

1 A It would have to have been shorter than that.
2 Q How short?
3 A It could have been up to a day, day and a half.
4 Q Within a day and a half?
5 A Yes.

6 MR. THOMAS: Nothing further.

7 THE COURT: Mr. Sanders.

8 MR. SANDERS: I have just another question.

9 **RECROSS-EXAMINATION**

10 BY MR. SANDERS:

11 Q Is there any possibility in this case that
12 the -- that the sex was postmortem?

13 A Yes.

14 Q It could have been based on the things that you
15 saw?

16 A Yes.

17 MR. SANDERS: I have nothing further, your
18 Honor.

19 THE COURT: Mr. Thomas.

20 MR. THOMAS: Nothing further.

21 THE COURT: May Dr. Saukel be excused?

22 MR. THOMAS: Yes.

23 THE COURT: Thank you for being with us, sir.
24 You are excused.

25 Call your next witness.

26 MR. THOMAS: That was my only witness this
27 afternoon.

28 THE COURT: Okay. Folks, I told you it

1 looked like we might be done a little early today.
2 We're requesting to start tomorrow morning at 9:00.
3 Everybody have a nice evening. You're all ordered to
4 watch American Idol, I think. Something to do other
5 than talk about this case.

6 Just so you'll know, our original estimate was
7 that we would be finished by the end of next week. I
8 think that the chances are real good that we're going to
9 be finished very early next week. That's the idea of
10 what kind of timing you can expect this case to have. I
11 think Mr. Thomas intended to rest tomorrow.

12 MR. THOMAS: That's correct, your Honor.

13 THE COURT: So then we'll hear the defense
14 case. I'm working on instructions right now, so we
15 should be well within our time -- original time
16 estimate.

17 We haven't heard everything yet. You're
18 admonished that it is your duty not to converse among
19 yourselves or with anyone else about any matter
20 connected with this case nor form or express an opinion
21 on it until it's submitted to you. See everyone
22 tomorrow morning at 9:00.

23 (Whereupon the following proceedings were
24 held outside the presence of the jury:)

25 THE COURT: Where's the stipulation regarding
26 readback and stuff like that?

27 MR. SANDERS: We handed those in.

28 MR. THOMAS: I just signed it.

1 THE COURT: Let's talk about what we're going
2 to do the rest of the afternoon. I want to go over
3 instructions.

4 MR. SANDERS: That's fine with me, your
5 Honor. I think I determined -- I know that your
6 bailiff found an envelope on the floor.

7 THE COURT: We should chat about that.

8 MR. SANDERS: I --

9 THE COURT: Why don't you tell us on the
10 record, Deputy Pete Fleigner, about what you found.

11 THE BAILIFF: This morning, after we'd
12 excused the jury for lunch recess, about 11:00, I came
13 back into the courtroom. In the aisleway next to the
14 second row of pews in the gallery I found an envelope,
15 white mailing envelope, laying face down sealed on the
16 ground. On the front of the envelope, it said
17 something to the effect of, verbatim WeTip. I don't
18 remember the exact words on it, but verbatim WeTip
19 report.

20 THE COURT: Where is that envelope?

21 THE BAILIFF: It's in the exhibit closet. I
22 can retrieve it.

23 THE COURT: Did you get a chance to talk to
24 anybody about that?

25 THE BAILIFF: I did, your Honor. I spoke to
26 everyone that is currently seated in the gallery,
27 except for Ms. Caldwell, who is an interpreter and
28 asked each of them if they knew anything about the

1 envelope. Everyone told me, no. That's on both
2 sides.

3 THE COURT: Why don't you get this document
4 for me?

5 Yes, Mr. Sanders?

6 MR. SANDERS: I think that I dropped that
7 envelope, your Honor.

8 THE COURT: You think you dropped it?

9 MR. SANDERS: I think I did. May I explain?

10 THE COURT: You know, Mr. Sanders, let me say
11 that you're welcome to explain, but in my opinion
12 there's no need to explain anything. If you dropped
13 something, you dropped something. It was a sealed
14 envelope. It remains sealed. People drop things.
15 I've done that before myself, and there's a chance I
16 could do it again sometime.

17 Frankly, this was brought to my attention by
18 Deputy Fleigner. He had no idea of what the
19 significance of a WeTip transcript might possibly be. I
20 have discussed with you and the deputy district
21 attorney, John Thomas, WeTip information that you were
22 hoping I would allow into evidence. After, I think,
23 fully discussing the issue, I denied to admit that.

24 MR. SANDERS: Right.

25 THE COURT: I just want to make sure there
26 wasn't some kind of intention of influencing jurors in
27 some way other than the presentation of evidence here
28 according to the Rules of Court.

1 MR. SANDERS: Right.

2 THE COURT: So I'm -- I'm satisfied now that
3 there wasn't any kind of intent to do something that's
4 inappropriate but just simply --

5 MR. SANDERS: It was -- yes, I had a manila
6 envelope with a number of items in it. That was in my
7 manila envelope, and I believe it was something that
8 slipped out.

9 THE COURT: I don't think there's anything
10 further to say about the subject.

11 Does anyone?

12 MR. THOMAS: No, your Honor.

13 MR. SANDERS: Could I have it back though?

14 THE COURT: I have no problem with that.
15 Just treat this as question of lost and found.

16 MR. SANDERS: Thank you.

17 THE COURT: Now, as I discussed, we have the
18 signature on the stipulation. Does Mr. Yablonsky wish
19 to be present in court as we discuss potential jury
20 instructions?

21 Mr. Sanders, why don't you talk to him. Make
22 sure he understands, when we do argument and I rule on
23 what instructions are going to be given, that would be
24 done in his presence.

25 Does he want to be here for the informal
26 discussion?

27 MR. SANDERS: I'll let him know, your Honor.

28

1 (Whereupon there was a
2 pause in proceedings.)

3 MR. SANDERS: My client indicates he wishes
4 to be present.

5 THE COURT: No problem. Nevertheless, I'm
6 going to say we're not going to do this on the record.
7 We'll be in court and it will be an informal setting.
8 He's welcome to be present while we do our
9 discussions.

10 Do you agree?

11 MR. SANDERS: Yes, sir.

12 THE COURT: So at this time we're going to go
13 off the record.

14 (Whereupon proceedings were held
15 off the record.)

16 THE COURT: Okay. We are back on the record
17 in the case of People of the State of California
18 versus John Henry Yablonsky. Mr. Yablonsky's here
19 with Mr. Sanders and John Thomas is here for the
20 People along with his investigating officer,
21 Detective Alexander.

22 We have informally discussed the instructions,
23 and it's not my intention to spend more time on that
24 right now because no one is obligated to be telling me
25 exactly whether the instructions are in the right form
26 or not because there are too many unanswered questions.

27 One of them occurred to me that I thought I
28 would deal with right now so we don't have any question

1 about it tomorrow.

2 Mr. Yablonsky, you don't have to answer me
3 right now, but you heard me explain to all the jurors in
4 great detail that the constitutional right to testify or
5 not to testify is not a right held by Mr. Sanders but a
6 right held by you, and you understand that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I have no idea what's going to
9 happen in this case. You've heard all the evidence
10 that's going to be presented. Mr. Sanders has heard
11 all of the evidence that is going to be presented.
12 The only thing that the jury hasn't heard is the
13 statement that you allegedly made to the police, and
14 there's no question about what's going to be in it
15 because there's no disagreement as to what's going to
16 be in it; is that right, Mr. Sanders?

17 MR. SANDERS: Yes, your Honor.

18 THE COURT: I understand you're not offering
19 it, but there isn't any grounds to exclude anything
20 except for certain things you've asked to have
21 redacted and Mr. Thomas has agreed. Therefore,
22 everyone knows what the evidence is going to be in
23 this case.

24 So tomorrow, after that -- unless someone tells
25 me otherwise, once that recording is played, I
26 anticipate, and you should anticipate, that Mr. Thomas
27 is going to say, subject to the admission of exhibits,
28 the People rest.

1 MR. SANDERS: Correct.

2 THE COURT: As soon as that happens, I'm
3 going to turn to you, Mr. Sanders, and say to you,
4 Mr. Sanders, this is the time for the defense case in
5 chief. Do you wish to present a defense or will you
6 rely on the state of the evidence and argue that the
7 People have not proved their case beyond a reasonable
8 doubt? At that time if it is your intention to do so,
9 you should call a witness.

10 MR. SANDERS: Right.

11 THE COURT: If you tell me that you're going
12 to rely on the state of the evidence, then here's what
13 it's going to mean to me. Mr. Yablonsky, it's going
14 to mean to me that you will have heard him say that,
15 and you will understand that that means that you're
16 not going to be giving testimony in this case. So if
17 that's what your intention is, that's fine. I'm not
18 going to stop while we have a meeting and discuss this
19 or give you any further warning or explanation of your
20 rights because you understand them; correct?

21 THE DEFENDANT: Correct.

22 THE COURT: So, therefore, I'll say it again,
23 if Mr. Sanders says, I'm going to rely on the state of
24 the evidence, that means that you are going to be
25 having him speak for you and the statement that he's
26 going to be making is going to include implicitly that
27 you waive your right to give testimony in this case,
28 and you understand that it's your right and not his?

1 Do you understand and agree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is that made clear enough in your
4 opinion, Mr. Sanders?

5 MR. SANDERS: I think it is, your Honor, yes.

6 THE COURT: By the way, I do not believe that
7 the law requires that I do this. I like to make sure
8 that no one is surprised.

9 Mr. Thomas, is that a sufficient advisal as far
10 as you're concerned?

11 MR. THOMAS: Yes, your Honor.

12 THE COURT: Then have a good evening. See
13 everybody tomorrow -- anything else that needs to be
14 put on the record?

15 MR. SANDERS: I don't believe so, sir.

16 THE COURT: Get that tape set up tomorrow
17 morning at 9:00 so we can hit the play button.

18 MR. THOMAS: I got to put Detective Alexander
19 on the stand first. Then I can hit the play button
20 after I ask him some questions.

21 THE COURT: You can set it up so we don't
22 have any delay. As long as we got Ms. Manning here,
23 is there a stipulation that the recording -- we have a
24 transcript; correct?

25 MR. THOMAS: Yes.

26 THE COURT: That the transcript of the
27 recording that is provided in this case can substitute
28 for Ms. Manning attempting to transcribe it as it is

1 played? Do you waive reporting of the recording,
2 Mr. Sanders?

3 MR. SANDERS: Yes, sir.

4 THE COURT: Mr. Thomas?

5 MR. THOMAS: Yes.

6 THE COURT: Thank you. Ms. Manning, you'll
7 be excused from recording the recorded media.

8 MR. THOMAS: Just to let the Court know, it's
9 my practice, instead of giving the jurors copies of
10 transcripts that have a hundred and some pages, to
11 just put the transcript on the screen there and go
12 along as the recording's happening.

13 THE COURT: I think it's a great practice. I
14 think you need to give me a copy of it.

15 MR. THOMAS: I have a copy for the Court.

16 THE COURT: So we can make it a part of the
17 record rather than just your PowerPoint. You're going
18 to use a PowerPoint to do that?

19 MR. THOMAS: I just hook it up to the
20 computer.

21 THE COURT: What is the program that you're
22 using?

23 MR. THOMAS: It's a Word program.

24 THE COURT: Okay. So just get me a copy so
25 that I can follow along, and so that I can mark it in
26 some way.

27 MR. THOMAS: I always do that too.

28 THE COURT: All right.

1 MR. THOMAS: Then after we're done on the
2 record, can we meet with you back there in chambers?

3 THE COURT: Today?

4 MR. THOMAS: Yes.

5 THE COURT: Mr. Sanders?

6 MR. SANDERS: Yes, sir.

7 THE COURT: Yes. We're off the record.

8 (Whereupon proceedings were

9 held off the record.)

10 (Whereupon proceedings in the above-entitled

11 matter were concluded for the day.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 27, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-

7 (Whereupon the following proceedings were held in open
8 court in the presence of the jury:)

9 THE BAILIFF: Remain seated. Come to order.
10 Court is now in session.

11 THE COURT: Good morning, ladies and
12 gentlemen. We're back on the record in the case of
13 People of the State of California versus John Henry
14 Yablonsky. Mr. Yablonsky is here along with his
15 attorney, David Sanders. John Thomas is here for the
16 People along with his investigating officer,
17 Detective Robert Alexander. We're going to continue
18 with the People's case in chief.

19 Call your next witness.

20 MR. THOMAS: People's next witness is
21 Detective Alexander.

22 THE CLERK: You do solemnly state that the
23 evidence you shall give in the matter pending before
24 this Court shall be the truth, the whole truth, and
25 nothing but the truth, so help you God?

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated.

28 THE BAILIFF: Please state your full name and

1 spell it for the record.

2 THE WITNESS: Robert Alexander R-o-b-e-r-t
3 A-l-e-x-a-n-d-e-r. Excuse me.

4 THE COURT: Good morning,
5 Detective Alexander.

6 THE WITNESS: Good morning, sir.

7 THE COURT: Your witness, Mr. Thomas.

8 MR. THOMAS: Thank you, your Honor.

9

10 **ROBERT ALEXANDER**, having been duly sworn,
11 testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. THOMAS:

14 Q What's your current occupation?

15 A Deputy sheriff for the San Bernardino County
16 Sheriff's Department.

17 Q How long have you been employed as a deputy
18 sheriff for San Bernardino County?

19 A Little over 14 years.

20 Q What's your current assignment?

21 A Detective for specialized investigations
22 division. I'm assigned to the homicide detail, and I
23 work cold homicide cases.

24 Q And as far as these cold homicide cases, do you
25 have anybody that works with you?

26 A Yes.

27 Q Who is that?

28 A I have one partner. His name is Greg Myler.

1 Q How long have you been assigned to the homicide
2 division?

3 A Over five years.

4 Q And how long have you been doing cold cases
5 for?

6 A On and off for the entire five years, but
7 specifically just cold cases, for right at three years.

8 Q Are you familiar with the cold case involving a
9 victim by the name of Rita Cobb?

10 A Yes.

11 Q And as far as that specific case, was that
12 something that you were assigned to work on?

13 A Yes.

14 Q And you were basically what's known as a case
15 agent?

16 A Yes.

17 Q What is a case agent?

18 A Case agent's responsibility is to review the
19 case, obtain all -- all the interviews that are
20 conducted at the time, analyze it, discuss with my
21 partner what the strengths and weaknesses are of the
22 case, come up with a game plan as to how we are going to
23 solve the case. I'm responsible for the investigation.

24 Q And at some point did you become familiar with
25 a person by the name of John Henry Yablonsky with a date
26 of birth of 9/30/1963?

27 A Yes.

28 Q And do you see Mr. Yablonsky here in this court

1 today?

2 A Yes, I do.

3 Q Could you point out where he's seated and tell
4 us what he's wearing?

5 A Mr. Yablonsky is seated to the left. He's
6 wearing a gray colored suit, green shirt, green tie,
7 some facial hair, bald head and glasses.

8 MR. THOMAS: May the record reflect the
9 witness has identified the defendant?

10 THE COURT: It will.

11 BY MR. THOMAS:

12 Q Did you actually at some point make contact
13 with the defendant?

14 A Yes.

15 Q Do you recall when that was?

16 A March 8, 2009.

17 Q Do you recall what day of the week that was?

18 A It was a Sunday.

19 Q As far as your contact with Mr. Yablonsky, what
20 was the purpose of your contact?

21 A To conduct an interview, and we wanted -- I
22 wanted some background information on Mr. Yablonsky. I
23 wanted to find out basically what the connection between
24 Mr. Yablonsky and Rita was.

25 Q Okay. And where did your contact with
26 Mr. Yablonsky occur?

27 A Took place at his residence in Long Beach.

28 Q And do you recall approximately what time you

1 first made contact with him?

2 A A little after 9:00 in the morning.

3 Q And then at some point during that contact did
4 you take a -- what we call a buccal swab?

5 A Yes.

6 Q What is that exactly?

7 A A buccal swab is basically -- it's -- we use a
8 cotton swab to obtain the buccal cells from inside the
9 mouth. They're inside the cheek. So we take a cotton
10 swab, rub it on the inside of the cheek to capture some
11 of the cells, and we use it as a sample.

12 Q Then in this particular case, did you do that
13 with Mr. Yablonsky; rub a cotton swab in his mouth to
14 take a sample?

15 A Yes, I did.

16 Q And as far as that sample was concerned, what
17 did you do with it?

18 A I placed it into an envelope, printed his name
19 on the envelope, placed a seal on the flap of the
20 envelope, signed it, and then placed that envelope,
21 along with another envelope that contained the same
22 sample -- we take two samples, placed that into a bigger
23 envelope, sealed that, and then eventually put that into
24 property.

25 Q That was done in accordance with the training
26 that you received as far as taking these buccal swabs?

27 A Yes.

28 Q When you book that into property, do you assign

1 a DR number to it?

2 A Yes.

3 Q What was the DR number that was assigned to
4 that particular swab?

5 A Can I refer to my notes to make sure I got it
6 exactly correct?

7 Q Would that refresh your recollection?

8 A Yes. 1331036 dash 07.

9 Q Then was there also a bar code that was
10 assigned to that --

11 A Yes, there was.

12 Q -- particular item? Do you recall what the bar
13 code was?

14 A Not off the top of my memory, but I will get
15 that for you. Bar Code Number 0960000071.

16 Q Then as far as that particular bar code, that's
17 unique to that particular item?

18 A Yes.

19 Q And then was there also an LR number associated
20 with this swab?

21 A There was.

22 Q What was the LR number?

23 A 44659.

24 Q As far as that particular swab, are you aware
25 which item number that eventually became?

26 A J-1.

27 Q That would be J dash 1?

28 A That's correct, J dash 1.

1 Q On March 8th of 2009 when you conducted this
2 interview with Mr. Yablonsky, during the interview, are
3 there certain things that you do in order to get people
4 to talk to you?

5 A Yes.

6 Q Would you call them techniques?

7 A Yes.

8 Q Part of your techniques in an interview with a
9 person you believe might be a homicide suspect is to lie
10 to them?

11 A Sometimes, yes.

12 Q Before you could do that, you have to build up
13 a rapport or trust with the individual?

14 A Yes.

15 Q In Mr. Yablonsky's case, did you go through any
16 of those techniques?

17 A Yes, I did.

18 Q During the interview, was that interview
19 recorded?

20 A Yes, it was recorded digital audio. Then
21 later -- part of it was recorded video.

22 Q As far as the digital audio portion, have you
23 had an opportunity to review a transcript, along with
24 the recording, to ensure that it was accurate?

25 A Yes.

26 Q And as far as Exhibit 49, which is the
27 recording and Exhibit 49A, which is the transcript of
28 that recording, do you believe that that's accurate to

1 the best of your ability?

2 (Whereupon Exhibits 49 and 49A were marked for
3 identification.)

4 THE WITNESS: Yes.

5 MR. THOMAS: At this time I'd be asking the
6 Court if we can play Exhibit 49. It's approximately
7 2 hours and 55 minutes. I was going to ask the Court
8 if Detective Alexander can step off the witness stand
9 and sit next to me for that time period.

10 THE COURT: Do you care where he sits?

11 MR. SANDERS: No, sir, I don't care where he
12 sits.

13 THE COURT: You can step down. I'm going to
14 explain something to the jury.

15 Ladies and gentlemen, you've heard it said that
16 he's going to play a tape. On the board -- on the
17 screen, he's going to be flashing an image. That's
18 going to be something that is a transcript that somebody
19 made. It is not evidence. It's only given to you for
20 the purpose of helping you understand the taped
21 conversation, which is the evidence.

22 Maybe it would be more accurate to say that
23 this transcript you're going to be looking at is
24 secondary evidence. My point is, if you hear something
25 on the tape that you believe is different than what you
26 are seeing on the board, you go by what's on the tape
27 because that's the actual conversation.

28 Ms. Manning, by the way, will not be reporting

1 this because the attorneys have stipulated that she may
2 be excused from having to do the tedious work of
3 transcribing multiple voices, perhaps even talking over
4 each other during the course of this interview.

5 Go ahead.

6 (Whereupon a portion of audiotape, Exhibit 49
7 was played, not reported.)

8 (Whereupon the lunch recess was taken.)
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