

1 THE COURT: That's all right. That's all
2 right. I didn't want to know the numbers for which
3 one, but it's eight to four. I'm going to ignore what
4 the numbers are for each side.

5 There's eight people on one side and four the
6 other; right?

7 THE FOREPERSON: Correct.

8 THE COURT: You said something interesting.
9 You said currently. Has that number been pretty
10 consistent or has that deviated a lot?

11 THE FOREPERSON: Honestly, there has been
12 progress pretty much all the time. For instance, what
13 it was on Monday, changed on Tuesday, changed today.

14 THE COURT: Okay. And what is it that makes
15 you think since anybody can talk to -- anybody can
16 send a note out, whether it's the foreperson, what is
17 it that makes you think, Juror Number 4, that at this
18 point no progress can be made one way or the other?

19 THE FOREPERSON: Each juror has indicated
20 that they're solid in their position.

21 THE COURT: You've been on several juries
22 before.

23 THE FOREPERSON: Yes.

24 THE COURT: Do you believe that the jury's
25 hopelessly deadlocked?

26 THE FOREPERSON: I believe the only thing
27 that might change would be the count through further
28 discussion.

1 THE COURT: Let me tell you what my thinking
2 is, and I am not going to hold people hostage. Your
3 time is very valuable. I've tried to make it clear
4 that I appreciate your service. We're well within our
5 time frame for this trial.

6 It's 3:00 today. I'm going to propose that you
7 go home tonight, come back tomorrow morning. Let
8 everything sit where it is, get off early, come in
9 tomorrow morning and talk to each other. I won't keep
10 you here unless you feel like you're making progress. I
11 think that might be something worth while.

12 Do you think that's possible?

13 THE FOREPERSON: I think it's possible.

14 THE COURT: Is there anyone -- I'm going to
15 know -- I'm going to make the order that we're going
16 to stop for the day. I'm going to ask you to come
17 back tomorrow. If you're back a half hour and send
18 back a note saying, nothing's changed. We're done.
19 We can't come to an agreement, I'll understand that,
20 and we'll talk again. We're well within our time
21 estimate.

22 At this point I'm going to ask you to go home
23 and, once again, I'll admonish you, since you're not
24 deliberating the 12 of you back there together, you're
25 just going to be on your own, so you're admonished that
26 it is your duty not to converse among yourselves or with
27 anyone else about any matter connected with this case
28 nor form or express an opinion on it until it's

1 submitted to you. Tomorrow morning -- would it be more
2 convenient to come in at 9:00? Does that work out
3 better for you? I see a couple heads shaking yes.

4 THE FOREPERSON: Works out better for me.

5 THE COURT: Let's make it 9:00 in the
6 morning. Everyone, have a good evening. We'll see
7 you tomorrow morning at 9:00 a.m.

8 (Whereupon the jury exited the courtroom and the
9 following proceedings were held:)

10 THE COURT: Okay. The jury is now gone.
11 Counsel, you're going to be here tomorrow?

12 MR. THOMAS: I'll be here tomorrow.

13 THE COURT: Maybe Mr. Sanders will be back
14 tomorrow.

15 MR. ZYWICIEL: Probably. Otherwise it will
16 probably be me.

17 THE COURT: I'm not a betting man. I never
18 know what a jury's going to do. I've had people go
19 home and come back, that half hour has turned into an
20 all-day deliberation ending in verdicts, and I've also
21 had them come back and say, this is done. We're not
22 going to go anywhere.

23 I think it's important that someone be here on
24 behalf of each side to talk to the jurors, so that I'll
25 be enlightened, if this case does result in a mistrial,
26 as to what should happen next.

27 MR. ZYWICIEL: I was curious, when he
28 mentioned the progress was made each day, I'm not sure

1 how you would define progress. Was it 11, 1 guilt
2 and, that and, progress is now 8, 4?

3 THE COURT: I didn't ask him that; did you
4 notice?

5 MR. ZYWICIEL: Right. But he was gracious
6 enough to tell us which way the split was.

7 THE COURT: Did I fail to explain clearly
8 that I didn't want him to tell me that?

9 MR. ZYWICIEL: I heard it.

10 MR. THOMAS: I heard it clearly.

11 THE COURT: I should say I failed to explain
12 it. There's no question I failed to explain it
13 because he didn't understand it. If I would have
14 explained myself properly, I guess he wouldn't have
15 said that. Seemed like people were trying to stop him
16 on each side.

17 Anything anybody want to add?

18 MR. ZYWICIEL: No.

19 MR. THOMAS: I was going to ask the Court
20 tomorrow if they come back and still have issues, if
21 the Court could bring up, do you think further
22 argument from the attorneys would help.

23 THE COURT: I didn't even get to that.

24 MR. THOMAS: Yeah.

25 THE COURT: When I made my proposal, and he
26 said yes, then I did that. Remind me tomorrow if
27 that's what you want me to do. That's going to be
28 important to know whether or not Mr. Sanders is going

1 to be here before I even try that.

2 Mr. Zywicki can argue anything. I've known
3 him long enough. We went to the same law school. I
4 don't know. I'd have to talk to you and Mr. Sanders,
5 and you'd have to tell me why reopening argument might
6 be of some benefit. You'd have to help me understand
7 it. We don't do that until Mr. Sanders is here.

8 MR. THOMAS: Well, it would be up to the jury
9 too if they had a specific issue that is holding them
10 up versus across the board.

11 THE COURT: Like whether or not
12 Mr. Yablonsky's DNA was taken voluntarily or
13 involuntarily.

14 MR. THOMAS: Yeah.

15 (Whereupon proceedings in the above-entitled
16 matter were concluded for the day.)
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1 VICTORVILLE, CALIFORNIA; FEBRUARY 3, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.M. SESSION

4 APPEARANCES:

5 The Defendant with his counsel,
6 **PHILIP ZYWICIEL**, 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 (Whereupon the following proceedings were held in open
13 court in the presence of the jury:)

14 THE BAILIFF: Remain seated. Come to order.
15 Court is now in session.

16 THE COURT: Good afternoon, ladies and
17 gentlemen. Back on the record in the case of People
18 of the State of California versus John Henry
19 Yablonsky. Mr. Yablonsky is here before the Court
20 with Mr. Zywiciel again. Mr. Sanders was in for a
21 little while this morning, but I believe he had to go
22 home. He's ill. John Thomas is here for the People
23 along with his investigating officer,
24 Detective Robert Alexander.

25 Juror Number 4, do you remain the foreperson of
26 this jury?

27 THE FOREPERSON: Yes.

28 THE COURT: I understand the jury's reached a

1 verdict?

2 THE FOREPERSON: That's correct.

3 THE COURT: Would you please hand the signed
4 forms to Deputy Fleigner? He's going to bring them to
5 me. I'm going to tell you this; I have to say this to
6 all of you. I have no idea which form you're handing
7 me. Before I look at the form, thank you for your
8 service. I'm not thanking you for any particular
9 decision that you arrived at. I'm thanking you for
10 taking the time out of your busy lives to help us
11 resolve this case.

12 THE FOREPERSON: Sir, would you like me just
13 to hand the signed forms to the bailiff?

14 THE COURT: Why don't you hand them all to
15 him?

16 THE FOREPERSON: Okay.

17 THE COURT: Thank you. Madam Clerk, will you
18 please read the verdicts.

19 THE CLERK: (Reading:)

20 "Superior Court of the State of
21 California, in and for the County of
22 San Bernardino.

23 "The People of the State of
24 California versus John Henry
25 Yablonsky, defendant.

26 "Case Number FVI900518.

27 "Verdict 1-A,

28 "We, the jury in the

1 above-entitled action, find the
2 defendant, John Henry Yablonsky,
3 guilty of the offense of first degree
4 murder of Rita Mabel Cobb as charged
5 in Count I of the Information.

6 "Dated February 3rd, 2011.

7 "Signed by the foreperson.

8

9 "Same title of court and cause.

10 "Special Allegation I as to
11 Count I.

12 "We, the jury in the
13 above-entitled action, find that the
14 murder of Rita Mabel Cobb was
15 committed by John Henry Yablonsky
16 while the said defendant was engaged
17 in the commission of and/or attempted
18 commission of the crime of rape, true.

19 "Dated February 3rd, 2011.

20 "Signed by the foreperson."

21 THE COURT: Ladies and gentleman, as you just
22 heard those verdicts read, do they represent your own
23 personal verdicts, so say you one, so say you all?

24 (Whereupon the jurors answered in the affirmative.)

25 THE COURT: Did either counsel wish to have
26 the jury polled?

27 MR. THOMAS: I do not.

28 MR. ZYWICIEL: I would.

1 THE COURT: Okay. What's going to happen is
2 Ms. LoVasco's going to go by seat number that you're
3 sitting in. She's going to ask you if the verdicts as
4 read were your own personal verdicts as well.

5 Go ahead with your speech.

6 THE CLERK: As I refer to your jury seat
7 number, please answer yes or no to the following
8 question: Were the verdicts as read your personal
9 verdicts, Juror Number 1?

10 JUROR NO. 1: Yes.

11 THE CLERK: Two?

12 JUROR NO. 2: Yes.

13 THE CLERK: Three?

14 JUROR NO. 3: Yes.

15 THE CLERK: Four?

16 JUROR NO. 4: Yes.

17 THE CLERK: Five?

18 JUROR NO. 5: Yes.

19 THE CLERK: Six?

20 JUROR NO. 6: Yes.

21 THE CLERK: Seven?

22 JUROR NO. 7: Yes.

23 THE CLERK: Eight?

24 JUROR NO. 8: Yes.

25 THE CLERK: Nine?

26 JUROR NO. 9: Yes.

27 THE CLERK: Ten?

28 JUROR NO. 10: Yes.

1 THE CLERK: Eleven?

2 JUROR NO. 11: Yes.

3 THE CLERK: Twelve?

4 JUROR NO. 12: Yes.

5 THE COURT: I'm going to order the verdicts
6 as read will be recorded in the minutes of the
7 proceedings.

8 Mr. Zywiciel, Mr. Thomas, do we have any
9 further need for the service of this jury?

10 MR. THOMAS: No, your Honor.

11 MR. ZYWICIEL: I don't think so.

12 THE COURT: Ladies and gentlemen, I never get
13 tired of reading instructions. Here we go.

14 "You have now completed your jury
15 service in this trial. On behalf of
16 all the judges of the court, please
17 accept my thanks for your time and
18 effort.

19
20 "Now that the case is over, you
21 may choose whether or not to discuss
22 your deliberations with anyone.

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24 "I'll remind you that under
25 California law, you must wait at least
26 90 days before negotiating or agreeing
27 to accept payment for information
28 about this case.

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"Let me tell you about some rules the law puts in place for your convenience and protection.

"The lawyers in the case, the defendant or their representatives may now talk to you about the case including your deliberations or verdict. Those discussions must occur at a reasonable time and place and with your consent.

"Please immediately report to the Court any unreasonable contact made without your consent by the lawyers in this case, their representatives or the defendant.

"A lawyer, representative, or defendant who violates these rules, violates a Court order and may be fined.

"I order that the Court's record of personal juror identifying information including names, addresses and telephone numbers be sealed until

1 further order of this Court.

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"If in the future the Court is asked to decide whether this information will be released, notice will be sent to any juror whose information is involved. You may oppose the release of this information and ask that any hearing on the release be closed to the public. The Court will decide whether and under what circumstances any information may be disclosed."

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In short, ladies and gentlemen, what I've just read to you is this: Talk if you want to. Don't talk if you don't want to. I've sealed the information, so that nobody's going to be able to get personal stuff about you without you knowing about it and have a chance to protest.

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I'm about to excuse you. Because of the hour of the day, the jury room is already closed. We would have had checks ready for you. Instead those checks will be sent to your home addresses.

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Personally accept my gratitude. I should say my personal gratitude for the effort that I know you all put in. You've worked very hard this week. Most of it has been deliberations, and, as I said before, I know that everyone knows how to get out of jury service.

1 Everyone knows how to dodge the responsibility, but you
2 should be very proud of yourselves that both lawyers in
3 this case believed you were people that they could trust
4 to be responsible and fair in deciding the verdict.

5 You also should be proud of yourselves for
6 having done your civic duty. If I haven't been clear
7 enough about how much I appreciate your service, I will
8 now switch it around and say I hope it hasn't been
9 entirely a one-way street. I hope that you are going to
10 leave this court with a little better understanding of
11 this third, coequal branch of government called the
12 judiciary.

13 On behalf of all the judges of the court, on
14 behalf of the People, on behalf of Mr. Yablonsky, thank
15 you very much for your service. You are now excused.
16 See you next year.

17 MR. THOMAS: Did the Court let them know to
18 stick around?

19 THE COURT: If you want to stick around and
20 talk to the lawyers, you're welcome to. It will be up
21 to you.

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

24 THE COURT: Shall I refer this to the
25 probation department?

26 MR. ZYWICIEL: Yes. Mr. Yablonsky's willing
27 to waive time for sentencing. I don't know if
28 Mr. Sanders wants to file motion for new trial or not,

1 so that probably works out best.

2 THE COURT: Today is the 3rd of February.
3 How about we go out six weeks?

4 MR. ZYWICIEL: Could we go to April 8th?

5 THE COURT: I don't see why not.

6 MR. THOMAS: That's fine with the People.

7 THE COURT: Setting no interim date,
8 Mr. Zywiciel, we should tell Mr. Sanders that he needs
9 to be aware that I'm going that long because I
10 anticipate if he's going to file a post-trial motion,
11 that would be the time -- he should have it filed two
12 weeks before that date.

13 MR. THOMAS: I'm sure on that date
14 Mr. Sanders is going to want to have the Court hear
15 the due process motion that's already been filed.

16 THE COURT: So your response has been filed?

17 MR. THOMAS: It's been filed also.

18 THE COURT: Any additional motions,
19 Mr. Zywiciel, that he may choose to file, I'd ask that
20 he file those by March the -- March the 25th.

21 This matter is referred to probation for a
22 report and recommendation from the probation department,
23 and, Mr. Yablonsky, I'll order you back on April the 8th
24 for further hearing and pronouncement of judgment.

25 MR. ZYWICIEL: Thank you.

26 (Whereupon proceedings in the above-entitled
27 matter were concluded.)

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

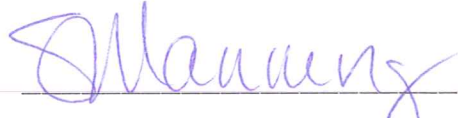
DEPARTMENT V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
))
Plaintiff,)
))
vs.) Case No. FVI900518
))
JOHN HENRY YABLONSKY,)
))
Defendant.)
_____)

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, SHAWNA MANNING, CSR No. 12827, Official Reporter for the above-entitled court, do hereby certify, to the best of my knowledge and belief, that the foregoing pages 1 through 8 and 104 through 854 comprise a full, true and correct computer-aided transcript of the proceedings taken in the above-entitled cause held upon January 18, 2011, January 20, 2011, January 24, 2011, January 25, 2011, January 27, 2011, January 31, 2011, February 2, 2011, and February 3, 2011

Dated this 2nd day of September, 2011 at Victorville, California.

 , CSR
SHAWNA MANNING, CSR No. 12827
OFFICIAL REPORTER

