

1 VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION

4 APPEARANCES:

5 The Defendant with his counsel,
6 **DAVID SANDERS**, Deputy Public Defender;
7 **JOHN THOMAS**, Deputy District Attorney of
8 San Bernardino County representing the
9 state of California.

10 (Shawna Manning, Official Reporter, CSR No. 12827.)

11 -oOo-

12 THE COURT: Back on the record in the case of
13 People of the State of California versus John Henry
14 Yablonsky. There are matters we did not complete.
15 There are matters that don't concern the jury. I
16 should indicate Mr. Yablonsky's present before the
17 Court. He's with his attorney, Dave Sanders.
18 John Thomas is here for the People.

19 We were discussing a motion by Mr. Sanders on
20 behalf of Mr. Yablonsky to allow admission of alleged
21 prior acts of a criminal sexual nature. We discussed
22 the circumstances of an alleged rape occurring in 1981.
23 We got to the point discussing a second alleged rape
24 occurring in 1996. At that time there was a phone call
25 or text that Mr. Sanders had to take care of something,
26 and we terminated our hearing.

27 MR. THOMAS: Then I also found a case that
28 I'd like the Court to review.

1 THE COURT: I will do that, and I
2 appreciate -- I do appreciate anybody getting me any
3 authority. I will read the authority that you provide
4 to me. What I'd like to do, for my own organizational
5 purposes, so I can keep the eggs in the proper basket,
6 is I'd like to hear about this 1996 rape.

7 MR. SANDERS: Your Honor --

8 THE COURT: You gave me the first description
9 of what happened with the 1981, so, Mr. Sanders, why
10 don't you tell me what you have to say about the 1996
11 alleged rape?

12 MR. SANDERS: Yes, your Honor. This was a
13 situation -- basically a domestic situation. My
14 client was living with a woman, and they got into a
15 situation where my client decided it would be better
16 to not live with her any longer. It was a situation
17 where there was all kinds of problems developing in
18 the relationship and at one point the young lady
19 invited my client to come over. My client came over,
20 they had sex, and my client began to move out.

21 Then he was approached by police officers who
22 said that she had indicated she had been raped rather
23 than having consensual sex, and the -- a short time
24 after that, the district attorney in Los Angeles county
25 determined not to file charges, not to proceed with the
26 case, and my client, a short time later, was given a
27 restraining order that that young lady could not
28 continue to bother him and harass him.

1 My point is that not only was it not a -- not a
2 rape, but even if it had been, even if it was as the
3 young lady said, there's no similarities. There's no
4 connections that could be drawn to any evidence in the
5 instant case. There's no -- there's no similar
6 circumstances. There's no similar approach or --
7 there's no evidence that any of the things that the lady
8 in Long Beach alleged were at all similar to something
9 that happened in 1985 even if what she said was true.

10 You know how district attorneys are. They're
11 pretty dogged about these things. In that case they
12 looked at it and said, no, we're not going to file
13 charges. In fact, we're going to give Mr. Yablonsky a
14 restraining order.

15 THE COURT: Well, the DA didn't decide to
16 give Mr. Yablonsky a restraining order.

17 MR. SANDERS: Pardon.

18 THE COURT: The DA didn't decide to give
19 Mr. Yablonsky a restraining order.

20 MR. SANDERS: No.

21 THE COURT: I'm sure you did not mean that.

22 MR. SANDERS: But the investigating officer
23 released him that same day.

24 THE COURT: Okay. All right.

25 MR. SANDERS: So my argument is that it's --
26 under 352, the prejudice of it overwhelms any
27 probative value.

28 THE COURT: Mr. Thomas.

1 MR. THOMAS: Again, the victim gives an
2 entirely different story than Mr. Yablonsky in this
3 case. She said that she did know Mr. Yablonsky, and
4 that she was at home just after midnight --

5 THE COURT: I'm sorry. She did say she did
6 know --

7 MR. THOMAS: Mr. Yablonsky.

8 THE COURT: Okay.

9 MR. THOMAS: She said that she was at home
10 just after midnight on the night that this occurred,
11 and Mr. Yablonsky entered through a bedroom door,
12 which was closed but unlocked, and when he entered the
13 residence, she asked him, what are you doing here?
14 What are you doing here? And Yablonsky said, you will
15 have to do what I want. I'm addicted to you. I'm
16 fucked up. I've gone too far to turn back. She asked
17 what he meant by fucked up. He didn't answer, and
18 then afterwards he told her, I will kill you if you
19 don't do what I want.

20 Then at that point he had a Taser that belonged
21 to the victim and threatened her with the Taser. Then
22 at that point there was a rape that occurred and her
23 underwear were ripped and other things happened, and she
24 reported it to the police afterwards.

25 THE COURT: Other than talking about cases
26 that -- any authority someone may have, have I been
27 given the factual circumstances that I need to plug in
28 the law? Do you think I've heard everything about the

1 facts?

2 MR. SANDERS: If I didn't mention it, your
3 Honor, my client lived at that residence. He actually
4 lived there.

5 THE COURT: At the time of the event?

6 MR. SANDERS: Yes. He was moving out at the
7 time and also a disagreement -- she didn't want him to
8 move out. She spoke to my client two or three times
9 after this, and my client, you know, asked, why did
10 you say all those things about me that aren't true?
11 She admitted that, I know they're not true, but I felt
12 that in our relationship at times that you raped my
13 soul, so I made those statements. That's why the
14 detectives and the police never took it any further
15 after they learned all these various things.

16 THE COURT: They learned these things -- did
17 she say that to the police?

18 MR. SANDERS: That's why they didn't file
19 charges.

20 THE COURT: Did she say that to the police?
21 She said to the police -- you're saying the police
22 reports contain her saying that she wasn't raped; that
23 he raped her soul?

24 MR. SANDERS: Yes. The police listened to a
25 phone call between my client and her.

26 MR. THOMAS: I don't have any of that
27 information.

28 THE COURT: Do you have the police report?

1 MR. SANDERS: No, I have my client that was
2 there.

3 THE COURT: Okay. All right.

4 MR. THOMAS: Then as far as the turn down, I
5 have a law enforcement arrest disposition. It looks
6 like the reason that it was turned down is the victim
7 refused to prosecute. There could be several reasons,
8 as the Court I'm sure is well aware, of why a victim
9 might choose not to want to prosecute or testify.

10 THE COURT: Mr. Thomas, you have a case you
11 mentioned.

12 MR. THOMAS: Yeah. The case is People V
13 Story, 2009 case, 45 Cal.4th 1282. Basically, that
14 case involved a murder. There were no allegations
15 alleged or no charges filed in the Information
16 alleging a rape or any type of sexual assault, but the
17 prosecution's theory in that case was that the victim
18 in the case was murdered in the course of -- in the
19 course of a rape or an attempted rape. They sought to
20 bring in evidence of defendant's prior conduct, two
21 occasions prior to the murder and two occasions after
22 the murder.

23 The trial court allowed that to come in under
24 1108 saying that because of the prosecution's theory was
25 that it was a first degree murder based on the felony
26 murder rule, that that -- those four prior -- those four
27 different incidents were allowed to come in.

28 The appellate court reversed on the basis that

1 there was no charging document alleging a sexual
2 assault. The California Supreme Court reversed the
3 appellate court and allowed the conviction to stand
4 based on the fact that it doesn't have to be alleged.
5 If the prosecution's theory is murder in the course of a
6 rape or attempted rape, the defendant's prior conduct or
7 prior actions can come in under 1108, and that's the
8 argument that the People are putting forth in this case
9 is in this case there's a special allegation or special
10 circumstance alleged that this was committed in the
11 course of a rape or attempted rape per Penal Code
12 Section 261.

13 THE COURT: Is there any authority that you
14 wanted me to look at, Mr. Sanders?

15 MR. SANDERS: Your Honor, I did --

16 THE COURT: Just a minute.

17 MR. SANDERS: Excuse me.

18 THE COURT: -- other than what we have
19 discussed so far?

20 MR. SANDERS: There were a couple of cases
21 that I found last evening. I didn't bring them with
22 me this morning. I apologize. I thought we were
23 going to get to this after we selected a jury.

24 THE COURT: I understand. I thought we'd
25 exercise an opportunity -- we'd use this opportunity
26 to do things we hadn't completed. That's fine. We're
27 not going to be talking to the jury about this this
28 morning.

1 Have we heard from the jury? We're ready?

2 THE CLERK: Um-hmm.

3 (Whereupon proceedings were held off the record.)

4 (Whereupon proceedings were
5 held in unrelated matters.)

6 THE COURT: Mr. Sanders, I'm going to take a
7 recess on this trial. We're going to start --
8 hopefully in 15 minutes we're going to have a reporter
9 available. I'm going to read whatever authority I
10 just got from the case that Mr. Thomas has given me.
11 I want you to find whatever case you wanted me to look
12 at. You mentioned there might be a couple of cases.

13 MR. SANDERS: I'd have to run back to my
14 office a couple of blocks away.

15 THE COURT: Well, I suppose that 15 minutes
16 is enough time to do that; isn't it?

17 MR. SANDERS: It will be tight.

18 THE COURT: Okay. Thank you.

19 (Whereupon a recess was taken.)
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8 San Bernardino County representing the
9 State of California.

10 (Michelle Swal, Pro Tempore Reporter, CSR #13580.)

11 -oOo-

12 THE BAILIFF: All rise. In the presence of
13 the flag of the United States of America symbol of
14 freedom and justice. Department 2 of the Victorville
15 Superior Court is now in session, the Honorable
16 John Tomberlin presiding. Please be seated.

17 Please raise your right hand to be sworn.

18 THE CLERK: Do each of you understand and
19 agree that you will accurately and truthfully answer
20 under penalty of perjury all questions propounded to
21 you concerning your qualifications and competency to
22 serve as a trial juror in the matter now pending
23 before this court, and that failure to do so may
24 project to you criminal prosecution?

25 If so, say, "I do."

26 (Whereupon the prospective jurors answered in the
27 affirmative.)

28 THE COURT: Good morning, ladies and

1 gentlemen.

2 That wasn't bad. We are here to pick a jury.
3 Juries work together. Let's practice. Good morning.

4 Welcome to Department 2, San Bernardino County
5 Superior Court. You have been summoned to hear the case
6 of People of the State of California versus
7 John Henry Yablonsky. Mr. Yablonsky is present here in
8 court, along with David Sanders, his attorney.

9 Mr. Sanders, will you please introduce yourself
10 and your client to this prospective jury.

11 MR. SANDERS: Good morning, ladies and
12 gentlemen. My name is David Sanders. This is my
13 client John Yablonsky. Good morning.

14 THE COURT: Anytime a case is brought in
15 court, somebody has to come in and allege something.

16 In this case it's the District Attorney's
17 office. And we have John Thomas, who is a Deputy
18 District Attorney. And his investigating officer is
19 Detective Robert Alexander.

20 Would you please introduce yourself and your
21 investigating officer, please.

22 MR. THOMAS: Good morning, ladies and
23 gentlemen of the jury. I am John Thomas, and I'm a
24 Deputy District Attorney for the county of
25 San Bernardino. And I represent the People of the
26 State of California in this case. The gentleman
27 seated or standing right next to me is Detective
28 Robert Alexander. He's from the San Bernardino County

1 Sheriff's Department. He'll be sitting with me
2 throughout this trial as my investigating officer.

3 Thank you.

4 THE COURT: Anytime there's a lawsuit,
5 someone has to come in and allege something, whether
6 it's a civil case or a criminal case. They don't just
7 pop up by themselves. You have to start somewhere.
8 Usually you start with a piece of paper.

9 In a felony case like this one, the document
10 that we work from is what is called an information. An
11 information is something that accuses a person of a
12 crime but it is not evidence of guilt. So I'm going to
13 read to you this information having explained to you
14 already the fact that someone has been charged with this
15 crime does not make them guilty of the crime.

16 Determination of guilt or innocence will be
17 your job after you listen to the evidence that is
18 presented in this case.

19 The Superior Court, County of San Bernardino.
20 The People of the State of California plaintiff versus
21 John Henry Yablonsky. The District Attorney of the
22 county of San Bernardino by this information alleges
23 that Count 1, on or about September 20th, 1985, in the
24 above-named judicial district the crime of murder in
25 violation of Penal Code section 187(a), a felony, was
26 committed by John Henry Yablonsky, who did unlawfully in
27 malice aforethought murder Rita Mabel Cob, a human
28 being.

1 It is further alleged as to Count 1 that the
2 murder of Rita Mabel Cob was committed by Defendant
3 John Henry Yablonsky while the said defendant was
4 engaged in the commission of and or the attempted
5 commission of the crime of rape, in violation of
6 Penal Code section 261.

7 This information consists of one count and is
8 signed Michael A. Ramos, District Attorney County of
9 San Bernardino, State of California by John Thomas,
10 Deputy District Attorney.

11 So now you know what this particular trial is
12 going to be about. Let me tell you how long it's going
13 to last, what our schedule will be.

14 Today is the 19th?

15 MR. SANDERS: The 19th, your Honor.

16 THE COURT: The attorneys and I pretty much
17 have agreed that this is the schedule. We're going to
18 pick a jury today and tomorrow. We will not be in
19 session on Friday. In fact, we won't be in session on
20 any Friday during this trial unless you, the jury,
21 have the case and are already in deliberations. So we
22 won't be in session on January 21st. We will come
23 back next week the 24th and we'll begin evidence.

24 We believe that the evidence will be presented
25 on the 24th, 25th, 26th, and 27th. We won't be in
26 session on the 28th unless you're deliberating. But the
27 case will probably not be finished by that day. We'll
28 come back on January 31st, then we'll be in session,

1 that's Monday. On February 1st, 2nd, and 3rd, we
2 believe you'll have this case submitted to you by
3 February the 4th.

4 Is that the schedule that we've anticipated,
5 Mr. Sanders?

6 MR. SANDERS: Yes, sir, I believe it is.

7 MR. THOMAS: Yes, your Honor.

8 THE COURT: Okay. So in order for you to be
9 able to serve on this jury, you'd have to be available
10 until about February the 4th.

11 Some of you might not be able to be with us.
12 We're going to give you a chance to address me in just a
13 few minutes. There are 74 of you, I believe. So
14 unfortunately even if you want to be with us, I can't
15 guarantee you a seat on this jury. We'll probably be
16 picking, I know we will be picking 12 jurors, probably
17 pick 15 with alternates. You can do the math. What is
18 that? About one chance in five of getting on this jury
19 panel.

20 So if you sit here with us and you don't get
21 selected, I'll be excusing you. And you'll be done for
22 your jury service for the year. What was it that
23 Clint Eastwood asked to Dirty Harry? Do you feel lucky?

24 I don't know which way you want it. If you
25 tell me that you don't have the ability to be here, I
26 can excuse you for hardship. Here's what I need to
27 hear. I need to hear a severe economic hardship or
28 medical hardship. Severe economic hardship means that

1 you don't get paid for jury service. Or you've already
2 booked a round-the-world cruise and you're leaving
3 before the trial is over and you're going to lose your
4 deposit, lose your airfare. You're going to tell me
5 that you've got a promotional exam that's only offered
6 once a year and that's during the course of our trial.
7 And if you don't have a chance to take that exam, you
8 won't get a chance to get promoted. Perhaps you're paid
9 for jury service but paid minimum wage and you get
10 commission on top of that and your employer doesn't give
11 you the commission while you're here. Or you need the
12 overtime you're getting now and you don't get paid by
13 your employer for the overtime. And if that's a
14 severe economic hardship to you -- and how am I going
15 know? -- I'm going to take your word for you it. You
16 have taken an oath to tell the truth. But we're not
17 going to make you present pay stubs or a letter from
18 your employer, any of that kind of stuff.

19 If you fall into that category, I will excuse
20 you for economic hardship. What is not economic
21 hardship? It's not economic hardship that you are
22 someone who is just so important that your work can't do
23 without you. Because that's economic hardship to
24 somebody else. The fact that you have a co-worker
25 that's on vacation and your boss is not going to know
26 what to do in your absence, sorry, but we all are
27 important in one way or another. I don't care if you're
28 a brain surgeon or you have a job taking care of

1 children at a home, your time -- well, I'm only going to
2 say as Shakespeare did when he said, "Time is the stuff
3 that life is made of." So the time for all of us is of
4 equal value in my opinion. And taking the time out of
5 your lives is what was contemplated when someone came up
6 with this idea of a jury trial a long, long time ago.
7 So people have fought wars over this. People have died
8 over it. The fact that people are called in and
9 expected to serve jury service is part of the
10 responsibility that we have for the blessings that we
11 enjoy of living in a free society. The fact that is a
12 hardship on somebody who is a co-worker, the fact that
13 your children if you're a teacher are not going to get
14 the quality of education from a substitute that they're
15 going to get from you, those are things that are
16 limitable but not a basis to which I will excuse you.

17 Okay. Medical hardship is a little easier.
18 Medical hardship is I'm sick right now, I can't stay
19 here. I can't sit. I'm taking medication and it
20 affects my ability to figure out what's being said or to
21 remember things. Or I have an appointment with the
22 VA Hospital for surgery. It takes me a long time to
23 reschedule these things. Please excuse me so I can go
24 to the doctor. Or my husband has a surgery scheduled,
25 and I'm the only one that takes him to the surgery or
26 the follow-up. Those are things which are medical
27 hardship for which I can excuse you.

28 There might be something else that you can tell

1 me about that's going to cause me to excuse you. Okay.
2 For example, maybe you're a college student. You're in
3 the middle of classes. You have finals coming up. You
4 need to study. If you don't do that, you're going to
5 fail your college classes. That would be a financial
6 hardship.

7 There could be other things. But I want you to
8 understand what I have just told you. If I can't fit it
9 into either financial hardship or medical hardship that
10 affects you personally or someone for who you are
11 responsible personally, I won't be able to excuse you.

12 Does that mean you won't be excused by the
13 attorneys? Let me explain to you that in my experience
14 as a trial attorney before I was a judge and now as a
15 judge -- we're talking about a lot of years -- attorneys
16 don't want people on their jury that don't want to be
17 here. Just so you'll know, even if you're qualified to
18 sit as a juror in this case, even though I can't excuse
19 you for hardship, the attorneys are going to have 20
20 peremptory challenges each. So 20 people that are
21 qualified and able to be with us are going to be excused
22 or maybe excused by Mr. Thomas and Mr. Sanders, that's
23 40 people combined. So keep in mind you may not be
24 excused by me but you might still be excused by the
25 attorneys later on in these proceedings.

26 Have I scared everyone? I don't mean to. I
27 just wanted to give you an idea of what the rules are
28 for which I can excuse you. If you think that you have

1 a hardship for which you should be excused and you're
2 seated at my left side of the room, your right side of
3 the room, and if you're in the front row, I want you to
4 stand. I see some hesitation. If you're in the front
5 row, I want you to stand right now if you have a
6 hardship you want to address to the Court.

7 You were thinking about it, weren't you? No?
8 Okay. I will always start with the person who is
9 closest to the isle so there will be less people to
10 trample over as you leave.

11 Would you please state your name and your juror
12 number if you know it.

13 PROSPECTIVE JUROR: Deanna Hudak, 035.

14 THE COURT: Tell me what your hardship is.

15 PROSPECTIVE JUROR: Medication issue as well
16 as a doctor's appointment that that medication relies
17 on.

18 THE COURT: Okay. You're taking medication
19 and it's affecting your ability to be a juror?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: You're shaking your head yes, and
22 the record will so reflect.

23 PROSPECTIVE JUROR: Yes. Sorry.

24 THE COURT: That's all right.

25 Mr. Thomas? Mr. Sanders?

26 MR. THOMAS: People stipulate.

27 MR. SANDERS: Stipulate, your Honor.

28 THE COURT: Mr. Thomas and Mr. Sanders, would

1 you agree that if I ask -- that I won't ask you again,
2 and if somebody asks to be excused for hardship only,
3 and I do excuse them, that your silence on that
4 subject will be deemed your consent, Mr. Thomas?

5 MR. THOMAS: Yes, your Honor.

6 THE COURT: Mr. Sanders?

7 MR. SANDERS: Yes, sir.

8 THE COURT: Okay. They have stipulated to
9 you being excused, Ms. Hudak. Thank you for being
10 with us. You are excused.

11 PROSPECTIVE JUROR: Sandy Zazueta, Juror
12 Number 074. I have two school-age children and a
13 two-year-old that I don't have daycare for after 3:00.

14 THE COURT: So what happens if you're here
15 with us until 4:30?

16 PROSPECTIVE JUROR: They're at school with
17 another teacher that will be with them at school until
18 I get there to pick them up.

19 THE COURT: What's wrong with that?

20 PROSPECTIVE JUROR: I can't pay for child
21 care for her.

22 THE COURT: So they would be with the teacher
23 at the school but that would be a charge that you
24 would incur.

25 Is that what you're telling me?

26 PROSPECTIVE JUROR: Exactly.

27 THE COURT: And you can't afford that?

28 PROSPECTIVE JUROR: No, not at this moment.

1 THE COURT: Thank you for being with us,
2 Ms. Zazueta. You are excused for financial hardship.

3 PROSPECTIVE JUROR: Thank you.

4 THE COURT: All right. Thank you.

5 We're going to be to the second row. If you're
6 in that second row and you want to address me with
7 medical or financial hardship, please stand.

8 PROSPECTIVE JUROR: My name is
9 Julia Erickson, Number 021. I am a migraine sufferer,
10 and I get migraines at any time. And I take
11 prescription medication and it makes me very light
12 headed and I have to lay down.

13 THE COURT: Okay. Let me say -- just so
14 you'll know, Ms. Erickson, and I'm saying this for
15 everyone who is listening, we also accommodate people
16 with issues, if they request that. So if you tell me
17 that, cause I don't know the frequency, I can tell by
18 your discussion of it that I can guess the intensity.
19 I'm sure it's difficult when you have a migraine.

20 Do you take this medication only when the
21 migraine comes on?

22 PROSPECTIVE JUROR: Right when it comes on.
23 I never know when it's going to come on.

24 THE COURT: Do you know about the frequency?

25 PROSPECTIVE JUROR: The frequency can vary
26 from once a week to five times a week. It varies.

27 THE COURT: Do you think if you were to sit
28 with us there would be a likelihood that you would

1 have an outbreak?

2 PROSPECTIVE JUROR: Yes. Yes. If I'm
3 sitting for long periods of time, it tends to bring
4 them on.

5 THE COURT: I heard something about
6 florescent lights too. Is that something that affects
7 you?

8 PROSPECTIVE JUROR: Yeah.

9 THE COURT: Okay. All right. Well, I
10 certainly -- again, I want you to know, Ms. Erickson,
11 if your request was I want to be on this jury and I
12 want you to agree to shut things down if I have a
13 migraine come on, if that's what you were asking, I
14 would be happy to try and accommodate you. But what I
15 think I'm hearing from you is that this particular
16 process would be inclined to bring on the migraine and
17 you'd rather be excused?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm going to excuse you for
20 medical hardship. Thank you for being with us this
21 morning.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: We're going to go to the third
24 row. If you are in the third row and want to address
25 me with a hardship, please stand.

26 Hello.

27 PROSPECTIVE JUROR: 002, Catherine Anderson.
28 I'm starting a --