

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

MAR 16 2011

COPY

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE CHARLAINE F. OLMEDO, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

AUGUST 6, 9, 2010

APPEARANCES:

FOR PLAINTIFF-RESPONDENT:

KAMALA HARRIS  
STATE ATTORNEY GENERAL  
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FOR DEFENDANT-APPELLANT:

IN PROPRIA PERSONA

VOLUME 4 OF 5 VOLUMES

PAGES 1501 TO 1596-1800

PAGES 1801 TO 1916-2100

KATHRYN L. MAUTZ, CSR #11539  
OFFICIAL COURT REPORTER

1 CASE NUMBER: KA085233  
2 CASE NAME: PEOPLE VS. TAUMU JAMES  
3 LOS ANGELES, CALIFORNIA FRIDAY, AUGUST 6, 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  
15 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE  
16 PRESENT. OUR JURORS ARE NOT PRESENT.

17 MR. GOUDY, YOU WANTED TO PUT SOMETHING ON  
18 THE RECORD?

19 MR. GOUDY: YES, YOUR HONOR. I HAVE BEEN TALKING  
20 TO THE EXPERT, THE D.N.A. EXPERT WHO IS HERE AND  
21 AVAILABLE ALL DAY, AND THERE ARE TWO SET OF NUMBERS. ONE  
22 IS THE RANDOM MAN NUMBER. THE RANDOM MAN PROBABILITY  
23 NUMBERS ARE VERY HIGH. BUT BECAUSE WITH MR. JAMES IT WAS  
24 A COLD CASE HIT, THE DATABASE -- THE DATABASE HAS  
25 1.66 MILLION PEOPLE IN IT. THE NUMBERS ARE REALLY A  
26 DATABASE NUMBER, BECAUSE IT'S NOT JUST A RANDOM PERSON  
27 THAT THEY FOUND. THEY GOT IT FROM A COLD CASE.

28 THE NUMBERS ARE STILL RATHER SIGNIFICANT,

1 QUADRILLIONS AND THINGS LIKE THAT, BUT MR. COLMAN IS IN A  
2 TOUGH SPOT, TALKING ABOUT A RANDOM MAN NUMBER VERSUS A  
3 PROBABILITY NUMBER. AND IF HE GIVES A DATABASE  
4 PROBABILITY BASE NUMBER, HE HAS TO EXPLAIN THAT, AND IT  
5 CREATES AN ISSUE.

6 MR. EVANS IS NOT REALLY CONTESTING THAT, SO  
7 HE HAS NO PROBLEM WITH THE RANDOM MAN PROBABILITY NUMBERS  
8 BEING GIVEN AS TO THE PROBABILITY FOR THE D.N.A.

9 THE COURT: IS THAT FINE?

10 MR. EVANS: AS I SAID IN MY OPENING, I AM NOT HERE  
11 TO CONTEST THAT MY CLIENT'S D.N.A. IS NOT ON THE HAT.

12 THE COURT: OBVIOUSLY ADMONISH HIM, YOUR EXPERT,  
13 ABOUT -- NOT TO EXPLAIN THE DATABASE THAT THE NUMBERS  
14 CAME FROM. HE CAN OBVIOUSLY SAY IT WAS A DATABASE.

15 MR. GOUDY: WE ARE NOT EVEN GOING TO GO THERE.  
16 HE SAID WE CAN JUST USE THE RANDOM MAN PROBABILITY  
17 NUMBER. I JUST WANT TO MAKE SURE, IN CASE THERE IS AN  
18 APPELLATE ISSUE --

19 THE COURT: THAT IT'S ON THE RECORD. IF THERE IS  
20 AN ISSUE, WE WILL TAKE IT UP.

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

25  
26 THE COURT: ON THE RECORD THEN IN PEOPLE VERSUS  
27 JAMES, MR. JAMES IS PRESENT. MR. GOUDY IS PRESENT, AND  
28 DEPUTY CARIAGA IS BACK ON THE STAND.

1                   SIR, I WOULD LIKE TO REMIND YOU THAT YOU  
2       REMAIN UNDER OATH AT THIS TIME.

3                   THE WITNESS: YES, YOUR HONOR.

4                   THE COURT: AND WE HAVE DETECTIVE CHISM AT COUNSEL  
5       TABLE AS WELL.

6                   AND YOU MAY CONTINUE YOUR REDIRECT.

7                   MR. GOUDY: THANK YOU, YOUR HONOR.

8  
9                   REDIRECT EXAMINATION (RESUMED)

10       BY MR. GOUDY:

11                  Q       GOOD MORNING, DEPUTY CARIAGA.

12                  A       GOOD MORNING.

13                  Q       YESTERDAY YOU INDICATED THAT YOU HAD SPOKEN  
14       TO EACH ONE OF THE WITNESSES A NUMBER OF TIMES --

15                  A       YES.

16                  Q       -- THAT NIGHT; CORRECT?

17                  A       CORRECT.

18                  Q       DO YOU HAVE A COPY OF YOUR REPORT WITH YOU?

19                  A       YES, I DO.

20                  Q       AND YOUR REPORT INDICATES YOUR SUMMARY OF  
21       WHAT THOSE WITNESSES TOLD YOU?

22                  A       YES.

23                  Q       LOOKING AT THE SECTION THAT -- IN YOUR  
24       REPORT RELATED TO YOUR CONVERSATION WITH FELICITAS  
25       GONZALEZ, I THINK YOU LISTED IT AS VICTIM 3; IS THAT  
26       CORRECT?

27                  A       YES.

28                  Q       HOW MANY LINES OF YOUR REPORT DID YOU PUT

1 IN THERE FOR YOUR CONVERSATIONS WITH HER?

2 MR. EVANS: OBJECTION. RELEVANCE.

3 THE COURT: OVERRULED.

4 THE WITNESS: THIRTEEN.

5 BY MR. GOUDY:

6 Q AND THOSE ARE ALL CAPITAL LETTERS?

7 A YES.

8 Q SINGLE-SPACED?

9 A YES.

10 Q SO YOUR MULTIPLE CONVERSATIONS WITH HER YOU  
11 REDUCED TO 13 LINES?

12 A YES.

13 Q WHAT ABOUT YOUR CONVERSATION WITH NANCY  
14 JARDINES? HOW MUCH OF YOUR REPORT DO YOU HAVE FOR HER?

15 A TEN.

16 Q AND WHAT ABOUT BRENDA BARRAGAN?

17 A EIGHTEEN.

18 Q AND ANNETTE SAAVEDRA?

19 A SIX.

20 Q AND IF YOU COULD LOOK THROUGH YOUR REPORT  
21 FOR NANCY JARDINES, FELICITAS GONZALEZ, BRENDA BARRAGAN,  
22 AND ANNETTE SAAVEDRA, DURING THE COURSE -- IN YOUR  
23 REPORT, HOW MANY OF THEM DID YOU LIST AS GIVING A  
24 DESCRIPTION OF THE RACE OF THE MEN WHO WERE IN THE  
25 HOUSE?

26 A FIVE.

27 Q AND WERE SOME OF THE DESCRIPTIONS THAT YOU  
28 PUT IN THERE OF THE SAME INDIVIDUAL?

1           A       YES.

2           Q       AND WHICH ONE WAS THE INDIVIDUAL THAT WAS  
3 MENTIONED THE MOST?

4           A       THAT WOULD HAVE BEEN SUSPECT 1, THE PERSON  
5 WITHOUT THE MASK.

6           Q       AND HOW MANY OF THE FOUR WOMEN THAT YOU  
7 INTERVIEWED INDICATED THAT THEY -- THAT INDICATED THE  
8 RACE OF THE MAN WITHOUT THE MASK?

9           A       I BELIEVE THEY ALL DID.

10          Q       SO THAT WOULD BE FOUR OF THE FIVE TIMES YOU  
11 WROTE DOWN THE RACE OF THE INDIVIDUALS IN YOUR SUMMARY?

12          A       YES.

13          Q       AND THEN THE ONE OTHER TIME WAS OF THE MALE  
14 CAUCASIAN OR HISPANIC?

15          A       YES.

16          Q       AND YET WHEN YOU FILLED OUT THE FACE SHEET,  
17 YOU DID HAVE RACE DESCRIPTIONS FOR THE OTHER MEN;  
18 CORRECT?

19          A       YES.

20          MR. GOUDY:  NOTHING FURTHER.

21          THE COURT:  RE CROSS IN THAT AREA?

22          MR. EVANS:  NO QUESTIONS.

23          THE COURT:  ALL RIGHT.  THANK YOU.  YOU MAY STEP  
24 DOWN.

25                    YOU MAY CALL YOUR NEXT WITNESS.

26          MR. GOUDY:  AT THIS TIME WE CALL DEPUTY HOLLY.

27

28

KEITH HOLLY,

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

3 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

4 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE  
5 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT  
6 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE  
7 TRUTH, SO HELP YOU GOD.

8 THE WITNESS: I DO.

9 THE CLERK: THANK YOU.

10 HAVE A SEAT ON THE WITNESS STAND. PULL THE  
11 MICROPHONE UNDERNEATH YOUR CHIN, AND TELL US YOUR FULL  
12 NAME AND SPELL IT.

13 THE WITNESS: MY NAME IS KEITH HOLLY, K-E-I-T-H  
14 H-O-L-L-Y.

15 THE CLERK: THANK YOU.

16 THE COURT: ALL RIGHT. YOU MAY BEGIN.

17

18 DIRECT EXAMINATION

19 BY MR. GOUDY:

20 Q SIR, WHAT IS YOUR OCCUPATION AND  
21 ASSIGNMENT?

22 A DEPUTY SHERIFF FOR THE CITY OF INDUSTRY.

23 Q AND WHAT WAS YOUR OCCUPATION AND ASSIGNMENT  
24 ON NOVEMBER 23RD OF 2008?

25 A I WAS A PATROL DEPUTY. I BELIEVE I WAS  
26 WORKING 143 TOM 1.

27 Q AND WERE YOU ON DUTY AT 8:45 P.M. ON THAT  
28 DATE?

1 A YES, I WAS.

2 Q DURING THAT TIME PERIOD, DID YOU RESPOND TO  
3 A CALL TO A ROBBERY AT A RESIDENCE ON TRAILSIDE DRIVE?

4 A YES, SIR.

5 Q AS YOU WERE RESPONDING TO THAT LOCATION,  
6 DID YOU SEE ANYBODY THAT CAUGHT YOUR ATTENTION?

7 A YES, I DID.

8 Q WHO DID YOU SEE?

9 A I SAW A MALE BLACK CROSSING -- HEADING  
10 NORTH ON 5TH, CROSSING PROCTOR.

11 MR. GOUDY: IF I MAY APPROACH, YOUR HONOR.

12 THE COURT: YOU MAY.

13 BY MR. GOUDY:

14 Q SHOWING YOU WHAT HAS BEEN MARKED AS  
15 PEOPLE'S 2 FOR IDENTIFICATION, DO YOU RECOGNIZE WHAT THIS  
16 IS (INDICATING)?

17 A YES, I DO.

18 Q WHAT IS THIS?

19 A THIS IS A MAP OF THE -- THIS IS A MAP OF  
20 THE BASSETT AREA.

21 Q AND 14050 TRAILSIDE DRIVE, DO YOU CONSIDER  
22 THAT TO BE IN BASSETT?

23 A YES, I DO.

24 Q NOW, LOOKING AT -- DOES THIS MAP ACCURATELY  
25 REPRESENT THE STREETS IN THAT AREA?

26 A YES, IT DOES.

27 Q AND IN PEOPLE'S 2 FOR IDENTIFICATION, CAN  
28 YOU -- DOES IT APPEAR ON THIS MAP WHERE YOU SAW THE MAN



1 ON NOVEMBER 23RD, 2008, AROUND 8:45 P.M.?

2 A YES, IT DOES.

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

5 THE COURT: YES.

6 BY MR. GOUDY:

7 Q WITH THIS RED PEN, COULD YOU MARK WITH AN  
8 "X" WHERE YOU SAW THE MAN ON NOVEMBER 23RD, 2008.

9 A APPROXIMATELY THAT AREA (INDICATING). I  
10 SAW HIM FROM HERE (INDICATING) TO ABOUT THERE  
11 (INDICATING).

12 MR. GOUDY: FOR THE RECORD, YOUR HONOR, THE  
13 WITNESS HAS DRAWN A RED "X," WHICH IS BASICALLY ON THE  
14 CORNER OF PROCTOR AND SOUTH 5TH AVENUE, INDICATING THAT  
15 HE SAW THE PERSON A LITTLE SOUTH OF THAT INTERSECTION.

16 THE COURT: THE RECORD WILL --

17 MR. GOUDY: AND HE HAS MARKED IT WITH A RED  
18 "X."

19 THE COURT: THE RECORD WILL SO REFLECT.

20 MR. GOUDY: AND SO WE CAN ALL SEE IT BETTER, I  
21 WILL MAKE THAT "X" A LITTLE BIGGER.

22 BY MR. GOUDY:

23 Q AND IS THAT "X" WHERE YOU CAME INTO CONTACT  
24 WITH THAT INDIVIDUAL?

25 A YES, IT IS.

26 Q DID YOU GET THE NAME OF THAT INDIVIDUAL?

27 A YES, I DID, LATER.

28 Q AND WHAT WAS THAT?

1           A           I BELIEVE IT'S DION HAWKINS.

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

3           THE COURT: YOU MAY.

4           BY MR. GOUDY:

5           Q           SHOWING YOU WHAT HAS BEEN MARKED AS  
6           PEOPLE'S 4 FOR IDENTIFICATION, DO YOU RECOGNIZE THE  
7           INDIVIDUAL, DION HAWKINS, IN THESE PHOTOGRAPHS?

8           A           YES, I DO.

9           Q           WHICH PHOTOGRAPH IS IT?

10          A           RIGHT THERE (INDICATING).

11          MR. GOUDY: FOR THE RECORD, THE WITNESS HAS  
12          POINTED TO THE PHOTOGRAPH MARKED NUMBER 5.

13          THE COURT: THE RECORD WILL SO REFLECT.

14          BY MR. GOUDY:

15          Q           AND THEN AFTER YOU DETAINED MR. HAWKINS,  
16          DID YOU TAKE HIM TO A LOCATION?

17          A           YES, I DID.

18          Q           WHERE DID YOU TAKE HIM TO?

19          A           I TOOK HIM TO THE COMMAND POST.

20          Q           WHERE WAS THAT?

21          A           THAT WAS APPROXIMATELY TWO BLOCKS SOUTH.  
22          IT WAS, I BELIEVE, IN SOME KIND OF CONTINUATION SCHOOL.

23          Q           AND WHY DID YOU TAKE HIM TO THAT LOCATION?

24          A           I TOOK HIM THERE BECAUSE THERE WERE STILL  
25          OUTSTANDING SUSPECTS, AND I WANTED TO GET HIM AS QUICKLY  
26          THERE AND SECURE HIM AS SOON AS POSSIBLE FOR A FIELD  
27          SHOW-UP.

28          Q           NOW, ARE YOU FAMILIAR WITH THAT AREA? ARE

1       YOU PRETTY WELL-FAMILIAR WITH THAT AREA?

2               A           SOMEWHAT, YEAH.

3               Q           ARE YOU FAMILIAR WITH THE ADDRESSES 545 AND  
4       555 SOUTH 5TH AVENUE?

5               A           NOT REALLY, SIR.

6               Q           OKAY. THAT'S FINE.

7       MR. GOUDY:   NOTHING FURTHER.

8       THE COURT:   CROSS?

9       MR. EVANS:   NO QUESTIONS.

10       THE COURT:   ALL RIGHT. THANK YOU, SIR. YOU MAY  
11   STEP DOWN.

12       THE WITNESS:  THANK YOU, MA'AM.

13       THE COURT:   PEOPLE, MAY CALL YOUR NEXT WITNESS.

14       MR. GOUDY:   THE PEOPLE CALL AMBER SAGE.

15

16                               AMBER SAGE,

17   CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND

18   TESTIFIED AS FOLLOWS:

19       THE CLERK:   PLEASE RAISE YOUR RIGHT HAND.

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

24       THE WITNESS:  I DO.

25       THE CLERK:   THANK YOU. HAVE A SEAT, PLEASE.

26                       STATE YOUR FULL NAME AND SPELL YOUR FULL  
27   NAME.

28       THE WITNESS:  MY NAME IS AMBER SAGE, A-M-B-E-R

1 S-A-G-E.

2 THE CLERK: THANK YOU.

3 THE COURT: YOU MAY BEGIN.

4 MR. GOUDY: THANK YOU, YOUR HONOR.

5

6 DIRECT EXAMINATION

7 BY MR. GOUDY:

8 Q MS. SAGE, HOW ARE YOU EMPLOYED?

9 A I AM EMPLOYED AS A SENIOR CRIMINALIST FOR  
10 THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT SCIENTIFIC  
11 SERVICES BUREAU.

12 Q AND WHAT IS YOUR ASSIGNMENT AT THE  
13 SCIENTIFIC SERVICES BUREAU?

14 A I WORK IN THE BIOLOGY SECTION.

15 Q YOU DEAL WITH D.N.A.?

16 A I DO, YES.

17 Q AND ARE YOU FAMILIAR WITH THE CASE  
18 REGARDING DION HAWKINS AND TAUMU JAMES?

19 A YES, I AM.

20 Q DID YOU DO ANY WORK ON THE CASE OF DION  
21 HAWKINS AND TAUMU JAMES?

22 A YES, I DID.

23 Q WHAT DID YOU DO?

24 A I SCREENED THE EVIDENCE ITEMS, MEANING I  
25 LOOKED AT THE CLOTHING. I TOOK SAMPLES FOR D.N.A. I  
26 ALSO DID ABOUT HALF OF THE D.N.A. PROCESS. I DID THE  
27 FIRST TWO STEPS, WHICH ARE CALLED THE EXTRACTION AND  
28 QUANTIFICATION, WHERE I REMOVED THE D.N.A. FROM THE CELLS

1 AND THEN I COUNT HOW MUCH D.N.A. I HAVE.

2 Q AND HOW DO YOU REMOVE THE D.N.A. FROM THE  
3 ITEMS?

4 A WE USE HEAT AND SPECIAL CHEMICALS, WHICH  
5 WILL BREAK OPEN THE CELLS AND RELEASE THE D.N.A.

6 Q AND HOW DO YOU QUANTIFY IT?

7 A WE USE, AGAIN, A SPECIAL CHEMICAL WHICH  
8 WILL MAKE COPIES OF A VERY SMALL PIECE OF D.N.A. AND  
9 THEN A COMPUTER WILL COUNT HOW MANY COPIES ARE MADE, AND  
10 THAT WILL TRANSLATE TO THE AMOUNT OF D.N.A. IN A TUBE.

11 Q DO YOU RECALL HOW MANY ITEMS YOU DID THIS  
12 PROCESS ON IN THIS PARTICULAR CASE?

13 A MAY I REFER TO MY FILE?

14 THE COURT: YES.

15 BY MR. GOUDY:

16 Q DO YOU HAVE A REPORT THAT INDICATES THAT?

17 A I DO, YES.

18 Q WOULD LOOKING AT THAT REFRESH YOUR  
19 RECOLLECTION?

20 A IT WOULD.

21 Q PLEASE.

22 A THANK YOU.

23 I LOOKED AT 11 CLOTHING ITEMS AND ONE  
24 REFERENCE SAMPLE.

25 Q BEFORE WE GET TO THAT, WHAT IS YOUR  
26 TRAINING AND EXPERIENCE TO MAKE YOU A CRIMINALIST WITH  
27 THE SHERIFF'S DEPARTMENT?

28 A I EARNED A BACHELOR OF SCIENCE DEGREE IN

1 MICROBIOLOGY FROM MICHIGAN STATE UNIVERSITY. I THEN  
2 EARNED GRADUATE CREDITS IN FORENSIC MOLECULAR BIOLOGY  
3 FROM THE STATE UNIVERSITY OF NEW YORK AT ALBANY.

4 I WAS PREVIOUSLY EMPLOYED BY THE  
5 MASSACHUSETTS STATE POLICE CRIME LABORATORY AS A  
6 CHEMIST II IN THE D.N.A. UNIT, WHERE MY DUTIES INCLUDED  
7 THE D.N.A. ANALYSIS OF FORENSIC SAMPLES. BEFORE I WAS  
8 ALLOWED TO DO D.N.A., I HAD TO TAKE AND PASS WRITTEN,  
9 ORAL, AND PRACTICAL EXAMS.

10 I WAS THEN EMPLOYED BY HUMAN IDENTIFICATION  
11 TECHNOLOGIES, WHICH IS A PRIVATE FORENSIC D.N.A.  
12 LABORATORY LOCATED IN CALIFORNIA. MY DUTIES THERE  
13 INCLUDED THE EXAMINATION OF EVIDENCE AND THE  
14 IDENTIFICATION OF BIOLOGICAL FLUID -- BLOOD, SEMEN, AND  
15 SALIVA -- AND ALSO THE D.N.A. ANALYSIS OF THOSE SAMPLES.  
16 AGAIN, I HAD TO TAKE AND PASS WRITTEN, ORAL, AND  
17 PRACTICAL EXAMS BEFORE I WAS ALLOWED TO DO CASEWORK.

18 WHILE AT THE SHERIFF'S DEPARTMENT, MY  
19 DUTIES AGAIN INCLUDED THE EXAMINATION OF EVIDENCE FOR THE  
20 PRESENCE OF BIOLOGICAL FLUIDS -- BLOOD, SEMEN, AND  
21 SALIVA -- THE D.N.A. ANALYSIS OF THOSE SAMPLES, AND I  
22 ALSO RESPOND TO AND INVESTIGATE CRIME SCENES. AGAIN,  
23 BEFORE I WAS ALLOWED TO DO CASEWORK, I HAD TO PASS  
24 WRITTEN, ORAL, AND PRACTICAL EXAMS.

25 I AM ALSO A MEMBER OF THE AMERICAN SOCIETY  
26 FOR MICROBIOLOGY, THE CALIFORNIA ASSOCIATION OF  
27 CRIMINALISTS, AND THE NORTHEASTERN ASSOCIATION OF  
28 FORENSIC SCIENTISTS.

1                   AND I ALSO REGULARLY READ SCIENTIFIC  
2 LITERATURE AND ATTEND SCIENTIFIC MEETINGS WITH RESPECT TO  
3 FORENSIC SCIENCE.

4                   Q       HOW MANY CASES HAVE YOU BEEN -- HAVE YOU  
5 WORKED ON REGARDING D.N.A.?

6                   A       BETWEEN 250 AND 300.

7                   Q       AND OF THOSE 250, 300 CASES, HOW MANY OF  
8 THEM HAS YOUR ASSIGNMENT BEEN TO EXTRACT AND QUANTIFY THE  
9 D.N.A.?

10                  A       ALL OF THEM.

11                  Q       NOW, WHEN YOU TAKE AN ITEM THAT HAS BEEN IN  
12 EVIDENCE AND DO YOUR PROCESSING, WHERE DO YOU GET THAT  
13 EVIDENCE FROM?

14                  A       USUALLY WE GET IT FROM THE EVIDENCE CONTROL  
15 SECTION, WHICH IS A DEPARTMENT IN THE LABORATORY WHICH  
16 HOUSES ALL OF THE EVIDENCE.

17                  Q       AND ARE THOSE ITEMS KEPT IN ANY PARTICULAR  
18 ORDER?

19                  A       THEY ARE. THEY ARE ORGANIZED INTO BOXES  
20 THAT ARE KEPT EITHER ON THE SHELVES, IF THEY ARE A LARGE  
21 ITEM, OR INSIDE FREEZERS.

22                  Q       AND HOW DO YOU DISTINGUISH ONE CASE FROM  
23 ANOTHER?

24                  A       ALL OF THE EVIDENCE THAT COMES INTO THE  
25 LABORATORY IS ASSIGNED A LABORATORY RECEIPT NUMBER, WHICH  
26 IS A UNIQUE NUMBER THAT GOES ONTO THE OUTSIDE OF THE  
27 EVIDENCE PACKAGING, WHICH WILL HAVE ALL OF THE  
28 IDENTIFYING INFORMATION: THE CONTENTS OF THE PACKAGING,

1 THE SHERIFF'S FILE NUMBER, OR THE DEPARTMENT FILE NUMBER,  
2 AS WELL AS THE INVESTIGATOR ASSIGNED TO THE CASE, THE  
3 CONTACT NUMBERS. ALSO, THE OUTSIDE PACKING IS LABELED  
4 WITH THAT SAME INFORMATION.

5 Q SO IF THERE ARE 11 ITEMS FOR ONE SHERIFF  
6 CASE NUMBER, WOULD IT RECEIVE THE SAME OR DIFFERENT LAB  
7 RECEIPT NUMBERS?

8 A EACH PACKAGE RECEIVES ONE LAB RECEIPT  
9 NUMBER. SO IF THERE ARE MULTIPLE BAGS WITHIN A LARGER  
10 BAG, THEN IT WOULD RECEIVE ONE LAB RECEIPT NUMBER. IF  
11 IT'S ONE BAG WITH ONE ITEM INSIDE, IT WOULD RECEIVE ITS  
12 OWN LAB RECEIPT NUMBER. IT JUST DEPENDS UPON HOW THEY  
13 ARE PACKAGED.

14 Q SO YOU COULD HAVE MULTIPLE LAB RECEIPT  
15 NUMBERS THAT RELATE TO THE SAME CASE?

16 A CORRECT.

17 Q AND HOW WOULD YOU MAKE SURE THAT THE  
18 MULTIPLE LAB RECEIPT NUMBERS STAY WITH THE SAME CASE?

19 A IT'S KEPT TRACK OF WITH A COMPUTER SYSTEM  
20 THAT WE USE TO ORGANIZE ALL OF THE EVIDENCE THAT WE  
21 HAVE.

22 Q AND WAS THAT DONE IN THIS CASE?

23 A YES.

24 Q AND THE ITEM -- ALL THE ITEMS THAT YOU  
25 RECEIVED, WAS THERE A LAB RECEIPT NUMBER ATTACHED?

26 A YES, THERE WAS.

27 Q WAS THERE A SHERIFF EVIDENCE TAG ATTACHED?

28 A I BELIEVE SO, YES.



1           Q       NOW, WHEN YOU NUMBER THESE ITEMS -- OR DO  
2       YOU NUMBER THESE ITEMS AS YOU ANALYZE THEM?

3           A       IT DEPENDS. IF AN ITEM COMES INTO THE  
4       LABORATORY OR COMES TO ME AND IT ALREADY HAS AN ITEM  
5       NUMBER DESIGNATED TO IT BY THE DETECTIVE, I WILL CONTINUE  
6       TO USE THAT ITEM NUMBER IF IT IS READILY VISIBLE, IF IT'S  
7       WRITTEN ON THE OUTSIDE OF THE PACKAGING OR IT'S WRITTEN  
8       ON THE LAB RECEIPT. IF I DO NOT SEE ANYWHERE ON THE  
9       PACKAGING OR THE LAB RECEIPT THAT AN ITEM NUMBER HAS BEEN  
10      DESIGNATED, I WILL I GIVE IT MY OWN ITEM NUMBER.

11          Q       HOW DO YOU MARK IT WITH YOUR ITEM NUMBER?

12          A       ITEM NUMBERS ARE GENERALLY OUR INITIALS,  
13      FOLLOWED BY A NUMBER, AND THEN EACH SUBSEQUENT ITEM GETS  
14      THE NEXT NUMBER.

15          Q       AND DID YOU DO THAT IN THIS CASE?

16          A       YES, I DID.

17          Q       AND OF THE 11 ITEM NUMBERS THAT YOU  
18      ANALYZED, WERE YOU ABLE TO EXTRACT AND QUANTIFY D.N.A.  
19      FROM ALL 11 ITEMS?

20          A       YES, I WAS.

21               MR. GOUDY: IF I MAY HAVE A MOMENT.

22               THE COURT: YOU MAY.

23               MR. GOUDY: I AM NOT REALLY A GLOVE PERSON.

24      BY MR. GOUDY:

25          Q       WHEN YOU ANALYZE THE EVIDENCE -- AFTER YOUR  
26      PROCESS IS DONE, WHAT DO YOU DO WITH THE ITEMS?

27          A       WHEN WE ARE FINISHED, WE RETURN THE ITEMS  
28      TO THE EVIDENCE CONTROL SECTION.

1 Q DO YOU SEAL THEM IN ANY WAY?

2 A WE DO. WE -- ANY WAY THAT WE'VE OPENED THE  
3 PACKAGING, WHETHER IT BE TO CUT THROUGH SEALS OR CUT  
4 THROUGH THE PACKAGING ITSELF, WE WILL THEN STAPLE IT  
5 CLOSED AND RESEAL IT WITH EVIDENCE TAPE.

6 Q AND AFTER YOU PROCESS IT WHERE YOU HAVE  
7 EXTRACTED THE D.N.A. AND QUANTIFIED THE D.N.A., WHAT DO  
8 YOU DO WITH THE D.N.A. SAMPLES THAT YOU'VE OBTAINED?

9 A IN THIS CASE THE D.N.A. THAT I HAVE  
10 QUANTIFIED, I TRANSACTED OR GAVE TO ANOTHER ANALYST, WHO  
11 FINISHED THE REMAINDER OF THE D.N.A. ANALYSIS.

12 Q WHO WAS THAT?

13 A DR. PAUL COLMAN.

14 Q EXACTLY WHAT DO YOU DO WHEN YOU EXTRACT  
15 D.N.A. FROM AN ITEM OF CLOTHING?

16 A IN THIS CASE I SWABBED SEVERAL CLOTHING  
17 ITEMS. SO I TOOK WHAT LOOKS LIKE A VERY LONG ONE-ENDED  
18 Q-TIP. I RUBBED IT ONTO THE INTERIOR OF THESE CLOTHING  
19 ITEMS WHERE THEY WOULD HAVE TOUCHED YOUR SKIN. I THEN  
20 CUT OFF THE COTTON PORTIONS OF THOSE SWABS, PLACED THEM  
21 INTO TUBES, AND THEN I ADDED THE SPECIAL CHEMICALS TO  
22 THOSE TUBES, PUT THEM ONTO A HEAT SOURCE, AND ANALYZED  
23 THE D.N.A.

24 Q AND THE ITEMS WHAT YOU TOOK THE D.N.A.  
25 FROM, WHAT DID YOU DO WITH THOSE?

26 A I THEN RETURNED THEM TO THE EVIDENCE  
27 CONTROL SECTION.

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

1 THE COURT: YOU MAY.

2 BY MR. GOUDY:

3 Q SHOWING YOU WHAT HAS BEEN MARKED AS  
4 PEOPLE'S 5 FOR IDENTIFICATION, DO YOU RECOGNIZE THIS ITEM  
5 (INDICATING)?

6 A I DO, YES.

7 Q AND HOW DO YOU RECOGNIZE IT?

8 A BECAUSE MY INITIALS ARE ALONG THE SEAL ON  
9 THE BOTTOM. ALSO, MY INITIALS, THE LABORATORY RECEIPT  
10 NUMBER, AND THE DATE I HAVE WRITTEN ON THE OUTSIDE OF THE  
11 PACKAGING.

12 Q NOW, THERE IS A THING THAT'S STAPLED TO THE  
13 TOP HERE (INDICATING). WHAT IS THAT?

14 A THIS IS WHAT WE CALL THE LAB RECEIPT THAT  
15 HAS ALL THE IDENTIFYING INFORMATION THAT I SPOKE ABOUT,  
16 AS WELL AS THE BAR CODE SO THAT WE CAN KEEP TRACK OF THIS  
17 ITEM.

18 Q AND THE NUMBER THAT YOU WROTE WHERE YOUR  
19 INITIALS ARE, THAT'S THE SAME LAB RECEIPT NUMBER?

20 A IT IS, CORRECT.

21 Q AND THE DATE THAT'S ON THERE, WHAT IS  
22 THAT?

23 A THE DATE THAT'S ON THERE WOULD BE THE DATE  
24 THAT I OPENED THE PACKAGE.

25 Q THE EVIDENCE SEAL WHERE YOUR INITIALS ARE,  
26 WHEN DID YOU PUT THOSE THERE?

27 A I DATED THE SEAL JANUARY 20TH OF 2009.

28 Q AND DID YOU SEAL IT BACK UP WITH THE

1 EVIDENCE TAPE?

2 A YES.

3 Q AND THEN YOU INITIALED IT AND DATED IT?

4 A CORRECT.

5 Q NOW, THE DATE 12/29/08 THAT YOU PUT  
6 UNDERNEATH YOUR INITIALS WITH THE LAB RECEIPT NUMBER,  
7 THAT'S THE DATE YOU BEGAN YOUR PROCESS?

8 A CORRECT.

9 Q AND YOU SEALED IT BACK UP ON JANUARY 20TH  
10 OF 2009?

11 A THAT'S RIGHT.

12 Q WHERE IS THE EVIDENCE KEPT DURING THAT TIME  
13 PERIOD?

14 A DURING THAT TIME PERIOD, IT'S IN MY  
15 POSSESSION, IN THE LABORATORY, BEHIND A SEALED DOOR TO  
16 THE EVIDENCE EXAM ROOM, BEHIND ANOTHER SEALED DOOR, BOTH  
17 OF WHICH REQUIRE KEY CARDS THAT ONLY MEMBERS OF THE  
18 BIOLOGY SECTION POSSESS, AND IT'S KEPT INSIDE OF MY  
19 PERSONAL FREEZER.

20 MR. GOUDY: AND IF I MAY OPEN PEOPLE'S 5 FOR  
21 IDENTIFICATION, YOUR HONOR.

22 THE COURT: YES.

23 MR. GOUDY: I AM OPENING PEOPLE'S 5 AND TAKING OUT  
24 THE CONTENTS.

25 BY MR. GOUDY:

26 Q AND THERE ARE TWO GLOVES WITH YELLOW  
27 POST-IT NOTES STAPLED TO THEM AND ONE SMALLER COIN  
28 ENVELOPE. DO YOU RECOGNIZE THESE?

1 A I DO, YES.

2 Q AND WHAT ARE THESE?

3 A THEY ARE TWO GLOVES THAT I EXAMINED.

4 Q AND HOW DO YOU KNOW THESE ARE GLOVES THAT  
5 YOU EXAMINED?

6 A WHEN I EXAMINE CLOTHING ITEMS, I STAPLE A  
7 POST-IT NOTE TO THE ITEM WITH MY INITIALS, THE ITEM  
8 NUMBER, AND THE LABORATORY RECEIPT NUMBER.

9 Q AND THE ITEM NUMBER THAT -- IS THAT YOUR  
10 ITEM NUMBER OR THE DETECTIVE'S ITEM NUMBER?

11 A THAT'S MY ITEM NUMBER.

12 Q AND WHAT IS THE ITEM NUMBER FOR THESE TWO  
13 GLOVES?

14 A ONE IS LABELED ITEM 7. AND IF YOU WOULDN'T  
15 MIND --

16 Q OH, SORRY.

17 A THANK YOU.

18 THE OTHER IS LABELED A.R. 6 AND A.R. 7.

19 Q AND THOSE ARE YOUR INITIALS WITH THE NUMBER  
20 6 AND 7?

21 A CORRECT.

22 Q AND THEN YOU PUT THE LABORATORY RECEIPT  
23 NUMBER?

24 A YES.

25 Q AND YOU SIGNED YOUR INITIALS?

26 A I DID.

27 Q THERE IS ALSO A COIN ENVELOPE. DO YOU  
28 RECOGNIZE THIS (INDICATING)?

1           A        I DO, YES.

2           Q        AND WHAT IS THIS?

3           A        IT APPEARS THAT I REMOVED A POSSIBLE HAIR  
4 FIBER FROM ONE OF THE GLOVES, AND I PLACED IT INTO THAT  
5 COIN ENVELOPE TO PRESERVE IT.

6           Q        AND DID YOU WRITE THAT ON THE ENVELOPE?

7           A        I DID.

8           Q        ALONG WITH THE RECEIPT NUMBER AND YOUR  
9 INITIALS?

10          A        YES.

11          Q        AND ON THE BACK THERE IS AN EVIDENCE SEAL  
12 TAPE?

13          A        CORRECT.

14          Q        WITH YOUR INITIALS AND A DATE?

15          A        YES.

16          Q        THIS DOES NOT HAVE A SEPARATE NUMBER, DOES  
17 IT?

18          A        NO. IT DOES NOT.

19          Q        AND WHY IS THAT?

20          A        BECAUSE I REMOVED IT FROM ONE OF THESE  
21 ITEMS THAT WAS INSIDE OF THIS BAG. IT WASN'T GOING TO BE  
22 MOVED ON FOR ANY FURTHER ANALYSIS. I JUST MOVED IT TO  
23 PRESERVE IT SO THAT IN MY MANIPULATIONS OF SWABBING THE  
24 ITEM AND TAKING PHOTOS OF IT THAT THE HAIR WOULDN'T BE  
25 LOST. SO I PLACED IT INTO THAT ENVELOPE TO PRESERVE IT  
26 IF AT ANY POINT IN THE FUTURE IT NEEDED TO BE LOOKED AT.

27          Q        WHEN YOU EXTRACTED AND QUANTIFIED THE  
28 D.N.A. FROM THOSE TWO GLOVES, WHERE DID YOU SWAB THEM AT?

1           A           I WOULD HAVE TO REFER TO MY FILE SO I CAN  
2 TELL YOU EXACTLY. THANK YOU.

3           Q           AND IN LOOKING AT YOUR REPORT, WOULD THAT  
4 REFRESH YOUR RECOLLECTION?

5           A           LOOKING AT MY HANDWRITTEN NOTES WILL.  
6 THANK YOU.

7                       I SWABBED THE INTERIOR CUFFS OF BOTH  
8 GLOVES, AS WELL AS THE INTERIOR WEBS OF THE FINGERS.

9           Q           AND DID YOU OBTAIN D.N.A. FROM THE GLOVES  
10 A.R.S. 6 AND A.R.S. 7?

11          A           AGAIN, I WOULD HAVE TO --

12          Q           WOULD LOOKING AT YOUR NOTES REFRESH YOUR  
13 RECOLLECTION?

14          A           IT WOULD, THANK YOU.

15                       YES, I DID.

16          Q           AND THOSE SWABS THAT YOU COLLECTED THE  
17 D.N.A. FROM, YOU FOLLOWED THE SAME PROCEDURE, PUT THEM IN  
18 THE TUBE, SEALED THEM, AND THEY ADVANCED ON TO THE NEXT  
19 CRIMINALIST; CORRECT?

20          A           CORRECT.

21                       MR. GOUDY: I AM OPENING UP WHAT HAS BEEN MARKED  
22 AS PEOPLE'S 6 FOR IDENTIFICATION. I AM TAKING OUT THE  
23 CONTENTS, AND IT'S A BLUE JUMPSUIT.  
24 BY MR. GOUDY:

25          Q           DO YOU RECOGNIZE THE BAG MARKED PEOPLE'S 6  
26 FOR IDENTIFICATION?

27          A           I DO, YES.

28          Q           AND HOW DO YOU RECOGNIZE IT?

1           A           AGAIN, MY INITIALS, THE LABORATORY RECEIPT  
2           NUMBER AND THE DATE ARE WRITTEN ON THE BAG ITSELF, AND MY  
3           INITIALS AND THE DATE ARE WRITTEN ACROSS MY SEAL.

4           Q           AND THAT'S THE EVIDENCE TAPE ON THE BOTTOM?

5           A           CORRECT.

6           Q           AND IT HAS A SHERIFF'S EVIDENCE RECEIPT ON  
7           IT?

8           A           IT DOES.

9           Q           AND IT HAS GOT A LAB RECEIPT?

10          A           YES.

11          Q           AND ON THIS JUMPSUIT THERE IS A YELLOW  
12          POST-IT NOTE WITH THE INITIALS A.R.S.-5 AND A LAB RECEIPT  
13          NUMBER AND SOME WRITTEN INITIALS. ARE THOSE YOURS?

14          A           THEY ARE, YES.

15          Q           BASED UPON THIS, CAN YOU TELL WHETHER OR  
16          NOT THIS IS ONE OF THE ITEMS THAT YOU EXTRACTED D.N.A.  
17          AND QUANTIFIED D.N.A. FROM?

18          A           IT IS, YES.

19          Q           DO YOU RECALL WHERE YOU SWABBED THIS ITEM?

20          A           THAT ITEM I SWABBED THE INTERIOR COLLAR.

21          Q           AND DID YOU OBTAIN D.N.A. FROM THIS ITEM?

22          A           I DID, YES.

23          Q           AND THE D.N.A. SWAB THAT YOU USED, DID YOU  
24          THEN PUT IT IN A TUBE AND SEAL IT AND SEND IT ON ITS  
25          WAY?

26          A           I DID, YES.

27          Q           I AM OPENING UP PEOPLE'S 7 FOR  
28          IDENTIFICATION. DO YOU RECOGNIZE THIS (INDICATING) AS





1 HAVING BEEN HANDLED BY YOU PREVIOUSLY?

2 A YES, I DO.

3 Q AND HOW DO YOU RECOGNIZE THAT?

4 A AGAIN, THE LABORATORY RECEIPT NUMBER. MY  
5 INITIALS AND THE DATE I HAVE WRITTEN ON THE PACKAGING. I  
6 HAVE ALSO SIGNED THE SEAL WITH MY INITIALS AND THE DATE.

7 Q AND THERE IS A LAB RECEIPT ON THIS AS WELL?

8 A CORRECT.

9 Q AND THAT HAS THE SAME LAB RECEIPT NUMBER AS  
10 THE ONE THAT YOU HAD; CORRECT?

11 A YES.

12 Q AND ALL OF THE NUMBERS WOULD BE THE SAME.  
13 THE ONE THAT YOU WROTE, NEXT TO YOUR INITIALS AND DATE,  
14 WOULD HAVE THE SAME LAB RECEIPT NUMBER AS THE RECEIPT  
15 THAT'S ATTACHED TO THE ENVELOPES OR THE BAG?

16 A CORRECT.

17 Q I AM TAKING OUT THE CONTENTS. IT IS A  
18 BLACK HAT/HOOD WITH TWO -- THREE HOLES CUT OUT OF IT.  
19 DO YOU RECOGNIZE THIS?

20 A YES, I DO.

21 Q AND HOW DO YOU RECOGNIZE THIS?

22 A AGAIN, THE YELLOW POST-IT NOTE THAT I  
23 CREATED WITH MY INITIALS, THE LABORATORY RECEIPT NUMBER,  
24 AND THE ITEM NUMBER ARE STAPLED TO IT.

25 Q AND DID YOU ATTEMPT TO EXTRACT D.N.A. FROM  
26 THIS ITEM?

27 A YES.

28 Q AND WERE YOU ABLE TO?

1 MR. EVANS: FOR THE RECORD, THE WITNESS IS  
2 REFERRING TO HER REPORT.

3 THE COURT: THE RECORD WILL SO REFLECT.

4 THE WITNESS: YES, I WAS.

5 BY MR. GOUDY:

6 Q AND WHERE DID YOU SWAB THIS ITEM TO --  
7 WHERE YOU EXTRACTED D.N.A. FROM?

8 A AGAIN, REFERRING TO MY NOTES, I SWABBED THE  
9 INTERIOR BRIM, AS WELL AS THE INTERIOR AROUND THE HOLES.

10 Q NOW, CAN YOU TELL WHERE THE D.N.A. YOU  
11 EXTRACTED CAME FROM, IF IT CAME FROM THE BRIM OR FROM  
12 AROUND THE HOLES?

13 A NO. I CANNOT.

14 Q AND WHY NOT?

15 A BECAUSE I SWABBED THEM TOGETHER ONTO ONE  
16 SWAB. SO I WOULD HAVE NO WAY OF KNOWING WHERE EXACTLY  
17 THE D.N.A. CAME FROM.

18 Q AND THEN YOU PUT THE ITEM BACK IN THE  
19 ENVELOPE, SEALED IT UP, TOOK THE SWABS, PUT THEM IN A  
20 TUBE, SEALED THEM UP, AND SENT THEM ON THEIR WAY?

21 A YES.

22 Q DID YOU DO ANYTHING ELSE -- AND YOU DID  
23 THAT FOR ALL 11 ITEMS; IS THAT CORRECT?

24 A YES.

25 Q AND DO YOU RECALL WHAT OTHER ITEMS YOU DID  
26 D.N.A. TESTING ON?

27 A READING FROM MY REPORT, I EXAMINED A BLACK  
28 KNIT HAT, A BLACK KNIT GLOVE, ANOTHER BLACK KNIT GLOVE,

1 THE BLACK KNIT HAT WITH THE HOLES, THE BLUE JUMPSUIT, A  
2 BROWN AND BLACK GLOVE FROM A RIGHT HAND, A LEFT HAND  
3 BROWN AND BLACK GLOVE, A WHITE KNIT GLOVE, A PAIR OF GRAY  
4 SWEATPANTS, A BLUE LONG-SLEEVED SHIRT, AND A BLACK HOODED  
5 SWEATSHIRT.

6 Q AND JUST SO WE ARE CLEAR, THE BLACK KNIT  
7 HAT WITH THE HOLES CUT OUT WAS THE ONE THAT I SHOWED YOU  
8 HERE IN COURT; CORRECT?

9 A YES.

10 Q AND THE BLACK AND BROWN GLOVES, WERE THOSE  
11 THE GLOVES I SHOWED YOU HERE IN COURT?

12 A YES.

13 Q AND THEN THE BLUE JUMPSUIT IS ALSO THE ONE  
14 THAT I SHOWED YOU HERE IN COURT?

15 A YES.

16 MR. GOUDY: NOTHING FURTHER.

17 THE COURT: CROSS-EXAMINATION.

18 MR. EVANS: YES.

19  
20 CROSS-EXAMINATION

21 BY MR. EVANS:

22 Q REFERRING TO PEOPLE'S 7, THE BLACK KNIT  
23 CAP, YOU REMEMBER DOING THE D.N.A. TESTING ON THAT?

24 A I DO, YES.

25 Q OKAY. AND SO BASICALLY YOU TOOK SAMPLES  
26 FROM THAT PARTICULAR ITEM OF CLOTHING USING ONE COTTON  
27 SWAB; IS THAT CORRECT?

28 A THAT'S CORRECT, YES.

1 Q AND WHERE DID YOU -- WHERE EXACTLY DID YOU  
2 TAKE THE -- ON THAT HAT, WHERE EXACTLY DID YOU TAKE THE  
3 D.N.A. SAMPLES FROM?

4 A I SWABBED THE INSIDE OF THE BRIM, AS WELL  
5 AS THE INTERIOR AROUND THE HOLES.

6 Q ALL THREE HOLES?

7 A YES.

8 Q AND WHEN YOU SAY THE BRIM, WHAT ARE YOU  
9 REFERRING TO?

10 A I AM REFERRING TO THE EDGE AROUND THE  
11 BOTTOM PORTION OF THE HAT.

12 Q AND JUST SO WE ARE CLEAR, DID YOU SWAB THE  
13 TOP PORTION OR WHERE THE TOP PORTION OF THE HEAD WOULD  
14 BE, ASSUMING THAT THE HAT WAS ON THEIR HEAD?

15 A I DID NOT.

16 Q DID YOU DO ANY OTHER PARTS IN THE AREAS --  
17 ANY OTHER -- YOU'RE SURE YOU DIDN'T DO ANY OTHER AREAS?

18 A ACCORDING TO MY NOTES, I DID THE BRIM AND  
19 AROUND THE HOLES.

20 Q WHY DID YOU CHOOSE THOSE AREAS?

21 A BASICALLY I FELT LIKE IF A PERSON WERE TO  
22 WEAR THAT PARTICULAR ITEM AND PUT IT OVER THEIR FACE, I  
23 FELT THAT THOSE WOULD BE THE AREAS WHERE THE SKIN WOULD  
24 COME INTO THE MOST CONTACT. SO THAT'S THE AREA THAT I  
25 SWABBED.

26 Q SO WOULD IT BE FAIR TO SAY THAT DEPENDING  
27 UPON WHERE YOU SWAB, YOU CAN PICK UP DIFFERENT  
28 CONCENTRATIONS OF D.N.A.?

1 A YES.

2 Q AND YOU WOULD ALSO -- COULD YOU PICK UP  
3 DIFFERENT PERSONS IF THERE ARE DIFFERENT D.N.A. SAMPLES  
4 OR -- I MEAN, THAT'S A FAIR STATEMENT; RIGHT?

5 A IT IS, YES.

6 MR. EVANS: ONE MOMENT, YOUR HONOR.

7

8 (SHORT PAUSE IN THE PROCEEDINGS.)

9

10 MR. EVANS: NOTHING FURTHER.

11 THE COURT: ANY REDIRECT?

12 MR. GOUDY: NO, YOUR HONOR.

13 THE COURT: THANK YOU. YOU MAY STEP DOWN.

14 THE WITNESS: THANK YOU.

15 THE COURT: PEOPLE, YOU MAY CALL YOUR NEXT  
16 WITNESS.

17 MR. GOUDY: AT THIS TIME, THE PEOPLE WOULD CALL  
18 DR. PAUL COLMAN.

19

20 PAUL COLMAN,  
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: I DO.

1 THE CLERK: THANK YOU. HAVE A SEAT IN THE WITNESS  
2 STAND.

3 PLEASE STATE YOUR FULL NAME AND SPELL YOUR  
4 FULL NAME.

5 THE WITNESS: PAUL COLMAN, P-A-U-L C-O-L-M-A-N.

6 THE CLERK: THANK YOU.

7 THE COURT: ALL RIGHT. YOU MAY BEGIN.

8  
9 DIRECT EXAMINATION

10 BY MR. GOUDY:

11 Q SIR, WHAT IS YOUR OCCUPATION?

12 A I AM EMPLOYED AS A CRIMINALIST WITH THE  
13 LOS ANGELES COUNTY SHERIFF'S CRIME LAB.

14 Q HOW LONG HAVE YOU BEEN A CRIMINALIST WITH  
15 THE LOS ANGELES COUNTY CRIME LAB?

16 A SINCE MAY OF 1989.

17 Q WHAT IS YOUR TRAINING AND EXPERIENCE TO BE  
18 A CRIMINALIST?

19 A WELL, MY ACADEMIC TRAINING -- I WILL TRY TO  
20 KEEP THIS SHORT -- I GUESS I PUT THE STARTING POINT AT  
21 1964. IN 1964, I GRADUATED FROM LOWELL HIGH SCHOOL IN  
22 SAN FRANCISCO WITH AN INTEREST IN SCIENCE. IN 1968, I  
23 OBTAINED A BACHELOR'S DEGREE FROM THE UNIVERSITY OF  
24 CALIFORNIA BERKELEY IN BIOCHEMISTRY.

25 IN 1972, I OBTAINED A DOCTORATE DEGREE IN  
26 BIOCHEMISTRY FROM THE STATE UNIVERSITY OF NEW YORK IN  
27 BUFFALO. FROM 1972 TO 1976, I DID POSTGRADUATE RESEARCH  
28 AT COLUMBIA UNIVERSITY, AGAIN IN BIOCHEMISTRY. AND AT

1 THAT POINT I RETURNED BACK TO THE WEST COAST, FROM WHERE  
2 I ORIGINATED, AND BECAME EMPLOYED AT THE UNIVERSITY OF  
3 SOUTHERN CALIFORNIA AND CHILDREN'S HOSPITAL IN  
4 LOS ANGELES. I WORKED THERE FOR APPROXIMATELY 13 YEARS,  
5 AND IN 1989 I JOINED THE L.A. COUNTY SHERIFF'S CRIME  
6 LAB.

7 FOR APPROXIMATELY ONE YEAR, I DID NARCOTICS  
8 ANALYSIS, SOMETHING THAT WAS NEW TO ME, AND THEN I  
9 TRANSFERRED INTO WHAT THEN WAS THE SEROLOGY SECTION OF  
10 THE LAB. IT'S BEEN RENAMED AS THE FORENSIC BIOLOGY  
11 SECTION, WHERE WE DO OUR D.N.A. TESTING, AND THAT'S WHERE  
12 I AM CURRENTLY ASSIGNED.

13 Q WOULD IT BE FAIR TO SAY THAT YOU WERE  
14 WORKING AT THE SHERIFF'S CRIME LAB WHEN D.N.A. BECAME A  
15 FORENSIC TOOL?

16 A THAT'S CORRECT, AND I WAS INVOLVED IN THE  
17 EARLY VALIDATION OF THIS NEW TECHNOLOGY.

18 Q AND IN THE 21 YEARS THAT YOU HAVE BEEN AT  
19 THE SHERIFF'S CRIME LAB, APPROXIMATELY HOW MANY CASES  
20 HAVE YOU WORKED ON WITH D.N.A.?

21 A SIR, I DON'T HAVE AN EXACT COUNT. I DON'T  
22 KEEP STATS ON THAT SORT OF THING, BUT WELL, WELL OVER  
23 100 CASES.

24 Q AND WHAT IS YOUR CURRENT ASSIGNMENT IN THE  
25 FORENSIC LAB?

26 A CURRENTLY I AM ASSIGNED TO FORENSIC BIOLOGY  
27 AS A D.N.A. ANALYST, MY MAJOR RESPONSIBILITY ANALYZING  
28 D.N.A. IN CASEWORK.



1 Q AND ARE YOU FAMILIAR WITH A CASE INVOLVING  
2 A DION HAWKINS AND A TAUMU JAMES?

3 A YES, I AM.

4 Q AND DID YOU DO D.N.A. ANALYSIS ON THAT  
5 CASE?

6 A YES, I DID.

7 Q SPECIFICALLY, WHAT TYPE OF WORK DID YOU DO  
8 ON THAT CASE?

9 THE WITNESS: MAY I REFER TO MY NOTES, YOUR  
10 HONOR?

11 THE COURT: YOU MAY.

12 THE WITNESS: THANK YOU.

13 IN THIS CASE I WAS ASKED TO COMPARE A  
14 SERIES OF SAMPLES OF D.N.A. THAT HAD BEEN PREVIOUSLY  
15 EXTRACTED AND QUANTITATED BY MS. AMBER SAGE. SO I  
16 RECEIVED IN THIS CASE THE D.N.A., ALL READY FOR MY  
17 ANALYSIS, AND MY ANALYSIS INVOLVED A SERIES OF DISCRETE  
18 STEPS, WHICH INCLUDED AMPLIFICATION OF THE D.N.A. THROUGH  
19 SOMETHING CALLED P.C.R. TECHNOLOGY, AND THEN TYPING OF  
20 THE D.N.A., GENERATING THE RESULTS OF THE GENOTYPES, AND  
21 THEN COMPARING THESE SAMPLES THAT SHE HAD PREPARED FROM  
22 FORENSIC UNKNOWNNS -- AND THERE WERE SEVERAL OF THEM --  
23 AGAINST SUBMITTED REFERENCES. AND THE REFERENCES THAT I  
24 WAS COMPARING IT AGAINST WERE MR. DION HAWKINS AND  
25 MR. TAUMU JAMES.

26 BY MR. GOUDY:

27 Q NOW, HOW MANY UNKNOWNNS DID YOU DO AN  
28 ANALYSIS WITH?

1           A           I BELIEVE THERE WERE 11 FORENSIC UNKNOWNNS  
2           THAT I WAS ASKED TO COMPARE AGAINST THOSE REFERENCES.

3           Q           AND WHEN YOU DID THE COMPARISON, DID YOU DO  
4           THE SAMPLE KNOWN TO BE MR. DION HAWKINS' AND COMPARE IT  
5           AGAINST THE D.N.A. TAKEN FROM ALL 11 FORENSIC UNKNOWNNS?

6           A           CORRECT.

7           Q           AND DID YOU DO THE SAME THING WITH THE  
8           SAMPLE TAKEN FROM TAUMU JAMES?

9           A           CORRECT.

10          Q           AND YOU SAY YOU AMPLIFIED THE D.N.A.   WHAT  
11          DOES THAT MEAN?

12          A           YES.   ONCE WE HAVE THE EXTRACTED  
13          QUANTITATED D.N.A., WE NEED TO AMPLIFY DISCRETE PORTIONS,  
14          AND THESE ARE CALLED S.T.R., FOR SHORT TANDEM REPEAT  
15          LOCI.   AND THE KITS THAT WE USE, WHICH ARE CALLED  
16          IDENTIFIER, MANUFACTURED BY A.B.I., INCLUDE IN THE KIT  
17          15 S.T.R. LOCI THAT WE AMPLIFY.

18                   AND BY "AMPLIFY," WHAT I MEAN IS WE HAVE A  
19          MACHINE CALLED A THERMAL CYCLER.   ACTUALLY, WE HAVE MANY  
20          OF THESE MACHINES.   AND WHAT THEY DO IS THEY CYCLE THE  
21          TEMPERATURE OF THE EXTRACTED D.N.A., AND WE HAVE ADDED TO  
22          THAT REACTION COMPONENTS SUFFICIENT TO BUILD MORE D.N.A.,  
23          BUT IT'S PRIMED BY THESE 15 S.T.R. PRIMERS.   SO IT'S A  
24          COCKTAIL, AND IT GOES IN THE TUBE, AND WE DO 28 DOUBLING  
25          CYCLES.

26                   NOW, 28 DOUBLING CYCLES DOESN'T SOUND LIKE  
27          A LOT.   BUT JUST TO HELP YOU VISUALIZE THIS, IF I WERE TO  
28          PUT A PENNY ON THAT TABLE THERE AND DOUBLE IT 28 TIMES --

1 SO, FOR INSTANCE, THE FIRST DOUBLING I WOULD HAVE TWO  
2 PENNIES. THE NEXT DOUBLING I WOULD HAVE FOUR PENNIES.  
3 AND IF I CONTINUED THAT PROCESS 28 TIMES, YOU WOULD HAVE  
4 OVER \$2,000,000 SITTING HERE. ALL RIGHT? SO 28 DOUBLING  
5 CYCLES IS ACTUALLY, FOR THESE 15 DISCRETE MARKERS OR  
6 LOCI, SUFFICIENT DOUBLING OR PRODUCING OF D.N.A. FOR US  
7 TO VISUALIZE IT.

8 AND WE VISUALIZE IT IN THE LAST STEP OF THE  
9 PROCESS WITH A MACHINE CALLED A GENETIC ANALYZER, AND THE  
10 MACHINE USES A PROCESS CALLED CAPILLARY ELECTROPHORESIS  
11 TO SEPARATE OUT ALL OF THESE PRODUCTS, ALL OF THESE  
12 AMPLIFIED PRODUCTS. AND IT ALLOWS US TO IDENTIFY THEM,  
13 AND THEN WE GENERATE TABLES OF RESULTS.

14 Q AND DID YOU DO THAT IN THIS CASE?

15 A YES.

16 Q FOR ALL THE D.N.A. THAT MS. SAGE EXTRACTED?

17 A THAT'S CORRECT.

18 Q DID YOU HAVE TO DO THAT AS WELL FOR THE  
19 SAMPLES, THE KNOWN SAMPLES?

20 A YES. WE HAVE IN THIS BUSINESS TWO  
21 CATEGORIES OF SAMPLES: WE HAVE FORENSIC UNKNOWNNS, AND  
22 THOSE ARE SAMPLES THAT ARE SUBMITTED TO THE LABORATORY  
23 WHERE THEY ARE ASKING US CAN WE FIGURE OUT WHO OR WHO  
24 COULD NOT HAVE DONATED THOSE SAMPLES; AND THEN THE OTHER  
25 CLASS OF SAMPLES WE HAVE ARE OUR REFERENCES OR OUR  
26 STANDARDS, AND THESE ARE USUALLY TODAY THEY ARE JUST  
27 TAKEN FROM ORAL OR CHEEK SWABS, SO WE DON'T HAVE TO BLEED  
28 THE PERSON. IT'S PRETTY EASY TO GET THESE SAMPLES. AND

1       THESE ARE SAMPLES FOR WHICH THERE IS A KNOWN DOCUMENTED  
2       CHAIN OF CUSTODY SO WE KNOW WHO IT BELONGS TO OR WHO IT  
3       CAME FROM, AND THEN WE ARE SIMPLY ASKED TO COMPARE THESE  
4       STANDARDS AGAINST OUR FORENSIC UNKNOWNNS TO SEE IF ANY OF  
5       THEM COULD BE THE DONORS.

6               Q       NOW, THE FORENSIC UNKNOWN SAMPLES, WHEN YOU  
7       GOT THEM, WHERE WERE THEY AT?

8               A       WELL, THERE WERE TWO FORENSIC UNKNOWNNS, AND  
9       THEY WERE BOTH ORAL REFERENCE SAMPLES.   AND YOU'RE ASKING  
10      WHO DID I RECEIVE THEM FROM?

11              Q       WELL, WERE THEY IN THE LAB SOMEWHERE?

12              A       YES.

13              Q       AND WHERE WERE THEY IN THE LAB?

14              A       WE HAVE A DEPARTMENT CALLED EVIDENCE  
15      CONTROL, AND THEY RETAIN CUSTODY OF ALL OF THE SAMPLES.  
16      SO WHEN I AM ASKED TO DO A CERTAIN SET OF SAMPLES, I  
17      WOULD GO TO EVIDENCE CONTROL TO OBTAIN THESE SAMPLES.

18              Q       AND THAT'S WHERE YOU GOT THE 11 ITEMS, THE  
19      FORENSIC EVIDENCE UNKNOWN SAMPLES; CORRECT?

20              A       CORRECT.

21              Q       AND THE TWO REFERENCE SAMPLES WHAT YOU GOT,  
22      WHERE WERE THOSE WHEN YOU GOT THEM?   WERE THEY ALSO IN  
23      THE EVIDENCE CONTROL SECTION?

24              A       WELL, ORAL REFERENCE SAMPLES -- AND THIS IS  
25      FOR MR. HAWKINS -- WAS RECEIVED FROM DETECTIVE CHISM ON  
26      JANUARY 22ND, 2009.   THAT WAS FOR MR. HAWKINS.

27                      AND THE OTHER REFERENCE IN THIS CASE WAS  
28      FROM MR. TAUMU JAMES, AND I RECEIVED THAT SAMPLE ON

1 JULY 29TH, 2009, DIRECTLY FROM EVIDENCE CONTROL.

2 MR. EVANS: YOUR HONOR, FOR THE RECORD, THE  
3 WITNESS WAS REFERRING AND READING FROM HIS REPORT.

4 THE COURT: THE RECORD WILL SO REFLECT.

5 BY MR. GOUDY:

6 Q NOW, WHAT DO YOU DO TO MAKE A COMPARISON  
7 BETWEEN A REFERENCE SAMPLE AND A FORENSIC UNKNOWN?

8 A WELL, ONCE THE GENETIC ANALYZER HAS  
9 PRODUCED THE DATA SET, AS AN ANALYST, MY RESPONSIBILITY  
10 IS TO COMPARE THE PROFILES, THE D.N.A. PROFILES THAT ARE  
11 GENERATED WITH THIS INSTRUMENT AGAINST THE PROFILES THAT  
12 ARE GENERATED FOR THE REFERENCES THAT I AM COMPARING.  
13 AND I DO HAVE A CHART, ACTUALLY, IF YOU WOULD LIKE ME TO  
14 SHOW IT TO YOU.

15 Q IS THAT THIS CHART HERE (INDICATING)?

16 A YES.

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

18 THE COURT: YOU MAY.

19 MR. GOUDY: YOUR HONOR, I HAVE A CHART THAT I  
20 WOULD ASK TO BE MARKED. IF I COULD MARK IT AS  
21 PEOPLE'S --

22 THE COURT: 12.

23 MR. GOUDY: -- 12 FOR IDENTIFICATION.

24 THE COURT: IT WILL BE SO MARKED.

25

26 (MARKED FOR IDENTIFICATION

27 PEOPLE'S EXHIBIT NO. 12,

28 CHART.)

1 BY MR. GOUDY:

2 Q THE CHART THAT I JUST PUT UP THERE AND  
3 MARKED AS PEOPLE'S 12 BY PLACING A P-12 IN THE UPPER  
4 RIGHT-HAND CORNER IN BLUE INK, IS THIS A CHART THAT YOU  
5 PREPARED?

6 A YES, IT IS.

7 Q AND WHAT DOES THIS CHART SHOW?

8 A THIS SHOWS THE GENETIC PROFILES OF TWO  
9 FORENSIC UNKNOWNNS AND TWO REFERENCE SAMPLES THAT I WAS  
10 ASKED TO COMPARE. NOW, THERE WERE OTHER FORENSIC  
11 UNKNOWNNS THAT WERE ANALYZED, BUT THESE ARE THE TWO THAT I  
12 SELECTED BECAUSE THEY PROVIDED THE GREATEST DEGREE OF  
13 INFORMATION, THE GREATEST DISCRIMINATION.

14 Q NOW, LET'S START WITH -- YOU HAVE THEM  
15 COLOR COORDINATED. SOME COLUMNS ARE IN BLUE, AND SOME  
16 ARE IN RED. WHY IS THAT?

17 A MAY I USE A LASER POINTER TO --

18 THE COURT: YOU MAY.

19 THE WITNESS: THANK YOU.

20 LET ME JUST -- CAN YOU ALL SEE THAT? THIS  
21 (INDICATING) REFERS TO THE SAMPLE I.D.'S, AND AT THE  
22 BOTTOM I PUT WHAT THEY WERE. THIS IS SAMPLE  
23 09D1950-ARS-4A. "ARS" IS A REFERENCE TO AMBER SAGE.  
24 THIS NUMBER (INDICATING) IS A D.N.A. CASE NUMBER, JUST A  
25 SEQUENCE. THIS WAS THE 1,950TH CASE OF THE LAB, AND THE  
26 4A (INDICATING) IS THE NUMBER THAT I ATTACHED JUST  
27 SEQUENTIALLY SAMPLE BY SAMPLE. SO THIS ONE WAS 4A.

28 AND THESE (INDICATING) COLUMNS REPRESENT

1 THE 15 GENETIC LOCI THAT WE LOOK AT. FOR INSTANCE, THIS  
2 IS D8S1179. THE "D" STANDS FOR D.N.A. IT'S A D.N.A.  
3 LOCUS. THE "8" STANDS FOR CHROMOSOME NUMBER 8. WE HAVE  
4 GOT 23 PAIRS OF CHROMOSOMES IN EACH AND EVERY NUCLEUS IN  
5 OUR BODY, IN EACH CELL, AND THIS IS ON THE EIGHTH  
6 CHROMOSOME.

7 THE "S" (INDICATING) JUST STANDS FOR SINGLE  
8 LOCUS, WHICH MEANS THAT THIS PARTICULAR SEQUENCE OF  
9 D.N.A. IS NOT FOUND IN ANY OTHER CHROMOSOME IN THE HUMAN  
10 GENOME. AND THE "1179" HAS TO DO WITH THE ORDER OF  
11 DISCOVERY. IT'S NOT REALLY IMPORTANT HERE.

12 IN ANY EVENT, WE LOOK AT 15 GENETIC LOCI,  
13 AND WE ALSO LOOK AT ONE OTHER MARKER CALLED AMELOGENIN.  
14 AND THE ONLY INFORMATION THAT AMELOGENIN PROVIDES IS THE  
15 GENDER OF THE SOURCE. SO IT'S EITHER MALE OR FEMALE. IF  
16 IT'S MALE, IT'S X-Y. IF IT'S FEMALE, IT'S JUST "X."  
17 THAT'S THE ONLY DISCRIMINATION THAT LOCUS GIVES.

18 THE OTHER 15 ARE WHAT ARE CALLED SHORT  
19 TANDEM REPEATS, AND THESE LOCI ARE PARTICULARLY USEFUL  
20 FOR HUMAN IDENTITY TESTING BECAUSE THEY ARE HIGHLY  
21 VARIABLE IN THE HUMAN POPULATION. THE TERM WE USE IS  
22 POLYMORPHIC, BUT IT JUST MEANS THAT THEY ARE VERY, VERY  
23 VARIABLE, AND THAT IS WHAT YOU WANT. IT GIVES YOU THE  
24 MOST DISCRIMINATION.

25 SO WHAT I HAVE ON THE FAR TWO RIGHT COLUMNS  
26 ARE TWO REFERENCES, OR STANDARDS, FROM THIS ONE IN RED  
27 (INDICATING), JUST ARBITRARILY CODED RED, FROM  
28 MR. HAWKINS (INDICATING), AND THIS ONE IN BLUE

1 (INDICATING) IS FROM MR. JAMES. AND THESE ARE THEIR  
2 REFERENCE PROFILES.

3 AND WHAT I DID IN THIS CASE WAS LOOK AT THE  
4 EXTRACT FROM THE BLACK KNIT HAT AND FROM THE BROWN AND  
5 BLACK GLOVE. NOW, I DIDN'T ACTUALLY SEE THESE ITEMS. I  
6 RECEIVED THE D.N.A. THAT AMBER HAD EXTRACTED FROM THESE  
7 ITEMS. AND WHEN I TYPED IT, I GOT THESE RESULTS.

8 NOW, WHAT I DID -- AND TO MAKE IT EASIER  
9 FOR YOU TO VISUALIZE THIS, I COLOR-CODED WHAT I COULD  
10 INCLUDE. AND ALL OF THE MARKERS THAT ARE IN HERE THAT  
11 ARE BLUE ARE CONSISTENT WITH ORIGINATING FROM MR. JAMES.  
12 THE OTHER MARKERS THAT ARE IN BLACK WERE VERY WEAKLY  
13 DETECTED. THEY WERE THERE BUT WEAK, VERY MINOR TYPES.  
14 THEY COULD NOT HAVE COME FROM EITHER OF THESE TWO  
15 REFERENCES (INDICATING).

16 AND SIMILARLY, IN THE BROWN AND BLACK  
17 GLOVE, I WAS ABLE TO COMPARE AND I WAS ABLE TO DETERMINE  
18 THAT THE PROFILE OF MR. HAWKINS IS INCLUDED IN THAT  
19 PROFILE AGAIN AS A MAJOR. THERE ARE MINOR TYPES DETECTED  
20 THAT COULD NOT COME FROM, AGAIN, EITHER OF THESE  
21 INDIVIDUALS.

22 THE COURT: I WILL GO AHEAD AND STOP YOU THERE,  
23 AND WE WILL TAKE OUR LUNCH BREAK. SO YOU ARE ORDERED  
24 BACK HERE AT 1:30.

25 LADIES AND GENTLEMEN, PLEASE KEEP IN MIND  
26 THE COURT'S ADMONITION, AND WE WILL SEE YOU BACK HERE AT  
27 1:30.

28 ///



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

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1 CASE NUMBER: KA085233  
2 CASE NAME: PEOPLE VS. TAUMU JAMES  
3 LOS ANGELES, CALIFORNIA FRIDAY, AUGUST 6, 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 JURY:)  
12

13 THE COURT: BACK ON THE RECORD IN PEOPLE VERSUS  
14 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE  
15 PRESENT. ALL OF OUR JURORS ARE PRESENT. DETECTIVE  
16 CHISM IS HERE AT COUNSEL TABLE, AND WE HAVE  
17 DR. COLMAN BACK ON THE STAND.

18 SIR, I'D LIKE TO REMIND YOU THAT YOU REMAIN  
19 UNDER OATH.

20 AND MR. GOUDY, YOU MAY CONTINUE.

21 MR. GOUDY: THANK YOU, YOUR HONOR.  
22

23 DIRECT EXAMINATION (RESUMED)

24 BY MR. GOUDY:

25 Q DR. COLMAN, JUST SO WE ARE CLEAR --

26 MR. GOUDY: IF I MAY APPROACH, YOUR HONOR.

27 THE COURT: YOU MAY.  
28

///  
28

1 BY MR. GOUDY:

2 Q THE NUMBERS UP HERE, THE 09D1950, THAT  
3 BASICALLY MEANS THIS IS THE YEAR (INDICATING) --

4 A THAT'S CORRECT.

5 Q -- OF THE SAMPLE?

6 A (NO AUDIBLE RESPONSE.)

7 Q "D" IS FOR D.N.A.?

8 A THAT'S CORRECT.

9 Q AND THE 1950 IS THE CHRONOLOGICAL NUMBER OF  
10 THE CASE?

11 A THAT'S RIGHT. THAT'S THE 1,950TH CASE THAT  
12 OUR LAB WORKED ON.

13 Q "ARS" WOULD BE AMBER SAGE'S INITIALS?

14 A CORRECT.

15 Q AND THE 4A, THAT'S THE EVIDENCE NUMBER?

16 A YEAH. THAT WOULD BE HER CHRONOLOGY OF THE  
17 EVIDENCE ITEMS THAT SHE RECEIVED AND EXTRACTED THE  
18 D.N.A.

19 Q NOW, THERE WAS -- EARLIER SHE TESTIFIED  
20 THAT A BLACK KNIT HAT WITH HOLES IN IT WAS -- SHE  
21 HAD WRITTEN A.R.S. 4. NOW, UP THERE YOU HAVE THE  
22 BLACK KNIT HAT A.R.S. 4-A. WHAT IS THE 4-A`?

23 A I BELIEVE THE "A" IS JUST HER DESIGNATION  
24 OF THE SAMPLE REMOVED FROM 4-A, FROM 4, THAT WOULD  
25 HAVE GONE TO D.N.A. SO EVERY SAMPLE WOULD BE  
26 NUMBERED WITH AN "A," SUCH AS 4-A OR 6-A,  
27 DESIGNATING THE PORTION THAT WAS REMOVED FOR  
28 EXTRACTION AND ULTIMATE D.N.A. TESTING.

1                   Q           SO THE SWAB THAT SHE USED TO EXTRACT THE  
2                   D.N.A. AND THEN SHE PUT IN THE TUBE WAS LABELED  
3                   4-A?

4                   A           CORRECT.

5                   Q           AND THAT CAME FROM NUMBER 4?

6                   A           FROM NUMBER 4.

7                   Q           AND 6-A CAME FROM NUMBER 6?

8                   A           THAT'S CORRECT, MR. GOUDY.

9                   Q           THANK YOU.

10                               NOW, THE REFERENCE SAMPLES, THE ONE FOR  
11                   MR. HAWKINS AND MR. JAMES, WHEN YOU RECEIVED THEM  
12                   WERE THEY -- WHAT TYPE OF PACKAGING WERE THEY IN?

13                   A           WELL, I DON'T HAVE A RECOLLECTION JUST OFF  
14                   THE TOP OF MY HEAD, BUT GENERALLY WE RECEIVE THESE  
15                   PACKAGES AS SEALED, TAPE SEALED, AND THE REFERENCES  
16                   GENERALLY ARE ORAL SWABS. SO THEY COME PACKAGED IN  
17                   A LITTLE CARTON THAT ALLOWS THEM TO DRY IN TRANSIT.  
18                   AND SO WHEN I RECEIVED THEM, THEY WOULD HAVE BEEN  
19                   SEALED IN THESE LITTLE CARDBOARD BOXES IN A SEALED  
20                   OUTER CONTAINER.

21                   Q           AND IF THERE WAS A PROBLEM WITH THE WAY  
22                   THEY WERE PACKAGED AND SEALED, YOU WOULD HAVE NOTED  
23                   THAT; CORRECT?

24                   A           I WOULD HAVE NOTED IT, CORRECT.

25                   Q           AND DO YOU RECALL IF THERE WAS A PROBLEM  
26                   WITH THE WAY THE REFERENCE SAMPLES FOR MR. HAWKINS  
27                   OR MR. JAMES WAS PACKAGED AND SEALED?

28                   A           NO. THERE WAS NO PROBLEM.

1 Q AND THEY ALSO HAVE A LAB RECEIPT ATTACHED  
2 TO THEM; CORRECT?

3 A CORRECT.

4 MR. GOUDY: YOUR HONOR, I HAVE A PHOTOCOPY OF A  
5 LAB RECEIPT. IT HAS THE LAB RECEIPT NUMBER  
6 K140598. IT HAS THE INVESTIGATOR NAME R. CHISM,  
7 AND IT SAYS "ENVELOPE CONTAINING D.N.A. SWABS FROM  
8 JAMES/TAUMU." MAY I ASK THAT THIS BE MARKED AS  
9 PEOPLE'S NUMBER 13 FOR IDENTIFICATION?

10 THE COURT: IT WILL BE SO MARKED.

11

12 (MARKED FOR IDENTIFICATION  
13 PEOPLE'S EXHIBIT NO. 13,  
14 LAB RECEIPT.)

15

16 MR. GOUDY: I AM MARKING IT P-13 IN THE BOTTOM  
17 RIGHT-HAND CORNER, ON THE BACK OF THAT PAPER.

18 MR. GOUDY: MAY I APPROACH?

19 THE COURT: YOU MAY.

20 BY MR. GOUDY:

21 Q SHOWING YOU WHAT HAS BEEN MARKED AS  
22 PEOPLE'S NUMBER 13 FOR IDENTIFICATION, DOCTOR, DO  
23 YOU RECOGNIZE WHAT THIS IS?

24 A YES. THIS IS THE LABORATORY RECEIPT THAT  
25 ACCOMPANIED THE REFERENCE SUBMISSION FOR MR. JAMES,  
26 K140598. THAT'S WHAT MY NOTES REFLECT.

27 Q AND THAT LAB RECEIPT NUMBER WOULD  
28 CORRESPOND WITH THE SWAB THAT YOU TESTED AS A

1 REFERENCE SAMPLE VERSUS THE BLACK KNIT HAT; IS THAT  
2 CORRECT?

3 A THAT'S CORRECT. THAT WOULD BE THIS  
4 REFERENCE HERE (INDICATING).

5 Q NOW, THE BLACK KNIT HAT, HOW MANY BLACK  
6 KNIT HATS DID YOU COMPARE THAT REFERENCE TO?

7 A THERE WAS A SAMPLE 1-A, IDENTIFIED AS A  
8 BLACK KNIT HAT. THERE WAS A SAMPLE 4-A, IDENTIFIED  
9 AS A BLACK KNIT HAT. THAT'S THE ONE WE --

10 Q IS THERE ANY WAY TO DISTINGUISH BETWEEN THE  
11 TWO KNIT HATS?

12 A SIR, I NEVER, MR. GOUDY, EXAMINED THESE  
13 HATS. SO IF YOU BROUGHT BOTH HATS AND SHOWED THEM  
14 TO ME NOW, I COULDN'T IDENTIFY FROM PERSONAL  
15 KNOWLEDGE THE HATS.

16 Q BASED ON THE REPORTS --

17 A YES.

18 Q -- ARE THEY BOTH DESIGNATED SOLELY AS BLACK  
19 KNIT HATS?

20 A WELL, ON THE TRANSMITTAL FORM THAT I  
21 RECEIVED FROM AMBER SAGE, YES, I BELIEVE.

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

23 THE COURT: YOU MAY.

24 BY MR. GOUDY:

25 Q AND YOU'RE LOOKING AT A REPORT?

26 A WELL, 1-A, BLACK KNIT HAT, AND 4-A, BLACK  
27 KNIT HAT WITH EYE AND MOUTH HOLES.

28 Q SO 4-A HAS EYE AND MOUTH HOLE ON THERE?

1 A YES. EYE AND MOUTH HOLES.

2 Q SO ONE WAS JUST A BLACK KNIT HAT, AND ONE  
3 WAS A BLACK KNIT HAT CAN WITH EYE AND MOUTH HOLES?

4 A THAT'S THE WAY IT WAS TRANSMITTED  
5 TO ME, YES.

6 MR. GOUDY: YOUR HONOR, I HAVE ANOTHER LAB  
7 RECEIPT. IT'S GOT A NUMBER K059240. IT HAS THE  
8 NAME DION HAWKINS WITH THE INVESTIGATOR NAME CHISM,  
9 AND IT SAYS "BAG CONTAINING TWO D.N.A. SWABS." I  
10 WOULD ASK THAT THIS BE MARKED AS PEOPLE'S NUMBER 14  
11 FOR IDENTIFICATION.

12 THE COURT: IT WILL BE SO MARKED.

13

14 (MARKED FOR IDENTIFICATION

15 PEOPLE'S EXHIBIT NO. 14,

16 LAB RECEIPT.)

17

18 MR. GOUDY: I AM MARKING A P-14 IN THE BOTTOM  
19 RIGHT-HAND CORNER.

20 BY MR. GOUDY:

21 Q SHOWING YOU WHAT HAS BEEN MARKED AS  
22 PEOPLE'S 14 FOR IDENTIFICATION, DO YOU RECOGNIZE  
23 THIS (INDICATING)?

24 A YES.

25 Q WHAT IS THIS A PHOTOCOPY OF?

26 A THIS IS THE LABORATORY RECEIPT THAT I  
27 RECEIVED ON JANUARY 22ND FROM DETECTIVE CHISM  
28 CONTAINING THE ORAL REFERENCE SAMPLE FROM MR. DION

1 HAWKINS, K059240.

2 Q AND WOULD THAT REFERENCE SAMPLE HAVE BEEN  
3 PACKAGED AND SEALED IN THE SAME MANNER AS THE ONE  
4 FOR MR. JAMES?

5 A YES.

6 Q AND IF THERE HAD BEEN A PROBLEM WITH THE  
7 SEALING AND THE PACKAGING OR THE REFERENCE SAMPLE,  
8 YOU WOULD HAVE NOTED THAT; CORRECT?

9 A THAT'S CORRECT.

10 Q AND WAS THERE A PROBLEM WITH THAT REFERENCE  
11 SAMPLE?

12 A NO. THERE WAS NOT.

13 Q NOW, YOU MAKE THE COMPARISONS AND WE SEE  
14 THE CHART OF PEOPLE'S 12, AND THERE ARE A LOT OF  
15 NUMBERS UP THERE.

16 A CORRECT.

17 Q FIFTEEN LOCI, IS THAT WHAT THEY ARE  
18 CALLED?

19 A LOCI.

20 Q EXCUSE ME.

21 A ALTHOUGH I HAVE TALKED TO PEOPLE -- THIS IS  
22 A LATIN WORD. LOCUS, SINGLE, PLURAL. SOME PEOPLE  
23 HAVE TOLD ME THAT THE CORRECT IS LOCI. I THINK  
24 COMMON ENGLISH PRONUNCIATION WOULD SAY LOCI.

25 Q WHAT IS AN ALLELE?

26 A OKAY. AN ALLELE -- AND THOSE NUMBERS IN  
27 THESE BOXES (INDICATING) ARE ALL ALLELES. THESE  
28 REFER TO THE NATURAL FORMS OF GENES THAT WE



1 INHERIT. NOW, BECAUSE THESE PARTICULAR S.T.R. LOCI  
2 CONTAIN VERY VARIABLE GENES, WE HAVE A LOT OF  
3 DIFFERENT VERSIONS OF ESSENTIALLY THE SAME  
4 INFORMATION, BUT IT'S REITERATED, OR COPIED,  
5 MULTIPLE TIMES. WHAT THESE NUMBERS (INDICATING)  
6 ACTUALLY REFER TO IS THE NUMBER OF TIMES A  
7 PARTICULAR SEQUENCE IS COPIED. THEY'RE LIKE  
8 BOXCARS, OR TANDEM REPEATS WE CALL THEM.

9 SO, FOR INSTANCE, JUST AS AN EXAMPLE HERE,  
10 WE SEE AN 8 AND AN 11. WELL, WE ARE ALL GOING TO  
11 HAVE A NUMBER IN THAT BOX. THIS INDIVIDUAL RECEIVED  
12 AN 8 FROM ONE BIOLOGICAL PARENT AND AN 11 FROM THE  
13 OTHER BIOLOGICAL PARENT. THESE NUMBERS (INDICATING)  
14 REFER TO THE NUMBER OF REITERATIONS, OR REPEATS, OF  
15 SOME CONSENSUS SEQUENCE THAT WE ALL HAVE.

16 SO ONE PARENT DONATED EIGHT COPIES. THAT  
17 IS A SEQUENCE OF D.N.A. WITH EIGHT REPETITIVE COPIES  
18 OF THIS S.T.R. ANOTHER PARENT DONATED TO THAT  
19 OFFSPRING 11. SAME SEQUENCE BUT 11. SO A BIGGER  
20 PIECE AND A SMALLER PIECE. AND BECAUSE THESE ARE SO  
21 HIGHLY VARIABLE IN THE POPULATION, IT'S EXCEEDINGLY  
22 UNLIKELY THAT ANY TWO RANDOM PEOPLE UNRELATED TO  
23 EACH OTHER WOULD SHARE THESE PROFILES.

24 Q JUST SO I AM CLEAR, SINCE YOU WENT WITH THE  
25 8 AND THE 11 -- AND THAT IS WITH LOCI D7S820?

26 A CORRECT.

27 Q ONE PARENT DONATED 8 COPIES OF THAT LOCI,  
28 AND ONE 11 COPIES OF THAT LOCI.

1 A OF THAT SEQUENCE, CORRECT. CORRECT.

2 Q SO WHEN YOU SEE -- AND THAT WAS UNDER THE  
3 A.R.S. 6-A FOR THE BROWN AND BLACK GLOVE; CORRECT?

4 A CORRECT.

5 Q SO WHEN YOU SEE 8 AND 10 UNDER A.R.S. 4-A,  
6 FOR THE BLACK KNIT HAT, THERE IS AN 8 THERE AS WELL?

7 A THERE IS.

8 Q THAT DOESN'T MEAN THAT IT'S A  
9 POSSIBILITY -- DOES THAT MEAN THAT IT'S A POSSIBILITY  
10 THAT THEY CAME FROM THE SAME PERSON?

11 A NO. THAT'S NOT POSSIBLE.

12 Q BECAUSE THERE IS A 10, THESE NUMBERS WORK  
13 IN TANDEM; IS THAT CORRECT?

14 A THAT'S CORRECT. AND PERHAPS ONE THING,  
15 JUST TO CLARIFY FOR THE JURY -- I DIDN'T GET INTO  
16 THIS, BUT FORENSICALLY WHAT IS IMPORTANT TO  
17 UNDERSTAND ABOUT D.N.A. IS FROM THE MOMENT WE ARE  
18 CONCEIVED, EACH AND EVERY ONE OF US, WHEN OUR  
19 FATHER'S -- OUR BIOLOGICAL FATHER'S SPERM  
20 FERTILIZED OUR MOTHER'S OVUM, OR EGG, FROM THAT  
21 ORIGINAL FERTILIZED CELL -- THAT IS, ORIGINAL  
22 CONCEPTION OF EACH HUMAN BEING -- ALL PROGENY FROM  
23 THAT UNION HAVE EXACTLY THE SAME D.N.A., WHICH MEANS  
24 NO MATTER WHERE I SAMPLE YOU, I AM GOING TO GET THE  
25 SAME D.N.A.

26 AND IN FACT, WHAT IS INTERESTING IS, FOR  
27 FORENSIC APPLICATIONS, IT NEVER CHANGES. SO, FOR  
28 INSTANCE, IF I WERE TO SAMPLE YOU AT BIRTH AND COME

1 BACK TEN YEARS LATER AND RESAMPLE AND COME BACK TEN  
2 YEARS LATER AT AGE 20 AND RESAMPLE AND DO THIS  
3 THROUGHOUT YOUR ENTIRE LIFE CYCLE, THE D.N.A. WOULD  
4 NEVER CHANGE. YOU COULD BE 80, 100 YEARS OLD, AND  
5 IT WOULD BE THE SAME. IN FACT, IT ACTUALLY SURVIVES  
6 THE LIVING STATE.

7 AS AN EXAMPLE, HAIR FROM THE EXHUMED  
8 REMAINS OF ABRAHAM LINCOLN HAS BEEN LOOKED AT IN  
9 MODERN TIMES TO MAKE A DIAGNOSIS OF MARFAN'S  
10 DISEASE. SO WHAT I AM SAYING IS THAT D.N.A., IF  
11 PROPERLY PRESERVED, IS VERY, VERY STABLE, AND IT  
12 DOESN'T CHANGE. AND IT DOESN'T MATTER FROM WHERE IN  
13 YOUR BODY I SAMPLE YOU, I WILL GET THE SAME D.N.A.  
14 PROFILE.

15 Q AND JUST BECAUSE THERE IS ONE AREA, ONE  
16 LOCI, THE TH-01 WHERE FROM THE A.R.S. 4-A THERE IS A 7  
17 AND 8, WHICH MEANS THAT ONE PARENT CONTRIBUTED 7 AND ONE  
18 CONTRIBUTED 8 --

19 A CORRECT.

20 Q -- THAT IS CONSISTENT WITH A.R.S. 6-A, ALSO  
21 A 7 AND 8 FOR THE SAME LOCI?

22 A THAT'S RIGHT. THAT'S RIGHT.

23 Q AND THAT ALSO APPEARS IN THE TWO  
24 REFERENCES?

25 A RIGHT. THESE (INDICATING) TWO  
26 INDIVIDUALS -- AND THIS IS NOT UNUSUAL -- AT THAT LOCUS  
27 HAPPEN TO BE IDENTICAL. SO YOU MAY FIND AN  
28 INDIVIDUAL THAT AT ONE OF THESE 15 LOCI IS THE SAME

1 AS YOU. BUT IN ORDER TO BE YOU OR TO BE IDENTICAL  
2 TO YOU, THEY WOULD HAVE TO BE THE SAME AT ALL 15  
3 LOCI.

4 Q SO WE DON'T -- SO YOU ARE NOT LOOKING JUST  
5 AT THE COMBINATIONS OF THE NUMBERS FOR EACH  
6 INDIVIDUAL LOCI; YOU ARE ALSO LOOKING AT ALL 15 LOCI  
7 TO MAKE A DETERMINATION IF THAT D.N.A. CAME FROM A  
8 PARTICULAR REFERENCE SAMPLE?

9 A ABSOLUTELY CORRECT. WE HAVE TO LOOK AT THE  
10 TOTALITY OF THE GENOTYPE. WE CAN'T JUST BECOME SO  
11 FOCUSED ON ONE LOCUS. WE HAVE TO LOOK AT ALL THE  
12 LOCI.

13 Q NOW, BASED UPON YOUR ANALYSIS OF THE --  
14 LET'S START WITH THE BROWN AND BLACK GLOVE AND THE  
15 REFERENCE FROM DION HAWKINS, THE TWO IN RED. BASED  
16 UPON YOUR ANALYSIS OF THE LOCI AND THE NUMBERS THAT  
17 ARE UP THERE, DID YOU COME TO AN OPINION AS TO  
18 WHETHER OR NOT THERE WAS ANY D.N.A. OF DION HAWKINS  
19 FOUND ON THE BROWN AND BLACK GLOVE?

20 A YES, I DID.

21 Q AND WHAT IS THAT OPINION?

22 A OKAY. I DECLARED A MATCH BETWEEN THE TYPES  
23 ATTRIBUTABLE TO THE MAJOR CONTRIBUTOR OF THIS  
24 PROFILE (INDICATING) AND MR. HAWKINS. I AM NOW  
25 DECLARING A MATCH, A LOCUS-FOR-LOCUS MATCH BETWEEN  
26 THAT REFERENCE PROFILE AND THE MAJOR CONTRIBUTOR OF  
27 THAT BROWN AND BLACK GLOVE.

28 Q WHICH MEANS THAT MR. HAWKINS' D.N.A. WAS

1 FOUND ON THAT BLACK GLOVE?

2 A IT MEANS THAT THE TYPES I FOUND FOR THE  
3 MAJOR CONTRIBUTOR ARE INDISTINGUISHABLE FROM HIS  
4 REFERENCE PROFILE.

5 Q AND IS THERE A CALCULATION THAT YOU USE SO  
6 WE GET AN IDEA OF THE EXACTNESS OF THAT D.N.A.  
7 MATCH?

8 A YES.

9 Q WHAT IS THAT CALCULATION?

10 A WELL, WHEN WE MAKE A MATCH DECLARATION, WE  
11 BELIEVE IT'S NECESSARY -- I BELIEVE IT'S NECESSARY  
12 TO WEIGHT THAT DECLARATION. AND BY ATTACHING WEIGHT  
13 TO IT, WHAT I MEAN IS TO GIVE YOU A STATISTICAL  
14 SIGNIFICANCE AS TO THE LIKELIHOOD OF ACTUALLY  
15 FINDING THAT PROFILE IN A RANDOM PERSON. WE ALSO  
16 REFER TO THIS AS THE FREQUENCY OF THE CURRENT  
17 ESTIMATE. HOW RARE OR HOW COMMON THAT PROFILE IS IS  
18 THE WEIGHT WE ATTACH IT, OR THE SIGNIFICANCE WE  
19 ATTACH TO THE MATCH.

20 Q AND IS THERE A MATHEMATICAL CALCULATION TO  
21 COME UP WITH THAT FREQUENCY?

22 A YES.

23 Q AND HOW DO YOU -- WHAT IS THE MATHEMATICAL  
24 EQUATION, OR HOW DO YOU COME TO THAT NUMBER?

25 A WELL, I WILL TRY TO MAKE THIS  
26 COMPREHENSIBLE. IN ORDER TO ESTIMATE THE FREQUENCY OF A  
27 PROFILE, WE HAVE TO KNOW THE FREQUENCY ESTIMATE FOR ALL  
28 THE ALLELES IN THAT PROFILE.

1                   NOW, THE WAY THIS IS DONE IS DATABASES ARE  
2 COLLECTED, AND THE ONE THAT WE RELY UPON -- MOST PUBLIC  
3 AGENCY LABORATORIES RELY ON THIS DATABASE -- IS THE  
4 F.B.I. FREQUENCY OF ALLELE DATABASE. AND WHAT WAS DONE  
5 WAS SAMPLES OF RANDOM INDIVIDUALS WERE COLLECTED FOR THE  
6 MAJOR RACIAL GROUPS. SO WE HAVE A COLLECTION OF  
7 RANDOM -- AND BY "RANDOM," I MEAN BIOLOGICALLY UNRELATED  
8 TO EACH OTHER -- A POPULATION OF WHITES, AND THEN WE HAVE  
9 ANOTHER POPULATION OF AFRICAN-AMERICANS, AND THEN WE HAVE  
10 A THIRD POPULATION OF HISPANICS. AND IN EACH OF THOSE  
11 POPULATIONS, THE ALLELE FREQUENCIES WERE DETERMINED, AND  
12 THESE ARE RANDOM INDIVIDUALS.

13                   FROM THE ALLELE FREQUENCIES, WE USE  
14 SOMETHING CALLED THE PRODUCT RULE. NOW, THE PRODUCT RULE  
15 IS SIMPLY WHAT YOU DO WHEN YOU HAVE INDEPENDENT EVENTS  
16 WITH INDEPENDENT OUTCOMES.

17                   TO GIVE YOU A VERY CRUDE ANALOGY, IMAGINE I  
18 HAD, LET'S SAY, TEN FISH BOWLS UP HERE, AND IN EACH FISH  
19 BOWL I HAD TEN MARBLES. OKAY? AND IN EACH FISH BOWL,  
20 NINE OF THE MARBLES WERE WHITE AND ONE WAS BLACK. AND  
21 ALL THE MARBLES HAD THE SAME SIZE, SAME WEIGHT, SAME  
22 TEXTURE. AND I ASKED YOU TO BE BLINDFOLDED, AND TAKING  
23 THE FIRST FISH BOWL OR MARBLE, I ASK YOU, WHAT IS THE  
24 CHANCE THAT YOU WOULD PICK OUT THE BLACK MARBLE? WELL,  
25 THERE ARE TEN CHANCES, ONLY ONE OF WHICH IS BLACK. SO  
26 THE ANSWER IS 10 PERCENT, OR ONE IN TEN, AND YOU'RE  
27 BLINDFOLDED.

28                   NOW I ASK YOU -- NO PEEKING, YOU'RE

1 BLINDFOLDED -- WHAT IS THE CHANCE THAT YOU CAN PICK OUT  
2 THE BLACK MARBLE IN FISH BOWL 1 AND FISH BOWL NUMBER 2?  
3 WELL, THERE IS A ONE IN TEN CHANCE FOR EACH FISH BOWL;  
4 BUT IF I AM ASKING FOR BOTH FISH BOWLS, YOU USE WHAT'S  
5 CALLED THE PRODUCT RULE. IT'S ONE IN TEN TIMES ONE IN  
6 TEN. SO THERE IS A ONE IN 100 CHANCE THAT IF YOU WERE  
7 BLINDFOLDED YOU WOULD PULL THE BLACK MARBLES OUT OF THOSE  
8 TWO FISH BOWLS.

9 AND IF YOU HAD TEN FISH BOWLS, THERE IS A  
10 ONE IN TEN, TIMES ONE IN TEN, TIMES ONE IN TEN, TIMES ONE  
11 AND TEN AND SO FORTH, WHICH IS ABOUT ONE IN TEN BILLION  
12 THAT YOU WOULD PULL OUT FROM EACH FISH BOWL, BLINDFOLDED,  
13 BY CHANCE, THE BLACK MARBLE. AND THAT'S THE PRODUCT  
14 RULE. SO EVEN THOUGH WE ONLY HAVE TEN MARBLES IN THE  
15 FISH BOWL, THE CHANCE THAT YOU WOULD PULL CONSECUTIVELY,  
16 BLINDFOLDED, ALL TEN IS EXCEEDINGLY UNLIKELY.

17 AND WE DO THE SAME THING HERE. WE CROSS  
18 MULTIPLY THE ALLELE FREQUENCIES OF EACH OF THESE  
19 GENOTYPES BECAUSE THEY ARE INHERITED INDEPENDENTLY, JUST  
20 LIKE PULLING MARBLES OUT OF THAT FISH BOWL.

21 Q AND WHEN YOU USE THAT PRODUCT RULE TO  
22 DETERMINE THE FREQUENCY OR THE ESTIMATED FREQUENCY OF  
23 OCCURRENCE FOR MR. HAWKINS AND THE BROWN AND BLACK GLOVE,  
24 WHAT NUMBER DO YOU COME UP WITH?

25 A OKAY. I AM GOING TO GIVE YOU THE NUMBERS,  
26 AND THEN I AM GOING TO EXPLAIN THEM. THE PROFILE OF THE  
27 MAJOR CONTRIBUTOR FROM SAMPLE 6-A HAS AN ESTIMATED  
28 FREQUENCY OF OCCURRENCE OF ONE IN 3.1 SEXTILLION RANDOM

1 CAUCASIANS. IT HAS AN ESTIMATED FREQUENCY OF OCCURRENCE  
2 OF 1 IN 734.9 QUINTILLION AFRICAN-AMERICANS. IT HAS AN  
3 ESTIMATED FREQUENCY OF OCCURRENCE OF 1 IN 26.4 SEXTILLION  
4 HISPANICS. NOW, THERE ARE VERY SMALL PROBABILITIES --  
5 BECAUSE REMEMBER, WE ARE DIVIDING ONE BY THESE  
6 ASTRONOMICAL NUMBERS, SO THESE ARE VERY SMALL WHAT WE  
7 CALL RANDOM MATCH PROBABILITIES.

8 BUT JUST TO PUT THESE NUMBERS IN SOME  
9 CONTEXT, IF IT'S OKAY --

10 Q PLEASE.

11 A -- BECAUSE THESE, I KNOW, ARE NUMBERS THAT  
12 ONLY PEOPLE THAT DO THIS BUSINESS WOULD BE FAMILIAR.

13 LET'S TALK ABOUT A NUMBER THAT I THINK IS  
14 FAMILIAR TO ALL OF US, AND THAT'S THE NUMBER ONE. NUMBER  
15 ONE. IF I TAKE THE NUMBER ONE AND MULTIPLY IT BY 1,000,  
16 I HAVE THE NUMBER ONE WITH THREE ZEROS, AND WE CALL THAT  
17 A THOUSAND. IF I TAKE A THOUSAND AND MULTIPLY IT BY A  
18 THOUSAND, WE HAVE ONE WITH SIX ZEROS, AND WE'D CALL THAT  
19 A MILLION. IF I TAKE A MILLION AND MULTIPLY IT BY 1,000,  
20 WE HAVE A ONE WITH NINE ZEROS, AND WE'D CALL THAT A  
21 BILLION. IF I TAKE A BILLION AND MULTIPLY IT BY 1,000,  
22 WE'D HAVE A ONE WITH 12 ZEROS, AND WE'D CALL THAT A  
23 TRILLION, SORT OF LIKE THE NATIONAL DEBT.

24 IF I MULTIPLIED THAT BY A THOUSAND, WE HAVE  
25 ONE WITH 15 ZEROS, AND WE'D CALL THAT A QUADRILLION. IF  
26 I MULTIPLIED THAT BY A THOUSAND, WE'D HAVE A ONE WITH  
27 18 ZEROS, AND WE'D CALL THAT A QUINTILLION. AND IF WE  
28 TAKE THAT NUMBER AND MULTIPLY IT BY 1,000, WE'D HAVE A



1 ONE WITH 21 ZEROS, AND WE'D CALL THAT A SEXTILLION.  
2 MERCIFULLY, WE CAN STOP THERE BECAUSE WE DON'T GO BEYOND  
3 THAT IN THIS CASE. SO A SEXTILLION IS A ONE WITH 21  
4 ZEROS AFTER IT, A VERY, VERY BIG NUMBER.

5 AND SO THE PROBABILITY OF FINDING THIS  
6 PROFILE, IF IT'S ONE IN A SEXTILLION, MEANS IF I HAD --  
7 NOW, OBVIOUSLY WE DON'T HAVE SEXTILLION PEOPLE. IT'S NOT  
8 A POSSIBILITY. BUT IF I HAD A SEXTILLION  
9 RANDOM-GENERATED GENOTYPES, ONE OF THEM WOULD BE EXPECTED  
10 TO MATCH THAT PROFILE.

11 Q NOW, YOU DID THE SAME THING WITH THE  
12 SAMPLE, THE REFERENCE SAMPLE FROM TAUMU JAMES; CORRECT?

13 A YES.

14 I JUST WANT TO ADD THAT I BRING THIS  
15 (INDICATING) TO COURT EVERY TIME I COME. THIS IS A  
16 CURRENT -- A U.S. CENSUS BUREAU ESTIMATE OF THE WORLD'S  
17 CURRENT POPULATION, AND THE WORLD'S CURRENT POPULATION,  
18 AS OF YESTERDAY, IS ABOUT 6.8 BILLION. SORRY.

19 Q NO, THAT'S FINE.

20 SO BASICALLY TO GET TO A SEXTILLION, WE  
21 WOULD HAVE TO MULTIPLY A BILLION TIMES A BILLION?

22 A THAT'S TIMES ANOTHER THOUSAND.

23 Q TIMES ANOTHER THOUSAND, YES.

24 NOW, DID YOU DO THE SAME THING WITH THE  
25 REFERENCE SAMPLE OF TAUMU JAMES WITH THE BLACK KNIT HAT  
26 WITH THE HOLES --

27 A YES.

28 Q -- CUT IN IT?

1 A (NO AUDIBLE RESPONSE) .

2 Q AND DID YOU COME UP WITH AN ESTIMATED  
3 FREQUENCY OF OCCURRENCE FOR -- WELL, FIRST, DID YOU COME  
4 TO AN OPINION AS TO WHETHER OR NOT THE D.N.A. OF TAUMU  
5 JAMES WAS IN THE BLACK KNIT HAT WITH THE HOLES CUT IN IT?

6 A YES. I HAVE DECLARED A MATCH. NOW, WE ARE  
7 TALKING ABOUT SAMPLE 4-A (INDICATING). THE TYPES  
8 ATTRIBUTABLE TO THE MAJOR CONTRIBUTOR IN THAT STAIN MATCH  
9 THE REFERENCE PROFILE OF MR. JAMES.

10 Q LET'S GO BACK TO ONE OTHER THING. DID YOU  
11 COMPARE THE REFERENCE SAMPLE OF DION HAWKINS TO THE BLUE  
12 JUMPSUIT?

13 A AND THAT'S ITEM -- THAT ITEM WAS IDENTIFIED  
14 AS SAMPLE 5-A.

15 Q YES.

16 A I DO NOT SEE THE DATA HERE. I DID NOT PUT  
17 IT IN THE CHART BUT YES, I DID MAKE A COMPARISON.

18 Q AND WERE YOU ABLE TO DETERMINE IF THERE WAS  
19 ANY D.N.A. OR THERE WAS A MATCH WITH D.N.A. FOUND ON  
20 ITEM 5-A, THE BLUE JUMPSUIT, AND MR. HAWKINS' D.N.A.?

21 A NO. I DID NOT DECLARE A MATCH. A MATCH  
22 CAN ONLY BE DECLARED WHEN THE PROFILE FROM THE EVIDENCE  
23 IS INDISTINGUISHABLE FROM A REFERENCE.

24 Q COULD YOU EXCLUDE ANY D.N.A. FOUND ON THE  
25 BLUE JUMPSUIT AS HAVING COME FROM -- COULD YOU EXCLUDE  
26 MR. HAWKINS AS BEING A CONTRIBUTOR TO THE D.N.A. FOUND ON  
27 NUMBER 5-A?

28 A NO. HE CANNOT BE EXCLUDED. PERHAPS -- LET

1 ME JUST EXPLAIN THIS. ON THIS ITEM, THE BLUE JUMPSUIT,  
2 WHAT I OBSERVED WAS A PARTIAL PROFILE, AND IT IS  
3 CONSISTENT -- IT IS CONSISTENT WITH A MIXTURE OF D.N.A.  
4 FROM AT LEAST TWO SOURCES, A MAJOR AND POSSIBLE MINOR OR  
5 MINORS. MR. HAWKINS CANNOT BE EXCLUDED AS A CONTRIBUTOR  
6 TO THE MIXTURE, BUT I DIDN'T -- FIRST OF ALL, I GOT A  
7 VERY INCOMPLETE OR WHAT WE WOULD CALL A PARTIAL PROFILE.  
8 IT DIDN'T HAVE NUMBERS IN ALL THE BOXES.

9 THE TYPES THAT I DID SEE AT THE LIMITED  
10 NUMBER OF LOCI WHERE I DETECTED SOMETHING WERE CONSISTENT  
11 WITH ORIGINATING FROM MR. HAWKINS, BUT THERE WERE MAJOR  
12 PORTIONS OF HIS PROFILE THAT DID NOT SHOW UP BECAUSE THE  
13 BOXES HAD NO NUMBER. SO I WOULD NOT DECLARE A MATCH.  
14 BUT FOR THE TYPES THAT I DID DETECT, HE REMAINS A  
15 POSSIBLE SOURCE. I CANNOT EXCLUDE HIM AS A POSSIBLE  
16 SOURCE.

17 Q SO --

18 A BUT I WILL NOT CALL IT A MATCH.

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

20 THE COURT: YOU MAY.

21 BY MR. GOUDY:

22 Q SO LET'S GO BACK TO YOUR CHART. JUST AS AN  
23 EXAMPLE -- I KNOW I AM JUST PICKING SECTIONS -- YOU MAY  
24 HAVE FOUND A 13 AND 15 IN THE TOP LOCI. YOU MAY HAVE  
25 FOUND A 15 OR --

26 A ACTUALLY, I FOUND A 13, 14, 15, AT -- AT  
27 LOCUS D-8 (INDICATING).

28 Q SO YOU JUST FOUND THE PAIR THAT MATCHED IN

1 SOME OF THE BOXES, BUT NOT ENOUGH OF THE BOXES TO MAKE A  
2 MATCH?

3 A YES. OF THE 15 LOCI I EXAMINED, I FOUND  
4 TYPES DETECTED AT ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN  
5 -- SEVEN BOXES. ABOUT HALF.

6 Q AND THOSE WERE CONSISTENT WITH  
7 MR. HAWKINS. BUT BECAUSE THERE WERE ONLY SEVEN OF THE  
8 BOXES AND NOT 15, YOU CAN'T SAY IF IT'S A MATCH OR NOT?

9 A THAT'S CORRECT. THAT'S CORRECT.

10 Q NOW, GOING BACK TO THE BLACK KNIT HAT AND  
11 MR. JAMES, YOU DETERMINED THAT THERE WAS A MATCH. AND  
12 WHAT IS THE ESTIMATED FREQUENCY OF OCCURRENCE OF  
13 MR. JAMES' D.N.A. BEING FOUND ON THAT BLACK KNIT HAT?

14 A RIGHT. SO AGAIN WE ARE TALKING ABOUT  
15 SAMPLE 4-A, AND I AM GOING TO GIVE YOU NOW A FREQUENCY  
16 ESTIMATE OF THE TYPES ATTRIBUTABLE TO THE MAJOR  
17 CONTRIBUTOR IN THAT STAIN, EVERYTHING THAT IS IN BLUE  
18 (INDICATING).

19 THE ESTIMATED FREQUENCY OF OCCURRENCE OF  
20 THAT PROFILE IS ONE IN 1.6 SEXTILLION RANDOM CAUCASIANS.  
21 IT HAS AN ESTIMATED FREQUENCY OF OCCURRENCE OF ONE IN 5.2  
22 QUINTILLION AFRICAN-AMERICANS, AND IT HAS AN ESTIMATED  
23 FREQUENCY OF OCCURRENCE OF ONE IN 1.6 SEXTILLION  
24 HISPANICS.

25 Q YOU HAVE SIX NUMBERS IN BLACK ON THE BLACK  
26 KNIT HAT; IS THAT CORRECT?

27 A THAT'S CORRECT. SIX TYPES, MINOR TYPES  
28 WERE DETECTED IN THE BLACK KNIT HAT, CORRECT.

1 Q ARE YOU ABLE TO DETERMINE IF THOSE MINOR  
2 TYPES WERE CONSISTENT WITH MR. HAWKINS?

3 A YES.

4 Q AND WERE THEY?

5 A NO.

6 Q SO THAT -- THAT'S BASICALLY OTHER D.N.A.  
7 THAT WAS FOUND IN THE HAT; CORRECT?

8 A YEAH. THERE WAS ANOTHER SOURCE OF HUMAN  
9 D.N.A. ON THE HAT.

10 Q THE MAJORITY BEING FROM MR. JAMES?

11 A CORRECT.

12 Q BUT THOSE OTHER NUMBERS UP THERE INDICATE  
13 THERE WAS A SECOND SOURCE?

14 A SINCE I DID NOT RECEIVE A SUBMITTED  
15 REFERENCE TO COMPARE AGAINST THOSE OTHER TYPES, I HAVE NO  
16 WAY OF KNOWING WHO COULD HAVE DONATED IT. SOMEBODY CAME  
17 IN CONTACT WITH THE HAT THAT DONATED THOSE TYPES, BUT IT  
18 WAS NOBODY THAT I COMPARED IN THIS CASE.

19 Q MEANING IT WAS NOT MR. HAWKINS?

20 A CORRECT.

21

22 (DISCUSSION OFF THE RECORD.)

23

24 MR. GOUDY: NOTHING FURTHER.

25 THE COURT: CROSS-EXAMINATION.

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

27 ///

28 ///

## CROSS-EXAMINATION

BY MR. EVANS:

Q DR. COLEMAN, I WANT TO FOCUS YOU ON THE FINDINGS THAT YOU MADE REGARDING THE BLACK KNIT HAT.

A YES, SIR.

Q DO YOU HAVE THAT IN MIND?

A YOU'RE TALKING THIS ONE HERE (INDICATING)?

Q YES, SIR.

A 4-A.

Q AND IN COMPARISON TO MR. JAMES' REFERENCE -- AS A REFERENCE SAMPLE.

A YES.

Q JUST SO THAT WE ARE CLEAR, THERE IS A MIXTURE OF AT LEAST TWO CONTRIBUTORS OF HUMANS WHOSE D.N.A. WAS ON THE BLACK KNIT CAP; CORRECT?

A I WOULD ONLY POSSIBLY DIFFER WITH THE "AT LEAST." THERE'S EVIDENCE OF TWO. THERE COULD BE MORE THAN TWO. IT'S POSSIBLE. BUT BASED ON THE TYPES DETECTED, IT'S MY OPINION THAT THERE ARE TWO DONORS ON THAT HAT.

Q WOULD YOU SAY THAT THE WAY THE SAMPLE OF D.N.A. IS TAKEN OFF THE HAT DETERMINES WHERE THE D.N.A. IS FOUND ON THE PARTICULAR HAT; CORRECT?

A THAT'S CORRECT. THAT'S CORRECT.

Q AND THE ONLY WAY TO KNOW ALL OF THE CONTRIBUTORS ON THE HAT IS TO SWAB THE HAT IN TOTAL OR IN WHOLE; CORRECT?

A THIS IS A SAMPLE SELECTED, I BELIEVE, FROM

1 WHERE CONTACT WITH ONE'S SKIN WOULD BE MOST LIKELY. BUT  
2 THERE ARE MULTIPLE SOURCES OF D.N.A. IN THIS SAMPLE. I  
3 SUPPOSE TO KNOW EVERYONE WHO HAS CAME IN CONTACT WITH THE  
4 HAT, ONE WOULD SAMPLE THE ENTIRE HAT.

5 Q AND AS FAR AS YOU KNOW, THE PERSON YOU ARE  
6 WORKING WITH, MS. SAGE, SHE TESTED OR TOOK SAMPLES FROM  
7 THE MOUTH AREA AND THE BRIM AREA; CORRECT?

8 A I BELIEVE SO, YES.

9 Q BUT IF THE HAT -- IF THE HAT -- ASSUMING  
10 THE HAT WAS WORN, THERE WOULD BE CONTACT WITH -- AND IF  
11 IT WAS WORN OVER SOMEONE'S FACE, THERE CERTAINLY WOULD BE  
12 CONTACT IN OTHER AREAS OF THAT HAT WITH THE SKIN OF THE  
13 INDIVIDUAL WEARING IT; CORRECT?

14 A THAT'S CORRECT.

15 Q AND IF THOSE AREAS WERE NOT SWABBED, THEN  
16 WE DON'T KNOW IF THERE IS ADDITIONAL D.N.A. EVIDENCE ON  
17 THAT HAT SHOWING WHETHER THERE ARE OTHER PEOPLE WHOSE  
18 D.N.A. IS ON THAT HAT; IS THAT CORRECT?

19 A IF THERE WERE AREAS OF THE HAT THAT WERE  
20 NOT SAMPLED THAT CONTAINED HUMAN D.N.A., WE WOULD NOT  
21 KNOW ABOUT THOSE AREAS, THAT'S CORRECT.

22 Q AND WHEN YOU SAMPLE THE D.N.A., WHEN YOU  
23 TAKE A SAMPLE, YOU'RE LOOKING AT BASICALLY -- YOU'RE  
24 DETERMINING -- AS TO THE MOUTH AREA AND THE BRIM AREA, A  
25 DETERMINATION IS MADE BY YOU THAT THE MAJOR CONTRIBUTOR  
26 AS TO THAT PARTICULAR ITEM WAS MR. JAMES; CORRECT?

27 A THAT'S CORRECT.

28 Q BUT YOU ALSO DETERMINE THAT THERE IS ONE

1 OTHER PERSON WHO ALSO -- WHOSE D.N.A. IS ALSO ON THAT  
2 HAT; CORRECT?

3 A THERE IS A MINOR CONTRIBUTOR IN THAT  
4 SAMPLE, CORRECT.

5 Q AND THAT MINOR CONTRIBUTOR IS NOT DION  
6 HAWKINS; CORRECT?

7 A THAT IS CORRECT.

8 Q ALL RIGHT. BUT IF A SAMPLE WAS TAKEN FROM  
9 THE TOP OF THE HAT WHERE THE HAT COULD COME INTO CONTACT  
10 WITH BOTH THE SKIN AND THE HAIR, DEPENDING ON THE  
11 TESTING, THERE COULD BE A DIFFERENT MAJOR CONTRIBUTOR  
12 FROM THAT AREA; CORRECT?

13 A SIR, IF YOU ASK ME IN THE REALM OF WHAT IS  
14 POSSIBLE, SURE, IT'S POSSIBLE. I MEAN, WE HAVE TO TAKE  
15 WHAT WE THINK ARE REASONABLE AREAS OF A GARMENT TO SAMPLE  
16 WHERE IT'S MOST LIKELY TO HAVE CONTACT WITH THE WEARER,  
17 AND I BELIEVE THAT'S WHAT WAS DONE.

18 Q WITH THE SKIN; CORRECT?

19 A UH-HUH.

20 Q OR THE HAIR; CORRECT?

21 A UH-HUH.

22 Q THAT WOULD BE "YES"? WOULD YOUR ANSWER BE  
23 "YES"?

24 A WELL, I AM NOT SAYING -- BECAUSE I DON'T  
25 KNOW EXACTLY. I WOULD HAVE TO LOOK THROUGH AMBER'S NOTES  
26 WHERE SHE SAMPLED THE HAT, BUT I BELIEVE OUR PROTOCOL,  
27 OUR PURPOSE IS TO TRY -- ON ANY GARMENT TO TRY TO FIGURE  
28 OUT WHO WORE IT, WHO HAD CONTACT WITH IT. SO I BELIEVE



1 SHE WOULD HAVE SAMPLED THE AREAS MOST LIKELY TO HAVE  
2 CONTACT WITH THE WEARER. SO, FOR INSTANCE, IF IT'S A  
3 BASEBALL CAP, WE WOULD USUALLY SWAB THE SWEAT BAND  
4 PORTION OF THE CAP. THAT'S WHERE IT HAS THE GREATEST  
5 CONTACT WITH ONE'S SKIN.

6 Q BUT THE HAT ALSO HAS CONTACT -- IF THE HAT  
7 IS PULLED OVER THE HEAD OF THE PERSON, IT WOULD HAVE  
8 CONTACT WITH THE CHEEKS; CORRECT?

9 A THAT'S TRUE.

10 Q THE NECK AREA; CORRECT?

11 A POSSIBLY, YES.

12 Q THE EARS; CORRECT?

13 A POSSIBLY, YES.

14 Q THE TOP OF THE HEAD; CORRECT?

15 A CERTAINLY.

16 Q ALL OVER?

17 A CERTAINLY.

18 Q THE NOSE?

19 A IT'S POSSIBLE.

20 Q I MEAN, THERE'S FLUIDS THAT WOULD COME OUT  
21 OF THE NOSE, OR YOU WOULD EXPECT IF PEOPLE BREATHE  
22 THROUGH THEIR NOSE; CORRECT?

23 A POSSIBLY, YES.

24 Q NOW, JUST BECAUSE D.N.A. IS FOUND ON A  
25 PARTICULAR ITEM, YOU CANNOT GIVE ANY INDICATION AS TO  
26 WHEN THAT D.N.A. WAS PUT ON THAT PARTICULAR ITEM;  
27 CORRECT?

28 A THAT'S ABSOLUTELY CORRECT. THE D.N.A.

1 PROVIDES US A WEALTH OF INFORMATION ABOUT WHO COULD OR  
2 COULD NOT BE ITS SOURCE, BUT IT TELLS US NOTHING ABOUT  
3 ITS AGE. AFTER ALL, THERE HAVE BEEN SCIENTISTS IN  
4 AUSTRALIA WHO HAVE IDENTIFIED D.N.A. FROM DINOSAURS IN  
5 EGGS THAT HAVE BEEN FOSSILIZED FOR MILLIONS OF YEARS. SO  
6 WE CERTAINLY CAN'T AGE D.N.A.

7 Q AND YOU CAN'T SAY AS TO THE EXACT MANNER IN  
8 WHICH THE D.N.A. SAMPLE WAS DEPOSITED ON THE PARTICULAR  
9 ITEM; CORRECT?

10 A D.N.A. DOES NOT INFORM US HOW IT GOT WHERE  
11 IT GOT, ONLY WHO COULD HAVE GIVEN IT.

12 Q SO YOU'RE NOT INDICATING THAT -- YOU'RE NOT  
13 EVEN INDICATING THAT THAT HAT WAS EVEN WORN BY MR. JAMES;  
14 CORRECT?

15 A NO, SIR. I AM ONLY TELLING YOU WHO COULD  
16 OR COULD NOT BE A SOURCE OF THAT D.N.A. HOW IT GOT  
17 THERE, I CANNOT -- THE D.N.A. DOES NOT INFORM ME OF  
18 THAT. I DON'T KNOW HOW IT GOT THERE.

19 Q SO IT DOESN'T INFORM YOU THAT THE HAT WAS  
20 ACTUALLY WORN BY MR. JAMES; CORRECT?

21 A THAT'S CORRECT.

22 Q AND THE RESULTS THAT YOU HAVE GIVEN AND THE  
23 OPINIONS THAT YOU HAVE GIVEN US DOESN'T INDICATE THAT  
24 MR. JAMES WAS EVEN THE LAST WEARER OF THE CAP; CORRECT?

25 A WELL, HE DOES PROVIDE THE MAJORITY OF THE  
26 D.N.A. IN THAT SAMPLE. SINCE I CANNOT TELL YOU WITH ANY  
27 PRECISION HOW LONG THAT D.N.A. WAS THERE BEFORE I  
28 RECEIVED IT, I CAN'T TELL YOU THE ORDER OR SEQUENCE OF

1 DEPOSITION. I CAN JUST TELL YOU WHO WAS THERE AND WHO  
2 WAS NOT THERE. SO YES, I CAN'T TELL THE ORDER.

3 Q WOULD YOU SAY THAT THE AMOUNT OF D.N.A.  
4 EXTRACTED IN THIS CASE IN TERMS OF YOUR RESULTS WAS  
5 RELATIVELY LOW CONSIDERING THE SIZE OF THE AREA THAT WAS  
6 SWABBED?

7 A WELL, I CAN STATE THIS, BECAUSE I DID THE  
8 AMPLIFICATION. THE AMOUNT OF D.N.A. -- LET ME BACK UP  
9 FOR JUST A MOMENT. WHEN WE EXTRACT THE SAMPLE, WE HAVE  
10 TO QUANTITATE THE AMOUNT OF D.N.A., AND WE DO THAT TO  
11 ENSURE THAT WE HAVE A SUFFICIENT QUANTITY TO GET A  
12 GENOTYPE OR TO GET A RESULT. THAT AMOUNT OF D.N.A. IS  
13 APPROXIMATELY ONE NANOGRAM.

14 NOW, A NANOGRAM, IF YOU WILL ALLOW ME, IS A  
15 UNIT OF MEASURE THAT YOU ARE PROBABLY NOT REALLY FAMILIAR  
16 WITH. PERHAPS I CAN HELP YOU. A NANOGRAM IS ONE  
17 BILLIONTH OF A GRAM. IT DOESN'T TELL YOU MUCH. BUT IF I  
18 ASK YOU TO IMAGINE AN ORDINARY NICKEL, A U.S. NICKEL, A  
19 COIN, A NICKEL IS DESIGNED TO WEIGH PURPOSELY  
20 5.000 GRAMS. SO A FRESHLY MINTED NICKEL WEIGHS 5 GRAMS.  
21 THAT MEANS A NICKEL WEIGHS 5 BILLION NANOGRAMS.

22 SO A NICKEL'S WEIGHT WORTH OF D.N.A. WOULD  
23 BE ENOUGH FOR ME TO RUN 5 BILLION TESTS. SO THE AMOUNT  
24 OF D.N.A. WE NEED IS ONE BILLIONTH OF THE WEIGHT OF A  
25 GRAM, AND WE ONLY NEED FIVE OF THEM. AND I CAN TELL YOU  
26 IN THIS DATA SET, THERE WAS SUFFICIENT D.N.A.

27 SO I DON'T KNOW IF THAT IS ANSWERING YOUR  
28 QUESTION, BUT WE DID NOT GET WHAT WE CALL TRACE

1       QUANTITIES OF D.N.A. WE GOT SUFFICIENT HUMAN D.N.A. TO  
2       RUN THESE TESTS.

3               Q       BUT ARE YOU SAYING THAT CONSIDERING THE  
4       SIZE OF THE AREA THAT WAS SWABBED, WOULD YOU SAY THE --  
5       WOULD YOU SAY THAT THE AMOUNT OF D.N.A. EXTRACTED FROM  
6       THE BLACK KNIT CAP WAS RELATIVELY LOW?

7               A       SEE, YOU'RE ASKING ME FOR AN EXPECTATION OF  
8       HOW MUCH HUMAN D.N.A. SHOULD BE ON AN ITEM OF CLOTHING,  
9       AND I HAVE NO WAY TO KNOW THAT. I MEAN, IF YOU GO TO THE  
10      STORE AND BUY BRAND NEW UNDERWEAR AND SAMPLE IT, I DON'T  
11      THINK YOU'RE GOING TO FIND ANY D.N.A. OR A VERY, VERY  
12      MINIMAL QUANTITY, IF ANY.

13              ON THE OTHER HAND, IF IT'S SOMETHING THAT  
14      YOU JUST FINISHED WEARING AND YOU SAMPLE IT, THEN YEAH,  
15      YOU ARE GOING TO FIND MUCH MORE. SO I DON'T KNOW THAT I  
16      CAN GENERALIZE AS TO WHAT YOU WOULD EXPECT ON ANY GIVEN  
17      ITEM UNLESS I KNOW THE HISTORY OF THAT ITEM.

18              Q       AND THERE'S NO WAY THAT YOU CAN TELL THAT  
19      FROM THE RESULT OF YOUR TESTING?

20              A       ABSOLUTELY. I WILL NOT KNOW THE HISTORY  
21      FROM THESE RESULTS.

22              MR. EVANS: I HAVE NOTHING FURTHER.

23              THE COURT: REDIRECT.

24  
25                              REDIRECT EXAMINATION

26      BY MR. GOUDY:

27              Q       IN THE SHERIFF'S LAB, HAVE YOU BEEN IN A  
28      POSITION WHERE THERE HAVE BEEN REQUESTS FOR TESTING DONE

1 BY AN OUTSIDE AGENCY?

2 A YES.

3 Q OR AN OUTSIDE PRIVATE FIRM?

4 A WE CERTAINLY CONTRACT WITH OUTSIDE POLICING  
5 AGENCIES TO DO D.N.A. CASEWORK.

6 Q I AM GOING THE OTHER WAY. IN OTHER WORDS,  
7 HAVE YOU EVER HAD A REQUEST FROM A DEFENSE EXPERT TO COME  
8 AND LOOK AT YOUR RESULTS?

9 A OH, YES, ABSOLUTELY.

10 Q HAVE YOU EVER HAD A REQUEST FROM A DEFENSE  
11 EXPERT TO TAKE THE ITEMS WITH THE D.N.A. WHERE THE D.N.A.  
12 WAS EXTRACTED FROM TO TEST THOSE SAMPLES?

13 A TO TAKE THE ITEMS?

14 Q YES.

15 A YES. WE HAVE SPLIT EVIDENCE WITH OUTSIDE  
16 LABORATORIES FOR INDEPENDENT ANALYSIS. THAT'S NOT  
17 UNCOMMON.

18 Q AND THOSE RECORDS ARE KEPT; CORRECT?

19 A YES.

20 Q DID THAT HAPPEN IN THIS CASE?

21 A NO.

22 MR. GOUDY: NOTHING FURTHER.

23 THE COURT: RECROSS?

24 MR. EVANS: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP  
26 DOWN.

27 THE WITNESS: THANK YOU.

28 THE COURT: PEOPLE, YOU MAY CALL YOUR NEXT

1 WITNESS.

2 MR. GOUDY: THE PEOPLE CALL DETECTIVE CHISM.

3 MIGHT I HAVE ONE MOMENT, YOUR HONOR?

4 THE COURT: YOU MAY.

5

6 (SHORT PAUSE IN THE PROCEEDINGS.)

7

8 ROBERT CHISM,

9 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND

10 TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

12 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE  
13 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT  
14 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE  
15 TRUTH, SO HELP YOU GOD.

16 THE WITNESS: YES, I DO.

17 THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

18 FOR THE RECORD, PLEASE STATE AND SPELL YOUR  
19 FULL NAME FOR THE RECORD.

20 THE WITNESS: ROBERT CHISM, R-O-B-E-R-T, LAST NAME  
21 C-H-I-S-M, AS IN MARY.

22 THE CLERK: THANK YOU.

23 THE COURT: YOU MAY BEGIN.

24

25 DIRECT EXAMINATION

26 BY MR. GOUDY:

27 Q SIR, WHAT IS YOUR OCCUPATION AND  
28 ASSIGNMENT?

1           A           I AM A DETECTIVE WITH THE OPERATION SAFE  
2           STREETS BUREAU, WHICH IS THE GANG UNIT PART OF THE  
3           LOS ANGELES COUNTY SHERIFF'S DEPARTMENT. I WORK OUT OF  
4           INDUSTRY SHERIFF'S STATION.

5           Q           WAS THAT YOUR ASSIGNMENT ON NOVEMBER 23RD  
6           OF 2008?

7           A           YES.

8           Q           ARE YOU ONE OF THE INVESTIGATING OFFICERS  
9           INTO THE CRIME COMMITTED AT 14050 TRAILSIDE DRIVE IN  
10          BASSETT?

11          A           YES, I AM.

12          Q           IS THAT IN LOS ANGELES COUNTY?

13          A           YES, IT IS.

14          Q           DURING THE COURSE OF YOUR INVESTIGATION,  
15          WERE YOU AWARE THAT A GUN WAS RECOVERED INSIDE OF A BLACK  
16          KNIT HAT, A SKI MASK OR A KNIT HAT WITH HOLES CUT IN IT?

17          A           YES, SIR.

18          Q           AND WAS THAT GUN EVER PROCESSED TO  
19          DETERMINE IF THERE WERE FINGERPRINTS ON THAT GUN?

20          A           YES, IT WAS.

21          Q           AND WERE THERE ANY PRINTS -- WERE PRINTS --  
22          WAS ANYONE ABLE TO LIFT PRINTS OFF THAT GUN?

23          A           NOTHING THAT WAS IDENTIFIABLE.

24          Q           SO THERE MAY HAVE BEEN PARTIALS OR LITTLE  
25          PIECES, BUT NOTHING THAT COULD BE COMPARED TO ANYONE?

26          A           THAT'S CORRECT.

27          Q           ARE YOU FAMILIAR WITH --

28          MR. GOUDY: MAY I HAVE ONE MOMENT, YOUR HONOR?

1 YOUR HONOR, MAY I HAVE ONE MOMENT? I THINK COLMAN LEFT  
2 WITH AN EXHIBIT.

3  
4 (SHORT PAUSE IN THE PROCEEDINGS.)

5  
6 (DISCUSSION OFF THE RECORD.)

7  
8 THE COURT: ALL RIGHT. BACK ON THE RECORD.

9 YOU MAY CONTINUE, MR. GOUDY.

10 MR. GOUDY: THANK YOU.

11 MAY I APPROACH?

12 THE COURT: YOU MAY.

13 BY MR. GOUDY:

14 Q DETECTIVE, DID YOU -- OR WERE YOU PRESENT  
15 WHEN A D.N.A. SWAB WAS DONE OF DION HAWKINS?

16 A YES, I WAS.

17 Q AND WHO DID THE D.N.A. SWAB?

18 A IT WAS MY CO-INVESTIGATOR, DETECTIVE  
19 RICHARDSON.

20 Q SHOWING YOU PEOPLE'S 4 FOR IDENTIFICATION,  
21 DO YOU SEE A PHOTOGRAPH OF DION HAWKINS IN THAT EXHIBIT?

22 A YES, I DO.

23 Q WHICH ONE IS MR. HAWKINS?

24 A THE SECOND ROW. IT WOULD BE THE FIFTH  
25 PICTURE, BOTTOM CENTER.

26 Q IT'S THE ONE THAT IS CIRCLED; CORRECT?

27 A YES, IT IS.

28 Q AND WHEN YOU SAW DETECTIVE RICHARDSON DO



1 THE SWAB, WHAT DID HE DO TO MR. HAWKINS?

2 A HE TOOK A -- BASICALLY IT'S A Q-TIP ON A  
3 LONG LITTLE WOODEN EXTENDED POLE, ABOUT 6 INCHES LONG.  
4 HE TOOK ONE Q-TIP -- I WILL JUST REFER TO IT AS A  
5 Q-TIP -- AND SWABBED IT AROUND THE INSIDE LINING OF HIS  
6 MOUTH, AND HE DID THE SAME WITH A SECOND Q-TIP.

7 AFTER A FEW MOMENTS OF ALLOWING IT TO AIR  
8 DRY, THERE IS A LITTLE CARDBOARD BOX THAT'S MAYBE ONE  
9 INCH BY ONE INCH. HE PLACES BOTH OF THE SWABS, Q-TIP  
10 SWABS INTO THE BOX AND SEALED IT.

11 Q AND WHAT DID YOU DO WITH THAT BOX?

12 A I PLACED THE BOX INTO AN ENVELOPE AND  
13 TRANSPORTED IT STRAIGHT TO THE CRIME LAB.

14 Q SHOWING YOU PEOPLE'S 14 FOR IDENTIFICATION  
15 (INDICATING), DO YOU RECOGNIZE WHAT THAT IS?

16 A YES, SIR.

17 Q WHAT IS THAT?

18 A IT'S A LAB RECEIPT OF THE D.N.A. SWABS THAT  
19 WE TRANSPORTED TO THE CRIME LAB.

20 Q D.N.A. SWABS OF WHOM?

21 A THIS WOULD BE FOR DION HAWKINS.

22 Q NOW, DO YOU RECALL WHEN THAT WAS DONE?

23 A JANUARY -- I THINK IT WAS -- IT WAS  
24 JANUARY 2009. I THINK IT WAS RECEIVED ON THE 23RD --  
25 22ND, JANUARY 22ND, 2009, WAS THE DATE THAT IT WAS  
26 RECEIVED.

27 Q DID YOU EVER DO A COLLECTED D.N.A. SWAB  
28 FROM TAUMU JAMES?

1 A YES, I DID.

2 Q IS TAUMU JAMES IN THE COURTROOM?

3 A YES, HE IS.

4 Q CAN YOU POINT TO HIM AND TELL US WHAT HE IS  
5 WEARING RIGHT NOW?

6 A SEATED TO MY RIGHT, CREAM-COLORED SHIRT  
7 NEXT TO DEFENSE COUNSEL (INDICATING).

8 MR. GOUDY: INDICATING THE DEFENDANT, YOUR HONOR.

9 THE COURT: YES. THE RECORD WILL SO REFLECT.  
10 BY MR. GOUDY:

11 Q AND HOW DID YOU CONDUCT THE D.N.A. -- GET  
12 THE D.N.A. TESTING OF MR. JAMES?

13 A THE SAME AS I STATED. I TOOK BOTH OF THE  
14 Q-TIPS, SWABBED THEM INSIDE THE INNER LINING OF HIS  
15 MOUTH. AFTER A FEW MINUTES OF ALLOWING THEM TO SORT OF  
16 AIR DRY, I PLACED THEM INSIDE OF THAT PARTICULAR BOX AND  
17 PLACED IT INSIDE OF AN ENVELOPE.

18 Q SHOWING YOU PEOPLE'S 13 FOR IDENTIFICATION,  
19 DO YOU RECOGNIZE WHAT THAT IS (INDICATING)?

20 A YES, I DO.

21 Q WHAT IS THAT?

22 A IT'S A LAB RECEIPT FROM THE ENVELOPE THAT  
23 CONTAINED THE D.N.A. SWABS FROM TAUMU JAMES.

24 Q AND WHEN YOU GOT THE D.N.A. AND PUT THE  
25 SWABS IN THE BOX, WHERE DID YOU TAKE THEM?

26 A TO THE SHERIFF'S CRIME LAB.

27 Q AND YOU SEALED THEM THE WAY YOU WERE  
28 SUPPOSED TO SEAL THEM AND FOLLOWED THE PROPER PROCEDURES?

1 A YES, SIR.

2 Q AND WHAT DATE WERE THOSE TAKEN TO THE CRIME  
3 LAB?

4 A JULY 23RD, 2009.

5 Q ON NOVEMBER 30TH OF 2008, DID YOU GO TO  
6 14050 TRAILSIDE DRIVE IN BASSETT?

7 A YES, I DID.

8 Q DID YOU GO THERE ALONE OR WITH SOMEONE?

9 A WITH DETECTIVE RICHARDSON.

10 Q AND WHEN YOU WENT THERE WITH DETECTIVE  
11 RICHARDSON, DID YOU SPEAK WITH ANY OF THE RESIDENTS OF  
12 THAT LOCATION?

13 A YES, SIR.

14 Q SPECIFICALLY, DID YOU SPEAK WITH FELICITAS  
15 GONZALEZ?

16 A YES.

17 Q WHEN YOU SPOKE TO FELICITAS GONZALEZ, DID  
18 YOU TALK TO HER ABOUT WHAT HAPPENED ON THE NIGHT OF  
19 NOVEMBER 23RD, 2008?

20 A YES, SIR.

21 Q DID YOU ASK HER IF SHE EVER SAW A MASKED  
22 MAN?

23 A YES.

24 Q AND DID SHE TELL YOU IF SHE EVER SAW A  
25 MASKED MAN?

26 A SHE DID.

27 Q WHERE DID SHE SAY SHE FIRST SAW THE MASKED  
28 MAN?

1 A IN THE HALLWAY OUTSIDE OF HER BEDROOM.

2 Q DID SHE EVER INDICATE TO YOU IF THE MASKED  
3 MAN EVER POINTED A GUN AT HER?

4 A SHE DID.

5 Q WHAT DID SHE SAY?

6 A HE WAS ARMED AND HE POINTED THE WEAPON AT  
7 HER.

8 Q DID SHE EVER TELL YOU IF THE MASKED MAN  
9 EVER THREATENED HER GRANDSON, HENRY?

10 A YES, SHE DID.

11 Q WHAT DID SHE SAY?

12 A "DO WHAT I TELL YOU OR HENRY WILL BE HURT."

13 Q DID SHE EVER TELL YOU WHETHER OR NOT THE  
14 MASKED MAN TOOK SOMETHING FROM THE SAFE?

15 A THE SAFE WAS EMPTY, BUT I -- I UNDERSTAND  
16 THAT WEDDING -- SOME TYPE OF JEWELRY WAS TAKEN OUT OF THE  
17 SAFE.

18 Q AND DID SHE TELL YOU WHO TOOK THAT -- THOSE  
19 ITEMS FROM THE SAFE?

20 A THE MASKED INDIVIDUAL.

21 Q DID SHE EVER TELL YOU WHETHER OR NOT SHE  
22 WAS ABLE TO TELL IF THE MASKED MAN -- WHAT RACE THE  
23 MASKED MAN WAS?

24 A SHE SAID THAT HE WAS AFRICAN-AMERICAN.

25 Q DID SHE TELL YOU HOW SHE WAS ABLE TO  
26 DETERMINE THIS IF HE WAS WEARING A MASK?

27 A THE DARK SKIN SHE WAS ABLE TO SEE THROUGH  
28 THE EYE HOLES AND -- THE HOLES THAT WERE ON THE MASK.

1 Q ON JUNE 2ND OF 2009, DID YOU GO BACK TO  
2 THAT ADDRESS ON TRAILSIDE DRIVE?

3 A YES, I DID.

4 Q AND IN FACT, WHEN YOU WENT BACK TO THAT  
5 ADDRESS, DID YOU HAVE A SET OF PHOTOGRAPHS WITH YOU?

6 A I DID.

7 Q SHOWING YOU WHAT HAS BEEN MARKED AS  
8 PEOPLE'S 10 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT  
9 (INDICATING)?

10 A YES, I DO.

11 Q WHAT IS THAT?

12 A IT IS A PHOTO LINEUP THAT I PREPARED OF SIX  
13 SIMILAR-LOOKING INDIVIDUALS, ONE OF THEM BEING MR. JAMES  
14 AND FIVE INDIVIDUALS THAT ARE SIMILAR IN FACIAL FEATURES.

15 Q AND WHEN YOU TOOK THOSE PHOTOGRAPHS TO  
16 14050 TRAILSIDE DRIVE, DID YOU SHOW THEM TO ANY  
17 INDIVIDUALS?

18 A I DID.

19 Q WHO DID YOU SHOW THEM TO?

20 A NANCY JARDINES, BRENDA BARRAGAN, ANNETTE  
21 SAAVEDRA ON THAT DAY.

22 Q AND ON THAT DAY WHEN YOU SHOWED THOSE  
23 PHOTOGRAPHS -- THE PHOTOGRAPHS TO THOSE THREE  
24 INDIVIDUALS, DID THEY IDENTIFY ANYBODY?

25 A YES.

26 Q DID THEY ALL THREE IDENTIFY THE SAME  
27 PERSON?

28 A YES, THEY DID.

1 Q AND WHICH PHOTOGRAPH DID THEY IDENTIFY?

2 A IT WOULD BE PHOTO NUMBER 4 OF 6, THE BOTTOM  
3 LEFT CORNER, SECOND ROW.

4 Q AND WHO IS DEPICTED IN THAT PHOTOGRAPH?

5 A IT'S TAUMU JAMES.

6 Q NOW, DID YOU SHOW THEM THE PHOTOGRAPHS  
7 TOGETHER, OR DID YOU SHOW IT TO THEM SEPARATELY?

8 A THEY WERE ALL INTERVIEWED SEPARATELY.

9 Q AND WHEN YOU SHOWED THEM THE PHOTOGRAPHS  
10 SEPARATELY, AT SOME POINT IN TIME DID THEY TELL YOU ABOUT  
11 A LETTER THAT THEY HAD RECEIVED?

12 A YES, SIR.

13 Q AND WHEN THEY TOLD YOU ABOUT THE LETTER,  
14 DID THEY TELL YOU THAT SEPARATELY AS YOU WERE SHOWING THE  
15 PHOTOGRAPHS OR AFTERWARDS AND THEY WERE ALL TOGETHER?

16 A AFTER I SHOWED THEM THE PHOTOGRAPHS, AND  
17 EACH ONE TOLD ME SEPARATELY. THE ONES THAT TOLD ME TOLD  
18 ME SEPARATELY.

19 Q SO YOU SHOWED THEM THE PHOTOGRAPHS, THEY  
20 PICKED OUT A PHOTOGRAPH, AND THEN THEY TOLD YOU, "WE GOT  
21 THIS LETTER." AND EACH ONE TOLD YOU THAT SEPARATELY?

22 A YES, SIR.

23 Q DO YOU RECALL WHO YOU SHOWED THE  
24 PHOTOGRAPHS TO FIRST?

25 A I DON'T REMEMBER THE ORDER.

26 Q WELL, WHEN THEY -- WHEN YOU SHOWED THE  
27 PHOTOGRAPHS TO THEM AND THEY TOLD YOU THEY RECEIVED THE  
28 LETTER, DID THEY TELL YOU IF, BASED UPON THE INFORMATION

1 IN THAT LETTER, THEY WENT ON THE INTERNET?

2 A YES.

3 Q DID THEY TELL YOU THAT THEY SAW A  
4 PHOTOGRAPH OF SOMEBODY BASED UPON THE INFORMATION IN THAT  
5 LETTER?

6 A YES, THEY DID.

7 Q AND DID THEY TELL YOU THAT THEY LOOKED AT  
8 THAT PHOTOGRAPH?

9 A YES.

10 Q ALL THREE OF THEM?

11 A NO.

12 Q WHICH ONES TOLD YOU THEY LOOKED AT A  
13 PHOTOGRAPH ON THE INTERNET?

14 A BRENDA BARRAGAN AND ANNETTE SAAVEDRA.

15 Q AND WHEN THEY TOLD YOU THAT, DID THEY TELL  
16 YOU WHETHER OR NOT THEY WERE PICKING OUT THAT PHOTOGRAPH  
17 BASED UPON WHAT -- WELL, LET ME BACK UP. WHEN THEY  
18 PICKED THAT PERSON OUT, WHAT DID THEY TELL YOU ABOUT IF  
19 THEY HAD EVER SEEN THAT PERSON BEFORE?

20 A WHEN THEY IDENTIFIED HIM, I ASKED, "WELL,  
21 HOW DO YOU RECOGNIZE HIM?" AND THEY SAID, "BECAUSE I SAW  
22 HIS PICTURE." THAT'S WHEN THEY EXPLAINED ABOUT THE  
23 LETTER THAT THEY HAD RECEIVED AND THEN LOOKING HIM UP ON  
24 THE INTERNET.

25 Q PRIOR TO GOING OVER THERE ON JUNE 2ND, DID  
26 YOU KNOW THAT THEY HAD LOOKED UP A PHOTOGRAPH OF  
27 MR. JAMES ON THE INTERNET?

28 A I DID NOT.

1 Q WERE YOU AWARE OF ANY LETTER THAT HAD BEEN  
2 SENT TO THEM?

3 A I WAS NOT.

4 Q DID YOU SEND A LETTER TO THEM?

5 A NO. I DID NOT.

6 Q SO THEY OFFERED THAT INFORMATION ON THEIR  
7 OWN?

8 A YES.

9 Q AND WHAT ABOUT MS. JARDINES?

10 A AS I DID WITH ALL THREE, I PRESENTED HER  
11 WITH THE PHOTO. I ASKED HER IF SHE RECOGNIZED ANYONE IN  
12 THE PHOTO. SHE LOOKED AT THE PHOTO FOR A FEW MOMENTS,  
13 AND SHE POINTED TO THE PHOTO OF TAUMU JAMES AND SAID, "I  
14 RECOGNIZE HIS FACE. I RECOGNIZE HIS EYES. I RECOGNIZE  
15 HIS MOUTH. HE WAS STANDING IN MY FACE."

16 Q DID SHE SAY WHETHER OR NOT HE WAS WEARING A  
17 MASK?

18 A SHE SAID THAT HE WAS WEARING A MASK.

19 Q AND WHEN YOU SAY "HE WAS STANDING IN MY  
20 FACE," WAS SHE REFERRING TO THE EVENTS OF NOVEMBER 23RD,  
21 2008?

22 A YES, SHE WAS.

23 Q AT ANY POINT IN TIME DID YOU ASK HER IF SHE  
24 SAW THE PHOTOGRAPH ON THE INTERNET?

25 A YES, I DID.

26 Q AND WHAT DID SHE SAY?

27 A SHE SAID THAT SHE HAD NOT.

28 Q DID YOU GO BACK TO THE HOUSE WITH THE



1 PHOTOGRAPHS DEPICTED IN PEOPLE'S 4 FOR IDENTIFICATION?

2 EXCUSE ME. PEOPLE'S 10 FOR IDENTIFICATION.

3 A YES, I DID.

4 Q AND WHEN WAS THAT?

5 A I AM NOT SURE OF THE DATE.

6 Q DOES JULY 6TH, 2009 SOUND FAMILIAR?

7 A YES, SIR.

8 Q AND WHEN YOU WENT BACK THERE ON JULY 6TH OF  
9 2009, DID YOU SPEAK WITH FELICITAS GONZALES?

10 A YES, I DID.

11 Q AND DID YOU SHOW HER THE PHOTOGRAPHS IN  
12 PEOPLE'S 10?

13 A YES, I DID.

14 Q AND DID SHE PICK OUT ANY INDIVIDUAL?

15 A YES.

16 Q WHICH PHOTOGRAPH DID SHE PICK OUT?

17 A SHE POINTED TO THE PHOTO OF TAUMU JAMES.

18 Q DID YOU ASK HER IF SHE HAD SEEN THE  
19 PHOTOGRAPH ON THE INTERNET?

20 A YES, I DID.

21 Q WHAT DID SHE SAY?

22 A SHE SAID SHE HAD SEEN THE PHOTO ON THE  
23 INTERNET.

24 MR. GOUDY: NOTHING FURTHER.

25 THE COURT: CROSS-EXAMINATION.

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

27 MR. GOUDY: OH, EXCUSE ME, YOUR HONOR. IF I MAY.

28 THE COURT: YES.

1 BY MR. GOUDY:

2 Q THE EVIDENCE -- THE CLOTHING THAT WAS  
3 RECOVERED AT THE SCENE, ARE YOU AWARE OF ANY REQUEST BY A  
4 DEFENSE EXPERT TO TAKE THOSE ITEMS AND DO TESTING ON  
5 THEM?

6 A NO. I AM NOT.

7 Q IN THE NORMAL COURSE OF BUSINESS, IF A  
8 REQUEST WAS MADE FOR EVIDENCE ON A CASE WHERE YOU WERE  
9 THE DETECTIVE, WOULD YOU BE INFORMED OF THAT?

10 A YES. IT WOULD BE PRESENTED TO ME AS PART  
11 OF DISCOVERY BY EITHER SIDE.

12 Q HAVE YOU EVER RECEIVED SUCH A REQUEST?

13 A I HAVE NOT.

14 MR. GOUDY: NOTHING FURTHER.

15 THE COURT: THANK YOU.

16 CROSS-EXAMINATION.

17 MR. EVANS: THANK YOU.

18

19 CROSS-EXAMINATION

20 BY MR. EVANS:

21 Q DETECTIVE CHISM, LET'S GO TO THE DATE OF --  
22 LET'S FIRST GO TO THE DATE OF JUNE 2ND, 2009, WHEN YOU  
23 WENT OUT AND INTERVIEWED MS. SAAVEDRA, MR. JARDINES, AND  
24 MS. BARRAGAN. DO YOU REMEMBER THAT DATE?

25 A YES, SIR.

26 Q AND AT THAT TIME WHEN YOU -- WHEN YOU WERE  
27 THERE, WAS IT THAT YOU SHOWED THEM THE SIX-PACK, THEY  
28 PICKED A PHOTO OF MR. JAMES AND THEN EXPLAINED TO YOU THE

1 CIRCUMSTANCES AS TO HOW THEY SAW THE PHOTOGRAPH AS IT  
2 RELATES TO MS. SAAVEDRA AND MS. BARRAGAN?

3 A YES, SIR.

4 Q SO BASICALLY IT WAS YOUR UNDERSTANDING  
5 THAT THEY HAD TOLD YOU THAT THEY PICKED OUT THE PERSON  
6 OR MR. JAMES' PHOTO BECAUSE THEY HAD SEEN IT PREVIOUSLY  
7 ON THE INTERNET? THAT WAS THE BASIS OF THEIR  
8 IDENTIFICATION?

9 A THAT'S CORRECT.

10 Q AND WHEN YOU SAW MS. GONZALEZ ON JULY 6TH,  
11 2009, BASICALLY SHE INFORMED YOU OF THE SAME THING THAT  
12 SHE PICKED MR. JAMES' PHOTOGRAPH BECAUSE OF WHAT SHE HAD  
13 SEEN PREVIOUSLY ON THE INTERNET?

14 A YES, SIR.

15 Q SO SHE BASED HER IDENTIFICATION OF  
16 MR. JAMES SOLELY UPON -- AND I AM REFERRING TO THE  
17 PHOTOGRAPH IN PEOPLE'S 10 -- HER PICKING MR. JAMES' PHOTO  
18 IS BASED SOLELY UPON THE VIEWING OF THE INTERNET PHOTO;  
19 IS THAT CORRECT?

20 A THAT'S WHAT SHE EXPLAINED.

21 Q NOW, AT THAT TIME YOU HAD AN OPPORTUNITY TO  
22 SPEAK WITH MS. SAAVEDRA; IS THAT CORRECT? I AM REFERRING  
23 BACK NOW TO JUNE 2ND, 2009.

24 A I SPOKE WITH HER THAT DAY, YES.

25 Q AND SHE INFORMED YOU THAT SHE COULD NOT  
26 IDENTIFY ANY OF THE SUSPECTS THAT WERE IN HER HOME ON  
27 11/23/2008. FAIR STATEMENT?

28 A YES.

1 Q AND SHE ALSO TOLD YOU THAT SHE COULD NOT  
2 IDENTIFY TAUMU JAMES AS ONE OF THE PEOPLE IN THE HOUSE ON  
3 NOVEMBER 23RD, 2008; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q BUT WHEN YOU SPOKE TO MS. JARDINES ON  
6 JUNE 2ND, 2009, SHE DENIED EVER SEEING THE PHOTOGRAPH ON  
7 THE INTERNET PRIOR TO MAKING THE SIX-PACK IDENTIFICATION  
8 OF MR. JAMES; IS THAT A FAIR STATEMENT?

9 A THAT'S CORRECT.

10 Q AND DID MS. SAAVEDRA AND MS. BARRAGAN TELL  
11 YOU INDEPENDENTLY THAT MS. JARDINES WAS NOT WITH THEM AT  
12 THE TIME THAT THEY WERE VIEWING THE INTERNET PHOTOGRAPH?

13 A I ONLY ASKED ABOUT THEIR ACTIONS. I DIDN'T  
14 ASK WHO WAS PRESENT.

15 Q ON JUNE 2ND, 2009, DID YOU ASK MS. SAAVEDRA  
16 IF SHE HAD AN INDEPENDENT RECOLLECTION OF THE EVENTS ON  
17 THAT DATE?

18 A I DON'T RECALL MY PURPOSE THAT DAY TO  
19 INQUIRE ABOUT THOSE PHOTOS. I DON'T RECALL GOING INTO  
20 THE DETAILS OF THE EVENTS.

21 Q DO YOU REMEMBER TESTIFYING IN THIS MATTER  
22 ON AUGUST 5TH, 2009?

23 A YES, I DO.

24 Q AND DO YOU REMEMBER TESTIFYING --  
25 MR. EVANS: ONE MOMENT, YOUR HONOR.

26  
27 (COUNSEL CONFERRED SOTTO VOCE.)

28 ///

1 BY MR. EVANS:

2 Q DO YOU REMEMBER ASKING THEM ABOUT THE  
3 PHOTOGRAPHIC IDENTIFICATION AND ANSWERING THAT THEY  
4 BASICALLY TOLD ME, REFERRING TO YOURSELF, THAT THEY HAD  
5 NOT SEEN -- I AM SORRY, THAT THEY HAD SEEN THIS PHOTO,  
6 THEY PICKED HIM OUT BASED ON WHAT THEY HAD SEEN, AND THEY  
7 COULD NOT PROVIDE ANY RECOLLECTION OF THE EVENTS ON THAT  
8 DAY? DO YOU REMEMBER TESTIFYING TO THAT?

9 A YES, SIR.

10 Q AND YOU WERE REFERRING TO THE THREE  
11 INDIVIDUALS, MS. BARRAGAN, MS. GONZALEZ, AND  
12 MS. SAAVEDRA, WHEN YOU WERE TESTIFYING TO THAT; IS THAT  
13 CORRECT?

14 A THAT'S CORRECT.

15 Q SO ALL THREE OF THOSE INDIVIDUALS WERE NOT  
16 ABLE TO PROVIDE YOU WITH AN INDEPENDENT RECOLLECTION OF  
17 WHAT OCCURRED ON NOVEMBER 23RD, 2008; IS THAT CORRECT?

18 A WELL, I THINK WE WERE SPEAKING OF THE  
19 IDENTIFICATION OF MR. JAMES, NOT ABOUT THE EVENTS.

20 Q SO THEY HAD NO INDEPENDENT RECOLLECTION OF  
21 MR. JAMES -- REFERRING TO THOSE THREE INDIVIDUALS, THEY  
22 HAD NO INDEPENDENT RECOLLECTION OF MR. JAMES BEING IN  
23 THEIR HOUSE ON NOVEMBER 23RD, 2008; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q NOW, WHEN YOU SPOKE TO MS. JARDINES ON THAT  
26 DATE ON JUNE 2ND, 2009, SHE INDICATED TO YOU THAT SHE  
27 RECOGNIZED MR. JAMES BASED UPON HIS EYES AND HIS MOUTH;  
28 IS THAT CORRECT?

1 A YES.

2 Q NOW, PRIOR TO JUNE 2ND, 2009, HAD SHE GIVEN  
3 YOU ANY INDICATION ABOUT THE DISTINCTIVE CHARACTERISTICS  
4 OF A MASKED MAN THAT WAS IN HER HOUSE ON JUNE -- I AM  
5 SORRY, NOVEMBER 23RD, 2008?

6 A NOTHING DISTINCTIVE, NO, SIR.

7 Q DID MR. JARDINES EVER SAY TO YOU THAT THE  
8 SUSPECT THAT WORE A MASK THAT SHE ENCOUNTERED HAD  
9 FRECKLES?

10 A THAT I DON'T RECALL.

11 Q DID SHE SAY HIS NOSE WAS LIGHT-COLORED?

12 A THAT I DON'T RECALL.

13 Q YOU HAD AN OPPORTUNITY TO SPEAK TO  
14 MR. RAFAEL GONZALEZ ON NOVEMBER 30TH, 2008; CORRECT?

15 A YES, SIR.

16 Q AND THAT WAS WITH DETECTIVE RICHARDSON,  
17 YOUR PARTNER; CORRECT?

18 A YES.

19 Q AND THAT WAS APPROXIMATELY EIGHT DAYS AFTER  
20 THE EVENT IN QUESTION THAT YOU ARE TESTIFYING ABOUT HERE  
21 TODAY; CORRECT?

22 A YES, SIR.

23 Q AND AT THAT TIME WHEN YOU SPOKE TO RAFAEL  
24 GONZALEZ, HE TOLD YOU THAT ON THAT DAY HE SAW TWO MALE  
25 BLACKS AND ONE INDIVIDUAL WEARING A SKI MASK THAT ENTERED  
26 THE HOUSE. IS THAT A FAIR STATEMENT?

27 A YES.

28 Q AND YOU ALSO HAD AN OPPORTUNITY ON THAT

1 DATE, REFERRING TO NOVEMBER 30TH, 2008, TO SPEAK TO  
2 FELICITAS GONZALEZ; IS THAT CORRECT?

3 A YES, WE DID.

4 Q DID SHE SAY ANYTHING TO YOU ABOUT A SUSPECT  
5 WEARING A MASK TOUCHING A PHONE WITH HIS BARE HANDS IN  
6 NANCY JARDINES' ROOM?

7 A I DON'T RECALL THAT, SIR.

8 Q DID SHE SAY THAT IN THE FUTURE IF SHE WAS  
9 ABLE TO SEE THE MASKED MAN, SHE COULD IDENTIFY HIM?

10 A I BELIEVE SHE DID.

11 Q SHE SAID THAT SHE THOUGHT SHE COULD  
12 IDENTIFY HIM IF SHE SAW HIM AGAIN?

13 A YES.

14 Q DID MS. GONZALEZ SPECIFICALLY SAY TO YOU  
15 THAT A MAN WEARING A MASK PUT A GUN TO HER FOREHEAD?

16 A I DON'T RECALL A BODY PART. I KNOW SHE  
17 SAID HE POINTED A GUN AT HER.

18 MR. EVANS: ONE MOMENT, YOUR HONOR.

19 THE COURT: ALL RIGHT.

20 MR. EVANS: I HAVE NOTHING FURTHER AT THIS TIME.

21 THE COURT: ALL RIGHT. THANK YOU.

22 ANY REDIRECT?

23 MR. GOUDY: NO, YOUR HONOR.

24 THE COURT: THANK YOU. YOU MAY STEP DOWN.

25 THE COURT: ANY FURTHER WITNESSES?

26 MR. GOUDY: NO, YOUR HONOR. THE PEOPLE WOULD  
27 MOVE PEOPLE'S 1 THROUGH 14 INTO EVIDENCE.

28 THE COURT: ALL RIGHT. WE WILL TAKE THAT UP IN

1 JUST A LITTLE BIT.

2 MR. EVANS: CAN I COME TO SIDEBAR?

3 THE COURT: YES.

4

5 (THE FOLLOWING PROCEEDINGS

6 WERE HELD AT SIDEBAR:)

7

8 MR. EVANS: I WOULD LIKE TO MAKE AN 1118 MOTION.

9 THE COURT: JUST WAIT AND I WILL EXCUSE THEM FOR  
10 THE DAY.

11 IS 10:15 OKAY FOR YOU GUYS ON MONDAY?

12 MR. EVANS: YES.

13 MR. GOUDY: YES.

14

15 (THE FOLLOWING PROCEEDINGS

16 WERE HELD IN OPEN COURT IN

17 THE PRESENCE OF THE JURY:)

18

19 THE COURT: LADIES AND GENTLEMEN, THIS CONCLUDES  
20 THE PEOPLE'S PORTION OF THE CASE. WE ARE GOING TO HAVE  
21 THE DEFENSE PORTION OF THE CASE STARTING MONDAY, AND THEN  
22 WE ARE GOING TO LIKELY BE IN INSTRUCTION MAYBE MONDAY  
23 AFTERNOON, FOR SURE TUESDAY. AND TUESDAY WILL ALSO BE  
24 ARGUMENT, AND YOU WILL START YOUR DELIBERATIONS TUESDAY.  
25 THAT'S THE TIME FRAME OF HOW THIS IS GOING.

26 KEEP IN MIND THE COURT'S ADMONITION. WE  
27 ARE GOING TO EXCUSE YOU FOR THE WEEKEND. HAVE A LOVELY  
28 WEEKEND. I AM ORDERING YOU ALL BACK HERE MONDAY MORNING



1 AT 10:15 IN THE MORNING. 10:15.

2 JUROR NO. 9, YOU HAD INDICATED SOME  
3 CONCERN. IS IT ALL SQUARED AWAY?

4 JUROR NO. 9: I AM OKAY.

5 THE COURT: AND ALTERNATE 1, YOU HAD YOUR HAND  
6 RAISED. IF YOU WANT, YOU CAN SIT TIGHT FOR A MINUTE AND  
7 WE WILL TALK TO YOU.

8 EVERYONE ELSE IS EXCUSED. WE WILL SEE YOU  
9 MONDAY AT 10:15 IN THE MORNING. THANK YOU.

10

11 (THE FOLLOWING PROCEEDINGS  
12 WERE HELD IN OPEN COURT IN  
13 THE PRESENCE OF ALTERNATE  
14 JUROR NO. 1.)

15

16 THE COURT: OKAY. WITH REGARD TO ALTERNATE  
17 NUMBER 1, I KNOW YOU HAD SOME THINGS COMING UP NEXT  
18 WEEK. WHAT IS IT THAT YOU HAVE COMING UP NEXT WEEK?

19 ALTERNATE JUROR NO. 1: WELL, I ONLY HAVE -- NEXT  
20 WEEK I HAVE AN APPOINTMENT MONDAY MORNING. I CAN TRY TO  
21 RESCHEDULE IT.

22 THE COURT: OKAY. WHAT TIME IS YOUR APPOINTMENT?

23 ALTERNATE JUROR NO. 1: IT'S FROM 10:00 UNTIL  
24 NOON, BUT I AM OKAY UNTIL THURSDAY, ACTUALLY.

25 THE COURT: CAN YOU DO ME A FAVOR AND TRY TO  
26 RESCHEDULE IT? IF YOU CAN'T, CALL US IN THE MORNING, AND  
27 THEN I WILL TALK TO THE ATTORNEYS AND SEE IF WE WILL  
28 EXCUSE YOU. BUT IF YOU CAN RESCHEDULE IT, THEN BE HERE

1 AT 10:15, AND THAT WOULD BE GREAT. SO JUST BE IN TOUCH  
2 WITH US. THANK YOU SO MUCH AND YOU HAVE A GREAT  
3 WEEKEND.

4 ALTERNATE JUROR NO. 1: THANK YOU.

5 THE COURT: AND YOU HAVE THE PHONE NUMBER TO THE  
6 COURTROOM; RIGHT? YOU HAVE THE NUMBER TO CALL, JUST IN  
7 CASE?

8 ALTERNATE JUROR NO. 1: YES.

9 THE COURT: THANK YOU, MA'AM.

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

15  
16 THE COURT: WITH REGARD TO THE EXHIBITS, FIRST OF  
17 ALL, I DON'T THINK THERE -- ALL OF OUR JURORS HAVE LEFT  
18 NOW. I DON'T THINK THERE WERE ANY OBJECTIONS TO ANY OF  
19 THE EXHIBITS. SO ANY OBJECTION TO THEIR ADMISSION INTO  
20 EVIDENCE AT THIS TIME?

21 MR. EVANS: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. THE PEOPLE'S EXHIBITS WILL  
23 BE RECEIVED INTO EVIDENCE.

24  
25 (RECEIVED IN EVIDENCE  
26 PEOPLE'S EXHIBIT NOS. 1  
27 THROUGH 14.)

28 ///

1 THE COURT: AND YOU WANTED TO RAISE YOUR 1118  
2 MOTION?

3 MR. EVANS: I DO. IF I MAY JUST -- YOUR HONOR, AS  
4 TO COUNTS 1, 2, 3, 4, AND 7, I SUBMIT ON THE EVIDENCE.  
5 THE COURT HEARD THE EVIDENCE. I WANT TO SPECIFICALLY  
6 ADDRESS COUNTS 5, 6, AND 8.

7 PARTICULARLY AS TO COUNTS 5 AND 6, I DO NOT  
8 BELIEVE THAT THERE WAS ANY EVIDENCE OF TAKING OF PROPERTY  
9 FROM THE PERSON OR THE IMMEDIATE PRESENCE OR POSSESSION  
10 OF MR. WALTER GONZALEZ AND/OR CHANTELLE BARRAGAN. I  
11 DON'T THINK THERE IS ANY EVIDENCE OF THAT.

12 THE COURT: AND BEFORE YOU ARGUE, ACTUALLY,  
13 PEOPLE, I DO WANT YOU TO ADDRESS -- I AM NOT SURE WALTER  
14 WAS EVEN AWARE A ROBBERY WAS GOING ON.

15 MR. GOUDY: I AM ACTUALLY -- I WOULD SUBMIT AS TO  
16 THE COUNT WITH WALTER. CHANTELLE I WOULD LIKE TO BE  
17 HEARD.

18 THE COURT: OKAY. I WILL HAVE TO REVIEW -- SOME  
19 OF THESE I WILL TAKE UNDER SUBMISSION, AND I WILL RULE  
20 LATER BECAUSE I HAVE TO GO THROUGH MY NOTES REGARDING  
21 EACH.

22 BUT COUNT 5 THEN WILL BE DISMISSED AT THIS  
23 TIME PURSUANT TO PENAL CODE SECTION 1118, AND I WILL GIVE  
24 THE INSTRUCTION THAT THEY ARE NOT TO --

25 MR. GOUDY: ACTUALLY, WERE WE THAT SPECIFIC WITH  
26 WHO THE VICTIMS WERE? I DON'T THINK THEY KNOW THAT YET.

27 THE COURT: THEY MAY NOT.

28 MR. GOUDY: I THINK YOU JUST SAID THERE WERE SOME

1 ROBBERIES --

2 THE COURT: WELL, I THINK I SAID THERE MIGHT HAVE  
3 BEEN EIGHT COUNTS OF ROBBERY.

4 MR. GOUDY: OH, I DIDN'T KNOW.

5 THE COURT: AND ONE COUNT OF KIDNAPPING FOR  
6 ROBBERY, BUT I WILL GO BACK WITH THE REPORTER TO SEE  
7 EXACTLY WHAT I TOLD THEM.

8 MR. GOUDY: THAT'S FINE.

9 THE COURT: AND THEN DID YOU -- YOU WANTED TO BE  
10 HEARD ON THE 209?

11 MR. EVANS: OH, AND I ALSO THINK COUNT 9 SHOULD BE  
12 DISMISSED AS WELL. I DON'T THINK THERE'S ANY EVIDENCE.

13 THE COURT: I WASN'T SURE ABOUT --

14 MR. GOUDY: WAS THAT FABIAN? ACTUALLY, I THINK  
15 WHAT HAPPENED IS THAT WAS ORIGINALLY -- WE HAVE PROBLEMS  
16 WITH OUR COMPUTERS. I THINK THAT WAS NOT -- THAT WAS IN  
17 THE FELONY COMPLAINT NOT REFILED AND MAYBE --

18 THE COURT: I JUST NEED TO KNOW ANY OBJECTION?

19 MR. GOUDY: NO. IT SHOULDN'T HAVE BEEN THERE.  
20 THAT'S RIGHT. I AGREE. IT SHOULDN'T HAVE BEEN THERE.

21 THE COURT: COUNT 9 IS ALSO DISMISSED PURSUANT TO  
22 PENAL CODE SECTION 1118 AT THIS TIME.

23 GO AHEAD AND MAKE YOUR ARGUMENT AS TO  
24 CHANTELE BARRAGAN. THAT WOULD BE COUNT 6.

25 MR. EVANS: COUNT 6.

26 THE COURT: AND COUNT 8, THE 209.

27 MR. EVANS: I DON'T THINK THERE WAS ANY EVIDENCE  
28 THAT ANYTHING WAS TAKEN FROM HER. I THINK THE ONLY CHILD

1 WHOSE IMMEDIATE PRESENCE WAS AT ISSUE WAS HENRY, AND THAT  
2 WAS THE -- I MEAN, THERE WAS -- EVEN FROM MY STANDPOINT  
3 THERE IS CONTRADICTORY EVIDENCE AS TO WHICH OF THE  
4 SUSPECTS I BELIEVE WAS THE ONE WHO MAY HAVE SAID  
5 SOMETHING TO HIS GRANDMOTHER OR MOTHER. BUT HE WAS  
6 PRESENT IN THE BEDROOM, AND THERE WAS A THREAT MADE TO  
7 HIM REGARDING "OPEN THE SAFE" OR "FIND SOME MONEY OR ELSE  
8 WE ARE GOING TO HARM HIM." SO I THINK CERTAINLY HE'S  
9 PART OF THAT.

10 BUT I DON'T SEE HOW CHANTELE BARRAGAN IS  
11 IN ANY WAY -- IS IN ANY WAY RELATED BECAUSE I THINK SHE  
12 MAY HAVE BEEN IN THE HALLWAY WITH HER MOTHER.

13 AND IN FACT, I THINK -- I THINK I WOULD  
14 ALSO SAY THE SAME ARGUMENT APPLIES TO BRENDA, BECAUSE  
15 BRENDA CLEARLY STATED -- BRENDA BARRAGAN, HER MOTHER -- I  
16 WOULD ALSO MAKE A MOTION FOR COUNT 2 BECAUSE THE ITEMS OF  
17 HERS THAT WERE TAKEN WERE TAKEN FROM A BEDROOM, AND SHE  
18 CLEARLY DID NOT SEE THEM TAKEN, AND SHE WASN'T -- IT  
19 WASN'T IN HER IMMEDIATE PRESENCE.

20 AND IN FACT, IT'S THE SAME FOR COUNT 1.  
21 COUNTS 1 AND 2 AND 6 RELATE TO VICTIMS WHO WERE --  
22 NOTHING WAS TAKEN FROM THEM, AND THEY WEREN'T IN THE ROOM  
23 WHEN THE SAFE WAS OPENED. OR THERE WERE NO THREATS MADE,  
24 BUT THEY WOULD HARM THOSE INDIVIDUALS IF PROPERTY WASN'T  
25 TURNED OVER. SO I'D MAKE A MOTION TO COUNTS 1, 2, AND 6.

26 THE COURT: AND IF YOU WANT TO ADDRESS COUNT 8 AS  
27 WELL.

28 MR. EVANS: AND I THINK THAT ARGUMENT ALSO APPLIES

1 TO COUNT 8. BUT EVEN IF THE COURT FINDS THAT THERE IS  
2 SUFFICIENT EVIDENCE RELATING TO THE ROBBERY CLAIM, I  
3 DON'T THINK THAT THERE IS EVIDENCE OF SUBSTANTIAL  
4 MOVEMENT HERE. SHE IS IN A GARAGE THAT'S PART OF THE  
5 SAME PROPERTY, AND IT'S FOR THE HOUSE. IF IT'S A  
6 RESIDENTIAL ROBBERY, ALL THEY'RE ASKING IS -- THEY ARE  
7 SAYING, "GO BACK INTO THE HOUSE."

8 THE COURT: ALL RIGHT.

9 MR. EVANS: I DON'T THINK THAT IS SUBSTANTIAL  
10 MOVEMENT. I DON'T THINK THAT'S SUFFICIENT. I THINK  
11 KIDNAPPING FOR ROBBERY INVOLVES MORE THAN MOVING -- I  
12 THINK IT'S PRETTY CLOSE. THE GARAGE IS PRETTY CLOSE.

13 THE COURT: I AM DENYING YOUR 1118 MOTIONS AS TO  
14 THE OTHER COUNTS.

15 WELL, FIRST OF ALL, THERE WERE CELL PHONES  
16 THAT WERE TAKEN. AND SO THEY DID HAVE PROPERTY TAKEN,  
17 AND THEN THEY TESTIFIED THAT GUNS WERE POINTED AT THEM.  
18 SO I DO THINK THERE IS A SUFFICIENT BASIS THAT THAT  
19 SHOULD GO TO THE JURY.

20 WITH REGARD TO BRENDA AND CHANTELE, I  
21 THINK THERE IS EVIDENCE -- IN CONSTRUING EVIDENCE IN A  
22 LIGHT MOST FAVORABLE TO THE PEOPLE, WHICH IS WHAT I AM  
23 REQUIRED TO DO UNDER AN 1118.1 MOTION, THAT THERE IS AN  
24 ARGUMENT THAT THEIR MOVEMENT, SPECIFICALLY TO THE HALLWAY  
25 AND DOWN TO THE FLOOR NEAR THE BEDROOM DOOR, WAS A  
26 REQUEST FOR THE SAFE -- AND THIS CLEARLY IS ALL ONE  
27 LARGE EXTENDED FAMILY LOCATION -- WAS PART OF THE ATTEMPT  
28 TO GET THE SAFE OPEN AND PART OF THE ROBBERY. SO I DO

1 THINK THAT THERE IS A SUFFICIENT BASIS THAT IT SHOULD GO  
2 TO THE JURY.

3 AND WITH REGARD TO THE KIDNAPPING, I AM  
4 DENYING IT THERE. I THINK THE ISSUE THAT THE JURY WILL  
5 HAVE TO DECIDE, ASIDE FROM YOUR ARGUMENTS CONCERNING THE  
6 ROBBERY, ARE GOING TO BE IS IT A SUBSTANTIAL DISTANCE.  
7 THE CALCRIM DEFINES SUBSTANTIAL DISTANCE AS MEANING MORE  
8 THAN A SLIGHT OR TRIVIAL DISTANCE AND A MOVEMENT THAT  
9 MUST SUBSTANTIALLY INCREASE THE RISK OF PHYSICAL OR  
10 PSYCHOLOGICAL HARM BEYOND THAT NECESSARILY PRESENT FOR  
11 THE ROBBERY.

12 AND I THINK THE FACT THAT THEY TOOK HER  
13 FROM THE LOCATION IN THE GARAGE WHERE SHE WAS DOING  
14 LAUNDRY AND BROUGHT HER INTO THE HOUSE WHERE THERE WERE  
15 MORE MASKED AND UNMASKED MEN ALL WITH FIREARMS AND THEN  
16 PLACED HER ON THE FLOOR WITH HER CHILDREN IS SOMETHING  
17 THAT, ARGUABLY, WOULD SUBSTANTIALLY INCREASE THE RISK OF  
18 HARM TO HER BOTH PHYSICALLY AND PSYCHOLOGICALLY DURING  
19 THE COURSE OF THE ROBBERY. SO FOR THOSE REASONS, I AM  
20 GOING TO DENY IT.

21 WORK ON JURY INSTRUCTIONS OVER THE WEEKEND.

22 MR. GOUDY: I WILL HAVE THEM FIRST THING MONDAY.

23 THERE IS A POTENTIAL SPECIAL RELATED TO  
24 COUNT 8 THAT I AM LOOKING AT.

25 THE COURT: WE WILL TAKE UP JURY INSTRUCTIONS AT  
26 THE CLOSE.

27 MR. GOUDY: WELL, I JUST WANTED TO LET EVERYBODY  
28 KNOW, IN CASE THEY WANTED TO CHECK BEFORE MONDAY. IT HAS

1 TO DO WITH MOVING SOMEONE FROM A PLACE WHERE THERE'S  
2 POTENTIAL FOR ESCAPE IN RELATION TO A KIDNAP FOR ROBBERY.

3 THE COURT: WELL, IF YOU BOTH WANT TO LOOK AT THAT  
4 ISSUE.

5 AND ONE LAST FINAL THING. THERE ARE TWO  
6 THINGS I WANT YOU TO THINK ABOUT, MR. JAMES, OVER THE  
7 WEEKEND AND ALSO TALK TO YOUR ATTORNEY ABOUT. THE FIRST  
8 IS YOU HAVE AN ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN  
9 SILENT AND TO TESTIFY ON YOUR OWN BEHALF, AND THAT  
10 DECISION IS YOUR DECISION ALONE. EVEN IF YOUR ATTORNEY  
11 DISAGREES WITH IT, IT IS FOR YOU TO DECIDE IF YOU WANT TO  
12 TESTIFY OR NOT TESTIFY.

13 I ALWAYS TELL DEFENDANTS THAT THE ATTORNEYS  
14 MAKE THE TACTICAL DECISIONS, BUT I WANT YOU TO UNDERSTAND  
15 THAT THIS ONE IS YOURS. OBVIOUSLY YOU SHOULD LISTEN TO  
16 THE ADVICE OF YOUR ATTORNEY. HE IS A VERY GOOD, VERY  
17 EXPERIENCED ATTORNEY. BUT I WILL ASK YOU AT THE CLOSE OF  
18 THE CASE, OUTSIDE OF THE JURORS PRESENCE, AND I WILL ASK  
19 YOU IF YOU HAVE TALKED TO YOUR ATTORNEY AND ASK YOU WHAT  
20 YOUR DECISION IS, WHETHER IT IS TO TESTIFY OR NOT  
21 TESTIFY, AND JUST PUT ON THE RECORD THAT THAT IS YOUR  
22 DECISION THAT YOU HAVE MADE AND YOU'RE COMFORTABLE WITH  
23 IT. ALL RIGHT?

24 THE DEFENDANT: OKAY.

25 THE COURT: SO TALK TO YOUR ATTORNEY ABOUT THAT  
26 AND THINK ABOUT WHAT IT IS THAT YOU WANT TO DO, BECAUSE  
27 WE WILL START WITH THE DEFENSE CASE ON MONDAY.

28 THE SECOND THING IS WE HAVE BIFURCATED YOUR



1 PRIORS AT THIS TIME. IF YOU TESTIFY, WE WILL TAKE UP THE  
2 ISSUE OF WHAT MIGHT COME IN FOR IMPEACHMENT PURPOSES. IF  
3 YOU DON'T TESTIFY -- OBVIOUSLY I HAVE NOT ALLOWED  
4 ANYTHING ABOUT YOUR PRIOR CONVICTIONS TO COME IN BEFORE  
5 THE JURY.

6 WHILE THE JURY IS DELIBERATING, IF WE EVER  
7 GET TO THE STAGE WHERE THIS IS A CONVICTION AND WE HAVE  
8 TO PROCEED ON A TRIAL FOR THE PRIORS -- AND I SAY THIS AS  
9 AN IF, NOT THAT I AM TRYING TO PREDICT THE FUTURE -- YOU  
10 HAVE A COUPLE OF OPTIONS OPEN TO YOU. TALK TO YOUR  
11 ATTORNEY ABOUT THIS.

12 YOU HAVE THE RIGHT TO A JURY TRIAL ON THE  
13 PROOF OF THE PRIORS. THAT WOULD BE THE SAME JURY THAT  
14 JUST RENDERED THE VERDICTS FOR A CONVICTION. IF THERE IS  
15 A JURY TRIAL, YOU DON'T GET A NEW JURY. IT'S THE SAME  
16 JURY.

17 YOU HAVE -- IF YOU WANT TO WAIVE JURY, YOU  
18 CAN HAVE A COURT TRIAL. BASICALLY THE PEOPLE WOULD STILL  
19 HAVE TO MAKE THEIR PROOF BY PROOF BEYOND A REASONABLE  
20 DOUBT. THEY WOULD HAVE TO CALL WITNESSES, AND YOU COULD  
21 CONFRONT AND CROSS-EXAMINE THOSE WITNESS, BUT IT WOULD BE  
22 TO ME AS THE TRIER OF FACT, NOT A JURY. THAT'S WHAT WE  
23 CALL A COURT TRIAL. OR YOU CAN ADMIT YOUR PRIOR. THOSE  
24 ARE YOUR THREE CHOICES THAT YOU HAVE.

25 SO YOU DON'T NEED TO LET ME KNOW THAT NOW,  
26 BUT TALK TO YOUR ATTORNEY. WHEN THE JURY IS  
27 DELIBERATING, I AM GOING TO ASK YOU WHAT YOUR DECISION  
28 IS SO THAT IF THERE IS A WAIVER OF THE JURY, WE CAN TAKE

1 THAT UP BEFORE THE JURY IS EXCUSED.

2 SO THINK ABOUT THOSE THINGS OVER THE  
3 WEEKEND, AND YOU ALL HAVE A GOOD WEEKEND.

4 MR. JAMES, GET SOME SLEEP. I KNOW THEY GET  
5 YOU UP EARLY FOR COURT.

6 WE WILL SEE YOU ALL ON MONDAY MORNING.

7 MR. GOUDY: THANK YOU, YOUR HONOR.

8 THE COURT: COUNSEL, BE HERE AT 10:00 O'CLOCK JUST  
9 IN CASE THERE ARE ANY ISSUES WE NEED TO DEAL WITH.

10 MR. GOUDY: AND I WILL TRY AND HAVE THOSE  
11 INSTRUCTIONS HERE FIRST THING IN THE MORNING.

12 SO MR. EVANS, I WILL LEAVE A COPY FOR YOU.

13 THE COURT: AND IN THE FINAL WORDING, TOO.

14 MR. GOUDY: YES. AND THAT WAY IF MR. EVANS WANTS  
15 TO COME HERE EARLY, THE PACKAGE SHOULD BE HERE NO LATER  
16 THAN 9:00.

17

18 (THE MATTER WAS CONTINUED  
19 TO MONDAY, AUGUST 9, 2010,  
20 AT 10:15 A.M. FOR FURTHER  
21 PROCEEDINGS.)

22

23 (THE NEXT PAGE NUMBER IS 1801.)

24

25

26

27

28

1 CASE NUMBER: KA085233  
2 CASE NAME: PEOPLE VS. TAUMU JAMES  
3 LOS ANGELES, CALIFORNIA MONDAY, AUGUST 9, 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 IN  
11 THE PRESENCE OF THE JURY:)  
12

13 THE COURT: ON THE RECORD IN PEOPLE VERSUS  
14 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE PRESENT.  
15 ALL OF OUR JURORS ARE PRESENT. THIS IS CASE NUMBER  
16 KA085233.

17 AND LADIES AND GENTLEMEN, WE ARE NOW IN THE  
18 DEFENSE PORTION OF THE CASE.

19 MR. EVANS, YOU MAY CALL YOUR FIRST WITNESS.

20 MR. EVANS: MEHUL ANJARIA.  
21

22 MEHUL ANJARIA,  
23 CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND  
24 TESTIFIED AS FOLLOWS:

25 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

26 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE  
27 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT  
28 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE

1 TRUTH, SO HELP YOU GOD.

2 THE WITNESS: I DO.

3 THE CLERK: THANK YOU. HAVE A SEAT.

4 FOR THE RECORD, PLEASE STATE AND SPELL YOUR  
5 FULL NAME.

6 THE WITNESS: MEHUL ANJARIA, M-E-H-U-L  
7 A-N-J-A-R-I-A.

8 THE COURT: ALL RIGHT. YOU MAY BEGIN.

9 MR. EVANS: THANK YOU, YOUR HONOR.

10

11 DIRECT EXAMINATION

12 BY MR. EVANS:

13 Q WHAT IS YOUR PRESENT OCCUPATION?

14 A I AM THE FOUNDER AND CHIEF CONSULTANT OF  
15 M.B.A D.N.A. CONSULTING, L.L.C. IT IS A D.N.A.  
16 CONSULTING FIRM THAT I STARTED IN OCTOBER OF 2009.

17 Q WHAT ARE YOUR CURRENT DUTIES IN THAT  
18 CAPACITY, OR WHAT YOU ARE DOING?

19 A TYPICALLY I WILL PROVIDE CONSULTATION TO  
20 ATTORNEYS, WHICH INCLUDES REVIEWING THE WORK OF CRIME  
21 LABORATORIES WITH REGARDS TO D.N.A. ANALYSIS, HELPING  
22 ATTORNEYS UNDERSTAND WHAT THE D.N.A. RESULTS ACTUALLY  
23 MEAN, OF COURSE CHECKING FOR ANY MISTAKES, HELPING WITH  
24 PREPARATION FOR TRIAL.

25 I ALSO ON OCCASION WILL OBSERVE D.N.A.  
26 TESTING AT A LABORATORY, PARTICULARLY IF THERE IS NOT  
27 ENOUGH SAMPLE TO DIVIDE BETWEEN TWO LABORATORIES.

28 I ALSO MAKE MYSELF AVAILABLE TO AGENCIES

1 WHO ARE LOOKING TO ADD A D.N.A. TESTING LABORATORY OR  
2 ACHIEVE ACCREDITATION OF THEIR D.N.A. LABORATORY.

3 Q PRIOR TO YOUR CURRENT WORKING CAPACITY, BY  
4 WHOM HAVE YOU BEEN EMPLOYED AND DURING WHAT TIME PERIODS?

5 A BETWEEN JANUARY OF 2005 AND OCTOBER OF  
6 2009, I WAS WITH A PRIVATE FORENSIC D.N.A. LABORATORY  
7 THAT I CO-FOUNDED. THE NAME OF THE LAB WAS HUMAN  
8 IDENTIFICATION TECHNOLOGIES, OR H.I.T. SO I WAS THERE  
9 FOR ABOUT FIVE YEARS PRIOR TO FORMING MY OWN CONSULTING  
10 FIRM.

11 Q AND WHAT WERE YOUR DUTIES THERE AT HUMAN  
12 IDENTIFICATION TECHNOLOGIES, INCORPORATED?

13 A I WAS THE LABORATORY DIRECTOR, THE D.N.A.  
14 TECHNICAL LEADER, AND THE QUALITY ASSURANCE OFFICER. SO  
15 BASICALLY I WAS RUNNING ALL OF THE TECHNICAL OPERATIONS.  
16 IT WAS MY DUTY TO SUPERVISE ALL OF THE TESTING AND THE  
17 CONSULTATION. I DID CASEWORK MYSELF. I MADE SURE THAT  
18 THE LABORATORY REMAINED COMPLIANT WITH ALL OF THE  
19 ACCREDITATION STANDARDS AND ALL THE QUALITY CONTROL  
20 MEASURES THAT GO INTO RUNNING AN ACCREDITED D.N.A.  
21 LABORATORY.

22 Q PRIOR TO WORKING AND FOUNDING HUMAN  
23 IDENTIFICATION TECHNOLOGIES, WHERE ELSE -- WHERE WERE YOU  
24 PREVIOUSLY EMPLOYED?

25 A PRIOR TO THAT, BETWEEN DECEMBER OF 1998 AND  
26 JANUARY OF 2005, I WAS A CRIMINALIST WITH THE  
27 SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT WORKING IN  
28 THEIR D.N.A. UNIT. SO THERE I DID D.N.A. CASEWORK,

1 TESTIFIED IN COURT, PREPARED REPORTS.

2 FOR THE LAST NINE MONTHS THAT I WAS AT THE  
3 SHERIFF'S DEPARTMENT, AFTER GETTING MY MASTER'S DEGREE I  
4 SERVED AS THE D.N.A. TECHNICAL LEADER, WHICH IS  
5 ESSENTIALLY THE SCIENTIST IN CHARGE OF THE TECHNICAL  
6 OPERATIONS AT THE LABORATORY.

7 Q OTHER THAN WHAT YOU HAVE JUST DESCRIBED, DO  
8 YOU HAVE ANY OTHER FORENSIC SCIENCE EXPERIENCE?

9 A I DO. PRIOR TO DOING ALL THAT WORK IN  
10 D.N.A., FOR ABOUT TWO AND A HALF TO THREE YEARS I WORKED  
11 IN THE ANALYSIS OF CONTROLLED SUBSTANCES, OR STREET  
12 DRUGS, AND DID THE INVESTIGATION OF A METHAMPHETAMINE  
13 LABORATORY. I DID THAT BOTH AT THE SAN BERNARDINO COUNTY  
14 SHERIFF'S DEPARTMENT AND ALSO THE ORANGE COUNTY SHERIFF'S  
15 CORONER DEPARTMENT.

16 Q YOU BRIEFLY TOUCHED ON IT, BUT WHY DON'T  
17 YOU OUTLINE FOR THE JURORS HERE YOUR FORMAL EDUCATION.

18 A SURE. I HAVE A MASTER'S OF SCIENCE DEGREE  
19 IN CRIMINALISTICS FROM THE CALIFORNIA STATE UNIVERSITY AT  
20 LOS ANGELES, AND I DID A BACHELOR OF SCIENCE DEGREE IN  
21 BIOCHEMISTRY AT THE UNIVERSITY OF ILLINOIS AT CHICAGO.

22 Q DO YOU HOLD ANY OTHER -- DO YOU HOLD ANY  
23 CERTIFICATIONS?

24 A I DO. I HAVE CERTIFICATES FROM THE  
25 AMERICAN BOARD OF CRIMINALISTICS IN BOTH GENERAL  
26 CRIMINALISTICS AND THE MOLECULAR BIOLOGY SPECIALTY, OR  
27 D.N.A. SPECIALTY.

28 Q HOW MANY TIMES HAVE YOU TESTIFIED AS A

1 D.N.A. EXPERT?

2 A IN D.N.A. SPECIFICALLY, 36 OCCASIONS PRIOR  
3 TO TODAY.

4 Q AND HAVE YOU PERFORMED D.N.A. ANALYSIS IN  
5 ACCREDITED LABORATORIES?

6 A I HAVE. AT THE PRIVATE LAB THAT I FOUNDED,  
7 H.I.T., I DID PERFORM CASEWORK. THAT LABORATORY WAS  
8 ACTUALLY THE FIRST D.N.A. LABORATORY IN CALIFORNIA TO GET  
9 WHAT IS CALLED A.S.C.L.D.-L.A.B. INTERNATIONAL  
10 ACCREDITATION.

11 AND WHEN I WORKED AT THE SAN BERNARDINO  
12 COUNTY SHERIFF'S DEPARTMENT, WE WERE ACCREDITED AT THE  
13 TIME BY PROBABLY WHAT'S CALLED A.S.C.L.D.-L.A.B., WHAT IS  
14 KNOW AS THE LEGACY PROGRAM, WHICH WAS SORT OF THE EARLIER  
15 TYPE OF ACCREDITATION BEFORE THE INTERNATIONAL  
16 ACCREDITATION CAME INTO PLAY.

17 Q WHEN YOU HAVE TESTIFIED IN THE PAST, YOU  
18 TESTIFIED FOR BOTH THE PROSECUTION AND FOR THE DEFENSE?

19 A I HAVE, YES.

20 Q IN THIS CASE WERE YOU ASKED TO REVIEW THE  
21 D.N.A. RESULTS, CONCLUSIONS, AND NOTES ASSOCIATED WITH A  
22 SAMPLE FROM A SKI MASK GIVEN THE ITEM NUMBER 09D, AS IN  
23 DAVID, 1950, DASH, A, AS IN APPLE, R, AS IN ROBERT, S, AS  
24 IN SAM, DASH, 4, DASH, AF?

25 A YES, I WAS. I WAS PROVIDED WITH D.N.A.  
26 LABORATORY REPORTS, AS WELL AS WRITTEN NOTES AND A  
27 COMPACT DISC OF ELECTRONIC DATA FROM THE ACTUAL  
28 INSTRUMENTS THAT DO THE D.N.A. TYPING.

1 Q AFTER REVIEWING THE INFORMATION YOU JUST  
2 DESCRIBED, DO YOU AGREE WITH THE LOS ANGELES COUNTY  
3 SHERIFF'S DEPARTMENT LABORATORY FINDING THAT THE MAJOR  
4 D.N.A. PROFILE FROM THE MIXTURE OF D.N.A. FROM THE SKI  
5 MASK MATCHES TAUMU JAMES?

6 A I DO. I DIDN'T SEE ANY LABORATORY ERRORS  
7 OR CONTAMINATION OR PROBLEMS IN THE NOTES OR THE  
8 REPORTS. SO I WOULD AGREE WITH THAT CONCLUSION.

9 Q AT MY REQUEST DID YOU PROVIDE A REPORT OF  
10 OPINIONS REGARDING THE D.N.A. TESTING YOU PERFORMED ON  
11 THAT SKI MASK?

12 A I DID PREPARE A REPORT DATED JULY 20TH  
13 BASICALLY SUMMARIZING MY REVIEW OF THE MATERIALS AND SORT  
14 OF MY OPINIONS ON WHAT THE RESULTS' CONCLUSIONS MIGHT  
15 ACTUALLY MEAN.

16 Q DO YOU HAVE ANY CRITICISMS OF THE SHERIFF'S  
17 DEPARTMENT LABORATORY WORK OR RESULTS AND THE CONCLUSIONS  
18 REGARDING THE MASK THAT YOU NOTED?

19 A NO, I DO NOT.

20 Q IN LOOKING AT THE RESULTS IN THE NOTES, DID  
21 THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, THEIR TESTS  
22 THAT THEY UNDERTOOK, DETERMINE WHAT TYPE OF BODY FLUID OR  
23 CELLULAR MATERIAL THAT WAS PRESENT ON THE MASK?

24 A THE TESTING DID NOT DETERMINE THE ACTUAL  
25 BODILY SOURCE OF THE D.N.A. THEY JUST DETECTED SOME SORT  
26 OF CELLULAR MATERIAL THAT WOULD HAVE D.N.A. SO, FOR  
27 EXAMPLE, SOMETIMES IN LABORATORY CASES WE CAN  
28 SPECIFICALLY IDENTIFY THAT THERE IS BLOOD PRESENT OR



1       THERE IS SEMEN PRESENT OR A HAIR. FOR A LOT OF SAMPLE  
2       TYPES, BECAUSE D.N.A. TESTING IS SO SENSITIVE, IT MAY BE  
3       IMPOSSIBLE TO DETERMINE WHAT THE ACTUAL BODILY SOURCE OF  
4       THE D.N.A. IS. FOR EXAMPLE, WE CAN'T TEST IN A  
5       LABORATORY FOR PERSPIRATION.

6               Q       SO WHEN YOU WERE REFERRING -- WHEN YOU  
7       REFER TO CELLULAR MATERIAL, WHAT SPECIFICALLY ARE YOU  
8       REFERRING TO?

9               A       BASICALLY WHEN YOU LOOK AT WHERE D.N.A. IS  
10      FOUND IN THE HUMAN BODY, IT'S FOUND WITHIN CELLS THAT  
11      HAVE WHAT'S CALLED A NUCLEUS, AND YOU'RE GOING TO FIND  
12      THAT PRETTY MUCH EVERYWHERE IN THE HUMAN BODY. FOR  
13      EXAMPLE, WHITE BLOOD CELLS, SPERM CELLS, WHAT IS KNOWN AS  
14      EPITHELIAL CELLS, WHICH ARE IN THE MOUTH, IN THE BODY  
15      CAVITIES, AND EVEN ON YOUR SKIN. SO THE D.N.A. IS IN THE  
16      CELLS. WE HAVE TRILLIONS OF CELLS IN OUR BODY, AND  
17      REALLY MOST OF THOSE CELLS HAVE D.N.A. THAT WE CAN TEST.

18              Q       ONE OF THE CONCLUSIONS, IF YOU REMEMBER,  
19      WAS THAT THE D.N.A. MASK CONTAINED THE D.N.A. OF AT LEAST  
20      TWO PERSONS; IS THAT CORRECT?

21              A       YES. ON THAT PARTICULAR ITEM, THERE WAS A  
22      MIXTURE OF AT LEAST TWO INDIVIDUALS.

23              Q       IS THAT COMMON TO FIND MIXTURES OF TWO  
24      PERSONS' D.N.A. ON A PARTICULAR ITEM?

25              A       WELL, SPECIFICALLY ON A SKI MASK, MY  
26      EXPERIENCE IS YES. IT SEEMS LIKE WE ALMOST ALWAYS SEE  
27      SOME TYPE OF MIXTURE ON SKI MASKS. IT COULD BE TWO  
28      PEOPLE. IT COULD BE THREE PEOPLE. IT'S A PRETTY COMMON

1 OCCURRENCE BOTH IN THE TESTING THAT I HAVE DONE AND THEN  
2 IN THE WORK THAT I HAVE REVIEWED OF OTHER LABORATORIES AS  
3 WELL.

4 Q AND THAT CONCLUSION, DOES THAT MEAN IT IS  
5 LIKELY THAT IT COULD BE EXPLAINED BECAUSE THE ITEM COULD  
6 HAVE BEEN SHARED BY AT LEAST TWO INDIVIDUALS?

7 MR. GOUDY: OBJECTION. LEADING.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES. THAT IS DEFINITELY A PLAUSIBLE  
10 EXPLANATION THAT MULTIPLE PEOPLE COULD WEAR A MASK, LEAVE  
11 THEIR D.N.A. BEHIND, AND -- YOU KNOW, THE D.N.A. CAN STAY  
12 ON THE MASK FOR A GOOD PERIOD OF TIME, DAYS, WEEKS,  
13 MONTHS, JUST DEPENDING ON THE CONDITION.

14 BY MR. EVANS:

15 Q WHEN A PERSON WEARS A SKI MASK OR MULTIPLE  
16 PERSONS, CAN THOSE INDIVIDUALS LEAVE DIFFERENT AMOUNTS OF  
17 D.N.A., EVEN IF THEY ARE WORN FOR THE SAME PERIOD OF  
18 TIME?

19 A THEY CAN. AND THERE'S SORT OF A LOOSE  
20 SCIENTIFIC TERM THAT WE USE THAT IS CALLED A D.N.A.  
21 SHEDDER INDEX, WHICH REALLY MEANS HOW LIKELY SOMEONE IS  
22 TO SHED THEIR D.N.A. WHEN THEY TOUCH SOMETHING, AND IT  
23 CAN DEPEND ON OBVIOUS THINGS. LIKE, IF ONE PERSON PUTS  
24 ON A SKI MASK AND THEY ARE VERY SWEATY AND THE OTHER  
25 PERSON IS NOT AS SWEATY, A SWEATY PERSON IS MORE LIKELY  
26 TO LEAVE MORE D.N.A. BEHIND BECAUSE AS YOU SWEAT, CELLS  
27 ARE COMING OUT OF YOUR BODY, AND THOSE WILL BE DEPOSITED  
28 ON THE MASK.

1                   OTHER REASONS FOR ONE PERSON LEAVING MORE  
2 D.N.A. THAN ANOTHER ARE SORT OF JUST BECAUSE. THERE ARE  
3 SO MANY VARIABLES, AND WE ALL SORT OF SHED OUR CELLS AT  
4 DIFFERENT RATES.

5                   Q           WHEN YOU REFER TO THE TERM, HOW DO YOU  
6 DEFINE THE TERM "AMOUNTS OF D.N.A."? WHAT ARE YOU IN  
7 ESSENCE SAYING FROM YOUR PERSPECTIVE?

8                   A           TO TAKE IT ALL THE WAY BACK, AN AMOUNT OF  
9 D.N.A. WOULD BE FIRST, YOU KNOW, HOW MANY CELLS WERE  
10 DETECTED? THE MORE CELLS THAT ARE PRESENT, THE MORE  
11 D.N.A. THERE IS. AND WE CAN MEASURE THE AMOUNT OF D.N.A.  
12 IN ACTUALLY A WEIGHT. WE USE A TERM CALLED NANOGRAMS,  
13 WHICH IS A BILLIONTH OF A GRAM. SO IT'S A VERY TINY  
14 AMOUNT.

15                               ANOTHER WAY WOULD BE THE AMOUNT OF THE  
16 D.N.A. WHEN WE LOOK AT THE FINAL D.N.A. TEST RESULTS, AND  
17 THEY LOOK -- YOU KNOW, IT'S A CHART WITH PEAKS ON THEM,  
18 AND THE HIGHER THE PEAKS ARE, THE MORE D.N.A. IS  
19 PRESENT. IT SORT OF LOOKS LIKE AN E.K.G., IF YOU HAVE  
20 EVER HAD A HEART EXAM WITH THE PEAKS THAT DETECT THE  
21 HEART. IT'S THE SAME THING WITH THE DETECTION OF D.N.A.

22                   Q           IS IT REASONABLE TO ASSUME THAT -- BARRING  
23 UNUSUAL CIRCUMSTANCES LIKE WASHING, THE D.N.A. FROM THE  
24 WEARER OF A SKI MASK CAN REMAIN ON THAT MASK FOR DAYS OR  
25 EVEN WEEKS?

26                   A           ABSOLUTELY. AND DEPENDING ON FACTORS, IT  
27 COULD BE LONGER. IF THERE IS A LOT OF D.N.A. AND THE SKI  
28 MASK IS KEPT FROZEN, IT CAN LAST INDEFINITELY. SO IT

1 ABSOLUTELY CAN REMAIN ON A MASK FOR AN EXTENDED PERIOD OF  
2 TIME.

3 Q SO WHEN YOU SAY -- WHAT DOES -- WELL, HOW  
4 DO YOU DEFINE WHAT A MAJOR D.N.A. PROFILE MEANS? WHAT  
5 DOES THAT REALLY INDICATE?

6 A WELL, WHAT THAT MEANS IS IF YOU HAVE A  
7 SAMPLE THAT YOU TEST AND THERE IS A MIXTURE OF D.N.A.  
8 FROM MORE THAN ONE PERSON, IF YOU CAN DETERMINE WHAT'S  
9 CALLED A MAJOR D.N.A. PROFILE, THAT MEANS THAT THERE IS  
10 D.N.A. FROM ONE INDIVIDUAL THAT IS PRESENT IN A HIGHER  
11 QUANTITY; AND IN LOOKING AT THE ACTUAL FINAL RESULTS, YOU  
12 CAN SEE A CLEAR DIFFERENCE IN, FOR EXAMPLE, THE HEIGHT OF  
13 THOSE PEAKS FROM ONE PERSON'S D.N.A. THAN THE OTHER'S IN  
14 THE MIXTURE.

15 Q ALL RIGHT. AND DOES IT NECESSARILY MEAN,  
16 REFERRING TO A D.N.A. MAJOR -- A MAJOR D.N.A. PROFILE,  
17 DOES THAT NECESSARILY MEAN THAT THERE IS A LARGE AMOUNT  
18 OF D.N.A. FROM THE MAJOR CONTRIBUTOR, OR IS IT MERELY A  
19 RELATIVE TERM?

20 A WHEN WE ARE TALKING ABOUT A MAJOR  
21 CONTRIBUTOR, IT'S ALWAYS A RELATIVE TERM. SO WITHIN THAT  
22 D.N.A. SAMPLE THAT YOU HAVE, HOW MANY OTHER CONTRIBUTORS,  
23 THE MAJOR CONTRIBUTOR IS THE ONE THAT HAS CONTRIBUTED THE  
24 MOST. NOW, THE OVERALL AMOUNT OF D.N.A. COULD BE RATHER  
25 LOW, BUT WITHIN THAT MIXTURE OF A SMALL AMOUNT OF D.N.A.  
26 THERE COULD BE ONE DISTINCT D.N.A. TYPE. SO LONG STORY  
27 SHORT, THAT WOULD BE A RELATIVE TERM.

28 Q PARTICULARLY IN THIS CASE, THERE IS A SKI

1 MASK. BUT ANY ITEM YOU CAN GET DIFFERENT D.N.A. RESULTS  
2 DEPENDING ON WHERE ON THE PARTICULAR ITEM THE SAMPLING  
3 OCCURS?

4 A YOU CAN. AND WHEN YOU DO D.N.A. ANALYSIS  
5 ON A SKI MASK, THERE ARE OBVIOUS PLACES TO SAMPLE:  
6 AROUND THE MOUTH, AROUND THE EYES, AROUND THE NOSE. BUT  
7 EVEN -- PARTICULARLY IF YOU HAVE A MIXTURE OF D.N.A. ON A  
8 MASK, IF YOU SAMPLE DIFFERENT AREAS, YOU MIGHT GET  
9 DIFFERENT RATIOS OF A D.N.A. MIXTURE. SO IN OTHER WORDS,  
10 IN ONE SPOT THAT YOU SWAB, YOU MIGHT GET INDIVIDUAL "A"  
11 IS THE MAJOR CONTRIBUTOR, AND THERE IS A MIXTURE OF OTHER  
12 PEOPLE. AND THEN YOU TEST ANOTHER AREA OF THE MASK, AND  
13 NOW INDIVIDUAL "A" IS NOT THE MAJOR CONTRIBUTOR AND NOW  
14 IT'S INDIVIDUAL "B."

15 SO THAT'S JUST BEEN MY EXPERIENCE WHEN YOU  
16 TEST MULTIPLE AREAS OF THE SKI MASK AND, YOU KNOW, THE  
17 REASON BEING THAT YOU CANNOT SEE THE CELLULAR MATERIAL.  
18 IT'S NOT LIKE A BLOOD STAIN WHERE YOU CAN GO IN AND  
19 TARGET WHERE YOU ARE MOST LIKELY TO GET THE HIGHEST LEVEL  
20 OF D.N.A.

21 Q CAN D.N.A. TESTING TELL OR REACH THE  
22 CONCLUSION AS TO WHEN THE D.N.A. WAS DEPOSITED ON A  
23 PARTICULAR ITEM?

24 A IT CANNOT.

25 Q AND WHY IS THAT?

26 A WELL, BASICALLY THERE IS NO TECHNOLOGY TO  
27 DO THAT. AND BECAUSE D.N.A. CAN LAST A LONG TIME, THERE  
28 ARE CERTAIN INDICATORS. FOR EXAMPLE, IF -- YOU KNOW, IF

1 A BLOOD STAIN IS OUT IN THE DESERT UNDER VERY HOT  
2 CONDITIONS, THE D.N.A. WILL BREAK DOWN VERY QUICKLY. SO  
3 IF YOU HAVE SOME EXPECTATION THAT SOMETHING WAS IN THE  
4 DESERT AND ALL OF A SUDDEN THERE WAS NO D.N.A. PRESENT,  
5 IT MIGHT BE EXPLAINED BY THE ENVIRONMENT. BUT YOU CAN'T  
6 PUT A TIME CLOCK ON IT. THERE'S NO TEST THAT TELLS US  
7 TIME.

8 Q A FINDING OR A CONCLUSION THAT A MAJOR  
9 CONTRIBUTOR IS ON A MASK, DOES THAT NECESSARILY MEAN THAT  
10 THAT INDIVIDUAL WAS THE LAST PERSON TO WEAR THE MASK?

11 A IT DOES NOT NECESSARILY MEAN THAT.

12 Q NOW, WAS THE AMOUNT OF D.N.A. THAT MATCHED  
13 MR. TAUMU JAMES SO OVERWHELMING IN QUANTITY THAT THERE  
14 WAS NO OTHER REASONABLE EXPLANATION THAT HE WAS THE LAST  
15 WEARER OF THE MASK?

16 A NO, IT WAS NOT. I WOULD CHARACTERIZE THE  
17 OVERALL AMOUNT OF D.N.A. THAT WAS ON THE MASK AS  
18 MODERATE. SO ENOUGH TO GET TYPING RESULTS, AND THERE  
19 WAS, YOU KNOW, A CLEAR PROFILE FROM MR. JAMES. BUT THE  
20 D.N.A. RESULTS WEREN'T, YOU KNOW, SKY HIGH WHERE THERE  
21 WAS JUST A VERY HIGH CONCENTRATION OF CELLULAR MATERIAL  
22 ON THE MASK.

23 Q COULD D.N.A. BE TRANSFERRED TO A MASK OR A  
24 PARTICULAR ITEM? AND IF SO, HOW?

25 A A D.N.A. TRANSFER IS VERY EASY TO ACHIEVE.  
26 BECAUSE TESTING IS SO SENSITIVE, WE CAN DETECT IT. SO  
27 CERTAINLY ON A MASK -- FOR EXAMPLE, LET'S SAY I HAD VERY  
28 SWEATY HANDS AND I PICKED UP A MASK. SOME OF MY D.N.A.

1 IS GOING TO TRANSFER TO THAT MASK. THE QUESTION IS, IS  
2 IT ENOUGH FOR TESTS TO DETECT, AND WHAT ARE THE  
3 VARIABLES? LIKE I SAID, IF MY HAND IS SWEATY, IF I AM  
4 HOLDING IT FOR A LONG TIME, I AM MORE LIKELY TO TRANSFER  
5 THE D.N.A.

6 JUST TO GIVE YOU AN IDEA OF HOW THAT WORKS,  
7 IF I LITERALLY JUST TOUCHED THE DESK HERE (INDICATING)  
8 AND I SWABBED IT AND TESTED IT RIGHT AWAY, THERE IS A  
9 GOOD CHANCE THAT I WILL GET AT LEAST PART OF MY D.N.A.  
10 PROFILE. SO THAT GIVES YOU AN IDEA OF HOW SENSITIVE THE  
11 TESTING IS.

12 Q IN THIS CASE, THE RESULTS THAT SAYS  
13 MR. JAMES' D.N.A. WAS ON A PARTICULAR SKI MASK, DOES THAT  
14 ALSO INDICATE THAT HE WAS THE MOST FREQUENT WEARER OF  
15 THAT SKI MASK, IF AT ALL?

16 A NO, IT WOULD NOT. AND THE REASON BEING  
17 THAT IF SOMEBODY WORE THE SKI MASK LESS BUT THEY SHED  
18 MORE D.N.A., THEY WOULD LEAVE MORE D.N.A. THAN SOMEBODY  
19 WHO WORE IT MORE OFTEN BUT DIDN'T SHED AS MUCH D.N.A.

20 Q AND EVEN THE FACT THAT THERE WAS D.N.A. ON  
21 IT, AGAIN, DOESN'T MEAN THAT IT WAS NECESSARILY WORN BY  
22 THE PERSON WHOSE D.N.A. WAS ON THAT MASK; CORRECT?

23 A THAT'S TRUE. THERE ARE OTHER WAYS TO  
24 TRANSFER D.N.A. ONTO A MASK, PARTICULARLY AT THE LEVELS  
25 THAT WERE DEPICTED. THEY WEREN'T WHAT WE CALL TRACE,  
26 VERY SMALL LEVELS OF D.N.A. THE EXAMPLE I GAVE IS IF I  
27 TOUCHED THIS DESK FOR TEN SECONDS.

28 BUT AT THE SAME TIME, IT WASN'T A HUGE

1 LEVEL OF D.N.A. ON THE MASK THAT WOULD PRECLUDE, FOR  
2 EXAMPLE, SOMEBODY WITH VERY SWEATY HANDS HOLDING THAT  
3 MASK FOR SOME PERIOD OF TIME AND POTENTIALLY TRANSFERRING  
4 ENOUGH D.N.A. TO DETECT AND TEST IT.

5 Q WOULD YOU SAY THE AMOUNT OF D.N.A.  
6 EXTRACTED WAS RELATIVELY LOW CONSIDERING THE SIZE OF THE  
7 AREAS SWABBED, REFERRING TO THE SKI MASK?

8 A WELL, THE WAY THE MASK WAS SAMPLED WAS THE  
9 BOTTOM -- ACCORDING TO THE NOTES, THE BOTTOM APPROXIMATE  
10 THREE INCHES OF WHAT THEY CALL THE BRIM OF THE HAT WAS  
11 SWABBED AND THEN ALSO THE INSIDE OF THE MASK WHERE THE  
12 HOLES WERE SWABBED AS WELL.

13 SO ONE THING TO KEEP IN MIND IS THAT ALL OF  
14 THAT AREA THAT WAS SAMPLED IS ON ONE SWAB THAT'S ANALYZED  
15 TOGETHER. SO WE DON'T KNOW WAS THERE ONE AREA ON THE  
16 MASK WHERE THERE WAS A LOT OF D.N.A. AND NOTHING ANYWHERE  
17 ELSE, OR IS THERE OVERALL A LOW LEVEL OF CELLULAR  
18 MATERIAL, BUT BECAUSE YOU'RE SWABBING AND PICKING UP FROM  
19 A LARGE AREA, YOU GET ENOUGH TO TEST.

20 SIMILARLY, THE MIXTURE OF D.N.A., BECAUSE  
21 THE LARGER AREA IS SAMPLED TOGETHER, WE DON'T KNOW WHERE  
22 PERSON "A" CAME FROM VERSUS PERSON "B." WE JUST KNOW  
23 THAT IN THAT WHOLE AREA THAT IS SAMPLED, THESE ARE THE  
24 CELLS THAT WERE COLLECTED.

25 AND OVERALL IT WAS -- AGAIN, IT WAS ENOUGH  
26 TO ANALYZE, BUT IT WASN'T WHAT I WOULD CHARACTERIZE AS A  
27 HIGH LEVEL OF D.N.A.

28 MR. EVANS: I HAVE NOTHING FURTHER AT THIS TIME.



1 THE COURT: CROSS-EXAMINATION.

2  
3 CROSS-EXAMINATION

4 BY MR. GOUDY:

5 Q SINCE YOU LEFT THE SAN BERNARDINO COUNTY  
6 SHERIFF'S DEPARTMENT, HOW MANY TIMES HAVE YOU TESTIFIED  
7 FOR THE PROSECUTION?

8 A PROBABLY FOUR OR FIVE TIMES I HAD TO GO  
9 BACK AND TESTIFY IN CASES THAT I WORKED WITH THE  
10 SHERIFF'S DEPARTMENT.

11 Q SO IT'S ALL BEEN RELATED TO YOUR EMPLOYMENT  
12 WITH THE SHERIFF'S DEPARTMENT?

13 A TRUE. AS A CONSULTANT, I TYPICALLY WORK  
14 WITH DEFENSE ATTORNEYS BECAUSE, OF COURSE, THE  
15 PROSECUTION HAS THEIR OWN D.N.A. EXPERTS.

16 Q NOW, YOU JUST SAID THAT IF YOU WERE TO  
17 TOUCH BASICALLY THE WITNESS STAND IN FRONT OF YOU, YOU  
18 WOULD EXPECT TO GET SOME D.N.A. FROM YOU; CORRECT?

19 A CORRECT.

20 Q NOT A TRACE AMOUNT; CORRECT?

21 A WELL, IT DEPENDS ON HOW LONG I TOUCH IT,  
22 WHAT IS ON MY HANDS, ET CETERA. I THINK THAT EVEN IF I  
23 WERE TO TOUCH IT INSTANTANEOUSLY AND SWAB IT, I WOULD GET  
24 SOME RESULT. IT MAY NOT BE A FULL D.N.A. PROFILE.

25 Q NOW, IF YOU TOUCHED THE TOP OF THE WITNESS  
26 STAND AND YOU SWABBED THE BOTTOM OF THE WITNESS STAND,  
27 WOULD YOU EXPECT TO FIND YOUR D.N.A.?

28 A IF I DIDN'T SWAB IN THE AREA THAT I

1 TOUCHED, OF COURSE I WOULD NOT EXPECT TO FIND MY D.N.A.

2 Q MY QUESTION IS IF YOU TOUCHED THE TOP AND  
3 YOU SWABBED THE BOTTOM, WOULD YOU EXPECT TO FIND YOUR  
4 D.N.A. ON THE BOTTOM OF THE WITNESS STAND?

5 A I WOULD NOT.

6 Q AND THE SAME HOLDS TRUE WITH ANYTHING. YOU  
7 HAVE TO HAVE TOUCHED THE AREA WHERE THE SWAB WAS -- TO  
8 THINK IT'S YOUR D.N.A., YOU HAD TO HAVE TOUCHED THAT  
9 AREA; CORRECT?

10 A OR YOUR D.N.A. HAD TO HAVE COME IN CONTACT  
11 WITH THAT AREA, JUST TO BE MORE SPECIFIC.

12 Q IF, LET'S SAY -- ON THE MASK THAT WE ARE  
13 TALKING ABOUT, THEY TESTED 3 INCHES ON THE BRIM OF THE  
14 MASK AND AROUND THE HOLES OF THE MASK; CORRECT?

15 A CORRECT.

16 Q AND FOR MR. JAMES' D.N.A. TO HAVE GOTTEN  
17 THERE, ONE OF TWO THINGS HAD TO HAVE HAPPENED: HE EITHER  
18 HANDLED THE MASK OR WAS WEARING THE MASK, OR HIS D.N.A.  
19 WAS TRANSFERRED THERE; CORRECT?

20 A CORRECT. AND JUST TO SPECIFY A TRANSFER,  
21 EITHER HE DIDN'T -- THE OTHER SCENARIO IS NOT NECESSARILY  
22 THAT HE WORE IT BUT HE SOMEHOW TOUCHED IT OR, TECHNICALLY  
23 SPEAKING, SOMEHOW CELLULAR MATERIAL FROM HIM WAS  
24 TRANSFERRED TO THE MASK.

25 Q WELL, HOW WOULD HIS D.N.A. BE TRANSFERRED  
26 TO THE MASK WITHOUT HIM TOUCHING IT?

27 A YOU KNOW, I GUESS SOME -- SOME EXAMPLES ARE  
28 IF SOMEONE IS STANDING OVER IT, SWEATING OVER IT, SWEAT

1 DROPS, YOU WOULDN'T HAVE TO PHYSICALLY TOUCH THE MASK.  
2 SOMEHOW IF SOMEBODY HAD AHOLD OF SOMEBODY'S SALIVA OR  
3 PERSPIRATION, THEY COULD ACTUALLY TRANSFER IT TO THE  
4 MASK.

5 Q SO EITHER HE WAS STANDING OVER THE MASK,  
6 PERSPIRING ONTO THE MASK, OR SOMEBODY GOT HIS SALIVA OR  
7 HIS PERSPIRATION AND BASICALLY WIPED IT ON THE MASK;  
8 CORRECT?

9 A THOSE WOULD BE TWO EXPLANATIONS OF -- YOU  
10 KNOW, FOR HIS D.N.A. TO GET ON THE MASK WITHOUT LITERALLY  
11 PHYSICALLY TOUCHING THE MASK.

12 Q COULD YOU THINK OF ANY OTHER WAYS THAT HIS  
13 D.N.A. WOULD GET ON THAT MASK, EXCEPT FOR THOSE THAT YOU  
14 MENTIONED, BECAUSE I ASKED YOU HOW WOULD THAT TRANSFER  
15 OCCUR?

16 A AND YOU'RE ASKING SPECIFICALLY WITHOUT HIM  
17 PHYSICALLY TOUCHING?

18 Q CORRECT.

19 A THAT WOULD PROBABLY BE IT. MAYBE SOME  
20 VARIATIONS ON THAT, BUT --

21 Q NOW, ASSUMING HE WASN'T STANDING OVER IT,  
22 PERSPIRING ON THE MASK, OR SOMEBODY DIDN'T GET HIS SALIVA  
23 OR PERSPIRATION AND WIPE IT ON THE MASK, HIS D.N.A. WAS  
24 THERE. HE HAD TO HAVE TOUCHED IT IN SOME MANNER;  
25 CORRECT?

26 A CORRECT.

27 Q AND BECAUSE THE SWABS WERE DONE --  
28 BASICALLY IT WAS ONE SWAB DONE AROUND THE BRIM OF THE

1 HAT, THE MASK, AND THE EYE HOLES. HE WOULD HAVE HAD TO  
2 HAVE TOUCHED THOSE AREAS; CORRECT?

3 A YES.

4 Q WE DON'T KNOW WHICH ONE BECAUSE ONE SWAB  
5 WAS USED IN ALL THE AREAS; CORRECT?

6 A YES. THAT'S TRUE.

7 Q DOES D.N.A. FLOAT?

8 A IT DOES NOT TRAVEL -- D.N.A. ITSELF DOESN'T  
9 TRAVEL THROUGH THE AIR. OF COURSE, IF YOU ARE SPITTING  
10 OR SOMETHING, I GUESS IN THAT REGARDS D.N.A. CAN FLOAT.

11 Q CAN IT GO THROUGH OBJECTS?

12 A I MEAN, FOR EXAMPLE, IF YOU HAD A BLOOD  
13 STAIN ON THE OUTSIDE OF A SOCK, IT COULD, YOU KNOW, SOAK  
14 THROUGH A SOCK OR SOME KIND OF -- SOME TYPE OF CLOTHING.  
15 I AM NOT SURE IF THAT'S WHAT YOU ARE ASKING.

16 Q WELL, IN THIS PARTICULAR INSTANCE, WE KNOW  
17 IT'S NOT BLOOD; CORRECT?

18 A CORRECT.

19 Q AND WE KNOW THE D.N.A. ISN'T SEMEN?

20 A CORRECT.

21 Q AND WHAT WAS THE OTHER TYPE? BLOOD, SEMEN,  
22 AND HAIR. WE KNOW IT'S NOT HAIR; CORRECT?

23 A THAT'S CORRECT.

24 Q ASIDE FROM BLOOD OR SEMEN, CAN D.N.A. GO  
25 THROUGH OBJECTS?

26 A BASICALLY CELLULAR MATERIAL -- COULD YOU  
27 CLARIFY A LITTLE BIT?

28 Q WELL, YOU TOUCHED THE TOP OF THE WITNESS

1 STAND. YOUR D.N.A. IS NOT GOING TO GO TO THE BOTTOM OF  
2 THE WITNESS STAND; CORRECT?

3 A CORRECT. YES.

4 Q OKAY. SO FOR THE D.N.A. TO HAVE BEEN  
5 FOUND, THAT PARTICULAR AREA HAD TO HAVE BEEN TOUCHED;  
6 CORRECT?

7 A YES. THAT'S CORRECT.

8 Q SO IN THIS INSTANCE, ON THE SKI MASK, THE  
9 AREA WHERE THIS WAS SWABBED, ASIDE FROM THE TWO OPTIONS  
10 YOU GAVE OF STANDING OVER AND PERSPIRING OR SOMEBODY  
11 TAKING HIS SALIVA AND PERSPIRATION AND WIPING IT ON  
12 THERE, MR. JAMES HAD TO HAVE TOUCHED THAT AREA ON THE  
13 MASK THAT WAS SWABBED FOR HIS D.N.A. TO BE FOUND THERE;  
14 CORRECT?

15 A AGREED.

16 Q AND IN THIS CASE, DO YOU RECALL WHERE ON  
17 THE MASK THE SWABBING OCCURRED?

18 A ACCORDING TO THE NOTES, IT WAS THE LOWER  
19 3 INCHES OF THE BRIM AND THEN THE INSIDE AREA AROUND  
20 WHERE THE HOLES WERE. THAT WAS THE BEST DESCRIPTION.

21 Q THAT, ACTUALLY, WAS THE INSIDE OF THE BRIM  
22 AS WELL, WASN'T IT?

23 A YES. EVERYTHING WAS SWABBED ON THE INSIDE  
24 OF THE HAT.

25 Q SO FOR MR. JAMES' D.N.A. TO HAVE GOTTEN ON  
26 THAT MASK, HIS D.N.A., HE HAD TO HAVE TOUCHED -- ASIDE  
27 FROM THOSE TWO INSTANCES WE TALKED ABOUT, HE HAD TO HAVE  
28 TOUCHED THE INSIDE OF THE SKI MASK, EITHER THE 3 INCHES

1 AROUND THE BRIM OR AROUND THE HOLES; CORRECT?

2 A YES. THAT'S CORRECT.

3 MR. GOUDY: NOTHING FURTHER.

4 THE COURT: REDIRECT?

5 MR. EVANS: NOTHING, YOUR HONOR. THANK YOU.

6 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY  
7 STEP DOWN.

8 YOU MAY CALL YOUR NEXT WITNESS.

9 MR. EVANS: I BRIEFLY CALL DETECTIVE CHISM.

10

11

ROBERT CHISM,

12

CALLED AS A WITNESS BY THE DEFENDANT, WAS PREVIOUSLY

13

SWORN AND TESTIFIED AS FOLLOWS:

14

15

THE COURT: DETECTIVE CHISM, IF YOU CAN RESUME THE

16

STAND. AND I WOULD LIKE TO REMIND YOU THAT YOU REMAIN

17

UNDER OATH AT THIS TIME.

18

YOU MAY BEGIN.

19

20

DIRECT EXAMINATION

21

BY MR. EVANS:

22

Q ON JUNE 2ND, 2009, YOU WENT OUT AND MET

23

WITH THREE INDIVIDUALS; IS THAT CORRECT?

24

A YES.

25

Q FOR THE PURPOSE OF SHOWING THEM SIX-PACK OF

26

PHOTOS; CORRECT?

27

A YES, SIR.

28

Q THE THREE INDIVIDUALS THAT YOU MET WITH

1 WERE -- WHO WAS THAT AGAIN? WAS THAT ANNETTE SAAVEDRA?  
2 WAS SHE ONE OF THE TWO PEOPLE?

3 A YES, SHE WAS.

4 Q THE SECOND PERSON WAS NANCY JARDINES?

5 A YES.

6 Q AND THE THIRD PERSON THAT YOU MET WITH WAS  
7 BRENDA BARRAGAN; IS THAT CORRECT?

8 A YES, SIR.

9 Q THE THREE INDIVIDUALS THAT -- WHEN YOU WENT  
10 OUT THERE, DID YOU BRING SOMEONE WHO COULD TRANSLATE OR  
11 INTERPRET THE SPANISH LANGUAGE TO ENGLISH OR VICE VERSA?

12 A NO, SIR.

13 Q AT THAT TIME -- SO IT WOULD BE FAIR TO SAY  
14 WHEN YOU SPOKE TO THOSE THREE INDIVIDUALS, YOU DID SO IN  
15 ENGLISH; CORRECT?

16 A YES. YES, SIR.

17 Q AND DID THEY RESPOND TO YOU IN ENGLISH?

18 A YES, THEY DID.

19 Q AND ANY ADMONITIONS YOU GAVE THEM REGARDING  
20 THE SIX-PACK THAT YOU DESCRIBED PREVIOUSLY, THE  
21 ADMONITION YOU GAVE THEM BEFORE SHOWING THE SIX-PACK,  
22 THAT WAS READ TO THEM OR WAS PROVIDED TO THEM IN THE  
23 ENGLISH LANGUAGE; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND THEN WHEN YOU SPOKE -- I AM SORRY. ON  
26 JULY 6TH, 2009, YOU HAD THE OPPORTUNITY TO SPEAK TO  
27 FELICITAS GONZALES; IS THAT CORRECT?

28 A THAT'S CORRECT.

1 Q AND THAT WAS FOR THE SAME PURPOSE, TO BRING  
2 THE SIX-PACK OF PHOTOS TO HER TO SEE IF SHE CAN MAKE AN  
3 IDENTIFICATION; IS THAT CORRECT?

4 A YES.

5 Q AND AT THAT TIME DID YOU BRING AN  
6 INTERPRETER OR A TRANSLATOR THAT COULD TRANSLATE SPANISH  
7 TO ENGLISH AND ENGLISH TO SPANISH?

8 A NO, SIR.

9 Q SO WOULD IT BE FAIR TO SAY WHEN YOU SPOKE  
10 TO MS. GONZALEZ, YOU DID SO IN ENGLISH?

11 A THAT'S CORRECT, YES, SIR.

12 Q AND SHE RESPONDED TO YOU IN ENGLISH;  
13 CORRECT?

14 A YES.

15 Q AND PRIOR TO SHOWING HER THE SIX-PACK, DID  
16 YOU READ HER AN ADMONITION, OR DID YOU HAVE HER READ AN  
17 ADMONITION?

18 A I BELIEVE I READ IT.

19 Q AND JUST SO WE ARE CLEAR, YOU DID SO IN  
20 ENGLISH; IS THAT CORRECT?

21 A YES, SIR.

22 MR. EVANS: NOTHING FURTHER.

23 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

24

25 CROSS-EXAMINATION

26 BY MR. GOUDY:

27 Q WHEN YOU SPOKE TO THE FOUR WOMEN THAT YOU  
28 JUST MENTIONED, DID YOU HAVE ANY PROBLEM UNDERSTANDING



1 THEM?

2 A NO. I DID NOT.

3 Q WHEN YOU ASKED THEM A QUESTION, DID THEIR  
4 ANSWERS SEEM TO FIT THE QUESTION THAT YOU ASKED?

5 A YES, IT DID.

6 Q DID THEY EVER ASK FOR AN INTERPRETER?

7 A NO.

8 Q BRENDA BARRAGAN, DO YOU KNOW IF SHE SPEAKS  
9 SPANISH?

10 A YES, SHE DOES.

11 Q AND IF YOU HAD A PROBLEM SPEAKING TO EITHER  
12 NANCY JARDINES OR FELICITAS GONZALEZ, WAS BRENDA BARRAGAN  
13 PRESENT TO WHERE YOU COULD HAVE USED HER AS AN  
14 INTERPRETER?

15 A I COULD HAVE, BUT IN OUR INVESTIGATION WE  
16 DON'T TRY TO USE A CIVILIAN TO TRANSLATE FOR PURPOSES OF  
17 OUR CASE.

18 Q BUT IF YOU WERE OUT THERE AT THE TIME AND  
19 YOU DIDN'T HAVE A TRANSLATOR FROM THE DEPARTMENT, YOU  
20 COULD HAVE DONE THAT; CORRECT?

21 A I COULD HAVE, YES.

22 Q DID YOU FEEL THERE WAS A NEED TO DO THAT?

23 A NO, SIR.

24 MR. GOUDY: NOTHING FURTHER.

25 THE COURT: REDIRECT?

26 MR. EVANS: NOTHING FURTHER.

27 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP  
28 DOWN.

1 MR. EVANS: YOUR HONOR, MAY WE APPROACH?

2 THE COURT: YES.

3

4 (THE FOLLOWING PROCEEDINGS

5 WERE HELD AT SIDEBAR:)

6

7 MR. EVANS: I JUST WANT HIM TO WALK IN FRONT OF  
8 THE JURY SO THEY HAVE AN OPPORTUNITY TO OBSERVE HIS  
9 PHYSICAL CHARACTERISTICS.

10 THE COURT: LET ME JUST TALK TO THE BAILIFF TO  
11 MAKE SURE THAT THAT'S OKAY. OTHERWISE, I WILL JUST HAVE  
12 HIM WALK SLOWLY.

13 AFTER THAT, DO YOU HAVE ANY FURTHER  
14 WITNESSES, OR IS YOUR WITNESS AT 1:30?

15 MR. EVANS: 1:30.

16

17 (A DISCUSSION WAS HELD BETWEEN  
18 THE COURT AND BAILIFF WHICH  
19 WAS NOT REPORTED.)

20

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

24

25 THE COURT: LADIES AND GENTLEMEN, AT MR. EVANS'  
26 REQUEST, MR. JAMES IS GOING TO WALK IN FRONT OF THE JURY  
27 BOX SO THAT YOU CAN ALL OBSERVE HIS APPEARANCE. MY  
28 BAILIFF IS PRESENT NEXT TO MR. JAMES. IT IS NOT TO BE

1       CONSTRUED IN ANY WAY AS EVIDENCE ABOUT MR. JAMES '  
2       CHARACTER. IT'S JUST A PRECAUTION THAT I TAKE IN THE  
3       COURTROOM, REGARDLESS WHO THE DEFENDANT IS. SO DON'T  
4       INFER ANYTHING ABOUT THE BAILIFF'S ACCOMPANIMENT OF  
5       MR. JAMES.

6               MR. EVANS, DID YOU ALSO WANT TO APPROACH OR  
7       NOT? YOU'RE FINE?

8               MR. EVANS: I AM OKAY.

9               THE COURT: IF YOU JUST WANT TO WALK BACK AND  
10       FORTH THE LENGTH OF THE JURY BOX.

11               ALL RIGHT. THANK YOU, MR. JAMES. YOU MAY  
12       SIT DOWN.

13               IS THAT SUFFICIENT?

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

15               THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE  
16       NEXT WITNESS WILL BE HERE AT 1:30. SO YOU ARE GOING TO  
17       HAVE A LONGER LUNCH BREAK. WE ARE ACTUALLY GOING TO  
18       HANDLE SOME MOTIONS AND JURY INSTRUCTIONS NOW SO WE WON'T  
19       WASTE TIME AFTER THE WITNESSES ARE DONE TESTIFYING SO  
20       THAT WE CAN GO STRAIGHT INTO ARGUMENT. I APOLOGIZE FOR  
21       THE LONGER LUNCH FOR YOU ALL. WE WILL BE USING OUR TIME  
22       TO MAKE UP FOR IT ON THE BACK END. THANK YOU ALL.

23               KEEP IN MIND THE COURT'S ADMONITION, AND WE  
24       WILL SEE YOU ALL HERE AT 1:30.

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: OUR JURORS ARE GONE.

7 COUNSEL, I WANT YOU TO BOTH REVIEW THE JURY  
8 INSTRUCTIONS TOGETHER AND SEE WHERE THE FEW DISAGREEMENTS  
9 LIE, IF THERE ARE ANY DISAGREEMENTS. I USE CALCRIM, SO  
10 OBVIOUSLY SEE WHERE WE ARE AT WITH REGARD TO THAT. AND  
11 THEN I WILL COME BACK OUT IN ABOUT 20 MINUTES. JUST LET  
12 ME KNOW WHAT YOU DON'T AGREE ON, AND THEN WE WILL TAKE UP  
13 THOSE FEW ISSUES.

14 MR. EVANS: OKAY.

15 THE COURT: SO HE CAN CHANGE OUT.

16 KEEP THOSE CLOTHES FRESH, MR. JAMES, AND WE  
17 WILL BRING YOU BACK OUT WHEN WE TALK ABOUT THE JURY  
18 INSTRUCTIONS.

19 AND JUST SO IT'S CLEAR ON THE RECORD, WHILE  
20 MR. JAMES WAS WALKING BACK AND FORTH IN FRONT OF THE  
21 JURORS, MY BAILIFF WAS NOT STANDING NEXT TO HIM. HE WAS  
22 STANDING, ACTUALLY, BY THE GATE THAT THE JURORS ENTER  
23 INTO, PROBABLY ABOUT A 20-FOOT DISTANCE BETWEEN HIM AND  
24 MR. JAMES, JUST SO THAT'S CLEAR ON THE RECORD.

25 MR. EVANS: I CONCUR.

26  
27 (COUNSEL CONFERRED SOTTO VOCE.)

28 ///

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

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

1 CASE NUMBER: KA085233  
2 CASE NAME: PEOPLE VS. TAUMU JAMES  
3 LOS ANGELES, CALIFORNIA MONDAY, AUGUST 9, 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  
11 OUTSIDE THE PRESENCE OF THE  
12 JURY:)  
13

14 THE COURT: ON THE RECORD.

15 IN ADDITION TO THE INSTRUCTIONS THAT THE  
16 COURT IS GOING TO GIVE THAT I HAVE ALREADY MENTIONED OFF  
17 THE RECORD, THE COURT IS GOING TO GIVE AIDING AND  
18 ABETTING, 401, JUST BECAUSE IT'S MENTIONED IN THE ROBBERY  
19 IN CONCERT.  
20

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

25 THE COURT: LADIES AND GENTLEMEN, I AM SORRY.  
26 THERE'S ONE QUICK MATTER THAT I NEED TO DO. I DIDN'T  
27 HAVE THE LAWYERS HERE BEFORE. THEY ARE HERE NOW. IT  
28 WILL TAKE TWO MINUTES. I WILL ASK YOU TO JUST SIT OUT IN

1 THE HALLWAY FOR TWO MOMENTS, AND I WILL CALL YOU RIGHT  
2 BACK OUT.

3 AND PLEASE KEEP IN MIND COURT'S  
4 ADMONITION.

5  
6 (WHEREUPON ANOTHER MATTER WAS HEARD.)

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

11  
12 THE COURT: WE ARE BACK ON THE RECORD IN PEOPLE  
13 VERSUS JAMES. ALL OF OUR JURORS ARE PRESENT. BOTH  
14 COUNSEL ARE PRESENT. DETECTIVE CHISM IS AT COUNSEL  
15 TABLE. MR. JAMES, OF COURSE, IS PRESENT.

16 YOU MAY CALL YOUR NEXT WITNESS, MR. EVANS.

17 MR. EVANS: RANDALL PETEE.

18 THE COURT: COME ON FORWARD, SIR.

19  
20 RANDALL PETEE,  
21 CALLED AS A WITNESS BY THE DEFENDANT, 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: I DO.

1 THE CLERK: THANK YOU. HAVE A SEAT.

2 FOR THE RECORD, PLEASE STATE AND SPELL YOUR  
3 FULL NAME.

4 THE WITNESS: RANDALL PETEE, R-A-N-D-A-L-L,  
5 PETEE, P-E-T-E-E.

6 THE CLERK: THANK YOU.

7 THE COURT: ALL RIGHT. YOU MAY BEGIN.

8

9 DIRECT EXAMINATION

10 BY MR. EVANS:

11 Q WHAT IS YOUR CURRENT OCCUPATION?

12 A I AM A PRIVATE INVESTIGATOR.

13 Q ARE YOU SELF-EMPLOYED, OR DO YOU WORK FOR  
14 SOMEONE?

15 A I AM SELF-EMPLOYED WITH MY AGENCY, WHICH IS  
16 MODEL PETEE ASSOCIATES.

17 Q HOW LONG HAVE YOU HAD YOUR OWN AGENCY?

18 A OVER TEN YEARS.

19 Q PRIOR TO WORKING AS A PRIVATE INVESTIGATOR,  
20 WHAT TYPE OF WORK EXPERIENCE HAVE YOU HAD IN TERMS OF --  
21 WHY DON'T YOU GO THROUGH YOUR WORK EXPERIENCE AS IT  
22 RELATES TO YOUR PRIVATE INVESTIGATION WORK.

23 A I WAS EMPLOYED BY THE -- I WAS A DEPUTY  
24 SHERIFF FOR THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT.  
25 I STARTED IN 1982. I USED TO WORK IN CUSTODY. I WORKED  
26 APPROXIMATELY FOUR, FOUR AND A HALF YEARS AT LENNOX  
27 STATION. AND THEN I WENT TO NARCOTICS, AND I MEDICALLY  
28 RETIRED OUT OF NARCOTICS AFTER APPROXIMATELY SIX YEARS.



1 Q LET ME TAKE YOU TO THE DATE OF JULY 10TH,  
2 2010, IN THE AFTERNOON. DID YOU HAVE AN OPPORTUNITY TO  
3 SPEAK TO A WOMAN BY THE NAME OF NANCY JARDINES?

4 A YES, I DID.

5 Q AND WHERE DID YOU MEET WITH HER?

6 A AT HER RESIDENCE.

7 Q AND WAS THAT OVER AT 14050 NORTH TRAILSIDE  
8 DRIVE IN THE CITY OF LA PUENTE, STATE OF CALIFORNIA?

9 A YES.

10 Q WHEN YOU CONDUCTED YOUR INTERVIEW WITH  
11 MR. JARDINES, DID YOU DO SO WITH THE ASSISTANCE OF THE  
12 SPANISH LANGUAGE INTERPRETER?

13 A YES.

14 Q AT THAT TIME WHEN YOU SPOKE TO HER, DID YOU  
15 ASK HER WHETHER OR NOT SHE HAD RECEIVED A LETTER IN THE  
16 MAIL REGARDING MR. JAMES?

17 A YES.

18 Q AND SO DID SHE INDICATE TO YOU THAT SHE  
19 RECEIVED A LETTER THAT MR. JAMES MAY BE A SUSPECT IN A  
20 CASE THAT SHE WAS INVOLVED WITH?

21 A YES.

22 Q DID SHE ALSO EXPLAIN OR MENTION ANYTHING  
23 ABOUT VIEWING A PHOTOGRAPH OF MR. JAMES ON THE INTERNET?

24 A YES.

25 Q AND DID SHE ALSO DISCUSS LOOKING AT A  
26 SIX-PACK OF PHOTOGRAPHS WITH DETECTIVE CHISM FROM THE  
27 LOS ANGELES COUNTY SHERIFF'S DEPARTMENT?

28 A YES.

1 Q WHAT DID SHE TELL YOU OCCURRED? WHAT WAS  
2 THE FIRST THING THAT OCCURRED? DID SHE RECEIVE THE  
3 LETTER FIRST? DID SHE VIEW THE INTERNET PHOTO FIRST, OR  
4 DID SHE VIEW THE SIX-PACK OF PHOTOS FIRST?

5 A SHE TOLD ME THAT SHE VIEWED THE LETTER  
6 FIRST. SHE THEN VIEWED THE PHOTO ON THE INTERNET, AND  
7 THEN SHE WAS SHOWN THE SIX-PACK.

8 Q SO WAS THERE ANYTHING UNCLEAR ABOUT THE  
9 FACT THAT IN HER STATEMENT THAT SHE HAD SEEN THE INTERNET  
10 PHOTOGRAPH OF MR. JAMES PRIOR TO VIEWING THE SIX-PACK OF  
11 PHOTOGRAPHS?

12 A NO.

13 MR. EVANS: NOTHING FURTHER.

14 THE COURT: CROSS-EXAMINATION.

15  
16 CROSS-EXAMINATION

17 BY MR. GOUDY:

18 Q WAS THAT THE ONLY INDIVIDUAL YOU SPOKE TO  
19 ON THAT DAY?

20 A NO.

21 Q WHO ELSE DID YOU SPEAK TO?

22 A I SPOKE TO HER SISTER.

23 Q WHO WAS THAT?

24 A ON THE TELEPHONE.

25 Q WHICH SISTER WAS THAT?

26 A SAAVEDRA.

27 Q ANNETTE?

28 A ANNETTE, CORRECT.

1 Q AND DID YOU ASK ANNETTE IF MR. JARDINES WAS  
2 PRESENT WHEN SHE, ANNETTE, LOOKED AT THE PHOTOGRAPH ON  
3 THE INTERNET?

4 A YES.

5 Q AND WHAT DID SHE SAY?

6 A SHE COULDN'T RECALL.

7 Q DID YOU EVER GO BACK AND SPEAK WITH ANYONE  
8 ELSE?

9 A NO.

10 Q DID YOU EVER TALK TO FELICITAS GONZALEZ AT  
11 ALL?

12 A NO.

13 Q DID YOU TALK WITH BRENDA BARRAGAN?

14 A NO.

15 MR. GOUDY: NOTHING FURTHER.

16 THE COURT: ANYTHING FURTHER?

17 MR. EVANS: NO, YOUR HONOR. NOTHING.

18 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP  
19 DOWN?

20 THE WITNESS: THANK YOU.

21 THE COURT: ANYTHING FURTHER?

22 MR. EVANS: YES, YOUR HONOR. WE CALL DR. ROBERT  
23 SHOMER. IF I MAY GO GET HIM.

24 THE COURT: YES.

25

26 (SHORT PAUSE IN THE PROCEEDINGS.)

27

28 ROBERT WILLIAM SHOMER,

1 CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND  
2 TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

4 YOU DO SOLEMNLY STATE THE TESTIMONY YOU ARE  
5 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT  
6 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE  
7 TRUTH, SO HELP YOU GOD.

8 THE WITNESS: I DO.

9 THE CLERK: THANK YOU. HAVE A SEAT.

10 THE WITNESS: THANK YOU.

11 THE CLERK: PLEASE TELL US YOUR FULL NAME AND  
12 SPELL YOUR FULL NAME.

13 THE WITNESS: ROBERT WILLIAM SHOMER, R-O-B-E-R-T  
14 W-I-L-L-I-A-M S-H-O-M-E-R.

15 THE COURT: YOU MAY BEGIN.

16 MR. EVANS: THANK YOU, YOUR HONOR.

17  
18 DIRECT EXAMINATION

19 BY MR. EVANS:

20 Q WHAT IS YOUR PRESENT OCCUPATION?

21 A I AM A DEPARTMENTAL PSYCHOLOGIST THAT  
22 BRINGS A PARTICULAR BACKGROUND INTO THE LEGAL PROCESS.  
23 MY BACKGROUND HAS TO DO WITH THE HUMAN PERCEPTION,  
24 MEMORY, VARIOUS THINGS THAT GO INTO WHAT WE TYPICALLY  
25 CALL EYEWITNESS IDENTIFICATION.

26 Q WHAT IS YOUR EDUCATION AND TRAINING THAT  
27 YOU BRING TO YOUR OCCUPATION?

28 A I HAVE A BACHELOR'S OF SCIENCE DEGREE IN

1 EXPERIMENTAL PSYCHOLOGY FROM U.C.L.A. I WAS ACCEPTED  
2 INTO THE DOCTORATE PROGRAM AT U.C.L.A., AND I EARNED A  
3 DOCTORATE IN EXPERIMENTAL PSYCHOLOGY.

4 I HAVE TAUGHT COURSES AT U.C.L.A. WHILE  
5 STILL A GRADUATE STUDENT. I ALSO PUBLISHED PAPERS AND  
6 PEER REVIEW JOURNALS IN EXPERIMENTAL PSYCHOLOGY BACK IN  
7 THOSE DAYS.

8 I RECEIVED MY DOCTORATE, AND I WENT ON TO  
9 BE OFFERED A NUMBER OF FACULTY POSITIONS. I WAS OFFERED  
10 A FACULTY POSITION AT HARVARD UNIVERSITY, WHERE I WAS AN  
11 ASSISTANT PROFESSOR IN THREE DEPARTMENTS AT THE SAME  
12 TIME. I SERVED IN THAT CAPACITY FOR FIVE YEARS.

13 I DID A NUMBER OF PROJECTS FOR HARVARD  
14 UNIVERSITY, PROJECTS FOR THE NATIONAL SCIENCE FOUNDATION,  
15 THE UNITED STATES NAVY, THE ADVANCED RESEARCH PROJECTS  
16 AGENCY, THE DEPARTMENT OF DEFENSE, AND NUMEROUS OTHER  
17 GRANTING AGENCIES. THESE PROJECTS HAD TO DO WITH HUMAN  
18 BEHAVIOR, REACTIONS UNDER STRESS, AND HUMAN PERCEPTION.

19 IN ADDITION TO ALL OF THOSE THINGS, I  
20 TAUGHT COURSES IN ALL THREE DEPARTMENTS AND DID WHAT  
21 ASSISTANT PROFESSORS TYPICALLY DO.

22 I RETURNED TO THE WEST COAST WITH A TENURED  
23 POSITION AT CLAREMONT COLLEGE IN POMONA WHERE I TAUGHT  
24 FOR TEN YEARS AND HELPED BUILD UP THE EXPERIMENTAL  
25 PSYCHOLOGY LABORATORY. AND DURING THAT SAME PERIOD OF  
26 TIME I FIRST QUALIFIED AND TESTIFIED AND WAS CALLED AN  
27 EXPERT WITNESS. I DID THAT FIRST IN 1974 IN  
28 SAN BERNARDINO.

1 I BEGAN ALSO WORKING AS A PSYCHOLOGIST FOR  
2 A POLICE DEPARTMENT, SPECIFICALLY THE CITY OF HAWTHORNE.  
3 I DID THAT FOR A NUMBER OF YEARS. IT BROUGHT ME INTO  
4 CONTACT WITH A MEDICAL GROUP IN THE HAWTHORNE AREA, SO I  
5 LEFT THAT COMMUNITY AFTER A TOTAL OF 15 YEARS AND JOINED  
6 THE MEDICAL GROUP. I EVENTUALLY BECAME THE PRESIDENT AND  
7 C.E.O. OF A MEDICAL GROUP FOR A LARGE GROUP OF PHYSICIANS  
8 AND 130,000 PATIENTS.

9 THROUGHOUT THAT PERIOD OF TIME, I STILL  
10 QUALIFIED AND TESTIFIED AS AN EXPERT WITNESS IN VARIOUS  
11 COURTS, AND I AM NOW RETIRED FROM THE MEDICAL GROUP AND  
12 BASICALLY DO THIS FOR THE LAST ABOUT TEN YEARS.

13 Q NOW, YOU SAY YOU'VE QUALIFIED AS AN  
14 EXPERT. WHAT PARTICULAR AREA HAVE YOU BEEN QUALIFIED AS  
15 AN EXPERT?

16 A WELL, SPECIFICALLY AS AN EXPERT, SO-CALLED  
17 EXPERT IN EYEWITNESS IDENTIFICATION, MEMORY PERCEPTION,  
18 VARIOUS PROCEDURES THAT GO INTO EYEWITNESS  
19 IDENTIFICATION, AND I HAVE QUALIFIED AND TESTIFIED IN  
20 THOSE AREAS PROBABLY CLOSE TO 1,000 TIMES OVER THE LAST  
21 35 YEARS IN 16 STATES, IN FEDERAL COURT, MILITARY COURT  
22 MARTIALS, AS WELL AS HERE IN CALIFORNIA, OF COURSE.

23 Q YOUR WORK, DO YOU CONSULT AND WORK WITH  
24 DEFENSE ATTORNEYS?

25 A PRIMARILY, YES. THEY'RE THE ONES THAT  
26 PRIMARILY CALL ME AND ASK ME TO TESTIFY OR CONSULT WITH  
27 THEM.

28 Q HOW ABOUT JUDGES OR BAR ASSOCIATIONS? HAVE

1 YOU BEEN ASKED TO CONSULT AND/OR PROVIDE TRAINING TO  
2 EITHER OR BOTH OF THOSE GROUPS?

3 A YES. ONCE I PROVIDED A TRAINING VIDEO FOR  
4 JUDGE'S SCHOOL IN HOW TO DEAL WITH EYEWITNESS  
5 IDENTIFICATION EXPERTS. I HAVE ADDRESSED MEETINGS OF  
6 JUDGES. I HAVE ADDRESSED THE CALIFORNIA STATE BAR  
7 ASSOCIATION ON EYEWITNESS IDENTIFICATION. I HAVE  
8 ADDRESSED COUNTY BAR ASSOCIATIONS ALL OVER THE COUNTRY.  
9 I HOPE THAT'S RESPONSIVE TO YOUR QUESTION.

10 Q DO YOU TAKE EVERY CASE THAT IS BROUGHT TO  
11 YOU?

12 A NO. I GET CALLED VERY OFTEN, AND I ASK FOR  
13 EITHER AN INITIAL REVIEW BY VERBAL MEANS, OR IF THEY WANT  
14 ME TO GO OVER THE CASE. AND ABOUT 30 PERCENT OF THE TIME  
15 I TELL THE ATTORNEY WHAT I WOULD TESTIFY TO, AND THEY  
16 CHOOSE NOT TO HAVE ME TESTIFY IN COURT. AND IT'S  
17 BASICALLY -- BECAUSE I HAVE TOLD THEM THAT THERE REALLY  
18 ISN'T ANYTHING IN THAT PARTICULAR CASE THAT WOULD NEED MY  
19 TESTIMONY TO EXPLAIN TO JURORS OR ANYBODY ELSE.

20 MR. GOUDY: OBJECTION. MOTION TO STRIKE. HEARSAY  
21 AS TO WHAT HE TOLD OTHER ATTORNEYS.

22 THE COURT: SUSTAINED.

23 IF YOU WANT TO REPHRASE THE QUESTION OR  
24 RE-ASK A DIFFERENT QUESTION.  
25 BY MR. EVANS:

26 Q IS EYEWITNESS IDENTIFICATION BASED UPON  
27 THERAPY OR CLINICAL PSYCHOLOGY?

28 A NO. WHEN YOU HEAR A PSYCHOLOGIST, IT HAS

1        NOTHING TO DO WITH THERAPY OR CLINICAL PSYCHOLOGY.  THERE  
2        IS A VERY LARGE BODY OF SPECIFIC SCIENTIFIC RESEARCH ON  
3        EYEWITNESS PERCEPTION, THE VISUAL SYSTEM, THE BRAIN,  
4        MEMORY, ALL OF THE VARIOUS THINGS THAT GO INTO THE  
5        PROCESS CALLED EYEWITNESS IDENTIFICATION.  IT'S NOTHING  
6        TO DO WITH CLINICAL PSYCHOLOGY OR THERAPY PER SE.

7                Q            PRIOR TO TESTIFYING TODAY, HAVE YOU  
8        REVIEWED POLICE REPORTS AND TRANSCRIPTS OF TESTIMONY  
9        RELATING TO THE CASE PEOPLE VERSUS TAUMU JAMES?

10              A            I HAVE.  I HAVE REVIEWED REPORTS.  I HAVE  
11        REVOWED THE INITIAL INCIDENT, WHICH OCCURRED  
12        NOVEMBER 23RD OF '08, AND SUBSEQUENT REPORTS HAVING TO DO  
13        WITH BOTH A SHOW-UP AND PHOTO LINEUP SOON AFTERWARDS,  
14        THEN A SUBSEQUENT PHOTO PROCEDURE DONE IN JUNE OF '09,  
15        AND THEN TESTIMONY OR VARIOUS STATEMENTS OF EYEWITNESSES  
16        FROM THAT POINT UP TO THIS POINT.

17              Q            HAVE YOU EVALUATED, TESTED, OR INTERVIEWED  
18        ANY OF THE EYEWITNESSES OR WITNESSES IN THIS CASE OR ANY  
19        OF THE POLICE OFFICERS?

20              A            NO.  ABSOLUTELY NOT.  NOR WOULD I EVEN IF  
21        YOU GAVE ME ACCESS TO THEM.

22              Q            WHY IS THAT?

23              A            I AM NOT HERE TO PRESENT ANY KIND OF  
24        CONCLUSION ABOUT WHETHER ANYBODY IS RIGHT OR WRONG.  
25        THAT'S UP TO THE JURY.  I AM HERE SIMPLY TO PROVIDE SOME  
26        INFORMATION ABOUT HOW THESE MEMORY PROCESSES ACTUALLY  
27        WORK AND HOW THIS INFORMATION CAN BE USED OR NOT USED IN  
28        TERMS OF EVALUATING THE IDENTIFICATIONS BY AN EYEWITNESS,



1 BUT I AM NOT HERE TO RENDER ANY CONCLUSION THAT I THINK  
2 ANY ONE EYEWITNESS WAS CORRECT OR INCORRECT. SO I WOULD  
3 CONSIDER INTERVIEWING THEM REALLY INTRUSIVE AND NOT  
4 OF MUCH VALUE.

5 Q HAVE YOU VISITED THE ALLEGED CRIME SCENE IN  
6 THIS CASE?

7 A I HAVE NOT.

8 Q IN TERMS OF EYEWITNESS IDENTIFICATION,  
9 WOULD YOU SAY THAT LIGHTING, DISTANCE, ARE THOSE CRUCIAL  
10 FACTORS IN EYEWITNESS IDENTIFICATION?

11 A THEY'RE CRUCIAL IN THE SENSE THAT YOU HAVE  
12 TO HAVE ENOUGH OF THEM, BUT THEY'RE NOT SUFFICIENT TO  
13 CREATE THE OPPORTUNITY FOR AN ACCURATE IDENTIFICATION.  
14 SO WE ARE NOT CAMERAS. A CAMERA NEEDS ENOUGH LIGHT TO  
15 TAKE A PICTURE. HUMAN BEINGS OBVIOUSLY NEED ENOUGH LIGHT  
16 TO SEE SOMETHING. IT'S PITCH DARK, YOU CAN'T SEE  
17 ANYONE.

18 WE NEED ENOUGH TIME TO SEE SOMEBODY. A  
19 CAMERA NEEDS ENOUGH EXPOSURE TIME. WE NEED ENOUGH  
20 DISTANCE TO TAKE IN THE DETAILS OF THEIR FACE. BUT WITH  
21 HUMAN BEINGS, IT'S ALMOST REVERSE. SOMEBODY IS RIGHT UP  
22 IN YOUR FACE, YOU'RE ACTUALLY LESS ACCURATE THAN IF THEY  
23 ARE FARTHER AWAY, AND THAT'S BECAUSE OF THE FACT THAT WE  
24 ARE NOT MACHINES. CAMERAS ARE NOT AFFECTED BY STRESS, SO  
25 DISTANCE, DURATION, AND LIGHTING VERY IMPORTANT FOR A  
26 CAMERA TO TAKE A PICTURE.

27 IF YOU ARE A HUMAN BEING, YOU'RE REACTING  
28 TO A SITUATION. SOMEONE IS THREATENING YOU. SOMEONE IS

1 IN A HOSTILE POSTURE TOWARDS YOU. IT ACTUALLY AFFECTS  
2 THE WAY YOUR EYES TAKE IN INFORMATION, AND IT AFFECTS THE  
3 WAY YOUR BRAIN RECORDS THAT INFORMATION. SO IT'S  
4 COMPLETELY DIFFERENT FROM A CAMERA. LIGHTING, DISTANCE,  
5 AND DURATION ARE ALWAYS NECESSARY, BUT THEY ARE NOT  
6 SUFFICIENT FOR AN ACCURATE IDENTIFICATION BECAUSE ALL THE  
7 MECHANISMS WORK DIFFERENTLY, DEPENDING ON WHAT'S GOING ON  
8 IN THE SITUATION.

9 Q IS YOUR TESTIMONY TODAY BASED UPON YOUR  
10 OWN RESEARCH THAT YOU HAVE CONDUCTED?

11 A NO. I ACTUALLY TRY TO CONSCIOUSLY LEAVE  
12 THAT OUT, AND THAT'S BECAUSE I DON'T THINK IT'S AN  
13 APPROPRIATE PLATFORM ON WHICH TO BASE A LOT OF  
14 CONCLUSIONS. ONE PERSON DOING A LINE OF WORK IS -- I  
15 THINK MY RESEARCH IS INTERESTING, BUT I DEPEND ON A LARGE  
16 BODY OF SPECIFIC SCIENTIFIC RESEARCH, A VERY LARGE BODY  
17 OF CONSISTENT RESEARCH AND CONSISTENT FINDINGS DONE BY  
18 PSYCHOLOGISTS ALL OVER THE COUNTRY AND BY RESEARCH IN  
19 OTHER COUNTRIES. THAT'S THE BODY OF RESEARCH UPON WHICH  
20 I BASE MY TESTIMONY, NOT ANY ONE'S RESEARCH, INCLUDING MY  
21 OWN.

22 Q IS THERE MUCH DISAGREEMENT ABOUT THE MAJOR  
23 FINDINGS IN THIS AREA OF RESEARCH THAT YOU HAVE JUST  
24 DESCRIBED?

25 A EXTREMELY LITTLE. ANYONE CAN SAY I CAN DO  
26 THE EXPERIMENT BETTER THAN YOU. PERHAPS THEY CAN. BUT  
27 IN TERMS OF THE OVERALL FINDINGS ABOUT WHAT GOES ON HERE,  
28 HOW DOES EYEWITNESS IDENTIFICATION REALLY WORK, HOW WELL

1 DO PEOPLE IDENTIFY OTHERS, ON THE FACTORS THAT INFLUENCE  
2 BOTH INCREASING ACCURACY OR DECREASING ACCURACY, THERE IS  
3 ALMOST NO DISAGREEMENT. SO THERE IS A VERY CONSISTENT  
4 BODY OF FINDINGS HERE THAT I SUPPOSE YOU CAN FIND  
5 SOMEBODY THAT DISAGREES WITH EVERYTHING; BUT IN TERMS OF  
6 THE MAJOR FINDINGS, THERE IS ALMOST NO DISAGREEMENT.

7 Q THIS BODY OF RESEARCH THAT YOU ARE  
8 REFERRING TO, IS THIS THE SAME BODY OF RESEARCH THAT THE  
9 U.S. DEPARTMENT OF JUSTICE RELIES UPON FOR THEIR TRAINING  
10 MANUALS FOR LAW ENFORCEMENT?

11 A YES. EXACTLY.

12 MR. GOUDY: OBJECTION. SPECULATION.

13 THE COURT: SUSTAINED, AND ALSO CALLS FOR  
14 HEARSAY.

15 BY MR. EVANS:

16 Q AND THE RESEARCH THAT YOU'VE DISCUSSED, HOW  
17 RELIABLE IS THE EYEWITNESS IDENTIFICATION OF STRANGERS  
18 FOUND TO BE?

19 A WELL, IT'S LIKE FLIPPING A COIN UNDER THE  
20 BEST OF CIRCUMSTANCES, AND THAT'S WITH NO STRESS,  
21 ADEQUATE LIGHTING, ADEQUATE DISTANCE, ADEQUATE TIME TO  
22 SEE SOMEONE. THE ACCURATE IDENTIFICATION OF A PERSON OF  
23 THE SAME RACE AS YOURSELF -- BECAUSE THAT'S ANOTHER  
24 FACTOR -- AND NO OBSCURING THE FACE WORKS AT ABOUT A  
25 50/50 LEVEL ON AVERAGE. NOW, THAT'S NOT TO SAY ANYONE  
26 CAN'T BE CORRECT OR INCORRECT IN A PARTICULAR  
27 CIRCUMSTANCE.

28 Q AND THE REASONS FOR THE LOW LEVEL OF

1 EYEWITNESS IDENTIFICATION ACCURACY, WHAT ARE SOME OF  
2 THOSE REASONS?

3 A ONE OF THE MAJOR REASONS IS STRESS. SUDDEN  
4 UNEXPECTED LIFE-THREATENING STRESS ACTUALLY IS TERRIBLY  
5 DEADLY FOR ACCURACY OF EYEWITNESS IDENTIFICATION.  
6 INDIVIDUALS ARE FAR LESS ACCURATE IN STRESSFUL  
7 SITUATIONS. THE PRESENCE OF WEAPONS SIGNIFICANTLY  
8 DETRACTS FROM THE ACCURACY OF EYEWITNESS IDENTIFICATION  
9 BECAUSE PEOPLE FOCUS ON THE WEAPON. A WEAPON IS THE MOST  
10 DANGEROUS PART OF A SITUATION. FROM THERE DEATH OR  
11 INJURY MAY COME, NOT THE PERSON'S FACE.

12 THE THIRD KIND OF SITUATION IS THAT  
13 CROSS-RACIAL IDENTIFICATIONS ARE SIGNIFICANTLY LESS  
14 ACCURATE THAN SAME-RACE IDENTIFICATIONS NOT BECAUSE OF  
15 RACE PER SE, BUT BECAUSE WE ARE MOST ACCURATE WITH  
16 PEOPLE -- IN IDENTIFYING PEOPLE WHO LOOK LIKE US.  
17 SOMEBODY LOOKS DIFFERENT FROM US, THE ACCURACY RATE  
18 PLUMMETS.

19 THE THIRD THING HAS TO DO WITH PARTICULAR  
20 SITUATIONAL FACTORS. IS THERE A DISGUISE? CAN YOU SEE  
21 THE WHOLE FACE OF THE PERSON? ARE YOU SEEING THEM FROM  
22 THE BACK OR THE SIDE? CAN YOU SEE THEIR ENTIRE FACE?  
23 AND THAT'S IMPORTANT BECAUSE OF THE MAJOR SOURCE OF ERROR  
24 IN EYEWITNESS IDENTIFICATION, AND THAT'S SIMILARITY OR  
25 RESEMBLANCE.

26 MANY, MANY PEOPLE RESEMBLE EACH OTHER OR  
27 ARE SIMILAR TO EACH OTHER, AND WE ALL KNOW THIS BASED ON,  
28 YOU KNOW, AREN'T YOU SO-AND-SO OR SOMEBODY SAYING THAT TO

1 US. SO SIMILARITY AMONG PEOPLE IS AN ESTABLISHED FACTOR  
2 IN EYEWITNESS IDENTIFICATION INACCURACY. IT'S THE  
3 LARGEST SOURCE.

4 SO OBVIOUSLY THE MORE YOU CAN SEE OF THE  
5 FACE, THE CALMER THE SITUATION, THE LESS THERE ARE  
6 DISTRACTORS LIKE WEAPONS, AND WHETHER THAT PERSON LOOKS  
7 LIKE US, ALL OF THOSE THINGS HELP ACCURACY. THE PRESENCE  
8 OF ANY OF THOSE THINGS SIGNIFICANTLY DETERIORATE THE  
9 ACCURACY BELOW THAT 50/50 LEVEL I WAS SPEAKING OF  
10 EARLIER.

11 Q IN PARTICULAR, IN A CRIME SCENE THAT  
12 INVOLVES MULTIPLE PERPETRATORS, HOW DOES THAT FACTOR  
13 AFFECT THE ACCURACY OF EYEWITNESS IDENTIFICATION?

14 A IT CREATES DIVIDED ATTENTION. THERE ARE  
15 MORE THINGS GOING ON AND MORE PEOPLE THAT THE BRAIN  
16 ATTENDS TO. THIS NOT A CONSCIOUS DECISION OF I AM GOING  
17 TO LOOK AT PERSON "A," THEN "B," AND THEN "C." AFTER THE  
18 FACT PEOPLE MAY BELIEVE THEY DID THAT, BUT THERE IS ALL  
19 KINDS OF RESEARCH THAT SHOWS THAT PEOPLE REALLY ARE NOT  
20 ACCURATE IN TERMS OF WHAT THEY REPORT THEY LOOKED AT OR  
21 DID NOT LOOK AT AFTER THE FACT.

22 SO WHEN YOU ACTUALLY TRACK PEOPLE'S EYE  
23 MOVEMENTS -- AND MANY EXPERIMENTS DO -- MULTIPLE  
24 INDIVIDUALS ACTUALLY CAUSE A FURTHER DECREASE IN ACCURACY  
25 WITH THE ABILITY OF IDENTIFYING ANY ONE PERSON. SO THAT  
26 CREATES DIVIDED ATTENTION, LESS ACCURACY.

27 Q IN YOUR OPINION, ISN'T SOMEONE SEEING A  
28 PERSON DURING AN UNEXPECTED AND STRESSFUL SITUATION THEN

1 FOUND TO STAMP MEMORIES WHICH LEAD TO LATER ACCURATE  
2 EYEWITNESS IDENTIFICATION?

3 A YES. THAT'S A VERY INTERESTING POINT IN  
4 THAT WE MISTAKE VIVIDNESS FOR ACCURACY. SO THERE IS SOME  
5 KIND OF STAMPING THAT'S GOING ON, BUT IT'S ALMOST AS IF  
6 YOU STAMP AND YOU CREATE A DEEPER IMPRESSION AND THE  
7 STAMP IS VIBRATING. IT'S LIKE THE CAMERA IS VIBRATING.  
8 YOU MAY GET A VERY INTENSE PICTURE, BUT IT'S VERY  
9 BLURRY.

10 THAT'S THE WAY MEMORY ACTUALLY WORKS. THAT  
11 IS, EXTREME STRESS ACTUALLY CREATES STRONGER MEMORIES,  
12 BUT THEY ARE LESS ACCURATE MEMORIES. SO WHEN, ACTUALLY,  
13 YOU CAN TEST THE CORRECTNESS, THE ACCURACY OF A VERY  
14 STRESSFUL MEMORY, YOU FIND IT'S NOT AS ACCURATE AS A  
15 MEMORY THAT WAS ESTABLISHED IN A NON-STRESSFUL WAY.

16 SO YOU ARE IN -- IN GENERAL PEOPLE MISTAKE  
17 VIVIDNESS FOR ACCURACY WHEN IN FACT THERE REALLY ISN'T A  
18 STRONG RELATIONSHIP BETWEEN THE TWO. SO THE MOST VIVID  
19 MEMORIES YOU HAVE MAY NOT NECESSARILY BE ACCURATE  
20 MEMORIES, AND THAT'S THE FINDING IN THIS SPECIFIC AREA OF  
21 EYEWITNESS IDENTIFICATION.

22 SO SUDDEN STRESS DOESN'T HELP YOU WITH  
23 ACCURACY. IT PLANTS THE MEMORY SO YOU WILL NEVER FORGET  
24 YOU WERE A VICTIM OR A WITNESS TO AN EVENT, BUT YOUR  
25 ACTUAL ACCURACY, HOW WELL YOU CAN LATER DISTINGUISH A  
26 PARTICULAR FACE, HOW WELL YOU PAY ATTENTION TO THE  
27 DETAILS OF THAT FACE, THAT'S ACTUALLY INTERFERED WITH AND  
28 YOU'RE LESS ACCURATE.

1           Q       WHAT IS THE ROLE OF THE INITIAL DESCRIPTION  
2       AND THE AMOUNT OF DETAIL IN THAT INITIAL DESCRIPTION IN  
3       OBTAINING AN ACCURATE EYEWITNESS IDENTIFICATION?

4           A       IT'S AN ABSOLUTELY CRITICAL BENCHMARK FOR A  
5       COUPLE OF REASONS.  THE FIRST IS MANY PEOPLE RESEMBLE  
6       EACH OTHER.  SO THE WAY YOU TELL THE DIFFERENCE BETWEEN  
7       PEOPLE WHO RESEMBLE EACH OTHER IS THE SPECIFIC DETAIL OF  
8       THE PERSON.  ALL OF US RESEMBLE SOMEBODY OR PERHAPS MORE  
9       THAN ONE PERSON.  SO HOW DO YOU PICK OUT A PARTICULAR  
10      PERSON?  AND THAT'S OBVIOUSLY THE DETAILS ABOUT THAT  
11      PARTICULAR PERSON.  SO THOSE DETAILS AND THE INITIAL  
12      DESCRIPTION CAN HELP DISTINGUISH BETWEEN ONE  
13      SIMILAR-LOOKING PERSON AND ANOTHER.

14                 THE SECOND IS IT'S A KIND OF AN INDEX OF  
15      HOW DIFFICULT OR HOW EASY THE SITUATION WAS FOR THE  
16      WITNESS.  IF IT'S VERY DIFFICULT FOR THEM, THEY ARE NOT  
17      GOING TO HAVE MUCH DETAIL IN THEIR DESCRIPTION, AND THE  
18      DESCRIPTION WOULD TEND TO BE MUCH MORE GENERIC AND BROAD.

19                 IF THEY CAN PAY ATTENTION TO DETAILS, IF  
20      THEY SEE DETAIL, THAT DETAIL OUGHT TO BE MENTIONED IN THE  
21      INITIAL DESCRIPTION, NOT LATER ON WHEN THEY HAVE BECOME  
22      CONVINCED THAT A PARTICULAR PERSON WAS INVOLVED AND THEY  
23      MAY HAVE SEEN A PICTURE OF THAT PERSON.  INITIALLY.  THAT  
24      IS, THEIR INITIAL REPORT, BECAUSE THE WAY HUMAN MEMORY  
25      WORKS, THAT'S THE PRIME SORT OF ACCURACY TEST, WHAT WAS  
26      THAT INITIAL DESCRIPTION?

27           Q       EVEN DIRECTLY RELATED TO THIS POINT, BUT  
28      WHAT IS THE FACTOR OF TIME, AND HOW DOES IT AFFECT

1 MEMORY?

2 A TIME IS AN ENEMY TO ACCURACY. HUMAN  
3 MEMORY, OR THE FACE OF A STRANGER, DECAYS MOST QUICKLY  
4 AFTER THE FIRST 24 HOURS. SO DO IT WITHIN THE FIRST  
5 24 HOURS FOR THE MAXIMUM ACCURACY. THAT DOESN'T MEAN  
6 THAT IT ALL OF A SUDDEN DISAPPEARS. IT MEANS THAT YOU  
7 HAVE GOT A SUBSTANTIAL LOSS OF ACCURACY AFTER 24 HOURS,  
8 AND THE ACCURACY CONTINUES TO DIMINISH OVER TIME, NOT AT  
9 THE SAME RAPID RATE OF THE FIRST 24 HOURS OR AFTER THE  
10 FIRST 24 HOURS, BUT IT DECAYS. THE MORE TIME, THE LESS  
11 ACCURATE OF THE IDENTIFICATION OF A STRANGER.

12 SO WHEN YOU GET INTO MONTHS AND YEARS OR  
13 WEEKS AND MONTHS AND YEARS, YOU'RE CONTINUING TO DECLINE  
14 IN POTENTIAL ACCURACY OF IDENTIFICATION AND ACCURACY FOR  
15 THE PERSON'S MEMORY OF WHAT ACTUALLY OCCURRED. SO YOU  
16 MAY REMEMBER YOUR REPORT OF WHAT YOU SAID ABOUT IT MORE  
17 THAN YOU REMEMBER THE INCIDENT BECAUSE MEMORY IS NOT A  
18 LITTLE WATERTIGHT COMPARTMENT. EVERY TIME YOU REPORT,  
19 THAT'S A NEW MEMORY. SO YOU MAY REPORT OVER TIME AND  
20 YOUR MEMORY MAY BE OF THE REPORT YOU MADE, BUT THAT MAY  
21 NOT HAVE AS MUCH TO DO WITH THE INITIAL EVENT AS YOU'D  
22 LIKE TO THINK IT DOES.

23 Q LET ME PROVIDE YOU WITH A HYPOTHETICAL.  
24 ASSUME FOUR INDIVIDUALS ENTER A HOUSE WITH FIREARMS. TWO  
25 OF THOSE MEN'S FACES ARE COVERED WITH SOMETHING PULLED  
26 OVER THEIR FACE, EITHER SKI MASKS OR SOME FORM THEREOF.  
27 TWO OF THE WITNESSES WHO ARE IN THE HOUSE PROVIDE A  
28 DISTINCTIVE -- THEY CLAIM THAT -- THEY DO NOT PROVIDE



1       DISTINCTIVE CHARACTERISTICS AS TO THE NOSE, MOUTH, AND  
2       EYES, OTHER THAN THE SKIN COLOR OF THE INDIVIDUAL WHOSE  
3       FACE APPEARS TO BE COVERED, AND THEY CLAIM THEY CAN SEE  
4       THE FACE OF AT LEAST ONE OF THE TWO IN THE SKI MASK.  
5       WHAT ARE THE FACTORS RELEVANT TO THE EYEWITNESS  
6       IDENTIFICATION IN THIS HYPOTHETICAL?

7               A           SUDDEN UNEXPECTED STRESS HAS BEEN FOUND TO  
8       BE VERY, VERY HARMFUL TO THE ULTIMATE ACCURACY OF  
9       IDENTIFICATION. THE VERY PROCESSES THAT THE PERCEPTION  
10      SYSTEM USES SHIFT TO LARGE FEATURES RATHER THAN SPECIFIC  
11      DETAIL.

12                       THE OPTICAL PERCEPTION SYSTEM IS REALLY  
13      VERY COMPLICATED. IT NOT JUST LIKE SNAPPING PICTURES  
14      WITH YOUR EYES. RIGHT NOW EVERYTHING YOU SEE IS UPSIDE  
15      DOUBT. THE BRAIN TURNS IT AROUND. THE BACK OF THE EYE  
16      IS ACTUALLY BRAIN TISSUE, THE RETINA. IT'S COMPLICATED,  
17      BUT THE FINDING IS THAT UNDER HIGH STRESS, THE VERY  
18      PROCESSES CHANGE AND SMALL DETAIL, THE VERY THING YOU  
19      NEED FOR EYEWITNESS IDENTIFICATION ACCURACY, IS REALLY  
20      DIMINISHED.

21                       THE NEXT THING IS, NONE OF THIS DOES ANYONE  
22      ANY GOOD UNLESS IT'S RECORDED IN MEMORY. NOW, IT HAS TO  
23      BE RECORDED IN MEMORY, AND THE VERY PROCESSES YOU NEED TO  
24      DO THAT ARE INTERFERED WITH BY HIGH STRESS. SO THAT'S  
25      TWO ASPECTS.

26                       THE THIRD ASPECT IS IF THERE ARE MULTIPLE  
27      INDIVIDUALS WHERE YOU HAVE DIVIDED ATTENTION, IT'S LESS  
28      ACCURACY ABOUT ANY OF THEM.

1 THE THIRD THING IS THE INITIAL  
2 DESCRIPTION. IF THERE IS A DISTINCTIVE FEATURE OR  
3 FEATURES ABOUT THE INDIVIDUAL INVOLVED, THEN CLEARLY  
4 THOSE SHOULD HAVE BEEN PART OF THE INITIAL DESCRIPTION IF  
5 THE PERSON CLAIMS TO BE ABLE TO LATER IDENTIFY SOMEBODY  
6 IN A MASK. THERE'S SOMEBODY WHO IS DISTINCTIVE. MAYBE  
7 THERE IS SOME PART OF THE FACE THAT CAN BE SEEN THAT IS  
8 SOMEHOW DISTINCTIVE, THERE IS A SCAR ON THE NOSE, A MARK,  
9 SOMETHING LIKE THAT.

10 IF THOSE THINGS WERE LATER USED TO RELY ON  
11 AS A BASIS OF SOMEONE'S IDENTIFICATION, THEY NEED TO BE  
12 IN THE INITIAL DESCRIPTION. THE REASON FOR THAT IS YOU  
13 DON'T SET UP LIKE A WATERPROOF BARRIER AROUND OUR MEMORY  
14 OF WHO WE SAW OR WHAT WE SAW. LATER ON IF SOMEBODY  
15 SHOWED US A PICTURE OR PICTURES AND WE BELIEVED THAT THAT  
16 PERSON WAS INVOLVED, OUR MEMORY OF THAT PICTURE FUSES  
17 TOGETHER AND IS INCORPORATED IS THE WORD THAT'S MOST  
18 OFTEN USED INTO OUR MEMORY OF THE EVENT. AND THEN WE  
19 COME TO BELIEVE OH, WE SAW THIS DISTINCTIVE FEATURE WHEN  
20 IN FACT WE NEVER MENTIONED IT INITIALLY.

21 SO, UNFORTUNATELY, THAT'S JUST THE WAY  
22 HUMAN MEMORY WORKS. THAT'S WHY THE INITIAL DESCRIPTION  
23 IS SO IMPORTANT. IF THE FACE IS CONCEALED BY SOME KIND  
24 OF FACE COVERING, THAT MAKES IT VERY, VERY DIFFICULT FOR  
25 EVENTUAL ACCURACY. IT'S EXTREMELY DIFFICULT. HEAD  
26 SHAVED, HAIRLINE, ALL OF THOSE ARE IMPORTANT CUES TO BE  
27 ABLE TO IDENTIFY SOMEONE LATER. IF THEY ARE OBSCURED,  
28 THE ACCURACY GOES DOWN VERY SIGNIFICANTLY.

1           Q       DISTINGUISH FOR US -- AND I THINK  
2       DISTINGUISH -- THERE IS A DIFFERENCE BETWEEN WHAT YOU  
3       MEAN BY A DISTINCTIVE CHARACTERISTIC AND A MEMORY OF THAT  
4       VERSUS AN EYEWITNESS IDENTIFICATION WHERE YOU'RE SAYING  
5       THIS IS THE PERSON; IS THAT CORRECT?

6           A       SURE. I MEAN, THERE IS A DESCRIPTION AND  
7       THERE'S IDENTIFICATION. OBVIOUSLY WHEN YOU SEE SOMEBODY,  
8       ONE OF THE KEY ISSUES IS THE DESCRIPTION. AGAIN, IT'S  
9       IMPORTANT BECAUSE MANY PEOPLE RESEMBLE EACH OTHER. AS I  
10      SAID, IT'S ALSO AN INDEX OF HOW DIFFICULT THE SITUATION  
11      WAS. IF THERE'S NO DETAILS IN THE DESCRIPTION, THEN WHAT  
12      LATER IS THE IDENTIFICATION BASED?

13                   BECAUSE IDENTIFICATION IS NOT A  
14      DESCRIPTION. IDENTIFICATION IS PICKING OUT THE VERY SAME  
15      PERSON YOU SAW IN A FAIR TEST CONTEXT. NOW, BY "FAIR  
16      TEST," I AM NOT IMPLYING ANYBODY IS TRYING TO BE UNFAIR.  
17      FAIR, IN THE SENSE I AM USING IT, IS REPRESENTATIVE,  
18      REPRESENTATIVE OF WHAT IS IN A PERSON'S MEMORY, NOT THE  
19      WAY THE TEST WAS CONSTRUCTED, NOT WHO'S ASKING THE  
20      QUESTIONS, NOT WHAT THE ASSUMPTIONS OF THE WITNESSES ARE,  
21      BUT PURELY ON WHAT THEY SAW. THIS HAS TO BE A FAIR  
22      REPRESENTATIVE TEST OF WHAT PEOPLE SAW FOR IT TO HAVE ANY  
23      MEANING AT ALL.

24                   WHEN YOU IDENTIFY SOMEBODY, YOU'RE SAYING  
25      THAT'S THE PERSON I SAW. YOU'RE NOT SAYING THAT'S THE  
26      PERSON I HAVE COME TO BELIEVE IS THE INDIVIDUAL OR THAT'S  
27      NOT THE PERSON I ASSUME IS THE INDIVIDUAL. WE ARE  
28      TESTING EYEWITNESS IDENTIFICATION, NOT EYEWITNESS

1       ASSUMPTIONS.  SO IT'S REALLY A DIFFERENCE BETWEEN A  
2       DESCRIPTION AND AN OBSERVATION AND THEN A LATER  
3       DEMONSTRATED ABILITY TO PICK SOMEBODY OUT.  
4       IDENTIFICATION REFERS TO A DEMONSTRATED ABILITY TO PICK  
5       SOMEBODY OUT IN A FAIR TEST CONTEXT.

6               Q           CAN AN ACCURATE IDENTIFICATION BE MADE  
7       SIMPLY WHEN POLICE SHOW PHOTOGRAPHS TO EYEWITNESSES TO  
8       SEE IF THEY CAN MAKE AN IDENTIFICATION?

9               A           NO.  THERE HAS TO BE A SET OF BASICALLY  
10      PROCEDURES.  THE TESTS HAVE TO BE DONE IN A PARTICULAR  
11      WAY FOR IT TO BE A VALID AND RELIABLE TEST.  I MEAN,  
12      OBVIOUSLY NOBODY WOULD SHOW A SET OF FIVE CAUCASIANS AND  
13      ONE AFRICAN-AMERICAN IF THE DESCRIPTION HAD BEEN AN  
14      AFRICAN-AMERICAN.  SO AT SOME LEVEL, EVERYBODY RECOGNIZES  
15      THAT WOULD BE UNFAIR EVEN THOUGH THERE ARE SIX PICTURES.

16                       SO THEN WHEN YOU START THERE, YOU SAY OKAY,  
17      WELL, WHAT SIX PICTURES, AND HOW SHOULD THEY BE  
18      PRESENTED?  WELL, FIRST EVERYONE HAS TO MEET THE INITIAL  
19      DESCRIPTION TO THE SAME EXTENT.

20                       SECOND, NO ONE STICKS OUT LIKE A SORE  
21      THUMB.

22                       THIRD, THE INSTRUCTIONS FOR THE TEST HAVE  
23      TO BE, LOOK, IT'S JUST AS IMPORTANT NOT TO MAKE AN I.D.  
24      AS TO MAKE AN I.D., CLEAR THE INNOCENT AS WELL AS PICK A  
25      GUILTY PERSON.

26                       FOURTH, THE PERSON ADMINISTERING THE TEST  
27      SHOULD NOT BE THE PERSON WHO KNOWS IN WHAT PHOTOGRAPH THE  
28      SUSPECT IS LOCATED.  IN OTHER WORDS, IT SHOULD BE

1 CONDUCTED IN A DOUBLE BLIND FASHION THE WAY ALL IMPORTANT  
2 TESTS ARE DONE. IN MEDICINE AND SEARCH, IT'S BLIND  
3 TESTING, MEANING THAT YOU PROTECT THE EXPERIMENTER, WHO  
4 KNOWS WHICH ONE IS THE SUGAR PILL AND WHICH ONE IS THE  
5 MEDICINE, FROM HAVING ANY INFLUENCE ON THE PROCESS, AND  
6 NOT BECAUSE THEY ARE GOING TO SAY, OH, IT'S A SUGAR PILL,  
7 THIS IS MEDICINE; IT'S BECAUSE THEIR ATTITUDE, THEIR BODY  
8 POSTURE, THEIR LANGUAGE, THE QUESTIONS THEY ASK CAN ALL  
9 HAVE INFLUENCE, DEMONSTRATED INFLUENCE ON WHETHER OR NOT  
10 THE PERSON PICKS THE ONE THAT THEY THINK IT IS.

11 AND THE NEXT THING IS THAT THIS HAS TO BE A  
12 FAIR TEST IN THAT IT'S A LEVEL PLAYING FIELD. NOBODY IS  
13 REPEATED FROM SOME OTHER PROCEDURE. THEY HAVE TO HAVE  
14 EQUAL OPPORTUNITY HERE THAT YOU'VE ONLY SEEN THE PEOPLE  
15 IN THIS TEST THE FIRST TIME OR AT THE CRIME. IT CAN'T  
16 BE, YOU KNOW, LIKE YOU DON'T REPEAT SOMEBODY FROM ONE  
17 IDENTIFICATION PROCEDURE TO ANOTHER, BECAUSE THAT TAKES  
18 AWAY THE VALIDITY OF THE TEST COMPLETELY.

19 Q SO IN A HYPOTHETICAL, EVEN ASSUMING THAT  
20 THE IDENTIFICATION PROCEDURE HAS BEEN DONE IN THE PROPER,  
21 BEST MANNER, BUT ASSUMING THE WITNESS WHO IS  
22 PARTICIPATING IN THE EYEWITNESS IDENTIFICATION PROCEDURE  
23 HAD SEEN ONE OF THE PHOTOGRAPHS THAT'S INCLUDED IN THE  
24 SIX-PACK OR A PHOTOGRAPH OF SOMEONE WHO IS INCLUDED IN  
25 THE SIX-PACK OF PHOTOS, CAN YOU GET AN ACCURATE  
26 IDENTIFICATION IN THAT?

27 A NO.

28 MR. GOUDY: OBJECTION. CALLS FOR A CONCLUSION

1        THAT HE CAN'T MAKE.

2                THE COURT:    SUSTAINED IN THE WAY IT'S PHRASED.

3                IF YOU WANT TO REPHRASE.

4                MR. GOUDY:    MOTION TO STRIKE.

5                THE COURT:    THE ANSWER WILL BE STRICKEN.

6                REPHRASE YOUR QUESTION.

7        BY MR. EVANS:

8                Q            LET ME GIVE YOU A HYPOTHETICAL.    ASSUME  
9        THAT THE IDENTIFICATION PROCEDURE RELATING TO A SIX-PACK  
10       IS DONE IN A MANNER SUCH THAT ONE OF THE PEOPLE WHO IS  
11       INCLUDED IN THE SIX-PACK, WHOSE PHOTO IS INCLUDED IN THE  
12       SIX-PACK, THE WITNESS WHO IS BEING SHOWN IT HAS SEEN A  
13       PHOTOGRAPH OF THAT PERSON.    IT'S NOT THE SAME PHOTOGRAPH  
14       BUT A PHOTOGRAPH OF THAT PERSON PRIOR TO VIEWING THE  
15       SIX-PACK.    ARE THERE PROBLEMS WITH THIS IDENTIFICATION  
16       PROCEDURE?

17               A            YES, BECAUSE YOU NEVER CAN KNOW THAT.    IT'S  
18       UNKNOWABLE TO WHAT EXTENT THE WITNESS AND THEIR MEMORY OF  
19       THE INDIVIDUAL THEY SAW AT THE CRIME IS CONTAMINATED OR  
20       TAINTED BY THE EXPOSURE OF THAT ONE PHOTOGRAPH.

21               IN OTHER WORDS, IF YOU LOOK AT SIX  
22       PHOTOGRAPHS AND YOU'VE SEEN A PERSON PREVIOUSLY, YOU MAY  
23       HAVE SEEN THAT PERSON AT THE SCENE OF THE CRIME.  
24       OBVIOUSLY THAT'S WHY THE POLICE PRESENT A SIX-PACK.    SO  
25       WHAT YOU'RE TESTING WHEN YOU PRESENT A SIX-PACK IS, IS  
26       ANYBODY IN THERE ONE OF THE PEOPLE THAT YOU SAW AT THE  
27       SCENE OF THE CRIME?    WELL, THAT'S PERFECTLY REASONABLE.

28               NOW, IF YOU ADD ON THAT THEY'VE SEEN A

1 PERSON IN THE SIX-PACK PRIOR TO THE SIX-PACK AND THAT  
2 PERSON WAS NOT AT THE SCENE OF THE CRIME, THEN YOU NEVER  
3 KNOW, IF THEY PICKED THAT PERSON OUT OF THE SET OF  
4 PICTURES, WHY THEY ARE PICKING THAT PERSON.

5 YOU SAY OKAY, WELL, THE SIMPLE SOLUTION IS  
6 JUST ASK THEM. DID THAT AFFECT YOU? WELL, THAT WOULD  
7 HAVE TO INVOLVE THINGS THAT DON'T EXIST. THE THINGS THAT  
8 DON'T EXIST ARE A PERSON'S ABILITY TO SAY EVERYTHING THAT  
9 INFLUENCED THEM. IN OTHER WORDS, YOU'RE ASKING TO VOUCH  
10 FOR ANY INFLUENCE. HOW DOES YOUR MEMORY WORK? ARE YOU  
11 SURE THERE'S NO CONTAMINATION? ARE YOU SURE THAT THIS  
12 DIDN'T INFLUENCE YOU? AND YOU ASK THEM, AND THEY TELL  
13 YOU. CAN YOU RELY ON THAT ANSWER? AND THE ANSWER IS  
14 ABSOLUTELY NOT.

15 AND THE REASON I AM SAYING THIS IS BECAUSE  
16 ALL THE RESEARCH IN HUMAN MEMORY SHOWS EXACTLY THE  
17 OPPOSITE. PEOPLE CAN BE INFLUENCED BY THINGS THAT THEY  
18 ARE NOT AWARE OF, ABSOLUTELY SIGNIFICANTLY INFLUENCED,  
19 AND STILL NOT BE AWARE THAT THEY HAVE BEEN INFLUENCED.

20 SO IN EFFECT WHEN YOU HAVE A PHOTO  
21 PROCEDURE WHERE ONE OF THOSE ALTERNATIVES, ONE OF THE SIX  
22 HAS BEEN SEEN PREVIOUSLY IN A CONTEXT OBVIOUSLY RELEVANT  
23 TO THIS WHOLE SITUATION, THERE'S NO WAY NOW THAT YOU CAN  
24 CREATE A VALID TEST. THE PERSON IS TAINTED. THEIR  
25 MEMORY IS CHANGED. THIS IS DIFFERENT THAN ANY OTHER KIND  
26 OF EVIDENCE.

27 IF YOU HAVE A BLOOD SAMPLE AND YOUR MACHINE  
28 IS CONTAMINATED, YOU SAY OKAY, AND YOU TAKE THE PART THAT

1 YOU'VE SAVED FOR THIS PURPOSE AND YOU RUN A DIFFERENT  
2 MACHINE OR YOU CLEAN UP YOUR MACHINE AND YOU SAY, OKAY,  
3 I'LL SCRATCH THAT AND LET'S DO IT AGAIN. YOU CAN'T DO  
4 THAT WITH EYEWITNESS IDENTIFICATION.

5 THIS EVIDENCE EXISTS ONLY IN THE MIND, AND  
6 THERE IS NO INDEPENDENT OUTSIDE EXISTENCE. THIS IS VERY  
7 DIFFERENT KIND OF EVIDENCE. AND ONCE YOU EXPOSE SOMEBODY  
8 TO A PHOTOGRAPH OR ONCE YOU'VE EXPOSED THEM TO AN  
9 IDENTIFICATION PROCEDURE, THAT ACTUALLY CHANGES THE  
10 EVIDENCE BECAUSE THE EVIDENCE IS IN THE MIND.

11 YOU DON'T CHANGE FINGERPRINTS. YOU DON'T  
12 CHANGE FOOTPRINTS OR BLOOD SAMPLES, BUT YOU DO CHANGE  
13 EYEWITNESS IDENTIFICATION EVIDENCE BY THE WAY IN WHICH  
14 THE SEQUENCE OCCURS. SO IF THERE IS A PHOTOGRAPH OF A  
15 CRIME, A PHOTOGRAPH OF A PERSON ASSUMED TO BE INVOLVED IN  
16 THAT CRIME AND THEN A SIX-PACK, ANY CHOICE IN THAT  
17 SIX-PACK IS ESSENTIALLY MEANINGLESS. UNFORTUNATELY, THE  
18 VALIDITY AND THE RELIABILITY OF SUCH A PROCEDURE NOW DOES  
19 NOT EXIST.

20 Q IS THIS THE CAUSE OF -- IS IT REFERRED TO  
21 AS INCORPORATION?

22 A YES. WHAT HAPPENS IS THE DETAILS IN THE  
23 PHOTOGRAPH, THE SINGLE PHOTOGRAPH, ARE INCORPORATED INTO  
24 YOUR MEMORY. YOU CAN'T SAY WELL, I HAVE ERECTED THIS --  
25 IN FINANCE SOMETIMES YOU MAYBE HAVE HEARD THE TERM  
26 "CHINESE WALL" OR THIS WALL IN THE LAW FIRM AND THEY  
27 HANDLE THIS AND WE HANDLE THAT AND WE RECOMMEND THESE  
28 STOCKS, BUT WE DON'T TELL THEM THAT WE ARE INVESTING IN



1 THOSE STOCKS, AND ALL OF THIS IS INDEPENDENT SUPPOSEDLY.  
2 YOU DON'T HAVE ANYTHING LIKE THAT IN THE HUMAN MIND. YOU  
3 CAN'T SAY WELL, I HAVE ERECTED THIS WALL AND I WAS  
4 EXPOSED TO SOMETHING, BUT I KEEP IT IN A SEPARATE  
5 COMPARTMENT AND IT DIDN'T AFFECT ME. FOR THE REASONS  
6 THAT I HAVE ALREADY SAID -- AND I DON'T WANT BORE YOU BY  
7 REPEATING THEM.

8 Q LET ME GIVE YOU A HYPOTHETICAL. A WITNESS  
9 MAKES A STATEMENT THEY HAVE AN INDEPENDENT MEMORY MORE  
10 THAN A YEAR AFTER HAVING SELECTED A PHOTOGRAPH OF A  
11 PERSON'S FACE FROM A SET OF SIX PHOTOS CONTAINED WITHIN A  
12 SIX-PACK, AND THEY WERE REPORTING THAT TO THE POLICE  
13 BASED UPON THEIR SELECTION IN THE SIX-PACK, ON HAVING  
14 SEEN A SINGLE PHOTO OF THAT PERSON BEFORE SEEING THE  
15 SIX-PACK. WHAT FACTORS RELEVANT TO EYEWITNESS  
16 IDENTIFICATION WOULD BE INVOLVED IN AN EYEWITNESS SAYING  
17 THAT THEY BELIEVED THEY HAVE AN INDEPENDENT MEMORY OF A  
18 PERSON OR THAT PERSON'S FACE?

19 A WELL, THE FIRST THING, THEY ACTUALLY  
20 BELIEVE IT. AND THEY MAY BE ABLE TO PASS ANY KIND OF  
21 POTENTIAL PROCEDURE USED AS TO WHETHER THEY ARE TELLING  
22 THE TRUTH. THEY ACTUALLY BELIEVE IT. BUT BELIEF IS NOT  
23 SYNONYMOUS WITH ACCURACY. BELIEF IS NOT SYNONYMOUS WITH  
24 WHAT YOU ACTUALLY SEE AND WHAT YOU ACTUALLY DO, AND NOT  
25 BECAUSE ANYONE IS TRYING TO MAKE IT UP, CONCEAL, OR FOOL  
26 ANYONE, BECAUSE THIS IS THE WAY HUMAN MEMORY WORKS.

27 WOULD EVERYONE KNOW THAT THEIR MEMORY IS  
28 INDEPENDENT? WOULD ANYONE KNOW THAT THEIR MEMORY IS

1 INDEPENDENT? HOW WOULD THEY KNOW THAT? IT'S THEIR  
2 OPINION ABOUT THE WAY THEIR MEMORY WORKS. OKAY, WELL,  
3 THEY CAN HAVE AN OPINION ABOUT THE WAY THEIR MEMORY  
4 WORKS, AND THEY ARE TELLING YOU THE TRUTH.

5 ALL RIGHT. NOW WE GO TO RESEARCH IN HOW  
6 MEMORY ACTUALLY WORKS, AND WE FIND NOTHING TO  
7 SUBSTANTIATE THAT WHATSOEVER. THERE IS NO SUCH THING AS  
8 INDEPENDENT RECALL. EVERY EXPERIMENT THAT'S BEEN DONE --  
9 MEMORY RESEARCH GOES BACK 200 YEARS -- SHOWS THAT THINGS  
10 THAT YOU SHOW PEOPLE CAN INFLUENCE THEM WITHOUT THEIR  
11 BEING AWARE OF IT. AND YOU ASK THEM, AND THEY SAY NO, I  
12 WASN'T EVEN AWARE OF THAT.

13 AND SO HOW DO YOU EXPLAIN THIS? WELL, IT'S  
14 VERY SIMPLE. PEOPLE ARE NOT AWARE OF ALL THINGS THAT  
15 AFFECT THEIR MEMORY, AND YET THERE IS AN ENORMOUS BODY OF  
16 RESEARCH, EVEN LARGER THAN EYEWITNESS IDENTIFICATION  
17 RESEARCH, THAT SHOWS THEY ARE INFLUENCED. SO THEY ARE  
18 JUST SIMPLY NOT AWARE OF IT, YET THE INFLUENCE OCCURS.

19 SO INDEPENDENT MEMORY IS, FRANKLY, COMPLETE  
20 FICTION IN THIS PARTICULAR SETTING BECAUSE THERE IS NO  
21 WAY THAT THEY CAN SAY IT'S INDEPENDENT. THEY CAN'T  
22 DETERMINE INSIDE THEIR OWN HEAD WHICH IS INDEPENDENT AND  
23 WHICH IS NOT, WHICH COMES ONLY FROM THEIR MEMORY OF THE  
24 TIME OF THE CRIME, WHICH IS WHAT THEY ARE TALKING ABOUT;  
25 AND IF COMPLETELY INFLUENCED -- I BEG YOUR PARDON,  
26 UNINFLUENCED BY ANYTHING THAT HAS OCCURRED SINCE, THERE  
27 IS NO SUCH FINDING IN SCIENCE THAT I AM AWARE OF.

28 Q IN YOUR EXPERIENCE, WHAT IS THE ROLE OF A

1 PHOTOGRAPHIC LINEUP IN DETERMINING A WITNESS' ABILITY TO  
2 MAKE AN EYEWITNESS IDENTIFICATION?

3 MR. GOUDY: OBJECTION. RELEVANCE.

4 THE COURT: OVERRULED.

5 THE WITNESS: IT'S A TEST OF THE WITNESS' ABILITY  
6 TO IDENTIFY. I MEAN, THROUGH ONE ALTERNATIVE YOU'VE  
7 CREATED TREMENDOUS SUGGESTIBILITY. YOU NEVER KNOW  
8 WHETHER THE PERSON THAT PICKED THAT ALTERNATIVE WILL  
9 AGREE WITH SOMETHING OR THEY CAN ACTUALLY HAVE THE  
10 ABILITY TO IDENTIFY. SO PHOTOGRAPHS ARE TESTS. THEY ARE  
11 A TEST OF THE ABILITY TO PICK OUT THE VERY SAME PERSON  
12 YOU SAW BEFORE FROM ESSENTIALLY A MULTIPLE CHOICE TEST.  
13 BY MR. EVANS:

14 Q WHAT DOES THE RESEARCH INDICATE IN TERMS  
15 OF THE GUIDELINES OF HOW PHOTOS IN A SIX-PACK SHOULD BE  
16 SHOWN?

17 A THEY SHOULD BE SHOWN ONE AT A TIME BY  
18 SOMEONE WHO DOES NOT KNOW IN WHAT PHOTOGRAPH IS A  
19 SUSPECT. THESE ARE THE RECOMMENDATIONS BY THE CALIFORNIA  
20 COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE UNDER  
21 JOHN VAN DE CAMP, THE UNITED STATES DEPARTMENT OF  
22 JUSTICE, THE AMERICAN BAR ASSOCIATION. FIVE STATES HAVE  
23 ALREADY CHANGED THEIR RULES TO INCORPORATE THOSE THINGS.

24 SANTA CRUZ -- I AM SORRY, SAN JOSE AND  
25 SANTA CLARA COUNTY HAVE CHANGED THEIR RULES IN HOW TO DO  
26 EYEWITNESS PROCEDURES BASED ON THAT, AND THAT'S BECAUSE  
27 IF THE PICTURES ARE SEEN ONLY ONE AT A TIME, THE WITNESS  
28 SEES ONLY ONE PICTURE AT A TIME, IT PREVENTS A KIND OF

1       LOOKING FOR THE ONE WHO LOOKS MOST LIKE THE PERSON.

2               THE SECOND THING THAT HAS TO BE DONE IN THE  
3       SITUATION WHERE THE PERSON ADMINISTERING THE PROCEDURE  
4       DOESN'T KNOW WHERE THEIR SUSPECT IS OR DOESN'T EVEN KNOW  
5       IF THE SUSPECT IS IN THERE AND THAT'S BECAUSE OF ANY  
6       INADVERTENT -- I AM NOT ACCUSING ANYONE OF TRYING TO FLIP  
7       THE BOAT -- OF INADVERTENCE. SO SEQUENTIALLY, MEANING  
8       ONE AT A TIME, DOUBLE BLIND, GOOD INSTRUCTIONS, AS I SAID  
9       EARLIER, A CHOICE OF PICTURES THAT ARE APPROPRIATE, AND A  
10      RECORDING OF THE CONFIDENCE LEVEL AND THE ENTIRE SESSION  
11      SO WE KNOW EXACTLY WHAT OCCURRED, WHAT WAS SAID.

12              THE INSTRUCTIONS SHOULD BE IN THE NATIVE  
13      LANGUAGE OF THE INDIVIDUAL. THERE SHOULD BE SOMEBODY  
14      THERE WHO UNDERSTANDS THE NATIVE LANGUAGE OF THE PEOPLE  
15      TAKING THIS TEST, BECAUSE THERE'S A LOT OF TRANSLATION  
16      ISSUES, THINGS LIKE THAT.

17              Q       BUT DOESN'T GIVING AN ADMONITION BEFORE  
18      SHOWING THE PHOTOGRAPHS AND HAVING THE WITNESS SIGN THAT  
19      ADMONITION SAYING THAT THEY UNDERSTAND, DOESN'T THAT FIX  
20      THE PROBLEMS?

21              A       UNFORTUNATELY NOT, BECAUSE READING  
22      SOMETHING OR HAVING IT READ TO YOU, WHETHER IT'S IN YOUR  
23      OWN LANGUAGE OR NOT, IS NOT SUFFICIENT TO GUARANTEE  
24      SOMEBODY UNDERSTANDS. THE PURPOSE OF THE ADMONITION IS  
25      NOT SO THAT THEY SIGN IT; IT'S THEY REALLY UNDERSTAND  
26      IT.

27              NOW, THE REASON THE ADMONITION IS SO  
28      IMPORTANT IS BECAUSE WHEN A POLICE OFFICER SHOWS UP WITH

1 A SET OF PICTURES, WITNESSES HAVE BEEN FOUND TO ASSUME  
2 THE GUILTY PARTY IS IN THERE, ONE OF THE SIX. SO WHAT  
3 THE ADMONITION ATTEMPTS TO DO IS OFFSET THAT AND SAY,  
4 LOOK, IT'S JUST AS IMPORTANT TO CLEAR THE INNOCENT AS TO  
5 PICK SOMEBODY AND A FEW OTHER THINGS, TAKE YOUR TIME, BE  
6 CAREFUL AND SO ON.

7 BUT IT'S NOT JUST READING IT; IT'S DO THE  
8 PEOPLE IT'S READ TO, OR IF THEY READ IT THEMSELVES,  
9 REALLY UNDERSTAND IT. AND, UNFORTUNATELY, WE ALL SIGN  
10 THINGS WE DON'T REALLY UNDERSTAND SUCH AS MEDICAL CONSENT  
11 FORMS, INSURANCE POLICIES, ALL SORTS OF THINGS, AND WE  
12 SIGN THEM. AND THERE THEREIN LIES THE PROBLEM. WELL,  
13 THERE YOU SIGNED IT. BUT, UNFORTUNATELY, AS WE ALL KNOW,  
14 THAT'S NOT SUFFICIENT. IT'S THE UNDERSTANDING OF THE  
15 ADMONITION, NOT JUST THE SIGNATURE. THAT'S THE KEY  
16 THING.

17 Q YOU REFERRED TO PROBLEMS ASSOCIATED WITH  
18 LESS RELIABLE IDENTIFICATIONS. WOULDN'T A POSITIVE  
19 IN-COURT IDENTIFICATION BE INDEPENDENT AND TAKE CARE OF  
20 ALL OF THESE PROBLEMS?

21 A WELL, IT WOULD BE NICE IF IT DID. BUT  
22 AGAIN, NOTHING IS INDEPENDENT IN THE HUMAN MIND. THAT  
23 IS, BY THAT TIME, THIS PERSON CERTAINLY OUGHT TO LOOK  
24 FAMILIAR TO YOU. THERE IS ONE PERSON SEATED THERE AT THE  
25 DEFENDANT'S TABLE, SOMEONE YOU MIGHT HAVE SEEN IN A  
26 SINGLE PHOTO, A PERSON YOU SAW AGAIN IN A SET OF PHOTOS  
27 OR SEEN AT A PRIOR PROCEEDING. YOU MIGHT SEE THEM IN A  
28 LOT OF WAYS.

1                   SO NOW WHAT IS THE TEST IN COURT? WELL,  
2                   IT'S ONLY A TEST OF CONSISTENCY. ARE YOU STILL  
3                   CONSISTENT IN PICKING THAT PERSON? IT HAS NOTHING TO DO  
4                   AT ALL WITH ACCURACY, NOTHING DO WITH THE ABILITY TO  
5                   IDENTIFY. BECAUSE THERE IS NO FAIR TEST ANYMORE. THAT  
6                   PERSON OUGHT TO LOOK FAMILIAR TO YOU. AND SO WHAT YOU'RE  
7                   REALLY SAYING IS I AM CONSISTENT WITH MY CHOICE OF THAT  
8                   PERSON, BUT THAT CHOICE MAY HAVE OCCURRED OR MAY NOT HAVE  
9                   OCCURRED IN A PROCEDURE OR A SET OF CIRCUMSTANCES THAT  
10                  REALLY WAS SUGGESTIVE. IT HAD NOTHING TO DO WITH  
11                  ACCURACY. SO YOU HAVE TO, UNFORTUNATELY, CURE THINGS THE  
12                  FIRST TIME AROUND, NOT LATER.

13                Q           SO WHAT DOES THE RESEARCH SAY THAT YOU'VE  
14                  INVESTIGATED REGARDING MAKING AN IDENTIFICATION OF  
15                  SOMEONE IN COURT AND HOW IT AFFECTS THEIR MEMORIES OF THE  
16                  CIRCUMSTANCES IN WHICH THEY BELIEVE THEY SAW THE  
17                  INDIVIDUAL PERSON?

18                A           WELL, THAT'S THE INTERESTING PART. ONCE  
19                  SOMEBODY COMMITS THEMSELVES TO AN IDENTIFICATION, THEN  
20                  THEIR MEMORY HAS BEEN FOUND TO ACTUALLY CHANGE TO SUPPORT  
21                  THE COMMITMENT THEY'VE MADE. SO IF YOU TALK TO THEM SOON  
22                  AFTER THE CRIME, OH, IT WAS REALLY DIFFICULT, THERE WERE  
23                  DIFFERENT PEOPLE AND THEY HAD GUNS AND THIS AND THAT, AND  
24                  LATER ON WHEN THEY COMMIT THEMSELVES TO AN  
25                  IDENTIFICATION, I REALLY PAID ATTENTION TO THIS PERSON.  
26                  I REALLY KNOW THAT IT'S THAT PERSON BECAUSE I -- THE  
27                  LIGHT WAS GOOD. THEY WERE UP CLOSE TO ME, AND I COULD  
28                  SEE ALL THE DETAILS IN THEIR FACE, WHICH THEY MAY OR MAY

1 NOT HAVE EVER MENTIONED PREVIOUSLY. AND THIS IS WHAT YOU  
2 ARE GETTING A COMMITMENT FROM. THEY HAVE COMMITTED  
3 THEMSELVES TO THIS, AND NOW THEY ARE STRENGTHENING THEIR  
4 COMMITMENT. IT'S NOTHING TO DO WITH THEIR OBSERVATION.

5 SO YOU GET A STRENGTHENING OF THOSE THINGS  
6 THAT WOULD SUPPORT THE BELIEF THAT THEY HAVE MADE THE  
7 RIGHT CHOICE. OBVIOUSLY IT WOULD BE HARDER IF THEY  
8 DIDN'T PAY ATTENTION, IF IT WAS DARKER OR THERE WERE  
9 DISTINCTIVE FEATURES. SO ALL OF THESE THINGS NOW SORT OF  
10 CROP UP AS SUPPORTS FOR THE CHOICE THAT YOU'VE NOW MADE  
11 AND WERE NOT THERE INITIALLY.

12 I HOPE THAT'S RESPONSIVE TO YOUR QUESTION.

13 Q BUT THAT'S TRUE EVEN THOUGH THE WITNESS  
14 WILL GET UP ON THE STAND, SITTING IN A SIMILAR POSITION  
15 THAT YOU ARE IN, AND CONFIDENTLY SAY THAT'S THE GUY?

16 A YES. UNFORTUNATELY, ONE OF THE KEY THINGS  
17 WE WOULD DEPEND ON IN NORMAL LIFE WOULD BE CONFIDENCE.  
18 HOW DO I GET TO THE COURTHOUSE? WELL, YOU GO THAT WAY  
19 FOUR BLOCKS AND MAKE A RIGHT TURN AND IT'S TWO BLOCKS  
20 DOWN. YOU SAY IT VERY CONFIDENTLY AND YOU FOLLOW THEIR  
21 INSTRUCTIONS. CONFIDENCE IS NORMALLY ASSOCIATED WITH  
22 ACCURACY IN MOST THINGS WE DO IN LIFE.

23 WELL, FOR EYEWITNESSES, THAT'S THE GUY, I  
24 AM 110 PERCENT SURE. CAN YOU ASSESS THAT SAME VALUE OF  
25 CONFIDENCE IN THAT REMARK? AND, UNFORTUNATELY, ALL OF  
26 THE RESEARCH -- AND THIS IS THE MOST RESEARCHED FACTOR OF  
27 ALL -- SHOW THAT THERE IS NO RELATIONSHIP BETWEEN  
28 CONFIDENCE AND ACCURACY. 110 PERCENT SURE DOESN'T MEAN

1 ANYTHING MORE THAN I THINK THAT'S THE GUY OR I AM NOT  
2 SURE.

3 NOW, THAT MEANS, OF COURSE, IF SOMEBODY IS  
4 NOT SURE, THEY MAY BE CORRECT; BUT IT ALSO MEANS THAT  
5 SOMEBODY WHO IS VERY CONFIDENT MAY NOT BE CORRECT. THERE  
6 IS JUST NO USABLE RELATIONSHIP BETWEEN THOSE TWO THINGS,  
7 ACCURACY AND CONFIDENCE, AND THAT'S BECAUSE USUALLY LONG  
8 AFTER THE FACT PEOPLE ARE SAYING I AM CONFIDENT WHEN THE  
9 PROCESSES HAS GONE ON AND YOU HAVE BEEN EXPOSED TO THIS  
10 PERSON'S FACE ON DIFFERENT OCCASIONS AND DIFFERENT  
11 CIRCUMSTANCES. AND SO YOU MAY BECOME MORE AND MORE  
12 COMMITTED TO THIS, BUT THAT HAS NOTHING TO DO WITH  
13 ACCURACY. SO THAT'S WHY THERE IS NO RELATIONSHIP BETWEEN  
14 CONFIDENCE AND ACCURACY IN THIS AREA.

15 MR. EVANS: I HAVE NOTHING FURTHER AT THIS TIME.

16 THE COURT: CROSS-EXAMINATION.

17  
18 CROSS-EXAMINATION

19 BY MR. GOUDY:

20 Q YOU'VE BEEN TESTIFYING AS AN EXPERT ON  
21 EYEWITNESS EXAMINATION FOR THE LAST TEN YEARS SOLELY? I  
22 MEAN, THAT'S ALL YOU HAVE BEEN DOING FOR THE LAST TEN  
23 YEARS?

24 A WELL, I RETIRED FROM THE MEDICAL GROUP, SO  
25 THAT'S PRIMARILY WHAT I DO.

26 Q AT THE MEDICAL GROUP, WHAT DID YOU DO?

27 A I WAS THE PRESIDENT AND C.E.O. FOR ABOUT  
28 SIX YEARS. PRIOR TO THAT, I WAS THE HEAD OF THE BEHAVIOR



1 HEALTH UNIT. WE HAD A COUPLE OF PSYCHIATRISTS, CLINICAL  
2 SOCIAL WORKERS AND PSYCHOLOGISTS WHO WERE UNDER ME.  
3 PRIOR TO THAT, I WAS JUST A MEMBER OF THE MEDICAL GROUP.

4 Q HAVE YOU BEEN PAID TO TESTIFY TODAY?

5 A I HAVE BEEN PAID FOR MY TIME, CERTAINLY. I  
6 WAS APPOINTED THROUGH THE COURT SYSTEM THAT APPOINTS  
7 EXPERTS.

8 Q WELL, YOU WERE APPOINTED BECAUSE YOU WERE  
9 ASKED TO BE APPOINTED BY THE DEFENSE?

10 A CERTAINLY. THE DEFENSE REQUESTED MY  
11 APPOINTMENT THROUGH THE SYSTEM. I AM ONE OF THE THREE OR  
12 FOUR PEOPLE ON THE LIST THAT QUALIFY FOR THOSE  
13 APPOINTMENTS.

14 Q JUST SO WE ARE CLEAR, THE COURT DIDN'T  
15 APPOINT YOU; IT WAS AT THE REQUEST OF THE DEFENSE THAT  
16 YOU ARE HERE?

17 A THANK YOU FOR HELPING ME STRAIGHTEN THAT  
18 OUT. I IN NO WAY IMPLIED THE ENDORSEMENT OF THE COURT OR  
19 COURT APPOINTMENT IN ANY SENSE OF THAT. I UNDERSTOOD  
20 WHAT YOU'RE SAYING. IT IS A COURT APPOINTMENT  
21 TECHNICALLY THROUGH A SYSTEM SET UP BY THE COURTS.

22 Q HOW MANY HOURS DID YOU WORK ON THIS  
23 CASE?

24 A THE TOTAL WILL BE SOMEWHERE IN THE  
25 NEIGHBORHOOD OF 12 HOURS.

26 Q AND HOW MUCH DO YOU GET PAID FOR THE  
27 12 HOURS?

28 A ITS AROUND \$2,500.

1 Q SO 200-PLUS DOLLARS AN HOUR?

2 A WELL, APPROXIMATELY. NO, IT WILL BE \$200  
3 AN HOUR.

4 Q OKAY. DID THAT INCLUDE WRITING A REPORT?

5 A NO. I DON'T WRITE REPORTS BECAUSE THERE IS  
6 NO CONCLUSION. I AM NOT SAYING THIS WITNESS IS RIGHT OR  
7 WRONG. I AM SIMPLY GIVING TESTIMONY AS I HAVE IN  
8 HUNDREDS OF OTHER TIMES ABOUT THE VARIOUS FACTORS  
9 INVOLVED.

10 Q YOU'VE TESTIFIED OVER 1,000 TIMES?

11 A PROBABLY NOT OVER 1,000, BUT MAYBE CLOSE TO  
12 IT.

13 Q OVER HOW MANY YEARS?

14 A 35.

15 Q AND ALL ON EYEWITNESS EXPERT?

16 A CORRECT.

17 Q AND DURING THAT 35 YEARS HAVE THERE BEEN  
18 ANY MAJOR CHANGES?

19 A IN?

20 Q IN EYEWITNESS IDENTIFICATION.

21 A IT'S BECOME MORE AND MORE CLEAR THAT IT'S A  
22 MAJOR PROBLEM, AND THERE'S MORE AND MORE STREAMS OF  
23 EVIDENCE.

24 MR. GOUDY: OBJECTION. MOTION TO STRIKE.  
25 NONRESPONSIVE.

26 THE COURT: CAN I HAVE THAT QUESTION READ BACK.

27

28 (THE RECORD WAS READ.)

1 THE COURT: OVERRULED.

2 BY MR. GOUDY:

3 Q GO AHEAD.

4 A THIS WAS AN AREA THAT I STARTED BEING  
5 INVOLVED IN 35 YEARS AGO IN TERMS OF BEING IN COURT. I  
6 HAVE BEEN INVOLVED IN IT MUCH EARLIER THAN THAT. THE  
7 EXPERIMENTAL RESEARCH IN THOSE DAYS DIDN'T INCLUDE THINGS  
8 LIKE MAGNETIC RESONANT IMAGING STUDIES THAT CONFIRM HOW  
9 CHANGES ARE OCCURRING IN THE VISUAL SYSTEM UNDER STRESS.  
10 IT DIDN'T INCLUDE SUCH THINGS AS BRAIN WAVE STUDIES  
11 HAVING TO DO WITH SUPPORTING THE CROSS-RACIAL  
12 IDENTIFICATION EFFECTS.

13 IT DIDN'T INCLUDE A LOT OF THE GOVERNMENT  
14 WORK THROUGH THE DEPARTMENT OF JUSTICE IN TERMS OF HOW  
15 MANY EXONERATIONS ARE DUE TO MISTAKEN EYEWITNESS  
16 IDENTIFICATION. IT DIDN'T INCLUDE A WHOLE SERIES OF  
17 EXPERIMENTS ON STRESS DONE IN THE MILITARY AND SPECIAL  
18 FORCES. SO IN THAT SENSE I CAN'T THINK OF ANY WAY IN  
19 WHICH THE BASIC PREMISES HAVE BEEN UNDERMINED OR CHANGED  
20 OTHER THAN TO STRENGTHEN ALL OF THE THINGS ABOUT THE  
21 WEAKNESSES OF EYEWITNESS IDENTIFICATION OVER THE LAST  
22 35 YEARS.

23 Q SO THE ANSWER IS NO, THERE HAVEN'T BEEN ANY  
24 MAJOR CHANGES IN EYEWITNESS IDENTIFICATION BELIEFS; IS  
25 THAT CORRECT?

26 A WELL, I SUPPOSE THAT'S TRUE, YEAH. I MEAN,  
27 MY BELIEFS ARE NOW SUPPORTED BY A LOT MORE DATA THAN THEY  
28 WERE INITIALLY.

1 Q YOU HAVE NEVER DONE ONE STUDY ON EYEWITNESS  
2 IDENTIFICATION; IS THAT TRUE?

3 A NOT SPECIFICALLY IN A CRIMINAL SETTING,  
4 NO. I HAVE DONE A WHOLE CHAPTER ON EYEWITNESS  
5 IDENTIFICATION FOR ALPINE PUBLICATIONS, BUT NOT  
6 EXPERIMENTAL STUDIES WHERE THAT'S IN THE TITLE. I HAVE  
7 DONE STUDIES ON PERCEPTION AND MEMORY, BUT NOT WHERE  
8 EYEWITNESS I.D. WAS IN THE TITLE, THAT'S TRUE.

9 Q SO EVERYTHING THAT YOU'VE TESTIFIED TO  
10 REGARDING EYEWITNESS IDENTIFICATION IS BASED UPON OTHER  
11 PEOPLE'S WORK?

12 A CORRECT.

13 Q AND WHAT TYPE OF STUDIES HAVE YOU REVIEWED  
14 TO COME TO YOUR CONCLUSIONS?

15 A IT WAS A WHOLE VARIETY OF STUDIES. THERE  
16 ARE EXPERIMENTAL STUDIES, FOR EXAMPLE, WHERE SOMEBODY IS  
17 RECRUITED TO TEST THE FLAVORS OF SOFT DRINKS. AND WHILE  
18 THEY ARE DOING THAT, SOMEBODY COMES IN AND GETS INTO A  
19 FIGHT WITH THE EXPERIMENTER AND THEN LEAVES AND CAMPUS  
20 POLICE COME. THE PARTICIPANTS ARE ASKED TO GIVE A  
21 DESCRIPTION OF THE PERSON, WHO WAS THERE AND DID THIS.  
22 SOMETIMES THEY GO SO FAR IN OTHER EXPERIMENTS TO HAVE A  
23 LINEUP AND ASK IF THAT PERSON CAN BE IDENTIFIED. THAT'S  
24 ONE ASPECT. THAT'S ACADEMIC RESEARCH ON CAMPUS.

25 ANOTHER IS FIELD RESEARCH. A ROBBERY IS  
26 STAGED IN A STORE. IT'S STAGED, ALTHOUGH THE  
27 PARTICIPANTS DON'T KNOW IT'S STAGED. BUT OBVIOUSLY THE  
28 POLICE ARE NOTIFIED AND THE OWNER OF THE STORE IS

1 INVOLVED. AND IN THAT KIND OF SETTING, THEN A CRIME  
2 OCCURS AND WITNESSES ARE THERE AND ASKED TO GIVE A  
3 DESCRIPTION BY LOCAL POLICE WHO ARE INVOLVED IN THIS.

4 THE THIRD WOULD BE MILITARY STUDIES WHERE  
5 ACTUAL STRESS IS EMPLOYED AND YOU KNOW THEY ARE UNDER  
6 STRESS BECAUSE YOU TAKE BLOOD SAMPLES, AND YOU CAN  
7 ACTUALLY TELL THE LEVEL OF STRESS THAT THEY ARE UNDER.

8 THE FOURTH WOULD BE STUDIES RECENTLY WHERE  
9 PEOPLE ARE WEARING WHAT ARE CALLED LIFE VESTS. THESE  
10 MONITOR ALL OF THE PHYSIOLOGICAL PROCESSES OF THE BODY,  
11 HEART RATE, G.S.R., BLOOD PRESSURE WHILE SOMEBODY IS  
12 WALKING AROUND, AND YOU SUBJECT THEM TO STRESS AND YOU  
13 SEE WHAT EFFECT THIS HAS ON THEIR MEMORY.

14 EYE MOVEMENT TRACKING STUDIES IN REAL LIFE  
15 CIRCUMSTANCES WHERE SOMEBODY LOOKS LIKE THEY HAVE GOTTEN  
16 ACTUALLY VERY BADLY INJURED BY SOMEBODY ELSE, THE  
17 PARTICIPANTS HAPPEN TO BE WEARING THESE THINGS BECAUSE  
18 THEY WERE JUST IN ANOTHER PART OF THE BUILDING WHERE THEY  
19 WERE IN AN EXPERIMENT, AND THE EXPERIMENTER SAID, WELL,  
20 LET'S JUST LEAVE THESE ON AND WE WILL TAKE THEM OFF AFTER  
21 LUNCH. DURING LUNCH THIS THING OCCURS, AND SO THEY  
22 ACTUALLY KNOW EXACTLY WHERE THESE PEOPLE ARE LOOKING  
23 DURING THIS EVENT.

24 THESE ARE JUST SOME EXAMPLES OF SOME OF THE  
25 STUDIES OF WHAT ROLE DOES EYEWITNESS IDENTIFICATION PLAY  
26 WHEN SOMEBODY WAS CONVICTED OF A CRIME THAT THEY DIDN'T  
27 ACTUALLY COMMIT, AND ABOUT 80 PERCENT IS THE ANSWER FOR  
28 THAT.

1           Q       NOW, YOU HAVE INDICATED THAT THE MORE TIME  
2       SOMEBODY SEES THE PERSON OR A PHOTOGRAPH OR THINGS OF  
3       THAT NATURE, THE LESS RELIABLE IT BECOMES THAT THEIR  
4       IDENTIFICATION IS ACCURATE AS OPPOSED TO IT BEING  
5       SOMETHING THAT WAS INCORPORATED IN THEIR MEMORY; CORRECT?

6           A       WELL, NOT SUPPOSED TO. I MEAN, FORGIVE  
7       ME. IT'S A LITTLE CONFUSING, BUT OBVIOUSLY THE MORE TIME  
8       YOU SEE SOMEBODY, THE MORE FAMILIAR YOU ARE WITH THEM AND  
9       THE MORE YOU CAN ACCURATELY IDENTIFY THEM.

10          Q       I GUESS NOT PRIOR TO THE EVENT BUT AFTER  
11       THE EVENT. SO YOU'VE NEVER SEEN ANYONE BEFORE AN EVENT  
12       HAPPENED, THEN IT HAPPENED. AND IF YOU SEE THEM AGAIN  
13       AND AGAIN, THAT IMAGE INCORPORATES IN THEIR MIND, AND  
14       YOUR INDICATION IS THAT THE IDENTIFICATION BECOMES LESS  
15       RELIABLE?

16          A       WELL, YEAH. I MEAN, WE ARE TRYING TO TEST  
17       WHETHER OR NOT THAT'S THE PERSON THEY SAW AT THE CRIME.  
18       IF THEY SEE THAT PERSON IN SOME KIND OF PHOTOGRAPH IN  
19       BETWEEN THE CRIME AND THE PROCEDURE, WE CAN NEVER KNOW  
20       WHETHER THE PROCEDURE IS A TEST OF THEIR MEMORY FROM THE  
21       CRIME OR WHETHER IT'S BEEN INFLUENCED BY THEIR MEMORY OF  
22       THE PHOTOGRAPH THEY SAW. THERE'S NO WAY TO SEPARATE THAT  
23       OUT.

24          Q       DOES IT MEAN THAT THEY ARE NOT ACCURATE?

25          A       WELL, ACCURACY IS A TOTALLY DIFFERENT  
26       THING. I MEAN, ONE CAN -- THAT'S AN EVALUATION. THAT'S  
27       A JUDGMENT ON THE PART OF THE JURY OR WHOEVER THE FACT  
28       FINDERS ARE.

1 Q WELL, BUT --

2 A BECAUSE IT DOESN'T EXCLUDE THE POSSIBILITY,  
3 BUT IT CERTAINLY DOESN'T BODE WELL FOR FINDING OUT BY AN  
4 IDENTIFICATION PROCEDURE THAT'S BEEN TAINTED.

5 Q SO SOMEONE WHO IS A VICTIM OF A CRIME GOES  
6 TO A LIVE LINEUP. YOU KNOW WHAT A LIVE LINEUP IS;  
7 CORRECT?

8 A SURE.

9 Q THAT'S WHERE THEY USUALLY HAVE SIX PEOPLE  
10 LINED UP AND THEY ASK YOU, "DO YOU RECOGNIZE THAT PERSON  
11 THERE?"

12 A YES.

13 Q SO THEY GO TO A LIVE LINEUP, AND THEY PICK  
14 SOMEBODY OUT. AND THEN THEY'VE ALSO SEEN A PHOTOGRAPHIC  
15 LINEUP, SIX PHOTOGRAPHS, AND THEY PICK THE SAME PERSON  
16 OUT.

17 A SURE.

18 Q SO YOU'RE SAYING, WELL, IF THEY COME INTO  
19 COURT AND THEY IDENTIFY THAT INDIVIDUAL IN COURT, WELL,  
20 YOU CAN'T REALLY TRUST THAT IT'S ACCURATE OR NOT BECAUSE  
21 THEY HAVE SEEN THAT LIVE LINEUP AND THEY'VE SEEN HIM AT A  
22 PHOTOGRAPHIC LINEUP; CORRECT?

23 A OH, ABSOLUTELY. AND AS A MATTER OF FACT,  
24 IF THEY SAW THEM IN A PHOTOGRAPHIC LINEUP FIRST, WHICH I  
25 KNOW THAT'S WHAT YOU WANTED, AND THEN THE LIVE LINEUP AND  
26 THEN IN COURT, THE REAL ISSUE IS WHAT WERE THE  
27 CIRCUMSTANCES WHERE THEY PICKED HIM OUT OF THE SIX-PACK?  
28 BECAUSE IF YOU JUST REPEAT SOMEBODY TWO OR THREE TIMES,

1 YOU'RE NOT GAINING ANY INFORMATION ABOUT WHETHER THEY CAN  
2 REALLY MAKE AN I.D. OR NOT.

3 Q NOW, YOU SAY THE PROPER PROCEDURE OR THE  
4 PREFERRED PROCEDURE IS TO SHOW INDIVIDUAL PHOTOGRAPHS?

5 A CORRECT.

6 Q BECAUSE IT'S A RANDOM SELECTION. YOU DON'T  
7 WANT TO HINT THAT ANY ONE PHOTOGRAPH MAY OR MAY NOT BE  
8 ACCURATE, IF THE SUSPECT IS NUMBER ONE AND THE PERSON  
9 RIGHT AWAY SAYS THAT'S THE GUY, WELL, THEY'VE ONLY SEEN  
10 ONE PHOTOGRAPH; CORRECT?

11 A SURE.

12 Q THAT'S CORRECT; RIGHT?

13 A FORGIVE ME, BUT THAT'S NOT THE WAY IT'S  
14 DONE.

15 Q WELL, YOU JUST SAID THAT A SINGLE  
16 PHOTOGRAPHIC SHOW-UP ISN'T REALLY A GOOD THING.

17 A NO, AND YOU DON'T DO IT THAT WAY. IF YOU  
18 DO A SEQUENTIAL PRESENTATION, IN THE INSTRUCTIONS IT SAYS  
19 THAT NO MATTER WHERE YOU WANT TO STOP, YOU HAVE TO SEE  
20 ALL THE PHOTOGRAPHS. SO, FOR EXAMPLE, IN PHOTOGRAPH  
21 NUMBER ONE, THE WITNESS SAYS, "OH, THAT'S THE GUY," THEY  
22 STILL HAVE TO LOOK AT TWO, THREE, FOUR, FIVE, AND SIX FOR  
23 IT TO BE A VALID TEST.

24 Q SO EVEN IF THE PERSON -- BECAUSE WE CAN'T  
25 RELY UPON THEM WRITING DOWN THAT THEY FOLLOWED THOSE  
26 INSTRUCTIONS BECAUSE WE DON'T REALLY KNOW, JUST LIKE WE  
27 DON'T KNOW IF THEY REALLY UNDERSTOOD THE ADMONITION. IF  
28 THE PERSON LOOKS AT THE FIRST PHOTOGRAPH AND SAYS, "I



1 KNOW THAT'S HIM, AND YEAH, I'LL LOOK AT THE OTHER ONES  
2 BUT I DON'T REALLY CARE BECAUSE THAT'S THE FIRST  
3 PHOTOGRAPH," THE FACT THAT THEY DIDN'T PICK OUT ANYBODY  
4 ELSE REALLY DOESN'T MATTER, DOES IT?

5 A WELL, OF COURSE IT MATTERS. THE THING IS  
6 IS THIS: IF YOU WANT A VALID ANSWER, YOU HAVE TO HAVE A  
7 VALID TEST. THE VALIDITY OF THE ANSWER DEPENDS UPON THE  
8 VALIDITY OF THE TEST. IF YOU WANT TO KNOW MY JUMPING  
9 ABILITY, YOU DON'T WANT ME TO BE WEARING SPRING-LOADED  
10 SHOES. THAT DOESN'T MEAN ANYTHING. SO THE VALIDITY OF  
11 THE PROCEDURE GENERATES THE VALIDITY OF THE ANSWER.  
12 THAT'S WHY YOU HAVE PROCEDURAL RULES AND REGULATIONS.

13 AND ANOTHER VERY STRONG RECOMMENDATION IS  
14 THAT THE ENTIRE PROCEDURE BE RECORDED SO WE KNOW EXACTLY  
15 WHAT OCCURRED AND WE KNOW WHAT WAS SAID BY THE WITNESS  
16 AND BY THE DETECTIVE INVOLVED AND HOW LONG IT TOOK,  
17 BECAUSE YOU HAVE SITUATIONS WHERE THE WITNESS SAYS, "NO,  
18 I DIDN'T PICK ANYBODY FOR FIVE MINUTES," AND THE  
19 DETECTIVE SAYS, "NO, HE PICKED HIM RIGHT AWAY." YOU GO  
20 TO THE AUDIO RECORDING AND, SURE ENOUGH, THE VICTIM  
21 PICKED HIM RIGHT AWAY. SO IT CAN HELP ALL SIDES BY  
22 HAVING AN ACCURATE, OBJECTIVE RECORD OF THIS TEST. THIS  
23 IS A VERY CRITICAL STAGE.

24 Q NOW, WHEN YOU SAY THAT -- EARLIER YOU  
25 TESTIFIED THAT SOMETIMES PEOPLE ARE LOOKING AT THINGS  
26 THAT THEY DON'T REALLY KNOW THAT THEY ARE LOOKING AT OR  
27 THEY ARE NOT LOOKING AT THINGS THAT THEY THINK THEY WERE  
28 LOOKING AT.

1           A           RIGHT.

2           Q           SO IF YOU GIVE AN INITIAL DESCRIPTION  
3 BECAUSE IT JUST HAPPENED AND YOU ARE STILL UNDER THE  
4 STRESS OF THAT EVENT HAPPENING, YOU MAY HAVE NOTICED  
5 THINGS OR HAVE BEEN LOOKING AT THINGS THAT AT THAT MOMENT  
6 YOU DON'T REMEMBER LOOKING AT THOSE THINGS BECAUSE YOU'RE  
7 UNDER THE STRESS OF THAT EVENT; CORRECT?

8           A           YES. AND WITH A CERTAIN PASSAGE OF  
9 TIME --

10          Q           EXCUSE ME. IS THAT CORRECT?

11          A           FORGIVE ME. YES, THAT'S TRUE.

12          Q           OKAY. SO WHEN YOU SAY THAT THE INITIAL  
13 DESCRIPTION IS VERY IMPORTANT, WELL, THEY MAY HAVE STILL  
14 BEEN UNDER THE STRESS AND NOT AT THAT MOMENT REALIZED OH,  
15 YEAH, I SAW THIS PARTICULAR CHARACTERISTIC; IS THAT  
16 CORRECT?

17          A           THAT'S CERTAINLY POSSIBLE.

18          Q           OKAY. NOW, WHAT ARE ARCHIVAL STUDIES?

19          A           AN ARCHIVAL STUDY IS WHERE YOU GO THROUGH  
20 DATA THAT WAS ALREADY PREVIOUSLY ASSEMBLED. FOR EXAMPLE,  
21 THE ARCHIVAL STUDY OF D.N.A. EXONERATIONS, THAT WOULD BE  
22 AN EXAMPLE OF WHERE WE ARE NOT ACTUALLY MANIPULATING ANY  
23 VARIABLES OR SETTING ANYTHING UP. YOU ARE SIMPLY GOING  
24 THROUGH THE DATA THAT'S ALREADY BEEN ACCUMULATED AND  
25 ANALYZING IT.

26          Q           AND LET'S SAY IN AN ARCHIVAL STUDY -- SO  
27 THEY TAKE BASICALLY REAL CASES?

28          A           RIGHT.

1 Q BECAUSE THAT'S REALLY THE BEST WAY TO  
2 DETERMINE WHEN SOMEBODY IS REALLY UNDER STRESS, BECAUSE  
3 IT'S REALLY HAPPENING TO THEM AT THAT POINT?

4 A WELL, YES AND NO. I MEAN, THE ARCHIVAL  
5 STUDIES ARE AFTER THE FACT. SO --

6 Q WELL, YOU ARE LOOKING AT THE REPORTS OF  
7 WHAT HAPPENED AT THAT TIME, BUT THOSE ARE THE REAL TRUE  
8 LIFE CASES; CORRECT?

9 A WELL, THEY ARE CERTAINLY ACTUAL CRIMES.  
10 BUT WHETHER THE RECORD IS REALLY THE BEST INDICATOR OF  
11 WHAT OCCURRED AT THE TIME IS REALLY THE ISSUE.

12 Q WELL, IF THEY HAVE -- LET'S SAY THERE'S  
13 THESE ARCHIVAL STUDIES AND SOMEBODY MAKES AN  
14 IDENTIFICATION. HOW WOULD THE RESEARCHER GO ABOUT  
15 DETERMINING IF THAT WAS AN ACCURATE OR INACCURATE  
16 IDENTIFICATION?

17 A WELL, IT'S VERY SIMPLE. THE ONES THAT I AM  
18 REFERRING TO ARE ARCHIVAL STUDIES OF -- NOW I THINK  
19 THERE'S MORE THAN 350 PEOPLE WHO HAVE BEEN EXONERATED BY  
20 THE COURT SYSTEM IN THE VARIOUS STATES -- AS NOT HAVING  
21 BEEN RESPONSIBLE FOR THE CRIME FOR WHICH THEY WERE  
22 ACCUSED AND CONVICTED, AND THEY WERE EXONERATED OBVIOUSLY  
23 ON THE BASIS OF D.N.A.

24 NOW THE ISSUE IS, OKAY, GIVEN THAT THEY  
25 HAVE BEEN EXONERATED AND INITIALLY CONVICTED, WHAT ROLE  
26 DID EYEWITNESS IDENTIFICATION PLAY IN THOSE CASES? I  
27 MEAN, YOU CAN THINK OF A LOT OF REASONS PEOPLE CAN GET  
28 ERRONEOUSLY CONVICTED: INADEQUATE ASSISTANCE OF COUNSEL,

1       SOMEBODY BRIBES SOMEBODY.  THERE'S A VARIETY OF REASONS.

2                   WELL, IT TURNS OUT THAT EYEWITNESS  
3       IDENTIFICATION IS INVOLVED IN THESE ERRONEOUS CONVICTIONS  
4       AT 80 PERCENT OF THEM, AND THAT'S A VERY STABLE NUMBER  
5       FOUND BY VARIOUS BODIES, INCLUDING THE UNITED STATES  
6       DEPARTMENT OF JUSTICE, PROJECT INNOCENCE, A BUNCH OF  
7       OTHER INVESTIGATORY BODIES, THE CALIFORNIA COMMISSION.  
8       THEY ALL COME OUT WITH ABOUT THE SAME NUMBER.

9           Q       SO BASICALLY IF IT'S 80 PERCENT, D.N.A.  
10       PLAYS A HUGE PART IN DETERMINING WHETHER OR NOT THERE IS  
11       AN ACCURATE I.D. OR NOT?

12       A       EXACTLY.

13       Q       AND IF SOMEONE PICKS SOMEBODY OUT AND  
14       THERE'S D.N.A. TO INDICATE THAT THAT PERSON WAS NOT THE  
15       PERPETRATOR, WELL, THAT WOULD GO DOWN AS, SEE, EYEWITNESS  
16       IDENTIFICATION IN THAT PARTICULAR CASE YOU CAN'T RELY ON  
17       BECAUSE THE FORENSIC D.N.A. SHOWED THE OPPOSITE; CORRECT?

18       A       NO.  THE PROBLEM IS, D.N.A. IS EXQUISITELY  
19       GOOD FOR THE ELIMINATION OF PEOPLE, BUT IT'S NOT AS GOOD  
20       FOR THE INCLUSION OF PEOPLE.  SO IT'S KIND OF AN  
21       ASYMMETRIC EFFECT.  D.N.A. IS PRETTY GOOD FOR  
22       ELIMINATION, VERY GOOD FOR ELIMINATION; BUT INCLUSION IS  
23       A WHOLE OTHER MATTER.  I MEAN, D.N.A. COULD HAVE GOTTEN  
24       ON THERE IN MANY DIFFERENT WAYS.  IT COULD BE A MIXTURE  
25       OF D.N.A. AND WHOLE OTHER THINGS.  BUT THAT HAS TO BE  
26       EXAMINED ON ITS OWN, AND I AM NOT A D.N.A. EXPERT.

27       Q       WELL, YOU HAVEN'T DONE ANY TESTS ON  
28       EYEWITNESS IDENTIFICATION EITHER; CORRECT?

1           A           I HAVEN'T DONE ANY RESEARCH WITH EYEWITNESS  
2 IDENTIFICATION IN THE TITLE, THAT'S CORRECT.

3           Q           AND YOU HAVEN'T DONE ANY REGARDING FALSE --  
4 OR EYEWITNESS IDENTIFICATION WHERE D.N.A. COMES BACK TO  
5 SOMEONE ELSE, HAVE YOU?

6           A           I HAVE NOT MYSELF, NO.

7           Q           SO WHEN YOU SAY, WELL, THAT'S A WHOLE OTHER  
8 AREA, WELL, YOU JUST MENTIONED A BUNCH OF AREAS THAT YOU  
9 HAVEN'T DONE ANY TESTING ON EITHER, HAVE YOU?

10          A           WELL, SPECIFICALLY, THE WHOLE ISSUE OF THE  
11 MATHEMATICS OF INCLUSION AND EXCLUSION COMBINATIONS, THE  
12 ODDS AND ALL OF THAT, IS NOT MY AREA OF EXPERTISE. BUT I  
13 AM AWARE OF MANY SUCH STUDIES, BUT I DON'T PURPORT TO BE  
14 AN EXPERT IN THOSE AREAS.

15          Q           AND WHICH STUDIES ARE WE TALKING ABOUT?

16          A           WELL, WE ARE STUDYING -- STUDIES, FOR  
17 EXAMPLE, WHERE YOU GET A MIXTURE OF D.N.A., WHERE YOU GET  
18 FAMILIAL D.N.A., WHERE YOU HAVE ALL KINDS OF PROBLEMS IN  
19 THE INCLUSION OF A SPECIFIC PERSON. THERE IS A HUGE  
20 CONTROVERSY AMONG THE NATIONAL INSTITUTES OF SCIENCE AS  
21 TO WHETHER THE PROBABILITY CALCULATION, SAYING, OH, IT'S  
22 ONE PERSON IN A BILLION OR A TRILLION, WHETHER THOSE  
23 CALCULATIONS MEAN ANYTHING AT ALL. SO I AM AWARE OF ALL  
24 OF THESE CONFLICTS GOING ON RIGHT NOW, BUT I DON'T  
25 PRETEND TO KNOW ANYTHING MORE ABOUT IT THAN THAT.

26          Q           AND THAT REALLY HAS NOTHING TO DO WITH  
27 EYEWITNESS IDENTIFICATION, THE STUDY YOU JUST BROUGHT UP;  
28 CORRECT?

1           A           WELL, ONLY INsofar AS YOU USE D.N.A. TO  
2 EXCLUDE SOMEBODY AND THE COURT SYSTEM SAYS, OKAY, BECAUSE  
3 YOU'VE EXCLUDED HIM, THAT PERSON WHO WAS CONVICTED FOR  
4 THE CRIME IS NO LONGER --

5           Q           WELL, I AM GOING BACK TO THE TEST ABOUT THE  
6 DIFFERENCE IN THE CALCULATIONS. THAT REALLY DOESN'T HAVE  
7 ANYTHING TO DO WITH AN EYEWITNESS EXPERT, DOES IT?

8           A           NOT DIRECTLY. YOU'RE RIGHT.

9           Q           SO YOU JUST THREW THAT OUT THERE FOR WHAT  
10 PURPOSE?

11          A           WELL, YOU ASKED ME ABOUT D.N.A., AND I ONLY  
12 KNOW D.N.A. AT KIND OF AN EDUCATED LAYPERSON'S LEVEL.

13          Q           WHY DID YOU REVIEW THE REPORTS IN THIS  
14 CASE?

15          A           WELL, BECAUSE IT'S IMPORTANT TO KNOW WHAT  
16 FACTORS ARE RELEVANT IN THIS CASE. NOT TO GIVE IT A  
17 CONCLUSION BUT, I MEAN, I CAN GIVE LECTURES ON THAT THAT  
18 LAST FOR DAYS. THERE ARE SO MANY DIFFERENT FACTORS. SO  
19 IT NEEDS TO BE CUT DOWN, AND THE ATTORNEY AND I HAVE TO  
20 AGREE ON WHAT THE RELEVANT FACTORS ARE.

21          Q           WELL, WHEN YOU SAY THE ATTORNEY AND YOU  
22 HAVE TO AGREE ON WHAT THE RELEVANT FACTORS ARE, THE  
23 FACTORS ARE THE FACTORS, ARE THEY NOT?

24          A           EXACTLY, IN ANY PARTICULAR CASE. THIS CASE  
25 DIDN'T INVOLVE MANY OTHER FACTORS THAT OTHER CASES  
26 INVOLVE.

27          Q           SO IF I ASK YOU A QUESTION ABOUT A  
28 PARTICULAR FACTOR, WHETHER YOU HAVE READ THE REPORT OR

1 NOT, YOU COULDN'T ANSWER THAT QUESTION, COULD YOU?

2 A YEAH, BUT IT WOULD BE SO TIME CONSUMING AND  
3 IRRELEVANT THAT FOR ME, TO HAVE A DIRECT EXAMINATION  
4 WHICH BASICALLY SAYS OKAY, TELL US EVERYTHING THAT YOU  
5 KNOW ABOUT EYEWITNESS IDENTIFICATION, I MEAN, IT WOULD BE  
6 DAYS.

7 Q WELL, IF I WERE TO GIVE A HYPOTHETICAL -- I  
8 COULD GIVE YOU A HYPOTHETICAL, AND YOU COULD JUST ANSWER  
9 RELATED TO THAT HYPOTHETICAL; RIGHT?

10 A I WOULD BE HAPPY TO.

11 Q AND YOU WOULD NOT NEED TO READ A REPORT FOR  
12 THAT; CORRECT?

13 A WELL, POSSIBLY. IT WOULD DEPEND ON WHETHER  
14 OR NOT -- I GUESS IT'S MY OWN ETHICAL STANDARD WHETHER I  
15 THOUGHT THAT WAS A LEGITIMATE HYPOTHETICAL OR NOT.

16 Q WELL, YOU DON'T GET -- I MEAN, THAT'S FOR  
17 THE COURT TO DECIDE WHETHER IT'S A LEGITIMATE  
18 HYPOTHETICAL; CORRECT?

19 A NO. IT'S FOR ME TO DECIDE WHETHER I AM  
20 GOING TO GET INVOLVED IN A CASE IN THE FIRST PLACE THAT  
21 HAS FACTORS THAT I THINK ARE APPROPRIATE. I DON'T DEPEND  
22 ON THE ATTORNEY TO ANALYZE THE EYEWITNESS ASPECTS OF THE  
23 CASE -- THAT'S WHY THEY NEED AN EXPERT -- ANYMORE THAN  
24 THE ATTORNEY ANALYZES THE BALLISTIC EVIDENCE OR THE  
25 D.N.A. OR ANYTHING ELSE.

26 Q HAVE YOU REVIEWED ALL THE REPORTS IN THIS  
27 CASE?

28 A I DON'T KNOW HOW MANY REPORTS THERE ARE,

1 BUT I HAVE REVIEWED A SUBSTANTIAL NUMBER.

2 Q I AM NOT SAYING ANYTHING AS TO MR. EVANS,  
3 SO THE INFORMATION YOU HAVE IS BASED UPON RELYING ON THE  
4 ATTORNEY TO PROVIDE YOU WITH REPORTS, BUT YOU DON'T KNOW  
5 IF YOU HAVE ALL THE REPORTS; CORRECT?

6 A THAT'S RIGHT. AS A MEMBER OF THE BAR --  
7 AND I HAVE WORKED WITH HIM FOR 35 YEARS -- I THINK THEY  
8 HAVE AN OBLIGATION TO BE TRUTHFUL, AND THEY USUALLY ARE.  
9 AND I BELIEVE THAT THE REPORTS THAT HE GAVE ME ARE  
10 ESSENTIALLY THE APPROPRIATE REPORTS.

11 Q DID YOU LISTEN TO ANY AUDIOTAPES?

12 A I DID NOT.

13 Q WERE YOU ASKED TO LISTEN TO ANY AUDIOTAPES?

14 A NO.

15 Q AS YOU SIT HERE, ARE YOU ABLE TO DETERMINE  
16 WHETHER OR NOT ANY PARTICULAR IDENTIFICATION IS ACCURATE  
17 OR INACCURATE?

18 A NO.

19 Q NOT JUST IN THIS CASE BUT IN ANY CASE.

20 A YOU'RE CORRECT. AND EVEN IF I HAD SUCH AN  
21 OPINION, IT WOULD BE TOTALLY INAPPROPRIATE FOR ME TO GIVE  
22 IT. SO I DON'T THINK I CAN, AND I WOULDN'T EVEN IF I  
23 COULD.

24 Q AND YOU KNOW THERE IS AN EYEWITNESS  
25 IDENTIFICATION INSTRUCTION; CORRECT?

26 A THERE IS.

27 Q AND THAT'S THE LAW OF THE LAND; CORRECT?

28 A WELL, THE LAW OF CALIFORNIA IN ITS PRESENT



1 INCARNATION. IT USED TO BE 292, AND NOW IT'S 315. SO IT  
2 CHANGES OVER TIME.

3 Q WELL, IT'S THE LAW OF CALIFORNIA?

4 A AT THE PRESENT TIME, YES.

5 Q AND YOU'RE NOT ASKING ANYBODY TO NOT FOLLOW  
6 THAT LAW; CORRECT?

7 A I CERTAINLY WOULD NOT.

8 Q IT WOULD BE IMPROPER FOR YOU TO DO SO;  
9 CORRECT?

10 A OF COURSE.

11 Q SO WHEN YOU TESTIFY AND SAY THAT SOMEONE  
12 BEING CERTAIN OF AN IDENTIFICATION IS IRRELEVANT, ARE YOU  
13 FAMILIAR WITH THE PART OF THE INSTRUCTION THAT SAYS TO  
14 LOOK AT HOW CERTAIN AN EYEWITNESS IS?

15 A OH, I AM VERY FAMILIAR WITH IT. IT DOESN'T  
16 SAY THAT YOU SHOULD THEREFORE SAY -- WHEN YOU LOOK AT IT  
17 THAT HIGH CERTAINTY IS ASSOCIATED WITH HIGH ACCURACY.  
18 THAT'S EXACTLY THE POINT.

19 Q IT SAYS IT'S A FACTOR; CORRECT?

20 A EXACTLY. IT IS A FACTOR.

21 Q IN FACT, YOU JUST SAID THAT IT'S KIND OF  
22 IRRELEVANT?

23 A NO, TO ACCURACY. IT IS A FACTOR THAT  
24 SHOULD BE CONSIDERED BECAUSE WHEN A WITNESS TESTIFIES  
25 THAT THEY ARE ABSOLUTELY SURE, YOU DON'T JUST --

26 MR. GOUDY: OBJECTION. NONRESPONSIVE.

27 THE COURT: SUSTAINED.

28 IF MR. EVANS WANTS FURTHER EXPLANATION, HE

1 WILL GET A CHANCE TO ASK YOU ON REDIRECT.

2 THE WITNESS: OKAY.

3 BY MR. GOUDY:

4 Q AND ONE OF THE FACTORS IS IF THEY HAVE BEEN  
5 ABLE TO IDENTIFY OTHER PERPETRATORS; CORRECT?

6 A THAT'S CORRECT.

7 Q AND YOU'VE SAID THAT THAT ACTUALLY ISN'T  
8 GOOD FOR YOUR ABILITY TO IDENTIFY SOMEONE; CORRECT?

9 A I DID NOT SAY THAT AT ALL.

10 Q WELL, YOU SAID IF THERE ARE MULTIPLE PEOPLE  
11 THAT IT DIVIDES YOUR ATTENTION, AND THAT MAKES IT HARDER  
12 TO MAKE AN IDENTIFICATION?

13 A WELL, THAT'S CORRECT, TRUE.

14 Q BUT THE LAW SAYS YOU HAVE TO LOOK TO SEE IF  
15 THEY'VE IDENTIFIED OTHER INDIVIDUALS.

16 MR. EVANS: ARGUMENTATIVE.

17 THE COURT: SUSTAINED.

18 MR. GOUDY: NOTHING FURTHER.

19 THE COURT: REDIRECT?

20 MR. EVANS: BRIEFLY.

21

22 REDIRECT EXAMINATION

23 BY MR. EVANS:

24 Q DR. SHOMER, LET ME GIVE YOU A  
25 HYPOTHETICAL. I WANT YOU TO ASSUME THAT THE I.D.  
26 PROCEDURE OCCURRED IN THE FOLLOWING MANNER: THE WITNESS  
27 RECEIVED A LETTER THAT A NAMED PERSON IS A SUSPECT IN A  
28 CRIME IN WHICH THEY MAY BE A WITNESS OR A VICTIM; THE

1 VICTIM OR WITNESS, ON THEIR OWN, LOOKS UP AND SEES A  
2 PICTURE OF THE PERSON REFERRED TO IN A LETTER.  
3 THEREAFTER, THE WITNESS THEN LOOKS AT A SIX-PACK OF  
4 PHOTOS. ONE OF THE PHOTOS INCLUDED IN THE SIX PHOTOS IS  
5 THE PERSON THAT THEY HAD SEEN PREVIOUSLY IN ANOTHER PHOTO  
6 THAT THEY LOOKED UP ON THEIR OWN. WHAT ARE THE FACTORS  
7 RELEVANT TO EYEWITNESS IDENTIFICATION IN THIS CONTEXT?

8 MR. GOUDY: OBJECTION. ASKED AND ANSWERED.  
9 BEYOND THE SCOPE.

10 THE COURT: I ALLOW IT.

11 THE WITNESS: THERE'S NO VALIDITY TO ANY  
12 SUBSEQUENT TEST ONCE THEY'VE EXPOSED THEMSELVES TO A  
13 PICTURE OF A PERSON WHO WAS PROVIDED -- OR RATHER THE  
14 INFORMATION IS PROVIDED THAT THAT NAMED PERSON IS  
15 CONNECTED TO THAT CRIME. THEY THEN ON THEIR OWN LOOK UP  
16 THE PHOTO OF THAT PERSON, AND ANY SUBSEQUENT TEST OF  
17 THEIR ABILITY TO IDENTIFY THE PERSON SEEN AT THE CRIME,  
18 ESPECIALLY IF THAT PERSON IS IN A SET OF PHOTOGRAPHS, IS  
19 MEANINGLESS.

20 MR. EVANS: NOTHING FURTHER.

21 THE COURT: RECROSS?

22 MR. GOUDY: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP  
24 DOWN?

25 THE WITNESS: THANK YOU, YOUR HONOR.

26 THE COURT: ANY FURTHER WITNESSES?

27 MR. EVANS: NONE.

28 THE COURT: AT THIS TIME DOES THE DEFENSE REST?

1 MR. EVANS: THE DEFENSE RESTS.

2 THE COURT: ANY REBUTTAL WITNESSES, PEOPLE?

3 MR. GOUDY: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I  
5 PROBABLY HAVE ABOUT -- THIS CONCLUDES THE EVIDENCE  
6 PORTION OF THE CASE. THE INSTRUCTIONS WILL PROBABLY TAKE  
7 ABOUT 30 TO 40 MINUTES TO READ. SO WE ARE GOING TO TAKE  
8 OUR AFTERNOON BREAK NOW, AND THEN I WILL INSTRUCT YOU THE  
9 REST OF THE AFTERNOON. AND WHEN I AM DONE READING THE  
10 INSTRUCTIONS TO YOU, WE WILL TAKE OUR RECESS AND WE WILL  
11 HAVE THE ARGUMENT TOMORROW, AND THEN YOU WILL BEGIN  
12 DELIBERATION TOMORROW.

13 SO TAKE A 20-MINUTE RECESS, AND WE WILL SEE  
14 YOU BACK HERE IN 20 MINUTES. THANK YOU.

15 KEEP IN MIND THE COURT'S ADMONITION.

16

17 (RECESS.)

18

19 THE COURT: I WILL GO AHEAD AND READ THE  
20 INSTRUCTIONS TO YOU.

21 (READING:)

22 MEMBERS OF THE JURY, I WILL NOW  
23 INSTRUCT YOU ON THE LAW THAT APPLIES TO  
24 THIS CASE. I WILL GIVE YOU A COPY OF  
25 THE INSTRUCTIONS TO USE IN THE JURY ROOM.

26 YOU MUST DECIDE WHAT THE FACTS  
27 ARE. IT IS UP TO ALL OF YOU, AND YOU  
28 ALONE, TO DECIDE WHAT HAPPENED, BASED

1 ONLY ON THE EVIDENCE THAT HAS BEEN  
2 PRESENTED TO YOU IN THIS TRIAL.

3 DO NOT LET BIAS, SYMPATHY, PREJUDICE,  
4 OR PUBLIC OPINION INFLUENCE YOUR DECISION.  
5 BIAS INCLUDES, BUT IS NOT LIMITED TO, BIAS  
6 FOR OR AGAINST THE WITNESSES, ATTORNEYS,  
7 THE DEFENDANT OR ALLEGED VICTIM, BASED  
8 UPON DISABILITY, GENDER, NATIONALITY,  
9 NATIONAL ORIGIN, RACE OR ETHNICITY,  
10 RELIGION, GENDER IDENTITY, SEXUAL  
11 ORIENTATION, AGE, OR SOCIOECONOMIC  
12 STATUS.

13 YOU MUST FOLLOW THE LAW AS I EXPLAIN  
14 IT TO YOU, EVEN IF YOU DISAGREE WITH IT.  
15 IF YOU BELIEVE THAT THE ATTORNEYS' COMMENTS  
16 ON THE LAW CONFLICT WITH MY INSTRUCTIONS,  
17 YOU MUST FOLLOW MY INSTRUCTIONS.

18 PAY CAREFUL ATTENTION TO ALL OF  
19 THESE INSTRUCTIONS AND CONSIDER THEM  
20 TOGETHER. IF I REPEAT ANY INSTRUCTION  
21 OR IDEA, DO NOT CONCLUDE THAT IT IS  
22 MORE IMPORTANT THAN ANY OTHER  
23 INSTRUCTION OR IDEA JUST BECAUSE I  
24 REPEATED IT.

25 SOME WORDS OR PHRASES USED DURING  
26 THIS TRIAL HAVE LEGAL MEANINGS THAT ARE  
27 DIFFERENT FROM THEIR MEANINGS IN  
28 EVERYDAY USE. THESE WORDS AND PHRASES

1 WILL BE SPECIFICALLY DEFINED IN THESE  
2 INSTRUCTIONS. PLEASE BE SURE TO LISTEN  
3 CAREFULLY AND FOLLOW THE DEFINITIONS  
4 THAT I GIVE YOU. WORDS AND PHRASES  
5 NOT SPECIFICALLY DEFINED IN THESE  
6 INSTRUCTIONS ARE TO BE APPLIED USING  
7 THEIR ORDINARY, EVERYDAY MEANINGS.

8 SOME OF THESE INSTRUCTIONS MAY NOT  
9 APPLY, DEPENDING ON YOUR FINDINGS ABOUT  
10 THE FACTS OF THE CASE. DO NOT ASSUME  
11 JUST BECAUSE I GIVE A PARTICULAR  
12 INSTRUCTION THAT I AM SUGGESTING  
13 ANYTHING ABOUT THE FACTS. AFTER YOU  
14 HAVE DECIDED WHAT THE FACTS ARE, FOLLOW  
15 THE INSTRUCTIONS THAT DO APPLY TO THE  
16 FACTS AS YOU FIND THEM.

17 DO NOT DO ANY RESEARCH ON YOUR OWN  
18 OR AS A GROUP. DO NOT USE A DICTIONARY,  
19 THE INTERNET, OR OTHER REFERENCE MATERIALS.  
20 DO NOT INVESTIGATE THE FACTS OR LAW. DO  
21 NOT CONDUCT ANY EXPERIMENTS, OR VISIT THE  
22 SCENE OF ANY EVENT INVOLVED IN THIS CASE.  
23 IF YOU HAPPEN TO PASS BY THE SCENE, DO  
24 NOT STOP OR INVESTIGATE.

25 YOU HAVE BEEN GIVEN NOTEBOOKS AND  
26 MAY HAVE TAKEN NOTES DURING THE TRIAL.  
27 YOU MAY USE YOUR NOTES DURING  
28 DELIBERATIONS. THE NOTES ARE FOR

1 YOUR OWN INDIVIDUAL USE TO HELP YOU  
2 REMEMBER WHAT HAPPENED DURING THE  
3 TRIAL. PLEASE KEEP IN MIND THAT  
4 YOUR NOTES MAY BE INACCURATE OR  
5 INCOMPLETE. IF THERE IS A  
6 DISAGREEMENT ABOUT THE TESTIMONY  
7 AND STIPULATIONS AT TRIAL, YOU MAY  
8 ASK THAT THE COURT REPORTER'S  
9 RECORD BE READ TO YOU. IT IS THE  
10 RECORD THAT MUST GUIDE YOUR  
11 DELIBERATIONS, NOT YOUR NOTES.

12 PLEASE DO NOT REMOVE YOUR  
13 NOTES FROM THE JURY ROOM.

14 AT THE END OF THE TRIAL,  
15 YOUR NOTES WILL BE COLLECTED AND  
16 DESTROYED.

17 COUNTS 5 AND 9, CHARGING THE  
18 DEFENDANT WITH ROBBERY OF WALTER  
19 GONZALEZ AND FABIAN GONZALEZ, NO  
20 LONGER NEEDS TO BE DECIDED IN THIS  
21 CASE.

22 DO NOT SPECULATE ABOUT OR  
23 CONSIDER IN ANY WAY WHY YOU NO  
24 LONGER NEED TO DECIDE THESE COUNTS.

25 THE FACT THAT A CRIMINAL CHARGE  
26 HAS BEEN FILED AGAINST THE DEFENDANT IS  
27 NOT EVIDENCE THAT THE CHARGE IS TRUE.  
28 YOU MUST NOT BE BIASED AGAINST THE

1 DEFENDANT JUST BECAUSE HE HAS BEEN  
2 ARRESTED, CHARGED WITH A CRIME, OR  
3 BROUGHT TO TRIAL.

4 A DEFENDANT IN A CRIMINAL CASE  
5 IS PRESUMED TO BE INNOCENT. THIS  
6 PRESUMPTION REQUIRES THAT THE PEOPLE  
7 PROVE A DEFENDANT GUILTY BEYOND A  
8 REASONABLE DOUBT. WHENEVER I TELL YOU  
9 THE PEOPLE MUST PROVE SOMETHING, I MEAN  
10 THEY MUST PROVE IT BEYOND A REASONABLE  
11 DOUBT.

12 PROOF BEYOND A REASONABLE DOUBT  
13 IS PROOF THAT LEAVES YOU WITH AN ABIDING  
14 CONVICTION THAT THE CHARGE IS TRUE.  
15 THE EVIDENCE NEED NOT ELIMINATE ALL  
16 POSSIBLE DOUBT BECAUSE EVERYTHING IN  
17 LIFE IS OPEN TO SOME POSSIBLE OR  
18 IMAGINARY DOUBT.

19 IN DECIDING WHETHER THE PEOPLE  
20 HAVE PROVED THEIR CASE BEYOND A  
21 REASONABLE DOUBT, YOU MUST IMPARTIALLY  
22 COMPARE AND CONSIDER ALL THE EVIDENCE  
23 THAT WAS RECEIVED THROUGHOUT THE ENTIRE  
24 TRIAL. UNLESS THE EVIDENCE PROVES THE  
25 DEFENDANT GUILTY BEYOND A REASONABLE  
26 DOUBT, HE IS ENTITLED TO AN ACQUITTAL  
27 AND YOU MUST FIND HIM NOT GUILTY.

28 YOU MUST DECIDE WHAT THE FACTS



1 ARE IN THIS CASE. YOU MUST USE ONLY  
2 THE EVIDENCE THAT WAS PRESENTED IN  
3 THIS COURTROOM. "EVIDENCE" IS THE  
4 SWORN TESTIMONY OF WITNESSES, THE  
5 EXHIBITS ADMITTED INTO EVIDENCE, AND  
6 ANYTHING ELSE I TOLD YOU TO CONSIDER  
7 AS EVIDENCE.

8 NOTHING THAT THE ATTORNEYS SAY IS  
9 EVIDENCE. IN THEIR OPENING STATEMENTS  
10 AND CLOSING ARGUMENTS, THE ATTORNEYS  
11 DISCUSS THE CASE, BUT THEIR REMARKS ARE  
12 NOT EVIDENCE. THEIR QUESTIONS ARE NOT  
13 EVIDENCE. ONLY THE WITNESSES' ANSWERS  
14 ARE EVIDENCE. THE ATTORNEYS' QUESTIONS  
15 ARE SIGNIFICANT ONLY IF THEY HELPED YOU  
16 TO UNDERSTAND THE WITNESSES' ANSWERS.  
17 DO NOT ASSUME THAT SOMETHING IS TRUE  
18 JUST BECAUSE ONE OF THE ATTORNEYS ASKED  
19 A QUESTION THAT SUGGESTED IT WAS TRUE.

20 DURING THE TRIAL, THE ATTORNEYS  
21 MAY HAVE OBJECTED TO QUESTIONS OR MOVED  
22 TO STRIKE ANSWERS GIVEN BY THE WITNESSES.  
23 I RULED ON THE OBJECTIONS ACCORDING TO  
24 THE LAW. IF I SUSTAINED AN OBJECTION,  
25 YOU MUST IGNORE THE QUESTION. IF THE  
26 WITNESS WAS NOT PERMITTED TO ANSWER, DO  
27 NOT GUESS WHAT THE ANSWER MIGHT HAVE  
28 BEEN OR WHY I RULED AS I DID. IF I

1 ORDERED TESTIMONY STRICKEN FROM THE  
2 RECORD, YOU MUST DISREGARD IT AND MUST  
3 NOT CONSIDER THAT TESTIMONY FOR ANY  
4 PURPOSE.

5 YOU MUST DISREGARD ANYTHING YOU  
6 SAW OR HEARD WHEN THE COURT WAS NOT IN  
7 SESSION, EVEN IF IT WAS DONE OR SAID BY  
8 ONE OF THE PARTIES OR WITNESSES.

9 DURING THE TRIAL, YOU WERE TOLD  
10 THAT THE PEOPLE AND THE DEFENSE AGREED,  
11 OR STIPULATED, TO CERTAIN FACTS. THIS  
12 MEANS THAT THEY BOTH ACCEPT THOSE FACTS  
13 AS TRUE. BECAUSE THERE IS NO DISPUTE  
14 ABOUT THOSE FACTS, YOU MUST ALSO ACCEPT  
15 THEM AS TRUE.

16 THE COURT REPORTER HAS MADE A  
17 RECORD OF EVERYTHING THAT WAS SAID  
18 DURING THE TRIAL. IF YOU DECIDE THAT  
19 IT IS NECESSARY, YOU MAY ASK THAT THE  
20 COURT REPORTER'S NOTES BE READ TO YOU.  
21 YOU MUST ACCEPT THE COURT REPORTER'S  
22 NOTES AS ACCURATE.

23 FACTS MAY BE PROVED BY DIRECT  
24 OR CIRCUMSTANTIAL EVIDENCE OR BY A  
25 COMBINATION OF BOTH. DIRECT EVIDENCE  
26 CAN PROVE A FACT BY ITSELF. FOR  
27 EXAMPLE, IF A WITNESS TESTIFIES HE  
28 SAW IT RAINING OUTSIDE BEFORE HE CAME

1 INTO THE COURTHOUSE, THAT TESTIMONY  
2 IS DIRECT EVIDENCE THAT IT WAS  
3 RAINING. CIRCUMSTANTIAL EVIDENCE  
4 ALSO MAY BE CALLED INDIRECT EVIDENCE.  
5 CIRCUMSTANTIAL EVIDENCE DOES NOT  
6 DIRECTLY PROVE THE FACT TO BE DECIDED,  
7 BUT IS EVIDENCE OF ANOTHER FACT OR  
8 GROUP OF FACTS FROM WHICH YOU MAY  
9 LOGICALLY AND REASONABLY CONCLUDE  
10 THE TRUTH OF THE FACT IN QUESTION.  
11 FOR EXAMPLE, IF A WITNESS TESTIFIES  
12 THAT HE SAW SOMEONE COME INSIDE  
13 WEARING A RAINCOAT COVERED WITH  
14 DROPS OF WATER, THAT TESTIMONY IS  
15 CIRCUMSTANTIAL EVIDENCE BECAUSE IT  
16 MAY SUPPORT A CONCLUSION THAT IT WAS  
17 RAINING OUTSIDE.

18 BOTH DIRECT AND CIRCUMSTANTIAL  
19 EVIDENCE ARE ACCEPTABLE TYPES OF  
20 EVIDENCE TO PROVE OR DISPROVE THE  
21 ELEMENTS OF A CHARGE, INCLUDING  
22 INTENT AND MENTAL STATE AND ACTS  
23 NECESSARY TO A CONVICTION, AND  
24 NEITHER IS NECESSARILY MORE  
25 RELIABLE THAN THE OTHER. NEITHER  
26 IS ENTITLED TO ANY GREATER WEIGHT  
27 THAN THE OTHER. YOU MUST DECIDE  
28 WHETHER A FACT IN ISSUE HAS BEEN

1 PROVED BASED ON ALL THE EVIDENCE.

2 BEFORE YOU MAY RELY ON  
3 CIRCUMSTANTIAL EVIDENCE TO  
4 CONCLUDE THAT A FACT NECESSARY TO  
5 FIND THE DEFENDANT GUILTY HAS BEEN  
6 PROVED, YOU MUST BE CONVINCED THAT  
7 THE PEOPLE HAVE PROVED EACH FACT  
8 ESSENTIAL TO THAT CONCLUSION  
9 BEYOND A REASONABLE DOUBT.

10 ALSO, BEFORE YOU MAY RELY ON  
11 CIRCUMSTANTIAL EVIDENCE TO FIND  
12 THE DEFENDANT GUILTY, YOU MUST BE  
13 CONVINCED THAT THE ONLY REASONABLE  
14 CONCLUSION SUPPORTED BY THE  
15 CIRCUMSTANTIAL EVIDENCE IS THAT  
16 THE DEFENDANT IS GUILTY. IF YOU  
17 CAN DRAW TWO OR MORE REASONABLE  
18 CONCLUSIONS FROM THE CIRCUMSTANTIAL  
19 EVIDENCE, AND ONE OF THOSE  
20 REASONABLE CONCLUSIONS POINTS TO  
21 INNOCENCE AND ANOTHER TO GUILT,  
22 YOU MUST ACCEPT THE ONE THAT POINTS  
23 TO INNOCENCE. HOWEVER, WHEN  
24 CONSIDERING THE CIRCUMSTANTIAL  
25 EVIDENCE, YOU MUST ACCEPT ONLY  
26 REASONABLE CONCLUSIONS AND REJECT  
27 ANY THAT ARE UNREASONABLE.

28 YOU ALONE MUST JUDGE THE

1 CREDIBILITY OR BELIEVABILITY OF THE  
2 WITNESSES. IN DECIDING WHETHER  
3 TESTIMONY IS TRUE AND ACCURATE, USE  
4 YOUR COMMON SENSE AND EXPERIENCE.  
5 YOU MUST JUDGE THE TESTIMONY OF  
6 EACH WITNESS BY THE SAME STANDARD,  
7 SETTING ASIDE ANY BIAS OR PREJUDICE  
8 YOU MAY HAVE. YOU MAY BELIEVE  
9 ALL, PART, OR NONE OF ANY WITNESS'  
10 TESTIMONY. CONSIDER THE TESTIMONY OF  
11 EACH WITNESS AND DECIDE HOW MUCH OF  
12 IT YOU BELIEVE.

13 IN EVALUATING A WITNESS'  
14 TESTIMONY, YOU MAY CONSIDER ANYTHING  
15 THAT REASONABLY TENDS TO PROVE OR  
16 DISPROVE THE TRUTH OR ACCURACY OF  
17 THAT TESTIMONY. AMONG THE FACTORS  
18 THAT YOU MAY CONSIDER ARE:

19 HOW WELL COULD THE WITNESS SEE,  
20 HEAR, OR OTHERWISE PERCEIVE THE THINGS  
21 ABOUT WHICH THE WITNESS TESTIFIED?

22 HOW WELL WAS THE WITNESS ABLE TO  
23 REMEMBER AND DESCRIBE WHAT HAPPENED?

24 WHAT WAS THE WITNESS' BEHAVIOR  
25 WHILE TESTIFYING?

26 DID THE WITNESS UNDERSTAND THE  
27 QUESTIONS AND ANSWER THEM DIRECTLY?

28 WAS THE WITNESS' TESTIMONY

1 INFLUENCED BY A FACTOR SUCH AS BIAS  
2 OR PREJUDICE, A PERSONAL RELATIONSHIP  
3 WITH SOMEONE INVOLVED IN THE CASE, OR  
4 A PERSONAL INTEREST IN HOW THE CASE  
5 IS DECIDED?

6 WHAT WAS THE WITNESS' ATTITUDE  
7 ABOUT THE CASE OR ABOUT TESTIFYING?

8 DID THE WITNESS MAKE A STATEMENT  
9 IN THE PAST THAT IS CONSISTENT OR  
10 INCONSISTENT WITH HIS OR HER  
11 TESTIMONY?

12 HOW REASONABLE IS THE TESTIMONY  
13 WHEN YOU CONSIDER ALL THE OTHER  
14 EVIDENCE IN THE CASE?

15 DO NOT AUTOMATICALLY REJECT  
16 TESTIMONY JUST BECAUSE OF  
17 INCONSISTENCIES OR CONFLICTS.  
18 CONSIDER WHETHER THE DIFFERENCES  
19 ARE IMPORTANT OR NOT. PEOPLE  
20 SOMETIMES HONESTLY FORGET THINGS  
21 OR MAKE MISTAKES ABOUT WHAT THEY  
22 REMEMBER. ALSO, TWO PEOPLE MAY  
23 WITNESS THE SAME EVENT YET SEE OR  
24 HEAR IT DIFFERENTLY.

25 IF YOU DO NOT BELIEVE A  
26 WITNESS' TESTIMONY THAT HE OR SHE  
27 NO LONGER REMEMBERS SOMETHING, THAT  
28 TESTIMONY IS INCONSISTENT WITH THE

1 WITNESS' EARLIER STATEMENT ON THAT  
2 SUBJECT.

3 IF YOU DECIDE THAT A WITNESS  
4 DELIBERATELY LIED ABOUT SOMETHING  
5 SIGNIFICANT IN THE CASE, YOU SHOULD  
6 CONSIDER NOT BELIEVING ANYTHING  
7 THAT WITNESS SAYS. OR, IF YOU THINK  
8 THE WITNESS LIED ABOUT SOME THINGS,  
9 BUT TOLD THE TRUTH ABOUT OTHERS, YOU  
10 MAY SIMPLY ACCEPT THE PART THAT YOU  
11 THINK IS TRUE AND IGNORE THE REST.

12 THE CRIMES CHARGED IN THIS CASE  
13 REQUIRE PROOF OF THE UNION, OR JOINT  
14 OPERATION, OF ACT AND WRONGFUL INTENT.

15 FOR YOU TO FIND A PERSON GUILTY  
16 OF THE CRIMES OF ROBBERY AS ALLEGED  
17 IN COUNTS 1, 2, 3, 4, 6, AND 7, AND  
18 KIDNAPPING TO COMMIT ROBBERY AS A  
19 LESSER TO COUNT 8, AS WELL AS A  
20 LESSER INCLUDED OFFENSE OF THAT,  
21 THAT BEING SIMPLE KIDNAPPING, THAT  
22 PERSON MUST NOT ONLY INTENTIONALLY  
23 COMMIT THE PROHIBITED ACT BUT MUST  
24 DO SO WITH A SPECIFIC INTENT. THE  
25 ACT AND THE SPECIFIC INTENT REQUIRED  
26 ARE EXPLAINED IN THE INSTRUCTION FOR  
27 THAT CRIME.

28 THE CRIMES REQUIRE PROOF OF THE

1 UNION OR --

2 I AM SORRY. DID I JUST READ THAT? I'M  
3 SORRY. STRIKE THE OTHER INSTRUCTION I JUST READ.

4 THE CRIMES REQUIRE PROOF OF THE  
5 UNION, OR JOINT OPERATION, OF ACT AND  
6 WRONGFUL INTENT.

7 THE FOLLOWING CRIME REQUIRES  
8 GENERAL CRIMINAL INTENT: KIDNAPPING.  
9 FOR YOU TO FIND A PERSON GUILTY OF  
10 THIS CRIME, THE PERSON MUST NOT ONLY  
11 COMMIT THE PROHIBITED ACT BUT MUST DO  
12 SO WITH A WRONGFUL INTENT. A PERSON  
13 ACTS WITH A WRONGFUL INTENT WHEN HE  
14 OR SHE INTENTIONALLY DOES A PROHIBITED  
15 ACT. HOWEVER, IT IS NOT REQUIRED  
16 THAT HE OR SHE INTEND TO BREAK THE  
17 LAW. THE ACT REQUIRED IS EXPLAINED  
18 IN THE INSTRUCTION FOR THAT CRIME.

19 THE FOLLOWING CRIMES REQUIRE A  
20 SPECIFIC INTENT OR MENTAL STATE:  
21 ROBBERY AND KIDNAPPING FOR ROBBERY.  
22 FOR YOU TO FIND A PERSON GUILTY OF  
23 THESE CRIMES, THAT PERSON MUST NOT  
24 ONLY INTENTIONALLY COMMIT THE  
25 PROHIBITED ACT, BUT MUST DO SO WITH A  
26 SPECIFIC INTENT. THE ACT AND THE  
27 SPECIFIC INTENT REQUIRED ARE EXPLAINED  
28 IN THE INSTRUCTION FOR THAT CRIME.



1 NEITHER SIDE IS REQUIRED TO CALL  
2 ALL WITNESSES WHO MAY HAVE INFORMATION  
3 ABOUT THE CASE OR TO PRODUCE ALL  
4 PHYSICAL EVIDENCE THAT MIGHT BE RELEVANT.

5 THE TESTIMONY OF ONLY ONE WITNESS  
6 CAN PROVE ANY FACT. BEFORE YOU CONCLUDE  
7 THAT THE TESTIMONY OF ONE WITNESS PROVES  
8 A FACT, YOU SHOULD CAREFULLY REVIEW ALL  
9 OF THE EVIDENCE.

10 IF YOU DETERMINE THERE IS A CONFLICT  
11 IN THE EVIDENCE, YOU MUST DECIDE WHAT  
12 EVIDENCE, IF ANY, TO BELIEVE. DO NOT  
13 SIMPLY COUNT THE NUMBER OF WITNESSES WHO  
14 AGREE OR DISAGREE ON A POINT AND ACCEPT  
15 THE TESTIMONY OF THE GREATER NUMBER OF  
16 WITNESSES. ON THE OTHER HAND, DO NOT  
17 DISREGARD THE TESTIMONY OF ANY WITNESS  
18 WITHOUT A REASON OR BECAUSE OF PREJUDICE  
19 OR A DESIRE TO FAVOR ONE SIDE OR THE  
20 OTHER. WHAT IS IMPORTANT IS WHETHER  
21 THE TESTIMONY OR ANY OTHER EVIDENCE  
22 CONVINCES YOU, NOT JUST THE NUMBER OF  
23 WITNESSES WHO TESTIFY ABOUT A CERTAIN  
24 POINT.

25 DURING THE TRIAL, CERTAIN EVIDENCE  
26 WAS ADMITTED FOR A LIMITED PURPOSE. YOU  
27 MAY CONSIDER THAT EVIDENCE ONLY FOR THAT  
28 PURPOSE AND FOR NO OTHER.

1                   YOU HAVE HEARD EYEWITNESS TESTIMONY  
2                   IDENTIFYING THE DEFENDANT. AS WITH ANY  
3                   OTHER WITNESS, YOU MUST DECIDE WHETHER  
4                   AN EYEWITNESS GAVE TRUTHFUL AND  
5                   ACCURATE TESTIMONY.

6                   IN EVALUATING IDENTIFICATION  
7                   TESTIMONY, CONSIDER THE FOLLOWING  
8                   QUESTIONS:

9                   DID THE WITNESS KNOW OR HAVE  
10                  CONTACT WITH THE DEFENDANT BEFORE  
11                  THE EVENT?

12                  HOW WELL COULD THE WITNESS SEE  
13                  THE PERPETRATOR?

14                  WHAT WERE THE CIRCUMSTANCES  
15                  AFFECTING THE WITNESS' ABILITY TO  
16                  OBSERVE, SUCH AS LIGHTING, WEATHER  
17                  CONDITIONS, OBSTRUCTIONS, DISTANCE,  
18                  AND DURATION OF OBSERVATION?

19                  HOW CLOSELY WAS THE WITNESS  
20                  PAYING ATTENTION?

21                  WAS THE WITNESS UNDER STRESS  
22                  WHEN HE OR SHE MADE THE OBSERVATION?

23                  DID THE WITNESS GIVE A DESCRIPTION  
24                  AND HOW DOES THAT DESCRIPTION COMPARE  
25                  TO THE DEFENDANT?

26                  HOW MUCH TIME PASSED BETWEEN THE  
27                  EVENT AND THE TIME WHEN THE WITNESS  
28                  IDENTIFIED THE DEFENDANT?

1 WAS THE WITNESS ASKED TO PICK THE  
2 PERPETRATOR OUT OF A GROUP?

3 DID THE WITNESS EVER FAIL TO  
4 IDENTIFY THE DEFENDANT?

5 DID THE WITNESS EVER CHANGE HIS  
6 OR HER MIND ABOUT THE IDENTIFICATION?

7 HOW CERTAIN WAS THE WITNESS WHEN  
8 HE OR SHE MADE AN IDENTIFICATION?

9 ARE THE WITNESS AND THE DEFENDANT  
10 OF DIFFERENT RACES?

11 WAS THE WITNESS ABLE TO IDENTIFY  
12 OTHER PARTICIPANTS IN THE CRIME?

13 WAS THE WITNESS ABLE TO IDENTIFY  
14 THE DEFENDANT IN A PHOTOGRAPHIC OR  
15 PHYSICAL LINEUP?

16 WERE THERE ANY OTHER CIRCUMSTANCES  
17 AFFECTING THE WITNESS' ABILITY TO MAKE  
18 AN ACCURATE IDENTIFICATION?

19 THE PEOPLE HAVE THE BURDEN OF  
20 PROVING BEYOND A REASONABLE DOUBT THAT  
21 IT WAS THE DEFENDANT WHO COMMITTED THE  
22 CRIME. IF THE PEOPLE HAVE NOT MET  
23 THIS BURDEN, YOU MUST FIND THAT THE  
24 DEFENDANT IS NOT GUILTY.

25 YOU HAVE HEARD EVIDENCE OF  
26 STATEMENTS THAT A WITNESS MADE BEFORE  
27 THE TRIAL. IF YOU DECIDE THAT THE  
28 WITNESS MADE THOSE STATEMENTS, YOU

1 MAY USE THOSE STATEMENTS IN TWO WAYS:

2 1. TO EVALUATE WHETHER THE  
3 WITNESS' TESTIMONY IN COURT IS  
4 BELIEVABLE; AND

5 2. AS EVIDENCE THAT THE  
6 INFORMATION IN THOSE EARLIER  
7 STATEMENTS IS TRUE.

8 WITNESSES WERE ALLOWED TO TESTIFY  
9 AS EXPERTS AND TO GIVE OPINIONS. YOU  
10 MUST CONSIDER THE OPINIONS, BUT YOU ARE  
11 NOT REQUIRED TO ACCEPT THEM AS TRUE OR  
12 CORRECT. THE MEANING AND IMPORTANCE OF  
13 ANY OPINION ARE FOR YOU TO DECIDE.

14 IN EVALUATING THE BELIEVABILITY OF AN  
15 EXPERT WITNESS, FOLLOW THE INSTRUCTIONS  
16 ABOUT THE BELIEVABILITY OF WITNESSES  
17 GENERALLY. IN ADDITION, CONSIDER THE  
18 EXPERT'S KNOWLEDGE, SKILL, EXPERIENCE,  
19 TRAINING, AND EDUCATION, THE REASONS  
20 THE EXPERT GAVE FOR ANY OPINION, AND  
21 THE FACTS OR INFORMATION ON WHICH THE  
22 EXPERT RELIED IN REACHING THAT OPINION.  
23 YOU MUST DECIDE WHETHER INFORMATION  
24 ON WHICH THE EXPERT RELIED WAS TRUE  
25 AND ACCURATE. YOU MAY DISREGARD ANY  
26 OPINION THAT YOU FIND UNBELIEVABLE,  
27 UNREASONABLE, OR UNSUPPORTED BY THE  
28 EVIDENCE.

1           AN EXPERT WITNESS MAY BE ASKED  
2           A HYPOTHETICAL QUESTION. A HYPOTHETICAL  
3           QUESTION ASKS THE WITNESS TO ASSUME  
4           CERTAIN FACTS ARE TRUE AND TO GIVE AN  
5           OPINION BASED ON THE ASSUMED FACTS.  
6           IT IS UP TO YOU TO DECIDE WHETHER AN  
7           ASSUMED FACT HAS BEEN PROVED. IF  
8           YOU CONCLUDE THAT AN ASSUMED FACT IS  
9           NOT TRUE, CONSIDER THE EFFECT OF THE  
10          EXPERT'S RELIANCE ON THAT FACT IN  
11          EVALUATING THE EXPERT'S OPINION.

12           IF THE EXPERT WITNESSES DISAGREED  
13          WITH ONE ANOTHER, YOU SHOULD WEIGH EACH  
14          OPINION AGAINST THE OTHERS. YOU SHOULD  
15          EXAMINE THE REASONS GIVEN FOR EACH  
16          OPINION AND THE FACTS OR OTHER MATTERS  
17          ON WHICH EACH WITNESS RELIED. YOU MAY  
18          ALSO COMPARE THE EXPERTS' QUALIFICATIONS.

19           WITNESSES, WHO WERE NOT TESTIFYING  
20          AS EXPERTS, GAVE THEIR OPINIONS DURING  
21          THE TRIAL. YOU MAY, BUT ARE NOT  
22          REQUIRED, TO ACCEPT THOSE OPINIONS AS  
23          TRUE OR CORRECT. YOU MAY GIVE THE  
24          OPINIONS WHATEVER WEIGHT YOU THINK  
25          APPROPRIATE. CONSIDER THE EXTENT OF  
26          THE WITNESS' OPPORTUNITY TO PERCEIVE  
27          THE MATTERS ON WHICH HIS OR HER  
28          OPINION IS BASED, THE REASONS THE

1 WITNESS GAVE FOR ANY OPINION, AND  
2 THE FACTS OR INFORMATION ON WHICH  
3 THE WITNESS RELIED IN FORMING THAT  
4 OPINION. YOU MUST DECIDE WHETHER  
5 INFORMATION ON WHICH THE WITNESS  
6 RELIED IS TRUE AND ACCURATE. YOU  
7 MAY DISREGARD ALL OR ANY PART OF  
8 AN OPINION THAT YOU FIND  
9 UNBELIEVABLE, UNREASONABLE, OR  
10 UNSUPPORTED BY THE EVIDENCE.

11 A DEFENDANT HAS AN ABSOLUTE  
12 CONSTITUTIONAL RIGHT NOT TO TESTIFY.  
13 HE OR SHE MAY RELY ON THE STATE OF  
14 THE EVIDENCE AND ARGUE THAT THE PEOPLE  
15 HAVE FAILED TO PROVE THE CHARGES BEYOND  
16 A REASONABLE DOUBT. DO NOT CONSIDER,  
17 FOR ANY REASON AT ALL, THE FACT THAT  
18 THE DEFENDANT DID NOT TESTIFY. DO NOT  
19 DISCUSS THAT FACT DURING YOUR  
20 DELIBERATIONS OR LET IT INFLUENCE YOUR  
21 DECISION IN ANY WAY.

22 THE EVIDENCE SHOWS THAT OTHER  
23 PERSONS MAY HAVE BEEN INVOLVED IN THE  
24 COMMISSION OF THE CRIMES CHARGED AGAINST  
25 THE DEFENDANT. THERE MAY BE MANY  
26 REASONS WHY SOMEONE WHO APPEARS TO  
27 HAVE BEEN INVOLVED MIGHT NOT BE A  
28 CODEFENDANT IN THIS PARTICULAR TRIAL.

1                   YOU MUST NOT SPECULATE ABOUT WHETHER  
2                   THOSE OTHER PERSONS HAVE BEEN OR WILL  
3                   BE PROSECUTED. YOUR DUTY IS TO DECIDE  
4                   WHETHER THE DEFENDANT ON TRIAL HERE  
5                   COMMITTED THE CRIMES CHARGED.

6                   SOMEONE AIDS AND ABETS A CRIME IF HE  
7                   OR SHE KNOWS OF THE PERPETRATOR'S UNLAWFUL  
8                   PURPOSE AND HE OR SHE SPECIFICALLY INTENDS  
9                   TO, AND DOES IN FACT, AID, FACILITATE,  
10                  PROMOTE, ENCOURAGE, OR INSTIGATE THE  
11                  PERPETRATOR'S COMMISSION OF THAT CRIME.

12                  THE DEFENDANT IS CHARGED IN COUNTS  
13                  1, 2, 3, 4, 6, AND 7 WITH ROBBERY, IN  
14                  VIOLATION OF PENAL CODE SECTION 211.

15                  TO PROVE THAT THE DEFENDANT IS GUILTY  
16                  OF THIS CRIME, THE PEOPLE MUST PROVE THAT:

17                  1. THE DEFENDANT TOOK PROPERTY THAT  
18                  WAS NOT HIS OWN;

19                  2. THE PROPERTY WAS TAKEN FROM  
20                  ANOTHER PERSON'S POSSESSION AND IMMEDIATE  
21                  PRESENCE;

22                  3. THE PROPERTY WAS TAKEN AGAINST  
23                  THAT PERSON'S WILL;

24                  4. THE DEFENDANT USED FORCE OR FEAR  
25                  TO TAKE THE PROPERTY OR TO PREVENT THE  
26                  PERSON FROM RESISTING; AND

27                  5. WHEN THE DEFENDANT USED FORCE OR  
28                  FEAR TO TAKE THE PROPERTY, HE INTENDED TO

1 DEPRIVE THE OWNER OF IT PERMANENTLY.

2 THE DEFENDANT'S INTENT TO TAKE THE  
3 PROPERTY MUST HAVE BEEN FORMED BEFORE OR  
4 DURING THE TIME HE USED FORCE OR FEAR.  
5 IF THE DEFENDANT DID NOT FORM THIS  
6 REQUIRED INTENT UNTIL AFTER USING THE  
7 FORCE OR FEAR, THEN HE DID NOT COMMIT  
8 ROBBERY.

9 THE PROPERTY TAKEN CAN BE OF ANY  
10 VALUE, HOWEVER SLIGHT. TWO OR MORE  
11 PEOPLE MAY POSSESS SOMETHING AT THE  
12 SAME TIME.

13 A PERSON DOES NOT HAVE TO ACTUALLY  
14 HOLD OR TOUCH SOMETHING TO POSSESS IT.  
15 IT IS ENOUGH IF THE PERSON HAS CONTROL  
16 OVER IT OR THE RIGHT TO CONTROL IT EITHER  
17 PERSONALLY OR THROUGH ANOTHER PERSON.

18 FEAR, AS USED HERE, MEANS FEAR  
19 OF INJURY TO THE PERSON HIMSELF OR  
20 HERSELF, OR INJURY TO THE PERSON'S  
21 FAMILY OR PROPERTY.

22 PROPERTY IS WITHIN A PERSON'S  
23 IMMEDIATE PRESENCE IF IT IS SUFFICIENTLY  
24 WITHIN HIS OR HER PHYSICAL CONTROL THAT  
25 HE OR SHE COULD KEEP POSSESSION OF IT  
26 IF NOT PREVENTED BY FORCE OR FEAR.

27 THE DEFENDANT IS CHARGED IN  
28 COUNTS 1, 2, 3, 4, 6, AND 7 WITH ROBBERY



1 BY ACTING IN CONCERT WITH DION HAWKINS  
2 AND AT LEAST ONE OTHER MAN, IN VIOLATION  
3 OF PENAL CODE SECTION 213 SUBSECTION (A)  
4 SUBSECTION (1) SUBSECTION (A).

5 TO PROVE THAT A DEFENDANT IS GUILTY  
6 OF THIS CRIME OR THIS ALLEGATION, I  
7 SHOULD SAY, THE PEOPLE MUST PROVE THAT:

8 1. THE DEFENDANT PERSONALLY  
9 COMMITTED OR AIDED AND ABETTED A ROBBERY;

10 2. WHEN HE DID SO, THE DEFENDANT  
11 VOLUNTARILY ACTED WITH TWO OR MORE OTHER  
12 PEOPLE WHO ALSO COMMITTED OR AIDED AND  
13 ABETTED THE COMMISSION OF THE ROBBERY;  
14 AND

15 3. THE ROBBERY WAS COMMITTED IN  
16 AN INHABITED DWELLING.

17 A DWELLING IS INHABITED IF SOMEONE  
18 LIVES THERE AND EITHER IS PRESENT OR  
19 HAS LEFT BUT INTENDS TO RETURN.

20 TO DECIDE WHETHER THE DEFENDANT  
21 OR DION HAWKINS OR THE OTHER MEN  
22 COMMITTED ROBBERY, PLEASE REFER TO  
23 THE SEPARATE INSTRUCTIONS THAT I  
24 HAVE GIVEN YOU ON THAT CRIME. TO  
25 DECIDE WHETHER THE DEFENDANT OR  
26 DION HAWKINS AND THE OTHER MEN  
27 AIDED AND ABETTED ROBBERY, PLEASE  
28 REFER TO THE SEPARATE INSTRUCTIONS

1            THAT I HAVE GIVEN YOU ON AIDING  
2            AND ABETTING. YOU MUST APPLY  
3            THOSE INSTRUCTIONS WHEN YOU DECIDE  
4            WHETHER THE PEOPLE HAVE PROVED  
5            ROBBERY IN CONCERT.

6            TO PROVE THE ALLEGATION OF  
7            ROBBERY IN CONCERT, THE PEOPLE DO  
8            NOT HAVE TO PROVE THAT A PREARRANGED  
9            PLAN OR SCHEME TO COMMIT ROBBERY --  
10          I AM SORRY. THE PEOPLE DO NOT HAVE  
11          TO PROVE A PREARRANGED PLAN OR  
12          SCHEME TO COMMIT ROBBERY.

13          ROBBERY IS DIVIDED INTO TWO DEGREES.  
14          IF YOU CONCLUDE THAT THE DEFENDANT  
15          COMMITTED A ROBBERY, YOU MUST THEN  
16          DECIDE THE DEGREE.

17          TO PROVE THAT THE DEFENDANT IS  
18          GUILTY OF FIRST DEGREE ROBBERY, THE  
19          PEOPLE MUST PROVE THAT:

20          THE ROBBERY WAS COMMITTED IN AN  
21          INHABITED DWELLING. A DWELLING IS  
22          INHABITED IF SOMEONE LIVES THERE AND  
23          EITHER IS PRESENT OR HAS LEFT BUT  
24          INTENDS TO RETURN.

25          ALL OTHER ROBBERIES ARE OF THE  
26          SECOND DEGREE.

27          THE PEOPLE HAVE THE BURDEN OF  
28          PROVING BEYOND A REASONABLE DOUBT THAT

1 THE ROBBERY WAS FIRST DEGREE RATHER  
2 THAN A LESSER CRIME. IF THE PEOPLE  
3 HAVE NOT MET THIS BURDEN, YOU MUST  
4 FIND THE DEFENDANT NOT GUILTY OF  
5 FIRST DEGREE ROBBERY.

6 THE DEFENDANT IS CHARGED IN  
7 COUNT 8 WITH KIDNAPPING FOR THE  
8 PURPOSE OF ROBBERY, IN VIOLATION OF  
9 PENAL CODE SECTION 209 SUBSECTION (B).

10 TO PROVE THAT THE DEFENDANT IS  
11 GUILTY OF THIS CRIME, THE PEOPLE MUST  
12 PROVE THAT:

13 1. THE DEFENDANT INTENDED TO  
14 COMMIT ROBBERY;

15 2. ACTING WITH THAT INTENT,  
16 THE DEFENDANT TOOK, HELD, OR DETAINED  
17 ANOTHER PERSON BY USING FORCE OR BY  
18 INSTILLING A REASONABLE FEAR;

19 3. USING THAT FORCE OR FEAR,  
20 THE DEFENDANT MOVED THE OTHER PERSON  
21 OR MADE THE OTHER PERSON MOVE A  
22 SUBSTANTIAL DISTANCE;

23 4. THE OTHER PERSON WAS MOVED  
24 OR MADE TO MOVE A DISTANCE BEYOND THAT  
25 MERELY INCIDENTAL TO THE COMMISSION OF  
26 A ROBBERY;

27 5. WHEN THAT MOVEMENT BEGAN, THE  
28 DEFENDANT ALREADY INTENDED TO COMMIT

1 ROBBERY; AND

2 6. THE OTHER PERSON DID NOT  
3 CONSENT TO THE MOVEMENT.

4 AS USED HERE, SUBSTANTIAL DISTANCE  
5 MEANS MORE THAN A SLIGHT OR TRIVIAL  
6 DISTANCE. THE MOVEMENT MUST HAVE  
7 SUBSTANTIALLY INCREASED THE RISK OF  
8 PHYSICAL OR PSYCHOLOGICAL HARM TO THE  
9 PERSON BEYOND THAT NECESSARILY PRESENT  
10 IN THE ROBBERY. IN DECIDING WHETHER  
11 THE MOVEMENT WAS SUFFICIENT, CONSIDER  
12 ALL THE CIRCUMSTANCES RELATING TO THE  
13 MOVEMENT.

14 TO BE GUILTY OF KIDNAPPING FOR THE  
15 PURPOSE OF ROBBERY, THE DEFENDANT DOES  
16 NOT ACTUALLY HAVE TO COMMIT THE ROBBERY.

17 TO DECIDE WHETHER THE DEFENDANT  
18 INTENDED TO COMMIT ROBBERY, PLEASE REFER  
19 TO THE SEPARATE INSTRUCTIONS THAT I WILL  
20 GIVE YOU OR HAVE GIVEN YOU ON THAT CRIME.

21 IF ALL OF YOU FIND THAT THE  
22 DEFENDANT IS NOT GUILTY OF THE GREATER  
23 CHARGED CRIME OF KIDNAP FOR ROBBERY,  
24 YOU MAY FIND HIM GUILTY OF A LESSER  
25 CRIME IF YOU ARE CONVINCED BEYOND A  
26 REASONABLE DOUBT THAT THE DEFENDANT  
27 IS GUILTY OF THAT LESSER CRIME. A  
28 DEFENDANT MAY NOT BE CONVICTED OF

1 BOTH A GREATER AND LESSER CRIME FOR  
2 THE SAME CONDUCT.

3 NOW I WILL EXPLAIN TO YOU WHICH  
4 CHARGES ARE AFFECTED BY THIS INSTRUCTION:

5 KIDNAPPING IS A LESSER CRIME OF  
6 KIDNAPPING FOR THE PURPOSE OF ROBBERY  
7 CHARGED IN COUNT 8.

8 IT IS UP TO YOU TO DECIDE THE  
9 ORDER IN WHICH YOU CONSIDER EACH CRIME  
10 AND THE RELEVANT EVIDENCE, BUT I CAN  
11 ACCEPT A VERDICT OF GUILTY OF A LESSER  
12 CRIME ONLY IF YOU HAVE FOUND THE  
13 DEFENDANT NOT GUILTY OF THE  
14 CORRESPONDING GREATER CRIME.

15 FOR THE CHARGE OF THE LESSER  
16 CRIME, YOU WILL RECEIVE A FORM  
17 INDICATING YOUR VERDICT ON BOTH  
18 THE GREATER AND THE LESSER CRIME.  
19 THE GREATER CRIME -- ACTUALLY, IT  
20 WOULD BE TWO DIFFERENT VERDICT  
21 FORMS, ONE FOR THE GREATER CRIME  
22 AND THEN ONE FOR THE LESSER CRIME.  
23 WHEN YOU HAVE REACHED A VERDICT,  
24 HAVE THE FOREPERSON COMPLETE THE  
25 FORM AND SIGN AND DATE IT. FOLLOW  
26 THESE DIRECTIONS BEFORE WRITING  
27 ANYTHING ON THE FORM.

28 IF ALL OF YOU AGREE THE PEOPLE

1 HAVE PROVED BEYOND A REASONABLE  
2 DOUBT THAT THE DEFENDANT IS GUILTY OF  
3 THE GREATER CRIME AS CHARGED, THEN SIGN  
4 THAT VERDICT FORM, DATE IT, AND THEN  
5 RETURN THE FORM. DO NOT SIGN OR DATE  
6 ANY OTHER VERDICT FORM FOR THAT LESSER  
7 CRIME.

8 IF ALL OF YOU CANNOT AGREE  
9 WHETHER THE PEOPLE HAVE PROVED BEYOND  
10 A REASONABLE DOUBT THAT THE DEFENDANT  
11 IS GUILTY OF THE GREATER CRIME AS  
12 CHARGED, INFORM ME ONLY THAT YOU  
13 CANNOT REACH AN AGREEMENT AND DO  
14 NOT WRITE ANYTHING ON THE VERDICT  
15 FORM.

16 IF ALL OF YOU AGREE THAT THE  
17 PEOPLE HAVE NOT PROVED BEYOND A  
18 REASONABLE DOUBT THAT THE DEFENDANT  
19 IS GUILTY OF THE GREATER CRIME BUT YOU  
20 ALSO AGREE THAT THE PEOPLE HAVE PROVED  
21 BEYOND A REASONABLE DOUBT THAT HE IS  
22 GUILTY OF THE LESSER CRIME, THEN  
23 FILL OUT THE FORM OF NOT GUILTY FOR  
24 THE GREATER CRIME AND FILL OUT GUILTY  
25 FOR THE VERDICT FORM ON THE LESSER  
26 CRIME.

27 IF ALL OF YOU AGREE THE PEOPLE  
28 HAVE NOT PROVED BEYOND A REASONABLE

DOUBT THAT THE DEFENDANT IS GUILTY  
OF EITHER THE GREATER OR LESSER  
CRIME, THEN FILL OUT THE NOT GUILTY  
VERDICT FORMS FOR BOTH THE GREATER  
AND THE LESSER CRIMES.

IF ALL OF YOU AGREE THE  
PEOPLE HAVE NOT PROVED BEYOND A  
REASONABLE DOUBT THAT THE DEFENDANT  
IS GUILTY OF THE GREATER CRIME, BUT  
ALL OF YOU CANNOT AGREE ON A VERDICT  
FOR THE LESSER CRIME, THEN FILL OUT  
THE NOT GUILTY VERDICT FORM FOR THE  
GREATER CRIME AND LEAVE BLANK THE  
VERDICT FORM FOR THE LESSER CRIME  
AND LET ME KNOW THAT YOU CANNOT  
REACH AN AGREEMENT FOR THE LESSER  
CRIME.

KIDNAPPING IS A LESSER INCLUDED  
OFFENSE TO KIDNAPPING FOR THE PURPOSE  
OF ROBBERY, AS ALLEGED IN COUNT 8.

TO PROVE THAT THE DEFENDANT IS  
GUILTY OF THIS CRIME, THE PEOPLE MUST  
PROVE THAT:

1. THE DEFENDANT TOOK, HELD,  
OR DETAINED ANOTHER PERSON BY USING  
FORCE OR BY INSTILLING REASONABLE FEAR;

2. USING THAT FORCE OR FEAR, THE  
DEFENDANT MOVED THE OTHER PERSON OR

1                   MADE THE OTHER PERSON MOVE A SUBSTANTIAL  
2                   DISTANCE; AND

3                   3.   THE OTHER PERSON DID NOT  
4                   CONSENT TO THE MOVEMENT.

5                   SUBSTANTIAL DISTANCE MEANS MORE  
6                   THAN A SLIGHT OR TRIVIAL DISTANCE.  
7                   IN DECIDING WHETHER THE DISTANCE WAS  
8                   SUBSTANTIAL, YOU MUST CONSIDER ALL  
9                   THE CIRCUMSTANCES RELATING TO THE  
10                  MOVEMENT.  THUS, IN ADDITION TO  
11                  CONSIDERING THE ACTUAL DISTANCE  
12                  MOVED, YOU MAY ALSO CONSIDER OTHER  
13                  FACTORS SUCH AS WHETHER THE MOVEMENT  
14                  INCREASED THE RISK OF PHYSICAL OR  
15                  PSYCHOLOGICAL HARM, INCREASED THE  
16                  DANGER OF A FORESEEABLE ESCAPE  
17                  ATTEMPT, GAVE THE ATTACKER A GREATER  
18                  OPPORTUNITY TO COMMIT ADDITIONAL  
19                  CRIMES, OR DECREASED THE LIKELIHOOD  
20                  OF DETECTION.

21                  IF YOU FIND THE DEFENDANT  
22                  GUILTY OF THE CRIMES CHARGED OR  
23                  THE LESSER CRIME, YOU MUST THEN  
24                  DECIDE WHETHER, FOR EACH CRIME, THE  
25                  PEOPLE HAVE PROVED THE ADDITIONAL  
26                  ALLEGATION THAT THE DEFENDANT  
27                  PERSONALLY USED A FIREARM DURING THE  
28                  COMMISSION OF THAT CRIME.  YOU MUST



1 DECIDE WHETHER THE PEOPLE HAVE PROVED  
2 THIS ALLEGATION FOR EACH CRIME AND  
3 RETURN A SEPARATE FINDING FOR EACH  
4 CRIME.

5 THE TERM FIREARM IS ANY DEVICE  
6 DESIGNED TO BE USED AS A WEAPON, FROM  
7 WHICH A PROJECTILE IS DISCHARGED OR  
8 EXPELLED THROUGH A BARREL BY THE  
9 FORCE OF AN EXPLOSION OR OTHER FORM  
10 OF COMBUSTION.

11 A FIREARM DOES NOT NEED TO BE IN  
12 WORKING ORDER IF IT WAS DESIGNED TO  
13 SHOOT AND APPEARS CAPABLE OF SHOOTING.

14 A FIREARM DOES NOT NEED TO BE  
15 LOADED.

16 SOMEONE PERSONALLY USES A FIREARM  
17 IF HE INTENTIONALLY DOES ANY OF THE  
18 FOLLOWING:

- 19 1. DISPLAYS THE WEAPON IN A  
20 MENACING MANNER;  
21 2. HITS SOMEONE WITH THE WEAPON; OR  
22 3. FIRES THE WEAPON.

23 THE PEOPLE HAVE THE BURDEN OF PROVING  
24 EACH ALLEGATION BEYOND A REASONABLE DOUBT.  
25 IF THE PEOPLE HAVE NOT MET THIS BURDEN,  
26 YOU MUST FIND THAT THE ALLEGATION HAS NOT  
27 BEEN PROVED.

28 IF YOU FIND THE DEFENDANT GUILTY

1 OF THE CRIMES CHARGED IN COUNTS 6 AND 7,  
2 YOU MUST THEN DECIDE WHETHER, FOR EACH  
3 CRIME, THE PEOPLE HAVE PROVED THE  
4 ADDITIONAL ALLEGATION THAT THE VICTIMS  
5 IN THOSE CRIMES WERE UNDER THE AGE OF  
6 14 AND THE DEFENDANT KNEW OR REASONABLY  
7 SHOULD HAVE KNOWN THAT FACT. YOU MUST  
8 DECIDE WHETHER THE PEOPLE HAVE PROVED  
9 THIS ALLEGATION FOR EACH CRIME AND  
10 RETURN A SEPARATE FINDING FOR EACH CRIME.

11 TO PROVE THIS ALLEGATION, THE PEOPLE  
12 MUST PROVE THAT:

13 1. THE VICTIM WAS UNDER THE AGE  
14 OF 14 AT THE TIME THE CRIME WAS COMMITTED;  
15 AND

16 2. THE DEFENDANT KNEW THE VICTIMS  
17 WERE UNDER THE AGE OF 14, OR THE  
18 DEFENDANT SHOULD HAVE REASONABLY KNOWN  
19 THE VICTIMS WERE UNDER THE AGE OF 14 AT  
20 THE TIME THE CRIMES WERE COMMITTED.

21 THE PEOPLE HAVE THE BURDEN OF  
22 PROVING EACH ALLEGATION BEYOND A  
23 REASONABLE DOUBT. IF THE PEOPLE  
24 HAVE NOT MET THIS BURDEN, YOU MUST  
25 FIND THAT THE ALLEGATION HAS NOT  
26 BEEN PROVED.

27 EACH OF THE CRIMES CHARGED IN THIS  
28 CASE IS A SEPARATE CRIME. YOU MUST

1           CONSIDER EACH COUNT SEPARATELY AND  
2           RETURN A SEPARATE VERDICT FOR EACH ONE.

3           WHEN YOU GO TO THE JURY ROOM,  
4           THE FIRST THING YOU SHOULD DO IS  
5           CHOOSE A FOREPERSON. THE FOREPERSON  
6           SHOULD SEE TO IT THAT YOUR DISCUSSIONS  
7           ARE CARRIED ON IN AN ORGANIZED WAY AND  
8           THAT EVERYONE HAS A FAIR CHANCE TO BE  
9           HEARD.

10          IT IS YOUR DUTY TO TALK WITH ONE  
11          ANOTHER AND TO DELIBERATE IN THE JURY  
12          ROOM. YOU SHOULD TRY TO AGREE ON A  
13          VERDICT IF YOU CAN. EACH OF YOU MUST  
14          DECIDE THE CASE FOR YOURSELF, BUT  
15          ONLY AFTER YOU HAVE DISCUSSED THE  
16          EVIDENCE WITH THE OTHER JURORS. DO  
17          NOT HESITATE TO CHANGE YOUR MIND IF  
18          YOU BECOME CONVINCED THAT YOU ARE  
19          WRONG. BUT DO NOT CHANGE YOUR MIND  
20          JUST BECAUSE OTHER JURORS DISAGREE  
21          WITH YOU.

22          KEEP AN OPEN MIND AND OPENLY  
23          EXCHANGE YOUR THOUGHTS AND IDEAS ABOUT  
24          THIS CASE. STATING YOUR OPINIONS TOO  
25          STRONGLY AT THE BEGINNING OR  
26          IMMEDIATELY ANNOUNCING HOW YOU PLAN  
27          TO VOTE MAY INTERFERE WITH AN OPEN  
28          DISCUSSION. PLEASE TREAT ONE ANOTHER

1 COURTEOUSLY. YOUR ROLE IS TO BE AN  
2 IMPARTIAL JUDGE OF THE FACTS, NOT TO  
3 ACT AS AN ADVOCATE FOR ONE SIDE OR  
4 THE OTHER.

5 AS I TOLD YOU AT THE BEGINNING  
6 OF THE TRIAL, DO NOT TALK ABOUT THE  
7 CASE OR ABOUT ANY OF THE PEOPLE OR  
8 ANY SUBJECT INVOLVED IN IT WITH  
9 ANYONE, INCLUDING, BUT NOT LIMITED  
10 TO, YOUR SPOUSE OR OTHER FAMILY, OR  
11 FRIENDS, SPIRITUAL LEADERS OR  
12 ADVISORS, OR THERAPISTS. YOU MUST  
13 DISCUSS THE CASE ONLY IN THE JURY  
14 ROOM AND ONLY WHEN ALL JURORS ARE  
15 PRESENT. DO NOT DISCUSS YOUR  
16 DELIBERATIONS WITH ANYONE.

17 DURING THE TRIAL, SEVERAL ITEMS  
18 WERE RECEIVED INTO EVIDENCE AS EXHIBITS.  
19 YOU MAY EXAMINE WHATEVER EXHIBITS YOU  
20 THINK WILL HELP YOU IN YOUR DELIBERATIONS.

21 IF YOU NEED TO COMMUNICATE WITH ME  
22 WHILE YOU ARE DELIBERATING, SEND A NOTE  
23 THROUGH THE BAILIFF, SIGNED BY THE  
24 FOREPERSON OR BY ONE OR MORE MEMBERS OF  
25 THE JURY. TO HAVE A COMPLETE RECORD OF  
26 THIS TRIAL, IT IS IMPORTANT THAT YOU NOT  
27 COMMUNICATE WITH ME EXCEPT BY A WRITTEN  
28 NOTE. IF YOU HAVE QUESTIONS, I WILL TALK

1 TO THE ATTORNEYS BEFORE I ANSWER SO IT  
2 MAY TAKE SOME TIME. YOU SHOULD CONTINUE  
3 YOUR DELIBERATIONS WHILE YOU WAIT FOR  
4 MY ANSWER. I WILL ANSWER ANY QUESTIONS  
5 IN WRITING OR ORALLY HERE IN OPEN COURT.

6 DO NOT REVEAL TO ME OR ANYONE ELSE  
7 HOW THE VOTE STANDS ON THE QUESTION OF  
8 GUILT OR ISSUES IN THIS CASE UNLESS I ASK  
9 YOU TO DO SO.

10 YOUR VERDICT ON EACH COUNT AND ANY  
11 SPECIAL FINDINGS MUST BE UNANIMOUS. THIS  
12 MEANS THAT TO RETURN A VERDICT, ALL  
13 OF YOU MUST AGREE TO IT. DO NOT REACH  
14 A DECISION BY THE FLIP OF A COIN OR BY  
15 ANY SIMILAR ACT.

16 IT IS NOT MY ROLE TO TELL YOU  
17 WHAT YOUR VERDICT SHOULD BE. DO NOT  
18 TAKE ANYTHING I SAID OR DID DURING  
19 THE TRIAL AS AN INDICATION OF WHAT I  
20 THINK ABOUT THE FACTS, THE WITNESSES,  
21 OR WHAT YOUR VERDICT SHOULD BE.

22 YOU MUST REACH YOUR VERDICT  
23 WITHOUT ANY CONSIDERATION OF PUNISHMENT.

24 YOU WILL BE GIVEN VERDICT FORMS.  
25 AS SOON AS ALL JURORS HAVE AGREED ON  
26 A VERDICT, THE FOREPERSON MUST DATE  
27 AND SIGN THE APPROPRIATE VERDICT FORMS  
28 AND NOTIFY THE BAILIFF. IF YOU ARE ABLE

1 TO REACH A UNANIMOUS DECISION ON ONLY  
2 ONE OR ONLY SOME OF THE CHARGES, FILL  
3 IN THOSE VERDICT FORMS ONLY, AND NOTIFY  
4 THE BAILIFF. RETURN ANY UNSIGNED VERDICT  
5 FORMS.

6 ALL RIGHT. LADIES AND GENTLEMEN, I AM  
7 ORDERING EVERYONE BACK HERE AT 10:00 A.M. 10:00 A.M. SO  
8 KEEP IN MIND THE COURT'S ADMONITION, AND I WILL SEE YOU  
9 BACK AT 10:00 A.M.

10  
11 (THE MATTER WAS CONTINUED  
12 TO TUESDAY, AUGUST 10, 2010,  
13 AT 10:00 A.M. FOR FURTHER  
14 PROCEEDINGS.)

15  
16 (THE NEXT PAGE NUMBER IS 2101.)  
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