

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

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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
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CA 90013

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 CREATE 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 ANNIE SAAVEDRA?

19 A SIX.

20 Q AND IF YOU COULD LOOK THROUGH YOUR REPORT
21 FOR NANCY JARDINES, FELICITAS GONZALEZ, BRENDA BARRAGAN,
22 AND ANNIE 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: RECROSS 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 DIRECT EXAMINATION

9 BY MR. GOUDY:

10 Q SIR, WHAT IS YOUR OCCUPATION?

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

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

15 A SINCE MAY OF 1989.

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

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

24 IN 1972, I OBTAINED A DOCTORATE DEGREE IN
25 BIOCHEMISTRY FROM THE STATE UNIVERSITY OF NEW YORK IN
26 BUFFALO. FROM 1972 TO 1976, I DID POSTGRADUATE RESEARCH
27 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 UNKNOWNS -- 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 UNKNOWNS DID YOU DO AN
28 ANALYSIS WITH?

1 A I BELIEVE THERE WERE 11 FORENSIC UNKNOWN
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 UNKNOWN?

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 UNKNOWNS, 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 UNKNOWNS 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 UNKNOWNS, 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 UNKNOWNS AND TWO REFERENCE SAMPLES THAT I WAS
10 ASKED TO COMPARE. NOW, THERE WERE OTHER FORENSIC
11 UNKNOWNS 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 ///

1 (WHEREUPON THE LUNCH RECESS
2 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 ///

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.

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
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 ///

1 | **CROSS-EXAMINATION**

2 BY MR. EVANS:

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

5 A YES, SIR.

6 Q DO YOU HAVE THAT IN MIND?

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

8 Q YES, SIR.

9 A 4 -A.

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

12 A YES.

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

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

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

24 A THAT'S CORRECT. THAT'S CORRECT.

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

28 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 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 CHANTELLE 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 CHANTELLE 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 CHANTELLE, 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:

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

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

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

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

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

A CORRECT.

Q NOT A TRACE AMOUNT; CORRECT?

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

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

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 WIPE 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.

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:)

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.

25

(COUNSEL CONFERRED SOTTO VOCE.)

28 | //

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

4
5 (WHEREUPON THE LUNCH RECESS
6 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 DIRECT EXAMINATION

9 BY MR. EVANS:

10 Q WHAT IS YOUR CURRENT OCCUPATION?

11 A I AM A PRIVATE INVESTIGATOR.

12 Q ARE YOU SELF-EMPLOYED, OR DO YOU WORK FOR
13 SOMEONE?

14 A I AM SELF-EMPLOYED WITH MY AGENCY, WHICH IS
15 MODEL PETEE ASSOCIATES.

16 Q HOW LONG HAVE YOU HAD YOUR OWN AGENCY?

17 A OVER TEN YEARS.

18 Q PRIOR TO WORKING AS A PRIVATE INVESTIGATOR,
19 WHAT TYPE OF WORK EXPERIENCE HAVE YOU HAD IN TERMS OF --
20 WHY DON'T YOU GO THROUGH YOUR WORK EXPERIENCE AS IT
21 RELATES TO YOUR PRIVATE INVESTIGATION WORK.

22 A I WAS EMPLOYED BY THE -- I WAS A DEPUTY
23 SHERIFF FOR THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT.
24 I STARTED IN 1982. I USED TO WORK IN CUSTODY. I WORKED
25 APPROXIMATELY FOUR, FOUR AND A HALF YEARS AT LENNOX
26 STATION. AND THEN I WENT TO NARCOTICS, AND I MEDICALLY
27 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 ANNIE?

28 A ANNIE, 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
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

WITNESS' EARLIER STATEMENT ON THAT SUBJECT.

IF YOU DECIDE THAT A WITNESS DELIBERATELY LIED ABOUT SOMETHING SIGNIFICANT IN THE CASE, YOU SHOULD CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAYS. OR, IF YOU THINK THE WITNESS LIED ABOUT SOME THINGS, BUT TOLD THE TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART THAT YOU THINK IS TRUE AND IGNORE THE REST.

THE CRIMES CHARGED IN THIS CASE
REQUIRE PROOF OF THE UNION, OR JOINT
OPERATION, OF ACT AND WRONGFUL INTENT.

FOR YOU TO FIND A PERSON GUILTY
OF THE CRIMES OF ROBBERY AS ALLEGED
IN COUNTS 1, 2, 3, 4, 6, AND 7, AND
KIDNAPPING TO COMMIT ROBBERY AS A
LESSER TO COUNT 8, AS WELL AS A
LESSER INCLUDED OFFENSE OF THAT,
THAT BEING SIMPLE KIDNAPPING, THAT
PERSON MUST NOT ONLY INTENTIONALLY
COMMIT THE PROHIBITED ACT BUT MUST
DO SO WITH A SPECIFIC INTENT. THE
ACT AND THE SPECIFIC INTENT REQUIRED
ARE EXPLAINED IN THE INSTRUCTION FOR
THAT CRIME.

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

1 DOUBT THAT THE DEFENDANT IS GUILTY
2 OF EITHER THE GREATER OR LESSER
3 CRIME, THEN FILL OUT THE NOT GUILTY
4 VERDICT FORMS FOR BOTH THE GREATER
5 AND THE LESSER CRIMES.

6 IF ALL OF YOU AGREE THE
7 PEOPLE HAVE NOT PROVED BEYOND A
8 REASONABLE DOUBT THAT THE DEFENDANT
9 IS GUILTY OF THE GREATER CRIME, BUT
10 ALL OF YOU CANNOT AGREE ON A VERDICT
11 FOR THE LESSER CRIME, THEN FILL OUT
12 THE NOT GUILTY VERDICT FORM FOR THE
13 GREATER CRIME AND LEAVE BLANK THE
14 VERDICT FORM FOR THE LESSER CRIME
15 AND LET ME KNOW THAT YOU CANNOT
16 REACH AN AGREEMENT FOR THE LESSER
17 CRIME.

18 KIDNAPPING IS A LESSER INCLUDED
19 OFFENSE TO KIDNAPPING FOR THE PURPOSE
20 OF ROBBERY, AS ALLEGED IN COUNT 8.

21 TO PROVE THAT THE DEFENDANT IS
22 GUILTY OF THIS CRIME, THE PEOPLE MUST
23 PROVE THAT:

24 1. THE DEFENDANT TOOK, HELD,
25 OR DETAINED ANOTHER PERSON BY USING
26 FORCE OR BY INSTILLING REASONABLE FEAR;
27 2. USING THAT FORCE OR FEAR, THE
28 DEFENDANT MOVED THE OTHER PERSON OR

MADE THE OTHER PERSON MOVE A SUBSTANTIAL
DISTANCE; AND

3. THE OTHER PERSON DID NOT
CONSENT TO THE MOVEMENT.

SUBSTANTIAL DISTANCE MEANS MORE
THAN A SLIGHT OR TRIVIAL DISTANCE.

IN DECIDING WHETHER THE DISTANCE WAS SUBSTANTIAL, YOU MUST CONSIDER ALL THE CIRCUMSTANCES RELATING TO THE MOVEMENT. THUS, IN ADDITION TO CONSIDERING THE ACTUAL DISTANCE MOVED, YOU MAY ALSO CONSIDER OTHER FACTORS SUCH AS WHETHER THE MOVEMENT INCREASED THE RISK OF PHYSICAL OR PSYCHOLOGICAL HARM, INCREASED THE DANGER OF A FORESEEABLE ESCAPE ATTEMPT, GAVE THE ATTACKER A GREATER OPPORTUNITY TO COMMIT ADDITIONAL CRIMES, OR DECREASED THE LIKELIHOOD OF DETECTION.

IF YOU FIND THE DEFENDANT GUILTY OF THE CRIMES CHARGED OR THE LESSER CRIME, YOU MUST THEN DECIDE WHETHER, FOR EACH CRIME, THE PEOPLE HAVE PROVED THE ADDITIONAL ALLEGATION THAT THE DEFENDANT PERSONALLY USED A FIREARM DURING THE 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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