

No. _____

IN THE
Supreme Court of the United States

FERNANDO ROMERO,

Petitioner,

v.

NEIL MCDOWELL, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether the district court abused its discretion by denying petitioner's motion to appoint counsel when petitioner presented a substantial claim of ineffective assistance at trial, did not have the assistance of counsel in presenting the claim to the state court, and the claim could have been significantly strengthened with the addition of expert opinion and investigation not available to a pro se petitioner?

PARTIES AND LIST OF PRIOR PROCEEDINGS

The parties to this proceeding are Petitioner Fernando Romero and Respondent Neil McDowell, Warden of Ironwood State Prison in Blythe, California. The California Attorney General represents Respondent.

Romero was convicted in Los Angeles County Superior Court following a jury trial in *People v. Eric DeLaCruz*, case no. YA07478-02, Judge James R. Brandlin, presiding, in 2011. The case involved two defendants: Fernando Romero and Eric DeLaCruz.

The California Court of Appeal affirmed Romero's conviction on appeal in *People v. Fernando Romero*, No. B232533, on January 15, 2013. Petitioner's Appendix 94-105 attached hereto ("Pet. App.").

The California Supreme Court denied the petition for review on April 17, 2013. *People v. Fernando Romero*, Case No. S208260. Pet. App. 93.

The Superior Court of Los Angeles County denied a claim for ineffective assistance of counsel in *People v. Fernando Romero*, Case No. YA074783 on April 30, 2015. Pet. App. 76-78.

The California Supreme Court denied a claim for ineffective assistance of counsel in *In re Fernando Romero on Habeas Corpus*, Case No. S229185, on January 13, 2016. Pet. App. 92.

The California Supreme Court denied a claim for ineffective assistance of counsel in *In re Fernando Romero on Habeas Corpus*, Case No. S237848, on November 30, 2016. Pet. App. 71.

The United States District Court for the Central District of California, Judge Otis D. Wright, II, presiding, denied the petition for habeas corpus in *Romero v. Callahan*, case no. 14-05405 on October 22, 2018. Pet. App. 13-16.

The Ninth Circuit Court of Appeals granted a certificate of appealability (“COA”) on Romero’s ineffective-assistance of counsel claim in *Romero v. McDowell*, case no. 18-56475, on August 22, 2019. Pet. App. 11. The Ninth Circuit subsequently affirmed the judgment of the district court in a unpublished opinion on July 29, 2021. Pet. App. 2-6. Romero’s subsequent petition for panel rehearing, or rehearing en banc, was denied on September 22, 2021. Pet. App. 1.

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**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Fernando Romero (“Romero” or “Petitioner”) petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Romero v. McDowell*, No. 18-56475.

I. OPINIONS BELOW

The unpublished opinion of the Ninth Circuit Court of Appeals in *Romero v. McDowell*, No. 18-56475, was issued on July 29, 2021. Petitioner’s Appendix (“Pet. App.”) 2-6. The Ninth Circuit denied the petition for panel rehearing, or rehearing en banc, on September 22, 2021. Pet. App. 1. The order of the United States District Court denying relief was unreported. Pet. App. 13-16. The California Court of Appeal’s affirmance on direct appeal, No. B232533 (January 15, 2013), is unpublished. Pet. App. 94-105. The California Supreme Court’s denial of the petition for review, No. S208260, on April 17, 2013, is unpublished. Pet. App. 93. The Superior Court of Los Angeles County’s denial of the petition for habeas corpus, No. YA074783 on April 30, 2015, is unpublished. Pet. App. 76-78. The California Supreme Court’s denials of two subsequent petitions for habeas corpus, No. S229185, on January 13, 2016 and No. S237848, on November 30, 2016, are unpublished. Pet. App. 71, 92.

II. JURISDICTION

The Ninth Circuit's order affirming the denial of Romero's habeas petition was filed and entered on July 29, 2021. Pet. App. 2-6. Its denial of the petition for panel rehearing, or rehearing en banc, was filed and entered on September 22, 2021. Pet. App. 1. The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rule 13.1.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, 6th Amendment

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

18 U.S.C. § 3006A(a)(2)(B)

(2) Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who--

. . .

(B) is seeking relief under section 2241, 2254, or 2255 of title 28.

IV. STATEMENT OF THE CASE

A. Basis for Federal Jurisdiction

Petitioner is in state custody at Ironwood State Prison in Blythe, California. He filed a habeas corpus petition under 28 U.S.C. § 2254 challenging the

constitutionality of his convictions and sentence. The district court denied the petition on the merits with prejudice. Pet. App. 13-16. After the Ninth Circuit granted a COA, it affirmed the district court's denial of the petition. Pet. App. 2-6, 11-12. The Ninth Circuit subsequently denied panel rehearing and rehearing en banc. Pet. App. 1.

B. Facts Material to the Consideration of the Question Presented

1. State Trial Court and Post-Conviction Proceedings

Sonia Rios Riskin was known in the media as “the Black Widow of Lomita.” Pet. App. 94. She was suspected of involvement in the murders of two of her husbands, Earl Bourdeau and Larry Riskin, both of whom had died by gun shot while visiting her family in the Philippines following their suggestions of divorce. *Id.*

On January 7, 2007, Sherry Jackson received an email purporting to be from Sonia's son, John Bourdeau, offering to help arrange a return of her brother Larry Riskin's remains from the Philippines. Pet. App. 95. A later email requested \$35,000 be deposited into an account at Washington Mutual bank in exchange for the service. Additional e-mails offered to assist in the return of Riskin's Navy plaques and awards, and suggested that Sonia's murder could be arranged and paid for on credit. Jackson forwarded the e-mails to the FBI. *Id.* Their source was ultimately attributed to co-defendant Eric De La Cruz. Pet. App. 95-96. The referenced bank account belonged to De La Cruz's wife. Pet. App. 96.

On April 19, 2007, Los Angeles County Deputy Sheriff Jeffrey Farmar responded to a 911 call from Sonia's beauty salon. Pet. App. 95. Sonia reported that

at 9:00 a.m. a light-skinned Hispanic man with a military-style haircut had walked into the salon, pointed a gun at her face, and told her “I will get you,” as he ran out. The description she provided generally matched Romero’s physical appearance. *Id.*

Sonia reported she recognized this man from a previous incident, when she had received a phone call at the salon from a man who said his name was Frank and that he had been referred to her for a haircut. Pet. App. 95. Sonia told him the shop was closed. A few minutes later, a man arrived at the salon, pulled on the locked door and pounded on the glass. Sonia did not open the door and the man left. She retrieved his number from her telephone’s caller-identification function. Police responding to the second incident confirmed the number, which was Romero’s cell phone number. *Id.*

On April 27, 2007, Sonia’s body was discovered inside her Lomita home by John Bourdeau. Pet. App. 96, 252. She died by a single gunshot to the head. Pet. App. 101. There were no signs of burglary or forced entry. *Id.* A nine millimeter shell casing was found on the living room rug and a nine millimeter bullet in a door. Pet. App. 95. Except for a missing nine-millimeter semiautomatic Beretta, nothing in the home appeared to be disturbed. The parties stipulated Sonia had been killed on the evening of April 26. *Id.*

After Sonia’s murder, Jackson began receiving e-mails from De La Cruz himself, asking if she were responsible for Sonia’s death, asserting that Bourdeau was responsible for Sonia’s death, and that the remains could be obtained if Riskin’s family paid a judge in the Philippines \$180,000 (a sum that could be reduced to

\$52,300 because De La Cruz had raised most of the money himself). Jackson never sent him any money. Pet. App. 95.

Cell phone activity between Romero and De La Cruz on April 26 connected to a cell tower .3 miles from the crime scene at 9 p.m. Pet. App. 96. The cell phone activity was the subject of a lengthy stipulation between the parties. Pet. App. 108-17.

Both DeLaCruz and Romero were convicted of first-degree murder (California Penal Code § 187) and conspiracy to murder (California Penal Code § 182). Pet. App. 94.

On direct appeal, Romero challenged the sufficiency of the evidence, the prosecutor's conduct in closing argument, and raised instructional and evidentiary challenges. Pet. App. 97. The California Court of Appeal affirmed the conviction on January 15, 2013, having "found at most a single insignificant error that was clearly harmless." Pet. App. 94.

The California Supreme Court denied a petition for review on April 17, 2013. Pet. App. 93.

2. Federal post-conviction & state court exhaustion proceedings

Romero timely filed a pro se petition for habeas corpus (hereinafter "initial petition") in district court on July 10, 2014, raising the ineffective-assistance-of-counsel claim at issue here for the first time. Pet. App. 91. Romero promptly moved for a stay and abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), and sought appointment of counsel to help him develop his claims. Pet. App. 18.

The motion for appointment of counsel was denied on the reasoning that Romero had no constitutional right to counsel. Pet. App. 98. The motion for a *Rhines* stay was also denied on the reasoning that Romero had not shown good cause for his failure to exhaust state remedies. Pet. App. 79-90. The magistrate judge ordered Romero's mixed petition dismissed with leave to amend, providing that a report and recommendation would be submitted to recommend dismissal if an amended petition containing only exhausted claims was not filed. It also granted a stay pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003), so that Romero could exhaust his soon-to-be-dismissed claims in the California Supreme Court. *Id.*

Romero filed a habeas petition in superior court on March 3, 2015. On April 30, 2015, the petition was denied. Pet. App. 76-78. The state court denied the ineffective assistance of counsel claim on the merits, finding that Romero had not demonstrated prejudice. Pet. App. 78.

On May 12, 2015, Romero attempted to file a habeas petition in the California Court of Appeal. Although Romero provided the district court with a copy of the signed proof of service, as well as a prison log of outgoing mail to verify that it had been sent, the petition was never docketed.

On August 11, 2015, Romero's case was transferred from Magistrate Judge Kenton to Magistrate Judge MacKinnon. Although Magistrate Judge Kenton had acknowledged Romero's filings in the lower state courts without finding a violation of his order, Magistrate Judge MacKinnon issued an order that suggested those

filings were not well taken and noting that Romero had failed to dismiss his unexhausted claims.

On September 4, 2015, in an effort to comply with Magistrate Judge MacKinnon's order, Romero moved the California Court of Appeal to withdraw his undocketed petition. U.S.D.C. Docket No. 48 at 9. He filed a petition in the California Supreme Court the same day. *Id.* at 78. On November 23 and December 14, 2015, Romero supplemented his California Supreme Court petition with evidence from his trial transcripts and from his trial counsel's file. The California Supreme Court denied the petition on January 13, 2016, with a citation to *In re Robbins*, 18 Cal. 4th 770, 780 (1998). Pet. App. 92.

On February 5, 2016, Romero again moved for the appointment of counsel, which was denied without prejudice because, the district court reasoned, there was yet no basis to grant discovery or an evidentiary hearing. Pet. App. 73-74. A subsequent motion for counsel was denied on the same basis. Pet. App. 72-73.

On October 15, 2016, Romero filed a second petition in the California Supreme Court to exhaust the time-of-death allegations. U.S.D.C. Docket No. at 87. It was denied on November 30, 2016. Pet. App. 71.

On January 1, 2017, Romero filed a second petition in superior court to add a time-of-death allegation to his ineffective-assistance claim. U.S.D.C. Docket No. 116, Ldgm't 18. The superior court denied the petition on the merits and also found it was procedurally barred. Pet. App. 18.

On March 22, 2017, Romero moved to amend his federal petition to add the time-of-death allegation. Romero explained that in light of the time-of-death evidence, he was actually innocent of the murder charge. The motion to amend was granted. Pet. App. 68-69.

The Warden moved to dismiss Romero's amended petition as untimely and procedurally defaulted. Acknowledging the "complex procedural issues" involved, the district court denied the motion and ordered merits briefing. Pet. App. 40 at n.5. Upon completion of merits briefing, Magistrate Judge MacKinnon issued a report and recommendation to deny the petition. Pet. App. 17-65. The report was adopted and judgment entered. Pet. App. 13-16.

After the Ninth Circuit granted a certificate of appealability on Romero's ineffective-assistance claim, it affirmed the district court's denial of the claim in a memorandum decision without oral argument. Pet. App. 2-11. Romero filed a timely petition for panel rehearing or rehearing en banc, which was also denied. Pet. App. 1.

REASONS FOR GRANTING THE WRIT

A. Romero should have been appointed counsel to represent him in habeas corpus proceedings in the district court in the interests of justice

"Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person" litigating a case under 28 U.S.C. § 2254. 18 U.S.C. § 3006A(a)(2)(B). Prior opinions of this Court strongly suggests that a district court's

failure to appoint counsel to a petitioner with a substantial claim of ineffective-assistance is an abuse of discretion:

Where, as here, the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim. This is because the state habeas court "looks to the merits of the clai[m]" of ineffective assistance, no other court has addressed the claim, and "defendants pursuing first-tier review ... are generally ill equipped to represent themselves" because they do not have a brief from counsel or an opinion of the court addressing their claim of error.

Martinez v. Ryan, 566 U.S. 1, 11 (2012) (quoting *Halbert v. Michigan*, 545 U.S. 605, 617, (2005)). *Martinez* created an equitable right to effective-post conviction counsel with respect to ineffective assistance claims, reasoning that:

Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney.

Martinez, 566 U.S. 1, 11–12 (citing *Halbert*, 545 U.S. at 619). *Martinez* reasoned that "[b]y deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." *Id.* at 13. The same can be said for a district court that finds a habeas petitioner with a substantial

ineffective-assistance claim is not entitled to counsel “in the interests of justice.” 28 U.S.C. § 2254(h); 18 U.S.C. 3006A(a)(2)(B).

In *Ayestas v. Davis*, 138 S. Ct. 1080 (2018), this Court held that it may be error for a district court to refuse funding in “cases in which funding stands a credible chance of enabling a habeas petitioner to overcome the obstacle of procedural default.” *Id.* at 1094. There, the Court was construing 18 U.S.C. § 3599(a), which authorizes funding for “reasonably necessary services” for post-conviction challenges of death-sentenced individuals. 18 U.S.C. § 3599(a). The *Ayestas* standard should govern the appointment of counsel for ineffective assistance claims.

In the Ninth Circuit, the district court abuses its discretion in failing to appoint counsel in noncapital habeas corpus cases “when the case is so complex that due process violations will occur absent the presence of counsel.” *Bonin v. Vasquez*, 999 F.2d 425, 428–29 (9th Cir. 1993). Outside of cases where an evidentiary hearing has been ordered, it is not clear when the Ninth Circuit would consider this standard met. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

The Ninth Circuit’s amorphous standard is in contrast to the standard of the Eighth Circuit, where a district court deciding whether to appoint counsel “should first determine whether ... [the] petitioner has presented a nonfrivolous claim,” *Abdullah v. Norris*, 18 F.3d 571, 573 (8th Cir. 1994), and then “should consider the legal complexity of the case, the factual complexity of the case, and the petitioner’s

ability to investigate and present his claims, along with any other relevant factors.”

Martin v. Fayram, 849 F.3d 691, 699 (8th Cir. 2017).

Romero requested counsel three times in the district court. Pet. App. 66-67, 70, 72-74. These requests were denied because Romero had not shown an entitlement to discovery or an evidentiary hearing. *Id.* However, as *Martinez* acknowledged, “[w]hile confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record.” *Id.* at 12 (internal citation omitted). *Martinez* thus makes clear that a petitioner who was unassisted by counsel in state habeas must have counsel appointed in the district court in the interest of justice to develop his ineffective-assistance claim.

Here, Romero supported his allegation that counsel’s time-of-death stipulation was ineffective with information from trial counsel’s files showing that the coroner’s time-of-death estimate had the potential to exonerate him. Although counsel stipulated that time-of-death was Thursday evening, April 26, 2007, the victim’s body was not discovered until Friday afternoon, April 27, 2020. Pet. App. 109, 252, 257; U.S.D.C. Docket No. 116-1, Pt. 2 at 3-4, 7. Police arrived on the scene at 2:35 p.m. Friday; the victim was pronounced dead 10 minutes later. U.S.D.C. docket no. 95-1 at 14; *id.*, No. 116-1, Pt. 2 at 3. The evidence suggested a 30-hour window in which the murder could have been committed.

The prosecution’s trial theory relied on the murder being committed during a 49-minute window on April 26. According to counsels’ stipulation, Romero and De

La Cruz connected by cell phone at 8:26 p.m. that night and again at 9 p.m., when their cell phones pinged a cell-phone tower near the scene of the homicide. Pet. App. 536, 113. By 9:21 p.m., Romero's phone pinged in Downey, which was en route to his residence in Highland. Pet. App. 113; 7 RT 1867.

However, the "coroner estimated that the victim had been dead for approximately 16 hours (give or take 1 to 2 hours) from the time of the liver temperature taken by the Coroner investigator at the scene at 0220 hours on 04-28-07. Approximately, 16 hours from this time would be at 1000 hours on 04-27-07." U.S.D.C. Docket No. 95 at 131 (emphasis added); U.S.D.C. Docket No. 116-1, Pt. 2 at 8. The coroner did not testify at trial and this evidence was never offered to the jury.

As the California Court of Appeal acknowledged, the evidence of Romero's guilt was "entirely circumstantial." Pet. App. 94. Regardless of the evidence supporting the conspiracy charge, the unlitigated time-of-death evidence was highly exculpatory on the charge of first-degree murder. A police report suggests Romero had an unassailable alibi for the morning of April 27, as he had reported for naval duty in San Diego County. U.S.D.C. Docket No. 95 at 82; U.S.D.C. Docket No. 116-1, Pt. 3 at 325.

Moreover, the coroner's estimated time of death was not the only evidence suggesting the murder occurred on the morning of April 27 instead of the evening of April 26. According to another police report, a confidential witness "stated that on the day of the murder, he/she heard a loud scream coming from a female's voice at

approximately 0730, which the witness believed came from the victim’s residence.” U.S.D.C. Docket No. 95 at 132; U.S.D.C. Docket No. 116-1, Pt. 2 at 9. Had trial counsel conducted a proper follow-up investigation, this witness may have been able to corroborate the coroner’s time-of-death estimate.

The only strategy suggested in the state-court record is during a brief colloquy regarding the stipulations, boiling down to the assertion that counsel for both defendants did not believe they could refute the evidence to which they stipulated. Pet. App. 121-22. Nothing in the colloquy suggested that any investigation was performed prior to the decision to stipulate. *Id.*

California practitioners have a clear duty to investigate when time of death is a “particularly important issue.” *In re Long*, 10 Cal. 5th 764, 776 (2020). Even though “time of death often cannot be estimated with precision,” reasonable counsel should consult a medically trained expert as part of his investigation. *Id.* In *Long*, the California Supreme Court held that “[e]ven accepting that time of death estimates are inexact and are stated as a range, it is not clear what led [counsel] to believe that any range derived from the available evidence would necessarily encompass the prosecution’s timeframe — a timeframe that tended to rule out the possibility that someone other than Long committed the crime.” *Id.* at 777. Concluding that there was “no reason why competent counsel would not have at least inquired” into the question, the California Supreme Court held that counsel “was not in a position to make a reasonable decision as to which defense or defenses to focus on at trial.” *Id.* (“We conclude that counsel’s failure to consult a time of

death expert ‘was the result of inattention, not reasoned strategic judgment’, and that counsel’s performance in this regard fell below an objective standard of reasonableness.” (quoting *Wiggins v. Smith*, 539 U.S. 510, 534 (2003))).

Romero’s trial counsel stipulated to a time of death that was inconsistent with the medical examiner’s time of death estimate, and, failing to call the medical examiner to testify to that estimate, deprived the jury of evidence that could have created a reasonable doubt as to Romero’s guilt of the murder charge. Having stipulated to an unfavorable time of death, counsel also failed to present to the jury evidence of Romero’s alibi, which would have exonerated Romero of the murder had the jury credited the medical examiner’s time of death estimate.

As an uncounseled, indigent prisoner, Romero had no ability to hire an medical expert who could have opined on time of death. He had no ability to investigate the identity of the unnamed witness who heard a scream coming from the victim’s house Friday morning, at a time the U.S. Navy could have verified Romero was in another county. His undeveloped claim of ineffective assistance was denied by both the state and federal court, despite the fact that, had the evidence been developed, Romero may have been able to prove his innocence of the murder charge. The interests of justice required the appointment of counsel in district court to assist Romero in developing his claim.

Accordingly, this Court should grant the writ of certiorari to better define when the interests of justice require the appointment of counsel for an indigent

noncapital habeas petitioner with a substantial claim of ineffective assistance of counsel at trial.

V. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: December 20, 2021

By: /s/ Tracy Casadio
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FERNANDO ROMERO
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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 22 2021

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

FERNANDO ROMERO,

Petitioner-Appellant,

v.

NEIL MCDOWELL, Warden,

Respondent-Appellee.

No. 18-56475

D.C. No.

2:14-cv-05405-ODW-AFM
Central District of California,
Los Angeles

ORDER

Before: M. SMITH and OWENS, Circuit Judges, and ROBRENO,* District Judge.

The panel has voted to deny the petition for panel rehearing. Judges M. Smith and Owens voted to deny the petition for rehearing en banc, and Judge Robreno so recommends.

The full court has been advised of the suggestion for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are therefore DENIED.

* The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 29 2021

FOR THE NINTH CIRCUIT

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

FERNANDO ROMERO,

Petitioner-Appellant,

v.

NEIL MCDOWELL,*

Respondent-Appellee.

No. 18-56475

D.C. No.

2:14-cv-05405-ODW-AFM

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Submitted July 27, 2021***
Pasadena, California

Before: M. SMITH and OWENS, Circuit Judges, and ROBRENO,**** District Judge.

* Neil McDowell has been substituted for his predecessor, David Holbrook, as the Warden of Ironwood State Prison under Federal Rule of Appellate Procedure 43(c)(2).

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

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

**** The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

California state prisoner Fernando Romero appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas corpus petition challenging his conviction for first-degree murder and conspiracy to commit murder. We review de novo a district court's decision to deny a § 2254 habeas petition. *Sanders v. Cullen*, 873 F.3d 778, 793 (9th Cir. 2017). As the parties are familiar with the facts, we do not recount them here. We affirm.

We granted a certificate of appealability ("COA") regarding "whether trial counsel was ineffective for failing to adequately investigate and prepare the case in violation of appellant's Sixth Amendment right to counsel, including whether counsel inadequately investigated evidence regarding the victim's time of death, third-party culpability, or cell phone evidence," and then also asked the parties to address some procedural issues.

1. As a preliminary matter, we are not persuaded by the State's argument that Romero waived the certified issue by failing to adequately raise it in his opening brief. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004). Romero provides sufficient argument that his trial counsel was ineffective regarding the victim's time of death and cell phone evidence. The only portion we deem waived is whether his trial counsel was ineffective regarding third-party culpability because Romero does not address it in his briefs.

2. Romero claims that his trial counsel was ineffective for stipulating to

cell phone evidence—which showed that Romero and his co-defendant called each other numerous times on the night of April 26, 2007, and did so from a location very near the victim’s house—without the benefit of investigation or expert consultation.¹ Romero primarily points to minor, non-material errors in the stipulation. However, Romero failed to demonstrate a reasonable likelihood of a more favorable outcome if his trial counsel had conducted additional investigation of the cell phone evidence. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984) (discussing prejudice requirement for an ineffective assistance of counsel claim).

3. Romero also claims that his trial counsel was ineffective for stipulating regarding the victim’s time of death.² Specifically, the parties stipulated that: “The exact time of death cannot be ascertained. However, there is nothing inconsistent with the victim having been killed the evening of 4-26-07.” Romero contends that the stipulation contradicts a statement by a detective recounting that the coroner estimated that the victim was killed the morning of April 27, 2007. However, the state court did not unreasonably determine that Romero’s trial counsel made a sound tactical decision to enter into the stipulation

¹ Like the district court, we review this claim de novo out of an abundance of caution.

² Like the district court, we review this claim under the deferential standard of the Antiterrorism and Effective Death Penalty Act. *See* 28 U.S.C. § 2254(d).

regarding the victim's time of death because he believed that an actual time of death could not be established favorably to Romero and because calling the coroner to testify could result in prejudicial testimony, including a gruesome description of the victim's body. *See id.* at 689 (discussing deficient performance requirement for an ineffective assistance of counsel claim).

4. Because we conclude that the district court properly denied Romero's ineffective assistance of counsel claims on the merits, we need not reach the parties' arguments regarding procedural default. *See Ayala v. Chappell*, 829 F.3d 1081, 1096 (9th Cir. 2016) ("[C]ourts are empowered to, and in some cases should, reach the merits of habeas petitions if they are . . . clearly not meritorious despite an asserted procedural bar." (alteration in original) (citation omitted)).

5. Our COA ordered the parties to address "whether the magistrate judge exceeded his authority by denying appellant's motion for a stay and abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005). *See Mitchell v. Valenzuela*, 791 F.3d 1166 (9th Cir. 2015)." *Mitchell* held that a magistrate judge has no authority to deny a *Rhines* motion which is dispositive of unexhausted claims, but instead must submit a report and recommendation to the district court for de novo review. 791 F.3d at 1171-74.

Here, although the magistrate judge denied Romero's motion for a *Rhines* stay (prior to *Mitchell*'s guidance), Romero's unexhausted claims were never

actually dismissed and his case was effectively stayed while he exhausted them in state court. The district court eventually denied the claims on their merits. Therefore, the magistrate judge's denial of the *Rhines* motion was not dispositive of the unexhausted claims and any error was harmless. *Mitchell*, 791 F.3d at 1172 n.5, 1174.

6. Finally, we decline Romero's request to expand the COA to include whether the district court abused its discretion by denying Romero's motions to appoint counsel. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

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

Counsel Listing in Published Opinions

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

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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Date

(use "s/[typed name]" to sign electronically-filed documents)

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Excerpts of Record*			\$	\$
Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>)			\$	\$
Reply Brief / Cross-Appeal Reply Brief			\$	\$
Supplemental Brief(s)			\$	\$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee				\$
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TOTAL: 4 x 500 x \$.10 = \$200.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 22 2019

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

FERNANDO ROMERO,

Petitioner-Appellant,

v.

CHARLES W. CALLAHAN,

Respondent-Appellee.

No. 18-56475

D.C. No. 2:14-cv-05405-ODW-AFM
Central District of California,
Los Angeles

ORDER

Before: SCHROEDER and PAEZ, Circuit Judges.

The request for a certificate of appealability (Docket Entry Nos. 2 & 3) is granted with respect to the following issue: whether trial counsel was ineffective for failing to adequately investigate and prepare the case in violation of appellant's Sixth Amendment right to counsel, including whether counsel inadequately investigated evidence regarding the victim's time of death, third-party culpability, or cell phone evidence. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e).

The district court resolved this claim on the merits without addressing whether it was barred by AEDPA's statute of limitations or procedurally defaulted. The parties' briefs shall address these questions, including whether the magistrate judge exceeded his authority by denying appellant's motion for a stay and abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005). *See Mitchell v. Valenzuela*, 791 F.3d 1166 (9th Cir. 2015).

A review of this court's docket reflects that the filing and docketing fees for this appeal are due. Within 21 days of the filing date of this order, appellant shall either (1) pay to the district court the \$505.00 filing and docketing fees for this appeal and file in this court proof of such payment, or (2) file in this court a motion to proceed in forma pauperis, accompanied by a completed Form CJA 23. Failure to pay the fees or file a motion to proceed in forma pauperis shall result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

If appellant moves to proceed in forma pauperis, appellant may simultaneously file a Form 24 motion for appointment of counsel.

The Clerk shall serve a copy of Form CJA 23 and Form 24 on appellant.

If appellant pays the fees, the following briefing schedule shall apply: the opening brief is due December 18, 2019; the answering brief is due January 17, 2020; the optional reply brief is due within 21 days after service of the answering brief. If appellant files a motion to proceed in forma pauperis, the briefing schedule will be set upon disposition of the motion.

The Clerk shall serve on appellant a copy of the "After Opening a Case – Pro Se Appellants".

If Charles W. Callahan 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).

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FERNANDO ROMERO,

12 Petitioner,

13 v.

14 CHARLES W. CALLAHAN, Warden,

15 Respondent.
16

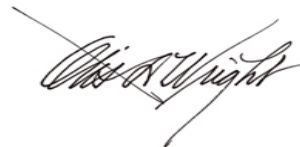
Case CV 14-05405- ODW (AFM)

JUDGMENT

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

19 IT IS ORDERED AND ADJUDGED that the Petition is denied and the
20 action is dismissed with prejudice.

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22 DATED: October 22, 2018



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24 **OTIS D. WRIGHT, II**
25 **UNITED STATES DISTRICT JUDGE**
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FERNANDO ROMERO,

12 Petitioner,

13 v.

14 CHARLES W. CALLAHAN, Warden,

15 Respondent.
16

Case No. CV 14-05405-ODW (AFM)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, records on
18 file and the Report and Recommendation of United States Magistrate Judge.
19 Further, the Court has engaged in a *de novo* review of those portions of the Report
20 to which objections have been made.

21 Petitioner's objections are overruled. With the exception of the following
22 arguments, Petitioner's objections do not warrant discussion as they are properly
23 addressed in the Report.

24 With regard to the coroner's estimated time of death, Petitioner complains
25 that the Report addresses only Detective Muse's affidavit in support of a search
26 warrant, but does not mention the affidavits of other police officers that also recited
27 the coroner's alleged statement. (ECF No. 142 at 34.) As Petitioner indicates,
28 Detective Muse was the officer to whom the coroner apparently provided his

1 opinion. (See ECF No. 142 at 30-31.) Petitioner's claims that the time of death was
2 not accurately reflected by the stipulation and that he is actually innocent are based
3 upon the coroner's alleged statement to Detective Muse. The Report thoroughly
4 addressed the coroner's alleged statement. (See ECF No. 137 at 41-46.) The
5 existence of affidavits from other officers who reiterated the same information
6 about the coroner's estimate – apparently adopting it from Detective Muse – does
7 not alter the Court's analysis of the admissibility or evidentiary value of the
8 coroner's alleged estimate. Contrary to Petitioner's suggestion, the fact that a
9 hearsay statement is copied and repeated by others does not affect the admissibility
10 or reliability of the statement.

11 Petitioner also objects to the Report's finding that he failed to show prejudice
12 because he did not point to any admissible exculpatory evidence regarding the time
13 of death. Specifically, Petitioner complains that counsel was not appointed to assist
14 him in gathering such evidence. (ECF No. 142 at 44-45.) As the Report indicates,
15 however, the California Superior Court appointed counsel for Petitioner with
16 respect to his claims regarding Detective Muse's affidavit and the coroner's
17 estimate of the time of death. After further proceedings, the Superior Court made
18 factual findings to which this Court must defer. (See ECF No. 134 at 41-42, 45.)
19 Furthermore, because Petitioner's claims are governed by AEDPA, this Court may
20 not consider new evidence on claims adjudicated on the merits by the state court
21 unless the standard set forth in 28 U.S.C § 2254(d) is satisfied. *See Cullen v.*
22 *Pinholster*, 563 U.S. 170 180-187 (2011). As explained in the Report, Petitioner has
23 not satisfied that standard. Consequently, the Court could not consider any evidence
24 regarding the time of death that had not already been presented to the state court.

25 The Court accepts the findings and recommendations of the Magistrate
26 Judge. IT THEREFORE IS ORDERED that (1) the Report and Recommendation
27 of the Magistrate Judge is accepted and adopted; (2) Petitioner's request for an
28 evidentiary

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3 hearing is denied; and (3) Judgment shall be entered denying the Petition and
4 dismissing the action with prejudice.

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6 DATED: October 22, 2018

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FERNANDO ROMERO,

12 Petitioner,

13 v.
14

15 W.L. MONTGOMERY, Warden,

16 Respondent.
17

Case No. CV 14-05405-ODW (AFM)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE**

18 This Report and Recommendation is submitted to the Honorable Otis D.
19 Wright, II, United States District Judge, pursuant to 28 U.S.C. § 636 and General
20 Order 05-07 of the United States District Court for the Central District of California.

21 **BACKGROUND**

22 In February 2011, petitioner and his codefendant Eric De La Cruz were
23 convicted of first-degree murder and conspiracy to commit murder. In addition, the
24 jury found true the allegation that a principal was armed with a firearm during the
25 commission of the murder. Petitioner was sentenced to state prison for a term of 26
26 years to life. (Clerk's Transcript ["CT"] 1174-1175, 1201-1202.) The California
27 Court of Appeal affirmed petitioner's conviction on January 15, 2013, and the
28 California Supreme Court subsequently denied review. (Respondent's Notice of

1 Lodging, Lodgments 1-4.)

2 Petitioner then filed a petition for a writ of habeas corpus in this Court. (ECF
3 No. 1.) Because the petition included unexhausted claims for relief, petitioner sought
4 and received a stay of this action so that he could exhaust his state court remedies.
5 (ECF No. 32.) On February 5, 2016, after exhausting his state court remedies,
6 petitioner filed a First Amended Petition. (ECF No. 55.) The matter was stayed again
7 at respondent's request while petitioner exhausted three additional claims for relief.
8 (ECF No. 107.) After the California Supreme Court denied relief, the stay was lifted.
9 (ECF No. 117.) On March 30, 2018, and pursuant to this Court's direction,
10 respondent filed an answer addressing the merits of all of petitioner's claims for
11 relief. (ECF No. 122.) Petitioner filed a reply on June 11, 2018. (ECF No. 134.)

12 SUMMARY OF THE TRIAL EVIDENCE

13 The following summary of the evidence is taken from the opinion of the
14 California Court of Appeal. Independent review of the record confirms that the state
15 appellate court's summary of the evidence is a fair and accurate one. Citations to the
16 record are this Court's.

17 1. *Overview.*

18 Sonia Rios Riskin married Earl Bourdeau, a U.S. Naval officer
19 serving in the Philippines, and they moved to Lomita, California. When
20 Bourdeau later said he wanted a divorce, Sonia asked him to go to the
21 Philippines and talk to her family. Bourdeau went to the Philippines in
22 1987 and he was shot dead while visiting Sonia's family. (Reporter's
23 Transcript on Appeal ["RT"] 1551-1555.) Sonia subsequently married
24 Larry Riskin, another U.S. Naval officer. When Riskin later said he
25 wanted a divorce, Sonia asked him to go to the Philippines and talk to
26 her family. Riskin did so in 2006 and he, too, was shot dead while
27 visiting Sonia's family. (RT 1311-1316, 1556-1558.) Although Sonia
28 was suspected of involvement in both murders, she was never charged.

1 The media referred to her as The Black Widow of Lomita. (RT 1558-
2 1559.)

3 Sonia operated a beauty salon in Lomita. In April 2007, a man
4 tried to force his way into her salon. Two days after that, the man
5 returned and shot at her, but the gun apparently misfired. A week later
6 Sonia's body was discovered by her son, John Bourdeau, inside in her
7 Lomita home. She had been shot once in the head. Bourdeau was
8 initially the prime suspect, but police then discovered that defendant
9 De La Cruz, Sonia's great nephew, had been trying to extort money from
10 Larry Riskin's family. Investigators eventually theorized De La Cruz
11 and codefendant Romero, a fellow Navy sailor, had murdered Sonia in
12 the hope of benefitting from her will.

13 The evidence against the defendants was entirely circumstantial,
14 but very powerful. Highlights included the following. A bank account
15 intended for the deposit of money extorted from Riskin's family
16 belonged to De La Cruz's girlfriend, Maria Perez. The cell phone used
17 to call Sonia just before the man tried to force his way into her salon
18 belonged to Romero. De La Cruz and Romero were on leave from the
19 aircraft carrier U.S.S. Ronald Reagan when Sonia was killed, and cell
20 phone records showed they made numerous calls to each other the night
21 of her death from locations very close to her house. Both defendants lied
22 to investigators on numerous occasions and De La Cruz tried to provide
23 a false alibi for Romero.

24 *2. The extortion attempt.*

25 Following Larry Riskin's death in April 2006, his sister, Sherry
26 Jackson, tried to have his ashes returned to the United States for burial.
27 She was told by the embassy that Riskin's ashes were in the possession
28 of Sonia's family in the Philippines. Riskin's family tried, without

1 success, to obtain his remains. Then, on January 6, 2007, Jackson
2 received an e-mail purporting to be from Sonia's son, John Bourdeau,
3 offering to help arrange a return of Riskin's remains. This initial offer
4 of help evolved into a request for \$35,000 to be deposited into an
5 account at Washington Mutual bank. There followed other e-mails,
6 ranging from an offer to assist in the return of Riskin's Navy plaques
7 and awards, to a proposal that Sonia's murder could be arranged and
8 paid for on credit.² Jackson forwarded all these e-mails to the FBI. (RT
9 1318-1329, 1351, 1878-1880, 3618, 3629, 3684; CT 292-295.)

10 _____
11 ² This last e-mail stated: "I have a friend in L.A. and he can find a way to kill Sonia
12 Rios Riskin. All I need is your permission. You don't have to pay him right now.
He will kill her first, and then you can pay him later."

13 A few weeks before Sonia's death, Jackson received an e-mail
14 from the same source saying Sonia had a nephew in the Navy and
15 providing the nephew's e-mail address. Jackson was instructed to
16 contact the nephew, but not to mention Bourdeau's name. It turned out
17 this e-mail address was associated with De La Cruz's Navy e-mail
18 account. After Sonia's murder, Jackson began receiving e-mails from
19 De La Cruz himself. The first said, "Are you responsible for the death
20 of Sonia? My name is Eric, and I need to know." Subsequent e-mails
21 asserted that: John Bourdeau was responsible for Sonia's death;
22 Bourdeau could not help with the return of Riskin's remains; the
23 remains could be obtained if Riskin's family paid a judge in the
24 Philippines \$180,000; and, the sum could be reduced to \$52,300 because
25 De La Cruz had now raised most of the money himself. Jackson never
26 sent him any money. (RT 1337-1341, 1349, 1877, 3620.)

27 *3. Sonia's death.*

28 On April 19, 2007, Los Angeles County Deputy Sheriff Jeffrey

1 Farmar responded to a 911 call from Sonia's beauty salon. Sonia
2 reported that at 9:00 a.m. a clean-cut, light-skinned Hispanic man with
3 a military-style haircut, who was five eight or nine, 140–150 pounds and
4 24–26 years old, had walked into the salon and pointed a gun at her face.
5 She ducked under her desk, began screaming and heard a gunshot. The
6 man said, "I will get you," and ran out. Sonia's description turned out to
7 generally match Romero's physical appearance. (RT 1505, 1509, 1517-
8 1520; CT 442.)

9 Sonia told Farmar she recognized this man from an incident on
10 the day before. (It was subsequently established the first incident had
11 actually taken place two days earlier, on April 17.) Sonia received a
12 phone call at the salon from a man who said his name was Frank and
13 that he had been referred to her shop for a haircut. Sonia told him the
14 shop was closed. A few minutes later a man arrived at the salon, pulled
15 on the locked door and pounded on the glass. Sonia did not open the
16 door and the man left. She thought it was suspicious this person wanted
17 a haircut because his hair "looked freshly cut and he was clean-shaven,"
18 so she retrieved his number from her telephone's caller-I.D. function.
19 She had written the number down on a piece of cardboard and she gave
20 this to Farmar, who looked at Sonia's phone himself and confirmed the
21 number she had given him. This phone number turned out to be
22 Romero's cell phone number. (RT 1520-1529.)

23 John Bourdeau testified he found Sonia in her home, lying face
24 down on the living room floor in a pool of blood. (RT 1591-1594, 1619,
25 1628, 1647, 1805-1806.) Homicide Detective Michael Rodriguez
26 examined the crime scene. There were no signs of burglary or forced
27 entry. Sonia had been shot once in the back of the head. There was a
28 nine-millimeter shell casing on the living room rug and a nine-

1 millimeter bullet in a door. The house was neat and nothing seemed to
2 have been disturbed. Sonia was wearing jewelry and there was \$1,700
3 in her purse. On a shelf in the bedroom was an empty gun case for a
4 nine-millimeter semiautomatic Beretta. (RT 1655-1666, 1830-1832,
5 2107, 2111-2112, 2115.) The parties stipulated Sonia had been killed
6 on the evening of April 26. (RT 1668, 1829.)

7 Robert Stone was Sonia's estate planning attorney. She had
8 initially employed him to collect on Riskin's life insurance policy.
9 When Stone arrived to open his office the Monday morning following
10 the Thursday night on which Sonia had been killed, De La Cruz and
11 Maria Perez were waiting outside in the hall. De La Cruz asked if Sonia
12 had a will and if she had left anything to him. When Stone said he did
13 not think Sonia had a will, De La Cruz appeared to be "surprised" and
14 "disappointed." De La Cruz said he believed John Bourdeau had
15 something to do with Sonia's death. (RT 1571-1573.)

16 4. *The investigation.*

17 The Los Angeles County Sheriff's Department and the United
18 States Navy Criminal Investigation Service (NCIS) worked together to
19 investigate Sonia's murder. Their investigation revealed the following.

20 The account used to send the e-mails to Jackson beginning on
21 January 6, 2007, had been created by De La Cruz in the name of John
22 Bourdeau. These e-mails were sent by someone onboard a Navy ship
23 that was part of the Pacific Fleet, and the U.S.S. Ronald Reagan was
24 operating in the Pacific Fleet at the time. On multiple occasions De La
25 Cruz's Navy e-mail account was used to access the Yahoo e-mail
26 account he had created in John Bourdeau's name. (RT 1877-1879, 3618,
27 3629; CT 415.)

28 The bank account at Washington Mutual, into which Larry

1 Riskin's sister was supposed to deposit \$35,000 to obtain his remains,
2 belonged to Maria Perez, De La Cruz's then-girlfriend whom he
3 subsequently married.

4 Cell phones cannot be used on Navy ships in the middle of the
5 ocean because there is no reception, so the Navy provides onboard pay
6 phones which can be used with calling cards. From April 13 until April
7 20, 2007, De La Cruz was at sea. On April 20, the U.S.S. Ronald Reagan
8 returned to San Diego. On April 19, a military calling card was used on
9 the U.S.S. Ronald Reagan to call Romero's cell phone. The same calling
10 card was subsequently used to place calls from De La Cruz's cell phone
11 once he was in port. There were many calls from De La Cruz's cell
12 phone to Romero's cell phone on April 17 and 19. (RT 1855-1856,
13 3631.)

14 On the morning of April 17, a call was made from Romero's cell
15 phone to Sonia's salon in Lomita. This call was placed from a location
16 less than one mile from the salon, and it was made shortly before the
17 man showed up and banged on the window. (RT 1858-1860, 1872-
18 1873.) On the morning of April 26, a call was made from Romero's cell
19 phone in San Bernardino to De La Cruz's cell phone in San Diego
20 County. On the night of April 26, multiple calls were made from
21 Romero's cell phone to De La Cruz's cell phone. At 9:00 p.m., both
22 defendants' cell phones were transmitting through the same cell phone
23 tower, which was located just 0.3 miles from Sonia's Lomita house. At
24 9:21 p.m., there was a call from De La Cruz's cell phone in Harbor City
25 to Romero's cell phone in Downey. The pattern of these phone calls
26 showed Romero and De La Cruz heading toward Sonia's house before
27 9 p.m. on the night she was murdered, and then moving away from her
28 house shortly thereafter. (RT 1863-1873.)

1 5. *Police interviews with De La Cruz and Romero.*

2 When detectives first interviewed De La Cruz on May 2, 2007,
3 John Bourdeau was the prime suspect in Sonia's death and they
4 considered De La Cruz to be merely a family member who might
5 provide helpful background information. De La Cruz said Sonia owned
6 a nine-millimeter Beretta. He said Sonia and John Bourdeau argued
7 about Bourdeau using drugs and that Sonia did not trust him. De La Cruz
8 had arrived in Los Angeles a few days before Sonia was killed, but he
9 did not see her before she died. On the following Sunday, Bourdeau and
10 De La Cruz went to her house. Bourdeau took off his shoes and
11 borrowed De La Cruz's slippers to walk through the house. Later that
12 day, Bourdeau asked De La Cruz if he knew the password to Sonia's
13 computer, where her will was located, or the identity of her attorney.
14 That night, Bourdeau called De La Cruz and said Sonia had given him
15 her nine-millimeter gun. He asked De La Cruz to take the gun to San
16 Diego, but he later called back and said he was going to keep it. (CT
17 675-676, 704-716.)

18 On July 3, 2007, detectives interviewed De La Cruz again. He
19 was now a suspect, but they pretended otherwise. De La Cruz said he
20 believed Bourdeau had sent the e-mails to Riskin's sister and that
21 Bourdeau's friends had killed Sonia. De La Cruz said he had spoken to
22 Sonia when he was in Hawaii about the salon shooting incident, but the
23 detectives knew this was impossible.³ (RT 1883; CT 447, 464.)

24 _____
25 ³ At trial, the parties stipulated the U.S.S. Ronald Reagan departed Hawaii on April
26 13 and arrived in San Diego on April 20. Hence, the two incidents at Sonia's salon
happened after De La Cruz had already left Hawaii.

27 De La Cruz was interviewed for a third time on May 14, 2008.
28 Detectives showed him a photograph of Romero and said they believed

1 this man had been involved in Sonia's death. De La Cruz looked
2 shocked and became very nervous. He said Sonia had given him the
3 phone number of the person who shot at her in the salon. De La Cruz
4 said he called the number and discovered it belonged to Romero, a
5 friend of his from the Navy. Romero told De La Cruz he had called the
6 salon because he wanted a haircut and because he was looking for
7 De La Cruz. De La Cruz told the detectives Romero could not have been
8 the person who tried to shoot Sonia at the salon because Romero had
9 been on a ship with him in Hawaii at the time. In fact, however, Romero
10 was on shore leave at the time of the salon incidents and had flown from
11 Hawaii to Los Angeles on April 10. (RT 2130, 2147-2149, 2162; CT
12 557-574, 578-579, 587.)

13 The detectives also interviewed Romero on May 14, 2008. They
14 told him there had been a shooting in Lomita and that his phone number
15 had been recorded by the caller-I.D. system at the shooting location.
16 Romero said he had never been to Lomita. (RT 2175; CT 591, 604-605,
17 617-622, 634-637, 647-650.)

18 Luis Marquez was in the Navy with the defendants and was close
19 friends with De La Cruz. While at sea with De La Cruz in early 2007,
20 Marquez mentioned he hated his ex-wife and sometimes wished she
21 would die. De La Cruz said he could arrange to have her killed, he knew
22 someone who could kill her, and he would even loan Marquez the
23 money to pay for it. Marquez declined the offer. When Marquez made
24 similar remarks on another occasion, De La Cruz repeated the offer.
25 Marquez did not believe De La Cruz was joking because he had a very
26 serious look on his face. (RT 3030, 3038-3044, 3053, 3054-3059, 3066-
27 3088, 3098-3099, 3105.)

28 On May 16, detectives interviewed Romero a second time. They

1 told him phone records showed he had been in Lomita on April 17, 19
2 and 26. Romero denied it. Detectives showed him a police sketch based
3 on his own driver's license photograph and falsely told him it had been
4 prepared from Sonia's description of the suspect. Romero denied he was
5 the person depicted in the sketch. In an interview with Naval
6 investigators, Romero falsely said he had been at sea between April 13
7 and 20, 2007. (RT 3117, 3309-3310; CT 476-482, 486-488, 496, 513,
8 525.)

9 On February 3, 2009, De La Cruz was interviewed a final time.
10 Detectives said they knew he had sent the e-mails to Riskin's sister and
11 that one of the e-mails had referenced Perez's Washington Mutual
12 account. De La Cruz denied sending the e-mails. He denied having
13 killed Sonia, but he also said he could not tell detectives the truth
14 because he was concerned about his family. (RT 3315, 3684-3686,
15 2704; CT 738, 744, 768-780, 804-421, 828, 846.)

16 *6. Perez's statements and prior testimony.*

17 Detectives interviewed Perez on two occasions and she testified
18 at the preliminary hearing. She did not testify at trial, but her preliminary
19 hearing testimony was admitted into evidence. (See RT 3340-3353,
20 4219-4220.)

21 Perez said that when Sonia died, De La Cruz and Perez were
22 living in Carson with De La Cruz's grandmother, Celestina. De La Cruz
23 and Sonia were very close; he saw her every weekend and "treated [her]
24 like his real grandma." On the night she died, De La Cruz and Perez
25 were staying at Sonia's second house in Apple Valley. They had arrived
26 about 11:00 p.m. and they left early the next morning. They went to the
27 salon and then to Sonia's house in Lomita, looking for her. There were
28 police cars outside when they arrived at the house, and De La Cruz

1 started crying before the police informed them Sonia had been shot in
2 the head.

3 De La Cruz and Perez then drove to Celestina's house in Carson.
4 During Perez's police interview, detectives asked her what De La Cruz
5 had told Celestina happened at Sonia's house, and Perez responded:
6 "Like he kill somebody." At the preliminary hearing, Perez denied she
7 had meant De La Cruz was confessing to Sonia's murder; rather, De La
8 Cruz was just informing Celestina that the police considered him a
9 suspect in her death.

10 Regarding the Washington Mutual bank account referenced in the
11 e-mails sent to Larry Riskin's family, Perez said someone at the salon
12 must have gotten their hands on her account information and used it in
13 the e-mails. (CT 964-1101.)

14 The defendants did not put on any evidence.

15 *People v. Romero*, 2013 WL 164192, at *1–5 (Cal. Ct. App. Jan. 15, 2013).

16 **PETITIONER'S CLAIMS**

17 Petitioner raises the following claims for relief:

18 1. The admission of De La Cruz's out of court statements violated
19 petitioner's right of confrontation. (ECF No. 55 at 8; ECF No. 55-1 at 20-37; ECF
20 No. 55-2 at 1-16.)

21 2. The prosecutor committed misconduct during closing argument. (ECF
22 No. 55 at 11; ECF No. 55-2 at 17-25.)

23 3. The evidence was insufficient to support petitioner's conviction. (ECF
24 No. 55 at 12; ECF No. 55-2 at 26-33.)

25 4. Petitioner was deprived of due process by erroneous instructions on
26 accomplice liability. (ECF No. 55 at 14; ECF No. 55-2 at 34-38.)

27 5. Petitioner was deprived of due process by erroneous instructions on
28 reasonable doubt. (ECF No. 55 at 16; ECF No. 55-2 at 39-42.)

1 (2012) (citing *Williams v. Taylor*, 529 U.S. 362, 412 (2000)).

2 Under section 2254(d)(1), a state court's determination that a claim lacks merit
3 precludes federal habeas relief so long as "fairminded jurists could disagree" about
4 the correctness of the state court's decision. *Harrington v. Richter*, 562 U.S. 86, 101
5 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). This is true
6 even where a state court's decision is unaccompanied by an explanation. In such
7 cases, the petitioner must show that "there was no reasonable basis for the state court
8 to deny relief." *Harrington*, 562 U.S. at 98. Review of state court decisions under
9 § 2254(d)(1) "is limited to the record that was before the state court that adjudicated
10 the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011).

11 Under section 2254(d)(2), relief is warranted only when a state court decision
12 based on a factual determination is "objectively unreasonable in light of the evidence
13 presented in the state-court proceeding." *Stanley v. Cullen*, 633 F.3d 852, 859 (9th
14 Cir. 2011) (quoting *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004)). Further,
15 state court findings of fact – including a state appellate court's factual summary – are
16 presumed correct unless rebutted by clear and convincing evidence. 28 U.S.C.
17 § 2254(e)(1); see *Vasquez v. Kirkland*, 572 F.3d 1029, 1031 n.1 (9th Cir. 2009).

18 Here, Grounds One through Six above were denied in a reasoned decision by
19 the California Court of Appeal. (Lodgment 2). Because the California Supreme Court
20 summarily denied review (Lodgment 4), the California Court of Appeal's decision
21 constitutes the relevant state court adjudication on the merits for purposes of the
22 AEDPA. See *Berghuis v. Thompkins*, 560 U.S. 370, 380 (2010) (where state supreme
23 court denied discretionary review of decision on direct appeal, the decision on direct
24 appeal is the relevant state-court decision for purposes of the AEDPA standard of
25 review). Ground Seven was denied on the merits by the Los Angeles County Superior
26 Court. (Lodgments 5 & 6.) However, the California Supreme Court subsequently
27 denied the petition raising this claim with citation to *In re Robbins*, 18 Cal. 4th 770,
28 780 (1998). (Lodgments 8, 12.) Respondent argues that this Court should "look

through” the Supreme Court’s denial to the Superior Court’s decision for purposes of AEDPA review. (ECF No. 122 at 20). There is no authority supporting respondent’s contention. *See Mejia v. Foulk*, 2015 WL 391688, at *8-9 (C.D. Cal. Jan. 28, 2015) (federal court does not “look through” a state court decision denying a claim on procedural grounds; rather it reviews the claim de novo) (citing *Amado v. Gonzalez*, 758 F.3d 1119, 1130 (9th Cir. 2014)). Thus, out of an abundance of caution, the Court reviews this claim de novo. *See Berghuis*, 560 U.S. at 390 (“[c]ourts can ... deny writs of habeas corpus under § 2254 by engaging in *de novo* review when it is unclear whether AEDPA deference applies, because a habeas petitioner will not be entitled to a writ of habeas corpus if his or her claim is rejected on *de novo* review”). With respect to Ground Eight, respondent concedes that no state court adjudicated the merits of that claim (ECF No. at 122 at 6), so review of that claim is de novo. *See Stanley v. Cullen*, 633 F.3d 852, 860 (9th Cir. 2011). Finally, Grounds Nine through Eleven were summarily denied by the California Supreme Court (Lodgments 16, 17), a decision that is presumed to be an adjudication of the merits and is entitled to deference under the ADEPA. *See Harrington*, 562 U.S. at 98.

DISCUSSION

A. Confrontation Clause (Ground One).

Petitioner alleges that the trial court erred by admitting De La Cruz’s police statement in which he recounted what Sonia had told him. Petitioner argues that the admission of this hearsay evidence violated his rights under and the Confrontation Clause.

1. Factual Background.

Prior to trial, the prosecutor told the trial court that he and defense counsel had “gone through the issues in the case. I’m offering the same evidence that I did at [the] preliminary hearing. [¶] I’ll be bringing in both defendants’ statements. Counsel and I are in agreement that because both defendants deny any involvement, we don’t have

1 an *Aranda-Bruton*¹ issue. So we won't have a need for dual juries or for edits."
2 (Augmented Reporter's Transcript ["ART"] C-2.) Defense counsel did not indicate
3 any disagreement with the prosecutor's representations.

4 During opening statements, however, when the prosecutor referred to
5 particular statements made by De La Cruz, petitioner's counsel objected that the
6 prosecutor was referring to hearsay statements that incriminated petitioner in
7 violation of *Aranda-Bruton*. The prosecutor pointed out the issue had already been
8 discussed, and argued there was no *Aranda-Bruton* problem because both defendants
9 had denied culpability when they spoke to the police, and the statements were not
10 being offered for their truth. The trial court overruled the objection and said it would
11 give a limiting instruction if appropriate. (RT 1278-1282.)

12 During its case in chief, the prosecution introduced evidence of De La Cruz's
13 statements during his third interview with detectives. In the course of that interview,
14 the detectives showed De La Cruz a photograph of petitioner and said they believed
15 he was involved in the murder. De La Cruz looked shocked and became very nervous.
16 (RT 2147.) He responded, "No. I know him," and "I work with the guy." (CT 562-
17 563.) Further, De La Cruz told the detectives that Sonia had given him a phone
18 number and said that the person with the phone number had tried to shoot her at her
19 salon. De La Cruz called the phone number and found out that it belonged to
20 petitioner, who was in the Navy with him. De La Cruz asked petitioner about it, and
21 petitioner explained that he called the salon because he wanted a haircut and because
22 he was looking for De La Cruz. De La Cruz added that petitioner could not have been
23 the person who tried to shoot Sonia at the salon because petitioner was on a ship with
24 him in Hawaii at that time. (CT 563-566, 579, 585.)

25 Petitioner's counsel objected, citing *Aranda-Bruton*. The prosecutor argued
26

27 ¹ *Bruton v. United States*, 391 U.S. 123 (1968) held that the admission of a facially incriminating
28 confession of a non-testifying codefendant's violates this right. *People v. Aranda*, 63 Cal. 2d 518
(1965) is California's equivalent of *Bruton*.

1 that the evidence was not being offered for its truth, but rather to show De La Cruz
2 had been lying to detectives. The trial court ruled that petitioner's *Aranda-Bruton*
3 objection was untimely and separately overruled his hearsay objection. (RT 2135-
4 2139.)

5 The trial court subsequently gave the jury the following limiting instruction:
6 "During Mr. De La Cruz's interviews with investigators, he made certain assertions
7 regarding statements the victim had allegedly made to him. [¶] Those statements
8 attributed to the victim were not admitted to prove the content of what she allegedly
9 said was true, but instead, were admitted for use in determining the credibility or lack
10 of credibility of Mr. De La Cruz." (RT 3306.)

11 **2. Clearly Established Federal Law.**

12 The Confrontation Clause of the Sixth Amendment provides that in criminal
13 cases the accused has the right to "be confronted with witnesses against him." U.S.
14 Const. amend. VI. As the Supreme Court has explained, the Confrontation Clause
15 bars the admission of testimonial out-of-court statements by witnesses not appearing
16 at trial the witnesses are unavailable and the defendant had a prior opportunity to
17 cross-examine them. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). The
18 Confrontation Clause is also violated by the admission of the facially incriminating
19 confession of a non-testifying codefendant. *Bruton v. United States*, 391 U.S. 123,
20 126-127 (1968). The Confrontation Clause, however, has no application to
21 statements offered for purposes other than proving the truth of the matter asserted.
22 *Crawford*, 541 U.S. at 59 n.9.

23 Furthermore, all Confrontation Clause violations, including those raised under
24 *Aranda/Bruton*, are subject to harmless error analysis. See *Lilly v. Virginia*, 527 U.S.
25 116, 139-140 (1999) (holding that a *Bruton* error claim, like any other Confrontation
26 Clause claim, is subject to harmless error analysis); *Delaware v. Van Arsdall*, 475
27 U.S. 673, 680-684 (1986) (Confrontation Clause violation is subject to harmless error
28 analysis). In a federal habeas corpus proceeding, an error is harmless unless the

petitioner demonstrates that the error had “a substantial and injurious effect or influence in determining the jury’s verdict.” *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993); see *Davis v. Ayala*, ___ U.S. ___, 135 S. Ct. 2187, 2198 (2015).²

3. Analysis.

The California Court of Appeal considered and rejected petitioner’s claim. It explained that De La Cruz’s statement that Sonia gave him petitioner’s phone number and said that this was the person who tried to shoot her did not facially incriminate petitioner in either Sonia’s murder or the conspiracy to murder her. Instead, at most, it incriminated petitioner in the earlier shooting at Sonia’s salon, which implicated petitioner in the charged conspiracy and murder only when linked to other evidence produced at trial. As such, it concluded, admission of the statement did not violate *Aranda-Bruton*. The state appellate court went on to find that:

Sonia’s statement to De La Cruz, and De La Cruz’s statement to the police, were not offered for the truth of the matters asserted; rather, they were offered to attack De La Cruz’s credibility because they showed he had been withholding information from the police. “Out-of-court statements that are not offered for their truth are not hearsay under California law [citations], nor do they run afoul of the confrontation clause.” (*People v. Ervine* (2009) 47 Cal.4th 745, 775–776.)

Even assuming arguendo this evidence was inadmissible, it was cumulative and therefore harmless beyond a reasonable doubt. (See *People v. Burney* (2009) 47 Cal. 4th 203, 234 [“*Aranda/Bruton* error is

² On direct review, the harmless review standard is the one established in *Chapman v. California*, 386 U.S. 18, 24 (1967): whether the error was “harmless beyond a reasonable doubt.” *Davis*, 135 S. Ct. at 2197. Under the AEDPA, relief is not warranted unless the state court’s *Chapman* harmless error determination was unreasonable. *Davis*, 135 S. Ct. at 2197-2198. Because the *Brecht* standard is “less onerous” for the state than the “harmless beyond a reasonable doubt” standard applied on direct review, the Court addresses only *Brecht*. See *Fry v. Pliler*, 551 U.S. 112, 120 (2007) (“it certainly makes no sense to require formal application of both tests ... when the latter obviously subsumes the former”); *Jones v. Harrington*, 829 F.3d 1128, 1141 (9th Cir. 2016).

1 not reversible per se, but rather is scrutinized under the harmless-
2 beyond-a-reasonable-doubt standard.”].) The evidence was merely
3 cumulative because Officer Farmer testified Sonia had told him the
4 same thing, had given him a piece of cardboard with Romero's phone
5 number on it, and had allowed Farmer to see for himself Romero's
6 phone number on the caller-I.D. system. In these circumstances, we
7 cannot believe the jury would have convicted Romero even if this
8 portion of De La Cruz's police statement had been withheld.

9 In sum, we conclude there was no error in admitting this evidence,
10 and even had there been error it would have been harmless.

11 *Romero*, 2013 WL 164192, at *9 (footnote omitted).

12 The state court's determination was not contrary to or an unreasonable
13 application of clearly established federal law.

14 To begin with, the Confrontation Clause – and, therefore, the *Bruton* rule
15 applying the Confrontation Clause to statements made by a non-testifying
16 codefendant – is concerned only with out-of-court statements admitted for the truth
17 of the matter asserted. *Crawford*, 541 U.S. at 59 n.9. Thus, no constitutional violation
18 occurs when out-of-court statements are introduced for a proper non-hearsay
19 purpose. See *Tennessee v. Street*, 471 U.S. 409, 413-414 (1985) (Confrontation
20 Clause was not concerned with admission of accomplice's out-of-court confession
21 where the prosecution did not introduce the accomplice's out-of-court confession to
22 prove the truth of the accomplice's assertions, but rather to rebut the defendant's
23 testimony that his own confession was derived from his accomplice's); *Gonzales v.*
24 *Virga*, 2012 WL 6004520, at *17 (E.D. Cal. Nov. 30, 2012) (Confrontation Clause
25 not implicated in the admission of out-of-court statements introduced for the non-
26 hearsay purpose of attacking witness's credibility rather than the truth of the matter,
27 and where jury was so instructed); *Quintana v. Hedgepeth*, 2009 WL 2900333, at
28 *16 (C.D. Cal. Sept. 3, 2009) (*Bruton* was not implicated where the codefendant's

1 statement was not admitted for the truth of the matter asserted, but rather as
2 circumstantial non-hearsay evidence of consciousness of guilt).

3 As the state court emphasized, De La Cruz's statements to the police relating
4 Sonia's statements were not offered for the truth of the matter asserted. That is, they
5 were not admitted to prove that Sonia's account of petitioner's actions was true.
6 Rather, De La Cruz's statements were introduced solely to impeach De La Cruz's
7 credibility because they showed that De La Cruz withheld relevant information
8 regarding who might have killed Sonia during his prior interviews with the police.
9 (RT 2135-2139.) Furthermore, the jury was instructed that the evidence could be
10 considered only for that purpose. (RT 3306.) Accordingly, admission of these
11 statements does not offend *Bruton* or the Confrontation Clause. *See Moses v. Payne*,
12 555 F.3d 742, 755–756 (9th Cir. 2009) (no Confrontation Clause violation where the
13 state appellate court concluded that the prosecution did not introduce this testimony
14 to prove the truth of the matter asserted – namely, whether the petitioner kicked the
15 victim – but rather to explain “a separate relevant issue: why the witness contacted
16 the [Child Protective Services]”); *Belmonte v. W.L. Montgomery*, 2015 WL 5923487,
17 at *10–11 (C.D. Cal. Oct. 9, 2015) (no *Bruton* violation where statements were not
18 admitted for the truth of the matter but rather to show that the petitioner sought to
19 have witness provide false testimony).

20 Furthermore, even if admission of De La Cruz's statements violated the
21 Confrontation Clause, the error was harmless. As the California Court of Appeal
22 correctly noted, De La Cruz's statements were cumulative of properly admitted
23 evidence. Specifically, Deputy Farmar testified that he responded to a 911 call for
24 assault with a deadly weapon. When he arrived at Sonia's salon, Sonia was panic-
25 stricken. She told Deputy Farmar that a man had entered the salon and pointed a gun
26 at her. Sonia had ducked under her desk and screamed. She said that she heard one
27 gunshot, after which the man said, “I will get you,” and ran out. Sonia described the
28 man as a light-skinned Hispanic or Mexican with a military-style haircut. She gave

1 Deputy Farmar the phone number that was on the caller I.D. of her phone. Further,
2 Sonia said that she recognized the man as one who had appeared at her store the day
3 before asking for a haircut. She said that the man had called first and asked if she was
4 in the salon, that she told the caller that she was there but the salon was closed, and
5 a few minutes later the man appeared at the door, which was locked, and pounded on
6 it. Sonia said she was suspicious of the man because he clearly did not need a haircut.
7 Deputy Farmar looked at the telephone at Sonia's salon and verified the phone
8 number that had called her. (RT 1505-1506, 1510-1511, 1513-1529). The police later
9 discovered that the number that appearing on Sonia's phone belonged to petitioner.
10 (RT 1852-1853.)

11 Petitioner does not point to, and the record does not suggest, any reason to
12 doubt Deputy Farmar's credibility; nor does he dispute that the number that appeared
13 on Sonia's caller I.D. belonged to him. In light of this evidence, any error in the
14 admission of De La Cruz's cumulative statements did not result in actual prejudice.
15 *See Padilla v. Terhune*, 309 F.3d 614, 622 (9th Cir. 2002) (erroneous admission of
16 confession was cumulative of properly admitted evidence and, therefore, could not
17 have had a "substantial and injurious effect or influence in determining the jury
18 verdict"); *Meeks v. Gonzales*, 2016 WL 7645418, at *5 (C.D. Cal. Dec. 5, 2016)
19 ("Cumulative or duplicative evidence fits well within the concept of harmless
20 error."), *report and recommendation adopted*, 2017 WL 57763 (C.D. Cal. Jan. 3,
21 2017).

22 **B. Prosecutorial Misconduct (Ground Two).**

23 Petitioner alleges that the prosecutor committed misconduct during closing
24 argument.

25 **1. Factual background.**

26 Prior to closing argument, petitioner's counsel objected to any comment on his
27 failure to call petitioner's wife as an alibi witness. The trial court agreed, ruling that
28 any such comment would violate the martial privilege. Nevertheless, the trial court

1 clarified that the prosecutor could comment generally on the failure to provide an
2 alibi. The prosecutor indicated he would not mention petitioner's wife "directly."
3 (RT 4274-4286.) During closing argument, the prosecutor made the following
4 comments:

5 [I]n the end, this is not complicated. In the end, you can walk back there,
6 and you can say oh, my gosh, [De La Cruz] set this up in advance. Said
7 he was going to kill her as John Bourdeau. [¶] Set the deal up with
8 Romero. Romero is there on all the days that count. Sonia gives them
9 the phone number. Gives them his physical description. [¶] They match
10 up on the night of the murder. They lie afterwards. Neither one of them
11 has an alibi. Neither one of them presented an alibi. [¶] By the way, if
12 they had an alibi to present, don't you think that there would have been
13 people standing up here saying "they were with me that night?" [¶]
14 Maria Perez tried.³ You saw what happened. So in the end, don't make
15 this more complicated than what it is.

16 (RT 4551-4552.)

17 **2. Clearly Established Federal Law.**

18 A prosecutor's improper comments violate the Constitution only if they "so
19 infected the trial with unfairness as to make the resulting conviction a denial of due
20 process." *Parker v. Matthews*, 567 U.S. 37, 45 (2012) (per curiam) (quoting *Darden*
21 *v. Wainright*, 477 U.S. 168, 181-183 (1986)). In determining whether a prosecutor's
22 comments rendered a trial fundamentally unfair, the Court must consider them in the
23 context of the entire trial. *Boyde v. California*, 494 U.S. 370, 385 (1990); *Darden*,
24 477 U.S. at 179-182; *see also Hein v. Sullivan*, 601 F.3d 897, 912-913 (9th Cir.
25 2010). Furthermore, even when prosecutorial misconduct rises to the level of a due
26

27 ³ At the time of trial, Maria Perez was De La Cruz's wife. The prosecutor presented Perez's
28 preliminary hearing testimony in which she provided an arguably weak alibi for De La Cruz. (RT
3315-3316, 3340-3341, 3346, 3350, 4219; CT 950, 963-1101.)

1 process violation, federal habeas corpus relief is available only if that misconduct
2 had a “substantial and injurious effect or influence in determining the jury’s verdict.”
3 *Brecht*, 507 U.S. at 623 (1993); see *Shaw v. Terhune*, 380 F.3d 473, 478 (9th Cir.
4 2004) (“Prosecutorial misconduct which rises to the level of a due process violation
5 may provide the grounds for granting a habeas petition only if that misconduct is
6 deemed prejudicial under the ‘harmless error’ test articulated in *Brecht*....”).

7 **3. Analysis.**

8 As he did on appeal, petitioner argues the prosecutor’s references to both
9 defendants’ failure to call alibi witnesses, together with the reference to De La Cruz’s
10 wife, “unmistakably signaled” petitioner’s failure to call his own wife as a witness.
11 The California Court of Appeal rejected petitioner’s claim, explaining:

12 [A]lthough the trial court ordered the prosecutor not to comment
13 on the failure to call Romero’s wife to testify, the court expressly
14 permitted the prosecutor to comment on the defense’s failure to produce
15 an alibi. The prosecutor’s comment on appellants’ failure to produce
16 alibi witnesses did not violate the trial court’s order because the
17 prosecutor never referred to appellant Romero’s wife or commented on
18 her failure to testify.

19 We find rather far-fetched defendants’ assertion the prosecutor’s
20 reference to De La Cruz’s wife “unmistakably” signaled to the jury that
21 the prosecutor was also really talking about Romero’s wife. We do not
22 think it reasonably likely the jury would have gleaned that meaning
23 when the prosecutor said: “By the way, if they had an alibi to present,
24 don’t you think that there would have been people standing up here
25 saying ‘they were with me that night?’ [¶] Maria Perez tried. You saw
26 what happened. So in the end, don’t make this more complicated than
27 what it is.”

28 As for Romero’s reference to Detective Rodriguez’s testimony

1 about questioning Romero's wife, the detective merely explained he had
2 interviewed her pursuant to his usual investigative protocol of locking
3 potential witnesses into their statements as early as possible. There was
4 no defense objection to this testimony, and we do not think it reasonable
5 to conclude the jury would have made a subliminal connection between
6 Rodriguez's testimony and the prosecutor's closing argument.

7 As for De La Cruz's complaint about the prosecutor directly
8 commenting on the failure of Perez to testify at trial, De La Cruz does
9 not even try to suggest what would have made this improper. Contrary
10 to De La Cruz's assertion, Perez did not assert the marital privilege at
11 trial. Rather, it appears that, given the weakness of her preliminary
12 hearing testimony, De La Cruz decided it would be counter-productive
13 to call her at trial. There was nothing wrong with the prosecutor
14 commenting on this.

15 In sum, the prosecutor here did no more than comment on
16 defendants' failure to present logical witnesses and evidence. "The Fifth
17 Amendment does not prohibit the prosecution from commenting on the
18 state of the evidence presented at trial, or on the defense's failure to
19 introduce material evidence or to call witnesses other than the
20 defendant." (*People v. Taylor* (2010) 48 Cal.4th 574, 633.) "A
21 prosecutor is permitted ... to comment on a defendant's failure to
22 introduce material evidence or call logical witnesses. [Citation.] By
23 directing the jury's attention to the fact defendant never presented
24 evidence that he was somewhere else when the crime was committed,
25 the prosecutor did no more than emphasize defendant's failure to present
26 material evidence. He did not capitalize on the fact defendant failed to
27 testify." (*People v. Brown* (2003) 31 Cal.4th 518, 554.)

28 *Romero*, 2013 WL164192, at *13-14 (internal quotation marks and citation omitted).

1 The state court's determination was not an unreasonable application of clearly
2 established federal law.

3 Fairly construed, nothing about the prosecutor's statements constituted
4 improper argument. The prosecutor did not refer to petitioner's wife or her failure to
5 testify, but rather commented on the general absence of any alibi witness. Further,
6 the prosecutor's argument could not reasonably be construed as commenting upon
7 petitioner's failure to testify on his own behalf. *Cf. Griffin v. California*, 380 U.S.
8 609, 611-614 (1965) (holding that a prosecutor may not comment upon a defendant's
9 failure to testify). The prosecutor's statements about the absence of alibi witnesses
10 were a proper comment on petitioner's failure to present material evidence. *See Cook*
11 *v. Schriro*, 538 F.3d 1000, 1020 (9th Cir. 2008) (A prosecutor may "comment on the
12 failure of the defense to produce evidence to support an affirmative defense so long
13 as it does not directly comment on the defendant's failure to testify"); *see Menendez*
14 *v. Terhune*, 422 F.3d 1012, 1034 (9th Cir. 2005) ("A prosecutor may, consistent with
15 due process, ask a jury to convict based on the defendant's failure to present evidence
16 supporting the defense theory."); *see generally, Ceja v. Stewart*, 97 F.3d 1246, 1253
17 (9th Cir. 1996) ("Counsel are given latitude in the presentation of their closing
18 arguments, and courts must allow the prosecution to strike hard blows based on the
19 evidence presented and all reasonable inferences therefrom.") (citation omitted). The
20 remarks were not phrased in such a manner that reasonable jurors would understand
21 the prosecutor to be pointing specifically to the failure of either petitioner or his wife
22 to testify. *See Fischer v. Hill*, 2012 WL 1577503, at *17 (C.D. Cal. Jan. 9, 2012)
23 (rejecting prosecutorial misconduct claim, explaining, "[i]n commenting that Fischer
24 had no alibi witnesses, the prosecutor did no more than emphasize Fischer's failure
25 to present material evidence."), *report and recommendation adopted*, 2012 WL
26 1578505 (C.D. Cal. Apr. 30, 2012), *aff'd*, 578 F. App'x 631 (9th Cir. 2014).

27
28

1 **C. Sufficiency of the Evidence (Ground Three).**

2 Petitioner alleges that the evidence presented at trial was insufficient to support
3 his convictions of first-degree murder and conspiracy to commit murder.
4 Specifically, petitioner contends that the circumstantial evidence was insufficient to
5 support his conviction because there was no evidence of specific intent to commit
6 murder. (See ECF No. 55-2 at 26-33.) In petitioner's traverse, however, petitioner
7 attempts to rely upon new evidence regarding the victim's time of death in support
8 of this claim. (See ECF No. 134 at 23-24.) As discussed below, a challenge to the
9 sufficiency of the evidence is limited to the evidence presented to the jury.
10 Accordingly, petitioner's allegation that new evidence demonstrates he is actually
11 innocent is addressed separately in the discussion of Ground Nine.

12 **1. Legal standard.**

13 Pursuant to clearly established federal law, evidence is sufficient to support a
14 conviction if, "after viewing the evidence in the light most favorable to the
15 prosecution, any rational trier of fact could have found the essential elements of the
16 crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). If
17 the evidence support conflicting inferences, a reviewing court "must presume – even
18 if it does not affirmatively appear in the record – that the trier of fact resolved any
19 such conflicts in favor of the prosecution, and must defer to that resolution." *Jackson*,
20 443 U.S. at 319, 326; *see also Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (per curiam)
21 (*Jackson* "makes clear that it is the responsibility of the jury – not the court – to
22 decide what conclusions should be drawn from evidence admitted at trial").

23 The reviewing court "must respect the province of the jury to determine the
24 credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences
25 from proven facts by assuming that the jury resolved all conflicts in a manner that
26 supports the verdict." *See Walters v. Maass*, 45 F.3d 1355, 1358 (9th Cir. 1995); *see*
27 *also Jackson*, 443 U.S. at 319, 324, 326. Although "mere suspicion or speculation
28 cannot be the basis for the creation of logical inferences," *see Maass*, 45 F.3d at

1 1358, “[c]ircumstantial evidence can be used to prove any fact, including facts from
2 which another fact is to be inferred, and is not to be distinguished from testimonial
3 evidence insofar as the jury’s fact-finding function is concerned.” *Payne v. Borg*, 982
4 F.2d 335, 339 (9th Cir. 1993) (citation omitted). Furthermore, “to establish sufficient
5 evidence, the prosecution need not affirmatively ‘rule out every hypothesis except
6 that of guilt.’” *Schell v. Witek*, 218 F.3d 1017, 1023 (9th Cir. 2000) (en banc) (quoting
7 *Wright v. West*, 505 U.S. 277, 296 (1992) (plurality opinion)).

8 Where, as here, the state court has adjudicated the merits of a sufficiency of
9 the evidence claim, federal habeas corpus relief is warranted only if the state court
10 decision was objectively unreasonable. *Cavazos*, 565 U.S. at 2. See *Emery v. Clark*,
11 643 F.3d 1210, 1213-1214 (9th Cir. 2011) (“When we undertake collateral review of
12 a state court decision rejecting a claim of insufficiency of the evidence pursuant to
13 28 U.S.C. § 2254(d)(1), . . . we ask only whether the state court’s decision was
14 contrary to or reflected an unreasonable application of *Jackson* to the facts of a
15 particular case.”).

16 Finally, in considering the sufficiency of the evidence, the Court looks to state
17 law for the substantive elements of the criminal offense. *Coleman v. Johnson*, 566
18 U.S. 650, 655 (2012) (per curiam).

19 **2. Analysis.**

20 Under California law, conspiracy requires two or more persons agreeing to
21 commit a crime, along with the commission of an overt act in furtherance of that
22 conspiracy. *People v. Bogan*, 152 Cal. App. 4th 1070, 1074 (2007). The prosecution
23 must show an intent to agree and to commit the underlying substantive offense.
24 *Bogan*, 152 Cal. App. 4th at 1074. California law defines first degree murder as
25 unlawful killing with malice aforethought, premeditation, and deliberation. *People v.*
26 *Hernandez*, 183 Cal. App. 4th 1327, 1332 (2010).

27 The California Court of Appeal found the evidence was sufficient to support
28 petitioner’s conviction of conspiracy to commit first-degree murder and first-degree

1 murder. As it explained:

2 There was compelling circumstantial evidence the defendants planned
3 to murder Sonia in the hope De La Cruz would inherit from her estate,
4 and Romero obviously expected to be compensated for his part in this
5 plot.

6 The prosecution theory was that De La Cruz wanted Romero to
7 kill Sonia while De La Cruz was at sea so he would have an alibi and
8 could blame the murder on John Bourdeau. However, when the shooting
9 at the salon went awry De La Cruz came home and, together with
10 Romero, murdered Sonia at her house. During closing argument, the
11 prosecutor said: “We said De La Cruz has Sonia’s trust. Key to her
12 house. Access to her firearms.... [¶] Crooks don’t go into houses, not
13 steal anything, find a gun that’s in a closed location, then use that gun to
14 kill somebody. [¶] But I’ll tell you who does do that. Someone who is a
15 part of the family, knows where that gun is, and then takes it with them.
16 [¶] ... [¶] The reasonable inference, based on the phone conversations
17 between Mr. De La Cruz and Mr. Romero while he is at sea, [is that]
18 Fernando Romero was supposed to get that done while Eric was at sea.
19 When it didn’t happen, Eric had to come home and do the job himself.”

20 The circumstantial evidence of Romero’s role in the conspiracy
21 was overwhelming. He and De La Cruz were friends in the Navy and
22 they served together on the U.S.S. Ronald Reagan. About a week before
23 Sonia was murdered, a man entered her beauty salon, pointed a gun at
24 her and apparently tried to shoot her. When he departed, the man uttered
25 a death threat. The evidence showed this man was Romero. His cell
26 phone number had been recorded on Sonia’s caller-I.D. system and
27 phone records showed his close proximity to her salon. De La Cruz
28 made five phone calls to Romero that day from the U.S.S. Ronald

1 Reagan. Telephone records demonstrated that, on the night Sonia was
2 murdered, the defendants started out from different locations, traveled
3 toward Sonia's house, came within at least 0.3 miles of it, and then
4 traveled away from it in different directions. During the ensuing
5 investigation, Romero lied to detectives about never having been to
6 Lomita and he lied to Naval investigators about having been at sea
7 during the salon incidents. De La Cruz gave detectives a false alibi for
8 Romero regarding the salon incidents.

9 Romero's reliance on *Juan H. v. Allen* (9th Cir. 2005) 408 F.3d
10 1262, is misplaced. In that case, the minor's brother shot the victims and
11 there was insufficient evidence the minor intended to facilitate the
12 shootings or even knew his brother intended to carry them out. The
13 Ninth Circuit reasoned "the circumstantial evidence presented does no
14 more than establish that a rational trier of fact could conclude that Juan
15 H. knew his brother was armed and ready to confront Magdelano and
16 Ramirez if the family and home of Juan H. were again threatened. That
17 Juan H. stood behind his older brother after the family home had been
18 attacked, even if he knew his brother was armed, does not permit the
19 rational inference that he knew his brother would, without provocation,
20 assault or murder the victims." (*Id.* at p. 1278, fn. omitted.) As the
21 Attorney General points out: "Unlike *Juan H.*, where the events
22 unfolded quickly and the juvenile's brother suddenly shot the victim
23 without provocation, the evidence in the instant case strongly suggested
24 a preconceived plan by appellants to kill" Sonia, "including an attempt
25 to frame a third party for [her] murder before she was killed, a prior
26 unsuccessful attempt to kill [her], and an execution-style murder ... in
27 her home."

28 *Romero*, 2013 WL 164192 at *6-7.

1 The state court's determination was not objectively unreasonable. As noted,
2 the evidence showed that petitioner and De La Cruz were friends in the Navy who
3 served together on an aircraft carrier. (RT 2159; CT 563.) In the months before
4 Sonia's murder, De La Cruz sent emails to Sherry Jackson falsely indicating that they
5 were from Sonia's estranged son, John Bourdeau, and making it appear that he was
6 soliciting Sonia's murder. (RT 1877-1882; CT 296, 304.) One week before Sonia
7 was killed, petitioner entered her salon, tried to shoot her, and threatened to "get"
8 her. (RT 1517-1520, 1527, 1852, 1861.) That same day, De La Cruz made numerous
9 phone calls to petitioner. (RT 1857-1857.)

10 Phone records show that on the night when Sonia was killed, petitioner and
11 De La Cruz traveled from different locations toward Sonia's house, came within .3
12 miles of her house, and then traveled away from the house in different directions.
13 (RT 1864-1867, 1869-1872.) Sonia was shot one time in the back of her head.
14 Nothing in the house was disturbed, no valuables were taken, and there were no signs
15 of forced entry. (RT 1661-1663, 1665, 1668.)

16 Petitioner and De La Cruz both lied when they were questioned. Petitioner
17 falsely told the police that he had never been in Lomita. (RT 605, 618, 624, 635-636.)
18 He also falsely told Naval investigators that he was on an aircraft carrier at the time
19 of the salon incident. (RT 3649-3650.) De La Cruz lied and told detectives that
20 petitioner was on an aircraft carrier with him at the time of the salon incident; he also
21 said that Bourdeau had sent the emails to Sherry Jackson. (CT 456, 565-566, 579
22 585.) Shortly after Sonia was murdered, De La Cruz showed up at her attorney's
23 office to inquire about her will. (RT 1569-1576.)

24 Based upon this evidence, the prosecution's theory was that De La Cruz hoped
25 to inherit from Sonia's will. He planned to have Sonia murdered and to frame
26 Bourdeau. Petitioner was supposed to kill Sonia while De La Cruz was at sea so that
27 De La Cruz would have an alibi. However, when petitioner's attempt to kill Sonia at
28 the salon failed, De La Cruz came home. He and petitioner then went to Sonia's

1 home together, and one or the other shot her. (RT 4279-4320, 4322-4331, 4530-
2 4554.)

3 A rational jury could infer from the circumstantial evidence – including the
4 cell phone calls between petitioner and De La Cruz, petitioner’s phone calls to Sonia,
5 his appearance at Sonia’s salon, his unsuccessful attempt to shoot Sonia at the salon,
6 the presence of petitioner and De La Cruz near Sonia’s home on the night she was
7 likely shot, and the fact De La Cruz and petitioner lied to the police about their
8 whereabouts – that petitioner and De La Cruz conspired to murder Sonia and that
9 petitioner either shot Sonia or aided and abetted De La Cruz to do so. In sum,
10 independent review of the record confirms that the state court’s determination was
11 not an unreasonable one.

12 **D. Jury instructions on accomplice liability (Ground Four).**

13 Petitioner contends that he deprived of due process by erroneous instructions
14 on accomplice liability.

15 **1. Factual Background.**

16 The trial court instructed the jury with CALCRIM No. 400, which provided as
17 follows:

18 A person may be guilty of a crime in two ways. One, he or she
19 may have directly committed the crime. I will call that person the
20 perpetrator. [¶] Two, he or she may have aided and abetted a perpetrator
21 who directly committed the crime. [¶] A person is equally guilty of the
22 crime whether he or she committed it personally, or aided and abetted
23 the perpetrator who committed it.

24 (CT 1153.)⁴

26 ⁴ CALCRIM No. 400 has since been amended to eliminate the “equally guilty” language and the
27 final sentence now reads: “A person is guilty of a crime whether he or she committed it personally
28 or aided and abetted the perpetrator.”

1 Petitioner contends that the instruction was erroneous because it failed to
2 explain that an aider and abettor could be guilty of either a greater or a lesser crime
3 than the direct perpetrator. Specifically, petitioner argues that the instruction
4 permitted the jury to convict him of first-degree murder even if it concluded that he
5 lacked the requisite mental intent.

6 **2. Clearly Established Federal Law.**

7 Claims of error concerning state jury instructions are generally matters of state
8 law only. *See Gilmore v. Taylor*, 508 U.S. 333, 344 (1993) (“instructional errors of
9 state law generally may not form the basis for federal habeas relief”); *see also*
10 *Menendez*, 422 F.3d at 1029 (any error in state court's determination of whether state
11 law allowed for instruction in case cannot form basis for federal habeas relief).
12 Federal habeas relief based upon a claim of instructional error is available only when
13 a petitioner demonstrates that “[an] ailing instruction by itself so infected the entire
14 trial that the resulting conviction violates due process.” *Estelle v. McGuire*, 502 U.S.
15 62, 72 (1991); *see also Waddington v. Sarausad*, 555 U.S. 179, 191 (2009) (same).
16 A challenged instruction must be evaluated in the context of the other jury
17 instructions and the trial record as a whole, not in artificial isolation. *Waddington*,
18 555 U.S. at 191.

19 If a jury instruction is ambiguous, inconsistent or otherwise deficient, it will
20 violate due process only when a reasonable likelihood exists that the jury has applied
21 the challenged instruction in a manner that violates the Constitution. *Waddington*,
22 555 U.S. at 190-191; *Estelle*, 502 U.S. at 72. It is not enough that there is some “slight
23 possibility” that the jury misapplied the instruction. *Weeks v. Angelone*, 528 U.S. 225,
24 236 (2000). Finally, errors in jury instructions are subject to harmless error analysis
25 and do not merit habeas relief unless such error had a substantial and injurious effect
26 or influence in determining the jury’s verdict. *Hedgpeth v. Pulido*, 555 U.S. 57, 61-
27 62 (2008) (per curiam) (citing *Brecht*, 507 U.S. at 623).

1 **3. Analysis.**

2 The California Court of Appeal rejected petitioner's claim, explaining that
3 CALCRIM No. 400 was, "in almost all situations, a correct instruction because
4 generally, a person who is found to have aided another person to commit a crime is
5 'equally guilty' of that crime." Thus, if either petitioner or De La Cruz "believed the
6 instruction was inappropriate to the facts of their case, they were obliged to ask for a
7 modification." *Romero*, 2013 WL164192, at *10-11. The state appellate court also
8 found there was no instructional error, reasoning:

9 In any event, it is clear that in the circumstances of this case
10 CALCRIM No. 400 was not incomplete. As the Attorney General points
11 out, the jury necessarily found the defendants possessed the requisite
12 mental state for first degree murder under other instructions. For
13 example, the jury was instructed the prosecution had to prove an aider
14 and abettor knowingly intended to facilitate the perpetrator's crime, and
15 that "the members of the alleged conspiracy had an agreement and intent
16 to commit murder." By convicting defendants of first degree murder and
17 conspiracy under these instructions, the jury necessarily found they both
18 acted with the requisite mental state for first degree murder.

19 The trial court did not err by giving CALCRIM No. 400.
20 *Romero*, 2013 WL164192 , at *10-11.

21 This Court is bound by a state court's interpretation and application of
22 California law. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005). Thus, the Court
23 defers to the state appellate court's conclusion that the jury instruction was proper
24 under state law.

25 Furthermore, considered in the context of the entire trial record, petitioner has
26 not demonstrated a reasonable likelihood that the jury misapplied the instruction to
27 obviate the prosecution's burden of proving every element of first-degree murder as
28 an aider and abettor beyond a reasonable doubt. To the contrary, other jury

instructions made clear that the jury was required to find that petitioner harbored the requisite mental intent. Specifically, the trial court instructed the jury that the prosecution was required to prove that that an aider and abettor knew the unlawful purpose of the perpetrator, intended to encourage or facilitate the commission of the crime, and by act or advice, aided or encouraged the commission of the crime. (CT 1154 [CALCRIM 401].) The jury was further instructed that in order to convict petitioner of first degree murder, the prosecution had to prove that he acted willfully, deliberately, and with premeditation, which was further defined as requiring that petitioner “carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.” (CT 1157-1158 [CALCRIM No. 521].) The same instruction informed the jury that the prosecution had the burden to prove beyond a reasonable doubt that the murder was first degree rather than a lesser crime, and if the prosecution failed to meet its burden, the jury must find petitioner not guilty of first-degree murder. (CT 1159.) It would be almost impossible for a person to know of another’s intent to murder and decide to aid in accomplishing the crime without at least a brief period of deliberation and premeditation, which is all that is required. Therefore, it was not reasonably likely that the jury convicted petitioner of first-degree murder based upon De La Cruz’s guilt. *See Hernandez v. Jacques*, 2014 WL 1766924, at *14 (C.D. Cal. May 2, 2014) (rejecting challenge to CALCRIM No. 400’s “equally guilty” language in light of other instructions given to the jury, including CALCRIM No. 401); *Britt v. Hedgpeth*, 2013 WL 2154156, at *17-18 (C.D. Cal. May 15, 2013) (same).

E. Reasonable doubt instructions (Ground Five).

Petitioner alleges that he was denied due process by the erroneous instructions on reasonable doubt.

1. Factual Background.

The jury was instructed with CALCRIM No. 220, which provides as follows:
The fact that a criminal charge has been filed against the defendants is

1 not evidence that the charge is true. [¶] You must not be biased against
2 the defendants just because they have been arrested, charged with a
3 crime, or brought to trial. [¶] A defendant in a criminal case is presumed
4 to be innocent. This presumption requires that the People prove a
5 defendant guilty beyond a reasonable doubt. [¶] Whenever I tell you the
6 People must prove something, I mean they must prove it beyond a
7 reasonable doubt. [¶] Proof beyond a reasonable doubt is proof that
8 leaves you with an abiding conviction that the charge is true. [¶] The
9 evidence need not eliminate all possible doubt, because everything in
10 life is open to some possible or imaginary doubt. [¶] In deciding whether
11 the People have proved their case beyond a reasonable doubt, you must
12 impartially compare and consider all the evidence that was received
13 throughout the entire trial. [¶] Unless the evidence proves the defendants
14 guilty beyond a reasonable doubt, they are entitled to an acquittal, and
15 you must find them not guilty.

16 (CT 1132.)

17 **2. Clearly Established Federal Law.**

18 “[T]he Due Process Clause protects the accused against conviction except
19 upon proof beyond a reasonable doubt of every fact necessary to constitute the crime
20 with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). “The beyond a
21 reasonable doubt standard is a requirement of due process, but the Constitution
22 neither prohibits trial courts from defining reasonable doubt nor requires them to do
23 so as a matter of course.” *Victor v. Nebraska*, 511 U.S. 1, 5 (1994). “[S]o long as the
24 trial court instructs the jury on the necessity that the defendant’s guilt be proven
25 beyond a reasonable doubt, the Constitution does not require that any form of words
26 be used in advising the jury of the government’s burden of proof”; rather, taken as a
27 whole, the instructions must correctly convey the concept of reasonable doubt to the
28 jury. *Victor*, 511 U.S. at 5 (internal citation omitted).

1 **3. Analysis.**

2 The California Court of Appeal considered and rejected petitioner's claim as
3 follows:

4 Romero contends this instruction was erroneous for two reasons.
5 First, by telling "jurors reasonable doubt must arise from evidence
6 presented at trial," the instruction ignored the fact reasonable doubt can
7 sometimes "be based upon absence of evidence, not just the evidence
8 presented in court." Second, the "abiding conviction" language
9 "convey[s] an insufficient standard of proof akin to clear and convincing
10 evidence and going only to jurors' duration of belief in guilt, not their
11 degree of certainty." However, both of these claims have been
12 repeatedly rejected by other courts, with whose reasoning we agree.

13 The admonition to consider all the evidence received at trial
14 "informs the jury that the People may not meet their burden of proof
15 based on evidence other than that offered at trial. The instruction does
16 not tell the jury that it may not consider any perceived lack of evidence
17 in determining whether there is a reasonable doubt as to a defendant's
18 guilt." (*People v. Westbrooks* (2007) 151 Cal.App.4th 1500, 1509....)

19 Attacks on the "abiding conviction" language have also been
20 repeatedly rejected. "[D]efendant's assertions on the deficiencies of the
21 phrase 'abiding conviction' must give way to the great weight of legal
22 authority approving that very language." (*People v. Stone* (2008) 160
23 Cal.App.4th 323, 334....)

24 *Romero*, 2013 WL 164192, at *14 (citations omitted).

25 The state court's determination was not an unreasonable application of clearly
26 established federal law. As the Ninth Circuit and other courts in this district have
27 concluded, CALJIC No. 220 satisfies the Constitution by adequately informs the jury
28 that the prosecution must prove each element of an offense beyond a reasonable

doubt. *See Lisenbee v. Henry*, 166 F.3d 997, 999 (9th Cir. 1999) (use of the phrase “abiding conviction” in reasonable doubt instruction); *Durden v. Madden*, 2017 WL 3531496, at *10 (C.D. Cal. June 23, 2017) (holding language of CALJIC No. 220 adequate under Constitution), *report and recommendation adopted*, 2017 WL 3524287 (C.D. Cal. Aug. 16, 2017); *Munguia v. Ducart*, 2016 WL 8794698, at *6 (C.D. Cal. Oct. 19, 2016) (same).

F. Ineffective Assistance of Counsel (Ground Seven).

In Ground Seven, petitioner alleges that trial counsel provided ineffective assistance because he stipulated to cell phone evidence, was unprepared and “inattentive,” and failed to timely object to portions of the police interviews.⁵

1. The Right to Effective Assistance of Counsel.

The Sixth Amendment guarantees that a criminal defendant will not be convicted without the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-686 (1984). In order to establish ineffective assistance of counsel, petitioner must satisfy the two-prong test of *Strickland*. First, he must identify the acts or omissions of counsel that were not the result of reasonable professional judgment. *Strickland*, 466 U.S. at 690; *see also Knowles v. Mirzayance*, 556 U.S. 111, 123, 127 (2009). An assessment of counsel’s performance is highly deferential and counsel is presumed to have rendered professionally adequate assistance. *Strickland*, 466 U.S. at 690. To overcome this presumption, petitioner must demonstrate that “the identified acts or omissions were outside the wide range of professionally competent assistance.” *Strickland*, 466 U.S. at 690.

⁵ The California Supreme Court dismissed the petition raising Ground Seven with citation to *In re Robbins*, 18 Cal. 4th 770, 780 (1998). (Lodgments 8, 12.) Prior to filing an answer addressing the merits of this claim, respondent filed a motion to dismiss arguing, in part, that federal review of Ground Seven and Eight is precluded by the doctrine of procedural default. (ECF No. 67.) Because the Court concludes that petitioner is not entitled to relief on the merits of these claims, it need not resolve the procedural issue. *See Lambrix v. Singletary*, 520 U.S. 518, 525 (1997) (district court may address the merits without reaching procedural issues where the interest of judicial economy are best served).

1 Second, petitioner must show that counsel's deficient performance prejudiced
2 his defense. *Strickland*, 466 U.S. at 687, 693. To prove prejudice, petitioner must
3 demonstrate a reasonable probability that but for his counsel's errors, the result of
4 the proceeding would have been different. *Strickland*, 466 U.S. at 694. "A reasonable
5 probability is a probability sufficient to undermine confidence in the outcome."
6 *Strickland*, 466 U.S. at 694; *see also Knowles*, 556 U.S. at 127. Because petitioner
7 bears the burden of satisfying both prongs of the *Strickland* standard, a federal court
8 "need not determine whether counsel's performance was deficient before examining
9 the prejudice suffered by the defendant as a result of the alleged deficiencies.... If it
10 is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient
11 prejudice ... that course should be followed." *Strickland*, 466 U.S. at 687, 697.

12 Where, as here, a petitioner raises a claim of ineffective assistance of counsel
13 based upon an alleged failure to investigate, the petitioner must show what
14 information would have been revealed by the investigation and how that information
15 would have produced a different result. *See Gallego v. McDaniel*, 124 F.3d 1065,
16 1077 (9th Cir. 1997) (rejecting a claim that counsel was ineffective for failing to
17 conduct an adequate investigation where the petitioner did not identify any
18 information that had been uncovered in a subsequent investigation, which, if known
19 at the relevant time, would have changed the outcome of the proceedings).

20 **2. Trial Counsel's Stipulation to the Cell Phone Records.**

21 At trial, both defense attorneys stipulated to the prosecution's cell phone
22 evidence, including evidence of phone calls made between petitioner and De La Cruz
23 on the night Sonia was killed. As set forth above, the cell phone evidence
24 demonstrated that petitioner and De La Cruz traveled from different locations toward
25 Sonia's house, came within .3 miles of Sonia's house at approximately 9:00 p.m.,
26 and then traveled away from the house in different directions. (RT 1864-1873; CT
27 419-422.) At the conclusion of the trial, the prosecutor indicated that he wanted to
28 make a record regarding the stipulation. The prosecutor stated that prior to the

1 stipulation, he had told the defense attorneys,

2 I'll call in every expert from every phone company ..., and we'll go step
3 by step. [¶] But unless you have some good cross-examination, and
4 you're actually going to dispute this stuff, I don't know how that's going
5 to help you. I don't know what benefit you're going to gain out of that.

6 (RT 4570-4571.) The prosecutor further indicated that the stipulation benefited the
7 defense because it was "not as strong as what I would have gotten had I had
8 somebody in here [to testify]." (RT 4571.)

9 Petitioner complains that trial counsel stipulated to this evidence without
10 investigating the records or consulting an expert. According to petitioner, the cell
11 phone records were inaccurate. In support of his contention, petitioner points out that
12 the records indicate that at 8:32 p.m. on the night of April 26, 2007, petitioner's cell
13 phone connected through a cell phone tower located at 24823 Western Avenue in
14 Lomita, which was .3 miles from Sonia's house. (CT 420.) Then, the records indicate
15 that at 8:35 p.m., petitioner's phone connected to a cell phone tower located at 2545
16 327th Street in Torrance. (CT 422.) Based upon Google Maps, however, the address
17 2545 327th Street in Torrance does not exist. (ECF No. 55-2 at 46-51; ECF No. 55-
18 12 at 33.) Yet petitioner concedes that there is a cell phone tower located at 2545
19 237th Street in Torrance, which is less than two miles west of the cell phone tower at
20 24823 Western Avenue and Sonia's house.

21 Petitioner's evidence reveals an apparent inaccuracy in the cell phone records
22 – namely, that the 2545 327th Street in Torrance does not exist. Yet, the error appears
23 to be a typographical mistake because there is a cell phone tower located at 2545
24 237th Street in Torrance, which is less than two miles west of the cell phone tower at
25 24823 Western Avenue and Sonia's house. (ECF No. 55-2 at 47-48.)

26 Thus, assuming the truth of petitioner's allegations and evidence, if trial
27 counsel had more carefully reviewed the cell phone records, he would have
28 discovered a minor inaccuracy that appears to be the result of a typographical error.

1 The “inaccuracy” would have had little, if any, bearing on the probative value of the
2 cell phone records. As petitioner acknowledges, at both 8:32 and 9:00 p.m., calls
3 from his cell phone to De La Cruz pinged off the 24823 Western Avenue cell tower
4 .3 miles from Sonia’s house (CT 420-422; RT 1865), and nothing petitioner alleges
5 or presents indicates that trial counsel could have undermined the validity of that
6 record.

7 Petitioner also argues that a more careful reading of the cell phone records
8 would have challenged the prosecution’s timeline. As petitioner points out, the
9 records reveal that at 9:21 he made a phone call to De La Cruz, and his call pinged
10 off of a cell site in an unspecified cell tower in Downey. (CT 421; RT 1865-1866.)
11 Petitioner argues that “[t]here does not appear to be enough time to commit a murder
12 in Lomita at 9:00 p.m., as the prosecution argued, and drive all the way to Downey
13 in twenty-one minutes.” (ECF No. 55-2 at 49.) Petitioner’s argument is based upon
14 a Google Map that indicates that it is 20 miles from the Western Avenue address to
15 the Downey civic center, with an estimated travel time of 28 minutes. (ECF No. 55-
16 12 at 34.) Petitioner’s argument is based upon an unsupported assumption that the
17 cell phone tower from which his phone pinged at 9:21 was located in the Downey
18 civic center rather than on the edge of the city, in a location closer to Lomita.

19 In sum, other than speculation, petitioner has identified nothing that trial
20 counsel could have discovered that would have undermined the validity of the cell
21 phone records. Specifically, petitioner has failed to point to anything that would have
22 cast doubt upon the critical facts revealed by the cell phone records – namely, that
23 petitioner and De La Cruz called each other numerous times on the night of April 26,
24 2007 and did so from a location very near Sonia’s house. As a result, petitioner has
25 not demonstrated a reasonable likelihood of a more favorable outcome if trial counsel
26 had conducted additional investigation of the cell phone records. *See Gonzalez v.*
27 *Knowles*, 515 F.3d 1006, 1015-1016 (9th Cir. 2008) (speculation is insufficient to
28 show prejudice under *Strickland*).

1 **3. Trial Counsel’s Lack of Preparation, Inattentiveness, and Failure**
2 **to Object.**

3 Petitioner alleges that trial counsel was unprepared and inattentive at trial. In
4 support of his claim, petitioner asserts that on several occasions, trial counsel could
5 not recall the outcome of earlier litigation on important issues.” (ECF No. 55-2 at
6 51.) Petitioner also asserts that both the trial court and the prosecutor raised concerns
7 about trial counsel’s performance at trial, citing several instances in which the trial
8 court or the prosecutor indicated that if trial counsel continued with a particular line
9 of questioning, it could be prejudicial to petitioner.

10 Notwithstanding petitioner’s conclusory allegations of prejudice, petitioner
11 has not explained how any of trial counsel’s alleged deficiencies negatively impacted
12 the presentation of his defense, and the Court’s review of the pages of the transcript
13 upon which petitioner’s claim is based does not reveal any. (See RT 1223, 1540,
14 2135, 2154, 2156, 3324, 3690.) Petitioner fails to specify what further preparation or
15 attentiveness on the part of his counsel would have accomplished. As a result, his
16 allegations are insufficient to entitle him to relief. See *James v. Borg*, 24 F.3d 20, 26
17 (9th Cir. 1994) (“Conclusory allegations which are not supported by a statement of
18 specific facts do not warrant habeas relief.”).

19 Petitioner’s allegations regarding trial counsel’s failure to timely object to
20 portions of the police interviews fares no better. Petitioner’s claim appears to be
21 based solely upon counsel’s failure to make a timely motion to exclude De La Cruz’s
22 statements under *Aranda/Bruton*. (See ECF No. 55-2 at 51-52.) As discussed above,
23 however, admission of De La Cruz’s statements did not violate *Aranda/Bruton*.
24 Because petitioner has not identified any potentially meritorious basis for objecting
25 to any police interviews, he has not demonstrated that trial counsel’s failure to object
26 fell outside the range of reasonable professional assistance. See *James*, 24 F.3d at 26
27 (trial counsel’s failure to make a futile motion does not constitute ineffective
28 assistance of counsel).

1 **G. Actual Innocence (Grounds Eight and Nine).**

2 In Ground Eight, petitioner alleges that he is factually innocent based upon the
3 trial record. As discussed above, however, the evidence presented at trial was
4 sufficient to support the jury's finding of guilt. Accordingly, there is no merit to this
5 claim. In Ground Nine, petitioner alleges that newly discovered evidence
6 demonstrates that he is actually innocent.

7 **1. Factual Background.**

8 The prosecution's theory at trial was that petitioner and De La Cruz killed
9 Sonia on the night of April 26, 2007. As discussed above, the theory was based upon
10 cell phone records revealed that the two men traveled toward her house that night and
11 were both within .3 miles of her house at approximately 9:00 p.m. Sonia's son, John
12 Bourdeau, discovered her dead body at approximately 2:00 p.m. next day. (RT 1593-
13 1594, 1647.)

14 The parties entered a stipulation based upon the report of the medical
15 examiner, Dr. R. Djabourian (also referred to as the coroner). The stipulation stated
16 that Dr. Djabourian conducted an autopsy of Sonia on April 30, 2007 and concluded
17 that Sonia died from a single, instantly fatal gunshot wound to the head, and that:
18 "The exact time of death cannot be ascertained; however, there is nothing
19 inconsistent with the victim having been killed the evening of April 26, 2007." (RT
20 1667-1668.)

21 In March 2016, petitioner received trial counsel's file and discovered the new
22 evidence upon which his claim of actual innocence is based. That evidence consists
23 of Detective Linda Muse's statement of probable cause for a search warrant, in which
24 Detective Muse states: "The coroner estimated that the victim had been dead for
25 approximately 16 hours (give or take 1 to 2 hours) from the time of the liver
26 temperature taken by the Coroner investigator at the scene at 0220 hours on 04-28-
27 07. Approximately, 16 hours from this time would be at 1000 hours on 4-27-07."
28 (Lodgment 16 at 217.)

1 Relying upon Detective Muse's statement, petitioner argues that Sonia was
2 killed no earlier than 8:20 a.m. on April 27, 2007. Further, because petitioner was at
3 work in San Diego at that time, he could not have killed her. (See ECF No. 102 at
4 22-24; Lodgment 22 at 12.)

5 Petitioner presented his claims based upon Detective Muse's statement to the
6 California Superior Court. (Lodgment 18.) After obtaining an informal response from
7 the District Attorney (Lodgment 19), the Superior Court appointed counsel for
8 petitioner, directed the District Attorney to file a return, and conducted a hearing.
9 (Lodgment 22, 25.) In the course of the proceedings, petitioner's trial counsel
10 provided a declaration. Trial counsel stated that he had been aware of Detective
11 Muse's statement prior to trial. However, trial counsel made a tactical decision to
12 enter the stipulation because he believed the coroner's estimation was not precise and
13 it would be more prejudicial to petitioner if the coroner were called to testify. In
14 particular, trial counsel wanted to avoid the possibility that the coroner would correct
15 his estimation so that it would specifically include the night of April 26, 2007 and
16 also wanted to preclude the jury from hearing the coroner's testimony describing the
17 condition of the victim's body. (Lodgment 25 at 119-120.)

18 The Superior Court subsequently rejected petitioner's claims, finding that
19 Detective Muse's statement about the coroner's estimated time of death had been
20 disclosed to the defense prior to trial; the stipulation at trial was not based upon false
21 evidence, misrepresentation, mistake, or neglect; the prosecutor did not commit
22 misconduct; trial counsel made a tactical decision to enter into the stipulation to
23 prevent the coroner from testifying; and the evidence did not show that petitioner was
24 factually innocent. (Lodgment 22 at 5-11.)

25 **2. Clearly Established Federal Law.**

26 The Supreme Court has never recognized a freestanding claim of actual
27 innocence. See *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013), *Herrera v. Collins*,
28 506 U.S. 390, 404-405 (1993); *Jones v. Taylor*, 763 F.3d 1242, 1246 (9th Cir. 2014).

1 In the absence of United States Supreme Court case law establishing a right to a
2 freestanding claim of actual innocence, a federal court cannot conclude that the state
3 court's adjudication of such a claim was contrary to, or an unreasonable application
4 of, clearly established federal law. *See Wright v. Van Patten*, 552 U.S. 120, 126
5 (2008) ("Because our cases give no clear answer to the question presented, ... it
6 cannot be said that the state court unreasonably applied clearly established Federal
7 law") (citation, internal brackets and quotations omitted); *McPherson v. Paramo*,
8 2017 WL 9732426, at *20 (C.D. Cal. Dec. 5, 2017) (in absence of Supreme Court
9 precedent establishing a freestanding claim of actual innocence, habeas corpus relief
10 for such a claim is unavailable under AEDPA), *report and recommendation adopted*,
11 2018 WL 1183355 (C.D. Cal. Mar. 7, 2018). Arguably, then, petitioner cannot
12 prevail on a claim of actual innocence.

13 At the same time, the Ninth Circuit has assumed that such a claim may be
14 viable. *Jones*, 763 F.3d at 1246. In order to prevail on such a claim, "at a minimum,
15 the petitioner 'must go beyond demonstrating doubt about his guilt, and must
16 affirmatively prove that he is probably innocent.'" *Jones*, 763 F.3d at 1246; *Carriger*
17 *v. Stewart*, 132 F.3d 463, 476 (9th Cir. 1997) (en banc). A petitioner's burden is
18 "'extraordinarily high'" requiring a "'truly persuasive'" showing. *Carriger*, 132 F.3d
19 at 476 (quoting *Herrera v. Collins*, 506 U.S. 390, 417 (1993)).

20 In determining whether petitioner has met this burden, the Court considers "all
21 the evidence, old and new, incriminating and exculpatory, without regard to whether
22 it would necessarily be admitted under rules of admissibility that would govern at
23 trial." *Jones*, 763 F.3d at 1247 (quoting *House v. Bell*, 547 U.S. 518, 538 (2006)
24 (internal quotation marks and citation omitted)). Petitioner must demonstrate that "in
25 light of the new evidence, no juror, acting reasonably, would have voted to find [him]
26 guilty beyond a reasonable doubt." *House*, 547 U.S. at 537 (quoting *Schlup v. Delo*,
27 513 U.S. 298, 329 (1995)). After considering all of the evidence, the Court must make
28 "a probabilistic determination about what reasonable, properly instructed jurors

1 would do.” *House*, 547 U.S. at 538 (quoting *Schlup*, 513 U.S. at 329).

2 **3. Analysis.**

3 In the rare case in which the *Schlup* standard has been found to have been met,
4 the petitioner presented new “credible evidence that the petitioner had a solid alibi
5 for the time of the crime, numerous exonerating eyewitness accounts of the crime,
6 DNA evidence excluding the petitioner and identifying another potential perpetrator,
7 a credible confession by a likely suspect explaining that he had framed the petitioner,
8 and/or evidence contradicting the very premise of the prosecutor’s case against the
9 petitioner.” *Cotinola v. Gipson*, 2014 WL 562636, at *13 (C.D. Cal. Feb. 7, 2014)
10 (citing cases).

11 Petitioner’s new evidence falls far short of such a showing. To begin with,
12 Detective Muse’s statement reflecting the coroner’s statement estimating the time of
13 death constitutes hearsay. Hearsay is insufficient to establish a credible claim of
14 innocence. *See Herrera*, 506 U.S. at 417 (noting that affidavits in support of actual
15 innocence claim were particularly suspect because they consisted of hearsay); *Nino*
16 *v. Beard*, 2016 WL 9384348, at *6 (C.D. Cal. Sept. 13, 2016) (statement based on
17 hearsay did not constitute trustworthy evidence of innocence).

18 Furthermore, the statement Detective Muse attributed to the coroner amounts
19 to a general estimate of the time of death. It does not purport to actually establish
20 Sonia’s time of death. Although it is arguably inconsistent with the stipulation
21 entered into at trial, considering the indefinite wording of the estimate, it does not
22 clearly preclude the possibility that Sonia could have been killed on the night of April
23 26, 2007. Notably, the coroner did not include any estimate of the time of death in
24 his autopsy report. (*See* Lodgment 25 at 42-53.)

25 Considering all of the evidence, petitioner has failed to establish that no
26 reasonable juror who heard all of the evidence, including Detective Muse’s statement
27 regarding the coroner’s estimated time of death, would have found petitioner guilty
28 beyond a reasonable doubt. Accordingly, petitioner is not entitled to relief. *See Jones*,

1 763 F.3d at 1250 (reversing a judgment granting relief on an actual innocence claim,
2 concluding that even the victim's recantation was insufficient to establish actual
3 innocence because the court could not "say that every juror would credit her
4 recantation testimony over her trial testimony").

5 **H. Prosecutorial Misconduct (Ground Ten).**

6 Petitioner alleges that the prosecutor committed misconduct by entering into a
7 stipulation regarding the victim's time of death that he knew to be false.

8 To prevail on a claim that a conviction was obtained by use of false evidence,
9 a petitioner must show that (1) the evidence was actually false, (2) the prosecution
10 knew or should have known that the evidence was actually false, and (3) the false
11 evidence was material. *Napue v. Illinois*, 360 U.S. 264, 269-271 (1959); *Hein v.*
12 *Sullivan*, 601 F.3d 897, 908 (9th Cir. 2010).

13 As set forth above, petitioner has failed to establish that the stipulation
14 regarding the time of death was false. The Superior Court found that the prosecutor
15 disclosed Detective Muse's statement to the defense and did not commit misconduct;
16 it further that the stipulation was not false. (Lodgment 22 at 9-11.) Petitioner has not
17 demonstrated that the state court's factual determinations were unreasonable in light
18 of the evidence presented to it. See 28 U.S.C. § 2254(d)(2). Furthermore, this Court
19 must presume that the state court's factual determinations are correct, and petitioner
20 bears the burden of rebutting this presumption by clear and convincing evidence. 28
21 U.S.C. § 2254(e)(1) ("a determination of factual issues made by a State court shall
22 be presumed to be correct" and "the applicant shall have the burden of rebutting the
23 presumption of correctness by clear and convincing evidence"). Petitioner has not
24 done so.

25 **I. Ineffective Assistance of Counsel (Ground Eleven).**

26 Petitioner contends that trial counsel provided ineffective assistance because
27 he (1) failed to challenge the time of death (2) failed to investigate and present a third-
28 party culpability defense to suggest that John Bourdeau was the killer. (ECF No. 102

1 at 60-69.)

2 **1. Failure to Challenge the Time of Death**

3 As set forth above, petitioner's trial counsel provided a declaration stating that
4 he made a tactical decision to enter the stipulation regarding the time of death because
5 he believed that an actual time of death could not be established favorably to
6 petitioner and because calling the coroner to testify could result in prejudicial
7 testimony, including a gruesome description of the victim's body. As also set forth
8 above, after considering the same evidence presented to this Court, the California
9 Superior Court found that the stipulation was the result of a compromise, was based
10 upon a reasonable tactical decision by trial counsel, and was not false. (Lodgment 22
11 at 9-11.) In light of the evidence before the state court, these factual findings were
12 not unreasonable. That is, it was not unreasonable to conclude that trial counsel made
13 a tactical decision to enter a broad stipulation rather than risk potentially more
14 unfavorable testimony from the coroner.

15 Furthermore, petitioner has not demonstrated prejudice. To begin with, trial
16 counsel could not have presented Detective Muse's statement recounting the
17 coroner's alleged statement because it constitutes hearsay. *See* Cal. Evid. Code
18 § 1200. Furthermore, petitioner presents no declaration or other evidence to this
19 Court (or the state court) indicating that the coroner or any other medical expert was
20 willing to testify on petitioner's behalf and setting forth the substance of the favorable
21 expert opinion regarding the time of death. Thus, there is no basis to conclude that
22 favorable testimony was available even if trial counsel had called the coroner or
23 conducted additional investigation into the time of death. *See Alcala v. Woodford*,
24 334 F.3d 862, 872-873 & n.3 (9th Cir. 2003) (to succeed on a claim of ineffective
25 assistance of counsel based upon a failure to call witnesses, a petitioner not only must
26 identify the witnesses in question but also must describe specifically the testimony
27 those witnesses would have given and how such testimony would have altered the
28 trial's outcome); *Bragg v. Galaza*, 242 F.3d 1082, 1088 (9th Cir.), *amended*, 253

1 F.3d 1150 (2001) (petitioner's mere speculation that, had a witness been interviewed,
2 he might have given helpful information, is not enough to establish ineffective
3 assistance); *Dows v. Woods*, 211 F.3d 480, 486 (9th Cir. 2000) (rejecting an
4 ineffectiveness claim based on trial counsel's failure to interview or call an alibi
5 witness, when there was no evidence in the record that the witness would have
6 testified favorably for the defense).

7 **2. Failure to Investigate Third-Party Culpability.**

8 Petitioner alleges that trial counsel was deficient because he failed to
9 investigate and present a third-party culpability defense suggesting that John
10 Bourdeau was the killer. According to petitioner, the evidence supporting such a
11 theory consists of evidence that Bourdeau attended Narcotic Anonymous meetings;
12 had prior drug-related arrests; used methamphetamine; provided varying accounts of
13 the times at which he checked on his mother; failed a polygraph examination; and
14 demonstrated to his cousin how Sonia might have been shot. (ECF No. 102 at 64-67;
15 ECF No. 95 at 7-10.)

16 None of this evidence suggests that a viable third-party culpability defense
17 existed. The results of a polygraph examination are not admissible in a criminal
18 proceeding unless all parties stipulate to the admission of the results. Cal. Evid. Code
19 § 351.1. Evidence that Bourdeau demonstrated to his cousin how his mother could
20 have been shot is hardly evidence suggesting that he was the actual shooter. Petitioner
21 does not explain how evidence that Bourdeau had a drug problem tended to show he
22 committed murder. As for evidence that Bourdeau made inconsistent statements
23 regarding the time or day on which he checked on his mother, while such evidence
24 could suggest consciousness of guilt, such discrepancies could also have an innocent
25 explanation. In sum, petitioner has presented, at best, speculative evidence
26 supporting a theory that Bourdeau was the actual killer.

27 On the other hand, the evidence at trial showed that De La Cruz had tried to
28 frame Bourdeau as the killer by setting up a fake email account using Bourdeau's

1 name and sending emails that made it appear Bourdeau was soliciting Sonia's
2 murder. In light of the evidence that Bourdeau was falsely implicated by De La Cruz,
3 and considering the weak evidence suggesting that Bourdeau was actually the killer,
4 petitioner has not shown a reasonable likelihood of a more favorable verdict if trial
5 counsel had presented such a defense.

6 **J. Cumulative Error (Ground Six).**

7 Petitioner alleges that he was prejudiced by the cumulative effect of multiple
8 trial errors.

9 In cases where there are a number of errors at trial, the court analyzes the
10 overall effect of all the errors in the context of the entire trial. This addresses the
11 situation in which errors that might not be so prejudicial as to amount to a deprivation
12 of due process when considered alone may nevertheless cumulatively produce a trial
13 that is fundamentally unfair. *Alcala v. Woodford*, 334 F.3d 862, 883 (9th Cir. 2003).

14 The California Court of Appeal rejected petitioner's claim, explaining, "we
15 have found at most a single insignificant error that was clearly harmless; hence,
16 Romero's trial was not fundamentally unfair." *Romero* 2013 WL164192 , at *15.

17 The only arguable error in petitioner's trial was the admission of De La Cruz's
18 cumulative statement recounting what Sonia told him about the phone call. Thus,
19 there is nothing to accumulate. *See generally United States v. Pineda-Doval*, 614
20 F.3d 1019, 1036 (9th Cir. 2010) (identifying three errors, but concluding that "[t]here
21 was no prejudice, cumulative or otherwise"); *Davis v. Woodford*, 384 F.3d 628, 654
22 (9th Cir. 2004) (rejecting a claim of cumulative error based upon alleged ineffective
23 assistance of counsel where the petitioner had "not demonstrated prejudice as to the
24 individual claims, and the nature of the claims does not support a conclusion of
25 cumulative prejudice").

26 **K. Request for Evidentiary Hearing.**

27 Petitioner has requested an evidentiary hearing. With regard to all of
28 petitioner's claims except for Grounds Seven and Eight, this Court's review "is

1 limited to the record that was before the state court that adjudicated the claim on the
2 merits.” *Pinholster*, 563 U.S. at 180. Federal courts may not consider new evidence
3 on claims adjudicated on the merits in state court unless a petitioner first satisfies his
4 burden under § 2254(d). *See Pinholster*, 563 U.S. at 181-185; *Holland v. Jackson*,
5 542 U.S. 649, 652-653 (2004). The Court’s determination that petitioner is not
6 entitled to federal habeas corpus relief under the § 2254(d) precludes an evidentiary
7 hearing. With regard to Ground Seven, an evidentiary hearing is not warranted
8 because petitioner has failed to identify specific non-speculative exculpatory
9 evidence that trial counsel could have discovered if he had conducted additional
10 investigation regarding the cell phone records. *See Jones v. Gomez*, 66 F.3d 199, 205
11 (9th Cir. 1995) (“conclusory suggestions” and “bald assertions” fall short of stating
12 an ineffective assistance of counsel claim and do not entitle the petitioner to an
13 evidentiary hearing). Finally, Ground Eight does not purport to rely upon evidence
14 outside of the reporter’s transcript. Accordingly, petitioner’s request for an
15 evidentiary hearing should be denied.

16 **RECOMMENDATION**

17 FOR THE FOREGOING REASONS, IT IS RECOMMENDED that the
18 District Court issue an Order: (1) accepting and adopting this Report and
19 Recommendation; (2) denying petitioner’s request for an evidentiary hearing; and
20 (3) directing that Judgment be entered denying the Petition and dismissing this action
21 with prejudice.

22
23 DATED: 8/14/2018

24 

25 _____
26 ALEXANDER F. MacKINNON
27 UNITED STATES MAGISTRATE JUDGE
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-5405-ODW (AFM) Date: April 11, 2018

Title FERNANDO ROMERO v. CHARLES W. CALLAHAN

Present: The Honorable: ALEXANDER F. MacKINNON, U.S. Magistrate Judge

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

Proceedings (In Chambers): ORDER DENYING MOTION FOR DISCOVERY, MOTION FOR EVIDENTIARY HEARING, AND MOTION FOR APPOINTMENT OF COUNSEL (ECF Nos. 125, 126)

On April 2, 2018, petitioner filed a motion seeking permission to conduct discovery and requesting an evidentiary hearing. (ECF No. 126.) Review of petitioner’s claims is governed by the AEDPA, which requires federal courts to evaluate the reasonableness of state court decisions on the basis of the record before the state court that adjudicated the petitioner’s claims on the merits. *See* 28 U.S.C. § 2254(d); *Cullen v. Pinholster*, 563 U.S. 170, 180-185 (2011). As the Supreme Court has made clear, this Court may not consider new evidence on claims adjudicated on the merits in state court unless the standard set forth in § 2254(d) is satisfied. *Pinholster*, 563 U.S. at 180-187.

Until such time as the Court determines that petitioner has made the requisite showing that the state court’s determination of one or more of his claims was an unreasonable application of clearly established law, petitioner’s requests for discovery and for an evidentiary hearing are premature. Accordingly, petitioner’s motion is **denied without prejudice** at this time.

Petitioner also has requested appointment of counsel. (ECF No. 125). Courts may appoint counsel for state habeas petitioners who are or become unable to afford

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-5405-ODW (AFM) Date: April 11, 2018

Title FERNANDO ROMERO v. CHARLES W. CALLAHAN

counsel when “the interests of justice so require.” 28 U.S.C. § 2254(h); 18 U.S.C. § 3006A(a)(2). Appointment of counsel may be required if the court determines that counsel is “necessary for effective utilization of discovery procedures” or that an evidentiary hearing is required. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

As discussed above, there is no basis to conclude that discovery or an evidentiary hearing is necessary at this time. Moreover, based on the Court’s review of the pleadings and record to date, it does not appear that the interests of justice require the appointment of counsel here. Accordingly, Petitioner’s Motion for Appointment of Counsel is **denied without prejudice**.

It is so ordered.

Initials of Preparer

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-05405 ODW (AFM) Date: February 28, 2018

Title Fernando Romero v. Neil McDowell

Present: The Honorable: ALEXANDER F. MacKINNON, U.S. Magistrate Judge

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

Proceedings (In Chambers): Order granting petitioner’s motion to supplement the First Amended Petition (ECF No. 102) and requiring supplemental briefing

Before the Court is petitioner’s Motion to Supplement the First Amended Petition. (ECF No. 102). In light of respondent’s statement of non-opposition to the motion (ECF No. 119), it is **GRANTED**. Accordingly, the First Amended Petition is deemed to include the three claims set forth in petitioner’s motion.

On February 21, 2017, the Court issued an order directing respondent to file an answer addressing the merits of the claims presented in the First Amended Petition. (ECF No. 98). Now that the stay previously entered in this matter has been lifted, respondent shall have forty-five (45) days from the date of this order within which to comply with Court’s February 21, 2017 order by filing an Answer addressing the merits of *all* of petitioner’s claims for relief, including the three newly-added claims.¹ At the same time, respondent shall lodge any relevant records.

Petitioner shall have thirty (30) days from the date of service of the Answer within which to file a Reply. The Reply shall be limited to facts or arguments responsive to those contained in the Answer and may not raise new grounds for relief. The Reply may not

¹ Respondent is not precluded from raising any procedural defenses to the three newly added claims. Nevertheless, for the reasons set forth in the February 21, 2017 order, briefing on the merits of petitioner’s claims is warranted in this case. See *Lambrix v. Singletary*, 520 US. 518, 524-25 (1997) (district court may address the merits without resolving procedural issues when doing so best serves the interest of judicial economy).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-05405 ODW (AFM) Date: February 28, 2018

Title Fernando Romero v. Neil McDowell

exceed 25 pages unless petitioner receives advance permission from the Court. All other aspects of the February 21, 2017 remain in effect.

IT IS SO ORDERED.

Initials of Preparer

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. **CV 14-05405 ODW (AFM)** Date: **April 19, 2017**

Title **Fernando Romero v. Neil McDowell**

Present: The Honorable: **ALEXANDER F. MacKINNON, U.S. Magistrate Judge**

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

Proceedings (In Chambers): Motion for Appointment of Counsel (ECF No. 104); Motion for Discovery (ECF No. 105); Request for Stay (ECF No. 106)

1. Petitioner’s motion for appointment of counsel (ECF No. 104) is **denied without prejudice**. As the Court stated in its order on February 9, 2016, it does not appear that the interests of justice require appointment of counsel at this time. Although petitioner requests the assistance of counsel to litigate his three new claims premised on the victim’s time of death, the Court has not yet decided whether amendment of the First Amended Petition with the three new claims is appropriate.

2. Petitioner’s motion for discovery (ECF No. 105) is **denied without prejudice**. Discovery at this time would be premature, particularly in light of the fact that the Court has not yet ruled on petitioner’s motion to amend the First Amended Petition.

3. Respondent’s request for a stay pending resolution of petitioner’s habeas petition in the Los Angeles County Superior Court (ECF No. 106) is **granted**. Respondent shall update the Court of the outcome of petitioner’s habeas proceeding in the Superior Court. Upon receipt of respondent’s update, the Court will issue further orders as appropriate.

Initials of Preparer

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FILED

NOV 30 2016

Jorge Navarrete Clerk

S237848

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re FERNANDO ROMERO on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKAUYE

Chief Justice

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-05405 ODW (AFM) Date: June 15, 2016

Title Fernando Romero v. W.L. Mongtomery, Warden

Present: The Honorable: ALEXANDER F. MacKINNON, U.S. Magistrate Judge

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

**Proceedings (In Chambers): Motion for Appointment of Counsel
(Filed June 8, 2016; ECF No. 81)**

The Court has reviewed petitioner’s third request for appointment of counsel and again denies the request.

Courts may appoint counsel for state habeas petitioners who are or become unable to afford counsel when “the interests of justice so require.” 28 U.S.C. § 2254(h); 18 U.S.C. § 3006A(a)(2). Appointment of counsel is required in at least two situations: (1) when the court determines that counsel is “necessary for effective utilization of discovery procedures” and (2) when the court determines that “an evidentiary hearing is required.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

At this time, there is no basis to conclude that discovery or an evidentiary hearing is necessary in this case. Moreover, based upon the Court’s review of the pleadings and the record to date, it does not appear that the interests of justice require the appointment of counsel here. Petitioner has not demonstrated to the Court that he needs counsel to proceed. **Accordingly, Petitioner’s Motion for Appointment of Counsel is DENIED WITHOUT PREJUDICE.**

The Clerk of the Court is directed to serve a copy of this Order upon petitioner at his current address of record.

Initials of Preparer

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-5405-ODW (AFM) Date: February 9, 2016

Title Fernando Romero v. Neil McDowell, Warden

Present: The Honorable: ALEXANDER F. MacKINNON, U.S. Magistrate Judge

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

Proceedings (In Chambers): Request to Review Discovery CD and for an Evidentiary Hearing (ECF No. 53); and Motion for Appointment of Counsel (ECF No. 54)

Petitioner has requested discovery that the Court review a “discovery CD” purporting to contain cell tower data and to conduct an evidentiary hearing with respect to his habeas claims. (ECF No. 53.) In *Cullen v. Pinholster*, 563 U.S. 170, 180-87 (2011), the Supreme Court held that the AEDPA requires federal courts to evaluate the reasonableness of state court decisions on the basis of the record before the state court that adjudicated the petitioner’s claims on the merits. Under *Pinholster*, federal courts may not consider new evidence on claims adjudicated on the merits in state court unless both the standard set forth in § 2254(d) and the standard set forth in § 2254(e)(2) are satisfied. As the Supreme Court explained in *Harrington v. Richter*, 562 U.S. 86, 102 (2011):

“Under § 2254(d), a habeas court must determine what arguments or theories supported or, as here [i.e., where there was no reasoned state-court decision], could have supported, the state court’s decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court.”

Furthermore, “[a]s a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” *Richter*, 131 S. Ct. at 786-87.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. **CV 14-5405-ODW (AFM)** Date: **February 9, 2016**

Title **Fernando Romero v. Neil McDowell, Warden**

Accordingly, until such time as the Court determines that petitioner has made the requisite showing that the California Supreme Court’s rejection of one or more of his claims “was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement” (or it is established that the discovery CD was in the record before the state court that adjudicated petitioner’s claims on the merit), petitioner’s request for the Court to review the discovery CD and to conduct an evidentiary hearing is premature. Petitioner’s request (ECF No. 53) is **denied without prejudice** at this time.

Petitioner also has requested appointment of counsel. (ECF No. 54). Courts may appoint counsel for state habeas petitioners who are or become unable to afford counsel when “the interests of justice so require.” 28 U.S.C. § 2254(h); 18 U.S.C. § 3006A(a)(2). Appointment of counsel is required in at least two situations: (1) when the court determines that counsel is “necessary for effective utilization of discovery procedures” and (2) when the court determines that “an evidentiary hearing is required.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

As discussed above, there is no basis to conclude that discovery or an evidentiary hearing is necessary at this time. Moreover, based on the Court’s review of the pleadings and record to date, it does not appear that the interests of justice require the appointment of counsel here. Accordingly, Petitioner’s Motion for Appointment of Counsel (ECF No. 54) is **denied without prejudice**.

The Clerk of the Court is directed to serve a copy of this Order upon Petitioner at his current address of record.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 14-05405 ODW (AFM) Date: August 11, 2015

Title Fernando Romero v. W.L. Montgomery, et al.

Present: The Honorable: ALEXANDER F. MacKINNON, U.S. Magistrate Judge

Ilene Bernal
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Petitioner:
N/A

Attorneys Present for Respondent:
N/A

Proceedings (In Chambers):

The Court has received Petitioner’s two most recent Status Reports, filed July 27 and July 30, 2015. (Dkt. Nos. 43 and 44). The Court has also reviewed the prior Status Reports filed by Petitioner. In its February 20, 2015 Order at page 11, the Court stated: “If Petitioner wishes to proceed pursuant to a Kelly Stay, Petitioner must file a habeas petition in the California Supreme Court within 30 days of this Order containing Grounds One and part of Ground Two and must thereafter file a Status Report with this Court every 30 days advising the Court of the status of his habeas petition pending in the California Supreme Court.” Although Petitioner has filed several Status Reports, none of those reports (or the documents submitted with those reports) indicate that Petitioner has filed a habeas petition with the California Supreme Court as required by the February 20, 2015 Order. Thus, it appears Petitioner has not yet complied with the Court’s requirements for proceeding pursuant to a Kelly Stay. Petitioner is ordered to file another Status Report within 30 days of the date of this Order, regarding the status of any petitions he has pending before the California Court of Appeal or the California Supreme Court.

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Case No.

ORDER SUMMARILY DENYING

versus

OF

FERNANDO ROMERO

(CRC 4.551(g))

Petition for Writ of Habeas Corpus by PERMANO ROMERO, pro se ("Petitioner").

The Court has read and considered the Petition for Writ of Habeas Corpus filed by the Petitioner and Defendant on 3-5-15, and finds that the following apply:

[] The petition is incomplete in that it lacks some or all of the required information (i.e., when and where was Petitioner sentenced or otherwise detained; by whom and where the Petitioner is restrained; whether there was an appeal and the outcome of that appeal; whether prior habeas petitions have been filed and, if so, when, in which court, and the outcome of each). Penal Code §§1474, 1475 and 1477; California Rule of Court 4.551(a).

[] The Petitioner has failed to allege that he or she is actually or constructively in the custody of the State and being unlawfully imprisoned or restrained of his or her liberty, Penal Code §§1473, 1473.5 or other lawful ground to vacate the judgment of conviction. Penal Code §1473.6.

[] It appears from the allegations of the petition that the Petitioner is in the custody of the federal government or the authorities of another state and that this custody has not been requested or authorized by the State of California. Rather, Petitioner's custody is at most a collateral consequence of his or her California conviction. Under such circumstances, Petitioner is not in custody for California habeas corpus purposes. *People v. Villa* (2009) 45 Cal. 4th 1063, 1069-74; *In re Azurin* (2001) 87 Cal. App. 4th 20, 25-26.

[] The writ of habeas corpus is reserved for errors of a fundamental jurisdictional or constitutional type, rather than erroneous evidentiary or procedural rulings.. *In Re Harris* (1993) 5 Cal. 4th 813, 828. No ground alleged here is of a type cognizable on habeas corpus.

[] Assuming the facts alleged in the petition are true, petitioner fails to allege facts establishing a *prima facie* case for habeas relief. *People v. Duvall*, (1995) 9 Cal.4th 464, 474-75.

[] A habeas petitioner must allege with particularity the facts upon which relief is sought and include copies of reasonably available documents supporting the claim. Vague or conclusory allegations made without any explanation of the basis for the allegations do not warrant relief. *In re Martinez* (2009) 46 Cal. 4th 945, 955-56; *People v. Duvall*, (1995) 9 Cal.4th 464, 474; *People v. Karis* (1988) 46 Cal. 3rd 612, 656; *In re Swain*, (1949) 34 Cal. 2nd 300, 303-04.

[] Petitioner has failed to explain and justify the significant delay in seeking habeas relief. *In re Clark*, (1993) 5 Cal.4th 750, 765; *In re Swain* (1949) 34 Cal. 2nd 300, 302.

[] The petition raises issues could have been raised on appeal, but were not, and Petitioner has failed to allege facts establishing an exception to the rule barring habeas consideration of claims that could have been raised on appeal. *In re Reno* (2012) 55 Cal. 4th 428, 490-93; *In re Harris*, (1993) 5 Cal.4th 813, 825-26; *In re Dixon*, (1953) 41 Cal. 2nd 755, 759; *In re Smith* (1911) 161 Cal. 208.

[] The petition raises issues which were raised and rejected on appeal and Petitioner has failed to allege facts establishing an exception to the rule barring habeas consideration of claims that were been raised on appeal. *In re Reno* (2012) 55 Cal. 4th 428, 478-79; *In re Harris*, (1993) 5 Cal.4th 813, 825-26 (1993); *In re Waltreus*, (1965) 62 Cal. 2nd 218, 225.

[] The petition presents claims raised and rejected in a prior habeas petition and Petitioner has not alleged facts establishing an exception to the rule barring reconsideration of claims previously rejected. Such successive claims constitute an abuse of the writ of habeas corpus. *In re Reno* (2012) 55 Cal. 4th 428, 455; *In re Martinez* (2009) 46 cal. 4th 945, 956; *In re Clark*, (1993) 5 Cal.4th 750, 767-68; *In re Miller* (1941) 17 Cal. 2nd 734, 735.

[] Petitioner filed a prior petition for habeas relief and failed to raise the claims raised in the current petition, and Petitioner has not alleged facts establishing an exception to the rule requiring all claims to be raised in one timely filed petition. *In re Reno* (2012) 55 Cal. 4th 428, 454; *In re Clark*, (1993) 5 Cal.4th 750, 767-68; *In re Horowitz* (1949) 33 Cal. 2nd 534, 546-47.

[] Habeas corpus is not available to challenge the use of evidence obtained by an illegal search or seizure in violation of the Fourth Amendment. *In re Sakarias* (2005) 35 Cal. 4th 140, 169-70; *In re Sterling*, (1965) 63 Cal. 2nd 486, 487-89.

//

[] As to the claim of ineffective assistance of trial counsel, Petitioner has failed to show that but for counsel's allegedly deficient performance, there is a reasonable probability that a more favorable outcome would have resulted. It is not enough to speculate about possible prejudice to be accorded relief. Petitioner has failed to show that the prejudicial effect of counsel's errors was a "demonstrable reality." *In re Cox* (2003) 30 Cal. 4th 974, 1016; *In re Clark* (1993) 5 Cal. 4th 750, 766; *Strickland v. Washington* (1984) 466 U. S. 668, 697.

[] As to the claim of ineffective assistance of appellate counsel, during Petitioner's first appeal of right, Petitioner has failed to show that appellate counsel's exercise of professional judgment was deficient or that, but for counsel's errors, the outcome of the appeal would have been different. Appellate counsel is not required to raise every non-frivolous issue and Petitioner alleges no more than a failure to raise issues. *Smith v. Robbins* (2000) 528 U. S. 259, 288; *Jones v Barnes* (1983) 463 U. S. 745, 750-52.

[] It appears that administrative remedies are available to petitioner. The petition does not contain factual allegations establishing that petitioner has exhausted available administrative remedies, or that exhaustion is excused. *In re Dexter*, (1979) 25 Cal. 3rd 921, 925;

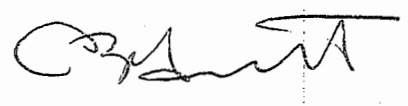
[] Petitioner's conviction arose from a plea of guilty or no-contest, and the claims Petitioner now raises in this petition only go to Petitioner's guilt or innocence or are challenges to an agreed-upon disposition. As such, they have been waived by virtue of his plea and there is no basis to excuse this waiver. *See People v. Maultsby* (2012) 53 Cal. 4th 296, 301-04; *People v. Hester* (2000) 22 Cal. 4th 290, 295. Petitioner has received the benefit of his or her bargain and may not thereafter trifle with the courts by attempting better his or her bargain. *People v. Hester, supra*, at 295.

[] Petitioner is not now in actual or constructive State custody, and the Petitioner has not alleged a basis to excuse the requirement of State custody. The petition is therefore moot. *In re Azurin* (2001) 87 Cal. App. 4th 20, 25; *In re Wesley W.* (1981) 125 Cal. App. 3rd 240, 246; *In re King* (1970) 3 Cal. 3rd 226, 229 n.2.

For all of the foregoing indicated reasons, the petition is DENIED.

The Clerk is ordered to serve a copy of this memorandum upon the petitioner and upon the District Attorney (Habeas Corpus Litigation Team), 320 West Temple Street, Room 540, Los Angeles, California 90012.

Dated: 4-30-15


ALAN B. HONEYCUTT
 Judge of the Superior Court

1 filed a "Motion for a Rhines Stay; Memorandum of Points and
 2 Authorities" on July 11, 2014. In accordance with the Court's Order
 3 requiring Respondent to file a Response, on December 8, 2014,
 4 Respondent filed a "Motion to Dismiss Petition for Writ of Habeas
 5 Corpus; Memorandum of Points and Authorities" ("MTD") contending that
 6 the Petition contains unexhausted claims and a "Notice of Lodging of
 7 Documents." Respondent also filed an "Opposition to Motion for Rhines
 8 Stay; Memorandum of Points and Authorities."

9 On February 4, 2015, Petitioner filed a document entitled
 10 "Objection to Attorney General's Motion to Dismiss Petition for Habeas
 11 Corpus" ("Opposition").

12 BACKGROUND

14 On February 17, 2011, a Los Angeles County Superior Court jury
 15 found Petitioner guilty of first degree murder in violation of
 16 California Penal Code ("PC") § 187(a) and conspiracy to commit murder
 17 in violation of PC § 182(a)(1), with an enhancement for a principal
 18 being armed with a firearm in violation of PC § 12022(a)(1). (See
 19 Petition at 1.) The trial court sentenced Petitioner to 26 years to
 20 life in state prison. (Lodged Document ["LD"] No. 2 at 2.)

21 Petitioner filed an appeal in the California Court of Appeal.
 22 (Lodged Document No. 1.) On January 15, 2013, the California Court of
 23 Appeal affirmed the judgment of conviction (LD No. 2.)

24 Petitioner filed a Petition for Review in the California Supreme
 25 Court. (LD No. 3.) On April 17, 2013, the California Supreme Court

27 ¹(...continued)
 28 that a majority of our sister circuits have determined that the rule
 applies to habeas petitions filed under AEDPA."

1 summarily denied review. (LD No. 4.)

2
3 **PETITIONER'S CONTENTIONS**

4 Petitioner contends the following, inter alia:

- 5 1. Trial counsel rendered ineffective assistance. (Petition at
6 4, 11-15).²
- 7 2. Petitioner is factually innocent and there is insufficient
8 evidence to support his convictions. (Petition at 5, 16-20).
- 9 3. The prosecutor committed misconduct. (Petition at 6, 21-23.)

10
11 **APPLICABLE LAW**

12 **A. Exhaustion of State Remedies Law.**

13 Federal habeas petitioners challenging the legality of custody
14 pursuant to a state court judgment must first exhaust any remedies
15 available in the state courts, unless circumstances exist which make
16 such remedies ineffective. (28 U.S.C. §2254(b)(1)) This exhaustion
17 requirement is not met if a petitioner has the right, under state law,
18 to raise the claims presented in any available state procedure. (28
19 U.S.C. §2254(c)) A state, through counsel, may waive the exhaustion
20 requirement, but must do so expressly. (28 U.S.C. §2254(b)(3))

21 The exhaustion requirement is designed to protect the role of the
22 state courts in the enforcement of federal law and to prevent
23 disruption of state judicial proceedings. Rose v. Lundy, 455 U.S.
24 509, 518 (1982). A petitioner has exhausted state remedies if he has
25 fairly presented each and every one of his federal claims to the
26 highest state court with the jurisdiction to consider them. Duncan v.

27 _____
28 ² For ease of reference, the Court refers to the ECF-generated
page numbers when referring to the Petition.

1 Henry, 513 U.S. 364, 365 (1995) (per curiam), citing Picard v. Connor,
2 404 U.S. 270, 275 (1971); Harmon v. Ryan, 959 F.2d 1457, 1460 (9th
3 Cir. 1992). A claim has been fairly presented if the petitioner has
4 described both the operative facts and legal theory upon which the
5 claim is based. Davis v. Silva, 511 F.3d 1005, 1009-10 (9th Cir.
6 2008); Gray v. Netherland, 518 U.S. 152, 162-63 (1996). The
7 petitioner must have alerted the state court that a claim is asserted
8 under the United States Constitution. Duncan, 513 U.S. at 365.
9 Further, "a state prisoner does not 'fairly present' a claim to a
10 state court if that court must read beyond a petition or a brief (or
11 a similar document) that does not alert it to the presence of a
12 federal claim in order to find material, such as a lower court opinion
13 in the case, that does so." Baldwin v. Reese, 541 U.S. 27, 32 (2004).

14 Unless the state expressly waives the exhaustion requirement, a
15 federal court cannot grant relief requested in a state prisoner's
16 habeas petition if the prisoner has not exhausted state remedies with
17 respect to each and every claim contained in the petition. 28 U.S.C.
18 §2254(b)(1); Reutter v. Crandel, 109 F.3d 575, 578 (9th Cir.), cert.
19 denied, 118 S. Ct. 142 (1997) (even petitions containing both
20 exhausted and unexhausted claims are subject to dismissal).

21 Petitions that mix exhausted and unexhausted claims ordinarily
22 should be dismissed without prejudice. See Rose v. Lundy, 455 U.S.
23 509, 522 (1982); Guizar v. Estelle, 843 F.3d 371, 372 (9th Cir. 1988).
24 However, a Court may not deny a mixed petition without first affording
25 the petitioner an opportunity to amend the petition to delete the
26 unexhausted claims. Butler v. Long, 752 F.3d 1177(9th Cir. 2014);
27 James v. Giles, 221 F.3d 1074, 1077-78 (9th Cir. 2000); see also
28 Henderson v. Johnson, 710 F.3d 872, 873 (9th Cir. 2013); Jefferson v.

1 Budge, 419 F.3d 1013 (9th Cir. 2005).

3 **MOTION TO DISMISS**

4 Respondent contends that the Petition should be dismissed as it
 5 contains unexhausted claims. Specifically, Respondent contends that
 6 Ground One and part of Ground Two are unexhausted. In Ground One,
 7 Petitioner contends that trial counsel rendered ineffective
 8 assistance. (See Petition at 4, 11-15.) In Ground Two, Petitioner
 9 contends he is factually innocent and there is insufficient evidence
 10 to support his conviction. (Petition at 5, 16-20.)

11 Petitioner concedes that Ground One and the factual innocence
 12 claim in Ground Two are not fully exhausted. Petitioner in his Motion
 13 for a Rhines Stay alleges “good cause” exists for his failure to
 14 exhaust all of his claims; that his claims are potentially meritorious
 15 and he has been diligent. With respect to Ground One, Petitioner
 16 alleges his trial counsel failed to conduct an adequate investigation
 17 and stipulated to the cell phone records admissibility and accuracy,
 18 rather than challenge the cell phone records. (Motion for Stay at 3-
 19 4.) Petitioner contends it was “nearly impossible” to further
 20 investigate the cell phone record and tower evidence by the one-year
 21 statute of limitations deadline set forth in the Antiterrorism and
 22 Effective Death Penalty Act of 1996 (“AEDPA”), section 2244(d)(1).
 23 (Id. at 6.) With respect to his factual innocence claim in Ground Two,
 24 Petitioner contends in September 2012 that co-defendant De la Cruz
 25 informed Petitioner that the victim’s son, John Bourdeau, had gone to
 26 Bourdeau’s grandmother’s house after the murder with a gun and asked
 27 De la Cruz in the presence of his grandmother and De la Cruz’s aunt if
 28 they could take the weapon and hide it. (Id. at 6-7.)

DISCUSSION

In Rhines v. Weber, 544 U.S. 269, 275-276 (2005), the United States Supreme Court held that a federal district court may stay a mixed habeas petition to allow a petitioner to present unexhausted claims to the state court. A District Court should stay, rather than dismiss, a mixed habeas petition if the Petitioner has good cause for his failure to exhaust, his unexhausted claims are meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics. Id. at 278.

In Rhines, the Supreme Court noted that because of the total exhaustion requirement in Rose v. Lundy, 455 U.S. 509, 518-19 (1982) and AEDPA's one-year statute of limitations, petitioners with mixed petitions "run the risk of forever losing their opportunity for any federal review of their unexhausted claims." Rhines, 544 U.S. at 275. This risk arises because a petitioner could be faced with a choice of either striking his unexhausted claims and going forward with an exhausted petition or allowing the whole petition to be dismissed, without prejudice, as mixed. Under the first option, if Petitioner's original petition had already been decided on the merits, he could not include the newly exhausted claims in a subsequent petition, as the second petition would be subject to the strict limitations AEDPA places on successive petitions. See 28 U.S.C. §2244(b). The second option available under Rose is no more desirable for a petitioner given the fact that AEDPA's one-year statute of limitations will likely have run before a petitioner is able to fully exhaust state court remedies on the mixed petition and return to federal court. Rhines, 544 U.S. at 275.

District Courts in the Ninth Circuit have offered a range of

standards as to what constitutes good cause. In Jackson v. Roe, 425 F.3d 654, 661-62 (9th Cir. 2005), the Ninth Circuit held that the Rhines good cause standard did not require a petitioner to show that “extraordinary circumstances” prohibited him from exhausting his claims. However, the Ninth Circuit has recognized that a “stay and abeyance” should be available only in limited circumstances. Id. at 661. In Wooten v. Kirkland, 540 F.3d 1019 (9th Cir. 2008), the Ninth Circuit ruled that petitioner did not show good cause by arguing that he was under the impression that his counsel had raised all claims before the state court of appeal. Wooten, 540 F.3d at 1024. The Ninth Circuit explained that finding good cause in that argument would render stay and abey orders routine “and would run afoul of Rhines and its instruction that district courts should only stay mixed petitions in ‘limited circumstances.’” Wooten, 540 F.3d at 1024.

In light of the above circumstances, Rhines concluded that a District Court has discretion to stay a mixed petition to allow a petitioner time to return to state court to present unexhausted claims. In making this determination, however, the Court held that the stay and abeyance procedure must be applied consistently with AEDPA’s twin purposes: “reducing delays in the execution of state and federal criminal sentences” and encouraging “petitioners to seek relief from state courts in the first instance.” Rhines, 544 U.S. at 277. As a result, Rhines cautioned, a stay and abeyance should be available only in limited circumstances, and is appropriate only when the District Court determines that there was “good cause” for the failure to exhaust. Rhines, 544 U.S. at 277.

More recently, in Blake v. Baker, 745 F.3d 977, 983 (9th Cir. 2014), the Ninth Circuit held that “[ineffective assistance] by post-

1 conviction counsel can be good cause for a Rhines stay," finding that
2 such a conclusion was consistent with and supported by Martinez v.
3 Ryan, ___ U.S. ___, 132 S.Ct. 1309, 1315 (2012), in which the Supreme
4 Court held that ineffective assistance of post-conviction counsel at
5 the initial review of collateral proceedings may establish cause for
6 a prisoner's procedural default of a claim. The Court in Blake found
7 that the "good cause element is the equitable component of the Rhines
8 test," and that "good cause turns on whether the petitioner can set
9 forth a reasonable excuse, supported by sufficient evidence, to
10 justify [the failure to exhaust]." (Id.) The petitioner in Blake
11 argued that he failed to exhaust ineffective assistance of trial
12 counsel claim because state post-conviction counsel failed to discover
13 evidence that he suffered extreme abuse as a child, as well as organic
14 brain damage and psychological disorders. (Id. at 982.) Petitioner
15 supported his argument with evidence of his abusive upbringing and
16 history of mental illness. In light of this showing the Ninth Circuit
17 found that the District Court abused its discretion in denying the
18 stay and remanded the case. (Id. at 983-84.)

19 Here, Respondent contends that a Stay is unwarranted under Rhines
20 as Petitioner has not shown "good cause" for his failure to exhaust
21 his unexhausted claims for ineffective assistance of counsel and
22 factual innocence in the state courts before proceeding in the
23 District Court. In Petitioner's ineffective assistance of counsel
24 claim, he contends that counsel rendered ineffective assistance for
25 failing to investigate the prosecution's cell phone evidence.
26 Petitioner contends that the cell phone records contained an
27 inaccurate address for a cell phone tower and further investigation of
28 the cell phone records might have revealed other inaccuracies. (Motion

1 for Stay at 4-6.) However, Petitioner does not explain when he
2 discovered this claim or why he did not present it earlier in state
3 court. Respondent also contends that Petitioner has not shown that the
4 claim is potentially meritorious. Respondent contends that even
5 assuming arguendo that the address for one of the cell towers did not
6 exist, the prosecution presented cell phone evidence that Petitioner
7 made a call at the time of the murder that connected to a cell phone
8 tower, .3 miles from the victim's house. (See Motion at 4; LD 2 at 6.)
9 Respondent argues that Petitioner's ineffective assistance of counsel
10 claim regarding further investigation of the cell phone records is
11 entirely speculative.

12 Additionally, as to Petitioner's factual innocence claim,
13 Respondent argues that Petitioner fails to establish "good cause" for
14 not exhausting this claim earlier in state court, since Petitioner
15 admits he was aware of this information in September 2012. (See Motion
16 at 6.)

17 The Court concludes that Petitioner's asserted bases for his Stay
18 do not constitute "good cause," and a stay and abeyance under Rhines
19 is not warranted.

20 However, Petitioner may request a Stay pursuant to Kelly v.
21 Small, 315 F.3d 1063 (9th Cir. 2003). Under Kelly, a petitioner must
22 first amend his mixed petition to delete any unexhausted claims. The
23 Court will then stay and hold in abeyance the amended, and now fully
24 exhausted petition, while the petitioner exhausts the deleted claims
25 in state court. The petitioner may then later amend his stayed
26 petition to reattach the now fully exhausted claims to the original
27 petition. King, 564 F.3d 1133, 1135 (9th Cir. 2009). A petitioner
28 seeking to avail himself under the Kelly three-step procedure is not

1 required to show good cause under Rhines, but rather must show that
2 the amendment of any newly exhausted claims back into the petition
3 satisfies both Mayle v. Felix, 545 U.S. 644, 655 (2005) by sharing a
4 “common core of operative facts” and Duncan v. Walker, 533 U.S. 167
5 (2001), by complying with the statute of limitations.

6 Under Duncan v. Walker, 533 U.S. 167 (2001), the filing of a
7 petition for federal habeas corpus relief does not toll AEDPA’s
8 statute of limitations (unlike an application for state habeas relief,
9 which does). (Id. at 172.) Additionally, Mayle v. Felix, 545 U.S. 644
10 (2005) provides that a petitioner may amend a new claim into a pending
11 federal habeas petition after the expiration of the limitations period
12 only if the new claim shares a “common core of operative facts” with
13 the claims in the pending petition; a new claim does not “relate back”
14 to the filing of an exhausted petition simply because it arises from
15 “the same trial, conviction or sentence.” (Id. at 662-64.) Because
16 the Kelly procedure requires petitioners to dismiss their unexhausted
17 claims and then attempt to add them back into the federal petition
18 later, the Kelly procedure, unlike the Rhines procedure, does nothing
19 to protect a petitioner’s unexhausted claims from untimeliness in the
20 interim. Duncan and Mayle, taken together, make demonstrating
21 timeliness of claims amended into federal habeas petitions after
22 exhaustion often problematic. See King, 564 F.3d at 1141.

23 In King, the Ninth Circuit held that a Kelly Stay “is in part an
24 exercise of litigants’ usual prerogative, specifically recognized in
25 Rose, to amend complaints if they can do so to make them cognizable in
26 federal court.” King, 564 F.3d at 1141. The Ninth Circuit in King
27 affirmed the District Court’s denial of a Kelly Stay because the
28 claims that the petitioner sought later to amend would have been

1 untimely and did not relate back to his timely claims. Thus, while a
 2 Kelly Stay does not "require the imposition of a special standard such
 3 as 'good cause,'" King, 564 F.3d at 1141, a petitioner must at least
 4 demonstrate that the claims he seeks to exhaust and later add by
 5 amendment will not be time-barred in federal court. See Id. at 1142-
 6 43 (holding that a petitioner may invoke Kelly's three-step procedure
 7 subject only to the requirement that the amendment of any newly
 8 exhausted claims back into the petition must satisfy the relation back
 9 of Mayle v. Felix, 545 U.S. 644 (2005)).

11 ORDER

12 **IT IS HEREBY ORDERED** that (1) Respondent's Motion to Dismiss the
 13 Petition for Writ of Habeas Corpus is **GRANTED**. The Petition is
 14 dismissed with leave to amend; (2) Petitioner's request for a Stay
 15 under Rhines is **DENIED**; (3) Petitioner has the following options: (a)
 16 Petitioner is granted a Kelly Stay and may, within 30 days of the date
 17 of this Order, file a First Amended Petition with the Court containing
 18 only his exhausted claims in part of Ground Two and Ground Three. If
 19 Petitioner wishes to proceed pursuant to a Kelly Stay, Petitioner must
 20 file a habeas petition in the California Supreme Court within 30 days
 21 of this Order containing Grounds One and part of Ground Two and must
 22 thereafter file a Status Report with this Court every 30 days advising
 23 the Court of the status of his habeas petition pending in the
 24 California Supreme Court. After the California Supreme Court has
 25 issued its decision (assuming the California Supreme Court denies the
 26 Petition) Petitioner must file a Second Amended Petition in this Court
 27 containing his original exhausted claim as well as the newly exhausted
 28 claims within 30 days of the Supreme Court's decision. Petitioner is

1 forewarned that claims may be precluded as untimely if they do not
2 comport with the statute of limitations set forth in 28 U.S.C.
3 §2244(d). The Court is not making any determination at this time that
4 Petitioner can timely exhaust any claims prior to the expiration of
5 the statute of limitations; or (b) If Petitioner fails to file a First
6 Amended Petition containing only his exhausted claims, the Court will
7 issue a Report and Recommendation recommending dismissal of the
8 Petition as a "mixed" petition.

9
10 DATED: February 20, 2015

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-05405-ODW (VBK)	Date	July 21, 2014
Title	Fernando Romero v. W. L. Montgomery, et al.		

Present: The Honorable	Victor B. Kenton, United States Magistrate Judge

Roxanne Horan

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

Proceedings: (IN CHAMBERS)

The Court is in receipt of Petitioner's document entitled "Motion for Appointment of Counsel Pursuant to 28 U.S.C. Section 2254(b) and 18 U.S.C. § 3306A."

The Court **HEREBY DENIES** without prejudice Petitioner's motion for appointment of counsel. See Knaubert v. Goldsmith, 791 F.2d 722, 728-29 (9th Cir.), cert. denied 479 U.S. 867 (1986); McCleskey v. Zant, 499 U.S. 467, 495 (1991) (there is no constitutional right to appointment of counsel in a case consisting of a Petition for Writ of Habeas Corpus by a state or federal prisoner pursuant to 28 U.S.C. §2254); Duckett v. Godinez, 67 F.3d 734, 750 n.8 (9th Cir. 1995) (state prisoner did not have a constitutional right to counsel in a §2254 proceeding).

Initials of Preparer

RH

S229185

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re FERNANDO ROMERO on Habeas Corpus.

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)

SUPREME COURT
FILED

JAN 13 2016

Frank A. McGuire Clerk
Deputy

CANTIL-SAKAUYE

Chief Justice

Appellate Courts Case Information

Supreme Court

Change court ▼

Court data last updated: 09/04/2020 11:27 AM

Docket (Register of Actions)

PEOPLE v. ROMERO

Division SF

Case Number S208260

Date	Description	Notes
01/28/2013	Received premature petition for review	Defendant and Appellant: Eric Delacruz Attorney: John Steinberg
02/15/2013	Case start: Petition for review filed	Defendant and Appellant: Eric Delacruz Attorney: John Steinberg
02/22/2013	Record requested	
02/22/2013	2nd petition for review filed	Defendant and Appellant: Fernando Romero Attorney: Joseph C. Shipp
02/26/2013	Received Court of Appeal record	one doghouse (volume 1 of 4)
04/17/2013	Petitions for review denied	
04/22/2013	Returned record	1 doghouse

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2013 WL 164192

Not Officially Published

(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Second
District, Division 3, California.

The PEOPLE, Plaintiff and Respondent,

v.

[Fernando ROMERO](#) et al.,
Defendants and Appellants.

B232533

|

Filed January 15, 2013

APPEAL from judgments of the Superior Court of Los Angeles County, [James R. Brandlin](#), Judge. Affirmed. (Los Angeles County Super. Ct. No. YA074783)

Attorneys and Law Firms

[Joseph Shipp](#), under appointment by the Court of Appeal, for Defendant and Appellant Fernando Romero.

[John Steinberg](#), under appointment by the Court of Appeal, for Defendant and Appellant Eric De La Cruz.

[Kamala D. Harris](#), Attorney General, [Dane R. Gillette](#), Chief Assistant Attorney General, [Lance E. Winters](#), Assistant Attorney General, [Steven D. Matthews](#) and [Herbert S. Tetef](#), Deputy Attorneys General, for Plaintiff and Respondent.

Opinion

[KLEIN](#), P.J.

*1 Defendants and appellants, Fernando Romero and Eric De La Cruz, appeal their convictions for first degree murder and conspiracy to commit murder, with a principal-armed firearm enhancement ([Pen.Code, §§ 187, 182, 12022](#)).¹ They were each sentenced to prison terms of 26 years to life.

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

The judgments are affirmed.

BACKGROUND

Viewed in accordance with the usual rule of appellate review ([People v. Ochoa \(1993\) 6 Cal.4th 1199, 1206](#)), the evidence established the following.

1. Overview.

Sonia Rios Riskin married Earl Bourdeau, a U.S. Naval officer serving in the Philippines, and they moved to Lomita, California. When Bourdeau later said he wanted a divorce, Sonia asked him to go to the Philippines and talk to her family. Bourdeau went to the Philippines in 1987 and he was shot dead while visiting Sonia's family. Sonia subsequently married Larry Riskin, another U.S. Naval officer. When Riskin later said he wanted a divorce, Sonia asked him to go to the Philippines and talk to her family. Riskin did so in 2006 and he, too, was shot dead while visiting Sonia's family. Although Sonia was suspected of involvement in both murders, she was never charged. The media referred to her as The Black Widow of Lomita.

Sonia operated a beauty salon in Lomita. In April 2007, a man tried to force his way into her salon. Two days after that, the man returned and shot at her, but the gun apparently misfired. A week later Sonia's body was discovered by her son, John Bourdeau, inside in her Lomita home. She had been shot once in the head. Bourdeau was initially the prime suspect, but police then discovered that defendant De La Cruz, Sonia's great nephew, had been trying to extort money from Larry Riskin's family. Investigators eventually theorized De La Cruz and codefendant Romero, a fellow Navy sailor, had murdered Sonia in the hope of benefitting from her will.

The evidence against the defendants was entirely circumstantial, but very powerful. Highlights included the following. A bank account intended for the deposit of money extorted from Riskin's family belonged to De La Cruz's girlfriend, Maria Perez. The cell phone used to call Sonia just before the man tried to force his way into her salon belonged to Romero. De La Cruz and Romero were on leave from the aircraft carrier U.S.S. Ronald Reagan when Sonia was killed, and cell phone records showed they made numerous calls to each other the night of her death from locations very close to her house. Both defendants lied to investigators on numerous occasions and De La Cruz tried to provide a false alibi for Romero.

2. *The extortion attempt.*

Following Larry Riskin's death in April 2006, his sister, Sherry Jackson, tried to have his ashes returned to the United States for burial. She was told by the embassy that Riskin's ashes were in the possession of Sonia's family in the Philippines. Riskin's family tried, without success, to obtain his remains. Then, on January 6, 2007, Jackson received an e-mail purporting to be from Sonia's son, John Bourdeau, offering to help arrange a return of Riskin's remains. This initial offer of help evolved into a request for \$35,000 to be deposited into an account at Washington Mutual bank. There followed other e-mails, ranging from an offer to assist in the return of Riskin's Navy plaques and awards, to a proposal that Sonia's murder could be arranged and paid for on credit.² Jackson forwarded all these e-mails to the FBI.

² This last e-mail stated: "I have a friend in L.A. and he can find a way to kill Sonia Rios Riskin. All I need is your permission. You don't have to pay him right now. He will kill her first, and then you can pay him later."

*2 A few weeks before Sonia's death, Jackson received an e-mail from the same source saying Sonia had a nephew in the Navy and providing the nephew's e-mail address. Jackson was instructed to contact the nephew, but not to mention Bourdeau's name. It turned out this e-mail address was associated with De La Cruz's Navy e-mail account. After Sonia's murder, Jackson began receiving e-mails from De La Cruz himself. The first said, "Are you responsible for the death of Sonia? My name is Eric, and I need to know." Subsequent e-mails asserted that: John Bourdeau was responsible for Sonia's death; Bourdeau could not help with the return of Riskin's remains; the remains could be obtained if Riskin's family paid a judge in the Philippines \$180,000; and, the sum could be reduced to \$52,300 because De La Cruz had now raised most of the money himself. Jackson never sent him any money.

3. *Sonia's death.*

On April 19, 2007, Los Angeles County Deputy Sheriff Jeffrey Farmar responded to a 911 call from Sonia's beauty salon. Sonia reported that at 9:00 a.m. a clean-cut, light-skinned Hispanic man with a military-style haircut, who was five eight or nine, 140–150 pounds and 24–26 years old, had walked into the salon and pointed a gun at her face. She ducked under her desk, began screaming and heard a gunshot.

The man said, "I will get you," and ran out. Sonia's description turned out to generally match Romero's physical appearance.

Sonia told Farmar she recognized this man from an incident on the day before. (It was subsequently established the first incident had actually taken place two days earlier, on April 17.) Sonia received a phone call at the salon from a man who said his name was Frank and that he had been referred to her shop for a haircut. Sonia told him the shop was closed. A few minutes later a man arrived at the salon, pulled on the locked door and pounded on the glass. Sonia did not open the door and the man left. She thought it was suspicious this person wanted a haircut because his hair "looked freshly cut and he was clean-shaven," so she retrieved his number from her telephone's caller-I.D. function. She had written the number down on a piece of cardboard and she gave this to Farmar, who looked at Sonia's phone himself and confirmed the number she had given him. This phone number turned out to be Romero's cell phone number.

John Bourdeau testified he found Sonia in her home, lying face down on the living room floor in a pool of blood. Homicide Detective Michael Rodriguez examined the crime scene. There were no signs of burglary or forced entry. Sonia had been shot once in the back of the head. There was a nine-millimeter shell casing on the living room rug and a nine-millimeter bullet in a door. The house was neat and nothing seemed to have been disturbed. Sonia was wearing jewelry and there was \$1,700 in her purse. On a shelf in the bedroom was an empty gun case for a nine-millimeter semiautomatic Beretta. The parties stipulated Sonia had been killed on the evening of April 26.

Robert Stone was Sonia's estate planning attorney. She had initially employed him to collect on Riskin's life insurance policy. When Stone arrived to open his office the Monday morning following the Thursday night on which Sonia had been killed, De La Cruz and Maria Perez were waiting outside in the hall. De La Cruz asked if Sonia had a will and if she had left anything to him. When Stone said he did not think Sonia had a will, De La Cruz appeared to be "surprised" and "disappointed." De La Cruz said he believed John Bourdeau had something to do with Sonia's death.

4. *The investigation.*

The Los Angeles County Sheriff's Department and the United States Navy Criminal Investigation Service (NCIS) worked together to investigate Sonia's murder. Their investigation revealed the following.

The account used to send the e-mails to Jackson beginning on January 6, 2007, had been created by De La Cruz in the name of John Bourdeau. These e-mails were sent by someone onboard a Navy ship that was part of the Pacific Fleet, and the U.S.S. Ronald Reagan was operating in the Pacific Fleet at the time. On multiple occasions De La Cruz's Navy e-mail account was used to access the Yahoo e-mail account he had created in John Bourdeau's name.

*3 The bank account at Washington Mutual, into which Larry Riskin's sister was supposed to deposit \$35,000 to obtain his remains, belonged to Maria Perez, De La Cruz's then-girlfriend whom he subsequently married.

Cell phones cannot be used on Navy ships in the middle of the ocean because there is no reception, so the Navy provides onboard pay phones which can be used with calling cards. From April 13 until April 20, 2007, De La Cruz was at sea. On April 20, the U.S.S. Ronald Reagan returned to San Diego. On April 19, a military calling card was used on the U.S.S. Ronald Reagan to call Romero's cell phone. The same calling card was subsequently used to place calls from De La Cruz's cell phone once he was in port. There were many calls from De La Cruz's cell phone to Romero's cell phone on April 17 and 19.

On the morning of April 17, a call was made from Romero's cell phone to Sonia's salon in Lomita. This call was placed from a location less than one mile from the salon, and it was made shortly before the man showed up and banged on the window. On the morning of April 26, a call was made from Romero's cell phone in San Bernardino to De La Cruz's cell phone in San Diego County. On the night of April 26, multiple calls were made from Romero's cell phone to De La Cruz's cell phone. At 9:00 p.m., *both* defendants' cell phones were transmitting through the same cell phone tower, which was located just 0.3 miles from Sonia's Lomita house. At 9:21 p.m., there was a call from De La Cruz's cell phone in Harbor City to Romero's cell phone in Downey. The pattern of these phone calls showed Romero and De La Cruz heading toward Sonia's house before 9 p.m. on the night she was murdered, and then moving away from her house shortly thereafter.

5. Police interviews with De La Cruz and Romero.

When detectives first interviewed De La Cruz on May 2, 2007, John Bourdeau was the prime suspect in Sonia's death and they considered De La Cruz to be merely a family member who might provide helpful background information.

De La Cruz said Sonia owned a nine-millimeter Beretta. He said Sonia and John Bourdeau argued about Bourdeau using drugs and that Sonia did not trust him. De La Cruz had arrived in Los Angeles a few days before Sonia was killed, but he did not see her before she died. On the following Sunday, Bourdeau and De La Cruz went to her house. Bourdeau took off his shoes and borrowed De La Cruz's slippers to walk through the house. Later that day, Bourdeau asked De La Cruz if he knew the password to Sonia's computer, where her will was located, or the identity of her attorney. That night, Bourdeau called De La Cruz and said Sonia had given him her nine-millimeter gun. He asked De La Cruz to take the gun to San Diego, but he later called back and said he was going to keep it.

On July 3, 2007, detectives interviewed De La Cruz again. He was now a suspect, but they pretended otherwise. De La Cruz said he believed Bourdeau had sent the e-mails to Riskin's sister and that Bourdeau's friends had killed Sonia. De La Cruz said he had spoken to Sonia when he was in Hawaii about the salon shooting incident, but the detectives knew this was impossible.³

³ At trial, the parties stipulated the U.S.S. Ronald Reagan departed Hawaii on April 13 and arrived in San Diego on April 20. Hence, the two incidents at Sonia's salon happened after De La Cruz had already left Hawaii.

*4 De La Cruz was interviewed for a third time on May 14, 2008. Detectives showed him a photograph of Romero and said they believed this man had been involved in Sonia's death. De La Cruz looked shocked and became very nervous. He said Sonia had given him the phone number of the person who shot at her in the salon. De La Cruz said he called the number and discovered it belonged to Romero, a friend of his from the Navy. Romero told De La Cruz he had called the salon because he wanted a haircut and because he was looking for De La Cruz. De La Cruz told the detectives Romero could not have been the person who tried to shoot Sonia at the salon because Romero had been on a ship with him in Hawaii at the time. In fact, however, Romero was on shore leave at the time of the salon incidents and had flown from Hawaii to Los Angeles on April 10.

The detectives also interviewed Romero on May 14, 2008. They told him there had been a shooting in Lomita and that his phone number had been recorded by the caller-I.D. system

at the shooting location. Romero said he had never been to Lomita.

Luis Marquez was in the Navy with the defendants and was close friends with De La Cruz. While at sea with De La Cruz in early 2007, Marquez mentioned he hated his ex-wife and sometimes wished she would die. De La Cruz said he could arrange to have her killed, he knew someone who could kill her, and he would even loan Marquez the money to pay for it. Marquez declined the offer. When Marquez made similar remarks on another occasion, De La Cruz repeated the offer. Marquez did not believe De La Cruz was joking because he had a very serious look on his face.

On May 16, detectives interviewed Romero a second time. They told him phone records showed he had been in Lomita on April 17, 19 and 26. Romero denied it. Detectives showed him a police sketch based on his own driver's license photograph and falsely told him it had been prepared from Sonia's description of the suspect. Romero denied he was the person depicted in the sketch. In an interview with Naval investigators, Romero falsely said he had been at sea between April 13 and 20, 2007.

On February 3, 2009, De La Cruz was interviewed a final time. Detectives said they knew he had sent the e-mails to Riskin's sister and that one of the e-mails had referenced Perez's Washington Mutual account. De La Cruz denied sending the e-mails. He denied having killed Sonia, but he also said he could not tell detectives the truth because he was concerned about his family.

6. *Perez's statements and prior testimony.*

Detectives interviewed Perez on two occasions and she testified at the preliminary hearing. She did not testify at trial, but her preliminary hearing testimony was admitted into evidence.

Perez said that when Sonia died, De La Cruz and Perez were living in Carson with De La Cruz's grandmother, Celestina. De La Cruz and Sonia were very close; he saw her every weekend and "treated [her] like his real grandma." On the night she died, De La Cruz and Perez were staying at Sonia's second house in Apple Valley. They had arrived about 11:00 p.m. and they left early the next morning. They went to the salon and then to Sonia's house in Lomita, looking for her. There were police cars outside when they arrived at the house, and De La Cruz started crying before the police informed them Sonia had been shot in the head.

De La Cruz and Perez then drove to Celestina's house in Carson. During Perez's police interview, detectives asked her what De La Cruz had told Celestina happened at Sonia's house, and Perez responded: "Like he kill somebody." At the preliminary hearing, Perez denied she had meant De La Cruz was confessing to Sonia's murder; rather, De La Cruz was just informing Celestina that the police considered him a suspect in her death.

Regarding the Washington Mutual bank account referenced in the e-mails sent to Larry Riskin's family, Perez said someone at the salon must have gotten their hands on her account information and used it in the e-mails.

*5 The defendants did not put on any evidence.

CONTENTIONS

1. There was insufficient evidence to sustain Romero's convictions.
2. The trial court erred by admitting a portion of De La Cruz's police statement relating to Sonia's account of the salon incidents.
3. The trial court gave an erroneous accomplice liability instruction.
4. The prosecutor committed misconduct during closing argument.
5. The trial court gave an erroneous reasonable doubt instruction.
6. There was cumulative error.

DISCUSSION

1. *Sufficient evidence to sustain Romero's convictions.*

Romero contends there was insufficient evidence for the jury to have found him guilty in this case. This claim is meritless.

a. *Legal principles.*

“In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] ‘ “Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. ‘ “If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ [Citations.]” ’ [Citation.]” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

The reviewing court is to presume the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Ochoa*, *supra*, 6 Cal.4th at p. 1206.) Even if the reviewing court believes the circumstantial evidence might be reasonably reconciled with the defendant's innocence, this alone does not warrant interference with the jury's verdict. (*People v. Towler* (1982) 31 Cal.3d 105, 118.) As our Supreme Court said in *People v. Rodriguez*, *supra*, 20 Cal.4th 1, while reversing an insufficient evidence finding because the reviewing court had rejected contrary, but equally logical, inferences the jury might have drawn: “The [Court of Appeal] majority's reasoning ... amounted to nothing more than a different weighing of the evidence, one the jury might well have considered and rejected. The Attorney General's inferences from the evidence were *no more inherently speculative* than the majority's; consequently, the majority erred in substituting its own assessment of the evidence for that of the jury.” (*Id.* at p. 12, italics added.)

b. Discussion.

*6 Romero argues there was insufficient evidence he entered into an agreement with De La Cruz to murder Sonia. He argues the evidence showed no real motive for his involvement because “he had no relation to the family whatsoever and certainly gained nothing from the killing.” We disagree. There was compelling circumstantial evidence the defendants planned to murder Sonia in the hope De La Cruz would inherit from her estate, and Romero obviously expected to be compensated for his part in this plot.

The prosecution theory was that De La Cruz wanted Romero to kill Sonia while De La Cruz was at sea so he would have an alibi and could blame the murder on John Bourdeau. However, when the shooting at the salon went awry De La Cruz came home and, together with Romero, murdered Sonia at her house. During closing argument, the prosecutor said: “We said De La Cruz has Sonia's trust. Key to her house. Access to her firearms.... [¶] Crooks don't go into houses, not steal anything, find a gun that's in a closed location, then use that gun to kill somebody. [¶] But I'll tell you who does do that. Someone who is a part of the family, knows where that gun is, and then takes it with them. [¶] ... [¶] The reasonable inference, based on the phone conversations between Mr. De La Cruz and Mr. Romero while he is at sea, [is that] Fernando Romero was supposed to get that done while Eric was at sea. When it didn't happen, Eric had to come home and do the job himself.”

The circumstantial evidence of Romero's role in the conspiracy was overwhelming. He and De La Cruz were friends in the Navy and they served together on the U.S.S. Ronald Reagan. About a week before Sonia was murdered, a man entered her beauty salon, pointed a gun at her and apparently tried to shoot her. When he departed, the man uttered a death threat. The evidence showed this man was Romero. His cell phone number had been recorded on Sonia's caller-I.D. system and phone records showed his close proximity to her salon. De La Cruz made five phone calls to Romero that day from the U.S.S. Ronald Reagan. Telephone records demonstrated that, on the night Sonia was murdered, the defendants started out from different locations, traveled toward Sonia's house, came within at least 0.3 miles of it, and then traveled away from it in different directions. During the ensuing investigation, Romero lied to detectives about never having been to Lomita and he lied to Naval investigators about having been at sea during the salon incidents. De La

Cruz gave detectives a false alibi for Romero regarding the salon incidents.

Romero's reliance on *Juan H. v. Allen* (9th Cir.2005) 408 F.3d 1262, is misplaced. In that case, the minor's brother shot the victims and there was insufficient evidence the minor intended to facilitate the shootings or even knew his brother intended to carry them out. The Ninth Circuit reasoned "the circumstantial evidence presented does no more than establish that a rational trier of fact could conclude that Juan H. knew his brother was armed and ready to confront Magdelano and Ramirez if the family and home of Juan H. were again threatened. That Juan H. stood behind his older brother after the family home had been attacked, even if he knew his brother was armed, does not permit the rational inference that he knew his brother would, without provocation, assault or murder the victims." (*Id.* at p. 1278, *fn.* omitted.) As the Attorney General points out: "Unlike *Juan H.*, where the events unfolded quickly and the juvenile's brother suddenly shot the victim without provocation, the evidence in the instant case strongly suggested a preconceived plan by appellants to kill" Sonia, "including an attempt to frame a third party for [her] murder before she was killed, a prior unsuccessful attempt to kill [her], and an execution-style murder ... in her home."

*7 There was sufficient evidence to sustain Romero's convictions.

2. Trial court did not err by admitting evidence of De La Cruz's police statement.

Romero contends the trial court improperly allowed the jury to learn from De La Cruz's police statement that Sonia had given him Romero's phone number and said this was the person who tried to kill her. Romero argues this evidence was inadmissible hearsay and violated his confrontation clause rights. These claims are meritless.

a. Background.

Prior to trial, the prosecutor told the trial court: "[C]ounsel and I have ... gone through the issues in the case. I'm offering the same evidence that I did at [the] preliminary hearing. [¶] I'll be bringing in both defendants' statements. Counsel and I are in agreement that because both defendants deny any involvement, we don't have an *Aranda-Bruton*⁴ issue. So we

won't have a need for dual juries or for edits." Neither defense attorney disagreed with the prosecutor's representations.

⁴ *Bruton v. United States*(1968) 391 U.S. 123 [88 S.Ct. 1620]; *People v. Aranda* (1965) 63 Cal.2d 518.

During the opening statements, however, Romero's attorney objected that the prosecutor was referring to hearsay statements made by De La Cruz that incriminated Romero and implicated *Aranda-Bruton*. The prosecutor pointed out the issue had already been discussed, and argued there was no *Aranda-Bruton* problem because both defendants had denied culpability when they spoke to the police, and the statements were not being offered for their truth. The trial court overruled Romero's objection and said it would give a limiting instruction if appropriate.

When the prosecutor subsequently introduced evidence of De La Cruz's police statements, Romero objected to this portion: Detectives told De La Cruz there had been a break in the case and showed him a photograph of Romero, saying this person might have been involved in the salon shooting. De La Cruz responded by saying, "No. I know him," and "I work with the guy." De La Cruz said Sonia had given him the phone number of the person who tried to shoot her at the salon, that when De La Cruz called the number he discovered it was Romero, and that Romero said he had called the salon because he was trying to get a haircut and also because he was trying to get in touch with De La Cruz. The prosecutor argued this evidence was not being offered for its truth, but rather to show De La Cruz had been lying to detectives.⁵ The trial court ruled Romero's *Aranda-Bruton* objection was untimely, because it had not been made pretrial, and overruled his hearsay objection.

⁵ Because, if this story were true, it meant De La Cruz knew the gunman's identity a year before he said anything to the police.

The trial court subsequently gave the jury this limiting instruction: "During Mr. De La Cruz's interviews with investigators, he made certain assertions regarding statements the victim had allegedly made to him. [¶] Those statements attributed to the victim were not admitted to prove the content of what she allegedly said was true, but instead, were admitted for use in determining the credibility or lack of credibility of Mr. De La Cruz."

b. *Legal principles.*

*8 As our Supreme Court explained in *People v. Lewis* (2008) 43 Cal.4th 415: “A criminal defendant has a right, guaranteed by the confrontation clause of the Sixth Amendment to the United States Constitution, to confront adverse witnesses. The right to confrontation includes the right to cross-examination. [Citation.] A problem arises when a codefendant’s confession implicating the defendant is introduced into evidence at their joint trial. If the declarant codefendant invokes the Fifth Amendment right against self-incrimination and declines to testify, the implicated defendant is unable to cross-examine the declarant codefendant regarding the content of the confession.

“In *Bruton v. United States* (1968) 391 U.S. 123 [88 S.Ct. 1620], the United States Supreme Court held that the admission into evidence at a joint trial of a nontestifying codefendant’s confession implicating the defendant violates the defendant’s right to cross-examination guaranteed by the confrontation clause, even if the jury is instructed to disregard the confession in determining the guilt or innocence of the defendant. [Citation.] The high court reasoned that although juries ordinarily can and will follow a judge’s instructions to disregard inadmissible evidence, ‘there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.’ [Citation.] Such a context is presented when ‘the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial.’ [Citation.]

“Three years before *Bruton*, we had come to a similar conclusion on state law grounds [in *People v. Aranda* (1965) 63 Cal.2d 518], but we also concluded that the codefendant’s confession may be introduced at the joint trial if it can be edited to eliminate references to the defendant without prejudice to the confessing codefendant. [Citation.] If not, and the prosecution insists on introducing the confession, the trial court must sever the trials. [Citation.]

“The high court limited the scope of the *Bruton* rule in *Richardson v. Marsh* (1987) 481 U.S. 200 [95 L.Ed.2d 176, 107 S.Ct. 1702].... There, defendant Marsh was jointly tried with one Williams for murder. Williams’s confession was introduced into evidence, but it was edited to remove

any reference to Marsh. The high court held that admission of Williams’s confession with a limiting instruction did not violate Marsh’s confrontation rights. The court explained that *Bruton* recognized a narrow exception to the general rule that juries are presumed to follow limiting instructions, and this narrow exception should not apply to confessions that are not incriminating on their face, but become so only when linked with other evidence introduced at trial.” (*People v. Lewis, supra*, 43 Cal.4th at pp. 453–454.)

“The United States Supreme Court decisions on the *Bruton* rule, and most of the state decisions on the issue, concern extrajudicial confessions by a nontestifying codefendant. And both *Bruton* and *Aranda* use the term ‘confession’—i.e., a complete and express acknowledgment of intentional participation in a crime. However, both cases use the broad term ‘statement’ and the narrow term ‘confession’ interchangeably, and all statements inculcating the declarant codefendant and the other defendant appear to fall within the rationale of the rule. Accordingly, the California Supreme Court has found the rule applicable to *any statement* that incriminates a nondeclarant defendant as well as the declarant. [Citations.]” (5 Witkin & Epstein, *Cal.Criminal Law* (4th ed. 2012) Crim Trial, § 432, p. 691.)

c. *Discussion.*

*9 We conclude the trial court did not err by admitting De La Cruz’s statement that Sonia gave him Romero’s phone number and said this was the person who tried to shoot her. The statement did not violate *Aranda–Bruton* because it facially incriminated neither the declarant-codefendant, De La Cruz, nor the nondeclarant-codefendant, Romero, in either Sonia’s murder or the conspiracy to murder her. (See *Richardson v. Marsh, supra*, 481 U.S. at p. 211 [accomplice statement that incriminates defendant only when considered in conjunction with other evidence does not violate confrontation clause].) As the Attorney General argues: “This was not a situation where appellant De La Cruz confessed to the crime and in doing so implicated appellant Romero as his partner in the crime.... [A]ppellant De La Cruz’s statement was *not* a confession and he did *not* state that he committed criminal acts with appellant Romero.” At most, the statement facially incriminated Romero in the April 19 shooting at Sonia’s salon, an act which implicated Romero in the charged conspiracy and murder only when linked to *other evidence* produced at trial.

Moreover, far from this evidence being powerfully incriminating, De La Cruz tried to exculpate his codefendant by insisting to detectives that he could not believe Romero had tried to shoot Sonia.⁶ (See, e.g., *People v. Garcia* (2008) 168 Cal.App.4th 261, 282 [“The only extrajudicial statement at issue in this appeal that facially incriminates Ojito is Garcia’s statement ... that he and Ojito ‘went looking for the guy that [Garcia] had a fight with.’ However, we do not find this statement to be *powerfully incriminating* because it *facially* incriminates Ojito only by showing that he and Garcia were looking for Barajas; it is not *direct* evidence that Ojito intended Barajas would be assaulted or murdered when they found him.”].)

⁶ Romero acknowledges De La Cruz told the police “he did not think [Romero] was involved because they worked together and [Romero] was a family man; maybe his grandmother was mistaken saying this about [Romero] to him and police.”

As for Romero’s hearsay claim, Sonia’s statement to De La Cruz, and De La Cruz’s statement to the police, were not offered for the truth of the matters asserted; rather, they were offered to attack De La Cruz’s credibility because they showed he had been withholding information from the police. “Out-of-court statements that are not offered for their truth are not hearsay under California law [citations], nor do they run afoul of the confrontation clause.” (*People v. Ervine* (2009) 47 Cal.4th 745, 775–776.)

Even assuming arguendo this evidence was inadmissible, it was cumulative and therefore harmless beyond a reasonable doubt. (See *People v. Burney* (2009) 47 Cal.4th 203, 234 [“*Aranda/Bruton* error is not reversible per se, but rather is scrutinized under the harmless-beyond-a-reasonable-doubt standard.”].) The evidence was merely cumulative because Officer Farmer testified Sonia had told him the same thing, had given him a piece of cardboard with Romero’s phone number on it, and had allowed Farmer to see for himself Romero’s phone number on the caller-I.D. system. In these circumstances, we cannot believe the jury would have convicted Romero even if this portion of De La Cruz’s police statement had been withheld.⁷

⁷ See, e.g., *People v. Arceo* (2011) 195 Cal.App.4th 556, 579 [“In any case, even if Mejjorado’s statement had been inadmissible, Adan’s testimony on this point was cumulative and harmless beyond a reasonable doubt [citation omitted] ... [because]

the jury heard properly admitted testimony that Arceo himself told both David and Adan that he shot one of the victims, and that Sergio told both David and Adan the same story. Under these circumstances, it is inconceivable that the jury would not have convicted Arceo in the absence of Adan’s additional statement that Mejjorado told him the same thing.”].

In sum, we conclude there was no error in admitting this evidence, and even had there been error it would have been harmless.

3. The trial court did not err by giving *CALCRIM* No. 400 on accomplice liability.

*10 Both defendants contend the trial court erred by instructing the jury with *CALCRIM* No. 400 regarding accomplice liability. This claim is meritless.

a. Legal principles.

“A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.” (*People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) “When the crime at issue requires a specific intent, in order to be guilty as an aider and abettor the person ‘must share the specific intent of the [direct] perpetrator,’ that is to say, the person must ‘know[] the full extent of the [direct] perpetrator’s criminal purpose and [must] give[] aid or encouragement with the intent or purpose of facilitating the [direct] perpetrator’s commission of the crime.’ [Citation.]” (*People v. Lee* (2003) 31 Cal.4th 613, 624.)

“Because aiders and abettors may be criminally liable for acts not their own, cases have described their liability as ‘vicarious.’ [Citation.] This description is accurate as far as it goes. But, as we explain, the aider and abettor’s guilt for the intended crime is not entirely vicarious. Rather, that guilt is based on a combination of the direct perpetrator’s acts and the aider and abettor’s *own* acts and *own* mental state.” (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) “Aider and abettor liability is ... vicarious only in the sense that the aider and abettor is liable for another’s actions as well as that person’s own actions. When a person ‘chooses to become a part of the

criminal activity of another, she says in essence, “your acts are my acts....” [Citation.] But that person's *own* acts are also her acts for which she is also liable. Moreover, that person's mental state is her own; she is liable for her mens rea, not the other person's.” (*Id.* at p. 1118.)

In *People v. Nero* (2010) 181 Cal.App.4th 504, this court pointed out that in *McCoy* “our California Supreme Court held that an aider and abettor may be found guilty of *greater* homicide-related offenses than those the actual perpetrator committed. Extending that holding, we conclude that an aider and abettor may be found guilty of *lesser* homicide-related offenses than those the actual perpetrator committed.” (*Nero*, at p. 507.) We found error in *Nero* because the jury asked for clarification of this issue and the trial court failed to provide it: “[W]here, as here, the jury asks the specific question whether an aider and abettor may be guilty of a lesser offense, the proper answer is ‘yes,’ she can be. The trial court, however, by twice rereading CALJIC No. 3.00 [predecessor instruction to CALCRIM No. 400] in response to the jury's question, misinstructed the jury.” (*Id.* at p. 518.)

b. Discussion.

In the case at bar, the trial court instructed the jury with CALCRIM No. 400, as follows: “A person may be guilty of a crime in two ways. One, he or she may have directly committed the crime. I will call that person the perpetrator. [¶] Two, he or she may have aided and abetted a perpetrator who directly committed the crime. [¶] A person is equally guilty of the crime whether he or she committed it personally, or aided and abetted the perpetrator who committed it.”⁸

⁸ CALCRIM No. 400 has since been amended to eliminate the “equally guilty” language and the final sentence now reads: “A person is guilty of a crime whether he or she committed it personally or aided and abetted the perpetrator.”

*11 Defendants contend this instruction was erroneous because it failed to explain an aider and abettor could be guilty of either a greater or a lesser crime than the direct perpetrator. De La Cruz argues: “[T]he jury was mis-instructed that each principal, regardless of the extent or manner of participation is equally guilty. Applying this erroneous and misleading instruction, once the jury concluded that Romero was the killer and that he was guilty of first-degree murder, appellant was also guilty of first-degree murder, even though he may

have only aided and abetted a lesser crime.” Romero argues: “The prosecutor theorized appellant may have been the triggerman, but neither defendant was charged with personal use of a firearm; and in arguing aiding and abetting, the prosecutor stressed he did not have to prove which defendant ‘pulled the trigger’ or that both defendants were in the house.”

However, it is well-recognized that CALCRIM No. 400 is, in almost all situations, a correct instruction. “ ‘Generally, a person who is found to have aided another person to commit a crime is “equally guilty” of that crime.’ (*People v. Lopez* (2011) 198 Cal.App.4th 1106, 1118 ..., citing § 31 and 1 Witkin & Epstein, Cal.Criminal Law (3d ed. 2000) Introduction to Crimes, § 77, pp. 122–123.) Because it is generally true that an aider and abettor is as equally guilty as the direct perpetrator of a crime, the instruction that the court gave was generally accurate. [Citation.] Given that the instruction was generally accurate, but potentially incomplete in this case since there was evidence from which the jury could have concluded that Jeanne had a mental state different from John's with respect to Rintalan's killing, it was incumbent on Jeanne to request a modification if she thought that the general instruction would be misleading under the circumstances of this case. By failing to request a modified instruction, Jeanne has forfeited this claim. [Citation.]” (*People v. Loza* (2012) 207 Cal.App.4th 332, 349–350.) Hence, if Romero and De La Cruz believed the instruction was inappropriate to the facts of their case, they were obliged to ask for a modification.

In any event, it is clear that in the circumstances of this case CALCRIM No. 400 was not incomplete. As the Attorney General points out, the jury necessarily found the defendants possessed the requisite mental state for first degree murder under other instructions. For example, the jury was instructed the prosecution had to prove an aider and abettor *knowingly intended* to facilitate the perpetrator's crime,⁹ and that “the members of the alleged conspiracy had an agreement and intent to commit murder.” By convicting defendants of first degree murder and conspiracy under these instructions, the jury necessarily found they both acted with the requisite mental state for first degree murder. This is not at all a case like *People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1162, relied on by defendants, which found CALCRIM No. 400 inappropriate where the prosecution theorized the defendants had intended to kill victim No. 1, but not finding him at home killed victim No. 2 instead, and there were no eyewitnesses and thus no evidence showing which defendant had been the direct perpetrator. In the case at bar, the jury found the

defendants had conspired together to murder Sonia and then carried out their plan.

9 The jury was instructed: “Someone aids and abets a crime if he or she knows of the perpetrator’s unlawful purpose, and he or she specifically intends to and does in fact aid, facilitate, promote, encourage, or instigate the perpetrator’s commission of that crime.”

The trial court did not err by giving CALCRIM No. 400.

4. *There was no prosecutorial misconduct.*

Defendants contend the prosecutor committed misconduct during closing argument by commenting on their failure to present alibi witnesses. This claim is meritless.

a. *Legal principles.*

*12 “ ‘Under California law, a prosecutor commits reversible misconduct if he or she makes use of “deceptive or reprehensible methods” when attempting to persuade either the trial court or the jury, and it is reasonably probable that without such misconduct, an outcome more favorable to the defendant would have resulted. [Citation.] Under the federal Constitution, conduct by a prosecutor that does not result in the denial of the defendant’s specific constitutional rights—such as a comment upon the defendant’s invocation of the right to remain silent—but is otherwise worthy of condemnation, is not a constitutional violation unless the challenged action “ ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’ ” ’ [Citations.] In addition, “ ‘a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety. [Citation.]” ’ [Citation.] Objection may be excused if it would have been futile or an admonition would not have cured the harm.” (*People v. Dykes* (2009) 46 Cal.4th 731, 760.)

“When we review a claim of prosecutorial remarks constituting misconduct, we examine whether there is a reasonable likelihood that the jury would have understood the remark to cause the mischief complained of. [Citation.]” (*People v. Osband* (1996) 13 Cal.4th 622, 689.)

“*Griffin v. California* (1965) 380 U.S. 609 [85 S.Ct. 1229]] forbids argument that focuses the jury’s attention directly on an accused’s failure to testify and urges the jury to view that failure as evidence of guilt.” (*People v. Avena* (1996) 13 Cal.4th 394, 443.) “A prosecutor may not directly or indirectly comment on a defendant’s failure to testify in his or her own defense. [Citation.] But the prosecutor may comment on the state of the evidence, including the failure of the defense to introduce material evidence or to call witnesses.” (*People v. Mincey* (1992) 2 Cal.4th 408, 446; see, e.g., *People v. Medina* (1995) 11 Cal.4th 694, 756 [no *Griffin* violation where “prosecutor’s comments were directed to the general failure of the defense to provide an innocent explanation as to why defendant was armed ... at the time of the robberies”].)

b. *Discussion.*

Prior to closing argument, the trial court sustained a defense objection to the prosecutor’s intention to address Romero’s failure to call his wife as an alibi witness. The trial court reasoned this would constitute “a back-door comment on the assertion of a [marital] privilege.” The prosecutor agreed “not to mention Mrs. Romero directly.”

During closing argument, the prosecutor said: “[I]n the end, this is not complicated. In the end, you can walk back there, and you can say oh, my gosh, [De La Cruz] set this up in advance. Said he was going to kill her as John Bourdeau. [¶] Set the deal up with Romero. Romero is there on all the days that count. Sonia gives them the phone number. Gives them his physical description. [¶] They match up on the night of the murder. They lie afterwards. Neither one of them has an alibi. Neither one of them presented an alibi. [¶] By the way, if they had an alibi to present, don’t you think that there would have been people standing up here saying ‘they were with me that night?’ [¶] Maria Perez tried. You saw what happened. So in the end, don’t make this more complicated than what it is.”

Despite having made no objection to these remarks at trial, the defendants now contend the comments constituted prosecutorial misconduct. De La Cruz argues: “The trial court had expressly prohibited the prosecutor from arguing Romero’s failure to call his wife as an alibi witness, in view of her assertion of a marital privilege,” and “[w]hile the prosecutor did not mention Mrs. Romero, he did allude to Maria Perez’s preliminary hearing testimony when he argued that both defendants failed to call alibi witnesses,

leaving the *unmistakable implication* that the defendants failed to call their wives as alibi witnesses, and directly commenting on the failure of appellant's wife, Maria Perez, to testify at trial." (Italics added.) Romero argues the prosecutor's references "to both defendants' (plural) failure to call alibi witnesses, and the accompanying reference to coappellant's wife, *unmistakably signaled* appellant's failure to call his own wife as well; this is especially so given the prosecutor's pointed examination of the detective geared toward eliminating any alibi from appellant's wife." (Italics added.)

***13** We are not persuaded. As the Attorney General rightly asserts, although the trial court ordered the prosecutor not to comment on the failure to call Romero's wife to testify, the court "expressly permitted the prosecutor to comment on the defense's failure to produce an alibi." "The prosecutor's comment on appellants' failure to produce alibi witnesses did not violate the trial court's order because the prosecutor never referred to appellant Romero's wife or commented on her failure to testify."

We find rather far-fetched defendants' assertion the prosecutor's reference to De La Cruz's wife "unmistakably" signaled to the jury that the prosecutor was also really talking about Romero's wife. We do not think it reasonably likely (see *People v. Osband*, *supra*, 13 Cal.4th at p. 689) the jury would have gleaned that meaning when the prosecutor said: "By the way, if they had an alibi to present, don't you think that there would have been people standing up here saying 'they were with me that night?' [¶] Maria Perez tried. You saw what happened. So in the end, don't make this more complicated than what it is."

As for Romero's reference to Detective Rodriguez's testimony about questioning Romero's wife, the detective merely explained he had interviewed her pursuant to his usual investigative protocol of locking potential witnesses into their statements as early as possible. There was no defense objection to this testimony, and we do not think it reasonable to conclude the jury would have made a subliminal connection between Rodriguez's testimony and the prosecutor's closing argument.

As for De La Cruz's complaint about the prosecutor directly commenting on the failure of Perez to testify at trial, De La Cruz does not even try to suggest what would have made this improper. Contrary to De La Cruz's assertion, Perez did not assert the marital privilege at trial.¹⁰ Rather, it appears

that, given the weakness of her preliminary hearing testimony, De La Cruz decided it would be counter-productive to call her at trial. There was nothing wrong with the prosecutor commenting on this.

¹⁰ De La Cruz's opening brief states Perez "married appellant on December 18, 2010, and asserted her marital privilege at his trial." However, it was Romero's wife who was going to assert the privilege, not De La Cruz's wife. De La Cruz does subsequently note the marital privilege issue concerned Romero's wife.

In sum, the prosecutor here did no more than comment on defendants' failure to present logical witnesses and evidence. "The Fifth Amendment does not prohibit the prosecution from commenting on the state of the evidence presented at trial, or on the defense's failure to introduce material evidence or to call witnesses other than the defendant." (*People v. Taylor* (2010) 48 Cal.4th 574, 633.) "A prosecutor is permitted ... to comment on a defendant's failure to introduce material evidence or call logical witnesses. [Citation.] By directing the jury's attention to the fact defendant never presented evidence that he was somewhere else when the crime was committed, the prosecutor did no more than emphasize defendant's failure to present material evidence. He did not capitalize on the fact defendant failed to testify." (*People v. Brown* (2003) 31 Cal.4th 518, 554.)

Defendants' reliance on *People v. Gaines* (1997) 54 Cal.App.4th 821, is misplaced. Contrary to De La Cruz's assertions, *Gaines* did not hold it was improper to comment on a defendant's failure to call alibi witnesses if the defendant did not put on an alibi defense. Rather, in that case comments regarding the failure to produce a particular defense witness were held improper because the prosecutor referred to matters not in evidence, essentially informing the jury what the missing witness would have said on the basis of no evidence whatsoever. (See *id.* at p. 825.) Here, the prosecutor did not refer to any matter outside the evidence when he commented on the defendants' failure to produce alibi witnesses.

***14** There was no prosecutorial misconduct.

5. *The reasonable doubt instruction was not erroneous.*

Romero contends the trial court's reasonable doubt instruction was erroneous. This claim is meritless.

The trial court gave the jury [CALCRIM No. 220](#): “The fact that a criminal charge has been filed against the defendants is not evidence that the charge is true. [¶] You must not be biased against the defendants just because they have been arrested, charged with a crime, or brought to trial. [¶] A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. [¶] Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt. [¶] Proof 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. [¶] *In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial.* [¶] Unless the evidence proves the defendants guilty beyond a reasonable doubt, they are entitled to an acquittal, and you must find them not guilty.” (Italics added.)

Romero contends this instruction was erroneous for two reasons. First, by telling “jurors reasonable doubt must arise from evidence presented at trial,” the instruction ignored the fact reasonable doubt can sometimes “be based upon absence of evidence, not just the evidence presented in court.” Second, the “abiding conviction” language “convey[s] an insufficient standard of proof akin to clear and convincing evidence and going only to jurors’ duration of belief in guilt, not their degree of certainty.”

However, both of these claims have been repeatedly rejected by other courts, with whose reasoning we agree.

The admonition to consider all the evidence received at trial “informs the jury that the People may not meet their burden of proof based on evidence other than that offered at trial. The instruction does not tell the jury that it may not consider any perceived lack of evidence in determining whether there is a reasonable doubt as to a defendant’s guilt.” ([People v. Westbrook \(2007\) 151 Cal.App.4th 1500, 1509](#); accord [People v. Garelick \(2008\) 161 Cal.App.4th 1107, 1117](#); [People v. Campos \(2007\) 156 Cal.App.4th 1228, 1238](#); [People v. Flores \(2007\) 153 Cal.App.4th 1088, 1093](#); [People v. Hernandez Rios \(2007\) 151 Cal.App.4th 1154, 1157](#).)

Attacks on the “abiding conviction” language have also been repeatedly rejected. “[D]efendant’s assertions on the

deficiencies of the phrase ‘abiding conviction’ must give way to the great weight of legal authority approving that very language.” ([People v. Stone \(2008\) 160 Cal.App.4th 323, 334](#); accord, [People v. Zepeda \(2008\) 167 Cal.App.4th 25, 31, fn. 4](#) [“Our state Supreme Court and the Courts of Appeal in every appellate district consistently rejected defendant’s argument as it applied to the ‘abiding conviction’ phrase in [CALJIC No. 2.90](#). [Citations.] Those rulings apply with equal force to the language of [CALCRIM No. 220](#).”]; [People v. Carillo \(2008\) 163 Cal.App.4th 1028, 1039](#) [rejecting objection to “abiding conviction” language because “the propriety of the instruction ... has been upheld many times”].)

***15** Romero’s instructional claims are meritless.

6. There was no cumulative error.

Romero contends the cumulative prejudicial effect of the various trial errors he has raised on appeal requires the reversal of his convictions. However, we have found at most a single insignificant error that was clearly harmless; hence, Romero’s trial was not fundamentally unfair. (See [People v. Vieira \(2005\) 35 Cal.4th 264, 305](#) [“Because we identified only one harmless error ... the claim of cumulative error is without merit.”]; [People v. Jenkins \(2000\) 22 Cal.4th 900, 1056](#) [“Defendant contends the cumulative prejudicial effect of the various errors he has raised on appeal requires reversal of the guilt and penalty judgments. We have rejected his assignments of error, with limited exceptions in which we found the error to be nonprejudicial. Considered together, any errors were nonprejudicial. Contrary to defendants’ contention, his trial was not fundamentally unfair, even if we consider the cumulative impact of the few errors that occurred.”].)

DISPOSITION

The judgments are affirmed.

We concur:

KITCHING, J.

ALDRICH, J.

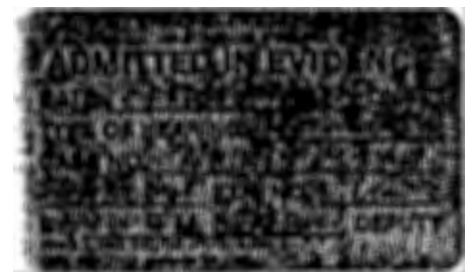
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000416
FILED
LOS ANGELES SUPERIOR COURT

FEB 2 2011

JOHN A. CLARKE, CLERK
BY M. DE LA CRUZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

ERIC DE LA CRUZ

FERNANDO ROMERO

Defendants

Case No.: YA074783

REVISED TRIAL STIPULATIONS

Date: February 2, 2011
Court: Dept. Southwest "L"

TO THE HONORABLE JAMES R. BRANDLIN, JUDGE OF THE ABOVE
ENTITLED COURT:

PLEASE TAKE NOTICE that in the above-entitled action, the People and
Defendants agree to the following stipulations for trial.

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CAUSE OF DEATH

- The decedent, Sonia Rios-Risken ("Victim"), was autopsied on April 30, 2007 at the Los Angeles County Medical Examiner's Office by Deputy Forensic Pathologist, Dr. R. Djabourian. Dr. Djabournian made the following observations and conclusions:
 - The cause of death was homicide from a single gunshot wound to the head.
 - This instantly fatal gunshot wound entered through the back of the head and exited through the right cheek.
 - No other injuries other than the gunshot wound were observed.
 - The exact time of death cannot be ascertained. However, there is nothing inconsistent with the victim having been killed the evening of 4-26-07.

PHONE RECORDS

- (310) 505-3163 ("De La Cruz's cell") was a Sprint/Nextel cellular phone number subscribed to Eric De La Cruz from 12-27-06 through 4-8-09.
- (619) 647-4974 ("De La Cruz's second cell") was a Sprint/Nextel cellular phone number subscribed to Eric De La Cruz.
- (310) 518-4611 ("De La Cruz's land line") was an AT&T residential hard line located at 215 E. 221st Street, Carson, CA subscribed to Celestina Santander.
- (951) 203-0159 ("Romero's cell") was a Verizon wireless cellular phone number subscribed to Fernando Romero from 7-12-06 through 5-31-07.
- (951) 533-5175 ("Romero's second cell") was a Verizon wireless cellular phone number subscribed to Fernando Romero beginning on 7-11-06.
- (909) 685-9981 ("Romero's third cell") was a T-Mobile cellular phone number subscribed to David Hernandez, Fernando Romero's father-in-law at the time of the murder.
- (909) 877-0675 ("Romero's Father-in-Law's land line") was a residential hard line subscribed to David Hernandez, Fernando Romero's father-in-law at the time of the murder.
- (909) 486-0805 ("Romero's Father-in-Law's cell phone") was a cell phone subscribed at the time of the murder to David Hernandez, Fernando Romero's father-in-law at the time of the murder.

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- (310) 518-4611 ("Grandma's Phone") was a residential hard line subscribed to Celestina Santander in Carson.
- (310) 940-9913 ("Joenel's cell") was a cellular phone subscribed to Joenel De La Cruz.
- (310) 620-9046 ("Maria Perez's cell") was a T-Mobile cellular phone number subscribed to Maria Perez.
- (310) 999-3514 ("Rios-Risken's cell") was a Sprint/Nextel cellular phone number subscribed to Sonia Rios-Risken.
- (310) 326-7574 ("Rios-Risken's land line salon phone") was an AT&T land line subscribed to Sonia Rios-Risken.
- **Calling Card number 9590274280**
 - This calling card was donated to the U.S. Military.
 - 4-19-07 3:05 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-23-07 8:07 pm PST (Calling card used to make a call from De La Cruz's cell phone).
- **Calling Card number 9590272883**
 - This calling card was donated to the U.S. Military
 - 4-18-07 10:15 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-18-07 10:16 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-18-07 10:17 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-18-07 10:52 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-18-07 10:53 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-19-07 3:11 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-19-07 3:12 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-19-07 3:14 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-19-07 5:04 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-19-07 9:41 pm CST (Calling card used on the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
 - 4-23-07 10:15 am PST (Calling card used to make a call from De La Cruz's cell phone to De La Cruz's second cell phone).
 - 4-23-07 through 4-29-07 (Calling card used to make nine calls from De La Cruz's cell phone to various numbers).

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- **Defendant Fernando Romero's Phone Records**

- 4-9-07 through 4-10-07 (Romero's cell phone was used in Hawaii).
- 4-10-07 11:02 pm PST (Romero's cell phone was used in Ontario, CA).
- 4-12-07 6:51 pm PST (28 second call from De La Cruz's cell phone to Romero's cell phone).
- 4-12-07 7:17 pm PST (6 minute 17 second call from Romero's cell phone to De La Cruz's cell phone).
- 4-17-07 7:46 am PST (54 second call from Romero's Father-in-Law's cell phone to Romero's cell phone)
- 4-17-07 8:43 am PST (Call from Romero's cell phone to Romero's cell phone)
- 4-17-07 8:44 am PST through 9:32 am PST (six calls placed or received from Romero's cell phone transmitting off a cell site at 24823 Western Ave., Lomita).
 - The cell site was .8 of a mile from Rios- Risken's salon.
- 4-17-07 9:12 am PST (32 second call from Romero's cell phone to Rios Risken's salon hard line with a cell site at 24823 Western Ave., Lomita).
 - The cell site was .8 of a mile from Rios- Risken's salon.
- 4-17-07 9:16 am PST (1:02 second call from Romero's Father-in-Law's cell phone to Romero's cell phone).
- 4-17-07 9:20 am PST (45 second call from Rios-Risen's cell phone to Romero's cell phone).
- 4-17-07 9:32 am (Call from Romero's cell phone to Romero's Father-in-Law's cell phone).
- 4-17-07 9:56 am PST (Romero's cell phone records show that the phone is being used as its operator is moving east while making cell phone calls ultimately ending up in San Bernardino County that afternoon).
- 4-17-07 1:57 pm PST (28 second call from Rios-Risen's cell phone to Romero's cell phone).
- 4-18-07 10:15 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-18-07 10:16 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-18-07 10:17 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-18-07 10:52 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-18-07 10:53 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-19-07 9:37 am PST (Call from Romero's cell phone to 411).
 - The cell site for Romero's cell phone was .8 of a mile from Rios-Risen's salon.
- 4-19-07 11:02 am PST (Call from Romero's Father-in-Law's cell phone to Romero's cell phone)

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- 4-19-07 12:37 pm PST (Call from Romero's cell phone to Romero's cell phone)
 - The cell site for Romero's cell phone was in Highland, CA.
- 4-19-07 12:37 pm PST (40 second call from Rios-Risken's cell phone to Romero's cell phone).
 - The cell site for Romero's cell phone was in Highland, CA.
- 4-19-07 3:05 pm CST (Calling card #9590274280 used from somewhere in the ocean to call Romero's cell phone).
- 4-19-07 3:11 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-19-07 3:12 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-19-07 3:14 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-19-07 5:04 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-19-07 9:41 pm CST (Calling card #9590272883 used from the USS Ronald Reagan somewhere in the ocean to make a call to Romero's cell phone).
- 4-19-07 9:28 pm PST (3:12 second call from Romero's Father-in-Law's cell phone to Romero's cell phone)
- 4-26-07 6:06 am PST (Call from Romero's cell phone to De La Cruz's cell phone).
 - The cell site for Romero's cell phone was in San Bernardino.
- 4-26-07 2:54 pm PST (Call from Romero's cell phone to De La Cruz's cell phone).
- 4-26-07 5:55 pm PST (Call from Romero's cell phone to De La Cruz's cell phone).
- 4-26-07 8:26 pm PST (Call from De La Cruz's cell phone to Romero's cell phone).
 - De La Cruz's cell site was at 22017 Figueroa St., Carson.
 - Romero's cell site was at 22017 Figueroa St., Carson.
- 4-26-07 8:32 pm PST (Outgoing call from Romero's cell phone with a cell site of 24823 Western Ave., Lomita).
 - The cell site was .3 miles from Rios-Risken's residence, the scene of the murder.
- 4-26-07 8:34 pm PST (Call from Romero's cell phone to Romero's Father-in-Law's cell phone).
- 4-26-07 8:34 pm PST (Call from Romero's cell phone to Romero's Father-in-Law's land line").
- 4-26-07 9:00 pm PST (Call from Romero's cell phone to De La Cruz's cell phone with a cell site of 24823 Western Ave., Lomita for both phones).
 - The cell site was .3 miles from Rios-Risken's residence, the scene of the murder.
- 4-26-07 9:01 pm PST (Call from Romero's cell phone to Romero's Father-

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in-Law's cell phone).

- 4-26-07 9:21 pm PST (Call to De La Cruz's cell phone from Romero's cell phone).
 - De La Cruz's cell site was at 24180 S. Vermont Ave., Harbor City.
 - Romero's cell site was in Downey.

• **Defendant Eric De La Cruz's Phone Records**

- 4-11-07 through 4-13-07 (De La Cruz's cell phone is being used in Hawaii).
 - 4-12-07 6:51 pm PST (28 second call to De La Cruz's cell phone in Hawaii from Romero's cell phone in California).
 - 4-12-07 7:17 pm PST (6 minute 17 second call from De La Cruz's cell phone in Hawaii to Romero's cell phone in California).
- 4-23-07 10:15 am PST (Calling card used to make a call from De La Cruz's cell phone to De La Cruz's second cell phone).
- 4-23-07 8:07 pm PST (Calling card used to make a call from De La Cruz's cell phone).
- 4-26-07 6:06 am PST (Call to De La Cruz's cell phone from Romero's cell phone).
 - De La Cruz's cell site was in Encinitas.
 - Romero's cell site was in San Bernardino.
- 4-26-07 7:20 am (Call to De La Cruz's cell phone from De La Cruz's second cell phone)
 - De La Cruz's cell site was in Carson.
- 4-26-07 2:54 pm PST (Call to De La Cruz's cell phone from Romero's cell phone).
- 4-26-07 4:30 pm PST (Call from De La Cruz's cell phone to De La Cruz's second cell phone).
 - De La Cruz's cell site was in Carson.
- 4-26-07 4:36 pm PST (Call to De La Cruz's cell phone from De La Cruz's second cell phone).
 - De La Cruz's cell site was in Carson.
- 4-26-07 5:55 pm PST (Call to De La Cruz's cell phone from Romero's cell phone).
 - De La Cruz's cell site was in Carson.
 - Romero's cell site was in Carson.
- 4-26-07 8:16 pm PST (Call to De La Cruz's cell phone from De La Cruz's second cell phone).
 - De La Cruz's cell site was in Carson.
- 4-26-07 8:26 pm PST (Call from De La Cruz's cell phone to Romero's cell phone).
 - De La Cruz's cell site was at 24180 S. Vermont Ave., Harbor City.
 - Romero's cell site was in Torrance.
- 4-26-07 8:28 pm PST (Call from De La Cruz's cell phone to De La Cruz's second cell phone).
 - De La Cruz's cell site was in Carson.
- 4-26-07 8:35 pm PST (Call from De La Cruz's cell phone to Romero's cell phone).
 - De La Cruz's cell site is 24823 Western Ave., Lomita.

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- The cell site was .3 miles from Rios-Risken's residence, the scene of the murder.
 - Romero's cell site was at 2545 327th St., Torrance.
- 4-26-07 8:52 pm PST (Call to De La Cruz's cell phone from De La Cruz's second cell phone).
 - De La Cruz's cell site is 24823 Western Ave., Lomita.
 - The cell site was .3 miles from Rios-Risken's residence, the scene of the murder.
- 4-26-07 9:00 pm PST (Call to De La Cruz's cell phone from Romero's cell phone).
 - The cell site for both phones, 24823 Western Ave., Lomita.
 - The cell site was .3 miles from Rios-Risken's residence, the scene of the murder.
- 4-26-07 9:01 pm PST (Call from De La Cruz's cell phone to De La Cruz's second cell phone).
 - De La Cruz's cell site was at 24823 Western Ave., Lomita.
 - The cell site was .3 miles from Rios-Risken's residence, the scene of the murder.
- 4-26-07 9:12 pm PST (Call from De La Cruz's cell phone to De La Cruz's second cell phone).
 - De La Cruz's cell site was at 22017 Figueroa St., Carson.
- 4-26-07 9:21 pm PST (Call to De La Cruz's cell phone from Romero's cell phone).
 - De La Cruz's cell site was at 24180 S. Vermont Ave., Harbor City.
 - Romero's cell site was in Downey.
- 4-26-07 9:22 pm PST (Call from De La Cruz's cell phone to Celestina Santander, De La Cruz's Grandmother).
- There are no calls from De La Cruz's cell phone to Rios-Risken's cell phone or land line salon phone during the month of April, 2007.
- **Decedent Sonia Rios-Risken's Phone Records**
 - There are no calls from De La Cruz's cell phone to Rios-Risken's cell phone or land line salon phone during the month of April, 2007.
 - 4-17-07 9:12 am PST (32 second call from Romero's cell phone to Rios Risken's salon hard line with a cell site of 24823 Western Ave., Lomita).
 - The cell site was .8 of a mile from Rios- Risken's salon.
 - 4-17-07 9:20 am PST (45 second call from Rios-Risken's cell phone to Romero's cell phone).
 - 4-17-07 1:57 pm PST (28 second call from Rios-Risken's cell phone to Romero's cell phone).
 - 4-19-07 12:37 pm PST (40 second call from Rios-Risken's cell phone to Romero's cell phone).
 - 4-26-07 8:03 pm PST (1 minute outgoing call Rios-Risken's cell phone).

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E-MAIL AND COMPUTER RECORDS

- Defendant De La Cruz was the account holder for an e-mail account, delacruz26@gmail.com
- On January 6, 2007, Defendant De La Cruz created an e-mail account, jhnbourdeau@yahoo.com in the name of "John Bourdeau," the son of Sonia Rios-Risken.
- The alternate e-mail address given for the jhnbourdeau@yahoo.com account at the time it was set up was ericson98@hotmail.com
- The ericson98@hotmail.com account was subscribed to an "Eric Cruz."
- Three emails were sent to the ericson98@hotmail.com account from Defendant De La Cruz's USS Ronald Reagan email account, dela cruzes@cvn76.navy.mil
- The originating city for the jhnbourdeau@yahoo.com account was Carson, CA the city of residence of Defendant De La Cruz.
- On January 6, 2007, the same day the jhnbourdeau@yahoo.com account was first set up, an e-mail from that account signed "John," was sent to Sherry Risken Jackson, the sister of victim Sonia Rios-Risken's second deceased husband, Law Risken. The e-mail inquired if Jackson wanted the return of her deceased brother's remains from the Philippines.
- On February 25, 2007, an e-mail was sent from the jhnbourdeau@yahoo.com account signed "John," to Sherry Risken Jackson requesting \$35,000 for the return of her deceased brother's remains from the Philippines.
 - The log-on activity for the jhnbourdeau@yahoo.com account demonstrates that the IP address for that e-mail was sent by someone onboard a Pacific Fleet U.S. Navy ship.
 - The USS Ronald Reagan was operating in the Pacific Fleet at this time and was routing internet and email traffic through this IP address.
- On February 25, 2007, a second e-mail was sent from the e-mail account jhnbourdeau@yahoo.com, signed "John," to Sherry Risken Jackson volunteering to arrange for the murder of victim Sonia Rios Risken.
- On March 19, 2007, an e-mail from the jhnbourdeau@yahoo.com account signed "John," was sent to Sherry Risken Jackson. The e-mail advised that "maids" in the Philippines could get her deceased brother's remains home in 2-3 weeks, but requested that \$35,000 be deposited in a Washington Mutual bank account number (185-021190-4) in the name of Maria Delores Perez, who subsequent investigation would reveal was Defendant De La Cruz's then girlfriend, now wife.

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- The log-on activity for the jhnbourdeau@yahoo.com account demonstrates that the IP address for that e-mail was sent by someone onboard a Pacific Fleet U.S. Navy ship.
 - The USS Ronald Reagan was operating in the Pacific Fleet at this time and was routing internet and email traffic through this IP address.
- On March 23, 2007, an e-mail from the jhnbourdeau@yahoo.com account signed "John," was sent to Sherry Risken Jackson. The e-mail stated, "I have a friend in L.A. and he can find a way to kill Sonia Rios Risken. All I need is your permission, you don't have to pay him right now. He will kill her first and then you can pay him later."
 - The log-on activity for the jhnbourdeau@yahoo.com account demonstrates that the IP address for that e-mail was sent by someone onboard a Pacific Fleet U.S. Navy ship.
 - The USS Ronald Reagan was operating in the Pacific Fleet at this time and was routing internet and email traffic through this IP address.
- On March 28, 2007, an e-mail from the jhnbourdeau@yahoo.com account signed "John," was sent to Sherry Risken Jackson.
 - The log-on activity for the jhnbourdeau@yahoo.com account demonstrates that the IP address for that e-mail was sent by someone onboard a Pacific Fleet U.S. Navy ship.
 - The USS Ronald Reagan was operating in the Pacific Fleet at this time and was routing internet and email traffic through this IP address.
- On April 7, 2007, an e-mail from the jhnbourdeau@yahoo.com account signed "John," was sent to Sherry Risken Jackson.
 - The log-on activity for the jhnbourdeau@yahoo.com account demonstrates that the IP address for that e-mail was sent by someone onboard a Pacific Fleet U.S. Navy ship.
 - The USS Ronald Reagan was operating in the Pacific Fleet at this time and was routing internet and email traffic through this IP address.

US NAVY RECORDS

- Defendant De La Cruz's US Navy e-mail account in 2007 was delacruz@cvn76.navy.mil
- On February 25, 2007, the USS Ronald Reagan was anchored in Japan. Defendant De La Cruz was stationed aboard the USS Ronald Reagan.
- On February 27, 2007, the USS Ronald Reagan was anchored in Japan. Defendant De La Cruz was stationed aboard ship and would have had liberty to go ashore to Japan.
- On March 19, 2007, the USS Ronald Reagan was traveling from Hong Kong to South Korea. Defendant De La Cruz was stationed aboard ship.

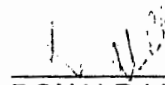
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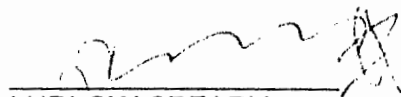
- March 22, 2007 through March 25, 2007, the USS Ronald Reagan was in port in Korea. Defendant De La Cruz was stationed aboard ship and would have had access to leave the ship during that time period.
- On March 28, 2007, the USS Ronald Reagan was traveling from Korea to Pearl Harbor, Hawaii. Defendant De La Cruz was stationed aboard ship.
- On April 7, 2007, the USS Ronald Reagan was traveling from Korea to Pearl Harbor, Hawaii. Defendant De La Cruz was stationed aboard ship.
- On April 10, 2007, Defendant Romero, a sailor serving in the United States Navy with Defendant De La Cruz on the USS Ronald Reagan, flew from Hawaii to Los Angeles by commercial airline.
- On April 13, 2007, Defendant De La Cruz left Pearl Harbor, Hawaii aboard the USS Ronald Reagan, arriving in port at Coronado, California on April 20, 2007.
- From April 13, 2007 through April 20, 2007, Defendant Romero was on authorized leave from the navy.

DATED: February 2, 2011

Respectfully Submitted,


JOHN LEWIN
Deputy District Attorney


DONALD LEVINSON
Attorney for Eric De La Cruz


LUDLOW CREARY
Attorney for Fernando Romero

CALCRIM 222. EVIDENCE

001133

Requested by Plaintiff	☐	Requested by Defendant	☐	Requested by	☐
Given as Requested	☐	Given as Modified	☐	Given on Court's Motion	☐
Refused	☐				
Withdrawn	☐				
Judge					

Print date: 6/2007

You must decide what the facts are in this case. You must use only the evidence that was presented in this courtroom ~~or during a jury view~~. "Evidence" is the sworn testimony of witnesses, the exhibits admitted into evidence, and anything else I told you to consider as evidence.

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. Their questions are not evidence. Only the witnesses' answers are evidence. The attorneys' questions are significant only if they helped you to understand the witnesses' answers. Do not assume that something is true just because one of the attorneys asked a question that suggested it was true.

During the trial, the attorneys may have objected to questions or moved to strike answers given by the witnesses. I ruled on the objections according to the law. If I sustained an objection, you must ignore the question. If the witness was not permitted to answer, do not guess what the answer might have been or why I ruled as I did. If I ordered testimony stricken from the record you must disregard it and must not consider that testimony for any purpose.

You must disregard anything you saw or heard when the court was not in session, even if it was done or said by one of the parties or witnesses.

During the trial, you were told that the People and the defense agreed, or stipulated, to certain facts. This means that they both accept those facts as true. Because there is no dispute about those facts you must also accept them as true.

The court reporter has made a record of everything that was said during the trial. If you decide that it is necessary, you may ask that the court reporter's notes be read to you. You must

)

)

accept the court reporter's notes as accurate.

001134

CALCRIM 401. AIDING AND ABETTING: INTENDED CRIMES

001154

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

To prove that the defendant is guilty of a crime based on aiding and abetting that crime, the People must prove that:

1. The perpetrator committed the crime;
2. The defendant knew that the perpetrator intended to commit the crime;
3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime;

AND

4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Someone aids and abets a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

If all of these requirements are proved, the defendant does not need to actually have been present when the crime was committed to be guilty as an aider and abettor.

If you conclude that defendant was present at the scene of the crime or failed to prevent the crime, you may consider that fact in determining whether the defendant was an aider and abettor. However, the fact that a person is present at the scene of a crime or fails to prevent the crime does not, by itself, make him or her an aider and abettor.

[REDACTED]

1 DISCUSSED THIS BEFORE -- THAT ON THE -- WE COME IN THE 7TH
2 AS KIND OF A LAST CHECK, AND THEN WE WOULD START -- WE SAID
3 THE 17TH, BUT WHEN I WENT AND I LOOKED SOMEONE INFORMED ME
4 IT'S A HOLIDAY.

5 THE COURT: THAT'S TRUE.

6 MR. LEWIN: WHICH I DIDN'T REALIZE.

7 SO WE COME BACK THE 18TH TO TIME-QUALIFY,
8 HAVE -- GET THE QUESTIONNAIRES DONE. I WOULD HAVE TO THEN
9 GET ALL THE QUESTIONNAIRES, TAKE THEM, GET THEM COPIED, AND
10 GO THROUGH THEM.

11 AND AS WE DISCUSSED BEFORE, YOUR HONOR, WE'D
12 STILL COME BACK JANUARY 24TH TO START JURY SELECTION AND
13 TRIAL ON A CASE THAT SHOULD BE MUCH FASTER THAN IT
14 OTHERWISE WOULD HAVE BEEN.

15 MR. LEVINSON: ABOUT THREE-AND-A-HALF WEEKS?

16 MR. LEWIN: I THINK LESS.

17 MR. LEVINSON: YOU THINK LESS THAN THREE WEEKS?

18 MR. LEWIN: YES, NOW.

19 MR. LEVINSON: YOUR HONOR, IF I MAY ADD,
20 MR. LEWIN AND MYSELF HAVE HAD NUMEROUS CONVERSATIONS, AND
21 THIS IS A VERY SERIOUS MURDER CASE. WE'RE STIPULATING TO
22 STUFF THAT DOESN'T HURT US -- OR STIPULATING TO THIS THAT
23 DOES POSSIBLY HURT US IF THE TESTIMONY IS CHANGED. WE'RE
24 TRYING TO MAKE THIS AS FAST AS POSSIBLE, STILL HOLDING THE
25 CASE AND DOING THE CASE THE BEST WAY WE CAN. AND I THINK
26 THAT ALL OF THE STIPULATION WILL EXPEDITE THE TRIAL.

27 MR. LEWIN: AND IF I COULD ADD, YOUR HONOR, IN
28 SPEAKING TO BOTH ATTORNEYS, WHAT MR. LEVINSON SAID, WHAT

1 DOESN'T HURT THEM, THE ISSUE ON THE CELL PHONE -- THE CELL
2 PHONE, COMPUTER RECORDS, ET CETERA, IT'S DAMAGING EVIDENCE,
3 BUT IT ISN'T EVIDENCE THAT COUNSEL BELIEVES THEY CAN
4 REFUTE.

5 SO RATHER THAN SPEND FOUR WEEKS OF WITNESS
6 AFTER WITNESS COMING IN, THAT WAS THE PURPOSE OF THE
7 STIPULATION.

8 IS THAT KIND OF COURSE OF EVENTS, YOUR
9 HONOR, IS THAT WHAT THE COURT IN HAD MIND?

10 THE COURT: THAT'S FINE.

11 MR. LEWIN: OKAY.

12 THE COURT: I DO HAVE A QUESTION FOR YOU,
13 HOWEVER.

14 MR. LEWIN: SURE.

15 THE COURT: I DID NOTIFY OUR JURY ASSEMBLY ROOM
16 THAT WE WOULD NEED A LARGE PANEL FOR THIS CASE. I ASKED
17 THEM TO ORDER 200 JURORS. BUT WHEN I SENT THE E-MAIL, I
18 INDICATED TO THEM THAT WE WOULD NEED THIS LARGE PANEL
19 BETWEEN THE WEEK OF JANUARY 10TH THROUGH THE 14TH.

20 I RECALL THAT WE DISCUSSED COMING IN ON THE
21 7TH, BUT I ASSUME THAT YOU'RE GOING TO TIME-QUALIFY THEM IN
22 THE WEEK OF THE 10TH THROUGH THE 14TH, NOT THE WEEK OF THE
23 18TH.

24 SO ASSUMING THAT I CAN STILL ORDER IN A
25 LARGE PANEL FOR THE WEEK OF THE 18TH THROUGH THE 21ST, IT'S
26 YOUR DESIRE TO TIME-QUALIFY ON JANUARY 18TH?

27 MR. LEWIN: YES, YOUR HONOR.

28 AND, IN FACT, YOUR HONOR, UNFORTUNATELY

1 THE RECORD?

2

3 (PROCEEDINGS WERE HELD AT
4 THE BENCH, NOT REPORTED.)

5

6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD IN OPEN COURT, IN
8 THE PRESENCE OF THE JURY:)

9

10 THE COURT: AT THIS TIME, ALL THE LADIES AND
11 GENTLEMEN OF THE JURY ARE PRESENT. EACH OF THE
12 DEFENDANTS ARE PRESENT IN THE DELACRUZ AND ROMERO TRIAL.

13 DEFENSE COUNSEL ARE PRESENT. THE
14 PROSECUTOR IS PRESENT.

15 THE INVESTIGATING OFFICERS ARE PRESENT.

16 MR. LEWIN, YOUR NEXT WITNESS, PLEASE.

17 MR. LEWIN: DEPUTY JEFF FARMAR. F-A-R-M-A-R.

18 MAY I GET HIM, PLEASE?

19 THE COURT: YES.

20

21 (PAUSE IN PROCEEDINGS.)

22

23 THE COURT: DEPUTY, STEP FORWARD, PLEASE.

24 FACE THE CLERK AND RAISE YOUR RIGHT HAND.

25 //

26 //

27 //

28 //

1' JEFFREY FARMAR,
2 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND
3 TESTIFIED AS FOLLOWS:

4 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
5 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
6 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
7 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

8 THE WITNESS: YES, I DO.

9 THE CLERK: PLEASE BE SEATED.

10 PLEASE STATE AND SPELL YOUR NAME SLOWLY FOR
11 THE RECORD.

12 THE WITNESS: JEFFREY FARMAR.

13 J-E-F-F-R-E-Y. F-A-R-M-A-R.

14 THE COURT: FEEL FREE TO ADJUST YOUR SEAT SO THAT
15 YOU'RE COMFORTABLE WITH THE MICROPHONE.

16 MR. LEWIN, YOUR DIRECT EXAMINATION, PLEASE.

17
18 DIRECT EXAMINATION

19 BY MR. LEWIN:

20 Q WHAT IS YOUR CURRENT OCCUPATION AND
21 ASSIGNMENT?

22 A DEPUTY SHERIFF AT LOMITA STATION.

23 I'M ASSIGNED TO PATROL.

24 Q AND IS THAT FOR THE LOS ANGELES COUNTY
25 SHERIFF'S DEPARTMENT?

26 A YES, IT IS.

27 Q DEPUTY, HOW LONG HAVE YOU BEEN EMPLOYED
28 WITH THE SHERIFF'S DEPARTMENT?

1 A APPROXIMATELY 11 YEARS, NOW.

2 Q AND DURING THAT TIME, HAVE YOU ALWAYS BEEN
3 IN PATROL?

4 A NO, I HAVEN'T.

5 Q DO YOU RECALL WHERE YOU WERE ASSIGNED BACK
6 ON APRIL 19, 2007?

7 A YES. I WAS ASSIGNED PATROL AT LOMITA
8 STATION.

9 Q WHEN YOU'RE WORKING PATROL, DOES THAT MEAN
10 YOU'RE OUT ON THE STREET IN BASICALLY A SQUAD CAR?

11 A YES, SIR. IN UNIFORM IN A MARKED BLACK AND
12 WHITE VEHICLE.

13 Q AND DEPUTY, DO YOU RECALL WHERE YOU WERE
14 WORKING ON THAT DATE?

15 A YES, I DO.

16 Q AND WITH RESPECT TO THAT DATE, DO YOU
17 RECALL BEING DISPATCHED TO 2144 WEST LOMITA?

18 A YES, I DO.

19 Q AND IS THAT IN THE COUNTY OF LOS ANGELES?

20 A YES, IT IS.

21 Q AND IS THAT THE CITY OF LOMITA, OR AN
22 UNINCORPORATED AREA?

23 A THAT'S LOCATED IN THE CITY OF LOMITA.

24 Q DEPUTY, WHAT WAS IT THAT BROUGHT YOU TO
25 THAT LOCATION?

26 A ON APRIL 19TH, AN EMERGENT CALL CAME OUT ON
27 THE RADIO AND OUR MOBILE DIGITAL TERMINALS IN THE
28 VEHICLE OF A 245, OR ASSAULT WITH A -- WELL, A DEADLY

1 WEAPON CALL CAME OUT.

2 Q DEPUTY, HAVE YOU HAD A CHANCE TO TAKE A
3 LISTEN TO WHAT I'LL REFER TO AS A 911 CALL IN THIS CASE?

4 A YES, I HAVE.

5 Q AND DO YOU RECOGNIZE -- THE 911 CALL THAT
6 YOU LISTENED TO, DO YOU RECOGNIZE THAT AS THE 911 CALL
7 THAT WAS THE SUBJECT OF DISPATCH?

8 A YES, I DO.

9 Q DID YOU RECOGNIZE THE FEMALE VOICE? I'M
10 GOING TO REFER TO HER AS THE VICTIM IN THAT 911 CALL?

11 A YES, I DO.

12 Q AND WAS THAT A PERSON THAT YOU WOULD LATER
13 CONTACT WHEN YOU WENT TO THAT LOCATION?

14 A YES, IT WAS.

15 MR. LEWIN: YOUR HONOR, AT THIS POINT, I'D LIKE TO
16 MARK AS PEOPLE'S --

17 THE COURT: 28.

18 MR. LEWIN: THANK YOU, YOUR HONOR.

19 THE COURT: WHAT IS IT YOU'RE MARKING?

20 MR. LEWIN: I HAVE A CD. THIS IS IN THE CD FORMAT
21 THAT CAN BE PLAYED ON A CD PLAYER. I'LL MARK THAT AS
22 28.

23 AND WITH THE COURT'S PERMISSION, I'M GOING
24 TO MARK THE TRANSCRIPT AS 29.

25 YOUR HONOR, THE COURT HAS -- I HAVE ENOUGH
26 COPIES FOR THE JURY, BUT THE COURT HAS A COPY I WILL BE
27 MARKING AS 29.

28 THE COURT: I'LL MARK IT AS -- ACTUALLY, WHY DON'T

1 WE MARK THE TRANSCRIPT AS 28-A, IF THERE'S NO OBJECTION.

2 MR. LEWIN: YOU WANT 28 AND 28-A?

3 OR 28-A AND 28-B?

4 THE COURT: 28 AND 28-A.

5

6 (PEOPLE'S EXHIBITS 28, CD,

7 AND 28-A, TRANSCRIPT, WERE MARKED

8 FOR IDENTIFICATION.)

9

10 MR. LEWIN: OKAY. YOUR HONOR MAY I HAND THESE OUT
11 TO THE JURORS?

12 THE COURT: YES. IS THERE ANY OBJECTION TO THE
13 COURT INSTRUCTING THE JURY ON THE LIMITED USE OF THE
14 TRANSCRIPT?

15 MR. CREARY: NO OBJECTION, YOUR HONOR.

16 MR. LEVINSON: NO OBJECTION.

17 THE COURT: LADIES AND GENTLEMEN, IF A FEW
18 MOMENTS, WE'RE GOING TO LISTEN TO A CD OF A 911 CALL.
19 AND I WILL INSTRUCT YOU THAT AS JURORS, YOU ARE THE
20 JUDGES OF THE FACTS. YOU HAVE TO DECIDE WHAT HAPPENED.

21 ONE OF THE ISSUES YOU HAVE TO DECIDE IS
22 WHAT WORDS WERE SPOKEN ON THIS PARTICULAR CD OF THE 911
23 CALL.

24 THE TRANSCRIPT IS PREPARED BY AN EMPLOYEE
25 WHO LISTENS TO THE CD, AND USES HIS OR HER BEST JUDGMENT
26 AS TO WHAT WORDS ARE SPOKEN. BUT THE TRANSCRIPT ITSELF
27 IS NOT EVIDENCE.

28 WHAT IS EVIDENCE IS THE CD AND THE

1 TESTIMONY OF THE WITNESSES REGARDING WHAT WORDS WERE
2 SPOKEN.

3 SO YOU'RE BEING PROVIDED A TRANSCRIPT SO
4 YOU DON'T HAVE TO WRITE OUT YOUR OWN TRANSCRIPT WORD FOR
5 WORD. FEEL FREE TO EDIT THIS TRANSCRIPT. THIS IS LIKE
6 YOUR ROUGH WORKING COPY.

7 SO IF YOU DISAGREE WITH SOME OF THE WORDS
8 IN THE TRANSCRIPT, FEEL FREE TO STRIKE THEM OUT.

9 IF YOU CAN HEAR WORDS THAT THE TRANSCRIBER
10 WASN'T ABLE TO UNDERSTAND OR HEAR, FEEL FREE TO INCLUDE
11 THEM.

12 THE EVIDENCE IS THE CD AND THE TESTIMONY OF
13 THE WITNESSES REGARDING WHAT WORDS ARE SPOKEN. THE
14 TRANSCRIPT IS NOT EVIDENCE.

15 ARE WE CLEAR?

16 EVERYONE NODDING THEIR HEADS AFFIRMATIVELY.

17 MR. CREARY: YOUR HONOR, I WOULD LIKE TO LODGE AN
18 OBJECTION TO THE EVIDENCE THAT'S ABOUT TO COME FORWARD
19 ON 352 GROUND AND RELEVANCE.

20 THE COURT: THE OBJECTION IS NOTED FOR THE RECORD.

21 IT'S OVERRULED. BASED UPON OUR PREVIOUS
22 DISCUSSION AT SIDE BAR AND THE COURT'S REVIEW OF THE CD
23 AS IT WAS PLAYED BEFORE, I'M SATISFIED THAT IT IS
24 RELEVANT, AND THAT THERE IS AN EXCEPTION UNDER 1200 OF
25 THE EVIDENCE CODE.

26 MR. LEVINSON: YOUR HONOR, I WOULD JUST FOR THE
27 RECORD -- I'M SORRY, I'D LIKE TO JOIN IN ANY OF
28 MR. CREARY'S OBJECTIONS AS TO FOUNDATIONAL ISSUES. I

1 JUST DON'T WANT TO BOTHER THE COURT WITH THEM.

2 THE COURT: IT'S NOT A BOTHER, MR. LEVINSON. FEEL
3 FREE TO OBJECT IF YOU FEEL IT'S APPROPRIATE TO DO SO.

4 MR. LEVINSON: THANK YOU.

5 THE COURT: I'LL NOTE YOU AS JOINING IN THE
6 OBJECTION.

7 MR. LEVINSON: THANK YOU.

8 MR. LEWIN: COUNSEL, MAY IT BE STIPULATED THAT THE
9 COURT REPORTER NEED NOT TAKE DOWN THE TRANSCRIPT OF THE
10 911 CALL AS IT'S BEING PLAYED? THE PEOPLE SO STIPULATE,
11 IF THE COURT WILL ACCEPT THAT, YOUR HONOR.

12 MR. LEVINSON: SO STIPULATED.

13 MR. CREARY: SO STIPULATED.

14 MR. LEVINSON: SO STIPULATED ON BEHALF OF
15 MR. DELACRUZ.

16 THE COURT: ACCEPTED.

17 MR. LEWIN: MAY I BEGIN, YOUR HONOR?

18 THE COURT: YOU MAY.

19 MR. LEWIN: I DON'T KNOW HOW LOUD IT'S GOING TO
20 BE. I'LL START IT. IF IT'S TOO LOUD OR NOT LOUD
21 ENOUGH, RAISE YOUR HAND AND I'LL STOP.

22

23 (THE CD WAS PLAYED.)

24

25 MR. LEWIN: MAY I CONTINUE, YOUR HONOR?

26 THE COURT: YOU MAY.

27 Q BY MR. LEWIN: DEPUTY, DO YOU RECALL, WAS
28 THE 911 CALL RECEIVED AT APPROXIMATELY 10:00 A.M. ON

1 THAT DATE?

2 A YES, IT WAS.

3 Q AND DO YOU RECALL HOW LONG IT WAS AFTER
4 THAT THAT YOU RESPONDED TO THE LOCATION?

5 A I RESPONDED IMMEDIATELY. I ARRIVED AT THE
6 LOCATION -- PROBABLY ONE OR TWO MINUTES AFTER THE
7 INITIAL CALL CAME OUT.

8 Q WHEN YOU GOT TO THE LOCATION -- I WANT TO
9 SHOW YOU A COUPLE OF PHOTOGRAPHS. A PHOTOGRAPH THAT I'D
10 LIKE MARKED AS PEOPLE'S 29.

11
12 (PEOPLE'S EXHIBIT 29,
13 PHOTOGRAPH, WAS MARKED FOR
14 IDENTIFICATION.)

15

16 Q BY MR. LEWIN: DEPUTY, I'M GOING TO HAVE
17 YOU LOOK UP ONTO THE ELMO. DEPUTY, DO YOU RECOGNIZE
18 THIS LOCATION?

19 A YES, I DO.

20 Q WHAT DO YOU RECOGNIZE THIS LOCATION TO BE?

21 A THIS IS 2144, SONIA'S ARTISTIC HAIR DESIGN.

22 Q WAS THAT THE LOCATION WHERE YOU RESPONDED?

23 A YES, IT WAS.

24 Q AND IS THAT A SHERIFF'S PATROL CAR THAT YOU
25 CAN SEE THE HOOD IN THE PHOTOGRAPH?

26 A YES.

27 Q SHOWING YOU WHAT I'D LIKE TO MARK AS
28 PEOPLE'S 30.

1 (PEOPLE'S EXHIBIT 30,
2 PHOTOGRAPH, WAS MARKED FOR
3 IDENTIFICATION.)
4

5 Q BY MR. LEWIN: DO YOU RECOGNIZE WHAT THIS
6 PHOTOGRAPH DEPICTS?

7 A YES, I DO.

8 Q DOES THAT AGAIN DEPICT SONIA'S ARTISTIC
9 HAIR DESIGN?

10 A YES, IT DOES.

11 Q AND THESE PHOTOGRAPHS, TO THE BEST OF YOUR
12 KNOWLEDGE, DO THEY APPEAR TO HAVE BEEN TAKEN THE DATE
13 THAT YOU RESPONDED TO THE INCIDENT ON APRIL 19, 2007?

14 A YES, THEY DO.

15 Q DEPUTY, WHEN YOU GOT TO THE LOCATION, WERE
16 YOU CONTACTED BY AN INDIVIDUAL?

17 A YES, I WAS.

18 Q AND CAN YOU DESCRIBE WHAT THIS INDIVIDUAL
19 LOOKED LIKE?

20 A IMMEDIATELY ARRIVING UPON THE LOCATION, I
21 CONTACTED A -- FEMALE, PACIFIC ISLANDER IN DESCENT.
22 COULDN'T TELL AT THE TIME.

23 Q DID THE PERSON IDENTIFY HERSELF TO YOU?

24 A YES, SHE DID.

25 Q AND WHO DID SHE SAY SHE WAS?

26 A SONIA RIOS RISKEN.

27 Q AND DEPUTY, SHOWING YOU WHAT'S BEEN
28 PREVIOUSLY MARKED AS PEOPLE'S 3. OTHER THAN THE AGE,

1 DOES THIS APPEAR TO BE THE PERSON THAT CONTACTED YOU?
2 THE FEMALE ON THE RIGHT?

3 A YES, IT DOES.

4 Q AND WHEN SHE CONTACTED YOU, DO YOU RECALL,
5 WHERE DID THAT CONTACT TAKE PLACE? IN TERMS OF
6 PHYSICALLY WITH RESPECT TO THE LOCATION?

7 A IMMEDIATELY UPON ARRIVING AT THE LOCATION,
8 I ENTERED THE BUSINESS. I MADE CONTACT WITH HER JUST
9 INSIDE THE FRONT DOOR OF HER BUSINESS.

10 MR. LEWIN: PEOPLE'S 31, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 A PHOTO. IT WILL BE SO MARKED.

13

14 (PEOPLE'S EXHIBIT 31,
15 PHOTOGRAPH, WAS MARKED FOR
16 IDENTIFICATION.)

17

18 Q BY MR. LEWIN: DEPUTY, DOES THIS
19 PHOTOGRAPH, DOES THAT DEPICT THE INTERIOR OF SONIA'S
20 HAIR DESIGN?

21 A YES, IT DOES.

22 Q AND DO YOU KNOW FROM THIS PHOTOGRAPH, DO
23 YOU RECALL WHERE WOULD THE DOOR BE? LET ME BRING --
24 MAYBE IT WILL BE EASIER WITH THE PHOTO ITSELF.

25 HOLD ON A MINUTE.

26 A YEAH. THIS IS THE DOOR RIGHT HERE. THE
27 PHOTO WAS TAKEN FROM THE DOORWAY LOOKING INTO THE
28 BUSINESS.

1 Q SO YOU POINTED FROM THE FRONT TO --
2 BASICALLY, THE ORIENTATION OF THE PHOTOGRAPH IS
3 BASICALLY APPEARS TO BE TAKEN FROM THE DOORWAY; IS THAT
4 CORRECT?

5 A YES, IT IS.

6 Q NOW, YOU SAID THAT THIS PERSON -- DID THEY
7 CONTACT YOU, OR DID YOU CONTACT THEM?

8 A I CONTACTED -- SONIA RISKEN.

9 Q OKAY. AND CAN YOU DESCRIBE WHAT WAS
10 SONIA'S DEMEANOR WHEN YOU CONTACTED HER?

11 A SHE WAS VERY PANIC-STRICKEN. SHE WAS
12 PACING BACK AND FORTH INSIDE HER BUSINESS.

13 Q AND GOING THERE, YOU'D BEEN TOLD WHAT? IN
14 TERMS OF DISPATCH, WALKING INTO THE SITUATION. WHAT
15 WERE YOU EXPECTING?

16 A I WAS EXPECTING TO FIND A VICTIM OF A
17 GUNSHOT.

18 Q AND IN TERMS OF THE PRIORITY OF A CALL, ON
19 A SCALE OF ONE TO TEN, WITH ONE BEING A VERY LOW-
20 PRIORITY CALL AND TEN BEING A VERY HIGH-PRIORITY CALL,
21 WHERE WAS THIS ONE?

22 A THIS WOULD BE ONE OF THE HIGHEST PRIORITY,
23 OR HIGHEST RISK CALLS WE RECEIVED.

24 Q SO WHEN YOU WALK IN THERE, YOU'RE CONTACTED
25 BY SONIA. WAS SHE ABLE TO GIVE YOU A CALM, COHERENT
26 RECITATION OF WHAT HAPPENED?

27 A NO, SHE WASN'T.

28 Q CAN YOU DESCRIBE WHAT WAS SHE SAYING TO YOU

1 IN TERMS OF HER INITIAL EFFORTS AT COMMUNICATION?

2 A INITIALLY, WHEN I GOT THERE, SHE -- SHE WAS
3 VERY PANIC-STRICKEN. SHE WAS BLURTING OUT INFORMATION,
4 SAYING "THEY SHOT ME."

5 I'M TRYING TO ASCERTAIN ACTUALLY WHAT HAD
6 HAPPENED IN THERE.

7 Q WAS SHE STANDING STILL, OR WAS SHE MOVING
8 AROUND?

9 A SHE WAS CONSTANTLY PACING BACK AND FORTH
10 WITHIN THE BUSINESS.

11 Q DO YOU RECALL, WAS SHE SPEAKING IN A CALM
12 MANNER?

13 A NO. THERE WAS -- LOTS OF STRESS IN HER
14 VOICE. AND SHE WAS -- ACTUALLY SCREAMED OUT A COUPLE
15 TIMES, FLAILING HER ARMS.

16 Q WERE YOU ABLE TO ASCERTAIN WHETHER OR NOT
17 SONIA RIOS APPEARED TO HAVE AN ACCENT?

18 A YES. I IMMEDIATELY RECOGNIZED THAT SHE HAD
19 A HEAVY ACCENT. AND I -- RECOGNIZED THAT ENGLISH WAS
20 NOT HER FIRST LANGUAGE.

21 Q AND YOU'VE BEEN A DEPUTY SHERIFF FOR ABOUT
22 10 OR 11 YEARS; IS THAT CORRECT?

23 A YES.

24 Q WERE YOU ABLE, BASED ON YOUR EXPERIENCE,
25 WERE YOU ABLE TO ASCERTAIN WHAT TYPE OF ACCENT SHE
26 APPEARED TO HAVE?

27 A I IMMEDIATELY RECOGNIZED IT AS BEING SOUTH
28 PACIFIC.

1 Q AND SO YOU START TALKING TO HER. AND WHAT
2 IS YOUR GOAL WHEN YOU GET THERE? WHAT ARE YOU TRYING TO
3 DO?

4 A WHEN I FIRST ARRIVE ON SCENE, I WANTED TO
5 GIVE ANY ASSISTANCE, IF NEEDED. IF SHE WAS IN FACT THE
6 VICTIM OF A GUNSHOT WOUND, YOU KNOW, I WANTED TO --
7 ASSIST HER IN THAT.

8 SECOND IS TO ASCERTAIN WHAT ACTUALLY
9 HAPPENED, AND CONTAIN THE SCENE.

10 Q WERE YOU ABLE TO FIGURE OUT WHETHER OR NOT
11 SHE HAD BEEN SHOT?

12 A YES. I DID.

13 Q AND HAD SHE BEEN SHOT? DID YOU SEE ANY
14 EVIDENCE OF A GUNSHOT WOUND?

15 A NO, I COULD SEE NO EVIDENCE OF A GUNSHOT
16 WOUND.

17 Q NOW, WHEN YOU GOT THERE, DEPUTY, WERE YOU
18 ALSO CONCERNED AS TO WHERE AN INDIVIDUAL MIGHT BE -- FOR
19 LACK OF A BETTER WORD, CALL HIM THE PERPETRATOR -- THE
20 SUSPECT, WHERE THAT PERSON MIGHT BE LOCATED?

21 A YES. THAT'S OUR -- ONE OF OUR FIRST
22 PRIORITIES. ALSO, WE HAVE A -- OUTSTANDING SUSPECT.
23 AND WE DON'T WANT TO BECOME VICTIMS OURSELVES.

24 Q WHEN YOU SPOKE TO -- I'M GOING TO GO
25 THROUGH THIS IN MORE DETAIL. WHEN YOU SPOKE TO
26 MS. RIOS, DID SHE INDICATE TO YOU WHETHER THERE WAS ONE
27 OR MORE THAN ONE PERSON INVOLVED?

28 A INITIALLY, SHE SAID "THEY, THEY." I'M

1 INTERPRETING THAT MEANING THERE WERE TWO. AND THEN UPON
2 FURTHER QUESTIONING, TRYING TO GET SOME INFORMATION FROM
3 HER, I LEARNED THAT SHE HAD ACTUALLY ONLY SEEN ONE
4 SUSPECT.

5 Q SO WHEN SHE WAS USING THE TERM "THEY," WAS
6 IT YOUR -- BASED ON YOUR CONTACT WITH HER, DID THAT
7 APPEAR TO BE A LANGUAGE ISSUE, OR A DESIRE ON HER PART
8 TO INDICATE THERE WERE TWO PEOPLE?

9 MR. CREARY: OBJECTION, SPECULATION.

10 THE COURT: SUSTAINED.

11 Q BY MR. LEWIN: DID SHE EVER AT ANY POINT,
12 OTHER THAN USING THE TERM "THEY" --

13 A YES, SHE DID.

14 Q LET ME JUST -- OTHER THAN USING THE TERM
15 "THEY," DID SHE EVER DESCRIBE MORE THAN ONE SUSPECT AS
16 HAVING BEEN INVOLVED?

17 A NO, SHE HAD NEVER DESCRIBED MORE THAN ONE
18 SUSPECT.

19 Q WAS SHE CLEAR THAT IT WAS ONLY ONE SUSPECT
20 TO YOU, WHEN YOU SPOKE TO HER?

21 A YES, SHE WAS.

22 Q SO HOW LONG DOES IT TAKE YOU TO BE ABLE TO
23 GET WHAT I'LL CALL A COHERENT VERSION OF EVENTS FROM
24 HER?

25 IN OTHER WORDS, IS IT IMMEDIATELY? YOU
26 WALK IN, YOU SAY HEY, WHAT HAPPENED? WHAT DO YOU HAVE
27 TO DO TO GET HER TO EXPLAIN WHAT OCCURRED?

28 A JUST TO GET THE BASICS OF WHAT ACTUALLY

1 HAPPENED, WHAT SHE COULD RECALL, GIVE A DESCRIPTION OF A
2 SUSPECT, TOOK A GOOD THREE, FOUR MINUTES.

3 Q AND AFTER THIS THREE TO FOUR MINUTES, WERE
4 YOU ABLE TO GET FROM HER, DID SHE TELL YOU WHAT HAD
5 HAPPENED THAT MORNING?

6 A YES, SHE DID.

7 Q AND WHAT DID SHE TELL YOU HAD HAPPENED?

8 A SHE STATED THAT APPROXIMATELY 9:00 A.M., A
9 MALE CAME TO HER BUSINESS. THE DOOR TO THE BUSINESS HAD
10 BEEN PROPPED OPEN. SHE WAS STANDING BESIDE THE --
11 BEHIND THE DESK IN HER BUSINESS.

12 Q LET ME STOP YOU. IS THE DESK THAT SHE'S
13 REFERRING TO, DID SHE INDICATE WHERE THAT WAS, AND DO
14 YOU SEE IT IN THE PHOTOGRAPH?

15 A YES.

16 Q CAN YOU POINT TO IT?

17 A YES. THE DESK IS BESIDE THE CHAIRS
18 ALONG -- THE LEFT WALL.

19 THE COURT: DEPUTY, I'M GOING TO HAND YOU A LASER
20 POINTER. JUST PUSH HARD ON THIS BRASS BUTTON. MAKE
21 SURE YOU DON'T GET IT IN ANY OF THE JURORS' EYES,
22 PLEASE.

23 THE WITNESS: THIS WOULD BE THE DESK, INSIDE THE
24 BUSINESS.

25 Q BY MR. LEWIN: PLEASE CONTINUE.

26 WHAT ELSE DID SHE SAY TO YOU?

27 A SHE SAID A -- A MALE HISPANIC,
28 LIGHT-SKINNED, ENTERED HER BUSINESS. STOPPED

1 APPROXIMATELY 3 FEET INSIDE THE DOOR.

2 SHE DESCRIBED THE MALE HISPANIC AS
3 LIGHT-SKINNED. VERY SHORT, CLEAN CUT HAIR. CLEANLY
4 SHAVEN.

5 HE WAS WEARING A BLACK SWEATSHIRT WITH
6 SILVER OR WHITE CURSIVE LETTERING ON IT, AND BLACK
7 PANTS.

8 THE MALE RAISED A HANDGUN, AND POINTED IT
9 AT HER FACE. AS SHE WAS -- VERY SURPRISED. AT THAT
10 POINT, SHE PANICKED. SHE JUMPED UNDERNEATH HER DESK.

11 SHE SAID THAT PAPERS HAD GONE FLYING. SHE
12 BEGAN SCREAMING. SHE HEARD ONE GUNSHOT. SHE DID NOT
13 SEE THE GUNSHOT. AND THEN SHE HEARD THE MALE SAY "I
14 WILL GET YOU."

15 Q DID SHE INDICATE TO YOU WHAT THE MALE DID
16 AT THAT POINT?

17 A IMMEDIATELY AFTER SAYING "I WILL GET YOU,"
18 HE RAN FROM THE LOCATION WESTBOUND ALONG LOMITA
19 BOULEVARD, AND TOWARDS WOODWARD AVENUE.

20 Q DID YOU AT ANY POINT IN TIME DURING WHAT
21 I'M GOING TO CALL YOUR INVESTIGATION, WERE YOU EVER ABLE
22 TO LOCATE THE SUSPECT?

23 A NO. I WASN'T.

24 Q AND THERE WERE OTHER UNITS FROM SHERIFFS
25 THAT WERE ALSO RESPONDING; IS THAT CORRECT?

26 A YES, THERE WERE.

27 Q BASED ON YOUR KNOWLEDGE, WERE THEY ABLE TO
28 LOCATE THE SUSPECT?

1 A NO, THEY WERE NOT.

2 Q DID SHE FURTHER DESCRIBE WHAT THIS MAN
3 LOOKED LIKE?

4 A SHE DESCRIBED HIM AS A MALE HISPANIC,
5 LIGHT-SKINNED. VERY CLEAN CUT AND WELL-SHAVEN. SHE
6 DESCRIBED THE HAIRCUT AS A MILITARY STYLE HAIRCUT.

7 Q IN FACT, THERE IS A BOX ON YOUR REPORT THAT
8 YOU CAN CHECK; IS THAT CORRECT?

9 A YES, THERE IS.

10 Q AND UNDER "HAIR TYPE," WHAT BOX DID YOU
11 CHECK?

12 MR. CREARY: OBJECTION. CALLS FOR HEARSAY.

13 THE COURT: SUSTAINED AS TO WHAT HE WROTE IN THE
14 REPORT.

15 MR. LEWIN: YOUR HONOR, UNDER EVIDENCE CODE
16 SECTION 1236, A PRIOR CONSISTENT STATEMENT. HE'S
17 TESTIFYING, I WANT TO BE --

18 THE COURT: IF I NEED FURTHER ARGUMENT, I'LL LET
19 YOU KNOW; OTHERWISE, JUST STATE YOUR OBJECTIONS AND ANY
20 COMMENTS YOU MIGHT HAVE BY REFERENCE TO THE EVIDENCE
21 CODE.

22 THE OBJECTION IS SUSTAINED. YOU CAN ASK
23 THE WITNESS WHAT THE VICTIM SAID TO HIM, BECAUSE I FIND
24 IT'S AN EXCITED UTTERANCE AND SPONTANEOUS STATEMENT.

25 BUT AS RELATES TO WHAT HE WROTE IN HIS
26 REPORT, THE OBJECTION IS SUSTAINED.

27 REFRAME THE QUESTION, PLEASE.

28 Q BY MR. LEWIN: WHAT DID MISS RIOS TELL YOU

1 WITH RESPECT TO HIS HAIR?

2 A SHE SAID IT WAS VERY CLEAN-CUT. MILITARY
3 STYLE HAIRCUT.

4 Q DID SHE USE THE WORDS "MILITARY STYLE"?

5 A YES, SHE DID.

6 Q AND DID SHE INDICATE TO YOU WHAT SHE DID
7 FOR A LIVING? IN OTHER WORDS, WHEN YOU WENT THERE, WERE
8 YOU ABLE TO ASCERTAIN WHAT HER JOB WAS?

9 A YES. HER OCCUPATION WAS PRIMARILY A HAIR
10 STYLIST.

11 Q DID SHE FURTHER DESCRIBE WHAT THIS PERSON
12 LOOKED LIKE IN TERMS OF AGE, HEIGHT, AND WEIGHT?

13 A SHE DESCRIBED HIM AS BETWEEN FIVE-EIGHT AND
14 FIVE-NINE, 140 TO 150 POUNDS, APPROXIMATELY 24 TO
15 26 YEARS OLD.

16 Q AND DEPUTY, DID YOU MAKE A REPORT REGARDING
17 WHAT THE WITNESS TOLD YOU?

18 A YES, I DID.

19 Q AND DID YOU PUT THIS INFORMATION IN YOUR
20 REPORT AT THAT TIME?

21 A YES, I DID.

22 Q DEPUTY, DID SHE FURTHER INDICATE TO YOU, OR
23 DID YOU ASK HER -- STRIKE THAT. DURING YOUR
24 CONVERSATION WITH HER, DID IT COME OUT THAT SHE
25 RECOGNIZED THIS INDIVIDUAL FROM A PRIOR CONTACT?

26 A YES, SHE DID.

27 Q WHAT SPECIFICALLY DID SHE TELL YOU?

28 A SHE TOLD ME THAT SHE RECOGNIZED THE

1 INDIVIDUAL THAT CAME TO HER STORE TODAY AS A PERSON THAT
2 SHE HAD SEEN YESTERDAY.

3 Q AND WHAT SPECIFICALLY DID SHE TELL YOU
4 ABOUT THE INCIDENT THAT HAD ALLEGEDLY OCCURRED
5 YESTERDAY?

6 A WELL, SHE DESCRIBED -- YESTERDAY, HER
7 BUSINESS WAS CLOSED. SHE RECEIVED A PHONE CALL. THE
8 PERSON ON THE OTHER END OF THE LINE SAID "HI, I'M FRANK.
9 I WAS REFERRED TO YOUR SHOP --

10 MR. CREARY: OBJECTION, CALLS FOR HEARSAY.

11 THE COURT: LAY THE FOUNDATION, PLEASE.

12 Q BY MR. LEWIN: AT THE TIME THAT SHE IS
13 DISCUSSING THIS INCIDENT, IS SHE STILL UPSET?

14 A YES, SHE IS.

15 Q IS IT STILL WITHIN THE SAME TIME PERIOD AS
16 YOU'VE DESCRIBED IN TERMS OF WHEN THIS INCIDENT OCCURRED
17 AND YOU SPEAKING TO HER?

18 A YES.

19 THE COURT: HOW MANY MINUTES, APPROXIMATELY, AFTER
20 YOU YOUR ARRIVAL WAS THIS DISCUSSION ABOUT WHAT
21 OCCURRED, QUOTE, "YESTERDAY"?

22 THE WITNESS: I WOULD SAY ABOUT 4 MINUTES.

23 THE COURT: OKAY. DO YOU HAVE FURTHER QUESTIONS
24 REGARDING THE FOUNDATION?

25 MR. LEWIN: I DON'T, YOUR HONOR.

26 THE COURT: MATTER SUBMITTED BY THE DEFENSE?

27 MR. LEVINSON: YES.

28 MR. CREARY: WELL, YOUR HONOR, I WOULD JUST LIKE

1 TO -- WHATEVER THE OTHER PERSON SAID TO HER IS HEARSAY.

2 I'LL SUBMIT.

3 THE COURT: DO YOU WISH TO TAKE WITNESS ON VOIR
4 DIRE RELATIVE TO THE FOUNDATIONAL ELEMENTS UNDER 1240
5 AND 1241? OR IS THAT PORTION SUBMITTED?

6 MR. CREARY: THAT'S SUBMITTED, YOUR HONOR.

7 THE COURT: THE OBJECTION IS OVERRULED.

8 YOU MAY INQUIRE.

9 Q BY MR. LEWIN: DEPUTY, WHAT DID SHE STATE
10 TO YOU ABOUT THAT PRIOR INCIDENT?

11 A SHE TOLD ME THAT SHE RECOGNIZED THE PERSON
12 THAT CAME IN HER STORE TODAY AS THE PERSON THAT HAD COME
13 TO HER STORE YESTERDAY.

14 Q AND WITH RESPECT TO THAT IDENTIFICATION,
15 DID SHE TELL YOU, OR DID YOU INQUIRE AS TO HOW SURE SHE
16 WAS THAT IT WAS THE SAME PERSON?

17 A SHE SAID SHE WAS SURE.

18 Q AND WHAT SPECIFICALLY DID SHE SAY HAD
19 HAPPENED ON THE PRIOR OCCASION?

20 A SHE SAID SHE RECEIVED A PHONE CALL FROM AN
21 UNKNOWN PERSON AT THAT TIME.

22 Q DID SHE INDICATE TO YOU WHAT TIME,
23 APPROXIMATELY, THIS PHONE CALL HAD COME?

24 A SHE SAID IN THE AFTERNOON.

25 Q PLEASE CONTINUE.

26 A THE PERSON ON THE PHONE SAID "HI, I'M
27 FRANK."

28 MR. CREARY: 352.

1 THE COURT: OVERRULED.

2 GO AHEAD.

3 THE WITNESS: SAID "HI, I'M FRANK. I WAS REFERRED
4 TO YOUR SHOP BY A FRIEND FOR A HAIRCUT. ARE YOU THERE?"

5 AND HE SAID HE WAS ON LOMITA BOULEVARD, AND
6 COULD BE THERE SHORTLY.

7 Q BY MR. LEWIN: DID SHE INDICATE TO YOU IF
8 HE SAID WHERE HE WAS ON LOMITA BOULEVARD?

9 A NO. HE DIDN'T.

10 Q DO YOU RECALL, DEPUTY, WRITING IN YOUR
11 REPORT THAT THE PERSON SAID -- THAT MISS RISKEN RELATED
12 TO YOU --

13 MR. CREARY: OBJECTION. WELL -- ACTUALLY, THIS IS
14 IMPROPER IMPEACHMENT. HE SAID HE DOESN'T RECALL. SO
15 I'M NOT REALLY SURE WHY HE'S READING THE STATEMENT.

16 THE COURT: DO YOU WANT TO REFRESH HIS MEMORY AND
17 SEE WHETHER OR NOT REVIEWING HIS REPORT MAY ASSIST HIM
18 IN RECALLING?

19 MR. LEWIN: I MEAN, IS THAT THE WAY THE COURT
20 WANTS ME -- I THINK EITHER WAY I THINK IS APPROPRIATE.

21 IS THAT THE WAY THE COURT WOULD LIKE?

22 THE COURT: SURE.

23 Q BY MR. LEWIN: DO YOU HAVE YOUR REPORT IN
24 FRONT YOU?

25 A YES, I DO.

26 Q WHY DON'T YOU TAKE A LOOK AT YOUR REPORT.

27 THE COURT: IS THERE PAGE AND LINE NUMBER YOU WANT
28 TO REFER TO THE WITNESS?

1 MR. LEWIN: WELL, I'VE GOT TO FIND IT, YOUR HONOR.

2

3 (PAUSE IN PROCEEDINGS.)

4

5 THE COURT: DID YOU LOCATE IT, DEPUTY?

6 THE WITNESS: YES, I DID, SIR.

7 THE COURT: CAN YOU TELL THE PROSECUTOR WHAT PAGE

8 AND LINE NUMBER IT'S ON, PLEASE?

9 MR. LEWIN: MAY I APPROACH, YOUR HONOR?

10 THE COURT: SURE.

11 THE WITNESS: PAGE 3, PARAGRAPH 6.

12

13 (PAUSE IN PROCEEDINGS.)

14

15 Q BY MR. LEWIN: DEPUTY, DOES IT REFRESH YOUR
16 MEMORY SPECIFICALLY, NOW, WHAT MISS RIOS RISKEN TOLD YOU
17 ABOUT WHAT THE PERSON SAID, STARTING WITH THE "HI, I'M
18 FRANK"?

19 A YES.

20 Q WHAT DID HE SAY?

21 A "HI, I'M FRANK. I WAS REFERRED TO YOUR
22 SHOP BY A FRIEND FOR A HAIRCUT. ARE YOU THERE? I'M
23 JUST DOWN THE STREET ON LOMITA BOULEVARD."

24 Q WHAT'S THE NEXT THING THAT MISS RIOS RISKEN
25 TOLD YOU HAPPENED?

26 A MISS RISKEN TOLD ME THAT SHE HAD TOLD THE
27 PERSON ON THE PHONE THAT SHE WAS THERE; HOWEVER, SHE WAS
28 CLOSED.

1 Q AND WHAT DID SHE SAY HAPPENED NEXT?

2 A SHE HUNG UP THE PHONE. A FEW MINUTES AFTER
3 THAT, A MALE ARRIVED AT HER BUSINESS. THE BUSINESS DOOR
4 WAS CLOSED AND LOCKED.

5 MR. CREARY: OBJECTION, LACKS FOUNDATION.

6 THE COURT: AS TO WHETHER OR NOT IT STILL FALLS
7 UNDER 1240 AND 1241?

8 MR. CREARY: WELL, HIS STATEMENT THAT -- WHAT
9 HAPPENED DOESN'T -- WELL, I'LL WITHDRAW THE OBJECTION.

10 THE COURT: OKAY. YOU MAY PROCEED.

11 THE WITNESS: A MALE ARRIVED AT HER BUSINESS. THE
12 BUSINESS DOOR WAS CLOSED AND LOCKED.

13 Q BY MR. LEWIN: LET ME STOP YOU.

14 DID SHE DESCRIBE -- WHEN SHE SAID A MALE,
15 DID SHE DESCRIBE WHAT THE MALE LOOKED LIKE?

16 A YES. SHE SAID THE PERSON THAT CAME TO HER
17 STORE YESTERDAY HAD THE EXACT SAME CLOTHING, AND WAS THE
18 SAME PERSON THAT ARRIVED AT HER STORE TODAY.

19 Q PLEASE CONTINUE.

20 A THE MALE PULLED ON THE DOOR. WHEN IT
21 WOULDN'T OPEN, HE PULLED ON THE DOOR HANDLE ABRUPTLY,
22 AND ACTUALLY POUNDED ON THE GLASS OF THE DOOR.

23 Q DID SHE REFER TO THIS MALE AS A HISPANIC?

24 A YES, SHE DID.

25 MR. CREARY: OBJECTION, LEADING.

26 THE COURT: SUSTAINED.

27 MR. CREARY: MOVE TO STRIKE THE ANSWER.

28 THE COURT: ANSWER STRICKEN.

1 Q BY MR. LEWIN: WHAT NATIONALITY DID SHE
2 REFER TO THE MALE AS?

3 A SHE SAID HE WAS LIGHT-SKINNED MEXICAN.

4 Q AND DEPUTY, WHAT DID SHE TELL YOU OCCURRED
5 AFTER THIS LIGHT-SKINNED MEXICAN APPEARED AT THE SALON?

6 A WELL, SHE TOLD HIM "WE'RE CLOSED." SHE WAS
7 AFRAID TO GO ANSWER THE DOOR BECAUSE OF THIS PERSON'S
8 ACTIONS. AND THE MALE THEN IMMEDIATELY LEFT.

9 Q LET ME STOP YOU.

10 DID SHE INDICATE TO YOU WHEN SHE SAW THE
11 MALE AS TO WHAT HIS HAIR APPEARED LIKE?

12 MR. CREARY: OBJECTION. ASKED AND ANSWERED.

13 THE COURT: YOU'RE ASKING ABOUT THE DESCRIPTION
14 THAT SHE GAVE, IF ANY, OF THE INDIVIDUAL THE DAY BEFORE
15 THE SHOOTING INCIDENT?

16 MR. LEWIN: I'M ASKING ABOUT -- I'M ASKING WHAT
17 DID SHE SAY ABOUT THE CONDITION OF THIS MALE'S HAIR AS
18 IT THEN AFFECTS HER SUBSEQUENT CONDUCT ON THAT DATE.

19 THAT'S WHERE I'M GOING, YOUR HONOR.

20 THE COURT: OKAY, I'LL OVERRULE.

21 YOU CAN ANSWER.

22 THE WITNESS: YES, SHE WAS AFRAID. SHE THOUGHT IT
23 WAS VERY ODD THAT THIS PERSON WOULD WANT TO COME TO HER
24 STORE FOR A HAIRCUT, GIVEN THAT IT WAS IT LOOKED FRESHLY
25 CUT AND HE WAS CLEAN-SHAVEN.

26 Q BY MR. LEWIN: AND DID SHE TELL YOU THAT
27 THAT WAS HER RESPONSE WHEN SHE SAW THE MALE -- WE ARE
28 TALKING ABOUT THE FIRST INCIDENT; CORRECT?

1 A YES.

2 Q AND WHAT DID SHE SAY SHE DID IN RESPONSE
3 WHEN SHE SAW THIS PERSON -- YOU SAID HE WAS PULLING ON
4 THE DOOR. WHAT DID SHE DO?

5 A WELL, SHE WAS AFRAID TO OPEN THE DOOR. SHE
6 TOLD HIM "WE'RE CLOSED." SHE REFUSED TO OPEN THE DOOR.

7 THEN HE LEFT. SHE BECAME VERY SUSPICIOUS
8 OF THIS PERSON BECAUSE -- FOR ONE, WHY WOULD HE BE
9 COMING TO HER STORE WHEN HE DOES NOT NEED A HAIRCUT.

10 Q DID SHE INDICATE TO YOU IF, AT THAT TIME,
11 SHE THEN TOOK ANY SUBSEQUENT ACTION?

12 A YES. SHE BECAME VERY SUSPICIOUS OF THE
13 PERSON AND THE PHONE CALL. SHE WENT BACK TO HER PHONE.
14 SHE RECEIVED -- A CALLER I.D. FROM HER BUSINESS LINE
15 HANDSET.

16 AND SHE NOTED DOWN THE PHONE NUMBER ON A
17 PIECE OF CARDBOARD. SHE CALLED THAT NUMBER BACK. THE
18 SAME PERSON THAT HAD CALLED HER PREVIOUSLY AND HAD
19 SHOWED UP AT THE DOOR, ANSWERED THE PHONE.

20 HE SAID "OH, I'M JUST DOWN THE STREET.
21 I'LL BE THERE IN A FEW MINUTES." HOWEVER, HE NEVER
22 ARRIVED.

23 Q AND DID SHE INDICATE TO YOU WHAT THAT PHONE
24 NUMBER WAS?

25 A YES, SHE DID.

26 Q WHAT NUMBER DID SHE TELL YOU IT WAS?

27 A AREA CODE 951-203-0159.

28 Q NOW, THIS HAIR SALON, THIS IS A HARD LINE

1 AS OPPOSED TO CELL PHONE; IS THAT CORRECT?

2 A THAT'S CORRECT.

3 Q NOW, DEPUTY, DID YOU ACTUALLY SEE YOURSELF,
4 PHYSICALLY, DID YOU ACTUALLY SEE THE CALL ON THE PHONE?

5 A YES, I DID.

6 Q DEPUTY, WERE YOU ABLE TO ASCERTAIN WHAT
7 DATE THAT CALL CAME IN ON THE FIRST CALL?

8 A WHEN I LOOKED AT THE CALLER I.D., I SAW
9 THAT IN FACT THE CALL HADN'T BEEN PLACED ON THE PREVIOUS
10 DAY, THE 18TH, THAT IT HAD BEEN PLACED AND RECEIVED ON
11 THE 17TH.

12 Q AND DEPUTY, YOU INDICATED THAT SHE HAD
13 WRITTEN DOWN THE NUMBER FOR YOU; IS THAT CORRECT?

14 A YES, SHE DID.

15 Q I'M GOING TO SHOW YOU WHAT I'D LIKE TO
16 MARK -- ARE WE AT THIRTY --

17 THE COURT: TWO.

18 MR. LEWIN: 32. THANK YOU, YOUR HONOR.

19

20 (PEOPLE'S EXHIBIT 32,
21 PHOTOGRAPH, WAS MARKED FOR
22 IDENTIFICATION.)

23

24 Q BY MR. LEWIN: DEPUTY, DO YOU RECOGNIZE
25 THAT PIECE OF PAPER?

26 A YES, I DO.

27 Q AND WHAT DO YOU RECOGNIZE THAT PIECE OF
28 PAPER TO BE? I'M SORRY. DO YOU RECOGNIZE THAT IMAGE?

1 WHAT DOES THAT IMAGE DEPICT?

2 A IT -- THIS IS A PIECE OF CARDBOARD THAT
3 MISS RISKEN HAD WRITTEN DOWN THE PHONE NUMBER OF THE
4 PERSON THAT JUST CALLED HER.

5 Q AND THE PHONE NUMBER, IS THAT 951-203-0159?

6 A YES, IT IS.

7 Q AND THE WRITING ON THERE, WAS THAT WRITING
8 YOU WROTE, OR WAS THAT WRITING THAT SHE GAVE YOU?

9 A THIS IS -- HER WRITING. AND SHE GAVE ME
10 THE CARDBOARD AS I SEE IT HERE.

11 Q DEPUTY, DID YOU ATTEMPT TO SEE IF YOU COULD
12 DISCOVER WHO THE OWNER WAS OF THAT PHONE NUMBER?

13 A YES, I DID.

14 Q AND WHAT DID YOU DO IN ORDER TO TRY TO
15 ASCERTAIN THAT INFORMATION?

16 MR. CREARY: THIS IS BEYOND THE SCOPE.

17 THE COURT: DO YOU WISH TO BE HEARD AT SIDE BAR?

18 MR. CREARY: YES.

19 THE COURT: COME ON UP.

20

21 (THE FOLLOWING PROCEEDINGS

22 WERE HELD AT THE BENCH:)

23

24 THE COURT: MR. CREARY.

25 MR. CREARY: YOUR HONOR, ALL THIS IS COMING IN
26 UNDER THE EXCEPTION, EXCITED UTTERANCE EXCEPTION. NOW
27 HE'S ASKING WHAT THE DEPUTY DID.

28 I'M SURE THERE'S GOING TO BE HEARSAY THAT

1 COMES OUT OF THIS.

2 MR. LEWIN: THE OFFER OF PROOF IS THERE ISN'T
3 GOING TO BE HEARSAY. WHERE I'M GOING IS THE DEPUTY GOES
4 BACK, GOES TO A REVERSE DIRECTORY TO TRY TO FIGURE OUT
5 WHAT THE NUMBER IS. HE'S UNSUCCESSFUL.

6 THERE'S NO HEARSAY INVOLVED. I'M SIMPLY
7 GOING TO ASK HIM "ARE YOU A DETECTIVE? DID YOU CONTINUE
8 TO INVESTIGATE?" "NO, I HANDED THIS OFF TO A
9 DETECTIVE."

10 I'M JUST TRYING TO SHOW HE ATTEMPTED TO DO
11 WHAT HE COULD DO AS A PATROL DEPUTY.

12 MR. CREARY: SUBMITTED.

13 THE COURT: OBJECTION NOTED FOR THE RECORD.

14 IT'S OVERRULED, GIVEN THE OFFER OF PROOF.

15 LET'S PROCEED.

16

17 (THE FOLLOWING PROCEEDINGS
18 WERE HELD IN OPEN COURT, IN
19 THE PRESENCE OF THE JURY:)

20

21 MR. LEWIN: MAY I CONTINUE, YOUR HONOR?

22 THE COURT: YOU MAY.

23 Q BY MR. LEWIN: DEPUTY, WHAT DID YOU DO, IF
24 ANYTHING, NEXT?

25 A AFTER RECEIVING THE PIECE OF CARDBOARD WITH
26 THE NUMBER SHE HAD WRITTEN ON IT, I IMMEDIATELY CALLED
27 MY DESK AND ASKED THEM TO CONDUCT A REVERSE LOOKUP.

28 MR. CREARY: OBJECTION -- WITHDRAWN, YOUR HONOR.

1 THE WITNESS: I ASKED MY DESK TO CONDUCT A REVERSE
2 LOOKUP THROUGH OUR 911 SYSTEM.

3 Q BY MR. LEWIN: CAN YOU EXPLAIN WHAT THIS IS
4 WHEN YOU SAY REVERSE LOOKUP?

5 A WHEN SOMEONE MAKES A 911 CALL, WE RECEIVE
6 THAT AT OUR DISPATCH THROUGH OUR TELEPHONE NETWORKS.
7 THIS LISTS THE ACCOUNT HOLDER'S NAME AND ADDRESS.

8 I ATTEMPTED TO DO THAT WITH THIS PHONE
9 NUMBER.

10 MR. CREARY: I WOULD ASK THAT THE PART ABOUT WHAT
11 THE DEPUTY ASKED HIS COLLEAGUES TO DO IS HEARSAY.

12 MOVE TO STRIKE THAT.

13 THE COURT: IS IT BEING OFFERED FOR THE TRUTH OF
14 THE STATEMENT, OR TO EXPLAIN HIS STATE OF MIND AS TO
15 WHAT ACTIONS HE TOOK?

16 MR. LEWIN: YOUR HONOR, THERE'S NO -- IT'S A
17 QUESTION. HE'S ASKING THEM TO DO SOMETHING. THERE'S NO
18 STATEMENT TO BE ADMITTED, NOTHING ADMITTED FOR THE TRUTH
19 OF THE MATTER ASSERTED.

20 THE COURT: LADIES AND GENTLEMEN, AT THE
21 CONCLUSION OF THE CASE, YOU'LL GET SERIES OF
22 INSTRUCTIONS. ONE OF THE INSTRUCTIONS WILL TELL YOU
23 THAT CERTAIN EVIDENCE MAY BE OFFERED FOR A LIMITED
24 PURPOSE.

25 IN THIS CONTEXT, I'LL PERMIT THE WITNESS'S
26 ANSWER NOT FOR THE TRUTH OF WHAT SOMEBODY TOLD HIM, BUT
27 JUST TO EXPLAIN TO YOU WHAT ACTIONS HE TOOK BASED ON THE
28 RECEIPT OF INFORMATION, HOW HE ATTEMPTED TO FOLLOW UP IN

1 THE CASE.

2 THAT'S WHAT IT'S LIMITED FOR.

3 NEXT QUESTION.

4 Q BY MR. LEWIN: DEPUTY, WERE YOU ABLE TO
5 ASCERTAIN INFORMATION ABOUT WHO THE NUMBER BELONGED TO?

6 A NO, THERE WAS NO RETURN ON THAT TELEPHONE
7 NUMBER.

8 Q NOW, DEPUTY, AS A PATROL DEPUTY, IS IT
9 TYPICAL WHEN YOU INVESTIGATE A CASE LIKE THIS, DO YOU
10 KEEP THE CASE, AND THEN PROCEED WITH IT THROUGH EITHER
11 ARREST OR FILING OR TRIAL? OR AS PATROL DEPUTY, DOES IT
12 GET TURNED OVER TO A DETECTIVE?

13 A AS A PATROL DEPUTY, I WOULD BE THE INITIAL
14 INVESTIGATING DEPUTY. ONCE I CONCLUDE THAT FIRST
15 PORTION OF THE CASE, I TURN IT OVER TO THE NEXT HANDLING
16 DETECTIVES.

17 Q IS IT FAIR TO SAY, DEPUTY, THAT YOUR WORK
18 ON THIS CASE STOPPED THAT DAY?

19 A YEAH. AFTER THAT DAY, I WAS DONE WITH IT.

20 Q DEPUTY, WERE YOU PRESENT -- DO YOU KNOW WHO
21 DEPUTY JAMES IS?

22 A YES, I DO.

23 Q AND DO YOU RECALL WHAT HE DID WITH RESPECT
24 TO THE WORK AT THE SCENE THAT YOU OBSERVED?

25 A YES. AS A ROUTINE, THE NATURE OF THIS
26 INCIDENT CALLS FOR OUR FORENSIC OR SCIENTIFIC SERVICES
27 DIVISION TO COME OUT AND DO A PORTION OF INVESTIGATION
28 DOCUMENTATION.

1 Q AND WAS DEPUTY JAMES, WAS HE TAKING PHOTOS?

2 A YES.

3 Q DEPUTY, DID YOU EVER SEE YOURSELF, WERE YOU
4 ABLE TO FIND ANY EXPENDED ROUND?

5 A NO, I WAS NOT.

6 Q MEANING A BULLET THAT HAD BEEN FIRED?

7 A YES. NO, I WAS NOT.

8 MR. LEWIN: NO FURTHER QUESTIONS, YOUR HONOR.

9 THE COURT: WHO WANTS TO GO FIRST ON CROSS?

10 MR. CREARY: I'LL GO, YOUR HONOR.

11 THE COURT: MR. CREARY.

12

13 CROSS-EXAMINATION

14 BY MR. CREARY:

15 Q GOOD AFTERNOON, OR GOOD MORNING, DEPUTY
16 FARMAR.

17 A GOOD MORNING.

18 Q HOW ARE YOU?

19 NOW, YOU ARRIVED AT THE SHOP, AT THE
20 VICTIM'S SHOP, HOW LONG AFTER YOU GOT THE CALL?

21 A APPROXIMATELY ONE TO TWO MINUTES.

22 Q ONE TO TWO MINUTES.

23 AND YOU SAID SHE WAS VERY AGITATED?

24 A YES, SHE WAS.

25 Q SHE WAS PACING?

26 A YES, SHE WAS.

27 Q OKAY.

28 AND YOU SAID SHE WAS INCOHERENT?

1 A AT TIMES.

2 Q AT TIMES, SHE WAS INCOHERENT.

3 NOW, ALL OF THE STATEMENTS THAT SHE GAVE
4 YOU DURING YOUR INTERVIEW, THAT MR. LEWIN ASKED YOU
5 ABOUT, ALL OF THAT WAS GOTTEN FROM THE VICTIM DURING
6 THIS INITIAL INTERVIEW?

7 A YES, IT WAS.

8 Q ALL RIGHT.

9 HOW LONG DID THIS INTERVIEW LAST?

10 A THE INITIAL INTERVIEW, APPROXIMATELY 6 TO
11 10 MINUTES.

12 Q OKAY, 6 TO 10 MINUTES.

13 AND YOU IMMEDIATELY STARTED INTERVIEWING
14 THE VICTIM WHEN YOU ARRIVED AT THE CRIME SCENE; RIGHT?

15 A YES.

16 Q OKAY. SO -- AND IN THAT 6 TO 10 MINUTES,
17 SHE TOLD YOU IN GREAT DETAIL WHAT HAD HAPPENED THE DAY
18 PRIOR?

19 A MY INVESTIGATION IS IN CERTAIN STEPS. THE
20 INITIAL FACTS I GOT FROM HER WERE FOR PURPOSES OF
21 LIKE --

22 MR. CREARY: NONRESPONSIVE. MOTION TO STRIKE.

23 THE COURT: SUSTAINED. STRICKEN.

24 ARE WE DONE WITH THE PROJECTOR FOR THE TIME
25 BEING?

26 MR. CREARY: FOR THE TIME BEING, YOUR HONOR.

27 THE COURT: WHY DON'T WE JUST CLOSE THE PAPER ON
28 THE FRONT OF IT SO THAT IT'S NOT AS BRIGHT FOR OUR

1 JURORS.

2 THANKS. GO AHEAD.

3 Q BY MR. CREARY: I'M GOING TO ASK YOU THE
4 QUESTION AGAIN. HOPEFULLY, IT WILL BE CLEARER TO YOU.

5 YOU INTERVIEWED THIS -- YOU INTERVIEWED
6 MISS RISKEN FOR 6 TO 10 MINUTES. WAS IT CLOSER TO 6, OR
7 CLOSER TO 10?

8 A MY INTERVIEW WITH HER PROBABLY TOOK OVER AN
9 HOUR; HOWEVER, INITIALLY, THE FACTS I GOT FROM HER, THAT
10 INTERVIEW PORTION WAS 6 TO 10 MINUTES.

11 Q ALL RIGHT.

12 THE FACTS THAT YOU RELAYED TO THE JURY THIS
13 MORNING IS WHAT YOU'RE REFERRING TO; RIGHT?

14 A YES.

15 Q OKAY. SO AGAIN, WOULD YOU AGREE THAT SHE
16 GAVE YOU A LOT OF DETAIL IN THOSE 6 TO 10 MINUTES?

17 A YES.

18 Q AND SHE GAVE YOU A LOT OF DETAIL AS TO AN
19 INCIDENT THAT OCCURRED THE DAY PRIOR IN THOSE 6 TO
20 10 MINUTES?

21 A I BELIEVE THE PREVIOUS DAY'S ACCOUNT WAS
22 NOT WITHIN THAT 6 TO 10 MINUTES. THAT WAS BEYOND. THAT
23 WAS LIKE THE SECOND PART OF MY INVESTIGATION.

24 Q DIDN'T YOU JUST SAY, NOW, THAT SHE RELAYED
25 ALL OF THESE FACTS THAT YOU THAT YOU TESTIFIED ABOUT,
26 WITHIN THAT INITIALING INTERVIEW?

27 DIDN'T YOU JUST SAY THAT WHEN I ASKED YOU
28 THAT QUESTION BEFORE?

1 A SIR, IT WAS NOT CLEAR TO ME WHAT EXACTLY
2 YOU WERE ASKING.

3 Q OKAY. SO NOW YOU'RE SAYING THAT ACTUALLY,
4 THE INTERVIEW LASTED AN HOUR?

5 A I'M SAYING THE SAME THING, SIR.

6 Q SO IT LASTED AN HOUR?

7 A YES.

8 Q ALL RIGHT.

9 SO YOUR TESTIMONY THAT IT LASTED 6 TO 10
10 MINUTES WAS INCORRECT? IS THAT CORRECT? AM I RIGHT?

11 A THE INITIAL INTERVIEW LASTED 6 TO
12 10 MINUTES. TO GET THE FIRST BIT OF INFORMATION THAT
13 WAS NECESSARY FOR ME TO DO BROADCASTS, AND THINGS LIKE
14 THAT.

15 Q OH. OKAY. SO YOU DIDN'T GET A LOT OF
16 INFORMATION FROM HER IN THOSE 6 TO 10 MINUTES?

17 A I GOT AS MUCH AS I COULD, SIR.

18 Q DO YOU REMEMBER WHAT EXACTLY -- WELL, LET
19 ME WITHDRAW THAT.

20 NOW, YOU TESTIFIED THAT YOU DIDN'T SEE ANY
21 EVIDENCE -- WELL, LET ME REPHRASE THAT.

22 YOU DIDN'T FIND AN EXPENDED ROUND; CORRECT?

23 A THAT'S CORRECT.

24 Q TO YOUR KNOWLEDGE, DID ANYBODY, DID ANY OF
25 THE INVESTIGATORS FIND AN EXPENDED ROUND?

26 A NO, THEY DID NOT.

27 Q TO YOUR KNOWLEDGE, DID YOU SEE ANY EVIDENCE
28 OF A GUNSHOT, ANY EVIDENCE THAT A GUN WAS FIRED INTO

1 THAT PLACE?

2 A NO.

3 Q PREMISES?

4 A NO, I DID NOT SEE ANY EVIDENCE OF A
5 GUNSHOT.

6 Q DID SHE POINT TO YOU ANYPLACE TO LOOK WHERE
7 THE BULLET MAY HAVE BEEN LODGED?

8 A SHE WAS UNDER THE DESK. NO. THROUGH MY
9 QUESTIONING, I TRIED TO ASCERTAIN WHERE THE PERSON WAS,
10 AND WHERE IT COULD HAVE GONE.

11 BUT WE LOOKED JUST ABOUT EVERYWHERE.

12 Q YOU AND SHE LOOKED JUST ABOUT EVERYWHERE?

13 A I DON'T KNOW IF SHE LOOKED HERSELF. I
14 WENT -- WHEN THE DEPUTIES GOT THERE AND THE DETECTIVES
15 HAD FOLLOWED AFTERWARDS, THEY LOOKED JUST ABOUT
16 EVERYWHERE.

17 Q DID YOU SEE THEM LOOKING?

18 A I DID.

19 Q ALL RIGHT.

20 DID SHE HELP THEM AT ALL?

21 A I DO NOT KNOW, SIR.

22 Q OKAY. BUT YOU SAW THEM LOOKING; RIGHT?

23 A YES, I DID.

24 Q WHERE WAS SHE WHEN THEY WERE LOOKING?

25 A WE ASKED HER TO SIT DOWN. IT WOULD HAVE
26 BEEN JUST INSIDE THE DOOR, ALONG THE -- THE EAST WALL,
27 OR ON THE LEFT.

28 Q SHE DIDN'T PROVIDE ANY ASSISTANCE WHILE

1 THEY WERE LOOKING FOR A BULLET, OR -- OR A BULLET HOLE?

2 A WHEN I ASKED HER QUESTIONS, TRIED TO
3 ASCERTAIN WHERE THE BULLET COULD HAVE GONE, SHE ASSISTED
4 ME; HOWEVER, I CAN'T TESTIFY TO WHAT SHE DID WITH THE
5 OTHER DETECTIVES.

6 Q OKAY. WHERE DID SHE DIRECT YOU?

7 A IMMEDIATELY BEHIND THE DESK.

8 Q NOTHING THERE; RIGHT?

9 A I DID NOT SEE ANYTHING.

10 Q NO DAMAGE WHATSOEVER?

11 A I COULD NOT FIND ANY DAMAGE, SIR.

12 Q ALL RIGHT.

13 DID YOU SEE PAPERS STREWN ON THE FLOOR?

14 A YES, I DID.

15 Q WERE THERE A LOT OF PAPERS ON THE FLOOR?

16 A THERE WERE SEVERAL PAPERS ON THE FLOOR.

17 Q DID SHE GIVE YOU -- DID SHE DESCRIBE THE

18 GUN TO YOU?

19 A YES, SHE DID.

20 Q WHAT DID SHE DESCRIBE IT AS?

21 A WELL, INITIALLY, SHE SAID IT WAS JUST A

22 HANDGUN. I TRIED TO ASCERTAIN WHAT TYPE OF GUN.

23 AND AFTER WE DISCUSSED THE APPEARANCE OF
24 DIFFERENT TYPES OF GUNS, WE CONCLUDED, SONIA RISKEN AND
25 I CONCLUDED THAT IT WAS A REVOLVER.

26 Q OKAY. BASED ON WHAT FACTORS DID YOU
27 CONCLUDE THAT IT WAS A REVOLVER?

28 A I SHOWED HER SAMPLES OF THE TWO TYPES OF

1 GUNS THAT I CARRIED. ONE BEING MY SEMIAUTOMATIC,
2 ANOTHER A REVOLVER. THE CYLINDER, HAMMER. ONE WOULD
3 EXPEND A -- EXPENDED ROUND. THE OTHER ONE WOULD NOT.
4 AND SHE AGREED THAT IT RESEMBLED A
5 REVOLVER.

6 Q OKAY. AND DID YOU COME TO THAT AGREEMENT
7 BECAUSE YOU COULD NOT FIND AN EXPENDED ROUND?

8 A ALL I COULD DO IS ASK HER TO DESCRIBE THE
9 WEAPON, BEST OF HER ABILITY.

10 Q MY QUESTION IS --

11 A THAT WOULD BE CONSISTENT WITH A REVOLVER,
12 YES, SIR.

13 Q MY QUESTION IS THIS. DID YOU CONCLUDE THAT
14 IT MUST HAVE BEEN A REVOLVER BECAUSE YOU COULDN'T FIND
15 AN EXPENDED ROUND?

16 A SHE TOLD ME IT WAS A REVOLVER.

17 Q SHE DESCRIBED IT AS A REVOLVER?

18 A WELL, AFTER SHOWING HER TWO TYPES OF GUNS,
19 SHE SAID YES, IT RESEMBLES THIS ONE.

20 Q WAS THIS AFTER YOU LOOKED FOR THE EXPENDED
21 ROUND THAT SHE TOLD YOU THAT?

22 A THAT WAS ONGOING, SIR.

23 Q THAT WAS ONGOING. SO YOU DON'T KNOW
24 WHETHER SHE TOLD YOU SHE THOUGHT IT WAS A REVOLVER AFTER
25 YOU SEARCHED FOR AND COULD NOT FIND AN EXPENDED ROUND,
26 OR DID SHE TELL YOU THAT BEFORE YOU LOOKED FOR THE
27 EXPENDED ROUND?

28 A NO, HE CONTINUED LOOKING FOR AN EXPENDED

1 CASING, AND THE ROUND ITSELF.

2 Q SO YOU -- OKAY.

3 NOW, DID SHE GIVE YOU A THEORY AS TO WHO
4 WOULD HAVE BEEN SHOOTING AT HER? OR WHY SOMEBODY WOULD
5 HAVE BEEN SHOOTING AT HER?

6 A YES, SHE DID.

7 Q WHAT WAS THAT THEORY?

8 MR. LEWIN: OBJECTION, YOUR HONOR.

9 THIS ISSUE HAS BEEN LITIGATED PRETRIAL.

10 THE COURT: WHY DON'T YOU APPROACH.

11 MR. CREARY: I'LL WITHDRAW THE QUESTION.

12 THE COURT: ALL RIGHT. THE QUESTION IS WITHDRAWN.

13 NEXT QUESTION, PLEASE.

14

15 (A DISCUSSION WAS HELD

16 OFF THE RECORD.)

17

18 MR. CREARY: YOUR HONOR, MAY WE APPROACH SIDE BAR?

19 THE COURT: COME ON UP, PLEASE.

20

21 (THE FOLLOWING PROCEEDINGS

22 WERE HELD AT THE BENCH:)

23

24 MR. CREARY: YOUR HONOR, I THINK I KNOW WHAT

25 MR. LEWIN'S ISSUE IS GOING TO BE -- I DON'T WANT TO

26 VIOLATE ANY COURT ORDER. I JUST DON'T RECALL EXACTLY

27 WHAT THE OUTCOME OF THAT LITIGATION WAS AS TO ISSUE --

28 MR. LEWIN: AS THE COURT IS AWARE, I 402 ABOUT

1 EVERYTHING THAT CAN POSSIBLY COME UP. THIS ISSUE --

2 THE COURT: PRETTY MUCH.

3 MR. LEWIN: THAT WAS A SOFTBALL FOR YOUR HONOR.

4 THIS ISSUE INVOLVED SHERRY JACKSON. I HAVE
5 REPEATEDLY SPOKEN TO COUNSEL ABOUT WHETHER OR NOT THEY
6 INTEND TO INTRODUCE ANY THIRD-PARTY CULPABILITY
7 EVIDENCE.

8 THE OFFER OF PROOF WHAT THE WITNESS SAID
9 WAS SHERRY JACKSON, SHE BELIEVED ANONYMOUS CALLS THAT
10 HAD BEEN MADE, THAT SHE BELIEVED IT WAS SHERRY JACKSON.

11 AND THAT SHE IS THEN GOING TO SAY "YEAH,
12 SHERRY JACKSON MADE DEATH THREATS." PREVIOUSLY, WITH
13 THIS COURT AS WELL, SAID ARE YOU PLANNING ON BRINGING
14 ANY THIRD-PARTY CULPABILITY EVIDENCE IN REGARDING SHERRY
15 JACKSON.

16 THEY SAID THEY WEREN'T. I DON'T BELIEVE IT
17 IN ANY WAY MEETS HALL. NOT EVEN A FOUNDATION. AS AN
18 OFFER OF PROOF FURTHER, DETECTIVE RODRIGUEZ HAS LISTENED
19 TO THE TAPES.

20 COUNSEL, I DON'T KNOW IF THEY HAVE OR NOT.
21 BUT THEY CERTAINLY COULD HAVE MADE ARRANGEMENTS. DID
22 NOT RECOGNIZE THE VOICE.

23 AND WHAT WE AGREED ON, THE THREE OF US,
24 MR. LEVINSON, MR. CREARY AND I, THAT OKAY, YOU CAN ASK
25 HER WHETHER SHE EVER THREATENED HER.

26 BUT THAT THAT'S THE END OF IT. SO NOW
27 WE'RE BACK TO THE SAME ISSUE. SHERRY JACKSON HAS
28 ALREADY GONE HOME TO WASHINGTON. SO --

1 MR. CREARY: SHE'S SITTING IN THE AUDIENCE.

2 THE COURT: FRONT ROW, RIGHT SIDE.

3 MR. LEWIN: IN ANY EVENT.

4 THE COURT: SECOND CHAIR.

5 MR. LEWIN: THANKS, YOUR HONOR.

6 THE BOTTOM LINE IS WE'VE HAD -- THIS ISSUE
7 HAS BEEN DEALT WITH. I ALREADY WITH THIS RULING
8 STRUCTURED MY CASE, WITH DEFENSE COUNSEL'S ASSERTIONS
9 AND AGREEMENTS AS TO WHAT THE INFORMATION IS GOING TO
10 BE.

11 THEY CAN'T MEET HALL. OBVIOUSLY, YOU KNOW,
12 IT'S REAL LATE TO GO WELL, YOU KNOW, NOW I'VE DECIDED
13 I'D LIKE TO ASK ABOUT THIS.

14 THE COURT: MATTER SUBMITTED BY ALL SIDES?

15 MR. LEWIN: YES.

16 MR. CREARY: YOUR HONOR, I WAS JUST GOING TO
17 SAY -- IT DOES GO TO HER STATE OF MIND. SHERRY JACKSON
18 IS SITTING OUT THERE.

19 THE ONLY QUESTION I WAS GOING TO ASK HER IS
20 THE QUESTION -- IS DID SHE GIVE YOU A THEORY. I DIDN'T
21 ASK SPECIFICALLY ABOUT SHERRY JACKSON. I DIDN'T KNOW
22 WHAT HE WAS GOING TO SAY.

23 THE COURT: SO ARE YOU GOING TO LEAVE IT AS DID
24 YOU ASK HER IF SHE HAD A THEORY, AND SHE GAVE AN
25 AFFIRMATIVE ANSWER, AND LEAVE IT AT THAT? OR FOLLOW IT
26 UP? I DIDN'T THINK --

27 MR. CREARY: I MEAN -- YEAH, I MEAN, I DON'T KNOW,
28 I DON'T KNOW IF -- IT GOES TO STATE OF MIND. AND

1 BASICALLY, I THINK THAT THE STATEMENT "I'M GOING TO HAVE
2 YOU KILLED" WOULD FALL UNDER THE HEARSAY OBJECTION.

3 HELP ME OUT, DON.

4 BEYOND THAT, I'LL SUBMIT.

5 MR. LEVINSON: I THINK HE'S SAID ABOUT AS MUCH AS
6 I CAN.

7 THE COURT: ALL RIGHT.

8 FIRST AS RELATES TO THE STATEMENTS, THE
9 STATEMENTS THAT YOU HAVE BEEN ASKING THE WITNESS ABOUT
10 DEPEND LARGELY, UP UNTIL THIS POINT, WHETHER OR NOT THE
11 VICTIM MADE CONTEMPORANEOUS STATEMENTS UNDER THE HEAT OF
12 THE EXCITEMENT WITHOUT OPPORTUNITY FOR REFLECTION,
13 ET CETERA; WHAT SHE SAW, WHAT SHE DID, WHAT HAPPENED.

14 WHEN YOU'RE ASKING NOW TO HAVE THE VICTIM'S
15 STATE OF MIND OFFERED AS TO WHAT HER THEORIES OF THE
16 CASE ARE, I THINK YOU'RE A LITTLE BIT FAR AFIELD OF 1240
17 AND 1241.

18 BECAUSE NOW YOU'RE BASICALLY ASKING THE
19 DEAD PERSON'S OPINION AS TO WHY CERTAIN THINGS MAY HAVE
20 OCCURRED. I THINK YOU HAVE A HEARSAY ISSUE, NUMBER ONE.

21 ALSO, I DON'T THINK YOU HAVE A SUFFICIENT
22 FOUNDATION FOR THIRD-PARTY CULPABILITY.

23 NOW, IF YOU'RE GOING TO ATTEMPT TO BRING IN
24 INFORMATION ABOUT SHERRY JACKSON, THEN YOU SHOULD ASK
25 HER TO REMAIN, OR YOU SHOULD LEAVE HER ON CALL. BECAUSE
26 THE PROSECUTION MAY VERY WELL WANT TO RECALL THE WITNESS
27 IF YOU'RE GOING TO ATTEMPT TO BRING IN, IN YOUR CASE IN
28 CHIEF, OTHER EVIDENCE.

1 MR. LEWIN: YOUR HONOR, THE ISSUE I HAVE WITH THAT
2 IS THAT -- I HAVE STRUCTURED EVERYTHING. IN OTHER
3 WORDS, YOU CAN'T STIPULATE --

4 THE COURT: WE'RE NOT THERE, YET.

5 MR. LEWIN: JUST WANT TO MAKE SURE WHAT THE
6 COURT'S -- IF THAT WERE TO HAPPEN NOW, IT MAKES IT LOOK
7 LIKE I'VE HIDDEN SOMETHING. THEY DON'T MEET THE
8 STANDARD OF HALL.

9 BUT MORE THAN THAT, WE WENT THROUGH THIS
10 WITH THIS COURT. THE COURT SAID NO, WE ARE NOT GOING
11 THERE. NOTHING HAS CHANGED. LISTEN --

12 MR. CREARY: LET ME JUST RESPOND. I THINK -- I
13 MEAN, THE WAY THE JUDGE IS GOING TO RULE, IT'S PROBABLY
14 MOOT.

15 BUT I MEAN -- THE PEOPLE CAN'T GET US TO
16 STIPULATE TO NOT DEFEND OUR CLIENTS. I MEAN, WHATEVER
17 WE NEED TO DO, WE NEED TO DO IT VIGOROUSLY. SO I MEAN,
18 I'M NOT STIPULATING OH, I WON'T DO THIS IF THE OCCASION
19 ARISES. IF I NEED TO TRY TO DELVE INTO CERTAIN AREAS,
20 I'M GOING TO DO IT.

21 I CAN'T BASE MY DEFENSE ON WHAT I PROMISED
22 JOHN I WON'T DO.

23 MR. LEWIN: IT WASN'T PROMISED TO ME, IT WAS TO
24 THE COURT WHAT THE EVIDENCE IS GOING TO BE.

25 THE COURT: WELL, YOU HAVEN'T STARTED THIS PART OF
26 YOUR AFFIRMATIVE DEFENSE, YET. IF YOU WANT TO LEAVE
27 THIS WITNESS ON CALL, YOU WANT TO LEAVE SHERRY JACKSON
28 ON CALL, THAT'S FINE.

1 BUT FOR PURPOSES OF YOUR CROSS-EXAMINATION
2 OF THIS WITNESS, I'VE MADE VERY LIMITED RULINGS. ONE,
3 THE STATEMENT ASKING ABOUT SONIA RISKEN'S THEORY OF THE
4 CASE, IT'S NOT RELEVANT. IT CALLS FOR HEARSAY.

5 IT DOESN'T FALL WITHIN THE FOUNDATION OF
6 THIRD-PARTY CULPABILITY.

7 WE'RE MOVING ON.

8 IF YOU WANT TO KEEP THESE PEOPLE ON CALL
9 FOR YOUR CASE IN CHIEF, AND YOU CAN EVALUATE, THEN
10 HAVING SEEN THE ENTIRE PROSECUTION CASE, THEN AT LEAST
11 GIVE MR. LEWIN THE COURTESY OF LETTING HIM KNOW IF
12 YOU'RE GOING TO ATTEMPT TO SEEK THIRD-PARTY CULPABILITY.

13 WE'LL FORMALLY REVISIT THAT ISSUE AT THAT
14 TIME.

15 MR. LEWIN: YOUR HONOR, THE PROBLEM IS SHERRY
16 JACKSON, SHE WAS SUPPOSED TO LEAVE YESTERDAY. I THINK
17 SHE'S LEAVING THIS EVENING.

18 THE COURT: WE DO HAVE AIRPLANES THAT GO FROM THE
19 STATE OF WASHINGTON TO THE CITY OF LOS ANGELES. SO SHE
20 CAN BE BROUGHT BACK, IF NECESSARY.

21 MR. LEWIN: THE DEFENSE WOULD BE COORDINATING
22 THAT, YOUR HONOR. IT WOULDN'T BE MY RESPONSIBILITY.

23 THE COURT: THANK YOU.

24

25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN OPEN COURT, IN
27 THE PRESENCE OF THE JURY:)

28

1 THE COURT: ALL RIGHT.

2 THE OBJECTION IS SUSTAINED.

3 MR. CREARY, YOU MAY ASK YOUR NEXT QUESTION.

4 MR. CREARY: THANK YOU, YOUR HONOR.

5 Q AND DURING YOUR INVESTIGATION, DID YOU
6 CONTACT ANY OTHER WITNESSES?

7 A YES, I DID.

8 Q OKAY. AND DID ANY OTHER WITNESSES TELL YOU
9 THAT THEY HEARD GUNSHOTS? OR HEARD A GUNSHOT?

10 A NO, THEY DIDN'T.

11 Q AND WERE ANY OF THESE WITNESSES -- WELL,
12 DID ANY OF THESE WITNESSES TELL YOU THAT THEY HEARD THE
13 VICTIM SCREAMING?

14 A YES.

15 MR. LEWIN: OBJECTION. HEARSAY, YOUR HONOR,
16 WITHOUT AN EXCEPTION. MOTION TO STRIKE ANY ANSWER.

17 THE COURT: DO YOU WISH TO BE HEARD, MR. CREARY?

18 MR. CREARY: NO, YOUR HONOR. I'LL SUBMIT.

19 I'LL WITHDRAW.

20 THE COURT: THE OBJECTION IS SUSTAINED. THE
21 PARTIAL ANSWER IS STRICKEN. THE ONE THAT'S GIVEN.

22 GO AHEAD.

23 MR. CREARY: THANK YOU.

24 NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: MR. LEVINSON.

26 MR. LEVINSON: VERY BRIEFLY.

27

28

CROSS-EXAMINATION

BY MR. LEVINSON:

Q GOOD MORNING, DEPUTY. HOW ARE YOU?

A GOOD MORNING.

Q I'M GOING TO ASK YOU A FEW QUESTIONS.

NOW, HOW LONG DID YOU GET -- HOW LONG DID
IT TAKE YOU TO RESPOND TO THE SCENE AFTER THE 911, YOU
SAID?

A APPROXIMATELY ONE TO TWO MINUTES.

Q SO YOU WERE THERE RIGHT AWAY?

A RELATIVELY QUICKLY. YES.

Q WHEN YOU GOT THERE, DID YOU SMELL ANY
LINGERING ODOR OF CORDITE, OR GUNSHOT AT ALL?

A I DO NOT RECALL.

Q AND YOU DIDN'T SEE ANY PHYSICAL EVIDENCE OF
ANY GUNSHOT; IS THAT CORRECT?

A THAT'S CORRECT.

Q YOU SEARCHED AND COULDN'T FIND ANYTHING; IS
THAT RIGHT?

A THAT IS CORRECT.

Q AND DID YOU FIND THAT UNUSUAL AT THE TIME?

MR. LEWIN: OBJECTION, RELEVANCE.

THE COURT: OVERRULED.

THE WITNESS: NO, THAT'S NOT UNUSUAL. OR LET'S
SAY NOT SURPRISING. WE CONTINUED TO DO OUR SEARCH AND
DO THE BEST WE CAN.

Q THANK YOU.

MR. LEVINSON: NO FURTHER QUESTIONS.

1 THE COURT: MR. CREARY, DO YOU HAVE CROSS?

2 MR. CREARY: NO, YOUR HONOR.

3 THE COURT: MR. LEWIN, DO YOU HAVE ANY REDIRECT?

4 MR. LEWIN: NO, YOUR HONOR.

5 THE COURT: MAY THE WITNESS BE EXCUSED?

6 MR. LEVINSON: NO OBJECTION, YOUR HONOR.

7 THE COURT: MR. CREARY.

8 MR. CREARY: NO OBJECTION.

9 THE COURT: MR. LEWIN.

10 MR. LEWIN: YES, YOUR HONOR.

11 THE COURT: NO OBJECTION?

12 MR. LEWIN: NO OBJECTION.

13 THE COURT: MR. STONE, THANK YOU FOR JOINING US
14 TODAY, SIR. YOU ARE EXCUSED. WATCH YOUR STEP.

15 YOU WISH TO RECALL MR. BOURDEAU AT THIS
16 TIME?

17 MR. LEWIN: YES, YOUR HONOR.

18

19 JOHN BOURDEAU,
20 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
21 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

22 THE COURT: RESUME YOUR SEAT UP HERE ON THE
23 WITNESS STAND. I'D REMIND YOU YOU'RE STILL UNDER OATH.

24 MR. LEWIN, YOU MAY RESUME.

25

26 DIRECT EXAMINATION RESUMED

27 BY MR. LEWIN:

28 Q MR. BOURDEAU, WE WERE AT THE POINT IN THE

1 EXAMINATION I WAS ASKING YOU ABOUT SECURITY CAMERAS THAT
2 YOU INSTALLED; IS THAT CORRECT?

3 A YES, I DID.

4 Q AND YOU INSTALLED THEM AT YOUR MOM'S
5 REQUEST?

6 A YES.

7 Q I WANT TO SHOW YOU WHAT I'M MARKING AS
8 EXHIBIT 37.

9 DO YOU RECOGNIZE THIS LOCATION?

10 A YES.

11
12 (PEOPLE'S EXHIBIT 37,
13 PHOTOGRAPH, WAS MARKED FOR
14 IDENTIFICATION.)

15
16 Q BY MR. LEWIN: AND WHAT IS THAT LOCATION?

17 A THAT'S THE FRONT ENTRANCE AT MY MOM'S
18 HOUSE.

19 Q AND DO YOU SEE IN THAT IMAGE, ARE YOU ABLE
20 TO SEE THE SECURITY CAMERAS THAT YOU INSTALLED?

21 A YES.

22 Q I'M GOING TO -- PEOPLE'S 38. THIS IS A
23 CLOSE-UP PHOTOGRAPH OF THE LAMP THAT IS INSIDE THE DOOR;
24 IS THAT CORRECT? INSIDE THE GATED DOOR?

25 A YES.

26
27 (PEOPLE'S EXHIBIT 38,
28 PHOTOGRAPH, WAS MARKED FOR

1 IDENTIFICATION.)

2

3 Q BY MR. LEWIN: SO THAT WOULD BE -- CORRECT?
4 THAT WOULD BE IN ESSENCE -- THIS LAMP HERE.

5 IS THAT RIGHT?

6 A YES.

7 Q AND THE CAMERA THAT WE CAN SEE IN THIS
8 PHOTOGRAPH IS -- BACK TO 38, IS THAT THE CAMERA YOU
9 INSTALLED?

10 A YES.

11 Q DID YOU ALSO INSTALL A CAMERA OUTSIDE
12 THAT'S VISIBLE HERE?

13 A NO.

14 Q NO? WHERE IS THE OTHER CAMERA?

15 A IT'S -- IT'S ON THE CORNER OF THE HOUSE.

16 Q OH, I APOLOGIZE. SO THERE'S A SECOND
17 CAMERA AS WELL; IS THAT RIGHT?

18 A YES.

19 Q WHERE IS THAT CAMERA LOCATED?

20 A ON THE RIGHT SIDE -- IF YOU'RE FACING THE
21 HOUSE, IT'S ON THE RIGHT SIDE. CORNER OF THE HOUSE.

22 Q AND THE CAMERAS THAT YOU SET UP, WERE THEY
23 VIDEO CAMERAS?

24 A YES.

25 Q AND DID THOSE ALLOW YOUR MOM TO SEE WHO WAS
26 COMING AND GOING?

27 A YES.

28 Q WERE THOSE CAMERAS LOADED, WOULD THEY BE

1 LOADED WITH VIDEO SO THAT YOU COULD REVIEW THEM? OR
2 WERE THEY SIMPLY CAMERAS THAT JUST ALLOWED YOU TO SEE
3 WHAT WAS GOING ON, BUT DIDN'T RECORD?

4 A THEY WERE JUST CAMERAS.

5 Q SO THERE WAS NO RECORDING ON THOSE CAMERAS?

6 A NO RECORDING.

7 Q AND WERE YOU FAMILIAR WITH HOW YOUR MOM
8 WOULD OPERATE THE CAMERAS? IN OTHER WORDS, WHAT WOULD
9 BE HER HABIT AND CUSTOM AS TO HOW INDIVIDUALS WOULD
10 ENTER THE HOUSE?

11 A SHE WOULD HAVE THE TELEVISION ON IN HER
12 BEDROOM. AND THEN WHEN SOMEBODY RINGS THE DOORBELL, AND
13 THEN THAT'S WHEN SHE WOULD SEE WHO IS IN THE FRONT OF
14 THE HOUSE.

15 Q I WANT TO TALK ABOUT FOR A MOMENT -- I'M
16 SORRY. YOUR MOM AT THIS POINT, WHAT WAS HER REACTION TO
17 STRANGERS COMING TO THE HOUSE?

18 AND WHAT I'M ASKING YOU IS WAS YOUR MOM THE
19 KIND OF PERSON WHO -- SHE DIDN'T CARE WHO CAME TO THE
20 HOUSE, SHE WOULD JUST LET THEM IN? OR WAS YOUR MOM THE
21 KIND OF PERSON WHO WAS VERY PARANOID ABOUT PEOPLE SHE
22 DIDN'T KNOW?

23 A YEAH, SHE WAS PARANOID ABOUT PEOPLE SHE
24 DIDN'T KNOW.

25 Q AND DID THAT INCREASE, THAT PARANOIA, AFTER
26 ALL THESE BLACK WIDOW ARTICLES CAME OUT?

27 A YES.

28 Q ARE YOU FAMILIAR WITH THIS INDIVIDUAL?

1 POINTING TO DEFENDANT DELACRUZ?

2 A YES.

3 Q AND WHO DO YOU KNOW HIM TO BE?

4 A MY COUSIN'S SON.

5 Q AND HIS RELATION TO YOUR MOM WOULD BE WHAT?

6 A GRAND NEPHEW.

7 Q AND IT WOULD BE HER OLDER SISTER'S SON; IS
8 THAT CORRECT?

9 A HER OLDER SISTER'S GRANDSON.

10 Q GRANDSON. EXCUSE ME. THANK YOU.

11 AND THAT OLDER SISTER'S NAME IS WHAT?

12 A CELESTINA SANTANDER.

13 THE COURT: WOULD YOU SPELL IT, PLEASE, FOR THE
14 REPORTER?

15 THE WITNESS: C-E-L-E-S-T-I-N-A.

16 S-A-N-T-A-N-D-E-R.

17 Q BY MR. LEWIN: DOES SHE LIVE IN CARSON?

18 A YES.

19 Q CAN YOU TELL ME, WHAT HAS BEEN YOUR
20 RELATIONSHIP WITH THE DEFENDANT? WITH MR. DELACRUZ?

21 THE COURT: AT WHAT POINT IN TIME?

22 Q BY MR. LEWIN: WHEN DID YOU MEET HIM?

23 A APPROXIMATELY 10 MONTHS BEFORE MY MOM
24 PASSED AWAY.

25 Q AND HOW WAS THAT IT YOU MET HIM?

26 A HE CAME UP TO WHERE I WAS LIVING AT THAT
27 TIME. AND -- INFORMED ME THAT MY MOM WAS SICK.

28 Q LET ME ASK YOU, IN TERMS OF YOU AND YOUR

1 MOM'S RELATIONSHIP, WERE YOU AND YOUR MOM ESTRANGED FOR
2 A LONG PERIOD OF TIME?

3 A YES.

4 Q AND WAS IT DURING THE PERIOD OF TIME THAT
5 YOU WERE ESTRANGED THAT YOUR MOM BECAME CLOSE TO
6 MR. DELACRUZ?

7 A YES.

8 Q WERE YOU AWARE IF MR. DELACRUZ WAS EVER
9 LIVING IN YOUR MOM'S HOUSE?

10 A I WAS INFORMED BY THAT.

11 Q DID YOU EVER SEE HIM THERE?

12 A NO.

13 Q DID YOU EVER SEE ANY OF HIS PROPERTY THERE?

14 A YES.

15 Q DID YOU EVER SEE MAIL THERE FOR HIM?

16 A YES.

17 Q WHEN I SAY THE NAME JOENEL DELACRUZ, WHO DO
18 YOU KNOW THAT TO BE?

19 A ERIC DELACRUZ'S BROTHER.

20 Q THAT YOUNGER BROTHER, OR OLDER BROTHER?

21 A A YOUNGER BROTHER.

22 Q AND JOENEL DELACRUZ, WHEN DID YOU MEET HIM?

23 A MET HIM BEFORE I MET ERIC. IN CARSON,
24 WHERE I WORK.

25 Q HOW LONG BEFORE YOU MET ERIC DID YOU MEET
26 JOENEL?

27 A I DON'T KNOW EXACTLY.

28 Q ARE WE TALKING YEARS, OR MONTHS?

1 A LESS THAN A YEAR.

2 Q ARE YOU ALSO FAMILIAR -- DO YOU KNOW WHO
3 MARIA PEREZ DELACRUZ IS?

4 A YES.

5 Q AND WHO DO YOU KNOW HER TO BE?

6 A AT THAT TIME, ERIC'S GIRLFRIEND.

7 Q AND DID YOU MEET HER AROUND THE SAME TIME
8 AS YOU MET ERIC?

9 A YES.

10 Q BEFORE YOUR MOM DIED, DID JOENEL AT POINTS
11 LIVE IN YOUR MOM'S HOUSE AS WELL?

12 A HE WAS -- HE WAS STAYING AT MY MOM'S SHOP.

13 Q WHAT ABOUT MARIA PEREZ? DO YOU KNOW IF SHE
14 EVER LIVED AT YOUR MOM'S HOUSE?

15 A I DON'T KNOW THAT.

16 Q DID YOU EVER SEE -- WERE YOU EVER PRESENT
17 WHEN MR. DELACRUZ, THE DEFENDANT, WOULD SEE YOUR MOM?

18 A YES.

19 Q CAN YOU DESCRIBE, BASED ON WHAT YOU SAW,
20 WHAT THEIR RELATIONSHIP WAS LIKE?

21 A I WOULD SEE THEM ONLY VERY SHORTLY. AND
22 THEY WOULD HAVE -- SMALL CHATS. AND THAT WAS IT.

23 Q BASED ON YOUR KNOWLEDGE, DO YOU THINK THAT
24 YOU HAVE A CLOSER RELATIONSHIP WITH YOUR MOM, OR WAS
25 ERIC DELACRUZ CLOSER TO YOUR MOM?

26 A I DON'T THINK I SAW ENOUGH OF THEIR
27 RELATIONSHIP COMPARED TO MINE TO SAY THAT -- WHICH
28 ONE -- WHICH ONE OF US IS CLOSER.

1 Q DID YOU HAVE A KEY TO THE HOUSE?

2 A NO, I DIDN'T.

3 Q DO YOU KNOW IF ERIC DELACRUZ HAD A KEY TO
4 THE HOUSE?

5 A I DIDN'T.

6 Q YOU DON'T KNOW IF HE DID OR NOT?

7 A YES.

8 Q AFTER LAW RISKEN DIED, DID YOU START SEEING
9 YOUR MOM MORE?

10 A YES.

11 Q AND YOU SAID THAT SHE WAS SICK. WERE YOU
12 ATTENDING TO HER HEALTH ISSUES?

13 A I WAS HELPING HER WITH -- HOUSEWORK. AT
14 HOME.

15 Q AND WOULD YOU ALSO SEE HER AT HER SALON?

16 A YES.

17 Q AND DID YOU WORK AT TIMES AT DIFFERENT
18 SALONS?

19 A YES.

20 Q AND WERE YOU WORKING AT A SALON, IN FACT
21 NOT YOUR MOM'S SALON, BUT A DIFFERENT SALON IN 2007 AT
22 THE TIME YOUR MOM WAS MURDERED?

23 A YES.

24 Q DO YOU KNOW HOW OFTEN BEFORE YOUR MOM'S
25 MURDER THAT YOU WOULD SEE YOUR MOM WITH MR. DELACRUZ?

26 A ERIC CAME AROUND ON WEEKENDS. PROBABLY --
27 TWICE A MONTH I WOULD SEE HIM. GO BY MY MOM'S PLACE.

28 Q AND WOULD THERE BE TIMES WHEN HE WOULD

1 DEPLOY -- DID YOU KNOW HE WAS IN THE NAVY?

2 A YES.

3 Q AND WHEN HE WAS DEPLOYED, I ASSUME YOU
4 WOULD SEE HIM LESS; IS THAT CORRECT?

5 A YES.

6 Q BASED ON WHAT YOU SAW, DID YOUR MOM APPEAR
7 TO BE AFFECTIONATE TOWARDS MR. DELACRUZ?

8 A NO.

9 Q YOUR MOM WAS NOT AFFECTIONATE TOWARDS
10 MR. DELACRUZ?

11 A WELL --

12 THE COURT: DO YOU UNDERSTAND THE QUESTION?

13 THE WITNESS: CAN YOU REPHRASE THE QUESTION?

14 Q BY MR. LEWIN: DID YOUR MOM SEEM LIKE SHE
15 LIKED ERIC? THAT HE WAS IMPORTANT TO HER?

16 A YES.

17 Q AFTER YOUR MOM WAS MURDERED, DO YOU KNOW IF
18 THE DEFENDANT, IF ERIC DELACRUZ STARTED LIVING IN HER
19 HOUSE AT SOME POINT?

20 A NO.

21 Q DO YOU KNOW IF JOENEL DELACRUZ OR MARIA
22 PEREZ WAS LIVING IN YOUR MOM'S HOUSE OR ANY OTHER
23 PROPERTY THAT YOUR MOM HAD AFTER THE MURDER?

24 A NO.

25 Q ARE YOU FAMILIAR WITH -- DO YOU KNOW THIS
26 MAN? FERNANDO ROMERO?

27 A NO, I DON'T.

28 Q DO YOU KNOW ANY OF ERIC DELACRUZ'S FRIENDS

1 FROM THE NAVY?

2 A NO, I DON'T.

3 Q AND HAVE YOU EVER HAD ANY CONTACT WITH ANY
4 OF MR. DELACRUZ'S OTHER FRIENDS, AS FAR AS YOU KNOW?

5 A NO, I DON'T.

6 Q ALL RIGHT.

7 I WANT TO GO TO THE PERIOD OF TIME BEFORE
8 YOUR MOM'S DEATH. I WANT TO ASK YOU, AFTER THE
9 INCIDENTS AT THE SALON -- DO YOU KNOW THE TWO INCIDENTS
10 I'M REFERRING TO AT THE HAIR SALON WITH YOUR MOM?

11 A YES.

12 Q DID YOUR MOM -- AND I WANT YOU TO LISTEN TO
13 MY QUESTION CAREFULLY. I'M NOT ASKING YOU WHAT SHE TOLD
14 YOU ABOUT THEM. BUT I WANT TO KNOW, DID SHE DISCUSS
15 THEM WITH YOU?

16 A YES.

17 Q AND DID SHE TELL YOU THAT SHE WAS AFRAID?

18 A SHE NEVER MENTIONED SHE WAS AFRAID.

19 Q DID SHE ASK YOU TO PUT SURVEILLANCE CAMERAS
20 AT THE SALON?

21 A AFTER.

22 Q THAT'S WHAT I'M ASKING. AFTER. SHE'S
23 ASKING YOU TO PUT SURVEILLANCE CAMERAS AT THE SALON?

24 A YES.

25 Q AND DID SHE TELL YOU SHE WANTED TO PUT THE
26 SURVEILLANCE CAMERAS AT THE SALON BECAUSE SHE WAS
27 CONCERNED?

28 A SHE DIDN'T SAY SHE WAS CONCERNED. BUT SHE

1 ASKED ME TO.

2 Q AND DID YOU ASK HER "HEY, MOM, WHY DO YOU
3 WANT ME TO PUT THESE SURVEILLANCE CAMERAS?"

4 A NO, I DIDN'T ASK HER.

5 Q YOU JUST DID IT?

6 A YES.

7 Q AND DID THIS HAPPEN -- THE TIMING, WAS THAT
8 RIGHT AFTER THE INCIDENTS AT THE SALON?

9 A THE FIRST INCIDENT. AFTER, YES.

10 Q THERE WEREN'T CAMERAS OPERATING WHEN THESE
11 INCIDENTS OCCURRED AT THE SALON; IS THAT CORRECT?

12 A YES.

13 MR. CREARY: OBJECTION, LEADING.

14 THE COURT: SUSTAINED. IT'S ALSO A
15 DOUBLE-NEGATIVE.

16 REFRAME THE QUESTION, PLEASE.

17 Q BY MR. LEWIN: WERE THERE SURVEILLANCE
18 CAMERAS OPERATING AT THE SALON WHEN THE INCIDENTS
19 OCCURRED?

20 A NO. NO.

21 Q I WANT TO GO TO THE DAY BEFORE YOUR MOM'S
22 BODY WAS FOUND. APRIL 26, 2007.

23 DO YOU RECALL WHEN THE LAST TIME YOU SAW
24 HER WAS?

25 A I SAW HER ON WEDNESDAY AT HER SHOP.

26 Q DO YOU RECALL WHAT DAY YOUR MOM WAS
27 MURDERED ON?

28 A I WAS TOLD ON WEDNESDAY.

1 Q LET ME BACK UP.

2 THE LAST TIME YOU SAW HER WAS WHEN?

3 A THAT WEDNESDAY.

4 Q WEDNESDAY, THE 25TH?

5 A I DON'T REMEMBER THE DATE.

6 Q I'M SORRY. DO YOU RECALL SEEING YOUR MOM,
7 LEAVING THE SALON WITH HER?

8 A YES.

9 Q THE DAY BEFORE HER BODY WAS FOUND?

10 A YES.

11 Q OKAY. WHEN YOU LEFT THE SALON, LATER ON
12 THAT NIGHT, DID YOU TRY TO GET AHOLD OF YOUR MOM BY CELL
13 PHONE?

14 A YES, I DID.

15 Q WERE YOU ABLE TO REACH HER?

16 A NO.

17 Q DID YOU ALSO TRY HER ON HER HOME PHONE?

18 A I DON'T RECALL THAT.

19 Q WERE YOU ABLE TO REACH HER, THOUGH?

20 A NO.

21 Q THE NEXT DAY, DO YOU RECALL, DID YOU TRY TO
22 REACH YOUR MOM AGAIN?

23 A YES, SEVERAL TIMES.

24 Q AND WERE YOU ABLE TO REACH HER?

25 A NO.

26 Q AT SOME POINT THAT NEXT DAY, DID YOU GET
27 CONCERNED ABOUT YOUR MOM?

28 A I STARTED TO GET CONCERNED, YES.

1 Q DO YOU KNOW WHO ROBERTO RIOS IS?

2 THE COURT: THE NAME AGAIN, PLEASE?

3 MR. LEWIN: ROBERTO RIOS.

4 THE COURT: THANK YOU.

5 THE WITNESS: THAT'S MY UNCLE.

6 Q BY MR. LEWIN: THAT'S ALSO SONIA'S BROTHER?

7 A YES.

8 Q AND DO YOU RECALL WHETHER THAT NEXT DAY,
9 EARLIER ON THE SAME DAY YOUR MOM'S BODY WAS FOUND, DID
10 YOU END UP TELLING ROBERTO RIOS, HEY, I CAN'T REACH MY
11 MOM?

12 A YES.

13 Q AND DID MR. RIOS INDICATE TO YOU THAT HE
14 HAD NOT BEEN ABLE TO REACH HER, EITHER?

15 MR. LEWIN: AND YOUR HONOR, NOT FOR THE TRUTH OF
16 THE MATTER ASSERTED, SIMPLY GOING TO EXPLAIN THE
17 WITNESS'S SUBSEQUENT CONDUCT.

18 THE COURT: LIMITED FOR THAT PURPOSE.

19 THE WITNESS: YES.

20 Q BY MR. LEWIN: AND AT THIS POINT, WERE YOU
21 MORE CONCERNED?

22 A YES.

23 Q WERE YOU WORKING THAT DAY?

24 A I WENT TO WORK THAT DAY.

25 Q DID YOU END UP LEAVING THE SALON WHERE YOU
26 WERE WORKING, AND GOING TO YOUR MOM'S HOUSE?

27 A YES, I DID.

28 Q AND WHEN YOU WENT OVER THERE, DID YOU SEE

1 HER CAR?

2 A MY MOM'S CAR?

3 Q WERE YOU ABLE TO SEE YOUR MOM'S CAR WHEN
4 YOU GOT THERE?

5 A NO.

6 Q WHERE DID SHE NORMALLY KEEP HER CAR?

7 A IT'S ALWAYS IN THE GARAGE, IF SHE'S HOME.

8 Q SO WHEN YOU GOT THERE, YOU HADN'T TALKED TO
9 YOUR MOM SINCE THE NIGHT BEFORE; IS THAT CORRECT?

10 A YES.

11 Q WHAT DID YOU DO?

12 A ON THAT FRIDAY?

13 Q YES. WHEN YOU FOUND YOUR MOM.

14 TELL ME WHAT YOU DID.

15 A I WAS -- I WAS ON THE PHONE STILL CALLING
16 HER. AND THEN -- THE SAME TIME, I WAS RINGING THE
17 DOORBELL. SHE STILL HASN'T ANSWERED. I HAVEN'T GOTTEN
18 IN CONTACT WITH HER.

19 SO I DECIDED THAT'S IT. I HAVE A KEY TO
20 THE SIDE GATE. AND I OPENED -- I OPENED THE SIDE GATE,
21 AND WENT IN.

22 Q LET ME STOP YOU.

23 SO YOU HAVE A KEY TO THE SIDE GATE, BUT NOT
24 TO THE HOUSE?

25 A YES.

26 Q IS THAT CORRECT?

27 A YES.

28 Q SO YOU GO TO THE SIDE GATE.

1 YOU GO INTO THE BACKYARD AREA?

2 A YES.

3 Q AND WHAT DO YOU SEE?

4 A I WENT AROUND THE CORNER OF THE HOUSE, IN
5 THE BACK. AND AS I GOT OVER THE CORNER, I NOTICED THAT
6 THE SLIDING DOOR WAS APPROXIMATELY TWO-THIRDS OPEN. THE
7 BLINDS WERE STILL CLOSED.

8 I WENT IN -- AND I WALKED A FEW STEPS IN
9 THE -- I WALKED A FEW STEPS IN THE LIVING ROOM. AND
10 THEN I SAW HER BODY.

11 Q I'M SORRY, THIS PHOTOGRAPH, I'M JUST GOING
12 TO SHOW YOU ONE. BUT I NEED YOU TO -- YOU'VE SEEN THE
13 PHOTOGRAPH OF YOUR MOM THAT I SHOWED YOU YESTERDAY; IS
14 THAT CORRECT?

15 A YES.

16 MR. LEWIN: MAY I HAVE ONE MOMENT, YOUR HONOR?

17 THE COURT: SURE.

18 THERE'S SOME TISSUE THERE, SIR, IF YOU NEED
19 IT.

20
21 (A DISCUSSION WAS HELD
22 OFF THE RECORD.)

23
24 MR. LEWIN: YOUR HONOR, COUNSEL WILL STIPULATE
25 THAT THE WITNESS HAS SEEN PEOPLE'S 39, AND THAT THIS
26 SHOWS THE CONDITION OF HIS MOM WHEN HE SAW HER.

27 ALTHOUGH THIS IS A MUCH CLOSER PHOTOGRAPH.

28

1 (PEOPLE'S EXHIBIT 39,
2 PHOTOGRAPH, WAS MARKED FOR
3 IDENTIFICATION.)
4

5 MR. LEVINSON: SO STIPULATED ON BEHALF OF
6 DELACRUZ.

7 MR. CREARY: SO STIPULATED ON BEHALF OF
8 MR. ROMERO.

9 THE COURT: ALL RIGHT.

10 LADIES AND GENTLEMEN, AT THE CONCLUSION OF
11 THE CASE, YOU'LL GET A SERIES OF INSTRUCTIONS. ONE OF
12 THOSE INSTRUCTIONS WILL TELL YOU THAT AS TO STIPULATED
13 FACTS, THERE'S NO DISPUTE AS TO THOSE FACTS. THEY'RE
14 DEEMED TO BE CONCLUSIVELY PROVEN TRUE.

15 NAMELY, THAT YESTERDAY, THE WITNESS WAS
16 SHOWN THE PHOTOGRAPH THAT WILL BE MARKED PEOPLE'S 39.

17 NEXT.

18
19 (A DISCUSSION WAS HELD
20 OFF THE RECORD.)
21

22 Q BY MR. LEWIN: WHEN YOU SAW YOUR MOM,
23 MR. BOURDEAU, WAS SHE MOVING?

24 A NO.

25 Q YOU SAID YOU TOOK A FEW STEPS IN. ONCE YOU
26 SAW HER, WHAT DID YOU DO?

27 A I WANTED TO COME UP TO HER. EVERYTHING WAS
28 GOING BY SO FAST. I QUICKLY REALIZED THAT -- I DIDN'T

1 WANT TO ACCEPT THAT SHE WAS DEAD. BECAUSE SHE WAS
2 LAYING THERE IN A POOL OF BLOOD.

3 AND QUICKLY REALIZED THAT SOMEBODY MIGHT
4 STILL BE AT THE HOUSE. AND THEN I RAN BACK OUT.

5 Q WHAT DID YOU DO NEXT?

6 A I WENT TO THE NEXT-DOOR NEIGHBOR TO GET
7 SOME HELP.

8 Q AND WERE YOU AND THE NEIGHBOR ABLE TO CALL
9 911?

10 A YES.

11 Q AND DID THE OFFICERS SHOW UP?

12 A YES.

13 Q DO YOU NEED MOMENT MR. BOURDEAU, OR ARE YOU
14 OKAY?

15 A (CRYING.)

16 THE COURT: DO YOU WANT US TO TAKE A BREAK, SIR?

17 THE WITNESS: I'M OKAY, YOUR HONOR.

18 THE COURT: DO YOU NEED A BREAK? OR DO YOU NEED
19 SOME WATER? JUST LET US KNOW.

20 THE WITNESS: I NEED SOME WATER.

21 THE COURT: OKAY. LET ME GET YOU SOME.

22

23 (PAUSE IN PROCEEDINGS.)

24

25 Q BY MR. LEWIN: JUST TELL ME WHEN YOU'RE
26 READY, MR. BOURDEAU.

27

28 (PAUSE IN PROCEEDINGS.)

1 Q BY MR. LEWIN: READY?

2 A YES.

3 Q MR. BOURDEAU, DO YOU RECOGNIZE THIS
4 INDIVIDUAL RIGHT HERE, DETECTIVE RODRIGUEZ?

5 A YES.

6 Q AND DID YOU SEE HIM THAT DAY AT YOUR MOM'S
7 HOUSE, THE DAY YOU FOUND THE BODY? DO YOU REMEMBER?

8 A I DON'T REMEMBER.

9 Q DO YOU REMEMBER TALKING TO POLICE OFFICERS
10 THAT DAY?

11 A YES.

12 Q DO YOU RECALL DETECTIVES, MR. BOURDEAU,
13 GETTING PRETTY AGGRESSIVE WITH YOU REGARDING WHETHER YOU
14 WERE INVOLVED IN YOUR MOM'S MURDER?

15 A THE -- THE FIRST TIME, NO.

16 BUT EVENTUALLY, THEY DID.

17 Q LET ME ASK YOU SOMETHING. DID YOU HAVE
18 ANYTHING TO DO WITH YOUR MOM'S MURDER?

19 A NO, SIR.

20 Q WHEN I SAY AN E-MAIL,
21 JHNBORDEAU@YAHOO.COM, ARE YOU FAMILIAR WITH THAT E-MAIL
22 ADDRESS?

23 A NO, SIR.

24 Q HAS THAT EVER BEEN YOUR E-MAIL ADDRESS?

25 A NO.

26 Q DID YOU EVER SEND ANY E-MAILS TO SHERRY
27 JACKSON?

28 A NO.

1 Q HAD YOU EVER MET SHERRY JACKSON BEFORE THIS
2 TRIAL?

3 A NO.

4 Q DID YOU EVER SEND ANY E-MAILS ASKING FOR
5 MONEY FOR THE RETURN OF LAW RISKEN'S BODY?

6 A NO.

7 Q DID YOU EVER WRITE E-MAILS OFFERING TO HAVE
8 YOUR OWN MOTHER MURDERED?

9 A NO.

10 Q MARIA PEREZ DELACRUZ, YOU KNOW WHO SHE IS;
11 CORRECT?

12 A YES.

13 Q DO YOU KNOW HER BANKING INFORMATION?

14 A NO, I DON'T.

15 Q DID YOU EVER HAVE HER WASHINGTON MUTUAL
16 BANK ACCOUNT NUMBER?

17 A NO, I DON'T.

18 Q DID YOU EVER REQUEST THAT MONEY BE
19 DEPOSITED IN THAT BANK ACCOUNT?

20 A NO.

21 Q DO YOU KNOW ANYTHING AT ALL ABOUT THE
22 E-MAILS THAT WERE SENT TO SHERRY JACKSON BETWEEN JANUARY
23 AND OCTOBER OF 2007?

24 A NO.

25 Q DID YOU HAVE ANYTHING TO DO WITH THAT?

26 A NO.

27 Q DID YOU HAVE ANY PLAN, OR WERE YOU INVOLVED
28 AT ALL IN ANY CONSPIRACY, ANY PLAN TO COMMIT MURDER WITH

1 FERNANDO ROMERO AND ERIC DELACRUZ?

2 A NO.

3 Q HAVE YOU EVER BEEN IN THE UNITED STATES
4 NAVY?

5 A NO, SIR.

6 Q HAVE YOU EVER BEEN ON THE USS RONALD
7 REAGAN?

8 A NO.

9 Q DO YOU RECALL IF, BETWEEN JANUARY AND APRIL
10 OF 2007, IF YOU WERE IN THE SOUTH PACIFIC AT ALL?
11 SPECIFICALLY IN JAPAN, HONG KONG, OR KOREA?

12 A NO.

13 Q YOU WERE NOT; IS THAT CORRECT?

14 A NO, I WAS NOT.

15 Q MR. BOURDEAU, DESPITE WHAT YOUR MOM IS
16 ACCUSED OF DOING, YOU STILL LOVED HER; DIDN'T YOU?

17 A YES (CRYING).

18 MR. LEWIN: NO FURTHER QUESTIONS.

19 THE COURT: YOU WANT TO TAKE A BREAK BEFORE WE
20 START CROSS?

21 MR. LEVINSON: YEAH, I THINK HE NEEDS A FEW
22 MINUTES, YOUR HONOR.

23 THE COURT: OKAY. LADIES AND GENTLEMEN, WE ARE
24 GOING TO TAKE OUR AFTERNOON RECESS A LITTLE BIT EARLY.
25 DON'T GO TOO FAR.

26 DON'T FORM OR EXPRESS ANY OPINIONS ABOUT
27 THE CASE UNTIL IT'S SUBMITTED TO YOU. YOU'RE ORDERED TO
28 RETURN IN 10 MINUTES. WE'LL SEE YOU IN 10 MINUTES.

1 IF YOU WANT TO USE JURY ROOM, THAT'S OPEN
2 AND AVAILABLE TO YOU.

3 MR. LEWIN: YOUR HONOR, ARE COUNSEL EXCUSED AS
4 WELL?

5 THE COURT: YES.

6 MR. LEWIN: THANK YOU.

7 THE COURT: MR. BOURDEAU, YOU YOU'RE WELCOME TO
8 STEP DOWN. JUST RETURN IN 10 MINUTES.

9
10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT, OUT
12 OF THE PRESENCE OF THE JURY:)

13
14 THE COURT: THE JURORS HAVE LEFT THE COURTROOM.
15 WE'LL BE IN RECESS FOR 10 MINUTES.

16
17 (RECESS.)

18
19 THE COURT: BACK ON THE RECORD IN THE DELACRUZ AND
20 ROMERO MATTER. EACH DEFENDANT IS PRESENT WITH THEIR
21 RESPECTIVE COUNSEL. THE PEOPLE ARE PRESENT. NONE OF
22 THE LADIES AND GENTLEMEN OF THE JURY ARE PRESENT.

23 COUNSEL, ANYTHING WE NEED TO ADDRESS?

24 MR. LEWIN: YES. THE COURT HAD PREVIOUSLY
25 INDICATED THAT MR. BOURDEAU WOULD NOT BE ABLE TO BE
26 IMPEACHED WITH HIS PRIOR DRUG CONVICTION, WHICH WAS
27 QUITE OLD, ET CETERA.

28 MY OTHER QUESTION WOULD BE, I WANT TO MAKE

1 SURE THE COURT IS ALSO -- ADMONISH DEFENSE COUNSEL, AND
2 I KNOW THEY KNOW, MR. BOURDEAU ORIGINALLY FAILED A
3 POLYGRAPH. OBVIOUSLY, THAT'S NOT ADMISSIBLE.

4 I WANT TO MAKE SURE THERE AREN'T GOING TO
5 BE ANY DISCUSSIONS REGARDING DRUG USE, ET CETERA, THAT
6 ARE GOING TO COME IN.

7 JUST MORE TO REMIND DEFENSE COUNSEL AS TO
8 WHAT THE COURT'S PRIOR RULINGS ARE.

9 MR. LEVINSON: YOUR HONOR, ON BEHALF OF MYSELF AND
10 MY CLIENT, I'M CERTAINLY NOT GOING TO ADDRESS THOSE
11 ISSUES. JUST GOING TO ADDRESS ISSUES WHAT HE TESTIFIED
12 TO.

13 MR. CREARY: YOUR HONOR, BUT I THINK HIS PRIOR
14 CONDUCT IS WITHIN THE PURVIEW OF CROSS-EXAMINATION.
15 MAYBE NOT THE CONVICTIONS. BUT PRIOR USE.

16 THE COURT: WHY DON'T YOU APPROACH SIDE BAR,
17 PLEASE.

18
19 (THE FOLLOWING PROCEEDINGS
20 WERE HELD AT THE BENCH:)

21
22 THE COURT: WHAT'S THE OFFER OF PROOF WITH REGARDS
23 TO PRIOR DRUG USAGE?

24 MR. CREARY: WELL, I MEAN, YOU KNOW -- IF HE IS A
25 DRUG ADDICT, IT MIGHT BEAR ON HIS CREDIBILITY. IT MIGHT
26 BEAR ON HIS PROPENSITY TO TELL THE TRUTH.

27 THE COURT: WHEN IS THE OFFER OF PROOF AS TO WHAT
28 HIS DRUG USAGE IS?

1 MR. CREARY: I'M SORRY?

2 THE COURT: WHEN? WHEN DO YOU ALLEGE HE WAS
3 ADDICTED TO DRUGS?

4 MR. CREARY: AT THE TIME THAT THIS WAS GOING ON.
5 MAYBE BEFORE. MAYBE AFTER. MAYBE CURRENTLY.

6 MR. LEWIN: MY ONLY CONCERN IS THAT I HAVE -- I
7 SPECIFICALLY HAVE 402'D, I KEEP 402'ING ISSUES, AND WE
8 KEEP HAVING -- AN IDEA OF WHAT WE CAN AND CANNOT GO
9 INTO.

10 AND THEN THE COURT I THOUGHT HAS ALREADY
11 RULED. OBVIOUSLY, IF I THOUGHT THAT THEY WERE GOING TO
12 BE ABLE TO GO INTO MR. BOURDEAU'S DRUG USAGE, WHICH
13 THERE'S NO OFFER OF PROOF AS TO HOW IT RELATES TO THIS
14 CASE, EVEN WHEN IT OCCURRED -- THEY WOULD HAVE TO
15 EXAMINE, WE HAVE TO HAVE A 402 HEARING EXAMINING
16 MR. BOURDEAU OUTSIDE THE PRESENCE.

17 BUT I THINK THEY HAVE TO MAKE AN OFFER OF
18 PROOF AS TO IN THIS CASE, HOW HIS DRUG USAGE, EVEN IF HE
19 HAD USED DRUGS, WOULD BE RELEVANT AND WOULD BE NOT
20 SUBJECT TO 352 WITH RESPECT TO HIS TESTIMONY.

21 IN OTHER WORDS, YOUR HONOR, THIS IS NOT AN
22 EYEWITNESS CASE. THIS IS NOT -- MR. BOURDEAU, IN
23 ESSENCE, WHAT HE'S TESTIFIED TO IS HE FOUND HIS MOM.
24 WHAT OCCURRED. THERE'S NO DISPUTE AS TO THAT.

25 AS TO INSTALLING SECURITY SYSTEMS. THE
26 PRIOR RELATIONSHIPS. IN OTHER WORDS, YOUR HONOR, EVEN
27 IF THE COURT WERE TO FIND THAT MR. BOURDEAU HAS USED
28 DRUGS, I DON'T THINK THAT OPENS UP, JUST BECAUSE HE USED

1 DRUGS, WITH THE BACKGROUND OF THIS TESTIMONY, I DON'T
2 THINK IT WOULD PASS 352 ANALYSIS.

3 BUT I'M MORE CONCERNED, I THOUGHT WE
4 LITIGATED THIS IN ADVANCE. I JUST CAN'T -- IT'S
5 DIFFICULT WHEN I KEEP HAVING THINGS THAT I'VE LITIGATED
6 THAT WE'VE -- I KNOW IT'S NOT INTENTIONAL, BUT YOU KNOW,
7 IT MAKES IT HARD TO DO MY JOB EFFECTIVELY.

8 THE COURT: I DIDN'T BRING MY NOTES BACK INTO THE
9 HALLWAY WITH REGARDS TO THE 402 ISSUES. BUT MY
10 RECOLLECTION IS THAT I PRECLUDED PRIOR CONVICTIONS,
11 WHICH WAS TOO REMOTE IN TIME.

12 I ALSO PRECLUDED ISSUES DEALING WITH
13 NARCOTICS-RELATED OFFENSES THAT DIDN'T RISE TO THE LEVEL
14 OF MORAL TURPITUDE.

15 I DON'T HAVE A CII IN FRONT ME. I DON'T
16 REMEMBER WHAT THE YEARS WERE. IF YOU'RE GOING TO
17 INQUIRE, WE'LL DO IT OUTSIDE THE PRESENCE OF THE JURY,
18 AND WE'LL GO FROM THERE.

19 MR. LEWIN: CAN I HAVE MOMENT WITH THE WITNESS? I
20 TOLD HIM --

21 THE COURT: THAT'S FINE.

22 MR. LEWIN: JUST WANT TO LET HIM KNOW.

23 THE COURT: LET'S GO OFF THE RECORD FOR A MOMENT.

24

25 (A DISCUSSION WAS HELD
26 OFF THE RECORD.)

27

28 (THE FOLLOWING PROCEEDINGS

1 WERE HELD IN OPEN COURT, OUT
2 OF THE PRESENCE OF THE JURY:)

3
4 MR. LEWIN: MAY I GET MR. BOURDEAU, YOUR HONOR?

5
6 (PAUSE IN PROCEEDINGS.)

7
8 THE COURT: ALL RIGHT.

9 WE'RE BACK ON THE RECORD IN OPEN COURT
10 OUTSIDE THE PRESENCE OF THE JURY.

11 COUNSEL, BOTH SIDES READY TO PROCEED WITH
12 REGARDS TO ANY 402 ISSUES?

13 MR. CREARY: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. BOURDEAU, IF YOU COULD RESUME YOUR SEAT
16 UP HERE ON THE WITNESS STAND. I'D REMIND YOU YOU'RE
17 STILL UNDER OATH.

18 BOTH DEFENDANTS ARE PRESENT WITH COUNSEL.
19 PEOPLE ARE PRESENT. THE INVESTIGATING OFFICERS ARE
20 PRESENT. NONE OF THE LADIES AND GENTLEMEN OF THE JURY
21 ARE PRESENT.

22 MR. CREARY, YOU HAVE SOME BRIEF QUESTIONS?

23 MR. CREARY: YES, YOUR HONOR.

24 THE COURT: GO AHEAD.

25
26 DIRECT EXAMINATION

27 BY MR. CREARY:

28 Q MR. BOURDEAU, DID YOU HAVE A PRIOR DRUG

1 PROBLEM?

2 A YES, I DID.

3 Q OKAY. AND IN RELATION TO THAT PROBLEM, DID
4 YOU EVER SELL DRUGS?

5 A NO, NEVER DID.

6 Q JUST USED THEM?

7 A YES.

8 Q DID YOU EVER BUY DRUGS FOR OTHER PEOPLE?

9 A NO.

10 MR. LEWIN: YOUR HONOR, THIS IS NOT RELEVANT TO
11 THE POINT.

12 THE COURT: IT'S NOT RELEVANT BECAUSE THERE'S NO
13 TIME FRAME THAT'S INVOLVED.

14 MR. CREARY: WELL, YEAH. I MEAN -- YOU WANT ME TO
15 FOCUS ON THE PERIOD SURROUNDING THE --

16 THE COURT: IN SOME WAY THAT IT'S NOT TOO REMOTE
17 IN TIME, YES.

18 Q BY MR. CREARY: SAY IN -- IN THE LAST I
19 GUESS 5 YEARS, HAVE YOU BOUGHT OR SOLD DRUGS?

20 A NO.

21 Q OKAY.

22 BUT YOU'VE USED DRUGS IN THE LAST 5 YEARS?

23 A NO.

24 Q OKAY. ALL RIGHT.

25 MR. CREARY: NO FURTHER QUESTIONS ON THAT.

26 THE COURT: MR. LEVINSON.

27 MR. LEVINSON: I REALLY DON'T HAVE ANYTHING TO
28 INQUIRE ON THIS.

1 THE COURT: MR. LEWIN.

2 MR. LEWIN: NO, YOUR HONOR. THE PEOPLE WOULD
3 RENEW THEIR 402 MOTION TO PRECLUDE ANY AREA OF
4 EXAMINATION REGARDING MR. BOURDEAU'S PRIOR DRUG USE. IF
5 THE COURT -- UNLESS THE COURT REQUIRES MORE QUESTIONING
6 FROM ME, I GUESS I WOULD SUBMIT BASED ON HIS TESTIMONY.

7 THE COURT: I NEED TO KNOW FROM MR. CREARY WHETHER
8 OR NOT YOU'RE ANTICIPATING ASKING ANY OF THOSE QUESTIONS
9 IN FRONT OF THE JURY.

10 MR. CREARY: NO, YOUR HONOR. I MEAN, IF THE COURT
11 RULES THAT IT'S NOT RELEVANT, I'M NOT GOING TO ASK THEM.

12 THE COURT: YOUR OFFER OF PROOF DOESN'T HAVE
13 ANYTHING THAT CURRENTLY IS RELEVANT REGARDING THE
14 CREDIBILITY OF THE WITNESS DEALING WITH DRUG USAGE.

15 I'VE ALREADY RULED WITH REGARDS TO THE
16 INADMISSIBILITY OF ANY POLYGRAPH EXAMINATION
17 ADMINISTERED TO ANYBODY IN THIS CASE UNDER I BELIEVE
18 EVIDENCE CODE SECTION 351.5.

19 AND AS RELATES TO THE PRIOR INCIDENT
20 INVOLVING MR. BOURDEAU FROM 1988, IT WAS TOO REMOTE IN
21 TIME. SO YOU'RE NOT GETTING INTO ANY OF THOSE AREAS.

22 MR. CREARY: NO. AND SINCE HE'S INDICATED THAT HE
23 HASN'T USED DRUGS IN THE PAST 5 YEARS, IT REALLY WON'T
24 BE RELEVANT TO HIS ABILITY TO PERCEIVE, OR ANYTHING LIKE
25 THAT AS WELL. SO I'M NOT GOING TO ASK ANY QUESTIONS IN
26 THAT AREA.

27 THE COURT: LET'S BRING OUR JURY BACK IN, THEN.

28 MR. LEWIN: YOUR HONOR, COULD I JUST REMIND

1 MR. BOURDEAU, THAT MR. BOURDEAU, WHEN YOU ARE ANSWERING
2 QUESTIONS, YOU ARE NOT TO BRING UP ANYTHING ABOUT TAKING
3 A POLYGRAPH, ET CETERA. DON'T MENTION THE LIE DETECTOR
4 OR POLYGRAPH EXAMINATION.

5 DO YOU UNDERSTAND THAT?

6 THE WITNESS: YES.

7 MR. LEWIN: THANK YOU, YOUR HONOR.

8 THE COURT: MADAM CLERK, WOULD YOU BRING OUR
9 JURORS IN, PLEASE?

10

11 (THE FOLLOWING PROCEEDINGS
12 WERE HELD IN OPEN COURT, IN
13 THE PRESENCE OF THE JURY:)

14

15 THE COURT: AT THIS TIME, ALL THE LADIES AND
16 GENTLEMEN OF THE JURY ARE PRESENT, INCLUDING OUR FOUR
17 ALTERNATE JURORS. THE DEFENDANTS ARE PRESENT WITH
18 COUNSEL. THE PEOPLE ARE PRESENT. THE INVESTIGATING
19 OFFICERS ARE PRESENT.

20 WHO WANTS TO HANDLE CROSS-EXAMINATION
21 FIRST?

22 MR. LEVINSON: I'LL START FIRST, YOUR HONOR.

23 THE COURT: MR. LEVINSON, YOU MAY INQUIRE.

24 MR. LEVINSON: THANK YOU.

25

26 CROSS-EXAMINATION

27 BY MR. LEVINSON:

28 Q GOOD AFTERNOON, MR. BOURDEAU.

1 A GOOD AFTERNOON, SIR.

2 Q I'M GOING TO ASK YOU SOME QUESTIONS. THEY
3 MAY BE SOME HARD QUESTIONS. BUT ALL WE ARE TRYING TO DO
4 IS GET THE TRUTH, HERE, NOT TRYING TO HURT YOU OR
5 ANYTHING.

6 DO YOU UNDERSTAND?

7 A I UNDERSTAND.

8 Q OKAY. NOW, DURING THE PERIOD THAT YOUR
9 MOTHER HAD THE PROBLEMS OVER AT THE SALON, SHE CALLED
10 YOU TO HELP OUT; IS THAT CORRECT?

11 A SHE DIDN'T CALL ME TO HELP OUT.

12 Q ALL RIGHT.

13 YOU WERE JUST THERE TO HELP OUT?

14 A YES.

15 Q ALL RIGHT.

16 AND YOU STAYED AT THE SALON; IS THAT
17 CORRECT? YOU STAYED AT NIGHT?

18 A A FEW TIMES.

19 Q AND YOU SHE ASKED YOU TO PUT IN A SYSTEM OF
20 CAMERAS? VIDEO CAMERAS?

21 A YES.

22 Q THIS WAS AFTER THE TWO INCIDENTS AT THE
23 SALON; IS THAT CORRECT?

24 A AFTER THE TWO INCIDENTS --

25 Q THE SHOOTING, AND THEN THE DAY BEFORE THE
26 INCIDENT?

27 A AFTER THE FIRST INCIDENT.

28 Q OKAY.

1 WELL, THE FIRST INCIDENT WOULD BE WHAT, THE
2 SHOOTING?

3 A YES.

4 Q OKAY. NOW, YOU TESTIFIED THAT YOU DIDN'T
5 BELIEVE WHAT THE PRESS WAS SAYING ABOUT YOUR MOTHER
6 BEING A BLACK WIDOW; IS THAT CORRECT?

7 A YES.

8 Q ALL RIGHT.

9 AND YOU DID EVERYTHING YOU CAN AS A GOOD
10 SON TO TRY TO PROTECT HER; IS THAT CORRECT?

11 A YES.

12 Q AND DO YOU KNOW WHETHER OR NOT MR. DELACRUZ
13 WAS DEPLOYED DURING THIS TIME, OR WAS HE AT HOME?

14 DO YOU HAVE ANY IDEA?

15 THE COURT: WHAT IS "THIS TIME"?

16 Q BY MR. LEVINSON: I'M TALKING ABOUT THE
17 TIME OF THE INCIDENTS THAT OCCURRED AT THE SALON.

18 A I DON'T KNOW.

19 MR. LEWIN: YOUR HONOR, THE PEOPLE WOULD STIPULATE
20 THAT DURING THE TIME THAT THE INCIDENTS OCCURRED AT THE
21 SALON ON APRIL 17TH AND APRIL 19TH, 2007, THAT ERIC
22 DELACRUZ WAS ON THE USS RONALD REAGAN, WAS DEPLOYED IN
23 THE UNITED STATES NAVY.

24 WE STIPULATE TO THAT.

25 MR. LEVINSON: I'LL ACCEPT THAT STIPULATION.

26 ABSOLUTELY, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 I ASSUME THERE'S NO OBJECTION TO THE

1 STIPULATION?

2 MR. CREARY: NO, YOUR HONOR.

3 THE COURT: THE COURT ACCEPTS THE STIPULATION.

4 Q BY MR. LEVINSON: NOW, YOU WERE ESTRANGED
5 FROM YOUR MOTHER FOR A PERIOD OF TIME BEFORE THESE
6 INCIDENTS; IS THAT CORRECT?

7 A YES.

8 Q ALL RIGHT.

9 AND DID YOU HAVE SOME KIND OF
10 RECONCILIATION WHERE YOU -- WHEN YOU WERE HELPING HER?

11 A YES, WE DID.

12 Q AND DID SHE EVER GIVE YOU A KEY TO THE
13 HOUSE?

14 A NO.

15 Q DID SHE EVER OFFER FOR YOU TO SLEEP AT THE
16 HOUSE?

17 A YES.

18 Q DID YOU?

19 A A FEW TIMES.

20 Q ALL RIGHT.

21 AND YOU DIDN'T HAVE A CAR, DID YOU?

22 A I HAD A CAR.

23 Q DID YOU HAVE A CAR?

24 A YES.

25 Q NOW, YOU SAID YOU DID NOT HAVE THE KEYS TO
26 THE HOUSE, BUT YOU HAD THE KEYS TO THE SIDE GATE; IS
27 THAT CORRECT?

28 A YES.

1 Q SHE NEVER OFFERED YOU THE KEYS TO THE
2 HOUSE; IS THAT CORRECT?

3 A YES.

4 Q WAS SHE IN ANY WAY FINANCIALLY SUPPORTING
5 YOU DURING THIS TIME?

6 A NO.

7 THE COURT: DO YOU WISH TO REASK THE QUESTION THAT
8 YOU ASKED TWO QUESTIONS AGO? WHERE YOU USED THE
9 DOUBLE-NEGATIVE REGARDING KEYS TO THE HOUSE? SO THAT
10 IT'S CLEAR?

11 Q BY MR. LEVINSON: AT ANY TIME, DID YOU HAVE
12 KEYS TO THE HOUSE? THAT WOULD BE ANY TIME THAT YOU
13 TESTIFIED TO ON DIRECT EXAMINATION.

14 A NO.

15 MR. LEVINSON: IS THAT BETTER, YOUR HONOR?

16 THE COURT: IT'S CLEAR, NOW.

17 MR. LEVINSON: THAT YOU.

18 Q NOW, IN YOUR UNDERSTANDING, SHE HAD A
19 PRETTY GOOD RELATIONSHIP WITH ERIC; IS THAT CORRECT?

20 A YES.

21 Q AND DID SHE MENTION ERIC AT ALL TO YOU?

22 A A FEW TIMES.

23 Q IN PASSING? A FEW TIMES?

24 A A FEW TIMES.

25 Q WHAT, IF ANYTHING, DID SHE SAY ABOUT ERIC?

26 A THEY WOULD TALK ABOUT -- SHE WOULD TALK
27 ABOUT MONEY. THAT ERIC -- WOULD HELP HER WITH SOME OF
28 HER FINANCIAL NEEDS.

1 Q SO ERIC WAS HELPING HER, TO YOUR KNOWLEDGE,
2 ERIC WAS HELPING HER OR SENDING HER MONEY, HELPING HER
3 FINANCIALLY; IS THAT CORRECT?

4 A YES.

5 Q DO YOU KNOW WHETHER OR NOT --

6 MR. LEWIN: YOUR HONOR, I'M GOING TO OBJECT TO THE
7 LAST ANSWER. I BELIEVE IT LACKS FOUNDATION; BASED ON
8 HEARSAY WITHOUT FURTHER OFFER OF PROOF.

9 THE COURT: MR. LEWIN, YOUR OBJECTION IS UNTIMELY
10 AT THIS POINT. IT'S OVERRULED.

11 Q BY MR. LEVINSON: DO YOU KNOW WHETHER OR
12 NOT WHEN ERIC CAME INTO TOWN, WHETHER HE SLEPT AT THE
13 HOUSE DURING THIS PERIOD?

14 A I -- I DIDN'T SEE HIM SLEEP AT THE HOUSE.

15 Q YOU DIDN'T SEE HIM SLEEP AT THE HOUSE.
16 OKAY. BUT WHEN WAS -- WHEN WAS IT FIRST THAT YOU
17 REALIZED HE WAS SLEEPING AT THE HOUSE?

18 WAS THIS AFTER YOUR MOTHER'S DEATH? YOU
19 MENTIONED THAT HE WAS SLEEPING AT THE HOUSE.

20 A HE LIVED THERE. BEFORE.

21 Q HE LIVED THERE BEFORE?

22 A YES.

23 Q OKAY. WHEN DID HE LIVE THERE?

24 A I DON'T KNOW EXACTLY.

25 Q WAS THIS BEFORE YOUR MOTHER'S DEATH?

26 A YES.

27 Q ALL RIGHT.

28 SO HE LIVED WITH HER; IS THAT CORRECT?

1 A YES.

2 Q AND YOU DIDN'T LIVE THERE; IS THAT CORRECT?

3 A YES.

4 Q DID YOU HAVE YOUR OWN APARTMENT?

5 A YES.

6 Q LET'S TALK ABOUT THE 26TH AND 27TH. I'LL
7 TRY TO BE FAST AND GET YOU OUT OF THIS AS FAST AS
8 POSSIBLE.

9 I UNDERSTAND YOU'RE EMOTIONALLY INVOLVED.
10 I DON'T WANT THE MAKE THINGS WORSE. BELIEVE ME, I
11 DON'T. I UNDERSTAND.

12 ON THE 26TH, YOU SAW HER AT THE SHOP; IS
13 THAT CORRECT?

14 A WEDNESDAY. THE 26TH?

15 Q YES.

16 A YES.

17 Q ALL RIGHT.

18 WHAT TIME WAS THIS?

19 A I ARRIVED AT THE SHOP -- APPROXIMATELY
20 6:00.

21 Q 6:00 AT NIGHT?

22 A YES.

23 Q ALL RIGHT.

24 AND DID YOU SEE HER LEAVE AND GO HOME?

25 A I SAW HER LEFT THE SHOP.

26 Q OKAY. DID YOU CALL HER THAT NIGHT TO SEE
27 IF SHE WAS OKAY?

28 A NOT UP UNTIL 9:20.

1 Q 9:20 IN THE EVENING?

2 A YES.

3 Q ALL RIGHT.

4 AND YOU MADE A CALL AT 9:20 IN THE EVENING.

5 AND DID SHE ANSWER THE PHONE?

6 A NO, SHE DIDN'T.

7 Q DID YOU CALL HER CELL PHONE?

8 A YES.

9 Q AND YOU CALLED HER LAND LINE; CORRECT?

10 A I DON'T RECALL THE LAND LINE.

11 Q ALL RIGHT.

12 NOW, YOU COULD HAVE AT THIS POINT -- YOU
13 DIDN'T HEAR ANYTHING FROM HER AT 9:20. WEREN'T YOU
14 GETTING CONCERNED THAT MAYBE SOMETHING HAPPENED TO HER?
15 SHE WASN'T ANSWERING THE PHONE?

16 A AT THAT TIME, NO.

17 Q ALL RIGHT.

18 SO THAT'S APPROXIMATELY THREE HOURS AFTER
19 YOU SAW HER LEAVE; IS THAT CORRECT? ABOUT THREE HOURS
20 AND TEN MINUTES? SOMETHING LIKE THAT?

21 YOU SEE HER LEAVE THE SHOP?

22 A YES.

23 Q OKAY. YOU CALLED AT 9:20. THEN YOU DIDN'T
24 CALL AFTER THAT; IS THAT CORRECT?

25 A AFTER 9:20, I CALLED HER SEVERAL TIMES.

26 Q ALL RIGHT.

27 SEVERAL TIMES THAT EVENING?

28 A YES.

1 Q ALL RIGHT.

2 DO YOU REMEMBER WHEN?

3 A YOU MEAN THE TIMES?

4 Q YES. IF YOU CAN REMEMBER.

5 A THEY WERE VERY CLOSE.

6 Q ALL RIGHT.

7 WELL, LET ME ASK YOU SOMETHING, FIRST OF
8 ALL. WERE THE EVENTS FRESHER IN YOUR MIND WHEN THIS
9 OCCURRED THAN THEY ARE NOW?

10 A YES.

11 Q SO YOUR MEMORY WAS BETTER THEN; CORRECT?

12 A I'M SORRY?

13 Q YOUR MEMORY WAS BETTER THEN THAN IT IS NOW;
14 IS THAT CORRECT?

15 A YES.

16 Q IT WAS FRESHER IN YOUR MIND THEN, IT JUST
17 HAPPENED; RIGHT?

18 A YES.

19 Q SO YOU CALLED HER AT NIGHT SEVERAL MORE
20 TIMES, AND YOU DIDN'T GET ANY ANSWERS; IS THAT CORRECT?

21 A YES.

22 Q YOU CALLED THE CELL PHONE?

23 A YES.

24 Q AND YOU CALLED THE LAND LINE? ALL RIGHT.

25 WELL, AT THIS TIME, WEREN'T YOU GETTING
26 KIND OF CONCERNED SOMETHING MAY HAVE HAPPENED TO HER
27 BECAUSE SHE WAS NOT ANSWERING THE PHONE?

28 A AT THIS TIME, I GUESS -- NO.

1 Q SO YOU COULD HAVE GONE OVER TO HER HOUSE
2 THAT EVENING, BUT YOU DIDN'T; IS THAT CORRECT?

3 A I WENT TO HER HOUSE.

4 Q YOU WENT TO HER HOUSE THAT NIGHT?

5 A YES.

6 Q ALL RIGHT. WHAT TIME?

7 A THAT'S WHAT TIME I ARRIVED. AT -- 9:20.

8 Q 9:20 AT NIGHT?

9 A YES.

10 Q ALL RIGHT. AND WAS SHE THERE?

11 A SHE DIDN'T ANSWER THE CALLS. AND -- I RANG
12 THE DOORBELL.

13 Q ALL RIGHT.

14 DID YOU KNOCK ON THE DOOR?

15 A I ONLY HAD REACH OF THE DOORBELL.

16 Q DID YOU SAY, "HEY, MOM, ARE YOU IN THERE?"

17 A NO.

18 Q DID YOU SEE HER CAR THERE?

19 A NO.

20 Q YOU DIDN'T SEE HER CAR THERE?

21 A NO.

22 Q ALL RIGHT.

23 ISN'T IT CORRECT THAT SHE HAD MANY CARS?

24 A YES.

25 Q ALL RIGHT.

26 WAS THERE ONE SPECIFIC CAR THAT SHE USUALLY
27 DROVE?

28 A YES.

1 Q WHAT WAS THAT?

2 A MERCEDES SUV.

3 Q SO YOU DIDN'T SEE HER CAR THERE, YOU
4 THOUGHT SHE MAY BE OUT; IS THAT CORRECT?

5 A I THOUGHT THAT, YES.

6 Q AND WERE YOU CONCERNED AT THIS POINT,
7 THOUGH, THAT YOU COULDN'T GET AHOLD OF HER?

8 A NO. LIKE I SAID, AT THIS TIME, NO.

9 Q OKAY. SO THEN WHAT, YOU WENT HOME AND WENT
10 TO SLEEP; IS THAT CORRECT?

11 A YES.

12 Q AND YOU WOKE UP THE NEXT MORNING; CORRECT?

13 A YES.

14 Q AND DID YOU CALL HER BEFORE YOU WENT TO
15 WORK?

16 A YES.

17 Q AND DID YOU CALL HER CELL PHONE?

18 A YES.

19 Q DID SHE ANSWER?

20 A NO.

21 Q DID YOU CALL HER LAND LINE?

22 A I DON'T RECALL CALLING HER LAND LINE.

23 Q NOW, SHE HADN'T BEEN CONTACTED SINCE WHAT?
24 12 OR 13 HOURS BEFORE; IS THAT CORRECT? YOU HAD LOST
25 CONTACT WITH HER; IS THAT RIGHT?

26 A YES.

27 Q AND YOU STILL DIDN'T GO OVER TO HER HOUSE
28 BEFORE WORK; IS THAT CORRECT?

1 A THE NEXT DAY, I DID.

2 Q BEFORE WORK?

3 A YES.

4 Q OKAY. WHAT TIME IS THIS?

5 A IT WAS BEFORE 12:00.

6 Q WHAT TIME WAS WORK?

7 A TWELVE.

8 Q WORK STARTED AT 12:00?

9 A YES.

10 Q ALL RIGHT.

11 AND IS THIS THE TIME THAT YOU SAW HER? OR
12 DID YOU GO BACK TO WORK?

13 A I STILL DIDN'T SEE HER.

14 Q ALL RIGHT.

15 SO YOU WENT TO HER HOUSE. DID YOU GO
16 AROUND THE BACK TO SEE IF THE DOOR WAS OPEN?

17 A THAT DAY, NO.

18 Q THE NIGHT BEFORE, HAD YOU GONE AROUND THE
19 BACK TO SEE IF THE DOOR WAS OPEN OR CLOSED?

20 A THE NIGHT BEFORE --

21 Q YES. WHEN YOU SAID YOU WENT OVER THERE AT
22 9:20?

23 A NO, I DIDN'T.

24 Q ALL RIGHT.

25 SO YOU HAD TWO OPPORTUNITIES TO DETERMINE
26 WHETHER THE DOOR WAS OPEN OR CLOSED, AND YOU DIDN'T GO
27 BACK THERE, YOU JUST KNOCKED ON THE DOOR; IS THAT RIGHT?

28 A YES.

1 Q ALL RIGHT.

2 WAS HER CAR THERE IN THE MORNING WHEN YOU
3 SAW IT?

4 A IT WASN'T THERE. SHE ALWAYS PARKS HER CAR
5 IN THE GARAGE.

6 Q OKAY. SO YOU DON'T KNOW IF SHE WAS THERE
7 OR NOT; IS THAT RIGHT?

8 A YES, I DIDN'T KNOW.

9 Q AND YOU KNOCKED ON THE DOOR, AND THERE'S NO
10 ANSWER; CORRECT?

11 A YES.

12 Q WEREN'T YOU CONCERNED THAT MAYBE SOMETHING
13 HAD HAPPENED TO HER AT THAT POINT?

14 A A LITTLE BIT. AT THAT TIME.

15 Q I MEAN, SHE HAD HAD THIS INCIDENT THAT HAD
16 OCCURRED WHERE SHE HAD BEEN SHOT AT; IS THAT CORRECT?

17 A YES.

18 Q SO I MEAN -- YOU HAD BEEN KIND OF WORRIED,
19 WEREN'T YOU?

20 A YES.

21 Q YOU COULD HAVE CALLED THE POLICE, COULDN'T
22 YOU?

23 A YES.

24 Q YOU DIDN'T; RIGHT?

25 A I DIDN'T.

26 Q YOU WENT BACK TO WORK, AND YOU MADE SOME
27 MORE PHONE CALLS; CORRECT?

28 A YES.

1 Q NO ANSWER; CORRECT?

2 A YES.

3 Q SO YOU REALLY GOT CONCERNED AT THIS POINT?

4 A YES.

5 Q SO AT THAT POINT, DID YOU CALL THE POLICE?

6 A NO, I DIDN'T.

7 Q BUT YOU COULD HAVE CALLED THE POLICE; IS
8 THAT CORRECT?

9 A YES.

10 Q AND YOU WENT OVER TO THE HOUSE THEN; IS
11 THAT CORRECT?

12 A I DON'T RECALL IF I WENT TO THE HOUSE IN
13 THE EVENING.

14 Q YOU WENT TO WORK, AND -- WHAT TIME DID YOU
15 LEAVE WORK? TO GO TO THE HOUSE?

16 A ON THE THURSDAY? I CAN'T --

17 Q WELL, LET ME ASK YOU.

18 WAS IT STILL LIGHT OUT?

19 A YES.

20 Q WAS IT IN THE AFTERNOON?

21 A YES.

22 Q IT WAS BEFORE SUNSET; CORRECT?

23 A YES.

24 Q AND YOU KNOCKED ON THE FRONT DOOR?

25 A RANG THE DOORBELL.

26 Q ALL RIGHT.

27 NO ANSWER; CORRECT?

28 A YES.

1 Q AND AT THIS POINT, YOU WERE PRETTY WORRIED;
2 RIGHT?

3 A I WAS WORRIED, YES.

4 Q AND THEN THAT'S THE FIRST TIME THAT YOU
5 WENT -- YOU OPENED UP THE BACK GATE. YOU HAD A KEY;
6 RIGHT? SIDE GATE?

7 A ARE WE TALKING ABOUT THE THURSDAY, OR THE
8 FRIDAY?

9 Q THE DAY THAT YOU FOUND HER.

10 A YES.

11 Q OKAY. THE DOOR WAS WHAT, TWO-THIRDS OPEN
12 AT THAT POINT; RIGHT?

13 A THE SLIDING DOOR.

14 Q SLIDING DOOR IN THE BACK?

15 A YES.

16 Q THAT'S THE DOOR THAT HAD BEEN THERE THE TWO
17 TIMES THAT YOU WERE THERE THAT YOU DIDN'T GO BACK AND
18 SEE; CORRECT?

19 A YES.

20 Q OKAY.

21 YOU WALKED IN, AND THEN YOU SAW HER;
22 CORRECT?

23 A YES.

24 Q AND YOU TESTIFIED LIKE -- EVERYTHING WENT
25 AROUND YOU, YOU DIDN'T KNOW, YOU THOUGHT SHE WAS LIKE
26 MAYBE ALIVE OR DEAD, JUST YOUR WHOLE WORLD WAS CHANGING;
27 IS THAT CORRECT?

28 A YES.

1 Q BUT YOU DIDN'T CALL 911 FROM HER TELEPHONE,
2 DID YOU?

3 A NO, I DIDN'T.

4 Q YOU COULD HAVE; RIGHT?

5 A YES.

6 Q SO YOU WENT OVER TO A NEIGHBOR, AND YOU
7 CALLED 911; IS THAT CORRECT?

8 A YES.

9 Q DID YOU HAVE ANY CONTACT WITH MY CLIENT
10 AFTER YOUR MOTHER'S DEATH?

11 A I HAVE, YES.

12 Q WHEN DID YOU HAVE CONTACT WITH HIM?

13 A THE FIRST -- I CAN'T RECALL THE FIRST TIME.

14 Q WAS IT A FEW DAYS AFTER THE DEATH? MAYBE A
15 WEEK? DO YOU REMEMBER?

16 A I CAN'T RECALL EXACTLY.

17 Q ALL RIGHT.

18 SO AT THIS POINT IT WAS PRETTY TOUGH
19 BECAUSE YOU WERE GRIEVING; CORRECT?

20 A YES.

21 MR. LEVINSON: THANK YOU.

22 NO FURTHER QUESTIONS.

23 THE COURT: MR. CREARY, YOU MAY INQUIRE.

24 MR. CREARY: YES, YOUR HONOR.

25

26 CROSS-EXAMINATION

27 BY MR. CREARY:

28 Q GOOD AFTERNOON, MR. BOURDEAU.

1 A GOOD AFTERNOON, SIR.

2 Q SO JUST -- LET'S JUST CLARIFY SOME THINGS,
3 HERE. SO AT THE TIME OF YOUR MOTHER'S DEATH, YOU WERE
4 NOT LIVING AT THE HOUSE; RIGHT?

5 A I WAS NOT LIVING THERE.

6 Q OKAY.

7 AND WHERE WERE YOU LIVING AT THE TIME?

8 A MY UNCLE'S PLACE.

9 Q AND YOU -- BUT THE NIGHT OF HER DEATH, THE
10 NIGHT THAT YOU COULDN'T -- BEFORE YOU FOUND HER, YOU
11 STAYED AT THE SALON; RIGHT? YOU HAD A KEY TO THE SALON,
12 HER SALON; RIGHT?

13 A YES.

14 Q YOU STAYED THERE?

15 A YES.

16 Q OKAY. NOW, THE LAST TIME YOU SAW HER THAT
17 EVENING, AGAIN, WAS WHAT TIME? OR SPOKE TO HER, I
18 SHOULD SAY. THE LAST TIME YOU SPOKE TO HER THAT EVENING
19 WAS WHAT TIME?

20 A WHICH EVENING?

21 Q THE 26TH. I'M SORRY, THE 26TH. THE DAY --
22 THE LAST TIME YOU SAW HER.

23 A LAST TIME I SAW HER WAS AROUND SIX -- SIX.

24 Q ON THE 26TH?

25 A YES.

26 Q NOW, YOU KNEW THAT SHE HAD BEEN -- THAT
27 SOMEONE HAD TRIED TO SHOOT HER THE WEEK PRIOR; RIGHT?

28 A YES.

1 Q SO YOU WERE VERY CONCERNED ABOUT HER;
2 RIGHT?

3 A YES.

4 Q AND DID SHE ASK YOU TO CHECK ON HER?

5 A NO, SHE DIDN'T.

6 Q SHE DIDN'T ASK YOU TO CHECK ON HER WHEN YOU
7 SPOKE TO HER AT 6:00 THAT EVENING?

8 A OH, SHE -- WHEN WE LEFT THE SHOP -- AFTER I
9 FINISHED WHAT I WAS DOING, SHE TOLD ME TO CALL HER AS
10 SOON AS I FINISH.

11 Q OKAY. AND WAS THAT -- WAS THAT BECAUSE OF
12 WHAT HAPPENED THE WEEK PRIOR?

13 A NO.

14 Q THAT HAD NOTHING TO DO WITH THE SHOOTING
15 THE WEEK PRIOR?

16 A NO. NO.

17 Q OKAY. SHE JUST WANTED YOU TO CHECK ON HER
18 JUST BECAUSE?

19 A SHE TOLD ME THAT SHE WAS GOING TO TELL ME
20 SOMETHING.

21 MR. LEWIN: AGAIN, OBJECTION, HEARSAY.

22 MOTION TO STRIKE.

23 THE COURT: SUSTAINED.

24 MR. LEWIN: IS THE ANSWER STRICKEN, YOUR HONOR?

25 THE COURT: YES.

26 Q BY MR. CREARY: NOW, SO WHEN YOU CALLED HER
27 AT 9:20, YOU HAD NO CONCERN FOR HER SAFETY AT THAT TIME?
28 GIVEN WHAT HAD HAPPENED THE WEEK PRIOR?

1 A OF COURSE. YES.

2 Q OKAY. WASN'T THAT THE REASON WHY YOU
3 CALLED HER AT 9:20? TO MAKE SURE SHE WAS OKAY?

4 A ALSO BECAUSE SHE TOLD ME TO CALL HER.

5 Q OKAY. SO -- OKAY. SO YOU CALL HER, YOU
6 DON'T REACH HER. YOU CALLED HER CELL PHONE; RIGHT?

7 A YES.

8 Q THEN YOU CALLED HER HOUSE PHONE; RIGHT?

9 A I DON'T RECALL CALLING THE HOUSE PHONE. I
10 KEPT CALLING THE CELL PHONE.

11 Q SO YOU DIDN'T CALL THE HOUSE PHONE AT ALL?

12 A I DON'T RECALL.

13 Q ALL RIGHT.

14 DO YOU RECALL GIVING A STATEMENT TO
15 POLICE -- WELL, WE'LL JUST MOVE ON.

16 SO THEN YOU WENT -- AND THEN YOU WENT TO
17 HER HOUSE; RIGHT? AFTER YOU CALLED HER AND COULD NOT
18 REACH HER?

19 A YES.

20 Q THEN YOU WENT TO HER HOUSE?

21 A YES.

22 Q HOW LONG AFTER THE CALL DID YOU GO TO HER
23 HOUSE?

24 A THAT'S -- I GOT TO HER HOUSE AT 9:20,
25 APPROXIMATELY.

26 Q YOU GOT TO HER HOUSE AT 9:20?

27 A YES. THAT'S WHAT TIME I GOT --
28 APPROXIMATELY, I GOT THERE.

1 Q OKAY. ARE YOU SURE YOU DIDN'T CALL HER AT
2 9:20?

3 A I WAS ALSO CALLING HER.

4 Q OKAY.

5 SO YOU WERE CALLING HER AND DRIVING OVER
6 THERE?

7 A YES.

8 Q ALL RIGHT.

9 AND THE REASON WHY YOU WERE CALLING HER AND
10 DRIVING OVER THERE IS BECAUSE WERE YOU CONCERNED FOR HER
11 SAFETY; RIGHT?

12 A YES.

13 Q AND YOU WERE CONCERNED FOR HER SAFETY
14 BECAUSE SHE HAD -- SOMEONE HAD TRIED TO SHOOT HER THE
15 WEEK BEFORE; RIGHT?

16 A YES.

17 Q ALL RIGHT.

18 SO YOU GET TO HER HOUSE. AND YOU PULL IN
19 THE DRIVEWAY; RIGHT?

20 A YES.

21 Q AND THAT WAS AT ABOUT 9:20 YOU GOT TO HER
22 HOUSE?

23 A YES.

24 Q AND YOU RANG THE DOORBELL; RIGHT?

25 A YES.

26 Q NOW, YOU HAD A KEY TO THE -- YOU DIDN'T
27 HAVE A KEY TO THE FRONT DOOR?

28 A NO.

1 Q BUT YOU HAD A KEY TO THE GATE?

2 A YES.

3 Q AND AT THAT POINT, IT DIDN'T OCCUR TO YOU
4 TO GO INTO THE YARD AND INVESTIGATE FURTHER?

5 A NO. I DIDN'T.

6 Q EVEN THOUGH YOU KNEW SHE'D BEEN SHOT AT
7 BEFORE, A WEEK PRIOR, AND SHE ASKED YOU TO CALL HER, YOU
8 DIDN'T FEEL COMPELLED TO DO THAT?

9 A NO, I DIDN'T.

10 Q ALL RIGHT.

11 SO THEN YOU WENT -- FROM THERE, YOU WENT TO
12 THE SHOP; IS THAT CORRECT?

13 A I WENT TO -- MY UNCLE'S HOUSE.

14 Q WENT TO YOUR UNCLE'S HOUSE. AND DID YOU
15 TELL YOUR UNCLE THAT YOU COULDN'T REACH HER, THAT YOU
16 COULDN'T REACH YOUR MOTHER?

17 A YES.

18 Q AT THAT TIME?

19 A YES.

20 Q ARE YOU SURE ABOUT THAT? THAT YOU TOLD HIM
21 AT THAT TIME WHEN YOU GOT TO HIS HOUSE, THE EVENING OF
22 THE 26TH, ARE YOU SURE THAT YOU TOLD YOUR UNCLE THEN
23 THAT YOU COULD NOT REACH YOUR MOTHER?

24 A I'M NOT SURE.

25 Q OKAY. ISN'T IT TRUE THAT YOU TOLD POLICE
26 THAT YOU DID NOT TELL YOUR UNCLE ABOUT NOT BEING ABLE TO
27 REACH -- YOU DID NOT TELL YOUR UNCLE ABOUT NOT BEING
28 ABLE TO REACH YOUR MOTHER UNTIL THE NEXT DAY?

1 THE COURT: MR. CREARY? UNFORTUNATELY, THAT
2 QUESTION IS ABOUT AS CLEAR AS MUD.

3 MR. CREARY: OKAY. I'LL REFRAME --

4 THE COURT: CAN YOU REFRAME IT SO IT'S CLEAR
5 WHETHER YOU'RE ASKING HIM IF HE MADE A STATEMENT TO THE
6 POLICE, OR WHETHER OR NOT HE MADE STATEMENT TO THE
7 UNCLE? OR --

8 MR. CREARY: I'LL CLEAN IT UP.

9 THE COURT: GO AHEAD.

10 Q BY MR. CREARY: ISN'T IT TRUE THAT YOU TOLD
11 THE POLICE THAT YOU DID NOT TELL YOUR UNCLE RIOS ABOUT
12 NOT BEING ABLE TO CONTACT YOUR MOTHER SINCE THURSDAY
13 EVENING?

14 ISN'T IT TRUE THAT YOU TOLD THE POLICE THAT
15 YOU DID NOT TELL YOUR UNCLE ABOUT NOT BEING ABLE TO
16 CONTACT YOUR MOTHER?

17 THE COURT: DO YOU UNDERSTAND THE QUESTION?

18 THE WITNESS: NO, SIR.

19

20 (A DISCUSSION WAS HELD

21 OFF THE RECORD.)

22

23 MR. LEWIN: YOUR HONOR, I BELIEVE WE HAVE
24 STIPULATION THAT MIGHT HELP.

25 THE COURT: GO AHEAD.

26 MR. LEWIN: STIPULATE THAT THE WITNESS ORIGINALLY
27 TOLD THE POLICE THAT HE DID NOT TELL HIS UNCLE THAT HE
28 COULDN'T REACH HIS MOM THAT NIGHT BECAUSE HIS UNCLE HAD

1 BEEN SICKLY, AND HE DID NOT WANT TO GET HIM CONCERNED.
2 SO STIPULATED?

3
4 (A DISCUSSION WAS HELD
5 OFF THE RECORD.)
6

7 MR. CREARY: WE'LL ACCEPT THAT STIPULATION, YOUR
8 HONOR.

9 THE COURT: OKAY.

10 THE COURT ACCEPTS THE STIPULATION.

11 Q BY MR. CREARY: SO YOU WENT BACK TO YOUR
12 MOTHER'S HOUSE FRIDAY MORNING AT 8:30 A.M.; RIGHT?

13 A YES.

14 Q THE NEXT MORNING?

15 A YES.

16 Q AND YOU STAYED THERE ABOUT 5 MINUTES, THEN
17 YOU WENT BACK TO YOUR UNCLE'S HOUSE; RIGHT?

18 A YES.

19 Q IS THAT CORRECT?

20 A YES.

21 Q SO AT THAT POINT THE NEXT MORNING, AFTER
22 NOT TALKING TO YOUR MOTHER SINCE 6:00 P.M., AROUND
23 6:00 P.M. THE PRIOR EVENING, YOU DID NOT -- IT DIDN'T
24 OCCUR TO YOU TO GO AND INVESTIGATE, GO TO THE GATE AND
25 INVESTIGATE FURTHER; CORRECT?

26 A YES.

27 Q AND YOU STAYED AT YOUR UNCLE'S HOUSE UNTIL
28 ABOUT 12:00 P.M.; RIGHT? ONCE YOU LEFT FRIDAY MORNING,

1 WHEN YOU WENT THERE AT 8:30, STAYED 5 MINUTES, YOU WENT
2 BACK TO YOUR UNCLE'S HOUSE; RIGHT?

3 THAT'S CORRECT; RIGHT?

4 A YES.

5 Q THEN YOU STAYED AT YOUR UNCLE'S HOUSE UNTIL
6 12:00 P.M. RIGHT? CORRECT?

7 A ON THAT FRIDAY?

8 Q ON THAT FRIDAY, YES.

9 A YES.

10 Q OKAY.

11 AND YOU WENT TO YOUR JOB AROUND 2:00 P.M.;
12 RIGHT?

13 A YES.

14 Q ALL RIGHT.

15 AND YOU STILL COULDN'T REACH YOUR MOTHER;
16 CORRECT?

17 A YES.

18 Q OKAY. SO AT SOME POINT AFTER YOU GOT TO
19 WORK, YOU WENT BACK OVER TO YOUR MOTHER'S HOUSE; RIGHT?

20 A YES.

21 Q AT THAT POINT, YOU WENT INTO THE YARD AND
22 OBSERVED THE SLIDING DOOR OPEN; RIGHT?

23 A YES.

24 Q OKAY. THEN, OF COURSE, YOU WENT TO YOUR
25 NEIGHBOR AND CALLED THE POLICE?

26 A YES.

27 MR. CREARY: THANK YOU.

28 NO FURTHER QUESTIONS.

1 THE COURT: DO YOU HAVE ANY REDIRECT EXAMINATION,
2 MR. LEWIN?

3 MR. LEWIN: YES.
4

5 REDIRECT EXAMINATION
6 BY MR. LEWIN:

7 Q MR. BOURDEAU, I JUST WANT TO CLARIFY. I'M
8 GOING TO GO BY THE DAYS. I WANT YOU TO ASSUME FOR A
9 MOMENT THAT YOUR MOM, YOU FOUND YOUR MOM ON FRIDAY,
10 APRIL 27, 2007.

11 I WANT TO YOU ASSUME THAT FOR A MOMENT;
12 OKAY?

13 A OKAY.

14 Q WAS THE LAST TIME THAT YOU SAW HER, WAS IT
15 THURSDAY, THE NIGHT BEFORE?

16 A IT WAS WEDNESDAY.

17 Q HOW MANY DAYS HAD IT BEEN SINCE YOU HAD
18 SEEN -- SO ARE YOU TELLING ME THAT -- LET ME BACK UP.

19 DO YOU RECALL SPEAKING TO DETECTIVES IN
20 THIS CASE ABOUT WHAT HAD OCCURRED? DO YOU RECALL
21 SPEAKING TO THE DETECTIVES?

22 A WHAT HAD OCCURRED WHERE?

23 Q OKAY. DO YOU REMEMBER TALKING TO A DEPUTY,
24 DEPUTY HOY, AT THE SCENE ON FRIDAY, APRIL 27TH? DO YOU
25 REMEMBER TALKING TO A DEPUTY WHO RESPONDED WHEN YOUR MOM
26 WAS MURDERED?

27 A I REMEMBER TALKING TO THE DEPUTY.

28 Q DO YOU REMEMBER TELLING HIM THAT YOU HAD

1 SEEN YOUR MOM THE NIGHT BEFORE, MEANING THURSDAY, AT
2 APPROXIMATELY 6:45?

3 A THURSDAY? NOT ON A THURSDAY.

4 Q MR. BOURDEAU, WAS YOUR MEMORY ABOUT WHEN
5 YOU LAST SAW YOUR MOM, IS IT BETTER TODAY, OR WAS IT
6 BETTER BACK IN 2007?

7 A I LAST SAW HER ON A WEDNESDAY.

8 Q I WANT YOU TO FORGET ABOUT THE DAYS OF THE
9 WEEK FOR A MOMENT. OKAY? I WANT YOU TO FORGET ABOUT
10 THE DAYS OF THE WEEK.

11 HOW LONG WAS IT BEFORE YOU SAW YOUR MOM
12 UNTIL YOU CAME AND FOUND HER BODY?

13 A TWO DAYS.

14 Q DO YOU REMEMBER TELLING DETECTIVE
15 RODRIGUEZ, WHO IS SEATED NEXT TO ME -- STRIKE THAT. DO
16 YOU REMEMBER TELLING DEPUTY HOY THAT YOU SAW HER THE
17 NIGHT BEFORE?

18 A THE NIGHT BEFORE --

19 Q THE NIGHT BEFORE YOU FOUND HER BODY.

20 A I DON'T REMEMBER SAYING THAT.

21 Q DO YOU REMEMBER TALKING TO DETECTIVE LINDA
22 MUSE, AND TELLING HER ON APRIL THE 27TH -- STRIKE
23 THAT -- YES, ON APRIL 27, 2007, SHE WENT THROUGH YOUR
24 ACTIVITIES, WHAT YOU HAD BEEN DOING.

25 DO YOU RECALL THAT? DO YOU RECALL THE
26 DETECTIVES ASKING YOU AND GOING THROUGH HEY, WHAT DID
27 YOU DO THIS WEEK?

28 A I DON'T REMEMBER.

1 Q OKAY. DO YOU REMEMBER TELLING DETECTIVE
2 MUSE -- EXCUSE ME, DO REMEMBER TELLING DETECTIVE MUSE
3 THAT ON THE 26TH, THE NIGHT BEFORE YOUR MOM'S BODY, YOU
4 FOUND HER BODY, THAT YOU AND YOUR MOM HAD LEFT THE SALON
5 TOGETHER?

6 A I REMEMBER TELLING HER THAT. YES.

7 Q OKAY. SO AND DO YOU REMEMBER TELLING HER
8 THAT AT 9:20 P.M. THAT YOU HAD TRIED TO CALL YOUR MOM ON
9 THE CELL, BUT THERE WAS NO ANSWER?

10 A YES.

11 Q OKAY. I THINK, MR. BOURDEAU, I JUST WANT
12 TO MAKE SURE YOU'RE FOLLOWING, HERE. TODAY YOU'RE NOW
13 SAYING THAT THE LAST TIME YOU SAW YOUR MOM WAS
14 WEDNESDAY.

15 ISN'T IT TRUE THAT YOU'VE ALWAYS TOLD
16 INVESTIGATORS THAT THE LAST TIME YOU SAW HER WAS THE
17 THURSDAY, THE NIGHT BEFORE? AND THEN WHEN YOU COULDN'T
18 GET AHOLD OF HER THAT DAY, YOU CAME BACK THE NEXT DAY,
19 AND YOU ENDED UP FINDING HER BODY?

20 A NO, SIR.

21 MR. LEVINSON: ASKED AND ANSWERED, YOUR HONOR.

22 THE COURT: OVERRULED.

23 GO AHEAD AND ANSWER, PLEASE.

24 THE WITNESS: I SAW HER -- I SAW HER ON THE
25 WEDNESDAY. LAST SAW HER ON THE WEDNESDAY.

26 Q BY MR. LEWIN: MR. BOURDEAU, DO YOU
27 REMEMBER TELLING DETECTIVES, DETECTIVE MUSE ON APRIL 26,
28 THAT YOU CLOSED THE SALON AT APPROXIMATELY 7:00 P.M.?

1 A THE 26TH, ISN'T THAT -- IS THAT WEDNESDAY?

2 Q THE 26TH WOULD BE THURSDAY.

3 A SO IT WOULD BE THE 25TH, WEDNESDAY, THAT I
4 LAST SAW HER.

5 Q SO YOU'RE SAYING -- LET ME ASK YOU, IF YOU
6 WOULD HAVE TOLD DETECTIVES BACK IN 2007 THAT THE LAST
7 TIME YOU SAW YOUR MOM WAS ON APRIL 26TH, ON THE
8 THURSDAY, WOULD YOUR MEMORY HAVE BEEN BETTER THEN THAN
9 IT IS NOW?

10 A I THINK IT'S -- NOW.

11 Q YOUR MEMORY IS BETTER NOW, THREE YEARS
12 LATER, THAN IT WAS WITHIN TWO DAYS OF THE EVENTS
13 HAPPENING, THREE YEARS AGO?

14 IS THAT WHAT YOU'RE TELLING US?

15 A I HAD A -- HAD AN APPOINTMENT ON THAT
16 WEDNESDAY NIGHT.

17 Q LET ME GO THROUGH -- ONE MOMENT.

18 THE COURT: CAN I SEE COUNSEL AT SIDE BAR, PLEASE?

19

20 (THE FOLLOWING PROCEEDINGS

21 WERE HELD AT THE BENCH:)

22

23 THE COURT: TO THE CASUAL OBSERVER, IT WOULD
24 APPEAR HE IS CONFUSED WHETHER OR NOT IT WAS WEDNESDAY OR
25 THURSDAY.

26 IS EITHER SIDE PLANNING ON CALLING REBUTTAL
27 WITNESSES WHO WILL MAKE A STATEMENT AS TO WHEN HE MADE
28 THE LAST OBSERVATION OF HIS MOTHER?

1 MR. LEWIN: WELL, IF WE COULD GET A STIPULATION, I
2 CAN -- COUNSEL HAS THE DISCOVERY. ALL THE DISCOVERY HAS
3 ALWAYS BEEN, AND EVERYTHING ALWAYS -- HE'S MIXING UP THE
4 TWO NIGHTS.

5 THE LAST TIME HE SAID IS THE 26TH. IF
6 COUNSEL IS WILLING TO STIPULATE, I DON'T NEED TO GO ANY
7 FURTHER. OR I'LL HAVE TO JUST PLOW THROUGH IT.

8 MR. CREARY: I'LL STIPULATE HE TOLD THE POLICE IT
9 WAS THURSDAY. I WON'T STIPULATE HE'S CONFUSED.

10 MR. LEWIN: OKAY. THAT'S ALL THAT I'M ASKING.

11 MR. LEVINSON: I WILL STIPULATE HE IS CONFUSED.

12 MR. LEWIN: SO THE STIPULATION --

13 THE COURT: LUDLOW WON'T STIP TO THAT, SO I'M NOT
14 ASKING --

15 MR. LEWIN: THE STIPULATION WOULD BE THAT
16 MR. BOURDEAU -- STIPULATION WOULD BE THAT MR. BOURDEAU
17 IS CONFUSED ABOUT THE --

18 THE COURT: I DON'T THINK MR. CREARY IS
19 COMFORTABLE WITH THAT.

20 MR. CREARY: LET'S TALK.

21 THE COURT: WE'RE OFF THE RECORD.

22 YOU MEET AND CONFER.

23
24 (A DISCUSSION WAS HELD
25 OFF THE RECORD.)

26
27 THE COURT: BACK ON THE RECORD AT SIDE BAR.

28 IS THERE A STIPULATION, OR NOT?

1 MR. LEVINSON: NO.

2 THE COURT: OKAY. LET'S PROCEED.

3

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

7

8 THE COURT: YOU MAY RESUME.

9 Q BY MR. LEWIN: MR. BOURDEAU, IN DISCUSSING
10 THE SITUATION INVOLVING YOUR MOM, HAS IT BEEN COMMON FOR
11 YOU TO BECOME CONFUSED ON DATES AND TIMES?

12 A YES.

13 Q I COULDN'T HEAR YOUR ANSWER.

14 A YES.

15 Q SO WHAT I'M ASKING, I JUST ASKED YOU A
16 MOMENT AGO, YOU SPOKE TO DETECTIVES AND A DEPUTY ON
17 APRIL 26, 2007, THE DAY YOUR MOM'S BODY WAS FOUND;
18 CORRECT?

19 DO YOU REMEMBER SPEAKING TO THEM?

20 A THAT'S ON THE FRIDAY. IS THAT THE 26TH?

21 Q I'M NOT GOING TO TALK ABOUT THE DAYS OF THE
22 WEEK. I WANT TO MAKE THAT REAL SIMPLE. FORGET ABOUT
23 DAYS OF THE WEEK. FORGET ABOUT CALENDAR DAYS.

24 ALL WE ARE GOING TO TALK ABOUT IS -- WE'RE
25 GOING TO TALK ABOUT TWO DAYS. THE DAY YOUR MOM'S BODY
26 WAS FOUND?

27 A YES.

28 Q AND THE NIGHT BEFORE; OKAY?

1 A OKAY.

2 Q ARE YOU FOLLOWING ME ON THIS?

3 A YEAH.

4 Q THE DAY YOUR MOM'S BODY WAS FOUND, YOU WERE
5 AT YOUR MOM'S HOUSE; RIGHT?

6 A YES.

7 Q ALL THE DEPUTIES SHOWED UP; RIGHT?

8 A YES.

9 Q THIS DETECTIVE SHOWED UP?

10 A YES.

11 Q HIS PARTNER, DETECTIVE LINDA MUSE, SHOWED
12 UP?

13 A YES.

14 Q AND DID YOU SPEAK TO HER? AN AFRICAN
15 AMERICAN WOMAN?

16 A YES.

17 Q AND DID YOU END UP GOING THROUGH WITH
18 HER -- DID SHE ASK YOU MANY QUESTIONS ABOUT WHAT HAD
19 HAPPENED, WHAT YOUR ACTIVITIES WERE THAT WEEK?

20 A YES.

21 Q DO YOU RECALL TELLING HER THAT ON THE DAY
22 BEFORE YOU FOUND YOUR MOM'S BODY, THE DAY BEFORE --
23 WE'RE NOT TALKING ABOUT A DAY OF THE WEEK. THE DAY
24 BEFORE YOU FOUND YOUR MOM'S BODY, YOU AND YOUR MOM LEFT
25 THE SALON TOGETHER?

26 DO YOU RECALL TELLING --

27 A I DON'T RECALL.

28 MR. LEWIN: ONE MOMENT, YOUR HONOR.

1 (PAUSE IN PROCEEDINGS.)

2
3 Q BY MR. LEWIN: AS YOU SIT HERE, DO YOU
4 RECALL TELLING DETECTIVE MUSE THAT YOU HAD TRIED TO CALL
5 YOUR MOM AT 9:20 P.M.?

6 A ON THAT WEDNESDAY.

7 Q SO YOU STILL THINK IT'S WEDNESDAY THAT YOU
8 TRIED TO CALL HER?

9 A YES.

10 Q DO YOU KNOW -- HAVE YOU EVER TOLD
11 DETECTIVES THAT IT WAS WEDNESDAY THAT YOU TRIED TO CALL
12 HER BEFORE?

13 A I DON'T EXACTLY REMEMBER.

14 Q OKAY. SO HERE'S MY QUESTION. AS YOU SIT
15 HERE RIGHT NOW, HOW CONFIDENT ARE YOU, MR. BOURDEAU,
16 THAT YOU'RE REMEMBERING THE DAYS CORRECTLY?

17 ARE YOU CONFIDENT, OR NOT CONFIDENT?

18 A I'M NOT CONFIDENT ANYMORE.

19 MR. LEWIN: YOUR HONOR, AT THIS POINT, I'M GOING
20 TO ACTUALLY ASK THAT -- IF POSSIBLE, THAT WE'RE ABLE TO
21 ADJOURN EARLY TODAY SO THAT MR. BOURDEAU HAS THE
22 OPPORTUNITY TO LISTEN TO HIS TAPE-RECORDED STATEMENT,
23 AND I WANT TO SEE IF THAT REFRESHES HIS RECOLLECTION.

24 I COULD DO IT HERE, BUT IT'S THERE ARE TOO
25 MANY -- IT IS TOO LENGTHY, AND TOO MANY OTHER ISSUES.

26 THE COURT: I'M NOT INCLINED TO RECESS AN HOUR
27 EARLY FOR THAT LIMITED PURPOSE. SO IF YOU WANT TO
28 RESERVE YOUR RIGHT TO RECALL THE WITNESS AT A LATER TIME

1 DURING THE TRIAL, YOU MAY DO SO.

2 IF YOU WANT TO CALL ADDITIONAL WITNESSES
3 UNDER 1235, YOU CAN DO SO. BUT I DON'T WANT TO BREAK AN
4 HOUR EARLY.

5 MR. LEWIN: UNDERSTOOD, YOUR HONOR.

6 LET ME GO TO A COUPLE OTHER AREAS WITH
7 RESPECT TO MY REDIRECT THAT I CAN GET THIS DONE.

8 Q AS YOU SIT HERE, MR. BOURDEAU, IS YOUR
9 MEMORY -- HOW MANY DIFFERENT NIGHTS WAS IT THAT YOU WENT
10 OVER TO YOUR MOM'S HOUSE TO TRY TO LOCATE HER?

11 A TWO.

12 Q AND IS THAT INCLUDING -- IS THAT THE TWO
13 NIGHTS BEFORE? DOES THAT INCLUDE THE DAY THAT YOU FOUND
14 THE BODY? OR IS THAT ADDITION TO THE DAY YOU FOUND THE
15 BODY?

16 A TWO NIGHTS WHERE -- THE LAST TIME I SAW
17 HER. AND THEN THE NEXT NIGHT -- I STILL THINK -- HAVE
18 CONTACT WITH HER. THEN I FOUND HER THE FOLLOWING DAY.

19 Q OKAY. LET ME ASK YOU, WAS YOUR MOM, WOULD
20 YOU DESCRIBE HER HAS A PRIVATE PERSON?

21 A VERY PRIVATE.

22 Q AND BETWEEN YOU AND YOUR MOM, WHO WAS KIND
23 OF THE BOSS?

24 A SHE IS.

25 Q WOULD IT BE NORMAL FOR YOU TO JUST --
26 MR. CREARY: YOUR HONOR, THIS IS BEYOND THE SCOPE.
27 BEYOND THE SCOPE OF CROSS.

28 MR. LEWIN: AN OFFER OF PROOF, IT'S NOT BEYOND THE

1 SCOPE, YOUR HONOR.

2 MR. LEVINSON: I THINK IT'S IMPROPER
3 REHABILITATION.

4 THE COURT: I DON'T WANT TO HEAR SPEAKING
5 OBJECTIONS FROM EITHER SIDE. IF YOU WANT TO APPROACH
6 AND GIVE ME YOUR OFFER OF PROOF AS TO HOW IT'S
7 RESPONSIVE TO THE CROSS-EXAMINATION, I'LL PERMIT YOU TO
8 DO SO.

9 MR. LEWIN: ALL RIGHT.

10 THE COURT: YOU MAY APPROACH.

11
12 (THE FOLLOWING PROCEEDINGS
13 WERE HELD AT THE BENCH:)

14
15 THE COURT: WHAT'S THE OFFER OF PROOF?

16 MR. LEWIN: COUNSEL MADE REPEATED -- ON
17 CROSS-EXAMINATION, MR. CREARY, REGARDING WELL, WHY
18 DIDN'T YOU CALL THE POLICE EARLIER; WHY DIDN'T YOU WALK
19 IN THE NIGHT BEFORE.

20 MR. CREARY: I NEVER ASKED THAT.

21 THE COURT: HANG ON.

22 MR. LEWIN: WHY DIDN'T YOU GO BACK AND CHECK ON
23 YOUR MOM. THE BOTTOM LINE IS THAT THE OFFER OF PROOF
24 WOULD BE THAT MR. BOURDEAU, THE RELATIONSHIP HE HAD WITH
25 HIS MOM WAS HE DIDN'T HAVE A KEY TO THE HOUSE.

26 YOU DON'T JUST GO WALKING BACK, YOU DON'T
27 JUST GO CALL THE POLICE. HE DOES WHAT HIS MOM TELLS
28 HIM.

1 THE COURT: SO YOUR OFFER OF PROOF IS HIS MOM SAID
2 "I DON'T WANT YOU TO GO AROUND THE SIDE GATE TO LOOK FOR
3 ME"? OR WHAT?

4 MR. LEWIN: THE OFFER OF PROOF IS THAT GIVEN THEIR
5 RELATIONSHIP, COUNSEL HAS MADE A CIRCUMSTANTIAL
6 INFERENCE THAT THERE'S SOMETHING IMPROPER, SOMETHING,
7 YOU KNOW, UNTOWARD REGARDING THE FACT THAT MR. BOURDEAU
8 DID NOT GO AND ENTER THE HOUSE THE NIGHT BEFORE.

9 THE COURT: THEN THE EASIEST WAY TO ADDRESS THAT
10 IS JUST ASK HIM. "WHY DIDN'T YOU?"

11 MR. LEWIN: WELL, YOUR HONOR, MY QUESTION WOULD
12 BE, THOUGH -- I UNDERSTAND THAT COULD BE ONE WAY OF
13 DOING IT. BUT WHAT IS IMPROPER ABOUT THE WAY THAT I'M
14 DOING IT?

15 THE COURT: UNDER 352, I'M GOING TO MAKE AND
16 SUSTAIN MY OWN OBJECTION. YOU HAVE YOUR CHOICE. YOU
17 CAN EITHER FINISH NOW, OR YOU CAN ASK HIM DIRECTLY,
18 INSTEAD OF BEATING AROUND THE BUSH.

19 LET'S GO.

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

24
25 MR. LEWIN: MAY I CONTINUE, YOUR HONOR?

26 THE COURT: YES, SIR.

27 Q BY MR. LEWIN: MR. BOURDEAU, THE NIGHT --
28 YOU WERE ASKED PREVIOUS QUESTIONS ON CROSS-EXAMINATION

1 REGARDING WHY YOU DIDN'T GO AND -- THE NIGHT BEFORE YOU
2 FOUND THE BODY, WHY YOU DIDN'T GO AND CONTACT YOUR MOM,
3 GO AROUND THE BACK GATE.

4 WHY DIDN'T YOU DO THAT?

5 A SHE WOULD GET UPSET.

6 MR. CREARY: YOUR HONOR, I JUST WOULD LIKE, BEFORE
7 WE MOVE FORWARD, I THINK THAT MISSTATES THE LINE OF
8 QUESTIONING AND THE ANSWERS.

9 THERE WAS NO QUESTION AS TO WHY.

10 THE COURT: IF THAT'S THE OBJECTION, IT'S
11 OVERRULED. ANSWER IS IN.

12 NEXT QUESTION.

13 Q BY MR. LEWIN: YOU WERE ALSO ASKED
14 QUESTIONS ABOUT YOUR MOM'S CAR, WHETHER IT WAS THERE OR
15 NOT?

16 A YES.

17 Q YOUR MOM KEPT HER CAR IN THE GARAGE; IS
18 THAT CORRECT?

19 A ALWAYS.

20 Q SO YOU WOULDN'T KNOW WHETHER THE CAR WAS
21 THERE OR NOT; IS THAT CORRECT?

22 A I WOULDN'T KNOW.

23 Q LET ME BE CLEAR. YOU HAD NO WAY TO SEE
24 INTO THE GARAGE; IS THAT CORRECT?

25 A YES.

26 Q AND SO WHEN YOU SAID BEFORE -- YOU WERE
27 ASKED QUESTIONS ABOUT WHETHER YOUR MOM'S CAR WAS THERE
28 OR NOT --

1 A YES.

2 Q JUST SAY CORRECT OR INCORRECT: WOULD IT BE
3 CORRECT THAT YOU WOULD NOT BE ABLE TO KNOW IF THE CAR
4 WAS THERE?

5 A CORRECT.

6 Q YOU WERE ALSO ASKED QUESTIONS ABOUT
7 WHETHER -- MR. LEVINSON I THINK ASKED YOU IF ERIC
8 DELACRUZ GAVE YOUR MOM MONEY.

9 DO YOU RECALL HIM ASKING YOU THAT?

10 A YES.

11 Q DID YOUR MOM HAVE A LOT OF MONEY?

12 A NO.

13 Q YOU WERE AWARE YOUR MOM OWNED HER OWN
14 BUSINESS; CORRECT?

15 A YES.

16 Q AND SHE OWNED HER OWN HOUSE; IS THAT
17 CORRECT?

18 A YES.

19 Q SO WHAT IS YOUR SOURCE? IN OTHER WORDS,
20 WHEN YOU SAID ERIC DELACRUZ WAS GIVING YOUR MOM MONEY,
21 HOW DO YOU KNOW?

22 A SHE HAD TOLD ME.

23 MR. LEWIN: YOUR HONOR, I WOULD THEN ASK THAT THAT
24 BE STRICKEN. THAT'S GOING TO BE HEARSAY.

25 THE COURT: IT'S UNTIMELY AT THIS POINT. THE
26 OBJECTION IS NOTED FOR THE RECORD. IT'S OVERRULED.

27 MR. LEWIN: IT WOULD CERTAINLY BE TIMELY --

28 THE COURT: I'M DONE. I'VE RULED.

1 NEXT QUESTION.

2 MR. LEWIN: YOUR HONOR, THE CURRENT QUESTION I
3 JUST ASKED.

4 THE COURT: YOU'RE OBJECTING TO YOUR OWN QUESTION?

5 MR. LEWIN: I'M OBJECTING TO AN ANSWER WHICH IS
6 CALLING FOR HEARSAY.

7 THE COURT: WE'RE DONE.

8 DO YOU HAVE ANY OTHER QUESTIONS?

9 MR. LEWIN: I DO.

10 THE COURT: GO AHEAD.

11 Q BY MR. LEWIN: YOU WERE ASKED WHY DIDN'T
12 YOU CALL THE POLICE PREVIOUS TO WHEN YOU DID; IS THAT
13 CORRECT? DO YOU RECALL BEING ASKED THAT? BY -- STRIKE
14 THAT.

15 THE DEFENSE COUNSEL, ONE OR BOTH OF THEM
16 ASKED YOU, YOU COULD HAVE CALLED THE POLICE EARLIER.

17 DO YOU RECALL THAT?

18 A YES.

19 Q WHY DIDN'T YOU CALL THE POLICE EARLIER?

20 A I WAS NOT -- I WAS NOT -- CONCERNED AS
21 MUCH, BECAUSE I THOUGHT MAYBE SHE WAS -- SHE WAS
22 SLEEPING. SHE WAS RESTING. OR MAYBE SHE COULD HAVE
23 GONE WITH SOME FRIENDS.

24 Q WERE YOU CONCERNED THAT IF YOU CALLED THE
25 POLICE, THAT YOUR MOM MIGHT BE UPSET WITH YOU?

26 A YES.

27 MR. LEWIN: YOUR HONOR, AT THIS POINT, GIVEN THE
28 COURT'S PRIOR INSTRUCTIONS, I WOULD ASK TO RESERVE THE

1 REST, AND I WOULD ACTUALLY ASK TO CALL MY NEXT WITNESS
2 IN BETWEEN, SO THAT I HAVE THE OPPORTUNITY, AS I
3 INDICATED BEFORE, SO MR. BOURDEAU CAN SIT DOWN AND HEAR
4 HIS PRIOR INTERVIEW.

5 THE COURT: I'M DISINCLINED TO PERMIT YOU TO CALL
6 A WITNESS WITHOUT DEFENSE COUNSEL FINISHING THEIR
7 RECROSS.

8 BUT YOU CAN RESERVE THE RIGHT TO RECALL THE
9 WITNESS AT A LATER TIME, IF YOU WISH TO.

10 MR. LEWIN: ALL RIGHT.

11 THE COURT: ANY ADDITIONAL QUESTIONS ON REDIRECT
12 AT THIS POINT?

13 MR. LEWIN: NO, I DON'T, YOUR HONOR.

14 THE COURT: DO YOU HAVE ANY RECROSS-EXAMINATION?

15 MR. CREARY: YES, YOUR HONOR.

16 MR. LEVINSON: YES.

17 THE COURT: WHO WANTS TO GO FIRST?

18 MR. LEVINSON: MR. CREARY.

19 THE COURT: THANK YOU.

20

21 RECROSS-EXAMINATION

22 BY MR. CREARY:

23 Q MR. BOURDEAU, LET ME GET THIS STRAIGHT.

24 YOU HADN'T SPOKEN TO YOUR MOTHER IN
25 TWO DAYS; RIGHT? THIS IS WHAT YOU JUST TESTIFIED TO?

26 A YES.

27 Q BEFORE YOU FOUND HER?

28 A YES.

1 Q AND AGAIN, A WEEK PRIOR, SOMEONE TRIED TO
2 KILL HER WITH A GUN; RIGHT?

3 A YES.

4 Q AND SHE ASKED YOU TO CHECK ON HER; RIGHT?
5 THE NIGHT -- THE LAST TIME YOU SAW HER, SHE ASKED YOU TO
6 CHECK ON HER WHEN YOU GOT FINISHED WITH YOUR
7 APPOINTMENT; RIGHT?

8 MR. LEWIN: MISSTATES THE TESTIMONY.

9 THE COURT: SUSTAINED. REFRAME.

10 Q BY MR. CREARY: DID YOUR MOTHER ASK YOU TO
11 CHECK ON HER WHEN YOU GOT FINISHED WITH YOUR
12 APPOINTMENT?

13 MR. LEWIN: YOUR HONOR, I'M GOING TO ASK COUNSEL
14 TO NOT YELL AT THE WITNESS.

15 THE COURT: HE'S NOT YELLING, BUT THE TONE OF
16 VOICE IS A LITTLE BIT TOO MUCH.

17 MR. CREARY: I'LL TONE IT DOWN.

18 THE COURT: THANK YOU.

19 Q BY MR. CREARY: DID YOUR MOTHER ASK YOU TO
20 CHECK ON HER THE LAST NIGHT YOU SAW HER? WASN'T THAT
21 ONE OF THE LAST THINGS SHE SAID TO YOU, "CHECK ON ME
22 AFTER YOU GET OUT OF YOUR APPOINTMENT"?

23 MR. LEWIN: OBJECTION.

24 THAT MISSTATES THE TESTIMONY.

25 THE COURT: OVERRULED. IT'S ASKED.

26 MR. LEWIN: ASKED AND ANSWERED, YOUR HONOR.

27 THE COURT: IT'S ASKED IN QUESTION FORM.

28 OVERRULED.

1 MR. LEWIN: ASKED AND ANSWERED; OBJECTION, YOUR
2 HONOR.

3 THE COURT: OVERRULED.

4 Q BY MR. CREARY: YES OR NO?

5 THE COURT: DO YOU RECALL THE QUESTION?

6 THE WITNESS: YES.

7 THE COURT: GO AHEAD AND ANSWER, SIR.

8 THE WITNESS: SHE TOLD ME TO CALL HER AS SOON AS I
9 FINISH FROM MY MEETING. MY APPOINTMENT.

10 Q BY MR. CREARY: AND AS YOU TESTIFIED, YOU
11 DID THAT?

12 A YES.

13 Q YOU DIDN'T REACH HER?

14 A YES.

15 Q SO TWO DAYS GO BY, AND THEN YOU FINALLY
16 DECIDE TO GO CHECK, TO GO PAST THE GATE?

17 THE COURT: MR. CREARY, WATCH THE TONE.

18 Q BY MR. CREARY: TWO DAYS GO BY, AND THEN
19 YOU DECIDE TO GO PAST THE GATE TO CHECK ON YOUR MOTHER?

20 A YES.

21 Q AND YOU SAY THAT FOR THOSE TWO DAYS, GIVEN
22 WHAT HAD HAPPENED PRIOR, YOU WEREN'T WORRIED ABOUT HER?
23 AND THAT'S WHY YOU DIDN'T GO ANY FURTHER THAN KNOCKING
24 ON THE DOOR AND MAKING PHONE CALLS?

25 THE COURT: THE QUESTION IS COMPOUND.

26 REFRAME IT.

27 Q BY MR. CREARY: AND THAT'S WHY YOU DIDN'T
28 GO ANY FURTHER THAN KNOCKING ON THE DOOR?

1 A I DIDN'T THINK THAT ANYTHING -- ELSE WOULD
2 HAPPEN TO HER, WOULD HAPPEN TO HER.

3 Q YOU DIDN'T THINK IT WOULD HAPPEN TO HER?

4 A I DIDN'T THINK THAT SOMETHING LIKE THAT
5 WOULD HAPPEN TO HER.

6 Q LIKE WHAT?

7 A SHE WOULD GET MURDERED.

8 Q EVEN THOUGH A WEEK PRIOR, SOMEONE HAD TRIED
9 TO MURDER HER?

10

11 (PAUSE IN PROCEEDINGS.)

12

13 MR. CREARY: NO FURTHER QUESTIONS, YOUR HONOR.

14 I'LL WITHDRAW THAT QUESTION.

15 THE COURT: MR. LEVINSON.

16 MR. LEVINSON: VERY BRIEFLY, YOUR HONOR.

17

18 RE CROSS-EXAMINATION

19 BY MR. LEVINSON:

20 Q SO NOW YOU'RE TELLING US THAT THE LAST TIME
21 YOU SAW YOUR MOTHER WAS ON WEDNESDAY NIGHT; CORRECT?

22 THE COURT: THE QUESTION IS ARGUMENTATIVE AS
23 PHRASED. "SO NOW YOU'RE TELLING US."

24 REFRAME IT.

25 Q BY MR. LEVINSON: ARE YOU TELLING US NOW
26 THAT THE LAST TIME YOU SAW YOUR MOTHER WAS WEDNESDAY
27 NIGHT?

28 A IT WAS ON A WEDNESDAY NIGHT.

1 Q AND THEN YOU FOUND HER BODY ON FRIDAY
2 AFTERNOON, LATE AFTERNOON?

3 A AROUND 2:30. 2:00, 2:30.

4 Q MY GOD, WEREN'T YOU -- WEREN'T YOU SCARED?

5 MR. LEWIN: OBJECTION.

6 THE COURT: IS THAT A QUESTION?

7 MR. LEVINSON: I'LL WITHDRAW THAT.

8 THE COURT: PLEASE.

9 MR. LEVINSON: I WILL WITHDRAW THAT.

10 I'M SORRY. IT WAS IMPROPER. I'M SORRY.

11 Q WEREN'T YOU FEARFUL THAT SHE MAY BE DEAD,
12 YOU HADN'T HEARD FROM HER IN TWO DAYS?

13 A NO. I WAS NOT QUICK TO -- TO CHECK ON HER
14 BECAUSE I DIDN'T WANT TO UPSET HER.

15 Q YOU SAID SHE WAS A PRIVATE PERSON; CORRECT?

16 A YES.

17 Q HAD THERE BEEN ANY OTHER TIMES IN THE PAST
18 WHERE SHE HAD TOLD YOU TO CONTACT HER AND KEEP
19 CONTACTING HER WHERE YOU HAD NOT BEEN ABLE TO CONTACT
20 HER IN TWO DAYS?

21 THE COURT: DO YOU UNDERSTAND THE QUESTION?

22 THE WITNESS: NO, SIR.

23 Q BY MR. LEVINSON: OKAY. HAD THERE BEEN ANY
24 SIMILAR TIMES IN THE PAST WHERE SHE SAID, YOU KNOW,
25 KEEP -- CALL ME, AND KEEP IN TOUCH WITH ME, AND YOU
26 CALLED HER LIKE YOU DID FOR THESE TWO DAYS?

27 ANY TIMES IN THE PAST WHERE YOU HAD HAD THE
28 SAME OR SIMILAR SITUATION? WHERE SHE HAD NOT RESPONDED?

1 A NO.

2 Q SO THIS IS THE ONLY SITUATION; IS THAT
3 CORRECT? WHERE YOU SAW HER ON WEDNESDAY NIGHT, YOU SAW
4 HER BODY ON FRIDAY; CORRECT?

5 A YES.

6 MR. LEVINSON: THANK YOU.

7 THE COURT: DO YOU WISH TO RESERVE YOUR RIGHT TO
8 RECALL THE WITNESS?

9 MR. LEWIN: YES, YOUR HONOR.

10 THE COURT: MR. BOURDEAU, I'M GOING TO ORDER THAT
11 YOU REMAIN AVAILABLE ON CALL. BY AGREEMENT WITH THE
12 ATTORNEYS, YOU'RE WELCOME TO REMAIN IN THE COURTROOM, IF
13 YOU WISH TO.

14 YOU MAY BE CALLED AS A WITNESS LATER IN THE
15 PROCEEDINGS. GO AHEAD AND STEP DOWN, SIR.

16 THE WITNESS: THANK YOU, YOUR HONOR.

17 THE COURT: NEXT WITNESS FOR THE PEOPLE.

18 MR. LEWIN: YOUR HONOR, MAY I HAVE A 5-MINUTE
19 BREAK, PLEASE?

20 THE COURT: SURE. ALL RIGHT.

21 LADIES AND GENTLEMEN OF THE JURY, DON'T
22 FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE UNTIL IT'S
23 SUBMITTED TO YOU.

24 I'M GOING TO TRY LIMIT THIS TO A 5-MINUTE
25 RECESS. IF YOU WANT TO USE THE JURY ROOM, YOU'RE
26 WELCOME TO DO SO.

27
28 (THE FOLLOWING PROCEEDINGS

1 THE COURT: AT THIS TIME, ALL THE LADIES AND
2 GENTLEMEN OF THE JURY ARE PRESENT, INCLUDING OUR FOUR
3 ALTERNATE JURORS. ALL OTHER PARTIES PREVIOUSLY
4 ANNOUNCED ARE STILL PRESENT.

5 MR. LEWIN, YOUR NEXT WITNESS, PLEASE.

6 MR. LEWIN: DETECTIVE MIKE RODRIGUEZ, YOUR HONOR.

7 THE COURT: DETECTIVE SERGEANT RODRIGUEZ, IF YOU'D
8 STEP FORWARD, PLEASE. FACE THE CLERK.

9 THE CLERK: RAISE YOUR RIGHT HAND.

10

11 MICHAEL RODRIGUEZ,
12 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND
13 TESTIFIED AS FOLLOWS:

14 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
15 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
16 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
17 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

18 THE WITNESS: YES, I DO.

19 THE CLERK: PLEASE BE SEATED.

20 PLEASE STATE AND SPELL YOUR NAME SLOWLY FOR
21 THE RECORD.

22 THE WITNESS: MICHAEL RODRIGUEZ.

23 R-O-D-R-I-G-U-E-Z.

24 THE COURT: FEEL FREE TO ADJUST THE MICROPHONE.

25 MR. LEWIN, YOUR DIRECT EXAMINATION, PLEASE.

26

27

28

DIRECT EXAMINATION

BY MR. LEWIN:

Q DETECTIVE, WHAT IS YOUR CURRENT OCCUPATION
AND ASSIGNMENT?

A I'M A SERGEANT WITH LOS ANGELES COUNTY
SHERIFF'S DEPARTMENT, ASSIGNED TO HOMICIDE BUREAU.

Q HOW LONG YOU BEEN A DEPUTY SHERIFF?

A TWELVE YEARS.

Q HOW LONG BEEN ASSIGNED TO HOMICIDE?

A SIX YEARS.

Q ARE YOU THE LEAD DETECTIVE ON THE CASE
KNOWN AS THE SONIA RIOS RISKEN HOMICIDE?

A YES, I AM.

Q AND WHEN DID YOU FIRST START WORKING ON THE
CASE?

A THE DAY THAT THE BODY WAS DISCOVERED.

Q WHAT DAY WAS THAT?

A APRIL 26, 2007.

Q AT THAT TIME, DID YOU HAVE A PARTNER?

A YES. DETECTIVE LINDA MUSE, M-U-S-E.

Q IS SHE STILL YOUR PARTNER?

A NO, SHE IS NOT.

Q HOW DOES IT WORK WITH RESPECT TO HOW
PARTNERS ARE ASSIGNED AT SHERIFF'S HOMICIDE?

A LIKE MARRIAGES, SOMETIMES THEY BREAK UP. I
HAD A PARTNER SWITCH. PARTNERED UP WITH DETECTIVE GARY
SICA, S-I-C-A.

Q AND IS IT -- WITHIN THE SHERIFF'S HOMICIDE,

1 JOKES ASIDE, IS IT A COMMON SITUATION WHERE PARTNERS ARE
2 REASSIGNED?

3 A YES. DETECTIVE SICA AND I HAD WORKED
4 PREVIOUSLY TOGETHER.

5 Q AND YOU WINDED UP BEING THE ONE TO KEEP,
6 FOR LACK OF A BETTER TERM, THIS CASE; IS THAT RIGHT?

7 A YES. WHEN PARTNERS SPLIT UP, THEY WILL
8 DIVIDE THEIR CASES UP.

9 Q HOW WAS IT THAT YOU WERE FIRST ASSIGNED TO
10 THIS CASE?

11 A WE WERE ON ROTATION ON CALL AT THE TIME
12 THAT THE INCIDENT WAS REPORTED. WE WERE NEXT UP ON THE
13 ON-CALL LIST.

14 Q AND HOW DID YOU FIRST HEAR ABOUT THIS
15 HOMICIDE?

16 A IT WAS REPORTED TO ME BY MY DESK THAT I WAS
17 REPORTING TO A MURDER IN THE CITY OF LOMITA.

18 Q WAS THIS AT 1819 WEST 252ND STREET?

19 A YES, IT WAS.

20 Q AND DID YOU RESPOND TO THAT LOCATION?

21 A YES.

22 Q ABOUT WHAT TIME DID YOU GET THERE?

23 A I WANT TO SAY IT WAS LATER IN THE
24 AFTERNOON, THE EARLY EVENING HOURS BY THE TIME I
25 ACTUALLY ARRIVED. POSSIBLY 5:30, 6:00 IN THE EVENING.

26 MR. LEWIN: PEOPLE'S NEXT IN ORDER, YOUR HONOR, IS
27 GOING TO BE --

28 THE COURT: I THINK YOU'RE AT 40.

1 MR. LEWIN: THANK YOU.

2

3 (PEOPLE'S EXHIBIT 40,
4 PHOTOGRAPH, WAS MARKED FOR
5 IDENTIFICATION.)

6

7 Q BY MR. LEWIN: SHOWING YOU WHAT HAS BEEN
8 MARKED AS PEOPLE'S 40.

9 DO YOU RECOGNIZE THE PHOTOGRAPH?

10 A YES.

11 Q WHAT DOES THIS PHOTOGRAPH DEPICT?

12 A THAT IS ACTUALLY THE EXTREME WEST END OF
13 THE CUL-DE-SAC LOCATED ON 252ND FACING EASTBOUND TOWARD
14 EBONY LANE, IN THE CITY OF LOMITA.

15 Q IS THAT THE LOCATION WHERE YOU RESPONDED?

16 A THE LOCATION IS ACTUALLY TO THE LEFT, WHERE
17 YOU CAN SEE THE RED CAR IN THE PHOTOGRAPH.

18 Q SHOWING YOU WHAT I'M MARKING AS PEOPLE'S
19 41. DO YOU ALSO RECOGNIZE THIS PHOTOGRAPH?

20 A YES.

21

22 (PEOPLE'S EXHIBIT 41,
23 PHOTOGRAPH, WAS MARKED FOR
24 IDENTIFICATION.)

25

26 Q BY MR. LEWIN: DOES THAT DEPICT SONIA RIOS
27 RISKEN'S RESIDENCE?

28 A YES. THAT'S A FRONT VIEW OF THE LOCATION,

1 FACING NORTHBOUND.

2 Q AND IS THAT APPROXIMATELY WHAT THE LOCATION
3 LOOKED LIKE WHEN YOU RESPONDED?

4 A YES. IT APPEARS THAT THE LEFT PORTION OF
5 THE HOUSE IS A LITTLE BIT CUT OFF BY THE PHOTOGRAPH.

6 Q SHOWING YOU WHAT I'M MARKING AS PEOPLE'S
7 42. DO YOU RECOGNIZE THIS PHOTOGRAPH?

8 A YES. THAT IS THE SAME RESIDENCE.
9 1819 252ND STREET.

10
11 (PEOPLE'S EXHIBIT 42,
12 PHOTOGRAPH, WAS MARKED FOR
13 IDENTIFICATION.)
14

15 Q BY MR. LEWIN: DOES THAT LOOK IN ESSENCE
16 THE SAME AS IT DID WHEN YOU RESPONDED ON THAT DAY?

17 A EXACTLY THE SAME.

18 MR. LEWIN: ONE MOMENT.

19 THE COURT: YES, SIR.

20

21 (A DISCUSSION WAS HELD
22 OFF THE RECORD.)
23

24 Q BY MR. LEWIN: DETECTIVE, WHEN YOU ARRIVED
25 AT THE SCENE, WHAT WAS YOUR RESPONSIBILITY?

26 A TO TAKE OVER THE CRIME SCENE, TO ASSUME
27 COMMAND, MY PARTNER AND I. AND TO TAKE OVER THE
28 INVESTIGATION.

1 Q AND WHEN YOU ARRIVED, WERE THERE ALREADY
2 LAW ENFORCEMENT PERSONNEL THERE?

3 A YES.

4 Q AND IF YOU CAN RECALL, WHAT PERSONNEL WERE
5 THERE?

6 A THE HANDLING PATROL UNIT. I BELIEVE IT WAS
7 DEPUTY HOY. ASSISTING UNITS FROM THE LOMITA SHERIFF'S
8 STATION, WHO CORDONED OFF THE AREA, SECURED IT WITH
9 YELLOW CRIME SCENE TAPE.

10 Q WHEN YOU GET THERE, WHEN YOU SAY YOU TAKE
11 CONTROL, WHAT DOES THAT MEAN?

12 A WE'RE ASSUMING RESPONSIBILITY FOR THE
13 FOLLOW-UP INVESTIGATION, SUBSEQUENT FOLLOW-UP
14 INVESTIGATION, INCLUDING INTERVIEWING WITNESSES,
15 IDENTIFYING SUSPECTS, AND PROCESSING THE CRIME SCENE.

16 Q AND WHEN YOU GOT THERE, DID YOU ACTUALLY
17 ENTER INTO THE HOUSE?

18 A YES. AT SOME POINT, WE DID.

19 Q AND SHOWING YOU WHAT'S BEEN MARKED AS
20 PEOPLE'S 39. DO YOU RECOGNIZE THIS PHOTO?

21 A I DO.

22 Q AND WHAT DOES THAT PHOTO DEPICT?

23 A THAT IS A PHOTO DEPICTING THE VICTIM, SONIA
24 RIOS RISKEN, LYING FACE DOWN ON LEFT SIDE OF HER FACE,
25 IN A POOL OF BLOOD, WITH HER RIGHT HAND NEAR THE TOP OF
26 HER FOREHEAD AND NOSE AREA.

27 SHE IS ACTUALLY LAYING WEST OF A STAIRWELL
28 THAT LEADS TO THE SECOND STORY OF THE LOCATION. JUST

1 NORTH OF THE FRONT DOOR.

2 Q HOW WAS SHE CLOTHED?

3 A NIGHT APPAREL, SUCH AS PAJAMAS.

4 Q DO YOU RECALL, WAS THE BLOOD POOLED AS YOU
5 SEE IN THE PHOTOGRAPH?

6 A YES. IT WAS UNDERNEATH THE BODY. IT WAS
7 COAGULATED BY THE TIME WE ENTERED THE CRIME SCENE.

8 Q I'M GOING TO MARK THIS AS PEOPLE'S 43. DO
9 YOU RECOGNIZE THIS PHOTOGRAPH?

10 A YES.

11
12 (PEOPLE'S EXHIBIT 43,
13 PHOTOGRAPH, WAS MARKED FOR
14 IDENTIFICATION.)

15
16 Q BY MR. LEWIN: I WANT TO ASK YOU, DID YOU
17 RECOVER -- DID YOU NOTICE A SHELL CASING AT THE SCENE?

18 A YES. A LITTLE HARD TO TELL IN THE PICTURE,
19 BUT IF YOU LOOK AT BOTTOM MIDDLE PORTION OF THE PICTURE
20 NEAR THE EVIDENCE ITEM OF 4, I BELIEVE, THERE IS A SHELL
21 CASING THAT'S ON A THROW RUG.

22 THE RUG IS CONSISTENT WITH A WHITE OR CREAM
23 COLOR, CONSISTENT WITH THE LIVING ROOM RUG AND DINING
24 ROOM RUG, WHICH WOULD BE TO THE RIGHT, JUST WEST OF THE
25 SMALL LITTLE HALLWAY, THERE, NEXT TO THE STAIRWELL.

26 Q AND WERE YOU ABLE TO DETERMINE -- DID YOU
27 HAVE A CHANCE TO EXAMINE THE CASING?

28 A YES.

1 Q WERE YOU ABLE TO DETERMINE THE CALIBER OF
2 THE WEAPON?

3 A 9-MILLIMETER CALIBER.

4 Q AND YOU ARE TRAINED IN FIREARMS; IS THAT
5 CORRECT?

6 A I HAVE A GENERAL KNOWLEDGE OF FIREARMS.
7 I'M NOT A FIREARM EXPERT.

8 Q ARE YOU FAMILIAR, DETECTIVE, WITH WHAT KIND
9 OF WEAPON THE CASING, IN TERMS OF REVOLVERS OR
10 SEMIAUTOMATIC WEAPONS?

11 A YES.

12 Q COULD YOU PLEASE DESCRIBE WHAT LEAVES A
13 CASING?

14 A WHAT NEEDS A CASING?

15 Q WHAT LEAVES A CASING. WHAT KIND OF WEAPON?
16 REVOLVER, OR A SEMIAUTOMATIC?

17 A SEMIAUTOMATIC.

18 Q IS IT FAIR THAT WHEN A SEMIAUTOMATIC WEAPON
19 IS FIRED, THAT A CASING IS EJECTED FROM THE WEAPON?

20 A A CARTRIDGE CASE IS THEN REJECTED TYPICALLY
21 OUTSIDE OF THE RIGHT PORTION OF THE FIREARM.

22 Q WITH A REVOLVER, THE CASING STAYS INSIDE
23 THE CYLINDER; CORRECT?

24 A THAT'S CORRECT.

25 Q DETECTIVE, WHEN YOU GOT THERE, WERE YOU
26 ABLE TO TAKE A LOOK AT ANY POINT, AND DETERMINE HOW THE
27 VICTIM APPEARED TO HAVE BEEN KILLED?

28 A YES. BASED ON THE EVIDENCE, AND THE WAY

1 THE BODY WAS POSITIONED, WE LATER RECOVERED AN EXPENDED
2 PROJECTILE IN THE BOTTOM PORTION OF THE DOOR.

3 WHICH WOULD BE WHERE YOU COULD SEE EVIDENCE
4 5 TO THE UPPER MIDDLE PORTION. THERE WAS A DOUBLE WOOD
5 DOOR THERE. WOULD HAVE BEEN THE FAR WEST DOOR.

6 THE COURT: HERE'S A LASER POINTER, IF YOU WANT TO
7 USE IT AT ALL DURING YOUR TESTIMONY.

8 Q BY MR. LEWIN: I'M GOING TO SHOW YOU --
9 CONSECUTIVELY, WE'VE GOT --

10 THE COURT: SHOULD BE UP TO 44.

11 MR. LEWIN: 44, 45, AND 46.

12
13 (PEOPLE'S EXHIBITS 44, 45, 46,
14 PHOTOGRAPHS, WERE MARKED FOR
15 IDENTIFICATION.)

16
17 Q BY MR. LEWIN: SHOWING YOU WHAT'S BEEN
18 MARKED AS 45. DOES THIS SHOW THE -- WHAT YOU'D CALL, I
19 THINK YOU CALL IT A PROJECTILE, OR A BULLET THAT WAS
20 RECOVERED?

21 A YES. RIGHT WHERE I'M POINTING WITH THE
22 LASER, NUMBER 5, THE BOTTOM PORTION OF THE DOUBLE WOOD
23 DOOR, THE FURTHEST WEST WOOD DOOR.

24 Q I'M GOING TO SHOW YOU 45.
25 DOES THIS SHOW THE HOLE IN THE DOOR?

26 A YES. IT'S HARD TO TELL ON THE LIGHTING,
27 THE PROJECTILE. BUT ON THE ACTUAL PHOTO, IT'S MORE
28 VISIBLE.

1 THE COURT: MR. LEWIN, I THINK YOU MISSPOKE,
2 BECAUSE YOUR PREVIOUS QUESTION OF A DIFFERENT
3 PHOTOGRAPH, YOU MARKED AND IDENTIFIED ON THE RECORD AS
4 45. CAN YOU JUST CLARIFY, PLEASE?

5 MR. LEWIN: OKAY.

6 THE COURT: IS 45 THE CLOSE-UP, AND 44 IS THE
7 PHOTO TAKEN FURTHER AWAY FROM THE DOOR?

8 MR. LEWIN: 44 IS TAKEN FURTHER AWAY.

9 THE COURT: IS THAT THE ONE THAT'S DISPLAYED?

10 MR. LEWIN: THAT'S UP NOW -- 45.

11 THE COURT: THE RECORD WILL REFLECT THAT WHEN YOU
12 ASKED THE QUESTION DEALING WITH THE PROJECTILE AND THE
13 WITNESS ANSWERED, YOU WERE ACTUALLY DISPLAYING 44, AND
14 NOT 45.

15 NOW YOU HAVE 45 UP ON THE SCREEN.

16 MR. LEWIN: I DO.

17 THE COURT: ALL RIGHT. YOU MAY PROCEED.

18 Q BY MR. LEWIN: SHOWING YOU WHAT'S BEEN
19 MARKED PEOPLE'S 46. DOES THIS ACTUALLY SHOW THE
20 PROJECTILE THAT IS RECOVERED FROM THE DOOR?

21 A IT DOES.

22 Q LET ME SEE IF I CAN DIM THIS DOWN.

23 IS THAT BETTER FOR THE JURY? OKAY.

24 AND DETECTIVE, DID YOU HAVE THE OPPORTUNITY
25 TO EXAMINE THE PROJECTILE?

26 A YES.

27 Q AND WERE YOU ABLE TO DETERMINE WHAT CALIBER
28 THE PROJECTILE WAS?

1 ALL RIGHT. THANK YOU.

2 EVERYONE NODDING AFFIRMATIVELY.

3 MR. LEWIN, YOU'VE REQUESTED PERMISSION FROM
4 THE COURT TO RECALL A WITNESS OUT OF ORDER FOR
5 SCHEDULING PURPOSES. YOU'RE ASKING TO RECALL JOHN
6 BOURDEAU?

7 MR. LEWIN: YES, YOUR HONOR. THANK YOU VERY MUCH.

8 THE COURT: MR. BOURDEAU, IF YOU COULD STEP
9 FORWARD AGAIN, PLEASE, SIR.

10 MR. LEWIN: I WANT TO THANK DEFENSE COUNSEL AS
11 WELL, SIR.

12 THE COURT: YES, SIR.

13 MR. BOURDEAU, JUST RESUME YOUR SEAT UP HERE
14 ON THE WITNESS STAND.

15
16 JOHN BOURDEAU,
17 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
18 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

19 THE COURT: MR. BOURDEAU, I'D REMIND YOU YOU'RE
20 STILL UNDER OATH. FEEL FREE TO ADJUST THE MICROPHONE SO
21 THAT IT'S COMFORTABLE FOR YOU.

22 WOULD YOU LIKE SOME MORE WATER?

23 THE WITNESS: YES, PLEASE, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. LEWIN, YOU WISH TO INQUIRE?
26
27
28

DIRECT EXAMINATION

BY MR. LEWIN:

Q MR. BOURDEAU, HOW DO YOU FEEL TODAY?

A NOT VERY WELL.

Q AND WHEN YOU SAY NOT VERY WELL, WHAT IN
PARTICULAR?

A I'M -- I'M SHAKY. I'M -- I FEEL LIKE I'M
GOING TO COLLAPSE.

Q LET ME ASK YOU SOMETHING. WHEN YOU
TESTIFIED YESTERDAY, DID YOU FEEL THE SAME WAY?

A YES.

Q MR. BOURDEAU, IS IT DIFFICULT FOR YOU TO
TALK ABOUT AND TO THINK ABOUT THE EVENTS RELATING TO
YOUR MOM'S MURDER?

A YES, IT IS.

Q AND WHEN YOU DO THAT, DOES IT CAUSE YOU
STRESS?

A A LOT OF STRESS.

Q AND WHAT HAPPENS IN TERMS OF YOUR MEMORY
WHEN YOU GET STRESSED?

A I GET CONFUSED.

Q YESTERDAY, DO YOU RECALL TESTIFYING THAT
YOU HAD GONE TO YOUR MOTHER'S HOUSE ON WEDNESDAY NIGHT?

A YES.

Q DID YOU GO TO YOUR MOM'S HOUSE ON WEDNESDAY
NIGHT?

A NO, I DIDN'T.

Q AND YOU'VE SPOKEN TO DETECTIVES AND TO

1 MYSELF WITH DETECTIVES ON SEVERAL OCCASIONS; IS THAT
2 CORRECT?

3 A YES.

4 Q OTHER THAN WHEN YOU WERE IN COURT
5 YESTERDAY, HAVE YOU EVER SAID THAT YOU WENT TO THE HOUSE
6 ON WEDNESDAY NIGHT?

7 A NO.

8 Q WHEN IS THE LAST TIME THAT YOU SAW YOUR
9 MOM? WHAT DAY?

10 A THE 26TH. THURSDAY NIGHT.

11 Q OKAY. AND WAS WHAT YOU TESTIFIED
12 YESTERDAY -- LET'S JUST GO THROUGH IT.

13 THE LAST TIME YOU SAW YOUR MOM ON THURSDAY
14 WAS WHEN?

15 A AT 6:30. AROUND 6:30.

16 Q WHERE DID YOU SEE HER?

17 A AT THE SHOP.

18 Q WHEN YOU SAY THE SHOP, HER SALON?

19 A YES.

20 Q AND DO YOU RECALL, WHEN SHE LEFT THE SALON,
21 WERE YOU THERE?

22 A AT THE SAME TIME I DID.

23 Q WHAT TIME DID YOU GUYS LEAVE THE SALON?

24 A AROUND 6:30.

25 Q AND IS THAT P.M.?

26 A P.M., YES.

27 Q JUST WANT TO VERIFY THAT'S THURSDAY AT
28 6:30 P.M.?

1 A YES.

2 Q AND AFTER YOU LEFT THE SALON, OR AS YOU
3 WERE LEAVING, DID YOUR MOM TELL YOU TO CALL HER LATER?

4 A AS WE WERE LEAVING, SHE DID TELL ME TO CALL
5 HER.

6 Q AND DID YOU ATTEMPT TO CALL HER LATER?

7 A LATER ON, YES.

8 Q ABOUT WHAT TIME WAS IT THAT YOU TRIED TO
9 CALL HER?

10 A I STARTED TO CALL HER AT 9:00.

11 Q AND WERE YOU ABLE TO GET AHOLD OF HER?

12 A NO.

13 Q WHEN YOU WERE NOT ABLE TO GET AHOLD OF HER
14 ON THAT THURSDAY NIGHT, THAT'S WHEN YOU WENT OVER TO THE
15 HOUSE?

16 A YES.

17 Q AND IS EVERYTHING YOU TESTIFIED TO
18 YESTERDAY ABOUT GOING OVER TO THE HOUSE THURSDAY NIGHT,
19 ON THURSDAY NIGHT, WAS THAT ACCURATE?

20 A YES.

21 Q AND SO WAS IT THE NEXT DAY, FRIDAY, THAT
22 YOU DISCOVERED YOUR MOM?

23 A YES.

24 Q AND WAS WHAT YOU TESTIFIED TO YESTERDAY
25 ABOUT WHAT YOU DID ON FRIDAY WHEN YOU FOUND YOUR MOM,
26 WAS THAT ACCURATE?

27 A I'M SORRY? I DIDN'T UNDERSTAND.

28 Q WAS WHAT YOU TESTIFIED TO YESTERDAY ABOUT

1 FINDING YOUR MOM ON FRIDAY, WAS THAT ACCURATE?

2 A YES.

3 MR. LEWIN: YOUR HONOR, I HAVE NO FURTHER
4 QUESTIONS FOR THE WITNESS.

5 THE COURT: MR. LEVINSON.

6 MR. LEVINSON: THANK YOU VERY MUCH.

7

8 CROSS-EXAMINATION

9 BY MR. LEVINSON:

10 Q GOOD MORNING, MR. BOURDEAU.

11 A GOOD MORNING, SIR.

12 Q I JUST HAVE A COUPLE QUESTIONS TO ASK YOU.

13 NOW, ORIGINALLY, YOU TESTIFIED THAT YOU
14 FOUND YOUR MOTHER, ON DIRECT EXAMINATION, ON THE 26TH;
15 IS THAT CORRECT? THAT SHE WAS MISSING THE 25TH.

16 STRIKE THAT. REPHRASE.

17 ORIGINALLY, YOU SAID THAT YOU SAW HER THE
18 NIGHT BEFORE, AND THEN THE NEXT DAY, YOU FOUND THE BODY;
19 IS THAT CORRECT?

20 A YES.

21 Q ON CROSS-EXAMINATION, IT WAS BROUGHT OUT,
22 AND YOU SAID THAT YOU SAW HER TWO DAYS BEFORE, THEN YOU
23 FOUND THE BODY; IS THAT CORRECT?

24 MR. LEWIN: IS IT CORRECT HE SAID THAT, OR
25 CORRECT, YOUR HONOR, THAT --

26 THE COURT: SUSTAINED.

27 THE QUESTION IS AMBIGUOUS.

28 Q BY MR. LEVINSON: DID YOU SAY ON

1 CROSS-EXAMINATION THAT YOU FOUND HER TWO DAYS LATER?

2 DO YOU UNDERSTAND MY QUESTION?

3 A NO, NOT QUITE.

4 Q OKAY. ORIGINALLY, YOU SAID SHE LEFT ABOUT
5 6:20, YOU MADE PHONE CALLS, YOU KNOW, LIKE AT 9:00, SO
6 FORTH.

7 THEN YOU WENT OVER THE NEXT DAY BEFORE
8 WORK, AND YOU FOUND THE BODY; IS THAT CORRECT?

9 MR. LEWIN: YOUR HONOR, SAME OBJECTION.

10 THE COURT: SUSTAINED. AMBIGUOUS.

11 Q BY MR. LEVINSON: WHEN YOU TESTIFIED ON
12 DIRECT EXAMINATION, WHAT TIME DID YOUR MOTHER LEAVE?

13 MR. LEWIN: SAME OBJECTION, YOUR HONOR.

14 THE COURT: SUSTAINED.

15 ARE YOU ASKING HIM TO RECOUNT WHAT HE
16 TESTIFIED TO, AS OPPOSED TO WHAT HIS RECOLLECTION IS?

17 MR. LEVINSON: YES, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. LEWIN: YOUR HONOR, SAME OBJECTION WITH
20 RESPECT TO TIME. TALKING ABOUT TODAY ON DIRECT, OR
21 YESTERDAY? I THINK THE QUESTION IS VAGUE.

22 HOWEVER, IT'S --

23 THE COURT: DO YOU WANT TO CLARIFY THAT? ARE YOU
24 ASKING ABOUT THE DIRECT EXAMINATION YESTERDAY?

25 MR. LEVINSON: YES, YOUR HONOR.

26 MAY I JUST HAVE A MOMENT?

27 THE COURT: SURE.

28

1 (A DISCUSSION WAS HELD
2 OFF THE RECORD.)
3

4 Q BY MR. LEVINSON: DID YOU SAY YESTERDAY
5 THAT YOU SAW YOUR MOTHER AT 6:20? ON THURSDAY NIGHT?
6 ON THE 26TH? LEAVING THE SALON?

7 A I GOT TO THE SHOP AT AROUND 6:00.

8 Q AND DID YOU SAY SHE LEFT ABOUT 6:20?

9 A WE LEFT AT THE SAME TIME.

10 Q OKAY. WHAT TIME WAS THAT?

11 A AROUND 6:20, 6:30.

12 Q OKAY. THEN YOU TESTIFIED YOU MADE SOME
13 PHONE CALLS LATER THAT NIGHT; IS THAT CORRECT?

14 A YES.

15 Q AND YOU TESTIFIED THAT SHE ASKED YOU TO
16 CALL HER; IS THAT CORRECT?

17 A YES.

18 Q THEN YOU SAID YOU MADE SOME PHONE CALLS,
19 AND YOU WENT OVER, YOU ACTUALLY WENT OVER THERE; IS THAT
20 CORRECT? THAT NIGHT?

21 A WENT OVER WHERE?

22 Q TO HER HOUSE.

23 A YES, I DID.

24 Q AND YOU WENT TO THE FRONT DOOR; CORRECT?

25 A YES.

26 Q KNOCKED ON THE FRONT DOOR?

27 A YES.

28 Q YOU DID NOT GO TO THE BACK; IS THAT

1 CORRECT?

2 A NOT THAT THURSDAY NIGHT.

3 Q ALL RIGHT.

4 YOU WENT BACK HOME, WENT TO SLEEP; CORRECT?

5 A YES.

6 Q NEXT, YOU MADE SOME PHONE CALLS THE NEXT
7 MORNING; IS THAT CORRECT?

8 A YES.

9 Q AND YOU GOT NO ANSWER; IS THAT CORRECT?

10 A YES.

11 Q AND THEN YOU WENT OVER THE NEXT MORNING,
12 AND YOU HAD A KEY TO THE SIDE GATE; IS THAT CORRECT?

13 A YES.

14 Q YOU OPENED THE SIDE GATE; CORRECT?

15 A YES.

16 Q ALL RIGHT.

17 AND YOU TESTIFIED THAT AT THAT POINT, THE
18 SLIDING DOOR WAS OPEN, AND THAT'S WHEN YOU SAW YOUR
19 MOTHER'S BODY; IS THAT CORRECT?

20 MR. LEWIN: YOUR HONOR, THAT MISSTATES THE
21 TESTIMONY IN TERMS OF TIME.

22 THE COURT: SUSTAINED.

23 REFRAME THE QUESTION, PLEASE.

24 MR. LEWIN: MAY I HAVE ONE MOMENT, YOUR HONOR?

25 THE COURT: SURE.

26

27 (A DISCUSSION WAS HELD

28 OFF THE RECORD.)

1 MR. LEWIN: THANK YOU, YOUR HONOR.

2 THE COURT: GO AHEAD.

3 Q BY MR. LEVINSON: SO YOU WENT OVER IN THE
4 MORNING, YOU KNOCKED ON THE DOOR; CORRECT?

5 A YES.

6 Q AND YOU WENT BACK TO WORK; IS THAT CORRECT?
7 OR YOU WENT TO WORK?

8 A YES.

9 Q AND THEN YOU LEFT WORK, AND CAME BACK IN
10 THE AFTERNOON; IS THAT CORRECT?

11 A ON THAT FRIDAY?

12 Q YES.

13 A YES.

14 Q YOU USED THE LITTLE KEY FOR THE SIDE GATE;
15 IS THAT CORRECT?

16 A YES.

17 Q YOU OPENED THAT UP; IS THAT CORRECT?

18 A YES.

19 Q YOU SAW THE SLIDING DOOR PARTIALLY OPEN; IS
20 THAT CORRECT?

21 A YES.

22 Q AT THAT POINT, YOU ENTERED; IS THAT
23 CORRECT?

24 A YES.

25 Q AND YOU SAW YOUR MOTHER'S BODY; CORRECT?

26 A YES.

27 Q NOW, ON CROSS-EXAMINATION, IS IT CORRECT
28 THAT YOU SAID AT ONE POINT THAT THERE WAS A TWO-DAY

1 LAPSE FROM THE TIME THAT YOU LAST SAW HER UNTIL YOU SAW
2 HER BODY? IS THAT CORRECT?

3 MR. LEWIN: YOUR HONOR, THE QUESTION IS AMBIGUOUS.
4 WITH THE TERM "CORRECT," IT'S UNCLEAR WHETHER HE'S
5 ASKING DID HE SAY IT BEFORE, OR WAS IT CORRECT WHEN HE
6 SAID IT.

7 THE QUESTION IS AMBIGUOUS.

8 THE COURT: DO YOU UNDERSTAND THE QUESTION, SIR?

9 THE WITNESS: NO, NOT QUITE, SIR.

10 THE COURT: SUSTAINED.

11 MR. LEVINSON: MAY I HAVE A MOMENT, YOUR HONOR?

12 THE COURT: YES.

13

14 (A DISCUSSION WAS HELD
15 OFF THE RECORD.)

16

17 Q BY MR. LEVINSON: DID YOU TESTIFY ON
18 CROSS-EXAMINATION YESTERDAY THAT AT ONE POINT, THE LAST
19 TIME YOU SAW HER WAS ON THE 25TH, WEDNESDAY, AND THE
20 NEXT TIME YOU SAW HER BODY WAS ON THE 27TH, ON FRIDAY?

21 A I WAS CONFUSED AT THAT TIME.

22 Q BUT DID YOU TESTIFY TO THAT?

23 A YES.

24 Q ALL RIGHT.

25 NOW, YOU'VE HAD TIME TO REGROUP YOUR
26 THOUGHTS. YOU DISCUSSED IT WITH THE D.A.; CORRECT?
27 YOUR TESTIMONY?

28 A YES.

1 Q DID YOU LISTEN TO ANY CD OF YOUR TESTIMONY
2 OR ANY STATEMENT THAT YOU GAVE?

3 A YES.

4 Q AND THAT REFRESHED YOUR MEMORY; CORRECT?

5 A YES.

6 Q SO NOW YOU'RE SAYING THAT IT WAS THE
7 TWENTY -- IT WAS NOW THE 26TH THAT YOU SAW HER LAST
8 ALIVE, THEN YOU SAW HER DEAD ON THE 27TH; IS THAT
9 CORRECT?

10 A YES.

11 Q ALL RIGHT.

12 SO THEN, THIS NOW IS -- BECAUSE OF YOUR
13 CONFUSION AND SO FORTH, WE HAVE TWO VERSIONS, BUT YOU
14 REFRESHED YOUR MEMORY FROM WHAT MR. LEWIN GAVE YOU; IS
15 THAT CORRECT?

16 MR. LEWIN: YOUR HONOR, I THINK THE QUESTION
17 ASSUMES FACTS --

18 MR. LEVINSON: I'LL WITHDRAW IT.

19 THANK YOU. NO FURTHER QUESTIONS.

20 THE COURT: MR. CREARY, DO YOU HAVE
21 CROSS-EXAMINATION?

22 MR. CREARY: YES, YOUR HONOR. THANK YOU.

23 THE COURT: YOU MAY PROCEED.

24

25 CROSS-EXAMINATION

26 BY MR. CREARY:

27 Q MR. BOURDEAU, WOULD IT BE FAIR TO SAY THAT
28 YOU'RE BLAMING THE DISCREPANCIES ON YOUR TESTIMONY

1 YESTERDAY, THE DISCREPANCIES WITHIN YOUR TESTIMONY
2 YESTERDAY ON BEING CONFUSED?

3 A SEVERAL THINGS.

4 Q WHAT ARE THE SEVERAL THINGS YOU'RE BLAMING
5 THE DISCREPANCIES ON?

6 MR. LEWIN: YOUR HONOR, I'M GOING TO OBJECT TO THE
7 TERM "DISCREPANCY." IT'S ARGUMENTATIVE. AND IT MAKES A
8 FACTUAL DETERMINATION.

9 THE COURT: OVERRULED.

10 YOU CAN ANSWER, SIR.

11 THE WITNESS: CAN YOU REPEAT THE QUESTION?

12 Q BY MR. CREARY: WHAT ARE YOU BLAMING YOUR
13 DISCREPANCIES IN YOUR TESTIMONY ON?

14 THE COURT: YESTERDAY.

15 Q BY MR. CREARY: YESTERDAY. THE
16 DISCREPANCIES YESTERDAY IN YOUR TESTIMONY.

17 A I WASN'T FEELING VERY WELL.

18 Q YOU WEREN'T FEELING VERY WELL. DID YOU
19 TELL MR. LEWIN BEFORE YOU TESTIFIED YESTERDAY THAT YOU
20 WEREN'T FEELING VERY WELL?

21 MR. LEWIN: YOUR HONOR, THAT ASSUMES A FACT NOT IN
22 EVIDENCE.

23 THE COURT: OVERRULED. IT'S A QUESTION.

24 Q BY MR. CREARY: DID YOU TELL MR. LEWIN THAT
25 YESTERDAY?

26 A I DON'T RECALL.

27 Q DID YOU TELL MR. LEWIN THAT YOU WEREN'T
28 FEELING WELL AT THE BREAK?

1 A I DON'T RECALL TALKING TO HIM DURING THAT
2 TIME.

3 Q DID YOU TELL MR. LEWIN THAT YOU WEREN'T
4 FEELING WELL AFTER YOU GOT OFF THE WITNESS STAND?

5 YES OR NO.

6 A I'M NOT SURE.

7 Q YOU'RE NOT SURE?

8 A I DON'T RECALL.

9 Q WHEN DO YOU RECALL FIRST TELLING MR. LEWIN
10 THAT YOU DIDN'T FEEL WELL WHILE YOU WERE TESTIFYING?

11 A AFTER -- AFTER I GOT OUT HERE -- IN THE
12 OFFICE.

13 Q AFTER YOU GOT INTO THE OFFICE?

14 A YES.

15 Q OKAY. AND HOW LONG AFTER YOUR TESTIMONY
16 DID YOU GET INTO THE OFFICE?

17 A FEW MINUTES.

18 Q A FEW MINUTES? OKAY.

19 AND YOU TOLD HIM IMMEDIATELY AFTERWARDS YOU
20 WEREN'T FEELING WELL DURING YOUR TESTIMONY?

21 A NO. NO.

22 Q WHEN SPECIFICALLY, DO YOU REMEMBER WHAT
23 TIME YOU TOLD MR. LEWIN THAT YOU DID NOT FEEL WELL?

24 A I -- I DON'T RECALL WHAT TIME I GOT OUT OF
25 HERE.

26 Q WAS IT AFTER YOU -- BY ANY CHANCE, HAD YOU
27 DISCUSSED YOUR TESTIMONY WITH MR. LEWIN AND/OR DETECTIVE
28 RODRIGUEZ? PRIOR TO YOU TELLING THEM YOU DIDN'T FEEL

1 WELL DURING THE TESTIMONY?

2 A I DON'T RECALL -- TALKING TO THEM AT THAT
3 TIME ABOUT IT.

4 Q WHAT WERE YOUR SYMPTOMS?

5 A VERY NERVOUS. VERY TERRIFIED. MY LEGS
6 FEELS LIKE IT'S JELLO. LIKE I'M GOING TO COLLAPSE AND
7 FAINT. AND I STILL HAVE SOME OF THOSE SYMPTOMS RIGHT
8 NOW.

9 Q OKAY. AND AGAIN, YOU DIDN'T TELL MR. LEWIN
10 OR DETECTIVE RODRIGUEZ ABOUT THESE SYMPTOMS UNTIL LATER,
11 UNTIL AFTER YOU TESTIFIED; IS THAT CORRECT?

12 MR. LEWIN: OBJECTION. COMPOUND WITH RESPECT TO
13 BOTH MYSELF AND DETECTIVE RODRIGUEZ.

14 THE COURT: SUSTAINED.

15 Q BY MR. CREARY: YOU DIDN'T TELL MR. LEWIN
16 ABOUT THESE SYMPTOMS UNTIL MUCH LATER; RIGHT?

17 A YES.

18 Q AND YOU DIDN'T TELL DETECTIVE RODRIGUEZ
19 ABOUT THESE SYMPTOMS UNTIL MUCH LATER, IF AT ALL; DID
20 YOU?

21 A I DON'T RECALL MENTIONING IT TO DETECTIVE
22 RODRIGUEZ.

23 Q SO NOW YOU COME IN HERE THIS MORNING, AND
24 YOU GIVE A DIFFERENT STORY THAN WHAT YOU GAVE TO
25 MR. LEWIN YESTERDAY; RIGHT?

26 MR. LEWIN: OBJECTION, ARGUMENTATIVE.

27 THE COURT: YOU WANT TO REFRAME IT SO IT'S NOT
28 ARGUMENTATIVE?

1 MR. CREARY: OKAY.

2 Q NOW, YOU COME IN THIS MORNING, AND YOUR
3 RECOLLECTION OF THE EVENTS SURROUNDING YOUR MOTHER'S
4 DEATH DIFFER FROM WHAT YOU TESTIFIED TO YESTERDAY;
5 CORRECT?

6 MR. LEWIN: OBJECTION.

7 THAT MISSTATES THE EVIDENCE.

8 THE COURT: WELL, OVERRULED ON THAT GROUND.

9 BUT IT'S COMPOUND AND SOMEWHAT VAGUE.

10 REFRAME THE QUESTION, PLEASE.

11 MR. CREARY: I'LL CLEAN IT UP.

12 Q YESTERDAY, YOU SAID IT WAS TWO DAYS BETWEEN
13 THE LAST TIME YOU SPOKE TO YOUR MOTHER AND THE TIME YOU
14 FOUND HER BODY; RIGHT?

15 A YES.

16 Q NOW YOU'RE SAYING THAT IT WAS ONE DAY
17 BETWEEN THE LAST TIME YOU SPOKE TO YOUR MOTHER?

18 A YES.

19 Q AND THE TIME YOU FOUND HER BODY?

20 A YES.

21 Q AND YOU'RE SAYING THAT THE REASON WHY YOU
22 SAID TWO DAYS YESTERDAY IS BECAUSE YOU WERE NERVOUS?

23 A I WAS ALSO REFERRING TO MY SCHEDULE AT THAT
24 TIME. THAT WEEK.

25 Q OH. SO YOU SAID TWO DAYS BECAUSE --
26 BECAUSE OF YOUR SCHEDULE THAT WEEK?

27 A YES.

28 Q YOU REMEMBER YOUR SCHEDULE --

1 A THAT'S ONE OF THE REASONS.

2 Q THAT WAS ONE OF THE REASONS?

3 A YES.

4 Q AND YOU FELT DIZZY, AND YOUR LEGS FELT LIKE
5 JELLO?

6 A YEAH.

7 Q THAT'S WHY YOU ADDED A DAY TO HOW LONG IT
8 HAD BEEN SINCE YOU HAD SEEN OR SPOKEN TO YOUR MOTHER?

9 A NOT JUST -- NOT JUST -- I'M TERRIFIED.

10 Q OKAY.

11 A BECAUSE OF INTIMIDATION.

12 Q HAS ANYBODY INTIMIDATED YOU?

13 A YES.

14 Q HOW HAVE THEY INTIMIDATED YOU?

15 THE COURT: EXCUSE ME.

16 DO YOU WANT TO APPROACH SIDE BAR BEFORE YOU
17 GO DOWN THIS ROAD?

18 MR. CREARY: I'LL WITHDRAW THE QUESTION, YOUR
19 HONOR. I WON'T GO DOWN THIS ROAD.

20 THE COURT: OKAY.

21 MR. CREARY: OKAY.

22 Q HAVE I THREATENED YOU?

23 A NO.

24 Q HAS MR. LEVINSON THREATENED YOU?

25 A NO.

26 Q OKAY. SO NOBODY HAS INTIMIDATED YOU, NONE
27 OF THE LAWYERS HAVE INTIMIDATED YOU WHILE YOU'VE BEEN
28 TESTIFYING; HAVE THEY?

1 A NO.

2 MR. LEWIN: YOUR HONOR, I'M GOING TO OBJECT. THE
3 QUESTION IS COMPOUND. ALSO OPENING THE DOOR.

4 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.

5 MR. CREARY: I'LL BACK OFF OF IT, YOUR HONOR.

6 MR. LEWIN: MOTION TO STRIKE WHATEVER -- ANY
7 ANSWER.

8 THE COURT: ANY PARTIAL ANSWER IS STRICKEN.

9 MR. LEWIN: YOUR HONOR, CAN I HAVE ONE MOMENT?

10 THE COURT: SURE.

11

12 (A DISCUSSION WAS HELD
13 OFF THE RECORD.)

14

15 MR. LEWIN: THANK YOU, YOUR HONOR.

16 Q BY MR. CREARY: SO AGAIN, IN FACT, IT
17 WASN'T TWO DAYS SINCE YOU SPOKE TO YOUR MOTHER, TO THE
18 TIME YOU DISCOVERED THE BODY; RIGHT?

19 A YES.

20 Q IT WAS BASICALLY ONE DAY?

21 A YES.

22 Q BUT STILL, YOU HAD A KEY TO HER GATE;
23 RIGHT?

24 A YES.

25 Q AND YOU KNEW THAT SOMEONE HAD ATTEMPTED TO
26 KILL HER A WEEK PRIOR; RIGHT?

27 A YES.

28 Q AND YOU KNEW THAT SHE WAS AFRAID FOR HER

1 LIFE; RIGHT?

2 A SHE NEVER SAID IT.

3 Q WELL, SHE NEVER TOLD YOU SHE WAS AFRAID FOR
4 HER LIFE?

5 A SHE NEVER DID.

6 Q OKAY. SO YOU DIDN'T BELIEVE THAT SHE WAS
7 AFRAID FOR HER LIFE?

8 MR. LEWIN: OBJECTION. NOT RELEVANT.

9 THE COURT: OVERRULED ON THAT GROUND.

10 MR. LEWIN: WELL, IT'S ALSO 352.

11 ALSO ASKING FOR HEARSAY.

12 THE COURT: OVERRULED ON THAT GROUND. IT'S ASKING
13 FOR HIS STATE OF MIND.

14 MR. LEWIN: YOUR HONOR, HIS STATE OF MIND AS TO
15 WHETHER OR NOT HE THOUGHT SHE WAS -- RELEVANCE OBJECTION.
16 THERE, AND 352.

17 TO MAKE SURE THE COURT IS UNDERSTANDING MY
18 GROUNDS.

19 THE COURT: I HEARD IT. I GOT IT.

20 OVERRULED.

21 Q BY MR. CREARY: YOU DIDN'T THINK SHE -- YOU
22 DIDN'T BELIEVE THAT SHE WAS IN FEAR FOR HER LIFE?

23 A SHE WAS A VERY TOUGH WOMAN.

24 Q SO THAT'S WHY, EVEN THOUGH SHE ASKED YOU TO
25 CALL HER AS SOON AS YOU GOT OUT OF YOUR MEETING, ASKED
26 TO YOU CHECK ON HER, YOU DIDN'T GET PAST --

27 MR. LEWIN: OBJECTION. ASSUMES FACTS NOT IN
28 EVIDENCE. MISSTATES PRIOR TESTIMONY WITH RESPECT TO THE

1 SECOND PART OF THE QUESTION.

2 ALSO COMPOUND.

3 THE COURT: SUSTAINED.

4 Q BY MR. CREARY: SO THAT'S WHY YOU DIDN'T
5 BOTHER TO GET PAST THE FRONT DOOR UNTIL --

6 MR. LEWIN: OBJECTION. ARGUMENTATIVE ALREADY.

7 THE COURT: LET HIM FINISH THE QUESTION.

8 MR. CREARY: I'LL REPHRASE THE QUESTION.

9 Q THAT'S WHY YOU DIDN'T GO PAST YOUR
10 MOTHER'S -- PAST KNOCKING ON YOUR MOTHER'S FRONT DOOR
11 UNTIL 2:30 THE NEXT DAY AFTER YOU COULDN'T REACH HER?

12 A I DON'T UNDERSTAND.

13 Q THE REASON WHY YOU DIDN'T TAKE FURTHER
14 STEPS TO CHECK ON YOUR MOTHER'S WELFARE BEYOND CALLING
15 HER AND KNOCKING ON HER FRONT DOOR -- FOR A DAY -- AFTER
16 YOU HAD LAST SEEN HER WAS BECAUSE YOU DIDN'T THINK THERE
17 WAS ANYTHING TO WORRY ABOUT?

18 A I DIDN'T -- SHE -- I DIDN'T WANT TO UPSET
19 HER IF I -- YOU KNOW, KEPT KNOCKING FOR TOO LONG. AND
20 BECAUSE I KNEW THAT SHE HAD SOME HEALTH PROBLEM. I
21 DIDN'T WANT TO UPSET HER.

22 I FIGURED SHE WAS JUST -- SHE WAS ALREADY
23 SLEEPING. AND SHE DIDN'T WANT TO BE DISTURBED.

24 Q BUT MR. -- THIS WILL BE MY LAST QUESTION.
25 BUT DIDN'T SHE TELL YOU TO CHECK ON HER?

26 MR. LEWIN: OBJECTION.

27 MISSTATES THE TESTIMONY, YOUR HONOR.

28 Q BY MR. CREARY: DIDN'T SHE ASK YOU TO CHECK

1 ON HER?

2 MR. LEWIN: STILL MISSTATES.

3 THE COURT: "CHECK ON HER" IS NOT A LITERAL --

4 Q BY MR. CREARY: DIDN'T SHE ASK YOU TO CALL
5 HER TO MAKE SURE SHE WAS OKAY?

6 A I DID CALL HER.

7 MR. LEWIN: OBJECTION TO THE SECOND PART OF THE
8 QUESTION.

9 MR. CREARY: I'LL WITHDRAW THE QUESTION.

10 THE COURT: OVERRULED. THE ANSWER IS IN.

11 ANYTHING ELSE?

12 Q BY MR. CREARY: YOU SAID YOU DID CHECK ON
13 HER?

14 A I DID CALL HER.

15 Q YOU DID CALL HER. I'M SORRY.

16 OKAY, THANK YOU.

17 MR. CREARY: NO FURTHER QUESTIONS.

18 THE COURT: MAY THE WITNESS BE EXCUSED?

19 MR. LEWIN: YES.

20 MR. CREARY: SUBJECT TO RECALL, YOUR HONOR.

21 THE COURT: ANY OBJECTION?

22 MR. LEVINSON: NO OBJECTION.

23 THE COURT: MR. BOURDEAU, I'M GOING TO RELEASE YOU
24 TODAY, BUT ORDER THAT YOU REMAIN AVAILABLE ON CALL. IF
25 YOU DO GET A CALL, YOU'RE REQUIRED TO RETURN ON 2 HOURS'
26 NOTICE.

27 IF YOU DON'T GET A CALL, YOU DON'T NEED TO
28 WORRY ABOUT IT. OKAY?

1 THE WITNESS: THANK YOU, YOUR HONOR.

2 THE COURT: PLEASE WATCH YOUR STEP AS YOU STEP
3 DOWN. NEXT WITNESS FOR THE PEOPLE. DO YOU WISH TO
4 RECALL DETECTIVE SERGEANT RODRIGUEZ?

5

6 (A DISCUSSION WAS HELD
7 OFF THE RECORD.)

8

9 THE COURT: DETECTIVE, RESUME YOUR SEAT UP HERE ON
10 THE WITNESS STAND. I'D REMIND YOU YOU'RE STILL UNDER
11 OATH.

12

13 MICHAEL RODRIGUEZ,
14 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
15 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

16 THE COURT: YOU MAY CONTINUE YOUR EXAMINATION OF
17 THE WITNESS.

18

19 DIRECT EXAMINATION RESUMED

20 BY MR. LEWIN:

21 Q DETECTIVE, YOU'VE HAD A CHANCE TO EITHER BE
22 PRESENT FOR OR LISTEN TO ALL OF THE PRIOR STATEMENTS
23 THAT JOHN BOURDEAU HAS GIVEN; IS THAT CORRECT?

24 A YES.

25 Q PRIOR TO YESTERDAY ON CROSS-EXAMINATION,
26 HAD YOU HE EVER MENTIONED HAVING GONE TO HIS MOM'S HOUSE
27 TO CHECK ON HER ON WEDNESDAY NIGHT?

28 A NO.

1 Q AND DETECTIVE, HAD HE BEEN CLEAR IN HIS
2 OTHER INTERVIEWS THAT HE HAD ONLY GONE THURSDAY NIGHT?

3 A YES.

4 Q NOW, DETECTIVE, YOU WERE ALSO PRESENT
5 DURING CROSS-EXAMINATION A MOMENT AGO WITH MR. BOURDEAU
6 WHEN COUNSEL ASKED IF HE RELATED TO ME, DEPUTY D.A. JOHN
7 LEWIN, THAT HE WAS UPSET OR NERVOUS EITHER PRIOR OR
8 AFTER HIS TESTIMONY.

9 DO YOU RECALL LISTENING TO THOSE QUESTIONS?

10 A YES.

11 Q DID YOU HAVE CONTACT WITH MR. BOURDEAU
12 YESTERDAY?

13 A YES, SEVERAL TIMES.

14 Q DID MR. BOURDEAU INDICATE TO YOU PRIOR TO
15 HIS TESTIMONY HOW HE FELT?

16 A YES, HE DID.

17 Q WHAT DID HE TELL YOU?

18 A BASICALLY, WHAT HE SAID ON THE STAND. THAT
19 HIS LEGS, QUOTE, FELT LIKE JELLY. THAT HE FELT LIKE HE
20 WAS GOING TO COLLAPSE.

21 ALSO TOLD ME HE DIDN'T KNOW IF HE COULD
22 ACTUALLY GET UP THERE AND GO THROUGH WITH IT WITHOUT
23 COLLAPSING.

24 Q THIS IS BEFORE HE TESTIFIED; IS THAT
25 CORRECT?

26 A IT WAS ONGOING. BEFORE ON THE BREAKS,
27 AFTER HE CAME OFF THE STAND.

28 Q DURING YOUR DEALINGS WITH MR. BOURDEAU WITH

1 RESPECT TO THIS CASE, HAS HE EXPRESSED TO YOU ON
2 NUMEROUS OCCASIONS THAT HE WAS VERY NERVOUS, AND
3 DREADING TESTIFYING IN COURT?

4 A YES.

5 Q NOW, I WANT TO BACK UP, AND I WANT TO GO TO
6 THE CRIME SCENE ITSELF, AND SOME OBSERVATIONS YOU MADE
7 WHEN YOU CAME TO THE HOUSE.

8 A OKAY.

9 Q DID YOU RECOVER A CELL PHONE?

10 A YES.

11 Q AND WHERE WAS THAT CELL PHONE RECOVERED?

12 A IN THE VICTIM'S MASTER BEDROOM AT 1819
13 252ND STREET.

14 Q AND WAS THE PHONE NUMBER THAT THAT PHONE
15 WENT TO, WAS IT (310) 999-3514?

16 A YES.

17 THE COURT: 999-3514?

18 MR. LEWIN: YES.

19 THE COURT: THANK YOU.

20 MR. LEWIN: YOUR HONOR, THERE HAS PREVIOUSLY BEEN
21 A STIPULATION THAT THAT PHONE NUMBER IS THE CELL PHONE
22 NUMBER SUBSCRIBED TO VICTIM, SONIA RIOS RISKEN.

23 THE COURT: ALL RIGHT.

24 MR. LEWIN: AND THOSE -- YOUR HONOR, BECAUSE WE'VE
25 ALREADY FILED THOSE WRITTEN STIPULATIONS, WITH THE
26 COURT'S PERMISSION, DOES THE COURT NEED ME TO INQUIRE AS
27 I'M PRESENTING THEM, SINCE WE'VE ALREADY DONE IT, DOES
28 COUNSEL AGREE WE'VE ALREADY IN ADVANCE --

1 THE COURT: I THINK YOU COULD JUST STATE THAT
2 THERE'S BEEN A STIPULATION, AND ASK COUNSEL TO JOIN,
3 BECAUSE THE JURORS DON'T YET HAVE A COPY OF THE
4 STIPULATIONS.

5 IF COUNSEL WANT TO AGREE THEY CAN GET A
6 COPY OF THE WRITTEN STIPULATIONS, THAT'S FINE. BUT
7 RIGHT NOW, THEY DON'T KNOW. SO --

8 MR. LEWIN: I'M JUST ASKING THAT -- I'LL INDICATE
9 THERE'S BEEN A STIPULATION. BUT RATHER THAN ASKING BOTH
10 COUNSELS FOR EACH STIPULATION, HAVE THEY ALREADY JOINED,
11 BECAUSE THAT'S A DETERMINATION FOR THE COURT, WE'VE
12 ALREADY FILED IT, DO I NEED TO INQUIRE IN THAT REGARD?

13 THE COURT: FOR THE BENEFIT OF THE TRIERS OF FACT,
14 I WOULD RECOMMEND THAT YOU DO THAT; OTHERWISE, IT GETS
15 BACK TO THAT QUESTIONNAIRE:

16 IF THERE'S A STIPULATION, YOU DON'T HEAR
17 ANY EVIDENCE, CAN YOU FOLLOW THE INSTRUCTION OF THE
18 COURT.

19 IT'S MUCH EASIER IF THEY GET TO HEAR AND
20 SEE THE LAWYERS SAY YES, THAT WAS OUR STIPULATION.

21 MR. LEWIN: I THOUGHT THAT WAS A VERY WELL-WRITTEN
22 QUESTION. I DON'T KNOW WHAT THE COURT --

23 THE COURT: LET'S GO.

24 Q BY MR. LEWIN: DETECTIVE, YOU ENDED UP
25 RECOVERING THAT CELL PHONE; IS THAT CORRECT?

26 A YES.

27 Q AND PURSUANT TO YOUR INVESTIGATION, DID YOU
28 ALSO RECOVER FROM THE HOUSE AN ALBERTSONS RECEIPT?

1 A YES.

2 Q AND WAS THAT ALBERTSONS RECEIPT, WAS IT
3 DATED THAT EVENING, THURSDAY, APRIL 26TH?

4 A YES.

5 Q DETECTIVE, YOU WANT TO -- ONE THING, TO GO
6 BACK, BRIEFLY. YESTERDAY, I THINK YOU TOLD ME, IS THAT
7 CORRECT, THAT YOU ACTUALLY SAID, YOU RESPONDED -- YOU
8 GAVE THE WRONG DATE, THAT YOU HAD RESPONDED APRIL 26TH?

9 A YES. I GOT CONFUSED.

10 Q WHAT DATE DID YOU RESPOND?

11 A THE 27TH.

12 Q AND WHAT DAY OF THE WEEK WAS THAT?

13 A FRIDAY.

14 Q SO GOING BACK TO THE ALBERTSONS RECEIPT
15 THAT YOU FOUND, WHEN YOU FOUND THAT RECEIPT, WHAT, IF
16 ANYTHING, DID YOU DO?

17 A WE FOUND THE RECEIPT, I BELIEVE IT WAS IN A
18 PLANTER IN THE MASTER BEDROOM. THE PLANTER WE BOOKED
19 INTO EVIDENCE, AND WE FOUND THE RECEIPT WHEN WE WERE
20 EXAMINING THAT PLANTER.

21 IT WAS SIGNIFICANT TO US BECAUSE IT SHOWED
22 A RECEIPT ON THE 26TH DURING THE EVENING HOURS BETWEEN
23 7:15 AND 7:30 P.M. ON THE 26TH, THURSDAY.

24 MY PARTNER, DETECTIVE LINDA MUSE, THEN WENT
25 TO ALBERTSONS AND OBTAINED A VIDEO THAT SHOWS THE VICTIM
26 WALKING OUT OF THE ALBERTSONS, CONSISTENT WITH THAT TIME
27 SHORTLY AFTER THE TIME STAMP OF THE RECEIPT.

28 Q DID YOU ACTUALLY SEE VIDEO YOURSELF?

1 A YES.

2 Q DID YOU RECOGNIZE THE VICTIM?

3 A YES.

4 Q AND BASED ON THAT, DETECTIVE, WERE YOU
5 ABLE, FOR THE PURPOSES OF YOUR INVESTIGATION, TO
6 ESTABLISH THAT THE VICTIM WAS ALIVE THEN, THURSDAY
7 EVENING, AT THE TIME SHE WAS AT ALBERTSONS?

8 A YES. INITIALLY, THAT WAS THE LAST HOUR WE
9 BELIEVE WE -- THAT WE KNEW SHE WAS ALIVE AT THIS TIME.
10 PENDING PHONE RECORDS.

11 Q AND DETECTIVE, WHEN YOU ENDED UP -- AT A
12 CERTAIN POINT IN TIME, YOU GOT PHONE RECORDS; IS THAT
13 CORRECT? FOR THE VICTIM?

14 A YES.

15 Q AND CAN YOU TELL ME WHEN THE LAST CALL WAS
16 MADE FROM HER CELL PHONE?

17 A IT WAS APPROXIMATELY 8:03 P.M. ON THE 26TH.
18 ABOUT A HALF HOUR AFTER THE ALBERTSONS RECEIPT. IT WAS
19 A CALL PLACED TO A HENRY SALCIDO.

20 Q WHAT TIME WAS THAT AGAIN?

21 A I BELIEVE IT WAS 8:03 P.M., APPROXIMATELY.

22 Q AND WHEN YOU SAID IT WAS PLACED TO A HENRY
23 SALCIDO, DO YOU KNOW WHO HENRY SALCIDO IS?

24 A YES.

25 Q WHO IS THAT?

26 A HENRY SALCIDO IS A LAWYER THAT THE VICTIM
27 WAS CONSULTING WITH REGARDING ANY POSSIBLE PENDING
28 INVESTIGATION REGARDING THE DEATHS OF HER TWO HUSBANDS.

1 MICHAEL RODRIGUEZ,
2 RECALLED AS A WITNESS, HAVING BEEN PREVIOUSLY SWORN,
3 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

4
5 CROSS-EXAMINATION

6 BY MR. LEVINSON:

7 Q GOOD MORNING, SERGEANT RODRIGUEZ.

8 HOW ARE YOU?

9 A GOOD MORNING, SIR.

10 Q YOU'RE THE LEAD DETECTIVE ON THIS CASE;
11 CORRECT?

12 A THAT'S CORRECT.

13 Q AND WHEN YOU CAME INTO THE SCENE, THE BODY
14 WAS LAYING TO WHAT, THE WEST OF THE STAIRS? IS THAT
15 CORRECT?

16 A THAT'S CORRECT.

17 Q ALL RIGHT.

18 SO THE PHOTOS THAT WE SAW WERE TAKEN FROM
19 THE WEST LOOKING INTO THE EAST; IS THAT CORRECT?

20 A THAT WAS ONE OF THE ANGLES. THEY WERE ALSO
21 TAKEN NORTH TO SOUTH AND SOUTH TO NORTH.

22 Q AND WHAT DIRECTION DID THE BULLET GO
23 THROUGH SONIA RIOS RISKEN'S HEAD.

24 A IT WOULD HAVE BEEN IN A SOUTH -- IN A
25 SOUTHBOUND MANNER.

26 Q SOUTHBOUND MANNER. OKAY.

27 IS THAT CONSISTENT WITH BEING INSIDE OF THE
28 RESIDENCE, OR BEING OUTSIDE OF THE RESIDENCE WITH THE

1 DOOR OPEN?

2 A IT WOULD HAVE BEEN INSIDE THE RESIDENCE.
3 CONSISTENT WITH WHERE SHE CAME TO REST.

4 Q OKAY. SO DO YOU KNOW HOW FAR AWAY,
5 APPROXIMATELY, THE SHOT WAS? CAN YOU MAKE ANY -- DID
6 YOU DO ANY FORENSIC WORK TO DETERMINE HOW FAR AWAY SHE
7 WAS FROM THE 9-MILLIMETER?

8 A IT APPEARED, BASED ON THE POSITION OF HER
9 BODY AND THE RECOVERED PROJECTILE, THAT IT WAS VERY
10 CLOSE.

11 Q OKAY. SO YOU SAID IT WAS FROM INSIDE OF
12 THE RESIDENCE; CORRECT?

13 A YES.

14 Q SO THERE'S A POSSIBILITY IT COULD HAVE BEEN
15 SOMEONE THAT SHE KNEW; IS THAT CORRECT?

16 A POSSIBILITY.

17 Q YOU DIDN'T SEE ANY SIGNS OF STRUGGLE, OR
18 ANYTHING?

19 A NONE.

20 Q OKAY.

21 LET'S TALK ABOUT SOME CELL PHONES FOR A
22 MINUTE, HERE.

23 A SURE.

24 Q YOU AND I HAVE HAD SOME CONVERSATIONS OUT
25 OF COURT ABOUT THE CELL PHONES; CORRECT?

26 A YES.

27 Q ALL RIGHT.

28 AND I'M NOT GOING TO GO INTO DEPTH WITH

1 THEM. JUST GOING TO ASK YOU A FEW QUESTIONS ABOUT CELL
2 PHONES.

3 A SURE.

4 Q ALL RIGHT.

5 NOW, YOU GET CELL PHONE RECORDS, YOU
6 SUBPOENA THEM; CORRECT?

7 A YES. EITHER VIA COURT ORDER, OR SEARCH
8 WARRANT.

9 Q SEARCH WARRANT. ALL RIGHT.

10 AND YOU GET THE RECORDS. AND YOU FIND OUT
11 WHAT TOWERS THERE ARE; CORRECT?

12 A YES.

13 Q OR CELL SITES?

14 A YES.

15 Q DO YOU PUT THEM ON A MAP OVERLAY? OVER AT
16 THE STATION?

17 A WHAT USUALLY OCCURS IS WE GET THE DATA IN
18 RAW FORM FROM THE PHONE COMPANIES. IF YOU'VE EVER
19 EXAMINED A CELL PHONE RECORD, THE LAY PERSON HAS A
20 REALLY HARD TIME UNDERSTANDING THOSE UNTIL YOU CAN BREAK
21 THEM DOWN, USUALLY BY AN ANALYST, THAT CAN PUT THEM IN A
22 FORM PEOPLE LIKE MYSELF CAN UNDERSTAND.

23 Q RIGHT. BUT DID YOU PUT THEM ON SOME KIND
24 OF MAP OVERLAY AT ALL?

25 A I HAD AN ANALYST FROM THE DEPARTMENT OF
26 JUSTICE THAT ASSISTED US IN THIS CASE WHOSE PRIMARY
27 EXPERTISE IS DEALING WITH CELL PHONES IN THAT NATURE.
28 THAT PUT IT IN A FORM THAT'S MORE USER FRIENDLY.

1 Q RIGHT. THERE'S NO EXPERT ON THIS CASE THAT
2 WE HAVE TO CROSS-EXAMINE; IS THAT CORRECT?

3 A NO. MY KNOWLEDGE OF THE -- IN THIS
4 PARTICULAR CASE IS PRETTY GOOD.

5 Q OKAY. NOW, CELL PHONES HAVE A FOOTPRINT;
6 IS THAT CORRECT? IN OTHER WORDS, A CELL PHONE ONLY GOES
7 SO FAR -- EXCUSE ME. STRIKE THAT.

8 A CELL SITE ONLY GOES SO FAR, DEPENDING
9 UPON HEIGHT, DEPENDING UPON WHETHER IT'S A RURAL OR
10 METROPOLITAN AREA; IS THAT CORRECT?

11 A YEAH. THERE ARE FACTORS THAT DETERMINE
12 PROXIMITY THAT ARE -- VARY.

13 Q ALL RIGHT.

14 SO WHERE WE HAVE A SPECIFIC ADDRESS, LIKE
15 MR. LEWIN GAVE A SPECIFIC ADDRESS A COUPLE OF TIMES
16 THAT THE CALL WAS MADE FROM SO AND SO AND SO AND SO.

17 THAT'S WITH THE CELL SITE; IS THAT CORRECT?

18 A YES. I THINK THE ONE IN QUESTION WAS A
19 CELL SITE ON THE WESTERN AVENUE IN THE CITY OF LOMITA.

20 Q SO THE CELL PHONE COULD BE NOT AT -- IT'S
21 NOT AT THE CELL SITE, IT COULD BE EITHER CLOSER, OR IT
22 COULD BE FARTHER AWAY; IS THAT CORRECT? WITHIN THE
23 FOOTPRINT?

24 A WITHIN THAT RADIUS, YES. I USE THE WORD
25 RADIUS RATHER THAN FOOTPRINT.

26 Q SAME THING, WE'RE ON THE SAME PAGE;
27 CORRECT?

28 A YES.

1 Q NOW, OF COURSE, WE DON'T KNOW WHAT ANYBODY
2 SAYS ON A CELL PHONE; IS THAT CORRECT?

3 A NOT AT THAT PARTICULAR TIME, NO.

4 Q YOU DIDN'T HAVE ANY WAY OF TRIANGULATING AT
5 THIS POINT. THESE ARE OLD RECORDS?

6 A THAT'S CORRECT.

7 Q SO YOU'RE NOT FOLLOWING THEM WHERE YOU
8 TRIANGULATE?

9 A NOT AT THAT TIME.

10 Q AND OBVIOUSLY, THEY'RE GPS ENABLED, BUT THE
11 GPS IS OFF; IS THAT CORRECT? SO YOU DON'T KNOW EXACTLY
12 WHERE THE PHONE CALL IS MADE?

13 A JUST WITHIN THAT RADIUS, IN CLOSE PROXIMITY
14 AT THOSE PARTICULAR TIMES THOSE CALLS WERE MADE.

15 Q RIGHT. SO THEY COULD HAVE BEEN TALKING
16 ABOUT MOST OF -- ABOUT MOST ANYTHING; IS THAT CORRECT?
17 ROMERO AND DELACRUZ?

18 A I WOULD IMAGINE.

19 Q THANK YOU.

20 NOW, LET'S TALK ABOUT MR. BOURDEAU. DID
21 MR. BOURDEAU -- INITIALLY, MR. BOURDEAU WAS A SUBJECT OF
22 GREAT INTEREST TO YOU; IS THAT CORRECT?

23 A YES. BASED ON SOME FACTORS THAT CAME IN
24 EARLY IN THE INVESTIGATION.

25 Q AND WAS THAT DUE TO INCONSISTENT TESTIMONY,
26 OR HIS BEHAVIOR ORIGINALLY?

27 A ONE OF THE FACTORS WAS HIS GENERAL
28 Demeanor, WHICH IS LIKE IT WAS IN COURT. IT WAS WHAT

1 MR. DELACRUZ WAS TELLING US.

2 ALSO AT FACE VALUE, THE E-MAILS WE RECEIVED
3 IN HIS NAME. QUOTE/UNQUOTE, HIS NAME.

4 Q RIGHT. AND IT WASN'T UNTIL MUCH LATER ON
5 THAT REALLY MR. DELACRUZ BECAME THE SUBJECT OF INTEREST;
6 IS THAT CORRECT?

7 A THE PHONE RECORDS CAME BACK WITHIN I
8 BELIEVE TEN DAYS OF THE MURDER, WHICH LINKED
9 MR. DELACRUZ TO MR. ROMERO, AND NOT MR. BOURDEAU.

10 Q NOW, LET'S TALK ABOUT THE E-MAILS.

11 A YES, SIR.

12 Q THESE WERE ALL TRACED OUT TO MR. DELACRUZ;
13 CORRECT?

14 A THAT'S CORRECT.

15 Q WHEN YOU LOOK AT THE E-MAILS GENERALLY,
16 WOULD YOU SAY THAT IT'S PROBABLY AN ATTEMPT TO EXTORT
17 THE RISKEN FAMILY FOR MONEY?

18 A NOT THE SOLE PURPOSE. IT WAS ONE OF THE
19 PURPOSES.

20 Q THANK YOU.

21 SONIA RIOS RISKEN WAS KILLED BY A 9
22 MILLIMETER; CORRECT?

23 A YES.

24 Q AND THERE WAS A BERETTA MISSING FROM A --
25 WHAT WAS IT? A GUN CASE UPSTAIRS?

26 A IT WAS NOT IN THAT GUN CASE. I DON'T KNOW
27 IF IT WAS MISSING. I DON'T KNOW HOW IT WAS DISPOSED OF.

28 Q BUT YOU KNEW IT WAS A BERETTA?

1 A YES.

2 Q DID IT SAY BERETTA ON THE CASE?

3 A YEAH, I THINK IT WAS INGRAINED IN THE
4 PLASTIC.

5 Q SO -- PROBABLY IS THE CASE THAT IT CAME
6 WITH; RIGHT? OR AT LEAST IT WAS THE SAME -- AT LEAST IT
7 SAID BERETTA?

8 A YES.

9 Q BERETTAS DO MAKE 9 MILLIMETERS; CORRECT?

10 A THAT'S CORRECT.

11 Q YOU HAD SOME TESTIMONY, OR YOU HAD SOME
12 STATEMENTS MADE BY MY CLIENT THAT SONIA RIOS RISKEN
13 OWNED A BERETTA; IS THAT CORRECT?

14 A YES.

15 Q AND MR. BOURDEAU, THE DAY HE CAME IN,
16 HAD -- HE HAD ACCESS TO THE HOUSE. IT WAS OPEN. THE
17 DAY THAT THE MURDER, THE DAY HE DISCOVERED THE BODY; IS
18 THAT CORRECT?

19 A YES.

20 Q THANK YOU.

21

22 (A DISCUSSION WAS HELD
23 OFF THE RECORD.)

24

25 MR. LEVINSON: THANK YOU.

26 NO FURTHER QUESTIONS.

27 THE COURT: MR. CREARY, CROSS-EXAMINATION.

28 MR. CREARY: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. CREARY:

Q GOOD MORNING, DETECTIVE RODRIGUEZ.

A GOOD MORNING, SIR.

Q I'LL TRY TO BE QUICK WITH YOU, TO GO OVER A
FEW THINGS.

AS YOU TESTIFIED, YOU WENT TO THE CRIME
SCENE; RIGHT?

A YES, SIR.

Q AND YOU WERE INVOLVED IN THE INVESTIGATION
OF THE CRIME SCENE; RIGHT?

A YES.

Q AND DID YOU FIND ANY PRINT EVIDENCE? TO
YOUR KNOWLEDGE, WAS ANY PRINT EVIDENCE FOUND?

A NO.

Q OKAY. AND ANY BLOOD EVIDENCE THAT WAS
POTENTIALLY LINKED TO THE SUSPECTS, TO YOUR KNOWLEDGE?

A NO. THE ONLY BLOOD THAT WE FOUND WAS FROM
THE VICTIM.

Q OKAY. AND THERE WAS NO BALLISTIC EVIDENCE
THAT YOU COULD LINK TO MY CLIENT AS WELL?

A WELL, WE HAD BALLISTIC EVIDENCE, THE FACT
WE HAD AN EXPENDED SHELL CASING. JUST DIDN'T HAVE A GUN
TO COMPARE IT TO.

Q TO YOUR KNOWLEDGE, NONE OF THAT TRACED BACK
TO MY CLIENT; RIGHT? TO MR. ROMERO, TO YOUR KNOWLEDGE?
THE BALLISTIC EVIDENCE?

A WE DIDN'T HAVE GUN TO COMPARE IT TO.

1 Q GOTCHA. GOTCHA.

2 MR. LEWIN: YOUR HONOR, WE WOULD STIPULATE, IF
3 COUNSEL WANTS A STIPULATION, THAT THERE WAS NO PHYSICAL
4 EVIDENCE AT THE CRIME SCENE THAT COULD BE TRACED BACK TO
5 MR. ROMERO.

6 THE COURT: DO YOU WISH TO ACCEPT THE STIPULATION?

7 MR. CREARY: YES, I'LL ACCEPT THE STIPULATION,
8 YOUR HONOR.

9 THE COURT: IT'S ACCEPTED BY THE COURT.

10 THANK YOU.

11 Q BY MR. CREARY: JUST REAL QUICKLY REGARDING
12 THE CELL SITE EVIDENCE THAT MR. LEVINSON WENT INTO WITH
13 YOU.

14 YOU TALK ABOUT THE RADIUS. DO YOU HAVE ANY
15 IDEA HOW WIDE THAT RADIUS COULD BE?

16 A THE RADIUS MAY VARY, DEPENDING HOW MANY
17 CELL SITE TOWERS ARE IN THAT AREA. I COULD GIVE YOU AN
18 EXAMPLE, IF YOU'D LIKE.

19 Q OKAY. WELL, LET ME JUST ASK YOU THIS. DO
20 YOU KNOW HOW MANY CELL SITE TOWERS ARE IN THE AREA WHERE
21 THE MURDER OCCURRED?

22 A NOT EXACTLY. DON'T KNOW HOW MANY.

23 Q OKAY. BUT IT WOULD BE FAIR TO SAY THAT
24 JUST BECAUSE A CALL PINGED OFF A PARTICULAR CELL TOWER
25 DOESN'T MEAN THE PERSON THAT MADE THAT CALL WAS IN THAT
26 SAME -- RIGHT NEXT TO THE CELL TOWER; RIGHT?

27 A NO, I THINK THAT'S WHY IT GIVES YOU THE
28 GEOGRAPHICAL DISTANCE APPROXIMATION ON THAT.

1 Q OKAY. ALL RIGHT. THANK YOU.

2 THE COURT: DO YOU HAVE REDIRECT EXAMINATION ON
3 THE LIMITED CROSS?

4 MR. LEWIN: I DO, YOUR HONOR.

5 THE COURT: GO AHEAD.

6

7 REDIRECT EXAMINATION

8 BY MR. LEWIN:

9 Q MR. LEVINSON ASKED YOU ABOUT THE CRIME
10 SCENE AND ABOUT DEFENSIVE WOUNDS TO THE VICTIM.

11 DO YOU RECALL THAT?

12 A YES.

13 Q LET ME ASK YOU -- I WANT YOU TO ASSUME THE
14 FOLLOWING HYPOTHETICAL.

15 A OKAY.

16 Q BASED ON YOUR TRAINING AND EXPERIENCE AS A
17 HOMICIDE INVESTIGATOR, AND THE EVIDENCE AND INFORMATION
18 YOU GATHERED IN THIS CASE, IS THIS CRIME SCENE
19 CONSISTENT WITH THE KILLER OR KILLERS HAVING BEEN
20 ADMITTED INTO THE RESIDENCE EITHER VOLUNTARILY BY THE
21 VICTIM, OR HAVING HAD A KEY TO THE LOCATION?

22 A YES.

23 Q THE WOUND TO THE VICTIM'S HEAD AND THE LACK
24 OF ANY DEFENSIVE WOUNDS, ARE THOSE CONSISTENT WITH THE
25 VICTIM HAVING HAD HER BACK TO THE KILLER AT THE TIME SHE
26 WAS SHOT?

27 A ABSOLUTELY.

28 Q ARE THEY ALSO CONSISTENT WITH THE VICTIM

1 HAVING NOT PERCEIVED IN ADVANCE OF THE SHOOTING THAT SHE
2 WAS GOING TO BE SHOT?

3 A YES.

4 Q IN ESSENCE, ARE THE WOUNDS CONSISTENT WITH
5 THE VICTIM HAVING BEEN SHOT IN THE BACK OF THE HEAD, IN
6 ESSENCE, EXECUTION STYLE, AND NEVER HAVING SEEN WHAT WAS
7 GOING TO OCCUR?

8 A YES.

9 MR. CREARY: I WOULD MOVE TO STRIKE -- OR THE
10 QUESTION IS CALLING FOR SPECULATION.

11 MOVE TO STRIKE THE ANSWER.

12 THE COURT: OVERRULED.

13 YOU CAN GO INTO IT ON RECROSS. IT GOES THE
14 WEIGHT, RATHER THAN ADMISSIBILITY. JUST THE DETECTIVE'S
15 OPINION.

16 Q BY MR. LEWIN: DETECTIVE, YOU TESTIFIED
17 THAT THERE ARE NUMEROUS CELL TOWERS IN THIS AREA; IS
18 THAT CORRECT?

19 A YES.

20 Q BASED ON YOUR TRAINING AND EXPERIENCE, IS
21 IT TRUE THAT IN FACT THE LOS ANGELES METROPOLITAN AREA,
22 AS OPPOSED TO, YOU KNOW, LET'S SAY RURAL ALASKA, DOES IT
23 HAVE MORE OR LESS DENSITY OF CELL TOWERS?

24 A MORE.

25 Q AND SO BASED ON YOUR TRAINING AND
26 EXPERIENCE WITH RESPECT TO CELL TOWERS, IS IT TRUE OR
27 FALSE THAT THEREFORE, WHEN YOU HAVE A PHONE CALL IN A
28 POPULATED AREA WITH A LOT OF CELL PHONE TOWERS HITTING

1 OFF A CERTAIN CELL TOWER, THAT THAT FOOTPRINT AREA WHERE
2 THE CELL PHONE WOULD BE TO HIT OFF THAT CELL PHONE TOWER
3 HAS TO BE VERY CLOSE?

4 MR. CREARY: OBJECTION.

5 COMPOUND, VAGUE, OVERBROAD.

6 THE COURT: SUSTAINED.

7 REFRAME THE QUESTION, PLEASE.

8 Q BY MR. LEWIN: DETECTIVE, I'LL TAKE IT ONE
9 STEP AT A TIME. THE CELL PHONE TOWER IN THIS CASE, THE
10 TOWERS THAT WE'VE DISCUSSED -- WE'LL TALK ABOUT THE ONES
11 THAT ARE STIPULATED ON THE DATES OF EITHER 4/17, 4/19,
12 OR 4/26.

13 I'M GOING TO REFER TO THE CELL TOWERS THAT
14 WE'VE HAD STIPULATIONS WITH RESPECT TO THE PHONE CALLS
15 ON 4/17 AND 4/19, FROM MR. DELACRUZ'S -- I'M SORRY,
16 MR. ROMERO'S CELL PHONES HITTING .8 MILES -- A CELL
17 TOWER FROM THE SALON.

18 SO ARE YOU CLEAR AS TO WHICH RECORDS I'M
19 REFERRING TO?

20 A YES.

21 Q BASED ON YOUR KNOWLEDGE OF CELL TOWERS,
22 WOULD YOU HAVE THIS KIND OF HIT OFF THAT CELL TOWER IF
23 THE PERSON HAD BEEN TEN MILES AWAY?

24 A NO.

25 MR. CREARY: THIS GOES BEYOND THE SCOPE OF HIS --

26 MR. LEWIN: MAY WE APPROACH? I'M SORRY.

27 MAY I TALK TO COUNSEL FOR A MOMENT?

28 THE COURT: SURE.

1 (A DISCUSSION WAS HELD
2 OFF THE RECORD.)
3

4 MR. LEWIN: YOUR HONOR, I THINK THERE WAS A -- I
5 THINK THE OBJECTION IS WITHDRAWN.

6 THE COURT: IS THE OBJECTION WITHDRAWN?

7 MR. CREARY: YES, IT IS, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 Q BY MR. LEWIN: DETECTIVE, SO BASED ON YOUR
10 EXPERIENCE, WOULD IT BE CONSISTENT IN THIS SITUATION
11 WITH THE HIGH DENSITY OF CELL TOWERS FOR THAT CELL PHONE
12 TO HAVE BEEN FIVE MILES AWAY?

13 A NO.

14 Q WOULD IT BE CONSISTENT IN YOUR EXPERIENCE
15 WITH THAT CELL PHONE TO HAVE BEEN EVEN THREE MILES AWAY?

16 A NO.

17 Q BASED ON YOUR EXPERIENCE, DETECTIVE,
18 APPROXIMATELY WHAT WOULD THE -- FOR LACK OF A BETTER
19 TERM, MR. LEVINSON USED THE TERM FOOTPRINT.

20 WHAT WOULD THE FOOTPRINT BE, APPROXIMATELY?

21 A I WOULD SAY IT WOULD BE WITHIN A MILE. BUT
22 THAT WOULD ALSO FACTOR IN HOW MANY OTHER CELL SITE
23 TOWERS WERE CLOSE BY.

24 Q AND DETECTIVE, ARE YOU AWARE, YOU HAVE, AND
25 YOU PROVIDED IN THIS CASE IN DISCOVERY, A LIST OF ALL
26 THE CELL PHONE TOWERS; IS THAT CORRECT?

27 A YES.

28 Q AND DETECTIVE, IS IT FAIR TO SAY THAT BASED

1 ON YOUR TRAINING AND EXPERIENCE AND WHAT YOU KNOW FROM
2 THIS CASE, THAT THIS AREA, METROPOLITAN LOS ANGELES,
3 THIS LOMITA AREA, IS FLOODED WITH CELL SITE TOWERS?

4 MR. LEVINSON: OBJECTION TO THE WORD "FLOODED,"
5 YOUR HONOR.

6 THE COURT: INUNDATED? PLENTIFUL?

7 WHAT WOULD YOU LIKE, MR. LEVINSON?

8 MR. LEVINSON: I LIKE "INUNDATED" BETTER.

9 MR. LEWIN: I'LL GO WITH "INUNDATED," YOUR HONOR.

10 MR. LEVINSON: I'LL ACCEPT THAT.

11 MR. CREARY: AND LEADING.

12 AND THE MENTION OF THE LIST IS HEARSAY.

13 THE COURT: OKAY. MR. LEVINSON'S OBJECTION TO THE
14 WORD SELECTED BY THE PROSECUTION IS OVERRULED.

15 ON THE LEADING OBJECTION, IT'S SUSTAINED.

16 REFRAME THE QUESTION.

17 MR. LEWIN: YOUR HONOR, I WOULD SIMPLY OFFER,
18 SINCE THE WITNESS IS TESTIFYING AS AN EXPERT, SINCE THE
19 CODE ALLOWS ME TO LEAD AN EXPERT, I DON'T THINK THAT A
20 LEADING OBJECTION IN THIS CONTEXT, BECAUSE HE'S
21 TESTIFYING AS EXPERT, WOULD APPLY.

22 THE COURT: WE CAN HAVE THAT DISCUSSION, IF YOU
23 LIKE, AT SIDE BAR.

24 MR. LEWIN: OKAY.

25 THE COURT: COME ON UP.

26

27 (THE FOLLOWING PROCEEDINGS

28 WERE HELD AT THE BENCH:)

1 THE COURT: FIRST, AS A PRACTICAL MATTER, I
2 RECOGNIZE THAT GIVEN THE AVAILABLE OPTIONS TO THE
3 PROSECUTION, THAT DEFENSE COUNSEL IS NOT OBJECTING TO
4 THE DETECTIVE TESTIFYING AS TO MATTERS THAT MAY BE
5 OUTSIDE OF HIS AREA OF EXPERTISE, BECAUSE THE PROSECUTOR
6 HAS AVAILABLE ON CALL EXPERTS THAT CAN LAY THAT
7 FOUNDATION.

8 HAVING SAID THAT, FOR TACTICAL REASONS,
9 JUST BECAUSE THEY'RE NOT OBJECTING THAT HE LACKS
10 QUALIFICATIONS AS AN EXPERT DOESN'T MAKE HIM AN EXPERT,
11 AND YOU STILL CAN'T LEAD A NONEXPERT EVEN IF THERE'S NO
12 OBJECTION.

13 SO YOUR CHOICES ARE LAY THE FOUNDATION AND
14 CONVINCE ME HE'S A REAL EXPERT, OR ASK NON-LEADING
15 QUESTIONS.

16 MR. LEWIN: YOUR HONOR, MAY I JUST -- SO I DON'T
17 WASTE THE COURT'S TIME. OBVIOUSLY, THE COURT IS AWARE
18 THAT UNDER THE CODE, MANY JUDGES, DEPENDS ON WHO YOU'RE
19 IN FRONT OF, WHAT THE DEFINITION IS -- THERE'S GOING TO
20 BE NO ISSUE THAT DETECTIVE RODRIGUEZ IS AN EXPERT AS
21 OPPOSED TO THE GENERAL PUBLIC.

22 HE IS NOT GOING TO HAVE THE LEVEL OF
23 EXPERTISE THAT AN ENGINEER WOULD. SO I'M ASKING THE
24 COURT IF I MEET THE FIRST STANDARD, IS THAT GOING TO
25 SATISFY THE COURT? IF THE COURT WANTS A SECOND
26 STANDARD, I WON'T EVEN GO THERE.

27 THE COURT: AS A PRACTICAL MATTER, THE
28 QUALIFICATION OF AN EXPERT IS FAIRLY DEFINED IN THE

1 CODE, AND IN THE CASES.

2 MR. LEWIN: OKAY.

3 THE COURT: HE DOESN'T HAVE TO BE A PH.D. OR A
4 ROCKET SCIENTIST TO QUALIFY AS AN EXPERT. BUT WHAT I'M
5 SAYING IS YOU HAVEN'T EVEN LAID THAT FOUNDATION.

6 SO EITHER ASK A NON-LEADING QUESTION AND
7 LET HIM ANSWER IT WITHOUT LEADING HIM, OR LAY THE
8 FOUNDATION.

9 MR. LEWIN: YOUR HONOR, THE REASON THAT I TOOK
10 THIS APPROACH IS MR. LEVINSON TREATED THE DETECTIVE AS
11 AN EXPERT IN THIS AREA, AND WHICH I DIDN'T OBJECT.

12 MR. LEVINSON: NO, I DIDN'T.

13 THE COURT: COME ON. MY RULING STANDS.

14 LET'S GO. THANK YOU.

15

16 (THE FOLLOWING PROCEEDINGS

17 WERE HELD IN OPEN COURT, IN

18 THE PRESENCE OF THE JURY:)

19

20 THE COURT: YOU MAY PROCEED.

21 Q BY MR. LEWIN: DETECTIVE, YOU DON'T HAPPEN
22 TO HAVE A PH.D. IN ENGINEERING OR EXTENSIVE EXPERIENCE
23 DESIGNING CELL PHONE COMMUNICATION NETWORKS; CORRECT?

24 A I DON'T HAVE A PH.D. IN ANYTHING.

25 Q DURING YOUR COURSE AS A HOMICIDE DETECTIVE,
26 IS IT FAIR TO SAY THAT CELL PHONE TECHNOLOGY IS A KEY
27 ISSUE IN SOMETHING YOU HAVE TO DEAL WITH ON MOST OF YOUR
28 CASES?

1 A IF NOT ALL.

2 Q AND PURSUANT TO THAT KIND OF RESPONSIBILITY
3 OR SITUATION, HAVE YOU YOURSELF HAD TO LEARN ABOUT HOW
4 CELL PHONE TECHNOLOGY WORKS?

5 A YES.

6 Q AND IN YOUR EXPERIENCE, HAVE YOU HAD
7 CONVERSATIONS WITH EXPERTS, BOTH TECHNICAL CELL PHONE
8 EXPERTS, CELL PHONE ANALYSTS, REGARDING HOW CELL PHONES
9 WORK?

10 A YES.

11 Q HOW CELL PHONES TRANSMIT?

12 A TO SOME EXTENT, YES.

13 Q AND MOST IMPORTANTLY, HOW CELL PHONE TOWERS
14 RELATE TO THE LOCATION OF CELL PHONES WITHIN A
15 PARTICULAR GEOGRAPHIC AREA?

16 A YES.

17 MR. CREARY: CALLS FOR HEARSAY, YOUR HONOR.

18 THE COURT: OVERRULED. THIS IS FOUNDATIONAL AS TO
19 HIS EXPERTISE OR LACK THEREOF.

20 IT'S OVERRULED.

21 MR. LEWIN: YOUR HONOR, AT THIS POINT, THE PEOPLE
22 WOULD OFFER THE WITNESS AS AN EXPERT PURSUANT TO THE
23 CODE IN THIS AREA.

24 THE COURT: THE REQUEST IS DENIED AT THIS POINT.

25 YOU CAN EITHER LAY ADDITIONAL FOUNDATION
26 AND SPECIFICS, OR YOU CAN MOVE ON.

27 Q BY MR. LEWIN: DETECTIVE, WHO HAVE YOU
28 SPOKEN TO REGARDING CELL PHONE SITE TECHNOLOGY?

1 A I'VE SPOKEN WITH ANALYSTS FROM VARIOUS
2 PHONE COMPANIES: T-MOBILE, VERIZON, SPRINT. WE OFTEN
3 HAVE TO CONSULT WITH THEM ON OUR CASES WHEN WE SUBMIT A
4 SEARCH WARRANT TO ANALYZE.

5 I'VE WORKED EXTENSIVELY WITH ANALYSTS FROM
6 THE DEPARTMENT OF JUSTICE ON NUMEROUS CASES REGARDING
7 THE VARIOUS THINGS WE JUST DISCUSSED; CELL SITES,
8 COMPLETE CELL PHONE RECORDS, VARIOUS NATURES OF THAT.

9 Q AND DETECTIVE, PURSUANT TO THESE
10 CONVERSATIONS, HAVE YOU DISCUSSED WITH -- DO SOME OF
11 THESE ANALYSTS HAVE TECHNICAL BACKGROUNDS?

12 A THEY ALL DO.

13 Q AND SO THESE WOULD BE INDIVIDUALS WHO COME
14 TO COURT, AND THEY THEMSELVES TESTIFY AS ENGINEERS; IS
15 THAT CORRECT?

16 A YES.

17 Q IN ESSENCE?

18 MR. CREARY: OBJECTION, FOUNDATION.

19 CALLS FOR HEARSAY.

20 THE COURT: OVERRULED.

21 Q BY MR. LEWIN: AND IN THESE CONVERSATIONS
22 YOU'VE HAD, HAS THAT BEEN ONE CONVERSATION?

23 A NO. THERE ARE USUALLY MANY PER CASE AND
24 PER INCIDENT; A DISCREPANCY OR ANYTHING THAT YOU SEE ON
25 YOUR RECORDS THAT YOU'RE LOOKING FOR.

26 Q HOW MANY CASES HAVE YOU HAD WHERE YOU HAVE
27 HAD TO REVIEW CELL PHONE RECORDS, AND PARTICULARLY WHERE
28 CELL PHONE TOWER EVIDENCE HAS BEEN IMPORTANT? OR PART

1 OF THE CASE?

2 A PURSUANT TO MURDERS, 20 TO 25.

3 Q AND NOT EVEN JUST MURDERS, ANY KIND OF CASE
4 THAT YOU HANDLED WHERE CELL PHONE TOWER TECHNOLOGY HAS
5 BEEN SOMETHING THAT YOU HAVE HAD TO ANALYZE, EXAMINE,
6 AND DISCUSS WITH OTHER EXPERTS?

7 A OVER 50.

8 MR. LEWIN: YOUR HONOR, AT THIS POINT IN TIME,
9 MAYBE THREE IS A CHARM. I WOULD SUBMIT DETECTIVE
10 RODRIGUEZ AS AN EXPERT UNDER THE CODE WITH RESPECT TO
11 CELL PHONE TOWER EVIDENCE.

12 MR. LEVINSON: OBJECTION, YOUR HONOR.

13 THE COURT: GROUNDS?

14 MR. LEVINSON: GROUNDS IS HE STILL DOES NOT HAVE
15 AN EXPERTISE ON IT.

16 THE COURT: OKAY. IT'S SUSTAINED.

17 YOU CAN EITHER LAY THE FOUNDATION, OR YOU
18 CAN MOVE ON, AS I'VE SAID BEFORE. I DON'T KNOW HOW MANY
19 DISCUSSIONS HE'S HAD WITH THEM; I DON'T KNOW HOW MANY
20 HOURS OF CLASSROOM TRAINING; I DON'T KNOW IF HE'S
21 ATTENDED SEMINARS; I DON'T KNOW WHETHER OR NOT THERE'S A
22 FORMALIZED COURSE; I DON'T KNOW IF HE'S PREVIOUSLY
23 QUALIFIED AS AN EXPERT IN THIS FIELD, AND RENDERED
24 OPINIONS PREVIOUSLY.

25 THERE ARE A LOT OF OTHER STEPS THAT YOU CAN
26 LOOK TO TO ESTABLISH EXPERTISE. ALL I HAVE IS VERY
27 NEBULOUS DISCUSSIONS WITH OTHER PEOPLE.

28 Q BY MR. LEWIN: WELL, DETECTIVE, HAVE YOU

1 HAD ANY CLASSES OR SEMINARS WHERE YOU HAVE BEEN
2 INSTRUCTED BY THESE EXPERTS REGARDING CELL PHONE TOWER
3 TECHNOLOGY?

4 A ON SEVERAL OCCASIONS, WE'VE HAD
5 REPRESENTATIVES FROM THE CELL PHONE COMPANIES THEMSELVES
6 COME TO HOMICIDE BUREAU AND GIVE US -- I DON'T KNOW IF
7 YOU CALL IT A SEMINAR, BUT I GUESS YOU WOULD. YOU KNOW,
8 ONE-DAY CLASSES.

9 PURSUANT TO -- EACH COMPANY IS A LITTLE BIT
10 DIFFERENT IN THE WAY THEY OPERATE AND THE WAY THEY
11 PROVIDE THE DATA. A LOT OF IT IS SO WE CAN -- WE'RE
12 ABLE TO READ THE DATA, DECIPHER THEIR NUMERIC CODES, AND
13 WHATNOT.

14 I'VE ATTENDED CLASSES ON WIRETAPS AND
15 VARIOUS SEARCH WARRANTS THAT YOU USE IN OBTAINING CELL
16 PHONE RECORDS.

17 Q AND IN THESE SEMINARS, AND WITH RESPECT TO
18 YOUR WIRETAP TRAINING, IS CELL PHONE TOWER TECHNOLOGY,
19 HAS THAT BEEN AN AREA WHERE YOU HAVE BEEN INSTRUCTED ON?

20 A YES.

21 Q AND DETECTIVE, HOW MANY CONVERSATIONS DO
22 YOU THINK YOU HAD WITH CELL PHONE EXPERTS, CELL PHONE
23 TOWER EXPERTS, PARTICULARLY THE ENGINEER, FOR LACK OF A
24 BETTER TERM, ENGINEERING EXPERTS THAT YOU HAVE RELATED
25 THAT YOU HAVE DISCUSSED THESE ISSUES WITH, WITH THESE
26 COMPANIES?

27 MR. CREARY: THAT MISSTATES THE EVIDENCE. I DON'T
28 THINK THE WITNESS EVER SAID ENGINEERING EXPERTS.

1 MR. LEWIN: I BELIEVE HE DID, YOUR HONOR.

2 WHEN I ASKED, HE SAID --

3 THE COURT: OVERRULED.

4 THE WITNESS: I'VE PROBABLY SPOKEN TO IN THE RANGE
5 OF TEN TO 12 VARIOUS EXPERTS, BUT I'VE SPOKEN TO THEM ON
6 NUMEROUS OCCASIONS. MORE THAN A ONE-TIME CONVERSATION
7 ON MOST CASES.

8 Q BY MR. LEWIN: SO IN TOTAL, HOW MANY
9 CONVERSATIONS DO YOU THINK YOU HAD WITH THESE EXPERTS
10 REGARDING THIS ISSUE?

11 A IF I HAD TO PUT A NUMBER ON IT, I WOULD SAY
12 CLOSE TO A HUNDRED.

13 MR. LEWIN: YOUR HONOR, AT THIS POINT, THE
14 PEOPLE --

15 THE COURT: MATTER SUBMITTED BY THE DEFENSE?

16 MR. CREARY: YES.

17 MR. LEVINSON: YES, YOUR HONOR.

18 THE COURT: DO YOU WISH TO TAKE THE WITNESS ON
19 VOIR DIRE?

20 MR. LEVINSON: YES, I DO, YOUR HONOR.

21 THE COURT: GO AHEAD.

22 MR. LEVINSON: THANK YOU.

23

24 VOIR DIRE EXAMINATION

25 BY MR. LEVINSON:

26 Q SERGEANT, HAVE YOU EVER TESTIFIED AS AN
27 EXPERT ON CELL PHONE TECHNOLOGY, OR USE OF CELL PHONES
28 IN L.A. COUNTY? IN SUPERIOR COURTS?

1 A I'VE TESTIFIED AS TO CONTENT, I'VE NEVER
2 TESTIFIED AS AN EXPERT.

3 Q ALL RIGHT.

4 AND WE HAD A CONVERSATION YESTERDAY, YOU
5 AND I, OUTSIDE; CORRECT?

6 A ABOUT TWELVE OF THEM.

7 Q ABOUT TWELVE. ABOUT CELL PHONES; RIGHT?

8 A YES.

9 Q I GAVE YOU SOME PHRASES, TERMINOLOGY, AND
10 YOU SAID YOU ARE NOT FAMILIAR WITH THEM; IS THAT
11 CORRECT?

12 A THAT'S CORRECT.

13 Q YOU TOLD ME YOU WERE NOT AN EXPERT; IS THAT
14 CORRECT?

15 A THAT'S CORRECT.

16 Q THANK YOU.

17 MR. LEVINSON: NO FURTHER QUESTIONS.

18 THE COURT: MR. CREARY.

19 MR. CREARY: NO QUESTIONS, YOUR HONOR.

20 THE COURT: OKAY. MATTER SUBMITTED?

21 MR. LEWIN: YES, YOUR HONOR.

22 MR. LEVINSON: SUBMITTED.

23 THE COURT: THE REQUEST IS DENIED.

24 MR. LEWIN: ONE MOMENT, YOUR HONOR.

25 THE COURT: SURE.

26 MR. LEVINSON: HE'S STILL TRYING.

27

28 (PAUSE IN PROCEEDINGS.)

1 THE COURT: MR. LEVINSON, STAGE WHISPER.

2

3 (PAUSE IN PROCEEDINGS.)

4

5 MR. LEWIN: YOUR HONOR, I THINK WITH RESPECT TO
6 WHERE WE ARE IN HIS TESTIMONY, I DON'T HAVE ANY FURTHER
7 QUESTIONS AT THIS POINT IN TIME.

8 THE COURT: OKAY.

9 MR. LEWIN: THEN I WOULD --

10 THE COURT: YOU WANT TO RECALL HIM?

11 ANY ADDITIONAL CROSS BASED ON WHERE WE'RE
12 AT NOW?

13 MR. LEVINSON: NO, YOUR HONOR.

14 THE COURT: MR. CREARY.

15 MR. CREARY: NO, YOUR HONOR.

16 THE COURT: THANK YOU.

17 DETECTIVE, YOU MAY STEP DOWN.

18 THE WITNESS: THANK YOU, YOUR HONOR.

19 MR. LEWIN: YOUR HONOR, I'M ACTUALLY, WITH THE
20 COURT'S PERMISSION, IN OTHER WORDS, I INTERRUPTED HIM TO
21 KIND OF LET THE DEFENSE CATCH UP TO WHERE WE WERE.

22 SO WITH THE COURT'S PERMISSION, I WOULD NOW
23 HAVE HIM CONTINUE.

24 THE COURT: OKAY.

25 SO YOU WANT TO INQUIRE AS TO ANOTHER AREA?

26 MR. LEWIN: YES.

27 THE COURT: OKAY.

28 GO AHEAD.

1 OF MAY 14TH.

2 MR. CREARY: NO. AGAIN, YOUR HONOR, I HAD
3 WITHDRAWN THAT OBJECTION THIS MORNING BEFORE WE EVEN HAD
4 ARGUMENT ON IT. SO I HAVE NOTHING MORE TO SAY ABOUT
5 THAT.

6 THE COURT: OKAY.

7 MR. LEWIN: YOUR HONOR, WE HAD A -- OVER THE LUNCH
8 HOUR, EXTENSIVE DISCUSSION BACK AND FORTH. WE HAVE A
9 STIPULATION, IF IT WILL WORK FOR THE COURT.

10 AND THE STIPULATION, THIS WILL -- I TOLD
11 COUNSEL THAT I WAS GOING TO BRING IN A CELL PHONE TOWER
12 EXPERT.

13 AND SO WHAT COUNSEL AND I HAVE AGREED ON IS
14 THAT THE STIPULATION WOULD BE AS FOLLOWS: THAT WITH
15 RESPECT TO ALL OF THE CELL TOWER STIPULATIONS, THAT FOR
16 EACH OF THE STIPULATIONS, THE SUBJECT PHONES WERE WITHIN
17 AN AREA OF ZERO TO THREE MILES FROM THE CELL TOWER.

18 THE COURT: SO STIPULATED?

19 MR. LEVINSON: SO STIPULATED ON BEHALF OF
20 MR. DELACRUZ.

21 MR. CREARY: SO STIPULATED ON BEHALF OF
22 MR. ROMERO, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 I'LL ACCEPT THE STIPULATION. THAT WILL BE
25 FASTER THAN RECALLING YOUR INVESTIGATOR AND ASKING
26 ADDITIONAL FOUNDATIONAL QUESTIONS.

27 MR. LEWIN: THE ONLY QUESTION I HAD, YOUR HONOR,
28 WAS THAT I --

1 THE COURT: EVEN YOUR INVESTIGATOR IS NODDING HIS
2 HEAD SAYING THANK YOU.

3 MR. LEWIN: I FELT LIKE A SPIDER IN A JAR.
4 BECAUSE I ASKED MORE QUESTIONS, AND THEN I'D HAVE HOPE I
5 WAS GOING TO GET OUT; THEN THE LID WOULD CLOSE, AND I
6 COULDN'T BREATHE AGAIN.

7 JUST HOPING TO BE PUT TO DEATH, YOU KNOW,
8 MERCIFULLY EARLIER.

9 THE COURT: I WON'T GO THERE.

10 LET'S JUST BRING THE JURY IN, PLEASE.

11 MR. LEWIN: YOUR HONOR, DO YOU MIND IF DETECTIVE
12 RODRIGUEZ SITS DOWN HERE? OR DO YOU WANT HIM UP THERE
13 WHILE IT'S BEING PLAYED?

14 THE COURT: I DON'T CARE.

15

16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD IN OPEN COURT, IN
18 THE PRESENCE OF THE JURY:)

19

20 THE COURT: AT THIS TIME, ALL LADIES AND GENTLEMEN
21 OF THE JURY ARE PRESENT, INCLUDING OUR FOUR ALTERNATE
22 JURORS. EACH DEFENDANT IS PRESENT WITH THEIR COUNSEL.
23 THE PEOPLE ARE PRESENT. THE INVESTIGATING OFFICER IS
24 PRESENT.

25 LADIES AND GENTLEMEN, COUNSEL HAVE MET AND
26 CONFERRED. THEY HAVE A STIPULATION THAT WILL AVOID THE
27 NEED TO CALL FURTHER EXPERTS ON CELL PHONE TOWER
28 TECHNOLOGY.

1 MR. LEWIN, DO YOU WISH TO FRAME THE
2 STIPULATION, PLEASE?

3 MR. LEWIN: IT MIGHT TAKE ME A COUPLE ATTEMPTS,
4 YOUR HONOR. I DON'T HAVE IT WRITTEN OUT.

5 THE STIPULATION WOULD BE AS FOLLOWS:

6 IT WILL BE STIPULATED FOR ALL OF THE CELL
7 TOWER RECORDS -- SO WHENEVER THERE IS A STATEMENT IN THE
8 STIPULATION WHERE IT SAYS THAT AT THE TIME WHATEVER
9 PHONE WAS .3 MILES AWAY, OR .8 MILES AWAY, THE
10 STIPULATION WILL BE AS FOLLOWS:

11 THAT THE CELL -- WHATEVER CELL PHONE WE ARE
12 REFERRING TO IN EACH INDIVIDUAL STIPULATION WAS WITHIN
13 ZERO TO THREE MILES OF THAT CELL PHONE TOWER AT THE TIME
14 THAT THE PHONE WAS CAPTURED.

15 SO IT COULD BE ZERO MILES, RIGHT AT THE
16 CELL PHONE TOWER, IT COULD BE IN A 3-MILE RADIUS.

17 IS THAT SO STIPULATED, COUNSEL?

18 MR. CREARY: SO STIPULATED.

19 MR. LEVINSON: SO STIPULATED.

20 THE COURT: ACCEPTED BY THE COURT.

21 MR. LEWIN: YOUR HONOR, I DON'T HAVE -- THAT ONE
22 IS NOT WRITTEN DOWN. WITH THE COURT'S PERMISSION, I
23 WOULD ASK, RATHER THAN ME TRYING TO RECREATE IT, IF THE
24 JURY NEEDS THAT LATER, WILL YOU BE ABLE TO ASK THE COURT
25 REPORTER TO --

26 THE COURT: SURE.

27 MR. LEWIN: THANK YOU, YOUR HONOR.

28 THE COURT: THANK YOU.

1 INTENDS TO RESERVE APPROXIMATELY 30 MINUTES FOR HIS
2 REBUTTAL ARGUMENT.

3 BECAUSE THE PROSECUTOR HAS THE BURDEN OF
4 PROOF, THE PROSECUTOR HAS A RIGHT TO A CLOSING ARGUMENT,
5 AND THEN A REBUTTAL ARGUMENT TO THE DEFENSE CLOSING
6 ARGUMENT.

7 KEEP IN MIND THE LAWYERS ARE NOT WITNESSES.
8 WHAT THE LAWYERS SAY IS NOT EVIDENCE.

9 MR. LEWIN, YOU MAY COMMENCE WITH YOUR
10 CLOSING ARGUMENT.

11 MR. LEWIN: YOUR HONOR, CAN WE GET THE LIGHTS?

12 THE COURT: SURE, IF YOU'RE READY FOR IT.

13 MR. LEWIN: GOOD AFTERNOON.

14 I WANT TO FIRST THANK EVERYBODY FOR THE
15 TIME THEY'VE TAKEN. I'M RARELY AHEAD OF SCHEDULE IN A
16 CASE, BUT WE ACTUALLY GOT IT IN ON TIME. AND WE
17 APPRECIATE ALL OF YOUR TIME AND YOUR ATTENTION.

18 I HAVE ALWAYS WANTED TO BE ONE OF THOSE
19 LAWYERS WHO -- WHEN I WAS IN TRAINING GOING ON 20 YEARS
20 AGO, I WATCHED A LAWYER DO A CLOSING ARGUMENT. AND HE
21 QUOTED SOPHOCLES AND ARISTOTLE. I'LL BE HONEST, I
22 DIDN'T EXACTLY KNOW WHAT HE WAS SAYING OR HOW IT
23 RELATED. BUT HE SOUNDED REALLY SMART. AND HE SOUNDED
24 REALLY ELOQUENT.

25 AND THAT'S REALLY, UNFORTUNATELY, GOING ON
26 20 YEARS, NOW, IT'S REALLY NOT MY STYLE TO QUOTE THE
27 LITERARY EXAMPLES OUT THERE.

28 BUT THAT BEING SAID, THERE IS ONE QUOTE

1 THAT I THINK REALLY SUMS THINGS UP. ROBERT JACKSON WAS
2 A UNITED STATES SUPREME COURT JUSTICE. AND UNLIKE
3 ALMOST NO SUPREME COURT JUSTICE IN HISTORY, AND NONE
4 TODAY, HE HAD EXTENSIVE TRIAL EXPERIENCE.

5 HE HAD BEEN A PROSECUTOR. HE HAD BEEN
6 ASSIGNED TO THE NUREMBERG WAR TRIALS. HE HAD BEEN A
7 PROSECUTOR THERE. AND HE HAD A FAMOUS QUOTE. HE SAID
8 WHEN HE TRIED CASES, THERE WERE ALWAYS THREE ARGUMENTS
9 THAT HE HAD.

10 THE FIRST ARGUMENT WAS THE ONE HE PLANNED
11 OUT. IT WAS ELOQUENT, BRILLIANTLY WRITTEN, ORGANIZED,
12 COHERENT. HE COVERED EVERYTHING.

13 THE SECOND ARGUMENT WAS ONE HE ACTUALLY
14 GAVE TO THE JURY. THAT ONE WAS NOT AS COHERENT. NOT AS
15 ORGANIZED. LEFT A FEW THINGS OUT. MISSED A FEW POINTS
16 HERE AND THERE.

17 BUT THE BEST ARGUMENT THAT HE SAID HE WOULD
18 GIVE ON EVERY CASE WAS THE ONE WE WOULD THINK OF THAT
19 NIGHT AFTER HE'D DONE THE REAL ONE, ON THE COUCH, WHEN
20 IT WAS TOO LATE.

21 SO I'M HOPING THAT AS I SIT HERE TODAY, THE
22 BEST ARGUMENT I GIVE TODAY IS NOT GOING TO BE THE ONE I
23 THINK OF TONIGHT.

24 THE COURT: MR. LEWIN, BEFORE YOU GET TOO FAR INTO
25 YOUR ARGUMENT, I DID WANT TO ASK COUNSEL TO REMAIN AT
26 THE PODIUM, RATHER THAN MOVING.

27 MR. LEWIN: OKAY. WILL DO.

28 THE COURT: THANK YOU.

1 MR. LEWIN: IN THINKING ABOUT WHAT I WAS GOING TO
2 SAY TODAY, THIS IS AN UNUSUAL CASE. GENERALLY SPEAKING,
3 AS A PROSECUTOR, WHEN YOU ARE GETTING YOUR CASES AND
4 REVIEWING THEM, YOU KIND OF HAVE A CHECKLIST.

5 YOUR VICTIM BEING A DOUBLE MURDERER IS
6 GENERALLY NOT SOMETHING THAT YOU GO WOW, I WAS HOPING I
7 COULD HAVE A VICTIM LIKE THAT. THAT REALLY MAKES MY JOB
8 EASY.

9 AND UNFORTUNATELY, OUR JOB, AND MY JOB IS
10 TO MAKE SURE THAT JUSTICE PREVAILS. AND THAT EVERY
11 PERSON, NO MATTER WHO THEY ARE, THAT THE LAW IS
12 FOLLOWED. AND IN THIS CASE, WE KNOW WHAT WE HAVE.
13 WE'VE BEEN DISCUSSING IT SINCE VOIR DIRE.

14 ONE OF THE THINGS THAT REALLY KIND OF GOT
15 ME ABOUT THIS CASE IS, WHEN YOU THINK ABOUT IT, IT IS
16 JUST SO COMPLETELY ALMOST UNBELIEVABLE. IF IT WERE A
17 MOVIE, YOU GUYS WOULD HAVE WALKED OUT HALFWAY THROUGH,
18 AND SAID OH, THIS ISN'T BELIEVABLE, YOU'VE GOT TO BE
19 KIDDING ME.

20 NO WAY CAN THIS HAPPEN. SOMEBODY FRAMING
21 THE UNCLE FOR THE MURDER IN ADVANCE, AND IT JUST -- SHE
22 COMMITTED TWO PRIOR MURDERS. IT'S A BAD MOVIE. AND
23 THAT'S THE THING ABOUT REAL LIFE. IT DOESN'T HAVE TO BE
24 BELIEVABLE. FICTION HAS TO BE BELIEVABLE. REAL LIFE
25 DOESN'T.

26 AND IN THIS CASE, REAL LIFE KIND OF OUTDID
27 ANYTHING THAT ANYONE COULD HAVE IMAGINED.

28 THE OTHER THING THAT REALLY KIND OF GOT ME

1 AS I THOUGHT ABOUT WHAT I WAS GOING TO DISCUSS IN THIS
2 CASE IS THAT THIS PLAN BY ERIC DELACRUZ, EXECUTED BY
3 MR. DELACRUZ AND MR. ROMERO, IT'S JUST UNABASHEDLY EVIL.

4 HOW DO YOU EVEN COME UP WITH IT? AND IT'S
5 IRONIC THAT AS BAD A PERSON AS SONIA APPEARS TO HAVE
6 BEEN -- AND SHE WAS A BAD PERSON. THERE'S, YOU KNOW, NO
7 DOUBT ABOUT IT.

8 THE ONE PERSON THAT SHE TREATED WELL WAS
9 ERIC DELACRUZ. SHE TREATED HIM WELL. SHE CARED ABOUT
10 HIM. HE TOLD YOU THAT IN HIS STATEMENTS TO
11 INVESTIGATORS THAT WERE PLAYED. YOU HEARD HIS OWN
12 VOICE.

13 AND SO WHAT HAPPENED? WHAT'S THIS CRIME
14 ABOUT? I DON'T HAVE TO PROVE MOTIVE IN THIS CASE.
15 CERTAINLY, IT IS SHOCKING. NONE OF US WANTS TO THINK
16 THAT, YOU KNOW, OUR TROOPS SERVING OUR COUNTRY, DOING
17 INCREDIBLE WORK ARE OUT THERE, ARE COMMITTING THIS KIND
18 OF OFFENSE.

19 AND THERE'S KIND OF A NATURAL RESPONSE, A
20 VERY NATURAL RESPONSE FOR PEOPLE TO SAY YOU KNOW WHAT, I
21 DON'T WANT TO BELIEVE THAT THIS HAPPENED.

22 AND THAT'S OKAY. IT'S A NATURAL RESPONSE
23 TO LOOK AT THIS CASE AND GO YOU KNOW WHAT, I REALLY WISH
24 I DIDN'T HAVE TO BELIEVE THAT THESE TWO INDIVIDUALS DID
25 THIS. BUT UNFORTUNATELY, THE EVIDENCE SAYS OTHERWISE.

26 AND WHEN WE LOOK AT THE MOTIVE IN THIS
27 CASE, YOU KNOW THE MOTIVE IS VERY OLD-FASHIONED. IT'S
28 JUST STRAIGHT OLD-FASHIONED GREED.

1 ERIC DELACRUZ THOUGHT -- AND YOU KNOW WHAT,
2 HE THOUGHT PROBABLY PRETTY REASONABLY THAT IF SOMETHING
3 HAPPENED TO SONIA, HE WAS GOING TO GET HER MONEY AND HER
4 PROPERTY.

5 NOW REMEMBER, IT DOESN'T MATTER THAT IT
6 TURNED OUT HE WAS WRONG. DOESN'T MATTER. BUT WHAT HE
7 KNEW, ACCORDING TO THE EVIDENCE, IS THAT SONIA HAD A SON
8 SHE DIDN'T EVEN ACKNOWLEDGE.

9 JOHN BOURDEAU WAS SOMEWHAT OF A PATHETIC
10 INDIVIDUAL. HE WASN'T EVEN ALLOWED IN HIS MOTHER'S
11 HOUSE. DIDN'T HAVE A KEY. BASICALLY WENT OVER THERE TO
12 WATER THE LAWN AND TAKE OUT THE GARBAGE.

13 WHY WOULD ERIC THINK THAT THAT'S THE PERSON
14 SONIA IS GOING TO LEAVE HER ESTATE TO? SO ERIC PUTS
15 THIS PLAN INTO EFFECT. AND WHAT'S EVEN MORE SINISTER IS
16 THAT HE DECIDES FOUR MONTHS BEFORE HE COMMITS THIS
17 MURDER, FOUR MONTHS, THAT HE'S GOING TO FRAME JOHN
18 BOURDEAU FOR HIS OWN MOTHER'S MURDER.

19 IT'S JUST TWISTED BEYOND ANY BELIEF.

20 ABSOLUTELY TWISTED.

21 THAT WAS HIS KIND OF DIABOLICAL PLAN. HE
22 HAD A SECOND PART OF THE PLAN. WHILE I'M DOING THIS,
23 LET ME SEE IF I CAN EXPLOIT THE PAIN AND GRIEF OF THE
24 RISKEN FAMILY. LET ME SEE IF I CAN GET A FEW DOLLARS
25 OUT OF THEM IN THE HOPES THAT THEY CAN GET THEIR BROTHER
26 AND SON HOME SO HE CAN HAVE A DECENT BURIAL. A
27 COMMANDER OF THE UNITED STATES NAVY. CAN HE BE BURIED
28 ON AMERICAN SOIL.

1 ERIC EXPLOITED THAT. AND HE EXPLOITED THAT
2 BOTH AS JOHN BOURDEAU AND AS HIMSELF.

3 YOU KNOW, WHEN YOU LOOK AT IT, YOU SAY TO
4 YOURSELF WELL, HOW COULD A CRIME LIKE THIS HAPPEN? AND
5 AGAIN, NO ONE DESERVES TO BE MURDERED. BUT I'M NOT
6 GOING TO STAND UP HERE AND SAY THAT SONIA LIVED A LIFE
7 WHERE SHE DID GOOD THINGS, AND YOU SAY TO YOURSELF BOY,
8 IT'S JUST SO UNFAIR.

9 WHAT HAPPENED WAS NOT RIGHT. IT'S IMMORAL.
10 IT NEEDS TO BE PUNISHED. BUT SONIA RIOS IN THE END WAS
11 DONE IN BY THE KIND OF PLAN, BY THE KIND OF ACTION THAT
12 SHE HERSELF WOULD TAKE.

13 YOU LOOK AT ERIC DELACRUZ, YOU SAY YOU KNOW
14 WHAT, HE DID NOT FALL VERY FAR FROM THE TREE. HE REALLY
15 DIDN'T. HE IS A RIOS THROUGH AND THROUGH. HE IS, IN
16 THE END, HIS GREAT AUNT'S GRANDNEPHEW.

17 FERNANDO ROMERO. IN SOME WAYS, EVEN MORE
18 TROUBLING. THIS IS A GUY IN THE NAVY, HE DOESN'T EVEN
19 KNOW SONIA. DOESN'T EVEN KNOW HER.

20 HE IS SIMPLY A COLD-BLOODED, HIRED KILLER.
21 THAT'S ALL HE IS. NOTHING MORE, NOTHING LESS. HIS
22 MOTIVE? CIRCUMSTANTIALLY, SINCE HE DOESN'T KNOW HER,
23 THE ONLY REASONABLE INFERENCE WE CAN DRAW IS THAT HE
24 EXPECTED THAT HE WAS GOING TO BE COMPENSATED. HE WAS
25 GOING TO GET SOME OF THIS MONEY THAT WAS GOING TO COME
26 TO ERIC DELACRUZ.

27 AGAIN, JUST BECAUSE THAT DIDN'T HAPPEN
28 DOESN'T IN ANY WAY MITIGATE, EXCUSE, OR CHANGE THE

1 MOTIVE.

2 NOW, LET'S TALK ABOUT SONIA. WE WERE
3 DIRECT WITH YOU, STARTING IN BEFORE YOU WERE EVEN IN
4 JURY SELECTION, WITH THE STATEMENT THE JUDGE READ.
5 HAVEN'T HIDDEN FROM YOU WHAT SHE WAS, WHAT SHE DID.

6 THE EVIDENCE SUGGESTS THAT SHE KILLED BOTH
7 OF HER HUSBANDS. HAD THEM MURDERED IN THE PHILIPPINES.
8 BUT YOU ALL AGREED, EVERY ONE OF YOU, YOU ALL AGREED YOU
9 KNOW WHAT, WE CAN SEPARATE THAT.

10 THIS IS WHY EVERYONE WAS QUESTIONED
11 REPEATEDLY ABOUT YOUR RESPONSIBILITY AS JURORS, ABOUT
12 HOW YOU FELT, ABOUT WHETHER YOU COULD SEPARATE THINGS.

13 AND KIND OF MAKES SENSE, BECAUSE NO MATTER
14 HOW BAD SONIA IS, NO MATTER WHAT SHE DID TO HER
15 HUSBANDS, IN THE END, OUR SYSTEM OF LAW HERE, WHAT WE
16 STAND FOR, OUR JUSTICE SYSTEM IT'S BIGGER THAN HER.

17 SO IF YOU GO BACK THERE, AND YOU ALL WANT
18 TO TAKE A MOMENT BEFORE YOU START AND GET YOUR FEELINGS
19 OUT ABOUT SONIA -- YOU KNOW WHAT, I REALLY THINK SHE
20 LIVED A BAD LIFE, SOME JUROR SAID KARMA, YOU KNOW WHAT,
21 GO AHEAD AND DO THAT. BUT ONCE YOU GET THAT OUT OF YOUR
22 SYSTEM, THEN WHAT YOU GUYS HAVE TO DO IS YOU HAVE TO DO
23 YOUR JOB.

24 AND AS I SAID BEFORE, WHAT'S IRONIC --
25 EXCUSE ME. WHAT'S IRONIC IS THAT ERIC, EVEN THOUGH HE
26 IS THE PERSON WHO ORCHESTRATED THIS WHOLE THING, BY HIS
27 OWN WORDS, SONIA TREATED HIM WELL.

28

1 (AUDIO RECORDING PLAYED.)

2

3 MR. LEWIN: SHE TREATED HIM WELL. HE TOLD YOU
4 THAT DURING THE INTERVIEWS. HE SAID, YOU HEARD HIM, YOU
5 KNOW WHAT, SHE WAS GOOD TO ME. SHE RAISED US. SO HER
6 REWARD, PROBABLY THE ONE GOOD THING SHE EVER DID, THE
7 ONE PERSON SHE TREATED WELL, YOU KNOW WHAT HAPPENED.

8 NOW, BEFORE I START TALKING ABOUT THE
9 EVIDENCE IN THIS CASE, THERE IS A KEY POINT THAT NEEDS
10 TO GUIDE YOU IN YOUR DELIBERATIONS.

11 THE COURT'S READ TO YOU CALCRIM 200, WHICH
12 TALKS ABOUT YOUR DUTIES AS JURORS. YOU NEED TO BASE
13 YOUR DECISION ON THE FACTS THAT HAVE BEEN PRESENTED AND
14 PROVED FROM THE EVIDENCE.

15 NOW, THAT MEANS FACTS AND CIRCUMSTANTIAL
16 INFERENCES. WE'RE NOT SAYING THAT YOU ONLY HAVE TO HAVE
17 DIRECT EVIDENCE. CIRCUMSTANTIAL INFERENCES. WHAT WAS
18 PRESENTED, WHAT DOES THAT MEAN.

19 SO AS AN EXAMPLE, IF SOMEBODY GOES BACK
20 THERE AND SOMEBODY SAYS YOU KNOW WHAT, HOW DO WE KNOW,
21 ISN'T IT POSSIBLE THAT SHE WAS KILLED BY SOMEONE IN THE
22 PHILIPPINES.

23 WELL, YOU'VE GOT TO STOP YOURSELF, STOP
24 THAT PERSON NEXT TO YOU, AND SAY HEY, WAIT A MINUTE, WAS
25 THERE ANY EVIDENCE WHATSOEVER PRESENTED? AND THERE
26 WASN'T.

27 AND THAT IS WHY -- AGAIN, THIS IS AN ISSUE
28 THAT WE COVERED IN THE QUESTIONNAIRE AND IN VOIR DIRE.

1 YOU KNOW, THE 16 OF YOU ARE NOT HERE BY ACCIDENT. THIS
2 WAS A SELECTION PROCESS. YOU MIGHT NOT FEEL LIKE YOU
3 WON ANYTHING. BUT YOU 16 WERE CHOSEN.

4 AND EVERYBODY SPENT A LOT OF TIME, THE
5 JUDGE, THE ATTORNEYS, MYSELF, TRYING TO FIGURE OUT WHO
6 WERE GOING TO BE THE BEST PEOPLE TO HEAR THIS CASE.

7 AND YOU 16 WERE ELECTED. AND WITH THAT
8 RESPONSIBILITY, WITH THAT HONOR, COMES A DUTY. AND THAT
9 DUTY IS TO MAKE SURE THAT YOU FOLLOW THE EVIDENCE IN THE
10 CASE, AND THAT YOU COME TO A DECISION THAT'S BASED ON
11 THAT EVIDENCE.

12 NOW, SOME OF YOU MIGHT ALSO BE SAYING TO
13 YOURSELVES, AND THIS IS COMMON, WHAT AM I MISSING?
14 THERE'S A REASON THAT I ASK JURORS DURING VOIR DIRE HEY,
15 HOW MANY OF YOU ARE -- ARE THERE ANY OF YOU HERE I ASKED
16 IF YOU RECALL WHO -- NO MATTER WHAT THE EVIDENCE IS,
17 THEY'RE GOING TO BE SAYING YOU KNOW, I HAVE THIS
18 QUESTION; OR WHAT ABOUT THIS, OR I'M A SKEPTIC, OR ISN'T
19 IT POSSIBLE THIS HAPPENED.

20 OR YOU KNOW WHAT, THIS JUST SEEMS TOO
21 STRAIGHT-FORWARD. THE WAY THE EVIDENCE CAME OUT, SOME
22 OF YOU MIGHT THINK WELL, WHY DID WE HAVE A TRIAL.

23 I WANT TO BE VERY CLEAR. IN THIS COUNTRY,
24 IF SOMEONE COMMITS A CRIME, NO MATTER HOW HEINOUS, NO
25 MATTER HOW MUCH EVIDENCE, THEY HAVE A RIGHT TO SAY PROVE
26 IT. GO TO TRIAL. PROVE ME GUILTY.

27 MR. ROMERO AND MR. DELACRUZ HAVE SAID THEY
28 WANT THEIR TRIAL. THEY HAVE EVERY RIGHT TO HAVE IT.

1 AND AS I SIT UP HERE, MY DUTY HAS BEEN TO
2 MAKE SURE THAT I GO THROUGH THE EVIDENCE, AND I PRESENT
3 A CASE THAT IS COMPELLING.

4 AND WHEN THAT HAS INVOLVED ME SPENDING A
5 LOT OF TIME GOING THROUGH EVIDENCE, CALLING WITNESSES, I
6 HOPE THAT YOU ALL UNDERSTAND THAT I CAN'T ASK YOU TO DO
7 YOUR DUTY AS JURORS IF I DON'T DO MINE AS A PROSECUTOR.

8 YOU KNOW, THERE'S NO SCOREBOARD UP THERE.
9 I'M A BIG SPORTS FAN. I WOULD LOVE IF THERE WAS A
10 SCOREBOARD UP THERE WHERE COULD I LOOK AND I COULD SEE
11 WOW, YOU KNOW WHAT, I'M UP 24 NOTHING, IT'S THE FOURTH
12 QUARTER, I CAN TAKE A KNEE.

13 I DON'T HAVE A SCOREBOARD. SO I HAVE TO GO
14 FROM START TO FINISH. I HAVE TO PUT ON EVERYTHING THAT
15 I HAVE. AND I HAVE TO BASICALLY FUNCTION AS IF EVERY
16 DAY, I'VE GOT TO PROVE MY CASE.

17 EVEN IF THE EVIDENCE IS OVERWHELMING. EVEN
18 IF SOME OF YOU -- AND I'VE SEEN THE LOOKS -- ARE
19 THINKING OH, MY GOSH, WHEN IS HE GOING TO STOP? ANOTHER
20 WITNESS?

21 AND IT'S FAIR. AND I ACCEPT THAT BURDEN.
22 I HOPE YOU ALL UNDERSTAND AND DON'T HOLD IT AGAINST ME
23 THAT I TAKE THIS JOB VERY SERIOUSLY. AND THE WORD
24 "SERIOUSLY" IS ALSO IMPORTANT.

25 BECAUSE AS SOME OF YOU MIGHT HAVE SEEN, WE
26 BRING OUR PERSONALITIES INTO THE COURTROOM. SOME OF US
27 MORE THAN OTHERS. I'M GOING TO MAKE AN OCCASIONAL,
28 MAYBE MORE THAN OCCASIONAL JOKE. I WANT TO MAKE SURE

1 THAT YOU AS JURORS UNDERSTAND I RESPECT THIS COURT. I
2 RESPECT THIS JUDGE TREMENDOUSLY. I RESPECT BOTH
3 LAWYERS. AND I RESPECT THE SERIOUSNESS OF WHAT
4 HAPPENED.

5 BUT THAT DOESN'T MEAN THAT ON A DAY-TO-DAY
6 BASIS THAT THERE AREN'T GOING TO BE THINGS THAT MAKE ME
7 SMILE. AND THIS IS A TOUGH JOB. THIS JOB CAN EAT YOU
8 UP. ON EVERYBODY'S END.

9 SO I HOPE AGAIN THAT YOU ALL UNDERSTAND
10 WHERE I'M COMING FROM, AND WERE NOT INSULTED OR AFFECTED
11 BY ANY COMMENTS THAT I'VE MADE.

12 I DIDN'T TRY TO TRIP ANYBODY. MR. LEVINSON
13 DID TRIP ME. I KNOW THAT IT WAS AN ACCIDENT, THE OTHER
14 DAY. BUT THINGS LIKE THAT HAPPEN. AND OUR RESPONSE IS
15 VERY CLEAR. I RESPECT BOTH ATTORNEYS VERY MUCH. I LIKE
16 THEM BOTH. AND WE'VE HAD A COLLEGIAL TRIAL, A COLLEGIAL
17 RELATIONSHIP.

18 LET'S TALK ABOUT OPENING STATEMENT FOR A
19 MINUTE. I GAVE A SHORT, CONCISE OPENING. THAT WAS YOUR
20 CLUE TO -- SMILE. SOMETHING. YOU GUYS MISSED IT. IT
21 WAS LONG. IT WAS LONG FOR A REASON. I HAVE A LOT OF
22 EVIDENCE. AND I WANTED TO PRESENT IT IN A COMPELLING
23 MANNER.

24 AND IN AN OPENING STATEMENT, YOU KIND OF
25 THINK OF -- WHEN WE'RE GIVING THEM. I LIKE TO THINK OF
26 OPENING STATEMENT IS IT'S KIND OF LIKE WRITING A CHECK.
27 IT'S NOT EVIDENCE.

28 BUT YOU'RE BASICALLY SAYING I'M WRITING A

1 CHECK, AND I BELIEVE THERE ARE FUNDS IN THE BANK TO
2 COVER IT.

3 AND I BELIEVE THAT EVERY CHECK I WROTE IN
4 OPENING STATEMENT, THERE WERE FUNDS AVAILABLE. I BACKED
5 UP EVERYTHING I SAID I WAS GOING TO PROVE IN THIS CASE.

6 NOW, THE DEFENDANTS IN THIS CASE WERE UNDER
7 NO OBLIGATION WHATSOEVER TO PRESENT AN OPENING
8 STATEMENT. THEY DID NOT HAVE TO DO THAT. IT WAS THEIR
9 CHOICE.

10 THEY ELECTED TO DO SO. AND ALL THAT I ASK
11 IS THAT YOU EVALUATE THEIR OPENING STATEMENTS. YOU BE
12 AS CRITICAL IN EVALUATING WHAT THEY SAID THEY WOULD
13 PROVE AS YOU ARE ABOUT WHAT I SAID.

14 LET'S TALK ABOUT THE OPENING STATEMENT
15 RELATED TO MR. DELACRUZ.

16 MR. LEVINSON SAID -- ON JANUARY 31ST, HE
17 SAID MY CASE IS BUILDING A MOUNTAIN OUT OF A MOLEHILL.
18 THAT THAT WAS REASONABLE DOUBT.

19 NOW, LISTEN. MR. LEVINSON HAS A TOUGH
20 CASE. MR. DELACRUZ HAS NOT EXACTLY GONE ABOUT
21 COMMITTING THIS CRIME IN AN INTELLIGENT FASHION.

22 AND THAT'S IMPORTANT FOR YOU TO UNDERSTAND.
23 BECAUSE AGAIN, A LOT OF JURORS, AND IT'S A NATURAL
24 REACTION, THEY SAY WAIT A MINUTE, THERE'S NO WAY HE
25 COULD BE GUILTY IN THIS CASE BECAUSE HE WOULDN'T HAVE --
26 HE WOULDN'T HAVE DONE THE THINGS HE DID.

27 WHY WOULD HE SEND E-MAILS FROM THE U.S.
28 NAVY IF THEY'RE GOING TO CATCH HIM? WHY WOULD HE FRAME

1 JOHN BOURDEAU? WHY WOULD HE HAVE THE MONEY DEPOSITED TO
2 HIS GIRLFRIEND'S ACCOUNT?

3 WELL, I'LL LET YOU IN ON A SECRET I THINK
4 YOU ALL KNOW. CRIMES GET COMMITTED EVERY DAY. A LOT OF
5 PEOPLE DON'T GET CAUGHT. GENERALLY WHEN YOU GET CAUGHT,
6 YOU MADE A MISTAKE. MR. DELACRUZ MADE ENOUGH MISTAKES
7 TO GET CAUGHT ABOUT TEN TIMES.

8 NOW AGAIN, JUST BECAUSE THOSE MISTAKES WERE
9 MADE DOES NOT IN ANY WAY, AND SHOULD NOT CAUSE YOU TO
10 SAY WELL, YOU KNOW WHAT, IF I WERE MR. DELACRUZ, AND I
11 WERE COMMITTING THIS CRIME, I WOULDN'T HAVE DONE THIS,
12 THIS, AND THIS; THEREFORE, YOU KNOW WHAT, I THINK HE
13 MUST BE NOT GUILTY.

14 THE EVIDENCE IS WHAT IT IS. AND IT POINTS
15 WHERE IT POINTS. YOU DON'T HAVE TO BE INTELLIGENT TO
16 COMMIT CRIMES. AND MORE THAN THAT, YOU DON'T HAVE TO
17 COMMIT CRIMES IN AN INTELLIGENT MANNER.

18 TRUE STORY. A GUY WALKS INTO A WELLS FARGO
19 BANK IN THE BAY AREA PLANNING TO ROB IT. THIS IS BEFORE
20 THEY HAD ATM'S. GOES OVER WHERE YOU USED TO FILL OUT
21 THE DEPOSIT SLIPS AND WITHDRAWALS.

22 SOME OF YOU ARE PROBABLY OLD ENOUGH TO
23 REMEMBER THAT. SOME OF YOU PROBABLY DON'T. BUT PEOPLE
24 ACTUALLY WENT INSIDE BANKS, FOR THE YOUNGER JURORS.

25 GOES IN THE MIDDLE. STARTS TO GET A LITTLE
26 SLIP, AND IS GOING TO WRITE HIS STICKUP NOTE. BUT THIS
27 GUY SAYS TO HIMSELF OH, NO, YOU KNOW WHAT, I DON'T WANT
28 TO DO THAT. SOMEONE MIGHT HAVE SEEN ME START TO WRITE.

1 SOMEONE MIGHT HAVE SEEN ME WRITE IT.

2 SO HE TAKES THE NOTE. HE WALKS ACROSS THE
3 STREET TO THE BANK OF AMERICA. WAITS IN LINE. GETS UP
4 TO THE TELLER. THE TELLER SIZES HIM UP. HE GIVES HER
5 THE STICKUP NOTE. SIZES HIM UP PRETTY ACCURATELY.

6 SHE SAYS, QUOTE, "I'M SORRY, SIR, THIS IS
7 BANK OF AMERICA. YOU'VE GIVEN ME A WELLS FARGO STICKUP
8 NOTE. IF YOU WANT TO ROB A BANK, YOU'LL HAVE TO GO
9 ACROSS THE STREET AND GIVE THIS TO WELLS FARGO. OR FILL
10 OUT A STICKUP NOTE ON BANK OF AMERICA PAPER.

11 THE COPS ARREST HIM 15 MINUTES LATER AT
12 WELLS FARGO IN LINE WITH HIS NOTE. I TELL THIS STORY
13 BECAUSE AGAIN, YOU DON'T HAVE TO BE A ROCKET SCIENTIST
14 TO COMMIT CRIMES.

15 AND IN MR. DELACRUZ'S CASE, MR. ROMERO'S
16 CASE, YOU KNOW THE MAIN THING THAT THEY NEEDED, THEY
17 HAD. THEY JUST NEEDED TO BE EVIL. THEY JUST NEEDED TO
18 BE WITHOUT ANY CONSCIENCE. ONE OF THEM KILLS THE WOMAN
19 WHO BASICALLY RAISED HIM. AND THE OTHER ONE DOESN'T
20 EVEN KNOW HER.

21 LET'S TALK A LITTLE BIT MORE ABOUT THE
22 OPENING. BY THE WAY, THIS CHECK BOUNCED.

23 NO ONE SAW THE DEFENDANT THERE. AND
24 LISTEN, WE TALKED ABOUT THIS IN VOIR DIRE. EVERYONE
25 AGREED, GENERALLY SPEAKING, WHEN YOU'RE GOING TO DO
26 MURDER, GENERALLY SPEAKING, HERE'S THE PLAN.

27 KILLER OR KILLERS, AND VICTIM. IF SOMEBODY
28 ELSE IS THERE, IT'S GENERALLY A MISTAKE. SO THE FACT

1 THAT NO ONE SAW THEM, WE TALKED ABOUT THIS IN VOIR DIRE.
2 THE LACK OF AN EYEWITNESS. OF COURSE, NO ONE SAW THEM.
3 HE'S GOT A KEY TO HER HOUSE. HE HAS ACCESS TO IT. WE
4 WOULDN'T EXPECT ANYBODY TO HAVE SEEN THEM.

5 THAT CHECK AGAIN DID NOT CLEAR.

6 INSUFFICIENT FUNDS.

7 NEXT THING. NO ONE SAW HIS CAR THERE.

8 AGAIN, WHO WOULD WE EXPECT TO HAVE SEEN HIS CAR THERE?
9 WHO WOULD KNOW IT'S HIS CAR? AND AGAIN, DO YOU THINK
10 THEY DROVE UP, HONKING THE HORN, GOT OUT OF THE CAR,
11 FIRED A FEW SHOTS IN THE NEIGHBORHOOD JUST TO LET THEM
12 KNOW WHAT THEY WERE DOING?

13 MAYBE YELLED "I'M GOING TO GO KILL THAT OLD
14 LADY. ANYBODY WANT TO WATCH?" AND THEN WENT INSIDE AND
15 DID IT. YOU KNOW, I SAY THIS, IT'S ABSURD. BUT I SAY
16 IT BECAUSE THIS IS THE ARGUMENT, THIS IS THE STATEMENT,
17 THE OPENING THAT THE DEFENSE GAVE. THEY SAID HEY, NO
18 ONE SAW HIS CAR THERE. THAT'S REASONABLE DOUBT.

19 THAT CHECK DIDN'T CLEAR.

20 MR. LEVINSON SAID THAT THE CIRCUMSTANTIAL
21 EVIDENCE IN THIS CASE IS COMPOSED OF SUPPOSITION AND
22 CONJECTURE. AND THAT'S A LINE, IF YOU'VE EVER WATCHED
23 "PERRY MASON," PERRY MASON WOULD SAY THAT SAME LINE; THE
24 SPIT AGAIN WOULD KIND OF COME OUT OF HIS MOUTH WHEN HE'D
25 SAY IT. THE CIRCUMSTANTIAL EVIDENCE WAS SO BAD.

26 YOU KNOW, BOTH ATTORNEYS, ACTUALLY, IN VOIR
27 DIRE, BOTH OF THEM EXPLAINED TO YOU AND AGREED THAT
28 CIRCUMSTANTIAL EVIDENCE CAN BE JUST AS GOOD AS DIRECT

1 EVIDENCE.

2 SO THE SUPPOSITION AND CONJECTURE, WE DON'T
3 HAVE ANY SUPPOSITION AND CONJECTURE HERE. THE
4 CIRCUMSTANTIAL EVIDENCE IN THIS CASE IS OVERWHELMING. A
5 LOT OF IT IS PHYSICAL. THE E-MAILS ARE A PHYSICAL PIECE
6 OF EVIDENCE. THE BANK ACCOUNT. THE CELL PHONE RECORDS.

7 THERE'S NO CONJECTURE. IT'S PRETTY MUCH
8 IF YOUR CELL PHONE SAYS THAT YOU'RE HITTING OFF A
9 CERTAIN LOCATION WHERE YOU SAY I'VE NEVER BEEN ANYWHERE
10 CLOSE TO, ON THE DATES WHEN THE ACTIVITY IS OCCURRING,
11 IT ISN'T SUPPOSITION TO GO YOU KNOW WHAT, LOOKS LIKE YOU
12 WERE THERE.

13 ESPECIALLY WHEN DURING YOUR INTERVIEWS,
14 YOU'RE CONFIRMING THAT'S YOUR CELL PHONE, AND THE CALLS
15 SHOW YOU'RE CALLING YOUR FATHER-IN-LAW BEFORE AND AFTER
16 THE INCIDENTS.

17 ALL RIGHT. WHAT ELSE DID WE HAVE? "THE
18 CELL PHONE RECORDS, AGAIN, COMPOSED OF SUPPOSITION AND
19 CONJECTURE." WELL, WHAT'S INTERESTING ABOUT THAT IS
20 THEY STIPULATED TO THE CELL PHONE RECORDS. THEY
21 STIPULATED.

22 NOW, WHAT MR. DELACRUZ'S ATTORNEY HAS SAID,
23 MR. LEVINSON AND MR. CREARY BOTH SAID WELL, YOU DON'T
24 KNOW WHAT THEY SAID ON THE PHONE.

25 WELL, THAT'S NOT QUITE TRUE. BECAUSE YOU
26 HAVE THE STATEMENTS FROM SONIA RIOS ABOUT WHAT WAS SAID.
27 BUT IN THIS CASE, WHAT WAS SAID IS NOT AS IMPORTANT AS
28 WHERE THE CALLS WERE PLACED, WHEN THEY WERE PLACED, HOW

1 MANY WERE PLACED, ET CETERA.

2 AGAIN, THIS IS A CHECK THAT WILL NOT CLEAR
3 THE BANK.

4 CELL PHONE RECORDS DON'T SHOW CONTENT OF
5 THE CALLS. I CAN SKIP THAT ONE.

6 ALL RIGHT. WHAT DO WE HAVE NEXT? "WE
7 DON'T KNOW IF ERIC DELACRUZ WAS INTENDING TO BE A
8 CONSPIRATOR IN THIS CASE." NOW, I'LL BE HONEST, I DON'T
9 UNDERSTAND THAT STATEMENT.

10 HOW CAN HE BE -- SOMEHOW THERE WAS A
11 CONSPIRACY THAT OCCURRED WHERE HE INVENTED THE JOHN
12 BOURDEAU E-MAIL, BUT HE WASN'T INTENDING FOR IT TO BE A
13 CONSPIRACY? AGAIN, ERIC DELACRUZ IS THE MASTERMIND.
14 THE EVIDENCE PROVES IT BEYOND ANY DOUBT IN THIS CASE.

15 ANOTHER CHECK WITH NO MONEY.

16 ALL RIGHT.

17 WHAT DO WE HAVE NEXT? "REASONABLE
18 INFERENCES RAISE REASONABLE SUSPICIONS THAT ERIC
19 DELACRUZ DIDN'T COMMIT THIS CRIME." EVERY INFERENCE IN
20 THIS CASE, EVERY INFERENCE POINTS TO THEIR GUILT. BOTH
21 THEIR GUILT. MR. DELACRUZ AND MR. ROMERO. THIS IS A
22 CHECK THAT DID NOT HAVE FUNDS. DID NOT CLEAR.

23 ALL RIGHT. THAT WAS LITERALLY
24 MR. LEVINSON'S OPENING STATEMENT. I DO NOT THINK THAT
25 IN THE END, ANY OF THOSE STATEMENTS WERE SUPPORTED BY
26 THE EVIDENCE IN THIS CASE BY CROSS-EXAMINATION. THEY
27 WEREN'T.

28 WHAT ABOUT MR. ROMERO'S -- THE OPENING

1 STATEMENTS GIVEN BY MR. CREARY? HE SAID THIS IS A CASE
2 BUILT ENTIRELY ON CIRCUMSTANTIAL EVIDENCE. WELL, IT'S
3 NOT BUILT ENTIRELY ON CIRCUMSTANTIAL EVIDENCE. THAT'S
4 NOT TRUE.

5 REMEMBER SONIA RIOS SEES AN INDIVIDUAL THAT
6 SHE DESCRIBES. SHE DESCRIBES AS CONSISTENT, HIS AGE,
7 HIS HEIGHT, HIS KIND OF HAIR. AND SHE HAS THE PHONE
8 NUMBER.

9 HOW IS THAT ENTIRELY CIRCUMSTANTIAL? HOW
10 DOES SHE GET THE PHONE NUMBER? SHE GOT THE PHONE NUMBER
11 BECAUSE MR. ROMERO CALLED HER. ON MORE THAN ONE
12 OCCASION. STUPID ON HIS PART? ABSOLUTELY.

13 SOMETHING HE WISHES HE PROBABLY COULD HAVE
14 BACK? I'M SURE. BUT THIS CASE IS NOT BUILT ENTIRELY ON
15 CIRCUMSTANTIAL EVIDENCE. AND THE CIRCUMSTANTIAL
16 EVIDENCE THAT YOU DO HAVE IN ADDITION TO THE EVIDENCE I
17 JUST DESCRIBED, IS DAMNING. THERE'S NO OTHER REASONABLE
18 INTERPRETATION.

19 WHAT ELSE DO WE HAVE?

20 THAT CHECK DOESN'T CLEAR.

21 "NOT A STRONG CASE OTHER THAN PHONE CALLS."
22 NOW, THAT SEEMS TO BE SOME KIND OF -- ADMISSION IS
23 NOT -- SOME KIND OF CONCESSION THAT OKAY, THE PHONE
24 CALLS, PHONE CALLS, THEY HURT.

25 WELL, THE PROBLEM IS THAT WHEN YOU COMBINE
26 THE PHONE CALLS WITH THE OTHER EVIDENCE YOU HAVE IN THE
27 CASE, REMEMBER, THOSE PHONE CALLS ON THE 17TH, WE HAVE
28 THE CALLS ON THE 19TH, THEY'RE FOLLOWED BY HIM COMING

1 DOWN THERE WITH A FIREARM.

2 SO YOU KNOW, "NOT A STRONG CASE FOR THE
3 PHONE CALLS." IT'S LIKE WHAT'S THE OLD SAYING?
4 MRS. LINCOLN, OTHER THAN THE SHOOTING, HOW WAS THE PLAY?
5 YOU KNOW, OTHER THAN THE PHONE CALLS? STILL OTHER
6 EVIDENCE. BUT THAT IS DAMAGING. AND CANNOT BE, CANNOT
7 BE REBUTTED.

8 ALL RIGHT.

9 WHAT ELSE DO WE HAVE?

10 THE COURT: MR. LEWIN, YOU'RE AT THE 30-MINUTE
11 MARK.

12 MR. LEWIN: THANK YOU, YOUR HONOR.

13 WE DON'T KNOW WHO WAS ACTUALLY ON THE
14 PHONE. WELL, THE PROBLEM IS THAT MR. ROMERO, IN HIS
15 STATEMENTS TO THE POLICE, SAID THAT HE HAD THE PHONE.

16 AT THE VERY END, HE CHANGES IT. BUT THE
17 CELL PHONE RECORDS KILL HIM. BECAUSE UNLESS THAT PERSON
18 HAS A NEED TO BE CALLING HIS VOICE MAIL, HIS
19 FATHER-IN-LAW'S PHONE NUMBER, IT DOESN'T MAKE SENSE.

20 SO WE KNOW WHO IS ON THE PHONE.

21 WE DON'T KNOW WHAT ACTIONS WERE TAKEN. I
22 DON'T KNOW WHAT THAT MEANS. BUT WE DID KNOW WHAT
23 ACTIONS WERE TAKEN. WE KNOW THAT MR. ROMERO FLEW HOME.
24 WE KNOW THAT HE THEN WENT TO LOMITA. THREE DIFFERENT
25 TIMES ON ALL THREE DATES. THE SECOND TIME WITH A GUN.

26 AND THE THIRD TIME, THE CIRCUMSTANTIAL
27 EVIDENCE WOULD DEMONSTRATE ALSO, WITH A GUN. SO WHAT
28 ACTIONS WERE TAKEN? THE ACTIONS WERE CONSPIRACY AND

1 MURDER.

2 OKAY. "NO EYEWITNESSES. FINGERPRINTS.
3 GUNS. BULLETS AND DNA TYING FERNANDO ROMERO TO THE
4 CASE." AGAIN, WHAT WOULD YOU EXPECT? SHE'S SHOT ONE
5 TIME IN HER HOUSE. I DON'T THINK THAT IT'S REASONABLE
6 TO BELIEVE THAT MR. ROMERO IS GOING TO GO OVER THERE AND
7 GOING TO TOUCH THE WALL AND GOING TO MAYBE INTENTIONALLY
8 CUT HIMSELF, AND MAYBE I'LL DROP MY DRIVER'S LICENSE,
9 AND MAYBE I WILL LEAVE MY GUN OUT.

10 WE TALKED ABOUT THE ABSENCE OF PHYSICAL
11 EVIDENCE. AND IN THIS CASE, THE PROBLEM IS THAT
12 MR. ROMERO FORGOT ABOUT THE CELL PHONES. SEE, HE LEFT
13 PHYSICAL EVIDENCE BEHIND. HE JUST DIDN'T KNOW IT.

14 "NOTHING BUT RECORDS AND PINGS FROM A LOCAL
15 CELL TOWER." AGAIN, A COUPLE OF STATEMENTS BEFORE THAT,
16 THERE WAS NOTHING BUT THE PHONE CALLS, AND NOW WE HAVE A
17 KIND OF A BACKTRACK OF WELL, YOU KNOW, IT'S JUST PHONE
18 RECORDS AND PINGS.

19 WELL, THOSE PHONES RECORDS AND PINGS FROM
20 THAT TOWER -- BY THE WAY, YOU HAVE THE PHONE RECORDS.
21 YOU CAN SEE THAT THERE ARE OTHER PHONE TOWERS IN THOSE
22 RECORDS VERY CLOSE IN TORRANCE.

23 WE'RE NOT SITTING IN THE MIDDLE OF
24 OKLAHOMA, WHERE SOMEONE CAN SAY YOU KNOW WHAT -- I DON'T
25 KNOW IF IT'S TRUE OR NOT, I DON'T WANT TO SAY ANYTHING
26 ABOUT OKLAHOMA -- BUT MAYBE SOME VERY DESERTED, RURAL
27 AREA WHERE 30 MILES AWAY, YOU'RE GOING TO HAVE A PHONE
28 CALL.

1 THERE'S A STIPULATION THAT IT'S ZERO TO
2 THREE MILES.

3 AND BY THE WAY, THERE'S NO EXPLANATION.
4 MR. ROMERO SAID? "I WAS NEVER ANYWHERE NEAR, NEVER BEEN
5 TO LOMITA," ALL THREE DAYS, ET CETERA. AND SONIA HAS
6 HIS NUMBER AND THE DESCRIPTION, ET CETERA.

7 BUT YOU ALSO, WHEN YOU LOOK AT THE RECORDS,
8 YOU CAN SEE THAT YOU KNOW WHAT, THERE ARE OTHER CELL
9 PHONE TOWERS VERY CLOSE THAT THE PHONES HIT AT OTHER
10 TIMES.

11 WHAT DOES THAT TELL YOU? IT TELLS YOU THAT
12 IN THIS AREA -- AND WE KNOW IT ANYWAY. WE KNOW THIS
13 AREA IS FULL OF CELL PHONE TOWERS. IT'S NO COINCIDENCE
14 THAT IT'S HITTING OFF THE ONE RIGHT BY THE SALON AND
15 RIGHT BY THE HOUSE.

16 IT COULD BE WORSE. THEY COULD HAVE CHECKS
17 UP HERE FOR MY THREE-HOUR OPENING. SO THESE CHECKS ARE
18 GOING TO END SOON.

19 THEY SAID I PRESENTED A NICE SCENARIO, A
20 NICE PACKAGE. WHAT I PRESENTED IS EVIDENCE. EVIDENCE,
21 LADIES AND GENTLEMEN. OVERWHELMING EVIDENCE.
22 INDISPUTABLE EVIDENCE. EVIDENCE WHICH IS NOT BEEN
23 REBUTTED.

24 "THE JURY WILL FIND THAT THERE IS
25 SUFFICIENT REASONABLE DOUBT." THAT'S HOPEFUL, BUT I
26 DON'T THINK IT REFLECTS REALITY. I DON'T THINK IT
27 REFLECTS WHAT'S BEEN PRESENTED. I DON'T THINK IT
28 REFLECTS THE COMMON SENSE AND INTELLIGENCE THAT ALL OF

1 YOU HAVE.

2 OKAY. LET'S TALK ABOUT MOTIVE, BRIEFLY. I
3 AM NOT REQUIRED TO PROVE IT. DON'T HAVE TO PROVE IT.
4 THERE IS SUBSTANTIAL EVIDENCE IN THIS CASE AS TO WHAT
5 THE MOTIVE IS. AND HOW DO WE KNOW ABOUT THE MOTIVE?
6 WELL, IT'S A FACTOR THAT CAN BE USED TO SHOW DEFENDANT'S
7 GUILT.

8 NOW WE GET TO, AGAIN, ERIC DELACRUZ. HIS
9 GREED IS SO OVERWHELMING THAT HE MAKES MISTAKE AFTER
10 MISTAKE AFTER MISTAKE. A LITTLE RULE KILLERS SHOULD
11 LIVE BY. WAIT UNTIL AFTER THE AUTOPSY AND FUNERAL
12 BEFORE YOU SHOW UP AT THE DECEASED'S LAWYER'S OFFICE
13 LOOKING FOR MONEY.

14 WHAT HAPPENS? HER BODY IS NOT EVEN COLD,
15 YET. ROBERT STONE IS DRIVING TO WORK. IT'S 8:30 A.M.,
16 AND HE PULLS UP. THEY'RE WAITING IN THE OFFICE. WHO IS
17 IT? WELL, IT'S NOT AN UNKNOWN PERSON. IT'S MARIA
18 PEREZ.

19 AND WHAT HAPPENS? "WHAT DID SHE LEAVE ME?
20 WHAT AM I GETTING." NOT A LOT OF SMALL TALK.

21 NO WILL? WHAT? BOY. YOU WANT TO TALK
22 ABOUT YOUR BAD DAYS? THAT'S A KICK BELOW THE STOMACH.
23 BECAUSE YOU DO ALL THIS WORK, YOU HAVE THIS LENGTHY
24 CONSPIRACY, YOU DO ALL THIS STUFF TO FRAME JOHN
25 BOURDEAU, AND IN THE END, YOU DON'T GET ANY MONEY.

26 ROBERT STONE SAYS "I'VE BEEN DOING THIS
27 27 YEARS. I'VE NEVER SEEN THIS HAPPEN. EVER."

28 LET'S TALK ABOUT THE CRIMES IN THIS CASE.

1 TWO SEPARATE CRIMES. THAT'S IMPORTANT. CONSPIRACY TO
2 COMMIT MURDER AND MURDER. THEY ARE SEPARATE. AND THEY
3 NEED TO BE TREATED INDIVIDUALLY.

4 I'M GOING TO START WITH THE CONSPIRACY TO
5 COMMIT MURDER. SOME PEOPLE WOULD THINK THAT YOU KNOW
6 WHAT, IF YOU HAVE A MURDER, YOU CAN'T HAVE A CONSPIRACY
7 TO COMMIT MURDER. AND THAT'S JUST NOT CORRECT. YOU CAN
8 HAVE BOTH, AND WE HAD BOTH IN THIS CASE. I'M GOING TO
9 GO THROUGH IT.

10 ERIC DELACRUZ. HE COMES UP WITH THIS PLAN
11 BACK ON JANUARY 6TH. HOW DO YOU KNOW? BECAUSE HERE HE
12 IS. REMEMBER THAT'S THE SAME DAY, WITHIN MINUTES OF
13 CREATING THAT ACCOUNT.

14 AND YOU KNOW, BEFORE WE CRITICIZE, BEFORE I
15 CRITICIZE HIS PLAN TOO MUCH, IT WORKED FOR A WHILE.
16 DETECTIVE RODRIGUEZ TOLD YOU THEIR FIRST SUSPECT WAS
17 JOHN BOURDEAU. AND YOU KNOW WHAT, WITH WHAT THEY KNEW,
18 THAT WAS REASONABLE.

19 I WANT TO TAKE A MOMENT. THIS WAS A
20 DIFFICULT, COMPLICATED CASE. THESE TWO DETECTIVES
21 WORKED EXTREMELY HARD. THE NCIS INVESTIGATORS WORKED
22 EXTREMELY HARD. A LOT OF RESOURCES WERE EXPENDED TO
23 FIND OUT WHAT HAPPENED. TO WORK THROUGH ALL THE
24 RECORDS.

25 AND THESE GUYS DID IT. NOW, WHAT DO WE
26 KNOW? WE KNOW HE CREATED THE E-MAIL ADDRESS. WE KNOW
27 THE ERICSON98 IS HIS. WE KNOW THE TIME. AND WHAT DOES
28 HE DO WITH IT? WHAT HAPPENS ONCE HE CREATES IT?

1 WELL, HE SENDS AN E-MAIL THAT SAME DAY,
2 JANUARY 6TH. BUT THE BIG E-MAIL -- AND AGAIN, YOU'VE
3 GOT TO LIKE THE WAY ERIC WRITES. HE CALLS SHERRY A
4 DIFFERENT NAME ON EVERY E-MAIL.

5 "SHIRLEY, I CAN BE A BIG HELP TO YOU AND
6 YOUR FAMILY. I CAN HELP YOUR FAMILY IN TWO WAYS.
7 FIRST, I CAN GET YOUR BROTHER'S REMAINS IN THE
8 PHILIPPINES." SOUNDS OKAY.

9 AND THEN JUST KIND OF CASUALLY, "OH, AND
10 SECOND, I CAN GET SOMEONE TO KILL SONIA RIOS FOR YOU
11 GUYS."

12 FEBRUARY 25. TWO MONTHS BEFORE HER MURDER.
13 HE'S ALREADY GOT HIS PLAN. NOW, WHEN FERNANDO ROMERO
14 FLEW HOME ON APRIL 10TH, THERE IS EVIDENCE TO SUGGEST
15 THAT THE CONSPIRACY WAS ALREADY IN EFFECT. BUT I'M NOT
16 USING THAT AT ALL IN MY CASE.

17 YOU HAVE TO -- WE'RE GOING TO TALK ABOUT
18 THE OVERT ACTS. BECAUSE WE ARE GOING TO GET TO SEVERAL
19 OVERT ACTS WHERE THERE'S NO DOUBT THE CONSPIRACY ALREADY
20 OCCURRED, THE AGREEMENT HAS ALREADY HAPPENED.

21 WHAT DO I HAVE TO SHOW FOR CONSPIRACY TO
22 COMMIT MURDER? ONE, THAT THE DEFENDANTS CAME TO AN
23 AGREEMENT TO KILL SONIA RIOS. THE AGREEMENT DOES NOT
24 HAVE TO BE FORMAL. THAT SHOULDN'T SHOCK ANYBODY.

25 YOU KNOW, THIS IS NOT AN AGREEMENT THAT YOU
26 TAKE TO YOUR LOCAL LAWYER, AND SAY "I'D LIKE YOU TO DRAW
27 UP A CONSPIRACY TO COMMIT MURDER."

28 I DON'T EVEN THINK I CAN GO ON

1 LEGALZOOM.COM AND FIND THAT. SO GENERALLY SPEAKING,
2 THERE AREN'T FORMAL, WRITTEN AGREEMENTS BECAUSE IT'S NOT
3 A VERY SMART THING TO DO.

4 ALTHOUGH IN THIS CASE, HAD THERE BEEN A
5 FORMAL WRITTEN AGREEMENT, GIVEN THE OTHER MISTAKES THEY
6 MADE, IT WOULDN'T HAVE SURPRISED ME. BUT WE DON'T HAVE
7 ONE.

8 THE AGREEMENT MAY BE INFERRED FROM CONDUCT.
9 THAT'S USUALLY WHAT'S GOING TO HAPPEN. ACTIONS SPEAK
10 LOUDER THAN WORDS. AND THE ACTIONS THAT THEY TOOK PROVE
11 THIS CONSPIRACY BEYOND ANY DOUBT.

12 THEY INTENDED THAT ONE OR BOTH OF THEM
13 WOULD CARRY OUT THE CRIME. THAT'S IMPORTANT. THEY
14 DON'T BOTH HAVE TO CARRY OUT THE CRIME. IT CAN ONLY BE
15 JUST ONE OF THEM. AS LONG AS THEY BOTH INTENDED THAT
16 ONE OF THEM IS GOING TO DO IT. ONE OR BOTH OF THEM
17 COMMITS ONE OVERT ACT.

18 THAT DOESN'T MEAN EACH ONE COMMITS AN OVERT
19 ACT. THAT MEANS THERE'S AN AGREEMENT, AND THEN ONE
20 COMMITS AN OVERT ACT.

21 THAT OVERT ACT IS DONE BY ONE OR MORE
22 MEMBERS, AND IT'S TO HELP ACCOMPLISH THE CRIME.

23 YOU GUYS DON'T HAVE TO AGREE UNANIMOUSLY ON
24 WHICH OVERT ACT. IF THREE JURORS THINK, YOU KNOW WHAT,
25 I THINK THE OVERT ACT WAS DRIVING DOWN TO THE SALON BY
26 FERNANDO ROMERO ON APRIL 17TH; TWO JURORS SAY NO, NO,
27 YOU KNOW WHAT, I THINK IT WAS NOT UNTIL HE DROVE DOWN ON
28 APRIL 19TH; FOUR OTHER JURORS GO NO, NO, I THINK IT WAS

1 WHEN ON APRIL 26TH, THE CONVERSATIONS; AS LONG AS ALL OF
2 YOU AGREE THAT AN OVERT ACT HAPPENED, YOU DO NOT HAVE TO
3 BE UNANIMOUS.

4 JUST THAT IT HAS BEEN COMMITTED.

5 AND FINALLY, THE TARGET CRIME DOES NOT HAVE
6 TO BE COMMITTED. SO WHAT I'M SAYING HERE IS THAT THE
7 CONSPIRACY TO COMMIT MURDER WAS ACTUALLY -- HAD ALREADY
8 OCCURRED BY THE EVIDENCE THAT'S BEEN PRESENTED BEFORE
9 THEY EVER CAME DOWN ON THE 26TH. THEY WERE PLANNING TO
10 KILL HER THAT WEEK. IT JUST DIDN'T WORK OUT.

11 THAT CRIME WAS DONE. IF SHE HAD NEVER BEEN
12 MURDERED, THEY WOULD STILL HAVE BEEN GUILTY OF THE
13 CONSPIRACY TO HAVE COMMITTED THAT CRIME.

14 ALL RIGHT. WHAT'S THE EVIDENCE? WELL,
15 WE'VE GOT ROMERO FLYING HOME AND NOT TAKING THE TIGER
16 CRUISE. WHICH IN AND OF ITSELF WOULDN'T HAVE MEANT AS
17 MUCH, EXCEPT FOR THE LIE TO NCIS.

18 HE GOT HIMSELF INTO TROUBLE. AND HE LIED,
19 SAID HE WAS ON THAT CRUISE. NO REASON TO LIE TO HIM.
20 HE'S ON LEAVE. HE LIED BECAUSE HE KNOWS WHAT HE DID
21 WHILE HE WAS GONE.

22 THE CALLING CARD CALLS FROM DELACRUZ TO
23 ROMERO. THERE IS NO REASONABLE EXPLANATION FOR THESE
24 CALLS. AND I AM NOT GOING TO -- I'VE PUT ON THIS
25 EVIDENCE.

26 IF YOU ARE NOT CONVINCED ABOUT THE CALLS,
27 WHICH, BY THE WAY HAVE BEEN STIPULATED TO, IT'S VERY
28 CLEAR WHO MADE THEM. IT'S VERY CLEAR WHY THEY WERE

1 MADE. I DON'T KNOW WHAT ELSE I'M GOING TO BE ABLE TO
2 ARGUE.

3 WHAT ELSE DO WE HAVE? WE HAVE DELACRUZ
4 SPECIFICALLY CALLING ROMERO FROM THE BOAT ON THE 17TH,
5 18TH, AND 19TH. ISN'T THAT INTERESTING. IT'S THE
6 THREE DAYS WHEN ALL THIS ACTIVITY IS GOING ON.

7 WHAT ARE ON THOSE CALLS? WHAT IS
8 CIRCUMSTANTIAL EVIDENCE ON THOSE CALLS? "DID YOU DO IT?
9 IS IT DONE? WHAT? ARE YOU GOING TO GET IT DONE
10 TOMORROW?"

11 WHAT ELSE DO WE HAVE? WE HAVE THE PHONE
12 RECORDS, WHICH HAVE BEEN STIPULATED TO. ROMERO'S CELL
13 PHONE. HE IS AT THE LOCATION ON EACH OF THE DAYS, APRIL
14 17, APRIL 19, AND APRIL 26. THAT EVIDENCE IS
15 UNEXPLAINABLE, IRREFUTABLE, AND THERE'S ONLY ONE
16 REASONABLE INFERENCE YOU CAN DRAW. HE SAID REPEATEDLY,
17 "I'VE NEVER BEEN IN LOMITA. I'VE NEVER BEEN THERE."

18 WHAT ELSE? WHAT ABOUT THE PATTERN OF THEIR
19 CONVERSATIONS ON THE DATE OF THE MURDER? YOU KNOW, FOR
20 ERIC DELACRUZ, IT'S VERY CLEAR BY THE EVIDENCE THAT HE
21 INTENDED THIS TO HAPPEN WHILE HE WAS ON THE BOAT SO HE'D
22 HAVE AN ALIBI. DIDN'T HAPPEN. DID NOT HAPPEN.

23 SO NOW ON THE DAY OF THE MURDER, HE AND
24 ROMERO, THEY'RE GOING TO DO IT TOGETHER. ON THE NIGHT
25 OF THE MURDER, THEIR CALLS KEEP GETTING CLOSER AND
26 CLOSER TO SONIA'S RESIDENCE, CULMINATING AT THE TIME
27 WHERE THE EVIDENCE SUGGESTS THE MURDER OCCURRED, THEY
28 ARE BOTH HITTING OFF THE SAME TOWER, THREE TENTHS OF A

1 MILE AWAY. AND THEN THEY SCURRY AWAY IN DIFFERENT
2 DIRECTIONS LIKE COCKROACHES AFTER THE CRIME OCCURS.

3 THE ONLY REASONABLE EXPLANATION FOR THAT
4 CONDUCT IS THEY JUST KILLED HER. BY THE WAY, I DON'T
5 HAVE TO PROVE WHETHER ONE PULLED THE TRIGGER, ONE WAS IN
6 THE HOUSE, ONE WAS AT A DIFFERENT LOCATION. I DON'T
7 HAVE TO PROVE THAT. I'M GOING TO MAKE AN ARGUMENT AS TO
8 WHO THE EVIDENCE SUGGESTS PULLED THE TRIGGER IN THIS
9 CASE.

10 LET'S TALK ABOUT MURDER. THERE REALLY
11 AREN'T A WHOLE LOT OF LEGAL ISSUES WITH RESPECT TO
12 MURDER IN THIS CASE, OTHER THAN THE ISSUE OF AIDING AND
13 ABETTING.

14 YOU CAN BE GUILTY OF MURDER IN TWO WAYS.
15 YOU CAN DIRECTLY COMMIT THE CRIME. YOU CAN BE THE
16 SHOOTER. OR YOU CAN AID AND ABET THE PERPETRATOR.

17 FANCY WORDS. WHAT DOES THAT MEAN? WELL,
18 CALJIC (SIC) 401 IS GOING TO TELL YOU TO PROVE AIDING
19 AND ABETTING, YOU'VE GOT TO PROVE THE PERPETRATOR
20 COMMITTED THE CRIME; YOU HAVE TO PROVE THAT THE
21 INDIVIDUAL, THE OTHER INDIVIDUAL KNEW THE PERPETRATOR'S
22 INTENT.

23 WHAT DOES MEAN? BASICALLY, ONE GUY COMMITS
24 THE CRIME, THE OTHER GUY KNOWS HE'S GOING TO DO IT, AND
25 THAT BEFORE OR DURING THE CRIME, THE OTHER INDIVIDUAL
26 INTENDED TO AID AND ABET THE PERPETRATOR.

27 WHAT DO YOU KNOW? WELL, WE KNOW THAT ERIC
28 DELACRUZ HAD A KEY TO THE HOUSE. WE KNOW THERE WAS NO

1 FORCED ENTRY INTO THE HOUSE. SONIA RIOS IS PETRIFIED.
2 SHE'S GOT SURVEILLANCE. IN THE END, JUST LIKE SHE DID
3 TO HER HUSBANDS, SONIA WAS KILLED BY SOMEBODY SHE
4 TRUSTED.

5 NOW, SONIA DIDN'T ACTUALLY KILL HER
6 HUSBANDS. BUT THE HUSBANDS WENT TO THE PHILIPPINES
7 THINKING THEY WERE SAFE. AND THEY WEREN'T. AND SONIA
8 RIOS, INSIDE OF HER HOUSE, WITH ALL HER MONEY AND THE
9 GUNS, INCLUDING THE MISSING GUN, APPARENTLY THOUGHT SHE
10 WAS SAFE. SHE WASN'T.

11 AND YOU HAVE TO PROVE THE WORDS OR CONDUCT
12 DID IN FACT AID AND ABET THE PERPETRATOR.

13 AIDING AND ABETTING, WHAT DOES THAT MEAN?
14 AIDS, FACILITATES, PROMOTES, ENCOURAGES, OR INSTIGATES
15 THE PERPETRATOR'S COMMISSION OF THAT CRIME.

16 AND IT IS VERY CLEAR THAT IN FIFTY
17 DIFFERENT WAYS, THESE TWO INDIVIDUALS AIDED EACH OTHER.
18 PLANNED THIS THING OUT. GOT TOGETHER. UTILIZED ERIC
19 DELACRUZ'S ABILITY TO GET INTO THE HOUSE, WHETHER HE
20 USED A KEY, WHETHER HE LET FERNANDO ROMERO IN. IT'S
21 VERY CLEAR. NO QUESTION.

22 A PERSON DOES NOT NEED TO HAVE BEEN PRESENT
23 WHEN THE CRIME WAS COMMITTED? LET'S ASSUME -- AND WE
24 DON'T KNOW, BUT LET'S ASSUME THAT YOU END UP BELIEVING,
25 I BELIEVE THE EVIDENCE DEMONSTRATES THIS, THAT RIGHT
26 THERE, FERNANDO ROMERO IS THE TRIGGER MAN. HE'S THE ONE
27 WHO WALKED UP BEHIND SONIA AND EXECUTED HER.

28 WHETHER ERIC WAS STANDING OUTSIDE, WAS

1 STANDING -- WAS IN THE HOUSE, WAS THREE BLOCKS AWAY,
2 DOESN'T MATTER A BIT.

3 AND BY THE WAY, IF FERNANDO ROMERO ISN'T
4 GOING TO PULL THE TRIGGER, WHY DOES ERIC DELACRUZ NEED
5 HIM? HE DOESN'T. FERNANDO ROMERO HAS ONE ROLE IN THIS
6 CASE. HE NEEDS TO BE THE ONE TO PULL THE TRIGGER.

7 ALL RIGHT. I HAVE TO PROVE THE DEFENDANT
8 GUILTY BEYOND A REASONABLE DOUBT. I SPENT A LOT OF TIME
9 ON THIS. "REASONABLE" IS THE KEY WORD. I HAVE TO PROVE
10 EVERY ELEMENT OF THE CRIME CHARGED.

11 BUT NOT EVERY ISSUE IS REASONABLY IN
12 DISPUTE. WHAT DOES THAT MEAN? WELL, THAT MEANS JUST
13 BECAUSE THERE ARE ELEMENTS AND ISSUES HERE, NOT
14 EVERYTHING IS IN DISPUTE.

15 WE HAVE THE STIPULATION. SO FOR INSTANCE,
16 ALL THESE STIPULATIONS, IF SOMEBODY SAID YOU KNOW WHAT,
17 I DON'T BELIEVE THAT THE E-MAILS WERE SENT AT THIS TIME
18 FROM THIS BOAT, OR I DON'T BELIEVE THE CELL PHONE
19 RECORDS, YOU CANNOT QUESTION IT. YOU ABSOLUTELY ARE
20 LEGALLY REQUIRED TO ACCEPT WHAT'S IN THE STIPULATIONS.

21 BY THE WAY, YOU CAN'T SPECULATE AS TO WHY
22 STIPULATIONS WERE ENTERED INTO. YOU CAN'T SAY YOU KNOW
23 WHAT, I DON'T THINK THEY SHOULD HAVE ENTERED INTO THAT
24 STIPULATION, OR I DON'T THINK THAT STIPULATION -- I
25 DON'T AGREE WITH IT. YOU HAVE TO ACCEPT IT AND MOVE ON.

26 WHAT ISSUE IS NOT REASONABLY IN DISPUTE?
27 WELL, IT'S NOT REASONABLY IN DISPUTE THAT ERIC DELACRUZ
28 CREATED THE JOHN BOURDEAU ACCOUNT. AND I DON'T THINK

1 MR. LEVINSON WILL STAND UP HERE AND DISPUTE IT. DOESN'T
2 HAVE MUCH CHOICE. THAT'S NOT REASONABLY IN DISPUTE.

3 WE'VE GOT, AS WE SAID BEFORE, IT'S CREATED
4 ON THE DAY WITH THE CARSON I.P. ADDRESS WITH THE
5 ERICSON98, WITH THE CONNECTION TO THE NAVY. IT DOESN'T
6 WORK.

7 WHAT ELSE IS NOT REASONABLY IN DISPUTE? IT
8 IS NOT REASONABLY IN DISPUTE THAT ERIC SOLICITED THE
9 E-MAILS, SOLICITED SONIA'S MURDER ON E-MAIL.

10 IT'S NOT REASONABLY IN DISPUTE ROMERO WAS
11 IN SOUTHERN CALIFORNIA THE WEEK OF THE SALON INCIDENTS.

12 I UNDERSTAND THE EVIDENCE SHOWED HE FLEW
13 INTO ONTARIO, AND NOT L.A.X. I KNOW THERE'S ONE JUROR
14 GOING "HE MISSED THAT ONE." I DIDN'T HAVE A GOOD
15 VISUAL, SO THAT REPRESENTS SOUTHERN CALIFORNIA, NOT
16 L.A.X. ITSELF.

17 THAT'S NOT IN DISPUTE. IN FACT, THAT'S
18 BEEN STIPULATED TO.

19 ROMERO LIED TO NCIS ABOUT THE TIGER CRUISE.
20 AGAIN, NOT REASONABLY IN DISPUTE. THAT'S WHAT WE HAVE.
21 WE HAD THE STATEMENTS FROM THE NCIS INVESTIGATORS.

22 ROMERO WAS NEAR THE SALON DURING THE 4/17
23 INCIDENT. NOW, IN THE END, BOTH COUNSEL HAVE STIPULATED
24 TO THE PHONE RECORDS. BUT WHAT THEY'RE SAYING IS
25 LISTEN, THEY DON'T PROVE ANYTHING.

26 BUT THEY DO. THEY DO. IT IS NOT
27 REASONABLE, GIVEN THE EVIDENCE THAT YOU HAVE IN THIS
28 CASE, GIVEN MR. ROMERO'S STATEMENTS ABOUT HIS PHONE,

1 WHEN HE WAS CALLING, WHEN THE CALLS OCCURRED. THAT IS
2 NOT REASONABLY IN DISPUTE.

3 ON THE 17TH, WE HAVE GOT HIS CALLS GOING TO
4 OTHER INDIVIDUALS THAT HE KNOWS, AT THE SAME TIME THESE
5 EVENTS ARE OCCURRING. NO ONE HAS HIS PHONE. 4/19.
6 SAME ISSUE. SAME THING. BUT MORE THAN THAT, REMEMBER,
7 THIS IS NOT JUST CELL TOWER INFORMATION.

8 SONIA HAS HIS PHONE NUMBER. HOW CAN SHE
9 HAVE HIS PHONE NUMBER? SHE DOESN'T KNOW WHO HE IS.
10 NOBODY COULD HAVE GIVEN IT TO HER. SO YOU KNOW EVEN
11 WITHOUT THE CELL TOWER RECORDS, YOU KNOW THAT PERSON IS
12 MR. ROMERO BECAUSE SONIA RIOS HAD THE PHONE NUMBER.

13 HOW DO WE KNOW SHE GAVE IT TO HIM? THERE
14 IT IS. HER WRITING. SHE GAVE THAT ALMOST FROM THE
15 GRAVE. HELPING SOLVE HER OWN CASE. THERE IT IS. HER
16 WRITING DOWN OF THAT PHONE NUMBER.

17 DEPUTY FARMAR SAW IT. PHYSICALLY HIMSELF
18 SAW IT ON THE CALLER I.D. WE'VE GOT THE PHYSICAL
19 DESCRIPTION WHICH MATCHES ROMERO TO A "T." SHE
20 DESCRIBES A MALE HISPANIC, VERY LIGHT COMPLEXION.
21 SHORT, DARK HAIR.

22 SHE EVEN HAS "MILITARY" FOR THE STYLE OF
23 HIS HAIR. SHE GOT THE AGE RIGHT. SO YOU HAVE TO THINK
24 THAT APPARENTLY, FOR MR. ROMERO TO NOT BE GUILTY, YOU'D
25 HAVE TO COME UP WITH APPARENTLY SOMEBODY WHO LOOKS JUST
26 LIKE HIM, GRABBED HIS PHONE, WENT DOWN TO THOSE
27 LOCATIONS ON THOSE THREE DATES, APPARENTLY WAS CAREFUL
28 ENOUGH TO ALSO CALL HIS FATHER-IN-LAW AND HAVE

1 CONVERSATIONS WITH HIM. BECAUSE THEY'RE COMPLETED
2 CALLS. APPARENTLY FRAMED MR. ROMERO.

3 SOMEHOW GET THE PHONE BACK TO HIM. DOES
4 THAT MAKES SENSE? IT DOESN'T.

5 THE DAY AND TIME AND LOCATION OF THE MURDER
6 IS NOT IN DISPUTE. WE KNOW THAT SONIA MADE HER LAST
7 CALL AT APPROXIMATELY 8:03. WE KNOW SHE WAS SHOT BEHIND
8 WITH A 9-MILLIMETER FIREARM. SHE WAS EXECUTED, LADIES
9 AND GENTLEMEN. BRUTALLY EXECUTED. NEVER SAW IT COMING.

10 AND SONIA RIOS, IT'S NOT LIKE THE AVON LADY
11 GOING DOOR TO DOOR. SHE OPENED IT UP, AND WOW, WHO
12 WOULD HAVE THOUGHT THIS COULD HAPPEN? SONIA KNEW HER
13 KILLER. SHE TRUSTED HER KILLER BECAUSE SHE WOULD NEVER
14 HAVE TURNED HER BACK ON A STRANGER. NOT WITH THE
15 EVIDENCE THAT YOU HAVE.

16 NO FORCED ENTRY INTO THE HOME. SHE HAS
17 SURVEILLANCE CAMERAS, WHICH JOHN BOURDEAU TOLD YOU SHE
18 USED. SHE'S BEING LABELED IN THE MEDIA AS THE BLACK
19 WIDOW OF LOMITA. SHE'S REALLY NOT INTERESTED IN PEOPLE
20 COMING OVER SHE DOESN'T KNOW.

21 WE KNOW THE KILLERS HAD ACCESS TO THE
22 HOUSE, OR WERE ALLOWED IN. THAT'S ERIC DELACRUZ. WELL,
23 THAT'S NOT JOHN BOURDEAU. AND THERE'S NO EVIDENCE
24 WHATSOEVER JOHN BOURDEAU WAS INVOLVED. BUT IT'S REALLY
25 SAD THAT HE DIDN'T EVEN HAVE A KEY TO HIS OWN MOM'S
26 HOUSE.

27 SONIA NEVER PERCEIVED A THREAT. SHE NEVER
28 SAW IT. SHE WAS EXECUTED FROM BEHIND. NEVER SAW IT

1 COMING.

2 LISTEN, SHE LIVED A -- LOTS OF MISTAKES.
3 SHE DIDN'T DESERVE THAT, LADIES AND GENTLEMEN. NO MONEY
4 OR PROPERTY WAS TAKEN. ALL RIGHT.

5 THE MOTIVE FOR THIS CRIME, THERE'S \$1,700
6 IN HER PURSE. THE MOTIVE FOR THIS CRIME WAS SOMEBODY
7 WANTED HER DEAD. AND THAT SOMEBODY WAS ERIC DELACRUZ.

8 AND THE PERSON THAT HE WAS USING TO DO IT
9 WITH HIM WAS FERNANDO ROMERO.

10 ALL RIGHT.

11 LET'S TALK ABOUT INTENTIONALLY MAKING FALSE
12 OR MISLEADING STATEMENTS. NOW, I COULD BE UP HERE FOR
13 HOURS AND HOURS IF I WERE TO GO THROUGH ALL OF THE
14 INCONSISTENCIES, LIES, ET CETERA.

15 THE REASON THAT WE HAVE THOSE PRIOR
16 STATEMENTS THAT YOU SAW, THE REASON WHY WE HAVE CLIPS OF
17 WITNESSES, THE REASON WHY WE ASK -- THE DETECTIVES ASK
18 THE SAME QUESTIONS AND I PLAY THEM ALL IS BECAUSE PEOPLE
19 MAKE MISTAKES. THEY LIE. AND THE BIGGEST LIARS IN THIS
20 CASE? ERIC DELACRUZ, FERNANDO ROMERO, MARIA PEREZ,
21 JOENEL DELACRUZ.

22 IF A DEFENDANT MADE A FALSE OR MISLEADING
23 STATEMENT RELATING TO THE CHARGED CRIME KNOWING THE
24 STATEMENT WAS FALSE OR INTENDING TO MISLEAD, THAT MAY
25 SHOW YOU HE WAS AWARE OF HIS GUILT, AND YOU MAY CONSIDER
26 IT IN YOUR DETERMINATION.

27 THE NOTES ARE A SECURITY BLANKET SO I HAVE
28 THEM AND I KNOW WHERE I'M GOING. BUT I WILL FREQUENTLY

1 GET AHEAD OF THEM, THEN I HAVE TO CATCH UP AND SEE WHERE
2 I AM SO I DON'T MISS SOMETHING. SO I APOLOGIZE.

3 YOUR HONOR, THE COURT WAS LOOKING -- I SAW
4 COURT LOOKING OVER HERE.

5 WAS COURT PLANNING TO BREAK?

6 THE COURT: NO, YOU'RE FINE.

7 MR. LEWIN: OKAY.

8 THE COURT: YOU'VE GOT FOUR MINUTES UNTIL YOU HIT
9 THE HOUR MARK.

10 MR. LEWIN: OKAY. THANK YOU, YOUR HONOR.

11 SOME OF THE MOST INCRIMINATING EVIDENCE IN
12 THIS CASE, IT CAME OUT OF THE DEFENDANTS' OWN MOUTHS.
13 WHEN WE TALK ABOUT ERIC DELACRUZ, IT'S INTERESTING.
14 THERE WERE A FEW OCCASIONS DURING HIS INTERVIEWS, VERY
15 FEW, WHERE ANYTHING REMOTELY RELATED TO THE TRUTH CAME
16 OUT.

17 BUT THERE WERE A COUPLE OF EXCEPTIONS. AND
18 THEY KIND OF ILLUSTRATE THE POINT THAT EVEN A PERSON,
19 YOU KNOW, WEAVING THIS WEB OF DECEIT, THAT EVERY ONCE IN
20 A WHILE SOMETHING TRUTHFUL COMES OUT.

21 SO THE DEFENDANT WAS TRYING TO FRAME JOHN
22 BOURDEAU, WAS THE CONSISTENT THEME. BUT IN TALKING
23 ABOUT JOHN BOURDEAU, HE MAKES A COMMENT ABOUT
24 COINCIDENCES THAT REALLY RINGS TRUE.

25

26 (AUDIO RECORDING PLAYED.)

27

28 MR. LEWIN: THERE ISN'T SUCH THING AS COINCIDENCE.

1 ERIC DELACRUZ DIDN'T MEAN TO BE TALKING ABOUT HIMSELF.
2 BUT YOU KNOW WHAT? HE WAS. WHAT DOES HE SAY? MADE
3 ANOTHER VERY INTERESTING OBSERVATION.

4 AND IT REALLY DESCRIBED HOW HE RESPONDED TO
5 THE DETECTIVES, AND HOW FERNANDO ROMERO RESPONDED TO
6 DETECTIVES. HE TALKED ABOUT -- THIS IS THE WINDOW INTO
7 HIS THINKING. ABOUT HOW KILLERS RESPOND TO QUESTIONING.

8

9 (AUDIO RECORDING PLAYED.)

10

11 MR. LEWIN: THAT ABOUT WRAPS UP THE TRUE
12 STATEMENTS THAT ERIC DELACRUZ MADE WITH RESPECT TO THIS
13 INVESTIGATION.

14 NOW, HE WAS CONFRONTED WITH THE FACT THAT
15 THE SHIP WAS NOT IN HAWAII. WHEN SONIA RIOS --
16 REMEMBER, HE SAYS HE FOUND OUT ABOUT THE INCIDENT AT THE
17 SALON WHILE THE SHIP WAS STILL IN HAWAII. BUT IT HADN'T
18 HAPPENED, YET.

19 AND THIS CLIP, YOU CAN HEAR THE NERVOUSNESS
20 IN HIS VOICE. THE DETECTIVES, THEY GOT HIM.

21

22 (AUDIO RECORDING PLAYED.)

23

24 MR. LEWIN: YEAH, THAT WAS A MISTAKE. AGAIN,
25 THERE'S NO REASONABLE EXPLANATION FOR THAT. THERE'S NO
26 WAY AROUND IT. THAT STATEMENT ALONE, THAT STATEMENT
27 ALONE HANGS ERIC DELACRUZ.

28 THERE ARE LITERALLY ABOUT 50 PIECES OF

1 EVIDENCE AGAINST MR. DELACRUZ THAT ANY TWO OF THEM WOULD
2 BE ENOUGH.

3 ALL RIGHT. MARIA DELACRUZ. WHERE DO I
4 START? SHE'S IN THE U.S. ARMY. SHE GREW UP IN THE
5 U.S.; GRADUATED FROM HIGH SCHOOL; SHE ATTENDED LONG
6 BEACH STATE.

7 AND YOU KNOW WHAT, SHE SPOKE ENGLISH PRETTY
8 WELL WHEN SHE TALKED TO THE DETECTIVES. BUT WHEN I HAD
9 HER ON THE STAND, ANY QUESTION THAT SHE DIDN'T WANT TO
10 ANSWER, SHE COULDN'T UNDERSTAND.

11 AM I STANDING UP HERE TELLING YOU THAT I
12 DON'T UNDERSTAND WHY MARIA DID WHAT SHE DID? HEY, SHE
13 WAS IN A TERRIBLE POSITION. SHE LOVES HER HUSBAND. AND
14 WHAT DID SHE SAY?

15 WELL -- COULDN'T GET THE STORY STRAIGHT
16 TWICE ABOUT THE NIGHT OF THE MURDER WHEN THEY LEFT FOR
17 APPLE VALLEY; WHY THEY LEFT FOR APPLE VALLEY; WHAT ROUTE
18 THEY TOOK; HOW LONG THEY WERE THERE; WHY THEY LEFT. THE
19 CELL PHONE CONVERSATION; HOW SHE FOUND OUT ABOUT THE
20 MURDER.

21 THERE WAS ALMOST NOTHING THAT SHE TESTIFIED
22 TO THAT SHE GAVE THE SAME STORY TWICE. MOST THE TIME
23 SHE GAVE THREE, FOUR DIFFERENT STORIES. AND YOU COULD
24 SEE ON HER FACE, IF THERE'S EVER A WITNESS WHO SHOULDN'T
25 PLAY POKER, IT'S HER. THE LIES JUST FLY OFF HER FACE.
26 SHE COULDN'T HANDLE IT.

27 ALL RIGHT.

28 WHAT WAS HER LIMITATION? WHAT WAS HER

1 ISSUE? SHE WAS TRYING TO PROTECT DEFENDANT, TO THE
2 POINT OF PERJURING HERSELF. I'M NOT GOING TO STAND UP
3 HERE AND SAY YOU KNOW WHAT, SHE WAS MISTAKEN. SHE LIED.
4 SHE COMMITTED PERJURY. SHE LIED, AND SHE LIED
5 CONTINUALLY.

6 WHAT'S INTERESTING IS THAT IN THE END,
7 DESPITE HER BEST EFFORTS, SHE COULDN'T PULL IT OFF. SHE
8 FINALLY ADMITTED THAT ERIC HAD NOT BEEN WITH HER THAT
9 NIGHT.

10

11 (VIDEOTAPE PLAYED.)

12

13 MR. LEWIN: SO THIS WAS -- SHE GAVE WHAT I'LL CALL
14 AN ABBREVIATED VERSION OF THE TRUTH.

15

16 (VIDEOTAPE PLAYED.)

17

18 MR. LEWIN: THAT WAS ABOUT AS MUCH TRUTH TO BE GOT
19 FROM HER. AND IT WAS LIKE PULLING TEETH, AS YOU ALL
20 SAW.

21

22 NOW, EVENTUALLY, SHE DID ADMIT, AS WE SAID,
23 THEY HAD NOT BEEN IN APPLE VALLEY FOR TWO DAYS. AND YOU
24 TRY DIFFERENT TACKS WITH WITNESSES. SHE WOULDN'T SAY
25 SHE WAS LYING.

26

27 BUT SHE WOULD AGREE WHEN I WOULD SAY, "SO
28 IS THAT SOMETHING THAT YOU SAID, SO YOU DID SAY THAT?
YOU JUST CAN'T -- IT'S NOT TRUE, BUT YOU CAN'T REALLY
EXPLAIN IT?"

1 YEAH, SHE WOULD AGREE ON THAT. BY THE WAY,
2 WE CALL WHAT SHE'S ABOUT TO SAY -- WE CALL THAT A LIE.

3

4 (VIDEOTAPE PLAYED.)

5

6 MR. LEWIN: AGAIN, THAT TRULY ENDS THE TRUTHFUL
7 TESTIMONY. NOW, SHE ALSO SAID -- YOU LOOK AT HER FACE
8 AND HER DEMEANOR, THAT HER MAIN CONCERN, WHAT WAS HER
9 MAIN CONCERN WHEN SHE TESTIFIED? HER MAIN CONCERN WAS
10 WHAT CAN I DO TO PROTECT ERIC.

11

12 (VIDEOTAPE PLAYED.)

13

14 MR. LEWIN: NOW, IT'S INTERESTING, THE URGE TO
15 PROTECT A LOVED ONE DIDN'T REALLY EXTEND TO ERIC
16 DELACRUZ. BECAUSE IF YOU NOTICED DURING HIS INTERVIEW,
17 WHEN PUSH CAME TO SHOVE, WHEN HE WAS REALLY GETTING
18 PRESSED, MAN, HE THREW HIS WIFE UNDER THE BUS SO FAST.

19

20 (AUDIO RECORDING PLAYED.)

21

22 MR. LEWIN: SO IN THE END, WHEN PUSH COMES TO
23 SHOVE, "YEAH, I'M -- I DIDN'T KNOW, I'M JUST HERE ON THE
24 WEEKENDS. I DON'T KNOW, REALLY KNOW WHAT SHE WAS
25 DOING."

26

27 NOW, ERIC DELACRUZ DID FINALLY ADMIT, AND
28 IT WAS VERY SUBTLE, HE DID FINALLY ADMIT HE SENT THE
E-MAILS.

1 (AUDIO RECORDING PLAYED.)

2

3 MR. LEWIN: SO THE ONE ADMISSION, WHEN CONFRONTED
4 WITH THE NAVY RECORDS, THE COMPUTER RECORDS, ET CETERA,
5 ERIC DELACRUZ FINALLY SAYS "YEAH, YOU KNOW, I GUESS I
6 DID SEND THOSE E-MAILS."

7 NOT MUCH OF AN ADMISSION, LADIES AND
8 GENTLEMEN. THAT'S PRETTY MUCH -- THE GUN IS SMOKING.
9 SOMEONE SEES YOU, AND YOU GO "YEAH, I SHOT IT."

10 ALL RIGHT. JOENEL DELACRUZ. WHERE DO I
11 START HERE? HE MIGHT HAVE BEEN MORE DISHONEST THAN HIS
12 SISTER-IN-LAW. NO MATTER WHAT QUESTION HE WAS ASKED, IT
13 WAS ALWAYS -- MARIA CAME IN AND SHE LIED. HOW CAN I TRY
14 TO HELP MY HUSBAND TRY TO TELL A BUNCH OF LIES.

15 JOENEL TAKES A DIFFERENT APPROACH. YOU
16 KNOW, I'M GOING TO COME IN THERE AND SAY I DON'T
17 REMEMBER, I CAN'T RECALL, OR I DON'T KNOW.

18 IF -- AND THEY DON'T PERMIT IT; I'M SURE
19 SOME OF YOU WOULD HAVE LIKED IT -- IF THERE WERE JUROR
20 DRINKING GAMES, OKAY, AND YOU EACH HAD TO TAKE A SHOT
21 EVERY TIME JOENEL DELACRUZ SAID "I DON'T KNOW, I DON'T
22 REMEMBER, I CAN'T RECALL," YOU ALL WOULD HAVE BEEN DRUNK
23 AND ON THE FLOOR ABOUT HALF AN HOUR INTO HIS TESTIMONY.

24 NOW, IT'S NOT HARD TO SEE WHY HE IS
25 DEFENDING HIS BROTHER. HE LOVES HIS BROTHER BEYOND
26 ANYTHING. I'VE GOT TO GIVE HIM AT LEAST CREDIT FOR
27 THAT.

28 WHAT DID HE SAY WHEN BROTHER IS ARRESTED?

1 WHAT DOES HE TELL DETECTIVE RODRIGUEZ? "I WANT TO GO
2 WITH HIM."

3

4 (AUDIO RECORDING PLAYED.)

5

6 MR. LEWIN: THAT ABOUT SAYS IT. WHAT IS HIS
7 TESTIMONY? HE CANNOT REMEMBER IF HIS BROTHER WAS ON THE
8 USS RONALD REAGAN. SAYS "WE DIDN'T HAVE KEYS TO SONIA'S
9 HOUSE." CONFLICTING STATEMENTS ABOUT HIS KNOWLEDGE OF
10 SONIA'S ASSAULT WITH THE "48 HOURS" ISSUE.

11 NEVER ASKED HIS BROTHER ANYTHING ABOUT THE
12 MURDER. NEVER ASKED, EVEN WHEN HE'S ON "48 HOURS," OR
13 POINTING CAMERAS AT THE BROTHER. DOES NOT KNOW -- HE
14 DON'T KNOW THEIR WHEREABOUTS THE NIGHT OF THE MURDER.

15 AND HE HAD A SELECTIVE MEMORY. AND WHEN
16 HE'S ASKED IN ESSENCE, OKAY, YOU KNOW WHAT, HE'S
17 CONFRONTED ABOUT HIS PRIOR INCONSISTENT STATEMENT TO
18 INVESTIGATORS ABOUT HOW HE FOUND OUT THAT SONIA WAS
19 DEAD. AND APPARENTLY, HE HAS AN IDEA. HERE'S WHAT HE'S
20 GOING TO SAY.

21

22 (VIDEOTAPE PLAYED.)

23

24 THE COURT: MR. LEWIN, YOU HAVE ABOUT 20 MINUTES
25 LEFT ON YOUR FIRST ALLOCATION OF TIME. THIS IS THE TIME
26 WE WOULD NORMALLY BREAK.

27 MR. LEWIN: FINE, YOUR HONOR.

28 THE COURT: DO YOU WANT TO FINISH?

1 MR. LEWIN: NO, THAT'S FINE.

2 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
3 DON'T FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE UNTIL
4 THE MATTER IS SUBMITTED TO YOU.

5 REMEMBER THE ADMONITIONS.

6 WE'LL SEE YOU IN 15 MINUTES.

7 THANK YOU.

8
9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT, OUT
11 OF THE PRESENCE OF THE JURY:)

12
13 THE COURT: ANYTHING ELSE WE NEED TO ADDRESS
14 OUTSIDE THE PRESENCE OF THE JURY?

15 MR. LEWIN: NO, YOUR HONOR.

16 THE COURT: COUPLE OF THINGS.

17 FIRST, FOR OUR L.A. TIMES PHOTOGRAPHER?
18 I'M GOING TO ASK YOU NOT TO LEAN OVER THE JURY BOX AS
19 YOU'RE TRYING TO GET A SHOT AROUND THE VIDEOGRAPHER.

20 I UNDERSTAND THAT YOU HAVE A VERY LIMITED
21 ANGLE. BUT YOU'RE A LITTLE TOO CLOSE TO THE JURORS AT
22 THAT POINT. SO TRY AND GIVE THEM A LITTLE MORE SPACE.

23 COUNSEL, DURING PART OF MR. LEWIN'S CLOSING
24 ARGUMENT, I COULD HEAR -- I WON'T CALL IT SNICKERS, BUT
25 NOISE FROM THE AUDIENCE SECTION. I THINK IT'S IN THE
26 FRONT ROW.

27 MR. JOENEL DELACRUZ WAS HERE. THE BAILIFF
28 IS NODDING HIS HEAD YES. I DON'T KNOW IF ONE OF THE

1 DEFENSE ATTORNEYS WANTS TO TALK TO HIM.

2 MR. LEVINSON: I'LL TALK TO HIM.

3 THE COURT: HE WON'T BE ALLOWED BACK IF THAT
4 CONTINUES.

5 MR. LEVINSON: I THINK THIS IS ONLY THE SECOND
6 TIME HE'S BEEN HERE. I'LL TAKE CARE OF IT.

7 THE COURT: I KNOW IT'S DIFFICULT FOR HIM, BUT HE
8 NEEDS TO UNDERSTAND THAT HE IS JUST AN OBSERVER.

9 LET'S PROCEED. THANK YOU.

10 MR. LEWIN: THANK YOU, YOUR HONOR.

11

12 (RECESS.)

13

14 THE COURT: BACK ON THE RECORD IN THE DELACRUZ AND
15 ROMERO MATTER. EACH DEFENDANT IS PRESENT WITH THEIR
16 RESPECTIVE COUNSEL. THE PEOPLE ARE PRESENT. THE
17 INVESTIGATING OFFICER IS PRESENT.

18 COUNSEL, IS ANYTHING WE NEED TO ADDRESS
19 OUTSIDE THE PRESENCE OF THE JURY?

20 MR. LEWIN: NO, YOUR HONOR.

21 MR. CREARY: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT.

23 LET'S GO AHEAD AND BRING OUR JURORS IN.

24 IS THE TIMES PHOTOGRAPHER COMING BACK?

25 OKAY.

26

27 (THE FOLLOWING PROCEEDINGS

28 WERE HELD IN OPEN COURT, IN

1 THE PRESENCE OF THE JURY:)

2

3 THE COURT: AT THIS TIME, ALL THE LADIES AND
4 GENTLEMEN OF THE JURY ARE PRESENT, INCLUDING OUR FOUR
5 ALTERNATE JURORS. EACH DEFENDANT IS PRESENT WITH THEIR
6 RESPECTIVE COUNSEL. THE PEOPLE ARE PRESENT. THE
7 INVESTIGATING OFFICER IS PRESENT.

8 MR. LEWIN, YOU MAY CONCLUDE WITH YOUR
9 CLOSING ARGUMENT. YOU HAVE 20 MINUTES LEFT OF THE
10 ORIGINAL 90 MINUTES THAT YOU ASKED TO RESERVE.

11 MR. LEWIN: YOUR HONOR, CAN WE JUST WAIT TO START
12 UNTIL I GET THE --

13

14 (PAUSE IN PROCEEDINGS.)

15

16 THE COURT: DID YOU WANT THE LIGHTS OUT?

17 MR. LEWIN: PLEASE.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MR. LEWIN: I AM NOT GOING TO GO THROUGH -- I'VE
20 GOT NUMEROUS CLIPS OF MR. ROMERO MAKING THE POINT THAT
21 HE WAS INCONSISTENT IN HIS STATEMENTS REGARDING WHY HE
22 CALLED SONIA'S SALON; WHEN HE CALLED SONIA'S SALON; THE
23 REASON FOR CALLING SONIA'S SALON; HOW MANY TIMES HE
24 CALLED SONIA'S SALON.

25 SO RATHER THAN TAKE -- THESE CLIPS TAKE
26 TIME, AND -- I AM ON A BIT OF A TIME CRUNCH, HERE, SO
27 I'M NOT GOING TO PLAY THEM. THERE ARE A FEW I AM GOING
28 TO PLAY.

1 HE DENIED EVER HAVING A CONVERSATION WITH
2 SONIA. HE SAID THAT IN ESSENCE, HE HAD JUST CALLED UP.
3 AND HE SAID IT WAS A WRONG NUMBER. BUT HE ALSO SAID AT
4 TIMES THAT HE HAD GONE THERE TO -- CALLED TO TRY TO GET
5 AHOLD OF ERIC DELACRUZ.

6 WE KNOW THAT'S NOT TRUE, BECAUSE HE HAS
7 ERIC'S NUMBERS. THEY'RE TALKING THAT WHOLE WEEK. AND
8 WE ALSO KNOW WHAT'S REALLY IMPORTANT IS THAT MR. ROMERO
9 LIVES NOWHERE NEAR THIS AREA.

10 THIS ISN'T A QUESTION OF HIM GOING 5 MILES
11 OUT OF HIS WAY. REMEMBER, HE COMES IN TO LOMITA. HE IS
12 THERE FOR VERY SHORT PERIODS OF TIME. ON ALL THREE
13 DATES. COMES IN, DOES WHAT HE NEEDS TO DO, AND LEAVES.

14 ROMERO DENIED ASKING SONIA FOR A HAIRCUT.
15 IN FACT, HE DENIED ANY CONVERSATION WITH SONIA.

16

17 (AUDIO RECORDING PLAYED.)

18

19 MR. LEWIN: NOW, WE CAN SKIP THE NEXT SLIDE.

20 WHEN ERIC DELACRUZ WAS CONFRONTED WITH THE
21 SITUATION REGARDING THE SALON INCIDENT, ERIC -- IN
22 ESSENCE, HE LIED LIKE HE DID WITH MOST OF THE QUESTIONS
23 HE WAS ASKED.

24 AND HE DESCRIBED -- IF YOU REMEMBER, HE
25 WENT THROUGH THE CONVERSATION THAT HE HAD WITH ROMERO
26 WHEN HE APPARENTLY FIRST REALIZED OH, MY GOSH, YOU'RE
27 THE ONE WHO CALLED. AND I'LL JUST QUOTE IT.

28 HE SAYS: "LIKE, OH, NO, THE FIRST TIME I

1 GOT MAD, LIKE WHO THE FUCK IS THIS, BLAH, BLAH, BLAH.
2 LIKE WHO THE FUCK IS THIS, YOU KNOW, HE TELLS ME BACK,"
3 THE PROFANITY CONTINUES.

4 "WELL, YOU CALLED MY GRANDMA'S SALON? HE'S
5 LIKE WHAT SALON? THEN I GAVE HIM, I GAVE HIM THE NUMBER
6 AND THE NAME SONIA RISKEN, BLAH, BLAH, BLAH. AND HE'S
7 LIKE WHO'S THIS? IT'S ERIC. THEN HE'S LIKE OH, IT'S
8 FERNANDO."

9 THAT'S APPARENTLY, EVEN THOUGH THEY'VE BEEN
10 CALLING EACH OTHER REPEATEDLY, THEY'RE SHOCKED WHEN THE
11 NUMBER COMES UP.

12 BY THE WAY, WE ALL HAVE CELL PHONES. AND
13 YOU KNOW, AS MUCH AS THEY'RE CALLING EACH OTHER, AS SOON
14 AS HE SEES THE NUMBER AND PUNCH IT, IT'S GOING TO SAY
15 FERNANDO'S CELL. IT'S GOING TO SAY ERIC'S CELL.

16 SO AGAIN, THIS IS ABSOLUTELY ABSURD.

17 IT'S INTERESTING. AND WE KNOW -- WHY DID
18 THIS HAPPEN? WHY DID THEY MAKE THIS MISTAKE? WHY DID
19 BOTH ERIC AND FERNANDO LIE ABOUT THESE CALLS? THE
20 REASON IS THEY DON'T KNOW, EITHER ONE OF THEM, THAT
21 SONIA HAS FILED A POLICE REPORT.

22 WHAT THEY SAID.

23

24 (AUDIO RECORDING PLAYED.)

25

26 MR. LEWIN: MR. ROMERO DIDN'T KNOW THAT. AND
27 THAT'S VERY CLEAR. AGAIN, ONE OF THE FEW THINGS THAT HE
28 SAID THAT WAS PROBABLY ACCURATE.

1 AND THE OTHER THING THAT WAS JUST PRICELESS
2 WAS THE CONVERSATION -- AND WE CAN SKIP THE NEXT SLIDE
3 AS WELL. THE CONVERSATION WHERE HE TALKS ABOUT THE CELL
4 TOWERS.

5 IN ESSENCE, THEY GO THROUGH AND THEY
6 EXPLAIN TO HIM EVERY TIME YOUR CELL PHONE -- IT PINGS ON
7 A TOWER. AND THEN THE MONEY LINE: "YOU DIDN'T KNOW
8 THAT, DID YOU?" "NO, I DIDN'T."

9 OBVIOUSLY. AGAIN, AS WE SAID BEFORE, THE
10 DEFENDANTS IN THIS CASE BOTH MADE A LOT OF MISTAKES.
11 BUT THOSE MISTAKES DON'T MEAN THAT THEY DIDN'T COMMIT
12 THESE CRIMES. THOSE MISTAKES PROVE THAT THEY COMMITTED
13 THESE CRIMES.

14 EVEN WHEN ROMERO IS CONFRONTED WITH THE
15 CELL RECORDS, CONFRONTED WITH THE RECORDS, HE STARTS
16 ADMITTING YEAH, THAT HE'S NERVOUS. BUT HE SAYS NOPE, HE
17 DIDN'T MAKE THOSE CALLS.

18 SKIP THE NEXT SLIDE, PLEASE.

19 WHEN HE IS CONFRONTED WITH THE CALLS TO THE
20 DEFENDANT ON THE NIGHT OF THE MURDER, THEY GO THROUGH
21 AND THEY TELL HIM YOU KNOW, IT'S COMING UP. YOU'RE
22 HITTING OFF THE CELL PHONE RIGHT BY THE HOUSE.

23 AND AGAIN, HE SAYS "HEY, CAN I SEE THE
24 NUMBER?" HE SEES THE NUMBER. AND HE DENIES IT. IT'S
25 NOT HIM. AND THEN FINALLY, FINALLY, WE GET AN
26 EXPLANATION AS TO OKAY, HERE'S WHAT HAPPENED.

27

28 (AUDIO RECORDING PLAYED.)

1 MR. LEWIN: NOW WE GET HIS FINAL EXPLANATION FOR
2 WHAT HAPPENED.

3
4 (AUDIO RECORDING PLAYED.)

5
6 MR. LEWIN: WHAT HE SAID WAS THAT -- THEY'RE ASKED
7 "WHY ARE YOU LYING ABOUT BEING IN LOMITA THAT DAY?"

8 SAYS, "I MEAN, THAT'S -- I'M NOT, YOU KNOW,
9 I DON'T KNOW WHAT YOU GUYS WANT ME TO" SAY.

10 "THEN EXPLAIN THAT TO ME."

11 "I DON'T KNOW, LIKE I'M NOT GONNA SAY
12 ANYTHING THAT I DON'T KNOW. PROBABLY SOMEONE USED MY
13 CELL PHONE OR SOMETHING. I HAVE NO IDEA. BECAUSE I
14 DON'T KNOW WHY IT SHOWS THAT I WAS IN LOMITA, BECAUSE
15 I'VE NEVER BEEN THERE."

16 YOU HAVE TO ASK YOURSELF DOES THAT ADD UP
17 TO SOMETHING THAT'S REASONABLE. DOES THAT MAKE SENSE.
18 IS THAT SUPPORTED BY YOUR COMMON SENSE.

19 ALL RIGHT.

20 LUIS MARQUEZ. LUIS MARQUEZ CONFIRMED ALL
21 THE EVENTS OF MAY 14TH THROUGH MAY 16TH. DELACRUZ IS
22 CALLING HIM. REMEMBER, THAT CALL TAKES PLACE, HE'S
23 TRYING TO BE SLICK. HE'S USING A DIFFERENT PHONE. HE'S
24 USING DIFFERENT NUMBERS. BUT IT DOESN'T WORK.

25 HE SAYS THAT HE'S PRESENT WHEN HE HAS --
26 DELACRUZ HAS ROMERO CALL HIM ON THE PHONE. AND WHAT
27 HAPPENS? ROMERO GETS OFF THE PHONE, SAYS "NCIS WANTS TO
28 TALK ABOUT -- THE CALL ABOUT, YOU KNOW, I CALLED ERIC'S

1 GRANDMOTHER." AND HE'S NERVOUS. HE'S UPSET.

2 AND MARQUEZ WAS ASKED "WELL, WOULD YOU HAVE
3 BEEN NERVOUS?" "I WOULDN'T HAVE BEEN NERVOUS IF THEY
4 ASKED ME ABOUT THAT. I DIDN'T DO ANYTHING WRONG."

5 THE EVIDENCE SHOWS MR. ROMERO WAS NERVOUS
6 BECAUSE THEY ARE CLOSING IN ON HIM. NOW, WHAT ELSE DO
7 WE FIND OUT? WE FIND OUT FROM MR. MARQUEZ, WHEN THEY
8 ARE ATTEMPTING TO GET THE EVIDENCE TO PROVE THESE
9 CALLS -- HE COMES BACK AND HE TELLS THE STORY, HE'S
10 PHYSICALLY SICK. ABOUT ERIC DELACRUZ LITERALLY
11 SOLICITING -- THE MAN'S COMPLAINING ABOUT HIS EX-WIFE.
12 ABOUT PROBLEMS.

13 BOY, MR. DELACRUZ, HE'S NOTHING IF NOT A
14 PROBLEM SOLVER. "HEY, YOU KNOW WHAT? I CAN WHACK HER
15 FOR YOU," BASICALLY. "I CAN HAVE HER KILLED. I'VE GOT
16 SOMEBODY WHO CAN DO IT FOR ME." I BELIEVE HE SAYS
17 LOS ANGELES.

18 MARQUEZ IS IN SHOCK. NOW, MR. LEVINSON
19 SPENT A LOT OF TIME, IF YOU REMEMBER, "WELL, IT WAS
20 PROBABLY LOUD WHERE YOU WERE WORKING."

21 "NO, WE WEREN'T WORKING."

22 "I MEAN, IT WAS PROBABLY LOUD ON THE
23 CARRIER, A LOT OF STUFF GOING ON?

24 "NO."

25 "WELL, THE ELEVATORS ARE LOUD; RIGHT?"

26 "NO, THERE WAS NOBODY AROUND."

27 "WELL WERE YOU DRINKING?"

28 "NO."

1 KIND OF STRUCK OUT, THERE. IN THE END,
2 ERIC DELACRUZ SOLICITED THE MURDER OF LUIS MARQUEZ'S
3 WIFE.

4 AND LIKE A GOOD FRIEND, HE OFFERED TO LOAN
5 MARQUEZ MONEY. THEN SAID BASICALLY, IF I RECALL, THAT
6 HE WOULD DO IT, OR COULD DO IT ON CREDIT.

7 MARQUEZ WAS VERY CLEAR. HE WAS NOT JOKING.
8 AND THE OFFER WAS MADE AT TWO DIFFERENT TIMES. DIRECT
9 AND CIRCUMSTANTIAL EVIDENCE. BOTH ARE ACCEPTABLE AS A
10 MEANS OF PROOF. NEITHER IS ENTITLED TO ANY GREATER
11 WEIGHT THAN THE OTHER.

12 WE TALKED ABOUT SUFFICIENCY OF
13 CIRCUMSTANTIAL EVIDENCE. THIS IS THE KEY. IF THERE ARE
14 TWO OR MORE REASONABLE CONCLUSIONS FROM THE EVIDENCE,
15 AND THAT MEANS INFERENCES FROM THE EVIDENCE, THEN YOU
16 HAVE TO ACCEPT THE ONE THAT POINTS TO INNOCENCE.

17 BUT YOU MUST ACCEPT ONLY REASONABLE
18 CONCLUSIONS, AND REJECT THOSE THAT ARE UNREASONABLE.

19 THE ONLY REASONABLE CONCLUSION FOR THE
20 EVIDENCE IN THIS CASE IS THAT THE DEFENDANTS COMMITTED
21 BOTH OF THESE CRIMES.

22 NOW, I SPENT A LOT OF TIME WITH BOOMER.
23 AND SOME OF YOU MIGHT HAVE THOUGHT IT WAS SILLY. IT'S
24 ACTUALLY VERY IMPORTANT. BECAUSE ANYBODY WHO CAN'T LOOK
25 AT THIS VERY SIMPLE CIRCUMSTANTIAL CASE, WHO CAN'T LOOK
26 AT IT AND SAY YOU KNOW WHAT, HERE'S WHAT IT IS -- YOU
27 NOTICE, I KICKED THEM AS JURORS.

28 ALL OF YOU WERE ABLE TO LOOK AT THE

1 EVIDENCE IN THAT CASE. YOU KNOW WHAT? CIRCUMSTANTIAL
2 EVIDENCE, IT CAN PUT SOMEBODY AT YOUR CRIME SCENE.
3 BOOMER. WE KNOW WHERE HE WAS. WE KNOW WHERE HE WAS.
4 WE KNOW WHAT HE DID.

5 AND LADIES AND GENTLEMEN, IN THIS CASE, THE
6 SAME CAN BE SAID. THE DEFENDANTS' GUILT IN THIS CASE IS
7 NOT IN DOUBT. NEITHER ONE OF THEM.

8 NEITHER ONE OF THEIR GUILT IS IN DOUBT. WE
9 KNOW WHAT HAPPENED. WE KNOW, WE KNOW THAT THE TWO OF
10 THEM PLANNED TO MURDER HER, AND WE KNOW THAT ONE OF THEM
11 PULLED THE TRIGGER.

12 WE KNOW SHE WAS TARGETED. THAT'S THE ONLY
13 QUESTION. WHO DID IT? WHO PULLED THE TRIGGER.

14 AND LADIES AND GENTLEMEN, WE KNOW, WE KNOW
15 CIRCUMSTANTIALY IF ERIC DELACRUZ WANTED TO DO HIS OWN
16 DIRTY WORK, HE DIDN'T NEED ROMERO. HE COULD HAVE DONE
17 THIS HIMSELF.

18 BY THE WAY, AND IT'S PROBABLY SCARY FOR YOU
19 TO THINK, IF YOU TAKE ROMERO OUT OF THE WHOLE SITUATION,
20 YOU DON'T HAVE THE PHONE CALLS, MAYBE THEY NEVER FIND
21 OUT ABOUT JOHN BOURDEAU. IT'S SCARY TO THINK.

22 BUT THE EVIDENCE SHOWS, NOT THAT IT
23 MATTERS, THAT MR. ROMERO PULLED THAT TRIGGER. HE PULLED
24 IT.

25 AND BY THE WAY, THE GUN ALLEGATION THAT'S
26 CHARGED? I DIDN'T CHARGE EITHER ONE OF THEM WITH
27 PERSONALLY FIRING THE WEAPON. I CHARGED THAT A GUN WAS
28 USED BY ONE OF THE TWO IN THE CRIME.

1 ALL RIGHT.

2 WE SAID DELACRUZ HAS SONIA'S TRUST. KEY TO
3 HER HOUSE. ACCESS TO HER FIREARMS. BY THE WAY, IT'S
4 INTERESTING THAT THE 9-MILLIMETER THAT'S MISSING, WE
5 HAVE A MISSING FIREARM THAT'S CONSISTENT WITH OUR
6 WEAPON.

7 CROOKS DON'T GO INTO HOUSES, NOT STEAL
8 ANYTHING, FIND A GUN THAT'S IN A CLOSED LOCATION, THEN
9 USE THAT GUN TO KILL SOMEBODY.

10 BUT I'LL TELL YOU WHO DOES DO THAT.
11 SOMEONE WHO IS A PART OF THE FAMILY, KNOWS WHERE THAT
12 GUN IS, AND THEN TAKES IT WITH THEM.

13 WE HAVE THE LIES. WE HAVE THE CONTACTS
14 WITH SONIA. WE HAVE THE DESCRIPTION. REMEMBER, THE
15 SECOND CONTACT WITH SONIA AT THE SALON INVOLVED A
16 FIREARM.

17 THE REASONABLE INFERENCE, BASED ON THE
18 PHONE CONVERSATIONS BETWEEN MR. DELACRUZ AND MR. ROMERO
19 WHILE HE IS AT SEA, FERNANDO ROMERO WAS SUPPOSED TO GET
20 THAT DONE WHILE ERIC WAS AT SEA. WHEN IT DIDN'T HAPPEN,
21 ERIC HAD TO COME HOME AND DO THE JOB HIMSELF.

22 AGAIN, EVEN THOUGH SONIA IS DEAD, EVEN
23 THOUGH WE DON'T HAVE PHYSICAL EVIDENCE THAT PLACES THEM
24 DIRECTLY AT THE SCENE, WE HAVE A CELL PHONE RECORDS --
25 IT'S EASY TO VISUALIZE THAT ONE OR BOTH OF THEM WAS
26 THERE.

27 THEY KILLED HER. THEY MURDERED HER. THEY
28 CONSPIRED TO KILL HER. LADIES AND GENTLEMEN, THEY NEED

1 TO BE HELD ACCOUNTABLE FOR WHAT THEY HAVE DONE.

2 NOW, THE DEFENDANTS ARE GOING TO GET UP IN
3 A MOMENT, ONE OF THEM IS GOING TO GET UP, AND THEY'RE
4 GOING TO GIVE YOU THEIR CLOSING ARGUMENTS.

5 AND I ASK THAT YOU LISTEN, YOU PAY CLOSE
6 ATTENTION. JUST BECAUSE SOMEONE USES THE WORD
7 "REASONABLE DOUBT" DOESN'T MEAN THAT IT'S BEEN SHOWN.

8 SO I WANT YOU TO CRITICALLY ANALYZE
9 EVERYTHING I'VE SAID. AND I WANT YOU TO DO THE SAME
10 THING FOR BOTH COUNSEL.

11 AND AGAIN, I WANT TO THANK YOU FOR YOUR
12 TIME AND FOR YOUR ATTENTION.

13 THANK YOU.

14 THE COURT: THANK YOU, MR. LEWIN.

15 MADAM CLERK, WOULD YOU TURN THE LIGHTS BACK
16 UP, PLEASE?

17 MR. LEWIN: YOUR HONOR, JUST AS A COUNT, I HAVE
18 35 MINUTES LEFT; CORRECT?

19 THE COURT: YOU HAVE 35 MINUTES LEFT.

20 MR. LEWIN: THANK YOU, YOUR HONOR.

21 THE COURT: THANK YOU.

22 WHO WISHES TO GO FIRST FOR THE DEFENSE?

23 MR. CREARY: I'LL GO YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 MR. CREARY. THANK YOU.

26 MR. CREARY: WELL, GOOD AFTERNOON. AND THANK YOU
27 FOR BEING PATIENT WITH US. THIS HAS BEEN A LONG TRIAL.

28 I KNOW THAT THERE'S BEEN A LOT OF EVIDENCE

1 THAT YOU'VE HAD TO SIT THROUGH. AND I APPRECIATE, WE
2 ALL APPRECIATE YOU DOING IT WITH GRACE.

3 NOW, BEFORE I LAUNCH INTO MY CLOSING, I
4 JUST WANT TO -- COUPLE OF THINGS THAT MR. LEWIN BROUGHT
5 UP, AND JUST SORT OF CLARIFY SOME THINGS.

6 FIRST OF ALL, REGARDING THE STIPULATIONS.
7 WE WANT YOU TO UNDERSTAND THAT THE STIPULATIONS THAT
8 WERE AGREED TO IN THIS TRIAL WERE NOT STIPULATIONS AS TO
9 THE GUILT OF OUR CLIENTS.

10 MR. LEWIN MAKES IT SOUND LIKE WE LITERALLY
11 STIPULATED THAT OUR CLIENTS ARE GUILTY. NO. WHAT WE
12 STIPULATED TO WAS THE EXISTENCE OF PHONE RECORDS. AND
13 THAT THESE PHONE RECORDS CORRESPONDED TO PARTICULAR
14 PHONE NUMBERS THAT WERE ASSOCIATED WITH ONE OR BOTH OF
15 THE DEFENDANTS.

16 THAT'S IT. WE DIDN'T STIPULATE THAT THEY
17 USED THOSE PHONES ON THOSE PARTICULAR OCCASIONS AT THOSE
18 PARTICULAR TIMES IN THOSE PARTICULAR LOCATIONS.

19 SO JUST WANT YOU TO UNDERSTAND WHAT THAT
20 STIPULATION MEANS. AND LIMIT TO THAT STIPULATION.

21 SECONDLY, MR. LEWIN TALKS ABOUT REASONABLE
22 INFERENCES. ALL RIGHT. AND THERE'S AN INSTRUCTION
23 YOU'RE GOING TO GET REGARDING REASONABLE INFERENCES, AND
24 WHY THAT'S SO IMPORTANT, AND WHY MR. LEWIN KEEPS
25 BRINGING IT UP.

26 BECAUSE WHAT HE WANTS YOU TO BELIEVE, THAT
27 ALTHOUGH -- AS TO MY CLIENT, THERE REALLY ISN'T
28 SUFFICIENT EVIDENCE; THE REASONABLE INFERENCE, EVEN WITH

1 THIS WEAK EVIDENCE, THE REASONABLE INFERENCE IS THAT
2 HE'S GUILTY; IS THAT HE DID SHOOT MISS RIOS; THAT HE DID
3 KILL HER; THAT HE PULLED THE TRIGGER.

4 ANOTHER THING THAT MR. LEWIN BROUGHT UP,
5 AND I'LL BRING THIS UP AGAIN IN MY CLOSING, IS -- HE
6 PLAYED MR. ROMERO'S INTERVIEW ON MAY 16, 2008. YOU
7 HEARD IT. AND IT WENT ON FOR A LONG TIME.

8 AND HE POINTS OUT, MR. LEWIN POINTS OUT
9 WHAT HE CALLS LIES. MR. ROMERO'S LIES. WELL, ONE OF
10 THE LIES THAT HE POINTS OUT IS MR. ROMERO'S REFUSAL TO
11 IDENTIFY HIMSELF IN A COMPOSITE SKETCH.

12 MR. LEWIN: YOUR HONOR, I'M GOING TO OBJECT. THAT
13 MISSTATES. I DID NOT ARGUE THAT.

14 MR. CREARY: OKAY.

15 THE COURT: DO YOU WISH TO REFRAME YOUR ARGUMENT?

16 MR. CREARY: ALL RIGHT.

17 HE DIDN'T PUT THAT IN HIS ARGUMENT. BUT HE
18 CERTAINLY IMPLIED IT IN HIS DIRECT EXAMINATION.

19 AND YOU HEARD IT. YOU WERE HERE. YOU
20 HEARD IT. SO THAT'S A PHOTOGRAPH OF AN INDIVIDUAL WHO
21 AT FIRST GLANCE IS A DARK-SKINNED INDIVIDUAL. WHO AT
22 FIRST GLANCE, FROM MY PERSPECTIVE, LOOKS LIKE HE COULD
23 BE AFRICAN AMERICAN.

24 WHEN I SAW THAT PHOTO, I THOUGHT WHO'S
25 THAT? SO BECAUSE MR. ROMERO SEES THE PHOTO, AND SEES
26 THIS DARK-SKINNED INDIVIDUAL, AND HE'S -- THE SHOOTER
27 AGAIN IS DESCRIBED AS A LIGHT-SKINNED HISPANIC, LIKE
28 MR. ROMERO? THE IMPLICATION IS WELL, HE'S LYING. THAT

1 SHOWS THAT HE'S DISHONEST, THAT HE'S GOT CONSCIOUSNESS
2 OF GUILT.

3 ANOTHER LIE THAT MR. LEWIN BROUGHT UP IN
4 HIS CLOSING WAS MR. ROMERO'S DENIAL OF MAKING THE PHONE
5 CALLS. WELL, MR. ROMERO WAS INTERVIEWED WHAT, OVER A
6 YEAR AFTER THIS MURDER OCCURRED?

7 NOT LIKE HE EXPECTED, YOU KNOW, THIS
8 INTERVIEW. NOT LIKE HE WAS WAITING FOR THIS INTERVIEW.
9 SO HE GETS, YOU KNOW -- HE'S BROUGHT INTO THIS
10 INTERROGATION SITUATION.

11 AND THEN HE'S HAMMERED WITH QUESTIONS ABOUT
12 WHAT CALLS HE MADE, WHEN, WHERE. HE'S SHOWN THESE PHONE
13 RECORDS. WELL, MAYBE, MAYBE THE REASONABLE INFERENCE IS
14 HE DOESN'T REMEMBER. HE JUST DOESN'T REMEMBER.

15 SO MAYBE HIS RESPONSE IS HONEST. YES. I
16 DIDN'T MAKE THAT CALL. MAYBE SOMEONE HAD MY PHONE.

17 YOU KNOW, JOHN SAYS -- MR. LEWIN SAYS WELL,
18 YOU KNOW, ANOTHER LIE IS HE SAID HE HAD NEVER BEEN TO
19 LOMITA. WELL, THERE'S NO EVIDENCE THAT MR. ROMERO IS
20 FROM L.A. MAYBE HE JUST THOUGHT HE WAS IN THE L.A.
21 AREA, IF HE WAS HERE. MAYBE HE DIDN'T KNOW WHAT CITY HE
22 WAS IN.

23 YOU KNOW, THERE'S NO EVIDENCE TO INDICATE
24 THAT HE ACTUALLY KNEW WHERE HE WAS ON A PARTICULAR DATE.
25 A PARTICULAR DATE OVER A YEAR PRIOR TO THAT.

26 SO MR. LEWIN WANTS YOU TO MAKE THESE
27 REASONABLE INFERENCES THAT BASICALLY ARE LEAPS IN LOGIC
28 TO MY CLIENT'S GUILT.

1 NOW, I WANT TO GET INTO THE BACKGROUND OF
2 OUR VICTIM, HERE. AND THEN WE'LL GO INTO SOME OTHER
3 THINGS.

4 BUT THE BACK STORY HERE, AS YOU PROBABLY
5 ALL KNOW, IS THAT SONIA RIOS RISKEN WAS A DESPICABLE
6 HUMAN BEING. SHE WAS A MONSTER. AND WHOEVER MURDERED
7 HER, IT'S AKIN TO SOMEONE MURDERING OTHER SERIAL
8 KILLERS, LIKE JEFFREY DAHMER OR JOHN GACY; AND AS SUCH,
9 AS SUCH A DESPICABLE PERSON, AND A KILLER, A SERIAL
10 KILLER, SHE HAD A LOT OF PEOPLE, MOST LIKELY, THAT WOULD
11 HAVE A MOTIVE AND A REASON TO TAKE HER OUT.

12 MR. LEWIN: OBJECTION, YOUR HONOR.

13 THE COURT: APPROACH SIDE BAR, PLEASE.

14

15 (THE FOLLOWING PROCEEDINGS
16 WERE HELD AT THE BENCH:)

17

18 THE COURT: MR. LEWIN.

19 MR. CREARY: THIS IS ARGUMENT, JOHN.

20 THE COURT: MR. LEWIN.

21 MR. LEWIN: I DON'T THINK -- IF I CAN -- I DON'T
22 THINK THAT -- THERE HAS BEEN NO EVIDENCE ABOUT OTHER
23 INDIVIDUALS THAT HAVE A MOTIVE TO KILL HER.

24 IT'S BASICALLY A THIRD-PARTY CULPABILITY
25 ARGUMENT. I DIDN'T OBJECT TO THE CHARACTERIZATIONS OF
26 THE VICTIM AS JEFFREY DAHMER, SERIAL KILLER, ET CETERA;
27 BUT IN ORDER TO MAKE THE ARGUMENT, YOU CAN'T SAY THERE
28 ARE LOTS OF OTHER PEOPLE WHO MIGHT HAVE HAD A MOTIVE

1 WHEN YOU DON'T HAVE -- NONE OF THAT HAS BEEN PRESENTED.

2 THAT'S NOT EVIDENCE. SO I DON'T THINK
3 THAT'S A PROPER ARGUMENT.

4 THE COURT: OKAY. MR. CREARY.

5 MR. CREARY: I'M JUST MAKING AN ARGUMENT. I'M
6 JUST SAYING IN ALL LIKELIHOOD, THERE ARE PEOPLE THAT
7 WANTED TO KILL HER, BASED ON THE EVIDENCE THAT'S
8 PRESENTED.

9 THE COURT: THE ARGUMENT NEEDS TO BE SUPPORTED BY
10 THE EVIDENCE RECEIVED AT THE TIME OF TRIAL. I THINK
11 IT'S A FAIR ARGUMENT TO SAY THAT WE DON'T KNOW WHO WAS
12 INSIDE THAT HOUSE THAT NIGHT; OR TO ADDRESS SPECIFIC
13 INDIVIDUALS, IF YOU THINK THAT THERE ARE OTHER PEOPLE
14 THAT HAD THE ABILITY, OR THE TESTIMONY SHOWS THAT THEY
15 WERE THERE THAT NIGHT, THEY HAD THE ABILITY, ET CETERA.

16 BUT TO SIMPLY SAY IT THE WAY YOU FRAMED IT,
17 I AGREE WITH MR. LEWIN.

18 MR. CREARY: I'LL MOVE ON.

19 THE COURT: YOU CAN REFRAME IT, IF YOU WISH.

20 LET'S PROCEED.

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

25
26 THE COURT: YOU MAY PROCEED, MR. CREARY.

27 MR. CREARY: THANK YOU, YOUR HONOR.

28 WELL, THE POINT BEING, WHO KNOWS WHO KILLED

1 MISS RISKEN. OKAY.

2 NOW, HOW DID THEY GET TO MY CLIENT? HOW
3 DID THESE DETECTIVES GET TO MY CLIENT? WELL, FIRST, AS
4 MR. LEWIN BROUGHT UP, WAS THE PHONE CALLS. OKAY. THE
5 PHONE CALL FROM MY CLIENT'S PHONE TO SONIA'S PHONE ON
6 PARTICULAR DATES. YOU KNOW.

7 THE 17TH OF APRIL, 2007, WHEN SOMEONE
8 SHOWED UP AT HER SHOP. THE 19TH, WHEN SOMEONE ALLEGEDLY
9 TOOK A SHOT AT HER. AND OTHER PHONE CALLS. LET'S JUST
10 DEAL WITH THOSE PHONE CALLS FIRST. OKAY.

11 NOW, THE DESCRIPTION OF THE PERSON WHO
12 SHOWED UP AT HER SHOP WAS ESSENTIALLY THE DESCRIPTION OF
13 THE AVERAGE YOUNG LATINO MALE IN SOUTHERN CALIFORNIA.

14 YOU KNOW, REALLY. AND WHAT IS A MILITARY
15 HAIRCUT? THEN THERE WERE MORE PHONE CALLS ON THE 19TH.
16 OBVIOUSLY, THOSE ARE MORE SIGNIFICANT BECAUSE THOSE
17 RELATES TO THE ALLEGED SHOOTING IN WHICH MISS RIOS IS
18 ALLEGED TO HAVE BEEN FIRED UPON.

19 NOW, WHAT IS INTERESTING, NOT THAT THOSE
20 CALLS WEREN'T -- THAT CALL WASN'T MADE, THAT THE CALL
21 WASN'T MADE. WHAT'S INTERESTING IS THAT THERE'S NO
22 EVIDENCE, THERE'S NO PHYSICAL EVIDENCE THAT ANYONE FIRED
23 UPON HER.

24 THERE WAS NO BULLET. THERE IS NO EVIDENCE
25 OF A BULLET. THERE'S NO EVIDENCE OF BULLET FRAGMENTS.
26 THERE'S NO EVIDENCE OF ANY DAMAGE OF ANY SORT ANYWHERE
27 IN THAT SHOP.

28 THERE'S NO PHYSICAL EVIDENCE THAT THE

1 SHOOTING EVER OCCURRED.

2 NOW, ANOTHER THING THAT I WANT YOU TO TAKE
3 INTO ACCOUNT ABOUT THAT, ABOUT THIS WHOLE INCIDENT, THIS
4 WHOLE INCIDENT THAT HAPPENED THE WEEK PRIOR TO SONIA
5 RIOS RISKEN'S MURDER, IS THAT MY CLIENT WAS NEVER
6 IDENTIFIED AS THE ASSAILANT. NEVER.

7 SO DO YOU THINK THAT IF THE PEOPLE TRULY
8 BELIEVED THEY HAD A CASE REGARDING THAT INCIDENT AGAINST
9 MY CLIENT, THAT THERE WOULD HAVE FILED IT. THEY DIDN'T
10 FILE IT.

11 NOW, WHY ARE THEY USING IT? BECAUSE THEY
12 NEED TO BOLSTER, MR. LEWIN NEEDS TO BOLSTER HIS WEAK
13 CASE AGAINST MY CLIENT.

14 SO HE TAKES SOMETHING THAT OCCURRED A WEEK
15 PRIOR, THAT REALLY THERE WAS ONLY A DESCRIPTION OF AN
16 ASSAILANT. AND THERE'S A PHONE CALL THAT APPARENTLY
17 CAME FROM MY CLIENT'S NUMBER. WE DON'T REALLY KNOW WHAT
18 THEY TALKED ABOUT.

19 AND THEN SOMETHING ALLEGEDLY HAPPENS.
20 SOMETHING HAPPENS. BUT OBVIOUSLY, THERE WASN'T PROBABLE
21 CAUSE TO ARREST MY CLIENT ON THAT CASE, AND THEY DIDN'T.
22 AND THEY -- NOT ONLY DID THEY NOT, THEY DIDN'T FILE IT.
23 SO LET'S PUT THAT IN ITS PROPER CONTEXT.

24 WHAT HAPPENED ON THE 19TH OF APRIL, 2007
25 DOES NOT MAKE MY CLIENT GUILTY OF MURDER.

26 NOW, YOU ALSO HAVE THE PHONE CALLS BETWEEN
27 DELACRUZ AND MY CLIENT ON SPECIFIC DATES. ON PERTINENT
28 DATES. AGAIN, 17TH, 19TH, 26TH OF APRIL. AND OTHER

1 PHONE CALLS THAT MR. LEWIN BROUGHT RECORDS IN TO SHOW.

2 NOW, IN PARTICULAR, THE PHONE CALLS BETWEEN
3 MY CLIENT'S PHONE AND MR. DELACRUZ'S PHONE ON THE LAST
4 EVENING THAT MISS RISKEN'S KNOWN TO HAVE BEEN ALIVE,
5 THOSE ARE OBVIOUSLY AN AREA OF PARTICULAR FOCUS.

6 AND THE INTERESTING THING ABOUT THAT IS WE
7 REALLY DON'T KNOW WHAT TIME SHE DIED. THE CORONER COULD
8 NOT DETERMINE A TIME OF DEATH. HER SON, JOHN BOURDEAU,
9 HADN'T SPOKEN, DIDN'T SPEAK TO HER UNTIL -- LET ME
10 REPHRASE THAT.

11 HE DIDN'T SEE HER AGAIN UNTIL THE NEXT DAY,
12 WHEN SHE WAS DEAD ON THE FLOOR. SO HE SPOKE TO HER
13 AROUND 6:00 P.M. ON THE 26TH. AND THEN HE FINDS HER
14 DEAD AT ABOUT 2:00 THE NEXT DAY.

15 NOW, WE DON'T KNOW WHEN SHE DIED. SO EVEN
16 IF THESE PHONE CALLS WERE MADE BY MR. DELACRUZ AND MY
17 CLIENT, AND EVEN IF THEY WERE IN LOMITA AT AROUND
18 9:00 P.M. ON THE NIGHT OF THE 26TH, IT'S VERY POSSIBLE
19 THAT SHE DIED AFTER 9:00 P.M.

20 SHE COULD HAVE DIED AT 10:00 P.M.; SHE
21 COULD HAVE DIED AT 3:00 IN THE MORNING. WE DON'T KNOW.
22 WE DON'T KNOW.

23 JUST LIKE MR. LEWIN, MY NOTES ARE SORT OF
24 MY SECURITY BLANKET. I JUST WANT TO MAKE SURE I'M GOING
25 DOWN AND HITTING EVERYTHING I NEED TO HIT.

26 ANOTHER INTERESTING POINT ABOUT THESE CALLS
27 IS THAT THE PHONES, THE ONLY THING THAT THE CELL TOWER
28 RECORDS CAN ESTABLISH ABOUT ANY OF THE CALLS THAT WERE

1 INFORMATION THAT I CAN SHARE, I WILL DO SO.

2 MR. LEWIN, YOU MAY COMMENCE WITH THE
3 REMAINDER OF YOUR CLOSING ARGUMENT.

4 MR. LEWIN: BEFORE WE START, YOUR HONOR, COULD I
5 GET THE LIGHTS?

6 THE COURT: SURE. YOU HAVE A REMAINDER OF 35
7 MINUTES OUT OF YOUR ALLOCATED TIME.

8 MR. LEWIN: THAT'S WHY I ASKED TO DO THE LIGHTS
9 FIRST, YOUR HONOR.

10 THE COURT: THANK YOU. PROCEED.

11 MR. LEWIN: BEGIN, YOUR HONOR?

12 THE COURT: PLEASE.

13 MR. LEWIN: I'M GOING TO OBVIOUSLY MOVE ALONG
14 QUICKLY, HERE. AS A LAWYER, IT'S A FEELING WHEN YOU'RE
15 IN A CLOSING ARGUMENT, THE HARDEST PART IS NOT STANDING
16 UP AND GIVING IT.

17 IT'S NOT PREPARING IT, IT'S NOT ALL THE
18 WORK THAT GOES INTO IT. THE HARDEST PART IS THAT DURING
19 THE OTHER SIDE'S CLOSING ARGUMENT, YOU HAVE TO SIT
20 THERE, AND YOU WANT TO GET UP AND YOU WANT TO SCREAM.

21 YOU WANT TO YELL, "ARE YOU KIDDING ME?"
22 AND YOU WATCH THE JURORS, AND YOU'RE LOOKING, OKAY, NO.
23 OH, THAT ONE IS WRITING. OH, GOD, NO, THEY CAN'T BE
24 THINKING THAT THAT'S A POINT. IT DRIVES YOU CRAZY.

25 IT IS DIFFICULT. THERE'S A -- NOT A LOT OF
26 TIME, BUT I HAVE TO SLIDE PAST IT. I'M GOING TO SLIDE
27 PAST LOT OF STUFF IN MY CLOSING, HERE.

28 BUT I WILL ABBREVIATE IT. GENERALLY

1 SPEAKING, THE WAY I START WITH THIS IS I TALK ABOUT --
2 AS YOU MIGHT HAVE SEEN, I'M NOT THE FITTEST GUY IN THE
3 WORLD. I LIKE MY FOOD. A BATTLE THAT I -- EVERY DAY
4 WHEN I WORKED DOWNTOWN, I WOULD DRIVE HOME, AND I'D HAVE
5 TO GO ON THE 405 FREEWAY, AND I'D HAVE TO PASS
6 MANCHESTER, WHERE RANDY'S DOUGHNUTS IS.

7 AND EVERY DAY, I WOULD GET OFF, BECAUSE YOU
8 GET OFF, THEN GET RIGHT BACK ON AGAIN. AND I WOULD GO
9 OKAY, IF THE LIGHT IS RED AT MANCHESTER, GOD WANTS ME TO
10 HAVE MY DOUGHNUT.

11 BUT I WASN'T REALLY FAIR ENOUGH TO ACTUALLY
12 PLAY IT STRAIGHT. SO IF THAT LIGHT WAS RED COMING UP
13 AND IT WAS GOING TO TURN GREEN, I WOULD GO REALLY SLOW,
14 AND I WOULD TRY TO MANIPULATE IT SO THAT OKAY, NOTHING I
15 CAN DO, I'VE GOT TO HAVE A DOUGHNUT.

16 AS YOU CAN TELL, MOST THE TIME I GOT THE
17 DOUGHNUT. AND AS HARD AS IT IS TO RESIST WANTING TO GET
18 THAT DOUGHNUT, IT'S HARDER TO SIT HERE WHEN YOU WANT TO
19 STAND UP AND YOU WANT TO SAY "WAIT A MINUTE," YOU KNOW,
20 "THAT DOESN'T MAKE SENSE. THAT CAN'T BE RIGHT."

21 SO I'M GOING TO START WITH, GOING TO BACK
22 UP AND START WITH KIND OF A GENERAL COMMENT ABOUT THE
23 EVIDENCE IN THIS CASE.

24 LISTEN, THE DEFENSE ATTORNEYS IN THIS CASE
25 HAVE A VERY DIFFICULT JOB. THE REASON THEY HAVE A
26 DIFFICULT JOB IS THE EVIDENCE IN THIS CASE, IT ISN'T
27 STRONG, IT ISN'T PRETTY GOOD, IT'S OVERWHELMING. IT IS
28 OVERWHELMING.

1 IT IS SO OVERWHELMING THAT IT'S LIKE A
2 TIDAL WAVE. I KNOW SOME OF YOU ARE THINKING WHY DOES HE
3 CONTINUE TO DROWN IT WITH MORE WAVES AND MORE WAVES AND
4 MORE WAVES. BECAUSE THAT'S MY JOB. THAT'S MY DUTY.

5 AND I THINK WHAT THE DEFENSE IS ASKING YOU
6 IS THEY WANT YOU TO -- BASICALLY, THEY HAVE A PICTURE.
7 LIKE THIS. WHEN YOU LOOK AT THIS PHOTOGRAPH, AND YOU
8 TAKE A LOOK AND YOU SEE -- YOU KNOW WHAT, THEY WANT YOU
9 TO LOOK AT EACH LITTLE PART IN ITS -- THEY WANT TO
10 MAGNIFY IT, AND BRING IT UP.

11 THEY DON'T WANT YOU TO SEE THE WHOLE
12 PICTURE. SO YOU LOOK AT IT SO CLOSE THAT IT'S BLURRY.
13 THE REASON IS BECAUSE YOU'RE NOT SEEING, YOU KNOW, THE
14 FOREST FOR THE TREES.

15 YOU'VE GOT TO BACK UP. YOU'VE GOT TO LOOK
16 AT THIS CASE IN COMPLETE, COMPLETE, TOTAL EVERYTHING.
17 ALL THE PIECES IN THIS CASE COME TOGETHER.

18 THERE ISN'T ANYTHING THAT'S MISSING.
19 NOTHING MISSING IN THIS CASE. I'M GOING TO START
20 WITH -- LET'S GO THROUGH MR. DELACRUZ'S ARGUMENT,
21 BECAUSE IT WAS SECOND.

22 YOU KNOW, AGAIN, MR. LEVINSON WAS IN A
23 TOUGH SPOT. HE'S UP HERE, AND HE HAS GOT, YOU KNOW, TO
24 QUOTE LUCY -- RICKY RICARDO, "YOU HAVE SOME 'SPLAININ'
25 TO DO."

26 HE'S GOT A TOUGH JOB. BECAUSE THE EVIDENCE
27 AGAINST HIS CLIENT IS OVERWHELMING. WHERE DO YOU GO
28 WITH THIS? HE'S FRAMED THE GUY FOUR MONTHS IN ADVANCE

1 FOR HIS MOTHER'S DEATH. HE'S NAILED BY CELL PHONE
2 RECORDS. HE NAILED BY STATEMENTS. STUFF OUT OF HIS OWN
3 MOUTH. IT'S TAPED.

4 SO HE CONCEDES OKAY, YOU KNOW WHAT,
5 FINALLY, YEAH, THE E-MAILS, MY CLIENT SENT THEM. THIS
6 IS AN OBSTRUCTION OF JUSTICE CASE.

7 LISTEN, IT'S A NICE ATTEMPT. IT'S LIKE THE
8 STORY, THE GUY'S FISHING IN THE LAKE. IT'S A NO-FISHING
9 AREA. AND THE RANGER DRIVES HIS BOAT UP AND SAYS TO THE
10 GUY, "HEY, WHAT ARE YOU DOING? THIS IS A NO-FISHING
11 AREA."

12 AND THE GUY SAYS, "OH, NO, I'M NOT FISHING.
13 I'M JUST DROWNING WORMS." SO YOU KNOW THAT'S PRETTY
14 MUCH -- MR. LEVINSON AND MR. CREARY, THEY'RE DROWNING
15 WORMS.

16 BUT YOU'VE GOT TO BACK UP. YOU'VE GOT TO
17 TAKE A LOOK. YOU SAY WAIT A MINUTE. WHAT THEY SAY
18 DOESN'T MAKE SENSE. AND LET'S GO THROUGH WHAT
19 MR. LEVINSON TALKED ABOUT IN HIS CLOSING.

20 YOU ALWAYS KNOW WHEN THEY START SAYING WHAT
21 A GREAT JOB YOU DID AND HOW GOOD YOU ARE, AND YOUR CASE
22 IS GREAT, THE DETECTIVES WERE GREAT, YOU ALWAYS BRACE
23 YOURSELF. IT'S COMING.

24 AND MR. LEVINSON, YOU KNOW, HE -- WE "DID A
25 GREAT JOB, BUT." AND LET'S START WITH A THEME THAT
26 KEEPS COMING UP. AND THAT IS THAT THE DETECTIVES
27 SOMEHOW -- USUALLY, IT'S A RUSH TO JUDGMENT. THAT THE
28 DETECTIVES IN THIS CASE, IT WAS A RUSH TO JUDGMENT.

1 THEY TOO QUICKLY FOCUSED ON MY CLIENT.

2 HERE, WE HAVE THE OPPOSITE. THE IDEA IS
3 YOU KNOW WHAT, THEY WAITED TOO LONG, APPARENTLY. AND WE
4 HAVE THE ARGUMENT THAT THIS WAS A COLD CASE. FIRST OF
5 ALL, THE COLD CASE INSIGNIA, THAT'S NOT EVIDENCE.
6 THAT'S A TITLE SLIDE ON MY COMPUTER.

7 AND I DO LOTS OF COLD CASES. THAT'S WHY
8 IT'S THERE. IT DOESN'T FIT INTO THIS CASE. THERE'S NO
9 HIDDEN MEANING. AND IT'S NOT FOR YOUR CONSIDERATION.

10 NUMBER TWO, THIS WAS NEVER A COLD CASE. I
11 WENT THROUGH FOR A REASON, AND I DESCRIBED -- THE
12 DETECTIVES, I HAD THEM GO THROUGH EVERYTHING THAT THEY
13 DID.

14 THEY PUT THIS THING METHODICALLY TOGETHER.
15 AND THEY SPECIFICALLY DID NOT MOVE EARLIER BECAUSE THEY
16 WERE GATHERING MORE EVIDENCE. THEY SAY THAT IT SAT FOR
17 A YEAR. WE WENT THROUGH WITH DETECTIVE RODRIGUEZ THE
18 ORDER OF WHAT HE DID WITH DETECTIVE SICA.

19 THEY NEVER SAT ON THIS CASE. THEY WERE
20 DOING THINGS THE ENTIRE TIME. NCIS WAS DOING THINGS THE
21 ENTIRE TIME. BUT THE OTHER POINT, MAYBE MORE IMPORTANT
22 IS, IT DOESN'T MATTER.

23 THE ISSUE IS NOT HOW LONG THE CASE TOOK TO
24 GET FILED, WHETHER IT TOOK ONE YEAR, FOUR YEARS. THE
25 ISSUE IS THEY'RE MURDERERS. THEY MURDERED HER. THEY
26 CONSPIRED TO KILL HER. THERE'S NO STATUTE OF
27 LIMITATIONS.

28 ALL RIGHT. THEY'VE GOT TO ANSWER FOR WHAT

1 THEY'VE DONE. BUT I THINK IT IS IMPORTANT TO ADDRESS
2 THE POINT THAT SOMEHOW, THESE DETECTIVES DIDN'T GAIN ANY
3 OTHER EVIDENCE, OR "48 HOURS" SOMEHOW CONTROLLED WHAT
4 HAPPENED IN THIS CASE.

5 WE HAVE FREEDOM OF THE PRESS. "48 HOURS"
6 IS HERE. THERE THEY ARE. THEY'RE DOING THEIR STUFF.
7 THAT'S THEIR RIGHT. THEY DON'T INFLUENCE THE SHERIFF'S
8 DEPARTMENT. THEY DON'T DECIDE WHEN CASES -- OR HOW THEY
9 ARE INVESTIGATED. THEY DON'T INFLUENCE THE DISTRICT
10 ATTORNEY'S OFFICE.

11 THESE DETECTIVES, THEY DID AN OUTSTANDING
12 JOB. THEY PUT THIS CASE TOGETHER. AND THEY GATHERED --
13 NOT THAT IT MATTERS, BUT THEY GATHERED A LOT OF EVIDENCE
14 AFTER THAT INTERVIEW.

15 REMEMBER THE INTERVIEW WITH MARIA DELACRUZ
16 AND THE PHONY ALIBIS. AFTER THE "48 HOURS" EPISODE
17 AIRED. THE INTERVIEW WITH JOENEL DELACRUZ. AFTER THE
18 "48 HOURS" EPISODE AIRED. THE LAST INTERVIEW WITH THE
19 DEFENDANT. AFTER THE "48 HOURS EPISODE" AIRED. THE
20 CALLING CARD CALLS FROM THE BOAT. AFTER THE "48 HOURS"
21 EPISODE AIRED.

22 SO YOU KNOW -- THAT'S JUST SMOKE. AND I
23 UNDERSTAND. NEITHER DEFENSE COUNSEL HAS MUCH TO WORK
24 WITH.

25 SO THEY'VE GOT TO DO WHAT THEY'VE GOT TO
26 DO. AND AGAIN, OBVIOUSLY, AS YOU ALL CAN TELL, THE
27 THREE OF US, YOU KNOW, NOT ONLY DO HAVE A PROFESSIONAL
28 RELATIONSHIP, THE THREE OF US, WE LIKE EACH OTHER.

1 WE'RE CORDIAL. IT'S A JOB. IT'S NOT
2 PERSONAL WHEN THEY ARE ATTACKING MY PART OF THE CASE.
3 IT'S NOT PERSONAL WHEN I'M ATTACKING THEIRS.

4 ALL RIGHT.

5 MR. LEVINSON SAYS THAT ERIC, HE SAYS THEY
6 GO TO ERIC BECAUSE THEY KNOW HE DIDN'T DO IT, BUT KNOW
7 HE'S INVOLVED.

8 HOW IN THE CONTEXT OF THIS CASE CAN HE KNOW
9 SOMETHING ABOUT WHAT HAPPENED, BUT NOT BE INVOLVED? THE
10 PERSON PULLING THE TRIGGER, THE EVIDENCE SUGGESTS, THE
11 OTHER PARTY, THE OTHER PART OF THE CONSPIRACY IS
12 FERNANDO ROMERO.

13 THE ONLY CONNECTION BETWEEN SONIA RIOS AND
14 FERNANDO ROMERO IS HIM. SO THAT JUST DOESN'T HOLD UP.

15 THEY KEEP TALKING ABOUT THERE WAS A PIECE
16 OF THE PUZZLE MISSING. WHAT DETECTIVE SICA SAID TO
17 ROMERO AND SAID TO DELACRUZ, BOTH OF THEM WAS -- THE
18 PIECE OF THE PUZZLE THAT'S MISSING IS NOT DID THEY
19 ENGAGE IN A CONSPIRACY. DID THEY COMMIT MURDER. THE
20 PIECE OF THE PUZZLE MISSING IS WHICH ONE PULLED THE
21 TRIGGER.

22 IN THE END, IT DOESN'T MATTER. THESE
23 DETECTIVES, WHY DID THEY GO AFTER THE DEFENDANTS?
24 BECAUSE IN THE END, WHAT THEY LIKE TO GET, WHAT
25 EVERYBODY WANTS TO GET IS, YOU WANT A CONFESSION.

26 WE TALKED ABOUT THE IDEA IN VOIR DIRE OF --
27 HAVE TO KEEP PEEKING AT THE CLOCK -- WE TALKED IN VOIR
28 DIRE ABOUT THE ISSUE OF NOT BEING STRAIGHT AND DIRECT

1 WITH SUSPECTS.

2 AND I USED AN EXAMPLE, I USE IT EVERY
3 TRIAL. YOU KNOW, THE GIRL WHO COMES HOME LATE. AND THE
4 MOM IS WAITING, THE DAD IS WAITING. CURFEW IS 11:00.
5 IT'S 10:59 P.M. MOM OR DAD FALLS ASLEEP.

6 THE NEXT MORNING, YOU'RE NOT GOING TO SAY
7 TO YOUR DAUGHTER "HEY, YOU CURFEW IS 11:00. I WAITED
8 UNTIL 10:59 P.M. LAST NIGHT. WHAT TIME DID YOU GET
9 HOME?"

10 BECAUSE SHE'S GOING TO SAY "OH, MOM, YOU
11 JUST MISSED ME. YOU MUST HAVE FALLEN ASLEEP RIGHT AS I
12 WALKED THROUGH THE DOOR."

13 THE DETECTIVES, IN THE RUSES THAT THEY
14 USED, THOSE WERE DESIGNED TO MAKE THE DEFENDANTS EITHER
15 ADMIT WHAT HAPPENED, OR CONTINUALLY LIE.

16 THEY WENT WITH OPTION NUMBER TWO. ALL
17 RIGHT. WE ALSO HAD WHY WEREN'T MARIA AND JOENEL CHARGED
18 WITH OBSTRUCTION OF JUSTICE.

19 WELL, FIRST OF ALL, WHETHER THEY HAVE BEEN
20 CHARGED, WERE CHARGED, NEVER CHARGED, WILL BE CHARGED,
21 THAT IS ABSOLUTELY NOT FOR YOUR DETERMINATION.

22 THE QUESTION IS NOT -- IF YOU GUYS GO BACK
23 THERE AND YOU DECIDE YOU KNOW WHAT, I THINK JOENEL AND
24 MARIA WERE IN THIS THING, TOO -- AND BY THE WAY, GIVEN
25 THE CALLS, YOU KNOW, I MEAN, THERE'S NO EVIDENCE THAT
26 MARIA KNEW ANYTHING ABOUT IT BEFOREHAND.

27 BUT CERTAINLY, THERE IS A CIRCUMSTANTIAL
28 INFERENCE THAT WHEN HE'S TELLING HER "WE'VE GOT TO GET

1 OUT OF TOWN," THAT SHE MIGHT HAVE KNOWN SOMETHING. EVEN
2 IF YOU DECIDED SOMEHOW THAT THEY WERE INVOLVED, THAT
3 DOESN'T AFFECT THESE DEFENDANTS' GUILT.

4 SO AGAIN, THAT'S KIND OF JUST A LITTLE
5 SIDETRACK FOR YOU GUYS TO TAKE THAT DOESN'T MAKE MUCH
6 SENSE.

7 DEFENSE COUNSEL SAYS I HAVE TO PROVE THAT
8 THERE WAS PREMEDITATION AND DELIBERATION. NOW, IN THIS
9 CASE, WHOEVER KILLED HER, THERE'S NO -- THERE CAN'T BE
10 ANY QUESTION THAT THIS WAS A PREMEDITATED, DELIBERATED
11 CRIME. THEY'RE COMING IN, THEY'RE EXECUTING HER.
12 THEY'RE NOT STEALING ANYTHING. SO THE ISSUE HERE IS NOT
13 WHAT HAPPENED. IT'S WHO DID IT.

14 AND THAT DOESN'T GO TO THE CONSPIRACY. WHY
15 DO I ADDRESS EACH AND EVERY POINT? BECAUSE I'LL TELL
16 YOU THE WORST POSSIBLE THING YOU CAN HEAR AS A
17 PROSECUTOR, THE WORST IS AFTER A HUNG JURY, WHEN ONE OF
18 THE JURORS COMES BACK AND SAYS "YOU KNOW WHAT, YOU KNOW,
19 DEFENSE COUNSEL MENTIONED THIS POINT ABOUT, YOU KNOW,
20 WHY WOULD HE HAVE KILLED HER IF HE WERE GOING TO MOVE TO
21 SAN DIEGO. YOU KNOW, YOU NEVER ADDRESSED THAT. THAT
22 REALLY BOTHERED ME."

23 HUH-UH. THERE'S ONE WAY TO GO WHEN YOU TRY
24 CASES. THAT IS, YOU PUT ON EVERYTHING YOU HAVE. AND I
25 DIDN'T SAVE ANYTHING. I PUT MY STUFF UP IN OPENING.
26 WHEN WE STARTED THIS TRIAL, OPENING STATEMENTS, I SAID
27 WHAT I WAS GOING TO PROVE.

28 THE DEFENSE KNEW IT. IN MY OPENING TO MY

1 CLOSING. I PUT IT ALL OUT THERE. I DIDN'T SAVE
2 ANYTHING FOR LATER. THAT WAS TO GIVE THEM A CHANCE TO
3 ADDRESS WHAT I BELIEVE THE EVIDENCE WAS GOING TO SHOW,
4 WHAT I BELIEVE IT HAS SHOWN.

5 AND LADIES AND GENTLEMEN, THEY TALKED ABOUT
6 THE FACT, BOTH OF THEM, THAT I HAD TO PROVE EVERY
7 ELEMENT, BUT THEY NEVER REALLY DISCUSSED WHAT ELEMENTS
8 WERE MISSING.

9 ALL RIGHT. WHAT ELSE? WE HAVE THE COMMENT
10 THAT BECAUSE SOMEHOW, THE -- WELL, LET ME BACK UP. I
11 STARTED TO GO TO MR. ROMERO. LET ME FINISH WITH
12 MR. DELACRUZ.

13 COUNSEL SAYS THAT MAYBE HE DID IT.
14 PROBABLY HE DID IT. BUT THAT'S NOT PROVING THAT HE DID
15 IT. NOW, THIS HAS ALWAYS BEEN VERY INTERESTING. IF YOU
16 AS JURORS ARE SAYING TO YOURSELF YOU KNOW, I THINK HE
17 DID IT, IT LOOKS LIKE HE DID IT, YOU HAVE TO ASK
18 YOURSELVES NOT BOY, DO I BELIEVE BEYOND A REASONABLE
19 DOUBT.

20 YOU HAVE TO ASK YOURSELF HEY, WAIT A
21 MINUTE. WHY DO I THINK THAT? WHY DO I THINK THAT HE
22 DID IT? AND MAYBE I THINK THAT BECAUSE THE EVIDENCE
23 SHOWS IT, AND MAYBE I DON'T HAVE A REASONABLE DOUBT.

24 THEY ALSO TALKED ABOUT THE FACT THAT
25 MR. LEVINSON SAID THAT THERE'S THE PROSECUTION'S TRUTH,
26 MY TRUTH, AND THE MIDDLE. THERE'S ONE TRUTH. TRUTH IS
27 ABSOLUTE. THERE ISN'T MY TRUTH AND HIS TRUTH AND THE
28 MIDDLE TRUTH. THERE'S THE TRUTH.

1 AND THE TRUTH IN THIS CASE, WE KNOW WHAT IT
2 IS. WE KNOW WHAT IT IS. IT'S NOT COMPLICATED. FOR THE
3 WHOLE MONTH WE'VE BEEN IN TRIAL -- WE ACTUALLY MOVED
4 PRETTY QUICK, BUT FOR THE TIME WE'VE BEEN IN TRIAL, THIS
5 CASE, ALTHOUGH IT'S GOT BIZARRE, STRANGE FACTS, IN THE
6 END, IT'S VERY SIMPLE. IT'S NOT DIFFICULT. THIS IS NOT
7 A HARD ANALYSIS FOR YOU AS JURORS.

8 A COUPLE THINGS I AGREED ON. "MY GUY MADE
9 A LOT OF STUPID MOVES IN THIS CASE." MR. LEVINSON SAID
10 YEAH, HE DID. ENOUGH STUPID MOVES TO GET HIMSELF
11 CONVICTED FIVE TIMES.

12 I MEAN, IT'S SAD TO SAY -- AND THANK GOD HE
13 DID MAKE MISTAKES. BUT YEAH, IT'S MIND BOGGLING WHEN
14 YOU GO THROUGH IT, START ADDING UP, GOOD LORD, WHY DID
15 HE DO THIS, WHY DID HE DO THAT, WHY DID HE DO THIS.

16 THE CASE, AS SOON AS YOU LOOK AT IT, THE
17 FRAME JOB, THE CALLS, EVERYTHING, FALLS APART. IT WAS A
18 HOUSE OF CARDS. IT LOOKED GOOD. IT'S LIKE A HOLLYWOOD
19 SET FROM FAR BACK. IT LOOKS LIKE A HOUSE. BUT YOU WALK
20 UP TO IT, YOU OPEN THE DOOR, AND THE CARDBOARD FALLS
21 DOWN.

22 THAT'S WHAT HAPPENED TO HIM IN THIS CASE.
23 AGAIN, JUST BECAUSE HE MADE A LOT OF MISTAKES DOESN'T
24 MEAN HE'S NOT GUILTY. IN FACT, THAT'S WHAT PROVES IT.

25 THEY WERE GOING TO MOVE TO SAN DIEGO
26 TOGETHER. APPARENTLY, THAT'S WHAT SONIA RIOS THOUGHT.
27 UNTIL SHE GOT A BULLET IN THE BACK OF HER HEAD.

28 BECAUSE HE DIDN'T WANT TO WAIT TO GET THE

1 MONEY HE THOUGHT WAS GOING TO BE COMING TO HIM. THAT'S
2 ALL TRUE. I'M SURE SONIA RIOS, JUDGING BY THE EVIDENCE,
3 NEVER SAW THIS COMING. NOT FROM HIM.

4 WHAT ELSE DO WE HAVE? AGAIN, I AGREE
5 WITH -- MR. LEVINSON SAYS I CAN'T EXPLAIN THE CONDUCT OF
6 MY CLIENT, JOENEL, AND MARIA. BUT IT ALL GOES TO
7 OBSTRUCTION OF JUSTICE.

8 NO. NO. BY THE WAY, GENERALLY SPEAKING,
9 WHEN WE FILE MURDER CHARGES, WE'RE NOT REAL BIG ON
10 FILING THE OBSTRUCTION OF JUSTICE. IT'S KIND OF LIKE,
11 YOU KNOW, WHEN YOU HAVE A SERIAL KILLER BROUGHT INTO
12 COURT, YOU'RE GENERALLY NOT GOING TO SAY ALSO, YOU'VE
13 GOT THREE EXPIRED TRAFFIC TICKETS.

14 WE LOOK AT WHAT THE BIG CRIME IS. THE FACT
15 THAT SOMEHOW, HE'S NOT FACING OBSTRUCTION OF JUSTICE OR
16 EXTORTION, ET CETERA, THAT'S AGAIN, YOU KNOW, MAKING
17 LEMONADE OUT OF LEMONS. OR DROWNING WORMS.

18 LUIS MARQUEZ. NOW, THE ARGUMENT WAS --
19 THIS IS WHAT I FOLLOWED. HE ATTEMPTED TO COVER UP HIS
20 USE OF A CELL PHONE -- WHICH THERE WAS NOTHING WRONG
21 WITH USING A CELL PHONE -- BY APPARENTLY TELLING NCIS
22 THAT HE HAD MADE COMMENTS WISHING HIS WIFE DEAD, IN
23 ESSENCE, AND THAT MR. DELACRUZ MADE AN OFFER.

24 IT'S VERY CLEAR BY THE EVIDENCE, THE WAY IT
25 CAME OUT, MR. MARQUEZ WAS VERY UNCOMFORTABLE TELLING
26 THIS INFORMATION TO INVESTIGATORS.

27 HE'S COMING BACK. YOU HEARD HIM TALK.
28 HE'S COMING BACK, AND HE'S GOT TO BE THINKING OH, MY

1 GOD. JEEZ. THAT COULD HAVE BEEN MY WIFE WHO IS DEAD.

2 SO IT DOESN'T MAKE A WHOLE LOT OF SENSE
3 THAT MR. MARQUEZ IS GOING TO GET HIMSELF MIXED UP WITH A
4 MURDERER, AND IS GOING TO SAY THAT MURDERER, IN RESPONSE
5 TO HIS COMMENT, OFFERED TO KILL HIS WIFE IN ORDER TO,
6 QUOTE, GET OUT OF THE UNLAWFUL USE OF A CELL PHONE?

7 LISTEN, IT'S AGAIN -- THEY DIDN'T HAVE MUCH
8 TO WORK WITH. IT'S EASY, BEING -- THE EVIDENCE I HAVE
9 IN THIS CASE, YOU KNOW, PEOPLE ARE REAL GOOD AT POKER
10 WHEN THEY'VE GOT FOUR ACES IN THEIR HAND, OR A FULL
11 HOUSE. I HAVE THE CARDS. THAT'S JUST HOW IT WORKED.

12 ALL RIGHT.

13 WHAT ELSE DO WE HAVE WITH RESPECT TO MR. --
14 NOW GO BACK TO MR. ROMERO. MR. CREARY COMPARED HER TO
15 JEFFREY DAHMER. AND LISTEN, IF THIS CASE WERE ABOUT
16 WHETHER SONIA RIOS WAS A GOOD PERSON, EVEN WHETHER, YOU
17 KNOW, SOME MORAL, OUTSIDE THE LAW, INTELLECTUAL
18 DISCUSSION, SHE DESERVED TO DIE, I DON'T KNOW.

19 NONE OF US ARE GOD. NONE OF US. AND NONE
20 OF US ARE ALLOWED TO MAKE THAT DETERMINATION. THAT'S
21 WHY WE HAVE LAWS.

22 WHATEVER SONIA'S ANSWERING FOR, IF SHE
23 BELIEVED THAT, IF WHATEVER SHE'S ANSWERING FOR NOW,
24 THAT'S BETWEEN HER AND GOD. BUT IT WAS NOT FOR THESE
25 MEN TO SEND HER THERE.

26 SO THE IDEA THAT SHE'S JEFFREY DAHMER,
27 SERIAL KILLER, IT'S -- YOU KNOW, IT IS INTERESTING
28 LANGUAGE. IT'S PROVOCATIVE. IT REALLY DOESN'T

1 INFLUENCE THIS CASE.

2 BUT THE IDEA THAT SOMEONE ELSE IS INVOLVED
3 IN THIS CASE, THERE'S NO EVIDENCE WHATSOEVER. AND THAT
4 BRINGS UP JUST A -- THIS IS SUPPOSED TO BE A JURY, HERE.
5 AND THIS IS WHAT AS JURORS, WHAT YOU SHOULDN'T BE
6 HEARING.

7 WHAT IF; ISN'T IT POSSIBLE THAT; COULDN'T
8 THIS HAVE HAPPENED. YOU ARE NOT ALLOWED TO SPECULATE
9 OUTSIDE THE EVIDENCE. SO IF SOMEONE GOES BACK THERE
10 WHEN YOU DELIBERATE AND THEY SAYS WELL, YOU KNOW WHAT,
11 HOW DO YOU KNOW THAT THERE WASN'T SOMEBODY IN THE
12 PHILIPPINES, AND THEY DIDN'T COME OUT HERE, AND THEY
13 DIDN'T COMMIT THIS MURDER, HOW DO I KNOW SOMEONE ELSE
14 WASN'T WORKING WITH ERIC?

15 YOU'VE GOT TO STOP THEM, STOP YOURSELF, AND
16 GO WAIT A SECOND. THERE'S NO EVIDENCE OF THAT IN THIS
17 CASE. NONE.

18 BY THE WAY, EVEN IF SOMEHOW YOU THOUGHT
19 THAT SOMEBODY ELSE IN ADDITION TO ERIC AND ROMERO WERE
20 INVOLVED IN THIS CASE, THAT'S NOT WHAT YOU'RE HERE TO
21 DECIDE.

22 THE QUESTION IS NOT DID THESE TWO DO IT
23 THEMSELVES, WHO ELSE MIGHT HAVE HELPED, AND WHO ELSE
24 MIGHT HAVE BENEFITED. BY THE WAY, THERE'S NO EVIDENCE
25 ANYBODY BUT THESE TWO COMMITTED THE MURDER.

26 THE QUESTION IS DID THEY COMMIT THE MURDER,
27 AND HAS IT BEEN PROVEN BEYOND A REASONABLE DOUBT. AND
28 BEFORE THE MURDER, DID THEY ENGAGE IN THAT CONSPIRACY.

1 AND HAS THAT BEEN PROVEN BEYOND A REASONABLE DOUBT.

2 ALL RIGHT.

3 LET'S TALK FOR A MOMENT ABOUT MR. ROMERO'S
4 CLOSING. HE SAID THERE'S NO PHYSICAL EVIDENCE THAT
5 ANYONE FIRED ON HER, OR THAT THE SHOOTING EVEN OCCURRED.

6 WELL, THAT IS TRUE, THEY DIDN'T FIND THE
7 BULLET. THEN HE SAYS YOU KNOW WHAT, THE FACT THAT THE
8 9-MILLIMETER GUN WAS USED IN THE MURDER, AND ALLEGEDLY
9 MR. ROMERO HAD THE REVOLVER?

10 WELL, ANOTHER REASONABLE INTERPRETATION OF
11 THE EVIDENCE IS HE DIDN'T GO THERE WITH A GUN TO, YOU
12 KNOW, TO FIND OUT WHAT THE PERM WAS GOING TO COST FOR
13 HIS HAIR. HE WENT THERE WITH A PURPOSE.

14 IT DIDN'T WORK. YOU DON'T HAVE TO BE A
15 ROCKET SCIENTIST. EVEN THESE TWO COULD FIGURE OUT THAT
16 IF GUN NUMBER ONE DIDN'T WORK, MIGHT AS WELL USE GUN
17 NUMBER TWO.

18 HOW IS IT THAT THE GUN MISSING FROM THE
19 HOUSE, THE 9-MILLIMETER, THAT NO ONE KNOWS A
20 9-MILLIMETER -- WHAT DID DETECTIVE RODRIGUEZ SAY? THREE
21 PEOPLE ON EARTH, FOUR PEOPLE ON EARTH? THAT GUN,
22 BURGLARS DON'T COME INTO A HOUSE DECIDING TO KILL
23 SOMEBODY AND GO YOU KNOW WHAT, I WANT TO KILL THIS
24 PERSON. LET'S GO SEE IF WE CAN FIND A GUN HIDDEN
25 SOMEWHERE IN THE HOUSE TO DO IT.

26 BY THE WAY, BURGLARS COME IN, THEY TAKE
27 MONEY. THEY TAKE PROPERTY. SO THE FACT THAT ERIC
28 DELACRUZ, THAT HE KNOWS, HE'S SAYING 9-MILLIMETER, THE

1 FACT THAT GUN IS MISSING, THAT'S AGAIN ANOTHER PIECE
2 THAT IMPLICATES MR. DELACRUZ. IMPLICATES MR. ROMERO.

3 MR. CREARY SEEMED TO ALTERNATE BACK AND
4 FORTH BETWEEN "IT IS NOT MY GUY, MR. ROMERO WAS NEVER AT
5 THE SALON"; BUT THEN THE NEXT THING HE WOULD SAY IS
6 "WELL, EVEN IF HE WAS THERE, YOU DON'T KNOW WHAT THEY
7 SAID, YOU DON'T KNOW WHY HE WAS THERE."

8 HERE'S THE PROBLEM. I HAVE PRESENTED
9 EVIDENCE, AND THAT EVIDENCE LEADS ONE WAY. UNLESS THE
10 DEFENSE HAS DONE SOMETHING TO REBUT THAT EVIDENCE --

11 THE COURT: EXCUSE ME. THERE'S AN OBJECTION
12 PENDING.

13 MR. CREARY, DO YOU WISH TO APPROACH?

14 MR. LEWIN: I ASSUME WE'LL BE ON HOLD?

15
16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD AT THE BENCH:)

18
19 THE COURT: WHAT'S THE GROUND FOR THE OBJECTION,
20 MR. CREARY?

21 MR. CREARY: YOUR HONOR, THAT'S JUST A
22 MISSTATEMENT OF MY ARGUMENT. I NEVER SAID IF HE WAS
23 THERE. MEANING AT THE -- IF HE WAS AT THE SHOP.

24 SO MR. LEWIN IS MISSTATING MY ARGUMENT.

25 I DIDN'T SAY THAT.

26 THE COURT: I'M GOING TO OVERRULE THE OBJECTION.
27 I DON'T THINK THAT IT'S NECESSARILY A MISSTATEMENT OF
28 YOUR ARGUMENT.

1 LET'S PROCEED.

2

3 (THE FOLLOWING PROCEEDINGS

4 WERE HELD IN OPEN COURT, IN

5 THE PRESENCE OF THE JURY:)

6

7 MR. LEWIN: MAY I CONTINUE, YOUR HONOR?

8 THE COURT: YOU MAY.

9 MR. LEWIN: IF THE EVIDENCE THAT I PRESENTED IS A
10 REASONABLE INTERPRETATION OF THE EVIDENCE, AND POINTS
11 ONE WAY, AND THE DEFENSE DOES NOTHING TO CHANGE YOUR
12 VIEW OF THAT EVIDENCE, THEN YOU'VE GOT TO ACCEPT THE
13 REASONABLE INTERPRETATION.

14 THE REASONABLE INTERPRETATION, WHEN YOUR
15 CELL PHONE THAT YOU HAVE IN YOUR POSSESSION IS PINGING
16 OFF CELL TOWERS ON ALL THREE DATES, WHEN YOU DON'T LIVE
17 IN THE AREA, WHEN YOU HAVE NO BUSINESS BEING IN THAT
18 AREA, WHEN THE PHONE IS CALLING OTHER PEOPLE THAT YOU
19 KNOW, WHEN YOU DON'T SAY THE PHONE WAS STOLEN WHEN
20 YOU'RE INTERVIEWED, WHEN YOU SAY YEAH, IT'S MY PHONE,
21 HEY, THE REASONABLE INFERENCE WAS THAT'S YOUR PHONE.

22 AND WHEN IT'S MATCHED UP BY THE FACT THAT
23 YOUR PHYSICAL DESCRIPTION -- HE SAID WELL, SHE'S JUST
24 DESCRIBED THE TYPICAL MALE HISPANIC. THERE'S NO
25 TYPICAL. SHE DESCRIBED A GUY 24 TO 26, FIVE-SEVEN,
26 FIVE-EIGHT. IT DOESN'T MAKE SENSE. IT'S ROMERO.

27 SO THAT ARGUMENT JUST DOES NOT HOLD WATER.
28 IT DOESN'T WORK.

1 HE ALSO TOLD YOU THAT BECAUSE THE VICTIM
2 DID NOT IDENTIFY MR. ROMERO, THAT SOMEHOW THAT PROVES --
3 AND WE NEVER FILED A CASE INVOLVING THE FIRST TWO
4 ASSAULTS.

5 WELL, ONE BIG PROBLEM, WHICH DETECTIVE
6 RODRIGUEZ POINTED OUT. SHE WAS DEAD. YOU CAN'T
7 IDENTIFY -- IT'S VERY DIFFICULT TO MAKE IDENTIFICATION
8 OF PEOPLE WHEN YOU ARE DEAD.

9 IT'S VERY DIFFICULT FOR DETECTIVES TO SAY
10 HEY, YOU KNOW WHAT, WHY DON'T WE SET UP A SIX PACK OF
11 INDIVIDUALS WHEN THEY DON'T HAVE THE RESULTS, YET, FOR
12 WHO THE NUMBER WENT TO.

13 SO AGAIN, THAT DOESN'T MAKE SENSE. IT'S
14 NOT LOGICAL. IT DOESN'T STAND UP TO REASON.

15 HE SAID THAT THE PHONE CALLS, BETWEEN THE
16 TWO OF THEM ON APRIL 26TH, THOSE ARE IN THE AREA OF
17 PARTICULAR FOCUS, BUT WE DON'T KNOW WHEN SONIA RIOS
18 DIED.

19 WE DO KNOW CIRCUMSTANTIALLY WHEN SHE DIED.
20 BECAUSE HER SON CAN'T GET A HOLD OF HER AFTER THAT NIGHT.
21 SHE'S DEAD AFTER 8:03 P.M. SHE'S DEAD THAT NIGHT.
22 THAT'S THE EVIDENCE THAT WE HAVE.

23 THAT'S THE ONLY EVIDENCE THAT WE HAVE.
24 THERE'S NOTHING, NOTHING, LADIES AND GENTLEMEN, THAT
25 SUGGESTS THAT SHE EVER SAW APRIL 27TH.

26 YOU LOOK AT HOW SHE IS DRESSED. YOU LOOK
27 AT THE FACTS IN THIS CASE. JUST DOESN'T ADD UP. AND
28 AGAIN, THAT'S A LITTLE -- ANOTHER LITTLE SIDETRACK.

1 LET'S SEE IF WE CAN GET THE JURY TALKING
2 ABOUT WELL, WHEN EXACTLY DID SHE DIE. BECAUSE THEN WE
3 WON'T BE TALKING ABOUT THE DAMAGING ADMISSIONS, THE CELL
4 PHONE RECORDS, THE CELL SITE RECORDS, THE E-MAILS,
5 ET CETERA.

6 HE SAYS THAT IT WAS REASONABLE FOR DELACRUZ
7 TO CALL FROM THE BOAT. HE SAID THAT'S WHAT THE NCIS
8 INVESTIGATOR SAID. THAT IS NOT WHAT SHE SAID. IT WAS
9 NOT REASONABLE.

10 AND THE PHONE CALLS, IT'S NOT JUST ONE.
11 THEY'RE REPEATED. THEY CONTINUE. AND I'VE GIVEN YOU A
12 REASONABLE INFERENCE FOR THOSE CALLS. REASONABLE
13 INFERENCE WAS THAT HE'S TRYING TO FIND OUT, "DID YOU GET
14 IT DONE? IS SHE DEAD?"

15 AND OF COURSE, WE KNOW IT DIDN'T HAPPEN.
16 DON'T KNOW WHY IT DIDN'T HAPPEN, BUT JUST DOESN'T
17 MATTER.

18 WE'RE TOLD THAT ROMERO CAN'T REMEMBER WHAT
19 HAPPENED A YEAR AGO. YOU KNOW, THE TRUTH IS NOT HARD TO
20 REMEMBER. AND IN THE END, HERE'S WHAT YOU CAN REMEMBER.

21 "I'VE NEVER BEEN TO LOMITA IN MY LIFE.
22 I'VE NEVER BEEN TO THE SOUTH BAY IN MY LIFE." YOU CAN
23 ASK YOURSELVES, IF YOU HAVE AS JURORS, ANYBODY YOU KNOW,
24 HEY, YOU EVER BEEN TO ELWOOD, INDIANA. YOU KNOW.

25 WHETHER YOU'RE ASKED ABOUT IT TODAY OR FIVE
26 YEARS FROM NOW, IF THE ANSWER IS NO, I'VE NEVER BEEN
27 THERE, THAT'S NOT TIME-DEPENDENT. SO THE FACT THAT
28 MR. ROMERO SAYS "I'VE NEVER BEEN TO LOMITA" NUMEROUS

1 TIMES, AND HE'S IMPEACHED BY THOSE PHONE CALLS, THOSE
2 CELL PHONE RECORDS, THEY'RE NOT DEPENDENT ON TIME.

3 THEY SAY THAT THERE WERE DOUBTS ABOUT
4 ROMERO'S GUILT. WHERE IS THAT FROM? WHERE DOES THAT
5 COME FROM? THERE'S NO EVIDENCE TO SUPPORT THAT.

6 IN THE END, WE TALKED ABOUT BOOMER. WE
7 WENT THROUGH, WE SAID HOW HE BECOMES A PART OF THE CASE.
8 IN THE END, BOOMER DID IT. BOOMER DID IT.

9 IN THE END, THESE GUYS DID IT. IT IS ONE
10 OF THE HARDEST THINGS AS A PROSECUTOR IS THAT -- THESE
11 CASES, YOU WORK THEM FOR A LONG TIME. AND YOU WORK
12 HARD. THIS IS NOT AN EASY JOB FOR ANY OF US.

13 AND YOU KNOW, THE WORK THAT'S DONE ON THIS
14 CASE, THE DETECTIVES WORK VERY HARD. I WORK VERY HARD.
15 AND WE WORKED HARD FOR A LONG, LONG TIME.

16 AND IN THIS JOB, THERE'S A POINT WHERE THE
17 DETECTIVES HAVE TO TURN IT OVER TO ME. AND SOMETIMES,
18 DETECTIVES AND PROSECUTORS, IT CAN BE HARD, BECAUSE THEY
19 LOSE SOME CONTROL.

20 AND THEN THERE IS THE TIME WHERE I HAVE TO
21 LET THE CASE GO. I HAVE TO TURN IT OVER TO YOU GUYS.
22 AND IT'S HARD. BECAUSE YOU GUYS IN THE END ARE THE ONES
23 THAT DECIDE.

24 AND ALL THAT I CAN ASK, AND ALL THAT I CAN
25 HOPE, YOU GUYS ARE SMART JURORS. YOU WERE CHOSEN. YOU
26 COMPLETED THESE LENGTHY QUESTIONNAIRES. YOU SHOWED US
27 HOW BRIGHT YOU WERE.

28 YOU ALL TOLD US YOU COULD GET PAST THE

1 ISSUES OF THE VICTIM, AND PROBLEMS THAT SHE HAD, AND THE
2 LIFE THAT SHE LED. SO IN THE END, I DON'T HAVE A
3 CHOICE. IT GETS TURNED OVER.

4 AS JURORS, THOUGH, YOU ALL HAVE TO REMEMBER
5 THAT YOU GUYS HAVE THIS DUTY AND THIS RESPONSIBILITY.
6 AND A PART OF THAT IS WHEN YOU GO BACK THERE, AND YOU
7 START LOOKING AT THIS CASE, IF ONE JUROR SAYS WELL, YOU
8 KNOW, HOW DO I KNOW THAT SOMEONE FROM THE PHILIPPINES
9 DIDN'T COME OVER HERE THAT SAME NIGHT AND KILL HER, YOU
10 HAVE TO SAY HEY, WAIT A MINUTE. WHERE IS THE EVIDENCE?

11 IF THERE'S NO EVIDENCE, YOU HAVE TO TELL
12 THAT PERSON HEY, YOU CAN'T BASE YOUR DECISION ON
13 EVIDENCE THAT ISN'T THERE.

14 AND IF SOMEONE REFUSES TO FOLLOW THEIR
15 DUTY, WHETHER IT'S ABOUT EVIDENCE, WHETHER IT'S, YOU
16 KNOW WHAT, I DIDN'T LIKE THAT PROSECUTOR, HE TOOK TOO
17 LONG, I DECIDED AFTER OPENING WHEN HE WENT -- I THINK A
18 LITTLE BIT OVER TWO HOURS, SOMETHING LIKE THAT, MAYBE
19 CLOSER TO THREE -- I DON'T LIKE THAT PROSECUTOR; HE IS
20 NOT GOING TO WIN THIS CASE. I'M VOTING NOT GUILTY. I
21 DON'T CARE WHAT THE EVIDENCE SHOWS.

22 YOU KNOW, WE'RE NOT BACK THERE. ONLY YOU
23 ARE BACK THERE. SO REMEMBER, IF YOU YOURSELF CAN'T
24 FOLLOW YOUR DUTY AND YOUR OBLIGATION, YOU NEED TO LET
25 THE COURT KNOW.

26 IF SOMEONE ELSE CAN'T FOLLOW THEIR DUTY OR
27 OBLIGATION, YOU HAD NEED TO LET THE COURT KNOW. BECAUSE
28 WE ARE NOT BACK THERE.

1 IT DOESN'T HELP IF WE FIND OUT TWO DAYS
2 AFTER THE JURY HAS BEEN DISMISSED THAT HEY, SOMEBODY WAS
3 CONSIDERING SOMETHING THEY WEREN'T SUPPOSED TO.

4 WOW. I HAVE FIVE MINUTES AND TEN SECONDS
5 LEFT. I DIDN'T THINK IT WAS GOING TO HAPPEN. I CAN
6 SLOW DOWN AND END THIS RIGHT.

7 THIS CASE IS UNUSUAL. THE FACTS, AS I SAID
8 REPEATEDLY, ARE, YOU KNOW, THEY'RE A BAD MOVIE. BUT
9 WHAT'S INTERESTING IS THAT AS CRAZY AS THE CONSPIRACY
10 WAS, WITH THE E-MAILS, WITH THE FRAMING OF JOHN
11 BOURDEAU, WITH ALL THE CRAZY EVIDENCE IN THIS CASE, IN
12 THE END, IT'S ACTUALLY VERY SIMPLE.

13 YOU DON'T HAVE A DIFFICULT JOB AS JURORS
14 ASSIMILATING A BUNCH OF EVIDENCE. SEE, IN THE END, THIS
15 IS NOT COMPLICATED. IN THE END, YOU CAN WALK BACK
16 THERE, AND YOU CAN SAY OH, MY GOSH, ERIC SET THIS UP IN
17 ADVANCE. SAID HE WAS GOING TO KILL HER AS JOHN
18 BOURDEAU.

19 SET THE DEAL UP WITH ROMERO. ROMERO IS
20 THERE ON ALL THE DAYS THAT COUNT. SONIA GIVES THEM THE
21 PHONE NUMBER. GIVES THEM HIS PHYSICAL DESCRIPTION.

22 THEY MATCH UP ON THE NIGHT OF THE MURDER.
23 THEY LIE AFTERWARDS. NEITHER ONE OF THEM HAS AN ALIBI.
24 NEITHER ONE OF THEM PRESENTED AN ALIBI.

25 BY THE WAY, IF THEY HAD AN ALIBI TO
26 PRESENT, DON'T YOU THINK THAT THERE WOULD HAVE BEEN
27 PEOPLE STANDING UP HERE SAYING "THEY WERE WITH ME THAT
28 NIGHT"?

1 MARIA PEREZ TRIED. YOU SAW WHAT HAPPENED.
2 SO IN THE END, DON'T MAKE THIS MORE COMPLICATED THAN
3 WHAT IT IS. JUST BECAUSE WE HAD A LENGTHY TRIAL DOESN'T
4 MEAN THAT THIS IS A DIFFICULT CASE.

5 I BELIEVE THAT THE EVIDENCE IN THIS CASE
6 SHOWS BEYOND ANY, ANY REASONABLE DOUBT THAT THESE TWO
7 DEFENDANTS -- ERIC DELACRUZ, THE MASTERMIND, HE PLANNED
8 THIS OUT. EVIL. SINISTER. DECEITFUL. HE PLANNED IT
9 OUT.

10 DECIDED HE WAS GOING TO KILL HIS GREAT
11 AUNT, THE PERSON WHO LOVED HIM. YOU KNOW, APPARENTLY,
12 IT WAS JUST BUSINESS. HE DIDN'T HAVE ANYTHING AGAINST
13 HER. "SHE TREATED ME -- SHE RAISED ME. SHE WAS GOOD TO
14 ME."

15 BUT HE WANTED HER MONEY. SO HE DECIDED HE
16 WAS GOING TO KILL HER. AND HE DIDN'T APPARENTLY DIDN'T
17 WANT TO GET HIS HANDS DIRTY, SO HE FOUND THIS MAN.
18 NOTHING MORE THAN A COLD-BLOODED HIRED KILLER. NOTHING
19 MORE.

20 DON'T LET THE NAVY, THE NAVY FOOL YOU.
21 DON'T LET THAT MISLEAD YOU. BECAUSE THE EVIDENCE IS
22 WHAT THE EVIDENCE IS. AND HE'S A COLD-BLOODED KILLER.

23 HE DIDN'T EVEN KNOW HER. I DON'T KNOW
24 WHAT'S WORSE. KILLING SOMEONE YOU LOVED WHO WAS GOOD TO
25 YOU, OR KILLING SOMEBODY YOU NEVER EVEN MET FOR SOME
26 UNKNOWN BENEFIT.

27 BUT THAT'S WHAT THEY DID. THEY DECIDED TO
28 DO IT. APPARENTLY, MR. ROMERO COULDN'T GET IT DONE

1 WHILE MR. DELACRUZ WAS ON THE BOAT. SO MR. DELACRUZ HAD
2 TO TAKE A MORE ACTIVE ROLE.

3 AND THEY WENT THERE. I DON'T KNOW WHICH
4 ONE WENT IN THE HOUSE. I DON'T KNOW IF THEY BOTH DID.
5 I DON'T KNOW IF ONE DID.

6 BY THE WAY, AS JURORS, THAT IS NOT
7 SOMETHING FOR YOU TO GET CONCERNED ABOUT, OR TO GET HUNG
8 UP ON. I MENTIONED BEFORE WHEN WE STARTED THIS CASE,
9 THAT YOU ALL AGREED "I CAN REACH A VERDICT BASED ON THE
10 EVIDENCE THAT IS PRESENTED. I DON'T NEED TO HAVE ALL OF
11 MY QUESTIONS ANSWERED."

12 I'M NOT OBLIGATED TO PROVE TO YOU HERE'S
13 HOW THIS ONE WENT IN THE HOUSE, HE WENT IN FIRST, HE DID
14 THIS, HE DID THAT.

15 IT WOULD BE IMPOSSIBLE. AND IT'S NOT
16 REQUIRED. BUT IT IS VERY CLEAR THAT THAT'S WHAT
17 HAPPENED.

18 LADIES AND GENTLEMEN, THE EVIDENCE IN THIS
19 CASE, IT IS OVERWHELMING. NOW, WE STARTED WITH A BLANK
20 PUZZLE PIECE. WE STARTED -- THE PIECES STARTED TO COME
21 TOGETHER.

22 AND IN THE END, YOU KNOW WHAT'S IRONIC? WE
23 DON'T HAVE ANY MISSING PIECES IN THIS CASE. NONE. ERIC
24 DELACRUZ. GUILTY. GUILTY OF CONSPIRACY TO COMMIT
25 MURDER. GUILTY OF MURDER. FERNANDO ROMERO. GUILTY.
26 NO MISSING PIECES. CONSPIRACY TO COMMIT MURDER AND
27 MURDER.

28 MY LAST SLIDE, BY THE WAY. THAT'S JUST

1 SOME OF THE EVIDENCE. THAT'S JUST SOME OF IT. WHAT
2 DOES IT ADD UP TO? A MOUNTAIN OF EVIDENCE AGAINST THESE
3 DEFENDANTS. A MOUNTAIN. A MOUNTAIN, LADIES AND
4 GENTLEMEN.

5 THE EVIDENCE PROVES THEY PLANNED THIS. AND
6 THEN THEY CARRIED IT OUT. AND IT IS TIME THAT THEY ARE
7 HELD ACCOUNTABLE.

8 THANK YOU VERY MUCH.

9 THE COURT: THANK YOU, MR. LEWIN.

10 MADAM CLERK, WOULD YOU TURN THE LIGHTS BACK
11 ON, PLEASE?

12 MADAM CLERK, WOULD YOU SWEAR IN OUR
13 BAILIFFS, PLEASE?

14 THE CLERK: DO YOU SOLEMNLY STATE THAT YOU WILL
15 TAKE CHARGE OF THE JURY AND KEEP THEM TOGETHER, THAT YOU
16 WILL NOT SPEAK TO THEM YOURSELF, NOR ALLOW ANYONE ELSE
17 TO SPEAK TO THEM UPON MATTERS CONNECTED WITH THE CASE
18 EXCEPT ON ORDER OF THE COURT; AND WHEN THEY HAVE AGREED
19 UPON A VERDICT, YOU WILL RETURN THEM INTO THE COURTROOM,
20 SO HELP YOU GOD;

21 FURTHERMORE, DO YOU SOLEMNLY STATE THAT YOU
22 WILL TAKE CHARGE OF THE ALTERNATE JURORS AND KEEP THEM
23 APART FROM THE JURY WHILE THEY ARE DELIBERATING ON THE
24 CAUSE, UNTIL OTHERWISE INSTRUCTED BY THE COURT, SO HELP
25 YOU GOD.

26
27 (THE TWO BAILIFFS RESPONDED
28 IN THE AFFIRMATIVE.)