

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

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

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

MAR 16 2011

COPY

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE CHARLAINE F. OLMEDO, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

AUGUST 10, 11, 12, 2010; OCTOBER 4, 2010;

NOVEMBER 2, 9, 2010; DECEMBER 15, 2010; JANUARY 12, 2011

APPEARANCES:

FOR PLAINTIFF-RESPONDENT:

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FOR DEFENDANT-APPELLANT:

IN PROPRIA PERSONA

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KATHRYN L. MAUTZ, CSR #11539
BEATRICE BECERRA, CSR #12099
CYNTHIA ROSALES, CSR #5410
ELAINE SMITH, CSR #3366
OFFICIAL COURT REPORTERS

1 CASE NO.: KA085233-02
2 CASE NAME: PEOPLE V. JAMES
3 LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 10, 2010
4 DEPARTMENT 121 HON. CHARLAINE OLMEDO, JUDGE
5 APPEARANCES: (AS PREVIOUSLY NOTED.)
6 REPORTER: BEA J. BECERRA, CSR #12099
7 TIME: A.M. SESSION
8
9 (THE FOLLOWING PROCEEDINGS WERE HELD
10 IN OPEN COURT OUTSIDE THE PRESENCE
11 OF THE JURY:)

12
13 THE COURT: WE'RE ON THE RECORD IN PEOPLE VERSUS
14 JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE PRESENT.
15 OUR JURORS ARE IN THE JURY ROOM. IT'S NOW 10:40. WE'VE
16 BEEN WAITING 40 MINUTES FOR JUROR NUMBER 12 WHO'S NOT SHOWN
17 UP AND HAS NOT CALLED. AND THE CLERK JUST WENT OUT TO THE
18 HALLWAY ONE LAST TIME. BOTH SIDES STIPULATED HE CAN NOW BE
19 EXCUSED, AND WE'LL SEAT ALTERNATE 2 IN HIS PLACE.

20 SO STIPULATED?

21 MR. GOUDY: YES, YOUR HONOR.

22 MR. EVANS: SO STIPULATED.

23 THE COURT: NORMALLY, I'D CHOOSE ALTERNATES
24 RANDOMLY, BUT I UNDERSTAND BOTH COUNSEL ARE ACTUALLY
25 DESIROUS ALTERNATE 2 BE SEATED AS A SITTING JUROR, BASED
26 UPON SOME CONCERNS ABOUT ALTERNATE 1'S BOTH AVAILABILITY
27 FOR THE PENDENCY OF THE DELIBERATIONS THAT SHE INDICATED TO
28 THE CLERK AND IN SOME OF THE ANSWERS SHE EXPRESSED.

1 MR. EVANS: AFTER SHE WAS SWORN.
2 THE COURT: AFTER SHE WAS SWORN IN.
3 MR. GOUDY: YES.
4 THE COURT: SO IS THAT AN ACCURATE SUMMARY OF BOTH
5 COUNSEL'S VIEWS ON BEHALF OF MR. JAMES.

6 MR. EVANS: YES, YOUR HONOR.
7 THE COURT: ON BEHALF OF THE PEOPLE?
8 MR. GOUDY: YES, YOUR HONOR.
9 THE COURT: OKAY. OKAY LET'S CALL IN OUR JURORS.
10

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

14
15 THE COURT: ON THE RECORD IN PEOPLE VERSUS JAMES.
16 ALL OF OUR JURORS ARE PRESENT EXCEPT FOR JUROR NUMBER 12.
17 AND AT THIS TIME, ALTERNATE 2, I'M GOING TO ASK TO YOU MOVE
18 ONE SEAT OVER. YOU ARE NOW ONE OF THE 12 JURORS.

19 AT THIS TIME WE'RE GOING TO BEGIN OUR
20 ARGUMENT PHASE OF THE TRIAL. AND, MR. GOUDY, YOU MAY GO.

21 MR. GOUDY: THANK YOU, YOUR HONOR.

22 GOOD MORNING, LADIES AND GENTLEMEN. WE'RE
23 PRETTY MUCH ON SCHEDULE, WHICH IS PRETTY LUCKY. ACTUALLY,
24 THAT USUALLY DOES NOT HAPPEN. FOR THOSE OF YOU WHO HAVE
25 SAT AS JURORS BEFORE, YOU KNOW THINGS CAN SOMETIMES DRAG
26 ON. I WANT TO START OFF BY THANKING YOU FOR YOUR
27 ATTENTIVENESS IN SITTING ON A JURY. IT'S A VERY IMPORTANT
28 PROCESS THAT A LOT OF PEOPLE DON'T REALLY WANT TO DO IT AND

1 WILL DO WHATEVER THEY CAN DO TO GET OUT OF IT, AS YOU KNOW,
2 BASED UPON THE ANSWERS GIVEN IN JURY SELECTION.

3 NOW, I GET TO SPEAK TWICE. I WILL SPEAK.
4 MR. EVANS WILL GO AND THEN I WILL GET TO GO AGAIN. IT'S
5 NOT SET UP TO BE UNFAIR. IT'S JUST THAT I HAVE THE BURDEN
6 OF PROOF, SO THE PROCESS IS SET UP SO I GET TO SPEAK TO YOU
7 TWICE AND KIND OF GO OVER WHAT I BELIEVE WHAT THE EVIDENCE
8 SHOWS AND HOW THE LAW APPLIES TO WHAT THE EVIDENCE WAS.

9 NOW, EVERY CASE IN EVERY TRIAL, AT LEAST IN
10 CRIMINAL TRIALS, NO MATTER HOW LONG IT IS -- WE'VE BEEN
11 HERE ABOUT A WEEK, A LITTLE LONGER MAYBE -- BUT IT DOESN'T
12 MATTER IF IT'S A WEEK, THREE DAYS, A MONTH, A YEAR. EVERY
13 CRIMINAL CASE BASICALLY COMES DOWN TO SIMPLE QUESTIONS,
14 EVERY ONE: WAS A CRIME COMMITTED? IF A CRIME WAS
15 COMMITTED, WHAT CRIME WAS COMMITTED? AND THEN WHO
16 COMMITTED THE CRIME? IT DOESN'T MATTER HOW MUCH EVIDENCE
17 THERE IS PRESENTED, HOW LONG IT TAKES. THOSE ARE THE THREE
18 BASIC QUESTIONS THAT MUST BE ANSWERED.

19 SOME OF THE QUESTIONS ARE PRETTY EASY TO
20 ANSWER. FOR EXAMPLE, IN THIS CASE WAS A CRIME COMMITTED?
21 OF COURSE, A CRIME WAS COMMITTED. MEN GO INTO 14050
22 TRAILSIDE DRIVE. SOME HAVE ON MASKS, SOME DON'T. THEY ARE
23 ALL ARMED. THEY HOLD THE FAMILY HOSTAGE -- WELL, HOSTAGE
24 IN OUR SENSE, NOT IN A LEGAL SENSE. BUT BASICALLY THEY
25 HOLD THEM AT GUN POINT WHILE TAKING PROPERTY THAT DOESN'T
26 BELONG TO THEM. THEY MOVE BRENDA BARRAGAN FROM THE GARAGE
27 INTO THE HOUSE. A CRIME WAS COMMITTED. PRETTY SIMPLE.
28 THAT'S ONE OF THOSE QUESTIONS. OF COURSE, WE KNOW A CRIME

1 WAS COMMITTED. THE EVIDENCE IS CLEAR. AND I DON'T THINK
2 ANYBODY IS GOING TO SAY THERE WAS NOT A CRIME COMMITTED.

3 SO LET'S GET TO A LITTLE TOUGHER QUESTION.
4 WHAT CRIME WAS COMMITTED? WELL, YOU'VE HEARD THE CHARGES:
5 ROBBERY AND KIDNAPPING FOR ROBBERY. AND YOU ALSO HEARD
6 SOMETHING NEW IN THE INSTRUCTIONS TALKING ABOUT KIDNAPPING,
7 JUST PLAIN KIDNAPPING. AND I'LL GET TO THAT IN A SECOND.

8 WELL, THE JUDGE READ YOU THE INSTRUCTIONS.
9 WE CALL THEM INSTRUCTIONS. THEY ARE INSTRUCTIONS FOR YOU.
10 BUT THEY ARE THE LAW. YOU ARE BOUND TO FOLLOW THE LAW. IN
11 FACT, EACH OF ONE OF YOU SWORE THAT YOU WOULD FOLLOW THE
12 LAW, WHICH MEANS YOU'RE GOING TO FOLLOW THE INSTRUCTIONS.
13 AND YOU'RE GOING TO HAVE THEM IN WRITTEN FORM, SO IF YOU
14 NEED TO GO BACK, YOU CAN READ THEM, SO YOU DON'T HAVE TO
15 REMEMBER EVERYTHING THE JUDGE SAID. BUT HOPEFULLY YOU WERE
16 LISTENING. IF YOU NEED TO REFRESH YOUR MEMORY, YOU CAN DO
17 SO BECAUSE YOU'LL HAVE THEM.

18 AND THE LAW TELLS US WHAT A ROBBERY IS. I'M
19 GOING TO START WITH ROBBERY BECAUSE THAT'S THE MAJORITY OF
20 THE COUNTS 1, 3, 4, 6, AND 7, CHARGED WITH ROBBERY. AND
21 EACH COUNT HAS A DIFFERENT VICTIM. AND YOUR JOB IS TO
22 DECIDE EACH INDIVIDUAL COUNT. YOU DON'T GET TO GROUP THEM
23 ALTOGETHER. YOU HAVE TO DECIDE COUNT 1, COUNT 2, COUNT 3,
24 COUNT 4, COUNT 6, AND COUNT 7 AS REGARDS TO THE ROBBERY.
25 YOU'LL ALSO HAVE TO DECIDE COUNT 8, WHICH IS THE KIDNAP FOR
26 ROBBERY.

27 WELL, WHAT'S A ROBBERY? SOMEBODY TOOK
28 PROPERTY THAT WAS NOT THEIRS. DID THAT HAPPEN HERE? OF

1 COURSE, IT DID. THERE WAS SOME JEWELRY, THREE CELL PHONES,
2 A WALLET. THE MASKED MEN CAME INTO THE HOUSE OF THE
3 GONZALEZES. AND I USE THAT BECAUSE THAT'S THE MOTHER AND
4 FATHER. WE KNOW THERE ARE DIFFERENT NAMES, BUT LET'S JUST
5 GO WITH RAPHAEL GONZALEZ AND FELICITAS GONZALEZ. THEY GO
6 INTO THEIR HOUSE, AND THEY TAKE PROPERTY OF PEOPLE WHO LIVE
7 IN THAT HOUSE. IT DIDN'T BELONG TO THEM.

8 THE PROPERTY WAS TAKEN FROM ANOTHER PERSON'S
9 POSSESSION OR IMMEDIATE PRESENCE. WELL, WHAT WE DO KNOW IS
10 THAT THE PHONES AND THE WALLET AND THE JEWELRY WERE NOT ON
11 ANY ONE PARTICULAR PERSON. THEY WERE IN BEDROOMS. SO IT
12 WASN'T ON THEIR PERSON. WAS IT IN THEIR IMMEDIATE
13 PRESENCE? WELL, IT CERTAINLY WASN'T IN FELICITAS'S
14 IMMEDIATE PRESENCE OR NANCY JARDINE'S IMMEDIATE PRESENCE
15 WHEN THEY ARE IN THE BEDROOM WITH THE SAFE AND THE MASKED
16 MAN IS THERE WITH THE PERSON WHO SPEAKS SPANISH AND THEY
17 ARE TAKING THE STUFF. IT'S IN THEIR IMMEDIATE PRESENCE.

18 WAS THE PROPERTY TAKEN AGAINST THE PERSON'S
19 WILL? I DON'T THINK ANYBODY IN THE HOUSE WILLINGLY GAVE UP
20 THAT STUFF. IN OTHER WORDS, WERE THEY FORCED TO GIVE UP
21 THAT PROPERTY? OF COURSE THEY WERE. THEY WERE HELD AT GUN
22 POINT. IN FACT, HENRY, THE YOUNG BOY, WAS THREATENED:
23 GIVE US STUFF OR WE'RE GOING TO HURT HIM. WE'RE NOT
24 MESSING AROUND.

25 DID THE DEFENDANT USED FORCE OR FEAR TO TAKE
26 THE PROPERTY? WELL, I'LL HOLD OFF ON THE DEFENDANT. BUT
27 WHEN -- DID THE PEOPLE USE FORCE OR FEAR TO TAKE THE
28 PROPERTY OR PREVENT THE PERSONS FROM RESISTING? WELL,

1 THREATENING A LITTLE KID IS PREVENTING SOMEONE FROM
2 RESISTING. CERTAINLY, HOLDING PEOPLE AT GUN POINT IS FORCE
3 OR FEAR.

4 AND WHEN THE PERSON USED FORCE OR FEAR TO
5 TAKE THE PROPERTY, HE INTENDED TO DEPRIVE THE OWNER OF IT
6 PERMANENTLY. I DON'T THINK THEY WERE GOING GIVE IT BACK.
7 THEY TOOK THE PHONES, THE JEWELRY, THE WALLET. WHEN YOU GO
8 IN WITH GUNS AND YOU'RE TAKING STUFF, YOU INTEND TO
9 PERMANENTLY DEPRIVE THE OWNER OF IT. I THINK THAT'S PRETTY
10 CLEAR. SO CLEARLY THERE WAS A ROBBERY. IN FACT, THERE
11 WERE MULTIPLE ROBBERIES.

12 NOW, THE THING ABOUT ROBBERY IS YOU DON'T
13 ACTUALLY HAVE TO BE HOLDING THE PROPERTY. WE TALKED ABOUT
14 THAT BECAUSE IT SAYS "IMMEDIATE PRESENCE." SO WHAT DOES
15 THAT MEAN? HOW FAR DOES IT HAVE TO BE AWAY? AND, WELL, IF
16 THEY TAKE ONE ITEM, DOESN'T THAT MEAN ONE VICTIM? NO, IT
17 DOESN'T. THE LAW SAYS, TWO PEOPLE CAN POSSESS AN ITEM. IN
18 FACT, MORE THAN ONE PERSON. IT CAN BE MORE THAN TWO PEOPLE
19 CAN POSSESS ONE ITEM BECAUSE IT'S NOT AN OWNERSHIP INTEREST
20 IN THE PROPERTY. IT'S NOT HAVING YOUR HANDS ON IT. IT'S
21 HAVING CONTROL OF THE PROPERTY.

22 WHO WOULD HAVE CONTROL OF THAT PROPERTY?
23 WELL, IF THEY WERE ALL IN THE HOUSE, IF YOU LOOK AT IT ONE
24 BY ONE, WHO WOULD HAVE CONTROL OF THAT PROPERTY? WOULD
25 EACH ONE OF THOSE PEOPLE IN THAT HOUSE HAVE CONTROL OF THE
26 PROPERTY THAT WAS TAKEN? WELL, EVEN CHANTEL AND HENRY AND
27 THE KIDS, IF THEY ARE THERE ALONE, AND HOPEFULLY THEY ARE
28 NEVER THERE ALONE AT THEIR AGE, AND IF THEY WERE AND PEOPLE

1 CAME IN AND TRIED TO TAKE THAT PROPERTY, WHO WOULD HAVE
2 CONTROL OVER IT? THEY WOULD, NOT THE PEOPLE WITH THE GUNS.
3 SO EVERYBODY IN THAT HOUSE HAD SOME TYPE OF CONTROL, SOME
4 TYPE OF POSSESSION.

5 NOW IN THE IMMEDIATE PRESENCE. WELL,
6 RAPHAEL, HE WAS IN THE LIVING ROOM. AND I PUT THE TWO
7 DIAGRAMS UP THERE, AND IT KIND OF CHANGED THE WAY THAT
8 YOU'VE SEEN THEM, KIND OF PUT THEM UP THERE AT THE SAME
9 TIME. IF YOU LOOK AT PEOPLE'S 1, IT'S NO LONGER FOR
10 IDENTIFICATION. I KNOW THAT IT USED TO BE A BLUE TAG. NOW
11 IT'S GREEN BECAUSE IT'S EVIDENCE OF THE CASE. IT'S BEEN
12 ACCEPTED, AND YOU'RE GOING TO BE ABLE TO TAKE THIS IN THE
13 BACK.

14 THIS IS THE HOUSE OF RAPHAEL GONZALEZ.
15 THAT'S WHERE HE WAS BASICALLY THE WHOLE TIME WHEN THEY CAME
16 IN. HE NEVER LEAVES THERE. HIS PROPERTY IS TAKEN FROM
17 THIS ROOM. THE WALLET IS TAKEN FROM HIS ROOM WITH THE DB.
18 IS THAT HIS IMMEDIATE PRESENCE? THE HALLWAY, ACCORDING TO
19 BRENDA -- I THINK IT WAS BRENDA, MAYBE NANCY -- IS ABOUT
20 FIVE FEET, SIX FEET LONG. IT'S NOT A VERY BIG HOUSE.

21 IS THAT HIS IMMEDIATE PRESENCE? SURE,
22 BECAUSE HE HAS CONTROL OVER HIS PROPERTY IN HIS BEDROOM
23 WHEN HE'S IN HIS HOUSE, DOESN'T HE? DOES IT MATTER IF HE'S
24 IN THE KITCHEN? DOES IT MATTER IF HE'S IN THE BACK FAMILY
25 ROOM? DOESN'T HE HAVE CONTROL OVER EVERYTHING THAT'S IN
26 HIS HOUSE?

27 THE LAW IS SET UP TO WHERE IT DOESN'T MATTER
28 IF YOU'RE IN ONE PART OF YOUR HOUSE AND PEOPLE TAKE ITEMS

1 FROM ANOTHER PART OF YOUR HOUSE BECAUSE THEY ARE HOLDING
2 YOU AT GUN POINT, YOU'RE RESISTING. BECAUSE IF THAT
3 MATTERED, WELL, THE ROBBERS COULD JUST MOVE THEM TO THE
4 FURTHEST POINT OF THE HOUSE, KEEP THEM THERE, AND THEN GO
5 TO THE OTHER SIDE OF THE HOUSE AND TAKE WHATEVER THEY WANT,
6 WELL, THERE'S NO ROBBERY BECAUSE IT'S NOT IN THEIR
7 IMMEDIATE PRESENCE. THAT MAKES NO SENSE, AND THAT'S NOT
8 THE WAY THE LAW IS SET UP.

9 IN THIS PARTICULAR INSTANCE, OF COURSE, IT
10 WAS TAKEN FROM HIS IMMEDIATE PRESENCE. HE HAD CONTROL OVER
11 THAT. IN FACT, THE LAST PART OF THE ROBBERY, THE LAST
12 COUPLE LINES (READING:) PROPERTY IS WITHIN A PERSON'S
13 IMMEDIATE PRESENCE IF IT IS SUFFICIENTLY WITHIN HIS OR HER
14 PHYSICAL CONTROL THAT HE OR SHE COULD KEEP POSSESSION OF IT
15 IF NOT PREVENTED BY FORCE OR FEAR.

16 IN OTHER WORDS, COULD HE KEEP POSSESSION OF
17 HIS STUFF IF SOMEBODY WASN'T PUTTING THEIR FOOT DOWN,
18 HOLDING THEM DOWN WITH THEIR FOOT, POINTING A GUN AT THEM?
19 OF COURSE, HE COULD. EVERYONE WHO'S IN THAT HOUSE IS IN
20 THAT POSSESSION. HE'S BEING HELD AT GUN POINT. HE'S BEING
21 MOVED FROM THE HALLWAY.

22 WELL, YOU CAN'T REALLY SEE IT HERE. BUT
23 IT'S KIND OF A BASIC DIAGRAM. THIS ROOM HERE IN THE
24 HALLWAY SEPARATING THE LIVING ROOM AND KITCHEN; HENRY,
25 CHANTEL AND BRENDA WERE FORCED TO LIE DOWN AND THEN MOVED
26 INTO THAT HALLWAY HERE. EVEN IN THAT POSITION HERE, THEY
27 HAVE CONTROL OVER IT BECAUSE THEY COULD TAKE PHYSICAL
28 CONTROL BUT FOR THE FORCE OR THE FEAR OR THE RESTRAINT,

1 WHICH IS WHAT THE MASKED GUN MEN WERE DOING. SO THERE'S
2 CLEARLY A ROBBERY.

3 NOW, THERE'S A COUPLE OTHER THINGS ABOUT THE
4 ROBBERIES, A COUPLE FINDINGS THAT YOUR'E GOING TO SEE ON
5 THE VERDICT FORMS. THE FIRST IS ROBBERY IN CONCERT. WELL,
6 WHAT IS ROBBERY IN CONCERT? BASICALLY IT MEANS THAT THERE
7 ARE THREE PEOPLE OR MORE THAT COMMIT THE ROBBERY TOGETHER.
8 WERE THERE THREE PEOPLE OR MORE IN THIS CASE? THERE WERE
9 AT LEAST FOUR GUYS THERE, MAYBE A FIFTH. CLEARLY, THIS IS
10 A ROBBERY IN CONCERT.

11 THERE ARE CERTAIN DEGREES OF ROBBERY.
12 THERE'S A FIRST DEGREE AND A SECOND DEGREE. AND THIS ALSO
13 GOES WITH THE ROBBERY IN CONCERT, THAT THE ROBBERY WAS
14 COMMITTED IN AN INHABITED DWELLING. SOMEBODY'S HOUSE, THEY
15 WERE LIVING IN A HOUSE. OKAY. IT'S AN INHABITED DWELLING.
16 WELL, THAT'S THE SAME WITH THE FIRST DEGREE ROBBERY VERSUS
17 A SECOND DEGREE ROBBERY.

18 A FIRST DEGREE ROBBERY WAS A ROBBERY
19 COMMITTED IN A DWELLING HOUSE OR IN A DWELLING, AN
20 INHABITED DWELLING. THE PEOPLE DON'T EVEN HAVE TO BE HOME.
21 BUT IN THIS CASE THEY CERTAINLY WERE. IF A ROBBERY IS
22 COMMITTED IN AN INHABITED DWELLING, IT'S A FIRST DEGREE
23 ROBBERY. ALL OTHER ROBBERIES ARE SECOND DEGREE ROBBERIES.

24 WELL, DID THIS HAPPEN IN SOMEBODY HOUSE, AN
25 INHABITED DWELLING? YES. SO IT'S A FIRST DEGREE ROBBERY.
26 WAS THIS DONE IN AN INHABITED DWELLING WITH MORE THAN THREE
27 PEOPLE? YES. SO IT'S ROBBERY IN CONCERT. PRETTY SIMPLE.
28 PRETTY CLEAR COUNT.

1 NOW, THERE'S THE OTHER CHARGE OF KIDNAP FOR
2 ROBBERY. YOU HEARD THE INSTRUCTION WITH THE REGULAR
3 ROBBERIES, SO I'M GOING TO GO BASICALLY WITH THE KIDNAPPING
4 IN AND OF ITSELF. SO IT KIND OF FOLLOWS IF THERE'S A
5 KIDNAPPING, YOU CAN PRETTY MUCH GUESS WHAT THE ADDITIONAL
6 PART OF THE KIDNAPPING FOR ROBBERY IS. SO YOU HAVE A
7 KIDNAPPING. THAT IS A LESSER INCLUDED OFFENSE OF THE
8 KIDNAP FOR ROBBERY. AND IT TELLS YOU THERE'S A LESSER
9 OFFENSE, KIDNAPPING. WELL, WHAT IS KIDNAPPING? THE PERSON
10 TOOK, HELD, OR DETAINED ANOTHER PERSON BY USING FORCE OR
11 INSTILLING REASONABLE FEAR.

12 BRENDA BARRAGAN, SHE'S IN HER GARAGE. SHE'S
13 MOVED AT GUN POINT. WAS THAT BY FORCE? WAS THAT BY
14 INSTILLING REASONABLE FEAR? HOWEVER YOU WANT TO PHRASE IT,
15 IT'S BOTH. SHE'S FORCED TO GO. SHE DOESN'T KNOW WHAT
16 HAPPENS IF SHE DOESN'T GO. THEY ARE FORCING HER TO GO INTO
17 THE HOUSE. WAS SHE REASONABLY IN FEAR? OF COURSE. A
18 MASKED GUY COMES INTO HER GARAGE WITH A GUN AND TELLS HER,
19 LET'S GO -- OF COURSE, IT'S REASONABLE.

20 USING FORCE OR FEAR, THE DEFENDANT MOVES
21 THAT PERSON OR MADE THE OTHER PERSON MOVE A SUBSTANTIAL
22 DISTANCE. A SUBSTANTIAL DISTANCE. NOW, USUALLY WHEN WE
23 THINK "SUBSTANTIAL DISTANCE" OR WE THINK OF THE WORD
24 "SUBSTANTIAL," IT MEANS A GREAT DISTANCE. SUBSTANTIAL.
25 THAT'S NOT WHAT IT MEANS IN THIS CASE. IT TELLS YOU, THE
26 LAW TELLS YOU WHAT THAT MEANS. I'LL GET TO THAT.

27 BUT THE THIRD ELEMENT IS THE OTHER PERSON
28 DID NOT CONSENT TO THE MOVEMENT. DID SHE CONSENT TO GO

1 INTO THE HOUSE, OR WAS SHE FORCED TO GO INTO THE HOUSE?
2 IT'S PRETTY CLEAR SHE WAS FORCED TO GO IN THE HOUSE. SO
3 REALLY THE KEY ON THE KIDNAPPING IS SUBSTANTIAL DISTANCE.
4 WELL, WHAT DO WE KNOW? SO HOW FAR WAS SHE MOVED? SHE SAID
5 FROM WHERE SHE WAS STANDING IN TO THE GARAGE TO THE HOUSE
6 WAS ABOUT 13 FEET.

7 REMEMBER SHE SAID SHE STOOD HERE AND STAYED
8 OVER THERE, AND WE SAID ABOUT 12-13 FEET. AND THEN FROM
9 THE DOOR INTO THE GARAGE IT'S A COUPLE STEPS, DEPENDING ON
10 THE STEPS, A COUPLE FEET AND PER STEP, YOU KNOW, ADD
11 ANOTHER FOUR FEET. SO 17 FEET ROUGHLY. LET'S GO BETWEEN
12 15 AND 20. SOMEWHERE IN THERE WAS ABOUT HOW FAR SHE WAS
13 MOVED. NOW, DOES THAT SOUND LIKE A SUBSTANTIAL DISTANCE?
14 WELL, IT KIND OF DEPENDS BECAUSE YOU DON'T LOOK AT THE
15 LENGTH. YOU LOOK AT THE TYPE OF MOVEMENT.

16 AND WHAT IS SIGNIFICANT ABOUT THAT MOVEMENT?
17 SUBSTANTIAL MEANS MORE THAN A SLIGHT OR TRIVIAL DISTANCE.
18 IN DECIDING WHETHER THE DISTANCE WAS SUBSTANTIAL, YOU MUST
19 CONSIDER ALL THE CIRCUMSTANCES RELATED TO THE MOVEMENT.
20 THUS IN ADDITION TO CONSIDERING THE ACTUAL DISTANCE MOVED,
21 YOU MUST ALSO CONSIDER OTHER FACTORS SUCH AS WHETHER THE
22 MOVEMENT INCREASED THE RISK OF PHYSICAL OR PSYCHOLOGICAL
23 HARM. THAT'S THE FIRST PART. AND THERE'S MORE.

24 WELL, BEING FORCED TO GO FROM HER GARAGE TO
25 HER HOUSE, DID THAT INCREASE HER RISK IN ANY WAY? WELL
26 THERE WAS ONE MASKED MAN WITH A GUN. NOW THERE'S FOUR.
27 SHE IS SEEING HER CHILDREN HELD AT GUN POINT. SHE'S SEEING
28 HER FAMILY HELD AT GUN POINT. IS THAT AN INCREASE IN

1 PSYCHOLOGICAL HARM? IT'S ALSO INCREASED THE DANGER OF
2 FORESEEABLE -- OF A FORESEEABLE ESCAPE ATTEMPT. THAT'S
3 ALSO A FACTOR IN DETERMINING WHETHER OR NOT IT'S A
4 SUBSTANTIAL DISTANCE. WHEN SHE'S IN THE GARAGE, SHE'S
5 THERE. DOES SHE HAVE A CHANCE TO ESCAPE? DOES SHE HAVE A
6 CHANCE TO GET AWAY IF EVERYBODY ELSE IS IN THE HOUSE?

7 NOW, THIS GARAGE IS ATTACHED TO THE HOUSE,
8 BUT UNLIKE MOST ATTACHED GARAGES, THERE'S NO DOOR GOING
9 FROM THE GARAGE TO THE HOUSE. YOU HAVE TO GO OUTSIDE. YOU
10 CANNOT GO FROM THE GARAGE DIRECTLY INTO THE HOUSE. IF THEY
11 ARE IN THE HOUSE, IS THERE A CHANCE SHE CAN ESCAPE? SHE
12 COULD ALWAYS GO OUT THE BIG GARAGE DOOR. SHE CAN EVEN GO
13 OUT THE SIDE DOOR AND RUN DOWN THE SIDE OF THE GARAGE. BY
14 MOVING HER FROM THE GARAGE INTO THE HOUSE, THEY HAVE
15 PREVENTED HER FROM A POTENTIAL ESCAPE.

16 WELL, WHY DO YOU THINK THEY MOVED HER TO THE
17 GARAGE? FOR THAT VERY REASON. THEY DON'T WANT ANY
18 STRAGGLERS OUT THERE RUNNING TO NEIGHBORS, CALLING THE
19 POLICE. THEY MOVED HER SO THEY CAN HAVE ALL THE VICTIMS
20 TOGETHER. ANOTHER FACTOR, THEY GAVE THE ATTACKER A GREATER
21 OPPORTUNITY TO COMMIT ADDITIONAL CRIMES. WELL, THEY WENT
22 IN THERE FOR A PARTICULAR REASON. REMEMBER, THEY WERE
23 ASKING ABOUT MONEY AND A SAFE. THE SAFE WASN'T IN THE
24 GARAGE. ANOTHER OPPORTUNITY TO MAKE HER A VICTIM OF A
25 ROBBERY. THEY COULD COMMIT OTHER CRIMES OR THE DECREASED
26 LIKELIHOOD OF DETECTION.

27 IT KIND OF GOES ALONG WITH THE ESCAPE BUT A
28 LITTLE DIFFERENT. THEY DON'T WANT STRAGGLERS OUT THERE.

1 THEY DON'T WANT HER TO BE IN A POSITION, EVEN IF SHE RUNS
2 AWAY, TO MAKE ANY NOISE TO DO ANYTHING TO DRAW ATTENTION TO
3 THE HOUSE. BECAUSE REMEMBER THEY PUT EVERYBODY TOGETHER.
4 THEY WANT EVERYBODY WHERE THEY CAN SEE THEM. IF SOMEBODY
5 IS NOT IN THAT LOCATION, IT'S MORE LIKELY THEY'RE GOING TO
6 BE FOUND OUT SOONER. SO WAS THIS A SUBSTANTIAL DISTANCE?
7 UNDER THE TOTALITY OF THE CIRCUMSTANCES, IT WAS. IT WASN'T
8 A GREAT DISTANCE, BUT IT WAS A SUBSTANTIAL DISTANCE. SO
9 THERE'S A KIDNAPPING.

10 WE'LL GO TO THE NEXT STEP, WHICH IS THE
11 CRIME CHARGED IN COUNT 8. WELL, WAS IT KIDNAPPING FOR
12 ROBBERY? DID THEY INTEND TO COMMIT A ROBBERY? OF COURSE,
13 THEY DID. THAT'S THE FIRST THING THEY SAID. THE THREE
14 GUYS GO IN. WHERE'S THE SAFE? WHERE'S THE MONEY? WITH
15 THAT INTENT DID THEY HOLD, DETAIN ANOTHER PERSON BY USING
16 FORCE OR INSTILLING FEAR? OF COURSE, THEY DID.

17 USING THAT FORCE OR FEAR, DID THEY MOVE THE
18 OTHER PERSON A SUBSTANTIAL DISTANCE? YES. THE OTHER
19 PERSON MOVED WAS MADE TO MOVE BEYOND THE DISTANCE WHICH WAS
20 MERELY INCIDENTAL TO THE COMMISSION OF THE ROBBERY. WHAT
21 DOES THAT MEAN? COULD THEY HAVE COMMITTED THAT ROBBERY
22 WITHOUT MOVING HER FROM THE GARAGE? BASED UPON WHAT THEY
23 DID -- THEY WENT IN THERE. THERE'S A SAFE. SO, OBVIOUSLY,
24 SOMEBODY KNEW THERE WAS A SAFE IN THE HOUSE, AND THEY
25 WANTED THE MONEY. COULD THEY HAVE COMMITTED THAT ROBBERY
26 OF ALL THOSE OTHER PEOPLE IF SHE WAS STILL IN THE GARAGE?
27 YES. IT WASN'T INCIDENTAL TO THE ROBBERY. THEY COULD HAVE
28 DONE IT WITHOUT MOVING HER. BUT THEY MOVED HER FOR A

1 REASON, TO PREVENT HER FROM ESCAPING, MAKING HER A ROBBERY
2 VICTIM, AND MAKING SURE SHE DIDN'T DO ANYTHING TO WHERE
3 THEY WOULD BE DETECTED.

4 WHEN THE MOVEMENT BEGAN, THE DEFENDANT --
5 THE PEOPLE ALREADY INTENDED TO COMMIT THE ROBBERY. DID
6 THEY? THREE WENT IN RIGHT AWAY. AT GUN POINT ONE WENT
7 INTO THE GARAGE FOR BRENDA. OF COURSE, THEY DID. AND
8 AGAIN THE PERSON DID NOT CONSENT TO THE MOVE. ONE OF THE
9 THINGS ABOUT KIDNAPPING FOR ROBBERY, IF YOU KIDNAP SOMEBODY
10 FOR THE PURPOSE OF ROBBERY, EVEN IF YOU DON'T COMMIT THE
11 ROBBERY, IT'S STILL KIDNAPPING FOR ROBBERY. IT'S WHAT YOU
12 INTEND. IT'S THE SPECIFIC INTENT TO MOVE SOMEBODY WITH THE
13 ROBBERY IN MIND. THAT PERSON DOESN'T HAVE TO BE THE PERSON
14 YOU'RE GOING TO ROB. YOU JUST MOVE THAT PERSON UNDER THOSE
15 ELEMENTS OF THE CRIME WITH THE INTENT TO COMMIT THE
16 ROBBERY. THAT'S WHAT HAPPENED TO BRENDA BARRAGAN. SHE WAS
17 MOVED FROM THE GARAGE INTO HER HOUSE, AND THEY INTENDED TO
18 COMMIT THAT ROBBERY.

19 NOW THERE ARE A COUPLE OTHER THINGS. THERE
20 ARE SOME ENHANCEMENTS -- PERSONAL USE OF A FIREARM DURING
21 THE COMMISSION OF THE CRIME. DID THE PERSON USE A HANDGUN?
22 WELL, EVERYBODY HAD A GUN. EVERY PERSON WHO IS WAS IN THAT
23 HOUSE, MASKED OR UNMASKED WHO DIDN'T LIVE THERE HAD A GUN.
24 PRETTY SIMPLE. AND THE OTHER ONE HAS TO DO WITH THE AGE OF
25 A COUPLE OF THE VICTIMS, BASICALLY IT WAS CHANTEL AND HENRY
26 UNDER 14. I THINK THERE WAS EVIDENCE, TESTIMONY THAT THEY
27 WERE EIGHT AND SIX OR TEN AND EIGHT. SOMETHING LIKE THAT.
28 THEY WERE UNDER 14. AND FOR THAT TO APPLY, THE PEOPLE WHO

1 COMMITTED THE CRIME WOULD HAVE TO KNOW OR REASONABLY KNOW
2 THEY WERE UNDER 14. IT'S KIND OF HARD TO MISTAKE THAT.
3 BUT YOU KNOW THEY ARE THEY WERE UNDER 14 WHEN THE CRIME WAS
4 COMMITTED.

5 SO WE COVERED WAS A CRIME COMMITTED AND WHAT
6 CRIMES WERE COMMITTED. THE THIRD QUESTION, WHO COMMITTED
7 THE CRIME, IS KIND OF WHAT THE WHOLE CASE IS ABOUT. TO BE
8 HONEST, IN MOST CRIMINAL CASES THAT'S REALLY THE MAIN
9 QUESTION: WHO COMMITTED THE CRIME? AND THAT'S REALLY WHAT
10 ALL THE EVIDENCE GOES TO.

11 WELL, WHAT DO WE HAVE? WHAT EVIDENCE DO WE
12 HAVE THAT THE DEFENDANT, TAUMU JAMES, COMMITTED THE CRIME?
13 THIS IS WHERE THE POINT OF VIEW OF WHAT THE EVIDENCE SHOWS
14 THAT IT CHANGED QUITE A BIT. YOU'RE GOING TO HEAR MY POINT
15 OF VIEW. YOU'RE GOING TO HEAR MR. EVANS' POINT OF VIEW.
16 AND THAT'S GREAT. THAT'S THE WAY THE SYSTEM IS SET UP.
17 WHAT MATTERS IS YOUR POINT OF VIEW. YOU'VE HEARD ALL THE
18 EVIDENCE. YOU'VE HEARD ALL THE WITNESSES. YOU'VE HEARD
19 FROM THE EXPERTS. YOU'VE SEEN THE EVIDENCE. YOU'VE SEEN
20 THE MASK, A BLUE JUMPSUIT. YOU'VE SEEN THE GLOVES. YOU'VE
21 SEEN A LOT OF STUFF. WELL, WHAT EVIDENCE DO WE HAVE?

22 LET'S START WITH THE MOST POPULAR PART OF
23 THE EVIDENCE, THE PHOTO IDENTIFICATION. NANCY JARDINES. A
24 YEAR AFTER THE ROBBERY SHE'S SHOWN A SET OF PHOTOGRAPHS, OF
25 SIX PEOPLE. SHE SAYS THIS GUY, HE'S THE GUY. SHOWN
26 PEOPLE'S TEN, SIX PHOTOGRAPHS. NOTHING SIGNIFICANT ABOUT
27 ANY OF THE PHOTOGRAPHS. NOTHING POINTED OUT "PICK ME, PICK
28 ME." NOBODY SAID PICK THIS PARTICULAR PHOTOGRAPH. SHE

1 LOOKS AT THESE SIX PHOTOGRAPHS, AND SHE PICKS OUT THIS ONE
2 HERE ON THE BOTTOM LEFT HAND CORNER. WHOSE PHOTOGRAPH?
3 THE DEFENDANT. THIS IS THE GUY. I REMEMBER HIM. I
4 REMEMBER THE EYES. WHAT I COULD SEE THROUGH THE MASK,
5 THAT'S WHAT I REMEMBER -- EYES, NOSE, AND MOUTH. THAT WAS
6 HIM.

7 THE LAW WHICH YOU ARE BOUND TO FOLLOW SAYS
8 YOU CAN. IT DOESN'T SAY YOU HAVE TO, BUT IT SAYS THE
9 TESTIMONY OF ONE WITNESS IS SUFFICIENT TO PROVE A FACT.
10 THAT'S IT. HER TESTIMONY ALONE IS ENOUGH. WHEN SHE SAYS
11 THAT GUY CAME BACK TO MY BEDROOM, HAD ON A MASK, POINTED A
12 GUN TO ME, AND TOOK ME AND MY MOM TO MY MOM'S BEDROOM, TOLD
13 US TO OPEN THE SAFE, THREATENED HENRY, TOOK ITEMS. HE WAS
14 THERE. HE WAS RIGHT THERE. I COULD SEE THOSE EYES. I
15 COULD SEE THE MOUTH. I COULD SEE THE NOSE. AND YOU KNOW
16 WHAT, THE GUY IN THE PHOTOGRAPH, THAT'S HIM. THAT'S ENOUGH
17 LEGALLY.

18 IT DOESN'T MATTER WHAT ANYBODY ELSE SAYS.
19 BECAUSE THE LAW SAYS THAT'S ENOUGH. WELL, YOU THINK, WOW,
20 THAT SIX PACK WAS SEVEN MONTHS LATER, JUNE 2, 2009. WE
21 KNOW THAT DATE, NOT BECAUSE SHE REMEMBERS THE DATE, BUT
22 BECAUSE THERE WAS A STIPULATION THAT THAT'S THE DAY SHE SAW
23 THE PHOTOGRAPH. AND A STIPULATION IS A FACT THAT YOU HAVE
24 TO ACCEPT AS BEING TRUE. AND, IN FACT, IT'S NOT EVEN A
25 FULL SEVEN MONTHS BECAUSE THE CRIME HAPPENED ON
26 NOVEMBER 23, '08, AND SHE'S SHOWN THAT PHOTOGRAPH JUNE 2ND
27 OF 2009. SO IT'S ACTUALLY A LITTLE CLOSER THAN SIX MONTHS.
28 BUT EITHER WAY THAT'S THE GUY. HAS SHE EVER CHANGED HER

1 MIND? DID SHE EVER PICK OUT ANYBODY ELSE AS BEING THE GUY
2 IN THE MASK? NOPE. THAT'S HIM. IF YOU BELIEVE HER,
3 THAT'S ENOUGH.

23 SO HE RECOVERS ALL THESE DIFFERENT THINGS,
24 AND THEY DO TESTING. AND THEY FIND DNA ON THE HAT, ON THE
25 JUMPSUIT, AND ON THE GLOVES AT THE SAME LOCATION RIGHT
26 THERE IN THAT ONE HOUSE. AND THEY GET DNA OFF IT AND DO
27 TESTS. AND WHAT DO THEY FIND? THEY FIND THE DNA MATCHES.
28 WHOSE DNA DOES IT MATCH? IT MATCHES THIS GUY RIGHT HERE.

1 WHAT A COINCIDENCE. SHE HAPPENED TO PICK OUT THE
2 PHOTOGRAPH OF THE GUY WHOSE DNA WAS FOUND IN THE MASK.

3 WHEN I SAY IN THE MASK, I MEAN IN THE MASK,
4 NOT ON THE MASK, BECAUSE IT'S ON THE INSIDE OF THAT MASK.
5 EVEN THEIR EXPERT TELLS YOU BASICALLY WAYS FOR THAT TO GET
6 ON THERE, HIS DNA TO GET ON THERE. TWO OF THEM. WELL,
7 HE'S EITHER STANDING OVER IT PERSPIRING -- AND, BELIEVE ME,
8 NOBODY KNOWS MORE ABOUT PERSPIRING THAN ME -- STANDS OVER
9 IT, PERSPIRING, AND DRIPS HIS DNA ON IT. OR SOMEBODY TAKES
10 HIS PERSPIRATION OR HIS SALIVA AND RUBS IT ON IT. THOSE
11 ARE TWO POSSIBILITIES.

12 BUT REMEMBER THAT WOULD HAVE TO HAVE BEEN
13 DONE ON THE INSIDE OF THE MASK, NOT THE OUTSIDE. OR THE
14 ONLY OTHER WAY IS FOR HIM TO HAVE TOUCHED THAT MASK ON THE
15 INSIDE -- THE ONLY OTHER WAY. THAT MASK THAT WAS FOUND TWO
16 BLOCKS FROM THAT CRIME SCENE, FROM THAT HOUSE WHERE THOSE
17 PEOPLE WERE ROBBED AND HELD AT GUN POINT, WHERE THE YOUNG
18 BOY WAS THREATENED, TWO BLOCKS FROM THAT LOCATION.

19 AND WHAT ELSE DO WE KNOW ABOUT THE ITEMS
20 FOUND AT THAT LOCATION? GEE, THERE'S A GUN INSIDE THAT SKI
21 MASK. WOW. THE GUYS WITH THE SKI MASK HAD A GUN. NO
22 PRINTS FOUND ON THE GUN, BUT A GUN NONTHELESS. WHAT ELSE
23 DO WE KNOW? THERE WAS A BLUE JUMPSUIT AND THE GLOVES.
24 THERE WAS DNA FOUND OFF THAT -- NOT HIS, BUT SOMEBODY
25 ELSE'S.

26 THE GUY IN THIS SET OF PHOTOGRAPHS CIRCLED
27 NUMBER 5, DION HAWKINS. WHAT DO WE KNOW ABOUT THIS
28 PHOTOGRAPH? NANCY JARDINES IDENTIFIED THIS GUY AS BEING

1 THE GUY WITHOUT THE MASK. BRENDA BARRAGAN IDENTIFIED THIS
2 GUY AS BEING THE GUY WITHOUT THE MASK WHO WAS IN THE HOUSE
3 WITH A GUN. CLOTHES FOUND AT THE SAME LOCATION. THEY'VE
4 IDENTIFIED HIM. HE'S ONE OF THE GUYS. HE WASN'T WEARING A
5 MASK. HIS DNA IS FOUND ON THE GLOVES. ONE IN A
6 SEXTILLION, ACTUALLY, MORE THAN A SEXTILLION, WHICH MEANS
7 THERE'S 21 ZEROS. HOW MANY PEOPLE ARE ON THE EARTH? SEVEN
8 BILLION? THAT'S NINE ZEROS. THAT'S LIKE DOUBLE. IT'S A
9 BILLION, A BILLION CHANCES DION HAWKINS'S DNA WAS FOUND ON
10 THOSE GLOVES AND COULD HAVE BEEN FOUND ON THE JUMPSUIT.

11 DR. COLMAN DIDN'T GO ANY FURTHER BECAUSE HE
12 DIDN'T HAVE ENOUGH OF A SAMPLE BECAUSE THOSE BOXES -- AND
13 YOU HAVE THIS CHART TOO. I DIDN'T UNFOLD BECAUSE I DID NOT
14 WANT TO COVER UP EVERYTHING. BUT YOU HAVE HIS CHART.
15 REMEMBER THERE'S 15 BOXES. THAT'S ON THE LOW SIDE. HE
16 DIDN'T HAVE ENOUGH DNA, ON THE LOW SIDE, TO MAKE A
17 DETERMINATION TO MAKE A MATCH, BUT IT WAS ALL CONSISTENT
18 WITH DION HAWKINS. SOMEONE ELSE WHO WAS IDENTIFIED AT THAT
19 LOCATION BY THOSE VICTIMS.

20 AND THEN YOU HAVE THE DEFENDANTS' DNA INSIDE
21 THE MASK. THAT BY ITSELF IS ENOUGH.

22 DO YOU THINK THOSE ITEMS BELONGED TO ANYBODY
23 BUT THE PEOPLE WHO COMMITTED THE ROBBERY, WHO WENT INTO THE
24 HOUSE, HELD THE FAMILY AT GUN POINT, TOOK THE PROPERTY AND
25 MOVED BRENDA BARRAGAN FROM THE GARAGE INTO THE HOUSE? WHO
26 ALL STUFFED THAT STUFF THERE? WHO ELSE WOULD HAVE HAD A
27 REASON TO BE GOING TWO BLOCKS FROM THAT CRIME SCENE,
28 GETTING RID OF THAT CLOTHING A SHORT TIME LATER?

1 AND WHAT ELSE DO WE KNOW? DION HAWKINS WAS
2 FOUND LIKE THREE AND A HALF BLOCKS AWAY, RUNNING DOWN THE
3 STREET -- WELL, JOGGING, I GUESS, DOWN TO 5TH AVENUE.
4 DEPUTY HOLLY SAID HE SAW HIM ACTUALLY ON THIS SIDE OF
5 PROCTOR BUT STOPPED HIM BASICALLY AT THE INTERSECTION OF
6 PROCTOR AND 5TH.

7 GEE, LET'S SEE. THERE'S 14050 TRAILSIDE
8 DRIVE, GO DOWN TO FIFTH, GO ANOTHER BLOCK OR SO -- OOPS,
9 THERE'S THE CLOTHING WITH THE GUN AND THE MASK. GO A
10 LITTLE FARTHER. OH, THERE'S DION HAWKINS THAT DAY -- THAT
11 NIGHT ACTUALLY. HE'S STOPPED CLOTHED WITH HIS DNA IN A
12 DIRECT LINE FROM HOW HE'D BE GETTING OUT OF THERE. WELL,
13 MAYBE IT WAS HIS DNA ON THE MASK BECAUSE REMEMBER THERE
14 WERE TWO. ONE WASN'T ENOUGH. THE SECOND DNA DIDN'T REALLY
15 MATCH ANYBODY, BUT THERE WAS A LITTLE EXTRA, SO IT WAS
16 THERE. BUT WE KNOW IT WASN'T DION HAWKINS. THE NUMBERS
17 DIDN'T MATCH UP. IT WASN'T DION HAWKINS. THE MAJOR
18 CONTRIBUTOR ON THE MASK WAS DEFENDANT JAMES -- NOT THE
19 MINOR CONTRIBUTOR, THE MAJOR CONTRIBUTOR.

20 NO MATTER HOW MUCH YOU WANT TO SAY HOW MUCH
21 ON THERE OR HOW MUCH WASN'T ON THERE, THERE'S A MAJOR AND A
22 MINOR CONTRIBUTOR. HE'S THE MAJOR CONTRIBUTOR. THE MASK
23 WAS FOUND TWO BLOCKS AWAY WITH ANOTHER PERPETRATOR STOPPED.
24 INSIDE THE MASK WAS A GUN. THE CHANCES THAT IT'S NOT HIS
25 DNA, DR. COLMAN BROKE IT DOWN BY RACE: CAUCASIAN, BLACKS,
26 AND HISPANICS. HE GAVE THE HUGE NUMBERS. ACTUALLY, THE
27 SEXTILLION, THE 21 ZEROES ARE CAUCASIAN AND HISPANIC.

28 I'M JUST GOING TO DEAL WITH BLACK BECAUSE

1 THE WITNESSES ALL SAID THEY WERE BLACK, 5.2 QUINTILLION --
2 NOT 21 ZEROS; IT'S ONLY 18. STILL A BILLION BILLION. HIS
3 DNA, THERE'S NO DOUBT HIS DNA WAS ON THE INSIDE OF THAT SKI
4 MASK. REASONABLY -- AND THAT'S WHAT YOU HAVE TO LOOK AT
5 BECAUSE REMEMBER IT'S A REASONABLE DOUBT, AND THERE'S
6 INSTRUCTIONS IN THERE THAT TALK ABOUT THE EVIDENCE,
7 CIRCUMSTANTIAL AND DIRECT. AND YOU HAVE TO LOOK AT THE
8 REASONABLE EXPLANATION.

9 REASONABLENESS. IS THERE REALLY ANY DOUBT
10 THAT THE PEOPLE WHO COMMITTED THAT CRIME DUMPED THOSE
11 CLOTHES AT THAT HOUSE ON 5TH AVENUE TWO BLOCKS AWAY?
12 THERE'S ANOTHER REASONABLE EXPLANATION. THE DNA ON THOSE
13 ITEMS WOULD BE THE PEOPLE WHO COMMITTED THAT CRIME, WHO
14 COMMITTED THOSE CRIMES. THE DNA IN AND OF ITSELF IS
15 ENOUGH. AND NANCY JARDINES'S TESTIMONY IN AND OF ITSELF IS
16 ENOUGH. BUT YOU DON'T LOOK AT THEM SEPARATELY. YOU DON'T
17 TAKE EVERYTHING JUST PIECE BY PIECE BY PIECE BECAUSE YOU
18 TAKE EVERYTHING AS A WHOLE TO DETERMINE WHAT'S REASONABLE,
19 TO DETERMINE WHAT HAPPENED HERE, TO DETERMINE IF THERE'S A
20 REASONABLE DOUBT. SOME PEOPLE MAY SAY THERE'S A DOUBT, BUT
21 IS IT REASONABLE? HE WAS IDENTIFIED. HIS DNA IS ON THE
22 MASK. HE'S GUILTY OF THE CRIMES. THANK YOU.

23 THE COURT: THANK YOU.

24 MR. EVANS?

25 MR. EVANS: THANK YOU, YOUR HONOR.

26 LADIES AND GENTLEMEN, THE PEOPLE HAVE NOT
27 SHOWN BEYOND A REASONABLE DOUBT THAT TAUMU JAMES WAS THE
28 MAN WHO WAS INSIDE THAT HOME ON NOVEMBER 23RD, 2008. AND

1 I'M GOING TO OUTLINE FOR YOU ALL THE REASONS -- ALL THE
2 REASONS YOU SHOULD DOUBT IN EVERY WAY THAT HE WAS THE MAN
3 WHO WAS INVOLVED.

4 I THANK YOU ALL, AND A VERY GOOD MORNING TO
5 YOU. BEFORE I BEGIN, THIS IS THE LAST TIME I GET A CHANCE
6 TO TALK. FOR SOME OF YOU THAT'S A RELIEF. AND I GET THAT,
7 AND I DON'T TAKE IT PERSONALLY. BUT I WANT YOU TO LISTEN
8 BECAUSE I KNOW MR. GOUDY HAS PUT A LOT OF TIME IN THIS
9 CASE, AND I KNOW FOR SURE I HAVE PUT IN A LOT OF TIME TO
10 PRESENT THIS CASE TO YOU.

11 SO GIVE ME THIS ONE LAST OPPORTUNITY. I'M
12 GOING TO WALK THROUGH THE EVIDENCE AND OUTLINE EACH OF
13 THESE IDEAS. OKAY. BUT I'M GOING TO LOOK AT THE EVIDENCE
14 AND THE LAW. AND THAT'S WHERE I WANT YOU TO STAY. I DON'T
15 WANT YOU TO GET CAUGHT UP IN FOCUSING ON THESE THINGS THAT
16 BLIND YOU.

17 BUT BEFORE WE BEGIN, I WANT TO GIVE YOU
18 STRUCTURE FOR THE EVIDENCE BECAUSE THAT'S WHAT THE LAW
19 INDICATES HERE. THERE'S A COUPLE WAYS YOU CAN LOOK AND
20 BASICALLY CATEGORIZE THE EVIDENCE. YOU COULD SAY WITHOUT
21 LOOKING AT ANYTHING THAT WE HAVE SHOWN OR EVEN PUT ON HERE
22 AND JUST LOOK AT THE PEOPLE'S CASE, AND IF YOU SAY TO
23 YOURSELF THEY HAVE NOT MET THEIR BURDEN, THEY HAVEN'T
24 PROVEN THE CASE BEYOND A REASONABLE DOUBT, THE VERDICT,
25 LADIES AND GENTLEMEN, IS NOT GUILTY. OKAY?

26 LET'S SAY YOU LOOK AT THE PEOPLE'S
27 INFORMATION OR THE EVIDENCE THAT THEY PRESENTED AND ARGUED,
28 AND YOU LOOK AT WHAT I HAVE PRESENTED ON BEHALF OF

1 MR. JAMES, AND YOU SAY, YOU KNOW WHAT, I'M NOT REALLY
2 CONVINCED OF EITHER. AGAIN, BECAUSE THE PEOPLE HAVE THE
3 BURDEN BEYOND A REASONABLE DOUBT, THE VERDICT BY LAW IS NOT
4 GUILTY.

5 OKAY. NOW, IF YOU SIT BACK AND YOU SAY YOU
6 KNOW WHAT, I HEAR WHAT MR. GOUDY HAS TO SAY; I'VE HEARD
7 WHAT THE PEOPLE HAD TO SAY, AND I FIND THAT TO BE A
8 REASONABLE EXPLANATION. AND THEN YOU LOOK AT WHAT I HAVE
9 TO SAY AND THE EVIDENCE I PRESENTED AND HE PRESENTED AND
10 THE ARGUMENT I PRESENTED, AND YOU SAY THAT THAT IS
11 REASONABLE, LADIES AND GENTLEMEN, THE VERDICT BY LAW IS NOT
12 GUILTY. YOU SEE?

13 AND WHEN YOU READ THAT INSTRUCTION, AND
14 YOU'RE GOING TO HAVE IT BACK THERE AND I WANT YOU TO,
15 PLEASE READ IT. MEMORIZE IT, PLEASE. CIRCUMSTANTIAL
16 EVIDENCE, SUFFICIENCY OF THE EVIDENCE, CALCRIM 224. I'M
17 GOING TO READ IT TO YOU. BECAUSE THE EVIDENCE IN THIS CASE
18 ESPECIALLY AS IT RELATES TO THE DNA EVIDENCE IS
19 CIRCUMSTANTIAL. OKAY? AND HERE'S THE LAW AGAIN.

20 (READING:) BEFORE YOU MAY RELY ON
21 CIRCUMSTANTIAL EVIDENCE TO FIND THE DEFENDANT GUILTY, YOU
22 MUST BE CONVINCED THAT THE ONLY REASONABLE CONCLUSION
23 SUPPORTED BY THE CIRCUMSTANTIAL EVIDENCE IS THAT THE
24 DEFENDANT IS GUILTY. IF YOU CAN DRAW TWO OR MORE
25 REASONABLE CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE,
26 AND ONE OF THOSE REASONABLE CONCLUSIONS POINTS TO INNOCENCE
27 AND THE OTHER TO GUILT, YOU MUST ACCEPT THE ONE THAT POINTS
28 TO INNOCENCE.

1 THAT'S THE INSTRUCTION, LADIES AND
2 GENTLEMEN. OUR BURDEN HERE AS IT RELATES TO CIRCUMSTANTIAL
3 EVIDENCE, AND THAT'S WHAT THIS CASE IS BUILT UPON, IS TO
4 PROVIDE A REASONABLE EXPLANATION, NOT A MORE REASONABLE
5 EXPLANATION -- A REASONABLE EXPLANATION. IF I DO SO, THE
6 VERDICT BY LAW IS NOT GUILTY. THE ONLY WAY, AS THIS
7 INSTRUCTION HAS INDICATED, IS TO SAY THAT THE PEOPLE'S
8 POSITION IS REASONABLE AND OURS IS UNREASONABLE.

9 NOW, LET'S TALK ABOUT THE EVIDENCE BECAUSE
10 I'M GOING TO PROVIDE YOU, IF I CAN STAY ON TRACK AND
11 REMEMBER TO NUMBER WHEN I MOVE IT ALONG HERE, 13 REASONS
12 WHY YOU SHOULD FIND THE DEFENDANT NOT GUILTY OF THE CRIMES
13 CHARGED. AND IN ALL FAIRNESS, LADIES AND GENTLEMEN, YOU
14 HAVE ONE FOR EACH OF YOU TO TAKE BACK THERE AND ONE EXTRA
15 JUST IN CASE. BUT THE TWO OF THE ARGUMENTS REALLY RELATED
16 TO WHAT CRIME HAS OCCURRED IN THIS CASE. THAT'S WHAT IT
17 COMES DOWN TO. AND I'M GOING TO SHOW YOU AT THE END SOME
18 OF THE CRIMES CHARGED JUST AREN'T ROBBERIES. IT'S NOT A
19 KIDNAPPING FOR ROBBERY. BUT I WANT TO PRIMARILY FOCUS ON
20 THE EVIDENCE AS IT RELATES TO THE IDENTIFICATION AND THE
21 DNA EVIDENCE BECAUSE, AS THE PEOPLE SAID, THAT SHOWS THAT
22 MR. JAMES IS GUILTY.

23 WELL, I WANT YOU TO LOOK AT THAT EVIDENCE.
24 OKAY? AND I DON'T WANT YOU TO FALL INTO -- THERE'S SOME
25 GREAT LAWYERING TRAPS GOING ON HERE. AND I'M GOING TO
26 POINT THEM OUT BECAUSE IT GIVES YOU TUNNEL VISION, AND I
27 DON'T WANT YOU TO HAVE TUNNEL VISION. BECAUSE AS HER HONOR
28 HAS INDICATED VERY CLEARLY IN THE INSTRUCTION, YOU ARE TO

1 LOOK AT ALL THE EVIDENCE. I REMEMBER WHEN I WAS HERE
2 DURING VOIR DIRE, REMEMBER WHEN I SAID, I'M NOT GOING TO
3 WASTE YOUR TIME, AND I THINK I LIVED UP TO MY WORD. I
4 DIDN'T LINGER. I DIDN'T WASTE YOUR TIME. BUT THERE MIGHT
5 BE TIMES WHEN I MIGHT POINT SOMETHING OUT, A LITTLE PIECE
6 IN TERMS OF THE TIME FRAME OF THE TRIAL, BUT IT'S REALLY
7 IMPORTANT.

8 AND I'LL GO THROUGH ALL THOSE THINGS AND ASK
9 FOR YOUR PATIENCE BECAUSE I NEED TO GO BACK AND LOOK
10 THROUGH THOSE NOTES BECAUSE I CAN'T REMEMBER EVERYTHING
11 THAT WENT ON IN THIS TRIAL FOR THE LAST WEEK. AND THERE
12 ARE SOME THINGS I NEED TO CUE MY MEMORY IN THE NOTES TO
13 FURTHER ARGUE, SO BE PATIENT WITH ME.

14 ALL RIGHT. SO LET'S BEGIN ON THE FIRST
15 POINT, ONE OF THE FIRST POINTS. I FIRMLY DISAGREE WITH
16 MR. GOUDY COMPLETELY THAT THE PEOPLE HAVE SHOWN BEYOND A
17 REASONABLE DOUBT THAT THE HAT IN PEOPLE'S 7 WAS THE ONE
18 WORN BY SUSPECT -- ANY SUSPECT IN THIS CASE. AND THE
19 ANSWER TO THAT QUESTION IS NO. BUT LET'S WALK THROUGH THAT
20 EVIDENCE HERE, AND YOU KNOW WHERE I'M GOING HERE BECAUSE I
21 HAVE TO PUT THESE GLOVES ON. AND LET ME DO IT NOW BECAUSE
22 IT CAN GET DIFFICULT AT TIMES, BUT LET'S START. OKAY?

23 FIRST AND FOREMOST, FOR THAT DNA EVIDENCE
24 THAT IS ON THE HAT TO BE ANY RELEVANCE TO THIS CASE, FIRST
25 AND FOREMOST THE HAT HAS TO HAVE BEEN WORN BY ONE OF THE
26 SUSPECTS. I THINK YOU'D HAVE TO AGREE WITH ME ON THAT.
27 NOW, IS THERE ANY EVIDENCE THIS CASE THAT THE HAT OR THE
28 BEANIE OR WHATEVER THIS IS, WAS WORN OR SEEN ON ANY OF THE

1 SUSPECTS? THE ANSWER TO THAT QUESTION IS NO. DOES ANYONE
2 SEE A PERSON WEARING THAT HAT AS THEY WALK OUT AND LEAVE
3 THE HOUSE? DOES ANYONE SEE A SUSPECT PUT THAT ACTUAL HAT
4 IN THE LOCATION IT WAS FOUND? THIS IS MY FIRST POINT. AND
5 THE ANSWER TO THAT QUESTION IS NO.

6 NOW, SOMETHING VERY IMPORTANT. I'VE GOT TO
7 GO TO ANOTHER INSTRUCTION BECAUSE I HAVE TO READ THIS ONE
8 TOO. DON'T FALL FOR THAT, OH, WHEN CARIAGA GOT UP ON THE
9 STAND AND SAID, RADIO FROM THE HELICOPTER TOLD ME TO GO TO
10 THAT LOCATION. AND WHAT DID I DO AT THAT POINT? OBJECT.
11 HEARSAY. THE COURT'S RULING: NOT ADMITTED FOR THE TRUTH
12 OF THE MATTER ASSERTED. REMEMBER THAT? ADMITTED FOR THE
13 LIMITED PURPOSE.

14 CALCRIM 303, YOU'RE GOING TO HAVE IT. IT'S
15 ANOTHER ONE I WANT YOU TO REMEMBER ESPECIALLY AS TO THIS
16 POINT. (READING:) DURING THE TRIAL CERTAIN EVIDENCE WAS
17 ADMITTED FOR A LIMITED PURPOSE. YOU MAY CONSIDER THAT
18 EVIDENCE ONLY FOR THAT PURPOSE AND NO OTHER.

19 THAT EVIDENCE ABOUT WHAT WAS SAID FROM
20 SOMEONE UP IN A HELICOPTER IS NOT OFFERED FOR THE TRUTH OF
21 THE MATTER ASSERTED. IT DOES NOT SHOW ANYTHING THAT THIS
22 HAT WAS PUT IN THAT LOCATION BY ANY SUSPECT. AND DON'T
23 ACCEPT IT FOR THAT BECAUSE THAT'S AGAINST THE LAW AND
24 THAT'S AGAINST THE COURT'S RULING. SO THAT'S THE FIRST
25 PIECE OF EVIDENCE. NOW WHAT IS SECOND?

26 NOT ONLY DO WE NOT KNOW THAT INFORMATION,
27 LADIES AND GENTLEMEN, THE PEOPLE'S OWN WITNESSES,
28 SPECIFICALLY MS. JARDINES, TELL YOU THAT THIS HAT IN

1 PEOPLE'S 7 WAS NOT WORN BY ONE OF THE SUSPECTS. HOW DO WE
2 KNOW THAT? LOOK AT THIS CAP. WHAT DID MS. JARDINES TELL
3 YOU ABOUT THE CAP THAT WAS WORN BY THE PERSON SHE
4 IDENTIFIED BY MR. JAMES. WAS THERE ANYTHING UNCLEAR ABOUT
5 THE FACT THAT SHE SAW FOUR HOLES IN THE MASK THAT SHE
6 CLAIMS HE WAS WEARING. IS THERE ANYTHING UNCLEAR, LADIES
7 AND GENTLEMEN, ABOUT PEOPLE'S 7, THAT IT ONLY HAS THREE
8 HOLES? ANYTHING?

9 AGAIN, IF THE DNA THAT WAS FOUND OF
10 MR. JAMES ON THIS MASK IS TO HAVE ANY MEANING IN THE TRIAL,
11 ANY MEANING, THIS MASK HAD TO BE WORN BY HIM. THE EVIDENCE
12 IN THIS CASE, LADIES AND GENTLEMEN, WAS CLEAR BY THEIR OWN
13 WITNESSES. THEY ARE RELYING ON MS. JARDINES'S
14 IDENTIFICATION. THEY ARE SAYING THAT SHE HAD THE
15 OPPORTUNITY TO OBSERVE MR. JAMES. CLEARLY, SHE SAW HIM IN
16 THE KITCHEN. SHE WAS IN THE HALLWAY WITH HIM, THE KITCHEN
17 HALLWAY (INDICATING) INTO HER BEDROOM, INTO HER MOTHER'S
18 BEDROOM. PLENTY OF OPPORTUNITY TO OBSERVE HIM.

19 THIS IS WHAT SHE SAID -- THIS WOULD HAVE TO
20 BE WHAT HE WAS WEARING AT THAT TIME. AND IT'S CLEARLY NOT.
21 YOU SEE, IT'S A GOOD LAWYERING TACTIC THAT MR. GOUDY WAS
22 RELYING UPON HERE. ALL RIGHT? AND THAT LAWYERING TACTIC
23 IS "I'VE GOT A PIECE OF EVIDENCE THAT'S UNCONTRADICTED, SO
24 I'M GOING TO FOCUS ON IT AND TRY TO CONFORM ALL THE
25 EVIDENCE TO MAKE IT LOOK AND HELP HIS CASE," BUT HE'S NOT.
26 HE'S BYPASSING IMPORTANT PIECES OF EVIDENCE, ONE OF WHICH
27 IS TO SAY IF MR. JAMES WAS A SUSPECT AND HIS DNA, AND HE
28 WORE THIS HAT DURING THE CRIME, AND HE WAS A PERSON THAT

1 MS. JARDINES HAS IDENTIFIED, WHERE'S THE OTHER HOLE?

2 THERE'S NO OTHER HOLE LADIES AND GENTLEMEN.

10 THERE WAS DISTINCTIVE CHARACTERISTICS ABOUT
11 THIS MASK, LADIES AND GENTLEMEN, THAT IF MR. JAMES WAS
12 WEARING IT AS MS. JARDINES TESTIFIED, SHE WOULD HAVE
13 POINTED OUT THESE DISTINCTIVE CHARACTERISTICS. SHE WOULD
14 HAVE DONE SO, YOU WOULD HAVE EXPECTED, ON NOVEMBER 23,
15 2008. BUT IF SHE DIDN'T DO THAT -- SHE TESTIFIED UNDER
16 OATH ON JUNE 12, 2009, IN THE EL MONTE COURTHOUSE, NEVER
17 MENTIONED ANYTHING ABOUT THE DISTINCTIVE CHARACTERISTICS
18 ABOUT THIS MASK AT THAT TIME. SHE SPOKE TO DETECTIVE CHISM
19 ON JUNE 2ND, 2009, AND NEVER ONCE MENTIONED ANYTHING
20 DISTINCTIVE ABOUT THIS MASK SHE CLAIMED MR. JAMES WAS
21 WEARING. AND EVEN MORE IMPORTANT THAN THAT, BECAUSE I
22 DON'T WANT TO YOU STOP THERE ON ANY OF THE EVIDENCE,
23 BECAUSE WHEN HE HAD GOT UP HERE IN FRONT OF YOU, SHE NEVER
24 MENTIONED THAT EITHER.

25 YOU SEE THIS MASK, LADIES AND GENTLEMEN, WAS
26 NOT WORN BY A SUSPECT AND CERTAINLY NOT WORN BY MR. JAMES.
27 THAT MAKES THE DNA EVIDENCE ON HERE IRRELEVANT.

28 | MY THIRD POINT AS IT RELATES TO THE DNA

1 EVIDENCE, LADIES AND GENTLEMEN: REMEMBER THE SIGNIFICANCE
2 OF WHAT THE DNA CONCLUSIONS ARE. ALL RIGHT? BOTH EXPERTS
3 TOLD YOU ABOUT THIS. ONE, JUST BECAUSE THERE'S DNA RESULT,
4 SOMEONE'S DNA ON AN ITEM, IT DOES NOT SHOW WHEN THE DNA WAS
5 DEPOSITED. IT DOES NOT MEAN THAT THE PERSON ACTUALLY WORE
6 IT. IT DOES NOT MEAN, EVEN IF HE'S A MAJOR CONTRIBUTOR,
7 THAT THE PERSON WAS THE LAST WEARER OF THE ITEM. IT DOES
8 NOT MEAN THAT HE WAS THE MOST FREQUENT WEAR EITHER OF IT.
9 AND BECAUSE OF THE AREA THAT WAS SWABBED, THE AMOUNT OF DNA
10 WAS RELATIVELY LOW, CONSIDERING THAT AREA THAT WAS DONE.
11 YOU CANNOT BYPASS THAT EVIDENCE BECAUSE A SIGNIFICANT --
12 AGAIN, DON'T LOSE SIGHT OF WHAT THE RESULTS SAY. THAT'S MY
13 THIRD POINT.

14 WE'RE GOING TO GO BACK TO CALCRIM 224. THIS
15 IS MY FOURTH POINT, AND I THINK ITS ESSENTIAL AND IT'S
16 SOMETHING THE PEOPLE DON'T WANT YOU TO LOOK AT. THE
17 RESULTS ARE CLEAR AS TO WHO'S DNA IS ON THERE. IT'S NOT
18 ONLY MR. JAMES'S DNA. THERE'S ANOTHER PERSON'S DNA. WHY DO
19 THE PEOPLE JUST EXCLUDE THAT OTHER PERSON AS A POSSIBLE
20 PERPETRATOR HERE. WHY IS IT THAT IT'S MR. JAMES'S DNA THAT
21 THEY ONLY WANT YOU TO FOCUS ON?

22 WE KNOW THAT THERE'S AT LEAST TWO PERSON'S
23 DNA. AND IF WE WOULD HAVE HAD THE WHOLE THING SWABBED, WE
24 MAY HAVE FOUND OTHER PERSON'S. BUT LET'S JUST LOOK AT
25 THERE'S TWO PEOPLE'S DNA. WHAT DOES THAT SHOW? THAT EVEN
26 UNDER THEIR THEORY, THEY ARE SAYING BOTH PEOPLE WORE IT.
27 WHY DO THEY BYPASS THE FACT THAT THE OTHER PERSON COULD BE
28 THE PERPETRATOR? ISN'T THAT JUST AS REASONABLE AS

1 MR. JAMES BEING THE PERPETRATOR? AND IF THAT'S THE CASE,
2 YOU HAVE TO FOLLOW THE LAW BECAUSE THE LAW SAYS THAT
3 CIRCUMSTANTIAL EVIDENCE AS IT RELATES TO THE DNA IF ONE
4 SAYS IT'S REASONABLE TO THINK MR. JAMES WORE IT AND THERE'S
5 ONE EXPLANATION, A REASONABLE ONE SAYING THAT ANOTHER
6 PERSON WORE IT BECAUSE THEIR DNA IS ON IT, UNDER THEIR
7 THEORY THAT'S CIRCUMSTANTIAL EVIDENCE AND BY LAW MEANS NOT
8 GUILTY. BIG HOLE AND VOID IN THE PEOPLE'S ARGUMENT AS TO
9 THIS ISSUE. IT'S A GOOD LAWYERING TACTIC.

10 FOCUS ON WHAT'S UNCONTROVERTED. BUT YOU
11 CAN'T CONFORM THE EVIDENCE AS IT WAS PRESENTED AS IT IS TO
12 MAKE THAT WORK. THE EVIDENCE IS WHAT IT IS. TWO PEOPLE'S
13 DNA. EVEN UNDER THEIR THEORY IT COULD BE TWO SEPARATE
14 PEOPLE, THAT OTHER PERSON'S DNA IS NOT MR. JAMES. THAT
15 OTHER PERSON'S DNA COULD BE THE OTHER PERSON. THAT'S
16 REASONABLE BECAUSE THEY ARE SAYING THEY BOTH HAD TO WEAR
17 IT. IT'S ON THE INSIDE.

18 FIFTH POINT I WANT TO MAKE ABOUT THE DNA.
19 THE GUN WAS FOUND INSIDE THE HAT. WOW. IS THERE ANY
20 EVIDENCE IN THIS CASE THAT ANY OF THE WITNESSES SAID THAT
21 THAT WAS THE GUN THAT THEY SAW ANYONE HOLDING DURING THE
22 COMMISSION OF THE CRIME? THERE'S NO EVIDENCE TO THAT. YOU
23 KNOW, IF THAT WAS MR. JAMES'S GUN, THEN HOW COME HIS PRINTS
24 AREN'T ON THE GUN? HOW COME HIS DNA IS NOT ON THE GUN IF
25 HE TOUCHED IT WITHOUT A GLOVE AS MS. JARDINES SAID?

26 IF YOU HAVE THE CORROBORATION, AT LEAST
27 YOU'D EXPECT IT. THERE IS NOT ONE WITNESS. YOU HAVEN'T
28 EVEN SEEN THAT WEAPON, LADIES AND GENTLEMEN. THERE'S NOT

1 ONE WITNESS THAT'S COME IN HERE AND SAID, THAT'S THE WEAPON
2 THAT MR. JAMES HAD IN HIS HAND OR ANYBODY HAD IN THEIR
3 HAND. PLEASE LOOK AT ALL THE EVIDENCE. THAT'S WHAT I'M
4 ASKING YOU TO DO HERE BECAUSE IT'S ALL SIGNIFICANT.

5 LET'S MOVE ONTO THE IDENTIFICATION EVIDENCE.
6 THIS IS THE SIXTH POINT I'D LIKE TO MAKE. LET'S START WITH
7 MS. JARDINES BECAUSE THE PEOPLE ARE LIKE THAT'S ALL YOU
8 NEED, MS. JARDINES'S. PLEASE FOCUS ON THE EVIDENCE. I
9 DON'T WANT YOU TO GO ANYWHERE, BUT FOCUS ON WHAT SHE HAD TO
10 SAY. IT'S SO IMPORTANT. SO IMPORTANT. SHE'S AN IMPORTANT
11 WITNESS FOR THE DEFENSE. AMEN, SHE CAME IN TO TESTIFY.
12 LADIES AND GENTLEMEN, SHE WANTS YOU TO BELIEVE THAT HER ID
13 OF MR. JAMES IS INDEPENDENT OF ANYTHING ELSE, THAT SHE HAS
14 AN INDEPENDENT RECOLLECTION OF MR. JAMES ON THE NIGHT OF
15 NOVEMBER 23RD, 2008. ALL RIGHT. LET'S HOLD HER TO THAT.
16 PLEASE, LET'S HOLD HER. THERE'S A LOT OF FACTS I NEED TO
17 GO THROUGH, SO BEAR WITH ME HERE.

18 START WITH ON NOVEMBER 23RD, 2008, WHEN
19 MS. JARDINES WAS SPEAKING TO DEPUTY CARIAGA, AND SHE'S GOT
20 THE EVENTS CLEAREST IN HER MIND. CLEARLY, IT JUST
21 HAPPENED. OKAY? CARIAGA TELLS YOU, I HAD TO GO BACK TO
22 HER ON A NUMBER OF OCCASIONS. AND HE DOES SO BECAUSE IT
23 SHOWS GOOD POLICE WORK. SHE'S GOT -- HE HAS AN UPSET
24 WITNESSES, AND HE'S GOING TO KEEP COMING BACK TO HER A
25 NUMBER OF TIMES TO HELP HER WORK THROUGH THE EMOTION OF THE
26 MOMENT AND THE SHOCK OF THE MOMENT AND IN DOING SO GET AS
27 MANY DETAILS AS HE CAN BECAUSE HE KNOWS THIS IS HIS BEST
28 OPPORTUNITY TO FIND OUT WHO THE UNKNOWN SUSPECTS ARE IN THE

1 CASE.

2 AT THAT TIME, LADIES AND GENTLEMEN, WHEN HE
3 SPEAKS TO HER, NANCY JARDINES MENTIONS NOTHING, ABSOLUTELY
4 NOTHING ABOUT EYES, NOSE, AND MOUTH OF A MASKED PERSON,
5 NOTHING. SHE DOESN'T MENTION ANYTHING ABOUT DARK SKIN.
6 AND DEPUTY CARIAGA SAID WHEN HE WAS ASKED, AND I THINK IT
7 WAS BY MR. GOUDY, WELL, DIDN'T YOU SAY SOMETHING ABOUT THE
8 RACE OF THE UNKNOWN SUSPECT? YEAH, THEY ID'D THE RACE OF
9 THE MASKED PERSON BY VOICE, NOT BY SKIN COLOR. THAT'S WHAT
10 THEY SAID. THAT'S WHAT SHE SAID.

11 DID ANYONE MENTION ANYTHING ABOUT EYES OF A
12 SUSPECT? OH, YES. DEPUTY CARIAGA TOLD YOU THE GENTLEMAN
13 WHO WAS DESCRIBED AS MALE WHITE OR A MALE HISPANIC WAS
14 SPEAKING SPANISH. HE WAS THE ONLY PERSON THEY TALKED ABOUT
15 EYES ABOUT, NOT ABOUT THE PERSON IN A MASK. THEY GAVE A
16 VERY GENERAL DESCRIPTION OF ANYONE IN A MASK. THAT'S WHAT
17 MS. JARDINES DID. THAT'S BECAUSE SHE NOT DIDN'T SEE AND
18 COULDN'T ID THAT PERSON. OKAY?

19 BUT I DON'T WANT YOU TO STOP THERE. BECAUSE
20 WHAT ELSE IS A SIGNIFICANT EVENT ON JUNE 12TH, 2009? SHE
21 GETS ON THE STAND IN THE EL MONTE COURTHOUSE. SHE
22 DESCRIBES THE PERSON THAT SHE SAID WAS WEARING THE MASK.
23 OKAY? SHE SAYS, I HAD AN OPPORTUNITY -- IT'S UNDER OATH.
24 I HAD AN OPPORTUNITY TO SEE THE EYES, THE NOSE, THE MOUTH,
25 SKIN COLOR AND BUILD OF THE PERSON; RIGHT? FIRST TIME SHE
26 SAYS THIS. UNDER OATH, LADIES AND GENTLEMEN, NANCY
27 JARDINES SAYS THE MASKED MAN SHE CAN IDENTIFY IS THE PERSON
28 THAT WAS THERE WAS THIN BUILT.

1 MR. GOUDY: OBJECTION. MISSTATES THE EVIDENCE.

2 THE COURT: LADIES AND GENTLEMEN, YOU HEARD THE
3 EVIDENCE IN THE TESTIMONY. IT IS FOR YOU TO DECIDE WHAT
4 THE EVIDENCE HAS SHOWN AND WHAT INFERENCES CAN BE DRAWN
5 FROM THE EVIDENCE. WHAT THE LAWYERS SAY IS NOT EVIDENCE
6 ANYWAY.

7 MR. EVANS: MR. JAMES, I IMPEACHED HER WITH THAT.
8 YOU CAN GO BACK AND LOOK. IT'S THERE. HE'S NOT THIN
9 BUILT. LOOK AT HIM. YOU'RE WITHIN -- YOU'RE NOT EVEN AS
10 CLOSE AS MS. JARDINES. SHE WAS WITH HIM, WITH THE SUSPECT
11 FROM BEGINNING TO END. THERE'S NO WAY THIS MAN IS THIN
12 BUILT. LOOK AT HIS ARMS. LOOK AT HIS SHOULDERS. LOOK AT
13 HIS CHEST. AND HE'S IN A DRESS SHIRT. I WEAR A DRESS
14 SHIRT EVERY DAY. DO YOU KNOW WHAT KIND OF BUILD YOU HAVE
15 TO HAVE TO SEE THAT? THAT'S NOT THIN BUILD. THAT'S NOT A
16 MEDIUM BUILD. THAT'S A MUSCULAR BUILD. THAT'S NOT A THIN
17 BUILT MAN. YOU HAVE TO GIVE HIM THAT.

18 OKAY. SHE REMEMBERS HIS EYES; RIGHT? SHE
19 REMEMBERS HIS NOSE. SHE REMEMBERS HIS SKIN COLOR. LOOK AT
20 HIS NOSE. IS THAT DARK SKIN? NO, IT'S NOT DARK SKIN. BUT
21 MOST IMPORTANTLY, LOOK AT THE FRECKLES ON HIS NOSE. IF SHE
22 CAN ID HIM BY THE NOSE, WHERE'S THE EVIDENCE OF FRECKLES?
23 EVEN WHEN SHE'S ON THE STAND, SHE CAN'T EVEN SAY IT.

24 THERE WAS ONE OTHER THING, AND YOU PROBABLY
25 SAW IT. I WON'T HAVE MR. JAMES COME UP. BUT YOU CAN SEE
26 IT. HE HAS DISTINCTIVE NOSTRILS TOO. LOOK HOW LARGE HIS
27 NOSTRILS ARE. THEY ARE NOT THIN. THEY ARE UP AND
28 PROTRUDING. YOU HAVE TO GIVE ME THIS. OKAY? IF

1 MS. JARDINES IS ABLE TO ID MR. JAMES THROUGH THE MASK
2 SEEING THE NOSE, SHE WOULD HAVE PICKED OUT ONE OF THOSE
3 THINGS, DON'T YOU THINK, ONE OF THEM TO CARIAGA UNDER OATH.
4 AT THE PRELIMINARY HEARING, HERE TESTIFYING? NOTHING.
5 THAT'S BECAUSE THAT ID IS NO GOOD. MR. JAMES WAS NOT
6 THERE. SHE WOULD HAVE SEEN THAT.

7 LET ME MOVE ON TO MY NEXT POINT, WHICH
8 RELATES TO MS. JARDINES AND HER IDENTIFICATION. SHE WANTS
9 YOU TO BELIEVE THAT SHE DID NOT SEE THE INTERNET PHOTOGRAPH
10 BEFORE SHE SAW THE SIX PACK WITH DETECTIVE CHISM. OKAY.
11 LET'S STEP BACK AND LOOK AT THE INFORMATION HERE BECAUSE
12 IT'S IMPORTANT FOR WHAT I'M TALKING ABOUT NOW AND WILL
13 REFER TO LATER. SO LET'S GET THIS DOWN.

14 A LETTER COMES IN THE MAIL SOMETIME AFTER
15 NOVEMBER 23RD BUT BEFORE JUNE 2ND, 2009. AT THAT TIME THE
16 LETTER INDICATES VERY CLEARLY THAT TAUMU JAMES IS A SUSPECT
17 IN THE CASE IN WHICH THEY ARE A VICTIM. THIS IS THE FIRST
18 TIME ANYONE HEARS -- ANYBODY -- MS. JARDINES OR ANYONE
19 NAMED TAUMU JAMES, THE FIRST TIME. THEN MS. JARDINES WOULD
20 HAVE YOU BELIEVE THAT SHE SEES THE SIX PACK, AND THEN SHE
21 LOOKED AT THE INTERNET PHOTOGRAPH. BUT WE KNOW THAT'S NOT
22 TRUE.

23 YOU CAN CHARACTERIZE IT WHATEVER WAY YOU
24 WANT THAT SHE'S NOT BELIEVABLE, THAT SHE'S LYING. BUT WE
25 KNOW THAT THE REAL PROGRESSION OF EVENTS HERE WAS THE
26 LETTER WAS RECEIVED, THE PHOTOGRAPH WAS VIEWED OF MR. JAMES
27 ON THE INTERNET, AND THEN THE SIX PACK OCCURRED. BECAUSE
28 WHY? MS. JARDINES, WHEN SHE WAS INTERVIEWED ON JULY 10 BY

1 RANDALL PETEE, THE INVESTIGATOR THAT WORKED WITH ME, SHE
2 TOLD HIM THAT. IT WAS LESS THAN A MONTH, BASICALLY A MONTH
3 FROM TODAY, BUT LESS THAN A MONTH WHEN SHE TESTIFIED. BUT
4 MOST IMPORTANTLY EVEN IN ADDITION TO WHAT SHE HAS TO SAY,
5 YOU'VE GOT TO PUT THIS EVIDENCE TOGETHER BECAUSE IT ALL
6 MAKES SENSE, THE PUZZLE FITS HERE.

7 OKAY. HERE'S THE FIRST PIECE OF THE PUZZLE.
8 AND THAT'S SAAVEDRA INDICATED THAT SHE WAS THE ONE WHO WENT
9 ON THE INTERNET IN THE HOUSE AND LOOKED UP MR. JAMES'S
10 PHOTOGRAPH CLEARLY. THAT'S UNCONTROVERTED EVIDENCE. AND
11 MS. JARDINES IS LIVING IN THE HOME WITH ANNETTE SAAVEDRA.
12 OKAY? ANNETTE SAAVEDRA INDICATES VERY CLEARLY AND
13 UNCONTROVERTED, I LOOKED AT THE INTERNET PHOTOGRAPH ONE
14 TIME. AND AT THAT TIME WHEN I LOOKED AT THE INTERNET
15 PHOTOGRAPH, NANCY WAS THERE. NANCY JARDINES, BRENDA
16 BARRAGAN, FELICITAS GONZALEZ -- THEY WERE ALL THERE AND
17 PRESENT. IT WAS DONE ONCE, AND IT WAS DONE BEFORE THE SIX
18 PACK -- THAT'S ANNETTE SAAVEDRA.

19 NANCY JARDINES TELLS YOU, I WAS WITH ANNETTE
20 WHEN I LOOKED AT THE PHOTOGRAPH. OKAY. PUT THE PIECES OF
21 THE PUZZLE TOGETHER. SHE HAD TO SEE THE PHOTOGRAPH ON THE
22 INTERNET BEFORE THE SIX PACK. SHE HAD TO. AND YOU KNOW
23 THAT ONCE SHE SEES THE PHOTOGRAPH, SHE'S GOING TO PICK OUT
24 THE SIX PACK. SHE WANTS TO SAY IT'S DIFFERENT, BUT REALLY
25 IT'S NOT. IT CAN'T BE BECAUSE THE OTHER WITNESSES IN HER
26 OWN TESTIMONY, WHEN YOU PUT IT TOGETHER, COMPLETELY
27 CONTRADICT THAT POSITION. IT'S NOT TRUE. SHE SAW THE
28 PHOTOGRAPH. AND YOU'VE HEARD THE SCIENTIFIC EVIDENCE, THE

1 STUDIES DOCTOR SHOMER TALKED TO YOU ABOUT, IT'S CLEAR
2 THAT'S A TAINT THAT'S GOING TO FOCUS HER ON THAT
3 PHOTOGRAPH, THE FAMILIARITY OF SEEING IT PRIOR TO THIS.
4 AND I THINK YOU ALSO CAN PRETTY WELL ASSUME THE PEOPLE IN
5 THE HOUSE WERE TALKING ABOUT THIS BEFORE THEY SAW THE SIX
6 PACK, AND AFTER THAT SAW IT.

7 THERE'S A PART HERE THAT SAYS THERE'S
8 SOMETHING HERE TO LOOK AT THAT'S VERY HUMAN AS IT RELATES
9 TO MS. JARDINES. AND I UNDERSTAND THIS. HER AND HER
10 FAMILY ARE VICTIMS OF A ROBBERY. ALL RIGHT. AND THE
11 NATURAL REACTION IS THEY WANT EVERYBODY CAUGHT. THAT'S THE
12 HUMAN REACTION. ALL RIGHT. AND IMAGINE AT A POINT BEFORE
13 THEY RECEIVED THE LETTER, THEY DON'T KNOW WHO THE UNKNOWN
14 SUSPECTS ARE BECAUSE IT'S CLEAR ABOUT THE INITIAL
15 IDENTIFICATION. THEY DON'T HAVE ANY IDEA WHO THIS PERSON
16 IS. THEN ALL OF A SUDDEN HERE COMES THIS LETTER THAT SAYS,
17 HEY, WE THINK THIS GUY'S A SUSPECT IN THE CASE. IT'S THE
18 FIRST TIME THEY HEAR ABOUT IT, WOW, WHO IS THIS PERSON?
19 GET ON THE INTERNET.

20 HERE IT IS. I MEAN, THE HUMAN REACTION IS
21 WOW, NOW THEY ARE GOING TO START CHANGING THEIR MEMORY.
22 NOW SHE'S GOING TO TRY TO GO BACK AND RECREATE IT SO THAT
23 SHE CAN RESOLVE THE CONFLICT OR THE TENSION WITHIN HER,
24 KNOWING THAT SOMEONE, AN UNKNOWN PERSON, MAY HAVE GOTTEN
25 AWAY WITH THIS. BUT WE DON'T KNOW WHO THAT PERSON IS. IT
26 IS HUMAN, LADIES AND GENTLEMEN. BUT IT'S NOT RIGHT IN
27 TERMS OF PROOF BEYOND A REASONABLE DOUBT. IT'S A TRICK
28 THAT THE PEOPLE ARE PLAYING, AND IT'S NOT JUST FROM ME

1 SAYING IT. I MEAN, IT'S FROM DR. SHOMER WHO'S AN EXPERT IN
2 THIS AREA, WHO'S WELL-READ AND UP-TO-DATE ON WHAT THE
3 STUDIES SAY.

4 I FEEL COMPELLED TO TALK ABOUT FELICITAS
5 GONZALEZ AS IT RELATES TO ID, EVEN THOUGH THE PEOPLE ARE
6 NOT RELYING UPON HER IDENTIFICATION. ALL RIGHT. FELICITAS
7 GONZALEZ MAKES NO IDENTIFICATION OF THE MASKED PERSON AT
8 THE SCENE. SHE TESTIFIES AS TO NO DISTINCTIVE
9 CHARACTERISTICS AS IT RELATES TO THE MASK, WHICH I'VE
10 ALREADY TALKED ABOUT, OR MR. JAMES FACE; MAKES NO MENTION
11 OF THAT TO DEPUTY CARIAGA ON NOVEMBER 23RD, 2008.

12 AGAIN, REMEMBER, EVEN THOUGH SHE MAY TALK
13 ABOUT SKIN COLOR, SHE DIDN'T SAY ANYTHING ABOUT SKIN COLOR
14 TO DEPUTY CARIAGA. AGAIN THE RACE -- ANY RACIAL
15 INFORMATION THAT CARIAGA RECEIVED AS IT RELATES TO THE
16 MASKED SUSPECT, AND THERE ARE TWO OF THEM, RELATED TO THE
17 VOICE INFORMATION AND THAT ONLY.

18 SHE SAYS SAID NOTHING ABOUT HIS EYES TO
19 CARIAGA, AND I WENT THROUGH THAT. DEPUTY CARIAGA, ISN'T
20 THIS A PLACE ON THE REPORT THAT TALKS ABOUT THE EYES AS IT
21 RELATES TO A SUSPECT? YES, IT'S THERE, AND IT WAS BLANK ON
22 HIS REPORT.

23 THEN THE IDENTIFICATION. SHE ALSO WOULD
24 LIKE YOU TO BELIEVE THAT THE ID SHE MADE HERE IN COURT WAS
25 ONE INDEPENDENT OF THE INTERNET PHOTOGRAPH. BUT AGAIN YOU
26 CAN DO THE SAME THING. SHE ADMITS THAT SHE RECEIVED THE
27 LETTER. SHE ADMITS THAT SHE SAW THE PHOTOGRAPH ON THE
28 INTERNET. WE ALL KNOW THAT THAT OCCURRED BEFORE JUNE 2ND,

1 2009, BECAUSE THE OTHER WITNESSES, HER SISTERS THAT WERE IN
2 THE HOUSE SAID, WE SAW IT ONCE, AND WE ALL SAW IT TOGETHER.
3 AND SHE EVEN ADMITS IT THAT SHE SAW IT WITH SOME OF THEM.

4 SO WE KNOW IT OCCURRED BEFORE JUNE 2ND. BUT
5 WE ALSO KNOW THAT BECAUSE SHE TOLD DETECTIVE CHISM THAT.
6 FELICITAS GONZALEZ TOLD DETECTIVE CHISM THAT, YES, I'M
7 PICKING MR. JAMES OUT OF THE SIX PACK, BUT I'M DOING SO
8 BECAUSE I'M BASING THAT ON WHAT I SAW ON THE INTERNET. HE
9 TESTIFIED TO IT.

10 BUT WHAT ELSE DID SHE SAY, WHICH IS REALLY
11 IMPORTANT IF YOU'RE EVER THINKING -- OR IF THE PEOPLE COME
12 BACK IN REBUTTAL AND TALK ABOUT FELICITAS GONZALEZ. SHE
13 TOLD DETECTIVE CHISM ON JUNE 2ND, 2009, THAT SHE HAD NO
14 INDEPENDENT RECOLLECTION OF THE EVENTS THAT OCCURRED ON
15 NOVEMBER 23RD, 2008, AS IT RELATES TO THE IDENTITY OF
16 MASKED SUSPECTS. NONE. NOW, ONE AND A HALF YEARS LATER
17 FOR THE FIRST TIME SHE'S GOING TO GET UP ON THE STAND AND
18 TELL YOU SHE HAS AN INDEPENDENT RECOLLECTION. THAT'S
19 COMPLETELY CONTRADICTORY TO ANYTHING SHE'S TOLD TO AT LEAST
20 TWO DEPUTIES PRIOR TO COMING HERE.

21 THE COURT: MR. EVANS, I DON'T MEAN TO INTERRUPT
22 YOU. I DON'T KNOW HOW MUCH FURTHER YOU HAVE.

23 MR. EVANS: I HAVE MORE.

24 THE COURT: ALL RIGHT. SO RATHER THAN MAKING YOU
25 FINISH SHORTLY, WHY DON'T WE TAKE OUR LUNCH BREAK, AND YOU
26 CAN FINISH WITH NO TIME CONSTRAINT AFTER LUNCH.

27 MR. EVANS: THANK YOU.

28 THE COURT: LADIES AND GENTLEMEN, WE'LL BE TAKING

1 OUR LUNCH BREAK. KEEP IN MIND THE COURT'S
2 ADMONITION. SEE YOU ALL BACK HERE AT 1:30. THANK YOU.

3

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

6

7 (THE NEXT PAGE NUMBER IS 2251.)

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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA TUESDAY, AUGUST 10, 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: WE ARE BACK ON THE RECORD IN PEOPLE
14 VERSUS JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE
15 PRESENT, AND ALL OF OUR JURORS ARE PRESENT.

16 AND YOU MAY CONTINUE, MR. EVANS.

17 MR. EVANS: THANK YOU, YOUR HONOR.

18 I DIDN'T SAY POINTS SEVEN AND EIGHT, BUT I
19 FIGURE YOU ALL FIGURED THEM OUT AT LEAST IN DIRECT.

20 I AM MOVING ONTO MY NINTH POINT, AND THIS
21 RELATES TO THE SIX-PACK IDENTIFICATION. AND REMEMBER,
22 FOCUSING ON DR. SHOMER'S TESTIMONY AS IT RELATES TO
23 SIX-PACK IDENTIFICATION AND THE WAY THESE THINGS SHOULD
24 BE DONE, I AM GOING TO TELL YOU THAT IN LIGHT OF THE
25 SCIENTIFIC EVIDENCE THAT IS OUT THERE, THE SIX-PACK THAT
26 WAS DONE TO ANY OF THOSE THREE INDIVIDUALS REALLY WASN'T
27 GOOD EVIDENCE. THERE'S A NON-LEGAL TERM, BUT YOU KNOW
28 WHAT I AM TALKING ABOUT.

1 AND THE REASON IS THE IMPORTANCE OF THE
2 DOUBLE BLIND THEORY, WHICH WAS NOT INCORPORATED IN THIS
3 CASE, AND THROUGH NO FAULT -- I AM NOT BLAMING DETECTIVE
4 CHISM. I THINK THAT'S THE POLICIES. HE FOLLOWED THE
5 POLICIES OF THE L.A. COUNTY SHERIFF'S DEPARTMENT. I
6 DON'T DOUBT THAT.

7 BUT ALL OF YOU, WE HAVE ALL HAD SCIENCE
8 COURSES. EVEN IF WE ARE NOT SCIENCE MAJORS AND WE DON'T
9 WORK IN THE SCIENTIFIC FIELD, WE'VE HAD SCIENCE COURSES.
10 AND WHAT MAKES SENSE ABOUT SCIENTIFIC DATA IS THE PERSON
11 ADMINISTERING THE TEST, AS WELL AS THE PERSON TAKING THE
12 TEST, SHOULD BE BLIND IN TERMS OF ANY KIND OF RESULT OR
13 ANY KNOWLEDGE ABOUT THE ULTIMATE OUTCOME, AND THAT WASN'T
14 DONE IN THIS CASE. AND AS A RESULT, I AM TELLING YOU
15 THAT THE RESULT OF THAT SHOULD BE DISREGARDED IN ADDITION
16 TO THE REASONS THAT I HAVE ALREADY DISCUSSED.

17 I'D ALSO TELL YOU THAT THE SIX-PACK
18 EVIDENCE IN TERMS OF THE IDENTIFICATION ISN'T ANY GOOD
19 ALSO BECAUSE IN ADDITION TO THE PHOTO THAT WAS SHOWN OR
20 THAT THEY LOOKED AT PRIOR TO ALL OF THEM LOOKED AT BEFORE
21 THEY SAW THE SIX-PACK.

REMEMBER THE THEORY THAT DR. SHOMER TALKED
ABOUT IN TERMS OF INCORPORATION, WHICH I THINK IS
IMPORTANT, ESPECIALLY IN THE CONTEXT OF THIS CASE WHERE
THE EVENT OCCURRED ON NOVEMBER 23RD, 2008, AND THE
SIX-PACK IS NEARLY SEVEN MONTHS LATER, MORE THAN SEVEN
MONTHS LATER ON JUNE 2ND, 2009.

28 | YOU SEE, AT THAT POINT OVER TIME -- TIME IS

1 NOT A FRIEND. IN ESSENCE, IT'S THE END OF EYEWITNESS
2 IDENTIFICATION BECAUSE OF THE THEORY OF INCORPORATION
3 THAT PEOPLE ARE GOING TO TAKE THEIR EXPERIENCES, AND
4 ESPECIALLY THE IMPORT OF INFORMATION FROM INDIVIDUALS WHO
5 ARE INVOLVED IN THE EVENT, AS WELL AS THE PICTURE, AND
6 THEY ARE GOING TO TAKE THIS AND ALL OF A SUDDEN IT'S
7 NATURAL TO START CHANGING THEIR MIND, CHANGING THEIR
8 MEMORY.

9 BECAUSE IT'S NOT A PHOTOGRAPH. IT'S NOT
10 SOMETHING THAT YOU CAN LOOK UP LIKE A PHOTOGRAPH ON THE
11 INTERNET IN A ROOM. AND SOMETIMES WE ALL WISH WE COULD
12 IN TERMS OF MEMORY OF EVENTS, MEMORY OF CERTAIN
13 CIRCUMSTANCES OR THINGS THAT WE NEED TO REMEMBER. WE
14 WISH WE COULD IMPRINT IT IN OUR MIND, PULL IT UP, SEE IT
15 ON A SCREEN. I MEAN, IT WOULD MAKE OUR LIVES EASIER, BUT
16 THAT'S NOT THE HUMAN EXPERIENCE.

17 AND IN LIGHT OF THE IDEA OF THE
18 INCORPORATION AND HOW IT INFILTRATES INTO THE MEMORY AND
19 CHANGES THE MEMORY AND CHANGES WHAT WE THINK WE REMEMBER,
20 I AM TELLING YOU THAT THE SIX-PACK EVIDENCE IN THIS CASE
21 SHOULD BE DISREGARDED.

22 NOW, I WANT TO POINT OUT BRIEFLY SOME OF
23 THE STATEMENTS THAT SOME OF THE OTHER WITNESSES THAT WERE
24 THERE -- AND I AM REFERRING PRIMARILY TO BRENDA BARRAGAN,
25 ANNETTE SAAVEDRA, AND RAFAEL GONZALEZ. ALL OF THEM WERE
26 THERE. AND IN THIS POINT -- AND THIS IS NOT A MAJOR
27 POINT, BUT IT CORROBORATES WHAT I AM TELLING YOU
28 BASICALLY.

1 BRENDA BARRAGAN, SHE'S THE PERSON WHO WAS
2 IN THE GARAGE. SHE CLEARLY STATED ON THE STAND MR. JAMES
3 WAS NOT THE PERSON THAT WAS WITH HER IN THE GARAGE. SHE
4 ALSO SAID THAT SHE TOLD DETECTIVE CHISM TWO IMPORTANT
5 PIECES OF INFORMATION REGARDING IDENTIFICATION AND THE
6 PEOPLE WITH MASKS THAT SHE COULD NOT IDENTIFY MR. JAMES
7 AS A SUSPECT IN THE CASE EVEN AFTER VIEWING THE
8 PHOTOGRAPH OF HIM ON JUNE 2ND, 2009.

9 AND SECONDLY, AND IMPORTANTLY, IS THAT SHE
10 HAD NO INDEPENDENT RECOLLECTION OF THE EVENTS ON
11 NOVEMBER 23RD, 2008, AS IT RELATES TO THE IDENTIFICATION
12 OF THE SUSPECT. SO MS. BARRAGAN CONFIRMS THAT MR. JAMES
13 WASN'T THERE.

14 ANNETTE SAAVEDRA, WHO WAS IN HER ROOM
15 DURING THE WHOLE EVENT, SHE REALLY WAS NEVER OUTSIDE AND
16 CLOSE TO ANY OF THE SUSPECTS. SHE SAYS THAT SHE COULDN'T
17 I.D. MR. JAMES, AND THE ONLY WAY SHE COULD I.D. HIM WAS
18 FROM THE INTERNET PHOTOGRAPH. AND THAT'S HOW SHE PICKED
19 HIM OUT IN THE SIX-PACK.

20 AND, FINALLY, RAFAEL GONZALEZ DOESN'T I.D.
21 HIM. BUT REALLY, MR. JAMES, OR THE SUSPECT THAT THEY ARE
22 TRYING TO SAY IS MR. JAMES, OR ANY OF THE SUSPECTS,
23 EXCEPT FOR THE ONE WITHOUT THE MASK, HE COULDN'T IDENTIFY
24 HIM. HE'S NOT SAYING THAT MR. JAMES WAS THERE. ALL
25 RIGHT? IT'S NOT A BIG POINT, BUT IT'S SOMETHING TO TAKE
26 INTO CONSIDERATION WITH THE WHOLE EVIDENCE.

27 NOW, THE NEXT POINT, WHICH IS THE ELEVENTH
28 POINT THAT I AM TRYING TO MAKE HERE, IS KEEP IN MIND

1 THERE IS A TIME LINE HERE THAT'S REALLY IMPORTANT TO
2 UNDERSTAND BECAUSE IT COMPLETELY UNDERMINES WHAT THE
3 PEOPLE ARE ARGUING IN TERMS OF THE CONNECTION OF THE I.D.
4 EVIDENCE TO THE D.N.A. AND HOW THEY JUST KIND OF SEEM TO
5 WORK IN A CIRCLE TOGETHER AS THEY KEEP OVERLAPPING OR
6 POINTING BACK TO ONE ANOTHER, WHICH IS REALLY NOT THE
7 CASE, IN ADDITION TO THE REASONS THAT I HAVE STATED IN
8 TERMS OF THE PROBLEM OF THE IDENTIFICATION AND IN LOOKING
9 AT THE COMPLETENESS OF THE D.N.A. EVIDENCE.

10 WHAT ALSO IS IMPORTANT HERE TO
11 UNDERSTAND -- AND KEEP IN MIND THIS TIME LINE BEFORE I
12 TALK FURTHER ABOUT THIS -- ON NOVEMBER 23RD, 2008, NO ONE
13 KNOWS ANYTHING ABOUT TAUMU JAMES. NO NAME, NO
14 IDENTIFICATION, NO DISTINCTIVE CHARACTERISTICS. NOTHING
15 COMES UP. THE NEXT MAJOR EVENT THAT OCCURS IN THIS CASE
16 IS THE D.N.A. EVIDENCE. IT'S AT THAT POINT WE HAVE
17 D.N.A. EVIDENCE.

18 AND THAT'S THE FIRST TIME THAT MR. JAMES
19 EVEN -- THERE IS ANY KIND OF INDICATION TO ANYONE IN THIS
20 CASE THAT MR. JAMES IS INVOLVED OR COULD BE INVOLVED OR
21 COULD POTENTIALLY BE A SUSPECT OR ANYTHING. IT'S AFTER
22 THAT POINT THAT WE SEE THAT A LETTER GOES OUT. IT'S
23 AFTER THAT POINT -- AND THEN THE NEXT MAJOR EVENT IS THE
24 INTERNET PHOTOGRAPH AND THEN THE SIX-PACK.

25 AND IT'S ONLY AT THE SIX-PACK WHERE ONE OF
26 THE FOUR INDIVIDUALS WHO LOOKS AT THE SIX-PACK INDICATES
27 THAT THEY HAVE AN INDEPENDENT RECOLLECTION OF MR. JAMES,
28 AND I HAVE ADDRESSED THAT TO SHOW THAT THAT'S NOT

1 CREDIBLE. MR. JARDINES' IDENTIFICATION IS NOT CREDIBLE.

2 SO WHEN YOU LOOK AT THAT PROGRESSION OF
3 EVENTS, IT'S NOT AS THE PEOPLE WANT TO SHOW YOU OR WANT
4 YOU TO BELIEVE, THAT THERE IS AN IDENTIFICATION AND THE
5 D.N.A. HELPS CORROBORATE IT. IT'S THE THOUGHT AND THE
6 SEQUENCE OF EVENTS THAT THERE IS D.N.A. HERE AT THE SCENE
7 AND NOW WE HAVE GOT TO MAKE THE EVIDENCE FIT, AND THAT'S
8 WHAT THEY ARE DOING HERE. THAT'S THE WRONG SEQUENCE,
9 FIRST AND FOREMOST.

10 BUT SECONDLY, THE D.N.A. EVIDENCE IS NOT
11 THAT DETERMINATIVE IN TERMS OF SAYING THAT THE PERSON WAS
12 THE LAST WEARER, THAT THE PERSON WORE IT ON THAT NIGHT.
13 BECAUSE NOT ONLY THAT, THERE ARE TWO PEOPLE'S D.N.A.
14 DON'T EXCLUDE THE OTHER PERSON IF YOU ARE GOING TO SAY
15 THAT THIS HAT WAS WORN BY THE SUSPECT, AND DON'T BYPASS
16 THE INVERSE DIRECTION THAT THIS SHOULD BE GOING. IT
17 SHOULD BE IDENTIFICATION, D.N.A.

18 THEY'RE TAKING D.N.A. -- THIS IS THE
19 TRICK. THIS IS THE TACTIC HERE. THEY ARE TAKING THE
20 D.N.A. CONCLUSION, THE RESULT, AND THEY ARE TAKING IT OUT
21 OF CONTEXT, OUT OF THE MEANING THAT IT IS, AND TRYING TO
22 FIT THE EVIDENCE TO SAY THAT THIS IS THE PERSON. OKAY?
23 IT IS HIS BEST PIECE OF ARGUMENT THAT HE HAS BECAUSE IT
24 IS UNCONTRADICTED. WE ARE NOT HERE TO SAY THAT
25 MR. JAMES' D.N.A. IS NOT ON THAT KNIT CAP. WE ARE NOT
26 HERE SAYING THAT. BUT IT'S WHAT THEY ARE DOING WITH IT,
27 AND DON'T FALL FOR THAT.

28 NOW, I WANT TO TALK JUST BRIEFLY ABOUT --

1 AS MR. GOUDY SAID, I HAVE BASICALLY CONCLUDED WHAT HE AND
2 I AGREE ARE THE MOST IMPORTANT PIECES OF EVIDENCE.
3 NOTICE THE AMOUNT OF TIME THAT I HAVE TAKEN TO TALK ABOUT
4 THOSE COMPARED TO HIM.

5 I WANT TO TALK ABOUT WHAT CRIME OCCURRED
6 HERE, AND I AM GOING TO TALK ABOUT IT BRIEFLY. FIRST AND
7 FOREMOST, LADIES AND GENTLEMEN, I AM NOT HERE TO SAY THAT
8 NO CRIME WAS COMMITTED. LET ME BE VERY CLEAR. AND WHEN
9 YOU HEAR THE EVIDENCE ABOUT A ROBBERY IN THIS CASE AND
10 YOU HEAR ABOUT CHILDREN AND YOU SEE THE GUNS, THIS IS NOT
11 A PRETTY PICTURE, AND IT'S NOT EASY TO LISTEN TO. OKAY?
12 I UNDERSTAND THAT COMPLETELY. AND THERE IS NO -- THERE'S
13 NO INDICATION HERE THAT THESE PEOPLE, WHAT THEY WENT
14 THROUGH, WAS RIGHT. THAT IS NOT WHAT WE ARE SAYING.
15 WHAT THEY WENT THROUGH WAS TERRIBLE.

16 BUT WHAT I AM SAYING IS THAT MR. JAMES IS
17 NOT THE PERSON THAT'S INVOLVED, AND IT CERTAINLY HASN'T
18 BEEN PROVEN BEYOND A REASONABLE DOUBT. AND WHAT I DON'T
19 WANT YOU TO DO IS TO GET CAUGHT UP IN A DIFFICULT
20 SITUATION WHERE YOU START FEELING LIKE THE WITNESSES
21 FEEL, THE VICTIMS IN THIS CASE WHERE THEY FEEL LIKE THEY
22 HAVE GOT TO CONFORM THE EVIDENCE TO BLAME SOMEONE SO THAT
23 THEY FEEL BETTER. AND THAT'S THE DIFFICULTY OF YOUR JOB
24 HERE. I RECOGNIZE THAT. I SEE THAT. BUT IT IS SORTING
25 THROUGH THE EVIDENCE, AND THAT'S WHY THE STANDARD IS
26 REASONABLE DOUBT, REASONABLE EXPLANATIONS. AND THAT'S
27 WHY I TRIED TO FOCUS ON THAT, TO STAY WITHIN THAT REALM.

28 NOW, WHEN YOU STEP BACK AND YOU LOOK AT THE

1 EVIDENCE OF THE ROBBERIES IN THIS CASE, I AM NOT SITTING
2 HERE SAYING THAT WHAT BRENDA BARRAGAN WENT THROUGH IS NOT
3 BAD FOR HER. I WOULD TELL YOU I WOULD DEFINE THE CRIME
4 DIFFERENTLY. IT'S A CRIME, BUT IT'S NOT A ROBBERY, AND
5 IT'S NOT A KIDNAPPING FOR ROBBERY, AND I AM GOING TO
6 EXPLAIN THAT.

7 AND AS IT RELATES TO CHANTELLE, ONE OF THE
8 MINOR CHILDREN, I AM NOT SAYING THAT SHE WAS NOT A
9 VICTIM. SHE'S JUST NOT A VICTIM OF ROBBERY. OKAY?
10 THAT'S WHAT I AM SAYING.

11 AND I DIDN'T CHARGE THE CASE. I MADE NO
12 CHOICE IN THAT. I JUST HAVE TO LOOK AT THE EVIDENCE, THE
13 LAW AND THE CHARGES, AND THEY HAVE GOT TO COME TOGETHER
14 BEYOND A REASONABLE DOUBT. AND IF THEY DON'T, THEN IT'S
15 NOT GUILTY. I BELIEVE IN THAT SYSTEM. SOMETIMES IT'S
16 DIFFICULT FOR ME, AND I KNOW IT'S DIFFICULT FOR YOU
17 SOMETIMES WHEN YOU HEAR THIS EVIDENCE.

18 BUT THAT'S WHEN I WAS HERE IN JURY
19 SELECTION AND YOU SAW ME AND I WAS TALKING TO SOME OF
20 YOUR COLLEAGUES WHO WERE SITTING IN THE SEATS BEFORE YOU
21 AND THEY SAID, YOU KNOW, I DON'T KNOW IF I CAN
22 NECESSARILY FOLLOW THE LAW. GOOD-BYE. YOU'VE GOT TO
23 FOLLOW THE LAW. I HAVE GOT TO COUNT ON YOU TO DO
24 IT. MR. JAMES COUNTS ON YOU TO DO IT, AND MR. GOUDY
25 COUNTS ON YOU TO DO IT. I KNOW THE COURT DOES, TOO.
26 IT'S SO IMPORTANT TO FOLLOW THIS, AND IT IS A CHALLENGE
27 SOMETIMES TO REMAIN IN THE REASONABLE WORLD WHEN THERE IS
28 AN EMOTIONAL CHAOS THAT THESE PEOPLE EXPERIENCED. THAT'S

1 THE SYSTEM.

2 NOW, AS YOU LOOK AT THE EVIDENCE AS IT
3 RELATES TO ROBBERY, LADIES AND GENTLEMEN, I AM HERE TO
4 TELL YOU THAT AS IT RELATES TO CHANTELLE, SHE HAS NO
5 CONTROL OVER ANY OTHER PROPERTY. NO PROPERTY WAS TAKEN
6 FROM HER OR IN HER IMMEDIATE PRESENCE. IT'S NOT A
7 ROBBERY AS IT RELATES TO HER.

8 AS IT RELATES TO BRENDA BARRAGAN, NOTHING
9 IS TAKEN FROM HER IMMEDIATE PRESENCE. THE SAME WITH
10 RAFAEL GONZALEZ. AND IN FACT, THEY TOLD YOU THEMSELVES
11 THEY HAD NO KNOWLEDGE, NO KNOWLEDGE WHATSOEVER THAT THE
12 ITEMS WERE TAKEN FROM THEM. THE CELL PHONE, THE WALLET,
13 THOSE ITEMS THAT BELONGED TO THE RESPECTIVE PEOPLE, THEY
14 HAD NO KNOWLEDGE OF IT UNTIL AFTERWARDS. YOU CAN'T BE
15 PREVENTED FROM DOING SOMETHING IF YOU DON'T KNOW IT'S
16 HAPPENING IN THE FIRST PLACE TO GIVE YOU THE OPPORTUNITY
17 TO PREVENT IT. THAT'S WHAT I AM SAYING HERE AS IT
18 RELATES TO THOSE TWO, THREE PEOPLE.

19 AS IT RELATES TO THE KIDNAPPING FOR
20 ROBBERY, FIRST OF ALL, YOU HAVE TO FIND THAT THERE WAS A
21 ROBBERY, AND THAT'S COUNT 8 AS IT RELATES TO BRENDA
22 BARRAGAN. THAT'S AN ESSENTIAL ELEMENT. YOU HAVE TO FIND
23 THAT A ROBBERY OCCURRED OR THE ATTEMPTED ROBBERY OR THE
24 INTENT.

25 NOW SECONDLY -- AND I THINK THIS IS MUCH
26 MORE IMPORTANT -- IS YOU HAVE TO FIND THAT THERE WAS A
27 SUBSTANTIAL DISTANCE. AND I THINK THE PEOPLE EVEN ARGUED
28 IT IS A SHORT DISTANCE. IT'S GOING FROM AN ATTACHED

1 GARAGE TO THE OUTSIDE INTO THE HOUSE. THAT ACTION WAS
2 DONE BY THE SUSPECTS. IT'S INCIDENTAL TO COMMITTING THAT
3 ROBBERY.

4 DO THE SUSPECTS -- DOES IT INCREASE THE
5 RISK? WELL, I AM TELLING YOU THAT THE RISK DOES DECREASE
6 BY MOVING HER INTO THE HOUSE BECAUSE, FIRST OF ALL, ONCE
7 SHE'S IN THE HOUSE, THE SUSPECTS ARE OUTNUMBERED BY TWO
8 TO THREE TO ONE BY THE PEOPLE IN THE HOUSE FIRST AND
9 FOREMOST, AND THERE IS SAFETY IN NUMBERS.

10 AND SECONDLY, IF THE SUSPECTS ARE IN THE
11 HOUSE -- I MEAN, IF EVERYONE IS IN THE HOUSE, IT'S JUST
12 EASIER TO CONTROL THE SITUATION AND LESS LIKELY THAT IT'S
13 GOING TO GET OUT OF HAND AND CAN ERUPT INTO FURTHER
14 VIOLENCE OR FURTHER HARM.

15 I MAKE THESE ARGUMENTS NOT AT ALL TO
16 CONCEDE THAT I THINK THOSE CRIMES ARE IN ANY WAY
17 CONNECTED TO MR. JAMES. LIKE I TOLD YOU IN THE
18 BEGINNING, THERE ARE TWO ARGUMENTS I'D MAKE AT THE END.
19 THEY REALLY DO NOT RELATE TO MR. JAMES IN TERMS OF GUILT
20 OR INNOCENCE, BUT IT REALLY HAS TO DO WITH WHAT CRIMES
21 WERE COMMITTED. AND I FEEL COMPELLED TO AT LEAST ADDRESS
22 THOSE IN THE CONTEXT OF THIS CASE, BECAUSE THAT'S IN
23 LIGHT OF THE PEOPLE'S ARGUMENTS.

24 ALL RIGHT. THAT'S IT. THAT'S ALL I HAVE
25 TO SAY IN TERMS THAT RELATE TO THE EVIDENCE.

26 I WANT TO THANK YOU FOR YOUR PATIENCE
27 AGAIN. I KNOW IT'S DIFFICULT. YOU'RE NOT GETTING PAID
28 BIG DOLLARS TO SIT IN THOSE CHAIRS, AND I KNOW YOU'VE GOT

1 A DIFFICULT JOB. I KNOW THE SYSTEM WORKS. I HAVE SAT IN
2 THAT CHAIR AND HAVE BEEN A JUROR, AND I KNOW HOW
3 IMPORTANT IT IS FROM NOT ONLY YOUR END BUT THIS END, TOO.

4 I THANK YOU FOR LISTENING. MR. JAMES
5 THANKS YOU FOR LISTENING. AS I SAID, THIS IS THE LAST
6 OPPORTUNITY THAT I GET TO SPEAK. MR. GOUDY IS GOING TO
7 GET UP. GIVE HIM THE SAME ATTENTION THAT YOU GAVE ME.
8 HE DESERVES IT. HE HAS WORKED HARD, I PROMISE YOU.

9 BUT ALSO REMEMBER THAT I CAN'T GET UP
10 ANYMORE. SO WHEN HE SAYS SOMETHING, I WOULD JUST ASK
11 YOU, IN YOUR MIND, TO SAY TO YOURSELF HOW WOULD I ADDRESS
12 THAT? HOW DOES THE EVIDENCE REALLY ADDRESS THIS? HOW
13 DOES THE LAW ADDRESS THAT?

14 I THANK YOU ALL. I TRUST IN YOU.
15 MR. JAMES TRUSTS IN YOU. AND I THINK WHEN YOU LOOK AT
16 THE EVIDENCE, WHICH I AM ASKING YOU TO DO, LOOK AT ALL
17 THE EVIDENCE AND FOLLOW THE LAW. I WANT YOU TO FOLLOW
18 THE LAW. AND WHEN YOU DO BOTH OF THOSE, THE VERDICTS FOR
19 ALL CHARGES, FOR ALL COUNTS, IS NOT GUILTY. THANK YOU
20 ALL.

21 THE COURT: THANK YOU, MR. EVANS.

22 MR. GOUDY.

23 MR. GOUDY: I DON'T KNOW THAT I HAVE EVER BEEN
24 ACCUSED OF TRICKING PEOPLE. I DON'T TAKE IT PERSONALLY
25 WHEN MR. EVANS SAYS THAT, BECAUSE SOMETIMES IT'S THE
26 CHOICE OF WORDS OR THE IMPRESSIONS THAT WE WANT TO LEAVE
27 AS ADVOCATES THAT IT MAY NOT ALWAYS COME OUT RIGHT, OR
28 PEOPLE MAY HEAR IT A LITTLE DIFFERENTLY. I AM GOING TO

1 ADDRESS THE TRICKING PART, THOUGH, BECAUSE WHAT'S GOOD
2 FOR THE GOOSE IS GOOD FOR THE GANDER.

3 BUT I WANT TO TALK ABOUT THE LAST THING
4 FIRST, WHICH WAS HOW LONG DID MR. EVANS TALK ABOUT THE
5 CRIMES AND HOW LONG DID I TALK ABOUT THEM? DOES THAT
6 REALLY MATTER? NO. BUT WHY WOULD THAT BE? WHY WOULD I
7 SPEND MORE TIME GOING OVER THE NATURE OF THE CHARGES, THE
8 ELEMENTS, WHAT'S REQUIRED, AS OPPOSED TO THE DEFENSE?
9 BECAUSE I HAVE THE BURDEN OF PROOF. AND IF YOU ARE
10 CONFUSED ON SOMETHING, IT WORKS TO HIS BENEFIT, NOT
11 MINE. SO IT'S IMPORTANT THAT WE ARE CLEAR ON WHAT THIS
12 ALL MEANS.

13 I WAS SURPRISED, HOWEVER, WHEN THE DEFENSE
14 ARGUES THAT TAKING BRENDA BARRAGAN AT GUNPOINT FROM A
15 LOCATION WHERE SHE'S BY HERSELF INTO A HOUSE WITH THREE
16 OTHER GUNMEN DECREASED THE RISK TO HER. HOW IS THAT
17 POSSIBLE? BECAUSE NOW THERE'S TWICE AS MANY VICTIMS IN
18 THE HOUSE THAN THERE WERE WHEN SHE WAS OUT IN THE
19 GARAGE? WHAT, THEY ARE GOING TO OVERPOWER THESE FOUR
20 GUNMEN? RAFAEL GONZALEZ, WHO IS PLAYING DEAD ON THE
21 LIVING ROOM FLOOR -- WELL, ACTING LIKE HE'S PASSED OUT?
22 MAYBE HENRY AND CHANTELLE ARE GOING TO ATTACK THE GUY WHO
23 SPEAKS SPANISH.

24 BUT THEIR ARGUMENT AS TO WHY IT DECREASES
25 THE RISK, WHY IT DOES NOT SUBSTANTIALLY INCREASE THE RISK
26 IS BECAUSE WELL, NOW THERE ARE TWICE AS MANY VICTIMS AS
27 THERE ARE PEOPLE WITH GUNS IN THE HOUSE. THAT'S
28 LUDICROUS. THAT MAKES ABSOLUTELY NO SENSE.

1 OR MAYBE, WELL, SHE'S SAFER IN THERE
2 BECAUSE THINGS WON'T GET OUT OF HAND. AREN'T THINGS
3 ALREADY OUT OF HAND? THERE ARE MEN IN THE HOUSE WEARING
4 MASKS, HOLDING GUNS, THREATENING LITTLE BOYS. HOW MUCH
5 MORE OUT OF HAND IS IT GOING TO GET?

6 DID THEY MOVE HER IN THERE FOR THAT
7 REASON? THEY MOVED HER IN THERE BECAUSE IT'S BETTER FOR
8 THEM, NOT BECAUSE IT'S BETTER FOR HER. SHE CAN'T GET
9 AWAY IF SHE'S IN THE HOUSE, WHERE WE HAVE HER KIDS AT
10 GUNPOINT. SHE'S NOT GOING TO RUN THEN. SHE CAN'T GO OUT
11 OF THAT GARAGE DOOR AND GO FOR HELP. SHE CAN'T MAKE
12 NOISE AND DRAW ATTENTION TO THE HOUSE. THAT'S WHY THEY
13 MOVED HER. NOT BECAUSE IT DECREASED THE RISK TO HER.

14 IT MAY NOT HAVE BEEN A LONG WAY, BUT IN
15 THAT DISTANCE A LOT HAPPENED. HER ENTIRE MIND-SET
16 CHANGED. SHE SEES HER KIDS ON THE FLOOR. SHE SEES HENRY
17 BEING PICKED UP WITH A GUN POINTED AT HIM. DO YOU THINK
18 THAT INCREASED HER PSYCHOLOGICAL HARM?

25 SO LET'S GO TO ANNETTE SAAVEDRA. THE
26 DEFENSE SAYS WE KNOW -- WELL, LET ME BACK UP. THE
27 DEFENSE SAYS THEY KNOW THAT NANCY JARDINES SAW THAT
28 PHOTOGRAPH BEFORE SHE LOOKED AT THE SIX-PACK. SHE SAW

1 THE PHOTOGRAPH ON THE INTERNET BEFORE SHE LOOKED AT THE
2 SIX PHOTOGRAPHS BECAUSE ANNETTE SAAVEDRA SAID SHE WAS
3 THERE, AND SHE ONLY LOOKED AT IT ONE TIME.

4 HOW COME ANNETTE SAAVEDRA HAS TO BE RIGHT?
5 I MEAN, THAT'S THEIR PREMISE. SHE'S TELLING YOU THE
6 TRUTH. SHE'S RIGHT SPOT ON WHEN SHE SAYS THIS IS THE WAY
7 IT WAS. WELL, SHE'S BEEN A LITTLE INCONSISTENT. IT'S
8 NOT HER FAULT. PEOPLE REMEMBER THINGS DIFFERENTLY.

9 BUT REMEMBER, RANDALL PETEE, THE DEFENSE
10 INVESTIGATOR, HE SAID, WHEN HE TALKED TO NANCY JARDINES
11 AT HER HOUSE ON JULY 10TH OF 2010 -- I THINK THAT WAS THE
12 DATE, RIGHT AROUND THERE, LESS THAN A MONTH AGO -- WELL,
13 LESS THAN A MONTH FROM WHEN SHE TESTIFIED, BECAUSE I
14 THINK IT'S A MONTH TODAY, HE TALKED TO ANNETTE SAAVEDRA
15 ON THE PHONE AND ASKED ANNETTE, "WAS NANCY THERE?" AND
16 ANNETTE TOLD HIM, "I DON'T REMEMBER."

17 SO WHEN THE DEFENSE NOW TELLS YOU THIS IS
18 THE WAY IT IS BECAUSE THAT'S WHAT ANNETTE TESTIFIED TO,
19 WHAT HAPPENED TO WELL, IT'S INCONSISTENT? NOW, IT COULD
20 BE AN INNOCENT MISRECOLLECTION ON THE PART OF MR. EVANS.
21 A LOT OF STUFF HAPPENED OVER THE LAST FOUR DAYS, A LOT OF
22 TESTIMONY, BUT THAT WAS HIS INVESTIGATOR. IN FACT, HE
23 DIDN'T EVEN ASK ABOUT THAT. I DID.

24 WHAT ELSE DID HIS INVESTIGATOR SAY?
25 BECAUSE THEY ARE HANGING AN AWFUL LOT ON THAT. NANCY
26 JARDINES TOLD MR. PETEE THAT SHE SAW THE PHOTOGRAPH ON
27 THE INTERNET BEFORE SHE SAW THE SIX-PACK. THAT'S WHAT HE
28 SAID. THAT'S WHAT MR. PETEE SAID SHE SAID. SHE DENIED

1 THAT, "THAT'S NOT WHAT I TOLD HIM." THEY ARE JUST
2 ASSUMING SHE'S WRONG.

3 BUT HOW MUCH DID THE DEFENSE TALK ABOUT
4 WHAT HAPPENS CLOSER IN TIME? THAT'S WHEN YOU ARE GOING
5 TO REMEMBER IT THE BEST; RIGHT? THE DESCRIPTION,
6 THAT'S -- WHEN THEY GIVE THE DESCRIPTION RIGHT AFTER IT
7 HAPPENS, THAT'S WHAT YOU HAVE TO GO BY BECAUSE IT'S FRESH
8 IN THEIR MIND.

9 MR. PETEE TALKED TO NANCY JARDINES THIRTEEN
10 MONTHS AFTER SHE WAS SHOWN THE SIX-PACK. THIRTEEN
11 MONTHS. A FEW DAYS AFTER ANNETTE SAAVEDRA WENT ON THE
12 INTERNET, ACCORDING TO ANNETTE, IS WHEN THE DETECTIVE
13 SHOWED UP. JUNE 2ND, 2009, DETECTIVE CHISM ASKED NANCY
14 JARDINES, "DID YOU SEE THE PHOTOGRAPH ON THE INTERNET?"
15 "NO. I DIDN'T SEE IT."

16 WHAT HAPPENED TO WELL, YOU HAVE TO GO WITH
17 WHAT WAS SAID INITIALLY? THAT'S THEIR BEST MEMORY.
18 THAT'S THE ONE THAT YOU HAVE TO BELIEVE BECAUSE THAT'S
19 WHEN IT'S FRESH IN THEIR MIND. IT DIDN'T COME UP IN THE
20 DEFENSE CLOSING. THEY WANT YOU TO BELIEVE WHAT WAS SAID
21 13 MONTHS LATER.

22 NANCY JARDINES IDENTIFIED THE DEFENDANT OUT
23 OF A SIX-PACK SEVEN MONTHS LATER. THIS IS TWICE AS
24 LONG. IT'S A CREDIBILITY CALL BETWEEN MR. PETEE AND
25 MR. JARDINES. WHAT REASON WOULD MS. JARDINES HAVE TO
26 LIE? WHY WOULD SHE MAKE THAT UP? WELL, BECAUSE THERE
27 WERE PEOPLE IN HER HOUSE WHO ROBBED HER AND HER FAMILY,
28 HELD AT GUNPOINT. IT'S NATURAL TO WANT TO GET PEOPLE.

1 SOMEBODY HAS TO PAY FOR THAT.

2 WHAT DO WE KNOW ABOUT MR. JARDINES? SHE IS
3 NOT GOING TO PICK OUT THE WRONG PEOPLE. SHE WILL TELL
4 YOU -- IN FACT, SHE DID -- BECAUSE THE NIGHT THIS
5 HAPPENED, THERE WERE TWO OTHER MEN STOPPED BY THE
6 SHERIFFS. THEY TOOK HER OUT THERE, AND THEY SAID, "ARE
7 THESE TWO OF THE GUYS WHO WERE IN YOUR HOUSE?" AND SHE
8 SAID, "NO, THAT'S NOT THEM." IF SHE WAS LOOKING TO BLAME
9 SOMEBODY, WHY DIDN'T SHE BLAME THEM? THEY WERE RIGHT
10 THERE.

11 AND IF SHE CAN'T IDENTIFY THE PERSON BEHIND
12 THE MASK, HOW IS SHE ABLE TO EXCLUDE THEM? ACCORDING TO
13 THEM, THEY COULDN'T SEE THE PERSON'S FACE. I DON'T
14 KNOW. BUT SHE WAS ABLE TO. IN FACT, SHE DID. SHE'S NOT
15 TRYING TO POINT TO SOMEBODY WHO IS INNOCENT.

16 AND WOULDN'T ALL THE OTHER VICTIMS HAVE
17 THAT SAME INCENTIVE AS FELICITAS GONZALEZ, ANNETTE
18 SAAVEDRA, BRENDA BARRAGAN? DON'T THEY ALL HAVE THAT SAME
19 FEELING, THE TENSION, THE FRUSTRATION, THE WANTING THAT
20 THE PEOPLE WHO DID THIS TO GET CAUGHT? YET, THEY SAID
21 YEAH, WE SAW THE PHOTO ON THE INTERNET BEFOREHAND.
22 THAT'S WHAT THEY SAID.

23 NOW, FELICITAS GONZALEZ IS A LITTLE
24 DIFFERENT. AND THE FACT THAT I DIDN'T MENTION HER
25 EARLIER IS IN NO WAY AN INDICATION OF WHETHER I BELIEVE
26 HER OR I DON'T BELIEVE HER. BUT YOU KNOW WHAT? I CAN'T
27 TELL YOU. I CAN'T VOUCH FOR ANY WITNESS. IT WOULD BE
28 IMPROPER TO DO SO.

1 PEOPLE'S MEMORIES DO CHANGE OVER TIME.
2 THEY DO REMEMBER THINGS DIFFERENTLY. AND YOU KNOW WHAT?
3 YOU KIND OF HAVE TO GO WITH THE INITIAL SOMETIMES BECAUSE
4 YOU HAVE TO PAY ATTENTION TO WHAT IS HAPPENING AT THE
5 TIME OF THOSE INITIAL CONVERSATIONS. WHAT ARE THEY
6 THINKING ABOUT? WHERE IS THEIR ATTENTION FOCUSED? WHAT
7 ARE THEY WORRIED ABOUT?

8 WHEN FELICITAS GONZALEZ, ANNETTE SAAVEDRA,
9
10 BRENDA BARRAGAN, NANCY JARDINES, RAFAEL GONZALEZ, WHEN
11 ALL OF THE WITNESSES WERE TALKING TO DEPUTY CARIAGA, WHAT
12 DO YOU THINK WAS FOREMOST ON THEIR MIND? WAS THAT A HAT
13 WITH HOLES CUT OUT IN IT, OR WAS IT A SKI MASK? DO YOU
14 THINK THAT'S WHAT THEY WERE THINKING ABOUT? DO YOU THINK
15 THAT WAS THEIR CONCERN, THAT IS WHERE THEIR FOCUS IS? OR
16 WERE THEY THINKING I AM SO THANKFUL TO BE ALIVE. I AM SO
THANKFUL THAT MY FAMILY IS OKAY.

17 DEPUTY CARIAGA SAID FELICITAS GONZALEZ
18 WAS -- I CAN'T EVEN REMEMBER THE WORD HE USED. CERTAINLY
19 UPSET. IS THAT NATURAL? IN FACT, DEPUTY CARIAGA TOLD
20 YOU THEY GET THE INITIAL REPORT, BUT HE KNOWS DETECTIVES
21 ARE GOING TO GO BACK OUT THERE LATER ON. WHY? SO THEY
22 COULD CALM DOWN A LITTLE BIT. SO THE FACT THAT SHE
23 DIDN'T SAY THAT IT WAS A HOMEMADE MASK -- AND IT'S NOT
24 REALLY A HOMEMADE MASK. IT'S A KNIT CAP WITH HOLES CUT
25 OUT OF IT. THAT'S WHAT IT IS.

26 AND YOU'RE GOING TO GET THE EVIDENCE TO GO
27 BACK IN THERE, AND THERE IS A TAG ON THERE. IT'S AN
28 EVIDENCE TAG FROM THE SHERIFF DEPUTY. IT HAS SEAN

1 CARIAGA ON THERE. HE'S THE ONE WHO INPUT THAT
2 INFORMATION. LOOK AT HOW HE DESCRIBED IT. HE DIDN'T
3 HAVE JUST HAVE HIS FAMILY THREATENED. HE DIDN'T HAVE A
4 GUN POINTED AT HIM OR HAVE HIS CHILD OR GRANDSON OR
5 NEPHEW THREATENED AT GUNPOINT. HE DIDN'T JUST SURVIVE
6 SOMETHING THAT HE THOUGHT HE COULD LOSE HIS LIFE. YOU
7 KNOW HOW HE DESCRIBED IT? A SKI MASK.

8 SO THE FACT THAT SHE DIDN'T SAY IT WAS A
9 KNIT CAP WITH HOLES CUT OUT OF IT, HOW IMPORTANT IS
10 THAT? HOW MUCH DIFFERENCE DOES THAT MAKE IN THIS CASE?
11 NOT VERY MUCH. BECAUSE EVEN THE SHERIFF DEPUTY DESCRIBED
12 IT AS SOMETHING IT REALLY ISN'T. THEY DON'T SEEM TO HAVE
13 A PROBLEM WITH HOW HE DESCRIBED IT.

14 MR. EVANS: I'D OBJECT. IMPROPER ARGUMENT.

15 THE COURT: SUSTAINED.

16 MR. GOUDY: THE DEFENSE DIDN'T BRING UP THAT
17 INCONSISTENCY, TOO. IN FACT, IT WAS NEVER MENTIONED BY
18 THEM.

19 YOU'VE SEEN MR. JAMES UP CLOSE TWICE. THE
20 DEFENSE SAYS HE'S NOT THIN, HE'S NOT MEDIUM BUILD, HE'S
21 MUSCULAR. ACTUALLY, NANCY JARDINES, I DON'T THINK SHE
22 REFERRED TO HIM AS THIN. I THOUGHT SHE SAID THAT HE WAS
23 MEDIUM BUILD. IN FACT, THERE WAS A TIME -- AND MAYBE IT
24 WAS BRENDA BARRAGAN WHERE I STOOD NEXT TO MR. EVANS. IN
25 FACT, I AM SURE THAT WAS MS. BARRAGAN. I STOOD NEXT TO
26 MR. EVANS. MR. EVANS IS THIN. ME, SHE WAS A LITTLE
27 HESITANT. MAYBE SHE DIDN'T WANT TO GIVE A TRUTHFUL
28 DESCRIPTION, WHICH I KIND OF APPRECIATED, BUT I AM A

1 BIGGER GUY. MR. JAMES, HE LOOKS MEDIUM TO HER. THOSE
2 ARE SUBJECTIVE DESCRIPTIONS. IT DEPENDS ON YOUR POINT OF
3 REFERENCE.

4 MY BROTHER IS 6'4", 260 POUNDS, ALTHOUGH HE
5 SAYS 240. WHEN I GREW UP, EVERYBODY I HUNG OUT WITH BUT
6 ONE GUY WAS 6'2" OR TALLER. I AM JUST OVER 6 FEET TALL.
7 IF YOU FOLLOW BASKETBALL, I PLAYED GUARD, THE SHORT GUYS
8 ON THE TEAM. SOME PEOPLE CALL ME BIG. SOME PEOPLE CALL
9 ME TALL. WHEN I WAS GROWING UP, YOU KNOW WHAT? I WAS
10 JUST ONE OF THE GUYS, CERTAINLY NOT THE TALLEST IN THE
11 GROUP. AND IN FACT, THAT ONE GUY, HIS FRESHMAN YEAR IN
12 COLLEGE, HE GREW THREE INCHES AND WE ARE NOW THE SAME
13 HEIGHT.

14 SO TO STAND UP HERE AND SAY HE IS MUSCULAR,
15 HE IS NOT THIN, HE IS NOT MEDIUM, HE'S NOT THIN, MAYBE
16 THAT'S HOW MR. EVANS FEELS. BUT IT'S NOT HIS
17 DESCRIPTION. IT'S NOT HIS POINT OF REFERENCE; IT'S
18 THEIRS.

19 AND WHAT DOES ALL OF THAT MEAN? THERE IS
20 AN INSTRUCTION IN HERE THAT TELLS YOU NOT TO GO OUT AND
21 INVESTIGATE. AND THERE IS A REASON YOU ARE TOLD NOT TO
22 GO AND INVESTIGATE, BECAUSE THINGS CHANGE OVER TIME. YOU
23 MAY WANT TO GO OUT TO 14050 TRAILSIDE DRIVE AND CHECK OUT
24 THE NEIGHBORHOOD. BUT THIS HAS BEEN 21, 22 MONTHS AGO.
25 THINGS MAY NOT BE THE SAME. WHAT WAS TAUMU JAMES' BUILD
26 LIKE 21, 22 MONTHS AGO? WAS HE MUSCULAR? DO WE KNOW?
27 NO, WE DON'T.

28 SO WHEN THEY SAY THAT DESCRIPTION DOESN'T

1 FIT, WE DON'T KNOW THAT. THERE'S NO EVIDENCE OF THAT.
2 BUT YOU KNOW WHAT? IT'S A SUBJECTIVE REFERENCE ANYWAY,
3 SO IT DOESN'T MATTER.

4 DR. SHOMER, A LOT OF WEIGHT FROM THE
5 DEFENSE GOES ON DR. SHOMER. HE'S WELL-READ, AND THAT'S
6 TRUE, AND THAT'S ALL HE IS. HE'S WELL-READ. DR. SHOMER
7 IS A PROFESSIONAL WITNESS. IT'S NOT A DEROGATORY
8 STATEMENT. IT'S A FACT. HE HAS TESTIFIED FOR THE LAST
9 TEN YEARS. ALL HE DOES IS TESTIFY AS AN EYEWITNESS
10 EXPERT. TEN YEARS, THAT'S ALL HE HAS DONE.

11 AND BEFORE THAT, HE WAS A MEDICAL GROUP
12 ADMINISTRATOR. IN THE 30-SOME YEARS HE HAS BEEN
13 TESTIFYING ABOUT EYEWITNESS IDENTIFICATION, HE HASN'T
14 DONE ONE EXPERIMENT. NOT ONE TEST. THAT'S IT. HE'S
15 READ REPORTS. HE'S READ STUDIES. THAT'S ALL IT IS.

16 IF I WANTED TO TAKE ALL OF THAT TIME, I
17 COULD READ THOSE SAME STUDIES. WELL, MAYBE THE SAME
18 STUDIES, BECAUSE THIS DOCTOR HAS BEEN DOING THIS ALL OF
19 THIS TIME. HE DOESN'T DO REPORTS, SO I DON'T KNOW WHAT
20 STUDIES HE LOOKED AT. NOBODY DOES, BECAUSE IT WOULD TAKE
21 TOO LONG.

22 SO WHEN THE DEFENSE GOES AND SAYS WELL,
23 GEE, DEPUTY CARIAGA, YOUR REPORT SAYS THIS AND THAT'S
24 INCONSISTENT WITH WHAT OTHER PEOPLE SAID, HOW ARE WE
25 SUPPOSED TO KNOW IF DR. SHOMER IS TESTIFYING CONSISTENTLY
26 OR INCONSISTENTLY WITH THE REPORTS THAT HE HAS READ? HE
27 DOESN'T DO REPORTS FOR THE STUDIES THAT HE'S READ. WE
28 DON'T KNOW.

1 THAT'S THEIR EXPERT. THAT'S WHO THEY WANT
2 YOU TO FOLLOW AND BELIEVE, BECAUSE HE KNOWS WHAT GOES ON
3 IN THE HUMAN MIND, BECAUSE HE HAS READ THESE STUDIES AND
4 THESE TESTS.

5 IT'S THE HUMAN MIND. ALL SORTS OF THINGS
6 HAPPEN. NOT ONE TIME WAS THERE ANY MENTION BY DR. SHOMER
7 THAT SOME PEOPLE HAVE BETTER MEMORIES THAN OTHER PEOPLE.
8 IT'S COMMON SENSE. SOME PEOPLE REMEMBER THINGS BETTER
9 THAN OTHER PEOPLE. IT DIDN'T PLAY A PART IN ANYTHING
10 THAT HE TESTIFIED TO. NOTHING.

11 HOW ABOUT HIS TESTIMONY? AND I DON'T WANT
12 TO SPEND TOO MUCH TIME ON IT, BUT HE TESTIFIED FOR A
13 LITTLE WHILE. NOW, THERE IS AN INSTRUCTION THAT TALKS
14 ABOUT THE WITNESSES AND THEIR DEMEANOR AND THEIR BIAS AND
15 THEIR MOTIVE. WELL, DOES DR. SHOMER HAVE A BIAS OR A
16 MOTIVE THAT PLAYS A PART IN HIS TESTIMONY? WELL, HOW
17 MANY TIMES IS HE CALLED AN EXPERT WITNESS BY THE
18 PROSECUTION? NONE. AND THAT'S ANOTHER POINT, AND THAT
19 GIVES YOU A GOOD INDICATION OF WHAT TYPE OF WITNESS
20 DR. SHOMER IS.

21 THE QUESTION, APPOINTED BY THE COURT.
22 REALLY? "DOES THE COURT EVER CALL YOU UP AND ASK YOU TO
23 TESTIFY?" "WELL, NO. IT'S ALWAYS THE DEFENSE." IT'S
24 ALWAYS THE DEFENSE, AND THAT'S WHAT HAPPENS. HE WANTS TO
25 GIVE YOU THE IMPRESSION THAT IT'S BY THE COURT, THAT HE'S
26 NEUTRAL. HE'S NOT NEUTRAL. THERE'S NOTHING ABOUT HIS
27 TESTIMONY THAT'S NEUTRAL. THERE'S NOTHING ABOUT HIM
28 BEING ON THE WITNESS STAND THAT'S NEUTRAL. IT IS ALL FOR

1 THE DEFENSE.

2 AND WHAT DO YOU THINK HAPPENS TO HIS
3 STANDARD OR HIS PROFESSIONAL WITNESS STATUS IF EVERYTHING
4 HE SAYS ISN'T FAVORABLE TO THE DEFENSE? HE DOESN'T HAVE
5 A PROFESSION MUCH LONGER. HE HAS TO GO BACK TO BEING AN
6 ADMINISTRATOR AT THE MEDICAL GROUP.

7 \$2,500 FOR 12 HOURS OF WORK. HE SAYS IT'S
8 12 HOURS OF WORK. "WHAT DID YOU DO?" "WELL, I READ SOME
9 REPORTS. I DON'T EVEN KNOW IF I READ ALL OF THE REPORTS,
10 BUT I READ SOME REPORTS." HOW MANY REPORTS DO YOU HAVE
11 TO READ FOR 12 HOURS? "WELL, I DON'T GO BY JUST WHAT THE
12 ATTORNEYS ASK ME. I HAVE TO DETERMINE WHETHER OR NOT THE
13 HYPOTHETICAL IS LEGITIMATE." WELL, THAT'S NOT YOUR JOB.
14 YOU DON'T GET TO CHOOSE THAT. IT'S NOT WHAT YOU DO.
15 IT SHOULDN'T MATTER. YOU CAN SAY WHEN YOU'RE ASKED THE
16 HYPOTHETICAL, "WELL, THAT'S NOT A FAIR HYPOTHETICAL."
17 BUT HE DOESN'T DO THAT. HE CONSULTS AND TALKS.

18 AND HOW MANY TIMES DID I ASK HIM A QUESTION
19 THAT COULD HAVE BEEN ANSWERED YES OR NO WHEN HE WENT ON
20 FOR 30 SECONDS OR A MINUTE AND START SPOUTING OFF A BUNCH
21 OF NUMBERS ABOUT HOW EYEWITNESS IDENTIFICATION WAS
22 SUSPECT? BECAUSE THIS IS WHAT HE SAID -- AND I AM
23 SUMMARIZING. HE DIDN'T ACTUALLY USE THESE WORDS, BUT HE
24 SAID EVERY TIME -- WELL, IF THE WITNESS SEES A PHOTOGRAPH
25 OR SOMEBODY IN A LIVE LINEUP, IF THEY COME INTO COURT AND
26 IDENTIFY HIM, IT'S A TAINTED IDENTIFICATION BECAUSE THEY
27 HAVE ALREADY SEEN A PICTURE OR SEEN A LIVE LINE-UP.

28 SO HOW MANY CASES DO YOU THINK THERE ARE,

1 CRIMINAL CASES, WHERE PRIOR TO COMING INTO COURT A
2 WITNESS HAS NOT EITHER SEEN THE DEFENDANT IN A LIVE
3 LINEUP OR IN A PHOTOGRAPHIC LINEUP? HOW OFTEN IS THAT
4 GOING TO HAPPEN? NEVER. BECAUSE HOW DO THEY KNOW THAT'S
5 THE GUY UNLESS SOMEBODY IDENTIFIES HIM?

6 AND ACCORDING TO THEIR EXPERT, WELL, THEN
7 WHEN THEY COME INTO COURT, IT'S TAINTED. YOU CAN'T RELY
8 ON IT. SO YOU SHOULD FEEL JUST AS COMFORTABLE IF THEY
9 TAKE THE STAND AND SAY, "I CAN'T PICK HIM OUT," BECAUSE
10 IT DOESN'T MATTER.

11 IN FACT, I ASKED HIM, BECAUSE OF THE
12 HYPOTHETICAL, IF SOMEBODY SEES HIM IN A SIX-PACK
13 PHOTOGRAPH AND THEN IN A LIVE LINEUP, THEIR IN-COURT
14 IDENTIFICATION WOULD BE IRRELEVANT BECAUSE THEY HAVE
15 ALREADY SEEN HIM. IS THAT THE KIND OF EVIDENCE THAT
16 JURORS SHOULD BE COMFORTABLE WITH? BUT THAT'S WHAT HE'S
17 SAYING.

18 AND HE WENT BACK AND FORTH, AND THIS GOES
19 BACK TO THE INITIAL DESCRIPTION. WELL, THEY DIDN'T
20 DESCRIBE ALL OF THESE CERTAIN FACTORS. THEY DIDN'T SAY
21 THIS, THIS, AND THIS. BUT THEN HE SAID, YOU KNOW WHAT?
22 WHEN PEOPLE ARE CLOSER, EVEN THOUGH THEY THINK THEY ARE
23 ABLE TO IDENTIFY BETTER, THEY DON'T. THEY'RE BETTER IF
24 THE PERSON IS A DISTANCE AWAY. WELL, IF THEY ARE A
25 DISTANCE AWAY, HOW CAN YOU GIVE THOSE SPECIFIC DETAILS?
26 BECAUSE YOU'RE TOO FAR AWAY TO SEE THEM, LIKE THE
27 FRECKLES ON THE NOSE.

28 HOW MANY OF YOU SITTING HERE, LOOKING AT

1 THE DEFENDANT, RECOGNIZE FRECKLES ON HIS NOSE WHEN HE WAS
2 SITTING ACROSS THE ROOM? BUT ACCORDING TO THEIR EXPERT,
3 YOU'RE BETTER OFF -- YOU HAVE A BETTER CHANCE OF HAVING
4 AN ACCURATE IDENTIFICATION IF HE'S A DISTANCE AWAY THAN
5 IF HE'S RIGHT UP IN YOUR FACE. THAT DEFIES LOGIC.

6 NOW, THERE ARE THINGS THAT YOU SHOULD BE
7 CONCERNED ABOUT IN THIS CASE ABOUT MR. JARDINES'
8 IDENTIFICATION. THERE IS. BECAUSE HE WAS WEARING A
9 MASK. DOES THAT MEAN THAT SHE'S NOT ACCURATE WHEN SHE
10 PICKED OUT HIS PHOTOGRAPH? NO. EVEN DR. SHOMER, THE
11 PROFESSIONAL DEFENSE EXPERT, SAYS, "I CAN'T SAY IF IT'S
12 AN ACCURATE IDENTIFICATION OR NOT." HE CAN ONLY TALK
13 ABOUT FACTORS. HE WAS WEARING A MASK. THAT IS A
14 FACTOR. SHE HASN'T WAVERED. THAT IS ALSO A FACTOR.

15 NOW, YOU CAN DETERMINE WHETHER OR NOT IT'S
16 A GOOD THING OR A BAD THING IF YOU WANT TO GO WITH
17 DR. SHOMER. BUT WOULD YOU FEEL MORE COMFORTABLE IF
18 SOMEBODY HAD WAVERED AS OPPOSED TO SOMEBODY WHO SAID,
19 "THAT'S THE PERSON. I SAW HIM HERE, I SAW HIM HERE, AND
20 I SAW HIM HERE," AND EACH TIME SHE SAYS, "THAT'S THE
21 GUY"? THAT'S WHAT AN ACCURATE IDENTIFICATION IS.
22 BECAUSE IF SHE DIDN'T, IF SHE WASN'T CERTAIN, I AM NOT SO
23 SURE THAT THE DEFENSE ARGUMENT'S GOING TO BE WELL, YOU
24 KNOW WHAT? EVEN THOUGH SHE'S NOT CERTAIN, IT'S STILL
25 OKAY.

26 SO LET'S GET BACK TO THE EVIDENCE IN THE
27 CASE. THE DEFENSE SAYS TAUMU JAMES DIDN'T WEAR THE HAT
28 OR THE MASK, WHATEVER YOU WANT TO CALL IT. IS THERE

1 EVIDENCE OF THAT? NOW, HIS D.N.A. IS ON THE INSIDE OF
2 THE MASK. THERE'S EVIDENCE THAT HE DID WEAR IT. I DON'T
3 REMEMBER HEARING ANYTHING ABOUT HIM NOT WEARING IT.

4 THE DEFENSE SAYS THAT'S NOT A MASK THAT WAS
5 WORN BY THE ROBBERS. NANCY JARDINES DID NOT SAY THAT'S
6 NOT THE MASK. SHE INITIALLY SAID IT LOOKS LIKE THE
7 MASK. ONE MASK LOOKS THE SAME AS THE OTHER, I THINK
8 THAT'S WHAT SHE SAID. SHE CAN'T TELL IF IT IS BECAUSE
9 THAT WOULD BE A LIE. AGAIN, I AM SUMMARIZING. THOSE,
10 AGAIN, AREN'T HER EXACT WORDS.

11 DION HAWKINS IS PICKED UP HERE
12 (INDICATING). HE'S NOT WEARING A MASK WHEN HE'S IN THE
13 HOUSE HERE (INDICATING). IN BETWEEN THE HOUSE AND WHERE
14 HE'S STOPPED, CLOTHING WITH HIS D.N.A. IS FOUND,
15 GLOVES. NO DOUBT IT'S HIS D.N.A. A POTENTIAL MATCH ON
16 THE BLUE JUMPSUIT RIGHT HERE (INDICATING) THAT NIGHT.

17 AND WITH THAT -- AND HE'S ONE OF THE GUYS.
18 NOBODY SAID HE'S NOT. EVERYBODY SAID HE WAS. HE WASN'T
19 WEARING A MASK. WITH THAT IS A MASK, A BLACK MASK. IT
20 JUST HAPPENS TO BE THERE WITH DION HAWKINS' STUFF. IT'S
21 A COINCIDENCE? BECAUSE THAT'S THE DEFENSE'S ARGUMENT.
22 THAT'S WHAT THEY'VE GOT TO SAY. BECAUSE IF IT WASN'T
23 WORN BY ONE OF THE MASKED MEN WHO WENT IN THERE WITH DION
24 HAWKINS, IT'S A COINCIDENCE THAT DION HAWKINS HAS STUFF
25 WITH HIS D.N.A. ON IT RIGHT AFTER HE WAS IN THE HOUSE
26 WITH OTHER PEOPLE COMMITTING THESE CRIMES, AND IT'S A
27 COINCIDENCE THERE HAPPENS TO BE A BLACK MASK WITH A GUN
28 IN IT RIGHT THERE, THE SAME LOCATION.

1 THAT'S WHAT THEY'VE ARGUED, BECAUSE THEY
2 SAID THERE'S NO EVIDENCE THAT THAT HAT WAS -- THAT THAT
3 MASK WAS WORN BY SOMEBODY WHO WENT INTO THAT HOUSE. OF
4 COURSE THERE'S EVIDENCE OF IT. AND ALL THE DEFENSE SAID
5 IS WELL, ALL THEY HAVE IS CIRCUMSTANTIAL EVIDENCE. THIS
6 IS WHY I DON'T LIKE WATCHING "LAW AND ORDER" AND ALL
7 THOSE OTHER SHOWS, BECAUSE CIRCUMSTANTIAL EVIDENCE IS
8 GOOD EVIDENCE. IT'S JUST LIKE DIRECT EVIDENCE. IN FACT,
9 THE LAW TELLS YOU IT'S THE SAME. IT CARRIES THE SAME
10 WEIGHT.

REMEMBER, THEY TALKED ABOUT REASONABLE,
WHAT IS REASONABLE AND WHAT IS NOT REASONABLE. IF THERE
ARE TWO REASONABLE EXPLANATIONS, YOU HAVE TO GO WITH THE
ONE THAT POINTS TO NOT GUILTY, AND THAT IS THE WAY IT IS,
AND THAT'S THE WAY IT SHOULD BE.

1 GUN. MR. JAMES' PRINTS WEREN'T ON THE GUN. HIS D.N.A.
2 WASN'T ON THE GUN. WHAT DOES THAT TELL YOU? NOBODY'S
3 PRINTS WERE ON THE GUN, AT LEAST PRINTS THAT THEY COULD
4 COMPARE ANYTHING TO. SOMEBODY HAD THE GUN.

5 THERE WERE NO PRINTS. THERE WAS NO D.N.A.
6 TAKEN OFF THE GUN, BUT SOMEBODY HANDLED THAT GUN. BUT IT
7 WAS IN THE HAT WITH THE MASK WITH HIS D.N.A. ON IT TWO
8 BLOCKS FROM WHERE A MASKED MAN WENT INTO THE HOUSE. AND
9 I SERIOUSLY DOUBT IF HIS PRINTS HAD BEEN FOUND ON THE GUN
10 OR HIS D.N.A. HAD BEEN FOUND ON THE GUN, THE ARGUMENT
11 WOULD HAVE BEEN, OKAY --

12 MR. EVANS: OBJECTION. IMPROPER ARGUMENT.

13 THE COURT: SUSTAINED.

14 MR. GOUDY: WHAT DOES THAT MEAN, NO PRINTS, NO
15 D.N.A. ON THE GUN? IT MEANS NOTHING. IT MEANS THERE
16 WERE NO FINGERPRINTS, USABLE FINGERPRINTS, AND THERE WAS
17 NO D.N.A. TAKEN OFF THE GUN. THAT'S WHAT IT MEANS. IT
18 DOES NOT MEAN THAT HE DIDN'T WEAR THAT MASK. IT DOES NOT
19 MEAN THAT HE DID NOT HAVE THAT GUN.

20 SO WHAT IS THE REASONABLE ALTERNATIVE TO
21 HIS GUILT? ONE REASONABLE, ONE UNREASONABLE. YOU HAVE
22 TO GO WITH THE REASONABLE. AND HOW DO WE KNOW HE WORE
23 THE MASK THAT NIGHT? NANCY JARDINES SAW HIM. SHE PICKED
24 HIM OUT. WHAT ARE THE CHANCES? WHAT A HUGE COINCIDENCE
25 THE PERSON SHE IDENTIFIES -- AND NO MATTER WHAT ORDER YOU
26 GO IN, WHETHER THE D.N.A. WAS FIRST OR THE I.D. WAS
27 FIRST, SHE DOESN'T KNOW ABOUT THE D.N.A., AND SHE STILL
28 PICKED OUT HIS PHOTOGRAPH. SHE STILL PICKS OUT DEFENDANT

1 JAMES' PHOTOGRAPH AND SAYS, "THIS IS GUY." IT'S NOT A
2 COINCIDENCE HIS D.N.A. WAS ON THAT MASK TWO BLOCKS FROM
3 HER HOUSE, FOUND RIGHT AFTER THESE GUYS LEFT. THAT IS
4 NOT A COINCIDENCE. THAT IS CIRCUMSTANTIAL EVIDENCE.

5 YOU HAVE TO GO WITH THE REASONABLE
6 EXPLANATION. IF THERE IS NO REASONABLE EXPLANATION THAT
7 POINTS TO NOT GUILTY, AND THERE IS A REASONABLE
8 EXPLANATION THAT POINTS TO HIS GUILT, YOU MUST GO WITH
9 THE GUILT.

10 THE DEFENDANT WENT TO THAT HOUSE WITH DION
11 HAWKINS. THE DEFENDANT WAS WEARING A MASK. THE
12 DEFENDANT HAD THAT GUN IN HIS HAND, AND HE AND HIS
13 BUDDIES OR HIS COHORTS OR WHATEVER YOU WANT TO CALL THEM
14 HELD THAT FAMILY AT GUNPOINT AND TOOK THEIR PROPERTY.

15 AND THE FACT THAT RAFAEL GONZALEZ WAS IN A
16 DIFFERENT ROOM 5 FEET AWAY FROM HIS DOORWAY WHERE HIS
17 PROPERTY WAS TAKEN DOESN'T MEAN THAT HE WASN'T A VICTIM.
18 IT'S IN HIS IMMEDIATE PRESENCE 5 FEET AWAY. FIVE FEET
19 AWAY. HOW MUCH MORE IMMEDIATE DO YOU NEED TO BE TO
20 PREVENT HIM FROM PROTECTING HIS STUFF, SOMEONE STANDING
21 ON HIM, SOMEONE HOLDING A GUN ON HIM, HOLDING A GUN ON
22 HIS FAMILY?

23 CHANTELLE BARRAGAN WAS CLOSER TO THE ITEMS
24 THAT WERE TAKEN. BRENDA BARRAGAN WAS CLOSER. THEY WERE
25 IN THIS HALLWAY HERE (INDICATING) BETWEEN HER BEDROOM AND
26 THE BATHROOM. THEY'RE RIGHT AT THE DOOR TO THE PARENTS'
27 BEDROOM, AND SOMETHING WAS TAKEN FROM HER BEDROOM AS
28 WELL: HER WALLET. NOT HER IMMEDIATE PRESENCE? WHEN

1 SHE'S IN THE HALLWAY BETWEEN THE KITCHEN AND THE LIVING
2 ROOM, IS SHE BEING PREVENTED FROM EXERCISING CONTROL OVER
3 THOSE ITEMS WHEN SHE IS LAYING ON THE GROUND AT
4 GUNPOINT? OF COURSE SHE IS. THEY'RE ALL VICTIMS.

5 AND YOU KNOW WHAT? THEY ALL WANT SOMEBODY
6 TO PAY, BUT THEY ARE NOT WILLING TO POINT OUT THE WRONG
7 GUY. THEY DIDN'T HAVE TO TELL ANYONE ABOUT THE INTERNET
8 PHOTOGRAPH. NOBODY KNEW. BUT THEY DID. THEY DIDN'T
9 HAVE TO EXCLUDE THOSE OTHER TWO GUYS WHO WERE FOUND THAT
10 NIGHT, BUT THEY DID.

11 HE COMMITTED THE CRIMES. HE'S GUILTY.
12 THANK YOU.

13 THE COURT: THANK YOU, MR. GOUDY.

14 THANK YOU, MR. EVANS.

15 AS FOR OUR ALTERNATE, I HAVE ONE
16 INSTRUCTION TO TELL YOU, MA'AM, AND THEN I WILL SEND YOU
17 ALL INTO YOUR RESPECTIVE PLACES.

18 (READING:)

19 TO THE ALTERNATE JUROR, THE JURY
20 WILL SOON BEGIN DELIBERATING, BUT YOU
21 ARE STILL AN ALTERNATE JUROR AND ARE
22 BOUND BY MY EARLIER INSTRUCTIONS ABOUT
23 YOUR CONDUCT. DO NOT TALK ABOUT THIS
24 CASE OR ABOUT ANY PARTICULAR SUBJECT
25 INVOLVED IN IT WITH ANYONE, NOT EVEN
26 YOUR FAMILY OR FRIENDS. DO NOT HAVE
27 ANY CONTACT WITH THE DELIBERATING
28 JURORS. DO NOT DECIDE HOW YOU WOULD

1 VOTE IF YOU WERE DELIBERATING, AND DO
2 NOT FORM OR EXPRESS AN OPINION ABOUT
3 THE ISSUES IN THIS CASE UNLESS YOU
4 ARE SUBSTITUTED IN FOR ONE OF THE
5 DELIBERATING JURORS.

6 I AM GOING TO HAVE OUR BAILIFF SWORN TO
7 TAKE CHARGE OF THE JURY.

8 THE CLERK: YOU DO SOLEMNLY SWEAR THAT YOU WILL
9 TAKE CHARGE OF THE JURY AND KEEP THEM TOGETHER; THAT YOU
10 WILL NOT SPEAK TO THEM YOURSELF NOR ALLOW ANYONE ELSE TO
11 SPEAK TO THEM UPON ANY SUBJECT CONNECTED WITH THIS CASE
12 EXCEPT BY ORDER OF THE COURT; AND WHEN THEY HAVE AGREED
13 UPON A VERDICT, YOU WILL RETURN THEM INTO THE COURT; AND,
14 FURTHERMORE, THAT YOU WILL TAKE CHARGE OF THE ALTERNATE
15 JURORS AND KEEP THEM APART FROM THE JURY WHILE THEY ARE
16 DELIBERATING ON THE CAUSE UNTIL OTHERWISE INSTRUCTED BY
17 THE COURT, SO HELP YOU GOD.

18 THE BAILIFF: I DO.

19 THE COURT: OKAY. AND I AM GOING TO ASK OUR
20 12 JURORS TO TAKE YOUR PERSONAL ITEMS, AS WELL AS YOUR
21 NOTEBOOKS, INTO THE JURY ROOM.

22 FOR OUR ONE ALTERNATE, GO OUT IN THE
23 HALLWAY. THE BAILIFF WILL BE BOTH IN THE JURY ROOM AND
24 IN THE HALLWAY TO LET YOU KNOW HOW ADMINISTRATIVELY THE
25 BUZZER SYSTEM WORKS AND HOW WE TAKE OUR BREAKS AND ALL
26 THAT INFORMATION. THANK YOU.

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 HAVE LEFT, AS WELL AS OUR
7 ALTERNATE JUROR.

8 GENTLEMEN, I WOULD LIKE YOU TO LOOK AT THE
9 VERDICT FORMS AND PUT YOUR INITIALS ON THE BACK OF EACH
10 VERDICT FORM TO INDICATE THAT YOU HAVE REVIEWED THE
11 VERDICT FORMS AND THEY MEET YOUR APPROVAL.

12 MR. EVANS, PLEASE TALK TO YOUR CLIENT IF
13 THERE IS A REQUEST FOR READBACK, IF YOU BOTH WAIVE YOUR
14 PRESENCE FOR READBACK, AND THAT WOULD BE SO THE COURT
15 REPORTER CAN GO BACK INTO THE JURY ROOM IF THERE IS A
16 REQUEST FOR READBACK. YOU WILL STILL BE NOTIFIED OF THE
17 READBACK AND GET A CHANCE TO REVIEW THE TRANSCRIPT, BUT I
18 JUST NEED TO KNOW IF YOU WANT IT DONE IN OPEN COURT OR IF
19 IT CAN BE DONE IN THE JURY ROOM WITH JUST THE COURT
20 REPORTER'S PRESENCE.

21 TALK TO HIM FOR A MOMENT, AND WE WILL TAKE
22 THAT UP IN JUST A FEW MOMENTS.

23 MR. GOUDY: I THINK WE BOTH HAVE ALREADY REVIEWED
24 THE VERDICT FORMS.

25 THE COURT: ALL RIGHT. MAKE SURE THE CLERK HAS
26 CELLPHONE NUMBERS WHERE SHE CAN REACH YOU AND THAT YOU
27 ARE BOTH WITHIN 20 MINUTES OF COMING TO COURT FOR WHEN WE
28 NEED YOU. SO I KNOW THIS CASE ORIGINATED FROM POMONA,

1 BUT YOU CAN STILL GO BACK TO YOUR OFFICES.

2 MR. GOUDY: NEITHER ONE OF US ARE FROM POMONA.

3 THE ONLY THING I WOULD SAY IS THE SHUTTLE SOMETIMES TAKES
4 A LITTLE LONGER.

5 THE COURT: JUST AS LONG AS YOU'RE IN
6 COMMUNICATION WITH THE CLERK SO WE KNOW HOW LONG YOU WILL
7 BE.

8 AND ALSO I WANT TO KNOW IF HE WILL WAIVE
9 JURY TRIAL ON THE PRIORS, IF IT'S A COURT TRIAL OR AN
10 ADMISSION, OR IF YOU'RE GOING TO WANT THE JURY TRIAL ON
11 THE PRIORS.

12 SO TAKE SOME TIME AND TALK TO HIM, AND WE
13 WILL HAVE HIM BROUGHT OUT IN TEN MINUTES.

14

15 (COUNSEL AND CLIENT CONFERRED
16 SOTTO VOCE.)

17

18 THE COURT: WE ARE BACK ON THE RECORD IN PEOPLE
19 VERSUS JAMES. MR. JAMES IS PRESENT. BOTH COUNSEL ARE
20 PRESENT. OUR JURORS ARE NOT PRESENT.

21 AND MR. EVANS, HAVE YOU TALKED TO MR. JAMES
22 ABOUT HIS RIGHT TO BE PRESENT AT READBACK AND WHETHER HE
23 WISHES TO WAIVE THAT IN THE FASHION THAT I TALKED ABOUT
24 WHERE YOU WILL BE NOTIFIED OF THE READBACK QUESTION, HAVE
25 A CHANCE TO READ THE TRANSCRIPTS, AGREE ON IT OR HAVE A
26 HEARING ON IT? AND WHEN IT ACTUALLY COMES TO THE
27 READBACK, WHETHER I RULE UPON IT OR IT'S AGREED UPON, THE
28 COURT REPORTER WILL GO BACK BY HERSELF IN THE JURY ROOM

1 AND DO THE READ BACK. HAVE YOU DISCUSSED THAT?

2 MR. EVANS: I HAVE, AND HE'S AGREEABLE TO NOT BE
3 PRESENT DURING THE READBACK.

4 THE COURT: MR. JAMES, HAVE YOU TALKED ABOUT THAT?

5 THE DEFENDANT: YES, I HAVE.

6 THE COURT: IS IT YOUR DESIRE TO WAIVE YOUR
7 PRESENCE?

8 THE DEFENDANT: YES.

9 THE COURT: MR. EVANS, HAVE YOU ALSO TALKED TO HIM
10 ABOUT HIS RIGHT TO A JURY TRIAL ON THE PRIORS, THE RIGHT
11 TO A COURT TRIAL, OR AN ADMISSION?

12 MR. EVANS: I HAVE, AND HE IS GOING TO WAIVE HIS
13 RIGHT TO A JURY TRIAL ON THE PRIORS.

14 THE COURT: IS THAT WHAT YOU WANT TO DO,
15 MR. JAMES?

16 THE DEFENDANT: YES.

17 THE COURT: OKAY. YOU DO HAVE A RIGHT TO A JURY
18 TRIAL ON THE PRIORS, AS I HAVE ALREADY EXPLAINED TO YOU A
19 COUPLE OF TIMES. IT WOULD BE THE SAME JURY THAT'S
20 LISTENING TO THE CASE NOW, AND THEY WOULD HAVE TO
21 UNANIMOUSLY AGREE THAT THE PRIORS ALLEGED ARE YOURS AND
22 THAT THAT CONVICTION WAS YOURS. THE SENTENCING ISSUE
23 WOULD STILL BE LEFT UP TO ME, SO WE ARE STILL TALKING
24 ABOUT THE PROOF OF THE PRIORS THAT THE JURY WOULD DECIDE.

25 IF YOU CHOOSE TO WAIVE THE JURY AND HAVE A
26 COURT TRIAL ON IT, AS I HAVE ALREADY EXPLAINED AS WELL, I
27 WOULD BE THE FINDER OF FACT. THE PEOPLE WOULD STILL HAVE
28 TO PROVE IT BY PROOF BEYOND A REASONABLE DOUBT. YOU'D

1 HAVE THE RIGHT TO CONFRONT AND CROSS-EXAMINE THE
2 WITNESSES OR QUESTION THE DOCUMENTARY EVIDENCE THAT'S
3 PRESENTED IN THAT FASHION, AND THEN I WOULD MAKE A
4 DECISION WHETHER OR NOT I BELIEVED THE PEOPLE HAVE MET
5 THEIR BURDEN BY PROOF BEYOND A REASONABLE DOUBT.

6 DO YOU UNDERSTAND THE DIFFERENCE?

7 THE DEFENDANT: YES.

8 THE COURT: OKAY. AND AT THIS TIME DO YOU WAIVE
9 YOUR RIGHT TO A JURY TRIAL ON THE PRIORS?

10 THE DEFENDANT: YES.

11 THE COURT: COUNSEL JOIN?

12 MR. EVANS: JOIN.

13 THE COURT: PEOPLE JOIN?

14 MR. GOUDY: YES, YOUR HONOR.

15 THE COURT: PEOPLE, DID I LEAVE ANYTHING OUT IN
16 THE WAIVER?

17 MR. GOUDY: NO, YOUR HONOR.

18 THE COURT: OKAY. THEN CAN YOU THINK OF ANYTHING
19 ELSE?

20 MR. EVANS: I AM JUST GOING THROUGH MY HEAD. I
21 DON'T THINK SO.

22 THE COURT: OKAY. THEN WITH THAT SAID, WE WILL GO
23 AHEAD AND GET YOU CHANGED OUT SO YOU CAN BE MORE
24 COMFORTABLE.

25 THE DEFENDANT: I AM COMFORTABLE IN THIS.

26 THE COURT: OKAY. IT'S A GOOD COLOR ON YOU,
27 TOO.

28 ALL RIGHT. SO WE WILL JUST KEEP YOU HERE

1 IN CASE THERE ARE ANY QUESTIONS.

2 THE JURY IS GOING TO DELIBERATE UNTIL 4:00
3 TODAY, AND THEN TOMORROW THEY WILL START AT 1:30.
4 REMEMBER, JUROR NO. 1 HAS THE COUNTY EXAM SHE WANTS TO
5 TAKE. AND SINCE WE YOU WERE BOTH WILLING TO ACCOMMODATE
6 HER, I ASSUME YOU WANT TO KEEP HER.

7

8 (THE MATTER WAS CONTINUED
9 TO TUESDAY, AUGUST 11, 2010,
10 AT 1:30 P.M. FOR FURTHER
11 PROCEEDINGS.)

12

13 (THE NEXT PAGE NUMBER IS 2401.)

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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA WEDNESDAY, AUGUST 11, 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 JURY RESUMES DELIBERATING.)

10
11 (THE MATTER WAS CONTINUED
12 TO THURSDAY, AUGUST 12, 2010,
13 AT 9:00 A.M. FOR FURTHER
14 PROCEEDINGS.)

15
16 (THE NEXT PAGE NUMBER IS 2701.)

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1 CASE NUMBER: KA085233
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3 LOS ANGELES, CALIFORNIA THURSDAY, AUGUST 12, 2010
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5 REPORTER: KATHRYN L. MAUTZ, CSR NO. 11539
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)

8
9 (WHEREUPON THE JURY RESUMES
10 DELIBERATING.)

11
12 (WHEREUPON THE LUNCH RECESS
13 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 THURSDAY, AUGUST 12, 2010
4 DEPARTMENT NO. 121 HON. CRAIG VEALS, 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: WE ARE ON THE RECORD IN PEOPLE VERSUS
14 TAUMU JAMES, CASE NUMBER -- EXCUSE ME, KA085233.
15 MR. TAUMU (SIC) IS PRESENT WITH COUNSEL. THE PEOPLE ARE
16 PRESENT, AND WE ARE JOINED BY ALL THE JURORS.

17 THE COURT IS INFORMED THAT THERE IS A
18 VERDICT IN THIS MATTER. THE FOREPERSON -- WHERE IS
19 NO. NINE? IN EVERY COURT THE SEATS ARE DIFFERENT. DO
20 YOU HAVE THE VERDICT FORM?

21 JUROR NO. 9: YES.

22 THE COURT: WOULD YOU TAKE A MOMENT TO LOOK AT
23 THEM TO MAKE SURE THAT THEY ACCURATELY REFLECT THE
24 UNANIMOUS VERDICT OF THE JURY AND THAT THEY ARE CORRECTLY
25 DATED, TODAY BEING AUGUST 12TH, AND THAT YOU HAVE
26 ASCRIBED YOUR NAME, YOUR SEAT NUMBER, OR JUROR
27 IDENTIFICATION NUMBER ON THE COMPLETED VERDICT FORMS.

28 JUROR NO. 9: YES. I HAVE FINISHED.

1 THE COURT: WOULD YOU PLEASE HAND THAT BACK TO THE
2 BAILIFF, PLEASE.

3 MADAM CLERK.

4 THE CLERK: (READING:)

5 IN THE CASE OF THE PEOPLE OF
6 THE STATE OF CALIFORNIA VERSUS TAUMU
7 JAMES, CASE NUMBER KA085233-02.

8 COUNT 1: WE, THE JURY IN THE
9 ABOVE-ENTITLED ACTION, FIND THE
10 DEFENDANT, TAUMU JAMES, GUILTY OF
11 THE CRIME OF ROBBERY, WHO DID
12 UNLAWFULLY AND BY MEANS OF FORCE
13 AND FEAR TAKE PERSONAL PROPERTY
14 FROM THE PERSON, POSSESSION, AND
15 IMMEDIATE PRESENCE OF RAFAEL GONZALEZ,
16 IN VIOLATION OF PENAL CODE SECTION 211,
17 A FELONY AS CHARGED IN COUNT 1 OF THE
18 INFORMATION.

19 WE FURTHER FIND THAT THE CRIME
20 OF ROBBERY IS IN THE FIRST DEGREE.

21 WE FURTHER FIND THE ALLEGATION
22 THAT IN THE COMMISSION OF THE ABOVE
23 OFFENSE THAT THE DEFENDANT, TAUMU
24 JAMES, PERSONALLY USED A FIREARM,
25 NAMELY A HANDGUN, WITHIN THE MEANING
26 OF PENAL CODE SECTION 12022.53(B) TO
27 BE TRUE.

28 WE FURTHER FIND THE ALLEGATION

1 THAT IN THE COMMISSION OF THE ABOVE
2 OFFENSE THE DEFENDANT, TAUMU JAMES,
3 VOLUNTARILY ACTED IN CONCERT PURSUANT
4 TO PENAL CODE SECTION 213 SUBSECTION (A)
5 SUBSECTION (1) SUBSECTION (A) TO BE TRUE.

6 DATED THIS 12TH DAY OF AUGUST 2010.

7 BY SEAT NUMBER 9, FOREPERSON.

8 COUNT NUMBER 2. SAME CAPTION,
9 SAME CASE NUMBER. WE, THE JURY IN THE
10 ABOVE-ENTITLED ACTION, FIND THE
11 DEFENDANT, TAUMU JAMES, GUILTY OF THE
12 CRIME OF ROBBERY, WHO DID UNLAWFULLY
13 AND BY MEANS OF FORCE AND FEAR TAKE
14 PERSONAL PROPERTY FROM THE PERSON,
15 POSSESSION, AND IMMEDIATE PRESENCE
16 OF BRENDA BARRAGAN, IN VIOLATION OF
17 PENAL CODE SECTION 211, A FELONY AS
18 CHARGED IN COUNT 2 OF THE INFORMATION.

19 WE FURTHER FIND THAT THE CRIME
20 OF ROBBERY IS IN THE FIRST DEGREE.

21 WE FURTHER FIND THE ALLEGATION
22 THAT IN THE COMMISSION OF THE ABOVE
23 OFFENSE, THE DEFENDANT, TAUMU JAMES,
24 PERSONALLY USED A FIREARM, NAMELY A
25 HANDGUN, WITHIN THE MEANING OF PENAL
26 CODE SECTION 12022.53(B) TO BE TRUE.

27 WE FURTHER FIND THE ALLEGATION
28 THAT IN THE COMMISSION OF THE ABOVE

1 OFFENSE, THE DEFENDANT, TAUMU JAMES,
2 VOLUNTARILY ACTED IN CONCERT PURSUANT
3 TO PENAL CODE SECTION 213 (A) (1) (A) TO
4 BE TRUE.

5 DATED THIS 12TH DAY OF AUGUST, 2010.

6 BY FOREPERSON IN SEAT NUMBER 9.

7 SAME CASE NUMBER, SAME CAPTION.

COUNT 3: WE, THE JURY IN THE
ABOVE-ENTITLED ACTION, FIND THE
DEFENDANT, TAUMU JAMES, GUILTY OF
THE CRIME OF ROBBERY, WHO DID
UNLAWFULLY AND BY MEANS OF FORCE
AND FEAR TAKE PERSONAL PROPERTY
FROM THE PERSON, POSSESSION, AND
IMMEDIATE PRESENCE OF FELICITAS
GONZALEZ, IN VIOLATION OF PENAL
CODE SECTION 211, A FELONY AS
CHARGED IN COUNT 3 OF THE
INFORMATION.

20 WE FURTHER FIND THAT THE
21 CRIME OF ROBBERY IS IN THE FIRST
22 DEGREE.

23 WE FURTHER FIND THE ALLEGATION
24 THAT IN THE COMMISSION OF THE ABOVE
25 OFFENSE, THE DEFENDANT, TAUMU JAMES,
26 PERSONALLY USED A FIREARM, NAMELY A
27 HANDGUN, WITHIN THE MEANING OF PENAL
28 CODE SECTION 12022.53(B) TO BE TRUE.

1 WE FURTHER FIND THE ALLEGATION
2 THAT IN THE COMMISSION OF THE ABOVE
3 OFFENSE, THE DEFENDANT, TAUMU JAMES,
4 VOLUNTARILY ACTED IN CONCERT PURSUANT
5 TO PENAL CODE SECTION 213(A)(1)(A)
6 TO BE TRUE.

7 DATED THIS 12TH DAY OF AUGUST,
8 2010.

9 BY FOREPERSON IN SEAT NUMBER 9.
10 SAME CAPTION, SAME CASE NUMBER.

11 COUNT 4: WE, THE JURY IN THE
12 ABOVE-ENTITLED ACTION, FIND THE
13 DEFENDANT, TAUMU JAMES, GUILTY OF
14 THE CRIME OF ROBBERY, WHO DID
15 UNLAWFULLY AND BY MEANS OF FORCE
16 AND FEAR TAKE PERSONAL PROPERTY
17 FROM THE PERSON, POSSESSION, AND
18 IMMEDIATE PRESENCE OF NANCY JARDINES,
19 IN VIOLATION OF PENAL CODE SECTION
20 211, A FELONY AS CHARGED IN COUNT 4
21 OF THE INFORMATION.

22 WE FURTHER FIND THAT THE CRIME
23 OF ROBBERY IS IN THE FIRST DEGREE.

24 WE FURTHER FIND THE ALLEGATION
25 THAT IN THE COMMISSION OF THE ABOVE
26 OFFENSE THE DEFENDANT, TAUMU JAMES,
27 PERSONALLY USED A FIREARM, NAMELY A
28 HANDGUN, WITHIN THE MEANING OF PENAL

1 CODE SECTION 12022.53(B) TO BE TRUE.

2 WE FURTHER FIND THE ALLEGATION
3 THAT IN THE COMMISSION OF THE ABOVE
4 OFFENSE, THE DEFENDANT, TAUMU JAMES,
5 VOLUNTARILY ACTED IN CONCERT PURSUANT
6 TO PENAL CODE SECTION 213(A)(1)(A)
7 TO BE TRUE.

8 DATED THIS 12TH DAY OF AUGUST,
9 2010.

10 BY FOREPERSON IN SEAT NUMBER 9.

11 SAME CAPTION, SAME CASE NUMBER,
12 COUNT 6: WE, THE JURY IN THE
13 ABOVE-ENTITLED ACTION, FIND THE
14 DEFENDANT, TAUMU JAMES, GUILTY OF
15 THE CRIME OF ROBBERY, WHO DID
16 UNLAWFULLY AND BY MEANS OF FORCE
17 AND FEAR TAKE PERSONAL PROPERTY
18 FROM THE PERSON, POSSESSION, AND
19 IMMEDIATE PRESENCE OF CHANTELLE
20 BARRAGAN, IN VIOLATION OF PENAL
21 CODE SECTION 211, A FELONY AS
22 CHARGED IN COUNT 6 OF THE INFORMATION.

23 WE FURTHER FIND THAT THE CRIME
24 OF ROBBERY IS IN THE FIRST DEGREE.

25 WE FURTHER FIND THAT THE
26 ALLEGATION IN THE COMMISSION OF THE
27 ABOVE OFFENSE, THE DEFENDANT, TAUMU
28 JAMES, PERSONALLY USED A FIREARM,

4 WE FURTHER FIND THE ALLEGATION
5 THAT IN THE COMMISSION OF THE ABOVE
6 OFFENSE, THE DEFENDANT, TAUMU JAMES,
7 VOLUNTARILY ACTED IN CONCERT PURSUANT
8 TO PENAL CODE SECTION 213 (A) (1) (A) TO
9 BE TRUE.

10 WE FURTHER FIND THE ALLEGATION
11 THAT IN THE COMMISSION OF THE ABOVE
12 OFFENSE, THE VICTIM IN THE ABOVE
13 OFFENSE WAS EIGHT YEARS OLD AND
14 SAID DISABILITY AND CONDITION WAS
15 KNOWN AND REASONABLY SHOULD HAVE
16 BEEN KNOWN TO THE DEFENDANT, TAUMU
17 JAMES, IN VIOLATION OF PENAL CODE
18 SECTION 667.9(B), TO BE TRUE.

19 DATED THIS 12TH DAY OF AUGUST,
20 2010.

21 BY FOREPERSON IN SEAT NUMBER 9.

22 SAME CASE NUMBER, SAME CAPTION.

23 COUNT 7: WE, THE JURY IN THE
24 ABOVE-ENTITLED ACTION, FIND THE
25 DEFENDANT, TAUMU JAMES, GUILTY OF THE
26 CRIME OF ROBBERY, WHO DID UNLAWFULLY
27 AND BY MEANS OF FORCE AND FEAR TAKE
28 PERSONAL PROPERTY FROM THE PERSON,

1 POSSESSION, AND IMMEDIATE PRESENCE OF
2 HENRY BARRAGAN, IN VIOLATION OF PENAL
3 CODE SECTION 211, A FELONY, AS CHARGED
4 IN COUNT 7 OF THE INFORMATION.

5 WE FURTHER FIND THAT THE CRIME
6 OF ROBBERY IS IN THE FIRST DEGREE.

7 WE FURTHER FIND THE ALLEGATION
8 THAT IN THE COMMISSION OF THE ABOVE
9 OFFENSE, THE DEFENDANT, TAUMU JAMES,
10 PERSONALLY USED A FIREARM, NAMELY A
11 HANDGUN, WITHIN THE MEANING OF PENAL
12 CODE SECTION 12022.53(B) TO BE TRUE.

13 WE FURTHER FIND THE ALLEGATION
14 THAT IN THE COMMISSION OF THE ABOVE
15 OFFENSE, THE DEFENDANT, TAUMU JAMES,
16 VOLUNTARILY ACTED IN CONCERT PURSUANT
17 TO PENAL CODE SECTION 213(A)(1)(A)
18 TO BE TRUE.

19 WE FURTHER FIND THE ALLEGATION
20 THAT IN THE COMMISSION OF THE ABOVE
21 OFFENSE, THE VICTIM IN THE ABOVE
22 OFFENSE WAS SIX YEARS OLD AND SAID
23 DISABILITY AND CONDITION WAS KNOWN
24 AND REASONABLY SHOULD HAVE BEEN
25 KNOWN TO THE DEFENDANT, TAUMU JAMES,
26 IN VIOLATION OF PENAL CODE SECTION
27 667.9(B) TO BE TRUE.

28 DATED THIS 12TH DAY OF AUGUST,

1 2010.

2 BY FOREPERSON IN SEAT NUMBER 9.

3 SAME CAPTION, SAME CASE NUMBER.

4 COUNT 8: WE, THE JURY IN THE
5 ABOVE-ENTITLED ACTION, FIND THE
6 DEFENDANT, TAUMU JAMES, NOT GUILTY
7 OF THE CRIME OF KIDNAPPING TO COMMIT
8 ANOTHER CRIME, WHO DID UNLAWFULLY
9 KIDNAP AND CARRY AWAY BRENDA BARRAGAN
10 TO COMMIT ROBBERY, IN VIOLATION OF
11 PENAL CODE SECTION 209(B) (1), A
12 FELONY AS CHARGED IN COUNT 8 OF THE
13 INFORMATION.

14 DATED THIS 12TH DAY OF AUGUST,

15 2010.

16 BY FOREPERSON IN SEAT NUMBER 9.

17 SAME CAPTION, SAME CASE NUMBER.

18 COUNT 8, A LESSER INCLUDED OFFENSE:
19 WE, THE JURY IN THE ABOVE-ENTITLED
20 ACTION, FIND THE DEFENDANT, TAUMU
21 JAMES, NOT GUILTY OF THE CRIME OF
22 KIDNAPPING, WHO DID UNLAWFULLY KIDNAP
23 AND CARRY AWAY BRENDA BARRAGAN, IN
24 VIOLATION OF PENAL CODE SECTION 207,
25 A FELONY, A LESSER INCLUDED OFFENSE
26 OF COUNT 8.

27 DATED THIS 12TH DAY OF AUGUST,

28 2010.

1 BY FOREPERSON IN SEAT NUMBER 9.

2 LADIES AND GENTLEMEN OF THE JURY, ARE THESE
3 YOUR VERDICTS, SO SAY YOU ONE, SO SAY YOU ALL?

4

5 (THE JURORS RESPONDED IN THE
6 AFFIRMATIVE.)

7

8 THE COURT: THANK YOU VERY MUCH.

9 MR. EVANS, WOULD YOU LIKE TO HAVE THE
10 JURORS POLLED?

11 MR. EVANS: YES, YOUR HONOR.

12 THE CLERK: WHEN I STATE YOUR JUROR SEAT NUMBER,
13 PLEASE ANSWER "YES" OR "NO" IF THE VERDICTS THAT I HAVE
14 JUST READ ARE INDEED YOUR PERSONAL VERDICTS.

15 JUROR NO. 1?

16 JUROR NO. 1: YES.

17 THE CLERK: JUROR NO. 2?

18 JUROR NO. 2: YES.

19 THE CLERK: JUROR NO. 3?

20 JUROR NO. 3: YES.

21 THE CLERK: JUROR NO. 4?

22 JUROR NO. 4: YES.

23 THE CLERK: JUROR NO. 5?

24 JUROR NO. 5: YES.

25 THE CLERK: JUROR NO. 6?

26 JUROR NO. 6: YES.

27 THE CLERK: JUROR NO. 7?

28 JUROR NO. 7: YES.

1 THE CLERK: JUROR NO. 8?
2 JUROR NO. 8: YES.
3 THE CLERK: JUROR NO. 9?
4 JUROR NO. 9: YES.
5 THE CLERK: JUROR NO. 10?
6 JUROR NO. 10: YES.
7 THE CLERK: JUROR NO. 11?
8 JUROR NO. 11: YES.
9 THE CLERK: JUROR NO. 12?
10 JUROR NO. 12: YES.
11 THE CLERK: ALL ANSWERED IN THE AFFIRMATIVE.
12 THE COURT: THANK YOU VERY MUCH.
13 OKAY. LADIES AND GENTLEMEN, NATURALLY THAT
14 CONCLUDES YOUR SERVICE ON THIS CASE.
15 EXCUSE ME JUST ONE SECOND.
16 WILL COUNSEL APPROACH, PLEASE.
17
18 (A DISCUSSION WAS HELD AT THE
19 BENCH WHICH WAS NOT REPORTED.)
20
21 THE COURT: ALL RIGHT. SORRY ABOUT THAT
22 INTERRUPTION.
23 AND AS SUSPECTED, THAT IS IT FROM YOUR
24 STANDPOINT.
25 BEFORE EXCUSING YOU, I DO WANT TO TAKE JUST
26 A MOMENT TO SPEAK TO YOU ON BEHALF OF JUDGE OLMEDO. I
27 KNOW SHE WOULD SAY THIS IF SHE WERE HERE BECAUSE I DO THE
28 SAME THING SHE DOES, AND WE ALL FEEL THE SAME WAY ABOUT

1 JURORS WHO PARTICIPATE ON CASES THAT ARE BEFORE US.
2
3 THANK YOU VERY MUCH FOR YOUR INVALUABLE PARTICIPATION TO
4 THE CAUSE OF JUSTICE IN THIS COURT. WE UNDERSTAND THAT
5 IT TAKES TIME. YOU HAVE TO PARK DOWNTOWN, WHICH IS VERY
6 DIFFICULT, AS WELL AS NAVIGATING THE AWFUL TRAFFIC THAT
7 WE HAVE TO ENDURE ON A DAILY BASIS. IT'S NO FUN, BUT WE
8 KNOW THAT BEING AWAY FROM HOME, BEING AWAY FROM WORK,
9 HAVING TO FOREGO ALL OF THE THINGS THAT YOU ORDINARILY
10 WOULD DO IS INCONVENIENT, AND YOU ENDURED IT ALL. SO
11 AGAIN, THANK YOU VERY MUCH FOR YOUR TIME. YOU ARE TO BE
12 COMMENDED FOR YOUR TREMENDOUS SPIRIT AND YOUR COMMITMENT
TO JUSTICE HERE.

13 THE PARTING JURORS ARE VERY HELPFUL IN THE
14 SENSE THAT THE THINGS THAT YOU HAVE TO SAY ABOUT THIS
15 CASE, OTHER THAN WHAT YOU SAY IN YOUR EVALUATIONS, ARE OF
16 GREAT INTEREST AND ARE VERY HELPFUL TO THE ATTORNEYS.
17 AND I AM SURE THEY WOULD VERY MUCH APPRECIATE IT IF YOU
18 WOULD WAIT A MINUTE OR TWO SO THAT THEY CAN TALK TO YOU.
19 YOU ARE UNDER NO OBLIGATION TO DO THAT. AND TO THE
20 EXTENT THAT YOU HAVE BEEN ADMONISHED THAT YOU CANNOT HAVE
21 DISCUSSIONS ABOUT THIS CASE DURING YOUR DELIBERATIONS,
22 THAT IS, OF COURSE, LIFTED.

23 SO IF YOU WISH, PLEASE -- AGAIN, IF YOU ARE
24 WILLING, WAIT OUTSIDE OF THE COURTROOM, AND THE ATTORNEYS
25 WILL BE WITH YOU IN JUST A FEW MOMENTS. AGAIN, YOU ARE
26 UNDER NO OBLIGATION TO DO SO.

27 AT THIS POINT, YOU WILL REPORT IS THE FIFTH
28 FLOOR JURY ASSEMBLY ROOM. THEY WILL PROCESS YOU OUT FROM

1 THERE. AND AGAIN, THANK YOU VERY MUCH. THANK YOU FOR
2 HAVING FILLED OUT THE EVALUATION FORMS. I AM SURE THAT
3 JUDGE OLMEDO WILL FIND THEM AS INTERESTING AND
4 INFORMATIVE AS I DO. SO THANK YOU, EVERYONE.

5 AGAIN, IF YOU CAN WAIT OUTSIDE A FEW
6 MINUTES, THE ATTORNEYS WILL BE OUTSIDE. BUT IF YOU
7 CHOOSE NOT TO, THAT'S YOUR PREROGATIVE. BUT PLEASE CHECK
8 OUT OF THE JURY ASSEMBLY ROOM, AND THANK YOU.

9

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

14

15 THE COURT: THE JURORS HAVE LEFT THE COURTROOM.
16 ALL PARTIES REMAIN PRESENT.

17 AND AS FAR AS SENTENCING IS CONCERNED, DO
18 YOU HAVE A DATE IN MIND?

19 MR. EVANS: SEPTEMBER 17TH.

20 THE COURT: SEPTEMBER 17TH?

21 MR. GOUDY: I WILL NOT BE HERE THAT DAY. I AM
22 HERE THE FOLLOWING FRIDAY, THOUGH, THE 24TH.

23 MR. EVANS: I AM GOING TO BE IN TRIAL.

24 OCTOBER 4TH?

25 MR. GOUDY: THAT'S FINE.

26 THE COURT: OCTOBER 4TH?

27 MR. EVANS: PLEASE.

28 THE COURT: OKAY. MR. JAMES, STATUTORILY YOU DO

1 HAVE THE RIGHT TO BE SENTENCED WITHIN THE NEXT 20 DAYS.
2 DO YOU UNDERSTAND AND GIVE UP THAT RIGHT AND AGREE THAT
3 WE WILL GO OVER TO OCTOBER 4TH FOR SENTENCING?

4 THE DEFENDANT: YES.

5 THE COURT: COUNSEL JOIN?

6 MR. EVANS: JOIN, YOUR HONOR.

7 THE COURT: DO YOU WANT TO TAKE A TIME WAIVER
8 BEYOND THAT IN AN ABUNDANCE OF CAUTION, MAYBE ZERO OF 10?

9 MR. GOUDY: ZERO OF TEN OR ZERO OF 20 MAYBE.

10 MR. EVANS: ZERO 20 IS FINE.

11 THE COURT: MR. JAMES, DO YOU FURTHERMORE AGREE
12 THAT IF SENTENCING IS NOT PROCEEDED WITH ON THAT DAY --
13 THAT IS, OCTOBER 4TH -- YOU WILL BE SENTENCED WITHIN
14 20 DAYS FOLLOWING?

15 THE DEFENDANT: YES.

16 THE COURT: AND COUNSEL JOIN?

17 MR. EVANS: I JOIN.

18 THE COURT: OKAY. THANK YOU VERY MUCH.

19 THE CLERK: IS BAIL NOW NO BAIL?

20 THE COURT: NO BAIL ON THIS.

21
22 (THE MATTER WAS CONTINUED
23 TO MONDAY, OCTOBER 4, 2010,
24 AT 8:30 A.M. FOR FURTHER
25 PROCEEDINGS.)

26
27 (THE NEXT PAGE NUMBER IS 3001.)
28

1 CASE NUMBER: KA085233-02
2 CASE NAME: PEOPLE V. JAMES TAUMU
3 LOS ANGELES, CALIFORNIA MONDAY, OCTOBER 4, 2010
4 DEPARTMENT 121 CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: CYNTHIA R. ROSALES, CSR #5410
6 TIME: A.M. SESSION
7

8 APPEARANCES:

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

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

18
19 THE COURT: PEOPLE'S VERSUS JAMES TAUMU, KA0875233.
20 MR. JAMES IS PRESENT IN COURT IN CUSTODY WITH MR. EVANS.
21 PEOPLE ARE REPRESENTED BY MR. GOUDY.

22 AND WE ARE HERE FOR SENTENCING AND MOTIONS.
23 AND I UNDERSTAND THERE IS GOING TO BE A REQUEST TO CONTINUE IT
24 BECAUSE YOU HAVE SOME MOTIONS YOU WANT TO FILE, CORRECT,
25 MR. EVANS?

26 MR. EVANS: THAT'S CORRECT, YOUR HONOR.

27 THE COURT: WHAT DATE WERE YOU THINKING OF?

28 MR. EVANS: WE ARE GOING TO REQUEST THE 28TH.

1 THE COURT: OF SEPTEMBER OR OCTOBER?

2 MR. EVANS: OCTOBER.

3 THE COURT: THAT'S FINE.

4 SIR, YOU HAVE THE RIGHT TO BE SENTENCED TODAY.

5 IS IT OKAY WITH YOU IF SENTENCING GO OVER TO OCTOBER 28TH OR
6 WITHIN TEN DAYS OF THAT DATE? IS THAT OKAY?

7 THE DEFENDANT: YES, YOUR HONOR.

8 THE COURT: COUNSEL JOIN?

9 MR. EVANS: JOINS.

10 THE COURT: WE WILL SEE YOU BACK, THEN, ON
11 OCTOBER 28TH FOR SENTENCING AND MOTIONS.

12 MR. GOUDY: YOUR HONOR, THERE IS ONE THING. IF THE
13 COURT MAY RECALL, DURING THE TRIAL I PROVIDED A NEW
14 INFORMATION BECAUSE WHEN THEY CONSOLIDATED THE CASE AND REDID
15 THE INFORMATION ONLY WITH MR. JAMES' NAME, THEY LEFT OUT AN
16 ENHANCEMENT, PENAL CODE SECTION 667.9.

17 HOWEVER, UPON REVIEWING THAT INFORMATION, THEY
18 THEN, WHEN THEY PUT IN THE NEW ENHANCEMENT, THEY PUT IN THE
19 CO-DEFENDANT'S PRIORS INFORMATION. IT WAS CORRECT ON THE
20 ORIGINAL INFORMATION, AND WHEN THEY PUT IN THE NEW
21 ENHANCEMENT, THEY PUT IN THE WRONG PRIOR.

22 SO, I WAS JUST GOING TO MOVE TO AMEND THE NEW
23 INFORMATION TO GO BACK TO WHAT WAS ON THE ORIGINAL INFORMATION
24 AS TO THE PRIOR, WHICH IS A CONVICTION FOR A PC 192(A),
25 VOLUNTARY MANSLAUGHTER.

26 THE COURT: WE STILL HAVE A JURY TRIAL ON THE PRIORS?

27 MR. GOUDY: COURT TRIAL.

28 THE COURT: I'M SORRY. COURT TRIAL ON THE PRIORS.

1 MR. GOUDY: YES. AND I CAN ALWAYS PROVIDE A NEW
2 INFORMATION WITH THAT CORRECT CASE NUMBER AND FACTS ON IT.

3 THE COURT: ALL RIGHT. MR. EVANS?

4 MR. EVANS: NO OBJECTION.

5 THE COURT: OKAY.

6 MR. GOUDY: I'LL PROVIDE THAT.

7 THE COURT: OBVIOUSLY, ENTER A DENIAL AT THIS TIME TO
8 THE NEW ALLEGATIONS.

9 MR. EVANS: YES, YOUR HONOR.

10 THE COURT: I WOULD LIKE A CORRECTED INFORMATION.

11 MR. GOUDY: I WILL MAKE SURE THAT EVERYTHING IS
12 CORRECT BECAUSE IT HASN'T BEEN YET.

13 MR. EVANS: TWO THINGS, ARE WE GOING TO DO THE COURT
14 TRIAL ON THE PRIORS?

15 THE COURT: WE WILL DO IT ON THE SAME DAY. WE WILL DO
16 MOTIONS, COURT TRIAL, AND P AND S.

17 MR. EVANS: AND, THEN, SECONDLY, I DON'T, BUT THE
18 COURT MAY HAVE, A COPY OF THE PROBATION REPORT. DO WE HAVE
19 ONE IN THIS CASE?

20 THE COURT: I CAN TAKE A LOOK, OR YOU CAN -- I'VE GOT
21 QUITE A FEW YEAR. YES, I DO HAVE ONE IF YOU WANT TO MAKE A
22 COPY OF IT, OR I WILL HAVE ROBERT MAKE A COPY OF IT SO YOU CAN
23 TAKE A LOOK AT IT.

24 MR. EVANS: THAT WOULD BE GREAT.

25 THE COURT: IT WAS PREPARED ON AUGUST OF 2009. DO YOU
26 NEED US TO HAVE A NEW ONE PREPARED BY THE NEXT COURT DATE OR
27 YOU THINK THIS SHOULD BE SUFFICIENT? I ASSUME THERE IS NOT
28 ANY NEW INFORMATION. I THINK, TECHNICALLY, IF WE HAVE AN

1 OLDER REPORT, THEY DO HAVE A RIGHT IF THEY WANT ONE --

2 MR. GOODY: IT WAS DONE WHILE HE WAS IN CUSTODY, AND
3 HE WAS PRO PER, WHICH IS WHY MR. EVANS DOESN'T HAVE IT, BUT I
4 DON'T THINK ANYTHING HAS CHANGED SINCE THAT TIME PERIOD.

5 THE COURT: IF YOU NEED US TO ORDER A NEW ONE, WE NEED
6 TWO WEEKS FOR A CUSTODY DEFENDANT AND GIVE THE CLERK A PHONE
7 CALL SO WE CAN HAVE IT WITHIN TWO WEEKS; OTHERWISE, WE WILL
8 HAVE THE COPY MADE FOR YOU NOW.

9 MR. JAMES, WE WILL SEE YOU BACK THEN ON
10 OCTOBER 28TH.

11
12 (THE MATTER WAS CONTINUED TO OCTOBER 28, 2010,
13 AT 8:30 A.M., FOR FURTHER PROCEEDINGS.)

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15 (THE NEXT PAGE NUMBER IS 3301.)

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

9 THE COURT: ON THE RECORD IN PEOPLE VERSUS JAMES,
10 BA -- I AM SORRY, KA085233. HE IS PRESENT IN COURT, IN
11 CUSTODY, WITH MR. EVANS. THE PEOPLE ARE REPRESENTED BY
12 MR. GOUDY.

13 AND WHAT IS A DATE THAT'S AGREEABLE TO BOTH
14 SIDES?

15 MR. GOUDY: THE 9TH, YOUR HONOR.

16 THE COURT: THE 9TH FOR SENTENCING?

17 MR. GOUDY: YES.

18 MR. EVANS: YES, YOUR HONOR.

19 THE COURT: ALL RIGHT. MR. JAMES, YOU HAVE THE
20 RIGHT TO HAVE YOUR SENTENCING WITHIN SIX DAYS OF TODAY'S
21 DATE. IS IT OKAY WITH YOU THAT SENTENCING GO OVER TO THE
22 9TH AND TAKE PLACE ON THAT DATE OR WITHIN THREE DAYS OF
23 THAT DATE?

24 THE DEFENDANT: YES, YOUR HONOR.

25 THE COURT: COUNSEL JOIN?

26 MR. EVANS: JOIN.

27 THE COURT: ALL RIGHT. WE WILL SEE YOU ALL THEN.

28 MR. GOUDY: THANK YOU, YOUR HONOR.

1 MR. EVANS: THANK YOU.

2 THE COURT: THAT'S A ZERO OF THREE, NOT A TEN.

3

4 (THE MATTER WAS CONTINUED TO
5 TUESDAY, NOVEMBER 9, 2010,
6 AT 8:30 A.M. FOR FURTHER
7 PROCEEDINGS.)

8

9 (THE NEXT PAGE NUMBER IS 3601.)

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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA TUESDAY, NOVEMBER 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 COURT: ON THE RECORD IN PEOPLE VERSUS TAUMU
10 JAMES, KA086790. HE IS PRESENT IN COURT. I AM SORRY.
11 WHICH CASE NUMBER IS IT? IT'S KA085233. OKAY. AND HE
12 IS PRESENT IN COURT, IN CUSTODY, WITH MR. EVANS. THE
13 PEOPLE ARE REPRESENTED.

14 WE HAVE THE TRIAL ON THE PRIORS, MOTION FOR
15 A NEW TRIAL, AND/OR SENTENCING.

16 MR. EVANS: YES, YOUR HONOR.

17 THE COURT: SO LET'S GET STARTED WITH OUR TRIAL ON
18 THE PRIORS.

19 MR. GOUDY: YOUR HONOR, I HAVE -- I AM MAKING SURE
20 THEY ARE ALL THE RIGHT CASE NUMBER, THE SAME CASE
21 NUMBER. I HAVE THREE DOCUMENTS. THEY ARE ALL CERTIFIED
22 COPIES, COURT DOCUMENTS. THE FIRST IS A REPORT FOR AN
23 INDETERMINATE SENTENCE. IT SHOWS A CONVICTION IN COUNT 1
24 FOR A VOLUNTARY MANSLAUGHTER. THE DEFENDANT IS TAUMU
25 JAMES, CASE NUMBER TA022788. I WOULD ASK THAT THIS BE
26 MARKED AS PEOPLE'S --

27 THE COURT: NEXT IN ORDER.

28 MR. GOUDY: CAN I JUST HAVE IT MARKED MAYBE AS

1 COURT'S 1, SINCE WE ARE IN THE COURT TRIAL?

2 THE COURT: SURE.

3 MR. GOUDY: I WILL MARK IT CT-1 IN THE BOTTOM
4 RIGHT-HAND CORNER.

5

6 (MARKED FOR IDENTIFICATION

7 COURT'S EXHIBIT NO. 1,

8 DOCUMENT.)

9

10 MR. GOUDY: I HAVE A MINUTE ORDER FOR THE SAME
11 CASE NUMBER DATED 5/24/93. I WOULD ASK THAT IT BE MARKED
12 AS COURT NUMBER 2. I AM MARKING CT-2 ON THE BOTTOM.

13

14 (MARKED FOR IDENTIFICATION

15 COURT'S EXHIBIT NO. 2,

16 MINUTE ORDER.)

17

18 MR. GOUDY: I HAVE ANOTHER MINUTE ORDER FOR
19 THE -- I GUESS IT'S PAGE 2, THE CONTINUATION OF THE
20 PREVIOUS MINUTE ORDER. I WOULD ASK THAT BE MARKED AS
21 CT-3.

22

23 (MARKED FOR IDENTIFICATION

24 COURT'S EXHIBIT NO. 3,

25 MINUTE ORDER.)

26

27 (COUNSEL CONFERRED SOTTO VOCE.)

28 ///

1 MR. GOUDY: MAY I APPROACH?

2 THE COURT: YOU MAY.

3 MR. GOUDY: THE PEOPLE WOULD MOVE COURT'S EXHIBITS
4 1, 2, AND 3 INTO EVIDENCE.

5 THE COURT: NO OBJECTION?

6 MR. EVANS: NO OBJECTION AT THIS TIME, YOUR HONOR.

7 THE COURT: THEY WILL BE RECEIVED.

8

9 (RECEIVED IN EVIDENCE

10 COURT'S EXHIBIT NOS. 1

11 THROUGH 3.)

12

13 MR. GOUDY: THE PEOPLE REST.

14 THE COURT: ALL RIGHT. AND LET ME JUST TAKE A
15 LOOK AT THE AMENDED INFORMATION.

16 AND WHILE I DO THAT, DID YOU WANT TO BE
17 HEARD? WE WILL DO IT LIKE WE WOULD FOR A TRIAL. YOU CAN
18 MAKE YOUR ARGUMENT AND, MR. EVANS, YOU CAN MAKE YOURS.

19 MR. GOUDY: WELL, I THINK WE PROBABLY NEED TO
20 ARRAIGN HIM ON THAT BECAUSE THEY DID MAKE CHANGES WHEN
21 THEY DID THE ORIGINAL CONSOLIDATION. THEY PUT THE PRIORS
22 FOR MR. HAWKINS TO MR. JAMES. I DIDN'T INFORM MR. EVANS
23 OF THAT AFTER THE VERDICT. SO I DON'T KNOW IF WE NEED TO
24 ARRAIGN HIM BECAUSE THE INFORMATION HAS CHANGED.

25 THE COURT: I THOUGHT THAT WE HAD DONE THAT.

26 MR. GOUDY: I COULDN'T RECALL.

27 THE COURT: I THOUGHT WE HAD. BUT IN CASE WE
28 DIDN'T, YOUR CLIENT WAIVES READING OF THE AMENDED

1 INFORMATION, STATEMENT OF RIGHTS, AND ENTERS A PLEA OF
2 NOT GUILTY TO THE AMENDED INFORMATION AND ANY ALLEGATIONS
3 AND ENHANCEMENTS?

4 MR. EVANS: YES.

5 THE COURT: OR A DENIAL TO ANY ENHANCEMENTS OR
6 ALLEGATIONS?

7 MR. EVANS: YES.

8 MR. GOUDY: YOUR HONOR, I THINK THE DOCUMENTS
9 SPEAK FOR THEMSELVES, YOUR HONOR. IT SHOWS A CONVICTION
10 FOR A 192 VOLUNTARY MANSLAUGHTER. THAT IS A STRIKE AND A
11 SERIOUS FELONY UNDER 192.7. THE NAME TAUMU IS UNCOMMON,
12 A VERY UNCOMMON NAME, AND I THINK THAT SUFFICES FOR PROOF
13 BEYOND A REASONABLE DOUBT AS TO THAT PRIOR.

14 THE COURT: DID YOU WANT TO BE HEARD, MR. EVANS?

15 MR. EVANS: YOUR HONOR, FORMALLY WE ARE NOT GOING
16 TO BE PRESENTING ANY EVIDENCE AS TO THIS, SO WE WOULD --
17 I GUESS WE WOULD REST AS WELL.

18 RELATING TO THE ARGUMENT, YOUR HONOR, THIS
19 IS VERY UNCONVENTIONAL TO PRESENT PAPERWORK RELATING TO A
20 PRIOR CONVICTION. WITH NO DISRESPECT TO MR. GOUDY, IT'S
21 NOT THE PROPER WAY TO PROVE THE PRIOR ALLEGATIONS. THE
22 APPROPRIATE WAY TO DO SO IS TO OBTAIN PHOTOGRAPHS OF THE
23 INDIVIDUAL WHO WAS IN THE DEPARTMENT OF CORRECTIONS,
24 RELATE THAT TO THE CASE NUMBER THAT IS IN THE MINUTE
25 ORDER AND/OR THE JUDGMENT AND COMMITMENT ORDER THAT THE
26 COURT HAS BEFORE IT AND/OR TO HAVE FINGERPRINTS TO MATCH
27 WHO THE INDIVIDUAL WAS THAT WAS IN THE DEPARTMENT OF
28 CORRECTIONS AND SHOW THAT IT RELATES TO THIS PARTICULAR

1 CASE. THE PEOPLE HAVE NOT PROVEN THEIR CASE BEYOND A
2 REASONABLE DOUBT.

3 MR. GOUDY WOULD LIKE TO TELL THE COURT THAT
4 MR. TAUMU JAMES IS NOT A COMMON NAME, BUT HE HAS NO BASIS
5 FOR PROVING THAT. THERE IS A DEPARTMENT OF CORRECTIONS
6 INFORMATION DATABASE. HE COULD HAVE CHECKED THAT. HE
7 COULD HAVE HAD SOMEONE HERE TO BRING CERTIFIED DOCUMENTS
8 INDICATING THE NUMBER OF INDIVIDUALS WHO ARE NAMED TAUMU
9 JAMES WHO HAVE BEEN IN THE DEPARTMENT OF CORRECTIONS
10 AND/OR WERE IN THE DEPARTMENT OF CORRECTIONS AT THAT
11 TIME. THERE'S NO EVIDENCE AS TO THAT. THEY HAVE NOT MET
12 THEIR BURDEN OF PROVING THIS CASE BEYOND A REASONABLE
13 DOUBT.

14 THE COURT IS WELL AWARE OF THE NUMBER OF
15 YEARS THE COURT HAS SAT ON THE BENCH AND THAT A TRIAL ON
16 THE PRIORS, WHICH IS A VERY SERIOUS ISSUE AS IT RELATES
17 TO THE SENTENCING, THAT THE PEOPLE NEED TO MEET THEIR
18 BURDEN, AND THE PEOPLE NEED TO PROVE THAT BEYOND A
19 REASONABLE DOUBT. THE ONLY WAY TO DO THAT IS TO TAKE
20 FINGERPRINTS OF MR. JAMES AND MATCH THOSE TO THE
21 INDIVIDUAL IN THOSE DOCUMENTS, IF THEY CAN MATCH IT UP.

22 WHERE IS THE INFORMATION SHOWN FROM THE
23 DEPARTMENT OF CORRECTIONS? THERE'S NOTHING. THERE IS NO
24 INDICATION THAT AN INDIVIDUAL WAS THERE. THE COURT KNOWS
25 THE NUMBER OF TIMES THAT WE HAVE BEEN TO COURT POSTTRIAL,
26 POST VERDICT. HAS ANYONE BEEN HERE TO TAKE
27 FINGERPRINTS? NO ONE. HAS ANYONE BEEN HERE TO VERIFY
28 THEY WERE THE PAROLE OFFICER OR PROBATION OFFICER OF THE

1 INDIVIDUAL WHO IS BEFORE THIS COURT? NO. I'D ASK THE
2 COURT TO FIND MR. JAMES NOT GUILTY OF THE SPECIAL
3 ALLEGATIONS FOR THOSE REASONS.

4 AND IF THE COURT HAS ADDITIONAL QUESTIONS,
5 I AM AVAILABLE TO DISCUSS THOSE WITH THE COURT OR ADDRESS
6 THEM.

7 THE COURT: ALL RIGHT.

8 MR. GOUDY: IF I MAY, YOUR HONOR, WE ARE NOT
9 ALLEGING A PRISON PRIOR. HE DIDN'T GO TO PRISON. SO
10 MR. EVANS WANTS US TO PROVIDE WITNESSES THAT DON'T EXIST,
11 DOCUMENTS THAT DON'T EXIST. IT'S ALLEGED AS A SERIOUS
12 FELONY, NOT A PRISON PRIOR. HE DIDN'T GO TO PRISON. HE
13 WAS PLACED ON PROBATION. THAT'S WHAT THE DOCUMENTS SAY.

14 SO IF HE SAYS WE NEED SOMEONE FROM THE
15 DEPARTMENT OF CORRECTIONS TO COME IN WITH A PHOTOGRAPH,
16 THEY DON'T EXIST BECAUSE HE DIDN'T GO TO PRISON. IT
17 WOULD BE IMPOSSIBLE TO BRING IN THE PEOPLE THAT THE
18 DEFENSE IS SAYING WE NEED.

19 THIS IS NO DIFFERENT THAN A FELON WITH A
20 FIREARM WHERE DOCUMENTS ARE PRESENTED AND YOU CAN GO BY
21 THE NAME. THAT'S MORE THAN ENOUGH. THIS IS NOT A COMMON
22 NAME. THE COURT CAN TAKE --

23 THE COURT: WELL, JAMES IS A COMMON NAME, BUT YOU
24 ARE SAYING TAUMU IS NOT.

25 MR. GOUDY: TAUMU IS NOT A COMMON NAME.

26 THE COURT CAN ALSO TAKE JUDICIAL NOTICE
27 OF THE "X" NUMBER THAT APPEARS ON THOSE DOCUMENTS AND
28 APPEARS IN OUR COURT FILE. THIS IS THE SAME, WHICH IS A

1 PROBATION NUMBER.

2 THERE'S NO REQUIREMENT THAT PRISON PACKETS
3 BE PRESENTED. THERE IS NO REQUIREMENT THAT ANY OF THAT
4 INFORMATION BE PRESENTED IF THE DOCUMENTS ARE SUFFICIENT,
5 AND THE NAME TAUMU JAMES IN THIS CASE IS SUFFICIENT FOR
6 PROOF BEYOND A REASONABLE DOUBT. IT'S THIS DEFENDANT.

7 THE COURT: SO WHAT -- AND I WILL GET TO YOU IN
8 JUST A MOMENT.

9 SO WHAT IMPACT DOES THIS HAVE ON
10 SENTENCING?

11 MR. GOUDY: WELL, IT REDUCES THE MAXIMUM FROM 71
12 TO -- FOR SOME REASON, I WROTE IT DOWN ON THE BACK OF A
13 DOCUMENT. NO, I DIDN'T INCLUDE THAT IN THE SENTENCING
14 MEMORANDUM, JUST IN CASE.

15 THE COURT: AND I READ THIS BEFORE OUR LAST
16 PROCEEDING, BUT I WILL REREAD IT AGAIN TODAY.

17 MR. GOUDY: THE MAXIMUM SENTENCE IS 47 YEARS IF
18 EVERYTHING IS CONSECUTIVE, INCLUDING THE WEAPONS AND
19 THE -- AND ALL THE COUNTS COMBINED. THE MAX IS 47 YEARS
20 IN PRISON.

21 THE COURT: AS OPPOSED TO THE 71?

22 MR. GOUDY: CORRECT.

23 THE COURT: ALL RIGHT. MR. EVANS.

24 MR. EVANS: AND THAT'S SIGNIFICANT.

25 THE COURT: THAT IS. YOU DON'T NEED TO MAKE THAT
26 ARGUMENT. OBVIOUSLY A DIFFERENCE OF 30-SOME-ODD YEARS IS
27 SIGNIFICANT.

28 MR. EVANS: SO HE DIDN'T GO TO PRISON. HE WENT TO

1 JAIL. HE DID HAVE A PROBATION OFFICER. HE WAS
2 FINGERPRINTED AT THE TIME HE WAS ARRESTED. ALL OF THAT
3 INFORMATION IS AVAILABLE TO THE PEOPLE TO SPECIFICALLY
4 TIE IT TO THIS INDIVIDUAL.

5 AGAIN, MR. GOUDY WOULD LIKE TO TELL THE
6 COURT THAT TAUMU JAMES IS AN UNUSUAL NAME. WHAT BASIS
7 DOES HE HAVE?

8 THE COURT: WELL, OBVIOUSLY LIFE EXPERIENCE, AND
9 HOW MANY PEOPLE YOU HAVE MET BEFORE THAT ARE NAMED
10 TAUMU? HE'S ASKING THE COURT TO USE LIFE EXPERIENCE.

11 MR. EVANS: HE HAS NEVER BEEN TO THE DEPARTMENT OF
12 CORRECTIONS. HE HAS NEVER BEEN TO LOS ANGELES PROBATION.

13 THE COURT: ARE YOU SAYING WE HAVE TO RUN
14 DATABASES OF THE D.M.V. TO COUNT HOW MANY TAUMUS THERE
15 ARE? I DON'T THINK THE LAW REQUIRES -- OBVIOUSLY FOR
16 REASONABLE DOUBT, THE LAW DOESN'T REQUIRE CERTAIN TYPES
17 OF EVIDENCE TO BECOME REASONABLE DOUBT. THE QUESTION IS
18 WHAT IS REASONABLE DOUBT FOR ME? I DO THINK TAUMU IS AN
19 UNUSUAL NAME. JAMES IS NOT.

20 I DO WANT TO DO MORE RESEARCH WITH REGARD
21 TO THIS ISSUE JUST WITH REGARD TO THE PROOF OF THE PRIOR,
22 THE SUFFICIENCY OF THE EVIDENCE WITH REGARD TO IT.

23 MR. GOUDY: JUST USING THE NAME?

24 THE COURT: BASED SOLELY ON THE NAME. USUALLY
25 WHERE I HAVE SEEN THE PEOPLE REST WITH REGARD TO A NAME,
26 THERE IS ALSO A PHOTO. PRIORS AREN'T NECESSARILY PROVEN
27 SOLELY BY PRINTS, BUT USUALLY THERE IS A PHOTO, OBVIOUSLY
28 A BOOKING PHOTO. OR SOMETIMES WE WILL HAVE THE COURT

1 FILE ORDERED OUT BY THE COURT AND HAVE MORE INFORMATION
2 THAN A DOCKET SHEET WITH JUST A NAME ON IT.

3 MR. EVANS: BUT MY CONCERN HERE IS THE PEOPLE ARE
4 SAYING WOW, LOOK AT THE "X" NUMBER. LOOK AT THE DATES OF
5 BIRTH. THEY COULD HAVE TRANPOSED THAT FROM THE
6 DEPARTMENT OF CORRECTIONS OR ANY OTHER INFORMATION. HOW
7 DO THEY KNOW IT BELONGS TO THIS INFORMATION? THAT'S THE
8 IMPORTANCE OF TAKING FINGERPRINTS. THAT'S THE IMPORTANCE
9 OF SHOWING PHOTOGRAPHS. YOU CAN'T CONVICT PEOPLE ON
10 PAPER.

11 THE COURT: WELL, YES, YOU CAN.

12 MR. EVANS: YOU CAN, BUT I AM SAYING IT'S NOT
13 RIGHT, NOT IN THIS CASE AND NOT UNDER THESE
14 CIRCUMSTANCES.

15 THE COURT: OBVIOUSLY THERE SHOULD BE SOME CASE
16 LAW ABOUT WHAT IS SUFFICIENT FOR THE PROOF OF THE PRIOR,
17 AND I WOULD LIKE TO LOOK AT SOME OF THE APPELLATE
18 DECISIONS OF WHAT THEY FEEL IS SUFFICIENT. SO I WILL DO
19 THAT OVER LUNCH.

20 SO YOU CAN COME BACK LATER? YOU CAN COME
21 BACK AFTER LUNCH. I DON'T HAVE A JURY TODAY. SO IF YOU
22 WANT TO DO THAT, THAT'S FINE.

23 MR. GOUDY: THAT'S FINE.

24 THE COURT: I JUST WANT TO DO A LITTLE MORE
25 RESEARCH IN THIS AREA.

26 MR. EVANS: I JUST WANT TO MAKE A RECORD THAT THE
27 PEOPLE HAVE RESTED, SO I WOULD OBJECT IF THEY WANT TO
28 REOPEN AT THIS POINT. THEY CAN'T FIX THEIR CASE.

1 THE COURT: WE DON'T HAVE TO GO THERE UNLESS THEY
2 ASK TO REOPEN.

3 MR. EVANS: I AM JUST SAYING.

4 THE COURT: OTHERWISE, IT'S PREMATURE.

5 SO YOU ARE BOTH ORDERED BACK HERE AT 1:30.
6 WE WILL TAKE THIS BACK UP AT 1:30.

7 MR. EVANS: THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU.

9

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

12

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1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA TUESDAY, NOVEMBER 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 COURT: ON PEOPLE VERSUS TAUMU JAMES,
10 MR. JAMES IS PRESENT WITH MR. EVANS. THE PEOPLE ARE
11 REPRESENTED BY MR. GOUDY.

12 I APOLOGIZE FOR THE DELAY. I HAVE BEEN
13 DOING SOME RESEARCH. I HAVE FOUND SOME CASES, AND I WILL
14 CERTAINLY LET YOU BOTH MAKE YOUR ARGUMENTS AS WELL.

15 SO I KNOW YOU ALREADY MADE YOUR ARGUMENT.
16 SO I WILL GO AHEAD AND LET MR. GOUDY MAKE HIS ARGUMENT,
17 AND YOU CAN RESPOND. HOW IS THAT, MR. EVANS?

18 MR. EVANS: YES.

19 THE COURT: MR. GOUDY, YOU SUBMITTED SOME CASES TO
20 THE COURT THAT I LOOK AT?

21 MR. GOUDY: YES, YOUR HONOR. PEOPLE VERSUS
22 BRUCKER, B-R-U-C-K-E-R, 148 CAL.APP.3D 230; PEOPLE VERSUS
23 MENDOZA, 183 CAL.APP.3D 390; AND PEOPLE VERSUS DUNLAP,
24 D-U-N-L-A-P, AT 18 CAL.APP.4TH 1468. THERE WERE A LOT
25 MORE THAN THOSE. BASICALLY THEY ALL STAND FOR THE
26 PROPOSITION THAT THE NAME IS ENOUGH. THEY TALK ABOUT IF
27 IT'S A DISTINCT NAME. THIS CERTAINLY IS DISTINCT.

28 ONE CASE THAT -- JUST BECAUSE I DIDN'T

1 PRINT OUT ALL THE CASES, BUT IT IS CITED, LOCKET -- THE
2 NAME WAS SAMUEL LOCKET, AND THEY FOUND THAT EVEN THOUGH
3 THE COURT INDICATED IT LOOKED IN THE LOCAL PHONE BOOKS
4 AND FOUND 23 LOCKETS AND THERE WAS NO SAMUEL, IT MADE IT
5 DISTINCT ENOUGH, BUT THERE IS NO REQUIREMENT THAT WE GO
6 TO THE LOCAL PHONE BOOK TO DETERMINE IF THERE IS ANY
7 OTHER TAUMU JAMES.

8 IN FACT, THE CASES TALK ABOUT IT'S PRIMA
9 FACIE EVIDENCE BASED UPON THE NAME THAT IT IS THE
10 DEFENDANT, AND THERE IS NO EVIDENCE TO THE CONTRARY. AND
11 AS COUNSEL POINTED OUT, BOTH SIDES ADDRESSED IT. THERE'S
12 NOTHING TO SAY THAT THE DOCUMENT DOES NOT REFER TO THIS
13 PARTICULAR TAUMU JAMES. AND TAUMU JAMES IS SUCH A
14 DISTINCT NAME THAT I THINK THAT THAT IS MORE THAN ENOUGH
15 FOR THE PRIOR TO BE FOUND AS TO THIS DEFENDANT.

16 THE COURT: THANK YOU.

17 MR. EVANS.

18 MR. EVANS: YOUR HONOR, I WOULD POINT THE COURT TO
19 FOOTNOTE 9 ON BRUCKER. THE DOCUMENTS THAT WERE PRESENTED
20 IN THAT CASE RELATING TO THE ISSUE OF SUFFICIENCY OF THE
21 EVIDENCE, IF THE COURT WILL NOTE FOOTNOTE 9, A CERTIFIED
22 COPY OF THE ABSTRACT OF JUDGMENT OF THE DEFENDANT'S 1975
23 VOLUNTARY MANSLAUGHTER INCLUDES A SUMMARY OF SENTENCE
24 DATA, AS WELL AS HIS FINGERPRINTS AND PHOTOGRAPHS -- AND
25 PHOTOGRAPH.

26 THAT'S EXACTLY WHAT WE ARE ASKING FOR
27 HERE. THAT WAS EXACTLY THE EVIDENCE THAT WAS PRESENTED
28 IN BRUCKER, AND I BELIEVE THAT IS THE ISSUE. AND THE

1 COURT FOUND THAT WAS SUFFICIENT EVIDENCE, AND THAT'S
2 EXACTLY WHAT WE ARE ASKING FOR IN THIS CASE. WE ARE
3 ASKING THE COURT TO FOLLOW BRUCKER, AND ESPECIALLY WHAT
4 IS SET FORTH IN FOOTNOTE 9.

5 I WOULD NOTE THAT THE COURT IN MENDOZA
6 RELIES UPON BRUCKER. IN FACT, FOR THE DETERMINATION
7 REGARDING THE IDENTITY OF THE INDIVIDUAL, THE ACTUAL
8 RECORDS -- THE ACTUAL RECORDS THAT ARE SET FORTH, SO I AM
9 CLEAR, THAT WERE RELIED UPON IN MENDOZA, IT JUST SAID
10 THAT THERE WERE CERTIFIED COPIES RELATING TO THE PRIOR
11 CONVICTIONS. THERE'S NO FURTHER ISSUE IN MENDOZA, BUT WE
12 CAN ASSUME THAT THERE WERE PROBABLY SIMILAR RECORDS
13 BECAUSE MENDOZA RELIES UPON BRUCKER.

14 AS TO THE LAST CASE THAT WAS CITED BY
15 COUNSEL, THE DUNLAP CASE, I WOULD POINT OUT THAT THE
16 ISSUE IN THAT CASE WAS NOT SUFFICIENCY OF THE EVIDENCE.
17 THE ISSUE IN THAT CASE WAS THE PROPER ADMISSION OF
18 CERTAIN DOCUMENTS TO PROVE WHETHER THE PERSON HAD A PRIOR
19 CONVICTION.

20 IN THAT CASE THERE WERE CERTIFIED
21 DOCUMENTS, AS THERE WERE IN THIS CASE. WE ARE NOT
22 CONTENDING THAT THE ADMISSION OF THE EVIDENCE BY THE
23 PEOPLE IN THIS CASE -- I MEAN, WE ARE NOT CONTESTING THE
24 ADMISSION OF THE EVIDENCE, AND WE ARE NOT -- BUT WHAT WE
25 ARE CONTESTING IS WHETHER THE INDIVIDUAL THAT IS ON THOSE
26 DOCUMENTS IS THE INDIVIDUAL THAT IS SITTING HERE IN
27 COURT, AND THAT'S THE BRIDGE THAT THE PEOPLE HAVE NOT
28 PROVEN BEYOND A REASONABLE DOUBT.

1 I HOPE THE COURT WILL RELY ON BRUCKER AND
2 FIND HIM NOT GUILTY AS TO THE SPECIAL ALLEGATIONS.

3 THE COURT: OR FIND THEM NOT TO BE TRUE.

4 MR. EVANS: NOT TO BE TRUE, THAT'S CORRECT.

5 THE COURT: ALL RIGHT. BOTH SIDES SUBMIT?

6 MR. GOUDY: YES, YOUR HONOR.

7 MR. EVANS: YES.

8 THE COURT: ALL RIGHT. I AM FINDING THE PRIOR TO
9 BE TRUE, BUT ON THIS BASIS, AND I AM GOING TO MAKE THIS
10 REALLY CLEAR FOR WHATEVER REVIEW THERE MAY BE.

11 I ALSO FOUND SOME ADDITIONAL CASES WHICH
12 INDICATE THE TRIER OF FACT MAY LOOK AT THE ENTIRE RECORD
13 OF THE CONVICTION TO DETERMINE THE SUBSTANCE OF THE PRIOR
14 CONVICTION AND WHETHER IT IS A SERIOUS FELONY FOR
15 PURPOSES OF THE FIVE-YEAR SENTENCE, MEANING THE COURT CAN
16 GO BEHIND SOMETIMES JUST THE DOCUMENT AND LOOK AT THE
17 CONVICTION, AND THAT'S TO DETERMINE IF AN ASSAULT WITH A
18 DEADLY WEAPON QUALIFIES A PRIOR, A BURGLARY, THOSE SORTS
19 OF THINGS. THAT WAS PEOPLE VERSUS REED, A CALIFORNIA
20 SUPREME COURT CASE AT 13 CAL.4TH 217.

21 BUT CASE LAW HAS ALSO HELD THAT A
22 DEFENDANT'S ADMISSION IN A PROBATION REPORT MAY BE
23 CONSIDERED TO DETERMINE, FOR PURPOSES OF SENTENCING UNDER
24 THE THREE-STRIKES LAW, THE NATURE OF THE PRIOR BURGLARY.
25 THAT WAS PEOPLE VERSUS GARRETT, A 2001 CASE AT
26 92 CAL.APP.4TH 2001.

27 AND THEN THERE IS THE CASE OF PEOPLE VERSUS
28 PRIETO, A 2003 CASE, ANOTHER CALIFORNIA SUPREME COURT

1 CASE AT 30 CAL.4TH 226, WHICH SAID THAT ONCE THE PEOPLE
2 PRESENT PRIMA FACIE EVIDENCE OF A PRIOR CONVICTION, THE
3 TRIAL COURT IS ALLOWED TO MAKE REASONABLE INFERENCES FROM
4 FACTS PRESENTED. IF THERE IS NO EVIDENCE TO THE
5 CONTRARY, THE TRIAL COURT MAY CONSIDER THE ABSTRACTS AND
6 THE FACTS OF THE PARTICULAR CASE AND, UTILIZING THE
7 OFFICIAL DUTY PRESUMPTION, FIND THE DEFENDANT WAS
8 CONVICTED OF AND SERVED THE TERM OF IMPRISONMENT FOR THE
9 LISTED FELONY.

10 AND THEN, FINALLY, THERE WAS PEOPLE VERSUS
11 TOWERS, A 2007 CASE AT 149 CAL.APP.4TH 1066, WHICH SAID
12 THE EVIDENCE WAS SUFFICIENT TO SHOW THAT THE BURGLARY
13 DEFENDANT WAS THE PERSON WHO COMMITTED THE PRIOR BURGLARY
14 IN TENNESSEE FOR PURPOSES OF THE THREE-STRIKES LAW EVEN
15 THOUGH THE TENNESSEE RECORD SHOWED A DIFFERENT FIRST AND
16 MIDDLE NAME. BOTH THE CALIFORNIA AND TENNESSEE PRISON
17 RECORDS SHOWED THE SAME DATE OF BIRTH AND TATTOO OF THE
18 WORD "GINA" ON THE LEFT ARM.

19 I DO THINK THAT THE COURT CAN FIND, BASED
20 UPON THE NAME ALONE IN THE DOCUMENTS IF IT'S SUFFICIENTLY
21 DISTINCT, THAT THE INDIVIDUAL IN COURT IS THE PERSON WHO
22 SUFFERED THE PRIOR CONVICTION. AND I AM CONVINCED BEYOND
23 A REASONABLE DOUBT THAT BASED UPON THE NAME TAUMU JAMES,
24 THAT BY ITSELF CONVINCES ME BEYOND A REASONABLE DOUBT
25 THAT HE IS THE PERSON WHO SUFFERED THE PRIOR MANSLAUGHTER
26 CONVICTION.

27 AND I WANT TO MAKE IT CLEAR THAT I FIND
28 THAT BY ITSELF; BUT IF I AM ALLOWED TO GO BEYOND THAT TO

1 THE PROBATION REPORT THAT WAS PREPARED IN THIS CASE, THE
2 PROBATION REPORT ALSO REFLECTS THE PRIOR CONVICTION ON
3 HIS PROBATION REPORT BY THE CASE NUMBER WITH THE
4 CONVICTION DATE THAT ALL MATCH UP TO THE DOCUMENTATION
5 THAT THE PEOPLE HAVE ADMITTED AS EXHIBITS INTO EVIDENCE,
6 WHICH WOULD FURTHER CORROBORATE IT. BUT THAT'S WHY I
7 WANTED TO MAKE SURE IN MY FACTUAL FINDING THAT I THINK
8 THE NAME IS SUFFICIENT IN AND OF ITSELF.

9 IF I AM ALLOWED TO CONSIDER THE PROBATION
10 REPORT AND THE DOCUMENTS IN THE PROBATION REPORT, AS I
11 READ THE CASE LAW TO ALLOW ME TO, I THINK THAT IS WELL
12 MORE CONVINCING; BUT I AM CONVINCED BASED UPON THE FACE
13 OF THE DOCUMENTS THAT HAVE BEEN SUBMITTED AS THE COURT'S
14 EXHIBITS.

15 MR. EVANS: HOW DO YOU KNOW WHAT THE PROBATION
16 OFFICER BASED IT UPON? THEY COULD HAVE JUST RAN A -- I
17 MEAN, WE DON'T KNOW.

18 THE COURT: THE CASE LAW IS CLEAR THAT I CAN
19 CONSIDER THAT. AND THERE HAS BEEN NO EVIDENCE TO THE
20 CONTRARY, AND THIS REPORT HAS BEEN PREPARED SINCE
21 AUGUST 17TH OF 2009.

22 MR. EVANS: MY OBJECTION IS TO THE PROBATION
23 REPORT. IT SHOULD BE NOTED AT THE TIME OF SENTENCING,
24 NOT AT THE TIME THAT --

25 THE COURT: NO, I UNDERSTAND THAT, AND THAT'S WHY
26 I WANT TO MAKE IT CLEAR THAT I FIND JUST BASED UPON THE
27 NAME ITSELF AND THE DOCUMENTS THAT HAVE BEEN PRESENTED, I
28 FIND THAT TO BE SUFFICIENT.

1 MR. EVANS: JUST SO THE RECORD IS CLEAR ON THIS
2 ISSUE, TAUMU IS A SWAHILI NAME. ALL RIGHT? IT'S A
3 COMMON SWAHILI NAME.

4 THE COURT: WELL, I DON'T KNOW THAT'S SWAHILI.
5 THERE IS NO EVIDENCE THAT IT'S SWAHILI.

6 MR. EVANS: BUT YOU'RE SAYING THAT IT'S
7 DIFFERENT. SO IF I AM IN AFRICA AMONGST A SWAHILI TRIBE,
8 THE NAME MICHAEL, WHICH IS THE MOST COMMON NAME OF
9 PEOPLE, MY NAME IN THE UNITED STATES AS TO MALES, IS NOT
10 A COMMON NAME. AND YET WE KNOW IT IS. SO IT'S A MATTER
11 OF CULTURAL PERSPECTIVE HERE.

12 THE COURT: IT IS, BUT WE ARE NOT IN AFRICA. WE
13 ARE IN LOS ANGELES, AND I SEE AND HEAR AND LOOK AT
14 RECORDS OF AT LEAST 20 TO 50 PEOPLE A DAY, AND I HAVE
15 BEEN DOING THIS JOB FOR NINE YEARS AND HE IS THE FIRST
16 TAUMU THAT I HAVE SEEN.

17 MR. EVANS: BUT WE DON'T KNOW OF THE NUMBER OF
18 AFRICAN-AMERICANS WHO ARE IN PRISON, IN THE DEPARTMENT OF
19 CORRECTIONS, HOW MANY PEOPLE ARE NAMED TAUMU, LET ALONE
20 TAUMU JAMES.

21 THE COURT: I FIND THAT CASE LAW DOESN'T REQUIRE
22 ME TO HAVE THAT COMPARISON MADE FOR ME TO FIND IT TO BE
23 DISTINCT, SUFFICIENTLY DISTINCT TO BE PROVEN BY PROOF
24 BEYOND A REASON DOUBT.

25 MR. EVANS: SUBMITTED.

26 THE COURT: SO THAT IS THE COURT'S RULING. I AM
27 CONVINCED BEYOND A REASONABLE DOUBT, AND I DO FIND THAT
28 THE PRIOR AS IT IS ALLEGED TO BE TRUE AND THAT IS

1 MR. JAMES SITTING IN FRONT OF ME.

2 SO WITH THAT SAID, LET'S MOVE ON TO THE
3 MOTION FOR THE NEW TRIAL. I HAVE READ THE PLEADINGS THAT
4 HAVE BEEN SUBMITTED BY MR. EVANS THAT WAS FILED ON
5 OCTOBER 25TH OF 2010.

6 SO MR. EVANS, DID YOU WANT TO BE HEARD?

7 MR. EVANS: YES, YOUR HONOR. FIRST AND FOREMOST,
8 I WOULD LIKE TO PUT THIS IN CONTEXT AND WHAT A MOTION FOR
9 A NEW TRIAL ALLOWS FOR ALL OF US, BOTH THE PEOPLE AND THE
10 DEFENSE AND FOR THE COURT. IT ALLOWS US AN OPPORTUNITY
11 TO STEP BACK AND LOOK A LITTLE BIT MORE OBJECTIVELY AS
12 OPPOSED TO WHAT WE HAD DONE IN THE MIDST OF TRIAL, IN THE
13 MIDST OF QUOTE, UNQUOTE, BATTLE.

14 PRIOR TO TRIAL -- AND WHAT IS NICE ABOUT A
15 MOTION FOR A NEW TRIAL, IT ALLOWS US TO LOOK AT THIS MORE
16 OBJECTIVELY AND SEE IT IN A BIG PICTURE. FIRST AND
17 FOREMOST IN THAT BIG PICTURE, I WOULD LIKE THE COURT TO
18 BE REMINDED THAT WE ASKED FOR AN IN-PERSON 402 HEARING
19 WHERE WITNESSES WOULD COME IN. THE COURT DID NOT ALLOW
20 US TO DO THAT.

21 AND I THINK THIS PROCEDURAL ERROR HURT
22 MR. JAMES' DUE PROCESS RIGHTS BECAUSE WHAT THE COURT
23 WOULD HAVE SEEN, AS THE COURT SAW IT WITH THE LIVE
24 TESTIMONY, IS THAT THREE OF THE WITNESSES -- THERE WERE
25 FOUR IDENTIFICATION OR VICTIM WITNESSES THAT CAME IN AND
26 SAID -- AND POINTED AT HIM AS TAUMU JAMES. THREE OF
27 THOSE WITNESSES -- I BELIEVE THAT WAS MS. BARRAGAN,
28 MS. --

1
2 (COUNSEL AND CLIENT CONFERRED
3 SOTTO VOCE.)
4

5 MR. EVANS: -- SAAVEDRA AND MS. GONZALEZ CAME IN
6 AND TESTIFIED, AND THEY WERE VERY CLEAR. THEY HAD NO
7 INDEPENDENT SOURCE IN TERMS OF SEEING MR. JAMES AT THE
8 LOCATION AT THE TIME OF THE CRIME. THEIR ONLY
9 IDENTIFICATION THAT THEY MADE AS TO MR. JAMES WAS TO SAY,
10 ONE, "I SAW HIS PICTURE ON THE INTERNET. I LOOKED AT HIS
11 PICTURE IN A SIX-PACK, AND I BASED PICKING HIM OUT
12 BASED" -- "IT WAS BASED UPON WHAT I SAW ON THE INTERNET,
13 NOT UPON WHAT I SAW AT THE CRIME SCENE."

14 AND THEN THEY CAME INTO COURT AND SAID,
15 "THAT'S THE MAN WHO I SAW ON THE INTERNET IN THE
16 SIX-PACK," ALL OF WHICH IS COMPLETELY IRRELEVANT TO THE
17 ISSUE OF IDENTIFICATION OF MR. JAMES AT THE LOCATION AT
18 THE TIME OF THE CRIME.

19 NOW, THE JURY IS SITTING THERE, AND THEY
20 ARE HEARING ONE, TWO, THREE IDENTIFICATIONS FROM EACH OF
21 THOSE WITNESSES THREE TIMES OVER. THAT'S NINE TIMES.
22 AFTER A WHILE, "THAT'S MR. JAMES, THAT'S MR. JAMES,
23 THAT'S MR. JAMES," THE JURY IS STARTING TO BELIEVE THAT
24 IT WAS MR. JAMES WHO WAS THERE AND, IN FACT, THEY WERE
25 THERE WHEN IN FACT THEY WERE NOT.

26 SO TO ALLOW THAT TYPE OF EVIDENCE BEFORE
27 THE JURY WAS HIGHLY PREJUDICIAL TO THIS CASE, AND IT WAS
28 IN NO WAY PROBATIVE. I MEAN, IT WAS CONCEDED BY THE

1 PEOPLE BECAUSE THE PEOPLE NEVER ASKED ONE OF THOSE THREE
2 WITNESSES, "IS THAT THE MAN?" POINTING AT MR. JAMES, "IS
3 THAT THE MAN THAT YOU SAW AT THE SCENE DURING THE
4 COMMISSION OF THE CRIMES THAT YOU'VE TESTIFIED TO?"
5 NEVER ASKED. NEVER ARGUED EITHER BY MR. GOUDY. ALL
6 RIGHT? BUT THAT EVIDENCE WAS ALLOWED TO COME IN, WHICH
7 IS PREJUDICIAL BECAUSE NOW IT'S MR. JAMES, MR. JAMES,
8 MR. JAMES BEING POINTED AT. THAT WAS PREJUDICIAL ERROR.

9 AND THEN ON TOP OF IT, WHAT THE COURT
10 WASN'T ABLE TO SEE, WHAT YOU DID HEAR DURING TRIAL, PRIOR
11 TO TRIAL I INFORMED THE COURT AS TO MS. JARDINES, WHICH I
12 THINK IS VERY IMPORTANT. SHE NEVER IDENTIFIES MR. JAMES
13 WHEN SHE IS INTERVIEWED TWO TIMES IMMEDIATELY AFTER THE
14 INCIDENT. IN FACT, SHE SAYS THE INDIVIDUAL WAS WEARING A
15 SKI MASK WITH FOUR HOLES.

16 SHE NEVER IDENTIFIED THE PERPETRATOR
17 WEARING A SKI MASK AS HAVING A DISTINCTIVE NOSE THAT
18 MR. JAMES HAS, WHICH IS VERY CLEAR HERE. HE'S
19 LIGHT-SKINNED FOR AN AFRICAN-AMERICAN MALE, AND IT'S
20 FRECKLED. MS. JARDINES VERY CLEARLY SAID THE NOSE WAS
21 CUT OUT. THAT'S WHERE ONE OF THE HOLES WAS, BUT NEVER
22 MADE THIS IDENTIFICATION. SHE NEVER EVEN DID SO AT
23 TRIAL.

24 WHEN SHE WAS ASKED ABOUT THE SIX-PACK, SHE
25 SAID, "NO, NO, I DIDN'T LOOK AT THE INTERNET PHOTO." BUT
26 THE COURT CLEARLY KNOWS THAT SHE DID SEE THAT INTERNET
27 PHOTO BEFORE SHE LOOKED AT THE SIX-PACK BECAUSE WHAT DO
28 WE KNOW? NOT ONLY DID SHE ADMIT THAT TO MY INVESTIGATOR,

1 MR. PETEE, IN JULY OF 2010, TWO MONTHS BEFORE -- OR ONE
2 MONTH BEFORE TRIAL, BUT THE THREE OTHER WITNESSES THAT
3 COULD NOT -- THAT HAD NO INDEPENDENT SOURCE AS TO
4 MR. JAMES BEING THE PERPETRATOR CLEARLY INDICATED THEY
5 WERE ALL TOGETHER AT THE SAME TIME, AND THERE WAS ONE
6 TIME WHEN THEY LOOKED AT THE INTERNET AND SAW MR. JAMES'
7 PHOTO.

8 MS. JARDINES' IDENTIFICATION HERE SHOULD
9 HAVE BEEN EXCLUDED BECAUSE THERE WAS NO INDEPENDENT
10 SOURCE. THE LIVE TESTIMONY THAT THE COURT WOULD HAVE
11 HEARD IN THIS CASE, IF YOU WOULD HAVE CONDUCTED IT WITH
12 THE WITNESSES, THOSE FOUR WITNESSES PRIOR TO TRIAL IN A
13 402 HEARING, YOU WOULD HAVE SEEN IT. IT WOULD HAVE MADE
14 THAT IMPRESSION ON THE COURT, AND IT SHOULD HAVE BEEN
15 EXCLUDED.

16 AGAIN, THIS IS A TIME, IN A MOTION FOR A
17 NEW TRIAL, TO STEP BACK AND LOOK AT THIS OBJECTIVELY.
18 AND WHEN WE LOOK AT THIS OBJECTIVELY, IT'S CLEAR THAT
19 MR. JAMES WAS NOT GIVEN A FAIR TRIAL BECAUSE OF THE
20 ADMISSION OF THAT EVIDENCE, BECAUSE THERE WAS NO
21 INDEPENDENT SOURCE FOR ANY OF THOSE FOUR WITNESSES AS TO
22 THE IDENTIFICATION OF HIM AS A SUSPECT AT THE SCENE.

23 NOW, I WOULD ALSO LIKE TO RENEW, IN PART OF
24 MY MOTION FOR A NEW TRIAL, THE ISSUE THAT I RAISED ALSO
25 IN THE 402 HEARING, WHICH WAS THE EXCLUSION BECAUSE OF
26 POLICE MISCONDUCT IN THIS CASE. NOW, THE COURT MADE A
27 FINDING AS TO SAYING WELL, THERE'S NO CLEAR EVIDENCE AS
28 TO HOW THESE WITNESSES -- YOU KNOW, BASICALLY THE TRAIL

1 OF THE EVIDENCE, WHO ACTUALLY SENT THE INFORMATION
2 REGARDING MR. JAMES AND SAID, HEY, YOU KNOW, LOOK ON THE
3 INTERNET IF YOU WANT TO SEE HIS PHOTO. IN ESSENCE, THAT
4 IS WHAT THESE WITNESSES TESTIFIED TO, AND THAT'S WHAT
5 THIS CASE WAS ABOUT.

6 NOW, ONE THING WE DO KNOW IS CLEAR,
7 SOMEBODY FROM LAW ENFORCEMENT -- WAS IT L.A. COUNTY? WAS
8 IT THE SHERIFF'S DEPARTMENT? WAS IT THE PROBATION
9 DEPARTMENT? -- HAD TO SEND THE INFORMATION TO THE
10 DEPARTMENT OF CORRECTIONS IN ARIZONA. THAT'S CLEAR.
11 SOMEONE HAD TO SEND THAT INFORMATION IN ORDER TO DO THAT,
12 TO PUT A HOLD ON HIM. SO WHETHER IT'S THE DEPARTMENT OF
13 CORRECTIONS OR WHOEVER, WHATEVER LAW ENFORCEMENT AGENCY
14 SENT THE INFORMATION TO THE VICTIMS IN THIS CASE, IT'S
15 LAW ENFORCEMENT MISCONDUCT IN DOING IT.

16 AND TO SAY THAT WELL, WE DON'T KNOW WHO
17 SENT IT AND IT COULD HAVE BEEN THE ARIZONA DEPARTMENT OF
18 CORRECTIONS AND THEY ARE NOT A LAW ENFORCEMENT AGENCY IN
19 THIS CASE AND, THEREFORE, WE GET TO WASH OUT THEIR
20 NEGLIGENCE OR THEIR INTENTIONAL CONDUCT IN THIS CASE
21 WOULD BE WRONG, YOUR HONOR, IN THE SAME WAY THAT IT WOULD
22 BE WRONG AND IS WRONG FOR SOMEONE TO STEAL MONEY, WASH IT
23 OR LAUNDER IT, AND MAKE IT LOOK GOOD. IT'S THE SAME
24 THING. IT'S THE EXACT SAME THING. YOU CAN'T MAKE IT
25 GOOD BY RUNNING IT THROUGH ANOTHER AGENCY. THAT'S USING,
26 IN ESSENCE -- IT'S IN ESSENCE WASHING IT. IT'S THE SAME
27 THING AS MONEY LAUNDERING.

28 FOR THESE TWO REASONS, YOUR HONOR, I'D ASK

1 THE COURT TO GRANT THE MOTION FOR A NEW TRIAL BECAUSE
2 MR. JAMES' DUE PROCESS RIGHTS, HIS RIGHT TO A FAIR TRIAL,
3 WERE DENIED IN THIS CASE. I THANK YOU.

4 THE COURT: ALL RIGHT. THANK YOU.

5 MR. GOUDY.

6 MR. GOUDY: I'LL ADDRESS THE SECOND ONE, THE
7 SECOND ARGUMENT FIRST, SINCE I DON'T BELIEVE THAT WAS IN
8 THE MOVING PAPERS. AND I DON'T THINK IT HAS TO BE, BUT
9 THERE IS ABSOLUTELY NO EVIDENCE OF LAW ENFORCEMENT
10 MISCONDUCT HERE. TO SAY THAT WHEN A CASE IS FILED AND A
11 WARRANT IS ISSUED THEY SHOULD NOT NOTIFY THE STATE PRISON
12 THAT THE DEFENDANT IS IN TO LET THEM KNOW THERE IS A
13 WARRANT IN THE SYSTEM AND THEN SOMEHOW THAT AGENCY SENDS
14 A LETTER SAYING HEY, THIS GUY MAY BE GETTING OUT, YOU
15 SHOULD KNOW, THAT SOMEHOW LAW ENFORCEMENT HAS DONE
16 SOMETHING WRONG IS LUDICROUS AND MAKES ABSOLUTELY NO
17 SENSE. THEY HAVE TO NOTIFY ARIZONA SO THAT THEY DON'T
18 LET A DANGEROUS, VIOLENT CRIMINAL BE RELEASED WHEN THERE
19 IS A WARRANT OUTSTANDING IN CALIFORNIA. THEY HAVE TO DO
20 THAT. AND IF THEY DIDN'T DO THAT, THEN MAYBE THAT WOULD
21 BE NEGLIGENT.

22 BUT EVEN ON THIS KIND OF THING, NEGLIGENCE
23 REALLY DOESN'T APPLY BECAUSE THERE HAS TO BE SOME TYPE OF
24 INTENTIONAL ACTION BY LAW ENFORCEMENT TO REALLY RISE TO
25 THE LEVEL OF A VIOLATION OF DUE PROCESS. THAT SOMEHOW
26 THEY NEGLIGENTLY DID THIS, THAT WOULDN'T EVEN APPLY.

27 AND THERE IS ABSOLUTELY NO EVIDENCE --
28 THERE IS CONJECTURE AND THERE ARE ACCUSATIONS, BUT THERE

1 IS NO EVIDENCE THAT ANYONE TOLD ANY OF THE WITNESSES TO
2 GO ON THE INTERNET AND LOOK UP THE DEFENDANT'S
3 PHOTOGRAPH. IN FACT, THE EVIDENCE IS JUST TO THE
4 CONTRARY. EVERY WITNESS WHO WENT ON THE INTERNET SAID,
5 "NOBODY TOLD ME TO DO IT. WE JUST DID IT." SO CERTAINLY
6 THERE IS NOTHING THAT LAW ENFORCEMENT DID TO PRECIPITATE
7 THE WITNESSES TO LOOK AT THAT PHOTOGRAPH, AND ANY
8 ALLEGATION OR ANY ACCUSATION IS CONTRARY TO THE EVIDENCE
9 AND IS JUST WRONG.

10 BUT LET'S GET TO WHAT THE MOTION WAS REALLY
11 ABOUT, WHICH WAS MS. JARDINES AND THE COURT'S RULING NOT
12 TO HAVE A 402. THE EVIDENCE WAS MS. JARDINES SAYS --

13 THE COURT: I HAD THE 402. I DIDN'T ALLOW VOIR
14 DIRE OF THE WITNESSES.

15 MR. GOUDY: RIGHT. MY APOLOGIES.

16 THE DENIAL OF THE 402. THE EVIDENCE WAS
17 NANCY JARDINES SAID, "I DIDN'T LOOK AT THE INTERNET
18 PHOTO." IF THE COURT WOULD HAVE ALLOWED -- IF THE COURT
19 WOULD HAVE LET THE DEFENSE CALL MS. JARDINES UP THERE TO
20 GET ANOTHER SHOT AT CROSS-EXAMINING HER BEFORE THE JURY,
21 SHE WOULD HAVE SAID THE SAME THING, BECAUSE THAT'S ALL
22 SHE SAID.

23 CONTRARY TO THE DEFENSE INVESTIGATOR, WHO
24 SAYS SHE TOLD ME SOMETHING DIFFERENT, SHE TOLD THAT TO
25 THE DETECTIVE SHORTLY AFTER EVERYBODY ELSE LOOKED AT THE
26 PHOTOGRAPH ON THE INTERNET. SHE TESTIFIED AT TRIAL, "I
27 DID NOT LOOK AT THAT PHOTOGRAPH ON THE INTERNET PRIOR TO
28 LOOKING AT THE SIX-PACK." THE COURT WOULD HAVE BEEN IN

1 THE SAME POSITION, WHICH IS IT'S A FACTUAL CALL FOR THE
2 TRIER OF FACT TO DETERMINE WHAT TO BELIEVE AND WHAT NOT
3 TO BELIEVE. DID SHE OR DIDN'T SHE, AND WHAT IS THE
4 WEIGHT OF THAT? IT WAS A FACTUAL CALL, NOT A LEGAL
5 CALL.

6 THERE WAS NO EVIDENCE PRESENTED AT TRIAL,
7 EVEN STEPPING BACK, TO INDICATE THAT MS. JARDINES DID
8 ANYTHING WRONG IN HER IDENTIFYING THE DEFENDANT IN THIS
9 SIX-PACK THAT REQUIRED AN INDEPENDENT SOURCE. SHE SAW
10 HIM. SHE SAID IT.

11 THE DEFENSE SAID WELL, THE FIRST TWO TIMES
12 SHE WAS INTERVIEWED SHE DIDN'T IDENTIFY THE DEFENDANT.
13 SHE WASN'T GIVEN A SIX-PACK TO LOOK AT THE FIRST TWO
14 TIMES SHE WAS INTERVIEWED. THEY DIDN'T HAVE A PHOTOGRAPH
15 FOR HER TO LOOK AT. THEY DIDN'T HAVE THAT UNTIL LATER.
16 AND ONCE THEY HAD THAT, THEY SHOWED IT TO HER AND SHE
17 PICKED HIM OUT RIGHT AWAY. NO ISSUE.

18 TO NOW COME BACK AND SAY WELL, WE'VE HAD A
19 BETTER LOOK AND THE COURT HAS HEARD EVERYTHING DOESN'T
20 MEAN THAT THE COURT WAS WRONG WHEN IT DENIED THE 402.
21 THE COURT WAS RIGHT IN DENYING THE 402. THIS WAS A
22 FACTUAL ISSUE.

23 EVERY ISSUE THAT MR. EVANS HAS BROUGHT UP,
24 THE JURY HEARD: THE HOLES IN THE MASK, THE FRECKLES ON
25 THE FACE, ALTHOUGH IF HE HAS GOT A MASK, THE FRECKLES ON
26 THE FACE, I DON'T KNOW REALLY KNOW HOW IMPORTANT THAT IS.
27 BUT ANYWAY, ALL OF THE THINGS HE HAS BROUGHT UP WERE
28 FACTUAL ISSUES THAT THE JURY HEARD ABOUT, AND THE JURY

1 MADE ITS DECISION.

2 TO SAY THAT THIS COURT WOULD HAVE COME TO A
3 DIFFERENT CONCLUSION BASED UPON HAVING HEARD THE
4 WITNESSES PRIOR TO TRIAL TO SAY THAT THERE WAS NO
5 INDEPENDENT SOURCE, I THINK, IS HOPING, AND CERTAINLY NOT
6 LAID OUT OR BORNE OUT BY THE EVIDENCE.

7 THE COURT: DID YOU WANT TO RESPOND?

8 MR. EVANS: I DO. I DO.

9 I WANT TO BE VERY CLEAR HERE. WE SHOULD
10 HAVE HAD LIVE TESTIMONY NOT ONLY FROM MS. JARDINES BUT
11 FROM ALL FOUR WITNESSES, BECAUSE IT'S IMPORTANT TO HEAR
12 NOT ONLY WHAT THE OTHER THREE WITNESSES OTHER THAN
13 MS. JARDINES SAID REGARDING NO INDEPENDENT SOURCE AS TO
14 THE IDENTIFICATION OF MR. JAMES AS A SUSPECT AT THE
15 SCENE, IT'S IMPORTANT TO UNDERSTAND AS WELL AS TO
16 MS. JARDINES THE SOURCE THAT SHOWS THAT SHE DIDN'T HAVE
17 AN INDEPENDENT SOURCE. SO IT'S TWOFOLD, AND SO IT'S
18 IMPORTANT.

19 AND THE PROCEDURAL ERROR IS NOT PUTTING ON
20 THE LIVE TESTIMONY BECAUSE IT BECOMES COMPELLING ONCE THE
21 COURT HEARS IT. BUT ONCE THE COURT HEARS IT AND Allows
22 IT IN FRONT OF THE JURY, THERE IS NO WAY TO UNRING THE
23 BELL HERE.

24 KEEP IN MIND, YOUR HONOR, THAT
25 MS. JARDINES, AT THE TIME THAT SHE WAS INTERVIEWED BY THE
26 POLICE RIGHT AFTER THE INCIDENT, SAYS, "YES, I CAN MAKE
27 AN IDENTIFICATION. I CAN IDENTIFY THE PERSON WHO WAS NOT
28 WEARING THE MASK." SHE NEVER SAID THAT SHE COULD EVER

1 MAKE AN IDENTIFICATION OF THE PERSON WEARING THE MASK.

2 AND IT'S IMPORTANT TO UNDERSTAND THE
3 DISTINCTIVE CHARACTERISTICS ON MR. JAMES' FACE AND THE
4 FACT THAT IT'S A DIFFERENT MASK COMPLETELY. REMEMBER,
5 THE MASK WITH HIS D.N.A. WAS FOUND NOT AT THE SCENE BUT A
6 FEW BLOCKS FROM THE SCENE AND THREE HOLES.

7 WHAT THIS JURY SHOULD HAVE HEARD, YOUR
8 HONOR, WAS THERE WAS A ROBBERY IN THIS CASE. WE SAW
9 PEOPLE FLEE THE SCENE. HERE WAS A MASK THAT WAS FOUND,
10 AND IT CONTAINS THE D.N.A. OF TWO INDIVIDUALS, ONE OF
11 WHICH IS MR. JAMES. THAT'S WHAT THE JURY SHOULD HAVE
12 HEARD IN THIS CASE.

13 AND THEN WHEN THEY TAKE A LOOK AT THE
14 CIRCUMSTANTIAL EVIDENCE INSTRUCTION AND IT SAYS DOES THIS
15 EVIDENCE POINT ONE WAY TOWARDS HIS GUILT AND ONE WAY
16 TOWARD IT BEING NOT GUILTY, THEY SHOULD FOLLOW THE LAW
17 AND FIND HIM NOT GUILTY, AND THAT'S WHAT SHOULD HAVE
18 HAPPENED IN THIS CASE.

19 NOW, I ALSO WANT TO POINT OUT TO THE COURT
20 THAT WHEN YOU LOOK AT THE SECOND ARGUMENT I'M MAKING,
21 IT'S CLEAR. THERE IS NO WAY THAT MR. GOUDY CAN DENY
22 THIS. THE INFORMATION THAT IS SENT TO THE ARIZONA
23 DEPARTMENT OF CORRECTIONS BY LAW ENFORCEMENT IN THIS
24 STATE IS AN INTENTIONAL ACT.

25 THEN THE INFORMATION THAT'S PURPORTEDLY
26 SENT FROM THE DEPARTMENT OF ARIZONA DEPARTMENT OF
27 CORRECTIONS, CERTAINLY FROM A LAW ENFORCEMENT AGENCY, IS
28 AN INTENTIONAL ACT AND IS SENT TO WITNESSES WHO HAVE NOT

1 MADE AN IDENTIFICATION OF MR. JAMES PRIOR TO RECEIVING
2 THAT INFORMATION. THAT IS THE MISCONDUCT HERE.

3 AND TO WASH IT AWAY BY SAYING OH, WELL, WE
4 DON'T KNOW WHO SENT IT, OR WE KNOW WHO SENT IT, WE JUST
5 DON'T KNOW WHICH AGENCY AND IT WAS LAW ENFORCEMENT, YOU
6 CAN'T ABSOLVE THEM BY CREATING SOME KIND OF BUREAUCRATIC
7 STRUCTURE HERE TO WASH AWAY THE MISCONDUCT. THAT'S
8 EXACTLY WHAT I AM SAYING HERE, AND THAT'S THE REASON WHY
9 A MOTION FOR A NEW TRIAL SHOULD BE GRANTED. THANK YOU.

10 THE COURT: THANK YOU, MR. EVANS.

11 ON THE BASIS OF THE ALLEGED POLICE
12 MISCONDUCT, THAT WAS HEARD AT LENGTH ALSO DURING THE
13 TRIAL. AND I MADE A VERY CLEAR RECORD REGARDING MY
14 FINDINGS THERE, SO I AM NOT GOING TO REPEAT IT ALL. BUT
15 I AM GOING TO DENY THE MOTION FOR THE NEW TRIAL BASED
16 UPON THE SAME REASONING, AND I AM GOING TO INCORPORATE
17 THE REASONS I STATED ON THE RECORD DURING OUR 402'S INTO
18 THESE PROCEEDINGS SO THAT THEY ARE FULLY INCORPORATED AS
19 MY FACTUAL BASIS AND MY FINDINGS AND MY REASONING FOR
20 DENYING OR EVEN FINDING ANY POLICE MISCONDUCT HAS
21 OCCURRED HERE, AND IT CERTAINLY DOES NOT NECESSITATE A
22 MOTION FOR A NEW TRIAL.

23 WITH REGARD TO THE IDENTIFICATIONS, I WILL
24 ALSO INCORPORATE -- AGAIN, THIS WAS DISCUSSED AT LENGTH
25 DURING OUR TRIAL, AND I WILL INCORPORATE INTO MY FINDINGS
26 HERE THE FACTUAL FINDINGS I MADE AT THAT PARTICULAR TIME,
27 AS WELL AS MY REASONING.

28 BUT I DO WANT TO CLARIFY ON THE RECORD IN

1 REVIEWING MY NOTES -- AND I DO TAKE EXHAUSTIVE NOTES
2 DURING MY TRIALS -- THE THREE I.D.'S THAT I NOTED FROM MY
3 NOTES WERE FROM NANCY JARDINES, ANNETTE SAAVEDRA, AND
4 FELICITAS GONZALEZ. NOW, NANCY JARDINES -- ALL THREE
5 IDENTIFIED MR. JAMES AS THE MAN WITH THE MASK, AND THE
6 MASK WAS FOUND SHORTLY AFTER THE INCIDENT AT A LOCATION
7 THAT WAS NEARBY AND HAD HIS D.N.A. ON IT. IT IS CLEAR
8 THERE WAS SOME DISCREPANCY. WHETHER THERE WERE THREE
9 HOLES VERSUS FOUR HOLES IN THE MASK IS CLEARLY AN ISSUE.
10 I THINK ONE WITNESS SAID THERE WERE THREE HOLES, AND
11 ANOTHER SAID THERE WERE FOUR HOLES.

12 NANCY JARDINES, WHEN SHE MADE HER
13 IDENTIFICATION, INDICATED THAT SHE DID NOT LOOK AT THE
14 INTERNET. SHE DID NOT LOOK AT MR. JAMES' PHOTO. NOW, I
15 UNDERSTAND THAT SHE MAY HAVE TOLD YOUR INVESTIGATOR THAT,
16 BUT THAT IS SOMETHING THAT GOES TO WEIGHT, AS I STATED
17 BEFORE, NOT ADMISSIBILITY.

18 ANNETTE SAAVEDRA SAID THAT WHEN SHE DID
19 LOOK AT -- AND ANNETTE BEING THE ONE WHO LOOKED AT THE
20 INTERNET, SHE DID SAY SHE LOOKED AT THE INTERNET PHOTO.
21 SHE SAID NANCY JARDINES WAS NOT THERE.

22 FELICITAS GONZALEZ, WHEN SHE LOOKED AT THE
23 INTERNET, STATED VERY CLEARLY AND SPECIFICALLY UNDER
24 CROSS-EXAMINATION THAT HER IDENTIFICATION WAS NOT BASED
25 UPON THE PHOTO THAT SHE SAW ON THE INTERNET, AND SHE WAS
26 CROSS-EXAMINED IN THIS AREA. SO YOUR ARGUMENT GOES,
27 AGAIN, TO WEIGHT, NOT ADMISSIBILITY. AND SHE ALSO SAID
28 SHE DIDN'T REMEMBER IF NANCY JARDINES WAS THERE OR NOT.

1 SO AS I RULED EARLIER, I DON'T BELIEVE THE
2 IDENTIFICATIONS WERE TAINTED IN THE SENSE THAT THEY
3 NEEDED TO BE EXCLUDED ON THAT BASIS AND THAT THE
4 ARGUMENTS THAT WERE RAISED BY THE DEFENSE -- AND THE
5 COURT ALLOWED GREAT LATITUDE IN CROSS-EXAMINATION SO ALL
6 THE FACTORS OF THE IDENTIFICATIONS COULD BE BROUGHT OUT
7 BEFORE THE JURORS -- THAT THOSE ARGUMENTS WENT TO WEIGHT,
8 NOT ADMISSIBILITY. SO I AM NOT GOING TO GRANT THE MOTION
9 FOR A NEW TRIAL ON THAT BASIS.

10 I KNOW YOU'RE NOT CHALLENGING THE
11 SUFFICIENCY OF THE EVIDENCE; BUT IN THE EVENT I DO NEED
12 TO MAKE MY OWN INDEPENDENT FINDING OF THE SUFFICIENCY OF
13 THE EVIDENCE TO SUPPORT THE CONVICTIONS, IF THAT IS
14 INFERRED IN YOUR ARGUMENTS, I DO FIND THERE WAS
15 SUFFICIENT EVIDENCE BASED UPON THE IDENTIFICATIONS, AS
16 WELL AS THE D.N.A. EVIDENCE THAT WAS PRESENTED DURING THE
17 TRIAL.

18 MR. EVANS: YOUR HONOR, JUST SO I AM CLEAR --
19 BECAUSE I THINK THE COURT IS INCORRECT ON A COUPLE OF
20 POINTS HERE. ARE YOU SAYING THAT THERE WERE THREE
21 IDENTIFICATIONS MADE OF MR. JAMES AT THE TRIAL AS A
22 SUSPECT?

23 THE COURT: I AM SHOWING IN MY NOTES THAT --

24 MR. EVANS: I BELIEVE IT WAS ONLY MS. JARDINES.

25 THE COURT: NO. I AM SHOWING THAT THERE WERE
26 OTHER IDENTIFICATIONS.

27 MR. GOUDY: I BELIEVE FELICITAS GONZALEZ DID MAKE
28 AN I.D. HOWEVER, SHE INDICATED THAT SHE DID LOOK AT THE

1 PHOTOGRAPH PRIOR TO SEEING ANY SIX-PACK.

2 THE COURT: I KNOW NANCY DID. I DEFINITELY
3 HAVE -- I DEFINITELY HAVE IN MY NOTES THAT FELICITAS DID,
4 FELICITAS GONZALEZ, AND THEN -- LET ME SEE WHO THIS IS
5 UNDER.

6 MR. GOUDY: AND I BELIEVE THE OTHER -- I BELIEVE
7 SHE DID, BUT I THINK THAT SHE SAID SHE DID IT BASED UPON
8 THE --

9 THE COURT: I HAVE ANNETTE SAAVEDRA ALSO HAVING
10 MADE AN IDENTIFICATION.

11 MR. GOUDY: BUT I THINK SHE ALSO SAID SHE BASED IT
12 ON THE PHOTOGRAPH.

13 THE COURT: THAT WAS DONE AFTER THE PHOTOS?

14 MR. GOUDY: CORRECT.

15 THE COURT: BUT I BROUGHT UP FELICITAS BECAUSE SHE
16 WAS SPECIFICALLY CROSS-EXAMINED ON WAS HER IDENTIFICATION
17 BASED UPON THE INTERNET PHOTO, AND SHE SAID SPECIFICALLY
18 IT WAS NOT.

19 MR. EVANS: BUT THAT'S NOT WHAT SHE TOLD THE
20 POLICE OFFICER BEFORE THE SIX-PACK.

21 THE COURT: THAT IS A MATTER OF WEIGHING
22 INCONSISTENT STATEMENTS. YOU'RE ASKING ME TO FIND TRUE
23 WHAT SHE SAID TO THE POLICE OFFICER AND DISCOUNT WHAT SHE
24 SAID HERE, AND I AM NOT -- INCONSISTENT STATEMENTS HAPPEN
25 ALL THE TIME WITH WITNESSES. WITNESSES DON'T I.D. AT ONE
26 POINT BECAUSE THEY HAVE ISSUES, THEY SAY CERTAIN THINGS,
27 THEY COME INTO COURT AND SAY OTHER THINGS, THEY DO I.D.
28 OR THEY I.D. BEFORE BUT THEY DON'T I.D. NOW. I MEAN,

1 THAT HAPPENS EVERY DAY IN TRIAL.

2 MR. EVANS: WELL, I JUST WANT TO MAKE SURE THAT
3 WHAT --

4 THE COURT: THAT'S WHY IT GOES TO WEIGHT, NOT
5 ADMISSIBILITY.

6 MR. EVANS: BUT ALSO, I HAVE TO SAY THAT AS TO
7 MS. JARDINES, AT LEAST TWO OF THE OTHER WITNESSES
8 INDICATED THAT SHE, MS. JARDINES, WAS WITH THEM AT THE
9 TIME THAT THEY VIEWED THE INTERNET PHOTO. THAT OCCURRED
10 BEFORE THE SIX-PACK WAS SHOWN TO THEM, AND IT WAS ONLY
11 DONE ONCE.

12 WHAT OTHER CONCLUSION CAN YOU DRAW? NO
13 MATTER WHAT THAT WITNESS SAYS, WHAT MORE -- WHAT ELSE CAN
14 YOU DRAW FROM THAT?

15 THE COURT: I THINK THAT YOU ARE TAKING ONLY THAT
16 FACT WHICH SUPPORTS YOUR POSITION AND NOT LOOKING AT THE
17 TOTAL FACTS THAT THE WITNESSES TESTIFIED TO, SOME OF
18 WHICH ARE INCONSISTENT WITH WHAT THEY TOLD YOUR
19 INVESTIGATOR. AND AS I SAID, BECAUSE THERE WERE
20 INCONSISTENT STATEMENTS UTTERED BY THESE WITNESSES, THAT
21 IS WHY I RULED IT GOES TO WEIGHT AND NOT ADMISSIBILITY.

22 YOU WERE ASKING ME AS A MATTER OF LAW,
23 BECAUSE OF ONE STATEMENT THEY MADE THAT SUPPORTS YOUR
24 DEFENSE, TO RULE THAT THEY CANNOT TESTIFY OR THAT
25 EVIDENCE CAN'T COME IN --

26 MR. EVANS: BUT WHAT I AM SAYING --

27 THE COURT: -- DESPITE THE FACT THAT THERE WAS
28 OTHER EVIDENCE SAYING THAT THEY COULD DO THIS.

1 MR. EVANS: BUT WHAT I AM SAYING, YOUR HONOR --
2 THIS IS SO IMPORTANT HERE. BECAUSE IF THE COURT HAD TO
3 HEAR IT WITH THE LIVE WITNESSES, ALL OF THIS OTHER STUFF
4 THAT CAME OUT THAT WAS A SURPRISE, LIKE OH, BIG SURPRISE
5 WE GET, WE WOULD HAVE HEARD BEFOREHAND AND HAVE SAID WOW,
6 SHOULD THE JURY HEAR THIS?

7 THE COURT: I HAVE MADE MY RULING. I AM NOT GOING
8 TO ARGUE WITH YOU FURTHER. I HAVE STATED MY REASONING,
9 PLUS THE FACT THAT YOUR CLIENT'S D.N.A. WAS FOUND ON A
10 MASK THAT RESEMBLED THE ONES THE WITNESSES TESTIFIED TO
11 SHORTLY AFTER THEIR HOME INVASION ROBBERY.

12 MR. EVANS: AS WELL AS SOMEONE ELSE'S D.N.A. ON
13 THAT MASK. CLEARLY, THAT'S THE UNCONTROVERTED EVIDENCE,
14 AND WHO'S TO SAY THE OTHER PERSON IS NOT THE PERPETRATOR?

15 MR. GOUDY: THE JURY.

16 MR. EVANS: WELL, THE JURY HEARS THIS I.D.
17 EVIDENCE, AND THEN THEY LOOK AT THIS D.N.A. EVIDENCE AND
18 THEY START WEIGHING IT. I MEAN, THAT'S THE PROBLEM
19 HERE. IT FEEDS UPON ONE ANOTHER.

20 THE COURT: I HAVE MADE MY RULING.

21 MR. EVANS: THANK YOU.

22 THE COURT: SO THE MOTION FOR THE NEW TRIAL IS
23 DENIED.

24 BEFORE WE GO ON TO SENTENCING, BECAUSE I
25 DON'T KNOW -- DO YOU HAVE PEOPLE HERE THAT WANT TO BE
26 HEARD?

27 MR. GOUDY: I WAS TOLD THERE MIGHT BE, BUT IT
28 DOESN'T APPEAR THAT THERE IS.

1 THE COURT: I DON'T KNOW IF MR. JAMES WANTS TO
2 ADDRESS THE COURT. I DO HAVE JUST A QUICK ARRAIGNMENT.
3 SO I WILL TAKE A BRIEF BREAK SO I CAN GET THE PEOPLE OUT
4 REGARDING THESE OTHER SHORT MATTERS AND WE'LL COME BACK.

5
6 (WHEREUPON OTHER MATTERS WERE HEARD.)

7
8 THE COURT: BACK ON THE RECORD IN PEOPLE VERSUS
9 JAMES, KA085233. HE IS PRESENT IN COURT, IN CUSTODY,
10 WITH MR. EVANS. THE PEOPLE ARE REPRESENTED, AND WE ARE
11 NOW HERE FOR SENTENCING.

12 I WILL LET BOTH SIDES BE HEARD NOW THAT WE
13 HAVE TAKEN CARE OF THOSE OTHER ISSUES.

14 WAIVE ARRAIGNMENT FOR JUDGMENT AND TIME FOR
15 SENTENCING, NO LEGAL CAUSE?

16 MR. EVANS: YES, YOUR HONOR.

17 THE COURT: I HAVE READ THE SENTENCING POSITIONS
18 THAT HAVE BEEN FILED BY BOTH SIDES.

19 MR. EVANS?

20 MR. EVANS: DOES THE COURT HAVE A TENTATIVE RULING
21 SO THAT I CAN FOCUS MY ARGUMENT? IN PARTICULAR, I THINK
22 THE BIG ISSUES IN THIS CASE ARE LOW, MID, OR HIGH TERM,
23 ARE THE REMAINING COUNTS AFTER THE PRINCIPAL TERM OR THE
24 SUBORDINATE TERMS GOING TO BE CONSECUTIVE OR CONCURRENT.

25 THE COURT: I WOULD ACTUALLY LIKE TO HEAR FROM
26 BOTH OF YOU. BUT I WILL TELL YOU HONESTLY, MY CONCERN
27 WITH BOTH POSITIONS, WITH REGARD TO MR. JAMES, HE HAS A
28 RECORD. AND HE HAS A RECORD THAT INVOLVES VIOLENCE, AND

1 HE HAS A RECORD THAT INVOLVES VOLUNTARY MANSLAUGHTER AND
2 PRIOR ROBBERY CONVICTIONS. SO I AM GOING TO GIVE HIM A
3 SUBSTANTIAL AMOUNT OF TIME. THE CONTINUED VIOLENT CRIME
4 ACTIVITY, THE NATURE OF THE CRIMES, THIS PARTICULAR TYPE
5 OF CRIME, I FIND IT EVEN INCREASING IN ITS PROPENSITY AS
6 FAR AS VIOLENCE, AND I THINK THIS CRIME SHOWED PLANNING
7 AND SOPHISTICATION. SO I JUST WANT YOU TO KNOW WHAT MY
8 MINDSET AND THINKING IS.

9 MR. GOUDY, 71 YEARS IS, IN ESSENCE, HIS
10 ENTIRE LIFE. I AM NOT SURE THAT I FEEL THAT THAT IS
11 NECESSARILY THE APPROPRIATE SENTENCE AS FAR AS 71 YEARS.
12 I WILL TELL YOU I AM THINKING SOMETHING MORE ALONG THE
13 LINES OF -- AND I KNOW THIS IS STILL GOING TO SOUND TO
14 HIM LIKE HIS ENTIRE LIFE, BUT SOMETHING AROUND 40, 50
15 YEARS AS OPPOSED TO 71. I KNOW THAT DOESN'T MAKE EITHER
16 OF YOU HAPPY, BUT THAT'S MY GENERAL THOUGHT. SO YOU CAN
17 BOTH GO FROM THERE.

18 MR. EVANS: YOUR HONOR, FIRST OF ALL, I DON'T
19 THINK HE HAS A PRIOR ROBBERY CONVICTION.

20 THE COURT: I AM SORRY.

21 MR. GOUDY: HE HAS TWO BURGLARIES AND THE
22 VOLUNTARY.

23 MR. EVANS: THE BURGLARIES ARE COMMERCIAL, NOT
24 RESIDENTIAL.

25 THE COURT: I APOLOGIZE. I DO SEE THE -- NO.
26 THERE IS A JUVENILE ROBBERY.

27 MR. GOUDY: YEAH. THE ADJUDICATION, NOT A
28 CONVICTION, YES. HE HAS A JUVENILE.

1 THE COURT: HE HAS TWO JUVENILE BURGLARIES, A
2 10851, AND THEN A ROBBERY, JUVENILE.

3 AND THEN AS AN ADULT, HE HAS GOT VOLUNTARY
4 MANSLAUGHTER AND TWO ADDITIONAL BURGLARIES AND THEN
5 WHATEVER HAPPENED OUT IN ARIZONA.

6 MR. EVANS: IS THE COURT TAKING INTO CONSIDERATION
7 ON THE VOLUNTARY MANSLAUGHTER HE WAS GIVEN PROBATION,
8 WHICH I CAN'T EVEN IMAGINE A CIRCUMSTANCE THAT THAT WOULD
9 BE THE CASE, ALTHOUGH I HAVE HAD ONE IN MY 21-YEAR
10 CAREER.

11 THE COURT: WHAT I AM JUST SEEING FROM THIS IS
12 FROM '89 THROUGH 2007, AND YOU'RE TALKING A PERIOD OF,
13 WHAT, A FAIRLY SUBSTANTIAL AMOUNT OF CRIMINAL ACTIVITY,
14 ESPECIALLY WHEN YOU CONSIDER THE TIME HE SPENT IN CUSTODY
15 THAT HAS TAKEN AWAY FROM THOSE TIME PERIODS. FOR
16 INSTANCE, ON THE ADULT CASES HE HAD A SIX-YEAR STATE
17 PRISON SENTENCE, A 13-MONTH STATE PRISON SENTENCE, AND A
18 ONE-YEAR STATE PRISON SENTENCE.

19 SO I HAVE SOMEONE WHO, AS A JUDGE, WHEN I
20 LOOK AT THIS, AS SOON AS HE GETS OUT, HE HASN'T REALLY
21 LEARNED ANYTHING AND HE CONTINUES TO COMMIT ACTS, AND NOT
22 ACTS THAT ARE NECESSARILY LIKE WE SEE WITH A DRUG ADDICT
23 WHERE THEY ARE FEEDING AN ADDICTION AND THEY ARE HAVING
24 CONTROL ISSUES AS FAR AS STEALING, BUT ACTS WHICH ARE
25 VIOLENT IN NATURE AND CAUSE A GREAT CONCERN FOR PUBLIC
26 SAFETY.

27 MR. EVANS: I ADMITTED IN CLOSING ARGUMENTS THAT
28 THESE ARE VIOLENT CRIMES THAT ARE ALLEGED HERE, AND I AM

1 NOT HERE TO TAKE AWAY FROM THAT.

2 BUT WHEN THE COURT IS INDICATING TO ME THAT
3 HE'S INCREASING IN SERIOUSNESS, WELL, I MEAN, I KNOW THIS
4 IS RELATIVE, BUT KILLING SOMEONE VERSUS A ROBBERY WHERE
5 NOBODY WAS PHYSICALLY HARMED -- NOW, I DON'T DOUBT THERE
6 WAS EMOTIONAL HARM TO THE VICTIMS. I DON'T --
7 RELATIVELY, I THINK I WOULD DISAGREE WITH THE INCREASING
8 IN SERIOUSNESS.

9 THE COURT: WELL, I MEAN LIKE BURGLARIES AS
10 OPPOSED TO HOME INVASION ROBBERIES. HOME INVASION
11 ROBBERY IS A WHOLE STEP UP OF GOING INTO SOMEONE'S HOME,
12 KNOWING THAT THERE'S GOING TO BE PEOPLE IN THE HOME,
13 COMING IN WITH DISGUISES AND ORDERING PEOPLE AROUND IN
14 ORDER TO OBTAIN WHATEVER THEY THOUGHT MIGHT HAVE BEEN IN
15 THAT HOME.

16 MR. EVANS: BUT I THINK THE MAIN PARTICIPANT OR
17 THE MAJOR PLAYER IN THIS WAS MR. HAWKINS. I THINK THE
18 EVIDENCE IS PRETTY CLEAR AS TO THAT. HE APPEARS TO BE
19 THE PERSON THAT HAS PLANED THIS. SO I THINK -- THAT'S
20 WHY I MADE THE ARGUMENT THAT MR. JAMES HAS A LESSER ROLE
21 THAN MR. HAWKINS. I'D ASK THE COURT TO TAKE THAT INTO
22 CONSIDERATION AS WELL.

23 THE COURT: WELL, I THINK THAT ANY INDIVIDUAL WHO
24 COMES IN ARMED WITH A FIREARM AND ORDERS PEOPLE AROUND IS
25 A SIGNIFICANT PLAYER. I DON'T KNOW IF IT'S ANY MORE
26 SIGNIFICANT, BUT I DON'T FIND THAT ROLE TO BE MINOR.

27 MR. EVANS: THE COURT IS ALSO WELL AWARE THAT
28 INDIVIDUALS, AS THEY GET OLDER, ARE LESS LIKELY TO

1 RECOMMIT VIOLENT CRIMES. MR. JAMES WILL BE SIGNIFICANTLY
2 OLDER IN LIGHT OF THE -- EVEN IF THE COURT GIVES WHAT I
3 BELIEVE IS THE MINIMUM SENTENCE IN THIS CASE, WHICH I
4 BELIEVE IS 22 YEARS. SO I WOULD ASK THE COURT TO TAKE
5 THAT INTO CONSIDERATION.

6 AS I HAVE SAID, NO ONE INFILCTED PHYSICAL
7 INJURY. THERE IS NO MONETARY LOSS -- OR MINIMAL MONETARY
8 LOSS TO THE VICTIMS IN THIS CASE. SO I WOULD ASK THE
9 COURT TO IMPOSE THE LOW TERM. IF THE COURT FINDS THAT --
10 AS I AM HEARING THE COURT -- I DON'T WANT TO ACT LIKE I
11 AM NOT LISTENING, BUT I DO HEAR THE --
12 THE COURT: I NEVER THOUGHT THAT.

13 MR. EVANS: BUT I DO HEAR THE COURT SAYING THAT
14 THERE ARE AGGRAVATING FACTORS, AND I AM ASKING THE COURT
15 THEN TO WEIGH THE AGGRAVATING FACTORS WITH THE MITIGATING
16 FACTORS THAT WE HAVE RAISED.

17 AND IN LIGHT OF THAT, IF THE COURT IS
18 INCLINED TO FIND THAT THERE ARE STRONG AGGRAVATING
19 FACTORS, WHEN BALANCING THE MITIGATING FACTORS, MAYBE MID
20 TERM IS APPROPRIATE. THAT WOULD BE A SIX-YEAR TERM TIMES
21 TWO, WHICH IS 12, PLUS TEN. THAT'S 22 YEARS PLUS ONE,
22 23, FOR THE AGE OF THE ONE VICTIM, AND PLUS FIVE FOR THE
23 667(A)(1). THAT'S 28 YEARS. THAT'S A SIGNIFICANT AMOUNT
24 OF TIME IN A CASE LIKE THIS THAT INVOLVES ROBBERY.
25 THAT'S A LOT OF TIME.

26 THE COURT: MR. GOUDY?

27 MR. GOUDY: HE DESERVES EVERY DAY HE CAN POSSIBLY
28 GET. THEY KNEW WHAT WAS IN THAT HOUSE. THEY KNEW THERE

1 WAS A SAFE IN THAT HOUSE. IF THEY KNEW THAT, THEY KNEW
2 THERE WERE KIDS IN THAT HOUSE. THEY COULD HAVE COME IN
3 WHEN THE KIDS WERE IN SCHOOL, BUT THEY DIDN'T. THEY CAME
4 WHEN THE KIDS WERE AT HOME. THEY HAD THE OPPORTUNITY TO
5 COME AT A DIFFERENT TIME, AND THEY DID NOT.

6 AND WHAT HAPPENS WHEN THEY GET THERE? THEY
7 USED THE KID. THEY STAND HIM UP FROM WHERE HE IS LAYING
8 IN THE HALLWAY, AND THEY POINT A GUN AT HIS HEAD AND SAY,
9 "DO WHAT WE SAY, OR WE ARE GOING TO KILL HIM." THAT'S
10 WHAT THEY DID. THAT ALONE, THAT FACT ALONE, TAKING
11 FABIAN HERNANDEZ, I BELIEVE IS HIS NAME, PICKING HIM UP
12 AND PUTTING A GUN TO HIS HEAD WARRANTS THE MAXIMUM. I
13 THINK THAT IS IN AND OF ITSELF ENOUGH FOR THIS COURT TO
14 GIVE HIM EVERY SINGLE POSSIBLE DAY THE COURT CAN GIVE
15 HIM.

16 THEY COULD HAVE COME IN AT ANOTHER TIME
17 BECAUSE WE KNOW IT WAS PLANNED BECAUSE THEY KNEW ABOUT
18 THE SAFE, BUT THEY DIDN'T. THEY CHOSE TO GO IN THERE
19 WHEN THE KIDS WERE THERE, WHEN THEY KNEW THE KIDS WOULD
20 BE THERE. IT WASN'T DURING THE SCHOOL TIME. THEY WENT
21 IN DURING THAT TIME. THOSE FACTS ALONE ARE ENOUGH.

22 BUT WHEN YOU LOOK AT HIS RECORD, WE DIDN'T
23 ALLEGGE A ONE-YEAR PRIOR, ALTHOUGH HE HAS BEEN TO STATE
24 PRISON FOR TWO SEPARATE CRIMES, ACTUALLY. I BELIEVE THEY
25 WERE SERVED -- ALTHOUGH IT'S HARD TO TELL FROM THE
26 PROBATION REPORT WHETHER OR NOT THEY WERE SERVED
27 CONCURRENTLY OR ONE WAS A CONSECUTIVE TIME, BUT ONE FROM
28 PETALUMA COUNTY AND ONE FROM L.A. COUNTY. HE DIDN'T

1 LEARN HIS LESSON FROM THAT BECAUSE HE ENDS UP IN PRISON
2 IN ARIZONA FOR FALSE IMPERSONATION.

3 THEY ARE INCREASING IN SERIOUSNESS BECAUSE
4 BACK IN '93, WHEN HE PICKED UP THE VOLUNTARY
5 MANSLAUGHTER, MAYBE SOMETHING HAPPENED AND HE DECIDED TO
6 LAY LOW FOR A LITTLE WHILE. BUT THEN IT WENT TO THEFT
7 CRIMES, THEFT CRIMES, AND NOW THIS VERY VIOLENT CRIME.

8 THE TORMENT -- TO SAY -- WELL, FIRST OF
9 ALL, THE FACTORS IN MITIGATION CITED ALL HAVE TO DEAL
10 WITH WHETHER OR NOT TO GRANT PROBATION. HE'S NOT
11 ELIGIBLE FOR PROBATION. THOSE AREN'T MITIGATING FACTORS.
12 THERE ARE NO MITIGATING FACTORS WITH HIS RECORD, WITH
13 WHAT HE DID IN THIS CASE.

14 IT'S A HEINOUS CRIME. TO HOLD A GUN TO A
15 SIX-YEAR-OLD'S HEAD AND THREATEN THE FAMILY, WITH THAT
16 THOUGHT, HE DOESN'T DESERVE A BREAK. HE DESERVES
17 EVERYTHING, AND THAT'S WHY THE PEOPLE ARE ASKING FOR
18 71 YEARS, BECAUSE OF WHAT HE, ALONG WITH HIS COHORTS,
19 DID. IT'S NOT JUST THE COHORTS. THERE IS NO EVIDENCE
20 THAT MR. JAMES WAS THE MASTERMIND, BUT HE WAS THERE.

21 THEY USED THE CHILDREN, AND THAT'S
22 SEPARATE. I CAN USE THAT. THAT'S NOT SAYING FOR THE
23 ENHANCEMENT, BECAUSE IT'S HOW THEY USED THE CHILDREN, NOT
24 THAT THEY WERE A VICTIM. BUT TO USE A CHILD LIKE THAT IN
25 A CRIME LIKE THIS, HE DOESN'T DESERVE A BREAK.

26 THE COURT: ALL RIGHT.

27 MR. EVANS: I WOULD POINT TO TWO THINGS FOR THE
28 COURT TO CONSIDER. IF THE LEGISLATURE WOULD TELL YOU

1 THAT IF A CRIME ALLEGED IN THIS CASE WAS A ROBBERY WHERE
2 YOU POINTED A GUN AT A MINOR THE MAXIMUM SENTENCE WOULD
3 BE 16 YEARS -- FIVE YEARS, PLUS TEN FOR THE GUN, PLUS ONE
4 FOR THE MINOR CHILD -- THAT'S WHAT IT WOULD BE. IT'S NOT
5 LIFE. IT'S NOT 71 YEARS.

6 SECONDLY, AS THE COURT IS WELL AWARE, I
7 WOULD LIKE TO REMIND THE COURT THAT AS WE WERE WALKING IN
8 HERE BEFORE WE PICKED A JURY, THE PEOPLE WERE WILLING TO
9 OFFER 15 YEARS, AND WERE CONSIDERING COMING DOWN TO
10 13 YEARS AS AN OFFER FOR MR. JAMES.

11 MR. GOUDY: OBJECTION. THAT IS NOT TRUE THAT WE
12 WERE COMING DOWN TO 13, AND IT'S IRRELEVANT.

13 MR. EVANS: SO IT'S 15. NOW HE'S BEING PUNISHED
14 FOR GOING TO TRIAL. YOU'RE PUNISHING HIM.

15 THE COURT: I WILL MAKE MY DECISION BASED UPON THE
16 FACTS THAT WERE PRESENTED TO ME.

17 MR. EVANS: RIGHT, BUT HOW DO YOU GO FROM 71 TO
18 15?

19 THE COURT: WHATEVER YOU TWO NEGOTIATE, THAT'S ON
20 YOU TWO. I DON'T CONSIDER THAT.

21 MR. EVANS: BUT I AM SAYING THAT THE FACTS THAT
22 THE PEOPLE ARE RELYING ON HERE TO SAY 71 YEARS WAS OKAY
23 TO DO 15 PRIOR TO TRIAL.

24 THE COURT: WHAT I AM GOING TO DO -- AND I KNOW
25 YOU ARE NOT GOING TO BE PLEASED, BUT I WILL MAKE YOU COME
26 BACK ONE MORE TIME BECAUSE IT'S A COMPLICATED SENTENCING
27 BECAUSE OF THE NUMBER OF COUNTS AND ALLEGATIONS, AND I
28 NEED TO SIT DOWN. AND I APOLOGIZE FOR NOT HAVING DONE

1 THAT WITH REGARD TO THE OTHER MATTERS. I NEED TO SIT
2 DOWN AND FIGURE OUT HOW THE CALCULATIONS WORK OUT BECAUSE
3 THERE ARE SO MANY VARIATIONS. SO I ASK FOR YOUR
4 UNDERSTANDING SO I CAN TAKE A LITTLE MORE TIME WITH
5 REGARD TO THAT.

6 I DO UNDERSTAND BOTH OF YOUR POSITIONS, AND
7 I HAVE YOUR SENTENCING POSITIONS.

8 MR. GOUDY: JUST SO WE ARE CLEAR, WITH WHAT
9 MR. EVANS IS ARGUING, WE MIGHT AS WELL NOT HAVE
10 DISCUSSIONS ABOUT PLEA BARGAINS BECAUSE THE DEFENSE WILL
11 ALWAYS BRING THAT UP.

12 THE COURT: YOU BOTH DON'T NEED TO GO THERE. I
13 KNOW MR. EVANS IS ESSENTIALLY ARGUING THERE SHOULD BE NO
14 PUNISHMENT FOR GOING TO TRIAL. I UNDERSTAND THAT
15 ARGUMENT, AND I HEAR IT ALL THE TIME.

16 AND ALSO WHEN HE TALKS ABOUT WHAT HE THINKS
17 THE CASE IS WORTH IN RELATION TO WHAT YOU SAID IT WAS, I
18 UNDERSTAND YOU SAYING WHAT YOU THINK IT'S WORTH BEFORE
19 TRIAL AND WHATEVER IS COMPLETELY DIFFERENT IN THE SPIRIT
20 OF NEGOTIATION AS OPPOSED TO SENTENCING AFTER TRIAL.

21 AND I AM TELLING BOTH OF YOU, I DON'T
22 CONSIDER IT IN ANY EVENT. I CONSIDER ONLY THE FACTS THAT
23 WERE PRESENTED TO ME DURING THE TRIAL AND HOW THAT
24 RELATES TO THE LOCAL RULES AND THE -- I AM SORRY, THE
25 RULES OF COURT AND THE CODE SECTIONS THAT APPLY.

26 MR. GOUDY: SO I KNOW THE COURT -- JUST TO BRING
27 UP A POINT THAT HASN'T BEEN BROUGHT UP, BUT I BELIEVE
28 BECAUSE HE WAS IN ARIZONA, EVEN THOUGH HE WAS GOING TO

1 GET RELEASED PRETTY SOON, HE ACTUALLY DID MAKE A FORMAL
2 DEMAND. SO I BELIEVE THE COURT IS GOING TO HAVE TO MAKE
3 REFERENCE TO THAT --

4 THE COURT: WE CAN TAKE THAT UP ON THE NEXT DATE.

5 MR. GOUDY: I JUST WANT TO LET THE COURT KNOW
6 4.415, I THINK, IS THE RULE OF COURT THAT WOULD APPLY,
7 JUST SO THE COURT CAN LOOK AT THAT WHILE -- BEFORE WE
8 COME BACK.

9 THE COURT: WHAT IS A GOOD DATE FOR YOU?

10 MR. EVANS: I LEAVE FOR VACATION -- I LEAVE FOR
11 VACATION TOMORROW. SO I WON'T BE BACK UNTIL AFTER
12 THANKSGIVING.

13 THE COURT: DO YOU WANT THE 29TH OR THE 1ST?
14 THOSE ARE BOTH GOOD DATES, OR THE 6TH OR 7TH.

15 MR. GOUDY: THE 29TH OR 30TH ARE FINE. I AM HERE
16 ON BOTH OF THOSE.

17 THE COURT: HE'S OBVIOUSLY LOOKING AT SOME TIME.
18 IF YOU WANT TO GO LATER, THAT'S FINE. REGARDLESS, HE'S
19 LOOKING AT SOME TIME.

20 MR. EVANS: I PREFER TO GO OVER TO THE 14TH, 15TH.

21 THE COURT: ANYTIME THAT WEEK IS FINE, AS LONG AS
22 IT'S GOOD WITH YOUR CLIENT.

23 MR. GOUDY: THE 15TH.

24 THE COURT: OKAY. SO MR. JAMES, OBVIOUSLY WE HAVE
25 STARTED THE SENTENCING HEARING. IS IT OKAY WITH YOU THAT
26 WE FINISH IT UP ON THE 15TH?

27 THE DEFENDANT: YES.

28 THE COURT: COUNSEL JOIN?

1 MR. EVANS: JOIN.

2 THE COURT: JUST IN AN ABUNDANCE OF CAUTION, IN
3 CASE THERE IS A LOCK-DOWN OR YOU'RE A MISS-OUT, IS IT
4 OKAY WITH YOU THAT YOUR SENTENCING TAKE PLACE ON THAT
5 DATE OR WITHIN FIVE DAYS OF THAT DATE? IS THAT OKAY?

6 THE DEFENDANT: I WOULD LIKE TO BE HERE, IF
7 POSSIBLE.

8 THE COURT: WE WANT YOU HERE. WHAT I AM SAYING IS
9 IF FOR SOME REASON THEY DON'T TRANSPORT YOU THAT WE HAVE
10 WITHIN FIVE DAYS TO GET YOU HERE. I WILL NOT DO THIS
11 WITHOUT YOU HERE, I PROMISE YOU, SIR. IS THAT OKAY WITH
12 YOU?

13 THE DEFENDANT: YES.

14 MR. EVANS: JOIN.

15 THE COURT: THANK YOU.

16

17 (THE MATTER WAS CONTINUED TO
18 WEDNESDAY, DECEMBER 15, 2010,
19 AT 8:30 A.M. FOR FURTHER
20 PROCEEDINGS.)

21
22 (THE NEXT PAGE NUMBER IS 3901.)

23

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25

26

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28

1 CASE NUMBER: KA085233
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 LOS ANGELES, CALIFORNIA WEDNESDAY, DECEMBER 15, 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 COURT: WE ARE ON THE RECORD IN PEOPLE VERSUS
10 JAMES, KA085233. MR. JAMES IS PRESENT IN COURT, IN
11 CUSTODY, WITH MR. EVANS. THE PEOPLE ARE REPRESENTED BY
12 MR. GOUDY.

13 GOOD MORNING, MR. JAMES.

14 THE DEFENDANT: GOOD MORNING.

15 THE COURT: YOUR ATTORNEY IS REQUESTING FOR ONE
16 MORE CONTINUANCE BECAUSE HE WANTS TO FILE A MOTION FOR
17 RECONSIDERATION PRIOR TO THE SENTENCING. IT'S BEEN SOME
18 TIME, AND I HAVE INDICATED TO BOTH ATTORNEYS AT THE BENCH
19 THAT THE PEOPLE WOULD BE OBJECTING TO THE CONTINUANCE,
20 BUT I WILL GIVE YOUR ATTORNEY THE CHANCE TO FILE THAT
21 MOTION AND ANY OTHER MOTIONS PRIOR TO SENTENCING. SO
22 THAT MOTION AND ANY OTHER ADDITIONAL MOTIONS YOU WISH TO
23 FILE CAN BE FILED FOR OUR NEXT SENTENCING DATE, WHICH IS
24 GOING TO GO OVER TO JANUARY 12TH.

25 SO YOU DO HAVE THE RIGHT TO BE SENTENCED
26 TODAY OR WITHIN TEN DAYS OF TODAY'S DATE. IS IT OKAY
27 WITH YOU, SIR, THAT THIS GO OVER TO JANUARY 12TH FOR
28 SENTENCING AND MOTIONS AND YOUR SENTENCING TAKE PLACE ON

1 THAT DATE BUT WITHIN TEN DAYS OF THAT DATE? IS THAT OKAY
2 WITH YOU, MR. JAMES?

3 THE DEFENDANT: YES.

4 THE COURT: DO YOU JOIN, MR. EVANS?

5 MR. EVANS: YES. WHICH DEPARTMENT IS THAT?

6 THE COURT: DEPARTMENT "N" IN SAN FERNANDO. SO WE
7 WON'T BE IN THIS COURTHOUSE ANYMORE.

8 PEOPLE, I DID INDICATE THAT YOU OBJECT FOR
9 THE RECORD. DID YOU WANT TO STATE ANYTHING FURTHER OTHER
10 THAN LODGE YOUR OBJECTION?

11 MR. GOUDY: NO, YOUR HONOR.

12 THE COURT: SO YOUR OBJECTION IS NOTED AND THIS
13 WILL BE CONTINUED OVER THE PEOPLE'S OBJECTION, BUT I AM
14 INDICATING NO FURTHER CONTINUANCES AFTER THIS.

15 SO WE WILL SEE YOU BACK IN SAN FERNANDO, A
16 NEW COURTROOM FOR BOTH OF US, ON JANUARY 12TH.

17
18 (THE MATTER WAS CONTINUED TO
19 WEDNESDAY, JANUARY 12, 2011,
20 AT 8:30 A.M. FOR FURTHER
21 PROCEEDINGS.)

22
23 (THE NEXT PAGE NUMBER IS 4201.)

24

25

26

27

28

1 CASE NUMBER: KAO85233-02 AND KAO86790-01
2 CASE NAME: PEOPLE VS. TAUMU JAMES
3 SAN FERNANDO, CA. WEDNESDAY, JANUARY 12, 2011
4 NV "N" HON. CHARLAINE F. OLMEDO, JUDGE
5 REPORTER: ELAINE B. SMITH, CSR #3366
6 TIME: A.M. SESSION
7 APPEARANCES:

8 (THE DEFENDANT, TAUMU JAMES, PRESENT
9 WITH HIS COUNSEL MICHAEL S. EVANS,
10 PRIVATE COUNSEL; RONALD GOUDY,
11 DEPUTY DISTRICT ATTORNEY, REPRESENTING
12 THE PEOPLE OF THE STATE OF CALIFORNIA.)
13

14 THE COURT: ON THE RECORD IN PEOPLE VERSUS TAUMU
15 JAMES, MR. JAMES IS PRESENT IN CUSTODY WITH MR. EVANS.
16 MR. GOUDY IS PRESENT.

17 WE ARE HERE FOR SENTENCING AND THE NOTICE OF
18 MOTION AND MOTION FOR RECONSIDERATION REGARDING THE
19 REQUEST FOR NEW TRIAL.

20 I HAVE READ THE PLEADING FILE BY MR. EVANS
21 DATED JANUARY 11TH OF 2011; AND I HAVE ALSO READ AND
22 CONSIDERED AS IT RELATES TO THE SENTENCING THE PROBATION
23 REPORT THAT WAS PREPARED AUGUST 17TH OF 2009, THE
24 SENTENCING MEMORANDUM FILED BY THE PEOPLE, SENTENCING
25 MEMORANDUM FILED ON BEHALF OF MR. JAMES, AND THE LETTER
26 TO THE JUDGE FROM MR. JAMES' FAMILY MARGIE EVERETT. THAT
27 WAS ALSO RECEIVED BACK ON OCTOBER -- I'M SORRY --
28 SEPTEMBER 27TH OF 2010.

1 SO WITH THAT SAID, DID YOU WISH TO BE HEARD?

2 MR. EVANS: YES, YOUR HONOR. I'D LIKE TO BE HEARD
3 REGARDING THE MOTION REQUEST FOR RECONSIDERATION OF A
4 MOTION FOR A NEW TRIAL.

5 SPECIFICALLY I'D LIKE TO POINT OUT IN THE
6 COURT'S DENIAL OF THE MOTION FOR NEW TRIAL AS IT RELATED
7 TO THE ISSUE OF THE INDEPENDENT SOURCE OF THE
8 IDENTIFICATIONS AS TO FOUR WITNESSES, THE ARGUMENT IS
9 TWO-FOLD AND SEPARATE.

10 FIRST OF ALL AS IT RELATES TO MS. SAAVEDRA,
11 MS. GONZALEZ AND MS. BARRAGAN, IT'S BEEN OUR POSITION
12 THAT THE COURT SHOULD NOT HAVE ADMITTED ANY
13 IDENTIFICATION EVIDENCE IN THIS CASE AS IT RELATED TO
14 MR. JAMES ON THE GROUNDS IF IT WAS NOT AN INDEPENDENT
15 SOURCE OF THE IDENTIFICATION AND BECAUSE IT WAS NOT
16 RELEVANT UNDER 352, BOTH OF WHICH VIOLATED HIS DUE
17 PROCESS RIGHT TO TRIAL GUARANTEED UNDER THE 5TH AMENDMENT
18 AND THE 14TH AMENDMENT.

19 AS IT RELATES TO THOSE THREE WITNESSES THE
20 COURT BELIEVED THAT AT LEAST AS IT RELATED TO
21 MS. SAAVEDRA AND MS. GONZALEZ, THEY HAD IDENTIFIED
22 MR. JAMES AS THE SUSPECT WHO PARTICIPATED IN THE
23 ROBBERIES.

24 I HAVE GONE BACK AND OBTAINED TRANSCRIPTS AS
25 WELL AS THE HEARING ON THE MOTION FOR NEW TRIAL TO
26 OUTLINE, AND THE COURT MADE SOME FACTUAL DETERMINATIONS
27 WHICH I DON'T BELIEVE THE RECORD SUPPORTS.

28 PARTICULARLY THERE WAS NO IDENTIFICATION MADE

1 BY MS. GONZALEZ, BY MS. SAAVEDRA; AND I DON'T THINK THE
2 COURT'S NOTES, NOR THE PEOPLE'S POSITION, IS THAT
3 MS. BARRAGAN EVER MADE AN IDENTIFICATION OF MR. JAMES AS
4 A SUSPECT.

5 IT'S OUR POSITION THAT WITHOUT THAT
6 PARTICULAR IDENTIFICATION THAT, ONE, IT'S NOT RELEVANT
7 UNDER 352 AND THE 5TH AND 14TH AMENDMENTS; BUT, IN
8 ADDITION, BECAUSE OF THE SOURCE OF THAT IDENTIFICATION,
9 THE BASIS UPON WHICH THEY MADE THE IDENTIFICATION ALSO
10 VIOLATED HIS RIGHTS.

11 I POINT OUT THAT THE COURT INCORPORATED THE
12 CASE OF OCHOA AND A COUPLE OTHER CASES AT THE 402 HEARING
13 AND REINCORPORATED THAT IN THIS DECISION TO DENY THE
14 MOTION FOR A NEW TRIAL.

15 I WOULD POINT OUT IN ALL OF THOSE CASES, YOUR
16 HONOR, THAT THE WITNESSES THAT WERE ALLOWED TO TESTIFY AS
17 TO THE IDENTIFICATION ACTUALLY POINTED THE PERSON OUT IN
18 COURT AS A SUSPECT WHO PARTICIPATED IN THE CRIME. THAT'S
19 NOT THE CASE HERE.

20 I THINK THAT THAT'S A KEY DISTINCTION IN
21 UNDERSTANDING THAT THE TESTIMONY FROM MS. BARRAGAN,
22 MS. GONZALEZ AND MS. SAAVEDRA SHOULD NEVER HAVE BEEN
23 ADMITTED IN THIS CASE.

24 SO THAT'S THE FIRST ISSUE THAT I'M ASKING THE
25 COURT TO RECONSIDER; BUT AS IT RELATES TO MS. JARDINES
26 I'D ALSO POINT OUT TO THE COURT OUR POSITION WAS THERE
27 WAS A TAINT AS TO MS. JARDINES IN TERMS OF HER
28 IDENTIFICATION BOTH IN TERMS OF THE POLICE ACTIVITY OR

1 THE LAW ENFORCEMENT ACTIVITY IN THIS CASE, BUT MORE
2 IMPORTANTLY BY HER OWN TESTIMONY OR HER OWN STATEMENTS
3 PRIOR TO TRIAL.

4 SHE INDICATED THAT THE SOURCE OF THE
5 IDENTIFICATION OR THE POINTING MR. JAMES OUT AS A SUSPECT
6 VIA THE SIX-PACK, SHE BASED IT UPON WHAT SHE SAW IN THE
7 INTERNET AND NOT WHAT SHE SAW AT THE SCENE.

8 I KNOW SHE TESTIFIED DIFFERENTLY TO THAT AT
9 TRIAL. I'M NOT DEBATING THAT; BUT WHAT I'M CONCERNED
10 ABOUT IN THIS CASE AND THE BASIS UPON WHICH THE COURT
11 RULED WAS TO SAY THAT MS. SAAVEDRA, WHO WAS PRESENT
12 DURING THE INTERNET VIEWING, TESTIFIED CLEARLY AT TRIAL
13 THAT "MS. JARDINES WAS WITH US AT THE TIME, THE ONLY TIME
14 WE LOOKED AT THE INTERNET AND SAW THE PHOTOGRAPH OF
15 MR. JAMES."

16 THAT ALSO SHOWS THERE WAS NOT AN INDEPENDENT
17 SOURCE; AND THE CLEAR WEIGHT OF THE EVIDENCE WHICH SHOULD
18 HAVE BEEN DONE AT THE 402 HEARING WITH LIVE TESTIMONY
19 SHOWS THAT MS. JARDINES ALSO DID NOT HAVE AN INDEPENDENT
20 SOURCE.

21 THAT'S A SEPARATE ISSUE; BUT ALL FOUR OF THE
22 WITNESSES AS I HAVE DESCRIBED THEIR TESTIMONY SHOULD NOT
23 HAVE BEEN ADMITTED AT TRIAL FOR THE IDENTIFICATION.

24 IF THAT TESTIMONY WOULD HAVE BEEN EXCLUDED,
25 THE ONLY EVIDENCE THAT WOULD HAVE BEEN ADMITTED IN THIS
26 CASE RELATING TO EVIDENCE AGAINST MR. JAMES WOULD HAVE
27 BEEN DNA EVIDENCE THAT WAS FOUND IN A MASK, A MASK THAT
28 WAS NOT SHOWN TO BE THE MASK THAT WAS WORN BY ONE OF THE

1 PERPETRATORS; BUT EVEN IF IT WAS, IT HAD DNA OF TWO
2 INDIVIDUALS ON IT, MR. JAMES AND ANOTHER INDIVIDUAL, AND
3 THAT DOESN'T CONCLUSIVELY POINT TO HIM AS BEING THE
4 INDIVIDUAL WHO PARTICIPATED AND/OR USED THE MASK,
5 ASSUMING THAT MASK WAS THE ONE USED BY THE PERPETRATOR.

6 YOUR HONOR, IN LIGHT OF THE FACTUAL -- I
7 BELIEVE THAT A RE-REVIEW OF THE RECORDS I ASK THE COURT
8 TO RECONSIDER AND GRANT THE MOTION FOR NEW TRIAL BECAUSE
9 OF IMPROPER ADMISSION OF THE IDENTIFICATION EVIDENCE.

10 THERE WAS NEVER ONCE ASKED OF THREE WITNESSES
11 OUTSIDE OF MS. JARDINES "WAS THIS THE MAN" -- POINTING TO
12 MR. JAMES -- "WAS THIS THE MAN WHO WAS THE SUSPECT."

13 THEY NEVER SAID THAT; AND THE COURT CAN SEE
14 THAT PARTICULARLY THAT IT WAS ON DIRECT EXAMINATION THAT
15 MR. GOUDY WAS GIVEN PLENTY OF OPPORTUNITY TO ASK THAT
16 QUESTION AND NEVER ONCE DID.

17 SO THERE IS NO RELEVANCE TO ACTUALLY EVER
18 BRINGING IN THAT EVIDENCE, AND IT CERTAINLY VIOLATED HIS
19 DUE PROCESS RIGHTS.

20 THE COURT: THANK YOU, MR. EVANS.

21 MR. GOUDY.

22 MR. GOUDY: ONE, I THINK MR. EVANS IS REWRITING
23 HISTORY A LITTLE BIT BECAUSE AS I READ THE TRANSCRIPT OF
24 HIS INITIAL MOTION, THE 402, THE ONLY PERSON HE WANTED TO
25 CALL WAS NANCY JARDINES. THAT'S THE ONLY PERSON HE
26 OBJECTED TO TESTIFYING ABOUT THE PHOTO LINE-UP BECAUSE
27 SHE PICKED OUT MR. JAMES.

28 NOW AFTER TRIAL HE'S SAYING HEY, THAT PHOTO

1 I.D., WE SHOULDN'T HAVE HAD MS. GONZALEZ TESTIFY ABOUT
2 IT; WE SHOULDN'T HAVE HAD MS. SAAVEDRA TESTIFY ABOUT IT;
3 AND EVEN THOUGH MS. BARRAGAN'S TESTIMONY WASN'T INCLUDED
4 IN THE TRANSCRIPT I'M ASSUMING -- I KNOW SHE WAS SHOWN
5 THOSE PHOTOGRAPHS AS WELL.

6 THEY NEVER PICKED THE DEFENDANT OUT AS BEING
7 IN THE HOUSE. HOW IS THAT WE SAW THE PHOTOGRAPH AND
8 THAT'S THE PHOTOGRAPH WE PICKED OUT IN THE INTERNET, HOW
9 DOES THAT IN ANY WAY TAINT THE CONVICTION, WHICH IS
10 BASICALLY WHAT HE'S SAYING?

11 THEY NEVER SAID "HEY, THAT GUY IS THE GUY. I
12 SAW HIM IN THE HOUSE; AND, YEAH, WHEN I SAW HIM ON THE
13 INTERNET THAT REFRESHED MY RECOLLECTION" OR WHATEVER.

14 THEY NEVER IDENTIFIED HIM AS BEING THE
15 PERPETRATOR; BUT HE'S SAYING THAT BY THE FACT THAT THEY
16 IDENTIFIED SEEING HIS PHOTOGRAPH ON THE INTERNET AND THEN
17 PICKING IT OUT OF A SIX-PACK THAT SOMEHOW HIS DUE PROCESS
18 WAS DENIED.

19 THAT SIX-PACK WAS GOING TO COME IN ANYWAY;
20 AND THE FACT THAT THE PHOTOGRAPH WAS ON THE INTERNET WAS
21 GOING TO COME IN ANYWAY BECAUSE MS. JARDINES WAS GOING TO
22 TESTIFY AND THEY WERE GOING TO ASK HER "DIDN'T YOU SEE
23 THIS;" AND THAT WAS THEIR OWN IMPEACHMENT.

24 "YOU SAW THIS ON THE INTERNET." MS. JARDINES
25 SAID "I DID NOT." SHE'S TOLD THAT TO DETECTIVE CHISM.
26 SHE TESTIFIED UNDER OATH.

27 WE DON'T HAVE MS. JARDINES' TRANSCRIPT
28 EITHER; BUT SHE SAID AT TRIAL "I NEVER SAW THAT

1 PHOTOGRAPH BEFORE I PICKED IT OUT IN THE SIX-PACK."

2 I THINK IT'S AT PAGE 14, LINE 17 THROUGH 24,
3 IN HIS MOTION, WHICH WE HAVE THE TRANSCRIPT.

4 ALL HE SAYS IS "THAT'S WHY WE NEED
5 MS. JARDINES HERE."

6 THAT'S ALL HE CARED ABOUT IN HIS MOTION. THE
7 MOTION ONLY WENT TO HER, DIDN'T GO TO THE OTHER
8 DEFENDANTS; AND NOW HE'S SAYING I OBJECTED TO THIS --

9 THE COURT: YOU MEAN OTHER WITNESSES.

10 MR. GOUDY: I'M SORRY. THE OTHER WITNESSES.

11 I OBJECTED TO THEM TESTIFYING ABOUT THAT.
12 THAT IS NOT TRUE.

13 HIS MOTION NEVER SAID "I DON'T WANT THE OTHER
14 INDIVIDUALS TESTIFYING ABOUT THAT" BECAUSE HE KNEW THEY
15 WERE GOING TO SAY IT WAS BASED UPON WHAT I SAW IN THE
16 INTERNET.

17 NEVER ASKED THEM IF MR. JAMES WAS A PERSON IN
18 THE HOUSE. THEY NEVER TESTIFIED TO THAT.

19 SOMEONE WHO DOESN'T MAKE AN I.D. OF HIM, I
20 DON'T KNOW HOW THAT IN ANY WAY VIOLATES HIS DUE PROCESS,
21 BUT THAT'S WHAT THE DEFENSE IS CLAIMING.

22 SO THE MOTION TO DENY -- WELL, THE RULING TO
23 DENY THE MOTION, THE 402 MOTION, WAS PROPER.

24 IT ONLY WENT TO MS. JARDINES. SHE SAID "I
25 DIDN'T SEE THE PHOTOGRAPH." THAT'S WHAT SHE TOLD
26 DETECTIVE CHISM; THAT'S WHAT SHE'S TESTIFIED TO; AND
27 THAT'S WHAT THE JURY HEARD; AND THE JURY HEARD THE
28 IMPEACHMENT.

1 THE INVESTIGATOR SAID SHE TOLD HIM SOMETHING
2 ELSE.

3 THERE HAS BEEN NO DUE PROCESS VIOLATION HERE.

4 THE ONLY PERSON WHO I.D.'D THE DEFENDANT
5 BEING IN THE HOUSE BASED UPON THAT SIX-PACK SAID "I
6 DIDN'T SEE THE INTERNET PHOTO FIRST."

7 THEY HAD ALL THE IMPEACHMENT THAT THEY WANTED
8 TO BRING UP THAT WAS A VALID I.D.

9 THE COURT MADE THE PROPER RULING IN ALLOWING
10 HER TO TESTIFY TO THE I.D.

11 IF SHE HAD BEEN CALLED LIKE THEY SAID IN THE
12 402, JUST AS SHE SAID AT TRIAL, SHE WOULD HAVE TESTIFIED
13 "I DIDN'T SEE THAT PHOTOGRAPH BEFORE I PICKED HIS
14 PHOTO -- I DIDN'T SEE THE INTERNET PHOTOGRAPH BEFORE I
15 PICKED HIS PHOTOGRAPH OUT OF THE SIX-PACK."

16 THAT'S WHAT WE WOULD HAVE HEARD AT THE 402.

17 THERE WAS NO REASON TO DO THAT. IT WASN'T
18 GOING TO EXCLUDE THAT I.D. BECAUSE SHE MADE THE STATEMENT
19 TO DETECTIVE CHISM FIRST, AND THAT WOULD HAVE COME IN
20 UNDER A PRIOR INCONSISTENT STATEMENT IF SHE HAD TESTIFIED
21 AS THE DEFENSE HAD HOPED.

22 THERE WAS NO IMPROPER RULING BEFORE THE
23 TRIAL.

24 THE COURT MADE THE PROPER RULING AT DENYING
25 THE MOTION FOR A NEW TRIAL, AND NOW THAT WE'RE AT THE
26 THIRD TIME ARGUING THIS ISSUE THE SAME RESULT SHOULD BE
27 APPLIED.

28 THE COURT: THANK YOU, MR. GOUDY.

1 DID YOU WANT TO RESPOND, MR. EVANS?

2 MR. EVANS: BRIEFLY. YOUR HONOR, FIRST AND
3 FOREMOST I BELIEVE MR. GOUDY IS MISTAKEN.

4 I DID ASK FOR THE SUPPRESSION OF ALL
5 IDENTIFICATION EVIDENCE ON THE BASIS OF A TAINT AND UNDER
6 352.

7 I WANT TO POINT OUT SOMETHING THAT IS VERY
8 INTERESTING, AND IT'S INTERESTING THAT MR. GOUDY MAKES
9 THIS ARGUMENT.

10 HE'S IN ESSENCE SAYING THAT THE
11 IDENTIFICATION BY THE THREE WITNESSES OUTSIDE OF
12 MS. JARDINES WAS COMPLETELY IRRELEVANT. WHY DID HE BRING
13 IT IN ON DIRECT EXAMINATION, AND TO SHOW HOW IMPACTFUL
14 THAT INFORMATION WAS AND THAT TESTIMONY WAS, AND HOW I
15 OBJECTED STRENUOUSLY TO IT COMING IN?

16 YOUR HONOR, YOU HAVE SAT THROUGH MORE TRIALS
17 THAN I WILL HAVE EVER CONDUCTED IN MY CAREER.

18 THE COURT: I'M NOT SURE THAT'S TRUE.

19 MR. EVANS: I THINK THAT IS TRUE.

20 AND AT THE END OF THE CASE IN THE NOTES THAT
21 YOU TOOK YOU BELIEVED THAT THESE INDIVIDUALS, THOSE TWO
22 WITNESSES MS. GONZALEZ AND MS. SAAVEDRA ACTUALLY
23 IDENTIFIED MR. JAMES IN COURT.

24 I DON'T DOUBT YOUR NOTES. IT SHOWS THE
25 IMPACT OF THE PEOPLE'S TRIAL STRATEGY; AND WHEN YOU LOOK
26 AT IT IT EVEN FOOLED YOU.

27 IMAGINE TWELVE JURORS DO NOT HAVE THE
28 EXPERIENCE, THE TRAINING, THAT YOU HAVE AND THE THINGS

1 THAT YOU'VE SEEN BOTH SITTING HERE AS A PARTICIPANT WHO
2 HAS TRIED CASES AND AS A JUDGE.

3 YOU WERE ALSO FOOLED. EVEN IT WAS IN YOUR
4 NOTES, BUT THAT CLEARLY WASN'T THE CASE BECAUSE I'VE
5 SHOWN YOU THE TRANSCRIPT.

6 THAT IMPACT ALONE SHOULD PERSUADE THE COURT
7 THAT MR. JAMES' DUE PROCESS RIGHTS WERE VIOLATED HERE.

8 I SUBMIT.

9 THE COURT: ALL RIGHT. THANK YOU, MR. EVANS.

10 WHETHER OR NOT THERE WAS AN IN COURT
11 IDENTIFICATION OR DISCUSSION OF FEATURES BEING SIMILAR OR
12 NOT BY THE WITNESSES WHO DID TESTIFY, I THINK MY RULING
13 HAS BEEN CONSISTENT AND CLEAR THAT THE ISSUES RAISED BY
14 THE DEFENSE GO TO WEIGHT AND NOT ADMISSIBILITY.

15 SO FOR THAT REASON I AM GOING TO DENY AGAIN
16 THE MOTION FOR A NEW TRIAL, AND I WILL AGAIN -- I'VE SAID
17 SEVERAL FINDINGS. I'LL NOT GOING TO REPEAT THEM, BUT I
18 WILL CERTAINLY INCORPORATE THEM INTO MY RULING TODAY.

19 SO WHAT MY FINDINGS ARE ARE CLEAR, AND THAT
20 WILL BE MY RULING THAT THE MOTION FOR A NEW TRIAL IS
21 DENIED.

22 BEFORE WE BEGIN SENTENCING, MR. JAMES, YOU DO
23 HAVE A RIGHT TO ADDRESS THE COURT. YOU DON'T HAVE TO IF
24 YOU DON'T WANT TO, BUT IT'S YOUR RIGHT TO DO SO IF YOU
25 WISH. IF YOU'D LIKE TO ADDRESS THE COURT YOU MAY. IT'S
26 UP TO YOU.

27 YOU CAN TAKE A MOMENT AND TALK TO YOUR
28 LAWYER.

1 (DISCUSSION HELD OFF THE RECORD.)

2 DEFENDANT JAMES: THERE IS SOMETHING I WANT TO SAY,
3 YOUR HONOR.

4 IN THE BEGINNING OF THIS TRIAL WHEN I WAS
5 OFFERED TIME TO A DEAL PER SE 15 YEARS OPPOSED TO GOING
6 TO TRIAL, I ELECTED NOT TO TAKE THE DEAL BECAUSE I WAS
7 UNDER THE IMPRESSION THAT THE INFORMATION THAT WAS
8 PROVIDED TO ME, THE INFORMATION THAT WAS PROVIDED TO MY
9 LAWYER, THE EVIDENCE THROUGH DISCOVERY, THROUGH THE PRIOR
10 TESTIMONY PRIOR TO THAT, THAT'S WHAT I WOULD BE UP
11 AGAINST.

12 I WAS LED TO BELIEVE THAT -- FROM ALL THE
13 INFORMATION THAT WAS GIVEN TO ME I WAS LED TO BELIEVE
14 THAT THERE WAS ONE PERSON THAT SAID I WAS A PARTICIPANT
15 IN THIS CRIME. THAT'S WHAT I WAS LED TO BELIEVE AND I
16 FELT THAT'S WHAT I WAS GOING UP AGAINST. THAT'S WHY I
17 PUT MY LIFE ON THE LINE.

18 MY ATTORNEY TOLD ME THAT I WAS BEFORE A FAIR
19 JUDGE, THAT I COULDN'T BE BEFORE A BETTER JUDGE THE
20 COURTROOM THAT I WAS GOING TO HAVE MY TRIAL IN, AND I
21 BELIEVED HIM AND I BELIEVED IN EVERY ARGUMENT THAT HE'S
22 PUT BEFORE THE COURT.

23 THE COURT: I'LL TELL YOU HE HAS ADVOCATED
24 VIGOROUSLY AND AGGRESSIVELY ON YOUR BEHALF.

25 DEFENDANT JAMES: I CAN'T TAKE NOTHING FROM MY
26 ATTORNEY.

27 YOUR HONOR, I'VE SAT THROUGH THE TRIAL AND I
28 REMAINED CORDIAL AND RESPECTFUL THROUGH THE PROCEEDINGS;

1 BUT I JUST FEEL THAT TO ALLOW THREE PEOPLE TO COME IN IN
2 FRONT OF THE JURY AND POINT AT ME THREE TIMES EACH AND
3 NONE OF THEM SAYING I'M THE MAN THAT COMMITTED THE CRIME,
4 NONE OF THEM SAYING I DID ANYTHING TO THEM, THEY'RE
5 ALLOWED TO POINT AT ME AND POINT AT ME IN FRONT OF THE
6 JURY, I DON'T FEEL IT WAS FAIR; AND JUST THROUGH MY
7 LIMITED LEGAL -- THE CHANCES I'VE HAD WITH LEGAL JARGON I
8 SHOULD SAY IT DIDN'T PROVE ANYTHING.

9 I DON'T BELIEVE IT WAS PROBATIVE OF ANYTHING.
10 I DON'T BELIEVE IT TENDED TO PROVE ANYTHING "YES, THAT'S
11 THE GUY I SEE IN THE COURTROOM."

12 I FEEL LIKE IT WAS OVERWHELMING AND THERE WAS
13 NO POSSIBLE CHANCE FOR ME TO WIN.

14 NO ONE CAN WIN UNDER THOSE TYPE OF ORDERS;
15 AND THE COURT SEEN FIT FOR REASONS THE COURT GAVE -- I'M
16 GOING TO SIT HERE AND ACCEPT WHAT THE COURT IS GOING TO
17 ISSUE OUT TO ME AS I'VE SAT HERE AND ACCEPTED WHAT WENT
18 ON UP THERE ON THAT STAND.

19 I JUST FEEL IT'S -- NUMBER ONE THING, I
20 DIDN'T HAVE NOTHING TO DO WITH THIS CRIME, NOTHING. I
21 HAD NOTHING TO DO WITH IT WHATSOEVER; AND I FEEL IF I WAS
22 ABLE TO GO UP AGAINST THE PERSON WHO PLACED ME AT THE
23 SCENE OF THE CRIME, THE PERSON WHO IS SAYING I DID
24 SOMETHING ALONE, THAT PERSON'S TESTIMONY THAT ONE PERSON
25 POINTING AT ME ALONE, YOUR HONOR, I FEEL I WOULD HAVE HAD
26 A BETTER CHANCE.

27 THE COURT AND MR. GOUDY FEEL THAT IT WAS FAIR
28 THAT THREE EXTRA PEOPLE CAN COME IN AND POINT AT ME WITH

1 NO BASIS OTHER THAN THE FACT THAT THEY SEEN ME ON THE
2 INTERNET.

3 THERE IS NOTHING I CAN DO ABOUT IT. THERE IS
4 NOTHING I CAN DO.

5 ABSENT THE INTERNET PHOTOGRAPH I WOULDN'T
6 HAVE THREE EXTRA PEOPLE WOULDN'T BE ABLE TO POINT AT ME
7 IN COURT; AND I FEEL, YOUR HONOR, YOU SAID THAT THOSE
8 THREE PEOPLE SAID THAT I WAS THE MAN IN THE MASK AND AS
9 MY LAWYER SAID YOU FELT THAT WAY.

10 I DIDN'T STAND A CHANCE IN FRONT OF 12
11 PEOPLE. OF COURSE THEY FELT THE SAME WAY.

12 I'VE READ THE TRANSCRIPT OVER AND OVER
13 LOOKING FOR IT BECAUSE THE JUDGE SAID THAT'S WHAT THEY
14 SAID, AND IT DIDN'T EXIST.

15 SO IF YOU WERE PERSUADED TO BELIEVE IT, I
16 DIDN'T STAND A CHANCE BECAUSE TWELVE PEOPLE THAT DON'T
17 KNOW HOW TO -- THAT'S ALL.

18 IF THAT'S FAIR, IT'S FAIR, BUT WITH THAT --
19 THAT'S IT, YOUR HONOR.

20 THE COURT: OKAY. THANK YOU, MR. JAMES.

21 MR. EVANS, DID YOU WANT TO ADDRESS SENTENCING
22 OTHER THAN SOMETHING THAT'S IN YOUR POSITION PAPERS?

23 MR. EVANS: I'M ASKING THE COURT TO -- ONE THING I
24 DIDN'T INCLUDE.

25 I ASK THE COURT TO IMPOSE THE SENTENCE I
26 BELIEVE OF 17 YEARS BECAUSE I BELIEVED THAT WAS THE LOW
27 TERM OR THE LEAST THE COURT COULD IMPOSE. I WAS
28 INCORRECT.

1 THERE IS A FIVE YEAR PRIOR WHICH WOULD MAKE
2 IT 22. SO THAT'S WHAT I'M ASKING THE COURT TO IMPOSE,
3 THE LEAST AMOUNT OF TIME IN THIS CASE.

4 IN ADDITION TO WHAT I'VE CITED IN MY PAPERS I
5 WOULD ALSO LIKE TO POINT OUT THAT THE CO-DEFENDANT IN
6 THIS CASE, HE -- WHY IS HIS NAME ESCAPING ME AT THIS
7 POINT?

8 MR. GOUDY: HAWKINS.

9 MR. EVANS: MR. HAWKINS. THANK YOU, MR. GOUDY.

10 MR. HAWKINS RECEIVED A SENTENCE OF 30 YEARS
11 IN THIS CASE; AND IT'S CLEAR FROM THE TESTIMONY THAT THE
12 COURT HEARD IN THIS CASE THAT MR. HAWKINS WAS THE LEADER,
13 THE HEAVY IN THIS CASE. HE WAS CERTAINLY THE MOST
14 RESPONSIBLE, ACTED THE MOST EGREGIOUSLY IN THIS CASE.

15 IF THE COURT IS GOING TO IMPOSE SENTENCE OF
16 MORE THAN 22 YEARS, I ASK THE COURT TO IMPOSE ONE
17 CERTAINLY OF LESS THAN 30 YEARS BECAUSE MR. JAMES'
18 INVOLVEMENT PER THE JURY FINDINGS WAS LESSER THAN THAT OF
19 MR. HAWKINS; AND I WOULD SUBMIT ON THAT GROUND.

20 I HAVE HIS ACTUAL CUSTODY CALCULATIONS FOR
21 THE COURT, BUT I'LL RESERVE THAT. IT'S 538 ACTUAL DAYS.

22 MR. GOUDY: BASED ON MY CALCULATIONS IT'S 80 GOOD
23 TIME/WORK TIME AT 15% FOR A TOTAL OF 618.

24 THE COURT: OKAY. DID YOU WANT TO ADDRESS THE
25 COURT, MR. GOUDY?

26 MR. GOUDY: JUST BRIEFLY, YOUR HONOR.

27 SINCE WE'VE ALREADY ARGUED THE WHOLE -- I
28 KNOW WHAT WE THINK THE SENTENCE SHOULD BE AND I KNOW THE

1 COURT DISAGREES WITH MY 71 YEARS REQUEST; BUT IN REGARD
2 TO THIS PARTICULAR CASE, COMPARING THE DEFENDANT TO
3 MR. HAWKINS, ONE, IS I THINK UNFAIR AND INAPPROPRIATE.

4 MR. HAWKINS DID ADMIT WHAT HE DID WAS WRONG.
5 HE PLED GUILTY; AND MR. JAMES STILL SHOWS NO REMORSE,
6 DOESN'T ACCEPT RESPONSIBILITY FOR WHAT HE DID, AND THAT
7 DOES MAKE IT A DIFFERENCE.

8 AND IN REGARD AT LEAST TO THE 15 YEARS THAT
9 WAS OFFERED, THAT WAS ACTUALLY NEVER OFFERED. THAT WAS
10 BROUGHT UP BEFORE; AND I KNOW THE COURT KNOWS THAT
11 DOESN'T PLAY A PART IN IT, BUT THE OFFER HAD BEEN 20.

12 I TOLD MR. EVANS IF MR. JAMES WOULD ACCEPT
13 15, I WOULD TAKE THAT TO MY BOSS BECAUSE I HAVE TO GET
14 APPROVAL FOR A DISPOSITION, AND THAT WAS NEVER A COUNTER
15 OFFER. SO IT WAS ONLY PRESENTED THAT WAY. IT WAS NEVER
16 OFFERED TO MR. JAMES. SO THAT IS INACCURATE.

17 WE CAN'T COMPARE THE TWO DEFENDANTS EVEN
18 THOUGH I DON'T THINK MR. JAMES NECESSARILY -- MR. HAWKINS
19 WAS NECESSARILY THE HEAVIER. IT WAS JUST BETTER EVIDENCE
20 AGAINST HIM. HE WASN'T WEARING A MASK.

21 BASED UPON THE EVIDENCE THAT WAS PRESENTED,
22 THE WITNESSES SAID THE GUY WITH THE MASK WHO WAS TELLING
23 FELICITAS GONZALEZ "DO WHAT I SAY OR WE'RE GOING TO KILL
24 YOUR SIX-YEAR-OLD GRANDSON" -- THOSE WEREN'T HIS EXACT
25 WORDS -- BUT HIS COHORT, ONE OF THE THEM HAD THE SIX YEAR
26 OLD LIFTED UP OFF THE GROUND AND POINTING THE GUN AT HIS
27 HEAD.

28 NEITHER ONE OF THOSE PERSONS WAS MR. HAWKINS.

1 WE KNOW THAT. SO TO SAY MR. HAWKINS WAS THE HEAVY IS
2 INACCURATE.

3 THE PERSON IN THE MASK THREATENING THE
4 GRANDMOTHER WITH THE DEATH OF HER GRANDSON, LIFTING UP
5 THE GRANDSON AND POINTING THE GUN AT HIS HEAD, THOSE ARE
6 THE PEOPLE; AND THE DEFENDANT BASED UPON THE EVIDENCE WAS
7 ONE OF THOSE GUYS BECAUSE THOSE WERE THE TWO
8 AFRICAN-AMERICANS IN MASKS.

9 SO TO SAY MR. HAWKINS IS THE HEAVY IS NOT
10 CORRECT. THE CASE WAS JUST A LITTLE BETTER AGAINST HIM
11 BECAUSE HE CONFESSED.

12 SO THE PEOPLE STILL THINK THAT FACT ALONE
13 WARRANTS EVERY POSSIBLE DAY THAT HE CAN GET WITH HIS
14 RECORD, WITH THE ACT OF THESE CRIMES, WITH WHAT HAPPENED
15 IN THAT HOUSE AND EVERYTHING IN HIS PAST, THE FACT WE HAD
16 TO BRING HIM OUT FROM PRISON FROM ARIZONA.

17 HE WASN'T EVEN CHARGED AS A PRISON PRIOR. IN
18 FACT, HIS OTHER PRISON SENTENCE WASN'T ALLEGED AS A
19 PRISON PRIOR.

20 WITH EVERYTHING WE KNOW IT WAS A HEINOUS
21 CRIME AND HE DESERVES EVERY DAY HE CAN GET.

22 THE COURT: DID YOU WANT TO RESPOND?

23 MR. EVANS: I ALSO INVITE THE COURT TO GO BACK TO
24 THE TRANSCRIPT. IT'S WEARING ME OUT IN THIS CASE TO HAVE
25 TO TALK ABOUT THIS. MR. GOUDY, I GAVE YOU A COPY OF THE
26 TRANSCRIPT.

27 FELICITAS GONZALEZ SPOKE TO ONE INDIVIDUAL
28 DURING THE COMMISSION OF THAT CRIME. THAT INDIVIDUAL WAS

1 A SPANISH SPEAKING PERPETRATOR. SHE NEVER SPOKE TO AND
2 NEVER UNDERSTOOD THE INDIVIDUAL. THE PERSON WHO WAS
3 MAKING THE THREATS WAS A SPANISH SPEAKING PERSON.

4 THERE IS NO DEFINITIVE PROOF THAT IT WAS
5 MR. JAMES OR THE PERSON THAT THE JURY IDENTIFIED AND
6 CONVICTED MR. JAMES AS BEING THE PERSON WHO DID THAT. I
7 CAN'T EMPHASIZE THAT ENOUGH.

8 SECONDLY, IF MR. GOUDY IS STATING HERE THAT
9 MR. HAWKINS CAME BEFORE THE COURT IN POMONA, THREW
10 HIMSELF DOWN AND SAID "I AM SORRY AND I TAKE FULL
11 RESPONSIBILITY FOR THAT;" PLEASE, I ASK TO INCORPORATE
12 THAT SENTENCING HEARING AND MR. HAWKINS' STATEMENT INTO
13 THE RECORD FOR MR. JAMES BECAUSE I DO NOT BELIEVE THAT
14 THAT WAS THE CASE.

15 THERE IS NO DISTINGUISHING CHARACTERISTICS
16 BETWEEN MR. JAMES AND MR. HAWKINS OTHER THAN MR. JAMES
17 WAS NOT AS INVOLVED AND NOT THE HEAVY LIKE MR. HAWKINS IS
18 IS. HE DESERVES LESS TIME.

19 I SUBMIT.

20 THE COURT: BOTH SIDES SUBMIT?

21 MR. EVANS: YES.

22 MR. GOUDY: PEOPLE WILL SUBMIT, ALTHOUGH -- I'LL
23 LET IT GO.

24 THE COURT: ALL RIGHT. NO LEGAL CAUSE WHY JUDGMENT
25 SHOULD NOT NOW BE PRONOUNCED?

26 MR. EVANS: NONE.

27 THE COURT: YOU KNOW, MR. JAMES, I READ THE LETTER
28 FROM YOUR MOTHER, AND SHE'S SITTING HERE AND SHE'S QUITE

1 EMOTIONAL; AND WHAT'S DIFFICULT FOR ME TO UNDERSTAND IN
2 LOOKING AT SENTENCING YOU IS WITH HAVING THE LOVE AND
3 SUPPORT FROM YOUR FAMILY, THAT IS SO DIFFERENT FROM THE
4 INDIVIDUAL THAT I SEE IN THE PROBATION REPORT AND THE
5 AMOUNT OF CRIMES YOU'VE COMMITTED AND THE TYPE OF CRIMES
6 YOU'VE COMMITTED OVER THE YEARS.

7 SO IN REPREPARING FOR THIS CASE AS I DID FOR
8 TODAY'S PROCEEDINGS AND GOING OVER THE PROBATION REPORT,
9 WHICH CARRIES A LOT OF WEIGHT WITH THE COURT, I
10 REEVALUATED WHAT I WAS GOING TO SENTENCE YOU TO; AND I
11 HAVE TO SAY THAT MY DECISION IS I'M GOING TO SENTENCE YOU
12 TO THE MAXIMUM, TO THE 71 YEARS IN STATE PRISON.

13 THAT IS NOT BASED UPON YOUR COMPARISON TO
14 MR. HAWKINS, AND I WILL LIST ALL MY REASONS WHY.

15 MY CONCERN IS YOU AS A PERSON AS IT RELATES
16 TO YOUR PRIOR CRIMINAL CONDUCT.

17 THERE ARE VERY LITTLE PERIODS OF TIME WHEN
18 YOU WERE OUT OF CUSTODY CRIME FREE AND NOT UNDER SOME
19 SORT OF COURT GRANT OF SUPERVISION.

20 SO THE COURT DOES SELECT THE HIGH TERM TO
21 COUNT SEVEN AS THE BASE TERM FOR THIS COUNT, AND UNDER
22 THE RULES OF COURT 4.421(A)(8) THE CIRCUMSTANCES AND
23 FACTS OF THE CRIME INDICATE A PLANNING AND
24 SOPHISTICATION.

25 SPECIFICALLY GOING INTO A LOCATION KNOWING
26 THERE WAS A LOCATION, COMING IN WITH MASKS AND GUNS,
27 TAKING EVERYONE INTO A ROOM AND HAVING THEM GO DOWN AND
28 SEARCHING THE LOCATION INDICATES A HIGH DEGREE OF

1 PLANNING AND SOPHISTICATION IN THE COURT'S MIND.

2 WITH REGARD TO THE CONSECUTIVE IMPOSEMENT
3 OF -- I'M NOT SURE THAT'S THE WORD -- REGARDING IMPOSING
4 CONSECUTIVE TIME TO COUNT SEVEN AS A BASE TERM FOR THIS
5 COUNT, THE COURT FINDS THREE BASES.

6 UNDER 4.421(B) (1) THE CRIME INVOLVES VIOLENT
7 CONDUCT INDICATING A SERIOUS DANGER TO SOCIETY.

8 I DON'T THINK ANYONE WOULD ARGUE THAT WHOEVER
9 COMMITTED THIS CRIME -- I KNOW YOU'RE SAYING IT'S NOT
10 YOU -- EXHIBITED VIOLENT CONDUCT IN THE COURSE OF THIS
11 CRIME.

12 THE REASON WHY YOU ARE GETTING CONSECUTIVE
13 SENTENCES AND HIGH TERM AND THE 71 YEARS -- PUTTING ASIDE
14 WHAT MR. GOUDY HAS ARGUED -- IS THAT UNDER 4.421(B) (2)
15 YOUR HISTORY OF VIOLENT CONDUCT IS INCREASING IN
16 SERIOUSNESS AND THE TIME YOU HAVE DONE IN JUVENILE
17 FACILITIES, AND I'LL OUTLINE THAT, THE TIME IN STATE
18 PRISON IN MULTIPLE STATES HAS NOT IMPOSED UPON YOU THE
19 NEED TO CHANGE YOUR CONDUCT.

20 SO AT THIS POINT THE COURT FEELS THAT THE
21 DANGER TO THE PUBLIC SAFETY CONCERN ARE PARAMOUNT AT
22 THIS PARTICULAR TIME BECAUSE THERE IS NOTHING TO INDICATE
23 THAT OTHERWISE YOU WOULD LEAD A LAW-ABIDING LIFE.

24 GOING OVER YOUR COURSE OF CONDUCT IN YOUR
25 JUVENILE LIFE, IN 1989 YOU HAD THREE SEPARATE -- NO, YOU
26 HAD TWO IMPOSEMENTS -- THAT'S NOT A WORD.

27 YOU HAD TWO DIFFERENT TIMES WHERE YOU WENT TO
28 CAMP. YOU WENT TO CAMP IN 1989 FOR A 459 BURGLARY AND A

1 10851, AND YOU HAD A SECOND TERM IN CAMP FOR ANOTHER 459.

2 IN 1990 YOU CAME OUT OF CAMP AND YOU HAD TWO
3 COUNTS OF ROBBERY, ONE COUNT OF GRAND THEFT CARGO AND ONE
4 COUNT OF 10851 FOR WHICH YOU WENT TO C.Y.A.

5 ALTHOUGH THE TERM WAS SUPPOSED TO BE 12
6 YEARS, YOU WERE RELEASED FAIRLY SOON AFTER BECAUSE OF
7 YOUR ADULT STATUS; AND IN 1993 YOU COMMITTED A VOLUNTARY
8 MANSLAUGHTER FOR WHICH YOU GOT PROBATION FOR WITH SOMEONE
9 BEING DEAD; AND THEN 2001 YOU COMMITTED A 459 FOR WHICH
10 YOU WENT TO STATE PRISON.

11 2001 THERE WAS ANOTHER 459 WHICH YOU WENT TO
12 STATE PRISON; AND THEN 2007 THERE WAS CRIMINAL
13 IMPERSONATION FOR WHICH YOU WENT TO STATE PRISON IN
14 ARIZONA.

15 AND I KNOW IN SOME OF THE 459S IN YOUR ADULT
16 HISTORY THOSE WERE ALSO JURY TRIALS ALSO MAINTAINING YOUR
17 INNOCENCE; AND HERE WE ARE NOW LOOKING AT A HOME INVASION
18 ROBBERY WITH THE USE OF FIREARMS AND MULTIPLE VICTIMS;
19 AND AT THIS POINT THE COURT FINDS YOU TO BE A DANGER TO
20 THE PUBLIC FOR THE REASONS THAT I'VE STATED.

21 THEN UNDER 4.42(B)(3) YOU SERVED MULTIPLE
22 PRIOR PRISON TERMS.

23 IT IS ON THAT BASIS THAT YOU'RE GETTING THE
24 SENTENCE, NOT AS IT RELATES NECESSARILY TO MR. HAWKINS.

25 I HAVE NO IDEA WHAT MR. HAWKINS CRIMINAL
26 HISTORY WAS. I WAS NOT THE BENCH OFFICER THERE AND THE
27 COURT IS NOT CONSIDERING THAT IN THIS PARTICULAR CASE.

28 WITH REGARD TO COUNT ONE THE COURT IMPOSES

1 A -- COUNT SEVEN, THE PRINCIPAL TERM, THE COURT IMPOSES
2 29 YEARS TOTAL; 18 YEARS, WHICH IS THE HIGH TERM DOUBLED,
3 PLUS TEN YEARS FOR THE GUN ENHANCEMENT PURSUANT TO PENAL
4 CODE SECTION 12022.53(D); PLUS AN ADDITIONAL
5 YEAR PURSUANT TO PENAL CODE SECTION 667.9.

6 AS TO COUNT SIX, THE COURT WILL IMPOSE SEVEN
7 YEARS EIGHT MONTHS CONSECUTIVE, FOUR YEARS WHICH IS
8 ONE-THIRD THE MID TERM DOUBLED, PLUS THREE AND ONE-THIRD
9 YEARS, WHICH IS ONE-THIRD OF PENAL CODE SECTION
10 12022.53(B) AND ONE-THIRD OF THE YEAR PURSUANT TO PENAL
11 CODE SECTION 12022.53(B), WHICH IS ONE-THIRD OF PENAL
12 CODE SECTION 667.9.

13 THEN IN COUNTS ONE THROUGH FOUR IT WOULD BE
14 FOUR YEARS, ONE-THIRD THE ONE YEAR DOUBLED, PLUS THREE
15 YEARS PURSUANT TO PENAL CODE SECTION 12022.53(B) FOR
16 SEVEN YEARS FOUR MONTHS FOR EACH COUNT CONSECUTIVE; WHICH
17 COMES TO A TOTAL OF 29 YEARS FOUR MONTHS, PLUS FIVE YEARS
18 FOR THE PRISON PRIOR IN PENAL CODE SECTION 667(A), FOR A
19 TOTAL OF 71 YEARS.

20 YOU WILL GET CREDIT FOR 538 ACTUAL PLUS 80
21 GOOD TIME AND WORK TIME FOR A TOTAL OF 618 DAYS.

22 I HAVE NO DOUBT THAT A NOTICE OF APPEAL WILL
23 BE FILED AND YOU WILL BE APPEALING MY FACTUAL FINDINGS ON
24 THE ISSUES, BUT I AM GOING TO ADVISE YOU OF YOUR APPEAL
25 RIGHT NONTHELESS.

26 IT IS MY DUTY TO ADVISE YOU OF YOUR RIGHT TO
27 APPEAL TO THE APPELLATE COURTS OF THE JUDGMENT OF THIS
28 COURT IN IMPOSING SENTENCE, AND UPON ANY SUCH APPEAL THE

1 APPELLATE COURTS WILL REVIEW THE ORDER OF THIS COURT.

2 IF YOU WANT TO APPEAL, YOU HAVE THE RIGHT TO
3 DIRECT YOUR TRIAL ATTORNEY TO FILE A NOTICE OF APPEAL ON
4 YOUR BEHALF.

5 HOWEVER, YOU ARE ADVISED THAT THE FILING OF
6 SUCH NOTICE OF APPEAL BY TRIAL COUNSEL DOES NOT
7 CONSTITUTE AN UNDERTAKING BY HIM TO REPRESENT YOU ON
8 APPEAL UNLESS EXPRESSLY SO STATED IN THE NOTICE OF
9 APPEAL.

10 THERE IS A 60 DAY TIME LIMIT WHICH EITHER YOU
11 OR YOUR TRIAL ATTORNEY ON YOUR BEHALF MUST ACT BY FILING
12 A WRITTEN NOTICE OF APPEAL. THE 60 DAYS STARTS TO RUN
13 FROM TODAY.

14 YOUR NOTICE OF APPEAL MUST BE FILED IN THIS
15 COURT AND NOT THE COURT OF APPEAL. YOUR NOTICE OF APPEAL
16 MUST CLEARLY SPECIFY THAT YOU ARE APPEALING, JUST WHAT IT
17 IS YOU ARE APPEALING FROM, WHETHER YOU ARE APPEALING FROM
18 THE WHOLE JUDGMENT OR JUST PART OF IT, AND YOUR NOTICE OF
19 YOUR APPEAL MUST BE SIGNED BY YOU OR YOUR ATTORNEY.

20 IF YOU APPEAL, YOU HAVE THE RIGHT AT NO COST
21 TO YOU TO A TRANSCRIPT AND RECORD OF THE TRIAL COURT
22 PROCEEDING AS PROVIDED BY THE CALIFORNIA RULES OF COURT.

23 IF YOU APPEAL AND YOU DON'T HAVE THE MONEY TO
24 HIRE A LAWYER, THE APPELLATE COURT WILL APPOINT A LAWYER
25 TO REPRESENT YOU ON APPEAL.

26 YOU ARE ENTITLED TO THE ASSISTANCE OF YOUR
27 TRIAL ATTORNEY IN PREPARING AND SUBMITTING A MOTION FOR
28 APPOINTMENT OF COUNSEL ON APPEAL.

1 IT IS YOUR OBLIGATION TO KEEP THE APPELLATE
2 COURT ADVISED OF YOUR CURRENT MAILING ADDRESS. THEY WILL
3 THEN BE IN TOUCH WITH YOU REGARDING ANY RIGHT YOU HAVE TO
4 A FREE LAWYER AFTER NOTICE OF APPEAL HAS BEEN FILED.

5 I ALSO HAVE TO IMPOSE SOME MANDATORY FINES
6 AND FEES, AND YOU WILL ALSO HAVE TO PROVIDE A DNA SAMPLE
7 AND PRINT IMPRESSIONS PURSUANT TO PENAL CODE 296 AND
8 296.1.

9 THERE IS A \$200 RESTITUTION FINE REQUIRED BY
10 LAW PURSUANT TO PENAL CODE 1202.4(B); A \$200
11 PAROLE REVOCATION FINE PURSUANT TO PENAL CODE 1202.45,
12 WHICH IS STAYED PENDING REVOCATION; AND A \$40 COURT
13 SECURITY FEE; AND A \$30 CRIMINAL ASSESSMENT FEE.

14 ANYTHING FURTHER BY EITHER SIDE?

15 MR. EVANS: NOTHING FURTHER.

16 MR. GOUDY: NO, YOUR HONOR.

17 THE COURT: THANK YOU. THAT WILL BE THE ORDER OF
18 THE COURT.

19
20 (PROCEEDINGS CONCLUDED.)
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