IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

SAMUEL HOWARD Appellant, vs. E.K. McDANIEL, WARDEN, and CATHERINE CORTEZ MASTO, ATTORNEY GENERAL FOR THE STATE OF NEVADA, Respondents.	Case No. 57469

APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County

VOLUME 1 OF 14

FRANNY A. FORSMAN
Federal Public Defender
MIKE CHARLTON
Assistant Federal Public Defender
Nevada Bar No. 11025C
411 E. Bonneville Ave., Suite 250
Las Vegas, Nevada 89101
(702) 388-6577
Mike_Charlton@fd.org

Attorneys for Appellant

CASE NO. C 53867
~~X~~ H

FILED

MAY 21 11 40 AM '81
LORETTA BOWMAN
CLERK
BY Dedina Inery

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA,
Plaintiff,
vs
SAMUEL HOWARD aka Keith,
Defendant.

INDICTMENT

ROBBERY (Felony NRS 200.380); MURDER (Felony NRS 200.010, 200.030); and USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony NRS 193.165)

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

The Defendant above named SAMUEL HOWARD aka Keith is accused by the Clark County Grand Jury of the crime of ROBBERY (Felony NRS 200.380); MURDER (Felony NRS 200.010, 200.030); and USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME (Felony NRS 193.165) committed at and within the County of Clark, State of Nevada, ~~on~~ between March 26, 1980 and March 27, 1980, ~~on or about the day of , 19~~ as follows:

COUNT I - Robbery and Use of a Deadly Weapon in Commission of a Crime

did, on or about March 26, 1980, then and there wilfully, unlawfully and feloniously take personal property from the person of KEITH M. KINSEY, or in his presence, by means of force or violence or fear of injury to, and without the consent and against the will of the said KEITH M. KINSEY, to-wit: a Motorola 2-channel radio belonging to SEARS, ROEBUCK & COMPANY, 3450 South Maryland Parkway, Las Vegas, Clark County,

Nevada, being in the rightful possession of KEITH M. KINSEY, and a wallet and contents belonging to KEITH M. KINSEY, Defendant using a deadly weapon to-wit: a firearm, during the commission of said crime.

COUNT II - Robbery and Use of a Deadly Weapon in Commission of a Crime

did, on or about March 27, 1980, then and there wilfully, unlawfully and feloniously take personal property belonging to GEORGE STEVEN MONAHAN, to-wit: wallet and contents, from the person of GEORGE STEVEN MONAHAN, or in his presence, by means of force or violence or fear of injury to, and without the consent and against the will of the said GEORGE STEVEN MONAHAN, said Defendant using a deadly weapon, to-wit: a firearm, during the commission of said crime.

COUNT III - Murder and Use of a Deadly Weapon in Commission of a Crime

did, on or about March 27, 1980, then and there, without authority of law and with malice aforethought, wilfully and feloniously kill GEORGE STEVEN MONAHAN, a human being, by shooting at and into the body of the said GEORGE STEVEN MONAHAN with use of a deadly weapon, to-wit: a firearm.

DATED this 20th day of May, 1981.

ROBERT J. MILLER
DISTRICT ATTORNEY

By Raymond D. Jeffers
RAYMOND D. JEFFERS
Chief Deputy

ENDORSEMENT: A True Bill

Valene Scoble
VALENE SCOBLE, Deputy Foreman
Clark County Grand Jury, Panel A

Witnesses examined before the Grand Jury:

Dwana Thomas

Dr. Green

Mary Lou Monahan

William Ursick

A. Leavitt

R. Good

Dwight Hooker

Gary Morrow

K. Kinsey

D. Connell

Robert Slater

William Block

Roy Campos

M. Moser

80G0127/cs
LVMPD DR# 80-36306, 36485

CASE NO. C53867

DEPT. NO. V

DOCKET NO. H

FILED

Dec 30 11 32 AM '82

LORETTA BOWMAN
CLERK

BY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
PLAINTIFF,

VS.

SAMUAL HOWARD aka KEITH
DEFENDANT.

REPORTER'S TRANSCRIPT OF

ARRAIGNMENT CONTINUED

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

TUESDAY, NOVEMBER 30, 1982, 9:00 A.M.

APPEARANCES:

FOR THE STATE: MIKE AMADOR, ESQUIRE
DEPUTY DISTRICT ATTORNEY
CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101

FOR THE DEFENDANT: TERRENCE M. JACKSON, ESQUIRE
MICHAEL L. PETERS, ESQUIRE
DEPUTY PUBLIC DEFENDERS
309 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

14

LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 30, 1982, 9:00 A.M.

* * * * * *

THE COURT: STATE VS. HOWARD, also known as KEITH.

Counsel, this is on for confirmation of counsel.

MR. JACKSON: Your Honor, I would like to make some representations to the Court. Mr. Howard qualifies financially. The representations I would like to make deal with my relationship to the victim. He was my dentist for fifteen years. My parents both knew Dr. Monahan well. I don't know if that presents a conflict. I will not take the case, but as the team leader on the team who often supervises some of the other attorneys - -

THE COURT: Well, just don't supervise on this one, sir.

MR. JACKSON: All right. I just wanted to put that on the record. I will have nothing to do with the case because of my personal connection with the victim.

THE COURT: All right. That will be the order. And if you do, the attorney and yourself will both be held in contempt.

MR. JACKSON: I understand that, your Honor.

THE COURT: All right. So there is no question as far as the defendant's rights are concerned in this matter.

MR. JACKSON: I would like to put on the record I've done nothing on the case as of now. I haven't looked at the file except to see the name of the victim.

THE COURT: All right. Counsel, you will be handling the case; is that correct?

MR. PETERS: Yes, your Honor. I would request one weeks continuance to confirm with my client before we go forward since I was just assigned the case and haven't had a chance to confer.

THE COURT: Mr. Howard, do you have any objection to that?

1 THE DEFENDANT: I didn't hear you.
2 THE COURT: Do you have any objection to continuing
3 for a week to give your attorney an opportunity to look at
4 the case.
5 THE DEFENDANT: Yes, your Honor, I object. I would
6 rather have a fast and a speedy trial, plus the fact the case
7 is nearly three years old, and I'm presently doing time in
8 California. I would like to get on with it. I'm quite sure the
9 People are ready.
10 THE COURT: All right. Let's proceed with your
11 arraignment, sir.
12 THE DEFENDANT: Also, your Honor, I have a couple
13 requests.
14 THE COURT: Excuse me. We will proceed with the
15 arraignment. You can talk to your attorney and make them
16 through him.
17 THE DEFENDANT: Okay.
18 THE COURT: Do you have a copy of the indictment?
19 MR. PETERS: Yes, your Honor, I have a copy.
20 THE COURT: Stand up, Mr. Howard.
21 For the record, what is your true name, sir?
22 THE DEFENDANT: Excuse me?
23 THE COURT: What is your true name?
24 THE DEFENDANT: Samuel Howard and Keith.
25 THE COURT: Mr. Howard, excuse me just one moment.
26 I'm taking a look at the file.
27 Mr. Howard, have you read a copy of the information
28 or indictment in this case charging you with ROBBERY, MURDER and
29 USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME?
30 THE DEFENDANT: Yes, your Honor, but I don't understand
31 it. How many charges is pending against me here?
32 THE COURT: Have you read it, sir?

THE DEFENDANT: Have I read it?

THE COURT: Yes.

THE DEFENDANT: I read a number of them.

THE COURT: Are you ready to enter a plea at this time, sir?

THE DEFENDANT: Not Guilty.

THE COURT: To the indictment which charges you with ROBBERY and MURDER and the USE OF A DEADLY WEAPON, wherein it alleges that in Clark County between March 26TH and March 27, 1980, you did commit the crime of ROBBERY and the USE OF A DEADLY WEAPON IN THE COMMISSION of said crime, in that you did then and there take property from Keith Kinsey against the will of the said Keith Kinsey, to-wit: a Motorola two-channel radio belonging to Sears, Roebuck and Company, being in his possession by the use of a deadly weapon; how do you plead, guilty or not guilty?

THE DEFENDANT: I just said not guilty, your Honor. I plead not guilty.

THE COURT: Just listen to me sir. We have to go through each one of these charges.

THE DEFENDANT: Okay.

THE COURT: Count II, ROBBERY and the USE OF A DEADLY WEAPON IN THE COMMISSION OF A CRIME, on or about the 27th day of March, 1980, you did then and there willfully and unlawfully and feloniously take personal property belonging to George Steven Monahan, to-wit: a wallet and contents from the said George Steven Monahan, or in his presence, by the use of force, fear of injury to, and without the consent and against the will of the said George Steven Monahan with the use of a deadly weapon; how do you plead, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: In Count III, MURDER and the USE OF A

DEADLY WEAPON; how do you plead,guilty or not guilty?

THE DEFENDANT: Not Guilty.

THE COURT: In Count III, MURDER and the USE OF A DEADLY WEAPON IN THE COMMISSION OF A CRIME, which alleges that you did at or about March 27, 1980, then and there, without authority of law, and with malice aforethought, willfully and feloniously kill George Steven Monahan, a human being, by shooting at and into the body of the said George Monahan with the use of a deadly weapon, to-wit: a firearm; how do you plead, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: All right. Give me a trial date, please.

THE CLERK: January tenth.

THE COURT: The tenth of January.

THE CLERK: That's when we did have the Callier set that we cleared.

THE COURT: That was continued over, also. All right January tenth at the hour of 10:00 a.m. Calender call will be --

THE CLERK: January sixth.

THE COURT: -- January sixth at the hour of 9:00 a.m.

MR. PETERS: Your Honor, do you have a copy of the Grand Jury transcript in the file?

THE COURT: There is a defendant's copy here, Counsel. At this time I hand you a copy of that defendant's copy.

MR. PETERS: Thank you, your Honor.

I would also request that the Court grant a slight extension on the time for filing a writ in this matter as I have just received the Grand Jury transcript. I would request that you compute the 21 days to run or to start today.

THE COURT: Well, Counsel, if you can do it in a shorter period of time than the 21 days in order to meet the defendant's request for speedy trial, which I think he's

entitled to have, I have no problem with that.

MR. PETERS: Fine.

THE COURT: I will grant you all the time you need as long as it's within the time frame that we can go to trial on January tenth.

MR. PETERS: Just -- Okay. Thank you, your Honor.

MR. AMADOR: In case there is a problem, your Honor, the statute also requires in the filing of any Writ of Habeas Corpus that they waive the speedy trial defection.

THE COURT: All right. Counsel, the matter is continued until that time. If you need additional time, Counsel, come forward. But I would urge you to get it done within that period of time in view of your client's disposition.

MR. PETERS: Yes, your Honor.

(END OF PROCEEDINGS.)

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

Renee Silvaggio

RENEE SILVAGGIO, C.S.R. NO. 122

MEMORANDUM

OFFICE OF THE PUBLIC DEFENDER

MORGAN D. HARRIS
Public Defender

STEPHEN L. HUFFAKER
Assistant Public Defender

TO: MIKE PETERS

FROM: ALLEN WILMETH

SUBJECT: SAMUEL HOWARD - MURDER WITH USE OF A DEADLY WEAPON

DATE: DECEMBER 21, 1982

In response to your request, I submit the following:

Vacaville, Cal

On December 1, 1982 at 1:40 P.M. I spoke with Mary Caruther at California Medical Facilities at 707/448-6841 and she pulled the medical file on Howard.

She stated the records indicate that Howard is there as a prisoner, is under psychiatric treatment, had been under lots of care and attention, is diagnosed as having psychic in remission, with a possibility of developing serious problems in the future.

cc Allen Wilmeth
bs

CASE NO. C53867

DEPARTMENT NO. V

DOCKET H

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

VS.

SAMUEL HOWARD AKA KEITH,

DEFENDANT.

REPORTER'S TRANSCRIPT

OF

DEFENDANT'S MOTION

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

TUESDAY, DECEMBER 28, 1982, 9:00 A.M.

APPEARANCES:

FOR THE STATE: DANIEL SEATON, ESQUIRE
DEPUTY DISTRICT ATTORNEY
CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101

FOR THE DEFENDANT: MICHAEL PETERS, ESQUIRE
DEPUTY PUBLIC DEFENDER
309 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

LAS VEGAS, NEVADA, TUESDAY, DECEMBER 28, 1982, 9:00 A.M.

* * * * * * * * * *

THE COURT: STATE VERSUS HOWARD, ALSO KNOWN AS KEITH.

COUNSEL, I BELIEVE THIS IS THE DEFENDANT'S MOTION.

MR. PETERS: YOUR HONOR, THIS MORNING WE JUST RECEIVED AN ANSWER FROM THE STATE. I WOULD REQUEST THAT WE CONTINUE THIS PART OF TODAY'S HEARING UNTIL THURSDAY SO THAT I WOULD HAVE A CHANCE TO RESPOND IF NECESSARY.

THE COURT: ANY OBJECTION FROM THE STATE?

MR. SEATON: NO. I THINK NOT, YOUR HONOR, AS LONG AS THE MATTER CAN BE HEARD AND DECIDED UPON AS SOON AS POSSIBLE SO THAT WE DO NOT TAKE A CHANCE ON EXTENDING THE TRIAL DATE.

THE COURT: ALL RIGHT. THE TRIAL DATE IS SET FOR THE 10TH; ISN'T IT?

DEFENDANT HOWARD: YOUR HONOR, MAY I BE HEARD?

MR. PETERS: YES, YOUR HONOR. THE DEFENDANT AT THIS TIME WOULD LIKE TO MAKE A MOTION.

THE COURT: YES.

DEFENDANT HOWARD: YES. FOR THE MATTER OF RECORD, I HAVE A MOTION HERE FOR SUBSTITUTION AND REMOVE THE ATTORNEY OF MICHAEL PETERS.

THE COURT: WELL, YOU CAN RAISE IT ON THURSDAY MORNING, SIR.

DEFENDANT HOWARD: THURSDAY. THANK YOU.

MR. SEATON: YOUR HONOR, PRIOR TO THAT TIME MIGHT THE STATE BE SERVED WITH A COPY OF THAT MOTION?

THE COURT: IF YOU HAVE A COPY OF IT, COUNSEL, SECURE A COPY OF IT SO THE STATE CAN HAVE A COPY.

MR. SEATON: THANK YOU, YOUR HONOR.

THE COURT: THESE MATTERS ARE CONTINUED UNTIL THURSDAY AT THE HOUR OF 9:00 A.M. THAT'S ALL.

(END OF PROCEEDINGS.)

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

RENEE SILVAGGIO, C.S.R. NO. 122

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: JUN 1 8 1991

LORETTA BOWMAN, County Clerk and Clerk of the Eighth Judicial District Court, in and for the County of Clark, State of Nevada

By _____ Deputy

C53867

IN THE EIGHT JUDICIAL DISTRICT COURT

FOR THE COUNTY OF CLARK

STATE OF NEVADA

THE STATE OF NEVADA, Plaintiff, Vs. SAMUEL HOWARD JR., Defendant	NOTICE AND MOTION FOR SUBSTITUTION AND REMOVAL OF ATTORNEY OF RECORD

To: The Honorable Judge Mendoza, Judge of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

Comes now Samuel Howard Jr., defendant-petitioner pro-per and moves this Honorable Court for and order dismissing assigned counsel Michael Peters, of the Clark County Public Defender's Office to represent the defendant in in the above cantioned legal procedings. The defendant petitions the Honorable Court for said orders for the following material and relevant reasons, To Wit:

1.) Defendant was extradited from the state of California to the state of Nevada under the Interstate Agreement Act for the crime of murder and robbery.

2.) On or about the 23rd day of November, 1982, Michael Peters of the Clark County Public Defenders Office was assigned as counsel for the defendant.

3.) As of 12-22-82, assigned counsel Michael Peters of the Clark County Public-Defender's Office, only made one brief appearence here at the Clark County Jail to see the defendant.

4.) Michael Peters of the Clark County Public Defender's Office has failed to answer or return telephone calls that were made to him by the defendant, therefore failing to act in the best intrest of the defendant.

5.) The defendant have very little knowledge of the law however, the defendant would and could represent himself more effective than Michael Peters, or any other assigned counsel of the Clark County Public Defender's Office.

6.) The defendant have been told by Michael Peters of the Public Defender's Office that the defendant is facing the death penalty. Therefore trust,

and an effective assistance of counsel should have been established. defendant have in the past experienced Denial of effective assistance Counsel from Court appointed Public Defender's Office.

8.) The defendant is charge with murder where as it's a matter of record that the victim, a Mr. Monahan was a personal friend and the dentist of members of the Clark County Public Defender's Office. Therefore the defendant do not believe that he could or would be represented adequately by any counsel of the Public Defender's Office.

9.) The defendant does not believe that Michael Peters of the Public Defender's Office, with his heavy case load, can afford proper attention to a case of this magnatude in behalf of the defendant.

10.) The defendant feels Michael Peters and the Public Defender's Office have failed to establish a good working relationship with the defendant, therefore the defendant has loss all confidence, a lack of trust, therefore establishing irreconciable differences.

POINTS AND AUTHORITIES

In any case, this defendant-petitioner has lost faith in the representation by the said Michael Peters and the entire Clark County Public Defender's Office. It is contended that Michael Peters is in violation of the Nevada Supreme Court Rules 179; "Confidence of Client" in that he failed in "THE OBLIGATION TO REPRESENT THE CLIENT WITH UNDIVIDED FIDELITY" and the Canon of Ethics of the American Bar Association which has been "ADOPTED BY REFERENCE AND MADE ADDITIONAL RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR" under rule 208. Further, the Sixth Amendment of the United States Constitution not only provides that a defense shall be made for an accused, but that an effective defense be made and competent representation be afforded, FARRETT Vs. CALIFORNIA, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d. 562 (1975). It is also axiomatic under our system of jurisprudence that an accused be convicted "Beyond a Reasonable Doubt". In Rewinship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d. 368. MULLANY Vs. WILBYR, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d. 508.

Howard-8JDC0026

Wherefore, the foregoing reasons and the Authorities cited, the defendant prays this Honorable Court to grant the motion and relieve the Public-Defender's Office from further representation of this defendant and that an attorney other that the Public Defender's Office be assigned to represent this defendant in any further legal proceedings.

DATED this 23rd day of Dec., 1982

Respectfully submitted,

Samuel Howard Jr.
Defendant-Petitioner Pro-Per

SUBSCRIBED AND SWORN TO before me this 23 day of Dec., 1982.

NOTARY PUBLIC In and for the County of Clark, State of Nevada.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
EARNEST SHEEN JR.
My Appointment Expires April 16, 1985

FILED

CASE NO. C53867

DEPARTMENT NO. V

DOCKET H

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

VS.

SAMUEL HOWARD AKA KEITH,

DEFENDANT.

REPORTER'S TRANSCRIPT OF

DEFENDANT'S MOTION FOR SUBSTITUTION OF ATTORNEY; MOTION FOR APPOINTMENT OF PSYCHIATRIST

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

THURSDAY, DECEMBER 30, 1982, 9:00 A.M.

APPEARANCES:

FOR THE STATE: DANIEL SEATON, ESQUIRE
MELVIN HARMON, ESQUIRE
DEPUTY DISTRICT ATTORNEYS
CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101

FOR THE DEFENDANT: MICHAEL PETERS, ESQUIRE
MARCUS COOPER, ESQUIRE
DEPUTY PUBLIC DEFENDERS
309 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 30, 1982, 9:00 A.M.

* * * * * * *

THE COURT: STATE VERSUS HOWARD ALSO KNOWN AS KEITH.

MR. PETERS: YES, YOUR HONOR.

THE COURT: YOU MAY PROCEED, COUNSEL.

MR. PETERS: YOUR HONOR, I THINK POSSIBLY THE BEST ORDER IN WHICH TO TAKE THIS IS TO HEAR THE DEFENDANT'S MOTION FOR SUBSTITUTION OF ATTORNEY, BECAUSE I THINK THE OTHER MOTION, THE HEARING OF THOSE MOTIONS, WOULD BE AFFECTED AS TO THE DECISION ON THAT MATTER.

THE COURT: COUNSEL, IN VIEW OF THE STATE OF THE CALENDAR THIS MORNING, I AM GOING TO CONTINUE THIS UNTIL THIS AFTERNOON.

MR. PETERS: THAT'S FINE, YOUR HONOR.

THE COURT: AND THAT WILL GIVE YOU MORE TIME AND WE WON'T BE AS RUSHED, BECAUSE OF THE OTHER MATTERS THAT WE HAVE TO TAKE CARE OF THIS MORNING.

MR. SEATON: IF YOU DON'T MIND, YOUR HONOR, MIGHT I FILE IN OPEN COURT THE OPPOSITION TO THAT MOTION?

THE COURT: ALL RIGHT. COULD YOU ALSO GIVE THE DEFENDANT A COPY OF IT?

MR. SEATON: I WILL SO GIVE HIM ONE.

THE COURT: AND WE WILL CONTINUE THIS UNTIL 2:00 P.M. THIS AFTERNOON.

MR. PETERS: TWO O'CLOCK.

MR. SEATON: THANK YOU, YOUR HONOR.

THE COURT: THE MATTER IS CONTINUED UNTIL THEN.

(WHEREUPON, A RECESS WAS HAD IN THE PROCEEDINGS, AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

LAS VEGAS, NEVADA, THURSDAY, DECEMBER 30, 1982, 2:00 P.M.

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THE COURT: STATE VERSUS HOWARD.

THIS MATTER WAS CONTINUED THIS MORNING. YOU MAY PROCEED, COUNSEL.

MR. PETERS: YES, YOUR HONOR.

AS I STATED THIS MORNING, THERE ARE SEVERAL MOTIONS BEFORE THE COURT; ONE OF THEM IS TO RELEASE ME AS COUNSEL. SINCE THIS IS THE DEFENDANT'S MOTION, I BELIEVE THAT THIS WOULD BE THE PROPER MOTION TO TAKE FIRST SO THAT WE CAN GET THIS RESOLVED.

THE COURT: ALL RIGHT.

MR. HOWARD, YOU MAY STATE YOUR REASON FOR HAVING YOUR ATTORNEY RELEASED.

DEFENDANT HOWARD: YES,YOUR HONOR.

I HAVE A MOTION HERE AVAILABLE TO GIVE YOU.

THE COURT: IS THIS ANOTHER ONE?

DEFENDANT HOWARD: NO. THIS IS THE ORIGINAL ONE OF HAVING MY COUNSEL REMOVED.

THE COURT: ALL RIGHT. PROCEED. TELL ME ABOUT IT.

DEFENDANT HOWARD: SHOULD I READ IT OFF TO YOU OR WHAT?

THE COURT: NO. JUST TELL ME ABOUT IT.

DEFENDANT HOWARD: WHY I WANT HIM REMOVED?

THE COURT: YES.

DEFENDANT HOWARD: YOUR HONOR, I THINK IT WOULD TAKE A LOT OF TIME IF I GO INTO DETAIL. I'VE GOT ABOUT TEN, TWELVE DIFFERENT REASONS HERE. AND NOW IF YOU WANT ME TO PROCEED I'LL BE MORE THAN GLADLY TO DO SO.

THE COURT: YOU JUST PROCEED WITH ONE, TWO,

THREE, FOUR, RIGHT ON DOWN THE LINE.

DEFENDANT HOWARD: OKAY. OKAY.

ONE, THE DEFENDANT -- EITHER THE DEFENDANT WAS EXTRADITED FROM THE STATE OF CALIFORNIA --

THE COURT: I DON'T WANT YOU TO READ IT, SIR. JUST TELL ME.

DEFENDANT HOWARD: EXCUSE ME.

THE COURT: I DIDN'T WANT YOU TO READ IT. JUST TELL ME ABOUT IT.

DEFENDANT HOWARD: TELL YOU ABOUT IT?

THE COURT: YOU CAN SYNOPSIZE IT, SIR.

DEFENDANT HOWARD: OKAY, YOUR HONOR.

MR. PETERS HAVEN'T BEEN OUT TO SEE ME IN THE COUNTY JAIL, AND HE WAS APPOINTED ON THE 22ND OF NOVEMBER TO REPRESENT ME. AND I'M FACING -- HE SAID, AND A COUPLE OF OTHER ATTORNEYS SAID, I FACING THE DEATH PENALTY SO, THEREFORE, I FEEL THAT MY CASE WARRANT TRUST, DILIGENCY --

THE COURT: ALL RIGHT. YOUR CONCLUSIONS ARE --

DEFENDANT HOWARD: YOUR HONOR, YOU -- YOU -- YOU MAKE ME LOOSE MY TRAIN OF THOUGHT. YOU TELL ME TO GO INTO DETAIL AND I'M TRYING TO TELL YOU.

THE COURT: I'M TRYING --

DEFENDANT HOWARD: NOT DISRESPECTING YOU NOW, YOU ARE JUST TELLING ME TO GO INTO DETAIL.

THE COURT: I HOPE YOU'RE NOT.

WHAT I'M TRYING TO DO IS TO CHANNEL YOUR THOUGHTS BECAUSE YOU'RE SHOT-GUNNING THEM. AND THAT'S WHAT I'M TRYING TO DO, CHANNEL THEM DOWN TO WHERE WE CAN BEGIN TO MAKE SOME SENSE OF WHAT YOU ARE SAYING.

FIRST OF ALL, YOU SAY THAT HE HASN'T COME TO SEE YOU; IS THAT CORRECT?

DEFENDANT HOWARD: EXACTLY.

THE COURT: ALL RIGHT. LET'S TALK FACTS AND NOT CONCLUSIONS.

YOU WERE GETTING OFF ON ALL SORTS OF FLOUNCY CONCLUSIONS. TELL ME ABOUT THE FACTS, JUST EXACTLY WHAT HE DID OR DIDN'T DO.

DEFENDANT HOWARD: WELL, LIKE I SAID, HE HADN'T COME TO SEE ME.

THE COURT: ALL RIGHT.

DEFENDANT HOWARD: SO, HE HADN'T GOT ANYTHING --

THE COURT: ALL RIGHT. LET'S GET DOWN TO THAT. HE DIDN'T COME TO SEE YOU FROM WHEN TO WHEN, SIR?

DEFENDANT HOWARD: FROM THE TIME HE'S BEEN APPOINTED -- TO -- TO WHEN HE WENT TO THE -- WELL, YESTERDAY HE CAME OUT, OR WHENEVER HE WAS --

THE COURT: ALL RIGHT. YOU SAY HE WAS APPOINTED NOVEMBER 20TH, AND HE HAS NOT SEEN YOU --

DEFENDANT HOWARD: ON OR ABOUT THAT TIME, YOUR HONOR.

THE COURT: (CONTINUING) -- AND HE HAS NOT SEEN YOU SINCE YESTERDAY?

DEFENDANT HOWARD: THE LAST TIME I WAS IN COURT, I THINK IT WAS TUESDAY, YES, TUESDAY.

THE COURT: SO THAT WOULD HAVE BEEN DECEMBER 28TH; IS THAT CORRECT?

DEFENDANT HOWARD: YEAH.

THE COURT: ALL RIGHT. WHAT ELSE, SIR?

DEFENDANT HOWARD: THE VICTIM, MR.-- MR. MONAHAN, WAS DIRECTLY A FRIEND WITH THE PUBLIC DEFENDERS HERE IN CLARK COUNTY. AND INITIALLY YOU APPOINTED ANOTHER PUBLIC DEFENDER OFFICER TO REPRESENT ME AND HE WANTED OUT

BECAUSE HE FIGURED -- HE FIGURED -- HE DIDN'T WANT TO REPRESENT ME. HE THOUGHT THAT HE COULDN'T BECAUSE HE WAS A PERSONAL FRIEND.

THE COURT: WHO WAS THAT NOW?

DEFENDANT HOWARD: I DON'T REMEMBER HIS NAME, YOUR HONOR. THE ORIGINAL ATTORNEY THAT YOU APPOINTED FROM THE PUBLIC DEFENDER'S OFFICE.

THE COURT: YES. THAT'S THE NAME I'M TRYING TO GET.

DEFENDANT HOWARD: I DON'T KNOW, YOUR HONOR. YOU SHOULD KNOW THAT. I DON'T KNOW THAT.

THE COURT: ALL RIGHT. WHAT ELSE?

DEFENDANT HOWARD: OKAY. DISCOVERY MATERIAL IS VERY IMPORTANT THAT I HAVE A LOOK AT THAT TO HELP DEFEND MYSELF, ASSIST MYSELF IN MY DEFENSE.

THE COURT: WELL, WHAT DISCOVERY MATERIAL ARE YOU TALKING ABOUT, SIR?

DEFENDANT HOWARD: IN THIS CASE, YOUR HONOR?

THE COURT: WELL, WHAT DISCOVERY MATERIAL?

DEFENDANT HOWARD: WHAT DISCOVERY?

THE COURT: YES.

DEFENDANT HOWARD: WHAT RELEVANT DISCOVERY THERE WOULD BE, YOUR HONOR, IN THIS CASE.

THE COURT: WELL, I DON'T KNOW. YOU TELL ME. YOU ARE THE ONE THAT'S MAKING THE MOTION.

DEFENDANT HOWARD: WELL, YOUR HONOR, YOU HAVE MORE EXPERIENCE THAN I DO. I'M NOT --

THE COURT: TELL ME WHAT DISCOVERY MATERIAL YOU THINK --

DEFENDANT HOWARD: IN SPECIFIC?

THE COURT: (CONTINUING) -- THAT HE SHOULD HAVE GOTTEN FOR YOU. THAT'S WHAT I'M ASKING.

DEFENDANT HOWARD: RELEVANT TO THE CHARGES I'M CHARGED WITH, YOUR HONOR.

THE COURT: ALL RIGHT. LET'S MOVE ON.

DEFENDANT HOWARD: WHICH IS MURDER.

THE COURT: LET'S MOVE ON TO YOUR NEXT ALLEGATION. WHAT'S THAT?

DEFENDANT HOWARD: OKAY. I MADE NUMEROUS TELEPHONE CALLS TO HIS OFFICE. HE NEVER RETURNED THEM. HE PROMISED TO COME BY AND SEE ME AND HE NEVER CAME BACK TO SEE ME.

THE COURT: ALL RIGHT. WHAT ELSE?

DEFENDANT HOWARD: THE BRIEF APPEARANCES HE CAME BY TO SEE ME HE STATED THAT I KNEW THE PERSON THAT ACTUALLY COMMITTED THIS CRIME. HE FELT THAT I DID IT, YOU KNOW, THEREFORE I FIGURED THAT IF HE -- IF HE'S SAYING THIS TO ME HOW I COULD BE -- I COULDN'T -- HOW I COULD BE REPRESENTED ADEQUATELY.

THE COURT: ALL RIGHT. WHAT ELSE?

DEFENDANT HOWARD: THEREFORE, ESTABLISH THE -- RECONCILE THE DIFFERENCES. I COULDN'T POSSIBLY TRUST MR. PETERS OR ANYONE RELATED WITH THE PUBLIC DEFENDER'S OFFICE HERE IN CLARK COUNTY.

THE COURT: ALL RIGHT. GO ON.

DEFENDANT HOWARD: AND THERE'S NUMEROUS -- NUMEROUS PRE-TRIAL MOTIONS TO BE FILED ON MY BEHALF, SIR. AND I'VE MENTIONED THEM TO HIM AND HE NEVER CHECKED THEM OUT, AND THAT'S IT.

THE COURT: OKAY. SO IT LOOKS TO ME LIKE YOU'VE GOT SIX VARIOUS COMPLAINTS THEN THAT YOU HAVE AGAINST THE PUBLIC DEFENDER. NOW, IS IT AGAINST THE PUBLIC DEFENDER OR IS IT AGAINST MR. PETERS OR WHO ARE YOU BRINGING THESE MOTIONS AGAINST?

DEFENDANT HOWARD: EXCUSE ME?

THE COURT: WHO ARE YOU BRINGING THIS MOTION AGAINST?

DEFENDANT HOWARD: WELL, MR. PETERS AND THE PUBLIC DEFENDER'S OFFICE.

THE COURT: ALL RIGHT. YOU MAY BE SEATED, SIR.

DEFENDANT HOWARD: MR. PETERS -- YOUR HONOR, EXCUSE ME. MAY I FILE THIS MOTION ANYWAYS AS A MATTER OF RECORD?

THE COURT: GIVE IT TO THE BAILIFF.

ALL RIGHT. PROCEED, MR. PETERS.

MR. PETERS: YOUR HONOR, THANK YOU.

YOUR HONOR, I'M TRYING TO ADDRESS THE POINT SPECIFICALLY. I MAY OVERLAP, BUT I THINK A BRIEF HISTORY TO THIS WOULD BE APPROPRIATE.

OUR OFFICE WAS FORMALLY APPOINTED NOVEMBER 30TH. THE MORNING OF NOVEMBER 30TH IS WHEN I WAS FIRST INFORMED I WOULD BE HANDLING THIS CASE. THE FIRST TIME I MET MR. HOWARD WAS IN COURT THAT MORNING.

I'M SURE YOUR HONOR DOESN'T RECALL, BUT AT THAT TIME WHEN WE DID CONFIRM MY REQUEST TO A ONE WEEK'S CONTINUANCE IN ORDER TO TALK TO MR. HOWARD AT THE TIME MR. HOWARD WANTED TO GO AHEAD AND SET THE TRIAL DATE. THE PURPOSE FOR ME WANTING A WEEK'S CONTINUANCE WAS SO THAT I COULD TALK TO HIM AND EXPLAIN TO HIM MY TRIAL SCHEDULE SO THAT WE COULD TRY TO ACCOMODATE ONE ANOTHER SO THAT I COULD DO THE INVESTIGATION WORK THAT WAS NEEDED, HOWEVER, AT THE TIME THE TRIAL DATE WAS SET.

FOLLOWING NOVEMBER 30TH I SAW HIM SEVERAL DAYS LATER. I'M NOT SURE OF THE EXACT DATE, YOUR HONOR, BUT IT WAS WITHIN FIVE DAYS. THE REASON WHY I CAN

SAY THAT IS THAT I TOLD MR. HOWARD THAT UPON RECEIVING THE DISCOVERY I WOULD COME OVER TO TALK TO HIM. AT THAT TIME AL WILMETH, FROM MY OFFICE, AND MYSELF WENT OVER THERE AND BRIEFLY TALKED TO HIM ABOUT THE CASE.

THE COURT: WHEN WAS THAT, SIR?

MR. PETERS: WITHIN FIVE DAYS, YOUR HONOR. I TRIED TO NARROW IT DOWN, BUT IT WAS WITHIN FIVE DAYS.

THE COURT: THAT'S WITHIN FIVE DAYS OF THE 30TH?

MR. PETERS: OF THE 30TH.

AT THAT TIME I EXPLAINED TO HIM THAT I HAD A CAPITAL MURDER CASE THAT WAS DUE TO START WITHIN TWO WEEKS, WHICH DID TAKE PLACE STARTING THE 13TH AND A VERDICT WAS RENDERED DECEMBER 24TH. DURING THAT TIME I SPENT FULL TIME ON THAT CASE TRYING TO PREPARE FOR IT. DURING THAT TIME, YOUR HONOR, I DID NOT EXCEPT FOR THE PSYCHIATRIC MOTION THAT HAS BEEN FILED, I WAS NOT AVAILABLE TO WORK ON THE CASE. OURING THAT TIME I WAS NOT ABLE TO VISIT MR. HOWARD.

AS FOR ANY MESSAGES HE LEFT OR PHONE CALLS HE MADE, I RECEIVED NO MESSAGES. I'M NOT SAYING -- I'M NOT OFFERING THAT AS AN EXCUSE, BUT THERE WAS NO MESSAGE PUT IN MY BOX AS TO WHETHER HE CALLED OR NOT. I DON'T KNOW.

MR. HOWARD'S ADDRESSED THE FACT THAT THE VICTIM IN THE CASE WAS A FRIEND WITH THE PUBLIC DEFENDER -- A FRIEND OF THE PUBLIC DEFENDER'S OFFICE. I THINK WHAT HE'S REFERRING TO IS MR. JACKSON'S FRIENDSHIP WITH DR. MONAHAN, IN THAT TERRY JACKSON WENT TO HIM AS A DENTIST AND EVIDENTLY HAD SOME TYPE OF RELATIONSHIP. AND IF YOUR HONOR RECALLS, AT THAT TIME THERE WAS AN ORDER MADE THAT MR. JACKSON WOULD HAVE NO CONTACT WITH ME OR ANY OTHER LAWYER WORKING ON THAT CASE. AND, OF COURSE, MR. JACKSON AGREED AND HAS ABIDED BY

THAT ORDER, WHICH I MIGHT ADD HAS PRESENTED SOME DIFFICULTIES IN TRYING TO COORDINATE THIS.

YOUR HONOR, AS FAR AS THE DISCOVERY MATERIAL IS CONCERNED, THE DEFENDANT HAS STATED HE WANTS A COPY OF IT. IT'S BEEN THE OFFICE POLICY OF THE PUBLIC DEFENDER'S OFFICE NOT TO GIVE COPIES OF DISCOVERY. ONE IS A LOGISTIC PROBLEM, THE FACT THAT IF WE WERE EXPECTED TO GIVE COPIES TO ALL THE INMATES THAT WE COULD REALLY NEVER FIND TIME FOR SOME MORE SECRETARIES TO DO MORE WORK, AND THE AMOUNT OF PAPER WORK AND STUFF WOULD BE OVERWHELMING.

IN SOME CASES I THINK IT IS APPROPRIATE. AND IF THE COURT IS SO INCLINED TO GRANT SUCH AN ORDER, WHICH I TAKE IT IS A REQUEST FROM THE DEFENDANT FOR A COPY OF THE DISCOVERY, IN THIS CASE WE, OF COURSE, WOULD PROVIDE THE DISCOVERY. BUT I THINK THAT SHOULDN'T BE A CASE-BY-CASE BASIS.

YOUR HONOR, I'M GETTING A LITTLE BIT INTO THE ATTORNEY/CLIENT PRIVILEGE ON SOME OF THESE OTHER POINTS. I ASSUME THAT BECAUSE I'M BEING REQUESTED TO BE EXCUSED FROM THE CASE THAT TO A LIMITED EXTENT AT LEAST I'M ENTITLED TO RESPOND, AND I FEEL THAT I DON'T THINK THERE'S ANY REAL SERIOUS DETRIMENTAL INFORMATION THAT I WILL REVEAL, BUT I DO HAVE DOUBTS ABOUT GOING AHEAD ON SOME OF THE POINTS THAT HE'S ADDRESSED.

I WOULD INQUIRE OF THE COURT AS TO WHETHER, BASED ON MR. HOWARD'S COMMENTS THAT THEY FEEL I'M ENTITLED OR OBLIGATEO TO RESPONO. MOST OF THEM HAVE TO DO WITH THE MEETINGS I'VE HAO WITH MR. HOWARD IN REGARDS TO THIS CASE.

THE COURT: WELL, LET ME ASK YOU THIS: DO YOU HAVE ANY PROBLEM IN TRYING THIS CASE AT ALL?

MR. PETERS: WELL, HERE'S THE PROBLEM

1 THAT'S ARISEN, YOUR HONOR, AND WE'RE GETTING INTO ATTORNEY/
2 CLIENT PRIVILEGE TO AN EXTENT:
3 MR. HOWARD HAS BEEN UNWILLING,
4 ALTHOUGH NOT OBNOXIOUS, NOT AT ALL OBNOXIOUS, BUT HE'S REALLY
5 BEEN UNWILLING TO DISCUSS THE CASE, THE ONE TIME I VISITED
6 HIM. AFTER THAT, YOU KNOW, I TAKE RESPONSIBILITY FOR NO
7 SUBSEQUENT CONTACT. I WOULD HOPE THE COURT WOULD DEEM THAT
8 MY EXCUSE WAS SOMEWHAT DECREASED BY MY OTHER CASE. BUT
9 BASED ON THAT CONVERSATION THERE WAS NO MEANINGFUL DISCUSSION.
10 SUBSEQUENT TO THAT MARCUS COOPER AND MYSELF HAVE MADE CONTACT
11 WITH MR. HOWARD IN WHICH HE'S AGAIN REFUSED TO DISCUSS THE
12 SUBSTANCE OF THE CASE.
13 YDUR HONOR, IT MAY BE AT LOGGERHEADS,
14 IT MAY BE AN IRRECONCILABLE BREAKDOWN IN COMMUNICATIONS AT
15 THIS POINT.
16 THE COURT: THE STATE?
17 MR. HARMON: YOUR HONOR, THIS ISN'T MR.
18 HOWARD'S FIRST BRUSH WITH THE LAW.
19 I HAVE READ OVER HIS PROPER PERSON
20 MOTION, AND WHAT I PERCEIVE IS THAT HE HAS IT IN HIS MIND
21 THAT IF HE'S REPRESENTED BY THE PUBLIC DEFENDER'S OFFICE IT'S
22 GOING TD BE INADEQUATE REPRESENTATION. NOW, I DON'T SHARE
23 THAT LACK OF CONFIDENCE IN THE PUBLIC DEFENDER'S OFFICE, AND
24 I AM PERSUADED THAT MR. MARCUS COOPER AND MIKE PETERS CAN
25 GIVE THIS DEFENDANT ADEQUATE REPRESENTATION.
26 HE SUGGESTS THAT THEY ALL ARE
27 FRIENDS OF DR. MONAHAN, THE VICTIM. THAT ISN'T BORNE OUT
28 BY THE RECORD. THE ONLY PROBLEM WAS TERRY JACKSON, WHO WAS
29 A PATIENT FOR YEARS OF THE VICTIM; AND BY A COURT DIRECTIVE
30 THAT'S BEEN TAKEN CARE OF.
31 NDW, BECAUSE OF THE MURDER TRIAL
32 THAT MR. PETERS WAS INVOLVED IN THAT OCCUPIED A SUBSTANTIAL

AMOUNT OF TIME, NOTWITHSTANDING OUR ANXIETY TO GET THIS CASE TRIED AS SOON AS WE CAN, I THINK THE MORE SERIOUS QUESTION IS NOT WHETHER THE PUBLIC DEFENDER'S OFFICE, IN THE PERSONS OF MR. COOPER AND MR. PETERS REPRESENT THE DEFENDANT, BECAUSE I THINK THEY SHOULD REMAIN ON THE CASE. I THINK THE MORE SERIOUS QUESTION IS WHETHER, GIVEN THEIR CASE LOAD, THAT THEY HAVE HAD AN ADEQUATE OPPORTUNITY TO PREPARE THEIR CLIENT AND THEMSELVES FOR A JANUARY 10TH TRIAL DATE.

THE COURT: COUNSEL, HOW DO YOU FEEL ABOUT GOING JANUARY 10TH?

MR. PETERS: YOUR HONOR, BEFORE THE COURT THIS MORNING I HAD PROVIDED MR. SEATON A COPY OF A MOTION FOR A CONTINUANCE IN THE ANTICIPATION THAT IF WE WEREN'T REMOVED THAT WE WOULD NEED MORE TIME TO PREPARE. IT'S JUST -- IT'S SO TRUE. THERE'S NO WAY WE COULD BE READY. AND IF THE COURT IS INCLINED TO KEEP US ON THE CASE WE WOULD NEED A SUBSTANTIAL AMOUNT OF MORE TIME TO ADEQUATELY PREPARE. AND I DON'T DO THIS IN AN EFFORT TO STALL OR ANYTHING, JUST TO ADEQUATELY REPRESENT OUR CLIENT.

THE COURT: WELL, I HAVE NOT HEARD ANYTHING AT THIS MOMENT WHICH ESTABLISHES IN MY MIND ANY IRRECONCILABLE CONFLICT BETWEEN THE DEFENDANT AND THE PUBLIC DEFENDER. AS COUNSEL HAS SUGGESTED, THERE MAY BE A TIME OF PREPARATION INVOLVED AND THAT ADDITIONAL TIME SHOULD BE ACCORDED TO YOU, NOT ONLY TO PREPARE THE CASE ADEQUATELY BUT TO PREPARE THE CASE WITH YOUR CLIENT. I THINK THAT YOU WILL FIND THAT YOUR CLIENT PROBABLY SHOULD FEEL A LITTLE DISGUSTED WITH THE FACT THAT HE HAS NOT HAD A HECK OF A LOT OF COMMUNICATION WITH YOU PEOPLE, BUT I DON'T SEE ANY REASON AND NONE HAS BEEN BROUGHT TO MY ATTENTION THAT WOULD PRECLUDE THE PUBLIC DEFENDER FROM BEING ON THE CASE. AND I SO FIND.

NOW, I DON'T FIND THAT THE

RELATIONSHIP OF THE FACT THAT MR. JACKSON WENT TO THE VICTIM'S OFFICE FOR DENTISTRY HAS ANYTHING TO DO WITH THIS CASE. HE HAS BEEN ORDERED OFF IT AND I FIND NO INCLINATION OR ANY EVIDENCE AT ALL THAT HE HAS. AND I WOULD SUGGEST TO BOTH OF YOU THAT IF IT APPEARS THAT HE IS BEING INCLINED IN THAT DIRECTION THAT YOU ARE UNDER COURT ORDER TO IMMEDIATELY REPORT THAT TO ME. I DON'T THINK THAT MR. JACKSON IS GOING TO BE THAT FOOLISH TO VIOLATE THIS COURT'S ORDER.

AS FAR AS THE DISCOVERY MATERIAL, THE DEFENDANTS ARE NOT ENTITLED TO HAVE DUPLICATE COPIES MADE OF ALL OF THE DISCOVERY MATERIAL THAT IS BROUGHT BEFORE THE COURT. I THINK THAT, HOWEVER, THERE IS A FIDUCIARY AS WELL AS A RELATIONSHIP OF TRUST THAT MUST EXIST BETWEEN YOURSELF AND YOUR CLIENT, AND THAT IS A FULL DISCLOSURE OF WHAT YOU HAVE IN YOUR FILE, AND AT LEAST DISCUSSING IT WITH HIM SO THAT HE UNDERSTANDS WHAT THE DISCOVERIES SHOW SO THAT HE MAY BE ABLE TO ASSIST YOU IN FINDING ADDITIONAL ITEMS OF EVIDENCE. SO IN THAT REGARD I THINK IT'S MORE OF SHARING INFORMATION THAT SHOULD BE TAKING PLACE IN THIS CASE RATHER THAN SUPPLYING COPIES OF THE INFORMATION.

WITH THAT DIRECTION, COUNSEL, I WILL DIRECT YOU TO REMAIN ON THE CASE. YOU AND MR. COOPER ARE TO CONTINUE TO MEET WITH THE DEFENDANT TO PREPARE FOR TRIAL.

NOW, I DON'T KNOW HOW SOON YOU WILL BE ABLE TO GO, BUT I WILL CONTINUE THIS UNTIL NEXT TUESDAY TO ALLOW YOU AND YOUR CLIENT TO GET TOGETHER AND DISCUSS THE NEW TRIAL DATE. I AM STILL READY TO GO JANUARY 10TH IF YOU'RE READY TO GO, BUT IF YOU'RE NOT READY TO GO AT THAT TIME YOU CAN INDICATE TO ME ON THE 4TH AND WE WILL TAKE A LOOK AT THE TRIAL CALENDAR AND ACCOMODATE ACCORDINGLY.

NOW, I SEE YOU RAISING YOUR HAND,

MR. HOWARD. I WANT YOU TO DISCUSS THIS WITH YOUR ATTORNEYS FIRST AND THEN YOU CAN ALL REPORT TO ME AS TO A CONTINUED TRIAL DATE OR EITHER ACCEPTANCE OR NON-ACCEPTANCE OF THAT DATE, AND WE WILL MAKE A RECORD AT THAT TIME.

ALL RIGHT. ANYTHING FURTHER TO COME BEFORE THE COURT?

MR. HARMON: YOUR HONOR, THERE ALSO IS A PENDING MOTION BY THE DEFENSE FOR THE APPOINTMENT OF A PSYCHIATRIST. PERHAPS WE CAN CONSIDER THAT AS WELL.

THE COURT: COUNSEL?

MR. PETERS: IF MR. HARMON IS SUGGESTING THAT WE CONTINUE THAT UNTIL TUESDAY, THAT WILL BE FINE WITH ME.

MR. HARMON: WELL, I DON'T CARE. I'D JUST AS SOON DISPOSE OF IT NOW. IT'S UP TO THE COURT.

MR. PETERS: YES, YOUR HONOR. I'M READY TO GO FORWARD BASED ON THE MOTION. NO DOUBT IT'S INTEGRATED WITH THINGS WE HAVE DISCUSSED TODAY, BUT I FEEL THAT THE APPOINTMENT OF PSYCHIATRIST IN THIS CASE ARE IMPORTANT FOR A NUMBER OF REASONS:

FIRST OF ALL, BASED ON THE DISCOVERY THERE ARE INDICATIONS THAT IN THE PAST MR. HOWARD HAS SUFFERED FROM SOME PSYCHIATRIC PROBLEMS. I GET THIS ONLY THROUGH THE DISCOVERY AND ALSO A CONVERSATION OUR INVESTIGATOR HAD WITH A MARY CARRUTHERS OF CALIFORNIA. NOW, THESE ARE PAST PROBLEMS THAT ARE BEING PRESENTLY TREATED.

NOW, YOUR HONOR, I FEEL THAT IN A MURDER CASE THAT IT'S VERY IMPORTANT THAT AN ATTORNEY HAS EVERYTHING POSSIBLE TO SO DEFEND, TO SO REPRESENT HIS CLIENT.

THE COURT: I HAVE NO PROBLEM WITH THAT, COUNSEL. BUT YOU ARE NOT AT THIS TIME SUGGESTING THAT THE DEFENDANT IS UNABLE TO ASSIST YOU AT TRIAL.

1 MR. PETERS: NO, YOUR HONOR. PART OF THE
2 REASON IS THAT FROM THE AFFIDAVIT I FEEL LIKE I'M OBLIGATED
3 TO INQUIRE AS TO HIS STATE OF MIND BACK AT THE TIME OF THIS
4 ALLEGED INCIDENT.
5 THE COURT: COUNSEL, I WILL AGREE WITH YOU
6 THAT IN ORDER TO PREPARE YOUR CLIENT ADEQUATELY, IF THERE
7 HAS BEEN ANY INFERENCE IN THE PAST OR EVIDENCE THAT HE HAS
8 BEEN INVOLVED PSYCHIATRICALLY YOU OUGHT TO SECURE THE
9 ADDITIONAL INFORMATION TO ASSIST YOU IN THAT REGARD. I HAVE
10 NO PROBLEM THERE.
11 THE QUESTION THOUGH IS: IS THE
12 PURPOSE TO ASCERTAIN WHETHER HE CAN UNDERSTAND AND COMPREHEND
13 THE PROCEEDINGS OR IS THE PURPOSE MERELY TO ASSIST YOU TO
14 SECURE EVIDENCE TO ASSIST IN HIS DEFENSE, UNDERSTANDING THAT
15 HE AT LEAST AT THIS MOMENT GIVES YOU NO INDICATION THAT HE
16 IS NOT ABLE TO ASSIST YOU?
17 MR. PETERS: THE SECOND REASON YOU REFER
18 TO, YOUR HONOR, THE FACT THAT I THINK IT'S VERY CRUCIAL ON
19 THE ASSISTANCE OF THE DEFENSE. I THINK IT'S OBVIOUS FROM
20 HAVING TALKED TO THE COURT THAT -- WELL, I'M NOT A
21 PSYCHIATRIST, BUT MY PRIMARY JUDGMENT IS THAT --
22 THE COURT: ALL RIGHT. THEN I WILL
23 APPOINT A PSYCHIATRIST WHO WILL ASSIST YOU. IF IT APPEARS
24 THAT FROM THAT EXAMINATION THAT THERE IS ANY QUESTION AS TO
25 HIS CAPABILITY TO ASSIST IN HIS OWN DEFENSE THEN I WILL
26 APPOINT A SECOND PSYCHIATRIST TO GIVE US THAT SECOND EVALU-
27 ATION.
28 MR. PETERS: YOUR HONOR, PURSUANT TO THAT,
29 TOO, WE WILL BE IN THE PROCESS OF TRYING TO OBTAIN ALL AND
30 ANY MEDICAL RECORDS THAT ARE RELEVANT.
31 THE COURT: ALL RIGHT. AND I WILL APPOINT
32 DOCTOR O'GORMAN. AND COULD YOU HAVE THE DOCTOR SEE IF HE CAN

SEE HIM RIGHT AWAY. I KNOW IT WOULD BE MUCH TOO SOON TO ASK HIM TO REPORT BACK ON THE 4TH, BUT AT LEAST YOU'LL BE ABLE TO REPORT BACK ON THE 10TH. THAT DATE MAY BE CONTINUED BASED UPON WHAT YOUR DISCUSSION IS WITH YOUR CLIENT, AND YOU'LL REPORT BACK TO THE COURT ON THE 4TH AT THE HOUR OF 1:45 ON THAT DATE.

MR. PETERS: ONE, FORTY-FIVE?

THE COURT: RIGHT. THE MATTER IS CONTINUED UNTIL THEN.

MR. PETERS: THANK YOU, YOUR HONOR.

MR. HARMON: THANK YOU, YOUR HONOR.

(END OF PROCEEDINGS.)

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

RENEE SILVAGGIO, C.S.R. NO. 122

ORIGINAL

FILED
JAN 29 3 00 PM '83
LORETTA BOWMAN
CLERK
BY Mary Morley

CASE NO. C53867

DEPARTMENT FIVE

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff,
vs.
SAMUEL HOWARD,
Defendant.

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS
BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE
Tuesday, January 4, 1983
1:45 p.m.
MOTION TO VACATE TRIAL DATE

APPEARANCES:

For the Plaintiff: C. DAN BONDAR, ESQ.
Deputy District Attorney

For the Defendant: MARCUS D. COOPER, ESQ.
Deputy Public Defender

LAS VEGAS, CLARK COUNTY, NEVADA, TUESDAY, JANUARY 4, 1983

* * * * *

THE COURT: State versus Howard.

Counsel?

MR. COOPER: It's my understanding that this matter was continued to today, this time, for Court's decision on whether or not our motion for the continuance matter would be granted or not. Mr. Peters had hoped to be here; however, he's involved in a trial in Department Four that's expected to last some two to two and a half weeks. It started on Monday, yesterday.

There's not a great deal more I can add to what has already been presented to the Court. Mr. Peters just asked that I reiterate the fact that we are simply not in a position to be ready for trial by Monday. He has confided in me, Your Honor, that the investigation that's necessary in order to adequately represent, effectively represent at Mr. Howard's trial has not been done. In fact, I seriously doubt it has even gotten off the ground, the investigation that remains to be done. I would simply urge the Court to grant our motion to vacate the trial date and have it reset.

THE COURT: Mr. Howard, do you have any opposition to vacating trial date?

THE DEFENDANT: Yes, Your Honor, I object.

THE COURT: Why?

THE DEFENDANT: Initially I stated I wanted a speedy trial.

THE COURT: Do you want to go to trial Monday?

THE DEFENDANT: Yes.

THE COURT: Even knowing that your attorneys have not completed their investigation?

THE DEFENDANT: Unequivocally, I want to go

to trial.

MR. COOPER: Your Honor, I think the Court might be aware of the problem in dealing with Mr. Howard in this case. He has refused to discuss the case with us, any knowledge of the case. Puts us in a very awkward position, be virtually impossible for us to effectively represent him in trial if we were to begin on Monday. I'm not sure how the Court would square that with his right to a speedy trial. He's insisting that the trial go forward.

THE COURT: It's his right, Counsel.

MR. COOPER: I'm well aware of that, Your Honor. Puts us in an awkward position.

THE COURT: I would just suggest that your office begin to accommodate the client and clear the boards and assign someone full time to get ready for it Monday because he's insisting on it and he understands the problem. The problem is his representative, he would like to do more, but he keeps insisting he doesn't want any more done except to go to trial.

Is that your desire, Mr. Howard?

THE DEFENDANT: Yes, sir, Your Honor, go to trial.

THE COURT: You understand if the attorneys were given more time they feel they would be able to possibly do more investigation in your behalf?

THE DEFENDANT: Yes, Your Honor. Let me reiterate the fact, I spoke to you on this matter last week, Tuesday, I think it was, that I didn't trust my attorney, Mr. Peters, or the gentleman here. I don't know his name, he says he's my counsel and doesn't matter how much time they have, I don't think they will represent me adequately, so if I did waive time, I really wouldn't feel comfortable because I don't trust them, so I filed a motion to have them dismissed and still

they are on my case, so I really don't feel comfortable.

THE COURT: I guess we are fishing and you want to go to trial. I have no problem going to trial.

THE DEFENDANT: That's initially what I wanted to do so I could get back to California.

THE COURT: What do you want to do now?

THE DEFENDANT: Your Honor, like I stated originally, I'd rather go to trial. I have an appeal pending out of State of California and I want to get back there as soon as possible to take care of the matter.

THE COURT: We will go to trial Monday.

MR. COOPER: Just for the record, I'd like to make it clear, Mr. Peters and I are both working this case and I'm more or less assisting Mr. Peters on it. He's spearheading on it, the case more or less. He's going to be involved in a trial in Department Four for possibly the next week and a half to two weeks. I just wanted Mr. Howard to understand that if we are to go to trial on Monday that as far as I would be the attorney representing him at trial and I just wanted to make sure that is clear on the record.

THE COURT: I think he's aware of that.

State ready to proceed on Monday?

MR. BONMAN: Yes.

THE COURT: All right, we will be ready to proceed then on Monday.

MR. BONMAN: Your Honor, I think we had a calendar call coming up. Will it be necessary to come back at the time of calendar call?

THE COURT: I don't see why it should now.

MR. COOPER: No problem.

THE COURT: No further calendar call in this matter, we'll go to trial.

MR. BOWMAN: Thank you.

(Thereupon the proceedings in the foregoing matter were recessed.)

* * * * *

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

Elizabeth A. Donnelly

ELIZABETH A. DONNELLY, C.S.R.

CASE NO. C53867

DEPARTMENT FIVE

F-83-3903
CEF

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff,
vs.
SAMUEL HOWARD aka KEITH,
Defendant.

REPORTER'S TRANSCRIPT

OF

PROCEEDINGS

Tuesday, January 4, 1983

1:45 o'clock p.m.

APPEARANCES:

For the State: MELVYN T. HARMON, ESQ.
Deputy District Attorney

For the Defendant: GEORGE E. FRANZEN, ESQ.
Deputy Public Defender

LAS VEGAS, NEVADA, TUESDAY, JANUARY 4, 1983, 1:45 O'CLOCK P.M.

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MR. FRANZEN: No problem.

THE COURT: No further calendar call, this matter will go to trial.

MR. HARMON: Thank you.

ATTEST: Full, true and accurate transcript of the proceedings.

Elizabeth A. Donnelly

ELIZABETH A. DONNELLY, C.S.R.

A F F I D A V I T

STATE OF NEVADA)
ss:
COUNTY OF CLARK)

MARCUS D. COOPER, having been first duly sworn, deposes and says:

1. That he is an attorney licensed to practice law in the State of Nevada and is the Deputy Public Defender assigned to represent the defendant.

2. That on November 22, 1982, the Clark County Public Defender's Office was ordered by the Honorable Judge John F. Mendoza of the Eighth Judicial District Court to interview the defendant, SAMUEL HOWARD, for the purpose of determining whether said office could and would represent defendant in the instant case. That this matter was continued to November 30, 1982, in the above court for the possible confirmation of counsel.

3. That on November 30, 1982, Michael L. Peters, Deputy Public Defender, appeared before the Honorable Judge Mendoza and confirmed that the Clark County Public Defender's Office would represent the defendant in the instant case and was so appointed by Judge Mendoza.

4. That on November 30, 1982, a trial date was set for January 10, 1983.

5. That on November 30, 1982, Mr. Terrence M. Jackson, Chief Deputy Public Defender, assigned the case at bar to Deputy Public Defenders Michael L. Peters and Marcus D. Cooper, with Mr. Peters to act as lead counsel.

6. That Mr. Peters began a jury trial on a capital murder case on or about December 13, 1982 and concluded that trial on December 24, 1982. That from approximately December 3, 1982 to commencement of said trial Mr. Peters was involved in extensive preparation of the case for trial.

7. That on January 3, 1983, Mr. Peters began jury trial in a multiple count narcotics case in Department Four of the Eighth Judicial District Court. Based on representations by the Deputy District Attorney prosecuting the case, it is speculated that case will take two to two and one half weeks to try.

8. That your affiant has had three (3) jury trials during the month of December, 1982. That, in addition your affiant had a capital murder case (State v. Marshall, No. C55838) which the State is seeking the death penalty scheduled for trial to begin December 20, 1982, in Department Four.

9. That affiant was preparing for said trial and the State filed a Motion for Continuance on December 10, 1982 which was heard and granted on December 13, 1982, two days before the scheduled calendar call in said case.

10. That in addition affiant had scheduled for trial a murder case (State v. Burgeon, No. C60232). The Burgeon trial was set to begin January 10, 1983 before the Honorable Judge Mendoza. That affiant in anticipation that said trial would begin as scheduled was, during December of 1982, preparing for same.

11. That during December of 1982, two deputy public defenders, namely Terrence M. Jackson and Thomas C. Naylor were hospitalized as a result of illness which necessitated Mr. Peters and affiant assuming additional duties over and above their caseloads.

12. That consequently Mr. Peters and affiant were unable to devote sufficient time to the instant case.

13. That on December 30, 1982, Mr. Peters appeared before Judge Mendoze and requested a continuance of the trial scheduled for January 10, 1983. That following a hearing on said motion the matter was continued to January 4, 1983, to

determine whether counsel for defendant would be ready to proceed to trial on January 10, 1983.

14. That on January 4, 1983, prior to the court ruling on the Motion for Continaunce, the defendant insisted on exercising his right to a speedy trial and insisted that the trial commence on January 10, 1983, notwithstanding his counsels' contention that they were not ready for trial and could not effectively represent defendant should the trial begin as scheduled.

15. That given Mr. Peter's involvement in the trial as mentioned in paragraph 7 above, deputy public defender George E. Franzen was assigned to represent as co-counsel with your affiant.

16. That Mr. Franzen was assigned the instant case on January 5, 1983, and was first provided discovery on that date.

WHEREFORE affiant prays that the attached Motion be heard.

Marcus D. Cooper

MARCUS D. COOPER

Subscribed and Sworn to before me this 6th day of January, 1983.

Bonnie M. Smith

Notary Public in and for said County and State

BONNIE M. SMITH
NOTARY PUBLIC, STATE OF NEVADA
COUNTY OF CLARK
My Commission Expires Sept. 23, 1985

ROBERT J. MILLER
District Attorney
Clark County Courthouse
Las Vegas, Nevada 89155

CASE NO. C53867

DEPT. NO. V

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA, Plaintiff, -vs- SAMUEL HOWARD, Defendant.	NOTICE OF INTENT TO SEEK DEATH PENALTY

COMES NOW the State of Nevada, through ROBERT J. MILLER, Clark County District Attorney, by his Chief Deputy District Attorney MELVYN T. HARMON, pursuant to NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty hearing provided the trial jury returns a verdict of guilty of Murder in the First Degree. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

(1) The murder was committed by a person who was previously convicted of a felony involving the use or threat of violence to the person of another. [See NRS 200.033(2)]. The evidence will consist of certified judgments of conviction and/or certified court minutes and/or state prison records showing that defendant SAMUEL HOWARD was convicted in San Bernardino County, California, in 1980 or 1981 of the felony offenses of robbery with use of a firearm and unlawful taking of a motor vehicle. Additionally, the testimony of victim James David Hilyer and Officers Sandee Lofgren, D. VanBuren and Dennis Evans of the San Bernardino

Police Department, San Bernardino, California, or their designees, will be offered in support of this aggravating circumstance.

(2) The murder was committed while the person was engaged in the commission of or an attempt to commit any robbery. [See NRS 200.033(4)]. The evidence in support of this allegation will consist of testimony and physical evidence arising out of "the aggravated nature of the offense itself" and will be introduced during the guilt phase of these proceedings.

(3) The murder was committed for the purpose of avoiding or preventing a lawful arrest. [See NRS 200.033(5)]. The evidence in support of this allegation will consist of testimony and physical evidence arising out of "the aggravated nature of the offense itself" and will be introduced during the guilt phase of these proceedings.

The State of Nevada also intends to offer certified copies of Queens Supreme Court records which show that on or about July 13, 1979 SAMUEL HOWARD was convicted in absentia of first degree robbery. The defendant was on bail and absconded from the jurisdiction after two days of trial, so that the prosecution will be unable to produce a certified copy of the judgment of conviction in connection with this matter. Additionally, the State of Nevada expects to offer testimony from the victim [a nurse in Queens College, New York] and Detective John McNicholas of the Queens Police Department, Queens, New York or his designee. The State of Nevada may also seek to introduce evidence connecting defendant SAMUEL HOWARD to the October 11th or 12th, 1979 murder of Louis Zumpano, a used car salesman in Queens, New York. Mr. Zumpano was employed with the Park Inn Ford Used Car Division, 444 W. Merrick Road, Valley Stream, New York. Various co-workers of Louis Zumpano have identified defendant HOWARD with whom Mr. Zumpano was last seen taking for a demonstration ride in a 1975

Pontiac Grand Prix. Also, the testimony of Captain Roy Richter and Detective Arnold Hendricks of the Queens, New York, Police Department and/or their designees will be offered as evidence in connection with the Zumpano homicide.

DATED this 7th day of January, 1983.

Respectfully submitted,

ROBERT J. MILLER
District Attorney

By _____
MELVYN T. HARMON
Chief Deputy District Attorney

RECEIPT OF A COPY of the foregoing NOTICE OF INTENT TO SEEK DEATH PENALTY is hereby acknowledged this 7th day of January, 1983.

CLARK COUNTY PUBLIC DEFENDER
Attorney for Defendant
SAMUEL HOWARD

By _____
309 South 3rd St., #226
Las Vegas, Nevada 89101

FILED

CASE NO. C53867

DEPARTMENT NO. V

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

VS.

SAMUEL HOWARD,

DEFENDANT.

REPORTER'S EXCERPT TRANSCRIPT

OF PROCEEDINGS

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

MONDAY, JANUARY 10, 1983, AT 10:00 A.M.

APPEARANCES:

FOR THE STATE: MELVYN T. HARMON, ESQUIRE
200 SOUTH THIRD
LAS VEGAS, NV 89155
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: MARCUS D. COOPER, ESQUIRE
309 SOUTH THIRD STREET
LAS VEGAS, NV 89155
DEPUTY PUBLIC DEFENDER

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 10, 1983, AT 10:00 A.M.
2 * * * * * * * * * * *
3 THE COURT: COUNSEL, LET'S PROCEED WITH THE
4 VARIOUS MOTIONS.
5 YOUR FIRST MOTION, SIR.
6 MR. COOPER: YOUR HONOR, AT THIS TIME WE WOULD
7 LIKE TO RENEW OUR MOTION TO WITHDRAW FROM THIS CASE. I THINK
8 MR. JACKSON HAD APPEAREO BEFORE YOUR HONOR PREVIOUSLY IN THIS
9 MATTER, INDICATING THAT HE WAS PERSONALLY A FRIEND OF THE
10 VICTIMS IN THIS PARTICULAR CASE, AND FOR THAT REASON FELT
11 THAT IT WOULD BE INAPPROPRIATE FOR OUR OFFICE TO REPRESENT
12 MR. HOWARD.
13 AS YOUR HONOR IS AWARE, MR. JACKSON
14 IS MORE OR LESS OUR BOSS. HE'S OUR TEAM CHIEF.
15 THE COURT: WELL, COUNSEL, THAT MOTION IS
16 DENIED AND WAS DENIED THEN.
17 HE WAS INSTRUCTED AND ORDERED NOT
18 TO HAVE ANYTHING TO DO WITH THIS CASE. HAS HE HAD ANYTHING
19 TO DO WITH THIS CASE?
20 MR. COOPER: NO, YOUR HONOR, HE HAS NOT. HE
21 HAS OBEYED THE COURT'S ORDER. HE HAS NOT DISCUSSED, WITH THE
22 ATTORNEYS REPRESENTING MR. HOWARD, ANYTHING REGARDING THE CASE.
23 THE COURT: ALL RIGHT. THEN THAT MOTION IS
24 DENIED, SIR.
25 MR. COOPER: YOUR HONOR, IF I MAY JUST POINT
26 OUT SOME ADDITIONAL MATTERS IN REGARD TO THAT MOTION.
27 MR. JACKSON IS NOT THE ONLY ATTORNEY
28 IN OUR OFFICE WHO IS FAMILIAR WITH THE VICTIM IN THIS CASE.
29 MR. GIBSON, AN ATTORNEY WITH OUR
30 OFFICE, HAS EXPRESSED HIS HOPE THAT OUR CLIENT BE EXECUTED.
31 HE'S INDICATED THAT HE IS A FRIEND, OR WAS A FRIEND, OF DOCTOR
32 MONAHAN AND, IN FACT, PLAYED ON NUMEROUS SPORTS TEAMS WITH HIM.

1 MR. HOWARD DOES NOT TRUST THE
2 LAWYERS IN THE PUBLIC DEFENDER'S OFFICE, PARTIALLY BECAUSE OF
3 THAT RELATIONSHIP WITH DOCTOR MONAHAN. HE HAS REFUSED, HAS
4 CONTINUALLY REFUSED, TO DISCUSS THIS CASE WITH US.
5 WE ARE ALMOST COMPLETELY UNPREPARED
6 FOR REASONS STATED IN THE MOTIONS FILED. ATTACHED TO THE
7 MOTIONS IS MY AFFIDAVIT IN SUPPORT OF FILING THE MOTIONS
8 WITHIN 15 DAYS OF THE TIME SET FOR THE TRIAL. AND I THINK OUR
9 POSITION THERE IS FAIRLY WELL OUTLINED.
10 IN SHORT, YOUR HONOR, THERE IS NO
11 MEANINGFUL ATTORNEY/CLIENT RELATIONSHIP HERE. WE ARE TOTALLY
12 UNPREPARED TO PROCEED TO TRIAL.
13 THE COURT: WELL, THAT OCCURS BY PUBLIC
14 DEFENDERS, FROM THE PUBLIC DEFENDER'S OFFICE, ON MANY, MANY
15 OTHER OCCASIONS. I AM JUST WONDERING WHY, ALL OF A SUDDEN, YOU
16 COME IN AND SAY YOU'RE UNPREPARED.
17 YOU WERE INSTRUCTED TO PROCEED ON
18 TO GET PREPARED IN THIS CASE. THE DEFENDANT CAME BEFORE THIS
19 COURT AND DEMANDED A SPEEDY TRIAL, DEMANDS A SPEEDY TRIAL NOW,
20 AND YOU FAILED IN THAT OBLIGATION.
21 MR. COOPER: I UNDERSTAND THAT, YOUR HONOR.
22 I JUST THINK IT'S IMPORTANT THAT
23 WE STATE ON THE RECORD OUR UNPREPAREDNESS IN THIS CASE.
24 IF I MAY REFER THE COURT -- I
25 UNDERSTAND THE COURT IS DENYING OUR MOTION TO WITHDRAW; IS THAT
26 CORRECT?
27 THE COURT: THAT'S CORRECT, SIR.
28 MR. COOPER: YOUR HONOR, I WOULD AT THIS TIME
29 LIKE TO RENEW OUR MOTION TO CONTINUE.
30 NOW, I UNDERSTAND THAT WHEN MR.
31 PETERS APPEARED ON THIS CASE A WEEK OR SO AGO HE INDICATED
32 THAT WE WERE UNPREPARED AT THAT TIME. NOW, I SINCE DISCOVERED

1 THAT MR. PETERS' MOTION FOR A CONTINUANCE WAS NOT, IN FACT,
2 FILED. I'M NOT SURE OF THE REASON FOR THAT, YOUR HONOR, BUT
3 IN THIS -- IN THAT PARTICULAR MOTION, AND I THINK THE STATE
4 WAS PROVIDED A COPY OF THAT, IF I'M NOT MISTAKEN.
5 MR. HARMON: YES.
6 MR. COOPER: MR. PETERS STATES THE REASON WHY
7 WE WOULD SEEK A CONTINUANCE AND THE FACT THAT HE WAS INVOLVED
8 IN A MURDER TRIAL AND THEN STARTED A TWO TO TWO AND A HALF
9 WEEK NARCOTICS CASE.
10 MR. PETERS WAS LEAD COUNSEL IN THE
11 CASE. I WAS ASSIGNED TO MERELY ASSIST HIM IN THE PREPARATION
12 OF THIS CASE. I THINK THAT MY MOTION IS FAIRLY WELL STATED
13 IN MY AFFIDAVIT THAT'S ON FILE WITH THE COURT.
14 THE COURT: COUNSEL, ALL OF THAT HAS BEEN
15 FILED AND IS A MATTER OF RECORD.
16 THIS WAS ALSO MADE KNOWN TO THE
17 DEFENDANT AND THE DEFENDANT THEN INSISTED ON GOING TO TRIAL
18 WITHIN THE 60 DAYS.
19 SINCE THAT TIME I SEE THAT THERE
20 HAS BEEN A PLETHORA OF MOTIONS FILED IN THIS MATTER, QUITE
21 A NUMBER, I SHOULD SAY.
22 MR. COOPER: THAT'S CORRECT, YOUR HONOR.
23 THE COURT: IT APPEARS TO ME LIKE YOU'VE
24 GOTTEN YOUR CASE GOING AND MOVING FAIRLY WELL.
25 MR. COOPER: WELL, YOUR HONOR, I HAVE TO
26 ADMIT THAT A MAJORITY OF THESE MOTIONS ARE JUST BOILER-PLATE-
27 TYPE MOTIONS THAT WE FILED IN AN EFFORT TO GIVE SOME SEMBLANCE
28 OF EFFECTIVE REPRESENTATION HERE.
29 IN ADDITION, IN REGARDS TO OUR
30 MOTION TO CONTINUE, WE WERE SERVED, THIS MORNING, WITH THE
31 STATE'S NOTICE OF INTENT TO SEEK THE DEATH PENALTY. THE COPY
32 THAT I HAVE IS NOT FILE STAMPED. BUT I WOULD CITE THAT AS AN

1 ADDITIONAL REASON FOR THE CONTINUANCE. WE ARE AS EQUALLY
2 UNPREPARED TO DEFEND AGAINST THE NOTICE OF INTENT TO SEEK THE
3 DEATH PENALTY. WE WERE JUST SERVED A COPY OF THE STATE'S
4 MOTION HERE THIS MORNING.
5 THERE IS SOME ADDITIONAL INFORMA-
6 TION, YOUR HONOR, THAT WE CAME ABOUT ON SATURDAY THAT I THINK
7 WOULD HAVE A BEARING ON OUR MOTION FOR A CONTINUANCE. WE HAVE
8 LEARNED, THROUGH OFFICIALS AT THE VACEVILLE STATE PRISON, IN
9 VACEVILLE, CALIFORNIA, THAT MR. HOWARD HAS BEEN HOSPITALIZED
10 IN MENTAL INSTITUTIONS ON AT LEAST THREE DIFFERENT OCCASIONS:
11 THAT BEING THE VETERANS ADMINISTRATION HOSPITAL IN CALIFORNIA,
12 THE MENTAL WARD OF THAT HOSPITAL; THE PATTON STATE HOSPITAL
13 IN CALIFORNIA; AND ATASCADERO HOSPITAL. THESE ARE ALL MENTAL
14 INSTITUTIONS.
15 WE ALSO HAVE DISCOVERED THAT DURING
16 HIS STAY AT VACEVILLE STATE PRISON, HE WAS, FOR A PERIOD OF
17 TIME, CONFINED TO THE PSYCHOTIC UNIT OF THAT FACILITY.
18 WE HAVE ADDITIONALLY BEEN INFORMED
19 THAT MR. HOWARD HAS A HISTORY OF DRUG ABUSE, INCLUDING
20 PHENCYCLIDINE, PCP, HEROIN, COCAINE, MESCALINE, AMPHETAMINES,
21 AND BARBITUATES.
22 WE HAVE BEEN INFORMED THAT HE
23 HAS BEEN DIAGNOSED AS SCHIZOPHRENIC, THAT HE SUFFERS FROM A
24 HYPOTHYROIDISM, A MALADY THAT AFFECTS ONE'S METABOLISM.
25 WE HAVE INFORMATION THAT HE HAS,
26 ON NUMEROUS OCCASIONS, COMPLAINED OF HEAD INJURIES AND SEVERE
27 HEADACHES. WE HAVE DISCOVERED HE ATTEMPTED SUICIDE ON AT
28 LEAST ONE PRIOR OCCASION, AND HAS EXPRESSED, ON ANOTHER
29 OCCASION, A DESIRE TO COMMIT SUICIDE. THAT WAS IN THE
30 DISCOVERY PROVIDED US BY THE DISTRICT ATTORNEY'S OFFICE WHEN
31 HE WAS INTERVIEWED IN SAN BERNARDINO BY THE DETECTIVES HERE.
32 AT THAT TIME HE EXPRESSED, ACCORDING TO THEIR REPORTS, A DESIRE

1 TO COMMIT SUICIDE.

2 YOUR HONOR, I AM NOT EVEN SURE,
3 AT THIS POINT, THAT THE DEFENDANT IS COMPETENT TO PROCEED TO
4 TRIAL.

5 I KNOW THAT YOUR HONOR APPOINTED
6 DOCTOR O'GORMAN TO ASSIST US IN THE PREPARATION OF THE DEFENSE
7 IN THIS CASE. I HAVE TALKED TO DOCTOR O'GORMAN. HE SAW MR.
8 HOWARD BRIEFLY ONLY YESTERDAY, I BELIEVE, OR SATURDAY. I'M
9 NOT SURE. BUT I HAVE SPOKEN TO HIM. HE STATED TO ME ESSEN-
10 TIALLY THAT MR. HOWARD HAS, IN ESSENCE, REFUSED TO TALK TO
11 HIM; THAT THERE WAS SOME BRIEF DISCUSSION. AND I GATHERED
12 FROM THE CONVERSATION I HAD WITH DOCTOR O'GORMAN THAT HE SIMPLY
13 -- HE SIMPLY DOES NOT HAVE ENOUGH INFORMATION AVAILABLE TO HIM
14 TO RENDER AN OPINION AS TO MR. HOWARD'S COMPETENCY, EITHER AT
15 THE TIME THIS OFFENSE WAS ALLEGEDLY COMMITTED OR NOW. HE DID
16 INDICATE TO ME HE THOUGHT MR. HOWARD HAD SOME KIND OF
17 CHARACTER DISORDER.

18 IN LIGHT OF THE FACT THAT MR.
19 HOWARD HAS BEEN HOSPITALIZED IN NUMEROUS INSTITUTIONS ON
20 PRIOR OCCASIONS AND APPEARS TO HAVE A HISTORY OF MENTAL
21 ILLNESS, I THINK IT WOULD BE CERTAINLY BENEFICIAL TO HAVE A
22 PSYCHIATRIST EXAMINE HIM, TO HAVE THOSE RECORDS MADE AVAILABE
23 TO HIM, TO ASSIST HIM IN MAKING AN EVALUATION. I THINK, AT
24 THE VERY LEAST, YOUR HONOR, IT CERTAINLY RAISES A SERIOUS
25 DOUBT AS TO MR. HOWARD'S COMPETENCY, HIS COMPETENCY TO EFFECTI-
26 VELY ASSIST COUNSEL IN THIS CASE.

27 AND I WOULD AGAIN URGE THE COURT,
28 BASED ON THE REPRESENTATIONS I HAVE MADE AND MY AFFIDAVIT THAT'S
29 ON FILE WITH THE COURT, AND IF I MIGHT, YOUR HONOR, AS I
30 INDICATED, THE MOTION FOR CONTINUANCE PREPARED BY MR. PETERS
31 WAS NEVER FILED AND I'M NOT SURE THE REASON FOR THAT, BUT
32 HE INDICATED IN HIS AFFIDAVIT THAT WAS ATTACHED TO THE MOTION

1 THAT HE -- IF I MAY JUST READ FROM THAT AFFIDAVIT:
2 THAT THE TRIAL IN THIS CASE WAS SET ON
3 NOVEMBER 30TH; THAT MR. PETERS WAS PREPARING FOR A TRIAL IN
4 A CAPITAL MURDER CASE FROM APPROXIMATELY DECEMBER 3RD OF
5 1982 UNTIL DECEMBER 21ST OF 1982, AND, IN FACT, THE JURY WAS
6 OUT DELIBERATING UNTIL CHRISTMAS EVE OF 1982;
7 THAT EXCEPT FOR THE PSYCHIATRIC MOTION THAT
8 WAS FILED, MR. PETERS WAS UNABLE TO DEVOTE ANY TIME WHATSOEVER
9 TO THIS PARTICULAR CASE, MR. HOWARD'S CASE, NOR WAS HE ABLE
10 TO VISIT MR. HOWARD IN ORDER TO PREPARE FOR TRIAL;
11 HE INDICATES THAT BASED ON THE DISCOVERY THAT
12 WAS PROVIDED US, A WITNESS WHO WOULD BE CRUCIAL IN THE
13 DEFENDANT'S CASE, A MR. BOBBY FITZGERALD, WAS INDICATED; AND
14 THAT MR. FITZGERALD MAY HAVE INFORMATION WHICH WOULD TEND TO
15 EXONERATE THE DEFENDANT OF THESE CHARGES. HE INDICATES THAT
16 EFFORTS TO LOCATE THIS PARTICULAR WITNESS, WHO WE HAVE REASON
17 TO BELIEVE IS OUT OF STATE, WOULD TAKE QUITE SOME TIME FOR US
18 TO EXHAUST ALL THE REASONABLE POSSIBILITIES OR LEADS; AND
19 THAT, IN FACT, SUCH INVESTIGATION MAY REQUIRE OUT-OF-STATE
20 TRAVEL.
21 HE FURTHER INDICATES, YOUR HONOR, THAT THE
22 CASE INVOLVES NUMEROUS OUT-OF-STATE WITNESSES THAT MUST BE
23 CONTACTED AND INTERVIEWED; AND THAT HE WAS SCHEDULED TO START
24 TRIAL ON JANUARY 3RD IN A DRUG AND BRIBERY CASE, WHICH, IN
25 FACT, HE DID START.
26 IN MY BRIEF DISCUSSIONS WITH MR. HOWARD,
27 YOUR HONOR, AND THOSE WERE BRIEF OCCASIONS WHERE HE WOULD TALK
28 TO US, I JUST DISCOVERED THIS MORNING THAT IN THE TRIAL IN
29 CALIFORNIA, WHERE HE WAS CONVICTED OF ROBBERY, I BELIEVE,
30 SOME OF THE WITNESSES IN THAT PARTICULAR CASE -- AND THIS IS
31 A RATHER INVOLVED CASE, YOUR HONOR. IT'S SOMEWHAT CONVOLUTED.
32 IT'S A CAN OF WORMS, SO TO SPEAK. AND WE CERTAINLY ANTICIPATE

1 THAT THE STATE WILL BE INTRODUCING EVIDENCE OF OTHER OFFENSES
2 AND IN OTHER JURISDICTIONS, SOME OF WHICH MR. HOWARD HAS NOT
3 BEEN TRIED FOR YET, UNDER THE EXCEPTION TO THE PRIOR BAD ACTS
4 RULE, TO SHOW IDENTITY OR LACK OF MISTAKE, ETCETERA -- IT
5 HAS COME TO OUR ATTENTION THAT SOME OF THE WITNESSES WHO
6 TESTIFIED FOR THE STATE IN THE CALIFORNIA CASE, PARTICULARLY
7 ONE OF THE DETECTIVES HERE INVOLVED IN THE INVESTIGATION ON
8 THE CASE, AND A DAWANA THOMAS, WHO, ACCORDING TO THE DISCOVERY
9 PROVIDED US, GAVE VERY, VERY INCRIMINATING REPORTS TO THE
10 POLICE REGARDING MR. HOWARD'S INVOLVEMENT IN THIS PARTICULAR
11 CASE, AND SHE ALSO TESTIFIED IN CALIFORNIA.
12 WE DON'T HAVE ANY OF THE TRANS-
13 CRIPTS FROM THOSE PROCEEDINGS. I THINK WE WOULD BE REMISS
14 IN OUR DUTIES AS ATTORNEYS IN THIS PARTICULAR CASE IF WE WERE
15 TO PROCEED TO TRIAL WITHOUT HAVING HAD AN OPPORTUNITY TO
16 REVIEW THOSE TRANSCRIPTS FOR POSSIBLE IMPEACHMENT PURPOSES.
17 MR. HOWARD INDICATES TO ME THAT
18 THERE WERE SEVERAL MISSTATEMENTS, LIES, GIVEN BY THE WITNESSES
19 THAT I HAVE INDICATED. AND I WOULD THINK WE WILL CERTAINLY --
20 SHOULD CERTAINLY BE ENTITLED TO REVIEW THOSE RECORDS PRIOR TO
21 PROCEEDING TO TRIAL IN THIS CASE.
22 FOR THOSE REASONS, YOUR HONOR, I
23 WOULD URGE THE COURT TO GRANT OUR MOTION FOR A CONTINUANCE.
24 I PERSONALLY FEEL THAT I HAVE SOME SERIOUS QUESTION WHETHER OR
25 NOT THE DEFENDANT'S RIGHT TO SPEEDY TRIAL WOULD BE VIOLATED
26 IN LIGHT OF THE REPRESENTATIONS I HAVE MADE.
27 THE COURT: MR. HOWARD, YOU'VE HEARD THE
28 STATEMENTS OF YOUR ATTORNEY IN THIS MATTER. DO YOU HAVE
29 ANYTHING TO STATE TO THE COURT AT THIS TIME?
30 DEFENDANT HOWARD: YOUR HONOR, FIRST OF ALL,
31 I'M AT A LOSS OF WORDS BECAUSE MR. COOPER HERE, HE JUST WON
32 ME OVER. I DIDN'T THINK HE WOULD STATE WHAT I HAD STATED TO

1 HIM BEFORE PERTAINING TO WHAT HE JUST SAID.
2 I REALLY DON'T UNDERSTAND NOW.
3 YOU KNOW, IT'S BEYOND MY KNOWLEDGE. I'M NOT LITERAL
4 ENOUGH TO COMMUNICATE ON A LEVEL OF JAR- -- LEGAL JARGON.
5 BUT IF I HAD TIME TO MAYBE TALK
6 TO MR. COOPER I CAN UNDERSTAND IT MORE, 'CAUSE I DO AGREE
7 ABOUT HIM REVIEWING THE TRANSCRIPTS AND I THINK THAT MAYBE
8 IT COULD RESOLVE ME FROM THE CRIME I'M CHARGED WITH HERE.
9 AS FAR AS ME WAIVING TIME FOR A
10 CONTINUANCE, LIKE I SAY, I REALLY DON'T KNOW, YOUR HONOR. I
11 REALLY -- I'M JUST CONFUSED RIGHT NOW, YOU KNOW, 'CAUSE
12 PERSONALLY LIKE I SAID, I HAD AN APPEAL ACTION GOING OUT IN
13 CALIFORNIA AND I WAS, MORE OR LESS, CONCENTRATING ON THAT;
14 AND THAT DEFINITELY WOULD RESOLVE ME FROM THE CASE I'M CHARGED
15 WITH HERE. I STRONGLY BELIEVE IT.
16 IF I HAVE A LITTLE TIME SO I COULD
17 SHOW MR. COOPER HERE SOME OF THE PAPERS I HAVE AND THEN
18 PROCEED WITH HIM -- WITH HIM BEING NOT ONLY ASSISTANT COUNSEL,
19 OR CO-COUNSEL, BUT AS LEAD COUNSEL FOR ME IN THIS TRIAL, BUT
20 IF YOU'RE IN CONTROL, YOUR HONOR, SO I --
21 THE COURT: WELL, HE, ONCE AGAIN, IS RAISING
22 THE MOTION TO CONTINUE. YOU WERE RATHER ADAMANT ABOUT NOT
23 CONTINUING THIS MATTER AND GETTING ON WITH THE TRIAL.
24 WHAT'S YOUR FEELING NOW?
25 DEFENDANT HOWARD: YOUR HONOR, LIKE I SAY,
26 I'M SMILING BECAUSE, LIKE I SAY, MR. COOPER JUST WON ME OVER,
27 YOU KNOW.
28 THE ATTORNEYS AND, THE SAME WITH
29 THE DISTRICT ATTORNEY, THE PEOPLE'S ATTORNEY, THEY HAVE A
30 WAY WITH WORDS, YOU KNOW. MAYBE IF I --
31 THE COURT: DO I HEAR YOU SAYING, SIR, THAT
32 YOU DON'T HAVE ANY OBJECTION TO A CONTINUANCE? IS THAT WHAT

1 YOU ARE SAYING?

2 DEFENDANT HOWARD: I'M NOT -- NO, YOUR

3 HONOR. I'M NOT COMMITING MYSELF TO THAT.

4 ALL I'M SAYING IS THAT -- WELL,

5 MY TRIAL IS SUPPOSED TO START TODAY, YOUR HONOR.

6 THE COURT: YES.

7 DEFENDANT HOWARD: CAN'T WE CONTINUE TODAY

8 AND HE CAN JUST COME OVER WITH THE INFORMATION THAT WOULD

9 HELP ME? THAT'S ALL. WHATEVER HAPPENS, YOUR HONOR, HAPPENS.

10 THE COURT: WELL, IT HAS TO BE SET DOWN FOR

11 A TIME CERTAIN, FOR OBVIOUS REASONS; WITNESSES HAVE TO BE

12 LINED UP AND ALL THAT BUSINESS. WE HAVE TO ALLOT TIME FOR

13 THE COURT. SO IT'S JUST NOT SOMETHING WE CAN JUST CONTINUE

14 INDEFINITELY. IT'S A MATTER THAT'S GOING TO HAVE TO BE SET

15 FOR A TIME CERTAIN.

16 WHY DON'T YOU BE SEATED AND LET

17 ME FIND OUT FROM THE STATE.

18 DEFENDANT HOWARD: THANK YOU.

19 MR. HARMON: YOUR HONOR, THIS CASE IS A

20 LOGISTICAL NIGHTMARE FROM THE POINT OF VIEW OF THE STATE.

21 THERE ARE A NUMBER OF OUT-OF-STATE WITNESSES.

22 WHEN THE MOTION TO CONTINUE, WHICH

23 WAS ABOUT TEN DAYS AGO, ORIGINALLY CAME TO OUR ATTENTION, WE

24 HAD MIXED FEELINGS ABOUT IT, YOUR HONOR. WE WERE SENSITIVE

25 TO THE REPRESENTATIONS MADE BY THE DEPUTY PUBLIC DEFENDER,

26 THAT HE'D BEEN ASSIGNED THE CASE, HE WAS INVOLVED IN A THREE-

27 WEEK MURDER TRIAL IN DEPARTMENT XI; BUT WE ALSO WERE AWARE

28 THAT MR. HOWARD WAS COMPLAINING THAT HE HAD VERY LITTLE

29 CONTACT WITH HIS COUNSEL.

30 SO, CANDIDLY, YOUR HONOR, AT THAT

31 POINT WE PLAYED IT SOMEWHAT LOOSELY, BUT WE KNEW IF THE CASE

32 WENT FORWARD WE HAD TO BE READY AND WE DIDN'T WANT TO PUSH

1 THE THING AND PERHAPS BUILD SOME TYPE OF ERROR INTO THE
2 RECORD.
3 AND SO WE CAME DOWN TO THE COURT
4 LAST TUESDAY, JANUARY THE 4TH, ANTICIPATING THAT PERHAPS THE
5 CASE WOULD BE POSTPONED. AT THAT TIME, IN UNEQUIVOCAL
6 TERMS -- IN FACT, I THINK MR. HOWARD USED THE WORD "UNEQUIVO-
7 CAL" -- HE ASSERTED HIS RIGHT TO HAVE A SPEEDY TRIAL. FROM
8 THAT POINT ON, YOUR HONOR, WE HAVE MADE EVERY EFFORT TO MAKE
9 CONTACT WITH THE MANY WITNESSES WE HAVE INVOLVED. AND AT
10 CONSIDERABLE TIME AND EXPENSE, WE ARE READY, YOUR HONOR.
11 I WOULD INDICATE THAT WE HAVE AN
12 OUT-OF-STATE WITNESS COMING IN FROM THE STATE OF ARIZONA,
13 THAT THE ARRANGEMENTS HAVE BEEN MADE, THE TRAVEL PLANS ARE
14 IN ORDER; WE HAVE SIX OFFICERS OUT OF THE STATE OF CALIFORNIA,
15 FROM THE SAN BERNARDINO AREA, AND AN OFFICER FROM THE DOWNEY,
16 CALIFORNIA, POLICE DEPARTMENT; WE HAVE TWO OUT-OF-STATE
17 WITNESSES FROM THE STATE OF COLORADO, ONE OF WHOM IS ALREADY
18 HERE, SHE'S THE WIDOW OF THE DECEASED, GEORGE MONAHAN.
19 FOR THOSE REASONS, YOUR HONOR,
20 WE VIGOROUSLY OPPOSE ANY POSTPONEMENT AT THIS TIME.
21 WITH DUE RESPECT TO MR. HOWARD,
22 I GET THE FEELING TODAY HE'S MORE OR LESS PLAYING GAMES. I
23 MEAN, HE WAS SURE HE WANTED TO GO TO TRIAL ON TUESDAY, AND
24 NOW HE SEEMS TO BE INDECISIVE. I THINK PERHAPS IT'S A
25 CONTRIVED INDECISION THIS MORNING.
26 COUNSEL HAS MENTIONED A POSSIBLE
27 WITNESS, BOBBY FITZGERALD. WELL, PERHAPS THIS ISN'T THE TIME
28 FOR COMMENTARY ON THE CASE, BUT TEN DAYS AGO MR. PETERS
29 MENTIONED THE POSSIBILITY OF NEEDING TO FIND THIS WITNESS.
30 SO THEY'VE HAD ALMOST TWO WEEKS NOW TO DO THEIR INVESTIGATION.
31 FRANKLY, I THINK MR. FITZGERALD
32 IS A FIGMENT OF THE IMAGINATION OF THE DEFENDANT. DAWANA

1 THOMAS, A WITNESS WHO WAS A COMPANION OF THE DEFENDANT AT
2 THE TIME THESE CRIMES WERE ALLEGED TO HAVE OCCURRED, HAS
3 ALREADY GIVEN STATEMENTS THAT DURING THE PERIOD OF TIME SHE
4 WAS HERE WITH THE DEFENDANT THAT NOBODY NAMED BOBBY FITZGERALD
5 WAS EVER IN THE PRESENCE OF THE DEFENDANT, TO HER KNOWLEDGE.
6 WITH RESPECT TO THE NOTICE OF
7 INTENT TO SEEK THE DEATH PENALTY, YOUR HONOR, THAT WAS SERVED
8 UPON THE PUBLIC DEFENDER'S OFFICE FRIDAY EVENING. WE MADE A
9 POINT OF GETTING IT OVER THERE BEFORE 5:00 P.M., BECAUSE WE
10 WANTED THEM TO BE AWARE OVER THE WEEKEND OF OUR INTENTION.
11 IN FACT, I MADE PERSONAL REPRESENTATION IN OUR OFFICE FRIDAY
12 AFTERNOON TO BOTH MR. FRANZEN AND MR. COOPER THAT WE WERE IN
13 THE PROCESS OF DICTATING OUR MOTION OF INTENT TO SEEK THE
14 DEATH PENALTY. SO IF THEY JUST MANAGED TO SEE THE NOTICE THIS
15 MORNING, IT CERTAINLY DOESN'T COME AS ANY SURPRISE TO THEM.
16 IT WAS MADE FRIDAY. IN FACT, THE STATUTE ONLY REQUIRES THAT
17 THAT TYPE OF NOTICE BE SERVED SOMETIME BEFORE THE COMMENCEMENT
18 OF THE PENALTY HEARING. SO I THINK THAT THE DEFENSE HAS BEEN
19 GIVEN EVERY BIT OF DOUBT IN REGARDS TO THAT.
20 WITH RESPECT TO THE DEFENDANT'S
21 STATE OF MIND --
22 THE COURT: THE PUBLIC DEFENDER'S OFFICE
23 KNEW SOME TIME AGO THAT YOU WERE GOING TO BE ASKING FOR THE
24 DEATH PENALTY. ALL YOU HAD TO DO WAS TAKE A LOOK AT THE
25 DEFENDANT'S OWN MOTION, WHERE THE DEFENDANT SAYS HE WAS TOLD,
26 BY MIKE PETERS OF THE PUBLIC DEFENDER'S OFFICE, THAT HE IS
27 FACING THE DEATH PENALTY. SO HE WAS AWARE OF THAT ASPECT
28 OF IT SOME TIME AGO. I DON'T FIND THAT THEY WERE SURPRISED
29 BY THAT.
30 MR. HARMON: BUT, YOUR HONOR, THE PUBLIC
31 DEFENDER'S OFFICE HAS BEEN ON THIS CASE SINCE NOVEMBER THE
32 30TH, 1982.

1 I KNOW WE WOULD ALL LIKE TO
2 ENGAGE IN THE GENTLEMAN'S PRACTICE OF LAW, AND JUST HAVE A
3 CASE OR TWO A MONTH. IN FACT, WITH OUR CRIMINAL JUSTICE
4 SYSTEM IT DOESN'T WORK OUT THAT WAY.
5 THESE REPORTS THAT MAKE REFERENCE
6 TO ALLEGED PRIOR HOSPITALIZATIONS OF THE DEFENDANT ON STATE
7 OF MIND, THESE ARE CONTAINED IN DISCOVERY THAT WAS MADE
8 AVAILABLE TO THE PUBLIC DEFENDER'S OFFICE SHORTLY AFTER THEY
9 CAME INTO THE CASE. SPECIFICALLY AN OFFICER'S REPORT BY THE
10 NAME OF AL LEAVITT, OF THE LAS VEGAS METROPOLITAN POLICE
11 DEPARTMENT, REFERS TO INFORMATION HE RECEIVED FROM MR. HOWARD
12 REGARDING PRIOR HOSPITALIZATIONS, AND THAT ALSO WAS CONTAINED
13 IN EITHER THE DEFENDANT'S MOTION FOR APPOINTMENT OF PSYCHIA-
14 TRIST OR THE MOTION TO CONTINUE. SO THEY HAVE KNOWN ABOUT
15 THAT FOR A SUBSTANTIAL PERIOD OF TIME.
16 THE COURT: LET ME JUST ASK, I APPOINTED A
17 PSYCHIATRIST ON THE 10TH. HOW COME HE WAS ONLY ASKED TO SEE
18 HIM JUST THIS WEEKEND?
19 MR. COOPER: I HONESTLY DON'T KNOW, YOUR
20 HONOR. MR. PETERS APPARENTLY NEVER GOT AROUND TO INFORMING
21 DOCTOR O'GORMAN THAT HE WAS APPOINTED TO EXAMINE MR. HOWARD.
22 IN REFERENCE TO MR. HARMON'S
23 STATEMENTS, YOUR HONOR, THAT WE WERE AWARE OF PRIOR HOSPITALI-
24 ZATIONS, IN PART THAT IS TRUE; BUT THE DISCOVERY THAT WE WERE
25 PROVIDED INDICATED THAT MR. HOWARD HAD BEEN HOSPITALIZED IN
26 NEW YORK. WE HAD ABSOLUTELY NO IDEA HE HAD BEEN HOSPITALIZED
27 IN MENTAL INSTITUTIONS IN CALIFORNIA.
28 I UNDERSTAND THE STATE TRIED TO
29 VERIFY THAT HE HAD BEEN HOSPITALIZED IN NEW YORK, AND THEY
30 WERE UNABLE TO VERIFY THAT, OR IT WAS INDICATED TO THEM THAT,
31 NO, HE HAD NOT BEEN HOSPITALIZED.
32 AND IN THE DISCOVERY THAT WE WERE

1 PROVIDED WITH ON FRIDAY OF LAST WEEK, WE DISCOVERED THAT MR.
2 HOWARD HAS SEVERAL ALIASES. IT IS POSSIBLE THAT HE COULD HAVE
3 BEEN HOSPITALIZED UNDER SOME OF THOSE ALIASES. I DON'T KNOW
4 THAT THE STATE TRIED TO VERIFY THAT.
5 YOUR HONOR, YOU KNOW THE STATE
6 HAS HAD WELL OVER TWO YEARS TO PREPARE FOR THIS CASE. EVEN
7 IF WE WERE -- COULD DEVOTE EVERY HOUR OF EVERY WORKING DAY
8 ON THIS CASE FROM THE TIME THAT WE WOULD HAVE BEEN APPOINTED,
9 WE WOULD HAVE HAD ABOUT 34, 35 DAYS TO PREPARE FOR THE CASE.
10 WE WEREN'T PROVIDED THE DISCOVERY IN THE CASE UNTIL SOME THREE
11 TO FOUR, PERHAPS EVEN FIVE DAYS AFTER WE CONFIRMED AS COUNSEL
12 IN THE CASE; AND THEN A TRIAL DATE WAS SET.
13 MR. HARMON: YOUR HONOR, WHEN MR. PETERS
14 APPEARED BEFORE THE COURT ABOUT TEN DAYS AGO AND WE TALKED,
15 FIRST OF ALL, ABOUT THE GRIEVANCES THAT THE DEFENDANT HAD WITH
16 THE PUBLIC DEFENDER'S OFFICE, AND THE COURT, IN FACT, CANVASSED
17 THE DEFENDANT AT THAT TIME, WHEN IT GOT TO THE POINT OF STATE
18 OF MIND THE COURT ASKED MR. PETERS WHAT HIS PURPOSE WAS IN
19 WANTING PSYCHIATRISTS APPOINTED.
20 MR. PETERS INDICATED IT WOULD
21 ASSIST IN DEVELOPING THE DEFENSE, THAT HE HAD NO REASON TO
22 DOUBT THE COMPETENCY OF THE DEFENDANT BASED UPON THE CONTACT
23 HE HAD HAD WITH HIM. SO WE SUBMIT THERE IS NO REASONABLE
24 DOUBT THAT HAS BEEN RAISED AT THIS POINT AS TO THE COMPETENCY.
25 THE COURT: COUNSEL, JUST SO WE CAN PUT THAT
26 ISSUE TO REST, JUST LISTENING TO THE DEFENDANT HERE IN COURT
27 OVER THESE PROCEEDINGS OVER A PERIOD OF TIME, I FIND THAT HE
28 IS COMPETENT AND ABLE TO ASSIST IN HIS DEFENSE. HE IS
29 CERTAINLY VERY KNOWLEDGEABLE ABOUT HIS SITUATION AND THE
30 PROBLEMS THAT HE'S GETTING INTO. HE IS AWARE OF WHAT HE'S
31 CHARGED WITH AND THE CIRCUMSTANCES.
32 MR. HARMON: THANK YOU. I CERTAINLY CONCUR

WITH THE COURT.

ONE FURTHER POINT. REFERENCE WAS MADE TO TRANSCRIPTS OUT OF SAN BERNARDINO COUNTY, CALIFORNIA. THE DEFENDANT WAS RECENTLY CONVICTED OF ROBBERY THERE WITH USE OF A WEAPON AND UNLAWFUL ENTRY OF A MOTOR VEHICLE. WE'D LIKE TO HAVE THE TRANSCRIPTS, TOO, YOUR HONOR. IT'S VERY QUESTIONABLE THAT THEY ARE AVAILABLE TO EITHER PARTY. MR. SEATON HAS HAD CONTACT WITH THE DISTRICT ATTORNEY'S OFFICE THERE AND HE'S NOT CLEAR THAT THE TRANSCRIPTS HAVE EVEN BEEN PREPARED.

SO WE SUBMIT, CONSIDERING ALL OF THE CIRCUMSTANCES AND IN VIEW OF THE FACT THAT THE DEFENDANT IS STILL UNWILLING TO WAIVE HIS RIGHT TO A SPEEDY TRIAL, THAT THE MOTION TO CONTINUE SHOULD BE DENIED.

THE COURT: WELL, I'M GOING TO CONTINUE THIS FOR ABOUT AN HALF HOUR. I WANT YOU GENTLEMAN TO TALK TO THE DEFENDANT ONCE AGAIN AND SEE WHAT HIS CURRENT ATTITUDE IS NOW, AS HE SEEMINGLY LIKES YOU MORE THAN HE DID. AND WE WILL FIND OUT WHAT YOUR MOTION WILL BE AT THAT TIME.

WE WILL CONTINUE THIS FOR ONE HALF HOUR. WE WILL BE IN RECESS.

(WHEREUPON, AT THE HOUR OF 10:20
A RECESS WAS HAD IN THE PROCEEDINGS)
(END OF EXCERPT.)

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

RENEE SILVAGGIO, C.S.R. NO. 122

JAN 31 1 23 PM '83

CASE NO. ~~C53276~~ C53867

DEPARTMENT NO. V

DOCKET H

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
PLAINTIFF,

VS.

SAMUEL HOWARD AKA
KEITH,
DEFENDANT.

REPORTER'S PARTIAL TRANSCRIPT -
RE: JURY TRIAL - CONTINUANCE

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

MONDAY, JANUARY 10, 1983, 11:00 A.M.

APPEARANCES:

FOR THE STATE: MELVIN HARMON, ESQUIRE
DANIEL SEATON, ESQUIRE
DEPUTY DISTRICT ATTORNEYS
CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101

FOR THE DEFENDANT: MARCUS COOPER, ESQUIRE
GEORGE FRANZEN, ESQUIRE
DEPUTY PUBLIC DEFENDERS
309 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

EXHIBIT "D"

LAS VEGAS, NEVADA, MONDAY, JANUARY 10, 1983, 11:00 A.M.

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THE COURT: THIS IS A CONTINUATION OF THE MATTER OF THE STATE OF NEVADA VERSUS SAMUEL HOWARD.

COUNSEL?

MR. FRANZEN: YOUR HONOR, WE FOUND A BRIEF OPPORTUNITY TO SPEAK WITH MR. HOWARD. MR. HOWARD CONTINUES TO BELIEVE THAT HE SHOULD HAVE OTHER COUNSEL, AND HE CONTINUES TO WISH TO GO TO TRIAL AS SCHEDULED.

WE, HOWEVER, AS HIS PRESENT COUNSEL, WOULD ASK, IF THIS COURT CONCEDES IT'S GOING TO ALLOW US A CONTINUANCE, YOUR HONOR, TO THE 1:30 CALENDAR, SO WE MIGHT GO UP TO THE JAIL AND SPEAK TO THE DEFENDANT A LITTLE MORE REGARDING WHAT IS GOING ON HERE.

THE COURT: WELL, GENTLEMEN, I WOULD SUGGEST YOU BE READY TO PROCEED THEN -- YOUR MOTION IS DENIED -- TO PROCEED AND TRY THE CASE THIS AFTERNOON. IF HE CONTINUES TO INSIST THAT HE WANTS TO GO TO TRIAL, YOU ARE GOING TO GO TO TRIAL. SO I WOULD SUGGEST THAT YOU BE READY TO GO. IT'S ENTIRELY BASED UPON HIS DESIRES IN THIS MATTER, AND I WANT YOU TO KNOW THAT.

THE PUBLIC DEFENDER IS NOT GOING TO BE RELEASED. IT'S TOO LATE FOR THAT. THE FACT THAT MR. PETERS DID NOT DO AS WELL AS HE SHOULD HAVE DOESN'T CHANGE A THING. IT'S OBVIOUS THAT THE DEFENDANT KNOWS ABOUT IT, WAS FULLY AWARE OF IT, AND HAS HEARD IT THREE OR FOUR TIMES. YOU GENTLEMEN HAVE REINFORCED IT FOUR OR FIVE TIMES. SO BE READY TO GO.

I WILL CONTINUE THIS MATTER UNTIL 1:45 THIS AFTERNOON.

MR. SEATON: YOUR HONOR, BEFORE WE LEAVE COULD I FILE IN OPEN COURT THE STATES ANSWER IN OPPOSITION TO

THE DEFENDANT'S MOTION TO SEVER THE OFFENSES?

THE COURT: YES, YOU MAY.

MR. COOPER: WE HAVE BEEN PROVIDED A COPY OF THAT, YOUR HONOR. I ASSUMED THAT THE STATE'S INTENT -- NOTICE OF INTENTION TO SEEK THE DEATH PENALTY HAS BEEN FILED.

MR. HARMON: IT HAS.

MR. COOPER: IN LIGHT OF THAT MOTION, YOUR HONOR, I WOULD ASK LEAVE OF THE COURT TO FILE, IN OPEN COURT AT THIS TIME, MOTIONS THAT WE WOULD LIKE FILED AS A RESULT OF THE STATE SEEKING THE DEATH PENALTY IN THIS CASE.

THE COURT: ALL RIGHT. WHAT ARE THEY, SIR, FOR THE RECORD?

MR. COOPER: YOUR HONOR, FOR THE RECORD THEY ARE MOTIONS TO -- WE HAVE A MOTION FOR DISCOVERY OF AGGRAVATING CIRCUMSTANCES THAT THE STATE INTENDS TO USE AT THE PENALTY HEARING AND FOR DISCOVERY OF MITIGATING CIRCUMSTANCES IN THE STATE'S POSSESSION. THE SECOND MOTION IS A MOTION FOR INDIVIDUAL EXAMINATION OF PERSPECTIVE JURORS OUTSIDE OF THE PRESENCE OF THE OTHER JURORS. AND A MOTION FOR ADDITIONAL PEREMPTORIES.

THE COURT: WELL, GENTLEMEN, YOU MAY FILE THAT. LET ME SEE THEM.

ALL RIGHT. MISS CLERK, AS SOON AS YOU PUT A FILE STAMP ON THEM, BRING THEM BACK TO CHAMBERS AND I WILL READ THEM IN CHAMBERS. I WILL BE READY TO RULE ON THE MOTIONS, GENTLEMEN, UNLESS THERE IS ANYTHING TO SUPPLEMENT THEM, THIS AFTERNOON AT 1:45. WE WILL BE PROCEEDING TO IMPANEL THE JURY THIS AFTERNOON IF IT'S ALL SET TO GO.

MR. HARMON: FINE, YOUR HONOR.

MR. SEATON: THANK YOU, YOUR HONOR.

THE COURT: WE WILL BE IN RECESS UNTIL 1:45.

...

(WHEREUPON, AT THE HOUR OF 12:00 A.M. A RECESS WAS HAD IN THE PROCEEDINGS.)

LAS VEGAS, NEVADA, MONDAY, JANUARY 10, 1983, 2:45 P.M.

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THE COURT: THIS MATTER HAS BEEN CONTINUED FOR FURTHER PROCEEDING UNTIL THIS TIME.

COUNSEL, I GAVE YOU AN OPPORTUNITY TO DISCUSS THIS FURTHER WITH YOUR CLIENT. WHAT DO YOU HAVE TO REPORT TO THE COURT?

MR. FRANZEN: YES, YOUR HONOR. MR. COOPER AND I SPENT AN HOUR AND A HALF WITH OUR CLIENT ON THE LUNCH HOUR AND BEYOND. HE STILL REQUESTS THAT THIS TRIAL GO AS SCHEDULED THIS WEEK; WE, HOWEVER, DO NOT FEEL WE ARE PREPARED AND WE BELIEVE THAT SINCE THE NEVADA REVISED STATUTES REGARDING THE SETTING OF TRIALS WITHIN 60 DAYS WAS AMENDED, I BELIEVE, IN 1967 TO ALLOW THE COURT THE DISCRETION REGARDING THE 60 DAY RULE, THE CASES ARE NOT BEING DISMISSED BECAUSE OF A VIOLATION OF THE 60 DAY RULE, MERELY BECAUSE OF A REQUEST FOR CONTINUANCE IF THE DEFENDANT CAN BE CHARGED WITH HAVING CAUSED THE DELAY. IN THIS INSTANCE WE HAVE SUPPLIED THE COURT WITH TWO CASES: BAILEY VERSUS STATE, 94 NEVADA -- AND I APOLOGIZE I DON'T HAVE THE ACTUAL CITE, AN ADVANCED OPINION 95; ADAMS V. SHERIFF, 91 NEVADA 575, A 1975 DECISION, WHICH SPEAK WITH THE FLEXIBILITY OF OUR STATUTES. SINCE MR. OWENS -- OR MR. HOWARD HAS ONLY BEEN IN CUSTODY HERE IN THE STATE OF NEVADA FOR, I BELIEVE, ABOUT 35 DAYS, WE BELIEVE THAT A REQUEST TO HAVE THIS CASE CONTINUED OVER HIS OBJECTION, WITH THE REQUEST OF HIS ATTORNEY, SHOULD BE GRANTED. AND WE WOULD REQUEST THAT THE MATTER BE RESET FOR TRIAL, 60 DAYS WOULD BE APPROPRIATE, AND WE WOULD BE ABLE TO INVESTIGATE THIS MAN'S DEFENSE AND ADEQUATELY

DEFEND HIM.

THE COURT: ALL RIGHT.

EXCUSE ME. WHY DON'T WE JUST -- LET ME HEAR FROM MR. HOWARD FIRST.

MR. HOWARD, DO YOU HAVE ANYTHING FURTHER TO STATE IN THIS MATTER AT THIS TIME?

DEFENDANT HOWARD: NO, YOUR HONOR, I DON'T.

I ALREADY GAVE YOU MY STATEMENT. I STILL STAND --

THE COURT: ALL RIGHT. THANK YOU.

MR. HARMON: YOUR HONOR, ON TUESDAY, JANUARY 4TH, THE DEFENDANT UNEQUIVOCALLY ASSERTED HIS RIGHT TO A SPEEDY TRIAL. NOW THE STATE SAT HERE SILENTLY THROUGH THAT. AS I REMEMBER, IT WAS DETERMINED WE WOULD GO TO TRIAL TODAY. OUR ONLY COMMENT WAS THAT WE WERE READY, THAT WE WOULD BE READY TO GO TO TRIAL. YOUR HONOR, WE RELIED ON THAT.

YOUR HONOR, THIS IS NOT A RECENT CASE. AS THE RECORD SHOWS, THE VICTIM WAS ALLEGEDLY KILLED ON MARCH THE 27TH, 1980. SO WE ARE APPROACHING THE THIRD YEAR ANNIVERSARY OF THIS CASE.

THE COURT: LET ME ASK YOU, COUNSEL, IN VIEW OF THE SERIOUSNESS AND IN VIEW OF THE FACT OF THE DEATH PENALTY CASE, I HAVE DETERMINED, DURING THE RECESS, THAT I AM GOING TO CONTINUE IT.

HOWEVER, THERE DOES APPEAR TO BE CERTAIN THINGS THAT THE STATE CAN BE MADE -- THE DEFENSE CAN BE MADE TO ADHERE TO, AND THAT IS THE TAKING OF DEPOSITIONS IF NECESSARY. I DON'T KNOW WHETHER YOU DESIRE TO EVEN ASSERT THAT. IF YOU HAVE A PROBLEM WITH THE WITNESSES THAT ARE COMING IN, A PROBLEM GETTING A WITNESS BACK, A PROBLEM LOOSING SOME OF THE EVIDENCE BECAUSE OF THEIR MOTION TO CONTINUE, I WILL SET IT DOWN FOR THE TAKING OF DEPOSITIONS OF THOSE PARTICULAR WITNESSES.

1 NOW, I DON'T KNOW WHETHER THAT'S A CONSIDERATION OR WHETHER
2 YOU WOULD WANT TO HAVE THOSE WITNESSES HERE ANYWAY UNDER ANY
3 CIRCUMSTANCES, WHICH IN A CASE OF THIS MAGNITUDE YOU PROBABLY
4 WOULD.
5 MR. HARMON: WELL, WE WOULD CERTAINLY WANT TO
6 HAVE THE WITNESSES HERE. BUT THEN IN THE CASE, FOR EXAMPLE, OF
7 DWANDA THOMAS, SHE IS SCHEDULED TO ARRIVE THIS EVENING. I DON'T
8 THINK WE CAN CALL HER OFF NOW. WE MIGHT WANT TO CONSIDER
9 PETITIONING OF THE COURT FOR THE TAKING OF A DEPOSITION FROM
10 HER.
11 THE COURT: ALL RIGHT. WELL, LET ME JUST
12 ADVISE YOU THAT THAT IS GOING TO BE ONE OF THE CONDITIONS; AND
13 I AM GOING TO REQUIRE THAT IF THERE ARE ANY WITNESSES WHO --
14 AND I WILL GET THE SECTION RIGHT OFFHAND AND I WILL CONTINUE
15 IT IN ORDER TO GIVE YOU AN OPPORTUNITY TO TAKE A LOOK AT THAT
16 SECTION TO SEE HOW IT WOULD BE APPLICABLE TO YOUR PARTICULAR
17 SITUATION.
18 MR. HARMON: WELL, I APPRECIATE THAT, YOUR
19 HONOR.
20 THE COURT: I WILL CONTINUE THE TRIAL DATE
21 UNTIL MAYBE TOMORROW MORNING OR LATER TOMORROW IN ORDER TO LET
22 YOU HAVE THAT OPPORTUNITY BECAUSE THAT WILL BE A CONDITION OF
23 MY CONTINUING.
24 DOES THE DEFENSE HAVE ANY OBJECTION TO
25 THAT PROCEDURE OF TAKING THE DEPOSITION?
26 MR. COOPER: MAY I HAVE THE COURT'S
27 INDULGENCE?
28 THE COURT: I AM TRYING TO FIND THE STATUTE,
29 GENTLEMEN.
30 MR. HARMON: I BELIEVE IT'S CHAPTER 194, YOUR
31 HONOR.
32 WE, YOUR HONOR, OF COURSE, ARE STILL

UNDER AN OBLIGATION, EVEN IF A DEPOSITION IS TAKEN, TO MAKE A GOOD-FAITH EFFORT TO PRODUCE THE WITNESS AT TRIAL. BUT I FEEL REASONABLY SURE, YOUR HONOR, THAT OUR DECISION WILL BE, AFTER CONFERRING ABOUT THIS, BECAUSE WE BELIEVE THAT DWANDA THOMAS IS A KEY WITNESS --

THE COURT: OF HAVING HER HERE?

MR. HARMON: (CONTINUING) -- THAT WE WOULD WANT TO HAVE HER DEPOSED.

YOUR HONOR, BACK LAST TUESDAY WE WERE MORE OR LESS RECONCILED THAT PERHAPS THIS CASE WOULD BE POSTPONED. THE THING THAT UPSETS US A LITTLE BIT IS THAT WE RELIED UPON THIS CASE GOING TO TRIAL, AND WE HAVE SPENT A GREAT DEAL OF TIME AND EXPENSE NOW IN GETTING READY. I'M TALKING ABOUT WITNESSES WHO HAVE ALREADY COME FROM OUT-OF-STATE. I AM ALSO CONCERNED ABOUT SCHEDULING A TRIAL DATE NOW. WE HAVE OUR SCHEDULES, OF COURSE, TO MANAGE AS WELL. I HAVE A MURDER CASE, THE KIM CASE --

THE COURT: I HAVE TWO DAYS THAT I HAVE PRELIMINARILY LOOKED AT, COUNSEL. AS YOU KNOW, I HAVE SOMETHING LIKE SEVEN MURDER CASES TO BE TRIED WITHIN THE NEXT THREE OR FOUR MONTHS.

MR. HARMON: I HAVE THE KIM CASE ON FEBRUARY THE 1ST, AND I KNOW THE FRANK LAPINA RETRIAL IS SCHEDULED FOR THIS DEPARTMENT, SET TO START ON FEBRUARY 22ND. THE FIRST TRIAL --

THE COURT: I AM TOLD, HOWEVER, THAT THAT PROBABLY WILL BE CONTINUED. THERE IS GOING TO BE A MOTION. SO I CAN ASSUME THAT.

MR. HARMON: WELL, MR. GOWAN MAKES MANY MOTIONS. I CAN ASSURE THE COURT THAT WE WILL BE RESISTING HIS MOTION. BUT THAT CASE WILL BE AT LEAST THREE WEEKS.

THE COURT: THE PROBLEM, COUNSEL, THAT I FIND

1 IS THAT I AM JUST OVER-BOOKED. I HAVE CALLIER RIGHT IMMEDIATELY
2 AFTER THAT. AND IT LOOKS LIKE I'M JUST GOING TO BE FORCED TO
3 CONTINUE THE LAPINA CASE.
4 AS IT STANDS NOW, GENTLEMEN, I HAVE THE
5 SLADE MURDER CASE TO GO THE 24TH; THE TURNER CASE TO GO THE
6 14TH OF FEBRUARY; THE LAPINA, WHICH WAS SET FOR THE 22ND,
7 UNDOUBTABLY WILL BE CONTINUED PROBABLY FOR THE REASONS THAT THE
8 CALLIER CASE IS GOING THE 28TH; BURGEON IS GOING THE 7TH; AND
9 IT LOOKS LIKE THOSE CASES HOWEVER WILL PUSH ME INTO MY CIVIL
10 BLOCK AND PROBABLY OCCUPY THREE WEEKS OF MARCH; AND DOWN TO
11 THE SUMMERS MURDER CASE ON APRIL THE 4TH. IT APPEARS THAT THE
12 FIRST AVAILABLE DAY WOULD BE APRIL 11TH.
13 NOW, HOW DO YOUR CALENDARS VIEW THAT?
14 MR. COOPER: I HAVE A NUMBER OF MURDER TRIALS,
15 YOUR HONOR. BUT THEY ARE SET EARLIER. I HAVE NO PROBLEM WITH
16 THAT DATE.
17 MR. HARMON: WELL, WE WOULD NATURALLY LIKE A
18 MUCH EARLIER SETTING, BUT IF THAT'S THE BEST THE COURT CAN DO
19 APRIL 11TH WILL BE FINE WITH US.
20 THE COURT: ALL RIGHT. IN VIEW OF THE
21 INCONVENIENCE TO THE STATE, I WILL GIVE SOME DUE DEFERENCE TO
22 YOUR TRYING TO REARRANGE YOUR CALENDAR AND WITNESS SCHEDULING
23 BECAUSE OF THAT.
24 AND SO THERE IS NO FURTHER QUESTION IN
25 THE PUBLIC DEFENDER'S OFFICE AS TO WHO IS TRYING THE CASE,
26 MR. COOPER, I AM ASSIGNING BOTH YOU AND MR. FRANZEN THE CASE,
27 AND YOU CANNOT BE RELEASED FROM THE CASE WITHOUT ORDER OF THIS
28 COURT. AND IF YOU SO DESIRE, YOU ARE GOING TO HAVE TO MAKE A
29 MOTION AND THEN YOU WILL HAVE TO SHOW CAUSE TO THIS COURT WHY
30 YOU SHOULD BE RELEASED. AND A COPY OF THIS ORDER WILL BE
31 DELIVERED TO THE PUBLIC DEFENDER.
32 FURTHER, THE PUBLIC DEFENDER WILL MAKE

1 ADJUSTMENTS IN YOUR SCHEDULE TO MAKE CERTAIN YOU ARE TRYING THIS
2 CASE ON APRIL 11TH, AND THAT IS NOT TO MR. JACKSON BUT DIRECTLY
3 TO THE PUBLIC DEFENDER, MR. HARRIS HIMSELF, PREPARE THAT ORDER.
4 FURTHER, I WANT THAT ORDER TO BE
5 EXPANDED THAT NEITHER MR. HARRIS, NOR MR. JACKSON, NOR ANY
6 DEPUTIES OF THE PUBLIC DEFENDER'S OFFICE ARE TO BECOME EITHER
7 DIRECTLY OR INDIRECTLY INVOLVED IN THIS CASE WITHOUT YOUR
8 EXPRESS APPROVAL. AND BY THAT I MEAN I DON'T WANT ANYMORE OF
9 THIS GARBAGE OF COMING BACK BEFORE THE COURT THAT ONE DEPUTY
10 DOESN'T LIKE THIS DEFENDANT OR WHATEVER. THAT MAY BE HIS OWN
11 PERSONAL FEELING, BUT THAT IS AN INDIRECT INVOLVEMENT IN THIS
12 CASE. IF I HEAR ANYMORE OF IT THEN I AM GOING TO BE ISSUING
13 SOME ORDERS TO SHOW CAUSE TO DEPUTIES IN YOUR OFFICE AS TO
14 THEIR INVOLVEMENT IN THIS CASE.
15 NOW, I DON'T KNOW HOW THAT REMARK CAME
16 ABOUT, BUT THIS DEFENDANT IS ENTITLED TO FEEL THAT HE HAS YOUR
17 ONE-THOUSAND PERCENT LOYALTY AND YOUR EFFORTS IN DOING SO. I
18 KNOW BOTH OF YOU CAN AND ARE CAPABLE TO ADEQUATELY REPRESENT
19 THIS GENTLEMEN. BUT I THINK HE'S ALSO ENTITLED TO FEEL THAT
20 HE'S NOT GOING TO BE INFLUENCED, OR YOU'RE NOT GOING TO BE
21 INFLUENCED BY ANY SUCH INVOLVEMENT FROM ANY OTHER MEMBERS OF
22 THE PUBLIC DEFENDER'S OFFICE. AND I WANT THAT VERY CLEARLY
23 SPELLED OUT SO THAT IF IT OCCURS AGAIN THAT INDIVIDUAL DEPUTY
24 WILL APPEAR BEFORE THIS COURT TO SHOW CAUSE WHY HE SHOULD NOT
25 BE HELD IN CONTEMPT.
26 NOW, THE COURT HAD GONE OVER THIS MATTER
27 AND THE REASONS FOR THE COURT'S ACTIONS SHOULD BE CLEAR BECAUSE
28 THEY TEND TO BECOME OBSCURE AS WE GET FURTHER AND FURTHER AWAY
29 FROM THE DATE OF THE DECISION. IN THIS CASE, THE DEFENDANT IS
30 ENTITLED TO HIS RIGHT TO A SPEEDY TRIAL. AND THAT, AS YOU
31 KNOW, IS SET FORTH IN N.R.S. 178.556, WHICH IS IN DISCRETIONARY
32 LANGUAGE AS FAR AS THE 60 DAY RULE IN CONCERNED.

1 THE DEFENDANT HAS CONTINUALLY INSISTED
2 ON BEING TRIED TODAY. HIS MOTION TO THE COURT WAS IN EFFECT
3 THAT HIS ATTORNEY MR. MIKE PETERS HAD NOT REPRESENTED HIM AT
4 ALL AND HAD NOT DONE SO REALLY WITHOUT ANY DILIGENCE AND
5 APPARENTLY INCOMPETENTLY. I CAN MAKE NO OTHER FINDING AT THIS
6 POINT THAN HIS ASSERTIONS ARE TRUE. AND COUNSEL HAS ALSO MADE
7 THOSE ASSERTIONS TO THE COURT. IT'S A POOR DAY IN THE JUDICIAL
8 SYSTEM WHEN A DEFENDANT HAS TO COME BY WAY OF HIS OWN PERSONAL
9 MOTION TO ASSERT THAT THE PUBLIC DEFENDER ASSIGNED TO HIM IS
10 NOT DOING WHAT THE LAW REQUIRES BOTH OF HIM AS AN EMPLOYEE OF
11 THIS COUNTY AND AS A LAWYER ADMITTED TO PRACTICE LAW IN THIS
12 STATE. MR. PETER'S CONDUCT IN THIS CASE IS TOTALLY NOT
13 UNDERSTOOD BY THIS COURT. I DON'T KNOW WHAT WOULD CAUSE AN
14 ATTORNEY TO ALLOW THIS CASE TO GET THIS BUNGLED UP AND ALLOW
15 A DEFENDANT TO ALMOST GO TO TRIAL, BEING ALMOST TEN DAYS BEFORE
16 TRIAL, BEFORE HE EVEN HAS DONE ANYTHING WITH THE CASE. I AM
17 REALLY SHOCKED.
18 THE DEFENSE COUNSEL KNEW THAT THIS WAS
19 A DEATH PENALTY CASE, AT LEAST THAT IS WHAT THE STATE IS ASKING.
20 THE STATE HAS BEEN READY TO PROCEED. THE COURT HAS BEEN READY
21 TO PROCEED. AND HE IN THE PUBLIC DEFENDER'S OFFICE HAS NOT
22 BEEN. THE PUBLIC DEFENDER NOW IS PUT IN A POSITION OF HAVING
23 TO RAISE EVERY POSSIBLE REASON WHY YOU ARE NOT READY TO PROCEED.
24 I DON'T FIND THAT TO BE ADEQUATE REPRESENTATION. I DON'T UNDER-
25 STAND WHY YOU RAISED ALL OF THESE MOTIONS AT THIS LATE DATE, AND
26 THE OBVIOUS REASON WAS IN ORDER TO TRY TO SECURE A CONTINUANCE
27 TO UNDUE WHAT HAS ALREADY BEEN DONE BY INACTION. THE COURT
28 WAS AND IS STILL CONCERNED ABOUT THIS FAILURE TO ADEQUATELY
29 REPRESENT THIS DEFENDANT. I'M MORE CONCERNED ABOUT THE
30 ADMINISTRATIVE MORES IN THE OFFICE OF THE PUBLIC DEFENDER THAT
31 WOULD ALLOW THIS TO EXIST. THAT CONCERNS ME VERY MUCH. I
32 WONDER IF OTHER DEFENDANTS ARE SUFFERING THE SAME TYPE OF

1 INACTION TO THEIR CASES AS THIS DEFENDANT. HAD IT NOT BEEN
2 FOR AT LEAST THIS DEFENDANT OBJECTING TO PROCEEDING ON FOR
3 TRIAL, WE MIGHT HAVE GONE TO THE POINT OF HAVING THIS CASE
4 TRIED WITH THE DEFENDANT NOT HAVING ADEQUATE COUNSEL. THE
5 DEFENDANT OBJECTED, AND THEN I MADE INQUIRY AND REQUIRED THAT
6 YOU, MR. PETERS -- OR THAT MR. PETERS MEET WITH YOU, MR. COOPER,
7 AND THAT THE TWO OF YOU TALK TO THIS DEFENDANT IN ORDER TO SEE
8 IF YOU COULDN'T RESOLVE WHAT APPEARED TO BE AT THE TIME A CON-
9 FLICT, A SERIOUS CONFLICT. MR. PETERS HAS NOT YET REAPPEARED
10 IN THE CASE SINCE THAT TIME. I BELIEVE BOTH YOU AND MR. FRANZEN
11 HAVE. I UNDERSTAND HE IS OCCUPIED IN ANOTHER CASE.
12 THE FACT REMAINS THAT THIS DEFENDANT
13 WAS NOT COMPETENTLY AND ADEQUATELY REPRESENTED. AND IT SHOULD,
14 I THINK, BE VERY CLEAR TO YOUR ADMINISTRATORS THAT WHATEVER
15 SYSTEM YOU HAVE IS FUNCTIONING VERY POORLY. YOU APPARENTLY ARE
16 FUNCTIONING UNDER AN ARCHAIC RULE THAT ASSIGNS A CASE TO A
17 DEPUTY AND A DEPUTY CAN'T REMOVE HIMSELF OR EXTRACATE HIMSELF
18 FROM A POSSIBLE SITUATION MERELY BECAUSE ITS BEEN ASSIGNED TO
19 HIM. THERE SEEMS TO BE A GREATER EMPHASIS UPON THE NEEDS OF
20 THE PUBLIC DEFENDERS THAN THERE IS UPON THE NEEDS AND THE
21 RIGHTS OF DEFENDANTS. I THINK THIS CASE REALLY HIGHLIGHTS THAT
22 SPECIFIC ISSUE.
23 I DON'T INTEND TO DO ANYTHING FURTHER
24 DIRECTLY WITH THIS. BUT I AM GOING TO TALK TO THE PUBLIC
25 DEFENDER, AND I WANT THAT AS A MATTER OF RECORD, BECAUSE I
26 PERSONALLY AM, AND I THINK ANY CITIZEN SHOULD BE, OFFENDED BY
27 THIS LACK OF ADEQUATE REPRESENTATION. IF THE SYSTEM IS WRONG,
28 THEN THE SYSTEM OUGHT TO BE CHANGED.
29 BUT WHAT GOT US HERE IS THE FACT, IF
30 I BELIEVE MR. COOPER, AND I DO BELIEVE MR. COOPER, THAT HE HAD
31 MANY, MANY OTHER CASES ASSIGNED TO HIM AND THAT HE WAS REALLY
32 IN EFFECT OVERWORKED BY THE SYSTEM. THAT DOES NOT ALLOW FOR

1 THE REASSIGNMENT OF OUR DEPUTIES AUTOMATICALLY OR WITHIN THE
2 SYSTEM ITSELF. IT WOULD SEEM TO ME THAT WE OUGHT TO CHANGE THE
3 SYSTEM. NOW, I DON'T KNOW WHETHER THAT WOULD CHANGE THE
4 COMFORTABLE SITUATION THAT SOME DEPUTIES FIND THEMSELVES IN OR
5 HOW IT WOULD EFFECT THE OVERALL OPERATION. BUT CERTAINLY
6 SOMEBODY WITHIN THAT ORGANIZATION OUGHT TO BEGIN TO PAY ATTENTION
7 TO THE DEFENDANT'S RIGHTS, NOT ONLY TO A SPEEDY TRIAL BUT TO AN
8 ADEQUATE REPRESENTATION.
9 I HAVE TRIED IN THIS CASE TO GIVE THE
10 DEFENDANT'S VIEWS DEFERENCE. I HAVE PAID DEFERENCE TO THEM
11 BECAUSE IT IS HIS LIFE THAT'S ON THE LINE IN THIS CASE.
12 HOWEVER, FROM THE TOTALITY OF THE
13 CIRCUMSTANCES IN THIS CASE, I FIND THAT I COULD NOT PUT THE
14 DEFENDANT TO TRIAL THIS DATE, EVEN THOUGH IT'S INCONVENIENT TO
15 THE STATE, BECAUSE I THINK IT WOULD DEPRIVE HIM OF A FAIR AND
16 IMPARTIAL TRIAL. IT WOULD CERTAINLY DEPRIVE HIM OF HAVING
17 COMPETENT COUNSEL TO ASSIST HIM. AND THAT'S NOT TO SAY THAT
18 YOU GENTLEMEN ARE NOT COMPETENT. THAT'S MERELY TO FOLLOW
19 THROUGH WITH YOUR SUGGESTION TO ME THAT YOU HAVEN'T HAD ENOUGH
20 TIME TO ADEQUATELY AND CAPABLY ASSIST HIM IN HIS DEFENSE, A
21 TASK WHICH WAS UNDERTAKEN BY ANOTHER LAWYER WHO IS NOT HERE
22 REPRESENTING HIM.
23 THEREFORE, I WILL HONOR YOUR REQUEST TO
24 EXTEND THE TRIAL DATE, AND I WILL EXTEND IT UNTIL APRIL THE 11TH.
25 THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL I THINK CAN BE PROTECTED,
26 TOGETHER WITH A RIGHT TO A FAIR AND IMPARTIAL TRIAL, AS WELL
27 AS ADEQUATE COUNSEL BY DOING SO. SO I WILL CONTINUE IT TILL
28 THEN.
29 HOWEVER, I WANT YOU TO REST ASSURED IN
30 ONE THING: WHATEVER YOUR OTHER ASSIGNMENTS MAY BE THIS WILL
31 HAVE PRIORITY IN YOUR ASSIGNMENTS. AND IF YOU FIND THAT YOUR
32 OTHER ASSIGNMENTS ARE IN ANYWAY DEBILITATING YOUR ABILITIES TO

1 PROCEED AND ADEQUATELY REPRESENT THIS DEFENDANT, I WANT YOU TO
2 FORTHWITH FILE A MOTION IN THIS COURT FOR YOU ARE, FIRST OF ALL,
3 OFFICERS OF THIS COURT, AND SECONDLY, PUBLIC DEFENDERS. I
4 THINK YOU OUGHT TO UNDERSTAND THAT. I SOMETIMES FEEL THAT YOU
5 GENTLEMEN BELIEVE IT'S THE OTHER WAY AROUND.
6 IS THERE ANYTHING FURTHER TO COME
7 BEFORE THE COURT AT THIS TIME?
8 MR. HARMON: WHAT WOULD THE DATE OF CALENDAR
9 CALL BE?
10 THE COURT: THE 7TH.
11 MR. HARMON: FINE, YOUR HONOR.
12 WILL THE COURT GIVE US A TIME CERTAIN
13 FOR A DEPOSITION WITH RESPECT TO DWANDA THOMAS?
14 THE COURT: TOMORROW, GENTLEMEN, AT THE HOUR
15 OF 2:00?
16 MR. HARMON: THAT'S FINE, YOUR HONOR.
17 THE COURT: THE DEFENDANT WILL BE AVAILABLE
18 THEN.
19 MR. HARMON: WELL, WHAT ABOUT THE MOTIONS THAT
20 ARE NOW PENDING BEFORE THE COURT?
21 THE COURT: I INTEND TO TAKE CARE OF SOME OF
22 THE MOTIONS SINCE WE WERE WAITING.
23 MR. FRANZEN: YOUR HONOR, COULD WE RESPECTFULLY
24 ASK THAT THE RULING ON THOSE MOTIONS BE DELAYED? THEY WERE
25 HURRIEDLY WRITTEN, THEY AREN'T ALL THAT THEY SHOULD BE. WE
26 MAY WISH TO SUPPLEMENT SOME OF THOSE MOTIONS TO GIVE THE COURT
27 A BETTER PICTURE OF THE LAW.
28 THE COURT: WELL, THERE ARE SOME THAT ARE A
29 MATTER OF DISCRETION. I'LL EXERCISE THAT DISCRETION NOW, COUNSEL.
30 ON THE MOTION FOR ADDITIONAL
31 PEREMPTORY CHALLENGES, THAT MOTION IS DENIED. COUNSEL, IF IT
32 APPEARS THAT THERE IS AN APPARENT EFFECT UPON THOSE JURORS THAT

ARE PRESENT AT THE TIME OF SELECTION, AND THAT I THINK IS EASILY ASCERTAINABLE BY QUESTIONING, I WILL ADDRESS THAT INDIRECTLY AT THE TIME. BUT THERE IS NO STATUTORY AUTHORITY FOR THE GRANTING OF ADDITIONAL PREEMPTORY CHALLENGES, AND I DON'T INTEND TO BECOME THE LEGISLATURE AND EXTEND THOSE CHALLENGES.

THE MOTION FOR INDIVIDUAL EXAMINATION OUTSIDE OF THE PRESENCE OF OTHER JURORS, COUNSEL, THAT MOTION AS WELL IS DENIED. AS YOU KNOW, WE HAVE TRIED HUNDREDS OF CASES IN WHICH WE HAVE NOT FOLLOWED THAT RULE OR THAT REQUEST OR THAT I SHOULD SAY PROCEDURE, I DON'T MEAN REQUEST; AND I DON'T FIND, NOR HAVE I BEEN SHOWN AT ANY TIME, THAT THIS PROCEDURE IS ANY BETTER THAN ANY OTHER PROCEDURE THAT WE HAVE USED. IF IT APPEARS THAT THERE IS A TREMENDOUS DEGREE OF KNOWLEDGE ABOUT THE CASE, THAT THERE IS JURORS WHO ARE MAKING THOSE ASSERTIONS WHEN WE QUESTION THEM, IF THEY DO HAVE KNOWLEDGE ABOUT THE CASE WHICH MAY INFLUENCE OTHER JURORS, I MAY CONSIDER FURTHER INQUIRY. BUT AS FAR AS INDIVIDUAL EXAMINATION OUTSIDE OF THE PRESENCE OF OTHER JURORS, I FIND THAT PROCEDURE REALLY ISN'T REALLY AN EFFECTIVE METHOD OF VOIR DIRE. THE COURTS MAY DIFFER ON THIS, BUT IN MY EXPERIENCE I HAVE NEVER SEEN WHERE IT HAS, NOR HAVE I HEARD ANY EXPOSITION BY ANY LOCAL JUDGE THAT SAYS THAT IT DOES, EXCEPT THE FACT THAT IT ACCOMODATES COUNSEL.

THE NOTICE OF INTENT SPEAKS FOR ITSELF. NO MOTION FOR THAT.

WITH REGARDS TO THE MOTION FOR LINE UP, I THINK ON THAT ONE, COUNSEL, WE ARE TO GIVE YOU SOME -- HAS THERE BEEN A RESPONSE TO THAT MOTION? I HAVEN'T SEEN IT IF THERE HAS.

MR. HARMON: NO, YOUR HONOR. WE GOT THAT MOTION THIS MORNING.

THE COURT: ALL RIGHT. WELL, SINCE THAT IS

1 THE CASE, WE WILL JUST AS SOON SET THAT DOWN FOR A TIME CERTAIN
2 SO WE CAN ARGUE THAT TWO WEEKS, GENTLEMEN, THE 25TH.
3 MR. HARMON: THAT'S FINE, YOUR HONOR.
4 THE COURT: ALL RIGHT. WE WILL SET THAT
5 MOTION DOWN THE 25TH AT 9:00 A.M.
6 THEN THE LAST SERIES OF MOTIONS WERE TO
7 SEVER. I WANT TO COMMEND BOTH OF YOU GENTLEMEN, COUNSEL, IN
8 THIS. I THINK YOU BOTH DID A VERY GOOD JOB IN RESEARCHING THIS
9 ISSUE. HOWEVER, LOOKING AT THE STATE'S RESPONSE I THINK IT WAS
10 A COMMENDABLE JOB OF RESEARCH. I'M CONVINCED, AFTER LOOKING AT
11 IT, THAT FOLLOWING WHAT YOUR THEORY OF THE CASE COULD POSSIBLY
12 BE AS YOU HAVE INDICATED IN YOUR MOTION AND THAT SEEMS TO BE
13 THE TEST. I WAS NOT AWARE THAT THAT WAS THE TEST UNTIL I READ
14 YOUR POINTS AND AUTHORITIES. SO YOUR MOTION TO SEVER IS DENIED.
15 LET'S PROCEED ON TO THE NEXT ONE, THE
16 MOTION IN LIMINE TO DISCOVER BAD CONVICTIONS AND PRIOR ACTS, TO
17 SUPPRESS THE SAME. GENTLEMEN, I WILL CONTINUE THAT UNTIL WE
18 REALLY GET A CHANCE TO GET INTO DEPTH AND READ SOME OF YOUR
19 POINTS ON THAT ONE. SO I WILL CONTINUE THAT ONE UNTIL THE
20 25TH AT THE HOUR OF 9:00 A.M.
21 THE MOTION TO DISCOVER AGGRAVATING
22 CIRCUMSTANCES, DO YOU HAVE ANY PROBLEM WITH THAT OR DO YOU
23 WANT TO RESPOND TO THAT, COUNSEL?
24 MR. HARMON: WE DON'T OBJECT TO THAT, YOUR
25 HONOR. WE THINK IN PART THAT ALREADY IT HAS BEEN COMPLIED WITH
26 WITH OUR NOTICE OF INTENT. AND I WILL STATE FOR THE RECORD
27 THAT WHEN WE GET ADDITIONAL INFORMATION WE WILL SUPPLEMENT THE
28 NOTICE OF INTENT.
29 THE COURT: I THINK THEY ARE. I THINK COUNSEL
30 IS ENTITLED TO THAT. UNDER THE STATUTE AS TO WHAT EXACT FORM,
31 AND THE RIGHTS OR OBSERVATIONS, THE STATUTE IS UNCLEAR AS TO
32 HOW THAT IS TO BE MADE KNOWN. BUT I WILL GRANT YOUR MOTION,

1 COUNSEL, AND IF THERE IS ANY QUARREL AS TO HOW IT IS GOING TO
2 BE FULFILLED, IF YOU DON'T BELIEVE IT'S FULFILLED ADEQUATELY,
3 YOU HAVE AT LEAST UNTIL TEN DAYS BEFORE TRIAL TO RAISE THAT
4 BY WRITTEN MOTION. I DON'T WANT TO WAIT UNTIL THE LAST DAY,
5 GENTLEMEN, AND THEN HAVE THE MOTIONS RAISED AT THE DAY OF TRIAL.
6 ANY OTHER MOTIONS?
7 MR. COOPER: NOTHING AT THIS TIME, YOUR HONOR.
8 THE COURT: ALL RIGHT, GENTLEMEN, WE WILL BE IN
9 RECESS. WE WILL TAKE THE DEFENDANT BACK UP.
10 WE HAVE HAD I THINK THIS IS OUR TENTH
11 BOMB THREAT. SO I JUST WANT TO LET YOU KNOW. SO THE BAILIFF
12 IS INSTRUCTED TO SEARCH THE AREA AND I JUST WANT TO LET YOU
13 KNOW. WE'RE NOT GOING TO CLEAR THE COURTHOUSE. I JUST WANT
14 TO LET YOU KNOW THAT WE'VE RECEIVED IT.
15 MR. FRANZEN: YOUR HONOR?
16 THE COURT: YES.
17 MR. FRANZEN: THE DEFENDANT WISHES TO ADDRESS
18 THE COURT. DO YOU HAVE TIME BEFORE WE LEAVE?
19 THE COURT: WELL, I THINK WE BETTER DO FIRST
20 THINGS FIRST.
21 THE DEFENDANT: IT WILL BE BRIEF, YOUR HONOR.
22 THE COURT: ALL RIGHT. MAKE IT VERY BRIEF,
23 BECAUSE I DON'T WANT A BANG IN THE MIDDLE OF IT.
24 THE DEFENDANT: YES. BUT MY RIGHTS TO A
25 FAST AND SPEEDY TRIAL, ARE YOU DENYING THAT? ARE YOU MOVING --
26 THE COURT: I CONTINUED IT TO APRIL THE 11TH.
27 I DON'T BELIEVE I HAVE DENIED YOUR RIGHT TO A SPEEDY TRIAL.
28 THE DEFENDANT: OH, YOU HAVEN'T DENIED --
29 THE COURT: NO. THE STATUTE SAYS THAT IF
30 POSSIBLE IN EFFECT THAT THE COURT SHOULD SET THE MATTER DOWN
31 FOR TRIAL WITHIN 60 DAYS FROM THE DATE IN THIS CASE YOU WERE
32 BROUGHT BACK TO THE JURISDICTION, BROUGHT BEFORE THE COURT,

AND ARRAIGNED, SINCE YOU HAD PREVIOUSLY LEFT. SO IT DOESN'T APPEAR THAT IT'S GOING TO BE MUCH LONGER THAN THAT. IT'S DISCRETIONARY TO THE COURT, AND I HAVE EXERCISED THAT DISCRETION. I THINK IT WILL BE TO YOUR BENEFIT IN THE LONG RUN.

WE WILL BE IN RECESS.

(WHEREUPON, AT THE HOUR OF 3:15 P.M. A RECESS WAS HAD.)

(END OF PROCEEDINGS.)

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS.

RENEE SILVAGGIO, C.S.R. NO. 122

ROBERT J. MILLER
District Attorney
Clark County Courthouse
Las Vegas, Nevada 89155

CASE NO. C53867

DEPT. NO. V

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA, Plaintiff, -vs- SAMUEL HOWARD, Defendant.	SUPPLEMENTAL NOTICE OF INTENT TO SEEK DEATH PENALTY

COMES NOW the State of Nevada, through ROBERT J. MILLER, Clark County District Attorney, by his Chief Deputy District Attorney MELVYN T. HARMON, pursuant to NRS 175.552 and NRS 200.033 and reiterates its intention to seek the death penalty at a penalty hearing provided the trial jury returns a verdict of guilty of Murder in theFirst Degree. Furthermore, the State of Nevada discloses that it will present the following evidence in additional to information provided in its original notice of intent to seek the death penalty filed January 7, 1983 as follows:

(1) Evidence of three separate robbery offenses committed in the New York City area where the modus operandi of the offenses is similar to the offenses involving victim MONAHAN.

(a) EDWARD SCHWARTZ was a victim of a robbery on or about October 5, 1979 and has positively identified a photograph of SAMUEL HOWARD as the suspect.

(b) JOHN TUCILLO was the victim of a robbery on or about October 7, 1979 and has

made a positive identification of defendant SAMUEL HOWARD as the perpetrator of that offense.

(c) MARK ROTHMAN was the victim of a robbery on or about July 31, 1979 and he is expected to identify SAMUEL HOWARD as the person responsible for the commission of the crime.

Detectives GREENE and CURRAN, believed to be affiliated with the police department in Queens, New York, were involved in the investigation of the above mentioned robberies and will be able to tesitfy to identification procedures.

DATED this 12th day of January, 1983.

Respectfully submitted,

ROBERT J. MILLER
District Attorney

By _____
MELVYN T. HARMON
Chief Deputy District Attorney

RECEIPT OF A COPY of the foregoing SUPPLEMENTAL NOTICE OF INTENT TO SEEK DEATH PENALTY is hereby acknowledged this 12th day of January, 1983.

CLARK COUNTY PUBLIC DEFENDER
Attorney for Defendant
SAMUEL HOWARD

By _____
309 South 3rd St., #226
Las Vegas, Nevada 89101

CASE NO. C53867

DEPARTMENT NO. V

DOCKET H

FILED

APR 16 1984

LORETTA BOWMAN, CLERK

BY _____ DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

PLAINTIFF,

VS.

SAMUEL HOWARD, AKA KEITH,

DEFENDANT.

REPORTER'S TRANSCRIPT OF

JURY TRIAL

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

TUESDAY, APRIL 12, 1983, AT 10:00 A.M.

APPEARANCES:

FOR THE STATE: MELVIN T. HARMON, ESQUIRE
DANIEL M. SEATON, ESQUIRE
200 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89115
DEPUTY DISTRICT ATTORNEYS

FOR THE DEFENDANT: MARCUS D. COOPER, ESQUIRE
GEORGE E. FRANZEN, ESQUIRE
309 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101
DEPUTY PUBLIC DEFENDERS

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

VOLUME II

LAS VEGAS, NEVADA, TUESDAY, APRIL 12, 1983, AT 10:00 A.M.

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(WHEREUPON, AT THE HOUR OF 10:00 O'CLOCK A.M. THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE PRESENCE OF THE JURY:)

THE COURT: THIS IS THE CONTINUATION OF THE CASE OF THE STATE OF NEVADA VERSUS SAMUEL HOWARD.

IS THE STATE READY TO PROCEED?

MR. HARMON: YES, THE STATE IS READY, YOUR HONOR.

THE COURT: COUNSEL?

MR. FRANZEN: YOUR HONOR, I NOTICED ON THE 9:00 O'CLOCK CALENDAR THIS MORNING THERE WERE TWO PROPER MOTIONS BROUGHT BY THE DEFENDANT. I DON'T KNOW.

THE COURT: THOSE WERE DISPOSED OF YESTERDAY, COUNSEL, I THOUGHT.

MR. FRANZEN: I -- I DIDN'T REALIZE THEY HAD BEEN, YOUR HONOR. I WAS JUST BRINGING IT TO THE COURT'S ATTENTION THAT I THOUGHT IT WAS ON THIS MORNING.

THE COURT: WELL, THERE IS A MOTION TO DISCOVER.

MR. FRANZEN: YES, SIR.

THE COURT: AND THAT'S A LITTLE LATE.

THE PROPER MOTIONS, COUNSEL, IF YOU FEEL THEY HAVE ANY VALIDITY YOU MAY PROCEED TO RAISE THEM AS WE PROCEED THROUGH THE TRIAL.

MR. FRANZEN: VERY WELL, YOUR HONOR. I GUESS IT'S JUST ANOTHER INDICIA OF OUR IRRECONCILABLE DIFFERENCES WITH THE DEFENDANT.

THE COURT: WELL, I UNDERSTAND THAT. BUT

THE NEVADA CASES ARE VERY, VERY CLEAR THAT WHEN DEFENDANT HAS COUNSEL, COUNSEL WILL BRING MOTIONS AND NOT DEFENDANTS.

MR. FRANZEN: VERY WELL, YOUR HONOR.

WE WILL NOT BE MAKING AN OPENING STATEMENT, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. FRANZEN: THE DEFENDANT HAS NOT ADVISED US OF HIS DEFENSE. SO WE ARE NOT SURE WHAT TO SAY.

THE COURT: ALL RIGHT.

SO IS THERE ANYTHING FURTHER OUTSIDE OF THE PRESENCE OF THE JURY?

MR. HARMON: NOT FROM THE STATE, YOUR HONOR.

MR. FRANZEN: NO, SIR.

THE COURT: ALL RIGHT. CALL THE JURY.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: COUNSEL STIPULATE TO THE PRESENCE OF THE JURY?

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. FRANZEN: YES, YOUR HONOR, THE DEFENSE DOES.

THE COURT: LADIES AND GENTLEMEN OF THE PANEL, YOU HAVE BEEN HANDED PADS AND PENCILS BY THE BAILIFF TO USE AS YOU DEEM NECESSARY. HOWEVER, LET ME ADVISE YOU THAT EVERYTHING THAT IS BEING SAID IN THE COURTROOM IS BEING TAKEN DOWN WORD-FOR-WORD BY THIS YOUNG LADY SEATED RIGHT HERE (INDICATING). SO IF YOU DECIDE TO TAKE NOTES, I WOULD TAKE THEM JUDICIOUSLY. BY THAT I MEAN DON'T GET CARRIED AWAY. SOME JURORS GET SO CARRIED AWAY WITH TAKING NOTES THEY FORGET THEY HAVE ANOTHER OBLIGATION, AND THAT IS TO OBSERVE THE WITNESSES AS THEY

1 TESTIFY. YOU ARE GOING TO HAVE TO MAKE SOME JUDGMENTS AT
2 THE END OF THIS TRIAL AND THOSE JUDGMENTS, OF COURSE, WILL
3 DEPEND UPON WHO YOU BELIEVE AND WHO YOU DON'T BELIEVE. SO
4 I THINK IT'S VERY IMPORTANT THAT YOU OBSERVE THE WITNESSES
5 AS THEY TESTIFY. SO JUST DON'T OVERUSE YOUR PADS AND PENCILS.
6 PLEASE PAY ATTENTION TO WHAT'S GOING ON IN THE COURTROOM.
7 FURTHER, THE COURT WISHES TO ADVISE
8 YOU THAT NO JUROR MAY DECLARE TO HIS FELLOW JURORS ANY FACT
9 RELATING TO THE CASE AS OF HIS OWN KNOWLEDGE. AND IF ANY
10 JUROR DISCOVERS, DURING THE TRIAL OR AFTER THE TRIAL HAS
11 RETIRED, THAT HE OR SHE OR ANY OTHER JUROR HAS PERSONAL
12 KNOWLEDGE OF ANY FACT IN CONTROVERSY IN THE CASE, HE SHOULD
13 DISCLOSE SUCH SITUATION TO THE JUDGE OUT OF THE PRESENCE OF
14 THE OTHER JURORS.
15 IT OCCURS SOMETIMES DURING TRIALS
16 THAT A JUROR WILL REMEMBER SOMETHING ABOUT THE CASE AND PROBABLY
17 HAD FORGOTTEN ABOUT IT INADVERTENTLY BECAUSE THEY DIDN'T MAKE
18 THE CONNECTION FROM WHAT THEY OBSERVED OR SAW OR HEARD TO
19 THE CASE AT HAND. WHEN THAT OCCURS, YOU ARE DUTY BOUND TO
20 REPORT THAT TO MY BAILIFF. THEN I WILL HAVE TO CONFER WITH
21 THE ATTORNEYS TO SEE WHETHER OR NOT YOU WILL OR WILL NOT
22 CONTINUE ON AS JURORS. THE REASON FOR THAT IS OBVIOUS: AS I
23 MENTIONED TO YOU WHEN WE STARTED THIS CASE, YOU ARE THE JUDGES
24 OF THE FACTS AND YOU ALONE WILL DETERMINE THE FACTS. NOBODY
25 ELSE WILL DETERMINE THEM BUT YOU.
26 WHEN YOU START TO, IN EFFECT, TESTIFY
27 WITH YOUR PERSONAL KNOWLEDGE, YOU CHANGE YOUR ROLE FROM THAT
28 OF A JUDGE TO THAT OF A WITNESS. OF COURSE, THESE PARTIES
29 HAVE NOT HAD AN OPPORTUNITY TO CROSS-EXAMINE YOU AND TO
30 EXAMINE YOU ABOUT THE EXTENT OF YOUR KNOWLEDGE. SO THAT WOULD
31 HAVE TO BE REPORTED, OF COURSE, TO THE COURT.
32 THAT MEANS IF ANY OF YOU HEAR ANOTHER

JUROR REITERATING OR STATING THAT THEY KNOW SOMETHING ABOUT THE CASE, YOU ARE REQUIRED TO REPORT THAT TO THE COURT AS WELL.

AT THIS TIME, WE WILL HAVE THE CLERK READ THE INFORMATION TO YOU, AND I WILL INSTRUCT YOU A LITTLE FURTHER ABOUT WHAT IS GOING TO HAPPEN IN THESE PROCEEDINGS AND WHAT YOU CAN ANTICIPATE AND WHAT YOU OUGHT TO BE LOOKING FOR DURING THE TRIAL.

MISS CLERK, YOU MAY READ THE INDICTMENT.

THE CLERK: YES, SIR.

CASE NUMBER C53867. FILED MAY 21, 11:40 A.M., 1981. LORETTA BOWMAN, CLERK. BY ALDENA MANG.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

THE STATE OF NEVADA, PLAINTIFF, VERSUS SAMUEL HOWARD, ALSO KNOWN AS KEITH, DEFENDANT.

INDICTMENT. ROBBERY, FELONY N.R.S. 200.380; MURDER, FELONY N.R.S. 200.010, 200.030; AND USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME, FELONY N.R.S. 193.165.

STATE OF NEVADA, COUNTY OF CLARK, SS.

THE DEFENDANT ABOVE NAMED, SAMUEL HOWARD, ALSO KNOWN AS KEITH, IS

ACCUSED BY THE CLARK COUNTY GRAND JURY OF THE CRIME OF ROBBERY, FELONY N.R.S. 200.380; MURDER, FELONY N.R.S. 200.010, 200.030; AND USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME, FELONY N.R.S. 193.165; COMMITTED AT AND WITHIN THE COUNTY OF CLARK, STATE OF NEVADA, BETWEEN MARCH 26, 1980, AND MARCH 27, 1980, AS FOLLOWS:

COUNT I - ROBBERY AND USE OF A DEADLY WEAPON IN THE COMMISSION OF A CRIME,

DID ON OR ABOUT MARCH 26, 1980, THEN AND THERE WILFULLY, UNLAWFULLY AND FELONIOUSLY TAKE PERSONAL PROEPRTY FROM THE PERSON OF KEITH M. KINSEY, OR IN HIS PRESENCE, BY MEANS OF FORCE OR VIOLENCE OR FEAR OF INJURY TO, AND WITHOUT THE CONSENT AND AGAINST THE WILL OF THE SAID KEITH M. KINSEY, TO-WIT: A MOTOROLA 2-CHANNEL RADIO BELONGING TO SEARS, ROEBUCK & COMPANY, 3450 SOUTH MARYLAND PARKWAY, LAS VEGAS, CLARK COUNTY, NEVADA, BEING IN THE RIGHTFUL POSSESSION OF KEITH M. KINSEY, AND A WALLET AND CONTENTS BELONGING TO KEITH M. KINSEY, DEFENDANT USING A DEADLY WEAPON, TO-WIT: A FIREARM, DURING THE COMMISSION OF SAID CRIME.

COUNT II - ROBBERY AND USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME,

DID, ON OR ABOUT MARCH 27, 1980, THEN AND THERE WILFULLY, UNLAWFULLY AND FELONIOUSLY TAKE PERSONAL PROPERTY BELONGING TO GEORGE STEVEN MONAHAN, TO-WIT: WALLET AND CONTENTS, FROM THE PERSON OF GEORGE STEVEN MONAHAN, OR IN HIS PRESENCE, BY MEANS OF FORCE OR VIOLENCE OR FEAR OF INJURY TO, AND WITHOUT THE CONSENT AND AGAINST THE WILL OF THE SAID GEORGE STEVEN MONAHAN, SAID DEFENDANT USING A DEADLY WEAPON, TO-WIT: A FIREARM, DURING THE COMMISSION OF SAID CRIME.

COUNT III - MURDER AND USE OF A DEADLY WEAPON IN COMMISSION OF A CRIME,

DID, ON OR ABOUT MARCH 27, 1980, THEN AND THERE, WITHOUT AUTHORITY OF LAW AND WITH MALICE AFORETHOUGHT, WILFULLY AND FELONIOUSLY KILL GEORGE STEVEN MONAHAN, A HUMAN BEING, BY SHOOTING AT AND INTO THE BODY OF THE SAID GEORGE STEVEN MONAHAN WITH USE OF A DEADLY WEAPON, TO-WIT: A FIREARM.

DATED THIS 20TH DAY OF MAY, 1981.

ROBERT J. MILLER, DISTRICT ATTORNEY.
BY RAYMOND D. JEFFERS, CHEIF DEPUTY.

ENDORSEMENT: A TRUE BILL. VALENE SCOVILLE, DEPUTY FOREMAN, CLARK COUNTY GRAND JURY, PANEL A.

WITNESSES EXAMINED BEFORE THE GRAND JURY --

THE COURT: COUNSEL, DO YOU WAIVE THE READING OF THE WITNESSES?

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE CLERK: TO WHICH THE DEFENDANT HAS ENTERED PLEAS OF NOT GUILTY.

THE COURT: ALL RIGHT.

LADIES AND GENTLEMEN, THE INFORMATION THAT HAS JUST BEEN READ TO YOU, REMEMBER IS A MERE ACCUSATION. IT IS NOT EVIDENCE. IT MERELY IS A METHOD OF BRINGING A DEFENDANT BEFORE A JURY TO DETERMINE HIS GUILT OR INNOCENCE.

YOU MUST FURTHER REMEMBER THAT THE DEFENDANT, AS WE START THESE PROCEEDINGS, IS ASSUMED TO BE INNOCENT UNTIL HIS GUILT IS PROVEN BEYOND A REASONABLE DOUBT. I WOULD JUST LIKE TO READ TO YOU WHAT A REASONABLE DOUBT IS, AS DEFINED BY THE NEVADA LEGISLATURE, AS WE START THESE PROCEEDINGS TO GIVE YOU SOME IDEA DURING THESE PROCEEDINGS AS TO WHAT THE STANDARD OF PROOF IS:

A REASONABLE DOUBT IS ONE BASED ON REASON. IT IS NOT A MERE POSSIBLE DOUBT, BUT IS SUCH A DOUBT AS WOULD GOVERN OR CONTROL A PERSON IN THE MORE WEIGHTY AFFAIRS OF LIFE. IF THE MINDS OF THE JURORS, AFTER THE ENTIRE COMPARISON AND CONSIDERATION

1 OF ALL OF THE EVIDENCE, ARE IN
2 SUCH A CONDITION THAT THEY CAN
3 SAY THEY FEEL AN ABIDING CONVICTION
4 OF THE TRUTH OF THE CHARGE, THERE
5 IS NOT A REASONABLE DOUBT. DOUBT
6 TO BE REASONABLE MUST BE ACTUAL
7 AND SUBSTANTIAL, NOT MERE POSSIBILITY
8 OR SPECULATION.
9
10 LADIES AND GENTLEMEN, OVER THE NEXT
11 FEW DAYS THIS TRIAL WILL PROCEED GENERALLY IN THE FOLLOWING
12 FASHION:
13 FIRST, THE STATE MAY MAKE AN OPENING STATEMENT
14 OUTLINING THEIR CASE TO YOU. THE DEFENSE ALSO HAS THAT SAME
15 RIGHT AND OPPORTUNITY. BUT REMEMBER THAT NEITHER SIDE HAS
16 TO MAKE AN OPENING STATEMENT. IT ISN'T REQUIRED IN THE LAW.
17 IT'S MERELY AN ACCOMMODATION TO THEM IF THEY DESIRE TO AVAIL
18 THEMSELVES OF IT. SO, ONCE AGAIN, REMEMBER THAT AN OPENING
19 STATEMENT IS NOT REQUIRED.. THE PURPOSE OF AN OPENING STATEMENT
20 IS TO GIVE YOU KIND OF A ROAD MAP OF WHAT THE PARTIES' CASE
21 WILL BE. IT'S NOT TO BE USED FOR ARGUMENT BECAUSE THAT WILL
22 COME AT THE END OF THE TRIAL, WHEN WE HAVE CONCLUDED THE
23 EVIDENCE, READ THE INSTRUCTIONS TO YOU, AND THEN THE STATE
24 AND THE DEFENSE MAY ARGUE THE CASE TO YOU. AT THIS POINT
25 IT'S MERELY TO KIND OF FOCUS YOUR ATTENTION AS TO WHAT EACH
26 SIDE INTENDS TO PROVE.
27 THEN THE STATE, SINCE THEY HAVE THE
28 BURDEN, MUST PROCEED TO INTRODUCE EVIDENCE. AT THE CONCLUSION
29 OF THE STATE'S EVIDENCE, THE DEFENDANT ALSO HAS A RIGHT TO
30 INTRODUCE EVIDENCE.
31 AT THE CONCLUSION OF ALL OF THE
32 EVIDENCE THAT WILL COME TO YOU IN THE FORM OF WITNESSES WHO

1 WILL BE TESTIFYING UNDER OATH AND ANY EXHIBITS THAT MAY BE
2 ADMITTED THROUGH THEM OR ANY STIPULATIONS THAT THE LAWYERS
3 AGREE UPON, AT THE CONCLUSION OF THE EVIDENCE THEN THE COURT
4 WILL THEN INSTRUCT YOU AS TO THE LAW.
5 WE WILL THEN LISTEN TO THE ARGUMENTS
6 OF COUNSEL, THEN YOU WILL PROCEED TO THE JURY ROOM, WHERE
7 YOU WILL ELECT A FOREMAN. YOU WILL THEN PROCEED TO DELIBERATE
8 AND ARRIVE AT A VERDICT IF YOU CAN.
9 NOW, REMEMBER ONCE AGAIN, THAT IT IS
10 YOUR DUTY, AND YOUR DUTY ALONE, TO DETERMINE THE FACTS. PLEASE
11 PAY ATTENTION TO THESE WITNESSES AS THEY TESTIFY. AND FROM
12 THIS EVIDENCE YOU CAN DRAW REASONABLE INFERENCES ARISING FROM
13 THAT EVIDENCE. IN DOING SO, YOU MUST NOT ENGAGE IN GUESSWORK
14 OR SPECULATION. SOMETIMES JURORS ARE OF THE OPINION THAT
15 THEY LISTEN TO WHAT THEY HEAR ON TELEVISION OR OTHER SOURCES
16 AND COME UP WITH A CONCLUSION THAT CIRCUMSTANTIAL EVIDENCE
17 IS NOT GOOD EVIDENCE. WELL, THAT IS NOT THE LAW, AND I WOULD
18 SO INSTRUCT YOU. EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE,
19 EITHER ONE, MAY BE USED BY YOU IN ARRIVING AT A VERDICT. I
20 WILL GIVE YOU MORE SPECIFIC INSTRUCTION ON THAT. BUT THAT IS
21 ONE OF THE MISCONCEPTIONS, I BELIEVE, THAT JURORS HAVE WITH
22 REGARD TO THE TYPE OF EVIDENCE THAT IS ADMITTED.
23 REMEMBER, THAT THE TESTIMONY OF THE
24 WITNESSES CAN COME TO YOU IN ANOTHER FORM, AND I DON'T KNOW
25 WHETHER IT WILL BE, AND THAT IS BY USE OF DEPOSITIONS.
26 WILL THERE BE ANY DEPOSITIONS IN
27 THIS CASE, COUNSEL?
28 MR. HARMON: THERE'RE NOT ANY ANTICIPATED,
29 YOUR HONOR.
30 THE COURT: REMEMBER, THOUGH , THAT WHEN
31 THE PARTIES ARE HERE IN A COURTROOM AND IF ONE SIDE OBJECTS,
32 DON'T START KEEPING COUNT OF WHETHER THEY WIN THE OBJECTION OR

1 NOT. THAT ISN'T THE WAY THE TRIAL IS RUN. WHEN ONE SIDE IS
2 PRESENTING, THE OTHER SIDE WILL, OF NECESSITY, BE OBJECTING
3 MORE. BUT WHEN THE OTHER SIDE IS PRESENTING, THEN YOU WILL
4 SEE THE OBJECTIONS SWITCH TO THE OPPOSITE SIDE.
5 DON'T DRAW ANY CONCLUSIONS BECAUSE
6 I SUSTAIN OR OVERRULE THE OBJECTION. IF SOMEONE MAKES AN
7 OBJECTION AND I OVERRULED IT, THE QUESTION MAY PROCEED AND
8 THE WITNESS MAY ANSWER; IF I SUSTAINED THE OBJECTION, THEY
9 CAN'T PROCEED ANY FURTHER WITH THAT QUESTION; IF I ORDER THAT
10 THE MATTER BE STRICKEN AND YOU DISREGARD IT, YOU HAVE TO
11 DISREGARD EITHER THE QUESTION ASKED OR THE ANSWER GIVEN,
12 DEPENDING ON WHAT THE QUESTION IS.
13 REMEMBER THOUGH, THESE ARGUMENTS
14 AND OBJECTIONS ARE DICTATED BY RULES OF EVIDENCE WHICH HAVE
15 TAKEN HUNDREDS OF YEARS IN OUR AMERICAN JURIST PRUDENTIAL
16 SYSTEM TO DEVELOPE; RULES LIKE THE HEARSAY RULE. HEARSAY
17 IS NOT ADMISSIBLE BECAUSE A WITNESS TAKES A STAND AND SAYS,
18 "I HEARD JOE SAY" OUTSIDE THIS COURTROOM. THE REASON IT
19 ISN'T ADMISSIBLE IS JOE ISN'T HERE; JOE ISN'T UNDER OATH;
20 JOE CAN'T BE CROSS-EXAMINED. SO THERE ARE REASONS FOR THESE
21 RULES. AND THESE ARE THE THINGS THAT I WILL RULE UPON,
22 WHETHER OR NOT THEY ARE MATERIAL AND LEGAL EVIDENCE. AND IF
23 THEY ARE LEGAL AND MATERIAL EVIDENCE, CERTAINLY THEY WILL GO
24 BEFORE YOU, IF THEY'RE NOT, IT WILL NOT.
25 AT TIMES THROUGHOUT THE TRIAL WE
26 MAY HAVE ARGUMENTS OUTSIDE OF YOUR PRESENCE, THAT IS HEARINGS.
27 WE MAY EVEN HAVE WITNESSES TESTIFY. AND I KNOW IT'S GOING
28 TO BE ANNOYING TO YOU TO HAVE TO GO OUTSIDE AND SIT OUTSIDE
29 AND WAIT DURING THIS PERIOD OF TIME. BUT THESE ARGUMENTS DO
30 CUT DOWN AND LIMIT THE AMOUNT OF EVIDENCE THAT COMES BEFORE
31 YOU. IT REALLY CUTS DOWN THE TRIAL TIME. AND ALSO MORE
32 IMPORTANTLY IT PROTECTS THE PARTIES, BECAUSE THEY GET AN

1 OPPORTUNITY TO RAISE THESE OBJECTIONS OUTSIDE OF YOUR PRESENCE,
2 BECAUSE AT THE POINT IN TIME THE OBJECTION IS RAISED, WE DON'T
3 KNOW WHETHER OR NOT THAT EVIDENCE WILL BE ADMITTED FOR YOU
4 TO CONSIDER.
5 ONCE AGAIN, REMEMBER THAT THE OPENING
6 STATEMENTS AND THE CLOSING ARGUMENTS OF THE LAWYERS IS NOT
7 EVIDENCE. STATEMENTS AND ARGUMENTS OF LAWYERS IS NOT EVIDENCE.
8 I POINT THAT OUT TO YOU BECAUSE LAWYERS ARE NOT UNDER OATH,
9 THEY ARE NOT SWORN AS WITNESSES, THEY ARE NOT TESTIFYING AS
10 WITNESSES. THEY ARE ADVOCATING THEIR CLIENT'S POSITION.
11 SOMETIMES JURORS GET CONFUSED AND THEY WILL GO BACK TO THE
12 JURY ROOM AND SAY, "THAT LAWYER SAID", AND ASSUME THAT THAT
13 IS EVIDENCE. IT IS NOT. THEY MAY BE PARAPHRASING EVIDENCE.
14 WHAT YOU WANT TO PAY ATTENTION TO IS WHAT THE WITNESSES SAY,
15 BECAUSE THEY'RE THE ONES THAT YOU ARE GOING TO HAVE TO BELIEVE
16 OR DISBELIEVE.
17 FURTHER, REMEMBER THAT WE ARE NOT
18 HERE TO BE IN ANY WAY INFLUENCED BY ANY FEELING OF PERSONAL
19 SYMPATHY OR PREJUDICE TOWARD ANY PART OF THIS SUIT. EACH
20 PARTY OF THIS SUIT IS ENTITLED TO A FAIR AND IMPARTIAL
21 CONSIDERATION.
22 NOW, NO STATEMENT OR RULING OR
23 REMARK THAT I MAKE DURING THIS TRIAL IS IN ANY WAY INTENDED
24 TO INDICATE MY OPINION AS TO WHAT THE FACTS ARE. YOU ALONE
25 DETERMINE THOSE FACTS. I DON'T. SO YOU WILL NOT FIND ME
26 MAKING ANY SUCH CONCLUSIONS.
27 REMEMBER, THAT YOU ALONE MUST DECIDE
28 UPON THE BELIVEABILITY OF THE EVIDENCE AND ITS WEIGHT AND ITS
29 VALUE. IN CONSIDERING THE WEIGHT AND VALUE OF THE TESTIMONY
30 OF ANY WITNESS, YOU CAN TAKE INTO CONSIDERATION THE PARENTS,
31 THE ATTITUDE, THE BEHAVIOR OF THE WITNESSES, THE INTEREST OF
32 THE WITNESS, THE OUTCOME OF THE SUIT, THE RELATIONSHIP OF THE

WITNESS TO ANY PARTIES TO THE SUIT, THE INCLINATION OF THE WITNESS TO SPEAK THE TRUTH OR NOT, THE PROBABILITY OR IMPROBABILITY OF THE WITNESSES' STATEMENTS, AND ALL OF THE OTHER FACTS AND CIRCUMSTANCES. THUS, YOU CAN GIVE TO THE TESTIMONY OF ANY WITNESS JUST SUCH WEIGHT AS YOU BELIEVE THAT WITNESS IS ENTITLED TO RECEIVE.

ONCE AGAIN, UNTIL THIS CASE IS SUBMITTED TO YOU FOR YOUR DELIBERATIONS, YOU ARE NOT TO DISCUSS THIS CASE WITH ANYONE OR REMAIN WITHIN THE HEARING OF ANY WITNESS DISCUSSING IT. I THINK I INSTRUCTED YOU ON THIS YESTERDAY AS TO WHAT YOU CAN DO.

FIRST OF ALL, YOU CAN WALK AWAY FROM THE PERSON; SECONDLY, YOU CAN TELL THEM THAT YOU ARE A JUROR, APPRECIATE THAT THEY NOT DISCUSS IT WITH YOU OR PASS THE TIME OF DAY WITH YOU. IF YOU FEEL THAT YOU NEED TO REPORT THIS TO THE BAILIFF, PLEASE FEEL FREE TO DO SO.

NOW, ONCE THE MATTER HAS BEEN SUBMITTED TO YOU, AT THAT TIME, FOR THE FIRST TIME, YOU MAY DISCUSS THIS WHEN ALL OF YOU ARE PRESENT IN THE JURY ROOM TOGETHER. BECAUSE ALL OF YOU WILL BE ENTITLED TO HEAR WHAT ALL OF THE REST OF YOU HAVE TO SAY BEFORE YOU ARRIVE AT A VERDICT.

NOW, REMEMBER TO KEEP AN OPEN MIND IN THIS CASE AND DON'T DECIDE ANY ISSUES UNTIL THE CASE IS FINALLY SUBMITTED TO YOU. BECAUSE IN TRUTH AND IN FACT, YOU CAN'T REALLY DECIDE ALL THE ISSUES UNTIL YOU HAVE THE LAW AS A STANDARD TO APPLY THE FACTS TO AND MAKE THAT COMPARISON. BECAUSE WITHOUT THE LAW, FACTS MEAN NOTHING. WITHOUT THE STANDARD, FACTS MEAN NOTHING. SO WITH THAT, REMEMBER THAT THAT WON'T BE CONCLUDED UNTIL SOMEWHERE DOWN THE LINE; THE FACTS WILL BE GIVEN TO YOU IMMEDIATELY BEFORE THE ARGUMENTS; AND THEN WHEN YOU GO BACK TO THE JURY ROOM YOU CAN MAKE THAT COMPARISON.

AS I PREVIOUSLY POINTED OUT TO YOU, THE INSTRUCTIONS WILL BE IN WRITING, AND YOU CAN TAKE THEM WITH YOU TO THE JURY ROOM TO READ AND COMPARE.

IF YOU CANNOT HEAR ANY WITNESSES, MYSELF OR THE LAWYERS, BECAUSE THEY'RE SPEAKING TOO SOFTLY, RAISE YOUR HAND. DON'T INTERRUPT THEM. ONE OF US WILL PICK IT UP AND HAVE THE PERSON SPEAK UP OR I'LL SPEAK UP OR WHOEVER'S VOICE IS DROPPING WILL SPEAK UP.

REMEMBER, THAT IN OUR SYSTEM, JURORS MAY NOT ASK QUESTIONS. YOU ARE NOT ADVOCATES. YOU ARE NOT INTERROGATORS. YOU ARE JUDGES. AND YOU ARE TO JUDGE THIS CASE ENTIRELY ON THE EVIDENCE SUBMITTED TO YOU IN THIS COURT-ROOM. YOU ARE NOT TO GO OUT TO THE SCENE OF WHERE THIS MAY OR MAY NOT HAVE OCCURRED, OR GO BACK OR TRY TO RECONSTRUCT ANY EVIDENCE. SCENES CHANGE AND THEY CHANGE VERY RAPIDLY. SO YOU PROBABLY WON'T BE ABLE TO FIND THE SAME SITUATION OCCURING AGAIN. SO PLEASE DON'T GO BACK AND TRY TO DO THAT, AS SOME JURORS WILL OPT TO DO MORE OFTEN IN CIVIL CASES THAN CRIMINAL CASES. BUT JURORS DO TRY THAT.

NOW, I MAY TAKES NOTES AT ONE POINT IN THIS TRIAL AND NOT AT OTHERS. DON'T DRAW ANY INFERENCES FROM THE FACT THAT I TAKE NOTES AT ONE TIME AND NOT AT ANOTHER.

I BELIEVE THAT THOSE ARE ALL THE INSTRUCTIONS THAT I HAVE TO GIVE YOU AT THIS POINT.

AT THIS TIME, IS THE STATE READY TO MAKE AN OPENING STATEMENT, AND DO YOU DESIRE TO MAKE ONE AT THIS TIME?

MR. HARMON: IT IS, AND WE DO, YOUR HONOR.

THE COURT: YOU MAY, SIR.

MR. HARMON: THANK YOU, YOUR HONOR.

(OPENING STATEMENT)

BY MR. HARMON:

JUDGE MENDOZA, LADIES AND GENTLEMEN OF THE JURY. THE EVIDENCE IN THIS CASE WILL ESTABLISH THAT ON OR ABOUT MARCH THE 26TH, 1980, THE DEFENDANT, SAMUEL HOWARD, DROVE A BLACK 1980 OLDSMOBILE CUTLASS, BEARING A NEW YORK LICENSE PLATE NUMBER TO THE SEARS STORE, LOCATED IN THE BOULEVARD MALL, A SHOPPING CENTER, AT 3450 SOUTH MARYLAND PARKWAY, SOMEWHERE SHORTLY AFTER NOON.

HE HAS WITH HIM A FEMALE COMPANION, WHO WAITED IN THE VEHICLE. SHE WILL BE IDENTIFIED AS DWANA (SIC) THOMAS, THE FIRST NAME IS SPELLED D-W-A-N-A.

MR. HOWARD WENT INTO THE STORE AND APPROACHED THE HARDWARE DEPARTMENT IN THE SEARS STORE. SOMETIME SHORTLY AFTER HIS ARRIVAL THERE, BECAUSE OF HIS BEHAVIOR, HE CAME UNDER THE SURVEILLANCE OF A SECURITY OFFICER. THAT INDIVIDUAL WILL BE IDENTIFIED AS KEITH KINSEY, K-I-N-S-E-Y.

MR. KINSEY OBSERVED THE DEFENDANT LOOKING FROM PLACE-TO-PLACE IN A SOMEWHAT NERVOUS MANNER. AND THEN HE SAW HIM PICK UP A POWER TOOL FROM ONE OF THE SHELVES IN THE HARDWARE DEPARTMENT. HE THEN WALKED A FEW AISLES AWAY AND BEGAN LOOKING QUICKLY AND BENT DOWN AND THEN REMOVED THE POWER TOOL, WHICH TURNED OUT TO BE A SANDER, FROM THE BOX WHERE IT WAS ORIGINALLY CONTAINED; PULLED OUT THE OTHER WRAPPING; PULLED OUT THE PLASTIC THAT WAS IMMEDIATELY AROUND THE TOOL; AND PLACED THESE ITEMS BACK INTO THE BOX AS THEY HAD BEEN OPENED OUTSIDE OF THE STORE.

THEN MR. KINSEY SAW THE DEFENDANT, MR. HOWARD, APPROACH SEVERAL CASHIERS, AT LEAST ONE OF WHICH HAD BEEN IDENTIFIED AS LINDA WILSON. THERE, REPRESENTATIONS WERE MADE THAT HE HAD PURCHASED THE SANDER AND DIDN'T LIKE IT

1 AND WISHED TO RETURN IT TO THE STORE AND GET A REFUND.
2 MR. KINSEY AT THIS POINT WAS AWARE
3 THAT SOMETHING IMPROPER, CONTRARY TO THE STORE POLICY, WAS
4 OCCURRING; BUT HE MOTIONED IN SOME FASHION TO THE PERSONS
5 INVOLVED AT THE CASHIER'S DEPARTMENT TO LET THE TRANSACTION
6 CONTINUE.
7 THE DEFENDANT, MR. HOWARD, WAS GIVEN
8 A RETAIL CREDIT CHECK. HE WAS THEN INSTRUCTED TO TAKE THAT
9 DOWN TO THE MAIN CASHIER SECTION FOR A REFUND OF $41.39.
10 MR. KINSEY, THE SECURITY OFFICER,
11 FOLLOWED HIM TO THAT LOCATION; AND AFTER, IN FACT, MR. HOWARD
12 HAD SECURED HIS SO-CALLED REFUND OF $41.39, HE GOT THE LITTLE
13 TAP ON THE SHOULDER FROM THE SECURITY OFFICER.
14 AT THAT POINT, MR. HOWARD BECAME
15 RATHER IRATE; HE SUGGESTED THAT THE OFFICER HAD NO BUSINESS
16 APPROACHING HIM IN THIS WAY, THAT HE HAD, IN FACT, BOUGHT
17 LEGITIMATELY THE SANDER, THAT HE HAD A WIFE OR GIRLFRIEND
18 IN THE AREA WHO WOULD CORROBORATE THAT.
19 MR. KINSEY CALLED FOR A BACK-UP,
20 SUSPECTING THAT HE WAS GOING TO HAVE SOME DIFFICULTY. HIS
21 BACK-UP WAS TOM MAJOR, MERCHANDISING MANAGER AT THE STORE;
22 AND ALSO, A STOCK BOY, IDENTIFIED AS DELANE, THAT'S D-E-L-A-N-E,
23 SCHIEFEISTEIN, S-C-H-I-E-F-E-I-S-T-E-I-N.
24 AT SOME POINT, THE SECURITY OFFICER
25 KINSEY AND THE OTHER TWO GENTLEMEN WERE ABLE TO PERSUADE THE
26 DEFENDANT TO GO WITH THEM TO THE SECURITY OFFICE. HE CONTINUED
27 TO BE INCOOPERATIVE, MR. KINSEY IS EXPECTED TO TESTIFY. HE
28 THEN DETERMINED; BECAUSE HE DIDN'T KNOW IF THE SUBJECT WAS
29 ARMED, HE DIDN'T KNOW ANYTHING ABOUT HIM, HE WAS BEING VERY
30 UNCOOPERATIVE, THAT HE WOULD HAVE TO HANDCUFF HIM. AND AS
31 HE MADE AN EFFORT TO DO SO, THE DEFENDANT SWUNG TO AN AREA
32 IN HIS WAISTBAND TO HIS BACK AND PRODUCED A GUN. AT THIS POINT,

1 HE HOPPED UPON SOME CHAIRS, AND IN UNMISTAKABLE LANGUAGE
2 INFORMED THESE MEN THAT THEY WEREN'T TO TOUCH HIM. HE TOLD
3 THEM WHAT HE WOULD DO IF THEY PERSISTED IN THEIR EFFORTS.
4 AND THEY WERE THEN TOLD TO GET FLAT ON THEIR STOMACHS ON THE
5 FLOOR.
6 THE EVIDENCE WILL SHOW THAT AT THAT
7 POINT HE WAS TOLD THAT HE COULD HAVE THE MONEY, AND, IN FACT,
8 HE LEFT WITH SOMEWHAT OVER $40 IN UNITED STATES CURRENCY
9 BELONGING TO THE SEARS STORE. HE ALSO TOOK WITH HIM TWO
10 ITEMS HE OBTAINED FROM THE PERSON OF SECURITY OFFICER KINSEY.
11 ONE OF THE ITEMS WAS A BLACK LEATHER BADGE CASE AND BADGE.
12 THE CASE CONTAINED A YELLOW METAL STAR BADGE WITH THE WORDS,
13 "SERGEANT, SEARS, ROEBUCK AND COMPANY", 1328 IMPRINTED ON IT.
14 THE BADGE CASE ALSO CONTAINED A PERSONAL IDENTIFICATION CARD
15 IN THE NAME OF KEITH KINSEY. THE DEFENDANT ALSO TOOK AT GUNPOINT
16 FROM MR. KINSEY, HIS MOTOROLA TWO-WAY WALKIE-TALKIE RADIO.
17 THE DEFENDANT THEN LEFT THE SCENE.
18 THE EVIDENCE WILL SHOW THAT HE WENT OUT, GOT INTO THE BLACK
19 OLDSMOBILE CUTLASS, AND LEFT THE SCENE WITH HIS GIRLFRIEND,
20 DWANA THOMAS.
21 THE EVIDENCE IS FURTHERMORE EXPECTED
22 TO SHOW AS THEY RAPIDLY LEFT THE AREA NEAR THE INTERSECTION OF
23 BEAUMONT AND CAMBRIDGE STREETS, ESSENTIALLY THAT IS JUST
24 ACROSS THE STREET FROM THE MALL, ACROSS MARYLAND PARKWAY;
25 AND AT THE NEXT INTERSECTION A WITNESS BY THE NAME OF STEVEN
26 HOUCHEN, H-O-U-C-H-E-N, WAS IN FACT GOING WESTBOUND ON
27 DUMONT STREET PREPARING TO TURN SOUTHBOUND ON CAMBRIDGE, WHEN
28 A BLACK OLDSMOBILE CUTLASS BUMPED INTO THE BACK OF HIS VEHICLE.
29 THE VEHICLE THEN PULLED AROUND TO THE RIGHT; THERE WAS A
30 CONFRONTATION AT THAT POINT, WHICH WILL BE DESCRIBED BY MR.
31 HOUCHEN, THAT HE WANTED THE CAR TO PULL OVER SO HE COULD EXAMINE
32 THE DAMAGE ON HIS VEHICLE, AND HE WAS COMMUNICATING THAT WHEN

1 THE DRIVER PRODUCED A WEAPON. THE DRIVER OF THE OLDS CUTLASS
2 THEN PULLED SOUTHBOUND ON CAMBRIDGE. MR. HOUCHEN FOLLOWED
3 THE VEHICLE, OBTAINED THE LICENSE NUMBER. HE IS EXPECTED TO
4 TESTIFY IT WAS A NEW YORK LICENSE NUMBER 614ZHQ, BEING THE
5 LICENSE NUMBERS AND THE LETTERS ON THE LICENSE.
6 AT SOME POINT AFTER THIS, THE VEHICLE
7 THEN MADE ITS GETAWAY.
8 LADIES AND GENTLEMEN, THE EVIDENCE
9 WILL FURTHER SHOW THAT DURING THIS PERIOD OF TIME, A PROMINENT
10 PRACTICING DENTIST IN LAS VEGAS, NEVADA, WAS GEORGE STEVEN
11 MONAHAN. MR. MONAHAN HAD HIS BUSINESS AT THE WINCHESTER PLAZA
12 OFFICE COMPLEX. THAT IS LOCATED AT 1700 EAST DESERT INN ROAD,
13 JUST SEVERAL BLOCKS AWAY FROM THE BOULEVARD SHOPPING MALL.
14 MR. MONAHAN HAD AN ASSOCIATE, BOYD MAGDALL, M-A-G-D-A-L-L.
15 AND THEY OCCUPIED SUITE 401 AT THE WINCHESTER PLAZA.
16 MR. MONAHAN WAS THE OWNER OF A 1977
17 DODGE VAN. HE WANTED TO SELL THAT VEHICLE. IN FACT, THE
18 EVIDENCE WILL SHOW THAT FOR A SHORT PERIOD OF TIME PRIOR TO
19 MARCH 26TH AND MARCH 27TH, 1980, HE HAD BEEN ADVERTISING
20 THROUGH THE LOCAL NEWSPAPER, THE REVIEW-JOURNAL, THAT VEHICLE
21 FOR SALE. HE ALSO HAD THE VEHICLE PARKED AT A NUMBER OF
22 LOCATIONS, WITH FOR SALE SIGNS IN THE VEHICLE. HE HAD IT
23 PART OF THE TIME PARKED OUTSIDE OF HIS OFFICE AREA NEAR
24 DESERT INN AND LA CANADA AVENUE. HE FURTHERMORE PERIODICALLY
25 PARKED THE VEHICLE, BECAUSE OF THE LARGE AMOUNT OF TRAFFIC
26 AT THAT INTERSECTION, NEAR MARYLAND PARKWAY AND DESERT INN
27 ROAD.
28 AT ABOUT 4:00 O'CLOCK P.M., THIS
29 IS SOME HOURS NOW AFTER THE INCIDENT OCCURRED AT THE SEARS
30 STORE INVOLVING PRIMARILY SECURITY OFFICER KEITH KINSEY,
31 BUT STILL ON MARCH THE 26TH, 1980, MARY LOU MONAHAN, THE
32 WIFE OF DENTIST GEORGE STEVEN MONAHAN, RECEIVED A TELEPHONE

1 CALL FROM A PERSON IDENTIFYING HIMSELF AS KEITH. THE INDIVIDUAL
2 SAID THAT HE HAD SEEN THEIR VAN, REALIZED IT WAS ADVERTISED FOR
3 SALE, AND WAS INTERESTED IN PURCHASING IT. HE FURTHER INDICATED
4 THAT HE WOULD LIKE TO SEE IT.
5 MRS. MONAHAN EXPLAINED THAT HER HUSBAND
6 WAS NOT THERE AT THE MOMENT, BUT HE WOULD HAVE TO MAKE THE
7 DECISION, THAT SOME TYPE OF APPOINTMENT WAS TO BE MADE. SO
8 AFTER A BRIEF CONVERSATION, THE PERSON CALLING HUNG UP. APPAR-
9 ENTLY ABOUT TWENTY MINUTES LATER, AFTER MR. MONAHAN HAD RETURNED
10 HOME, ANOTHER CALL WAS RECEIVED, AN APPOINTMENT WAS SET UP TO
11 CONTACT THE PERSON INTERESTED IN MAKING THE PURCHASE AT CAESARS
12 PALACE. THE PERSON IDENTIFIED HIMSELF AS KEITH, SAID HE WAS A
13 SECURITY OFFICER EMPLOYED BY CAESARS PALACE.
14 SO AT ABOUT 8:00 P.M. ON MARCH 26TH,
15 1980, GEORGE STEVEN MONAHAN, HIS WIFE, MARY LOU MONAHAN, THE
16 DAUGHTER OF MR. MONAHAN BY A PREVIOUS MARRIAGE, MARY CATHERINE
17 MONAHAN, AND A SISTER OF MARY LOU MONAHAN, BARBARA ZEMAN, WENT
18 IN THE 1977 DODGE VAN TO CAESARS PALACE TO KEEP THEIR APPOINT-
19 MENT WITH THE PERSON WHO SAID HE WAS THE SECURITY OFFICER AND
20 WHO SAID HIS NAME WAS KEITH.
21 THEY OBSERVED AN INDIVIDUAL WHO FIT THE
22 DESCRIPTION AS THEY TURNED INTO THE PARKING AREA OF LAS VEGAS
23 BOULEVARD TO THE FRONT AND PERHAPS TO THE SIDE OF CAESARS PALACE.
24 THE INDIVIDUAL WALKED AROUND TO THE DRIVERS SIDE AND THERE WAS
25 A BRIEF CONVERSATION AT THAT POINT BETWEEN HIMSELF AND GEORGE
26 MONAHAN.
27 THE MAN WAS ASKED IF HE WAS KEITH. HE
28 SAID HE WAS. HE THEN INDICATED THAT HE WOULD RECOGNIZE THAT VAN
29 ANYWHERE. AND THE EVIDENCE WILL SHOW IT WAS RATHER DISTINCTIVE
30 IN ITS APPEARANCE. IT WAS BLACK WITH THE WORDS "BLACK OAK" IN
31 GOLD LETTERING WRITTEN ON BOTH SIDES.
32 AT THAT POINT, A DECISION WAS MADE THAT

1 THE VEHICLE WOULD BE PULLED UP TO A CERTAIN LOCATION AND THERE
2 WOULD BE FURTHER CONVERSATION. THE VAN WAS PARKED.
3 THE EVIDENCE WILL SHOW WHILE THE SUBJECT
4 WAS WALKING TO THE AREA WHERE THE VAN WAS PARKED THAT MR. MONA-
5 HAN GOT OUT; MARY LOU MONAHAN GOT OUT; SHE WAS ON THE PASSENGER'S
6 SIDE. SHE AND HER HUSBAND WERE IN THE FRONT SEAT AND THE OTHER
7 TWO LADIES WERE SEATED IN BACK.
8 THE VEHICLE WAS COMPLETELY OPENED UP
9 ON THE PASSENGER SIDE SO THAT THE MAN WHO WAS SUBSEQUENTLY
10 IDENTIFIED AS THE DEFENDANT, SAMUEL HOWARD, COULD LOOK IN.
11 HE APPROACHED. HE DID LOOK INTO THE
12 VEHICLE. MR. MONAHAN EXPLAINED A FEW THINGS CONCERNING THE
13 VEHICLE. THEY ALSO DISCUSSED THE PURCHASING PRICE. AND THE MAN,
14 SUBSEQUENTLY IDENTIFIED AS THE DEFENDANT SAMUEL HOWARD, SAID HE
15 WOULD LIKE A TEST RIDE, HOWEVER, HE INDICATED HE WAS ON DUTY.
16 AND SO THERE WAS FURTHER CONVERSATION ABOUT THE SCHEDULE OF
17 GEORGE MONAHAN THE FOLLOWING DAY, MARCH 27, 1980.
18 MR. MONAHAN INDICATED HE DID HAVE AN
19 APPOINTMENT AT ABOUT 7:30 A.M., THAT IT WOULD BE BETTER FOR HIM
20 TO BE CONTACTED FOR SOME TYPE OF TEST RIDE DURING THE MORNING
21 HOURS BECAUSE HIS SCHEDULE WAS MUCH HEAVIER IN THE AFTERNOON.
22 AT SOME POINT THEN, MARY LOU MONAHAN
23 GAVE THE DEFENDANT MR. HOWARD A BUSINESS CARD, INDICATING THE
24 ADDRESS AND SUITE NUMBER OF MR. MONAHAN'S OFFICE. AT THAT
25 POINT THE DEFENDANT MR. HOWARD WALKED AWAY.
26 THE EVIDENCE WILL BE AT NO TIME DID HE
27 ACTUALLY GET COMPLETELY INSIDE OF THE VAN, NOR DID HE TOUCH ANY
28 OF THE DOOR HANDLES. THIS IS SIGNIFICANT BECAUSE SOME TIME LATER
29 ON IN THE INVESTIGATION THE EVIDENCE WILL SHOW THAT THE LEFT
30 THUMB PRINT OF THE DEFENDANT SAMUEL HOWARD WAS FOUND ON THE DOOR
31 KNOB ON THE PASSENGER SIDE OF THE VAN WHEN FINGERPRINT COMPARI-
32 SONS WERE CONDUCTED.

MR. MONAHAN AND HIS COMPANIONS THEN TOOK THE VAN BACK TO HIS OFFICE AREA, 1700 EAST DESERT INN ROAD, AND THE VEHICLE WAS PARKED.

AT ABOUT TEN MINUTES TO 7:00 THE FOLLOWING MORNING, MARCH THE 27TH, 1980, GEORGE MONAHAN LEFT FOR WORK VERY MUCH AS HE TYPICALLY DID. HIS WIFE, MARY LOU MONAHAN, WILL TESTIFY AS TO THE TIME HE LEFT AND AS TO WHAT SHE RECALLS HE WAS WEARING. SHE WILL TESTIFY THAT WHEN GOING TO WORK HE TYPICALLY WORE VERY LITTLE JEWELRY, BUT HE DID HAVE A SEIKO WRISTWATCH ON AND A SMALL AMOUNT OF UNITED STATES CURRENCY.

SHE FURTHERMORE WILL TESTIFY THAT HE LEFT IN A TRUCK THAT THEY OWNED, THAT HE HAD WITH HIM THE DAILY RECEIPTS FROM HIS BUSINESS FROM MARCH 26TH, 1980, THAT HE TOOK WITH HIM. HE ALSO TOOK WITH HIM, BECAUSE HE EXPECTED TO ENCOUNTER THIS PERSON WHO WAS INTERESTED IN PURCHASING THE VEHICLE, A TITLE TO THE 1977 DODGE VAN. MARY LOU MONAHAN NEVER SAW HER HUSBAND AGAIN.

THE EVIDENCE WILL SHOW THAT SOMETIME AROUND 7:00 O'CLOCK A.M. AN INDIVIDUAL FITTING THE DESCRIPTION OF THE DEFENDANT RESPONDED TO THE OFFICE. HE WANTED TO KNOW IF DR. MONAHAN WAS THERE. HE WAS ADVISED BY A DENTAL ASSISTANT HELENE ZUCKERMAN, THAT HE WAS NOT THERE YET; THAT THE INDIVIDUAL REPLIED THAT HE KNEW THE DOCTOR HAD A 7:30 APPOINTMENT AND THEN LEFT.

MARY LOU MONAHAN ARRIVED AT ABOUT 8:00 O'CLOCK A.M. SHE ALSO WORKED PERIODICALLY AT THE OFFICE. AND SHE WAS VERY DISTURBED WHEN SHE DISCOVERED AT 8:00 A.M. THAT HER HUSBAND WAS NOT THERE. AT SOME POINT IT WAS PERCEIVED BY PERSONS INTERESTED THAT HIS TRUCK WAS PARKED JUST ADJACENT TO WHERE THE VAN HAD BEEN, BUT THE VAN WAS GONE. THE LITTLE BANK BAG WITH ALL OF HIS DAILY RECEIPTS FROM THE PRECEDING DAY, MARCH 26TH, 1980, WERE INSIDE THE TRUCK; SO WAS THE TITLE TO THE VAN; BUT THE

1 VAN WAS GONE AND SO WAS GEORGE STEVEN MONAHAN.
2 AT APPROXIMATELY 6:45 P.M. ON MARCH 27,
3 1980, GEORGE MONAHAN WAS DISCOVERED. HE HAD BEEN SHOT ONCE IN
4 THE BACK OF THE HEAD. THE SHOT ENTERED HIS HEAD AT ABOUT THE
5 LOCATION I'M INDICATING HERE (INDICATING), SOME THREE AND A HALF
6 INCHES BEHIND THE LEFT EAR. THE BULLET EXITED ON THE RIGHT
7 SIDE SOMEWHERE AN INCH OR SO ABOVE HIS RIGHT EAR (INDICATING).
8 THE BULLET TRAVELED FROM LEFT TO RIGHT AND FROM FRONT --
9 EXCUSE ME, FROM BACK TOWARD THE FRONT. IT WAS AT ABOUT A FORTY-
10 FIVE DEGREE ANGLE AND IT WENT SLIGHTLY UPWARD.
11 MR. MONAHAN WAS THIRTY-NINE YEARS OF AGE
12 THERE WERE A NUMBER OF FURNISHINGS INSIDE THE VAN THAT HAD BEEN
13 PLACED OVER HIM. HE WAS DISCOVERED LAYING FACE DOWN INSIDE OF
14 THE VAN. HE HAD NO WALLET ON HIS PERSON; HIS WRISTWATCH WAS
15 GONE; NO MONEY EXCEPT FOR ELEVEN CENTS DISCOVERED BY INVESTI-
16 GATING OFFICERS. THERE ALSO WAS A C.B. RADIO MISSING WHICH HAD
17 BEEN REMOVED FROM THE PANEL WHERE IT WAS ENCASED, AND ALSO A
18 CASSETTE TAPE PLAYER WAS GONE.
19 THE AUTOPSY EXAMINATION REVEALED THAT
20 HE HAD DIED OF THE SINGLE GUN SHOT WOUND TO HIS HEAD.
21 ON OR ABOUT APRIL THE 1ST, 1980, THE
22 DEFENDANT SAMUEL HOWARD WAS APPREHENDED IN DOWNEY, CALIFORNIA.
23 HE WAS STILL IN THE COMPANY OF A YOUNG BLACK FEMALE IDENTIFIED
24 AS DWANA THOMAS. A BLACK 1980 OLDSMOBILE CUTLASS, BEARING NEW
25 YORK LICENSE PLATES, WAS IN THE PARKING LOT OUTSIDE OF THE
26 STONEWOOD SHOPPING CENTER IN DOWNEY, CALIFORNIA.
27 MR. HOWARD HAD ON HIS PERSON A MOTOROLA
28 TWO-WAY WALKIE-TALKIE RADIO. IT WILL BE IDENTIFIED IN COURT BY
29 KEITH KINSEY AS THE RADIO TAKEN AT GUN POINT FROM HIM.
30 IN AN ADJACENT STORE IN THE SAME STONE-
31 WOOD SHOPPING CENTER, A THRIFTY DRUG STORE, AN AREA WHERE CERTAIN
32 INDIVIDUALS HAD SEEN THE DEFENDANT, ON AISLE 26 ON THE SHELVES

A SEARS SECURITY OFFICER BADGE WAS RECOVERED. IT'S ANTICIPATED THAT KEITH KINSEY WILL IDENTIFY THAT AS THE SAME BADGE TAKEN FROM HIM MARCH 26TH, 1980, AT GUN POINT. ON AISLE 27 IN THE MID-SHELF AREA OF THE THRIFTY DRUG STORE A .357 SMITH AND WESSON REVOLVER WAS RECOVERED. SUBSEQUENT FIREARMS IDENTIFICATION WORK WILL ESTABLISH THAT THAT IS THE WEAPON WHICH COULD HAVE FIRED THE BULLET WHICH KILLED GEORGE MONAHAN.

SUBSEQUENTLY THE BLACK OLDSMOBILE WAS IMPOUNDED. INSIDE THE VEHICLE CLOTHING WAS RECOVERED. THERE WERE A NUMBER OF ITEMS OF PERSONAL IDENTIFICATION. ONE ITEM IN PARTICULAR WAS A WORK CARD IN THE NAME OF HAROLD STANBACK, THE SAME NAME USED BY THE DEFENDANT AT THE SEARS STORE WHEN HE GOT THE RETAIL CREDIT CHECK. A NUMBER OF LATENT FINGERPRINTS WERE RECOVERED FROM THE BLACK OLDSMOBILE CUTLASS WHICH SUBSEQUENTLY WERE MATCHED TO THE DEFENDANT SAMUEL HOWARD.

LADIES AND GENTLEMEN, IT IS THE CONTENTION OF THE STATE OF NEVADA THAT THE EVIDENCE, AFTER IT HAS ALL BEEN PRESENTED, WILL PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT SAMUEL HOWARD IS THE PERSON WHO ROBBED KEITH KINSEY AT GUN POINT ON MARCH 26TH, 1980; AND THAT THAT SAME MAN, SAMUEL HOWARD, IS THE PERSON WHO SHOT AND KILLED IN EXECUTION FASHION GEORGE MONAHAN, WHILE TAKING A TEST DRIVE IN MR. MONAHAN'S 1977 DODGE VAN MARCH 27, 1980; AND THAT MR. MONAHAN WAS ALSO ROBBED BY MEANS OF A DEADLY WEAPON INSIDE THE VEHICLE AND OTHER PERSONAL PROPERTY WAS TAKEN FROM HIM.

THANK YOU.

THE COURT: DOES THE DEFENSE DESIRE TO MAKE AN OPENING STATEMENT AT THIS TIME?

MR. COOPER: YOUR HONOR, WE WOULD RESERVE OUR RIGHT TO MAKE OUR OPENING STATEMENT AT THE CLOSING OF THE STATE'S CASE-IN-CHIEF.

THE COURT: ALL RIGHT. YOU MAY DO SO.

ARE YOU READY TO CALL YOUR FIRST WITNESS, SIR?

MR. SEATON: WE ARE, YOUR HONOR.

THE COURT: WOULD YOU APPROACH THE BENCH.

(WHEREUPON, A SIDE CONVERSATION WAS HAD AT THE BENCH NOT HEARD BY THE REPORTER.)

THE COURT: LADIES AND GENTLEMEN, WE ARE GOING TO TAKE A SHORT RECESS OF TEN MINUTES.

DURING THIS RECESS YOU ARE ADMONISHED NOT TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL, OR READ, WATCH OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THIS TRIAL WITH ANY PERSON CONNECTED WITH THIS TRIAL BY ANY MEDIUM OF INFORMATION, INCLUDING WITHOUT LIMITATION, NEWSPAPER, TELEVISION OR RADIO OR FORM OR EXPRESS ANY OPINION ON ANY SUBJECT CONNECTED WITH THIS TRIAL UNTIL THE CASE IS FINALLY SUBMITTED TO YOU.

WE'LL BE IN RECESS FOR TEN MINUTES.

(WHEREUPON, FROM THE HOUR OF 11:04 TO THE HOUR OF 11:16 A.M., A RECESS WAS HAD IN THE PROCEEDINGS, AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

THE COURT: COUNSEL, STIPULATE TO THE PRESENCE OF THE JURY.

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE COURT: YOU MAY PROCEED. CALL YOUR FIRST WITNESS.

MR. SEATON: THE STATE WOULD CALL KEITH KINSEY.

THE COURT: MR. KINSEY, WOULD YOU COME FORWARD, SIR.

MR. COOPER: YOUR HONOR, WE WOULD INVOKE THE EXCLUSIONARY RULE.

THE COURT: ALL RIGHT.

ALL PERSONS WHO HAVE BEEN CALLED TO TESTIFY IN THIS MATTER, OR KNOW THAT THEY ARE GOING TO TESTIFY, WILL REMAIN OUTSIDE THE COURTROOM SUBJECT TO CALL.

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

WHEREUPON,

KEITH MICHAEL KINSEY,

CALLEO AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN, EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: PROCEED.

DIRECT EXAMINATION

BY MR. SEATON:

Q WOULD YOU PLEASE STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE RECORD?

A KEITH MICHAEL KINSEY, K-I-N-S-E-Y.

Q WHAT IS YOUR AGE, MR. KINSEY?

A I'M THIRTY.

Q AND DO YOU LIVE IN LAS VEGAS?

A YES, SIR, I DO.

Q FOR HOW LONG HAVE YOU LIVED HERE?

A SINCE JUNE OF 1976.

Q ARE YOU MARRIED?

A YES.

Q DO YOU HAVE ANY CHILDREN?

A YES.

Q IN 1980 WHERE WERE YOU EMPLOYED?

A I WAS EMPLOYED BY SEARS ROEBUCK AND COMPANY ON MARYLAND PARKWAY.

Q DO YOU KNOW THE ADDRESS?

A YES. IT'S 3450 SOUTH MARYLAND PARKWAY.

Q IS THAT IN CLARK COUNTY, NEVADA?

A YES, SIR.

Q AND WERE YOU EMPLOYED ON A FULL-TIME BASIS?

A NO, SIR. I WAS PART-TIME.

Q AND BY THAT WHAT DO YOU MEAN? HOW MANY HOURS A WEEK DID YOU WORK?

A OH, APPROXIMATELY 25 TO 30 HOURS A WEEK.

Q AND WHAT ELSE DID YOU DO AT THAT TIME?

A I WAS A STUDENT AT THE UNIVERSITY.

Q U.N.L.V.?

A UNIVERSITY OF NEVADA, LAS VEGAS.

Q AS OF MARCH OF 1980, HOW LONG HAD YOU WORKED AT SEARS ROEBUCK?

A I HAD WORKED THERE APPROXIMATELY, NEARLY A YEAR.

Q AND WOULD YOU BRIEFLY AND GENERALLY DESCRIBE THE LOCATION OF SEARS ROEBUCK AS IT RELATES TO THE BOULEVARD MALL?

A OKAY.

THE BOULEVARD MALL IS LOCATED AMONG THE STREETS SURROUNDED BY MARYLAND PARKWAY, DESERT INN ON THE NORTH, MARYLAND PARKWAY ON THE WEST AND TWAIN TO THE SOUTH. SEARS ROEBUCK AND COMPANY IS LOCATED AT THE NORTH END OF THE MALL NEAREST DESERT INN.

Q AND AT THAT PARTICULAR TIME, IN MARCH OF 1980, WHAT WAS YOUR JOB WITH SEARS?

A MY JOB WITH SEARS IN MARCH OF 1980 WAS

AS A PLAINCLOTHES SECURITY OFFICER.

Q AND AS SUCH WHAT WERE YOUR DUTIES?

A MY GENERAL DUTIES WERE TO INSURE THE SAFETY OF THE STORE, APPREHEND SHOPLIFTERS, AND GENERALLY PROTECT THE STORE ASSETS.

Q DID YOU HAVE AN OCCASION IN THAT CAPACITY TO MAKE ARRESTS?

A YES, SIR, I DID.

Q AND HAVE YOU DONE THAT?

A YES, SIR.

Q AS A RESULT OF HAVING MADE THOSE ARRESTS DID YOU HAVE AN OPPORTUNITY TO TESTIFY IN COURT?

A YES, SIR, I HAVE.

Q CAN YOU RECALL ON HOW MANY OCCASIONS?

A TESTIFYING IN COURT UP UNTIL THAT TIME?

Q YES.

A PROBABLY BETWEEN HALF A DOZEN AND A DOZEN TIMES. I COULDN'T TELL YOU EXACTLY AT THAT POINT MY TIME THERE.

Q AND SINCE THEN HOW OFTEN HAVE YOU TESTIFIED IN COURT?

A PROBABLY ANOTHER HALF DOZEN TO A DOZEN.

Q AND ARE YOU PRESENTLY EMPLOYED WITH SEARS?

A NO, SIR, I'M NOT.

Q WHEN DID YOU LEAVE THEIR EMPLOY?

A I LEFT THERE IN FEBRUARY OF 1980, BECAUSE I HAD EMPLOYMENT ELSEWHERE.

Q WERE YOU WORKING FOR SEARS ON THE DAY OF MARCH 26TH, 1980?

A YES, SIR, I WAS.

Q AND CAN YOU TELL US THE HOURS THAT YOU

WORKED ON THAT PARTICULAR DAY?

A ON THAT PARTICULAR DAY I WORKED APPRDXIMATELY FROM 10:00 TO -- 10:00 TO 6:00 THAT DAY.

Q THAT WOULD BE 10:00 IN THE MORNING --

A YES, SIR.

Q (CONTINUING) -- UNTIL 6:00 IN THE EVENING?

A YES, SIR.

Q AND HOW WERE YOU DRESSED, SIR, IF YOU RECALL?

A OH, PROBABLY THE WAY I USUALLY WAS DRESSED. I WAS WEARING A DENIM JACKET, WRANGLER WAIST TYPE AND LENGTH JACKET; BLUE JEANS; PROBABLY SNEAKERS OF ONE KIND OR ANOTHER.

Q AND WERE YOU CARRYING ANYTHING WITH YOU THAT YOU USED IN YOUR JOB?

A YES, SIR. I HAD A PAIR OF HANDCUFFS, A TWO-WAY RADIO, AND IDENTIFICATION IDENTIFYING ME AS A REPRESENTATIVE OF SEARS SECURITY STAFF.

Q DID YOU HAVE A WEAPON?

A NO, SIR.

Q ARE YOU FAMILIAR WITH WEAPONS?

A YES. INASMUCH AS JUST A MINOR HOBBY.

Q DO YOU OWN A PISTOL?

A YES, SIR, I DO.

Q WHAT KIND IS IT?

A IT'S A RUGER .357 CALIBER REVOLVER.

Q NOW, BACK TO MARCH 26TH, 1980, AT APPROXIMATELY 12:30 IN THE AFTERNOON, WHILE YOU WERE WORKING DID YOU HAVE AN OPPORTUNITY TO BEGIN OBSERVING SOMEONE IN THE SEARS STORE AT THAT TIME?

A YES, SIR, I DID.

Q AND WAS THAT PERSON A MAN OR A WOMAN?

A IT WAS A MAN, SIR.

Q ARE YOU ABLE TO DESCRIBE THAT PERSON TODAY?

A YES, SIR.

Q COULD YOU TELL US THAT PERSON'S APPROXIMATE HEIGHT?

A TO THE BEST OF MY RECOLLECTION, HE WAS BETWEEN FIVE EIGHT AND FIVE NINE; FIVE FEET EIGHT INCHES, FIVE FEET NINE INCHES.

Q THANK YOU.

AND WHAT DID YOU APPROXIMATE HIS WEIGHT TO BE?

A APPROXIMATELY ONE HUNDRED EIGHTY POUNDS AT THE TIME, TO THE BEST OF MY KNOWLEDGE.

Q AND WHAT WAS HIS RACE?

A HE WAS NEGRO.

Q DID YOU APPROXIMATE HIS AGE?

A I ESTIMATED HIS AGE TO BE BETWEEN 25 AND 30 YEARS OF AGE.

Q CAN YOU DESCRIBE HIS HAIR FOR US?

A YES, SIR.

IT WAS -- IT WAS DONE IN WHAT IS CALLED AN AFRO STYLE. IT WAS BETWEEN SHORT AND MEDIUM IN LENGTH. IN OTHER WORDS, IT DIDN'T -- I'D SAY IN COMING FROM THE SIDE OF HIS HEAD IT DIDN'T GO OUT MORE THAN SAY AN INCH AND A HALF OR SO (INDICATING).

Q AND DID YOU NOTICE ANYTHING ABOUT HIS COMPLEXION?

A HE WAS CLEAR COMPLECTED AND HE HAD SOME FACIAL HAIR.

Q WHEN YOU SAY SOME "FACIAL HAIR," CAN YOU

BE MORE SPECIFIC?

A TO THE BEST OF MY KNOWLEDGE, I BELIEVE HE HAD A MOUSTACHE AND POSSIBLY EITHER SOME STUBBLE FROM SEVERAL DAYS' GROWTH OF BEARD OR HE WAS AT THE TIME ATTEMPTING TO GROW A BEARD OF THAT NATURE; THAT KIND OF FACIAL HAIR, IT WASN'T A LARGE BEARD OR ANYTHING.

Q AND WHAT DID YOU NOTICE ABOUT HIS PHYSICAL APPEARANCE, HIS BUILD?

A HE WAS VERY WELL BUILT. APPEARED TO BE, THROUGH HIS CLOTHES, HE APPEARED TO BE FAIRLY WELL MUSCULAR, AND IN PRETTY GOOD SHAPE.

Q NOW, WITH REGARD TO THE SAME INDIVIDUAL WHO YOU WERE WATCHING, CAN YOU TELL US WHAT HE WAS WEARING AT THAT TIME?

A YES, SIR.

TO THE BEST OF MY KNOWLEDGE, HE WAS WEARING SOME KIND OF DARK CAP, WHETHER IT BE KNIT OR BASEBALL CAP I CAN'T REMEMBER AT THIS POINT; HE WAS WEARING A TAN EITHER LEATHER OR VINYL OR WAIST-LENGTH JACKET; SOME KIND OF SHIRT THAT I DON'T RECALL AT THIS TIME; I BELIEVE HE WAS WEARING BLUE JEANS; AND WAS -- APPEARED -- I BELIEVE THEY WERE LIGHT-COLOREO OR WHITE TENNIS SHOES; HE ALSO HAD A SHOULDER BAG WITH HIM.

Q WITH REGARD TO THE LEATHER OR VINYL JACKET THAT HE HAD ON, CAN YOU RECALL ITS COLOR?

A IT WAS A TAN COLOR, SHADING A LITTLE BIT TOWARDS ORANGE IN CAST.

Q AND CAN YOU FURTHER DESCRIBE THE BAG THAT HE WAS CARRYING OVER HIS SHOULDER?

A THE BAG APPROXIMATED ONE OF THE TYPE OF SHOULDER BAGS THAT THE PEOPLE USUALLY CARRY ONTO AIRLINES. IT WAS APPROXIMATELY EIGHTEEN INCHES LONG BY ABOUT EIGHT TO TEN INCHES DEEP AND POSSIBLY EIGHT INCHES IN WIDTH; AND IT WAS

CARRIED OVER HIS SHOULDER; AND IT HAD A ZIPPER ON IT, I BELIEVE.

Q MR. KINSEY, WOULD YOU NOW LOOK AROUND THE COURTROOM AND TELL US IF YOU ARE ABLE TO IDENTIFY THE INDIVIDUAL WHO YOU WERE OBSERVING THAT DAY IN SEARS AS TO THE DEFENDANT OVER THERE IN THE DENIM JACKET AND THE LIGHT BLUE SHIRT (INDICATING).

MR. SEATON: MAY THE RECORD REFLECT THE IDENTIFICATION OF THE DEFENDANT BY THE WITNESS.

THE COURT: THE RECORD MAY SO SHOW.

BY MR. SEATON:

Q WHERE WAS THE DEFENDANT WHEN YOU FIRST SAW HIM IN SEARS ON MARCH 26TH, 1980?

A WHEN I FIRST OBSERVED THE INDIVIDUAL, HE WAS NEAR THE HARDWARE SECTION OF THE STORE, WHICH IS ALSO NEXT TO THE LARGE APPLIANCE SECTION.

Q ON WHAT LEVEL OF THE STORE IS THAT?

A THE MAIN STORE LEVEL. THERE ARE TWO FLOORS IN SEARS. THERE'S A MAIN LEVEL AND THEN THERE'S THE BASEMENT LEVEL.

Q AND WHERE WERE YOU WHEN YOU SAW HIM?

A I WAS IN THE LARGE APPLIANCE AREA.

Q HOW FAR APART IS THE LARGE APPLIANCE AREA FROM THE HARDWARE SECTION?

A AT THAT TIME IT WAS SEPARATED BY APPROXIMATELY SIX - TO = EIGHT FOOT WIDE AISLE.

Q EXCUSE ME. WOULD YOU DESCRIBE THAT.

A THE TWO DEPARTMENTS WERE SEPARATED BY A SIX - TO - EIGHT FOOT AISLEWAY.

Q COULD YOU FURTHER DESCRIBE THE AREA THAT YOU AND THE DEFENDANT WERE IN AT THAT TIME?

A WELL, THE LARGE APPLIANCE AREA CONTAINED WASHERS AND DRYERS AND THINGS OF THAT NATURE.

AND I, IN KEEPING IN MY JOB AS UNDER-COVER, WAS AT THAT TIME PRETENDING TO BE LOOKING AT WASHERS AND DRYERS. AND WHERE THE DEFENDANT WAS LOCATED WAS IN THE MAIN AISLEWAY TOWARDS THE CORNER OF THE HARDWARE DEPARTMENT. AND AT THE TIME I FIRST SAW HIM HE WAS WALKING DOWN THE AISLEWAY TOWARDS -- IN BETWEEN THE HARDWARE AND LARGE APPLIANCE DEPARTMENT.

Q AND IN EACH OF THESE -- OR IN THE HARDWARE DEPARTMENT ARE THERE COUNTERS UPON WHICH THERE ARE ITEMS FOR SALE?

A THEY'RE NOT REALLY COUNTERS. THEY'RE KIND OF LIKE SHELVING RACKS, WHERE THE LONG -- I'D SAY THEY WERE EIGHT - TO - TEN FEET LONG OR SO.

Q HOW TALL WOULD YOU SAY THEY ARE?

A APPROXIMATELY FIVE FEET TALL, FOUR - TO - FIVE FEET TALL.

Q AND HOW TALL ARE YOU?

A I'M FIVE FOOT TEN.

Q AT THIS FIRST MOMENT WHEN YOU FIRST SAW THE DEFENDANT WERE YOU ABLE TO SEE HIM CLEARLY OR WAS THERE ANYTHING IN YOUR WAY?

A NO, SIR. I WAS ABLE TO SEE HIM CLEARLY.

Q WHAT WAS IT THAT CAUSED YOU TO FOCUS IN ON THE DEFENDANT AT THAT TIME?

A WELL, THE MAIN THING THAT CAUSED ME TO FOCUS IN ON HIM WAS IT WAS HIS NERVOUS MANNER.

Q COULD YOU --

A THE WAY -- THE WAY HE WAS STANDING IN THE CENTER OF THE AISLE, KIND OF LOOKING IN VARIOUS DIRECTIONS FURTIVELY, AT LEAST TO MY WAY OF THINKING THAT'S WHAT IT WAS. THAT'S WHAT CAUSED ME TO START OBSERVING HIM IN THE FIRST PLACE. THAT WAS THE FIRST TIME I HAD SEEN HIM.

Q COULD YOU PLEASE TELL THE JURY WHAT YOU

1 SAW HIM DO FROM THAT POINT ON?
2 A FROM THE -- THE FIRST TIME I SAW HIM
3 HE WAS LOOKING AROUND IN VARIOUS DIRECTIONS IN A FURTIVE MANNER.
4 AND HE WALKED -- HE WALKED DOWN THE AISLEWAY AND TO ONE OF THE
5 SHELVING RACKS' AND UNITS. THEY HAD ITEMS ON SALE THERE ON THE
6 END OF THE RACKS STACKED THERE. HE AT THAT TIME WALKED OVER,
7 KIND OF LOOKED AROUND IT A SECOND, AND PICKED ONE OF THE ITEMS
8 UP.
9 Q DID YOU SEE WHAT THAT ITEM WAS?
10 A YES, SIR.
11 IT WAS A BELT SANDER OF SOME KIND. I
12 DON'T RECALL EXACTLY WHAT KIND AT THIS POINT. BUT IT WAS A --
13 IT WAS INSIDE OF A BOX. AND HE PICKED IT UP AND LOOKED AT IT
14 AS IF HE WERE GOING TO BUY IT AND THEN PROCEEDED DOWN THE AISLE-
15 WAY PAST TWO MORE RACKS OF MERCHANDISE AND PROCEEDED DOWN
16 ANOTHER SIDE AISLEWAY TOWARDS THE WALL OF THE STORE.
17 Q WHAT WERE YOU DOING AS HE WAS MOVING IN
18 THE DIRECTION THAT YOU JUST DESCRIBED?
19 A WELL, I WAS CROSSING THROUGH THE APPLI-
20 ANCE AREA, KEEPING HIM IN OBSERVATION.
21 Q AND WERE YOU ABLE TO?
22 A BECAUSE -- BECAUSE PART OF MY JOB IS
23 ONCE I SUSPECT SOMEONE OF ATTEMPTING TO DO SOMETHING IS I HAVE
24 TO KEEP THEM IN SIGHT AT ALL TIMES, THEY AND THE MERCHANDISE.
25 Q AND UP UNTIL THIS POINT, WERE YOU ABLE
26 TO KEEP HIM IN SIGHT AT ALL TIMES?
27 A YES, SIR.
28 Q ALL RIGHT.
29 AND THEN WHAT DID YOU OBSERVE HIM TO DO?
30 A HE WENT DOWN TO THE END OF THE AISLEWAY
31 AND SET THE MERCHANDISE DOWN ON THE BOTTOM SHELF OF ONE OF THE
32 RACKS AND STOOD UP AND -- AND STOOD THERE LOOKING AT THE

1 MERCHANDISE AND THEN KIND OF CASUALLY LOOKING AROUND IN
2 VARIOUS DIRECTIONS. AT WHICH TIME HE THEN CROUCHED DOWN AND
3 OPENED THE BOX AND MOVED --
4 Q EXCUSE ME. WHEN HE CROUCHED DOWN WERE
5 YOU STILL ABLE TO SEE HIM?
6 A YES, SIR. I HAD A DIRECT LINE VIEW OF
7 HIM DOWN THE AISLEWAY BECAUSE I WAS ONE ROW OF SHELVING -- OF
8 SHELVING UNITS BEHIND HIM AND TO HIS LEFT.
9 Q O.K.
10 A AND I COULD SEE BETWEEN THE AISLEWAY
11 AND HIMSELF WITHOUT BEING OBSERVED.
12 Q WELL, WHAT DID YOU SEE HIM DO WHEN HE
13 CROUCHED DOWN?
14 A HE CROUCHED DOWN AND HE OPENED THE END
15 OF THE BOX. IF I REMEMBER CORRECTLY, I THINK IT WAS STAPLED
16 SHUT; AND HE JUST POPPED THE STAPLES AND STUFF AND OPENED THE END
17 OF IT. HE THEN REMOVED THE CONTENTS, WHICH WERE ENCASED INSIDE
18 OF THE PLASTIC BAG. HE THEN TORE THE BAG OFF OF THE MERCHANDISE
19 AND REMOVED THE MERCHANDISE FROM THE BAG. HE DISCARDED THE
20 PLASTIC BAG AND PLACED THE MERCHANDISE BACK INSIDE THE BOX.
21 Q COULD YOU SEE THE MERCHANDISE WHEN HE
22 TOOK IT OUT OF THE BOX?
23 A YES, SIR.
24 Q AND WHAT WAS IT?
25 A IT WAS A -- A SEARS BELT SANDER AND IT
26 WAS BLACK IN COLOR, I BELIEVE, WITH RED HIGHLIGHTING ON IT.
27 Q WHEN HE PLACED THE SANDER BACK IN THE
28 BOX WITHOUT THE WRAPPING ON IT, THEN WHAT DID HE DO?
29 A HE PICKED THE ITEM BACK UP AGAIN AND
30 MOVED AROUND IN VARIOUS DIRECTIONS AND THEN PROCEEDED TO THE
31 CASHIER AREA, WHICH AT THAT TIME WAS IN THE HARDWARE DEPARTMENT
32 ITSELF. THEY NO LONGER HAVE THEM SET UP THAT WAY.

Q AND WHEN HE MOVED TO THE CASHIER AREA, DID YOU SIMILARLY MOVE SO AS TO KEEP HIM UNDER OBSERVATION?

A YES, SIR.

Q AND WERE YOU ABLE TO SEE HIM?

A YES, SIR.

Q WHAT DID HE DO WHEN HE ARRIVED AT THE CASHIER AREA?

A HE WALKED UP TO THE CASHIER AND TOLD HER THAT HE WANTED HIS MONEY RETURNED ON THIS ITEM, AS HE DIDN'T NEED IT OR DIDN'T WANT IT. I DON'T RECALL WHICH PHRASE HE USED AT THE TIME.

Q AT THIS POINT IN TIME, HOW FAR AWAY FROM YOU FROM THE CASHIER AREA WOULD YOU SAY?

A I WAS APPROXIMATELY SIX - TO - EIGHT FEET AWAY.

Q O.K.

A BEHIND ONE OF THE SHELVES, CASUALLY PRETENDING TO BE LOOKING AT MERCHANDISE.

Q COULD YOU EASILY HEAR WHAT WAS BEING STATED AT THE CASHIER'S DESK?

A YES, SIR.

Q ALL RIGHT.

AND THEN WHAT DID YOU SEE HAPPEN AND HEAR TAKE PLACE?

A WELL, THE SALESPERSON SAID THAT THEY -- SHE COULDN'T RETURN HIS MONEY WITHOUT A RECEIPT, BECAUSE THAT IS SEARS BASIC POLICY IS THEY DON'T LIKE TO RETURN MERCHANDISE WITHOUT RECEIPTS. AND THEY DISCUSSED IT. AND HE WAS -- HE WAS SAYING HE GOT IT AS A, I BELIEVE, YOU KNOW, TO THE BEST OF MY KNOWLEDGE, HE SAID SOMETHING ALONG THE LINES THAT HE GOT IT AS A GIFT AND JUST WANTED TO RETURN IT BECAUSE HE DIDN'T HAVE ANY NEED FOR IT; HE HAD ANOTHER ONE.

AT THAT TIME I TRIED TO MOTION TO THE SALESGIRL, THE CASHIER, TO GIVE HIM HIS MONEY, AND SHE MIS-UNDERSTOOD ME AT THE TIME. AND A SECOND SALESPERSON CAME INTO THE AREA AND WAS LISTENING TO THE DISCUSSION AND SAW ME MOTIONING. AT THAT TIME SHE CAME OVER AND TALKED TO ME TO FIND OUT WHAT I WISHED.

THE NORMAL POLICY AT THE TIME THAT I WORKED AT SEARS IS THEY WOULD NOT GIVE ANY CASH BACK TO ANYONE UPON THE SALES FLOOR. THEY WOULD GIVE THEM WHAT IS REFERRED TO AS A "RETAIL CREDIT CHECK."

I TOLD THE SALESPERSON TO GIVE HIM THE CASH, BECAUSE I WISHED TO ARREST HIM FOR OBTAINING MONEY UNDER FALSE PRETENSES. AT THIS TIME SHE ALSO MISUNDERSTOOD ME AND GAVE HIM THE RETAIL CREDIT CHECK INSTEAD.

Q THIS WAS THE SECOND OF THE TWO SALESGIRLS?

A YES, SIR. I BELIEVE SO.

Q AND ONCE THE DEFENDANT HAO THE SALES CHECK, WHAT DID HE THEN DO?

A HE LOOKED AROUND ONE MORE TIME IN VARIOUS DIRECTIONS AND THEN LEFT THE DEPARTMENT, THE HARDWARE DEPARTMENT, AND PASSED HIS WAY THROUGH THE STORE. HE WENT DOWN THE MAIN AISLEWAY IN A -- THROUGH THE STORE AND MADE A COMPLETE CIRCLE, ALMOST A COMPLETE CIRCLE, THROUGH THE STORE. AND THEN HE WENT DOWNSTAIRS TO CUSTOMER CONVENIENCE, WHICH IS ON THE UNDER-GROUND LEVEL OF THE FLOOR -- OR OF THE STORE.

Q AND WERE YOU FOLLOWING HIM AND OBSERVING HIM WHILE THIS WAS GOING ON?

A YES, SIR.

I FOLLOWED HIM AROUND AND THEN CAME BACK THROUGH THE ELEVATOR WELL, WHICH ALSO GOES DOWNSTAIRS, SO THAT I WOULDN'T FOLLOW DIRECTLY BEHIND HIM DOWN THE STAIRS AND HAVE HIM BECOME SUSPICIOUS.

Q SO DID YOU LOSE SIGHT OF HIM THEN?

A PROBABLY FOR ABOUT TEN TO FIFTEEN SECONDS, UNTIL I GOT TO THE BOTTOM FLOOR. AND I WAS --

Q WHERE? EXCUSE ME.

A AND I WAS DOWNSTAIRS QUICKLY ENOUGH TO SEE HIM COME DOWN THE LAST TWO OR THREE STEPS OF THE STAIRS.

Q AND WHEN YOU SAW HIM DO THAT, WHERE WERE YOU?

A I WAS INSIDE THE ELEVATOR WELL AT THAT POINT LOOKING THROUGH THE GLASS DOORS THERE.

HE CAME DOWN THE STAIRS AND I CAME OUT THE ELEVATOR DOOR, AND AT THAT TIME I DON'T EVEN RECALL WHAT DISPLAYS THEY HAD DOWNSTAIRS, BUT I WAS DOWN THERE OBSERVING THE MERCHANDISE AS IF I WAS GOING TO BUY.

Q CAN YOU DESCRIBE THE GENERAL DOWNSTAIRS AREA?

A IT'S GENERALLY A RECTANGLE DOWNSTAIRS. THERE ARE STAIRS AT ONE END AND THERE IS AN ESCALATOR AT THE OTHER END; AND TO THE SIDE OF THE STAIRS, ON THE WALL TO THE SIDE OF THE STAIRS, THERE'S A STOCKROOM AREA AND THE ELEVATOR WELL AREA AND THE STAIRWELL, WHICH I CAME DOWN, WHICH IS ALONGSIDE THE ELEVATOR WELL. AND HE CROSSED IN MY FIELD OF VISION THROUGH AN OPEN FLOOR OVER THERE AND I COULD OBSERVE HIM AT ALL TIMES.

Q WHERE DID HE GO THEN?

A HE THEN WENT TO THE CASHIER CAGE AREA, WHICH HAS ALSO BEEN CHANGED SINCE THEN, AND STOOD IN LINE BEHIND I BELIEVE ONE OTHER LADY WAS THERE WAITING TO BE HELPED BY THE PERSONNEL IN THE CASHIERS AREA.

Q DID HE REACH THE WINDOW FINALLY?

A YES, SIR.

Q AND WHAT TRANSPIRED THERE?

1 A FROM MY OBSERVATION, HE SIGNED THE
2 RETAIL CREDIT CHECK THAT THE SALESGIRL UPSTAIRS GAVE HIM BECAUSE
3 YOU HAVE TO DO THAT, AND PRESENTED IT TO THE CASHIER, IN WHICH
4 CASE THE CASHIER GAVE HIM HIS -- HIS MONEY FOR THE AMOUNT THAT
5 WAS ON THE RETAIL CREDIT CHECK.
6 Q DID YOU SEE HER GIVE HIM THE MONEY?
7 A YES, SIR.
8 Q DO YOU KNOW HOW MUCH SHE GAVE HIM?
9 A AT THIS TIME, IT WAS APPROXIMATELY $40 -
10 TO $42. I COULDN'T GIVE YOU THE EXACT AMOUNT AT THIS STAGE.
11 Q AND WHAT DID HE DO WITH THE MONEY WHEN
12 HE RECEIVED IT?
13 A HE STARTED TO FOLD IT UP IN HIS HANDS --
14 IN HIS HAND, AS IF TO PUT IT IN HIS POCKET.
15 Q WHAT HAPPENED TO THE CREDIT CHECK?
16 A IT WENT INTO THE CASHIER'S CAGE IN HER
17 DAILY DRAWER, BECAUSE WHAT THEY HAVE TO DO IS PUT IT IN THE
18 DRAWER TO DETERMINE THAT THEY HAD A REASON TO GIVE THE MONEY TO
19 SOMEONE.
20 Q WHEN YOU OBSERVED THE DEFENDANT PLACING
21 THE MONEY IN HIS POCKET, WAS HE STILL IN THE AREA OF THE
22 CASHIERS CAGE?
23 A HE HAD NOT PUT IT IN HIS POCKET BEFORE I
24 APPROACHED HIM.
25 Q I SEE.
26 AND WHEN DID YOU APPROACH HIM NOW?
27 A ALMOST -- HE HAD WALKED APPROXIMATELY
28 SIX - TO - SEVEN FEET AWAY FROM THE CASHIER'S CAGE, WALKING AWAY
29 FROM THE CASHIER'S CAGE WHEN I APPROACHED HIM.
30 Q AND WHAT DID YOU DO WHEN YOU APPROACHED
31 HIM?
32 A I APPROACHED HIM FROM HIS LEFT SIDE AND

1 SLIGHTLY FROM THE REAR, AND I TOOK AHOLD OF HIS LEFT ARM, JUST
2 ABOVE THE ELBOW, WITH MY RIGHT HAND. AT THAT POINT, WITH MY
3 LEFT HAND, I HAD MY SEARS IDENTIFICATION WITH A GOLD BADGE AND I
4 PLACED IT APPROXIMATELY ONE FOOT IN FRONT OF HIS FACE AND
5 IDENTIFIED MYSELF AS BEING THE SEARS SECURITY OFFICER AND WOULD
6 HE COME WITH ME, PLEASE.
7 Q PRIOR TO THIS OCCURRENCE, HAD YOU USED
8 YOUR RADIO AT ALL?
9 A YES, SIR, I HAD.
10 Q AND WHEN DID THAT TAKE PLACE?
11 A AT THE TIME THE DEFENDANT WAS STANDING IN
12 THE LINE, I RADIOED THE OPERATOR WHO HAD THE OTHER RADIO.
13 Q WHAT WAS THE PURPOSE OF THAT?
14 A I WANTED SOME ADDITIONAL PEOPLE WITH ME,
15 BECAUSE TO AVOID ANY PROBLEMS OR ANY ALTERCATIONS IF YOU HAVE
16 MORE PEOPLE THAN THE PERSON YOU ARE DETAINING THEY USUALLY WILL
17 COME ALONG QUIETLY AND THERE WOULDN'T BE ANY FIGHTING OR ANYTHING
18 OF THAT NATURE, BECAUSE I HAVE NO DESIRE TO FIGHT WITH HIM.
19 Q SO WAS IT AFTER YOU RADIOED FOR ASSIS-
20 TANCE THEN THAT YOU APPROACHED THE DEFENDANT?
21 A YES, SIR.
22 Q AND THEN WOULD YOU CONTINUE ON WITH WHAT
23 YOU DID WITH HIM WHEN YOU APPROACHED HIM.
24 A AS I STATED, I PUT MY BADGE IN FRONT OF
25 HIS FACE AND IDENTIFIED MYSELF AS BEING SEARS SECURITY AND WOULD
26 HE COME WITH ME. AT THAT STAGE, HE PUT HIS HAND -- HIS OTHER
27 HAND IN HIS POCKET AND PUT THE MONEY INTO HIS POCKET AND SAID
28 WHAT FOR?
29 I SAID, WELL, WE'LL DISCUSS IT IN THE
30 OFFICE. IT'S LESS, YOU KNOW, PROBLEM THAN OUT HERE.
31 AND HE SAYS I'M NOT GOING ANYWHERE WITH
32 YOU. YOU KNOW, -- WHAT'S THE PROBLEM?

AND I SAID, I'VE PLACED -- I'M GOING TO PLACE YOU UNDER CITIZENS ARREST FOR OBTAINING MONEY UNDER FALSE PRETENSES.

AND HE BECAME VERY AGITATED. AND HE SAID, WHAT DO YOU MEAN OBTAINING MONEY UNDER FALSE PRETENSES? I HAVEN'T DONE ANYTHING.

AND I SAID, I WATCHED YOU UPSTAIRS WITH THE SANDER AND I WOULD LIKE YOU TO COME WITH ME TO DISCUSS IT.

AND HE SAID, I DIDN'T COMMIT ANYTHING LIKE THAT. AND HE SAID, YOU KNOW, WHAT -- WHAT DOES IT MEAN?

AND I SAID, YOU ARE BEING ARRESTED FOR FRAUD.

AND HE SAID, I DIDN'T COMMIT NO FRAUD. HE SAID, I GOT THAT FROM MY WIFE. MY WIFE GAVE ME THAT FOR A GIFT AND IT'S -- AND IT'S -- AND THAT'S WHY I'M BRINGING IT BACK. LET'S GO UPSTAIRS AND WE'LL TALK TO MY WIFE AND SHE'LL SETTLE IT OUT.

AND I SAID, WELL, LET'S GO TO THE OFFICE AND WE'LL CALL HER DOWN, IF SHE'S UP THERE WE'LL PAGE HER.

Q UP UNTIL THIS POINT, HAD YOU TOUCHED THE DEFENDANT?

A YES, SIR, WHEN I FIRST APPROACHED HIM.

Q AND HOW DID YOU TOUCH HIM?

A I GRASPED HIM JUST ABOVE THE LEFT ELBOW WITH MY RIGHT HAND LIKE THIS (INDICATING).

Q AND DID YOU CONTINUE IN THAT GRASP?

A FOR A LITTLE BIT LONGER UNTIL HE JERKED HIS ARM OUT OF MY HAND.

Q WHEN DID THAT TAKE PLACE?

A DURING THE COURSE OF THE CONVERSATION ABOUT WHETHER OR NOT HE COMMITTED WHAT I ACCUSED HIM OF.

Q AND DURING THIS PERIOD OF TIME, DID

1 ANYONE ELSE ARRIVE ON THE SCENE?
2 A AS WE WERE WALKING TOWARD THE OFFICE AND
3 WE WERE KIND OF STANDING THERE AND KIND OF TAKING A STEP IN
4 WHATEVER, I WAS APPROACHED BY THE HARD LINES MANAGER TOM MAJOR,
5 WHO CAME BEHIND BOTH OF US WHILE WE WERE DISCUSSING.
6 Q AND THIS WAS OUTSIDE OF THE SECURITY
7 OFFICE?
8 A YES, SIR.
9 Q HOW FAR AWAY WERE YOU FROM THE SECURITY
10 OFFICE AT THIS TIME?
11 A PROBABLY ABOUT SIXTY - TO - SEVENTY FEET.
12 Q WHAT OCCURRED THEN WHILE TOM MAJOR WAS
13 THERE?
14 A THE DEFENDANT BECAME HIGHLY AGITATED.
15 HE BEGAN TALKING IN A VERY LOUD VOICE, COMPLAINING THAT I WAS
16 ONLY PICKING ON HIM BECAUSE HE WAS BLACK, AND WE HAD NO BUSINESS
17 PICKING ON HONEST PEOPLE, AND BE, YOU KNOW, THIS -- I CAN'T
18 RECALL THE EXACT WORDS, BUT IT WENT ALONG THAT LINE.
19 AND MR. MAJOR AT THE TIME TRIED BEING
20 CONCILIATORY TOWARDS HIM, TO CALM HIM DOWN AS WELL, JUST TO GET
21 HIM INTO THE OFFICE SO HE COULD DISCUSS IT FURTHER.
22 Q AND DURING THESE CONVERSATIONS BETWEEN
23 THE THREE OF YOU, WERE YOU STANDING STILL OR MOVING TOWARDS THE
24 OFFICE?
25 A MOVING TOWARDS THE OFFICE IN A GENERAL
26 MANNER. HE MOVED TOWARDS THE OFFICE A LITTLE MORE EASILY WITH
27 TWO OF US THERE.
28 Q AND THEN?
29 A THERE WASN'T ANY REAL RESISTANCE OF A
30 VERBAL NATURE UNTIL WE GOT CLOSE TO THE OFFICE.
31 Q AND WHAT HAPPENED AT THAT TIME?
32 A WELL, TO GET TO THE SECURITY OFFICE AT

SEARS YOU HAVE TO GO THROUGH A SERIES OF DOUBLE DOORS AND THE SECURITY OFFICE ENTRYWAYS OUT ON -- INTO THE STOCKROOM AREA, AND THE DOUBLE DOORS KIND OF DIVIDE THE MAIN STORE FLOOR FROM THE STOCKROOM AREA. AND WHEN WE PASSED THROUGH THE DOUBLE DOORS, WHICH WERE TIED OPEN AT THE TIME, HE BECAME EVEN MORE HIGHLY AGITATED AND REFUSED TO GO INTO THE OFFICE.

Q PRIOR TO THAT TIME, HAD YOU BEEN JOINED BY ANYONE ELSE?

A NO. BUT AS WE CROSSED THROUGH THE DOUBLE DOORS THERE WAS ANOTHER PERSON THAT CAME UP THAT WORKED FOR SEARS. HE WAS -- I BELIEVE HIS NAME WAS DELANE SCHIEFEISTEIN. AND HE CAME UP AND I MOTIONED HIM TO COME TO US TO GIVE US SOME KIND OF ASSISTANCE, BECAUSE I WANTED NUMBERS. AS I SAID BEFORE, THE MORE PEOPLE YOU HAVE INVOLVED WITH GETTING A PERSON QUIETED DOWN THEY USUALLY WILL NOT FIGHT WITH YOU.

Q AND DID MR. SCHIEFEISTEIN COME ALONG WITH YOU?

A YES, SIR, HE DID.

Q SO, NOW THERE WERE FOUR OF YOU THIS TIME?

A THERE ARE THREE SEARS PEOPLE AND THE DEFENDANT.

Q THAT'S CORRECT.

A AND WHEN WE CROSSED THROUGH THE DOUBLE DOORS, MR. SCHIEFEISTEIN UNTIED THE DOUBLE DOORS SO THEY WOULD SWING CLOSED, SO THAT THE ALTERCATION, IF THERE WAS GOING TO BE ONE, WOULD NOT BE VISIBLE TO EVERYBODY OUTSIDE.

Q ARE THESE FULL DOORS, SUCH AS THE ONE HERE IN THE COURTROOM (INDICATING) THAT COMPLETELY CLOSE THE PASSAGE-WAY?

A YES. THEY SWING TOGETHER. THEY'RE HINGED ON EITHER SIDE AND SWING CLOSED. THEY HAD GLASS WINDOWS IN THE CENTER -- CENTERS OF THE DOORS.

1 Q ALL RIGHT.
2 AND WHAT TRANSPIRED ONCE THE FOUR OF YOU
3 GOT INTO THE OFFICE AND THE DOORS WERE CLOSED?
4 FIRST OF ALL, WOULD YOU DESCRIBE THAT
5 OFFICE FOR US?
6 A O.K.
7 THE OFFICE HAS ONE ENTRYWAY AND IT'S
8 RECTANGULAR IN SHAPE. THERE ARE REALLY TWO OFFICES IN THERE.
9 THERE'S THE OFFICE OF THE MANAGER, WHICH HAS A SEPARATE DOOR TO
10 IT; AND THE OFFICE AREA WHERE WE WORKED EVERYDAY AND BROUGHT
11 SUSPECTS INTO THE OFFICE. AND AS YOU COME INTO THE DOOR TO YOUR
12 IMMEDIATE RIGHT THERE WAS A ROW OF CHAIRS DIRECTLY AHEAD OF YOU
13 WHERE TWO DESKS ARRANGED PERPENDICULAR TO THE WALLS, ONE OF THE
14 OTHER TOWARD THE BACK END OF THE OFFICE WHICH CONTAINED MY
15 SUPERVISOR'S OFFICE.
16 Q AND ONCE YOU WERE IN THE OFFICE, THE
17 FOUR OF YOU, THEN WHAT HAPPENED?
18 A I CLOSED THE OUTSIDE DOOR. MR. MAJOR
19 AND MR. SCHIEFEISTEIN MOVED AWAY FROM ME, AWAY FROM THE MAIN
20 ENTRANCE TO THE DOORWAY THERE, AND I AGAIN GRASPED THE DEFENDANT
21 AND TRIED TO GET HIM TO TURN AROUND, TO PUT HIS HANDS ON THE DOOR
22 SO I COULD FRISK, IN OTHERWORDS PAT HIM DOWN FOR WEAPONS.
23 HE REFUSED TO BE FRISKED. HE WOULD NOT
24 ALLOW ME TO DO IT. AND HE KEPT TELLING ME NOT TO TOUCH HIM AND
25 TO GET MY HANDS OFF OF HIM.
26 Q AND WHAT DID HE DO THEN?
27 A THE ONLY ONE THAT WAS PHYSICALLY
28 INVOLVED WITH HIM WAS MYSELF.
29 Q AND WHERE FROM YOU WERE MR. SCHIEFEISTEIN
30 AND MR. MAJORS?
31 A IN RELATION TO WHERE WE WERE HAVING OUR --
32 THE BEGINNING OF THE PHYSICAL ALTERCATION, THEY WERE APPROXIMATELY

EIGHT - TO - TEN FEET BEHIND ME, TOWARDS THE OTHER OFFICES, STANDING THERE OBSERVING, I ASSUME. I WASN'T -- THEY WEREN'T WITHIN MY RANGE OF VISION. I WAS MORE INTERESTED IN WATCHING THE DEFENDANT.

Q AND WHILE YOU WERE WATCHING HIM WHAT DID HE DO?

A. WELL, WE BEGAN TO KIND OF HAVE A PHYSICAL SCUFFLE. I TRIED TO GET HIM TO TURN AROUND SO I COULD PUT HIM UP AGAINST THE DOOR, AND HE KEPT KEEPING HIS BACK AWAY FROM ME, AND HE KEPT KIND OF PUSHING ME AWAY WITH HIS HAND AND NOT ALLOWING ME TO REALLY GET AHOLD OF HIM OF THAT NATURE.

WHILE WE WERE HAVING THE ALTERCATION, A GOLD BRACELET DROPPED OFF HIS WRIST. I BELIEVE IT WAS THE RIGHT WRIST. THAT'S THE HAND I KEPT TRYING TO GET AHOLD OF.

Q NOW, WAS HE ON THE FLOOR AT THIS TIME?

A AT THIS POINT HE WAS STILL ON THE FLOOR.

Q O.K.

A AND HE GOT VERY ANGRY WHEN THE BRACELET BROKE OFF. HE SAID, LOOK WHAT YOU DID TO MY BRACELET. YOU BROKE MY BRACELET. AND THEN JUMPED UP ON THE CHAIRS.

Q HOW DO YOU MEAN HE JUMPED UP ON THE CHAIRS?

A WELL, HE KEPT HIS BACK TO ME AT ALL TIMES AND HE JUST KIND OF HALF TURNED, STILL KEEPING HIS BACK AWAY FROM ME, AND JUST KIND OF STEPPED UP ON THE ROW OF CHAIRS WITH HIS BACK AGAINST THE WALL, SAYING THAT HE WASN'T -- HADN'T DONE ANYTHING WRONG, HE DIDN'T DESERVE TO BE ARRESTED, AND PRETTY MUCH SHOUTING AT THE TOP OF HIS LUNGS.

AND HE STOOD UP THERE TRYING TO KEEP ME AT BAY, TO KEEP MY HANDS OFF OF HIM. HE JUST DIDN'T WANT ME TO TOUCH HIM.

Q NOW, WERE YOU KEEPING YOUR HANDS OFF OF

HIM AT THAT TIME OR WHAT WERE YOU DOING?

A IN A GENERAL SORT OF WAY, YES. I WAS JUST KEEPING MY HANDS BEYOND HIM, JUST KIND OF TOUCHING HIS HANDS SO I WOULDN'T GET HIT OR SOMETHING IF HE DECIDED TO, TRYING TO TALK HIM DOWN INTO BEING REASONABLE. I WAS TRYING TO BE A CALMING INFLUENCE, BECAUSE AT THE TIME I HAD DETERMINED THAT I COULD NOT, MYSELF PHYSICALLY, HANDLE HIM AND I DIDN'T KNOW WHAT THE OTHER TWO PEOPLE WOULD DO IF I HAD TO COME TO THAT SITUATION.

Q WHAT WAS THE NEXT THING THAT THE DEFENDANT DID WHILE STANDING UP ON THE CHAIRS?

A HE WAS BASICALLY JUST, YOU KNOW, SCREAMING VARIOUS THINGS THAT HE WASN'T GOING TO DO THIS.

AND I DECIDED AT THAT TIME AT ONE POINT THAT I'M GOING TO HAVE TO DO SOMETHING PHYSICAL, AND I REACHED UP AND I PHYSICALLY GRABBED HIS RIGHT WRIST WITH MY RIGHT HAND. AND WHEN I DID THAT, I STARTED TO PULL HIM AS IF TO GET HIM OFF OF THE CHAIRS. AND HE AT THE SAME TIME TOOK HIS RIGHT HAND AND JERKED IT BACK ENOUGH TO SNAP - BREAK MY GRIP, AND IN DOING SO I HALF FELL BACKWARDS AND AT THE SAME TIME THAT HE DID THAT HE REACHED BEHIND HIS BACK WITH HIS LEFT HAND AND PULLED OUT A -- HE PULLED OUT A GUN ENCASED IN A HOLSTER.

Q WHAT DID HE DO WITH THE GUN THAT WAS ENCASED IN A HOLSTER?

A HE WAVED IT IN OUR -- MY DIRECTION FIRST, AND SAID, ALL RIGHT, GET AWAY FROM ME NOW OR I'LL BLOW ALL YOUR --

Q PLEASE TELL US EXACTLY WHAT HE SAID.

A BLOW ALL YOUR FUCKING HEADS OFF.

AND I JUST KIND OF STOOD THERE FOR A SECOND. I JUST MAYBE TOOK A STEP BACK TO LOOK AT HIM. AND HE JUST KIND OF WAVED THE GUN AROUND, AND WITH HIS RIGHT HAND HE RUSHED OVER AND PULLED THE HOLSTER OUT OF THE GUN, AT WHICH TIME I COULD DETERMINE THAT IT WAS A REVOLVER. I SAID AT THE TIME I

1 BELIEVE IT WAS A .357. AND I LOOKED DOWN THE CYLINDER TO SEE IF
2 THERE WERE BULLETS IN IT, WHICH THERE WERE. AT THAT TIME I JUST
3 BACKED AWAY AND SAID, TAKE IT AND GO. IT'S JUST NOT WORTH IT.
4 AND JUST BACKED AWAY FROM HIM AT THAT POINT.
5 Q HOW FAR AWAY FROM HIM WERE YOU AT THAT
6 TIME?
7 A WHEN I STARTED BACKING AWAY OR WHEN I WAS
8 FIRST --
9 Q WHEN YOU BACKED AWAY FROM HIM.
10 A PROBABLY SIX - TO - EIGHT FEET. I WAS
11 BACK NEARLY -- I WAS PROBABLY A FOOT OR TWO IN FRONT OF
12 SCHIEFEISTEIN AND MAJOR.
13 Q THEY REMAINED WHERE THEY WERE?
14 A ESSENTIALLY, PROBABLY BACKED UP A LITTLE
15 BIT MORE WHEN THE GUN WAS WAVED. I DIDN'T SEE THEM.
16 Q WAS THE DEFENDANT STILL STANDING ON THE
17 CHAIRS AT THE TIME?
18 A YES, SIR, HE WAS.
19 Q AND WHAT WAS THE NEXT THING THAT HAPPENED?
20 A HE TOLD US ALL TO GET ON THE FLOOR, AGAIN
21 HE'D BLOW OUR MOTHER FUCKING HEADS OFF, SOMETHING OF THAT NATURE.
22 Q WHAT DID YOU DO IN RESPONSE TO THAT?
23 A I JUST KEPT BACKING UP AND SAID, HEY,
24 TAKE IT AND GO. IT'S JUST NOT WORTH IT. YOU KNOW, THE MONEY'S
25 YOURS. JUST GO.
26 HE SAID GET ON THE FLOOR.
27 SO WE ALL -- I ASSUME SCHIEFEISTEIN AND
28 MAJOR FOLLOWED MY EXAMPLE BECAUSE I WENT DOWN TO THE FLOOR PRONE,
29 FACE DOWN.
30 Q WHEN YOU WENT DOWN TO THE FLOOR ON YOUR
31 FACE, WERE YOU FACING TOWARDS THE DEFENDANT?
32 A MY HEAD WAS TOWARD THE DEFENDANT. I WAS

1 STILL WATCHING HIM EVEN WHEN I WENT DOWN. I KEPT ESSENTIALLY
2 AS MUCH AS POSSIBLE EYE CONTACT WITH HIM.
3 Q AND WERE MR. SCHIEFEISTEIN AND MR. MAJOR
4 BEHIND YOU THEN?
5 A YES.
6 Q WHAT DID THE DEFENDANT DO AFTER YOU WENT
7 DOWN ON THE FLOOR ON ALL FOURS?
8 A HE KIND OF --
9 Q IN A PRONE POSITION.
10 A HE KIND OF STOOD UP ON THE THING, SAYING
11 HE WASN'T AFRAID TO DIE, HE'D KILL ALL OF US, AND THEN STEPPED
12 DOWN OFF OF THE CHAIRS.
13 Q WHERE DID HE GO AFTER HE STEPPED DOWN OFF
14 OF THE CHAIRS?
15 A AT THAT POINT, HE CROSSED THE ROOM. AND
16 I WAS LAYING ESSENTIALLY SPREAD EAGLE BUT I HAD MY HEAD UP LOOKING
17 AT HIM. HE CAME AROUND MY RIGHT SIDE AND I WAS IN A SPREAD EAGLE
18 POSITION, I BELIEVE, AND I COULDN'T SEE BECAUSE HE WAS BEHIND ME.
19 BUT I BELIEVE HE WAS BETWEEN THE ANGLE THAT MY RIGHT ARM MADE
20 WITH MY BODY ON MY RIGHTHAND SIDE, AND STOOD THERE.
21 Q AND WHAT DID HE DO WHEN HE GOT THERE?
22 A HE REACHED DOWN AND TOOK MY WALLET OUT OF
23 MY POCKET, WHICH WAS IN MY RIGHT REAR POCKET, THE SEARS IDENTI-
24 CATION WALLET, AND TOOK THE RADIO, WHICH WAS CLIPPED TO MY BELT,
25 ALSO ON THE RIGHTHAND SIDE OF ME IN THE REAR, AND TOOK THAT OFF.
26 Q WHAT WAS HE DOING WITH THE GUN AT THIS
27 TIME?
28 A JUST PRIOR TO HIM BENDING OVER TO TAKE
29 THE ITEMS I JUST SAID FROM ME, HE PUT THE GUN TO THE BACK OF MY
30 HEAD. I BELIEVE IT WAS THE GUN BECAUSE THAT'S WHAT IT FELT LIKE.
31 I COULDN'T SEE IT, OF COURSE.
32 Q DID THAT REMAIN THERE DURING THE TIME

THAT HE WAS TAKING THE ITEMS FROM YOU?

A YES, SIR, IT DID.

Q AND ONCE HE HAD THE ITEMS, THE BADGE, CASE AND THE RADIO, WHAT DID HE THEN DO?

A HE STOOD UP AND I HEARD HIM MUMBLE HALF TO HIMSELF AND HALF OUTLOUD THAT NOW HE COULD BE A REAL COP WITH THIS STUFF, SOMETHING TO THAT EFFECT, BUT IT WAS BASICALLY THAT HE COULD BE A REAL COP NOW.

Q I'M NOT SURE IF I HEARD YOU SAY A REAL COCK OR A REAL COP.

A REAL COP, POLICE OFFICER.

Q THANK YOU.

WHAT DID HE DO THEN AFTER YOU HEARD HIM SAY THIS?

A O.K.

HE THEN CROSSED BACK ACROSS THE ROOM IN A DIAGONAL MANNER AWAY FROM ME. I HAD -- WHICH I NEGLECTED TO TELL, I ALREADY HAD REMOVED HIS HOLSTER BAG FROM HIM WHEN HE FIRST CAME IN THE ROOM AND SET IT ON THE FLOOR. HE CROSSED ACROSS THE ROOM AND PICK- -- WENT -- BENT OVER TO HIS HOLSTER BAG, STILL LOOKING AT US, AND PICKED IT UP STILL HOLDING THE GUN AT US. AND I DON'T RECALL IF HE UNZIPPED IT AT THE TIME OR IF IT WAS UNZIPPED AT THE TIME, BUT HE PUT THE RADIO AND THE BADGE INTO THE CASE.

Q WHAT DID HE DO WITH THE GUN IN THE HOLSTER?

A I BELIEVE HE STUFFED THE HOLSTER INTO THE BAG ALSO. I WASN'T REALLY WATCHING THE HOLSTER TO SEE WHAT HE DID WITH IT. I WAS MORE AT THAT TIME INTERESTED IN WATCHING THE GUN AND THE INDIVIDUAL.

Q WHAT DID HE DO WITH THE GUN?

A HE STILL KEPT WAVING IT AT US WHILE HE

WAS SAYING THAT, YOU KNOW, DON'T NONE OF YOU MOTHER FUCKERS COME AFTER ME, IF YOU COME OUT THIS DOOR AFTER ME I'M GOING TO KILL YOU ALL. I'M JUST GOING TO SHOOT YOU ALL.

HE CROSSED OVER TO THE DOOR, STILL WITH HIS BACK AWAY FROM US AND STILL WATCHING US WHILE CROSSING THE DOOR CAREFULLY, AND SAID, NONE OF YOU MOTHER FUCKERS COME OUT THIS DOOR.

AND HE OPENED THE DOOR AND STEPPED OUT AND KIND OF HALF LOOKED AROUND THE CORNER, STILL HAD THE GUN OUT, AND AS HE PULLED THE DOOR CLOSED I CAUGHT A VAGUE MOTION, AND IT'S NOT VERY CLEAR, OF HIM PUTTING HIS HAND INTO THE BAG WITH THE GUN. I DON'T KNOW IF HE PUT IT IN THERE OR NOT. BUT HE HAD STUCK IT BACK IN HIS WAIST, IT'S JUST AN IMPRESSION, AS THE DOOR CLOSED.

THE COURT: COUNSEL, WE WILL TAKE OUR MORNING RECESS AT THIS TIME.

MR. SEATON: THANK YOU.

THE COURT: LADIES AND GENTLEMEN OF THE JURY, YOU ARE ADMONISHED NOT TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL, OR READ, WATCH OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THIS TRIAL WITH ANY PERSON CONNECTED WITH THIS TRIAL BY ANY MEDIUM OF INFORMATION, INCLUDING WITHOUT LIMITATION, NEWSPAPER, TELEVISION OR RADIO OR FORM OR EXPRESS ANY OPINION ON ANY SUBJECT CONNECTED WITH THIS TRIAL UNTIL THE CASE IS FINALLY SUBMITTED TO YOU.

WE'LL BE IN RECESS IN THIS MATTER UNTIL 1:40 THIS AFTERNOON.

LAS VEGAS, NEVADA, TUESDAY, APRIL 12, 1983, AT 1:55 P.M.

* * * * * * *

(WHEREUPON, FROM 11:57 A.M., UNTIL 1:55 P.M., THE NOON RECESS WAS HAD AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

THE COURT: COUNSEL STIPULATE TO THE PRESENCE OF THE JURY.

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

I BELIEVE THAT YOU WERE ON THE STAND, SIR. COME FORWARD.

YOU MAY PROCEED, COUNSEL.

MR. SEATON: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION CONTINUED

BY MR. SEATON:

Q MR. KINSEY, WHEN THE DEFENDANT LEFT THE OFFICE, WHAT HAPPENED TO THE ID BRACELET THAT HAD FALLEN FROM HIS ARM?

A I BELIEVE TO THE BEST OF MY RECOLLECTION IT STAYED THERE. I -- TO BE PERFECTLY HONEST, I DON'T RECALL THAT MUCH ABOUT IT, EXCEPT SEEING IT HIT THE FLOOR AT THIS POINT.

Q WHEN THE DEFENDANT LEFT THE ROOM, WHAT DID YOU DO AT THAT POINT?

A I IMMEDIATELY GOT UP FROM THE FLOOR AND RAN ACROSS THE ROOM AND LOCKED THE DOOR SO THAT THE DEFENDANT COULD NOT RETURN TO THE ROOM. AND THEN FROM THERE I WENT IMMEDIATELY TO THE PHONE AND TELEPHONED METRO POLICE.

Q AND DID THE POLICE RESPOND?

A YES, SIR.

Q AND DID YOU HAVE AN OPPORTUNITY TO TALK WITH THEM?

A YES, SIR.

Q DID YOU MAKE OUT A WRITTEN STATEMENT REGARDING THIS PARTICULAR INCIDENT WITH THE POLICE DEPARTMENT?

A YES, SIR.

MR. SEATON: THANK YOU.

IF I COULD HAVE THE ASSISTANCE OF THE BAILIFF, I WOULD, WITH YOUR HONOR'S PERMISSION, LIKE TO HAVE THE WITNESS COME AND APPROACH THE DIAGRAM TO MAKE A DIAGRAM.

THE COURT: ALL RIGHT.

MR. FRANZEN: YOUR HONOR, COULD WE HAVE THE DIAGRAM OVER HERE SO THAT COUNSEL CAN SEE WHAT'S BEING DONE?

THE COURT: WELL, COUNSEL, I THINK IT'S PROBABLY BETTER FOR THE JURY RIGHT THERE. SO IF YOU GENTLEMEN WANT TO LEAVE THE PLACES THERE, YOU MAY MOVE OVER HERE.

MR. SEATON: MR. KINSEY, COULD YOU APPROACH THE DIAGRAM, PLEASE.

AND FOR THE RECORD, YOUR HONOR, I KNOW IT'S INCONVENIENT TO MARK THE EXHIBIT NOW, BUT I WOULD LIKE TO KNOW THE EXHIBIT NUMBER SO I COULD REFER TO IT.

THE COURT: THE NUMBER?

THE CLERK: 47.

THE COURT: 47, ALL RIGHT.

BY MR. SEATON:

Q WE'LL REFER TO THE DRAWING YOU'RE GOING TO MAKE AS STATE'S PROPOSED EXHIBIT NUMBER 47, MR. KINSEY.

IF YOU WOULD TAKE ONE OF THE MARKERS

1 THERE AND DRAW FOR US, IF YOU WOULD, THE FIRST FLOOR AREA OF
2 SEARS IN WHICH ALL OF THESE INCIDENTS TOOK PLACE. WITHOUT
3 REFERRING TO THE INCIDENT, JUST DRAW US A DIAGRAM OF THE
4 INTERIOR OF THE SEARS BUILDING, IF YOU WOULD.
5 A O.K. THAT'S THE BASIC FLOOR LAYOUT.
6 Q COULD YOU PUT A "NORTH" ON THE --
7 A O.K.
8 Q (CONTINUING) -- DIAGRAM SO WE KNOW THE
9 DIRECTION IN WHICH WE ARE LOOKING.
10 A ALL RIGHT. NORTH GOES IN THIS DIRECTION
11 HERE (INDICATING).
12 Q ALL RIGHT.
13 AS SHOWN BY THE ARROW, NORTH THEN GOES
14 TO THE RIGHTHAND SIDE OF THE DIAGRAM.
15 A RIGHT.
16 Q COULD YOU VERBALLY EXPLAIN TO US WHAT IT
17 IS THAT YOU HAVE DRAWN THERE?
18 A O.K.
19 THESE LINES HERE (INDICATING) REPRESENT
20 THE MAIN AISLEWAYS IN THE STORE.
21 THIS SECTION IN HERE, IN THIS RECTANGLE,
22 (INDICATING) IS THE HARDWARE SECTION.
23 THIS IN HERE (INDICATING) IS THE LARGE
24 APPLIANCES, THE WASHERS AND DRYERS.
25 THIS SECTION HERE (INDICATING) IS THE
26 MISCELLANEOUS AREA.
27 AND THERE IS A WALKWAY THAT GOES BASICALLY
28 ALL THE WAY AROUND THE CENTRAL AREA.
29 Q ALL RIGHT.
30 A AND THAT'S WHAT THAT REPRESENTS.
31 Q ONE MOMENT. I'M GOING TO ASK YOU TO
32 DEPICT ON THE DIAGRAM WHERE YOU AND THE DEFENDANT WERE DURING

1 THIS TRANSACTION.

2 IN A PLACE THAT WON'T INTERFERE WITH

3 THOSE MARKINGS, COULD YOU SOMEHOW MARK THE AREA THAT IS THE

4 HARDWARE SECTION AND JUST WRITE "HARDWARE."

5 A O.K.

6 THAT WOULD BE THIS SECTION HERE (INDI-

7 CATING).

8 Q ALL RIGHT. THE WORD "HARDWARE" WITH AN

9 ARROW DRAWN ON IT.

10 WOULD YOU THEN DO THE SAME THING WITH

11 THE APPLIANCE SECTION.

12 AND IS THERE A CASHIER'S STAND IN THE

13 HARDWARE SECTION?

14 A YES. AT THE TIME THE INCIDENT OCCURRED

15 THERE WAS.

16 Q WOULD YOU DRAW IT IN, PLEASE.

17 A IT WAS BASICALLY I WOULD SAY IN THIS

18 AREA IN RELATION TO THE WHOLE THING (INDICATING).

19 AS I HAVE SAID, IT HAS CHANGED CONSID-

20 ERABLY SINCE THEN.

21 Q AS LEGIBLY AS YOU COULD, WOULD YOU

22 WRITE A SMALL "C.S." FOR CASHIER'S STAND ON THE INTERIOR OF THAT

23 BOX THAT YOU HAVE DRAWN?

24 A YEAH.

25 Q THANK YOU.

26 COULD YOU POINT OUT WHERE THE DEFENDANT

27 WAS, WITH THE POINTER, AT FIRST WHEN YOU FIRST OBSERVED HIM IN

28 THE SEARS STORE?

29 A THE FIRST TIME I OBSERVED HIM, THE

30 DEFENDANT WAS APPROXIMATELY HERE, IN THIS ENTRYWAY HERE (INDI-

31 CATING). I DID NOT SEE THE DIRECTION FROM WHICH HE CAME. I

32 JUST NOTICED HIM SORT OF STANDING THERE.

Q WITH THE OTHER MARKER, IF YOU WOULD, I BELIEVE IT'S A RED ONE, WOULD YOU PUT AN "S.H." WITH A LITTLE "1" AFTER IT IN THE AREA WHERE YOU FIRST SAW THE DEFENDANT.

A (INDICATING).

Q AND NOW, WITH THE POINTER, WOULD YOU TELL US OR SHOW US WHERE YOU WERE, WHERE YOU WERE, WHEN YOU FIRST MADE THIS OBSERVATION?

A O.K. IN THIS SECTION HERE (INDICATING). THE WASHERS AND DRYERS ARE LAID OUT IN ROWS ALONG LIKE THIS. THERE'S THREE OR FOUR WASHERS ALONG HERE, THERE'S A POLE HERE AND A POLE HERE (INDICATING); AND I WAS LOCATED APPROXIMATELY RIGHT THERE (INDICATING).

Q COULD YOU DRAW THE FIRST TWO LINES WITH THE BLACK PEN. COULD YOU DRAW THE FIRST TWO LINES THAT YOU HAVE JUST DESCRIBED OF WASHERS AND DRYERS?

A O.K. THEY APPROXIMATELY RAN ALONG HERE BASICALLY (INDICATING). AND THERE WAS A POLE HERE WITH A WASHER RIGHT THERE (INDICATING). AND THEN I -- AND THAT'S THE FIRST LINE OF --

Q AND WHERE WERE YOU?

A I WAS APPROXIMATELY RIGHT HERE ON THIS SIDE OF THE WASHERS (INDICATING).

Q COULD YOU WRITE YOUR INITIALS WITH A SMALL "1" AFTER THEM WHERE YOU WERE WHEN YOU FIRST OBSERVED THE DEFENDANT.

A (INDICATING).

Q AND YOU WERE ABLE TO VISUALIZE HIM AT THAT PARTICULAR TIME?

A YES, 'CUZ I WAS STANDING THERE LOOKING AT LITERATURE DEALING WITH THE MERCHANDISE SO THAT I COULD BE EITHER LOOKING AT EITHER THE MERCHANDISE OR THE PAPER, LIKE I WAS SHOPPING FOR THE MERCHANDISE.

Q WHERE THEN, SHOW US WITH THE POINTER, WHERE THE DEFENDANT WENT AS YOU OBSERVED HIM.

A O.K.

HE MOVED FROM THIS POSITION HERE, AFTER STANDING THERE AND LOOKING IN DIFFERENT DIRECTIONS, HE MOVED IN THIS DIRECTION HERE (INDICATING).

Q IN A NORTHERLY DIRECTION?

A YES, SIR.

Q AND WHERE DID HE NEXT STOP, POINT IF YOU WOULD, WITH THE POINTER.

A ALL RIGHT.

AT THIS POINT, THERE ARE SEVERAL ROWS RUNNING EAST AND WEST HERE OF MERCHANDISE, BEYOND THE SHELVING UNITS, RUNNING IN THIS FASHION HERE (INDICATING).

Q IN A WEST/EAST DIRECTION?

A RIGHT. THAT'S THE DIRECTION THEY RAN.

HE WENT IN THIS DIRECTION DOWN APPROXIMATELY AT LEAST ONE HERE, TWO, THREE -- PROBABLY TO THE EITHER THE THIRD OR FOURTH ONE. I CAN'T RECALL EXACTLY AT THIS POINT WHICH ROW IT WAS (INDICATING).

Q ALL RIGHT.

AT APPROXIMATELY THAT POINT, WITH THE BLACK PEN, WOULD YOU DRAW IN THAT PARTICULAR SHELVING AREA.

A I'LL JUST DRAW A SINGLE LINE FOR CLARITY, BUT THAT WILL REPRESENT AN ENTIRE RACK OF DISPLAY MERCHANDISE.

Q ALL RIGHT.

THE EASTERLY-MOST END OF THAT PARTICULAR RACK.

A O.K.

AT THIS POINT HERE (INDICATING) THERE WAS A FLAT SHELF, AND STANDING UPON IT WERE VARIOUS POWER TOOLS

THAT WERE ON SALE THAT PARTICULAR DAY, WHICHEVER TOOLS THEY HAPPENED TO BE.

Q WITH A DARKER LINE ON THAT EASTERLY END, WOULD YOU MARK THAT END DISPLAY AREA?

A O.K.

IT GENERALLY WENT IN THIS DIRECTION HERE LIKE SO (INDICATING).

Q AS DESIGNATED BY THE HEAVY BLACK LINE. O.K.

AND IS THAT WHERE THE DEFENDANT NEXT STOPPED?

A YES, SIR.

Q WOULD YOU WRITE AN "S.H.2" AT THAT POINT, SHOWING THE DOTTED LINE FROM THE "S.H.1" TO THE "S.H.2", THE DIRECTION OF THE PATH THAT HE TOOK.

A (INDICATING).

Q NOW, WHAT HAPPENED WHEN HE WAS AT THE POINT MARKED "S.H.2"?

A HE STOOD THERE FOR A SECOND OR SO AND LOOKED IN DIFFERENT DIRECTIONS AND WENT DOWN AND PICKED UP A PIECE OF MERCHANDISE, A POWER TOOL IN A PACKAGED BOX.

Q AND THEN DID HE MOVE FROM THAT SPOT?

A HE STOOD UP AND LOOKED AT IT FOR A SECOND AND THEN AT THAT POINT HE MOVED.

Q WHERE DID HE GO TO, SHOW US WITH THE POINTER IF YOU WOULD.

A O.K.

THERE IS ANOTHER AISLEWAY HERE (INDICATING).

Q JUST TO THE NORTH OF --

A JUST TO THE NORTH OF WHERE "S.H.2" IS, THERE IS A WALKWAY BETWEEN THE TWO. HE CAME TO THAT AND THEN

PROCEEDED DOWN THAT AISLEWAY.

Q YOU MEAN IN A WESTERLY DIRECTION?

A IN A WESTERLY DIRECTION.

Q COULD YOU DRAW THAT PARTICULAR SHELVING AREA AT THE END OF THE AISLE.

A IT WAS HERE AND IT CAME TO HERE (INDICATING), AND THERE WAS A BREAK FOR A WALKWAY IN THIS DIRECTION, AND THEN IT CONTINUED ON DOWN HERE LIKE SO (INDICATING).

Q THE SECOND LINE THAT YOU'VE DRAWN IS JUST NORTH OF THE --

A TO THE WEST.

Q (CONTINUING) -- CASHIER'S COUNTER?

A YES. JUST TO THE WEST.

Q AND TO THE WEST OF THE OTHER COUNTER?

A RIGHT.

THERE WAS AN OPEN AREA IN HERE (INDICATING).

Q AND THERE WAS --

A THERE WAS ALSO A SHELVING UNIT THAT RAN IN THIS DIRECTION HERE (INDICATING).

Q ALL RIGHT.

WOULD YOU WITH A DOTTED LINE AGAIN, FROM THE "S.H.2" SHOW THE PATH THAT THE DEFENDANT TOOK TO WHERE HE NEXT STOPPED; AND THEN AT THAT POINT DRAW IN A "S.H.3.".

A (INDICATING).

Q NOW, AT THIS POINT IN TIME WERE YOU STILL AT THE "K.K.1" THAT YOU'VE DRAWN THERE.

A NO, I WAS NOT.

Q WHERE HAD YOU MOVED TO?

A AT THIS POINT THERE WAS -- THERE WAS SEVERAL ROWS OF WASHERS AND DRYERS THROUGH HERE (INDICATING), AND THERE WAS A ROW THAT WAS BACK IN THIS DIRECTION JUST BEHIND

THIS AISLEWAY HERE AND THERE (INDICATING); AND I HAD MOVED FROM THERE TO BEHIND THERE TO OBSERVE HIM GO BEHIND THIS AISLE (INDICATING).

Q WOULD YOU DRAW IN THE LAST ROW OF APPLIANCES YOU JUST REFERRED TO?

COUNSEL, THERE'S A, FOR THE RECORD, A THREE, A RECTANGULAR LINE SHOWING TWO BREAKS IN IT WHICH WOULD BE, I ASSUME, THREE APPLIANCES IN THERE.

A YES, APPROXIMATELY.

Q WOULD YOU MARK "K.K.2" WHERE YOU STOOD NEXT AS YOU OBSERVED THE DEFENDANT.

A (INDICATING).

Q AND YOU ARE ALSO PUTTING IN A DOTTED LINE BETWEEN THE TWO, "K.K.1" AND "K.K.2", TO SHOW YOUR PATH.

A (INDICATING).

Q WHAT THEN DID YOU SEE THE DEFENDANT DO WHEN HE WAS AT THE POSITION "S.H.3"?

A O.K.

WHAT I DID BEFORE HE GOT TO THIS POSITION, AS HE WAS WALKING DOWN THIS AISLEWAY (INDICATING) I WAS COMING ALONG BEHIND HIM AS WELL. THERE WAS ANOTHER SERIES OF SHELVES ALONG HERE IN THE SAME POSITION AS THIS BUT JUST NORTH OF THOSE (INDICATING).

Q WHY DON'T YOU DRAW THOSE IN NOW, IF YOU WOULD, PLEASE.

A LIKE SO (INDICATING).

Q MAY THE RECORD REFLECT THAT THE WITNESS HAS JUST DRAWN TWO LINES TO THE NORTH OF THE LAST TWO COUNTER LINES THAT HE DREW.

A O.K.

Q O.K.

WHAT HAPPENED THEN?

A AT THIS POINT HE WAS WALKING DOWN HERE (INDICATING).

Q TOWARD THE "S.H.3"?

A TOWARDS THE "S.H.3".

I WAS COMING ALONG, TRAILING ALONG BEHIND HIM AT A DISCREET DISTANCE TO STILL KEEP AN EYE ON HIM BUT OUT OF HIS RANGE OF VISION SO THAT HE COULDN'T SEE ME.

Q ALL RIGHT.

A AND AT THAT POINT I CAME DOWN TO HERE AND I WAS STANDING RIGHT THERE (INDICATING).

Q THE RECORD SHOULD REFLECT THAT YOU HAVE JUST DRAWN A DOTTED LINE FROM "K.K.2" TO THE PLACE WHERE YOU'VE MARKED "K.K.3".

NOW, THE "K.K.3" AND THE "S.H.3" I ASSUME SHOWS YOUR RELATIVE POSITIONS.

A AT APPROXIMATELY THE SAME TIME.

Q AT APPROXIMATELY THE SAME TIME, THANK YOU.

WHAT DID YOU OBSERVE THE DEFENDANT TO DO AT THAT TIME?

A ALL RIGHT.

AT THIS POINT, I WAS STANDING FAR ENOUGH BACK TO WHERE HE COULDN'T SEE ME READILY WITHOUT STANDING UP AND TURNING AROUND. AND HE STOPPED AT THE POINT I'VE GOT MARKED HERE "S.H.3" AND SET THE BOX DOWN ON THE BOTTOM SHELF (INDICATING). IN OTHERWORDS, THE SHELVES WOULD COME OUT LIKE THIS AND HE SET IT DOWN ON THE BOTTOM SHELF AND THE BOTTOM SHELF STUCK OUT FURTHER THAN THE REST (INDICATING).

Q WAS THIS ON THE SHELF THAT WAS CLOSEST TO WHAT HAS BEEN MARKED AS "C.S.", TO THE CASHIER'S STAND?

A YES. IT WOULD BE RIGHT HERE ON THE SIDE OF IT (INDICATING).

Q ALL RIGHT.

A ON THE SIDE, AND HE SET THE BOX DOWN AND STOOD UP AND GLANCED IN EITHER DIRECTION DOWN THE AISLE TO SEE IF -- I ASSUME TO SEE IF ANYONE WAS WATCHING FROM EITHER DIRECTION.

Q WHAT DID HE DO THEN?

A HE THEN KNELT DOWN AND OPENED THE BOX. IN OTHERWORDS, HE PEELED OPEN THE END OF IT. THE BOX IS FOLDED OVER, AND AS I SAID IT BEFORE, I BELIEVE IT WAS STAPLED. I'M NOT SURE. HE PULLED IT OPEN, AND WHEN HE DID THAT, HE KIND OF GLANCED AROUND AGAIN AND THEN HE REMOVED THE CONTENTS, WHICH WERE ALL ENCASED IN THE PLASTIC BAG. HE THEN TORE THE PLASTIC BAG OFF OF THE MERCHANDISE AND DISCARDED IT ON THE SHELF NEXT TO HIM THERE SOMEWHERE IN THE VICINITY.

HE THEN PLACED ALL THE MERCHANDISE BACK INTO THE BOX OF A JUMBLED-UP WAY. AND AT THAT POINT, HE STOOD UP AND LOOKED AROUND. HE HAD THE BOX IN HIS HAND TO THE BEST OF MY KNOWLEDGE WHEN HE STOOD UP AND LOOKED IN EITHER DIRECTION.

AT THAT POINT, HE CAME -- HE RETRACED HIS STEPS TO HERE, CAME AROUND THIS END PART HERE, AND THEN WENT OVER TO THE CASHIER'S STATION (INDICATING).

Q WITHOUT GOING OVER THE LINES THAT YOU'VE ALREADY DRAWN, WOULD YOU RETRACE THOSE STEPS WITH THE DOTTED LINE FROM "S.H.3" TO THE NEXT PLACE WHERE HE STOOD, AND PUT AN "S.H.4"; WHICH THE RECORD SHOULD REFLECT IS RIGHT BY THE BOX MARKED "C.S.".

A (INDICATING).

Q AND WERE YOU STILL IN THE PLACE THAT YOU MARKED AS "K.K.3"?

A I WAS THERE UNTIL HE GOT TO THE CASHIER'S STATION, AND THEN HE HAD HIS BACK TO ME.

Q WHERE DID YOU MOVE TO AT THAT TIME?

A AT THIS POINT, I CAME AROUND THE END HERE AND STOOD IN THIS AISLEWAY HERE (INDICATING).

Q WITHOUT TRYING TO WRITE OVER WHAT YOU HAVE ALREADY WRITTEN, COULD YOU DEPICT THAT AS BEST AS YOU CAN WITH THE DOTTED LINE AND THE "K.K.4"?

A O.K. I CAME TO RIGHT THERE (INDICATING).

Q ALL RIGHT.

HOW FAR THEN WOULD YOU SAY "K.K.4" IS FROM "S.H.4"?

A AT THAT DISTANCE, APPROXIMATELY 10 - TO - 15 FEET.

Q ALL RIGHT.

A TO THE BEST OF MY KNOWLEDGE.

Q AND WHAT HAPPENED AT THAT TIME?

A THE DEFENDANT APPROACHED THE CASHIER'S STAND, AS I SAID. HE TALKED TO THE -- TO THE CASHIER THERE AND ASKED FOR HIS MONEY BACK ON THE ITEM. HE SAID THAT HE HAD GOTTEN IT AS A GIFT OR HE JUST DIDN'T WANT IT, HE HAD ANOTHER ONE, THAT SORT OF THING. AND HE SAID HE WOULD LIKE HIS MONEY BACK ON IT.

AT WHICH POINT THE CASHIER REPLIED TO HIM THAT SHE COULDN'T GIVE HIM HIS MONEY BACK ON IT WITHOUT A RECEIPT.

Q DO YOU KNOW THE NAME OF THAT CASHIER?

A OFF HAND, NO.

Q O.K.

A I COULDN'T EVEN BEGIN TO TELL YOU.

Q ALL RIGHT.

A AND WHILE THE DISCUSSION IS GOING ON WITH HIM HERE (INDICATING), I'M BACK HERE TRYING TO GET THE CASHIER'S ATTENTION TO TELL HER TO GIVE HIM THE MONEY (INDICATING).

Q WERE YOU STILL IN THE POSITION "K.K.4"?

A RIGHT.

Q ALL RIGHT.

A THROUGH MOTIONS AND EYE CONTACT AND THAT KIND OF THING.

Q DID SHE SEE YOU?

A SHE SAW ME BUT SHE DIDN'T APPEAR TO UNDERSTAND. AND AT THAT POINT A SECOND CASHIER CAME IN.

Q WHERE DID SHE GO TO?

A SHE CAME FROM OVER THE CASHIER AREA TO DISCUSS WHAT WAS GOING ON INVOLVING THE DEFENDANT.

Q SHE SPOKE WITH YOU OR WITH THE OTHER CASHIER?

A WITH THE OTHER CASHIER. AND SHE LOOKED UP AND SAW -- NOTICED ME MOTIONING TO HER.

Q O.K.

A SHE AT THE TIME SAID THERE WASN'T MUCH SHE COULD DO WITH IT, AND MADE SOME SORT OF EXCUSE TO GET AWAY FROM THE AREA.

Q DO YOU KNOW HER NAME BY ANY CHANCE?

A I BELIEVE HER NAME WAS LINDA, BUT I COULDN'T TELL YOU WHAT THE LAST NAME WAS.

Q AND WHERE DID LINDA GO WHEN SHE LEFT THE CASHIER'S STAND?

A SHE HAD A PIECE OF MERCHANDISE IN HER HAND, AND I DON'T RECALL WHAT IT WAS, AND SHE CAME BACK TO THIS SIDE OF THE AISLEWAY THAT I WAS ON (INDICATING). AND WHILE I WAS LOOKING AT MERCHANDISE SHE STOOD THERE AND TALKED TO ME ACROSS THIS AISLE WHILE SHE WAS PUTTING THE MERCHANDISE AWAY, OR WHATEVER SHE WAS DOING (INDICATING).

Q PUT AN "L" IF YOU WOULD WHERE THE SALES-GIRL LINDA WAS STANDING WHEN SHE WAS SPEAKING TO YOU.

A SHE WAS APPROXIMATELY THERE (INDICATING).

Q O.K.

A AND SHE WAS BENDING DOWN, PUTTING THE MERCHANDISE AWAY, TALKING TO ME WHILE I WAS TAKING CARE OF IT.

THE DEFENDANT WAS STILL DISCUSSING THE SITUATION WITH THE CASHIER. HE HAD NOT TURNED AROUND THAT I RECALL.

Q AND WHAT DID YOU TELL LINDA?

A I EXPLAINED TO HER TO GIVE HIM THE MONEY, THE CASH, BECAUSE I WISHED TO ARREST HIM FOR OBTAINING MONEY UNDER FALSE PRETENSES, BECAUSE I HAD SEEN WHAT WAS GOING ON.

AND SHE EVIDENTLY MISUNDERSTOOD ME AS WELL, BECAUSE SEARS HAS A POLICY THAT THEY DON'T GIVE CASH BACK. THEY GIVE YOU A RETAIL CREDIT SLIP AND YOU HAVE TO GO DOWNSTAIRS TO THE CASHIER AND GET IT.

SO SHE WENT BACK AND GAVE HIM A RETAIL CREDIT CHECK FOR THE MERCHANDISE.

Q SHE WENT BACK TO THE --

A CASHIER'S STAND.

Q (CONTINUING) -- CASHIER'S STAND, O.K.

A AND IF I REMEMBER CORRECTLY, I THINK SHE TOLD HIM THAT SHE COULDN'T GIVE HIM THE FULL PRICE ON IT BECAUSE IT WAS ON SALE AND HAD BEEN FOR A WEEK OR SO, AND THAT HE WOULD HAVE TO SETTLE FOR WHAT THE SALES PRICE WAS.

HE SAID THAT THAT WAS FINE.

AND THEN SHE GAVE HIM THE RETAIL CREDIT CHECK.

Q O.K.

WHERE DID THE DEFENDANT GO AFTER THAT?

A AT THIS POINT, AS I SAID, THERE WERE VARIOUS AISLEWAYS THROUGH HERE AND STUFF.

HE MADE HIS WAY BACK OUT TO THE MAIN

AISLEWAY HERE (INDICATING), AND PROCEEDED IN A SOUTHERLY DIRECTION DOWN THIS MAIN AISLEWAY IN THE STORE AND AROUND HERE TO THE STAIRS (INDICATING).

Q WOULD YOU DRAW, WITH OUR DOTTED LINE AGAIN, FROM THE "S.H.4" TO WHERE HE WENT DOWNSTAIRS. WOULD YOU DRAW THAT PATH AS BEST AS YOU KNOW.

A O.K.

AS I SAID, I AM JUST GOING TO TAKE THE DIRECT ROUTE BECAUSE I DON'T RECALL WHICH WAY HE WOUND HIS WAY THROUGH THE MERCHANDISE.

BUT HE WENT FROM THERE TO THE STAIRS (INDICATING).

Q AND LET'S MARK AN "S.H.5" AT THE POINT OF THE STAIRS.

A (INDICATING).

Q I BELIEVE YOUR TESTIMONY WAS THAT YOU WENT --

A I TOOK A SLIGHT DIFFERENT ROUTE.

Q (CONTINUING) -- ANOTHER WAY.

WOULD YOU SHOW US WITH THE POINTER FIRST, THE ROUTE THAT YOU TOOK.

A O.K.

FROM THIS POINT HERE FROM WHERE I WAS STANDING (INDICATING), I RETRACED MY STEPS BACK DOWN THIS AISLE-WAY, KEEPING HIM IN VIEW, BECAUSE AT THIS POINT IF HE LEAVES THE STORE WITH A RETAIL CREDIT CHECK THERE WAS NO WAY I COULD REALLY DO ANYTHING TO HIM BECAUSE HE HASN'T RECEIVED THE MONEY AND I WOULD HAVE TO WAIT UNTIL HE RETURNED TO THE STORE, BUT I RETRACED DOWN HERE AND JUST FOLLOWED ALONG BEHIND HIM AT A DISCREET DISTANCE IN THE SAME AISLEWAY (INDICATING), PERIODICALLY KEEPING MYSELF ALONG THESE AISLEWAYS SO THAT IF HE TURNED TO SEE IF ANYONE WAS FOLLOWING HIM I COULD STOP AND LOOK AT MERCHANDISE

I STOOD RIGHT HERE AT THIS POINT BEHIND A RACK OF CLOTHES HERE (INDICATING). THERE'S A SERIES OF RACKS AND WALLS AND STUFF THAT GO AROUND HERE (INDICATING), BUT I HAD VISUAL SIGHT OF HIM ACROSS THIS AREA (INDICATING).

Q TO THE STAIRS?

A NO. UNTIL HE REACHED A POINT HERE AND MADE HIS TURN THIS WAY (INDICATING).

Q SHOWING THE POINT AT THE --

A RIGHT HERE (INDICATING).

Q (CONTINUING) -- AT THE INTERSECTION WHERE HE TURNED NORTH TO GO TOWARDS THE STAIRS; IS THAT RIGHT?

A RIGHT.

AND AT THIS POINT, I STOPPED -- FROM HERE I IMMEDIATELY RAN TO THIS ELEVATOR WELL, WHICH IS HERE (INDICATING).

THERE IS TWO SERIES OF DOUBLE DOORS. THERE'S A DOUBLE DOOR HERE AND A DOUBLE DOOR HERE (INDICATING). AND I CAME IN THROUGH THESE DOUBLE DOORS AND STOOD BEHIND THESE DOUBLE DOORS LOOKING OUT THROUGH THE WINDOWS (INDICATING), OF WHICH I HAD A VIEW OF THE UPPER PART OF THE STAIRWELL BY THE TIME HE GOT TO THIS POINT --

Q ALL RIGHT.

A (CONTINUING) -- TO MAKE SURE THAT HE WENT DOWN THE STAIRS AND NOT JUST AROUND TO MAKE SURE NO ONE WAS FOLLOWING HIM.

Q WOULD YOU MARK AN "E.W." IN THE MIDDLE OF THE ELEVATOR WELL?

A OOPS. (INDICATING).

Q AND WOULD YOU THEN, WITH THE RED MARKER, TRACE YOUR STEPS AS YOU HAVE JUST DESCRIBED THEM TO THE POINT WHERE YOU STOPPED AND WATCHED HIM.

A ALL RIGHT.

1 I'LL START FROM HERE, INSTEAD OF
2 GOING BACK THROUGH, BUT I CAME THIS WAY (INDICATING).
3 Q YOU CAME FROM THE POINT --
4 A I RETRACED MY STEPS.
5 Q (CONTINUING) -- FROM "K.K.4"?
6 A RIGHT. I RETRACED MY STEPS HERE (INDI-
7 CATING).
8 Q O.K.
9 YOU WENT EAST AND TURNED SOUTH?
10 A AND THEN BASICALLY STAYED ALONG THIS SIDE
11 OF THE MAIN AISLEWAY (INDICATING); AND AS I SAID, THERE WERE
12 SHELVING UNITS ALL ALONG HERE THAT I COULD LOOK AT IF I NEEDED TO
13 (INDICATING).
14 I ESSENTIALLY FOLLOWED ALONG BEHIND
15 HIM AT A DISCREET DISTANCE UNTIL I GOT TO THIS POINT, APPROXIMATELY
16 THERE (INDICATING).
17 Q MARK THAT "S.H." -- OR "K.K.5" IF YOU
18 WOULD, PLEASE.
19 A (INDICATING).
20 Q AND THEN RETRACE YOUR STEPS BACK AS YOU
21 WENT TO THE ELEVATOR.
22 A O.K.
23 THEN I RAN BACK THIS WAY, DOWN THIS
24 WAY, AND THEN THROUGH HERE, INTO THE ELEVATOR WELL AT THIS POINT
25 HERE (INDICATING).
26 Q MARKING IT WITH A "K.K.6".
27 A AND STOOD THERE (INDICATING), LOOKING
28 THROUGH THE GLASS DOORS UNTIL I SAW HIM APPROACH THE TOP OF THE
29 STAIRS.
30 Q ALL RIGHT.
31 A INSIDE THE ELEVATOR WELL THERE'S AN
32 ELEVATOR ON THIS SIDE OF THE WELL (INDICATING).

Q ON THE NORTH SIDE?

A ON THE -- ON THE NORTH-WEST SIDE.

Q O.K.

A OF THE ELEVATOR WELL.

ON THE NORTH-EAST SIDE THERE'S A STAIRWELL IN HERE (INDICATING) FOR MERCHANDISE PURPOSES OR WHATEVER.

AND AS SOON AS I SAW HIM TAKE THE FIRST STEP DOWN THE STAIRS, I RAN DOWN THE STAIRS ON THE SIDE. THERE'S A SERIES OF STAIRS HERE (INDICATING), AND I RAN DOWN THOSE TO GET TO THE BOTTOM FLOOR SO THAT I WOULDN'T HAVE TO FOLLOW DIRECTLY BEHIND HIM.

Q ALL RIGHT.

LET'S SEE NOW IF WE CAN JUST, WITHOUT TAKING THE PAPER OFF, IF WE CAN TURN IT OVER.

FOR THE RECORD, WE HAVE BEEN REFERRING, ALL THE TIME, TO STATE'S PROPOSED 47.

FOR THE RECORD, I HAVE JUST TORN OFF A PLAIN, MARKED UP SHEET.

NOW, ON THIS NEXT SHEET OF PAPER, WHICH WILL BE REFERRED TO AS STATE'S PROPOSED EXHIBIT 48, WOULD YOU DRAW A DIAGRAM OF THE DOWNSTAIRS PORTION OF SEARS, SHOWING ALL OF THOSE AREAS THAT YOU AND THE DEFENDANT WERE IN.

A O.K.

THAT'S THE BASIC FLOOR PLAN, WITHOUT ANY DETAILS.

Q WOULD YOU DESCRIBE FOR THE JURY, WITH THE POINTER, WHAT YOU'VE DRAWN.

FIRST OF ALL, LET'S DO WHAT WE DID ON THE LAST ONE. SHOW US THE NORTH, IF YOU WOULD.

A O.K. (INDICATING).

Q O.K.

A NORTH RUNS TO THE RIGHT.

O.K. WHAT THIS IS, THIS IS THE BASEMENT FLOOR OF SEARS AT THE BOULEVARD MALL. THIS REPRESENTS THE STAIRS THAT THE DEFENDANT CAME DOWN (INDICATING). THIS IS THE ESCALATOR AT THE OTHER END (INDICATING). THIS IN HERE IS THE CUSTOMER CONVENIENCE AND CASHIER'S CAGE AREA (INDICATING).

AS I SAID PREVIOUSLY, THINGS HAVE BEEN TOTALLY CHANGED IN THERE NOW. THEY DON'T LOOK ANYTHING LIKE THEY DID THEN.

Q BOTH UPSTAIRS AND DOWN?

A THEY'VE REMODELED EXTENSIVELY.

THE BASIC AREA IS THE SAME HERE (INDICATING), BUT THERE IS NO LONGER ANY PLEXIGLASS SHIELDING OVER HERE BY THE CASHIER'S CAGE OR ANYTHING LIKE THAT (INDICATING).

Q ALL RIGHT.

A AND THIS AREA IN HERE (INDICATING), NOW HAS A PHOTO SHOP IN IT, BUT AT THAT TIME IT WAS JUST EMPTY AND LED BACK TO A BACKROOM, A BACK OFFICE AREA, WHICH HAS NOW BEEN TOTALLY REMODELED AND REVAMPED. SO IT DOESN'T LOOK LIKE THAT ANYMORE.

THIS HERE WILL REPRESENT DOUBLE DOORS WHEN I GOT TO THAT POINT (INDICATING).

Q O.K.

AND WHAT IS THE ROOM DOWN HERE (INDICATING)?

A THIS WILL BE THE SECURITY OFFICE.

Q THAT'S THE SECURITY OFFICE?

A THIS ALL BACK AROUND IN THIS AREA, ALL AROUND HERE (INDICATING), IS ALL STOCKROOM AREA.

Q AND WHERE IS THE ELEVATOR WELL?

A THE ELEVATOR WELL WOULD BE RIGHT HERE (INDICATING).

Q ALL RIGHT.

LET'S START WITH THAT AND MARK THAT "E.L." IF YOU WOULD, PLEASE.

A (INDICATING).

Q AND IF YOU WOULD PLEASE PUT A "S.T." BY THE STAIRS THAT THE DEFENDANT CAME DOWN.

A (INDICATING).

Q LET'S PUT A "C.C." WHERE THE CASHIER'S CAGE IS.

A O.K.

THIS IS THE CASHIER CAGE HERE AT THIS END; AND THIS IS THE CUSTOMER CONVENIENCE AREA IN HERE (INDICATING).

Q DOES THE CASHIER'S CAGE HAVE A WINDOW?

A IT DID AT THE TIME.

Q WOULD YOU MARK WITH A HEAVIER BLACK LINE, WHERE THAT WINDOW WAS, WHERE THEY TRANSACTED BUSINESS?

A IT APPROXIMATELY WAS ALONG LIKE THIS (INDICATING). AND THEY HAD APPROXIMATELY, I BELIEVE TO THE BEST OF MY RECOLLECTION, FOUR OPENINGS IN THERE THAT YOU COULD GO TO. THERE WAS ONLY ONE CASHIER ON AT THE TIME THOUGH.

Q THE RECORD SHOULD REFLECT A DOUBLE LINE IMMEDIATELY ABOVE "C.C." REFLECTS WHERE THE WINDOW WAS; IS THAT CORRECT?

A UH-HUH.

Q AND LET'S PUT "E.S.C." OUT TO THE SIDE WHERE THE ESCALATORS ARE, JUST SO WE'RE AWARE OF THAT.

A (INDICATING).

Q AND WHAT WAS THE ROOM DOWN HERE CALLED?

A THIS WAS THE SECURITY OFFICE.

Q JUST BELOW IT, RATHER THAN INSIDE OF IT, IF YOU'D WRITE "SEC OFF".

A IT GOES INTO THE SECURITY OFFICE REPRESENTED BY THE DOOR, WHICH IS WHERE THE SERVICE SOURCE OFFICE IS, WHICH REALLY DIDN'T HAVE ANY BEARING ON ANYTHING. IT WAS CLOSED OFF AT THE TIME, BECAUSE THE DOOR WAS CLOSED AND LOCKED.

Q WERE THERE DESKS IN THE SECURITY OFFICE?

A YES, THERE WERE.

Q WOULD YOU INDICATE THOSE WITH THE RECTANGLES?

A YES. (INDICATING).

AND THERE MAY HAVE POSSIBLY BEEN ANOTHER ONE AT THE TIME, BUT I DON'T RECALL.

Q O.K.

A I JUST KNOW THOSE TWO FOR SURE WERE THERE

Q AND WERE THERE A ROW OF CHAIRS IN THE SECURITY OFFICE?

A YES.

Q AND WHERE WOULD THEY BE?

A THEY WERE ALONG THIS WALL RIGHT HERE (INDICATING).

Q WOULD YOU REPRESENT THEM AS BEST AS YOU CAN AT THAT POINT.

A (INDICATING).

Q THE RECORD SHOULD REFLECT THAT THE CHAIRS ARE REPRESENTED BY A RECTANGULAR BOX THAT IS DIVIDED INTO FIVE PARTS. THEY WERE STANDARD CHAIRS WITH NO ARMS OR ANYTHING ON THEM, JUST PLACED TOGETHER.

WERE THEY FOLDING CHAIRS?

A NO. THEY WERE SOLID OFFICE CHAIRS, STEEL I BELIEVE. THE TYPICAL GOVERNMENT GREEN CHAIR.

Q ALL RIGHT.

WOULD YOU INDICATE WITH A -- WHAT WAS THE LAST "S.H." THAT YOU USED? -- WITH A "S.H.6" WHERE IT WAS

THAT YOU SAW THE DEFENDANT FOR THE FIRST TIME DOWN IN THE BASEMENT, WHICH IS REPRESENTED IN STATE'S PROPOSED EXHIBIT 48?

A I BELIEVE HE WAS RIGHT HERE, JUST TOWARDS THE BOTTOM SET OF STEPS HERE (INDICATING).

Q THAT'S "S.H.6".

A YES, SIX.

Q AND WOULD YOU DESIGNATE WITH A "K.K.6" WHERE YOU WERE WHEN YOU SAW HIM AT THAT POINT.

A O.K.

I HAD COME DOWN THE STAIRS AND COME OUT THE DOOR. THERE WAS A SERIES OF SHELVING UNITS AND THINGS BACK HERE (INDICATING), BECAUSE THEY STILL HAD THE TOY SECTION DOWN HERE. THEY NO LONGER HAVE IT THERE.

Q THAT'S THE AREA YOU ARE REFERRING TO BETWEEN THE ELEVATOR WELLS AND THE STAIRS?

A AND THE STAIRS.

THERE WERE SHELVES AND STUFF WHERE I COULD STEP OUT WITHOUT BEING OBSERVED. AND I WAS HERE (INDICATING) IN -- IT'S "K.K." WHAT?

Q "K.K.6".

A AND I WAS AT THAT POINT BEHIND THE SHELF IN THE GENERAL VICINITY WHERE I COULD LOOK OVER THE TOP CASUALLY AND SEE HIM DOWN THE STAIRS.

Q WITH A DOTTED LINE FROM "S.H.6" WOULD YOU INDICATE THE DIRECTION THAT THE DEFENDANT WENT UNTIL HIS NEXT STOP, AND THEN THERE PUT A "S.H.7".

A O.K.

HE WENT IN A NORTHERLY DIRECTION TO THE CASHIER'S CAGE AND HE STOPPED APPROXIMATELY HERE (INDICATING). I BELIEVE IT WAS AT THE FIRST WINDOW, IT MIGHT HAVE BEEN THE SECOND BUT I THINK IT WAS THE FIRST WINDOW. AND HE HAD TO STAND IN LINE BEHIND I BELIEVE IT WAS ANOTHER LADY. THERE

WAS ANOTHER LADY IN FRONT OF HIM.

Q AND DID YOU STAND AT "K.K.6"?

A NO.

Q WHERE DID YOU MOVE TO? WOULD YOU, DRAW A LINE IF YOU WOULD PLEASE.

A AS HE MOVED ACROSS THE FLOOR, I WANDERED IN THE SAME GENERAL VICINITY OVER THIS WAY BEHIND THE SHELVES AND MERCHANDISE (INDICATING), KEEPING HIM IN VISION AT ALL TIMES. AND I DON'T RECALL WHAT SHELVING UNIT I STOOD BEHIND BACK HERE (INDICATING), BECAUSE AS I SAID I DON'T FULLY RECALL THE LAYOUT. I WAS WATCHING HIM, BUT SOMEWHERE IN THIS VICINITY AS I WAS ALMOST BEHIND HIM.

Q AND YOU HAVE MARKED THAT WITH A "K.K.7". YOU WERE ABLE TO HAVE HIM IN YOUR FULL VIEW AT THAT TIME?

A YES.

Q BUT THERE WERE SHELVES AND OTHER THINGS IN BETWEEN?

A THERE WERE SHELVES AND MERCHANDISE. THEY NOW HAVE A BEAUTY SHOP HERE (INDICATING) WHICH WASN'T THERE AT THAT TIME.

Q BUT AT THAT TIME THERE WERE SHELVES BETWEEN "K.K.7" AND "S.H.7"?

A YES, SHELVES AND MERCHANDISE.

Q AND DID YOU STAY AT "K.K.7" WHILE HE TRANSACTED HIS BUSINESS AT THE CAGE?

A BASICALLY YES. AT THAT POINT IS WHERE I RADIOED FOR ASSISTANCE.

Q YOU RADIOED FOR ASSISTANCE WHILE YOU WERE AT "K.K.7"?

A RIGHT. WHILE HE WAS CONCENTRATING ON

GETTING IN LINE AND LOOK FORWARD, I RADIOED FOR ASSISTANCE.

Q AND WHO MOVED NEXT?

A HE MOVED UP IN LINE TO GET HIS MONEY.

Q AFTER HE RECEIVED HIS MONEY FROM THE CASHIER?

A O.K.

WHILE HE WAS RECEIVING HIS MONEY FROM THE CASHIER, I WAS MOVING IN A GENERAL WAY TOWARDS THE AREA WHERE HE WAS TO GET BETWEEN THE LINE OF DIRECTION HE WOULD HAVE TO GO FROM THERE TO THE ESCALATOR TO KIND OF COME BETWEEN HIM AND THAT.

Q AND DID YOU INTERSECT AT THAT POINT AFTER HE HAD LEFT?

A I INTERSECTED AT A POINT APPROXIMATELY I'D SAY 25 FEET OR SO FROM THE CASHIER'S CAGE WHERE HE GOT HIS MONEY.

HE CAME UP AND GOT HIS MONEY AND TURNED TO HIS LEFT AND STARTED TO WALK TOWARDS THE ESCALATOR.

Q WOULD YOU DRAW LINES REPRESENTING EACH OF YOUR MOVEMENTS TO THE POINT OF INTERSECTION WHERE YOU FIRST TAPPED HIM ON THE SHOULDER AND THEN REPRESENT THAT WITH A "S.H./K.K.8".

A O.K.

I -- I WALKED, AS I SAID, ALONG MERCHANDISE TO KEEP LOOKING AT IT AND TRIED TO STAY BEHIND HIM, OUT OF HIS FIELD OF VIEW, BECAUSE WHEN I DEALT WITH PEOPLE AT THAT POINT IF THEY SEE YOU COMING AFTER THEM THEY WILL TAKE OFF AND RUN. I DIDN'T WANT HIM TO SUSPECT ANYTHING UNTIL I HAD AHOLD OF HIM.

AND AT THIS POINT HERE (INDICATING) -- SHOULD I PUT A NUMBER IN THERE?

Q JUST PUT AN EIGHT.

A AN EIGHT?

Q AN EIGHT TO BE CONSISTENT.

A AT THIS POINT IS WHERE I APPROACHED THE DEFENDANT (INDICATING).

Q AND AT THAT POINT HOW DID YOU APPROACH HIM?

A I APPROACHED HIM FROM HIS LEFT AND FROM BEHIND HIM. AND I REACHED OUT WITH MY RIGHT HAND. I ALREADY HAD MY IDENTIFICATION OUT IN MY LEFT HAND.

I APPROACHED HIM FROM HIS LEFT SIDE AND SLIGHTLY TO THE REAR AND I GRASPED HIM JUST ABOVE THE ELBOW WITH MY RIGHT HAND. AND AT THE SAME TIME I GRASPED HIM ABOVE THE ELBOW WITH MY RIGHT HAND, I TOOK MY LEFT HAND WITH THE BADGE OPEN AND VISIBLE AND PUT IT APPROXIMATELY EIGHT INCHES TO A FOOT IN FRONT OF HIS FACE AND IDENTIFIED MYSELF AS BEING THE SEARS SECURITY AND WOULD HE COME WITH ME.

Q AND WAS IT AT THIS POINT THAT TOM MAJORS CAME ON THE SCENE?

A NO, NOT AT THIS POINT.

Q WHAT HAPPENED WITH THE TWO OF YOU?

A AS I STATED PREVIOUSLY, HE ASKED ME WHAT WAS THE REASON. YOU KNOW, WHAT WAS I STOPPING HIM FOR.

Q THE DEFENDANT ASKED YOU THIS?

A THE DEFENDANT DID.

AND I SAID, WELL, I'D RATHER DISCUSS THAT IN THE OFFICE.

AND HE ARGUED WITH ME, SAYING, YOU KNOW, WHAT HAVE I DONE? YOU KNOW, WHY ARE YOU STOPPING ME?

AND I SAID, WELL, I'D LIKE TO DISCUSS THE SANDER, OR SOMETHING TO THAT EFFECT, THAT YOU RETURNED UPSTAIRS.

AND HE SAID, WELL, I GOT THAT AS A

GIFT FROM MY WIFE.

AND I SAID, WELL, I WATCHED YOU PICK IT UP AND I'D LIKE YOU TO COME WITH ME.

AND HE BECAME LOUDER, SAYING HE HADN'T DONE ANYTHING. AND HE SAID, WHAT ARE YOU STOPPING ME FOR?

AND I SAID, WELL, I'M ARRESTING YOU FOR FRAUD. BECAUSE I DIDN'T -- I -- I JUST SAID IT SHORT SO WE COULD GET IN THERE AND GET IT TAKEN CARE OF.

AND HE SAID THAT I DIDN'T COMMIT NO FRAUD AND YOU'RE STOPPING ME --

MR. FRANZEN: YOUR HONOR, THIS IS ALL TESTIMONY THAT WAS GONE OVER THIS MORNING. I'VE HEARD NOTHING NEW. WE'VE SPENT THE LAST 45 MINUTES ON SOMETHING WE HEARD THIS MORNING 45 MINUTES OF. I'M GOING TO HAVE TO OBJECT TO THE CUMULATIVE NATURE, THE REPETITIOUSNESS OF THIS. THERE'S NO NEED FOR IT. I THINK THE MATTER IS CAUSING AN UNDUE DELAY IN THE PROCEEDINGS.

MR. SEATON: WELL, YOUR HONOR, MY RESPONSE IS THAT I THINK THAT WHILE THE TESTIMONY THAT THE WITNESS IS GIVING RIGHT NOW MAY BE SOMEWHAT CUMULATIVE, AND I DO WANT TO MOVE THROUGH IT, WHAT HE HAS DESCRIBED AS STATE'S PROPOSED EXHIBITS 47 AND 48 IS EXTREMELY IMPORTANT TO THE JURY'S FULL UNDERSTANDING OF THE MOTIONS AND RELATIONSHIPS OF ALL THE PARTIES.

THE COURT: COUNSEL, IT IS CUMULATIVE. HE HAS ALREADY TESTIFIED OT IT. THE ONLY ADDITIONAL THING THAT YOU ARE ADDING IS THE DIAGRAM, WHICH COULD HAVE BEEN DONE ALL AT ONE TIME. AND I DON'T KNOW WHY YOU ARE DOING IT SEPARATELY AS YOU HAVE IN THIS PARTICULAR CASE.

I WOULD SUGGEST TO YOU TO RAPIDLY CONCLUDE THIS PHASE OF THE TESTIMONY. IT IS CUMULATIVE.

YOUR OBJECTION IS SUSTAINED.

MR. SEATON: THAT'S FINE, YOUR HONOR. THANK YOU.

MR. FRANZEN: THANK YOU, YOUR HONOR.

BY MR. SEATON:

Q WOULD YOU SHOW WITH A DOTTED RED LINE THE PATH THAT THE TWO OF YOU TOOK UNTIL THE TIME THAT TOM MAJORS CAME UPON THE SCENE.

A O.K.

WE DIDN'T TRAVEL VERY FAR TOWARDS THE OFFICE. I WAS TRYING TO MAKE -- GET HIM TO GO THIS WAY (INDICATING).

WE ONLY WENT A FEW STEPS, ARGUING AND DISCUSSING ALL THE WAY ALONG, WHEN TOM MAJORS CAME FROM THIS DIRECTION SOMEWHERE (INDICATING). I DIDN'T SEE WHERE, BUT HE JUST WAS THERE.

Q LET'S PUT A "T.M." AT THE POINT WHERE TOM MAJORS CAME UPON YOU AND THE DEFENDANT.

A O.K.

SO THAT WOULD BE "T.M." RIGHT THERE, APPROXIMATELY THERE (INDICATING).

Q AND WOULD YOU THEN SHOW US WITH A DOTTED LINE, THE DIRECTION THAT THE THREE OF YOU WENT UNTIL THE TIME THAT MR. SCHIEFEISTEIN CAME ON THE SCENE.

A O.K.

WE TOOK A PATH THROUGH HERE AND WERE JUST ABOUT THROUGH THE DOUBLE DOORS THAT I'VE DESCRIBED BEFORE WHEN SCHIEFEISTEIN CAME FROM THIS DIRECTION AND MET US THERE (INDICATING).

Q WHERE YOU'VE JUST PUT A "D.S."?

A RIGHT.

Q NOW, WHERE YOU PUT A "D.S." THAT'S PRECISELY -- IS THAT WHERE THE DOUBLE DOORS ARE, THAT ENTRY?

A RIGHT AT THE DOUBLE DOORS.

THE DOUBLE DOORS WERE OPEN AND HELD BACK

AT THE TIME.

Q ALL RIGHT.

NOW, WOULD YOU SHOW US THE PATH THAT THE FOUR OF YOU TOOK?

A WE THEN MOVED HERE (INDICATING), AND PROCEEDED WITH ANOTHER VERBAL ARGUMENT AGAINST THIS WALL WITH THE DEFENDANT BACKED UP AGAINST THE WALL, AND WOULD NOT GO INTO THE OFFICE.

AND AT THIS TIME, DELANE SCHIEFEISTEIN CLOSED THE DOORS.

Q THE DOUBLE DOORS?

A THE DOUBLE DOORS.

AND WE WERE DISCUSSING TRYING TO GET HIM IN THE OFFICE. WE WERE TRYING TO BE CONCILIATORY TO HIM, AND FINALLY GOT -- HE FINALLY TALKED --

THE COURT: COUNSEL?

MR. SEATON: YES. I WAS JUST --

THE COURT: COUNSEL, THIS IS ENTIRELY CUMULATIVE. I'VE SUSTAINED THE OBJECTION. I WAS TRYING TO LET YOU GET IT OUT. I SEE THAT YOU --

MR. SEATON: WELL, I WAS JUST ABOUT --

THE COURT: APPARENTLY YOU WANT TO GO BACK THROUGH IT AGAIN.

THE OBJECTION IS SUSTAINED.

SIR, COME BACK AND BE SEATED.

DEFENDANT HOWARD: EXCUSE ME, YOUR HONOR. MAY I TAKE THE WITNESS STAND?

THE COURT: NOT AT THIS TIME. THERE WILL BE A RIGHT TIME FOR YOU TO DO SO MUCH LATER.

DEFENDANT HOWARD: O.K. THANK YOU.

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BY MR. SEATON:

Q CALLING YOUR ATTENTION TO MARCH THE 29TH, 1980, AT APPROXIMATELY 9:00 P.M., DID YOU HAVE AN OPPORTUNITY TO GO TO THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND MEET WITH DETECTIVE AL LEAVITT?

A YES, SIR, I DID.

Q AND WHAT WAS THE PURPOSE OF THAT MEETING?

A IT WAS THE PURPOSE TO CLARIFY ANY MATTERS INVOLVING THE ROBBERY AT SEARS, AND TO LOOK AT -- HE WANTED ME TO LOOK AT SOME PHOTOS.

Q AND DID YOU IN FACT LOOK AT PHOTOS?

A YES, SIR, I DID.

Q I WOULD LIKE NOW TO SHOW YOU -- MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YOU MAY.

BY MR. SEATON:

Q (CONTINUING) -- WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBITS 26A THROUGH AND INCLUDING 26G. WOULD YOU EXAMINE EACH OF THOSE EXHIBITS. AFTER YOU ARE THROUGH EXAMINING THEM, WOULD YOU TELL US IF YOU RECOGNIZE THOSE EXHIBITS.

A YES, SIR. I DO.

Q AND WOULD YOU TELL US WHAT THEY ARE?

A THEY ARE THE PHOTOS THAT WERE -- THAT THE METRO OFFICER HAD SHOWN ME THAT NIGHT WHEN WE HAD OUR MEETING.

Q AND CAN YOU TELL ME HOW HE SHOWED THEM TO YOU?

A WELL, HE FIRST DESCRIBED TO ME WHAT -- WHAT IT WAS HE WAS SHOWING ME, SHOWING ME A SERIES OF PHOTOGRAPHS. AND HE -- HE LAID THEM ON THE TABLE IN FRONT OF ME ONE AT A TIME

AND TOLD ME TO LOOK AT THEM CAREFULLY AND SEE IF ANY OF THEM LOOKED LIKE THE PERSON WHO ROBBED ME IN SEARS.

Q AND DID YOU DO THAT?

A YES, SIR, I DID.

Q AND FOR HOW LONG A PERIOD DID YOU LOOK AT STATE'S PROPOSED EXHIBITS A THROUGH -- LET ME SEE THE BACK OF IT -- 26A THROUGH G.

A APPROXIMATELY A MINUTE TO A MINUTE AND A HALF, I'D SAY, TO THE BEST OF MY KNOWLEDGE, MY RECOLLECTION. IT WASN'T VERY LONG.

Q AND WERE YOU ABLE TO IDENTIFY ANYONE?

A YES, SIR.

Q AND ARE YOU ABLE TO IDENTIFY THAT PERSON NOW?

A YES, SIR.

Q COULD YOU FIND THAT PHOTOGRAPH FOR US?

A IT'S PHOTOGRAPH NUMBER FIVE.

Q DID YOU SIGN THE BACK OF THAT PHOTOGRAPH, DO YOU RECALL?

A YES, SIR. TO THE BEST OF MY RECOLLECTION I DID.

Q WOULD YOU TAKE A LOOK AT THE BACK OF THE PHOTOGRAPH AND SEE IF YOUR SIGNATURE IS ON THERE.

A YES, SIR, IT IS.

Q IS THERE A DATE WITH IT?

A THREE - TWENTY NINE OF '80; AND IT SAYS 9:00 O'CLOCK.

Q THANK YOU.

IF YOU'D LOOK AT THEM AGAIN, DO STATE'S PROPOSED EXHIBITS 26A THROUGH 26G APPEAR TO BE IN THE SAME CONDITION TODAY AS THEY WERE WHEN YOU OBSERVED THEM ON MARCH THE 29TH, 1980, IN THE POLICE DEPARTMENT?

A TO THE BEST OF MY KNOWLEDGE, THEY DON'T LOOK

ANY DIFFERENT.

Q THANK YOU.

LET ME SHOW YOU NOW, MR. KINSEY, WHAT'S BEEN MARKED AS STATE'S PROPOSED EXHIBIT NUMBER 24B. I'D ASK YOU TO LOOK AT THAT AND TELL US IF YOU ARE ABLE TO IDENTIFY IT.

A IT -- IT APPEARS TO LOOK LIKE -- IT LOOKS LIKE THE RADIO I CARRIED -- CARRIED THAT DAY.

SEARS AT THE TIME DID NOT ENGRAVE THEIR RADIOS. BUT TO THE BEST OF MY RECOLLECTION IT LOOKS JUST LIKE THE RADIO I HAD THAT DAY.

Q WERE THERE NO IDENTIFYING MARKS ON IT THAT YOU WERE AWARE OF AT THAT TIME?

A OTHER THAN THE MODEL NUMBER, NO.

SINCE THAT TIME THEY HAVE ETCHED THE RADIOS. BUT AT THIS TIME THERE WERE NO ETCHINGS ON IT AT ALL.

Q AND WHO WAS THE OWNER OF THAT RADIO, IF YOU KNOW?

A SEARS ROEBUCK AND COMPANY.

Q AND HOW WAS IT IN YOUR POSSESSION?

A IT WAS GIVEN TO ME EACH DAY ON MY SHIFT TO USE IN MY WORK.

Q AND WHEN WAS THE LAST TIME YOU HAD THAT PARTICULAR RADIO IN YOUR POSSESSION?

MR. FRANZEN: YOUR HONOR, I'M GOING TO OBJECT. THE WITNESS HAS BEEN UNABLE TO IDENTIFY THIS AS HIS RADIO. THE PHRASEOLOGY THAT WHEN DID YOU LAST HAVE THIS RADIO IN YOUR POSSESSION --

THE COURT: OVERRULED. HE SAYS IT LOOKS LIKE HIS RADIO.

PROCEED.

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MR. SEATON:

Q YOU MAY ANSWER THE QUESTION.

A THE LAST TIME I HAD IT WAS ON MARCH THE 26TH OF 1980 AT APPROXIMATELY 12:30.

Q THANK YOU.

NOW, I WOULD ASK YOU TO EXAMINE WHAT HAS BEEN MARKED FOR PURPOSES OF IDENTIFICATION AS STATE'S PROPOSED EXHIBIT 24A, AND TELL ME IF YOU ARE ABLE TO IDENTIFY THAT?

A IT'S THE WALLET AND SEARS IDENTIFICATION BADGE THAT I WAS CARRYING THAT PARTICULAR DAY.

Q NOW, IS THERE ANYTHING UNIQUE ABOUT THIS PARTICULAR BADGE THAT MAKES YOU SURE THAT IT WAS THE SAME BADGE?

A YES. TWO THINGS THAT MAKE IT UNIQUE: FIRST OF ALL, IT SAYS "SERGEANT" ON IT, WHICH DION'T HAVE ANY MEANING TO MY POSITION IN THE ORGANIZATION, BUT THERE IS A NUMBER AT THE BOTTOM POINT OF THE STAR THAT SAYS 1328, THAT IS THE STORE NUMBER OF THE SEARS THAT I WORK AT AT THAT TIME; AND THIS WAS THE ONLY SERGEANT'S BADGE LIKE THIS.

Q WHAT DID THE OTHER BADGES SAY ON THEM, IF YOU KNOW.

A THE OTHER BADGES THAT WERE OF THIS PARTICULAR DESIGN, THERE WERE TWO OTHERS TO MY KNOWLEDGE AT THE TIME THAT WERE IN EXISTENCE. ONE SAID "LIEUTENANT" ON IT, AGAIN WITH 1328 AT THE BOTTOM; AND THE OTHER ONE SAID "CHIEF", WHICH WAS CARRIED BY MY SUPERVISOR. THE OTHER BADGES WE CARRIED WERE JUST A SILVER SHIELD, LIKE SOME OF THE OTHER POLICE DEPARTMENTS CARRY. IT WASN'T A STAR.

Q WAS THERE ANYTHING ELSE IN THE WALLET THAT YOU WERE CARRYING AT THAT TIME?

A WELL, THE TRESSPASS WARNING THAT IS IN HERE IS ROUTINELY CARRIED IN MY WALLET SO THAT WE CAN READ IT TO PEOPLE

THAT WE WISH TO HAVE LEAVE THE PREMISES OR PEOPLE THAT WE'VE APPREHENDED THAT WE DON'T WANT TO COME BACK TO THE STORE.

AND THERE WAS ALSO AT THE TIME AN IDENTIFICATION CARD IN THERE. IT WAS WHITE I BELIEVE WITH BLUE PRINTING ON IT. IT IDENTIFIED ME AS A MEMBER OF SEARS ROEBUCK AND COMPANY. I HAD MY SIGNATURE ON IT. AND I BELIEVE IT WAS THE CHIEF OF SECURITY'S SIGNATURE AT THE TIME FRANK CARTIERE WAS ALSO IN THE WALLET. IT IS NO LONGER IN HERE THAT I CAN SEE.

Q WAS THE NAME KEITH KINSEY ON THERE ONLY AS A SIGNATURE?

A IT WAS ON THERE AS A SIGNATURE AND IT WAS TYPED ON IN A LINE IDENTIFYING ME AS A REPRESENTATIVE OF SEARS ROEBUCK AND COMPANY.

Q I SEE.

AND WHO OWNED STATE'S PROPOSED EXHIBIT 24A?

A SEARS ROEBUCK AND COMPANY.

Q AND HOW DID YOU HAPPEN TO HAVE IT IN YOUR POSSESSION?

A IT WAS GIVEN TO ME BY MY SUPERVISOR TO CARRY FOR IDENTIFICATION PURPOSES.

Q AND WHEN WAS THE LAST TIME THAT YOU SAW OR HAD STATE'S PROPOSED EXHIBIT 24B, THE WALLET, IN YOUR POSSESSION?

A ON MARCH 26TH, 1980, AT APPROXIMATELY 12:30 P.M.

Q NOW, LET ME SHOW YOU STATE'S PROPOSED EXHIBIT 25A. I ASK YOU TO LOOK AT IT AND TELL ME IF YOU CAN IDENTIFY IT.

A WELL, I HAVE A HOLSTER HERE THAT -- WHICH WOULD HOLD A REVOLVER OR A PISTOL OF SOME KIND. FROM APPEARANCES IT COULD BE THE ONE THAT WAS CARRIED BY THE DEFENDANT THAT DAY. I COULD NOT SAY EXACTLY THAT IT WAS BECAUSE THEY MAKE MANY HOLSTERS LIKE THIS, BUT IT LOOKS LIKE IT.

Q O.K.

LET ME NOW SHOW YOU WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 31B. I ASK YOU TO TELL ME IF YOU CAN RECOGNIZE THAT PARTICULAR OBJECT.

A IT'S A REVOLVER WITH A 2-INCH BARREL. IT APPEARS TO BE A .357 MAGNUM PISTOL.

MR. FRANZEN: YOUR HONOR, I AM GOING TO OBJECT TO TESTIMONY ABOUT EXHIBITS THAT HAVE NOT YET BEEN ADMITTED INTO EVIDENCE.

THE COURT: WELL, I THINK BY ITS SIZE ALONE AND LOOKING AT THE EXTERIOR OF IT HE CAN ARRIVE AT THAT CONCLUSION, COUNSEL. HE'S NOT STATING ANYTHING OTHER THAN GENERALLY IDENTIFYING. I FIND NO PROBLEM IN THAT.

THE OBJECTION IS OVERRULED.

MR. SEATON: THANK YOU, YOUR HONOR.

THE WITNESS: TO THE BEST OF MY RECOLLECTION, IT ALSO COULD BE THE WEAPON THAT THE INDIVIDUAL WAS CARRYING.

THERE ARE MANY WEAPONS LIKE THIS. AND ALL I SAW OF IT BASICALLY WAS AFTER HE REMOVED THE HOLSTER HE WAS HOLDING IT IN HIS HAND OF COURSE AND ALL I COULD SEE WAS THE PORTION THAT GOES FROM HERE FORWARD (INDICATING).

BY MR. SEATON:

Q WOULD YOU --

I SEE THAT YOU HAVE BROKEN THE CYLINDER OUT. WOULD YOU CHECK THE WEAPON TO MAKE SURE THAT IT'S NOT LOADED.

A IT'S EMPTY.

Q THANK YOU.

AND IF YOU WOULD CLOSE IT BACK UP AGAIN.

WHAT IS THE DIFFERENCE BETWEEN A REVOLVER

AND AN AUTOMATIC PISTOL, IF YOU KNOW.

A WELL, A REVOLVER HAS A CYLINDER IN IT THAT ROTATES THE BULLETS INTO A FIRING POSITION. AN AUTOMATIC --

THE COURT: STOP POINTING THAT AT THE JURORS.

THE WITNESS: O.K. I'M SORRY.

BY MR. SEATON:

Q HOLD IT DOWN.

A I'M SORRY.

Q LET'S LEAVE IT RIGHT HERE.

A O.K.

Q THANK YOU.

A AN AUTOMATIC HAS THE BULLETS FED INTO THE WEAPON CHAMBER BY THE MEANS OF A CLIP-TYPE ASSEMBLY THAT IS USUALLY LOCATED IN THE HANDLE OF THE WEAPON, AND IT FEEDS THE BULLETS INTO THE WEAPON AND EJECTS THE SHELLS AFTERWARDS.

Q AND WHAT IS THIS PARTICULAR KIND OF A WEAPON THAT IS STATE'S 31B?

A IT IS A REVOLVER.

Q A REVOLVER.

AND WERE YOU ABLE ON MARCH THE 27TH, 1980, TO DETERMINE WHETHER OR NOT THE WEAPON THAT THE DEFENDANT WAS HOLDING IN HIS HAND AND POINTING AT YOU WAS LOADED?

A YES, SIR, I DID.

Q HOW WERE YOU ABLE TO DETERMINE THAT?

A WHEN HE POINTED IT IN MY DIRECTION, THE FIRST THING I LOOKED AT AFTER HE PULLED THE HOLSTER OFF THE WEAPON WAS TO SEE THAT IT APPEARED TO BE REAL AND TO SEE THAT IT WAS LOADED. IN A REVOLVER YOU CAN GENERALLY TELL ITS LOADED BY LOOKING IN THE ENDS OF THE CHAMBERS AND YOU CAN SEE THE HEADS OF THE BULLETS THROUGH IT.

Q THANK YOU.

THE COURT: WHAT'S THE REVOLVER NUMBER, PLEASE.

MR. SEATON: THE REVOLVER NUMBER IS 31B, YOUR HONOR.

THE COURT: PROCEED.

BY MR. SEATON:

Q I WOULD LIKE TO SHOW YOU NOW WHAT'S BEEN MARKED AS STATE'S PROPOSED EXHIBIT 40.

BEFORE I DO THAT, I WOULD LIKE TO SHOW IT TO OPPOSING COUNSEL, AND INDICATE FOR THE RECORD THAT IT APPEARS TO BE PRESENTLY INTACT AND IT IS FURTHER IN EVIDENCE AND IT WAS FURTHER IN EVIDENCE OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT, IN THE EVIDENCE VAULT OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT.

NOW, I SHOW YOU STATE'S PROPOSED EXHIBIT 48. ARE YOU ABLE TO IDENTIFY THAT OBJECT AT ALL?

A NO, OTHER THAN IT'S AN ENVELOPE.

Q WOULD YOU TAKE THE SCISSORS, PLEASE, AND CUT THE BOTTOM PORTION OF THE ENVELOPE SO THAT WE CAN REMOVE THE CONTENTS.

THE COURT: HOLD ON JUST A MINUTE. LET ME TAKE THAT.

I WOULD SPLIT IT ALONG THIS SIDE HERE (INDICATING) SO THAT YOU DON'T INTERRUPT THE EVIDENCE SEAL THERE.

MR. SEATON: THANK YOU, YOUR HONOR.

THE COURT: JUST TAKE THE POINT OF THE SCISSORS AND JUST CUT IT UP THAT SIDE.

MR. FRANZEN: YOUR HONOR, WE MISSED THE NUMBER OF THAT EXHIBIT.

THE COURT: WHAT'S THE NUMBER, COUNSEL?

MR. SEATON: THAT IS 40A.

BY MR. SEATON:

Q AND IF YOU WOULD, WITHDRAW THE ITEM THAT IS CONTAINED IN STATE'S PROPOSED EXHIBIT 40A AND PLEASE DESCRIBE IT, IF YOU WOULD.

A IT APPEARS TO BE A GOLD I.D. BRACELET, GOLD COLORED IDENTIFICATION-TYPE BRACELET.

MR. SEATON: COULD WE HAVE THIS MARKED AS STATE'S PROPOSED EXHIBIT 40A?

I WAS MISTAKEN ON THAT. I THINK THE PROPER IDENTIFICATION NUMBER FOR THE ENVELOPE WAS 40. THE IDENTIFICATION NUMBER FOR THE BRACELET WILL BE 40A.

THE COURT: ALL RIGHT.

BY MR. SEATON:

Q SHOWING YOU NOW WHAT HAS BEEN MARKED FOR PURPOSES OF IDENTIFICATION AS STATE'S PROPOSED EXHIBIT 40A, WHICH YOU'VE IDENTIFIED AS AN I.D. BRACELET, ARE YOU ABLE TO RECOGNIZE THAT PARTICULAR I.D. BRACELET?

A POSITIVELY, NO.

IT COULD BE THE BRACELET THAT I KNOCKED OFF HIS WRIST. I REALLY DON'T RECALL.

MR. SEATON: THANK YOU.

I WOULD LIKE THE RECORD TO REFLECT THAT I AM ABOUT TO SHOW THE WITNESS STATE'S PROPOSED EXHIBIT 44 AND THAT IT IS PRESENTLY INTACT. COUNSEL HAS HAD THE OPPORTUNITY TO LOOK AT IT.

MR. COOPER: MAY COUNSEL APPROACH THE BENCH, YOUR HONOR?

THE COURT: YOU MAY.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT RECORDED.)

MR. SEATON: FOR THE RECORD, YOUR HONOR, I WOULD LIKE IT TO REFLECT THAT I WAS ABOUT TO SHOW STATE'S PROPOSED EXHIBIT 44 TO THE WITNESS. I CHOOSE NOT TO DO SO AT THE TIME.

THE COURT: ALL RIGHT.

MR. SEATON: I RESERVE THAT FOR A LATER TIME.

THE COURT: PROCEED.

BY MR. SEATON:

Q INSTEAD OF THAT, LET ME SHOW YOU, MR. KINSEY, WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 38, AND ASK IF YOU CAN IDENTIFY THE DOCUMENTS THAT IS DEPICTED THERE.

A IT'S A COPY OF A SEARS ROEBUCK AND COMPANY RETAIL CREDIT CHECK. IT'S DATED FOR THE 26TH OF MARCH OF 1980. IT IS THE RETAIL CREDIT CHECK THAT THE DEFENDANT SIGNED THAT DAY FOR THE MERCHANDISE THAT HE TRIED TO RETURN.

Q HOW DO YOU KNOW THAT?

A I RECALL THE NAME; AND I ALSO PICKED UP THE ORIGINAL FROM THE CASHIER AFTER THE DEFENDANT HAD LEFT; AND I ALSO RECALL THE NAME THAT WAS USED THAT DAY THAT IS ON HERE, WHICH IS H. STANBACK, AND HE'S GOT IT SIGNED HAROLD STANBACK; AND ALSO UNDER HERE THEY HAVE THE PERSON'S NAME WHO ISSUES RETAIL CREDIT CHECKS AND IT IS ALSO SIGNED BY LINDA WILSON.

Q YOU SAY LINDA WILSON?

A YES.

Q THANK YOU.

THE COURT'S INDULGENCE.

JUST A FEW LAST QUESTIONS, MR. KINSEY.

WHEN THE DEFENDANT TOOK YOUR WALLET WITH THE BADGE IN IT AND THE RADIO, DID YOU GIVE CONSENT TO HIM FOR THAT TAKING?

A NO, SIR. I DID NOT.

Q WAS IT AGAINST YOUR WILL?

A YES, SIR.

Q WERE YOU AFRAID THAT IF YOU DIDN'T DO WHAT HE SUGGESTED THAT YOU WOULD BE INJURED?

A YES, SIR. MOST DEFINITELY.

MR. SEATON: THANK YOU.

I HAVE NOTHING FURTHER.

THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A RECESS AT THIS TIME.

DURING THIS RECESS YOU ARE ADMONISHED NOT TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL, OR READ, WATCH OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THIS TRIAL WITH ANY PERSON CONNECTED WITH THIS TRIAL BY ANY MEDIUM OF INFORMATION, INCLUDING WITHOUT LIMITATION, NEWSPAPER, TELEVISION OR RADIO OR FORM OR EXPRESS ANY OPINION ON ANY SUBJECT CONNECTED WITH THIS TRIAL UNTIL THE CASE IS FINALLY SUBMITTED TO YOU.

WE'LL BE IN RECESS FOR 15 MINUTES.

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LAS VEGAS, NEVADA, TUESDAY, APRIL 12, 1983, AT 3:14 P.M.

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(WHEREUPON, FROM THE HOUR OF 2:53 P.M. UNTIL 3:14 P.M., A RECESS WAS HAD IN THE PROCEEDINGS, AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

THE COURT: WILL COUNSEL STIPULATE TO THE PRESENCE OF THE JURY?

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. COOPER: YES.

THE COURT: COME FORWARD, SIR.

THE STATE, YOU HAVE NOW FINISHED YOUR DIRECT?

MR. SEATON: YES, YOUR HONOR. WE HAVE.

THE COURT: CROSS.

MR. COOPER: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. COOPER:

Q MR. KINSEY, YOU TESTIFY THAT YOU ARE NOW 30 YEARS OLD; IS THAT CORRECT?

A YES, SIR.

Q HOW OLD WERE YOU ON THE DATE THIS INCIDENT ALLEGEDLY OCCURRED?

A 26, 27. 26, I BELIEVE.

Q IT'S BEEN MORE THAN THREE YEARS AGO THAT THIS INCIDENT OCCURRED; IS THAT RIGHT?

A YES, SIR.

Q YOU SEEM TO HAVE, JUDGING FROM YOUR TESTIMONY

ON DIRECT EXAMINATION, A GOOD MEMORY OF WHAT HAPPENED EVEN DOWN TO MINUTE DETAILS REGARDING WHERE THE DEFENDANT ALLEGEDLY WAS STANDING, WHERE YOU WERE STANDING, WHERE HE WENT TO NEXT, AND SO FORTH.

GIVEN THE TIME LAPSE BETWEEN THE TIME THAT THIS HAPPENED AND YOUR TESTIMONY HERE TODAY, HOW DO YOU ACCOUNT FOR YOUR EXCELLENT MEMORY OF THIS INCIDENT.

A WELL, I CONSIDER MYSELF TO HAVE A GOOD MEMORY. AND IT WAS A RATHER, TO ME, MOMENTOUS OCCASION. IT STICKS IN MY MIND.

Q HAD YOU HAD OCCASION TO ARREST INDIVIDUALS PRIOR TO THIS INCIDENT?

A YES, SIR.

Q HAD YOU HAD OCCASIONS TO ARREST INDIVIDUALS SUBSEQUENT TO THIS INCIDENT?

A YES, SIR.

Q THE REASON THAT YOU ARE GIVING IS THAT THIS ONE INCIDENT STICKS OUT IN YOUR MIND?

A YES, SIR. IT WAS THE FIRST AND ONLY TIME I EVER HAD A WEAPON PULLED ON ME.

Q I SEE.

I ALSO GATHERED FROM THE TESTIMONY ON DIRECT EXAMINATION THAT, CORRECT ME IF I'M WRONG, THAT THIS INCIDENT TOOK AN APPRECIABLE PERIOD OF TIME. COULD YOU TELL US ABOUT HOW LONG IT WAS FROM THE TIME THAT YOU FIRST ENCOUNTERED THIS GENTLEMAN UP UNTIL THE TIME THAT HE LEFT THE STORE.

A I'D SAY APPROXIMATELY HALF HOUR TO 45 MINUTES, TO THE BEST OF MY KNOWLEDGE.

Q COULD IT HAVE BEEN MORE LIKE TEN MINUTES?

A CONCEIVABLY, YEAH. IT'S -- TIME I REALLY WASN'T PAYING ATTENTION TO AT THE TIME.

Q SO IT'S POSSIBLE THEN THAT THIS INCIDENT,

1 THIS ENTIRE INCIDENT, COULD HAVE TAKEN AS LITTLE AS TEN MINUTES?
2 A CONCEIVABLY.
3 Q ALL RIGHT.
4 AND I TAKE IT YOU HAD NEVER SEEN THIS
5 INDIVIDUAL BEFORE?
6 A NO, SIR.
7 Q THAT IS TRUE, ISN'T IT?
8 A. YES, SIR. I HAVE NEVER SEEN -- I HAVE NEVER
9 SEEN THE INDIVIDUAL PRIOR TO THAT.
10 Q DID YOU HAVE OCCASION, PRIOR TO COMING TO
11 COURT TO TESTIFY, TO GO OVER YOUR TESTIMONY WITH ANYONE?
12 A YES, SIR, I DID.
13 Q AND WHO DID YOU GO OVER YOUR TESTIMONY WITH?
14 A WITH THE -- THE DISTRICT ATTORNEY.
15 Q DO YOU RECALL WHICH ONE?
16 A MR. SEATON AND MR. HARMON AT VARIOUS TIMES.
17 Q I SEE.
18 SO IT WAS ON MORE THAN ONE OCCASION THAT
19 YOU DISCUSSED YOUR TESTIMONY WITH THEM?
20 A WELL, THEY WERE THERE IN AND OUT WHEN I WAS
21 DISCUSSING.
22 MAINLY IT WAS WITH MR. SEATON, MR. SEATON.
23 Q I SEE.
24 YOU TESTIFIED THAT YOU GAVE THE POLICE A
25 STATEMENT; IS THAT RIGHT?
26 A YES, SIR.
27 Q I SEE.
28 AND YOUR STATEMENT CONSISTS OF ABOUT FIVE
29 AND A HALF PAGES; IS THAT RIGHT?
30 A I WOULD IMAGINE SO.
31 Q APPROXIMATELY?
32 A APPROXIMATELY THAT. I REALLY DON'T RECALL.

1 Q DID YOU HAVE OCCASION TO REVIEW YOUR STATE-
2 MENT THAT YOU GAVE THE POLICE MORE THAN THREE YEARS AGO BEFORE
3 COMING TO COURT TO TESTIFY?
4 A YES, SIR, I DID.
5 Q WERE YOU GIVEN A COPY OF IT?
6 A YES, SIR.
7 Q WAS IT TO TAKE WITH YOU?
8 A YES, SIR.
9 Q AND YOU WERE GIVEN THAT BY SOMEONE AT THE
10 DISTRICT ATTORNEY'S OFFICE, I TAKE IT?
11 A YES, SIR.
12 Q IS IT TRUE, MR. KINSEY, THAT DURING THIS
13 ENTIRE INCIDENT YOUR ATTENTION WASN'T ALWAYS FOCUSED ON THE FACE
14 OF THIS MAN, WAS IT?
15 A NOT UP UNTIL THE WEAPON WAS DRAWN. O.K.
16 PRIOR TO THAT I WAS WATCHING HIS HANDS, WATCHING WHAT HE WAS
17 DOING WITH HIMSELF, THINGS OF THAT NATURE, AND ALSO LOOKING FOR
18 POSSIBLE PLACES WHERE HE COULD HAVE WEAPONS SECRETED. IT'S JUST
19 A HABIT I HAVE.
20 Q I SEE.
21 YOU HAVE TESTIFIED THAT IT COULD HAVE
22 TAKEN AS LITTLE AS TEN MINUTES. LET'S ASSUME THAT IT TOOK ABOUT
23 THAT, ABOUT TEN MINUTES. OF THAT TEN-MINUTE PERIOD OF TIME, ABOUT
24 HOW LONG WOULD YOU SAY YOUR ATTENTION WAS ACTUALLY FOCUSED ON
25 THIS MAN'S FACE, HIS FACIAL FEATURES.
26 A A COUPLE OF MINUTES AT LEAST.
27 Q UH-HUH.
28 A BECAUSE AFTER THE WEAPON WAS PULLED AND HE
29 HAD GAINED ON US AND ASKED TO GET ON THE FLOOR, I MADE IT A POINT
30 TO MEMORIZE HIS FACE. I STARED AT IT ON PURPOSE TO WATCH HIS
31 EYES AND TO WATCH THE WEAPON AS WELL.
32 Q SO IT WAS AT THAT POINT, THE POINT AT WHICH

THE GUN WAS DRAWN ON YOU, THAT YOU BEGAN TO PAY PARTICULAR ATTENTION TO HIS FACIAL FEATURES FOR POSSIBLE LATER IDENTIFICATION; IS THAT RIGHT?

A AFTER I ASCERTAINED THAT THE WEAPON WAS REAL AND LOADED.

Q I SEE.

WERE YOU FRIGHTENED WHEN THE WEAPON WAS POINTED AT YOU?

A STARTLED MORE THAN ANYTHING ELSE, AND THEN AFTER THAT POINT JUST CONCERNED ABOUT GETTING THE INDIVIDUAL OUT OF THE OFFICE WITH NO ONE GETTING HURT.

I REALLY DIDN'T HAVE TIME TO BE AFRAID PER SE. I IMAGINE, YOU KNOW, AFTERWARDS I HAD THOUGHTS ABOUT WHAT YOU COULD HAVE DONE, SHOULD HAVE DONE, OR WHATEVER, WHAT HAPPENED, WHAT COULD HAVE HAPPENED.

Q WOULD I BE ACCURATE IN SAYING THIS WAS A TERRIFYING EXPERIENCE FOR YOU ONCE THE GUN WAS DRAWN?

A NO.

Q YOU DID MAKE IT A POINT, AFTER THIS INDIVIDUAL LEFT THE SECURITY OFFICE, TO RUSH TO THE DOOR AND LOCK THE DOOR?

A YES, SIR.

Q WAS THAT BECAUSE OF YOUR FEAR THAT HE MIGHT ENTER AND HARM YOU OR THE OTHER PEOPLE THERE?

A I DIDN'T KNOW, BECAUSE OF HIS YELLING, IF THERE HAD BEEN A CROWD GATHERED OUTSIDE AND WHETHER HE WOULD COME BACK IN AND TAKE HOSTAGES. I WANTED TO BREAK -- TO GIVE US SOME TYPE OF WARNING BEFORE HE COULD COME BACK THROUGH THAT DOOR.

Q I SEE.

YOU HAVE TESTIFIED REGARDING THE PHYSICAL DESCRIPTION OF THE INDIVIDUAL.

A YES, SIR.

Q AND COULD -- WOULD YOU RESTATE FOR ME THE -- STRIKE THAT.

DID YOU GIVE THE POLICE A PHYSICAL DESCRIPTION OF THE INDIVIDUAL?

A YES, SIR.

Q DO YOU RECALL THE DESCRIPTION YOU GAVE THE POLICE?

A YES, SIR, BASICALLY.

Q O.K.

COULD YOU TELL US WHAT THAT WAS, PLEASE?

A YES, SIR.

I SAID HE WAS APPROXIMATELY FIVE EIGHT TO FIVE NINE, WHICH WAS ABOUT MY OWN HEIGHT BECAUSE HE AND I WERE ABOUT EYE LEVEL AND WHATEVER. I'D SAY ABOUT 185 POUNDS, 180 POUNDS, SOMEWHERE IN THAT AREA.

Q DIDN'T YOU TELL THE POLICE THAT HE WAS IN HIS OR APPEARED TO BE IN HIS MID-TWENTIES?

A I SAID 20 TO 30, 25 TO 30 RATHER, EXCUSE ME.

Q WELL, THAT'S NOT THE QUESTION THAT I ASKED.

DID YOU TELL THE POLICE THAT HE APPEARED TO BE IN HIS MID-TWENTIES?

A WELL, THE ONLY THING I CAN TELL YOU IS I TOLD THEM HE WAS 25 TO 30. THAT'S WHAT I VAGUELY REMEMBER SAYING TO THAT QUESTION WHEN THEY ASKED ME HOW OLD HE WAS.

Q DID THEY ASK YOU ABOUT HIS BUILD?

A YES.

Q DIDN'T YOU TELL THE POLICE THAT HE HAD A MEDIUM BUILD?

A MEDIUM-MUSCULAR BUILD. I SAID HE WAS VERY -- IN VERY GOOD CONDITION, I GOT THE IMPRESSION.

Q WHEN YOU TESTIFIED ON DIRECT EXAMINATION THAT THE INDIVIDUAL HAD A VERY MUSCULAR BUILD --

A TRUE.

Q IS THAT RIGHT?

A FROM LOOKING THROUGH THE JACKET AND STUFF. IT WAS A LEATHER JACKET AND JUST THE WAY HE MOVED HE APPEARED HE WAS WELL MUSCLED.

Q BUT YOU DID TELL THE POLICE THAT HE HAD A MEDIUM BUILD?

A YEAH. HE WASN'T HUGE. I MEAN HE WASN'T BIG. I DIDN'T CONSIDER HIM BIG AT THE TIME.

Q DO YOU USE THOSE TWO INTERCHANGEABLY, MEDIUM AND MUSCULAR?

A YOU CAN. AND AT THAT TIME, I DID. I DIDN'T --

Q WELL, MY QUESTION IS: DO YOU?

A DEPENDING ON THE CIRCUMSTANCES, YES.

Q I TAKE IT THAT THIS WAS ONE OF THOSE CIRCUMSTANCES IN WHICH YOU DID USE IT INTERCHANGEABLY?

A I WOULD PROBABLY SAY YES, TRYING -- TRYING TO THINK BACK WHAT I WAS THINKING LIKE AT THAT PERIOD OF TIME.

Q WHAT DOES A MEDIUM BUILD MEAN TO YOU?

A WELL, MEDIUM BUILD IS MORE, OH, I GUESS WHAT I WOULD SAY KIND OF LIKE THE BONY STRUCTURE AND THEN WHAT IS ATTACHED TO IT.

SOMEBODY THAT WOULD BE SAY A HEAVY BUILD WOULD BE SOMEONE WITH BIG BONES AND NOT NECESSARILY GOT A LOT OF WEIGHT ON IT, BUT IT WOULD BE SOMEBODY JUST BIG BONED.

AND I WOULD SAY HE WAS HEAVY BUILD, UNLESS HE WAS REALLY SKINNY.

Q AND WHAT DOES THE WORD "MUSCULAR" MEAN TO YOU?

A WELL, I DON'T CONSIDER MYSELF AT THE PRESENT TIME MUSCULAR. I AM NOT IN HALF BAD CONDITION, BUT I AM NOT

1 MUSCULAR.
2 SO TO ME ONE WHO WOULD BE MUSCULAR WOULD
3 BE SOMEBODY WHO, WELL, I GUESS THE CLASSIC WOULD BE A NARROW
4 WAIST, A GOOD SIZE CHEST, WHOSE ARMS WERE FAIRLY WELL FILLED OUT
5 AND THEY DIDN'T APPEAR TO BE FLABBY, THAT WOULD BE MY, I GUESS,
6 MY BASIC ADMONITION (SIC) OF SOMEONE WHO IS MUSCULAR.
7 Q I SEE.
8 YOU HAVE TESTIFIED EARLIER THAT PART OF
9 THE DESCRIPTION OF THIS INDIVIDUAL INCLUDED SOME FACIAL HAIR; IS
10 THAT RIGHT?
11 A YES, SIR.
12 Q AND IF I RECALL YOUR TESTIMONY CORRECTLY,
13 YOU TESTIFIED THAT IT APPEARED HE HAD THE BEGINNINGS OF A BEARD;
14 IS THAT RIGHT; OR SOME STUBBLE?
15 A FROM WHAT I RECALL.
16 Q I WASN'T CLEAR ON WHETHER YOU WERE SURE THAT
17 THIS INDIVIDUAL HAD A MOUSTACHE OR NOT. DID HE HAVE A MOUSTACHE?
18 A TO THE BEST OF MY RECOLLECTION, I THOUGHT
19 HE DID, BECAUSE LIKE I SAID HIS FACE HAD LIKE A GROWTH ON IT.
20 AND WHEN I WAS LOOKING AT HIS FACE I WAS LOOKING AT HIS EYES AS
21 WELL TO DETERMINE WHAT I THOUGHT HE WAS GOING TO DO.
22 Q BUT YOU AREN'T SURE?
23 A AT THIS POINT I'M SURE HE HAD FACIAL HAIR
24 AND HE COULD HAVE HAD LIKE A GROWTH HERE OR LIKE HE HADN'T SHAVED
25 IN SEVERAL DAYS, OR A MOUSTACHE, AT THE TIME.
26 Q DID YOU UNDERGO SOME KIND OF TRAINING AS A
27 SECURITY OFFICER?
28 A BASICALLY I WAS SHOWN HOW TO DO THE JOB BY
29 MY SUPERVISOR. HE EXPLAINED HOW I SHOULD APPROACH PEOPLE. HE
30 TOLD -- SHOWED -- HE TOLD ME HOW I SHOULD LOOK AT PEOPLE.
31 Q WELL, MORE SPECIFICALLY DID YOU HAVE ANY
32 TRAINING REGARDING IDENTIFICATION OF INDIVIDUALS?

A IN WHAT MANNER?

Q IN WHAT THINGS TO LOOK FOR AND FOR LATER IDENTIFICATION OF AN INDIVIDUAL?

A NOT REALLY. I WOULDN'T SAY THERE WAS ANY FORMAL TRAINING, NO. NOT THAT TYPE OF THING.

Q AS YOU WERE LYING ON THE FLOOR AND THE GUN WAS BEING POINTED AT YOU --

A YES, SIR.

Q (CONTINUING) -- YOU TESTIFIED THAT YOU WERE LOOKING AT THIS MAN SO THAT YOU COULD LATER IDENTIFY HIM.

A YES, SIR.

Q DID IT OCCUR TO YOU TO SEE WHETHER OR NOT HE HAD A MOUSTACHE?

A IT PROBABLY DID AT THE TIME. I JUST -- IT HAPPENED QUICK. SO --

Q WHAT PHYSICAL CHARACTERISTICS IF ANY DID YOU PICK UP AS YOU WERE LYING ON THE FLOOR THERE AND YOU WERE LOOKING AT HIM, SO THAT YOU COULD LATER MAKE YOUR IDENTIFICATION?

A THE EYES, THE SHAPE OF THE CHEEKBONES, THAT SORT OF THING; BECAUSE WITH FACIAL HAIR YOU CAN CHANGE IT BUT FACIAL STRUCTURE DOESN'T CHANGE.

Q WHAT DID YOU NOTE ABOUT THIS INDIVIDUAL'S EYES?

A UH, JUST MAINLY THE SHAPE OF THEM.

Q WHAT SHAPE WERE THEY?

A I GUESS I'D SAY ALMOND SHAPED. THAT'S BASICALLY MORE ON JUST SITTING HERE LOOKING AT THE INDIVIDUAL NOW. I COULDN'T TELL YOU EXACTLY WHAT I WAS THINKING AT THAT PARTICULAR TIME. BUT I WAS LOOKING FOR GENERAL FACIAL SHAPE AND FEATURES AND THINGS OF THAT NATURE.

Q DID YOU RELATE TO THE POLICE, ANY OF THESE FEATURES THAT YOU NOTED AS YOU WERE LYING ON THE FLOOR LOOKING AT

1 THIS MAN? DID YOU TELL THE POLICE WHAT THEY WERE?
2 A OH, NOT REALLY.
3 I JUST TOLD THEM THE BASIC -- BASICALLY
4 WHAT HE LOOKED LIKE, WHAT HE WAS WEARING AND BASICALLY WHAT HIS
5 FACIAL STRUCTURE AND HAIR LENGTH AND THINGS OF THAT NATURE WERE.
6 Q I SEE.
7 A THERE ARE OTHER THINGS I GUESS YOU JUST KIND
8 OF KEEP IN YOUR MIND THAT ARE REALLY HARD TO PUT INTO VERBIAGE.
9 I WOULD -- I WOULD THINK.
10 Q DID YOUR DESCRIPTION TO THE POLICE, DID IT
11 INCLUDE THE COLOR OF THE INDIVIDUAL'S EYES?
12 A PROBABLY IN THE WRITTEN DESCRIPTION, YES.
13 Q DO YOU RECALL WHAT COLOR EYES YOU TOLD THE
14 POLICE HE HAD?
15 A I SAID THEY WERE -- THEY WERE -- THEY APPEAR-
16 ED TO BE DARK BROWN.
17 Q IS THAT BECAUSE YOU BELIEVE MOST BLACK
18 PEOPLE HAVE DARK BROWN EYES OR IS THAT BECAUSE YOU ACTUALLY
19 OBSERVED THE COLOR OF HIS EYES?
20 A WELL, A COMBINATION. I'M NOT GOING TO DENY
21 THAT THERE MAY HAVE BEEN SOME THINKING ALONG THAT LINE.
22 Q YOU WERE ALSO ASKED, AS YOU WERE GIVING YOUR
23 STATEMENT TO THE POLICE, IF THERE WAS ANYTHING DISTINCTIVE ABOUT
24 THE MAN'S VOICE; WEREN'T YOU?
25 A YES, I WAS, IF I RECALL CORRECTLY.
26 Q AND DO YOU RECALL TELLING THE POLICE THAT HE
27 HAD A TYPICAL, AND I'M QUOTING, A TYPICAL BLACK DIALECT ACCENT
28 WITH ALL THE APPROPRIATE WORDS?
29 A YES. I RECALL WRITING THAT DOWN OR TELLING
30 THEM, WHICHEVER IT WAS. YES.
31 Q WOULD YOU SAY THAT I HAVE A TYPICAL BLACK
32 DIALECT ACCENT?

A NO, NOT REALLY.

Q WHAT IS THE TYPICAL BLACK DIALECT ACCENT?

A AT THE TIME THE PEOPLE I WAS GENERALLY DEALING WITH IN APPREHENSIONS, BLACK PEOPLE OF CERTAIN ECONOMIC LEVELS, THERE IS A SORT OF A SOUTHERN NOTE TO THE VOICE, THE SPEECH.

HE DIDN'T APPEAR TO SOUND EDUCATED. AFTER HE BECAME AGITATED THERE WERE A LOT OF MOTHER FUCKER THIS AND MOTHER FUCKER THAT, WHICH I HAVE DEALT WITH WITH PEOPLE IN THAT SITUATION BOTH WHETHER IT BE BLACK OR WHITE. BUT THE GENERAL -- THAT'S -- IT IS A GENERALITY ON MY PART AND PROBABLY AN INCORRECT ONE.

Q SO THAT'S THE TYPICAL BLACK DIALECT?

A OF THE PEOPLE --

Q AND THE WORDS THAT YOU REFERRED TO?

A (CONTINUING) -- OF THE PEOPLE THAT I WAS DEALING WITH AT THE TIME IN ARREST SITUATIONS.

Q COULD YOU BE A LITTLE MORE SPECIFIC?

YOU HAVE MENTIONED SOME OF THE PROFANITIES USED. COULD YOU BE A LITTLE MORE SPECIFIC AS TO WHAT YOU MEANT BY THE TYPICAL BLACK DIALECT? WERE THERE OTHER WORDS THAT WERE USED THAT WOULD FIT INTO YOUR CATEGORY OF A TYPICAL BLACK DIALECT.

A NOT OFF HAND. I REALLY COULDN'T SAY ANYTHING HE SAID OTHER THAN -- THAT SORT OF THING THAT STICKS IN MY MIND -- OTHER THAN WHAT I'VE JUST SAID.

Q I SEE.

YOU HAVE TESTIFIED EARLIER, AND CORRECT ME IF I'M WRONG, I THINK YOUR TESTIMONY WHEN YOU WERE BEING SHOWN THE WEAPON THAT'S BEEN MARKED AS AN EXHIBIT HERE THAT ALL YOU COULD SEE OF THE WEAPON WAS LIKE FROM THE CYLINDER TOWARDS THE FRONT; IS THAT CORRECT?

A YES. YES, SIR.

1 Q YOU COULDN'T SEE THE HANDLE OF THE GUN?
2 A. NO, SIR, OTHER THAN POSSIBLY WHAT MIGHT HAVE
3 BEEN COMING FROM THE BOTTOM PART OF HIS HAND. BUT I REALLY WASN'T
4 CONCENTRATING ON THAT PART OF THE GUN.
5 Q YOU TESTIFIED BEFORE THE GRAND JURY IN THIS
6 MATTER, DIDN'T YOU?
7 A YES, SIR.
8 Q DO YOU RECALL TELLING THE GRAND JURY THAT
9 YOU SAW A WOODEN HANDLE ON THE GUN?
10 A THAT'S POSSIBLE.
11 LIKE I SAID, PART OF IT POSSIBLY HUNG
12 BELOW HIS HAND.
13 Q WELL, DID YOU SEE A WOODEN HANDLE OR NOT?
14 A AT THIS STAGE, I DON'T RECALL. I REALLY DON'T.
15 MR. CDOPER: YOUR HONOR, I WOULD REFER COUNSEL FOR
16 THE STATE TO PAGE 13 OF THE GRAND JURY TRANSCRIPT, THE VERY FIRST
17 PARAGRAPH.
18 THE COURT: PROCEED, COUNSEL.
19 MR. COOPER: THANK YOU.
20
21 BY MR. COOPER:
22
23 Q MR. KINSEY, I JUST WANTED TO READ PART OF
24 YOUR TESTIMONY THERE REGARDING THIS PARTICULAR WEAPON. YOU
25 STATED, AND I'M BEGINNING AT LINE THREE, COUNSEL, THIS:
26 AND HE WAS HOLDING IT FIRST
27 IN HIS LEFT HAND LIKE THIS WITH
28 THE HOLSTER SHOVED OVER IT. AS
29 HE PULLED IT OUT OF HIS BACK, I
30 REMEMBER THE WOODEN HANDLES.
31 A THAT'S -- THAT'S A POSSIBILITY. I MAY HAVE
32 SAID IT THEN. I DON'T RECALL NOW. I REALLY DON'T. AND I --

1 Q WERE YOU SHOWN STATE'S EXHIBIT -- PROPOSED
2 EXHIBIT 31B AT THE GRAND JURY?
3 A I WOULD HAVE TO ASSUME THAT'S THE WEAPON.
4 Q YOU WERE SHOWN A WEAPON?
5 A YES, SIR.
6 Q BUT YOU DON'T -- YOU DON'T SPECIFICALLY
7 RECALL -- ARE YOU SAYING YOU DON'T REMEMBER SEEING THE WOODEN
8 HANDLES ON THE GUN?
9 A AT THIS STAGE NO. AT THAT STAGE I MAY HAVE
10 REMEMBERED IT. I DON'T RECALL NOW WHEN I WAS JUST ASKED.
11 Q I SEE.
12 A AND WHEN YOU JUST ASKED ME NOW.
13 Q DO YOU KNOW WHAT KIND OF WEAPON THAT IS?
14 A IN WHAT? A NAME BRAND?
15 Q NO. THE CALIBER.
16 A YES, SIR.
17 Q WHAT CALIBER IS THAT?
18 A IT'S A .357 MAGNUM.
19 Q YOU TESTIFIED THAT YOU OWN SUCH A CALIBER
20 WEAPON.
21 A YES, SIR, I DO. MINE'S NOT THE SAME MAKE
22 AND MODEL THOUGH.
23 Q THE SLIP THAT THIS GENTLEMAN WAS GIVEN AND
24 THAT HE LATER PRESENTED TO THE CASHIER, YOU WERE SHOWN A COPY OF
25 THE SLIP; IS THAT RIGHT?
26 A YES, SIR.
27 Q HOW IS IT THAT YOU IDENTIFY THAT SLIP AS
28 BEING THE ONE THAT WAS PRESENTED BY THE INDIVIDUAL TO THE CASHIER?
29 A THAT SLIP IS NOT THE ONE. THAT'S A COPY OF
30 THE SLIP THAT WAS PRESENTED TO THE CASHIER.
31 Q HOW CAN YOU IDENTIFY THAT AS A COPY?
32 A O.K. THE REASON I CAN IDENTIFY IT IS ON

1 MEMORY, FROM REMEMBERING WHAT WAS BASICALLY ON THE SLIP, WHO HAD
2 SIGNED IT AND THE DATE, AND THE MERCHANDISE THAT WAS ON THERE.
3 Q WHEN DID YOU FIRST TAKE A LOOK AT THE
4 ORIGINAL?
5 A AFTER THE DEFENDANT LEFT AND I CALLED METRO
6 I WENT FROM THE OFFICE TO THE CASHIER'S CAGE AND GOT IT. I
7 RECEIVED IT FROM THE CASHIER ITSELF AND THEN BROUGHT IT BACK TO
8 THE OFFICE, IN WHICH CASE IT WAS GIVEN OVER TO METRO FOR EVIDENCE
9 WHEN THEY CAME AND INVESTIGATED.
10 Q THE ORIGINAL WAS GIVEN TO METRO?
11 A TO THE BEST OF MY KNOWLEDGE, IT WAS.
12 Q YOU DIDN'T GIVE IT TO THEM?
13 A PARDON ME?
14 Q YOU DIDN'T GIVE IT TO THEM?
15 A I DON'T RECALL. I JUST KNOW IT WAS GIVEN TO
16 THEM IN MY PRESENCE.
17 Q YOU TESTIFIED THAT THIS GENTLEMAN REMOVED A
18 SANDER FROM A BOX AND HANDLED IT; IS THAT RIGHT?
19 A YES, SIR.
20 Q HE TOOK IT TO THE COUNTER?
21 A YES, SIR.
22 Q DID YOU INFORM THE POLICE DEPARTMENT OF THAT?
23 A YES, SIR, I DID.
24 Q DO YOU KNOW IF THEY TOOK POSSESSION OF THAT
25 SANDER?
26 A AT THE TIME, THEY DID NOT.
27 Q I SEE.
28 DO YOU KNOW IF THEY LATER TOOK POSSESSION
29 OF IT?
30 A O.K. WHAT HAD OCCURRED WAS I HAD NEVER HAD
31 TAKEN POSSESSION OF IT AT ALL. AND I WAS DOWN AT METRO POLICE
32 HEADQUARTERS TALKING I BELIEVE WITH THE DETECTIVE -- I THINK IT

WAS LEAVITT, I DON'T RECALL FOR SURE -- AND TOLD HIM ABOUT IT AND SAID THAT IT WAS STILL THERE.

Q I SEE.

SO YOU WOULDN'T KNOW IF THE POLICE HAD EXAMINED THAT SANDER FOR FINGERPRINTS OR THE PLASTIC BAG THAT WAS IN THE BOX FOR FINGERPRINTS?

A I WAS TOLD THEY HAD. AND WHEN I CAME BACK THERE WAS -- THERE WAS BLACK POWDER ALL OVER THE BOX AND THE PLASTIC BAG ITSELF. SO I DON'T KNOW PERSONALLY THEY DID. I JUST ASSUME THEY DID.

Q THAT'S WHAT YOU WERE INFORMED OF?

A YES, SIR.

Q THE RADIO THAT THE -- THE TWO WAY RADIO THAT YOU WERE SHOWN, YOU HAVE NO WAY OF STATING POSITIVELY THAT THAT'S THE RADIO THAT WAS TAKEN FROM YOU ON THE DAY IN QUESTION?

A NO, SIR. THERE'S NO WAY I COULD POSITIVELY SAY IT WAS.

Q I MEAN IT'S THE SAME BRAND NAME, BUT ASIDE FROM THAT, YOU HAVE NO WAY OF IDENTIFYING IT, DO YOU?

A NO. IT'S THE SAME BRAND, SAME MODEL, SAME SIZE AND COLOR AS THE ONE I HAD. I COULD NOT SAY THAT IS THE RADIO.

Q DID SEARS SELL THOSE TYPE RADIOS?

A NO, SIR, THEY DIDN'T.

I -- I DON'T KNOW WHO THEY CONTRACTED WITH TO GET THEM FROM, BUT THAT'S WHERE THEY GOT THEM FROM.

Q WHEN DID YOU TAKE A LOOK AT THE SEVEN PHOTOGRAPHS?

A I BELIEVE IT WAS THE TWO DAYS AFTER THE INCIDENT.

Q AND WHERE --

A TO THE BEST OF MY RECOLLECTION.

Q AND WHERE DID YOU LOOK AT THOSE PHOTOGRAPHS?

A IT WAS IN METROPOLITAN POLICE STATION I BELIEVE ON THE TOP FLOOR.

Q HOW IS IT THAT YOU CAME TO -- CAME TO GO TO THE POLICE STATION TO VIEW THE PHOTOGRAPHS? WERE YOU CALLED BY THE POLICE? DID THEY COME BY? JUST HOW DID THAT HAPPEN?

A NO. THEY CALLED ME TO COME DOWN.

Q DO YOU REMEMBER WHO YOU SPOKE TO?

A THE OFFICER THAT WAS THERE?

Q YES.

A I THINK IT WAS OFFICER LEAVITT.

Q I SEE.

BUT I ASSUME A POLICE OFFICER CALLED -- SOMEONE CALLED YOU ON THE PHONE AND IDENTIFIED THEMSELVES AS A POLICE OFFICER, RIGHT?

A YES, SIR.

Q AND ASKED YOU TO COME DOWN?

A I BELIEVE SO.

Q DO YOU --

A I DON'T RECALL.

Q WELL, DO YOU RECALL WHAT YOU WERE TOLD WHEN THAT PHONE CALL WAS MADE TO YOU?

A WELL, I WAS -- I WAS CALLED AT WORK, TOLD THEY WISHED TO HAVE ME COME DOWN AND DISCUSS SOME THINGS REGARDING THE CASE. THEY DIDN'T REALLY GET SPECIFIC OVER THE PHONE.

Q DID THEY TELL YOU OVER THE PHONE THAT THEY WANTED YOU TO TAKE A LOOK AT A PHOTOGRAPHIC LINEUP?

A I REALLY DON'T RECALL TO BE HONEST. I JUST DON'T RECALL. I JUST KNOW THEY WANTED ME TO COME DOWN AND TAKE CARE OF SOME THINGS INVOLVING THE CASE.

Q DO YOU RECALL WHETHER OR NOT THERE WAS ANYTHING MENTIONED TO THE EFFECT THAT THEY HAD A POSSIBLE SUSPECT

AND WANTED YOU TO LOOK AT PHOTOGRAPHS, ANYTHING OF THAT SORT?

A THEY MAY HAVE. I -- I REALLY DON'T RECALL.

Q IT'S POSSIBLE BUT YOU DON'T REMEMBER?

A IT'S POSSIBLE BUT I DON'T RECALL.

Q AND IS IT YOUR TESTIMONY YOU DON'T RECALL WHO IT WAS YOU SPOKE TO?

A ON THE PHONE, NO.

Q DID YOU IMMEDIATELY GO TO THE POLICE STATION?

A YEAH, AS SOON AS I INFORMED MY SUPERIOR THAT I WAS LEAVING.

Q WHEN YOU ARRIVED AT THE POLICE STATION I ASSUME THIS WAS OURING THE MORNING HOURS; IS THAT RIGHT?

A NO.

Q THIS WAS IN THE EVENING THEN?

A I THINK IT WAS IN THE EVENING, IF I RECALL.

Q I SEE.

THE PHOTOGRAPH THAT YOU IDENTIFIED THE INDIVIDUAL, THAT PARTICULAR PHOTOGRAPH NUMBER FIVE I BELIEVE IS THE ONE YOU SELECTED; IS THAT RIGHT?

A YES, SIR.

Q AND ON THE BACK OF THAT PHOTOGRAPH APPEARS YOUR SIGNATURE?

A YES, SIR.

Q ALONG WITH A TIME AND A DATE; IS THAT RIGHT?

A YES, SIR.

Q DO YOU RECALL WHAT TIME IT WAS YOU PUT ON THE PHOTOGRAPH?

A ONLY FROM SEEING IT TODAY, AND IT SAID 9:00.

Q 9:00.

AND DOES THAT REFRESH YOUR RECOLLECTION, YOUR MEMORY, AS TO WHETHER IT WOULD HAVE BEEN 9:00 A.M. OR

1 9:00 P.M.?
2 A NOT REALLY. I CAN'T BE SURE ENOUGH TO SAY
3 ONE WAY OR THE OTHER.
4 Q WERE YOU --
5 A I -- I TEND TO BELIEVE IT WAS IN THE
6 EVENING BECAUSE I BELIEVE AT THAT PERIOD OF TIME I WAS WORKING
7 FRIDAY NIGHTS, BUT I CAN'T RECALL FOR SURE. I HAD A ROTATING
8 SCHEDULE AT THE TIME, BEING PART TIME.
9 Q WHEN YOU ARRIVED AT THE POLICE STATION, WHO
10 WAS PRESENT?
11 A WHEN I WAS DISCUSSING?
12 Q YES.
13 A I BELIEVE IT WAS OFFICER LEAVITT; AND THERE
14 WAS A WOMAN BUT I DON'T RECALL HER NAME. I THINK SHE WAS A
15 SECRETARY. I'M NOT SURE.
16 Q WHAT CONVERSATION DID YOU HAVE WITH
17 OFFICER LEAVITT PRIOR TO YOUR VIEWING THESE PHOTOGRAPHS?
18 A I BELIEVE HE EXPLAINED THAT HE HAD SOME
19 PICTURES HE WANTED ME TO LOOK AT -- I CAN'T GIVE YOU THE EXACT
20 WORDS, I DON'T RECALL THEM -- OF POSSIBLE SUSPECTS. AND THAT
21 HE WANTED ME TO LOOK AT EACH ONE CAREFULLY BEFORE I MADE ANY
22 DECISIONS. AND I DON'T KNOW IF ANYTHING ELSE WAS SAID AT THAT
23 TIME OR NOT.
24 Q SO IT'S POSSIBLE THEN THAT YOU WERE LED TO
25 BELIEVE BY OFFICER LEAVITT THAT THERE WERE SOME SUSPECTS AMONG
26 THE PHOTOGRAPHS THAT YOU WERE GOING TO BE SHOWN?
27 A YEAH. I WOULD SAY SO.
28 Q DID HE REMAIN -- I TAKE IT THESE PHOTOGRAPHS
29 WERE VIEWED IN SOME ROOM OF SOME SORT; IS THAT RIGHT?
30 A YES, SIR. IT WAS JUST A PLAIN ROOM WITH A
31 TABLE IN IT.
32 Q DID OFFICER LEAVITT OR ANYONE ELSE REMAIN

1 IN THE ROOM WITH YOU AS YOU VIEWED THESE PHOTOGRAPHS?
2 A OFFICER LEAVITT DID FOR SURE. I DON'T
3 RECALL IF THE WOMAN WAS THERE OR NOT.
4 Q HE DIDN'T COME AND GO. HE STAYED THERE THE
5 ENTIRE TIME, DID HE?
6 A YES. HE HANDED ME EACH OF THE PICTURES,
7 ONE-BY-ONE. IN FACT, HE REALLY DIDN'T HAND THEM TO ME. HE SET
8 THEM ON THE TABLE.
9 Q THEY WERE KIND OF SPREAD OUT IN FRONT OF
10 YOU?
11 A WELL, WHAT HE WOULD DO IS HE WOULD HAND ME
12 THE FIRST ONE -- WHEN I SAY HAND ME, HE SET THE FIRST ONE IN
13 FRONT OF ME, AND THEN WOULD SET -- AND THEN WHEN I SAID I WAS
14 THROUGH LOOKING AT IT HE'D SET THE NEXT ONE DOWN.
15 Q DO YOU KNOW IF THEY WERE PRESENTED TO YOU
16 IN THE ORDER THAT THEY'RE NUMBERED NOW?
17 A THAT I COULDN'T TELL YOU.
18 Q WHEN YOU GOT TO PHOTOGRAPH NUMBER FIVE,
19 WHAT'S MARKED NOW AS NUMBER FIVE --
20 A YES, SIR.
21 Q (CONTINUING) -- YOUR TESTIMONY IS THAT YOU
22 TOLD HIM THAT THAT WAS THE GUY; IS THAT RIGHT?
23 A YES, SIR.
24 Q DID YOU STATE THAT IN UNEQUIVOCAL TERMS?
25 A YES, SIR.
26 Q THERE WAS NO DOUBT IN YOUR MIND?
27 A NO, SIR.
28 Q DID YOU TAKE A LOOK AT THE REST OF THE
29 PHOTOGRAPHS THAT HE HAD?
30 A NO, SIR.
31 Q I MEAN ONCE YOU REACHED THE ONE THAT YOU
32 WERE SURE WAS DEPICTING THE MAN WHO HAD ROBBED YOU, DID YOU GO

ON AND LOOK AT THE OTHER PHOTOGRAPHS?

A NO, SIR.

AT THAT POINT HE ASKED ME TO -- IF I WAS SURE THAT WAS THE ONE TO TURN IT OVER AND SIGN THE BACK OF IT.

Q AND THAT'S WHAT YOU DID?

A YES, SIR.

Q DO YOU RECALL SEEING A SIGNATURE ON THE BACK OF THE PHOTOGRAPH WHEN YOU TURNED IT OVER?

A YES, SIR.

Q DO YOU RECALL WHAT THAT SIGNATURE WAS?

A NO, SIR, I DON'T, OTHER THAN PROBABLY I HAVE SEEN IT TODAY.

Q WHEN YOU WERE SHOWN THE PHOTOGRAPH EARLIER TODAY THERE WAS A SIGNATURE IN ADDITION TO YOURS?

A YES, SIR.

Q DO YOU RECALL THE TIME THAT SIGNATURE WOULD HAVE BEEN PLACED THERE, AT LEAST WHAT'S STATED ON THE PHOTOGRAPH?

A NO, SIR, I DON'T OFF HAND. I DIDN'T LOOK AT IT THAT CLOSELY THIS TIME.

Q SHOWING YOU PHOTOGRAPH NUMBER FIVE THERE, MR. KINSEY --

MR. HARMON: YOUR HONOR, MAY WE SEE WHAT PROPOSED EXHIBIT NUMBER IT IS?

MR. COOPER: THIS IS PROPOSED 26E, YOUR HONOR.

THE COURT: 26E, ALL RIGHT.

BY MR. COOPER:

Q THERE APPEARS TO BE A SIGNATURE IN ADDITION TO YOURS ON THE BACK OF THAT PHOTOGRAPH; IS THAT RIGHT MR. KINSEY?

A YES, SIR, THERE IS.

Q AND THE SAME DATE AS THE DATE YOU TOOK A LOOK AT THE PHOTOGRAPH; IS THAT RIGHT?

A YES, SIR.

Q WHAT'S THE TIME THAT'S MENTIONED NEAR THE OTHER SIGNATURE?

A IT SAYS 8:30.

Q DID YOU TAKE A LOOK AT THE BACK OF THAT PHOTOGRAPH BEFORE YOU DECIDED THAT THAT WAS THE MAN WHO HAD ROBBED YOU?

A NO, SIR. HE, AS I STATED BEFORE, HE LAID THEM ON THE TABLE ONE-BY-ONE AND I LOOKED AT THEM WHILE THEY WERE LAYING ON THE TABLE.

Q WELL, DID YOU PICK THEM UP?

A NO, SIR.

Q MAY I HAVE THE COURT'S INDULGENCE FOR ONE MOMENT.

PART OF THE DESCRIPTION THAT YOU GAVE THE POLICE, MR. KINSEY, IN DESCRIBING THE CLOTHING OF THE INDIVIDUAL, I THINK YOUR TESTIMONY WAS THAT HE HAD ON A -- WAS IT AN ORANGISH-TYPE JACKET?

A IT WAS KIND OF A, A TAN. IT'S A SHADE THAT SORT OF TENDS TOWARDS AN ORANGE SHADE OF TAN. IT WAS LIKE A VINYL OR LEATHER. I COULDN'T TELL WHICH.

Q I SEE.

THE STATE'S EXHIBIT WHICH YOU HAVE BEFORE YOU NOW IN WHICH MR. HOWARD IS DEPICTED, I CAN'T PERSONALLY TELL WHETHER THAT'S A JACKET OR A SHIRT THAT HE HAS ON, BUT WHAT COLOR IS THAT OUTER GARMENT THAT HE HAS ON IN THERE?

A IT APPEARS TO BE A YELLOWISH, KIND OF A YELLOW -- ALMOST A YELLOW-ORANGE.

Q KIND OF ORANGISH, ISN'T IT?

A YEAH. IT LOOKS LIKE THE LIGHT FROM THE

CAMERA SORT OF YELLOWED EVERYTHING OUT.

IT'S KIND OF A YELLOWISH COLOR OF SHADE.

Q THE OTHER PHOTOGRAPHS THAT YOU WERE SHOWN, DO YOU RECALL THE COLOR OF THE SHIRT OR JACKET THAT THOSE INDIVIDUALS HAD ON?

A NO, SIR.

Q I'M GOING TO HAND YOU STATE'S EXHIBITS 26D, C, B, A, G AND F; AND ASK YOU TO LOOK AT THOSE.

A O.K.

Q DO ANY OF THE INDIVIDUALS DEPICTED IN THOSE PHOTOGRAPHS APPEAR TO HAVE ON ANY ORANGISH OR TANNISH OUTER GARMENT?

A JUST ONE.

Q AND WHICH ONE IS THAT?

A NUMBER TWO HAS KIND OF A TANNISH BEIGE TYPE SHIRT ON.

Q THAT'S --

A IT LOOKS LIKE IT HAS KIND OF A PATTERN ON IT.

Q CAN YOU GIVE US THE EXHIBIT, PROPOSED EXHIBIT NUMBER, ON THE REVERSE SIDE OF THAT NUMBER TWO, PLEASE?

A 26B.

Q B?

A B AS IN BACKER.

Q THANK YOU.

CAN YOU JUST PLACE THOSE ON THE TABLE THERE.

ONCE THIS INDIVIDUAL HAD LEFT THE SEARS STORE YOU DIDN'T ATTEMPT TO FOLLOW HIM OUTSIDE AND GET HIS LICENSE NUMBER OR SEE IN WHICH DIRECTION HE WENT OR ANYTHING LIKE THAT, DID YOU?

A NO, SIR, I DID NOT.

1 Q YOU TESTIFIED THAT YOU NO LONGER WORK WITH
2 SEARS; IS THAT RIGHT?
3 A YES, SIR.
4 Q WHEN DID YOU LEAVE THEIR EMPLOY?
5 A IN FEBRUARY OF 1982.
6 Q WAS THAT OF YOUR OWN --
7 A I TAKE THAT BACK. I LEFT ONE OTHER TIME
8 PRIOR TO THAT RIGHT AFTER THIS INCIDENT. BUT PERMANENTLY I LEFT
9 IN FEBRUARY OF 1982.
10 Q WHEN YOU LEFT PERMANENTLY WAS THAT OF YOUR
11 OWN VOLITION OR WERE YOU FOR SOME REASON FORCED TO LEAVE?
12 A NO. IT WAS MY OWN VOLITION. I GOT FULL
13 TIME WORK.
14 Q I SEE.
15 COURT'S INDULGENCE PLEASE.
16 JUST A COUPLE OF ADDITIONAL QUESTIONS,
17 MR. KINSEY.
18 A YES, SIR.
19 Q AS I INDICATED EARLIER, YOU HAVE GIVEN A
20 RATHER DETAILED ACCOUNT OF WHAT HAPPENED REGARDING THE DESCRIPTION
21 OF THE INDIVIDUAL, HIS CLOTHES, AND SO FORTH. DO YOU REMEMBER
22 WHAT LINDA WILSON HAD ON ON THAT DAY?
23 A NO, SIR.
24 Q WHAT ABOUT THE OTHER SALESWOMAN WHO WAS
25 INVOLVED HERE, DO YOU REMEMBER WHAT SHE HAD ON?
26 A NO, SIR.
27 MR. COOPER: I HAVE NOTHING FURTHER. I PASS THE
28 WITNESS AT THIS TIME, YOUR HONOR.
29 THE COURT: REDIRECT?
30 MR. SEATON: YES, YOUR HONOR.
31 ..
32 ..

REDIRECT EXAMINATION

BY MR. SEATON:

Q MR. KINSEY, THE FIRST TIME YOU LEFT SEARS WHAT WAS THE PURPOSE OF THAT LEAVING?

A I WAS ANGRY WITH SEARS FOR NOT PROVIDING ADDITIONAL SECURITY PERSONNEL, INSTEAD OF LEAVING A PERSON ON ALONE LIKE I WAS THE DAY OF THE INCIDENT IN QUESTION.

Q AND FOR HOW LONG A PERIOD OF TIME WERE YOU GONE FROM WORK?

A APPROXIMATELY A MONTH.

Q AND HOW WERE YOU REHIRED?

A I REQUESTED IT.

Q AND YOU WORKED THERE FOR HOW LONG THE NEXT TIME?

A TILL FEBRUARY OF 1982.

Q AND SINCE FEBRUARY OF 1982, WHAT HAVE YOU BEEN DOING?

A I'VE BEEN WORKING FOR THE STATE OF NEVADA, BUT I WAS WORKING WITH THEM PRIOR TO THAT. I WAS WORKING BOTH JOBS FOR A PERIOD OF TIME.

Q WHEN DID YOU GRADUATE FROM COLLEGE?

A I GOT MY BACHELORS DEGREE IN 1978. I GOT MY MASTERS DEGREE IN 1980.

Q I SEE.

AND YOU HAVE BEEN WORKING FOR THE STATE OF NEVADA SINCE FEBRUARY OF 1981?

A I'VE BEEN WORKING FOR THE STATE OF NEVADA SINCE NOVEMBER OF 1981.

Q I SEE.

CONTINUING ON IN THE SAME JOB UNTIL TODAY?

A YES, SIR.

Q AND WHAT IS THAT?

A I'M A WRIGHT-AWAY AGENT FOR THE DEPARTMENT OF TRANSPORTATION.

Q DID YOU SAY YOU DON'T REMEMBER WHAT THE GIRLS WERE WEARING, DO YOU?

A NO, SIR, I DO NOT.

Q DO YOU REMEMBER IF THE GIRLS HAD A GUN THAT DAY?

A IF THE GIRLS HAD A GUN?

Q YES.

A NO, THEY DIDN'T.

Q WOULD YOU TELL US AGAIN HOW SURE YOU WERE OF THE IDENTIFICATION WHEN YOU MADE IT IN THE PHOTOGRAPHIC LINEUP TWO DAYS LATER.

A I WAS POSITIVE.

Q AND WHEN YOU LOOKED AT THAT PHOTOGRAPHIC LINEUP AT THAT TIME IN YOUR MIND, AS BEST AS YOU CAN RECALL THE DAY, WHAT WAS THE BASIS FOR YOUR MAKING THE IDENTIFICATION?

A IT LOOKED LIKE THE INDIVIDUAL.

Q HOW DO YOU MEAN?

A AT LEAST -- AT LEAST TO MY MIND.

HOW DO I MEAN?

Q YES.

A FACIAL STRUCTURE, EYES, MOUTH TO SOME EXTENT, THAT'S BASICALLY -- THAT'S THE BASIC REASONS I WOULD THINK HE WOULD LOOK LIKE HIM. I JUST THOUGHT HE LOOKED LIKE HIM.

Q WHEN YOU HAD AN OPPORTUNITY TO OBSERVE HIM IN THE SEARS STORE THAT DAY YOU INDICATED ON CROSS-EXAMINATION THAT THE MINIMUM TIME MAY HAVE BEEN AS LITTLE AS TEN MINUTES; IS THAT CORRECT?

A YES, SIR.

Q AND WHAT WOULD YOU SAY THE MAXIMUM TIME COULD HAVE BEEN?

A ABSOLUTE MAXIMUM I'D SAY BETWEEN A HALF HOUR AND 45 MINUTES.

Q AND IF YOU HAD TO NARROW IT DOWN EVEN FURTHER, WHAT WOULD BE A SMALLER MINIMUM AND MAXIMUM TIME THAT YOU MIGHT CEASE UPON AT THIS TIME?

A 20 TO 30 MINUTES, BECAUSE IT WOULD TAKE A SUBSTANTIAL AMOUNT OF TIME FOR THEM, WITHIN REASON, TO WRITE UP HIS REFUND UPSTAIRS, FOR HIM TO WALK THROUGH THE STORE, AND TO WAIT ONE PERSON IN LINE WHILE HE RECEIVED THE CASH, AND THEN THE TIME ALLOWED FOR THE ALTERCATION, WHICH THE ALTERCATION ITSELF PROBABLY DIDN'T LAST LONGER THAN FIVE TO TEN MINUTES AT MOST.

Q WHAT DO YOU MEAN WHEN YOU SAY THE ALTERCATION?

A FROM THE TIME I APPROACHED THE INDIVIDUAL AND IDENTIFIED MYSELF, AND I'D SAY MAXIMUM BETWEEN FIVE AND TEN MINUTES AFTER THAT POINT THERE.

Q AND OF THAT FIVE OR TEN MINUTES DURING THE ALTERCATION, WHAT PART OF THAT TIME DO YOU THINK YOU WERE PAYING ATTENTION TO THE DEFENDANT'S FACE?

A THE MOST ATTENTION I PAID TO THE DEFENDANT'S FACE WAS AFTER THE WEAPON WAS PULLED AND I ASCERTAINED THAT IT WAS REAL AND LOADED, THEN I CONCENTRATED ON THAT PART OF IT I GUESS WITH ANOTHER PART OF MY MIND OR SOMETHING INTO MEMORIZING IT AS WELL AS WATCHING HIM.

Q AND YOU INDICATED EARLIER ON CROSS-EXAMINATION THAT HYPOTHETICALLY IF YOU HAD BEEN -- IF THE WHOLE THING HAD TAKEN TEN MINUTES YOU SPENT MAYBE TWO MINUTES OF THAT TEN MINUTES WATCHING THE DEFENDANT'S FACE. GIVEN THE 20 TO 30 MINUTES THAT WE'RE NOW TALKING ABOUT, HOW MUCH OF THAT TIME DO YOU THINK YOU WOULD HAVE SPENT LOOKING AT THE DEFENDANT'S FACE?

A WELL, DURING THE TIME I WAS WATCHING THE DEFENDANT IN THE STORE WHEN THE -- THE INCIDENT WAS OCCURRING PRIOR TO MY STOPPING HIM, YOU LOOK AT SOMEONE'S FACE OFF AND ON DURING THE TIME WHILE IT'S GOING ON SO YOU CAN SEE WHERE THEY'RE GOING TO LOOK AT, WHERE THEY'RE GOING TO GO, IF THEY'VE GOT SOMEBODY WORKING WITH THEM, THAT KIND OF THING. SO YOU LOOK AT IT OFF AND ON AS YOU ARE LOOKING AT THE PERSON UP AND DOWN AND THE MERCHANDISE IN HIS HAND.

AND THEN AFTER IT OCCURRED IN THE OFFICE THE INCIDENT WITH HIM PULLING THE GUN, FROM THAT POINT UNTIL THE TIME HE LEFT IT PROBABLY WASN'T MORE THAN TWO, THREE MINUTES. HE DIDN'T WASTE ANY TIME LEAVING.

Q EARLIER YOU INDICATED THAT THE DEFENDANT, SITTING OVER AT THE OTHER TABLE, WAS THE INDIVIDUAL WHO DID ALL THESE THINGS TO YOU. NOW, WE'RE NOT TALKING ABOUT THE PHOTOGRAPHIC IDENTIFICATION ANYMORE, BUT THE IDENTIFICATION HERE IN COURT. WHAT IS THE BASIS TODAY OF THAT IDENTIFICATION?

A BASICALLY THE EYES, THE WAY HE HOLDS HIS MOUTH, THE SHAPE OF HIS NOSE. HE LOOKS LIKE HE'S PUT A LITTLE WEIGHT ON. HIS FACE LOOKS HEAVIER THAN IT DID THEN, AT LEAST TO MY MEMORY.

Q ARE YOU ABLE TO SEE HIM ALL RIGHT AS YOU SIT THERE NOW?

A YES, SIR. YES.

Q WOULD YOU LOOK AT STATE'S PROPOSED EXHIBIT 26E, I BELIEVE IT IS PICTURE NUMBER FIVE, THAT'S THE PICTURE YOU IDENTIFIED AS BEING THE DEFENDANT.

A YES, SIR.

Q AND THE COLOR OF THE SHIRT THAT HE HAS THERE IS A YELLOWISH ORANGE?

A YES, SIR.

Q WAS HE WEARING THAT SHIRT ON MARCH THE 26TH,

1980?

A THAT I DON'T RECALL BECAUSE I -- I WAS MORE CAUGHT BY THE JACKET HE WAS WEARING. I DO NOT RECALL AT ALL WHAT COLOR SHIRT HE WAS WEARING.

Q IS THE YELLOWISH-ORANGE SHIRT IN STATE'S PROPOSED EXHIBIT 26E, WAS IT AT THE TIME OF THE PHOTOGRAPHIC LINE-UP ANY PART OF THE BASIS OF YOUR IDENTIFICATION AT THAT TIME?

A NO, SIR.

Q IS IT ANY PART OF THE BASIS OF YOUR IDENTIFICATION OF THE DEFENDANT TODAY IN COURT?

A NO, SIR.

MR. SEATON: THANK YOU. I HAVE NOTHING FURTHER.

THE COURT: ANY FURTHER QUESTIONS, COUNSEL?

MR. COOPER: YES, SIR.

RECROSS EXAMINATION

BY MR. COOPER:

Q MR. KINSEY?

A YES, SIR.

Q WHEN THIS MAN TOOK THE SANDER OUT OF THE BOX AND WENT TO THE COUNTER, YOU WERE STANDING BEHIND HIM; IS THAT CORRECT?

A BEHIND AND AT AN ANGLE TO HIM.

Q ALL RIGHT.

YOU CERTAINLY DIDN'T HAVE A FRONTAL VIEW OF THIS INDIVIDUAL, DID YOU?

A NO, SIR.

Q YOU WEREN'T LOOKING AT HIS FACE STRAIGHT ON, WERE YOU?

A NOT AT THAT POINT, NO.

Q AS HE WALKED FROM THAT AREA AND WENT DOWN TO WHEREVER YOU GET THE REFUND YOU WERE BEHIND HIM, WEREN'T YOU?

A YES, SIR.

Q YOU WERE LOOKING AT HIM FROM BEHIND?

A YES, SIR.

Q AS HE --

A EITHER FROM BEHIND OR FROM THE SIDE.

Q O.K.

AS HE'S STANDING IN LINE WAITING TO GET HIS -- GET THE REFUND, ARE YOU STILL BEHIND HIM AND TO THE SIDE OF HIM?

A YES, SIR.

THE ONLY TIME I HAD THE OPPORTUNITY TO OBSERVE HIS FACE IS WHEN I FIRST SAW HIM AND I WAS -- AT THE POINT I FIRST OBSERVED HIM IN INTERSECTION OF AISLEWAYS THERE I WAS IN FRONT OF HIM AND TO THE SIDE AND I WATCHED HIM, 'CUZ I WAS FOCUSED ON HIS FACE BECAUSE THAT'S WHAT GAVE ME THE IDEA TO START WATCHING HIM BECAUSE JUST THE WAY HE WAS LOOKING AROUND CAUGHT MY ATTENTION.

Q ALL RIGHT.

A AND WHEN WE WERE DOWNSTAIRS, WHEN HE CAME DOWN THE STAIRS AND WALKED ACROSS THE FLOOR AS WELL, IT WAS MOSTLY A PROFILE SIDE OF IT AS WELL AS THE FRONTAL THAT I HAD SEEN UPSTAIRS UNTIL WE GOT IN THE OFFICE.

MR. COOPER: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

MR. SEATON: NOTHING BY THE STATE, YOUR HONOR.

THE COURT: YOU'RE EXCUSED.

MR. SEATON: OH, YOUR HONOR, MAY WE RESERVE THE RIGHT TO RECALL MR. KINSEY?

THE COURT: YOU MAY.

MR. SEATON: THANK YOU.

(WHEREUPON, THE WITNESS WAS EXCUSED.)

THE COURT: COUNSEL, APPROACH THE BENCH.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED.)

THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A BRIEF RECESS OF TEN MINUTES.

DURING THIS RECESS YOU ARE ADMONISHED NOT TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL, OR READ, WATCH OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THIS TRIAL WITH ANY PERSON CONNECTED WITH THIS TRIAL BY ANY MEDIUM OF INFORMATION, INCLUDING WITHOUT LIMITATION, NEWSPAPER, TELEVISION OR RADIO OR FORM OR EXPRESS ANY OPINION ON ANY SUBJECT CONNECTED WITH THIS TRIAL UNTIL THE CASE IS FINALLY SUBMITTED TO YOU.

WE'LL BE IN RECESS FOR TEN MINUTES.

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LAS VEGAS, NEVADA, TUESDAY, APRIL 12, 1983, AT 4:30 P.M.

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(WHEREUPON, FROM 4:00 P.M. UNTIL 4:30 P.M., A RECESS WAS HAD IN THE PROCEEDINGS, AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

THE COURT: COUNSEL STIPULATE TO THE PRESENCE OF THE JURY?

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS, SIR.

MR. HARMON: TOM MAJOR.

THE COURT: COME FORWARD, SIR.

THE CLERK: RAISE YOUR RIGHT HAND.

WHEREUPON,

TOM MAJOR,

CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN, EXAMINED AND TESTIFIED AS FOLLOWS:

THE CLERK: YOU MAY BE SEATED.

THE COURT: PROCEED.

MR. HARMON: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. HARMON:

Q WILL YOU STATE YOUR NAME, PLEASE.

A TOM MAJOR.

1 Q SPELL YOUR LAST NAME.
2 A M-A-J-O-R.
3 Q MR. MAJOR, DO YOU LIVE IN LAS VEGAS, NEVADA?
4 A YES.
5 Q WHERE ARE YOU EMPLOYED?
6 A AT THE SEARS STORE AT THE BOULEVARD MALL.
7 Q IS THAT THE SEARS STORE LOCATED AT 3450
8 SOUTH MARYLAND PARKWAY?
9 A YES, IT IS.
10 Q THAT IS IN CLARK COUNTY, STATE OF NEVADA?
11 A YES.
12 Q WHAT ARE THE NATURE OF YOUR DUTIES AT THE
13 SEARS STORE AT THAT LOCATION?
14 A I'M THE MERCHANDISING MANAGER IN THE STORE,
15 AND JUST BASICALLY IN CHARGE -- RESPONSIBLE FOR SALES AND MER-
16 CHANDISING THE STORE IN GENERAL.
17 Q HOW LONG HAVE YOU BEEN THE MERCHANDISING
18 MANAGER IN THE STORE?
19 A IT WILL BE FIVE YEARS IN THE LAS VEGAS STORE
20 ON JUNE 19TH.
21 Q WERE YOU SO EMPLOYED ON MARCH THE 26TH, 1980?
22 A YES, SIR.
23 Q DID YOU HAVE OCCASION TO BE PRESENT WHEN AN
24 INCIDENT OCCURRED INVOLVING A BLACK MALE ADULT AND YOUR SECURITY
25 OFFICER KEITH KINSEY?
26 A YES, I WAS.
27 Q WILL YOU EXPLAIN ABOUT WHAT TIME THAT WAS?
28 A THAT OCCURRED JUST SHORTLY AFTER NOON ON
29 THAT MARCH 26TH.
30 Q OF 1980?
31 A YES.
32 Q WILL YOU EXPLAIN HOW YOU HAPPENED TO BECOME

1 INVOLVED IN WHAT OCCURRED?
2 A WHAT HAPPENED WAS THE FIRST INDICATION I
3 KNEW THAT I WAS NEEDED IN THE CUSTOMER CONVENIENCE AREA WAS THE
4 PBX OPERATOR MADE A PAGE OVER OUR LOUDSPEAKING SYSTEM JUST IN A
5 CODE THAT WOULD SAY THAT A PARTICULAR SECURITY PERSON WOULD NEED
6 ASSISTANCE, AND SHE MENTIONED TO THE CUSTOMER CONVENIENCE AREA.
7 WE USE THAT PAGING SYSTEM FOR OTHER
8 THINGS ALSO, SUCH AS IF -- JUST FOR CHECK APPROVALS OR TO MAKE
9 MERCHANDISE ADJUSTMENTS OR WHATEVER. BUT THIS WAS A PARTICULAR
10 PAGE ASKING FOR SECURITY ASSISTANCE.
11 Q DID IT IDENTIFY THE LOCATION?
12 A IT WAS ON THE LOWER LEVEL OF THE STORE IN
13 THE CUSTOMER SERVICE AREA, WHICH ALSO OUR CASHIER'S CAGE WAS
14 LOCATED IN THAT AREA ALSO.
15 Q DID YOU RESPOND TO THAT LOCATION?
16 A YES, I DID.
17 Q WHEN YOU SAID THIS WAS JUST AFTER NOON, WERE
18 YOU REFERRING TO 12:00 O'CLOCK NOON?
19 A YES.
20 Q WHAT HAPPENED WHEN YOU RESPONDED TO THE
21 CUSTOMER SERVICE AREA NEAR THE CASHIER'S CAGE?
22 A I WAS LOOKING FOR A -- ONE OF OUR SECURITY
23 PEOPLE. AND WHEN I CAME DOWN TO THE LOWER LEVEL I SAW KEITH
24 KINSEY WAS TALKING TO A GENTLEMAN DOWN THERE AND I DIDN'T KNOW
25 WHAT THE PROBLEM WAS AT ALL. I DIDN'T KNOW WHETHER IT WAS A
26 CUSTOMER COMPLAINT OR WHAT IT MIGHT BE OR A SHOPLIFTING APPRE-
27 HENSION OR WHAT IT COULD HAVE BEEN.
28 Q WHAT HAPPENED?
29 A SO I JUST APPROACHED -- WELL, I JUST APPROACH-
30 ED KEITH AND --
31 Q KEITH KINSEY?
32 A YES.

AND I GOT THE INDICATION THERE THAT HE WAS TRYING TO MAKE AN APPREHENSION AT THAT POINT.

Q WAS HE ABLE TO MAKE AN APPREHENSION?

A WELL, YES, HE WAS. HE TOLD THE GENTLEMAN THAT HE WANTED TO QUESTION HIM ABOUT THE SHOPLIFTING SITUATION AND WOULD HE PLEASE ESCORT HIM BACK TO THE SECURITY OFFICE. AND THAT'S WHAT WE'RE TRYING TO DO, IS TO JUST GET THE GENTLEMAN TO GO TO THE SECURITY OFFICE SO THAT WE COULD GO AHEAD AND FILE THE COMPLAINT.

Q WHEN YOU SAY "WE" ARE YOU REFERRING TO YOURSELF AND KEITH KINSEY?

A YES.

NORMALLY HE WOULD -- HE WOULD HANDLE THAT MY HIMSELF, BUT IN THAT PARTICULAR SITUATION APPARENTLY THE PERSON WAS NOT GOING TO GO VOLUNTARILY OR WHATEVER AND HE FELT THAT THERE MIGHT BE NEED FOR SOME KIND OF BACKUP OR ASSISTANCE.

Q DID YOU SUCCEED IN GETTING THE INDIVIDUAL WHO WAS TO BE APPREHENDED INTO THE SECURITY OFFICE AREA?

A YES, WE DID.

Q WILL YOU GIVE A PHYSICAL DESCRIPTION OF THE INDIVIDUAL WHO WAS TO BE APPREHENDED BY OFFICER KINSEY?

A IT WAS A BLACK MALE. I WOULD ESTIMATE THE HEIGHT OF ABOUT FIVE FOOT TEN, AND THE WEIGHT WAS OF A STOCKY-ATHLETIC BUILD, I WAS GUESSING 175 POUNDS.

Q DO YOU RECALL HOW THAT PERSON WAS DRESSED?

A TO MY RECOLLECTION THE MAN HAD ON A BASEBALL CAP, IT WAS BLUE IN COLOR AND A LEATHER JACKET. AND THEN THE ONLY OTHER THING I RECALL I BELIEVE HE HAD SOME KIND OF ATHLETIC FOOTWEAR, LIKE JOGGING SHOES.

Q ATHLETIC FOOTWEAR LIKE JOGGING SHOES.

A JOGGING SHOES OR TENNIS SHOES OR SOMETHING OF THAT NATURE. I DON'T RECALL THEM AS BEING A LEATHER DRESS SHOE

1 OR ANYTHING LIKE THAT. IT WAS MORE OF A CASUAL.
2 Q IT COULD HAVE BEEN TENNIS SHOES?
3 A IT COULD HAVE BEEN.
4 Q YOU SAID HE WAS WEARING SOME TYPE OF LEATHER
5 JACKET?
6 A YES.
7 Q DO YOU REMEMBER THE COLOR?
8 A I REMEMBER IT AS NOT BEING NOT DARK BROWN
9 BUT MORE OF A GOLDISH BROWN IN COLOR.
10 Q MR. MAJOR, WHAT HAPPENED WHEN YOU AND MR.
11 KINSEY GOT THIS SUBJECT INTO THE SECURITY OFFICE AREA?
12 A WELL, IN NORMAL PROCEDURE WHAT KEITH WAS
13 TRYING TO DO -- I WAS -- I WAS JUST THERE. EVEN THOUGH I'M THE
14 MERCHANDISING MANAGER OF THE STORE, I WAS NOT AWARE OF WHAT
15 EXACTLY KEITH WAS GOING TO DO. BUT NORMALLY WHAT WE WOULD DO
16 WOULD BE TO --
17 Q SIR, JUST EXPLAIN IF YOU WOULD, WHAT OCCURRED.
18 WHAT DID YOU SEE HAPPEN?
19 A KEITH ASKED THE SHOPLIFTING SUSPECT TO TURN
20 AROUND AND FACE THE WALL SO THAT HE MIGHT SEARCH THE INDIVIDUAL.
21 Q WAS HE ABLE TO SEARCH THE INDIVIDUAL?
22 A NO.
23 Q WHAT HAPPENED THEN?
24 A WELL, AT THAT POINT THE SUSPECT WAS -- WAS
25 TALKING IN A RATHER HIGH-PITCHED EXCITED VOICE AND WAS SAYING,
26 NO, HE DIDN'T WANT ANYBODY TO TOUCH HIM BECAUSE HE WAS GOING TO
27 BE BEATEN UP OR HIT. HE WAS CONCERNED THAT SOMEONE WAS GOING TO
28 HIT HIM.
29 Q DID HE SAY WHO HE WAS CONCERNED ABOUT HITTING
30 HIM?
31 A HE WAS CONCERNED -- HE WAS CONCERNED THAT
32 KEITH WAS GOING TO.

1 Q KEITH KINSEY?
2 A YES.
3 Q SO WHAT HAPPENED?
4 A WELL, IT WAS AT THAT POINT WHEN -- WHEN
5 KEITH MOVED IN TO -- TO TRY TO CONDUCT THE SEARCH THAT THE
6 SUSPECT JUMPED UP ON A ROW OF CHAIRS THAT WERE IN THE ROOM AND
7 QUICKLY PULLED A GUN OUT OF THE BACK OF HIS -- BEHIND HIS JACKET
8 AND ORDERED THOSE OF US IN THE ROOM TO GET DOWN ON THE FLOOR
9 FACE DOWN.
10 Q DID YOU ACTUALLY SEE THE GUN?
11 A YES, I DID.
12 Q WHAT WAS THE MAN DOING WITH THE GUN?
13 A HE WAS POINTING AT THE THREE OF US IN THE
14 ROOM AND JUST INDICATING TO US TO GET DOWN ON THE FLOOR.
15 Q WAS THERE A THIRD PERSON WHO AT SOME POINT
16 JOINED YOURSELF, KEITH KINSEY, AND THE SUBJECT IN QUESTION?
17 A YES, THERE WAS.
18 Q DO YOU KNOW THAT PERSON?
19 A I -- YES. HE WAS AN EMPLOYEE AT THE STORE
20 AND HASN'T WORKED AT THE STORE FOR ABOUT THREE YEARS NOW. BUT
21 I BELIEVE HIS NAME IS SCHIEFEISTEIN.
22 Q WOULD THAT BE S-C-H-I-E-F-E-I-S-T-E-I-N?
23 A YES.
24 Q DO YOU KNOW ANYTHING ABOUT THE WHEREABOUTS
25 OF MR. SCHIEFEISTEIN AT THIS TIME?
26 A I DO NOT KNOW. I BELIEVE HE WAS IN THE
27 MILITARY. HE, TO THE BEST OF MY KNOWLEDGE, WAS IN THE AIR FORCE
28 AND WAS WORKING AT SEARS PART-TIME. AND I BELIEVE HE WAS STATION-
29 ED AT THIS TIME ELSEWHERE.
30 Q IN ANY EVENT, HE'S NOT BEEN EMPLOYED BY THE
31 SEARS STORE FOR AT LEAST THREE YEARS; IS THAT CORRECT?
32 A THAT'S TRUE.

1 Q MR. MAJOR, IF YOU SAW THE SUBJECT AGAIN WHO
2 JUMPED UP ONTO THE CHAIR AND PULLED A GUN AND DIRECTED YOURSELF,
3 KEITH KINSEY AND MR. SCHIEFEISTEIN TO GET ON THE FLOOR, WOULD YOU
4 RECOGNIZE HIM?
5 A YES.
6 Q LOOK AROUND THE COURTROOM AND STATE WHETHER
7 YOU SEE THAT INDIVIDUAL IN COURT TODAY.
8 A YES. I SEE THE MAN -- THE BLACK MAN SITTING
9 TO MY RIGHT AT THE END OF THE TABLE.
10 Q HOW IS HE DRESSED AT THIS TIME?
11 A APPEARS TO HAVE ON A BLUE JACKET OF SOME
12 KIND.
13 MR. HARMON: YOUR HONOR, MAY THE RECORD SHOW THE
14 WITNESS HAS IDENTIFIED THE DEFENDANT SAMUEL HOWARD.
15 THE COURT: THE RECORD MAY SO SHOW.
16 MR. HARMON: THANK YOU.
17
18 BY MR. HARMON:
19
20 Q MR. MAJOR, WHAT IS IT THAT CAUSES YOU TO
21 IDENTIFY DEFENDANT HOWARD AS THE PERSON WHO PULLED THE GUN AND
22 ORDERED YOURSELF AND MR. KINSEY AND MR. SCHIEFEISTEIN TO GET ONTO
23 THE FLOOR?
24 A WELL, IT'S JUST THE -- THE APPEARANCE. I
25 THINK HE HAS DISTINCTIVE FEATURES. I JUST RECOGNIZE THE FACIAL
26 STRUCTURE AND THE COMPLEXION.
27 Q DID YOU GET A GOOD LOOK --
28 A AND THE EYES.
29 Q (CONTINUING) -- AT DEFENDANT HOWARD ON
30 MARCH 26TH, 1980?
31 A YES, I DID.
32 Q WHAT WERE THE LIGHTING CONDITIONS IN THE

SECURITY OFFICE AREA?

A THE LIGHTING WAS BRIGHT.

Q WAS THE DEFENDANT MAKING ANY EFFORTS TO CONCEAL HIS FACIAL APPEARANCE OR FACIAL STRUCTURE?

A NO.

Q HOW CLOSE DID YOU GET TO HIM?

A OH, I WAS WITHIN A FOOT. I'D SAY A FOOT AND A HALF PROBABLY.

Q WITHIN A FOOT OR A FOOT AND A HALF?

A YES.

Q WHAT HAPPENED AFTER THE DEFENDANT JUMPED UP ON THE CHAIR AND AT GUN POINT, ORDERED THE THREE OF YOU ONTO THE FLOOR?

A AT THAT TIME THE WORDS -- THE ONLY WORDS THAT I SPOKE, AND OBVIOUSLY I WAS VERY SURPRISED THAT HE HAD A GUN, AND I JUST INDICATED TO HIM THAT WE WERE NO LONGER INTERESTED IN MAKING ANY KIND OF AN ARREST, AND WE CERTAINLY WEREN'T GOING TO MAKE ANY ATTEMPT TO STOP HIM IF HE WANTED TO EXIT -- EXIT THE SECURITY ROOM AND LEAVE -- LEAVE THE STORE.

AT THAT POINT, KEITH KINSEY WAS LAYING RIGHT IN FRONT OF HIM AND --

Q RIGHT IN FRONT OF WHOM?

A OF -- OF THE MAN -- THE GENTLEMAN SITTING OVER HERE AT THE TABLE (INDICATING).

Q OF THE DEFENDANT?

A THE DEFENDANT, YES.

AND KEITH WAS LAYING FACE DOWN AND THE DEFENDANT REACHED DOWN AND PULLED OUT THE REMOTE RADIO THAT KEITH HAD EITHER IN HIS BACK POCKET OR ATTACHED TO HIS BELT AND TOOK THAT.

Q ARE YOU TALKING ABOUT A TWO-WAY RADIO THAT WAS USED BY SECURITY PERSONNEL?

A YES. IT'S USED TO COMMUNICATE WITH OTHER SECURITY PERSONNEL IN THE STORE.

AND HE TOOK THAT AND ALSO SOME KIND OF A LEATHER WALLET-TYPE THING OUT OF KEITH'S POCKET.

Q DID YOU SEE THIS HAPPEN?

A YES, I DID.

Q DID THE DEFENDANT MR. HOWARD STILL HAVE THE GUN OUT WHEN HE REMOVED THE WALLET?

A OH, YES.

Q AND ALSO THE TWO-WAY RADIO FROM THE PERSON --

A YES.

Q (CONTINUING) -- OF KEITH KINSEY?

A YES.

Q DID YOU KNOW WHAT WAS INSIDE THE WALLET THAT WAS REMOVED FROM THE PERSON OF MR. KINSEY?

A I DID NOT KNOW AT THAT TIME, NO.

Q WHAT COLOR WAS IT?

A I -- I COULDN'T ANSWER THAT. DARK BROWN IN COLOR. SOME KIND OF A -- I DIDN'T GET A GOOD LOOK AT THE -- AT THE WALLET.

Q WHAT HAPPENED AFTER THE DEFENDANT REMOVED THESE ITEMS FROM THE PERSON OF KEITH KINSEY?

A I CAN'T REMEMBER ANY WORDS BEING SPOKEN, BUT HE -- HE DID TURN AROUND AND EXIT THROUGH THE DOOR AND APPARENTLY OUT OF THE STORE.

Q DID YOU PERSONALLY GIVE THE DEFENDANT, MR. HOWARD, PERMISSION TO REMOVE FROM THE SEARS STORE PROPERTIES BELONGING TO SEARS ROEBUCK AND COMPANY?

A NO.

MR. HARMON: COURT'S INDULGENCE, PLEASE.

THAT CONCLUDES THE DIRECT EXAMINATION, YOUR HONOR.

THE COURT: CROSS.

MR. FRANZEN: YES, YOUR HONOR.

CROSS EXAMINATION

BY MR. FRANZEN:

Q WHAT WAS THE DATE THAT THIS HAPPENED, SIR?

A I BELIEVE IT WAS MARCH 26TH, 1980. IT WAS A WEDNESDAY.

Q AND HOW LONG AGO WAS THAT?

A THREE YEARS AGO.

Q IN THE INTERVENING THREE YEARS, HAVE YOU EVER HAD OCCASION TO SEE ANY PHOTOGRAPHS OR BE ASKED TO IDENTIFY ANYONE THROUGH PHOTOGRAPHS?

A NO, I HAVE NOT.

Q SO IT'S BEEN THREE YEARS SINCE YOU'VE LAST SEEN THE MAN IN YOUR STORE THAT IS SUPPOSED TO HAVE DONE THIS?

A THAT'S TRUE.

Q YOU HAVE SEEN NO PHOTOGRAPHIC REPRESENTATION EITHER?

A NO.

Q WERE YOU SUBPOENAED TO COME HERE TO COURT, SIR?

A YES, I WAS.

Q DID YOU KNOW WHAT YOU WERE COMING HERE TO DO, TO TESTIFY?

A YES.

Q DID YOU KNOW THAT YOU WERE COMING HERE TO TESTIFY TO SEE IF YOU COULD POSSIBLY IDENTIFY THE MAN WHO HAD DONE THIS?

A I -- ISN'T -- WASN'T AWARE THAT I WAS GOING

1 TO BE ASKED TO POSITIVELY IDENTIFY ANYONE.
2 Q HAVE YOU EVER TESTIFIED BEFORE, SIR?
3 A NO, I HAVEN'T.
4 Q HAVE YOU EVER BEEN IN A COURTROOM?
5 A NO.
6 Q DO YOU KNOW -- IS THERE ANYONE ELSE SITTING
7 IN FRONT OF YOU THAT YOU WOULD CONSIDER A BLACK MALE ADULT?
8 A YES.
9 Q WHO WOULD THAT BE, SIR?
10 A THE GENTLEMAN IN THE MIDDLE AT THE TABLE.
11 Q SO THERE WOULD BE TWO PEOPLE IN THIS COURT-
12 ROOM SEATED IN FRONT OF YOU THAT YOU WOULD CONSIDER TO BE BLACK
13 MALE ADULTS?
14 A YES.
15 Q THE POLICE NEVER SHOWED YOU A PHOTO DISPLAY
16 OF NUMEROUS BLACK MALES TO SEE IF YOU COULD PICK ONE OUT AT AN
17 UNSUGGESTED DISPLAY?
18 A NO.
19 Q DID THEY EVER ASK YOU TO GO TO THE PHYSICAL
20 LINEUP, WHERE YOU COULD SEE NUMEROUS BLACK MALES OF SIMILAR
21 PHYSICAL BUILDS, FACIAL STRUCTURE AND RACE, TO SEE IF YOU COULD
22 IDENTIFY THAT PERSON IN SUCH A NON-SUGGESTIVE MANNER?
23 A NO. I WASN'T ASKED THAT.
24 Q NOW, YOU SAY THAT THE GENTLEMAN OR THE MAN
25 WHO PULLED THE GUN SPOKE IN A HIGH PITCH VOICE. DID THIS VOICE
26 HAVE AN ACCENT?
27 A I DON'T RECALL AN ACCENT.
28 Q IT DIDN'T HAVE A SOUTHERN ACCENT?
29 A (NO AUDIBLE RESPONSE.)
30 Q DID IT HAVE A NEW YORK -- YOU WILL HAVE TO
31 SPEAK OUTLOUD FOR THE COURT REPORTER.
32 A NO. I INDICATED THAT I DIDN'T RECALL ANY

1 PARTICULAR ACCENT AT ALL, REGIONAL OR OTHERWISE.
2 Q HAVE YOU EVER SEEN THE MAN YOU'VE IDENTIFIED
3 IN THE STORE BEFORE?
4 A NO, I HAD NOT.
5 Q PRIOR TO COMING TO COURT, HAVE YOU DISCUSSED
6 THIS CASE WITH ANYONE?
7 A NOT RECENTLY, NO.
8 Q DID YOU DISCUSS IT WITH THE DISTRICT
9 ATTORNEY'S OFFICE?
10 A DISCUSSED IT BRIEFLY ABOUT I RECALL IT WAS
11 EITHER NOVEMBER OR DECEMBER OF LAST YEAR. JUST -- ONLY BRIEFLY,
12 AND THEN JUST BRIEFLY -- BRIEFLY YESTERDAY, AND THIS MORNING.
13 Q SO THREE TIMES YOU'VE DISCUSSED YOUR TESTI-
14 MONY?
15 A YES.
16 Q AND YOU KNEW YOU WERE COMING TO COURT TO
17 DESCRIBE THE EVENTS THAT OCCURRED AT THE SEARS STORE IN MARCH OF
18 1980?
19 A YES.
20 Q DID YOU SPEAK WITH MR. KINSEY PRIOR TO
21 COMING TO THE COURTROOM TODAY?
22 A YES, I DID.
23 Q DID YOU DISCUSS ANYTHING ABOUT WHAT HAPPENED
24 IN THE SEARS STORE IN MARCH OF 1980?
25 A NO, I DID NOT.
26 Q WHEN YOU SAY THE MAN SPOKE IN A HIGH PITCH
27 VOICE, DO YOU MEAN A SHRILL VOICE OR A SOPRANO?
28 A WELL, IT WAS JUST -- TO ME IT JUST SOUNDED
29 LIKE THE VOICE OF A PERSON WHO IS EXCITED AND -- AT THAT POINT.
30 Q O.K.
31 DID MR. KINSEY GRAB THE MAN?
32 A I DON'T RECALL HIM GRABBING HIM, NO.

1 Q HE NEVER TOUCHED HIM?
2 A I DON'T RECALL THAT, NO.
3 Q IT WOULDN'T BE -- WELL, WOULD IT TO YOUR
4 KNOWLEDGE BE NORMAL FOR MR. KINSEY TO GRAB A BLACK MAN THAT HE
5 WAS GOING TO APPREHEND?
6 A YES, IT WOULD BE. IT WOULD BE NORMAL. IT'S
7 POSSIBLE THAT HE DID GRAB HIM TO JUST -- JUST TO MORE OR LESS
8 ESCORT THE INDIVIDUAL TO THE SECURITY ROOM AND TO -- TO MAKE SURE
9 THE PERSON DIDN'T TRY TO --
10 Q BUT YOU DON'T RECALL, YOU DON'T RECALL ANY
11 SPECIFIC INSTANCE; YOU'RE GOING ON WHAT WOULD NORMALLY BE DONE;
12 WOULD THAT BE FAIR?
13 A THAT'S TRUE.
14 I, YOU KNOW, I REALLY CAN'T RECALL SEE-
15 ING, AND I'M NOT SAYING THAT KEITH -- KEITH KINSEY DID NOT TOUCH
16 OR GRAB THE SUSPECT -- BUT I -- I CANNOT RECALL SEEING THAT.
17 I KNOW THAT I PERSONALLY DID HAVE AHOLD
18 OF THE SUSPECT LIGHTLY AT ONE TIME.
19 Q OH, YOU DID?
20 A DURING THE TIME -- YES, I DID.
21 Q WHERE WOULD THAT HAVE BEEN?
22 A WELL, IT WAS -- IT WAS BRIEFLY OUT IN THE
23 HALLWAY BEFORE WE GOT TO THE SECURITY ROOM.
24 AND AS I MENTIONED, THE SUSPECT WAS KIND
25 OF MOVING AROUND IN A EXCITED MANNER AND HIS ARMS WERE KIND OF
26 WAVING AROUND A LITTLE BIT AND WE WERE TRYING TO -- TO GET HIM TO
27 ACCOMPANY US BACK TO THE SECURITY ROOM. AND I DID HAVE THE
28 OCCASION TO KIND OF GRAB HIM IN THE WRIST AREA TO ATTEMPT TO --
29 IN AN ATTEMPT TO LEAD HIM THAT WAY IF I COULD WITHOUT, YOU KNOW,
30 FORCIBLY GRABBING HIM OR PULLING HIM WITH THE -- WITH MUCH FORCE.
31 Q NOW, YOU SAY THAT YOU RECOGNIZED THE MAN
32 FROM HIS FACIAL FEATURES. DID YOU TELL THE POLICE, GIVING THEM A

DESCRIPTION OF THE FACIAL FEATURES IN MARCH --

A YES, WE DID.

Q NOT WE. DID YOU, SIR?

A YES, I DID.

Q DID YOU MAKE A WRITTEN STATEMENT?

A NOT ABOUT THE FACIAL FEATURES, BUT JUST ABOUT GENERAL APPEARANCE.

Q YOU GAVE NO STATEMENT TO THE POLICE OTHER THAN A GENERAL APPEARANCE?

A UH-HUH.

Q DO YOU RECALL IF YOU TOLD THE POLICE THE COLOR OF THE EYES OF THE MAN INVOLVED?

A I DON'T RECALL.

Q DO YOU RECALL IF YOU DESCRIBED HIS HAIR?

A NO.

TO ME HE WAS WEARING A CAP AND I COULDN'T DETERMINE TOO MUCH ABOUT THE LENGTH OF THE HAIR OR THE ACTUAL COLOR OF THE HAIR.

Q DID THE HAIR STICK OUT FROM UNDER THE CAP?

A NOT ALOT. IT WASN'T AS THOUGH IT WAS -- HE HAD AN AFRO HAIRCUT OR ANYTHING OF THAT NATURE. SO IT WAS A PRETTY CLEAN CUT APPEARANCE.

Q SHORT HAIR?

A MEDIUM, I'D SAY.

Q THERE'S BEEN PRIOR TESTIMONY OF MR. KINSEY THE HAIR LENGTH WAS AN INCH TO AN INCH --

MR. HARMON: O.K. THAT'S ARGUMENTATIVE, COUNSEL.

THE COURT: IT IS, COUNSEL. SUSTAINED.

BY MR. FRANZEN:

Q WOULD IT BE APPROPRIATE TO SAY THAT THE HAIR

LENGTH THAT YOU SAW ALONG THE SIDE OF THE HEAD WAS AN INCH TO AN INCH AND A HALF FROM THE SCALP?

A I CAN'T -- I CAN'T UNDERSTAND WHAT YOU'RE TRYING TO SAY.

Q HOW FAR DID THE HAIR STICK OUT FROM THE SIDE OF THE HEAD.

A NORMAL.

Q NORMAL? WHAT'S NORMAL TO YOU, SIR? AN INCH? AN INCH AND A HALF?

A IT WAS -- AN INCH AND A HALF TO WHAT?

Q STICKING OUT FROM THE SIDE OF THE HEAD, SIR.

SEE HOW MY HAIR STICKS OUT FROM THE SIDE OF MY SKULL, OR MR. COOPER, COUNSEL SEATED NEXT TO ME?

A UH-HUH.

Q O.K.

WITH THAT IN MIND, SIR, HOW FAR OUT DID THE HAIR LENGTH STICK FROM THE MAN THAT YOU SAW IN THE SEARS SECURITY OFFICE, THE BLACK MAN.

A IT DID NOT STICK OUT A NOTICEABLE AMOUNT. THAT'S WHAT I'M TRYING TO SAY.

Q O.K.

A THE HAIR WAS ONLY VISIBLE IF YOU WERE WEARING A BASEBALL CAP.

Q O.K.

COMPARED TO THE WAY THE MAN'S HAIR IS NOW?

A UH-HUH.

Q SAME?

A I WOULD SAY MORE OR LESS SLIGHTLY LONGER IN THE BACK NOW.

Q LONGER NOW?

A UH-HUH.

1 Q NOW, YOU DON'T RECALL HIS EYE COLOR.
2 DO YOU RECALL IF HE HAD ANY FACIAL HAIR
3 IN MARCH OF 1980?
4 A THAT WAS THAT IT WAS NOTICEABLE. IT WAS
5 NOT A HEAVY BEARD. I DO REMEMBER A SLIGHT BEARD IN THE CHEEK
6 AREA.
7 Q DID HE HAVE A GOATEE?
8 A I DON'T RECALL A GOATEE.
9 Q YOU DON'T RECALL. COULD HE HAVE OR YOU DON'T
10 RECALL OR HE DID NOT HAVE ONE?
11 A IT WAS NOT DISTINGUISHABLE ENOUGH TO ME TO
12 RECALL.
13 Q YOU DON'T RECALL ONE WAY OR THE OTHER?
14 A THAT'S TRUE.
15 Q O.K.
16 DO YOU RECALL IF HE HAD A MOUSTACHE?
17 A I DON'T RECALL. I DON'T RECALL A MOUSTACHE.
18 Q HE DID NOT HAVE A MOUSTACHE THEN OR YOU DON'T
19 KNOW IF HE HAD A MOUSTACHE OR HE MIGHT HAVE HAD A MOUSTACHE?
20 A THE DESCRIPTION OF HIS -- OF HIS BEARD WAS
21 THAT IT WAS NOT A FULL BEARD, AS THE GENTLEMAN'S IS TO YOUR LEFT;
22 BUT MORE AS THOUGH HE HADN'T SHAVED FOR, IN A CERTAIN AREA, FOR
23 A WEEK OR SO.
24 Q BUT DID HE HAVE A MOUSTACHE?
25 A I DO NOT RECALL A MOUSTACHE.
26 Q DO NOT RECALL A MOUSTACHE. WOULD THAT MEAN
27 HE DID NOT HAVE ONE?
28 A AS FAR AS I -- I CAN TELL YOU, THAT'S RIGHT.
29 Q O.K.
30 DID YOU SEE ANY JEWELRY ON THE MAN?
31 A NO, I DIDN'T.
32 Q BY THE MAN, I MEAN THE BLACK MALE ADULT THAT

1 WAS DETAINED IN THE SECURITY OFFICE.
2 A NO. I DON'T RECALL ANY JEWELRY.
3 Q WERE YOU IN THE SECURITY OFFICE FROM THE
4 TIME THAT YOU ENTERED WITH HIM AND MR. KINSEY AND TO THE TIME THAT
5 THE MAN LEFT?
6 A YES.
7 Q AND DURING THAT PERIOD OF TIME YOU SAW NO
8 JEWELRY ON THE DEFENDANT OR ON THE MAN?
9 A I CANNOT RECALL SEEING ANY JEWELRY.
10 Q WERE YOU LYING FACE DOWN, SIR, AT THE TIME
11 THE MAN TOOK MR. KINSEY'S RADIO AND WALLET?
12 A NO, I WAS NOT.
13 Q HOW FAR BACK INTO THE SECURITY OFFICE WERE
14 YOU?
15 A I WOULD SAY I WAS APPROXIMATELY 12 FEET FROM
16 WHERE KEITH KINSEY WAS LAYING ON THE FLOOR.
17 Q DID YOU ULTIMATELY ALSO LIE ON THE FLOOR?
18 A YES.
19 Q HOW SOON AFTER KINSEY LAID ON THE FLOOR DID
20 YOU BECOME PRONE ON THE FLOOR?
21 A IT WAS SEVERAL SECONDS LATER. WE WERE KIND
22 OF STANDING IN A MORE OR LESS OF A GROUP, AND IT WAS REALLY NOT
23 QUITE ENOUGH ROOM FOR ALL OF US TO LAY DOWN RIGHT WHERE WE WERE.
24 I WAS STANDING NEXT TO THE ROW OF CHAIRS. SO I MOVED BEHIND
25 WHERE KEITH WAS LAYING AND --
26 Q O.K.
27 A (CONTINUING) -- AND LAID ON THE FLOOR.
28 Q SO LET ME SEE IF I GET THIS CORRECTLY.
29 MR. KINSEY WAS TOLD TO LIE ON THE FLOOR
30 AND THEN WITHIN SECONDS YOU WERE ALL SIMILARLY ON THE FLOOR PRONE
31 A NOT SIMILARLY. I -- I NEVER PUT MY HEAD
32 FACE DOWN. I WAS -- KEPT MY EYE ON THE SUSPECT.

Q WERE YOU LAYING ON YOUR BACK?

A I WAS LAYING ON MY SIDE.

Q O.K.

ARE YOU STILL EMPLOYED AT SEARS, SIR?

A YES, I AM.

Q AT THE BOULEVARD MALL?

A YES.

Q NOW, YOU SAY THAT THE MAN WAS WEARING A LEATHER COAT THAT YOU DESCRIBED AS ORANGISH?

A NO.

Q TANNISH ORANGE?

A NO. I SAID IT WAS MORE OF A GOLDISH BROWN.

Q GOLDISH BROWN?

A LIGHTER. IT'S IN THE BROWN FAMILY BUT MORE OF A LIGHTER COLOR.

Q HOW LONG OF A COAT WAS IT? WAS IT AN EISENHOWER JACKET OR DOWN THE BUTTOCKS OR FULL LENGTH?

A IT WAS NOT FULL LENGTH. IT CAME JUST BELOW THE WAIST.

Q WAS THIS JACKET BUTTONED OR DID IT HAVE A STRAP OR A ZIPPER?

A I RECALL IT HAVING A ZIPPER. A ZIPPER.

THE COURT: APPROACH THE BENCH, COUNSEL.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED.)

THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE OUR EVENING RECESS.

..

..

..

..

DURING THIS RECESS YOU ARE ADMONISHED NOT TO CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL, OR READ, WATCH OR LISTEN TO ANY REPORT OF OR COMMENTARY ON THIS TRIAL WITH ANY PERSON CONNECTED WITH THIS TRIAL BY ANY MEDIUM OF INFORMATION, INCLUDING WITHOUT LIMITATION, NEWSPAPER, TELEVISION OR RADIO OR FORM OR EXPRESS ANY OPINION ON ANY SUBJECT CONNECTED WITH THIS TRIAL UNTIL THE CASE IS FINALLY SUBMITTED TO YOU.

WE WILL BE IN RECESS IN THIS MATTER UNTIL 9:45 TOMORROW MORNING.

(WHEREUPON, AT THE HOUR OF 5:00 P.M. THE EVENING RECESS WAS HAD.)

CASE NO. C53867

DEPARTMENT NO. V

DOCKET H

FILED

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
PLAINTIFF,

VS.

SAMUEL HOWARD, AKA KEITH,
DEFENDANT.

REPORTER'S TRANSCRIPT OF

JURY TRIAL

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

WEDNESDAY, APRIL 13, 1983, AT 10:20 A.M.

APPEARANCES:

FOR THE STATE: MELVIN T. HARMON, ESQUIRE
DANIEL M. SEATON, ESQUIRE
200 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89115
DEPUTY DISTRICT ATTORNEYS

FOR THE DEFENDANT: MARCUS D. COOPER, ESQUIRE
GEORGE E. FRANZEN, ESQUIRE
309 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101
DEPUTY PUBLIC DEFENDERS

REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122

VOLUME III

LAS VEGAS, NEVADA, WEDNESDAY, APRIL 13, 1983, AT 10:20 A.M.

* * * * * * * *

THE COURT: COUNSEL, STIPULATE TO THE PRESENCE OF THE JURY.

MR. COOPER: YES, YOUR HONOR.

MR. SEATON: THE STATE WOULD SO STIPULATE, YOUR HONOR.

THE COURT: YOU MAY PROCEED, COUNSEL. I BELIEVE WE HAD A WITNESS ON THE STAND. IS THAT CORRECT?

MR. HARMON: TOM MAJOR.

THE COURT: COME FORWARD, SIR. YOU ARE STILL UNDER OATH.

YOU MAY PROCEED.

CROSS EXAMINATION CONTINUED

BY MR. FRANZEN:

Q MR. MAJOR, WHERE WAS IT THAT YOU FIRST SAW THE MAN WHO WAS IN THE CUSTODY OF MR. KINSEY?

A THE FIRST TIME THAT I SAW HIM WAS ON THE LOWER LEVEL OF THE STORE IN FRONT OF THE CASHIER CUSTOMER SERVICE COUNTER.

Q DID HE HAVE HIS BACK TO YOU? DID MR. KINSEY HAVE HIS BACK TO YOU OR DID THE MAN HAVE HIS BACK TO YOU?

A KEITH KINSEY HAD MORE OF HIS BACK TO ME.

Q SO HE WAS BETWEEN YOU AND THE MAN THAT HE WAS DETAINING?

A YES.

Q WHEN YOU WALKED FROM THAT AREA TO THE SECURITY OFFICE WERE YOU BEHIND MR. KINSEY AND THE BLACK MAN OR IN FRONT OF THEM?

A IT PROBABLY CHANGED FROM TIME TO TIME ON THE WAY FROM THE -- THAT AREA TO THE SECURITY OFFICE.

Q SO WHEN YOU WERE --

A PART OF THE TIME I WAS IN FRONT AND PART OF THE TIME I WAS ON THE SIDE.

Q DID YOU WALK BACKWARD OR DID YOU WALK FACING WHERE YOU WERE GOING?

A I WAS WALKING TOWARD THE SECURITY OFFICE, YOU KNOW, KEEPING MY EYE ON THE DEFENDANT JUST TO SEE WHAT MOVEMENT HE WAS MAKING.

Q NOW, YOU HAVE TESTIFIED THAT YOU SAW NO JEWELRY; IS THAT CORRECT?

A THAT'S TRUE. I DIDN'T SEE ANY THAT TO ME STICKS IN MY MIND AS FAR AS JEWELRY.

Q AND YOU'VE SEEN -- OR THE POLICE DID NOT TAKE ANY OPPORTUNITY TO SHOW YOU A PHOTOGRAPHIC DISPLAY AND ASK YOU TO IDENTIFY ANYONE FROM A NON-SUGGESTIVE DISPLAY, DID THEY?

MR. HARMON: OBJECTION, ASKED AND ANSWERED.

THE COURT: I BELIEVE IT HAS BEEN COUNSEL.

MR. FRANZEN: I WILL GO ON TO THE NEXT QUESTION, YOUR HONOR. I WISH TO SHOW HIM THE DISPLAY.

THE COURT: ALL RIGHT. SHOW HIM THE DISPLAY.

BY MR. FRANZEN:

Q TWENTY SIX, PLEASE.

SIR, I JUST WANT TO SHOW YOU EXHIBIT 26, AND ASK YOU IF YOU WERE SHOWN SOMETHING LIKE THIS OR THIS ITSELF?

A I WAS NOT -- WAS NOT SHOWN THIS.

Q O.K.

I WOULD ALSO LIKE TO SHOW YOU 40A AND ASK IF YOU HAD EVER BEEN SHOWN THIS OR SEEN THIS?

A I WAS NEVER SHOWN THAT, NO.

Q HAVE YOU EVER SEEN IT?

A NOT TO THE BEST OF MY KNOWLEDGE.

Q HAVE YOU EVER SEEN ANYTHING LIKE IT?

A I HAVE SEEN BRACELETS OF THAT NATURE BEFORE, YES.

Q IN JEWELRY CASES, IS THAT WHERE YOU'VE SEEN THEM?

A YES, AND PEOPLE WEARING THEM.

Q WAS MR. KINSEY WEARING ONE LIKE THIS?

A I DON'T KNOW.

Q WAS THE BLACK MAN WEARING ONE LIKE THIS?

A I DON'T KNOW.

Q IF SOMETHING CAME UP REGARDING THAT BRACELET IT CAME UP OUT OF YOUR PRESENCE THEN BECAUSE YOU WOULD HAVE REMEMBERED IT; WOULD THAT BE CORRECT?

A IF I SAW IT AND IT STUCK IN MY MIND AS BEING UNUSUAL IT'S SOMETHING I PROBABLY WOULD HAVE REMEMBERED.

MR. COOPER: MAY I HAVE THE COURT'S INDULGENCE AGAIN, PLEASE.

BY MR. FRANZEN:

Q SIR, YOU HAVE PREVIOUSLY TESTIFIED THAT YOU MADE NO STATEMENT IN WRITING REGARDING THIS INCIDENT; IS THAT CORRECT?

MR. HARMON: OBJECTION. I DON'T RECALL THAT TESTIMONY, YOUR HONOR.

MR. FRANZEN: WELL, DID YOU GIVE -- WELL, I'LL REPHRASE IT. I THOUGHT HE HAD.

..

..

BY MR. FRANZEN:

Q DID YOU MAKE A WRITTEN STATEMENT REGARDING THIS INCIDENT?

A YES, I DID.

Q DID YOU SIGN IT, SIR?

A YES, I DID.

Q HAVE YOU SEEN IT RECENTLY?

A YES, I HAVE.

Q WHEN DID YOU SEE IT?

A I SAW IT YESTERDAY MORNING.

MR. FRANZEN: YOUR HONOR, MAY WE APPROACH THE BENCH?

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED.)

THE COURT: PROCEED, COUNSEL.

BY MR. FRANZEN:

Q DO YOU RECALL WHAT YOU TOLD THE POLICE IN YOUR WRITTEN STATEMENT, SIR?

A YES, I DO.

Q WHAT DID YOU TELL THEM, SIR.

A GENERALLY WHAT I'VE TESTIFIED SO FAR AS TO THE -- WHAT HAPPENED ROUGHLY FROM 12:20 TO 12:40 THAT AFTERNOON. IT'S JUST THE -- JUST THE SEQUENCE OF EVENTS THAT OCCURRED IS BASICALLY WHAT I WROTE IN MY STATEMENT.

Q NOW, YOU SAY FROM 12:20 TO 12:40?

A THAT WAS THE TIME THAT WAS ON MY -- ON THE STATEMENT THAT I HAD RECORDED.

Q WELL, YOU FIRST CAME INTO CONTACT WITH THE

1 INDIVIDUAL DOWNSTAIRS AND PROCEEDED TO THE SECURITY OFFICE; IS
2 THAT CORRECT?
3 A I'M SORRY. WOULD YOU --
4 Q YOU FIRST MET THE BLACK MAN AND MR. KINSEY
5 DOWNSTAIRS, THE LOWER FLOOR; IS THAT CORRECT?
6 A THAT'S TRUE.
7 Q AND THEN PROCEEDED TO THE SECURITY OFFICE,
8 ALSO ON THE LOWER FLOOR.
9 A THAT'S TRUE.
10 Q HOW FAR ARE THOSE SEPARATED? WHAT IS THE
11 DISTANCE THAT YOU WALKED?
12 A THE DISTANCE? I WOULD SAY IT'S PROBABLY 90
13 FEET.
14 Q 90?
15 A YES. I -- I ESTIMATE ABOUT 90 FEET.
16 Q WHEN YOU GOT INTO THE SECURITY OFFICE HOW
17 LONG DID THAT EPISODE LAST BEFORE THE BLACK MAN LEFT?
18 A IT WAS -- IT WAS NOT A LONG PERIOD OF TIME.
19 I RECALL IT PROBABLY BEING APPROXIMATELY IN MY MIND I WOULD SAY
20 ABOUT TEN MINUTES OR SO.
21 Q AND I BELIEVE YOU STATED THAT THE MAN SPOKE
22 WITH A HIGH PITCHED VOICE AND EVIDENCED CONCERN OR FEAR OF
23 MR. KINSEY.
24 A WELL, AS I TRIED TO DESCRIBE IT, IT WAS KIND
25 OF AN EXCITED VOICE, AS I THINK ANYONE WOULD BE IN BEING STOPPED
26 BY A SECURITY INDIVIDUAL; HE WAS TRYING TO DENY THE FACT THAT HE
27 HAD TAKEN ANYTHING OR FRAUDULENTLY SIGNED ANY REFUND SLIP AND
28 WAS -- AND THEN IT ALSO MENTIONED, AS I SAID, THAT HE SAID THAT.
29 Q WELL, DID HE OR DID HE NOT SAY THAT HE WAS
30 AFRAID THAT MR. KINSEY WAS GOING TO BEAT HIM UP?
31 A HE SAID TO ME BASICALLY WHEN HE SAW ME
32 APPROACHING I HAD MY --

1 Q DID HE OR DIDN'T HE SAY SOMETHING LIKE THAT,
2 SIR?
3 A HE SAID SOMETHING. I WAS GOING TO TELL YOU
4 APPROXIMATELY TO THE BEST OF MY KNOWLEDGE OF WHAT HE ACTUALLY DID
5 SAY.
6 HE SAID, MISTER, THIS MAN IS GOING TO
7 BEAT ME. DON'T LET HIM HIT ME.
8 Q O.K. ALL RIGHT.
9 DID HE SAY THAT IN THE SECURITY OFFICE
10 OR IN THE CORRIDOR?
11 A HE SAID THAT IN BOTH AREAS --
12 Q HE SAID MISTER?
13 A (CONTINUING) -- TO ME.
14 Q POLITELY TO YOU?
15 A YES.
16 Q NOW, WHEN YOU WENT INTO THE SECURITY OFFICE,
17 DID YOU CLOSE THE DOORS?
18 A YES.
19 Q WERE YOU THE ONE THAT RELEASED THE DOORS SO
20 THEY COULD CLOSE?
21 A I WAS.
22 Q WERE THEY SWINGING DOORS?
23 A NO. THEY'RE NOT SWINGING DOORS. IT'S A
24 NORMAL DOOR WITH A HANDLE.
25 Q ARE THEY DOUBLE DOORS?
26 A IT'S JUST A SINGLE DOOR.
27 Q WAS IT OPEN WHEN YOU ENTERED OR DID YOU HAVE
28 TO OPEN IT TO ENTER?
29 A DIDN'T HAVE TO UNLOCK IT, BUT JUST OPEN --
30 OPEN THE DOORS.
31 Q O.K.
32 A JUST TURNED --

1 Q SO IT WAS IN A CLOSED, UNLOCKED POSITION?
2 A THAT'S RIGHT.
3 Q AND YOU OPENED IT?
4 A WELL --
5 Q DID SOMEBODY OPEN IT?
6 A SOMEBODY OPENED IT, YES. I DON'T RECALL
7 WHETHER I DID.
8 Q WHEN YOU ENTERED, YOU ENTERED WITH A BLACK
9 MALE, MR. KINSEY AND WHAT'S THE OTHER GENTLEMAN'S NAME? DO YOU
10 RECALL, SIR?
11 A SCHIEFEISTEIN.
12 Q SCHIEFEISTEIN?
13 A SCHIEFEISTEIN.
14 Q ALL THREE OF YOU ENTERED?
15 A YES.
16 Q I'VE NEVER MET MR. SCHIEFEISTEIN, SIR. WHAT
17 DOES HE LOOK LIKE?
18 A HE'S A VERY YOUNG MAN. I WOULD SAY IN HIS
19 EARLY 20'S, LIGHT BUILD, NOT TOO TALL, APPROXIMATELY FIVE SEVEN,
20 FIVE EIGHT IN HEIGHT, I'D BE ESTIMATING 140 POUNDS OR LESS, LIGHT
21 HAIR, LIGHT COMPLEXION.
22 Q HOW LONG HAVE YOU KNOWN MR. SCHIEFEISTEIN?
23 A JUST VERY BRIEFLY. HE WORKED IN AN AREA OF
24 THE STORE THAT I WAS NOT RESPONSIBLE FOR AND I DID NOT HAVE MUCH
25 CONTACT WITH MR. SCHIEFEISTEIN.
26 Q HOW DID YOU MEET HIM? DID YOU SEE HIM ONCE
27 A DAY? TWICE A WEEK?
28 A HE WORKED PART-TIME AND DID NOT WORK EVERY-
29 DAY AND WORKED VARIOUS HOURS WHEN HE WAS AVAILABLE TO WORK. SO
30 I DIDN'T -- I MIGHT GO SEVERAL DAYS WITHOUT SEEING HIM AT ALL.
31 Q HOW LONG DID HE WORK THERE FOR SEARS?
32 A DID HE WORK THERE FOR SEARS?

Q YEAH.

A I DON'T KNOW THAT INFORMATION.

Q NOW, YOU TESTIFIED ON DIRECT THAT YOU DON'T KNOW WHERE MR. SCHIEFEISTEIN WOULD BE. HAVE YOU BEEN ASKED TO LOOK FOR HIM?

A ME?

Q YES.

A NO, I HAVE NOT.

Q LET'S SEE.

SO YOU TESTIFIED THE BLACK MAN WAS WEARING ATHLETIC SHOES. DO YOU RECALL WHAT COLOR THESE ATHLETIC SHOES WERE?

A NO, I DO NOT.

Q DO YOU KNOW WHAT A HIGH TOP, BASKETBALL TENNIS SHOE LOOKS LIKE?

A YES, I DO.

Q DO YOU RECALL IF IT WAS THAT KIND OF SHOE?

A I COULDN'T RECALL.

Q DO YOU RECALL IF IT WAS A LOW PORTER-TYPE OF TENNIS SHOE OR JOGGING SHOE OR ATHLETIC SHOE?

A NO. I COULDN'T TELL YOU FOR SURE WHETHER IT WAS A LOW CUT OR A HIGH TOP SHOE.

Q AND YOU DON'T RECALL THE COLOR; IS THAT CORRECT?

A THAT'S TRUE.

Q DO YOU RECALL WHAT COLOR OF PANTS THE BLACK MAN WAS WEARING?

A NO. I COULD NOT TELL YOU THE COLOR OF THE PANTS.

Q DO YOU RECALL IF THE MAN'S JACKET WAS OPEN OR CLOSED?

A COULDN'T TELL YOU FOR SURE.

1 Q DID YOU GET A LOOK AT THE SHIRT HE WAS
2 WEARING?
3 A NO.
4 Q SO YOU WOULDN'T KNOW WHAT COLOR SHIRT HE WAS
5 WEARING?
6 A NO.
7 Q DO YOU RECALL, SIR, IF THE JACKET HAD A
8 BELT?
9 A NO, I DON'T.
10 Q DID IT OR --
11 A NO, I DON'T RECALL.
12 Q IT DID NOT OR YOU DON'T RECALL?
13 A I DON'T RECALL.
14 Q SO IT COULD HAVE OR COULD NOT HAVE?
15 A THAT'S TRUE.
16 Q IF YOU WERE SHOWN A JACKET, WOULD YOU BE
17 ABLE TO IDENTIFY IT OR WOULD YOU BE JUST ABLE TO SAY THAT IT
18 LOOKS LIKE A JACKET?
19 A I WOULD JUST BE ABLE TO SAY IF IT LOOKS LIKE
20 GENERALLY SPEAKING, THAT PARTICULAR JACKET. I WOULD NOT BE ABLE
21 TO IDENTIFY THE JACKET POSITIVELY.
22 Q AND SINCE YOU ARE UNABLE TO SAY THE COLOR OR
23 THE TYPE OF SHOES THAT WERE BEING WORN, YOU WOULD NOT BE ABLE TO
24 IDENTIFY THOSE EITHER IF YOU WERE SHOWN; WOULD THAT BE CORRECT?
25 A I WOULD NOT POSITIVELY BE ABLE TO IDENTIFY
26 THE SHOES IF I WERE SHOWN THE SHOES.
27 Q YOU SAY YOU WOULD NOT BE ABLE TO POSITIVELY
28 IDENTIFY THEM. WHAT WOULD YOU BE ABLE TO SAY?
29 A IT WAS JUST --
30 Q WOULD YOU SAY IT JUST LOOKS LIKE A PAIR OF
31 SHOES?
32 A IT WAS IN THE CANVAS SHOE FAMILY, SOMETHING

OF THAT NATURE. I WOULD BE ABLE TO SAY THAT. BUT AS OPPOSED FROM A LEATHER SHOE --

Q YOU WOULD JUST BE ABLE TO SAY IT'S A CANVAS SHOE; IS THAT RIGHT?

A UH-HUH. THAT'S TRUE.

Q O.K.

NOW, THE BLACK MAN THAT YOU SAW IN THE SECURITY OFFICE, DID YOU NOTICE IF HE HAD LONG SIDEBURNS? SHORT SIDEBURNS? OR NO SIDEBURNS?

A WELL, I THINK I'VE MENTIONED THAT BEFORE. THERE WAS A GROWTH OF BEARD COMING DOWN TO HIS CHEEK AREA.

Q WERE THOSE SIDEBURNS OR JUST CONTINUATION OF THE BEARD?

A IT WAS KIND OF INDISTINGUISHABLE WHERE THE SIDEBURN ENDED AND THE GROWTH OF BEARD BEGAN. I COULDN'T TELL YOU THE LENGTH OF HIS SIDEBURNS. THE SIDEBURNS ARE THICKER THAN THE REST OF THE BEARD AT THAT POINT.

Q THE SIDEBURNS WERE THICKER. ABOUT HOW LONG DID THEY COME THEN? TO THE LOW JAWLINE? THE INNER EAR? OR DO YOU RECALL?

A TO THE BEST OF MY RECOLLECTION, IT WAS JUST BELOW THE EAR, ABOUT SAME --

Q THE EAR LOBE?

A THE EAR LOBE, POSSIBLY THE EAR LOBE, NOT FOR SURE.

Q I'M NOT SURE IF I UNDERSTOOD YOU. DID YOU SAY BELOW THE INNER EAR OR EAR LOBE?

A DOWN TO THE EAR LOBE AREA.

Q LIKE YOURS?

A POSSIBLY JUST A LITTLE LONGER THAN WHERE MINE COMES.

Q THAT WOULD BE BELOW THE EAR?

A BELOW -- VERY LITTLE BELOW THE EAR LOBE.

Q NOW, WHEN YOU WERE WITH THE BLACK MAN AND MR. KINSEY, DID YOU HEAR ANY CURSING IN THE AREA?

A I REALLY DON'T RECALL ANY PARTICULAR CURSING.

Q DO YOU RECALL MR. KINSEY CURSING?

A NO, I DON'T.

Q DO YOU RECALL THE BLACK MAN CURSING?

A NO, I DON'T.

Q DO YOU IN YOUR MIND HAVE ANYTHING THAT YOU WOULD CONSIDER TYPICAL BLACK RACE TALK THAT SOMEONE OF THE BLACK RACE WOULD TYPICALLY BE SAYING OR SPEAKING, EITHER DIALECT OR ACCENT?

A NOTHING THAT'S -- THAT I WOULD CONSIDER TYPICAL, NO.

Q O.K.

WHEN YOU WERE WITH THE BLACK MAN ADULT AND MR. KINSEY, DID YOU HEAR ANYBODY SAY "MOTHER FUCKER"?

A I DON'T RECALL.

Q YOU DON'T RECALL. I'M SORRY. IS THAT YOU DO NOT RECALL ANYONE SAYING THAT?

A I DO NOT RECALL ANYONE SAYING THAT.

Q IS THAT TYPE OF LANGUAGE PART OF YOUR NORMAL VOCABULARLY, SIR, AND THE PEOPLE THAT YOU ARE ACQUAINTED WITH?

A NO.

Q WOULD THAT BE SOMETHING YOU THINK YOU'D RECALL IF IT WAS SAID?

A WELL, NOT BEING ABLE TO RECALL ALL OF THE DIALOGUE THAT WAS SPOKEN, EITHER IN THE HALLWAY OR IN THE OFFICE, THAT PARTICULAR TERM DOESN'T STRIKE ME AS POSITIVELY HAD BEEN SAID.

Q IT'S NOT SOMETHING THAT YOU COMMONLY SAY

THOUGH?

A NO.

Q AND IT'S NOT SOMETHING THAT YOUR ACQUAINTANCES COMMONLY SAY?

A NO.

Q SO IT WOULD BE UNUSUAL?

A BUT IT'S NOT SOMETHING THAT I HAVEN'T HEARD BEFORE.

Q CORRECT.

A MANY TIMES IN MY LIFE.

Q BUT IT'S UNUSUAL TO YOUR RANGE OF ACQUAINTANCES; WOULD THAT BE CORRECT?

A IT'S CERTAINLY UNUSUAL IN A -- IN A NORMAL CONVERSATION, YES.

Q DID YOU REMAIN AT THE SECURITY OFFICE AFTER THE POLICE ARRIVED OR WERE YOU THERE WHEN THEY ARRIVED?

A I WAS IN THE STORE WHEN THEY ARRIVED.

Q YOU WERE?

A I WAS ON THE -- I WAS PROBABLY -- I WAS NOT IN THE SECURITY OFFICE I DON'T BELIEVE WHEN THEY ARRIVED.

Q WHEN YOU LEFT THE SECURITY OFFICE AFTER THE BLACK MAN LEFT --

A YES.

Q (CONTINUING) -- AND THEN YOU WERE NOT AT THE SECURITY OFFICE WHEN THE POLICE ARRIVED?

A NOT WHEN -- I DON'T BELIEVE I WAS THERE. I DON'T RECALL. I KNOW I LEFT THE SECURITY OFFICE, WENT ABOUT MY NORMAL WORK FUNCTIONS, AND THEN LATER WHEN THE POLICE ARRIVED I WENT BACK TO THE SECURITY OFFICE TO FILL OUT MY STATEMENT.

WHERE I WAS EXACTLY WHEN THE POLICE ARRIVED AT THE STORE I COULDN'T TELL YOU.

Q BUT IN ANY EVENT, YOU WERE NOT AT THE

SECURITY OFFICE WHEN THEY ARRIVED?

A THAT'S TRUE.

Q HOW LONG HAVE YOU KNOWN MR. KINSEY?

A WELL, I'VE WORKED AT THE STORE AT THE BOULEVARD MALL FOR FIVE YEARS. AND I DON'T KNOW WHEN HE BEGAN AT SEARS, BUT I WOULD SAY APPROXIMATELY I'VE BEEN ACQUAINTED WITH HIM FOR, I GUESS FOR FOUR YEARS NOW.

I DON'T KNOW IF HE WAS WORKING AT THE STORE, TO BE HONEST WITH YOU, WHEN I ARRIVED THERE OR IF HE CAME TO WORK SOMETIME LATER. I DON'T KNOW WHAT HIS SERVICE DATE WOULD BE.

Q DOES YOUR STORE HAVE A NUMBER?

A YES. IT DOES.

Q WHAT'S THE NUMBER?

A 1328 IS OUR IDENTIFYING NUMBER.

Q WHEN YOU SAW THE BLACK MALE ADULT DOWNSTAIRS FOR THE FIRST TIME WAS HE CARRYING ANYTHING?

A I DON'T RECALL HIM CARRYING ANYTHING.

Q DO YOU THINK THAT'S SOMETHING THAT YOU WOULD RECALL, CONSIDERING THIS INCIDENT?

A I DON'T RECALL. THAT'S ALL I CAN SAY.

Q WELL, WHEN YOU CAME UP TO HIM, I PRESUME, AT LEAST DURING THE WALK TO THE SECURITY OFFICE AS YOU APPROACHED HIM, YOU WOULD SEE HIS HANDS, THE BLACK MAN'S?

A UH-HUH.

Q BUT YOU DON'T RECALL IF HE WAS CARRYING ANYTHING?

A NOT IN HIS HAND.

Q DID HE HAVE ANYTHING UNDER HIS ARM THAT YOU COULD SEE?

A I DON'T RECALL.

Q O.K.

A HE HAD USE OF HIS HANDS. I MEAN HE WAVED HIS HANDS FROM TIME TO TIME. SO I, YOU KNOW, I DIDN'T NOTICE HIS HANDS. BUT --

Q DID YOU EVER TELL THE POLICE YOU COULD IDENTIFY THE MAN?

A THAT I -- THAT I COULD IDENTIFY THE MAN?

Q YEAH.

A I BELIEVE I SAID I THINK I COULD IDENTIFY THE MAN IF I SAW THE MAN AGAIN, YES.

Q BUT THEY NEVER ASKED YOU TO COME FORWARD AND IDENTIFY EITHER PHOTOGRAPHS OR A PHYSICAL LINEUP?

MR. HARMON: OBJECTION, ASKED AND ANSWERED.

THE COURT: SUSTAINED.

MR. FRANZEN: WELL, WAS THERE EVER ANY DISCUSSION BETWEEN YOU AND THE POLICE REGARDING YOUR VIEWING A LINEUP OR LOOKING AT PHOTOGRAPHS?

A WHEN I CAME DOWN TO MR. HARMON'S OFFICE IN NOVEMBER THERE WAS JUST MENTION THAT THERE COULD POSSIBLY BE A LINEUP.

Q BUT THAT WAS --

A THAT WAS NOT -- BUT THEN THE -- FROM THAT POINT I DIDN'T HEAR ANYMORE ABOUT ONE.

Q THIS WAS MR. HARMON THAT MENTIONED THAT YOU MIGHT --

A SOMEONE IN THE OFFICE. I DON'T KNOW IF IT WAS MR. HARMON OR ANOTHER GENTLEMAN.

Q THIS BEING THE DISTRICT ATTORNEY'S OFFICE?

A YES, ON THE SEVENTH FLOOR OF THIS BUILDING.

Q O.K.

NOW, YESTERDAY YOU STATED THAT YOU HAD SEEN MR. KINSEY IN THE CORRIDOR AND SPOKEN WITH HIM. WHAT DID YOU DISCUSS WITH MR. KINSEY?

A I DISCUSSED?

Q YESTERDAY.

A YESTERDAY? I JUST HAD NOT SEEN MR. KINSEY FOR SEVERAL MONTHS AND JUST GREETINGS AND ASKED WHAT HE HAD BEEN DOING LATELY, WHERE HE WAS WORKING AND HOW HIS NEW JOB WAS -- WAS GOING, AND THAT TYPE OF CONVERSATION.

MR. FRANZEN: YOUR HONOR, THAT WOULD CONCLUDE CROSS EXAMINATION UNTIL WE OBTAIN WHAT WAS TALKED ABOUT EARLIER.

THE COURT: ALL RIGHT. REDIRECT IT?

MR. HARMON: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. HARMON:

Q MR. MAJOR, YOU HAVE INDICATED THAT THE DEFENDANT, ON SEVERAL OCCASIONS, ADDRESSED YOU AND SAID, REFERRING TO MR. KINSEY, THIS MAN IS GOING TO BEAT ME, DON'T LET HIM HIT ME.

A YES.

Q IS THAT CORRECT?

A YES.

Q IN YOUR PRESENCE, DID KEITH KINSEY GIVE ANY INDICATION OF ATTEMPTING TO BEAT OR HIT THE DEFENDANT MR. HOWARD?

A NO, HE DIDN'T.

Q DID YOU SEE ANYTHING ABOUT THE BEHAVIOR OF MR. KINSEY, IN HIS EFFORTS TO MAKE THIS APPREHENSION, THAT YOU CONSIDERED EXTRAORDINARY?

A NO.

Q DID YOU OBSERVE MR. KINSEY DO ANYTHING THAT WOULD LEND SUPPORT TO THE DEFENDANT'S STATEMENT THAT MR. KINSEY WAS GOING TO BEAT OR HIT HIM?

A NO, I DID NOT.

Q FROM THE TIME THAT YOU WERE FIRST SUMMONED TO THE CUSTOMER SERVICE AREA NEAR THE CASHIER'S CAGE, DO YOU REMEMBER EXACTLY WHAT THE DEFENDANT SAID WORD FOR WORD?

A I CANNOT REPEAT IT WORD FOR WORD, BUT THE FIRST WORDS DEALT WITH HIM SEEING ME APPROACHING AND SAID BASICALLY -- WELL, DENYING THAT HE HAD DONE ANYTHING WRONG AND THAT DON'T LET THIS MAN HIT ME.

Q ARE YOU ABLE TO SAY DEFINITELY THAT THERE WERE NO PROFANITIES AT ANYTIME UTTERED BY THE DEFENDANT MR. HOWARD DURING THIS INCIDENT?

A I CAN'T DEFINITELY SAY THAT THERE WERE NONE, JUST THAT I WAS REALLY LISTENING FOR SOMETHING A LITTLE BIT MORE MEANINGFUL SO I COULD DISCOVER WHAT THE PROBLEM WAS OR WHAT THE CONFRONTATION WAS. I WASN'T INTERESTED IN ANY PROFANITY OR ANYTHING LIKE THAT, AND NOTHING -- AS I MENTIONED, I'VE OBVIOUSLY HEARD MY SHARE OF PROFANITY AND I WAS REALLY MORE INTERESTED IN LISTENING TO THE DETAILS AS TO WHAT WAS OCCURRING THERE.

Q YOU SIMPLY HAVE NO RECOLLECTION OF THAT, BUT YOU CAN'T POSITIVELY RULE OUT THAT IT WAS SAID; IS THAT CORRECT?

A I SAID --

MR. FRANZEN: OBJECTION, LEADING, YOUR HONOR.

THE COURT: OVERRULED.

MR. FRANZEN: THANK YOU, YOUR HONOR.

BY MR. HARMON:

Q MR. MAJOR, AT SOME POINT YOU HAVE TESTIFIED THAT THE DEFENDANT PRODUCED A GUN AND ORDERED YOU AND THE OTHERS TO GET ON THE FLOOR.

A YES.

Q DO YOU REMEMBER SPECIFICALLY WHAT HIS WORDS WERE WHEN HE GAVE YOU THAT INSTRUCTION?

A I CANNOT REPEAT SPECIFICALLY.

Q DO YOU RECALL IF, IN THE CHARACTERIZATION OF MR. FRANZEN, DEFENSE COUNSEL, HE DID THAT POLITELY?

A NO, I DON'T RECALL IT BEING IN ANYWAY IN A POLITE MANNER. IT WAS JUST THE PRESENCE OF THE GUN AND THE WORD "FLOOR" AND WE OBEYED THAT TYPE OF COMMAND.

Q DID THAT SITUATION CREATE QUITE AN IMPRESSION ON YOU?

A YES, IT CERTAINLY DID.

Q NOW, YOU HAVE IDENTIFIED THE DEFENDANT MR. HOWARD AS THE PERSON WHO DID THAT IN THIS COURTROOM YESTERDAY; IS THAT CORRECT?

A THAT'S TRUE.

Q HAD YOU GIVEN CONSIDERABLE THOUGHT AFTER THAT INCIDENT ON MARCH 26TH, 1980, AS TO WHAT MR. HOWARD LOOKED LIKE?

A YES, I HAVE.

Q DID YOU RETAIN SOME TYPE OF IMAGE OF HIS FACE AND FACIAL STRUCTURE IN YOUR MIND?

A THE IMAGE OF THE FACE IS WHAT STICKS IN MY MIND, AND THE PHYSICAL PHYSIQUE.

Q IS THAT WHY YOU MADE YOUR IDENTIFICATION YESTERDAY?

A YES, IT IS.

Q YOU STAND BY THAT IDENTIFICATION OF THE DEFENDANT TODAY?

A YES, I DO.

Q AS THE PERSON WHO PRODUCED THE GUN ON MARCH 26TH, 1980?

A YES, I DO.

MR. HARMON: THANK YOU.

NOTHING FURTHER FROM THIS WITNESS.

THE COURT: COUNSEL, APPROACH THE BENCH, PLEASE.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED.)

THE COURT: COUNSEL, MR. SEATON, THE OFFICER IS OUTSIDE WHO BROUGHT A COPY OF THIS. CAN HE BE EXCUSED AT THIS TIME?

MR. SEATON: YES, HE MAY, YOUR HONOR. THANK YOU.

THE COURT: RECROSS, COUNSEL?

MR. FRANZEN: YES, YOUR HONOR.

RECROSS EXAMINATION

BY MR. FRANZEN:

Q MR. MAJOR, WHEN MR. KINSEY DETAINS SOMEBODY FOR SHOPLIFTING DOES HE HANDCUFF THEM?

A THIS WOULD NOT BE WHAT I'VE OBSERVED, I'M NOT IN THE SECURITY OFFICE, BUT FROM WHAT I HAVE OBSERVED, IT IS NOT MANDATORY OR ALL-THE-TIME WOULD A SHOPLIFTER BE HANDCUFFED.

Q WELL, DID HE TRY AND HANDCUFF THE BLACK MALE ADULT IN THE SECURITY OFFICE?

A WHAT DO YOU MEAN DID HE TRY?

Q TO YOUR KNOWLEDGE DID HE WANT TO HANDCUFF THE BLACK MALE ADULT IN THE SECURITY OFFICE?

A I DON'T KNOW FOR A FACT THAT THAT'S WHAT HE INTENDED TO DO.

Q WOULD YOU HAVE SAID THAT WAS THE FACT IN YOUR STATEMENT IF IT WAS NOT THE FACT?

A (NO AUDIBLE RESPONSE.)

Q IN OTHERWORDS, YOU MEANT WHAT YOU SAID IN YOUR STATEMENT?

A I DID AT THE TIME WHEN I WROTE THAT STATEMENT.

MR. FRANZEN: MAY I APPROACH THE WITNESS, YOUR HONOR.

THE COURT: YOU MAY.

BY MR. FRANZEN:

Q SIR, REFERRING YOU TO A STATEMENT DO YOU RECOGNIZE THAT HANDWRITING ON THAT STATEMENT?

A YES, I DO.

Q IS THIS THE STATEMENT THAT YOU HAD WRITTEN BACK ON MARCH 26TH, 1980?

A YES. I HAVEN'T HAD AN OPPORTUNITY TO SEE IT OR TO A LEGIBLE COPY.

Q O.K.

A COULD I AT THIS POINT?

Q YES. I WAS JUST ABOUT TO GIVE IT TO YOU.

WOULD YOU TAKE A LOOK AT IT, AND PARTICULARLY I WISH TO DIRECT YOUR ATTENTION TO THAT PART THERE (INDICATING), WHERE YOU EXPLAINED THAT MR. KINSEY WAS TURNING HIM TO BE CUFFED.

A UH-HUH. O.K.

WHAT WAS THE QUESTION AGAIN?

Q WAS MR. KINSEY INTENDING TO HANDCUFF THE BLACK MALE ADULT IN THE SECURITY OFFICE?

A WELL, HE -- HE NEVER DID HANDCUFF HIM.

Q THAT'S NOT MY QUESTION, SIR. WAS HE INTENDING TO, BASED ON YOUR STATEMENT OF MARCH 26TH?

A THAT WAS AN ASSUMPTION ON MY PART. I DID

1 NOT -- I ASSUMED THAT'S WHAT HE WAS GOING TO DO.
2 Q O.K. FINE.
3 AND THIS WAS AFTER THE DOORS HAD BEEN
4 CLOSED; IS THAT CORRECT?
5 A YES. IT WAS -- THE DOORS WERE CLOSED,
6 CLOSED.
7 Q NOW, YOU WERE STARTLED WHEN THIS GUN CAME
8 OUT; WOULD THAT BE CORRECT?
9 A YES.
10 Q WHERE DID HE GET THE GUN FROM, THE BLACK
11 MALE ADULT?
12 A HE SEEMED TO REACH BEHIND HIM, UNDERNEATH
13 THE JACKET.
14 Q WELL, YOU'VE JUST READ YOUR REPORT, YOUR
15 STATEMENT. DOESN'T YOUR STATEMENT SAY THAT "HE REACHED INTO
16 THE JACKET"?
17 A I DON'T KNOW. I DIDN'T HAVE AN OPPORTUNITY
18 TO READ THAT VERBATIM.
19 Q WELL, I DON'T WANT TO RUSH YOU, SIR. WOULD
20 YOU LIKE TO READ YOUR STATEMENT AGAIN?
21 A WELL, IT WAS A VERY QUICK MOTION. WE DID
22 NOT AND I DID NOT HAVE ANY KNOWLEDGE THAT HE HAD A GUN ON HIS --
23 IN HIS POSSESSION. HE MADE A VERY QUICK MOVE, YOU KNOW, REACHING
24 BACK IN THIS AREA (INDICATING), YOU KNOW, PULLING OUT, AND OUT
25 CAME THE GUN.
26 Q WELL THEN, YOU'RE SAYING YOUR STATEMENT'S
27 NOT ALL THAT CORRECT.
28 A I CAN'T SAY THAT IT'S --
29 Q IS THAT WHAT YOU'RE SAYING?
30 A I CAN'T SAY THAT IT'S INCORRECT.
31 COULD I SEE THE STATEMENT AGAIN SO I
32 COULD SEE WHAT IT ACTUALLY IS, WHAT I'VE WRITTEN THERE?

Q CERTAINLY.

THE COURT: COUNSEL, HE'S BEEN FURNISHED A COPY.

THE WITNESS: MY STATEMENT SAID THAT HE SLIPPED, LEAPED ON A CHAIR AND REACHED INSIDE HIS JACKET AND PULLED OUT A HANDGUN.

BY MR. FRANZEN:

Q WELL, IS THAT CORRECT, SIR?

A I DON'T THINK THAT -- WELL, INSIDE COULD BE BETWEEN HIS BODY AND THE JACKET, IS WHAT I AM REFERRING TO HERE.

Q DOES IT SAY "REACHED BEHIND HIM"? DOES IT?

A NO, IT DOESN'T.

Q IT JUST SAYS THAT HE REACHED INSIDE HIS JACKET; IS THAT CORRECT?

A UH-HUH. THAT'S TRUE.

THE COURT: COUNSEL, APPROACH THE BENCH, PLEASE.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED.)

THE COURT: ANY FURTHER QUESTIONS, COUNSEL?

MR. FRANZEN: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: THE STATE?

MR. HARMON: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU'RE EXCUSED, SIR.

MR. HARMON: YOUR HONOR, WE WOULD LIKE TO RESERVE THE RIGHT TO RECALL MR. MAJOR.

THE COURT: ALL RIGHT.

(WHEREUPON, THE WITNESS WAS EXCUSED.)

MR. SEATON: LINDA WILSON.

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

WHEREUPON,

LINDA WILSON,

CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN, EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: PROCEED.

DIRECT EXAMINATION

BY MR. SEATON:

Q WOULD YOU PLEASE STATE YOUR NAME?

A MY NAME IS LINDA WILSON.

Q AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

A W-I-L-S-O-N.

Q IS IT MISS OR MRS.?

A IT'S MRS.

Q MRS. WILSON, DO YOU LIVE IN LAS VEGAS, NEVADA?

A YES, I DO.

Q HOW LONG HAVE YOU LIVED HERE?

A 28 YEARS.

Q WHERE ARE YOU PRESENTLY EMPLOYED?

A SUNRISE HOSPITAL.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

A TWO YEARS.

Q PRIOR TO THAT, WHERE WERE YOU EMPLOYED?

A SEARS.

Q WHERE WAS THAT SEARS LOCATED?

A AT THE BOULEVARD MALL.

Q HERE IN LAS VEGAS, NEVADA?

A YES.

Q AND HOW LONG HAD YOU BEEN EMPLOYED AT SEARS ROEBUCK AND COMPANY, AT THE BOULEVARD MALL?

A FIVE YEARS.

Q WHAT WAS YOUR CAPACITY WHILE YOU WERE THERE?

A I WAS A SALESCLERK.

Q AND YOU WERE SO EMPLOYED IN MARCH OF 1980?

A YES, I WAS.

Q AS A SALESCLERK, WHAT WERE YOUR GENERAL DUTIES?

A TO HELP THE CUSTOMERS TO GET MERCHANDISE TO THE FLOOR, TO TAKE CARE OF ANY CUSTOMER PROBLEMS.

Q NOW, ON MARCH OF 1980, HOW LONG AT THAT TIME HAD YOU WORKED AT SEARS?

A APPROXIMATELY FOUR YEARS.

Q LET ME CALL YOUR ATTENTION TO MARCH THE 26TH, 1980, CAN YOU RECALL AN INCIDENT -- WELL, FIRST OF ALL, LET ME ASK YOU IF YOU KNOW A GENTLEMAN EMPLOYED AT SEARS AT THAT TIME BY THE NAME OF KEITH KINSEY.

A YES, I DO.

Q WHAT CAPACITY WAS HE WORKING?

A HE WAS A SECURITY GUARD.

Q CAN YOU RECALL BACK TO MARCH 26TH, 1980, AN INCIDENT THAT AROSE IN SEARS IN THE EARLY AFTERNOON HOURS WITH KEITH KINSEY?

A YES, I CAN.

Q AND WOULD YOU TELL US WHERE YOU WERE WHEN YOU FIRST BECAME AWARE OF THIS INCIDENT TAKING PLACE?

A AT THE CASH BANK.

Q AND WOULD YOU TELL US WHAT OCCURRED AT THAT

TIME?

A A CUSTOMER APPROACHED THE CASH WRAP WITH A PIECE OF MERCHANDISE, I BELIEVE IT WAS A SANDER, WITH THE BOX OPEN AND NO RECEIPT. HE WANTED TO GET HIS MONEY BACK.

Q AND WHAT DID YOU TELL HIM?

A UH, WELL, I SAW THE SECURITY GUARD STANDING A COUPLE AISLES OVER, POINTING, MAKING SOME KIND OF MOTIONS TO ME.

Q BY THE "SECURITY GUARD" DO YOU MEAN KEITH KINSEY?

A YES, THAT'S CORRECT.

Q WHAT DID YOU DO IN RESPONSE TO THOSE MOTIONS?

A I EXCUSED MYSELF FOR A MOMENT AND SAID I HAD TO CHECK ON SOMETHING, AND WALKED BACK OVER BY KEITH AND ASKED HIM WHAT HE WANTED ME TO DO.

Q NOW, WERE YOU THE ONLY SALESCLERK WORKING AT THAT TIME, OR DEALING WITH THIS PARTICULAR CUSTOMER?

A WELL, THERE WAS ANOTHER SALESCLERK THAT HAD STARTED -- HAD CONFRONTED THE CUSTOMER IN THE BEGINNING, BUT SHE WASN'T SURE WHAT -- HOW TO HANDLE THE SITUATION.

Q AND THEN YOU CAME ON THE SCENE?

A AND THEN I WAS -- I WAS IN THE -- I COULD SEE THE CASH WRAP AND I COULD SEE THAT SHE WAS NEEDING HELP.

Q I SEE.

AND WHAT HAPPENED WHEN YOU WENT OVER AND SPOKE WITH KEITH?

A KEITH TOLD ME TO GIVE HIM BACK THE MONEY.

Q AND WHAT DID YOU THEN DO?

A I THEN WENT BACK TO THE CASH WRAP AND I WROTE THE CUSTOMER A RETAIL CREDIT CHECK.

Q WHAT WAS THE SEARS POLICY AT THIS TIME WITH REGARD TO THE RETURN OF MERCHANDISE AND YOUR GIVING MONEY BACK

1 FOR THAT MERCHANDISE.
2 A YOU'RE NOT SUPPOSE TO GIVE MONEY FROM THE
3 CASH REGISTER ON THE SALESFLOOR. THE CUSTOMERS ARE SUPPOSE TO
4 GO DOWNSTAIRS TO THE MAIN CASHIER.
5 Q WHO FILLED OUT THE RETAIL CREDIT CHECK THAT
6 YOU GAVE TO THIS INDIVIDUAL?
7 A I DID.
8 Q AND DID YOU FILL IT OUT IN ITS ENTIRETY?
9 A YES.
10 Q ONCE YOU GAVE THAT INDIVIDUAL THE RETAIL
11 CREDIT CHECK, WHAT THEN HAPPENED?
12 A I THEN DIRECTED HIM DOWNSTAIRS TO THE MAIN
13 CASHIER.
14 Q AND DID HE GO?
15 A YES, HE DID.
16 Q WHAT DIRECTIONS DID YOU GIVE HIM?
17 A DOWN THE MAIN AISLE BY THE T.V. DEPARTMENT
18 AND THEN TO TURN AT THE ALLSTATE BOOTH AND THE ESCALATOR WAS
19 RIGHT BEHIND THE ALLSTATE BOOTH.
20 Q AND DID HE GO IN THAT DIRECTION?
21 A I BELIEVE HE DID, YES.
22 Q CAN YOU DESCRIBE FOR US THE INDIVIDUAL, THE
23 CUSTOMER, WHO CAME TO THE STORE ON THAT DAY?
24 A HE WAS A BLACK MAN.
25 Q HOW TALL WOULD YOU SAY HE WAS?
26 A I BELIEVE HE WAS SIX FEET TALL.
27 Q CAN YOU MAKE A CLOSER ESTIMATION THAN THAT?
28 A FIVE TEN. I DON'T BELIEVE HE WAS MUCH
29 TALLER THAN ME.
30 Q HOW TALL ARE YOU?
31 A I'M FIVE FOOT SEVEN.
32 Q FIVE FOOT SEVEN.

HOW HEAVY DO YOU THINK HE WAS?

A OH, PROBABLY ABOUT 150 TO 170.

Q WHAT SORT OF A BUILD WOULD YOU THINK THAT HE HAD?

A I BELIEVE HE WAS VERY MUSCULAR IN THE UPPER BODY.

Q CAN YOU RECALL WHAT HE WAS WEARING?

A I DON'T RECALL EXACTLY WHAT HE WAS WEARING, BUT HE WAS CARRYING A SHOULDER BAG.

Q WOULD YOU DESCRIBE THAT FOR US?

A I BELIEVE IT WAS A RECTANGULAR BAG. IT WAS A LIGHT COLOR, I BELIEVE.

Q AND HOW WAS HE CARRYING THAT?

A IT WAS OVER HIS SHOULDER.

Q I SEE.

CAN YOU RECALL HIS HAIR?

A WHAT -- WHAT COLOR IT WAS?

Q WELL, YES. WHAT COLOR WAS IT?

A IT WAS BLACK.

Q AND WAS IT LONG OR SHORT?

A I BELIEVE IT WAS SHORT.

Q DO YOU RECALL ANYTHING ABOUT HIS COMPLEXION?

A NO, I DON'T.

Q WERE YOU ABLE TO ESTIMATE WHAT HIS AGE WAS?

A I BELIEVE HE WAS IN HIS LATE TWENTIES, EARLY THIRTIES.

Q IF YOU WERE TO SEE THAT INDIVIDUAL AGAIN DO YOU THINK THAT YOU COULD RECOGNIZE HIM?

A I DON'T KNOW.

Q LET ME ASK YOU TO LOOK ABOUT THE COURTROOM NOW AND SEE IF THERE'S ANYONE HERE WHO YOU CAN IDENTIFY AS BEING THE INDIVIDUAL WHO YOU CONFRONTED THAT DAY?

A I CAN'T REMEMBER.

Q ALL RIGHT. THANK YOU.

LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 38, AND ASK YOU TO EXAMINE THAT COPY. ARE YOU ABLE TO IDENTIFY IT?

A YES. THAT'S MY HANDWRITING.

Q WHAT IS DEPICTED THERE IN STATE'S PROPOSED EXHIBIT 38?

A THIS IS A COPY OF A RETAIL CREDIT CHECK THAT WAS ISSUED MARCH 26TH, 1980.

Q HOW CAN YOU IDENTIFY IT?

A WELL, IT HAS THE STORE NUMBER ON IT WHERE I WORKED AND IT HAS MY SIGNATURE ON IT. THIS IS MY HANDWRITING (INDICATING).

Q I SEE A NAME ON THERE "H. STANBACK". DID YOU PUT THAT ON?

A I ASKED THE CUSTOMER WHAT HIS NAME WAS AND THAT'S THE INFORMATION THAT THE CUSTOMER GAVE ME.

Q AND THEN THERE IS A SIGNATURE AT THE BOTTOM. WHO PUT THAT SIGNATURE THERE?

A DOWN AT THE BOTTOM AT THE "X"?

Q YES.

A THAT WOULD HAVE BEEN SIGNED BY THE CUSTOMER WHEN HE WENT DOWNSTAIRS TO THE MAIN CASHIER.

Q IS THAT THE NORMAL SEARS POLICY?

A YES, THAT IS.

Q WHAT IS THE SEARS STORE NUMBER?

A 1329.

Q I SEE AN "N.R." AT THE TOP OF THE RECEIPT. CAN YOU EXPLAIN THAT?

A THAT MEANS THE CUSTOMER HAD NO RECEIPT.

Q EXCEPT FOR THE OTHER SIGNATURE THAT YOU HAVE

1 INDICATED THAT WAS ON THERE, DID YOU FILL OUT THIS ENTIRE
2 DOCUMENT?
3 A YES, I DID.
4 Q CAN YOU TELL FROM LOOKING AT IT WHAT IT WAS
5 SPECIFICALLY THAT WAS BEING RETURNED?
6 A IT WAS A SANDER.
7 Q IS THERE A MODEL NUMBER?
8 A I BELIEVE IT'S 1166.
9 Q AND WHAT WAS THE TOTAL AMOUNT OF REFUND THAT
10 WAS TO HAVE BEEN GIVEN BACK TO THE CUSTOMER?
11 A FORTY ONE FIFTY NINE.
12 Q THAT IS $41.59.
13 A YES, THAT'S CORRECT.
14 Q IS THERE A DATE ON THIS TICKET?
15 MR. FRANZEN: YOUR HONOR, I AM GOING TO OBJECT.
16 WE'VE GONE BEYOND MERELY IDENTIFYING. WE ARE TESTIFYING ABOUT
17 AN EXHIBIT THAT'S NOT YET BEEN ADMITTED.
18 THE COURT: SUSTAINED.
19 MR. FRANZEN: I MOVE TO STRIKE THE TESTIMONY, YOUR
20 HONOR.
21 MR. SEATON: THANK YOU.
22 THE COURT: WELL, LET'S JUST WAIT FOR ONE MINUTE.
23 ARE YOU GOING TO MOVE FOR ITS INTRODUCTION
24 AT THIS TIME, COUNSEL?
25 MR. SEATON: YES, YOUR HONOR, I WOULD.
26 MR. FRANZEN: I WOULD OBJECT, YOUR HONOR, TO THE
27 BEST EVIDENCE RULE. IT'S A COPY OF ONE OF THE PRIOR ONES. I
28 BELIEVE AT LEAST ONE SAID THE ORIGINAL HAD BEEN GIVEN TO THE
29 POLICE. I WOULD LIKE TO KNOW WHERE THE ORIGINAL IS AND ACCOUNTED
30 FOR.
31 THE COURT: THE STATE?
32 MR. SEATON: WELL, YOUR HONOR, NRS 52.245, XEROX

1 COPIES HAVE BEEN MADE ADMISSIBLE.

2 THE COURT: FIFTY TWO WHAT?

3 MR. SEATON: 245.

4 THE COURT: PROCEED.

5 MR. SEATON: ON THAT GROUND, THE STATE WOULD MOVE
6 FOR ITS ADMISSION. THE WITNESS IS THE INDIVIDUAL WHO MADE UP THE
7 ORIGINAL. SHE HAS STATED ON THE STAND THAT THIS IS A COPY OF
8 THAT PARTICULAR DOCUMENT. FROM THE VERY EVIDENCE THAT COUNSEL
9 WISHES TO EXCLUDE NOW, IT HAS BECOME APPARENT THAT SHE IS ABLE
10 TO IDENTIFY EVERY PIECE OF WRITING THAT APPEARS ON THAT DOCUMENT.
11 THE VALIDITY --

12 THE COURT: MAY I SEE THE DOCUMENT, SIR?

13 MR. SEATON: YES, SIR.

14 (CONTINUING) -- THE VALIDITY AND VERACITY OF
15 IT HAS BEEN SHOWN IN THAT REGARD.

16 THE COURT: HAVE YOU HAD OCCASION TO READ THE
17 STATUTE, SIR?

18 MR. FRANZEN: YES. I BELIEVE OUR OBJECTION IS
19 STILL VALID. THE SUB-SECTION B STATES THAT IN THE CIRCUMSTANCES
20 OF THE UNFAIR DUPLICATE IN LIEU OF THE ORIGINAL, AND IN THE
21 CIRCUMSTANCES IT WOULD BE UNFAIR. THEY HAVE THE ORIGINAL. I
22 WOULD LIKE TO KNOW WHAT, IF ANYTHING, IS ON THE OTHERSIDE.

23 THE COURT: WELL, THAT'S SHEER SPECULATION,
24 COUNSEL. AND I FIND THAT IT IS, FROM THE TESTIMONY OF THE VARIOUS
25 WITNESSES, IT IS GENUINE, WAS SIGNED BY THE DEFENDANT, AS TESTI-
26 FIED BY --

27 MR. FRANZEN: WELL, YOUR HONOR, SHE HASN'T TESTI-
28 FIED THAT HE SIGNED IT.

29 THE COURT: COUNSEL, THE OTHER WITNESSES HAVE, IF
30 YOU WILL REMEMBER THE TESTIMONY.

31 FURTHER, IT DOES NOT APPEAR THAT THE CIRCUM-
32 STANCES ARE UNFAIR. IT DOES APPEAR TO BE THE DOCUMENT, A COPY

OF THE DOCUMENT, THAT SHE SIGNED ON THE DATE IN QUESTION. THE OBJECTION IS OVERRULED. THE SAME WILL BE RECEIVED AS 38.

MR. SEATON: THANK YOU, YOUR HONOR.

BY MR. SEATON:

Q MRS. WILSON, DID THERE COME A TIME ON THAT DAY THAT YOU AGAIN SAW THE BLACK MAN TO WHOM YOU GAVE THE RETAIL CREDIT CHECK?

A YES.

Q AND WHERE WAS THAT?

A I FIRST NOTICED HIM WHEN HE WAS JUST -- HAD JUST COME OFF THE ESCALATOR AND HE WAS RUNNING THROUGH THE STORE TO THE DOOR THAT HE ENTERED INTO.

Q WHEN YOU SAY RUNNING, COULD YOU MORE CLEARLY DESCRIBE THAT? HOW FAST WAS HE RUNNING?

A HE WAS RUNNING VERY FAST TO GET OUT OF THE STORE.

Q WHAT WAS HE CARRYING THEN?

MR. COOPER: I AM GOING TO OBJECT, YOUR HONOR, AS LEADING. SHE HASN'T TESTIFIED HE WAS CARRYING ANYTHING.

THE COURT: SUSTAINED.

BY MR. SEATON:

Q WAS HE CARRYING ANYTHING?

A I THOUGHT I SAID HE HAD A SHOULDER BAG BEFORE.

Q WELL, YOU DID EARLIER.

A YEAH.

Q WHEN YOU SAW HIM RUNNING THIS NEXT TIME WAS HE CARRYING ANYTHING THEN?

I DON'T RECALL.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

SAMUEL HOWARD

Appellant,

vs.

E.K. McDANIEL, WARDEN, and CATHERINE CORTEZ MASTO, ATTORNEY GENERAL FOR THE STATE OF NEVADA,

Respondents.

Case No. 57469

APPELLANT'S APPENDIX

Appeal from Order Denying Petition
for Writ of Habeas Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of May 2011. Electronic Service of the foregoing APPELLANT'S APPENDIX shall be made in accordance with the Master Service List as follows:

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