SUPERIOR COURT OF CALIFORIA

COUNTY OF SAN BERNARDINO

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF

CALIFORNIA,

Plaintiff,

vs.

JOHN HENRY YABLONSKY,

Defendant.

Case NO. FVI9005l8

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

REPORTER'S TRANSCRIPT OF JURY TRIAL

JANUARY 18, 2011, JANUARY19, 2011, JANUARY 20, 2011,

JANUARY 24, 2011, JANUARY25, 2011, JANUARY 27, 2011,

JANUARY 31, 2011, FEBRUARY2, 2011, and FEBRUARY 3, 2011

APPEARANCES:

MICHAEL A. RAMOS

District Attorney

BY: John Thomas

Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN

Public Defender

BY: David Sanders

Deputy Public Defender

CERTIFIED COPY

Reported by: Shawna Manning, CSR No. 12827

Official Reporter

Vol. 1 of 4 Michelle Swal, CSR No. 13580

Pages 1 through 266, incl. Pro Tempore Reporter

l

VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

A.M. SESSION

APPEARANCES:

The Defendant with his counsel,

DAVID SANDERS, Deputy Public Defender;

JOHN THOMAS, Deputy District Attorney of

San Bernardino County representing the

state of California.

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

-oOo-

THE COURT: Back on the record in the case of

People of the State of California versus John Henry

Yablonsky. There are matters we did not complete.

There are matters that don't concern the jury. I

should indicate Mr. Yablonsky's present before the

Court. He's with his attorney, Dave Sanders.

John Thomas is here for the People.

We were discussing a motion by Mr. Sanders on

behalf of Mr. Yablonsky to allow admission of alleged

prior acts of a criminal sexual nature. We discussed

the circumstances of an alleged rape occurring in l98l.

We got to the point discussing a second alleged rape

occurring in 1996. At that time there was a phone call

or text that Mr. Sanders had to take care of something,

and we terminated our hearing.

MR. THOMAS: Then I also found a case that

I'd like the Court to review.

2

THE COURT: I will do that, and I

appreciate -- I do appreciate anybody getting me any

authority. I will read the authority that you provide

to me. What l'd like to do, for my own organizational

purposes, so I can keep the eggs in the proper basket,

is I'd like to hear about this 1996 rape.

MR. SANDERS: Your Honor --

THE COURT: You gave me the first description

of what happened with the 1981, so, Mr. Sanders, why

don't you tell me what you have to say about the 1996

alleged rape?

MR. SANDERS: Yes, your Honor. This was a

situation -- basically a domestic situation. My

client was living with a woman, and they got into a

situation where my client decided it would be better

to not live with her any longer. It was a situation

where there was all kinds of problems developing in

the relationship and at one point the young lady

invited my client to come over. My client came Over,

they had sex, and my client began to move out.

Then he was approached by police officers who

said that she had indicated she had been raped rather

than having consensual sex, and the -- a short time

after that, the district attorney in Los Angeles county

determined not to file charges, not to proceed with the

case, and my client, a short time later, was given a

restraining order that that young lady could not

continue to bother him and harass him.

3

My point is that not only was it not a -- not a

rape, but even if it had been, even if it was as the

young lady said, there's no similarities. There's no

connections that could be drawn to any evidence in the

instant case. There's no -- there's no similar

circumstances. There's no similar approach or --

there's no evidence that any of the things that the lady

in Long Beach alleged were at all similar to something

that happened in 1985 even if what she said was true.

You know how district attorneys are. They're

pretty dogged about those things. In that case they

looked at it and said, no, we're not going to file

charges. In fact, we're going to give Mr. Yablonsky a

restraining order.

THE COURT: Well, the DA didn't decide to

give Mr. Yablonsky a restraining order.

MR. SANDERS: Pardon.

THE COURT: The DA didn't decide to give

Mr. Yablonsky a restraining order.

MR . SANDERS: NO .

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

MR. SANDERS: But the investigating officer

released him that same day.

THE COURT: Okay. All right.

MR. SANDERS: So my argument is that it's --

under 352, the prejudice of it overwhelms any

probative value.

THE COURT: Mr. Thomas.

4

MR. THOMAS: Again, the victim gives an

entirely different story than Mr. Yablonsky in this

case. She said that she did know Mr. Yablonsky, and

that she was at home just after midnight --

THE COURT: I'm sorry. She did say she did

know --

MR. THOMAS: Mr. Yablonsky.

THE COURT: Okay.

MR. THOMAS: She said that she was at home

just after midnight on the night that this occurred,

and Mr. Yablonsky entered through a bedroom door,

which was closed but unlocked, and when he entered the

residence, she asked him, what are you doing here?

What are you doing here? And Yablonsky said, you will

have to do what I want. I'm addicted to you. I'm

fucked up. I've gone too far to turn back. She asked

what he meant by fucked up. He didn't answer, and

then afterwards he told her, T will kill you if you

don't do what I want.

Then at that point he had a Taser that belonged

to the victim and threatened her with the Taser. Then

at that point there was a rape that occurred and her

underwear were ripped and other things happened, and she

reported it to the police afterwards.

THE COURT: Other than talking about cases

that -- any authority someone may have, have I been

given the factual circumstances that I need to plug in

the law? Do you think I've heard everything about the

5

facts?

MR. SANDERS: If I didn't mention it, your

Honor, my client lived at that residence. He actually

lived there.

THE COURT: At the time of the event?

MR. SANDERS: Yes. He was moving out at the

time and also a disagreement -- she didn't want him to

move out. She spoke to my client two or three times

after this, and my client, you know, asked, why did

you say all those things about me that aren't true?

She admitted that, I know they're not true, but I felt

that in our relationship at times that you raped my

soul, so I made those statements. That‘s why the

detectives and the police never took it any further

after they learned all these various things.

THE COURT: They learned these things -- did

she say that to the police?

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

charges.

THE COURT: Did she say that to the police?

She said to the police -- you're saying the police

reports contain her saying that she wasn't raped; that

he raped her soul?

MR. SANDERS: Yes. The police listened to a

phone call between my client and her.

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

information.

THE COURT: Do you have the police report?

6

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

there.

THE COURT: Okay. All right.

MR. THOMAS: Then as far as the turn down, I

have a law enforcement arrest disposition. It looks

like the reason that it was turned down is the victim

refused to prosecute. There could be several reasons,

as the Court I'm sure is well aware, of why a victim

might choose not to want to prosecute or testify.

THE COURT: Mr. Thomas, you have a case you

mentioned.

MR. THOMAS: Yeah. The case is People V

Story, 2009 case, 45 Cal.4th 1282. Basically, that

case involved a murder. There were no allegations

alleged or no charges filed in the Information

alleging a rape or any type of sexual assault, but the

prosecution's theory in that case was that the victim

in the case was murdered in the course of -- in the

course of a rape or an attempted rape. They sought to

bring in evidence of defendant's prior conduct, two

occasions prior to the murder and two occasions after

the murder.

The trial court allowed that to come in under

1108 saying that because of the prosecution's theory was

that it was a first degree murder based on the felony

murder rule, that that -- those four prior -- those four

different incidents were allowed to come in.

The appellate court reversed on the basis that

7

there was no charging document alleging a sexual

‘assault. The California Supreme Court reversed the

appellate court and allowed the conviction to stand

based on the fact that it doesn't have to be alleged.

If the prosecution's theory is murder in the course of a

rape or attempted rape, the defendant's prior conduct or

prior actions can come in under llO8, and that's the

argument that the People are putting forth in this case

is in this case there's a special allegation or special

circumstance alleged that this was committed in the

course of a rape or attempted rape per Penal Code

Section 261.

THE COURT: Is there any authority that you

wanted me to look at, Mr. Sanders?

MR. SANDERS: Your Honor, I did --

THE COURT: Just a minute.

MR. SANDERS: Excuse me.

THE COURT: -- other than what we have

discussed so far?

MR. SANDERS: There were a couple of cases

that I found last evening. I didn't bring them with

me this morning. I apologize. I thought we were

going to get to this after we selected a jury.

THE COURT: I understand. I thought we'd

exercise an opportunity -- we'd use this opportunity

to do things we hadn't completed. That's fine. We're

not going to be talking to the jury about this this

morning.

8

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

THE CLERK: Um-hmm.

(Whereupon proceedings were held off the

(Whereupon proceedings were

held in unrelated matters.)

THE COURT: Mr. Sanders, I'm going

recess on this trial. We're going to start

hopefully in 15 minutes we're going to have

record.)

to take a

a reporter

available. I'm going to read whatever authority I

just got from the case that Mr. Thomas has given me.

I want you to find whatever case you wanted me to look

at. You mentioned there might be a couple of cases.

MR. SANDERS: I'd have to run back

office a couple of blocks away.

T5

to my

THE COURT: Well, I suppose that l minutes

is enough time to do that; isn't it?

MR. SANDERS: It will be tight.

THE COURT: Okay. Thank you.

(whereupon a recess was taken.)

9

VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;

DEPARTMENT NO. V2 HONORABLE JOHN M. TOMBERLIN, JUDGE

A.M. SESSION

APPEARANCES:

The defendant with his counsel,

DAVID SANDERS, Deputy Public Defender;

JOHN THOMAS, Deputy District Attorney of

San Bernardino County representing the

State of California.

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

-oOo-

THE BAILIFF: All rise. In the presence of

the flag of the United States of America symbol of

freedom and justice. Department 2 of the Victorville

Superior Court is now in session, the Honorable

John Tomberlin presiding. Please be seated.

Please raise your right hand to be sworn.

THE CLERK: Do each of you understand and

agree that you will accurately and truthfully answer

under penalty of perjury all questions propounded to

you concerning your qualifications and competency to

serve as a trial juror in the matter now pending

before this court, and that failure to do so may

project to you criminal prosecution?

If so, say, "I do."

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Good morning, ladies and

10

gentlemen.

That wasn't bad. We are here to pick a jury.

Juries work together. Let's practice. Good morning.

Welcome to Department 2, San Bernardino County

Superior Court. You have been summoned to hear the case

of People of the State of California versus

John Henry Yablonsky. Mr. Yablonsky is present here in

court, along with David Sanders, his attorney.

Mr. Sanders, will you please introduce yourself

and your client to this prospective jury.

MR. SANDERS: Good morning, ladies and

gentlemen. My name is David Sanders. This is my

client John Yablonsky. Good morning.

THE COURT: Anytime a case is brought in

court, somebody has to come in and allege something.

Tn this case it's the District Attorney's

office. And we have John Thomas, who is a Deputy

District Attorney. And his investigating officer is

Detective Robert Alexander.

Would you please introduce yourself and your

investigating officer, please.

MR. THOMAS: Good morning, ladies and

gentlemen of the jury. I am John Thomas, and I'm a

Deputy District Attorney for the county of

San Bernardino. And I represent the People of the

State of California in this case. The gentleman

seated or standing right next to me is Detective

Robert Alexander. He's from the San Bernardino County

11

Sheriff's Department. He'll be sitting with me

throughout this trial as my investigating officer.

Thank you.

THE COURT: Anytime there's a lawsuit,

someone has to come in and allege something, whether

it's a civil case or a criminal case. They don't just

pop up by themselves. You have to start somewhere.

Usually you start with a piece of paper.

In a felony case like this one, the document

that we work from is what is called an information. An

information is something that accuses a person of a

crime but it is not evidence of guilt. So I'm going to

read to you this information having explained to you

already the fact that someone has been charged with this

crime does not make them guilty of the crime.

Determination of guilt or innocence will be

your job after you listen to the evidence that is

presented in this case.

The Superior Court, County of San Bernardino.

The People of the State of California plaintiff versus

John Henry Yablonsky. The District Attorney of the

county of San Bernardino by this information alleges

that Count 1, on or about September 20th, 1985, in the

above-named judicial district the crime of murder in

violation of Penal Code section 187(a), a felony, was

committed by John Henry Yablonsky, who did unlawfully in

malice aforethought murder Rita Mabel Cob, a human

being.

12

It is further alleged as to Count 1 that the

murder of Rita Mabel Cob was committed by Defendant

John Henry Yablonsky while the said defendant was

engaged in the commission of and or the attempted

commission of the crime of rape, in violation of

Penal Code section 261.

This information consists of one count and is

signed Michael A. Ramos, District Attorney County of

San Bernardino, State of California by John Thomas,

Deputy District Attorney.

So now you know what this particular trial is

going to be about. Let me tell you how long it's going

to last, what our schedule will be.

Today is the 19th?

MR. SANDERS: The l9th, your Honor.

THE COURT: The attorneys and I pretty much

have agreed that this is the schedule, We're going to

pick a jury today and tomorrow. We will not be in

session on Friday. In fact, we won't be in session on

any Friday during this trial unless you, the jury,

have the case and are already in deliberations. So we

won't be in session on January 21st. We will come

back next week the 24th and we'll begin evidence.

We believe that the evidence will be presented

on the 24th, 25th, 26th, and 27th. We won't be in

session on the 28th unless you're deliberating. But the

case will probably not be finished by that day. We'll

come back on January 31st, then we'll be in session,

13

that's Monday. On February lst, 2nd, and 3rd, we

believe you'll have this case submitted to you by

February the 4th.

Is that the schedule that we've anticipated,

Mr. Sanders?

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

MR. THOMAS: Yes, your Honor.

THE COURT: Okay. So in order for you to be

able to serve on this jury, you'd have to be available

until about February the 4th.

Some of you might not be able to be with us.

We're going to give you a chance to address me in just

few minutes. There are 74 of you, I believe. So

unfortunately even if you want to be with us, I can't

guarantee you a seat on this jury. We'll probably be

picking, I know we will be picking 12 jurors, probably

pick 15 with alternates. You can do the math. What is

that? About one chance in five of getting on this jury

panel.

So if you sit here with us and you don't get

selected, I'll be excusing you. And you'll be done for

your jury service for the year. What was it that

Clint Eastwood asked to Dirty Harry? Do you feel lucky

I don't know which way you want it. If you

tell me that you don't have the ability to be here, I

can excuse you for hardship. Here's what I need to

hear. I need to hear a severe economic hardship or

medical hardship, Severe economic hardship means that

14

you don't get paid for jury service. Or you've already

booked a round-the-world cruise and you're leaving

before the trial is over and you're going to lose your

deposit, lose your airfare. You're going to tell me

that you've got a promotional exam that's only offered

once a year and that's during the course of our trial.

And if you don't have a chance to take that exam, you

won't get a chance to get promoted. Perhaps you're paid

for jury service but paid minimum wage and you get

commission on top of that and your employer doesn't give

you the commission while you're here. Or you need the

overtime you're getting now and you don't get paid by

your employer for the overtime. And if that's a

severe economic hardship to you -- and how am I going

know? -- I'm going to take your word for you it. You

have taken an oath to tell the truth. But we're not

going to make you present pay stubs or a letter from

your employer, any or that kind of stuff.

If you fall into that category, I will excuse

you for economic hardship. What is not economic

hardship? It's not economic hardship that you are

someone who is just so important that your work can't do

without you. Because that's economic hardship to

somebody else. The fact that you have a co-worker

that's on vacation and your boss is not going to know

what to do in your absence, sorry, but we all are

important in one way or another. I don't care if you're

a brain surgeon or you have a job taking care of

15

children at a home, your time -- well, I'm only going to

say as Shakespeare did when he said, "Time is the stuff

that life is made of." So the time for all of us is of

equal value in my opinion. And taking the time out of

your lives is what was contemplated when someone came up

with this idea of a jury trial a long, long time ago.

So people have fought wars over this. People have died

over it. The fact that people are called in and

expected to serve jury service is part of the

responsibility that we have for the blessings that we

enjoy of living in a free society. The fact that is a

hardship on somebody who is a co-worker, the fact that

your children if you're a teacher are not going to get

the quality of education from a substitute that they're

going to get from you, those are things that are

limitable but not a basis to which I will excuse you.

Okay. Medical hardship is a little easier.

Medical hardship is I'm sick right now, I can't stay

here. I can't sit. I'm taking medication and it

affects my ability to figure out what's being said or to

remember things. Or l have an appointment with the

VA Hospital for surgery. It takes me a long time to

reschedule these things. Please excuse me so I can go

to the doctor. Or my husband has a surgery scheduled,

and I'm the only one that takes him to the surgery or

the follow-up. Those are things which are medical

hardship for which I can excuse you.

There might be something else that you can tell

16

me about that's going to cause me to excuse you. Okay.

For example, maybe you're a college student. You're in

the middle of classes. You have finals coming up. You

need to study. If you don't do that, you're going to

fail your college classes. That would be a financial

hardship.

There could be other things. But I want you to

understand what I have just told you. If I can't fit it

into either financial hardship or medical hardship that

affects you personally or someone for who you are

responsible personally, I won't be able to excuse you.

Does that mean you won't be excused by the

attorneys? Let me explain to you that in my experience

as a trial attorney before I was a judge and now as a

judge -- we're talking about a lot of years -- attorneys

don't want people on their jury that don't want to be

here. Just so you'll know, even if you're qualified to

sit as a juror in this case, even though I can't excuse

you for hardship, the attorneys are going to have 20

peremptory challenges each. So 20 people that are

qualified and able to be with us are going to be excused

or maybe excused by Mr. Thomas and Mr. Sanders, that's

40 people combined. So keep in mind you may not be

excused by me but you might still be excused by the

attorneys later on in these proceedings.

Have I scared everyone? I don't mean to. I

just wanted to give you an idea of what the rules are

for which I can excuse you. If you think that you have

17

a hardship for which you should be excused and you're

seated at my left side of the room, your right side of

the room, and if you're in the front row, I want you to

stand. I see some hesitation. If you're in the front

row, I want you to stand right now if you have a

hardship you want to address to the Court.

You were thinking about it, weren't you? No?

Okay. I will always start with the person who is

closest to the isle so there will be less people to

trample over as you leave.

Would you please state your name and your juror

number if you know it.

PROSPECTIVE JUROR: Deanna Hudak, O35.

THE COURT: Tell me what your hardship is.

PROSPECTIVE JUROR: Medication issue as well

as a doctor's appointment that that medication relies

on.

THE COURT: Okay. You're taking medication

and it's affecting your ability to be a juror?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: You're shaking your head yes, and

the record will so reflect.

PROSPECTIVE JUROR: Yes. Sorry.

THE COURT: That's all right.

Mr. Thomas? Mr. Sanders?

MR. THOMAS: People stipulate.

MR. SANDERS: Stipulate, your Honor.

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

l8

you agree that if I ask -- that I won't ask you again,

and if somebody asks to be excused for hardship only,

and I do excuse them, that your silence on that

subject will be deemed your consent, Mr. Thomas?

MR. THOMAS: Yes, your Honor.

THE COURT: Mr. Sanders?

MR. SANDERS: Yes, sir.

THE COURT: Okay. They have stipulated to

you being excused, Ms. Hudak. Thank you for being

with us. You are excused.

PROSPECTIVE JUROR: Sandy Zazueta, Juror

Number 074. I have two school-age children and a

two-year-old that I don't have daycare for after 3:00.

THE COURT: So what happens if you're here

with us until 4:30?

PROSPECTIVE JUROR: They're at school with

another teacher that will be with them at school until

I get there to pick them up.

THE COURT: What's wrong with that?

PROSPECTIVE JUROR: I can't pay for child

care for her.

THE COURT: So they would be with the teacher

at the school but that would be a charge that you

would incur.

Is that what you're telling me?

PROSPECTIVE JUROR: Exactly.

THE COURT: And you can't afford that?

PROSPECTIVE JUROR: No, not at this moment.

19

THE COURT: Thank you for being with us,

Ms. Zazueta. You are excused for financial hardship.

PROSPECTIVE JUROR: Thank you.

THE COURT: All right. Thank you.

We're going to be to the second row. If you're

in that second row and you want to address me with

medical or financial hardship, please stand.

PROSPECTIVE JUROR: My name is

Julia Erickson, Number O21. I am a migraine sufferer,

and I get migraines at any time. And I take

prescription medication and it makes me very light

headed and I have to lay down.

THE COURT: Okay. Let me say -- just so

you'll know, Ms. Erickson, and I'm saying this for

everyone who is listening, we also accommodate people

with issues, if they request that. So if you tell me

that, cause I don't know the frequency, I can tell by

your discussion of it that I can guess the intensity.

I'm sure it's difficult when you have a migraine.

Do you take this medication only when the

migraine comes on?

PROSPECTIVE JUROR: Right when it comes on.

I never know when it's going to come on.

THE COURT: Do you know about the frequency?

PROSPECTIVE JUROR: The frequency can vary

from once a week to five times a week. It varies.

THE COURT: Do you think if you were to sit

with us there would be a likelihood that you would

20

have an outbreak?

PROSPECTIVE JUROR: Yes. Yes. If Iim

sitting for long periods of time, it tends to bring

them on.

THE COURT: I heard something about

florescent lights too. Is that something that affects

you?

PROSPECTIVE JUROR: Yeah.

THE COURT: Okay. All right. Well, I

certainly -- again, I want you to know, Ms. Erickson,

if your request was I want to be on this jury and I

want you to agree to shut things down if I have a

migraine come on, if that's what you were asking, I

would be happy to try and accommodate you. But what I

think I‘m hearing from you is that this particular

process would be inclined to bring on the migraine and

you'd rather be excused?

PROSPECTIVE JUROR: Yes.

THE COURT: I'm going to excuse you for

medical hardship. Thank you for being with us this

morning.

PROSPECTIVE JUROR: Thank you.

THE COURT: We're going to go to the third

row. If you are in the third row and want to address

me with a hardship, please stand.

Hello.

PROSPECTIVE JURORi O02, Catherine Anderson.

I'm starting a --

2l

THE COURT: Just one second. O02?

PROSPECTIVE JUROR: Yes. I am starting five

weeks physical therapy, three times a week. I can see

the latest I can reschedule since I've already

scheduled it. It's for my left arm and my left knee.

THE COURT: I'm sorry, I can't hear you very

well. You're personally scheduled for physical

therapy?

PROSPECTIVE JUROR: Yes.

THE COURT: And --

PROSPECTIVE JUROR: Work related on my left

knee and left arm.

THE COURT: Okay. And you want to find

out --

PROSPECTIVE JUROR: Willing to See -- I did

not know how long this would last, the time. If I

could schedule it later, T'm willing to.

THE COURT: Okay. You know what, if you'll

do me a favor, Ms. Anderson, maybe during the lunch

recess you can talk to someone and find out. 4:30 is

the normal time that we'll knock off. Let's face it,

this is not a real short trial. This is not a real

long trial. But if somebody has something that's

coming up and they have to leave at 4:15 or 4:00 on

some particular day are we willing to accommodate you?

Yes, we are. I won't be able to do it on a daily

basis, but I'll certainly stay this: You will be out

of here by 4:30 every day. If you come back after

22

lunch, let us know, Ms. Anderson, and you can address

me again.

PROSPECTIVE JUROR: Okay. I might add also

to save some time most of my family is law

enforcement, so I don't know.

THE COURT: That's not of interest to me.

Law enforcement officers themselves can't be jurors.

PROSPECTIVE JUROR: I didn't know if you

would dismiss me, that's why I said it now.

THE COURT: Sworn officers cannot sit as

jurors. Law enforcement officers that are retired or

the family of law enforcement officers can. And I

appreciate your volunteering that, but this is

strictly a hardship discussion right now.

Thank you.

PROSPECTIVE JUROR: Joel Richartz, O57 is my

juror number. I am a teacher. I live 45 minutes from

my house to work. My son is also a high school

student at my high school so it's -- would be to get

him to school and back every day. And I don't know

how we're going to pull that off. He's very happy

about today because he gets to stay home.

THE COURT: Okay. There's no one else that

can get your son to school?

PROSPECTIVE JUROR: My wife and I work. She

works also up in the High Desert. If we go along, we

will try to figure it out. But there will probably be

days that we will not be able to get him to school.

23

THE COURT: I'm sorry. Just so I'll know,

where do you live?

PROSPECTIVE JUROR: I live in Wrightwood.

THE COURT: Okay. And where does your son go

to school?

PROSPECTIVE JUROR: Norco High School. I'm a

teacher at Corona/Norco Unified School District.

THE COURT: And your wife? Where does she

work?

PROSPECTIVE JUROR: She owns her own business

up in the High Desert in Wrightwood.

THE COURT: So is there anyone that can watch

the shop while she takes your son to high school?

PROSPECTIVE JUROR: It's also picking him up.

THE COURT: Is there anyone that can watch

the shop while she picks him up from high school?

PROSPECTIVE JUROR: She does have employees,

yes.

THE COURT: Well, Mr. Richartz, I'm going to

keep you with us for right now. It doesn't sound like

such a financial hardship that would be a reason for

me to excuse you.

PROSPECTIVE JUROR: Okay, sir.

THE COURT: Yes, sir?

PROSPECTIVE JUROR: My name is

Thomas Medlock. I am O43, and this is a personal

issue for me.

THE COURT: I'm sorry. What?

24

PROSPECTIVE JUROR: A personal issue. My son

was murdered in an armed robbery. I really don't

think a murder trial is something I can sit on.

THE COURT: Mr. Medlock, I'm going to say

this to you with all due respect. I am so sorry that

that's the case. But you're going to have to sit back

down because we're talking about one thing right now

and that's hardship.

Next row.

PROSPECTIVE JUROR: My name is Chris Proctor,

O54, I believe. My hardship probably would be I

don't -- I get a partial payment. I'm the only bread

winner in the house. I get a partial payment. I

don't know what that partial payment is because I

never ask, but we get a percentage for jury duty.

THE COURT: Who do you work for?

PROSPECTIVE JUROR: Wal-Mart Distribution

Center.

THE COURT: Mr. Proctor, I have had a lot or

jurors from Wal-Mart Distribution Center. Are you

saying to me that you get only a percentage because

they don't pay you overtime that you would have

otherwise gotten?

PROSPECTIVE JUROR: I don't know how it

works. I know that they --

THE COURT: I need you to do this, I need you

to call your HR people over lunch. I've never heard

this before. I know that often there is

25

miscommunication. I don't know where the source of

your information is that you're giving me. If you

come back and you say, "Yeah, they are only going to

give me X number of dollars and that reduces my pay

too much," then I'll excuse you. But I think that you

need to confirm that with the HR staff because I have

had numerous people on my juries over the years that

have worked for the Wal-Mart Distribution Center.

It's a large employer for our area. I have never

heard that before.

PROSPECTIVE JUROR: Just a lot of secrets.

THE COURT: Mr. Proctor, why don't you see me

and talk to us after lunch about this.

Okay?

PROSPECTIVE JUROR: Okay. Will do.

THE COURT: Thank you.

Yes, ma'am?

PROSPECTIVE JUROR: Theresa Reyes, O56. My

hardship is medical. I'm under medication and

sometimes the medication has side effects which I'm in

the bathroom quite a bit.

THE COURT: I don't want to get too personal,

I just say to you that we'll normally not go more than

about an hour and l5 minutes at a time.

PROSPECTIVE JUROR: I'm talking about loose

stools. That's what I mean.

THE COURT: Okay. Ms. Reyes, thank you. I

didn't want to give that information for other people

26

to know, but I'm going to excuse you for medical

hardship.

Thank you.

PROSPECTIVE JUROR: Joann Banbury, O07. I

don't have, like, a medical or financial hardship. My

case -- I have to be in court on Thursday the 27th.

(whereupon a cell phone rang.)

THE COURT: If that's for me, tell them I

can't take that call right now.

Now, tell me again what you just said?

PROSPECTIVE JUROR: I have to be in court on

the 27th.

THE COURT: Who has to be in court?

PROSPECTIVE JUROR: I do.

THE COURT: For what?

PROSPECTIVE JUROR: Me and my husband. We

are in a custody issue with kids so it's -- we -- we

have already had mediation on that. And they said I

will have to be there on the 27th. So that's why I'm

telling you. I don't have a problem with serving, but

I don't know if we can work around that.

THE COURT: We can.

PROSPECTIVE JUROR: COOI.

THE COURT: I don't really understand yet

where we are. Is it a dissolution of marriage and

it's regarding that?

PROSPECTIVE JUROR: No. It'5 the issue of

custody of the kids. The divorce and all that is

27

already done.

THE COURT: The children between you and your

husband?

PROSPECTIVE JUROR: Between -- no.

THE COURT: The custody of whose children?

PROSPECTIVE JUROR: It'S actually his son.

But the situation I'm involved in, you know,

they -- I'm having to go through everything with him.

THE COURT: Okay.

PROSPECTIVE JUROR: But it's only for that

one day. That's our court date.

THE COURT: Right. Those court dates are

frequently continued, but there's also another thing I

can tell you.

I have a little influence here at this

facility.

PROSPECTIVE JUROR: Right.

THE COURT: And I can simply -- are you going

to be in front of -- do you know who you're going to

be in front of? Commissioner Prouh or Judge Harris?

PROSPECTIVE JUROR: Prouh.

THE COURT: I'll -- I don't know how long

that procedure normally will take, but I will make

sure that Commissioner Prouh puts your matter on

first thing.

PROSPECTIVE JUROR: Okay. That works for me.

Usually we're sitting there all day.

THE COURT: Thank you.

28

Is that the penultimate row? Was that the

penultimate row?

MR. THOMAS: Yes, sir, it is.

THE COURT: Let's go to the last row.

PROSPECTIVE JUROR: My name is

Kenneth Rowe, O60 I believe it is.

THE COURT: Yes, sir.

PROSPECTIVE JUROR: I was trying to calculate

the days that you're saying because my work will pay

me for four jury days and after that I don't get paid

anymore. I'm the only one that makes income in the

family. My wife doesn't work. My son is in college.

THE COURT: Where do you work?

PROSPECTIVE JUROR: American Career College

down in Ontario.

THE COURT: They say they only pay for four

days?

PROSPECTIVE JUROR: Four days, I was told,

and after four days they don't pay for jury duty

anymore.

THE COURT: Mr. Rowe, you are excused for

financial hardship.

PROSPECTIVE JUROR: Thank you, your Honor.

THE COURT: It was the "son in college" line

that got me. I take it personally.

Yes, Ma'am?

PROSPECTIVE JUROR: My name is

Martha Chisolm, Juror Number O17. Hardship for me is

29

my husband is blind. He also has severe hearing loss.

I like to be close enough that I can keep track of

anything happening to him. He's had four heart

attacks.

THE COURT: Okay. You're a care provider for

your husband who has disabilities?

PROSPECTIVE JUROR: Yes.

THE COURT: Ms. Chisolm, I'm going to excuse

you for medical hardship. Thank you.

All right. Now we're going to take the other

side of the room. If you're in the front row and you

have a hardship, please stand.

PROSPECTIVE JUROR: Jay Storer, I'm Number

64. And my employer does pay for me to come to jury

duty but I'm scheduled for a lot of overtime for the

next six weeks. And that effects me if I have that

taken away if I come to jury duty. I'm the only one

in my family working. I have six kids and a daughter

in college.

THE COURT: Mr. Storer, thank you for being

with us today. You're excused financial hardship.

Yes, sir?

PROSPECTIVE JUROR: It's not a hardship. I

heard you mention to the young lady here that -- I'm

in law enforcement. I would love to serve but --

THE COURT: Feel free to serve then. Sit

down.

Hardship, folks. Second row.

30

Yes, sir?

PROSPECTIVE JUROR: My name is

Michael Sparks, Number O63. I am currently trying

to --

THE COURT: I can't hear you. You're

currently what?

PROSPECTIVE JUROR: I'm currently living in

the City of Victorville. My hardship is that I have a

short-term memory, and I can‘t comprehend a lot of

things.

THE COURT: I didn't hear everything you

said, but I believe you said you have a very

short-term memory?

THE PROSPECTIVE JUROR: Yes. And I have a

partial mental retardation, and I can't comprehend a

lot of things.

THE COURT: You believe that it would be

difficult for you to serve because of your mental

abilities?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Mr. Sparks, I'm going to

let that be a medical hardship and excuse you.

Thank you.

Third row. Last row. Last chance. Okay.

Sir, in the front row. We now have a few more

minutes to talk. You mentioned that you're in law

enforcement. And the reason why I didn't want to

address anything other than hardship was I wanted to

31

make sure that we do things in order. I'm talking about

law enforcement right now because you heard my comments

to someone else. My comments were general. And as

usual when I'm not addressing something real specific, I

tend to misstate stuff. Sorry. That's just me.

Otherwise, I act like the lawyer I was for 20 years, and

I speak with so much specificity that people are looking

at me and saying I asked what time it was, and you tell

me how to make a watch.

Shorthand I say, law enforcement doesn't sit

but that's not exactly the case. There are different

sections within the California Penal Code that define

who is a law enforcement officer for the purpose of jury

service. People who are like Deputy Fleigner, who is

passing some papers out right now, he's wearing a

uniform. He carries a gun any time he wants to,

anywhere he wants to. There is a section in the

Penal Code in which he is described and it

is -- what -- 832.8?

THE BAILIFF: 832?

THE COURT: It doesn't matter. You do not

need to know this. No one needs to know this.

There are some people that are involved in law

enforcement that are not defined by the same Penal Code

section as Deputy Fleigner is. Who -- if you were let's

say a policeman, or a police woman, who maybe is

assigned to a school district and you‘re only a peace

officer for the purposes of that Penal Code section

32

while you're on duty, then that's different than being a

full-time peace officer like Deputy Fleigner is. Other

people that fall into the category of peace officers

would include California Correctional peace officers,

people that are involved in housing and supervision of

our inmates. But they're not defined by the same

Penal Code section and are not exempt from jury service.

What is your name, sir?

PROSPECTIVE JUROR: Esitimoa Otuafi.

THE COURT: What number is it?

PROSPECTIVE JUROR: O50.

THE COURT: What is your exact job?

PROSPECTIVE JUROR: CDC.

THE COURT: California Department of

Corrections. Okay.

So you are a Correctional Peace Officer?

PROSPECTIVE JUROR: Yes.

THE COURT: And that is a different section

than the section that defines Mr. Deputy Fleigner.

For that reason you're not exempt.

So that's -- pardon me for having made such a

broad statement at the beginning.

Now, we also will go back now to Mr. Medlock.

Mr. Medlock has had an opportunity to address the Court.

I don't normally take these things out of order.

Usually if someone has a reason that they feel they

can't sit on a jury -- everyone will get a chance to

talk to me. So I don't -- l'm not inviting other people

33

to explain why they should be excused for what we refer

to as cause. But Mr. Medlock has already volunteered to

us that his son was the victim of a murder.

Mr. Medlock, sir, would you stand up so I can

talk to you?

PROSPECTIVE JUROR: Thank you.

THE COURT: You indicated that your son was a

victim of murder; is that correct?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: How long ago was that?

PROSPECTIVE JUROR: January 8th, 2004.

THE COURT: Is it something that is so

emotional to you still that if you were to be a juror

in this case that you believe you'd have a hard time

separating the facts that you hear in this courtroom

from the circumstances that you recall or the facts

that you were aware of that relate to your son's

murder?

PROSPECTIVE JUROR: Yes, your Honor, I do.

THE COURT: Okay. Counsel, this is not a

stipulation for hardship. This is whether or not you

want to at this point in the proceedings agree that I

can excuse Mr. Medlock for cause.

Do you want to do that?

MR. THOMAS: The People would be willing to

stipulate.

MR. SANDERS: As would the defense.

THE COURT: Thank you, Mr. Medlock. Again,

34

I'm sorry for the circumstances.

PROSPECTIVE JUROR: Thank you, your Honor.

THE COURT: You're welcome.

Okay. We're going to play the numbers game.

Call 18 names.

THE CLERK: Juror Number 19, Lisa Cuautle;

Juror Number 59, O59XXXXXXXX; Juror Number 6,

Nitika Austin; Juror Number 2, Catherine Anderson;

Juror Number 30, Marvell Greenwood; Juror Number 53,

Tony Pol; Juror Number 52, Donna Pineiro; Juror

Number 16, O16XXXXXXXXXXX; Juror Number 42,

Debra McKenzie; Juror Number 9, Cameron Bean; Juror

Number 29, Tasia Green; Juror Number 73,

Linda Whittaker; Juror Number 18, O18XXXXXXXX; Juror

Number 12, Katherine Bradfield; Juror Number 25,

OZSXXXXXXXXXXXXX; Juror Number 66, Sharon Tierney;

Juror Number 15, Marie Cervantes; Juror Number 54,

Christopher Proctor.

THE COURT: Funny we have two people that

we're going to get more information from. Started

right off with them in the jury box, first call.

Ms. Anderson and Mr. Proctor, we're still going

to listen to you. Just because you're called up here

that doesn't change anything. After lunch if you're not

able to you find out you can be with us and have you

back, you'll still have to come back. Or we can excuse

you for hardship still, if necessary.

If you're way in the back and you want to be

35

able to hear what goes on and you can hear, stay where

you are. If you don't have the ability to hear

everything, I want you to move closer.

It's really important that everyone follow

directions during this part of the proceedings so that

we can get through this in an organized manner. This is

a process that is a group participation process. I'm

going to be asking questions of the potential jurors

here. They're going to be answering those questions. I

want everyone in the courtroom to be able to hear every

question that I ask and every answer that I receive.

If you don't hear everything, then the process

is not going to work properly because later on we're

going to be streamlining. You'll be hearing me asking

things like: Did you hear everything I've asked

everybody else? Did you hear the other people's

responses? Would your responses be different?

Okay. It's not tough. It just requires that

everyone hear everything because I'm going to talk about

a lot of important principles, and I'm not going to

repeat those principles unless somebody asked me to. I

don't mind explaining things or re-explaining things.

But you'll see how this works in just a moment.

I've got a questionnaire here with l4

questions. I'm going to start with Ms. Cuautle in just

a moment. I'm going to read her each of these

questions. There's no reason for you to wait until I‘m'

talking to you to decide what your answers are. Decide

36

what your answers are while you're listening to her

answer these questions. That way if you do what I am

suggesting, when I get to OBQXXXXX, she's already going

to know what answers she's going to give me because

she's going to have listened to the question and

answered it for herself while I've been speaking to

Ms. Cuautle. That way I never have to have people

looking at me and saying things like, "My answer to

question 5 is no. Number 6 is no." Okay. You'll see

how this goes during the course of our discussions.

Everybody is glad to have an answer probably to

questions 1, 2, and 3. Some people are going to say, "I

have no "yes" answers to questions 4 through 14." Most

people will have a few. As I mentioned, though, I'm

going to be discussing some general principles. I'll be

doing that while I'm speaking to the jurors up here. So

that's why I want everyone to listen and think of how

you would respond to the things that I ask for during

this discussion. Even if you're here in the gallery,

that's what we might refer to as an audience if this

were a theater. And the people up here are in the jury

box. Behind the lawyers there's a row of seats and then

the deputies are sitting there. And there's a division

then what we refer to as the gallery, and that division

is called the bar.

Show them where the bar is, will you, Pete?

THE BAILIFF: My hand is on it and it runs

all the way across to you guys (indicating).

37

THE COURT: In the old days, I'm talking way

back when, judges probably went through the English

countryside. And I don't mean just England. We

basically have a system of law in the United States

based upon English common law developed over a long

period of time.

And the judge was probably a circuit writing

judge. The judge would come to a town and

there wouldn't be a courthouse. There might be a

dispute. There might be someone being tried for some

kind of crime. And I would have with me -- if I were

that judge -- bailiffs like the deputies that I have

here. And maybe for security, they would actually have

a bar and they would put it in front of me so that no

one could approach me except for if that person were

addressing the Court as someone who was a litigant or a

party to the action.

This area -- by the way, in front of me between

my bench and the seat where the attorneys are, that's

called the counsel table. It is typically referred to

as the well. So if I went to a small town when I was

going to sit as a judge, maybe the bailiffs would put me

behind the well. So that in order for someone to get to

me they would have to fall into the well. It would be

another procedure for personal safety. I'm giving you a

little bit of history of what's going on here.

This process now that we're going to enter into

is voir dire. Voir dire means to speak the truth. It's

38

an opportunity for the attorneys and myself to know a

little bit about you and what your feelings are. The

reason why I was allowing Mr. Medlock to address me, and

then I could excuse him was, one of the reasons, was I

wanted to explain this to you later. I couldn't look at

Mr. Medlock and say Mr. Medlock, you can't be a fair

juror; right? You can't look at him and tell that, but

he knew it. And he volunteered that.

Some of you may have feelings that are like

Mr. Medlock's that we haven't given you an opportunity

to express at this point. I'm not going to be able to

or try and trick you into saying something. I'm only

going to know if you can be a fair juror or not if you

tell me. That's why we're going to ask you questions.

If a final analysis can't be fair in my opinion because

of things you have told us, we're going to excuse you

for cause. That's how we refer to it. We had hardship

and now we have cause. Think of it because I can't be

fair.

The attorneys also have what are called

peremptory challenges. It means that even though you

could be fair and you're qualified to sit as a juror,

for one reason or another they do not want to have you

sit on the case. And then they get a chance to exercise

peremptory challenges. They cannot use peremptory

challenges to exclude someone because of their gender or

because of their ethnicity or any other, what we refer

to as, cognizable characters. But if for some reason

39

they don't like some of your answers, I have seen so

many different theories. Some people believe that

teachers don't make good jurors and they excuse

teachers. Some people might excuse people whose family

was involved in law enforcement or people whose family

maybe was involved in some kind of a criminal act

themselves.

These are things that they get the chance to

exercise peremptory challenges and they have 20 each.

So we're going to start with this process right now.

I'm going to talk to Ms. Cuautle, and then we're going

to take lunch and everyone will have an idea of what's

going to happen when we get back and I'm going to say

"O59XXXXX." And she'll know that's her cue. And after

I'm done with OSQXXXXX I'm going to say Ms. Austin.

She'll know that's her cue to answer these questions.

Let's start with you now, Ms. Cuautle.

MS. LISA CUAUTLE

BY THE COURT:

Q What is your business or occupation?

A Office clerk.

Q What kind of office is it?

A Environmental.

Q Is that a governmental agency?

A NO.

Q Tell me what that is. 1 want more.

A Deals with environmental issues, mold samples.

Q Okay. You eradicate those problems?

40

A No.

Q Yes?

A NO.

Q Do you identify them?

A Yes.

Q Okay.

Now, this next question is poorly worded

because it's antiquated. It uses the word "spouse."

I'm going to use the term life partner instead. Giggles

are heard all around but I say that because I don't care

if you're married to the person that you're living with.

I don't care about those kinds of things. I just want

to know if you share your life with someone; I want to

know what that person does. So here we go.

What is the business or occupation of your life

partner if you have one?

A He works for a roofing company, part owner of a

roofing company.

Q Do you mind, Ms. Cuautle, if I ask you to

please speak up.

A Okay.

Q It's tough to put you on the spot but I want

everyone in the room to be able to hear everything

that's said. Sorry. Just one second. I have another

jury back there deliberating. We are very busy.

Have you previously served on a jury?

A Yes.

Q How many times?

41

A Once.

Q Criminal or civil?

A Criminal.

Q Listen to my question carefully, please.

Because invariably someone is going to blow the answer

to this question. It's not the end of the world. But

I'm going to ask Ms. Cuautle in just a moment if there

was a verdict reached. I don't want anybody to

volunteer, "Yes. We acquitted someone. Yes. We

convicted someone." I just want to know if the jury was

able to reach a verdict.

Was the jury able to reach a verdict in your

case?

A No.

Q Okay. Was it a hung jury?

A Yes.

Q Sometimes juries don't reach a verdict for a

variety of reasons including cases that are settled out,

or just a mistrial for something -- some other reason

during the course of the trial.

In the case that you sat on a jury, what kind

of charge was it?

A A murder.

Q A murder case. Okay. And do you know how long

ago was that?

A 2003.

Q From memory can you tell us what the division

was like? Let's say 10 to 2 or 6 to 6?

42

A 7 to 2.

Q 7 to what?

A 7 to 2.

Q Was that a California case?

A Yes.

Q There has to be l2 people on a jury.

A I mean 7 to 5.

Q Okay. There was quite a discrepancy. Okay.

THE COURT: Now, for everyone else, you

should know that if Ms. Cuautle said, "I'm retired," I

would have asked her what did she retire from. Had I

asked her about her life partner and had she said that

her life partner is retired or deceased, then I would

have asked what did he do or she do during his or her

life. So you can just help us out by giving us that

information rather than me having to ask.

I'm going to say again, if you were on a jury,

I'm going to ask you did you reach a verdict. I don't

mean what was the verdict. I want to know did you reach

one.

If you answer yes to any of the following

questions, please tell me the question number and your

response. I‘m only going to read these once to

Ms. Cuautle.

BY THE COURT:

Q Are you acquainted with the Deputy District

Attorney, the Defense Attorney, the defendant, or any of

the following witnesses: Detective Greg Myler,

43

Daryl Kraemer, Martha Kraemer, Roger McCoy,

Donald Jones, Linda Mitchell, John Sullivan of

Lucerne Valley, Detective Robert Alexander, who you have

met, Dr. Bill Saukel (pathologist), Francesca Drake,

Holly Marie Brown, also known as Holly Marie Yablonsky,

Susan Anderson, Monica Siewertsen, Diane Flagg,

Angela Neete, Dr. Frank Sheridan (pathologist),

David Stockwell, Lori Kay Amaro, Kye Sun Kwoun,

Marshall Franey, Bruce Nash, Sherry Bratus (phonetic),

Ed White, Detective Mike Tuttle (phonetic), Detective

Gary Woods, and Detective Randy Nap (phonetic)?

A No.

Q Have you heard or read anything about this case

in the newspapers?

A NO.

Q I read 6 and 7 together because they are so

closely related.

Do you know any persons connected with law

enforcement, the legal profession, or the court system?

And 7, are any close relative or friends

members of any law enforcement agency?

A NO.

THE COURT: You know, I think that's as far

as I'm going to be able to get before we take our

lunch break.

We're going to start back at 1:40. Usually

we'll start at 1:30 but I had a matter continued from

this morning that I still have to resolve. So that

44

means that I need to have everyone come in the court,

wait outside the door, be ready to come in when you're

called at 1:40.

Every time we take a break I'm going to give

you this admonition.

You are admonished that it is your duty not to

converse among yourselves or with anyone else on any

matter connected with this case nor form or express an

opinion on it until it is submitted to you.

That means that when you're outside, feel free ‘

to talk about the weather, talk about the Golden Globes,

talk about the upcoming playoffs in football season.

You can talk about any kind of sports, the Australian n

Open is something I would be talking about, maybe.

I'm giving you an example of things that you

can talk about. What you can't talk about when I say

anything "connected with this case"? You're going to be

standing around. Maybe you're going to be calling in to

your work. Maybe you will be speaking to a loved one at

lunch.

Don't talk to them about murder. Don't talk to -

them about where you heard something that might have

peeked your curiosity about a crime that allegedly

occurred on September 20th, 1985. That's almost 25

years ago.

It's something you can't talk about with

anybody. Don't talk about anything related to this case

until the case is over, and then you can talk about it

45

with people all you want to. So you might run into the

attorneys outside, you can say good morning, good

afternoon as the case may be.

If somebody talks to you, direct them to

Deputy Fleigner. You met Deputy Fleigner. Pete is not

only our bailiff, but he's also the court liaison

officer.

If somebody wants to say something to me, if

somebody wants to bring something to my attention or

feels the need to tell something to the attorneys, don't

talk to them. Talk to Deputy Fleigner first.

Okay. We will take our lunch recess. We can't

get started until everyone is back. Don't come inside

the courtroom. Wait outside the courtroom until you're

called at 1:40. Have a nice lunch.

(Whereupon a lunch recess was taken.)

46

VICTORVILLE, CALIFORNIA; JANUARY 19, 2Oll;

DEPARTMENT NO. V2 HONORABLE JOHN M. TOMBERLIN, JUDGE

P.M. SESSION

(Appearances as heretofore mentioned.)

(Michelle Swal, Pro Tempore Reporter, CSR No. 13580.

-oOo-

THE COURT: We're back on the record in

People of the State of California versus

John Yablonsky. He is here along with David Sanders,

his attorney. John Thomas is here along with

Detective Alexander, his investigating officer.

Well, ladies and gentlemen of the jury, I was

exactly a half an hour off. That's not acceptable by my

standards. The matter that I had to deal with took

longer than I had anticipated. And I apologize that I

have kept you all waiting.

During the course of this trial there will

undoubtedly be some additional unintended delays. I

will assure you that never will it be something that I

have done without realizing that all of you are standing

out there in the hall waiting and that it's my fault if

I have inconvenienced you by having you summoned back

too early. Not in my defense, but just a fact of life,

I indicated that we're very busy. I could easily say

come back at 2:30. But then if I'm done early, then I

have lost court time. So, in a way of doing this to try

to move things expediently -- don't get me wrong, speed

isn't the only option and it's not the only result that

47

we're trying to obtain. We're trying to obtain a fair

trial to both sides. But I do apologize for the fact

that I kept you waiting.

When we left off, we were talking to

Ms. Cuautle and we had just finished 6 and 7. The

answers to which were no. It was a good time to take a

break because Number 8 is a question that I'm going to

read in just a moment. The rest of these questions

start needing a little bit of information, I think to

understand why they're here.

Would the fact that a witness is a law

enforcement cause you to favor one side or the other in

this case? Before I have you answer that, I want to

just make sure that you and everyone else understands

that when this trial is over, I'm going to be giving you

the law that applies to the case. You will be the judge

of the facts. I'm the judge of the law, so I'm going to

be explaining what the law is that applies to the case.

One of the things I'm going to tell you is you

must evaluate the testimony of each witness by the same

standards. Does that mean that all witnesses are

equally believable? Of course not. Somebody might have

been standing closer to an event, might have had a

better view of it, might have better vision, might have

been looking in the daylight. Somebody else might have

been looking from farther away at night, not wearing

glasses. So somebody could be absolutely sure they saw

something and somebody else could be absolutely sure

48

they saw that same event yet they might report it

differently.

You might have to determine who is to be

believed. And, of course, the opposite side of that

coin is there someone maybe that is less believable?

Some things I will be telling you about you can take

into consideration, might be has the person made a

statement in the past that is different than his or her

statement here in court? Did the person appear to you

to be telling the truth? What was the person's behavior

like on the witness stand?

In some cases you might hear that a witness has

been convicted of a felony in the past. That's

something you can take into consideration. There's a

lot of different things that you can take into

consideration in trying to determine whose testimony you

value over another's if there's a contradiction in the

testimony.

The reason why I say, though, that everybody

must be evaluated by the same standard is that there is

no belief, at least in this court, that just because

someone puts on a uniform that he or she is

automatically telling the truth any more than there's a

belief, at least in this court, that just because

someone put on a uniform, that he or she is lying. This

is another way of dealing with an issue that I'm going

to simply say to be a fair juror in this case, you're

going to decide the case based upon the evidence that is

49

presented in this courtroom, and not based upon biases

on agendas, on issues that you've resolved between

yourself and somebody else before you came into court.

So in other words, if you think all cops are liars at

all times, that's an attitude you might be bringing in

with you to this courtroom.

The corollary of that, the opposite is, if al

cops are telling the truth all the time, then that's a

attitude that you're bringing with you into this

courtroom. And it's not deciding the case based on th

facts that are presented.

Does everyone understand that?

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: That's why that question is in

there.

So when you get to answer that question -- ha

you answered that question yet, Ms. Cuautle?

THE PROSPECTIVE JUROR: No.

THE COURT: What's the answer?

THE PROSPECTIVE JUROR1 NO.

THE COURT: Okay. That's the explanation I

gave because I want everyone know. It's fine to be

supportive of law enforcement people, the police

officers, the men and women that protect us all. Of

course they're honorable people. It's an honorable

profession, but not everyone tells the truth all the

time.

50

Does everyone understand and agree what I just

got through saying?

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Anybody think that they lie all

of the time?

(whereupon the prospective jurors answered in the

negative.)

THE COURT: Number 9. This question requires

explanation. I read Number 9 and Number 10 together

because they're so close.

Do you have any feelings against the defendant

solely because he is charged with this particular

offense? And do you have any feelings about this

particular offense that would make it difficult for you

to be a fair and impartial juror?

Here is something you have to understand.

We're not asking you to be impartial about murder. You

don't have to be. You could think that murder is a

horrible thing. Well, it's been something that I think

most civilizations, as far as we have reported in

history, have prohibited murder. So, I mean, it's

nothing new. And we have passed laws in this country

and all the states. I mentioned common law before in

England before things were even written down, murder wa

a crime. So, again, you don't have to feel neutral

about murder. You just can't decide guilty or innocent

However, based only on how serious the crime is that

51

they're charged with.

There have been situations in this court where

from time to time we had to have trials with people that

involved the taking of a life of a child through

physical torture and abuse. If I had defined 12 people

that were going to say I feel neutral about that crime,

I think -- I hope I wouldn‘t be able to find 12 people

that would be able to do that. Does that mean the case

could never be tried? Of course not.

Mr. Sanders is not going to tell you that

murder is an okay thing. Mr. Sanders’ position is

this: Mr. Sanders‘ position is that Mr. Yablonsky, like

anyone who is charged with a crime, is entitled to be

presumed innocent until the contrary is proved, if it

can be, beyond a reasonable doubt. That's a right that

we all enjoy. So that when I read you the charges

earlier, I read there was a charge and there was a

special allegation. Mr. Yablonsky pleaded not guilty to

that charge. Mr. Yablonsky denied that special

allegation. We're not looking for people that feel

neutral about this crime. We're looking for people that

are able to evaluate this crime on the facts that are

presented in this courtroom.

We already heard Mr. Medlock. Just one second.

Number 47, Rebecca Ness. Where are you,

Ms. Ness? You would rather have a root canal than be in

my courtroom?

THE PROSPECTIVE JUROR: Absolutely not.

52

THE COURT: But you have a root canal

scheduled for the 26th that I see. That's next

Wednesday?

THE PROSPECTIVE JUROR: Right.

THE COURT: And you are excused for medical

hardship. Thank you for being with us.

Okay. Now that I have taken that break,

Ms. Anderson, what did you find out?

THE PROSPECTIVE JUROR: I can schedule for

later.

THE COURT: Mr. Proctor, what did you find

out?

THE PROSPECTIVE JUROR: Pretty much nothing,

but I will go off of your judgment on that because

you --

THE COURT: Well, tomorrow is another day.

Maybe you can find some more information out.

THE PROSPECTIVE JUROR: I just couldn't

contact anyone.

THE COURT: Maybe tomorrow we'll know

something different.

Everybody get it? I think I have beaten that

horse just about into the ground. We're not looking for

somebody that feels neutral about the crime.

Why do we ask this question, then? We ask this

question because there are people like Mr. Medlock out

there. Mr. Medlock's son was killed I think he said in

2003. He was murdered. So he's going to have an

53

emotional reaction to this, and he's concerned it's

going to affect how he views the evidence. We want

people that are going to be able to listen to the

evidence, that are going to be able to evaluate and use

their common sense and logic. But we don't want people

that are going to be using emotion to make their

decisions. We don't want somebody to make a decision

based on sympathy, either sympathy for a victim or

sympathy for the defendant who is on trial.

Does that make sense to you, Ms. Cuautle?

THE PROSPECTIVE JUROR: Yes.

THE COURT: Does that make sense -- does that

make sense to everyone else?

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Sometimes we have cases where a

person says, "Yeah, I was robbed at gunpoint three

times because I was a bank teller. But, yeah, I can

sit here as a juror and be fair in this case even

though it involves the robbing of a bank at gunpoint."

Some people are like that. They are -- I don't know.

They're people that just have a better ability to

compartmentalize their emotions. Sometimes you have

people that -- I had one gentleman, I believe that

this is correct, he indicated that he didn't think he

could be fair in a domestic violence case because of

his wife had told him that years and years ago before

they met that her mother had been abused in a

54

relationship. And that seemed to me that was really

remote. But he was telling me that it was going to

affect his ability to be a fair and impartial juror.

Who might argue with that? I can only listen to what

you have to tell me.

MS. LISA CUAUTLE

BY THE COURT:

Q Have you answered those questions already?

A No.

Q Would you now?

A No.

Q ll, have you or any of your close relatives or

friends been charged in any criminal offense?

A No.

Q 12, have you or any of your close relatives or

friends been the victim of a crime?

A No.

Q What a good sport. I'm picking on you because

you're the first person I'm speaking to.

Does the fact that the defendant has been

arrested or charged with this offense cause you to

believe from these facts alone that he is more likely to

be guilty than not guilty?

A No.

THE COURT: Isn't that an interesting

question?

Does anybody think that it's possible that you

might feel it more likely than not that the defendant is

55

guilty than not guilty but that you could still be a

fair juror in this case? How does that make sense? How

do we make sense of that? Let me explain it to you.

The fact that someone else is suspicious of

Mr. Yablonsky, the fact that someone, for instance, has

arrested Mr. Yablonsky and charged him of the crime is

not evidence of his guilt. I'm going to be saying that.

You will hear me say that probably several times between

now and the time that this trial is over and you begin

your deliberations. Because we don't base a jury

verdict on someone else‘s suspicions. 1t's not time to

be suspicious now. Now is the time to prove the case.

There is a line from the author Conan Doyle,

when Sherlock Holmes is talking to Dr. Watson and he

says, "What we know is not important, what is important

is what we can prove."

Does everyone understand what I'm talking

about?

There's another way to look at this that I'll

mention. What is more important than not? What do you

think that means? Do you think that means like

51 percent on one hand and 49 percent on the other more

important? How much more important, a little tiny bit?

In civil cases, we have a burden of proof that

we call preponderance of the evidence. My guess is that

preponderance comes from the root "ponderance" as in

weighing or heavy. So in order to prove a case that's a

civil case -- and by the way in a civil case, all you

56

can lose is your money.

In a criminal case, we have a different

standard because you can lose your freedom. So

preponderance of the evidence means just a little bit of

that scale is tipped. I have this up here -- I get to

use my show and tell page. Let's assume that this was

just not a cheap trick, but a very, very, expensive

scale and these pans weighed exactly the same amount.

They would be in perfect equilibrium, and this would be

absolutely straight across; right?

I always like to think of an old miner who goes

to Sacramento, and he brings out some gold dust. And

what does the assayer do? The assayer puts a Troy

weight here, one ounce, and it brings down the pan. And

you start pouring gold dust until these things are in

perfect equilibrium. And then you know you have one

Troy ounce of gold, and the assayer knows how much money

to pay the old miner. If you pour too much, it goes

down too far. That side preponderates. Don't have

enough gold dust, this side goes down too far, this side

preponderates. That's the civil standard. That's more

likely than not; right? That's where there's more

weight on one side than that which is opposed to it on

the other.

We don't have a standard like that in a

criminal case. We might talk about preponderance of the

evidence, by the way, in this case. It may relate to

other evidence that is presented, but we're going to be

57

talking about a different standard of proof. As far as

the charge goes, the jury is going to have to decide

whether or not Mr. Thomas has proved this case beyond a

reasonable doubt. I'm going to be giving you an

explanation, a definition what beyond a reasonable doubt

means. But I can tell you that it is a highest standard

that we have the courts of law. It's not just clear and

convincing, it's not just preponderance of the evidence,

it's not a strong suspicion, but it means beyond a

reasonable doubt. It would probably be something almost

like putting something -- one side all the way down and

the other side up. And you can't prove everything

beyond any possible or imaginary doubt because

everything in life is subject to some imaginary doubt,

possible doubt, but you will be using a high standard.

And that's why I can tell you that the fact

that you might believe Mr. Yablonsky is guilty more

likely than not would be totally irrelevant to the final

decision that you would make as a juror in this case.

Does that make sense to anyone? Have I

explained that in such a way you're getting my point?

(whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Because frankly, somebody might

be sitting there thinking, "Hey where there's smoke,

there's fire." You heard that, haven't you?

John Kennedy said, "Where there's smoke,

there's probably someone operating a smoke-making

58

machine." I don't know which way you want to look at

it, but I'm simply going to tell you that these are

attitudes, these are feelings that we bring into court.

We're not going to be using those. We're going to be

evaluating this case based upon the evidence that's

presented on the arguments of the attorneys and the law

that I give you.

MS. LISA CUAUTLE

BY THE COURT:

Q Is that something you can do, Ms. Cuautle?

A Yes.

Q Finally, is there any reason why you feel you

should not sit as a juror on this case?

A Well, my husband-- I wasn't sure about

hardship. I was going to ask you because at

lunch -- but I wasn't for sure about hardship if my

company was going to pay for the jury service and

they're not. And I have part-time job as it is, so it

is going to be a hardship for me.

Q After all this time.

By the way, I'm guessing I've spent probably a

half an hour altogether talking to Ms. Cuautle. And I

going to be excusing her in just one minute, but can you

see what I'm doing when I

say, "Pay attention to this"?

I'm not going to spend this half an hour talking with

anyone else. I'm not going to go over these things with

everyone. I'm not going to go over the specifics.

That's why I want you to be listening so when I

59

say, "Would you be able to follow the instructions on

those important things we discussed, could you do that?"

Then you're going to be able to say, "Yes" or "No."

But we'll go back to the hardship issue. If

you're not going to be paid for your part-time job while

you're here -- pardon me, that would be a financial

hardship to not be paid; right?

A Yes.

Q I'm going to excuse you. Thank you for being

with us.

A Thank you. Sorry.

Q That's all right. We have more.

THE COURT: Can you call another name to fill

that seat, please.

THE CLERK: Juror Number 4, OO4XXXXXXXXX.

THE COURT: OO4XXXXXXXXX. I saw you looking

at me when I was talking. You gave me the impression

that you heard me.

THE PROSPECTIVE JUROR: I was paying

attention.

THE COURT: Excellent.

Now, what I'm going to do is what I said I was

going to do first because what I said when I finished

with Mr. Cuautle I was going to talk with O59XXXXX. So

you catch up with this, OO4XXXXXXX, and I will be right

back to you.

60

OSQXXXXXXXXXXXX

BY TH E COURT:

Q You know what you‘re supposed to do, don't you?

A Uh-huh.

Q Please do.

A I'm supposed to answer these questions.

Q That's right.

A Number l is I'm a coach operator, when I am

Working.

Q A what operator?

A A coach operator.

Q Is that like a bus driver?

A Yes.

Q Okay.

A My significant other is an on-the-road truck

driver. I have served on a jury. It's been a while.

Q Was it a criminal or civil case and did you

reach a verdict?

A It was a criminal case.

Q Did you reach a verdict?

A They did. I was an alternate.

Q Okay. No on the other ones?

A All the way down.

Q No all the way down. You heard the things I

talking about in some detail, didn't you?

A Yes.

Q What do you think about those things?

A Not much.

6l

Q We're here to guarantee that Mr. Thomas

representing the People gets a fair trial. We're here

to make sure that Mr. Sanders representing Mr. Yablonsky

gets a fair trial. That's why I ask those questions.

Do you think those principles we talked about

are important?

A Yes, they are.

Q Would you guarantee those safeguards be

protected if you were a juror in this case?

A Uh-huh. Yes.

THE COURT: Thank you.

OO4XXXXXXXX'XXXXX

BY THE COURT:

Q OO4XXXXXXX?

A Yes, sir. I'm an operator engineer for the

State of California. My wife works for Kaiser as a

receptionist. I don't know anybody from --

Q Jury --

A -- from the jury or anyone.

Q Any prior jury service?

A Yes, I do. I have been in a criminal case and

that case we did deliberate.

Q And reached a verdict?

A Yes.

Q Okay. What "yes" answers do you have?

A None.

Q Okay. Thank you very much.

62

MS. NITIKA AUSTIN

BY THE COURT:

Q Ms. Austin?

A I am a federal correctional officer for federal

prison. My husband same occupation. No to 3. No to 4.

No to 5.

Q Do you have any "yes" answers?

A Number 6.

Q You know people involved in law enforcement

because your husband also is involved?

A And brother-in-law.

Q Okay.

A Both federal, my brother-in-law is state, and

my husband and I are federal.

Q Okay. Now, let's ask you this: Does the fact

that someone is a law enforcement officer mean they're

always going to tell the truth?

A No.

Q Have you had to investigate from time to time

the events, what events may have occurred during the --

A My occupation, yes.

Q Yeah. So sometimes there's a beef that

somebody who is an inmate, a convicted person, could get

in a beef with a corrections officer?

A Yes, I have to look further.

Q And you have to decide what happened. You

can't just say, "This person is convicted of a crime.

We're not going to believe him"?

63

A That's true. That's true.

Q Everybody get that point? I hope everybody

understands it. She's the one in a position that she

knows. That's what she's telling us, in her experience.

Her experience is that you have to evaluate each case on

its own merits.

That's a fair statement, isn't it?

A Yes.

Q Any other "yes" answers?

A Number ll and l2, which I don't -- I don't have

contact with family members, but I do know some of them

have criminal cases.

Q Do you know if some of your family members have

been involved with the law in an adverse way?

A Yes. I don't know the --

Q You don't know the specifics, and it‘s not

going to affect how you evaluate the evidence in this

case.

ls that a fair statement?

A Yes.

Q Anything else?

A That's it.

THE COURT: Thank you.

MS. CATHERINE ANDERSON

BY THE COURT:

Q Ms. Anderson, how do you do?

A I'm a food service worker. My husband is a

retired CHP officer. No, I -- Number 3 is no.

64

Q Never served on a jury. Tell me what kind of

worker are you, again?

A Food service.

Q Okay. Thank you.

A 3, 4 and 5 are no. 6 and 7 are yes, my

brother, my husband, and my son.

Q All involved in law enforcement?

A Correct.

Q What about if you were a juror in this case

could you evaluate the testimony of that person by the

same standard?

A I would actually -- it goes into 8 where I

would take their expertise into consideration, which

might persuade me in some ways.

Q Okay. Remember, I told you that you could

treat people differently as long as you had a reason for

it. The fact that somebody is a law enforcement officer

and has some expertise, that might be a reason that you

should take their testimony as more convincing than

someone that has no expertise.

I'll give you a perfect example. If you're

someone that has listened to a lot of gunshots at a

firing range -- I'm making this up -- maybe you can hear

a gun and you can say, "I heard a revolver." Somebody

else -- and then maybe you can hear a gun and say,

"That's an automatic."

THE COURT: Do you think that's possible to

make a different sound?

65

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: I see people shaking their heads

yes. What about -- so maybe they know something

because if they have expertise in listening to guns go

off because one of the things that police officers

have to do is they have to qualify at a shooting range

some number of days a month or weeks in the year or

whatever. And maybe I have shot a gun a few times in

my life, but I don't have much expertise with it. I

certainly haven't had an opportunity to get my ear

attuned to be able to tell what's being fired but some

people probably can.

So that's acceptable, someone's expertise.

Now, veracity is something different. Veracity is the

word that we're talking about in this case. Veracity or

in Latin we say "in veno veritas," which some of you

would know means "In wine there is the truth." So the

veritas that we're talking about is can you believe

someone or is someone telling you something honestly, as

opposed to someone accurate in relating their expertise.

That's the one we're talking about and that's the one

that makes the difference.

BY THE COURT:

Q What about that, Ms. Anderson, do you think

putting on a uniform is a guarantee of honesty?

A No.

Q Okay. Any other "yes" answers?

66

A 11 and 12, yes. And that's the only yeses I

have.

Q Tell us about 11 and 12.

A One was a car jacking and --

Q An arrest or victim?

A A victim.

Q Okay.

A And 12 was an arrest.

Q Who was arrested?

A A nephew.

Q Anything about the way your nephew's case was

treated would affect how you view the evidence in this

case?

A No. He deserved it.

Q Okay. Thank you.

MR. MARVELL GREENWOOD

BY THE COURT:

Q Mr. Greenwood?

A Number 1, I am a singer/song writer.

Q Would you speak up. 1 think 1 heard

singer/song writer?

A Yes, sir.

Q Wow. Cool.

A My ex-wife, she is a paralegal, I guess,

something like that. She works.

Q Okay.

A No, I have not worked as a juror.

MR. SANDERS: Your Honor, I can't hear.

67

THE COURT: Mr. Greenwood, you're going to

have to really sing out for us.

THE PROSPECTIVE JUROR: Sorry.

BY THE COURT:

Q You said that your wife worked for you before

she --

A No. She worked as a paralegal --

Q Before you were divorced?

A Right. Well, not paralegal. I don't know

exactly what it was. She worked in an office, that type

of work.

Q You never served on a jury before?

A No.

Q Any "yes" answers, Mr. Greenwood?

A NO.

THE COURT: Okay.

MR. TONY POL

BY THE COURT:

Q Mr. Pol?

A I am a retired mailman. My wife is a

housewife. First time I have been here. And all the

rest are no except 12. And a year ago, my daughter was

raped and drugged. She almost died.

Q Okay. All right. You know, Mr. Pol, you heard

what I said, people are affected differently. I don't

believe that because it's hard for you to talk about it,

that you’re necessarily telling me you couldn't be a

fair juror. But you have to tell me.

68

A My daughter -- it‘s kind of hard to accept on

this case, like you said, it's murder/rape. I just

can't.

Q You can't do it?

A No.

THE COURT: I'm not going to ask you to. I'm

going to ask the attorneys.

Counsel, do you stipulate to excuse Mr. Pol for

cause?

MR. SANDERS: Yes, sir.

MR. THOMAS: People would stipulate.

THE COURT: I'm sorry, sir, but you are

excused.

Call another came for that seat, please.

THE CLERK: Juror Number 44, Clyde Milburn.

THE COURT: We will wait for Mr. Milburn to

get up there, and we'll start talking in the meantime

to Ms. Pineiro.

MS. DONNA PINEIRO

BY THE COURT:

Q Ms. Pineiro?

A I am retired. l have plenty of time. My time

is your time. My husband is also retired. I worked at

the Victorville Court and the court down in

San Bernardino in the clerk's office in traffic. I have

been retired six-and-a-half years. I don't really have

any -- I did jury once and it was decided. And I don't

know any deputy or District Attorney. I haven't heard

69

anything about the case.

Q Ms. Pineiro, I'm going to pick on you.

I want everyone to know I only want to know

your "yes" answers. That's what I wanted you to do when

I was talking to Ms. Cuautle to figure out what your

"yes" answers were.

A 6 and 7.

Q Okay. I

A My ex-son-in-law is a deputy sheriff for the

San Bernardino County. I haven't had much contact with

him in five or six years. And like I said, I worked

here, but that was a long time ago. And I don't have

any close friends except for one lady who is on medical

retirement.

Q Okay.

A The rest is no.

Q So Ms. Pineiro, are you a good sport?

A Yes.

Q Can I ask you a trick question?

A Yes.

Q Suppose -- and this isn't going to

happen -- suppose I say to Deputy Fleigner I want you to

take the 12 people in the back two rows, put them back

there in the jury room right now, and come back with a

verdict. What's your verdict?

A I would say I haven't decided. I haven't heard

the evidence. I‘m a firm believer, and I'm a great

note-taker. You have to hear evidence on both sides.

70

Q In other words, you don't have a verdict. You

can't reach a verdict right now?

A I haven't even heard it.

Q Doesn't that sound absolutely reasonable?

That's what people should be like, isn't it? You don't

decide something until you've heard the evidence. You

don't rush to judgment.

A I wouldn't want that to happen to me.

Q Why did I say it was a trick question? It

sounds easy, doesn't it? Because as good as your answer

is -- I like it. It's the way I view things in my

regular life. If I'm trying to figure out what kind of

car I'm going to buy, I'm going to probably get all the

information I can, find out what the price is, what's

the gas mileage, what's the service record. I'm going

to go out and get information. That's what we would do

if we were going to be using the skills that we

developed in our normal lives.

In our courtroom sometimes things are what I

refer to as counter intuitive. In other words, it's

different than what we expect that the answer is going

to be. Why is that? It's different because

Mr. Yablonsky is presumed innocent until the contrary is

proved. Remember that? So this is not like we're

starting a foot race and Mr. Thomas and Mr. Sanders are

going to be on an equal footing and we're going to see

who is the best performer. Mr. Sanders does not have to

prove anything to you. The only person with a burden of

71

proof here is Mr. Thomas. And because Mr. Yablonsky is

presumed innocent and you haven't heard any evidence

yet -- I've already told you that because someone was

arrested and charged with a crime or brought to trial

that's not evidence of guilt.

So what evidence do you have that Mr. Yablonsky

is guilty?

A None.

Q None? So what's your verdict?

A Hung.

Q If he's presumed innocent, your verdict is

what?

A Until proven guilty --

Q So what's your verdict?

A Not -- I don't have any.

THE COURT: Okay. Well, I won't press the

point any farther. Does everyone see there is a

verdict right now and that verdict is not guilty?

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Okay. That's the only one you

can come to.

MR. CLYDE MILBURN

BY THE COURT:

Q Now I'm going to move over to Mr. Milburn.

Hello, Mr. Milburn. How are you doing?

A I'm a rigger for my trade. My wife is a nurse.

And --

72

Q A rigger?

A Yes.

Q You work at a casino?

A No. No. I work in shipyards. I work with the

cranes and stuff.

Q Wow. Interesting work.

A Dangerous work.

Q Yeah, I can see that.

A And I have served on a jury before, and it was

a hung jury.

Q How long ago was that?

A Back in the '80s.

Q A criminal case?

A Yes. Well -- yes.

Q Do you know what the split was, like, ll to I

or IO to 2?

A 10 to 2, I think.

Q Were you in the IO or the 2?

A I was in the 2.

Q Okay.

A And I only have yes to l2.

Q What is that?

A My sister was murdered, something like this.

It was her husband, kind of -- she was living with him,

so he just blowed her away.

Q How long ago did that happen?

A Yesterday. Not yesterday, like yesterday.

Q You remember it like yesterday?

73

A Yes.

Q Is that going to make this difficult?

A Yeah, already.

Q Mr. Milburn, I can see that.

Mr. Thomas, Mr. Sanders, will you stipulate

that I can excuse Mr. Milburn for cause?

MR. THOMAS: People stipulate.

MR. SANDERS: Yes, your Honor.

THE COURT: Thank you, Mr. Milburn. I'm

going to excuse you for cause. Thank you for being

with us. I'm sorry for your loss.

THE CLERK: Juror Number 26,

O26XXXXXX

016XXXXXXXXXXXXXXX

BY THE COURT:

Q While O26XXXXXXXXXX gets up there and gets

situated, Ol6XXXXXXX. Hello.

A Hi.

Q Will you answer those questions for us, please.

A I'm retired for Number l. My significant other

is also retired.

Q What did you do before you retired?

A I was working for a bank.

Q And what did he do?

A The same thing. We were -- we met at the bank.

Q Please speak up. You were what?

A We both worked for the bank, and we both

retired.

74

Q Right.

A I have yes on Number 3. It was a criminal

case, and we reached the verdict. And yes on Number 12.

My daughter‘s car was parked in front of our house and

somebody broke in. But she's a 17-year-old so there's

not much that was taken, but I thought that was

considered a yes.

Q Okay. That's not going to affect how you view

the evidence in this case; right?

A No.

THE COURT: Thank you.

OZGXXXXXXXXXXXXXXXXXXXX

BY THE COURT:

Q OZGXXXXXXXXXX?

A Yes. Right now I'm unemployed.

Q When you have a job what do you do?

A I worked at warehouses as a receiving clerk.

I'm single. No, this is my first time. And I have yes

answers for 11 and 12. 11 would be my dad, and Number

12 was myself and my sister.

Q What's 11? What about your dad? He was

arrested?

A Yes.

Q For what?

A Child abuse and the other one I don't wish to

disclose.

Q Okay. What about if you were to come down here

I and speak to me on the record with the attorneys?

75

A Okay.

THE COURT: Okay. Ladies and gentlemen of

the jury, pardon us for a minute. We don't want to be

rude.

(whereupon a bench conference was held on the record.)

O26XXXXXXXXXX?

A I was -- he molested my sister.

Q Father molested your sister. And did he

also -- you said that you were a victim, so he abused

you?

A Yes.

Q Okay. How long ago about did that happen?

A It would be 27 years ago.

' Q Okay. Is that something that affects how you

would view the evidence in this case?

A No, sir.

Q Is there -- was your father convicted?

A Yes.

Q Did you feel that justice was done in that

situation?

A I believe it was. My mom was -- she was in

favor for him not being prosecuted to the fullest, I

would say.

Q Would that affect how you view things in this

case?

A No.

THE COURT: Mr. Thomas, do you have any

questions you'd like to ask OZGXXXXXXXXXX?

76

MR. THOMAS: I do.

BY MR. THOMAS:

Q Will this affect how you View the evidence in

this case?

A No. I was a young boy.

Q Thank you.

A Yes.

THE COURT: Thank you.

So that everyone else will know, sometimes I

bring it up, usually I don't. I wait for somebody to

tell me, and you have just seen that someone has chosen

to get a chance to talk to me with the attorneys to ask

a couple of questions of him. You don't need to be

concerned about why a person might want to have some

matters private.

If you fall into that category, we don't want

to put you on the spot or embarrass you. We do want

honest answers to the extent that this encourages it

then we have you come down here and talk to me and the

attorneys. There's another way I can do it. I suppose

I could clear the courtroom. But if I did that, I'm

going to have to excuse you. I'm going to have to

admonish you. I'm going to have to wait until everyone

gets gathered back up, bring you back in, take roll, and

it's going to cause a lot of delay. To avoid doing

that, I think it's better and a better use of your time

if I just do what would be considered rude at the

Tomberlin Household is to whisper behind people's backs

77

but that's what we do, so I hope you don't mind.

Thank you, O26XXXXXXXXXX.

MS. DEBRA MCKENZIE

BY THE COURT:

Q Ms. McKenzie?

A I'm a division assistant support for a sales

organization in Loma Linda for advertising. My late

husband of ten years was an employer of a small paint

store in Nevada. I have served on one criminal trial as

an alternate. There was a verdict reached but I wasn't

a part of it. I have -- 6 and 7 are yes. I have

several close acquaintances that are police officers,

and my nephew is attempting to be hired on by the

Riverside PD. 11 and 12 are yes. My daughter-in-law‘s

younger brother is currently incarcerated on a charge of

rape and serving 25 years. He's attempting to get his

appeal filed and I'm involved in that.

Q You're involving in helping him get his appeal

filed?

A Yes.

Q Okay.

A I'm helping her with the paperwork. I can't

literally be involved in it because I'm not related but

I can tell her.

Q Okay. So you feel if that person was -- I

don't know. I shouldn't have said it that way.

Do you feel that that person was wrongly

convicted?

78

A Yes.

Q Okay. Do you think that would affect how you

might view the evidence in this case?

A No.

Q Okay.

A 12, my house has been broken into several times

and that's about the extent, petty things taken usually

by kids. They were never brought --

Q Is that it for "yes" answers?

A Yes -- not since I have lived up here.

THE COURT: Okay.

MR. CAMERON BEAN

BY THE COURT:

Q Mr. Bean?

A Good afternoon, your Honor. I'm a painting

contractor for South E1 Monte, California. My wife is a

mother and a nurse.

Q Wait a minute, from South E1 Monte. You don‘

live in South E1 Monte, do you?

A I do not. That's where I work. That's where

my shop is at.

Q Okay.

be al1 right here with this schedule?

A Yes, sir.

Q Okay.

A Never served on a jury before. 6 and 7 are yes

to both of those. I have a couple of good acquaintances

that are retired 1aw enforcement. And then my son has

79

several friends who are DOC, they work in the Department

of Corrections.

Q Okay.

A 11 is a yes. My brother for interstate

trafficking drugs from here to somewhere else and got

caught. l3 is a yes. As a hard working tax paying

citizen, I would hope that the District Attorney and the

law enforcement would have facts in order to at least

attempt to prove a case, as opposed to just throwing out

charges. I would hope that they would, you know, have

enough evidence that they would feel that they have a

good chance of a verdict in the case in their favor

before they bring it to this point.

Q Okay. That's a fair assessment, perhaps. Let

me ask you this question.

A Sure.

Q So if you believe that Mr. Thomas thinks he can

prove the case, do you think that's evidence of guilt?

A No. p

Q Okay. So are you with me that what's going to

happen is that no matter how strongly he believes it,

the final analysis is going to be the question of has he

proven it to you; is that right?

A Yes, sir.

Q Okay. Let me introduce another topic,

Mr. Bean. Let's say that Mr. Yablonsky decides that he

doesn't want to give testimony in this case. Everybody

should know, by the way, that there's a thing called a

80

Fifth Amendment to the United States Constitution.

Remember the first ten amendments were referred to as

the Bill of Rights. The Constitution wasn't ratified

until the Bill of Rights was added? So everyone has a

right to remain silent and can't be forced to give

testimony against themself.

If you were a juror in this case and

Mr. Yablonsky decides not to testify, would you be able

to ignore that issue and not hold that against him from

wanting to remain silent?

A I would.

THE COURT: It might be a difficult concept

for us to come

curious people

have children,

home -- if you

other room and

laughing, what

say, "I wonder

by. We're curious, aren't we? We are

I have people, and some of you might

and what may take place in your

hear like a "wack" and you go into the

there's Rachel crying and there's Jack

are you going to do? Are you going to

what happened." Or are you going to

pick them up and start -- never mind.

We won't describe things that are probably not

within the Statute of Limitations now. But you're going

to ask what happened. This kind of goes back a little

bit to what we discussed with Ms. Pineiro. We are

trying to get to the bottom of this. We don't have the

ability of controlling the information. You don't have

the ability to control the information that you get.

You're going to get what Mr. Thomas gives you. And

81

you're going to get something if Mr. Sanders thinks that

he should give you some information, remembering he has

no burden of proof and remembering that Mr. Yablonsky

has the constitutional right to decide whether or not to

give testimony.

I'm going to give instruction that will order

that you not consider for any purpose if Mr. Yablonsky

decides to remain silent. Remembering, again, that he

has a right to be presumed innocent the contrary is

proved, remembering that it's his decision to

make -- he'll make it with Mr. Sanders but he may choose

to rely on the state of the evidence.

Does everyone see that if you could infer that

someone was guilty because of the fact that they

exercised their privilege not to testify, then the right

to remain silent would not be much of a right, would it?

That privilege would not be very valuable.

Does everyone understand and agree that we

protect that important privilege? Okay.

MS. TASIA GREEN

BY THE COURT:

Q Ms. Green, hello.

A Hello. Right now I'm a student, and I collect

unemployment. My spouse is a pharmacy technician. I

have never served in a jury before. Yes to answers 11,

12, and 13. My nephew is in jail right now for a

murder. He's awaiting trial. And I in 2009 I was

beaten and sexually assaulted by my boyfriend. And

82

Number 13, I have to say yeah.

Q Okay. Would any of those things that you just

said affect your ability to be a fair and impartial

juror?

A You were saying when you were talking about how

if he wouldn't want to tell his story, I would

automatically think that he was guilty if he didn't want

to testify.

Q Even if I told you to ignore that, you wouldn't

be able to do that?

A Yeah, I believe if he wouldn't be able to

testify and say his side of the story, I just wouldn't

believe him at all.

Q Okay. Should we have further discussion on

that, Mr. Thomas or Mr. Sanders, to talk to this person?

MR. SANDERS: No, your Honor.

MR. THOMAS: I would stipulate.

THE COURT: She indicated an unwillingness to

follow an instruction that I'm certainly going to

give. I don't know whether he's going to testify or

not. But based upon what you have said, they're

stipulating I can excuse you for cause so I'm going to

excuse you for cause. Thank you for being with us.

Would you call out another name for that seat.

THE CLERK: JUROR Number 34, O34XXXXXXXX.

THE COURT: While O34XXXXXX comes forward to

take his seat, I'm going to say hello Ms. Whittaker.

83

MS . LINDA WHITTAKER

BY THE COURT:

Q Hello.

A Hi. I'm unemployed right now. I was in

retail. My husband works for the phone company. I

never served on a jury. And the answer to 14 is no.

THE COURT: Thank you.

O34 XXXX

BY THE COURT:

Q O 3 4XXXXXX .

A Hi. I work for the Department of Navy, DOD.

And I work with, you know, we fix the machines out

there, the war machines, and I'm a part-time student.

My wife is -- she works out there as well.

Q When you say "out there," where is that?

A Naval test station?

A No. A marine base in Barstow.

Q What's the same of that?

A Marine Core Logistics Base.

Q Thank you.

A I have never served on a jury. And yes to 11,

and yes to 12. Yes to ll, when I was younger as a

juvenile I got in some trouble.

Q You don't have to tell us about your juvenile

record.

A Okay. And then I have a couple brothers that

are incarcerated.

Q Anything about the way they were treated that

84

would cause you to question the fairness of --

A There have been in certain situations. My

older brother -- and a lot of stuff I didn't know

exactly how it went down. But from what I was told, the

police didn't act accordingly in that situation, so

yeah.

Q Does that mean you would automatically distrust

the police officers in this case?

A Not necessarily. I'd have to look at all the

facts and everything and go from there, but no.

Q Okay. Is that it for yes answers?

A No, 12. I have had my truck stolen before.

But everything else is a no.

THE COURT: Thank you.

OISXXXXXXXXXXXX

BY THE COURT:

Q O18XXXXXXX?

A I‘m a homemaker. My husband is a high school

teacher. And I have never served on a jury.

Q Any "yes" answers?

A No. I do know a few people in law enforcement.

Q Okay. Probably you had some --

A Friends.

Q Your husband teaches at Granite Hills; right?

A No. Victor Valley.

THE COURT: All right.

85

MS. KATHERINE BRADFIELD

BY THE COURT:

Q Ms. Bradfield?

A I am a food service worker for a middle school.

I husband works for the railroad. I have never served

on a jury. And I have a yes answer to Number 5. I read

the newspaper every day, and I do have some vague memory

of reading the two names of the victims of

Mr. Yablonsky.

Q Okay. Are you like me? You see something in

the newspaper and it's kind of an interesting thing to

read, but you don't necessarily believe that everything

printed in the newspaper is true?

A I can't say at this point. I would have to

read more and I have my thoughts. I'm kind of drawn

towards if it's there, then if there's smoke there must

be fire.

Q Let me ask you this: You have read something

in the newspaper, and you think it might be related to

this trial, do you think that if I were to tell you to

ignore what you heard or read in the newspaper could you

do that?

A Yeah.

Q Okay. This is not trial by what the cop

thinks. This is certainly not trial by what the

newspaper reporter thinks. There's nothing wrong with

newspapers, but I can tell you from personal experience

that I sometimes read about things that happened in a

86

courtroom. And I'm reading it and I go, "That sounds

weird." Then I'll realize that they‘re talking about

something that happened in my courtroom that's not quite

accurate. Reporters have to get information. They have

to get a story out.

I mentioned the question of honesty of police

officers. You heard me talk about that. You know we V

make a big deal of it. It‘s even on question 8 out of

the few that we ask. The fact is that most of the time

you're not going to have a law enforcement officer who

is a witness to anything other than relating to us what

he saw later or somebody pointed out to him or her or

what somebody told him or her.

So are you going to be able to be a fair juror?

A I think so.

Q Okay. Is that it?

A Yeah.

025XXXXXXXXXXXXXXXXX

BY THE COURT:

Q OZBXXXXXXXXX?

A Good afternoon. I‘m a registered nurse. My

husband is a school teacher. He teaches fifth grade. I

have been on two previous juries, one has been within

this -- your court system. And verdicts on both of

them.

Q Okay.

A No to all of the answers.

THE COURT: Thank you.

87

MS. SHARON TIERNEY

BY THE COURT:

Q Ms. Tierney?

A Good afternoon, Judge. Yes to 3. There was a

verdict. 6, I know a lot of law enforcement over the

years, and I do have attorneys in the family that are

San Bernardino County. Yes on 11, a son, friends,

family. 12 is a yes. And for myself, personally, just,

like, home invasion and vehicle theft. My son was

charged and he was -- on 11 -- he was sentenced, and

that was a felony. It was later dropped to a

misdemeanor and I believe before your court. I attended

most of the hearings or whatever. I thought he got a

fair shake.

Q What about 1 and 2?

A Sorry.

Q I'm wondering if you were anti-consecutive or

chronological.

A Dyslexic. I have been retired for about ten

years from the medical field, phases from nursing to

managing. And separated from my spouse for ten years.

I guess he would be categorized as welder, maintenance.

Q Is your son an attorney?

A No. My brother-in-law and father-in-law.

THE COURT: Okay. Thank you.

MS. MARIE CERVANTES

BY THE COURT:

Q Ms. Cervantes?

88

A Hi. I'm an instructional assistant for the

Victor Valley Elementary School here in Victorville. My

husband is in maintenance. I did serve on a jury a long

time ago, civil. Number 7 would be yes. My nephew is a

sergeant. He is a transfer here in the courthouse

somewhere.

Q What's his name?

A Steven Hinojos.

Q There‘s only one sergeant here in the

courthouse. I wanted to see if we were talking about

the same person.

A Yeah.

Q Yeah.

A Steven Hinojos and the last time I knew, he was

supposed to be transferred here.

Q He's here. He replaced Sergeant Bachelor, who

was a lieutenant. Maybe Steven will get promoted too.

A Does that mean I can leave? Number l2 is a

yes. My son was a victim. And the rest would be no.

THE COURT: Thank you.

MR. CHRISTOPHER PROCTOR

BY THE COURT:

Q Mr. Proctor?

A I work at Wal-Mart Distribution Center as a

loader. I have been there for seven years. My wife is

a stay-at-home mom/home school teacher. And I never

served on a jury. The only one I have a yes to is

Number 12. My best friend, she was raped by her father.

89

And my sister-in-law, she was raped at a party.

Q Okay. Is there anything about the fact that

you have friends or relatives that were raped, you know,

that rape is an allegation in this case? Is that going

to affect how you view the evidence in this case?

A I would like to say no. But a part of me -- I

didn't know until just now until I said it.

Q Okay. It happens all the time. Don‘t feel

like the Lone Ranger. Sometimes you can sit there

thinking about it, and you have your thoughts all in

order and I have seen people before all of a sudden have

a catch in their throat, hear the emotion rising, and

realize that it's going to affect them. This is going

to be something that you're going to hear about. It's

going to be an unpleasant experience in some ways.

Nobody says you have to be able to be unaffected by your

jury service.

But if you think that what you are telling me

about your own experience through your relative and your

friend and if those are going to affect you.

You think it will?

A Yeah. I would believe so, but like I said,

I‘ve been trying to work on that for a while.

Q But you think it might be hard to separate?

A Yeah.

THE COURT: Counsel, do you stipulate that I

can excuse Mr. Proctor for cause?

MR. SANDERS: Yes, your Honor.

90

MR. THOMAS: Yes, your Honor.

THE COURT: Mr. Proctor, you are excused.

We are getting close to that break. If you're

wondering does he ever stop.

Call another name, please.

THE CLERK: Juror Number l, Cherri Allen.

MS. CHERRI ALLEN

BY THE COURT:

Q V Hello, Ms. Allen.

A Hello. I am a campus assistant for Hesperia

Unified School District, Hesperia High School. My

husband is a laid off construction foreman. I have

never served on a jury. And I have yes to 6, 7, and l2.

6, I have an acquaintance that works for San Bernardino

police department, he’s a detective. And I have my son

works -- is a San Bernardino County sheriff‘s deputy

here in Victorville. And me and my husband had some

construction equipment stolen about 20 years ago.

Q That's it?

A That‘s it.

Q So your son's name, what is his first name?

A Steven Allen.

Q Steve Allen. I have heard of that name before.

It was a joke. The original Tonight Show. What about

this? You know that Detective Alexander is with the

San Bernardino Sheriff‘s Department; right? So if you

sat as a juror in this case, are you going to

automatically want to see Mr. Thomas win because

91

Mr. Thomas is here as the attorney for the People and

he's the one calling the police officers and he's trying

to sell you on this investigation being proven beyond a

reasonable doubt? Are you going to want to see that or

are you going to wait and see?

A No.

Q You will wait and see?

A Yeah, I'll wait and see. ·

Q Okay., This case is over. Your son comes up,

"Hey Mom, you acquitted somebody on a murder?"

What are you going to say?

A I listened to all the facts.

Q No problem. Let the chips fall where they may?

A Yeah.

THE COURT: I'm going to ask this now for

everyone here, that is all IS, you have heard me bring

up some things back there, for instance, O59XXXXX. I

talked to you quite a while ago. Ms. Austin, I talked

to you before I brought up the subject of presumption

of innocence, the right to remain silent, All of

those things I talked about later. But you all heard

everything that I have talked about so far.

Does everyone agree to apply those principles

that I have talked about with you so far?

(Whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Any problem with any of them?

92

(Whereupon the prospective jurors answered in the

negative.)

THE COURT: Okay. We're going to take a

recess. When we come back, we‘re going to hear from

Mr. Sanders. He is going to get an opportunity to ask

questions of you, then Mr. Thomas will get a chance.

Every time we take a break I'm going to say

you're admonished, that it is your duty not to converse

among yourselves or with anyone else on any matter

connected with this case nor form or express an opinion

on it until it's submitted to you.

15 minutes.

(whereupon a brief recess was taken.)

THE COURT: Okay. Thank you very much.

We're back on the record in the case of

People of the State of California versus

John Henry Yablonsky, who is here along with his

attorney David Sanders. John Thomas is here along with

Detective Alexander.

And we‘re continuing in our voir dire.

Mr. Sanders, would you like to have an

opportunity to ask questions?

MR. SANDERS: I do. Thank you.

THE COURT: Ladies and gentlemen, Dave

Sanders.

You're going to have to speak so loudly that

the people behind you can hear you, and I know that‘s

not your normal tone of voice. Maybe if you would move

93

to this podium down here, you would be facing the right

direction.

MR. SANDERS: I‘m sorry, your Honor. I

started off with something happening in my throat and

it came out soft. I'll try to make it louder.

THE COURT: Thank you.

MR. SANDERS: Ladies and gentlemen of the

jury, my opportunity at this point is to ask you some

questions. As the judge indicated, voir dire is the

desire that all of us have to have a fair trial, to

have a jury that is fair, a jury that is unbiased, a

jury that is unprejudiced, and a jury that can perform

a task that we hope in our country that jurors will

do. My questions are asked in that light.

I know the judge asked all of you individual

questions, and it took a couple of hours so I hope

you‘ll forgive me if I sometimes repeat some of the

things that the judge asked you. The reason I do that

is sometimes when OBQXXXXX answers questions at lO:3O in

the morning and we get all the way to Ms. Tierney,

OBQXXXXX thinks over, "Wait a minute. You know, there

was this other time," or "There was -- I do have an

answer to question Number 8 or 9," or something like

that. So l might do that a couple of times.

Then l do have some individual questions based

upon the answers that you gave the judge. All of you

understand that to be a juror, you‘re going to be a

judge. You‘re going to have to judge people. And those

94

people will be witnesses in this case.

Is there-any of you that have a feeling, a

religious feeling or otherwise, that you should not

judge other people? I don't see any hands.

Do you understand that those people are going

to come up here and sit right here and Mr. Thomas and

myself will ask them questions? And you will have to

judge that. Now, his honor is the judge of the law. He

will tell you what the law is because you have to be the

judge of the witnesses and the facts. You, and only

you, would have to decide what it was that happened or

what it was that didn‘t happen in this case.

Some of those witnesses may not be people off

the street. We might have a doctor coming in this case.

In fact, I think we will have a doctor come in this

case. And that doctor is going to take a stand and he‘s

going to testify. And you understand that if you‘re on

the jury in this case, you have to judge the doctor's

testimony and decide if it is credible or not.

Is there anybody intimidated by that

task?

Ms. Austin, do you feel up to that?

THE PROSPECTIVE JUROR: Yeah.

MR. SANDERS: That's not a problem, Mr. Bean?

THE PROSPECTIVE JUROR: No, sir.

MR. SANDERS: Okay.

You understand that the judge said we may have

some police officers testify in this case. Usually it‘s

95

police officers that go out to a crime scene and pick up

evidence and things like that, and there may be

testimony of that. You will have to judge when they

testify. If they say they saw something or they say

they heard something, you have to make a judgment.

Is that reasonable? I

(whereupon the prospective jurors answered in the

affirmative.)

MR. SANDERS: Anyone intimidated by that

task?

(whereupon the prospective jurors answered in the

negative.)

MR. SANDERS: Okay.

I think in this case we might have some people

that call themselves experts, some people that say, "I

know all about DNA testing. I know all about

fingerprinting. I know about something else." And you,

again, are going to have to make those judgments, make

the decisions.

Is anyone intimidated by that?

(whereupon the prospective jurors answered in the

negative.)

MR. SANDERS: No matter who the witness is in

this case or what it is that they're testifying about,

you are the people that have to make the judgments as

to whether or not that's reasonable testimony,

consistent testimony, it's competent testimony.

In this case, you are going to have to make

96

logical judgments. The judge is going to, for example,

instruct you that there is more than one kind of

evidence. There’s direct evidence, something somebody

saw happen, and there's indirect or circumstantial

evidence. And you'll have to decide is that

circumstantial evidence that the District Attorney or

the government‘s lawyer presented? Is it logical?

Is there anyone that feels they‘re not up to

that task? I don't see any hands.

All of us have emotions. There's nobody in

this room, I don't think, that is emotionless. You go

see a movie sometimes and just cry. Somebody tells you

a sad story, it makes you cry. One of your kids does

something great, they are in a play at school, you get

those feelings inside. And it's a strong feeling. But

you understand that emotion is something that you have

to set aside when you are a juror in a case like this.

You may hear things that are very emotional. But you

can't judge the case on emotion. You have to judge the

case on evidence and logic.

Is there any of you that feel you may have

difficulty with that?

(Whereupon the prospective jurors answered in the

negative.)

MR. SANDERS: Okay. Ms. Bradfield, do you

think you might have difficulty with that? Or do you

think that emotions might overwhelm?

THE PROSPECTIVE JUROR: I feel I might get

97

emotional but I don't think that would overwhelm me

because the logic would come over and it would have to

be --

MR. SANDERS: The logic and the thought would

be there?

THE PROSPECTIVE JUROR: Right.

MR. SANDERS: Okay.

O34XXXXXX, do you feel that way?

THE PROSPECTIVE JUROR: Yes.

MR. SANDERS: Mr. Greenwood?

THE PROSPECTIVE JUROR: Yes.

MR. SANDERS: How about OTGXXXXXXX?

THE PROSPECTIVE JUROR: The same.

MR. SANDERS: Okay.

This case is about a woman that died 25 years

ago. It may be that there will be people in the

audience that were related to her or that feel -- or her

family, feel strong -- and they be sitting in the

audience, and they will be watching you and listening to

what happens and looking at you and watching what you

do.

Do you realize that no matter what -- who is

out there or who is listening or who is watching you,

you have to decide the case based on the evidence and

not on whether or not someone might be sad or happy

depending on which side you're on as to what you are

doing?

Is there anybody who might have difficulty with

98

that?

Ms. McKenzie, so you are a juror in this case,

and it's time for you to go deliberate. And you go back

in the back room and you decide there's not enough

evidence here. I have to put not guilty because there's

not enough evidence beyond a reasonable doubt. But I

know if I do that, I'm going to come out and there's

going to be six members of their family and they're all

going to be crying and looking at me. I don't think I

can do that.

Do you think you might feel that way?

THE PROSPECTIVE JUROR: No.

MR. SANDERS: OIBXXXXXXX, do you think that

way?

THE PROSPECTIVE JUROR: No.

MR. SANDERS: Is there anybody here that is

concerned that maybe might affect them?

(whereupon the prospective jurors answered in the

negative.)

MR. SANDERS: Mr. Bean, I wanted to ask you a

couple of questions based upon a couple of answers

that you gave the judge. I think you used the words

"Where there's smoke, there's fire." Did you use

that, or did you answer a question?

THE PROSPECTIVE JUROR: I didn't use the

words, no.

MR. SANDERS: I think what you said was, you

hope that as a taxpayer that your government -- the

99

politicians that run the District Attorney‘s office

are not going to bring a case in to you unless they

have some evidence.

Is that when you said?

THE PROSPECTIVE JUROR: That's correct.

MR. SANDERS: Okay. I hope that too. But at

the same time, are you able to follow the instructions

the judge will give you that you must presume my

client innocent until the government's attorney is

able to prove otherwise?

THE PROSPECTIVE JUROR: Sure.

MR. SANDERS: Okay. And you don't think that

would be a problem one way or the other?

THE PROSPECTTVE JUROR: No.

MR. SANDERS: You understand that this

presumption of innocence is one of the pillars of our

own justice system?

THE PROSPECTIVE JUROR: I do.

MR. SANDERS: Okay, And the other main

pillar of our justice system, being that you can't

find a person guilty unless the government is able to

prove it beyond a reasonable doubt.

Now, the judge indicated as he was questioning

some of you, he told you the difference between -- in a

civil case it‘s just a preponderance and in some other

civil cases it might be clear and convincing evidence.

But this is a criminal case, This isn‘t preponderance.

This is beyond a reasonable doubt. You must decide the

100

case beyond a reasonable doubt to find anyone guilty.

Is there any of you that think that that was

unfair to the other side of the prosecution that they

have to meet such a high standard? Is there any of you

that think that's not fair? I don't see any hands.

Is there any of you that will not or you have a

doubt in your mind that you could actually have to find

somebody guilty beyond a -- or not guilty beyond a

reasonable doubt?

(Whereupon the prospective jurors answered in the

negative.)

MR. SANDERS: Okay. Have any of you ever

been a part of an organization, a political

organization or a club or a class or a group that has

ever tried to change anything in the criminal justice

system telling -- for example, writing letters to your

congressman that the criminal justice needs to be

changed?

Pardon me for a minute. I'm going through my

notes here. Ms. Anderson, you said that you had a

brother or husband or son in law enforcement?

THE PROSPECTIVE JUROR: Correct.

MR. SANDERS: All the same ages?

THE PROSPECTIVE JUROR: My brother and my

husband and my son.

MR. SANDERS: Your husband is retired?

THE PROSPECTIVE JUROR: Yes.

MR. SANDERS: And your son is?

101

THE PROSPECTIVE JUROR: Fontana PD. My

brother and husband, highway patrol.

MR. SANDERS: Right. Now, you're not

supposed to talk about this case.

THE PROSPECTIVE JUROR: Correct.

MR. SANDERS: Okay. But when it's over, and

you go home, do you anticipate that they will be

interested what happened in the trial you were on?

THE PROSPECTTVE JUROR: Yes.

MR. SANDERS: Do you believe that there's any

chance that they might be disappointed if you were to

decide that the verdict is not guilty?

THE PROSPECTIVE JUROR: I'm able to make my

own decisions.

MR. SANDERS: They won't give you a hard time

about it?

THE PROSPECTTVE JUROR: Yes.

MR, SANDERS: That's a different question,

but you can stand up to them? You‘re nodding your

head yes.

THE COURT: Counsel, will you approach

please? Off the record is fine.

(Discussion held off the record.)

THE COURT: Mr. Sanders, I‘ve stopped him

because Mr. Sanders is going to be a little bit

longer. I have another jury that I have to bring back

in and deal with this afternoon still. So I'm going

to have you all back in the morning. I shouldn't have

102

much to do in the morning. We should be able to start

very close to 8:30 but you were probably waiting for

everybody to go through the metal detector this

morning so I'm going to have you come in at

9:00 o'clock.

Be here at 9:00 o'clock. That will give

everybody a chance to hopefully find some parking places

that have been vacated by people that are leaving and

not being a big line waiting to get in.

So I've already talked about this for you, I'll

say it again. You‘re admonished that it is your duty

not to converse among yourselves or with anyone else in

any matter connected with this case. Do not form or

express an opinion until it's submitted to you.

We'll see everybody here tomorrow morning ready

to go at 9:00 o'clock.

Mr. Thomas?

MR. THOMAS: Can the Court also admonish the

jury that this case may be in the newspapers?

THE COURT: Yeah, sure. Thanks.

What can l say, Mr. Thomas is right. This is

always a difficult thing to talk about. It took me a

while to come to this conclusion. If you can't tell

your spouse that you‘re here on a possible murder trial,

and I'm telling you can't. You can't really tell your

spouse to go through the paper and watch out for murder

trial that's a cold case. That's the term that people

use these days. I guess popularized by TV's series or

l03

whatever. But, you know, so how are you going to know?

All I can say is don't look at the paper. That seems

kind of dumb. Everybody needs to know what's going on

in the sports world, we know that. So I can just tell

you, try and use some common sense. The front page of

the paper is probably something you don't want to be

looking at, reading any in-depth articles that happen to

be talking about a murder case, or if you see the name

Yablonsky or you see something about a cold case, just

don't read it. Put it away if you want to read it later

on when the case is over.

MR. THOMAS: Thank you, your Honor.

THE COURT: Okay, folks. 9:00 tomorrow

morning, which isn‘t started until everyone is here.

(Whereupon the following proceedings were held outside

the presence of the jury:)

THE COURT: The jury is gone, and now

Mr. Sanders has requested, and l agreed to make an

order that the jail can comply with this order, that

Mr. Yablonsky can be given access to a shave every

day. And he'll be allowed to trim his beard every

third day. And I'll make an order to that extent that

it doesn't have any problem with the jail procedures.

(whereupon proceedings in the above-entitled

matter were concluded for the day.)

104

` VICTORVILLE, CALIFORNIA; JANUARY 20, 2011;

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

A.M. SESSION

(Appearances as heretofore mentioned.)

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

-oOo-

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Good morning, ladies and

gentlemen. Back on the record in the case of People

of the State of California versus John Henry

Yablonsky. Mr. Yablonsky is here with his attorney,

David Sanders. John Thomas is here for the People.

We're continuing in our jury-selection process.

Mr. Sanders is using his remaining time for voir dire

this morning. You may proceed.

MR. SANDERS: Thank you, sir. Good morning,

ladies and gentlemen. Okay. Starting where we ended

up yesterday, and I‘ve forgotten some of the questions

I asked. Did I ask any of you if you understand that

my client has to be found guilty beyond a reasonable

doubt? I already said that?

(Whereupon the prospective jurors nodded in the

affirmative.)

MR. SANDERS: I got all your names yesterday,

and I think over-night I‘ve forgotten some of your

names. I just -- the only ones I remember was Mr. --

105

(Whereupon the court reporter asked

counsel to speak up.)

MR. SANDERS: The Only one I remember was

Mr. Bean and he was sitting next to Ms. Green. I

thought they should switch places so we would have

Green Bean instead of Bean Green. It would be easier

for me to remember, but I remember most of them.

MS. NITIKA AUSTIN

BY MR. SANDERS:

Q Let's see, Ms. Austin, you are presently a

corrections officer; is that correct?

A Yes.

Q And is that up in the federal facility?

A Yes.

Q North of here?

A Victorville.

Q Okay. So in a way, you're a peace officer --

A Yes.

Q -- is that correct?

A Yes.

Q I believe you said your husband is also?

A Yes.

Q And you understand that this is a criminal

case?

A Yes.

Q And we're going to be talking about whether or

not there's evidence to show that my client committed a

crime or not?

106

A Um-hmm.

Q All right. I assume that you hang out with

other correction officers and socialize with them?

A Yes.

Q Okay. Is that going to be a problem in any way

for you?

A No.

Q Okay. Like I asked the other lady yesterday,

suppose that you hear all the evidence in this case and

you determine that there's not enough evidence to show

beyond a reasonable doubt that my client committed a

crime.

Would that be a problem if your buddies or

friends or husband talked to you about the case after it

was over?

A No.

Q If they said, you found that guy not guilty,

that wouldn't be a problem for you? That wouldn't be in

your mind at all?

A No.

MS. CATHERINE ANDER§ON

BY MR. SANDERS:

Q Yesterday, Ms. Anderson, I asked you a couple

questions about your relatives. One thing I forgot to

ask you, did I hear you say that you've been a victim of

a carjack?

A No, it was a relative.

Q Okay. And which relative was that, how close?

107

A It was a nephew.

Q Does he live in this area?

A No, it was in Los Angeles.

Q So you heard about it?

A Yeah. I had gotten a call that he was okay and

was able to get away.

Q Very good. You didn't have to go to court or

anything like that?

A No.

Q All right. Was there anything about - about

the way that case was handled that made you have a good

feeling or bad feeling?

A No, I wasn't - I didn't keep contact with it,

just the basics and left it at that.

M§. SHARON TIERNEI

BY MR. SANDERS:

Q I think, let's see, Ms. Tierney, did you say --

you said something about a carjacking also?

A Not a carjacking.

Q What was it?

A My son was convicted of a felony, dropped to a

misdemeanor, and I was involved in a home burglary and

home invasion.

Q That's right. You said home invasion. Was

that you?

A Yes.

Q You were a victim of that?

A Yes.

108

Q Did you have to go to court and testify?

A No. There was a shoot-out shortly after that

in Big Bear and that solved the problem.

Q I guess that's one way to solve it, but you

were --

THE COURT: I‘m sorry. I didn‘t hear what

you said. What solved the problem?

MR. SANDERS: There was a shoot-out.

THE COURT: Yes. What solved the problem?

THE PROSPECTIVE JUROR: In Big Bear.

THE COURT: And that solved the problem?

THE PROSPECTIVE JUROR: I don't know who shot

him, but he was killed after accosting a woman in a

bathroom up there and carjacking. That's -- I don't

think I mentioned anything about carjacking.

BY MR. SANDERS:

Q This person that got shot in Big Bear was a

person that was the suspect in your home invasion

robbery?

A Yes, with my gun.

Q The shoot-out in Big Bear was with your gun?

A Yes. He stole the gun, used the gun accosting

somebody in Big Bear.

Q Got you. Thank you. But you had to go through

the process of having officers come to your house and

take statements from you --

A Yes.

Q -- and write down things?

109

A Try to claim property.

Q Was there anything about that situation that

gave you either a good feeling or bad feeling about the

criminal justice system the way it was handled?

A From what I can remember, because I was kind of

like in shock, when I had entered the home, the person

had already left, but there was a crowbar on my bed with

lingerie out of my drawer, and that kind of gave me a

invasion of personal nature, and that. So to remember

everything that transpired when the sheriffs arrived,

and that, I think everything was fine.

Q Okay. Let me --

A I don‘t have a feeling one way or the other.

Q All right. I guess the case never got to

court?

A No.

Q There never was a trial or anything?

A Not to my knowledge.

i Q But at the same time you were victimized and

you had some -- some strong natural feelings about that;

correct?

A Yes.

Q All right. In this case, we're going to be

talking about a woman that was killed back in 1985 in

her home. Now, do you suppose that if you were to be a

juror in this case and listen to that that there would

be things there that because of your particular

experiences would make it difficult for you to be a fair

110

and impartial juror? `

A To be honest, no, sir, because working in the

medical field and having to counsel patients, and that,

that have gone through different traumas in their lives,

I've put everything aside. There‘s people a lot worse

off.

Q Okay. Thank you, ma'am.

MS. DONNA PTNDTRQ

BY MR. SANDERS:

Q We had another juror with that same kind of

situation. See if I can find it. Ms. Pineiro?

A Yes.

Q I believe that you said that your sister was

murdered?

A No.

Q That wasn't you?

A No.

Q Was that somebody that's still here? I guess I

wrote down the wrong person. I thought you said you

worked in a courtroom.

A Yes.

Q You've been on one jury?

A Um-hmm.

Q Your ex-son-in-law is with the sheriff's

department?

A Right.

Q And your sister was murdered by her husband?

A No.

111

Q Where did I get that? Okay.

A Well --

MR, SANDERS: Never mind. I'll cross that

one off. Most of you now have had some time to think

about the questions yesterday. Let me ask you this

question again, I know it was asked yesterday, but now

that you've had a chance to think, maybe you came up

with something: Have any of you had a relative, a

friend, a close acquaintance, that's been the victim

of either a murder or a rape? Anybody? No? All

right.

THE COURT: Other than as disclosed

yesterday, Mr. Sanders?

MR. SANDERS: Well, I'm asking the question

of -- of the audience -- or of the prospective jurors

as a whole.

THE PROSPECTIVE JUROR: I had attempted.

MR. SANDERS: Right.

THE PROSPECTIVE JUROR: My mother was raped

when she was 16.

MR. SANDERS: Okay. Did we talk about that

yesterday?

THE PROSPECTIVE JUROR: No, because I didn't

remember yesterday. She doesn't talk about it.

MR. SANDERS: Okay. Got it. You were 16?

THE PROSPECTIVE JUROR: No, my mother was l6.

MR. SANDERS: She told you about it?

THE PROSPECTIVE JUROR: No. Her sister told

112

me about it because she refused to talk about it.

MR. SANDERS: I take it that that was a long

time ago?

THE PROSPECTIVE JUROR: Yes, and nobody was

ever prosecuted even though they knew who did it. It

was at a time in life when that sort of thing was not

acted upon. She was not considered a victim.

MR. SANDERS: Right. And it would not affect

your ability to sit on this case?

THE PROSPECTIVE JUROR: No.

MR. SANDERS: Anybody else here in the first

row think of anything like that?

You understand that this is a murder case? You

understand that the prosecutor here, the government's

lawyer, is going to try to bring in evidence to show

that my client killed somebody and because of that there

are going to be photographs, and those will be explicit

photographs, and there will be blood in those

photographs and things like that? Some of those things

may not be very easy to look at.

We're going to have a doctor come, and he‘s

going to testify about doing an autopsy, and what he

found. Again, are there any of you that feel that that

type of testimony or evidence would make you

uncomfortable and so that it would be difficult for you

to act without being emotional? Anyone?

113

MS. CATHERINE ANDERSON

BY MR. SANDERS:

Q Ms. Anderson.

A Yes.

Q Tell me your feelings.

A I have trouble -- I've seen my children in

accidents and friends that I know. I usually don‘t

go -- I went to see my mom in the hospital, and I

fainted. A lot of that stuff is -- that's just how I

am, I'm real queasy.

Q Okay. Is it to the point that it would make it

difficult for you to -- for example, if the district

attorney were to pull that screen down and put a picture

on that little -- whatever that thing is called.

THE COURT: ELMO.

BY MR. SANDERS:

Q ELMO -- and it's up here in 8 feet by 6 feet

showing a decomposed body --

A I wouldn't know unless I saw it, and if I

fainted, then I'd know.

Q All right.

THE COURT: I've got to say, I can't hear,

and I know that if I can't hear there's some people in

the back that can't hear. Anybody shaking their head

in the back that could be sitting closer, I'm going to

say, you all should move closer, but I‘m going to ask

everybody to keep their voices up. You too,

Mr. Sanders. I think if you keep your voice up, it

114

will make it easier for people to remember to keep

theirs up. Use our outdoor voices. This is a big

room.

I didn't hear what your response was, and

before you give me your response, I'm going to say

something real quickly to stick in here. Mr. Sanders

can ask if it would make you uncomfortable to look at

photographs that will be troubling. It seems that

anybody's answer to that would be yes. If the

photographs are troubling, it‘s going to make us

uncomfortable.

The question I'm concerned about as far as

cause goes is not whether you'll be uncomfortable

looking at photographs that are troubling, but it‘s

going to be, can you do it. If you‘re someone who's

going to be able to say, I‘m going to suck it up and

look at these photographs, then you can be a good juror.

If you're someone who's going to say, I'm not going to

look at what's on the board and ignore it, and thereby,

perhaps lose the benefit of the doctor's testimony while

he is talking about the procedures used for the

postmortem, the autopsies, then you may not get the full

impact of the evidence that is being presented. That

would make you someone who probably could not be a juror

here and would have to be excused for cause.

Again, I‘m not trying to stop Mr. Sanders from

the inquiry that he's making, but I will tell you this:

Without mentioning the name of any case, wasn't long

115

ago, Mr. Sanders I don't know if you were on that case

or not. It was a case that was a murder trial, and I

gave a long story to the -- one juror about how I don't

like these pictures, never liked these pictures. When I

was an attorney 20 years ago, I had occasion to have to

look at these photographs. I could always do it. I

didn't have a problem doing it at all. It was my job to

look at these photographs. I just would never look at

these photographs if it weren't my job. I‘m squeamish.

I'd be in my office sometimes, and I'd have a

big stack of photographs from a homicide scene followed

by photographs from an autopsy, and they were

disturbing. Again, I had no problem looking at them

because it was my job. People in my office would come

in, plop themselves down, grab the photographs and start

going through these things to entertain themselves, so

everybody's different.

After I got through explaining that to one

juror, she said she would -- she would try. I told her

she has to do more than try. She has to tell me she

can, and she finally said, okay, I can. The prosecutor

made the opening statement in that case. At the end of

the opening statement, we took a break. At some point

my bailiff came to me and said Juror Number 7 said she's

got to get out of here. I had to release that juror.

Fortunately, as you‘ll see and you‘ve heard

people mention alternates, we will pick alternate

jurors. If somebody has to be excused, we‘ll have an

116

alternate juror step into his or her shoes, but to lose

a juror and have to replace somebody within the first

15 minutes of a trial is probably bad. I‘m not trying

to talk anybody into trying to be brave or heroic or

anything when it comes to looking at these photographs.

With all due respect, the question is not would

it make you uncomfortable because there's nowhere along

the line that says that a juror has to feel comfortable

during the course of a trial that involves events that

are by their nature going to make you feel

uncomfortable.

I‘ve talked about murder. We don't want people

that feel neutral about murder, We don't want people to

feel comfortable about murder. That's not the issue.

The issue is whether or not it's going to affect your

ability to be a fair and impartial juror.

With that, Mr. Sanders, you may proceed.

MR. SANDERS: Did you want her to repeat that

answer or can we go forward?

THE COURT: You can go forward.

MS. CATHERINE ANDERSON

BY MR. SANDERS:

Q Okay. Ms. Anderson, the question then is do

you believe or do you think that there's a chance that

your uncomfortableness would rise to a level that it

would make it difficult for you to be objective?

A Yes.

117

MS. DEBRA MC KENZIE

BY MR. SANDERS:

Q All right. Ms. McKenzie, I had a couple of

other questions for you.

A Yes, sir.

Q I believe that you said you have been the

victim of a number of burglaries?

A Yes.

Q In any of those, did you have to go to court

to --

A Yes.

Q -- testify?

A I was supposed to, but they got it resolved

before I was even in the courtroom, so I got my property

back, and the man was convicted.

Q Okay. Same question that I asked Ms. Anderson

and Ms. Tierney, was there anything about the way that

you were treated or that your case was handled that made

you feel --

A No.

Q -- either good -- very good feelings or very

bad feelings about the criminal justice system?

A It was handled very professionally.

Q Okay.

A So I have no feeling one way or the other.

MR. CAMERON BEAN

BY MR. SANDERS:

Q Mr. Bean, you said you had your vehicle stolen?

118

A I have, yes.

Q Did you have to go to court and testify?

A No. They finally found it in the river bottom,

stripped.

Q Was anyone prosecuted for that?

A No, never.

018XXXXXXXXXXXX

BY MR, SANDERS:

Q Okay. 018XXXXXXX, what is the extent of your

socializing with the friends that you have in law

enforcement?

A Mainly acquaintances.

THE COURT: Got to speak up.

THE PROSPECTIVE JUROR: Acquaintances.

BY MR. SANDERS:

Q Okay.

A And --

Q So these are people you know, but it's not

people that you have over for dinner?

A No.

Q In the same bridge club or play golf?

A Um-hmm.

MR. SANDERS: Okay. This case is going to

involve discussions about DNA. Are there any of you

that have any specialized training in the science of

DNA? How about --

THE RROSPECTIVE JUROR: Not specialized, but

I‘m a student right now, part-time student. We‘re

119

learning about DNA.

MR. SANDERS: Is that at the local college?

THE PROSPECTIVE JUROR: No, online. I'm

taking online courses.

MR. SANDERS: Is that a criminalistics

course?

THE PROSPECTIVE JUROR: Yeah.

MR. SANDERS: Have you gotten into that

course very far?

THE PROSPECTTVE JUROR: Yeah, I'm almost

done.

MR. SANDERS: All right. You understand that

if you have above-average knowledge of this, that you

can‘t -- in other words, if someone comes in here and

gives DNA evidence and you're a part of the jury and

you go into the jury room, that you can't then testify

to the other members of the jury about what you might

know about DNA?

THE PROSPECTIVE JUROR: Right. I understand.

MR. SANDERS: All right. Anyone else have

any special knowledge about DNA, blood typing,

fingerprinting, anything like that?

(Whereupon the prospective jurors answered in the

negative.)

MR. SANDERS: I'm going to repeat one of the

questions that the judge asked yesterday. Did you all

understand that in the criminal justice system a

person that is accused of a crime has a constitutional

120

right not to testify? Any of you that have done any

research on this issue or maybe in a class that you

took in college and wrote a paper about it or debated

about it or anything like that? I don't see any

hands.

Any of you who have participated in a political

group or anything to try to amend or change that

particular law?

Any of you that disagree with that right that

thinks that a criminal defendant, person that’s charged

with a crime, shouldn't have the right not to testify?

What is your feeling?

THE PROSPECIIVE JUROR: I feel they should

testify and hear what they have to say.

MR. SANDERS: We ought to make them do it?

THE PROSPECTIVE JUROR: Yes.

MSLWRAIRERINE BRADFIELD

BY MR. SANDERS:

Q Ms. Bradford (sic).

A I feel that they -- if they are defending

themselves, they should take the stand and defend

themselves.

Q You understand that the law is that the

prosecutor, the government's attorney, has the burden of

proof in cases like this; that they have to prove a case

beyond a reasonable doubt, and that there's no burden of

proof on the defendant? That's our criminal justice

system.

121

Knowing that, Ms. Bradford, would you be able

to set aside your feelings and follow the law and not

consider that or would that be something that would

bother you if my client doesn't testify?

A It would be something that would bother me. It

would.

Q You don‘t -- if he didn‘t testify, you don‘t

think you could be a fair juror in this case?

A Not at this point.

MR. SANDERS: Let me ask you another thing;

Ms. Bradford indicated she had read about this case in

the newspaper. The rest of you indicated you have

not. Let me ask the question again. Now that we‘ve

had some time to think about this, do any of you

recall reading articles in the newspaper about a cold

case involving a woman that was killed in

Lucerne Valley in 1985, any of that -- any of those

kinds of things?

Sometimes what I worry about is that you may

not remember now, but as a case goes along, you may

remember something later. Let me ask you this: The

district attorney of our county is a politician. Like

any other politician, he has to be elected. When he was

running for re-election, he sent out mailers and the

mailers looked like this on the front. There was

another mailer that he sent out that looked like this.

Do any of you remember receiving these in the

mail?

122

THE PROSPECTIVE JUROR: I did.

THE COURT: Ms. Tierney.

THE PROSPECTIVE JUROR: Yeah.

MR. SANDERS: O34XXXXXX. Any of the rest of

you? The reason is because when the district attorney

sent them out, he put my client's picture on the back.

Do any of you remember seeing that photograph

when you got the mailer in the mail?

THE PROSPECTIVE JUROR: I ripped mine up

coming out of the post office.

MR. SANDERS: That's what I do. I throw them

in the trash. People may read them, and it may come

back to you and actually in the mailer --

THE COURT: Just a minute. Just a minute.

Sorry. We only have one reporter, so we can only have

one voice at a time. If someone's talking, you'll

have to stop.

MR. SANDERS: Yes, sir.

THE COURT: Go ahead.

MR. SANDERS: Okay. Who was talking?

Ms. Tierney?

THE RROSPECTIVE JUROR: I didn‘t -- like I

said, it came out in the mail, and I ripped -- I don‘t

remember seeing that side.

MR. SANDERS: Okay. Those of you that saw

this, if you read the writing on this, it makes it

sound like Mr. Yablonsky has already been convicted,

and he hasn't been.

123

Did any of you get that impression that saw

this that he had been found guilty? All right.

Again, those of you -- do you remember seeing

this one with my client's picture on the inside?

Ms. Bradford, do you remember seeing that?

THE PROSPECTTVE JUROR: It‘s Bradfield.

MR. SANDERS: I‘m sorry. You don‘t remember

seeing that?

THE PROSPECTIVE JUROR: I don‘t remember that

mailer at all.

MR. SANDERS: All right. O25XXXXXXXXX, you

don‘t remember seeing this?

THE PROSPECTIVE JUROR: No.

MR. SANDERS: OBQXXXXX?

THE PROSPECTIVE JUROR: Um-hmm, no.

MR. SANDERS: No one else? All right.

If during the trial you remember that you did

read something in the paper or something triggers a

memory in your mind, would all of you agree to decide

this case just on the evidence that comes out in court

and not on anything that you might have read or seen any

other occasion?

Is there anyone that couldn‘t do that?

Fact is, when this case is over, you'll know

more about this case than the district attorney. You

will have all the facts.

Thank you, your Honor.

THE COURT: Thank you, Mr. Sanders.

124

Mr. Thomas will now get an opportunity to

address you.

MR. THOMAS: Good morning, ladies and

gentlemen. Before I get started, I want to thank

everybody that's in the box right now and everybody

who‘s out in the audience for your time and your

attention in this matter. It's really important that

we have jurors in order for our criminal justice

system to work the way that it does. Without each one

of you taking the time out of your busy schedules and

every day lives, we wouldn't be able to have the

system that we have. So I wanted to thank you, and

I'm sure Mr. Sanders and the judge feel the same way.

I also want to emphasize something that the

judge said yesterday about telling the truth. It‘s very

important that you answer our questions truthfully. I

can give you numerous examples. My last trial down in

Fontana in October through December was about a

two-month trial, one and a half month, and there was a

juror that failed to disclose some information during

the voir dire process.

Well, we found out there was some information

that she failed to disclose, and she sat through the

whole trial. At the very end when we found out this

information, she was dismissed as a juror. So she

wasted all her time being a part of the jury for that

trial and never got to deliberate or make any decisions

on the case.

l25

lf there‘s something that comes to mind that

you‘re not sure of whether or not this is important or

unimportant or that this would answer the question that

was posed, it‘s very important for you to tell us or

tell the judge that information regardless of whether or

not we ask you specifically about that particular

incident or not. lf it‘s something you feel might cause

you to feel one way or the other or not be impartial in

the case, we need to know that.

With that, I want to get started. I'm sure all

of you received your jury summons weeks ago that you

were going to be on jury duty, I'm sure once you opened

up that envelope and you saw, oh, I got a jury summons,

you got all excited and you called your spouse or

significant other and told them, I got selected to be on

jury duty. I‘m so excited about this; right,

Mr. Greenwood? Nobody docs that; right? That's because

this is one of those things that people take seriously.

lt's a duty pretty much that you come here, and you sit

as a juror. That's part of being an American and being

in the system that we are.

Not everybody gets to do this. There's certain

people that don‘t get to participate in this. If you

live outside the county of San Bernardino, you wouldn‘t

be able to sit as a juror here in San Bernardino County.

People that have been convicted of felonies, they aren't

able to sit and be a juror on these cases. So it‘s a

privilege to do that, and it‘s like voting.

126

As far as the whole thing, what was the first

thing that came to your mind, 004XXXXXXX, as far as when

you opened that summons? What did you think?

THE COURT: Boating, Mr. Thomas? Did you say

boating?

MR, THOMAS: Voting. When I was over there?

THE COURT: Yeah.

MR. THOMAS: Yeah.

THE COURT: You're speaking plenty loud. I

thought I heard boating, and I kept waiting to figure

out where the privilege of boating was going to become

important. Go ahead, please.

004XXXXXXXXXXX

BY MR. THOMAS:

Q What were your first thoughts, 004XXXXXXXXXX?

A Well, I didn't like it.

Q Uh-huh.

A I mean for one, who likes to come and sit in

court, go through the process and get picked. Most of

the time, I don‘t get picked when I have sat. I was

picked once, late ‘90s, and I enjoyed it. It was

something that I wanted to do again, and I never got

picked again.

Q When you got picked, what kind of case was it?

A It was a murder.

Q Murder case?

A Um-hmm.

Q That was in the 1980s?

l27

A No, it was late ‘90s.

Q Late '90s. Was that in this county?

A Yes.

Q Okay. And you were actually a member of the

actual l2 that got to decide?

A Yes.

MR. THOMAS: Okay. And you said -- one of

the things you said was who wants to come in here and

spend their day listening to a bunch of attorneys

basically talk to you, a bunch of attorneys argue and

judge tell you all the instructions.

Anybody here think that this is going to be

like what they see on TV, on Law and Order and CSI and

some of those other shows?

Anybody open that jury summons and say this is

going to be great? I get to listen to something that's

kind of like Law and Order. It will be real-life TV

basically.

MS. NITIKA AUSTIN

BY MR. THOMAS:

Q Ms. Austin, did you think it was going to be

like that?

A No, I didn't, Every time I call it always says

I'm canceled. That's what I was hoping for.

Q I'm sure more people here were hoping they

would call up and say it was canceled.

Everybody here understand as far as TV goes

that‘s something that isn't real life? Everybody

128

understands that nobody‘s going to go back in the

deliberation room -- let's say the 16 of you are

selected and you go back in the deliberation room and --

who watches CSI or Law and Order just by show of hands?

Okay.

034XXXXXXXXXXX

BY MR. THOMAS:

Q 034XXXXXXXXXXX, let‘s say you're selected as a

juror. You watch CSI Miami?

A No, Law and Order.

Q So you watch Law and Order. Let's say you go

back in the deliberation room, something comes up and it

reminds you of an episode that you saw the night before

or sometime on Law and Order where you heard that the

prosecution or the police did something in that show and

you wonder how come they didn't do it in this case. How

come Mr. Thomas and Detective Alexander didn't do all

this stuff that I saw on Law and Order? I'm having

problems with that.

Would that be something that you would do back

in the deliberation room?

A No. A lot of that on TV, l know it's not true

because I've been studying about that and a lot of stuff

on like Law and Order wouldn't even hold in court as far

as that goes. No, I don‘t think so.

MR. THOMAS: Anybody disagree with 034XXXXXX

who would go back in the deliberation room and

basically say, look, you know, Horacio on CS1 Miami

129

did this cool thing that I saw on Monday night and why

didn't Detective Alexander do that when he was

investigating this case? Nobody's going to do that;

right? All right.

018XXXXXXXX

BY MR. THOMAS:

Q What was the first thought that went through

your head, 018XXXXXXX, when you heard the charges and

you heard the charge was murder in this case?

A I was surprised. I didn't think I'd be here

anyway, and I have never been on a jury. That's a big

one.

Q Okay. Did you have some sense of shock or

anything when you heard murder?

A Um-hmm.

Q What was your thought after you heard the

murder or before you heard the murder you hoard the date

that it occurred, I985? What was your thought when you

heard that?

A That was a long time ago.

MR. THOMAS: Okay. 016XXXXXXX, did you have

any thoughts when you heard murder and the tact that

it occurred back in T985?

THE PROSPECTIVE JUROR: No, because that's

just life, you know. We have -- every day there‘s

crime and every day there's trials, and we just have

to weigh everything out and see what fits and use your

better judgment on everything that's presented to you.

130

MR. THOMAS: Other than 004XXXXXXX, has

anybody sat on a jury before where the charge was

murder? I know there were a few individuals that sat

on juries before.

059XXXXXXXXXXXX

BY MR. THOMAS:

Q O59XXXXX, you've sat as an alternate on a jury?

A Um-hmm.

Q What type of trial was that?

A It was a criminal -- I guess it was criminal,

guy running from the police.

Q Okay. So kind of an evading charge?

A Yeah.

Q Okay. And as an alternate, what would -- what

did that make you feel like when you saw the l2 jurors

that were selected as jurors go back there and

deliberate and you weren‘t invited back there to

deliberate?

A Well, it didn't take long for them to

deliberate. Everybody got out of court and they had

already did the judgment.

Q Uh-huh. So you didn't feel like you were left

out or anything like that?

A No.

025XXXXXXXXXXXXXXXXX

BY MR. THOMAS:

Q All right. I know there was someone that had

two prier jury experiences. 025XXXXXXXXX, I think it

l3l

was you; right?

A Um-hmm.

Q What type of trials were they?

A One was in Big Bear, spousal abuse. The other

one was here. It was an incident at the Adelanto Jail.

Q Both of those trials you were actually one of

the l2 jurors?

A Yes.

Q You came to verdicts on both of those trials?

A Yes.

MR. THOMAS: Did anybody here follow any of

these high-profile cases, let's say the Lindsay Lohan

case or any of these other cases where you have

celebrities or has anybody been following what's been

going on in the news in Tucson with the congresswoman

that was shot there and the federal judge that was

killed? A few of you have been following that.

Has anybody watched any of the trials on these

high-profile cases on TV where you sat through and

watched it on TV? No.

0l6XXXXXXXXYXXXXXX

BY MR. THOMAS:

Q 0l6XXXXXXX, as far as your prior jury

experience, what did you think about the whole

experience?

A It‘s educational.

Q Uh-huh.

A You -- you are privileged to examine everything

132

and weigh the facts, and I think that's a very good

experience.

MR. THOMAS: Okay. Anybody here think

that -- think it‘s going to be a bad experience,

anybody that's not been a jury before?

I always ask this question of everybody in

here, and I didn't tell the people in the audience, but

it‘s very important that you listen to all of the

questions that are posed by myself and Mr. Sanders and

the judge in this case because once you get up here,

we‘re not going to go through all this again.

It‘s going to be a shortened version,

basically, did you hear everything that I asked all the

other jurors while they were up here? Yes. Would your

answers be any different? No or yes, they would be

different. I remember you asking this question, it

would be different as far as that particular question.

So it‘s very important that you pay attention.

As far as when you opened up that summons and

going back to opening up the summons, did you think,

look, I know I have this duty to go in there, a civil

duty to be a juror on this case, but, you know, this is

just a bad time in life? I got too much other stuff

going on? I wouldn‘t be able to concentrate for

whatever reason? I have a family member in the hospital

or something along those lines or, you know, I‘m too

busy looking for a job or something along those lines

where it‘s going to impair your ability to concentrate?

133

When you're up in the jury box listening to all the

evidence in this case you might be wondering, you know,

what's going on with this, what's going on with that, to

the extent that it impairs your ability to actually

listen to the testimony carefully.

Anybody here of the l8, did you get that

feeling when you opened up that summons or do you have

that feeling now where there‘s something in your life

that's going on right now that this isn't a good time

for me to be a juror?

MS. CATHERINE ANDERSON

BY MR. THOMAS:

Q Ms. Anderson.

A Yes, not when I opened the summons. Yesterday

when I was driving homo, things that I had already

scheduled, medical things for family members that I do

for them, I remembered I had dates set and everything.

I was going to have to look at the dates and see if I

can manage.

Q Okay. You think it will be to the extent where

let's say you're selected that you'd be focusing in on,

oh, well, what do I have to do tomorrow? I got to make

sure that I do this, get to this medical appointment in

time or I got to make sure I do this particular thing at

a certain time the day after? Is that something that

would cause you to lose focus?

A It might because I have a sister that's going

in for a third brain surgery. I'm the one that's taking

l34

her and dealing with that along with my father also.

Q I'm sorry to hear that.

A I take him, so I take care of three people in

between, not all the time but right now things

scheduled, surgeries are getting scheduled. I was going

through it to see if I can re-arrange or if anything

was -- I really didn‘t think I was going to get this far

in this process. I had something I want to add too.

Q Go ahead.

A You said that it's important if it's small or

large if we feel it's important to know, Mr. Sanders

asked jurors about socializing with people. Yesterday I

was at a social event where there was law enforcement,

and they did know that I'm on jury duty. They said, oh,

you weren't dismissed, and I said no. That was it.

Then I was asked a question and the question

was, you know, you're -- the 40-plus years that you‘ve

been around law enforcement, not -- have you known any

law enforcement to lie of all the years you've been

associated?

Q Uh-huh.

A And I said no. Being honest and truthful,

that’s important, but I was asked that question. I just

think that -- you know, you said nothing’s too small. I

think it's important.

Q We really appreciate your honesty. As far as

that particular thing goes, it's connected to what the

judge was talking about yesterday.

l35

A Right.

Q Do you think you can set that aside? Just

because you personally haven't had the experience of a

law enforcement officer lying, that doesn't mean that

law enforcement officers don't lie; right?

A Correct.

Q Okay. And let‘s say a law enforcement officer

gets up on the stand and says something that you believe

is contrary to what all the other evidence shows, and

you believe, well, I think they -- they could be lying.

Would you be able to set your personal experiences, the

fact that you haven't had a law enforcement officer lie

to you personally, and still be able to judge that

officer's credibility separately?

A Yes.

Q Okay.

A Then they wanted to make sure -- it's just the

way it was -- I was approached that be made clear that I

have -- you know, that I never had -- you never met --

you don't know of anyone that has ever lied; correct?

Q Uh-huh.

A Correct. I don't know -- you know, I‘ve never

heard of anyone that I've known that lied. It was just

the way I was approached.

Q Along those lines, you mentioned that if

Mr. Yablonsky didn't take the witness stand that you

would have some difficulty with that?

A Yes.

136

Q Okay. Despite the fact that you're going to be

instructed that you can‘t consider that as part of the

evidence in this case?

A Correct, but it's always --

Q Do you think you can set that aside? Let's say

we go through the whole trial and at the end of the

prosecution‘s case you don't believe that I proved my

case beyond a reasonable doubt, and Mr. Yablonsky and

his attorney decide they're not going to put on any

evidence. He‘s not taking the stand. They're not going

to put on any evidence.

Do you think that you can set that feeling that

you have that you believe defendants should have to take

the stand and judge the evidence the way it is at the

end of my case?

A I would probably have to hear it, but I feel,

knowing myself, it would still be a -- I would have that

doubt that there has to be more to it if he didn‘t want

to defend himself. For myself, I don't see why a person

wouldn't want to defend them self for something.

Q It sounds like you're telling me you wouldn't

be able to set that aside. You wouldn't be able to

follow the judge‘s --

A I wouldn't want to say yes.

MS. KATHERINQVBRADFIELD

BY MR. THOMAS:

Q Ms. Bradfield, you had the same problem that

Ms. Anderson had. You heard the question I posed to

l37

Ms. Anderson about at the end of the prosecution‘s case

if you believed I hadn‘t proved my case beyond a

reasonable doubt, would you be able to set that aside

and still come to a verdict of not guilty?

A I would have to hear the evidence, like you

said, and if I didn't feel it -- I don't know. If I --

I'd probably have to go back and weigh it. If you

haven't proved beyond a reasonable doubt to me, and he

simply hadn‘t taken the stand, I would have to actually

think about it and deliberate. If that's -- if you

understand that.

Q Okay. So let‘s say, hypothetically, at the end

of the case you believe that I haven't proven the case

beyond a reasonable doubt. Mr. Sanders gets up. The

defense isn‘t going to present any evidence. Do you

think you can go back in the deliberation room and say,

hey, Mr. Thomas didn't prove his case beyond a

reasonable doubt and the verdict by law has to be not

guilty, but I can't come back with a not guilty verdict

because I haven't heard from Mr. Sanders‘s client in

this case?

A Yes, because if you haven't proved it, all the

more reason for him to get up there and prove that he‘s

actually not guilty.

Q So you would have difficulty with that, and you

would have some difficulty coming back with a verdict of

not guilty in this case in this hypothetical?

A Yes.

138

Q And you don't think that you can set that

feeling that you have that Mr. Sanders' client has to

take the stand, and you don't think you can set that

aside and follow the law and come to a verdict of not

guilty?

A I don't think I could.

MR. THOMAS: Okay. Does anybody hero have

any specialized training? I know 034XXXXXX mentioned

something in the law or criminal justice, like, you‘ve

taken classes way back in junior college or high

school regarding the criminal justice system and how

it works.

Ms. Anderson? Nobody else?

THE PROSPECTIVE JUROR: I was asked by the

other attorney about working in courts. I did

traffic.

MR. THOMAS: Okay.

THE RROSPECTIVE JUROR: I did a little bit of

criminal when I worked in San Bernardino, but I did

that like 20 years ago.

MR. THOMAS: That was Ms. Pineiro.

THE PROSPECTIVE JUROR: The majority of my

time I worked -- I‘ve been retired six and a half

years. When I was working up here, it was traffic.

MR. THOMAS: Nobody else other than

Ms. Anderson? Mr. Greenwood?

THE PROSPECTIVE JUROR: I'm not sure. I did

security, and I don't know if that pertains to that,

139

but I did security for three years.

MR. SANDERS: I'm sorry?

THE COURT: He did security for about three

years.

MR. MARVELL GREHMWOOD

BY MR. THOMAS:

Q During those three years, did you have to take

some classes on what you can do and what you can't do as

a security officer?

A Right, yes.

Q Okay.

A To obtain a guard card, you have to learn your

power to arrest, tear gas, perhaps first aid, CPR.

Q Like Mr. Sanders had asked 034XXXXXX, those

people that have any specialized training in that area,

particularly Mr. Greenwood, I'm going to ask you the

same question that was asked of 034XXXXXX by

Mr. Sanders. Do you think you can set that aside and

not bring that into the deliberation room?

Let's say something comes up where you say,

wait a minute. I learned when T was doing security the

police aren‘t allowed to do that or that I wasn't

allowed to do that in order to make an arrest.

Do you think you can keep that out of the

deliberation room?

A Yes, I can.

MR. THOMAS: Has anybody here been a witness

in court before whether or not it be a deposition of

140

some sort or a civil case, divorce proceeding,

anything like that where you had to testify on the

weekend, take an oath before you got up there?

Ms. Tierney?

THE PROSPECTTVE JUROR: Medical malpractice,

MR. THOMAS: Okay. Then, Ms. McKenzie, you

had to?

THE PROSPECTTVE JUROR: My divorce.

MR. THOMAS: Anybody else? Ms. Anderson?

You always have your hand up. So you‘ve had to too.

THE PROSPECTTVE JUROR: Yes. T worked for an

insurance company, and it was somebody that had some

racial things said to them.

MR. THOMAS: I'm going to pick on Ms. Tierney

since she volunteered information regarding having to

give a statement to the police which was written down

in a police report.

When you did that, did you remember every

single detail and you told every single detail to the

police?

MR. SANDERS: Objection, your Honor, not for

cause.

THE COURT: Sustained.

BY MR. THOMAS:

Q As far as --

THE COURT: That's a two-sided sword,

Mr. Sanders.

MR. SANDERS: It is.

141

THE COURT: Go ahead.

MR. THOMAS: Then as far as being a witness,

let me give you an example. As far as let's say

you're asked to evaluate testimony as jurors, and

that's what you're going to be asked to do. There's

going to be certain factors that you have to evaluate.

There's going to be an instruction given to you that

just because there's a discrepancy in testimony that

that doesn't mean somebody‘s lying. The example I

like to give is let's say that you're at the Rose

Parade, and you see about 20 floats, about 1O bands

and 5 horses. You go home, and you tell your

significant other, your spouse, I was at this parade.

I saw so many floats. I saw so many horses. l saw so

many bands. Are you going to tell your signiﬁicant

other all the details of the parade, like what the

floats looked like, what the horses‘ colors were,

everything like that?

Mr. Bean, would you do that?

THE PROSPECTIVE JUROR: Probably not, no.

MR. THOMAS: You'd try to get to the

important details like if there was a float you

thought was really cool, you would say hey, I saw this

float and --

MR. SANDERS: Same objection, your Honor.

THE COURT: Sustained.

MR. THOMAS: I know one of the questions that

was asked by the judge was has anybody had a close

142

family member or relative or close friend who had been

charged with a crime, and my question's going to be,

has anybody here had either themselves or close

friend, close family member, relative ever been

arrested for a crime?

THE COURT: You're asking that question

separate from the issue of disclosures made yesterday;

is that correct?

MR. THOMAS: That's correct.

THE COURT: So if you have already told us

about that, he's not asking you to repeat it. Go

ahead.

MR. THOMAS: The people that had their hands

up, if you already told us about it, put your hand

down. If you hadn't told us about it, keep your hand

up.

wk/IARVELL GREEN?

BY MR. THOMAS:

Q Mr. Greenwood, what was that about?

A I had a misdemeanor that happened five or six

years ago.

Q Okay. What type of misdemeanor was it?

A It was domestic violence actually.

Q Okay. So you were arrested for it but never

charged?

A Well, yes, I was charged.

Q Okay. So you were charged with it too. You

had to go to court?

143

A Yes.

Q Was that here in this courthouse?

A No, actually it was Long Beach.

Q Then as far as the case goes, was it dismissed?

A No, actually did something ignorant. I took a

deal because I didn't want jail time and should have

went through it.

Q Then you were placed on misdemeanor probation?

A No. It was misdemeanor (sic).

Q Okay. As far as your experience in the system,

did you think you were treated fairly?

A Yeah, for what they -- from their View point.

Q What about your viow point?

A From mine, it was -- no.

Q Okay. What was it that you felt like you were

being treated unfairly?

A For one, the physicalness started with my

ex-wife, and that's what it was. It was like if you

want to call it that, a mutual thing. I would say that

I pushed her. That was after she started fighting me

first, and I was just getting her off me. The police

were called by our neighbors or something. That's when

they came. There was nothing else I could have done.

Q You felt like you weren't able to Lell your

side of the story?

A Well, just ignorance of the law system. I went

ahead because they had me over the weekend. I was

not -- I don't go to jail, so I was trying to get out of

144

it.

Q Okay.

A They came in and bargained, so I took it. I

shouldn't have because now that's on my record as a

misdemeanor domestic violence and it shouldn't have

been. If anything, it was defensive.

Q Okay. I'm sorry to hear that you feel that you

were treated unfairly.

MS. CATHERINE ANDERSON

BY MR. THOMAS:

Q Ms. Anderson, you also had your hand up?

A Yes, mine was my nephew that had raped my

grandmother. He went Lo prison.

MS. NITIKA AUSTIN

BY MR. THOMAS:

Q Okay. I know yesterday, Ms. Austin, you said

that some of your family was involved in crime of some

sort. I don't think we ever discussed what type of

crimes we're talking about.

Are we talking about drug crimes, crimes of

violence?

A Talking about a lot of drug crimes, violence,

murder. I don't know the extent of what it was, but I

have a cousin who is now serving time for murder. I

have a relative that is serving time for drugs.

Q Did you follow any of these cases as it went

through the justice system?

A Never.

145

Q Then as far as the court proceeding, you never

went to court on any of them?

A NO.

Q Did you ever go visit any of your relatives

while they were incarcerated?

A I visited my --

THE COURT: I can't hear you.

THE PROSPECTIVE JURORZ I did visit One, my

cousin.

BY MR. THOMAS:

Q And that was the cousin that --

A With the murder charge.

Q With the murder? Okay. But you didn't talk

about any of the details?

A NO.

MR. THOMAS: Okay. Anybody else here, since

we're on the topic, ever gone and visited a friend,

family member in jail, or prison?

O 1 sxxxxxxxxgggg

BY MR. THOMAS:

Q Ol8XXXXXXX, you've done that? What was the

person in prison or jail for?

A He was a friend in jail who was accused of

child molestation, and he was found innocent.

Q Okay. And did you ever talk about the case

with him?

A He asked me to testify if he needed me to, but

I never did.

146

Q All right. Were you willing to testify?

A Yes.

OO4XXXXXXX§§§§§§

BY MR. THOMAS:

Q And then, O04XXXXXXX, you had your right hand

up also?

A Couple of my cousins, one just got out from

dealing drugs. He served his time, and two other

cousins that are dead now for -- in LA doing the

gang-bang stuff.

Q Again, as far as these visits go, were they

just to say hello, how are you doing?

A Yeah. You know, the one I visited before he

died in the hospital. The other one was murdered. The

other one I visited in jail once because he kept going

back. I just visited him once. That was it.

MR. THOMAS: Has anybody here ever sought

some type of employment where they applied to be a law

enforcement officer or be involved in law enforcement

in some fashion or another?

THE PROSPECTIVE JUROR: I work for the

courts.

MR. THOMAS: In what capacity?

THE PROSPECTIVE JUROR: Clerk with traffic.

MR. THOMAS: Okay. So it was the same thing

we talked about?

THE PROSPECTIVE JUROR: Yeah.

THE PROSPECTIVE JUROR: My jOb that I'm doing

147

now, I have to -- I work maintaining State buildings.

Sometimes I got to go to the Department of Justice and

take care of buildings and make sure their evidence

rooms are nice and cold and they have heat where they

need to have heat, electrical, lights supposed to be

working where they should. I get exposed to a lot of

that stuff that they do in there.

MR. THOMAS: Okay.

THE PROSPECTIVE JUROR: I get to see a lot of

the stuff, evidence, pictures.

MR. THOMAS: Uh-huh.

THE PROSPECTIVE JUROR: Crime scenes and

sometimes they -- they kind of are in the garage, what

happened, sometimes they bring cars that are all, you

know, bullet holes in them, sometimes see the blood

and just horrible stuff, you know.

MR. THOMAS: You think that's going to affect

you in any way as being a juror?

THE PROSPECTIVE JUROR: No. I mean, been

around it for so long that you just do what you got to

do and get out.

MR. THOMAS: Has anybody here had some sort

of contact with law enforcement where they, at the end

of the contact, were dissatisfied in some way? The

example I give is let's say you were pulled over.

Most of us have been pulled over, and let's say the

officer pulled you over or the deputy that pulled you

over just wasn't a nice person. They were having a

148

bad day or whatever. Has anybody had that experience

before, show of hands?

O26XXXXXXXXXXXXXXXXXXXX

BY MR. THOMAS:

Q Okay. O26XXXXXXXXXX, since we haven't talked

to you really today, what was that experience?

A It was a case of mistaken identity. There was

a person that was in a store and was pointed out to

officers -- the owner of the store said that I was

involved in the crime he was committing, and it was like

a group of cars, say three, four, and they slandered my

friends and I, used force on us, and we didn't know what

was going on.

Q Um-hmm.

A And, you know, I was just really dissatisfied

how they approached us with guns drawn, and we didn't

show any kind of appearance that we were threatening.

Q Okay. Would you be able to set that experience

aside in this case and judge the evidence as it comes

out during the trial?

A Sure.

Q That wouldn‘t affect your judgment of the

evidence?

A NO.

MR. THOMAS: And everybody knows as far as

their contacts with law enforcement, if you have an

unpleasant contact with law enforcement, that doesn't

mean all law enforcement acts that particular way?

149

Everybody agree with that just by nodding your heads.

(whereupon the prospective jurors answered in the

affirmative.)

MR. THOMAS: Anybody disagree? Just raise

your hand. No hands.

Anybody here think that the legal system -- I

know it's been touched upon by Ms. Anderson and

Ms. Bradfield, anybody here think the legal system

favors or unduly favors one side over the other, they

favor the prosecution or they favor the defense?

THE PROSPECTIVE JUROR: That's not what ---

O 3 4XXXXXXXXXXXX

BY MR. THOMAS:

Q Were you going to say something?

A Yeah. In the family court system, not -- not

particularly defendant -- the lawyers per se, but

it's -- I've had bad experiences in family court --

Q Okay.

A -- with the other party, them siding with the

other party once I even gave all the evidence of what

was going on. I had a pretty bad experience in family

court for my children.

Q You'd be able to set that experience that you

had aside in family court and judge the evidence?

A I would try. I would try.

Q When you say you're going to try --

A Yeah.

Q Always makes myself, and I‘m sure Mr. Sanders

150

feels the same way, it always makes us nervous when

people say I'm going to try because it tells us that

there's something there you might not be able to.

A The only reason I'm taking the classes and

about to get my degree is because, you know, of a lot of

the stuff I didn't know when I went to court over my

children and stuff, and I ended up losing custody

because of what I didn't have. When I'm saying I would

try it's not that, you know -- everybody is different.

I know that much. I know when the system starts to

play, there's certain things that I would look for and,

you know, if I see the same thing maybe it would make

me, you know, feel that something's not fair.

Q Let's say hypothetically we go through this

trial and you come up with something that you think was

unfair one way or the other, whether or not it favored

mo or whether or not it favored the defense in this

case, and the judge at the end of the trial is going to

give you the law. Let's say your feelings conflicts

with the judge's instructions on the law.

Would you be able to put your feelings aside

and follow the instructions that the judge has given no

matter how strong your feeling might be? It might be

where you're about to explode, hey, this is totally

unfair. Would you be able to put that aside and follow

what Judge Tomberlin's instructions are?

A Based on the facts I know -- I know, I'd have

to go based on the facts, but it might still, you know,

151

my decision -- still influence my decision. I think it

would seriously, yeah.

Q So you don't think you can set that aside? You

think it would be too much in a case where you wouldn't

be able to follow the judge's instructions?

A Not really sure. I don't -- I would do my

best, you know, to ensure that Mr. Sanders can get a

fair trial with what I hear. I -- l don't know. All I

can say is I'll try, but there's an element of --

Q You think that if it came down to it where you

had a particular feeling, you wouldn't be able to set

that aside?

A I think maybe I could.

Q You think maybe you could?

A Yeah.

Q One of the things that you said during your

answer was that Mr. Yablonsky gets a fair trial.

A Yeah.

Q The People are entitled to a fair trial also.

A Definitely.

Q Would you be sure that you'd give the People a

fair trial that they're entitled to also?

A Yeah, definitely.

MR. THOMAS: Okay. And everybody here heard

Mr. Hoody's answer. Everybody agree with him as far

as giving both sides a fair trial in this case?

(whereupon the prospective jurors nodded in the

affirmative.)

152

O34XXXXXXXXXXX

BY MR. THOMAS:

Q Okay. O34XXXXXX, I don't know if anybody's

asked you. I know yesterday we talked about you had a

couple of brothers in prison.

What were the charges in that case?

A Several different ones drugs, gang violence,

but mostly they're going -- they're repeat offenders.

They're in and out. They've been going for violations

of parole. They don't see their PO. Then they go back

Most of those, but this last -- my -- my brother a year

older than I am is facing like his third strike right

now because of some stuff that went down in Barstow.

Q Are you following that case?

A Little bit, as much as I can.

Q I know there's a lot of people that don't feel

that this third-strike law is something that's fair or

good. Are you one of those people that -- do you think

it's fair that your brother's facing life on a third

strike? I'm assuming that the charge is a non-violent

charge?

A No, it's -- it's a violent charge --

Q Okay.

A s- what he's looking at because he's had two.

I think it depends on the charge. I'm sure there's

people that can get the third strike and not be a

serious charge. Then there's those who do something

really bad, so it's like, you know, that's how I feel.

153

Q It's a case-by-case basis, sometimes you agree

with the way that the system works and sometimes you

disagree?

A Yeah. As far as my brother, I'm going to be a

little biased because he is my brother, but I got to

look at, you know, the facts, and did he do what he was,

you know, suspected of doing, and that's -- when I talk

to him, he said, no, so, you know what I mean?

MR. THOMAS: As a family member, you believe

what your brother's saying.

Anybody else here in a similar situation as

O34XXXXXX where you have some issues with the way that

the laws are? No. Nobody's raising their hand.

Mr. Sanders talked about it and the judge

talked about it, my burden in this case is beyond all

reasonable doubt. The judge kind of hit on it

yesterday. There's a higher standard than that. That's

all possible doubt. I can tell you right now if that

was the standard I would never be able to prove a case

because there's always, as the judge said, there's

always some possible or imaginary doubt out there.

The example I give is, let's say I tell you I

can drive from here to Vegas in an hour, and all of you

are going to say that's not reasonable. That's not

reasonable for you to drive a distance of 186 miles or

190 miles from here to Vegas. Is it possible? Of

course it's possible. I can have the -- let's say I had

the governor's powers, and I was able to shut down the

154

15, and I had a race car, and I was able to drive

200 miles an hour. l can get there in an hour. It‘s

possible, but does everybody understand the difference

between reasonable and possible as far as that goes?

Anybody here going to hold me to a higher

standard of the beyond all possible doubt? No.

Has anybody here ever been strangled or choked

before or know somebody that's been in that situation?

MS. CATHERINE ANDERSON

BY MR. THOMAS:

Q I see Ms. Anderson shaking her head. Can you

tell us about it?

A It was a close friend of mine whose second

husband was strangling her and her daughter caught him

and called the police.

MR. THOMAS: Okay. Anybody else ever seen

something like that? No.

In this particular case, you're going to hear

some scientific evidence. Let's say there was no

scientific evidence and I'm asking you to convict

somebody on a murder charge with no scientific evidence

The jury instructions the judge is going to give you

apply for that.

Is there anybody here that would be unable to

do that? Would anybody here require some sort of

scientific evidence before you were able to convict in

murder case?

The example I give is --

155

THE COURT: Just one minute. Counsel, I'm

sorry. I'm sorry. I heard you say there's going to

be scientific evidence then you gave a hypothetical

about what happens if there's -- in a case where

there's no scientific evidence. I really don't think

this goes for cause at all. The Court's going to

sustain its own objection under 352.

MR. THOMAS: Could I rephrase the question,

your Honor?

THE COURT: I don't think so, but I'm not

going to try to stop you from getting questions

answered that are for cause. Why invent a

hypothetical that doesn‘t apply in this case? How can

that be for cause? If you can ask it in another way,

go ahead.

MR. THOMAS: Let's say there is scientific

evidence but you didn't believe the scientific

evidence, and let's say at the end of the case you

still believe that there is a murder that was

committed, and it's based on the testimony of

witnesses. Would you be able to still convict even

though in your mind there's no scientific evidence

because you disbelieve the scientific evidence? Would

you be able to convict on a murder charge?

MR. SANDERS: Objection, your Honor. It's an

incomplete hypothetical, and it's not for cause.

THE COURT: It's also asking them something

that I think is asking them to prejudge the evidence.

156

I'm going to sustain the objection.

MR. THOMAS: This case is going to involve a

sexual assault or alleged sexual assault. Is there

anybody here that feels like, well, a sexual assault

requires some degree of force or some degree of the

victim resisting in some way, otherwise you're not

going to have a sexual assault?

MS. DEBRA MC KENZIE

BY MR. THOMAS:

Q Ms. McKenzie, you have your hand up?

A Isn't that the definition of rape?

Q The definition that's going to be given

involves force or fear. Let's say the hypothetical --

MR. SANDERS: Objection, your Honor.

THE COURT: Sustained. This is not the time

for the instructions, Mr. Thomas. Sorry.

MR. THOMAS: Does anybody here feel like

because a sexual assault wasn't reported, that it

didn't happen?

Anybody here going to require that a sexual

assault be reported before they would ever be able to

say it happened? No

THE PROSPECTIVE JUROR: You're confusing.

MR. THOMAS: How is that confusing?

THE COURT: I'm going to sustain the Court's

objection. It's going into instruction on the law

that's going to be given, and that's really something

that I'm jealous about, Mr. Thomas. So I'm going to

157

sustain the Court's objection.

MR. THOMAS: Anybody here, other than what

we've already talked about, has anybody here been a

victim or know somebody close to them, family

relative, friend, that's been a victim of sexual

assault?

Other than what we've already discussed,

anybody thought of a situation that they haven't

discussed already?

MS. MARIE CERVANTES

BY MR. THOMAS:

Q Ms. Cervantes.

A It was my son. I feel like it's personal for

me because they're strangers.

Q Would you like to go up with the judge's

permission? Can we approach?

THE COURT: Sure.

(Whereupon the following proceedings were held at the

bench out of the hearing of the jury:)

THE PROSPECTIVE JUROR: My son was sexually

abused by a baby sitter at a young age, by a male, and

to me that's personal for me.

THE COURT: Sure.

THE PROSPECTIVE JUROR: As a male, and I know

he's a male. I can put it to the side and forget

about it. As long as I can see the evidence, I would

be fine.

THE COURT: All right. Any questions you

158

want to ask her?

MR. THOMAS: Would you be able to set that

aside?

THE COURT: She just said that.

MR. SANDERS: No questions.

(Whereupon the prospective juror left the bench and the

following proceedings were held at the bench:)

THE COURT: Mr. Thomas, I don't like the idea

of shutting you down in front of the jury. You're not

going to be able to try the case right now. This is

not the time to ask them to make a decision on what

they're going to do with certain facts if they're

there. That's asking them to prejudge the case. I'll

sustain the objections every time.

How much more time do you think you're going to

have?

MR. THOMAS: Five minutes.

(Whereupon the following proceedings were held in open

court in the presence of the jury:)

MR. THOMAS: I know there was another hand

up.

O 2 GXXXXXXXXXXXXKXXXXXXXX

BY MR . THOMAS:

Q O26XXXXXXXXXX, is it something more than what

we talked about yesterday?

A Yes, with the person that I spoke of yesterday.

Q Yeah. We already talked about yesterday?

A No, it was another person.

159

Q Okay. All right.

A My ex-girlfriend was gang raped.

MR. MARVELL GREENWOOD

BY MR. THOMAS:

Q Mr. Greenwood, you had your hand up?

A Yes, it was my ex-wife when she was a minor.

Q She was sexually assaulted?

A Yes.

Q Okay. And then --

THE COURT: Mr. Thomas, we've got a request

for a rest room break. Do you --

MR. THOMAS: We can take a recess.

THE COURT: Okay. 15 minutes, ladies and

gentlemen. You're admonished that it is your duty not

to converse among yourselves or with anyone else about

any matter connected with this case nor form or

express an opinion on it until it's submitted to you.

15 minutes.

(Whereupon a recess was taken.)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Welcome back. We're on the

record in the case of People of the State of

California versus John Henry Yablonsky who is here

with his attorney, David Sanders. John Thomas is here

for the People.

Mr. Thomas.

MR. THOMAS: Thank you, your Honor. Good

160

morning, again. I just have two more questions then

I'm done. Everybody here, regardless of the law the

judge instructs you, are you going to be able to

follow that law regardless of what your personal view

points and opinions are? Everybody comfortable with

that?

(Whereupon the prospective jurors answered in the

affirmative.)

MR. THOMAS: Except for the people we've

talked about, the difficulties that you're having,

anybody else?

The last question I'd like to ask of everybody,

you've heard all these questions we've asked. You've

heard the overall subjects and subject matter that we

covered. Anything that comes to mind you can think of

at this time that might cause you to not be able to be

an impartial juror in this case? Anything at all? I

mean, anything at all that you wanted to bring up at

this point that you haven't brought up that you thought

might be important for us to know?

MS. SHARON TIERNEY

BY MR. THOMAS:

Q Ms. Tierney.

A I've lived here most of my life. Back in '85,

it was still a relatively small town, and I worked in

the medical field. Some of the names that the judge

read off yesterday sound familiar, however, I won't know

until I see faces.

161

MR. THOMAS: Okay. Anybody here going along

those lines? Anybody here lived in Lucerne Valley or

live in Lucerne Valley now? No.

All right. Thank you very much.

Thank you, your Honor.

THE COURT: Both sides pass for cause?

MR. THOMAS: We need to approach.

THE COURT: Come on up.

(Whereupon the following proceedings were held at the

bench out of the hearing of the jury:)

THE COURT: Mr. Sanders, I'll start with you.

MR. SANDERS: Your Honor, we're just doing

the first 12?

THE COURT: We can do all 18.

MR. SANDERS: Juror Number 2, Ms. Anderson.

She said she did not believe she'd be able to follow

the judge's instruction relative to the right not to

testify.

THE COURT: Okay.

MR. SANDERS: And for a number of other

reasons, and Ms. Bradfield, Number 12, I believe.

THE COURT: Anything else?

MR. SANDERS: Nope.

THE COURT: Mr. Thomas.

MR. THOMAS: I don't have anything, but I

agree with Mr. Sanders on the challenge for cause for

Jurors 2 and 14.

l62

(Whereupon the following proceedings were held in open

court in the presence of the jury:)

THE COURT: Ms. Anderson, Ms. Bradfield, same

question for each of you, we're going to spend no

additional time other than for me to make sure l have

a final understanding of what your answer is.

Yesterday I explained to all of the jurors, including

yourselves, the importance of the constitutional

protection that we have based upon the 5th Amendment

of the United States Constitution to not be forced to

give testimony against ourselves and the cases over

the years have interpreted that to mean that it does

not allow a jury to form any conclusions based upon

the fact the defendant chooses to exercise his right

to remain silent.

I stated it this way, and I'll try to state it

the same way that the right to remain silent would be a

hollow right if it allowed someone to infer guilt by

that determination.

Do you each understand that, Ms. Anderson?

THE PROSPECTIVE JUROR: Yes.

THE COURT: Ms. Bradfield?

THE PROSPECTIVE JUROR: Yes.

THE COURT: So if you were a juror in this

case, I would order you not to let it come into your

deliberative process. l would tell you that if you

were a juror in this case and you were back in the

jury deliberation room and somebody happened to bring

163

up the fact that Mr. Yablonsky didn't testify,

assuming he didn't, you'd have to turn to them and

say, cannot talk about that. The judge told us not to

talk about it. It's improper. That's what you‘d have

to do.

Frankly, I could care less about your personal

feelings of curiosity. The point is, that's an

important constitutional right at stake.

Ms. Anderson, is it your position that you

could not follow the law and give the defendant the

protection that I've ordered you to give him if you were

a juror in this case?

THE PROSPECTIVE JUROR: No.

THE COURT: Say again.

THE PROSPECTIVE JUROR: NO.

THE COURT: Your position is not that?

THE PROSPECTIVE JUROR: No, I would respect

what you ask.

THE COURT: Okay. You could follow the law

as I give it to you?

THE PROSPECTIVE JUROR: Yes.

THE COURT: MS. Bradfield, would you put your

personal curiosity above the constitutional rights of

a defendant accused of a crime?

THE PROSPECTIVE JUROR: Say that again.

THE COURT: Would you put your personal

curiosity above the rights of a defendant who's

accused of a crime?

164

THE PROSPECTIVE JUROR: NO.

THE COURT: So if I ordered you to not

consider that issue, could you do so?

THE PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Thank you very much.

Other than that, counsel, do you pass for cause, each

side?

MR. SANDERS: Yes, your Honor.

MR. THOMAS: Yes, your Honor.

THE COURT: We're going to use peremptory

challenges now. The Court has determined based upon

the questions that all -- that everyone has been asked

that each of you is qualified to sit as a juror, but

the attorneys have 20 peremptory challenges each.

They could choose to exercise their challenges for

whatever reason that they want to other than an

improper discriminatory use of those challenges.

That's not allowed, and the attorneys wouldn't try to

do it. I mentioned that yesterday.

If a person's trying to exclude some people

based upon their gender or exclude people based upon

their ethnicity or something like that, that would be an

improper exercise of peremptory challenges.

The People go first, and there's going to be

challenges only to the 12 people in the back two rows,

and you'll see why I refer to this as the musical chairs

portion of the trial. Now, it's kind of late in the

morning. I would like everyone to know now if they are

l65

excused. You should not feel bad because one of the

attorneys or the other has made a determination that

you're not going to be a valuable juror for their side

of the case. That's really what it comes down to. I

don't want you to take it personally. I also don't want

you to waste the Court's time slapping high fives as you

leave the courtroom.

Mr. Thomas, the peremptory challenge is with

the People.

MR. THOMAS: People would ask the Court to

thank and excuse juror in Seat Number 9, Ms. McKenzie.

THE COURT: Ms. McKenzie, thank you for being

with us. You're excused. Would you please take that

seat Ol8XXXXXXX?

Defense.

MR. SANDERS: Pardon, your Honor?

THE COURT: Defense.

MR. SANDERS: You said defense?

THE COURT: Yes.

MR. SANDERS: Okay. The defense would thank

and excuse juror in Seat Number 3, Ms. Austin.

THE COURT: Ms. Austin, thank you for being

with us. You're excused. Ms. Bradfield, you want to

start for that seat?

Mr. Thomas.

MR. THOMAS: People would ask the Court to

thank and excuse the juror in Seat Number l2,

Ms. Whittaker.

166

THE COURT: Ms. Whittaker, thank you for

being with us. You are excused. Would you take that

seat please, OZSXXXXXXXXX?

Mr. Sanders.

MR. SANDERS: The defense would thank and

excuse Juror Number l0, Mr. Bean.

THE COURT: Mr. Bean, thank you for being

with us, and you are excused. Will you take that seat

please, Ms. Tierney?

Prosecution.

MR. THOMAS: People would ask the Court to

thank and excuse juror in Seat Number 5,

Mr. Greenwood.

THE COURT: Mr. Greenwood, thank you for

being here. You're excused. Will you take that seat

please, Ms. Cervantes?

Mr. Sanders.

MR. SANDERS: The defense would thank and

excuse Juror Number 3, Ms. Bradfield.

THE COURT: Ms. Bradfield, thank you for

being with us. You're excused. Would you take that

seat please, Ms. Allen?

Mr. Thomas.

MR. THOMAS: If I can have just a moment,

your Honor?

THE COURT: Please.

MR. THOMAS: People would accept the jury.

THE COURT: Mr. Sanders.

l67

MR. SANDERS: The defense would thank and

excuse Juror Number 4, Ms. Anderson.

THE COURT: Ms. Anderson, thank you for being

with us. You're excused.

Now we need to call seven names.

THE CLERK: Juror Number 7, Joann Banbury;

Juror Number 40, O4OXXXXX; Juror Number 36, Ferrill

Jordan; Juror Number 10, 010XXXXXXXX; Juror Number 69,

Anne Vaughan; Juror Number 57, Joel Richartz; Juror

Number 24, Hue Fortson.

THE COURT: Hello. In the back two rows, I

have 11 folks that I‘m not talking to, not because I

don't like you. We've talked to you enough. You

might think too. We already have done all the

examination of you that we're going to do. Even

though I'm looking in your direction, I'm not talking

to you. Mr. Sanders is not talking to you, and

Mr. Thomas is not talking to you. So I'm speaking

only to Ms. Banbury and those of you who are in the

front row. If you think I'm talking to you, and

you're not Ms. Banbury or somebody in the front row,

I'm not. Don't volunteer anything, don't shake your

head yes to agree with something, shake your head no

to disagree.

If, however, something asked by one of the

attorneys or asked by me makes you remember something

that you wish you would have told us before, just raise

your hand. We'll get back to you and give you an

168

opportunity to amplify anything you've told us.

Other than that, everybody bring their

questionnaires with them? Ms. Banbury, those of you in

the front row, did you bring your questionnaires?

MR. JOEL RICHARTQ

BY THE COURT:

Q Mr. Richartz, yesterday you talked to me about

issues regarding you're a teacher and getting your son

to school.

A Correct.

Q Did that work out okay?

A We're still working on it.

Q Okay. Perhaps I didn't give you enough

opportunity to explain to me whether or not it was going

to be a hardship. You said your wife has other

employees --

A Well, correct.

Q -- in her business. So how does that work out?

ls she going to be able to do that?

A She's in the process of talking to her other

employees and trying to arrange her schedule. We own a

video store in Wrightwood. The store's not open -- it's

open eight hours a day from noon to 8:00. The early

part -- but she is going back to school at Cal Poly

Pomona, and she does that on Tuesdays and Thursdays from

8:00 in the morning till 12:00 in the afternoon.

I do want to say that we are part owners of the

company. There's another couple that helps us with the

l69

company, but we are in the process, and she is in the

process right now and at lunch today I will be calling

her to see how that's coming along and we'll talk again

tonight to see how that's coming along.

Q Is this a financial hardship on you or not?

A No, it's not a financial hardship. I moan, I

am not --

Q Wait. Wait. Wait. Let me ask a question. Is

this going to be a distraction for you if you're here?

A No.

Q It's not going to keep you from being a fair

juror?

A NO.

Q If things end up not being a hardship -- is

this going to result in your son missing school?

A There might be a few days.

Q That's unacceptable. You're a teacher. You

know that; right?

A That's true. What will end up happening is I

do know all his teachers, and we will make sure that I'm

in contact with his teachers to get what homework we

need to do to get him caught up. I don't want to say

it's a hardship financial or medical because it's not.

Q I understand that, but how do I put this? You

have an obligation as you're well aware. Some of you

don't know this. I'll mention there's something called

a SARB board, School Attendance Review Board. I don't

know if any of you have heard of it before. I don't

170

think I'd heard of it before I had to hear people that

were given citations. It's the law. If you have a

student, you've got to have that kid in school or l

guess if you want to do some kind of approved home-study

program that's allowed. Other than that, you have to

have your child in school every day, and I don't know if

that changes when you graduate from high school or when

you turn 18 or what.

How old's your son?

A 15 years old.

Q Either way he hasn't graduated, and he hasn't

reached l8. I'm sure the law requires that -- you to

have him in school unless he has an excused absence.

A Correct.

Q Well, I'm going to tell you, I enumerated

various things that were hardships that I was concerned

about. How about this one, I don't think I should make

an order that causes you to break the law. So if you're

not able to tell me that your son's going to be able to

get to school every day as the law requires, I'm not

going to be able to have you here.

A That is your decision.

Q No. Let me put that in the form of a question.

Are you able to tell me that your son is not going to

miss school if you are here?

A I am not going to be able to tell you a hundred

percent positive that my son might miss occasional days.

I cannot at this point be a hundred percent confident in

171

that statement.

Q Okay. And I guess that there's another way of

putting that because he could be ill as well and stay

home, all kinds of things could happen. You're saying

you can't guarantee he's going to have transportation

available?

A Correct.

THE COURT: Mr. Thomas and Mr. Sanders, it's

my intention to excuse Mr. Richartz for hardship

unless you want to keep him around and just kick him

on your own.

What do you want to do?

MR. SANDERS: I'll submit on whatever the

Court wants to do.

MR. THOMAS: I'll do the same.

THE COURT: Mr. Richartz, thanks for being

with us. I'm going to excuse you. It sounds like I

should not permit the situation to occur that causes

you to be in violation of a law, so the Court--1

don't know which one trumps which. There's no reason

to have a conflict here. Thank you. You're excused.

Call another name for that seat please.

THE CLERK: Juror Number 58, Angela Roo.

THE COURT: Mr. Thomas said the reason why he

took so long in his questioning was because the rest

of it was going to go quickly. I agree with that. I

spent a long time yesterday. You've heard --by the

way, I'm speaking to, again, now Ms. Roo because she's

172

in the front row and each of you. You've heard a lot

of questions. You've heard responses. You've heard

many people being excused. We're going to jump to the

$64 question before I have you go through the

questionnaire individually.

As to Ms. Banbury and those of you in the front

row, look at Question 14. Is there any reason why you

feel you should not sit as a juror in this case?

Ms. Banbury and those of you in the front row, raise

your hands if that applies to you. Seeing no hands.

Good.

We're going to remember that the way we proceed

is you answer those questions by telling me only what

yes answers you have to Questions 4 through l4, if any.

MS. JOANN BANBURY

BY THE COURT;

Q Let's start with you, Ms. Banbury.

A Yes to 5, 7 and 12.

Q Well, I get to hear 1, 2 and 3.

A I thought you said -- sorry.

Q I'm sorry.

A I'm a receiver at Costco. My husband is a

concrete finisher, and I've never served before.

Q Okay. And then give me your yes answers?

A Yes, I saw the article in the paper when it

first came out.

Q How long ago was that? Back in 1985?

A No, not the original one, but recently. It

l73

goes to -- like I did see that postcard and all that and

seeing that -- that the defendant -- he did feel that

he's being shafted is what I got out of the picture

because of the way it was done.

Q Okay. All right. So let's talk about those

things, and, frankly, I had no idea Mr. Sanders was

going to pull out those pictures. I might have done

something to have stopped it rather than showing the

pictures, but I would have allowed him to ask the

question, did you see that and will that affect you?

So you've seen not only the flyers that -- what

do they call them? Slate mailers or political ads,

flyers, whatever they are. I'm not going to suggest

anything about my political beliefs but those trash cans

at the post office are there for some reason.

Is that going to affect how you view the

evidence in this case, Ms. Banbury?

A Well, of course I'm going to try to be fair.

Q Yeah. Everybody is going to try to be fair.

Some of us can be. Some of us can't be. Not a bad

thing if you are -- if you already have your mind made.

I'm going to say to be a juror and be fair, you're going

to have to be able to say without any reservation that

you understand that your verdict has to be based on what

happens in this courtroom, not based upon what somebody

puts on a political flyer and not based on something

that you read in the newspaper.

A Well, I'm going to listen to all of the

l74

evidence and try to make my decision that way, but I've

had -- you know, I grew up with a lot of my parents‘

friends that were police officers and stuff. I feel if

he's here, I am leaning towards the fact that he's

probably --

Q Got to keep focusing on what I'm asking you

because that's a different answer to a different

question. That's -- I'm asking if you can put aside at

this point what you might have seen in the newspaper and

seen in any political flyer or are you going to base

your verdict on those things?

A I can put them aside.

Q Now let's move on. What was your other --

We’re going to talk about what you mentioned about your

family, friends, and police officers, and things.

Was that your answer to Number 8?

A 7 and l2 was my other two.

Q So close friends or members of any law

enforcement agency. Yesterday I spent quite a bit of

time with Mr. Bean on this subject. I hope you were

paying attention. Mr. Bean said something about his

belief that -- he said, I hope we don't spend a lot of

taxpayer money on attempting to convict someone that is

just randomly selected off the street; right?

We probably all share that feeling and think

Mr. Sanders might have even said that he concurred with

that. I said to Mr. Bean -- l used that as an

opportunity to explain that it's okay as long as you

175

understand that when you have to decide this case, you

don't base your decision on the fact that someone's been

arrested, accused of a crime, or brought to trial

because of the fact that they might or you might be

leaning one way or the other should not come into your

deliberations at the end. Mr. Thomas has the

responsibility of proving Mr. Yablonsky guilty beyond a

reasonable doubt.

Do you agree with that?

A Yes.

Q Do you think that the fact that you've known

law enforcement officers or your family's known law

enforcement officers should lessen Mr. Thomas's burden?

A No, it shouldn't lessen it. It still needs to

be proved one way or another if he's guilty or innocent.

Q Let me say this, again, I'm not trying to

quibble with you. I'm saying this for everyone‘s

benefit. You said it needs to be proved one way or the

other. No, it doesn't. It only needs to be proved one

way. The presumption is that he's innocent right now.

Have it however you like. You can even say he's proved

innocent right now. The point is Mr. Yablonsky does not

have to prove to you that he's not guilty or that he's

innocent. The only one with a burden of proof in this

case is Mr. Thomas. That's the People.

If he doesn't meet that burden, you don't have

to have proof that Mr. Yablonsky's innocent because he's

presumed innocent.

l76

Does that make sense to you?

A Yes.

Q Could you follow that law?

A Yes.

Q Okay. What about Number 12?

A That had to do with my father. For 2O years

that I was growing up, he had a liquor store and he was

robbed a number of times at gun point. A few of those

times I was there too at the store when it happened. So

I was exposed to all that. So that's why I was

mentioning it.

Q Would that affect how you view the evidence in

this case?

A No, I don't think it will.

THE COURT: Okay. Thank you.

O4OXXXXXXXX

BY THE COURT:

Q O4OXXXXX.

A Yes. I'm a student at Victor Valley College.

Q Are you missing classes by being here?

A No, it's winter break.

Q Okay.

A I'm single, and I haven't served on any jury

and no to 4 through l4.

Q What are you studying?

A Undecided yet.

Q Okay. What's your favorite class?

A Computer repair.

177

THE COURT: Okay. Thank you.

MR. FERRILL JORDAN

BY THE COURT:

Q Mr. Jordan.

A Yes, sir. I'm in between jobs right now. When

I was working, I was working in water treatment. My

wife is a caregiver. She takes care of old people that

are sick in their homes, and I have served on a jury

before.

I am acquainted with people in the legal

profession.

Q Hold on. On the jury, how many times?

A Two times.

Q Criminal?

A Civil, negligence, both.

Q Both of them were civil cases?

A Yes.

Q I assume you reached a verdict in each case?

A Yes.

Q Go ahead.

A When Attorney Sanders pulled out that flyer, it

did jog my memory that I had read something in the paper

about a criminal accused being featured in a political

flyer, but I don't really know much about it passed

that. I am acquainted with some people in the legal

profession, attorneys.

I have -- I have been charged with a criminal

offense, and I have been the victim of a crime.

l78

Q What offense were you charged with and when?

A Spanking my child when he was little.

Q How long ago was that?

A 1997.

Q How was it resolved?

A I pled guilty to a misdemeanor charge, time

served, 300 bucks.

Q Okay. And you were the victim of a crime?

A Yeah. When I moved to Victorville, I had

somebody break in the house and steal everything when I

was moving in.

Q Anybody get caught?

A Yeah. Oh, yeah. Yeah. It was a big deal.

The police caught a big burglary ring. I got a lot of

my property back. They did a pretty good job.

Q 1993, where were you arrested?

A In '97? Here.

Q Here.

A Victorville.

Q Okay. How do you feel about that?

A You know, at the time I was pretty angry about

it because I remember growing up it was very -- a very

different attitude. The police would hold you while

your parents hit you, and I was upset about that, but

with a little time, you know, it worked out pretty well

I ended up on my own taking parenting training. It was

a pretty positive experience when it was all said and

done.

I79

Q You're not going to hold that against

anybody -- it's not going to make you more sympathetic

to one side or the other in this case?

A No. That was my deal.

THE COURT: Thank you.

WXXXXXXXXXX

BY THE COURT 1

Q O 1 OXXXXX .

A I'm employed by the FAA, Federal Aviation

Administration. My wife is -- basically, she stays at

home. She manages the property and the family concerns.

I've been on a jury four times, one civil, three

criminal. In each case a verdict was reached.

I have yeses to Item Number 6 and Item

Number I2. In the case of Item 6, I've got a casual

friend that is a deputy for San Bernardino County.

Also, in my work, I have regular contact with a number

of different law enforcement agencies.

Number 12, my daughter, who's an adult now, has

her own family, was the victim of a property crime. Her

vehicle was stolen from the front of their house. It

was recovered the following day, but the laptop that she

had in the vehicle was stolen, and that went unresolved

although it was reported. Nobody was ever found that

committed the crime.

Q Those things aren't going to affect how you

view the evidence in this case?

A No.

180

MS. ANNE VAUGHAN

BY THE COURT:

Q Ms. Vaughan.

A I work at Costco at membership. My husband

Works at Costco. He's an inventory auditor. I have

been on a jury before and --

Q How many times?

A One time.

Q Criminal? Civil?

A Criminal.

Q Reach a verdict?

A Didn't get that far.

Q Case was resolved out from under you?

A Yes.

Q Okay.

A Yes to 6. My neighbor's a police officer. I

don't talk to him. I talk to his wife, hi and bye.

That's about it.

Yes to ll. I have an old, childhood friend

that's in prison. That's about it.

Q Stay in touch?

A I've seen him a couple times in there.

Q Where?

A At Chino.

Q Okay. Think that's going to make you more

sympathetic to one side or another in this case?

A No.

Q Did you follow the case as it progressed

181

through the legal system?

A His case?

Q Yes.

A No.

Q You did not form any opinion about whether he

was treated fairly or unfairly, just that he's friend

and he's in jail?

A He's a friend and he's in jail.

Q Okay. That's it?

A That's it.

MS. ANGELA ROO

BY THE COURT:

Q MS. ROO.

A I work at Desert Valley Hospital in dietary,

and this is my first time.

Q Do you have a life partner, Ms. R00.

A No, I'm single. I have four kids. Number 11,

my brother for, like, trafﬁc.

Q That's it?

A Yeah.

THE COURT: Thank you.

MR. HUE FORTSON

BY THE COURT:

Q Mr. Fortson. .

A Yes. I'm a material specialist with

Continental Airlines as well as an ordained minister.

My spouse, she's a home-care worker, and I have served

on a jury in LA county. That was a civil case, and the

l82

gentleman got paid.

On Number 6, I have a -- we like to call her

our spiritual daughter who just became an attorney.

She's working with the LA Public Defender‘s Office.

She's now moving to San Diego in the same position.

On Number ll, I had a situation with my eldest

son before we moved up here. He was charged with --

supposedly accused of molesting a young man several

years ago that we had went to a church service and in

that the court battle drug out from there actually up to

here. We've only lived here for three years. It was

finally resolved in the sense that he had to take a

plea. It was either take a plea or go to jail for eight

years, get on the computer system or whatever it's

called. He went on and took that in spite of his

innocence. He went on with it. Now things are

resolved. He was on probation, had to go through

counseling and such, but he's moved on with his life.

Q You heard me ask Mr. Jordan how did he feel

about that. I'm going to ask you the same question.

How did you feel about that?

A Actually, everything happened so fast and at

the very wrong time in my life because at the time I was

laid off from my previous job. So I didn‘t have the

funds to get the proper defense that I felt he needed.

So we had to end up taking the lesser of the two sides.

It was quite an experience, but there was one

thing that really puzzled me with the public defender

l83

that we had. I asked him, when are we going to get to

the truth. His words were, we never get to the truth.

We just want to win the case. Winning the case meant

that he had to take one or the other.

At first, I didn't understand, and I was

somewhat bitter, my wife and I, because we felt like it

was wrong and unjust. This is a kid that we had known.

They had gone to school with, and I know things happen.

I have that understanding. We're dealing with just

people. I felt there should have been another way, but

we were told because of the economic situation that he

was not able to have a jury trial because we thought if

we went to a jury trial, the truth would have come out

with our situation, but we're not bitter now. We're

just moving on with life.

Q Mr. Fortson, let me say this: I don't know and

I can't tell you what the specifics were in that

situation, but I can say that if the lawyer advised you

that because of the economics that your son couldn't get

a jury trial, that's not correct. Everybody's entitled

to a trial by jury. It's a constitutional right if

their liberty is at stake, and you don't have to have

any money to hire a lawyer. A lawyer is provided for

you.

In fact, on top of that, the court will provide

the expense for bringing witnesses in to testify if you

want them to come in. The court will make sure that

they are available for testimony and provide

184

investigation costs and provide costs for expert fees

and all kinds of things like that whether a person can

afford it or not. So I -- that -- the information that

you were given, I'll just say that's -- it was an

incorrect statement that you were given.

Now, a lot of times people look at -- what can

I say -- risk analysis. Somebody might look at it and

say, do I want to take a chance to be convicted and go

to prison for eight years and have to register as a sex

offender for the rest of my life, or am I willing to

save myself even that possibility I'll plead to a lesser

or different charge and take probation? That happens.

Those are plea bargains. It happens all the time.

I don't know what happened specifically, and I

would suspect that with your son, that you probably

didn't have as much direct contact with the attorney as

your son did.

Is that a fair statement?

A Yes.

Q A lot of what you have determined was what your

son related back to you --

A Yes.

Q -- from what the attorney said to him?

A Correct.

Q Okay. I didn't have to spend all that much

time except I didn't want to create a misimpression

about the rights that someone has. I need to go through

that.

l85

Tell me, if you were a juror in this case,

would that be something that would affect how you view

the evidence here?

A No. I View the evidence as -- as it's put

before me.

Q Okay. You mentioned you're an ordained pastor

or minister?

A I said minister, but I am a pastor.

Q Okay. Do you have a church that you regularly

preside over?

A Yes, but we only meet on Sunday mornings. I

don't have a mid-week because I work swing shift at LAX

Airport.

Q May I ask what denomination if there is one?

A It's a spinoff from the Foursquare Church. We

were ordained under the Saints of Value Ministry, which

their particular leaders came from the Foursquare

denomination. It's a Christian non-denominational.

Q So do you have any problem, if it turns out

that you were a juror in this case, is that a problem

for you to sit and be a judge of the facts in this case?

A No, it's not in that we actually judge every

day about just about everything.

THE COURT: I say this again for everyone's

benefit, so you'll realize. No one's going to be able

to have a problem or hope that no one's going to have

a problem with sitting in judgment of another human

being because no one in this case is going to be asked

l86

to sit in judgment of another human being. You, as a

jury, are going to be charged with the responsibility

of judging the facts.

Is that a good distinction? Everybody

understands the difference there?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Then now speaking, again, to

Ms. Banbury and those of you in the front row. You

heard me talk about a lot of things. You heard

amplification of those things by Mr. Thomas and

Mr. Sanders. Is there anyone here that has a problem

with the notion of the presumption of innocence?

Everyone okay with that? As he sits right now,

Mr. Yablonsky is innocent. Can you all agree with me

on that?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Okay. Mr. Sanders could sit

there playing tic-tac-toe with Mr. Yablonsky through

this entire trial, and if in the final analysis he

does nothing other than that, he doesn't ask a single

question of a single witness, do you think that --

that that in any way relieves the burden of proof on

Mr. Thomas?

(Whereupon the prospective jurors answered in the

negative.)

THE COURT: Okay. Because he's presumed

187

innocent, Mr. Yablonsky does not have to prove that

he's innocent. I talked about that testimony.

Everyone understands now how important we all consider

the 5th Amendment, the right to remain silent, and how

it will be responsible -- your responsibility if

Mr. Yablonsky decides not to testify to not allow his

decision to enter your deliberations?

Could you each do that and follow the -- the

law as I give it to you?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Anybody have a problem with that?

Anybody have a problem with anything that

they've heard discussed so far in this case?

Anybody have a problem with the notion they

might be forced to look at unpleasant photographs? All

right.

Not hearing anyone say yes, we're going to take

our recess at this time. This afternoon we're going to

start back at 1:30. You'll hear Mr. Sanders and

Mr. Thomas ask some further questions of you. Each of

you are admonished that it is your duty not to converse

among yourselves or with anyone else about any matter

connected with this case nor form or express an opinion

on it until it's submitted to you. See you at 1:30.

(Whereupon the lunch recess was taken.)

188

VICTORVILLE, CALIFORNIA; JANUARY 20, 2011;

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

P.M. SESSION

(Appearances as heretofore mentioned.)

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

-oOo-

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Good afternoon, ladies and

gentlemen. Back on the record in the case of People

of the State of California versus John Henry

Yablonsky, who is here along with his attorney,

Dave Sanders. John Thomas is here for the People, and

he is, once again, joined by his investigating

officer, Detective Robert Alexander.

One of your numbers didn't make it back from

lunch. Leaves me with an awkward situation. The proper

way of stating it is I can't go forward without excusing

that member of the jury because everyone has to be here

for all stages of all proceedings.

With that in mind, Mr. Sells, are you here?

Mr. Sells is not here.

Counsel, will you stipulate that I can excuse

Mr. Sells from this panel so we can go forward?

MR. THOMAS: People stipulate.

MR. SANDERS: Yes, your HOIIOI.

THE COURT: Mr. Sells is excused from the

panel. Ms. Roo, I was informed by Deputy Fliegner

l89

that you determined or found out that you only get

paid for three days?

THE PROSPECTIVE JUROR: Yes, I just called my

boss.

THE COURT: Where do you work?

THE PROSPECTIVE JUROR: At Desert Valley.

THE COURT: Did you tell me you had four

children?

THE PROSPECTIVE JUROR: Yeah, I'm a Single

mom. So I won't be ablo to do it.

THE COURT: Your children have a lot of jobs?

THE PROSPECTIVE JUROR: No. Driving me nuts,

yeah.

THE COURT: So it would be a financial

hardship for you to be paid for only three days?

THE PROSPECTIVE JUROR: Yeah.

THE COURT: I'm going to excuse you for

financial hardship. Thank you for being here with us

so far.

THE PROSPECTIVE JUROR: Thank you.

THE COURT: Call another name for that seat,

please.

THE CLERK: Juror Number l4, Marie Burger.

MS, MARIE BURGER

BY THE COURT:

Q Ms. Burger, hello.

A Hello.

Q You remember how this goes; don't you?

I , \_

l9O

A Yes, I do. I'm a housewife. I've never

worked. My husband's deceased now, and he was a

carpenter, and I was on a -- previously I was on a jury

trial.

Q Criminal case or civil?

A Yes, it was criminal.

Q Reach a verdict?

A It was -- yes, we did.

THE COURT: Thank you. Well, we haven't done

very much. I don't know if you all want to open this

up to re-admit Mr. Sells.

MR. SANDERS: It's fine with us.

MR. THOMAS: It's fine with the People.

THE COURT: Okay. Mr. Sells is with us, and

he's back in our pool by stipulation. Mr. Sells

didn't miss very much except that Ms. Roo, who was

Number l7, indicated she did not get paid for more

than three days jury duty. She just found that out.

I excused her for financial hardship.

M5- MARIEIBEBEEB

BY THE COURT 2

Q Ms. Burger, what yes answers do you have to

Questions 4 through 14?

A Number 11, my nephew was convicted.

Q Of what?

A Of murder.

Q Of murder. How long ago was that?

A It's been about ten years.

191

Q Did you follow that case? .1

A Yes, I was -- I was in the courtroom during the

trial. I was there.

Q Where was that trial?

A Orange county.

Q Did you form any opinion about how he was

treated by the legal system?

A I wasn't satisfied, no. I wasn't satisfied

with his trial.

Q Do you think that he was treated unfairly by

the legal system?

A Yes, I do.

Q Do you think that that feeling would in any way

affect how you View the evidence in this case?

A I don't think so, but I don't know if I would

relate what I heard in the courtroom or not.

Q Well, you've heard me say that there's no way

that we can look at someone and tell by just what we

see. We have to hear from you. I

What do you think? Do you think this is the

wrong kind of case for you because of your own

experiences?

A Well, since it was a murder case, I think it

would be hard for me because there's a lot of evidence

that comes out that's not easy to hear and to see what

you're seeing in the courtroom. It won't be easy for

me, but I would do the best that I could.

Q I understand that you'd do the best that you

192

could, and everybody wants to be fair, but do you

you've got some -- because of the influence of the

experience that you've had so far that that would

how you view the evidence in this case?

A I don't know. I can't answer that, your

I don't know.

think

affect

Honor.

Q Well, I don't know how to put it any other way,

but I'll start off saying this again. Ms. Burger

everyone has to decide this case based upon just what is

shown here in this court; right?

A Yes.

Q It's the evidence that you hear. Mostly

it's

going to be from sworn testimony. People are going to

take the witness stand and give testimony. Then they're

going to be given an opportunity to be examined by what

I refer to as the world's oldest lie detector, and

that's cross-examination.

That's what you're going to have to do.

going to have to listen to that evidence and form

conclusion based upon the law that I tell you and

arguments that you listen to from the attorneys.

have to completely remove from your consideration

things that involve your nephew's trial in Orange

because that has nothing to do with this case.

You're

some

the

You'd

the

county

You understand and agree that it has nothing to

do with this case?

A Yes, I understand.

Q Well, so tell me, could you completely remove

193

the influence of that case from your consideration of

the facts and law in this case?

A I could, but it would not be easy.

Q I'm not -- easy really has nothing to do with

what I'm asking. I think you heard me say before I

can't guarantee that this is going to be at all times a

pleasant task. It's a job. It's a job that you didn't

volunteer for, but you have the responsibility to be a

juror if you can be, but you have to be fair.

Is that -' is that your final answer that you

can be fair, but it's going to be hard?

A Yes, that's my final answer.

MR. FERRILL JORDAN

BY THE COURT:

Q Okay. Mr. Jordan, I thought I recognized you,

and I thought lots of people have similar facial

characteristics. You were in my court observing some of

the Deering trial, the trial that I did just before this

one; is that correct?

A That's correct, Judge.

Q Were you here for any part of any hearing

involved with this case?

A No.

Q Okay. And are you a lawyer?

A No. If I may address, I did graduate from law

school, and I have passed the bar. I'm in limbo waiting

for my background check. That said, I‘d be happy to

follow the instructions you have much easier than trying

194

to figure it out myself.

Q But, in any event, you understand if you were a

juror in this case that we're not looking for anybody

that's an expert on the jury? We want the jurors to all

decide this case for themselves but only after talking

with the other jurors.

You could do that just like any other juror?

A Yes, sir. I'm nothing like an expert.

THE COURT: All right. Now, I'm told this

thing goes a lot quicker at this point in the

proceedings.

Mr. Sanders, why don't you demonstrate that for

us.

MR. SANDERS: I will, your Honor. Thank you.

Ms. Banbury, those in the front row, that's who I'm

addressing at this point. Did all of you hear the

questions that I asked the other jurors this morning?

If there's anyone that didn't, please raise your hand.

Did any of you have specific answers to those

questions and thought I have to say something? Any of

you thought that?

ls there any of you that have a doubt in your

mind that you couldn't be a fair juror in this case?

Thank you, your Honor. Finished.

THE COURT: Mr. Sanders, you have certainly

convinced me.

Mr. Thomas, feel free to take about the same

amount of time.

195

MR. THOMAS: I'll try. You've also heard all

the questions that I've asked. Of all you prospective

jurors, prior to you getting up here, do any of you

have any answers that would have been different or

that you want to volunteer information that you

haven't already volunteered to any of the questions

that I've previously asked? No.

O l OXXXXXXXXXXX

BY MR. THOMAS!

Q Then I notice, was it, OlOXXXXX, you've been on

three criminal trials?

A That's correct.

Q You were a juror -- part of the 12 jurors that

deliberated?

A Yes, except in one case. The trial ended as

soon as the jury was sat. Apparently there was a

settlement.

Q What type of criminal cases were they?

A This particular case was a methamphetamine

lab-type situation.

Q Were they the same for all three trials?

A No, I -- I was involved in another criminal

case that basically was a fraud -- criminal fraud-type

case, then another one that was a -- a murder case.

Q Okay. How long ago was that murder case?

A I'm thinking it was about sometime in the early

20005.

MR. THOMAS: Okay. Thank you very much.

I96

People pass for cause.

THE COURT: Guess what I told them. I told

them that if we get a jury today, we can stop and come

back to begin the case and the presentation of the

case on Monday. I think they like the idea of getting

a jump on the -- I was going to say get a jump on the

weekend. They all work on Fridays. I was a trial

attorney myself for a number of years, and it's a

tough job. They've got to coordinate things in court

and out of court. They've got to jump through hoops

that people in black robes put in front of them.

Everybody's passed for cause. We're going to

the musical chairs portion of our trial. Remember, they

have 20 each. Mr. Thomas has used three, passed one

time. Mr. Sanders has used four. So it's Mr. Thomas‘s

opportunity to exercise a peremptory challenge.

MR. THOMAS: The People accept the 12 jurors.

THE COURT: Mr. Sanders.

MR. SANDERS: Your Honor, the defense would

thank and excuse Juror Number 3, Ms. Allen.

THE COURT: Ms. Allen, thank you for being

with us. You're excused. 04OXXXXX, will you please

take the seat left by Ms. Allen?

Mr. Thomas.

MR. THOMAS: People accept the l2 jurors.

THE COURT: Mr. Sanders.

MR. SANDERS: Defense would thank and excuse

Juror Number 4, Ms. Banbury.

l97

THE COURT: Ms. Banbury, thanks for being

with us. You're excused. Will you take that seat

please, Mr. Jordan?

MR. THOMAS: Before Mr. Jordan takes that

seat, the People would thank and excuse Mr. Jordan.

THE COURT: Thank you, Mr. Jordan, for being

with us. You're excused. Will you take that seat,

OlOXXXXX?

Mr. Sanders.

MR. SANDERS: The People (sic) thank and

excuse Juror Number 5, Ms. Cervantes.

THE COURT: Ms. Cervantes, thank you for

being with us. You're excused. Will you take that

seat, Ms. Vaughan?

MR. THOMAS: Before Ms. Vaughan takes that

seat, the People would thank and excuse Ms. Vaughan.

THE COURT: Thank you, Ms. Vaughan. You're

excused. Will you take that seat, Ms. Burger?

Mr. Sanders.

MR. SANDERS: The jury (sic) thanks and

excuses Juror Number 10, Ms. Tierney.

THE COURT: Ms. Tierney, thank you for being

with us. Will you take that seat please, Mr. Fortson.

MR. THOMAS: Before Mr. Fortson takes that

seat, the People would ask the Court to thank and

excuse Mr. Fortson.

THE COURT: Mr. Fortson, thank you for being

with us. You're excused.

l98

Let's call seven new names.

THE CLERK: Juror Number 55, Doris Redding;

Juror Number --

THE COURT: Counsel, will you approach for a

second? Ms. Redding, will you come up here, please?

(Whereupon the following proceedings were held at the

bench out of the hearing of the juryz)

THE COURT: The microphone's off. We are

recording this though. My bailiff indicated that you

have a very uncomfortable feeling about this. You

think you would not be able to be a fair juror based

upon your own experiences as a crime victim.

Is that a correct statement?

THE PROSPECTIVE JUROR: Yes.

THE COURT: Think that would affect your

ability to be fair and impartial?

THE PROSPECTIVE JUROR: In this case, yes.

MR. THOMAS: I don't have any questions.

MR. SANDERS: No questions.

THE COURT: Do you want to stipulate that

Ms. Redding can be excused for cause?

MR. THOMAS: People stipulate.

MR. SANDERS: Yes.

THE COURT: Thank you for being with us.

You're excused.

(whereupon the following proceedings were held in open

court in the presence of the jury:)

THE COURT: Okay. No secrets. Because of

l99

the nature of this case, Ms. Redding had told Pete she

would like to talk to us before anything else, and

she's been excused for cause. Thank you, Ms. Redding.

THE CLERK: Juror Number 67, O67XXXXXXXXX;

Juror Number 72, O72XXXXXXXX; Juror Number 65,

OGSXXXXXXX; Juror Number 50 -- I'm sorry, sir, it's a

great name. I just can't say it. Juror Number 33,

Barbara Holmwood; Juror Number 31, Joyce Hall; Juror

Number 45, Curtis Miller.

THE COURT: Okay. I think we all know that

I'm going to be speaking to O67XXXXXXXX and only those

of you in the front row. The other ll of you, I'm not

speaking to you. The attorneys are asking nothing of

you, but, once again, I'll say if someone is reminded

of information they wish they would have brought up

earlier, feel free to raise your hand and we'll talk

to you.

Just as I did last time, I'm going to jump to

Question l4. Is there any reason you feel you should

not sit as a juror in this case for O67XXXXXXXX and

anyone in the front row? I see one hand.

Hello, Ms. Hall.

THE PROSPECTIVE JUROR: My the problem is I

can't reverse what's happening. I have a dump truck

full of rocks coming to my house this afternoon, and

I'm covering what was grass with rocks, and I couldn't

reverse it. I thought I could, but I can't.

THE COURT: Are you going to be driving the

2OO

truck?

THE

a dump truck.

THE

THE

THE

PROSPECTIVE JUROR: I hope not. NO, it's

COURT: What are you going to be doing?

PROSPECTIVE JUROR: Paying the guy.

COURT: It's going to be a financial

hardship if they come out and can't dump the rock,

they'll charge you for a second trip?

THE

THE

satisfies me

hardship, Ms

THE

your Honor.

THE

THE

THE

THE

THE

PROSPECTIVE JUROR: Probably, your Honor.

COURT: Why don't we say -- that

I'm going to excuse you for financial

Hall. Thank you for being with us.

PROSPECTIVE JUROR: Thank you very much,

COURT: Come back and see us real soon.

PROSPECTIVE JUROR: I'd love to.

COURT: Call another name.

CLERK: Juror Number 28, Susan Grace.

COURT: No one else asked or said they

had a problem with Number 14. What about you,

Ms. Grace, can you be fair? Any reason why you can't

be fair?

THE

PROSPECTIVE JUROR: The only thing that I

have a problem with is looking at the pictures because

I will be vomiting because I just cannot -- my stomach

is very queasy for nasty things.

THE

THE

COURT: So am I just so you'll know.

PROSPECTIVE JUROR: Okay.

2Ol

THE COURT: My visiting court assistant,

Ms. Andrade, is here today because Vickie, who you saw

yesterday, is out with her husband who's getting an

operation. She was saying we're hoping it can be done

the easy way because if they do it the hard way, they

have to go in through the, and at that point I said,

stop, and let me out of here. Again, I get queasy.

Is it the case for you, Ms. Grace, that if you

were a juror, you really think you'd become physically

ill?

THE PROSPECTIVE JUROR: Yes, because I --

THE COURT: Counsel, I think that's a medical

hardship. I'm inclined to excuse her right out.

Anybody have a problem with that?

MR. SANDERS: NO, sir.

MR. THOMAS: People don't have a problem.

THE COURT: Ms. Grace, thank you for being

here. You're excused.

THE PROSPECTIVE JURORZ Thank you.

THE COURT: Call another name for that seat.

THE CLERK: Juror Number I3, David Buell.

THE COURT: Is it Buell or Buell?

THE PROSPECTIVE JUROR: Buell just like the

motorcycle.

THE COURT: That's what I was going to say.

I guess you don't know anything about Harley Davidsons

and Buells and things like that.

THE CLERK: I'm sorry, I don't.

202

THE COURT: Mr. Buell, what about Number 14?

Is there any reason why you feel you should not sit as

a juror in this case?

THE PROSPECTIVE JUROR: NO, sir. I have a

brother doing time up state, half brother for same

circumstances but --

THE COURT: But that's fine -- this is --

what I'm looking for is you telling me why you cannot

be fair.

THE PROSPECTIVE JUROR: I can be fair.

THE COURT: All right. So now, as for

O67XXXXXXXX and all of you in the front row, did you

all hear the general legal principles we spoke about

so far?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: You understand that Mr. -- as he

sits there right now, Mr. Yablonsky is innocent?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Okay. You understand that

Mr. Yablonsky, because he's presumed innocent, doesn't

have to prove to you that he's not guilty? It's just

a presumption.

You understand that Mr. Thomas is the one who

has to prove his case beyond a reasonable doubt?

(Whereupon the prospective jurors nodded in the

affirmative.)

203

THE COURT: You understand that beyond a

reasonable doubt doesn't mean beyond any possible

doubt, but it means something that I'm going to define

for you, and you're going to use your common sense to

arrive at the conclusion? Each one of you agree with

that?

(whereupon the prospective jurors answered in the

affirmative.)

THE COURT: Each one of you agree you'll be

able to decide this case based not on predetermined

notions or agenda but just based on the law that I

give you, the facts as you determine them from the

evidence, and the arguments of the attorneys? Can you

all do that?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Did anyone hear or read anything

about -- I guess I'll get to that on down the line.

O 6 '7 XXXXXXXXXXXXX

BY THE COURT:

Q O67XXXXXXXX, will you answer these questions

for us please?

A These questions? Sure. Yes. I'm retired

navy, separated for years. She was a retail clerk,

never been on a jury before.

Question Number l2, I entered yes to. About 30

years ago, I was robbed when I worked in retail.

Q Okay. That wouldn't affect how you view the

204

evidence in this case?

A No.

Q You -- I guess, everybody ought to add a mental

note, when I ask about have you read or heard anything

about this case in the newspapers, I'm also going to

want to know did anybody -- please tell me if you saw

this political flyer or mailer that has been referred to

and shown by Mr. Sanders.

You didn't see that; did you, O67XXXXXXXX?

A No,

THE COURT: Thank you.

QZQXXXXXXXXXXXX

BY THE COURT:

Q O7ZXXXXXX.

A Yes. I'm a student.

Q Where?

A Victor Valley College.

Q So you're on break and this is not going to be

a problem for you?

A Depends how long it lasts.

Q When does school start?

A Mid February.

Q Ain't going to last that long.

A Never know.

Q That's a good point. You never do know because

Murphy's Law applies in my court like it applies

everywhere else, and any number of things could happen

to cause an exceptional delay, but it's not going to go

205

passed either the 4th of February or at the very outside

February the 10th. If it did, oh, well, we have

alternates. If you were on this jury, I wouldn't allow

you to miss classes. So go ahead.

A Okay. Well, I'm not married. This is the

first time I've been on a jury.

Q Okay.

A That's about it.

Q No yes answers?

A No.

Q Thank you. You didn't see the political flyer?

A No.

O65XXXXXXXXXXX

BY THE COURT:

Q OBSXXXXX.

A I'm a maintenance worker. My wife is a retired

retail worker. I've never been on a jury before, and I

answered yes to 7 and 8.

I have -- my daughter works in the court system

as a clerk, and my son-in-law‘s a peace officer.

Q Which court system?

A Arizona.

Q Okay. And where is your son?

A Same place, Arizona, and I know a lot of other

peace officers too.

Q O59XXXXX, you said 7 and 8. Did you mean 6 and

7?

A Yes, 6 and 7.

206

Q Thank you. Is that it?

A That's it.

Q How long does it take to grow a beard that

long?

A I've had it forever.

MR. ESITIMOA OTUAFI

BY THE COURT:

Q Mr. Otuafi.

A Yes.

Q Can you say your name for me too?

A Otuafi.

Q Thank you.

A Correctional officer with California Department

of Corrections.

Q Where do you work? Chino?

A Norco.

Q Okay. That's the --

A Rehab center.

Q -- California Rehab Center's drug treatment

location; is that right?

A I don't know about the drug treatment part, but

everything else, yes.

Q Is it really true that that was the original

Hotel California?

A Hotel California, yep.

Q Referred to by the Eagles in the song?

A He served time there. That's where he came up

with that song. Never served on a jury before. My

207

wife's a dispatcher for California -- CHP and yes on 6

and 7 and no on the flyer.

Q Okay. So 6 and 7 only. That means that you

work with a lot of people in law enforcement?

A Father-in-law retired federal, cousin that's a

San Bernardino County.

Q DA?

A No, sheriff.

Q Sheriff.

A Yeah.

Q Okay. All right. So let's get to the bottom

line here. You work in law enforcement because you work

in the jails. You have friends that are involved in law

enforcement. Suppose you were a juror in this case, and

you thought, gosh, Mr. Thomas is just a great guy, but

he didn't prove the case beyond a reasonable doubt.

Are you going to want to sort of lighten the

burden on him since you feel like you're on his side?

A NO.

Q You can be a fair person? You're the kind of

person you would want to hear the case --

A Yes.

Q -- if you were on trial; is that right?

A Yes.

Q Do you ever have to get involved with -- I

asked this of Ms. Austin earlier. You might have heard

me ask. Do you have to get involved with determining

who's in the right when there's a beef between another,

208

let's say, another correctional peace officer and an

inmate?

A 1 could, but I've never been in that situation.

Q You understand how it's possible that someone

who’s a law enforcement officer might not be telling the

truth in every instance?

A Yes.

Q You understand just because somebody has a

prior conviction, that doesn't mean they're going to lie

in every situation; does it?

A Yes.

Q It does?

A Or -'

Q You don't think that means they're going to lie

every time?

A No, no.

Q All right. Thank you.

MS. BARBARA HOLMWOOD

BY THE COURT:

Q Ms. Holmwood.

A Yes. I'm unemployed. I was a human resource

representative. My husband has his own lawn-care

business, and l was on a jury quite awhile ago, but we

did not reach a verdict. We didn't go to the end.

Q Does that mean you started deliberations?

A We didn't start deliberation and the district

attorney got sick and the trial was postponed or nothing

happened.

209

Q All right. Any yes answers?

A Yes. On 12, a cousin was raped quite a few

years ago.

Q Did you follow that case?

A No, it was in another state.

Q It's not going to affect how you view the

evidence in this case; right?

A No.

Q Anything else?

A Nope.

THE COURT: Thank you.

MR. DAVID BUELL

BY THE COURT:

Q Mr. Buell.

A Yes, sir. I'm retired marine presently working

at the marine corps logistics base in Barstow. My wife

is a homemaker and home-sohool teacher. I have not

served on a jury before.

As already stated, I guess it's Number 11.

Q Number 11, you have a brother.

A Brother in Montana.

Q Montana?

A Right.

Q And he was convicted of murder?

A Yes, sir.

Q Did you follow that case of his?

A No, I did not.

Q Did you form any opinion about how he was

210

treated by the legal system that would affect you here?

A No.

MR. CURTIS MILLER

BY THE COURT:

Q Mr. Miller.

A I'm a correctional officer, California

Department of Corrections. Wife is a homemaker. Never

been on a jury. Yes to 6, 7 and 11.

Obviously myself and friends. Father is

retired Department of Corrections. I got a

father-in-1aw who retired as a investigate -- detective

with the San Bernardino County Sheriff's, and I have a

cousin that's up north in Corcoran, I think.

Q What's he doing in Corcoran? Is he a prison

guard?

A No. That was the answer to Number 11. He’s an

inmate.

Q For what?

A I don't even know what he's in for this time.

He's in and out every three years.

Q That's not going to affect how you view the

evidence in this case; right?

A No.

Q You heard me speak to Mr. Otuafi about his

attitudes. Are yours similar to his?

A Yeah.

Q Where do you work?

A Lancaster.

211

Q And so you -- you deal with sentenced inmates?

A Yes.

Q Do you have occasion that you have to

investigate events that involve some kind of a dispute

between an inmate and a fellow peace officer?

A Yes.

Q Think you can be fair and listen to both sides?

A Yes.

Q I didn't specifically ask this question of

anyone else. Since Ms. Grace volunteered it though,

I've told people so far you've heard me say that there

might be things that you have to look at in this case.

The evidence might be difficult.

Is everyone willing to do that?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: I don't know what other general

questions that l failed to ask, but I'm sure the

attorneys will help me out.

Mr. Sanders.

MR. SANDERS: I'm going to pass, your Honor.

Thank you.

THE COURT: Mr. Thomas.

MR. THOMAS: I'll do the same.

THE COURT: Here we go. Back to the musical

chairs portion of our program. I'm trying to think of

who used the last peremptory challenge.

MR. THOMAS: I did on Mr. Fortson.

212

THE COURT: Thank you. The peremptory

challenge then is with you, Mr. Sanders.

MR. SANDERS: We'll thank and excuse Juror

Number 7, Ms. Pineiro.

THE COURT: Thank you for being with us.

You're excused. Would you take that seat please,

O72XXXXXX?

Mr. Thomas.

MR. THOMAS: The People would ask the Court

to thank and excuse juror in Seat Number 5,

Ms. Burger.

THE COURT: Ms. Burger, thank you for being

with us. You're excused. Will you take that seat,

O59XXXXX?

Mr. Sanders.

MR. SANDERS: Your Honor, we're satisfied

with the jury the way it is.

THE COURT: Mr. Thomas.

MR. THOMAS: People accept the jury as it is.

THE COURT: Will the 12 people in the back

two rows stand and raise your right hands and be

sworn?

THE CLERK: Do you, and each of you,

understand and agree that you will well and truly try

the cause now pending before this Court and a true

verdict render according only to the evidence

presented to you and the instructions of the Court.

If so, answer, "I do."

213

(Whereupon the jurors answered in the affirmative.)

THE CLERK: Thank you. Please be seated.

THE COURT: Mr. Otuafi and everyone, will you

please take a second to stand and move two seats to

your left?

Counsel, tell me how many alternates you think

we need.

MR. SANDERS: l don't think more than a

couple, but I'll submit to the Court.

MR. THOMAS: I suggest three.

THE COURT: Mr. Thomas, so giving me the

peace sign with an additional finger, which I guess is

a W or three. That's what I thought about before. We

have next week and the following week. That's the

time you think we're going to complete this case?

MR. THOMAS: We should be done by then.

MR. SANDERS: Yes, sir.

THE COURT: We're going to go with three

alternates. Ladies and gentlemen, you can imagine we

wouldn't want to start a long trip without a spare

tire. If you're driving a car, you got to have four

wheels when you leave, and you got to have four wheels

when you get back. This is a jury trial. It requires

l2 people when we start and 12 people when we finish.

That means that when O67XXXXXXXX wins the Megabucks

drawing on Wednesday night, $390 million without

splitting it with anyone, and he says I'm not going to

go to work. I'm not going to go to that trial either,

214

then I need somebody to take his seat. Occasionally

other less fortunate circumstances happen to people.

My honest assessment is that people usually are

able to finish the trial when we start one. I told you

about one lady that couldn't handle the photographs.

That's why I didn't spend much time talking to

Ms. Grace. So we're going to go with three alternates.

Are each of the four of you willing to serve as

alternates in this case?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Not hearing anybody disagree with

that.

You have three peremptory challenges because we

have three alternates. We start with the People. As

they sit there, we have Mr. Otuafi, Ms. Holmwood,

Mr. Buell and Mr. Miller.

As to those three alternates, do you care to

use a peremptory challenge, Mr. Thomas?

MR. THOMAS: People ask the Court Lo thank

and excuse Ms. Holmwood.

THE COURT: Thank you for being with us,

Ms. Holmwood.

THE PROSPECTIVE JUROR: Thank you.

THE COURT: Mr. Sanders.

MR. SANDERS: Your Honor, we'd thank and

excuse Mr. Otuafi.

THE COURT: Mr. Otuafi, thank you. You're

215

excused. Mr. Buell and Mr. Miller, will you move down

two seats? Why don't you call two names, please.

THE CLERK: Juror Number 32, Barbara Hayes;

Juror Number 62, Luke Sells.

THE COURT: Hello, Ms. Hayes, Mr. Sells.

You're the only two we're talking to.

What about Question 14?

(whereupon the prospective jurors answered in the

negative.)

MS. BARBARA HAYES

BY THE COURT:

Q Okay. Would you answer those questions for us

then, Ms. Hayes?

A Okay. The first one, I'm an office assistant,

and I work for the air district, and my husband is a

manager of a cabinet shop, and I've never served on a

jury.

Number 12, I was robbed at a -- 28 years ago

when I was working. That's it.

MR. LUKE SELLS

BY THE COURT:

Q Okay. Mr. Sells.

A I'm the owner of a distribution company for the

LA times up here in the high desert. My wife is a

homemaker, and I've never served on the jury.

Number 6, I have a cousin that is a sergeant

from the Long Beach Police Department.

Number ll, I have a nephew that was -- went to

216

trial for attempted murder.

Number 12, we had a car that was broken into.

So the nephew that went to trial, you mention

went to trial, was he acquitted or convicted?

A He was convicted.

Q Doing time?

A Yes.

Q Did you follow that case?

A No. It was on my wife's side, so we're not

real close.

Q That's not going to affect how you view the

evidence in this case?

A No.

THE COURT: You've both heard me talk about

all the important rights that each side has to

guarantee a free trial -- a fair trial.

Do you agree with those?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: Do you understand that you have

to decide this case based only on the evidence that's

presented in this courtroom, the arguments of the

attorneys, and the law as I explain it?

(Whereupon the prospective jurors nodded in the

affirmative.)

THE COURT: You understand that you might

have to see photographs that are unpleasant or hear

about things that are not particularly pleasant? Does

217

that trouble anyone?

(Whereupon the prospective jurors answered in the

negative.)

THE COURT: Okay. You understand, as he sits

there, Mr. Yablonsky is presumed innocent until the

contrary is proven? He doesn't have anything to prove

to you, Ms. Hayes?

THE PROSPECTIVE JUROR: Yes.

THE COURT: Mr. Sells?

THE PROSPECTIVE JUROR1 Yes.

MR. LUKE SELLS

BY THE COURT:

Q Mr. Sells, you own a company that's a

distribution company, so you're self employed?

A Correct.

Q Who's going to distribute those papers?

A People that work for me.

Q So it's not going to be a financial hardship

for you?

A No. I can just schedule different people to

cover the positions.

Q Did I say anything offensive about the

newspaper business yet?

A Not that I can recall. I usually am pretty

good at picking those things up.

Q I think l mentioned something to the effect of

just because something is in the newspaper doesn't mean

that you have to believe that it's true. That's all --

218

that's not -- that's not unfair; is it?

A No, not at all.

Q You didn't read anything about this case?

A No, 1 did not.

THE COURT: Ms. Hayes?

THE PROSPECTIVE JUROR: NO.

THE COURT: Either of you see the flyer, the

political flyer that Mr. Sanders was holding up

earlier, Ms. Hayes?

THE PROSPECTIVE JUROR: NO.

THE COURT: Mr. Sells?

THE PROSPECTIVE JUROR: No.

THE COURT: Mr. Sells, you did come back

about 15 minutes late.

THE PROSPECTIVE JUROR: I apologize.

THE COURT: That's all right. Is it going to

be a problem for you to be here on time?

THE PROSPECTIVE JUROR: No.

THE COURT: Okay. Mr. Sanders.

MR. SANDERS: Pass, your Honor. Thank you.

MR. THOMAS: People pass also.

THE COURT: As they sit there, we have

Mr. Buell, Mr. Miller, and Ms. Hayes as our three

alternates. Peremptory challenge is with you,

Mr. Thomas.

MR. THOMAS: People accept the three

alternates.

THE COURT: Mr. Sanders.

219

MR. SANDERS: I'm sorry. Where are we?

THE COURT: We have Mr. Buell, Mr. Miller and

Ms. Hayes. They're our three alternates.

MR. SANDERS: The People passed?

THE COURT: They did.

MR. SANDERS: Okay. Does the Court take them

in order?

THE COURT: No, l randomly select.

MR. SANDERS: We will thank and excuse,

Mr. Sells.

THE COURT: Mr. Sells, thank you for being

with us. You're excused.

Mr. Thomas, same three.

MR. THOMAS: People accept the three

alternates.

THE COURT: Mr. Sanders.

MR. SANDERS: Defense accepts the three

alternates, your Honor.

THE COURT: So you'll know, you exercised a

peremptory that you did not need to exercise. I don't

know what you thought or -- what you thought I was

answering, Mr. Sanders. What I assumed your question

was is during the trial if we lose one of our jurors,

do we take them in this order or do we randomly select

from the three.

MR. SANDERS: Right.

THE COURT: That was what I was answering.

MR. SANDERS: Right.

220

THE COURT: We put a name -- we put the three

names in a bin. We spin it around, and the clerk

reaches in and pulls out a number. That's the person

that we seat.

MR. SANDERS: Right.

THE COURT: Since we have our three

alternates being Mr. Buell, Mr. Miller, and Ms. Hayes,

if you would have passed peremptory challenge, we

would have excused Mr. Sells because he wasn't one of

the three.

MR. SANDERS: I thought that was the way it

would be, but I misunderstood what you were saying.

THE COURT: Okay. So...

MR. SANDERS: That's why I did that.

THE COURT: Do you want me to give you

another alternate?

MR. SANDERS: No, sir. We're fine.

THE COURT: Will the three alternates

please -- you waive any inconsistency in the selection

of alternates if there is any based upon what's just

happened, Mr. Thomas?

MR. THOMAS: Yes, your Honor.

THE COURT: Both sides stipulate to the

regular impanelment of our three alternates,

Ms. Sanders?

MR. SANDERS: Yes, sir.

THE COURT: Mr. Thomas?

MR. THOMAS: Yes, sir.

221

THE COURT: Will the three alternates please

stand, raise your right hand and be sworn?

THE CLERK: Do each of you understand and

agree that if called upon as a trial juror, you will

well and truly try the cause now pending before this

Court and a true verdict render according only to the

evidence presented to you and to the instructions of

the Court? If so, answer, "I do."

(Whereupon the alternate jurors answered in the

affirmative.)

THE COURT: I told you at the beginning I

couldn't promise you an opportunity to be on my jury.

I wish I could have had all of you here. Then again,

I don't know how long deliberations would take with a

jury of 40. I guess I'm going to have to wait and so

are you till next year.

Couldn't have gotten this far without you. We

thank you for being with us, being attentive. I know

this process can be tedious. I hope you've picked up

something about what goes on in the court that will be

of value to you in the future. I hope you're in court

in the future only for jury service, but I do hope you

come back and we can see you again next year.

On behalf of Department 2 and all of the judges

of this court, on behalf of People of the State of

California, on behalf of Mr. Yablonsky and the defense,

Court now is going to thank and excuse each of you.

Counsel, why don‘t you approach off the record?

222

Mr. Buell, Mr. Miller, take those two seats.

Mr. Buell will sit next to O26XXXXXXXXXX. Ms. Hayes,

you'll take the seat right next to OZBXXXXXXXXX. Thank

you.

(Whereupon a bench conference was held

off the record.)

(Whereupon the following proceedings were held in open

court in the presence of the juryz)

THE COURT: Ladies and gentlemen, we're going

to be done here right away. I'm going to do

pre-instruction. I believe you all heard me talk

about following the law. The Court doesn't just give

you a copy of the Penal Code and copy of the Evidence

Code and send you back there and say good luck. We

use instructions that have been formulated and tested

for years.

It is an attempt, to the extent that the

lawyers and judges are capable of putting things in

ordinary language, we do. I hope we're successful, but

we have our limitations. It seems like when we go to

law school it results in us saying things in a way

that's more complicated than any other job.

These are the instructions that I'll be giving

you when the trial is over as well. Those instructions

will be an explanation of how you apply the law and what

the law is and what needs to be proved, those kinds of

things, what the elements are of the offenses, what the

elements are of the -- any allegations in the case.

223

Those will be more specific. They'll come at the end of

the trial.

Now I'm going to read you a general

pre-instruction set of -- pretrial set of instructions.

"The trial will now proceed as

follows: The People may present an

opening statement. The defense is not

required to present an opening

statement, but if it chooses to do so,

it may give it either after the

People's opening statement or at the

beginning of the defense case. The

purpose of an opening statement is to

give you an overview of what the

attorneys expect the evidence will

show.

"Next, the People will offer

their evidence. Evidence usually

includes witness testimony and

exhibits. After the People present

their evidence, the defense may also

present evidence but is not required

to do so. Because he is presumed

innocent, the defendant does not have

to prove he is not guilty.

"After you have heard all the

224

evidence and the attorneys have given

their final arguments, I will instruct

you on the law that applies to this

case. After you have heard all the

arguments and instructions, you will

go to the jury room to deliberate.

"I will now explain some basic

rules of law and procedure. These

rules ensure that both sides receive a

fair trial.

"During the trial, do not talk

about the case or about any of the

people or any subject involved in the

case with anyone, not even your

family, friends, spiritual advisers,

or therapists."

There's an example of what judges and lawyers

do that most people wouldn't do because I said, don't

talk about this case with anyone. Then I say, not even

your family, friends, spiritual advisers or therapists.

We just cannot help it. Why don't we say, don't talk to

your barber either, but you can see the point is, don't

talk to anyone about this case.

Anybody know why? I‘m going to tell you why.

The reason is that we are going to take a careful

approach to everything we do in this trial. We want

225

everyone to feel that they've had a fair day in court.

Sometimes trial courts are compared to battle

fields. This is, believe me, an arena at this point.

Mr. Thomas and Mr. Sanders are both very professional.

They're going to be very courteous to one another

throughout this entire proceeding, but they have an

opposite end in mind. One of them is going to be trying

to convince you that Mr. Yablonsky is guilty beyond a

reasonable doubt. The other one's going to be trying to

convince you that Mr. Thomas hasn't proved that

Mr. Yablonsky is guilty beyond a reasonable doubt.

This is not where we come to compromise. This

isn't where we come to mediate. This is where we come

to a final determination with one person walking away as

a victor and one person ending this trial as the

vanquished.

My job, my goal as a judge, it's a pretty lofty

goal, but I take my job very seriously, is to make sure

that when this trial is over, whether you're the winner

or you're the loser, that you're going to leave this

court feeling like you had a fair trial, like you got a

chance to have your day in court. I want you to be my

partner in that. I told you that you're the judges of

the facts and not the judges of the law. That's my job.

I need your help if we're going to get through this and

guarantee that everyone's going to feel like they had a

fair trial.

What kind of things can happen that can make

226

people feel like they haven't had a fair trial? Failure

to avoid strict adherence to the orders that I make in

this case. I've had a situation before where the parent

of one of the defendants, I think it was just one

defendant in a trial. A parent saw a juror talking to a

police officer during the -- a break. Toward the end of

the trial, she wrote a note to me telling me about that.

I had to bring the police officer in. I had to

bring the juror in. It turns out they'd asked or been

discussing something about the flooding that was taking

place in Hesperia back in those days, and was the police

department in Hesperia going to do anything to improve

the condition of those roads.

They thought it was innocent, and it wasn't in

any way something about the trial, but the result was,

it cast suspicion. It cast doubt in the mind of the

defendant's mother as to whether or not her son had been

given a fair trial. We want to be like Ceasar's wife,

above the appearance of impropriety. That's why these

rules are in place.

When somebody presses you and says, oh, come

on. You can tell me about this. Nobody's going to

know. Well, you're going to know. You're going to be

asking yourself, was that just one thing that I've done

in not following the judge's instructions or are you

going to start off from this point on and make sure that

you scrupulously follow each of these instructions that

we give you?

227

Tell people that you are in Department 2 if you

want to. You can tell them when you're going to finish

your jury service. You can tell them what time you

start in the morning and what time you get through in

the evening. You can tell them that you're going to

have an hour and half lunch, and they can take you to

lunch. Tell them when the trial is over, you'll talk

about this case with them as long as they want to, but

please don't talk about anything about this case until

the trial is over.

"Do not share information about

the case in writing, by email, or on

the Internet.

"You must not talk about these

things with other jurors either until

the time comes for you to begin your

deliberations.

"As jurors, you may discuss the

case together only after all of the

evidence has been presented, the

attorneys have completed their

arguments, and I've instructed you on

the law. After I tell you to begin

your deliberations, you may discuss

the case only in the jury room and

228

only when all jurors are present.

"You must not allow anything that

happens outside the courtroom to

affect your decision.

"During the trial, do not read,

listen to, or watch any news report or

commentary about the case from any

source.

"Do not do any research on your

own or as a group. Do not use a

dictionary, the Internet, or other

reference materials. Do not

investigate the facts or law. Do not

conduct any tests or experiments or

visit the scene of any event involved

in this case. If you happen to pass

by the scene, do not stop or

investigate.

"If you have a cell phone or

other electronic device, keep it

turned off while you are in the

courtroom and during deliberations.

An electronic device includes any data

storage device. If someone needs to

229

contact you in an emergency, the court

can receive messages that it will

deliver to you without delay.

If you still have your court questionnaire,

there's handwritten phone number on the bottom of that

questionnaire. That's the telephone number to the

court, so you can tell your lovered one, your work,

whoever might need to contact you in an emergency that

that's the number that you need to be reached at.

"During the trial, do not speak

to any party, witness, or lawyer

involved in the trial. Do not listen

to anyone who tries to talk to you

about the case or about any of the

people or subjects involved in it. If

someone asks you about the case, tell

him or her that you cannot discuss it.

If that person keeps talking to you

about the case, you must end the

conversation.

"When the trial has ended and

you've been released as jurors, you

may discuss the case with anyone.

"I'll remind you that under

California law, you must wait at least

90 days before negotiating or agreeing

230

to accept payment for information

about this case.

"If you receive any information

about this case from any source

outside of the trial, even

unintentionally, do not share that

information with any juror. If you do

receive such information, or if

someone tries to influence you or any

juror, you must immediately tell the

bailiff.

"Some words or phrases that may

be used during this trial have legal

meanings that are different from their

meanings in everyday use. These words

and phrases will be specifically

defined in the instructions. Please

be sure to listen carefully and follow

the definitions that I give you.

Words and phrases not specifically

defined in the instructions are to be

applied using their ordinary, everyday

meanings.

"Keep an open mind throughout the

trial. Bo not make up your mind about

the Verdict or any issue until you

231

have discussed the case with the other

jurors during deliberations. Do not

take anything I say or do during the

trial as an indication of what I think

about the facts, the witnesses, or

what your verdict should be.

"Do not let bias, sympathy,

prejudice, or public opinion influence

Your decision.

"You must reach your verdict

without any consideration of

punishment."

Something we may have brought during voir dire,

and that is this is not a death penalty case. If this

were a death penalty case, you would have known that.

We would have told you that.

We would have a trial in two phases. During

the first phase, there would have been attempt as to

whether or not you could reach a verdict as to guilt

beyond a reasonable doubt. During the second phase, the

jury would make a determination as to what they thought

the appropriate verdict -- the appropriate punishment

was, and the choices would be only life without

possibility of parole and death if the defendant was

indeed found to be guilty.

There's no penalty phase during this trial. If

232

Mr. Yablonsky is convicted, this Court will be the one

that decides what, within the legal range of sentences,

what Mr. Yablonsky‘s punishment should be. Again, don't

let punishment enter into your consideration at all. I

only went into that so you would understand that this is

not a death penalty case if you were wondering that by

any means.

"You will be given notebooks and

may take notes during the trial. Do

not remove them from the courtroom.

You may take your notes into the jury

room during deliberations. I do not

mean to discourage you from taking

notes but here are some points to

consider if you do take notes.

"1. Note-taking may tend to

distract you. It may affect your

ability to listen carefully to all the

testimony and to watch the witnesses

as they testify; and

"2. The notes are for your own

individual use to help you remember

what happened during the trial.

Please keep in mind that your notes

may be inaccurate or incomplete.

"At the end of the trial, your

notes will be collected and destroyed.

233

"I will now explain the

presumption of innocence and the

People's burden of proof. The

defendant has pleaded not guilty to

the charge. The fact that a criminal

charge has been filed against the

defendant is not evidence that the

charge is true. You must not be

biased against the defendant just

because he has been arrested, charged

with a crime, or brought to trial.

"A defendant in a criminal case

is presumed to be innocent. This

presumption requires that the People

prove a defendant guilty beyond a

reasonable doubt. Whenever I tell you

the People must prove something, I

mean they must prove it beyond a

reasonable doubt unless I specifically

tell you otherwise.

"Proof beyond a reasonable

doubt is proof that leaves you with an

abiding conviction that the charge is

true. The evidence need not eliminate

all possible doubt because everything

234

in life is open to some possible or

imaginary doubt.

"In deciding whether the People

have proved their case beyond a

reasonable doubt, you must impartially

compare and consider all the evidence

that was received throughout the

entire trial. Unless the evidence

proves the defendant guilty beyond a

reasonable doubt, he is entitled to an

acquittal and you must find him not

guilty.

"You must decide what the facts

are in this case. You must use only

the evidence that is presented in the

courtroom. Evidence is the sworn

testimony of witnesses, the exhibits

admitted into evidence, and anything

else I tell you to consider

evidence.

as

"The fact that the defendant was

arrested, charged with a crime or

brought to trial is not evidence of

guilt.

235

"Nothing that the attorneys say

is evidence. In their opening

statements and closing arguments, the

attorneys will discuss the case, but

their remarks are not evidence. Their

questions are not evidence. Only the

witnesses‘ answers are evidence. The

attorneys‘ questions are significant

only if they help you understand the

witnesses’ answers. Do not assume

that something is true just because

one of the attorneys asks a question

that suggests it is true.

"During the trial, the attorneys

may object to questions asked of a

witness. I will rule on the

objections according to the law. If I

sustain an objection, the witness will

not be permitted to answer, and you

must ignore the question. If the

witness does not answer, do not guess

what the answer might have been or why

I ruled as I did. If I ordered

testimony stricken from the record,

you must disregard it and must not

consider that testimony for any

purpose.

236

"You must disregard anything you

see or hear when the court is not in

session even if it is done or said by

one of the parties or witnesses.

"The court reporter is making a

record of everything said during the

trial. If you decide that it is

necessary, you may ask the court

reporter's record be read to you. You

must accept the court reporter's

record as accurate.

"You alone must judge the

credibility or believability of the

witnesses. In deciding whether

testimony is true and accurate, use

your common sense and experience. You

must judge the testimony of each

witness by the same standards, setting

aside any bias or prejudice you may

have. You may believe all, part, or

none of any witness's testimony.

Consider the testimony of each witness

and decide how much of it you believe.

"In evaluating a witness's

237

testimony, you may consider anything

that reasonably tends to prove or

disprove the truth or accuracy of that

testimony. Among the factors that you

may consider are:

"How well could the witness see,

hear, or otherwise perceive the things

about which the witness testified?

"How well was the witness able to

remember and describe what happened?

"What was the witness's behavior

while testifying?

"Did the witness understand the

questions and answer them directly?

"Was the witness's testimony

influenced by a factor such as bias or

prejudice, a personal relationship

with someone involved in the case, or

a personal interest in how the case is

decided?

"What was the witness's attitude

about the case or about testifying?

"Did the witness make a statement

in the past that is consistent or

inconsistent with his or her

testimony?

"How reasonable is the testimony

when you consider other evidence in

238

the case?

Add other evidence and being

untruthful

"Do not automatically reject

testimony just because of

inconsistencies or conflicts.

Consider whether the differences are

important or not. People sometimes

honestly forget things or make

mistakes about what they remember.

Also, two people may witness the same

event yet see or hear it differently.

"If you do not believe a

witness's testimony that he or she no

longer remembers something, that

testimony is inconsistent with the

witness‘ earlier statement on that

subject.

"If you decide that a witness

deliberately lied about something

significant in this case, you should

consider not believing anything that

witness says. Or, if you think the

witness lied about some things but

told the truth about others, you may

239

simply accept the part that you think

is true and ignore the rest."

This next instruction I'm going to read to you

requires a little explanation. Some of you have had

service in the past. You have probably not seen this

instruction. It has to do with jurors asking questions

The people that put these instructions together thought

it would be a good idea to involve jurors more fully in

the experience by allowing jurors to ask questions. So

here's the instruction:

"If during the trial you have a

question that you believe should be

asked of a witness, you may write out

the question and send it to me through

the bailiff. I will discuss the

question with the attorneys and decide

whether it may be asked. Do not feel

slighted or disappointed if your

question is not asked. Your question

may not be asked for a variety of

reasons including that the question

may call for an answer that is

inadmissible for legal reasons. Also,

do not guess the reason your question

was not asked or speculate about what

the answer might have been.

"Always remember that you are not

240

advocates for one side or the other in

this case. You are impartial judges

of the facts."

It fails -- I should not say it fails.

Frequently this instruction fails to fully inform the

jurors what the purpose of this instruction is. It

relates to allowing you, the jury, to ask me or one of

the attorneys through me to pose a question to a witness

who is then on the stand testifying. It's not for you

to bring up issues that you think might be important in

the case. It's not for you to have an opportunity to

ask me what the law is.

I had a case -- well, I shouldn't talk about

specific cases, but I'll just say in a recent case a

question had to do with whether or not someone had

performed work on cars or whether that person had

basically gotten those cars under false pretenses and

chopped them up and sold them. One of tho jurors wrote

a question, sent it to me, and the question was

something like, what qualifies the defendant to be a

mechanic? ls he certified? Something like that. The

defendant wasn‘t on the witness stand. There was no way

that question could have been answered.

Think about what it is that you want. I'm not

trying to discourage you. If you have a question you

would like to have asked, make sure that it's a question

that the witness can answer. Make sure it's a question

that you want asked of that particular witness on the

241

stand at that time.

Now, if you -- if your question isn't asked,

I've told you here don't speculate about why, but don't

tell the other jurors that I sent the judge this

question, asked him to ask it and he didn't do it. Just

forget about it. Means for one reason or another that

this is a subject that's not going to be covered. Don't

speculate what the answer was. Don't talk about it with

the other jurors.

I'm not going to call people back to ask a

question a juror wants to be asked once that person has

been excused. So you have to do it while that person is

on the witness stand. That means, you'll see this as we

go through the trial. Somebody's going to be called.

After they've given direct examination,

cross-examination, sometimes further direct, further

cross, back and forth.

When nobody has any questions left, I'm going

to turn to the attorneys and say, may this witness be

excused? That's your cue. If you have a question that

you're thinking of putting together or you're in the

middle of writing it out, speak now. Speak then or

forever hold your peace. Don't be shy. Put your hand

up and say hold it. Hold it. I've got to finish a

question. Then you can write it out. Pass it to Pete.

I'll look at it and talk to the attorneys about

it, and we can ask that question of a witness if you

want me and to it's an admissible question. The problem

242

is, so you understand, once that witness is gone, you

come back later or after a break and say I've got a

question I'd like to ask of the witness. If that's

person's been excused, you're not going to get a chance

to have the answer to that question.

A little complicated. That's hopefully clear

what the purpose of those questions will be.

Do we have anybody speaking through an

interpreter in this case?

MR. THOMAS: There's a possibility that one

of the witnesses will.

THE COURT: Okay. Would that person be

speaking Spanish?

MR. THOMAS: Korean.

THE COURT: I‘m always embarrassed when I

make assumptions and I'm wrong.

"Some testimony may be given in

Korean. An interpreter will provide a

translation for you at the time of the

testimony. You must rely on the

translation provided by the

interpreter even if you understand the

language spoken by the witness. Do

not retranslate any testimony for

other jurors. If you believe the

court interpreter translated testimony

incorrectly, let me know immediately

by writing a note and giving it to the

243

bailiff."

You can see when this is done a witness might

be speaking Spanish. It's more likely in Southern

California that someone is going to be able to

understand what the interpreter is saying and understand

what's being said in Spanish. Korean, I think it's less

common, but maybe someone might speak Korean.

Why would we not want you to be back in the

jury room telling the other jurors something like this;

you know, this person who was the interpreter got that

wrong? The witness said it was dark outside, and the

interpreter said it was black outside. You can see that

we have 1 of the 12 people in charge of deliberations.

We don't want that.

Again, if somebody does speak through an

interpreter, if you understand that language and you

hear something you think is a mistake, that's all right.

We'll get it out in the open here. We'll ask the

interpreter to explain why that particular word was used

and everyone will be on the same footing as far as the

decisions that are made.

Witness identified as Jane Doe?

MR. THOMAS: Probably.

THE COURT: (Reading):

"There's a possibility that one

of the witnesses in this case is going

to be identified as Jane Doe. This

name is used only to protect her

244

privacy as required by law. The fact

that a person is identified in this

way is not evidence and do not

consider that fact for any purpose."

All right. That's how far I'm going to go on

the instructions that you're going to hear. On Monday

morning, you're going to hear the opening statements by

the attorneys -- I'm sorry, you're going to hear the

opening statement by Mr. Thomas. I'm sure he's going to

give you one.

As I've already explained, Mr. Sanders will

then have an opportunity to give you an opening

statement or reserve to a later time if he ever chooses

to make an opening statement.

One more time, you're admonished that it is

your duty not to converse among yourselves or with

anyone else about any matter connected with this case

nor form or express an opinion on it until it's

submitted to you. Don't come here tomorrow. Saturday

you're watching football? Just all Sunday?

MR. THOMAS: Just all Sunday.

THE COURT: I don't know what you're going to

do on Sunday, but -- I mean Saturday. Watch football

on Sunday. Don't talk about this case. Have a nice

weekend, folks. See you Monday morning at 9:00.

(Whereupon the jury exited the courtroom and the

I following proceedings were held:)

THE COURT: Back on the record in the case of

245

People of the State of California versus John Henry

Yablonsky. Mr. Yablonsky's here with his attorney,

Mr. Sanders. When we were last together, we were

discussing various issues regarding the admissibility

of the two prior rapes under llO8. We talked about

the case -- the various cases. We talked about the

Story case 45 Cal.4th l282, 2000. The case we talked

about the Falsetta case, 1999, 29 Cal.4th 903. We

talked about the factors that should be taken into

consideration by the Court in exercising its

discretion.

I gave both of you the understanding that today

was the time I was going to expect that you're going to

tell me how those factors mitigate in favor of your

position, specifically, why it should be admitted,

Mr. Thomas, and why it shouldn't be admitted,

Mr. Sanders.

Mr. Thomas.

MR. THOMAS: Well, as far as the -- I don't

know if we were saying l98l or I misheard, but the

event of the first alleged rape occurred on July 16th

of 1982 in El Paso, Texas, and I've already gone

through most of the facts with the Court.

THE COURT: Right. I'm talking about

doesn't -- don't you feel that there are factors that

I need to consider according to the Story case?

MR. THOMAS: Yeah. Under Story, if the Court

were to find that it comes in under llO8, and I think

246

from the chambers conversations that's where the Court

was leaning, the Court has to consider the factors

under Falsetta and 352. The factors are, the nature

of the -- the offenses or the actions, the relevance,

the possible remoteness, the degree of certainty of

its commission, and the likelihood of confusing,

misleading or distracting the jurors from their main

inquiry, similarity to the charged offense, likely

prejudicial impact on the jurors, the burden on the

defendant in defending against the uncharged offense,

and the availability of less prejudicial alternatives

to its outright admission, such as, admitting some but

not all of the defendant's other sex offenses or

excluding irrelevant though inflammatory details.

In this case, the People intend to bring in two

complaining witnesses. We don't intend to bring in any

doctors or medical personnel. I think it boils down to

an issue of credibility that the jurors themselves can

determine for themselves as far as if these witnesses

are actually telling the truth and same goes for if

Mr. Yablonsky takes the stand, and they can compare the

stories and figure out which one is more believable to

them.

THE COURT: Just one second. Maybe I didn't

make myself clear. I'd like you to -- here's what I

want you to tell me. Talk to me about each of these

cases in -- one occurred in 1982 and one occurred in

1991?

247

THE DEFENDANT: '96.

MR. THOMAS: '96.

THE COURT: '96. Okay.

MR. THOMAS: It would be October.

THE COURT: Let's call it the '82 and '96

cases. I really think what your job right now for me,

Mr. Thomas, is to tell me how the factors apply to

each of those cases.

MR. THOMAS: Okay. As far as the nature and

relevance of each of those cases, I think that both

cases involve alleged rapes and in this particular

case, the People are alleging that the murder was

committed in the attempted commission or commission of

a rape. I think they're similar in nature.

The possible remoteness as far as three years

before this particular crime -- and 1'm talking about

the 1982 -- it's not that remote. T can see somewhat of

an argument on the remoteness of the '96 rape.

The degree of certainty of its commission and

likelihood of confusing, misleading and distracting the

jurors from their main inquiry, I don't think it's going

to confuse, mislead, or distract the jurors. I think

the ultimate issue in this case is whether or not the

sexual relations between Mr. Yablonsky and the victim in

this case were consensual or nonconsensual.

I think both of these cases show that

Mr. Yablonsky has, if the jury were to believe the

victims in those two cases, has in the past forced

248

himself on victims, and which would support the

prosecution's theory in this case that he forced himself

on Rita Cobb before he ended up killing her.

As far as the prejudicial impact on the jurors,

of course there's going to be some prejudicial impact,

and that's just the cost of doing business, as you say.

As far as the -- there's always going to be some

prejudicial impact of probative evidence. That

prejudicial impact in this case I don't think outweighs

the probative value of that evidence for the jury. I

think that the jurors are entitled to hear that

Mr. Yablonsky has raped people in his past if they

believe these two witnesses that come in.

The -- I don‘t believe that there's any less

prejudicial alternatives to its outright admission in

this case. There's -- I can see if the People were

seeking to introduce medical documents or other

documents that would bolster the credibility of the

witnesses in this case or in the 1982 case and the 1996

case. I could see where the Court might want to limit

that, but -- there‘s case law regarding limiting the

medical opinions or the medical experts coming in to

testify. I think it's just basically going to be

credibility -- a credibility issue for the jury.

I don't think there's anything that's going to

be irrelevant as far as admitting the testimony of these

two victims in this case as to what occurred back in

1982 and back in 1996. I think if the Court were to

249

engage in that 352 analysis, I think that the overall

probative value of this evidence outweighs any

prejudicial effect it might have on the defendant.

THE COURT: Does that conclude your comments?

MR. THOMAS: Yes.

THE COURT: Mr. Sanders.

MR. SANDERS: Thank you, your Honor.

THE COURT: Let me ask a question, by the

way, I think one of the things that I should do if --

do we all agree that the issue of whether -- the issue

of remoteness in time is not today? The point to

determine the relevant temporal proximately would be

the alleged crime?

MR. THOMAS: Yes.

MR. SANDERS: Yes.

THE COURT: Okay. Mr. Sanders.

MR. SANDERS: Thank you, your Honor. I guess

it would be difficult for me to imagine a case where I

would differ so greatly from the district attorney as

I do in this one in my analysis of his offer of proof.

The statement was made that if there is any

prejudice. There's enormous prejudice

THE COURT: Speak up.

MR. SANDERS: Yes.

THE COURT: I heard what you said.

MR. SANDERS: There's enormous prejudice in

this kind of evidence, enormous prejudice. The

question is, is there even a little bit of relevance,

250

even a little bit of relevance, not that there could

be enough relevance to overcome the prejudice in this

matter.

What I believe the Story case says that's

important to note -- in Story the gentleman was charged.

There was two other instances that the Court allowed in

on the 1108 evidence. The Court noted they allowed them

in because, Number l, the two 1108 allegations were

similar to each other in a number of respects and that

they were also similar to the murder.

In the first place, that distinguishes Story

from our case. There is no way in which those two

offers of proof are similar to each other let alone in a

number of respects, and, second of all, neither one of

them are similar to the allegations in the instant case.

The first case happened in a bar off a military

base that was frequented by Gls. The second case

happened in the house where my client was living with

his then girlfriend. There's almost nothing the same

about them, and I notice in the district attorney's

argument the only similarity we have is that they're all

called rape. All rapes are not the same, and the Court

in Story found a number of respects where they were

similar. In this case there are none.

Now we go to the factors. The Court indicated

there are a number of factors. What we're comparing is

we are comparing a case that happened in 1982, an

allegation of forcible sex in a rest room of a bar, a

251

pool hall, that allegedly involved a knife, and we're

comparing that to a l9- -- l996 case where my client and

his girlfriend were having a domestic dispute over a

number of issues. Then we are comparing that to the

instant case, but in what respect?

In the instant case, there is no evidence of a

sexual assault other than that there was sperm found in

the victim's vagina and on a piece of cloth next to her

body. We don't know if the semen was left before or

after she died. We don't know if the semen was left the

day before or 36 hours before. There is no evidence of

that. There was nothing about the case involving the

instant case that would give anyone reason to believe

that a knife was involved. There was nothing about the

instant case that would show that any clothing was torn.

No clothing that was in the room was disturbed or torn.

There were no buttons missing. There was no zippers

that were torn.

The allegation in 1996 was that some panties

were forcibly torn in that case. There was no trauma to

the victim's female parts in the instant case. There's

nothing -- there's no evidence on her body, in the room,

anywhere, that would normally be associated with a rape.

To say that those other two cases are similar

in a number of respects is -- is completely false.

There's -- the only respect they're the same is that

they involve what some people would say was a rape.

Remoteness is extreme in the '96 case. It is

252

there in the '81 case.

Relevance. This basically is a homicide trial.

The main issue here is whether or not my client killed

Ms. Cobb, and the -- there is a side issue that -- a

special circumstance, and it's important to note that

the offered evidence only speaks to the special

circumstance, not the charge in Count I.

The next is the degree of certainty of

commission. Neither one of these cases involve a

criminal prosecution. Neither one of these cases

involved a conviction. Neither one of these cases

involved any findings by a magistrate, a judge, a jury,

or anyone, that they were actually committed.

In both of the cases, there was only an arrest,

of course, in each case by an officer that had no

personal knowledge and then no further steps were taken.

The cases were never filed. It wasn't like they were

dismissed. They just never were filed in the first

place. The degree of certainty of commission is modest

at best.

The only evidence of commission are the

statements of the two women that they gave years and

years ago. As far as I know, they have never given

statements since. I've never been provided with a

statement. I don't know of any investigative officer

that has taken a statement from them since that day

where they re-allege that any of these things happened.

The next is likelihood of confusing, misleading

253

or distracting the jury from their main task. Their

main task is the charge in Count I, the only charge,

which is a homicide. Basically, what we're asking the

jury to do is try three cases. They have to try -- they

have to decide, did the case in El Paso actually happen?

Did the case in Long Beach actually really happen? If

it did, did it have any relevance to the special

circumstance, which is attached to the main charge in

this case?

The next factor is similarity to the crime

charged. That's of the same nature and relevance. I've

already pretty well addressed that. We know of no

similarities because we don't have any information as to

what happened in the crime charged.

The prejudicial impact is extreme. It's

devastating. If this evidence is allowed to be brought

in -- this goes with the burden on the defendant of

defending against it. The prejudicial impact is extreme

because in -- this -- this alleged evidence by these two

women, if they say what they said years ago, is the only

evidence -- is the only evidence there is in this case

of a rape. There isn't any other evidence.

So if you say, of all the evidence in this

case, it only adds five percent, then the prejudice

isn't so great. Because there is no physical evidence

of rape that was collected in 1985 in the situation with

Ms. Cobb, that other evidence is 100 percent basically

of the evidence that there was a rape.

254

Burden of the defending against this; as I

indicated, I was not aware that these women were going

to be called until a week or so before trial. When that

occurred, my investigator and I made some phone calls

and found out that neither one of these women are where

they were in those days. The district attorney was kind

enough to provide me last week with their current

addresses, but, of course, that doesn't mean that they

talked to me.

In each of those cases, it's impossible to

find, for example, in the 1981 case, the other GIS that

were in that bar that night with my client, the

investigating officer or his supervisor that determined

that they were going to let my client go shortly after

he was arrested, anyone to testify to the fact that

there was no knife there. My client was arrested.

There was no knife there. The witness was impeached on

that issue.

The I996, we can't find or we don't know how to

get ahold of the officers at the jail that overheard the

telephone conversation between my client and the

prosecutrix where she basically admitted that, yeah,

okay, you didn't really rape me, but, you know, you did

rape my soul. That's why I called it a rape is because

I felt that you had raped my soul, and the -- the police

after hearing that conversation on the telephone didn't

follow through with filing any charges.

I don't know where these people are. I can't

255

find them. It's almost impossible for us to defend

against either one of those allegations at this point.

I don't know of a less prejudicial alternative.

I believe that neither one of these should come

in and this case should rise and fall on its own merits.

One less prejudicial alternative that was discussed in

Story was that the judge perhaps should have chosen one

of those instances, but that isn't the same case'in our

case because, as I said, there is just no evidence of a

common plan, similarity, similar circumstance or

anything in any of those cases and the present case.

Thank you, your Honor.

MR. THOMAS: May I respond?

THE COURT: Sure.

MR. THOMAS: As far as the convictions go, it

looks like in Story all four of those rapes that came

in --

THE COURT: If I may, that's something I

don't want to pass by. Mr. Sanders, you indicated

that the two in the instant case -- in the Story case,

there were four separate victims that testified.

MR. SANDERS: And I don't think that's an

important factor. That's --

THE COURT: You mentioned there was something

about limiting -- in the Story case, limiting the

number of people that were allowed to testify.

MR. SANDERS: On the less prejudicial

alternative.

256

THE COURT: In this instance, they were --

all four people were allowed to testify.

MR. SANDERS: Because they were all similar

in a number of respects.

THE COURT: Right. Four.

MR. SANDERS: Yes.

THE COURT: Thanks.

MR. THOMAS: As far as the four victims that

were allowed to testify, there was no mention that the

defendant in this case -- the Story case was ever

convicted of any of them. So it would be similar to

this.

In Story, the crime occurred in 1976. The

Court admitted two prior rapes, one that occurred in

1974, another one occurred in 1976, and then admitted

two subsequent rapes that the defendant committed, one

in 1980 and one in 1986. The 1986 rape that was

admitted was approximately ten years after the murder

was committed in Story.

Similarly in this case, we have a rape that

occurred in 1996, which is approximately just over ten

years, it's eleven years after the murder occurred in

the present case.

Mr. Sanders kept mentioning there's no physical

evidence, and Story it shows -- from my reading of it,

doesn't show that the DA admitted any physical evidence

except for one in 1986 that it looks like that might --

well, no, even in the 1986 case it was all three or four

257

victims that came in and testified for the jury that the

defendant in Story had committed these rapes, and there

was no physical evidence or mention of physical evidence

in the appellate opinion.

Mr. Sanders kept pointing out there was a lack

of trauma in -- in the Rita Cobb murder. Admitting the

two prior rapes would explain why there was a lack of

trauma because in the two prior rapes he used weapons,

one time in the 1982 case he used a knife, and then on

top of that he used his left hand to choke the victim.

In this case, the victim in the Rita Cobb case, she was

strangled.

The Story opinion talks about the fact that in

Story the victim was also strangled on Page 1300 of the

opinion.

THE COURT: 1300?

MR. THOMAS: Yeah.

MR. SANDERS: The case number?

MR. THOMAS: Case number --

THE COURT: Let me get there. Go ahead.

MR. THOMAS: The California Supreme Court

said:

"The fact that the defendant

strangled his victim to death after

the sexual intercourse permits a

reasonable jury to infer that Vickers

did resist," Vickers being the victim

in that case, "did resist and did --

258

and indeed died for that resistance."

The same argument can be made in this case. If

the jury were to believe that the sex occurred at or

near the time of death, the jury could come to the same

conclusion as they did in the Story case, that Ms. Cobb

was strangled because she resisted the defendant.

I would argue as far as the physical evidence

goes, prosecution's going to argue that because the bed

and the condition of the bed and the bedspread that

would indicate some evidence that there was a struggle

of some sort. It wasn't neat as far as the bed goes.

It wasn't made up neat, and I'm sure Mr. Sanders has a

contrary argument to that, but I think that that's one

of the arguments that the People could put forth and the

jury could believe.

Then as far as the 1996 case, this was a woman

that was known to Mr. Yablonsky, and he came uninvited

and basically took the sex if you believe the victim in

that case.

Same could be said for this case as far as

Rita Cobb's concerned. He knew the victim, and he --

the People are going to argue based on his 1996 case

that he did the same thing in this case. He invited

himself in and basically took sex from Ms. Cobb. In the

process of doing that, he murdered her. So I think

there's enough similarities and enough evidence there

for the Court to find that both the 1982 and the l996

case have probative value, that probative value

259

outweighs any prejudicial effect on the defendant.

THE COURT: Anything else, either side?

MR. SANDERS: Please, your Honor. It's one

thing in the abstract to say that if you're charged

with certain crimes you can bring in similar crimes to

bolster your argument, to bolster your position, but

what those cases didn't suggest is exactly what the

prosecutor uses those cases for.

It's one thing to say, in the Rita Cobb case,

he used a knife. In the El Paso case, he used a knife.

You can show a common scheme, plan, purpose, all those

things. It's one thing to say in the Rita Cobb case, he

came uninvited, and in the Long Beach case, he came

uninvited, but even his own argument shows that that's

not what he's doing here.

What he suggested is, we don't know what

happened to Rita Cobb, but we know in El Paso, he used a

knife; therefore, he probably used a knife in this case.

We can argue that's why it's a rape because he used a

knife. In the l996 case he came uninvited; therefore,

he must have come uninvited in this case. That's not

what Story or Falsetta or Pierce stand for; that you

can -- that you can bring in these other elements that

you don't have in your main case. They're to show

similarities. They're not to -- to try to bootstrap

other things into them that weren't there to start with.

If that's the similarity, if that's why it's

relevant, then it isn't and the prejudice, which is

260

huge, hasn't been overcome. Thank you.

THE COURT: Anything else?

MR. THOMAS: I would point out in Story that

the murder victim was strangled and the prior rapes

that were admitted the defendant did use a gun, and

so, therefore, it's not similar and the Court still

allowed its admission because -- under 1108, and that

would be -- we'd submit on that.

THE COURT: Anything else?

MR. SANDERS: No, your Honor. I've submitted

points. Thank you.

THE COURT: I'm struck by how, in my opinion,

the Story case is so close to the case that is before

me, and I think Story is just on all fours with People

Versus Yablonsky. What Story stands for, I believe,

is allowing the fact that someone was killed --

someone who was killed after having had sexual

relations, allows the jury to be told of prior similar

forcible sex crimes to infer that this was not just a

murder but was a forcible sex crime.

I didn't hear much discussion about this, but

what strikes me mostly about the Story case is here on

Page -- I guess it would be on -- starting on Page l285:

"Evidence presented at trial on

October 22nd, 1976, 26-year-old,

Betty Yvonne Vickers was found dead

lying on her stomach on the right side

of the bed in the bedroom of her

261

apartment on Main Street and Mountain

View.

"She was wearing only a football

jersey. The bottom half of her body

was covered with bed covers. Panties

were under the pillow on the bed, and

a bloody tampon was on the bed beside

her body.

"A large semen stain was found on

the bottom sheet. The rest of the

apartment contained no evidence of

struggle."

l286, next page -- actually, it's the end of

l285, beginning of l286:

"The vagina contained a white

discharge but no signs of injuries."

There was evidence of a struggle in that case

there being an opportunity to be examined. I think we

must not have had, in all likelihood, the same degree of

body decomposition as there was when Ms. Cobb was found,

the victim in this particular instance, but the

pathologist testified that the injuries were most

consistent with the victim's being face up and someone

applying their hands to her neck and either their elbows

on her collar bones or chest or perhaps even their knees

to straddle her and immobilize her.

So it appears that the evidence of struggle in

this particular instance didn't offer any light on the

262

subject of whether she had had consensual sex or there

was a struggle that ensued when Mr. Story decided to

strangle Ms. Vickers to death. So the question in that

case was exactly the question in this case. Was that

consensual sex? Was that not consensual sex? Was

there, in other words, a rape?

I think Justice Chin let us know that prior

accounts of rape can help the jury to answer that

question if the factors are appropriately met.

Mr. Sanders, I disagree with you that this is something

that is so far away from the -- the Story case. I think

it is right on with the Story case, and 1 agree with the

prosecution.

I think that Justice Chin had exactly these

issues in mind when he made the statement in the opinion

that Mr. Thomas has already alluded to that are found on

Page 1300. He did not tip-toe around it. He let it be

known that whether there was a rape in this case could

be determined by the force that was used to kill this

person. I think the fact that there was force used

clearly against Ms. Cobb is also very similar.

There was a weapon used by the -- by the way,

Mr. Sanders, you spent a lot of time once again

reiterating factors of dissimilarity, but the factors of

dissimilarity that you're alluding to are those that you

already explained to me, are things that were told to

you by your client, not things that have been

established in any way by the record of either of these

263

prior rapes or one prior rape and one subsequent rape.

Your client telling you that one of the cases

was not filed because the woman made a statement that

said she might -- he raped my spirit or raped my soul,

and that they heard a telephone conversation. You never

heard that conversation. You never found a report of

that as being the reason this case wasn't filed.

MR. SANDERS: Too old. I can't.

THE COURT: It's too old. You can't. That's

one way of arguing it, but it's not convincing to me.

You're saying that it's too old does not mean that

it's evidence that was ever available. It is evidence

that is not corroborated. It's a statement by your

client to exonerate himself. That's the way that I

feel.

I see that in each case, one case is use of a

knife.

MR. SANDERS: Alleged knife.

THE COURT: That's all I'm talking about

That's all I'm talking about. I'm talking about what

the prosecution's theory is and what their offer of

proof is. Those things that Mr. Thomas said when I

made him go through these factors, I agree with his

interpretation. I think this is exactly what 1108 was

intended to deal with.

I think that in any case where somebody is

giving evidence of prior criminality offered to a jury,

always hugely prejudicial, but you can't come to

the

264

conclusion that just because it's hugely prejudicial

that it's more prejudicial than probative. I think the

probative value greatly outweighs the prejudicial -- the

prejudice that's going to be raised.

You're going to be able to cross-examine those

alleged victims. You're going to be given an

opportunity of letting the jury see that these things

are not true. I wonder why Mr. Thomas hasn't elected

under 1108 to provide the alleged instances to the jury

in his case in chief. I think they're admissible at

that point in the trial. He hasn't asked for that.

That's his decision. That's what he has chosen to do as

a tactic. I don't understand tactics. I‘m sitting up

here as a judge, but looking at the Story case with the

very factors that are illuminated in Falsetta and

restated in Story.

I find this is a crime that involves a

sexual -- a sexual offense. I think it's appropriate to

let in these two instances, I don't find them remote in

time. I don't think that they are unduly prejudicial.

I think they're highly probative, and I'm going to allow

that evidence in.

Anything olsc, oithcr side? Other motions?

MR. THOMAS: One thing I wanted to put on the

record so the appellate courts will know about it in

case there is an appeal is at one point during the

discovery process, Mr. Sanders and I did discuss --

there's another murder/rape of a woman who was 60 at

265

the time. That occurred a few months prior to the

Rita Cobb case.

We discussed that, and the DNA evidence in that

case is different than the DNA evidence in this case. I

allowed Mr. Sanders, because it’s still an open case and

unsolved homicide, I didn't want to give him all the

reports, but I allowed him to go to San Bernardino

Sheriff's Department homicide division and review all --

THE COURT: Mr. Thomas, thank you. I‘ve got

a meeting in four minutes. I asked about motions. I

want to know about other motions. We can put things

on the record that we need to be put on the record at

8:30 on Monday.

MR. THOMAS: The only other motion, we can

deal with it on Monday, is there are members of the

victim's family that are on the witness list that

would like to be present. We can discuss that on

Monday.

THE COURT: You're going to have to talk to

Mr. Sanders about that.

MR. SANDERS: I'm going to make a motion to

have witnesses wait out in the hall.

THE COURT: To exclude people.

MR. SANDERS: To exclude.

THE COURT: It's not likely that I'm going to

deny that motion.

Do you have any authority to the contrary?

MR. THOMAS: I do have authority.

266

THE COURT: I'm not going to hear it now.

I'll see you on Monday morning at 8:30. Ladies and

gentlemen, have a nice weekend.

MR. SANDERS: Thank you, your Honor.

MR. THOMAS: Thank you, your Honor.

(Whereupon proceedings in the above-entitled

matter were concluded for the day.)

SUPERIOR COURT OF CALIFORNIA

COUNTY OE SAN BERNARDINO

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF

CALIFORNIA,

Plaintiff,

vs.

JOHN HENRY YABLONSKY,

Defendant.

Case No. FVI9GO5l8

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

REPORTER'S TRANSCRIPT 0E JURY TRIAL

JANUARY 18, 2011, JANUARY 19, 2011, JANUARY 20, 2011,

JANUARY 24, 2011, JANUARY 25, 2011, JANUARY 27, 2011,

JANUARY 31, 2011, FEBRUARY 2, 2011, and FEBRUARY 3, 2011

APPEARANCES:

MICHAEL A. RAMOS

District Attorney

BY: John Thomas

Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN

Public Defender

BY: David Sanders

Deputy Public Defender

C E R T I F I E D C O P Y

Shawna Manning, CSR No. 12827

Official Reporter

Vol. 2 of 4 Michelle Swal, CSR No. 13580

Pages 267 through 509, incl. Pro Tempore Reporter

Reported by:

267

VICTORVILLE, CALIFORNIA; JANUARY 24, 2011;

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

A.M. SESSION

(Appearances as heretofore mentioned.)

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

-oOo-

(Whereupon the following proceedings were held outside

the presence of the jury:)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Back on the record in the case of

People of the State of California versus John Henry

Yablonsky without the jury. Mr. Yablonsky's here with

Mr. Sanders. Mr. Thomas is here for the People.

What is it?

MR. THOMAS: Good morning, your Honor. A

couple things that we need to put on the record that I

was going to put on the record last week but the Court

needed to leave. There is another case that happened

about two months prior to this where a 63-year-old

woman was raped and murdered.

THE COURT: We did talk about this some. Is

this going to have to do with your opening statement

first thing this morning?

MR. THOMAS: I don't want to forget about it.

It will be quick.

THE COURT: I have a jury waiting.

MR. THOMAS: I know. Then we have to do

268

another motion regarding --

THE COURT: If you're not going to mention

this in the opening statement, let's talk about this

other murder later.

MR. THOMAS: Okay.

THE COURT: I don't see why we have to worry

about forgetting about it. What's the name of the

person?

MR. THOMAS: Helen Brooks.

THE COURT: What other motion?

MR. THOMAS: Then I know Mr. Sanders made a

motion last week to have the witnesses excluded from

the courtroom prior to their testimony. 1102.6 of the

Penal Code --

THE COURT: He made a motion to have them

excluded period --

MR. SANDERS: Right.

THE COURT: -- is what he actually moved.

Now, the evidence code section?

MR. THOMAS: Penal Code Section llO2.6.

THE COURT: 1102.6. Did you show that to

Mr. Sanders?

MR. THOMAS: I know that he's aware -- if you

want to look at this --

THE COURT: Go ahead.

MR. THOMAS: Under that section, it allows

two members of the victim's family to be present

during the court proceedings. The Court has

269

discretion as to whether or not to exclude them, but

as far as the statute goes, there has to be a hearing

and the victim's family members are allowed to speak

at that hearing. The Court has to go through a

weighing or balancing process.

In order to speed that up, the People's

position on it is we are requesting they be allowed in

after opening statements are done and they have gotten

up on the stand and testified, and that way there can be

no issues as far as the defendant's right to a fair

trial because they've already testified by the time

they're allowed back into the courtroom.

THE COURT: You don't have a problem with

that; do you?

MR. SANDERS: I don‘t.

THE COURT: That's fine. That's what -- the

way you stated it the first time was that he made a

motion to exclude them until they testify. That's

usually something that happens, and you don't call

them before -- excuse me, you don't have them sitting

here while you call other witnesses. If they're not

going to be here until after they testify, that solves

any problems.

MR. THOMAS: They're going to be the first

two witnesses that I call.

MR. SANDERS: They'll be able to stay after

they have testified.

THE COURT: After what?

270

MR. SANDERS: After they have testified.

THE COURT: Right. As far as I'm concerned,

there's no reason they shouldn't be here during the

opening statement.

What are they going to testify to? The fact

that she's dead?

MR. THOMAS: There's stuff.

THE COURT: Is it really going to be an

issue, in any event, Mr. Sanders?

MR. SANDERS: It's possible that there is,

your Honor.

MR. THOMAS: I don't want that to be an

issue.

THE COURT: Then we'll spend no more time on

it. Please bring the jury.

MR. THOMAS: Can I have five minutes to set

up?

THE COURT: You can, of course. I'm going to

give you that time, but I don't know why you weren't

here five minutes ago to set up because the jury was

told to be here at 9:00. You were here when I told

them to be here at 9:00. It seems that this is not

paying much attention to common courtesy that this

Court feels it owes the jury. I can't pay the jury

that common courtesy without your cooperation.

MR. THOMAS: I apologize.

(Whereupon there was a

pause in proceedings.)

271

(Whereupon the following proceedings were held in open

court in the presence of the jury:)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Good morning, everyone. I hope

you all had a nice weekend. Welcome back to

Department 2 where we're going to continue now with

the trial. This is the phase of the trial that's

called the People's case in chief. We're going to

start with the opening statements of the attorneys.

Mr. Thomas, I know, will make one. Mr. Thomas

is here for the People along with Detective Alexander,

his investigating officer. Mr. Sanders may make an

opening statement, but as I explained before during jury

selection and also during instructions that I started

off with, because Mr. Yablonsky -- who's present along

with Mr. Sanders -- is presumed innocent, he doesn't

have to prove to you that he's not guilty. Mr. Sanders

may make an opening statement, but he may not. It will

be up to him to decide if he wants to make one. If he

does, it will be at this time or at the end of the

People's case in chief.

Mr. Thomas, you may proceed.

(Whereupon opening statements commenced, were reported,

but are not transcribed herein.)

(Whereupon the following proceedings were held in open

court in the presence of the jury:)

THE COURT: Call your first witness.

272

MR. THOMAS: The People call Daryl Kraemer

THE CLERK: You do solemnly state that the

evidence you shall give in the matter pending before

this Court shall be the truth, the whole truth, an

nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please be seated.

THE BAILIFF: Slide yourself forward. Speak

directly towards the microphone. Keep your voice up,

please. Please state your full name and spell it for

the record.

THE WITNESS: Daryl B. Kraemer D-a-r-y-l

B-r-e-n-t K-r-a-e-m-e-r.

THE COURT: Good morning, Mr. Kraemer.

THE WITNESS: Good morning.

THE COURT: Your witness, Mr. Thomas.

MR. THOMAS: Thank you, your Honor.

DARYL KRAEMER, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q Before we get started, I wanted to go over a

conviction you suffered in 1992 for a felony.

Do you recall that?

A Yes, I do.

Q It was for possession of a controlled substance

or substances with intent to manufacture

273

methamphetamine; is that correct?

A That's correct.

Q Violation of Health and Safety 11338, and you

were convicted of a felony in that case?

A Yes, I was.

Q That was here in the San Bernardino courts?

A Yes.

Q Then you were also sentenced to three years

state prison?

A Yes.

Q That's your only Conviction that you've

suffered?

A Yes.

Q In this particular case, I'm going to show you

a photograph.

May I approach the witness, your Honor?

THE COURT: You may.

BY MR. THOMAS:

Q I'm going to show you a photograph. It's been

marked Exhibit 35. It's up on the screen.

Do you recognize that person?

(whereupon Exhibit 35 was marked

for identification.)

THE WITNESS: Yes, I do.

BY MR. THOMAS:

Q Who is that?

A This was my mother, Rita Cobb.

Q Do you recall your mother's birthday?

274

A February 23rd, I believe, 1930.

Q So at the time that your mom was murdered, she

was 55 years old?

A Yes.

Q Take us to the time period just before you

found out your mom was murdered. What was your

relationship like with your mom at that point?

A We had a good relationship. We were the

only -- it was her and I. We were originally from

Canada. We were the only ones that had each other here.

I have no brothers or sisters. We had our good times.

We had our bad times, but we always stayed in contact.

If we had an argument, sometimes we wouldn't see each

other for a little while. Then it would blow over, and

we'd get back together. I lived with her a period of

time.

Q And had you been over to her residence on

several occasions?

A Yes.

Q I'll show you an exhibit that's been marked

Exhibit 1.

Do you recognize that?

(Whereupon Exhibit l was marked

for identification.)

THE WITNESS: I recognize it as the house.

BY MR. THOMAS:

Q That's the house your mom, Rita, lived in?

A Yes.

275

Q And then if you notice, I'm going to point it

out with a laser pointer, there appears to be a garage

on the right-hand corner of the photograph.

Do you see that?

A Yes, I do.

Q Okay. Do you also see the car that -- what

appears to be a vehicle inside the garage?

A Yes.

Q Is that your mom's vehicle?

A Yes, I believe it was her Cadillac.

Q Was that the only vehicle that she owned at the

time back in 1985?

A As I recall, she maybe had a Jeep, an old

armory Jeep.

Q I think I have that in one of the photographs.

Let me pull that up. I'm going to show you what has

been marked Exhibit 8.

Looking at Exhibit 8, do you see what appears

to be a Jeep just to the right of center of the

photograph?

(Whereupon Exhibit 8 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q Is that the Jeep that you're talking about?

A Yes.

Q I'm going to show you another photograph that's

been marked Exhibit 2. It might be better for me to

276

bring it up there.

May I approach the witness?

(whereupon Exhibit 2 was marked

for identification.)

THE COURT: You may.

BY MR. THOMAS:

Q Looking at Exhibit 2, do you notice to the

right and behind the main house there appears to be

another structure? Do you see that?

A Yes.

Q And using the laser pointer to point to that

structure, is that a second house kind of?

A Yes, it was a guest house.

Q Back in 1985 when Rita was murdered, did you

know if anybody was staying in this guest house?

A At that time, no, I don't recall anybody

staying there.

Q Show you another photograph that's been marked

Exhibit 9.

Do you recognize this photograph?

(Whereupon Exhibit 9 was marked

£or identification.)

THE WITNESS: I recognize it as the guest

house.

BY MR. THOMAS:

Q Is that the front? Rear? From what you can

recall.

A The part -- that would be the side view. This

277

would be the back,

Q There's a

can use that laser

the front would be

A The front

I believe this was

and that would be the front.

laser pointer up there. Maybe you

pointer to explain to the jury where

on there.

would be on the other side of this.

a water heater. The front would be

around the side there. This was the sliding side door

that would face the, I believe it would be the east.

Q Just for the record, you used the laser pointer

to direct the jury's attention to the right-hand side of

the photograph, and on the other side of that right-hand

side is where you're indicating that the front of the

guest house would have been?

A Correct, around that side.

Q Okay. Prior to you finding -- prior to you

going over to your

body, when was the

A I believe

mom's house and finding your mom's

last time that you saw your mother?

it was a month, month and a half.

Q Had you spoken to your mother prior to that?

A Prior to the month and a half?

Q During that month and a half that --

A I don‘t recall speaking to her between that

month and a half up until the time she was murdered.

Q And then as far as any phone calls, did you

receive any phone calls from your mother prior to her

murder?

A I believe

mind, there was --

over the years, what stays in my

I had a message on an answering

278

machine stating she needed to talk to me. She was

worried about something or worried about somebody. I

don't recall exactly what it was, but I believe -- it

might have been that I talked to her, but what stays in

my mind all this time is that there

answering machine.

was something on an

Q And you recall being interviewed by

Detective Tuttle (phonetic) back in-- on September 23rd

of I985?

A Yes.

Q Okay. And this interview took place after you

had located your -- or found your mom's body in the

residence?

A Yes.

Q And during that interview-- have you had a

chance to look over that interview?

A Yes, I have.

Q And during that interview, did you ever mention

to -- or is it in there that you ever mentioned getting

that message?

A No.

Q So this is something that you‘re remembering

years later?

A Yes. It was years later. That's like a

concern of why I wanted to talk to her that weekend.

Q Okay. Did you attempt to talk to her that

weekend prior to September 23rd of 1985?

A From what I recall, I was attempting to call

279

her Friday, Saturday -- at least Saturday and Sunday.

When there was no answer at her home, I called her work

on Monday or called her work on Monday, and she hadn't

appeared -- come to work that day.

Q That's the reason that you eventually went over

to your mom's residence on September 23rd of 1985?

A Yes. \_

Q Do you recall approximately what time you went

over to the residence?

A I believe it was in the morning. It was

approximately 11:30 in the morning I arrived there.

Q Okay. When you arrived. Do you recall what

vehicle you were driving?

A I believe we had a Monte Carlo.

Q When you say we had a Monte Carlo, who's the we

that you‘re speaking about?

A At the time it was my -- my present wife,

Marta Kraemer.

Q Was she your wife at that time?

A NO.

Q You were boyfriend/girlfriend?

A Boyfriend/girlfriend living together.

Q So when you showed up at the residence, whore

exactly did you park at the residence?

A I recall parking behind her car that was parked

in the garage -- parked in her garage.

Q I'm going to show you what has been marked

Exhibit 3.

280

Is that about the location where you parked

your Monte Carlo?

(Whereupon Exhibit 3 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS;

Q It would have been directly -- would it have

been directly behind your mom's Cadillac?

A I recall being in the driveway, in this area.

Q Okay. If you can orientate us, how far away is

the house from the main road?

A Well, the property was five acres, and the

house sat directly at the back of the five acres.

Q And then as far as the address of the house, do

you recall the address?

A Something to the effect of 25435 Highway l8, I

believe it was.

Q That's in Lucerne?

A In Lucerne Valley, yes.

Q That's within the county of San Bernardino?

A Yes.

Q How long had your mom been living there at that

residence?

A From what I can recall, approximately l978.

Q Was she living there alone as far as you knew?

A She was living there with her husband at the

time, Jim Cobb.

Q Now, fast forward to 1985, was she living there

281

alone or was Jim still living there?

A She was living there alone. From what 1

recall, he died in approximately 1981, 1980.

Q So you go to the house. Did you think it was

unusual at all that the garage door was open and the car

was in the garage?

A Well, 1 thought it was -- it seemed normal that

the garage door was open. Sometimes she would close it.

From what I can recall, it was open if she was going to

be home.

Q Okay. So the fact that the garage door was

open and her car was in there, that didn't throw up any

red flags or anything like that?

A No.

Q So as far as the garage goes, how did you enter

the house?

A We entered the house through the door that was

right here in the garage that led into the kitchen area.

Q I'm going to show you a photograph that's been

marked Exhibit 4.

Do you recognize the -- what's depicted in

Exhibit 4?

(Whereupon Exhibit 4 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q What is that?

A That would be the door that entered into the

282

side of the house through the kitchen.

Q That's your mom's car that's in the bottom

right-hand corner of the photograph?

A Yes.

Q You were using the laser pointer to point to a

door in the center of the photograph?

A Yes.

Q So when you entered the door, was it closed?

Open?

A It was closed.

Q Do you recall if it was locked? Unlocked?

A I don't recall if it was locked or unlocked.

From what I recall, it was unlocked.

Q Do you recall telling the detectives back in

l985 that you don't know if the door was locked or

unlocked, but you used your key to enter the residence?

A Yes, after reviewing that, yes.

Q And your memory of events would have been more

fresh in your mind back in 1985, specifically

September 23rd of 1985?

MR, SANDERS: Objection, your Honor.

Leading.

THE COURT: It's foundational. It's

overruled.

BY MR. THOMAS:

Q Specifically, September 23rd of l985, than they

are today; right?

A Yes, my memory would be better then, yes.

283

Q Okay. So you enter the house. What, if

anything, did you observe or hear?

A When we went into the house I noticed all the

drapes were closed.

Q Let's stop right there. You noticed all the

drapes were closed. Was that unusual?

A Yes, we found that unusual.

Q Okay. And why is that?

A Because my mother always left the drapes open,

the curtains open. She enjoyed the view. Just kind

of -- the way she lived. She didn't make a habit of

closing curtains before she went to bed.

Q So as far as the drapes go, was there anything

else that you noticed when you walked into the house?

A The first thing was the odor.

Q Okay. And this odor that you‘re speaking of,

what did it smell like?

A Well, it smelled like the septic tank backing

up or something dead.

Q Okay. And so that was unusual?

A Yes.

Q Was there anything else that you noticed when |

you walked in?

A It was very hot, hot room -- the house was very

hot.

Q This is sometime middle/late September. Do you

recall if it was hot outside that day?

A The temperature at that time was -- it was like

284

summer. It was very warm.

Q Okay. So are we talking like 80 degrees or

higher?

A Yeah, at least 80 degrees, yes.

Q Okay. And then as far as inside the house, did

your mom have some air conditioning or some way to cool

down the house?

A Yes.

Q And what was the method that she used?

A Swamp cooler.

Q Okay. Did you at any point check if the swamp

cooler was on or whether or not it was malfunctioning?

A The swamp cooler was not on.

Q Did you check anything regarding the heat

because you said it was really hot? Was it hotter than

outside or --

A. Yes, it was hotter than outside. The heater

was on.

Q So you actually checked the heater and saw that

it was on?

A Yes, we had to turn the heater down.

Q And when you say we had to, you‘re referring to

Marta?

A Correct.

Q Okay. When you went inside the house, were you

together at that point?

A Yes, one -- I believe I was probably the first

one to go through, and she was right behind me.

285

Q Okay. Nobody else was with you at that point?

A No.

Q And then I notice in your interview back in

1985 with Detective Tuttle that there was no mention of

the heat being on.

Did you see that in the report?

A Yes.

Q Was that something that you told

Detective Tuttle back in 1985?

A No, it wasn't.

Q Okay. That's something you still remember as

being in the house?

A I remember that this whole time.

Q As far as the details that you gave

Detective Tuttle, did you give him every single detail

when you were interviewed?

A Every detail I could remember at that time. I

was pretty much in a state of shock.

Q You said you were in a state of shock. That's

because you discovered your mom's body that same day?

In fact, hours before you were interviewed, you

discovered your mom's body?

A Yes.

Q So you walk in. You notice the heat's on. Is

that something that you do prior to walking -- or you

turn off the heat prior to walking around the house

looking for your mom?

A We didn't even -- from what I recall, we didn't

286

do that. That was done after we saw her body.

Q Okay. When you entered the house, did you call

out for your mom?

A I don't recall calling out. I recall pretty

much walking straight into the -- into the bedroom.

Q When you walked in towards the bedroom -- let

me see if I can pull up a -- I'm going to show you

what's been marked Exhibit 39.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q Showing you what has been marked Exhibit 39, do

you see the door that you entered in Exhibit 39?

(Whereupon Exhibit 39 was marked

for identification.)

THE WITNESS: Yes, it was that door.

BY MR. THOMAS:

Q You're pointing to a door at the bottom

right-hand corner of the exhibit?

A Right, from the garage.

Q Okay. It's a door leading from the -- what's

marked garage to the main residence?

A Correct.

Q Okay. And then as far as the path that you

took to get to your mother's bedroom, what path did you

take? Maybe you can use the laser pointer to --

A Walked through the kitchen, made a right-hand

turn and straight into her bedroom this way.

287

Q You're indicating with the laser pointer you

walked, I believe it would be, to the east from the

garage. If you look at the bottom of the exhibit, there

appears to be north, south, west, east.

Do you see that?

A Right.

Q So you're walking east from the garage area.

Then at some point you walk south down that hallway in

the center of the exhibit, and then your mother's

bedroom is in the right-hand -- upper right-hand corner

of the exhibit; is that correct?

A Correct.

Q So as far as the path that you took, where's

the heater and the swamp cooler at?

A The swamp cooler would have been -- I believe

this area in the living room. The swamp cooler was -- I

believe that was probably the swamp cooler.

Q You're pointing to a box just outside the

portion of the residence in the upper left-hand corner

of Exhibit 39; is that correct?

A Correct. I'm assuming that's the swamp cooler.

Q Then the room that's on the interior of the

residence that you described as being a living room

area?

A Living room area there.

Q Where's the heater?

A From what I recall, it was -- I believe it

would have been this area.

288

Q So it would have been in the hallway area?

A From what I recall.

Q Okay. And it would have been just north of

your mother's bedroom?

A Yes.

Q So once you get to the bedroom -- prior to

getting there, did you notice if anything was disturbed

in any way like somebody had been ransacking the

residence at some point or did everything appear to be

normal to you?

A Everything appeared to be normal from what I

can recall.

Q So you get to your mother's bedroom. What do

you see when you get to your mother's bedroom?

A I see my mother lying on the bed. From what I

recall, leg propped up. I went pretty much into shock

at that period of time. It's been really hard for me to

visualize what I saw then.

Q Did you notice whether or not your mother had

any clothing on?

A No, I don’t remember her having any clothing

on.

Q Then other than that, was there anything else

that you could remember about your mother's body?

A Not other than she was laying there, and I saw

her dead, appeared to be dead tor a period of time. I

just pretty much basically went into shock, jusL broke

down.

289

Q When you say you broke down, are you talking

about crying?

A Crying.

Q Did you go into the bedroom at any point to

actually see if your mother had a pulse or anything like

that?

A No, I -- no.

Q So you saw her about from the doorway?

A I believe I went into the room.

Q Did it appear that the room had been ransacked

in any way that you can recall?

A At that time, no, it didn't appear to be

ransacked that I can recall at that point.

Q Let me ask you this: Did you touch anything or

touch your mom's body?

A No, I don't believe I touched her body, no.

Q At that point when you saw your mom's body, was

Marta there with you?

A She was behind me, I believe.

Q And then what did you do at that point?

A I broke down, and I screamed. I screamed, and

I believe, oh, no, she's done it. She‘s killed herself.

Q And as far as your belief that she killed

herself, that wasn't based on what you saw at the scone;

right?

A No.

Q That was a belief that you had based on your

experiences with your mom?

290

A Yes, because she'd been so lonely and

despondent.

Q As far as you said you broke down, you

screamed, what did you do at that point after?

A From what I can recall, I ran out of the

residence. From what I can recall, I looked up in the

sky and just yelled out, why. That's the -- at that

point I was in a state of panic. A lot of things have

been blacked out in my mind about that.

Q Is it fair to say that a lot of emotions were

going through you at that point?

A Extremely.

Q You were extremely emotional?

A Oh, extremely.

Q What was Marta doing at that point if you can

recall?

A Then it was the point that I believe that she

had gone in and seen, and at some point -- l don't

recall how everything went. She attempted to open up

the window because the smell was so overwhelming.

Q Did you notice if the windows were opened?

Closed?

A From what I recall, the windows were closed.

Q So you run outside. Does Marta run outside

with you?

A From what I can recall, I told her to call --

call the sheriff's department. Call somebody.

Q And at that point you had no idea that your mom

291

had been murdered?

A At that point, no.

Q And so you call -- or you tell Marta, call the

sheriff's department. Call somebody.

What did you do at that point?

A Well, almost to that point, she came out and --

from what I can recall, she came out and said something

to the effect that, it's more than that. It appears

that somebody's been here.

Myself, what I had done is my first thought was

having her call somebody, and the first person I could

think of is I wanted to go to John Sullivan's house.

Q Who is John Sullivan?

A John Sullivan is a very close personal family

friend, and he -- my mom would associate with him and

his wife quite often. He would come down, had for many

years, at least the past five years, would comc down and

help fix the house if she needs something done or -- and

he was just the first person I could think of. I jumped

in my car, and I was just despondent, and I don't even

remember driving up there, but I got in my car and

backed out of the driveway, drove around the driveway

and drove up to his house.

Q Where's his house in relation to your mom's

house?

A It was a couple miles up the road at a place

called Mini Springs Ranch.

Q As far as that drive, is it a dirt road? Paved

292

road?

A It was a paved road back out on Highway 18

towards Big Bear.

Q Is it just right off the highway, or do you

have to take other side roads?

A No. It's pretty much right off the highway.

Q So it's kind of like your mom's house?

A Right, correct.

Q That's about three miles up the road you said?

A Approximately.

Q So did Marta go with you at that point?

A No.

Q So you take off. Does she even know where

you're going? Did you tell her, I'm going to

John Sullivan's?

A I told her, I got to find John. I got to go

get John. I got to go get John.

Q And you said the reason you went to go get John

is because John's a close family friend of your mom's?

A Yes.

Q Did it occur to you at any point during the --

this whole incident that there could still be somebody

inside the house or was that something that didn't even

cross your mind?

A Didn't even cross my mind other than just went

crazy in shock.

Q And then you go over to John Sullivan's house.

What did you do over at John Sullivan's once you get

293

there?

A He's not home. From what I recall, I was

yelling in his yard, still looking up at the sky going,

why, and I jump back in the car and went back to the

house, which seemed like minutes to me.

Q I assume during this time period, you were

crying at this point?

A Oh, yes.

Q You go back to the house. This time where do

you park the car when you get back?

A From what I recall, I parked in the same

location, behind her Cadillac.

Q And then once you parked the car, did you go

back in the residence? What did you do?

A Yes, went back inside the residence.

Q Where was Marta at this point?

A I don't recall where she was at. I recall

asking her if she called, you know, the authorities, and

she had called the fire department -- she said the Tire

department was on their way. I don't recall exact

statements.

Q Then when you go back inside the house, did you

go back to the bedroom area where you discovered your

mom's body?

A I don't recall. I might have gone back in and

looked again. It's hard for me to recall exactly what I

did in what order.

Q Then let me ask the question I did before. At

294

this point did you ever touch your mom's body the second

time when you were at the house?

A I don‘t believe I ever touched her body.

Q Did you notice anything about her body the

second time that you went into the room that you didn't

notice the first time?

A Not that I can recall.

Q And based on your personalty, would that be

something that you would have done or something that you

wouldn't want to even do or think about?

A About touching her?

Q Touching her or looking at her body?

A I would have wanted to reach out and hold her,

but the visual of her decomposing, dead, she appeared to

be days -- it just -- it just -- I just couldn't do it.

Q Then as far as the windows, do you recall when

you went back to the residence if the windows were open

at this point?

A I believe maybe Marta had tried to open up a

window. I remember trying to open up windows. We

opened up a curtain, but the smell was so bad that

that's what -- we naturally did that.

Q And then you turned the heat off before you

left for John Sullivan's house?

A I don't recall if it was then or after I got

back. I don't recall.

Q Okay. But at some point you do recall?

A At some point I do recall, yes, we did that.

295

Q Do you recall a radio being on at any point?

A I vaguely recall talking with my wife that --

that, yeah, the radio was on very loud in the living

room and she had to turn it off in order to make phone

calls.

Q But that's something that you specifically

don't have any recollection of, yeah, I remember for

sure that the radio was on?

A Myself, I don't recall.

Q Is that something that Marta recalls?

A Yes.

Q As far as the swamp cooler being off and the

heater being on, that's something that you specifically

recall?

A I don't recall which manner we did. I believe

we started doing that after -- after we -- were making

some of the phone calls before anybody arrived.

Q Had you ever been over to your m0m‘s place

during the summer months where she had the heater on at

any point?

A In the summertime, at that time, no.

Q That's because it's hot outside?

A It was hot out.

Q When you entered your mother's bedroom the

second time that you were at that house, after you went

over to John Sullivan's, did you notice anything about

the room or the house that you thought, this is strange

or unusual?

296

A No, didn't -- didn't -- didn't appear that

there was a fight or anything disturbed from what I can

recall.

Q You didn't see anything that caused you to

believe that the house had been ransacked at some point?

A No.

Q Were there any items of value that you saw just

laying out in the open?

A I believe we saw -- my wife recalls more than I

do. Her purse was there. Her car keys were there. I

believe she had a ring that was there.

Q Show you a photograph that's been marked

Exhibit 10.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q Show you Exhibit IO. It's also up on the

screen.

Do you recognize that?

(Whereupon Exhibit 10 was marked

for identification.)

THE WITNESS: Yeah, I recognize it as a ring.

BY MR. THOMAS:

Q Do you recognize the ring itself?

A Well, I recognize it as the ring. I believe my

wife wears it now.

Q As far as that particular ring, it's on top of

what appears to be a table of some sort.

297

Do you see that?

A Yes.

Q Would that be one of the night stands or night

tables next to the bed?

A Yes, l believe it was.

Q At any point either the first time or the

second time when you were going through the house, did

you notice if any of the windows, doors, or any opening

from the outside were forced open or pried open?

A NO.

Q So you didn't notice any of that?

A, No. There was nothing -- everything was

unlocked.

Q Was it unusual for your mom to keep everything

unlocked?

A Yes, she made a habit of that, not locking the

place up.

Q Were there any times whore she would lock the

place up?

A When she would leave, go to work, go to town.

Q But if she was home, it was not unusual for her

to leave everything unlocked?

A No, that was not unusual.

Q Did your mom have any animals or pets?

A Yes, she had a dog.

Q Let me ask you about the dog. Was the dog

present when you arrived there the first time?

A From what I recall, he was there running around

298

outside.

Q When you say outside, where are we talking

about? Here. I'll put the diagram back up, Exhibit 39

Okay.

Looking at that exhibit, Exhibit 39, where wa

the dog in relation to the residence?

A Up in the front porch area where he usually

was -- if he was around, he'd be on the front porch by

the front door.

Q So when you drove up, you saw him on the from

porch area?

A Yeah, then he would get up, come out barking.

Q Okay. And were you familiar with your mother

practices as far as if the dog was allowed inside the

house or where the dog was kept during the night hours

or anything like that?

A She, from what I recall, had the habit of

leaving the dog in the house when she was home at nigh

Q Then when would the dog be outside?

A When she went to work or went to town or went

somewhere.

Q So when you go back inside the house, you go

your mother's bedroom. You look in. What do you do

after that?

A From what I can recall, I picked up a phone.

asked her if she called.

Q When you say you asked her, are you talking

about Marta?

299

A Right. If she called the authorities, anybody.

She said, yes, she called the fire -- the fire

department, or the fire department was on their way.

She talked to the -- maybe the sheriff's department. I

don‘t recall exactly how it went down, but I remember

then I called -- called them myself and told them what

was happening.

From what I recall, is that the dispatcher told

me to -- asked me if I touched anything. I said, yeah,

we opened windows. They said don‘t touch anything else

and get out of the house. That's what we did.

Q All right. And you've already explained to us

your demeanor as far as you being extremely emotional at

that point.

Could you describe Marta's demeanor for us?

A I think she was holding it together better than

I was.

Q Was she crying?

A Yeah, we were both crying.

Q But as far as the emotional aspect, you would

characterize yourself as being more emotional than Marta

was?

A Oh, yes, yes.

Q And then -- so you get off the phone. Was it

the sheriff's department or you don't remember?

A I don't recall.

Q And they tell you you have to get out of the

house. At that point did you follow what they told you

300

and leave the residence?

A Yes. I yelled to Marta to get out of the

residence. They told us not to touch anything, to get

out. That's what I recall.

Q Do you recall how you exited the residence?

A I don't recall if we went out the front door or

it could have been the garage. I don't recall.

Q Just for the record, you pointed to the door

that's in the bottom left-hand corner of Exhibit 39.

That's the front door that you were pointing

to?

A Right. I don't recall which door.

Q That leads into the living room area?

A Yes, this was the living room area.

Q Okay. So approximately, if you had to

estimate, how long -- or how much time did you spend in

the house the first time that you were in there?

A Before I --

Q Before you went over to John Sullivan's?

A -- John Sullivan's. I don't recall. It was

seemed like minutes. I just don't recall it.

Q Would you estimate that it would be about the

same amount of time you spent the second time that you

went inside the residence?

A I would estimate probably the same. Probably

the same.

Q Then as far as you leaving the residence,

what's the next thing that happened while you're outside

301

the residence?

A I believe we moved the car, after reviewing the

statement, moved the car down to the highway so they

could find out where the house was. We had a hard time

giving out an address at that time.

Q Okay. This is kind of a rural area. How would

you describe it?

A Rural area.

Q Okay. As far as the car, you're talking about

your Monte Carlo?

A Correct. I don't remember exactly doing that,

but reviewing a little bit of the statement, I guess

that's what we did.

Q And was it you that did it or was it Marta or

you don't remember?

A I really don't recall.

Q At some point the car's moved. Do people start

showing up at some point?

A At that point I believe the paramedics showed

up.

Q And then how long were you outside before the

paramedics showed up?

A I don't recall. Once that -- once they told us

to get out, don't touch anything else, get out of the

house, it didn't seem like it was very long after that.

Q Matter of minutes?

A Yes, from what I can recall.

Q When the paramedics show up, where's the dog at

302

this point?

A I don't recall.

Q As far as your mom's dog goes, if you know, was

it aggressive towards strangers?

A It would go out if somebody was pulling up or

trying to walk up. It would bark, which could be

intimidating.

Q But it would never attack somebody?

A No, never attacked anybody.

Q Okay. And as far as the clothing, your mom's

clothing was concerned, do you recall what type of

hangers she used to hang clothing?

A Metal hangers.

Q When you say metal hangers, you're talking

about wire hangers?

A Yeah, the wire hangers.

Q She didn't have those plastic hangers or

anything?

A Not that I recall. I almost recall nothing but

wire hangers.

Q Then approximately, you said, that it's -- you

already told us it's a rural area. Approximately how

far away was the closest neighbor to your mom's?

A Would have been the one right across

the highway.

Q So directly across the highway there's another

residence?

A Yes.

303

Q Do you recall who lived there?

A It was Don Stow (phonetic).

Q As far as that residence, was it also backed

away from highway 18?

A Not like my mother's was.

Q So your mom's was farther from the highway than

Don Stow‘s?

A Yes, it was the back of five acres, and his was

pretty much right on the highway.

Q So the paramedics showed up. Did you see where

they went or what they did?

A They went into the residence. They had to go

in and check to see if she could possibly be alive.

Q Did you go in with them at that point?

A No, I didn't.

Q Did you see Marta go in with them?

A l believe Marta started following them in, and

I believe I might have said to get out of the house.

Told us not to touch anything, not to go back in.

Q And then as far as your mom, you said that she

went to work. Do you know where she worked?

A Yes, she worked at Spring Valley Country Club.

Q That's Spring Valley Lake --

A Spring Valley Lake.

Q -- over here in Victorville? As far as your

mom's eye sight was concerned, did she have to wear

glasses or any type of prescription glasses or contacts?

A She wore glasses.

304

Q Okay. Is that something she had pretty much

every time that you would see her?

A Yes, pretty much all the time.

Q So if you went over to her house, she would

have her glasses on when she met with you?

A Yes, from what I can recall.

Q Then as far as her normal work hours at the

Spring Valley Lake Country Club or Golf Club, did she

have a normal work schedule that you knew of?

A I believe it was Monday through Friday 8:00 to

5:00, 8:00 to 4:00.

Q I'm going to ask; do you know that gentleman

seated next to the defense attorney, Mr. Sanders, in

this case?

A I know him now.

Q Back in l985, did you know John Yablonsky?

A Not that I can recall.

Q Do you know of a person with the last name of

Yablonsky?

A Yes.

Q Who was that?

A That was his father.

Q That would be George Yablonsky?

A Yes.

Q And how did you know George?

A I've known George since when I first went to

Lucerne Valley, I980 or I981. Just knew him as a casual

relationship through living there.

305

Q So is it more of an acquaintance-type

relationship?

A It was an acquaintance. We drank together in

the bar. I believe we went to the Colorado River once

MR. THOMAS: If I can have just a moment,

your Honor?

THE COURT: We'll take our morning recess,

ladies and gentlemen, 15 minutes. You're admonished

that it is your duty not to converse among yourselves

or with anyone else about any matter connected with

this case nor form or express an opinion on it until

it's submitted to you. 15 minutes.

(whereupon a recess was taken.)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Counsel approach.

(Wheroupon the following proceedings were held at the

bench out of the hearing of the juryz)

THE COURT: Okay. Mr. Sanders.

MR. SANDERS: Yes, your Honor.

THE COURT: If you want to put something on

the record, tell me next time. I told Mr. Thomas in

this polite way that I need to have the cooperation of

not being rude to this jury. I'm not going to let you

or Mr. Thomas cause me to be rude to this jury, If

there's something you need to put on the record when

we're taking a break, say can we wait before we leave

in advance. Give me a heads up so I can tell the jury

306

something. I'm not going to leave them waiting.

MR. SANDERS: I'm going to object to the

opening statement and ask for a mistrial to be

declared on the grounds that Mr. Thomas referred to my

client's statement, which was not a statement again t

interest, but may become a statement against interest

and has put me in a position that I have to put my/

client on the stand. f

THE COURT: Your client's statement is always

a statement against his interest.

MR. SANDERS: But it wasn't. It was like we

were talking about the other day when I wanted to put

in a guy's statement, and he said you want to put his

statement in.

THE COURT: Your client's a party to this

action. Anything he says is admissible against him.

MR. SANDERS: Yes, but the way that the DA

phrased it, 1 now have to put him on the stand because

of the manner in which he told the jury things.

THE COURT: Either he told the jury what your

client said or he didn't. If he told the jury your

client said something your client didn't say, that's

not grounds for a mistrial. That's grounds for you to

show he hasn't proven his case. If he told the jury

something your client said that your client did say,

then it's admissible. It's free game unless there's

an issue about admissibility, and I assume that you

wouldn't make a motion regarding violation of Miranda

307

at this point in the proceeding without having

mentioned it during our opportunity to have motions in

limine.

Am I wrong about that, the Miranda issue?

MR. SANDERS: NO.

THE COURT: Mr. Sanders, whatever your client

said is totally fair game to reference by Mr. Thomas.

If he misquotes your client, then that's fodder for

you. If he quotes your client, that's what your

client has to deal with. If it happens that that

requires him to get on the witness stand, that's

something that happened long before you had an

opportunity to be involved. So your motion for a

mistrial is going to be denied.

MR. SANDERS: Thank you.

(whereupon the following proceedings were held in open

court in the presence of the jury:)

THE COURT: Ladies and gentlemen, I'm suro

that you recall that T wear glasses and sometimes I

leave them in my chambers. I'm sure you recall that

we had on occasion during jury selection did things at

bench. When we can do something in a brief time, T‘d

rather do that rather than excuse you and keep you

waiting in the hall.

Back on the record in the case of People of the

State of California versus John Henry Yablonsky, who is

here with David Sanders, his attorney. John Thomas is

here along with Detective Robert Alexander, and on the

308

witness stand is your first witness, Daryl Kraemer,

who's still under oath and still in direct examination.

You may continue, Mr. Thomas.

MR. THOMAS: Thank you, your Honor.

BY MR. THOMAS:

Q There was just a couple of questions I forgot

to ask you before the break.

Did you bring any items over? Did you or Marta

bring any items over to your mother's house?

A Not that I recall.

Q Do you recall some beer cans that were brought

over?

A I don't recall that.

Q I'm going to show you a photograph that's been

marked Exhibit 24.

Do you recall those beer cans that are depicted

in Exhibit 24?

(Whereupon Exhibit 24 was marked

for identification.)

THE WITNESS: NO, I don't.

BY MR. THOMAS:

Q Do you ever recall talking with Detective McCoy

or any other detective and telling them that the l2-pack

of Coors beer belonged to you or was brought over by

you?

A I don't recall that.

Q Was Coors something that you would drink back

then in 1985?

309

A Yes.

So it may have been one of those situations

where you may have brought it over, but you don't

remember now?

Yes, I don't recall that.

Do you recall if Marta brought anything over

the residence?

I don't recall.

Back in 1985, did you or Marta smoke?

Yes.

What type of cigarettes did you smoke?

Marlboro regulars.

What type of cigarettes did Marta smoke?

I believe it was Virginia Slims.

Do you recall what type of cigarettes your

smoked if she smoked?

Yeah, she smoked -- I don't recall. Something

like Virginia Slims, but I don't recall what it was

Do you know ii your mom smoked Benson Hedges?

I don‘t recall what she was smoking at the

Prior to going over to your mother's residence

did you stop anywhere along the way?

I believe it's Marta's recollection that we

stopped and she grabbed something to drink.

But I'm talking about your recollection. You

don't have --

I don't recall stopping.

310

MR. THOMAS: Nothing further.

THE COURT: You may inquire, Mr. Sanders.

MR. SANDERS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SANDERS:

Q Good morning, Mr. Kraemer.

A Good morning.

Q This date we're talking about, I belie e you

said was the 23rd of September?

A Correct.

Q And that was in 1985?

A Yes. I

O\“\.

Q All right. You had been trying to -t ahold of

your mother for a couple of days; is that c rrect?

A Yes.

THE COURT: Mr. Sanders, will you pull that

microphone in front of you, please?

MR. SANDERS: Yes, sir. Is that better?

THE COURT: Sure. Can't be any worse.

BY MR. SANDERS:

Q I believe you said that you hao not seen your

mother for four, five or six weeks, something like that?

A Approximately, yes.

Q All right.

THE BAILIFFZ Try it now.

MR. SANDERS; Okay.

BY MR. SANDERS:

Q And my understanding was that you decided --

311

you made some phone calls to her home?

A Yes.

Q Do you remember the dates that you called her

that you were not able to get ahold of her?

A I believe it was that Saturday and that Sunday

and that Monday when I called her at work.

Q Okay. Was she supposed to have gone to work on

Sunday that week?

A No, her days off were Saturdays and Sundays.

Q So do you remember what time it was that you

tried -- started trying to call her on Saturday?

A I don't recall.

Q Could have been in the evening?

A I don't recall.

Q Okay, And you had not spoken to her before

that for four or five weeks?

A Yes.

Q All right. You indicated that she and you had

a good relationship most of the time; is that correct?

A Yes.

Q All right. I believe you had lived there at

that residence for a year or two earlier that decade;

correct?

A Yes.

Q Sometimes you guys would have arguments?

A Yes.

Q And I believe that the last time you had seen

her you and she had had a pretty good argument?

312

A Yes.

Q All right. So you'd stayed away a little

while, and now you were checking up on her and wanted to

talk to her again?

A Yes.

Q And I believe that you said that she had

contacted you at some point before the 20th?

A It's just something that stuck in my head. I

knew there was some kind of urgency that I call her that

weekend, and it's always stuck in my head that there was

an answering (sic) on my voice machine. I don't recall

how urgent it was, but from what I recall -- it stayed

with me all this time that she needed to talk to me;

that there was something bothering her or something.

She was worried about somebody, and that's what just

stayed in my head all these years. I believe there was

an urgency of why I wanted to get ahold of her that

weekend.

Q Do you remember how many days it was before

that weekend that you had gotten that call on your voice

mail -- on your telephone?

A I don't recall.

Q And she had -- was it a short message? Long

message?

A From what I'm thinking, it was a short message.

Q Just that she was having a problem or something

like that?

A Right.

313

Q No names were given?

A No.

Q You and Marta were together at that time; is

that correct?

A Yes.

Q The two of you got in the car and drove over,

and you believe you stopped along the way and Marta got

something to drink; is that correct?

A What I recall, I don't recall that.

Q Okay. And you didn't recall that box of Coors

beer; is that correct?

A NO.

Q Okay. When the two of you drove, I understand

that your mother's house was a ways off of the road, a

hundred yards? Less?

A Probably more than that. It was back five

acres from the highway.

Q But you think it was maybe more than a hundred

yards to the house?

A Yeah. I would say more than a hundred yards.

Q And the driveway up to the house, was there

just one or was there a horseshoe, and it went out in

two places?

A It was a horseshoe drive.

Q It entered the road at two locations?

A Yes.

Q The top of the horseshoe would be in front of

the front porch?

314

A Yes.

Q So you were driving the Monte Carlo and you

pulled up behind her car; is that right?

A Yes.

Q And then you went into the house, and you

discovered what you discovered?

A Correct, yes.

Q I notice the prosecutor asked you a couple

questions about how your mother would use the heater and

the swamp cooler, and what she would do with windows and

things like that.

Are you fairly confident in the things you said

that she would have tho drapes open every day when she

was there?

A Yes.

Q Okay. There never was a time she didn't do

that?

A Not when she was -- from what I can recall, she

always left them open.

Q Do you recall what the temperatures were back

then on the 23rd of September in Lucerne Valley?

A I recall that they were 75, 8O degrees outside.

It was just like summer just coming to an end.

Q What about at night?

A It wouldn't get -- it wouldn't get -- in my

opinion, it wouldn't get cool enough to turn on the

heater.

Q All right. Some people like the heater on when

315

other people wouldn't. Can you say for sure that your

mom wouldn't have turned on the heater?

A I don't believe she would turn on the heater

high.

Q Let me ask you this: Is it -- what was the

mechanism to turn the heat up?

A It was probably a dial.

Q And you turned it to a temperature?

A Yes.

Q If you wanted, you could set it at

85?

A Correct.

Q Do you remember what it was set on

came in the house?

A I don't recall what temperature it

no,

Q And you're not the one that turned

that correct?

A I don‘t believe -- it was Marta or

Q Okay. And did you open any oi the

7O or 80 or

when you

was set on,

it down; is

I.

windows?

A From what I -- I recall -- seems like what I

recall I tried to open windows.

Q All right. l understand that there are three

doors into the house; is that correct?

A The garage door, the front door, then there was

a sliding door.

Q Sliding glass door. Was that at the front or

the back?

316

A I know there was one on the side. I know when

you looked out towards the highway, you could see the

highway out there through like the sliding door, but at

this moment I can't recall if there was a sliding door

too, unless it was a big window.

Q Do you recall checking to see whether the front

door or the sliding door were locked when you were

there?

A From what all I can recall, is that all the

doors were unlocked.

Q Unlocked? I'm sorry. Were they locked or

unlocked?

A Unlocked.

Q Okay. Mr. Thomas asked you about what you

observed when you went into the house.

Do you have any recollection of seeing anything

that you thought was out of place?

A At that time, no. I don't recall seeing

anything that was out of place.

Q Your mother was a smoker; is that correct?

A Yes.

Q So it would not be unusual to have a pack of

cigarettes or ashtray or something like that?

A In the room?

Q Right.

A Yes, it wouldn't be unusual, no.

Q Okay. And when -- when you had lived there,

you said you noticed your mother always used the wire

317

hangers; is that correct?

A Yes.

Q Was she -- it was her habit when she would go

to bed -- was she the kind of person that liked to hang

her clothes up before she retired or would she put them

on the floor and put them away the next day?

A From what I can recall, I didn't see her hang

her clothes up every day. She dressed professionally to

go to work, and she took care of her clothes and hung

them up.

Q Did you notice any of her clothes on the floor

in the bedroom when you went in there?

A Not that I can recall.

Q Did your mother usually wear pajamas, if you

know?

A l don't recall.

Q Okay. Now, you spoke to the police and they

told you to go outside and wait; is that correct?

A That's correct.

Q You did that until they finished their work?

A Right.

Q Did you then go back into the house and look

around again?

A When they left?

Q Yes, when they were gone, maybe not that day

but --

A No, I stayed there in the house.

Q Okay. And you had more time and you were a

318

little bit more calm?

A Correct.

Q At that time did you try to take an inventory

to see if anything was missing?

A We looked around and nothing seemed -- appeared

to have been -- her ring was there, her purse was there.

Nothing appeared to be missing.

Q I think at some point you called the police and

told them that you found -- there was a gold chain that

was missing.

Do you remember that?

A After reviewing, I vaguely remember that.

Q When was it that you discovered that the gold

chain was missing?

A Well, I believe I thought it was a gold chain,

and we ended up discovering after this period of time

that that was not a gold chain; that it was a watch.

Q A watch that was missing?

A Yeah.

Q Okay. Did you call the police and let them

know there was a watch missing?

A Well, I believe from reading the statement that

it was a chain.

Q And you told the police it was a chain that was

missing; is that correct?

A Correct.

Q And then at a later time, after you talked to

the police, you determined it was not a chain?

319

A Right. I don't -- down the road a period of

time, we ended up finding something missing.

Q Okay. So it never was missing in the first

place or you found it at another time?

A We resolved that it -- the person that it came

from, that it wasn't a chain at all. It was a watch.

Q All right. So some person had given your

mother this watch?

A Right.

Q Was that Mr. Bidard (phonetic)?

A Yes.

Q So you spoke to Fred Bidard, and he told you it

wasn't a chain?

A I don't remember the conversation about it.

Yeah, the end result was that it was a watch that he had

given her.

Q All right. So when you told the detectives

that a chain was missing, that's what you are referring

to, and that Fred had given it to her, that's what

you're referring to?

A Right.

Q It wasn't a chain. It was a watch, and you

found the watch?

A Yes. The watch was returned to us from the

coroner. She was wearing it at the time.

Q And Fred was -- had been a boyfriend of hers at

sometime?

A Yes.

320

Q I assume that the police questioned you

diligently about her social contacts; is that correct?

A Yes.

Q And you were able to give them information

about people that she had dated or spent time with; is

that correct?

A Yes, the most that I can recall that day,

September 23rd.

Q The information you gave the police that day,

is that what you're saying?

A That's when they were talking to me the most

about who she, you know, was seeing from what I recall.

Q Did you tell the police that you didn't know

all the different people that she may have seen?

A Yes.

Q And you just told them about some of them that

you knew?

A Correct.

Q Okay. Who did you tell the police she had been

dating other than Mr. Bidard?

MR. THOMAS: Objection. Relevance.

THE COURT: Sustained.

BY MR. SANDERS:

Q You were asked by the district attorney about

some of the habits of your mother.

Do you know if she would sometimes invite

people to come over to her home?

A I'm sure she did.

321

Q So she wasn't a person that was just always

alone and no one ever came over?

A No.

Q She had -- she would sometimes invite

boyfriends and acquaintances to her house; is that

correct?

A Yes.

MR. THOMAS: Objection. Calls for

speculation.

THE COURT: If you know the answer, you can

answer.

THE WITNESS: If she had people come to visit

her?

BY MR. SANDERS:

Q Right.

A I'm sure -- I would say so, yes.

MR. THOMAS: Same objection. I don't think

it's been established that this witness knows for

sure.

THE COURT: And I don't know why you're

whispering, but I did hear what you said with great

difficulty.

MR. THOMAS: I'll speak up next time, your

1 Honor.

THE COURT: I'm going to sustain the

objection. Speculation.

BY MR. SANDERS:

Q Let me ask you: To your personal knowledge,

322

had you seen at times your mother bring friends over to

the house?

A Yes.

Q And on occasion those were boyfriends?

A The only boyfriend that I can even recall would

have been Mr. Bidard.

Q I think you told the police that to your

knowledge she had broken up with Mr. Bidard three months

prior to September?

A Yes, I don't recall the amount of -- three,

four months.

Q Was your mother someone that would seek social

interaction with men?

MR. THOMAS: Objection. Relevance.

THE COURT: Vague. Sustained.

BY MR. SANDERS:

Q In the siX-month period preceding

September 1985, do you have knowledge that your mother

would seek social interaction with men?

A No -- I don't understand the question.

Q Did she like to date?

A Sure, she liked to date.

Q Okay. And she dated fairly often to your

knowledge?

A Not -- I don't know how often.

Q Would she, to your knowledge, sometimes date

people that she had not known for a long time?

A That could be possible.

323

MR. THOMAS: Objection. Calls for

speculation based on the witness's answer. Move to

strike. Do I need to speak up more? I'm sorry.

THE COURT: Good idea if you want me to hear

anything you say.

MR. THOMAS: I objected on the basis that the

witness is speculating. I moved to strike the answer

that the witness gave based on that.

THE COURT: Sustained.

MR. SANDERS: Excuse me just a moment, your

Honor?

BY MR. SANDERS:

Q After the police had left, did you take a

closer look in your mother's bedroom to determine if

there were items of property that were missing?

A Yes.

Q Did you notice whether or not there were items

of property that were in plain sight?

A Yes.

Q And some of those may have been -- have some

value?

A Yes.

Q You indicated you initially thought that

perhaps your mother had killed herself?

A Yes.

Q That was because you had noted that she was

lonely and despondent?

A Yes, and I worried about her, yes.

324

Q All right. The district attorney asked you if

you thought perhaps someone might still be in

Do you remember that question?

A Yes.

the house.

Q At any time when you had your chance, did you

look through the house to see if you could find any

evidence that someone had come in the house?

A No -- no -- I don't -- no.

Q When -- when you went in initially and then

after you came back from Mr. Sullivan's and went in

again, did you move anything inside the house? Pick up

anything? Look at anything?

A The only thing that -- nothing other

the -- was trying to open the window.

than

Q I think you said the dog was outside when you

came?

A Correct.

Q After you initially drove up behind the

Cadillac that was in the garage, I believe that you said

that you then went to Mr. Sullivan's; correct?

A Yes.

Q And to do that, you got back in your

backed it up a short distance; correct?

A Yes.

Q And then you drove around the top of

horseshoe drive and out the other side?

A Yes.

Q For lack of a better term, I'm going

car and

the

to use the

325

side you initially came in as being the west drive and

the side you went out as the east drive.

Does that make sense to you?

A Yes.

Q When you came back from Mr. Sullivan's, did you

drive all the way up to the house again?

A Yes, from what I can recall, yes.

Q All right. And do you recall if you came in

the west drive again the second time?

A Actually, I don't recall which -- what I

believe is I backed out and wont around the horseshoe,

went out and came back in the same way.

Q The same way you came in the first time?

A I would -- I would guess I came back in the

same way I went out.

Q I see. Okay.

A But I don't recall exactly.

Q When you came from your house -- where were you

living at the time?

A Phelan.

Q What is that a 30-, 45-minute drive?

A Hour drive, approximately.

Q So you came from the west and entered the west

driveway the first time?

A I guess you could call it the west. I'm

thinking the north driveway and south driveway towards

the mountains.

Q Let's do that then. The one you came in first

326

was the north driveway? The one you went down to see

Mr. Sullivan was the south driveway?

A Yes.

Q All right. And then Mr. Sullivan's house was

towards the south?

A Right.

Q So when you came back from his house, you went

to the closest driveway?

A That's what I'm thinking. I don't recall

exactly -- don't recall exactly. That's what I'm

thinking that I did.

Q Okay. Then the -- someone told you you should

go move your car or you thought you should go move your

car by the highway so they could find your house?

A I don't recall that. I guess that's what we

did. We moved the car down by the highway, so they'd

see where the residence was.

Q Did you pull it by the north or south driveway?

A I don't recall.

Q All right. So the first people to get there

was the fire department?

A The paramedics.

Q Fire, paramedics. They came in one vehicle?

A What I can recall.

Q Did they drive all the way up to the house?

A From what I can recall, yes.

Q After that, police vehicles arrived; is that

correct?

327

A Correct.

Q And do you know how many of them drove to the

house?

A I don't recall.

Q I guess what I'm wanting to know is: Did you

ever notice that there was any distinctive tire prints

in the driveway, either one of them, that seemed odd or

didn't fit?

A At that time I was such an emotional wreck that

none of that came into -- I wasn't thinking of anything

like that at that moment.

Q Okay. Thank you. I believe you said that the

nearest neighbor was Mr. Stow and he lived across the

highway?

A Right.

Q So his house was pretty close to the highway,

maybe 150 yards from your mother's house?

A I'd say it's more than that.

Q ZOO yards?

A At least 200 yards.

Q All right. Do you know if he was there that

day?

A I don't recall. I don't recall if he was there

that day.

Q You didn't go to his house because you're

better friends with Mr. Sullivan than with him?

A Correct.

Q Okay. And you said you never met my client

328

back in the '80s; correct?

A Not that I can recall.

Q You did know his father, Mr. Yablonsky?

A Yes.

Q The gentleman seated by -- behind me in the

Hawaiian shirt?

A Yes.

Q And apparently you guys were pretty good

friends; is that correct?

A I would consider us friends. We socialized

together.

Q Went to the river together?

A Went to the river once together, if I recall.

Q Okay. Sometimes you would go out and you said

you'd drink with Mr. Yablonsky?

A Yes.

Q Did your mom -- was she ever present when the

two of you were drinking?

A With Mr. Yablonsky?

Q Yes.

MR. THOMAS: Your Honor, vague as to which

Mr. Yablonsky we're talking about.

THE COURT: Would you move that microphone in

front of you, please? And I'll sustain the objection

as vague.

BY MR. SANDERS:

Q I'm referring to the elder Mr. Yablonsky.

Do you recall if when you and he were drinking

329

that your mother was there also?

A I would believe there's been occasions, yes.

Q Okay. A few occasions?

A I would say yes.

Q Okay. Now, this all happened a long time ago,

and have you had an opportunity -- have you been

provided with police reports to help you refresh your

recollection?

A Yes.

Q Okay.

A Just --

Q When were those reports provided to you?

A I believe it was Friday.

Q Did you get a chance to read them over the

weekend?

A Yes.

Q Was there things there that you had forgotten?

A Yeah -- well, yes.

Q Okay. And then did you have to discuss your

testimony with anyone prior to testifying?

A No, nobody other than with my wife.

Q You didn't have to have a conversation with

Detective Alexander?

A No.

Q Mr. Thomas?

A No.

Q About what questions were going to be asked?

A No.

330

MR. SANDERS: Okay. If I might have just a

minute, your Honor?

THE COURT: You might.

MR. SANDERS: Thank you, your Honor. No

further questions on cross-examination.

THE COURT: Redirect.

MR. THOMAS: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q What years did you actually live with your mom

at her residence?

A I believe it was off and on between 1981, '82,

'83.

Q Then was it right around '83 that you stopped

living over there?

A I don't recall the exact date. She used to

work down below. I'd be there, watch the house, come up

to see her on weekends. I don't recall the specific

dates or years. Seems like it was in the early '80s.

Q In 1985 were you living with your mom at that

point?

A No.

Q If you had to estimate as to when you stopped

living with your mom at her residence, what year would

that be, if you had to estimate?

A Late '82, early '83.

Q On cross-examination Mr. Sanders asked you some

questions about a chain, and then you testified that it

331

wasn't a chain that was missing, it was a watch, and

that you essentially got that watch back. I think you

said it was from the coroner's office; is that correct?

A Correct.

Q Okay. Could you describe that watch to us?

A Just a gold lady‘s watch. I haven't looked at

it in years.

Q Thin band? Thick band?

A I think thicker band, not like a man's

thickness, but maybe (indicating).

Q You're holding up your index finger and thumb?

A Say maybe half an inch or quarter inch.

Q Maybe quarter inch, half inch, somewhere in

that neighborhood?

A Yes, I haven't looked at it in years.

Q When you received it from the coroner's office,

was the watch intact? What I mean by intact, was the

band still connected to the actual time piece?

A From what I recall, yes.

Q And then Mr. Sanders asked you when looking

around the house after the police left, do you recall

that line of questioning?

A Yes.

Q Do you recall where or if you found your

mother's glasses at any point?

A Yes, I don't recall.

Q And as far as your mother's glasses, would she

be the type of person that would throw her glasses on

\*\*\*SHAWNA MANNING, CSR No. 12827\*\*\*

COPYING PROHIBITED PURSUANT TO GOVERNMENT com: 699540))

3

K

I

\

S

\

»

332

the floor or would she set them down on the table? What

would she do with her glasses when she took them off?

A Set them on the table.

Q She wouldn't just toss them on the floor that

you've ever seen?

A No, I can't see her doing that.

MR. THOMAS: Nothing further.

THE COURT: Mr. Sanders.

MR. SANDERS: No questions. Thank you, your

Honor.

THE COURT: May this witness be excused?

MR. SANDERS: I'd ask that he remain on call,

please.

THE COURT: That means you're subject to

recall, Mr. Kraemer. It has been determined,

nevertheless, that the attorneys are willing to allow

you to remain in the court, contrary to the witness

exclusion order, while you're on call as a witness.

I'll order that you not discuss your testimony with

any other witness in this case until the trial is

over. You may remain in the gallery.

Call your next witness.

MR. THOMAS: People would call Marta Kraomer.

THE BAILIFF: Remain standing. Raise your

right hand and face the clerk to be sworn.

THE CLERK: You do solemnly state that tho

evidence you shall give in the matter pending before

this Court shall be the truth, the whole truth, and

\*\*\*SHAWNA MANNING, CSR NO. 12827\*\*\*

COPYING PROHIBITED PURSUANT TO GOVERNMENT CODE 69954(D)

O\\\333

nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Thank you. Please be seated.

THE BAILIFF: Slide yourself forward. Speak

directly towards the microphone. Keep your voice up,

please. Please state your full name and spell it f r

the record. '

THE WITNESS: Marta Kraemer M-a-r-t-a

K-r-a-e-m-e-r.

THE COURT: Good morning, Ms. Kraemer.

THE WITNESS: Good morning.

THE COURT: Your witness.

MR. THOMAS: Thank you, your Honor.

MARTA KRAEMER, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q I'm going to show you an exhibit I'm putting up

on the screen.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q I'm going to show you Exhibit 35. Do you

recognize the person depicted in this photograph?

A Yes, I do.

Q Who is that?

A That's Rita Cobb.

334

Q Okay. And who was Rita Cobb in relation to

you?

A My mother-in-law.

Q And as far as Rita was concerned, how long

prior to Rita's murder did you know Rita?

A Approximately four years.

Q And then as far as Rita was concerned, how did

you first meet Rita? Was there a person that you met

Rita through?

A Yes.

Q Who is that?

A Through Daryl.

Q Okay. And Daryl is your husband?

A Yes.

Q Back in 1985, specifically September of 1985,

were you and Daryl married at that point?

A No.

Q When was it that you actually got married?

A In 1990.

Q Going to the events of September 23rd of 1985,

prior to that day, when was the last time that you saw

Rita?

A Approximately a month.

Q Where did you see Rita that month prior?

A At her home.

Q And where was that home located if you can

recall?

A On Highway 18.

335

Q Okay. Let me give you an address and you can

tell me if that address is familiar. Is the address

located at the -- the residence located

at 35435 Highway 18 in Lucerne Valley, county of

San Bernardino?

A I can only speculate. I don't recall.

Q Okay. So you don't recall the exact address?

A No, I never lived there at the time.

Q I'm going to show you a photograph that's been

marked Exhibit 1.

May I approach?

THE COURT: You may.

BY MR. THOMAS:

Q Do you recognize what's depicted in Exhibit 1?

A Yes.

Q What is that?

A That's the residence.

Q That‘s Rita's residence?

A Yes.

Q Was there another separate residence from the

residence that we're looking at 1n Exhibit 1?

A Yes.

Q And where was that residence located on the

property?

A Behind this house.

Q I'm going Lo show you what's been marked

Exhibit 2, and if you can use the laser pointer just to

point out to the jury where that second residence is in

336

Exhibit 2.

You're pointing to a structure just located to

the right and behind the main residence that you've

described?

A That's correct.

Q That's on Exhibit 2. Did you ever become aware

of anyone else, prior to September 23rd of 1995 (sic),

living on this property in this back residence?

A Can you repeat the question?

Q Prior to September of 1985, did you ever become

aware of anyone else, besides Rita, living on that

property in that rear residence that you just pointed

out?

A I don't recall, no.

Q Fast forwarding to September 23rd of 1985, that

was the day that you found -- you and Daryl found Rita's

body inside the residence; is that correct?

A Yes.

Q Prior to going over to the residence, was there

anything that you did? Did you call her? Did you see

Daryl call her?

A We had tried calling her all weekend.

Q When you say we, you're talking about you --

yourself and Daryl?

A Yes.

Q Do you remember -- when you say all weekend,

are you including Friday, Saturday, Sunday or --

A l remember calling all weekend.

337

Q Do you recall how many times you called or

Daryl called?

A No, I don't remember the amount of times.

Q Somewhere in the neighborhood of two to five or

five to ten?

A I don't recall.

Q Before you arrived at Rita's residence on

September 23rd of 1985, did you stop anywhere or do you

recall stopping anywhere prior to going to the

residence?

A I don't recall. It's been a long time.

Q As far as how you got to the residence, do you

recall how you got to the -- to Rita's residence?

A Yes.

Q How was that?

A We drove in the Monte Carlo.

Q That's the Monte Carlo that you and Daryl

owned?

A Yes.

Q Do you recall where you parked the Monte Carlo

when you got to the residence?

A Yes. We pulled in right behind the Cadillac

that was parked in the garage.

Q I'm going to show you Exhibit 3. Is that the

Cadillac that you just referred to?

A Yes.

Q And that's the garage area that you just

referred to also?

338

A Yes, it is.

Q And when you pulled up in the Monte Carlo, did

you park it immediately behind there or how far behind

the Cadillac?

A Just a few feet behind to the -- the Cadillac.

Q Do you recall who was driving? Was it you or

was it Daryl?

A I don't recall.

Q And then once you pulled up, was that something

that -- strike that.

You've been over to Rita's house on several

occasions prior to September 23rd, 1985?

A Yes.

Q During those prior occasions, was it unusual

for the garage door to be up and the Cadillac parked

inside the garage?

A No, that wasn't unusual.

Q Was that an indication that Rita was home if

you saw that?

A That would be correct.

Q So at this point you pull up. I assume you and

Daryl both get out of the car?

A Yes.

Q What did you do at that point once you and

Daryl get out of the car?

A We proceeded to go into the house.

Q Do you recall how you got inside the house?

A We went -- I followed Daryl. He went in the

339

side door of the

garage, inside the garage.

Q I'm going to show you a photograph that's been

marked Exhibit 4. Looking at Exhibit 4, there appears

to be a door in the center of the photograph of

Exhibit 4.

Do you see that?

A Yes, I do.

Q Is that

the door that you were referring to

that you and Daryl went into?

A Yes, it

is.

Q And then once you get inside the house, is

there anything that you notice that was unusual?

A The smell was terrible. I mean, it was awful.

It smelled like the septic system was totally backed up.

It was -- it was

Q Besides

you noticed that

A At that

Q Did you

awful.

the smell, was there anything else that

was unusual?

time, no.

notice whether or not it was hot or

cold inside the house?

A Looking

it at the time?

back or at the very -- thinking about

Q What you can remember today.

A It was warm.

Q Do you recall whether it was warmer inside the

house or outside

the house?

A Inside the house, but the smell was very

gagging. It was

overwhelming to where you couldn't

340

breathe.

Q So as far as you were concerned, that smell was

so overpowering that it prevented you from seeing or

observing any other things inside the house at that

point?

A Yes.

Q Did you notice whether or not the door in the

garage was locked or unlocked when you went in?

A No, I didn't.

Q Did you notice whether or not the windows or

any other doors to the inside of the residence were open

at any point?

A I noticed the drapes in the front was -- was

closed, which was unusual because the drapes in the

front was normally open.

Q Was that something that you noticed when you

pulled up to the residence or was that something that

you noticed once inside -- once you were inside the

residence?

A Once 1 was inside the residence.

Q That's when you noticed the drapes were pulled

shut?

A Yes.

Q That was unusual because they weren't normally

shut like that?

A That is correct.

Q Had you ever seen them shut like that?

A No.

341

Q So you walk in. Do you recall where you went

once you walked inside the residence?

A I walked towards the table because I believe I

had something in my hand.

Q Do you recall what you had in your hand?

A I believe I had a cigarette in my hand, and I

had a drink in my hand.

Q Do you recall where the table was inside the

residence?

A It was the dining room table right there when

you walk into the house.

Q I'm going to show you an exhibit. It's been

marked Exhibit 39.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q Do you recognize that exhibit or what it

appears to be?

A Yes, a diagram of the house.

Q Okay. That's the interior of Rita's house?

A Yes.

Q Do you notice on that diagram, Exhibit 39, the

garage area? Do you see where that is?

A Yes, I do.

Q And from there, you entered what appears to be

a door leading from the garage area to the interior of

the residence.

Do you see that?

342

A Yes.

Q Where was the table that you said you might

have set some stuff down?

A This being a desk, this would be the table by

the front windows.

Q You're indicating a circle that's about in the

center of the photograph, a little to the left of

center, that's at the bottom of the photograph; is that

correct?

A Yes.

Q Okay. I'm going to show you an exhibit that's

been marked Exhibit 25.

Do you recognize what's depicted in Exhibit 25?

(Whereupon Exhibit 25 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q What does that exhibit show or depict?

A A drink and a pack of cigarettes.

Q On this table that you were just speaking to us

about?

A Yes.

Q The drink that's on the table, is that

something that you brought over to the residence?

A Very possibly.

Q Okay. But you don't independently recall

bringing that over?

A No, I --

343

Q Do you recall telling any of the detectives at

the scene that you brought that drink over?

A No.

Q And have you had an opportunity to review your

statements that you made back in 1985 to the detectives?

A Yes.

Q And back in 1985, your recollection of the

events were -- was more fresh in your memory than it is

today; right?

A Yes.

Q Do you remember seeing this in any of the

reports about a drink that you had brought over?

A Yes.

Q Even seeing that didn't refresh your

recollection as to bringing the drink over to the house?

A No, but the -- definitely the cigarettes.

Q What type of cigarettes did you smoke?

A Virginia Slims.

Q I‘m going to show you a photograph that's been

marked Exhibit 26.

Would that have been the type of cigarettes

that you smoked back in September of 1985?

(Whereupon Exhibit 26 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q Those were Virginia Slims lights?

A Yes.

344

Q And that was on the table that you just

described or earlier described?

A Yes.

Q I notice there's what appears to be a Slurpee

to the left of the pack of cigarettes?

A Yes.

Q Is that something that you would drink back in

September of 1985? Did you have Slurpees every now and

then?

A Yes.

Q Okay. Did Daryl smoke too?

A Yes.

Q Okay. Do you recall what he smoked back in

1985?

A I believe Marlboros.

Q Okay. Do you recall whether or not Rita

smoked?

A She did.

Q Do you recall what type of cigarettes she would

smoke?

A I don't recall.

Q When you entered the house, you said you went

to the table. You put some items down, which included

the pack of cigarettes; correct?

A Yes.

Q Do you recall telling the detective back in

September of 1985 that you were carrying a wax cup

containing a Slurpee that you had purchased at the local

345

convenience store and the cigarettes and lighter when

you entered the residence?

A I don't recall that, but I did read that in the

statement.

Q As far as Daryl was concerned, you said you

went to the table.

Did you see where Daryl went once you went to

the table?

A No.

Q At some point was there something that was said

by Daryl that caused you some concern?

A Yes.

Q Was that while you were in the general area of

that desk and that table?

A Yes.

Q What was said?

A Oh, my God. She's finally done it.

Q Do you recall telling the detective back when

you were interviewed in 1985 that Daryl stated quote

"Oh, my God. She's killed herself"?

A That would -- that sounds right.

Q And then once you heard this, what did you do?

A I immediately turned and went towards him.

Q Where was he at at this point when you went

towards him?

A He was in the hallway. lt was only a matter of

seconds that all this occurred.

Q Putting Exhibit 39 back on the screen there,

346

where was Daryl at the time you met up with him after

you heard him say, oh, my God. She's finally done it or

she's killed herself?

A Right by the post going towards her room.

Q If you could use the laser pointer to point

that out.

A Right here by the wall.

Q You're pointing to the area that there's an A24

in that area.

Do you see that?

A Right.

Q Then there‘s what appears to be a door and

you're pointing to that general area as to where Daryl

was?

A Yes.

Q Is that correct?

A Yes.

Q What was Daryl's demeanor when you first made

contact with him at the doorway there?

A He was in a state of panic, hysteria.

Q Was he crying?

A He was screaming.

Q Okay. Do you recall any of the things he was

screaming?

A Oh, my God, why?

Q At this point did you know what was going on?

A NO.

Q What did you do while he was screaming at this

347

point?

A I walked into the bedroom, and --

Q When you walked into the bedroom, what, if

anything, did you see?

A I remember -- this is really hard.

Q Take your time.

A I remember him saying that he thought she

killed herself. I'm sorry. I thought I could do this

real easily. It's not that easy.

Q Take your time.

A I remember her leg being propped up. Thank

you. I remember her teeth -- I thought I saw her teeth

on the pillow. I thought I saw part of her face, and I

just said, she didn't kill herself. Somebody's been

here.

Q And what caused you to say that? Was there

anything in particular that caused you to say that?

A I don't know. I think I blocked some things

out since then, but I just told him I knew somebody had

been there. Nobody could have done this to themselves.

Somebody has been here. She could not have killed

herself.

Q Did you notice whether or not Rita had any

clothing on?

A No. I could tell her body was twice the size

of her normal capacity because of the de- --

Q Would you characterize her body as being

somewhat bloated?

348

A Quite a bit bloated.

Q Okay“ \_

A And you got to understand, the smell was still

totally overwhelming in the house. It was real hot, and

the odor in the house was still really overwhelming.

Q You described to us seeing some of the stuff.

Was there anything that you haven't already

mentioned that you remember observing when you walked

into the room?

A Such as?

Q Anything else. You described seeing some of

her, I guess, it would be her dentures on the bed?

A Yeah, I thought I saw her dentures on the

pillow. I saw her wedding ring over on the night stand.

Q I'm going to show you a photograph, and prior

to coming to court today, you were never shown any

photographs; correct?

A That's correct.

MR. THOMAS: May 1 approach?

THE COURT: You may.

BY MR. THOMAS:

Q I‘m going to show you Exhibit 10. You

described seeing her wedding ring.

Is that what you saw that’s depicted in

Exhibit 10?

A Yes, sir.

Q And that's the way that you saw the ring was

how it's depicted in Exhibit 1O? ‘

349

A Yes, sir.

Q Did you touch anything when you went into the

room at all?

A No, not when I first went into the room.

Q You just saw Rita, and she was on the bed?

A Yes, she was on the bed.

Q Okay. You described that you saw her dentures.

You described seeing a wedding ring.

Was there anything else that you saw that you

can remember?

A I remember later that I -- after I tried to

make the phone call and I was trying to get some air,

because I went in and tried to open the bedroom window

at one point, when I was coming out, I thought I saw her

purse on the bed.

Q Okay. So you -- you think you observed her

purse laying on the bed area?

A Yeah. When I was coming out, that was -- that

wasn't the first initial time that I had been in the

room.

Q Okay. So that was at a later point?

A A later point after -- after I -- already tried

to make phone calls.

Q So let's just focus in on the first time that

you go into the room. Did the room appear to be

ransacked --

A No.

Q -- in any way? As far as, did you notice any

350

clothing or anything around the room?

A No.

Q Do you recall as far as Rita was concerned, are

you familiar with how she hung her clothes and

specifically what type of hangers she would use?

A After we -- after a year and a half, after we

went through the room because that took us that long to

go through the room, it took us a year and a half, she

had metal coat hangers.

Q Those were the only types of coat hangers that

you remember observing a year and a half later?

A Yeah.

THE COURT: We're going to take our lunch

recess now, ladies and gentlemen. 1:30. You're

admonished that it is your duty not to converse among

yourselves or with anyone else about any matter

connected with this case nor form or express an

opinion on it until it's submitted to you.

Ms. Kraemer, I'll order you back at l:3O.

THE WITNESS: Yes, sir.

(Whereupon the lunch recess was taken.)

351

VICTORVILLE, CALIFORNIA; JANUARY 24, 2011;

Q4

O

‘CD

23

\*7

n-Q

DEPARTMENT NO. VtZ HONORABLE TOMBERLIN, JUDGE

P.M. SESSION

(Appearances as heretofore mentioned.)

(Shawna Manning, Official Reporter, CSR No. 1282

-oOo-

(Whereupon the following proceedings were held in open

court in the presence of the juryz)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Good afternoon. Back on the

record in People of the State of California versus

John Yablonsky, who is here with his attorney,

Dave Sanders. John Thomas is here along with his

investigating officer, Detective Robert Alexander.

Marta Kraemer is on the witness stand still under oath

in cross-examination.

You may proceed.

MR. THOMAS: Thank you, your Honor.

BY MR. THOMAS:

Q I believe before we took the lunch break, we

were talking about how you were in the room and you we

still trying to figure out what you saw in the room th

first time that you went in there.

Do you recall that?

A Yes.

Q You've explained to us that you saw Rita's

dentures and you saw her wedding ring on the table and

7.

K8

G

352

then was there anything else that you noticed?

G

£1.

U]

IT‘

G

A I notic“ o was lying on her back, and hcr

leg was propped up.

Q As far as whether or not -- correct me if I'm

wrong, I think before the lunch hour, you said that you

couldn't remember whether or not she had clothing on?

A No, she did not have clothing on.

Q You remember that?

A Yes.

Q Now, as far as what you did once you went in

the room the first time, was Daryl inside the room with

you or was he at the door? Do you recall?

A No, he was out of the room at that time.

Q What did you do when you went in the room? Did

you touch anything or --

A No.

Q Then you left the room?

A Yes.

Q What did you do once you left the room?

A I remember coming out to find Daryl. I don't

remember where he was at that time. I believe he was

standing right there in the hallway, and I remember

telling him that somebody had been there; that there's

no way she could have done that to herself.

Q So you knew it wasn't a suicide at that point?

A Correct.

Q Once you told Daryl that, what was the next

thing that you did?

353

A I remember hugging him in the hallway for a

moment. s \*ke everything happened so fast.

D-I

rt

F4

F .

Q Then after you hugged him, at some point did

Daryl leave the house? Did he tell you where he was

going?

A He was going to go find John Sullivan.

Q Who was John Sullivan? Did you know that

person?

A Yes, I did.

Q How did you know John Sullivan?

A He was a family friend.

Q Did you go with Daryl to find John Sullivan?

A No.

Q What did you do once Daryl left?

A He told me to stay there and call whoever I

needed to call.

Q Do you remember at that point -- you said

earlier that the smell was overwhelming for you, and

that was what you were concentrating on. Was there a

point after you left the room that you were able to

notice other things that were unusual?

A It was very hot. It was very warm in the

house.

Q Did you find out or figure out why it was very

warm in the house?

A I think at the time I wasn't trying to figure

out why it was warm. I was more interested in trying to

cool it off, like, turn the swamp cooler on or open a

354

door.

Q What did you do

house?

A I tried to -- I

remember the exact order

long time ago.

Q Do you remember

the drapes?

A I did.

Q Do you remember

A I tried to open

it did not open.

A Yes.

open? Shut?

A I tried to move

recall.

opening the doors.

Did you at some

A Yes.

on?

heater was turned on.

O

H1

V-h

(“T

to see if you can cool he

opened the door. I don't

that I did it in. It was a

whether or not you opened up

opening up any windows or other

doors other than the ones that you've already mentioned?

only the one in Rita's room and

Q Were there drapes in Rita's room?

Q Do you recall whether or not those drapes were

the drapes aside -- I don't

Q Okay. So you tried to cool off the houso by

point turn on the swamp cooler?

Q At any point did you notice that the heater was

A I think Daryl was the one that noticed the

Q That wasn't something you did?

355

A No.

Q As far as you turn on the swamp cooler, did you

make any attempts at this point to call for help?

A Yes.

Q What attempts did you make to call for help?

A I remember dialing zero, and I got a busy

signal, so I dialed 9-1-l.

Q Did somebody answer when you dialed 9-l-l?

A Yes.

Q Yes. At that point were you able to talk to

somebody and explain what was happening?

A Yes.

Q At that point Daryl‘s already left I assume?

A Yes.

Q So you're on the phone with the 9-1-1 person.

Did they tell you that help was on the way?

A Yes.

Q How soon after you first entered the residence

did you call 9-l-l?

A I don't recall. Everything seemed to happen so

fast, and it was so long ago.

Q If you had to estimate, would it be a period of

minutes? Hours?

A Minutes.

Q It wasn't seconds?

A I would say minutes. You could tell she was

already deceased.

Q Okay. And then at some point when you called

L M, I. I

356

9-1-1 or after you called 9-1-l, did Daryl come back?

A Yes.

Q Were you still on the phone when Daryl came

back? Do you recall?

A I don't believe I was on the phone still.

Q Were you inside the house? Outside the --

Rita‘s house when Daryl came back?

A I think I met him on the porch.

Q When you met him on the porch, did you hear him

pulling up to the driveway and you went out to the porch

area or do you recall how this happened or were you

standing outside waiting for Daryl to come back?

A I don't recall.

Q Once he came back, did you and Daryl go back

inside the house, either of you? Do you recall doing

any of that?

A I don't recall.

Q Then at some point medical help came to the

residence I assume?

A Yes.

Q When they came to the residence, do you recall

what you did, if anything? If you can't remember, you

can't remember.

A It was a long time ago, John.

Q Do you recall telling -- prior to the medical

help arriving, did you pull the car out from the

driveway area? Do you recall that?

A Did I pull the car out?

357

Q Yeah.

Pt

if‘

D.)

(T

cl-

tr

O

-:

(‘T

o

H

Q

A I boliovc

me on the phone to put

the car down on Highway 18 so they could find -- so they

could find the residence.

Q So you personally moved the Monte Carlo after

Daryl got back from going to John Sullivan's place?

A I do recall that now that you mention that.

Q And then do you recall telling ADotective Matt

back in 1985 that when the paramedics arrived they

entered the residence through the front door going to

the victim?

A Yes.

Q Once they arrived, did you ever go back inside

the house that day?

A I think they said to stay out

Q You followed their orders and

house?

A I think I proceeded to go in,

not to go in, and the sheriff's office

of the house.

Q At some point did -- after --

of the house.

stayed out of the

but Daryl said

said to stay out

I assume the

sheriff's department showed up at the scene?

A Yes.

Q -- is that correct? And at some point after

all the personnel, the sheriff, the paramedics, after

they all left the scene, did you go look around the

house at any point?

A Can you repeat the question?

358

Q When you -- when the sheriff's department,

paramedics, left Rita's house, did you and Daryl go

inside the house afterwards at some point?

A At some point, yes.

Q Do you recall if it was that day or some later

day that you actually went inside the house?

A Yes.

Q Was it that day or --

A Later in the evening, yes.

Q Okay. Did you ever look at Rita's car at some

point?

A Yes.

Q What, if anything, did you find in Rita's car?

A There was a bag of pistachios in the backseat

of her car.

Q Do you recall where the car keys for Rita's car

were?

A I found them on the desk by the phone.

Q I'm going to show you a photograph that's been

marked Exhibit 29.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q Show you what has been marked Exhibit 29, do

you recognize this?

(Whereupon Exhibit 29 was marked

for identification.)

THE WITNESS: Yes.

359

BY MR. THOMAS:

Q There's a set of keys in the exhibit. Are

those Rita's keys, if you know?

A They appear to be, yes.

Q And those were in the desk area that you spoke

about earlier this morning?

A Yes.

Q Do you recall the day that you were -- or that

you found Rita's body, do you recall a radio being on?

A Yes.

Q And is that something that you recall telling

the detectives back in 1985 or is that something that

you recalled earlier in 2009 when you were again

interviewed by Detective Alexander?

A In 2009.

Q As far as your interview with the detectives

back in 1985, could you describe to us your emotional

state when you were being interviewed?

A In 2009?

Q In 1985.

A In 1985, my emotional state?

Q Yes.

A I was very upset.

Q Would it be fair to say that you weren't

focused in on all the details that you were giving to

the police officer or the detective that was

interviewing you?

A That would be correct.

360

Q Fair to characterize that during that interview

you were in a state of shock?

A Very much so.

Q This interview occurred approximately less than

two hours after you had found the body?

A Yes.

Q As far as this radio being on, tell us about

what you remember about the radio.

A I had to turn the radio down in order to make

the phone call.

Q Was it playing loud or was it just on?

A It was loud enough that I needed to turn it

down in order to make the phone call.

Q Do you recall where the radio was?

A It was in the living room.

Q Now, as far as Rita was concerned and her

clothing, you're familiar with the room she was found

in, her bedroom?

A As far as?

Q Had you been in there before?

A A couple oi times.

Q And you were in there afterwards; right?

A After that day?

Q Yeah.

A Yes.

Q How would you characterize the clothing

situation? Were her clothes spread all over the room or

were they nicely hung? How would you characterize the

361

room?

A They were nicely hung. I mean, it didn't look

like there had been things, like, they had been strung

all over the place like there had been an alterca ion of

any type.

MR. THOMAS: I have nothing further at thi

point.

THE COURT: Cross.

MR. SANDERS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SANDERS:

Q Good afternoon, Ms. Kraemer.

A Good afternoon.

Q I think you said you had known Ms. Cobb four

years before her death?

THE COURT: Move the microphone in front of

your face, please.

BY MR. SANDERS:

Q Had you known Ms. Cobb for about four years

before her death; is that correct?

A Yes, sir.

Q Had you met her before you met Daryl? The

reason I ask is I was under the impression that she had

been married to your former father-in-law?

A That is correct. She had been married to my

former father-in-law, but I had not met her until I met

Daryl.

Q Okay. What was your former father-in-law's

362

name?

A Paul Simon, Sr.

Q Paul Simon, Sr. That was not the one that she

was married to that died in 1979?

A I don't know what year -- I don't know which

one you're referring to.

Q Okay. Daryl had said that she had been married

to somebody and that he passed away in, like, 1979, and

he lived at that house.

A That would probably be Mr. Cobb.

Q That was Mr. Cobb. Okay. You didn't know her

when she was married to Mr. Simon?

A NO.

Q When you said that you and Daryl had been

trying all weekend to call her, was that you trying to

call her or Daryl trying to call her?

A Daryl.

Q You didn't try to call her yourself?

A No.

Q All right. And the district attorney asked you

were you trying to call her on Friday.

Do you know if Daryl was trying to call her on

Friday the 20th?

A I don't recall.

Q You don't know what time it was he was trying

to call her on Saturday?

A I don't recall the times.

Q So you and Mr. Kraemer get over there and you

363

park and you go in the back door. I'm going to call the

garage door the hack door.

A That's fine.

Q We're on the same page?

A Yes.

Q You walk through the kitchen and set down your

cigarettes; is that correct?

A Correct.

Q Did you ever smoke a cigarette in the house

that day?

A I don't recall.

Q Okay. Then you heard Daryl, and you also went

in the bedroom; is that correct?

A Yes.

Q Do you remember how much time you spent in the

bedroom that first time before you went out?

A Seconds.

Q All right. And then I believe you said Daryl

went off to go to Mr. Sullivan‘s house?

A Correct.

Q He told you he was going to do that?

A Yes.

Q All right. And did he give you any

instructions when he left like, call the cops, or

something like that?

A Yes.

Q And you had a cell phone?

A No, back then there was no cell phones.

364

Q Okay. What phone did you use then?

A The house phone.

Q It was working?

A Yes.

Q You didn't have any trouble getting through?

A No.

Q Then you said that there was another point when

you went into the bedroom; is that correct?

A Yes.

Q And how long were you in the bedroom the second

time?

A Probably a matter of seconds.

Q Is that because you were trying to open the

window?

A Yes.

Q And it wouldn't open?

A That's correct. The odor was so intense. You

could not stand to be there very long at all.

Q Then you came out?

A That's correct.

Q And you didn't go back in there a third time?

A No, sir.

Q Okay. So everything that you observed in that

bedroom, you observed in one of those two visits which

were each for a very few seconds?

A Correct.

Q I'm interested in a statement that you told the

prosecutor.

365

You said when you looked at her, you felt she

could not have done this; correct?

A That's correct.

Q And do you remember what it was that you saw

that made you feel that way?

A Like I said, it's a bit -- I think I blocked a

lot of things out since then, but I remember seeing her

dentures on the pillow.

Q Yes.

A The way she was lying there with her nude body,

and the way she was positioned with her leg up and she

was twice her normal size.

Q Was it -- I didn't mean to cut you off. Were

you finished?

A No. There was -- there was -- just appeared to

me that somebody had been there, and I didn't fool that

she could have done that to herself.

Q Thank you. The -- the -- the other question I

had on that was: Did you see any particular wound or

anything like that that made you feel that way?

A The way that she was positioned, it made me

feel like somebody had had sex with her to be quite

frank.

Q All right. When you said you opened the

drapes, which drapes were you referring to?

A The front drapes to the house.

Q Those are the ones that are right there by the

dining room table?

366

A That's correct.

Q I noticed that in that photograph of your

cigarettes and Slurpee cup, the drapes are open.

Is that because you had opened them?

A Yes.

Q I believe that you said that when the police

were finished doing what they were doing, it was later

in the evening; is that right?

A Well, they quickly interviewed me because I had

my son I needed to pick up back where I lived in Phelan.

Q I see. Then you went to Phelan and came back?

A I left Daryl sitting down at the highway.

Q Okay. So you had to go back and get Daryl?

A No, I had to go back and get our son in Phelan.

Q I'm sorry. After you got your son in Phelan,

did you then go back out to Lucerne Valley to pick up

Daryl?

A Yes.

Q And is that when you went into the house later

that evening?

A Yes.

Q Okay. And you were discussing with the

prosecutor here that you then looked through the

Cadillac also?

A I don't know if it was that night or not.

Q Could have been a different time?

A I don't recollect.

Q Do you ever recall seeing my client in 1985?

367

A No.

Q Did you ever meet Mr. George Yablonsky back in

'82, ‘S3, '84 or ‘85?

A Myself, no.

Q So you had never socialized with Mr. George

Yablonsky at any time that you can recall?

A Myself, no.

Q I believe you told the police that -- the

police asked you of people that had had contact with

Ms. Cobb; is that correct?

A Yes.

Q You told them about a boyfriend she had named

Fred?

A Yes.

Q I believe you also said she was dating a guy

from the country club?

A Yes, I said that. She told me she had a couple

of drinks with a guy from the country club.

MR, THOMAS: Objection. Calls for hearsay.

Move to strike.

THE COURT: Sustained. It will be stricken.

BY MR. SANDERS:

Q Were you -- were you aware of any other persons

that she had been seeing, let's say, six months before

her death?

MR. THOMAS: Objection. Relevance.

THE COURT: Sustained.

368

MR. SANDERS: Nothing further. Thank you,

your Honor.

THE COURT: Cross -- I mean, redirect.

MR. THOMAS: Nothing further, your Honor.

THE COURT: May this witness be excused?

MR. SANDERS: Remain on call please.

THE COURT: Subject to recall.

MR. SANDERS: Thank you.

THE COURT: That's fine. Ms. Kraemer, the

attorneys have agreed that, though you're subject to

recall, you may remain in the courtroom for the

remainder of the trial. I will order that you don‘t

speak to anyone. I know you're here with your

husband. Do not speak to him about your testimony

today. You may speak to anybody you want to after the

trial is over, but until a verdict has been reached,

you may speak to no one unless it's either the

investigating officer for one of the attorneys or one

of the attorneys themselves. Is that okay?

THE WITNESS: Thank you.

THE COURT: Do you agree?

THE WITNESS: Yes.

THE COURT: Please have a seat. Call your

next witness.

MR. THOMAS: People call Diane Flagg.

THE BAILIFF: Remain standing. Raise your

right hand and face the clerk to be sworn.

THE CLERK: You do solemnly state that the

369

evidence you shall give in the matter pending before

Ft

CT

G

this Court shall be the truth, whole truth, and

nothing but the truth, so help you God?

THE WITNESS: Yes, I do. “\

THE CLERK: Thank you. Please be seated. \

THE BAILIFF: Slide yourself forward. Speak‘

directly towards the microphone. Keep your voice up,}

please state your full name and spell it for the f

record. E

THE WITNESS: Diane Flagg D-i-a-n-e, also J

Marie M-a-r-i-e, Flagg F-l-a-g-g. J

THE COURT: Good afternoon, Ms. Flagg. //

THE WITNESS: Good afternoon. /

THE COURT: You know, you've got a nice full

Voice. You don't have to worry about speaking into

that microphone.

THE WITNESS: Good. It makes me feel more

comfortable when I don't.

THE COURT: Just keep your voice up.

THE WITNESS: I am.

THE COURT: Your witness.

MR. THOMAS: Thank you, your Honor.

DIANE FLAGG, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q Back in September of l985, where were you

370

living?

A At 7520 Fairlane in Lucerne Valley at

Wolf Mountain Sanctuary.

Q And as far as that sanctuary goes, in relation

to Highway 18, where is that?

A It's a little bit closer -- it's on the way to

Big Bear, little bit closer than where Rita Cobb's house

was.

Q The sanctuary is a little bit closer

to Big Bear than Rita Cobb's place?

A Correct.

Q You knew a person by the name of Rita Cobb?

A Yes, I did. I knew of her.

Q And at some point were you interviewed by a

Detective Roger McCoy from the San Bernardino County

Sheriff's Department?

A Yes, 1 was.

Q And what was the purpose of that interview?

A Well, we actually -- Tonya and I were noticing

that there was a lot of police officers over at Rita's

house, and we noticed -- we had a conversation like the

day before that we had seen --

MR. SANDERS: Objection, your Honor. The

answer is nonresponsive, and I'd ask that the witness

only speak for herself.

THE COURT: That's sustained. In other

words, you were mentioning a we. I don't know that

there's any reason for that so at this point --

371

THE WITNESS: Try to exclude the person that

I'm having a conversation with.

THE COURT: Yeah. He's not asking you about

a conversation. Listen to the question. Start again.

THE WITNESS: Go ahead.

BY MR. THOMAS:

Q You noticed there was police cars outside

Rita's house.

Do you recall what day that was?

A It was either -- I mean, it's been 26 years. I

can‘t say the4exact day that it was, but I know it ﬂy‘

--'-s\ \_ \_ W \_\_ \_ \_ \_\_>

was -- it was -- we had a lot of -- there was a lot of

>\_i\_\_\_\_§€ gm”): irli W \*7 m i ‘ W‘ V ruyg

cars and everything. Then the next day, we noticed that

\V/ (\ l> ?‘---'<\_.- /\\_-i\_\_\_\_ i\_ Vi -P A\_\_\_ -\_ \_‘ , \_,i\_>: ,1);

there was -- the police were there, and that's when we

thought -- I thought that I should go and talk to the

police because I had sawlsomething before: y§§“ih5§1!1he

day before when I saw the police cars. We knew

something was wéong Q? Ilknew something was wrong. I'm

leery -

Q This interview that you had, it looks like it

occurred sometime approximately September 26th of I985?

A Yes.

Q The time that this interview occurred, the

events were fresher in your memory at that point than

they are today?

A That's correct.

Q You've had a chance to look over the police

report containing your interview?

372

A Yes.

Q And during that interview, you described to

Detective McCoy a few things.

Do you recall that?

A Yes.

Q What did you describe to Detective McCoy?

“A That I saw a man hitchhiking that was between\_

Rita Cobb's house going towards the Big\_§ear area,‘ ,\_“

hitchhiking that way. He was, like, around six feet

\_\_\_\_\_",,\_\_ . - ,l\_ ,,.ItlJI\_\_”-

tall, black hai;L,mnstache, beard, and had jeans on.

$\_\_\_\_ \_»\_-'---”\_” \\*-\\_\_..\_...\_\_.\_.l\_ .\_,\_,\_ \_ .\_\_;\_.=-.=.\_\_¢ --..\_»

Then I also recall --

\ ” '

Q Let me stop you there. That's one thing that

you told Detective McCoy?

A Yes.

Q Okay. And then you also told Detective McCoy

about another thing; is that correct?

A Yes.

Q What was this other thing that you told

Detective McCoy about?

A I saw a number of cars there before I seen the

.\_.\_i\_i\_i\_\_,\_-m- 7/ ,,\_\_\_,i\_ \*\>' .\_.\_r\_, I I. MW Ari, M II“ ,i\_

police there. I remember seeing a number of cars, and

then I saw a Pinto car, silver. H77

.»\_\_Z\_\_\_\_\_\_\_\_1\_r \_-\_’¢\_,\_\_,Al\_..@\_/------=-------»-

HQ I'm going to show you what's been marked

-<-\_.-\_-.i.\_\_,.t\_,\_\_\_\_,\_\_\_\_\_\_"\_ \_,,.\_. W» '-- -- --- "M"--> / -...\_\_\_.\_\_\_\_,\_\_v\_w \_ ,{ ...\_\_\_\_\_\_\_ \_ 9

ExhibitLlLWandVl;ll bring it up there so that you can

see it.

May I approach the witness?

THE COURT: You will -- you can.

373

BY MR. THOMAS:

Q Do you recognize what's depicted in Exhibit 1?

A Yes.

Q What's depicted in Exhibit 1?

A You see, that's Rita's house where she lived

and her car in the garage there.

Q And you described that car to Detective McCoy

as a Cadillac?

A Cadillac, yes.

Q What color would you say that car is?

A It's -- I don't have my glasses on. From what

I can see --

MR. SANDERS: Objection, your Honor. The

photograph speaks for itself if that's what she's

using for identification.

THE COURT: Sustained.

BY MR. THOMAS:

Q Do you recall without looking at the photograph

what color Rita's car was, her Cadillac was?

A I don't remember the color of her car. Looks

like it was blue -- bluish.

Q As far as the day where you were describing

\_i\_u, \_w\_\_w’Wi \\_\_\_\_drmy,mir»ci\_m:,ir@x¢

this to Detective McCoy, do you recall telling

-\* '-- 7 ' -- --'--\_ e-\_.c\_.\_\_ \_ \_ \_\_\_ \_\_ A\_\_‘,,4.J»

Detective Mo§gy\_that it was either Friday night or

Saturday night?

i\_\_%\_\_\-\_g\_MmUm&wJ\_\_\_

A Yes.

Q And you specifically remember another car being

-.-"“""' ""'“"'\*--< J -' I“ - -- --- \_\_L\_\_ \_ ‘\_ ,2 \_€\_\_\_'\_\_,\_..-\_\_------------‘\\ \

there? Wmﬂmaqﬂ‘

| C/-'\ i

374

A Yes.

--\_\_\_,

Q What kind of car was that?

. \_‘“\_, \_Wﬂ\_,»

A A F@£5‘§1ﬁE5.\* i W

Q Was this a Pinto station wagon or was it a

regular --

A It was a car.

Q Okay. Do you recall what color that was?

A Silver.

Q As far as the color of the vehicle, do you

recall what time you saw this?

A No.

Q Was it evening hours?

A No, I don't recall.

Q You just recall there was a silver Pinto?

\_ /\_..\_’,\_,\_\_\_-%\_\_\_\_Q ,.\_.a\_\_,\_a-..,..(. \_..\_i.\_.a ....=- -.k\_\_.\_...==,\_\_ \_ -\_,,,,\_,,\_\_," ,\_/-\/’

A Because I had a conversation with the other

-iQ\_ GLK;\_,\_\_\_MM\_ /<\_, Q,i ,ii\_,\_iWp\_\_\_G\_mm(,,\_\_\_

person. That's why I recall it.

Q That conversation was with this person that you

referred to as Tonya?

A Yes.

Q The color of the Pinto, would that be something

be wrong on the color? j

A It's like 25, 26 years ago. I know for sure 7t

was a Pinto, and it was a car. I know that for sure.

As far as the color, it's a possibility. You know, f/

mean, it's 26 years later.

Q As far as anybody in the area of the Pinto or

Rita's Cadillac, did you see anybody outside?

>

that you were positive of back in 1985 or that you could;

I

375

A NO .

Q Do you recall the Cadillac? Was it in the

garage? Outside?

A No, I don't recall.

MR. THOMAS: Nothing further.

THE COURT: Mr. Sanders, you may inquire.

MR. SANDERS: Thank you, your Honor.

CROSS-EXAMINA'I‘ION

BY MR. SANDERS: -

Q Good afternoon, Ms. Flagg.

A Good afternoon.

Q Have you seen a copy of the police report that

has your statement? \_

A Yes. \

Q Were you able to read over that? x

A Yes. %

When you read over that, do you remember thét

Q

\\ \_'\_\_ \_. ‘\_ \_\\_ \_7 \_\_\_ \_ \_/\_ \_ \_ ff,‘ 5 \_\_ ‘J:

that's what you said or could you remember?

»-‘ /A4-’\* --l-\_\\_\_\_‘ ‘-- ‘L-e ""

A The part -- the only thing I was questioni g

J \_..\_\_/He - J" \* X‘---ii \_, , , . M

myself was more on the hitchhiker, but cars I kind of

kk€\_\_‘!’/ﬂ\_Mu\_, l\_“\_4‘imil.w\_7“-iiWi\_\_W \-M, ,riil

like, so our neighbor had a Pinto car. I do remember

r\_my\_qJ\_-\_\_d\_\_,i» .

the car. As far as the hitchhiker, I surely couldn't

\_identify him today.

MhyQ‘%W Okay. so let me understand, I believe that you

said that you lived up Highway 18 from Rita, Ms. Cobb?

A Yes.

Q And can you see her house from where you live?

A NO.

376

Q So when you saw these things, it was because

you were driving by?

A That's correct.

Q All right. And you mentioned a person by the

name of Tonya.

A Yes.

Q Who is Tonya?

A Tonya Carloni (phonetic). She owns Wolf

Mountain Sanctuary. She knows a lot of people in

Lucerne, and she had mentioned Rita must have somebody

over.

Q Ma'am.

A I'm just saying. That's how I remember it.

Q Okay. I can't ask you what someone else said.

A Yes, that's how I remember it though.

Q I'm just trying -- you said that Tonya was

someone that was riding with you at the time?

A Yes.

Q Were you going up the hill towards

Wolf Mountain?

A Yes.

Q Were you going towards Wolf Mountain?

A Coming back to our home.

Q Okay.

A Yeah.

Q And I think I heard you say that you saw

\_ ,.-\_\

is \_,(< ,\_ \_\_\_iM\_\_§\_\_\_\_\_\_,\_ \_\_\_‘\_,\_,

Vseveral cars at Rita's hous§;#

\_Then the next day is when you saw the police

377

activity?

A Yes.

Q So this time that you're driving up the

mountain with Tonya, was the day before you saw the

police activity?

A Yes.

Q All right. And I believe that the first thing

you said to the police was that as you were driving up

towards Wolf Mountain, you saw a hitchhiker going passed

Ms. Cobb‘s residence?

A Yes.

Q All right. And you gave that description to

the police?

A Yes.

Q And then I believe you said that you also saw

wutwwwgw QM,i\_\_\_i\_w\_\_M\_\_$\_\*qk( Wg\_\_\_\_\_\_\_\_ﬂ\_ﬂ,»

several carsﬁparked in front of her house?

A Yes.

Q And by several! did you mean three or four or

six or seven or another number?

A It's been a long time, but I would -- I don't

think six or seven would be in my head. It would be a

lesser amount like tQQ%i4m;iQg£.

Q Did three or four include the Cadillac?

<=\*--..\_;\_\_\_:\_ \\_\_;‘,\_\_ \_r>)\_\_\_¥\_\_\_\_,,.$ H,‘ ,,,,...\_,\_-\_-.1-< :-'x 1, .\_.1..\_\_\_\_\_.\_....\_V---/

iéir\_ N9-,1

Q Three or four besides the Cadillac?

A Yes.

Q Do you remember the make or model of any of the

other cars?

378

A NO.

Q When you were interviewed, you may not remember

this because, like you said, it was a long time ago --

A Um-hmm.

Q -- but when you were interviewed, you told this

\*-=--\-\_--i-----\*\*<""\_p‘-\\_‘%“'----».\_.-\_\_\_\_\_\*\_\_\_\_\_\_\_:,\_ u\_'\_\_4\_..- l-=--‘

officer that you saw several cars; is that your words?

,\_\_r.\_\\_\_\_\_\_\_Z\_\_..\_\_\_,\_ ,l\_Nj,¢ -\\_\_‘&\_ i ,r\_=\_.

A Yes.

\vﬂ\_\_\_/,\_

Q Okay. And then did the officer ask you was one

of them a Pinto? K’ " “N “‘” "TETEWWME

""-‘,\_’,4-----'”""T\_-T""

A No, not at all.

ll\_#\_-\_ill/-\\_\_l\_,i.\_

Q Okay.

A Not at all. Didn't know anything about that.

He didn't mention it. I mentioned it.

Q That was the only make or model other than the

Cadillac you can remember?

A Yes.

Q So the other three or four cars that were

»\_\_-\_\_\_ \_,\_,\_ \_,¢\_\_,\\_\_‘\_,\_\_,\_\_,\_\_,\_,\‘\_[.\_e\_\_\_\_‘\_\_\_\_A\_\_\_\_\_\7(’\_-\_\_’V\_\_‘"\_v“

there, you don't remember their makes or models?

‘\_\_\_\_\_\_v\_\_<,\_,4.\_»-,\_4..\_,> \_ -\*\*- ---- ----- W -<...\_\_\_ \_ \_t I \_\_\_ \_“v\_\_' \_w\_\_\_\_:\_J\_ﬂL‘ﬁ

VA No.

h1QNn\_ All right. Now, when the -- when the

prosecutor just asked you that question, he asked you in

this way, did you see these things on Friday or Saturday

evening, but in your report you said just Friday or

-\\_'\_\_\_\_\_\_\_\_,\_\_Q\_,-)--J--4-‘W----\*-»\=--.-...\_\_\_\_\_,\\_\_\_\_\_D\_u\_ y \_\_\_\_\_5 y\_Q\_\_ \_..\_l, \_M\_,\_\_\_M,v\_,\_

Saturday.

You didn't use the word evening; did you?

A No, I wasn't --

Q Is that because your best recollection is you

‘nwent by there in the daytime?

2

379

A Yeah, I didn't know what time of day it was. I

don't remember the time of day 26 years ago. r\

Q Could it have been morning, noon or --

A Yes, that's correct. !

Q -- or afternoon?

A That's correct.

MR. SANDERS: Thank you, ma'am. Nothing

further on cross-examination.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q Do you recall what -- where you were coming

from when you went by Rita's house?

A The market. We always go down to the market.

Q When you say we always go down to the market,

you're talking about yourself and Tonya?

A Yes.

Q Did then -- as far as your trips to the market,

was there a specific time that would occur?

A No.

Q Would you go sometimes really late at night?

A If we were hungry. It was to get food.

Q Okay. And so there were times you would go

during the daytime. There were times you would go

during the nighttime.

You can't narrow it down based on when you went

to the market?

A No, I can't. I'm sorry.

380

MR. THOMAS: Nothing further.

THE COURT: Cross.

MR. SANDERS: No, sir. Thank you.

THE COURT: May Ms. Flagg be excused?

MR. THOMAS: Yes.

MR. SANDERS: Yes, your Honor.

THE COURT: Thanks for being with us,

Ms. Flagg. You're excused. That means you can go or

stay, whichever you'd like.

THE WITNESS: Thank you.

THE COURT: Call your next witness.

MR. THOMAS: People call Roger McCoy.

THE BAILIFF: Remain standing. Raise your

right hand and face the clerk to be sworn.

THE CLERK: You do solemnly state that the

evidence you shall give in the matter pending before

this Court shall be the truth, the whole truth, and

nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please be seated.

THE BAILIFF: Please state your full name and

spell it for the record.

THE WITNESS: Roger T. McCoy R-o-g-e-r

M-c-C-o-y.

THE COURT: Hello.

THE WITNESS: Hello.

THE COURT: Mr. McCoy, I don't know if I

remember seeing you before, but you look familiar.

381

THE WITNESS: Well, been a long time I've

been around.

THE COURT: Your witness, Mr. Thomas.

MR. THOMAS: Thank you, your Honor.

ROGER MCCOY, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q Good afternoon, Mr. McCoy.

A Hello.

Q At some point did you work for the

San Bernardino County Sheriff's Department?

A Yes.

Q How long did you work for the San Bernardino

County Sheriff's Department?

A I was employed with them for 22 years.

Q And do you recall the year that you retire ?

A 2000.

Q Was there a rank that you retired?

A Sergeant. I

Q And at some point did you spend any of youri

22 years with the San Bernardino County Sheriff's

Department as a homicide investigator?

A Yes. //

Q Do you recall the years that you spent/as a

homicide investigator? /

A From 1984 to '86.

382

Q So it was approximately two years, a little

over two years?

A Little bit over two years.

Q And as far as your time in homicide, was there

a method or way that it would be determined who was

going to go out to which homicide scenes?

A Generally depends on who had the duty at the

time. There were four teams, and the duty was rotated

through the teams. If Team 1 was already on a case,

Team 2 picked it up and on down the line through Team 4.

Q How many people were part of each team that

you're talking about?

A Four detectives and a sergeant.

Q And the team that you were apart of, who was

all part of that team?

A Dave Baker was the sergeant in charge o£ it.

Gary Woods -- it's hard because they -- we rotated

through all the teams. I'm trying to keep track of who

was on the specific teams at a specific time.

Gary Woods was there. Let's see who else was on that

one. I think -- I'm trying to remember. Pepper was on

there.

Q Do you recall who the sergeant of the team was?

A Baker.

Q And then, so it was Woods, yourself, and then

there were two other people?

A Yes.

Q Was Peterson part of your team?

383

A It's entirely possible because, like I said, we

did not stay in the homogenized team. Depending on who

was in court or sick or whatever, you got pulled from

one team to another, and the only thing that stayed

consistent was the sergeant.

Q Okay. And then approximately how many homicide

scenes had you -- or did you go to during your time as a

deputy sheriff with San Bernardino County?

A As a deputy sheriff or as a homicide

investigator?

Q Specifically, as a deputy sheriff first?

A I'd have to guess 20.

Q And then as a homicide detective, I'm guessing

that was most of those 20 were as a homicide detective?

A Well, yeah, I would think the majority of them.

Q Do you recall responding to a scene at the

address of 35435 Highway l8 in Lucerne Valley, county of

San Bernardino?

A Yes.

Q And specifically back on September 23rd of

1985?

A Yes.

Q Do you recall approximately what time you

arrived at the scene?

A If I can refer to my notes, it would tell me

that.

Q The notes you're referring to are the reports

that were produced in this case?

384

A Correct.

Q Would that refresh your recollection?

A Yes.

MR. THOMAS: May the witness do so?

THE COURT: Yes.

THE WITNESS: We arrived at approximately

1422 hours on 9/23 of '85.

BY MR. THOMAS:

Q And 1422 for those of us that don't know

military time, that would be 2:22?

A Correct.

Q In the afternoon?

A In the afternoon.

Q I'm going to show you some photographs. First

I'll show you Exhibit 1.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q Show you what has been marked Exhibit l, do you

recognize that photograph?

A Yes.

Q What does that photograph depict?

A That's the front yard portion of the victim's

residence.

Q Showing you another photograph that's been

marked Exhibit 2, do you recognize what that photograph

depicts?

A Appears to be the side of her residence.

385

Q Show you another photograph that‘s been marked

Exhibit 3, do you recognize what that photograph

depicts?

A The victim's garage and her vehicle.

Q As far as your assignment, and -- I forgot to

ask this earlier, when you go out to homicide scenes,

are certain people assigned certain assignments to do at

the scene?

A Yes.

Q What was your assignment?

A I was to do the crime scene.

Q When you say you were to do the crime scene,

what does that mean?

A Basically, you try to locate physically with

measurements, the size of the building, where it's

located in the building, where the victim is located,

any evidence that you may observe or that's located,

that type of thing.

Q Okay. And l‘m going to show you an exhibit

that's been marked Exhibit 39.

Did you do a crime scene -- what they call a

crime scene diagram in this case?

A Yes, I did.

Q Looking up at the screen there, Exhibit 39's up

there.

ls that the crime scene diagram that you

prepared regarding the case of Rita Cobb?

A Yes.

386

Q And I notice on the diagram there's several

what appear to be measurements.

Do you see those?

A Yes.

Q Were those measurements taken by you?

A Yes.

Q And then as far as orientation goes, can you

give us some sort of orientation where north and south

is? Is that written on the diagram?

A It's written on the diagram. Using a compass,

we try to get a general direction of where everything‘s

located using a compass as a starting point as a

reference.

Q You did that in this particular case?

A Yes.

Q And you put the directions up there in the

bottom right-hand corner of Exhibit 39?

A Yes.

Q Can you describe to us what was the practice

back in 1985 as far as when you show up at one of these

homicide scenes?

You discuss who's going to do what?

When does somebody go inside the house and

start looking around?

A Generally, the sergeant who's in charge of the

team will decide you're scene, you're interviews, you're

whatever, whatever is appropriate for the incident. I

don't know that he uses any particular criteria to

387

choose it. It's just you're it.

Q Okay. And you were it for the crime scene?

A I was it.

Q And then as far as these photographs that I'm

showing you, when are these photographs taken?

A During the course of the investigation while we

were on the scene.

Q I'm going to show you another photograph that's

been marked Exhibit 4.

Do you recognize that photograph?

A Only as much as it appears to be the interior

of the garage.

Q That's the -- in the bottom right-hand corner

of the photograph looks -- what appears to be a

Cadillac?

A Right.

Q That's the same car that you see in the other

photographs?

A Yes.

Q Show you what has been marked Exhibit 5, do you

recognize this photograph?

(Whereupon Exhibit 5 was marked

for identification.)

THE WITNESS: Yes. That's the back of her

house, the back of the victim's home.

BY MR. THOMAS:

Q And looking at, I believe it's Exhibit -- were

there two separate residences on that property?

388

A I do not recall that.

IO

U)

CT

<2

Z

you what has boon marked Exhibit 2, do you

see the other building in the rear there?

A I do.

Q Okay. Was that a detached type of structure

that possibly could hold people in there?

MR. SANDERS: What photo are we looking at?

MR. THOMAS: We're looking at a different one

right now. He has Exhibit 2 up there.

Do you see it in Exhibit 2?

THE WITNESS: Yes. I do not recall that

building being there, but obviously it was. It's in

the photograph.

BY MR. THOMAS:

Q Okay. Show you what has been marked Exhibit 6,

in Exhibit 6, can you see the other building that I was

taking to you about?

(Whereupon Exhibit 6 was marked

for identification.)

THE WITNESS: I believe I can -- yes. Yes.

BY MR. THOMAS:

Q Did you do any investigation in that particular

building that you can recall?

A I cannot recall other than it was there. We

looked at it, but there was no investigative leads that

we could find in that building. I'm assuming because it

was there. I don't remember the building being there

so...

389

Q Show you what has been marked Exhibit 7, do you

recognize that? i

(whereupon Exhibit 7 was marked

for identification.)

THE WITNESS: No, I do not.

BY MR. THOMAS:

Q Now, as far as Exhibit 7, if you look at the

previous exhibit, Exhibit 6, can you see what appears to

be a metal-type container?

A Yes.

Q Did you see that in both of the photographs?

A Yes.

Q As far as that metal type of container, you can

see that it's from Exhibit 6 next to what appears to be

the smaller residence or the smaller structure on the

property.

A Yes, yes.

Q Okay. So looking at Exhibit 7, do you have any

idea what you're looking at as far as the main residence

is concerned?

A Well, in judging what I'm looking at, I‘m

assuming you have a water tank with a structure in front

of what I'm assuming -- what appears to be the main

residence or main structure ahead of it deeper into the

picture.

Q Okay. Then I'm going to show you Exhibit 8.

Do you recall seeing a Jeep at any point on the

property?

390

A I do not, no.

Q SO as far as the exterior of the property, was

that one of the things that you were assigned to do or

were you assigned to do the interior portion of it?

A The interior.

Q As far as the exterior portion of the

residence, you were never out there to take measurements

or anything?

A We found some tire tracks on the outside of the

residence, but I did not go around the entire structure.

Q Since we‘re speaking of tire tracks, I'm going

to show you an exhibit. It's been marked Exhibit 21.

Do you recognize that?

(Whereupon Exhibit 21 was marked

for identification.)

THE WITNESS: Well, only in as much is it's

tire prints in the dirt. Specifically, I could not

tell you where that was located, but we did take

measurements of tracks that were out in front of the

house and in the general area.

BY MR. THOMAS:

Q As far as those tire tracks are concerned, you

put that in your report?

A I did.

Q Would looking at your report refresh your

recollection as to where those tire tracks were?

A I think so.

Q Specifically, Page 3 of your report underneath

391

' scene at the top of the page.

tructure and tire\_prints there Lindicatingjl-

crime

A\_\_ Yeah. Tire prints logated on the east side of’

the s if \_ \_, \_ \_ \_ \_

Located on the west s' f t Q\_§L£yctureLx;he;§Lw§r§éi\_:

ional Yehicle-%i§e-p

Q So as far as these specific set of tire(£i§cks;-

you wouldn't be able to tell us if they were the tire

tracks on the east side or the west side?

A Not from that photograph. It's only been 25

years.

Q As far as the tire tracks, 1 notice there

appear to be placards in Exhibit 21, Placard 1 and 2.

Do you see that in the photograph?

A Yes.

Q I'm going to show you what has been marked

Exhibits 22 and 23, put them up on the screen, 22 being

the exhibit up at the top and 23 being the photograph at

the bottom. Speaking first about Exhibit 22.

What does Exhibit 22 depict?

(Whereupon Exhibit 22 was marked

for identification.)

THE WITNESS: Tire prints.

BY MR. THOMAS:

FQ That's the tire¥printiuthit:y23;marhedﬁas

P1aca;a“NG;Lal 1?, K

A Yes.

And then there's another set of tire tracks in

‘Exhibit 23; is that correct?

392

(Whereupon Exhibit 23 was marked

for identification.)

THE WITNESS: Correct.

BY MR. THOMAS:

Q You used Placard Number 2 to designate that

tire track?

A Correct.

Q At some point did you see what appears to be a

l2-pack of Coors at the location?

A Yes.

Q At the residence?

A Yes.

Q Where's that located?

A On the outside, I believe, the front porch.

Q I'm going to show you what's been marked

Exhibit 24.

Do you recognize that?

A Yes.

Q Is that the l2-pack of Coors that you spoke

about?

A Yes.

Q That's depicted in the photograph on top of

what appears to be some sort of concrete?

A Cinder block.

Q Cinder block?

A Yes.

Q At some point did you find out who brought that

l2-pack to the location?

393

A Yes.

Q Who was that?

A Rita's son.

Q That would have been Daryl Kraemer?

A Yes.

Q Once you got inside the house, did you look

around to see if there's anything of evidentiary value

to you?

A Other than in the bedroom where the deceased

was found?

Q Yes.

A Yes.

Q And just for the record, did you go to -- where

did you start your investigation? Did you start out in

the bedroom or did you start out at some other location

in the house?

A Do an overall from the front door. Start from

the front door and work our way into the structures.

Q And on Exhibit 39, the diagram that you

prepared in this case, where is the front door if you

can recall?

A It's on the northeast corner, I suppose would

be the best place to put it.

Q On the diagram, if you're looking at it, it‘s

at the bottom left-hand corner and you see what appears

to be a door swinging open?

A Correct.

Q So you started your investigation at that

394

particular location?

A Correct.

Q And then as far as the investigation

progressed, did it go to this room just adjacent to what

appears to be a living room where you see the circle

table?

A Yes.

Q Okay. You marked -- did you mark any items in

that particular area?

A I believe there -- there was another container

of beer in that general area.

Q As far as that container -- are you sure it was

beer?

A There was beer located in the house, and l‘m

thinking that's where it was at.

Q Would looking at your report refresh your

recollection as to whether or not --

A Certainly.

Q Specifically, it would be bottom of Page 2?

A That's where the ashtray was located.

Q Do you recall seeing anything about a mention

of beer in this report?

A Yeah. It seems there was another 6-pack of

beer or something.

Q Would that have been indicated in your report?

A Should be, yes.

Q Do you recall seeing a Slurpee cup?

A NO.

395

Q I'm going to show you a photograph that's been

marked Exhibit 25.

Do you recognize that photograph?

A In relationship to the Slurpee cup, no. It's

part of the interior of the residence, but I don't

recall a Slurpee cup.

Q Okay. As far as the Slurpee cup was concerned,

there's a placard just to the right of the Slurpee cup

in the photograph.

Do you see that?

A Yes.

Q That would be Placard Number 6?

A It appears to be, yes.

Q As far as Placard Number 6, what was contained

or designated by Placard Number 6?

A I don't readily find that in my report.

Q Would looking at a close-up of Placard Number 6

help refresh your recollection?

A I don't believe so.

Q You want to try?

A Can't hurt.

Q Okay. I'm going to show you what has been

marked Exhibit 26.

Do you recognize that?

A Yes, but it wasn't for the Slurpec cup.

Q What was it designating?

A The Virginia Slim cigarette pack.

Q Okay. Then looking at your report, bottom of

IGHAID44/""4 \_ .. m,.wli.\_.-..\_ \_.\_\_..\_ \_ \_ .\_\_\_ . \_\_ , \_..,...l.. \_,\_\_..\_ .

396

Page 2 of your report, you wrote also located in the

L is \_ \_

‘\_ \_ \_\_, \_\_k\_\_\_\_\_\_\_,.- -“ W

dining area is a round table which stood soft drink

----'is ----- - - \_ - --M" - V -- - - aw - r ,\_\_ \i‘\_V\_\_/‘\_\_ \_\_\_,\_

containers and a package of Virginia glimsygigarettes.

-\*\\_\_\_\_\_\_\_\_ \_\_ {T7 \_ . -- V - -- --' tn "‘-+-»--rr»-.

Do you see that?

A Yes.

Q The soft drink container, that would have been

what you were referring to, the Slurpee cup?

A I would assume.

Q Okay. Then there were other items that were

located in the desk area.

Do you recall those items?

A Not specifically but --

Q Specifically, would referring to your report,

specifically Page 2, the last paragraph on Page 2, would

that refresh your recollection as to what was found on

the desk area?

A Well, it indicates the Virginia Slims

cigarettes and the soft drink.

Q Those were located, according to your report,

on the round table; right?

A Yes.

Q Just above that there's a -- located in the

dining area of the residence is a desk, which is located

against the south wall of the dining area. Then it

talks about items that were found on top of the desk.

A Yes.

Q Okay. And Placard Number 5 would have been,

according to your report, an ashtray?

WA

397

A Correct.

Q I'm going to show you what has been marked

Exhibit 27.

Looking at Exhibit 27, that's the desk that is

referred to in your report?

(Whereupon Exhibit 27 was marked

for identification.)

THE WITNESS; Yes.

BY MR. THOMAS:

Q And then specifically I'll show you Exhibits 28

and 29 together, 28 being the one on top, 29 being the

one on the bottom.

Placard Number 5 appears right behind what

appears to be an ashtray with some cigarette butts in

\_\_\_, - - ' \_ \_\_%z it . \_,l\_\_.;7.li\_..‘\_‘i..a

there?

.\_ri\_\_---X

(whereupon Exhibits 28 and 29 were marked for

identification.)

THE WITNESS: Correct.

BY MR. THOMAS:

Q Then Placard Number 7, what does that

designate? 7' kw?‘

A 7 The'§e2son and Hedges cigarettes.

,Qi..,.-Q1-eyltoé.n§,§el\_.9i.@-.:L@11-1»@@mulb2E,3gP@ar@<g{\_§O

be blogd\_§tains%9r blood spots of some sort in the

residence?

i\_\_W,-\_iW\_\_r\_

A Yes.

Q How were those labeled?

THE COURT: Why don’t we stop right now and

398

take our afternoon recess and call this the end of a

chapter and start up in 15 minutes.

Ladies and gentlemen, you're admonished that it

is your duty not to converse among yourselves or with

anyone else about any matter connected with this case

nor form or express an opinion on it until it's

submitted to you.

(whereupon a recess was taken.)

(Whereupon the following proceedings were held in open

court in the presence of the jury:)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Good afternoon. Back on the

record in the case of People of the State of

California versus John Henry Yablonsky. Mr. Yablonsky

is here with his attorney, David Sanders, along with

his counterpart from the District Attorney's Office,

John Thomas, and Detective Robert Alexander.

On the witness stand, we have

Sergeant Roger McCoy, retired, and continuing in direct

examination.

MR. THOMAS: Thank you, your Honor.

BY MR. THOMAS:

Q &c‘Before we left for the break, we were about to

get into whatzyou7;;-what appeared to Eeﬂbloodkspattery

of some sort in the residence; is that correct?

.\_\_. \_l,\_\_\_\_\_\_ ‘\_\_\_\_\_.»-=----\_»w---»--)'i‘i\*----'-\_--\*\_\_- \_\_\_\_..%\_ 5“ \_;1=\_-

\_A Correct.

Q And those were designated how?

399

A

-Q" On the diagram, Exhibit 39 that you see on the

screen, if you can use the laser pointer up there, can

you point out to us where A-23 is first?

A (pointing).

Q You're pointing to the hallway to the right

center of the screen where it's marked A-23, and then

there's an arrow to what appears to be the end of a wall

or doorway?

A Right.

Q Then do you see A-24 on there?

A (pointing).

Q You're pointing to an area on the diagram to

the right of center just before you enter the victim's

bedroom where it says A-24, and then there's an arrow

pointing to the door where it would hinge open and shut?

A Right.

Q Then as far as A-23 was concerned, did you do

,\_\_\_\_\_\_‘k ‘(U 7'” \*7 \_ I '7 \_ I 5%‘: \_\_ \_

any measurements as far as that particular suspected

.,\_.i\_\_r..r.Ir,.>.,\_,\_\_..,.\_Ir @\_-..\_.=%\_ .,“..... ,,..<\_

pblood drop?

A Yes.

Q What were the measurements that you took?

A If I can refer to my notes?

Q Would that refresh your recollection?

A Yes, it will.

THE COURT: Don't you think by now it's a

better idea to say refer to those and see if it

refreshes your recollection because the answer could

400

be no, and you're still going to ask him to look.

Go ahead, please.

THE WITNESS: A-23 was located approximately

35 inches above the“IiB5§'$E the hallway.

§?IIRi"Inz>iI1Is:r""I'I" “I "t I "T"

Q I'm going to show you an exhibit that's been

marked Exhibit 36.

Looking at Exhibit 36, is that the blood spot

.\_\_\_‘,g§\_\_\_,x\_\_,\_ V --=\_\_<-=»==-Ql\_\_ \_ﬂ\_i \_ \_ ,\_\_ w:\_\_\_»\_ \_ \_\_i \

that you saw that was marked A-23?

(Whereupon Exhibit 36 was marked

for identification.)

THE WITNESS: Yes, I believe it iS.

BY MR. THOMAS:

Q And then as far as A-24 was concerned, what was

V-"‘\*--¢-=-----rA-..5\_-\_=\_..\_ ,-5‘ -=-----»-=-A-=.==\_am \_. IQ \_’\_\_w\_ \_‘\_M\_ Gr? -r‘\_,“a\_g\_y\_\_\_9\_\_,\_\_\_\_\_,\_'m=-.>

the description that you gave on A-24?

A That was located on the molding in the doorway

---'e=-»»\_\_ - ----- \_\_ 4 \_\_ \_ .\_ \_ \_ J,‘ A\_,\,\_

leading from the hall of the residence into the bedroom

where the victim was located.

Q How far off the ground was that located?

A Located approximately 43 inches from the floor

»-.\_\_ \_.\_,\_\_\_\_\_-,- ----'-'----)-ii .w.\_».\_\_-\_.\_\_\_\_.\_m\_.\_.\_. .d<- ,\_,.\_\_\_, -.- \_ m \_\_

of the hallwa.

‘\_wg§' I'm going to show you another photograph that's

been marked Exhibit 37.

Do you recognize that photograph?

(Whereupon Exhibit 37 was marked

for identification.)

THE WITNESS: Yes.

401

BY MR.

Q

blood

A

Q

THOMAS:

Is that the photograph of the blood drop or

spot marked as A-24?

Yes.

As far as the exterior of the house, before we

get i

nto the victim;§bedr9pmL did you find any

)

cigar

-\_.\_\_..\_\_\_:.

A

...\_,»-

Q

photo

BY MR.

‘Q

just

'<\_=»--»-<-A\_=-»-----<\_.i\_\_\_ii.;i i 41- -- 7.» 7»: --4\-.-. 2:.’ 4 -.=i

cigar

etteﬁbutts?

It -J€.i.%./..i,l..ies.Il....i.§.Y.§-iE13.€.§\_.e\_\_ 1313? -

Okay. I'm going to show you a couple

graphs. First, Exhibit 30.

Do you recognize what's depicted in Exhibit 30?

(whereupon Exhibit 30 was marked

for identification.)

THE WITNESS: No, I do not.

THOMAS:

As far as Exhibit 30 was concerned, can you see

to the right of §iacQ§E Qgtgre appears to be some

ette butts?

\_ ,\_ M ,\_\_i\_.... .\_\_

A

I‘-.\_\_\_

Q

porch

A

Q

A

Q

Exhib

A

Q

Yes.

Does the photograph -- if you look at the front

photograph that I showed you earlier --

Exhibit 1.

I think it's Exhibit l or 2 or 3. |

I have Exhibit 1.

Do you see any of the items that you see in

it 30 in Exhibit 1?

No, I do not.

Okay. So you don't recall marking any of the

402

cigarette butts with Placard Numberfﬁ?

A Those placards were generally set up by the ID

tech that was on scene, and they refer to his -- his

notes --

Q Okay.

A -- and the location of which was documented

\_\_ \_\_ "7 ..\_.\_ V W \_\_ \_\_\_ \_\_...

when they're collected, and they're usuall collected by

<-Z""""’ -

the crim§,l§grregsrmumds\_

-,\_\_.K,,\_---

Q That would have been Don Jones?

t\_\_.v\_-\_.\_\_\_\_\_\_\_ -\_\_c\_\_\_I,\_,\_\_<--»--»»=-=----""”“““="“‘ ' "

‘A ’Correc.

Q Okay. I'll ask him.

Now, as far as the interior of the bedroom or

the victim's bedroom inside the house, could you

describe what you saw when you walked in there?

A There was a woman's body lying on the bed. She

was nude. It was a moderate state of decomposition,

face was all purple and swollen.

Q And then I believe you wrote in your report

moderate to advanced state of decomposition?

A Correct.

Q And then was there anything about her face that

you saw that was unusual?

A Her head was swollen quite a bit. Her face was

purple in color.

Q Was there a white cloth at any point that you

observed?

A Yes.

Q Where was that white cloth?

403

A I believe it was on the floor next to her.

Q Would referring to your report refresh your

"“i""--\*\*<- 4¢v"'}" H; . . 7 --\_;»\_\_\_ A\_-\_\_ \_\_\_ V\_\_\_ \_\_i\_-\_,.-=-

recollection?

%‘\_-oi?--"/;-“.

A Sure.

-\_\_\\_dd,,s

r§\_%\_l§Z2\_ltrLQQ\_Qiith§“page, first paragraph.

ri\_N\_M\\_‘-\_p£M0M fM\_J

NA\_K‘¥lLmhthinginq of another situation. This was

‘ L\_\_,\_\_\_\_\_\_,\_ A---\*-\

gused as a gag in her mouth. Yes, that was resent.

, \_‘ , \_\_ \_ \_;\_\_\_ \_ \_\_ M

P

Q I'm going to show you what has been marked

Exhibit 33.

Do you recognize that exhibit?

(Whereupon Exhibit 33 was marked

for identification.) E

THE WITNESS: Yes.

BY MR. THOMAS:

Q What does that exhibit depict?

K\\_\_k Q,-,\_.----““"“‘““““'““‘f \*- I

A That depicts the position and the location of

the body when 1 entered the room.

Q And I notice there appears to be a\_white‘§lotQ

coveriggmtgemyictimL§H£ece in Exhibit 33? ‘

\_A Y§§aa

Q And that's the white cloth that you referred to

as being uS@q\_3§:i- Passibhrbeingrnsedwesmaagag? A

ta)-x\_

A I believe so, yes.

Q\_ Show you another photograph that;§ﬂb§eQ marked \_

Exhibit 13;,,

M\_\_\_\_\_\_,a’»

Do you recognize that photograph?

(Whereupon Exhibit 13 was marked

for identification.)

404

THE WITNESS: Yes, it's the same victim from

a different angle.

BY MR. THOMAS:

Q That particular picture, Exhibit 13, is taken

from the doorway that would lead out to the hallway?

A Correct.

Q Okay. In that particular photograph, do you

remember there being any clothing?

A Yes, there was some clothing on the bed.

Q Okay. Was it on the bed or --

A In my mind, it's on the bed.

Q Would referring to your report refresh your

recollection as to where the clothing was located?

A Certainly. According to my notes, it was on

the floor of the bedroom adjacent to what is the north

wall.

Q In looking at that photograph, the north wall

would be that wall just to the right there in that

photograph, Exhibit 13?

A Yes.

Q So there was clothing on the floor there?

A Yes.

Q I'm going to show you what's been marked

Exhibit ll.

Looking at Exhibit ll, do you recognize that --

what's depicted in this photograph?

(whereupon Exhibit ll was marked

for identification.)

405

THE WITNESS: No.

BY MR. THOMAS:

Q As far as that particular photograph, you can

see the victim's leg in the bottom left-hand corner of

\_\_ \_\_\_ \_ 7\_\_ \_

\_£Q§mphotograph?

A Yes.

r\_\_\_\_\_\_,

Q Okay. And so looking at the other photograph,

\.\_\_\_\_\_\_\_\_,\_\_.'-r A \_ (-..\_\_ .7 \_ J ‘j, 7‘-----“"‘\*“"'

that\would be the -- I guess it would be Eheinorthrsidey

of the bed?

amﬁawamiﬁa

A Yes.

\_l\_\_N‘\_\_i\_\_\_,

Q Okay. And then there's what appears to be some

--\_\_\_\_\_“\_ \_%$7W W ’V;MM\*w “MTV? 7w\_)“iM

sort of item in that photograph depicted?

/\_ \_, \_ \_\_ \_,;,,...--Pl

A Yes, cloth or something.

Q At the top o£ the photograph, the top

right-hand corner of the photograph, and I'll point it

out to you with the laser, there appears to be a set of

glasses.

Do you see that?

A Yes.

Q Those glasses, were they there that you can

remember?

A They're in the photograph, so they were there

because nothing was moved. All we were there doing was

measurements, and what have you. Nothing gets moved

until the crime lab, the ID tech, homicide, we are all

satisfied, the coroner comes in and the only thing

that's moved is the victim's body.

Q Okay. Were you present when the coroner came

Mi

406

in to move the victim's body?

A Yes.

Q And typically what happens when the victim's

body‘s moved?

A It's rolled to one side so we can inspect

what's under the body directly and for additional

evidence or investigative leads.

Q Okay. And then as far as the bedding, how

would you characterize the bedding? If you look at the

photographs I've shown you already, was it -- was the

bedding neat?

A No, it was -- it had been, in my description,

wadded up more or less.

Q Okay.

A Disturbed.

Q When you say wadded up, what part of the bed

was wadded up?

A If I can use the photograph as an example, it‘s

in the northeast corner of the bed.

Q Okay. And then let me show you another

photograph that's been marked Exhibit 14.

Do you see where the bedding was wadded in this

exhibit?

(Whereupon Exhibit 14 was marked

for identification.)

THE WITNESS: Yes, over there.

BY MR. THOMAS:

Q Then looking at Exhibit l4, that's just from a

407

different angle from the previous exhibit that I showed

you?

A Right, yes.

Q Okay. At any point did you notice a -- I guess

it would be a watch pin of some sort?

A Yes.

Q Do you recall where that was located?

A Located up by her head in this general area.

Q Show you a photograph that's been marked

Exhibit 12.

I guess it would be characterized as a

watchband pin?

(Whereupon Exhibit 12 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q And so that particular item was just above

Rita's head on the right side of the bed?

A Yes.

Q Did you notice, as far as the bedroom itself

was concerned, did you notice if it appeared to be

somewhat orderly or was it ransacked or is that

something that you can't remember?

A The bedroom, like the rest of the house, was

-\_\_\_ \_ ,\_ \_\_ \_’\_\_\_\_:\_>\_\_\_\_l\_¢...\_=\_¢ -=i\_.\_...\_.\_....\_.\_...,=,, ,,¢.i,.,,\_.==,.=..-.,\_\_,(.\_\_,=,.i\_-..-

not organized. There were things that should have been

émt away that weren't depending on who your wife is I

"--'=“”"‘T‘““ ‘ <-»=»Lv..-»-- \_.=...<\_ tv.r=e:,.\_,,\_.\_,,§»-<e-----<--‘-' ti, lg X Vi \_‘\_ic£\_\_‘v M,’-'-':"""“’

guess. The whole house had things that were out of \_

\place that just were not put away. Either she didn't

" 7 -(1.. ....=P \_\_\_,..\_-' ‘ ' " .\_,\_ \_ \_ 7:,: -

408

have a place for them or she had chosen not to put them

away.

Q As far as some of these items that were out and

about, would you characterize some of these items as

being items of value?

A No, just normal every day things that you'd

collect. You go to the store and instead of putting it

away, you set it down and that type of thing.

Q As far as the bedroom was concerned, were there

dressers or anything like that in that bedroom that you

can recall?

A I do not have it indicated in the diagram, and

I don't remember any.

Q When you looked through the house, did you see

drawers or anything that were left open like somebody

had been going through that?

A No, the house did not appear to be ransacked.

It was not orderly. It hadn't been torn apart.

Q And then as far as the victim was concerned

\*-""\1-V-»---- \_\_ \_ 7 c \_ W-'-- --= \_ .,\_ \_§\_\_\_, \_\_ Q \_> \_ \_ \_ \_ \_\_\_\_ﬁ\_,\_,\_\_..\_.-A.»

did you nggggega murder weapon or anything on the /

victim? ;/

harem ,

A Yes, she had what appeared to be a cgag \_

hanger -- a wire coat hanger wrapped around hor neck.

--\_\_...----- -<\_a\_;\_..=.=\_-‘-- -I ----la.»-- 7'-"““"\_"'N”““°“‘\*<-.l,‘\_\_\_\_\_,‘,\_\_,\_¢QQ, \_‘\_\_‘\_\_{-\_ as

At that point she was in a state of decomposition. She

was swelling, so it was cutting very deeply into her M

throat.

Q Do you recall whether or not her dentures were

inside her mouth?

409

I/1

DJ--\_

C5

Q

A She -- if I remember, uppers were inside

her lowers were on the bed with her I believe.

Q I'm going to show you a couple photographs.

First, Exhibit 16.

Looking at Exhibit 16, can you see the wire

hanger that you were speaking about?

(Whereupon Exhibit 16 was marked

for identification.)

THE WITNESS: Not real well in that picture,

but in this picture certainly, yes.

BY MR. THOMAS:

Q When you say not real well in that picture,

you're talking about the picture on the big screen?

A The projection picture is not indicating the

wire as well as the regular photograph.

Q Do you see her upper dentures and lower

dentures in that photograph?

A Yes.

Q Again, if you can just point out to where her

upper dentures and lower dentures are in the photograph

A Uppers are still in her mouth.

Q Just for the record, you're pointing to the

upper center of the photograph, Exhibit 16?

A Correct. The lowers were on the bed next to

her.

Q Then you're pointing to the area on the bottom

right-hand corner of the photograph.

A Yes .

410

Q Show you what has been marked Exhibit 15.

Did you notice whether or not the victim had a

bracelet of some sort on?

(Whereupon Exhibit 15 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q And do you see that bracelet in the photograph,

Exhibit 15?

A Yes.

Q Okay. Where is it?

A In the projection picture, it’s hard to see.

It's right in there.

Q Did she also have a watch on?

A Yes.

Q Where is the watch?

A Either that -- this portion is the watch and

this is the jewelry or it's the other way around. This

is probably the bracelet and that's the watch.

Q So --

A She had them on her wrists.

Q Just for the record, you think that the

bracelet might be on the right hand -- right wrist area

of the victim and the watch on the left wrist area of

the victim?

A Correct, yes.

Q Then as far as the body being rolled, one of

the purposes of doing that is so that the coroner

411

investigator can establish lividity and some other

things?

A Correct.

Q And lividity being blood settling?

A Blood settling, yes.

Q Okay. And that would indicate whether or not a

victim had been moved?

MR. SANDERS: Objection, your Honor, to the

prosecutor testifying.

MR. THOMAS: I can ask or rephrase it.

THE COURT: ln a way that's it's not leading,

go ahead.

MR. THOMAS: As far as lividity is concerned,

do you know other than establishing --

THE COURT: Just a second. Counsel, are you

going to be asking these same questions of the person

who was there --

MR. THOMAS: I can ask the pathologist these

questions.

BY MR. THOMAS:

Q I'm going to show you Exhibit 34.

Looking at Exhibit 34, is that when the body is

being rolled?

(Whereupon Exhibit 34 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q Then afterwards, was there a picture taken of

412

the bed after the body was removed?

A Yes.

Q I'm going to show you Exhibit 18.

Do you recognize that exhibit?

(whereupon Exhibit 18 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q What does that exhibit depict?

A The top of the water bed with the blanket,

sheet with body fluids present on the sheet.

Q Then as far as all of the photographs that I've

shown you that you've been able to identify, so

excluding those ones that you said I don't know what's

in these photographs, are all those photographs true and

accurate depictions of the crime scene as you saw it

back on September 23rd, 1985?

A Yes.

Q Did you do an investigation in the interior of

the residence to determine if you could see any signs of

forced entry?

A Yes.

Q Did you find anything to indicate there was a

forced entry?

A NO.

Q Did you find any indications that there was a

theft or some sort of burglary at the location?

A No.

ll

413

MR. THOMAS: Nothing further at this point.

THE COURT: Mr. Sanders, do you have any

questions?

MR. SANDERS: If I may have just a moment,

your Honor? No questions. Thank you, your Honor.

THE COURT: Okay. May Sergeant McCoy be

excused?

MR. THOMAS: Yes.

MR. SANDERS: If he may remain on call.

MR. THOMAS: Can we approach on that?

THE COURT: Sure.

(whereupon the following proceedings were held at the

bench out of the hearing of the juryz)

MR. THOMAS: Sergeant McCoy is from Idaho.

The DA‘s Office had to fly him in here. He's

scheduled to leave first thing Wednesday morning to go

back to Idaho.

MR. SANDERS: Can we agree if there's a

statement that I need to corroborate, we can use his

report?

MR. THOMAS: Yeah.

MR. SANDERS: Okay.

MR. THOMAS: I don't have any problem with

that.

THE COURT: In other words, make sure we

understand, he said, I don't see anything wrong with

that. He's concerned that he's going to have

Joe Smith on the stand and Joe Smith is going to

414

testify differently than the report that McCoy made

back in 1985

MR.

SANDERS: We have an agreement that we

can use those reports for that purpose.

MR.

THE

THOMAS: Okay.

COURT: So in other words, I can tell him

that he's subject to recall, but it's a technicality

that he's going to be going; right?

MR.

MR.

THOMAS: Yes.

SANDERS: Yes.

(Whereupon the following proceedings were held in open

court in the presence of the jury:)

THE

COURT: Or in the alternative, we could

simply excuse him subject to the stipulation?

MR.

MR.

THE

SANDERS: Excused.

THOMAS: Yes, your Honor.

COURT: Sergeant McCoy, thank you for

being with us, sir. You are excused.

THE

THE

MR.

THE

evidence you

WITNESS: Thank you.

COURT: Call your next witness.

THOMAS: People call Donald Jones.

CLERK: You do solemnly state that the

shall give in the matter pending before

this Court shall be the truth, the whole truth, and

nothing but the truth, so help you God?

THE

THE

WITNESS: l do.

CLERK: Thank you. Please be seated.

THE BATLIFF: Please state your full name and

415

o\

spell it for the record.

THE WITNESS: My name is Donald Thomas \ones

D-o-n-a-l-d T-h-o-m-a-s J-o-n-e-s. §

THE COURT: Good afternoon, Mr. Jones. /

THE WITNESS: Good afternoon, sir. f

THE COURT: Your witness, Mr. Thomas./K

MR. THOMAS: Thank you, your Honor.//

/

DONALD JONES, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q What is your current occupation?

A I'm a criminalist with the San Bernardino

County Sheriff's Department. Basically a forensic

scientist who works in the crime laboratory.

Q When you say forensic scientist, what does that

mean?

A It means someone who has received training with

regard to the laws of natural sciences and applies that

to physical evidence as it is necessary for

investigations for court purposes.

Q And how long have you been employed with

San Bernardino County as a criminalist?

A For about 30 and a half years.

Q And as far as your qualifications to be a

criminalist, can you briefly describe to the jury what

your qualifications are?

416

A It's pretty basic to be a criminalist. You

need to have a bachelor of science degree in some sort

of natural science. I have a bachelor of science degree

in chemistry from California State University at

Northridge. I have a -- went back to school to get a

master's degree in biology from California State

University at San Bernardino.

In order to do some of the specialized

techniques that we do at the laboratory, we do receive

additional training, either in-house practical exams or

through additional training that we go to outside

agencies, such as, the Federal Bureau of Investigation,

California Criminalistics Institute, or there are some

private organizations which will train us in various

techniques we use in the crime laboratory.

Q Then during your 3O-plus years as a

criminalist, did you continue to be educated and go to

different classes that you attend in order to progress

in the things that you do as a criminalist?

A Yes, sir. There were classes and courses of

which I have just got finished talking about. In

addition to that, there‘s a professional organization I

belong to, the California Association of Criminalists.

We have semiannual meetings. We have study groups in

which we can attend to exchange information with other

forensic scientists who are either in the same

discipline or field that I'm in or in related fields,

and we get to exchange information about what's

417

happening in our laboratory, in our region with what's

happening in other regions, either of the state or of

the country.

Q Are there any licenses or certificates that you

need to do what you're doing as a criminalist?

A There are -- there is a certification program.

It is not a requirement. T am not certified. There

was, for the individual laboratories, what's called an

accreditation program that is required primarily to do

forensic DNA work. You must have -- you must be an

accredited laboratory. Our laboratory has been

accredited through an organization called the American

Society of Crime Lab Directors. They're a laboratory

accreditation board since 1995.

Q And what are some of the things that you've

done or fields that you've been in as far as a

criminalist and things that you've done as a criminalist

in San Bernardino County?

A When I was first hired, I primarily worked in

the areas of controlled substance analysis, looking at

drugs and narcotics and forensic alcohol analysis, doing

blood alcohol samples, working with breath alcohol

instruments.

T also did crime scene investigations. As kind

of a subset of crime scene investigations, I did

clandestine laboratory investigations, illegal drug

labs.

T worked a short amount of time on a few cases

418

in what‘s was called trace analysis, looking at maybe

hairs or fibers or paints, shoe prints, and so on, but

in about 1984, 1985, I began to specialize in the area

that is now called forensic biology. At the time it was

called serology. It was the identification of

physiological fluids and the characterization -- or

comparison of physiological fluids and stains.

Q Okay. And now it's forensic biology?

A Forensic biology was developed over the years.

Right now the primary area that is known in forensic

biology is forensic DNA work, and I have been trained in

forensic DNA. I went to an FBI course back in l99O. It

was one of the initial pushes of our laboratory to put

forensic DNA work online. It wound up replacing the

conventional serology techniques we used prior to that.

Since then, forensic DNA has changed in a

number of ways with advances of different technologies

that have come along with some of the research projects,

the human genome project. Forensic science is kind of

an applied science, which is a nice way of saying the

techniques that are used in pure research, we steal them

and use them to analyze evidence and so forth. We apply

the techniques they have developed for these other uses

in a specific area of looking at evidence especially

evidence in criminal investigations.

Q And you said that forensic biology kind of

replaced serology. What was some of the major

differences between what you did in serology area versus

419

what you're doing now in forensic biology?

A To get down to the technical parts, forensic

serology most of time you looked at the fluids that were

‘left behind, the liquid part, the blood or say the blood

or saliva or semen samples and so on, the fluids.

When you get more to forensic DNA work, you're

no longer looking at the fluid part of it. You're

looking at the cells that are there because that is

where the DNA is housed, and so it -- it really shifted

the focus from basically the water part of the biology

to the cellular part of the biology.

In so doing, what it did was it allowed us to

become more specific in terms of who could have left a

particular sample. It's called the discriminating power

of the genetic markers we would get looking at serology.

It was not very powerful. We would be -- we'd feel

really good if we could get a number that said one in a

hundred or one in a thousand people could have left that

stain.

When you look at DNA, it is much more

discriminating because of the markers we look at in DNA

and in the relative biology of what these markers are.

It allows us to look instead of one in a hundred or one

in a thousand, one in a billion, one in a trillion, one

in a guadrillion.

Q As far as specific training that you received

in the area of forensic biology, you already told us

that you went to a month-long course by the FBI academy?

420

l

A Yes, sir.

Q What other stuff have you done?

A The California Criminalistics Institute has a

number of courses that it put on. When a particular

technology came out, which uses what's called the

polymerase chain reaction, it allowed us to look at

smaller amounts of DNA.

The initial course I took at the FBI, in order

for it to be applied to evidence, you need to have a

fairly large stain that had a lot of DNA in it. If the

stain was a mixed stain, say of semen and blood or semen

and something else, you could separate the semen out,

the sperm cells. You could separate them out and get

the DNA, but you needed a lot of it in order to get the

technology that was in play at that time.

With the advances, as I mentioned, with the

human genome project and other researching, they

developed this process called the polymerase chain

reaction, which allows you to take a small amount of

DNA, that previously we couldn't do anything with, and

it puts it into a molecular Xeroxing mode and copies the

information millions of times. In so doing, it then

produces enough material for us to actually work with

and get an answer.

This became really advantageous in forensics

where a lot of times the samples that you get are not

big stains. They are small stains, and maybe something

as a cigarette butt and so forth. Previously we weren't

421

able to do a lot with those. With the advances, we were

able to take a look at skin cells that were left on the

cigarette butt.

The courses that I took then started to train

me as to how to apply these technologies, and the kits

that were being produced by certain commercial

manufacturers, to the analysis of these -- to the

analysis of evidence and the DNA that I recovered from

evidence.

Over the last ten years, the -- the kits and

the DNA markers that we look at have pretty much

plateaued or stabilized such that we have a set of DNA

markers or DNA locations that we look at. That is

pretty standard across the nation, so that a -- a sample

that I look at in San Bernardino County, and I can do

some DNA typing on it, can be compared to samples done

in Kansas City or in Tampa or anywhere across the

nation.

A lot of the western hemisphere uses the same

set of DNA markers, so my results can be compared to

either offender samples or to crime scene samples that

are typed in other laboratories across the country.

Q Then you referred to it as polymerase chain

reaction. That's also referred to as PCR?

A It's much easier to say PCR.

Q I'll start referring to it as PCR. PCR is

basically the process by which you multiply whatever

cells you have and DNA cells and make it into -- where

422

you might have few make it into millions?

A Roughly.

Q Does that seem accurate?

A What the PCR

process does is it mimics what our

body does. Our body will have a cell that has various

organs in it. It has

a nucleus, and in order for us to

grow, our cells have to divide. In order to divide, the

DNA has to duplicate itself, has to replicate itself.

Well, this PCR process mimics that replication

process. It doesn't do it exactly the same way the cell

does because we don't

don't need the entire

certain segments.

What they've

That kit will look at

are interested in and

information, and they

in terms of by what's

need all of that information. We

DNA strand duplicated. We need

done is they've designed a kit.

tho specific DNA segments that we

copy them and copy the

do that the same way the cell does

called division or duplication

just again and again and again.

It really has assisted

more and more forensic samples,

passed we didn't get enough DNA.

through this PCR and be able to

us in being able to type

some that in times

Now we can process it

get results and be able

to compare the results then to other results, either

other evidentiary samples or from known reference

samples.

Q As far as the PCR process, is that generally

accepted in the scientific community as reliable and

423

accurate?

A Yes, sir. It is relied upon.

Q Okay. And then as far as your experience --

going back to your experience as far as that's

concerned, have you testified in court prior to today

regarding DNA analysis?

A Yes, sir, I have. I've testified twice within

the last year. There was a period of time where I was

not in forensic DNA. For a period of ten years, I was

basically in supervision and so forth. Prior to that,

there was a period of about ten years that I was in DNA

and I would say I think I testified probably close to

50 times.

Q And then as far as publications and

presentations that you've done regarding DNA, have you

done some of those?

A Yes, sir, I have.

Q Approximately how many of those presentations

or publications have you done?

A I should know the exact number of that, but I

don't.

Q Generally?

A Generally, I'd say lO to l2.

Q And then as far as your current assignment,

you're currently assigned to the forensic biology area?

A Yes, sir. I'm currently assigned to do case

work in the forensic biology unit. I've been doing --

back doing case work again now for a little over a year

424

Q Back in September, specifically September 23rd

of I985, what was your assignment then as a criminalist?

A I worked in the serology unit at that time, and

I also was assigned to crime scene investigations.

Q So that meant you went to a lot of crime scenes

as part of your job or duty as a criminalist?

A Yes, sir. As part of my job, every six weeks

or so I was on call for a week. If a major

investigation needed my assistance to go out and

document the evidence or collect the evidence, then I

got paged in the hours of the day and night and would go

out to do that. If it were -- if it was a major scene,

then sometimes a couple of us would go out and do that

work with each other.

Q Then as far as going specifically to

September 23rd of 1985, did you respond to a homicide

location located at 35435 Highway 18 in Lucerne Valley,

county of San Bernardino?

A Yes, sir, I did.

Q When you got to that location, what were you

assigned to do?

A I was assigned to basically process a homicide

scene. There was a single female victim inside the

residence. There was some -- there was evidence in --

primarily in a bedroom, some other items of evidence of

interest in other parts of the house. My partner -- I

had a partner working with me at the time,

Dave Stockwell (phonetic), and Dave and I processed the

425

scene.

Q Then as far as the scene was concerned, do you

recall processing the victim's bedroom?

A Yes, sir.

Q And during processing of the victim‘s bedroom,

did you locate certain items of significance that you

noted?

A There were a number of items that we -- we

noted in the bedroom and collected. Then there were a

couple of techniques we used for collecting evidence in

there.

Q Let's start with there was a watchband pin. Do

you recall that?

A Yes, sir. There was a watchband pin that was

near the Victim's head on the bed. The bed was a water

bed, and the pin was up just to the side of the victim's

head.

Q I'm going to show you a photograph that's been

marked Exhibit 12.

Do you see that particular watchband pin

depicted in Exhibit 12?

A Yes, sir, I do.

Q And that's the pin that looked -- appears in

the center of the photograph?

A That's correct.

Q Just below it there appears to be a ruler.

Do you see that?

A Yes, sir.

426

Q There appears to be several different lines on

that ruler, some longer than others on the top and -- or

the top ones are longer than the ones on bottom.

Do you see that?

A Yes,

Q What

A If I

Q Yes.

A This

Each of these

These smaller

sir.

do the top lines represent, if you know?

may use the pointer?

ruler from end to end is about six inches.

dark lines along the top is one inch.

lines are each a centimeter. You have

2.54 centimeters to an inch or so. If you were looking

at the watchband, it looks like it's something like

probably three quarters of an inch or so.

Q Then

for those of us that aren't familiar with

watchband pins, what are they used for?

A Watchband pins are used to hold the watchband

on. At the edge of the watch, there are a couple of

holes -- the pin itself is spring loaded. It can be

depressed

watchband and

receiving

the watchband

inside then put through a sleeve in the

then released and it will expand into two

holes at the edge of the watch thereby holding

onto the watch itself.

There are usually two of them; one on either

side of the watch to hold the band in place so it can be

strapped to your wrist or to something else.

Q And that particular photograph with the size of

that particular watchband pin, did you -- were you able

427

to locate a watch that possibly could have fit that

watchband pin or this watchband pin could have fit that

watch?

A I don't remember seeing a watch or collecting a

watch. No, sir.

Q Then as far as the bed was concerned, you were

in charge of looking over the bed and making sure that

you're not missing any items that were located on the

bed?

A Yes, sir. In fact, we had a systematic way in

which we entered the room to start with, starting with

vacuuming the floor at the entry part of the door,

collecting evidence that was along the, as you looked at

the bed, the right side of the bed, then vacuuming the

floor there, vacuuming the floor around the other side

of the bed. We did a tape lift of the body. We

vacuumed the surface of the bed being careful not to

scoop that up and collected that. There was some other

items, a couple of pillows and some cloth and clothing

material that were -- that was on the bed also.

Q Then as far as watchband pins, are they all the

same length or do they have different lengths?

A I believe they have different lengths. It

would depend on the size of the receiver of the

individual watches. That particular pin looks very

similar to the size of one I've got in my watch. I just

replaced my watchband yesterday. Interesting that you

asked about watchband pins.

428

Q Now, as far as the particular watch that you're

wearing, the band itself, how big is the band, would you

say?

A In terms of the width of the part of the band

where the pin would go, probably approximately three

quarters of an inch to an inch.

Q Then when you were doing your investigation of

the bedroom area, you didn't find any watch during your

search that could match that watch pin?

A Not that I recall, no, sir.

Q Okay. Would referring to your report refresh

your recollection as to whether or not you collected any

watches or --

A I referred to my report a lot while I was

sitting in the hallway. I referred to my notes also. I

don't remember any mention of a watch.

Q So there's no mention in any of the reports

that you reviewed of a watch being found similar to the

size of that watchband?

A That's correct.

Q Okay.

MR. SANDERS: What page are you referring to?

MR. THOMAS: 349.

MR. SANDERS: Thank you.

BY MR. THOMAS:

Q As far as photographs were concerned, did you

take photographs or were you present when photographs

were taken?

429

A I was present when they were taken, but I did

not take them., I believe we had two people from the

identification division, I believe, Tom Moody and

Jeff Bedetti (phonetic) were present at the scene.

Q I'm going to show you what's been marked

Exhibit ll.

Looking at Exhibit ll, can you see what's

depicted there?

A I see what's depicted. I believe I know what

this is. If I could refer to my crime scene notes, I

could get a relative idea.

Q Would that refresh your recollection?

A Yes, sir. Yes, sir. That appears to be a pair

of panties that were, as you look at the bed, they were

along the right side near the top. They were on the

floor actually on the carpeting.

Q Then as far as the photograph -- I forget what

exhibit that is.

A Exhibit ll.

Q Exhibit ll, there also appears to be some

eyeglasses of some sort?

A Yes, sir. There was a pair of eyeglasses that

were underneath a table-like area there.

Q Were those eyeglasses damaged in any way that

you could tell?

A I don't remember, and I don't have any notes to

that.

Q As far as the collection of evidence, did you

430

actually collect any evidence from the victim herself,

swabs or anything like that? '

A Yes. We collected two vaginal swabs and then

prepared basicallywa microscope smear of one of the

swabiz

Q And when you go to a crime scene and you do

something like that, are you familiar with what they

call an LR number?

A Yes, sir. \

Q What is that? \

A An LR number is a number that our crime lab

gives each particular investigation we come involv d

with. This particular investigation was given the LR

number of 44659.

Q As far as that LR number is concerned, s that

a unique number to an individual case?

A Yes, it is. //

Q Excuse me. As far as the particular LR number

in this case, what was it?

A I did just say it. It was 44659.

Q I'm sorry. As far as that number, is that a

number that ever changes? Let's say it's given to a

case in 1985, in 2011 is that the exact same number?

A Yes, sir. When we initially get a case, that

particular case is given that number and then any

evidence that comes in is associated with that LR

number. At the time that we made the collection of

evidence on September 23rd, 1985, we collected items,

431

put them into evidence and logged them into this

particular case.

Subsequent to that, if there were other items

that were either submitted to the laboratory or

submitted to property, they were all related to this

particular LR number. As we progressed through the

years, just as recently as a couple of years ago, an

item was submitted to the laboratory. It was referenced

to this particular LR number since it was part of this

investigation.

Q Then as far as -- in conjunction with the

LR number, there is another -- a DR number that's also

assigned to it?

A Yes, sir. The DR number will be something that

the individual investigating agency has. The reason we

don't use the DR number in the crime laboratory is

because our crime lab not only works with sheriff's

department cases, such as this, we also work with

individual police agencies, and they will have their own

DR or reporting number system.

You can see there's a whole bunch of different

types of numbers we would get from different agencies.

The laboratory actually instituted its own laboratory

report number, the LR number, So then we could readily

keep track of individual cases without worrying about

whether Colton PD used the same number as Fontana PD and

so forth, just lessen the confusion.

Q Okay. As far as this particular case, can you

432

\‘\

\

give us the DR number that was assigned to it?

A The DR number was 1331036 dash O7.

Q You said that you collected some vaginal sw bs

from the victim in this case.

That would be Rita Cobb?

A That's correct,

Q As far as the vaginal swabs, were they gféen an

item number of some sort?

A Yes, sir.

Q What was the item number?

A The item number was A dash 11. When we went to

..,»--\_.\\_J\_\_m\_T/\_P,/<-'"Wt --- -’---- --»'-»»--,,\_\_.\_,\_. \_,I.\_I\_\_\_’\_\_-\_‘M\_ W \_\_\_\_\_ \_\_\_ \_\_\_\_

the crime scenekweyerything that we were to collect at

the crime scene was called item A and then in order as

we collected them we sub-itemized them. So A-l was the

-\_..-\_s\_\_bMi\_‘ jg; W‘ \_}\_\_\_ m ,\_’\_\_,{ ;\_,../-- ' ' WM -1” ,1. A7-' ...I\_,,..1..l 1.1, \_\_.,....-“A-\_,

vacuum sweepings andsotﬁggthy A-11, then would be the

-\\_‘\_\_u MW“ I MUM 4\_5\_’,, ,>/(4 A , ,M, \_ W\_\_\_\_\_M\_\_’MQ\_\_\_u,\_,M\_\_,\_,-a

llth item that we collected at the scene, which were the

vaginal swabs from Ms. Cobb.

Q As far as the vaginal swabs were concerned, how

were those collected by you?

A Two swabs were inserted into the vaginal area

”“\*"---- "M M» -»"""'-<:-»-,}...=I< < "<\>\ , $ ..\_\_=» 491-'90 .1 v“ .,- L“ be/-K-=-»-#5‘

and swabbed around,\_withdrawn. One swab was then

.¢’%==-=»..w , 1,1, \_> W11) ,,, M. W :/ =\* I W” ’ “ ‘""\*‘"“-- ----- -- »--» - »»-Meet M" --M ‘M---\*--- --- -%\_\_\_\_\_\_\_,\_,\_\_

smeared across a microscogemslide. That microscooe

Ei}§§lPsiQ9i§.§€5h 12- T§§l?Wib$aﬂEF9a§¥%?EliB9I

Eackaged for later §§;Iy§;§i\

Qax: As IQ; as the swabs go, they were taken at the

crime scene itself?

A This particular set of swabs was taken at the

crime scene. There was another set taken later on at

433

i \

the autopsy.

Q There was item, a felt pad of some sort, that

was collected.

-\_....\_\_‘\_\_\_”,.,\_..ci.. .aar""’\*"‘

Do you recall that? my

A Yes. That was Item A dash 18. Actually, it

‘\_-W‘\_"W\_MJ%mW@\_w,MrimalmsririirrlQ\_MW\_ﬂmﬂM\_,,,:\_\_ “\_\_M“\_)

was in a group of items that were taken as A dash 18,

s\_ii\_-\_M\_

-.\_ \_.\_ \_ \_...¢....\_\_..\_,e;

and the felt pad was further examined

2--.\_\_,\_.,»»=-\_\_==...r i \_\_\_;\_\_:\_\_,\_..\_\_,\_\_ia‘--J-- ----- »r>-"\*---»---.=-\_/

sub-itemized with stains that were on the feltﬁpad.

.\_\_\_\_\_.\_,\\_\_\_W2\_= ‘sf, R Y, ,,l= .3 Q-»-.\_. .-e we ‘=mR-\_,, ..§\_\_=\_\_\_ ,

Q Then as far as the felt pad was concerned, I'm

\_»-e--ex‘ W WM c\_{A\_\_\_”/\_\_.r\_,\_,a,--W------‘-'\*'-"\*“"“""-'"‘ ‘“\*\*""“---»-=----=--»-.\_\_..“»-’---------=--r---""‘

going to show youﬂg photograph and\_then mayQg\_ygpwga$

¢¢,r,i, its ..., w;‘,y\_‘g “\_m\_\_\_0\_.\_m\_\_\_,i......1... . \_\_\_\_\_\_\_\_ 6......

rand kind of

point it out towthevlury;¢§hQwmyou“what's beenmmarked

Exhiét -

>

;?“"“x-\_\ \'\_,

U |J>»

o you see the felt pad in Exhibit l4?\x

“Tho felt paa“BTi§l§§E1y4iBwé£\*§1§€€§ia$d

corner of the photo, kind of a tan or brownish, light

brown colored pad.

Q Let me see if I have another photograph. This

one might be a better one. Show you what's been marked

Exhibit 13.

Do you see that felt pad inrthatéparticular M

exhibit?

A Right in that area that l‘m showing with the

-"‘ X fr ‘ N wm'>"““ " '“>------..\_ \_\_,.. » > - Tr-Ki ‘ -»'-" as =- re ‘T ->-e aural ‘,,\_W\_\_\_\_ ,,."\_,..\_....,r.,.w»=.i..»-=-"“" "°'\*‘

laser pointer here which is somewhat to the lower left

\_ 59.. 1,. , \*\*)V --'-.!,\_ y \_\_ \_ A) ,\_ . Wy ‘

./=-......--»/-,- e-X“ " “< \*--\*-"="'“ "‘\*'/--e-M. Q’ \_\_ \_ ,4 ....\_‘ ir..»-- e---=--\_...mv.

center ofMtheWphotograph.

-\_m-“Mm:;J,- »-irmrM»---w"

Q And then that particular item was given the

designation A-l8 along with other items of clothing?

wies.

\*=1o\::>

Were there any blood stains that you analyzed

S >6 ﬁe 't if ‘T ‘es e “:1 yr <- <--.\_,\*L\_;"\_\_\_\_\_€w\_hl W H

434

1

or collected?

A There were two blood stains that were not part

of this particular -- directly within th room that we

took -- that we collected. There was a lood stain that

actually was on the door frame going into this room, and

another blood stain that was on a portion of the hall or

end of a wall in the hallway. Those are Items A dash

23. That is the one in the hallway, and A dash 24,

would be the one on the doorpost of the room.

Q Let's start with A dash 24, the one on the

doorpost of the room.

Did you actually collect a sample of that?

A Yes. That would have been swabbed and removed

from the doorpost.

Q When you swab it, how do you go about that?

A I believe at that time -- we've had a couple of

different collection techniques. I believe at that time

we had small squares of white linen that we moisten with

sterile water and then swabbed over the top of the blood

stain to collect it.

Q Okay. And then so that became A dash 24?

A Yes, sir.

Q And then I'm going to show you Exhibit 36,

which depicts A dash 23.

Did you do the same thing regarding A dash 23

as you did with A dash 24?

A Yes, sir.

Q Then at some point did you analyze any of these

435

/\

1|

blood stains, A dash 23 or A dash 24?

A Yes, sir. I did not analyze them immediately.

It was quite a number of years later that I went back

and actually analyzed them using the DNA techniques.

Remember at that time in l985, we were not doing

forensic DNA work in our laboratory. We didn't start

that until 1992, so it would have been after 1992 that(I

looked at these with DNA techniques.

Q Would looking at your reports and notes refresh

your recollection as to when your analysis was done?

A Yes, sir. Yes, sir. I999 was when I took a

look at the two blood stains that were on the -- that we

previously spoke of.

Q When you were taking a look at the two blood

stains, did you also look at a profile from the victim

in this case?

A Yes, sir. Actually, as a matter of fact, there

were about l6 different reference profiles that I looked

at at that time, which includes the reference sample

from the victim.

Q Then as far as Item A-23 and A-24, what type of

->........» W §i'; , n1»"‘§ V-M-I: .,.- \_.\_..».i. , gJr<' ,\_ i...W.v,.\_..c......ct.....,...l»\_\_..c.w..u...i<..\_..m..»-1»-£»-»\_==

DNA analysis did you do to those specific items?

-;-»----( ‘s ‘rX-»< \_ :,\_,;\_):“:’\_\_V\_\_T\_\_”= 1’, J16 ;l,a\_\_Q\_w\_\_MWr r >4‘: V “ M\_“\_\_\_;\_’\_mm:W\_, ..... ..>,

A I used a -- a technique that involved the (M

polymerase chain reaction, PCR process that we spokemof

5:35 Hifglifli 915, E113}, 53¥s§...,.@:..9%i§.:£..z2;@g-.1<;tr....%alr.a..a...

couple\_of\_kits that we were using at that time in 1999.

This is prior to the one that we have employed most

»..\_\_:“;: \_\_a;\_\_\_i\_;\_\_v;W,\_ , mi ,2 a \_:,\_ll\_ \_ T,\_\_\_h u\_\_;\_\_k\_\_,\_wW\_\_(\_=m\_;M,\_\_\_,\_2\_,,,,,\_-:-».\_.,...s.,m\_\_\_\_\_\_\_\_\_\_\_$\_,A\_\_,.,-.a»-.---¢--’-

recently, but it still was discriminating enoug\_MkM%mERJ

guy" Nor 1 t :\_\_\_\_:.....,,..,a- ===\* ’--ea» ‘>-= - --'-=<-'-\*-M.....,...=.\_...=l..\_...-.-...,-"=s-r "-\*" ‘““”’ "\_“""“”'""°"”7A V ’

D“

Ft

O

Ff

(D

!-'

r-‘

436

the\_,,s,;§\_isifeH£s\_§§19rni9,I§ll.\_9f these r@§ leS' slid

I was able to distiQguish=among“a}l of the ones that I

,.»--..\_ ‘\_ m ; \_; \_$\_\_,,,¢»\*"‘ M‘ ‘wm‘"'"“'\*“""“‘“"'----------...\_,....-1-D-ms.

looked at and also to determine that that particular --

uw :\_\_’\_\_, in \_\_\_“.., “Y -- Wm-K »-\*"‘“'““"'\*" ---.=.;-\_>.,.,..A..\_\_,..l...\_. .-I----»-»»---‘---------»---\_\_,\_\_\_\_<\_:\_,

these two particulagpstains had the same DNA type as the

-..\_,\_\_\_\_\_\_\_\_\_,\_,.,.>=»“‘“ =-Y"‘=""s‘\*‘ """“ "'“""""“ "‘“":“ ‘- as -=s“‘\*'-\*="-- ---»“l\_\_M,\_J\_\_ \_m\_\_

yyiptimladeneteofwangsrgthe other reference samples.

Q As far as the -- I guess it would be the random

probabilty that this same profile was found in another

human being, did you also determine what that was?

A Yes, sir, What you're looking for is basically

a population frequency, how common does this particular

set of DNA markers occur in the general population. I

did some calculations for what I called three major

ethnic groups that we report in our report.

Q What were those calculations as far as Items

\_W-\_w¢9§\_‘W; K7 um P‘: /\_v W W‘ W\_\_>\_ MW w\_pm\_M\_\_,,M.., 1-\_¢-.,\_\_\_c...\_-l,\_,.w..,.,.-\_.v,,,\.¢N..,.,.,,\_\_,I.l.¢

A-23 and A-24?

%\_-.----»""“" "Mm

A

You would expect that -- that particular DNA

7 S ‘N \_\_ My ,k ,\_.t\_\_\_\_,\_),\_\_,,,M4 m\_=N\_\_., W--‘V --\*--» --\----' -'\*-‘=-'==»-1‘-»-<,......,,,\_.,\_\_..a.Ii,\_g-....l\_.\_\_, .. 1. A-=-%.\_\_ Au’

type or particular profile t24occur in 1 in 27,000

Caucasians, l in 160,000 Hispanics, and l in about

\_\_\_“\_\_/-4... .1.” ll I \_%\_\_=( W Evil. H .W-.\_.. \_,W\_\_\_,\_‘m\_\_\_

...-

...--.........,ml.. Mw

610 000 African Americans or blacks as we reported at

I /‘Via >PQ\-‘M

-...\_,W£\_\_,.\,,,\_, ,,.»»-:----"\*\*\*----qr»-- . \_,..,--- --= --...l....m=.-..-.@-........\_,.,\_\_-\_\_\_,\_i,\_,-,.L \_, 2%,...‘

that time.

Q Then as far as that specific testing that you

did, was that specific testing generally accepted in the

scientific community as reliable and accurate back then?

A Yes, sir. It still is today. It's just not as

discriminating -- not as powerful as the current

technology. So we've moved onto more powerful

technologies.

Q As far as these specific numbers, I think you

437

talked about it earlier, they're not l in 7 billion or

trillion or guadrillions?

A These numbrs=arelnet$\_ They're still mrly

‘ax 1\*’ '“‘\\_,,. ‘\_l,\_.i-‘,\_k1‘4;“ \

‘lbw

specific.

so“)/"

“Q Then basegﬁgp¢year-ewn-trainiQg and experience,

did you have an opigion as to EQQ§§uQlQQQ\_§hat was on

\_§\_\_\_\_p\_\_M\_\_\_wﬂW‘\_‘\_‘: \_\_ Q: 9,; f e ’ t ’s<.\_\_\_\_\_\_\_\_% j’\_ ,,e .‘

these stains A-23 and A-Z§jMM

\_l\_\_Myfl,i:u,W:ewei\_li\_\_lil,»-

A My opinion wouldxbe that particular blood would

--\_\_\_“\_:\_\_‘>\_\_\_‘\_\_\_§ ;\_\_\_:\_§,,,.e-‘S :==‘ ‘J {‘ ‘“' "‘\*"='"--'--=»\*'\* ---.‘-§-.\_...,a...»----T---=-\*'”‘\*""‘

be that of 1:%l§A‘1-I...jJ».Ci.’E..i‘-Ln,\_',\_..-

Q That would be Rita Cobb?

A That's correct.

Q At some point did you extract DNA from Item A//

dash 11, the vaginal swabs taken from Rita Cobb? -

A Yes, sir, I did.

Q And how did you do that?

A The purpose of looking at vaginal swabs is to

look to see if there had been a sexual assault, which

would mean there could be the -- T shouldn't say sexual

assault -- if there had been sexual intercourse, which

would mean the possible presence of what are called

sperm cells.

The samples that contain spermatozoa are

handled different than other samples that are extracted

for DNA. Something about the spermatozoa cells that

make them hardier than non-sperm cells. If you have a

mixture, such as, when we take a vaginal swab, you're

going to have vaginal epithelial cells from whoever the

victim is.

438

Q When you say epithelial cells, what are you

referring to?

A Upper surface skin-cell type of cells. The

soft, soft tissue cells on the inside of the vaginal

vault. Those can be broken open and dissected and DNA

recovered from them and have the sperm cells stay

intact. We have a different extraction process by which

we'll take a portion of the vaginal swab, put it in a

solution, treat it for a short amount of time with

chemicals which will break open these non-sperm cells

and allow the DNA to float free in the solution.

The sperm cells stay intact. If I take that

sample and put it in a centrifuge and spin it really

fast, the sperm cells will go to the bottom. The liquid

with the DNA from the non-sperm cells floats to the top.

I can take my test tube, draw off the liquid on the top.

It now has a non-sperm cell DNA, which most would have

come from the victim. I expect all of that DNA to be

the same as the victim's type.

The sperm cells that are at the bottom -- sperm

cells did not come from the victim. I can now treat

them a little more harshly, which will break open the

cells, break open the nucleus in there and get the DNA

out of the sperm cells in seconds. I now have separated

sperm cell DNA from the non-sperm DNA, and I can

individually type them and compare them to reference DNA

samples that I get from individuals.

O Okay. Then once you do the extraction from the

439

cells, is that something -- you stated before that there

is a different type of technology that you were using or

a system that you were using back in 1999?

A Back in I999, there was a different typing --

way that we typed the DNA. In fact, I believe when I

first started looking at these samples, it was actually

in 1997 when I started looking at these samples. The

technology that we used, it was what we call typing or

comparison part of it toward the end of our DNA work.

The initial part of it when we extract the DNA,

we digest it, we break it open, that part has maintained

and been steady throughout. I still use the same

process today as I did when I first started in DNA 20

years ago, break open these cells, differentially break

open the non-sperm cells and sperm cells. That's the

same techniques.

Where the advances have come is in the DNA

typing itself. The typing I used back in l997, some of

that typing needed a lot of DNA other parts I used the

polymerase chain reaction and used a small amount of the

DNA that I recovered.

What I should tell you is that when we separate

out these extractions, and I have non-sperm cells and

the sperm cell, I have it in a small volume of water

based, like aqueous solution, and I -- first thing I had

to do is figure out how much of that is human DNA.

There might be some bacterial DNA. So how much is

human. After I figure out how much is human, then I

440

know how much of it I can take, and maybe there's

<3

volume of 40 microliters. It might be that I can take

five microliters off of that and be able to do all of my

DNA testing and still save some of that liguid for

someone else to test later if they need it.

So this guantitation that I do, determining how

much human DNA is there, is rather critical to know how

much of the sample I need to use in order to do my

typing.

It also will then, as I mentioned, let me know

if this sample will have something left for future

technologies, which may come about.

Q As far as the typing procedure that you

used,

you said that the extraction procedure is basically the

same throughout from 1999 to when you did it to today.

The typing that's done or that you used

1999, is that different than the typing that was

2003?

A Yes, it is. It's -- the typing is very

different. It is -- it uses a totally different

DNA factors and DNA locations that it looks at.

fact, the results that I got in 1993 --

Q '99.

A '97, the results that I got in 1997 are

in

used in

set of

In

not

compatible with the DNA typing results that we get now.

I can't take these and compare them to the new kit or

new set of data. I would need to take a small little

bit of that extract and process that with this new

441

typing kit in order to get a new set of data or

additional DNA information. I have the -- I hesitate to

call it the old DNA information that I got in '97, and

then if the sample was retyped to get a new set of DNA

information using that more recently developed DNA

typing kit.

Q So we're clear, as far as the extraction that

you did in 1999 of the vaginal swabs labeled A dash ll

and LR Number 44659, those boing extracted samples,

hypothetically, let's say criminalists in 2003 wanted to

use the extracted samples that you obtained in 1999 to

do the typing that was more advanced in 2003, there's no

effect that your extraction would have on that DNA

typing that's done in 2003?

A That's correct. In fact, one of the reasons

that I save the extractions after I have taken my small

portion off and typed them, I save them, package them

away, if somebody else wants to test, whether to retest

my work or to test with an additional DNA typing

technique, I put them away to allow them to do that.

That's why we save it, so it can be tested again.

Q Then once you do the extraction, you said you

packaged it up.

Is it -- how do you package it up, if you can

describe that for us?

A Well, the final result that I get is in a tube,

a small what they call a cryovial tube, that final

extract, and it's from there that I take off a small

442

portion I'm going to use. The amount that remains,

there's a screw cap on the top of the cryovial. It then

gets -- actually, I package it into several different

envelopes, different extracts into different envelopes,

put a bar code on them, and submit them for storage in

our property unit.

Q And as far as the storage, you have been at the

crime lab all these years, are they properly stored in

accordance with what's generally accepted in the

scientific community?

A Yes, they were. By procedure, we freeze them.

The truth is, the solution that we keep the DNA in, you

probably don't truly need to freeze it, but I guess I

would call it for appearances sake, we

freezer.

store it in a

Q Then as far as that solution is concerned, is

that something that lasts indefinitely

or is there a

certain number of years you can keep it for?

A As far as I know, there is not a shelf life, if

you will. It might be somewhat dependent on how strong

the DNA selection is. If it's really concentrated DNA,

it probably will last longer. If it's

know if it will stick to the inside of

tube and over time become less able to

In this instance, there was a

these tubes. 1 think they're going to

as long as you still have the solution

you use it up.

weak DNA, I don't

the plastic of

type.

lot of DNA in

last a long time

in there until

443

MR. THOMAS: Nothing further.

THE COURT: Do you have questions you want to

ask?

MR. SANDERS: A couple, your Honor.

THE COURT: We'll do that tomorrow.

MR, SANDERS: Yes, sir.

THE COURT: l0:OO, ladies and gentlemen.

You're admonished that it is your duty not to converse

among yourselves or with anyone else about any matter

connected with this case nor form or express an

opinion on it until it's submitted to you. See you

tomorrow morning at lO:OO.

Mr. Jones, see you then. You can step down.

THE WITNESS: Thank you.

(whereupon the following proceedings were held outside

the presence of the jury:)

THE COURT: Okay. The jury is gone. You

wanted to put something on the record this morning,

Mr. Thomas. This is the time to do it.

MR. THOMAS: I just wanted to put on the

record this morning that we had a case, Helen Brooks.\

It's an unsolved homicide over at the sheriff's )

department, and it's still unsolved. There's a

‘different DNA profile that was obtained from the

vaginal swabs on that case versus this particulaD/

case, but the fact that there was a victim who/was

similarly aged as Rita Cobb, Helen Brooks was 60 at

the time that she was killed, and it was in the same

444

general area, as far as the high desert. She was

murdered in Apple Valley, and, in fact, that occurred

a few months prior to this murder.

My office thought that it would be good for

Mr. Sanders to come over and look at the file. I did

provide him an opportunity to do so. We gave him access

to the entire Helen Brooks file. He spent pretty much

an entire day looking through the file and taking notes,

but I just had a concern that this might be potential

Brady material in the future if I didn't disclose it.

THE COURT: I thought we already talked about

this.

MR. SANDERS: We did not, your Honor.

THE COURT: Okay. You have -- you

acknowledge that you've had a chance to look at the

prosecution's file; right?

MR. SANDERS: I have.

THE COURT: Anything else to be said on the

subject?

MR. THOMAS: N0.

MR. SANDERS: WeIl, the -- the -- I

thought -- I'm sorry. Let me bring up a different

point. It would be my intention to ask the \

criminalist and some of the others about the Brooks

case, and the reason is this; your Honor, it is in

many respects almost identical to the Rita Cobb case./

I can't give you a list right now, but there's so many

ways these two cases are similar because of that for

ill

445

the first two or three years after September 23rd of

1985, the sheriff's department treated the two cases

as if they had been committed by the same person.

There were several investigations to determine,

you know, who might have done both of these cases, and I

think that that's part of the information that's

important in this case to -- to demonstrate to the jury.

I assume Mr. Thomas was going to object to my

questioning along that line, and I thought that that‘s

why we put it off till now, so it would not be mentioned

if I chose to give an opening statement at the start of

the case.

MR. THOMAS: The People -- Mr. Sanders is

correct. The People would be objecting based on

relevance. We wouldn't be able to bring in evidence

that, well, maybe John Yablonsky is responsible for

the Helen Brooks murder. He committed this murder.

The Court would look at the evidence and say, wait a

minute. There's an entirely different DNA profile

there. What evidence do you have to link

Mr. Yablonsky to the Helen Brooks case?

Same thing with this scenario. What evidence

does Mr. Sanders have to link somebody else who might

have been involved in the Helen Brooks murder to the

Rita Cobb murder? There is none. I think that it would

confuse the jury. It's an undue waste of court time,

and I think that weighing the probative value versus the

prejudicial effect or the undue waste of time, l think

446

that the probative value is slim to none.

THE COURT: And confusion really.

MR. SANDERS: No, in --

THE COURT: Just one second. Mr. Sanders,

I'm not going to spend anymore time on this now. See

me in the morning with whatever authority you have,

either one of you. Everybody can bring in authority

that would be helpful.

MR. SANDERS: Thank you.

THE COURT: The fact that Mr. Yablonsky did

not kill Helen Brooks does not mean he did not kill

Rita.

MR. SANDERS: Absolutely, but it -- there‘

different -- it's a two-edged sword.

THE COURT: Bring me those cases that you

find that you think shed light on this if there is

S E5.

such authority. I don't -- I don't know what you'll

find, but if there's something there, give it to me

tomorrow.

MR. SANDERS: Thank you, your Honor.

THE COURT: See you tomorrow at 9:45.

MR. THOMAS: Thank you, your Honor.

(Whereupon proceedings in the above-entitled

matter were concluded for the day.)

447

VICTORVILLE, CALIFORNIA; JANUARY Z5, 2011;

-- DEPARTMENT --NO. V-2 HONORABLE JOHNEM. TOMBERLIN, JUDGE

A.M. SESSION

(Appearances as heretofore mentioned.)

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

-oOo-

(Whereupon the following proceedings were held outside

the presence of the juryz)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Back on the record in the case of

People of the State of California versus John Henry

Yablonsky who is here with his attorney,

David Sanders. Mr. Thomas is here along with his

investigating officer, Detective --

Detective Alexander.

Mr. Sanders.

MR. SANDERS: Yes, sir. I had two matters I

wanted to address the Court. As I indicated in

chambers, the first is; as I indicated yesterday,

there is a case of a woman --

THE COURT: I don't think we need to

reiterate the issues regarding Ms. Brooks. We've gone

over this, and the case that you referred to, People

versus Hall 41 Cal.3d 826 regarding the issues of

third party culpability.

MR. SANDERS: Yes, your Honor. My position

is that it is relevant evidence. It would assist the

448

jury in understanding the case and the situation that

existed back in 1985. For those reasons, I would ask,

the Court to allow us to introduce that evidence.

THE COURT: Mr. Thomas.

MR. THOMAS: I think the Court's already

dealt with that, in certain aspects, prior to us

beginning trial. As far as People versus Hall, I

think the case law, if I recall correctly, states that

mere motive and opportunity is not enough to bring

about third party culpability in a case.

Mr. Sanders hasn't even proved mere motive or

opportunity. I don't see how Hall even applies or that

he can get this under third-party culpability, and I'd

ask the Court to prohibit him from going into this line

of questioning.

THE COURT: 352, it Seems like it's likely to

lead to confusion. There's no one else that's being

tried for this particular crime, but Mr. Yablonsky

isn't accused of having killed Ms. Brooks. It's just

as likely to lead to prejudice against Mr. Yablonsky

as it would be -- it doesn't, in my opinion, tend to

exonerate him by any means with the possible exception

of leading to confusion. I don't see what the

advantage would be to the defense to have this

information in, and I'm going to order that it -- find

that it is more prejudicial than probative and unduly

consumptive of court time and likely to confuse the

jury.

449

I know the next thing is -- let's go ahead and

put it in the way you put it in chambers. \_You want to

establish the reputation of the victim in this case as

barfly. I don't see it.

MR. SANDERS: Actually, what I didn't want to

do is try to do that. What I would like to do is just

to have the jury understand, as everyone else in

those -- in 1985 understood, that Ms. Cobb did have a

number of gentleman of different ages, and she

entertained them at her residence. She invited them

to be there, and it was not uncommon for her to have

male quests at home.

MR. THOMAS: I would argue it's improper

character evidence. What's the relevance of that?

It's just to dirty the victim up.

THE COURT: I don't see the relevance either.

MR. SANDERS: There -- it's one thing if --

if we -- if we had -- we had -- if we had a person

that never had anybody at her house. Then if you have

someone at her house, it means a lot more.

THE COURT: You've asked the son of the woman

did he know that she dated, did she have people over.

MR. SANDERS: Well, there was more. I had

additional questions to ask both him and Marta on that

subject.

THE COURT: I think that you established

enough for whatever you needed to. It wasn't like she

had no one ever at her home. I haven't allowed

450

Mr. Thomas, nor has Mr. Thomas attempted to, establish

as you just put it that she is someone who doesn't

engage with any kind of social intercourse was what

you called it.

MR. SANDERS: Thank you, your Honor.

THE COURT: That's -- that's it?

MR. THOMAS: The only other matter before we

bring the jury is I was going to ask the Court's

permission to reopen,

THE COURT: That's fine. Bring the jury.

MR. SANDERS: No objection.

THE COURT: You said that you don't object,

Mr. Sanders?

MR. SANDERS: Yes, your Honor.

(whereupon the following proceedings were held in open

court in the presence of the jury:)

THE BAILIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Back on the record in the case of

People of the State of California versus John Henry

Yablonsky who is here with his attorney,

David Sanders. John Thomas is here for the People

along with Robert Alexander, his investigating

officer.

Before we get started this morning, I was

advised that there was someone in the hallway, not one

of the jurors, but someone near the jurors that had a

copy of the Daily Press. Apparently it has an article

451

about this case with a photograph of Mr. Yablonsky.

No one has seen anything about that; have they?

No one's read the article? Stay away from the paper, I

suppose, until the case is over.

Anything else anyone wants to bring up on this

subject, Mr. Thomas or Mr. Sanders?

MR. THOMAS: No, your Honor.

MR. SANDERS: No, sir, thank you.

THE COURT: Donald Jones is still on the

witness stand -- he was going to go into

cross-examination, and Mr. Thomas has indicated that

he had a few questions that he meant to ask that he

didn't ask and asked to have an opportunity to reopen

his direct examination. Mr. Sanders has not objected.

Proceed.

MR. THOMAS: Thank you, your Honor.

DONALD JONES, having previously been duly sworn,

testified further as follows:

DIRECTWEXAMINATIONVireopened)

BY MR. THOMAS:

Q Good morning, Mr. Jones.

A Good morning, sir.

Q Yesterday, do you recall me showing you a bunch

of photographs?

A Yes, sir, I do.

Q Okay. And those photographs, each one of those

photographs I showed you yesterday, are those all true

452

and accurate depictions of the crime scene as you saw it

back on September 23rd of 1985?

A To the best of my recollection, yes, sir.

Q I was going to ask you about the eXtraction-

process.

As far as that process is concerned, I think we

already went through yesterday that that was done in

accordance with the scientific procedures that you were

familiar with?

A Yes, sir. You're referring to the extraction

of DNA from the stains?

Q Yes.

A Yes, sir.

Q As far as that process is concerned, did you do

that in accordance with the training that you received?

A Yes, sir. In accordance with the training I

received in accordance with the procedures that we have

established and that have been reviewed as part of our

accreditation.

Q Was there anything about that process that

caused you any concern, anything that happened that was

unusual?

A Not that I recall and not that I remember

looking through and seeing in my notes.

Q That would have been something that you would

have noted if that had happened?

A Yes, sir.

Q And then I asked you about item A dash 11

453

yesterday and the extraction that occurred on that tem.

Did you also do the extractions regarding

...\.l\_-¢\_\_-\\\_\_“\_\_AM\_\_\_\_ M \_\_\_-\_\_nﬁ\_; my J,‘\_\\K V

A dash 18? “P

....,-»--.\_\_,\_\_..,------ '-r

A Yes, sir. Actually, there were several sam les

that had been taken from A dash l8, and I took a loo

at -- I extracted two of them then went on to do s e

work on one of those two.

Q Then as far as the extractions that you did on

A dash 18, that was specifically the felt pad?

A That's correct, yes, sir.

Q When you did the extractions, you were familiar

with the felt pad from back when you collected it in --

on September 23rd of I985?

A Yes, sir.

Q And it appeared to be in the same condition as

when you collected it?

A Well, actually, the samples that I looked at

with regard to the felt pad were samples cut from the

felt pad. When we take the samples back to the crime

lab, rather than store a gigantic piece of evidence in

our freezer, we'll cut out the stains, and then we put

the stains in a smaller envelope, and that can be stored

in our freezer. The rest of the items then are stored

at room temperature.

Q The question that I have is, the cutouts that

you had, did they appear to be cutouts from the felt pad

that you observed back on September 23rd, 1985?

A Yes, sir.

454

Q Okay. And then as far as that extraction

process went, you did the same process that you did with

the felt pad cuttings as you did with A dash ll?

A Yes, sir. In terms of separation of the sperm

cell and non-sperm cells into two fractions.

Q Then you did the same thing as far as being

able to -- that you preserved the extracted DNA for

future use by other criminalists?

A Yes, sir.

Q Did you label that in some way?

A Yes, sir. I spoke yesterday of some plastic

tubes with screw caps on the top called cryovials. Each

of those vials would have been then labeled with the

LR number and with the item number and with the fraction

number. For instance, for the felt pad, it would have

said the LR number, 44659, would have had the item

number, A dash 18. I believe it was stain B, and then

the fraction number would be E-2. E-l is generally the

first extraction. It will have the non-sperm cell DNA,

and E-2 is the second extraction, if you will, and that

will have the sperm cell DNA.

Q Were they labeled A dash 18a and A dash 18b?

A I believe, yes, sir. I did extractions on two

stains from A dash l8a and b, and they would have been

labeled independently.

Q Okay. Then was there anything about that --

strike that. As far as that extraction process, you did

that in accordance with the scientific training

455

procedures that you received?

A Yes, sir. There probably is something that I

should note also that when we do this extraction

procedure, at the time we're doing the sample, working

with the samples, and so on, we extract not only the

evidential sample from the stain, but I have another

tube which has a blank in it. Basically, I put all the

reagents in it, all of my enzymes, all of my bufters in

this other tube, but it has no stain in it. It should

have no DNA. It is what we call a reagent control,

something that at the end should show no DNA at all.

Also, extract a known positive control, one

that I know has DNA in it to show that the extraction

works in case all my samples are negative. I want to

make sure that the extraction process is working. So I

run -- with each set of extractions, I run a negative

control and positive control. Those also would have

been collected in the small screw-cap vials and stored

with the rest of the samples, the positive and negative

controls for the extractions that I did.

Q Okay. And do you yourself test that

afterwards?

A In general, I test the negative control. I

will test them all to see if there's human DNA. If I

find human DNA in the evidential sample, and there's

human DNA in the positive extraction control, and

there's no DNA in the reagent control, things are coming

out as I expect. Then the positive extraction control,

456

I will not type that. I already know what the type of

that is. Its purpose is to see if I was able to recover

DNA .

The negative control, I will go on with the

rest of the processes to see if, even though I didn't

detect DNA in there, if there's anything in there that

would -- would be carried over into the typing process.

I expect that to have no DNA typing results.

In this particular case, it had no DNA typing

results. I also then will save that sample along with

the evidential sample, so that if somebody in the future

wants to test using a different typing technique or

different technology, they can test the known blank to

make sure there's something that won't show up in this

other type of test in the known blank.

Q So you did this with Item A dash l8a and b?

A Yes, sir.

Q And then you also did it with the item that we

spoke of yesterday, A dash ll?

A Yes, sir, the vaginal swab that was collected

at the crime scene.

Q Okay. And later, after you were done, you did

all the tests that you just explained as far as testing

the negative portion of it and as far as all of the

tests were concerned, anything come out that caused you

any concern?

A Nothing that caused me concern. The results of

-“vx .\_,\_,.>-\_\_\_, .\_\_\_ k\_\_,\_\_\_“

the DNA typing that I didﬂshowed th§t\_it was\_the same

457

semen donor for the felt pad as for the vaginal swab,

‘bat it did not match any of the reference samples that

W,\_\_M\_i,-\_W\_-\_»\_¢-e-wﬂ\_Mii\_@¢m\_i\_\_,uum m--

had been submitted to the laboratory at the\_time:

At the time I did the testing, I\_had\_what we

» Q.”/- Q6-»-=‘-<»e---= '->\\_\_\_.\_.i ,\_., \_\_\_\_&\_\_\_\_,\_\_,'--' '-=->-

call a semen donor profile, but I had nobody that it

\_\_\_\_‘\_\‘ ‘B/\_,\_.\_\_\_.\_-Q?» - -»-‘ K» -»>\_\_»-»--(»--’s\--1--'---\_\_\_=\\_\_/----"\*--».\_\_\_\_\_,\_\_‘..¢-

matched.

»\6,r

Okay. As far as the quality control of the

testing that you performed on A dash 18a and b and

A dash ll, was there any concerns that you had regarding

that quality control that you talked about?

A No, sir.

Q Then the other thing I forgot to ask you

yesterday is, you mentioned a pair of panties that were

found on the floor next to the bed.

Do you recall that?

A Yes, sir. I believe we called that Item

A dash 3. They were on the -- as you looked from the

foot of the bed, they were on the right-hand side up

toward the head of the bed near a set of eyeglasses.

Q As far as that pair of panties, was there any

testing that was done by the crime lab to determine

whether or not that contained any serological fluids of

any sort?

A There was a screening test for semen on the

panties. That test was negative.

MR. THOMAS: Nothing further.

THE COURT: Cross.

MR. SANDERS: Thank you, your Honor.

458

CROSS-EXAMINATION

BY MR. SANDERS:

Q Good morning, Mr. Jones.

A Good morning, sir.

Q Let me make sure I understand this. Your job

back in 1985 was to collect evidence; is that correct?

A Yes, sir.

Q And you were hired by the sheriff's department

to do that?

A I was hired for a number of reasons. One of my

assigned tasks was crime scene investigation.

Q Then as the years went by, you assumed more

responsibilities; is that correct?

A I have had different assignments as the years

went by. I came to a point where I specialized. I

would characterize it when I first started, I was a

generalist. I worked in a number of different areas,

but as time went by, I began to specialize in a

particular area. In this instance, forensic serology,

which became forensic biology or DNA.

This is a necessity that you wind up

specializing. It is something that has been forced upon

us by our accreditation that they want us to specialize

in one particular task or assignment that we perform.

Q Back in 1985, you were called to go out to

Highway l8 in Lucerne Valley; is that correct?

A Yes, sir.

Q And do you remember what time you arrived?

459

A I could check the -- my notes if you don't

mind.

Q Feel free.

A Okay. According to my notes, I actually

received the call when I was in Rancho Cucamonga at

right about 2:00 in the afternoon and went from

Rancho Cucamonga to the address at 35435 Highway I8 in

Lucerne Valley and got there a little bit after 3:00 in

the afternoon.

Q When you arrived, was anybody inside the crime

scene at that time?

A I don't know who was where. I can tell you

that the notes I took indicate that Sergeant Dave Baker

and two detectives that I have listed here as Gary Wood

and Al Long.

THE COURT: What was that last name?

THE WITNESS: Long L-o-n-g.

THE COURT: Thank you.

BY MR. SANDERS:

Q Do you know if someone had kept a log of people

that entered or left the crime scene before you arrived?

A I do not know.

Q No one showed you a log indicating who had been

in and out?

A No, sir. My understanding is part of the

investigation the homicide detectives kept track ot who

was at the scene, but in terms of a physical log, I

don't remember seeing one or noting one.

460

Q All right. And then you have not seen one

since?

A That's correct.

Q Were you one of the persons responsible for

observing or collecting or preserving evidence outside

of the house that you went to?

A I don't believe we did any physical evidence

collection. There probably were photographs that were

taken by the identification division. As far as I can

recall, the only evidence that I collected was evidence

from inside the residence.

Q You were not the person responsible for

photographing; is that correct?

A That was handled by two -- at least -- at least

two other people that were there. I believe I mentioned

yesterday it was a Tom Moody and Jeff Bedetti. They

were from the identification division.

Pretty much people from the identification

division would do the photography and any latent

fingerprint development. People from the crime lab

would sketch and document the scene and collect the

physical evidence. The homicide investigators pretty

much would oversee the scene and make sure it was

processed and then handle the interviews and so forth.

Q Since you've mentioned it, let me ask you about

the fingerprint -- the effort that was made by the

sheriff's department to search the residence for

fingerprints.

461

Who was it that conducted that search?

A My answer to that is based upon procedure. I

don't know. I was not involved with the fingerprint

aspect of it, but that would have been Tom Moody and

Jeff Bedetti who did the fingerprint processing

throughout the crime scene.

Q As they do that, did they ever draw your

attention or show you some fingerprints they found?

A I don't remember anything with regard to

fingerprints at the scene.

Q I know that technology is different today than

it was back then, and sometimes we hear that you could

pretty much get DNA from anything these days.

Let me ask you this; is there -- is it possible

to get DNA from the same oil on hands that causes

fingerprints?

A The way I would answer that, in the continuum

of possibilities, it's possible. My experience with

what you call touch DNA is that it is -- it's very

dependent upon what it is that's being touched. If it's

a common object, the chances of getting DNA are good.

The chances of you being able to say it came from one

individual, not very good. In fact, probably from more

than three or four people. Generally, touch DNA on

common surfaces really is more confusing than -- than it

really is worth while to even attempt. It will give you

more questions or not answer any questions at all.

If you have something that is restricted in

462

terms of who could touch it, the handle of a tooth

--brush,-maybe a particular individual touches that and,

nobody else uses the tooth brush. That has a greater

potential for showing a single source of DNA that would

have come from the touching on the hands that was

transferred to the tooth brush.

Q What you're saying is you can collect it, but

it's often compromised? It's often --

A It is what I would call a true forensic sample

in that you don‘t know what you're going to get and a

lot of times you're going to get stuff that's not going

to mean anything or not be helpful to you.

Q You can collect DNA from hair?

A Yes, sir.

Q You collect it from skin cells?

A Yes, sir.

Q You can collect it from sweat?

A I have done tests on items that pretty much it

was in the sweaty area, and I have gotten good results,

yes, sir.

Q All right. So when you went to the scene then,

I think you said you have a protocol of when you enter

the front to which way you go and what you do; is that

correct?

A I don't know that I said that. I said that the

way we processed that particular scene, we had a way of

entering the primary bedroom. That was a decision we

made at the time based upon the information we had about

463

the investigation.

' Q '80 there was a decision made not to proee

other rooms in the house that same way because of

situation you found yourself in?

A Yes, sir. It was felt that our greatest

probability of finding something that might be rel

to the perpetrator of the crime would be in this

bedroom. The evidence seemed to point that everyt

happened in that room and, therefore, we should

concentrate our efforts on that.

Q Let me ask you a question about that. Wa

there any thought in your mind that perhaps someth

had happened outside this bedroom causing blood sp

in the hallway?

A Well, the actual patterns that were in th

hallway aren't what I would call blood spatter. T

probably more transfer. They were on some object

were transferred to the wall or the doorjamb. The

no other evidence outside in the hallway of any so

blood stain patterns, whether impact or cast off o

anything, other than these two what appear to be

transfer spots.

There were other items in the house that

collect for potential forensic biology examination

Those are the cigarette butts that were present in

various ashtrays, but I think in terms of the rest

the house, that was almost the extent of what we

collected.

SS

the

ated

hing

s

ing

atter

G

hey're

and

re was

rt of

r

we did

of

464

Q What about the car that was out in the carport

or the garage, did you process the car to look for

evidence?

A No, sir.

Q Whose decision was that?

A That, I don't know. In general, speaking again

by procedure, if the vehicle had been requested for

processing, it would have been done at the crime

laboratory.

Q You indicated when you went into the bedroom,

the first thing you did was performed a vacuuming

operation?

A Yes, sir.

Q And was that done by yourself?

A Both by myself and by my partner,

Dave Stockwell.

Q Okay. And what, if anything, did you find when

you examined the results of the vacuuming?

A I did not examine them. Dave Stockwell did,

and he has a number of notes that he made with regard to

hair and fibers that he pulled from -- from different

parts, whether it be the vacuum sweeping or from

articles of clothing, so when they were collected and

there, but I did not do that examination.

Q All right. One of the things that you did was

not only did you vacuum the floor, but you vacuumed the

clothing?

A Actually, the clothing would have been examined

465

back at the laboratory, open it up and do any sort of

’--collection e- - . . .. . . . . .

Q And shake it out?

A -- or processing looking for stains and so

forth. The vacuuming was on the areas of carpet around

the bed and then the surface of the bed itself.

Q And I’m assuming you have some kind of a

special vacuum cleaner that you --

A Yes, sir, we do. It looks like a regular

vacuum. The one we used at the time was

over-the-shoulder-type vacuum. It had a hose. Then at

the hose end, there was a special trap. It was a round

filter thing that you could unscrew, place a filter over

a screen, screw it back on, and then go through your

vacuuming. All the air would pass through and the

filter would trap any hairs, fibers, debris, trace

evidence and so forth onto the filter.

The filter would be taken out, placed in -- I

could check my notes. I believe we had Ziploc bags, we

placed the filters into. The trap would then be wiped

out in terms of any residual dust, put another filter

back into this cartridge and go on to the next section.

Q So you use a filter for the rug and then

switched and used a different one for the bed?

A Yes, sir. I think there were two or three

areas of the carpet that we did independently. We would

have used a separate filter for each of those and then

also a separate filter for the bed.

466

Q I'm assuming on the bed you did find hair

samples and fibers? a a

A Honestly, I don't know. I did not physically

examine the vacuum sweepings. We collect them because

you only got one shot. If someone wants to look at them

at a later time, I believe Mr. Stockwell may have done

that, then at least we have them. In terms of what the

sweepings contained, I couldn't tell you.

Q What about the -- when you approach the body, I

believe you said you took some tapings; is that correct?

How do you refer to that?

A Tape lifts.

Q Tape lifts.

A Yes, sir. My notes indicate that we took tape

lifts of various sections of the body. The idea is that

whatever occurred would be the most resent thing;

therefore, any potential evidence would be on the top or

the surface.

Q And in conjunction with that, you combed

through the victim's hair; is that correct?

A I don't remember doing that at the scene, and I

haven't seen any notes to indicate that we did comb

through the hair. That may have been done at the

autopsy, but I really can‘t tell you one way or the

other.

Q My understanding is sometimes when there's even

a suspicion that there was some type of sexual activity,

they'll take a combing of pubic hair to see if there's

467

any foreign hair?

A That is a common collection technique that is

used in sexual assault cases, yes, sir.

Q You do not know if that was done in this case?

A That's correct. I do not know.

Q Did you do any testing to the watch pin that

was found close to the victim's head?

A No, sir.

Q Was that ever examined to see if it had any

touch DNA?

A To have DNA, no, sir. I don't know if anybody

has looked at it again. I did not, and, honestly, if

someone requested we do touch DNA on it, l would find a

way to convince them that we weren't going to do it.

Q Did you examine the victim's fingernails or any

scraping from under her fingernails?

A I can check the autopsy notes that I have.

Q Thank you.

A In the notes that I have right here, a couple

of things. One is, with regard to fingernail scrapings,

no, sir. I don't have an indication of fingernail

scrapings.

Earlier you asked me with regard to pubic

combings. Pubic combings were done as part of a sex kit

that was collected at autopsy prior to me arriving

there. I received the sex offense kit from one of the

detectives that was attending the autopsy,

Detective Larry Brown, but there was an item called

468

\\_

\\;'“-\

““‘“"'“\_\\

pubic combings.

Q Did you analyze those findings?

A No, sir. In fact, the only thing that we

really -- with regard to the sex offense kit, the only

thing we really made any attempt to type or do anything

with was the reference blood sample that was collected,

and the blood sample itself was too putrid due to

decomposition to do anything meaningful with, so we did

not look at any of the other items collected as part of

the sex offense kit collected at the autopsy.

Q Why would a person be interested in looking at

fingernail scrapings?

A In general, fingernail scrapings may have

potential -- they have the potential of having DNA

underneath them if someone were to physically injure or

scratch their attacker in a confrontation, some sort of

assault.

Q In other words, if someone was being strangled

or having a coat hanger placed around their neck, they

may reach out and scratch the person that was doing

t h a t ?

A That's correct.

Q In this case, you said you did not -- no one

took any fingernail scrapings?

A As far as the notes I have, there were no

fingernail scrapings taken.

Q Is this something that was uncommon in 1985?

A I think it was uncommon. It's hard to go back

469

//

\\\_,/'

and take a look at what our common protocols were. At

the time, if we took a look at fingernail scrapings,

there was no serology that we could do at the time.

With the advent of DNA techniques, we have become more

aware and cognizant of the idea that you can get

meaningful information from underneath the fingernails.

Prior to that, using fingernail scrapings were

used to give an idea of a location that somebody was in

if they had dirt under there, what type of dirt it was,

anything else along that line. It was less likely that

you were looking at it to do some sort of genetic-marker

typing or there wasn't any DNA typing at the time, but

no serology typing.

I would say in terms of evidence collection,

fingernail scrapings were not high on the list with

regard to the things that were done all the time. With

the advent of the DNA techniques, that has totally

changed.

Q Did you determine whose fingerprints were found

in the residence?

A Again, sir, I had nothing to do with

fingerprints. I don't know if fingerprints were found.

Q Did you -- you said that you collected the

panties that were on the floor next to the bed; is that

correct?

A That's correct, yes, sir.

Q Did you examine those panties other than

looking for stains?

470

A No, sir.

Q For example, can you tell us whether or not

those panties were torn in any way?

A No, I cannot.

Q What about the eyeglasses that were on the

floor, was there any way in which they were damaged?

Was the lens cracked? Was the rim bent? Anything like

that?

A I have no notes at all with regard to the

condition of the eyeglasses.

Q My understanding is there were a number of

physical items in the room that you collected and put

into paper bags; is that correct?

A Yes, sir.

Q What would those items be?

Those items would be clothing that as found¢pn

A 1 A7 véiﬁr W

the floor the panties which we've spoken of, the --

\_\_.,\_.-,\_\_l\_\_l.-11--a\_\_\ g 7 \_\_\_“\_\_ 7\*’/‘A \_ \_\_ ‘ ‘\_\_\_\_\_\_\_m\_,

there were pillows that were on the bed. There was a

group of articles we cal] A dash 18 that were on the bed

at the bottom or the bed.

Q A dash 18 is -- is the number that you gave to

the items that were in a certain bag --

A They were in --

Q -- placed in a bag?

A They were toward the foot of the bed. The

r\*,l\_Mm\_u .... \_\_ M \_\_l,M\_w\_w:

"“-”"' '\_" t ---’- --,. a »---1/we ,\_\_ ..\_/-

primary item was this felt pad.

Q Was a blanket included in A dash 18?

A Let me --

471

Q I notice there was a blue blanket there in the

photographs.

A Right. In the report that I generated, I have

a general description. It says clothing and cloth

items, foot of bed. What I can do is look at any notes

that we made in the laboratory in terms of processing to

see if there's anything more descriptive. , £%§§ﬁ0

Q Okay . l./is/‘J

A Okay.

THE COURT: Mr. Sanders, is there a question‘

pending?

MR. SANDERS: We're waiting for an answer,

your Honor.

THE COURT: Okay. Sorry.

THE WITNESS: In looking at the notes, the

\*4,------/---.-'--=--.,,\_\_r\_\_\_\_\_,.V -- W. \_ 4., \_\_" i ’\_ \_

only item in the processing that is mentioned

Mregardingraidagr l8.i§i;£€i£§%? pad-

BY MR. SANDERS;

Q All ri ht. But in the notes it indicates

7 r)"\*,’\_4i‘-J/92""»//‘¢\*(?‘,>"Y1"-f('i>A\_)7>’l\_,-‘v7>iV-"\*\_‘-’T'-"“ r.\_-.l\_\_\_\_;\_\_,\_, M,

N A dashulgmis a felt pad and --

A Some otherﬂitemst some clothing items, yes,

sir.

Q Unknown clothing items?

A That's correct.

Q How many different bags were there that you put

these items into, the clothing and the felt pad and

whatever else you collected?

A The clothing on the floor near the doorway was

472

put into a paper sack. The panties were put into a

'large envelope. The white shorts that had been stuffed

in her mouth were placed in a paper sack. The felt

‘.,\_.\_,\_\_\_\_/--§..

cloth and other things that were related to that were

./“\*-'--»‘-\_-\_\_.a\_\_,e-..\_.\_\_¥ =--- \_ i \_ \_.\_-a-. ..

c,F\_-=1 --\_.\_\_\_,\_ U5 Mair ¢\_l.\_. i...=,:..\_ \_\_

placed in a paper §ag§,Hand theyhedding itselflgg

xfgfffﬁilsﬁﬁgrarily-i@-éei€5ﬂ§iPii§§i§o§igiEBP}}l1§»

ptransported-it-to-eurrory}pg room. \\_//

wg%o Four or five different bags?

A At least.

Q Now, if you had collected that same evidence in

2010, you would not have done it that way; is that

correct?

A In terms of collecting it and putting it into a

paper bag?

Q Right, and putting -- having the items together

in the paper bag? '

A I'm not sure why T wouldn't have grouped them

the same way. The -- the purpose sometimes of -- in

fact, the purpose of putting things into individual bags

usually is to keep them from contacting or -- or one

thing being transferred to tho other. If at the scene

they were already sitting on top of each other, that's

already happened. So the -- the thought process of

preventing any sort of transfer, that has potentially

already occurred.

The idea of not putting the group of clothes

that were found near the doorway in the same bag with

the panties, which they were in two separate bags, that

473

/)

I

would hold because at the scene they're not infcontact

with each other. The ;;ithe items that were at the foot

./“" ”“\ --$\_. \_ \_ i \*- I T’ I

of the bed again were pretty much in contact with each

“Q§m,\_,-=

I

\\_a\_c-i,an-»-aﬂ@.iJimiivia-1\_m“ca-\\_ \_ 1-

other; therefore, it would have gone into the same bag,

\_\_,.-.i\_\_WM\_\_v, ,,\_ m. we-a.. 1.. ii. - l\_.\_.\_.\_-ii\_\_-\_\_,\_\_;\_\_\_f,\_\_J..\_i\_\\_,,i\_ii.¢» A

I would not fault an investigator or crime scene person

if they decided to individually package cach one or if

they decided to put them, again, in the same container

with the same conditions.

Q You used the word in contact sometimes. We use

fin‘ \_\_,,,--=\_.\_\_\_‘,\_\_,.<.».\\_\_\_\_‘\_.\_\_\_\_\_....7 \_i.\_\_\_\_.\_/4---=-----\\_i\_,\_ pi ,\_. \_\_ \_,‘\_..\_,,\_.\_,.-.\,

(

the word contaminate. You don't want one item ofy

.\_t\_\_\_-‘/H‘ V :>-“-My /kJ147;r\_J\_\_\_,\_\_,f+Y1'>\*““"\*-="'\*' --=--\*7 ' =-=""<- -r<?<\_x\_1\_\_’\_'\_\_“\_\_¢\_\_\_,i\_\_\_,.-ea"

evidence to cgQLQminate”another\_item of evidehce?

A That's right; We callmit transferring,

transfer of evidence from one thing to another.

‘Q The felt pad was’placed\_ihto a bag with

something that you don‘t gememQer\_what it was at this

\_\_,/»-“-\*--- "\*‘\*‘-’-“‘------ '\*"-- “““ “"" “‘---='----A I \_\_... .‘, i\_\_,. \_.....:i.-J.

point?

A It was some article of clothing, yes, sir.

‘gwMW»A11 right. You saidijjayohimention a pair of

white shorts?

A Yes, sir.

Q That is separate from the panties that were on

the floor; is that correct?

A That's correct.

Q I noticed when we were looking at tho

photographs, there was one photograph where it appeared

there was a white cloth over the victim's face.

A That would be the pair of shorts.

Q You used the term that it was stuck in her

474

\ 1’

\\“,///

mouth?

A Yes, sir.

Q What portion of the white shorts was inside her

mouth?

A That, I couldn't tell you exactly which portion

it was without looking at the photographs, seeing if

it's reflected in a photograph to be able to determine

that.

Q Did you yourself actually observe the white

shorts in her mouth?

A I don't have any independent recollection of

it. I'm virtually positive I did. See where I might

have noted that. In terms of when we collected the

sample, Item A dash 17, I listed the description of

white shorts; location, victim's mouth. It was packaged

in a paper sack.

Q The reason I ask is because I know sometimes

when one person gets to the scene and maybe they take a

guess or they make an assumption, I bet that was a gag.

Then someone else might say, yeah, okay. From now on

we'll call that the gag.

In this case you saw the condition of the

victim's face when you went in the room; is that

correct?

A I saw the condition of the victim's body and

how she was laid out.

Q Okay.

A I --

475

\

\\\mM//

Q You noted that because of decomposition that

had gone on one thing that had happened was her tongue

was protruding from her mouth because it was large and

swollen; correct?

A I believe that's true, yes, sir.

Q And that her top dentures were protruding from

her mouth, and they weren't seated on her gums the way

they would normally be?

A That's true.

Q And her lower dentures had been pushed out of

her mouth; is that correct?

A I know we collected the lower dentures at the

autopsy, so they -- they probably were still with her

when they moved the body.

Q So my question was, from the condition that her

mouth was in from the decomposition, where in her mouth

was the shorts?

A l -- I don't know that I can tell you without,

again, looking at the photographs at the scene.

Q Okay. Did you do any swabs of her face?

A No, sir.

Q Or tape lifts?

A Let me check my notes on that one. No, sir, we

did -- according to my notes, did five tape lifts, one

of each arm, one of each leg, and one of the torso area.

Q Was a swab taken of the mouth?

A No, sir, not at the scene.

Q You, in your career, have collected a number of

476

samples of semen and sperm and tested them for DNA; is

that correct? a ,

A Yes, sir.

Q Is there a window of opportunity to do that

where the sperm or the semen has to be collected in a

certain amount of time or you're not able to do that

type of testing?

A It all depends on circumstances. If you're

speaking with regard to a homicide victim who is not

ambulatory, it is best to collect it as soon as possible

to minimize the effect of degradation that could take

place. Sperm cells, as I mentioned yesterday with

regard to the extraction process, are fairly hardy and

seem to be able to survive a period of time through the

decomposition process; however, I'm sure they have their

limits.

When we speak of sexual assault victims who are

ambulatory, the major concern there is the ability of

the seminal fluid to drain out or flush out during

bathing or normal activity, so the presence of seminal

fluid and the preservation of it will depend upon a

number of different factors.

The enzyme that we use or acid phosphatase that

we use for detecting the presence of semen and the other

protein called pre3O, they're fairly stable in terms of

in a dry stain or dry state. So an idea, in fact, this

is what we do at the crime scenes prior to the

autopsies, if we suspect there might be a sexual

477

assault, that's why we take a sample at the time, take

" it and dry it: s - A - -s- ’s-s’ A ea’ ,,”-W

Once you dry the sample, the degradation

process slows down tremendously and enhances your

chances then of being able to detect either the enzymes

or the proteins or in this case in years later the DNA.

Q So if -- so one of the things hat would

degrade the semen sample would be moist re?

A Yes, sir. In fact, in a biolo ical setting,

moisture is absolutely necessary for an sort of

biological process to take place. If yo can dry a

sample out, get the moisture out of ther , really about

the only thing that will degrade it is i you bombard it

with UV light and break up the DNA.

If you can stop -- if you can dr;\it out, the

bacterial processes and degradation processes should

come to a virtual halt. That and freezing, keeping it

cold.

Q Okay. So that was my next question.

What about heat? Does heat further the

degradation process of the sample?

A If moisture is present. If moisture is not

present, then heat will have a minimum effect on it.

Q Let me ask a different question then. Back in

1985, you went to the crime scene on Monday afternoon of

a woman that was seen alive on Friday afternoon and

evening.

A Okay.

478

Q You indicated that you were

some samples of semen or sperm?

A Yes, sir.

Q Now, do you have an opinion

not you were -- would have been able

those samples of semen and sperm had

week from Monday?

THE COURT:

MR. SANDERS: It is.

THE WITNESS: It is.

THE COURT:

THE WITNESS:

on the vaginal swab,

able to collect

as to whether or

to collect that --

you gotten there a

Is that a hypothetical question?

Can you answer it?

I believe I can. The sample

I don't know that we would hay

been able to do the serological testing on them in

terms of being able to identify the presence of an

enzyme called acid phosphatase or the P30 protein,

which is used to identify seminal fluid.

The sperm cells probably still would haye been

there.

BY MR. SANDERS:

Q Because of their hardiness?

A Not only hardiness. There were a lot of them.

When I looked at the sperm count, I made a slide. Ther

were a lot of sperm cells that were present. The felt

pad, that stain may have dried immediately or would

definitely not have been subjected to the same moisture

I have no doubt that even today we could possibly go to

that as long as it's been kept dry and still get at

479

least the P30 protein detection, definitely the DNA,

maybe even the acid phosphatase and it's been 25 years.

Q Now, going the other way, from the tests you

did, from the examination that you made, do you have the

capability of determining how long the sperm had been

there before you collected it or before the death of the

victim?

A Not in terms of the -- of the testing that I

did. That would be information that you would need to

piece together from other -- other facts that are

gathered.

Q That you don't have?

A That's correct.

Q Okay. By the way, your partner, that was

Mr. Stockwell?

A Yes, sir.

Q Did he have the training required for

collecting and processing evidence?

A Yes, sir. In fact, in many ways, Mr. Stockwell

left our laboratory a number of years ago, we lost a

great expertise. He was a tremendous, tremendous

criminalist.

MR. SANDERS: Thank you, your Honor. No

further questions on cross-examination.

THE COURT: Redirect.

MR. THOMAS: Thank you, your Honor.

480

REDIRECT EXAMINATION

BY MR. THOMAS:

Q The blood transfer that you spoke about earlier

on cross-examination, is that something that the victim

herself could have done where she put that blood

transfer on there?

A I have absolutely no information with regard to

how that could have gotten there. Pretty much any

hypothetical that you put up which has her blood on it

and it touched either the doorjamb or the part of the

wall would be an explanation. I have nothing I can

offer you on that.

Q Okay. So there's all these possibilities out

there -- I

A Yes.

Q -- to explain the blood transfer that you saw

on Items A dash 23 and A dash 24?

A That's correct.

Q Okay. You talked about cell analysis, fluids

draining out, and a victim that's ambulatory or I guess

still alive basically.

A Yes, sir.

Q Okay. When the seminal fluids drain out, do

they drain out of the vaginal area?

A Yes, sir. The logical thing would be that

there's a gravity flow, and it would slowly drain out if

the person is vertical and moving around.

Q So if the victim in that hypothetical is

481

wearing panties, they would drain out on the panties?

A It could, yes, sir. A ,- e W,’ e

Q Okay. And then assuming -- this is another

hypothetical. Assume that the victim had sex and

there's a pair of panties on the ground that has no

seminal fluid or no semen on there.

If you had to come to a conclusion as to how

soon that victim had sex prior to the discovery of the

body, would you have any opinion as far as that goes?

MR. SANDERS: Objection, your Honor.

Incomplete hypothetical.

MR. THOMAS: If I could rephrase it?

THE COURT: I can -- I can rule on this

before you rephrase it if I can ask Mr. Jones, can you

answer that question?

THE WITNESS: I'm not sure I truly understand

what he was trying to get at.

THE COURT: I think so too. I think it may

be an incomplete hypothetical, may be vague. You may

restate the question.

BY MR. THOMAS:

Q Okay. What's the significance to you of there

being an absence of seminal fluid on the panties that

were found by the bed? What did that indicate, if

anything, to you?

A If there's no seminal fluid on the panties,

then the suggestion is that the panties were not worn

after there was sexual intercourse.

482

Q And then as far as determining whether or not a

ttperson had sex or sexual intercourse with someone, what,

would you think is the most significant as far as

evidence? Do you think it would be a vaginal swab of

some sort or pubic hair or some hair found in the pubic

area of the victim?

A Definitely the vaginal sample. In fact, when

we have what we consider sexual assault cases, because

of the large back log we have, we want to look at the

most probative samples first.

THE COURT: Probative?

THE WITNESS: Yes, sir.

THE COURT: What does that word mean?

THE WITNESS: For me, it means the one that

would answer the question as succinctly as possible.

THE COURT: Thank you.

THE WITNESS: And thc answer for a sexual

assault case would be the vaginal swab. You look at

that. If you can identify the presence of semen on

it, then do some sort of characterization or DNA

typing of that. That will then answer the question

with regard to the presence of a semen donor.

If nothing was found in regard to semen, then

you start looking at other samples. Pubic hair

combings, hairs that are collected around the body,

things related to the body.

If that doesn't pan out, then you start looking

at -- we've already -- actually, before that, you look

483

for other stains, such as the one we found on the felt.

’Then you look for hairs-that are found in the pubic

combing or on the body.

If that doesn‘t pan out, then you start looking

at the vacuum sweepings that you took or you look for

things of that nature.

If that doesn't pan out, then you start looking

at the cigarette butts that were collected out of the

living room.

It's a progression of things that you want to

look at starting with those things that are more closely

related to the question you're trying to answer.

Q And then as far as the pubic hair is concerned,

if you find some other foreign hair in the pubic hair

combings, can you do the same type of DNA analysis that

you would do on a semen stain or vaginal swab?

A It depends on the condition of the hair. If

the hair has a good root structure to it, yes, you can.

If it does not have a good root structure, then there is

ultimate DNA testing that we don't do in our laboratory

that really is more comparative testing. You need to

have someone that you're going to be directly comparing

that type of result to.

Q Okay. Then there was discussion about

fingernail scrapings that you had with Mr. Sanders.

Do you recall that?

A Yes, sir.

Q As far as fingernail scrapings, just because

484

( 1

somebody had a struggle with someone else doesn't

necessarily mean that there will be foreign DNA on those

fingernail scrapings?

A That is true. In terms of the approach that we

take now with regard to crime scenes, rather than say

there's a chance there isn't DNA, we take the chance

there is DNA, and we will take it.‘ We may not get

anything. It may be that all the DNA would be the same

as the victim's because they scratched themselves.

Q As far as -- as far as those fingernail

scrapings go back in 1985, it wasn't one of those things

where, yeah, 20 years from now we're going to be able to

do DNA testing on these fingernail scrapings so we need

to start collecting these fingernail scrapings?

A The idea of DNA in 1985 was something out of a

science fiction magazine. It wasn't even -- for us in

the lab, wasn't even on the horizon. We were fully

involved in serology, looking at blood and semen and

saliva and those types of physiological fluids, trying

to do genetic-marker typing on proteins and enzymes and

antigens.

As I say, the -- the idea of doing DNA typing,

when I look at where we've come, 1'm absolutely amazed.

Absolutely amazed. To think of what we were capable of

doing in 1985 and what we're capable of doing today,

it's unbelievable.

Q So basically any suggestion that we can look at

something in 2011 and kind of play Monday-morning

485

quarterback and say, well, 25 years ago you should ha

done this, you should have collected that, you should

have collected this, would be something that would be

unfair?

MR. SANDERS: Objection, your Honor.

Argumentative.

THE COURT: Sustained.

BY MR. THOMAS:

Q As far as the sperm count was concerned, you

said that you saw a lot of sperm or the sperm count w

a lot on the slide that you looked at?

A Yes, sir.

Q When an individual is alive, does that sperm

count naturally decrease as the hours and minutes go

A Yes, sir. ln sexual assault cases involving

live victim, there's an interval called a post-coital

interval from the time the sexual intercourse takes

place until the time the kit is collected. ln genera

the longer the period of time, the less amount of

seminal fluid and/or sperm you will find present.

There are, of course, exceptions to this, bu

in general, as time goes by, you will have less and

less. The sooner after a particular incident that yo

collect a sample, the better off you are.

Q And what about in the situation hypothetical

of a person who dies shortly after having sexual

intercourse?

A If there's an opportunity for the -- for thi

V9

SS

by

51

ll

t,

1;

ly

S

486

drainage that we talked about, then the post-coital

interval between the time of the intercourse and time of

collection will be less critical.

Q So you would still, in this hypothetical that I

just posed to you, you would expect there to be also a

lot of sperm or the sperm count to be high?

A I would expect it to be -- to decrease less.

If there's very little there to start with, I would

expect there to be very little there when I collect the

sample. If there was a lot there when I started or when

it happened, then I expect there to be a lot there when

I collect the sample. There would be very little

difference. It depends on how much was there to start

with.

MR. THOMAS: Nothing further.

THE COURT: Mr. Sanders.

MR. SANDERS: Thank you, your Honor. Couple

questions.

RECROSS-EXAMINATION

BY MR. SANDERS:

Q Sperm count is relative?

A Yes, sir.

Q When you say high sperm count, that could mean

an individual that had a lot of sperm or an individual

that had a larger than average amount of sperm, but it

had taken some time.

You wouldn't be able to tell which one?

A I'm not sure I understand the second part, the

487

larger amount that's taken some time.

THE COURT: The Court's going to sustain its

own objection to vague. You want to restate?

MR. SANDERS: Yes, your Honor. Thank you.

BY MR. SANDERS:

Q You said you found a large amount of sperm

cells.

A Relatively largo amount compared to other

sexual cases that I worked, yes, sir.

Q All right. But you have no knowledge of the

person that -- that -- the sperm count of the person

that made that deposit?

A Absolutely. That's correct.

Q So it could have been -- you can't tell the

time based on just looking at what you looked at?

A No, sir.

Q Okay. In other words, from the information

that you had, the sexual experience of the victim could

have been at the time of death, hours before the time of

death, or after death?

A That's probably true. I would say it probably

wasn't days before in terms of she had intercourse,

several days passed, and then she died.

Q Right.

A I'm fairly certain of that.

Q Okay.

A If you take those days and shrink it down into

hours and so forth, I can't tell you.

488

Q All right. And one of the questions I asked

you at the preliminary hearing, isn't it true that you

would be unable to state that this particular victim had

consensual sex or nonconsensual sex before the time she

died?

A That is true. I have no information at all

with regard to the conditions that were present or what

circumstances were present. Pretty much all I can do is

make an assumption, but I can't tell you how it got

there or why it got there.

Q The prosecutor just asked about those blood

marks in the hallway.

A Yes, sir.

Q I believe that you said that you took those to

the lab and compared them to 16 different profiles; is

that correct?

A There was -- there were at least 16 different

reference blood samples that had been submitted over the

course of the investigation to us.

Q What do you mean by that?

A That have been submitted to us?

Q Yes.

A There were names and I'm somewhat -- I'm

presuming occurred during the course of investigation, a

person of interest, somebody for elimination purposes.

Those reference blood samples were submitted to the

laboratory. As they came in, we would analyze them and

compare them to the results we got for the -- initially,

489

for the -- for the stains we looked at, and then later

on, we were asked to compare them to these two blood

stains.

In each of these cases

stains as coming from the other

had received with the exception

regard to the blood stains, the

same as the victim's type.

we eliminated the blood

people whose blood we

of the victim. With

typing we got was the

Q These l6 different profiles, these are like

potential suspects?

A They could be. T don't know what they truly

were in the minds of the investigators.

Q All right.

A There were at least l6

subjects.

MR. SANDERS: Thank you, your Honor. Nothing

further on recross.

THE COURT: Mr. Thomas

FURTHER REDT§E§T¢§XAMTﬂATION

BY MR. THOMAS:

Q Out of those l6 subjects, none of them matched

either the blood stains that you found in the hallway

and none of them matched the semen sample that you had?

A The blood stain in the

hallway matched the

victim. That was one of the reference samples that we

had. The semen samples, sperm cell fractions of those

samples, off the vaginal swab and off the felt pad, that

did not match any of those other reference samples that

we got that I analyzed.

490

P

Q As far as the other reference samples that you

analyzed, did you have names attached to those reference

samples?

A Yes, sir.

Q Did the name Yablonsky ever get examined by

you?

A No, sir.

MR. THOMAS: Nothing further.

THE COURT: Mr. Sanders. We'll take a

ten-minute recess right now, ladies and gentlemen.

You're admonished that it is your duty not to converse

among yourselves or with anyone else about any matter

connected with this case nor form or express an

opinion on it until it's submitted to you.

(Whereupon a recess was taken.)

(whereupon the following proceedings were held in open

court in the presence of the jury:)

THE BATLIFF: Remain seated. Come to order.

Court is now in session.

THE COURT: Back on the record in the case of

People of the State of California versus John Henry

Yablonsky who is here with Mr. Sanders. Mr. Thomas is

here for the People along with his investigating

officer. Donald Jones is on the witness still under

oath.

MR. SANDERS: I wasn't quite fast enough,

your Honor, to say no further questions.

THE COURT: You needed to review some things.

491

That's fine.

P‘ /r

K0

I thought we would cut -- you're

through, both of you? May this witness be excused?

MR.

MR.

THE

Mr. Jones.

THE

THE

MR.

THE

evidence you

THOMAS: Yes, your Honor.

SANDERS: Yes, your Honor.

COURT: Thanks for being with us,

WITNESS: Thank you, sir.

COURT: Call your next witness.

THOMAS: People call Monica Siewertsen.

CLERK: You do solemnly state that the

shall give in the matter pending before

this Court shall be the truth, the whole truth, and

nothing but the truth, so help you God?

THE

THE

THE

spell it for

THE

WITNESS: I do.

CLERK: Thank you. Please be seated.

BAILIFF: Please state your full name and

the record.

WITNESS: Monica Siewertsen M-o-n-l-c-a

S-i-e-w-e-r-t-s-e-n.

THE

THE

THE

MR.

COURT: Good morning, Ms. Siewertsen.

WITNESS: Good morning.

COURT: Your witness.

THOMAS: Thank you, your Honor.

492

MONICA SIEWERTSEN, having been duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q What's your current occupation?

A I'm currently employed as a criminalist with

the Washoe County Sheriff's Department in Reno, Nevada.

Q How long have you been employed with the Washoe

County Sheriff's Department?

A Since January of 2009.

Q And then prior to that, where did you work?

A I was a criminalist in the San Bernardino

County Sheriff's Department in San Bernardino.

Q Do you remember what years you worked for the

San Bernardino County Sheriff's Department?

A From 2002 until the end of 2008.

Q Prior to working with the sheriff's department

in 2002, did you work for any other department as a

criminalist?

A Yes. l was employed with the Royal Canadian

Mounted Police in Edmonton Alberta in Canada as well as

the Mesa Police Department in Mesa, Arizona.

Q How many years of experience do you have as a

criminalist?

A Approximately 16.

Q Prior to becoming a criminalist, did you have

to take special education courses or anything like that?

A I have an honors bachelor of science from the

493

University of Waterloo in Waterloo, Canada. I have six

years of research experience in the area of molecular

biology, which is utilizing DNA, in my instance, to help

answer specific research questions.

Three of those years were at the Hospital of

Sick Children in Toronto, Canada and three years with

the King Faisal Specialist Hospital and Research Center

in Riyadh, Saudi Arabia.

Q As far as your training is concerned, did you

have on-the-job training also?

A Yes. At each of the police agencies where I

worked, 1 was required to undergo written, oral,

practical examinations, as well as demonstrating using

training samples and reading articles demonstrating a

competency in the area of the analysis that I performed

at each of the agencies. That would be mostly DNA

typing analysis.

Q As far as your current position at

Washoe County, what do you do over there as a

criminalist?

A I work in the forensic biology section. I

perform the identification of biological materials.

Then I perform DNA typing analysis in an attempt to

determine the origin of those biological materials.

Q How long have you been doing DNA typing and

working in the forensic biology area?

A Approximately most of those 16 years.

Q Then as far as the 16 years that you've done,

494

primarily working w

A Primarily,

Q And then d

how many cases have

typing?

A I don't ha

well over a thousan

Q And then a

eventually you had

of those cases?

A In some, I

Q How many t

an expert in DNA?

A I've been

Q As far as

done that before.

Is that on

type of DNA testing

A The actual

Q Yes.

A Yes. I've

analysis types, yes

Q Then if yo

DNA?

A DNA stands

often referred to a

contain the informa

carry on our daily

ith DNA?

yeah.

id you have -- during those 16 years,

you worked on where you did DNA

ve an exact number, but I would say

d.

s far as your case load is concerned,

to go into court to testify on some

'm required to testify, yes.

imes have you testified in court as

required to testify over 8O times.

testifying in court, you said you've

different types of DNA or a specific

that you've done?

analysis type?

testified in several different

u can explain to the jury, what is

for deoxyribonucleic acid. It's

s blueprint of life because it does

tion that allows us to be human,

functions, and it also allows us to

495

pass our traits on from one generation to the next.

Q What type of items can you find DNA on?

A In humans, DNA is located inside all cells

except for red blood cells. We're still able to analyze

blood in a forensic situation because white blood cells

are located in blood. That's where we obtain our DNA

from.

An important factor for forensic DNA analysis

is that no matter what the source of the cells -- the

source of the cells, I mean, blood, semen, saliva, the

roots of hair or tissue -- if it came from the same

individual, it will give the same DNA typing profile.

So we're able to compare different kinds of biological

material and determine if they came from the same

individual.

Q Okay. Up on the screen there is Exhibit 41.

May I approach?

(whereupon Exhibit 41 was marked

for identification.)

THE COURT: You may.

BY MR. THOMAS:

Q Can you explain to the jury what this exhibit

depicts, Exhibit 41?

A Yes. This is a caricature to basically help to

remind me of things to explain about the DNA molecules.

As l‘ve mentioned, DNA is located inside the cells in

the human body. No matter what the source of those

cells, if the cells came from the same individual, they

496

will give the same DNA typing profile.

DNA is packaged -- it's a very large molecule,

as you can imagine, because it contains a lot of

information. It's packaged in structures known as

chromosomes. A chromosome is similar to a spool of

thread. If you're familiar with a spool of thread, it

may contain 10 or 25 or 50 yards of thread in a very

small compact package that you could carry around. The

large DNA molecule is wound around something similar to

that spool of thread so it's able to be packaged in a

very small area.

The English language has 26 letters or the

English alphabet has 26 letters. We organize those

letters into words and into sentences. That's how we're

able to communicate with each other. The DNA alphabet

consists of only four letters or four building blocks

for the DNA molecule. They go by the letters A, T, G

and C. It's the order of these building blocks along

the DNA molecule in a certain stretch that imparts the

information, the blueprint that the body follows in

order to produce proteins and carry on functions.

These base pairs or building blocks pair in the

rungs of a ladder. This diagram here is often how a DNA

molecule is depicted. That is a double helix or

twisted-ladder format. The outsides of the twisted

ladder are like the outsides of the ladder -- the

outside of the DNA molecule is like the outside of a

ladder. The rungs are where those building blocks are

497

located.

If you divide those rungs in half, there's a

base on each side of that half. Every time there is a

T, the other half of the rung will always be an A.

Every time there is a C on one half of the rung, the

other half will always be a G. Because of that, if you

cut a DNA molecule down the center in half and you take

away half, you will always be able to reform the DNA

molecule because of those base pairing rules.

That is in nature how we make more cells in our

body, and how we repair injuries, how we grow, and also

how we're able to pass our traits from one generation to

the next. We use this particular technique in the

laboratory in order to make copies of particular areas

along the DNA molecule we're interested in during our

analysis.

Q That's also known as the extraction process or

that's done during the extraction process?

A That's -- the making of the copies is actually

done after the extraction process during the PCR or

polymerase chain reaction stage.

Q And then in this particular case, did you

perform some sort of DNA analysis?

A Yes, I did.

Q Okay. And what was the LR number of this

particular case?

THE WITNESS: Your Honor, may I refer to my

‘notes to refresh my recollection?

498

THE COURT: You know, you can do it anytime

you want to just do us a favor and just tell us, I'm

going to be referring to my notes.

THE WITNESS: Okay.

THE COURT: Thank you.

THE WITNESS: The LR number in this case

is 44659.

BY MR. THOMAS!

Q Was there also a DR number that was attaﬁﬁed to

this particular case? Jdpﬂﬁﬁ

A Yes. 79

Q What was the DR number?

A 1331036 dash O7.

Q Were there certain items that you analyzed

regarding this particular LR number, LR Number 44659?

A YES.

Q What were those items?

A Referring to my report, the particular items

that I analyzed was A dash ll, which was a vaginal swab

from Rita Cobb.

Q And then as far as that A dash ll is concerned,

did you have to actually do an extraction of the DNA of

that particular item?

A T did not. These were actual Lubes which

contained liquid. That liquid was DNA that had been

previously extracted from the vaginal swabs.

Q Then you talked about the PCR.

ls that done by you after you get a liquid?

499

A Yes, The steps, basically, of the DNA analysis

is to remove the DNA from whatever biological material

that you're looking at, and then to determine how much

you have because DNA analysis is like following a

recipe. We want to know how much DNA we have in order

to add the correct amount to our recipe.

Then we want to make a number of copies of the

particular areas of the DNA molecule that we're

interested in targeting. Then we want to analyze or

determine the differences or results at each of the

areas that we look at.

Q So you made the copies of the DNA for

Item A dash ll?

A I did.

Q Can you explain whether or not during that

process there were any abnormalities that you saw?

A The fact that the record is written means that

there was no reason to doubt the results at the end of

the analysis.

At each of the steps, there are positive and

negative controls that are carried through that analysis

to make sure that the process worked correctly, we

obtain the correct results from the positive control,

and that no results are obtained from the negative

control. That serves to show there's no inadvertent

addition of an unknown DNA sample.

In this particular case, once I complete my

analysis and write a report, my complete file is given

500

to a second individual to go over my analysis and to

agree with my conclusions before the report is released.

So there's no reason in this particular case to doubt

those results.

Q Okay. And that copying that you did, that was

in accordance to generally accepted scientific

procedures in the scientific community?

A Yes, as well as being validated within the

laboratory before they're used for case work.

Q And you did that in accordance with the

training that you received?

A Yes.

Q And then did you eventually obtain a DNA

profile or multiple DNA profiles from Item A dash ll?

A Yes, I did.

Q Can you tell us how, once you develop a DNA

profile, how that profile is developed, what you're

looking at in order to get that profile?

A Yes. As I've mentioned, we target l3 areas

along the DNA molecule. The DNA that we have, half of

our DNA is inherited from our mother and half of our DNA

is inherited from our father.

l had mentioned earlier that we have 46

chromosomes. We have 23 chromosome pairs. The half

inherited from your mother, the half inherited from your

father. When we look at any one area on the DNA

molecule, there are two copies of that area, the one

that you inherited from your mother, the one from your

501

father. When you target that area and do your analysis

and look for your result, you actually expect to see two

results at that area. The actual result is a length of

DNA .

The particular analysis that I perform is

called short tandem repeat analysis or STR analysis, and

what that analysis entails is the particular areas that

we're interested in, if we take one of those areas,

everyone in the world has the same core order of

building blocks at that location. For example, A, A, T,

G. That's the order of the building blocks at that

location. Everybody has that order.

What differs from person to person is the

number of times that that core sequence is repeated at

that particular location. One individual may have one

of their chromosomes that has four of those repeat

units, and the other of their chromosome has two of

those repeat units. At that one location, that

individual's DNA typing result would be a 2, 4. Someone

else using that same particular location will have that

same core sequence, but they may have three repeat units

at one area or one of the chromosomes and two repeat

units at the other chromosome. Their DNA typing result

at that one location would be a 2, 3.

So a DNA typing profile is a accumulation of

those numerical results at each of the areas that we

look at on the DNA molecule. We attempt to look at 13

areas.

502

Q Before we go on to the l3 areas, I'm going to

show you what's been marked Exhibit 43.

Is that an illustration of what you just

discussed as far as a short tandem repeats?

(Whereupon Exhibit 43 was marked

for identification.)

THE WITNESS: Yes.

BY MR. THOMAS:

Q I notice on Exhibit 43, that there's a group of

rectangular blocks with the letters A, G, A, T in there,

and then next to it say four alleles and then on the

bottom is another group of rectangular boxes with those

same letters and next to that is the six allele.

A Yes.

Q As far as the DNA type, that would be 4 comma

6?

A Correct.

Q What if it was, hypothetically, let's say the

second one is also four alleles?

A That is possible. Each of the areas that we

look at, there is not an infinite number of

possibilities or infinite number of links at that

particular area. There's a finite number of results.

So it is possible that an individual may coincidently

inherit the same result from both parents.

The length of the fragment or the number of

repeat units would be the same and the result of that

location would be written as a 4, 4 or may be written

503

just as a 4.

Q So when you only see a single number, that

means that that same number is a duplicate and you see a

Number 4 all by itself that means there's two 4s there?

A That's correct.

Q You were about to talk about the 23 chromosomes

and the locations. Let me show you an exhibit. I'm

going to show you what's been marked Exhibit 42.

Can you explain what's depicted in Exhibit 42

for the jury?

(Whereupon Exhibit 42 was marked

for identification.)

THE WITNESS: Yes, this is a representation

of the 23 chromosome pairs. 22 of the -- of the

pairs, each half of the pair is identical to the other

half. The 23rd pair, which is demonstrated in the

bottom right corner, are the sex determining

chromosome. A female will have two Xs and a male an

X, Y.

We look at 13 areas along the chromosomes

labeled l to 22, and we look at an area on the X and Y

chromosome to determine whether the donor of the

biological sample is a female or a male.

BY MR. THOMAS:

Q I notice on Exhibit 42, there appear to be

several chromosomes with no numbers on them.

Do you see that?

A Yes .

504

1 l

Q Are those chromosomes that aren't actually

examined?

A That's correct. We do not look at areas on

those particular chromosomes.

Q And each area that you examine is designated,

it looks like, with a number?

A That's correct. Basically, what that value is

in the yellow is a DNA address. If I say to you that an

individual lives at 201 Birch Street, if you're familiar

with the city we're in, then you would know where

2Ol Birch Street is.

These destinations are what microbiologists use

to know where a particular piece of DNA is located. For

example, on the second row, the number is Dl3S3l7.

Basically, that means that that's a DNA fragment. It's

on the l3th chromosome. It's a single unique sequence

that is found only once on the DNA molecule. lt was in

this particular case the 317th one characterized on the

l3th chromosome.

Q I notice it looks like Chromosome 5 has more

than one?

A Yes.

Q ls that the only chromosome that has more than

one?

A Yes. They are located on opposite arms of the

chromosome. They are far enough apart on the chromosome

that they are considered independent of each other.

Q How unique are these numbers we're talking

505

about as far as these short tandem repeat numbers? Are

they unique to each individual when you look at them all

13 loci?

A Do you mean the overall DNA typing profile?

Q Yes.

A The more information you have, the more areas

you obtain results for, the more individualizing a DNA

typing profile is. As I mentioned earlier, each area

only has a certain number of possibilities. One of the

areas has eight possibilities. With all the people in

the world having to have two of those eight

possibilities, obviously lots of people at that one area

are going to have the same result.

The power of individualization for DNA typing

analysis comes in looking at a number of areas. An

example for a car would be if I tell you I'm looking for

a white vehicle, that's a good piece of information

because I'm able to eliminate all other colored vehicles

as being the one that I'm looking for. It's -- there's

lots of other white vehicles around. If I then tell you

that I'm looking for a white vehicle that has two doors,

I can now exclude all white vehicles that have more than

two doors. For each additional piece of information I

give you, it's less likely I'm coincidentally going to

find a vehicle that fits that description.

For DNA typing analysis, the same is true. If

the frequency of occurrence of a result at one area is 1

in lO, well, I'm able to exclude nine out of ten people,

506

but there's lots of people out there that are going to

have that same result. If I then have a secondary

result and the frequency of occurrence of that second

area is l in 10, because the two areas are totally

independent of each other and what I obtain at one area

has no affect on what I obtain on the second area, we're

able to multiply the frequency of occurrence of the two

areas together. So the two results will be found in l

in 100 people.

If I then look at a third area, that third area

has a frequency of 1 in lO. The combination of those

three results would be found in only l in l,OOO people.

So for each additional piece of information I give, the

less likely it is that someone else is going to

coincidentally have those results.

By looking at all 13 areas, we're going to come

up with a DNA profile where it is unlikely that another

individual would match that profile.

Q So as far as these profiles are concerned, are

you able to get a DNA profile with those l3 points in

every case?

A No.

Q In some cases are you limited to maybe three or

four or five or six?

A Yes. Earlier, I mentioned that performing DNA

typing analysis was like following a recipe where we

need to add certain amounts of each of the components.

There's an optimum amount of DNA that we would like to

fl

507

add to our reactions in order to obtain results at all

13 areas; however, it's possible that that much DNA just

does not exist from the particular material we isolated

it from.

It's still worth a try to perform the DNA

typing analysis on that less-than-optimum amount because

any piece of information that we have gives some

information -- any result that we have gives some piece

of information. The example of cars, if all I'm able to

tell you is that l'm looking for a white vehicle, that's

still a piece of information. So it's useful. In DNA

typing analysis, if the amount of DNA present is not

optimum amount, it's possible we don't obtain results at

all 13 areas.

If the DNA has been around for a long time and

subjected to not optimum conditions, the DNA may be in

what we call a degraded form, and we may not obtain

results at all areas. If we don't obtain results or

when we obtain results, whether those are complete or

partial, we attach a statistical significance to that

result to give some idea of how common or rare the

result that we obtain is in the population.

Q As far as this particular case, were you able

to obtain a DNA profile from Item A dash ll?

A Yes, I was.

Q Was it a partial profile or was it a full

profile?

A Referring to my table summary result, I was

508

able to obtain a full profile from both fractions of

this particular sample.

Q And you said both fractions, could you explain

to the jury what you mean by both fractions?

A Yes. In this particular case, the extract that

I worked with was from a vaginal swab. Generally, the

purpose of examining a vaginal swab is to look for a

donor of a semen sample that may be present. A vaginal

swab we would expect to have epithelial cells, which are

from the vaginal wall of the individual the sample was

taken from as well as sperm cells, if there is a semen

donor.

We do what's called a differential extraction,

which helps to attempt to separate those two cell

sources. There were two fractions, a non-sperm or

female fraction and what we call a sperm fraction or the

fraction that is enriched for the male component of any

DNA that's present.

Q Did you do that separation or was that done for

you prior to you looking at Item A dash ll?

A That separation was done prior to my analysis.

Q Okay. So that would have been done by

Don Jones, according to the paperwork that you have?

A That's correct.

Q Then let me show you what's been marked

Exhibit 44.

Did the Court want to take the noon recess at

this point since this will be a good time to break?

509

THE COURT: If this is a good time for it,

we're not quite at noon, but if this is a good pausing

point, we'll do that.

Ladies and gentlemen, we'll start back at 1:30

You're admonished that it is your duty not to converse

among yourselves or with anyone else about any matter

connected with this case nor form or express an opinion

on it until it's submitted to you.

Ms. Siewertsen, see you back at 1:30 as well.

(Whereupon the lunch recess was taken.)