

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.)
)
 TAUMU JAMES,)
)
 DEFENDANT-APPELLANT.)

NO. KA085233-02
CONSOLIDATED W/
NO. KA086790-01

COPY
MAR 16 2011

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE CHARLAINE F. OLMEDO, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

SEPTEMBER 2, 2009; JANUARY 12, 2010;

JULY 30, 2010; AUGUST 2, 3, 2010

APPEARANCES:

FOR PLAINTIFF-RESPONDENT:

KAMALA HARRIS
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT:

IN PROPRIA PERSONA

VOLUME 2 OF 5 VOLUMES

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KATHRYN L. MAUTZ, CSR #11539

JOE BARRAGAN, CSR #5701

TRISHA SHEAR, CSR #11529

OFFICIAL COURT REPORTERS

1 CASE NUMBER: KA085233-02 CONS/W KA086790-01
2 CASE NAME: PEOPLE V. TAUMU JAMES
3 POMONA, CALIFORNIA SEPTEMBER 2, 2009
4 DEPARTMENT A HON. DANIEL J. BUCKLEY
5 REPORTER: JOE BARRAGAN, C.S.R. #5701
6 TIME: 2:44 P.M.
7

8 APPEARANCES:

9 DEFENDANT TAUMU JAMES IN PROPRIA PERSONA;
10 DEFENDANT DION HAWKINS REPRESENTED BY
11 LESLEY S. GORDON, DEPUTY PUBLIC DEFENDER;
12 RONALD GOUDY, DEPUTY DISTRICT ATTORNEY,
13 REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.
14

15 THE COURT: CALLING THE TWO MATTERS BEFORE THE COURT,
16 DION HAWKINS, WHICH IS NUMBER TWO ON THE COURT'S CALENDAR, AND
17 THEN TAUMU JAMES, NUMBER FOUR.

18 MR. JAMES IS IN CUSTODY REPRESENTING
19 HIMSELF.

20 OTHER APPEARANCES, PLEASE?

21 MS. GORDON: LESLEY GORDON, DEPUTY PUBLIC DEFENDER, ON
22 BEHALF OF MR. HAWKINS, WHO IS PRESENT IN CUSTODY.

23 MR. GOUDY: RONALD GOUDY, DEPUTY DISTRICT ATTORNEY, FOR
24 THE PEOPLE.

25 THE COURT: DEPARTMENT E HAD HANDLED THE 995 MOTION.
26 THAT WAS ASSUMABLY DENIED?

27 MS. GORDON: YES, YOUR HONOR.

28 THE COURT: IT'S BEFORE ME NOW. WE HAVE A READINESS

1 HEARING IN EACH CASE FOR SEPTEMBER 23, A JURY TRIAL FOR
2 SEPTEMBER 25. THE COURT DOES HAVE A 1098 MOTION FILED TO JOIN
3 THESE TWO CASES. THE COURT HAS REVIEWED THE MOVING PAPERS.

4 ANYTHING FURTHER FROM THE PEOPLE?

5 **MR. GOUDY:** NO, YOUR HONOR.

6 **THE COURT:** MS. GORDON?

7 **MS. GORDON:** THE ONLY THING I'D SAY, YOUR HONOR, IS
8 THAT I WOULD OBJECT FOR THE RECORD, PRESERVE THE ISSUE BECAUSE
9 NOT HAVING SEEN ANY OF THE DISCOVERY CONCERNING MR. JAMES,
10 CANDIDLY, I DON'T KNOW IF THERE ARE ANY ISSUES CONCERNING
11 EVIDENTIARY ISSUES OR ANYTHING OF THAT NATURE VIS-A-VIS
12 JOINDER. SO TO PRESERVE THE ISSUE, I'D OBJECT FOR THE RECORD;
13 AND THEN, OF COURSE, I CAN ALWAYS ON THE BACKSIDE, IF YOU
14 WILL, MAKE A MOTION FOR SEVERANCE ONCE -- IF THE COURT WERE TO
15 GRANT THAT MOTION, ONCE I GET DISCOVERY FROM MR. GOUDY.

16 **THE COURT:** MR. JAMES, YOUR POSITION ON THE MOTION?

17 **DEFENDANT JAMES:** YOUR HONOR, I HAVE AN OPPOSITION TO
18 THAT MOTION TO CONSOLIDATE THE CASES. I HAVEN'T RECEIVED
19 ANYTHING. I HAVEN'T RECEIVED ANY DISCOVERY. I'M FILING THE
20 OPPOSITION NOW TO GIVE MYSELF TIME TO PREPARE TO ARGUE LATER.
21 FOR SOME REASON --

22 **THE COURT:** TELL ME WHY THE CASES SHOULD NOT BE JOINED.
23 IF THE PEOPLE ARE ALLEGING THAT YOU TWO GENTLEMEN WERE IN THE
24 SAME PLACE AT THE SAME TIME DOING THE SAME CRIME, WHY SHOULD I
25 NOT GRANT THIS MOTION?

26 I'LL LET YOU ADDRESS DISCOVERY IN A MOMENT.
27 ANSWER MY VERY SPECIFIC QUESTION. GIVEN THOSE
28 ALLEGATIONS, WHY SHOULD I NOT GRANT THE MOTION?

1 **DEFENDANT JAMES:** BECAUSE THERE IS EVIDENCE THAT MAY --
2 THAT -- I MAY HAVE EVIDENCE THAT I WANT TO PRESENT THAT IS NOT
3 HELPFUL TO MR. HAWKINS. IN TURN, THERE IS EVIDENCE THAT MAY
4 COME OUT IN DISCOVERY THAT HE MAY USE AGAINST ME. I DON'T
5 HAVE ANY IDEA WHERE WE'RE STANDING RIGHT NOW BECAUSE THE
6 PROSECUTION, HE'S FILING MOTIONS, BUT NOT GIVING ME A CHANCE
7 TO PREPARE. I CAN'T ADEQUATELY DEFEND THIS MOTION. I DON'T
8 HAVE ANYTHING TO PRESENT TO GO AGAINST IT, BUT THAT IS
9 POSSIBLE EVIDENCE. THERE IS TELEPHONE CALLS --

10 **THE COURT:** THERE MAY WELL BE DEFENSES, SIR, OBVIOUSLY,
11 TO ANY CASE. BUT AT THE HEART OF THIS, THIS CASE COULD EASILY
12 HAVE BEEN FILED WITH BOTH OF YOU NAMED AS CO-DEFENDANTS.

13 I'M GOING TO GRANT THE MOTION OVER BOTH
14 DEFENDANTS' OBJECTIONS RECOGNIZING, OF COURSE, THAT WITH
15 FURTHER INFORMATION OR FURTHER PROCEDURAL STATUS EITHER
16 OR BOTH OF YOU COULD FILE A MOTION TO SEVER.

17 NOW, I DO HAVE FILED BY THE DEFENDANT,
18 FILED AUGUST 20TH, AND APPARENTLY THERE WAS ANOTHER ONE
19 FILED AUGUST 4TH, WITH DISCOVERY REQUESTS BY YOU,
20 MR. JAMES; CORRECT?

21 **DEFENDANT JAMES:** YES.

22 **THE COURT:** PEOPLE'S POSITION?

23 **MR. GOUDY:** YOUR HONOR, IF I MAY, I HAVE A WRITTEN
24 RESPONSE TO BOTH OF THOSE DISCOVERY REQUESTS FOR MR. JAMES, AS
25 WELL AS SOME DISCOVERY.

26 SHOWING THESE TO THE BAILIFF, AND HE'S
27 HANDING THEM TO MR. JAMES.

28 THE DISCOVERY ARE 40 PAGES OF LINE SHEETS

1 OF INTERCEPTED CALLS. UNFORTUNATELY, THEY PROVIDED ME
2 WITH TWO COPIES OF THE SAME THING. I KNOW THERE IS
3 ANOTHER PACKET. I WILL CALL MR. JAMES' INVESTIGATOR
4 TOMORROW SINCE I WILL NOT BE BACK IN MY OFFICE TODAY AND
5 HAVE HIM COME PICK UP THE OTHER PACKET OF THE LINE SHEETS
6 FOR THE WIRETAP.

7 I DO NOT HAVE ANY OF THE DNA INFORMATION
8 YET, ALTHOUGH I RECEIVED A MESSAGE TODAY THAT THE REPORT
9 IS IN; THE DETECTIVE HAS IT, AND HE'S GOING TO BE GETTING
10 IT TO ME; SO I SHOULD HAVE THAT TOMORROW AS WELL. I WILL
11 DO THE SAME THING, AND HOPEFULLY AT THE SAME TIME HAVE
12 MR. JAMES' INVESTIGATOR COME BY AND PICK UP THE DNA, AT
13 LEAST THE INITIAL REPORT.

14 THAT'S WHAT I HAVE AT THIS POINT. I WILL
15 PROVIDE THE ADDITIONAL STUFF, THE RECORDINGS, AS SOON AS
16 I GET THOSE OF THE INTERCEPTED CALLS.

17 **MS. GORDON:** AND I HAVE, SO THE COURT KNOWS, AS TO --
18 ON BEHALF OF MR. HAWKINS, I'VE SPOKEN TO MR. GOUDY AND GAVE
19 HIM AN INFORMAL DISCOVERY REQUEST FOR DNA, AND HE KNOWS THE
20 DISCOVERY REQUESTS ALSO REGARDING TAPES, ANY TAPES. I'VE
21 REQUESTED AFFIDAVITS REGARDING THE SUBPOENAS TO REVIEW THE
22 AFFIDAVITS WHICH MAY OR MAY NOT NEED TO BE LITIGATED, AND I
23 UNDERSTAND THAT. HE'S ALREADY INDICATED TO ME HE'S GOING TO
24 PROVIDE TO ME THE TAPES OF THESE CALLS AS WELL AS THE DNA
25 DISCOVERY, WHICH I'M AWAITING, AND HE INDICATED TO ME HE
26 HAS -- BY, "DNA DISCOVERY," I MEAN I NEED THE RAW DATA, LAB
27 NOTES, ET CETERA, WHICH MR. GOUDY KNOWS.

28 NOW, IN LIGHT OF THE JOINDER, I'LL NEED THE

1 COLD HIT MATERIAL WITH RESPECT TO MR. JAMES WHICH
2 MR. GOUDY HAS ALSO INDICATED TO ME HE'LL PUT IN THE
3 REQUEST FROM THE LAB TO GET THAT DATA TO ME SO THAT MY
4 LAB CAN REVIEW AND ANALYZE IT WHICH IS WHAT I NEED TO DO
5 IN PREPARATION FOR THIS CASE.

6 **THE COURT:** MR. JAMES, IN READING THE RESPONSE BY
7 MR. GOUDY, IT DOES SAY THAT HE'S GOING -- HAS OR WILL PRODUCE
8 TO YOU EVERYTHING THAT'S REQUIRED BY PENAL CODE SECTION
9 1054.1.

10 FOR THE RECORD, I'M ORDERING THE PEOPLE TO
11 PROVIDE ALL DISCOVERY IN COMPLIANCE WITH 1050.1.

12 SO YOU'LL BE GETTING SOME FURTHER
13 INFORMATION. IN ESSENCE, I'M GRANTING YOUR REQUEST
14 WITHIN THE PARAMETERS OF 1054.1. WHAT WE HAVE, SIR, IS I
15 HEAR YOU SAYING THAT YOU HAVE A NEED FOR NOT ONLY THE
16 DISCOVERY THAT WAS JUST HANDED TO YOU, BUT YOU BELIEVE
17 THERE IS ADDITIONAL DISCOVERY.

18 WOULD YOU BE WILLING TO WAIVE TIME AS TO
19 THIS CURRENT TRIAL, HAVE YOU COME BACK IN MAYBE EARLY
20 OCTOBER SO THAT WE WOULD THEN SCHEDULE A TRIAL DATE
21 WITHIN 60 DAYS OF THAT DATE?

22 **DEFENDANT JAMES:** IN THE EVENT I DON'T WAIVE TIME,
23 WHERE DO WE STAND THEN?

24 **THE COURT:** YOU'RE STARTING A TRIAL ON SEPTEMBER 25.

25 **DEFENDANT JAMES:** WITHOUT THE DISCOVERY?

26 **THE COURT:** YOU'RE STARTING THE TRIAL. YOU'D BE
27 GETTING THE DISCOVERY. YOU MAY NOT BE GETTING IT UNTIL
28 SOMETIME BETWEEN NOW AND THAT TRIAL DATE. THERE IS THE ISSUE

1 OF THE DNA THAT YOU MAY NOT HAVE ENOUGH TIME TO HAVE YOUR SIDE
2 ANALYZE IT AND PREPARE IT, BUT THE DIRECT ANSWER TO YOUR
3 QUESTION IS YOU WOULD HAVE A TRIAL IN APPROXIMATELY FOUR
4 WEEKS. BUT IF YOU WAIVE TIME, WE WOULD HAVE YOU COME BACK --

5 IS THERE A DATE THAT THE ATTORNEYS WERE
6 TALKING ABOUT?

7 **MR. GOUDY:** WE WERE LOOKING AT OCTOBER 6. I WILL
8 INDICATE TO THE COURT THERE IS ANOTHER MOTION THAT WAS FILED
9 BY MR. JAMES WHICH IS FOR A LINE-UP.

10 **THE COURT:** I PLAN TO GET TO THAT.

11 **MR. GOUDY:** IT MAY HAVE SOME BEARING ON HIS WILLINGNESS
12 TO WAIVE TIME.

13 **THE COURT:** LET'S PUT THAT FIRST.

14 SIR, YOU DID FILE A MOTION THAT YOU WANT TO
15 HAVE A LINE-UP. YOU DESCRIBE IT AS A MOTION TO CONDUCT A
16 TRY-ON, T-R-Y, DASH, O-N, LINE-UP.

17 PEOPLE'S POSITION?

18 **MR. GOUDY:** I HAVE NOT RESPONDED TO THAT BECAUSE ONE OF
19 THE ITEMS MR. JAMES MENTIONS IS THAT IDENTIFICATION WILL BE AN
20 ISSUE. SINCE I'VE NOT SEEN THE REPORT, ALTHOUGH I'VE BEEN
21 TOLD THERE IS A DNA MATCH ON EVIDENCE THAT WAS RECOVERED, I
22 THINK THAT MAY INDICATE THAT ID WILL NOT BE AN ISSUE BECAUSE
23 OF THE DNA MATCH. BUT IT'S HARD FOR ME TO RESPOND CITING THAT
24 WITHOUT HAVING SEEN THE REPORT.

25 HOWEVER, IF THERE IS A LINE-UP THAT WOULD
26 BE ORDERED, MY PRACTICE, ALTHOUGH IT'S BEEN A WHILE SINCE
27 I'VE HAD A LINE-UP, IT'S AT LEAST FOUR WEEKS BEFORE THE
28 SHERIFF'S DEPARTMENT WILL SCHEDULE A LINE-UP, AND THAT

1 PUTS US PAST THE TRIAL DATE. SO I'D BE ABLE TO RESPOND
2 WITHIN A WEEK OR TWO DEPENDING ON WHEN I CAN GET THE DNA
3 MATERIALS, BUT THEN WE'RE TALKING FOUR WEEKS BEFORE WE
4 COULD HAVE THE LINE-UP AT THE EARLIEST. I DON'T KNOW
5 WHAT THEIR TIMETABLE IS NOW.

6 **THE COURT:** WHAT I HEAR, SIR, IS THAT THERE BE FURTHER
7 CONSIDERATION FOR YOU. GIVEN THE ARGUMENT THAT I JUST HEARD
8 FROM THE ATTORNEY, I PROBABLY WOULD DELAY A DECISION ON YOUR
9 MOTION UNTIL WE KNOW WHAT THE DNA RESULTS ARE. EVEN IF I --
10 POINT BEING, EVEN IF I GRANTED IT TODAY, YOU WOULDN'T BE ABLE
11 TO HAVE THE LINE-UP FOR ANOTHER FOUR WEEKS.

12 **DEFENDANT JAMES:** IN RESPONSE TO THE PEOPLE, THE ISSUE
13 AS FAR AS THE EVIDENCE REGARDS TO ME IS ONLY IDENTIFICATION.
14 WHETHER THE PEOPLE SAY THERE IS DNA ON SOME CLOTHING
15 RECOVERED, THE ISSUE IS THE ONLY EVIDENCE THEY'RE PRESENTING
16 IS SOMEONE SAYING THEY WERE ABLE TO VIEW ME THROUGH A MASK.

17 **THE COURT:** NOT KNOWING WHETHER THAT IS CORRECT OR NOT,
18 THE ISSUE FOR YOU RIGHT NOW IS DO YOU WANT TO PROCEED FORWARD
19 WITH THE CURRENT TRIAL DATE OR DO YOU WANT TO WAIVE TIME SO
20 THAT THERE IS NO TRIAL DATE OTHER THAN IT BEING SCHEDULED
21 WITHIN 60 DAYS OF OCTOBER 6? IT'LL ALLOW YOU THIS OPPORTUNITY
22 TO INVESTIGATE, GET THE INFORMATION FROM THE PEOPLE, AND KNOW
23 EXACTLY WHAT THEIR POSITION IS AS TO NOT ONLY IDENTITY BUT
24 OTHER ISSUES OF THE CASE.

25 **DEFENDANT JAMES:** I'LL WAIVE TIME.

26 **THE COURT:** YOU WANT TO WAIVE TIME?

27 **DEFENDANT JAMES:** YES.

28 **THE COURT:** OKAY.

1 MR. HAWKINS, IS HE WILLING TO WAIVE TIME?

2 MS. GORDON: YES, HE IS, YOUR HONOR.

3 THE COURT: AS TO BOTH OF YOU, YOU HAVE THE RIGHT TO A
4 SPEEDY TRIAL. ARE YOU WILLING TO WAIVE THAT RIGHT, SO YOUR
5 TRIAL WILL BE WITHIN 60 DAYS OF OCTOBER 6?

6 MR. JAMES?

7 DEFENDANT JAMES: I'LL WAIVE THE RIGHT.

8 THE COURT: MR. HAWKINS?

9 DEFENDANT HAWKINS: YES.

10 THE COURT: COUNSEL, JOIN?

11 MS. GORDON: YES.

12 THE COURT: WHY DON'T WE SCHEDULE A PRETRIAL/TRIAL
13 SETTING CONFERENCE FOR OCTOBER 6. I'LL BE ORDERING THE PEOPLE
14 TO FOLLOW THROUGH WITH WHAT THEY INDICATED ALREADY IN THAT.

15 MR. JAMES, PRIMARILY, BUT ALSO MR. HAWKINS,
16 THROUGH YOUR ATTORNEY, YOU'LL BE GETTING ADDITIONAL
17 DISCOVERY THROUGH YOUR INVESTIGATOR. YOU'LL BE GETTING
18 THE RESULTS OF THE DNA. AND WITH THAT, ULTIMATELY THE
19 PEOPLE WILL ADVISE YOU WHETHER OR NOT THEY AGREE OR
20 DISAGREE THAT YOUR LINE-UP MOTION SHOULD BE GRANTED, AND
21 THEN WE'LL ADDRESS THE ACTUAL MOTION ON THE LINE-UP ON
22 OCTOBER 6 AS WELL.

23 DEFENDANT JAMES: SO FROM OCTOBER 6TH, IT WOULD BE FOUR
24 WEEKS FROM THAT DATE ON IF WE'LL BE ABLE TO HAVE THE LINE-UP
25 OR NOT?

26 THE COURT: IF I GRANT YOUR REQUEST ON OCTOBER 6, YES.
27 THE EARLIEST THAT THE SHERIFF'S DEPARTMENT COULD ARRANGE FOR
28 THE LINE-UP WOULD BE APPROXIMATELY FOUR WEEKS FROM THAT DATE.

1 OKAY?

2 **DEFENDANT JAMES:** OKAY. I DO HAVE SOME MOTIONS FOR THE
3 COURT.

4 **THE COURT:** YOU HAVE OTHER MOTIONS?

5 **DEFENDANT JAMES:** YES.

6 **THE COURT:** WOULD YOU HAND IT TO THE DEPUTY.

7 **MR. GOUDY:** ALSO, JUST A HOUSEKEEPING MATTER, THEY ARE
8 CONSOLIDATED INTO THE LOWER CASE NUMBER?

9 **THE COURT:** YES. THANKS FOR ASKING.

10 I'VE READ THE OPPOSITION TO CONSOLIDATE THE
11 DEFENDANTS, AND THAT WOULD NOT HAVE CHANGED MY MIND.
12 YOUR ARGUMENTS, I THINK, WERE ALREADY RAISED, AND I THINK
13 THAT'S WHY YOU FILED. SO I'LL GIVE YOU YOUR CONFORMED
14 COPY THROUGH THE CLERK'S OFFICE IN A MOMENT.

15 ANYTHING ELSE FOR TODAY?

16 **MR. GOUDY:** NO. IF I MAY INQUIRE, YOUR HONOR, I JUST
17 WANT TO MAKE SURE THAT I HAVE THE CORRECT NAME.

18 IS IT STILL MR. PODSKALAN, YOUR
19 INVESTIGATOR?

20 **DEFENDANT JAMES:** YES.

21 **MR. GOUDY:** I WANTED TO MAKE SURE I WAS CALLING THE
22 RIGHT INDIVIDUAL TOMORROW.

23 **THE COURT:** OKAY.

24 THANK YOU, EVERYBODY. SEE EVERYONE ON
25 OCTOBER 6, ZERO OF 60.

26 **MR. GOUDY:** THANK YOU, YOUR HONOR.

27 **THE COURT:** THANK YOU.

28 LET THE RECORD REFLECT THAT AS THE DEPUTIES

1 WERE APPROACHING BOTH DEFENDANTS TO ESCORT THEM OUT,
2 SINCE THEY ARE IN CUSTODY, MR. JAMES, YOU SAID LOUD
3 ENOUGH FOR ME TO HEAR -- I THINK YOU WERE ADDRESSING ME.

4 **DEFENDANT JAMES:** YES.

5 **THE COURT:** SAYING YOU DO NOT WANT TO WAIVE TIME?

6 **DEFENDANT JAMES:** NO, I DON'T.

7 **THE COURT:** YOU UNDERSTAND, SIR, WE HAVE A READINESS
8 CONFERENCE ON SEPTEMBER 23, AND YOU'RE GOING TO BE STARTING
9 TRIAL ON SEPTEMBER 25 WITH OR WITHOUT WHATEVER YOU HAVE IN
10 YOUR POSSESSION?

11 **DEFENDANT JAMES:** WITH OR WITHOUT THE DISCOVERY?

12 **THE COURT:** YOU MADE THAT DECISION, SIR. YOU CAN'T
13 HAVE IT BOTH WAYS. EITHER YOU PROCEED TO TRIAL, AND YOU HAVE
14 RIGHT NOW THAT RIGHT. THERE MAY BE ISSUES RAISED AT THAT TIME
15 THAT WOULD FORCE ME TO CONTINUE THE TRIAL, BUT WE CANNOT
16 CHANGE CERTAIN TIMELINES.

17 I'M NOT TRYING TO TALK YOU OUT OF IT, SIR.
18 YOU UNDERSTAND THAT YOU'RE STARTING TRIAL ON SEPTEMBER 25
19 EVEN IF SOME OF THESE THINGS WHICH CANNOT BE DONE
20 PHYSICALLY BY THEN ARE NOT DONE?

21 **DEFENDANT JAMES:** BUT WHAT YOU'RE TRYING TO GET ME TO
22 UNDERSTAND, IF I DON'T HAVE DISCOVERY, WE'RE STARTING TRIAL
23 REGARDLESS OF THE DISCOVERY?

24 **THE COURT:** IF IT'S REASONABLE IF THE DISCOVERY HAS NOT
25 BEEN PROVIDED TO YOU. I SAID A LOT RIGHT THERE.

26 **DEFENDANT JAMES:** WHAT MAKES IT REASONABLE?

27 **THE COURT:** IF IT'S PHYSICALLY IMPOSSIBLE, FOR EXAMPLE,
28 TO NOT GET THE DNA ANALYZED AND PREPARED, AS AN EXAMPLE, OR

1 MORE CRITICAL FOR YOU IS THAT THE PEOPLE HAVE GOTTEN THEIR DNA
2 RESULTS DONE; IT SHOWS DNA CONSISTENT WITH YOU BEING PRESENT,
3 BUT YOU, THROUGH AN EXPERT OR YOUR INVESTIGATOR, DO NOT HAVE
4 ENOUGH TIME TO HAVE A DISPUTED PRESENTATION OF THE CASE,
5 YOU'RE STILL STARTING TRIAL.

6 **DEFENDANT JAMES:** ALL RIGHT.

7 **THE COURT:** WHAT DO YOU WANT TO DO?

8 **DEFENDANT JAMES:** I DON'T WANT TO WAIVE TIME.

9 **THE COURT:** ORDER EACH DEFENDANT TO RETURN SEPTEMBER 23
10 FOR READINESS HEARING, SEPTEMBER 25. THE OTHER DATES I
11 INDICATED ARE VACATED. I DON'T BELIEVE IT CHANGES ANY OF THE
12 OTHER RULINGS THAT I DID. GIVEN AT THIS TIME THE PHYSICAL
13 INABILITY TO DO THE LINE-UP IN SUFFICIENT TIME FOR THE TRIAL,
14 I'M GOING TO DENY WITHOUT PREJUDICE THE MOTION FOR A LINE-UP.

15 I THINK THAT COVERS IT. THANK YOU VERY
16 MUCH, EVERYBODY.

17 **DEFENDANT JAMES:** WHY WAS MY MOTION DENIED AS FAR AS
18 THE LINE-UP?

19 **THE COURT:** WE CAN'T DO IT BETWEEN NOW AND THAT DATE,
20 SIR.

21 **DEFENDANT JAMES:** I JUST DON'T WANT TO WAIVE TIME UNTIL
22 OCTOBER. I WOULD LIKE TO HAVE WHATEVER TIME IT WOULD TAKE FOR
23 ME TO HAVE THE LINE-UP BE IT THAT IDENTITY IS THE ISSUE. I'M
24 JUST ASKING TO BE PLACED IN FRONT OF THE VICTIM IN THE LIGHT
25 SHE CLAIMS TO HAVE SEEN ME IN. THAT'S IT.

26 WHY CAN'T I HAVE A LINE-UP? BECAUSE I
27 DON'T WANT TO WAIVE MY RIGHT TO SPEEDY TRIAL?

28 **THE COURT:** BECAUSE OF THE REASONS ARTICULATED BY THE

1 PEOPLE, INCLUDING THE FACT THAT THEY BELIEVE IT'S QUITE
2 POSSIBLE THAT IDENTITY WILL NOT BE AT ISSUE, AND THEY ARE NOT
3 PHYSICALLY ABLE TO DO IT BY THEN.

4 **DEFENDANT JAMES:** YOUR HONOR, WITH ALL DUE RESPECT, THE
5 ONLY ISSUE IS IDENTITY. THAT'S THE ONLY ISSUE.

6 **THE COURT:** YOU'LL HAVE THE RIGHT TO PRESENT THAT AT
7 TRIAL. I'M NOT PREVENTING YOU FROM ARGUING THAT AND
8 PRESENTING EVIDENCE. I CAN ONLY DO SO MUCH BETWEEN NOW AND
9 SEPTEMBER 25.

10 **DEFENDANT JAMES:** BECAUSE THE PEOPLE DON'T WANT TO
11 RESPOND TO -- THEY SAID THEY NEED TO WAIT FOR DNA TO COME BACK
12 BEFORE THEY CAN RESPOND IN GIVING ME A LINE-UP?

13 **THE COURT:** THE FIRST QUESTION IS THIS: ARE YOU
14 WILLING TO WAIVE TIME? IF YOU'RE NOT, WE'LL KEEP THE TRIAL
15 DATE, AND WE'LL PROCEED.

16 **MR. GOUDY:** YOUR HONOR, MAY I HAVE A MOMENT?

17 **THE COURT:** YES.

18

19 (THE DISTRICT ATTORNEY AND THE DEFENDANT CONFER.)

20

21 **THE COURT:** THE RECORD SHOULD REFLECT THAT THE DEPUTY
22 DISTRICT ATTORNEY HAD AN OFF-THE-RECORD CONFERENCE WITH
23 MR. JAMES.

24 SIR, WHAT DO YOU WANT TO DO?

25 **DEFENDANT JAMES:** WAIVE TIME, YOUR HONOR.

26 **THE COURT:** I'LL HAVE TO GO OVER IT ONE MORE TIME.

27 DO YOU UNDERSTAND YOU HAVE THE RIGHT TO A
28 SPEEDY TRIAL?

1 **DEFENDANT JAMES:** YES.

2 **THE COURT:** YOU UNDERSTAND -- DO YOU WAIVE THAT RIGHT
3 SO THAT YOUR TRIAL WILL BE WITHIN 60 DAYS OF OCTOBER 6?

4 **DEFENDANT JAMES:** YES.

5 **THE COURT:** GREAT. THE COURT WILL ACCEPT THAT WAIVER.
6 WE'LL SEE YOU ON OCTOBER 6.

7 AGAIN, I WILL RESCIND MY DENIAL OF THE
8 MOTION FOR THE LINE-UP, AND I WILL SCHEDULE HEARING ON
9 OCTOBER 6. I DO THINK THAT COVERS IT.

10 THANK YOU, SIR. SEE YOU ON OCTOBER 6.

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1 CASE NUMBER: KA085233-02
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 POMONA, CALIFORNIA TUESDAY, JANUARY 12, 2010
4 DEPARTMENT EA-N HON. MIKE CAMACHO, JUDGE
5 REPORTER: TRISHA SHEAR, CSR NO. 11529
6 TIME: A.M. SESSION

7 APPEARANCES:

8 DEFENDANT, TAUMU JAMES, PRESENT WITH
9 COUNSEL, MICHAEL EVANS, ATTORNEY AT LAW;
10 RONALD GOUDY AND DAVID LOPEZ, DEPUTY
11 DISTRICT ATTORNEY, REPRESENTING THE
12 PEOPLE OF THE STATE OF CALIFORNIA.
13

14 **THE COURT:** ON RECORD IN THE MATTER OF PEOPLE VERSUS
15 TAUMU JAMES. THIS IS CASE CASE NO. KA085233. MR. JAMES IS
16 PRESENT BEFORE THE COURT, IN CUSTODY.

17 NOW, IS HE REPRESENTED BY COUNSEL AT THIS
18 POINT?

19 **MR. EVANS:** YOUR HONOR, I'M HIS CO-COUNSEL. I
20 BELIEVE HE HAS STANDBY COUNSEL THAT NEEDS TO BE RELIEVED.

21 **THE COURT:** MR. DAUGHERTY, YOU'RE STANDBY COUNSEL AT
22 THIS POINT?

23 **MR. DAUGHERTY:** THAT'S CORRECT.

24 **THE COURT:** COUNSEL, MAY I GET YOUR APPEARANCE FOR
25 THE RECORD, PLEASE.

26 **MR. EVANS:** MICHAEL EVANS ON BEHALF OF MR. JAMES.

27 **THE COURT:** HAVE YOU BEEN RETAINED?

28 **MR. EVANS:** I HAVE, YOUR HONOR, BY HIS FAMILY.

1 **THE COURT:** BUT, MR. JAMES, YOU'RE STILL MAINTAINING
2 YOUR PRO PER STATUS WITH STANDBY COUNSEL; IS THAT MY
3 UNDERSTANDING?

4 **DEFENDANT JAMES:** YES, YOUR HONOR.

5 **THE COURT:** WELL, MR. JAMES, YOUR CASE -- WELL, LET'S
6 MAKE THE RECORD CLEAR.

7 PEOPLE ARE REPRESENTED BY?

8 **MS. KAHRAMANIAN:** YOUR HONOR, I REPRESENT THE
9 SHERIFF'S DEPARTMENT. LALA KAHRAMANIAN ON BEHALF OF THE
10 L.A. COUNTY SHERIFF'S DEPARTMENT.

11 **THE COURT:** THE MATTER IS CALLED THIS MORNING
12 SPECIFICALLY FOR THE PITCHESS MOTION THAT HAS BEEN FILED BY
13 MR. JAMES.

14 MS. LESLEY GORDON ON BEHALF OF THE PUBLIC
15 DEFENDER IS PRESENT. HER CLIENT IS NOT IN COURT, ALTHOUGH
16 IN CUSTODY, MR. HAWKINS.

17 MS. GORDON, IS IT YOUR DESIRE TO JOIN IN THE
18 REQUEST FOR THE PITCHESS WITH MR. JAMES?

19 **MS. GORDON:** YES, YOUR HONOR. I WAS NEVER GIVEN
20 NOTICE BY MR. JAMES OF THE MOTION. I WAS NEVER SERVED WITH
21 THE MOTION. COUNSEL TODAY WAS KIND ENOUGH TO ALLOW ME TO
22 REVIEW THE PLEADINGS AND BASED ON THOSE, MY FIRST NOTICE, I
23 WOULD JOIN IN THE MOTION.

24 **MS. KAHRAMANIAN:** YOUR HONOR, I WOULD LIKE TO NOTE
25 OUR OBJECTION TO THE JOINDER. THE DEPUTIES HAVE NOT
26 RECEIVED SUFFICIENT NOTICE WITH REGARDS TO THE
27 CO-DEFENDANTS. WE OBJECT TO THE JOINDER.

28 **THE COURT:** UNDERSTOOD. YOUR OBJECTION IS

1 RESPECTFULLY DENIED, FOR THE RECORD. WE'RE GOING TO TRY TO
2 CLEAR THIS UP TODAY.

3 THE COURT HAS RECEIVED AND HAS CONSIDERED THE
4 PITCHESS MOTION FILED BY MR. JAMES.

5 MR. JAMES, IT'S INSUFFICIENT. YOU HAVEN'T
6 SHOWN GOOD CAUSE TO EVEN HAVE THE HEARING. YOUR MOTION IS
7 BASED ENTIRELY UPON SPECULATION AS TO POLICE MISCONDUCT.
8 YOU CERTAINLY HAVE PROVIDED THE COURT WITH NO PLAUSIBLE
9 FACTUAL SCENARIO THAT THERE IS ANY POLICE MISCONDUCT. YOU
10 SIMPLY CONCLUDED THERE MUST BE POLICE MISCONDUCT BECAUSE OF
11 THE IDENTIFICATION ISSUES AND THEREFORE YOU'RE ENTITLED TO
12 THIS MOTION. SO YOUR MOTION IS DENIED WITHOUT PREJUDICE
13 FOR FAILURE TO ESTABLISH GOOD CAUSE.

14 SO THE MATTER REMAINS HERE FOR PRETRIAL.

15 MS. GORDON, SINCE YOU'RE HERE ON HAWKINS, DO
16 YOU FEEL YOU'RE GOING TO BE READY TO PROCEED TO JURY TRIAL
17 ON THE 25TH?

18 **MS. GORDON:** NO, YOUR HONOR, BECAUSE I JUST RECEIVED
19 THE DNA DATA DISC ABOUT A WEEK AND A HALF TO TEN DAYS AGO.
20 AND THEN I PROCEEDED TO FOLLOW-UP WITH WHAT I NEED TO DO
21 BUT THAT TAKES TIME.

22 **THE COURT:** NOW, MR. DAVID LOPEZ IS OUR PROSECUTOR
23 HANDLING THE CALENDAR. WE'LL ASK HIM TO STAND IN FOR
24 WHOEVER THE TRIAL ATTORNEY IS.

25 **MS. GORDON:** YOUR HONOR, IT'S MR. GOUDY. IT'S A
26 SPECIALLY-ASSIGNED MATTER. MR. GOUDY GENERALLY MAKES THE
27 APPEARANCES SO I DON'T KNOW IF --

28 **THE COURT:** WELL, HE CERTAINLY HASN'T THIS MORNING.

1 WELL, I TELL YOU WHAT, WE'LL PUT THE MATTER ON SECOND CALL
2 SO I CAN RELIEVE COUNSEL TO MAKE THEIR OTHER COURT
3 APPEARANCES. BUT WE'LL RECALL YOU OUT HERE, MR. JAMES, TO
4 HEAR IF YOU HAVE ANY OTHER MOTIONS YOU'D LIKE THE COURT TO
5 HEAR. WE'LL BRING YOU BACK OUT THIS MORNING BUT ALL
6 COUNSEL ON THE PITCHES, YOU ARE EXCUSED.

7 MS. KAHRAMANIAN: THANK YOU, YOUR HONOR.

8

9 (UNRELATED MATTERS HEARD.)

10

11 THE COURT: PEOPLE VERSUS DION HAWKINS AND TAUMU
12 JAMES, CASE NO. KA085233. THE DEFENDANTS ARE PRESENT
13 BEFORE THE COURT, IN CUSTODY. MR. HAWKINS IS REPRESENTED
14 BY MS. GORDON ON BEHALF OF THE PUBLIC DEFENDER. MR. JAMES
15 IS REPRESENTING HIMSELF, AT LEAST, AT THIS POINT IN PRO PER
16 BUT HE DOES HAVE STANDBY COUNSEL OR CO-COUNSEL, IF YOU
17 WILL, IN COURT.

18 COUNSEL, ONCE AGAIN, MAY I GET YOUR APPEARANCE
19 FOR THE RECORD.

20 MR. EVANS: MICHAEL EVANS ON BEHALF OF MR. JAMES,
21 YOUR HONOR.

22 THE COURT: THE MATTER IS HERE FOR READINESS AND JURY
23 TRIAL.

24 PEOPLE, LET'S GET YOUR APPEARANCE FOR THE
25 RECORD.

26 MR. GOUDY: RONALD GOUDY, DEPUTY DISTRICT ATTORNEY
27 FOR THE PEOPLE.

28 THE COURT: HOW ARE WE GOING TO PROCEED, MS. GORDON?

1 YOU HAVE A REQUEST TO CONVERT THE READINESS DATE INTO A
2 PRETRIAL, TRIAL SETTING DATE?

3 **MS. GORDON:** YES, YOUR HONOR. I'VE CONFERRED WITH MY
4 CLIENT. HE'S AMENABLE TO THAT. THE REASON BEING, IT WAS
5 ABOUT TWO WEEKS AGO, NO MORE THAT, I GOT FROM MR. GOUDY THE
6 DATA DISC. THAT WAS NOT BECAUSE HE WAS DELAYING. I HAD
7 GOTTEN ANOTHER DISC FROM HIM. IT TURNED OUT TO BE
8 INAPPROPRIATE. IT DIDN'T HAVE THE DATA WE NEEDED. HE THEN
9 CONTACTED THE LAB. WE FINALLY DID GET A CORRECT DISC THAT
10 I SENT TO MY LAB FOR REVIEW AND ANALYSIS. WE'RE IN THE
11 PROCESS OF DOING THAT ANALYSIS AND IT SIMPLY TAKES TIME TO
12 GET IT DONE.

13 **THE COURT:** MR. GOUDY, ANY OBJECTION TO THAT REQUEST?

14 **MR. GOUDY:** NO, YOUR HONOR.

15 **THE COURT:** NOW, MR. JAMES, YOU HEARD REPRESENTATIONS
16 OF YOUR COMPANION, MR. HAWKINS, THROUGH HIS ATTORNEY, TO
17 BASICALLY GIVE THEM 60 DAYS FROM FEBRUARY 23RD TO PREPARE
18 THE CASE FOR TRIAL. I'M WILLING TO ACCOMMODATE THEM BUT
19 YOU'RE GOING TO HAVE TO GIVE UP YOUR RIGHT TO A SPEEDY
20 TRIAL AS WELL FOR THAT PURPOSE. THAT WILL CERTAINLY GIVE
21 YOU ADDITIONAL TIME TO FILE WHATEVER MOTIONS ON YOUR OWN
22 BEHALF THAT YOU FEEL ARE NECESSARY.

23 DO YOU AGREE TO DO THAT?

24 **DEFENDANT JAMES:** YES.

25 **THE COURT:** MR. HAWKINS, DO YOU GIVE UP YOUR RIGHT TO
26 A SPEEDY TRIAL AND AGREE TO THAT CONTINUANCE AS WELL?

27 **DEFENDANT HAWKINS:** YEAH.

28 **THE COURT:** COUNSEL, JOIN ON BEHALF OF HAWKINS?

1 **MS. GORDON:** YES, YOUR HONOR.

2 **THE COURT:** TIME WAIVERS NOTED. THE JURY TRIAL DATE
3 OF FEBRUARY 5TH IS ADVANCED AND VACATED. THE READINESS
4 HEARING IS NOW OFF CALENDAR. THAT SAME DATE, HOWEVER, WILL
5 NOW BE CALENDARED FOR PRETRIAL, TRIAL SETTING AS DAY ZERO
6 OF 60 DAYS FOR TRIAL.

7 **MS. GORDON:** EXCUSE ME, YOUR HONOR. I THINK YOU
8 MISSPOKE. YOU SAID FEBRUARY 5TH. IT'S FEBRUARY 23RD.

9 **THE COURT:** FEBRUARY 23RD FOR PRETRIAL, TRIAL SETTING
10 AS DAY ZERO OF 60 FOR TRIAL. THE JURY TRIAL DATE OF
11 FEBRUARY 25TH IS ADVANCED AND VACATED.

12 THE DEFENDANTS WILL REMAIN REMANDED ON THE
13 BAIL PREVIOUSLY ORDERED.

14 MR. JAMES, I NEED TO HEAR FROM YOU. DO YOU
15 HAVE ANY ADDITIONAL MOTIONS TO FILE TODAY?

16 **DEFENDANT JAMES:** I DON'T HAVE ANY ADDITIONAL
17 MOTIONS.

18 **THE COURT:** ALL MOTIONS PREVIOUSLY FILED ARE STILL
19 HELD IN ABEYANCE. MOST OF THEM ARE TRIAL ISSUES THAT WILL
20 BE HEARD AT TRIAL, INCLUDING YOUR 995. BUT JUDGE BUCKLEY
21 PREVIOUSLY RULED ON HOW THOSE MOTIONS WILL BE HEARD.

22 **MR. GOUDY:** YOUR HONOR, JUST FOR CLARIFICATION. LAST
23 TIME WHEN MR. EVANS CAME IN, WE PICKED THE DATES,
24 MS. GORDON AND MR. HAWKINS. WE PICKED THESE DATES. MY
25 UNDERSTANDING WAS MR. EVANS WAS COMING IN BUT BECAUSE HE
26 HAD TO LEAVE TO ANOTHER COURT, HE CAME BACK TWO DAYS LATER
27 AND PICKED THESE DATES. I THOUGHT HE WAS ATTORNEY OF
28 RECORD. AND I JUST FOUND OUT WHEN I WALKED IN THAT

1 MR. JAMES IS STILL PRO PER. THE ONLY REASON I'M A LITTLE
2 CONFUSED IS I RECEIVED DOCUMENTS FROM MR. JAMES AFTER, I
3 BELIEVE, MR. EVANS CAME IN AS COUNSEL. AND SINCE HE WAS,
4 MY BELIEF, NO LONGER PRO PER, I WASN'T REALLY WORRIED ABOUT
5 THOSE. I THOUGHT IT WAS A TRANSIT THING. I JUST NEED TO
6 BE CLEAR AS TO WHETHER MR. JAMES IS PRO PER AND NOT BECAUSE
7 I'M RECEIVING THINGS FROM MR. EVANS. IF HE'S NOT ATTORNEY
8 OF RECORD, THEN I DON'T RESPOND TO MR. EVANS. I ONLY
9 RESPOND TO THE PRO PER.

10 **THE COURT:** WELL, LET'S MAKE THAT ENTIRELY CLEAR FOR
11 THE RECORD.

12 MR. JAMES, IS IT STILL YOUR DESIRE TO
13 REPRESENT YOURSELF EVEN THOUGH YOU HAVE COUNSEL PRESENT IN
14 COURT WHO HAS BEEN ADVISING YOU?

15 **DEFENDANT JAMES:** YES. HE WAS BROUGHT ON TO BE
16 CO-COUNSEL. ANY INFORMATION THAT HE RECEIVED WITH ME, IT
17 WAS BEFORE MY FAMILY RETAINED MR. EVANS. SO HE CAN ANSWER
18 TO MR. EVANS. I WANT TO RETAIN MY PRO PER STATUS.

19 **THE COURT:** I DON'T REALLY SEE THE NEED TO CONTINUE
20 PRO PER STATUS WHEN YOU HAVE AN ATTORNEY BASICALLY ACTING
21 AS YOUR TRIAL ATTORNEY TO RECEIVE AND PREPARE THE CASE.

22 MR. EVANS, IS THAT YOUR UNDERSTANDING? YOU'VE
23 BEEN RETAINED AS COUNSEL FOR ALL PURPOSES ON BEHALF OF
24 MR. JAMES?

25 **MR. EVANS:** YES, YOUR HONOR. WHAT HAPPENED WAS WHEN
26 WE WERE IN FRONT OF DEPARTMENT A THE LAST TIME, MR. GOUDY
27 WAS NOT THERE. THE COURT ALLOWED ME TO MAINTAIN CO-COUNSEL
28 STATUS AS OPPOSED TO ALLOWING MR. JAMES TO REMAIN PRO

1 PER --

2 **THE COURT:** WELL, THAT'S --

3 **MR. EVANS:** -- BECAUSE OF ALL THE MOTIONS THAT HAVE
4 BEEN FILED IN THIS CASE.

5 **THE COURT:** I UNDERSTAND. BUT THAT'S NOT WHAT THE
6 MINUTE ORDER REFLECTS. THE MINUTE ORDER SAYS PRIVATE
7 COUNSEL, MICHAEL EVANS, APPEARING ON BEHALF OF DEFENDANT
8 FOR POSSIBLE RETAINMENT.

9 NOW, THE REPRESENTATION HAS BEEN MADE THAT YOU
10 HAVE BEEN RETAINED. WHAT THAT MEANS IS MR. JAMES IS NO
11 LONGER GOING TO CONTINUE TO REPRESENT HIMSELF. HE NOW HAS
12 COUNSEL RETAINED. THAT WAS EVIDENTLY JUDGE BUCKLEY'S
13 UNDERSTANDING BACK ON NOVEMBER 19TH.

14 SO, MR. JAMES, IN LIGHT OF THE FACT THAT YOU
15 HIRED PRIVATE COUNSEL, YOU TELL ME RIGHT NOW. IS IT STILL
16 YOUR DESIRE TO REPRESENT YOURSELF?

17 **DEFENDANT JAMES:** MY FAMILY HIRED MR. EVANS TO COME
18 ON AS CO-COUNSEL. I STILL WANT TO BE ABLE TO DO RESEARCH
19 ON MY CASE. IN THE EVENT THE CASE MOVES FORWARD, I WANTED
20 TO TAKE OVER FOR MYSELF, I WANT TO BE ABLE TO DO SO.

21 **THE COURT:** TYPICALLY WHEN INDIVIDUALS GO PRO PER,
22 THEY ARE NOTIFIED BY THE COURT FIRST THAT THEY WILL NOT
23 HAVE CO-COUNSEL. THAT'S ONE OF THE RULES. YOU CAN'T HAVE
24 IT BOTH WAYS. YOU HAVE TO MAKE AN ELECTION TODAY.

25 DO YOU WISH MR. EVANS TO CONTINUE BEING
26 RETAINED BY YOU AND YOUR FAMILY? YES OR NO.

27 **DEFENDANT JAMES:** YES, AS CO-COUNSEL.

28 **THE COURT:** YOUR PRO PER STATUS IS RELIEVED THEN.

1 YOU HAVE NEW COUNSEL OF RECORD.

2 SO, MR. EVANS, YOU'RE NOW THE ATTORNEY OF
3 RECORD AND WE'LL SEE YOU BACK HERE FOR FEBRUARY 23RD, 2010.
4 WHATEVER MOTIONS MR. JAMES PREVIOUSLY FILED, MR. EVANS, IF
5 YOU DESIRE TO ARGUE THOSE MOTIONS, YOU MAY HAVE THAT
6 OPPORTUNITY ON OUR NEXT DATE FEBRUARY 23RD, 2010.

7 GOOD LUCK TO YOU, EVERYBODY. WE'LL SEE YOU
8 BACK HERE ON THAT DATE.

9 MR. GOUDY: THANK YOU.

10

11 (THE PROCEEDINGS WERE CONCLUDED.)

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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA FRIDAY, JULY 30, 2010
4 DEPARTMENT NO. 121 HON. CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: KATHRYN L. MAUTZ, CSR NO. 11539
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (A DISCUSSION WAS HELD BETWEEN
10 THE COURT AND COUNSEL WHICH
11 WAS NOT REPORTED.)
12

13 (THE FOLLOWING PROCEEDINGS
14 WERE HELD IN OPEN COURT
15 OUTSIDE THE PRESENCE OF THE
16 PROSPECTIVE JURY:)
17

18 THE COURT: WE ARE ON THE RECORD IN PEOPLE VERSUS
19 JAMES, CASE NUMBER KA085233. MR. JAMES IS PRESENT, IN
20 COURT, WITH MR. EVANS. THE PEOPLE ARE REPRESENTED BY
21 MR. GOUDY, AND WE ARE HERE TO START OUR TRIAL TODAY.

22 I JUST WANTED MR. JAMES BROUGHT OUT, EVEN
23 THOUGH HE'S NOT GOING TO SEE THE JURY THIS MORNING, SO HE
24 CAN UNDERSTAND A LITTLE BIT ABOUT OUR PROCESS AND OUR
25 PROCEDURE. I UNDERSTAND THERE IS NO DISPOSITION AT THIS
26 POINT, SO WE ARE JUST GOING TO PROCEED AND DEAL WITH THE
27 402 PROBABLY NOT TODAY BUT SOMETIME WHEN WE GO THROUGH
28 THE JURY SELECTION PROCESS. CERTAINLY WE WILL FINISH IT

1 UP BEFORE WE GET TO OPENING STATEMENT.

2 MR. GOUDY: BEFORE WE SWEAR THE PANEL?

3 THE COURT: YOU MEAN BEFORE THE ACTUAL TWELVE?

4 MR. GOUDY: RIGHT. THE 402 WILL BE RESOLVED
5 BEFORE WE ACTUALLY SWEAR THE PANEL?

6 THE COURT: YES. BUT WE WILL START WITH OUR
7 JURORS TODAY, AND WE ARE GOING TO HAVE 55 JURORS BROUGHT
8 UP HERE.

9 I ALREADY TOLD YOU BOTH HOW THE COURT
10 CONDUCTS VOIR DIRE, SO YOU ARE AWARE OF THAT.

11 YOU HAVE THE QUESTIONNAIRE, WHICH HAS BEEN
12 APPROVED BY BOTH COUNSEL. SO WE ARE GOING TO CALL UP OUR
13 JURORS NOW. IT WILL TAKE HALF AN HOUR, 20 MINUTES FOR
14 THEM TO GET UP HERE. THEN THE CLERK WILL, IN THE
15 HALLWAY, HAVE THEM FILL OUT THE QUESTIONNAIRES. IT
16 USUALLY TAKES THEM ABOUT HALF AN HOUR TO FILL THEM OUT.
17 THEY WILL THEN BE EXCUSED FOR LUNCH.

18 MY CLERK WILL MAKE COPIES OF THE
19 QUESTIONNAIRES AND PUT THEM IN THE RANDOM ORDER THAT THEY
20 ARE GOING TO BE CALLED. SO YOU WILL ACTUALLY KNOW WHO IS
21 GOING TO BE CALLED NEXT, AND THEN YOU WILL HAVE THE LUNCH
22 TIME TO LOOK THEM OVER. SO IF YOU SIT -- IF YOU CAN WAIT
23 HERE THROUGH THAT PROCESS, MR. SAIKI WILL HAVE THEM FOR
24 YOU BEFORE YOU GO TO LUNCH, AND YOU CAN REVIEW THEM AT
25 LUNCH. AND THEN AT 1:30 WE WILL START WITH THE ACTUAL
26 VOIR DIRE PROCESS, AND THAT'S WHEN MR. JAMES WILL
27 ACTUALLY SEE THE JURORS. BUT I JUST WANTED TO EXPLAIN
28 THE PROCESS AND HAVE HIM HEAR IT AS WELL. SO EVERYONE

1 WILL BE ORDERED BACK AT 1:30.

2 I KNOW WE HAVE AN INTERESTED PARTY IN THE
3 AUDIENCE. MA'AM, THIS A PUBLIC COURTROOM. YOU ARE
4 CERTAINLY ALLOWED TO BE PRESENT IN THIS PROCESS, UNLESS
5 YOU'RE A WITNESS -- AND WE CAN TAKE THAT UP OTHERWISE --
6 BUT WHEN THE JURORS ARE -- THEY ARE GOING TO BE OUT IN
7 THE HALLWAY. AND WHEN THEY ARE IN THE COURTROOM, I NEED
8 YOU TO SIT AS CLOSE TO THAT WALL OVER THERE, TO MAKE ROOM
9 FOR OUR JURORS.

10 AND OUT IN THE HALLWAY, YOU ARE TO HAVE NO
11 CONTACT WITH ANY JURORS. DON'T SMILE AT THEM. DON'T SAY
12 HELLO. JUST KIND OF MAINTAIN YOUR DISTANCE UNTIL YOU'RE
13 IN COURT OR WHATNOT. YOU JUST HAVE TO BE VERY AWARE.
14 AND THEY MAY NOT EVEN NECESSARILY BE OUR JURORS. THEY
15 CAN BE THE JURORS NEXT DOOR. JUST DON'T TALK TO ANYONE
16 WITH A JUROR BADGE.

17 ANYTHING WE NEED TO ADDRESS THEN, OTHER
18 THAN THAT, BEFORE WE CALL UP OUR JURORS AND GET THIS
19 PROCESS STARTED?

20 MR. EVANS: JUST A COUPLE OF THINGS. FIRST, YOUR
21 HONOR, AS TO THE ISSUE OF IDENTIFICATION, I WOULD JUST
22 ASK IF THAT -- THAT THAT REALLY NOT BE TALKED ABOUT
23 DURING VOIR DIRE, BECAUSE WE DON'T KNOW IF THAT IS GOING
24 TO BE EVIDENCE IN THIS CASE.

25 THE COURT: THE ONLY THING -- YOU MEAN LIKE AS FAR
26 AS -- I THINK THEY CAN TALK ABOUT THE SUBJECT GENERALLY,
27 BUT I AM NOT GOING TO LIMIT MR. GOUDY FROM ASKING ABOUT
28 SINGLE WITNESS TESTIMONY. THAT'S SOMETHING THAT MOST

1 PROSECUTORS COVER IN THEIR VOIR DIRE.

2 I AM NOT SURE HOW IDENTIFICATION WOULD COME
3 UP OTHER THAN THINKING DO YOU AUTOMATICALLY BELIEVE OR
4 DISCOUNT SOMEONE'S IDENTIFICATION FROM A SIX-PACK? I
5 MEAN, IT WOULD BE SO GENERAL THAT IT WOULDN'T NECESSARILY
6 DEAL WITH THE ISSUES IN THIS CASE.

7 MR. GOUDY: I DON'T THINK THAT'S GOING TO BE AN
8 ISSUE.

9 THE COURT: OKAY.

10 MR. EVANS: SECONDLY, THE ACTUAL JURY
11 QUESTIONNAIRES, DO WE TURN THOSE IN AT THE COMPLETION OF
12 JURY SELECTION, OR DO WE KEEP THOSE WITH US? DO WE WRITE
13 ON THE FORMS?

14 THE COURT: YOU CAN WRITE ON THE FORMS. YOU CAN
15 KEEP THEM BECAUSE WE KEEP THE ORIGINALS IN THE COURT
16 FILE, AND THEY HAVE ONLY JUROR NUMBERS ON THEM. IT WILL
17 NOT HAVE THEIR NAMES. SO THAT'S FINE. SO YES, YOU CAN
18 MAKE NOTES ON THEM AND DO WHATEVER YOU WANT. WELL, YOU
19 CAN'T DO WHATEVER YOU WANT, BUT YOU CAN WRITE WHATEVER
20 YOU WANT ON THEM, IF YOU WISH.

21 MR. EVANS: THANK YOU.

22 THE COURT: ALL RIGHT. THEN MR. JAMES, WE ARE
23 GOING TO HAVE YOU GO BACK THERE. NOW THAT YOU HAVE YOUR
24 TIE ALL STRAIGHTENED OUT, WE ARE GOING TO HAVE YOU TAKE
25 IT OFF AGAIN, AND WE WILL SEE YOU BACK UP HERE AT 1:30.

26 COUNSEL, WAIT AROUND, AND MR. SAIKI WILL
27 TELL YOU HOW TO DEAL WITH THE QUESTIONNAIRES.

28 MR. GOUDY: THE SUBPOENAED DOCUMENTS I HAVE, I

1 DROPPED THEM OFF WITH MR. SAIKI, YOUR CLERK. WHILE WE
2 ARE WAITING, CAN WE POSSIBLY BE EXCUSED TO FIND A
3 COMPUTER TO SEE WHAT'S ON THAT DISK?

4 THE COURT: ABSOLUTELY.

5 MR. GOUDY: WE DON'T NEED TO BE IN THE COURTROOM?

6 THE COURT: CORRECT. THE JURORS WILL NOT ACTUALLY
7 PHYSICALLY ENTER THE COURTROOM UNTIL 1:30. THEY WILL BE
8 OUT IN THE HALLWAY, FILLING OUT THE QUESTIONNAIRES, UNTIL
9 WE COME BACK AT 1:30. ALL RIGHT?

10 THEN YOU ARE ALL ORDERED BACK AT 1:30.
11 JUST MAKE SURE YOU CHECK IN WITH ROBERT TO FIND OUT WHAT
12 TIME HE NEEDS YOU BACK HERE TO GIVE YOU YOUR PACKET OF
13 QUESTIONNAIRES SO THAT YOU CAN HAVE THEM BEFORE LUNCH.

14 MR. EVANS: VERIZON STILL HASN'T COMPLIED WITH THE
15 SUBPOENA. THE BODY ATTACHMENT WAS ISSUED AND HELD. SO
16 THE COURT STILL HAS JURISDICTION, BUT WE WILL TRY TO WORK
17 IT OUT SO WE CAN GET THOSE DOCUMENTS.

18 THE COURT: IF YOU NEED ME TO TAKE ANY ACTION,
19 JUST LET ME KNOW.

20

21 (WHEREUPON THE LUNCH RECESS
22 WAS TAKEN UNTIL 1:30 P.M.)

23

24

25

26

27

28

1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA FRIDAY, JULY 30, 2010
4 DEPARTMENT NO. 121 HON. CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: KATHRYN L. MAUTZ, CSR NO. 11539
6 TIME: P.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT IN
11 THE PRESENCE OF THE
12 PROSPECTIVE JURY:)
13

14 THE COURT: I WOULD LIKE TO WELCOME ALL OF YOU TO
15 DEPARTMENT 121. THIS IS THE CASE OF PEOPLE VERSUS TAUMU
16 JAMES, CASE NUMBER KA085233, AND MR. JAMES IS IN COURT
17 BEING REPRESENTED BY MR. EVANS.

18 MR. EVANS, IF YOU WOULD PLEASE INTRODUCE
19 YOURSELF AND YOUR CLIENT.

20 MR. EVANS: GOOD AFTERNOON. MY NAME IS MICHAEL
21 EVANS, AND THIS (INDICATING) IS MY CLIENT, MR. TAUMU
22 JAMES.

23 THE COURT: AND THE PEOPLE ARE REPRESENTED BY
24 MR. GOUDY.

25 IF YOU CAN PLEASE INTRODUCE YOURSELF.

26 MR. GOUDY: HELLO. MY NAME IS RONALD GOUDY.

27 THE COURT: AND I AM JUDGE OLMEDO. I PRESIDE
28 OVER THIS COURTROOM, AND YOU HAVE ALL BEEN CALLED BECAUSE

1 WE NEED A JURY FOR A CRIMINAL PROCEEDING.

2 TO MY RIGHT (INDICATING) IS MR. SAIKI. HE
3 IS THE COURTROOM CLERK, AND HE IS THE ONE THAT YOU WILL
4 BE DEALING WITH MOST OF THE TIME.

5 TO MY FAR RIGHT (INDICATING) IS DEPUTY
6 CABRERRA.

7 AND THEN TO MY LEFT IS, I ALWAYS SAY ONE OF
8 THE MOST IMPORTANT PEOPLE IN THE COURTROOM. THIS
9 (INDICATING) OUR COURT REPORTER, MS. MAUTZ. WE DON'T
10 HAVE A MICROPHONE TO PASS TO ALL OF YOU. SO WHEN IT'S
11 YOUR TURN TO TALK, IT'S IMPORTANT TO TALK AS LOUDLY,
12 SLOWLY, AND CLEARLY AS POSSIBLE.

13 AND IT'S HUMAN NATURE TO ANSWER QUESTIONS
14 GOING "UH-HUH" OR "HUH-UH" OR NODDING YOUR HEAD YES OR
15 SHAKING IT NO. BUT THAT DOESN'T COME OUT ON THE RECORD,
16 AND SO I WILL ASK YOU IS THAT A YES? IS THAT A NO? IT'S
17 NOT THAT I DON'T UNDERSTAND WHAT YOU ARE TRYING TO
18 COMMUNICATE, BUT I DO NEED TO ACTUALLY HAVE THE WORDS ON
19 THE RECORD.

20 ALL RIGHT. AND I AM JUDGE OLMEDO, AS I
21 SAID.

22 SO WE ARE GOING TO HAVE YOU ALL STAND UP
23 AND TAKE THE OATH, AND WE WILL START THIS PROCESS.

24 THE CLERK: WILL THE PROSPECTIVE JURORS PLEASE
25 RISE.

26 DO YOU, AND EACH OF YOU, UNDERSTAND AND AGREE
27 THAT YOU WILL ACCURATELY AND TRUTHFULLY ANSWER UNDER PENALTY
28 OF PERJURY ALL QUESTIONS PROPOUNDED TO YOU CONCERNING YOUR

1 QUALIFICATIONS AND COMPETENCY TO SERVE AS A TRIAL JUROR IN
2 THIS MATTER NOW PENDING BEFORE THIS COURT, AND THAT FAILURE
3 TO DO SO MAY SUBJECT YOU TO CRIMINAL PROSECUTION.

4 IF YOU UNDERSTAND AND AGREE, PLEASE ANSWER, "I
5 DO."

6
7 (THE PROSPECTIVE JURORS
8 ANSWERED IN THE AFFIRMATIVE.)

9
10 (VOIR DIRE OF PROSPECTIVE JURORS
11 WAS REPORTED, NOT INCLUDED HEREIN.)

12
13 THE COURT: I AM GOING TO ACTUALLY READ YOU THE
14 FULL SEPARATION ADMONITION FOR OVER THE WEEKEND, AND THEN
15 I AM GOING TO ORDER YOU ALL BACK HERE FOR MONDAY AT 10:30
16 MONDAY MORNING.

17 (READING:)

18 YOU WILL BE PERMITTED TO SEPARATE
19 DURING RECESSES AND AT THE END OF THE
20 DAY. I WILL TELL YOU WHEN TO RETURN.
21 PLEASE REMEMBER THAT WE CANNOT BEGIN
22 THE TRIAL UNTIL ALL OF YOU ARE IN PLACE,
23 SO IT IS IMPORTANT TO BE ON TIME.

24 REMEMBER, DO NOT TALK ABOUT THE
25 CASE OR ABOUT ANY OF THE PEOPLE OR
26 ANY SUBJECT MATTER INVOLVED IN IT
27 WITH ANYONE, INCLUDING THE OTHER
28 JURORS. DO NOT MAKE UP YOUR MIND

1 ABOUT THE VERDICT OR ANY ISSUE UNTIL
2 AFTER YOU HAVE DISCUSSED THE CASE
3 WITH THE OTHER JURORS DURING
4 DELIBERATIONS.

5 AND WITH THAT SAID, YOU ARE ALL EXCUSED.
6 IF YOU HAVE A QUESTION OR NEED TO TALK TO MR. SAIKI, HE
7 WILL BE OUT IN JUST A MOMENT. WAIT FOR HIM.

8 SO WE WILL SEE YOU ALL AT 10:30 MONDAY
9 MORNING. HAVE A NICE WEEKEND.

10

11 (THE MATTER WAS CONTINUED
12 TO MONDAY, AUGUST 2, 2010,
13 AT 10:30 A.M. FOR FURTHER
14 PROCEEDINGS.)

15

16 (THE NEXT PAGE NUMBER IS 301.)

17

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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA MONDAY, AUGUST 2, 2010
4 DEPARTMENT NO. 121 HON. CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: KATHRYN L. MAUTZ, CSR NO. 11539
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT
11 OUTSIDE THE PRESENCE OF THE
12 JURY:)

13
14 THE COURT: ON THE RECORD IN PEOPLE VERSUS TAUMU
15 JAMES, CASE NUMBER KA085233. MR. JAMES IS PRESENT IN
16 COURT.

17 AND THE PEOPLE HAVE FILED AN AMENDED
18 INFORMATION. DOES YOUR CLIENT WAIVE ARRAIGNMENT,
19 ADVISEMENT OF CONSTITUTIONAL RIGHTS, READING OF THE
20 INFORMATION, AND ENTER A PLEA OF NOT GUILTY AND A DENIAL
21 TO ANY AND ALL ALLEGATIONS --

22 MR. EVANS: YES, YOUR HONOR.

23 THE COURT: -- ON THE AMENDED INFORMATION?

24 MR. EVANS: YES, YOUR HONOR.

25 THE COURT: I JUST WANTED TO MAKE SURE WE
26 ARRAIGNED HIM ON THE RECORD.

27 AND I AM NOT SURE IF WE PUT THIS ON THE
28 RECORD. WITH REGARD TO THE PRIORS THAT ARE ALLEGED,

1 THOSE ARE BIFURCATED. WE WILL TAKE THOSE UP IF HE
2 CHOOSES TO TESTIFY AS FAR AS COMING IN FOR IMPEACHMENT
3 PURPOSES, BUT AT THIS POINT THEY ARE BIFURCATED.

4 ALL RIGHT. WE CAN BRING IN OUR JURORS.

5
6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD IN OPEN COURT IN
8 THE PRESENCE OF THE PROSPECTIVE
9 JURY:)

10
11 (VOIR DIRE OF PROSPECTIVE JURORS
12 WAS REPORTED, NOT INCLUDED HEREIN.)

13
14 THE COURT: THE PEREMPTORY IS WITH THE PEOPLE.

15 MR. GOUDY: THE PEOPLE ACCEPT THE PANEL AS
16 PRESENTLY CONSTITUTED.

17 THE COURT: THE PEREMPTORY IS WITH THE DEFENSE.

18
19 (COUNSEL AND CLIENT CONFERRED
20 SOTTO VOCE.)

21
22 MR. EVANS: WE ACCEPT.

23 THE COURT: ALL RIGHT. CAN I SEE BOTH COUNSEL AT
24 SIDEBAR.

25
26 (THE FOLLOWING PROCEEDINGS
27 WERE HELD AT SIDEBAR:)

28 ///

1 THE COURT: OKAY. THERE ARE FOUR ALTERNATES
2 LEFT. IF YOU GUYS EXERCISE YOUR PEREMPTORIES, YOU WILL
3 GET TWO ALTERNATES, OR IF THERE ARE TWO THAT YOU CAN
4 STIPULATE TO. AND SO YOU BOTH KNOW, I DO CHOOSE THEM
5 RANDOMLY IF THEY ARE CALLED TO FILL IN.

6 SO I WILL GIVE YOU A MOMENT TO TALK TO EACH
7 OTHER.

8
9 (COUNSEL CONFERRED SOTTO VOCE.)

10
11 THE COURT: BACK ON THE RECORD.

12 BOTH COUNSEL HAVE STIPULATED TO THE
13 GENTLEMAN, NUMBER 52, WHO IS SITTING IN SEAT NUMBER A-2
14 AND JUROR NO. 55, THE WOMAN SITTING AS THE LAST JUROR. I
15 WILL -- SO IT'S 52 AND 55; CORRECT? SO STIPULATED?

16 MR. EVANS: SO STIPULATED.

17 MR. GOUDY: SO STIPULATED.

18 THE COURT: OKAY.

19
20 (THE FOLLOWING PROCEEDINGS
21 WERE HELD IN OPEN COURT IN
22 THE PRESENCE OF THE JURY:)

23
24 THE COURT: JUROR NO. 55, MA'AM, CAN YOU TAKE
25 ALTERNATE SEAT NUMBER 1.

26 IS THAT SO STIPULATED?

27 MR. GOUDY: YES.

28 MR. EVANS: SO STIPULATED.

1 (A DISCUSSION WAS HELD BETWEEN
2 THE COURT AND CLERK WHICH
3 WAS NOT REPORTED.)
4

5 THE COURT: FOR OUR TWO JURORS OUT IN THE
6 AUDIENCE, THANK YOU SO MUCH. YOU ARE EXCUSED. YOU MAY
7 RETURN TO THE JURY ASSEMBLY ROOM.

8 YOU TWO WILL BE OUR ALTERNATES, ALTERNATE 1
9 AND 2, THE WAY YOU ARE SEATED. BUT IF WE GET TO THE
10 POINT WHERE WE NEED TO CALL AN ALTERNATE, WE CHOOSE THEM
11 RANDOMLY. SO DON'T THINK YOUR SEAT NUMBER WILL
12 NECESSARILY IMPLICATE HOW YOU WILL BE CALLED AS AN
13 ALTERNATE.

14 AT THIS POINT, LADIES AND GENTLEMEN, I AM
15 GOING TO GO AHEAD AND EXCUSE YOU FOR THE DAY. WE HAVE
16 SOME MOTIONS THAT WE NEED TO TAKE CARE OF, AND I DON'T
17 WANT TO KEEP YOU WAITING AROUND. SO I AM ORDERING YOU
18 BACK AT 10:45 IN THE MORNING. WE WILL GET STARTED WITH
19 WITNESSES AND OPENING STATEMENTS TOMORROW MORNING AT
20 10:45.

21 YOU ALL HAVE THE PHONE NUMBER OF THE
22 COURT. PLEASE MAKE SURE THAT YOU ARE ON TIME. AND IF
23 SOMETHING COMES UP, MAKE SURE THAT YOU CALL US AND LET US
24 KNOW. ALL RIGHT?

25 JUROR NO. 12: DOES COURT USUALLY LAST UNTIL
26 4:30?

27 THE COURT: IT GOES BETWEEN 4:00 AND 4:30,
28 DEPENDING ON WHERE WE ARE AT WITH WITNESSES. FOR

1 INSTANCE, I WON'T START ANOTHER WITNESS IF WE HAVE A FEW
2 MINUTES LEFT.

3 AND IF ANY OF YOU HAVE A DOCTOR'S
4 APPOINTMENT THAT WAS PLANNED OR SOMETHING, SOMETIMES WE
5 CAN WORK AROUND THOSE ISSUES, TOO. JUST MAKE SURE YOU
6 LET ME KNOW. I KNOW ONE OF YOU HAD SOME EVENTS COMING UP
7 LATER IN AUGUST THAT I SAID I WOULD TAKE INTO
8 CONSIDERATION.

9 JUROR NO. 12: BECAUSE I HAVE A FINAL ON WEDNESDAY
10 AT 4:30.

11 THE COURT: WE WILL MAKE SURE WE WORK AROUND THAT
12 FOR YOU, SIR. WE WILL TALK TO YOU LATER ABOUT THAT
13 TOMORROW. JUST REMIND ME AT A BREAK THAT YOU NEED TO
14 TALK TO ME ABOUT YOUR FINAL.

15 AND THAT WAS JUROR NO. 12.

16 SO YOU ARE ALL EXCUSED. KEEP IN MIND THE
17 COURT'S ADMONITION, AND WE WILL SEE YOU ALL BACK HERE
18 TOMORROW MORNING AT 10:45. THANK YOU.

19

20 (RECESS.)

21

22 (A DISCUSSION WAS HELD BETWEEN
23 THE COURT AND COUNSEL WHICH
24 WAS NOT REPORTED.)

25 ///

26 ///

27 ///

28 ///

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT
3 OUTSIDE THE PRESENCE OF THE
4 JURY:)

5
6 THE COURT: WE ARE ON THE RECORD IN PEOPLE VERSUS
7 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE PRESENT.
8 THIS IS KA085233, AND WE ARE HERE FOR THE 402.

9 NOW, I HAVE DONE RESEARCH INTO THIS AREA,
10 AND I THINK I UNDERSTAND THE FACTS. I THINK FOR THE MOST
11 PART, THE FACTS ARE PRETTY MUCH UNCONTESTED; IT'S HOW I
12 INTERPRET THOSE FACTS AS FAR AS THE LEGAL AUTHORITY THAT
13 IS OUT THERE IN THIS AREA.

14 BUT LET ME JUST SUMMARIZE TO MAKE SURE I
15 UNDERSTAND IT CORRECTLY, AND I WILL ALLOW BOTH SIDES TO
16 BE HEARD. AS I UNDERSTAND IT, THIS WAS A RESIDENTIAL
17 ROBBERY, KIND OF A HOME-INVASION TYPE OF ROBBERY, IF I
18 UNDERSTAND IT CORRECTLY, OF A BOARDINGHOUSE. SO THERE
19 WERE A NUMBER OF PEOPLE IN ONE PLACE.

20 MR. GOUDY: IT WASN'T A BOARDINGHOUSE. IT WAS ALL
21 ONE FAMILY.

22 THE COURT: OH, ONE FAMILY. OKAY.

23 AND AT A CERTAIN POINT -- AND YOU CAN BOTH
24 CLARIFY AS TO HOW THE WITNESSES AND/OR VICTIMS GOT
25 NOTIFICATION ABOUT MR. JAMES. BUT IN ANY EVENT, THE
26 VICTIMS AND/OR WITNESSES WENT ONLINE INDEPENDENTLY, ON
27 THEIR OWN, AND VIEWED A PHOTOGRAPH OF MR. JAMES ONLINE
28 PRIOR TO THE SHERIFF'S DETECTIVES SHOWING THEM AN

1 OFFICIAL LAW ENFORCEMENT SIX-PACK.

2 AND DEFENSE COUNSEL'S ARGUMENT IS THAT
3 THEIR VIEWING OF -- THEIR INDEPENDENT VIEWING OF THE
4 PHOTO ONLINE HAS TAINTED THEIR IDENTIFICATIONS OF THE
5 SIX-PACK, IF I AM UNDERSTANDING CORRECTLY THE GENERAL
6 GIST OF WHAT HAPPENED. IS THAT CORRECT?

7 MR. EVANS: WELL, THAT'S ALSO, BUT THERE IS AN
8 IMPORTANT BIT OF INFORMATION. I MEAN, THERE IS SOME
9 OTHER INFORMATION THAT I WOULD LIKE TO FILL IN.

10 THE COURT: OH, ABSOLUTELY, AND THAT'S WHY I SAID
11 I AM NOT SURE ABOUT HOW THE VIEWING ONLINE TOOK PLACE.
12 BUT ESSENTIALLY WHAT IS AT ISSUE HERE IS THEIR VIEWING AN
13 ONLINE PHOTO PRIOR TO THE OFFICIAL LAW ENFORCEMENT
14 IDENTIFICATION PROCEDURE, THE SIX-PACK.

15 MR. EVANS: AND THE ISSUE FOR ME IS NOT ONLY
16 TAINT, BUT THERE IS A 352 ISSUE BECAUSE I DON'T THINK
17 THERE IS ANY PROBATIVE VALUE WHEN THE I.D. THAT IS MADE
18 IN THE SIX-PACK IS BASED UPON THE PHOTOGRAPH THAT THEY
19 SAW PREVIOUSLY ON THE ARIZONA DEPARTMENT OF CORRECTIONS
20 WEB SITE.

21 AND IN PARTICULAR WHAT THE COURT -- WHAT I
22 REALLY WANT THE COURT TO FOCUS ON IS PAGES 15 THROUGH 18
23 OF THE PRELIMINARY HEARING INVOLVING MR. JAMES WHEREIN
24 DETECTIVE CHISM, TESTIFYING UNDER OATH, UNDER THE
25 AUTHORITY OF PROP 115, IS ASKED THERE WERE FOUR PEOPLE
26 WHO VIEWED -- WHO DID THE SIX-PACK, THE THREE OF THEM,
27 AND THE WITNESSES ARE BARRAGAN, SAAVEDRA, AND FELICITAS
28 GONZALEZ, THE THREE OF THEM. AND ACCORDING TO HIS

1 OPINION, THEY BASED THEIR CIRCLING OF MR. JAMES' PHOTO IN
2 THE SIX-PACK UPON THE ARIZONA DEPARTMENT OF
3 CORRECTIONS -- UPON VIEWING HIS PHOTO IN THE ARIZONA
4 DEPARTMENT OF CORRECTIONS.

5 PARTICULARLY, I WILL POINT THE COURT TO --
6 IT IS LINES 16 THROUGH 23.

7 THE COURT: ON WHICH PAGE?

8 MR. EVANS: ON PAGE 18. I MEAN, THEIR OWN
9 INVESTIGATING OFFICER IS SAYING THE I.D.'S FOR THOSE
10 THREE WITNESSES IS BASED UPON SEEING THE PHOTOGRAPH.

11 THE COURT: OKAY. AND I ALSO WOULD LIKE YOU BOTH
12 TO FILL IN THE DETAILS. I MEAN, I PUT THE GENERAL
13 QUESTION, BUT IF YOU WANT TO FILL IN THE DETAILS AND MAKE
14 YOUR ARGUMENT.

15 AND THE REASON WHY I INDICATED AT THE BENCH
16 WHEN WE WERE NOT ON THE RECORD THAT I DON'T NEED TO HEAR
17 FROM THE WITNESSES IS BECAUSE THE FACTS ARE PRETTY MUCH
18 UNCONTESTED. I KNOW YOU WANT THEM TO SAY THE
19 IDENTIFICATION IS OF THEIR OWN INDEPENDENT MEMORY AND NOT
20 FROM THE VIEWING OF THE PHOTOGRAPH, BUT I FOUND SOME CASE
21 LAW THAT INDICATES THAT IS NOT NECESSARILY REQUIRED, AND
22 I WILL PUT ON THE RECORD MY FINDINGS.

23 BUT IT JUST SEEMS TO ME UNCONTESTED
24 REGARDING THE FACTS, AND WE ARE NOT DEALING WITH WHAT
25 YOU'RE CLAIMING IS A SUGGESTIVE PHOTO SIX-PACK. IT'S
26 JUST THE VIEWING OF THIS PHOTO BY THE WITNESSES, HOW
27 SHOULD THAT BE CONSTRUED WITH REGARD TO THE
28 IDENTIFICATION PROCESS. SO PLEASE FILL IN THE DETAILS.

1 MR. EVANS: MAY I START WITH THE BEGINNING THEN?
2 THE COURT: PLEASE.

3 MR. EVANS: OKAY. THERE IS AN INITIAL INTERVIEW
4 OF THE FOUR WITNESSES, AND THE FOUR WITNESSES ARE
5 BARRAGAN, SAAVEDRA -- AND THAT'S S-A-A-V-E-D-R-A -- AND
6 THE THIRD PERSON IS FELICITAS GONZALEZ, AND THE FOURTH
7 ONE IS NANCY JARDINES, WHICH IS J-A-R-D-I-N-E-S.

8 ON NOVEMBER 23RD, 2008, WHICH IS THE DATE
9 OF THE INCIDENT INVOLVED IN THIS CASE, ALL FOUR ARE
10 INTERVIEWED. NONE OF THEM CAN MAKE AN IDENTIFICATION OF
11 MR. JAMES AT THAT TIME. THEY DON'T EVEN GIVE A GENERAL
12 DESCRIPTION OTHER THAN THEY SAY THAT THERE WAS A MALE
13 BLACK WITH A MEDIUM BUILD. AND I WILL TELL YOU THAT
14 MR. JAMES HASN'T CHANGED HIS BUILD, AND HE IS NOT MEDIUM
15 BUILD. HE IS DEFINITELY V-SHAPED. HE'S NOT THIN. HE'S
16 NOT MEDIUM. THAT WOULD BE MY INTERPRETATION.

17 THE COURT: WELL, I THINK IT'S SUBJECTIVE BECAUSE
18 I THINK OF A LARGE BUILD AS A HUSKY TO OVERWEIGHT
19 GENTLEMAN, AND CLEARLY MR. JAMES IS NOT AN OVERWEIGHT
20 GENTLEMAN.

21 MR. EVANS: I WOULD AGREE WITH YOUR HONOR.

22 BUT NO ONE ELSE MENTIONS THEY CAN IDENTIFY
23 ANYONE ELSE, EXCEPT THE INDIVIDUAL WHO DID NOT HAVE THE
24 MASK ON. AND THE INDIVIDUAL WHO DID NOT HAVE THE MASK
25 ON, WHO WAS A MALE BLACK -- I BELIEVE THAT MR. GOUDY
26 WOULD CONCEDE -- WAS DION HAWKINS, THE GENTLEMAN WHO WAS
27 A CO-DEFENDANT IN THIS CASE AND PLED GUILTY ALREADY IN
28 THIS CASE. NO ONE ELSE IS ABLE TO EVEN GIVE MORE THAN A

1 BASIC GENERAL DESCRIPTION OF ANY OF THE OTHER
2 PERPETRATORS OTHER THAN BEING MALE BLACKS, MALE
3 HISPANICS, AND MAYBE A MEDIUM BUILD.

4 AND I WANT TO POINT OUT THAT ON THE 23RD OF
5 NOVEMBER, 2008, THERE IS NO MENTION ABOUT ANYTHING
6 DISTINCTIVE ABOUT A MALE BLACK WEARING A MASK IN TERMS OF
7 ANYTHING ABOUT HIM. NOTHING WAS MENTIONED.

8 MS. JARDINES IS INTERVIEWED AGAIN ON THE
9 25TH OF NOVEMBER, TWO DAYS LATER. SHE GIVES THE SAME
10 STATEMENT. SO THERE IS A CORROBORATING STATEMENT.

11 IN THE INTERIM PERIOD, BETWEEN
12 NOVEMBER 25TH UNTIL JUNE 2ND, WHICH IS THE DATE THAT
13 THERE IS A FOLLOW-UP INTERVIEW AND THE SIX-PACKS WERE
14 SHOWN TO THESE FOUR WITNESSES, IN THE INTERIM THE
15 WITNESSES INDICATE THAT THEY RECEIVED A LETTER FROM
16 LOS ANGELES COUNTY PROBATION INDICATING THAT TAUMU JAMES
17 MAY BE INVOLVED IN THE CASE THAT THEY ARE WITNESSES
18 AND/OR VICTIMS ON, AND HE MAY BE RELEASED.

19 MR. GOUDY: EXCUSE ME. JUST SO WE ARE CLEAR, DID
20 YOU SAY FROM THE PROBATION DEPARTMENT?

21 MR. EVANS: ACCORDING TO --

22
23 (COUNSEL AND CLIENT CONFERRED
24 SOTTO VOCE.)
25

26 MR. EVANS: ONE PERSON HAS SAID THE PROBATION
27 DEPARTMENT. ONE HAS SAID THE ARIZONA DEPARTMENT OF
28 CORRECTIONS. BUT EITHER WAY, THERE IS A LAW ENFORCEMENT

1 AGENCY THAT HAS GIVEN NOTICE TO THESE INDIVIDUALS
2 INDICATING THAT MR. JAMES IS ABOUT TO BE RELEASED FROM
3 THE ARIZONA DEPARTMENT OF CORRECTIONS, AND HE MAY BE A
4 SUSPECT IN THEIR CASE.

5 NOW, INTERESTINGLY, PRIOR TO THIS LETTER
6 GOING OUT, IT WAS THE IDENTIFICATION OF MR. JAMES' D.N.A.
7 ON ONE PIECE OF CLOTHING. SO CHRONOLOGICALLY IT IS THE
8 OBTAINING OF THE CLOTHING, THE D.N.A. TESTING, AND THEN
9 THE TEST WHERE IT SAYS MR. JAMES AND ANOTHER INDIVIDUAL'S
10 D.N.A. ARE ON THIS CLOTHING. THEN THE LETTER COMES
11 AND --

12 THE COURT: AND THE CLOTHING IS OBVIOUSLY TIED TO
13 THE CRIME.

14 MR. GOUDY: A SKI MASK THAT WAS RECOVERED WITH A
15 GUN IN IT, YES.

16 MR. EVANS: I DON'T KNOW WHAT THE WITNESSES ARE
17 GOING TO SAY, BUT LET'S ASSUME FOR PURPOSES OF THE
18 ARGUMENT THAT'S WHAT THE CLAIM IS GOING TO BE.

19 THEN IT'S AT THIS POINT THAT THE NOTICE IS
20 SENT OUT. ONE PERSON SAID LOS ANGELES PROBATION. OTHERS
21 HAVE SAID THE ARIZONA DEPARTMENT OF CORRECTIONS. EITHER
22 WAY, THE PEOPLE THAT ARE -- THE EIGHT VICTIMS THAT ARE IN
23 THIS HOUSE ARE GIVEN THIS NOTICE. THERE'S INDEPENDENT
24 ACTIONS BY THE INDIVIDUALS IN THE HOUSE TO LOOK UP
25 MR. JAMES ON THE ARIZONA DEPARTMENT OF CORRECTIONS
26 WEB SITE. AT THAT POINT THEY ARE ABLE TO OBTAIN A
27 PICTURE. AND WE ARE UNCLEAR AS TO THE EXACT DATE, BUT IT
28 CERTAINLY IS BEFORE THE JUNE 2ND, 2009 DATE WHEN

1 SHERIFF'S DEPUTIES GO OUT TO INTERVIEW THE FOUR WITNESSES
2 AND SHOW THEM THE SIX-PACKS.

3 AT THAT TIME MS. BARRAGAN, SAAVEDRA, AND
4 GONZALEZ INDICATE THEY CAN IDENTIFY VIA THE SIX-PACK
5 MR. JAMES, BUT THEY DID SO BASED UPON THE ARIZONA
6 DEPARTMENT OF CORRECTIONS PHOTOGRAPH. THAT IS THE BASIS
7 OF THE I.D., NO OTHER INDEPENDENT RECOLLECTION.

8 THE COURT: AND THAT'S COMING FROM THE
9 PRELIMINARY HEARING TRANSCRIPT AS OPPOSED TO WHAT IS
10 WRITTEN IN THEIR IDENTIFICATION DOCUMENTS?

11 MR. EVANS: THAT'S CORRECT. AND THAT IS UNDER
12 OATH BY THE DETECTIVE, THE INVESTIGATING OFFICER IN THIS
13 CASE, INDICATING THAT THE SIX-PACK IDENTIFICATION OF
14 THESE THREE WITNESSES IS BASED UPON THEM FIRST LOOKING AT
15 THE ARIZONA DEPARTMENT OF CORRECTIONS PHOTO AND THEN
16 CIRCLING IT. THERE IS A DIRECT CONNECTION.

17 NOW, AS TO MS. JARDINES, THERE IS AN
18 INTERESTING SITUATION BECAUSE WHEN SHE IS INTERVIEWED,
19 SHE MAKES THE CLAIM THAT SHE NEVER SAW THE ARIZONA
20 DEPARTMENT OF CORRECTIONS PHOTOGRAPH, THAT SHE'S AWARE
21 THAT THEY KEPT THIS AWAY FROM HER. THE OTHER PEOPLE IN
22 THE HOUSE KEPT THIS AWAY FROM HER AND NEVER DISCUSSED
23 IT.

24 NOW, WE ARE TALKING ABOUT A THREE-BEDROOM
25 HOUSE WHERE WE HAVE TWO TO THREE EXTENDED FAMILIES LIVING
26 IN IT. THERE ARE AT LEAST EIGHT TO TEN PEOPLE LIVING IN
27 THAT HOUSE AT THE SAME TIME, AND THEY ARE CLAIMING THAT
28 SOMEHOW THEY HAVE WALLED OFF THIS INFORMATION FROM HER

1 AND THAT SHE NEVER SAW THIS -- SHE NEVER SAW THE
2 PHOTOGRAPH AND THAT WHEN SHE TALKS TO CHISM ON JUNE 2ND,
3 SHE PICKS MR. JAMES OUT AND SHE CLAIMS, "I THINK THAT'S
4 THE GUY BECAUSE I RECOGNIZE HIS NOSE AND HIS MOUTH,"
5 NEVER BEFORE MENTIONING ANYTHING ABOUT NOSE AND MOUTH.
6 THIS IS THE FIRST TIME IT COMES UP.

7 NOW, FINALLY, MY INVESTIGATOR GOES OUT TO
8 INTERVIEW MS. JARDINES ON JULY 11TH, 2010. THAT WOULD BE
9 THREE WEEKS AGO OR APPROXIMATELY THREE WEEKS AGO. SHE
10 SAYS TO HIM, "I SAW THE ARIZONA DEPARTMENT OF CORRECTIONS
11 PHOTOGRAPH PRIOR TO DOING THE SIX-PACK, AND IT'S BASED
12 UPON THAT."

13 SO I AM MAKING THIS ARGUMENT THAT THERE
14 IS -- FIRST OF ALL, THERE'S A TAINT BECAUSE SOMEBODY FROM
15 LAW ENFORCEMENT HAS SENT OUT THIS INFORMATION. BUT EVEN
16 IF THERE'S NOT A TAINT, THERE IS NO PROBATIVE VALUE TO
17 THIS IDENTIFICATION IN THIS CASE, AND IT IS CERTAINLY
18 HIGHLY PREJUDICIAL. THERE'S NO PROBATIVE VALUE BECAUSE
19 IF IT'S BASED UPON WHAT IS ON THE ARIZONA DEPARTMENT OF
20 CORRECTIONS PHOTOGRAPH, THAT'S IRRELEVANT. THAT HAS
21 NOTHING TO DO WITH THIS CASE.

22 THE IDENTIFICATION IN THE SIX-PACK NEEDS TO
23 BE BASED UPON THE EVENT IN QUESTION IN ORDER FOR IT TO BE
24 PROBATIVE IN THIS CASE AND CERTAINLY PROBATIVE ENOUGH TO
25 OVERCOME THE UNFAIR PREJUDICE THAT THIS WOULD CAUSE.
26 THAT'S WHAT THE BASIS IS OF OUR ARGUMENT.

27 THE COURT: AND DID YOU WANT TO RESPOND,
28 MR. GOUDY?

1 MR. GOUDY: WELL, A COUPLE DIFFERENT THINGS. ONE,
2 I DON'T THINK THAT WHEN SOMEBODY DOES SOMETHING THERE IS
3 NO EFFECT, NOTHING THAT LAW ENFORCEMENT DID THAT MADE
4 THEM LOOK AT THIS PHOTOGRAPH.

5 THE LETTER, ALTHOUGH COUNSEL HAS SAID
6 SOMEBODY SAID IT WAS THE PROBATION DEPARTMENT AND
7 SOMEBODY SAID THAT IT WAS FROM THE DEPARTMENT OF
8 CORRECTIONS, THEY NEVER MENTIONED THE LETTER FROM
9 PROBATION TO DETECTIVE CHISM WHEN HE SHOWED THEM THE
10 SIX-PACK. THAT ONLY COMES UP IN THE DEFENSE
11 INVESTIGATOR'S REPORT.

12 AND FROM WHAT I READ, THEY DON'T SAY ONE
13 PERSON SAYS IT WAS FROM THE DEPARTMENT OF CORRECTIONS OF
14 ARIZONA AND ONE SAYS IT'S FROM THE PROBATION DEPARTMENT.
15 THEY SAID THEY GOT TWO LETTERS, AND THEY COULDN'T
16 REMEMBER WHICH ONE IT WAS THAT GOT THEM TO LOOK AT THE
17 INTERNET.

18 SO NOBODY EVER ACTUALLY SAID IT WAS A
19 LETTER FROM THE PROBATION DEPARTMENT. I THINK THE ONLY
20 REASON THAT'S BEING BROUGHT UP IS BECAUSE THAT'S A
21 LOS ANGELES AGENCY AND IT GOES TO SHOW THAT WELL, SEE, IT
22 WAS A LOCAL LAW ENFORCEMENT AGENCY THAT GOT THEM TO LOOK
23 AT THIS PHOTOGRAPH. WELL, THAT'S NOT THE CASE, AND
24 THAT'S NOT EVEN WHAT THE DEFENSE INVESTIGATOR REPORT
25 SAYS. IT SAYS THEY COULDN'T REMEMBER.

26 HOWEVER, IF YOU LOOK AT --

27 THE COURT: I AM NOT SURE IF TECHNICALLY PROBATION
28 IS A LAW ENFORCEMENT AGENCY. I MEAN, I THINK THEY MIGHT

1 QUALIFY AS A PEACE OFFICER AS OPPOSED TO A LAW
2 ENFORCEMENT OFFICER. I MEAN, THERE ARE DIFFERENT LEVELS,
3 IF YOU LOOK AT THE GOVERNMENT CODE AND BUSINESS AND
4 PROFESSIONS CODE AND WHATNOT, BUT THAT'S A WHOLE SEPARATE
5 ISSUE.

6 MR. GOUDY: BUT EVEN FOR CLARIFICATION, THAT
7 LETTER THAT THEY ARE SHOWN IS A NOTIFICATION OF A
8 HEARING. AT THE TIME THE SIX-PACK WAS SHOWN, THERE COULD
9 NOT HAVE BEEN A HEARING SET BECAUSE THE DEFENDANT WAS
10 STILL IN ARIZONA. HE HAD NOT BEEN PICKED UP FROM THE
11 DEPARTMENT OF CORRECTIONS IN ARIZONA BY THE DETECTIVES,
12 SO THERE IS NO WAY THAT LETTER COULD HAVE GONE OUT WHEN
13 THE SIX-PACK WAS SHOWN. SO IT HAD TO BE A LETTER FROM
14 THE DEPARTMENT OF CORRECTIONS OF ARIZONA GIVING THEM SOME
15 NOTIFICATION THAT THE DEFENDANT WAS GOING TO BE RELEASED.

16 AND THEY SAW -- AND WHAT WAS LEFT OUT IN
17 THAT TIME TABLE IS THAT IN THAT TIME, IN THAT INTERIM, A
18 CASE HAD BEEN FILED AGAINST MR. JAMES FOR AN ARREST
19 WARRANT. THEY WENT TO GET HIM IN ARIZONA. SO WHEN THEY
20 SHOWED THEM THE SIX-PACK, NOBODY FROM LOCAL LAW
21 ENFORCEMENT, I THINK, WAS EVEN AWARE THAT ARIZONA HAD
22 SENT THIS LETTER UNTIL THEY WENT OUT THERE TO THAT
23 LOCATION.

24 BUT LAW ENFORCEMENT HAS DONE NOTHING. THIS
25 SIX-PACK IN AND OF ITSELF IS NOT SUGGESTIVE. THEY HAVE
26 NOT VIOLATED ANYTHING BY SHOWING A ONE-PHOTOGRAPH
27 SHOW-UP. NOBODY DID THAT. THEY DID THAT ON THEIR OWN
28 BASED UPON SOME LETTER THAT THEY RECEIVED FROM THE

1 DEPARTMENT OF CORRECTIONS IN ARIZONA. SO THERE IS
2 CERTAINLY NO TAINT.

3 IN REGARDS TO THE OTHER ASPECT OF IT, WHICH
4 IT HAS TO BE BASED UPON THEM SEEING HIM, REGARDLESS OF
5 WHAT THE DEFENSE INVESTIGATOR'S REPORT SAYS,
6 MS. JARDINES, WHEN SHE LOOKS AT THE PHOTOGRAPH, SAYS AT
7 THE SIX-PACK, "I HAVEN'T SEEN ANY PHOTOGRAPHS." SO IF
8 THEY WANT TO IMPEACH HER BY THIS INVESTIGATOR SAYING THAT
9 RELATES TO AN IMPEACHMENT ISSUE, NOT AN ADMISSIBILITY
10 ISSUE, AND THE FACT THAT THERE IS NO DUE PROCESS
11 VIOLATION HERE, NOTHING LAW ENFORCEMENT DID WRONG,
12 ANYTHING THAT THEY HAVE THAT THEY WANT TO GO INTO ON
13 CROSS-EXAMINATION ABOUT THEIR ABILITY TO IDENTIFY THE
14 DEFENDANT BASED UPON SEEING THIS ONE PHOTOGRAPH, THAT
15 AGAIN WOULD GO TO THE WEIGHT AND NOT TO THE
16 ADMISSIBILITY.

17 THEY HAVE ALL THE OPPORTUNITY IN THE WORLD
18 TO CROSS-EXAMINE THE WITNESSES ABOUT THEIR
19 IDENTIFICATION, AND THEY CAN GO INTO HAVING SEEN THE
20 PHOTOGRAPH, WHAT IS THE IDENTIFICATION BASED UPON, IS IT
21 BECAUSE YOU SAW THIS PHOTOGRAPH. THEY CAN CROSS-EXAMINE
22 THEM ALL THEY WANT IN REGARDS TO THAT TO BRING OUT THAT
23 ASPECT OF IT, BUT IT DOESN'T GO TO THE ADMISSIBILITY OF
24 THE IDENTIFICATION, ONLY TO THE POTENTIAL WEIGHT OF THAT
25 IDENTIFICATION.

26 THE COURT: ALL RIGHT. AND DID YOU WANT TO
27 RESPOND?

28 MR. EVANS: I DO.

1 THE COURT: ALL RIGHT.

2 MR. EVANS: FIRST OF ALL, IT IS SUGGESTIVE WHEN
3 YOU SEND A LETTER. A LETTER IS BEING SENT SAYING THIS IS
4 A SUSPECT IN THE CASE THAT YOU ARE A VICTIM AND A WITNESS
5 ON, AND THEN YOU LOOK HIM UP. I MEAN, HOW MUCH MORE
6 SUGGESTIVE CAN IT BE THAN TO SAY WE BELIEVE -- AND WHEN
7 NO ONE ELSE HAS EVEN IDENTIFIED HIM.

8 THE COURT: AND DO WE HAVE A COPY OF THE LETTER?

9 MR. GOUDY: WE DON'T. THEY HAVE NEVER PROVIDED
10 ONE TO THE DETECTIVE, AND WE NEVER RECEIVED A COPY OF THE
11 LETTER.

12 THE COURT: SO WHAT WE ARE GOING ON AS FAR AS WHAT
13 THE LETTER ACTUALLY SAID IS BASED UPON WHO RELATED THIS
14 TO WHO?

15 MR. GOUDY: THE VICTIMS RELATED TO THE DETECTIVE
16 WHEN HE WENT OUT THERE TO SHOW THEM THE SIX-PACK.

17 MR. EVANS: SO TO ME THERE IS SOMETHING SUGGESTIVE
18 THAT THE COURT NEEDS TO LOOK INTO. HERE, FIRST OF ALL,
19 IS THE LETTER, THE LETTER STATING THIS IS THE GUY THAT'S
20 A SUSPECT, AND THEY LOOK HIM UP. I MEAN, HOW MUCH MORE
21 SUGGESTIVE CAN IT BE? IS THIS THE GUY? IS THAT HIM? I
22 MEAN, YEAH, IT'S ONE STEP REMOVED, BUT IT'S THERE. IT IS
23 SUGGESTIVE. AND IT ISN'T BEING DONE BY LAW ENFORCEMENT;
24 IT'S BEING DONE BY THE DEPARTMENT OF CORRECTIONS FROM
25 ANOTHER STATE.

26 SECONDLY, WHICH IS REALLY IMPORTANT HERE IN
27 TERMS OF UNDERSTANDING THE PREJUDICIAL IMPACT, COUNSEL IS
28 JUST LIKE WELL, YOU KNOW, THIS IS ABOUT THE WEIGHT OF THE

1 EVIDENCE. WELL, WAIT A MINUTE. ONCE WE OPEN THE DOOR TO
2 THIS AMOUNT OF EVIDENCE, THESE JURORS ARE GOING TO FIGURE
3 OUT MR. JAMES IS IN THE ARIZONA DEPARTMENT OF
4 CORRECTIONS. THERE'S NO OTHER WAY AROUND IT. AND THEY
5 ARE GOING TO KNOW THAT HE HAS GOT A PRIOR RECORD,
6 REGARDLESS IF HE TESTIFIES OR NOT.

7 SO THERE IS SOMETHING VERY PREJUDICIAL IN
8 ADDITION TO THE IDENTIFICATION. THEY ARE GOING TO LEARN
9 ABOUT, IN PART, HIS PRIOR CRIMINAL HISTORY IN ORDER FOR
10 ME TO ADDRESS THE PROBLEM, WHICH I BELIEVE IS IN THE
11 IDENTIFICATION IF THE JURY IS GOING TO HEAR THIS.

12 IN EFFECT, WE ARE HAVING A MINI TRIAL ON
13 THIS IDENTIFICATION BECAUSE IF THE IDENTIFICATION COMES
14 IN, NOT ONLY DOES THIS OTHER INFORMATION COME IN, BUT
15 THEN I HAVE GOT TO BRING IN AN I.D. EXPERT. I HAVE NO
16 OTHER CHOICE BUT TO EXPLAIN THIS. SO WE ARE HAVING A
17 MINI TRIAL ON AN ISSUE WHICH HAS LIMITED, IF ANY,
18 PROBATIVE VALUE. THIS IS NOT RELIABLE.

19 NOW, I WANT TO ADDRESS, FINALLY, ONE OTHER
20 ISSUE THAT I -- ANOTHER THING I TAKE EXCEPTION WITH. AS
21 TO MS. JARDINES, THE PEOPLE ARE ASSUMING THAT SHE IS
22 GOING TO TESTIFY WHAT IS IN THE REPORT FROM DETECTIVE
23 CHISM, BUT THE LAST THING SHE SAID HERE TO MY
24 INVESTIGATOR WAS, "I SAW THE PICTURE BEFORE I MADE THE
25 I.D." SO THE IMPEACHMENT IS NOT GOING TO BE FROM ME; THE
26 IMPEACHMENT IS GOING TO BE FROM THE PEOPLE.

27 AND AGAIN, HOW PROBATIVE IS THAT?
28 IMPEACHMENT EVIDENCE IS NOT FOR THE TRUTH OF THE MATTER

1 ASSERTED. I MEAN, THE PEOPLE WILL ARGUE THAT, BUT IT'S
2 IN ESSENCE TO COUNTER WHAT IS IN ESSENCE -- MS. JARDINES
3 IS GOING TO TESTIFY SIMILAR, AS FAR AS I KNOW, TO THE
4 OTHER THREE WITNESSES, AND DETECTIVE CHISM HAS ALREADY
5 STATED WHAT HE BELIEVES IS THE TAIN'T THERE. HE'S SAYING
6 WHAT THE TAIN'T IS.

7 NOW, THAT'S WHY WE HAVE TO HAVE
8 MR. JARDINES HERE, BECAUSE I DON'T EVEN KNOW WHAT IS
9 GOING TO BE IMPEACHMENT. THERE IS AN ASSUMPTION ON THE
10 PEOPLE'S PART, BUT I DON'T THINK THAT'S A CORRECT
11 ASSUMPTION UNTIL WE HEAR FROM HER.

12 THE COURT: WELL, I ASSUME THAT WHAT IS IN THE
13 REPORT THAT THE PEOPLE HAVE IS WHAT THE DETECTIVE WOULD
14 SAY SHE WOULD SAY.

15 MR. GOUDY: YES.

16 THE COURT: AND I WOULD ASSUME WHAT YOUR
17 INVESTIGATOR SAID -- HE OR SHE?

18 MR. EVANS: IT'S A HE, BUT THERE WAS AN
19 INTERPRETER WHO IS A SHE. SO EITHER WAY WORKS.

20 THE COURT: AND I WOULD ASSUME THAT WHAT HE TOLD
21 YOUR INVESTIGATOR IS WHAT YOUR INVESTIGATOR WOULD SAY HE
22 SAID, AND THERE MAY BE A THIRD VERSION THAT COMES UP
23 HERE. I MEAN, THAT'S NOT UNUSUAL IN VIOLENT CRIME CASES
24 THAT PEOPLE SAY ALL SORTS OF DIFFERENT THINGS.

25 BUT I AM READY TO RULE ON THIS. SO BOTH
26 SIDES SUBMITTED WITH THEIR ARGUMENT?

27 MR. EVANS: JUST ONE POINT. I THINK WE DON'T KNOW
28 WHAT SHE IS GOING -- I DON'T KNOW WHAT IS --

1 THE COURT: WELL, LET'S ASSUME HE COMES HERE AND
2 SAYS SOMETHING TOTALLY DIFFERENT. LET'S ASSUME THAT.
3 THAT STILL DOESN'T ERASE THE IDENTIFICATION IN WHAT HE
4 SAID PRIOR, AND IT STILL DOESN'T ERASE WHAT HE TOLD YOUR
5 INVESTIGATOR ABOUT SEEING THE PHOTO. IT JUST MEANS THAT
6 WE HAVE TO DEAL WITH ANOTHER THIRD VERSION. DOES THAT
7 MAKE HIS TESTIMONY COMPLETELY IMPEACHMENT ON A WHOLE
8 BUNCH OF DIFFERENT GROUNDS? ABSOLUTELY. DOES THAT MAKE
9 IT ADMISSIBLE?

10 PUTTING ASIDE THE I.D. ISSUE -- LET'S SAY
11 THE I.D. WAS AN ISSUE. LET'S SAY YOU HAVE A WITNESS WHO
12 GAVE FIVE DIFFERENT STORIES. DOES THAT MAKE THEIR
13 TESTIMONY INADMISSIBLE? DOES THAT MAKE THEM NOT TO BE
14 QUALIFIED TO BE CALLED AS A WITNESS? NO, IT DOESN'T.
15 THAT MEANS THEY GET IMPEACHED UP THE WAZOO.

16 MR. EVANS: BUT I THINK IT DOES MAKE A DIFFERENCE
17 WHAT SHE STATES UNDER OATH BECAUSE SHE HAS NOT STATED
18 ANYTHING UNDER OATH, AND I THINK THAT'S THE DIFFERENCE
19 WITH MS. JARDINES. WE NEED TO KNOW WHAT SHE IS GOING TO
20 SAY UNDER OATH SO WE KNOW WHAT IS IMPEACHMENT AND WHAT
21 IS HER SUBSTANTIVE TESTIMONY.

22 THE COURT: WELL, I AM READY. BOTH SIDES SUBMIT?

23 MR. EVANS: SUBMIT.

24 MR. GOUDY: YES.

25 THE COURT: I AM NOT GOING TO SUPPRESS THE I.D.'S
26 FOR THESE REASONS, AND I AM GOING TO LAY THEM OUT: WITH
27 REGARD TO THE IMPEACHMENT, WE WILL GET TO SANITIZING AS
28 IT RELATES TO THE PRIOR IN ARIZONA BECAUSE I THINK THERE

1 ARE WAYS TO GET AROUND IT BY SANITIZING IT THAT WE CAN
2 DEAL WITH THIS WITHOUT NECESSARILY THEM FINDING OUT THAT
3 IT WAS A PRIOR CONVICTION. OKAY? AND I WILL GET TO THAT
4 ISSUE SEPARATELY.

5 AS IT RELATES TO SHOWING THE UNRELIABILITY
6 OF AN IDENTIFICATION PROCEDURE, THE DEFENSE BEARS THE
7 BURDEN FOR THAT, AND THAT'S PEOPLE VERSUS DE SANTIS, A
8 1992 CASE AT 2 CAL.4TH 1198, PAGE 1222.

9 THE CONSTITUTIONAL RELIABILITY OF A LINEUP
10 DEPENDS UPON TWO FACTORS: ONE, WHETHER THE
11 IDENTIFICATION PROCEDURE WAS UNDULY SUGGESTIVE AND
12 UNNECESSARY AND, IF SO; TWO, WHETHER THE IDENTIFICATION
13 ITSELF IS RELIABLE WHEN ONE CONSIDERS THE ENTIRE PROCESS,
14 AND THAT'S PEOPLE VERSUS GORDON, A 1990 CASE AT
15 50 CAL.3D 1223, PAGE 1242.

16 IF THE COURT FINDS THE CHALLENGED PROCEDURE
17 WAS NOT IMPERMISSIBLY SUGGESTIVE, THE INQUIRY INTO DUE
18 PROCESS CLAIM ENDS, AND THAT'S PEOPLE VERSUS OCHOA, A
19 1998 CASE AT 19 CAL.4TH 353, PAGE 412.

20 IF THE OUT-OF-COURT I.D. PROCEDURE IS RULED
21 UNTAINTED, IT CAN BE INTRODUCED, AND THE WITNESS CAN
22 TESTIFY WITHOUT SHOWING AN INDEPENDENT ORIGIN FOR THE
23 IN-COURT IDENTIFICATION.

24 IN ADDITION, EVIDENCE OF THE PRIOR I.D. CAN
25 BE INTRODUCED. THE DEFENDANT CAN ALSO OFFER EVIDENCE OF
26 THE SUGGESTIVENESS IN THE PROCEDURE ITSELF TO THE
27 JURORS, AND THAT'S PEOPLE VERSUS GREENE, A 1973 CASE AT
28 34 CAL.APP.3D 622.

1 NOW, IN LOOKING AT THIS, THIS PRESENTS
2 KIND OF A UNIQUE FACTUAL SCENARIO. SO I TRIED TO FIND
3 DIFFERENT THINGS THAT WERE SIMILAR TO THIS KIND OF
4 SITUATION.

5 OBVIOUSLY THERE IS CASE LAW OUT THERE THAT
6 SAYS ONE PHOTO SHOW-UP IS NOT NECESSARILY IMPERMISSIBLY
7 SUGGESTIVE. THERE IS CASE LAW OUT THERE THAT SAYS YOU
8 CAN SHOW SOMEONE A MULTITUDE, A GROUP OF PHOTOS, AND A
9 DEFENDANT CAN BE IN EACH DIFFERENT GROUP OF PHOTOS AND BE
10 THE ONLY ONE THAT CONTINUES THROUGHOUT THE DIFFERENT
11 GROUP OF PHOTOS, AS LONG AS THERE'S NOT MORE THAN ONE OF
12 HIS PICTURES IN ONE GROUP, AND THAT'S NOT NECESSARILY
13 IMPERMISSIBLY SUGGESTIVE.

14 AND THERE IS ALSO A CASE OUT THERE THAT
15 SAYS SHOWING A VICTIM OR A WITNESS A VIDEOTAPE OF THE
16 CRIME IN PROGRESS BEFORE SHOWING A PHOTO LINEUP IS NOT SO
17 SUGGESTIVE THAT IT VIOLATES DUE PROCESS. SO THOSE ARE
18 ALL DIFFERENT FACTUAL SCENARIOS.

19 TO ME, THIS SEEMS AKIN TO HOW WOULD THIS BE
20 DIFFERENT IF THE NEWS MEDIA GOT A PHOTO FROM SOMEPLACE
21 AND SAYS HERE IS A SUSPECT IN SERIAL RAPES OR SOMETHING
22 LIKE THAT, OR THEY OFTENTIMES SHOW THE ARTIST'S RENDERING
23 ON T.V. AND SAY LOOK OUT FOR THIS SUSPECT, AND THAT'S
24 BROADCAST EITHER ON T.V. OR IN PRINT, AND YOU HAVE
25 POTENTIAL VICTIMS OR WITNESSES VIEWING THOSE PHOTOS. AND
26 THEN THEY CATCH THE PERSON, OR THE PERSON IS UNDER
27 ARREST, AND THEY DO THE PHOTO SIX-PACK OR A LIVE LINEUP.
28 IF THAT WERE THE CASE, THEN YOU COULD NEVER HAVE A

1 WITNESS WHO WOULD NOT NECESSARILY BE TAINTED IF JUST
2 VIEWING A PHOTOGRAPH OF A SUSPECT AND BEING TOLD THIS IS
3 A SUSPECT IS PER SE IMPERMISSIBLY SUGGESTIVE.

4 SO THAT'S HOW I KIND OF FASHION IT TO YOU.
5 IT'S AN INTERESTING QUESTION OF WHETHER OR NOT THERE IS A
6 STATE ACTION OR NOT BRINGING IN THE DUE PROCESS ISSUE.
7 BECAUSE IT IS A DIFFERENT STATE AND TOTALLY INDEPENDENT
8 OF THIS INVESTIGATION AND THESE LAW ENFORCEMENT OFFICERS,
9 I AM NOT SURE THAT IT IMPLICATES A STATE ACTION IN ANY
10 EVENT. BUT EVEN ASSUMING IT DOES, I DON'T FIND IT TO BE
11 SO IMPERMISSIBLY SUGGESTIVE, BECAUSE THE WITNESSES
12 THEMSELVES ARE THE ONES THAT WENT ONLINE TO FIND THE
13 PICTURE AND TO TAKE A LOOK AT THE INDIVIDUAL. SO I DO
14 THINK THIS REALLY IS A MATTER THAT GOES TO WEIGHT, NOT
15 ADMISSIBILITY. SO THE MOTION TO EXCLUDE THE
16 IDENTIFICATION IS DENIED FOR THAT REASON.

17 I DO THINK YOU BRING UP AN INTERESTING
18 POINT REGARDING THE PRIOR CONVICTION. THE ISSUE WHETHER
19 OR NOT THIS IS A STATE ACTION IS REALLY A LEGAL ISSUE FOR
20 THE COURT TO DETERMINE WITH REGARD TO THE DUE PROCESS,
21 AND OBVIOUSLY WE ARE DEALING WITH THAT IN THIS MOTION.
22 ONCE I HAVE DEALT WITH THAT, I DON'T SEE ANY REASON WHY
23 THAT POINT NEEDS TO COME UP TO THE JURORS UNLESS ONE OF
24 YOU THINKS THERE IS A REASON WHY IT NEEDS TO BE. I THINK
25 YOU CAN SANITIZE IT BY ASKING THE WITNESSES DID THEY
26 RECEIVE A LETTER FROM AN AGENCY -- YOU DON'T HAVE TO
27 SPECIFY WHAT AGENCY -- REGARDING MR. JAMES THAT LED THEM
28 TO THINK HE MIGHT BE INVOLVED IN THIS CASE, AND THEN THEY

1 WENT ONLINE AND THEY LOOKED AT THE PICTURE OF MR. JAMES.

2 NOW, IN THIS COMPUTER AGE, THERE IS YOU
3 TUBE, THERE'S GOOGLE. THERE'S ALL SORTS OF WAYS PEOPLE
4 CAN GET PHOTOS OF PEOPLE ONLINE. IT DOES NOT NECESSARILY
5 MEAN THAT THERE IS A LAW ENFORCEMENT ISSUE THAT BROUGHT
6 THEM ONLINE. IN FACT, IT'S NOT UNCOMMON, IN THE NUMBER
7 OF GANG MURDER CASES THAT I HAVE DONE, WHERE ELECTRONIC
8 EVIDENCE HAS COME IN THROUGH CHAT ROOMS AND WEB PAGES AND
9 WHATNOT AS OPPOSED TO SOME LAW ENFORCEMENT AGENCY. SO I
10 THINK THERE IS A WAY YOU CAN PROBABLY SANITIZE IT WITHOUT
11 SHOWING THAT HE WAS ACTUALLY HELD IN CUSTODY IN A
12 DIFFERENT STATE AND THE DIFFERENT STATE NOTIFIED THE
13 INDIVIDUALS.

14 MR. EVANS: I DON'T KNOW. I DON'T SEE HOW I CAN
15 GET AROUND IT, BUT I AM GOING TO TRY.

16 THE COURT: YOU TWO TALK TO EACH OTHER FIRST.

17 SO THAT'S MY RULING. YOU BOTH KNOW MY
18 RULING. SEE IF THERE IS SOME WAY YOU CAN SANITIZE IT
19 THAT MEETS BOTH YOUR NEEDS. IF NOT, THEN BEFORE WE GET
20 TO THAT EVIDENCE, I WILL ORDER YOU HOW IT SHOULD BE
21 SANITIZED.

22 MR. EVANS: OKAY. THE COURT IS --

23 THE COURT: SO I AM ALLOWING THE I.D.'S TO COME
24 IN. I DO THINK IT GOES TO WEIGHT, NOT ADMISSIBILITY. I
25 AM FINDING THAT THERE IS NOT A TAIN'T OR A SUGGESTIBILITY
26 HERE.

27 MR. EVANS: YOU'RE SAYING THERE IS NO 352 ANALYSIS
28 THAT NEEDS TO BE DONE IN ADDITION TO THE CONSTITUTIONAL

1 DUE PROCESS ANALYSIS?

2 THE COURT: WELL, I THINK THAT'S INFERRED WHEN I
3 SAY I AM GOING TO SANITIZE IT TO REDUCE THE PREJUDICE.
4 BECAUSE WHAT I AM SAYING IS I AM GOING TO EXCLUDE THE
5 FACT THAT HE WAS HELD IN CUSTODY IN ARIZONA AND SANITIZE
6 IT TO STATE SIMPLY THE WITNESSES WERE CONTACTED -- YOU
7 CAN SAY BY AN OUT-OF-STATE AGENCY CONCERNING MR. JAMES,
8 PERIOD, IN THIS CASE AND SO THEY WENT ONLINE AND LOOKED
9 UP HIS PHOTO. THAT'S HOW I WOULD SUGGEST TO SANITIZE IT,
10 AND THEN YOU DON'T HAVE TO HEAR ABOUT A PRIOR CONVICTION
11 OR BEING HELD IN CUSTODY. SO UNDER THE 352 ANALYSIS I
12 THINK THAT CURES THE PREJUDICE, AND I THINK THE
13 IDENTIFICATION IS PROBATIVE.

14 MR. EVANS: THERE IS A FINDING THAT IT IS MORE
15 PROBATIVE THAN PREJUDICIAL?

16 THE COURT: YES.

17 MR. EVANS: EVEN THOUGH DETECTIVE CHISM SAID
18 OTHERWISE?

19 MR. GOUDY: WELL, I AM NOT SURE HE SAID THAT.

20 MR. EVANS: WELL, IT'S RIGHT HERE. IT'S RIGHT
21 HERE.

22 THE COURT: WELL, HE DIDN'T SAY IT WAS NOT
23 PROBATIVE.

24 MR. GOUDY: AND HE DIDN'T SAY IT WAS MORE
25 PREJUDICIAL THAN PROBATIVE. AND SOMEHOW IN AN I.D. CASE,
26 EVERY I.D. IS GOING TO BE PREJUDICIAL.

27 THE COURT: WE DON'T NEED TO ADDRESS EACH OTHER.

28 SO THAT'S THE COURT'S RULING. SO I SUGGEST

1 YOU TALK TO EACH OTHER ABOUT SANITIZING. I HAVE JUST
2 GIVEN YOU A SUGGESTION OF HOW I WOULD SUGGEST YOU TO
3 SANITIZE IT.

4 MR. EVANS: CAN I JUST READ INTO THE RECORD WHAT
5 HIS ANSWER WAS? BECAUSE I JUST FIND IT -- THERE'S A
6 QUESTION. MAY I?

7 THE COURT: YOU MAY. I AM ASSUMING EVERYTHING YOU
8 SAID WAS TRUE. SO I MEAN, YOU'VE PROFFERED IT, AND I
9 TOTALLY ACCEPT THAT AS TRUE AS AN OFFICER OF THE COURT.
10 BUT IF YOU WANT TO READ IT INTO THE RECORD, THAT'S FINE.

11 MR. EVANS: THE QUESTION IS ASKED OF THE THREE
12 OTHER INDIVIDUALS WHO LOOKED AT -- OTHER THAN
13 MS. JARDINES -- DO THEY SAY WHETHER OR NOT THEY RECOGNIZE
14 THE PERSON IN PHOTOGRAPH NUMBER 4. THAT'S STARTING AT
15 LINE 16, PAGE 18 OF MR. JAMES' PRELIMINARY HEARING
16 TRANSCRIPT.

17 THE ANSWER: "THEY DID."

18 QUESTION: "WHAT DID THEY TELL YOU?" THIS
19 IS TO DETECTIVE CHISM.

20 ANSWER: "THEY BASICALLY TOLD ME THAT THEY
21 HAD SEEN HIS PHOTO. THEY PICKED HIM OUT BASED ON WHAT
22 THEY HAD SEEN. SO THEY COULD NOT PROVIDE ANY
23 RECOLLECTION OF THE EVENTS ON THAT DAY."

24 AND THEY ARE REFERRING -- AND SEEING THE
25 PHOTO IS REFERRED BACK IN THE PREVIOUS THREE PAGES
26 REGARDING THE INFORMATION THEY SAW ON THE INTERNET.
27 THAT'S THE PHOTO THAT THEY ARE REFERRING TO.

28 THE COURT: ALL RIGHT. SO THAT WILL BE THE

1 COURT'S RULING.

2 SO WE WILL BE IN RECESS TOMORROW UNTIL --
3 WELL, WE WILL START WITH THE JURORS AT 10:45 IN THE
4 MORNING. IF YOU CAN WORK OUT A WAY OF SANITIZING IT WITH
5 EACH OTHER, I WANT TO MAKE SURE THAT YOU ADEQUATELY AND
6 COMPLETELY ADMONISH YOUR WITNESS, CIVILIAN AND LAW
7 ENFORCEMENT, CONCERNING THAT ISSUE.

8 MR. GOUDY: THERE WOULDN'T EVEN BE AN ISSUE WITH
9 THAT.

10 THE COURT: IF YOU CAN'T WORK IT OUT, COME HERE AT
11 10:30 SO WE CAN GET IT SQUARED AWAY BEFORE YOU MAKE YOUR
12 OPENING STATEMENTS.

13 THAT WILL BE THE ORDER OF THE COURT.

14

15 (THE MATTER WAS CONTINUED
16 TO TUESDAY, AUGUST 3, 2010,
17 AT 10:45 A.M. FOR FURTHER
18 PROCEEDINGS.)

19

20 (THE NEXT PAGE NUMBER IS 601.)

21

22

23

24

25

26

27

28

1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 3, 2010
4 DEPARTMENT NO. 121 HON. CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: KATHRYN L. MAUTZ, CSR NO. 11539
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT
11 OUTSIDE THE PRESENCE OF THE
12 PROSPECTIVE JURY:)
13

14 THE COURT: WE ARE ON THE RECORD IN PEOPLE VERSUS
15 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE PRESENT,
16 AND WE HAVE DETECTIVE CHISM PRESENT.

17 MR. GOUDY, THE D.A., JUST LET MR. EVANS
18 KNOW THAT DETECTIVE RICHARDSON IS OUT ON FAMILY LEAVE FOR
19 A MONTH AND NOT AVAILABLE FOR THIS TRIAL. MR. EVANS HAD
20 INDICATED THAT DETECTIVE RICHARDSON WAS AN IMPORTANT
21 IMPEACHMENT WITNESS OF THE PEOPLE'S WITNESSES, BUT RIGHT
22 NOW DETECTIVE CHISM IS GOING THROUGH THE REPORT TO SEE IF
23 HE CAN TESTIFY TO THE CONTENTS OF THE REPORT THAT
24 DETECTIVE RICHARDSON AUTHORED.

25 I HAVE INDICATED TO BOTH COUNSEL IF THERE
26 IS A NEED TO CONTINUE BECAUSE OF DETECTIVE RICHARDSON'S
27 UNAVAILABILITY, I WOULD GRANT A CONTINUANCE. WE HAVE NOT
28 SWORN THE JURORS IN AT THIS POINT, SO I WOULD GRANT THE

1 CONTINUANCE. IF NEITHER SIDE INDICATES NOW THAT THEY
2 NEED A CONTINUANCE, I AM NOT GOING TO GRANT A
3 CONTINUANCE. SO YOU NEED TO DECIDE WHAT YOU WANT TO DO
4 NOW.

5 MR. EVANS: I JUST NEED A MOMENT WITH MR. JAMES,
6 IF I COULD.

7 THE COURT: SURE. THAT'S FINE. I WILL GIVE YOU
8 ONE MOMENT.

9 I JUST WANT BOTH SIDES TO BE AWARE AND
10 THINK ABOUT THIS. IF SOMETHING UNFORESEEN COMES UP AND
11 DETECTIVE RICHARDSON DOES BECOME CRITICAL TO EITHER SIDE
12 IN THE TRIAL, I AM NOT GOING TO GRANT THE CONTINUANCE
13 ONCE THE TRIAL IS UNDER WAY, BUT I WOULD GRANT YOU THE
14 CONTINUANCE NOW.

15
16 (COUNSEL AND CLIENT CONFERRED
17 SOTTO VOCE.)

18
19 THE COURT: BACK ON THE RECORD THEN.

20 MR. EVANS HAS HAD A CHANCE TO TALK WITH HIS
21 CLIENT. THE PEOPLE HAVE TALKED TO THE DETECTIVE.

22 ALL SIDES READY TO GO FORWARD? THERE IS NO
23 MOTION TO CONTINUE BASED UPON DETECTIVE RICHARDSON'S
24 UNAVAILABILITY AT THIS TIME?

25 MR. EVANS: THAT'S CORRECT. WE ARE READY.

26 MR. GOUDY: THAT'S FINE.

27 THE COURT: OKAY. WE CAN CALL IN OUR JURORS.

28 MR. EVANS: DO WE NEED TO TALK TO THE ALTERNATE?

1 THE COURT: NO. AT THIS POINT, AT A QUARTER
2 OF -- OFF THE RECORD.

3
4 (A DISCUSSION WAS HELD BETWEEN
5 THE COURT AND COUNSEL WHICH
6 WAS NOT REPORTED.)

7
8 (THE FOLLOWING PROCEEDINGS
9 WERE HELD IN OPEN COURT IN
10 THE PRESENCE OF THE PROSPECTIVE
11 JURY:)

12
13 THE COURT: ON THE RECORD IN PEOPLE VERSUS
14 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE PRESENT,
15 AND ALL OF OUR JURORS AND PROSPECTIVE JURORS ARE
16 PRESENT.

17 IF ALL OF YOU COULD PLEASE STAND.

18 THE CLERK: DO YOU AND EACH OF YOU UNDERSTAND AND
19 AGREE THAT YOU WILL WELL AND TRULY TRY THE CAUSE NOW
20 PENDING BEFORE THIS COURT, AND A TRUE VERDICT RENDER
21 ACCORDING ONLY TO THE EVIDENCE PRESENTED TO YOU AND TO
22 THE INSTRUCTIONS OF THE COURT.

23 IF YOU UNDERSTAND AND AGREE, PLEASE ANSWER, "I
24 DO."

25
26 (THE JURORS AND ALTERNATE JURORS
27 ANSWERED IN THE AFFIRMATIVE.)

28 ///

1 THE COURT: LADIES AND GENTLEMEN, I AM GOING TO
2 GIVE YOU SOME PREINSTRUCTION FIRST, AND THEN THE LAWYERS
3 WILL START WITH THEIR OPENING STATEMENTS. YOU DON'T NEED
4 TO TAKE NOTES ON THESE INSTRUCTIONS BECAUSE YOU ARE GOING
5 TO GET A LOT MORE INSTRUCTIONS AT THE CONCLUSION OF THE
6 CASE, AND YOU'RE GOING TO HAVE THEM IN WRITTEN FORM BACK
7 IN THE JURY ROOM. THE NOTEBOOKS YOU HAVE ARE TO TAKE
8 NOTES DURING THE TRIAL, AND WE WILL HAVE INSTRUCTION
9 REGARDING THAT AS WELL.

10 (READING:)

11 JURY SERVICE IS VERY IMPORTANT,
12 AND I WOULD LIKE TO WELCOME YOU AND
13 THANK YOU FOR YOUR SERVICE.

14 BEFORE WE BEGIN, I AM GOING TO
15 DESCRIBE FOR YOU HOW THE TRIAL WILL
16 BE CONDUCTED AND EXPLAIN WHAT YOU AND
17 THE LAWYERS AND I WILL BE DOING.
18 WHEN I REFER TO THE PEOPLE, I MEAN
19 THE ATTORNEY FROM THE DISTRICT
20 ATTORNEY'S OFFICE WHO IS TRYING THIS
21 CASE ON BEHALF OF THE PEOPLE OF THE
22 STATE OF CALIFORNIA. AND WHEN I
23 REFER TO DEFENSE COUNSEL, I MEAN THE
24 ATTORNEY WHO IS REPRESENTING THE
25 DEFENDANT, MR. JAMES.

26 THE FIRST STEP IN THE TRIAL IS
27 THE PEOPLE'S OPENING STATEMENT. THE
28 DEFENSE MAY CHOOSE TO GIVE AN OPENING

1 STATEMENT THEN OR AT THE BEGINNING OF
2 THE DEFENSE CASE. THE PURPOSE OF AN
3 OPENING STATEMENT IS TO GIVE YOU AN
4 OVERVIEW OF WHAT THE ATTORNEYS EXPECT
5 THE EVIDENCE WILL SHOW.

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

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

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

26 DURING THE TRIAL, DO NOT TALK
27 ABOUT THE CASE OR ABOUT ANY OF THE
28 PEOPLE OR ANY SUBJECT INVOLVED IN

1 THE CASE WITH ANYONE, NOT EVEN YOUR
2 FAMILY, FRIENDS, SPIRITUAL ADVISORS,
3 OR THERAPISTS. YOU MUST NOT TALK
4 ABOUT THESE THINGS WITH THE OTHER
5 JURORS EITHER UNTIL THE TIME COMES
6 FOR YOU TO BEGIN YOUR DELIBERATIONS.

7 AS JURORS, YOU MAY DISCUSS THE
8 CASE TOGETHER ONLY AFTER ALL OF THE
9 EVIDENCE HAS BEEN PRESENTED, THE
10 ATTORNEYS HAVE COMPLETED THEIR
11 ARGUMENTS, AND I HAVE INSTRUCTED
12 YOU ON THE LAW. AFTER I TELL YOU
13 TO BEGIN YOUR DELIBERATIONS, YOU
14 MAY DISCUSS THE CASE ONLY IN THE
15 JURY ROOM AND ONLY WHEN ALL JURORS
16 ARE PRESENT.

17 YOU MUST NOT ALLOW ANYTHING
18 THAT HAPPENS OUTSIDE OF THE COURTROOM
19 TO AFFECT YOUR DECISION. DO NOT DO
20 ANY RESEARCH ON YOUR OWN OR AS A GROUP.
21 DO NOT USE A DICTIONARY OR OTHER
22 REFERENCE MATERIAL, INVESTIGATE THE
23 FACTS OR LAW, CONDUCT ANY TESTS OR
24 EXPERIMENTS, OR VISIT THE SCENE OF
25 ANY EVENT INVOLVED IN THIS CASE.
26 IF YOU HAPPEN TO PASS BY THE SCENE,
27 DO NOT STOP OR INVESTIGATE.

28 DURING THE TRIAL, DO NOT SPEAK

1 TO ANY PARTY, WITNESS, OR LAWYER
2 INVOLVED IN THE TRIAL. DO NOT
3 LISTEN TO ANYONE WHO TRIES TO TALK
4 TO YOU ABOUT THE CASE OR ABOUT ANY
5 OF THE PEOPLE OR SUBJECTS INVOLVED
6 IN IT. IF SOMEONE ASKS YOU ABOUT
7 THE CASE, TELL HIM OR HER THAT YOU
8 CANNOT DISCUSS IT. IF THAT PERSON
9 KEEPS TALKING TO YOU ABOUT THE CASE,
10 YOU MUST END THE CONVERSATION.

11 WHEN THE TRIAL HAS ENDED AND
12 YOU HAVE BEEN RELEASED AS JURORS,
13 YOU MAY DISCUSS THE CASE WITH ANYONE.
14 BUT UNDER CALIFORNIA LAW, YOU MUST
15 WAIT AT LEAST 90 DAYS BEFORE
16 NEGOTIATING OR AGREEING TO ACCEPT
17 ANY PAYMENT FOR INFORMATION ABOUT
18 THE CASE.

19 IF YOU RECEIVE ANY INFORMATION
20 ABOUT THE CASE FROM ANY SOURCE
21 OUTSIDE OF THE TRIAL, EVEN
22 UNINTENTIONALLY, DO NOT SHARE THAT
23 INFORMATION WITH ANY OTHER JUROR.
24 IF YOU DO RECEIVE SUCH INFORMATION,
25 OR IF ANYONE TRIES TO INFLUENCE YOU
26 OR ANY JUROR, YOU MUST IMMEDIATELY
27 TELL THE BAILIFF.

28 SOME WORDS OR PHRASES THAT MAY

1 BE USED DURING THE TRIAL HAVE LEGAL
2 MEANINGS THAT ARE DIFFERENT FROM
3 THEIR MEANINGS IN EVERYDAY USE.
4 THESE WORDS AND PHRASES WILL BE
5 SPECIFICALLY DEFINED IN THESE
6 INSTRUCTIONS.

7 PLEASE BE SURE TO LISTEN
8 CAREFULLY AND FOLLOW THE DEFINITIONS
9 THAT I GIVE YOU. WORDS AND PHRASES
10 NOT SPECIFICALLY DEFINED IN THE
11 INSTRUCTIONS ARE TO BE APPLIED USING
12 THEIR ORDINARY EVERYDAY MEANINGS.

13 KEEP AN OPEN MIND THROUGHOUT
14 THE TRIAL. DO NOT MAKE UP YOUR MIND
15 ABOUT THE VERDICT OR ANY ISSUE UNTIL
16 AFTER YOU HAVE DISCUSSED THE CASE
17 WITH THE OTHER JURORS DURING
18 DELIBERATIONS.

19 DO NOT TAKE ANYTHING I SAY OR
20 DO DURING THE TRIAL AS AN INDICATION
21 OF WHAT I THINK ABOUT THE FACTS, THE
22 WITNESSES, OR WHAT YOUR VERDICT SHOULD
23 BE. DO NOT LET BIAS, SYMPATHY,
24 PREJUDICE, OR PUBLIC OPINION INFLUENCE
25 YOUR DECISION.

26 YOU HAVE BEEN GIVEN NOTEBOOKS AND
27 MAY TAKE NOTES DURING THE TRIAL. DO NOT
28 REMOVE THEM FROM THE COURTROOM. YOU MAY

1 TAKE YOUR NOTES INTO THE JURY ROOM DURING
2 DELIBERATIONS.

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

16 YOU MUST DECIDE WHAT THE FACTS
17 ARE IN THIS CASE. YOU MUST USE ONLY
18 THE EVIDENCE THAT IS PRESENTED IN THE
19 COURTROOM. EVIDENCE IS THE SWORN
20 TESTIMONY OF WITNESSES, THE EXHIBITS
21 ADMITTED INTO EVIDENCE, AND ANYTHING
22 ELSE I TELL YOU TO CONSIDER AS EVIDENCE.

23 NOTHING THAT THE ATTORNEYS SAY IS
24 EVIDENCE. IN THEIR OPENING STATEMENTS
25 AND CLOSING ARGUMENTS, THE ATTORNEYS
26 WILL DISCUSS THE CASE, BUT THEIR
27 REMARKS ARE NOT EVIDENCE. THEIR
28 QUESTIONS ARE NOT EVIDENCE. ONLY

1 THE WITNESSES' ANSWERS ARE EVIDENCE.
2 THE ATTORNEYS' QUESTIONS ARE
3 SIGNIFICANT ONLY IF THEY HELPED YOU
4 TO UNDERSTAND THE WITNESSES' ANSWERS.
5 DO NOT ASSUME THAT SOMETHING IS TRUE
6 JUST BECAUSE ONE OF THE ATTORNEYS
7 ASKS A QUESTION THAT SUGGESTS IT IS
8 TRUE.

9 DURING THE TRIAL, THE ATTORNEYS
10 MAY OBJECT TO QUESTIONS ASKED OF A
11 WITNESS. I WILL RULE ON THE
12 OBJECTIONS ACCORDING TO THE LAW.
13 IF I SUSTAINED AN OBJECTION, THE
14 WITNESS WILL NOT BE PERMITTED TO
15 ANSWER, AND YOU MUST IGNORE THE
16 QUESTION. IF THE WITNESS DOES NOT
17 ANSWER, DO NOT GUESS WHAT THE ANSWER
18 MIGHT HAVE BEEN OR WHY I RULED AS
19 I DID. IF I ORDERED TESTIMONY
20 STRICKEN FROM THE RECORD, YOU MUST
21 DISREGARD IT AND MUST NOT CONSIDER
22 THAT TESTIMONY FOR ANY PURPOSE.

23 YOU MUST DISREGARD ANYTHING
24 YOU SEE OR HEAR WHEN THE COURT IS
25 NOT IN SESSION, EVEN IF IT IS DONE
26 OR SAID BY ONE OF THE PARTIES OR
27 WITNESSES.

28 THE COURT REPORTER IS MAKING

1 A RECORD OF EVERYTHING SAID DURING
2 THE TRIAL. IF YOU DECIDE THAT IT
3 IS NECESSARY, YOU MAY ASK THAT THE
4 COURT REPORTER'S NOTES BE READ TO
5 YOU. YOU MUST ACCEPT THE COURT
6 REPORTER'S NOTES AS ACCURATE.

7 WILL THERE BE A TRANSLATOR?

8 MR. GOUDY: YES.

9 THE COURT: (READING:)

10 SOME TESTIMONY MAY BE GIVEN
11 IN SPANISH. AN INTERPRETER WILL
12 PROVIDE A TRANSLATION FOR YOU AT
13 THE TIME THAT THE TESTIMONY IS GIVEN.
14 YOU MUST RELY ON THE TRANSLATION
15 PROVIDED BY THE INTERPRETER, EVEN
16 IF YOU UNDERSTAND THE LANGUAGE SPOKEN
17 BY THE WITNESS. DO NOT RETRANSLATE
18 ANY TESTIMONY FOR OTHER JURORS. IF
19 YOU BELIEVE THE COURT INTERPRETER
20 TRANSLATED TESTIMONY INCORRECTLY, LET
21 ME KNOW IMMEDIATELY BY WRITING A NOTE
22 AND GIVING IT TO THE CLERK OR THE
23 BAILIFF.

24 NOW, THIS LAST INSTRUCTION IS THE
25 SEPARATION ADMONITION. AND FROM HERE ON OUT, I WILL
26 ALWAYS TELL YOU, WHENEVER WE BREAK, TO KEEP IN MIND THE
27 COURT'S ADMONITION. THIS IS WHAT I AM TALKING ABOUT.

28 (READING:)

1 YOU MAY BE PERMITTED TO SEPARATE
2 DURING THE RECESSES AND AT THE END OF
3 THE DAY. I WILL TELL YOU WHEN TO RETURN.
4 PLEASE REMEMBER THAT WE CANNOT BEGIN THE
5 TRIAL UNTIL ALL OF YOU ARE IN PLACE, SO
6 IT IS IMPORTANT TO BE ON TIME.

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

15 AND WITH THAT SAID, WE WILL GO AHEAD AND
16 GET STARTED WITH OUR OPENING STATEMENTS.

17 MR. GOUDY.

18 MR. GOUDY: THANK YOU, YOUR HONOR.

19 GOOD MORNING, LADIES AND GENTLEMEN. BACK
20 ON NOVEMBER 23RD OF 2008, AT APPROXIMATELY 8:45 P.M., AT
21 A HOUSE LOCATED AT 14050 TRAILSIDE DRIVE IN BASSETT --
22 NOW, BASSETT IS AN AREA OF LA PUENTE. THAT'S THE HOME OF
23 RAFAEL GONZALEZ AND HIS FAMILY.

24 NOW, BASICALLY ALL OF HIS FAMILY LIVES AT
25 THAT HOUSE: HIS WIFE, FELICITAS; HIS DAUGHTER, BRENDA
26 BARRAGAN WITH HER TWO CHILDREN, CHANTELE AND HENRY;
27 NANCY JARDINES, WHO LIVES THERE WITH HER CHILD; WALTER
28 GONZALEZ; AND ANNETTE SAAVEDRA, WHO LIVES THERE WITH HER

1 HUSBAND AND HER CHILD.

2 NOW, ON THAT DATE AT THAT TIME, AS
3 MR. GONZALEZ, RAFAEL GONZALEZ, IS SITTING ON HIS COUCH IN
4 HIS LIVING ROOM, WHICH IS THE FIRST ROOM WHEN YOU ENTER
5 THE FRONT DOOR, THREE MEN COME INTO THE ROOM, ARMED.
6 SOME ARE WEARING MASKS. SOME ARE NOT.

7 AND AT THAT TIME WHILE THOSE THREE MEN GO
8 INTO THE HOUSE, ONE MAN GOES INTO THE GARAGE. NOW, THERE
9 IS AN -- IT'S AN ATTACHED GARAGE, SO IT SHARES A COMMON
10 WALL. BUT UNLIKE MOST ATTACHED GARAGES, IT DOES NOT HAVE
11 A COMMON DOOR. THE DOOR TO THE GARAGE -- TO GO FROM THE
12 HOUSE TO THE GARAGE, YOU HAVE TO GO OUTSIDE AND THEN GO
13 INTO THE FRONT DOOR. IT'S A LITTLE HALLWAY NOT VERY
14 BIG. THE DOOR SETS BACK IN THE GARAGE.

15 AND INSIDE THE GARAGE IS BRENDA BARRAGAN.
16 NOW, THE MASKED MAN GOES INTO THE GARAGE AND HAS A GUN.
17 BRENDA SCREAMS. SHE'S SCREAMING FOR HER FATHER. THE
18 MASKED MAN TELLS HER TO SHUT UP. HE TAKES HER OUT OF THE
19 GARAGE, OUTSIDE, INTO THE FRONT DOOR AND INTO THE HOUSE.

20 NOW, THE THREE MEN THAT ARE IN THE HOUSE
21 ALREADY, ONE OF THEM HAS ON A HAT, A BEANIE, AND IT'S UP
22 SO THEY CAN SEE HIS FACE.

23 ONE OF THE MEN TELLS MR. GONZALEZ TO GET
24 DOWN ON THE GROUND, GET ON THE FLOOR. HE GETS ON THE
25 FLOOR. HE KEEPS HIS HEAD DOWN. HE DOESN'T LOOK UP. IN
26 FACT, AT SOME POINT IN TIME, THEY TRY AND GET HIM UP,
27 LIFT HIM UP TO GO TO THE SAFE IN THE HOUSE, AND HE ACTS
28 LIKE HE'S PASSED OUT. THEY CAN'T LIFT HIM UP. HE STAYS

1 ON THE FLOOR THE ENTIRE TIME.

2 NANCY JARDINES IS IN THE KITCHEN AT THE
3 TIME THAT THE THREE MEN COME INTO THE HOUSE. FELICITAS
4 GONZALEZ IS IN HER ROOM. WALTER GONZALEZ IS IN HIS
5 ROOM. ANNETTE SAAVEDRA IS IN HER ROOM.

6 AND FELICITAS GONZALEZ HAS HER
7 GRANDCHILDREN WITH HER, CHANTELE AND HENRY. THAT'S
8 BRENDA'S CHILDREN. SHE COMES OUT WHEN SHE HEARS THE
9 SCREAMING. ANOTHER MAN TELLS HER TO STOP. THEY TAKE THE
10 KIDS. THEY PUT THEM ON THE GROUND NEXT TO BRENDA, THEIR
11 MOTHER, AND THEY'RE SAYING, "WHERE'S THE MONEY? WHERE'S
12 THE MONEY? WHERE'S THE SAFE? OPEN THE SAFE."

13 NOW, AS IT HAPPENS, THE GONZALEZ FAMILY HAS
14 A SAFE IN THEIR HOUSE, AND IT'S IN THE BEDROOM OF RAFAEL
15 AND FELICITAS. THEY EVENTUALLY GET FELICITAS TO GO TO
16 THE SAFE, AND SHE OPENS THE SAFE. THERE'S NO MONEY IN
17 THE SAFE. THERE'S A BOX WITH A COUPLE RINGS IN IT.
18 THEY'RE ASKING, "WHERE'S THE MONEY? WHERE'S THE MONEY?"

19 AT SOME POINT FELICITAS TELLS ONE OF HER
20 GRANDCHILDREN TO GO TO NANCY JARDINES, AND SHE TAKES THE
21 CHILD AND GOES INTO THE BACK BEDROOM OF THE HOUSE. THEY
22 GO AND THEY GET NANCY FROM THE BACK BEDROOM, AND THEY
23 BRING HER TO THE ROOM. "WHERE IS THE MONEY? WHERE IS
24 THE MONEY?" THERE'S NO MONEY. THERE'S NO MONEY.

25 SHE IS IN HER PARENTS' BEDROOM WITH THE
26 MASKED MAN, WHO GOES AND TAKES HER FROM HER ROOM IN THE
27 BACK OF THE HOUSE AND WALKS HER TO THE FRONT OF THE HOUSE
28 TO WHERE THE FRONT BEDROOM IS. THAT PERSON IS WEARING A

1 SKI MASK. HOLES -- NOSE AND MOUTH -- ARE VISIBLE. HE
2 HAS A GUN ON HER THE WHOLE TIME OR HAS A GUN OUT.
3 SOMETIMES IT'S POINTED AT HER AND SOMETIMES NOT.

4 WALTER GONZALEZ COMES OUT OF HIS ROOM AT
5 SOME POINT IN TIME. HE'S TOLD TO GET ON THE FLOOR.

6 WHILE THIS IS GOING ON, ANNETTE SAAVEDRA
7 HAS A WINDOW IN HER ROOM THAT LOOKS TO THE BACK ROOM OF
8 THE HOUSE, AND SHE SEES THE MASKED MAN. SO SHE CALLS THE
9 POLICE. SHE TELLS HER HUSBAND, SHE TELLS HER CHILD, TO
10 STAY DOWN, BE QUIET.

11 ONE OF THE MEN OPENS THE BACK DOOR TO THE
12 HOUSE. AND WHEN HE OPENED THE BACK DOOR TO THE HOUSE, IT
13 SOUNDS LIKE A DOORBELL, THEIR ALARM. SO THE INTRUDERS,
14 THE ROBBERS THINK SOMEBODY IS COMING IN AND OUT OF THE
15 HOUSE EVERY TIME THEY OPEN THE DOOR, BECAUSE THEY HEAR A
16 DOORBELL. WELL, IT'S REALLY THE ALARM, AND THEY GET A
17 LITTLE SPOOKED.

18 NOW, THEY HAVE GOT NO MONEY, BECAUSE
19 THERE'S NO MONEY IN THE SAFE. THEY HAVE GOT A COUPLE
20 RINGS. A PURSE IS TAKEN, THREE CELL PHONES, AND THEY RUN
21 OUT THE FRONT DOOR. THERE ARE FOUR OF THEM.

22 A MALE BLACK WHO IS NOT WEARING A MASK, AND
23 TWO MALE BLACKS WHO ARE WEARING A MASK, PARTICULARLY THE
24 ONE WHO TAKES THEM TO THE BACK, TAKES NANCY JARDINES TO
25 THE BACK ROOM, INTO THE FAMILY -- INTO HER PARENTS' ROOM
26 AND SAYS, "GIVE US THE MONEY, GIVE US THE MONEY," AND
27 ACTUALLY THREATENS THEM, "IF YOU DON'T GIVE ME THE MONEY,
28 WE'RE NOT MESSING AROUND. SOMEBODY IS GOING TO GET

1 HURT." THAT PERSON IS WITH NANCY JARDINES MOST OF THE
2 TIME INSIDE OF THE HOUSE.

3 AS THEY LEAVE, THEY RUN. THE OTHER MAN IS
4 EITHER A MALE HISPANIC OR A CAUCASIAN, BUT HE SPEAKS
5 SPANISH TO THEM. AS THEY RUN, THE FAMILY STAYS IN THE
6 HOUSE. THE POLICE OFFICERS ARE ARRIVING, SHOWING UP, AND
7 THEY DETAIN A PERSON WHO IS RUNNING ALONG 5TH AVENUE,
8 WHICH IS A COUPLE BLOCKS FROM WHERE THE HOUSE IS. THEY
9 DETAIN THAT INDIVIDUAL. FAMILY MEMBERS ARE TAKEN TO A
10 LOCATION WHERE HE IS AT, AND THEY IDENTIFY HIM AS BEING
11 THE PERSON WITHOUT THE MASK, AND THAT PERSON IS DION
12 HAWKINS.

13 THERE ARE A COUPLE OF OTHER GUYS WHO ARE
14 STOPPED, AFRICAN-AMERICAN MALES WHO ARE STOPPED. A
15 COUPLE OF THE WITNESSES ARE TAKEN THERE, AND THEY SAY,
16 "THOSE TWO GUYS ARE NOT THE GUYS. THEY ARE NOT -- THEY
17 WERE NOT IN THE HOUSE." THOSE ARE THE ONLY PEOPLE WHO
18 WERE STOPPED THAT NIGHT. MR. HAWKINS IS IDENTIFIED AS
19 BEING THE GUY IN THE HOUSE, WEARING THE HAT WITH NO
20 MASK.

21 THE OFFICERS, CHECKING OUT THE AREA, FIND
22 SOMETHING. THEY FIND, ABOUT A BLOCK AND A HALF AWAY, IN
23 THE YARD AT 545 5TH AVENUE, A HOODED SWEATSHIRT, A BLUE
24 UNDERSHIRT AND SWEAT PANTS, AND A BLACK-AND-WHITE GLOVE.

25 NOW, NEXT DOOR TO THAT, AT 555 5TH AVENUE,
26 THEY FIND TWO GLOVES, A BLUE JUMPSUIT, AND A SKI MASK.
27 AND INSIDE THE SKI MASK IS A GUN.

28 AND THEN AT THE CORNER OF LOMITAS AND

1 REDBURN, WHICH IS A BLOCK AND THEN A LITTLE LEFT TURN AND
2 A SMALL HALF BLOCK AWAY, THEY FIND TWO GLOVES. AND A
3 LITTLE DISTANCE DOWN REDBURN, THEY FIND ANOTHER CAP.

4 SO THE SHERIFF'S DEPUTIES ARE THINKING
5 WELL, WE HAVE GUYS WHO HAVE COMMITTED ROBBERIES WEARING
6 HATS AND A SKI MASK AND HAVING GUNS. THEY FIND THESE
7 THINGS, AND THEY TAKE IT ALL AS EVIDENCE. THEY TAKE IT
8 TO THEIR FORENSIC PEOPLE AND THEY CHECK FOR D.N.A., AND
9 THEY FIND ON ONE ITEM THE D.N.A. THAT MATCHES DION
10 HAWKINS, THE PERSON WHO WAS SEEN TWO BLOCKS AWAY AND WAS
11 STOPPED AND I.D.'ED AT THAT LOCATION.

12 THEY ALSO FIND D.N.A. FROM ANOTHER
13 INDIVIDUAL, THE DEFENDANT, ON THE SKI MASK WITH THE HOLES
14 IN IT. THEY FIND HIS D.N.A. THAT'S THE ONE WITH THE GUN
15 IN IT. NOW, THEY FIND D.N.A. ON THESE ITEMS.

16 THEY PUT TOGETHER A PHOTOGRAPHIC LINE-UP,
17 AND THEY PUT TOGETHER, ACTUALLY, TWO PHOTOGRAPHIC
18 LINE-UPS. FIRST, EVEN THOUGH THEY HAVE CAUGHT HIM AT THE
19 SCENE OR TWO, TWO AND A HALF BLOCKS FROM THE SCENE, THE
20 FACT THAT THEY HAVE HAD -- HE HAS BEEN IDENTIFIED IN THE
21 FIELD BY WITNESSES, THEY STILL PUT TOGETHER A SIX-PACK,
22 AND THAT'S SIX PHOTOGRAPHS. ON T.V., IT'S A PHOTOGRAPHIC
23 LINE-UP, A SIX-PACK. MOST PEOPLE HAVE SEEN THAT OR HAVE
24 HEARD OF IT.

25 THEY SHOW THE WITNESSES. THE WITNESSES
26 PICK OUT DION HAWKINS AND SAY THAT'S THE GUY THAT WAS
27 THERE WITHOUT THE MASK. HE HAD A GUN.

28 SOMETIME LATER, WHEN THEY GET THE D.N.A.

1 MATCHED TO MR. JAMES, THEY PUT TOGETHER ANOTHER SET OF
2 PHOTOS. MR. JAMES' PHOTOGRAPH IS THERE, AND THE
3 DETECTIVES GO OUT TO TALK TO THE WITNESSES AND THEY SHOW
4 THEM THE SIX-PACK, THE SIX PHOTOGRAPHS, ONE OF WHICH IS
5 MR. JAMES.

6 NOW, THE WITNESSES TELL THE DETECTIVE -- AT
7 LEAST WITNESS ANNETTE SAAVEDRA, BRENDA BARRAGAN, AND
8 FELICITAS GONZALEZ SAY, YOU KNOW WHAT? WE GOT THIS
9 LETTER. IT LISTED HIM AS A SUSPECT, MR. JAMES. BASED
10 UPON THE INFORMATION IN THE LETTER, WE WENT TO A WEB
11 SITE, AND WE SAW A PHOTOGRAPH OF HIM. THEY TELL THE
12 DETECTIVE THAT. UP UNTIL THAT POINT, THE DETECTIVE
13 DIDN'T KNOW ABOUT THE LETTER, DIDN'T KNOW ABOUT THE
14 PHOTOGRAPH. THEY GAVE THAT INFORMATION TO HIM. NANCY
15 JARDINES SAYS SHE DIDN'T LOOK AT THE PHOTOGRAPH ON THE
16 INTERNET.

17 SO HE SHOWS THEM ALL THE SIX-PACK, AND THEY
18 PICK OUT THE DEFENDANT'S PHOTOGRAPH. THIS WAS THE GUY
19 WITH THE MASK. NANCY JARDINES SAYS, "I RECOGNIZE THE
20 EYES AND THE MOUTH. THAT GUY WAS RIGHT NEXT TO ME."
21 REMEMBER, THE GUY WITH THE SKI MASK WENT BACK TO HER
22 ROOM, TOOK HER BACK THROUGH THE HOUSE TO THE FAMILY -- TO
23 THE PARENTS' ROOM, WAS WITH HER IN THE PARENTS' ROOM, HAD
24 THE GUN ON HER AND THREATENED HER AND THREATENED THE
25 FAMILY, "SOMETHING WILL HAPPEN IF WE DON'T GET ANY
26 MONEY." SHE SAID, "I REMEMBER THOSE EYES AND THAT
27 MOUTH. THIS IS THE GUY WITH THE SKI MASK."

28 YOU WILL HEAR FROM THE VICTIMS IN THE

1 HOUSE. THEY WILL TELL YOU WHAT HAPPENED WHEN THEY WERE
2 THERE. YOU WILL HEAR FROM THE DETECTIVES. YOU WILL HEAR
3 FROM THE FORENSIC PEOPLE, THE D.N.A. PEOPLE. THEY WILL
4 TELL YOU WHAT THE D.N.A. MEANS, WHERE IT WAS RECOVERED
5 OFF THE ITEMS, THE CHANCE THAT IT'S SOMEBODY OTHER THAN
6 THE DEFENDANT AND MR. HAWKINS' D.N.A. ON THOSE ITEMS.

7 AND THEN YOU WILL HAVE TO GO BACK AND
8 DETERMINE WHETHER OR NOT THE DEFENDANT, MR. JAMES, WAS IN
9 FACT THE PERSON IN THE SKI MASK WHO WAS THERE WITH THE
10 THREE OTHER MEN. THE EVIDENCE IS GOING TO SHOW, BASED
11 UPON THE LAW AND THE FACTS, THAT THE DEFENDANT IS GUILTY
12 OF THE CRIMES. THANK YOU.

13 THE COURT: ALL RIGHT. THANK YOU, MR. GOUDY.

14 MR. EVANS.

15 MR. EVANS: YES, YOUR HONOR. THANK YOU.

16 ON NOVEMBER 23RD, 2008, THE EVIDENCE IN
17 THIS CASE WILL SHOW THAT MR. TAUMU JAMES WAS NOT
18 INVOLVED, WAS NOT A SUSPECT, DID NOT PARTICIPATE IN ANY
19 OF THE ROBBERIES THAT ARE ALLEGED HERE.

20 LADIES AND GENTLEMEN, THERE WILL ALSO BE NO
21 EVIDENCE THAT THE CRIME -- ONE OF THE CRIMES THAT'S
22 ALLEGED HERE IS A KIDNAPPING FOR ROBBERY, AND THERE WILL
23 BE NO EVIDENCE THAT THIS CASE IS IN ANY WAY ABOUT A
24 KIDNAPPING FOR ROBBERY.

25 GOOD MORNING, LADIES AND GENTLEMEN. MY
26 NAME IS MICHAEL EVANS. I INTRODUCED MYSELF BEFORE, AND I
27 AM HERE ALONG WITH MR. TAUMU JAMES. WE ARE HERE TO TALK
28 TO YOU AND PRESENT AND SHOW EVIDENCE THAT HE DID NOT

1 COMMIT THE CRIMES ALLEGED HERE.

2 LET ME GIVE YOU A LITTLE BASIC FRAMEWORK,
3 AND I THINK IT'S IMPORTANT TO LOOK AT THE EVIDENCE. ONE
4 THING I AM GOING TO PROMISE YOU IS I AM NOT GOING TO
5 WASTE YOUR TIME, BUT I WANT YOU TO LISTEN BECAUSE THERE
6 ARE TIMES WHERE I AM GOING TO BE FOCUSING ON A LOT OF THE
7 LITTLE BITS OF THE EVIDENCE. AND IT MAY NOT SEEM
8 IMPORTANT -- AND I WILL GET A CHANCE TO SUM IT UP AT THE
9 END OF THE CASE -- BUT I WANT YOU TO KNOW THAT WHEN YOU
10 LISTEN TO THE EVIDENCE, THERE ARE SOME IMPORTANT THINGS
11 THAT YOU ARE GOING TO HEAR IN THE BEGINNING REGARDING
12 THIS CASE.

13 FIRST OF ALL, THE HOME THAT'S INVOLVED HERE
14 IS A VERY SMALL HOME, AND YOU'RE GOING TO FIND THAT THERE
15 ARE FOUR FAMILIES LIVING INSIDE THIS HOME, AT LEAST EIGHT
16 TO TEN PEOPLE, CHILDREN, ADULTS, EXTENDED FAMILY.

17 NOW, WHAT ELSE YOU ARE GOING TO HEAR,
18 LADIES AND GENTLEMEN, IS THAT ON THE NIGHT OF
19 NOVEMBER 23RD, 2008, THREE SUSPECTS ENTERED THE LOCATION
20 OF THE HOUSE. APPARENTLY -- IT'S GOING TO BE UNCLEAR,
21 BUT AT LEAST TWO, MAYBE THREE WERE WEARING MASKS. ONE
22 WAS NOT WEARING A MASK OR WAS WEARING A MASK AND TOOK IT
23 OFF. SOMEWHERE THE EVIDENCE IS GOING TO FLOW IN THAT
24 AREA. ALL RIGHT?

25 ONE OF THE INDIVIDUALS WHO DOES NOT ENTER
26 THE HOUSE EVENTUALLY GOES BACK INTO THE GARAGE AREA. HE
27 ENCOUNTERS -- AT LEAST WE THINK IT'S A HE -- ENCOUNTERS
28 AN INDIVIDUAL, AND I BELIEVE HER NAME IS BARRAGAN, AND

1 THE INDIVIDUAL SHE ENCOUNTERS HAS A MASK ON. NOW, LADIES
2 AND GENTLEMEN, LET ME SHARE WITH YOU SOMETHING THAT WILL
3 BE UNCONTROVERTED. MS. BARRAGAN WILL NOT BE ABLE TO
4 IDENTIFY WHO THAT INDIVIDUAL IS.

5 NOW, AT SOME POINT SHE IS BROUGHT BACK INTO
6 THE HOUSE, OR SHE WALKS INTO THE HOUSE WITH THE SUSPECT,
7 AND THEN THERE IS SOME -- THERE'S PEOPLE LOOKING FOR
8 MONEY IN THIS HOUSE. ALL RIGHT? AND I WANT YOU TO
9 FOLLOW THE FACTS OF THE CASE, BECAUSE I THINK IT'S REALLY
10 IMPORTANT WHEN YOU HEAR THE EVIDENCE ABOUT WHAT HAPPENS
11 TO THE INDIVIDUAL PEOPLE, BECAUSE IT IS IMPORTANT TO
12 UNDERSTANDING THE ELEMENTS OF THE CASE.

13 AND ONE OF THE FACTS NEEDED IN THE ELEMENTS
14 IS TO DETERMINE WHETHER THE CRIME OF ROBBERY ACTUALLY
15 OCCURRED TO EACH OF THESE INDIVIDUALS. ONE THING THAT I
16 CAN PROMISE YOU IS THE CRIME OF ROBBERY OCCURRED. WHAT
17 THE EVIDENCE WILL SHOW IS UNCLEAR AS TO HOW MANY
18 OCCURRED. ALL RIGHT? SO NOW WE ARE TALKING ABOUT WHAT
19 THE EVIDENCE WILL SHOW AS IT RELATES TO THE INDIVIDUAL
20 CRIMES THAT ARE CHARGED.

21 NOW, AT SOME POINT THERE IS A COMMOTION IN
22 THE HOUSE, AND THE SUSPECTS FLEE. THEY LEAVE. THE
23 POLICE OFFICERS, IN A RELATIVELY SHORT TIME, ARRIVE.
24 IT'S THE SAME DATE, A RELATIVELY SHORT TIME PERIOD
25 BETWEEN THE TIME PERIOD THAT THE CRIME OR CRIMES HAVE
26 BEEN ALLEGED TO HAVE BEEN COMMITTED AND THE TIME THEY
27 GIVE THEIR FIRST STATEMENT. THEIR FIRST STATEMENT.
28 THESE WITNESSES WILL TELL YOU THAT THE EVENTS THAT

1 OCCURRED ON THAT DATE WERE CLEAREST IN THEIR MIND AT THAT
2 TIME. THE OFFICERS, WHO HAD AN OPPORTUNITY AND SPOKE TO
3 THEM, AND EACH OF THE WITNESSES WILL BE ASKED.

4 NOW, LADIES AND GENTLEMEN, I PROMISE YOU
5 ONE THING ON ANOTHER PIECE OF UNCONTROVERTED EVIDENCE:
6 NO ONE THAT WAS IN THAT HOUSE WILL IDENTIFY MR. JAMES AS
7 A SUSPECT. THEY WILL SAY ONE OF THE INDIVIDUALS, WHO HAD
8 A MASK ON, WAS UNDER 5'10", MEDIUM BUILD. MR. JAMES IS
9 NOT MEDIUM BUILD. YOU CAN SEE HIM RIGHT NOW. FOCUS ON
10 HIS ARMS. FOCUS ON HIS CHEST. FOCUS ON HIS PHYSIQUE.

11 IN THE INTERVIEW OF THE WITNESSES ALSO,
12 THEY DID NOT IDENTIFY MR. JAMES. THEY GIVE A GENERAL
13 DESCRIPTION, WHICH THE EVIDENCE SHOWS WILL SHOW THAT HE
14 DOES NOT MEET. AND, LADIES AND GENTLEMEN, THERE IS
15 NOTHING THAT IS SAID BY ANY OF THESE WITNESSES THAT SAYS
16 ANYTHING DISTINCTIVE ABOUT ANY OF THE INDIVIDUALS WHO
17 WERE WEARING MASKS. NOTHING. NOTHING ABOUT EYES
18 DISTINCTIVE, NOTHING ABOUT MOUTH.

19 THE WITNESSES ARE INTERVIEWED A NUMBER OF
20 TIMES OVER A TIME PERIOD FROM NOVEMBER UNTIL JUNE OF
21 2009. THEIR STORIES REMAIN CONSISTENT. BUT IN THAT
22 INTERIM PERIOD, LADIES AND GENTLEMEN, A LETTER IS SENT TO
23 THE HOME OF THE VICTIMS INDICATING MR. JAMES IS A SUSPECT
24 IN A CASE IN WHICH THEY WERE THE VICTIMS. THE EVIDENCE
25 WILL BE UNCONTRADICTED, LADIES AND GENTLEMEN, THIS IS THE
26 FIRST TIME THEY HEAR THE NAME TAUMU JAMES.

27 THE INDIVIDUALS WITHIN THE HOUSE, AT LEAST
28 THREE OF THEM, WILL TELL YOU THAT THEY WENT AND DID A

1 SEARCH ON THE INTERNET, AND THEY FIND A PHOTOGRAPH OF
2 TAUMU JAMES. MS. SAAVEDRA, MS. BARRAGAN, AND
3 MS. GONZALEZ WILL ALL SAY THAT THEY SAW THAT PHOTOGRAPH
4 BEFORE JUNE 2ND, 2009; AND WHEN THE SHERIFF'S DEPUTIES
5 CAME WITH THE SIX-PACK PHOTOS AND THE I.D.'S, THEY WERE
6 ABLE TO PICK MR. JAMES AS ONE OF THE PEOPLE IN THE
7 SIX-PACK PHOTO, BUT THEY BASED THAT IDENTIFICATION UPON
8 THE PHOTO THEY SAW ON THE INTERNET, NOT UPON WHAT
9 HAPPENED ON NOVEMBER 28TH -- 23RD, 2008.

10 NOW, THERE IS A FOURTH WITNESS, AND HER
11 NAME IS NANCY JARDINES. NOW, LADIES AND GENTLEMEN, THE
12 \$64,000 QUESTION IN THIS CASE IS WHAT IS SHE GOING TO
13 SAY? BECAUSE WHEN SHE WAS INITIALLY INTERVIEWED, SHE
14 MENTIONS NOTHING ABOUT MR. JAMES, NOTHING DISTINCTIVE
15 ABOUT HIM.

16 APPARENTLY THE EVIDENCE WILL SHOW ON
17 JUNE 2ND, 2009, SHE WILL CLAIM THAT SHE IS ABLE TO
18 IDENTIFY MR. JAMES IN A SIX-PACK PHOTO; BUT WHEN SHE
19 DOES, SHE WILL SAY I NEVER SAW THE INTERNET BEFORE. AND
20 I KNOW THEY LIVE IN A SMALL HOUSE WITH FOUR EXTENDED
21 FAMILIES, WHO SHE IS RELATED TO, BUT NO ONE SHOWED HER
22 THE PHOTOGRAPH ON THE INTERNET AND SHE IS ABLE TO SAY
23 WOW, THAT'S MR. JAMES. MR. JAMES WAS THE SUSPECT BECAUSE
24 HIS EYES AND HIS MOUTH ARE DISTINCTIVE. IT'S ALSO
25 ANOTHER IMPORTANT FACT THAT YOU NEED TO KEEP IN MIND,
26 LADIES AND GENTLEMEN.

27 ON JULY 11TH OF 2010 OF THIS YEAR,
28 MS. JARDINES WAS INTERVIEWED BY AN INVESTIGATOR THAT

1 WORKS FOR ME. AND SHE SAYS TO HIM OR THEM AT THAT TIME,
2 "I SAW THE INTERNET PHOTO PRIOR TO DOING THE SIX-PACK,
3 AND AT THAT TIME I BASED MY IDENTIFICATION UPON WHAT I
4 SAW ON THE INTERNET, NOT ABOUT WHAT HAPPENED ON
5 NOVEMBER 23RD OF 2008." THE \$64,000 QUESTION IS WHAT IS
6 MS. JARDINES GOING TO SAY, AND I CANNOT TELL YOU WHAT
7 THAT'S GOING TO BE. I CAN ONLY TELL YOU THE CHRONOLOGY
8 AND THE PROGRESSION OF EVENTS THAT OCCURRED UP UNTIL THIS
9 DATE.

10 THE EVIDENCE WILL SHOW THAT THERE IS NO
11 IDENTIFICATION OF MR. JAMES PARTICIPATING IN THE CRIME OR
12 BEING AT THE SCENE ON NOVEMBER 23RD, 2008.

13 THERE WILL ALSO BE D.N.A. EVIDENCE IN THIS
14 CASE, LADIES AND GENTLEMEN, AND I WANT TO REASSURE YOU
15 FIRST AND FOREMOST THAT NO ONE IS GOING TO CONTEST THAT
16 MR. JAMES' D.N.A. IS ON A PIECE OF CLOTHING. BUT WHAT
17 ELSE YOU ARE GOING TO HEAR IN TERMS OF THE EVIDENCE
18 REGARDING THE D.N.A., THE D.N.A. FOUND ON A PIECE OF
19 CLOTHING CANNOT TELL WHEN THAT ACTUAL D.N.A. WAS
20 DEPOSITED -- THAT WOULD BE THE CONTRADICTED EVIDENCE, I
21 BELIEVE, IN THIS CASE -- OR EXPLAIN THE EXACT MANNER IN
22 WHICH IT WAS DEPOSITED, OR EVEN SAY THAT THE INDIVIDUAL
23 WHOSE D.N.A. IS ON THIS EVIDENCE OR THIS PIECE OF
24 CLOTHING OR WHATEVER IT IS EVEN MEANS THE PERSON WORE
25 IT. AND THE MIXTURE OF D.N.A. ON THIS CLOTHING THAT THE
26 PEOPLE WOULD BE RELYING UPON HAS AT LEAST TWO
27 CONTRIBUTORS. THAT MEANS AT LEAST TWO PEOPLE'S D.N.A.,
28 ONE OF WHICH IS MR. JAMES'.

1 AT THE END OF THE CASE, LADIES AND
2 GENTLEMEN, I WILL HAVE THE OPPORTUNITY TO ARGUE THIS
3 CASE. I THANK YOU FOR LISTENING NOW, AND I WILL THANK
4 YOU AGAIN. AT THE END OF THE CASE, THE EVIDENCE WILL
5 SHOW THAT MR. JAMES IS NOT GUILTY OF THE CRIMES CHARGED.
6 THANK YOU.

7 THE COURT: ALL RIGHT. THANK, MR. EVANS.

8 AND MR. GOUDY, YOU MAY CALL YOUR FIRST
9 WITNESS.

10 MR. GOUDY: THE PEOPLE CALL BRENDA BARRAGAN.

11 MR. EVANS: MOTION TO EXCLUDE.

12 THE COURT: MOTION TO EXCLUDE OTHER WITNESSES,
13 OTHER THAN THE INVESTIGATING OFFICER, IS GRANTED.

14 JUROR NO. 12: ARE WE EVER ABLE TO ASK QUESTIONS?

15 THE COURT: NO. THAT'S A COMMON QUESTION,
16 THOUGH.

17 DOES SHE NEED AN INTERPRETER?

18 MR. GOUDY: NO.

19
20 BRENDA BARRAGAN,
21 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND
22 TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

24 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE
25 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
26 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
27 TRUTH, SO HELP YOU GOD.

28 THE WITNESS: YES.

1 THE CLERK: HAVE A SEAT IN THE WITNESS STAND.

2 PULL THE MICROPHONE BACK UNDERNEATH YOUR
3 CHIN, AND TELL US YOUR FULL NAME AND SPELL YOUR FULL
4 NAME.

5 THE WITNESS: BRENDA MICHELLE BARRAGAN,
6 B-R-E-N-D-A, M-I-C-H-E-L-L-E, B-A-R-R-A-G-A-N.

7 THE CLERK: THANK YOU.

8 THE COURT: ALL RIGHT. YOU MAY BEGIN.

9 MR. GOUDY: THANK YOU, YOUR HONOR.

10

11 DIRECT EXAMINATION

12 BY MR. GOUDY:

13 Q MS. BARRAGAN, ON NOVEMBER 23RD OF 2008,
14 WHERE DID YOU LIVE?

15 A 14050 TRAILSIDE DRIVE IN LA PUENTE.

16 Q IS THAT ALSO KNOWN AS BASSETT, OR DO YOU
17 KNOW?

18 A NO.

19 Q OKAY. AND WHO DID YOU LIVE THERE WITH?

20 A I LIVE WITH MY DAD, MY STEPMOM, MY
21 BROTHER, MY SISTER, MY STEPSISTER, MY SISTER'S HUSBAND,
22 AND MY TWO KIDS. JUST THE WHOLE FAMILY LIVES THERE.

23 Q ABOUT HOW MANY PEOPLE LIVE IN THAT HOUSE?

24 A ELEVEN, INCLUDING KIDS.

25 Q HOW MANY BEDROOMS IN THE HOUSE?

26 A FIVE BEDROOMS.

27 MR. GOUDY: MAY I APPROACH, YOUR HONOR?

28 THE COURT: YOU MAY.

1 MR. GOUDY: YOUR HONOR, I HAVE A DIAGRAM OF A
2 HOUSE. I WOULD ASK THAT THIS BE MARKED AS PEOPLE'S 1 FOR
3 IDENTIFICATION.

4 THE COURT: IT WILL BE SO MARKED FOR
5 IDENTIFICATION PURPOSES.

6
7 (MARKED FOR IDENTIFICATION
8 PEOPLE'S EXHIBIT NO. 1,
9 DIAGRAM.)

10
11 MR. GOUDY: I AM MARKING A P-1 IN THE UPPER
12 RIGHT-HAND CORNER IN BLUE.

13 BY MR. GOUDY:

14 Q MS. BARRAGAN, DO YOU SEE WHAT IS DEPICTED
15 IN PEOPLE'S 1 FOR IDENTIFICATION?

16 A YES.

17 Q YOU CAN SEE THAT?

18 A YES.

19 Q AND IS THAT A ROUGH DIAGRAM OF THE HOUSE AT
20 14050 TRAILSIDE DRIVE?

21 A YES.

22 Q YOUR HOUSE?

23 A YES.

24 Q NOW, AT APPROXIMATELY 8:45 IN THE EVENING
25 ON NOVEMBER 23RD OF 2008, WERE YOU AT HOME?

26 A YES.

27 Q AND DID ANYTHING UNUSUAL HAPPEN AT THAT
28 TIME?

1 A YES.

2 Q WHAT HAPPENED?

3 A PEOPLE BROKE INTO OUR HOUSE.

4 Q HOW MANY PEOPLE?

5 A I DON'T REMEMBER HOW MANY PEOPLE.

6 Q MORE THAN ONE?

7 A YES.

8 Q MORE THAN FIVE?

9 A I DON'T KNOW.

10 Q AND WHEN THE PEOPLE BROKE INTO THE HOUSE

11 INITIALLY, WHERE WERE YOU?

12 A I WAS IN THE GARAGE.

13 Q AND WHAT WERE YOU DOING IN THE GARAGE?

14 A LAUNDRY. I WAS DOING LAUNDRY.

15 Q HOW LONG HAD YOU BEEN IN THE GARAGE PRIOR

16 TO THE PEOPLE BREAKING INTO YOUR HOUSE?

17 A MAYBE FIVE, TEN MINUTES AT THE MOST.

18 Q AND THE GARAGE, OBVIOUSLY THERE'S A WASHER

19 AND DRYER IN THERE?

20 A CORRECT.

21 Q ARE THERE CARS THAT ARE PARKED IN THERE?

22 A NO.

23 Q DOES IT HAVE -- HOW MANY DOORS DOES THE

24 GARAGE HAVE?

25 A ONE DOOR AND THEN THE BIG GARAGE DOOR TO

26 PARK CARS.

27 Q THE BIG GARAGE DOOR?

28 A THE BIG ONE, AND THEN ONE FOR -- TO WALK IN

1 AND OUT OF THERE.

2 Q AND THE BIG GARAGE DOOR, DID THAT DOOR --
3 DID THAT WORK?

4 A IT DOES WORK.

5 Q AND DID IT WORK ON THAT DAY?

6 A IT WAS CLOSED.

7 Q BUT IT WORKED?

8 A IT WORKED.

9 Q AND WAS IT ONE WHERE IT HAD A REMOTE OR IT
10 WAS ELECTRIC, OR DID YOU HAVE TO GO OVER THERE AND
11 ACTUALLY MANUALLY LIFT OPEN THE DOOR?

12 A YOU HAVE TO MANUALLY OPEN IT.

13 Q THE OTHER DOOR, THE DOOR TO WALK IN AND OUT
14 OF, WHERE DOES THAT DOOR LEAD?

15 A OUTSIDE.

16 Q IS THERE A DOOR FROM THE GARAGE THAT GOES
17 RIGHT INTO THE HOUSE?

18 A NO.

19 Q THE WASHER AND DRYER, WHERE WAS THAT IN THE
20 GARAGE?

21 A IF YOU WALK IN, IT'S ON YOUR RIGHT-HAND
22 SIDE.

23 Q IS IT RIGHT NEXT TO THE DOOR?

24 A YES. WELL, IT'S THE BOILER, AND THEN IT'S
25 THE WASHER AND THE DRYER. AS YOU WALK IN, IT'S TO YOUR
26 RIGHT.

27 Q SO LET'S SAY YOU'RE AT THE DOOR OF THE
28 GARAGE, FACING THE GARAGE, OR YOU'RE INSIDE THE GARAGE

1 FACING OUT.

2 A OKAY.

3 Q SO THE WASHER AND DRYER WOULD BE TO YOUR
4 LEFT?

5 A CORRECT.

6 Q WHERE WOULD THE WASHER AND DRYER BE IN THE
7 COURTROOM RIGHT NOW IF YOU WERE RIGHT AT THE DOOR?

8 A FACING --

9 Q OUT?

10 A -- OUTSIDE. THEY ARE RIGHT -- THEY ARE,
11 LIKE, RIGHT THERE (INDICATING). SO THEY ARE FAIRLY CLOSE
12 TO THE DOOR.

13 MR. GOUDY: IF I MAY, YOUR HONOR.

14 THE COURT: YOU MAY.

15 BY MR. GOUDY:

16 Q DIRECTLY -- WHICH IS CLOSER TO THE DOOR,
17 THE WASHER OR THE DRYER?

18 A THE DRYER.

19 Q WERE YOU AT THE WASHER OR THE DRYER?

20 A I WAS NEAR THE WASHER BECAUSE I WAS SORTING
21 CLOTHES.

22 Q TELL ME WHERE TO STAND AS TO WHERE YOU WERE
23 IN RELATIONSHIP TO THE DOOR WHEN THESE PEOPLE BROKE INTO
24 YOUR HOUSE.

25 A OKAY. I WAS, LIKE, RIGHT HERE (INDICATING)
26 AND --

27 Q YOU ARE AT THE DOOR?

28 A I AM AT THE DOOR.

1 Q POSITION ME TO WHERE YOU WOULD HAVE BEEN
2 STANDING.

3 A MAYBE LIKE RIGHT THERE WHERE THAT CHAIR IS
4 (INDICATING).

5 Q OVER HERE (INDICATING)?

6 A YES.

7 MR. GOUDY: APPROXIMATELY 10 FEET, YOUR HONOR?

8 THE COURT: I WOULD AGREE.

9 MR. EVANS, WOULD YOU AGREE WITH THAT? I
10 DON'T HAVE THAT MEASUREMENT ACTUALLY.

11 MR. EVANS: IT'S MORE THAN 10 FEET.

12 MR. GOUDY: ACTUALLY, IT'S PROBABLY CLOSER TO 12.

13 THE COURT: ALL RIGHT. IT WILL BE SO NOTED.

14 BY MR. GOUDY:

15 Q NOW, WHEN PEOPLE BROKE INTO YOUR HOUSE,
16 DID YOU HEAR THEM GO INTO THE HOUSE?

17 A NO.

18 Q WHAT DID YOU NOTICE?

19 A WHILE I WAS BENDING OVER SORTING THE
20 CLOTHES OUT, I SAW SOMEBODY, LIKE, ENTER THE DOOR, AND I
21 THOUGHT IT WAS MY BROTHER. SO THEN I GOT UP AND I TURNED
22 AROUND TOWARDS THE DOOR, AND JUST SOMEONE WAS STANDING
23 RIGHT THERE WITH A -- WITH JUST LIKE A SKI MASK OVER
24 THEIR HEAD AND STARTED --

25 Q WELL, AND YOU STARTED --

26 A I STARTED YELLING.

27 Q NOW, WHEN YOU SAY YOU SAW SOMEBODY COME TO
28 THE DOOR, IS THAT THE DOOR TO THE GARAGE?

1 A YES.

2 Q CAN YOU SEE FROM WHERE YOU WERE, AT THE
3 DOOR, TO YOUR HOUSE?

4 A NO.

5 Q AND THE PERSON THAT YOU SAW WAS WEARING A
6 SKI MASK?

7 A YES.

8 Q COULD YOU TELL MALE OR FEMALE?

9 A IT WAS A GUY.

10 Q COULD YOU TELL WHAT RACE?

11 A YES.

12 Q WHAT RACE?

13 A BLACK.

14 Q HOW COULD YOU TELL?

15 A BECAUSE PART OF THE EYES, IT DIDN'T COVER
16 COMPLETELY HIS SKIN. SO YOU COULD TELL HE WAS BLACK.

17 Q DID THAT PERSON SAY ANYTHING TO YOU?

18 A YES.

19 Q WHAT WAS THAT?

20 A HE TOLD ME TO SHUT UP.

21 Q FROM THE TIME YOU FIRST NOTICED THE PERSON
22 WALKING INTO YOUR GARAGE TO WHEN HE TOLD YOU TO SHUT UP,
23 HOW MUCH TIME PASSED?

24 A MAYBE FIVE, SIX MINUTES. I AM NOT SURE.

25 Q NOW, YOU WERE YELLING?

26 A YES.

27 Q WHAT WERE YOU YELLING?

28 A I WAS YELLING FOR MY DAD TO HELP ME.

1 Q WHERE WAS YOUR DAD WHEN YOU LAST SAW HIM?

2 A HE WAS SITTING IN THE LIVING ROOM.

3 Q HOW LONG HAD YOU BEEN IN THE GARAGE?

4 A I DON'T REMEMBER.

5 Q AND WHILE YOU WERE YELLING FOR THIS TIME
6 PERIOD, DID YOUR DAD EVER COME INTO THE GARAGE?

7 A NO.

8 Q AFTER THE MAN IN THE SKI MASK TOLD YOU TO
9 SHUT UP, DID YOU SHUT UP RIGHT AWAY?

10 A NO.

11 Q HOW MANY TIMES DID HE HAVE TO TELL YOU TO
12 SHUT UP?

13 A A LOT BECAUSE I WAS YELLING REALLY LOUD.

14 Q COULD YOU SEE IF THE MAN HAD ANYTHING IN
15 HIS HANDS?

16 A HE HAD A GUN.

17 Q DO YOU RECALL WHICH HAND THE GUN WAS IN?

18 A IT WAS IN HIS RIGHT HAND.

19 Q AND WHERE WAS THE GUN POINTED, IF ANYWHERE?

20 A WELL, HE WALKED TOWARDS ME BECAUSE I
21 WOULDN'T SHUT UP, AND HE PUT HIS HAND OVER MY MOUTH AND
22 HE PUT THE GUN TO MY HEAD.

23 Q DID HE SAY ANYTHING?

24 A WELL, HE KEPT ON SAYING, "SHUT UP, SHUT
25 UP."

26 Q AND WHEN HE CAME OVER TO YOU, DID HE WALK
27 AROUND YOU? DID HE RUN AROUND YOU? HOW DID HE GET OVER
28 TO WHERE YOU WERE?

1 A HE WALKED TOWARDS ME. AND THEN WITH HIS
2 LEFT HAND, HE PUT IT OVER MY MOUTH SINCE I WAS YELLING SO
3 MUCH.

4 Q DID YOU TRY AND RUN AWAY FROM HIM AT THAT
5 POINT?

6 A NO.

7 Q THEN WHAT HAPPENED?

8 A WHEN I FINALLY SHUT UP, THEN HE TOLD ME TO
9 WALK TOWARDS THE HOUSE, AND WE WALKED TOWARDS THE
10 HOUSE -- IN THE HOUSE.

11 Q WHEN YOU -- SO YOU HAD TO EXIT THE GARAGE?

12 A YES.

13 Q ABOUT HOW FAR IS THE GARAGE DOOR FROM THE
14 FRONT DOOR OF THE HOUSE?

15 A LIKE, A COUPLE STEPS, THREE, FOUR STEPS.

16 Q AND WHEN YOU WENT INTO THE HOUSE, WHO WENT
17 INTO THE HOUSE FIRST? YOU OR THE MAN WITH THE GUN?

18 A I DID.

19 Q WHEN YOU WALKED INTO THE HOUSE, WHAT ROOM
20 WERE YOU IN?

21 A THE LIVING ROOM.

22 Q AND WHEN YOU WALK IN THE DOOR, IS THERE A
23 WALL ON EITHER SIDE OF THE DOOR?

24 A I AM SORRY. COULD YOU REPEAT THAT?

25 Q YOU WALK IN THE DOOR. AND THE DOOR, IS
26 THAT RIGHT IN THE MIDDLE OF THE LIVING ROOM OR ON ONE
27 SIDE OF THE LIVING ROOM?

28 A NO. IT'S RIGHT IN THE LIVING ROOM.

1 Q AND DID YOU SEE YOUR FATHER?

2 A NO.

3 THE COURT: I AM GOING TO STOP YOU THERE. WE WILL
4 GO AHEAD AND TAKE OUR LUNCH BREAK.

5 LADIES AND GENTLEMEN, KEEP IN MIND THE
6 COURT'S ADMONITION, AND WE WILL SEE YOU ALL BACK HERE AT
7 1:30.

8 MA'AM, YOU ARE ORDERED BACK HERE AT 1:30.

9 SO EVERYONE, YOU ARE EXCUSED, AND WE WILL
10 SEE YOU ALL AT 1:30. KEEP IN MIND THE COURT'S
11 ADMONITION.

12
13 (THE FOLLOWING PROCEEDINGS
14 WERE HELD IN OPEN COURT
15 OUTSIDE THE PRESENCE OF THE
16 JURY WITH JUROR NO. 5:)

17
18 THE COURT: ALL OF OUR JURORS HAVE LEFT, EXCEPT
19 FOR JUROR NO. 5, WHO INDICATED SHE WANTS A WORD.

20 JUROR NO. 5: I JUST WANTED TO APOLOGIZE FOR BEING
21 LATE. I RUN A BUSINESS AND MY BUSINESS PARTNER TOOK A
22 MEDICAL LEAVE, SO I AM DOING THE BEST THAT I CAN. I JUST
23 WANTED TO -- I KNOW IT'S MY CIVIL DUTY TO BE HERE, BUT I
24 AM DOING THE BEST I CAN. SO I WANTED TO APOLOGIZE FOR
25 BEING LATE.

26 THE COURT: I APPRECIATE THAT. AND IF YOU CAN
27 CALL US, THAT ALSO HELPS SOMETIMES. JUST TRY TO BE HERE
28 AS BEST AS YOU CAN. I KNOW THAT IT'S DIFFICULT TO WORK

1 AND DO JURY SERVICE, BUT PLEASE MAKE YOUR BEST EFFORTS.
2 THANK YOU SO MUCH. YOU HAVE A GOOD LUNCH.

3 JUROR NO. 5: THANK YOU.
4

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

9
10 THE COURT: WE WILL SEE YOU ALL AT 1:30.
11

12 (WHEREUPON THE LUNCH RECESS
13 WAS TAKEN UNTIL 1:30 P.M.)
14
15
16
17
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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 3, 2010
4 DEPARTMENT NO. 121 HON. CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: KATHRYN L. MAUTZ, CSR NO. 11539
6 TIME: P.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8
9

10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT IN
12 THE PRESENCE OF THE JURY:)

13 THE COURT: WE ARE BACK ON THE RECORD IN PEOPLE
14 VERSUS JAMES. MR. JAMES IS PRESENT WITH MR. EVANS.
15 MR. GOUDY IS PRESENT WITH DETECTIVE CHISM. ALL OF OUR
16 JURORS ARE PRESENT. MS. BARRAGAN IS BACK ON THE STAND.

17 MA'AM, I WOULD LIKE TO REMIND YOU THAT YOU
18 REMAIN UNDER OATH AT THIS TIME.

19 AND YOU MAY CONTINUE, MR. GOUDY.

20 MR. GOUDY: THANK YOU, YOUR HONOR.

21 MAY I APPROACH, YOUR HONOR?

22 THE COURT: YOU MAY.
23

24 DIRECT EXAMINATION (RESUMED)

25 BY MR. GOUDY:

26 Q JUST GOING BACK TO THE DIAGRAM OF THE
27 HOUSE, NOW, THERE ARE HOW MANY BEDROOMS IN THE HOUSE?

28 A FIVE.

1 Q AND THERE'S ONE MARKED 1, 2, 3, 4 ON THIS
2 DIAGRAM (INDICATING). NOW, YOU SAW THIS BEFOREHAND;
3 CORRECT?

4 A YES.

5 Q OR A SMALLER VERSION OF IT?

6 A YES.

7 Q WHERE IS THE OTHER BEDROOM SUPPOSED TO BE?

8 A IT'S RIGHT WHERE MY BEDROOM IS RIGHT HERE
9 (INDICATING). THAT ONE IS SPLIT IN HALF.

10 Q SO BETWEEN THESE TWO DOORWAYS THERE IS A
11 WALL?

12 A YES.

13 Q FOR THE RECORD, IS IT RIGHT ABOUT HERE
14 (INDICATING)?

15 A YES.

16 MR. GOUDY: I AM GOING TO DRAW A LINE IN BLACK.

17 BY MR. GOUDY:

18 Q AND THIS IS ALSO A BEDROOM?

19 A CORRECT.

20 MR. GOUDY: AND I WILL WRITE "BEDROOM" HERE RIGHT
21 WHERE I AM WRITING "BEDROOM."

22 THE COURT: THE RECORD WILL SO REFLECT.

23 BY MR. GOUDY:

24 Q IS THAT CORRECT (INDICATING)?

25 A YES.

26 Q AND THAT WAS YOUR BEDROOM?

27 A NO. MY BEDROOM IS THIS ONE (INDICATING),
28 AND THE OTHER ONE IS MY BROTHER'S.

1 Q SO THE ONE TO THE RIGHT IS YOURS, AND THE
2 ONE TO THE LEFT IS YOUR BROTHER'S?

3 A YES.

4 Q I BELIEVE WE LEFT OFF WHERE YOU HAD JUST
5 GOTTEN INTO THE HOUSE, WHERE THE MAN WITH THE GUN TOOK
6 YOU INTO THE HOUSE.

7 NOW, WHEN YOU GOT INTO THE HOUSE, COULD YOU
8 SEE ANY OF YOUR OTHER FAMILY MEMBERS?

9 A YES.

10 Q WHO COULD YOU SEE?

11 A MY TWO CHILDREN.

12 Q WHERE WERE THEY?

13 A THEY WERE FACE DOWN ON THE FLOOR, BETWEEN
14 THE HALLWAY AND THE KITCHEN ENTRANCE.

15 Q AND WAS THERE ANY -- WERE ANY OTHER ROBBERS
16 NEAR YOUR CHILDREN?

17 A YES.

18 Q AND COULD YOU DESCRIBE THAT PERSON?

19 MR. EVANS: MOTION TO STRIKE THE PORTION OF
20 "ROBBERS." CALLS FOR A LEGAL CONCLUSION.

21 THE COURT: SUSTAINED.

22 IF YOU WANT TO REPHRASE.

23 BY MR. GOUDY:

24 Q WAS THERE SOMEBODY WHO WAS NOT FROM YOUR
25 FAMILY NEAR YOUR CHILDREN?

26 A YES.

27 Q AND HOW WERE THEY DRESSED?

28 A I DON'T REMEMBER THE WAY THEY WERE DRESSED,

1 BUT THEY DIDN'T HAVE A MASK ON SO I CAN SEE HIS FACE.

2 Q AND COULD YOU TELL WHAT RACE HE WAS?

3 A YES.

4 Q WHAT RACE WAS HE?

5 A HE WAS BLACK.

6 Q FACIAL HAIR? DID HE HAVE ANY FACIAL HAIR?

7 A I DON'T REMEMBER.

8 Q WAS HE TALL OR SHORT?

9 A HE WAS MEDIUM HEIGHT.

10 Q AND THE PERSON WHO HAD THE MASK AND THE GUN
11 ON YOU AND TOOK YOU FROM THE GARAGE INTO THE HOUSE, HOW
12 TALL IS THAT PERSON?

13 A HE WAS TALLER THAN MYSELF.

14 Q HOW TALL ARE YOU?

15 A ABOUT 5'5".

16 Q AND THE PERSON WITHOUT THE MASK, COULD YOU
17 SEE IF THAT PERSON HAD ANYTHING IN HIS HANDS?

18 A HE HAD A GUN, AND IT WAS POINTED TOWARDS MY
19 KIDS.

20 Q WHEN THEY WERE LAYING ON THE GROUND?

21 A YES.

22 Q EXCUSE ME. ON THE FLOOR?

23 A YES.

24 Q WERE THEY ON THEIR BACKS, THEIR STOMACH, OR
25 THEIR SIDES?

26 A THEY WERE FACE DOWN.

27 Q AND THAT PERSON HAD THE GUN POINTED DOWN AT
28 YOUR CHILDREN?

1 A YES.

2 Q THE PERSON WHO TOOK YOU FROM THE GARAGE
3 INTO THE HOUSE, WAS HE TALLER, SHORTER, OR ABOUT THE SAME
4 HEIGHT AS THE MAN WHO HAD THE GUN POINTED AT YOUR
5 CHILDREN?

6 A I DON'T KNOW.

7 Q THE PERSON WHO HAD THE GUN ON YOUR
8 CHILDREN, WAS HE -- WHAT WAS HIS BUILD LIKE?

9 A WHAT DO YOU MEAN?

10 Q WELL, WAS HE BIG, MEDIUM, SMALL?

11 A LIKE HEAVYSET?

12 Q YEAH. WAS HE HEAVYSET, WAS HE THIN, OR WAS
13 HE MEDIUM?

14 A HE WAS MEDIUM.

15 Q DID YOU EVER SEE YOUR FATHER AT ANY POINT
16 WHEN YOU WENT INTO THE HOUSE?

17 A NO.

18 Q WHEN THE PERSON TOOK YOU INTO THE HOUSE,
19 WHERE DID HE TAKE YOU?

20 A WHERE MY CHILDREN WERE, AND HE TOLD ME TO
21 LAY DOWN NEXT TO THEM.

22 Q AND DID YOU DO SO?

23 A YES.

24 Q DID YOU LAY ON YOUR BACK, YOUR STOMACH, OR
25 YOUR SIDE?

26 A FACE DOWN.

27 Q AND WHICH DIRECTION WAS YOUR HEAD POINTED?

28 A MY FEET WERE TOWARDS MY BEDROOM, AND MY

1 HEAD WAS TOWARDS THE KITCHEN.

2 Q AND WAS THAT THE SAME POSITION YOUR
3 CHILDREN WERE IN?

4 A NO.

5 Q HOW WERE THEY LAYING?

6 A WELL, THE WAY WE WERE LAYING DOWN, WE MADE
7 KIND OF LIKE A T-SHAPED -- LIKE, ALL OF OUR HEADS WERE
8 TOGETHER, AND OUR FEET WERE OUT.

9 Q WHO WAS CLOSEST TO THE FRONT DOOR?

10 A CHANTELLE, MY DAUGHTER.

11 Q AND WERE HER FEET TOWARDS THE DOOR OR
12 TOWARDS -- BASICALLY POINTING TOWARDS THE BACK OF THE
13 HOUSE?

14 A TOWARDS THE DOOR.

15 Q SO HER HEAD WOULD HAVE BEEN TOWARDS THE
16 BACK OF THE HOUSE?

17 A YES.

18 Q AND YOUR SON, WHERE WAS HE?

19 A HALF OF HIS BODY WAS, LIKE, ON -- IN THE
20 KITCHEN, AND THE OTHER HALF WAS, LIKE, IN THE HALLWAY.
21 SO HIS HEAD WAS TOUCHING CHANTELLE'S HEAD, AND THEN MY
22 BODY WAS CROSSED.

23 Q HOW IS IT THAT YOU ENDED UP IN THAT
24 PARTICULAR FORM?

25 A JUST REACTION. I JUST LAID DOWN LIKE
26 THAT.

27 Q NOW, WHILE THIS WAS GOING ON, WHERE WAS THE
28 MAN WITH THE MASK AND THE GUN?

1 A I DON'T KNOW.

2 Q WHERE WAS THE MAN WITH NO MASK THAT YOU HAD
3 SEEN POINTING THE GUN AT YOUR CHILDREN?

4 A HE STAYED THERE.

5 Q AT ANY POINT IN TIME DID YOU LEAVE THAT
6 AREA?

7 A YES.

8 Q HOW LONG OF A TIME WERE YOU LAYING ON THE
9 FLOOR NEXT TO YOUR CHILDREN BEFORE YOU WENT SOMEWHERE
10 ELSE?

11 A A COUPLE MINUTES.

12 Q WHY DID YOU GO SOMEPLACE ELSE?

13 A THEY GRABBED -- ONE OF THE GUYS GRABBED MY
14 SON, AND HE TOOK HIM INTO MY DAD'S BEDROOM.

15 Q NOW, WHEN YOU SAY ONE OF THE GUYS GRABBED
16 YOUR SON, WAS IT THE GUY WITH THE MASK?

17 A I DON'T KNOW WHO GRABBED HIM.

18 Q COULD YOU TELL IF IT WAS THE PERSON WITHOUT
19 THE MASK?

20 A I DON'T KNOW WHO IT WAS.

21 Q WHEN THEY PICKED UP YOUR SON, HOW OLD AT
22 THAT TIME WAS YOUR SON?

23 A SIX.

24 Q DID THEY SAY ANYTHING WHEN THEY PICKED UP
25 YOUR SON?

26 A YES.

27 Q WHAT DID THEY SAY?

28 A I CAN HEAR SOMEBODY SAYING, "OPEN THE

1 SAFE. OPEN THE SAFE." BUT SINCE THEY WEREN'T OPENING IT
2 QUICK ENOUGH, THEY GRABBED HIM, I GUESS. I DON'T KNOW
3 WHY.

4 Q AND AFTER THE PERSON PICKED UP YOUR SON AND
5 TOOK HIM TO YOUR FATHER'S ROOM, HOW LONG BEFORE YOU GOT
6 UP AND WENT SOMEWHERE?

7 A WELL, AS SOON AS THEY GRABBED HIM, I GOT UP
8 WITH HIM, AND THEN WE HAD TO LAY BACK DOWN RIGHT OUTSIDE
9 MY BEDROOM.

10 Q DID THEY TELL YOU TO GET UP WITH YOUR SON?

11 A I DON'T REMEMBER. I JUST GOT UP WITH HIM.

12 Q AND NOW YOU WERE LAYING IN FRONT OF YOUR
13 ROOM?

14 A YES.

15 Q IN LOOKING ON THE DIAGRAM, WHERE IS YOUR
16 FATHER'S ROOM?

17 A IT'S RIGHT NEXT TO MY BEDROOM.

18 Q GOING LEFT TO RIGHT IN THE UPPER LEFT-HAND
19 CORNER, THERE IS A BEDROOM RIGHT HERE ON THE DIAGRAM
20 (INDICATING), THE UPPER LEFT-HAND CORNER. WHOSE BEDROOM
21 IS THAT?

22 A THAT ONE IS NANCY'S BEDROOM.

23 Q THE NEXT ONE (INDICATING)?

24 A THAT'S MY BROTHER, WALTER, AND THEN THAT'S
25 MY BEDROOM (INDICATING), AND THEN THAT'S MY DAD'S
26 (INDICATING).

27 Q WHOSE BEDROOM IS ACROSS FROM WALTER'S
28 BEDROOM?

1 A MY SISTER NANCY.

2 Q NANCY'S BEDROOM IS IN THE UPPER LEFT?

3 A YES.

4 Q AND THAT'S NANCY JARDINES?

5 A JARDINES.

6 Q SO IF I PUT N.H., THAT'S NANCY'S?

7 A YES.

8 MR. GOUDY: FOR THE RECORD, YOUR HONOR, I HAVE
9 WRITTEN AN "N.H." IN THE AREA MARKED "BEDROOM" IN THE
10 UPPER LEFT-HAND CORNER.

11 THE COURT: THE RECORD WILL SO REFLECT.

12 BY MR. GOUDY:

13 Q THE NEXT BEDROOM IS WALTER GONZALEZ'S?

14 A YES.

15 Q I AM WRITING A "W.G." IN THE NEXT AREA TO
16 THE RIGHT MARKED "BEDROOM."

17 THE NEXT BEDROOM IS YOURS?

18 A YES.

19 Q BRENDA BARRAGAN?

20 A YES.

21 MR. GOUDY: FOR THE RECORD, I HAVE WRITTEN A
22 "B.B." IN THE NEXT AREA MARKED "BEDROOM."

23 BY MR. GOUDY:

24 Q AND THE BEDROOM BASICALLY BETWEEN YOUR ROOM
25 AND THE GARAGE IS YOUR PARENT'S ROOM?

26 A MY DAD'S, UH-HUH.

27 Q AND YOUR DAD IS RAFAEL GONZALEZ?

28 A YES.

1 Q AND YOUR MOTHER, FELICITAS?

2 A YES.

3 Q I HAVE WRITTEN AN "R.G." AND A "F.G." IN
4 THE AREA MARKED "BEDROOM" BETWEEN -- RIGHT NEXT TO THE
5 GARAGE.

6 AND THE BEDROOM UNDERNEATH WALTER'S BEDROOM
7 IS?

8 A ANNETTE SAAVEDRA.

9 Q A.S. AND I HAVE WRITTEN AN "A.S." IN THE
10 BEDROOM WHICH IS UNDERNEATH THE BEDROOM MARKED "W.G."

11 AND IS THAT WHERE EVERYONE'S BEDROOM IS?

12 A YES.

13 Q WHEN THEY TOOK YOUR SON AND YOU, DID THEY
14 PUT YOU IN FRONT OF YOUR DOORWAY OR CLOSER TO THE DOOR OF
15 YOUR PARENTS' ROOM?

16 A NO. IN THE DOORWAY.

17 Q OF YOUR ROOM?

18 A YES.

19 Q DID THEY SAY ANYTHING TO YOU?

20 A NO.

21 Q COULD YOU HEAR ANYBODY SAYING ANYTHING AT
22 THAT POINT IN TIME?

23 A YES.

24 Q YOUR FAMILY MEMBERS OR THE OTHER PEOPLE?

25 A THE OTHER PEOPLE.

26 Q WHAT DID YOU HEAR THEM SAY?

27 A THEY FIRST SAID, "OPEN THE SAFE, OPEN THE
28 SAFE." SO ONCE THEY OPENED IT, THEY SAID, "WELL, WHERE'S

1 THE MONEY AT? WHERE'S THE MONEY AT?"

2 Q NOW, COULD YOU SEE THEM OPEN THE SAFE?

3 A NO.

4 Q WHERE IS THE SAFE LOCATED?

5 A IT IS -- AS SOON AS YOU WALK INTO MY DAD'S
6 BEDROOM, IT'S RIGHT IN FRONT. YOU CAN'T MISS IT.

7 Q AND CAN YOU SEE THE SAFE FROM THE HALLWAY
8 WHERE YOU WERE AT?

9 A YES.

10 Q COULD YOU -- WERE YOU LOOKING AT THE SAFE?

11 A NO.

12 Q WHICH WAY WERE YOU LOOKING?

13 A I WAS FACE DOWN.

14 Q YOUR HEAD WAS POINTED IN WHICH DIRECTION?

15 A TOWARDS MY SISTER'S AND MY BROTHER'S
16 BEDROOM.

17 Q THE OPPOSITE WAY FROM YOUR PARENT'S
18 BEDROOM?

19 A CORRECT.

20 Q WHERE WAS YOUR SON?

21 A HE WAS IN THE BEDROOM.

22 Q WHICH BEDROOM?

23 A MY DAD'S BEDROOM.

24 Q SO WHEN THEY PICKED UP YOUR SON AND THEN
25 YOU WENT WITH THEM, AT SOME POINT YOU AND YOUR SON WERE
26 SEPARATED?

27 A CORRECT.

28 Q WHEN YOU WENT TO THE HALLWAY AND YOU HEARD

1 "OPEN THE SAFE," COULD YOU HEAR THE SAFE OPEN?

2 A I DON'T REMEMBER.

3 Q HOW COULD YOU TELL THAT THEY HAD OPENED THE
4 SAFE?

5 MR. EVANS: OBJECTION. CALLS FOR SPECULATION.

6 THE COURT: I WILL TAKE IT SUBJECT TO A MOTION TO
7 STRIKE.

8 YOU MAY ANSWER THAT QUESTION.

9 THE WITNESS: HOW DO I KNOW IT WAS OPEN?

10 BY MR. GOUDY:

11 Q YES.

12 A BECAUSE YOU CAN HEAR WHEN THEY TURN A KNOB
13 TO, LIKE, ACTUALLY PROBABLY OPEN, BECAUSE IT'S LIKE A
14 LITTLE KNOB. SO YOU JUST HAVE TO MOVE IT, AND THEN IT
15 OPENS.

16 MR. EVANS: OBJECTION. CALLS FOR SPECULATION.

17 BY MR. GOUDY:

18 Q OKAY. COULD YOU HEAR THAT?

19 A YES.

20 THE COURT: ALL RIGHT. THE MOTION TO STRIKE ON
21 SPECULATION IS DENIED.

22 BY MR. GOUDY:

23 Q DO YOU KNOW ON THAT DAY IF THERE WAS ANY
24 MONEY IN THE SAFE?

25 A MY DAD NEVER KEEPS MONEY IN THERE.

26 MR. EVANS: OBJECTION. NONRESPONSIVE. MOTION TO
27 STRIKE.

28 THE COURT: SUSTAINED. IT WILL BE STRICKEN.

1 BY MR. GOUDY:

2 Q DO YOU KNOW IF THERE WAS MONEY IN THE SAFE?

3 A THERE IS NEVER MONEY IN THERE.

4 MR. EVANS: SAME OBJECTION.

5 THE COURT: LAY A FOUNDATION.

6 BY MR. GOUDY:

7 Q HAVE YOU LOOKED IN THE SAFE BEFORE?

8 A YES.

9 Q DO YOU KNOW WHAT'S KEPT IN THE SAFE?

10 A YES.

11 Q TO YOUR KNOWLEDGE, HAS MONEY EVER BEEN KEPT
12 IN THE SAFE?

13 A NO.

14 Q WHEN YOU HEARD THE SAFE OPEN UP, DID YOU
15 HEAR ANYBODY SAY ANYTHING?

16 A THEY SAID, "WHERE'S THE MONEY? WHERE'S THE
17 MONEY?"

18 Q AND WAS THAT SOMEONE FROM YOUR FAMILY OR
19 ONE OF THE OTHER PEOPLE?

20 A NO. THE OTHER PEOPLE.

21 Q THE PEOPLE -- LET'S CALL THEM THE
22 INTRUDERS. ONE OF THE INTRUDERS?

23 A CORRECT.

24 MR. EVANS: MOTION TO STRIKE. CALLS FOR -- IT'S
25 BASICALLY ARGUMENTATIVE.

26 THE COURT: OVERRULED.

27 BY MR. GOUDY:

28 Q WHEN THE PERSON CAME INTO CONTACT WITH YOU

1 IN THE GARAGE WITH THE MASK AND THE GUN AND HE WAS
2 TALKING TO YOU, COULD YOU TELL IF HE -- IF IT WAS HIS
3 VOICE OR SOMEONE ELSE'S VOICE SAYING, "WHERE'S THE MONEY?
4 WHERE'S THE MONEY?" OR DO YOU KNOW?

5 A I DON'T KNOW.

6 Q AFTER THAT, AFTER THE SAFE WAS OPEN AND
7 THEY WERE SAYING, "WHERE'S THE MONEY? WHERE'S THE
8 MONEY?" DID YOU HEAR ANYONE IN YOUR HOUSE RESPOND?

9 A I DON'T REMEMBER.

10 Q WHAT HAPPENED AFTER THAT?

11 A MY BROTHER CAME OUT OF HIS BEDROOM, AND ONE
12 OF THE INTRUDERS -- THERE WAS SOMEBODY ELSE IN THE HOUSE,
13 "LET'S GO, LET'S GO." BECAUSE MY BROTHER, HE'S BALD, SO
14 HE KIND OF LOOKS LIKE A GANGSTER. AND I GUESS HE SCARED
15 HIM AWAY, SO -- BUT THEY TOLD HIM -- WHEN HE WALKED OUT
16 OF HIS BEDROOM, THEY HAD HIM LAY DOWN RIGHT NEXT TO ME.

17 Q AND DID YOU --

18 MR. EVANS: MOTION TO STRIKE THE PORTION AS TO
19 WHAT -- THAT HE WAS SCARED AWAY.

20 THE COURT: THAT PORTION WILL BE STRICKEN AS
21 SPECULATIVE. EVERYTHING ELSE MAY REMAIN.

22 BY MR. GOUDY:

23 Q COULD YOU SEE YOUR BROTHER ACTUALLY COME
24 OUT OF HIS ROOM?

25 A NO.

26 Q DID YOU HEAR HIS DOOR OPEN?

27 A YES.

28 Q AT SOME POINT IN TIME HE WAS LAYING NEXT TO

1 YOU?

2 A YES.

3 Q DID YOU HEAR ANYBODY TELL HIM TO GET DOWN?

4 A YES.

5 Q WHO WAS THAT?

6 A I DON'T KNOW.

7 Q ONE OF THE INTRUDERS?

8 A YES.

9 Q HOW LONG AFTER YOUR BROTHER LAID DOWN NEXT
10 TO YOU DID THE INTRUDERS LEAVE?

11 A THEY LEFT LIKE NOT EVEN A MINUTE LATER.
12 THEY LEFT RIGHT AWAY.

13 Q DURING THE TIME THAT THIS WAS GOING ON --
14 WELL, DOES YOUR HOUSE HAVE AN ALARM SYSTEM OF SOME SORT?

15 A IT DOES.

16 Q WHAT TYPE OF ALARM SYSTEM IS IT? NOT THE
17 BRAND, BUT WHAT HAPPENS?

18 A WELL, WHEN WE OPEN THE DOORS -- I MEAN, IT
19 SOUNDS LIKE A DOORBELL RINGING. BUT SINCE I HAD WALKED
20 OUT TO THE GARAGE, I LEFT THE DOOR OPEN A LITTLE BIT SO I
21 DON'T HAVE TO BE OPENING AND CLOSING THE DOOR.

22 Q AND IS THAT TRUE FOR THE FRONT AND BACK
23 DOOR?

24 A CORRECT.

25 Q WHERE IS THE BACK DOOR?

26 A IT'S IN THE BACK FAMILY ROOM (INDICATING).

27 MR. GOUDY: YOUR HONOR, MAY THE WITNESS BE ALLOWED
28 TO STEP DOWN TO THE DIAGRAM?

1 THE COURT: SHE MAY.

2 BY MR. GOUDY:

3 Q SINCE THERE IS NOT A BACK DOOR DEPICTED ON
4 THE DIAGRAM, COULD YOU MARK WITH TWO LINES, BASICALLY
5 LIKE VERTICAL LINES OR HORIZONTAL LINES, WHERE THE BACK
6 DOOR IS?

7 A (WITNESS COMPLIES.)

8 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE
9 WITNESS HAS DRAWN TWO HORIZONTAL LINES ON THE FAR LEFT
10 EDGE OF THE DIAGRAM.

11 THE COURT: THE RECORD WILL SO REFLECT.

12 BY MR. GOUDY:

13 Q AND THAT BACK DOOR, WHEN THAT DOOR IS
14 OPENED, DOES IT ALSO MAKE THE SAME SOUND?

15 A IT DOES.

16 Q DOES IT MAKE THE SOUND WHEN IT'S CLOSED?

17 A AS LONG AS YOU OPEN THE DOOR, YOU CAN HEAR
18 THAT NOISE.

19 Q AND WHEN YOU SAY, "I OPEN THE DOOR AND THEN
20 I PULL IT SHUT, SO I CLOSE THE DOOR," DOES IT MAKE THAT
21 SOUND AS YOU CLOSE THE DOOR OR ONLY WHEN YOU OPEN THE
22 DOOR?

23 A ONLY WHEN YOU OPEN IT.

24 Q DURING THIS TIME PERIOD WERE YOU EVER IN A
25 POSITION TO SEE THE BACK DOOR?

26 A NO.

27 Q DID YOU EVER HEAR THE DOORBELL SOUND GOING
28 OFF AS -- WHEN SOMEONE OPENS THE DOOR?

1 A I DON'T REMEMBER.

2 Q WHEN YOU FIRST WERE TAKEN FROM THE GARAGE
3 INTO YOUR HOUSE, YOU SAID THE DOOR WAS OPEN A LITTLE?

4 A YES.

5 Q DID SOMEONE CLOSE THE DOOR AT ANY POINT IN
6 TIME.

7 A I DON'T KNOW.

8 Q AFTER THE INTRUDERS LEFT -- WELL, DID YOU
9 HEAR ANYBODY SPEAK TO YOUR FAMILY -- DID THEY ALWAYS
10 SPEAK TO YOUR FAMILY IN ENGLISH?

11 A NO. ONE OF THE INTRUDERS WAS SPEAKING
12 SPANISH.

13 Q AND WAS IT THE PERSON IN THE MASK --

14 A I DON'T KNOW.

15 Q -- THAT CAME INTO CONTACT WITH YOU?

16 A I DON'T KNOW.

17 Q AND WHERE WERE YOU WHEN YOU HEARD THIS
18 PERSON SPEAKING -- ONE OF THE INTRUDERS SPEAKING IN
19 SPANISH?

20 A WHEN I WAS OUTSIDE OF MY BEDROOM, LAYING
21 DOWN.

22 Q DID YOU OF HEAR ANYONE SPEAKING SPANISH
23 WHILE YOU WERE LAYING WITH YOUR CHILDREN?

24 A NO.

25 Q DO YOU KNOW IF YOUR DAUGHTER WAS EVER MOVED
26 FROM THE LOCATION BETWEEN THE LIVING ROOM AND THE
27 KITCHEN?

28 A SHE WAS.

1 Q WHEN WAS THAT?

2 A WHEN -- WHEN MY SON WAS MOVED, I GRABBED
3 HER HAND AS WELL, AND I TOOK HER WITH ME.

4 Q SO YOU TOOK YOUR DAUGHTER WITH YOU?

5 A WELL, THEY TOLD US TO GET -- THEY GRABBED
6 MY SON. SO I DIDN'T LET GO OF HIS HAND, AND I WAS
7 HOLDING MY DAUGHTER'S HAND AS WELL.

8 Q AND THEN WHEN YOU WENT TO LAY -- WHEN YOU
9 WERE MADE TO LAY ON THE FLOOR IN THE HALLWAY, YOUR
10 DAUGHTER WAS WITH YOU?

11 A YES.

12 Q AND WHEN SHE WAS LAYING WITH YOU, WHERE WAS
13 SHE? WAS SHE ON YOUR LEFT OR ON YOUR RIGHT OR NEAR YOUR
14 HEAD OR NEAR YOUR FEET?

15 A NO. SHE WAS NEAR MY HEAD.

16 Q AFTER THE INTRUDERS LEFT, WHAT DID YOU DO?

17 A WELL, WE ALL GOT UP, AND WE ALL STARTED
18 CRYING AND YELLING.

19 Q DID YOU STAY IN THE HALLWAY? DID YOU GO TO
20 ANOTHER PART OF THE HOUSE?

21 A WE WERE ALL OVER THE HOUSE.

22 Q JUST YOU. HOW ABOUT JUST YOU?

23 A ME? I WENT TO LOOK FOR MY SISTER BECAUSE
24 MY SISTER WAS STILL IN HER BEDROOM WHEN ALL OF THIS
25 HAPPENED.

26 Q WHICH SISTER?

27 A MY SISTER ANNETTE.

28 Q AND SHE WAS IN HER BEDROOM?

1 A IN HER BEDROOM.

2 Q AND THAT'S THE ONE MARKED "A.S."?

3 A YES.

4 Q WHAT ABOUT -- DURING THIS, DID YOU EVER SEE

5 YOUR MOM, FELICITAS?

6 A NO. I DON'T REMEMBER.

7 Q WHAT ABOUT NANCY?

8 A NO.

9 Q WHAT ABOUT ANY OTHER CHILDREN?

10 A NO.

11 Q AFTER THE INTRUDERS LEFT, COULD YOU TELL IF

12 ANYTHING HAD BEEN TAKEN?

13 A YES.

14 Q WHAT WAS TAKEN? WAS ANYTHING OF YOURS

15 TAKEN?

16 A YES.

17 Q WHAT OF YOURS WAS TAKEN?

18 A MY WALLET.

19 Q AND WHERE WAS THAT?

20 A THAT WAS IN MY BEDROOM, ON A SMALL

21 BOOKSHELF.

22 Q DID YOU EVER SEE ANYONE GO INTO YOUR

23 BEDROOM?

24 A NO.

25 Q ANYTHING ELSE TAKEN OF YOURS?

26 A NO.

27 Q AT SOME POINT IN TIME DID THE POLICE

28 ARRIVE?

1 A YES.

2 Q OR THE SHERIFFS?

3 A YES.

4 Q ABOUT HOW LONG AFTER THE INTRUDERS LEFT DID
5 THE SHERIFFS ARRIVE?

6 A A COUPLE OF MINUTES.

7 Q AND WHEN THE SHERIFFS ARRIVED, HOW MANY
8 WERE THERE?

9 A I DON'T REMEMBER.

10 Q DID YOU TALK TO THEM?

11 A YES.

12 Q AT ANY POINT IN TIME DID YOU GO SOMEPLACE
13 WITH THE SHERIFFS?

14 A OUTSIDE OF MY HOUSE?

15 Q YES.

16 A YES.

17 Q WHERE DID YOU GO?

18 A DOWN THE STREET, WHERE THE HIGH SCHOOL IS
19 AT.

20 Q ABOUT HOW FAR IS THAT FROM YOUR HOUSE?

21 A LIKE A BLOCK.

22 MR. GOUDY: IF I MAY, YOUR HONOR.

23 THE COURT: YOU MAY.

24 MR. GOUDY: YOUR HONOR, I HAVE A BLOWUP OF A MAP.
25 AT THE BOTTOM IT SAYS 14050 TRAILSIDE DRIVE, BASSETT,
26 CALIFORNIA, AND I WOULD ASK THAT THIS BE MARKED AS
27 PEOPLE'S 2 FOR IDENTIFICATION.

28 THE COURT: IT WILL BE SO MARKED.

1 (MARKED FOR IDENTIFICATION
2 PEOPLE'S EXHIBIT NO. 2,
3 MAP.)
4

5 MR. GOUDY: I AM MARKING A "P-2" IN THE UPPER
6 RIGHT-HAND CORNER.

7 BY MR. GOUDY:

8 Q MS. BARRAGAN, DO YOU RECOGNIZE WHAT THIS IS
9 A MAP OF?

10 A YES.

11 Q WHAT IS THIS A MAP OF?

12 A WHERE I LIVE.

13 Q THE STREETS?

14 A YES.

15 Q AND THERE IS A LITTLE RED -- IT'S LIKE A
16 LITTLE PIN POINTING TO AN AREA. AND WHAT AREA WOULD THAT
17 BE POINTING TO?

18 A MY HOUSE.

19 Q SO THIS IS WHERE YOUR HOUSE IS
20 (INDICATING), WHERE THIS PIN IS POINTING?

21 A YES.

22 Q THE SCHOOL THAT YOU WENT TO, WHERE WAS
23 THAT?

24 A IT'S RIGHT ON THE CORNER OF 5TH AND
25 LOMITAS.

26 Q IT'S ON --

27 A IT'S RIGHT ON THE CORNER.

28 Q WHICH SIDE?

1 A ON YOUR LEFT-HAND SIDE.

2 MR. GOUDY: MAY THE WITNESS BE ALLOWED TO STEP
3 DOWN TO THE DIAGRAM?

4 THE COURT: SHE MAY.

5 BY MR. GOUDY:

6 Q WHAT IS THE NAME OF THE HIGH SCHOOL?

7 A VALLEY HIGH SCHOOL.

8 Q IF YOU CAN JUST WRITE A "V.H.S." WHERE THE
9 HIGH SCHOOL IS.

10 A (WITNESS COMPLIES.)

11 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE
12 WITNESS HAS DRAWN A "V.H.S." ON WHAT I BELIEVE IS THE
13 SOUTHWEST CORNER OF 5TH AVENUE AND LOMITAS.

14 BY MR. GOUDY:

15 Q SO WHEN YOU WENT TO THAT LOCATION, DID YOU
16 GO BY YOURSELF WITH THE SHERIFF DEPUTIES, OR DID YOU GO
17 WITH ANYONE ELSE FROM YOUR FAMILY?

18 A I WENT BY MYSELF.

19 Q WHEN YOU GOT TO THAT LOCATION, DID THEY ASK
20 YOU TO LOOK AT ANYONE?

21 A YES.

22 Q AND DID YOU LOOK AT THAT PERSON?

23 A YES.

24 Q DID YOU RECOGNIZE THAT PERSON?

25 A YES.

26 Q AND WHO WAS THAT PERSON?

27 A IT WAS THE GUY THAT WAS STANDING OVER WITH
28 THE GUN WITH MY KIDS.

1 Q THE ONE WITHOUT THE MASK?

2 A CORRECT.

3 Q AND DID YOU TELL THE SHERIFF DEPUTIES THAT?

4 A YES.

5 Q NOW, AT SOME POINT IN TIME DID A DETECTIVE
6 RICHARDSON SHOW YOU ANY PHOTOGRAPHS?

7 A YES.

8 Q AND DO YOU KNOW WHO DETECTIVE RICHARDSON
9 IS?

10 A YES.

11 Q THIS PERSON I AM POINTING TO (INDICATING)
12 NOW, THAT'S NOT DETECTIVE RICHARDSON, IS IT?

13 A NO.

14 Q THAT'S DETECTIVE CHISM?

15 A YES.

16 Q AND WHEN DETECTIVE RICHARDSON SHOWED YOU
17 THE PHOTOGRAPHS, DID HE READ ANYTHING TO YOU PRIOR TO
18 SHOWING YOU THE PHOTOGRAPHS?

19 A I DON'T REMEMBER.

20 Q DID HE HAVE YOU READ SOMETHING?

21 A I DON'T REMEMBER.

22 Q DID HE ASK YOU TO LOOK AT THE PHOTOGRAPHS?

23 A YES.

24 Q AND DID YOU LOOK AT THE PHOTOGRAPHS?

25 A YES.

26 Q AND DID YOU RECOGNIZE ANYBODY IN ANY OF THE
27 PHOTOGRAPHS?

28 A YES.

1 Q AND WHO DID YOU RECOGNIZE?

2 A THE GUY THAT I HAD TO -- THAT I POINTED
3 OUT, THE ONE THAT WAS STANDING OVER MY KIDS.

4 MR. GOUDY: YOUR HONOR, I HAVE TWO SHEETS OF
5 PAPER. THE FIRST ONE IS A WITNESS ADMONITION FOR MUG
6 SHOW-UPS. IT'S DATED 11/24/08. IT HAS A SIGNATURE OF
7 BRENDA M. BARRAGAN. I WOULD ASK THAT THIS BE MARKED AS
8 PEOPLE'S 3 FOR IDENTIFICATION.

9 THE COURT: IT WILL BE SO MARKED.

10

11 (MARKED FOR IDENTIFICATION
12 PEOPLE'S EXHIBIT NO. 3,
13 WITNESS ADMONITION.)

14

15 MR. GOUDY: I AM MARKING A P-3 IN THE LOWER
16 RIGHT-HAND CORNER.

17 THE SECOND IS A COPY OF SIX PHOTOGRAPHS.
18 ONE IS CIRCLED. THE ONE THAT IS CIRCLED HAS THE INITIALS
19 "B" AND "B." I'D ASK THAT THIS BE MARKED AS PEOPLE'S 4
20 FOR IDENTIFICATION.

21 THE COURT: IT WILL BE SO MARKED.

22

23 (MARKED FOR IDENTIFICATION
24 PEOPLE'S EXHIBIT NO. 4,
25 SIX-PACK.)

26

27 MR. GOUDY: I AM MARKING A P-4 IN THE BOTTOM
28 RIGHT-HAND CORNER.

1 MAY I APPROACH?

2 THE COURT: YOU MAY.

3 BY MR. GOUDY:

4 Q SHOWING YOU FIRST WHAT HAS BEEN MARKED AS
5 PEOPLE'S 3 FOR IDENTIFICATION, DO YOU RECOGNIZE THIS
6 SHEET OF PAPER?

7 A UH-HUH.

8 Q IS THAT "YES"?

9 A YES.

10 Q AND THERE IS A SIGNATURE OF BRENDA M.
11 BARRAGAN?

12 A YES.

13 Q AND THERE ARE FOUR THINGS ABOVE THAT
14 NUMBERED 1, 2, 3, AND 4. THE FIRST ONE IS, "YOU ARE
15 ABOUT TO VIEW A SERIES OF SIX PHOTOGRAPHS OF
16 SIMILAR-APPEARING INDIVIDUALS." DID DETECTIVE RICHARDSON
17 READ THAT TO YOU?

18 A YES.

19 MR. EVANS: OBJECTION. ASKED AND ANSWERED.

20 THE COURT: I WILL ALLOW IT.

21 THE WITNESS: YES.

22 BY MR. GOUDY:

23 Q THE SECOND ONE, "THE SUSPECT WHO IS
24 INVOLVED IN THIS CRIME MAY OR MAY NOT BE AMONG THESE
25 PHOTOGRAPHS." DID DETECTIVE RICHARDSON READ THAT TO YOU?

26 A YES.

27 Q THE THIRD ONE, "YOU ARE UNDER NO OBLIGATION
28 TO MAKE A SELECTION." DID DETECTIVE RICHARDSON READ THAT

1 TO YOU?

2 A YES.

3 Q AND THE FOURTH ONE, "THE PURPOSE OF
4 SHOWING YOU THESE PHOTOGRAPHS IS TO ELIMINATE THE
5 INNOCENT, AS WELL AS IDENTIFY THE PERSON RESPONSIBLE."
6 DID DETECTIVE RICHARDSON READ THAT TO YOU?

7 A YES.

8 Q DID YOU THEN LOOK AT SOME PHOTOGRAPHS?

9 A YES.

10 Q SHOWING YOU PEOPLE'S 4 FOR IDENTIFICATION,
11 DO YOU RECOGNIZE THESE PHOTOGRAPHS?

12 A YES.

13 Q AND ARE THESE THE PHOTOGRAPHS THAT YOU
14 LOOKED AT AFTER BEING READ THESE ONE, TWO, THREE, AND
15 FOUR BY DETECTIVE RICHARDSON?

16 A YES.

17 Q AND AFTER DETECTIVE RICHARDSON READ THESE
18 THINGS TO YOU, DID YOU SIGN YOUR NAME?

19 A YES.

20 Q THERE IS A DATE, 11/24/08. IS THAT YOUR
21 WRITING (INDICATING)?

22 A NO.

23 Q WHERE IT SAYS "DETECTIVE RICHARDSON," YOU
24 DIDN'T WRITE "DETECTIVE RICHARDSON," DID YOU?

25 A NO.

26 Q AT THAT TIME, IS THAT YOUR WRITING?

27 A NO.

28 Q THERE IS A PHOTOGRAPH THAT IS CIRCLED. DID

1 YOU CIRCLE THAT PHOTOGRAPH?

2 A YES.

3 Q THERE ARE INITIALS "B" AND "B" NEXT TO
4 THAT. DID YOU INITIAL THE CIRCLE?

5 A YES.

6 Q UNDERNEATH THERE, IT SAYS "HE WAS STANDING
7 NEAR MY CHILDREN, HOLDING A GUN AND SAYING 'EVERYBODY
8 CALM DOWN.'" DID YOU WRITE THAT?

9 A YES.

10 Q THE PERSON DEPICTED IN THE PHOTOGRAPH YOU
11 CIRCLED, WHICH IS PHOTOGRAPH NUMBER 5, WAS THAT THE
12 PERSON STANDING OVER YOUR CHILDREN WITH THE GUN?

13 A YES.

14 Q WAS HE WEARING A MASK?

15 A NO.

16 Q AT SOME POINT IN TIME -- ACTUALLY, SOMETIME
17 LATER, DETECTIVE CHISM CAME TO YOUR HOUSE WITH SOME
18 PHOTOGRAPHS; IS THAT CORRECT?

19 A YES.

20 Q AND WHEN DETECTIVE CHISM CAME TO YOUR HOUSE
21 WITH SOME PHOTOGRAPHS, WERE THEY DIFFERENT PHOTOGRAPHS
22 FROM THE PHOTOGRAPHS DETECTIVE RICHARDSON HAD SHOWN YOU?

23 A I DON'T REMEMBER.

24 Q DID DETECTIVE RICHARDSON ASK YOU TO LOOK
25 THE PHOTOGRAPHS?

26 MR. EVANS: I AM GOING TO OBJECT AS TO FOUNDATION.

27 MR. GOUDY: IF I MAY WITHDRAW IT.

28 THE COURT: YOU ARE WITHDRAWING?

1 MR. GOUDY: YES.

2 BY MR. GOUDY:

3 Q WHEN DETECTIVE CHISM CAME OUT AND SHOWED
4 YOU THE PHOTOGRAPHS, WHEN WAS THAT IN RELATIONSHIP TO
5 WHEN DETECTIVE RICHARDSON SHOWED YOU PHOTOGRAPHS?

6 A WHAT DO YOU MEAN?

7 Q WAS IT THE NEXT DAY? WAS IT A WEEK LATER?
8 MONTHS LATER? YEARS LATER? DO YOU RECALL?

9 A I DON'T REMEMBER.

10 Q WELL, WAS IT THE NEXT DAY?

11 A NO.

12 Q WAS IT A FEW DAYS LATER?

13 A NO.

14 Q WAS IT A FEW MONTHS LATER?

15 A I DON'T REMEMBER.

16 Q HOW MANY TIMES DID DETECTIVE CHISM SHOW YOU
17 PHOTOGRAPHS?

18 A ONCE.

19 Q AND THE ONE TIME HE SHOWED YOU THE
20 PHOTOGRAPHS, DID YOU LOOK AT THOSE PHOTOGRAPHS?

21 A YES.

22 Q NOW, PRIOR TO LOOKING AT THOSE PHOTOGRAPHS,
23 DID YOU TALK TO DETECTIVE CHISM ABOUT A LETTER THAT WAS
24 RECEIVED AT YOUR HOUSE?

25 MR. EVANS: YOUR HONOR, I WOULD OBJECT AS TO
26 TIME. I AM WILLING TO STIPULATE THAT IT'S JUNE 2009 TO
27 EXPEDITE THIS RELATING TO THE SIX-PACK.

28 THE COURT: CAN I SEE YOU BOTH AT SIDEBAR.

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD AT SIDEBAR:)

3
4 THE COURT: STIPULATIONS SHOULD BE WORKED OUT
5 BEFORE OFFERING THEM.

6 MR. EVANS: I DIDN'T KNOW WE WERE GOING TO GO
7 THROUGH THE DATE. I DON'T WANT TO KEEP OBJECTING AS TO
8 FOUNDATION. THAT'S WHY I DID THAT.

9 MR. GOUDY: I CAN CLEAR IT UP WITH THE DATE.

10 THE COURT: WELL, HE'S WILLING TO STIPULATE.

11 MR. GOUDY: THAT'S FINE.

12 THE COURT: ALL RIGHT.

13
14 (THE FOLLOWING PROCEEDINGS
15 WERE HELD IN OPEN COURT IN
16 THE PRESENCE OF THE JURY:)

17
18 THE COURT: ALL RIGHT. IF YOU WANT TO REOFFER
19 THE STIPULATION WITH REGARD TO THE DATE OF THIS SHOWING
20 BY DETECTIVE CHISM.

21 MR. GOUDY: COUNSEL, WILL YOU STIPULATE THAT
22 DETECTIVE CHISM SHOWED MS. BARRAGAN A SIX-PACK -- SIX
23 PHOTOGRAPHS ON JUNE 2ND OF 2009?

24 MR. EVANS: SO STIPULATED.

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, A
26 STIPULATION MEANS THAT THE LAWYERS ACCEPT THAT FACT AS
27 TRUE AND PROVEN, AND YOU MUST ACCEPT THAT FACT AS TRUE
28 AND PROVEN; THAT IS, THAT THAT WAS THE DATE THAT

1 DETECTIVE CHISM SHOWED THE PHOTOS TO MS. BARRAGAN.

2 YOU MAY CONTINUE.

3 BY MR. GOUDY:

4 Q NOW, PRIOR TO LOOKING AT THE PHOTOGRAPHS,
5 DID YOU TALK TO DETECTIVE CHISM ABOUT A LETTER THAT WAS
6 RECEIVED AT YOUR HOUSE?

7 A YES.

8 Q AND IN THIS LETTER, DID IT INDICATE THAT A
9 SUSPECT IN A CASE INVOLVING YOU WAS SOMEONE BY THE NAME
10 OF TAUMU JAMES?

11 A YES.

12 Q DID YOU TELL DETECTIVE CHISM THAT BASED
13 UPON THE INFORMATION IN THAT LETTER THAT YOU AND SOME
14 FAMILY MEMBERS WENT ONTO THE INTERNET AND SAW A PICTURE
15 OF MR. JAMES?

16 A YES.

17 Q DID DETECTIVE CHISM ASK YOU IF YOU HAD
18 RECEIVED A LETTER?

19 A WE TOLD HIM WE RECEIVED THE LETTER.

20 Q WHEN YOU TOLD HIM THAT, DID HE ACT
21 SURPRISED?

22 MR. EVANS: IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: I DON'T KNOW.

25 THE COURT: IF YOU KNOW.

26 THE WITNESS: I DON'T KNOW.

27 BY MR. GOUDY:

28 Q WHEN YOU TOLD DETECTIVE CHISM ABOUT THE

1 LETTER, DID YOU ALSO TELL HIM THAT YOU AND SOME FAMILY
2 MEMBERS WENT ON THE INTERNET?

3 A YES.

4 Q DID DETECTIVE CHISM, PRIOR TO RECEIVING THE
5 LETTER, EVER TELL YOU THAT YOU WOULD RECEIVE A LETTER?

6 A NO.

7 Q DID HE EVER TELL YOU TO GO ONTO THE
8 INTERNET AND FIND A PICTURE OF MR. JAMES?

9 A NO.

10 MR. EVANS: OBJECTION. CALLS FOR HEARSAY. MOTION
11 TO STRIKE.

12 THE COURT: I WILL ALLOW IT SIMPLY FOR THE EFFECT
13 ON THE LISTENER, NOT FOR THE TRUTH OF THE MATTER
14 ASSERTED.

15 SO LADIES AND GENTLEMEN, THAT LAST QUESTION
16 AND ANSWER, OR THIS SERIES OF QUESTIONS, IS ONLY BEING
17 OFFERED AS IT RELATES TO MS. BARRAGAN'S ACTIONS AND NOT
18 NECESSARILY FOR THE TRUTH OF THE MATTER ASSERTED THAT
19 THAT WAS IN FACT WHAT HAPPENED OR HEARD.

20 BY MR. GOUDY:

21 Q DID THE LETTER YOU RECEIVED TELL YOU TO GO
22 ON THE INTERNET?

23 A NO.

24 Q IT WAS JUST SOMETHING THAT YOU ALL DID?

25 A YEAH. WE WANTED TO BE NOSEY.

26 THE COURT: I AM SORRY. I DIDN'T HEAR THAT
27 ANSWER.

28 THE WITNESS: I SAID WE WERE JUST BEING NOSEY.

1 THE COURT: OKAY.

2 BY MR. GOUDY:

3 Q WHO WAS THERE WHEN YOU AND YOUR FAMILY
4 MEMBERS WENT ONTO THE INTERNET?

5 A MY SISTER ANNETTE WAS THE ONE THAT WENT
6 ONTO THE INTERNET.

7 Q WERE YOU PRESENT?

8 A I WAS.

9 Q WHO ELSE?

10 A AND FELICITAS.

11 THE COURT: I AM SORRY. AND WHO?

12 THE WITNESS: FELICITAS.

13 BY MR. GOUDY:

14 Q WAS NANCY THERE?

15 A NO.

16 Q DID YOU SEE A PICTURE? DID YOU LOOK AT A
17 PICTURE ON THE INTERNET?

18 A I DIDN'T.

19 Q THE PERSON WHO HAD THE MASK, THE SKI MASK
20 ON WITH THE GUN WHILE YOU WERE IN THE GARAGE, DO YOU SEE
21 THAT PERSON IN THE COURTROOM RIGHT NOW?

22 A NO.

23 Q WOULD YOU BE ABLE TO IDENTIFY THAT PERSON
24 IF YOU SAW THEM?

25 A NO.

26 Q BESIDES YOUR WALLET -- AND HOW MUCH WAS IN
27 YOUR WALLET, IF ANYTHING? OR I SHOULD SAY WHAT WAS IN
28 YOUR WALLET?

1 A MONEY.

2 Q DO YOU RECALL HOW MUCH?

3 A NO.

4 Q ANYTHING ELSE TAKEN FROM THE HOUSE, TO YOUR
5 KNOWLEDGE?

6 A YES.

7 Q WHAT ELSE WAS TAKEN?

8 A MY DAD'S TWO CELL PHONES AND FELICITAS'
9 CELL PHONE.

10 MR. EVANS: CALLS FOR SPECULATION.

11 THE COURT: LAY A FOUNDATION.

12 BY MR. GOUDY:

13 Q DID YOU SEE YOUR FATHER'S TWO CELL PHONES
14 AND FELICITAS' CELL PHONES BEFORE THEY -- DID YOU KNOW
15 WHERE THEY WERE AT BEFORE THE INTRUDERS ARRIVED?

16 A YES.

17 Q WHERE WERE THEY AT?

18 A IN THEIR BEDROOM.

19 Q DID YOU SEE ANY OF THE INTRUDERS TAKE THE
20 CELL PHONES?

21 A NO.

22 Q WHEN YOU GOT UP AFTER THE INTRUDERS LEFT,
23 DID YOU GO INTO YOUR DAD'S BEDROOM?

24 A NO.

25 MR. EVANS: MOTION TO STRIKE THE PREVIOUS
26 TESTIMONY.

27 THE COURT: ALL RIGHT. MOTION TO STRIKE IS
28 GRANTED.

1 BY MR. GOUDY:

2 Q AT SOME POINT IN TIME DID YOU HAVE TO COME
3 TO COURT AND TESTIFY?

4 A YES.

5 Q AND WHEN YOU CAME TO COURT AND TESTIFIED,
6 WAS THERE SOMEBODY -- ONE OF THE INTRUDERS IN THE
7 COURTROOM?

8 A YES.

9 Q AND WHICH INTRUDER WAS IT?

10 A THE ONE THAT WAS STANDING OVER MY KIDS.

11 Q THE ONE THAT WAS IN THE PHOTOGRAPHS THAT
12 DETECTIVE RICHARDSON SHOWED YOU?

13 A YES.

14 MR. GOUDY: NOTHING FURTHER.

15 THE COURT: CROSS-EXAMINATION.
16

17 CROSS-EXAMINATION

18 BY MR. EVANS:

19 Q NOVEMBER 3RD, 2008, TAKING YOU BACK TO THAT
20 DATE WHEN YOU WERE IN THAT GARAGE, LET'S GO TO THAT PLACE
21 FIRST. DO YOU HAVE THAT IN MIND, WHEN YOU WERE THERE?

22 A YES.

23 Q AT THAT TIME YOU HAD INDICATED THAT THE
24 INDIVIDUAL THAT WAS IN THERE -- THERE WAS AN INDIVIDUAL
25 THAT WALKED IN THERE WITH A SKI MASK ON; IS THAT CORRECT?

26 A CORRECT.

27 Q AND WHEN YOU LOOKED AT THE PERSON THAT WAS
28 WEARING A SKI MASK, YOU INDICATED THAT THE SKI MASK DID

1 NOT COMPLETELY COVER HIS EYES; IS THAT CORRECT?

2 A CORRECT.

3 Q IT WOULD BE FAIR TO SAY THERE WAS NOTHING
4 DISTINCTIVE ABOUT THAT PERSON'S EYES? WOULD THAT BE A
5 FAIR STATEMENT THAT YOU NOTICED AT THAT TIME?

6 A WHAT DO YOU MEAN?

7 Q I MEAN, DID HE HAVE GREEN EYES?

8 A I REALLY DIDN'T CHECK HIS EYES OUT.

9 Q BUT YOU INDICATED THAT YOU SAW SOME OF HIS
10 SKIN; IS THAT CORRECT?

11 A YES.

12 Q AND YOU IDENTIFIED THAT SKIN AS BEING OF
13 A -- WOULD YOU SAY HIS SKIN WAS BLACK?

14 A CORRECT.

15 Q AND JUST SO I AM CLEAR, IN YOUR MIND THERE
16 IS A DIFFERENCE BETWEEN THE COLOR BLACK AND THE COLOR
17 BROWN; CORRECT?

18 A CORRECT.

19 Q NOW, THE PERSON WHO HAD BLACK SKIN, DO YOU
20 KNOW WHAT RACE THEY WERE?

21 A HE WAS BLACK.

22 Q WELL, HOW DO YOU KNOW THAT?

23 A BECAUSE OF HIS SKIN COLOR.

24 Q WELL, CERTAINLY YOU CAN SAY THAT PEOPLE WHO
25 ARE INDIAN DENOMINATION HAVE DARK SKIN, BLACK SKIN;
26 CORRECT?

27 A CORRECT.

28 Q AND CERTAINLY PEOPLE FROM THE CARIBBEAN,

1 WHO ARE MIXED HISPANIC AND AFRICAN DESCENT, WOULD ALSO
2 HAVE BLACK SKIN; CORRECT?

3 A I GUESS. I DON'T KNOW ANYBODY FROM THE
4 CARIBBEAN, SO I WOULDN'T KNOW SKIN COLOR THEY ARE.

5 Q DO YOU KNOW ANY PEOPLE THAT ARE
6 PUERTO RICAN?

7 A NOT REALLY.

8 Q HOW ABOUT FROM BELIZE?

9 A NO.

10 Q HOW ABOUT FROM MEXICO?

11 A YES.

12 Q WELL, THERE ARE PEOPLE WITH DARK BLACK SKIN
13 THAT ARE ALSO MEXICAN HERITAGE. WOULD THAT BE A FAIR
14 STATEMENT?

15 A NOT AS BLACK AS A BLACK PERSON.

16 Q OKAY. SO WOULD IT BE FAIR TO SAY THAT YOU
17 COULDN'T TELL IF THE INDIVIDUAL WHO WAS IN THE GARAGE
18 WITH YOU WAS OF ASIAN, INDIAN, OR AFRICAN DESCENT? WOULD
19 THAT BE A FAIR STATEMENT NOW?

20 A I DON'T KNOW.

21 Q THE INDIVIDUAL WHO CAME INTO -- WHO WAS IN
22 THE GARAGE, WOULD IT BE FAIR TO SAY WHEN YOU WERE LOOKING
23 AT THE SKI MASK, THE ONLY THING THAT YOU COULD SEE WAS
24 THE EYES AND PART OF THE SKIN NEAR THE EYES?

25 A CORRECT.

26 Q YOU DIDN'T SEE ANY OTHER PART OF HIS FACE?
27 IS THAT A FAIR STATEMENT?

28 A CORRECT.

1 Q NOW, THE INDIVIDUAL WHO CAME INTO THE
2 GARAGE ASKED YOU TO GO INTO THE HOUSE; IS THAT CORRECT?

3 A YES.

4 Q AND YOU WENT INTO THE HOUSE; CORRECT?

5 A YES.

6 Q AND WOULD IT BE FAIR TO SAY THAT AT THE
7 TIME THAT YOU WERE ALONE IN THE GARAGE WITH SOMEONE THAT
8 YOU DIDN'T KNOW, WEARING A SKI MASK, THAT YOU WANTED TO
9 GO INTO THE HOUSE TO BE WITH THE REST OF YOUR FAMILY AND
10 KIDS? WOULD THAT BE A FAIR STATEMENT?

11 A THAT I WANTED TO GO IN THE HOUSE WITH MY
12 KIDS?

13 Q YOU WANTED TO BE IN THE HOUSE AT THAT TIME
14 WITH YOUR CHILDREN.

15 A WHAT DO YOU MEAN BY THAT?

16 Q OKAY. LET ME TAKE YOU BACK IN TIME TO THE
17 POINT WHERE YOU ARE IN THE GARAGE WITH THE INDIVIDUAL YOU
18 DON'T KNOW WHO IS WEARING A SKI MASK. DO YOU HAVE THAT
19 TIME IN MIND?

20 A UH-HUH.

21 Q IS THAT "YES"?

22 A YES.

23 Q AT THAT POINT WHEN HE SAYS, "I WANT YOU TO
24 GO INTO THE HOUSE," WOULD IT BE FAIR TO SAY THAT YOU ALSO
25 WANTED TO GO INTO THE HOUSE BECAUSE YOU KNEW YOUR FAMILY
26 WAS INSIDE THE HOUSE?

27 MR. GOUDY: OBJECTION. MISSTATED AS SAID, "I WANT
28 YOU TO GO INTO THE HOUSE."

1 THE COURT: OVERRULED. IT'S CROSS-EXAMINATION.

2 THE WITNESS: DO I HAVE TO ANSWER THAT?

3 THE COURT: YOU CAN ANSWER THAT, IF YOU CAN.

4 THE WITNESS: I JUST WANTED HIM TO LEAVE.

5 BY MR. EVANS:

6 Q UNDERSTOOD, BUT DID YOU WANT -- DID YOU
7 WANT TO STAY IN THE GARAGE, OR DID YOU WANT TO GO INTO
8 THE HOUSE AND BE WITH YOUR FAMILY AND CHILDREN?

9 A THAT THOUGHT NEVER RAN THROUGH MY MIND,
10 SO -- I JUST WANTED HIM TO LEAVE, PERIOD.

11 Q OKAY. SO IT DIDN'T MATTER TO YOU IF YOU
12 STAYED IN THE GARAGE?

13 MR. GOUDY: OBJECTION. ARGUMENTATIVE.

14 THE COURT: OVERRULED.

15 YOU MAY ANSWER.

16 THE WITNESS: WELL, YEAH, I WANTED TO BE WITH MY
17 KIDS.

18 BY MR. EVANS:

19 Q NOW, YOU WALK INTO THE HOUSE, AND YOU SEE
20 YOUR SISTER FACE DOWN ON THE FLOOR?

21 A NO.

22 Q YOU DIDN'T SEE YOUR SISTER FACE DOWN ON THE
23 FLOOR?

24 A MY KIDS WERE FACE DOWN ON THE FLOOR.

25 Q AND THAT MAY HAVE BEEN ME. I DIDN'T HEAR
26 THAT. I THOUGHT YOU SAID SISTER.

27 BUT YOUR KIDS WERE ALSO FACE DOWN ON THE
28 FLOOR; CORRECT?

1 A MY KIDS WERE FACE DOWN ON THE FLOOR.

2 Q NOW, YOU INDICATED THAT THE PERSON THAT WAS
3 IN THE GARAGE, THAT PERSON WAS TALLER THAN YOU?

4 A YES.

5 Q HOW MUCH TALLER?

6 A I DON'T KNOW, BUT HE WAS TALLER THAN ME.

7 Q SIGNIFICANTLY?

8 MR. GOUDY: OBJECTION. VAGUE.

9 THE COURT: SUSTAINED.

10 BY MR. EVANS:

11 Q WOULD YOU SAY HE WAS AT LEAST SIX INCHES
12 TALLER THAN YOU?

13 A I WOULDN'T KNOW. HE WAS TALLER THAN ME. I
14 DIDN'T MEASURE HIM, BUT HE WAS TALLER THAN ME.

15 Q WOULD YOU SAY HE WAS AT LEAST A HEAD SIZE
16 TALLER THAN YOU?

17 A NO.

18 Q HE WASN'T?

19 A NO.

20 Q WOULD IT BE FAIR TO SAY THAT HE WAS A THIN
21 BUILD?

22 A I DON'T KNOW.

23 Q WAS HE OVERWEIGHT?

24 A NO. HE WASN'T OVERWEIGHT.

25 Q WAS HE THIN?

26 A HE WAS -- HE WAS A MEDIUM BUILD, I GUESS.

27 I AM NOT SURE. TO BE HONEST WITH YOU, I AM NOT SURE.

28 Q YOU'RE NOT SURE OF HIS BUILD?

1 A CORRECT.

2 Q WAS HE WEARING LOOSE OR TIGHT CLOTHING?

3 A HE WAS WEARING LOOSE -- A LOOSE TOP.

4 Q AND WHEN YOU SAY "TOP," WHAT ARE YOU
5 REFERRING TO?

6 A LIKE A JACKET.

7 Q NOW, THE INDIVIDUAL -- IF I SAID TO YOU IN
8 YOUR MIND -- IS THERE A DIFFERENCE BETWEEN MEDIUM BUILD
9 AND HEAVY BUILD?

10 A YES.

11 Q IS THERE A DIFFERENCE BETWEEN HEAVY BUILD
12 AND MUSCULAR BUILD?

13 A YES.

14 Q WOULD THERE BE A DIFFERENCE BETWEEN MEDIUM
15 BUILD AND MUSCULAR BUILD TO YOU? WOULD THAT BE A FAIR
16 STATEMENT?

17 A YES.

18 Q AND PERSON THAT WAS IN THE GARAGE WAS
19 APPROXIMATELY MEDIUM BUILD; CORRECT?

20 MR. GOUDY: OBJECTION. ASKED AND ANSWERED.

21 THE COURT: SUSTAINED.

22 BY MR. EVANS:

23 Q SO ON THE MARCH EVENING OF NOVEMBER 23RD,
24 2008, YOU SAW TWO PEOPLE THAT YOU DIDN'T RECOGNIZE AS
25 FAMILY MEMBERS IN THE GARAGE OR IN THE HOUSE?

26 A YES.

27 Q THE ONE INDIVIDUAL WHO WAS IN THE GARAGE
28 HAD THE SKI MASK WITH ONLY THE EYES; CORRECT?

1 A YES.

2 Q AND THE OTHER INDIVIDUAL DIDN'T HAVE ANY
3 SKI MASK ON; CORRECT?

4 A CORRECT.

5 Q JUST SO WE ARE CLEAR, THE INDIVIDUAL WHO
6 DID NOT HAVE A SKI MASK ON, IS HE IN COURT TODAY?

7 A NO.

8 Q NOW, YOU INDICATED YOU NOTICED THAT YOUR
9 WALLET WAS TAKEN ON THE NIGHT OF -- OR YOUR WALLET WAS
10 MISSING?

11 A YES.

12 Q ON THE NIGHT OF NOVEMBER 23RD, 2008;
13 CORRECT?

14 A YES.

15 Q IT'S FAIR TO SAY THAT YOU DID NOT SEE
16 ANYONE TAKE THE WALLET; CORRECT?

17 A NO.

18 Q THAT'S INCORRECT OR IT'S CORRECT?

19 A I DIDN'T SEE ANYBODY TAKE IT. I NOTICED
20 THAT THEY TOOK IT BECAUSE MY PURSE WAS -- WHATEVER I HAD
21 IN MY PURSE WAS ON THE BED, AND THEY HAD TAKEN EVERYTHING
22 ELSE. SO EVERYTHING WAS ON MY BED.

23 Q OKAY. LET'S GO BACK. ALL RIGHT? AS YOU
24 TESTIFIED PREVIOUSLY, YOU DIDN'T SEE ANYONE GO IN YOUR
25 BEDROOM; CORRECT?

26 A CORRECT.

27 Q AND YOU NEVER SAW ANYONE ACTUALLY TAKE THE
28 WALLET; CORRECT?

1 A CORRECT.

2 Q SO THE WALLET WAS NEVER TAKEN FROM YOUR
3 PERSON OR PERSONAL PRESENCE OR IN THE SURROUNDING AREA
4 THAT YOU WERE IN WHERE YOU COULD OBSERVE; CORRECT?

5 A CORRECT.

6 Q WHAT YOU DID OBSERVE WAS AFTER THE
7 INDIVIDUALS -- THE TWO INDIVIDUALS THAT YOU SAW IN THE
8 HOUSE, AFTER THEY HAD LEFT, YOU WENT INTO YOUR BEDROOM
9 AND YOU SAW YOUR PURSE HAD BEEN -- IT WAS ON THE BED;
10 CORRECT?

11 A YES.

12 Q AND YOU PREVIOUSLY REMEMBERED IT BEING ON
13 THE NIGHTSTAND?

14 A CORRECT.

15 Q AND THAT WAS IN A SEPARATE AREA FROM THE
16 BED; CORRECT?

17 A IT'S RIGHT IN FRONT OF MY BED.

18 Q AND YOU NOTICED THAT THE ITEMS THAT YOU
19 PREVIOUSLY REMEMBERED THAT WERE INSIDE THE PURSE WERE NOW
20 ON THE BED?

21 A CORRECT.

22 Q AND THAT YOU -- IN YOUR MIND, YOU THOUGHT
23 SOMEONE MUST HAVE TURNED YOUR PURSE OVER AND SHOOK IT AND
24 TRIED TO EMPTY IT?

25 A THEY DID, BECAUSE I NEVER LEAVE MY PURSE ON
26 THE BED. IT'S ALWAYS ON THE NIGHTSTAND.

27 Q BUT YOU DIDN'T SEE SOMEONE DO THAT?

28 A CORRECT.

1 Q NOW, ON JUNE 2ND, 2009, YOU MET WITH
2 DETECTIVE CHISM, WHO IS RIGHT OVER HERE (INDICATING),
3 SEATED TO MY LEFT; CORRECT?

4 A YES.

5 Q AND HE CAME TO SHOW YOU A SIX-PACK OF
6 PHOTOGRAPHS; CORRECT?

7 A YES.

8 Q NOW, PRIOR TO YOU LOOKING AT THOSE
9 PHOTOGRAPHS, YOU HAD RECEIVED A LETTER IN THE MAIL
10 INDICATING THAT TAUMU JAMES WAS A SUSPECT IN THE CASE YOU
11 WERE INVOLVED WITH; CORRECT?

12 A I DON'T REMEMBER WHEN WE RECEIVED THE
13 LETTER, BUT WE DID RECEIVE A LETTER.

14 Q AND IT WAS PRIOR TO THE TIME THAT YOU MET
15 WITH DETECTIVE CHISM?

16 A I DON'T REMEMBER.

17 Q WOULD YOU HAVE RECEIVED THE LETTER AFTER
18 YOU TALKED TO DETECTIVE CHISM?

19 A I DON'T REMEMBER. IT WAS A WHILE AGO, SO I
20 DON'T REMEMBER THE TIME WHEN WE RECEIVED THE LETTER AND
21 WHEN HE WENT.

22 Q SO WHEN YOU RECEIVED THE LETTER -- LET'S GO
23 TO THAT POINT. WHEN YOU RECEIVED THE LETTER AND YOU READ
24 THE NAME TAUMU JAMES, WAS THAT THE FIRST TIME YOU HAD
25 EVER SEEN OR HEARD THAT NAME?

26 A YES.

27 MR. EVANS: ONE MOMENT.

28 (SHORT PAUSE IN THE PROCEEDINGS.)

1
2 MR. EVANS: I HAVE NOTHING FURTHER OF THIS
3 WITNESS AT THIS TIME. THANK YOU.

4 THE COURT: THANK YOU, MR. EVANS.

5 REDIRECT, MR. GOUDY?

6 MR. GOUDY: YES, YOUR HONOR.
7

8 REDIRECT EXAMINATION

9 BY MR. GOUDY:

10 Q WHEN YOU WERE IN THE GARAGE AND THIS PERSON
11 CAME IN WITH THE MASK AND THE GUN AND THEN HELD A GUN TO
12 YOUR HEAD, DID HE ASK YOU IF YOU WANTED TO GO BACK INTO
13 YOUR HOUSE?

14 A NO.

15 Q WELL, YOU WENT BACK INTO YOUR HOUSE,
16 DIDN'T YOU?

17 A YES.

18 Q WHY?

19 A BECAUSE HE TOLD ME TO GO INTO THE HOUSE.

20 Q AND WHILE YOU WERE GOING FROM THE GARAGE
21 INTO YOUR HOUSE, WHERE WAS THE GUN?

22 A ON MY BACK.

23 Q HE HAD IT POINTED AT YOU?

24 A YES.

25 Q AT ANY POINT IN TIME DID HE GIVE YOU AN
26 OPTION TO STAY IN THE GARAGE INSTEAD OF GOING INTO THE
27 HOUSE?

28 A NO.

1 Q NOW, YOU INDICATED THAT YOU WANTED TO BE
2 WITH YOUR CHILDREN; IS THAT CORRECT?

3 A YES.

4 Q WHY AT THAT PARTICULAR TIME DID YOU WANT TO
5 BE WITH YOUR CHILDREN?

6 A BECAUSE I WANTED TO SEE HOW THEY WERE
7 DOING.

8 Q DID YOU WANT TO BE WITH YOUR CHILDREN WITH
9 MASKED GUNMEN POINTING GUNS AT THEM OR HOLDING GUNS?

10 A NO.

11 Q BUT YOU WANTED TO BE WITH THEM AT THAT
12 POINT IN TIME WHILE THIS WAS ALL HAPPENING; CORRECT?

13 A YES.

14 Q NOW, WHEN THE PERSON WITH THE MASK AND THE
15 GUN PUT THEIR HAND OVER YOUR MOUTH AND POINTED THE GUN AT
16 YOUR HEAD, DID YOU REACH AROUND TO FEEL HIS BODY SHAPE?

17 A NO.

18 Q DID YOU CHECK TO SEE IF HE WAS MUSCULAR OR
19 THIN UNDERNEATH THE LOOSE JACKET THAT HE WAS WEARING?

20 A NO.

21 Q WHEN YOU GOT INTO THE HOUSE BEFORE YOU WERE
22 ORDERED TO LAY DOWN ON THE GROUND NEXT TO YOUR CHILDREN,
23 DID YOU REACH UP AND GRAB THE PERSON WITH THE MASK AND
24 THE GUN TO SEE WHAT BUILD THEIR BUILD WAS?

25 A NO.

26 Q WHEN YOU WERE TOLD BY THE MAN WITH THE GUN
27 TO DO SOMETHING, DID YOU COMPLY?

28 A MEANING --

1 Q DID YOU DO IT?

2 A YES.

3 Q WHY?

4 A BECAUSE I DON'T WANT --

5 MR. EVANS: IRRELEVANT.

6 THE COURT: OVERRULED.

7 THE WITNESS: BECAUSE I DIDN'T WANT HIM TO SHOOT

8 ME.

9 BY MR. GOUDY:

10 Q WHEN YOU LOOKED AROUND YOUR HOUSE AND SAW
11 THAT YOUR PURSE AND STUFF HAD BEEN DUMPED OUT OF YOUR
12 PURSE AND YOUR WALLET WASN'T THERE, HAD YOU PLACED YOUR
13 WALLET IN YOUR BEDROOM?

14 A IN MY PURSE, IN MY BEDROOM.

15 Q IN YOUR BEDROOM?

16 A YES.

17 Q AND WHERE DID YOU PLACE IT?

18 A ON THE SHELF RIGHT NEXT TO MY BED.

19 Q AND AFTER THESE INTRUDERS HAD LEFT, YOUR
20 PURSE WAS IN A DIFFERENT CONDITION?

21 A IT WAS ON THE BED, FLIPPED OVER.

22 Q AND THE STUFF THAT WAS INSIDE THE PURSE
23 WAS --

24 A ALL OVER.

25 Q IT WAS ALL OVER?

26 A YES.

27 Q AND FROM THE TIME THAT THE MASKED GUNMAN
28 SHOWED UP AT YOUR HOUSE TO WHEN THEY LEFT, HOW LONG --

1 HOW MUCH TIME PASSED?

2 A I DON'T REMEMBER.

3 Q A LONG TIME? A SHORT TIME?

4 A IT WAS A SHORT TIME.

5 Q DURING THAT TIME PERIOD DID YOU SEE ANYONE
6 ELSE COME INTO YOUR HOUSE BESIDES THE ARMED INTRUDERS OR
7 SOMEONE FROM YOUR FAMILY?

8 A NO.

9 Q THE HOUSE THAT YOU WERE IN -- THAT YOU LIVE
10 IN FROM THE LIVING ROOM TO YOUR BEDROOM IS HOW FAR?

11 A IT'S NOT THAT FAR.

12 Q LET'S SAY YOU'RE STANDING IN THE LIVING
13 ROOM, AT THE BEGINNING OF THE HALLWAY, GOING BACK TO YOUR
14 BEDROOM. OKAY? YOU GOT THAT?

15 A FROM THE BEGINNING OF THE HALLWAY TO --

16 Q LET SAY YOU'RE STANDING RIGHT HERE
17 (INDICATING).

18 MR. GOUDY: AND FOR THE RECORD, YOUR HONOR, I AM
19 POINTING TO A HALLWAY SEPARATING THE BATHROOM AND THE
20 BEDROOM WITH "R.G.," "F.G.," THAT HALLWAY.

21 THE COURT: AND THIS IS ON PEOPLE'S 1?

22 MR. GOUDY: PEOPLE'S 1.

23 BY MR. GOUDY:

24 Q THAT HALLWAY, YOU ARE STANDING RIGHT THERE?

25 A UH-HUH.

26 Q HOW FAR AWAY IS YOUR BEDROOM? I AM THE
27 WALL TO YOUR BEDROOM. HOW FAR AWAY IS YOUR BEDROOM? IN
28 OTHER WORDS, HOW LONG IS THE HALLWAY?

1 A IT'S SHORT. LIKE 5 FEET IF YOU WALK LIKE
2 FIVE OR SIX STEPS, I WOULD SAY.

3 Q I WILL WALK TOWARDS YOU. IS IT CLOSER THAN
4 WHERE I AM STANDING TO YOU RIGHT NOW?

5 A YES.

6 Q I WILL WALK TOWARDS YOU. TELL ME TO STOP
7 WHEN I GET TO THE LENGTH OF THE HALLWAY. LIKE RIGHT
8 THERE (INDICATING).

9 MR. GOUDY: ABOUT 8 FEET, YOUR HONOR?

10 THE COURT: ONE MOMENT. APPROXIMATELY.
11 BY MR. GOUDY:

12 Q WHEN THE MASKED ARMED INTRUDER LEFT, DID
13 YOU SEE WHICH WAY -- HOW THEY LEFT YOUR HOUSE?

14 A NO.

15 Q DID YOU HEAR THEM?

16 A I JUST HEARD PEOPLE RUNNING.

17 Q DID YOU HEAR THE DOORBELL RING, THE ALARM?

18 A I DON'T REMEMBER.

19 Q AT THE TIME THAT YOU LEFT, YOU WERE IN THE
20 HALLWAY BY YOUR BEDROOM?

21 A YES.

22 MR. GOUDY: NOTHING FURTHER.

23 THE COURT: FURTHER RECROSS INTO THAT AREA?

24 MR. EVANS: BRIEFLY.

25

26 RECROSS-EXAMINATION

27 BY MR. EVANS:

28 Q WHEN YOU ARE INITIALLY IN THE GARAGE BY

1 YOURSELF AND YOU NOTICE THAT THERE'S AN INDIVIDUAL IN THE
2 GARAGE WEARING A SKI MASK, THAT WAS A SIGNIFICANT EVENT
3 FOR YOU. FAIR STATEMENT?

4 A WHAT DO YOU MEAN, "SIGNIFICANT"?

5 Q MEANING THAT IT WAS SOMETHING THAT IMPACTED
6 YOU OR WAS SO OUT OF THE ORDINARY THAT IT WAS SOMETHING
7 VERY DISTINGUISHABLE TO YOU. IS THAT A FAIR STATEMENT?

8 A YES.

9 Q AND WHEN YOU SEE THAT PERSON FOR THE FIRST
10 TIME, YOUR FOCUS IS ON HIM; CORRECT?

11 A YES.

12 Q ALL RIGHT. AND YOU REMEMBER -- I MEAN, AS
13 YOU SIT HERE TODAY, YOU CAN REMEMBER THAT MOMENT VERY
14 VIVIDLY IN YOUR MIND. IS THAT A FAIR STATEMENT?

15 A I REMEMBER IT.

16 Q OKAY. AND HOW CLOSE WAS THAT PERSON WHO
17 WAS IN THE GARAGE TO YOU AT THE CLOSEST TIME WHEN YOU
18 WERE IN THE GARAGE?

19 A CAN YOU REPEAT IT AGAIN? I AM SORRY.

20 Q I MEAN, HE WAS RIGHT NEXT TO YOU, RIGHT,
21 PHYSICALLY TOUCHING YOU AT SOME POINT; RIGHT?

22 A YES, WHEN HE HAD HIS -- WHEN HE WAS, LIKE,
23 HOLDING ON TO ME TO SHUT UP, YEAH.

24 Q AND HE'S WITHIN A FOOT OF YOU FOR THE
25 MAJORITY OF THE TIME THAT YOU ARE WITH HIM; CORRECT? I
26 MEAN, NOT ALL THE TIME. I MEAN, HE WALKS INTO THE
27 GARAGE, BUT EVENTUALLY HE MOVES TOWARDS YOU; CORRECT?

28 A YES.

1 Q AND HE STAYS IN THAT CLOSE PROXIMITY WITHIN
2 A FOOT OF YOU UNTIL YOU GO INTO THE HOUSE TOGETHER;
3 CORRECT?

4 A WELL, HE WAS -- HE GRABBED ME, AND THEN HE
5 TOLD ME TO GO INSIDE THE HOUSE.

6 Q I MEAN, THE MAJORITY OF TIME THAT YOU'RE
7 WITH HIM, HE'S WITHIN ARM'S LENGTH OF YOU. FAIR
8 STATEMENT?

9 A HE WALKED TOWARD ME AND HE GRABBED ME.
10 AFTER I SHUT UP -- HE TOLD ME TO SHUT UP, I CALMED DOWN A
11 LITTLE BIT FROM YELLING, AND THEN HE TOLD ME TO GO INSIDE
12 THE HOUSE.

13 Q AND WHEN YOU WALKED IN THE HOUSE WITH HIM,
14 HE'S RIGHT BEHIND YOU; CORRECT?

15 A YES.

16 Q AND YOU'RE KEEPING YOUR EYE ON HIM BECAUSE
17 HE HAS A GUN; RIGHT?

18 A HE'S BEHIND ME, SO I CAN'T SEE HIM WHEN WE
19 ARE WALKING IN THE HOUSE.

20 Q BUT BEFORE YOU WALK IN THE HOUSE, YOU'RE
21 KEEPING YOUR EYE ON HIM BECAUSE HE HAS A GUN; CORRECT?

22 A WHEN HE WAS WALKING TOWARDS ME, I WAS
23 KEEPING AN EYE ON HIM. AFTER THAT, HE WAS BEHIND ME
24 BECAUSE HE WAS -- HE HAD HIS HAND OVER MY MOUTH, AND HE
25 HAD A GUN TO MY HEAD.

26 Q AS YOU'RE LOOKING AT ME TODAY, DO YOU NEED
27 TO PAT ME DOWN TO KNOW WHAT KIND OF BUILD I HAVE AS A
28 PERSON?

1 A NO, BECAUSE YOUR SHIRT IS --

2 Q OKAY. DO YOU NEED TO PAT ME DOWN TO KNOW
3 WHAT KIND OF BUILD I HAVE?

4 A NO.

5 Q AS I STAND HERE AND MR. GOUDY STOOD UP AND
6 QUESTIONED YOU, CAN YOU TELL THE DIFFERENCE BETWEEN MY
7 BUILD AND MR. GOUDY'S BUILD JUST BY LOOKING AT US?

8 A YES.

9 Q YOU DON'T NEED TO PAT US DOWN OR TOUCH US
10 TO KNOW WHAT KIND OF BUILD WE HAVE TO KNOW THE DIFFERENCE
11 BETWEEN US; CORRECT?

12 A YES.

13 MR. EVANS: NOTHING FURTHER.

14 THE COURT: RE-REDIRECT?

15

16 FURTHER REDIRECT EXAMINATION

17 BY MR. GOUDY:

18 Q AS I STAND NEXT TO MR. EVANS, DO I HAVE A
19 BIGGER BUILD THAN HE DOES?

20 A YES.

21 Q IS HE A -- WHAT KIND OF BUILD DOES
22 MR. EVANS HAVE?

23 A SMALL.

24 Q WHAT KIND OF BUILD DO I HAVE?

25 A BIG.

26 Q IT'S OKAY. YOU CAN SAY IT. I KNOW. I SEE
27 MYSELF IN THE MIRROR EVERY DAY.

28 MR. GOUDY: YOUR HONOR, MAY THE DEFENDANT STAND

1 UP?

2 THE COURT: ALL RIGHT.

3 BY MR. GOUDY:

4 Q LOOKING AT US, WHAT KIND OF BUILD DO I
5 HAVE?

6 A YOU'RE HEAVY.

7 Q WHAT KIND OF BUILD DOES HE (INDICATING)
8 HAVE?

9 A HE'S MEDIUM-ISH.

10 MR. GOUDY: NOTHING FURTHER.

11 THE COURT: ALL RIGHT. RE-RE CROSS.

12

13 FURTHER RE CROSS-EXAMINATION

14 BY MR. EVANS:

15 Q I WANT YOU TO FOCUS ON THE ARMS, THE
16 SHOULDERS, THE NECK.

17 THE COURT: COUNSEL IS REFERRING TO MR. JAMES.

18 MR. EVANS: MR. JAMES.

19 BY MR. EVANS:

20 Q MR. JAMES HAS A MUSCULAR BUILD. FAIR
21 STATEMENT?

22 A I AM -- I CAN'T SEE HIS MUSCLES.

23 Q YOU CAN'T SEE HIS MUSCLES?

24 A NO. HE'S MEDIUM BUILD.

25 MR. EVANS: YOUR HONOR, IF I MAY, MAY HE BE
26 ALLOWED, MR. JAMES, TO WALK CLOSER?

27 THE COURT: DO YOU NEED HIM --

28 THE WITNESS: I DON'T WANT HIM NEAR ME.

1 THE COURT: DO YOU NEED HIM CLOSER TO ANSWER THE
2 QUESTION?

3 THE WITNESS: NO.

4 THE COURT: NO. YOUR REQUEST IS DENIED.

5 BY MR. EVANS:

6 Q SO YOU'RE SAYING YOU CAN'T TELL IF HE HAS A
7 MUSCULAR BUILD?

8 A NO.

9 Q SO THE ANSWER IS YES? YOU CAN OR YOU
10 CANNOT?

11 A NO.

12 Q CAN YOU TELL IF HE HAS A MUSCULAR BUILD OR,
13 NO, YOU DON'T THINK HE HAS A MUSCULAR BUILD?

14 A NO, I DON'T THINK.

15 Q YOU DON'T THINK HE DOES?

16 A NO.

17 MR. EVANS: NOTHING FURTHER.

18 THE COURT: ANYTHING FURTHER?

19 MR. GOUDY: NO, YOUR HONOR.

20 THE COURT: MAY THIS WITNESS STEP DOWN?

21 MR. GOUDY: YES.

22 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY
23 STEP DOWN.

24 YOU MAY CALL YOUR NEXT WITNESS.

25 MR. GOUDY: THE PEOPLE CALL DEPUTY CARIAGA.

26 ///

27 SEAN CARIAGA,

28 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND

1 TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

3 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE
4 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
5 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
6 TRUTH, SO HELP YOU GOD.

7 THE WITNESS: YES, I DO.

8 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

9 FOR THE RECORD, PLEASE STATE AND SPELL YOUR
10 FULL NAME.

11 THE WITNESS: MY NAME IS SEAN CARIAGA, S-E-A-N
12 C-A-R-I-A-G-A.

13 THE COURT: ALL RIGHT. YOU MAY BEGIN.

14

15 DIRECT EXAMINATION

16 BY MR. GOUDY:

17 Q SIR, WHAT IS YOUR OCCUPATION AND
18 ASSIGNMENT?

19 A I AM A DEPUTY SHERIFF FOR THE COUNTY OF
20 LOS ANGELES ASSIGNED TO INDUSTRY PATROL.

21 Q WAS THAT YOUR ASSIGNMENT ON NOVEMBER 23RD
22 OF 2008?

23 A YES, SIR.

24 Q AT APPROXIMATELY 8:45 IN THE EVENING, DID
25 YOU GO TO 14050 TRAILSIDE DRIVE?

26 A YES, SIR.

27 Q AND WHAT TOWN IS THAT IN?

28 A AN AREA THAT WE REFER TO AS BASSETT, BUT IT

1 IS ALSO REFERRED TO AS AVOCADO HEIGHTS, AND SOME PEOPLE
2 EVEN REFER TO IT AS WHITTIER.

3 Q AND WHEN YOU GOT TO THAT LOCATION, DID YOU
4 COME INTO CONTACT WITH ANY INDIVIDUALS?

5 A YES. SEVERAL.

6 Q AND WERE THEY RESIDENTS OF THAT ADDRESS?

7 A YES, SIR.

8 Q HAVE YOU SEEN ANY OF THOSE RESIDENTS IN THE
9 COURTHOUSE TODAY?

10 A YES, I HAVE.

11 Q THE LADY WHO JUST WALKED OUT OF THE
12 COURTROOM, DID YOU RECOGNIZE HER?

13 A SHE WAS ONE OF THE RESIDENTS THERE, YES.

14 Q WHEN YOU ARRIVED AT THAT LOCATION, DID YOU
15 SPEAK TO THE RESIDENTS ABOUT ANYTHING THAT HAD HAPPENED
16 THAT DAY?

17 A YES.

18 Q SPECIFICALLY, DID YOU TALK TO THE LADY WHO
19 JUST LEFT THE COURTROOM?

20 A SHE WAS ONE OF THE WOMEN I TALKED TO.

21 Q DO YOU RECALL HER NAME?

22 A NO, I DON'T.

23 Q AND WHEN YOU SPOKE TO THE LADY WHO JUST
24 LEFT, DID YOU TALK TO HER ABOUT SOME MEN WHO HAD COME
25 INTO HER HOUSE?

26 A YES.

27 Q AT SOME POINT IN TIME WERE OTHER UNITS
28 DISPATCHED TO THAT LOCATION?

1 A YES.

2 Q HOW MANY UNITS?

3 A I DON'T KNOW. I IMAGINE A LOT OF THE
4 STATIONS WERE CALLED.

5 Q WERE YOU WORKING ALONE OR WITH A PARTNER?

6 A A PARTNER.

7 Q WHO WAS THAT?

8 A DEPUTY TISCARENO.

9 Q IS THAT T-I-S-C-A-R-E-N-O?

10 A YES.

11 Q HOW LONG WERE YOU AT THAT LOCATION?

12 A I KNOW OUR ENTIRE INVESTIGATION LASTED
13 ABOUT 16 HOURS, AND I BELIEVE I WAS THERE FOR PROBABLY
14 ABOUT -- AT THE HOUSE PROBABLY THE FIRST TWO HOURS OR
15 SO.

16 Q WERE YOU THE FIRST UNIT TO ARRIVE AT THE
17 SCENE?

18 A I BELIEVE SO. YES, WE WERE, IN FACT.

19 MR. GOUDY: IF I MAY APPROACH, YOUR HONOR.

20 THE COURT: YOU MAY.

21 BY MR. GOUDY:

22 Q SHOWING YOU WHAT HAS BEEN MARKED AS
23 PEOPLE'S 2 FOR IDENTIFICATION, DO YOU RECOGNIZE WHAT THIS
24 IS A DIAGRAM OF?

25 A YES. IT'S A DIAGRAM OF THE AVOCADO HEIGHTS
26 AREA.

27 Q AND DURING THE COURSE OF THE INVESTIGATION,
28 WAS THERE LIKE A COMMAND CENTER SET UP?

1 A YES.

2 Q WHERE WAS THAT AT?

3 A IT WAS LOCATED IN THE PARKING LOT OF VALLEY
4 CONTINUATION HIGH SCHOOL.

5 Q WHERE IS THAT LOCATED AT?

6 A IT'S AT THE CORNER OF LOMITAS AND 5TH.

7 Q SHOWING YOU ON PEOPLE'S 2 FOR
8 IDENTIFICATION, THERE'S SOME LETTERS, V.H.S., THERE
9 (INDICATING). IS THAT THE LOCATION OF THE HIGH SCHOOL?

10 A YES, SIR.

11 Q AT SOME POINT IN TIME DID YOU LEAVE THE
12 HOUSE WITH ANY OF THE RESIDENTS AND GO TO ANOTHER
13 LOCATION?

14 A YES.

15 Q AND WHERE DID YOU GO?

16 A I BROUGHT THEM TO THE PARKING LOT OF VALLEY
17 CONTINUATION HIGH SCHOOL.

18 Q HOW MANY RESIDENTS?

19 A WE TOOK THEM ALL SEPARATELY, AND I BELIEVE
20 THREE. I AM NOT POSITIVE, THOUGH.

21 Q WAS THE WITNESS WHO JUST LEFT THE
22 COURTROOM, THE LADY WHO JUST LEFT THE COURTROOM, WAS SHE
23 ONE OF THE ONES THAT YOU TOOK TO THE CONTINUATION HIGH
24 SCHOOL?

25 A I BELIEVE SO.

26 Q AND WHEN YOU TOOK THE RESIDENTS TO THAT
27 LOCATION, WHAT WAS THE PURPOSE?

28 A THE PURPOSE WAS TO DO A FIELD SHOW-UP OF A

1 PERSON THAT WE HAD IN CUSTODY.

2 Q AND WHAT IS A FIELD SHOW-UP?

3 A A FIELD SHOW-UP IS WHEN WE HAVE SOMEBODY IN
4 CUSTODY THAT WE BELIEVE MAY BE A PART OF THE CRIME. WE
5 BRING EACH OF THE VICTIMS SEPARATELY TO THE SUSPECT, AND
6 WE SHOW THEM THE SUSPECT AND WE ASK THEM TO EITHER
7 IDENTIFY OR ELIMINATE THAT PERSON AS A SUSPECT, IF THEY
8 CAN.

9 Q DO YOU ADMONISH THEM IN ANY WAY?

10 A YES, WE DO. WE HAVE AN ADMONISHMENT CARD
11 THAT WE READ TO THEM.

12 Q AND WHEN YOU TOOK THE LADY WHO JUST LEFT
13 THE COURTROOM TO THE CONTINUATION HIGH SCHOOL, DID YOU
14 ADMONISH HER?

15 A YES.

16 Q HOW DID YOU ADMONISH HER?

17 A WE HAVE A CARD THAT WE READ VERBATIM. I
18 DON'T HAVE IT WITH ME. I AM SORRY. BUT IT ADVISES THEM
19 THAT WE ARE ABOUT TO SHOW THEM SOMEBODY WHO MAY OR MAY
20 NOT BE INVOLVED IN THE CRIME THAT HAD JUST OCCURRED AND
21 THAT IT IS VERY IMPORTANT TO ELIMINATE INNOCENT PEOPLE
22 JUST AS IT IS TO IDENTIFY GUILTY PEOPLE AND ALSO NOT
23 TO -- THAT THEIR HAIRSTYLE AND DRESS MAY BE DIFFERENT
24 FROM WHEN THEY SAW THEM.

25 Q AND WHEN YOU TOOK THE LADY WHO JUST LEFT
26 THE COURTROOM TO THE CONTINUATION HIGH SCHOOL, DID SHE
27 IDENTIFY THE INDIVIDUAL?

28 MR. EVANS: OBJECTION. CALLS FOR HEARSAY.

1 THE COURT: OVERRULED.

2 THE WITNESS: YES, SHE DID.

3 BY MR. GOUDY:

4 Q HOW DID YOU SHE IDENTIFY?

5 A SHE SAID THAT HE WAS ONE OF THE PEOPLE
6 INVOLVED. I DON'T REMEMBER EXACTLY THE WORDS THAT SHE
7 USED. I DO HAVE IT IN MY REPORT, AND I CAN REFER TO
8 THAT.

9 Q WOULD THAT REFRESH YOUR RECOLLECTION?

10 A YES.

11 Q PLEASE DO SO.

12 A OKAY. THE WORDS THAT SHE USED WERE,
13 "THAT'S HIM."

14 Q DO YOU RECALL THE OTHER INDIVIDUALS THAT
15 YOU TOOK TO THAT LOCATION, THE OTHER RESIDENTS?

16 A YES.

17 Q WHO WERE THEY?

18 A THERE WAS THE MALE, THE FATHER, AND THE
19 MOTHER.

20 Q DID YOU SEE THEM TODAY?

21 A YES.

22 Q WHERE DID YOU SEE THEM?

23 A IN THE HALLWAY.

24 Q AT SOME POINT IN TIME DID YOU GO TO
25 545 SOUTH 5TH AVENUE?

26 A YES.

27 Q WHY DID YOU GO THERE?

28 A OUR AIRSHIP TOLD US THAT --

1 MR. EVANS: OBJECTION. CALLS FOR HEARSAY.

2 THE COURT: OVERRULED. I AM GOING TO ALLOW IT FOR
3 THE EFFECT ON THE LISTENER.

4 MR. GOUDY: THANK YOU.

5 THE COURT: SO LADIES AND GENTLEMEN, THIS ISN'T
6 FOR THE TRUTH OF THE MATTER ASSERTED BUT TO EXPLAIN WHY
7 THE DEPUTY TOOK THE ACTIONS THAT HE DID.

8 THE WITNESS: WE WERE TOLD BY OUR AIRSHIP THAT THE
9 OBSERVER SAW TWO BLACK MALES RUN INTO THE YARD OF 545
10 5TH AVENUE.

11 MR. EVANS: MOTION TO STRIKE. CALLS FOR HEARSAY.

12 THE COURT: OVERRULED. I HAVE ALREADY ADMONISHED
13 THE JURORS.

14 AGAIN, LADIES AND GENTLEMEN, IT'S NOT BEING
15 OFFERED FOR THE TRUTH OF THE MATTER ASSERTED BUT TO
16 EXPLAIN WHY THE DEPUTY WENT THERE.
17 BY MR. GOUDY:

18 Q AND WHEN YOU GOT THERE TO 545 SOUTH
19 5TH AVENUE, DID YOU FIND ANYTHING?

20 A YES.

21 Q DID YOU RECOVER SOMETHING?

22 A I DID RECOVER SEVERAL THINGS.

23 Q WHAT DID YOU RECOVER?

24 A WE HAD A CANINE SERGEANT THAT DID A CANINE
25 SEARCH, AND HE POINTED OUT SOME CLOTHING THAT WAS IN THE
26 YARD AT 545 5TH AVENUE.

27 Q AND WHEN YOU RECOVERED THEM, YOU TOOK
28 PHYSICAL POSSESSION OF THEM?

1 A YES.

2 Q AND WHAT WAS THAT?

3 A I BELIEVE THERE WAS A SWEATSHIRT, SOME
4 GLOVES, AND POSSIBLY A JUMPSUIT. I AM NOT -- I RECOVERED
5 CLOTHING FROM TWO SEPARATE LOCATIONS. SO I WOULD HAVE TO
6 REFER MY REPORT AGAIN.

7 Q WOULD LOOKING AT YOUR REPORT REFRESH YOUR
8 RECOLLECTION AS TO WHAT YOU RECOVERED FROM 545 SOUTH
9 5TH AVENUE?

10 A YES, IT WOULD.

11 Q COULD YOU DO SO.

12 A OKAY.

13 Q WHAT DID YOU RECOVER FROM 545 SOUTH
14 5TH AVENUE?

15 A WE RECOVERED A PAIR OF GLOVES, A BLACK
16 JUMPSUIT AND A -- I AM SORRY. I THINK A SKI MASK ALSO.

17 Q AND THAT WAS FROM 545?

18 A YES.

19 Q DID YOU RECOVER ANYTHING -- ANY CLOTHING
20 FROM ANY OTHER LOCATION?

21 A YES.

22 Q WHAT LOCATION WAS THAT?

23 A THAT WOULD HAVE BEEN 555 ON 5TH AVENUE.

24 Q DO YOU RECALL WHAT YOU RECOVERED FROM THAT
25 LOCATION?

26 A WE RECOVERED A SKI MASK. WE RECOVERED A
27 HOODIE SWEATSHIRT AND, I BELIEVE, A PAIR OF SWEATPANTS
28 AND, I BELIEVE, A PAIR OF GLOVES, AND INSIDE THE BLACK

1 SKI MASK WAS ALSO A GUN.

2 Q NOW, DID YOU RECOVER THE BLACK HOODIE
3 SWEATSHIRT FROM 545 OR 555?

4 A AGAIN, I AM NOT POSITIVE.

5 Q DO YOU HAVE THAT IN YOUR REPORT?

6 A YES.

7 Q COULD YOU REFRESH YOUR RECOLLECTION,
8 PLEASE.

9 A OKAY. WE RECOVERED A BLACK HOODIE
10 SWEATSHIRT, THERMALS, AND A PAIR OF GLOVES.

11 Q FROM WHERE?

12 A 545.

13 Q WHAT ABOUT THE SWEATPANTS?

14 A GRAY SWEATPANTS.

15 Q THAT WAS ALL 545 SOUTH 5TH AVENUE?

16 A YES.

17 Q NOW, FROM 555 SOUTH 5TH AVENUE, WHAT WAS
18 RECOVERED?

19 A I AM REFERRING TO MY REPORT AND --

20 Q DID YOU WRITE DOWN WHERE THESE ITEMS WERE
21 RECOVERED IN YOUR REPORT?

22 A YES, I DID.

23 Q AND AT THE TIME THAT YOU WROTE THAT DOWN,
24 DID YOU WRITE THAT DOWN WHEN IT WAS FRESH IN YOUR MIND?

25 A YES.

26 Q CAN YOU RECALL EXACTLY AT THIS POINT IN
27 TIME WHAT ITEM OF CLOTHING YOU RECOVERED FROM WHICH
28 LOCATION?

1 A WITHOUT LOOKING AT MY REPORT, I CANNOT.

2 Q OKAY. LOOKING AT YOUR REPORT, IS THAT
3 ACCURATE AS TO WHERE YOU RECOVERED THE ITEMS?

4 A YES.

5 Q FROM 555 SOUTH AVENUE, WHAT DID YOU
6 RECOVER?

7 A A PAIR OF GLOVES, A DARK BLUE JUMPSUIT, AND
8 A BLACK SKI MASK.

9 Q WAS THERE ANYTHING INSIDE THE SKI MASK?

10 A THERE WAS A GUN.

11 Q WHAT DID YOU DO WITH THOSE ITEMS?

12 A WE RECOVERED THEM AND BOOKED THEM INTO
13 EVIDENCE.

14 Q NOW, WHEN YOU BOOKED ITEMS INTO EVIDENCE,
15 WHAT DID YOU DO?

16 A THE CLOTHING WE PUT INTO A BROWN PAPER
17 BAG. WHEN WE BRING THEM TO THE STATION, WE PUT A LABEL
18 ON THEM, AND WE MAKE A DUPLICATE LABEL TO THAT AND PUT
19 THAT IN OUR EVIDENCE LEDGER AND WE ATTACH ONE OF THE
20 LABELS TO THE BAG, AND WE PLACE THE BAG INTO THE EVIDENCE
21 LOCKER.

22 Q DO YOU DO THE SAME IF YOU PUT THE ITEMS
23 INTO AN ENVELOPE?

24 A YES.

25 Q IS THERE ANY WAY THAT YOU DISTINGUISH THE
26 ITEMS FROM ONE ANOTHER?

27 A AS FAR AS A NUMBER?

28 Q YES.

1 A I AM NOT SURE WHAT YOU ARE ASKING.

2 Q YOU NUMBER EACH ITEM?

3 A YES.

4 Q AND DID YOU DO THAT IN THIS CASE?

5 A YES.

6 MR. GOUDY: FIRST, YOUR HONOR, STARTING WITH AN
7 EVIDENCE ENVELOPE WITH A WHITE LABEL ATTACHED TO IT ON
8 THE BACK WITH A NUMBER 408191821463035005, AND IT HAS
9 BOOKED BY SEAN CARIAGA ON THE BOTTOM RIGHT-HAND OF THE
10 LABEL, I WOULD ASK THAT THIS BE MARKED AS PEOPLE'S -- THE
11 ENVELOPE AND ITS CONTENTS BE MARKED AS PEOPLE'S 5 FOR
12 IDENTIFICATION.

13 THE COURT: IT WILL BE SO MARKED.

14

15 (MARKED FOR IDENTIFICATION
16 PEOPLE'S EXHIBIT NO. 5,
17 EVIDENCE ENVELOPE AND ITS
18 CONTENTS.)

19

20 MR. GOUDY: I AM MARKING A P-5 IN RED INK
21 UNDERNEATH THE EVIDENCE SEAL ON THE RIGHT CORNER.

22 MR. GOUDY: I HAVE A BROWN BAG. IT HAS AN
23 EVIDENCE LABEL WITH THE NUMBER 408191821463035006 WITH
24 THE NAME SEAN CARIAGA ON THE BOTTOM RIGHT-HAND PART OF
25 THE LABEL. I'D ASK THAT THIS BAG AND ITS CONTENTS BE
26 MARKED AS PEOPLE'S 6 FOR IDENTIFICATION.

27 THE COURT: IT WILL BE SO MARKED.

28 ///

1 (MARKED FOR IDENTIFICATION
2 PEOPLE'S EXHIBIT NO. 6,
3 EVIDENCE BAG AND ITS CONTENTS.)
4

5 MR. GOUDY: I AM MARKING A P-6 IN RED INK ON THE
6 UPPER RIGHT-HAND CORNER OF THE BAG ON THE SAME SIDE AS
7 THE LABEL.

8 I HAVE ANOTHER EVIDENCE ENVELOPE. IT HAS
9 THE NUMBER 408191821463035007 WITH THE NAME SEAN CARIAGA
10 ON THE BOTTOM RIGHT-HAND CORNER OF THE LABEL. I'D ASK
11 THAT THIS ENVELOPE AND ITS CONTENTS BE MARKED AS PEOPLE'S
12 NUMBER 7 FOR IDENTIFICATION.

13 THE COURT: IT WILL BE SO MARKED.
14

15 (MARKED FOR IDENTIFICATION
16 PEOPLE'S EXHIBIT NO. 7,
17 EVIDENCE ENVELOPE AND ITS
18 CONTENTS.)
19

20 MR. GOUDY: I AM MARKING A P-7 IN RED INK ON THE
21 RIGHT-HAND SIDE OF THE ENVELOPE UNDERNEATH THE EVIDENCE
22 SEAL.

23 MAY I APPROACH?

24 THE COURT: YOU MAY.

25 WHY DON'T WE GO AHEAD AND TAKE OUR
26 AFTERNOON RECESS NOW BEFORE WE START WITH THE ENVELOPES.

27 SO LADIES AND GENTLEMEN, KEEP IN MIND
28 COURT'S ADMONITION. WE ARE GOING TO TAKE A 20-MINUTE

1 RECESS. WE WILL SEE YOU BACK OUTSIDE IN 20 MINUTES.

2 YOU ARE ORDERED BACK HERE, DEPUTY, IN
3 20 MINUTES.

4 THE WITNESS: YES, YOUR HONOR.

5

6 (RECESS.)

7

8 THE COURT: WE ARE BACK ON THE RECORD IN PEOPLE
9 VERSUS JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE
10 PRESENT. ALL OF OUR JURORS AND OUR ALTERNATE JURORS ARE
11 PRESENT. THE DEPUTY IS BACK ON THE STAND.

12 SIR, I'D LIKE TO REMIND YOU THAT YOU REMAIN
13 UNDER OATH AT THIS TIME.

14 MR. GOUDY, YOU MAY CONTINUE YOUR DIRECT
15 EXAMINATION.

16 MR. GOUDY: THANK YOU, YOUR HONOR.

17 BY MR. GOUDY:

18 Q DEPUTY, BEFORE WE GET INTO SPECIFIC
19 EXHIBITS, DID YOU RECOVER ANY OTHER ITEMS OUT AT THE
20 SCENE?

21 A YES.

22 Q WHAT ELSE DID YOU RECOVER?

23 A WE ALSO RECOVERED A BLACK BEANIE CAP AND
24 ANOTHER PAIR OF GLOVES.

25 Q AND WHERE WERE THOSE RECOVERED?

26 A THOSE WERE RECOVERED IN THE AREA OF LOMITAS
27 AND REDBURN.

28 Q NOW, IF I MAY APPROACH, YOUR HONOR.

1 THE COURT: YOU MAY.

2 MR. GOUDY: LOOKING AT PEOPLE'S 2 FOR
3 IDENTIFICATION, WHERE IS REDBURN AT?

4 THE WITNESS: MAY I STEP TOWN?

5 THE COURT: YOU MAY.

6 THE WITNESS: IT'S THIS CUL-DE-SAC STREET RIGHT
7 HERE (INDICATING).

8 MR. GOUDY: AND I WILL WRITE "REDBURN" ON THAT
9 LINE.

10 FOR THE RECORD, YOUR HONOR, I HAVE WRITTEN
11 REDBURN, R-E-D-B-U-R-N, ON A ROAD WHICH APPEARS TO BE
12 JUST TO THE LEFT OF 5TH AVENUE AND ABOVE EAST LOMITAS.

13 THE COURT: ALL RIGHT. THE RECORD WILL SO
14 REFLECT.

15 BY MR. GOUDY:

16 Q IS THAT CORRECT WHERE REDBURN IS?

17 A YES.

18 Q NOW, WHEN YOU RECOVER ITEMS AND BOOK THEM
19 INTO EVIDENCE, HOW DO YOU KEEP THEM SEPARATE FROM ONE
20 ANOTHER?

21 A WE PUT THEM IN SEPARATE BAGS OR ENVELOPES.

22 Q AND YOU NUMBER THEM?

23 A YES.

24 Q AND DO YOU NUMBER THEM STARTING AT 1?

25 A YES.

26 Q AND GOING UP TO HOWEVER FAR?

27 A CORRECT.

28 Q HOW DO YOU DETERMINE WHAT IS NUMBER 1?

1 A USUALLY WHAT WE PICK UP FIRST. SOMETIMES
2 IT MIGHT BE SOMETHING THAT WE MIGHT THINK IS THE MOST
3 IMPORTANT PIECE OF EVIDENCE THAT WE WILL NUMBER AS
4 NUMBER 1.

5 Q NOW, IN ALL THE CASES -- LET'S SAY YOU HAVE
6 TEN CASES AND ITEMS OF EVIDENCE ARE RECOVERED. EACH ONE
7 WOULD HAVE SOMETHING THAT THEY WOULD START WITH 1;
8 CORRECT?

9 A YES.

10 Q HOW DO YOU KEEP THE EVIDENCE FROM EACH
11 INDIVIDUAL CASE SEPARATE?

12 A WITH WHAT WE CALL AN U.R.N. NUMBER.

13 Q U.R.N., U-R-N?

14 A U-R-N.

15 Q WHAT IS AN U.R.N. NUMBER?

16 A UNIFORM REPORT NUMBER.

17 Q AND WHAT IS -- WHAT IS THAT IN RELATIONSHIP
18 TO EACH CASE?

19 A EVERY REPORT THAT WE WRITE HAS A SEQUENTIAL
20 NUMBER. IT'S A FIVE-DIGIT SEQUENTIAL NUMBER. THE U.R.N.
21 NUMBER INCLUDES A FIVE-DIGIT SEQUENTIAL NUMBER, BUT IT
22 ALSO INCLUDES SEVERAL OTHER DIFFERENT NUMBERS. IT
23 INCLUDES A RETENTION NUMBER, WHICH MEANS HOW MANY YEARS
24 WE KEEP THAT IN OUR FILE. IT INCLUDES THE YEAR. IT
25 INCLUDES THE REPORTING DISTRICT, WHICH IS THE AREA, AND
26 IT ALSO INCLUDES A STATISTICAL CODE.

27 Q NOW, WHEN YOU SAY A SEQUENTIAL NUMBER, THAT
28 MEANS FOR EACH CASE OR EACH REPORT?

1 A EACH REPORT THAT WE TAKE -- THE SEQUENCE
2 STARTS ON JANUARY 1ST. THE VERY FIRST REPORT THAT'S
3 TAKEN IS 00071, AND IT GOES ON FROM THERE. SO EVERY TIME
4 WE WRITE A REPORT, IT ATTACHES TO A SEQUENTIAL NUMBER.

5 Q WHAT ABOUT IF THERE IS -- LET'S SAY IN THIS
6 CASE THERE WERE SUPPLEMENTAL REPORTS THAT WERE WRITTEN.
7 SO IT'S NOT YOUR INITIAL REPORT, BUT THERE ARE REPORTS
8 RELATING TO THE SAME CASE BUT ARE DONE AT DIFFERENT
9 TIMES. DO THEY HAVE A DIFFERENT SEQUENTIAL NUMBER?

10 A THEY HAVE THE SAME SEQUENTIAL NUMBER.

11 Q SO THE NUMBER -- THE SEQUENTIAL NUMBER
12 RELATES TO THE INCIDENT?

13 A CORRECT.

14 Q AS OPPOSED TO EACH REPORT?

15 A CORRECT.

16 Q BECAUSE EACH CASE COULD HAVE 100 REPORTS?

17 A YES.

18 Q AND THEY WOULD ALL HAVE HAD A SEQUENTIAL
19 NUMBER?

20 A CORRECT.

21 Q WHEN YOU BOOK ITEMS INTO EVIDENCE, DO YOU
22 INCLUDE THAT U.R.N. NUMBER?

23 A YES.

24 Q DOES IT ALSO INCLUDE THE ITEM NUMBER THAT
25 YOU DESIGNATED AS TO EACH ITEM OF EVIDENCE THAT YOU
26 BOOKED?

27 A YES.

28 MR. GOUDY: MAY I APPROACH, YOUR HONOR?

1 THE COURT: YOU MAY.

2 BY MR. GOUDY:

3 Q STARTING WITH WHAT HAS BEEN MARKED AS
4 PEOPLE'S 5 FOR IDENTIFICATION, DO YOU RECOGNIZE WHAT THIS
5 IS (INDICATING)?

6 A YES. THIS IS AN EVIDENCE ENVELOPE, AND IT
7 HAS THE EVIDENCE TAG, WHICH I HAD PRINTED UP, AND I ALSO
8 DO NOTICE MY HANDWRITING HERE WHERE IT SAYS "HOLD FOR
9 D.N.A."

10 Q NOW, ON THE TAG, THAT'S BASICALLY LIKE A
11 LABEL THAT'S ATTACHED TO THE ENVELOPE; CORRECT?

12 A CORRECT.

13 Q AND IT HAS AN U.R.N. NUMBER THERE?

14 A YES, IT DOES.

15 Q AND THAT U.R.N. NUMBER, IS THAT THE SAME
16 U.R.N. NUMBER RELATED TO YOUR REPORT FOR THE INCIDENT AT
17 14050 TRAILSIDE DRIVE?

18 A YES.

19 Q NOW, THE LAST THREE NUMBERS ON THAT U.R.N.
20 NUMBER ON PEOPLE'S 5 FOR IDENTIFICATION IS 005. WHAT IS
21 THAT NUMBER?

22 A THAT IS THE SEQUENCE OF EVIDENCE. THAT IS
23 THE NUMBER OF EVIDENCE.

24 Q SO THE THINGS THAT YOU RECOVERED ON
25 NOVEMBER 23RD, 2008, THIS WAS THE ITEM THAT YOU
26 DESIGNATED BASICALLY AS ITEM NUMBER 5?

27 A CORRECT.

28 Q AND THE NAME AT THE BOTTOM, SEAN CARIAGA,

1 IS THAT YOUR NAME?

2 A CARIAGA, YES.

3 Q CARIAGA. EXCUSE ME. AND IT HAS GOT YOUR
4 I.D. NUMBER?

5 A YES.

6 Q AND YOU RECOGNIZE YOUR WRITING. IS THERE
7 ANY OTHER WRITING ON THAT ENVELOPE?

8 A JUST WHERE IT SAYS "HOLD FOR D.N.A."

9 Q THE NUMBER K051469, IS THAT YOURS?

10 A NO.

11 Q AND THE INITIALS P.R. UNDER THE EVIDENCE
12 LABEL, ARE THOSE YOUR INITIALS?

13 A NO.

14 Q DID YOU WRITE THOSE INITIALS?

15 A NO.

16 Q DO YOU KNOW WHOSE INITIALS THOSE ARE?

17 A ACTUALLY, I DON'T.

18 Q AND WHEN YOU BOOK AN ITEM INTO EVIDENCE, DO
19 YOU SEAL THE EVIDENCE?

20 A SOME OF THE EVIDENCE IS ACTUALLY SEALED
21 WITH A SEAL SUCH AS THIS RED EVIDENCE TAG (INDICATING).
22 WHEN WE BOOKED THIS EVIDENCE, IT WAS NOT SEALED. IT WAS
23 JUST CLOSED WITH THE METAL TAB.

24 Q AND TO YOUR RECOLLECTION, ITEM NUMBER 5
25 THAT YOU DESIGNATED NUMBER 5, THE EVIDENCE, WHAT IS
26 CONTAINED INSIDE OF PEOPLE'S 5 FOR IDENTIFICATION?

27 A I AM LOOKING AT THE TAG. IT SAYS TWO
28 GLOVES, AND THAT'S WHAT IT FEELS LIKE.

1 THE COURT: I AM SORRY. IT WAS TWO GLOVES AND
2 WHAT?

3 THE WITNESS: TWO GLOVES, AND THAT'S WHAT IT FEELS
4 LIKE ALSO.

5 BY MR. GOUDY:

6 Q NOW, WHEN YOU BOOK -- WHEN YOU HAVE THE
7 LABEL THAT'S CREATED, DO YOU LIST WHAT THE ITEM IS?

8 A YES.

9 Q AND THAT'S ALSO PRINTED OUT?

10 A CORRECT.

11 Q WHAT ABOUT THE NAME THAT APPEARS? WHAT IS
12 THE NAME THAT APPEARS ON THE LABEL?

13 A THE NAME IS DION HAWKINS.

14 Q WHAT NAME WOULD THAT BE?

15 A THAT WAS THE PERSON THAT WE ARRESTED IN THE
16 FIELD.

17 Q IS THAT THE PERSON WHO YOU SAW, THE LADY
18 WHO LEFT THE COURTROOM, WHO HAD MADE THE IDENTIFICATION
19 AT THE VALLEY CONTINUATION HIGH SCHOOL?

20 MR. EVANS: CALLS FOR HEARSAY.

21 THE COURT: OVERRULED.

22 BY MR. GOUDY:

23 Q AND THERE'S A DATE AT THE TOP RIGHT?

24 A YES.

25 Q WHAT IS THAT DATE?

26 A THIS WOULD BE THE 24TH OF NOVEMBER 2008.

27 Q WHAT DOES THAT SIGNIFY?

28 A THAT IT WAS LATE IN THE MORNING WHEN WE

1 ACTUALLY BOOKED THIS INTO EVIDENCE THE NEXT DAY.

2 Q AND IT ALSO HAS THE TIME THERE; IS THAT
3 CORRECT?

4 A YES.

5 Q AND THAT'S THE TIME THAT YOU BOOKED IT INTO
6 EVIDENCE?

7 A YES.

8 Q SO WHEN YOU BOOK AN ITEM INTO EVIDENCE AND
9 YOU HAVE THE LABEL PRINTED OUT, IT GIVES YOU THE NAME OF
10 THE SUSPECT THAT'S TIED TO IT, THE U.R.N. NUMBER, THE
11 DESCRIPTION OF THE ITEM, THE DATE, THE TIME, AND THAT'S
12 ALSO SO YOU KNOW WHAT IT IS YOU'RE BOOKING; CORRECT?

13 A CORRECT.

14 Q COULD YOU OPEN UP PEOPLE'S 5 FOR
15 IDENTIFICATION?

16 A YES.

17 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE
18 WITNESS IS BREAKING THE RED EVIDENCE SEAL ON THE FLAP OF
19 THE ENVELOPE.

20 BY MR. GOUDY:

21 Q AND WHAT WAS INSIDE OF THE ENVELOPE?

22 A TWO GLOVES.

23 Q AND DO YOU RECOGNIZE THOSE GLOVES?

24 A YES.

25 Q WHAT ARE THEY?

26 A I RECOGNIZE THESE ARE GLOVES THAT I
27 BOOKED. I AM NOT POSITIVE -- I WOULD HAVE TO REFER TO MY
28 REPORT AS TO IF THESE WERE THE ONES THAT WERE FOUND IN

1 THE STREET OR IF THEY WERE THE ONES FOUND AT ONE OF THE
2 OTHER LOCATIONS.

3 Q BASICALLY TO REFRESH YOUR RECOLLECTION AS
4 TO WHAT ITEM 5 WAS?

5 A YES.

6 Q COULD YOU LOOK AT THE REPORT AND REFRESH
7 YOUR RECOLLECTION.

8 A BASED ON THE FACT THAT I BOOKED THE OTHER
9 SET OF TWO GLOVES, WHICH ARE NUMBER 10, I FOUND THIS IN
10 ONE OF THE YARDS. THESE TWO GLOVES HAVE TO BE THE ONES
11 THAT WE FOUND IN THE STREET. I AM MISTAKEN. I AM
12 SORRY.

13 Q WHERE WERE THOSE GLOVES FOUND?

14 A THESE GLOVES WERE RECOVERED AT 555
15 5TH AVENUE.

16 Q NOW, ON THESE GLOVES, WHEN YOU TOOK OUT THE
17 GLOVES, THERE WAS A SMALL LITTLE ENVELOPE THAT FELL THAT
18 HAS PART OF AN EVIDENCE TAG, AND IT SAYS "P-O-S-S HAIR
19 FIBER FROM GLOVE" WITH A NUMBER K051469 AND SOME INITIALS
20 THERE.

21 A YES.

22 Q WHEN YOU PUT THE GLOVES IN THAT ENVELOPE,
23 WAS THAT THERE?

24 A NO.

25 Q EACH GLOVE HAS A POST-IT NOTE STAPLED TO
26 IT. ONE HAS A.R. 6 WITH THAT SAME K051469 AND THE SAME
27 INITIALS. THE OTHER ONE HAS A.R. 7 WITH THE K051469 AND
28 THE SAME INITIALS. DID YOU PUT THAT ON THOSE GLOVES?

1 A NO.

2 Q YOU DID WRITE "HOLD FOR D.N.A."; IS THAT
3 CORRECT?

4 A THAT IS MY HANDWRITING, YES.

5 Q AND WHAT DID THAT DESIGNATE?

6 A THAT MEANS THAT WE WANT TO HOLD THAT FOR
7 THE LAB TO DO A D.N.A. ANALYSIS ON.

8 Q IF YOU CAN PUT ALL THE ITEMS BACK INTO
9 PEOPLE'S 5 FOR IDENTIFICATION.

10 A (WITNESS COMPLIES.)

11 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE
12 WITNESS HAS PUT THE TWO GLOVES IN THE MANILA ENVELOPE,
13 AND THE SMALL ENVELOPE BACK INTO THE LARGER EVIDENCE
14 ENVELOPE.

15 THE COURT: THE RECORD WILL SO REFLECT.
16 BY MR. GOUDY:

17 Q THERE IS ALSO A -- ATTACHED TO THE OUTSIDE
18 OF THE ENVELOPE, THERE IS A LAB RECEIPT NUMBER, A LAB
19 RECEIPT. HAVE YOU SEEN THESE BEFORE?

20 A YES.

21 Q AND WHAT IS THIS?

22 A IT'S A RECEIPT THAT WE ATTACH TO EVIDENCE
23 THAT IS GOING TO BE PROCESSED IN THE LAB.

24 Q AND DID YOU DO THIS LAB RECEIPT?

25 A NO. I DID NOT.

26 Q THERE IS A NUMBER IN THE UPPER RIGHT-HAND
27 CORNER, K051469. WHAT IS THAT?

28 A THAT IS THE LAB RECEIPT NUMBER. ALL THE

1 LAB RECEIPTS ARE NUMBERED IN SEQUENCE.

2 Q AND THAT'S THE SAME NUMBER THAT WAS ON THE
3 ENVELOPE AND ON THE TWO POST-IT NOTES THAT YOU PUT BACK
4 INTO THIS ENVELOPE?

5 A I WOULD HAVE TO LOOK AGAIN.

6 Q THAT'S FINE. I WILL WITHDRAW THAT.

7 LOOKING AT PEOPLE'S 6 FOR IDENTIFICATION,
8 DO YOU RECOGNIZE WHAT THIS IS (INDICATING)?

9 A YES. THIS IS A BROWN PAPER BAG. IT HAS AN
10 EVIDENCE ENVELOPE WITH MY NAME AND EMPLOYEE NUMBER ON IT,
11 AND IT ALSO HAS A "HOLD FOR D.N.A." IN MY WRITING.

12 Q AND THIS HAS THE SAME TYPE OF LABEL WITH
13 THE SAME U.R.N. NUMBER, THE DATE, DION HAWKINS, AND YOUR
14 NAME AND SERIAL NUMBER; CORRECT?

15 A CORRECT.

16 Q NOW, AS TO THE DESCRIPTION, IS THAT THE
17 SAME OR DIFFERENT AS PEOPLE'S 5 FOR IDENTIFICATION?

18 A IT'S DIFFERENT.

19 Q AND WHAT IS THIS DESCRIPTION?

20 A THIS DESCRIPTION IS A JUMPSUIT, AND IT'S
21 ALSO MARKED NUMBER 6.

22 Q THE LAST THREE NUMBERS ARE 006, THE U.R.N.
23 NUMBER?

24 A YES.

25 Q AND THAT WOULD INDICATE WHAT?

26 A IT'S NUMBER SIX IN OUR CHAIN OF EVIDENCE
27 HERE.

28 Q THAT YOU DESIGNATED AS ITEM NUMBER 6?

1 A YES.

2 Q COULD YOU OPEN NUMBER 6 FOR IDENTIFICATION
3 AND TAKE OUT THE CONTENTS AND DESCRIBE WHAT YOU ARE DOING
4 FOR THE RECORD.

5 A I AM TEARING THE EVIDENCE SEAL. I AM
6 PULLING OUT A BLUE JUMPSUIT.

7 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE
8 WITNESS HAS OPENED THE BAG, PEOPLE'S 6, FOR
9 IDENTIFICATION AND TAKEN OUT A BLUE JUMPSUIT.
10 BY MR. GOUDY:

11 Q DEPUTY, THAT BLUE JUMPSUIT, DID YOU RECOVER
12 THAT FROM SOMEWHERE?

13 A YES.

14 Q WHERE DID YOU RECOVER THAT?

15 A I WOULD HAVE TO REFER AGAIN TO -- AS TO
16 WHETHER IT WAS 555 OR 545.

17 Q WOULD LOOKING AT YOUR REPORT REFRESH YOUR
18 RECOLLECTION?

19 A YES.

20 Q PLEASE DO SO.

21 A THIS WAS RECOVERED FROM 555 5TH AVENUE.

22 Q AND THAT'S THE SAME LOCATION THAT THE TWO
23 GLOVES IN PEOPLE'S 5 FOR IDENTIFICATION WERE RECOVERED?

24 A YES.

25 Q IF YOU COULD RETURN THE JUMPSUIT BACK INTO
26 THE BAG AND DESCRIBE WHAT YOU ARE DOING.

27 A I AM GRABBING THE JUMPSUIT AND PUTTING IT
28 BACK IN THE BAG.

1 Q SHOWING YOU WHAT HAS BEEN MARKED AS
2 PEOPLE'S 7 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT
3 (INDICATING)?

4 A YES.

5 Q WHAT IS THAT?

6 A IT'S AN EVIDENCE ENVELOPE WITH MY NAME AND
7 EMPLOYEE NUMBER ON IT, THE SAME U.R.N. NUMBER, AND I ALSO
8 RECOGNIZE THE HANDWRITING OF "HOLD FOR D.N.A." AS MINE.

9 Q AND DID YOU PUT SOMETHING IN THERE AND BOOK
10 THAT INTO EVIDENCE?

11 A YES. A SKI MASK.

12 Q AND THAT'S INDICATED ON THE DESCRIPTION?

13 A YES.

14 Q AND THE LAST THREE NUMBERS OF THE U.R.N.
15 ARE 007?

16 A CORRECT.

17 Q COULD YOU OPEN UP PEOPLE'S 7 FOR
18 IDENTIFICATION, TAKE OUT THE CONTENTS, AND DESCRIBE WHAT
19 YOU ARE DOING FOR US.

20 A I AM BREAKING THE EVIDENCE SEAL. I AM
21 REMOVING A BLACK SKI MASK.

22 Q LOOKING AT THIS SKI MASK, DID YOU RECOVER
23 THIS MASK FROM ANYWHERE?

24 A YES.

25 Q WHERE?

26 A I BELIEVE THAT WAS THE ONE I ALSO RECOVERED
27 FROM 555, BUT I WOULD HAVE TO DOUBLE CHECK.

28 Q WOULD LOOKING AT YOUR REPORT REFRESH YOUR

1 RECOLLECTION?

2 A YES.

3 Q PLEASE DO SO.

4 A YES. THIS WAS ALSO RECOVERED AT 555
5 5TH AVENUE.

6 Q AND IN RELATIONSHIP TO THE GUN, WHERE WAS
7 THE GUN IN RELATIONSHIP TO THIS MASK?

8 A I DIDN'T REALIZE THERE WAS A GUN INSIDE IT
9 UNTIL I ACTUALLY PHYSICALLY PICKED IT UP. AND WHEN I
10 PICKED IT UP, I REALIZED THERE WAS A GUN INSIDE.

11 Q THERE'S A YELLOW POST-IT NOTE STAPLED TO
12 THE SKI MASK WITH THE NUMBER A.R.F. 4, AND THEN THERE IS
13 A K051467 AND SOME INITIALS THERE.

14 A YES.

15 Q DID YOU -- WHEN YOU PUT IN THE SKI MASK,
16 WAS THAT ON THE SKI MASK?

17 A NO.

18 Q DOES THIS ENVELOPE, PEOPLE'S 7, ALSO HAVE A
19 LAB RECEIPT ON IT?

20 A YES.

21 Q AND CAN YOU TELL IF THE LAB RECEIPT NUMBER
22 IS THE SAME NUMBER K051467?

23 A YES, IT IS.

24 Q COULD YOU REPLACE THE SKI MASK INTO
25 PEOPLE'S 7 -- IN THE ENVELOPE MARKED PEOPLE'S 7 FOR
26 IDENTIFICATION, PLEASE.

27 A (WITNESS COMPLIES.)

28 Q THANK YOU.

1 NOW, THE OTHER ITEM OF EVIDENCE THAT YOU
2 RECOVERED, THE OTHER PIECES OF CLOTHING, WOULD YOU HAVE
3 FOLLOWED THE SAME PROCEDURE, PUT THEM INTO AN EVIDENCE
4 ENVELOPE OR A BAG, PRINTED OUT A LABEL, MARKED THOSE WITH
5 THE SAME NUMBERS BUT WITH THE LAST THREE DIGITS BEING 0
6 AND THEN WHATEVER THE EVIDENCE NUMBER WAS?

7 A YES.

8 Q AND YOU WOULD HAVE BOOKED THOSE INTO
9 EVIDENCE AS WELL?

10 A YES.

11 Q AND EACH ONE -- DO YOU RECALL IF YOU MARKED
12 EACH ONE "HOLD FOR D.N.A."?

13 A OBVIOUSLY I WOULDN'T HAVE DONE THAT WITH
14 THE GUN. I THINK ALL THE ITEMS OF CLOTHING I DID.

15 Q NOW, YOU BOOK A GUN THE SAME WAY?

16 A NO.

17 Q HOW IS BOOKING A GUN DIFFERENT?

18 A WE PUT IT IN A REGULAR ENVELOPE SUCH AS THE
19 MANILA ENVELOPES THERE. WE DO HAVE TO MANIPULATE IT TO
20 MAKE SURE THAT IT'S SAFE AND UNLOADED. WE USUALLY PUT
21 SOME KIND OF OBJECT IN THE BARREL TO LOCK IT SO THAT IT
22 DOES NOT FIRE AND IT CAN'T BE LOADED, AND WE PUT A TAG ON
23 IT JUST LIKE THE REST OF THE EVIDENCE.

24 Q JUST SO WE ARE CLEAR, WHEN YOU SAY AN
25 ENVELOPE LIKE THESE, YOU ARE TALKING ABOUT THE ENVELOPES
26 I AM HOLDING UP, PEOPLE'S 5 AND PEOPLE'S 7 (INDICATING)?

27 A YES.

28 ///

(DISCUSSION OFF THE RECORD.)

MR. GOUDY: MAY WE APPROACH JUST BRIEFLY, YOUR HONOR?

THE COURT: ALL RIGHT.

(THE FOLLOWING PROCEEDINGS
WERE HELD AT SIDEBAR:)

MR. GOUDY: I WANT TO CALL AN EXPERT ON SOME OF THE EVIDENCE, SO I WILL NEED TO RECALL THIS DEPUTY LATER.

THE COURT: ALL RIGHT. SO DO YOU WANT TO CROSS ON HIS STUFF RIGHT NOW?

MR. EVANS: JUST BRIEFLY.

THE COURT: THAT'S FINE.

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

THE COURT: ALL RIGHT. MR. GOUDY?

MR. GOUDY: NOTHING FURTHER AT THIS TIME, YOUR HONOR.

THE COURT: ALL RIGHT. DID YOU WANT TO RECROSS INTO THIS AREA RIGHT NOW?

MR. EVANS: JUST BRIEFLY. THANK YOU.

THE COURT: I MEAN CROSS-EXAMINATION.

CROSS-EXAMINATION

BY MR. EVANS:

Q JUST A LITTLE BIT OF CLARIFICATION. YOU WENT TO THE LOCATION OF 555 SOUTH -- I AM SORRY, 545 SOUTH 5TH AVENUE?

A YES, SIR.

Q AND YOU RECOVERED -- COULD YOU TELL US EXACTLY WHICH ITEMS YOU RECOVERED AT THAT LOCATION? AND IF YOU NEED TO REFER TO YOUR REPORT, PLEASE DO SO.

A YES. I DO NEED TO.

BLACK HOODIE SWEATSHIRT, BLUE THERMAL UNDERSHIRT, A PAIR OF GRAY SWEATPANTS, AND A WHITE AND BLACK GLOVE FROM 545.

Q SO LET ME MAKE SURE I GET THIS. A BLUE THERMAL UNDERSHIRT, A BLACK SWEATSHIRT. GO AHEAD.

A AND A PAIR OF GRAY SWEATPANTS AND A WHITE AND BLACK GLOVE.

Q AND THAT WAS A PAIR, OR WAS THERE ONE WHITE AND ONE BLACK OR ONE PAIR OF EACH?

A I BELIEVE IT WAS A GLOVE THAT WAS WHITE AND BLACK.

Q ALL RIGHT. ONE GLOVE?

A YES.

Q AND THAT WAS AT 545 SOUTH?

A YES.

Q NOW, AT 555 SOUTH 5TH AVENUE, WHAT EXACTLY DID YOU RECOVER THERE?

A TWO GLOVES, A BLUE JUMPSUIT, A BLACK SKI

1 MASK, AND THE GUN INSIDE THE SKI MASK.

2 Q ONE SKI MASK?

3 A YES.

4 Q AND THAT WAS A SKI MASK THAT YOU SHOWED US
5 THAT WAS CONTAINED IN PEOPLE'S 7; IS THAT CORRECT?

6 A YES.

7 Q AND THEN OVER AT REDBURN AND EAST LOMITAS,
8 YOU OBTAINED A BLACK BEANIE; IS THAT CORRECT?

9 A YES.

10 Q IS THAT DIFFERENT THAN A BLACK SKI MASK?

11 A IT COULD BE THE SAME. IT COULD BE SIMILAR,
12 BUT I REFERRED TO IT AS A SKI MASK, THOUGH, BECAUSE IT
13 HAD HOLES AROUND THE EYES AND MOUTH.

14 Q THAT WAS THE ITEM YOU FOUND OVER -- IT DID
15 ACTUALLY HAVE HOLES IN IT?

16 A YES.

17 Q HOLES -- DO YOU REMEMBER WHERE THE HOLES
18 WERE?

19 A THEY WERE LIKE RIGHT AROUND THE FACE AREA.
20 IT LOOKED LIKE -- IT LOOKED LIKE A SKI MASK, BUT NOW THAT
21 I LOOK AT IT AGAIN, I THINK THAT SOMEBODY CUT HOLES IN
22 IT.

23 Q WHICH ONE ARE YOU REFERRING TO?

24 A THE ONE THAT I HAD JUST A MINUTE AGO.

25 Q THAT'S THE ONE AT 555 SOUTH 5TH AVENUE;
26 CORRECT?

27 A YES.

28 Q I AM REFERRING TO THE ONE THAT YOU FOUND AT

1 REDBURN AND EAST LOMITAS. YOU REFERRED TO THAT AS A
2 BLACK BEANIE?

3 A YES.

4 Q IS THAT, IN YOUR MIND, IS DIFFERENT THAN A
5 BLACK SKI MASK?

6 A A BEANIE WOULD JUST BE THE HAT WITHOUT
7 THE -- WITHOUT THE HOLE FOR THE EYES AND THE MOUTH, YES.

8 Q ALL RIGHT. AND SO THAT ITEM, SO WE ARE
9 CLEAR, THE ONE THAT WAS FOUND IN THE STREET AT REDBURN
10 AND EAST LOMITAS, WAS A BLACK BEANIE THAT HAD NO CUTTINGS
11 IN IT; CORRECT?

12 A THAT I REMEMBER, YES.

13 Q AND THEN YOU ALSO FOUND A PAIR OF GLOVES?

14 A YES.

15 Q ONE PAIR?

16 A YES.

17 MR. EVANS: NOTHING FURTHER.

18 THE COURT: ANYTHING FURTHER?

19 MR. GOUDY: IF I MAY APPROACH.

20 THE COURT: YOU MAY.

21

22 REDIRECT EXAMINATION

23 BY MR. GOUDY:

24 Q IF YOU CAN TAKE OUT THE CONTENTS OF
25 PEOPLE'S 7 FOR IDENTIFICATION, PLEASE. COULD YOU SHOW US
26 WHAT YOU MEAN BY THE HOLES FOR THE MOUTH OR NOSE CUT OUT?

27 A (INDICATING).

28 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE

1 WITNESS HAS PUT HIS HAND INSIDE THE SKI MASK, HOLDING IT
2 UP, AND IT APPEARS THAT THERE ARE THREE HOLES, TWO THAT
3 APPEAR TO BE EYE HOLES, AND THE THIRD EITHER A NOSE OR
4 MOUTH HOLE, BASICALLY IN A TRIANGLE SHAPE.

5 THE COURT: THE RECORD WILL SO REFLECT.

6 MR. GOUDY: AND ONE OTHER THING. IF HE MAY BE
7 ALLOWED TO STEP DOWN TO THE DIAGRAM.

8 THE COURT: YOU MAY.

9 BY MR. GOUDY:

10 Q IN LOOKING AT THIS DIAGRAM, COULD YOU TELL
11 US WHERE 545 SOUTH 5TH AVENUE IS?

12 A I AM NOT SURE IF IT'S BETWEEN LOMITAS AND
13 DON JULIAN OR BETWEEN DON JULIAN AND PROCTOR, BUT I
14 BELIEVE IT'S BETWEEN LOMITAS AND DON JULIAN.

15 Q AND IT'S ON WHICH SIDE OF THE STREET?

16 A IT WOULD BE ON THE WEST SIDE OF THE STREET.

17 Q SO THAT WOULD BE TO THE LEFT OF 5TH AVENUE
18 OR TO THE RIGHT?

19 A TO THE LEFT.

20 Q 555 SOUTH 5TH AVENUE?

21 A THAT WOULD HAVE BEEN TWO HOUSES SOUTH OF
22 545.

23 Q WHEN YOU SAY "SOUTH," THAT MEANS TO THE
24 BOTTOM OF THE DIAGRAM?

25 A CORRECT.

26 Q AND IN REGARDS TO DON JULIAN AND LOMITAS,
27 WOULD IT BE RIGHT IN THE MIDDLE? WOULD IT BE CLOSER TO
28 DON JULIAN? WOULD IT BE CLOSER TO LOMITAS?

1 A IT WAS ACTUALLY DEAD CENTER.

2 Q IN BETWEEN THE TWO CROSS STREETS?

3 A YES. NOW THAT I REMEMBER, YES.

4 MR. GOUDY: NOTHING FURTHER.

5 THE COURT: ANY FURTHER CROSS?

6 MR. EVANS: NOTHING.

7 THE COURT: YOU MAY STEP DOWN FOR TODAY, BUT YOU
8 REMAIN ON CALL DURING THE PENDENCY OF THESE PROCEEDINGS.

9 THE WITNESS: YES.

10 THE COURT: DO YOU HAVE A WITNESS THAT YOU CAN
11 START FOR TEN MINUTES?

12 MR. GOUDY: THE PEOPLE WOULD CALL RAFAEL
13 GONZALEZ.

14
15 (MINERVA CLEMENTS, INTERPRETING FOR
16 THE WITNESS ENGLISH INTO SPANISH
17 AND SPANISH INTO ENGLISH.)

18
19 RAFAEL GONZALEZ,
20 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

23 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE
24 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
25 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
26 TRUTH, SO HELP YOU GOD.

27 THE WITNESS: YES.

28 THE CLERK: THANK YOU. HAVE A SEAT ON THE WITNESS

1 STAND.

2 FOR THE RECORD, PLEASE STATE AND SPELL YOUR
3 FIRST NAME.

4 THE WITNESS: RAFAEL GONZALEZ, R-A-F-A-E-L,
5 GONZALEZ, G-O-N-Z-A-L-E-Z.

6 THE COURT: YOU MAY BEGIN.

7 MR. GOUDY: THANK YOU.

8

9 DIRECT EXAMINATION

10 BY MR. GOUDY:

11 Q MR. GONZALEZ, ON NOVEMBER 23RD OF 2008,
12 WHERE DID YOU LIVE?

13 A I LIVED AT 14050 TRAILSIDE AT THE
14 CITY OF INDUSTRY.

15 Q AND WHO DID YOU LIVE THERE WITH?

16 A I LIVED WITH MY FAMILY.

17 Q HOW MANY PEOPLE LIVE IN THE HOUSE WITH
18 YOU?

19 A MY WIFE AND I, MY CHILDREN, THREE FEMALES,
20 ONE MALE, AND THEIR CHILDREN.

21 Q AT ABOUT 8:45 ON NOVEMBER 23RD, 2008, DID
22 SOMETHING UNUSUAL HAPPEN AT YOUR HOUSE?

23 A YES.

24 Q AND WHAT HAPPENED?

25 A THREE MALE -- ARMED MALES ENTERED INTO THE
26 HOUSE.

27 Q AND COULD YOU SEE THE MALES' FACES?

28 A I SAW THE FACE OF ONE MAN, BUT NOT THE

1 OTHERS BECAUSE THEY WERE WEARING MASKS.

2 Q NOW, THE FACE OF THE MAN THAT YOU COULD
3 SEE, COULD YOU TELL WHAT RACE HE WAS?

4 A YES. IT WAS A BLACK MAN.

5 Q THE OTHER TWO MEN, WERE YOU ABLE TO TELL
6 THEIR RACE EVEN THOUGH THEY WERE WEARING MASKS?

7 A NO.

8 Q AND WHEN THE THREE MEN CAME INTO YOUR
9 HOUSE, DID THEY COME IN THROUGH THE FRONT OR THE BACK
10 DOOR?

11 A THEY ENTERED THROUGH THE FRONT PART.

12 Q AND WHEN THEY CAME IN, DID THEY SAY
13 ANYTHING?

14 A YES. I WAS TOLD, "PUT YOURSELF ON THE
15 FLOOR."

16 Q COULD YOU SEE IF ANY OF THESE THREE MEN HAD
17 ANYTHING IN THEIR HAND?

18 A YES. THEY HAD WEAPONS.

19 Q DID THEY ALL HAVE WEAPONS?

20 A YES.

21 Q WHAT TYPE OF WEAPONS?

22 A THEY WERE SQUARE-TYPE OF GUNS.

23 Q WERE THEY LONG GUNS OR SHORT GUNS?

24 A AT THE TIME I SAW THAT THEY WERE SORT OF
25 SHORT, BUT ONE DID HAVE A LONGER PART ON THE LOWER PART.

26 Q DO YOU KNOW THE DIFFERENCE BETWEEN A PISTOL
27 AND A RIFLE?

28 A YES.

1 Q AND WERE THESE PISTOLS OR RIFLES?

2 A AS FAR AS I AM CONCERNED, THEY WERE GUNS.

3 Q PISTOLS OR RIFLES?

4 THE INTERPRETER: YOUR HONOR, THE INTERPRETER
5 NEEDS TO CLARIFY THAT. IN SPANISH, THE WORD "PISTOLA,"
6 WHICH IN ENGLISH ONE WOULD TEND TO THINK IT'S A PISTOL,
7 IS REFERRED TO AS GUNS. SO WE NEED TO THEN DEFINE FROM
8 THE QUESTION.

9 THE COURT: IF YOU WANT TO RE-ASK YOUR QUESTION
10 MORE SPECIFICALLY.

11 THE INTERPRETER: YES.

12

13 (DISCUSSION OFF THE RECORD.)

14

15 BY MR. GOUDY:

16 Q THE GUN, DID THEY HOLD IT IN ONE HAND OR IN
17 TWO?

18 A WITH ONE HAND.

19 Q AND WHEN YOU WERE TOLD TO LAY ON THE FLOOR,
20 DID YOU DO SO?

21 A YES.

22 Q AND WERE YOU ON YOUR BACK, YOUR SIDE, OR
23 YOUR STOMACH?

24 A OKAY. AT THE TIME THAT I WAS TOLD TO PLACE
25 MYSELF ON THE GROUND, I PLACED MYSELF ON MY STOMACH.

26 Q AT THE TIME THAT THE MEN CAME INTO YOUR
27 HOUSE, WHERE WAS YOUR DAUGHTER BRENDA, IF YOU KNOW?

28 A YES. A FEW MOMENTS BEFORE, SHE HAD EXITED

1 TO THE GARAGE.

2 Q WHEN THE MEN CAME INTO YOUR HOUSE, DID YOU
3 EVER HEAR YOUR DAUGHTER SCREAM?

4 MR. EVANS: LEADING.

5 THE COURT: OVERRULED.

6 THE WITNESS: YES.

7 BY MR. GOUDY:

8 Q AND COULD YOU TELL WHERE SHE WAS AT WHEN
9 SHE WAS SCREAMING?

10 A YES. FROM LISTENING TO HER SCREAMS, IT --
11 YOU COULD TELL THAT THEY WERE COMING FROM THE GARAGE MORE
12 OR LESS.

13 Q ONCE YOU WERE TOLD TO LAY ON THE FLOOR,
14 WERE YOU EVER TOLD TO MOVE FROM THAT LOCATION?

15 A NO.

16 Q DID ANYONE EVER TRY TO MOVE YOU FROM THAT
17 LOCATION?

18 MR. EVANS: LEADING.

19 THE COURT: OVERRULED.

20 THE WITNESS: YES, A LITTLE WHILE LATER.

21 BY MR. GOUDY:

22 Q WHAT HAPPENED?

23 A WHEN SOMEONE TRIED TO MOVE ME FROM THERE,
24 IT WAS WHEN MY HAND WAS GRABBED IN ORDER TO LIFT ME UP.

25 THE COURT: I AM GOING TO GO AHEAD AND STOP YOU
26 THERE. WE WILL TAKE OUR RECESS FOR THE DAY.

27 LADIES AND GENTLEMEN, KEEP IN MIND THE
28 COURT'S ADMONITION. WE ARE GOING TO RETURN AT -- IS

1 10:45 EASIER FOR ALL OF YOU AS OPPOSED TO 10:30? I SEE
2 HEADS NODDING.

3 I WILL ORDER YOU ALL BACK AT 10:30 IN THE
4 MORNING. WE ARE GOING TO BE BREAKING A LITTLE EARLIER
5 FOR TOMORROW. SO 10:30 IN THE MORNING.

6 KEEP IN MIND THE COURT'S ADMONITION.

7 MR. GONZALEZ, YOU ARE ORDERED BACK AT 10:30
8 IN THE MORNING.

9 THE WITNESS: VERY WELL.

10
11 (THE MATTER WAS CONTINUED
12 TO WEDNESDAY, AUGUST 4, 2010,
13 AT 10:30 A.M. FOR FURTHER
14 PROCEEDINGS.)

15
16 (THE NEXT PAGE NUMBER IS 901.)
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