

1 VICTORVILLE, CALIFORNIA; JANUARY 27, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.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 COURT: Okay. That's the end of the
10 tape -- that's the end of the tape.

11 MR. THOMAS: Yes.

12 THE COURT: Back on the record in People
13 versus John Yablonsky. Mr. Yablonsky is here with his
14 attorney, David Sanders. John Thomas is here for the
15 People along with his investigating officer,
16 Detective Robert Alexander, who is on the witness
17 stand and still under oath.

18 The record should reflect before we go on that
19 we took a morning recess since the time that we last had
20 our reporter here and we took a lunch recess. Pardon
21 me. Each time that we took a recess, I admonished the
22 jury in my normal fashion admonishing them, it is your
23 duty not to converse among yourselves or with anyone
24 else about any matter connected with this case nor form
25 or express an opinion on it until it's submitted to you.

26 Is there a stipulation that that was done in
27 accordance with general procedure after -- excuse me,
28 when we left for the morning recess and when we left for

1 the lunch recess, Mr. Thomas?

2 MR. THOMAS: Yes, your Honor.

3 THE COURT: Mr. Sanders?

4 MR. SANDERS: Yes, sir.

5 THE COURT: Is it further stipulated that
6 when we reconvened after the morning recess, and when
7 we reconvened after the noon recess, that we were
8 present with all of our 12 jurors and our three
9 alternates, Mr. Thomas?

10 MR. THOMAS: Yes.

11 THE COURT: Mr. Sanders?

12 MR. SANDERS: Yes, sir.

13 THE COURT: Okay. I think that's the
14 housekeeping we need to do.

15 You're still under oath continuing in direct
16 examination, Detective Alexander.

17 THE WITNESS: Yes, sir.

18 BY MR. THOMAS:

19 Q During the interview that we just heard, there
20 is a couple portions at the beginning of the interview
21 where I believe it was Detective Myler, for the most
22 part, was referring to missing paperwork.

23 Was that a true statement or was that a
24 statement intended to get Mr. Yablonsky to talk to you
25 more?

26 A It was intended to get Mr. Yablonsky to speak
27 with us. It wasn't true.

28 Q And as far as throughout the interview with

1 Mr. Yablonsky, there was talk with Mr. Yablonsky about
2 another individual or individuals from a family, and I
3 think he finally gave the name David Leftwich
4 (phonetic).

5 Do you recall that from the interview?

6 A Yes.

7 Q And do you recall yourself or Detective Myler
8 during the interview telling him that you've already
9 looked at that avenue or you've looked at those people
10 already?

11 A Yes.

12 Q Was that something that you had already done or
13 was that to keep the interview on track?

14 A It was basically two-fold, one to keep the
15 interview on track, but the original investigators
16 followed up on that lead.

17 Q During the interview, were there portions of
18 your interview with Mr. Yablonsky where instead of
19 giving a verbal answer he nodded his head yes or nodded
20 his head no?

21 A Yes, many times.

22 Q During the times where he did that, did you or
23 Detective Myler try to verbalize what he was doing at
24 that point by saying no or yes after the head nod?

25 A Yes.

26 Q And if you had indicated no on the recording,
27 that would have indicated that at that point he was
28 nodding his head no at that point?

1 A Yes.

2 Q There was a point in the interview or a couple
3 points in the interview where there were pauses, and it
4 looked like and sounded like Mr. Yablonsky was taking a
5 bathroom break.

6 Do you recall those?

7 A Yes.

8 Q And then there was one portion where it
9 appeared he was taking a bathroom break and you and
10 Detective Myler were whispering?

11 A Yes.

12 Q When that happened, was Mr. Yablonsky present
13 in the room?

14 A No.

15 Q On Page 99 of the transcript -- do you have a
16 copy of it up there?

17 A Yes, I do.

18 Q Do you see on the bottom of the page there was
19 a question posed by yourself, just the one time; right?
20 Never had any type of relationship with Rita? Excuse
21 me? And then Mr. Yablonsky answers, no.

22 Do you see that part?

23 A Yes.

24 Q Then after that, you ask him, no, did you ever
25 date her and there's a --

26 MR. SANDERS: Objection to this line of
27 questioning, your Honor. The evidence speaks for
28 itself, and this is cumulative.

1 MR. THOMAS: May I be heard on that?

2 THE COURT: Because of the u-h-t u-h?

3 MR. THOMAS: That's correct.

4 THE COURT: I'm going to allow this,

5 Mr. Sanders.

6 BY MR. THOMAS:

7 Q The next question, no. Did you ever date her,
8 and then Mr. Yablonsky answers, and it appears on the
9 transcript, uht uh (sic).

10 Do you recall that?

11 A Yes.

12 Q Was that a no? A yes?

13 A That was a no.

14 Q Was he also shaking his head at that point?

15 A Yes, he was.

16 Q Then the next question, kiss her, and again
17 there is a uth uh.

18 Do you see that?

19 A Yes.

20 Q Was that another no?

21 A That was another no accompanied by a shaking of
22 the head.

23 Q And then you asked, have sex with her, and then
24 there was a cell phone ringing at that point?

25 A Yes.

26 Q Did he nod his head in the negative or
27 affirmative at that point?

28 A In the negative.

1 Q And then finally you say, excuse me. I'm
2 sorry. No intimate relationship at all?

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q Did he nod his head after you asked that
7 question?

8 A After each one of the questions, he nodded his
9 head.

10 THE COURT: Nodding the head is really one of
11 those funny things. I think nodding means, I give
12 someone the nod. I think that's an affirmative. I
13 say shake his head meaning a negative. So I really
14 don't think it's helping to use the word nod as you've
15 been using it. I think if you want to say in the
16 affirmative, in the negative, I think it's fine
17 especially if you're talking about body language, and
18 it's -- you can be specific. You better re-establish
19 that.

20 MR. THOMAS: I will. Thank you, your Honor.

21 BY MR. THOMAS:

22 Q As far as the head of Mr. Yablonsky, was he
23 shaking his in the affirmative or in the negative?

24 A He shook his head from left to right.

25 Q And did he do that on several occasions?

26 A Yes.

27 Q And that indicated to you no?

28 A That's correct.

1 Q He did that for, I think it was three or four
2 questions that were posed to him?

3 A There were many questions that he did that to,
4 but those particular ones, yes.

5 MR. THOMAS: Nothing further at this point.

6 THE COURT: Mr. Sanders.

7 **CROSS-EXAMINATION**

8 BY MR. SANDERS:

9 Q Detective Alexander, you were familiar with the
10 entire investigation that had been done up to 2009 when
11 you spoke to my client; correct?

12 A Yes.

13 Q All of the reports that had ever been generated
14 in this case were in your possession?

15 A All of the reports that I knew about were in my
16 possession, yes.

17 Q Did you later find out there was others you
18 didn't know about?

19 A No.

20 Q So when you spoke to my client, for example, I
21 don't remember if it was you or your partner that day
22 that was using the fingerprint example.

23 Was that you or your partner?

24 A That was probably me.

25 Q Okay. And you were making a point to my client
26 in the room about if you wipe a table clean and you put
27 your fingerprint on it, it's there; correct?

28 A That's correct.

1 Q And your point was that if someone examined
2 that table down at the Signal Hill Police Station, they
3 would know Mr. Yablonsky had been there because of his
4 fingerprint?

5 A Yes.

6 Q Just to be clear, you knew that there was no
7 evidence that my client's fingerprint was at Rita Cobb's
8 house?

9 A That's correct.

10 Q In fact, you already knew whose fingerprints
11 were at Rita Cobb's house?

12 A I'm not sure if there were any fingerprints
13 developed.

14 Q You didn't read the fingerprint reports?

15 A I probably did, but I don't remember all the
16 names.

17 Q Do you remember one of the glasses in the
18 kitchen had a fingerprint on it?

19 A Yes.

20 MR. THOMAS: Objection. Calls for hearsay.

21 THE COURT: Sustained.

22 BY MR. SANDERS:

23 Q And you were aware of all of the blood-typing
24 matches that had been done?

25 MR. THOMAS: Objection. Calls for hearsay.

26 MR. SANDERS: I'm not asking him for a
27 result.

28 MR. THOMAS: Then I object on relevance.

1 THE COURT: I don't know what the relevance
2 is. You want to approach so you can tell us?

3 MR. SANDERS: I'll withdraw the question,
4 your Honor.

5 THE COURT: Okay.

6 BY MR. SANDERS:

7 Q And you had -- at the time when you went to see
8 my client, you already had the DNA-hit information;
9 correct?

10 A Yes.

11 MR. SANDERS: Excuse me just a moment,
12 Detective. I have no further questions, your Honor,
13 on cross-examination.

14 THE COURT: Redirect.

15 **REDIRECT EXAMINATION**

16 BY MR. THOMAS:

17 Q When you and Detective Myler were asking
18 Mr. Yablonsky, I believe you did it on several
19 occasions, about whether or not he had any sexual
20 contact or any dating relationship with --

21 MR. SANDERS: Objection, your Honor. Beyond
22 the scope of cross-examination.

23 THE COURT: I think so.

24 MR. THOMAS: I'll withdraw the question.
25 Nothing further.

26 THE COURT: Or you can move to reopen. I
27 don't care. I'm sure Mr. Sanders doesn't mind. If
28 you want to withdraw the question, fine.

1 What do you want to do?

2 MR. THOMAS: I'd move for permission to
3 reopen.

4 THE COURT: Mr. Sanders, do you object?

5 MR. SANDERS: Yes.

6 THE COURT: Do you want to state specific
7 grounds at the bench?

8 MR. SANDERS: No, submit, your Honor.

9 THE COURT: You can reopen. I see how there
10 can be no prejudice.

11 **DIRECT EXAMINATION (reopened)**

12 BY MR. THOMAS:

13 Q As far as the question that you posed to
14 Mr. Yablonsky regarding any sexual contact or dating
15 relationship he might have had with the victim, what was
16 the purpose of constantly asking him over and over again
17 those questions?

18 MR. SANDERS: Objection, your Honor. I think
19 that that misstates the evidence.

20 THE COURT: Well, you are characterizing
21 something. I'm going to sustain the objection to the
22 question in that form.

23 BY MR. THOMAS:

24 Q What was the purpose of asking him on multiple
25 occasions?

26 THE COURT: Asking him what?

27 MR. THOMAS: The same question about --

28 THE COURT: What question?

1 MR. SANDERS: Objection to relevancy also,
2 your Honor.

3 THE COURT: I'm just going to say, you want
4 to pin it down further than that, feel free to.

5 BY MR. THOMAS:

6 Q You recall asking him questions on multiple
7 occasions regarding any dating relationship or any
8 sexual contact that he may have had with the victim in
9 this case, Rita Cobb?

10 A Yes.

11 Q What was the purpose of asking him those
12 questions on multiple occasions?

13 A Because I knew the results of the DNA testing
14 that had been completed, and I knew that there had to be
15 some sort of sexual contact, and I wanted to give him a
16 chance to explain it to me.

17 MR. THOMAS: Nothing further.

18 THE COURT: Mr. Sanders, cross.

19 MR. SANDERS: Just briefly, your Honor.

20 Thank you.

21 **CROSS-EXAMINATION**

22 BY MR. SANDERS:

23 Q Detective Alexander, I think the first time
24 that question was asked was at my client's home; is that
25 correct?

26 A That was the first time I had ever had contact
27 with your client, yes. That's correct.

28 Q Okay. Well, specifically, the first time that

1 you asked him about sexual contact with Rita Cobb, was
2 at -- at his house? You hadn't yet gone to the
3 Signal Hill Station?

4 A That's correct.

5 Q Okay. And I believe the second one was at his
6 house, and you had not yet gone to the
7 Signal Hill Station?

8 A I didn't keep count, but I believe that's
9 correct.

10 Q Then you went to the Signal Hill Station, and I
11 believe then you asked him that set of questions again;
12 is that correct?

13 A That's correct. More than once.

14 MR. SANDERS: Thank you. I don't have any
15 further questions.

16 MR. THOMAS: Nothing further.

17 THE COURT: You can step down. Thank you.
18 Call your next witness

19 MR. THOMAS: People have no further
20 witnesses. People rest subject to the admission of
21 the exhibits.

22 THE COURT: Okay. Nobody was writing out a
23 question? No. So that's the People's case in chief.

24 Mr. Sanders, this is your opportunity to put on
25 the defense case in chief or chose to rest and rely on
26 the state of the evidence.

27 What will you do?

28 MR. SANDERS: One question first, your Honor.

1 I would like to make an 1118 motion. Do you wish to
2 hear that now or at another time?

3 THE COURT: At another time.

4 MR. SANDERS: At this point, the defense
5 rests.

6 THE COURT: Ladies and gentlemen, you have
7 heard all the evidence that you're going to hear in
8 this case.

9 Counsel, why don't you approach? This will be
10 off the record for scheduling only.

11 (Whereupon a bench conference was held
12 off the record.)

13 (Whereupon the following proceedings were held in open
14 court in the presence of the jury:)

15 THE COURT: Ladies and gentlemen, I've spoken
16 to the attorneys and we're going to come back on
17 Monday. I told you we wouldn't be in session this
18 Friday because there's no way we would be likely to
19 finish the case by this Friday, but I said you might
20 be in session next Friday.

21 Well, when I tell you for sure that we're not
22 going to be in session this Friday, then I do my best to
23 keep my word because I assume people made plans
24 accordingly. We'll be back Monday morning, 9:00.
25 You'll hear the instructions on the law that applies to
26 this case, and you'll hear the arguments of the
27 attorneys. My guess is that you'll get the case for
28 deliberations sometime close to or just after the lunch

1 recess.

2 So, once again, I'll remind you, you're not
3 going to be here tomorrow. Have a nice weekend. Come
4 in ready to go 9:00 on Monday morning. You're
5 admonished that it is your duty not to converse among
6 yourselves or with anyone else about any matter
7 connected with this case nor form or express an opinion
8 on it until it's submitted to you. Have a nice, safe
9 weekend.

10 (Whereupon the following proceedings were held outside
11 the presence of the jury:)

12 THE COURT: Okay. The jury's gone.
13 Mr. Sanders and Mr. Thomas, I'll expect the two of you
14 to go over your instruction -- over your exhibits
15 together and determine what it is that you're offering
16 and what it is you're objecting to. We'll do that
17 after we take our break. That will give you
18 15 minutes to pull that information together.

19 Mr. Sanders, you have an 1118.1 motion?

20 MR. SANDERS: I do, your Honor, as to each of
21 the charges. I do not feel that there's --

22 THE COURT: Isn't it just one charge?

23 MR. SANDERS: As to the charge and --

24 THE COURT: The allegation.

25 MR. SANDERS: -- special allegation.

26 Particularly as to the special allegation, I believe
27 that there's insufficient evidence as a matter of law
28 to show the case beyond a reasonable doubt. Thank

1 you.

2 THE COURT: Mr. Thomas.

3 MR. THOMAS: There's been more than enough
4 evidence presented for this to be given to the jury on
5 Count I and the special circumstance alleged. As far
6 as Count I is concerned, there's evidence linking
7 Mr. Yablonsky to that crime scene. The evidence was
8 testified to by Don Jones --

9 THE COURT: Don't worry.

10 MR. THOMAS: The evidence was testified to by
11 Don Jones and Dr. Saukel that there was a -- depending
12 on who you believe, there was a moderate amount of
13 sperm on the victim's vaginal swab or there was a lot
14 of sperm present on the victim's vaginal swab, which
15 indicated to them that she had sex close to the time
16 of the actual murder.

17 As far as the rape allegation, I think by
18 Mr. Yablonsky basically refusing -- or denying that he
19 had sex with the victim in this case, and he was given
20 multiple opportunities to admit that, the jury can infer
21 that the sex was nonconsensual.

22 Additionally, there's evidence of a struggle at
23 the crime scene along with the victim's position at the
24 crime scene and her fully nude body that indicates that
25 there was a sexual assault of some sort that occurred at
26 or near the time of her death.

27 As far as the struggle is concerned, there was
28 a watchband that did not belong to the victim or

1 watchband pin found above her head. Also, some --
2 the -- her glasses were found on the floor. There was
3 testimony from the victim's son that she normally
4 wouldn't throw her glasses on the floor, which could be
5 inferred by the jury as an indication of a struggle.
6 The photos showed that the bedding was somewhat
7 disheveled, indicating a struggle.

8 As far as the rape is concerned, there was
9 evidence that the victim was gagged at some point or the
10 jury can infer that she was gagged by the white shorts
11 that were found protruding from her mouth.

12 Based on all that evidence, there's enough for
13 the jury to decide that Mr. Yablonsky's guilty and find
14 the special circumstance true. I'd submit.

15 THE COURT: Mr. Sanders, anything you want to
16 add?

17 MR. SANDERS: Just briefly, your Honor.
18 Everything that the prosecutor said is evidence that
19 there might have been a struggle at the time that she
20 was killed; the glasses being thrown on the floor; the
21 watchband; all of those things may be evidence that
22 she struggled while someone tried to strangle her.

23 There's no evidence that any of those things
24 happened at a time when she may have had sex, and as
25 both the doctor and the criminalist said, there's no way
26 to say that the sex happened at the same time as the
27 strangulation. I believe the doctor said it could have
28 been up to a day before. The criminalist said it could

1 have been hours before, and so with that, I'll submit.

2 THE COURT: Anything else, either side?

3 MR. THOMAS: Submit it.

4 THE COURT: Mr. Sanders.

5 MR. SANDERS: No, sir, thank you.

6 THE COURT: Mr. Sanders, there's only one
7 reasonable interpretation of the -- of all of these
8 circumstances that seems to fit, Mr. Sanders. I have
9 no idea what the jury's going to do, but I'm satisfied
10 that the reasonable explanation for these events is
11 that someone raped and killed Ms. Cobb.

12 I agree that the evidence of the struggle could
13 be that something occurred at the time that she was
14 killed and has nothing to do with having sex, but her
15 body was naked. I think that is significant -- a
16 significant circumstance. I believe that it explains
17 motive in this case. I believe that's circumstantial
18 evidence that it was murder in the commission of a rape.
19 Then there's the circumstance of your client denying any
20 sexual contact with Ms. Cobb.

21 Those things, I believe, along with all the
22 other items that were discussed in his response --
23 Mr. Thomas's response to your motion, I think those
24 things all do allow a jury to come to the conclusion
25 that there was a crime as charged including the special
26 circumstance. The 1118.1 motion is denied.

27 You said you had another motion?

28 MR. SANDERS: I do.

1 THE COURT: Go ahead.

2 MR. SANDERS: Yes. In -- on Page 106 of the
3 statement, there is a portion there, which I had asked
4 to be excluded. I'm sure the prosecutor didn't do it
5 intentionally, but he -- I gave him a long list of
6 things to be redacted from this statement. This is
7 the only one that I noticed that he failed to redact.
8 Again, accident. I'm sure that it's not because he
9 was trying to be dishonest. It's just he had a lot of
10 redacting to do.

11 If the Court were to look at -- from Page --
12 from Line 10 down to Line 11, apparently what happened
13 there is the detective showed my client a picture of
14 Ms. Cobb, and the officer makes the statement, I saw --

15 THE COURT: We saw how it tore your stomach
16 up back at the house.

17 MR. SANDERS: Yes. My objection is -- well,
18 that's objectionable. What I call this kind of
19 evidence is the human lie detector test. We don't
20 allow lie detectors because they're not reliable and
21 proved that they make mistakes.

22 This is a subjective person playing the part of
23 the lie detector test, making a statement that he saw
24 what happened to a person's stomach, which is impossible
25 to say that someone was hurt or that someone was upset.
26 It may be proper in the -- in the appropriate
27 circumstances to say, I saw someone's eyebrows raise,
28 and I saw a jaw drop. These types of characterizations

1 are inappropriate, and I would ask the judge to ask the
2 jury to disregard them.

3 THE COURT: I don't think I intend to touch
4 it. I've never seen a case that cites the human lie
5 detector test. Do you have any authority for that?

6 MR. SANDERS: I was using an analogy, your
7 Honor. In other words, a lie detector.

8 THE COURT: I understand what you're saying.
9 The thing that I'm going to tell you is that the
10 jury's already been told that detectives lie to
11 people.

12 MR. SANDERS: Okay.

13 THE COURT: You know, he could say all kinds
14 of things that are just simply not there for any
15 reason other than to get Mr. Yablonsky to talk more,
16 and I don't even know that Mr. Yablonsky's stomach was
17 torn up. I don't know that Mr. Yablonsky -- that
18 Detective Alexander believed that there was hurt in
19 Mr. Yablonsky's eyes.

20 All of those things together are just things
21 that Detective Alexander has -- has asked or stated to
22 Mr. Yablonsky. In fact, if you want, I don't mind
23 telling the jury -- you could make a motion -- perhaps,
24 we could talk about how it could be worded. I've had
25 lawyers before that have made a point that they wanted
26 me to tell the jury that what the police officer is
27 saying is not evidence.

28 MR. SANDERS: Right. I have an instruction

1 like that I'm working on.

2 THE COURT: The only thing that's -- just
3 like here, what's important is what your client says.
4 What his -- what Detective Alexander or
5 Detective Myler said to Mr. Yablonsky is only evidence
6 to the extent that it helps understand the answer that
7 your client gave. I guess what I'm saying to you,
8 Mr. Sanders, is talk to -- to Mr. Thomas about it and
9 see what can be worded. I don't think that this is
10 any type of significant error. I don't think that
11 it's even error for this to have come in. Had we been
12 fighting over this and Mr. Thomas said, I want this
13 in, and you said I want it out, I probably would have
14 left it in.

15 MR. SANDERS: Okay.

16 THE COURT: Just so you'll know, I'm not
17 saying I won't -- I said I won't touch it because I'd
18 be afraid I'd be singling out this one part. I think
19 the jury should be made aware that this is -- this
20 could be true, this may not be true. We've got more
21 time.

22 Are you going to be here tomorrow?

23 MR. SANDERS: Yes, sir.

24 THE COURT: If you want to drop off any
25 proposed type of instruction, do it as early as
26 possible, and -- now, I've got them coming back --
27 you're not going to be here tomorrow, Mr. Thomas;
28 right?