR. FEISSA, AS WELL AS THE DEFENDANT'S
18 STATEMENTS TO EACH OTHER AND TO THIRD PARTIES.

19 MR. HIGGINS: WELL, WITH REGARD TO DEFENDANTS'
20 STATEMENTS TO THIRD PARTIES AND AMONG THEMSELVES, I
21 CAN'T SPEAK FOR THE CO-DEFENDANTS. BUT SOME OF THE
22 STATEMENTS WITH REGARD TO MY CLIENT -- SOME OF THOSE
23 ARE -- THEY ARE COMING IN BY WAY OF DOUBLE HEARSAY; WHAT
24 SOMEBODY ELSE TOLD FEISSA THAT MY CLIENT SAID.

25 ALSO WITH REGARD TO THE, FOR EXAMPLE,
26 TELEPHONE CALL TO A FEMALE WHERE MR. GIBBS WAS TALKING
27 TO THE FEMALE ON THE OTHER END. AND HE'S MAKING
28 STATEMENTS SUCH AS JUST GENERAL TALK ABOUT WHETHER OR

1 NOT HE'S GOING TO GO TO HEAVEN FOR ACTS HE HAS DONE.

2 HE'S NOT TALKING ABOUT ANYTHING IN
3 PARTICULAR, AND CERTAINLY HE DOESN'T GO TO THIS
4 PARTICULAR CASE.

5 IT'S JUST A GENERAL STATEMENT AS TO WHETHER
6 OR NOT HIS OPINION OF WHETHER ST. PETER IS GOING TO LET
7 HIM INTO HEAVEN BASED UPON ACTS HE'S DONE. I THINK
8 THOSE ARE QUESTIONS THAT WE ALL ASK OURSELVES.

9 SO I DON'T SEE WHERE THAT WOULD BE ANY TYPE
10 OF ADMISSION. I THINK IT WOULD BE MORE PREJUDICIAL THAN
11 PROBATIVE. IT MIGHT BE SOMETHING THAT A JURY MIGHT
12 ASSERT, OR RATHER LINK TO THIS CASE WHERE IT MAY HAVE NO
13 RELATIONSHIP TO IT.

14 SO I DON'T SEE THAT AS BEING AN ADMISSION
15 OF ANY PART ON MY CLIENT. AND WITH REGARD TO SOME OF
16 THE OTHER STATEMENTS, I WOULD BE OBJECTING BECAUSE IT
17 WOULD BE DOUBLE HEARSAY.

18 THE COURT: MS. OSTROWSKI, DO YOU WISH TO RESPOND?

19 MR. GRAYSON: YOUR HONOR, BEFORE SHE RESPONDS, I
20 JUST WANT TO MAKE A RECORD ABOUT THE ISSUE ABOUT
21 CO-CODEFENDANTS' STATEMENTS.

22 THE COURT: GO AHEAD.

23 MR. GRAYSON: I JUST WANT TO BE CLEAR THAT I WOULD
24 OBJECT TO ANYTHING COMING IN FROM ONE CO-DEFENDANT
25 AGAINST MY CLIENT ON THE GROUND OF HEARSAY, A VIOLATION
26 OF THE CONFRONTATION CLAUSE. AND ALSO VIOLATION OF DUE
27 PROCESS.

28 SO I JUST WANT THAT TO BE CLEAR.

1 MR. HIGGINS: I WOULD JOIN IN THAT. AND I WOULD
2 ALSO, EVEN THOUGH THE ARANDA-BRUTON ISSUE HAS BEEN
3 DISCUSSED IN GENERAL, I THINK SOME OF THE SPECIFIC
4 INSTANCES MIGHT RAISE ARANDA-BRUTON ISSUES BECAUSE
5 THEY'RE NOT NECESSARILY ADOPTIVE ADMISSIONS, OR ANY
6 OTHER EXCEPTIONS TO THE HEARSAY RULE. I CANNOT
7 CROSS-EXAMINE THE CO-DEFENDANTS.

8 MR. NEWMAN: I WOULD JOIN IN THAT.

9 AND I WOULD ADD ONE ADDITIONAL THING. WHAT
10 TROUBLES ME IS THAT A LOT OF THESE PHONE CONVERSATIONS
11 ARE IN RELATION TO REGARDING WHAT THE POLICE OR LAW
12 ENFORCEMENT HAD DONE BY PUTTING OUT A FALSE BULLETIN ON
13 A NUMBER OF PEOPLE, WITH SKETCHES OF MY CLIENT AND OTHER
14 TWO DEFENDANTS HERE, TRYING TO GENERATE TALK, MORE THAN
15 ANYTHING ELSE.

16 AND A LOT OF THESE CONVERSATIONS HAVE
17 NOTHING TO DO WITH ANY CONSPIRACY WHATSOEVER. I MEAN,
18 THESE MURDERS ARE LONG OVER. IT'S NO ONGOING CONSPIRACY
19 OR ANYTHING OF THIS NATURE.

20 THEY'RE JUST PEOPLE DISCUSSING WHAT HAD
21 HAPPENED ABOUT THEIR PHOTOS SHOWING UP ON TV AS L.A.'S
22 MOST WANTED. THINGS OF THAT NATURE.

23 AND I FIND SOMETHING REALLY TROUBLING ABOUT
24 PUTTING OUT A FALSE STATEMENT OR SOMETHING ON TV,
25 STIRRING UP THE COMMUNITY, AND ALSO THESE GENTLEMEN, AND
26 SPURRING THEM TO TALK SO THEY CAN RECORD WHATEVER
27 CONVERSATIONS THAT TAKE PLACE. AND THEN USING WHAT
28 CONVERSATIONS -- SOME OF THEM NOT EVEN FROM -- NONE FROM

1 MY CLIENT, BUT CONVERSATIONS BETWEEN OTHER TWO
2 DEFENDANTS, CO-DEFENDANTS, TO SOMEBODY ELSE WHO HAS
3 NOTHING TO DO WITH THE CASE, AND LETTING THAT COME IN
4 AGAINST MY CLIENT.

5 I THINK THAT WAS NOT WHAT WAS DISCUSSED, AT
6 LEAST ENVISIONED IN THE LAW. AND I DON'T SEE ANY REASON
7 THAT SHOULD COME IN.

8 AS FAR AS MR. FEISSA, WHAT CAN COME IN, MY
9 UNDERSTANDING, ANYTHING THAT CAN IMPEACH HIS CREDIBILITY
10 IS ADMISSIBLE. ANY TAPE RECORDING, OR ANYTHING WE MIGHT
11 HAVE.

12 THE COURT: I HAVEN'T INDICATED TO YOU THAT I'M
13 PLANNING ON LIMITING YOU WITH REGARD TO IMPEACHMENT AS
14 RELATES TO MR. FEISSA.

15 OBVIOUSLY, THERE MIGHT BE SOME PARAMETERS
16 UNDER 352. BUT I'M NOT LIMITING THE IMPEACHMENT TO WHAT
17 OCCURRED AT THE TIME OF THE PRELIMINARY HEARING.

18 MR. NEWMAN: FINE.

19 THE COURT: MS. OSTROWSKI, DO YOU WISH TO RESPOND
20 BRIEFLY?

21 MS. OSTROWSKI: YES. WITH RESPECT TO MR. HIGGINS'
22 COMMENTS ABOUT THE PRELIMINARY HEARING TRANSCRIPT, I'M
23 NOT QUITE CLEAR WHICH PORTIONS HE DISAGREES WITH IN
24 TERMS OF MY PROPOSED REDACTIONS.

25 I'M ALSO NOT CLEAR ABOUT WHAT ADDITIONAL
26 REDACTIONS HE WOULD LIKE TO MAKE. I WOULD NEED A PAGE
27 AND LINE NUMBER IN ORDER TO INTELLIGENTLY RESPOND TO
28 THAT.

1 CONTRARY TO THE COURT'S REQUEST, I DID NOT
2 HEAR FROM ANY OF THE DEFENSE ATTORNEYS SINCE OUR LAST
3 COURT APPEARANCE REGARDING THE STIPULATIONS ABOUT
4 IMPEACHMENT OF MR. FEISSA, NOR DID I RECEIVE ANY CONTACT
5 ABOUT REDACTIONS TO THE PRELIMINARY HEARING TRANSCRIPT,
6 NOR DID I RECEIVE ANY COMMUNICATION, REALLY, AT ALL.

7 SO I WASN'T ABLE TO GET A SENSE FROM THEM
8 WHAT IT IS THAT THEY HAVE A PROBLEM WITH, AND HOW I
9 PROPOSE TO REDACT THE PRELIM.

10 AS TO THE STATEMENTS, THE STATEMENTS THAT
11 ARE MADE TO FEISSA BY MR. GIBBS AND MR. KHALILL I
12 BELIEVE ARE ADMISSIBLE UNDER CERVANTES. I THINK THAT
13 HAS REALLY ALREADY BEEN LITIGATED. SO I WOULD JUST CITE
14 THAT CASE.

15 AS TO THE WIRETAPS, OBVIOUSLY, ANY
16 STATEMENT BY A PARTICULAR DEFENDANT DURING THAT CALL IS
17 ADMISSIBLE AGAINST THAT DEFENDANT.

18 IF THE COURT DOES NOT FEEL THAT THOSE
19 STATEMENTS CONSTITUTE DECLARATIONS AGAINST INTEREST,
20 WHICH MAY ALSO THEN FALL UNDER CERVANTES, FOR EXAMPLE,
21 THEN THEY WOULD NOT BE ADMISSIBLE AGAINST THE OTHER
22 DEFENDANTS UNLESS THE COURT THEN FOUND THEM TO BE
23 STATEMENTS OF CO-CONSPIRATORS, IS MY UNDERSTANDING.
24 THOSE ARE SORT OF THREE WAYS WE CAN GET TO IT.

25 IF THE COURT IS INCLINED TO NOT FIND THAT
26 THE STATEMENTS ARE PART OF A CONSPIRACY -- WHICH MY
27 POSITION ON THAT IS GIVEN THAT THESE MURDERS TOOK PLACE
28 WITH RESPECT TO THE 2001, THE 2001 MURDER TAKES PLACE,

1 THESE DEFENDANTS WERE CONTACTED BY LAW ENFORCEMENT,
2 ADVISED THAT THEY WERE SUSPECTS IN THIS CRIME. SO THIS
3 WAS KNOWLEDGE TO THEM IN 2001.

4 THEIR HOMES WERE SEARCHED. THEY WERE
5 CONTACTED ABOUT IT, SO THEY WERE MADE AWARE OF IT. WHEN
6 THEN THE RUSE IS DONE REGARDING "L.A.'S MOST WANTED,"
7 THAT OBVIOUSLY IS MEANT TO STIR UP THE POT OF THEM
8 TALKING ABOUT THAT CASE. AND THEY DO IN FACT START
9 TALKING ON THOSE CALLS.

10 SO ARGUABLY, THE CONSPIRACY IS STILL
11 ONGOING AT THAT POINT, GIVEN WHAT HAS TAKEN PLACE.

12 HOWEVER, IF THE COURT IS INCLINED NOT TO
13 FIND THAT, THEN I WOULD SEEK THAT THE WIRE STATEMENTS BE
14 ADMITTED AGAINST THAT PARTICULAR DEFENDANT, WITH A
15 LIMITING INSTRUCTION THAT THE JURORS ARE ALLOWED TO USE
16 THESE STATEMENTS MADE ON THE WIRE CALL BY A PARTICULAR
17 DEFENDANT AGAINST THAT PARTICULAR DEFENDANT, AND THAT
18 THEY DON'T CROSS OVER TO THE OTHER DEFENDANTS IN THIS
19 CASE.

20 AS TO MR. NEWMAN'S COMMENT ABOUT BEING ABLE
21 TO IMPEACH FEISSA WITH ANYTHING ELSE THAT EXISTS, I'M
22 NOT QUITE SURE WHAT HE'S REFERRING TO. SO -- UNLESS AND
23 UNTIL HE INDICATES WHAT IT IS HE'D LIKE TO IMPEACH WITH,
24 I DON'T HAVE ANY RESPONSE.

25 THE COURT: OKAY.

26 WITH REGARDS TO THIS MATTER, THE COURT
27 RULES AS FOLLOWS: FIRST, AS RELATES TO MR. FEISSA'S
28 CURRENT PENDING HOMICIDE TRIAL, I'M GOING TO PERMIT

1 COUNSEL TO USE OTHER COLLATERAL IMPEACHMENT WITHIN THE
2 SCOPE OF 352 TO BE ABLE TO IMPEACH MR. FEISSA, SINCE
3 HE'S UNAVAILABLE AS A WITNESS. I'M NOT LIMITING THEM TO
4 THE IMPEACHMENT THAT OCCURRED DURING THE PRELIMINARY
5 HEARING.

6 AS RELATES TO DEFENDANTS' STATEMENTS TO
7 EACH OTHER AND THIRD PARTIES CAPTURED BY WIRETAP, MY
8 TENTATIVE IS TO GRANT.

9 I WILL GIVE COUNSEL LEAVE TO ADDRESS
10 SPECIFIC PORTIONS OF THOSE STATEMENTS, IF THEY CHOOSE TO
11 DO SO, PRIOR TO THE COMMENCEMENT OF THE ACTUAL TRIAL.

12 BUT GIVEN THE FACT OUR JURORS ARE STANDING
13 OUT IN THE HALLWAY, I CAN'T ADDRESS EACH AND EVERY ONE
14 OF THOSE STATEMENTS IN DETAIL.

15 SO IF COUNSEL WANT TO FURTHER ADDRESS IT,
16 THEY CAN.

17 LET ME ADDRESS A FEW SECURITY-RELATED
18 ISSUES AND HOUSEKEEPING MATTERS.

19 FIRST, MR. WALLACE, MR. KHALILL, MR. GIBBS,
20 DURING THE COURSE OF THE TRIAL THERE'S ONLY ONE TIME
21 WHERE YOU'LL BE ASKED TO STAND AND YOU'LL BE PERMITTED
22 TO STAND. AND THAT'S WHEN I FIRST INTRODUCE YOU TO EACH
23 OF THESE PANELS.

24 WHEN I DO THAT, I'M INTRODUCE YOUR
25 ATTORNEY, AND I'LL INTRODUCE YOU. AND THEN THE TWO OF
26 YOU WOULD STAND AT THAT TIME.

27 AND THEN I'LL MOVE DOWN AND INTRODUCE THE
28 NEXT DEFENDANT, THE NEXT ATTORNEY. AND THEY WOULD

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
)
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
DECEMBER 19, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 15 OF 16 VOLUMES
PAGES 3901 TO 4141-4200

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

COPY

1 JUROR 3, ARE YOU MORE COMFORTABLE IN ONE
2 OF THE OTHER SEATS? WE CAN HAVE AN ALTERNATE SIT IN THE
3 CHAIR, IF YOU PREFER. WHICHEVER IS MOST COMFORTABLE.

4 ALL RIGHT. AT THIS TIME, ALL THE LADIES
5 AND GENTLEMEN OF THE JURY ARE PRESENT, INCLUDING OUR TWO
6 ALTERNATE JURORS. EACH OF THE DEFENDANTS ARE PRESENT
7 WITH THEIR RESPECTIVE COUNSEL. THE PEOPLE ARE PRESENT.

8 LADIES AND GENTLEMEN, AT THIS TIME, WE'RE
9 GOING TO COMMENCE WITH CLOSING ARGUMENTS BY COUNSEL.
10 JUST LIKE THE OPENING STATEMENTS OF COUNSEL ARE NOT
11 EVIDENCE, THE CLOSING ARGUMENTS OF THE ATTORNEYS ARE NOT
12 EVIDENCE, EITHER.

13 THE ATTORNEYS ARE NOT WITNESSES. THIS IS
14 THE OPPORTUNITY FOR THE ATTORNEYS TO DESCRIBE FOR
15 HERSELF OR HIMSELF WHAT EVIDENCE HAS COME INTO THE CASE,
16 AND WHAT REASONABLE INFERENCES YOU SHOULD DRAW FROM THAT
17 EVIDENCE.

18 I'M PLACING TIME LIMITS ON THE LAWYERS.
19 BECAUSE MR. HIGGINS ONLY NEEDS TO ADDRESS ONE OF THE TWO
20 CIRCUMSTANCES IN THE CASE, I'M LIMITING HIM TO
21 40 MINUTES. MR. GRAYSON AND MR. NEWMAN HAVE 60 MINUTES
22 EACH. MS. OSTROWSKI HAS 90 MINUTES. THAT INCLUDES BOTH
23 OF HER ARGUMENTS.

24 AND MS. OSTROWSKI, YOU MAY COMMENCE WITH
25 YOUR CLOSING ARGUMENT.

26 MS. OSTROWSKI: THANK YOU.

27 GOOD AFTERNOON, EVERYONE.

28 JUST TO GIVE YOU SORT OF A ROAD MAP OF

1 WHERE WE'RE GOING, I TRY TO TALK ABOUT ALMOST EVERYTHING
2 I CAN THINK IN THE FIRST ARGUMENT. SO THIS IS THE LONG
3 ONE. SO BEAR WITH ME.

4 THIS IS WHERE I'M GOING TO TALK ABOUT THE
5 EVIDENCE AND THE LAW, AND WHAT I ANTICIPATE THE DEFENSES
6 WILL BE, SO THAT ALL COUNSEL WILL BE ABLE TO RESPOND TO
7 THAT.

8 MY REBUTTAL WILL HOPEFULLY BE VERY SHORT,
9 JUST A FEW MINUTES, RESPONDING DIRECTLY TO ANYTHING I
10 FEEL THEY RAISED IN THEIR ARGUMENTS THAT I HADN'T
11 ALREADY ADDRESSED.

12 SO BEAR WITH ME NOW.

13 LADIES AND GENTLEMEN, IN EVERY CRIMINAL
14 CASE, EVERY CRIMINAL DEFENDANT HAS ESSENTIALLY TWO
15 DEFENSES: THE WITNESS WHO IS POINTING THE FINGER AT ME
16 IS MISTAKEN, OR THE WITNESS WHO IS POINTING THE FINGER
17 AT ME IS A LIAR. THOSE ARE THE TWO DEFENSES.

18 AND IN THIS CASE, YOU'RE GOING TO SEE BOTH
19 OF THEM. THE DEFENSE IS GOING TO TELL YOU EMOND TAYLOR
20 WAS MISTAKEN WHEN HE IDENTIFIED DENNIS WALLACE AND
21 MR. KHALILL AS BEING IN THE CAR THAT NIGHT WHEN HE AND
22 HIS BEST FRIEND WERE SHOT AT.

23 THEY'RE GOING TO TELL YOU THAT MR. FEISSA
24 IS A LIAR WHEN HE TESTIFIED THAT PEANUT AND K-9 TOLD HIM
25 HOW THEY SHOT ADIEL QUEZADA, AND HOW POKE WAS THE
26 LOOKOUT.

27 AND WHILE IT IS TRUE THAT IF YOU BELIEVE
28 EMOND TAYLOR, YOUR VERDICTS ON COUNT 2 AND 3 ARE GUILTY,

1 AND IF YOU BELIEVE MR. FEISSA, YOUR VERDICT ON COUNT 1
2 IS GUILTY.

3 WHILE THAT IS TRUE, THESE ARE NOT THE TWO
4 INDIVIDUAL WITNESSES IN THIS CASE THAT YOU SHOULD ONLY
5 LOOK AT. INSTEAD, YOU NEED TO LOOK AT ALL OF THE
6 EVIDENCE, NOT JUST THOSE TWO WITNESSES.

7 IN FACT, IN ORDER FOR YOU TO DECIDE WHETHER
8 YOU DO BELIEVE THOSE TWO WITNESSES, YOU NEED TO LOOK AT
9 ALL OF THE OTHER EVIDENCE, AND SEE HOW IT IS PUT
10 TOGETHER.

11 LADIES AND GENTLEMEN, JURY TRIALS, AND THE
12 EVIDENCE IS SORT OF LIKE A PUZZLE. WE GIVE YOU ALL THE
13 PIECES AS YOU COME IN THROUGH WITNESSES, THROUGH
14 EXHIBITS. AND YOUR JOB AS A JUROR IS TO PUT THEM
15 TOGETHER AND DETERMINE IF YOU CAN SEE THE PICTURE ON THE
16 FRONT OF THE BOX.

17 SO BECAUSE JURY TRIALS ARE A COMBINATION OF
18 HUMAN BEINGS AND NOT A SCIENCE PROJECT OR MATH PROBLEM,
19 IT'S NOT LIKE BUYING A NEW JIGSAW PUZZLE, WHERE ALL THE
20 PIECES ARE THERE.

21 IT'S LIKE BUYING A JIGSAW PUZZLE AT A
22 GARAGE SALE, WHERE YOU GET IT HOME, AND MAYBE SOME OF
23 THE PIECES ARE MISSING. OR A DOG CHEWED ON ONE PIECE,
24 SO IT DOESN'T FIT ANYWHERE, OR THERE'S MARINARA SAUCE ON
25 ANOTHER PIECE.

26 BUT AT THE END OF THE DAY, EVEN THOUGH THAT
27 JIGSAW PUZZLE ISN'T BRAND NEW, THE QUESTION IS, CAN YOU
28 SEE THE PICTURE ON THE FRONT OF THE BOX. IS IT A HOT

1 AIR BALLOON WITH KITTENS IN IT, OR WHATEVER IT MAY BE.

2 THAT'S WHAT YOU WILL NEED TO DO IN THIS
3 CASE. SO LET'S TALK ABOUT THE EVIDENCE. AND I WANT TO
4 TALK ABOUT ALL OF THE EVIDENCE, NOT JUST THE EVIDENCE
5 PRESENTED BY ME, BECAUSE THE COURT HAS INSTRUCTED YOU
6 THAT YOU NEED TO IMPARTIALLY COMPARE AND CONSIDER ALL OF
7 THE EVIDENCE THAT WAS RECEIVED THROUGHOUT THE ENTIRE
8 TRIAL.

9 FIRST, LET'S GO IN CHRONOLOGICAL ORDER.
10 LET'S TALK ABOUT THE MURDER OF TYRONN BICKHAM. WE HEARD
11 FROM EMOND TAYLOR, WHO TOLD US THAT ON AUGUST 10TH,
12 2001, AT AROUND 10:30 AT NIGHT, HE AND HIS BEST FRIEND,
13 TYRONN, WERE STANDING BEHIND TYRONN'S VEHICLE JUST
14 OUTSIDE HIS HOUSE, WHEN A WHITE CAR PULLED UP,
15 PRACTICALLY NEXT TO THEM.

16 AND SOMEBODY IN THAT WHITE CAR SAID
17 SOMETHING TO THE EFFECT OF, "THEY GET A PASS." OR
18 "THEY'RE STRAIGHT."

19 INTERESTINGLY, WE HEARD FROM THE DEFENSE
20 GANG EXPERT ABOUT WHAT THAT MEANS. REMEMBER THE DEFENSE
21 GANG EXPERT TALKED ABOUT HOW WHEN THERE ARE LADIES
22 PRESENT, IT'S A WHOLE DIFFERENT SET OF RULES.

23 MR. TAYLOR HAD TOLD US ABOUT HOW THERE WAS
24 A FEMALE WITH THEM WHEN THAT CAR FIRST WENT BY. NOT THE
25 SECOND TIME AROUND, BUT THE FIRST TIME.

26 SO YOU HEAR SOMETHING LIKE, "YOU GET A
27 PASS," AND THEN THE CAR TAKES OFF. THE NEXT TIME
28 MR. TAYLOR SEES THAT CAR, IT'S DOWN ACROSS THE STREET AT

1 THE CORNER OF SAN PEDRO AND PIRU. ACROSS FROM HIM.

2 AND AT THAT TIME, AND AT THE TIME THE CAR
3 FIRST WENT BY, HE IMMEDIATELY RECOGNIZED TWO PEOPLE IN
4 THE CAR. FRONT SEAT DRIVER, AND FRONT SEAT PASSENGER.
5 AND HE TOLD YOU HERE IN COURT THAT HE RECOGNIZED
6 MR. KHALILL AND MR. WALLACE AS THOSE PEOPLE.

7 HE THEN SEES THE CAR DRIVE ACROSS THAT
8 INTERSECTION. NOW, WHETHER THAT CAR STOPPED AT THE
9 MOUTH OF THE DRIVEWAY, AT THE CORNER, OR SOMEWHERE IN
10 BETWEEN, IS IMMATERIAL. BECAUSE WHAT EMOND IS ABLE TO
11 TELL YOU IS, "LOOK, I'M STANDING BEHIND THAT CAR. I SEE
12 THE CAR CROSS. AND THE NEXT THING I KNOW, SOMEONE IS
13 GETTING OUT OF THE BACK SEAT OF THAT CAR AND FIRING
14 SHOTS, AND I TOOK OFF RUNNING."

15 NOW, WHEN THAT PERSON GETS OUT OF THE CAR
16 AND STARTS FIRING SHOTS, MR. TAYLOR SAYS, "I CAN'T SEE
17 HIS FACE. I JUST -- AS SOON AS THE SHOTS START, I'M OUT
18 OF THERE."

19 BUT HE COULD TELL US THAT THE PERSON WAS
20 BEARING A BLACK HOODIE. THAT'S ABOUT AS DESCRIPTIVE AS
21 HE COULD GET ABOUT THAT SHOOTER.

22 WE KNOW THAT MR. TAYLOR RAN BACK TOWARDS
23 HIS HOUSE, AND HOPPED OVER THAT WALL. AND THAT HIS
24 FRIEND, MR. BICKHAM, WAS NOT SO LUCKY. HE ENDED UP ON
25 FRONT STEPS OF MR. TAYLOR'S RESIDENCE, BANGING ON THE
26 DOOR AND BEGGING FOR HIS LIFE, BECAUSE HE HAD BEEN SHOT
27 ONE TIME IN THE BACK.

28 AND WE KNOW FROM THE CORONER, THAT THAT

1 BULLET TRAVELED THROUGH HIS BODY, AND EXITED OUT THROUGH
2 HIS SHOULDER, AND CAUSED HIM TO DIE.

3 WE KNOW FROM MR. TAYLOR THAT THE DAY, AFTER
4 THE SHOOTING, MR. KHALILL AND MR. WALLACE PAID HIM A
5 VISIT. AND IN THIS VISIT, THEY WERE THERE TRYING TO
6 FIND OUT EXACTLY WHAT MR. TAYLOR KNEW.

7 AND WE KNOW FROM THE GANG EXPERT, IN GANG
8 CASES, IN FACT WE SAW IT PLAY OUT LIVE BEFORE OUR VERY
9 EYES, THAT THIS WAS AN INTIMIDATION TACTIC. THAT'S WHAT
10 THIS WAS.

11 THIS ISN'T A GOOD SAMARITAN STOPPING BY TO
12 SEE HOW EVERYBODY IS DOING. THIS IS THE TWO DEFENDANTS,
13 MR. WALLACE AND KHALILL, TRYING TO FIGURE OUT IF
14 MR. TAYLOR IS GOING TO BE A RAT OR NOT. IS HE GOING TO
15 SNITCH.

16 AND HOPEFULLY, THEIR PRESENCE AT HIS HOUSE
17 WILL ENSURE THAT HE DOES NOT SNITCH.

18 AND THEY GIVE HIM SOMEBODY ELSE TO BLAME.
19 MAYBE IT WAS MEXICANS. THAT'S WHAT HE REPORTED TO THE
20 DETECTIVE BACK IN 2001. THAT WHEN THESE GUYS CAME TO
21 HIS HOUSE, THEY WERE TRYING TO PUT THE PUT BLAME ON
22 SOMEBODY ELSE, AND THE PEOPLE THEY WERE SUGGESTING WERE
23 THE MEXICANS.

24 NOW, WE KNOW FROM MR. EMOND THAT WHEN THEY
25 CAME BACK TO HIS HOUSE THE NEXT DAY, THEY WERE NO LONGER
26 IN THAT WHITE NISSAN THAT DENNIS WALLACE DROVE. THIS
27 TIME, THEY WERE IN A WHITE CHEVY CAPRICE THAT
28 MR. KHALILL HAD AT THE TIME.

1 A WHITE CHEVY CAPRICE, LADIES AND
2 GENTLEMEN, THAT HAD BEEN TOWED TO THIS TOW YARD UNDER
3 MR. KHALILL'S NAME, AND HAD THE RELEASE OF LIABILITY IN
4 THE CAR WITH MR. KHALILL'S NAME.

5 SO WHAT DOES THAT TELL US? WELL, FIRST OF
6 ALL, THAT TELLS US HE WAS CERTAINLY NOT IN ATLANTA. HE
7 WAS HERE IN LOS ANGELES, GETTING A CAR.

8 AND INSIDE THAT CAR, SEVERAL PHOTOGRAPHS.
9 YOU HAVE THOSE IN EVIDENCE. YOU KNOW THE PHOTOS WITH
10 HIS GANG WRITING ON THE BACK OF THEM. THAT WAS
11 MR. KHALILL'S CAR.

12 AND WHEN HE SHOWS UP -- EXCUSE ME, WHEN THE
13 DETECTIVES SHOW UP TO SEARCH THROUGH THAT CAR, THEY FIND
14 A BLACK HOODIE. WE KNOW THIS SEARCH HAPPENED 10 DAYS
15 AFTER THE SHOOTING.

16 SO THIS IS HOW YOU KNOW THAT MR. KHALILL
17 WAS IN FACT IN LOS ANGELES AROUND THIS TIME. CONTRARY
18 TO WHAT HIS AUNT SAID, THAT HE DIDN'T COME BACK HERE
19 UNTIL OCTOBER OF 2001, WE KNOW FOR A FACT THAT HE WAS
20 HERE IN AUGUST OF 2001, THE SAME --

21 MR. GRAYSON: OBJECTION. MISSTATES THE TESTIMONY.
22 THE COURT: OVERRULED.

23 YOU MAY ADDRESS IT IN YOUR CLOSING
24 ARGUMENT.

25 MS. OSTROWSKI: THE SAME MONTH AS OUR SHOOTING.

26 NOW LET'S TALK ABOUT MR. EMOND TAYLOR'S
27 IDENTIFICATIONS. HE GAVE TWO. THE FIRST ONE WAS OF
28 MR. WALLACE ON AUGUST 14TH. THE SECOND WAS OF

1 MR. KHALILL ON AUGUST 15TH, BACK IN 2001.

2 NOW, THE DEFENSE WILL CONTEND THAT THESE
3 IDENTIFICATIONS THAT HE MADE AT THIS TIME WERE NOT
4 I.D.'S OF THE SUSPECTS. THESE ARE JUST THERE. THESE
5 ARE I.D.'S THAT WERE JUST OF PEOPLE HE KNEW FROM THE
6 NEIGHBORHOOD.

7 BUT THIS IS CONTRARY TO THE EVIDENCE,
8 LADIES AND GENTLEMEN. BECAUSE YOU HEARD FROM MR. TAYLOR
9 ABOUT HOW HE WAS READ THE ADMONITION. AND IN FACT, YOU
10 HAVE THE ADMONITION IN EVIDENCE. PUT IT UP ON THE ELMO,
11 AND YOU COULD SEE IT, WHERE HE SIGNED HIS NAME TWICE.

12 AND IN THAT ADMONITION, IT SPECIFICALLY
13 SAYS IN POINT 4, "THE PURPOSE OF SHOWING YOU THESE
14 PHOTOGRAPHS IS TO ELIMINATE THE INNOCENT AS WELL AS TO
15 IDENTIFY THE PERSON RESPONSIBLE IN THIS CRIME."

16 PARAGRAPH TWO TALKS ABOUT HOW THE SUSPECTS
17 MAY OR MAY NOT BE IN THE SIX PACK. THE SUSPECTS WHO
18 WERE INVOLVED IN THIS CRIME.

19 IT WAS NOT LOST ON MR. TAYLOR THAT THE
20 REASON THE DETECTIVES WERE SHOWING HIM PICTURES WAS TO
21 I.D. WHO MAY HAVE BEEN INVOLVED.

22 HE KNEW THAT. HE UNDERSTOOD THAT. WE'LL
23 TALK ABOUT IN A MOMENT WHY HE DOWNPLAYED IT INSTEAD OF
24 SAYING THAT THEY WERE THE PEOPLE WHO COMMITTED THE
25 CRIME.

26 BUT MR. TAYLOR WAS ABSOLUTELY READ THIS
27 ADMONITION. HE SIGNED HIS NAME TO IT TWICE. ONCE ON
28 EACH DAY THAT IT WAS READ TO HIM. IN 2010, 9 YEARS

1 LATER, HE COMES INTO COURT AT THE PRELIMINARY HEARING
2 AND IDENTIFIES BOTH MR. WALLACE AND MR. KHALILL.

3 THEN HE CAME IN HERE BEFORE YOU IN 2011 AND
4 AGAIN IDENTIFIED MR. WALLACE AND MR. KHALILL. TWICE NOW
5 HE'S COME TO COURT UNDER OATH, UNDER PENALTY OF PERJURY,
6 AND WITH CERTAINTY, MADE HIS IDENTIFICATIONS THAT THESE
7 TWO GUYS WERE IN THAT CAR THAT NIGHT.

8 SO WHY DID MR. TAYLOR DOWNPLAY ON
9 AUGUST 14TH? WHY DID HE DOWNPLAY HIS IDENTIFICATION,
10 ACT LIKE IT'S NOT AN I.D. OF THE SUSPECT, BUT RATHER
11 JUST AN I.D. OF PEOPLE HE KNOWS IN THE NEIGHBORHOOD?

12 BECAUSE THIS IS A TYPICAL GANG CASE.
13 YOU'VE HEARD THAT FROM MULTIPLE WITNESSES IN THIS CASE.
14 MULTIPLE DETECTIVES ABOUT HOW THESE CASES WORK. AND IN
15 FACT, YOU SAW IT PLAY OUT BEFORE YOUR VERY EYES WITH
16 BOTH MR. TAYLOR, BUT MORE IMPORTANTLY, WITH THE DEFENSE
17 WITNESS, JOLON GORDON.

18 MR. HIGGINS CALLED THAT WITNESS TO THE
19 STAND. AND WHEN THAT WITNESS WAS TESTIFYING ON DIRECT
20 EXAMINATION, ALL THREE OF THESE VERY EXPERIENCED DEFENSE
21 ATTORNEYS STOOD AT THIS PODIUM AND THEY ASKED THAT
22 WITNESS, "YOU'RE NOT AFRAID OF MY CLIENT. YOU'RE NOT
23 AFRAID OF ANY OF THESE DEFENDANTS."

24 OVER AND OVER AND OVER AGAIN THEY ASKED
25 THAT QUESTION. THEY ASKED THAT QUESTION REPEATEDLY.
26 "YOU'RE NOT AFRAID, YOU'RE NOT AFRAID, YOU'RE NOT
27 AFRAID."

28 AND THEN I GOT UP TO CROSS-EXAMINE HIM.

1 WHAT WAS THE FIRST THING THAT I DID? I PLAYED THAT TAPE
2 WHERE YOU HEAR HIM TALK ABOUT HOW AFRAID HE IS.
3 SPECIFICALLY OF DEFENDANT KHALILL. BECAUSE HE KNOWS
4 WHERE HIS FAMILY IS.

5 LADIES AND GENTLEMEN, IT MAKES SENSE THAT
6 WITNESSES IN GANG CASES FEEL THIS WAY. IT MAKES SENSE
7 THAT MR. TAYLOR, FOUR DAYS AFTER HE SEES HIS BEST FRIEND
8 SHOT AND KILLED, AND HE HIMSELF IS SHOT AT, IT MAKES
9 SENSE THAT HE WANTS TO DOWNPLAY.

10 BECAUSE HE KNOWS THAT TALKING TO THE COPS
11 IS SNITCHING. AND HE KNOWS WHAT HAPPENS TO SNITCHES.
12 HE KNOWS THE RISKS ON HIS LIFE. WHAT HE DOESN'T KNOW,
13 LADIES AND GENTLEMEN, IS WHETHER OR NOT THE PEOPLE WHO
14 SHOT AT THEM ARE GOING TO COME BACK AND FINISH THE JOB.

15 WHETHER THEY'RE GOING TO GO TO HIS PLACE OF
16 WORK. OR HIS HOUSE. WHAT IF MOVING OUT OF THE
17 NEIGHBORHOOD ISN'T ENOUGH? WHAT IF THEY FIND HIM? IT
18 MAKES SENSE THAT WITNESSES IN GANG CASES DO THIS. AND
19 YOU SAW IT LIVE IN FRONT OF YOU.

20 WELL, THEN, WHY, 9 YEARS LATER, DOES HE
21 COME IN AND TESTIFY; RIGHT? THAT'S THE NEXT QUESTION.
22 WELL, YOU SAW HIM ON THE STAND. YOU SAW HOW NERVOUS HE
23 WAS. IN FACT, HE ADMITTED TO BEING NERVOUS TESTIFYING
24 HERE. BECAUSE IT'S STILL SOMEWHAT SCARY.

25 BUT AFTER 9 YEARS, LADIES AND GENTLEMEN,
26 HE'S ALSO GROWN UP. HE'S MORE MATURE THAN HE WAS BACK
27 THEN. BUT MORE IMPORTANTLY, HE HAS STAYED SAFE. HE'S
28 GONE 9 YEARS, AND STAYED SAFE.

1 AND THAT PERHAPS GIVES HIM THE COURAGE TO
2 COME TO COURT AND MAKE AN I.D. HE DID IT IN 2010 AT THE
3 PRELIMINARY HEARING, AND HE DID IT IN 2011.

4 AND HE REALLY DID IT IN 2001. BUT HE
5 DOWNPLAYED IT. AND YOU HEARD FROM SEVERAL DETECTIVES
6 ABOUT HOW THEY ENCOUNTER THIS ALL THE TIME.

7 THE DEFENSE CALLED DR. SHOMER TO THE STAND,
8 AN I.D. EXPERT. MR. SHOMER SAID WELL, MR. TAYLOR'S
9 MIND -- OR HE DIDN'T SAY THIS IT'S ABOUT MR. TAYLOR. HE
10 SAYS IT ABOUT WITNESSES IN GENERAL.

11 MAYBE HIS MIND PLAYING TRICKS ON HIM, OR
12 HE'S MAKING ASSUMPTIONS. IT'S REALLY BASED ON WHAT
13 OTHER PEOPLE IN THE NEIGHBORHOOD ARE SAYING, NOT WHAT HE
14 SAW. AND HE IS JUST COMMITTED TO THE I.D. NOW. THOSE
15 WERE DR. SHOMER'S THOUGHTS.

16 WELL, BASED ON WHAT OTHERS ARE SAYING IS
17 FASCINATING TO ME. THIS IS THE POINT THE DEFENSE
18 RAISES. SO EVERYBODY ELSE IN THE NEIGHBORHOOD WAS
19 TALKING ABOUT HOW THESE TWO DEFENDANTS ARE THE ONES THAT
20 DID IT? THAT GIVES YOU CONFIDENCE IN MR. TAYLOR'S
21 IDENTIFICATION, NOT A LACK THEREOF.

22 AND WHAT ABOUT THIS NOTION THAT HE'S JUST
23 COMMITTED THE I.D., NOW, AFTER 9 YEARS? WELL, WE KNOW
24 THAT'S FALSE. BECAUSE YOU SAW MR. TAYLOR ACKNOWLEDGE
25 HIS OWN MISTAKE FROM THIS WITNESS STAND.

26 REMEMBER DAY TWO OF HIS TESTIMONY WHEN
27 MR. GRAYSON WAS QUESTIONING HIM? ON DAY ONE, MR. TAYLOR
28 MIXED UP THE DEFENDANTS IN TERMS OF WHO WAS DRIVING, OR

1 WHO WAS PASSENGER.

2 AND THEN THE NEXT DAY, HE SAID SOMETHING
3 ELSE IN THAT REGARD. SO MR. GRAYSON QUESTIONED HIM.
4 AND THE WITNESS ADMITTED "YEAH, YOU KNOW, I MADE A
5 MISTAKE WHEN I SAID THAT. AS SOON AS I WALKED OUT OF
6 HERE, I REALIZED IT."

7 HE'S ACKNOWLEDGING THAT HE HAS MADE A
8 MISTAKE. THIS IS NOT A GENTLEMAN WHO IS JUST SO
9 COMMITTED TO HIS I.D. FROM 10 YEARS AGO THAT HE CAN'T
10 LET IT GO. YOU GOT TO SEE HOW HE PERFORMS WHEN
11 CONFRONTED WITH MAKING A MISTAKE. HE DOES NOT DIG IN
12 HIS HEELS, AS DR. SHOMER SUGGESTED.

13 MORE IMPORTANTLY, THIS IS A WITNESS WHO
14 EXONERATES THE INNOCENT, LADIES AND GENTLEMEN. THIS
15 EXHIBIT -- OR, EXCUSE ME, THIS SIX PACK OF MR. BRICE WAS
16 SHOWN TO MR. TAYLOR ON AUGUST 14TH.

17 REMEMBER, ALL THE COPS KNEW WAS THAT IT WAS
18 SOMEBODY NAMED DENNIS FROM 135. AND THAT THE OTHER
19 SUSPECT HAD BRAIDS. AND SO THE DETECTIVE PUT TOGETHER
20 TWO SIX PACKS. ONE OF DENNIS FROM 135. THAT'S DENNIS
21 WALLACE. AND THEN WHEN HE DID RESEARCH, HE FOUND THAT
22 MR. BRICE HAD BEEN CONNECTED WITH MR. WALLACE AT SOME
23 POINT.

24 SO HE PUT THAT INDIVIDUAL IN A SIX PACK.
25 BUT MR. TAYLOR EXONERATED THAT PERSON. HE SAID NO, NO
26 I.D. IT WASN'T UNTIL THE NEXT DAY THAT HE WAS PRESENTED
27 WITH THE SIX PACK THAT HE I.D.'D.

28 DR. SHOMER, LADIES AND GENTLEMEN, PROVIDES

1 REASONABLE DOUBT FOR A REASONABLE FEE. HIS FEE IS
2 \$90,000 A YEAR. THAT'S WHAT HE EARNS FOR TESTIFYING
3 ONLY FOR THE DEFENSE. AND HAVING LITERALLY NO PERSONAL
4 EXPERIENCE IN THE AREA OF RESEARCH ABOUT WHICH HE IS
5 TESTIFYING.

6 HE ADMITTED TO THAT ON THE STAND. HE
7 BASICALLY JUST READS A LOT OF STUDIES THAT OTHER PEOPLE
8 HAVE DONE. DOESN'T TALK TO THOSE PEOPLE. JUST READS
9 ALL THE INFORMATION, AND THEN COMES IN HERE AND TELLS US
10 ABOUT IT.

11 AND HE ADVERTISES ON HIS WEBSITE "HEY, HIRE
12 ME AND I'LL GET YOU AN ACQUITTAL." THAT IS DR. SHOMER.

13 WHAT DR. SHOMER FAILS TO DO AND WHAT YOU
14 SHOULD NOT DO IS IGNORE IMPORTANT FACTORS. LIKE THIS
15 ISN'T A STRANGER I.D. THIS ISN'T A WOMAN WHO IS IN A
16 DARK ALLEY AND HER PURSE IS GETTING ROBBED FROM HER BY A
17 COMPLETE STRANGER, AND THERE'S NOT ENOUGH LIGHT FOR HER
18 TO SEE, AND THE WHOLE INCIDENT TAKES FIVE SECONDS.
19 THAT'S NOT THIS KIND OF CASE.

20 THERE'S ALSO CORROBORATING EVIDENCE IN THIS
21 CASE, WHICH DR. SHOMER ALSO FAILS TO CONSIDER. WHICH HE
22 ADMITTED. HE DOESN'T TAKE INTO CONSIDERATION ANY
23 STATEMENTS MADE BY DEFENDANTS OR PHYSICAL EVIDENCE, OR
24 ANYTHING LIKE THAT.

25 SO LET'S FIRST TALK ABOUT HOW THIS ISN'T A
26 STRANGER I.D. WE KNOW THAT IT'S NOT, BECAUSE MR. TAYLOR
27 HAS SEEN BOTH THESE DEFENDANTS DRIVING AROUND HIS
28 NEIGHBORHOOD ON PRIOR INSTANCES.

1 HE'S LIVED IN THAT NEIGHBORHOOD FOR
2 FIVE YEARS, AND SEEN THEM MULTIPLE, MULTIPLE TIMES.

3 IN FACT, MR. WALLACE USED TO HIT HIM UP
4 WHEN HE FIRST MOVED INTO THAT NEIGHBORHOOD. "WHERE ARE
5 YOU FROM?" HE'S HAD MULTIPLE CONTACTS WITH MR. WALLACE.

6 AND EVEN THE DEFENSE GANG EXPERT, LADIES
7 AND GENTLEMEN, ACKNOWLEDGED THAT IN THESE KIND OF
8 NEIGHBORHOODS, PEOPLE KNOW WHO'S WHO. THEY MAY NOT KNOW
9 A MONIKER, THEY MAY NOT KNOW FIRST NAME. MUCH LIKE SOME
10 OF YOU FOLKS PROBABLY HAVE SEEN THE SAME BAILIFFS AROUND
11 THIS BUILDING AS YOU COME HERE FOR YOUR JURY SELECTION.

12 YOU MAY NOT KNOW PEOPLE'S NAMES, UNLESS YOU
13 SNEAK A PEEK AT THEIR NAME TAG. BUT YOU RECOGNIZE THE
14 FACES. YOU'VE SEEN THEM OVER THE LAST THREE WEEKS.

15 THERE'S A VERY POWERFUL DIFFERENCE BETWEEN
16 RECOGNIZING AND DESCRIBING. AND THINK ABOUT HOW
17 IMPORTANT RECOGNITION IS. YOU MAY NOT BE ABLE TO
18 DESCRIBE SOMETHING VERY WELL, OR ARTICULATE IT VERY
19 WELL, BUT YOU'LL KNOW IT WHEN YOU SEE IT.

20 MR. TAYLOR WAS TELLING YOU "I RECOGNIZED
21 THEM IMMEDIATELY." HE MAY NOT HAVE KNOWN THEIR MONIKERS
22 OR THEIR NAMES RIGHT AWAY. BUT HE KNEW WHO THEY WERE.

23 THERE'S ALSO CORROBORATION TO MR. TAYLOR'S
24 IDENTIFICATIONS. THE FIRST ONE COMES IN THE FORM OF A
25 JAIL CALL WITH MR. KHALILL AFTER HIS ARRAIGNMENT IN THIS
26 CASE WITH HIS MOTHER.

27

28 (PLAYS RECORDING.)

1 MS. OSTROWSKI: YOU CAN HEAR ON THE TAPE HIS
2 MOTHER SPECIFICALLY ASKS HIM "WERE YOU EVEN THERE? HE
3 ANSWERS, "UH, YEAH. I WAS THERE."

4 DID YOU HEAR THE PAUSE IN HOW HE MAKES THAT
5 STATEMENT? AND I WANT YOU TO ASK YOURSELVES IS THIS HOW
6 YOU WOULD RESPOND IF SOMEBODY ASKED YOU IF YOU WERE
7 THERE.

8 WOULD A REASONABLE PERSON RESPOND IN THAT
9 WAY. AN INNOCENT MIND WOULD BE LIKE NO, I WASN'T THERE.
10 I DIDN'T HAVE ANYTHING TO DO WITH THIS. THAT'S NOT WHAT
11 HE SAYS. HE SAYS, "YEAH, I WAS THERE."

12 WE ALSO HAVE A DIRECT ADMISSION IN THE FORM
13 OF THAT YOUTUBE RAP VIDEO THAT HE POSTED. NOW, LADIES
14 AND GENTLEMEN, AT THE START OF THAT TAPE, I ENCOURAGE
15 YOU TO WATCH IT, THE VIDEO. LISTEN AT THE START. "THAT
16 KID ON SAN PEDRO, THAT NIGGA'S DEAD." THAT'S WHAT HE
17 SAYS AT THE START OF THE TAPE.

18 NOW, IF YOU LISTEN TO IT, COUNSEL IS GOING
19 TO TELL YOU THERE'S SOMETHING DIFFERENT, THAT IT'S THE
20 MIDDLE OF SAN PEDRO. ALL RIGHT.

21 LET'S SAY IT IS. LET'S SAY HE DOES SAY THE
22 MIDDLE OF SAN PEDRO. AND THEN HE MAKES REFERENCE TO
23 SOMEBODY BEING DEAD.

24 KILLING THE SON OF A NUTTY BLOCK CRIP GANG
25 MEMBER, A FOUNDING MEMBER OF THAT GANG, THAT IS A
26 BRAGGING RIGHT. KILLING ANYBODY IS A BRAGGING RIGHT IN
27 GANG CULTURE. AND THAT'S WHAT HE'S DOING IN THIS VIDEO.

28 WHILE WE'RE ON THE TOPIC OF THIS RAP VIDEO,

1 THERE'S A COUPLE OTHER GREAT ONES THAT I'D LIKE YOU TO
2 PAY ATTENTION TO. "DUE TO REPERCUSSIONS" -- THERE'S A
3 TYPO -- IT SHOULD BE D-U-E. "DUE TO REPERCUSSIONS,
4 NEIGHBOR SCARED TO SPEAK. NO WITNESS, NO NAME, EQUAL NO
5 ONE TO BLAME. HERE'S A TICKET, WELCOME TO THE MURDER
6 SHOW. I'M A YOUNG JESSE JAMES, I'M A RIDER, CAUSING
7 MORE CASUALTY THAN AL-QAEDA."

8 THIS IS HOW ENTRENCHED MR. KHALILL IS IN
9 THIS GANG. HOW PROUD HE IS OF THESE STATEMENTS.

10 BECAUSE OF THE STATEMENTS THAT MR. KHALILL
11 MAKES ON THE PHONE WITH HIS MOM, THAT SHOULD GIVE YOU
12 CONFIDENCE IN HIS TAYLOR'S IDENTIFICATION OF HIM.

13 AND BECAUSE YOU CAN HAVE CONFIDENCE IN THE
14 I.D. ON MR. KHALILL, YOU CAN ALSO HAVE CONFIDENCE ON THE
15 I.D. OF MR. WALLACE. THE I.D. OF AN INDIVIDUAL WHO
16 LIVES JUST DOWN THE STREET FROM HIM.

17 THE I.D. OF AN INDIVIDUAL WHO IS FREQUENTLY
18 SEEN DRIVING THAT WHITE NISSAN. THE I.D. OF AN
19 INDIVIDUAL WHO IS OFTEN WITH THE CO-SUSPECT,
20 MR. KHALILL. THE I.D. OF AN INDIVIDUAL WHO CAME TO HIS
21 HOUSE THE DAY AFTER TO BLAME THE SHOOTING ON THE
22 MEXICANS.

23 THE I.D. OF AN INDIVIDUAL WHO, WHEN HIS
24 HOUSE WAS SEARCHED, NOT TOO LONG AFTER THE MURDER, BOTH
25 MR. KHALILL WAS THERE, AND SO WAS THE WHITE NISSAN. AN
26 INDIVIDUAL WHO NOT ONLY HAD MR. KHALILL IN THE WHITE
27 NISSAN, BUT HE HAD AN AK MAGAZINE AND AMMO AT HIS HOUSE.

28 THE SAME KIND OF AMMUNITION, THE SAME

1 CALIBER AS WHAT WAS FOUND AT THE CRIME SCENE.

2 NOW, YOU HEARD FROM MR. MUNOZ, WHO TOLD YOU
3 "LOOK, I CAN'T TELL FOR SURE WHETHER OR NOT THIS
4 MAGAZINE FIRED THOSE BULLETS AT THE CRIME SCENE. I
5 CAN'T DO THAT KIND OF TEST. IT WASN'T CONCLUSIVE.
6 THERE WERE SIMILARITIES, BUT I'M NOT GOING TO GO SAY IT
7 WAS A MATCH. BUT WHAT I CAN TELL YOU IS THAT THIS IS AN
8 AK MAGAZINE, AND THIS IS AK CALIBER AMMO."

9 NOW, MR. NEWMAN IS GOING TO GET UP HERE AND
10 TELL YOU WELL, YOU HEARD MR. MUNOZ TALK ABOUT HOW THIS
11 WAS RUSSIAN AMMUNITION, AND THE ONE AT CRIME SCENE WAS
12 CHINESE. WELL, LADIES AND GENTLEMEN, THAT'S NOT A
13 SIGNIFICANT DIFFERENCE. AND LET ME PUT IT TO YOU IN
14 TERMS OF THIS.

15 IN MY HOUSE, I USUALLY HAVE MILK. IT'S A
16 STAPLE IN MY FRIDGE. WHAT ISN'T A STAPLE IS THE BRAND
17 THAT I HAVE. I GO FOR WHAT'S ON SALE. SOMETIMES THAT'S
18 THE RALPH'S BRAND. SOMETIMES IT'S THE NAME BRAND. WHAT
19 MATTERS IS THAT I HAVE MILK IN THE HOUSE.

20 WHAT MATTERS IS THAT YOU HAD AN AK
21 MAGAZINE, AN AK AMMO IN HIS HOUSE. WHETHER IT'S
22 CHINESE, RUSSIAN, RALPHS, OR KNUDSEN DOESN'T MATTER.
23 THE SIGNIFICANCE IS THE CALIBER.

24 WE ALSO HAVE AN ADMISSION OF SOME KIND FROM
25 MR. WALLACE. THAT CAME IN THE FORM OF THAT STIMULATION
26 THEY DID WHEN THEY TOOK HIS DNA. BECAUSE WHEN THOSE
27 DETECTIVES SHOW UP AT HIS HOUSE AND THEY SWAB HIM FOR
28 THAT DNA, AS SOON AS THEY LEAVE, WHO IS THE FIRST PERSON

1 HE CALLS? HE CALLS MR. KHALILL. THE PERSON THAT HE DID
2 THAT 2001 SHOOTING WITH.

3 DOESN'T CALL PEANUT. DOESN'T CALL ETHIE.
4 DOESN'T CALL BABY SPOKE. DOESN'T CALL ANY OTHER
5 GANGSTER. OR HIS MOM, OR ANYBODY ELSE. HE CALLS
6 MR. KHALILL. WHAT DOES HE SAY DURING THAT CALL?

7
8 (THE RECORDING WAS PLAYED.)

9
10 MS. OSTROWSKI: I MAY BE HAVING TECHNICAL
11 DIFFICULTIES ON WHETHER YOU CAN HEAR THIS OR NOT.
12 HOWEVER, YOU HAVE THE TRANSCRIPT IN FRONT OF YOU, AND
13 YOU HAVE THE TRANSCRIPTS BACK THERE, AND YOU'LL HAVE THE
14 AUDIOS BACK THERE WITH YOU.

15 THE POINT OF THIS CALL IS THAT WHEN HE
16 CALLS MR. KHALILL, HE TELLS HIM, GET OUT OF DODGE. NOW,
17 LADIES AND GENTLEMEN, IF YOU WERE INNOCENT, WOULDN'T YOU
18 BE THRILLED THAT THE COPS ARE COMING TO GET YOUR DNA?
19 ALL RIGHT. YOU'RE GOING TO BE EXONERATED IF YOU DIDN'T
20 DO ANYTHING; RIGHT?

21 HE'S NOT THRILLED. HE'S CALLING HIS CRIME
22 PARTNER AND WARNING HIM TO GET OUT OF DODGE. ALSO IN
23 THIS CONVERSATION, MR. WALLACE TALKS ABOUT WHAT HAPPENED
24 WHEN THE COPS WERE THERE. AND HE'S SPECIFICALLY
25 CONCERNED ABOUT HOW THEY'RE GOING TO TEST THE CLIP AND
26 THE BULLETS.

27 AND WHEN YOU LISTEN TO THIS TAPE, LADIES
28 AND GENTLEMEN, I KNOW IT'S DIFFICULT TO HEAR NOW, YOU

1 WILL HEAR MR. WALLACE'S STRESS IN HIS VOICE. YOU CAN
2 HEAR IT. "WHAT ARE THEY TESTING? WHY ARE THEY TESTING?
3 ARE THEY TESTING -- ARE THEY TESTING THE MAGAZINE? WHAT
4 ARE THEY TESTING?"

5 NOT "HALLELUJAH, THANK GOD THE COPS ARE
6 DOING SOME SCIENTIFIC TESTS. WE'RE GOING TO BE CLEARED
7 NOW." THAT'S NOT WHAT HE SAYS.

8 YOU ALSO CAN HEAR IN THESE CD'S THAT
9 MR. KHALILL IS ALSO NERVOUS. EXCUSE ME. I GOT AHEAD OF
10 MYSELF.

11 I'D ALSO LIKE YOU TO LISTEN TO THE SAME
12 CALL WHERE MR. WALLACE TALKS ABOUT HOW HE WAS IN THE
13 SHOWER WHEN THE COPS CAME. AND WHAT'S THE FIRST THING
14 THAT HE SAYS WHEN HE HEARS THAT IT'S THE SHERIFF'S
15 DEPARTMENT? "OH, SHIT."

16 THAT'S WHAT HE SAYS ON THE TAPE. THAT'S
17 WHAT WAS ENTERING HIS MIND WHEN THE COPS CAME TO HIS
18 HOUSE. AND DURING THIS SAME CONVERSATION, AS I WAS JUST
19 SPEAKING ABOUT A MOMENT AGO, MR. KHALILL IS EQUALLY
20 STRESSED OUT ABOUT THE TAKING OF HIS DNA.

21 BECAUSE HE SAYS TO MR. WALLACE, "AND THEY
22 SAID THEY'RE TRYIN' TO CATCH UP WITH ME?" POKE SAYS
23 "YEAH." K-9 SAYS "OH, MY GOD. I'M FINNIN' TO GET OUT
24 THE WAY." THIS IS GETTING WORSE AND WORSE.

25 AGAIN, NOT A "HALLELUJAH, THE COPS ARE
26 GOING TO SEE I DIDN'T DO THIS." HE'S TERRIFIED. HE'S
27 WORRIED.

28 THEIR STATEMENTS ON THOSE PHONES AND IN

1 THOSE CALLS, LADIES AND GENTLEMEN, CORROBORATE MR. EMOND
2 TAYLOR'S IDENTIFICATIONS FOR YOU.

3 NOW, LET'S TALK ABOUT THE MURDER OF ADIEL
4 QUEZADA. WE KNOW THIS MURDER TOOK PLACE JUST IN THE
5 INTERSECTION OF 139TH AND AVALON. IT WAS JULY 25, '08,
6 AND IT WAS AT ABOUT 8:30 IN THE EVENING.

7 WE KNOW FROM THE CRIME SCENE RESPONDERS
8 THAT THERE WERE SEVERAL CASINGS. THERE WERE ABOUT 17
9 CASINGS IN TOTAL THAT THEY COLLECTED. TWELVE WERE
10 9-MILLIMETER, FIVE WERE .40-CALIBER, INDICATING THAT TWO
11 FIREARMS WERE USED TO SHOOT AND KILL MR. QUEZADA.

12 WE ALSO KNOW FROM THE CRIME SCENE PICTURES
13 AND FROM THOSE FIRST RESPONDERS THAT ADIEL QUEZADA WAS
14 COVERED UP. HE WAS COVERED BY THE SHIELD THAT YOU SEE
15 SO THE PARAMEDICS COULD WORK ON HIM AND TRY TO SAVE HIS
16 LIFE.

17 SO SOMEBODY WALKING BY OR SEEING THIS CRIME
18 SCENE, THEY MAY HAVE SEEN YELLOW TAPE. BUT THEY AREN'T
19 SEEING WHO IS LAYING DOWN. THAT WILL BECOME IMPORTANT
20 WHEN YOU THINK ABOUT HOW MR. FEISSA WAS AWARE THAT IT
21 WAS ADIEL QUEZADA, THE SOUTH SIDE PLAYER KID, WHO HAD
22 BEEN SHOT.

23 WE HEARD FROM MR. BUCHANAN, WHO INDICATED
24 THAT HE WAS DOWN THE STREET WHERE THAT ORANGE CIRCLE IS
25 ON 139TH. AND THAT AFTER HE HEARD SHOTS, HE SAW A MALE
26 BLACK RUNNING DOWN 139TH. THIS PERSON WAS WEARING A
27 BLACK HOODIE. AND BECAUSE OF THAT, HE COULDN'T TELL WHO
28 IT WAS.

1 NOW, MR. BUCHANAN, BACK IN 2008, ALSO
2 INDICATED THAT HE SAW A DARK-COLORED CHEVY TAHOE. NOW,
3 WHEN HE LOOKS AT THE PICTURES YOU SEE ON THE SCREEN
4 RIGHT NOW OF THAT CHEVY TAHOE, HE TOLD THE DETECTIVES
5 "THAT LOOKS LIKE THE CAR. I THOUGHT IT WAS DARKER,
6 THOUGH."

7 IT WOULD MAKE SENSE HE WOULD THINK THE CAR
8 IS DARKER, RIGHT? THIS CAR IS DARK BLUE. IT IS A
9 MIDNIGHT BLUE. AT NIGHT, GUESS WHAT COLOR IT PROBABLY
10 LOOKS LIKE? BLACK.

11 WE ALSO HEARD FROM JOLON GORDON, LADIES AND
12 GENTLEMEN. MR. GORDON TOLD US THAT HE WAS AT THAT
13 MAILBOX. RIGHT ACROSS THE STREET FROM WHERE MURDER
14 HAPPENED, RIGHT?

15 NOW, IN 2011, THREE YEARS AFTER THE
16 SHOOTING, HE GETS BACK IN TOUCH WITH LAW ENFORCEMENT.
17 NOW HE LIVES IN TEXAS. HE'S CALLING UP SAYING HE HAS
18 MORE INFORMATION.

19 SO DETECTIVE VALENTINO AND PARTNER, THEY GO
20 OUT THERE, AND THEY INTERVIEW HIM. HE TELLS THEM AT
21 POINT IN TIME, "LOOK, THERE'S THREE PEOPLE, AND THEY'RE
22 WALKING FROM THE MAILBOX ACROSS THE STREET."

23 AS A DEFENSE WITNESS, NOW, HE SAYS "OH, NO,
24 THEY CROSSED FARTHER NORTH. LIKE NEAR 137TH." WELL,
25 LADIES AND GENTLEMEN, WHEN YOU LOOK AT THE MAP OF THE
26 LOCATION, YOU'RE GOING TO SEE THAT 139TH IS WHERE THE
27 CRIME HAPPENED. 138TH IS THE NEXT BLOCK. 137TH IS
28 GOING TO BE AFTER THAT.

1 AND I WANT YOU TO ASK YOURSELF, WHY IS HE
2 NOTICING PEOPLE CROSSING THE STREET TWO BLOCKS NORTH OF
3 WHERE HE IS?

4 HE'S ON HIS WAY TO THAT MAILBOX, RIGHT? TO
5 MAIL A LETTER FOR HIS MOM. DO YOU REALLY THINK THAT
6 HE'S PAYING ATTENTION TWO BLOCKS NORTH OF HIM? TO THREE
7 PEOPLE CROSSING THE STREET?

8 MR. GRAYSON: OBJECTION.

9 MISSTATES MR. GORDON'S TESTIMONY.

10 THE COURT: OVERRULED.

11 MS. OSTROWSKI: HE'S NOT. HE'S NOT PAYING
12 ATTENTION TWO BLOCKS AHEAD OF HIM. HE'S PAYING
13 ATTENTION TO WHAT'S HAPPENING IN FRONT OF HIM, LIKE A
14 NORMAL PERSON. THOSE PEOPLE ARE CROSSING RIGHT IN FRONT
15 OF HIM AT THE MAILBOX.

16 AFTER THE SHOOTING TOOK PLACE, WE KNOW FROM
17 MR. GORDON THAT HE RAN DOWN METLER. HE DID NOT RUN DOWN
18 139TH TOWARDS WHERE MR. BUCHANAN WAS, SO HE WOULDN'T
19 HAVE BEEN IN A POSITION TO SEE WHETHER THERE WAS AN SUV
20 OR NOT.

21 NOW, WE TALKED A MOMENT AGO ABOUT
22 MR. GORDON IN HIS INTERVIEW IN 2011. AND I TALKED TO
23 YOU ABOUT HOW YOU GOT TO SEE A LIVE WITNESS, AND IN A
24 GANG CASE, TESTIFY OUT OF FEAR.

25 WHEN HE MEETS WITH THEM, HE TELLS THE
26 DETECTIVES THAT THERE WERE THREE PEOPLE RUNNING, BUT HE
27 ONLY SAW ONE INDIVIDUAL. HE COULDN'T SEE THE OTHER TWO.
28 ONLY ONE OF THEM TURNED AROUND AND LOOKED AT HIM.

1 AND HE SAW THAT PERSON BECAUSE THE HOODIE
2 FELL OFF; RIGHT? THE HOODIE FELL OFF, AND HE WAS ABLE
3 TO SEE THE FACE AND DESCRIBE THAT PERSON AS A MALE
4 BLACK, TALL, SKINNY, AND WITH BRAIDS.

5 SO THEN THE DETECTIVES PUT IN FRONT OF HIM
6 A SIX PACK CONTAINING 6-FOOT MR. KHALILL. AND YOU HAVE
7 THAT HE'S 6-FOOT, AND YOU A HAVE PHOTO WITH HIS
8 MEASUREMENTS IN EVIDENCE. HE DOESN'T MAKE AN I.D.;
9 DOESN'T SAY ANYTHING ABOUT KNOWING HIM AT ALL, ABOUT
10 ANYTHING.

11 THEN THEY SHOW HIM MR. WALLACE'S SIX PACK.
12 AND IN THAT ONE, HE SAYS "OH, I RECOGNIZE MR. WALLACE,"
13 OR HE POINTS TO MR. WALLACE'S PICTURE. "BUT JUST FROM
14 THE NEIGHBORHOOD." AGAIN, JUST LIKE MR. EMOND TAYLOR.
15 JUST FROM THE NEIGHBORHOOD.

16 AND THEN THEY SHOW HIM A PICTURE OF PEANUT,
17 MR. GIBBS. AND HE DOESN'T MAKE ANY I.D. AT ALL.

18 BUT THEN HE ASKED TO SPEAK TO DETECTIVE
19 VALENTO AGAIN. AND WHAT DOES HE SAY? HE SAYS, "THERE'S
20 A GUY," AND THEN SOMETHING ABOUT HIS DOOR BEING OPEN,
21 CAN TELL THEY'RE IN THE CAR, AND THE DOOR SLAMS.

22 "THERE'S A GUY IN THE PHOTOS, BUT I DIDN'T
23 POINT HIM OUT, OKAY. I'M NERVOUS ABOUT THAT, YOU KNOW.
24 YOU KNOW WHAT I'M SAYING?"

25 DETECTIVE VALENTO SAYS "WELL, WHY DON'T YOU
26 TELL ME IN YOUR OWN WORDS? EXPLAIN IT TO ME. WHY CAN'T
27 YOU MAKE THE I.D.?"

28 HE SAYS "MAN, BECAUSE HE KNOWS WHERE MY

1 WHOLE FAMILY IS. HE KNOWS EVERYTHING ABOUT MY WHOLE
2 FAMILY. EVERYTHING. JUST BECAUSE MY FAMILY LIVES OVER
3 THERE."

4 AND WE KNOW THAT MR. GORDON'S FAMILY STILL
5 LIVES OVER THERE. MR. GORDON LIVES IN TEXAS. HE CAN'T
6 PROTECT HIS FAMILY FROM TEXAS. HIS FAMILY STILL LIVES
7 IN THIS NEIGHBORHOOD. AND THAT'S WHAT HE TELLS THE
8 DETECTIVE EARLIER THIS YEAR.

9 BUT THEN HE SAYS TO THE DETECTIVES, BECAUSE
10 THE DETECTIVES ASK, "ALL RIGHT, SO IS IT THAT YOU DON'T
11 WANT TO I.D. BECAUSE YOU'RE AFRAID OF RETALIATION? DO
12 YOU THINK HE'S GOING TO RETALIATE?"

13 AND YOU HEAR MR. GORDON'S VOICE; RIGHT?
14 YOU HEAR IT ON THAT TAPE. THE INFLECTION. "I WOULDN'T
15 DOUBT IT." THAT'S WHAT HE SAID; RIGHT?

16 SO YOU KNOW THAT HE'S TERRIFIED. DESPITE
17 THE 15 QUESTIONS THAT ALL THREE DEFENSE ATTORNEYS ASKED
18 HIM, "ARE YOU SCARED?" YOU KNOW EXACTLY WHAT'S GOING
19 THROUGH HIS MIND.

20 OBVIOUSLY, MR. KHALILL, THE PERSON WHO
21 MR. GORDON KNOWS AS K-9, IS THE ONE HE SAW RUNNING FROM
22 THE STREET, FROM THE CRIME SCENE. BUT HE IS TOO AFRAID,
23 TOO TERRIFIED TO MAKE AN IDENTIFICATION.

24 IN ADDITION TO MR. BUCHANAN AND MR. GORDON,
25 WE OF COURSE HAVE MR. FEISSA. MR. FEISSA WAS AN
26 UNAVAILABLE WITNESS. AND UNDER JURY INSTRUCTION 317,
27 THE COURT TELLS YOU THAT HE'S UNAVAILABLE, AND THAT YOU
28 MUST EVALUATE HIS TESTIMONY BY THE SAME STANDARDS THAT

1 YOU WOULD APPLY TO A WITNESS WHO TESTIFIED HERE IN
2 COURT.

3 WHEN YOU GO AND LOOK AT THE JURY
4 INSTRUCTION ABOUT ALL THE FACTORS ON CREDIBILITY, ONLY
5 ONE OF THEM INVOLVES ASKING YOU TO DETERMINE SOMETHING
6 LIVE AND IN FRONT OF YOU, LIKE HOW THEY WERE ON THE
7 STAND PHYSICALLY. ALL THE OTHER FACTORS ARE FACTORS YOU
8 CAN CONSIDER WITHOUT SEEING THE PERSON LIVE. AND THAT'S
9 WHAT THE COURT IS ASKING YOU TO DO.

10 NOW, THE DEFENSE HAS MADE CLEAR IN THEIR
11 QUESTIONS AND IN THEIR OPENING STATEMENT THAT MR. FEISSA
12 IS THE REAL KILLER. THAT'S THE DEFENSE; RIGHT? WELL,
13 HOW DO WE KNOW THAT HE'S NOT THE REAL KILLER?

14 WELL, FIRST OF ALL, THERE'S NO EVIDENCE,
15 THERE'S NO WITNESSES WHO SAW MR. FEISSA DO IT. THERE'S
16 NO WITNESSES WHO SAID, "MR. FEISSA TOLD ME HE DID IT."

17 THERE'S NO MATCH TO THE GUN THAT MR. FEISSA
18 WAS ARRESTED WITH. ON JULY 29, 2008, AS MUCH AS THE
19 DEFENSE KEPT ASKING THAT QUESTION AND TRYING TO MAKE IT
20 SOUND LIKE THAT GUN WAS, YOU KNOW, THE SAME GUN THAT WAS
21 USED IN THE MURDER, WE KNOW THAT IT WAS NOT. THAT IT
22 WAS CLEAR.

23 WE ALSO KNOW FROM DETECTIVE TY LABBE, ONE
24 OF THE LAST WITNESSES WHO TESTIFIED LAST WEEK, THAT AS
25 THE WIRE DETECTIVE, THE PERSON WHO HAD TO WRITE UP THE
26 AFFIDAVIT AND SAYING "HEY, JUDGE, I'D LIKE TO GET A
27 WIRETAP ORDER, WE GOT A SNITCH TELLING US ALL THIS
28 INFORMATION," HE SPECIFICALLY ATTEMPTED TO CLEAR

1 MR. FEISSA AS THE MURDERER BY LOOKING AT HIS CELL PHONE
2 RECORDS. AND HIS CELL PHONE RECORDS PUT MR. FEISSA AT
3 HOME. JUST LIKE MR. FEISSA SAID HE WAS.

4 WELL, WHAT ABOUT THIS BLACK CAMRY? THE
5 DEFENSE BROUGHT UP THIS BLACK CAMRY OVER AND OVER AGAIN.
6 DOES THIS PUT MR. FEISSA AT THE CRIME SCENE? WELL, THAT
7 BRINGS US BACK TO MR. GORDON; RIGHT?

8 BECAUSE IN 2008, MR. GORDON SAYS THAT THAT
9 BLACK CAMRY WAS LEAVING THE SCENE AFTER THE SHOOTING.
10 BUT HE ALSO SAID, "LOOK, I DON'T KNOW IF IT WAS THE
11 SUSPECT CAR, OR PEOPLE TRYING TO GET AWAY LIKE I WAS
12 TRYING TO GET AWAY. I'M NOT SURE."

13 THEN IN 2011, HE TELLS DETECTIVE VALENTA,
14 "I SAW THAT CAR LEAVING THE SCENE AT THE SAME TIME I SAW
15 THE THREE PEOPLE RUNNING AWAY," INDICATING THAT IT'S NOT
16 INVOLVED.

17 WHEN MR. HIGGINS PUT MR. GORDON ON THE
18 STAND, WHAT DID MR. GORDON SAY? HE SAID, "I SAW THAT
19 BLACK CAMRY LEAVING THE SCENE AT THE SAME TIME AS WHEN
20 THE SHOTS WERE BEING FIRED."

21 BUT THEN WE TOOK A LUNCH BREAK. AND THEN
22 MR. GRAYSON GOT TO CROSS HIM. SUDDENLY IT WAS A LITTLE
23 BIT DIFFERENT. NOW IT WAS ACTUALLY OH, YOU KNOW, MAYBE
24 THAT CAR WAS INVOLVED. MAYBE THIS WAS A DRIVE-BY.

25 OR MAYBE IT WAS THAT LITTLE RED STICK
26 FIGURE HE DREW IN DEFENSE EXHIBIT D. THE SINGLE
27 INDIVIDUAL HE SAW WALKING. EVEN THOUGH IN 2011, WHEN HE
28 MET WITH DETECTIVE VALENTA, HE SPECIFICALLY SAID THAT

1 PERSON WASN'T INVOLVED.

2 LADIES AND GENTLEMEN, THERE WERE 13 GUNSHOT
3 WOUNDS ON THIS VICTIM. 22 HOLES IN HIS BODY. TWO GUNS
4 WERE USED. THIS IS NOT A DRIVE-BY. YOU HEARD FROM THE
5 CORONER THAT THESE INJURIES WERE CONSISTENT WITH
6 SOMEBODY STANDING OVER HIM, DUMPING HIM OUT, JUST LIKE
7 MR. FEISSA DESCRIBED.

8 A DRIVE-BY SHOOTING WHERE THIS CAR IS
9 GETTING OUT OF THERE WITHIN SECONDS IS ABLE TO DO THAT
10 MUCH DAMAGE? THAT MANY HOLES INTO ONE INDIVIDUAL?

11 LADIES AND GENTLEMEN, WE KNOW FEISSA ISN'T
12 THE KILLER, BECAUSE HE DOESN'T BRING HIS CRIMES TO THE
13 ATTENTION OF LAW ENFORCEMENT.

14 WHEN HE GETS APPREHENDED -- OR ARRESTED,
15 EXCUSE ME, IN 2008, IN JULY OF 2008, HE BRINGS UP JUAN
16 LLANOS, THE MURDER OF COCO, AND HE BRINGS UP QUEZADA.

17 WE KNOW FOR SURE HE WASN'T INVOLVED IN THE
18 MURDER OF COCO BECAUSE HE WAS IN JAIL AT THE TIME. YOU
19 HEARD THAT FROM DETECTIVE VALENTINO, I BELIEVE ON
20 THURSDAY. AND THIS CASE. WE'VE ALREADY TALKED ABOUT
21 HOW WE KNOW HE'S NOT THE KILLER IN THIS CASE.

22 HE DOESN'T BRING UP TARRANT STREET, THE
23 MURDER OF DAVEON CHILDS. HE DOESN'T BRING UP THAT HE'S,
24 YOU KNOW, GOING TO BE SELLING DRUGS. HE DOESN'T BRING
25 UP HIS OWN STUFF. HE'S NOT TIPPING THE COPS OFF TO
26 THINGS THAT HE'S DONE.

27 AND PERHAPS EVEN MORE IMPORTANT THAN THAT
28 PIECE OF EVIDENCE, OR LACK OF EVIDENCE IS THAT NOWHERE

1 ON THESE WIRETAP CALLS DO YOU HEAR THE DEFENDANTS
2 COMPLAINING THAT THE MURDER ETHIE DID IS GETTING PINNED
3 ON THEM. IF ETHIE DID THIS MURDER, LADIES AND
4 GENTLEMEN, THESE DEFENDANTS WOULD KNOW IT.

5 THEY'RE FELLOW GANGSTERS. IF HE TOOK OUT
6 WHAT THEY BELIEVE TO A BARRIO-13, IF HE TOOK OUT A MALE
7 HISPANIC AROUND THE CORNER FROM K-9'S HOUSE, HE'S GOING
8 TO BE BRAGGING BIT. THESE DEFENDANTS ARE GOING TO KNOW
9 ABOUT IT.

10 AND NOWHERE ON THOSE CALLS DO THEY EVER
11 SAY, "I CAN'T BELIEVE WE'RE GETTING THAT MURDER ETHIE
12 DID ON US." THEY WILL REPEATEDLY SAY "THIS IS CRAZY. I
13 CAN'T BELIEVE THIS. THIS IS CRAZY. IT'S CRAZY HOW MUCH
14 THE COPS KNOW ABOUT OUR GANG. IT'S CRAZY."

15 BUT THEY'RE NOT DENYING IT. AND THEY'RE
16 CERTAINLY NOT PINNING IT ON MR. FEISSA. I WANT YOU TO
17 ASK YOURSELVES THIS QUESTION, TOO. IF MR. FEISSA IS
18 LYING TO COVER HIMSELF, WHY DOESN'T HE LIE BETTER?

19 WHY DOESN'T HE SAY HE WAS THERE AND HE SAW
20 IT ALL? THAT HE WAS ACROSS THE STREET? WHY DOESN'T HE
21 SAY THAT ALL THREE DEFENDANTS GAVE HIM ALL THE DIRTY
22 DETAILS? AS OPPOSED TO POKE -- OR EXCUSE ME, PEANUT AND
23 K-9 TOLD ME MOSTLY EVERYTHING, AS WELL AS BABY SPOKE?

24 WHY NOT SAY HE GOT ALL KINDS OF DIRECT
25 ADMISSIONS FROM POKE AS WELL? WHY DOESN'T HE SAY THAT
26 POKE AND K-9 ADMITTED THE 2001 MURDER TO HIM? REALLY
27 PUT HIM IN THE GOOD GRACES WITH THE COPS. SOLVE THE
28 THIRD MURDER FOR THEM.

1 IF HE'S GOING TO LIE, WHY NOT LIE BETTER?
2 WHY NOT TELL US WHO USED WHICH GUN? WHO HAD THE 40, WHO
3 HAD THE NINE. MR. FEISSA CAN'T TELL US THAT BECAUSE HE
4 DIDN'T GET THAT INFORMATION.

5 TELL US WHAT KIND OF GUN THAT POKE HAD. WE
6 KNOW THAT POKE WAS POSTED UP, BEING THE ARMED LOOKOUT.
7 WHAT KIND OF GUN DID HE HAVE? LIE BETTER, IF HE'S
8 LYING.

9 MR. FEISSA IS NOT THE KILLER, LADIES AND
10 GENTLEMEN. IT'S VERY EASY FOR THE DEFENSE TO POINT THE
11 FINGER AT HIM. THEY'VE GOT TO POINT THE FINGER AT
12 SOMEBODY; RIGHT? HE'S AN EASY ENOUGH TARGET. BUT NO
13 MATTER HOW MUCH THEY TRY TO MAKE THAT 9-MILLIMETER THAT
14 HE'S CAUGHT WITH THE MURDER WEAPON, IT'S NOT.

15 NO MATTER HOW MUCH THEY TRY TO ASK
16 QUESTIONS ABOUT THAT BLACK CAMRY, IT WASN'T INVOLVED IN
17 THIS SHOOTING. AND THE CELL RECORDS CONFIRM THAT
18 MR. FEISSA WAS HOME.

19 BUT HE DOES HAVE INSIDER KNOWLEDGE. HIS
20 STATUS AS A GANG MEMBER. AS THE DRIVER IN THE DRIVE-BY
21 SHOOTING OF DAVEON CHILDS, WHICH HE DID IN JANUARY OF
22 '08, SIX MONTHS BEFORE THIS MURDER WAS COMMITTED,
23 SEVEN MONTHS BEFORE THIS MURDER WAS COMMITTED.

24 IT'S BECAUSE OF THOSE ACTIONS, IT'S BECAUSE
25 OF WHO HE IS, IT'S BECAUSE HE IS DIRTY THAT HE GETS
26 ACCESS TO THIS INFORMATION.

27 IT IS BECAUSE HE IS ONE OF THEM THAT HE HAS
28 ACCESS TO THIS INFORMATION, AND CAN PROVIDE IT.

1 SO LET'S LOOK AT HIS TESTIMONY. HE TOLD US
2 THAT ON THE NIGHT OF THE MURDERS, HE GOES OVER TO K-9'S
3 HOUSE. THAT'S WHEN HE LEARNS OF THE MURDER. AND HE
4 TELLS THE DEFENDANTS, WHEN HE REALIZES WHO WAS KILLED,
5 "THAT KID WASN'T A SARRIO." WE KNOW THAT WORD "SARRIO"
6 IS DEROGATORY FOR B-13.

7 HE SAYS THAT HE TELLS THE TWO DEFENDANTS,
8 MR. KHALILL AND MR. GIBBS, THAT. BUT THEIR RESPONSE IS
9 "KICK MEXICANS," OR "FUCK MEXICANS." THEY DON'T CARE.
10 HISPANIC GANG MEMBER GOT KILLED. THAT'S ALL THEY CARE
11 ABOUT.

12 THEN HE TALKS ABOUT A SECOND CONVERSATION.
13 THERE'S SOME QUESTION ABOUT WHETHER THE SECOND
14 CONVERSATION WAS IN A PHONE CALL OR NOT. MR. GRAYSON
15 ASKED A LOT OF QUESTIONS. "ISN'T IT TRUE AT THE PROFFER
16 HE SAID HE COULDN'T REMEMBER IF IT WAS A PHONE CALL."

17 WELL, WHO CARES WHETHER IT WAS PHONE CALL?
18 IF I TALKED TO MY BEST FRIEND EVERY DAY AND SHE TELLS ME
19 SHE KILLED HER HUSBAND, I MAY NOT BE ABLE TO REMEMBER IF
20 SHE TOLD ME THAT WHEN WE WERE ON THE PHONE, OR WHEN WE
21 WERE HAVING BRUNCH, OR WHEN WE GETTING A MANI-PEDI. IT
22 DON'T MATTER WHEN THE CONVERSATION HAPPENED. WHAT
23 MATTERS IS THE CONTENT OF THE CONVERSATION.

24 AS MR. FEISSA ADVISED THE DETECTIVES,
25 "LOOK, I TALKED TO THESE GUYS ALL THE TIME. THEY'RE MY
26 HOMEYS. I DON'T KNOW EXACTLY WHEN I TALKED TO WHO, OR
27 WHICH-WHAT. BUT THIS IS WHAT I KNOW, THIS IS WHAT THEY
28 TOLD ME."

1 WHAT DID HE SAY IN THE SECOND CONVERSATION?
2 MR. KHALILL SAID THAT HE WAS DRIVING WITH POKE DOWN A
3 STREET. AND THEY CAUGHT A SARRIO SLIPPING. AND WE KNOW
4 SLIPPING ESSENTIALLY MEANS CATCHING A RIVAL OFF GUARD.

5 AND YOU'VE HEARD THAT THIS SCENARIO, FROM
6 THE DEFENSE GANG EXPERT, ISN'T ALL THAT UNCOMMON. HE'S
7 SEEN THIS EXACT SORT OF THING BEFORE.

8 REMEMBER I ASKED HIM ABOUT CATCHING A RIVAL
9 SLIPPING. HE ALSO SAID THAT AFTER THEY SAW THAT, THEY
10 WENT BACK TO K-9'S HOUSE ON 139TH. THEY TOLD THE
11 HOMEYS. THEY GOT SOME BURNERS. WE KNOW THAT THE
12 BURNERS MEANS GUNS. AND THEY WALKED BACK OVER THERE.

13 THEN K-9 SAID THAT "ME AND PEANUT WALKED UP
14 ON HIM. K-9 SAID, WHERE ARE YOU FROM? AND THEN THEY
15 DUMPED HIM OUT." WE KNOW THAT "DUMPED OUT" MEANS TO
16 SHOOT ROUNDS. TO DO EXACTLY WHAT MR. QUEZADA'S BODY
17 SHOWED THE CORONER HAPPENED. RIDDLED WITH BULLETS.

18 ONLY THREE OF THOSE SHOTS WERE FATAL. THEY
19 NEEDED THREE SHOTS TO KILL MR. QUEZADA. THEY USED 13.
20 LITERALLY, THE DEFINITION OF OVERKILL.

21 IN THAT THIRD CONVERSATION THAT TOOK PLACE
22 AT A PARTY, PEANUT TOLD MR. FEISSA "YEAH, WE DUMPED HIM
23 OUT. ME AND K-9 WALKED OVER THERE. K-9 SAID WHERE ARE
24 YOU FROM. AND I STOOD ON TOP OF HIM SHOOTING. POKE WAS
25 POSTED UP." AND WE KNOW THAT MEANS BEING AN ARMED
26 LOOKOUT.

27 THEN HE TALKS ABOUT HOW BABY SPOKE CAME
28 OVER AND JOINED THE CONVERSATION. AND HE SAYS "YEAH,

1 THE HOMEYS GAVE ME THE GUNS. A 9-MILLIMETER AND 40. I
2 HAD TO TRUCK IT." MR. FEISSA ASKED IF HE WANTED ALL OF
3 US TO BREAK IT DOWN INTO LAYMAN'S TERMS.

4 AND WHEN HE DID, SAID "YES, PLEASE DO," HE
5 EXPLAINED HE HAD TO RUN FAST BECAUSE HE HAD THE GUNS.

6 THEN PEANUT SAID "YEAH, BABY SPOKE WAS
7 SUPPOSED TO GO DO THE SHOOTING WITH US, BUT HE BITCHED
8 OUT. SO IT WAS ME, POKE, AND K-9 WHO WALKED OVER
9 THERE."

10 WHY SHOULD WE BELIEVE MR. FEISSA?

11 LADIES AND GENTLEMEN, IN JURY INSTRUCTION
12 226, THE COURT IS GOING TO ADVISE YOU THAT IN DECIDING
13 WHETHER TESTIMONY IS TRUE AND ACCURATE, YOU SHOULD USE
14 YOUR COMMON SENSE AND EXPERIENCE; THAT YOU MAY BELIEVE
15 ALL, PART, OR NONE OF A WITNESS'S TESTIMONY. AND YOU
16 SHOULD DECIDE HOW MUCH OF IT YOU WANT TO BELIEVE.

17 THIS INSTRUCTION ALSO TELLS YOU THAT PEOPLE
18 HONESTLY FORGET THINGS, OR MAKE MISTAKES ABOUT WHAT THEY
19 REMEMBER. AND THAT YOUR JOB AS A JUROR IS TO CONSIDER
20 WHETHER IT'S A MISTAKE THAT THEY'RE MAKING, OR THE THING
21 THEY CAN'T REMEMBER IS SOMETHING IMPORTANT AND
22 SIGNIFICANT. OR NOT.

23 NOW, THE DEFENSE IS GOING TO GET UP HERE,
24 AND THEY'RE GOING TO TELL YOU THAT MR. FEISSA IS A LIAR.
25 HE'S A LIAR AND HE'S A MURDERER. HE'S A CROOK. HE'S A
26 DOPE DEALER. YOU CAN'T BELIEVE ANYTHING HE SAYS.

27 PART OF WHY THEY'RE GOING TO SAY THAT IS
28 BECAUSE EIGHT MONTHS AFTER HE CAME FORWARD, EIGHT MONTHS

1 AFTER HE'S BEEN WORKING FOR THE SHERIFF'S DEPARTMENT AS
2 AN INFORMANT, HE GETS INTERROGATED. HE GETS INTERVIEWED
3 ABOUT HIS DOPE CASE, WHICH IS THAT INGLEWOOD CASE THAT
4 WE KNOW HE GOT SOME LENIENCY ON. AND THE DAVEON CHILDS
5 MURDER.

6 HE GETS QUESTIONED ABOUT THOSE TWO CASES.
7 AND IN THOSE INTERVIEWS, THE COPS FELT THAT HE WASN'T
8 BEING TRUTHFUL.

9 AND SO THE DEFENSE IS GOING TO TELL YOU
10 HE'S A LIAR. BUT KEEP IN MIND THAT THE DEFENSE ALSO
11 CALLED MS. BARNES, CYNTHIA BARNES, THE D.A. THAT HAD THE
12 CASE BEFORE ME, AND MR. HIGGINS WAS ASKING HER
13 QUESTIONS. YOU KNOW.

14 "AT THE TIME YOU TOOK THIS PROFFER, YOU
15 KNOW HE'S A LIAR, YOU KNOW THAT HE'S A MURDERER, HE'S
16 AWFUL."

17 AND WHAT DID HE ASK HER? "DID YOU DO ANY
18 RESEARCH ABOUT MR. FEISSA BEFORE YOU WERE GOING TO USE
19 HIM AS A WITNESS? DID YOU YOU FIND HIM TO BE A TRUTHFUL
20 PERSON?"

21 AND WHAT DID SHE SAY? SHE SAID "WELL, IT'S
22 NOT REALLY ABOUT WHETHER HE'S A TRUTHFUL PERSON PER SE.
23 IT'S ABOUT WHETHER OR NOT HE'S TRUTHFUL IN THIS CASE."

24 LYING ABOUT HIS DOPE CASE, OR LYING ABOUT
25 THE OTHER MURDER CASE ISN'T THE SAME THING AS LYING
26 ABOUT THIS CASE.

27 AND IF YOU THINK ABOUT IT, LADIES AND
28 GENTLEMEN, IT MAKES SENSE; RIGHT? IT MAKES SENSE WITH

1 THE OTHER EVIDENCE THAT WE KNOW.

2 WE KNOW FROM DETECTIVE DUNCAN THAT
3 INFORMANTS ARE COMMONLY USED, THEY'RE OFTEN PAID. AND
4 THEY'RE FREQUENTLY GANG MEMBERS. THEY'RE USUALLY
5 CRIMINALS. AND IT IS ALWAYS, ALWAYS A DIRTY BUSINESS
6 USING THEM.

7 AND A GANG MEMBER, JUST LIKE ANY OTHER
8 WITNESS, WHETHER THEY'RE A PRIEST, A RABBI, A TEACHER,
9 IT DOESN'T MATTER. ANYBODY IS CAPABLE OF LYING. AND
10 WHEN A CRIME HAPPENS IN HELL, LADIES AND GENTLEMEN, YOU
11 DON'T HAVE ANGELS AS WITNESSES. THIS WAS ONE OF THE
12 FIRST THINGS WE TALKED ABOUT IN JURY SELECTION.

13 WHEN YOU'RE INVESTIGATING GANG CASES, YOU
14 MAY GET GANG MEMBERS AS WITNESSES. WHEN YOU'RE
15 INVESTIGATING A MURDER, YOU MAY GET A MURDERER AS A
16 WITNESS.

17 BUT IF YOU USE YOUR COMMON SENSE AND THINK
18 ABOUT IT, THE WAY THE LAW THAT INSTRUCTS YOU, THE WAY
19 THE LAW INSTRUCTS YOU ACTUALLY MAKES COMMON SENSE. IF
20 YOU THINK THE WITNESS LIED ABOUT SOME THINGS BUT TOLD
21 THE TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART
22 THAT YOU THINK IS TRUE, AND IGNORE THE REST.

23 THE LAW RECOGNIZES WHAT WE ALL KNOW. WHICH
24 IS THAT EVEN THE MOST HONEST PERSON IN THE WORLD CAN
25 TELL A LIE. AND EVEN THE MOST DISHONEST PERSON CAN TELL
26 THE TRUTH.

27 A BROKEN WATCH IS RIGHT TWICE A DAY; ISN'T
28 THAT WHAT THEY SAY? THERE ARE NO ABSOLUTES. YOUR

1 QUESTION IN THIS CASE IS WHETHER OR NOT MR. FEISSA IS
2 TELLING THE TRUTH ABOUT THE QUEZADA MURDER. SO LET'S
3 FOCUS ON HIS TESTIMONY IN THIS CASE.

4 BECAUSE WHEN THESE DEFENSE ATTORNEYS GET UP
5 HERE AND TELL YOU WHAT A LIAR FEISSA IS, ALL THE THINGS
6 THAT THEY'RE POINTING TO ARE LIES ABOUT OTHER THINGS.
7 THERE'S NOT ONE LIE THAT THEY ARE POINTING TO IN THIS
8 CASE.

9 AND IF YOU LOOK AT HIS TESTIMONY, HE WAS
10 TRUTHFUL AND ADMITTED THINGS THAT PROBABLY LOT OF PEOPLE
11 WOULDN'T. HE ADMITTED HIS DRUG USE. HE ADMITTED HIS
12 GANG MEMBERSHIP. HE ADMITTED HIS CRIMINAL HISTORY.

13 HE ADMITTED THAT HE WAS GETTING PAID. HE
14 ADMITTED THAT HE GOT A CAR, A TERCEL THAT HE HAD FOR
15 ABOUT TWO WEEKS. NOT A BRAND NEW PORSCHE FOR THE REST
16 OF HIS LIFE. LIKE THE DEFENSE IS TRYING TO MAKE IT
17 SOUND. BUT HE'S ADMITTING ALL THESE BENEFITS.

18 THAT HE'S GETTING OUT OF TICKETS. AND THAT
19 HE EVEN HIT UP THE MURDER VICTIM. HE'S ADMITTING ALL OF
20 THIS INFORMATION IN HIS TESTIMONY IN THIS CASE.

21 MORE IMPORTANTLY, THOUGH, IS HE
22 CORROBORATED; RIGHT? THAT'S WHAT YOU SHOULD LOOK TO.
23 HAS HE BEEN CORROBORATED.

24 WELL, WE KNOW HE WAS CORROBORATED ON THE
25 MURDER OF COCO. THOSE TWO DEFENDANTS WERE CONVICTED
26 WITHOUT EVEN USING HIM AS A WITNESS. HE REACHED THE
27 SAME CONCLUSION THAT THAT JURY REACHED WITH VARIOUS
28 OTHER PEOPLE.

1 MR. FEISSA WAS ALSO CONFIRMED ON SEVERAL
2 CASES, GUN CASES, FOR DETECTIVE SHAW. AND YOU HEARD
3 MS. BARNES TALK ABOUT THESE OTHER CASES, HOW BEFORE SHE
4 SAT DOWN WITH HIM, HE'S BEEN CONFIRMED ON MULTIPLE OTHER
5 CASES.

6 BUT WHAT ABOUT ON THIS CASE? IS HE
7 CORROBORATED IN THIS CASE? WELL, LET'S LOOK AT THE
8 CORROBORATION. HE KNEW THAT VICTIM WAS THE SOUTH SIDE
9 PLAYER. HE KNEW THAT TWO GUNS WERE USED. HE KNEW THAT
10 ONE GUN WAS A 40 AND THE OTHER WAS A NINE. HE KNEW THE
11 VICTIM HAD BEEN DUMPED OUT.

12 HE KNEW THE DIRECTIONS THE SUSPECTS RAN
13 DOWN 139TH. AND HE KNEW THAT POKE'S CHEVY TAHOE, POKED
14 HOPPED IN HIS TAHOE AND TOOK OFF, WHICH IS CONSISTENT
15 WITH MR. BUCHANAN SEEING A DARK-COLORED SUV LEAVING THE
16 SCENE.

17 ALL OF THIS INFORMATION, LADIES AND
18 GENTLEMEN, WASN'T MADE PUBLIC. NONE OF THIS WAS ON THE
19 L.A. TIMES HOMICIDE BLOG, OR IN ANY KIND OF BROADCAST
20 BEFORE MR. FEISSA CAME FORWARD IN JULY OF 2008.

21 HE HAD NO ACCESS TO ANY OF THIS INFORMATION
22 WHEN HE CAME FORWARD ON HIS GUN CASE. UNLESS HE WAS
23 TOLD BY THESE DEFENDANTS, LIKE HE SAID, OR HE'S THE REAL
24 KILLER, WHICH WE'VE ALREADY DISPELLED. HE KNEW ALL OF
25 THAT INFORMATION.

26 AND MORE IMPORTANTLY, WHAT WE HAVE TO
27 CORROBORATE HIM ARE THE DEFENDANTS' OWN STATEMENTS
28 THROUGH THAT WIRETAP, LIKE I'VE ALREADY DISCUSSED. NONE

1 OF THEM MENTION THAT THEY'RE BEING PUT ON FOR FEISSA'S
2 CASE.

3 WE KNOW FROM THE WIRETAP, THERE WAS A
4 STIMULATION ON FEBRUARY 21, 2009. AND WE KNOW
5 IMMEDIATELY AFTER THAT SEGMENT AIRS, SOMEBODY CALLS
6 POKE, NAMED EVIL. AND IN THAT CONVERSATION, EVIL TELLS
7 HIM "YOU AND K-9 ARE ON, YOU KNOW, AMERICA'S MOST
8 WANTED."

9 AND YOU CAN HEAR POKE SAY "FOR REAL? WHAT?
10 PIRU?" AND THEN EVIL SAYS TO THEM "YEAH, FOR SOME SHIT,
11 SOME SHIT SHE SAID HAPPENED FEBRUARY 8TH AND THE OTHER
12 DAY."

13 WELL, THAT'S INCORRECT. MR. WALLACE IS NOT
14 BEING CHARGED WITH A MURDER THAT TOOK PLACE ON
15 FEBRUARY 8TH. THAT'S THE LLANOS CASE. THAT'S OLD OTHER
16 CASE. NOT BEING CHARGED WITH ANYTHING ON THE OTHER DAY
17 FROM FEBRUARY 21, 2009.

18 AND IT'S BECAUSE BOTH THOSE DATES ARE
19 WRONG. MR. WALLACE RESPONDS WITH "I DON'T KNOW WHAT THE
20 FUCK THEY'RE TALKING ABOUT."

21 NOW, THE DEFENSE IS GETTING UP HERE AND
22 SAYING THIS IS A DENIAL. HE'S DENYING THAT HE DID THESE
23 CRIMES. BUT WE KNOW FROM THIS TAPE, HE HASN'T SEEN THE
24 BROADCAST. HE'S GETTING HIS INFORMATION FROM THE PERSON
25 WHO IS TELLING IT TO HIM. FROM EVIL.

26 AND EVIL GETS IT WRONG. SO OF COURSE, HE
27 DENIES IT. HE'S DENYING SOMETHING HE DIDN'T DO. THAT'S
28 NOT A DENIAL FOR THE QUEZADA MURDER.

1 THEN WE HEAR SOMEBODY ELSE GET ON THIS
2 PHONE, IN THE SAME CALL. THIS PERSON SAYS TO HIM
3 "WHATEVER YOU DO, LET ME KNOW WHERE YOU GO SO I CAN GET
4 YOU SOME KIND OF LITTLE CHANGE TO HAVE IN YOUR POCKET.
5 LET ME KNOW WHERE YOU'RE GOING TO."

6 THEN HE SAYS TO POKE, "BUT YOU NEED TO GET
7 OUT OF HERE." THINK ABOUT IT. IF ONE OF YOUR LOVED
8 ONES, YOU SAW A COMPOSITE SKETCH AND WAS BEING
9 ASSOCIATED WITH A MURDER, WOULD YOU CALL THEM UP AND
10 IMMEDIATELY OFFER THEM WITH A MEANS TO ESCAPE?

11 YOU'D BE LIKE "DID YOU DO THIS? OH, MY
12 GOD, WHAT'S HAPPENING? I CAN'T BELIEVE THIS." THAT'S
13 NOT WHAT'S HAPPENING HERE.

14 THEY'RE HELPING HIM GET AWAY.

15 THEN MR. GIBBS CALLS MR. WALLACE. THAT'S
16 THE NEXT CALL THAT HAPPENED SHORTLY AFTER THIS IS
17 BROADCAST. AND LISTEN TO THIS CALL.

18 THIS IS THE CALL AT 10:47 P.M. BECAUSE
19 MR. WALLACE, WHEN HE'S TOLD BY PEANUT "HEY, DID EVIL
20 CALL YOU AND LET YOU KNOW," HE TAKES A VERY BIG PAUSE.

21 PEANUT SAYS "AIN'T THAT SOME CRAZY SHIT."
22 AND MR. WALLACE DOESN'T RESPOND WITH "I KNOW. CAN YOU
23 BELIEVE THIS? THIS IS RIDICULOUS. WE DIDN'T DO THIS.
24 THIS IS BOGUS. THIS IS ETHIE'S MURDER. THIS WAS B-13.
25 THIS WASN'T US."

26 INSTEAD, HIS RESPONSE IS "YEAH. I'M GOING
27 TO HAVE TO CALL YOU BACK LATER."

28 IS THAT HOW YOU WOULD RESPOND? IF YOU WERE

1 GIVEN THIS PHONE CALL?

2 THEN GIBBS CALLS K-9. AND HE TELLS HIM
3 "HEY, DID THAT NIGGA EVIL CALL YOU?" AND YOU CAN HEAR
4 MR. KHALILL ON THAT TAPE YELLING, "YEAH, BLOOD, WELL,
5 I'M OUTTA HERE."

6 WHY? IF YOU DIDN'T DO ANYTHING WRONG?

7 THEN WE HAVE PEANUT CALLING K-9. OR EXCUSE
8 ME, THIS IS IN THE SAME CALL. THIS IS THE SAME CALL
9 PEANUT AND K-9 ARE TALKING ABOUT WHOSE PICTURES ARE ON
10 THE NEWS SEGMENT.

11 YOU CAN HEAR THAT THERE'S SOMEBODY IN THE
12 BACKGROUND ASKING THEM QUESTIONS ABOUT IT AS WELL. THAT
13 THERE'S SORT OF LIME MULTIPLE VOICES. AND YOU CAN HEAR
14 THEM DISCUSSING AND ASKING WHETHER OR NOT BABY SPOKE IS
15 ON THERE.

16 THEY WANT TO KNOW WHETHER PEANUT IS ON
17 THERE AND BABY SPOKE. BECAUSE KEEP IN MIND, ONLY
18 KHALILL'S AND WALLACE'S PICTURES WERE THROWN UP IN THAT
19 VIDEO.

20 AND WHO ARE THE TWO OTHER PEOPLE THEY'RE
21 WORRIED ABOUT? PEANUT, WHO IS THE OTHER SHOOTER, AND
22 BABY SPOKE, WHO WE KNOW FROM MR. FEISSA IS THE GUY WOULD
23 GOT RID OF THE GUNS.

24 THEN ON FEBRUARY 24TH, THERE WERE SEARCH
25 WARRANTS. AND SEVERAL HOUSES GOT HIT. BABY SPOKE, K-9,
26 AND PEANUT. AND IMMEDIATELY AFTER MR. KHALILL'S HOUSE
27 WAS SEARCHED, WHO DOES HE CALL?

28 HE CALLS WALLACE. AGAIN, DOESN'T CALL

1 ANYBODY ELSE. CALLS MR. WALLACE.

2 AND IN THAT PHONE CALL, HE'S UPSET. HE'S
3 TELLING POKE "THEY JUST RAN IN MY SHIT." THEN THE
4 THINGS THAT HE DOES THAT IS INTERESTING IS HE REASSURES
5 MR. WALLACE. OLDER STATESMAN OF THE GANG; RIGHT?
6 "DON'T WORRY, I SAID I DIDN'T KNOW YOU. I TOLD THEM I
7 TAKE THE FIFTH. THE DETECTIVE WAS ASKING ME A GANG OF
8 QUESTIONS ABOUT YOUR ASS. I'M LIKE MAN, I DON'T EVEN
9 KNOW THAT PERSON."

10 REASSURING HIM, "DON'T WORRY, I WON'T
11 CONNECT US."

12 IN THAT SAME CALL, POKE SAYS TO HIM "WELL,
13 DID YOU CALL THE BABY?" REFERRING TO BABY SPOKE. HE
14 SAYS "NO, NO, I CALLED YOU FIRST."

15 AND THEN K-9 ASSURES POKE, "THE GOOD THING
16 IS THEY OBVIOUSLY AIN'T GOT SHIT." AND AGAIN, INSTEAD
17 OF MR. WALLACE SAYING "I KNOW, BECAUSE THIS IS BOGUS,
18 BECAUSE WE DIDN'T DO THIS, THAT'S WHY THERE DON'T HAVE
19 ANYTHING," HE TAKES ANOTHER ONE OF HIS BIG PAUSES:
20 "YEAH. I KNOW." YOU CAN HEAR THE CONCERN IN HIS VOICES
21 ON THESE TAPES.

22 LATER THAT SAME DAY, PEANUT AND BABY SPOKE
23 HAVE A CONVERSATION ON THE WIRE. YOU HEARD THIS CALL.
24 AND ONCE AGAIN, BABY SPOKE IS MAKING SURE THAT PEANUT
25 KNOWS "DON'T WORRY. I DENIED KNOWING YOU. THEY
26 ACTUALLY SAID TO ME WHERE'S K-9 AND PEANUT AT? DO THEY
27 LIVE WITH YOU? AND I SAID I DON'T KNOW WHO THE FUCK
28 PEANUT IS."

1 AND HE APOLOGIZES SORT OF, BECAUSE "THEY
2 HAD A PICTURE OF K-9, SO YOU KNOW, I COULDN'T SAY I
3 DON'T KNOW K-9."

4 BUT HE WANTS MR. GIBBS TO KNOW THAT HE'S
5 DOING WHAT HE'S SUPPOSED TO DO. HE'S BEING A GOOD
6 SOLDIER. HE'S NOT SNITCHING.

7 UNLIKE MR. FEISSA, WHO THEY REFER TO AS
8 ETHIE. YOU HEAR PEANUT NUT ASK BABY SPOKE "WHERE IS
9 ETHIE AT?" AND BABY SPOKE SAYS "HE'S IN TEXAS. IT'S
10 WEIRD ALL OF A SUDDEN THAT HOUSES GETTING HIT AND HE'S
11 IN TEXAS. I'M GONNA SMACK THIS SNITCH." THAT'S WHAT
12 BABY SPOKE IS SAYING ABOUT ETHIE TO PEANUT.

13 PEANUT THEN REASSURES BABY SPOKE. HE TELLS
14 HIM "THEY CAN'T DO NOTHIN', MY NIGGA. THEY AIN'T GOT
15 SHIT. THEY EXPECTIN' A NIGGA TO CRACK ON THE REAL."
16 NOT "THEY DON'T HAVE SHIT BECAUSE WE DIDN'T DO IT."

17 THAT'S NOT WHAT HE'S SAYING. HE'S SAYING
18 "THEY DON'T HAVE SHIT BECAUSE THEY'RE EXPECTING A NIGGA
19 TO CRACK." MEANING SOMEBODY CRACK AND TELL THEM, GIVE
20 THEM THE CASE.

21 AND THEN YOU HAVE THIS CALL, WHICH IS IN
22 THE SAME DISCUSSION WITH BABY SPOKE, WHERE PEANUT SAYS
23 TO BABY SPOKE "YOU KNOW WHAT I'M TRIPPIN' OFF OF?"
24 "WHAT?" "BECAUSE I'M FUCKED IF THEY FIND THAT
25 WHOOPTIE."

26 AND YOU HEARD FROM THE DETECTIVE ABOUT THE
27 WORD "WHOOPTIE" AND HOW THEY USE THIS. AND YOU CAN TELL
28 IN THE CONTEXT OF THIS CALL HOW THEY'RE TALKING ABOUT

1 IT. ESPECIALLY WHEN YOU KNOW, LADIES AND GENTLEMEN,
2 FROM MR. FEISSA, THAT BABY SPOKE IS THE GUY WHO GOT RID
3 OF THE GUNS.

4 SO PEANUT IS COMPLAINING TO THE GUY WHO GOT
5 RID OF GUNS "I'M SCREWED THEY FIND THE GUN."

6 WHAT DOES BABY SPOKE DO? HE REASSURES HIM
7 "I SWEAR TO GOD" -- THOSE ARE THE FIRST WORDS OUT OF HIS
8 MOUTH. "MAN, I SWEAR TO GOD," THEN PEANUT CUTS HIM OFF.
9 AND SAYS THAT THAT'S SOMEBODY CLOSE. THAT'S SOMEBODY
10 CLOSE WHO IS SNITCHING.

11 YOU ONLY THINK THAT YOU'RE GETTING IN
12 TROUBLE IF SOMEBODY'S SNITCHING ON YOU WHEN THEY'RE
13 CLOSE. IF THEY'RE GIVING GOOD INFORMATION. IF THE
14 INFORMATION THE POLICE HAD AND WERE CONFRONTING THESE
15 DEFENDANTS WERE WAS FALSE, THIS WOULDN'T BE THE
16 CONVERSATION.

17 IT WOULD BE ABOUT PEOPLE WHO WERE LYING.
18 NOT SNITCHING. IN THE SAME CALL, BABY SPOKE SAYS TO HIM
19 THAT "THE COPS KNOW ALL THIS INSIDE. SOMEBODY IS
20 SNITCHING."

21 GOING TO A VERY SPECIFIC CONVERSATION ABOUT
22 SNITCHING. AND AGAIN, NOT LYING. NOT PUTTING A CASE ON
23 YOU. NOT "I'M BEING FRAMED." SNITCHING. AND YOU HEARD
24 FROM THE GANG EXPERT THAT SNITCHING DOES NOT MEAN THE
25 SAME THING AS LYING.

26 THEY'RE TWO DIFFERENT WORDS. SNITCHING
27 MEANS THEY'RE TELLING ON US. AND THEY GO ON AND ON
28 ABOUT HOW IT'S LIKE SOMEBODY IS IN THEIR CONVERSATION.

1 THAT'S WHAT PEANUT SAYS. IT'S LIKE THEIR INNER
2 CONVERSATIONS.

3 AND BABY SPOKE SAYS "WELL, I HAVE NO DOUBT,
4 NO DOUBT IN MY MIND THAT IT'S A SNITCH. AND WHOEVER IS
5 THE SNITCH, THE NIGGA IS CLOSE TO US, MY NIGGA. 'CAUSE
6 EVERYTHING THEY'VE FOUND OUT OR PUT TOGETHER," AND
7 PEANUT SAYS "YEAH," "IS SOME SHIT THAT WAS TALKED ABOUT
8 BETWEEN THE CIRCLE. YOU FEEL ME?" AND PEANUT SAYS
9 "EXACTLY. EXACTLY, BLOOD. THAT'S WHAT I'M TRIPPIN' OFF
10 OF."

11 THIS CALL SHOWS YOU HOW WORRIED THEY ARE
12 ABOUT THE SNITCH. BECAUSE THE INFORMATION THAT'S OUT
13 THERE IS TRUE, AND GETTING BACK TO THEM.

14 A FEW DAYS LATER, THERE'S A CALL BETWEEN
15 K-9 AND SOMEBODY CALLED FAT DOG. AND IN THIS
16 CONVERSATION, WE ARE CONFIRMED WITH WHAT THE GANG EXPERT
17 TALKED ABOUT, AND WHAT MR. TAYLOR TALKED ABOUT, ABOUT
18 WHAT HAPPENS TO SNITCHES.

19 BECAUSE K-9 SAYS TO FAT DOG "SOMEBODY'S
20 TELLING." AND FAT DOG SAYS "WELL, IT'S ALL GOING TO
21 COME TO LIGHT. WHOEVER IS TELLING HAS TO GET ON THE
22 WITNESS STAND AND TELL. AND AIN'T NONE OF THEM WANT TO
23 DO THAT."

24 K-9 SAYS "THAT'S RIGHT. THEY DON'T WANT TO
25 GET HURT."

26 AND FAT DOG SAYS EXACTLY, 'CAUSE WE'RE
27 GONNA BE IN COURT WAITING."

28 SO YOU KNOW EVERYTHING THAT YOU'VE HEARD

1 ABOUT SNITCHES IS TRUE. AND YOU HEAR IT FROM
2 MR. KHALILL'S OWN MOUTH.

3 LESS THAN AN HOUR AFTER THAT DNA WAS
4 COLLECTED FROM MR. WALLACE, HE CONTACTS HIS MOM. AND
5 BASICALLY TELLS HER TO GET A LAWYER; RIGHT? "CALL GARY,
6 TELL HIM WE WANT TO HIRE HIM. TELL HIM THEY CAME AND
7 TOOK DNA."

8 AND WHAT'S INTERESTING ABOUT THIS CALL,
9 LADIES AND GENTLEMEN, IS THAT IT'S IN MARCH OF 2009.
10 THE DEFENDANT HADN'T BEEN ARRESTED. HE HADN'T BEEN
11 CHARGED. BUT THE DNA, THE TAKING OF HIS DNA SCARED HIM
12 ENOUGH TO GO GET A LAWYER.

13 AGAIN, IF YOU DID NOT DO A CRIME AND THE
14 COPS ARE TAKING DNA FROM YOU, YOU ARE THRILLED. BECAUSE
15 IT'S GOING TO EXONERATE YOU. BUT MR. WALLACE IS
16 NERVOUS.

17 THEN WE HAVE THE PHONE CONVERSATION BETWEEN
18 PEANUT AND HIS GIRLFRIEND. AND HE TALKS ABOUT WHAT
19 SOMEBODY WOULD SAY AT HIS FUNERAL. HE SAID SOMEBODY
20 WOULD SAY "I USED TO SEE THAT NIGGER. THAT NIGGER WAS
21 CRAZY AS A MOTHERFUCKER. HE SHOT LIKE TWO NIGGERS
22 BEFORE HE DIED."

23 AND THEN HE PAUSES AND SAID, "NAW, I'M
24 FUCKIN' WITH YOU," LIKE HE'S JUST KIDDING. BUT AS YOU
25 LISTEN TO THAT CALL, ASK YOURSELF IS HE REALLY KIDDING?

26 BECAUSE LATER IN THAT CALL, HE TALKS ABOUT
27 HOW "I DID SOME SHIT GOD CAN'T TAKE AWAY. ON THE REAL.
28 THAT I CAN'T ERASE, THAT I WILL GO TO THE BANK WITH.

1 FOR REAL."

2 AND THEN AGAIN, HE SAYS "IF I WAS GOD AND
3 SOME OF THE SHIT I DONE DID, I PROBABLY WOULD REJECT
4 MYSELF FROM GOING TO HEAVEN. BUT IF I LOOKED AT ALL THE
5 GOOD SHIT I DID AT THE SAME TIME, IT WOULD BE A HARD
6 DECISION."

7 HE HAS THE WEIGHT OF WHETHER HE'S GOING TO
8 GET INTO HEAVEN ON HIS SHOULDERS.

9 THE TOTALITY OF THIS EVIDENCE, LADIES AND
10 GENTLEMEN, ALL THE WIRETAPS, JOLON GORDON, STEVEN
11 BUCHANAN, ALL OF THEM CORROBORATE MR. FEISSA. THAT IS
12 WHY YOU CAN PUT YOUR FAITH IN HIS TESTIMONY.

13 NOW, LET'S TALK ABOUT THE LAW. THE FIRST
14 THING I WANT TO TALK ABOUT IS THIS INSTRUCTION CALLED
15 THE CORPUS RULE. BASICALLY, THIS INSTRUCTION SAYS YOU
16 CAN'T CONVICT THE DEFENDANT BASED ON HIS STATEMENTS
17 ALONE.

18 THE REASON WE HAVE THIS INSTRUCTION IS IF I
19 WALKED IN A POLICE STATION AND SAID I KILLED MY HUSBAND,
20 THAT STATEMENT ALONE COULDN'T CONVICT ME. ACTUALLY HAS
21 TO BE A DEAD HUSBAND. OKAY.

22 IN THIS CASE, WE ACTUALLY HAVE THE MURDERS.
23 WHAT THIS INSTRUCTION TELLS YOU IS YOU CAN USE
24 DEFENDANT'S STATEMENTS TO IDENTIFY THE I.D. OF THE
25 KILLER.

26 SO I DIDN'T WANT YOU TO GET CONFUSED AND
27 READ THIS INSTRUCTION WHERE IT SAYS YOU CAN'T USE
28 DEFENDANT'S STATEMENTS. YOU CAN USE EVERYTHING THAT

1 YOU'VE HEARD A DEFENDANT SAY AGAINST THAT PARTICULAR
2 DEFENDANT.

3 THAT IS ALLOWED.

4 SO THIS IS SORT OF NOT APPLICABLE.

5 I WANT TO TALK A LITTLE BIT ABOUT AIDING
6 AND ABETTING. BECAUSE IN THE MURDER OF MR. BICKHAM,
7 MR. WALLACE AND MR. KHALILL ARE GUILTY AS AIDERS AND
8 ABETTORS.

9 WE'VE NOT ALLEGING THEY'RE THE SHOOTER.
10 THEY'RE NOT THE GUY IN THE BACK SEAT WHO GOT OUT AND
11 STARTED FIRING THE AK. THEY'RE THE FRONT SEAT
12 PASSENGERS AND THE DRIVER. DOESN'T MATTER WHO IS IN
13 WHICH SEAT. ALL THAT MATTERS IS THAT THEY'RE IN THAT
14 CAR.

15 BUT THEY'RE BEING PROSECUTED UNDER AIDING
16 AND ABETTING. I WANT TO TALK ABOUT WHAT AIDING AND
17 ABETTING IS.

18 SIMILARLY, WITH RESPECT TO MR. QUEZADA,
19 MR. WALLACE IS BEING PROSECUTED AS AN AIDER AND ABETTOR.
20 HE'S THE LOOKOUT. THAT'S AIDER AND ABETTOR. THE
21 SHOOTERS ARE MR. KHALILL AND MR. GIBBS.

22 SO LET'S TALK A LITTLE BIT ABOUT AIDING
23 ABETTING. WHY IS THIS THE LAW? IS IT FAIR? THE
24 CLASSIC EXAMPLE OF AIDING ABETTING IS A BANK ROBBERY.

25 YOU'VE GOT THE PERSON WHO DRIVES THEM THERE
26 AND WAITS WITH THE GETAWAY CAR. YOU'VE GOT THE LOOKOUT.
27 YOU'VE GOT THE GUY THAT GOES IN AND POINTS THE GUN AND
28 SAYS "GIVE ME ALL YOUR MONEY."

1 THAT'S OUR CLASSIC AIDING AND ABETTING.
2 ALL THREE OF THOSE PEOPLE ARE TREATED THE SAME UNDER THE
3 LAW. SOMETIMES PEOPLE THINK WELL, THAT'S NOT FAIR.
4 THEY'RE NOT AS CULPABLE.

5 BUT THE REASON THIS LAW EXISTS IS BECAUSE
6 WE UNDERSTAND AS A COMMUNITY THAT THINGS GET DONE IN
7 GROUPS. YOU SEE, SOMEBODY IS LESS LIKELY TO COMMIT A
8 CRIME IF THEY'RE DOING IT ALONE. BECAUSE IF THEY BACK
9 OUT, THERE'S NOBODY THERE TO CALL THEM CHICKEN.

10 BUT WHEN THEY'RE DOING A CRIME WITH ONE OF
11 THEIR HOMEYS, IF THEY'RE GOING TO BACK OUT, THEN THEY'RE
12 GOING TO BE IN TROUBLE. PEOPLE AS A GROUP GET MORE
13 DONE. THEY'RE MORE LIKELY TO ENGAGE IN CONDUCT
14 TOGETHER. AND MORE IMPORTANTLY, THEY'RE MORE LIKELY TO
15 BE SUCCESSFUL IN PULLING IT OFF IF THEY HAVE A HELP AND
16 ASSISTANCE OF OTHERS.

17 AND THE EXAMPLE I LIKE TO GIVE IS GOING TO
18 THE GYM. I HATE GOING TO THE GYM. HATE IT, HATE IT,
19 HATE IT, HATE IT, HATE IT. I DO IT BECAUSE I AM VAIN,
20 AND I CAN'T AFFORD TO BUY ALL NEW CLOTHES. SO I HAVE TO
21 MAINTAIN A CERTAIN WEIGHT. THAT'S THE ONLY REASON I GO.

22 AND I'LL TELL YOU WHAT, IF I'VE GOT
23 SOMEBODY GOING TO THE GYM WITH ME, IF I HAVE A GYM
24 BUDDY, THAT AT LUNCH SAYS HEY, LET'S GO WORK OUT, OR
25 LET'S GO FOR A WALK, I'M MORE WILLING TO GO. BECAUSE I
26 DON'T WANT THEM TO THINK THAT I'M BEING LAZY.

27 SO I GO. I GET IT DONE. IF IT'S JUST ME
28 GOING TO THE GYM AFTER WORK, I'M TOO TIRED, I FIND AN

1 EXCUSE, AND I GET OUT OF IT.

2 OUR COMMON SENSE TELLS YOU THAT PEOPLE
3 COMMITTING CRIMES IN GROUPS IS DANGEROUS. AND BECAUSE
4 OF THAT, THE LAW HAS DRAFTED LAWS ABOUT AIDING AND
5 ABETTING. THE SUPPORT AND ENCOURAGEMENT THEY GET FROM
6 THEIR FELLOW GANG MEMBERS HELPS PULL OFF THIS CRIME.

7 SO HOW IS SOMEBODY GUILTY OF AIDING AND
8 ABETTING? WELL, THE LAW SAYS THAT THERE'S TWO WAYS TO
9 BE GUILTY. EITHER YOU DIRECTLY COMMIT THE CRIME, OR YOU
10 AID AND ABET SOMEBODY ELSE.

11 THE PERSON WHO DIRECTLY COMMITS IT IS
12 CALLED THE PERPETRATOR. WHETHER YOU'RE A PERPETRATOR,
13 MEANING THE SHOOTER, OR AN AIDER AND ABETTOR, MEANING A
14 DRIVER OR A PASSENGER OR A LOOKOUT, UNDER THE LAW,
15 THEY'RE ALL RESPONSIBLE FOR THE CRIME.

16 IN ORDER FOR SOMEBODY TO BE GUILTY UNDER
17 AIDING AND ABETTING, THEN THE SHOOTER MUST HAVE
18 COMMITTED THE CRIME; THE DEFENDANT KNEW THE SHOOTER WAS
19 GOING TO COMMIT THAT CRIME; BEFORE OR DURING THE CRIME
20 THE DEFENDANT INTENDED TO AID AND ABET THE SHOOTER; AND
21 THE DEFENDANT'S WORDS OR CONDUCT DID IN FACT AID AND
22 ABET.

23 WELL, THIS SORT OF BEGS THE QUESTION, WHAT
24 DOES IT REALLY MEAN TO AID AND ABET. AID AND ABET
25 TECHNICALLY MEANS THAT BASICALLY, THE DEFENDANT KNEW THE
26 SHOOTER'S PURPOSE, AND DID SOMETHING TO AID, FACILITATE,
27 PROMOTE, ENCOURAGE, OR INSTIGATE IT. IF YOU FIND THAT
28 THEY DID, THEN THEY ARE EQUALLY AS GUILTY.

1 SO LET'S TALK ABOUT MR. WALLACE. HE WAS
2 THE DRIVER DURING 2001 SHOOTING. IS HE GUILTY AS AN
3 AIDER AND ABETTOR. WELL, HE'S THE ONE THAT TAKES
4 EVERYBODY ON THIS MISSION. REMEMBER THAT WORD MISSION?
5 THE GANG EXPERT TALKED ABOUT IT.

6 HOW WHEN GANG MEMBERS COMMIT CRIMES
7 TOGETHER, THEY CALL IT LITERALLY A MISSION. IT'S HOW
8 YOU EARN STRIPES, IT'S HOW YOU EARN RESPECT, IT'S HOW
9 YOU SHOW YOUR FELLOW HOMEYS YOU'RE DOWN FOR THE GANG BY
10 GOING ON THESE MISSIONS. BY PARTICIPATING IN THESE
11 CRIMES.

12 MR. WALLACE ASSISTS THAT SHOOTER WITH
13 SCOPING OUT THE VICTIM, AND THEN DRIVING THE CAR BACK
14 AROUND TOWARDS THE SCENE, AND THEN PARKING THE CAR SO
15 THAT THE SHOOTER CAN GET OUT AND START FIRING THE AK.

16 THEN HE DRIVES THEM ALL AWAY FROM THE SCENE
17 SO THEY DON'T GET CAUGHT.

18 AND THEN THE NEXT DAY, HE GOES BACK TO THE
19 SCENE TO INTIMIDATE THE VICTIM. ALL OF THESE FACTS ARE
20 FACTORS THAT EVIDENCE TO YOU HE WAS AIDER AND ABETTOR.

21 NOW LET'S TALK ABOUT MR. KHALILL. HE'S THE
22 PASSENGER. WELL, HE'S WILLING TO GO ON THIS MISSION AS
23 WELL. HE GETS IN THAT CAR. HE RIDES SHOTGUN. HE'S A
24 FELLOW GANG MEMBER WITH MR. WALLACE.

25 AND HE DOESN'T BAIL AFTER THAT FIRST TIME
26 AROUND. HE DOESN'T GET OUT OF THE CAR. HE DOESN'T SAY
27 "OH, WHOA, YOU GUYS ARE GOING TO DO A SHOOTING? I'M
28 OUTTA HERE." HE STAYS. HE STAYS PUT. IN FACT, HE

1 RETURNS WITH THEM TO THAT CORNER. AND HE LEAVES WITH
2 EVERYBODY.

3 AND THEN HE JOINS MR. WALLACE THE NEXT DAY
4 IN GOING TO MAKE SURE THAT THAT VICTIM, MR. TAYLOR, WILL
5 STAY QUIET.

6 AND YOU HEARD FROM THE GANG EXPERT ABOUT
7 HOW THESE CRIMES TAKE PLACE, AND WHY THEY ALL
8 PARTICIPATE AND KNOW ABOUT IT.

9 IT WOULD HAVE BEEN A HUGE SIGN OF
10 DISRESPECT TO MR. KHALILL BY MR. WALLACE IF HE HAD
11 BROUGHT MR. KHALILL ON A SHOOTING AND DIDN'T TELL HIM
12 THAT WAS ABOUT TO GO DOWN.

13 YOU KNOW THAT THEY WERE ALL IN ON WHAT WAS
14 ABOUT TO HAPPEN IN THAT CAR BECAUSE OF THE RELATIONSHIP
15 AND DYNAMIC AS THE GANG EXPERT EXPLAINED IT.

16 MURDER. MURDER IS CHARGED IN TWO OF THE
17 COUNTS. WHAT IT REQUIRES IS THAT THE SHOOTER, OR THE
18 DEFENDANT, DID AN ACT THAT CAUSED THE DEATH OF ANOTHER
19 PERSON. THE ACT IS THE SHOOTING. WE KNOW BOTH VICTIMS
20 DIED FROM GUNSHOT WOUNDS.

21 I JUST WANT TO PAUSE ON THE WORD "PERSON."
22 BECAUSE SOMETIMES IT'S SORT OF GLOSSED OVER. WE HAVE TO
23 PROVE THEY WERE HUMAN BEING. JUST BECAUSE MR. BICKHAM
24 AND MR. QUEZADA ARE NOW REDUCED TO A PHOTOGRAPH, AT THE
25 TIME, THEY WERE REAL, LIVE, LIVING PEOPLE.

26 AND THE SHOOTING IS WHAT TOOK THEIR LIFE.

27 WHEN THE DEFENDANT COMMITTED THIS ACT, HE
28 HAD SOMETHING CALLED MALICE AFORETHOUGHT. OR THE

1 SHOOTER COMMITTED THIS ACT, THEY HAD MALICE
2 AFORETHOUGHT. WELL, THIS BEGS THE QUESTION. WHAT'S
3 MALICE AFORETHOUGHT.

4 THE JURY INSTRUCTIONS EXPLAINED TO YOU
5 THERE'S BASICALLY TWO KINDS. EITHER THE MALICE IS "I
6 WANT TO KILL," OR IT'S DOING SOMETHING VERY DANGEROUS
7 THAT YOU KNOW COULD RESULT IN KILLING, AND NOT CARE.
8 PROOF OF EITHER OF THESE IS SUFFICIENT.

9 BASICALLY, WHEN YOU'RE LOOKING AT MURDER,
10 LADIES AND GENTLEMEN, YOU HAVE A KILLING, A SHOOTING,
11 SOMEBODY IS DEAD. DO YOU HAVE MALICE AFORETHOUGHT, AN
12 INTENT TO KILL. IF YOU DO, YOU'RE AT SECOND-DEGREE
13 RIGHT THEN AND THERE. THE NEXT QUESTION IS HOW DO YOU
14 GET TO FIRST-DEGREE. SO LET'S TALK ABOUT THAT.

15 IN ORDER TO GET TO FIRST-DEGREE, WE HAVE TO
16 SHOW THAT THE MURDER WAS WILLFUL, DELIBERATE, AND
17 PREMEDITATED. AND THESE WORDS, WE THINK OF WHEN WE
18 THINK OF A LEGAL CONTEXT IN CRIMINAL TRIALS. YOU'VE
19 PROBABLY ALL HEARD THESE WORDS BEFORE.

20 BUT THEIR ACTUAL MEANING UNDER THE LAW IS
21 SIMPLE. THEY INTENDED TO DO IT, AND THEY THOUGHT ABOUT
22 IT BEFORE DOING IT.

23 IT DOESN'T HAVE TO BE A LONG PERIOD OF
24 TIME. I DON'T HAVE TO PROVE THAT THESE MURDERS WERE
25 PLANNED FOR MONTHS IN ADVANCE. YOU FOLKS DELIBERATE
26 EVERY DAY. AND PREMEDITATE EVERY DAY.

27 EVERY TIME YOU GO TO A STOP SIGN OR
28 CROSSWALK, RIGHT? WHAT DO YOU DO? YOU LOOK TO THE

1 LEFT, YOU LOOK TO THE RIGHT. YOU DECIDE IF IT'S SAFE TO
2 GO INTO THE INTERSECTION. THEN YOU DO.

3 IN THAT SPLIT SECOND THAT YOU'RE DECIDING
4 WHETHER TO GO THROUGH THAT INTERSECTION, THAT'S YOUR
5 PREMEDITATION AND DELIBERATION. THAT'S ALL THAT IT IS.

6 WAS MR. BICKHAM'S MURDER WILLFUL,
7 DELIBERATE, PREMEDITATED. THINK ABOUT ALL THE ACTS THAT
8 THEY HAD TO TAKE IN ORDER TO ACCOMPLISH THIS MURDER.
9 THEY HAD TO GET THE GUN. LOAD THE GUN. BRING THE GUN
10 INTO THE CAR. DRIVE BY THOSE VICTIMS. THEY LET THE
11 VICTIMS THINK THEY'RE SAFE. THEY GET A PASS. THEY'RE
12 STRAIGHT. THEN DRIVE AWAY.

13 THEY THEN COME BACK TO THOSE VICTIMS. THEY
14 PARK THE CAR. GET OUT OF THE CAR, WITH THE GUN. THE
15 GUN DOESN'T GO OFF ACCIDENTALLY, LADIES AND GENTLEMEN.
16 THIS WASN'T ONE SHOT THAT GOT FIRED. THIS WASN'T A
17 WARNING SHOT IN THE AIR.

18 "HEY, YOU GUYS BETTER GET OUT OF OUR TURF."
19 OR "HEY, WE'RE 135, WE MEAN BUSINESS." THERE ISN'T A
20 WARNING SHOT. THEY AIM, THEY FIRE, AND THERE ARE
21 MULTIPLE SHOTS. THERE WERE 18 CASINGS AT THAT SCENE
22 FROM THAT AK-47.

23 IT'S A ' MIRACLE THAT MR. BICKHAM ONLY
24 SUSTAINED ONE GUNSHOT WOUND, AND THAT MR. TAYLOR DIDN'T
25 SUSTAIN ANY.

26 BUT IT WASN'T FOR LACK OF TRYING BY THIS
27 SHOOTER. THE FACT THAT THEY RETURNED TO THE VICTIMS
28 AFTER DRIVING AROUND AND FIRED THAT MANY SHOTS, THAT IN

1 AND OF ITSELF DEMONSTRATES TO YOU THAT THIS WAS
2 PREMEDITATED.

3 WHAT ABOUT MR. QUEZADA? WELL, AGAIN, LIKE
4 MR. BICKHAM, FIRST, THEY DRIVE BY THE VICTIM. THEN THEY
5 RETURN TO THEIR HOMEYS. THEY GET THE GUNS. THE
6 BURNERS. THEY MAKE SURE THE GUNS ARE LOADED.

7 THEN THEY RETURN TO THE VICTIM. THEY TAKE
8 THEIR POSITIONS. AGAIN, THE GUN DIDN'T ACCIDENTALLY GO
9 OFF. WE'VE GOT 13 GUNSHOT WOUNDS. THIS ISN'T A WARNING
10 SHOT IN THE AIR, OR ONE SHOT TO THE KNEECAP OR THE FOOT.
11 THEY DUMPED THIS VICTIM OUT. HE'S GOT RIDDLED WITH
12 BULLETS.

13 AND AGAIN, THE FACT THAT THEY RETURNED TO
14 THIS VICTIM AND FIRED MULTIPLE SHOTS, THOSE FACTS IN AND
15 OF THEMSELVES DEMONSTRATE THAT MR. QUEZADA'S MURDER WAS
16 A FIRST-DEGREE. BOTH OF THESE MURDERS WERE
17 FIRST-DEGREE.

18 AND THAT REALLY WON'T BE THE ISSUE IN THIS
19 CASE. THESE DEFENSE ATTORNEYS AREN'T GOING TO TELL YOU
20 THAT THESE PEOPLE WEREN'T TRAGICALLY KILLED. THEY'RE
21 GOING TO SAY OUR GUYS DIDN'T DO IT. THAT'S IDENTITY.
22 THAT'S A DIFFERENT ISSUE.

23 BOTH OF THESE MURDER WERE WITHOUT A DOUBT,
24 FIRST-DEGREE.

25 FINALLY, THERE'S THE ATTEMPTED MURDER ON
26 MR. TAYLOR. BASICALLY, THAT INSTRUCTION REQUIRES THAT
27 WE PROVE THAT THE SHOOTER IN THIS CASE TOOK AT LEAST ONE
28 DIRECT BUT INEFFECTUAL STEP TOWARDS KILLING HIM. IN

1 THIS CASE, THAT JUST MEANS HE WAS FIRED AT, BUT HE
2 DIDN'T DIE, AND THAT THERE WAS AN INTENT TO KILL.

3 INTENT TO KILL FOR ATTEMPTED MURDER IS SORT
4 OF UNUSUAL, THOUGH. TWO WAYS THE LAW SAYS YOU CAN GET
5 THERE. ONE IS THAT HE LITERALLY HAD AN INTENT TO KILL,
6 MEANING THEY WANTED EMOND TAYLOR TO DIE. WHICH GIVEN
7 THE AMOUNT OF SHOTS THAT ARE BEING FIRED, AND FIRING AT
8 BOTH PEOPLE, THE FACT HE LIVED JUST MEANS HE WAS LUCKY.
9 I SUBMIT TO YOU THAT SHOOTER WANTED TO KILL BOTH
10 VICTIMS.

11 HOWEVER, THERE'S ALSO SOMETHING CALLED THE
12 KILL ZONE THEORY. WHAT THAT KILL ZONE THEORY SAYS, AND
13 BOTH OF THESE THEORIES YOU CAN USE -- AGAIN, SORRY, GOT
14 AHEAD OF MYSELF.

15 INTENDING TO KILL EMOND. ALL THE SAME
16 FACTS WE ALREADY TALKED ABOUT ON WHY THEY WOULD WANT TO
17 KILL MR. BICKHAM. SAME SITUATION, SAME SET OF FACTS.

18 LET'S TALK ABOUT KILL ZONE. WE KNOW FROM
19 THE CRIME SCENE VIDEO, LADIES AND GENTLEMEN, THIS IS WHY
20 WE SAW THAT, THAT THE CAR WAS ACTUALLY CLOSER TO THE
21 CORNER. IT WAS MORE UP HERE.

22 EMOND COULDN'T REMEMBER, AND THE DEPUTY
23 SORT OF DREW IT DOWN HERE. BUT WE KNOW FROM THIS VIDEO
24 WHEN WE SEE IT, IT'S REALLY IN BETWEEN THOSE TWO TREES.

25 YOU COULD SEE THE END OF IT WHEN THE DEPUTY
26 WAS FILMING THIS WAY, AND THAT STREET SIGN WAS IN THE
27 WAY. REMEMBER HOW I ASKED HIM ABOUT HOW YOU CAN SEE THE
28 STREET SIGN IN THE WAY, THE POLE OF IT?

1 SO WE KNOW THAT THAT CAR WAS BACK CLOSER UP
2 TO THE CORNER. AND THAT'S WHEN THE SHOTS STARTED FIRING
3 AND WHEN EMOND RAN.

4 THOSE NUMBER OF SHOTS THAT WERE FIRED, 18,
5 THAT'S CREATING A KILL ZONE. THAT'S NOT ONE SHOT AT ONE
6 PERSON. THAT'S MULTIPLE SHOTS THAT ARE BEING FIRED.

7 THE KILL ZONE THEORY SAYS THAT A PERSON MAY
8 INTEND TO KILL A SPECIFIC VICTIM; OR IF THEY INTEND TO
9 KILL ONE PERSON, SAY, FOR EXAMPLE, MR. BICKHAM, AND WERE
10 WILLING TO KILL ANYBODY ELSE WHO WAS IN THE WAY, THAT'S
11 SUFFICIENT.

12 AND SO THE EXAMPLE THAT I LIKE TO GIVE IS I
13 WANT TO KILL BICKHAM, AND BICKHAM IS ON AN AIRPLANE,
14 SAY. AND YOU THROW A BOMB ON THE AIRPLANE. CLEARLY,
15 YOU'RE WILLING TO KILL WHOEVER ELSE IS ON THE AIRPLANE;
16 RIGHT?

17 SAME THING. WHEN YOU BRING OUT AN AK,
18 START FIRING SHOTS AND SPRAYING -- AND WE KNOW THAT HE
19 WAS SPRAYING BECAUSE THERE'S GUNSHOTS ON THAT FENCE, AND
20 THERE'S GUNSHOTS ON MR. BICKHAM'S CAR. SO YOU KNOW THAT
21 THAT AK, WHEN IT CAME OUT, WAS TRYING TO HIT AS MANY
22 PEOPLE AS POSSIBLE.

23 AND THAT'S YOUR INTENT TO KILL.

24 FINALLY, THERE'S A SPECIAL ALLEGATION ON
25 COUNT 3. AND AGAIN, THIS IS WHETHER -- MR. TAYLOR IS
26 CHARGED WITH WILLFUL, DELIBERATE, AND PREMEDITATED. AND
27 IT'S ALL THE SAME FACTS THAT WE TALKED ABOUT FOR
28 MR. BICKHAM APPLY HERE, BECAUSE IT'S THE SAME SCENARIO.

1 NOW LET'S TALK ABOUT THE GANG ALLEGATION.
2 THE GANG ALLEGATION REQUIRES ME TO PROVE TO YOU THAT THE
3 CRIMES WERE COMMITTED EITHER FOR THE BENEFIT OF, AT THE
4 DIRECTION OF, OR IN ASSOCIATION WITH A GANG. THESE ARE
5 "OR," NOT "AND."

6 I DON'T HAVE TO PROVE ALL THREE TO YOU. I
7 DON'T HAVE TO PROVE THAT THIS WAS AN ORDERED HIT. THE
8 FACT THAT TWO GANG MEMBERS DID THIS CRIME TOGETHER, BOTH
9 OF THESE CRIMES, IS SUFFICIENT. THAT ELEMENT IS MET.

10 MR. WALLACE AND MR. KHALILL ARE BOTH GANG
11 MEMBERS. IN 2001, BY VIRTUE OF THEM GOING ON THIS
12 MISSION, THAT'S THEM ASSOCIATING.

13 IN 2008, ALL THREE DEFENDANTS ARE GANG
14 MEMBERS. WHEN THEY GO ON THE MISSION TO KILL
15 MR. QUEZADA, ALL THREE OF THEM BEING TOGETHER, THAT'S
16 ASSOCIATION.

17 "FOR THE BENEFIT OF" BASICALLY MEANS THEIR
18 MOTIVE. THEY HAD THAT HERE, TOO, BECAUSE AS THE GANG
19 EXPERT TOLD YOU, BY COMMITTING THESE KINDS OF SHOOTINGS,
20 THEY'RE EARNING RESPECT AMONG THEIR FELLOW GANG MEMBERS.
21 THEY'RE ENHANCING THEIR REPUTATION IN THE GANG WITH ONE
22 ANOTHER. AND THEY'RE INSTILLING FEAR IN THE COMMUNITY.

23 AS THOSE INDIVIDUAL GANG MEMBERS GAIN
24 STRENGTH ON THEIR OWN, AND GAIN STRENGTH WITHIN THEIR
25 GANG, THEN THEIR GANG GETS STRONGER.

26 IT'S LIKE THAT SAYING THAT THE SUM IS
27 GREATER THAN ITS INDIVIDUAL PIECES; RIGHT? AS THESE
28 INDIVIDUALS BECOME MORE AND MORE BRAZEN AND COMMIT THESE

1 CRIMES, THE GANG ITSELF GAINS TRACTION. THAT'S HOW IT
2 BENEFITS THE GANG.

3 THE SECOND ELEMENT OF THE GANG ALLEGATION
4 IS THAT THEY INTENDED TO PROMOTE, FURTHER, OR ASSIST IN
5 CRIMINAL CONDUCT BY GANG MEMBERS.

6 WELL, THIS CRIMINAL CONDUCT, LADIES AND
7 GENTLEMEN, CAN BE THE ACTUAL CRIME. SO THE FACT THAT
8 THEY'RE COMMITTING THIS CRIME TOGETHER, AND THEY'RE
9 TRYING TO PULL OFF THIS CRIME, THE MURDER OF
10 MR. BICKHAM, OR THE ATTEMPTED MURDER OR THE MURDER OF
11 ADIEL, ALL OF THAT COUNTS WITHIN THIS ELEMENT.

12 THERE'S A DEFINITION OF A STREET GANG.
13 BASICALLY, THIS JUST REQUIRES THAT I HAVE TO PROVE TO
14 YOU 135 PIRU IS A REAL GANG. WHICH I DON'T BELIEVE
15 THERE'S ANY DISPUTE THAT IT IS.

16 YOU HEARD ABOUT THE NUMBER OF MEMBERS.
17 WHAT KIND OF ACTIVITIES THEY COMMIT. AND THEN THERE'S A
18 LONG LAUNDRY LIST OF THINGS YOU HAVE TO SHOW TO SHOW
19 THERE'S A PATTERN OF CRIMINAL GANG ACTIVITY.

20 THE COURT: MS. OSTROWSKI, YOU'RE ABOUT AN HOUR
21 AND 15 MINUTES INTO YOUR PRESENTATION. JUST GIVING YOU
22 A HEADS UP.

23 MS. OSTROWSKI: THANK YOU.

24 I BELIEVE I'M CLOSE TO FINISHING. I'M
25 GOING TO TRY TO MOVE BACK THROUGH IT FASTER. I PROMISE.

26 THE COURT RECORDS ABOUT THOSE INDIVIDUALS
27 NAMED MR. ASKINS, BISHOP, AND LIMBRICK, THOSE THESE
28 MINUTE ORDERS, THAT SATISFIES THIS ELEMENT.

1 THERE'S NO REQUIREMENT THAT WE HAVE TO
2 PROVE THAT THEY'RE GANG MEMBERS; HOWEVER, YOU'VE SEEN
3 THE GANG PHOTOGRAPHS ON MR. WALLACE. YOU'VE SEEN THE
4 GANG PHOTOGRAPHS ON MR. KHALILL. YOU'VE SEEN THAT THEY
5 HAVE MARKED ON THEIR BODIES THEIR ALLEGIANCE TO 135.

6 BUT WHAT ABOUT PEANUT? WHAT ABOUT
7 MR. GIBBS? HE DOESN'T HAVE ANY TATTOOS. SO HOW DO WE
8 KNOW HE'S A GANG MEMBER?

9 WELL, WE KNOW FROM HIS ADMISSIONS TO THE
10 DETECTIVES. WE KNOW THE DETECTIVE DUNCAN, GANG EXPERT'S
11 OPINION. AND WE KNOW THROUGHOUT LISTENING TO THE CALLS
12 HOW THEY ALL REFER TO EACH OTHER AS BLOOD AND PEANUT AND
13 HOMEYS AND REFERENCE PIRU.

14 WE ALSO KNOW FROM HIS GIRLFRIEND, WHO
15 SPECIFICALLY SAYS TO HIM ON THE PHONE "I THINK ABOUT YOU
16 DYING BECAUSE WHEN YOU HAVE A BOYFRIEND THAT GANGBANGS,
17 I'VE GOT TO THINK ABOUT THAT."

18 SO YOU KNOW THAT MR. GIBBS IS A GANG
19 MEMBER.

20 THERE'S ALSO A COUPLE OF GUN ALLEGATIONS,
21 LADIES AND GENTLEMEN. ON COUNTS 1 AND 2, THE GANG
22 ALLEGATION HAS TO BE PROVEN FIRST. IF YOU FIND THAT
23 THAT'S TRUE, THEN YOU NEED TO ASK WAS A PRINCIPAL USING
24 A GUN.

25 AND WHETHER THE PRINCIPAL WAS USING A GUN
26 IS PRETTY SIMPLE. IT JUST MEANS DID SOMEBODY FIRE A
27 GUN, MEANING IT DIDN'T GO OFF ACCIDENTALLY; AND DID
28 SOMEBODY DIE AS A RESULT.

1 IN THIS CASE, OBVIOUSLY, MR. BICKHAM DIED
2 AS A RESULT OF SOMEBODY FIRING THE AK, AND THE SAME WITH
3 MR. QUEZADA.

4 THIS GUN ALLEGATION, LADIES AND GENTLEMEN,
5 APPLIES TO THE DEFENDANTS EVEN IF THEY'RE AIDERS AND
6 ABETTORS. SO WHEN YOU GO BACK THERE AND YOU'RE LOOKING
7 AT THE ELEMENTS, FIRST IS THE GANG ALLEGATION TRUE; THEN
8 IT'S DID A PRINCIPAL, NOT DID THE DEFENDANT, BUT DID
9 SOMEBODY WHO WAS DOING THIS CRIME FIRE A GUN. AND THE
10 ANSWER IS YES.

11 THE GUN ALLEGATION ON COUNT 3, THERE'S NO
12 NEED FOR THE GANG ALLEGATION TO BE TRUE. THIS ONE JUST
13 SAYS HEY, DID A PRINCIPAL HAVE READY, HAVE ARMED WITH
14 HIM, A GUN. IT DOESN'T EVEN REQUIRE THAT THEY SHOT THE
15 GUN.

16 SO ALL THE GUN ALLEGATIONS ARE ABOUT
17 WHETHER A PRINCIPAL, NOT WHETHER A SPECIFIC DEFENDANT,
18 HAD THEM.

19 THE SPECIAL CIRCUMSTANCE, LADIES AND
20 GENTLEMEN, THAT ONLY APPLIES TO WALLACE AND KHALILL.
21 THAT JUST MEANS THAT THERE'S TWO MURDERS. IF YOU FIND
22 THEM GUILTY OF BOTH MURDERS IN THIS CASE, YOUR SPECIAL
23 CIRCUMSTANCE FOR THEM IS TRUE.

24 I'LL FLY THROUGH -- NOW I'M AT THE DEFENSE.
25 THERE'S A JURY INSTRUCTION, LADIES AND GENTLEMEN, THAT I
26 WANT THE DRAW YOUR ATTENTION TO. BECAUSE WHAT IT SAYS
27 IS THAT NOTHING THE ATTORNEYS SAY IS EVIDENCE. AND
28 THEIR QUESTIONS AREN'T EVIDENCE. JUST BECAUSE A LAWYER

1 ASKS A QUESTIONS DOESN'T MEAN THAT IT'S TRUE.

2 AND THIS HAPPENED QUITE A FEW TIMES IN THE
3 TRIAL. THE INSTANCE I WANTED TO DRAW YOUR ATTENTION TO
4 WAS MR. FEISSA HAD A .40-CALIBER CLIP. THE DEFENSE TOLD
5 YOU IN OPENING STATEMENT THE EVIDENCE WOULD SHOW THAT.

6 THEY NEVER DID. THEY ASKED THE QUESTION OF
7 MULTIPLE WITNESSES. "ISN'T IT TRUE MR. FEISSA HAD A
8 .40-CALIBER CLIP?" AND EVERY SINGLE ONE OF THOSE
9 WITNESSES SAID "NO, I DON'T KNOW WHAT YOU'RE TALKING
10 ABOUT." THAT'S BECAUSE THAT'S NOT TRUE.

11 THE DEFENSE HAS NO BURDEN OF PROOF. I WANT
12 TO MAKE THAT VERY CLEAR. I'M THE ONE WITH THE BURDEN.
13 THAT'S WHY I'M TALKING SO LONG, GOING OVER EVERYTHING.
14 BECAUSE I UNDERSTAND THAT IT'S MY BURDEN, AND I WANT TO
15 MEET THAT BURDEN TO YOU.

16 THEY DON'T HAVE A BURDEN; HOWEVER, THEY DO
17 HAVE THE FREE SUBPOENA POWER OF THE COURT. YOU SAW THAT
18 THEY WERE ABLE TO BRING IN WITNESSES ON THEIR OWN
19 BEHALF. THEY CAN PICK WHICH WITNESSES THEY WANT TO
20 PRESENT. AND YOU AS JURORS CAN CONSIDER THEIR FAILURE
21 TO CALL LOGICAL WITNESSES.

22 FOR EXAMPLE, IN THE 2001 BICKHAM MURDER.
23 WHERE IS THE ALIBI? THINK ABOUT IT FOR A MOMENT.
24 SEPTEMBER 5TH, 2001, THERE'S A SEARCH WARRANT ON
25 WALLACE'S HOUSE.

26 HE'S THERE, AND KHALILL IS THERE. THE TWO
27 PEOPLE THAT ARE SUSPECTED IN THIS CASE. THEY'RE ADVISED
28 THAT THEY'RE SUSPECTED IN THIS CASE. THEY'RE NOTIFIED

1 SHORTLY AFTER THE MURDER.

2 IF MR. KHALILL IS IN ATLANTA, WHERE IS THE
3 WITNESS FROM ATLANTA TELLING US THAT? THEY KNOW ABOUT
4 THIS. AND THEY DON'T GO TO THE POLICE AND SAY HEY, YOU
5 GUYS THINK WE'RE SUSPECTS? NO, NO, NO, NO, NO. THIS IS
6 WHERE WE WERE.

7 WE DON'T HAVE ANY OF THAT.

8 WHAT ABOUT THE 2008 QUEZADA MURDER? WHERE
9 IS BABY SPOKE? IF MR. FEISSA IS MAKING UP THIS
10 CONVERSATION AT THE PARTY THAT HE HAD WITH PEANUT AND
11 BABY SPOKE, WHY DIDN'T THEY CALL BABY SPOKE TO REFUTE
12 IT?

13 MR. HIGGINS: OBJECTION, YOUR HONOR.

14 THE COURT: GROUNDS?

15 MR. HIGGINS: THE DEFENSE HAS NO BURDEN, AND --
16 UNFAIRLY SHIFTS THE BURDEN. IT MISDIRECTS THE JURY.

17 THE COURT: I'M GOING TO NOTE YOUR OBJECTION FOR
18 THE RECORD. I'M GOING TO OVERRULE IT.

19 IT'S TRUE THE DEFENSE HAS NO BURDEN. BUT
20 THE FAILURE TO CALL LOGICAL WITNESSES CAN BE COMMENTED
21 UPON BY BOTH SIDES.

22 YOU MAY CONTINUE.

23 MS. OSTROWSKI: THANK YOU.

24 WHERE IS BABY SPOKE TO REFUTE WHAT
25 MR. FEISSA WAS SAYING?

26 FINALLY, LADIES AND GENTLEMEN, TODAY YOU
27 GOT AN INSTRUCTION FROM THE COURT ABOUT HOW MR. GRAYSON
28 FAILED TO DISCLOSE THE TESTIMONY OF MISS PORTER, THE

1 AUNT, AND MR. KIDD, THE INMATE.

2 AND IN DOING SO, YOU'RE ALLOWED TO EVALUATE
3 THE WEIGHT AND SIGNIFICANCE OF THAT EVIDENCE. EXCUSE MY
4 TYPO. SO LET'S TALK ABOUT THAT EVIDENCE. AND HOW YOU
5 SHOULD DISCOUNT IT.

6 MISS KIDD, THE DEFENDANT'S AUNT. BEEN
7 SITTING HERE FOR MOST OF THE ENTIRE TRIAL. AND YET AT
8 THE 11TH HOUR, SHE'S CALLED TO COME FORWARD AND SAY THAT
9 MR. KHALILL WAS LIVING IN ATLANTA IN 2001, AND THAT HE
10 NEVER VISITED UNTIL AFTER OCTOBER, WHEN SOMEBODY DIED.
11 I DON'T REMEMBER IF IT WAS HER FATHER, MAYBE. TOO MANY
12 FACTS, I'M SORRY.

13 MR. GRAYSON: I'LL OBJECT.

14 THAT MISSTATES HER TESTIMONY.

15 THE COURT: SUSTAINED IN PART. THE WITNESS DIDN'T
16 SAY THAT HE DIDN'T COME OUT. SHE DOESN'T HAVE A
17 RECOLLECTION OF HIM COMING OUT IN THAT TIME FRAME.

18 I THINK THAT'S HER TESTIMONY.

19 MS. OSTROWSKI: SHE COULDN'T REMEMBER HIM EVER
20 VISITING BEFORE OCTOBER OF 2001.

21 WELL, WHY NOT COME FORWARD TO LAW
22 ENFORCEMENT, THEN, WITH THAT INFORMATION? YOU KNOW THAT
23 YOUR NEPHEW HAS BEEN ARRESTED ON A MURDER AND YOU HAVE
24 INFORMATION THAT WILL HELP EXONERATE HIM? YOU DON'T GO
25 TO THE POLICE AND TELL THEM THAT? YOU WAIT UNTIL THE
26 11TH HOUR AFTER SITTING HERE WATCHING THE ENTIRE TRIAL,
27 AND THEN YOU COME FORWARD?

28 IS THAT CREDIBLE? DOES THAT MAKE SENSE?

1 MORE IMPORTANTLY, HER TESTIMONY, LADIES AND
2 GENTLEMEN, IS INCONSISTENT WITH WHAT WE KNOW FROM THE
3 OTHER EVIDENCE. WE KNOW THAT HE WAS CONTACTED IN JUNE
4 OF 2001. DETECTIVE DUNCAN HAD AN F.I. CARD ABOUT THAT.

5 WE KNOW THAT THERE WAS PAPERWORK
6 REGISTERING THAT CAPRICE TO MR. KHALILL IN 2001. AND WE
7 KNOW THAT HE WAS AT MR. WALLACE'S RESIDENCE ON
8 SEPTEMBER 5TH, 2001.

9 WHAT ABOUT ELVIE PORTER? THE GENTLEMAN
10 INCARCERATED? WELL, THIS IS JUST THE GREATEST
11 COINCIDENCE OF ALL TIME, RIGHT? HE'S MR. GRAYSON'S
12 CLIENT. AND HE JUST HAPPENS TO CALL MR. GRAYSON THE
13 SATURDAY BEFORE CLOSING ARGUMENTS ARE TO HAPPEN ON
14 MONDAY, AND SAY "HEY, THAT WITNESS THAT POINTING THE
15 FINGER AT YOUR CLIENT? HE'S TRYING TO DO THE SAME THING
16 TO ME. HE'S TRYING TO INFORM ON ME.

17 "IN FACT, NOT ONLY IS HE TRYING TO INFORM
18 ON ME, BUT HE TOLD ME THAT HE TESTIFIED FALSELY."

19 I FIND IT VERY HARD TO BELIEVE THAT
20 MR. FEISSA USED THE WORDS "TESTIFIED FALSELY" AS OPPOSED
21 TO SOME OTHER SORT OF STREET VERNACULAR. BUT OKAY,
22 APPARENTLY WHAT MR. FEISSA SAID. HE ADMITTED TO
23 TESTIFYING FALSELY.

24 "OH, AND GREAT NEWS. GREAT NEWS. I'M
25 GOING TO BE IN TORRANCE COURT, SO I CAN TOTALLY TESTIFY
26 FOR YOU. BECAUSE I HAVE MY CASE THERE THAT DAY."

27 IS THAT A COINCIDENCE, OR WHAT? THAT AT
28 THE 11TH HOUR, JUST BEFORE CLOSING ARGUMENTS,

1 MR. GRAYSON'S OTHER CLIENT COMES FORWARD AND SAVES THE
2 DAY.

3 BUT WHAT DOES HE TELL US? HE TELLS US OH,
4 MR. FEISSA GOT THE MURDER BOOK. I SUPPOSE THIS IS TO
5 SHOW US THAT MR. FEISSA HAD INFORMATION ABOUT THE MURDER
6 BEFORE COMING FORWARD.

7 BUT THEIR OWN WITNESS SAYS THIS HAPPENED
8 BACK IN 2010, WHEN MR. FEISSA WAS IN CUSTODY ON WHAT WE
9 KNOW TO BE THE DOPE CASE.

10 WELL, MR. FEISSA CAME FORWARD IN 2008. AND
11 THAT'S NOT WHEN THIS CONVERSATION TOOK PLACE, AND WAS
12 NOT WHEN MR. FEISSA WAS SAYING HE LOOKED IN ANY REPORTS.

13 FINALLY, THE DEFENSE WILL ARGUE THAT
14 THERE'S NO DNA, THERE'S NO PRINTS, AND THERE'S NO GUN.
15 WELL, LADIES AND GENTLEMEN, I REMIND YOU THERE'S NOTHING
16 IN THE JURY INSTRUCTIONS REQUIRING THE PEOPLE TO BRING
17 YOU DNA EVIDENCE OR PRINT EVIDENCE, OR EVEN FIND THE
18 MURDER WEAPON.

19 AND WE KNOW THAT PRINT EVIDENCE DOESN'T
20 REALLY HAPPEN. YOU HEARD FROM TWO PRINT EXPERTS SAYING
21 THAT. DNA. DNA ON WHAT, LADIES AND GENTLEMEN? ON THE
22 GUNS? WE DON'T HAVE THE GUNS. THIS ISN'T A RAPE CASE.
23 DNA ISN'T POSSIBLE.

24 FINALLY, JUST A COUPLE OF DOS AND DON'TS
25 FOR YOUR DELIBERATION. IF YOU HAVE QUESTIONS, PLEASE
26 ASK THEM, ESPECIALLY IF THEY'RE RELATED TO THE LAW.

27 REASONABLE DOUBT. IT'S NOT A MERE POSSIBLE
28 DOUBT, BECAUSE EVERYTHING RELATING TO HUMAN AFFAIRS IS

1 OPEN TO SOME POSSIBLE OR IMAGINARY DOUBT.

2 IF THE DEFENSE IS ASKING YOU TO IMAGINE
3 "WHAT IFS," TO CONSIDER THINGS WE DON'T KNOW, OR WONDER
4 IF OTHER THINGS COULD HAVE BEEN PROVEN, THEN THEY'RE
5 ASKING YOU TO IMAGINE FACTS AND CIRCUMSTANCES THAT
6 AREN'T IN EVIDENCE. AND YOUR JOB IS TO EVALUATE WHAT IS
7 IN EVIDENCE.

8 WHAT YOU MAY DO AND WHAT YOU SHOULD DO IS
9 MAKE LOGICAL CONCLUSIONS BASED ON THE EVIDENCE. AND
10 THIS HYPOTHETICAL SORT OF CAME UP FOR US DURING JURY
11 SELECTION.

12 REMEMBER THE JUROR WITH THE CONTAGIOUS
13 DISEASE? YOU'RE ALLOWED TO USE YOUR COMMON SENSE, AND
14 UNDER THAT THAT JUROR WANTED TO GET OUT OF JURY DUTY.

15 WE DIDN'T NEED A MEDICAL DOCTOR TO PROVE
16 IT. THOSE KINDS OF LOGICAL CONCLUSIONS YOU CAN MAKE.

17 FINALLY, LADIES AND GENTLEMEN, I WILL LEAVE
18 YOU WITH THIS THOUGHT. JUST BECAUSE THIS IS A COURTROOM
19 AND THERE ARE CERTAIN RULES AND INSTRUCTIONS DOESN'T
20 MEAN AT THE END OF THE DAY THIS CASE ISN'T SIMPLY JUST
21 AS IT LOOKS.

22 HOW WOULD YOU DESCRIBE THIS CASE TO
23 SOMEBODY ELSE? LET'S PRETEND THE ADMONITION WAS LIFTED,
24 AND YOU COULD TALK TO YOUR ROOMMATE OR YOUR SPOUSE OR
25 SIGNIFICANT OTHER.

26 WHAT WOULD YOU SAY? YOU'D SAY THAT TWO
27 PEOPLE ARE DEAD BECAUSE THEY WERE MISTAKENLY BELIEVED TO
28 BE RIVALS.

1 THAT'S WHAT YOU WOULD SAY. AND YOU WOULD
2 SAY WITH ONE OF THEM, THERE WAS A SURVIVING VICTIM. AND
3 HE I.D.'D THE DEFENDANTS BECAUSE HE KNEW THEM. HE KNEW
4 THEM FROM THE NEIGHBORHOOD. HE KNEW THEM WHEN HE SAW
5 THEM THAT NIGHT. HE WAS TERRIFIED TO COME FORWARD, BUT
6 HE ULTIMATELY DID.

7 AND THEN YOU WOULD SAY THAT ON THE OTHER
8 MURDER, THAT WAS PROVEN TO YOU BECAUSE THERE WAS A
9 SNITCH IN THE GANG. A SNITCH, WHO LIKE THE DEFENDANTS,
10 WAS A GANG MEMBER AND A MURDERER. AND SO HE HAD THE
11 INSIDE SCOOP.

12 AND YOU'LL SAY THERE IS OTHER EVIDENCE,
13 TOO, THAT HELPS YOU CORROBORATE ALL THESE PEOPLE,
14 BECAUSE THERE WAS A WIRETAP. AND YOU GOT TO HEAR THE
15 DEFENDANTS OVER THE PHONES, HEAR WHAT THEY SAID.

16 AND THAT AT THE END OF THE DAY, WHEN YOU
17 ADD UP ALL THE PIECES, WHEN YOU PUT THAT JIGSAW PUZZLE
18 TOGETHER, AND YOU ADD EVERYTHING UP IN TOTALITY AND LOOK
19 AT IT IN ITS WHOLE, IT IS CLEAR TO YOU THAT THOSE
20 DEFENDANTS ARE GUILTY AS CHARGED, AND RESPONSIBLE FOR
21 THE MURDERS THAT THEY ARE CHARGED WITH.

22 AND BECAUSE OF THAT, I WILL ASK YOU TO
23 RETURN THE ONLY JUST VERDICT IN THIS CASE, AND FIND ALL
24 THREE DEFENDANTS GUILTY, AND ALL THE CIRCUMSTANCES AND
25 SPECIAL ALLEGATIONS TO BE TRUE.

26 THANK YOU.

27 THE COURT: THANK YOU.

28 LADIES AND GENTLEMEN OF THE JURY, DON'T

1 DRAWN FROM THOSE NUMBERS. AND IT WOULD SAVE A
2 TREMENDOUS AMOUNT OF TIME.

3 MS. OSTROWSKI: I AGREE THAT IT WOULD PERHAPS SAVE
4 A TREMENDOUS AMOUNT OF TIME; HOWEVER, IN LOOKING AT THE
5 REPORTS -- IF I CAN JUST HAVE A MINUTE.

6 THE COURT: OKAY.

7 MS. OSTROWSKI: THERE ARE SEVERAL REPORTS.

8 SO I GUESS THE QUESTION WOULD BE WHICH
9 REPORTS ARE WE GOING TO INTRODUCE.

10 AND IT'S SOMEWHAT -- AGAIN, IT'S A MAZE. I
11 THINK IT'S INCREDIBLY CONFUSING AND MISLEADING FOR
12 JURORS, POTENTIALLY.

13 I GUESS MY POINT TO THE COURT, YOUR HONOR,
14 IS THE DEFENSE IS UNABLE TO ARTICULATE WHAT SPECIFIC
15 DIFFERENCE, OR WHAT SPECIFIC ANSWERS DETECTIVE SHAW
16 WOULD PROVIDE, IF CALLED TO TESTIFY, AND HOW THAT
17 INFORMATION WOULD BE MATERIAL.

18 THE COURT: IT GOES TO THE DIFFERENCE IN THE
19 WEIGHT, AS TO WHETHER OR NOT AN INFORMANT WHO IS PAID
20 \$7,000 VERSUS AN INFORMANT WHO IS PAID \$12,000 HAS A
21 GREATER MOTIVE TO FABRICATE, TO PLEASE THE HANDLERS.

22 MS. OSTROWSKI: YES. BUT THERE'S NO OFFER OF
23 PROOF FROM THE DEFENSE THAT DETECTIVE SHAW WOULD COME
24 INTO COURT AND SAY THAT MR. FEISSA WAS PAID \$12,000, AND
25 HE COULDN'T BE IMPEACH WITH THE RECORD THAT COUNSEL IS
26 REFERRING TO BECAUSE THAT'S NOT SOMETHING THAT HE
27 DRAFTED.

28 THE COURT: OKAY.

1 MS. OSTROWSKI: AGAIN, THE DEFENSE CAN'T MAKE A
2 SHOWING THAT DETECTIVE SHAW WOULD PROVIDE EVIDENCE THAT
3 WOULD BE MATERIAL TO THE ISSUES IN THE CASE.

4 MR. HIGGINS: WELL, YOUR HONOR --

5 THE COURT: LET ME REASK THE QUESTION. ARE YOU
6 WILLING TO STIPULATE TO THE INTRODUCTION OF THE REPORTS
7 THAT WERE GENERATED BY VALENTO AND SHAW?

8 MR. HIGGINS: WELL, AS COUNSEL SAID, WE DON'T
9 NECESSARILY AGREE ON THINGS ALL THE TIME. BUT I DO
10 BELIEVE THE REPORTS ARE CONFUSING.

11 I WOULD HAVE TO LOOK AT THE REPORTS
12 SPECIFICALLY TO SEE. YOU KNOW, I'VE LOOKED AT THEM
13 ALREADY. BUT THE ONES I'VE LOOKED AT PREPARED BY
14 VALENTO, IT WAS AT LEAST -- LET'S SEE, THERE'S ONE HERE
15 DATED --

16 MS. OSTROWSKI: THE PROBLEM WITH THE REPORTS, YOUR
17 HONOR --

18 MR. HIGGINS: OCTOBER 10TH, 2010, WHERE HE REFERS
19 TO A MEETING, TO GO OVER A NUMBER OF THINGS. AND THERE
20 ARE SEVERAL LINES AND NUMBERS THAT HE'S REFERRING TO
21 THAT ARE INCORRECT.

22 THE COURT: OKAY.

23 MR. HIGGINS: SO, IT MAY BE VERY WELL CONFUSING TO
24 THE JURY.

25 THE COURT: THEN YOU'RE NOT ASKING THAT THE
26 RECORDS BE RECEIVED?

27 MR. HIGGINS: NOT AT THIS TIME.

28 THE COURT: WELL, I'M DISINCLINED TO ALLOW YOU TO

1 CALL SHAW. SO THAT'S WHY I WANTED TO KNOW WHETHER OR
2 NOT THERE'S SOMETHING IN THE REPORT THAT WOULD PROVIDE
3 THE FACTUAL BASIS FOR YOU. THAT WOULD BE A LOT MORE
4 EXPEDIENT THAN TRAILING THE CASE UNTIL MONDAY FOR THE
5 PURPOSES OF THAT LIMITED INQUIRY.

6 MR. HIGGINS: WELL, LET ME SAY THIS. I THINK THAT
7 DETECTIVE SHAW'S OVERALL HANDLING OF MR. FEISSA FROM THE
8 MOMENT HE WAS DECLARED TO BE A CONFIDENTIAL RELIABLE
9 INFORMANT THROUGH THE PAYMENTS THAT HE'D MADE, THROUGH
10 THE MISTAKES IN THESE THAT HE'S MADE, ARE ALL RELEVANT
11 TO MR. FEISSA BEING RELIABLE.

12 THE COURT: OKAY. I'VE HEARD THAT ARGUMENT.

13 MR. HIGGINS: AND I THINK THAT IF THE COURT IS
14 GOING TO DISALLOW IT, IN THAT WE WILL PROBABLY BE HERE
15 ON MONDAY, AND I THINK THAT MR. SHAW WOULD TAKE UP --
16 WOULD NOT TAKE UP VERY MUCH TIME.

17 THE COURT: COMPARED TO WHO? VALENTINO? DUNCAN?

18 MR. HIGGINS: COMPARED TO THE WITNESSES THAT WERE
19 CALLED BY THE PROSECUTION.

20 THE COURT: OKAY.

21 MR. HIGGINS: THAT IT WOULD BE DENYING OUR
22 CONSTITUTIONAL RIGHT TO A FAIR TRIAL. OUR RIGHT TO
23 PRESENT EVIDENCE UNDER THE CALIFORNIA AND U.S.
24 CONSTITUTIONS.

25 THE COURT: I'M TRYING TO FIND A HAPPY MEDIUM FOR
26 YOU, MR. HIGGINS. THE MOTION TO CALL SHAW IS DENIED
27 UNDER 352.

28 IF YOU WANT TO REVISIT THE ISSUE OF THE

1 REPORTS, AND IF YOU THINK THAT WILL HELP YOU, OR IF YOU
2 THINK MS. BARNES CAN PROVIDE ADDITIONAL INFORMATION
3 REGARDING THE DISCREPANCIES IN THE REPORTS THAT WOULD BE
4 HELPFUL TO ILLUSTRATE THE DEFICIENCIES IN RECORD
5 KEEPING, I MIGHT CONSIDER THAT.

6 I'M NOT INCLINED TO CONTINUE THE CASE FOR
7 TESTIMONY UNTIL MONDAY AT SOME POINT IN TIME FOR SHAW.
8 BECAUSE IF WE DO THAT, WE'RE NOT CLOSING MONDAY. WE'RE
9 CLOSING SOMETIME TUESDAY.

10 YOU'VE GOT A JUROR THAT'S FLYING OUT ON
11 THURSDAY. YOU DO THE MATH. WE'VE NOT GIVING THE JURY
12 ENOUGH TIME TO DELIBERATE.

13 AND I DO NOT WANT TO HAVE THIS CASE BE
14 RUSHED IN THE JURY ROOM. AND I DON'T WANT TO HAVE THIS
15 CASE MISTRIED.

16 AND SO WHEN YOU EVALUATE THE PROBATIVE
17 VALUE OF SHAW'S TESTIMONY WITH REGARD TO THOSE MISTAKES,
18 IT'S JUST IT DOESN'T MAKE SENSE TO CONTINUE THE CASE
19 UNTIL THEN FOR THAT PURPOSE.

20 SO THE REQUEST IS DENIED.

21 WHO ELSE DO YOU HAVE THAT YOU WANTED TO
22 ADDRESS?

23 MS. OSTROWSKI: MY UNDERSTANDING IS THE ONLY OTHER
24 WITNESSES, THEN, WOULD BE MS. BARNES AND THE GANG
25 EXPERT, MR. FLORES; IS THAT CORRECT?

26 MR. GRAYSON: AND MR. AHN.

27 THE COURT: THE COMPUTER GUY?

28 MR. GRAYSON: BUT I'M WILLING TO STIPULATE.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
)
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

DECEMBER 20, 21, 22, 2011
JULY 11, 2012
AUGUST 8, 2012

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 16 OF 16 VOLUMES
PAGES 4021 TO 4318-4500
4501 TO 4513-4800
4801 TO 4819-5100
5101 TO 5142-5400
5401 TO 5435-5700

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

CO

1 DOING IS BASICALLY BE ON CALL. BUT I'M GOING TO DIRECT
2 THE JURY TO REPORT TOMORROW MORNING, AFTER THEY'VE
3 COMPLETED WITH THEIR DELIBERATIONS TODAY, TO JUDGE
4 ARNOLD'S COURT.

5 JUDGE ARNOLD WILL SUPERVISE THEM. IF HE
6 NEEDS TO REACH ME, HE CAN GET ME BY PHONE. IF I NEED TO
7 COME IN, I'LL COME IN. I'M AVAILABLE UP THROUGH FRIDAY.

8 I'M NOT AVAILABLE NEXT WEEK, AS I
9 INDICATED.

10 ANY OBJECTION BY ANYBODY TO THAT PROCEDURE?

11 MS. OSTROWSKI: NO.

12 MR. HIGGINS: NO.

13 MR. GRAYSON: NO.

14 MR. NEWMAN: NO.

15 THE COURT: ALL FOUR LAWYERS SAY NO.

16 WITH REGARDS TO JUROR NUMBER 6, IT'S MY
17 BELIEF I SHOULD RELEASE THAT JUROR, BECAUSE IF I DON'T
18 RELEASE THAT JUROR, SHE COMMENCES WITH JURY
19 DELIBERATIONS, AND THE JURY DOES NOT REACH A VERDICT BY
20 CLOSE OF BUSINESS TOMORROW, THEN I HAVE TO INSTRUCT THEM
21 TO BEGIN JURY DELIBERATIONS ANEW.

22 I THINK IT'S A HORRIBLE WASTE OF TIME.
23 BECAUSE I THINK IT'S UNLIKELY, GIVEN THE EXTENT OF THE
24 TESTIMONY IN THE CASE AND THE NUMBER OF EXHIBITS, I
25 THINK IT'S INCREDIBLY UNLIKELY THE JURY WILL REACH A
26 VERDICT BY TOMORROW, CLOSE OF BUSINESS.

27 IS THERE A REQUEST TO HAVE JUROR NUMBER 6
28 SUBSTITUTED OUT AND REPLACED WITH A JUROR?

1 MR. HIGGINS: NO REQUEST HERE, YOUR HONOR. BUT
2 REMEMBER, WE HAVE TWO DIFFERENT CASES. I'M THINKING
3 THAT IT'S POSSIBLE THAT THEY COULD REACH A VERDICT ON AT
4 LEAST THE '08 MURDER BY THE CLOSE OF BUSINESS TOMORROW.

5 SO I WOULD WANT THAT JUROR TO REMAIN.

6 THE COURT: WHAT'S YOUR POSITION?

7 MR. NEWMAN: I THINK YOU MIGHT AS WELL SUBSTITUTE
8 HER OUT NOW. LIKE YOU SAID, IT WOULD BE A WASTE, AND
9 CAUSE MORE PROBLEMS WITH THE JURORS TO START ALL OVER
10 AGAIN.

11 THE LIKELIHOOD OF THEM REACHING A VERDICT
12 ON BOTH CASES ON EITHER CASE BY CLOSE OF BUSINESS
13 TOMORROW I THINK IS SLIM. THEY'RE NOT GOING TO START
14 UNTIL THIS AFTERNOON SOMETIME.

15 THAT MEANS THEY'RE GOING TO HAVE TO COME
16 IN, AND TELL THEM TO START ALL OVER AGAIN, WHICH I DON'T
17 THINK IS FAIR TO THE JURY.

18 THE COURT: MR. GRAYSON.

19 MR. GRAYSON: I'M NOT MAKING A REQUEST.

20 I'LL JUST SUBMIT.

21 THE COURT: YOU'RE NOT OPPOSED TO REPLACING JUROR
22 NUMBER 6?

23 MR. GRAYSON: I'M AMBIVALENT.

24 THE COURT: OKAY.

25 MS. OSTROWSKI.

26 MS. OSTROWSKI: I DON'T HAVE ANY OBJECTION.

27 THE COURT: IN THIS MATTER, I'M GOING TO FIND
28 THERE'S A MANIFEST NEED TO RELEASE JUROR NUMBER 6 IN

1 THIS MATTER BASED UPON THE SCHEDULING CONFLICT SHE
2 ALERTED US TO A LONG TIME AGO.

3 I EXPECTED, CANDIDLY, THAT THERE WOULD BE A
4 CONSENT TO A RECESS OF THE TRIAL DURING THE PERIOD OF
5 TIME WHEN THE JUROR WAS ON THE EAST COAST.

6 I CAN'T FORCE THE PARTIES TO AGREE TO IT.
7 CLEARLY, TO ME, IT'S REVERSIBLE ERROR IF I RECESS IT FOR
8 THAT PERIOD OF TIME. SO I INTEND TO EXCUSE JUROR NUMBER
9 6, AND SUBSTITUTE IN AN ALTERNATE.

10 MR. HIGGINS: SO THE RECORD CAN BE CLEAR, YOUR
11 HONOR, THAT WOULD BE OVER MY OBJECTION.

12 THE COURT: NOTED. LET'S PROCEED.

13 ACTUALLY, I'LL ASK JUROR NUMBER 6 TO STEP
14 BACK.

15
16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD IN OPEN COURT, IN
18 THE PRESENCE OF THE JURY:)

19
20 THE COURT: JUROR 6, CAN WE SEE YOU, PLEASE?

21
22 (THE FOLLOWING PROCEEDINGS
23 WERE HELD AT THE BENCH:)

24
25 MS. OSTROWSKI: YOUR HONOR, I HAVE A QUESTION
26 ABOUT VERDICT FORMS.

27 THE COURT: OKAY.
28

1 (PAUSE IN PROCEEDINGS.)

2
3 THE COURT: FIRST, LET START WITH AN APOLOGY.
4 WHEN WE STARTED THIS CASE, I ANTICIPATED THIS CASE WOULD
5 BE TO YOU BY FRIDAY, CLOSE OF BUSINESS, AND THAT
6 NOTWITHSTANDING YOUR DISCLOSURE THAT YOU HAD A TRIP TO
7 THE EAST COAST, THAT YOU WOULD HAVE HAD ADEQUATE TIME IN
8 ORDER TO BE ABLE TO DELIBERATE THE CASE, TO GO THROUGH
9 ITS ENTIRETY.

10 BUT I CAN'T UNDER THE LAW RECESS THE TRIAL
11 FOR A PERIOD OF MORE THAN 10 OR 11 DAYS FOR THAT TRIP.
12 BUT I KNOW THAT TRIP IS IMPORTANT TO YOU, AND I KNOW
13 THAT YOU'RE GOING TO BE MEETING WITH FAMILY, AND THIS
14 HAS BEEN PLANNED FOR SOME TIME.

15 SO I'M GOING TO EXCUSE YOU AS A JUROR IN
16 THIS CASE WITH OUR THANKS. I WISH I COULD HAVE COME TO
17 THIS CONCLUSION BEFORE NOW.

18 JUROR NO. 6: ME, TOO.

19 THE COURT: BUT IT WASN'T UNTIL THE VERY END I
20 REALIZED WHAT THE SCHEDULES ARE FOR THE OTHER JURORS,
21 AND DID THE RESEARCH ON IT TO KNOW WHETHER OR NOT
22 LAWFULLY, I COULD CONTINUE THE CASE FOR THAT LENGTH OF
23 TIME.

24 I'M SATISFIED NOW, BASED UPON THE RESEARCH
25 I DID LAST NIGHT AND TODAY, THAT I DON'T HAVE THE
26 AUTHORITY TO CONTINUE THE CASE WITHOUT CONSENT OF ALL
27 PARTIES FOR THAT PERIOD OF TIME.

28 AND I DON'T HAVE THAT CONSENT. SO I'M

1 GOING TO EXCUSE YOU, AND DIRECT YOU NOT TO DISCUSS OUR
2 CONVERSATION WITH ANY OTHER JURORS.

3 YOU'RE WELCOME TO GO DOWN TO THE JURY ROOM,
4 CHECK OUT, AND GO HOME. ENJOY YOUR TRIP ON THE EAST
5 COAST. I APPRECIATE YOUR CIVIC DUTY, AND YOUR PATIENCE
6 IN BEING HERE WITH US.

7 I'M SORRY YOU WEREN'T ABLE TO SEE IT
8 THROUGH TO THE END.

9 JUROR NO. 6: I DON'T TAKE MY SEAT, I CAN JUST GET
10 MY STUFF AND GO?

11 THE COURT: YES, MA'AM.

12 JUROR NO. 6: ALL RIGHT, THANK YOU.

13 THE COURT: THANK YOU.

14

15 (PAUSE IN PROCEEDINGS.)

16

17 THE COURT: ALL RIGHT.

18 LET'S PROCEED IN OPEN COURT. I'LL ADDRESS
19 THE ISSUE AT 1:30 REGARDING THE OTHER PROCEDURES ISSUES.

20

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

24

25 THE COURT: LADIES AND GENTLEMEN, BASED UPON THE
26 COURT'S FINDINGS, I'M FINDING THAT JUROR NUMBER 6 SHOULD
27 BE EXCUSED FOR LEGAL CAUSE.

28 AND WE HAVE TWO ALTERNATE JURORS LEFT. I

1 HAVE THE PROVERBIAL POST-ITS 1 AND 2 HERE. SINCE WE
2 ACTUALLY HAD THREE JURORS INITIALLY, AND WE SUBBED ONE
3 IN, YOU MAY HAVE A DIFFERENT NUMBER.

4 WHAT IS YOUR JUROR I.D. NUMBER, PLEASE?

5 JUROR 5383: 5383.

6 THE COURT: AND ALTERNATE 2, YOUR JUROR I.D.
7 NUMBER?

8 JUROR 5172: 5172.

9

10 (PAUSE IN PROCEEDINGS.)

11

12 THE COURT: MADAM CLERK, WOULD YOU SELECT ONE,
13 PLEASE?

14 JUROR NUMBER 2, WHICH IS JUROR 5172. YOU
15 ARE NOW JUROR NUMBER 6. ALTERNATE NUMBER 1, WHICH IS
16 JUROR 5383, YOU'LL REMAIN AS OUR ONLY ALTERNATE AT THIS
17 POINT.

18 LADIES AND GENTLEMEN, AT THIS TIME, THE
19 CASE HAS NOW COME TO A CLOSE. I'M GOING TO ORDER THAT
20 YOU RETURN THIS AFTERNOON AT 1:30 TO COMMENCE WITH YOUR
21 DELIBERATIONS.

22 HERE'S THE SCHEDULE FOR THE REMAINDER OF
23 THE WEEK. YOU'RE GOING TO START YOUR DELIBERATIONS THIS
24 AFTERNOON AT 1:30. WE'LL RECESS AT APPROXIMATELY 4:30.

25 WHENEVER YOU WANT TO TAKE A BREAK DURING
26 THE DAY, DURING THE AFTERNOON, JUST LET THE BAILIFF
27 KNOW. JUST BUZZ US. YOU CAN TAKE WHATEVER SCHEDULE YOU
28 WANT.

1 TOMORROW MORNING, I'M GOING TO WANT YOU TO
2 REPORT AT 9:00 IN FRONT OF DEPARTMENT SOUTHWEST G, WHICH
3 IS ON THE FOURTH FLOOR. JUDGE ARNOLD WILL BE
4 SUPERVISING -- HE IS THE SUPERVISING JUDGE IN THIS
5 DISTRICT -- IN MY ABSENCE.

6 I'M AVAILABLE BY TELEPHONE. IF THERE'S A
7 QUESTION OR A PROBLEM, I CAN COME INTO COURT. AND I
8 WILL BE AVAILABLE UP THROUGH THURSDAY.

9 WE WILL NOT BE IN TRIAL ON FRIDAY. SO WE
10 ARE GOING TO BE DARK ON FRIDAY, MEANING THAT WE'RE NOT
11 GOING TO BE IN SESSION.

12 IF THE JURORS HAVE NOT REACHED A VERDICT BY
13 CLOSE OF BUSINESS ON THURSDAY, FRIDAY WE'RE DARK. NEXT
14 MONDAY, DECEMBER 26TH, IS A LEGAL HOLIDAY. WE'RE NOT IN
15 SESSION ON THE 26TH, EITHER.

16 IF THE JURORS HAVEN'T REACHED A VERDICT BY
17 CLOSE OF BUSINESS ON THURSDAY, YOU RESUME YOUR
18 DELIBERATIONS ON TUESDAY MORNING AT 9:00.

19 NEXT WEEK, JUDGE STEVEN VAN SICKLEN,
20 DEPARTMENT F ON THIS FLOOR, THE JUDGE DOWN OUR HALL,
21 WILL BE SUPERVISING. I'M NOT AVAILABLE NEXT WEEK AT
22 ALL. I'M NOT EVEN IN THE COUNTRY.

23 CANDIDLY, I DON'T THINK MY CELL PHONE WILL
24 WORK IN THE AREA WHERE I'M GOING TO BE. I APOLOGIZE TO
25 YOU. I WANT TO STICK IT THROUGH TO THE END, BUT THIS IS
26 A VACATION FAMILY VACATION I'VE HAD PLANNED FOR 13
27 MONTHS.

28 SO THAT'S WHERE WE'VE AT. EACH OF YOU ARE

1 ORDERED TO RETURN AT 1:30 FOR THE COMMENCEMENT OF YOUR
2 DELIBERATIONS.

3 ALTERNATE NUMBER 1, I'M STILL GOING TO NEED
4 YOU TO REPORT AND LET THE BAILIFF KNOW WHERE WE CAN FIND
5 YOU IN THE BUILDING WHILE JURORS ARE IN DELIBERATIONS.

6 ALL RIGHT.

7 WE'RE GOING TO TAKE THE NOON RECESS. DON'T
8 FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE UNTIL IT'S
9 SUBMITTED TO YOU.

10 EACH OF YOU ARE ORDERED BACK AT 1:30.

11
12 (THE FOLLOWING PROCEEDINGS
13 WERE HELD IN OPEN COURT, OUT
14 OF THE PRESENCE OF THE JURY:)

15
16 THE COURT: THE RECORD WILL REFLECT ALL THE LADIES
17 AND GENTLEMEN OF THE JURY HAVE LEFT THE COURTROOM.

18 COUNSEL, EACH OF YOU ARE ORDERED BACK AT
19 1:30. MR. GRAYSON, YOU HAD AN APPEARANCE IN DOWNTOWN.

20 WILL SOMEBODY ELSE COVER IT FOR YOU?

21 MR. GRAYSON: I THOUGHT MIGHT BE THERE AT 1:30.
22 BUT I CAN GET SOMEBODY TO COVER IT.

23 THE COURT: I APPRECIATE IT. BECAUSE I KNOW WE
24 HAVE PROCEDURAL ISSUES WE STILL NEED TO RESOLVE
25 REGARDING THE JURY INSTRUCTIONS, AND I WANT TO MAKE SURE
26 EVERYBODY IS GOOD WITH THE EXHIBITS AND THE INSTRUCTIONS
27 IN FINAL FORM.

28 MR. GRAYSON: SHOULDN'T BE A PROBLEM.

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THE COURT: THANK YOU.

YOU'RE EACH ORDERED BACK AT 1:30 P.M.

THANK YOU.

(AT 12:14 P.M., PROCEEDINGS
WERE CONTINUED TO 1:30 P.M.
OF THE SAME DAY.)

1 CASE NUMBER: NO. YA075709-01/-02/-03
2 CASE NAME: PEOPLE VS. WALLACE, KHALILL, GIBBS
3 TORRANCE, CALIFORNIA TUESDAY, DECEMBER 20, 2011
4 DEPT. SOUTHWEST L HON. JAMES R. BRANDLIN, JUDGE
5 REPORTER: WILLIAM F. BARNES, CSR #3766
6 TIME: P.M. SESSION
7 (APPEARANCES AS HERETOFORE NOTED.)
8 ---000---
9
10 (THE JURY CONTINUES
11 DELIBERATIONS.)
12
13 (PROCEEDINGS WERE CONTINUED
14 TO WEDNESDAY, DECEMBER 21,
15 2011, AT 9:00 A.M.)
16
17 (THE NEXT PAGE NUMBER IS 4501.)
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1 CASE NUMBER: YA075709-01/-02/-03
2 CASE NAME: PEOPLE VS. WALLACE, KHALILL, GIBBS
3 TORRANCE, CALIFORNIA WEDNESDAY, DECEMBER 21, 2011
4 DEPT. SOUTHWEST L HON. MARK S. ARNOLD, JUDGE
5 REPORTER: WILLIAM F. BARNES, CSR #3766
6 TIME: 11:05 A.M.
7 APPEARANCES:
8 THE DEFENDANTS WALLACE,
9 KHALILL, AND GIBBS WITH THEIR
10 COUNSEL, RONALD HIGGINS, ESQ.;
11 ALLYSON OSTROWSKI, DEPUTY
12 DISTRICT ATTORNEY OF LOS ANGELES
13 COUNTY, REPRESENTING THE PEOPLE
14 OF THE STATE OF CALIFORNIA.
15
16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD IN OPEN COURT, OUT
18 OF THE PRESENCE OF THE JURY:)
19
20 THE COURT: WALLACE, KHALILL, AND GIBBS MATTER.
21 WE'RE OUTSIDE THE PRESENCE OF THE JURY. DEFENDANTS ARE
22 PRESENT.
23 MR. HIGGINS, YOU'RE STANDING IN FOR COUNSEL
24 WHO ARE NOT PRESENT?
25 MR. HIGGINS: YES, YOUR HONOR.
26 FOR MR. NEWMAN AND MR. GRAYSON.
27 THE COURT: ALL RIGHT.
28 THE PEOPLE ARE REPRESENTED.

1 THE JURY HAS SENT OUT A REQUEST, A WRITTEN
2 REQUEST THAT STATES "WE WANT GANG EXPERT TESTIMONY," IN
3 PARENTHESES, "MARTIN FLORES AND DETECTIVE DUNCAN,
4 RELATES TO 135 PIRU. EXPERT SAYING THE GANG WAS A
5 CRIMINAL STREET GANG. ALSO PROSECUTOR'S CLOSING
6 STATEMENT IN REGARD TO 186.22."

7 I KNOW YOU TWO HAVE CONFERRED. I
8 UNDERSTAND THAT YOU HAVE COME TO AN AGREEMENT AS TO SOME
9 OF THE READBACK OF TESTIMONY, BUT THERE'S A DISPUTE AS
10 TO OTHER PARTS?

11 MS. OSTROWSKI: YES.

12 MR. HIGGINS: THAT IS CORRECT, YOUR HONOR.

13 MS. OSTROWSKI: IF I MAY. THE COURT REPORTER HAS
14 BEEN KIND ENOUGH TO DIVIDE UP THE TRANSCRIPT FOR US.

15 IN THE FIRST SECTION OF DETECTIVE DUNCAN --
16 IF I CAN BRING IT TO THE COURT. ON PAGE 54,
17 BEGINNING -- EXCUSE ME, PAGE 52, LINE 4. PROBABLY A
18 DOG-EARED PAGE.

19 THAT SECTION GOING THROUGH PAGE 53, LINE 1
20 IS WITH RESPECT TO THE PREDICATE ACTS. AND MR. HIGGINS
21 IS ASKING THAT THAT BE OMITTED.

22 BECAUSE THE PREDICATE ACTS RELATE TO AN
23 ELEMENT OF WHETHER 135 IS A CRIMINAL STREET GANG, I'M
24 ASKING THAT IT BE INCLUDED.

25 MR. HIGGINS: I ASK THAT IT BE OMITTED, YOUR
26 HONOR. IT DOESN'T SEEM TO BE WITHIN THE SCOPE OF THE
27 QUESTION THAT THEY HAVE ASKED.

28 THEY DIDN'T SAY ANYTHING ABOUT PREDICATE

1 ACTS. I BELIEVE THE QUESTION WAS ABOUT 135.

2 SO I'M ASKING THAT THAT NOT BE READ. I
3 DON'T BELIEVE IT'S WITHIN THE SCOPE OF THE QUESTION.

4 THE COURT: WELL, IT DOES RELATE TO THE OFFICER'S
5 OPINION THAT 135TH STREET PIRU IS A CRIMINAL STREET
6 GANG. I CERTAINLY DON'T SEE ANY PREJUDICE TO YOUR
7 CLIENT. IT WAS CLEARLY RELEVANT AND ADMISSIBLE DURING
8 THE CASE IN CHIEF.

9 SO YOUR REQUEST, MR. HIGGINS, IS OVERRULED.

10 WHAT'S THE NEXT --

11 MS. OSTROWSKI: IN SECTION TWO -- WHICH I WILL NOW
12 HAND THE COURT. IN SECTION TWO, ON PAGE 8, THROUGH
13 11 -- I'M SORRY, PAGE 8, LINE 11; IS THAT RIGHT?

14 MR. HIGGINS: PAGE -- SECTION TWO, PAGE -- LET ME
15 SEE. PAGE 20 -- NO, NO, NO. I HAD OMIT PAGE 16, LINES
16 8 THROUGH 11, AND PAGE 17, LINE 1, THROUGH PAGE 18,
17 LINE 3.

18 THE COURT: HOLD ON. I'M ON PAGE 16.

19 WHAT ARE YOU OBJECTING TO?

20 MR. HIGGINS: 8 THROUGH 11.

21

22 (PAUSE IN PROCEEDINGS.)

23

24 THE COURT: ALL RIGHT.

25 MS. OSTROWSKI: I BELIEVE THAT'S RELATED TO THE
26 MISSION TESTIMONY; IS THAT RIGHT, YOUR HONOR?

27 THE COURT: YES. THE QUESTION IS "CAN YOU TELL US
28 WHAT A MISSION IS?" AND THE ANSWER IS "A MISSION

1 REGARDING THE GANGS WOULD BE GOING OUT TO ROB TO COMMIT
2 A CRIME."

3 MS. OSTROWSKI: YOU KNOW WHAT, YOUR HONOR, IN THE
4 INTERESTS OF TIME, I'LL SUBMIT ON THAT.

5 THE COURT: IT DOESN'T SEEM TO GO TO HIS OPINION
6 THAT 135 IS A CRIMINAL STREET GANG. I THINK THE
7 OBJECTION IS WELL-TAKEN.

8 MS. OSTROWSKI: OKAY.

9 THE COURT: WHAT'S NEXT?

10 MS. OSTROWSKI: I'LL SUBMIT ON PAGE 17, LINE 1,
11 THROUGH PAGE 18, LINE 18, WHICH IS ALSO ABOUT A MISSION.

12 HOWEVER, THE LAST AND FINAL THING IS ON
13 PAGE 27 OF THAT SECTION, BEGINNING AT LINE 25. IT'S
14 WHERE I BEGIN TO GIVE HIM THE HYPOTHETICAL, THEN HE
15 RENDERS HIS OPINIONS.

16 AND THAT WHOLE SECTION I BELIEVE --

17 MR. HIGGINS: IT GOES THROUGH PAGE 34, LINE 9.

18 MS. OSTROWSKI: THAT'S CORRECT.

19 GIVEN THE JURY'S INQUIRY ABOUT 186.22 --
20 OBVIOUSLY, WE'RE NOT GOING TO READ THEM MY CLOSING
21 ARGUMENT.

22 THE COURT: RIGHT.

23 MS. OSTROWSKI: BUT THAT WHOLE SECTION WHERE I
24 GIVE THE HYPO ON EACH OF THE MURDERS IN THIS CASE AND HE
25 RENDERS AN OPINION ABOUT THE 186.22, IT SEEMS
26 APPROPRIATELY RESPONSIVE.

27 THE COURT: IF THAT'S WHAT THEY ASKED FOR, THEN
28 FINE; BUT ALL THEY'RE ASKING FOR IS THE TESTIMONY FROM

1 THE EXPERT REGARDING 135 PIRU BEING A CRIMINAL STREET
2 GANG.

3 THEY'RE ASKING FOR YOUR CLOSING STATEMENT.
4 THEY'RE NOT GOING TO GET THAT. BUT IF THEY ASK FOR
5 ADDITIONAL READBACK ASKING FOR THE TESTIMONY ABOUT THE
6 HYPOTHETICAL, THEY CAN HAVE IT.

7 I BELIEVE THAT WE SHOULD GIVE THE JURY WHAT
8 THEY ASKED FOR. THEY'RE NOT ASKING FOR THE TESTIMONY
9 ABOUT THE HYPOTHETICAL.

10 THEY ARE ASKING FOR YOUR CLOSING ARGUMENT.

11 MS. OSTROWSKI: OKAY.

12 THE COURT: WHAT'S NEXT?

13 MS. OSTROWSKI: THAT'S IT.

14 THE COURT: THAT'S IT. ALL RIGHT.

15 MS. OSTROWSKI: THAT'S MY UNDERSTANDING; RIGHT?

16 MR. HIGGINS: THAT'S CORRECT.

17 THE COURT: ALL RIGHT.

18 LET'S HAVE THE JURY.

19

20 (A DISCUSSION WAS HELD

21 OFF THE RECORD.)

22

23 THE COURT: IS READBACK GOING TO BE DONE UP HERE?

24 MS. OSTROWSKI: YES. I GUESS THEY DID NOT WAIVE
25 PRESENCE. SO THE JURY WILL ACTUALLY BE BROUGHT OUT.

26 THE COURT: I UNDERSTAND.

27 MS. OSTROWSKI: I UNDERSTAND THE COURT REPORTER
28 WANTS A MOMENT WITH US TO GO THROUGH WHAT EXACTLY IS

1 COMING IN.

2 AND YOUR HONOR, I WOULD JUST ASK THAT A
3 NOTE, OR THEY BE ADVISED EITHER IN COURT THAT THEY CAN'T
4 RECEIVE MY CLOSING ARGUMENTS.

5 THE COURT: YES.

6

7 (A DISCUSSION WAS HELD
8 OFF THE RECORD.)

9

10 THE COURT: BOTH SIDES READY FOR THE JURY?

11 MR. HIGGINS: YES, YOUR HONOR.

12 MS. OSTROWSKI: YES, YOUR HONOR.

13 THE COURT: BUZZ THEM OUT.

14 MR. HIGGINS: IF THE COURT COULD EXPLAIN I'M
15 STANDING IN FOR THE OTHER TWO ATTORNEYS, I'D APPRECIATE
16 THAT.

17

18 (THE FOLLOWING PROCEEDINGS
19 WERE HELD IN OPEN COURT, IN
20 THE PRESENCE OF THE JURY:)

21

22 THE COURT: WE'RE ARE BACK ON THE RECORD IN THE
23 TRIAL MATTER. ALL PARTIES AND COUNSEL ARE PRESENT. OUR
24 JURORS AND ALTERNATE ARE PRESENT.

25 OBVIOUSLY, I'M NOT JUDGE BRANDLIN. JUDGE
26 BRANDLIN IS NOT AVAILABLE TODAY OR THROUGH THE REST OF
27 THE WEEK. SO I AGREED TO STAND IN FOR HIM.

28 MR. HIGGINS IS HERE; HOWEVER, MR. GRAYSON

1 AND MR. NEWMAN ARE NOT HERE. THEY HAD UNAVOIDABLE
2 COMMITMENTS.

3 SO THAT'S WHY THEY AREN'T HERE; OTHERWISE,
4 THEY WOULD BE.

5 YOU'VE SENT OUT A QUESTION FROM THE
6 FOREPERSON WHO IS SEATED IN SEAT NUMBER 4.

7 "WE WANT THE GANG EXPERT TESTIMONY." IN
8 PARENTHESES, "MARTIN FLORES AND DETECTIVE DUNCAN,
9 RELATING TO 135TH STREET PIRU. EXPERT SAYING THE GANG
10 WAS A CRIMINAL STREET GANG."

11 THAT IS GOING TO BE PROVIDED FOR YOU IN
12 JUST A FEW MOMENTS.

13 YOU'VE ALSO ASKED FOR THE PROSECUTOR'S
14 CLOSING STATEMENT IN REGARD TO THE 186.22 ALLEGATION.
15 UNFORTUNATELY, THAT IS NOT AVAILABLE TO YOU.

16 YOU CAN HAVE TESTIMONY READ BACK TO YOU,
17 BUT OPENING STATEMENTS, CLOSING ARGUMENTS, THAT'S NOT
18 AVAILABLE. THE REASON IS BECAUSE IT'S NOT EVIDENCE.

19 OKAY?

20 ALL RIGHT.

21 SO BILL, ARE YOU READY TO PROCEED?

22 THE REPORTER: YES.

23 THE COURT: ALL RIGHT. GO AHEAD.

24 ONCE READBACK IS FINISHED, YOU WERE
25 PREVIOUSLY TOLD AT YOU WERE GOING TO BE DELIBERATING IN
26 THE COURTROOM DOWNSTAIRS. YOU DON'T HAVE TO DO THAT.

27 JUST GO AHEAD, AND ONCE THE READBACK IS
28 FINISHED, RETURN TO THE JURY DELIBERATION ROOM UP HERE.

1 (THE TESTIMONY WAS READ
2 BY THE REPORTER.)
3

4 (AT 12:00 P.M., PROCEEDINGS
5 WERE CONTINUED TO 1:30 P.M.
6 OF THE SAME DAY.)
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1 CASE NUMBER: YA075709-01/-02/-03
2 CASE NAME: PEOPLE VS. WALLACE, KHALILL, GIBBS
3 TORRANCE, CALIFORNIA WEDNESDAY, DECEMBER 21, 2011
4 DEPT. SOUTHWEST L HON. JAMES R. BRANDLIN, JUDGE
5 REPORTER: WILLIAM F. BARNES, CSR #3766
6 TIME: 3:51 P.M.

7 (APPEARANCES AS HERETOFORE NOTED.)

8 ---000---

9
10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT, OUT
12 OF THE PRESENCE OF THE JURY:)

13
14 THE COURT: HAVE YOU BOTH SEEN THIS?

15 MS. OSTROWSKI: YES.

16 MR. HIGGINS: YES, YOUR HONOR.

17 THE COURT: ANY COMMENTS?

18 MS. OSTROWSKI: WE'VE SPOKEN WITH YOUR COURT
19 REPORTER. HE'S INDICATED THAT EVEN THOUGH HE'S OFF
20 TOMORROW, HE'LL HAVE EVERYTHING READY FOR WHATEVER COURT
21 REPORTER WILL BE AVAILABLE TOMORROW AT 9:00.

22 IT'S MY UNDERSTANDING THAT'S WHAT TIME THE
23 JURY WANTS TO START.

24 MR. HIGGINS: THAT IS CORRECT.

25 AND HE INDICATED HE'S GOING TO TAKE OUT ALL
26 THE OBJECTIONS IN THE JOLON GORDON AND THE BUCHANAN
27 TESTIMONY.

28 WE ALREADY EXCISED EVERYTHING OUT OF THE

1 FEISSA TESTIMONY, BECAUSE THAT WAS READ IN ANYWAY. HE
2 WAS NOT A LIVE WITNESS.

3 THE COURT: ALL RIGHT.

4 I'M GOING TO ASK THE COURT REPORTER
5 APPROXIMATELY HOW MUCH TIME IS INVOLVED IN THIS REQUEST.

6
7 (A DISCUSSION WAS HELD
8 OFF THE RECORD.)
9

10 THE COURT: I'M INCLINED TO HAVE THE JURY COME OUT
11 AND ASK THEM IF THEY CAN NARROW THIS DOWN. I MEAN, THEY
12 MUST BE LOOKING FOR SOMETHING IN PARTICULAR REGARDING
13 THEIR REQUEST.

14 MS. OSTROWSKI: I AGREE.

15 THE COURT: ALL RIGHT.

16 MR. HIGGINS: WELL, I DON'T NECESSARILY -- IT WAS
17 QUITE EXTENSIVE. VARIOUS ISSUES WENT THROUGHOUT THE
18 TESTIMONY OF EACH OF THOSE INDIVIDUALS. SO I DON'T KNOW
19 IF THAT WOULD BE HELPFUL.

20 THE COURT: I DON'T KNOW. I DIDN'T DO THIS TRIAL.
21 BUT I KNOW IN THE PAST WHEN I'VE GOTTEN REQUESTS FROM
22 JURORS TO HEAR THE ENTIRE TESTIMONY OF A WITNESS AND
23 THAT WITNESS WAS A LENGTHY WITNESS, I'VE ASKED THE JURY,
24 YOU KNOW, ARE THEY ABLE TO FOCUS THEIR REQUEST.

25 SOMETIMES THEY SAY YES, SOMETIMES THEY SAY
26 NO.

27 MS. OSTROWSKI: I WOULD AGREE --

28 MR. HIGGINS: IT'S UP TO THE COURT.

1 THE COURT: I'M GOING TO DO THAT.

2 MR. HIGGINS: I'D ALSO LIKE TO POINT OUT, YOUR
3 HONOR, THAT ONE REASON FOR THE -- POSSIBLY FOR THE
4 REQUEST IS THAT MR. FEISSA WAS NOT A LIVE WITNESS. THEY
5 COULD NOT OBSERVE HIM.

6 SO THAT COULD VERY WELL BE ONE REASON THEY
7 NEED IT READ BACK IN ITS ENTIRETY.

8 MS. OSTROWSKI: I AGREE, THOUGH, THAT IN TERMS OF
9 GORDON AND BUCHANAN, BOTH THOSE WITNESSES ADDRESS ONE
10 PARTICULAR ISSUE THAT FEISSA SPOKE TO.

11 SO PERHAPS THEY CAN AT LEAST NARROW DOWN
12 MR. GORDON AND MR. BUCHANAN. REFERRING, OF COURSE, TO
13 WHICH DIRECTION THE SUSPECTS RAN.

14 THERE'S NOT A WHOLE LOT OF CROSSOVER
15 BETWEEN THE THREE, OTHER THAN THAT.

16 MR. HIGGINS: WELL, I DON'T KNOW IF THAT'S JUST
17 THEIR FOCUS, BECAUSE MR. GORDON MADE OTHER STATEMENTS --

18 THE COURT: IT DOESN'T MATTER, BECAUSE I'M GOING
19 TO ASK THEM IF THEY CAN FOCUS. YOU'RE BOTH SPECULATING.

20 I'LL ASK THEM. IF THEY CAN FOCUS THEIR
21 INQUIRY, FINE; IF THEY CAN'T, THEY'LL GET ALL THE
22 TESTIMONY.

23

24 (THE COURT WRITES NOTE
25 TO THE JURY.)

26

27 THE COURT: ALL RIGHT.

28 RON, GO AHEAD AND SHOW THAT TO THEM. WAIT

1 IN THERE, AND SEE ARE THEY ABLE TO DO IT.

2 IF THEY ARE, OR IF THEY'RE NOT, COME ON OUT
3 AND LET ME KNOW.

4 THE BAILIFF: ALL RIGHT.

5
6 (BAILIFF DELIVERS NOTE
7 TO THE JURY.)

8
9 THE BAILIFF: THEY'RE DEBATING.

10 THE COURT: THEY HAVEN'T DECIDED YET?

11 THE BAILIFF: NO.

12 THE COURT: ALL RIGHT.

13 THEY'VE CHANGED THEIR REQUEST. I GUESS
14 THIS IS THE FOREPERSON WHO HAS WRITTEN THIS.

15 "AT THIS POINT, WE WANT THE ENTIRE FEISSA
16 TESTIMONY READ. WE WILL DECIDE LATER IF WE NEED GORDON
17 AND BUCHANAN."

18 ALL RIGHT.

19 AND FEISSA, THAT'S THE TESTIMONY THAT WAS
20 READ TO THEM BEFORE? NOT A LIVE WITNESS?

21
22 (A DISCUSSION WAS HELD
23 OFF THE RECORD.)

24
25 THE COURT: I'LL WRITE ON THE NOTE THAT THEY'RE TO
26 CONTINUE DELIBERATIONS UNTIL 4:30, AND THAT THE READBACK
27 THEY WANT WILL BE PROVIDED FOR THEM TOMORROW.

28 THEY SHOULD BE IN THE JURY DELIBERATION

1 ROOM HERE AT 9:00 A.M.

2 ANY RESPONSE BY EITHER COUNSEL?

3 MR. HIGGINS: THAT'S FINE, YOUR HONOR.

4 THE COURT: ANYTHING?

5 MS. OSTROWSKI: NO THAT IS FINE.

6 READBACK WILL BE OUT IN OPEN COURT, I
7 GUESS.

8 THE COURT: YES. GO AHEAD AND GIVE THEM THAT.

9 ANYTHING ELSE BY EITHER COUNSEL FOR THE
10 RECORD?

11 MS. OSTROWSKI: NO, THANK YOU.

12 MR. HIGGINS: NO.

13 THE COURT: SEE YOU TOMORROW.

14

15 (PROCEEDINGS FOR THIS
16 DATE CONCLUDED.)

17

18 (THE NEXT PAGE NUMBER IS 4801.)

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: YA075709-01/-02/-03
2 CASE NAME: PEOPLE VS. WALLACE-01/KHALILL-02
3 TORRANCE, CALIFORNIA GIBBS-03
4 DEPT. SOUTHWEST "G" THURSDAY, DECEMBER 22, 2011
5 COURT REPORTER: HON. MARK S. ARNOLD
6 TIME: LUCY I. MILIVOJEVIC, CSR #11496
7 P.M. SESSION

8 APPEARANCES:

9 DEFENDANT DENNIS WALLACE, PRESENT WITH COUNSEL,
10 WALTER NEWMAN, ATTORNEY AT LAW; DEFENDANT DEYAA
11 KHALILL, PRESENT WITH COUNSEL, TRACY GRAYSON,
12 COURT-APPOINTED ATTORNEY; DEFENDANT GIBBS,
13 PRESENT WITH COUNSEL, RONALD HIGGINS,
14 COURT-APPOINTED ATTORNEY; ALLYSON OSTROWSKI,
15 DEPUTY DISTRICT ATTORNEY, REPRESENTING THE
16 PEOPLE OF THE STATE OF CALIFORNIA.

17
18 (WHEREUPON PROCEEDINGS WERE HELD IN
19 OPEN COURT OUTSIDE THE PRESENCE OF
20 THE JURY AS FOLLOWS:)

21
22 THE COURT: ALL RIGHT. WE'RE ON THE RECORD IN THE
23 TRIAL MATTER. THE JURY HAS INDICATED THEY HAVE REACHED
24 VERDICTS. WHAT I'M INCLINED TO DO IS HAVE THE JURY COME OUT
25 AND CONFIRM THAT.

26 ANYBODY WISH TO BE HEARD?

27 MS. OSTROWSKI: NO.

28 MR. GRAYSON: NO.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF-RESPONDENT,)
)
) -VS-) NO. YA075709-01/
) -02/-03
)
) DENNIS WALLACE-01)
) DEYAA KHALILL-02)
) RAYMOND GIBBS-03)
)
) DEFENDANT-APPELLANT.)
)
)

SEP 10 2012

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JAMES R. BRANDLIN, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

DECEMBER 20, 21, 22, 2011
JULY 11, 2012
AUGUST 8, 2012

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 16 OF 16 VOLUMES
PAGES 4021 TO 4318-4500
4501 TO 4513-4800
4801 TO 4819-5100
5101 TO 5142-5400
5401 TO 5435-5700

WILLIAM F. BARNES, CSR #3766
OFFICIAL REPORTER

CO

1 THE COURT: THANK YOU MR. GRAYSON.

2 MS. OSTROWSKI, YOU MAY COMMENCE WITH YOUR
3 REBUTTAL ARGUMENT.

4 MS. OSTROWSKI: THANK YOU.

5 YELLING DOESN'T MAKE IT SO. THERE'S A
6 SAYING IN THE LEGAL COMMUNITY WHEN YOU DON'T HAVE THE
7 FACTS ON YOUR SIDE, ARGUE THE EVIDENCE; WHEN YOU DON'T
8 HAVE THE EVIDENCE ON YOUR SIDE, ARGUE THE LAW; WHEN YOU
9 DON'T HAVE EITHER, ATTACK THE D.A.

10 THAT'S WHAT MR. GRAYSON DID THROUGHOUT HIS
11 CLOSING ARGUMENTS. THAT'S WHAT LOT OF COUNSEL DID
12 THROUGHOUT THEIR CLOSING ARGUMENT.

13 BUT THIS CASE ISN'T ABOUT ME. IT'S NOT
14 ABOUT WHETHER THE SHERIFF'S DEPARTMENT DID A GOOD
15 INVESTIGATION. IT'S ABOUT THE EVIDENCE THAT YOU HAVE
16 BEFORE YOU.

17 AND WHEN YOU LOOK AT THAT EVIDENCE, DOES
18 THAT EVIDENCE CONVINCE YOU. MR. HIGGINS STARTED HIS
19 CLOSING ARGUMENT BY TELLING YOU THAT THE 2008 SHOOTING
20 DEATH OF ADIEL QUEZADA WAS TRAGIC.

21 AND WHILE IT IS TRUE THAT WHENEVER A LIFE
22 IS CUT SHORT, ESPECIALLY A 17-YEAR-OLD LIFE, IT IS
23 TRAGIC. I WON'T USE THAT WORD. THIS CASE, THE CORRECT
24 WORD TO USE IS THAT IT'S CRIMINAL.

25 BECAUSE THESE THREE DEFENDANTS PLANNED TO
26 KILL MR. QUEZADA. POKE AND K-9 DROVE BY. THEY CAUGHT
27 THAT SARRIO SLIPPING. AND THEY WENT BACK TO THE HANGOUT
28 AND K-9'S HOUSE. THEY GOT THE BURNERS. THEY GOT

1 PEANUT. AND THEY ALL WENT OVER THERE ON THEIR MISSION.
2 AND THEY ACCOMPLISHED THEIR MISSION. THAT MISSION WAS
3 CRIMINAL, AND YOU SHOULD FIND THEM GUILTY.

4 MR. HIGGINS TOLD YOU THAT MR. PORTER, THE
5 SURPRISE WITNESS THAT WE HAD IN THIS CASE ON THE DAY WE
6 ALL THOUGHT WE WERE GOING TO DO CLOSING ARGUMENTS, THAT
7 THAT SURPRISE WITNESS WAS CREDIBLE BECAUSE HE DOESN'T
8 EVEN KNOW THESE DEFENDANTS.

9 REALLY? JUST LIKE MR. GORDON WASN'T
10 AFRAID? JUST BECAUSE THE DEFENSE ATTORNEYS SAY TO THE
11 WITNESS "WELL, YOU'RE NOT HERE BECAUSE YOU'RE AFRAID,"
12 DOES THAT MAKE IT TRUE?

13 WE KNOW THAT IT DOESN'T. WE KNOW
14 MR. GORDON WAS AFRAID BECAUSE WE HEARD HIS VOICE ON THAT
15 TAPE. WE HEARD THE SOUND IN HIS VOICE. "I WOULDN'T
16 DOUBT IT." YOU HEARD HIM SPEAK THOSE WORDS.

17 MR. HIGGINS TOLD YOU HAD THAT THE
18 SHOOTER'S, OR VICTIM'S BODY DOES NOT INDICATE THE
19 SHOOTER STOOD OVER HIM BECAUSE THERE WAS NO SOOT OR
20 STIPPLING. WELL, DR. PANCHAL TOLD YOU THERE WOULD BE
21 SOOT OR STIPPLING ON THE WOUNDS IF YOU'RE WITHIN 2 FEET,
22 AND IF THE CLOTHING WERE VERY THIN.

23 IN THIS CASE, THE CLOTHING COULD HAVE
24 OBSCURED ANY SOOT OR STIPPLING BECAUSE AS WE KNOW FROM
25 DR. PANCHAL, MR. QUEZADA WAS WEARING A TANK TOP, HE WAS
26 WEARING A T-SHIRT, AND HE WAS WEARING JEANS.

27 SO YES, THERE IS NO STIPPLING ON HIS SKIN
28 AROUND THOSE BULLET WOUNDS.

1 COUNSEL HAS ARGUED TO YOU THAT YOU CAN'T
2 EVALUATE MR. FEISSA'S CREDIBILITY BECAUSE HE'S NOT HERE.
3 BUT THAT IS IN DIRECT CONTRADICTION TO THIS COURT'S
4 INSTRUCTION TO YOU FOLKS.

5 JURY INSTRUCTION 317 SPECIFICALLY ADVISES
6 YOU TO EVALUATE MR. FEISSA'S TESTIMONY THE SAME WAY YOU
7 WOULD ANY OTHER WITNESS. AND WHEN YOU LOOK AT THOSE
8 FACTORS IN JURY INSTRUCTION 226, ONLY ONE OF THEM
9 RELATES TO IN-PERSON Demeanor.

10 YOU FOLKS ARE INTELLIGENT PEOPLE. YOU CAN
11 LOOK AT THE ENTIRETY OF THE EVIDENCE, AND MAKE A
12 DETERMINATION, EVEN THOUGH MR. FEISSA WASN'T LIVE AND IN
13 FRONT OF YOU.

14 COUNSEL ARGUED WELL, WE COULDN'T DECIDE IF
15 HE WAS PAUSING. BUT YOU SAW MR. GRAYSON DO THAT WITH
16 DETECTIVE VALENTINO; REMEMBER? MR. GRAYSON ASKED
17 DETECTIVE VALENTINO A QUESTION. MR. VALENTINO PAUSED.

18 AND WHAT WAS THE FIRST THING MR. GRAYSON
19 DID? HE MADE A RECORD OF IT. "I NOTICED FOR THE RECORD
20 YOU JUST PAUSED ABOUT 25 SECONDS." REMEMBER THAT
21 EXCHANGE?

22 IF THERE WERE PAUSES IN MR. FEISSA'S
23 TESTIMONY, DELAYS IN HIM GETTING ANSWERS, THAT WOULD
24 HAVE BEEN DOCUMENTED BY THE ATTORNEYS ASKING QUESTIONS.

25 MR. HIGGINS SHOWED YOU THAT UNRELIABLE
26 CARD, AND ARGUED TO YOU THAT BECAUSE OF THAT CARD, WE
27 CAN'T TRUST MR. FEISSA. BUT YOU HEARD FROM DETECTIVE
28 LABBE ABOUT WHAT THAT CARD MEANT, AND THE CONTEXT OF

1 THAT CARD.

2 BY THE DEFENSE BRINGING OUT THAT CARD,
3 TRYING TO SHOW YOU THAT THAT MEANS HE'S A LIAR IN OTHER
4 INSTANCES, THAT'S YET ONE OF MANY EXAMPLES OF THE
5 DEFENSE TRYING THE MANIPULATE WHAT THE EVIDENCE MEANS.

6 JUST LIKE THEY WANT THAT 9-MILLIMETER
7 HANDGUN TO BE INVOLVED. JUST LIKE THEY WANT THE BLACK
8 CAMRY TO BE INVOLVED. BUT THAT'S NOT THE CASE, AND YOU
9 KNOW THAT FROM THE EVIDENCE PRESENTED.

10 THEY TALKED ABOUT LENIENCY, AND HOW
11 MR. FEISSA GOT LENIENCY ON HIS DOPE CASE. NOT A WHOLE
12 LOT OF LENIENCY. THE GUY CAN GET THE MAXIMUM ON THE
13 SENTENCE. THAT'S NOT THE BEST DEAL OF THE CENTURY.

14 AND HE DIDN'T GET ANY LENIENCY ON THE
15 TARRANT STREET, THE MURDER OF DAVEON CHILDS. NO
16 LENIENCY THERE. HE IS PROSECUTED. AND I STIPULATED
17 THAT HE'S GUILTY.

18 MR. HIGGINS FAILED TO ADDRESS IN THE
19 WIRETAPS -- I RAISED THIS ISSUE WHERE WE HEAR PEANUT ON
20 THE PHONE SAYING "I'M FUCKED IF THEY FIND THAT
21 WHOOPTIE."

22 THAT WHOLE CONVERSATION WITH BABY SPOKE,
23 HE -- IGNORE IT. DIDN'T EVEN MENTION IT. MR. NEWMAN IN
24 HIS ARGUMENT SAID THAT THEY NEVER CHARGED ANY OF THE
25 DEFENDANTS IN 2001. OR EXCUSE ME. LET ME BACK UP.

26 MR. NEWMAN TALKED TO YOU RIGHT AWAY ABOUT
27 THE GIANTS CASE, HOW THERE'S A SUSPECT IN THE GIANTS
28 CASE, AND A COP CAME OUT AND SAID "WE'VE GOT THE RIGHT

1 GUY." TWO WEEKS LATER, OR HOWEVER LONG IT WAS, HE WAS
2 EXONERATED. AND THAT'S EXAMPLE OF THE SYSTEM WORKING.
3 THAT INDIVIDUAL WAS NOT CHARGED BY THE D.A.'S OFFICE.

4 THAT PERSON DIDN'T GO THROUGH A PRELIMINARY
5 HEARING, LIKE THESE DEFENDANTS. DIDN'T GO THROUGH A
6 TRIAL, LIKE WE DID. IT DIDN'T GET THAT FAR.

7 THAT CASE ISN'T THIS CASE. IN THIS CASE,
8 YOU HAD SEVERAL DETECTIVES LOOKING AT MR. FEISSA,
9 LOOKING ON THE WIRETAP, LOOKING AT THE WITNESSES.

10 AND THEN IT WAS BROUGHT TO THE D.A.'S
11 OFFICE. YOU HEARD FROM MS. BARNES. SHE INVESTIGATED.
12 AND THEN IT WENT TO PRELIMINARY HEARING. AND A JUDGE
13 HEARD THE EVIDENCE. THEN IT CAME BEFORE YOU.

14 THESE CASES ARE NOT RELATED.

15 MR. NEWMAN INDICATED, AND SO DID THE OTHER
16 COUNSEL, THAT I CAN'T PROVE MOTIVE; IF THE MOTIVE
17 DOESN'T MAKE SENSE, WHY WOULD GANG MEMBERS KILL SOMEBODY
18 IN THEIR OWN TURF.

19 WELL, YOU HEARD FROM THE GANG EXPERT.
20 THAT'S WHAT GANG MEMBERS DO. THAT'S HOW THEY MARK THEIR
21 TURF. INNOCENTS DON'T GET KILLED? THEY WOULD NEVER
22 SHOOT AT SOMEBODY IN OWN AREA?

23 THAT'S RIDICULOUS. THAT'S CONTRARY TO WHAT
24 WE KNOW. EVEN THEIR OWN GANG EXPERT ACKNOWLEDGED THAT.
25 YES, SOMETIMES INNOCENT PEOPLE GET KILLED.

26 BUT LADIES AND GENTLEMEN, I DON'T HAVE TO
27 PROVE MOTIVE TO YOU. IN FACT, JURY INSTRUCTION 370
28 TELLS YOU I DON'T HAVE TO PROVE MOTIVE. AND IF YOU

1 THINK ABOUT IT, IT MAKES SENSE. SOMETIMES WE CAN'T
2 UNDERSTAND THE SENSELESS VIOLENCE OR THE STUPID THINGS
3 THAT PEOPLE DO.

4 HUGH GRANT. A HOOKER. ON HOLLYWOOD
5 BOULEVARD. WHY DID HE DO THAT? HE'S A HANDSOME MOVIE
6 STAR. HE CAN GET ANY WOMAN IN THE WORLD.

7 WINONA RYDER STEALING FROM SAKS FIFTH
8 AVENUE. SHE'S GOT MORE MONEY THAN GOD. WHY WOULD SHE
9 NEED TO BE STEALING? SOMETIMES WE CAN'T EXPLAIN WHY
10 THEY DO THINGS. THE LAW UNDERSTAND THAT, AND SAYS YOU
11 DON'T HAVE TO.

12 BUT YOU KNOW FROM THE GANG EVIDENCE IN THIS
13 CASE WHAT THESE MOTIVES WERE.

14 MR. NEWMAN INDICATED THAT MR. TAYLOR'S
15 STATEMENT WAS DIFFERENT IN '01 THAN IT IS IN 2011. THE
16 ONLY THING DIFFERENT ABOUT EMOND TAYLOR'S STATEMENT TO
17 THE POLICE IN AUGUST OF 2001 AND WHEN HE CAME TO COURT
18 TO TESTIFY BOTH TIMES, IN 2010 AND 2011, IS THAT HE'S
19 MORE CONFIDENT IN HIS I.D. THAT IS THE ONLY DIFFERENCE
20 BETWEEN THOSE STATEMENTS.

21 AND YOU KNOW FROM SEEING THIS CASE UNFOLD
22 EXACTLY WHY HE WAS DOWNPLAYING.

23 MR. NEWMAN ARGUED THAT THIS CASE DIDN'T GET
24 FILED BACK IN 2001. THAT'S RIGHT. CLEARLY, IT DIDN'T.
25 BUT WE DON'T KNOW WHY, AND WE'RE NOT SUPPOSED TO
26 SPECULATE WHY IT DIDN'T.

27 WE DON'T KNOW IF IT FELL THROUGH THE
28 CRACKS, OR SOME OTHER REASON. AGAIN, THE QUESTION

1 BEFORE YOU NOW IS DO YOU BELIEVE MR. TAYLOR. AND IF YOU
2 DO, THEN YOUR VERDICT IS GUILTY.

3 COUNSEL FOR DEFENDANT WALLACE, MR. NEWMAN,
4 HE ARGUED THAT THERE WAS THIS WHOLE ISSUE WITH THE
5 BRIGHT LIGHTS. THAT MR. BUCHANAN WOULD HAVE MENTIONED
6 THAT THERE WERE BRIGHT LIGHTS.

7 WELL, LADIES AND GENTLEMEN, MR. BUCHANAN
8 ONLY BROUGHT UP THE WHOLE NOTION ABOUT THERE BEING
9 BRIGHT HEADLIGHTS ON MR. WALLACE'S CAR WHEN THE DEFENSE
10 INVESTIGATOR SHOWED UP AT HIS HOUSE. THAT'S THE FIRST
11 TIME HE BROUGHT THAT UP.

12 AND YOU CAN'T TELL FROM LOOKING AT A PHOTO,
13 LIKE THE POLICE DID WITH MR. BUCHANAN, ABOUT WHETHER
14 THAT CAR HAS BRIGHT LIGHTS OR NOT.

15 THAT DIDN'T COME UP. YOU CAN'T TELL FROM
16 THAT, ONE WAY OR THE OTHER. MR. NEWMAN ARGUED THAT
17 MR. FEISSA NEVER SPOKE ABOUT WHAT POKE SAID, BUT THAT'S
18 NOT TRUE.

19 YOU HEARD MR. NEWMAN CROSS-EXAMINE ONE OF
20 THE WITNESSES ABOUT WHAT HE HAD SAID ABOUT POKE. AND
21 CONTRARY TO WHAT THE DEFENSE IS ARGUING THAT THIS IS ALL
22 HEARSAY, YOU ARE SPECIFICALLY ALLOWED TO CONSIDER THE
23 STATEMENTS THAT PEANUT AND K-9 MADE TO MR. FEISSA ABOUT
24 POKE. THAT HE WAS THE LOOKOUT. YOU ARE ALLOWED TO USE
25 THAT STATEMENT IN ORDER TO CONVICT MR. WALLACE.

26 THAT IS NOT HEARSAY. IF THAT WERE THE
27 CASE, YOU WOULD HAVE AN INSTRUCTION TELLING YOU THAT
28 YOU'RE NOT ALLOWED TO USE THAT STATEMENT.

1 THAT IS INCORRECT. YOU MAY USE THAT
2 STATEMENT, AND YOU SHOULD. BECAUSE K-9 AND PEANUT
3 AREN'T PASSING THE BLAME OFF TO POKE. THEY'RE NOT
4 SAYING HE IS THE SHOOTER. THEY'RE DESIGNATING HIS ROLE
5 AS THE LOOKOUT. AND THAT IS WHY IT IS RELIABLE.

6 MR. NEWMAN I THINK MISSPOKE WHEN HE TOLD
7 YOU YOU'RE NOT ALLOWED TO CONSIDER THE GANG EVIDENCE
8 UNTIL AFTER YOU CONVICT THE DEFENDANTS OF THE CHARGES.

9 THAT'S INCORRECT. YOU'RE ALLOWED TO USE
10 GANG EVIDENCE TO LOOK AT THEIR INTENT, TO LOOK AT THEIR
11 MOTIVES, AND TO EVALUATE THE WITNESSES THAT CAME BEFORE
12 YOU.

13 SO YOU ARE ALLOWED TO DISCUSS AND
14 DELIBERATE GANG EVIDENCE BEFORE YOU REACH A GUILTY
15 VERDICT.

16 MR. NEWMAN ARGUED THAT MR. WALLACE DIDN'T
17 FLEE, DIDN'T GO INTO HIDING. SOMETHING TO THAT EFFECT.
18 WELL, THAT'S ACTUALLY INCORRECT. BECAUSE YOU CAN HEAR
19 THEM ON THE TAPE TALKING ABOUT HIS DISMAY THAT HE WAS
20 FOUND OUT IN PASADENA.

21 BUT WE KNOW FROM HIS DWP RECORDS, THE
22 RECORDS THAT HIS ATTORNEY SUBMITTED TO YOU IN THE
23 EXHIBITS, HE PUTS DOWN THE SAN PEDRO ADDRESS. HE IS
24 DOCUMENTING HIS ADDRESS IN SAN PEDRO, BUT HE'S OUT IN
25 PASADENA.

26 COUNSEL ARGUED, MR. NEWMAN ARGUED IF -- WE
27 DON'T EVEN KNOW IF MR. WALLACE WAS HERE IN L.A. WELL,
28 IF HE WASN'T HERE IN L.A., HE WAS SOMEWHERE ELSE, WHO

1 WAS HE WITH? AND WHERE IS THAT PERSON TO TELL YOU THAT
2 HE WASN'T IN L.A.? AGAIN, JUST BECAUSE A LAWYERS SAYS
3 SOMETHING DOESN'T MAKE IT TRUE.

4 WITH RESPECT TO MR. GRAYSON'S ARGUMENT, HE
5 WANTS TO BLAME MR. FEISSA FOR APPARENTLY EVERY CRIME
6 THAT'S EVER BEEN COMMITTED IN THE GREATER LOS ANGELES
7 AREA. AND THAT'S JUST NOT THE CASE.

8 IS MR. FEISSA A MURDERER? ABSOLUTELY.
9 THAT'S WHY I STIPULATED TO IT. IS HE A DRUG DEALER?
10 YES, ABSOLUTELY. IS HE CRIMINAL? YES. A GANG MEMBER?
11 YES. BUT IT IS BECAUSE OF THOSE THINGS THAT HE HAS
12 ACCESS TO PEOPLE JUST LIKE HIM. THESE DEFENDANTS.

13 AND WHILE MR. GRAYSON WANTS MR. FEISSA TO
14 BE HELD ACCOUNTABLE FOR EVERY MURDER HE'S EVER
15 DISCUSSED, HE WAS IN COUNTY JAIL. HE'S INCARCERATED AT
16 THE TIME OF THE LLANOS MURDER.

17 AND IF COUNSEL WANTS TO SAY WELL, WHERE ARE
18 THE RECORDS? WELL, GUESS WHAT? YOU KNOW THEY HAVE THE
19 FREE SUBPOENA POWER OF THE COURT. YOU SAW THEM BRING IN
20 VARIOUS WITNESSES. THEY CAN GET DOCUMENTS. THEY CAN
21 GET RECORDS.

22 IF THERE'S SOMETHING I'M PRESENTING THAT'S
23 NOT TRUE, YOU BETTER BELIEVE THESE THREE VERY CAPABLE
24 DEFENSE ATTORNEYS ARE GOING TO SHOW YOU THAT IT'S FALSE.

25 SO WHEN THEY ASK YOU WHERE ARE THE RECORDS,
26 WE SHOULD ASK THEM WHERE ARE THE RECORDS DISPROVING.

27 COUNSEL TALKED ABOUT HOW THERE WOULD HAVE
28 BEEN DNA IF MR. GIBBS WAS STANDING OVER MR. QUEZADA

1 SHOOTING.

2 MR. GRAYSON: I'LL OBJECT.

3 THAT MISSTATES MY ARGUMENT.

4 THE COURT: OVERRULED.

5 MS. OSTROWSKI: WHERE ARE THE SCIENTIFIC EXPERTS
6 FROM THE DEFENSE TO COME IN HERE AND SAY TO YOU LADIES
7 AND GENTLEMEN THERE WOULD HAVE BEEN DNA ON THIS, THAT,
8 AND THE OTHER? AND BECAUSE THE COPS DIDN'T DO THAT,
9 YOU'RE MISSING OUT ON IMPORTANT EVIDENCE.

10 YOU DIDN'T HEAR FROM ANY SUCH WITNESSES.
11 BECAUSE THIS ISN'T "CSI MIAMI." I'M NOT DAVID CARUSO.
12 THIS ISN'T HOW IT ALL WORKS. YOU KNOW THAT FROM
13 LISTENING TO THE PRINT EXPERTS, WHO TOLD YOU THAT.

14 THERE ISN'T DNA AND PRINTS ON EVERYTHING IN
15 THE WORLD. THAT ISN'T HOW IT WORKS. IF IT WAS, AND
16 THAT WOULD HAVE EXONERATED DEFENDANTS, AGAIN, THESE
17 THREE VERY CAPABLE ATTORNEYS WOULD HAVE BROUGHT THAT TO
18 YOU.

19 THE COURT: FIVE MINUTES LEFT.

20 MS. OSTROWSKI: THANK YOU.

21 MR. HIGGINS: OBJECTION. TRYING TO SHIFT THE
22 BURDEN.

23 THE COURT: NOTED FOR THE RECORD.

24 IT'S OVERRULED.

25 LADIES AND GENTLEMEN, THE PROSECUTION
26 CLEARLY HAS THE BURDEN OF PROOF. THE DEFENSE HAS NONE.
27 THE PROSECUTION MAY ARGUE, HOWEVER, FAILURE TO CALL
28 WITNESSES OR FAILURE TO PRESENT ADDITIONAL EVIDENCE TO

1 THE CONTRARY.

2 MS. OSTROWSKI: MR. GRAYSON ARGUED THAT MR. FEISSA
3 HAS A MOTIVE TO LIE BECAUSE HE WANTED TO GET OUT OF
4 JAIL.

5 LADIES AND GENTLEMEN, ON AUGUST 7, 2008,
6 WHEN HE CAME FORWARD AND SAT DOWN WITH DETECTIVE VALENTO
7 ABOUT BOTH MURDER CASES, HE WAS OUT OF JAIL. DETECTIVE
8 SHAW HAD ALREADY RELEASED HIM.

9 MR. FEISSA COULD HAVE GOTTEN OUT OF DODGE,
10 AND NEVER COME BACK, AND NEVER INTERVIEWED WITH
11 MR. VALENTO. HE DIDN'T DO THAT. AND HE WAS OUT OF
12 CUSTODY WHEN HE GAVE THOSE STATEMENTS.

13 MR. GRAYSON ARGUED TO YOU WHEN K-9 FIRST
14 HEARD ABOUT THE MURDERS, HE SAID "THIS SHIT IS
15 RIDICULOUS." THAT IS INCORRECT.

16 THE VERY FIRST TIME WE HEAR FROM K-9, OR
17 KHALILL, EXCUSE ME, TALKING ABOUT THIS ON THE PHONES,
18 SOMEBODY SAYS "HEY, DID EVIL CALL YOU?" AND HE SAYS
19 "YEAH, MAN. I'M OUT OF HERE. I'M OUT OF HERE." THAT
20 WAS HIS FIRST RESPONSE.

21 I WANT TO TALK JUST ABOUT AIDING AND
22 ABETTING. COUNSEL ARGUED THAT MERE PRESENCE ISN'T
23 ENOUGH. THAT'S TRUE. THAT ALONE ISN'T ENOUGH. BUT YOU
24 HAVE MORE THAN THAT.

25 YOU GET TO CONSIDER THE FACT THAT HE WAS
26 PRESENT DURING IT, BUT YOU ALSO GET TO CONSIDER THE GANG
27 EVIDENCE THAT YOU HEARD, AND HOW THAT GOES TO HIS INTENT
28 AND MOTIVE; AND HOW GANG MEMBERS GO ON MISSIONS TOGETHER

1 AND COMMIT CRIMES TOGETHER TO BACK EACH OTHER UP; TO
2 MAKE SURE THAT THE JOB GETS DONE; TO MAKE SURE THAT THE
3 VICTIM GETS KILLED.

4 THAT IS WHAT THE GANG DOES, AND HOW THEY
5 SUPPORT EACH OTHER. AND YOU ARE ALLOWED TO USE THAT
6 EVIDENCE IN DETERMINING WHETHER HE WAS AN AIDER AND
7 ABETTOR.

8 YOU ALSO HAVE THE FACT THAT HE WENT TO THE
9 SCENE THE NEXT DAY WITH MR. WALLACE. IF HE WAS MERELY
10 PRESENT, IF THIS WAS JUST A "HOLY SMOKES, I CAN'T
11 BELIEVE THOSE GUYS DID A DRIVE-BY, I DON'T WANT ANY PART
12 OF THAT," THEN YOU DON'T GO BACK THE NEXT DAY TO
13 INTIMIDATE THE VICTIM, LIKE THESE GUYS DID.

14 LADIES AND GENTLEMEN, I TOLD YOU IN MY
15 FIRST ARGUMENT THAT AT THE END OF THE DAY, YOU JUST SIT
16 DOWN WITH YOURSELF AND THINK HOW WOULD I DESCRIBE THIS
17 CASE. IT WOULD BE VERY SIMPLE. THERE'S A LOT OF
18 EVIDENCE.

19 WE'RE ALL LAWYERS WHO CLEARLY LIKE TO TALK,
20 SO IT TOOK A LONG TIME TO GET THROUGH FOR YOU. BUT
21 HONESTLY, AT THE END OF THE DAY, WHAT THIS CASE COMES
22 DOWN TO AND WHAT YOU HAVE IN EVIDENCE, YOU KNOW EXACTLY
23 WHAT TOOK PLACE.

24 YOU KNOW THAT EMOND TAYLOR WAS SHOT AT BY
25 SOMEBODY WHO WAS IN A CAR WITH THESE TWO DEFENDANTS,
26 MR. KHALILL AND MR. WALLACE. AND THAT WHEN HE INITIALLY
27 CAME FORWARD, HE DOWNPLAYED IT.

28 BUT HE ULTIMATELY CAME INTO COURT AFTER

1 HE'S BEEN SAFE, AND AFTER HE'S GROWN UP A LITTLE BIT,
2 AND DID I.D.

3 YOU KNOW THAT IN THE 2008 KILLING OF ADIEL
4 QUEZADA, THAT WAS BROKE OPEN BY AN INFORMANT. AND THAT
5 INFORMANTS ARE DIRTY. AND MAYBE YOU DON'T LIKE WE HAVE
6 TO GET A SMALLER FISH IN ORDER TO GET A BIGGER FISH.

7 MAYBE YOU'D LIKE TO WRITE THE SHERIFF'S HE
8 DEPARTMENT A LETTER ABOUT HOW YOU THINK THEY SHOULD HAVE
9 A DIFFERENT POLICY WHEN IT COMES TO INFORMANTS.

10 BUT JUST BECAUSE THE INFORMANT POLICY MAY
11 NOT BE SOMETHING THAT WE LIKE, OR WE'RE ALTOGETHER
12 COMFORTABLE WITH, THIS DOESN'T MEAN THESE DEFENDANTS ARE
13 INNOCENT.

14 MR. FEISSA'S ROLE IN THAT GANG IS EXACTLY
15 WHAT GIVES HIM CREDIBILITY. AND WHEN YOU LOOK AT THE
16 TOTALITY OF THE EVIDENCE, AND PUT THOSE PIECES TOGETHER,
17 YOU SEE THE PICTURE ON THE FRONT OF THE BOX.

18 AND I ASK YOU TO VOTE GUILTY, AND FIND ALL
19 THE SPECIAL CIRCUMSTANCES AND ALLEGATIONS TO BE TRUE.

20 THANK YOU.

21 THE COURT: THAT YOU, MS. OSTROWSKI.

22 MADAM CLERK, WOULD YOU SWEAR IN THE
23 BAILIFF, PLEASE? OR BAILIFFS?

24 DEPUTY ICHIKAWA, ARE YOU GOING TO BE HERE
25 NEXT WEEK?

26 DEPUTY ICHIKAWA: I BELIEVE SO.

27 THE COURT: WOULD YOU MIND ALSO BEING SWORN AS
28 WELL?

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
THE PEOPLE OF THE STATE OF CALIFORNIA PLAINTIFF (S)	CASE NUMBER:	DEPT:
VS.		000748
01- 03 Wallace/Khalil/Gibbs	YA075709-01/02/03	SW-L
DEFENDANT(S)		

We, the jury in the above-entitled action request the following:

We ~~want~~ want gang expert testimony (Martin Flores & Detective Duran) related to 135-Piru, expert saying the gang was a criminal street gang. Also, prosecutors closing statement in regard to 186122.

FILED
LOS ANGELES SUPERIOR COURT

DEC 20 2011

JOHN A. FARRE, CLERK
BY [Signature] DEPUTY

This 20 day of Dec 2011
Jury Foreperson Signature REDACTED last 4 digits of JID# 0605 Seat # 4

Date Submitted: 12/20/11 Time Submitted: 4:30 A.M./P.M. Received by (Clerk/Bailiff): _____

Court's Response:

Date: _____

Judge Signature: _____
Honorable James R. Brandlin

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
THE PEOPLE OF THE STATE OF CALIFORNIA PLAINTIFF (S)	CASE NUMBER:	DEPT:
VS.		000763
01-03 Wallace/Khalil/Gibbs	YA075709-01/02/03	SW-L
DEFENDANT(S)		

We, the jury in the above-entitled action request the following:

- We would like to hear the entire Fressa testimony.
- We would like to hear the entire Idan Gordon testimony.
- We would like to hear the entire Buchanan testimony.

This 21 day of Dec 2011 ²¹
 Date Submitted: 12/21/12 Time Submitted: 2:15 PM Received by (Clerk/Bailiff): meas
 REDACTED: 0605 4
 last 4 digits of JID# Seat #

Court's Response

What you are asking for involves over 3 hours of testimony. Are you able to narrow the issues that you are focused on?
 M. ARNOLD, JUDGE

At this point, we want the entire Fressa testimony read. We will decide later if we need Gordon/Buchanan.

FILED
 Date _____ LOS ANGELES SUPERIOR COURT Judge Signature _____
 Honorable James R. Brandlin

LEO 1 2011
 JOHN A. CLARK
 BY: [Signature]
 DEPUTY

DELIBERATE UNTIL 4:30 P.M.
 THE READBACK WILL BE
 PROVIDED TOMORROW AT 9:00A.

ATTORNEY GENERAL

COURT OF APPEAL SECOND APPELLATE DISTRICT STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and **RESPONDENT**

No. YA075709-01-02-03

Vs

WALLACE, DENNIS-01
KHALILL, DEYAA-02
GIBBS, RAYMOND-03,

Volume 4 of 4 Volumes
Notice of appeal filing date:
08/08/12-01-02-03

Defendant(s) and **APPELLANT**

CLERK'S TRANSCRIPT Page 776 to 1055

Appearances:

**Appeal from the Superior Court,
County of Los Angeles**

Counsel for Plaintiff:

Honorable JAMES R. BRANDLIN, Judge

THE ATTORNEY GENERAL

Counsel for Defendant:

C/O C.A.P.

Date Mailed to:
Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

SEP 14 2012

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
JURY INSTRUCTIONS COVER PAGE

000776

Dept./Div. SW-L

THE PEOPLE OF THE

CASE No. YA075709-01/2/3

INSTRUCTIONS } ☒ GIVEN
 } ☐ REFUSED
 } ☐ WITHDRAWN

STATE OF CALIFORNIA

Plaintiff,

vs.

Consisting of

D. WALLACE / D. KHALILL / R. GIBBS

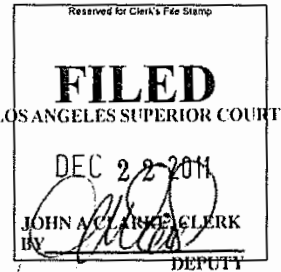
Defendant.

57

Pages herein

JAMES R. BRANDLIN

Judge Presiding.



LACIV 193 (Rev. 01/07)
LASC Approved 09-05

JURY INSTRUCTIONS COVER PAGE

000792

CALCRIM 226. WITNESSES

Requested by Plaintiff	☒	Requested by Defendant	☒	Requested by	☐
Given as Requested	☐	Given as Modified	☐	Given on Court's Motion	☐
Refused	☐				
Withdrawn	☐				
Judge					

Print date: 4/2008

You alone must judge the credibility or believability of the witnesses. In deciding whether testimony is true and accurate, use your common sense and experience. You must judge the testimony of each witness by the same standards, setting aside any bias or prejudice you may have.

You may believe all, part, or none of any witness's testimony. Consider the testimony of each witness and decide how much of it you believe.

In evaluating a witness's testimony, you may consider anything that reasonably tends to prove or disprove the truth or accuracy of that testimony. Among the factors that you may consider are:

- > How well could the witness see, hear, or otherwise perceive the things about which the witness testified?
- > How well was the witness able to remember and describe what happened?
- > What was the witness's behavior while testifying?
- > Did the witness understand the questions and answer them directly?
- > Was the witness's testimony influenced by a factor such as bias or prejudice, a personal relationship with someone involved in the case, or a personal interest in how the case is decided?
- > What was the witness's attitude about the case or about testifying?
- > Did the witness make a statement in the past that is consistent or inconsistent with his or her testimony?
- > How reasonable is the testimony when you consider all the other evidence in the case?

CALCRIM 226. WITNESSES

000793

Requested by Plaintiff	☒	Requested by Defendant	☒	Requested by	☐
Given as Requested	☐	Given as Modified	☐	Given on Court's Motion	☐
Refused	☐				
Withdrawn	☐				
Judge					

- > Did other evidence prove or disprove any fact about which the witness testified?
- > Did the witness admit to being untruthful?
- > What is the witness's character for truthfulness?
- > Has the witness been convicted of a felony?
- > Has the witness engaged in other conduct that reflects on his or her

believability?

- > Was the witness promised immunity or leniency in exchange for his or her testimony?

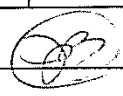
Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently.

If you do not believe a witness's testimony that he or she no longer remembers something, that testimony is inconsistent with the witness's earlier statement on that subject.

If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or, if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest.

000803

CALCRIM 317. FORMER TESTIMONY OF UNAVAILABLE WITNESS

Requested by Plaintiff	☒	Requested by Defendant	☒	Requested by	☐
Given as Requested	☐	Given as Modified	☐	Given on Court's Motion	☐
Refused	☐	 _____ Judge			
Withdrawn	☐				

Print date: 1/2006

The testimony that Samuel Feissa has given under oath was read to you because he is not available. You must evaluate this testimony by the same standards that you apply to a witness who testified here in court.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Of Pages **1055**
Defendant's Name: **WALLACE, DENNIS-01**
KHALILL, DEYAA-02
GIBBS, RAYMOND-03
Case #: **YA075709-01-02-03**

I, JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK of the Superior Court for the County and State aforesaid, do hereby certify that I have compared this transcript with the original documents on file and/or of record in this office and it is a full, true and correct copy.



JOHN A. CLARKE
Executive Officer/Clerk

Date:

8/28/2012

By:

A handwritten signature, likely of John A. Clarke, written in ink.

, Deputy

- ☐ Notice of Completion of the Clerk's Transcripts on appeal of the within action having been mailed/delivered to the attorneys representing the appellant and the respondent pursuant to Rule 8.336(f) of the rules on appeal, I hereby certify the foregoing record consisting of _____ pages to be a full, true and correct transcript on appeal.

Date:

SEP 14 2012

By:

A handwritten signature, likely of John A. Clarke, written in ink.

, Deputy

- ☒ Portions of this transcript are governed by the provisions of Code of Civil Procedure Section 237(a)(2), and all of the personal juror identifying information has been redacted.

Date: AUGUST 22, 2012

By:

A handwritten signature, likely of John A. Clarke, written in ink.

, Deputy