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SAMUEL HOWARD

Appellant,

VS.

E.K. McDANIEL, WARDEN, and  
CATHERINE CORTEZ MASTO,  
ATTORNEY GENERAL FOR THE STATE  
OF NEVADA,

### Respondents.

Electronically Filed  
May 12 2011 04:32 p.m.  
Case No. 57469 Tracie K. Lindeman

## APPELLANT'S APPENDIX

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

VOLUME 2 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](mailto:Mike_Charlton@fd.org)

Attorneys for Appellant

1 Q O.K.  
2 AND FROM WHICH DIRECTION WAS HE RUNNING?  
3 A FROM THE ESCALATOR TOWARD THE FRONT DOOR BY  
4 THE HARDWARE DEPARTMENT AND THEN THE CAFETERIA. I'M NOT GOOD AT  
5 DIRECTIONS. I'M SORRY.  
6 Q O.K. THAT'S ALL RIGHT.  
7 HOW CLOSE TO YOU DID HE COME WHEN HE  
8 WAS RUNNING BY?  
9 A HE WAS STANDING AT THE CASH WRAP AGAIN. IT'S  
10 NOT TOO FAR FROM THE DOOR.  
11 MR. SEATON: I HAVE NOTHING FURTHER, YOUR HONOR.  
12 COURT'S INDULGENCE FOR ONE MINUTE.  
13 THE COURT: CROSS?  
14 MR. SEATON: ONE FURTHER QUESTION, YOUR HONOR, IF  
15 I MAY?  
16 THE COURT: PROCEED.  
17  
18 BY MR. SEATON:  
19  
20 Q MRS. WILSON, FROM THE TIME, CONSIDER IF YOU  
21 WOULD FOR A MINUTE, FROM THE TIME THAT YOU SENT THE GENTLEMAN  
22 DOWNSTAIRS UNTIL WHEN YOU SAW HIM AGAIN, CAN YOU GIVE US AN  
23 ESTIMATE AS TO HOW MUCH TIME HAD TRANSPIRED BETWEEN THOSE TWO  
24 INCIDENCES?  
25 A I'LL SAY IT WAS BETWEEN 15 BUT NO MORE THAN  
26 30.  
27 MR. SEATON: THANK YOU. I HAVE NOTHING FURTHER.  
28 THE COURT: CROSS..  
29 MR. COOPER: THANK YOU, YOUR HONOR.  
30 ..  
31 ..  
32 ..

CROSS EXAMINATION

BY MR. COOPER:

Q WHAT WAS BETWEEN 15 AND 30 MINUTES, MRS. WILSON?

A FROM THE TIME I SENT THE CUSTOMER DOWNSTAIRS 'TIL HE REAPPEARED ON THE SALESFLOOR RUNNING.

Q HOW OLD ARE YOU, MA'AM?

A I'M 33.

Q YOU FIRST OBSERVED THIS MAN YOU'VE DESCRIBED WHEN HE APPROACHED YOUR REGISTER; IS THAT CORRECT?

A THAT'S CORRECT.

Q YOU'VE NEVER SEEN HIM BEFORE?

A NOT TO MY KNOWLEDGE.

Q HE WALKED UP TO YOU. DID HE TALK TO YOU?

A NO, HE DIDN'T WALK UP TO ME. HE WALKED UP TO SOMEONE ELSE FIRST.

Q ALL RIGHT,

HAD YOU NOTICED HIM PRIOR TO THE TIME THAT YOU WERE ASKED TO ASSIST IN THIS MATTER?

A NO, I HADN'T.

Q IS IT A CHECK REGISTER THAT HE CAME TO?

A YES, IT IS.

Q I ASSUME YOU WERE BUSY DOING SOMETHING ELSE WHEN THIS MAN APPROACHED THAT REGISTER?

A THAT'S RIGHT.

Q DID THE OTHER WOMAN, WHO WAS WORKING THERE AT THE TIME, DID SHE TELL YOU THAT SHE NEEDED ASSISTANCE?

A NO, SHE DIDN'T TELL ME.

Q WHAT ALERTED YOU TO THE SITUATION?

A BECAUSE SHE WAS LOOKING AROUND FOR SOMEONE

1 TO HELP HER BECAUSE SHE DID NOT KNOW HOW TO HANDLE THE SITUATION.

2 Q I SEE.

3 AND YOU ASSISTED HER?

4 A THAT'S RIGHT.

5 Q AT LEAST AT THAT POINT IN TIME THERE WAS  
6 ANOTHER CUSTOMER WHO WAS BRINGING IN AN ITEM PURCHASED, LEGALLY  
7 PURCHASED, FOR REFUND; ISN'T THAT RIGHT?

8 A TO THAT POINT, YES.

9 Q AND CAN YOU TELL US WHAT YOU DID TO ASSIST  
10 HER?

11 A I -- I WENT TO THE CASHIER WRAP AND ASSISTED  
12 HER. I TOOK OVER THE SITUATION.

13 Q ALL RIGHT. FINE.

14 WAS IT AT THAT POINT THAT MR. KINSEY  
15 MOTIONED TO YOU?

16 A YES, IT WAS.

17 Q ALMOST IMMEDIATELY?

18 A WHEN I WAS TALKING -- WHEN I -- THE CUSTOMER  
19 HAD ALREADY TALKED TO THE OTHER SALESCLERK, I BELIEVE, I ASKED  
20 HIM TO REPEAT THE STORY, AND WHEN HE STARTED TO TALK I SAW  
21 MR. KINSEY MOTIONING, YES.

22 Q DID THIS MAN TALK TO YOU, THE MAN AT THE  
23 COUNTER?

24 A YES, HE DID.

25 Q WHAT DID HE SAY?

26 A I CAN'T QUOTE HIM.

27 Q YOU DON'T REMEMBER WHAT HE SAID?

28 A NO. I CAN'T QUOTE HIM, NO.

29 Q WELL, AS NEAR AS YOU CAN RECALL, WHAT DID  
30 HE SAY?

31 A HE APPROACHED THE CASH WRAP WITH THE MER-  
32 CHANDISE AND HE WANTED TO RETURN IT. HE SAID THAT HIS WIFE OR

1 SOMEONE HAD BOUGHT IT FOR HIM AND HE DIDN'T WANT IT.

2 Q I SEE.

3 A AND HE WANTED TO GET THE MONEY BACK.

4 Q I SEE.

5 DO YOU RECALL ANYTHING DISTINCTIVE ABOUT  
6 THIS INDIVIDUAL'S VOICE?

7 A NO, I DON'T.

8 Q YOU DIDN'T NOTICE ANY KIND OF ACCENTS OR  
9 DIALECTS?

10 A NO, I DIDN'T.

11 Q WAS IT AT THAT POINT THEN THAT MR. KINSEY  
12 MOTIONED TO YOU?

13 A YES, IT WAS.

14 Q AND YOU WENT TO HIM; IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q WHERE WAS MR. KINSEY IN RELATION TO YOUR  
17 COUNTER THERE, YOUR REGISTER?

18 A HE WAS A COUPLE AISLES BACK, YOU KNOW, BEHIND  
19 SOME MERCHANDISE. WE HAVE AISLES OF MERCHANDISE.

20 Q WOULD YOU SAY HE'S AS FAR AS THIS BACK DOOR  
21 HERE (INDICATING), THE ENTRANCE TO THE COURTHOUSE IS FROM YOU?

22 A NO.

23 Q CLOSER THAN THAT?

24 A YES.

25 Q DID THIS MAN HAVE HIS BACK TO MR. KINSEY,  
26 THE MAN AT THE COUNTER?

27 A I BELIEVE HE DID, YES.

28 Q SO YOU WENT TO MR. KINSEY. WHAT DID YOU ASK  
29 HIM, IF ANYTHING?

30 A I ASKED HIM WHAT HE WANTED ME TO DO.

31 Q AND HE TOLD YOU WHAT?

32 A TO GIVE HIM -- TO GIVE HIM BACK THE CASH.

1 Q IS THAT ALL HE TOLD YOU?  
2 A THAT WAS ALL HE TOLD ME.  
3 Q HE DIDN'T TELL YOU THAT THIS MAN WAS SHOP-  
4 LIFTING OR THAT HE SUSPECTED HIM OF SHOPLIFTING?  
5 A HE DIDN'T TELL ME THAT, NO.  
6 Q I SEE.  
7 A BUT I PICKED THAT UP ON MY OWN.  
8 Q WHAT CAUSED YOU TO PICK THAT UP?  
9 A BECAUSE YOU NEVER GIVE CASH ON THE RETAIL  
10 FLOOR, AND HE TOLD ME TO GIVE HIM BACK THE CASH.  
11 Q GIVE HIM BACK THE CASH?  
12 A THAT'S CORRECT.  
13 Q DID YOU DO AS MR. --  
14 A NO. I WROTE A RETAIL CREDIT CHECK.  
15 Q WHY DIDN'T YOU DO AS MR. KINSEY REQUESTED?  
16 A BECAUSE YOU ARE INFORMED WHEN YOU WORK AT  
17 SEARS THAT YOU NEVER GIVE CASH BACK, AND I WROTE THE RETAIL CREDIT  
18 CHECK, WHICH IS IN TURN AS GOOD AS CASH IN THE SEARS STORE.  
19 THAT'S WHY.  
20 Q HOW LONG WOULD YOU SAY THIS MAN WAS STANDING  
21 AT YOUR REGISTER BEFORE HE LEFT?  
22 A 15 TO 20 MINUTES.  
23 Q THAT LONG?  
24 A WELL, I DID HAVE SOME CONVERSATION WITH HIM.  
25 Q DID HE TELL YOU THAT HIS WIFE OR GIRLFRIEND  
26 PURCHASED THIS ITEM AND HE DIDN'T WANT IT?  
27 A THAT'S RIGHT.  
28 BUT HE WANTED THE FULL SALES PRICE BACK  
29 FOR IT.  
30 Q UH-HUH.  
31 A AND I WASN'T GOING TO GIVE IT TO HIM BECAUSE  
32 THE MERCHANDISE HAD JUST BEEN ON SALE. SO I TOLD HIM ALL I WAS

1 GOING TO GIVE HIM WAS THE SALES PRICE OR HE'D HAVE TO GO DOWN-  
2 STAIRS AND TALK TO SOMEONE ELSE. WHEN I SAID THAT, HE SAID O.K.,  
3 O.K., I'LL JUST TAKE THE SALES PRICE.

4 Q IT WAS AT THIS POINT THAT MR. KINSEY  
5 MOTIONED YOU?

6 A NO.

7 Q WHAT ELSE WAS SAID? IT DIDN'T TAKE 15 OR 20  
8 MINUTES TO SAY WHAT YOU'VE JUST SAID DID IT?

9 A WELL, WHEN YOU'RE TALKING WITH A CUSTOMER  
10 YOU DON'T JUST RUSH THROUGH EVERYTHING, YOU KNOW, YOU TALK TO  
11 THEM.

12 Q EVEN THOUGH YOU HAD NEVER SEEN THIS MAN  
13 BEFORE, AND IT'S BEEN OVER THREE YEARS SINCE THIS HAPPENED, YOU  
14 RECALL HIM BEING ABOUT FIVE TEN; IS THAT RIGHT?

15 A THAT'S RIGHT.

16 Q AND YOU RECALLED THAT HE HAD A VERY MUSCULAR  
17 UPPER BODY; IS THAT RIGHT?

18 A YES.

19 Q WOULD YOU CHARACTERIZE HIS BUILD AS A MEDIUM  
20 BUILD?

21 A SURE.

22 Q MEDIUM BUILD BUT MUSCULAR?

23 A YES, VERY MUSCULAR IN THE UPPER BODY.

24 Q WHAT KIND OF CLOTHES WAS HE WEARING?

25 A I DON'T RECALL EXACTLY WHAT HE HAD ON, BUT  
26 I BELIEVE HE WAS DRESSED FAIRLY NICELY.

27 Q UH-HUH.

28 WHEN YOU SAY "FAIRLY NICELY" DO YOU MEAN  
29 JUST CASUAL CLOTHES OR A SUIT, PERHAPS?

30 A CASUAL CLOTHES, BUT NOT -- THEY WEREN'T  
31 TATTERED, YOU KNOW, THEY WEREN'T OLD JEANS, IF HE EVEN HAD JEANS  
32 ON. THEY WERE NICE CLOTHES.

1 Q DID HE HAVE A MOUSTACHE?  
2 A I DON'T RECALL.  
3 Q DID HE HAVE A BEARD?  
4 A I DON'T REMEMBER.  
5 Q DID YOU NOTICE ANY JEWELRY ON THIS MAN?  
6 A NO, I DON'T REMEMBER.  
7 Q DO YOU REMEMBER WHETHER HE HAD A JACKET ON  
8 OR ANY KIND OF COAT?  
9 A THE ONLY THING I RECALL IS THE SHOULDER BAG.  
10 Q UH-HUH. O.K.  
11 WHEN WERE YOU FIRST CONTACTED, MRS.  
12 WILSON, AND INFORMED THAT YOU WOULD BE CALLED TO TESTIFY IN THIS  
13 CASE?  
14 A MONDAY EVENING.  
15 Q WHO WERE YOU CONTACTED BY?  
16 A THE INVESTIGATOR.  
17 Q DO YOU KNOW WHO THE INVESTIGATOR WAS?  
18 A NO, I DON'T RECALL HIS NAME.  
19 Q DO YOU KNOW IF IT WAS AN INVESTIGATOR WITH  
20 THE DISTRICT ATTORNEY'S OFFICE?  
21 A YES, I DO.  
22 Q DID YOU GO IN FOR A MEETING WITH HIM OR DID  
23 HE COME TO YOU?  
24 A HE CAME IN FOR A MEETING YESTERDAY AT NOON.  
25 Q UH-HUH. O.K.  
26 WERE YOU ASKED TO DESCRIBE THIS MAN YOU  
27 SAW BY THE INVESTIGATOR?  
28 A NO, I WASN'T.  
29 Q HAVE YOU HAD OCCASION TO LOOK AT ANY POLICE  
30 REPORTS, ANYTHING DEALING WITH THIS CASE --  
31 A NO, I HAVEN'T.  
32 Q (CONTINUING) -- BEFORE COMING INTO COURT TO



1 TESTIFY?

2 A NO, I HAVEN'T.

3 Q DID YOU EVER TELL THE POLICE THAT YOU COULD  
4 IDENTIFY THIS MAN IF YOU SAW HIM AGAIN?

5 A NO, I DIDN'T.

6 Q IS THAT BECAUSE YOU COULDN'T?

7 A I WAS NEVER ASKED.

8 Q WHEN YOU WERE ASKED TO LOOK ABOUT THE COURT-  
9 ROOM AND SEE IF YOU COULD RECOGNIZE THE MAN THAT YOU SAW IN THE  
10 STORE THAT DAY, IT APPEARED TO ME THAT YOU LOOKED DIRECTLY AT  
11 THE GENTLEMAN SEATED TO MY LEFT; DIDN'T YOU?

12 A YES, I DID.

13 Q WERE YOU TOLD THAT THAT'S WHERE THE DEFEN-  
14 DANT WOULD BE SEATED?

15 A I BEG YOUR PARDON?

16 Q WHEN YOU WERE ASKED TO LOOK ABOUT THE COURT-  
17 ROOM, LET ME ASK YOU WHY DID YOU LOOK TO THE MAN TO MY LEFT?

18 A WHY WOULDN'T I?

19 Q WELL, DO YOU SEE OTHER BLACK MEN IN THE  
20 COURTROOM?

21 A I SURE DO.

22 Q WERE YOU TOLD THAT THE DEFENDANT WOULD BE  
23 SEATED AT THAT PARTICULAR TABLE?

24 A NO, I WASN'T TOLD. I DIDN'T NEED TO BE.

25 Q YOU KNEW THAT?

26 A WELL, HE'S NOT SITTING OVER THERE (INDICA-  
27 TING).

28 Q IN FACT, YOU DON'T KNOW WHETHER THE MAN WHO  
29 YOU SAW AT THE SEARS STORE IS SEATED IN THE COURTROOM AT ALL, DO  
30 YOU?

31 A I BELIEVE I SAID THAT.

32 Q COURT'S INDULGENCE, PLEASE.

1 WHEN YOU GAVE THIS GENTLEMAN THE SLIP  
2 TO TAKE TO THE CASHIER'S CAGE, YOU DIDN'T FOLLOW HIM DOWN TO THE  
3 CASHIER'S CAGE AREA; DID YOU?

4 A NO, I DIDN'T.

5 Q AND THE EXHIBIT THAT YOU WERE SHOWN, YOU  
6 IDENTIFIED THAT AS THE SLIP THAT YOU GAVE TO HIM; IS THAT RIGHT?

7 A YES, I DID.

8 Q DO YOU KNOW WHETHER THAT MAN MADE THE SIGNA-  
9 TURE THAT APPEARS ON THAT SLIP?

10 A NO, I DON'T.

11 Q WHEN YOU LAST SAW HIM, THIS MAN WAS RUNNING  
12 FROM THE STORE --

13 A YES.

14 Q (CONTINUING) -- IS THAT RIGHT?

15 A YES.

16 Q AT WHAT POINT DID YOU FIRST OBSERVE HIM  
17 AFTER HE HAD LEFT YOUR STATION THERE?

18 A ALMOST IMMEDIATELY.

19 Q WAS HE COMING OFF THE ESCALATOR?

20 A THAT'S RIGHT.

21 Q DID HE RUN BY YOUR STATION?

22 A HE RAN DOWN THE MAIN AISLE.

23 Q IS THAT BY YOUR STATION?

24 A IT'S BY MY STATION, YES.

25

26 MR. COOPER: I PASS THE WITNESS AT THIS TIME.

27 MR. SEATON: ONE BRIEF QUESTION.

28 THE COURT: PROCEED.

29 ..

30 ..

31 ..

32 ..

REDIRECT EXAMINATION

BY MR. SEATON:

Q MRS. WILSON, DID THERE COME A TIME, AFTER  
YOU LAST SAW THE INDIVIDUAL RUN BY, THAT YOU BECAME AWARE OF WHAT  
WENT ON DOWNSTAIRS?

A YES.

Q WHO TOLD YOU?

A I BELIEVE TOM MAJOR IS THE ONE THAT TOLD ME  
EXACTLY.

Q HE DESCRIBED TO YOU EVERYTHING THAT OCCURRED  
DOWN THERE?

A NO. HE JUST TOLD ME THAT A GUN WAS PULLED.

Q I SEE.

DID THAT MAKE AN IMPRESSION ON YOU?

A YES, IT CERTAINLY DID.

MR. SEATON: THANK YOU.

I HAVE NOTHING FURTHER.

MR. COOPER: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU ARE EXCUSED.

(WHEREUPON, THE WITNESS WAS  
EXCUSED.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. SEATON: BRAD FRANK.

THE COURT: MAY I SEE COUNSEL AT THE BENCH.

(WHEREUPON, SIDE BAR CONFERENCE  
WAS HELD AT THE BENCH; NOT  
REPORTED.)

THE COURT: CALL THE OFFICER.

THE CLERK: RAISE YOUR RIGHT HAND.

1 WHEREUPON,

2

3 BRADLEY FRANK,

4

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

7

8 THE COURT: PROCEED.

9

10 DIRECT EXAMINATION

11

12 BY MR. SEATON:

13

14 Q PLEASE STATE YOUR NAME.

15 A BRAD FRANK, F-R-A-N-K.

16 Q WHAT IS YOUR OCCUPATION?

17 A POLICE, PATROLMAN.

18 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

19 A TWELVE AND A HALF YEARS.

20 Q WHAT ARE YOUR DUTIES AS A POLICE PATROLMAN?

21 A RESPOND TO CALLS FROM THE PUBLIC IN REGARD

22 TO POLICE MATTERS, SOME TRAFFIC DUTIES.

23 Q ON MARCH THE 26TH, 1980, WERE YOU SO

24 EMPLOYED?

25 A YES.

26 Q AND WERE YOU CALLED TO SEARS ROEBUCK ON THAT

27 DAY?

28 A YES.

29 Q APPROXIMATELY WHAT TIME DID YOU ARRIVE THERE?

30 A OH, BETWEEN 12:30 AND 1:00.

31 Q AND WHERE DID YOU GO WHEN YOU GOT THERE?

32 A TO THE SECURITY OFFICE.

1 Q WHO DID YOU SEE?

2 A KEITH KINSEY, WHO WORKED SECURITY THERE.

3 Q WERE THERE ANY OTHER PEOPLE PRESENT?

4 A THERE WAS TWO OTHER SEARS EMPLOYEES, AS I

5 RECALL.

6 Q DO YOU RECALL THEIR NAMES AT THIS TIME?

7 A I THINK IT WAS TOM MAJOR AND LINDA SOMETHING.

8 Q DID YOU HAVE AN OCCASION TO TAKE REPORTS

9 FROM ANY OF THE WITNESSES?

10 A YES, I DID.

11 Q DID YOU, PURSUANT TO YOUR DUTIES THERE,

12 IMPOUND ANY EVIDENCE?

13 A YES. I IMPOUNDED A YEL- -- YELLOW I-D

14 BRACELET.

15 Q HOW DID YOU COME INTO CONTACT WITH THE

16 YELLOW I.D. BRACELET?

17 A SECURITY OFFICER KEITH KINSEY ADVISED ME

18 THAT IT WAS DROPPED BY THE PERSON WHO HAD BEEN DETAINED THERE

19 DURING A SCUFFLE THAT HAPPENED THERE IN THE SECURITY OFFICE.

20 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS

21 STATE'S PROPOSED EXHIBIT 40-A, CAN YOU TELL ME IF YOU CAN RECOG-

22 NIZE THAT ITEM?

23 A YES.

24 Q AND WHAT IS THE BASIS OF YOUR RECOGNITION?

25 A IT SHOWS MY INITIALS ON THE INSIDE OF THE

26 BRACELET.

27 Q HOW ARE THEY WRITTEN?

28 A B F.

29 Q DID YOU PLACE THOSE ON THERE?

30 A YES, I DID.

31 Q WHEN DID YOU DO THAT?

32 A AT THE TIME I IMPOUNDED THE BRACELET, ON THE

1 26TH OF MARCH.

2 Q AFTER YOU TOOK POSSESSION OF THE BRACELET,  
3 WHAT DID YOU THEN DO WITH IT?

4 A I TOOK IT TO THE SUB-STATION, PLACED IT INTO  
5 EVIDENCE IMPOUND, AND PUT IT INTO THE EVIDENCE VAULT.

6 Q FROM THE TIME THAT YOU TOOK THE I.D. BRACE-  
7 LET, MARKED AS STATE'S PROPOSED EXHIBIT 40-A, AT SEARS, UNTIL YOU  
8 PUT IT IN THE EVIDENCE ENVELOPE, WAS IT IN YOUR SOLE CARE AND  
9 CUSTODY?

10 A YES, IT WAS.

11 Q AND IS IT IN SUBSTANTIALLY THE SAME CONDI-  
12 TION TODAY AS IT WAS AT THAT TIME?

13 A YES.

14 Q NOW, LET ME SHOW YOU WHAT HAS BEEN MARKED  
15 FOR IDENTIFICATION AS STATE'S PROPOSED EXHIBIT 40, WOULD YOU LOOK  
16 THAT OVER AND TELL ME IF YOU ARE ABLE TO RECOGNIZE IT?

17 A YES, I AM. IT HAS MY INITIALS WRITTEN ON  
18 IT, MY HANDWRITING, ALSO MY NAME IS WRITTEN ON IT.

19 Q WHAT IS IT?

20 A PARDON ME?

21 Q WHAT IS IT?

22 A THIS IS AN EVIDENCE IMPOUND ENVELOPE.

23 Q AND WHEN DID YOU FIRST SEE STATE'S PROPOSED  
24 EXHIBIT 40?

25 A -- ON THE 26TH OF MARCH 1980.

26 Q WHERE WERE YOU?

27 A IN REGARD TO THE INFORMATION?

28 Q YES.

29 A AT THE SUB-STATION AT ATLANTIC AND ST. LOUIS,  
30 WHERE I IMPOUNDED THE BRACELET.

31 Q IS THAT THE IMPOUND -- IS THAT THE EVIDENCE  
32 THAT YOU PLACED IT INTO?

1 A YES, IT IS.

2 Q AND ONCE YOU PLACED THE BRACELET INTO THE  
3 ENVELOPE WHAT DID YOU DO WITH THE ENVELOPE?

4 A I PUT IT IN THE EVIDENCE VAULT AT THE SOUTH  
5 SUB-STATION, WHERE IT'S LOCKED.

6 Q DID YOU PUT ANY SEALS ON IT?

7 A YES.

8 Q AND ARE THOSE SEALS ON THERE TODAY?

9 A YES, THEY ARE.

10 Q AND DO THEY HAVE YOUR INITIALS ON THEM?

11 A YES.

12 Q ANYTHING ELSE?

13 A NO. IT DOES NOT HAVE MY INITIALS ON IT,  
14 PART OF IT IS COVERED UP. I BELIEVE THE DATE WOULD BE ON THE  
15 OTHER SIDE. BUT THIS IS MY INITIALS AND MY HANDWRITING.

16 Q O.K.

17 AND THEN ONCE YOU FILLED IT OUT AND  
18 FILLED THE EVIDENCE ENVELOPE OUT AND SEALED IT, WHAT DID YOU THEN  
19 DO WITH IT?

20 A I PUT IT IN THE LOST EVIDENCE VAULT AT THE  
21 SOUTH SUB-STATION.

22 Q AND FROM THE TIME THAT YOU FIRST SAW STATE'S  
23 PROPOSED EXHIBIT 40 UNTIL THE TIME THAT YOU PUT IT IN THE  
24 EVIDENCE VAULT, WAS IT IN YOUR SOLE CARE AND CUSTODY?

25 A YES, IT WAS.

26 Q WOULD YOU LOOK AT STATE'S PROPOSED EXHIBIT  
27 40, THE EVIDENCE ENVELOPE NOW, AND TELL ME IF IT'S SUBSTANTIALLY  
28 IN THE SAME CONDITION NOW AS IT WAS THEN. IF THERE ARE ANY  
29 DIFFERENCES WOULD YOU TELL US WHAT THEY ARE?

30 A SAME CONDITION.

31 Q IS THE EVIDENCE ENVELOPE IN THE SAME CONDI-  
32 TION NOW THAT IT WAS WHEN YOU PLACED IT IN THE --

1 A YES, IT IS. THIS IS THE SEAL THAT I PUT  
2 ACROSS IT THERE.  
3 Q ARE THERE ANY -- ARE THERE ANY SEALS THERE  
4 THAT YOU DID NOT PUT ON?  
5 A THIS RED SEAL HERE (INDICATING). I PUT THE  
6 YELLOW ONE ON HERE, THE ONE WITH MY INITIALS ON IT (INDICATING).  
7 Q YES. I SEE.  
8 DID YOU PUT THE YELLOW SEAL ON?  
9 A YES.  
10 Q I'M SORRY. I MEANT TO SAY DID YOU PUT THE  
11 RED SEAL ON?  
12 A NO.  
13 Q THERE APPEARS TO BE A TEAR HERE IN THE LOWER  
14 RIGHT HAND CORNER. DID YOU HAVE ANYTHING TO DO WITH THAT?  
15 A NO.  
16 MR. SEATON: COURT'S INDULGENCE.  
17 I HAVE NO FURTHER QUESTIONS OF THIS WITNESS,  
18 YOUR HONOR. BUT I WOULD OFFER INTO EVIDENCE STATE'S PROPOSED  
19 EXHIBITS 40 AND 40-A.  
20 MR. FRANZEN: NO OBJECTION.  
21 THE COURT: SAME WILL BE RECEIVED.  
22 CROSS?  
23 MR. FRANZEN: YES, YOUR HONOR.  
24  
25 CROSS EXAMINATION  
26  
27 BY MR. FRANZEN:  
28  
29 Q WERE YOU THE RESPONDING OFFICER, OFFICER  
30 FRANK, THE FIRST OFFICER AT THE SCENE?  
31 A YES.  
32 Q DID YOU GET A STATEMENT FROM THE PEOPLE



1 INVOLVED, REGARDING THE TIME OF THE OCCURRENCE?

2 A YES. IT'S ON THE CRIME REPORT I COMPLETED  
3 AT THE LOCATION AT THE SEARS SECURITY OFFICE.

4 Q DO YOU REMEMBER THE TIME, HAVE YOU LOOKED  
5 AT THE REPORT?

6 A THE TIME OF THE OCCURRENCE?

7 Q YES, SIR.

8 A I BELIEVE IT WAS 12:20 P.M. TO 12:30 P.M.

9 Q 12:20 TO 12:30?

10 A I BELIEVE SO, YES.

11 Q AND WHAT TIME WAS IT BEFORE IT WAS --

12 A WHAT TIME WAS IT WHAT?

13 Q (CONTINUING) -- REPORTED? WOULD THAT BE  
14 THE 12:30 TIME OR WOULD THAT BE LATER?

15 A IT WOULD BE RIGHT AT THAT TIME. I DON'T  
16 HAVE THE EXACT TIME THAT IT WAS CALLED INTO OUR DISPATCHER, BUT  
17 IT WOULD BE VERY SHORTLY AFTER THAT, IF IT WASN'T EXACTLY 12:30.

18 Q DID YOU GET A DESCRIPTION OF THE BLACK MAN  
19 THAT WAS SUPPOSED TO HAVE BEEN THE PERPETRATOR?

20 A AFTER I GOT TO THE STORE I GOT QUITE A GOOD  
21 DESCRIPTION, YES.

22 Q WAS HE DESCRIBED AS BEING IN HIS EARLY OR  
23 MID-TWENTIES?

24 A I COULD CHECK MY REPORT THERE. I REMEMBER  
25 MORE IN REGARD TO THE CLOTHING AND HEIGHT AND WEIGHT AND RACE  
26 AND HAIR STYLE.

27 Q O.K.

28 WOULD IT HELP YOU IF I SHOWED YOU YOUR  
29 REPORT?

30 A I HAVE COPIES, SIR, WITH ME.

31 I WILL CHECK ON THE AGE. MID-TWENTIES.

32 Q AND MEDIUM BUILD?

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A RIGHT.

Q WITH A SHORT AFRO, CLEAR COMPLEXION?

A UH-HUH. YES.

MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

THE COURT: THE STATE?

MR. SEATON: YES.

REDIRECT EXAMINATION

BY MR. SEATON:

Q WERE YOU INSIDE THE -- WHERE WERE YOU AT SEARS WHEN YOU RECEIVED POSSESSION OF THE BRACELET?

A IN THE SECURITY OFFICE AT SEARS ON THE LOWER LEVEL.

Q AND DO YOU RECALL FROM WHOM YOU RECEIVED IT?

A THE SECURITY OFFICER THERE, OR SECURITY SERGEANT KEITH KINSEY, EITHER HANDED IT TO ME OR POINTED IT OUT TO ME.

MR. SEATON: THANK YOU.

I HAVE NOTHING FURTHER, YOUR HONOR.

RECROSS EXAMINATION

BY MR. FRANZEN:

Q WHEN YOU SAY HE POINTED IT OUT TO YOU --

A I SAID HE EITHER HANDED IT TO ME OR POINTED IT OUT TO ME IN THAT ROOM, YES.

Q WHERE WOULD IT HAVE BEEN IF HE POINTED IT OUT TO YOU?

A ON THE FLOOR.

1 Q ON A TABLE?  
 2 A IT'S A SMALL ROOM.  
 3 Q SOMEBODY'S POSSESSION?  
 4 A I DON'T REMEMBER.

5 LIKE I SAY, I DON'T RECALL IF HE DID  
 6 POINT IT OUT AS OPPOSED TO HAND IT TO ME.

7 MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

8 MR. SEATON: NOTHING BY THE STATE, YOUR HONOR.

9 THE COURT: YOU'RE EXCUSED.

10 THE WITNESS: THANK YOU.

11 (WHEREUPON, THE WITNESS WAS  
 12 EXCUSED.)

13 THE COURT: COUNSEL, APPROACH THE BENCH.

14 (WHEREUPON, SIDE BAR CONFERENCE  
 15 WAS HELD AT THE BENCH; NOT  
 16 REPORTED.)

17 THE COURT: LADIES AND GENTLEMEN, WE ARE GOING TO  
 18 TAKE OUR MORNING RECESS AT THIS TIME. WE WILL RECONVENE THIS  
 19 AFTERNOON AT 1:15.

20 DURING THIS RECESS YOU ARE ADMON-  
 21 ISHED NOT TO CONVERSE AMONG YOURSELVES  
 22 OR WITH ANYONE ELSE ON ANY SUBJECT CON-  
 23 NECTED WITH THIS TRIAL, OR READ, WATCH  
 24 OR LISTEN TO ANY REPORT OF OR COMMENTARY  
 25 ON THIS TRIAL WITH ANY PERSON CONNECTED  
 26 WITH THIS TRIAL BY ANY MEDIUM OF INFORMA-  
 27 TION, INCLUDING WITHOUT LIMITATION, NEWS-  
 28 PAPER, TELEVISION OR RADIO OR FORM OR  
 29 EXPRESS ANY OPINION ON ANY SUBJECT CON-  
 30 NECTED WITH THIS TRIAL UNTIL THE CASE IS  
 31 FINALLY SUBMITTED TO YOU.

32 WE WILL BE IN RECESS UNTIL 1:30 THIS AFTERNOON

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 13, 1983, AT 1:30 P.M.

2 \* \* \* \* \*

3 (WHEREUPON, FROM THE HOUR OF  
4 11:15 A.M. UNTIL 1:30 P.M., THE  
5 NOON RECESS WAS HAD IN THE PRO-  
6 CEEDINGS, AT THE CONCLUSION OF  
7 WHICH THE FOLLOWING WAS HAD:)

8 THE COURT: COUNSEL, STIPULATE TO THE PRESENCE  
9 OF THE JURY?

10 MR. COOPER: YES, YOUR HONOR.

11 MR. SEATON: YES, YOUR HONOR.

12 THE COURT: CALL YOUR NEXT WITNESS.

13 MR. HARMON: STEVE HOUCHIN.

14 THE COURT: COME FORWARD, SIR.

15 THE CLERK: RAISE YOUR RIGHT HAND.

16  
17 WHEREUPON,

18  
19 STEPHEN DOUGLAS HOUCHIN,

20  
21 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,  
22 EXAMINED AND TESTIFIED AS FOLLOWS:

23  
24 THE CLERK: YOU MAY BE SEATED.

25 THE COURT: PROCEED.

26 ..  
27 ..  
28 ..  
29 ..  
30 ..  
31 ..  
32 ..

DIRECT EXAMINATION

BY MR. HARMON:

Q WILL YOU STATE YOUR NAME, PLEASE.

A STEPHEN DOUGLAS HOUCHIN.

Q SPELL YOUR NAMES FOR THE RECORD.

A MY FIRST NAME IS STEPHEN S-T-E-P-H-E-N.

SECOND NAME DOUGLAS, D-O-U-G-L-A-S. LAST NAME HOUCHIN, H-O-U-C-H-I-N.

Q MR. HOUCHIN, DO YOU LIVE IN LAS VEGAS, NEVADA, TODAY?

A NO, I DON'T.

Q DO YOU LIVE IN CLARK COUNTY, STATE OF NEVADA?

A YES, I DO.

Q HOW LONG HAVE YOU LIVED IN THIS COMMUNITY?

A SINCE 1968.

Q WERE YOU RESIDING IN CLARK COUNTY, NEVADA,

ON MARCH 26TH, 1980?

A YES, I WAS.

Q DID YOU AT SOME TIME ON THAT DATE HAVE OCCASION TO BE AT THE INTERSECTION OF DUMONT AND CAMBRIDGE?

A YES, SIR, I DID.

Q DO YOU REMEMBER ABOUT WHAT TIME IT WAS?

A 12:30, RIGHT AFTER NOON.

Q YOUR BEST ESTIMATE IS ABOUT 12:30?

A RIGHT IN THERE, 12:30, YES.

Q WHAT WERE YOU DOING AT THE INTERSECTION OF DUMONT AND CAMBRIDGE STREETS?

A I WAS ON A LUNCH BREAK FROM WHERE I WORKED.

I LIVED AT 1100 DUMONT. I WAS LEAVING MY RESIDENCE, STOPPED AT

1 THE STOP SIGN.

2 Q WHERE IS THE INTERSECTION OF DUMONT AND  
3 CAMBRIDGE STREETS FROM THE BOULEVARD MALL, AND MORE SPECIFICALLY  
4 THE SEARS ROEBUCK STORE?

5 A CAMBRIDGE AND DUMONT IS STRAIGHT OUT THE  
6 EXIT OF THE BOULEVARD MALL AND STRAIGHT WEST ACROSS MARYLAND  
7 PARKWAY.

8 Q SO THAT INTERSECTION WOULD BE WHERE IN  
9 RELATION TO SOUTH MARYLAND PARKWAY?

10 A SOUTH MARYLAND PARKWAY, DUMONT AND MARYLAND  
11 PARKWAY, AND THAT'S ABOUT -- I THINK IT'S ABOUT 30 HUNDRED BLOCK.  
12 I'M NOT REALLY SURE ABOUT THE --

13 Q BUT DUMONT GOES IN WHICH DIRECTION?

14 A EAST/WEST.

15 Q AND DOES IT INTERSECT MARYLAND PARKWAY?

16 A YES, IT DOES.

17 Q IS THERE SOME TYPE OF ACCESS OUT OF THE  
18 PARKING LOT AREA AT THE BOULEVARD ACROSS MARYLAND PARKWAY TO  
19 DUMONT?

20 A YES, THERE IS, STRAIGHT ON THROUGH.

21 Q AND HOW FAR WEST OF MARYLAND PARKWAY IS THE  
22 INTERSECTION OF CAMBRIDGE AND DUMONT?

23 A APPROXIMATELY TWO BLOCKS.

24 Q DID SOMETHING UNUSUAL HAPPEN AT ABOUT 12:30  
25 ON MARCH 26TH, 1980, INVOLVING YOU AND CERTAIN OTHER PERSON OR  
26 PERSONS AT THE INTERSECTION OF CAMBRIDGE AND DUMONT?

27 A YES, IT DID.

28 Q EXPLAIN WHAT HAPPENED, SIR.

29 A WE WERE SITTING AT A STOP LIGHT OR A STOP  
30 SIGN WESTBOUND TO MAKE A LEFT TURN GOING SOUTH IN A 1966 WHITE  
31 CORVETTE. A CAR CAME UP FROM BEHIND AND HIT IT. I LOOKED IN THE  
32 REAR VIEW MIRROR TO SEE THE CAR BACK UP TO GO AROUND TO THE RIGHT

1 SIDE OF ME AND ROLLED THE WINDOW DOWN IN THE CORVETTE TO HOLLER  
2 AT HIM TO STOP.

3 Q WHY DID YOU WANT THIS PERSON TO STOP?

4 A HE HIT MY CAR.

5 Q YOU WERE ACTUALLY PARKED GOING WESTBOUND  
6 ON WHICH STREET?

7 A I WAS STILL AT A STOP SIGN WESTBOUND.

8 Q ON WHICH STREET?

9 A ON DUMONT TO MAKE A LEFT TURN TO GO SOUTH  
10 ON CAMBRIDGE.

11 Q AND AS YOU SAT THERE, COMPLETELY STOPPED,  
12 SOMETHING HAPPENED?

13 A THE CAR -- THE CAR THAT I SAW IN MY REAR  
14 VIEW MIRROR HIT ME. I WAS JUST SITTING THERE AND IT HIT ME AND  
15 I LOOKED.

16 Q IT HIT YOU IN THE BACK OF YOUR CAR?

17 A YES.

18 AND I LOOKED IN THE REAR VIEW MIRROR AND  
19 HE WAS BACKING UP.

20 Q DID YOU SEE WHO THE DRIVER WAS?

21 A AT THAT TIME I SAW THAT IT WAS A MALE DRIVER.  
22 I DIDN'T REALLY PAY ANY ATTENTION TO WHO HE WAS EXACTLY.

23 Q DID YOU AT THAT TIME NOTICE WHETHER THERE  
24 WAS ANOTHER OCCUPANT IN THE VEHICLE?

25 A AT THAT TIME, NO.

26 Q SO WHAT HAPPENED AFTER THIS VEHICLE HIT YOU  
27 IN THE BACK OF YOUR CAR?

28 A AS I SAID, I LOOKED IN THE REAR VIEW MIRROR  
29 TO SEE HIM BACK UP AND GO AROUND THE RIGHTHAND SIDE OF ME AND I  
30 ROLLED THE WINDOW DOWN IN MY CAR, THE RIGHT WINDOW OF THE RIGHT  
31 PASSENGER DOOR, AND HOLLERED AT HIM TO STOP.

32 Q IS THAT EXACTLY WHAT YOU SAID, "STOP"?

1 A WELL, I THINK I MAY HAVE SAID SOMETHING IN  
2 PROFANITY, BUT I DID SAY "STOP".

3 Q MAYBE SOMETHING LIKE --

4 A AND I DID LET HIM KNOW I WANTED HIM TO STOP.

5 Q WHAT HAPPENED THEN, SIR?

6 A I NOTICED -- I NOTICED THERE WAS A PISTOL  
7 AND HE HAD HIS PISTOL STUCK ACROSS HIS ARM AND OUT THE DOOR OF  
8 THE WINDOW LIKE THIS (INDICATING), AND HE TOLD ME TO MIND MY OWN  
9 BUSINESS.

10 Q WHEN YOU SAY PISTOL ARE YOU REFERRING TO A  
11 HANDGUN?

12 A YEAH, A HANDGUN, APPROXIMATELY A .38 OR .357  
13 MAGNUM.

14 Q WHY DO YOU SAY IT WAS APPROXIMATELY A .38 OR  
15 A .357 MAGNUM?

16 A BECAUSE I'M NOT VERY WELL FAMILIAR WITH  
17 HANDGUNS OR GUNS, PERIOD.

18 Q IT WAS NOT A SMALL CALIBER WEAPON?

19 A NO, IT WAS NOT.

20 Q DID YOU SEE IN WHAT HAND THE PERSON HAD THE  
21 GUN?

22 A IT WAS -- IT WAS THE RIGHT HAND, LIKE THIS  
23 (INDICATING). IT WAS OVER HIS LEFT HAND OVER THE DOOR WINDOW.

24 Q NOW, ARE YOU REFERRING TO THE DRIVER OF THE  
25 VEHICLE?

26 A YES, I AM.

27 Q IN WHAT DIRECTION DID THE DRIVER OF THE  
28 VEHICLE POINT THE GUN?

29 A STRAIGHT DIRECTLY AT ME, MY FACE.

30 Q ABOUT HOW FAR AWAY WERE YOU AT THAT TIME?

31 A WELL, WHEN HE FIRST STUCK IT OUT THE WINDOW  
32 I HAD MY HEAD STUCK OUT THE DOOR OF THE CAR AND IT WAS PROBABLY



1 A FEW FEET.

2 Q FROM YOUR FACE?

3 A MY FACE, AND BY THAT TIME, I REALIZED WHAT  
4 IT WAS AND I HEADED BACK IN THE CAR AND DOWN.

5 Q MR. HOUCHIN, WILL YOU LOOK AROUND THE COURT-  
6 ROOM TODAY AND STATE WHETHER YOU SEE THAT PERSON IN COURT?

7 A YEAH, I SEE HIM.

8 Q POINT TO HIM AND DESCRIBE HOW HE'S DRESSED.

9 A (INDICATING) THE GENTLEMAN RIGHT THERE IN  
10 THE BLUE SWEATER AND THE BLUE -- I GUESS IT'S A COAT, SITTING ON  
11 THE END OF THIS TABLE RIGHT THERE (INDICATING).

12 MR. HARMON: YOUR HONOR, MAY THE RECORD SHOW THAT  
13 THE WITNESS HAS IDENTIFIED THE DEFENDANT SAMUEL HOWARD.

14 THE COURT: THE RECORD MAY SO SHOW.

15 MR. HARMON: THANK YOU.

16  
17 BY MR. HARMON:

18  
19 Q IS MR. HOWARD THE PERSON WHO POINED A GUN AT  
20 YOUR FACE ON MARCH 26TH, 1980?

21 A IF THAT MAN RIGHT THERE IS MR. HOWARD (INDI-  
22 CATING) HE'S THE ONE THAT POINTED THE GUN AT MY FACE THE FIRST  
23 TIME.

24 MR. HARMON: YOUR HONOR, MAY THE RECORD AGAIN SHOW  
25 THAT THE WITNESS HAS POINTED AT DEFENDANT HOWARD.

26 THE COURT: THE RECORD MAY SO SHOW.

27 MR. HARMON: THANK YOU.

28  
29 BY MR. HARMON:

30  
31 Q MR. HOUCHIN, AT THAT TIME DID THE DEFENDANT  
32 MR. HOWARD SAY ANYTHING TO YOU?

1 A OTHER THAN "JUST MIND YOUR OWN BUSINESS",  
2 PERIOD.  
3 Q HE SAID, "MIND YOUR OWN BUSINESS"?  
4 A YES. IT WAS VERY BLUNT. "MIND YOUR OWN  
5 BUSINESS."  
6 Q WHAT HAPPENED THEN, SIR?  
7 A I STUCK MY HEAD DOWN IN THE SEAT, DOWN INTO  
8 THE CAR WINDOW, AND WHEN I LOOKED UP HE WAS TURNING IN FRONT OF  
9 ME SOUTHBOUND ON CAMBRIDGE.  
10 Q BUT WHEN YOU SAY HE TURNED IN FRONT OF YOU --  
11 A I WAS STILL STOPPED.  
12 Q (CONTINUING) -- HE IS ON THE RIGHT SIDE OF  
13 YOUR VEHICLE?  
14 A YES. HE WAS ON THE RIGHT SIDE OF MY VEHICLE.  
15 I WAS STILL STOPPED. HE PROCEEDED ACROSS THE STREET AND TURNED  
16 LEFT AND WENT SOUTH ON CAMBRIDGE.  
17 Q SO HE TURNED LEFT ON CAMBRIDGE FROM THE  
18 RIGHT SIDE OF YOUR CAR?  
19 A YES.  
20 Q DID HE ACTUALLY PULL IN FRONT OF YOU?  
21 A OH, YES.  
22 Q WHAT TYPE OF DESCRIPTION HAD YOU BEEN ABLE  
23 TO OBTAIN AT THAT POINT OF THIS VEHICLE, WHICH HAD STRUCK YOU  
24 FROM THE REAR?  
25 A AT THIS POINT IT WAS JUST -- IT WAS A 1979  
26 EITHER PONTIAC GRAND PRIX OR A BIG SKYLARK, SOMETHING OF THAT --  
27 THAT BODY STYLE ANYWAY, AND IT WAS BLACK. I DIDN'T GET THE  
28 LICENSE NUMBER AT THAT TIME.  
29 Q AFTER THE VEHICLE DRIVEN BY THE DEFENDANT  
30 MR. HOWARD PULLED IN FRONT OF YOU AND PROCEEDED SOUTHBOUND ON  
31 CAMBRIDGE, WHAT IF ANYTHING DID YOU DO?  
32 A WHEN I GOT OVER BEING SCARED I GOT RATHER

1 MAD. THREE YEARS AGO I GUESS WAS A LITTLE BIT DIFFERENT THAN  
2 NOW. I GOT MAD AND DECIDED I WAS GOING TO CHASE HIM DOWN.

3 Q DID YOU PURSUE THE VEHICLE?

4 A YES, I DID. THERE WAS --

5 Q EXPLAIN WHAT HAPPENED.

6 A WHEN I PULLED FROM THE INTERSECTION THERE  
7 HAD BEEN A CAR. HE PULLED IN FRONT OF A CAR ALREADY GOING SOUTH-  
8 BOUND, NOT CAUSING ANY ACC-- YOU KNOW, ANY ACCIDENT LIKE THAT.

9 Q HE, MEANING THE PERSON YOU'VE ALREADY  
10 IDENTIFIED IN COURT?

11 A YES. I'M SORRY. YES. THE MAN I IDENTIFIED  
12 DROVE HIS CAR INTO THE LANE OF ANOTHER SOUTHBOUND CAR, NOT  
13 CAUSING AN ACCIDENT, AND SO THERE WAS -- AND AFTER I PROCEEDED  
14 FROM THE INTERSECTION TO FOLLOW HIM THERE WAS A CAR BETWEEN HE  
15 AND I.

16 Q DID YOU NOTICE AT THAT TIME HOW MR. HOWARD  
17 WAS DRIVING?

18 A AT THAT TIME JUST VERY FAST, YOU KNOW, IT  
19 WAS -- IT WAS VERY FAST. IT'S ONLY ABOUT ANOTHER TWO BLOCKS

20 DOWN TO TWAIN AND THERE WERE CARS -- I SAY CARS, THERE WAS ONE  
21 CAR IN FRONT OF HIM. YOU JUST DON'T GO BARRELLING ACROSS TWAIN  
22 STREET, MOST PEOPLE DON'T.

23 Q SO YOU OBSERVED THE DEFENDANT DRIVE VERY  
24 FAST SOUTHBOUND ON CAMBRIDGE FROM DUMONT TO TWAIN AVENUE?

25 A TO TWAIN, YES.

26 Q WHAT HAPPENED AT THE INTERSECTION OF  
27 CAMBRIDGE AND TWAIN?

28 A AT THAT POINT I THOUGHT HE WAS JUST GOING TO  
29 GO ACROSS TWAIN FOR, YOU KNOW, CAMBRIDGE; AND I WENT AHEAD AND  
30 PULLED ON THE RIGHTHAND SIDE OF HIM BETWEEN HIS CAR AND THE CURB  
31 TO GET A TAG NUMBER.

32 Q WHAT DO YOU MEAN "TO GET A TAG NUMBER"?

1 A BECAUSE THAT'S SOMETHING I DIDN'T HAVE, WAS  
2 A TAG NUMBER.  
3 Q THE LICENSE PLATE ARE YOU REFERRING TO?  
4 A THE LICENSE PLATE NUMBER ON THE VEHICLE,  
5 THE BLACK CAR THAT HIT ME.  
6 Q WERE YOU ABLE TO GET IT AT THAT POINT?  
7 A AT THAT TIME I GOT THE FIRST THREE NUMBERS.  
8 AS MY CAR WAS ROLLING FORWARD I LOOKED TO THE LEFT AND NOTICED  
9 ANOTHER OCCUPANT IN THE CAR, NOTICED HIS SAME RIGHT ARM WAS  
10 EXTENDED ACROSS HER CHEST AND HER WINDOW WAS COMING DOWN AND THAT  
11 PISTOL WAS POINTED TO ME AGAIN AND I DIDN'T STOP FOR THE STOP  
12 SIGN OR ANYTHING ELSE. I JUST --  
13 Q THIS IS THE SAME PERSON THAT POINTED THE  
14 GUN?  
15 A YES.  
16 Q DID IT APPEAR TO BE THE SAME GUN?  
17 A IT WAS THE SAME GUN.  
18 Q WAS IT POINTED AT YOU?  
19 A WHEN HE STARTED PUTTING HIS HAND OUT IT WAS  
20 COMING IN THAT DIRECTION. I DIDN'T STOP TO WAIT FOR HIM TO POINT  
21 IT AT ME, BUT AT ONE POINT WHEN I WAS PASSING HIM IT WAS.  
22 Q WAS IT AT THIS POINT THAT YOU FIRST NOTICED  
23 THAT THERE WAS SOME OTHER OCCUPANT IN THE BLACK CAR?  
24 A YES.  
25 Q DESCRIBE THAT PERSON.  
26 A FEMALE, NEGRO, LIGHT -- LIGHT COMPLETED  
27 NEGRO. SHE HAD BRAIDED HAIR.  
28 Q WHERE WAS SHE SEATED IN THE CAR?  
29 A PASSENGER'S SIDE OF THE FRONT SEAT.  
30 Q NOW, YOU SAY SOMEONE APPEARED TO BE ROLLING  
31 THE WINDOW DOWN IN THE PASSENGER'S SIDE AT THE INTERSECTION OF  
32 TWAIN AND CAMBRIDGE?

1 A THE WINDOW WAS COMING DOWN. THE WINDOW WAS  
2 COMING DOWN.

3 Q DO YOU KNOW WHO WAS CAUSING THE WINDOW TO  
4 COME DOWN?

5 A I DON'T KNOW. IT -- IT WAS GOING DOWN. IT  
6 REALLY APPEARED SMOOTHLY AND ON A MECHANIC END IT LOOKED AS  
7 THOUGH IT WAS ELECTRIC WINDOWS. SO I DIDN'T THINK ANYBODY WOULD  
8 HAVE TO BE CRANKING THEM.

9 MR. FRANZEN: I OBJECT TO THAT AS SPECULATIVE AND  
10 CONCLUSIONARY.

11 THE COURT: OVERRULED.

12  
13 BY MR. HARMON:

14  
15 Q MR. HOUCHIN, WERE YOU ABLE TO GET ANYTHING  
16 MORE AT THAT POINT THAN THE FIRST THREE LETTERS ON THE LICENSE  
17 PLATE?

18 A AT THAT TIME, NO, I WAS -- I HAD JUST GONE  
19 AROUND THE CORNER.

20 Q WHAT DID YOU DO AFTER YOU SAW THE DEFENDANT  
21 START TO COME AROUND WITH THE GUN AGAIN?

22 A I GOT RIGHT AROUND THE -- RIGHT AROUND THE  
23 CORNER OF CAMBRIDGE AND TWAIN, JUST WHERE I WAS ON TWAIN WEST-  
24 BOUND AND STOPPED THE CAR AND -- AND AT THAT TIME HE WAS PASSING  
25 ME THEN.

26 SEE, HE HAD PULLED OUT AND TURNED RIGHT  
27 ON TWAIN.

28 Q GOING WESTBOUND ON TWAIN?

29 A WESTBOUND ON TWAIN.

30 Q AFTER THE BLACK CAR, DRIVEN BY THE DEFENDANT  
31 IN THE COMPANY OF THE FEMALE YOU'VE JUST DESCRIBED, HAD PASSED  
32 YOU?

1 A UH-HUH.

2 Q WHAT DID YOU DO?

3 A AFTER HE PASSED, I PROCEEDED TO FOLLOW THEM,

4 AND AT THAT TIME I GOT THE TAG NUMBER, WROTE IT DOWN, BUT I

5 CONTINUED TO FOLLOW THEM DOWN TWAIN. AND HE JUST -- HE DROVE

6 FROM THE FAR RIGHTHAND LANE WESTBOUND ALL THE WAY ACROSS THE

7 TURNING LANE AND THEN INTO THE ON-COMING TRAFFIC LANE AND BACK

8 INTO THE LANES IN WHICH WE WERE GOING WEST IN.

9 Q HOW WOULD YOU CHARACTERIZE THE MANNER IN

10 WHICH THE DEFENDANT WAS DRIVING THE BLACK CAR WESTBOUND ON TWAIN?

11 A VERY, VERY ERRATIC; VERY.

12 Q WHAT DO YOU MEAN BY "VERY ERRATIC"?

13 A HE DIDN'T CARE ABOUT HIMSELF OR WHOEVER ELSE

14 WAS WITH HIM OR NOTHING. JUST, I MEAN --

15 Q WAS HE GOING IN AND OUT --

16 A YES.

17 Q (CONTINUING) -- OF THE OTHER VEHICLES?

18 A IN AND OUT, ZIGZAGGING ALL THE WAY BETWEEN

19 TRAFFIC, NOT ONLY IN THE LANES IN WHICH WE WERE IN BUT LANES IN

20 WHICH ON-COMING CARS WERE COMING.

21 Q HOW FAR DID YOU FOLLOW THE VEHICLE?

22 A RIGHT JUST BEFORE THE INTERSECTION OF

23 PARADISE AND TWAIN.

24 Q WHAT HAPPENED THEN?

25 A WELL, THE LIGHT WAS RED AND HE JUST KEPT

26 GOING AND I DIDN'T WANT TO GO THAT FAR.

27 Q HE WENT THROUGH THE LIGHT?

28 A YES. AND I DIDN'T.

29 Q AT TWAIN AND PARADISE?

30 A AND AT THAT TIME I DON'T HAVE ANY IDEA WHICH

31 WAY HE WENT.

32 Q YOU SAID YOU WROTE THE LICENSE NUMBER DOWN?

1 A YES, I DID.

2 Q DID YOU HAVE OCCASION SOMETIME AFTER THIS  
3 INCIDENT TO FILL OUT A REPORT FOR REPRESENTATIVES OF THE LAS  
4 VEGAS METROPOLITAN POLICE DEPARTMENT?

5 A OH, YES. YES, SIR.

6 Q DID YOU ALSO WRITE DOWN THE LICENSE NUMBER  
7 ON THE STATEMENT YOU PREPARED?

8 A YES, I DID.

9 Q HAVE YOU HAD OCCASION TO REVIEW THAT STATE-  
10 MENT AGAIN RECENTLY?

11 A YES, I HAVE.

12 Q DOES THAT REFRESH YOUR MEMORY AS TO WHAT THE  
13 LICENSE NUMBER WAS THAT YOU WROTE DOWN?

14 A YES, SIR.

15 Q WHAT WAS THE LICENSE NUMBER?

16 A 614 XHQ -- ZHQ, I'M SORRY.

17 Q 614 ZHQ?

18 A YES.

19 Q WAS THAT A NEVADA LICENSE PLATE?

20 A NEW YORK.

21 Q NOW, AT THE TIME YOU OBSERVED THE VEHICLE,  
22 DID YOU ESTABLISH FOR SURE IN YOUR MIND WHAT TYPE OF CAR IT WAS?

23 A YES. JUST -- JUST THE BODY STYLES ON THOSE  
24 ARE REAL CLOSE TO IT, BUT AS FAR AS THE PONTIAC GRAND PRIX, IT  
25 COULD HAVE BEEN A BUICK SKYLARK. THEY JUST -- THEY BOTH HAVE THE  
26 SAME BODY STYLES.

27 Q DO YOU RECALL WHETHER IN ONE OF THOSE STATE-  
28 MENTS THAT YOU MADE TO THE POLICE YOU ALSO MENTIONED AN OLDSMOBILE  
29 CUTLASS --

30 A YES, I DID.

31 Q (CONTINUING) -- AS A POSSIBILITY?

32 A YES, I DID. IN FACT, I BELIEVE I MENTIONED

1 JUST AN OLDSMOBILE CUTLASS AND JUST A PONTIAC GRAND PRIX.

2 Q BUT YOU DID FEEL IT WAS A LATE MODEL OLDS  
3 CUTLASS OR PONTIAC GRAND PRIX?

4 A YES, AT THAT TIME IT WAS.

5 Q WHAT COLOR WAS THE VEHICLE?

6 A BLACK.

7 Q CAN YOU ESTIMATE WHAT TIME IT WAS APPROXI-  
8 MATELY WHEN YOU LOST SIGHT OF THE VEHICLE BEING DRIVEN BY THE  
9 DEFENDANT IN THE AREA OF TWAIN AND PARADISE?

10 A I WOULD ASSUME ABOUT 12:45. I REALLY DON'T  
11 THINK IT WOULD HAVE TAKEN 15 MINUTES, BUT I'M JUST ASSUMING.

12 MR. HARMON: MAY WE HAVE THE COURT'S INDULGENCE.

13 THAT CONCLUDES DIRECT, YOUR HONOR.

14 THE COURT: CROSS.

15 MR. FRANZEN: YES.

16  
17 CROSS EXAMINATION

18  
19 BY MR. FRANZEN:

20  
21 Q SIR, BACK WHEN THIS HAPPENED, DID THE POLICE  
22 EVER ASK YOU TO LOOK AT A NON-SUGGESTIVE LINEUP OF SEVERAL BLACK  
23 MEN TO SEE IF YOU COULD PICK THEM OUT?

24 A NO, THEY DID NOT.

25 Q SO THIS WAS ACTUALLY THE FIRST TIME YOU'VE  
26 SEEN THE MAN THAT YOU SAY WAS IN THE AUTOMOBILE TODAY IN COURT  
27 NEXT TO HIS LAWYER?

28 A PHYSICALLY?

29 Q YES, SIR.

30 A I CAN SAY PHYSICALLY IT IS, YES.

31 Q YOU SAY PHYSICALLY. WHEN WAS THE LAST TIME  
32 PRIOR TO TODAY THAT YOU HAD SEEN HIM?



1 A YOU JUST DON'T FORGET AND YOU HAVE DREAMS  
2 ABOUT A MAN POINTING A GUN AT YOUR FACE.  
3 Q THAT'S NOT MY QUESTION, SIR.  
4 WHEN DID YOU LAST PHYSICALLY SEE HIM?  
5 YOU EMPHASIZED IT.  
6 A THE DATE OF THE -- OF THE INCIDENT.  
7 Q MARCH 26TH, 1980?  
8 A YES.  
9 Q DO YOU RECALL WHAT TYPE OF CLOTHING THE MAN  
10 WAS WEARING?  
11 A THEY WERE -- HE WAS WELL DRESSED, BUT THAT  
12 I DON'T HAVE ANY IDEA.  
13 Q YOU DON'T RECALL IF HE HAD A JACKET OR WAS  
14 WEARING A SHIRT OR HAD A HAT OR ANYTHING?  
15 A AH, NO. JUST WELL DRESSED IS WHAT I CAN  
16 RECALL AT THIS TIME.  
17 Q MR. HARMON ASKED YOU IF, HAVING READ YOUR  
18 REPORT, IT REFRESHED YOUR RECOLLECTION AS TO THE LICENSE NUMBER.  
19 HAD YOU FORGOTTEN THE LICENSE NUMBER UP UNTIL THE TIME THAT YOUR  
20 MEMORY WAS REFRESHED?  
21 A IT'S WRITTEN AT HOME ON A PICTURE.  
22 Q THAT'S NOT MY QUESTION, SIR.  
23 A DID I FORGET IT?  
24 Q YES, SIR.  
25 A NOT IN ITS ENTIRETY.  
26 Q NOT IN ITS ENTIRETY?  
27 A NO.  
28 Q O.K. JUST PART OF IT?  
29 A THAT'S CORRECT.  
30 Q SINCE THE WOMAN WAS IN THE PASSENGER'S SEAT,  
31 COULD SHE HAVE BEEN THE ONE THAT WAS ROLLING THE WINDOW DOWN?  
32 A I -- I DON'T KNOW.

1 Q YOU DON'T KNOW. IT COULD HAVE BEEN BUT  
2 MIGHT NOT HAVE BEEN TO YOUR --  
3 A I DON'T KNOW, SIR.  
4 Q YOU DON'T KNOW?  
5 A YES, SIR.  
6 Q WHAT DO YOU MEAN, SIR, BY A LIGHT COMPLEXION  
7 NEGRO?  
8 A I'M NOT VERY WELL VERSED IN THE COMPLEXION  
9 OF NEGROES. BUT I -- ALL I KNOW IS THERE'S DARK AND THERE'S  
10 LIGHT, AND HE'S A DARK COMPLETED NEGRO AND THE LADY THAT WAS IN  
11 THE CAR WAS LIGHT COMPLETED, AS MAYBE MIXED BREED SOMEWHERE.  
12 Q HOW ARE YOU EMPLOYED, SIR?  
13 A I'M A MECHANIC.  
14 Q SIR, WHAT IS THE DIFFERENCE BETWEEN A .38  
15 BULLET AND A .357 MAGNUM BULLET?  
16 A A .357 MAGNUM AND A .38?  
17 Q YES, SIR.  
18 A IT'S THE FACT OF IMPACT. YOU CAN PUT A .38  
19 BULLET IN A .357 AND FIRE IT.  
20 Q DOES A .357 HAVE A HARDER IMPACT?  
21 A IT HAS -- SURE IT HAS A HARDER IMPACT.  
22 Q IT MAKES A BIGGER HOLE?  
23 A YES. IF IT HAD THE RIGHT GRAIN IN IT IT  
24 WOULD.  
25 Q WHEN YOU LOOKED AT THE GUN, COULD YOU TELL  
26 WHAT COLOR IT WAS? WAS IT A BLUE OR SILVER GUN?  
27 A BLUISH BLACK.  
28 Q BLUISH BLACK?  
29 A UH-HUH.  
30 Q DID YOU GET A LOOK AT THE GRIPS?  
31 A NO, SIR.  
32 Q WHEN WERE YOU FIRST CONTACTED TO BE A

1 WITNESS HERE TODAY, SIR?

2 A MONDAY EVENING.

3 Q THIS IS LAST MONDAY?

4 A (NO AUDIBLE RESPONSE.)

5 MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

6 MR. HARMON: NO REDIRECT, YOUR HONOR.

7 THE COURT: YOU'RE EXCUSED.

8 (WHEREUPON, THE WITNESS WAS  
9 EXCUSED.)

10 THE COURT: CALL YOUR NEXT WITNESS.

11 MR. HARMON: MAY WE APPROACH THE BENCH, YOUR HONOR?

12 THE COURT: YOU MAY.

13 (WHEREUPON, SIDE BAR CONFERENCE  
14 WAS HELD AT THE BENCH; NOT  
15 REPORTED.)

16 THE COURT: LADIES AND GENTLEMEN OF THE JURY, IT  
17 WILL BE NECESSARY THAT WE TAKE TESTIMONY OUTSIDE OF YOUR PRESENCE.

18 SO DURING THIS RECESS YOU  
19 ARE ADMONISHED NOT TO CONVERSE

20 AMONG YOURSELVES OR WITH ANYONE  
21 ELSE ON ANY SUBJECT CONNECTED  
22 WITH THIS TRIAL, OR READ, WATCH  
23 OR LISTEN TO ANY REPORT OF OR  
24 COMMENTARY ON THIS TRIAL WITH  
25 ANY PERSON CONNECTED WITH THIS  
26 TRIAL BY ANY MEDIUM OF INFORMA-  
27 TION, INCLUDING WITHOUT LIMITA-  
28 TION, NEWSPAPER, TELEVISION OR  
29 RADIO OR FORM OR EXPRESS ANY  
30 OPINION ON ANY SUBJECT CONNEC-  
31 TED WITH THIS TRIAL UNTIL THE  
32 CASE IS FINALLY SUBMITTED TO YOU.

1 WE WILL BE IN RECESS PROBABLY FOR ABOUT 20  
2 MINUTES. YOU ARE EXCUSED AND MAY LEAVE THE COURTROOM. WE ARE  
3 STILL IN SESSION. YOU ARE EXCUSED AT THIS TIME.

4 (WHEREUPON, AT THE HOUR OF 1:50  
5 P.M., THE JURY LEFT THE COURT-  
6 ROOM AND THE FOLLOWING PROCEED-  
7 INGS WERE HAD OUTSIDE OF THEIR  
8 PRESENCE.)

9 THE COURT: OUTSIDE THE PRESENCE OF THE JURY,  
10 COUNSEL, PROCEED.

11 MR. HARMON: THANK YOU, YOUR HONOR.

12 MR. SEATON: YOUR HONOR, THE STATE WISHES NOW TO  
13 CALL DETECTIVE JOE MCGUCKIN TO THE STAND FOR THE PURPOSE OF SHOW-  
14 ING THAT THE AUTOMOBILE FROM WHICH THE LEATHER JACKET, BEING  
15 STATE'S PROPOSED EXHIBIT 44, THAT THAT JACKET WAS TAKEN FROM AN  
16 AUTOMOBILE WHICH HAD BEEN STOLEN AND THE AUTOMOBILE WAS IN  
17 DOWNEY, CALIFORNIA, A FEW DAYS AFTER THE INCIDENTS IN QUESTION IN  
18 THIS TRIAL. THE DETECTIVE WILL BE ABLE TO INDICATE TO THE COURT  
19 THAT HE HAD DISCUSSIONS WITH THE DETECTIVE HANDLING THE INVESTI-

20 GATIONS OF SAMUEL HOWARD IN THE NEW YORK CITY AREA, THAT DETEC-  
21 TIVE TOLD HIM THAT THE CAR WAS IN FACT STOLEN A COUPLE OF WEEKS  
22 PRIOR TO THIS TIME. THE CAR HAD BEEN RENTED BY A HAROLD STANBACK.  
23 THE OWNER OF THE USED -- THE RENTAL AGENCY WENT AND REPOSSESSED  
24 THE CAR -- MY NOTES MAY NOT BE EXACTLY CORRECT AS TO THE DATES,  
25 BUT THIS WOULD BE APPROXIMATE -- HE REPOSSESSED THE CAR ON MARCH  
26 THE 23RD OF 1980. ON THAT EVENING, ON MARCH THE 23RD, THE CAR  
27 WAS STOLEN BY WHOM THE OWNER DOES NOT KNOW. THAT INFORMATION  
28 WAS RELAYED TO DETECTIVE MCGUCKIN, WHO IN TURN, RELAYED IT TO  
29 DETECTIVE LEAVITT PRIOR TO DETECTIVE LEAVITT GOING TO DOWNEY,  
30 CALIFORNIA, ON APRIL THE 2ND, 1980, AT WHICH TIME HE INTERVIEWED  
31 THE DEFENDANT. AND IT WAS SUBSEQUENT TO THAT INTERVIEW THAT  
32 DETECTIVE LEAVITT SEARCHED THE CAR AND FOUND THE ITEMS THAT ARE

1 CONTAINED IN THE STATE'S PROPOSED EXHIBIT.

2 THE COURT: ALL RIGHT.

3 IS HE GOING TO TESTIFY TO THIS, COUNSEL?

4 MR. SEATON: PARDON ME?

5 THE COURT: IS THE DETECTIVE GOING TO TESTIFY ON  
6 THIS?

7 MR. SEATON: YES, HE IS.

8 THE COURT: COUNSEL, YOU HAD CITED TO ME A CASE  
9 THAT YOU THOUGHT MIGHT BE RIVAL TO THIS ISSUE.

10 MR. FRANZEN: YES, YOUR HONOR. I'M SORRY, I DON'T  
11 HAVE THE CASE WITH ME. IT'S WHITLEY VERSUS WARDEN.

12 THE COURT: WHITLEY?

13 MR. FRANZEN: W-H-I-T-L-E-Y.

14 THE COURT: EXCUSE ME. WHAT IS THE SPELLING OF  
15 THE OTHER?

16 MR. FRANZEN: AS IN WARDEN OF THE PRISON, YOUR  
17 HONOR.

18 THE COURT: WARDEN?

19 MR. FRANZEN: YES, SIR.

20 THE COURT: VERSUS --

21 MR. COOPER: EXCUSE ME, YOUR HONOR, IT'S WHITLEY,  
22 YOUR HONOR, W-H-I-T-L-E-Y, I THINK IS THE SPELLING, VERSUS  
23 WARDEN, AS IN PRISON WARDEN.

24 THE COURT: WHAT YEAR IS THAT, DO YOU KNOW APPROX-  
25 IMATELY?

26 MR. FRANZEN: I FOR- --

27 THE COURT: IN THE LAST FIVE YEARS?

28 MR. HARMON: IT'S OLDER THAN THAT, YOUR HONOR.  
29 IT'S AT LEAST TEN YEARS.

30 THE COURT: TEN YEARS?

31 MR. FRANZEN: IT'S A UNITED STATES SUPREME COURT  
32 DECISION, YOUR HONOR.

1 I DIDN'T REALIZE THAT THIS WAS GOING TO  
2 COME UP AT THE MOMENT. IF I COULD HAVE A FEW MOMENTS DURING THE  
3 RECESS I COULD BRING BACK TO THE COURT THE CITATION.

4 THE COURT: WHO IS GOING TO BE DOING THE EXAMINA-  
5 TION ON THIS?

6 MR. SEATON: I WILL DO THE EXAMINATION OF  
7 DETECTIVE MCGUCKIN.

8 THE COURT: WHO WILL BE DOING CROSS?

9 MR. FRANZEN: I WILL, YOUR HONOR.

10 THE COURT: WELL THEN, WHY DON'T WE ALLOW YOU TO  
11 EXCUSE YOURSELF AND CALL AND SEE IF YOU CAN GET ME A COPY OF THE  
12 CASE WHILE THIS IS GOING ON. IT WILL JUST TAKE A FEW MINUTES TO  
13 CALL.

14 MR. BAILIFF -- FIRST OF ALL, LET'S GET  
15 THE WITNESS IN HERE. WHO IS THE NEXT WITNESS AGAIN?

16 MR. SEATON: DETECTIVE JOE MCGUCKIN.

17 MR. COOPER: MAY I BE EXCUSED, YOUR HONOR?

18 THE COURT: YOU MAY.

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20  
21 WHEREUPON,

22  
23 JOSEPH P. MCGUCKIN,

24  
25 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,  
26 EXAMINED AND TESTIFIED AS FOLLOWS:

27  
28 THE COURT: PROCEED.

29 ..

30 ..

31 ..

32 ..

DIRECT EXAMINATION

BY MR. SEATON:

Q PLEASE STATE YOUR NAME AND SPELL YOUR LAST  
NAME FOR THE RECORD.

A MCGUCKIN, M-C- CAP G-U-C-K-I-N, JOSEPH P.

Q HOW ARE YOU EMPLOYED?

A HOMICIDE DETECTIVE, LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT.

Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

A I WAS COMMISSIONED WITH THE CLARK COUNTY  
SHERIFF'S OFFICE IN NOVEMBER OF '68, RECOMMISSIONED WITH METRO  
POLICE IN JULY OF '73.

Q IN MARCH OF 1960 DID YOU HAVE ANYTHING TO DO  
WITH A PENDING CASE AGAINST A SAMUEL HOWARD?

A YES, SIR.

Q HOW DID YOU FIRST BECOME AWARE OF THAT  
PARTICULAR CASE?

A DURING THE EARLY AFTERNOON HOURS OF THE 27TH,  
MY PARTNER AT THE TIME, DETECTIVE AL LEAVITT AND MYSELF, WENT TO  
THE RESIDENCE OF DR. GEORGE MONAHAN AND OBTAINED A MISSING PERSONS  
REPORT FROM HIS WIFE.

Q WAS THERE ANOTHER INCIDENT SIMULTANEOUSLY  
TAKING PLACE THAT YOU WERE AWARE OF, ANOTHER CASE REGARDING THE  
SAME DEFENDANT.

A THERE WAS A CASE EARLIER. I BELIEVE IT WAS  
THE 26TH, THE DAY BEFORE.

Q AND WHAT DID THAT HAVE TO DO WITH THIS?

A THAT INVOLVED AN INCIDENT AT THE SEARS  
ROEBUCK STORE AT THE MARYLAND PARKWAY STORE.

Q AND WHO WAS THE DETECTIVE IN CHARGE OF THAT

1 CASE?

2 A I BELIEVE IT WAS DETECTIVE CHARLES GORDON.

3 Q AND DID YOU AND DETECTIVE GORDON HAVE AN  
4 OPPORTUNITY TO DISCUSS THE TWO CASES?

5 A YES. THAT OCCURRED ON THE MORNING OF THE  
6 28TH OF MARCH.

7 Q AND WHAT DID YOU LEARN FROM DETECTIVE GORDON  
8 AT THAT TIME?

9 A THAT AS A RESULT OF THE INITIAL INCIDENT AT  
10 SEARS, THE SUSPECT HAD FLED THE AREA IN A VEHICLE WHICH WAS  
11 INVOLVED IN A TRAFFIC ACCIDENT. DUE TO THE TRAFFIC ACCIDENT, A  
12 LICENSE PLATE WAS OBTAINED.

13 Q DO YOU --

14 A DETECTIVE GORDON THEN ADVISED ME OF THE  
15 CIRCUMSTANCES OF THE VEHICLE DESCRIPTION OF THE VEHICLE.

16 Q DID YOU MAKE A NOTE OF THAT LICENSE PLATE  
17 NUMBER?

18 A IT WASN'T SO MUCH THAT I MADE A NOTE OF IT.  
19 HE GAVE ME A COPY OF A TELETYPE, WHICH WAS AN INQUIRY TO AN NCIC  
20 ON THIS LICENSE PLATE.

21 Q AND WHERE WAS THAT LICENSE PLATE FROM?

22 A NEW YORK.

23 Q AND DO YOU KNOW THE LICENSE NUMBER AT THIS  
24 TIME?

25 A 614, AND I DON'T RECALL THE LAST THREE LETTERS  
26 IN THE SEQUENCE THAT THEY OCCUR.

27 Q DO YOU HAVE ANYTHING WITH YOU TO REFRESH  
28 YOUR MEMORY?

29 A YES.

30 Q COULD I SEE IT PLEASE.

31 A YEAH.

32 Q WOULD YOU TELL ME WHAT IT IS THAT YOU ARE



1 REFERRING TO?

2 A THIS IS WHAT WE REFER TO AS A NCIC HIT ON  
3 A STOLEN VEHICLE.

4 Q AND --

5 MR. FRANZEN: YOUR HONOR, COULD I SEE THIS? YOUR  
6 HONOR, I CAN'T SEE OVER THE LAP OF THE WITNESS.

7  
8 BY MR. SEATON:

9  
10 Q WHERE DID YOU GET THIS NCIC HIT FROM?

11 A FROM DETECTIVE GORDON.

12 Q AND DOES IT CONTAIN THE LICENSE NUMBER OF  
13 THE VEHICLE IN QUESTION?

14 A YES, IT DOES.

15 Q WHAT WAS THE MAKE AND MODEL OF THE VEHICLE,  
16 IF YOU KNOW?

17 A IT WAS A 1980 OLDSMOBILE CUTLASS, TWO-DOOR.

18 Q DO YOU KNOW THE COLOR?

19 A BLACK.

20 Q WOULD YOU LOOK OVER THE NCIC HIT AND JUST  
21 READ IT TO YOURSELF.

22 A YEAH.

23 Q DOES READING THAT REFRESH YOUR MEMORY AS TO  
24 THE LICENSE NUMBER?

25 A YES.

26 Q WOULD YOU PLEASE TELL US WHAT IT IS?

27 A 614 ZERO HENRY QUEEN.

28 Q IS THAT ZHQ?

29 A RIGHT.

30 Q SUBSEQUENT TO YOUR DISCUSSIONS WITH DETEC-  
31 TIVE GORDON, WHAT DID YOU DO?

32 A HE EVENTUALLY CONTACTED A DETECTIVE ARNOLD

1 HENDRIX OF THE NEW YORK CITY POLICE DEPARTMENT, IN THE QUEENS  
2 PRECINCT STATION.

3 Q DID YOU CALL HIM?

4 A YES.

5 Q AND WHAT DID HE TELL YOU?

6 A BASICALLY THAT THE VEHICLE HAD BEEN RENTED  
7 FROM W.H.R. AUTO RENTAL ON MARCH THE 12TH, 1980. THE VEHICLE  
8 HAD BEEN RENTED FROM A WILLIAM REYNOLDS.

9 Q WAS --

10 MR. FRANZEN: YOUR HONOR, FOR THE RECORD I THINK  
11 AT THIS POINT I WOULD MAKE AN OBJECTION ON HEARSAY GROUNDS.

12 THE COURT: I WILL NOTE THE OBJECTION.

13 YOU MAY PROCEED, COUNSEL.

14 MR. SEATON: THANK YOU, YOUR HONOR.

15  
16 BY MR. SEATON:

17  
18 Q WOULD YOU STATE THE NAME OF THE INDIVIDUAL  
19 AGAIN?

20 A WILLIAM REYNOLDS.

21 Q WAS MR. REYNOLDS THE OWNER OF THE RENTAL  
22 AGENCY?

23 A YES.

24 Q AND BY WHOM WAS THE AUTOMOBILE RENTED?

25 A BY A PERSON THAT IDENTIFIED HIMSELF AS  
26 HAROLD STANBACK.

27 Q AND DID MR. WILLIAMS (SIC) RECEIVE THE CAR  
28 BACK?

29 A YES. ONCE HE HAD OBTAINED INFORMATION AS  
30 TO HAROLD STANBACK, THE PERSON THAT RENTED THE VEHICLE WAS NOT  
31 WHO HE SAID HE WAS, HE ATTEMPTED TO LOCATE THE VEHICLE ON HIS  
32 OWN. HE FOUND THE VEHICLE, I DON'T KNOW THE LOCATION, BUT IT

1 WAS IN NEW YORK CITY.

2 Q THE "HE" YOU ARE REFERRING TO IS --

3 A THAT'S MR. REYNOLDS.

4 Q (CONTINUING) -- MR. REYNOLDS?

5 A I THINK I SAID MR. WILLIAMS BEFORE, BUT I  
6 MEANT MR. REYNOLDS.

7 MR. REYNOLDS LOCATED HIS VEHICLE ON OR  
8 ABOUT THE 23RD OF MARCH, 1980.

9 Q AND WHAT DID HE DO WITH IT AT THAT TIME?

10 A HE BROUGHT IT BACK TO HIS AUTO RENTAL AGENCY  
11 LOT.

12 Q WAS THAT IN THE FORM OF A REPOSSESSION?

13 A YES, SIR. BASICALLY, YES.

14 DURING THE EVENING HOURS AFTER CLOSING  
15 ON THE 23RD OR THE MORNING OF THE 24TH, SOMEONE HAD REMOVED THE  
16 VEHICLE FROM THE CAR RENTAL AGENCY. MR. REYNOLDS THEN CONTACTED  
17 THE NEW YORK CITY POLICE DEPARTMENT AND REPORTED THE THEFT OF  
18 THE VEHICLE, AND I BELIEVE HE USED THE POSSIBILITY OF THE NAME OF  
19 A SUSPECT AS HAROLD STANBACK.

20 Q WOULD YOU GIVE US THE DATE AGAIN AND THE  
21 MONTH MR. REYNOLDS DETERMINED THAT THE CAR WAS MISSING?

22 A IT WOULD HAVE BEEN MARCH 23RD, THE EVENING  
23 OF THE 23RD, OR THE EARLY MORNING HOURS OF THE 24TH.

24 Q OF 1980?

25 A OF 1980.

26 Q THAT WAS THE SAME DAY OR THE NEXT MORNING  
27 THAT HE HAD REPOSSESSED THE CAR?

28 A YES.

29 MR. FRANZEN: SORRY. WHICH WAS IT?

30 THE COURT: COUNSEL, YOU WILL HAVE AN OPPORTUNITY  
31 ON CROSS TO FIND THAT OUT.

32 MR. FRANZEN: I WOULD OBJECT THEN, YOUR HONOR, TO

1 THE COMPOUND NATURE OF THE QUESTION, BECAUSE I CAN'T COMPREHEND  
2 THE ANSWER. YES TO WHICH PART OF IT?

3 THE COURT: OVERRULED.  
4 PROCEED.

5  
6 BY MR. SEATON:

7  
8 Q DID MR. REYNOLDS TURN IN A STOLEN VEHICLE  
9 REPORT?

10 A YES, HE DID.

11 Q TO WHOM?

12 A TO THE NEW YORK CITY POLICE DEPARTMENT.

13 Q TO THE SAME DETECTIVE TO WHOM YOU WERE  
14 SPEAKING?

15 A I DON'T KNOW IF IT WAS HE HIMSELF THAT TOOK  
16 THE REPORT. I DOUBT IT.

17 Q WAS HE AWARE OF IT?

18 A HE WAS AWARE OF IT, YES.

19 Q AND HE PASSED THAT INFORMATION ON TO YOU?

20 A YES.

21 Q TO HIS KNOWLEDGE WAS HE ABLE TO TELL YOU  
22 WHETHER OR NOT MR. REYNOLDS EVER RETURNED -- RECEIVED THE CAR  
23 BACK PRIOR TO THE 2ND OF APRIL, 1980?

24 A NO. IN CONVERSATION HE HAD, OR I HAD WITH  
25 HIM LATER, HE TOLD ME THAT THE VEHICLE WHICH I HAD ALREADY KNOWN,  
26 THE VEHICLE HAD BEEN RECOVERED IN SAN BERNARDINO, CALIFORNIA,  
27 SOMEWHERE AROUND APRIL THE 1ST OR 2ND.

28 Q DID YOU EVER HAVE AN OPPORTUNITY TO TALK TO  
29 DETECTIVE LEAVITT REGARDING THE INFORMATION WHICH YOU HAVE JUST  
30 TOLD US?

31 A YES.

32 Q AND WHEN DID YOU TALK TO HIM ABOUT THAT

1 INFORMATION?

2 A SOON AFTER I OBTAINED THE INFORMATION.

3 Q I'M SORRY. WOULD YOU GIVE THAT ANSWER AGAIN?

4 A SOON AFTER I OBTAINED THE INFORMATION.

5 MR. SEATON: MAY WE HAVE THIS MARKED, YOUR HONOR?

6 THE COURT: IT MAY BE MARKED.

7 MR. SEATON: AS THE STATE'S NEXT IN ORDER.

8 MR. FRANZEN: WHAT NUMBER WOULD THAT BE?

9 THE COURT: WHAT'S THE NUMBER AGAIN?

10 THE CLERK: FORTY NINE.

11  
12 BY MR. SEATON:

13  
14 Q SHOWING YOU NOW WHAT HAS BEEN MARKED AS  
15 STATE'S PROPOSED EXHIBIT 49, IS THIS THE NCIC HIT WHICH YOU'VE  
16 BEEN REFERRING TO THROUGHOUT YOUR TESTIMONY?

17 A YES, IT IS.

18 Q CAN YOU EXPLAIN A LITTLE BIT ABOUT AN NCIC  
19 HIT, WHAT THAT IS?

20 A AN NCIC IS NATIONAL CRIME INFORMATION CENTER  
21 THE POLICE AGENCY, SUCH AS METRO, HAVING A LICENSE PLATE OF A  
22 VEHICLE THAT THEY WANT TO RUN FOR LOSS, STOLEN, OR WHATEVER, THEY  
23 RUN IT THROUGH NCIC WITH THE APPLICABLE CODE. IN THIS PARTICULAR  
24 INSTANCE, A HIT WAS RECEIVED. IN OTHERWORDS, THERE WAS A REPORTED  
25 STOLEN AUTO VEHICLE, AND IT DESCRIBES WHICH AGENCY ENTERED THE  
26 VEHICLE INTO NCIC.

27 Q AND IN THIS CASE, WHICH AGENCY DID ENTER IT?

28 A IT WOULD HAVE BEEN THE NEW YORK CITY POLICE  
29 DEPARTMENT.

30 Q I SEE.

31 A THE LICENSE NUMBER IS NOTED, THE LICENSING  
32 STATE, THE LICENSING YEAR, AND THE TYPE OF VEHICLE WHICH HAS BEEN

1 REPORTED. THERE'S ALSO THE VIN NUMBER, VEHICLE IDENTIFICATION  
2 NUMBER, WHICH IS LISTED. THEN IT GIVES THE DESCRIPTION OF THE  
3 VEHICLE ITSELF: VEHICLE MAKE, OLDSMOBILE; VEHICLE MODEL, CUTLASS;  
4 THAT IT'S A TWO-DOOR SEDAN; AND THE VEHICLE COLOR, BLACK. IT  
5 ALSO LISTS THE DATE OF THE THEFT, 24-80; AND ALSO INCLUDES THE  
6 CASE NUMBER OR THE CITY POLICE DEPARTMENT CASE NUMBER, THE AGENCY  
7 CASE NUMBER.

8 Q THE NEW YORK POLICE CASE NUMBER?

9 A YES.

10 THEN IT ADVISES OF THE NCIC ENTRY  
11 NUMBER, WHICH IS MAINTAINED BY THE NCIC ITSELF. THEN THE AGENCY,  
12 OR ORI IN THIS CASE, IS IDENTIFIED AS A NEW YORK CITY POLICE  
13 DEPARTMENT. THEN THE SECOND PART OF THE MESSAGE IS THE LEGAL  
14 ALDER OR THE PERSON OR THE AGENCY, WHATEVER, THAT REPORTED THE  
15 THEFT, WHICH IS W.H.R. AUTO RENTALS, 4122 220TH STREET, BAY SIDE,  
16 NEW YORK.

17 Q AND ALL OF THE THINGS THAT YOU HAVE JUST  
18 TESTIFIED TO, WITH REGARD TO THIS 1980 OLDS CUTLASS THAT WE'VE  
19 BEEN REFERRING TO, IS ALL OF THAT INFORMATION CONTAINED IN THIS  
20 NCIC HIT?

21 A YES, IT IS.

22 Q NOW, YOU INDICATED I BELIEVE THAT DETECTIVE  
23 LEAVITT AND YOU WERE PARTNERS AT THIS TIME.

24 A YES.

25 Q WHO WAS THE, IF I MAY, THE LEAD DETECTIVE ON  
26 THE SAMUEL HOWARD CASE?

27 A DETECTIVE LEAVITT.

28 Q AND THIS NCIC HIT, WHICH HAS BEEN MARKED AS  
29 STATE'S PROPOSED EXHIBIT 49, WAS THAT IN THE FILE THAT YOU KEPT,  
30 THE DETECTIVE FILE?

31 A YES.

32 Q AND DID DETECTIVE LEAVITT HAVE ACCESS TO

1 THAT FILE?

2 A YES, HE DID.

3 Q AND DO YOU KNOW AS A MATTER OF FACT WHETHER  
4 OR NOT DETECTIVE LEAVITT HAS EVER SEEN STATE'S PROPOSED EXHIBIT  
5 49?

6 A I WOULD IMAGINE HE HAS.

7 MR. FRANZEN: OBJECTION, SPECULATION, YOUR HONOR.  
8 WE ARE NOT PROBABLE CAUSING ON HEARSAY. WE ARE GOING ON WHAT HE  
9 KNOWS.

10 MR. SEATON: I CAN ASK IT A DIFFERENT WAY, YOUR  
11 HONOR.

12 THE COURT: PROCEED.

13  
14 BY MR. SEATON:

15  
16 Q HAVE YOU HAD AN OPPORTUNITY TO DISCUSS WITH  
17 DETECTIVE LEAVITT IN THE PAST, THE INFORMATION THAT IS CONTAINED  
18 IN THE NCIC HIT, WHICH IS NOTED AS STATE'S PROPOSED EXHIBIT 49?

19 A YES.

20 MR. FRANZEN: COULD I HAVE A FOUNDATION, YOUR  
21 HONOR, AS TO WHEN? WHERE?

22 THE COURT: COUNSEL.

23  
24 BY MR. SEATON:

25  
26 Q CAN YOU TELL US WHEN THIS CONVERSATION WOULD  
27 HAVE TAKEN PLACE?

28 A THE ORIGINAL CONVERSATION I HAD WITH DETECTIVE  
29 GORDON, WHEN HE BROUGHT IT TO MY ATTENTION, WAS ON THE MORNING OF  
30 THE 28TH, SOMETIME BETWEEN SEVEN AND EIGHT. DETECTIVE LEAVITT  
31 ARRIVES IN THE OFFICE AT APPROXIMATELY 9:00 A.M., SO AT THAT TIME  
32 I PROBABLY WOULD HAVE MADE HIM AWARE OF IT.

1 Q WHAT IS THE DATE OF THE PRINTOUT ON THIS  
2 STATE'S PROPOSED EXHIBIT 49? WHEN DID YOU RECEIVE IT?  
3 A THIS -- I DIDN'T MAKE THE REQUEST. THIS WAS  
4 PROBABLY MADE EITHER BY COMMUNICATIONS OR DETECTIVE GORDON HIM-  
5 SELF. THE REQUEST WAS MADE ON 3-27-80 AT 1522 HOURS, 22 MINUTES  
6 PAST THREE P.M.  
7 Q DOES IT INDICATE WHEN IT CAME BACK?  
8 A THIS TIME AND DATE THAT I GAVE YOU IS THE  
9 DATE THAT THE MACHINE PRINTED IT.  
10 Q IN LAS VEGAS?  
11 A IN LAS VEGAS.  
12 Q I SEE. THANK YOU.  
13 MR. FRANZEN: I DIDN'T CATCH THAT DATE.  
14  
15 BY MR. SEATON:  
16  
17 Q WOULD YOU REPEAT THAT THEN FOR COUNSEL?  
18 A MARCH 27TH, 1980, 1522 HOURS IS THE TIME  
19 THAT IT WAS RECEIVED IN LAS VEGAS ACROSS THE COMPUTER.  
20 Q MARCH 27TH.  
21 WHEN DID YOU HAVE THE DISCUSSION REGARD-  
22 ING THE INFORMATION CONTAINED IN STATE'S PROPOSED EXHIBIT 49 WITH  
23 DETECTIVE LEAVITT?  
24 A THE FOLLOWING MORNING APPROXIMATELY 9:00 A.M.  
25 Q AND WHAT DID YOU -- LET ME ASK YOU THIS:  
26 DID YOU TELL HIM ALL OF THE INFORMATION THAT IS CONTAINED ON THAT  
27 NCIC HIT?  
28 A I DON'T SPECIFICALLY REMEMBER HANDING HIM  
29 THAT, BUT I WOULD IMAGINE I DID SO THAT HE COULD READ IT HIMSELF.  
30 Q AND DO YOU KNOW WHEN IT WAS THAT DETECTIVE  
31 LEAVITT WENT TO DOWNEY, CALIFORNIA, TO FURTHER INVESTIGATE THIS  
32 CASE?



1 A I BELIEVE IT WAS APRIL 1ST OR 2ND, 1980.

2 MR. SEATON: I HAVE NO FURTHER QUESTIONS, YOUR  
3 HONOR, BUT I WOULD OFFER STATE'S PROPOSED EXHIBIT 49 FOR THE  
4 PURPOSES OF THIS HEARING AT THIS TIME, YOUR HONOR.

5 THE COURT: ANY OBJECTION, COUNSEL?

6 MR. FRANZEN: NO.

7 THE COURT: SAME WILL BE RECEIVED.

8 CROSS?

9 MR. FRANZEN: YES, SIR.

10

11 CROSS EXAMINATION

12

13 BY MR. FRANZEN:

14

15 Q DETECTIVE MCGUCKIN, YOU SAID THAT MR.  
16 REYNOLDS EFFECTED A REPOSSESSION IN THE NATURE OF A REPOSSESSION.  
17 WHAT DO YOU MEAN BY THAT, SIR?

18 A IN OTHERWORDS, HE WENT OUT AND FOUND HIS OWN  
19 VEHICLE.

20

Q HE DIDN'T USE COURT PROCESS THEN?

21

A NO. I DON'T KNOW. ALL I KNOW IS WHAT I  
22 WAS TOLD BY DETECTIVE HENDRIX THAT THE VEHICLE WAS LOCATED BY  
23 MR. REYNOLDS. JUST EXACTLY HOW HE ACCOMPLISHED THAT I DON'T  
24 KNOW.

25

Q O.K.

26

WHEN THE FIRST RENTAL OCCURRED ON 3-12-80,  
27 DO YOU KNOW THE PERIOD OF TIME THAT RENTAL WAS GOOD FOR?

28

A I HAVE NO IDEA.

29

Q WHICH MEANS IT COULD HAVE BEEN FOR ONE DAY,  
30 IT COULD HAVE BEEN FOR A YEAR OR MORE. YOU JUST DON'T KNOW.

31

A I DON'T KNOW.

32

Q AND YOU DON'T KNOW IF, ON WHATEVER DATE IT

1 WAS THAT HE IN THE NATURE OF EFFECT -- WHAT WAS IN THE NATURE OF  
2 A REPOSSESSION, WHETHER THAT WAS COVERED WITHIN THE RENTAL  
3 PERIOD?

4 A I HAVE --

5 Q YOU JUST DON'T KNOW?

6 A AGAIN, I HAVE NO IDEA.

7 Q AND YOU DON'T KNOW WHETHER -- STRIKE THAT.

8 DID YOU EVER TALK WITH MR. REYNOLDS?

9 A NO, I HAVE NOT.

10 Q DO YOU KNOW WHERE THIS VEHICLE IS NOW?

11 A NO.

12 Q NOW, YOU SAY THAT YOU DON'T REMEMBER GIVING  
13 DETECTIVE LEAVITT STATE'S EXHIBIT 49, BUT YOU THINK YOU DID, I  
14 BELIEVE?

15 A THAT'S CORRECT.

16 Q BUT YOU'RE NOT SURE?

17 A I DON'T SPECIFICALLY REMEMBER HANDING IT TO  
18 HIM.

19 Q DO YOU KNOW THE NAME OF THIS RENTAL AGENCY  
20 THAT MR. REYNOLDS IS ASSOCIATED WITH?

21 A YES. IT'S A COMBINATION OF HIS INITIALS.

22 Q WHAT IS IT, SIR?

23 A W.H.R. AUTO RENTAL.

24 Q IS THAT ON THIS HIT, STATE'S 49?

25 A YES, AT THE BOTTOM.

26 Q YOU DIDN'T GET THAT INFORMATION THEN FROM  
27 EITHER THE QUEENS DETECTIVE OR MR. REYNOLDS, FOR WHOM YOU SPOKE?  
28 THIS ALL CAME FROM THE HIT, EXHIBIT 49?

29 A WHEN I SPOKE WITH DETECTIVE HENDRIX HE CON-  
30 FIRMED WHAT WAS ON IT.

31 MR. FRANZEN: I HAVE NO FURTHER QUESTIONS.

32 MR. SEATON: COURT'S INDULGENCE.

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32

THE STATE HAS NOTHING FURTHER, YOUR

HONOR.

THE COURT: YOU'RE EXCUSED, SIR.

THE WITNESS: THANK YOU, YOUR HONOR.

(WHEREUPON, THE WITNESS WAS  
EXCUSED.)

THE COURT: ANY FURTHER WITNESSES ON THIS MOTION,  
COUNSEL?

MR. SEATON: NO, YOUR HONOR.

THE COURT: ARGUMENT?

MR. SEATON: YOUR HONOR, IT'S THE STATE'S POSITION  
NOW, IN LIGHT OF THE EVIDENCE THAT HAS BEEN PRESENTED, THAT THE  
CAR WAS STOLEN ON APRIL THE 2ND, 1980. AND I SHOULD REFER  
MOMENTARILY TO STATE'S PROPOSED 44, WHICH, FOR THE RECORD, SHOWS  
THAT AL LEAVITT BOOKED THE ITEMS IN ON APRIL THE 5TH, 1980.  
PRIOR TO THOSE DATES THE CAR HAS BEEN RENTED BY A PERSON UNDER  
THE NAME OF HAROLD STANBACK. WHEN MR. REYNOLDS FOUND OUT THAT  
WAS AN IMPROPER NAME, HE WENT AND REPOSSESSED THE AUTO. IT HAS  
NO BEARING WHATSOEVER ON THIS AS TO WHETHER OR NOT THE DEFENDANT  
WAS EVEN A PART OF THIS TRANSACTION. ~~THE FACT OF THE MATTER IS~~  
THAT MR. REYNOLDS WENT AND REPOSSESSED HIS AUTOMOBILE AND WHETHER  
OR NOT THAT WAS DONE LEGITIMATELY. IT WAS TAKEN FROM HIS POSSES-  
SION FROM THE CAR LOT ON THE NIGHT OF APRIL -- OF MARCH 23RD,  
1980, OR THE MORNING HOURS OF MARCH 24TH. THE SEARCH TOOK PLACE  
DOWN IN -- OR NOT THE SEARCH, IT WASN'T A SEARCH. THE RECOVERY  
TOOK PLACE IN DOWNEY, CALIFORNIA, IN APRIL, AFTER THE DEFENDANT  
WAS LOCATED THERE. SO IT'S SIMPLY THE STATE'S CONTENTION THAT  
THIS WAS A STOLEN AUTOMOBILE AND THAT THE DEFENDANT HAS NO STAND-  
ING TO OBJECT TO THE SEARCH.

I WOULD LIKE TO CITE THE CASE OF GEBERT,  
G-E-B-E-R-T, VERSUS THE STATE OF NEVADA. I'M SORRY BUT I DON'T  
HAVE A CITE. IT WAS FILED MAY 27TH, 1969. GEBERT IS A CASE

1 WHERE THE DEFENDANT HAD ITEMS IN AN AUTOMOBILE WITH HIM AND THEY  
2 WERE SEIZED. IT WAS UPON THAT THAT PART OF THE CONVICTION WAS  
3 BASED. AND THE COURT, AND I'M NOT GOING TO QUOTE HERE, SAID THAT  
4 IN ORDER TO HAVE THE RIGHT TO CLAIM AN UNLAWFUL INVASION OF  
5 PRIVACY, WE SET IN DEAN VERSUS FOGIANI, THE PERSON MAKING THE  
6 CLAIM, AND I'LL GO DOWN TO THREE, MUST BE ANYONE WHO IS LEGITI-  
7 MATELY ON THE PREMISES WHERE A SEARCH OCCURS AND THE FRUITS OF  
8 THE SEARCH ARE PROPOSED TO BE USED AGAINST HIM. IN GEBERT, THE  
9 APPELLATE MET THE FIRST TWO REQUIREMENTS, WHICH THE DEFENDANT  
10 PROBABLY DOES IN THIS CASE ALSO. BUT THE COURT WENT ON TO SAY AS  
11 FOLLOWS THAT THIS COURT HELD THAT SINCE THE CAR IN WHICH THE  
12 DEFENDANT WAS RIDING WAS A STOLEN CAR WITHIN THE HOLDING OF  
13 JONES VERSUS U.S. SUPRA HARPER WAS ONE OF THE CLASS WHO, QUOTE,  
14 "BY VIRTUE OF THEIR WRONGFUL PRESENCE CANNOT INVOKE THE PRIVACY  
15 OF THE PREMISE SEARCHED."

16 SO, GEBERT TELLS US IN 1969, AND I DON'T  
17 KNOW THAT THE LAW HAS CHANGED SINCE THAT TIME, THAT A DEFENDANT  
18 THAT HAS ITEMS IN A STOLEN CAR AND ULTIMATELY HAS THEM SEIZED BY  
19 THE POLICE HAS NO STANDING TO OBJECT, BECAUSE THAT CAR WAS NOT

20 LEGITIMATELY HIS. IT WAS SOMEONE ELSE'S. THEREFORE, THE POLICE,  
21 AT LEAST AS THIS DEFENDANT IS CONCERNED, ARE AT LIBERTY TO GO  
22 INTO THAT CAR AND TAKE A LOOK AT IT. SOMEONE ELSE MAY HAVE THE  
23 STANDING TO OBJECT, BUT NOT THIS PARTICULAR DEFENDANT.

24 FURTHER, ALTHOUGH IT ISN'T IN FRONT OF  
25 THE COURT YET, I CAN MAKE AN OFFER OF PROOF AND A REPRESENTATION  
26 TO THE COURT THAT THE ITEMS THAT WE PROPOSE TO SHOW -- AND WITH-  
27 OUT GOING INTO THE BAG, I CANNOT STATE THIS FOR SURE, BUT I  
28 THINK IT'S ONLY A LEATHER JACKET -- THAT ITEM AT LEAST AND THE  
29 OTHER ITEMS IN THE BAG, EXHIBIT 44, WERE FOUND IN THE BACKSEAT  
30 OF THE AUTOMOBILE, NOT IN THE TRUNK OF THE CAR. THAT BEING THE  
31 CASE, WE WOULD ALSO BE ABLE TO CITE THE HARPER CASE, HARPER  
32 VERSUS THE STATE OF NEVADA, 84 NEV. 233, A 1968 NEVADA SUPREME

1 COURT CASE. IT'S ONE OF A LONG LINE OF CASES WHICH INDICATES  
2 THAT EVIDENCE WHICH IS IN PLAIN VIEW MAY BE RIGHTFULLY SEIZED  
3 BY THE POLICE, AND BEING IN THE BACKSEAT OF THE CAR THAT WILL BE  
4 FOUND TO BE THE CASE IN THIS PARTICULAR SITUATION.

5 ON THOSE GROUNDS AND WITH FACTUAL  
6 PREDICATE, THE STATE FEELS THERE COULD BE NO STANDING TO OBJECT  
7 TO THE SEIZURE OF THE COAT AND THAT IT SHOULD BE PROPERLY SHOWN  
8 TO WITNESSES TO MAKE A DETERMINATION FOR THE JURY'S PURPOSE AS  
9 TO WHETHER OR NOT IT MIGHT HAVE BEEN THE SAME JACKET THAT THE  
10 DEFENDANT WAS WEARING AT THE TIME THE CRIMES WERE COMMITTED.

11 THE COURT: COUNSEL?

12 MR. FRANZEN: YES, YOUR HONOR.

13 THE WHITLEY VERSUS WARDEN CITATION, WHICH IS  
14 401 US 460, I BELIEVE THE PERTINENT LANGUAGE WOULD BE --

15 THE COURT: 401 WHAT?

16 MR. FRANZEN: 460, YOUR HONOR.

17 MR. SEATON: IS THAT THE SUPREME COURT?

18 MR. FRANZEN: YES.

19 I BELIEVE THE PERTINENT LANGUAGE WOULD BE  
20 OF 568 LAWYERS CITATION OF 28 EDEEC --

21 THE COURT: YEAR?

22 MR. FRANZEN: 1971. 28 LAWYERS EDEEC 306.

23 BUT THE PERTINENT LANGUAGE I BELIEVE AT  
24 PAGE 313 -- AND ANOTHER CASE INTERRUPTING THAT IS RODRIQUEZ  
25 VERSUS STATE, 559 SOUTHWEST.2ND 925 -- BUT AGAIN THE PERTINENT  
26 LANGUAGE I BELIEVE BEING FOUND AT PAGES 926 AND 927. THE THRUST  
27 OF THESE CASES IS THAT WHEN A DEFENDANT CAN TEST THE VALIDITY OF  
28 THE STATE'S ALLEGED PROBABLE CAUSE ON THE GROUNDS OF A RADIO  
29 BROADCAST, IN THIS CASE WE HAVE A TELEPHONE CONVERSATION AND AN  
30 NCIC HIT, STATE'S 49, SIMILARLY HEARSAY, BUT ONCE THE ISSUE IS  
31 RAISED, THE STATE MAY NO LONGER PLACE MERE RELIANCE UPON AN  
32 UNSUBSTANTIATED HEARSAY COMMUNICATION. IT IS THEIR OBLIGATION

1 TO PRESENT EVIDENCE TO YOUR HONOR FROM THE SENDING AGENCY -- NOT  
2 HEARSAY, BUT THE SENDING AGENCY -- TO SHOW THAT THIS WAS IN TRUTH  
3 AND IN FACT ACCURATE.

4 YOUR HONOR, THE OTHER -- I HAVE ANOTHER  
5 CITATION, CHRIS VERSUS STATE, 376 ATLANTIC 2ND, 1158, A 1977 DECISION.  
6 AND I HAVE ANOTHER DECISION, AND I APOLOGIZE AS IT IS NOT  
7 A PUBLISHED DECISION. IT WAS BY JUDGE FOLEY INVOLVING THE POLICE  
8 STOPPING A YOUNG MAN WHO WAS HITCHHIKING AND ASKING HIM TO  
9 IDENTIFY HIMSELF. HE IDENTIFIED HIMSELF AND THEY GET A FALSE  
10 NCIC HIT, FALSE IN THAT THE NCIC HIT SAID A WARRANT IS ACTIVE FOR  
11 THIS YOUNG MAN, AND THE POLICE ARRESTED HIM AND SEARCHED HIM AND  
12 HIS BAG, WHEREIN I BELIEVE THEY FIND FIREARMS. THE COURT, AGAIN  
13 I BELIEVE -- YES. I'M SORRY. IT'S NOT JUDGE FOLEY. IT WAS THE  
14 HONORABLE THOMAS J. CLAIRLY, SENIOR JUDGE OF THE UNITED STATES  
15 DISTRICT COURT, RULED THAT ALTHOUGH THE POLICE HAD AN NCIC HIT,  
16 IT WAS A FALSE HIT AND THE POLICE CANNOT RELY UPON FALSE HITS.  
17 IT'S UP TO THEM TO PUT ACCURATE INFORMATION INTO THESE COMPUTERS  
18 AND TO MAKE SURE THAT THE INFORMATION IS MAINTAINED ACCURATELY  
19 FOR OBVIOUS REASONS. OTHERWISE, CITIZENS AROUND THE COUNTRY ARE  
20 GOING TO BE BEING PICKED UP ON INACCURATE HITS.

21 THE COURT: WELL, WHERE DOES THAT APPLY HERE?  
22 THERE ISN'T ANYTHING IN THIS RECORD --

23 MR. FRANZEN: WE WILL --

24 THE COURT: EXCUSE ME.

25 THERE ISN'T ANYTHING IN THIS RECORD TO  
26 SHOW THAT, QUOTE, "IT WAS A FALSE HIT".

27 MR. FRANZEN: THE PLACE IT SHOWS HERE, YOUR  
28 HONOR, IS THAT THE MAN WHO WAS SUPPOSED TO HAVE RENTED -- I BELIEVE,  
29 CORRECT ME IF I'M WRONG -- WHO IS SUPPOSED TO HAVE RENTED THIS  
30 CAR IS HAROLD STANBACK. I BELIEVE THE EVIDENCE, FROM BOTH MR.  
31 KINSEY AND MISS WILSON -- MRS. WILSON AND FROM ONE OF THE  
32 STATE'S EXHIBITS, WAS THAT MY CLIENT IS THAT MAN.

1 NOW, IF HE RENTED THIS CAR AND THIS  
2 MR. REYNOLDS USED NON-JUDICIAL PROCESS JUST TO GO OUT ON THE  
3 STREET AND STEAL IT BACK, AND I HAVE THE IMPRESSION FROM THE WAY  
4 OFFICER MCGUCKIN TESTIFIED THAT THAT IS EXACTLY WHAT HAPPENED,  
5 THIS CAR IS LAWFULLY IN THE POSSESSION OF MR. STANBACK PURSUANT  
6 TO A RENTAL AGREEMENT OF UNKNOWN DURATION.

7 NOW, YOUR HONOR, THE BURDEN OF PROOF  
8 FOR A WARRANTLESS SEARCH IS UPON THE STATE. I WOULD SUSPECT  
9 THAT BASED ON THIS, SINCE MY CLIENT LEASED THE CAR FROM THE  
10 EVIDENCE PRODUCED BY THE STATE, HE HAD VALID POSSESSION OF THE  
11 CAR. YOU CANNOT INTERRUPT VALID POSSESSION BY GOING OUT AND  
12 STEALING IT BACK. YOU AT LEAST HAVE TO GIVE THE PARTY SOME TYPE  
13 OF NOTICE, I WOULD SUSPECT.

14 ON THOSE GROUNDS, YOUR HONOR, AND ONE  
15 OTHER GROUND, THERE HAS BEEN NO TESTIMONY AS OF YET AS TO WHERE  
16 THIS CLOTHING CAME FROM. I THOUGHT IT WOULD COME OUT OF THE  
17 TRUNK OF AN AUTOMOBILE ALTHOUGH I HEARD MR. SEATON SAY IT CAME  
18 OUT OF THE BACKSEAT.

19 THE COURT: HIS OFFER OF PROOF WAS THAT IT WAS IN  
20 THE BACKSEAT.

21 MR. FRANZEN: PARDON ME, YOUR HONOR?

22 THE COURT: HIS OFFER OF PROOF WAS THAT IT WAS IN  
23 THE BACKSEAT.

24 MR. FRANZEN: BACKSEAT. WELL, I THOUGHT IT WAS  
25 IN THE TRUNK.

26 BUT IN ANY EVENT, WE ARE AGAIN GETTING INTO  
27 THE AREA OF TESTIMONY ABOUT EVIDENCE THAT HAS NOT YET BEEN  
28 INTRODUCED INTO EVIDENCE. I WOULD LIKE TO KNOW WHERE THAT  
29 JACKET CAME FROM FROM DETECTIVE LEAVITT. I THOUGHT I READ ON  
30 THE BAG -- COULD I APPROACH THE EVIDENCE BAG, YOUR HONOR?

31 THE COURT: SURE, GO AHEAD.

32 MR. FRANZEN: ON THAT, I WILL REST, YOUR HONOR.

1 THE COURT: COUNSEL, THE CASE OF HARPER VERSUS  
2 THE STATE I THINK IS DISPOSITIVE OF MOST OF THE ARGUMENTS THAT  
3 WERE MADE HERE. IN THAT CASE, THAT WAS THE CASE THAT I SAT ON  
4 IN 1968 I BELIEVE. IT WENT UP TO THE NEVADA SUPREME COURT. IN  
5 THAT CASE, I RULED ON THE VERY SAME ARGUMENT, THAT IF YOU WERE  
6 IN POSSESSION OF A STOLEN VEHICLE YOU DON'T LACK STANDING TO  
7 RAISE THE FOURTH AMENDMENT PROTECTION BECAUSE YOU MUST HAVE SOME  
8 LEGAL OWNERSHIP OR LEGAL RIGHT TO BE WHERE YOU ARE AT. .

9 THE NEVADA SUPREME COURT WAS FACED WITH  
10 THAT SITUATION. IN THAT CASE, THERE WERE TWO YOUNG MEN THAT WERE  
11 IN POSSESSION OF A STOLEN VEHICLE. AT THE TIME THEY WERE INITIALLY  
12 ARRESTED THE ONLY REASON THAT THEY WERE PULLED OVER WAS  
13 THERE WAS NO DEALERS REPORT OF SALE AFFIXED TO THE VEHICLE AND  
14 THERE WERE NO PLATES. SO WHEN THEY WERE PULLED OVER THE OFFICERS  
15 HAD THE PASSENGER STEP OUT OF THE CAR AND SIT ON THE CURB WHEN  
16 HE TALKED TO THE DRIVER. AND THE ISSUE WAS WHETHER OR NOT THEY  
17 HAD THE RIGHT TO OBJECT TO THE TAKING OF ITEMS OUT OF THE TRUNK  
18 AND TAKING OF ITEMS IN THE CAR. WHAT OCCURRED WAS WHILE THEY  
19 WERE CHECKING OUT THE DRIVER BY CONVERSATION, THE OFFICER  
20 DECIDED TO CALL BACK TO POLICE CONTROL. SO HE WENT BACK TO HIS  
21 POLICE CAR, AND THIS IS HOW THE POLICE CONTROL DESCRIBED IT: IT  
22 TOOK TEN OR FIFTEEN MINUTES FOR THE CALL TO COME BACK FROM  
23 POLICE CONTROL, AT WHICH TIME THE PATROLMEN LEARNED THAT THE CAR  
24 HAD NOT BEEN SOLD BY THE AUTO AGENCY AND THAT NO ONE HAD BEEN  
25 COMMISSIONED OR BEEN GIVEN PERMISSION TO TAKE IT FROM THEIR LOT.  
26 IT WAS BY RADIO COMMUNICATION FROM POLICE CONTROL. OBVIOUSLY,  
27 ALL THE INFORMATION RECEIVED BY THIS OFFICER WAS HEARSAY. IT  
28 WAS BASED ON INFORMATION THAT HAD BEEN SECURED FROM SOMEONE  
29 ELSE THROUGH POLICE CONTROL TO THE OFFICER IN THE FIELD. OUR  
30 SUPREME COURT HELD THAT SUFFICIENT. THE QUESTION THEN AROSE  
31 AS TO THE ISSUE OF STANDING. ON PAGES 236 OF THAT SUPREME  
32 COURT DECISION OUR NEVADA SUPREME COURT SAID THAT WE FIND THE



1 APPELLANT HARPER, THIS IS THE PASSENGER, IS WITHOUT STANDING TO  
2 CLAIM THE PROTECTION OF THE FOURTH AMENDMENT.

3 ON TWO PREVIOUS OCCASIONS THIS COURT  
4 HAS RULED ON THE MATTER OF STANDING. AND I CITE THE DEAN VERSUS  
5 FOGIANI CASE AND OSBOURNE VERSUS THE STATE. OSBOURNE INVOLVED  
6 THE SEARCH OF A STOLEN AUTOMOBILE. IN THAT CASE WE HELD THAT  
7 SINCE THE ACCUSED DID NOT OWN NOR HAVE ANY RIGHT TO POSSESS THE  
8 AUTOMOBILE, HE WAS WITHOUT STANDING TO CLAIM THE PROTECTION OF  
9 THE FOURTH AMENDMENT. THIS RULE ANNOUNCED THAT OSBOURNE IS  
10 CONTROLLING IN THIS CASE.

11 WELL, WHAT IS THE SITUATION HERE? THE  
12 OFFICER HERE RECEIVED HIS INFORMATION WITH REGARDS TO THE STAND-  
13 ING, IN REGARD TO THE OWNERSHIP OF THIS, BY MAKING A CALL TO A  
14 POLICE DETECTIVE IN THE STATE OF NEW YORK, WHO STATED THAT THE  
15 VEHICLE HAD BEEN RENTED BY ONE HAROLD STANBACK AND THAT THE  
16 OWNER OF THE VEHICLE, MR. REYNOLDS, HAD ASCERTAINED THAT MR.  
17 STANBACK WAS REALLY NOT THE INDIVIDUAL WHO HE BELIEVED HIM TO BE,  
18 AND THAT HE THEREUPON REPOSSESSED OR TOOK THE CAR BACK INTO HIS  
19 CUSTODY, PLACED IT BACK ON HIS LOT, AND SEVERAL DAYS OR THE  
20 FOLLOWING DAY OR WHATEVER, SHORTLY THEREAFTER, HE FOUND THAT THE  
21 CAR HAD BEEN STOLEN FROM HIS LOT. AT THAT TIME HE REPORTED THE  
22 VEHICLE STOLEN, BEING EITHER MARCH 23RD OR MARCH 24TH. MR.  
23 REYNOLDS HAD TURNED IN A STOLEN VEHICLE REPORT TO THE NEW YORK  
24 CITY POLICE DEPARTMENT. THEY LISTED IT ON THE NCIC COMPUTER.  
25 AND WHEN INQUIRED ABOUT THIS, THE COMPUTER CAME BACK WITH A HIT,  
26 INDICATING THAT THE CAR IS STOLEN.

27 NOW, THAT'S THE STATE OF THE RECORD AT  
28 THIS POINT. AND THAT'S THE INFORMATION THE OFFICERS RECEIVED.  
29 THAT IS THE STATE OF THE RECORD AS FAR AS THE VEHICLE IS CON-  
30 CERNED AS IT EXISTED AT THE TIME AND WAS APPARENTLY TAKEN BACK  
31 INTO POSSESSION IN SAN BERNARDINO, CALIFORNIA, WHERE IT HAD BEEN  
32 APPARENTLY, I WOULD HAVE TO ASSUME THAT BASED ON THE OFFER OF

1 PROOF, IN THE POSSESSION OF THIS DEFENDANT.  
 2 NOW, IT IS TRUE THAT THE DEFENDANT HAD  
 3 REPRESENTED HIMSELF TO BE HAROLD STANBACK TO SEARS, BUT THAT  
 4 DOESN'T PROVE THAT HE WAS THE SAME HAROLD STANBACK THAT LEASED  
 5 THE VEHICLE. THERE'S NOTHING TO INDICATE THAT WHATSOEVER.  
 6 THERE'S NOTHING IN THIS RECORD TO INDICATE THAT HE HAS EITHER  
 7 STANDING BY WAY OF RIGHT OF POSSESSION OR BY WAY OF RIGHT OF  
 8 OWNERSHIP. THE RECORD BEING DEVOID OF THAT, STANDING CAN'T BE  
 9 ASSUMED, IT MUST BE SHOWN AFFIRMATIVELY. THERE BEING NO SHOWING,  
 10 YOUR OBJECTION IS OVERRULED. YOU MAY PROCEED WITH YOUR PROOF.

11 WE'LL BE IN RECESS FOR ABOUT 15 MINUTES.  
 12 HAVE YOUR WITNESS READY TO PROCEED AT THAT TIME.

13 MR. SEATON: THANK YOU, YOUR HONOR.

14 (WHEREUPON, FROM 2:30 P.M. UNTIL  
 15 2:50 P.M., A RECESS WAS HAD IN  
 16 THE PROCEEDINGS, WHEREUPON THE  
 17 JURY ENTERED THE COURTROOM AND  
 18 THE FOLLOWING PROCEEDINGS WERE  
 19 HAD:)

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

22 MR. SEATON: YES, YOUR HONOR, THE STATE WILL.

23 THE COURT: COUNSEL.

24 MR. COOPER: YES, SIR.

25 THE COURT: ALL RIGHT. CALL YOUR NEXT WITNESS.

26 MR. HARMON: THANK YOU, YOUR HONOR.

27 MARY LOU MONAHAN.

28 ..  
 29 ..  
 30 ..  
 31 ..  
 32 ..

1 WHEREUPON,

2

3 MARY LOU MONAHAN,

4

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

7

8 THE COURT: YOU MAY PROCEED.

9

10 DIRECT EXAMINATION

11

12 BY MR. HARMON:

13

14 Q WILL YOU STATE YOUR NAME, PLEASE?

15

A MARY LOU MONAHAN.

16

Q SPELL YOUR LAST NAME.

17

A M-O-N-A-H-A-N.

18

Q IS IT MRS. MONAHAN?

19

A YES, IT IS.

20

Q MRS. MONAHAN, WERE YOU ACQUAINTED WITH

21

GEORGE STEVEN MONAHAN?

22

A HE'S MY LATE HUSBAND.

23

Q HOW LONG WERE YOU MARRIED TO GEORGE MONAHAN?

24

A AH, I WAS -- I WAS GOING ON THREE YEARS, I

25

BELIEVE.

26

Q HOW OLD WAS YOUR HUSBAND ON MARCH 27TH,

27

1980?

28

A HE WOULD HAVE BEEN -- WOULD HAVE BEEN 40

29

YEARS OLD.

30

Q DIRECTING YOUR ATTENTION TO MARCH 26TH,

31

1980, ON THAT DATE WERE YOU AND YOUR HUSBAND, GEORGE STEVEN

32

MONAHAN, THE OWNERS OF A 1977 DODGE VAN?

1 A YES, WE WERE.

2 Q WOULD YOU STATE WHAT COLOR IT WAS AND WHAT

3 DISTINCTIVE MARKINGS, IF ANY, IT HAD ON IT?

4 A IT WAS BLACK; IT HAD A SCENE PAINTED ON

5 BOTH SIDES; AND IT HAD THE WORDS "BLACK OAK" IN A GOLD-FOIL

6 TYPE PAINTING ON BOTH SIDES.

7 Q WHAT WERE YOUR INTENTIONS ON MARCH 26TH,

8 1980, REGARDING THIS 1977 DODGE VAN?

9 A WE HAD THE VAN UP FOR SALE,

10 Q HAD YOU RUN ADVERTISEMENTS IN ANY NEWSPAPERS?

11 A YES. WE HAD RUN AN AD TWO DIFFERENT TIMES

12 IN THE REVIEW JOURNAL.

13 Q THE LAS VEGAS REVIEW JOURNAL NEWSPAPER?

14 A YES.

15 Q DID YOU HAVE ANY TYPE OF FOR SALE SIGNS

16 POSTED ON THE VEHICLE?

17 A YES, WE DID.

18 Q WILL YOU DESCRIBE WHAT WAS PLACED ON THE

19 VEHICLE WHICH INDICATED THAT IT WAS FOR SALE?

20 A ~~WE HAD TWO PLASTIC FOR SALE SIGNS, STORE-~~

21 ~~BOUGHT TYPE FOR SALE SIGNS, ONE IN THE FRONT WINDOW AND THE OTHER~~

22 ~~IN ONE OF THE SIDE WINDOWS. IT STATED, "FOR SALE", AND ON THE~~

23 ~~BOTTOM WE HAD WRITTEN 1977 DODGE VAN, HAD OUR OFFICE NUMBER AND~~

24 ~~OUR HOME NUMBER WRITTEN DOWN ON THAT. WE ALSO --~~

25 Q WHEN YOU SAY YOUR OFFICE NUMBER, WHERE WAS

26 THAT?

27 A ON EAST DESERT INN, 1700 EAST DESERT INN

28 ROAD.

29 Q WAS THERE A PARTICULAR SUITE NUMBER AT 1700

30 EAST DESERT INN ROAD?

31 A YES, THERE IS, BUT I DON'T RECALL WHAT IT

32 IS RIGHT NOW.

1 Q IS 1700 EAST DESERT INN ROAD THE WINCHESTER  
2 PLAZA COMPLEX?  
3 A YES, IT IS.  
4 Q IS THAT IN LAS VEGAS, CLARK COUNTY, STATE  
5 OF NEVADA?  
6 A YES, IT IS.  
7 Q DID YOUR HUSBAND, GEORGE STEVEN MONAHAN,  
8 HAVE AN OFFICE IN THE WINCHESTER PLAZA OFFICE BUILDING AT 1700  
9 EAST DESERT INN ROAD?  
10 A YES, HE DID.  
11 Q WHAT WAS HIS PROFESSION?  
12 A HE WAS A DENTIST.  
13 Q DID YOU ASSIST HIM IN HIS WORK IN SOME  
14 FASHION?  
15 A I WAS A DENTAL HYGIENIST.  
16 Q SO YOU INDICATED THAT ON THE FOR SALE SIGN  
17 THERE WERE TWO SEPARATE TELEPHONE NUMBERS LISTED?  
18 A YES, THERE WERE.  
19 Q WAS ONE OF THESE TO THE OFFICE AT 1700 EAST  
20 DESERT INN ROAD?  
21 A YES, IT WAS.  
22 Q AND THE OTHER WAS A RESIDENTIAL PHONE NUMBER?  
23 A YES, SIR. IT WAS OUR HOME NUMBER.  
24 Q WHEN YOU SAY "OUR HOME NUMBER" YOU'RE  
25 REFERRING TO WHERE YOU AND MR. MONAHAN LIVED; IS THAT CORRECT?  
26 A YES, SIR.  
27 Q BESIDES ON TWO OCCASIONS RUNNING ADVERTISE-  
28 MENTS IN THE LAS VEGAS REVIEW JOURNAL AND PLACING FOR SALE SIGNS  
29 IN THE AREA YOU HAVE INDICATED ON THE VAN, WHAT OTHER EFFORTS  
30 WERE UNDERTAKEN TO SECURE A SALE FOR THE VEHICLE.  
31 A WE -- OR MY HUSBAND PARKED THE VAN A NUMBER  
32 OF TIMES ON THE CORNER OF MARYLAND PARKWAY AND DESERT INN, AT

1 THE CORNER OF THE BOULEVARD SHOPPING CENTER JUST UP FROM THE  
2 OFFICE. HE USED TO PARK IT THERE AND WALK TO WORK, LEAVE IT  
3 THERE FOR EXPOSURE.

4 Q AND WHEN YOU SAY THE VAN WOULD BE LEFT AT  
5 THE INTERSECTION OF DESERT INN ROAD AND MARYLAND PARKWAY FOR  
6 EXPOSURE, YOU MEAN BECAUSE OF THE LARGE AMOUNT OF TRAFFIC THAT  
7 WOULD GO BY THAT INTERSECTION?

8 A YES, SIR.

9 Q DO YOU KNOW OVER WHAT PERIOD OF TIME YOUR  
10 HUSBAND, GEORGE MONAHAN, LEFT THE VEHICLE ADVERTISING IT FOR  
11 SALE AT THAT LOCATION, NEAR THE INTERSECTION OF MARYLAND PARKWAY  
12 AND DESERT INN ROAD?

13 A HE WOULD LEAVE IT THERE AT -- A LITTLE BIT  
14 AFTER 7:00 IN THE MORNING WHEN HE WENT TO WORK, AND THEN HE  
15 WOULD PICK IT UP AT 5:00 ON HIS WAY HOME.

16 Q WHERE EXACTLY IS THE LOCATION WHERE YOUR  
17 HUSBAND WOULD ROUTINELY LEAVE THE VAN NEAR THE INTERSECTION OF  
18 MARYLAND PARKWAY AND DESERT INN ROAD FROM THE SEARS STORE, WHICH  
19 IS PART OF THE SHOPPING CENTER KNOWN AS THE BOULEVARD MALL.

20 A IT WOULD BE JUST AT THE CORNER OF THAT  
21 PARKING LOT OUTSIDE OF SEARS, THE SAME END OF THE BOULEVARD  
22 SHOPPING CENTER.

23 Q HOW FAR FROM THE INTERSECTION OF MARYLAND  
24 PARKWAY AND DESERT INN ROAD WAS YOUR HUSBAND'S OFFICE AT 1700  
25 EAST DESERT INN ROAD?

26 A • IT WAS APPROXIMATELY FIVE BLOCKS FROM MARY-  
27 LAND PARKWAY.

28 MR. HARMON: YOUR HONOR, MAY I HAVE THE COURT'S  
29 INDULGENCE.

30 YOUR HONOR, MAY I APPROACH THE WITNESS?

31 THE COURT: YOU MAY.

32 ..

1 BY MR. HARMON:

2

3 Q MRS. MONAHAN, I AM SHOWING YOU A SERIES OF  
4 PHOTOGRAPHS THAT HAVE BEEN MARKED AS PROPOSED EXHIBITS ONE  
5 THROUGH FOUR AND 22 AND 23. WILL YOU EXAMINE EACH OF THE PHOTO-  
6 GRAPHS AND AFTER YOU HAVE DONE SO, WILL YOU STATE WHETHER YOU  
7 RECOGNIZE THE VEHICLES SHOWN IN THESE PICTURES.

8 A YES, I DO.

9 Q EXCUSE ME?

10 A YES, I DO.

11 Q WHAT IS THE VEHICLE, WHICH IS SHOWN IN  
12 PROPOSED EXHIBITS ONE THROUGH FOUR AND 22 AND 23?

13 A IT'S THE VAN THAT WE HAD FOR SALE.

14 Q YOUR 1977 DODGE VAN?

15 A YES.

16 Q DO THESE PHOTOGRAPHS SHOW CERTAIN FOR SALE  
17 SIGNS WHICH WERE POSTED ON THE VEHICLE ON OR ABOUT MARCH 26TH,  
18 1980?

19 A YES, THEY DO.

20 Q MRS. MONAHAN, IN ADDITION TO HAVING VARIOUS  
21 FOR SALE SIGNS, WAS THERE ANY TYPE OF SHEET OF PAPER POSTED ANY-  
22 WHERE THAT GAVE OTHER DETAILS REGARDING THE VEHICLE?

23 A YES, THERE WAS.

24 Q WILL YOU DESCRIBE WHAT THAT WAS AND WHERE  
25 IT WAS LOCATED?

26 A IT WAS A YELLOW SHEET OF PAPER FROM A LEGAL  
27 PAD. IT WAS SITTING ON THE DASHBOARD SO THAT IT COULD BE VIEWED  
28 FROM THE PASSENGER'S SIDE FROM THE FRONT OF THE VAN, AND IT  
29 DESCRIBED ALL THE DETAILS OF THE VAN AND IT HAD THE ASKING PRICE  
30 ON THAT SHEET OF PAPER.

31 Q WHAT WAS THE ASKING PRICE?

32 A I BELIEVE IT WAS AROUND 7- OR \$8000, BUT

1 I'M NOT SURE.

2 Q MRS. MONAHAN, DURING THE AFTERNOON HOURS  
3 OF MARCH 26TH, 1980, WERE YOU AT YOUR RESIDENCE?

4 A YES, I WAS.

5 Q SOMETIME DURING THE AFTERNOON HOURS OF THAT  
6 DAY, WEDNESDAY, MARCH 26TH, 1980, DID YOU RECEIVE A TELEPHONE  
7 CALL FROM A PERSON WHO EXPRESSED AN INTEREST IN PURCHASING YOUR  
8 1977 DODGE VAN?

9 A YES, I DID.

10 Q DO YOU REMEMBER ABOUT WHEN THAT WAS?

11 A IT WAS AROUND 4:00 O'CLOCK IN THE AFTERNOON.

12 Q HOW DO YOU PLACE THE TIME AS BEING AROUND  
13 4:00 O'CLOCK IN THE AFTERNOON?

14 A BECAUSE MY HUSBAND HAD LEFT ABOUT A HALF  
15 AN HOUR BEFORE THAT TO PICK UP HIS DAUGHTER AT SCHOOL.

16 Q AND WHAT IS THE NAME OF YOUR HUSBAND'S  
17 DAUGHTER?

18 A MARY CATHERINE MONAHAN.

19 Q WAS SHE A DAUGHTER OF YOUR HUSBAND'S BY A  
20 PREVIOUS MARRIAGE?

21 A YES, SHE WAS.

22 Q DO YOU KNOW WHERE YOUR HUSBAND WENT TO PICK  
23 MARY CATHERINE UP AFTER --

24 MR. FRANZEN: OBJECTION ON RELEVANCE, YOUR HONOR.  
25 WE ARE NOT GOING TO THE CHARACTER AS TO WHY THIS --

26 MR. HARMON: WELL, THAT IS TRUE, YOUR HONOR. IT'S  
27 JUST A MATTER OF ESTABLISHING HOW LONG HE WAS GONE.

28 THE COURT: OVERRULED.

29 THE WITNESS: HE PICKED HER UP AT GORMAN HIGH  
30 SCHOOL.

31 ..

32 ..



1 BY MR. HARMON:

2  
3 Q AND WHAT IS THERE ABOUT THE FACT THAT HE HAD  
4 GONE TO PICK HER UP AT THE HIGH SCHOOL THAT CAUSES YOU TO KNOW  
5 THE PHONE CALL WAS SOMEWHERE AROUND 4:00 O'CLOCK, P.M.?

6 A BECAUSE WE HAD BEEN HOME IN THE AFTERNOON.  
7 IT WAS OUR AFTERNOON OFF. WE HAD BEEN OUT, COME IN THE HOUSE  
8 AND LOOKED AT THE TIME, AND I KNEW HE HAD BEEN GONE FOR APPROXI-  
9 MATELY A HALF AN HOUR. I LOOKED AT THE CLOCK TO GET AN IDEA,  
10 YOU KNOW, JUST HOW SOON HE WOULD BE BACK, AND I REMEMBER IT WAS  
11 RIGHT AROUND 4:00 O'CLOCK.

12 Q WERE YOU BY YOURSELF AT YOUR RESIDENCE WHEN  
13 THAT TELEPHONE CALL CAME IN?

14 A NO. MY SISTER, BARBARA ZEMEN, WAS THERE  
15 ALSO.

16 Q WILL YOU SPELL ZEMAN, PLEASE?

17 A Z-E-M-A-N.

18 Q DO YOU RECALL WHO ACTUALLY TOOK THE TELE-  
19 PHONE CALL AS IT CAME IN?

20 A NO, I DO NOT.

21 Q DID YOU, IN ANY EVENT, HAVE OCCASION TO  
22 SPEAK WITH SOMEONE WHO WAS INTERESTED IN THE VEHICLE?

23 A YES, I DID.

24 Q DO YOU RECALL WHETHER IT WAS A MALE OR A  
25 FEMALE?

26 A IT WAS A MALE.

27 Q DID THAT PERSON IDENTIFY HIMSELF?

28 A I ASKED HIM HIS NAME AT THE END OF THE CON-  
29 VERSATION AND HE IDENTIFIED HIMSELF JUST BY A FIRST NAME OF  
30 KEITH.

31 Q KEITH?

32 A YES.

1 Q WHAT, AS YOU REMEMBER IT NOW, WAS THE SUB-  
2 STANCE OF THE TELEPHONE CONVERSATION YOU HAD WITH THE PERSON  
3 IDENTIFYING HIMSELF AS KEITH?

4 A HE SAID HE WAS CALLING ABOUT THE VAN, THAT  
5 HE LIKED THE VAN FROM THE OUTSIDE BUT HE COULDN'T REALLY TELL  
6 WHAT THE INSIDE LOOKED LIKE. AND I BRIEFLY DESCRIBED WHAT WAS  
7 ON THE INSIDE OF THE VAN.

8 HE SAID THAT HE HAD SOLD HIS CAR AND  
9 THAT HE NEEDED SOMETHING RIGHT AWAY AND THAT HE WAS VERY INTER-  
10 ESTED IN IT. HE SAID THAT THE PRICE SOUNDED REASONABLE AND THAT  
11 HE WAS INTERESTED IN LOOKING AT IT.

12 Q DID THIS MAN TELL YOU THAT HE HAD SEEN THE  
13 VAN ALREADY?

14 A YES, HE DID.

15 Q DID HE TELL YOU WHERE IT WAS WHEN HE SAW  
16 IT?

17 A NO, HE DID NOT.

18 Q NOW, DID YOU JUST SAY THAT HE EXPRESSED AN  
19 INTEREST IN SEEING MORE OF THE VEHICLE?

20 A YES, HE DID.

21 Q WHAT IF ANYTHING WAS SAID AFTER THE MAN  
22 EXPRESSED AN INTEREST IN SEEING THE VEHICLE AGAIN?

23 A I ASKED HIM WHEN A GOOD TIME WOULD BE TO  
24 SHOW IT TO HIM.

25 Q ALL RIGHT.

26 A HE SAID THAT HE WAS A SECURITY GUARD AT  
27 CAESARS PALACE AND THAT HE COULD TAKE A BREAK SOMETIME IN THE  
28 EVENING, AROUND 8:00 O'CLOCK; IF HE COULD BRING IT OVER TO  
29 CAESARS PALACE AND SHOW IT TO HIM.

30 Q WHAT DID YOU SAY?

31 A AT THAT POINT I TOLD HIM THAT HE WOULD HAVE  
32 TO DISCUSS IT WITH MY HUSBAND, THAT HE WOULD BE BACK SHORTLY,

1 AND WOULD YOU PLEASE CALL BACK IN ABOUT A HALF AN HOUR.

2 Q DID YOU THEN CONCLUDE THE TELEPHONE CONVER-  
3 SATION WITH KEITH?

4 A THAT'S WHEN I ASKED HIM FOR HIS NAME AND HE  
5 SAID KEITH.

6 Q DID HE GIVE YOU A LAST NAME?

7 A NO, HE DID NOT.

8 Q MRS. MONAHAN, SOMETIME AFTER THIS FIRST  
9 TELEPHONE CONVERSATION WITH KEITH, TO YOUR KNOWLEDGE, DID A  
10 PERSON CALL AGAIN AND CONVERSE WITH YOUR HUSBAND, GEORGE MONAHAN?

11 A YES, HE DID.

12 Q ABOUT HOW MUCH AFTER 4:00 O'CLOCK P.M. WAS  
13 IT?

14 A IT WAS ABOUT 4:30.

15 Q HAD YOUR HUSBAND RETURNED BY THEN FROM PICK-  
16 ING UP HIS DAUGHTER FROM GORMAN HIGH SCHOOL?

17 A YES, HE HAD.

18 Q WHAT HAPPENED AT ABOUT 4:30 P.M.?

19 A WE RECEIVED ANOTHER PHONE CALL. I ANSWERED

20 THE PHONE AND GAVE IT TO MY HUSBAND AND TOLD HIM THAT WAS THE  
21 SAME INDIVIDUAL THAT HAD CALLED THE FIRST TIME.

22 Q DID YOU CONCLUDE IT WAS THE SAME PERSON?

23 A YES.

24 Q HOW DID YOU MAKE THAT CONCLUSION?

25 A BECAUSE I RECOGNIZED HIS VOICE.

26 Q DID YOUR HUSBAND THEN HAVE A SHORT CONVERSA-  
27 TION WITH THIS SAME INDIVIDUAL?

28 A YES, HE DID.

29 Q PRIOR TO RECEIVING THE TWO CALLS FROM THIS  
30 INDIVIDUAL WHAT HAD BEEN THE PLANS OF YOUR FAMILY FOR THE EVENING?

31 A WE WERE PLANNING ON GOING OUT TO HENDERSON  
32 TO VISIT MY HUSBAND'S PARENTS FOR DINNER.

1 Q DID YOU IN FACT KEEP THAT APPOINTMENT?  
2 A YES, WE DID.  
3 Q WHAT PERSONS WENT TO HENDERSON TO HAVE DINNER  
4 WITH YOUR HUSBAND'S PARENTS?  
5 A MY HUSBAND AND MYSELF, MY SISTER BARBARA  
6 AND MARY CATHERINE.  
7 Q DO YOU REMEMBER ABOUT WHEN IT WAS THAT YOU  
8 LEFT FOR YOUR DINNER ENGAGEMENT?  
9 A TO THE BEST OF MY RECOLLECTION, I BELIEVE  
10 IT WAS AROUND 6:00 O'CLOCK.  
11 Q DID THE FOUR OF YOU GO IN THE SAME VEHICLE?  
12 A YES, WE DID.  
13 Q WHAT VEHICLE DID YOU TAKE FROM YOUR RESIDENCE?  
14 A WE TOOK MY CAR FROM MY RESIDENCE OVER TO MY  
15 HUSBAND'S OFFICE TO PICK UP THE VAN.  
16 Q AND WHEN YOU SAY OVER TO YOUR HUSBAND'S  
17 OFFICE ARE YOU REFERRING TO THE WINCHESTER PLAZA AREA, 1700 EAST  
18 DESERT INN ROAD?  
19 A YES, I AM.  
20 Q WHAT HAPPENED AT THAT LOCATION?  
21 A WE LEFT BY CAR AT THAT LOCATION AND TOOK  
22 THE VAN TO HENDERSON SO THAT WE COULD GO BY CAESARS PALACE ON  
23 OUR WAY BACK FROM HENDERSON.  
24 Q DID YOU IN FACT ARRIVE AT HENDERSON AND KEEP  
25 YOUR ENGAGEMENT FOR DINNER WITH YOUR IN-LAWS?  
26 A YES, WE DID.  
27 Q SOMETIME AFTER THAT DID YOU IN FACT HAVE  
28 OCCASION TO GO TO THE AREA OF CAESARS PALACE?  
29 A YES, WE DID.  
30 Q FOR WHAT PURPOSE?  
31 A TO MEET KEITH AND SHOW HIM THE VAN.  
32 Q DO YOU REMEMBER AT ABOUT WHAT TIME YOU

1 ARRIVED IN THE AREA OF CAESARS PALACE ON MARCH 26TH, 1980?

2 A IT WAS 8:00 O'CLOCK.

3 Q 8:00 O'CLOCK P.M.?

4 A YES, SIR.

5 Q WHAT PERSONS WERE PRESENT IN THE VAN WHEN  
6 YOU WENT TO CAESARS PALACE?

7 A MY HUSBAND, MYSELF, BARBARA ZEMAN, AND MARY  
8 CATHERINE MONAHAN.

9 Q WILL YOU INDICATE, PLEASE, WHERE THE VARIOUS  
10 PERSONS WERE LOCATED INSIDE THE VAN.

11 A MY HUSBAND WAS DRIVING; I WAS SITTING IN THE  
12 FRONT PASSENGER'S SEAT; AND BARBARA AND MARY CATHERINE WERE IN  
13 THE BACK OF THE VAN, ON THE COUCH, IN THE BACK.

14 Q NOW, IS THE VAN TO WHICH YOU REFER NOW THE  
15 SAME VEHICLE DEPICTED IN STATE'S PROPOSED EXHIBITS ONE THROUGH  
16 FOUR AND 22 AND 23 WHICH I HAVE PREVIOUSLY SHOWN YOU?

17 A YES, IT IS.

18 Q TELL US WHAT HAPPENED WHEN YOU GOT IN FRONT  
19 OF CAESARS PALACE.

20 A WE TURNED INTO CAESARS PALACE, WENT APPROXI-  
21 MATELY 100 FEET AND SOMEBODY WAS STANDING THERE ON THE RIGHT SIDE  
22 AND FLAGGED US DOWN, AT THAT POINT WE STOPPED.

23 Q HOW HAD YOU -- EXCUSE ME.

24 HOW HAD YOU MADE YOUR APPROACH TO  
25 CAESARS PALACE?

26 A WE CAME NORTH ON LAS VEGAS BOULEVARD AND  
27 TURNED LEFT INTO CAESARS PALACE.

28 Q AT WHAT POINT AS YOU TURNED OFF OF LAS VEGAS  
29 BOULEVARD INTO THE CAESARS PALACE COMPLEX DID YOU SEE SOMEONE  
30 STANDING?

31 A APPROXIMATELY 100 FEET AFTER WE MADE THE  
32 TURN.

1 Q ABOUT A HUNDRED FEET AWAY FROM LAS VEGAS  
2 BOULEVARD SOUTH?  
3 A YES.  
4 Q WOULD THAT BE TO THE WEST OF THE BOULEVARD?  
5 A YES, IT WOULD.  
6 Q EXPLAIN WHAT HAPPENED AFTER YOU SAW AN  
7 INDIVIDUAL STANDING ABOUT A HUNDRED FEET WEST OF LAS VEGAS BOULE-  
8 VARD.  
9 A HE FLAGGED US DOWN, WAVED.  
10 Q WHAT DO YOU MEAN THAT HE FLAGGED YOU DOWN?  
11 A HE WAVE -- WAVED TO US TO STOP. AND WE  
12 DROVE JUST A LITTLE BIT PAST HIM AND STOPPED. AT THAT POINT HE  
13 CAME AROUND THE BACK OF THE VAN OVER TO MY HUSBAND'S SIDE AND  
14 SPOKE TO MY HUSBAND.  
15 Q WERE YOU STILL IN THE FRONT SEAT AREA,  
16 PASSENGER SEAT?  
17 A YES, I WAS.  
18 Q DID YOU HEAR THE CONVERSATION THEN THAT  
19 OCCURRED BETWEEN THIS INDIVIDUAL AND YOUR HUSBAND?  
20 A YES, I DID.  
21 Q WHAT WAS THE CONVERSATION?  
22 A MY HUSBAND ASKED, "ARE YOU KEITH?" AND HE  
23 SAID, "YES." AND HE SAID I WOULD RECOGNIZE THAT VAN -- SOMETHING  
24 TO THE EFFECT THAT I WOULD RECOGNIZE THIS VAN ANYWHERE.  
25 Q KEITH SAID THAT?  
26 A YES, HE DID.  
27 Q WHAT HAPPENED THEN?  
28 A HE TOLD US TO PULL UP JUST A LITTLE BIT.  
29 AND WE DROVE FORWARD, REALIZING THAT THERE WASN'T ANYPLACE TO  
30 PULL OVER ALONG THERE. IT WAS ALL VALET PARKING TO OUR RIGHT.  
31 SO WE TURNED AND WENT THROUGH A COUPLE OF BARRICADES INTO THE  
32 VALET PARKING BECAUSE IT WAS THE ONLY PLACE WE COULD STOP,

1 THINKING THAT SINCE HE DID WORK THERE HE WOULD COME OVER AND ASK  
2 THEM TO LET US STOP THERE FOR A LITTLE WHILE.

3 Q WHAT HAPPENED WHEN YOU PULLED TO THE SECOND  
4 LOCATION?

5 A WE STOPPED AND A GENTLEMAN CAME UP TO THE --  
6 MY HUSBAND'S SIDE OF THE CAR AND TOLD HIM THAT WE COULDN'T STOP  
7 THERE.

8 Q YOU'RE NOT TALKING ABOUT KEITH NOW, BUT  
9 SOMEONE ELSE?

10 A NO. SOMEONE ELSE.

11 Q DID YOU HEAR HIS REPLY TO THIS SECOND  
12 PERSON?

13 A AT THIS POINT HE TOLD HIM THAT WE WERE  
14 MEETING KEITH, AND THE GENTLEMAN SAID AGAIN I'M SORRY YOU CAN'T  
15 STOP HERE.

16 Q DID YOUR HUSBAND, GEORGE MONAHAN, THEN MOVE  
17 THE VAN TO A THIRD LOCATION?

18 A YES, HE DID.

19 Q WHERE WAS KEITH AT THIS TIME?

20 A AT THAT TIME HE WAS JUST APPROACHING THE  
21 VA- -- THE VAN. AS MY HUSBAND STARTED TO BACK UP AND TURN  
22 AROUND, HE DIDN'T COME ALL THE WAY UP TO THE VAN. HE JUST  
23 MOTIONED FOR US TO PULL OVER NEAR THE SIDE ENTRANCE OF CAESARS  
24 PALACE.

25 Q DID YOUR HUSBAND FOLLOW THAT INSTRUCTION?

26 A YES, HE DID.

27 Q IN FACT, WAS THE VAN PARKED AT THIS THIRD  
28 LOCATION?

29 A YES, IT WAS.

30 Q WILL YOU EXPLAIN WHAT HAPPENED THEN?

31 A WE PULLED UP ALONG THE CURB AND STOPPED THE  
32 VAN. MY HUSBAND AND I BOTH GOT OUT OF THE VAN. HE WALKED

1 AROUND AND OPENED UP BOTH THE SIDE DOORS TO THE VAN.

2 Q WHEN YOU SAY "HE WALKED AROUND" WHO ARE  
3 YOU REFERRING TO?

4 A MY HUSBAND.

5 Q ALL RIGHT.

6 SO HE GOT OUT FIRST; IS THAT WHAT YOU  
7 ARE SAYING?

8 A YES, HE DID.

9 Q YOUR HUSBAND GEORGE MONAHAN?

10 A YES, SIR.

11 Q AND THEN YOU GOT OUT?

12 A YES, SIR.

13 Q WHERE DID YOUR HUSBAND GO AFTER HE GOT OUT  
14 OF THE VAN?

15 A HE WALKED AROUND THE VAN AND OPENED UP BOTH  
16 THE SIDE DOORS WIDE OPEN SO IT WOULD BE VISIBLE INSIDE, TURNED  
17 THE LIGHT ON ON THE INSIDE OF THE VAN.

18 Q HOW MANY DOORS WERE THERE ON THE PASSENGER'S  
19 SIDE OF YOUR 1977 DODGE VAN?

20 A THERE WERE THREE DOORS.

21 Q WILL YOU DESCRIBE THOSE THREE DOORS?

22 A THERE'S A PASSENGER DOOR, WHICH I LEFT  
23 STANDING OPEN AS I GOT OUT.

24 Q YOU OPENED THAT AND LEFT IT STANDING OPEN?

25 A YES, I DID.

26 AND THEN THE TWO DOUBLE DOORS THAT MY  
27 HUSBAND OPENED THAT OPEN OUT AWAY FROM THE VAN.

28 Q YOU'RE TALKING ABOUT SOME TYPE OF CARGO  
29 DOORS?

30 A YES.

31 Q EXPLAIN HOW THEY WERE OPENED BY YOUR HUSBAND.

32 A YOU HAVE TO OPEN THE RIGHTHAND DOOR WITH



1 THE HANDLE FROM THE OUTSIDE OF THE VAN, THEN REACH AROUND ON  
2 THE INSIDE, PULL THE LATCH DOWN, AND THEN OPEN THE SECOND DOOR.

3 Q DO YOU KNOW WHAT YOUR HUSBAND'S PURPOSE WAS  
4 FOR OPENING ALL THE DOORS ON THE PASSENGER'S SIDE?

5 A YES. SO THAT HE COULD VIEW THE INSIDE OF  
6 THE VAN EASIER.

7 Q HE, BEING KEITH?

8 A YES, SIR.

9 Q AT SOME POINT IN TIME DID KEITH ARRIVE AT  
10 THIS THIRD LOCATION?

11 A YES, HE DID.

12 Q WHEN?

13 A AT APPROXIMATELY THAT TIME, AFTER MY HUSBAND  
14 OPENED THE DOORS. I WAS ALREADY OUT OF THE VAN AND I SAW HIM  
15 APPROACHING FROM THE SIDEWALK. AT THAT POINT I TOLD THE GIRLS --  
16 SUGGESTED THAT THEY GET OUT OF THE VAN.

17 Q DID YOUR SISTER AND MARY CATHERINE ALSO GET  
18 OUT OF THE VAN AT THAT TIME?

19 A YES, THEY DID.

20 Q WHAT HAPPENED AFTER KEITH GOT UP TO THE VAN?

21 A HE JUST STARTED TALKING TO MY HUSBAND ABOUT  
22 THE VAN AND HE LOOKED INSIDE THROUGH THE TWO DOUBLE DOORS, LEANED  
23 INTO THE VAN TO LOOK AROUND.

24 Q DID HE EVER ACTUALLY ENTER THE VAN?

25 A NO, HE DID NOT.

26 Q NOW, AT THE TIME KEITH APPROACHED THE VAN  
27 ON THE PASSENGER'S SIDE, WHAT WAS THE CONDITION OF ALL THE DOORS?

28 A THEY WERE ALL WIDE OPEN.

29 Q MRS. MONAHAN, WILL YOU LOOK AROUND THE COURT-  
30 ROOM AT THIS TIME AND STATE WHETHER THE PERSON WHO IDENTIFIED  
31 HIMSELF AS KEITH ON MARCH 26TH, 1980, AT ABOUT 8:00 O'CLOCK P.M.,  
32 IN THE AREA OF CAESARS PALACE, IS PRESENT IN COURT.

1 A YES, HE IS.

2 Q WILL YOU POINT TO HIM AND DESCRIBE HOW HE'S  
3 DRESSED.

4 A HE'S SITTING OVER THERE IN A DENIM JACKET  
5 AT THE END OF THAT TABLE (INDICATING).

6 MR. HARMON: YOUR HONOR, MAY THE RECORD SHOW THAT  
7 THE WITNESS HAS IDENTIFIED THE DEFENDANT SAMUEL HOWARD.

8 THE COURT: THE RECORD MAY SO SHOW.

9 MR. HARMON: THANK YOU.

10

11 BY MR. HARMON:

12

13 Q MRS. MONAHAN, AT ANY OF THE THREE LOCATIONS  
14 THAT YOU DESCRIBED WHERE THE VAN WAS PARKED IN THE AREA OF  
15 CAESARS PALACE ON MARCH 26TH, 1980, DID THE DEFENDANT MR. HOWARD  
16 EVER HAVE OCCASION TO TOUCH ANY OF THE DOOR HANDLES OR DOOR KNOBS  
17 ON THE PASSENGER'S SIDE?

18 A NO, HE DID NOT.

19 Q WHY DO YOU SAY THAT?

20 A BECAUSE WE SPECIFICALLY LEFT ALL THE DOORS  
21 WIDE OPEN SO THAT HE COULD LOOK INTO THE VAN EASILY.

22 Q CAN YOU ESTIMATE NOW HOW LONG THE VAN  
23 REMAINED PARKED IN THE AREA WHILE THE DEFENDANT MR. HOWARD,  
24 KNOWN THEN AS KEITH, EXAMINED THE INTERIOR OF THE VEHICLE?

25 A APPROXIMATELY TEN MINUTES.

26 Q WHAT DID YOU AND YOUR SISTER, BARBARA ZEMAN,  
27 AND MARY CATHERINE MONAHAN DO DURING THAT PERIOD OF TIME?

28 A WE WERE STANDING OFF TO THE SIDE, JUST A  
29 LITTLE BIT NEAR ONE OF THE PILLARS ON THE SIDE OF THE BUILDING  
30 THERE, WHILE MY HUSBAND WAS TALKING TO KEITH.

31 Q DID YOU OVERHEAR ANY OF THE CONVERSATION?

32 A YES, I DID.

1 Q DESCRIBE WHAT YOU HEARD SAID BETWEEN YOUR  
2 HUSBAND, GEORGE MONAHAN, AND THE DEFENDANT SAMUEL HOWARD, ALSO  
3 KNOWN AS KEITH.

4 A MY HUSBAND WAS JUST DESCRIBING THE INTERIOR  
5 OF THE VAN TO HIM A LITTLE BIT, EXPLAINING TO HIM THAT IT WAS OAK  
6 INTERIOR, THERE WAS A COOLER AND THEY DISCUSSED THE SKI RACK ON  
7 THE TOP OF THE VAN.

8 Q WHAT WAS THE DISCUSSION REGARDING THE SKI  
9 RACK?

10 A HE SAID THAT --

11 Q WHO SAID?

12 A MY HUSBAND STATED THAT IF HE WANTED THE SKI  
13 RACK LEFT ON THE VAN THIS IS ONE PART OF THE SALE.

14 Q WHAT DID MR. HOWARD SAY?

15 A HE SAID THAT HE DIDN'T SKI BUT HE LIKED THE  
16 LOOKS OF IT SO HE WOULD WANT IT ON THE TOP.

17 Q DID MR. HOWARD INDICATE A CONTINUED INTEREST  
18 IN PURCHASING THE VEHICLE?

19 A YES, HE DID.

20 Q WHAT DID HE SAY ABOUT THAT?

21 A HE MENTIONED A NUMBER OF TIMES HOW MUCH HE  
22 LIKED THE VAN. HE SAID HE'D LIKE TO TAKE IT FOR A TEST RIDE.  
23 HE STATED AGAIN THAT HE WAS IN A HURRY TO FIND SOMETHING AND HE'D  
24 LIKE TO TAKE A TEST RIDE, IF IT RODE WELL THAT HE WOULD BE VERY  
25 INTERESTED IN BUYING IT.

26 Q WAS THERE ANY DISCUSSION AT THAT POINT AS  
27 TO WHEN HE WOULD TAKE A TEST RIDE OF THE VEHICLE, AND BY "HE"  
28 I'M SPEAKING OF THE DEFENDANT.

29 A HE -- THE DEFENDANT ASKED IF HE COULD TAKE  
30 A TEST RIDE THE NEXT DAY.

31 Q DID HE GIVE ANY REASON FOR WAITING UNTIL  
32 THE NEXT DAY?

1 A BECAUSE HE WAS WORKING RIGHT THEN AND HAD  
2 TO GET BACK TO WORK.  
3 Q HE MAINTAINED HE WAS ON DUTY WHERE?  
4 A AT CAESARS PALACE.  
5 Q IN WHAT CAPACITY?  
6 A AS A SECURITY GUARD.  
7 Q DID YOU ASSUME AT THAT TIME THAT THIS WAS  
8 TRUE, THAT HE WAS IN FACT EMPLOYED AS A SECURITY GUARD AT CAESARS  
9 PALACE?  
10 A YES, WE DID.  
11 Q DID YOU SEE ANYTHING THAT HE WAS CARRYING,  
12 THAT THE DEFENDANT MR. HOWARD WAS CARRYING ON HIS PERSON THE  
13 NIGHT OF MARCH 26TH, 1980, WHICH SUPPORTED THAT CONCLUSION?  
14 A HE HAD A WALKIE-TALKIE TYPE RADIO.  
15 Q WHERE DID YOU SEE HIM HAVE A WALKIE-TALKIE  
16 TYPE RADIO?  
17 A WHEN WE FIRST SAW HIM I BELIEVE HE WAS  
18 CARRYING IT IN HIS HAND, LATER ON, HE WAS WEARING IT ON HIS BELT.  
19 Q AFTER MR. HOWARD INDICATED THAT HE WOULD  
20 LIKE TO TEST DRIVE THE VEHICLE THE FOLLOWING DAY, WAS THERE ANY  
21 CONVERSATION BETWEEN YOUR HUSBAND AND MR. HOWARD AS TO WHEN THAT  
22 WOULD OCCUR THE FOLLOWING DAY?  
23 A MY HUSBAND TOLD HIM THAT HE WOULD BE IN THE  
24 OFFICE ALL DAY ON THURSDAY. HE TOLD HIM THAT IT WOULD BE BETTER  
25 IF HE WOULD COME BY SOMETIME DURING THE MORNING BECAUSE HIS  
26 SCHEDULE WAS LIGHTER.  
27 Q THURSDAY, MEANING MARCH 27TH, 1980?  
28 A YES.  
29 Q DO YOU REMEMBER WHAT MR. HOWARD, THE  
30 DEFENDANT, ALSO KNOWN AS KEITH, SAID TO THAT?  
31 A HE TOLD HIM THAT HE WOULD BE BY.  
32 Q AT SOME POINT DURING THE CONVERSATION, WAS

1 MR. HOWARD TOLD WHERE THE OFFICE OF YOUR HUSBAND WAS LOCATED?

2 A YES, HE WAS.

3 Q IN WHAT MANNER?

4 A MY HUSBAND TOLD HIM WHERE THE OFFICE WAS

5 AND THEN I HANDED HIM ONE OF MY HUSBAND'S BUSINESS CARDS THAT

6 HAD THE SUITE NUMBER ON IT.

7 Q YOU PERSONALLY HANDED TO THE DEFENDANT YOUR

8 HUSBAND'S BUSINESS CARD?

9 A YES, SIR.

10 Q DID THAT BUSINESS CARD CONTAIN THE ADDRESS

11 OF THE OFFICE?

12 A YES, IT DID.

13 Q 1700 EAST DESERT INN ROAD?

14 A YES, SIR.

15 Q NOW, YOU STATED YOU DON'T RECALL NOW FOR

16 SURE WHAT THE SUITE NUMBER OF THE OFFICE WAS.

17 A NO, I DO NOT. IT WAS ON THE SECOND FLOOR.

18 Q DID THE CARD, THE BUSINESS CARD, CONTAIN

19 THE SUITE NUMBER?

20 A YES, IT DID.

21 Q WHAT DID MR. HOWARD SAY AFTER YOU GAVE HIM

22 THE BUSINESS CARD?

23 A HE JUST TOLD MY HUSBAND THAT HE WOULD SEE

24 HIM THE NEXT DAY.

25 Q WHAT HAPPENED THEN?

26 A THEN MR. HOWARD WALKED AWAY FROM THE VAN

27 AND AROUND THE CORNER IN THE BUILDING.

28 Q BY THE "BUILDING" ARE YOU REFERRING TO PART

29 OF THE CAESARS PALACE HOTEL COMPLEX?

30 A YES, I AM.

31 Q WHAT DID YOU AND YOUR HUSBAND AND YOUR COM-

32 PANIONS DO THEN?

1 A AT THAT POINT, THE GIRLS GOT BACK IN THE  
2 BACK OF THE VAN, I GOT IN THE PASSENGER'S SEAT, MY HUSBAND SHUT  
3 THE DOORS OF THE VAN, CAME AROUND AND GOT IN THE VAN, AND WE  
4 LEFT.

5 Q MRS. MONAHAN, DO YOU HAVE ANY RECOLLECTION  
6 OF HOW THE DEFENDANT, MR. HOWARD, WAS DRESSED WHEN YOU SAW HIM  
7 AROUND 8:00 O'CLOCK P.M., ON MARCH 26TH, 1980?

8 A YES, I DO.

9 Q DESCRIBE HOW HE WAS DRESSED TO YOUR MEMORY  
10 NOW.

11 A HE HAD ON A BROWN LEATHER JACKET; HE HAD  
12 CASUAL-TYPE PANTS ON, EITHER JEANS OR DENIM-TYPE LEVIS; AND TENNIS  
13 SHOES.

14 Q DO YOU RECALL THE COLOR OF THE TENNIS SHOES?

15 A NO, I DO NOT.

16 Q ASIDE FROM CLOTHING, DO YOU HAVE A RECOLLEC-  
17 TION OF THE PHYSICAL DESCRIPTION OF THE DEFENDANT AS YOU  
18 REMEMBER HIM FROM WEDNESDAY, MARCH 26TH, 1980?

19 A YES, I DO.

20 Q DESCRIBE HIM, PLEASE.

21 A HE'S APPROXIMATELY FIVE FEET EIGHT; 170  
22 POUNDS; HE WAS DARK SKINNED, NEGRO; HE HAD LONG RATHER BUSHY  
23 SIDEBURNS AND SOME FACIAL HAIR, THE BEGINNINGS OF IT, AND A SHORT  
24 BEARD.

25 Q DID YOU FORM AN OPINION AS TO HOW OLD  
26 APPROXIMATELY HE WAS?

27 A HE APPEARED TO ME TO BE AROUND 25 YEARS OLD.

28 Q HOW LONG WOULD YOU SAY THE CONVERSATION  
29 LASTED IN THE AREA OF CAESARS PALACE?

30 A IT WAS ABOUT TEN MINUTES, POSSIBLY FIFTEEN.

31 Q BETWEEN TEN TO FIFTEEN MINUTES?

32 A YES, SIR.

1 Q HOW CLOSE DID YOU GET TO THE DEFENDANT,  
2 MR. HOWARD, ON MARCH 26TH, 1980?  
3 A I WAS VERY CLOSE WHEN I HANDED HIM -- I WAS  
4 WITHIN ARMS LENGTH WHEN I HANDED HIM MY HUSBAND'S BUSINESS CARD.  
5 Q WITHIN A FOOT OR TWO?  
6 A YES, SIR.  
7 Q DID YOU GET A GOOD LOOK AT HIM AT THAT TIME?  
8 A YES, I DID.  
9 MR. HARMON: YOUR HONOR, WITH THE COURT'S PERMISS-  
10 SION, I WOULD LIKE TO HAVE THE WITNESS STEP DOWN TO THE BOARD.  
11 THE COURT: SHE MAY.  
12 MR. FRANZEN: YOUR HONOR, MAY I MOVE OVER TO THE  
13 CLERK SO I CAN SEE WHAT SHE'S DOING?  
14 THE COURT: YES.  
15 MR. FRANZEN: THANK YOU.  
16 MR. HARMON: WHAT WOULD BE THE NEXT NUMBER, YOUR  
17 HONOR? MAY WE HAVE THE DIAGRAM OF WHICH THE WITNESS IS ABOUT TO  
18 DRAW MARKED AS STATE'S PROPOSED EXHIBIT 55?  
19 THE COURT: YOU MAY.  
20  
21 BY MR. HARMON:  
22  
23 Q MRS. MONAHAN, WILL YOU PICK UP THE BLACK  
24 MARKER, PLEASE. I WOULD LIKE, IF YOU WILL, TO BEGIN BY SHOWING  
25 THE RELATIONSHIP OF THE CAESARS PALACE COMPLEX TO LAS VEGAS  
26 BOULEVARD AND ALSO INDICATE THE AREA WHERE YOUR HUSBAND TURNED  
27 LEFT AND WENT IN AND PARKED YOUR VAN.  
28 A WELL --  
29 Q NO. INDICATE ALSO, JUST GENERALLY SPEAKING,  
30 WHERE CAESARS PALACE COMPLEX WOULD BE FROM THERE.  
31 A IT'S ALL THE SAME.  
32 THE COURT: WOULD YOU PLEASE DRAW IT FIRST AND

1 THEN EXPLAIN WHERE IT IS, BECAUSE YOU WILL HAVE TO TURN AROUND  
2 AND EXPLAIN IT TO THE JURY.

3 MR. HARMON: THANK YOU, YOUR HONOR.

4 THE WITNESS: (INDICATING) IT'S IN THIS AREA  
5 RIGHT HERE.

6  
7 BY MR. HARMON:

8  
9 Q MRS. MONAHAN, I WANT YOU, BY USING A SQUARE  
10 IN EACH LOCATION, TO INDICATE THE THREE SPOTS WHERE, FOR A SHORT  
11 PERIOD OF TIME THE VAN WAS PARKED --

12 A (INDICATING).

13 Q (CONTINUING) -- OR STOPPED.

14 A O.K.

15 Q NOW, IF YOU WILL, I WOULD LIKE YOU TO PLACE,  
16 AND PERHAPS WE CAN USE THE RED MARKER TO DO THIS, THE LETTERS  
17 "SH" TO INDICATE WHERE THE DEFENDANT WAS STANDING WHEN YOU FIRST  
18 SAW HIM AS YOUR HUSBAND TURNED LEFT INTO THE CAESARS PALACE AREA.  
19 WILL YOU CIRCLE THAT PLEASE, AND PUT YOUR INITIALS OUTSIDE OF  
20 THE CIRCLE.

21 A (INDICATING).

22 Q I ALSO WANT YOU TO WRITE IN ONE, TWO, THREE,  
23 INDICATING THE VARIOUS PDINTS THE VEHICLE WAS STOPPED.

24 A YEAH.

25 Q NOW, NUMBER THREE INDICATES THE POINT AT  
26 WHICH THE DEFENDANT FINALLY EXAMINED THE INTERIOR OF THE VAN?

27 A YES, SIR.

28 Q NOW, WILL YOU INDICATE WITH A DOTTED LINE  
29 WHERE YOU REMEMBER THE DEFENDANT WALKING FROM THE ORIGINAL POINT  
30 YOU HAVE MARKED AS "S.H." AND ON OVER TO THE POINT WHERE HE  
31 EXAMINED THE VEHICLE.

32 A (INDICATING).



1 Q MRS. MONAHAN, DURING ANY PERIOD OF TIME AT  
2 THOSE THREE LOCATIONS, DID THE DEFENDANT HAVE THE OPPORTUNITY  
3 TO TOUCH ANY OF THE DOOR HANDLES OR DOOR KNOBS ON THE PASSENGER'S  
4 SIDE OF THE VAN?

5 A NO, HE DIDN'T.

6 Q WHY IS IT THAT YOU SAY HE DIDN'T HAVE AN  
7 OPPORTUNITY?

8 A WHEN WE STOPPED AT POINT ONE HE IMMEDIATELY  
9 CAME AROUND TO MY HUSBAND'S SIDE OF THE VAN. WHEN WE STOPPED AT  
10 POINT TWO, HE DID NOT.

11 Q NOW, BEFORE WE LEAVE POINT ONE, WAS IT YOUR  
12 TESTIMONY BEFORE THAT WHEN HE FLAGGED YOU DOWN, YOUR HUSBAND  
13 DROVE A LITTLE PAST HIM?

14 A YES, HE DID.

15 Q SO DID HE GO IN FRONT OR COME BEHIND THE  
16 VAN TO COME AROUND AND TALK TO YOUR HUSBAND?

17 A HE CAME BEHIND.

18 Q SO IN FACT, IF YOU WERE TO TRACE WITH A  
19 DOTTED LINE THE DOTS WOULD COME BEHIND THE VAN; IS THAT CORRECT?

20 A YES. YES, SIR.

21 Q WHAT HAPPENED AT POINT TWO, AFTER HE --  
22 STRIKE THAT FOR THE TIME BEING.

23 AT POINT ONE, WAS HE EVER -- BY "HE"  
24 AGAIN I'M REFERRING TO THE DEFENDANT -- ON THE PASSENGER'S SIDE  
25 OF THE VEHICLE WHERE HE WAS IN A POSITION TO TOUCH THE VEHICLE?

26 A NO, HE WASN'T.

27 Q THE CONVERSATION WAS ON THE DRIVER'S SIDE;  
28 IS THAT CORRECT?

29 A THAT'S CORRECT.

30 Q NOW, WHAT HAPPENED WHEN MR. HOWARD CAUGHT  
31 UP TO WHERE THE VAN WAS AT POINT TWO?

32 A HE DIDN'T COME ALL THE WAY UP TO THE VAN AT

1 POINT TWO. HE SAW, I ASSUME, THAT THEY WEREN'T GOING TO LET US  
2 STOP THERE. AND AT SOME POINT OVER IN THIS AREA (INDICATING),  
3 THAT'S WHEN HE MOTIONED FOR US TO PULL OVER TO THE SIDE OF THE  
4 HOTEL.

5 Q ARE YOU POSITIVE AT POINT TWO THAT THE  
6 DEFENDANT, MR. HOWARD, TOUCHED NO PART WHATSOEVER OF THE VAN?

7 A YES, I AM.

8 Q WHAT HAPPENED THEN AT POINT THREE?

9 A AT --

10 Q AT POINT NUMBER THREE.

11 A POINT THREE IS WHERE WE STOPPED THE VAN.  
12 HE CAME UP THE SIDEWALK THERE TO LOOK AT IT.

13 Q WERE THE VAN DOORS ON THE PASSENGER'S SIDE  
14 COMPLETELY OPEN?

15 A YES, THEY WERE.

16 Q BY THE TIME MR. HOWARD ARRIVED AT THE VAN?

17 A YES, SIR.

18 Q ARE YOU POSITIVE AT POINT THREE THAT THE  
19 DEFENDANT, MR. HOWARD, DIDN'T TOUCH ANY DOOR HANDLE OR DOOR KNOB  
20 ON THE PASSENGER'S SIDE OF THE VAN?

21 A YES, I AM.

22 Q THANK YOU. YOU MAY RETURN TO THE WITNESS  
23 STAND.

24 MRS. MONAHAN, WHERE DID YOUR HUSBAND  
25 AND OTHERS IN YOUR PARTY GO AFTER YOU LEFT CAESARS PALACE,  
26 SHORTLY AFTER 8:00 O'CLOCK P.M.?

27 A WE TOOK THE VAN BACK TO MY HUSBAND'S OFFICE  
28 TO LEAVE THERE AND PICK UP MY CAR.

29 Q DID YOU IN FACT LEAVE THE VAN IN THE AREA  
30 OF YOUR HUSBAND'S OFFICE?

31 A YES, WE DID.

32 Q WHAT TYPE OF CAR WAS IT THAT YOU WERE

1 DRIVING WHICH YOU REFER TO AS YOUR CAR?

2 A IT WAS A WHITE OLDSMOBILE CUTLASS.

3 Q DO YOU REMEMBER WHERE THE VAN WAS PARKED IN  
4 RELATION TO 1700 EAST DESERT INN ROAD?

5 A IT WAS ON THE WEST SIDE OF THE BUILDING IN  
6 THE PARKING LOT FACING THE BUILDING.

7 Q WHAT WAS THE CONDITION OF THE INSIDE OF THE  
8 VAN WHEN YOU PARKED IT AT THAT LOCATION NEAR YOUR HUSBAND'S  
9 OFFICE THE NIGHT OF MARCH 26TH, 1980? WAS IT DISTURBED IN ANY  
10 WAY?

11 A NO, IT WAS NOT.

12 Q COULD YOU DESCRIBE GENERALLY THE APPEARANCE  
13 OF THE INTERIOR OF THE VAN?

14 A IT WAS VERY CLEAN. WE HAD WORKED ON IT A  
15 NUMBER OF TIMES PREVIOUS TO THAT TO GET IT READY TO SELL. SO  
16 TO THE BEST OF MY RECOLLECTION THERE WAS NOTHING OUT OF ORDER.

17 Q WERE ANY CUSHIONS OUT OF PLACE?

18 A I WOULD NOT -- TO THE BEST OF MY RECOLLEC-  
19 TION, NO.

20 Q WERE THERE ANY -- DESCRIBE WHAT TYPE OF  
21 FURNISHINGS OR FURNITURE THERE WERE ON THE INSIDE OF THE VAN.

22 A IN THE BACK THERE WAS A COUCH THAT GOES ALL  
23 THE WAY ACROSS THE BACK. IT'S THE TYPE THAT MAKES INTO A BED,  
24 BUT JUST BECAUSE OF THE CABINETS THAT WE HAVE IN THERE, YOU CAN-  
25 NOT PULL IT DOWN. IT HAS REMOVABLE CUSHIONS ON THE BACK AND THE  
26 SIDES OF THE COUCH.

27 MR. HARMON: YOUR HONOR, MAY I HAVE THE COURT'S  
28 INDULGENCE AGAIN, PLEASE.

29 YOUR HONOR, MAY I APPROACH THE WITNESS.

30 THE COURT: YOU MAY.

31 ..

32 ..

1 BY MR. HARMON:

2  
3 Q MRS. MONAHAN, I AM SHOWING YOU TWO PHOTO-  
4 GRAPHS MARKED AS PROPOSED EXHIBITS 10 AND 11. DO THOSE APPEAR  
5 TO BE PHOTOGRAPHS OF THE INTERIOR OF YOUR 1977 DODGE VAN, THE  
6 SAME VEHICLE DEPICTED IN PROPOSED EXHIBITS ONE THROUGH FOUR AND  
7 22 AND 23?

8 A YES, THEY DO.

9 Q CAN YOU, FROM EXAMINATION OF THESE PHOTO-  
10 GRAPHS, TELL WHETHER THE CONDITION OF THE INTERIOR OF THE VAN  
11 HAD CHANGED AT THE TIME PROPOSED EXHIBITS 10 AND 11, THE PHOTO-  
12 GRAPHS, WERE TAKEN FROM THE CONDITION THE VAN WAS IN THE NIGHT  
13 OF MARCH 26TH, 1980, WHEN IT WAS PARKED OUTSIDE YOUR HUSBAND'S  
14 OFFICE?

15 A YES. THERE'S A GREAT DEAL OF DIFFERENCE.

16 Q WHAT CHANGES HAVE OCCURRED?

17 A THERE IS THAT -- IT APPEARS THAT THE TABLE --  
18 IT APPEARS THAT THE TABLE THAT CAN BE SET UP IN THE BACK OF THE  
19 VAN HAS BEEN PULLED OUT FROM UNDERNEATH THE COUCH WHERE IT WAS IN  
20 THE BACK; CUSHIONS HAD BEEN PULLED OFF THE COUCH; THE STAINED  
21 GLASS DOOR FROM THE CABINET IS STANDING OPEN, WHICH IT WASN'T;  
22 AND IT APPEARS THAT THE -- SOMETHING FROM ACROSS THE FRONT OF THE  
23 VAN HAS BEEN PULLED OUT, A PANEL OF SOME SORT.

24 Q THANK YOU.

25 MRS. MONAHAN, DID YOUR 1977 DODGE VAN  
26 HAVE SOME TYPE OF C.B. RADIO WHICH WAS BUILT INTO THE HEADLINE?

27 A YES, IT DID.

28 Q WILL YOU DESCRIBE THAT RADIO, PLEASE.

29 A IT WAS BUILT-IN ABOVE THE DRIVER'S SEAT,  
30 NOT INTO THE DASH BUT ABOVE THE FRONT PANEL OF THE VAN, AND IT  
31 HAD QUITE A FEW SWITCHES ACROSS THAT PANEL.

32 Q DO YOU KNOW HOW LONG THE C.B. RADIO HAD BEEN

1 BUILT-IN THE HEADLINE AT THAT LOCATION?

2 A IT WAS BUILT-IN WHEN WE BOUGHT THE VAN.

3 Q HOW LONG HAD YOU AND YOUR HUSBAND, GEORGE,  
4 HAD THE VAN?

5 A OH, I DON'T RECALL RIGHT OFF HAND WHEN IT  
6 WAS PURCHASED.

7 Q CAN YOU GIVE A ROUGH ESTIMATE? ARE WE TALK-  
8 ING ABOUT SIX WEEKS? SIX MONTHS?

9 A NO.

10 Q A YEAR?

11 A IT WOULD HAVE BEEN OVER A YEAR.

12 Q AND TO YOUR RECOLLECTION, THE C.B. RADIO HAD  
13 BEEN IN THE VAN DURING THAT PERIOD OF TIME?

14 A YES, IT WAS.

15 Q DID YOU ALSO HAVE SOME TYPE OF CASSETTE TAPE  
16 PLAYER THAT WAS ALSO BUILT INTO THE HEADLINE?

17 A YES, WE DID.

18 Q DO YOU REMEMBER HOW LONG IT WAS ONE OF THE  
19 ACCESSORIES INSIDE THE VAN?

20 A IT WAS ALSO THERE WHEN WE PURCHASED THE VAN.

21 Q MRS. MONAHAN, DIRECTING YOUR ATTENTION NOW  
22 TO MARCH 27TH, 1980, DO YOU RECALL WHAT TIME IT WAS YOUR HUSBAND,  
23 GEORGE STEVEN MONAHAN, LEFT FOR THE OFFICE?

24 A HE LEFT APPROXIMATELY TEN MINUTES TO 7:00  
25 A.M.

26 Q WHAT CAUSES YOU TO ESTIMATE IT WAS ABOUT  
27 TEN MINUTES TO SEVEN IN THE MORNING?

28 A BECAUSE THAT'S THE TIME HE LEFT EVERY  
29 MORNING WHEN HE HAD A 7:00 O'CLOCK PATIENT SCHEDULED.

30 Q DID HE FOLLOW A ROUTINE PROCEDURE?

31 A YES, HE DID.

32 Q DO YOU REMEMBER HOW YOUR HUSBAND WAS DRESSED

1 WHEN HE LEFT FOR WORK AT ABOUT 6:50 A.M.?

2 A YES, I DO.

3 Q HOW WAS HE DRESSED?

4 A HE HAD ON GREEN PLAID KNIT PANTS; A LIGHT  
5 COLORED SHIRT, I BELIEVE IT WAS YELLOW; A LIGHTWEIGHT JACKET;  
6 AND BROWN LEATHER SHOES.

7 Q DO YOU KNOW WHAT TYPE OF PERSONAL AFFECTS  
8 HE HAD WITH HIM WHEN HE LEFT FOR WORK ON MARCH 27TH, 1980?

9 A YES, I DO.

10 Q DESCRIBE WHAT HE HAD WITH HIM.

11 A HE HAD ON A GOLD SEIKO WATCH. HE WAS --

12 Q HOW SURE ARE YOU THAT YOUR HUSBAND HAD ON  
13 A GOLD SEIKO WATCH?

14 A I'M POSITIVE.

15 Q WHY ARE YOU POSITIVE?

16 A BECAUSE HE WORE IT EVERYDAY.

17 Q DO YOU RECALL ON WHICH WRIST HE WORE THE  
18 WATCH?

19 A HE WORE IT ON HIS LEFT WRIST.

20 Q WHAT ELSE DID HE HAVE IN THE WAY OF PERSONAL  
21 AFFECTS?

22 A HE HAD A LEATHER WALLET, A MONEY CLIP, AND  
23 A SET OF KEYS.

24 Q DO YOU KNOW WHERE HE TYPICALLY CARRIED HIS  
25 LEATHER WALLET?

26 A IN ONE OF HIS BACK POCKETS.

27 Q ARE YOU ABLE TO GIVE ANY FURTHER DESCRIPTION  
28 OF THE LEATHER WALLET?

29 A IT WAS BROWN LEATHER, JUST A SMALL WALLET.

30 Q WHAT CAUSES YOU TO SAY YOUR HUSBAND WOULD  
31 HAVE HAD THIS BROWN LEATHER WALLET WITH HIM?

32 A 'CUZ HE ALWAYS CARRIED IT WITH HIM.

1 Q DID HE TYPICALLY CARRY CREDIT CARDS OR OTHER  
2 CONTENTS INSIDE THE WALLET?

3 A YES, HE DID.

4 Q WHAT TYPES OF CONTENTS WOULD HE TYPICALLY  
5 HAVE?

6 A HE HAD A NUMBER OF CREDIT CARDS, A NUMBER  
7 OF OTHER TYPES OF CARDS IN HIS WALLET, MEMBERSHIP CARDS AND  
8 CERTAIN PICTURES.

9 Q WHAT KIND OF PICTURES?

10 A FAMILY PICTURES.

11 Q CAN YOU BE MORE SPECIFIC? IN FACT, DO YOU  
12 KNOW WHAT TYPES OF FAMILY PICTURES YOUR HUSBAND CARRIED IN THE  
13 WALLET?

14 A HE HAD A NUMBER OF PICTURES OF HIS CHILDREN.

15 Q WHICH CHILDREN SPECIFICALLY ARE YOU REFER-  
16 RING TO?

17 A MARY CATHERINE MONAHAN AND JAMES MONAHAN,  
18 HIS SON.

19 HE ALSO HAD PICTURES OF HIS TWO NEPHEWS.

20 Q HOW OLD WERE THEY?

21 A HOW OLD ARE THEY NOW?

22 Q EXCUSE ME. LET ME REPHRASE THE QUESTION.

23 DO YOU KNOW HOW OLD THEY WOULD HAVE BEEN  
24 WHEN THE PICTURES WERE TAKEN THAT HE CARRIED IN HIS WALLET?

25 MR. COOPER: I AM GOING TO OBJECT, YOUR HONOR, ON  
26 RELEVANCY.

27 THE COURT: SUSTAINED, UNLESS YOU CAN SHOW SOME  
28 RELEVANCY SIR.

29 MR. HARMON: WELL, IT MAY BE RELEVANT, YOUR HONOR,  
30 IN TERMS OF WHAT A CONSENT WITNESS IS EXPECTED TO TESTIFY REGARD-  
31 ING ITEMS SHE SAW THE DEFENDANT WITH.

32 THE COURT: YOU CAN CONNECT THEM UP THEN.

1 MR. HARMON: I CAN ONLY SAY AT THIS POINT PERHAPS,  
2 YOUR HONOR, IT'S NOT -- IT'S NOT SOMETHING THAT WE ARE JUST  
3 TRYING OUT TO TRY TO ENGENDER SYMPATHY. THERE DEFINITELY MAY BE  
4 SOME TIE THROUGH AN INDEPENDENT WITNESS.

5 THE COURT: ALL RIGHT. THE OBJECTION IS OVER-  
6 RULED.

7 MR. HARMON: THANK YOU.

8 THE COURT: SUBJECT TO BEING STRICKEN, COUNSEL,  
9 IF HE DOESN'T TIE IT.

10 MR. COOPER: THANK YOU, YOUR HONOR.

11  
12 BY MR. HARMON:

13  
14 Q HOW OLD, IF YOU KNOW, WERE THE TWO NEPHEWS  
15 WHEN THE PHOTOGRAPHS WERE TAKEN THAT YOUR HUSBAND CARRIED IN HIS  
16 WALLET?

17 A THEY WERE -- ONE IN PARTICULAR WAS ABOUT  
18 FOUR MONTHS AND THE OTHERS WERE ALL I WOULD SAY LESS -- THEY  
19 WERE LESS THAN A YEAR OLD, POSSIBLY A YEAR.

20 Q NOW, YOU SAID THAT YOUR HUSBAND HAD CREDIT  
21 CARDS?

22 A YES, HE DID.

23 Q DO YOU REMEMBER SPECIFICALLY WHAT TYPES OF  
24 CREDIT CARDS HE CARRIED IN HIS WALLET?

25 A HE HAD AN AMERICAN EXPRESS CARD AND A NUMBER  
26 OF GASOLINE CREDIT CARDS.

27 Q DO YOU REMEMBER THE NAMES OF THE COMPANIES?

28 A HE WOULD HAVE HAD A PHILLIPS 66, A UNION,  
29 CHEVRON, AND SHELL CARDS, POSSIBLY OTHERS.

30 Q DO YOU KNOW IF HE HAD ANY MONEY WHEN HE  
31 LEFT FOR WORK ON MARCH 27TH, 1980?

32 A YES. HE HAD ABOUT \$2.00 AND SOME CHANGE.



1 Q WHAT CAUSES YOU TO SAY THAT HE HAD MONEY IN  
2 APPROXIMATELY THAT AMOUNT?

3 A I JUST HAPPEN TO KNOW THAT DAY HOW MUCH  
4 MONEY HE HAD WITH HIM.

5 Q DO YOU KNOW IF YOUR HUSBAND LEFT THE HOUSE  
6 WITH ANY TYPE OF DEPOSIT BAG WITH DAILY RECEIPTS FROM HIS  
7 BUSINESS?

8 A YES, HE DID.

9 Q WHAT DID HE LEAVE THE HOUSE WITH?

10 A HE HAD A GREEN ZIPPER DEPOSIT BAG FROM THE  
11 BANK OF NEVADA WITH A DEPOSIT IN IT FROM THE DAY BEFORE; AND HE  
12 ALSO HAD THE TITLE TO THE VAN.

13 Q THE TITLE TO THE VAN WAS INSIDE THE GREEN  
14 DEPOSIT BAG?

15 A YES, IT WAS.

16 Q DID YOU KNOW WHY YOUR HUSBAND WAS TAKING THE  
17 TITLE TO THE VAN WITH HIM THAT MORNING?

18 A BECAUSE THE MAN THAT WE SHOWED THE VAN TO  
19 THE NIGHT BEFORE SAID THAT HE WOULD BE READY TO BUY THE VAN

20 AFTER HE RODE IT, IF HE LIKED THE WAY IT RODE THAT HE WOULD HAVE  
21 THE MONEY WITH HIM AND BE READY TO BUY THE VAN THAT DAY.

22 Q BY THE MAN WHO SAID HE'D BE READY TO BUY  
23 THE VAN THAT DAY, ARE YOU REFERRING TO THE DEFENDANT, MR. HOWARD?

24 A YES, I AM.

25 Q MRS. MONAHAN, DO YOU KNOW WHAT VEHICLE YOUR  
26 HUSBAND USED WHEN HE LEFT FOR THE OFFICE AT ABOUT TEN MINUTES TO  
27 7:00 ON MARCH 27TH, 1980?

28 A YES, I DO.

29 Q WHAT CAR WAS HE USING?

30 A HE DROVE HIS -- HIS ORANGE CHEVROLET TRUCK.

31 Q DID YOU SEE YOUR HUSBAND AS HE LEFT FOR THE  
32 OFFICE THAT MORNING, MARCH 27TH, 1980?

1 A YES, I DID.

2 Q HAVE YOU EVER SEEN HIM ALIVE SINCE THEN?

3 A NO, I HAVE NOT.

4 Q DID YOU ALSO GO TO THE OFFICE AT 700 EAST  
5 DESERT INN ROAD ON MARCH 27TH, 1980?

6 A YES, I DID.

7 Q ABOUT WHAT TIME DID YOU GO THERE?

8 A I WENT APPROXIMATELY 8:30 A.M.

9 Q WHAT WAS YOUR PURPOSE FOR GOING TO THE OFFICE  
10 ON THAT DAY AT THAT TIME?

11 A BECAUSE I WAS WORKING THAT DAY.

12 Q WHEN YOU GOT THERE DID YOU FIND YOUR HUSBAND  
13 GEORGE MONAHAN?

14 A NO, I DID NOT.

15 Q DID THAT CONCERN YOU?

16 A YES, IT DID.

17 Q WHY?

18 A WHEN I WALKED INTO THE OFFICE THROUGH HIS  
19 PRIVATE OFFICE INTO THE HALLWAY, HIS DENTAL ASSISTANT ASKED ME  
20 WHERE IS DR. MONAHAN. I SAID, ASSUMING THAT SHE MEANT SOMEWHERE  
21 THERE IN THE OFFICE, I SAID I DON'T KNOW. I HAVEN'T SEEN HIM  
22 YET.

23 Q YOU ASSUMED HE WAS ALREADY THERE?

24 A YES, I DID.

25 Q WHAT HAPPENED THEN?

26 A AT THAT POINT SHE TOLD ME THAT HE HAD NOT  
27 ARRIVED YET AND THAT HIS PATIENT WAS SITTING IN THE CHAIR.

28 Q WHAT PERSON IS THE DENTAL ASSISTANT TO WHOM  
29 YOU REFER NOW, THAT TOLD YOU THAT?

30 A HER NAME IS HEIDI EVANS.

31 Q H-E-I-D-I?

32 A YES, SIR.

1 Q THE LAST NAME IS EVANS?  
2 A EVANS.  
3 Q MRS. MONAHAN, WHAT DID YOU DO WHEN YOU  
4 FOUND THAT AT ABOUT 8:30 IN THE MORNING, YOUR HUSBAND WAS STILL  
5 NOT IN THE OFFICE?  
6 A I WAS CONCERNED RIGHT AWAY. I WENT BACK  
7 OUTSIDE TO SEE IF HIS TRUCK WAS THERE PARKED ON THE OTHER SIDE  
8 OF THE BUILDING.  
9 Q AND WAS HIS ORANGE CHEVROLET TRUCK PARKED  
10 THERE?  
11 A YES, IT WAS. IT WAS ON THE WESTSIDE OF THE  
12 BUILDING WHERE THE VAN HAD BEEN.  
13 Q WHERE THE VAN HAD BEEN?  
14 A AND THE VAN WAS NOT THERE.  
15 Q DID YOU OBSERVE ANY PERSONAL EFFECTS STILL  
16 INSIDE YOUR HUSBAND'S CHEVROLET TRUCK?  
17 A I DIDN'T GO DOWN AND LOOK AT THAT POINT.  
18 I WENT BACK INTO THE OFFICE AND A LITTLE WHILE LATER I WENT BACK  
19 DOWN, ALL THE WAY DOWNSTAIRS TO THE PARKING LOT, AND LOOKED TO  
20 SEE IF THE BANK BAG WAS STILL IN THE TRUCK, AND IT WAS STILL IN  
21 THE TRUCK IN THE FRONT SEAT.  
22 Q THE BANK BAG WHICH CONTAINED THE DAILY  
23 RECEIPTS?  
24 A YES, SIR.  
25 Q THAT WOULD BE FROM THE PRECEDING DAY'S  
26 BUSINESS?  
27 A THAT'S RIGHT.  
28 Q DID YOU SUBSEQUENTLY EXAMINE THAT BANK BAG?  
29 A YES, I DID.  
30 Q WERE THE RECEIPTS ALL THERE?  
31 A YES, THEY WERE.  
32 Q WHAT ABOUT THE TITLE TO YOUR 1977 DODGE VAN,

1 WAS THAT ALSO STILL INSIDE THE BANK DEPOSIT BAG?

2 A YES, IT WAS.

3 Q YOU REFERRED EARLIER IN YOUR TESTIMONY TO  
4 THE FACT THAT YOUR HUSBAND ROUTINELY CARRIED A MONEY CLIP. WAS  
5 THAT SEPARATE FROM THE BROWN LEATHER WALLET?

6 A YES, IT WAS.

7 Q WHERE DID HE USUALLY CARRY THE MONEY CLIP?

8 A IN ONE OF HIS SIDE FRONT POCKETS.

9 Q OTHER THAN THE SEIKO WRISTWATCH THAT YOU  
10 HAVE ALREADY REFERRED TO, DID YOUR HUSBAND, GEORGE MONAHAN, HAVE  
11 ANY TYPE OF RINGS OR CHAINS OR ANY OTHER TYPE OF JEWELRY THAT HE  
12 WORE THAT DAY?

13 A NO, HE DID NOT.

14 Q CAN YOU THINK OF ANY OTHER PERSONAL EFFECTS  
15 HE WOULD HAVE HAD ON HIS PERSON, OTHER THAN ITEMS THAT YOU HAVE  
16 ALREADY DESCRIBED?

17 A NOT THAT I CAN RECALL.

18 Q WHAT DID YOU DO AFTER YOU DISCOVERED THAT  
19 THE ORANGE TRUCK WAS PARKED OUTSIDE OF THE OFFICE AND THE VAN WAS  
20 GONE?

21 A I WENT BACK INTO THE OFFICE AND DISCUSSED  
22 THE SITUATION WITH DR. MAGDALL.

23 Q WILL YOU SPELL MAGDALL FOR THE RECORD,  
24 PLEASE?

25 A M-A-G-D-A-L-L.

26 Q IS IT DR. BOYD MAGDALL?

27 A YES, IT IS.

28 Q WAS HE AN ASSOCIATE OF YOUR HUSBAND'S IN  
29 THEIR BUSINESS?

30 A HE WAS A PARTNER.

31 Q DID YOU DISCUSS THE SITUATION WITH ANYONE  
32 ELSE?

1 A WITH HIS WIFE, LORIE, AND SEVERAL OTHER  
2 GIRLS IN THE OFFICE.

3 Q AS A RESULT OF THAT CONVERSATION, WHAT IF  
4 ANYTHING DID YOU TAKE?

5 A ONE OF THE GIRLS -- I TOLD -- FIRST OF ALL,  
6 I TOLD MR. MAGDALL THAT THE VAN WAS GONE, THAT HE MUST HAVE  
7 TAKEN KEITH FOR A RIDE. ONE OF THE GIRLS IN THE OFFICE HAD SAID  
8 THAT SOMEBODY CAME INTO THE OFFICE --

9 MR. COOPER: OBJECTION, YOUR HONOR, AS HEARSAY.

10 MR. HARMON: I THINK IT IS, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12  
13 BY MR. HARMON:

14  
15 Q ONE OF THE OTHER GIRLS TOLD YOU SOMETHING.  
16 WITHOUT GOING INTO WHAT SHE SAID --

17 A YES, SIR.

18 Q (CONTINUING) -- WHAT IS THE IDENTITY OF  
19 THAT GIRL?

20 A SHE WAS A DENTAL ASSISTANT TO DR. MAGDALL.

21 Q WHAT IS HER NAME?

22 A HELENE ZUCKERMAN.

23 Q WILL YOU SPELL THE NAMES FOR THE RECORD,  
24 PLEASE?

25 A I'M NOT EXACTLY SURE OF THE SPELLING, IT  
26 BELIEVE IT'S Z-U-C-K-E-R-M-A-N.

27 Q AND THE HELENE WOULD BE H-E-L-E-N-E?

28 A THAT'S CORRECT.

29 Q AFTER YOUR DISCUSSION WITH DR. MAGDALL AND  
30 OTHERS IN THE OFFICE, WHAT DID YOU DO?

31 A LORIE MAGDALL CALLED CAESARS PALACE, ASKED  
32 FOR SOMEONE IN THE SECURITY DEPARTMENT AND ASKED THEM TO CHECK

1 THEIR RECORDS AND SEE IF THEY HAD A SECURITY GUARD WORKING FOR  
2 THEM BY THE FIRST NAME OF KEITH.  
3 Q ALL RIGHT.  
4 SO YOU ATTEMPTED TO VERIFY WHETHER THERE  
5 WAS A KEITH WHO WAS WORKING AS A SECURITY GUARD AT CAESARS PALACE?  
6 A THAT IS CORRECT.  
7 Q WERE YOU ABLE TO VERIFY THAT?  
8 MR. COOPER: OBJECTION, YOUR HONOR. IT WOULD BE  
9 BASED ON HEARSAY.  
10 MR. HARMON: IT SIMPLY CALLS FOR A YES OR NO,  
11 YOUR HONOR.  
12 THE COURT: OVERRULED.  
13 THE WITNESS: YES. THEY TOLD LORIE THAT --  
14 MR. COOPER: OBJECTION, YOUR HONOR.  
15 MR. FRANZEN: THAT'S --  
16 THE COURT: SUSTAINED.  
17  
18 BY MR. HARMON:  
19  
20 Q YOU CAN'T GO INTO WHAT THEY TOLD YOU.  
21 A I'M SORRY.  
22 Q YOU WERE ABLE TO GET AN ANSWER TO YOUR  
23 QUESTION?  
24 A YES, SIR.  
25 Q AS A RESULT OF THAT, WHAT DID YOU DO?  
26 A THEN I KNEW SOMETHING DEFINITELY WAS WRONG.  
27 WE TRIED TO ANALYZE THE SITUATION. DR. MAGDALL, AT THAT POINT,  
28 SUGGESTED POSSIBLY THEY HAD DRIVEN OUT OF TOWN A LITTLE BIT AND  
29 RAN OUT OF GAS OR HAD SOME TYPE OF PROBLEM. SO WE TRIED TO  
30 REMAIN CALM AND WAIT FOR A LITTLE WHILE.  
31 Q AT SOME POINT, WAS THE POLICE DEPARTMENT  
32 NOTIFIED?

1 A YES, THEY WERE.

2 Q DO YOU REMEMBER ABOUT WHEN THAT WAS?

3 A TO THE BEST OF MY KNOWLEDGE IT WAS PROBABLY

4 ABOUT 9:45, 9:30.

5 Q MRS. MONAHAN, DID YOU HAVE OCCASION THERE-

6 AFTER TO SPEAK WITH REPRESENTATIVES OF THE LAS VEGAS METROPOLITAN

7 POLICE DEPARTMENT?

8 A YES, I DID.

9 Q DID YOU IN FACT GIVE THEM A STATEMENT

10 RELATING INFORMATION YOU HAD?

11 A YES, I DID.

12 Q WHEN DID YOU FIRST BECOME AWARE THAT YOUR

13 HUSBAND WAS IN FACT DECEASED?

14 A IT WASN'T UNTIL THE EVENING OF THE 27TH.

15 Q MARCH 27TH, 1980?

16 A YES, SIR.

17 Q ABOUT WHAT TIME WAS IT?

18 A I BELIEVE IT WAS ABOUT 7:00 O'CLOCK.

19 Q HOW DID THAT FACT COME TO YOUR ATTENTION?

20 A THERE WAS A POLICE OFFICER THAT CAME TO MY

21 HOME.

22 Q DIRECTING YOUR ATTENTION NOW TO ON OR ABOUT

23 MARCH THE 29TH, 1980, ON THAT DATE WERE YOU CONTACTED BY REPRESENTATIVES OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND

24 SHOWN CERTAIN PHOTOGRAPHS?

25

26 A YES, I WAS.

27 Q DO YOU REMEMBER WHERE IT WAS?

28 A IT WAS IN THE DINING ROOM OF MY HOME.

29 Q DO YOU RECALL WHAT THE NAME OR NAMES OF THE

30 OFFICERS WERE WHO RESPONDED TO SHOW YOU PICTURES?

31 A I BELIEVE THAT IT WAS OFFICER AL LEAVITT,

32 BUT I'M NOT SURE. THERE WERE QUITE A FEW OFFICERS IN AND OUT OF

1 MY HOME ALL DAY. HE AND OFFICER CONNER.

2 Q HE AND OFFICER CONNER AND --

3 A AND A NUMBER OF OTHERS.

4 Q WERE IN AND OUT?

5 A YES.

6 Q IS IT YOUR BEST RECOLLECTION THAT OFFICER

7 AL LEAVITT SHOWED YOU CERTAIN PHOTOGRAPHS?

8 A YES, IT IS.

9 Q ON MARCH 29TH, 1980?

10 A YES, IT IS.

11 Q DO YOU REMEMBER ABOUT WHAT TIME IT WAS?

12 A IT WAS EARLY EVENING, POSSIBLY 6:00 O'CLOCK.

13 Q WHAT OTHER PERSONS WERE THERE IN THE HOUSE,

14 IF ANY, AT THE TIME OFFICER LEAVITT SHOWED YOU PHOTOGRAPHS?

15 A MY SISTER BARBARA WAS THERE, MARY CATHERINE

16 Q BARBARA ZEMAN WAS THERE?

17 A YES.

18 Q AND MARY CATHERINE MONAHAN?

19 A MARY CATHERINE MONAHAN AND A NUMBER OF

20 OTHER PEOPLE FROM MY FAMILY.

21 Q DESCRIBE THE MANNER IN WHICH CERTAIN PHOTO-  
22 GRAPHS WERE SHOWN TO YOU BY OFFICER LEAVITT.

23 A HE BROUGHT THEM TO THE HOME -- TO MY HOUSE  
24 AND SET THEM OUT ON THE DINING ROOM TABLE.

25 Q DID YOU KNOW AHEAD OF TIME THAT OFFICER  
26 LEAVITT WAS COMING BY?

27 A YES, I DID.

28 Q DID HE TELL YOU WHY HE WAS COMING BY YOUR  
29 HOUSE?

30 A HE HAD PHONED AND I BELIEVE HE TOLD ME THAT  
31 HE WAS COMING BY TO SHOW ME SOME PICTURES.

32 Q WHAT IS YOUR BEST RECOLLECTION NOW OF WHAT



1 OFFICER LEAVITT SAID ABOUT COMING BY TO SHOW YOU SOME PICTURES?  
2 A AS FAR AS I CAN REMEMBER, THAT'S ALL HE  
3 SAID.  
4 Q DID HE IN FACT SHOW YOU SOME PICTURES?  
5 A YES, HE DID.  
6 Q DO YOU REMEMBER WHAT AREA OF THE HOUSE YOU  
7 WERE IN?  
8 A I WAS SITTING IN THE DINING ROOM.  
9 Q HOW MANY PERSONS WERE PRESENT?  
10 A I DON'T RECALL. I HAVE MEMBERS OF MY FAMILY  
11 IN AND OUT ALL WEEK-END AND I DON'T REMEMBER EXACTLY WHO WAS SIT-  
12 TING IN THE ROOM AT THE TIME.  
13 Q WERE YOU INDEPENDENTLY VIEWING THE PICTURES?  
14 A YES, I WAS.  
15 Q HOW DID OFFICER LEAVITT GO ABOUT SHOWING  
16 THEM TO YOU?  
17 A HE HAD ASKED BARBARA AND MARY CATHERINE TO  
18 GO OUT OF THE ROOM AND HE LAID THEM OUT ON THE DINING ROOM TABLE.  
19 Q WERE YOU ABLE AT THAT TIME TO SEE THE BACK  
20 OF ANY OF THE PHOTOGRAPHS?  
21 A NO, I WAS NOT.  
22 Q SO YOU SIMPLY SAW THE FACES ON THE VARIOUS  
23 PICTURES?  
24 A YES, I DID.  
25 Q AT THAT TIME DID OFFICER LEAVITT SUGGEST TO  
26 YOU IN ANYWAY WHAT PERSON OR PERSONS WERE PERHAPS SUSPECTS?  
27 A NO, HE DID NOT.  
28 Q DID YOU MAKE AN IDENTIFICATION?  
29 A YES, I DID.  
30 MR. HARMON: YOUR HONOR, MAY I HAVE THE COURT'S  
31 INDULGENCE?  
32 THE COURT: YOU MAY.

1 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR  
2 HONOR?

3 THE COURT: YOU MAY.

4  
5 BY MR. HARMON:

6  
7 Q MRS. MONAHAN, I AM SHOWING YOU NOW PROPOSED  
8 EXHIBITS 26A THROUGH 26G. I WOULD LIKE YOU TO LOOK AT ALL OF  
9 THOSE PHOTOGRAPHS AND AFTER YOU HAVE DONE SO WILL YOU STATE  
10 WHETHER THESE APPEAR TO BE THE PICTURES THAT OFFICER LEAVITT  
11 SHOWED YOU ON MARCH 29TH, 1980, AT YOUR RESIDENCE?

12 A YES, THEY DO.

13 Q DO THESE PHOTOGRAPHS, PROPOSED EXHIBITS 26A  
14 THROUGH 26G, APPEAR TO BE IN SUBSTANTIALLY THE SAME CONDITION NOW  
15 AS THEY WERE WHEN YOU VIEWED THEM MARCH 29TH, 1980?

16 A YES, THEY DO.

17 Q DO THEY ALL CARRY NUMBERS AS THEY HAVE NOW  
18 IN COURT?

19 A I BET THEY DID, YES.

20 Q DO YOU SEE THE PICTURE AT THIS TIME WHICH  
21 YOU IDENTIFIED ON MARCH 29TH, 1980?

22 A YES, I DO.

23 Q WHICH NUMBER IS IT?

24 A NUMBER FIVE.

25 Q WHAT HAPPENED AFTER YOU SELECTED PHOTOGRAPH  
26 NUMBER FIVE?

27 A THE OFFICER TURNED IT OVER AND HAD ME SIGN  
28 THE BACK OF THE PICTURE.

29 Q WILL YOU TURN OVER PHOTOGRAPH NUMBER FIVE  
30 AT THIS TIME.

31 FOR THE RECORD, IS THAT MARKED AS  
32 PROPOSED EXHIBIT 26E?

1 A YES, IT IS.

2 Q ON MARCH 29TH, 1980, DID YOU SIGN THE BACK

3 OF PROPOSED EXHIBIT 26E?

4 A YES, I DID.

5 Q WHAT DID YOU WRITE?

6 A MARY L. MONAHAN, THE DATE AND THE TIME.

7 Q AND WHAT DATE DID YOU PLACE THERE?

8 A 3-29-80.

9 Q AND WHAT TIME DID YOU PUT THERE?

10 A 8:30 O'CLOCK.

11 Q NOW, YOU SAID EARLIER THAT YOU THOUGHT IT

12 WAS THERE IN THE MORNING. WOULD THE 8:30 O'CLOCK BE IN THE

13 MORNING OR EVENING?

14 A IT WAS IN THE EVENING.

15 Q MRS. MONAHAN, IS THE SAME PERSON WHOSE

16 PHOTOGRAPH YOU IDENTIFIED ON MARCH 29TH, 1980, PRESENT IN COURT

17 TODAY?

18 A YES, HE IS.

19 Q WHO IS IT?

20 A IT'S THE DEFENDANT SITTING OVER THERE (INDI-

21 CATING).

22 Q WHEN YOU SAW THE PHOTOGRAPH, WHICH IS NUM-

23 BERED FIVE, AND WHICH IS MARKED FOR THE PURPOSES OF IDENTIFICATION

24 AS PROPOSED EXHIBIT 26E, ON MARCH 29TH, 1980, HOW SURE WERE YOU

25 OF YOUR IDENTIFICATION?

26 A I WAS VERY SURE.

27 Q WHEN YOU MADE THAT IDENTIFICATION, WHEN

28 WERE YOU SAYING YOU HAD SEEN THIS PERSON BEFORE WHO WAS SHOWN

29 IN PROPOSED EXHIBIT 26E?

30 A I HAD SEEN HIM AT CAESARS PALACE ON MARCH 26TH.

31 Q 1980?

32 A 1980.

1  
2  
3  
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32

Q AT ABOUT 8:00 O'CLOCK P.M.?

A YES, SIR.

THE COURT: WE WILL TAKE A RECESS AT THIS TIME  
FOR ABOUT TEN MINUTES.

LADIES AND GENTLEMEN, 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, TELE-  
VISION 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 FOR TEN MINUTES.

(WHEREUPON, FROM 4:10 P.M.,  
UNTIL 4:30 P.M., A RECESS WAS  
HAD IN THE PROCEEDINGS, AT THE  
CONCLUSION OF WHICH THE FOLLOW-  
ING WAS HAD:)

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

MR. SEATON: YES, YOUR HONOR.

MR. FRANZEN: YES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE COURT: LADIES AND GENTLEMEN OF THE JURY, I  
UNDERSTAND YOUR DISCOMFORT. YESTERDAY WE WERE BURNING UP AND  
TODAY WE'RE FREEZING. SO I WOULD SUGGEST THAT YOU BRING COATS

1 AND TRY TO OUT THINK THE ENGINEERS IN THIS BUILDING, SINCE  
2 APPARENTLY THEY KEEP PUTTING US IN THIS POSITION.

3 COUNSEL, CALL YOUR NEXT WITNESS.

4 MR. HARMON: THANK YOU.

5 I WOULD LIKE TO RECALL MARY LOU MONAHAN.

6 THE COURT: YES. COME FORWARD, PLEASE.

7 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR  
8 HONOR?

9 THE COURT: YOU MAY.

10  
11 BY MR. HARMON:

12  
13 Q MRS. MONAHAN, I AM SHOWING YOU AN OBJECT  
14 WHICH HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 24B. I WOULD  
15 LIKE YOU TO LOOK AT THAT AND STATE WHETHER YOU CAN SAY THAT THAT  
16 LOOKS LIKE ANY OBJECT THAT YOU SAW ON OR ABOUT MARCH THE 26TH,  
17 1980, IN THE AREA OF CAESARS PALACE.

18 A YES, IT DOES.

19 Q WHEN DID YOU SEE AN OBJECT IN THE AREA OF  
20 CAESARS PALACE ON MARCH 26TH, 1980, WHICH LOOKS LIKE STATE'S  
21 PROPOSED EXHIBIT 24B?

22 A IT LOOKS LIKE THE ONE THAT WAS CARRIED BY  
23 THE DEFENDANT KEITH, OR THE MAN THAT WE KNEW AS KEITH AT THAT  
24 TIME.

25 Q YOU ARE TALKING ABOUT A WALKIE-TALKIE RADIO?

26 A YES.

27 Q WAS IT YOUR TESTIMONY THAT YOU BELIEVE YOU  
28 FIRST SAW THAT OBJECT IN HIS HAND?

29 A YES, I DID.

30 Q AND THEN LATER ATTACHED TO HIS WAISTLINE  
31 SOMEWHERE?

32 A THAT'S CORRECT.

1 Q WHY DO YOU SAY THAT PROPOSED EXHIBIT 24B  
2 LOOKS LIKE THAT SAME WALKIE-TALKIE RADIO?

3 A JUST LOOKS LIKE THE SAME COLOR, SAME TYPE  
4 OF ANTENNA THAT IT HAD ON IT.

5 MR. HARMON: YOUR HONOR, MAY I AGAIN HAVE THE  
6 COURT'S INDULGENCE.

7 MAY I APPROACH THE WITNESS, YOUR HONOR?  
8 THE COURT: YOU MAY.

9  
10 BY MR. HARMON:

11  
12 Q MRS. MONAHAN, I AM SHOWING YOU NOW WHAT  
13 APPEARS TO BE SOME TYPE OF EVIDENCE BAG FOR IDENTIFICATION. IT'S  
14 MARKED AS PROPOSED EXHIBIT 44. IS IT IN A SEALED CONDITION AT  
15 THIS TIME?

16 A YES, IT IS.

17 Q WITHOUT DISPLAYING THE CONTENTS OF THE BAG  
18 TO THE JURY --

19 MR. FRANZEN: YOUR HONOR, COULD WE APPROACH THE  
20 BENCH?

21 THE COURT: YES.

22 (WHEREUPON, SIDE BAR CONFERENCE  
23 WAS HELD AT THE BENCH; NOT  
24 REPORTED.)

25 THE COURT: PROCEED.

26  
27 BY MR. HARMON:

28  
29 Q MRS. MONAHAN, I AM HANDING YOU A PAIR OF  
30 SCISSORS, AND I WOULD LIKE YOU TO CUT THE EVIDENCE BAG, PROPOSED  
31 EXHIBIT 44, OPEN AT THE BOTTOM, PLEASE.

32 A YEAH.

1 Q ALL RIGHT. THAT'S FINE.  
2 PERHAPS YOU CAN CUT IT OVER HERE (INDI-  
3 CATING).  
4 MRS. MONAHAN, AT THIS POINT, WITHOUT  
5 DISPLAYING THE CONTENTS OF THE BAG TO THE JURY, I WOULD LIKE  
6 YOU TO EXAMINE THE CONTENTS AND STATE WHETHER YOU SEE ANY TYPE  
7 OF ARTICLE OF CLOTHING THAT LOOKS SIMILAR TO SOMETHING YOU HAVE  
8 SEEN BEFORE.  
9 A YES, I DO.  
10 Q WILL YOU REMOVE THAT ITEM, PLEASE.  
11 MR. FRANZEN: MAY THE RECORD REFLECT THE WITNESS  
12 HAS REMOVED A BROWN LEATHER JACKET WITH A FUR COLLAR.  
13 THE COURT: THE RECORD MAY SO SHOW.  
14  
15 BY MR. HARMON:  
16  
17 Q ARE THERE ALSO OTHER CONTENTS?  
18 A YES, THERE ARE.  
19 Q WELL, PERHAPS BEFORE YOU PUT IT BACK, DO  
20 YOU SEE ANY OTHER CONTENTS?  
21 A YES, I DO.  
22 Q DOES THE OTHER CONTENTS ALSO APPEAR TO BE  
23 A JACKET?  
24 A YES, IT DOES.  
25 Q NOW, HAVE YOU REMOVED THE ITEM WHICH LOOKS  
26 LIKE THE ITEM YOU SAW BEFORE?  
27 A NO, IT DOES NOT. IN -- IN COLOR IT RESEM-  
28 BLED IT, BUT I DON'T REMEMBER THAT IT HAD A FUR COLLAR ON IT.  
29 Q WILL YOU EXAMINE THE OTHER JACKET, PLEASE.  
30 A O.K.  
31 Q DO EITHER OF THESE JACKETS LOOK LIKE ITEMS  
32 THAT YOU'VE SEEN BEFORE?

1 A YES. THE SECOND ONE DOES.

2 Q WHAT IS THERE ABOUT THE SECOND JACKET THAT

3 LOOKS SIMILAR?

4 A THE COLOR, AND I RECALL THAT IT WAS A SHORT

5 WAIST-TYPE JACKET.

6 Q NOW, ORIGINALLY YOU REMOVED THE FIRST

7 JACKET WHICH IS A LITTLE DARKER IN COLOR; IS THAT CORRECT?

8 A YES, IT IS.

9 Q WHEN IS IT YOU BELIEVE THAT YOU SAW THE

10 JACKET WHICH I HAVE IN MY HAND AT THIS TIME?

11 A IT WAS BEING WORN BY THE DEFENDANT WHEN WE

12 SHOWED HIM THE VAN ON MARCH 26TH AT CAESARS PALACE.

13 Q WILL YOU PLACE THE OTHER JACKET, THE ONE

14 THAT HAS THE FUR COLLAR, BACK INTO THE EVIDENCE BAG, PLEASE?

15 A UH-HUH.

16 MR. HARMON: YOUR HONOR, MAY WE HAVE THIS ITEM

17 MARKED AS PROPOSED EXHIBIT, I BELIEVE IT'S 41A?

18 THE COURT: IT MAY BE MARKED.

19 THE CLERK: 44.

20 MR. HARMON: 44, EXCUSE ME. 44.

21 MR. FRANZEN: THAT'S THE BAG, 41A, OR IS THAT THE

22 JACKET?

23 MR. HARMON: THE BAG IS 44.

24 MAY I HAVE THE COURT'S INDULGENCE AGAIN?

25 THE COURT: YOU MAY.

26 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR

27 HONOR?

28 THE COURT: YOU MAY.

29

30 BY MR. HARMON:

31

32 Q NOW, MRS. MONAHAN, WHAT IS IT ABOUT PROPOSED



1 EXHIBIT 44A THAT CAUSES YOU TO SAY THIS LOOKS LIKE THE JACKET  
2 WORN BY THE DEFENDANT ON MARCH 26TH, 1980, IN THE AREA OF  
3 CAESARS PALACE?

4 A THE COLOR OF THE JACKET AND THE FACT THAT  
5 IT IS A SHORT JACKET, IT COMES DOWN TO ABOUT THE WAIST LENGTH.

6 Q DOES THIS JACKET APPEAR TO BE MADE OUT OF  
7 THE SAME MATERIAL?

8 A YES. IT'S LEATHER.

9 Q DO YOU RECALL WHETHER THE JACKET WORN BY  
10 THE DEFENDANT ON MARCH 26TH, 1980, HAD ANY TYPE OF FUR COLLAR?

11 A TO MY BEST RECOLLECTION IT DID NOT.

12 Q WHAT CAUSES YOU, AFTER VIEWING BOTH JACKETS  
13 WHICH WERE IN PROPOSED EXHIBIT 44, TO DECIDE THAT THE JACKET  
14 LOOKING MORE LIKE THE ONE WORN BY THE DEFENDANT IS THE ITEM NOW  
15 MARKED AS PROPOSED EXHIBIT 44A?

16 A HAS A LITTLE BIT MORE OF A YELLOWISH TINT  
17 TO IT AND THE FACT THAT I DID NOT REMEMBER ANY FUR AROUND THE  
18 COLLAR.

19 MR. HARMON: YOUR HONOR, AGAIN MAY I HAVE THE  
20 COURT'S INDULGENCE?

21 THE COURT: YOU MAY.

22 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR  
23 HONOR?

24 THE COURT: YOU MAY.

25  
26 BY MR. HARMON:

27  
28 Q MRS. MONAHAN, I AM SHOWING YOU NOW A SERIES  
29 OF PHOTOGRAPHS MARKED AS PROPOSED EXHIBITS 50 THROUGH 54. I  
30 WOULD LIKE YOU TO EXAMINE THE PHOTOGRAPHS AND AFTER YOU'VE  
31 LOOKED AT THEM ALL, WILL YOU STATE WHETHER THE VEHICLE DEPICTED  
32 IN THESE PHOTOGRAPHS EITHER APPEARS TO BE SUBSEQUENT PICTURES

1 TAKEN OF YOUR 1977 DODGE VAN OR AT LEAST IS A SIMILAR VEHICLE.

2 A YES, IT IS.

3 Q HOW DO YOU RECOGNIZE PROPOSED EXHIBITS 50  
4 THROUGH 54?

5 A PRIMARILY BY THE OUTSIDE OF THE VAN.

6 Q IT'S THE SAME TYPE OF OUTSIDE AS EXISTED  
7 ON YOUR 1977 DODGE VAN?

8 A WITHOUT -- IT DOES NOT HAVE THE LETTERS  
9 "BLACK OAK" ON IT ANY LONGER, BUT IT DOES APPEAR THE SAME OTHER-  
10 WISE.

11 Q BUT THE PAINT IS NOT DIFFERENT; IS THAT  
12 RIGHT; IN PROPOSED EXHIBITS 50 THROUGH 54?

13 MR. FRANZEN: YOUR HONOR, AGAIN I AM GOING TO  
14 HAVE TO OBJECT. THERE'S BEEN NO FOUNDATION FOR THIS. THEY HAVE  
15 NOT BEEN ADMITTED INTO EVIDENCE AND THE WITNESS IS TESTIFYING  
16 ABOUT THEM.

17 MR. HARMON: WELL, THIS IS PART OF THE FOUNDATION  
18 I DON'T MEAN TO HAVE HER TESTIFYING FROM THE EXHIBIT.

19 THE COURT: IT THINK IT'S PRELIMINARY AT THIS  
20 POINT, COUNSEL. THERE'S BEEN NO TIE AT THIS POINT.

21 PROCEED.

22 MR. HARMON: THANK YOU.

23  
24 BY MR. HARMON:

25  
26 Q DIRECTING YOUR ATTENTION SPECIFICALLY TO  
27 THE PASSENGER'S SIDE DOORS, AS ARE DEPICTED IN PROPOSED EXHIBITS  
28 50 THROUGH 54, DO THEY APPEAR TO BE IDENTICAL TO THE CONDITION  
29 OF THE PASSENGER'S DOORS AS THEY WOULD HAVE EXISTED ON YOUR 1977  
30 DODGE VAN ON MARCH 26TH AND 27TH, 1980?

31 MR. FRANZEN: YOUR HONOR, THE WITNESS IS NOW  
32 TESTIFYING FROM IT, RATHER THAN MERELY IDENTIFYING IT, AGAIN WE

1 STILL HAVE NO FOUNDATION AS TO WHERE THESE PICTURES CAME FROM OR  
2 INDEED WHAT VAN THEY DEPICT.

3 THE COURT: STILL PRELIMINARY. THE OBJECTION IS  
4 OVERRULED.

5 MR. HARMON: THANK YOU.

6 THE COURT: PROCEED.

7

8 BY MR. HARMON:

9

10 Q DO YOU RECALL THE QUESTION?

11 A NO.

12 Q I AM DIRECTING YOUR ATTENTION SPECIFICALLY  
13 TO THE PASSENGER DOORS. I AM NOT TALKING ABOUT COLOR. I AM  
14 REFERRING TO THE POSITION OF THE DOORS, DOOR HANDLES, DOOR KNOBS

15 DOES THE APPEARANCE OF THE PASSENGER'S  
16 SIDE OF THE VEHICLE SHOWN IN PROPOSED EXHIBITS 50 THROUGH 54  
17 APPEAR TO BE IDENTICAL TO THE CONDITION OF YOUR 1977 DODGE VAN  
18 AS IT EXISTED MARCH 26TH AND MARCH 27TH, 1980?

19 A YES, THEY DO.

20 Q DIRECTING YOUR ATTENTION SPECIFICALLY TO  
21 PROPOSED -- EXCUSE ME, EXHIBIT 54. DO YOU RECALL HOW YOUR 1977  
22 DODGE VAN LOOKED WHEN ALL OF THE DOORS WERE OPEN ON THE PASSENGER'S  
23 SIDE, AS OF MARCH 26TH, 1980?

24 A YES, I DO.

25 Q DOES THE VEHICLE DEPICTED IN PROPOSED  
26 EXHIBIT 54, WHICH SHOWS ALL THE DOORS OPEN ON THE PASSENGER'S  
27 SIDE, LOOK THE SAME?

28 MR. FRANZEN: YOUR HONOR, AGAIN I FEEL I MUST  
29 INTERPOSE AN OBJECTION. THIS IS -- THIS ISN'T PART OF THE  
30 FOUNDATION. THIS IS PART OF THE QUESTIONING REGARDING WHAT IS  
31 DEPICTED IN THESE PHOTOGRAPHS AND MAKING COMPARISONS. AND I  
32 WOULD LIKE TO KNOW THE FOUNDATION FOR THESE PHOTOGRAPHS.

1 THE COURT: OVERRULED. PROCEED.  
2 THE WITNESS: YES. THEY WERE STANDING WIDE OPEN  
3 LIKE THEY ARE IN THIS PHOTOGRAPH (INDICATING).  
4

5 BY MR. HARMON:

6  
7 Q AND BY "THIS PHOTOGRAPH" YOU'RE REFERRING  
8 TO PROPOSED EXHIBIT 54?

9 A THAT'S CORRECT.

10 MR. HARMON: THANK YOU.

11 YOUR HONOR, THAT CONCLUDES DIRECT EXAMINA-  
12 TION.

13 THE COURT: CROSS.

14 MR. COOPER: THANK YOU, YOUR HONOR.

15 COURT'S INDULGENCE, PLEASE.  
16

17 CROSS EXAMINATION  
18

19 BY MR. COOPER:

20  
21 Q MRS. MONAHAN, THE PHOTOGRAPHS THAT YOU WERE  
22 SHOWN THAT WERE MARKED STATE'S PROPOSED EXHIBITS 50 THROUGH 54 --  
23 EXCUSE ME, 50 -- 50 THROUGH 54, THEY ALL DEPICT A VAN VEHICLE;  
24 IS THAT RIGHT?

25 A THAT IS CORRECT.

26 Q IS THIS THE SAME VAN THAT YOUR HUSBAND OWNED?

27 A YES, IT IS.

28 Q YOU HAVE TESTIFIED THAT THE VAN HAD BEEN UP  
29 FOR SALE FOR SOME TIME; IS THAT RIGHT?

30 A THAT IS CORRECT.

31 Q HOW LONG HAD IT BEEN UP FOR SALE ON THE DAY  
32 YOU AND YOUR HUSBAND AND YOUR SISTER AND STEP-DAUGHTER MET THIS

1 MAN AT CAESARS PALACE?

2 A FOR APPROXIMATELY TWO MONTHS, I BELIEVE.

3 Q TWO MONTHS?

4 A YES, SIR.

5 Q HOW OFTEN DURING THAT TWO-MONTH PERIOD WOULD  
6 YOU SAY THAT YOUR HUSBAND PARKED THE VAN AT THE CORNER OF MARY-  
7 LAND PARKWAY AND DESERT INN ROAD?

8 A HE PARKED IT THERE -- HE HAD JUST STARTED  
9 PARKING IT THERE FOR ABOUT TWO WEEKS, AND IT WOULD HAVE BEEN  
10 TUESDAYS THROUGH FRIDAYS.

11 Q IN FACT, HE WOULD PARK THE VAN THERE ON  
12 OCCASION AND WALK TO HIS OFFICE WHICH IS NEARBY; IS THAT RIGHT?

13 A WHEN THE WEATHER WAS RIGHT HE DID THAT, YES.

14 Q SO THAT ANYONE COULD HAVE -- ANY INTERESTED  
15 PARTY COULD HAVE COME TO THE VAN, TOUCHED THE VAN, TRIED TO OPEN  
16 THE VAN DOORS, EXAMINED IT FROM THE EXTERIOR; IS THAT RIGHT?

17 A THAT IS CORRECT.

18 Q DURING THE TWO-MONTH PERIOD THAT YOUR HUSBAND  
19 HAD BEEN TRYING TO SELL THE VAN, DO YOU KNOW IF THERE WERE A  
20 NUMBER OF PERSPECTIVE BUYERS OF THAT VAN?

21 A NO, THERE WERE NOT.

22 Q HE HAD NEVER TALKED, TO YOUR KNOWLEDGE, TO  
23 ANYONE WHO EXPRESSED AN INTEREST IN BUYING THAT VAN PRIOR TO THE  
24 EVENING YOU MET THIS GENTLEMAN AT CAESARS PALACE?

25 A NOT TO MY KNOWLEDGE.

26 Q DID HE EVER TALK TO YOU ABOUT PERSPECTIVE  
27 PURCHASERS?

28 A WE HAD RUN AN AD IN THE PAPER, IN THE REVIEW  
29 JOURNAL, TWO DIFFERENT TIMES. WE MADE -- TO THE BEST OF MY  
30 KNOWLEDGE WE MAY HAVE GOTTEN A COUPLE CALLS ON IT BUT WE HAD NOT  
31 SHOWN IT TO ANYONE OR TALKED TO ANYONE AT LENGTH ABOUT IT.

32 Q EXCUSE ME.

1 THE FOR SALE SIGN THAT WAS IN THE VAN,  
2 IT INCLUDED YOUR HUSBAND'S BUSINESS PHONE NUMBER; IS THAT RIGHT?

3 A THAT'S RIGHT.

4 Q DID IT ALSO INCLUDE THE BUSINESS ADDRESS?

5 A NO, IT DID NOT.

6 Q I SEE.

7 SO THAT ANYONE WHO CALLED YOUR HUSBAND'S  
8 BUSINESS NUMBER WOULD -- COULD FIND OUT THAT IT WAS A DENTIST'S  
9 OFFICE?

10 A YES, THEY COULD.

11 Q AND WHERE IT WAS LOCATED?

12 A THAT'S CORRECT.

13 Q O.K.

14 NOW, YOU TESTIFIED THAT AFTER RECEIVING  
15 THE PHONE CALL FROM THIS INDIVIDUAL WHO IDENTIFIED HIMSELF AS  
16 KEITH, SOMETIME LATER YOU, YOUR HUSBAND, YOUR SISTER AND YOUR  
17 STEP-DAUGHTER WENT TO CAESARS PALACE; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q HOW OLD WAS YOUR STEP-DAUGHTER AT THE TIME?

20 A I BELIEVE SHE WAS 14.

21 Q AND THE FOUR OF YOU WENT TO CAESARS PALACE?

22 A YES, WE DID.

23 Q WHEN YOU ARRIVED AT THAT LOCATION, YOU  
24 TESTIFIED THAT BEFORE THE DEFENDANT REACHED THE VAN ALL OF THE  
25 DOORS WERE OPEN; IS THAT RIGHT?

26 A THAT IS CORRECT.

27 Q WHERE IN RELATION TO THE -- TO THE VAN, DID  
28 YOU, YOUR SISTER AND YOUR STEP-DAUGHTER STAND WHEN YOU GOT OUT  
29 OF THE VAN?

30 A WE WERE APPROXIMATELY -- WE STOOD NEAR A  
31 COLUMN ON THE SIDE OF THE BUILDING, PROBABLY ABOUT SIX FEET AWAY  
32 FROM THE VAN.

1 Q I SEE. I SEE.

2 WOULD YOU HAVE BEEN TO THE REAR OF THE  
3 VAN? TO THE RIGHT SIDE? THE LEFT SIDE?

4 A NO. WE WERE TOWARDS THE FRONT.

5 Q TOWARDS THE FRONT. I SEE.

6 HOW LONG DID THE MEETING WITH THIS MAN,  
7 WHO IDENTIFIED HIMSELF AS KEITH, LAST THERE AT CAESARS PALACE,  
8 AT -- AT CAESARS PALACE?

9 A APPROXIMATELY TEN OR FIFTEEN MINUTES.

10 Q DID YOU -- DID YOU KEEP THIS PERSON WITHIN  
11 YOUR -- WITHIN YOUR VISION THAT ENTIRE PERIOD OF TIME?

12 A YES, I DID.

13 Q YOU NEVER LOOKED AWAY, OUT TOWARDS THE  
14 STRIP OR LOOKED BEHIND YOU?

15 A OH, I CAN'T SAY THAT I STARED AT HIM THE  
16 WHOLE TIME, BUT HE WAS DEFINITELY IN FRONT OF ME THE ENTIRE TIME.

17 Q YOU'VE TESTIFIED, I BELIEVE EARLIER, THAT  
18 HE INSPECTED THE VAN FOR ABOUT TEN MINUTES OR SO.

19 A HE DIDN'T INSPECT THE VAN THAT LONG. THAT  
20 WAS HOW LONG WE SPENT OR MY HUSBAND SPENT SPEAKING WITH HIM. HE  
21 LOOKED AT THE VAN VERY BRIEFLY.

22 Q IN YOUR STATEMENT THAT YOU GAVE THE POLICE  
23 DID YOU SAY IN YOUR STATEMENT THAT HE LOOKED AT THIS VAN FOR  
24 ABOUT FIVE OR SEVEN MINUTES?

25 A APPROXIMATELY THAT LENGTH OF TIME, YES.

26 Q TELL ME WHAT HE DID DURING THAT FIVE OR  
27 SEVEN-MINUTE PERIOD WHEN HE WAS LOOKING AT THE VAN.

28 A HE LOOKED INTO THE VAN THROUGH THE TWO OPEN  
29 DOORS ON THE SIDE, LEANED IN A LITTLE BIT, JUST KNELT ON ONE  
30 KNEE AND LOOKED INTO THE VAN SO THAT HE COULD SEE BOTH THE REAR  
31 AND THE FRONT OF THE VAN FROM THE INSIDE. THEN HE GOT BACK OUT  
32 OF THE VAN AND SPOKE TO MY HUSBAND FOR A LITTLE WHILE.

1 Q SO HE PUT HIS KNEE, YOU BELIEVE, INSIDE THE  
2 VAN AND LOOKED INSIDE?  
3 A YES, SIR.  
4 Q CAN YOU BE CERTAIN THAT HE DID THAT, THAT  
5 HE KNELT INSIDE?  
6 A THAT HE LEANED INSIDE. HE DIDN'T GET ALL  
7 THE WAY IN.  
8 Q THAT -- WHICH SIDE WOULD THE PASSENGER DOORS  
9 HAVE BEEN ON THAT HE -- WHERE HE LEANED INTO THE VAN? WOULD THAT  
10 HAVE BEEN ON THE PASSENGER'S SIDE OR THE DRIVER'S SIDE OF THE  
11 VAN?  
12 A ON THE PASSENGER'S SIDE.  
13 Q ALL RIGHT.  
14 AND YOU WOULD HAVE BEEN STANDING TO THE  
15 FRONT OF THE VAN?  
16 A WE WERE ON THE SIDE OF THE VAN, STILL EVEN  
17 WITH THE VAN BUT TOWARDS THE FRONT, YES.  
18 Q AND YOU OBSERVED HIM DO THIS; IS THAT RIGHT?  
19 A YES, I DID.  
20 Q DID THAT TAKE ALL OF FIVE TO SEVEN MINUTES?  
21 A APPROXIMATELY, YES.  
22 Q FOR FIVE TO SEVEN MINUTES HE LEANED INSIDE  
23 THE VAN LOOKING?  
24 A NO. THAT'S -- HE LEANED INSIDE THE VAN  
25 JUST BRIEFLY AND GOT RIGHT BACK OUT.  
26 Q DID HE WALK AROUND THE VAN AT ALL?  
27 A I DON'T BELIEVE THAT HE WALKED ALL THE WAY  
28 AROUND THE VAN WHILE WE WERE PARKED THERE, NO.  
29 Q YOU SAY YOU DON'T BELIEVE THAT HE DID. DO  
30 YOU RECALL WHETHER OR NOT HE DID?  
31 A TO THE BEST OF MY KNOWLEDGE, HE DID NOT WALK  
32 AROUND THE VAN.



1 Q IS IT POSSIBLE THAT HE COULD HAVE AND YOU  
2 JUST DON'T RECALL THAT?

3 A IT'S POSSIBLE.

4 Q WHEN THE VAN FIRST PULLED UP, I THINK IT  
5 WAS YOUR TESTIMONY, THAT THIS MAN WENT TO THE DRIVER'S SIDE OF  
6 THE VAN; IS THAT RIGHT?

7 A THAT'S CORRECT.

8 Q ALL RIGHT.

9 AND YOUR HUSBAND THEN GOT OUT OF THE  
10 VAN OR WAS HE ALREADY OUT?

11 A NO. WHEN HE WENT AROUND THE DRIVER'S SIDE  
12 THAT WAS WHEN WE FIRST PULLED INTO CAESARS PALACE AND NOBODY GOT  
13 OUT OF THE VAN AT THAT TIME.

14 Q I SEE.

15 A THAT'S WHEN HE STOPPED, JUST IDENTIFIED  
16 HIMSELF, AND THEN WE PULLED FORWARD.

17 Q I SEE.

18 HE DID TELL YOU, EITHER AT THAT TIME OR  
19 WHEN HE TALKED TO YOU ON THE PHONE, THAT HE HAD SEEN THE VAN ON  
20 A PRIOR OCCASION?

21 A YES, HE DID.

22 Q DID HE INDICATE THAT HE HAD SEEN IT ONCE  
23 OR MORE THAN ONCE?

24 A NO, HE DID NOT. HE JUST SAID HE LIKED IT  
25 FROM THE OUTSIDE BUT COULD NOT SEE EXACTLY WHAT IT WAS LIKE  
26 INSIDE.

27 Q HE SAID HE COULDN'T SEE EXACTLY WHAT IT WAS  
28 LIKE INSIDE?

29 A SAID SOMETHING TO THAT EFFECT, YES.

30 Q WERE YOU EVER ASKED, MRS. MONAHAN, TO GIVE  
31 A PHYSICAL DESCRIPTION OF THIS INDIVIDUAL YOU SAW PRIOR TO THE  
32 TIME YOU WERE SHOWN THE PHOTOGRAPH INSIDE THE POLICE OFFICE?

1 A YES, I WAS.

2 Q CAN YOU GIVE ME THE DESCRIPTION YOU GAVE THE  
3 POLICE?

4 A TO THE BEST OF MY KNOWLEDGE, I TOLD THEM HE  
5 WAS MEDIUM STATURE; APPROXIMATELY FIVE FOOT EIGHT; I DON'T RECALL  
6 EXACTLY THE WEIGHT THAT I GAVE THEM AT THE TIME, BUT SOMEWHERE  
7 AROUND 170 POUNDS; I TOLD THEM THAT I THOUGHT HE HAD SOME TYPE  
8 OF FACIAL HAIR, LONG SIDEBURNS.

9 Q DO YOU RECALL WHETHER HE HAD A MOUSTACHE?

10 A NO, I DO NOT.

11 Q IS THERE ANYTHING IN THE DESCRIPTION THAT  
12 YOU GAVE THE POLICE -- DID YOU COMPLETE THAT? WAS THERE ANYTHING  
13 ELSE YOU TOLD THEM?

14 A I TOLD THEM THAT HE WAS WEARING A LEATHER  
15 JACKET; SOME TYPE OF CASUAL PANTS, EITHER JEANS OR LEVI-TYPE  
16 PANTS; TENNIS SHOES; AND WAS CARRYING A WALKIE-TALKIE.

17 Q THIS WALKIE-TALKIE THAT YOU SAW HIM CARRY-  
18 ING, YOU RECOGNIZED IT AS A WALKIE-TALKIE AT THE TIME?

19 A YES, I DID.

20 Q I SEE.

21 AND IT WAS IN HIS HAND; IS THAT RIGHT?

22 A YES, IT WAS.

23 Q I SEE.

24 AT WHAT POINT DID HE PUT IT IN HIS  
25 WAISTBAND OR ON HIS BELT?

26 A I DON'T RECOLLECT SEEING HIM DO THAT, BUT  
27 I BELIEVE HE WAS WEARING IT ON HIS BELT.

28 Q YOU DIDN'T SEE HIM PUT IT ON HIS WAISTBAND?

29 A NO, I DID NOT. HE WAS CARRYING IT WHEN WE  
30 FIRST PULLED INTO THE PARK -- WHEN WE FIRST PULLED IN AND HE  
31 FLAGGED US DOWN. LATER ON WHILE THE VAN WAS PARKED AND HE WAS  
32 LOOKING AT IT HE WAS WEARING IT ON HIS BELT OR WAISTBAND.

1 Q I SEE. I SEE.

2 AFTER YOU HAD -- YOUR HUSBAND HAD PARKED  
3 THE VAN AND THE DOORS HAD BEEN OPENED AND THE GENTLEMAN CAME UP  
4 TO THE VAN, INTRODUCED HIMSELF, WHATEVER, DID HE STILL HAVE THE  
5 WALKIE-TALKIE IN HIS HAND?

6 A NO. HE HAD IT ON HIS WAISTBAND.

7 Q I SEE.

8 WOULD YOU -- HOW DID HIS HAIR COMPARE  
9 THEN TO NOW AS YOU SEE HIM IN COURT TODAY?

10 A I WOULD SAY --

11 Q WOULD YOU SAY THAT --

12 A I WOULD SAY THAT IT MAY HAVE BEEN A LITTLE  
13 BIT LONGER.

14 Q WOULD YOU SAY CONSIDERABLY LONGER OR JUST  
15 A FRACTION OF AN INCH LONGER, PERHAPS?

16 A I'D SAY IT JUST APPEARED A LITTLE BIT BUSH-  
17 IER, BUT I DON'T KNOW HOW MUCH LONGER IT WOULD HAVE TO BE TO  
18 LOOK LIKE THAT. IT WASN'T LONG, YOU KNOW, OVER HIS, YOU KNOW,  
19 HIS SHOULDER OR ANYTHING LIKE THAT.

20 Q WOULD YOU SAY THAT HE HAD AN AFRO AT THE  
21 TIME THAT YOU SAW HIM?

22 A I'D SAY A SHORT AFRO.

23 Q A SHORT AFRO. I SEE.

24 THIS C.B. RADIO THAT WAS IN THE VAN,  
25 CAN YOU -- IN DESCRIBING IT, I THINK YOU -- YOUR DESCRIPTION  
26 CONSISTED OF IT HAVING SEVERAL -- I THINK YOU SAID IT HAD SEVERAL  
27 SWITCHES OR SOMETHING TO THAT EFFECT. COULD YOU GIVE US A LITTLE  
28 MORE DETAIL ON THAT C.B.? DO YOU RECALL THE MODEL?

29 A NO. I DON'T RECALL THE UNIT ITSELF BEING --  
30 HAVING ANY -- LOOKING UNUSUAL AT ALL. IT WAS MOUNTED IN AN OAK  
31 PANEL AND NEXT TO IT THERE WERE APPROXIMATELY FOUR SWITCHES  
32 MOUNTED NEXT TO THAT.

1 Q YOU DON'T RECALL THE BRAND NAME?  
2 A NO, I DO NOT.  
3 Q WHAT COLOR WAS IT?  
4 A I DON'T RECALL.  
5 Q HOW LONG HAD YOU -- HAD YOUR HUSBAND OWNED  
6 THIS VAN FOR OVER A YEAR?  
7 A YES, HE DID.  
8 Q YOU DON'T RECALL THE COLOR OF THAT C.B.  
9 RADIO?  
10 A NO. WE DIDN'T USE IT VERY OFTEN. I DID  
11 NOT DRIVE -- VERY SELDOM DID I DRIVE THE VAN. SO I NEVER PAID  
12 THAT MUCH ATTENTION TO IT.  
13 Q WHEN YOU TESTIFIED PREVIOUSLY BEFORE THE  
14 GRAND JURY DO YOU RECALL TESTIFYING THAT KEITH GOT INTO THE VAN  
15 WITH YOUR HUSBAND WHERE THEY DISCUSSED THE POSSIBLE PURCHASE OF  
16 THAT VAN?  
17 A NO, I DO NOT.  
18 Q DID HE GET INSIDE THE VAN?  
19 A NO, HE DID NOT.  
20 Q WERE YOU WITHIN -- I ASSUME YOU WERE IN  
21 VERY CLOSE PROXIMITY TO YOUR HUSBAND AND THIS MAN KEITH DURING  
22 THE TIME YOU MET HIM AT CAESARS PALACE; IS THAT CORRECT?  
23 A THAT'S CORRECT.  
24 Q ALL RIGHT. I SEE.  
25 WERE YOU CLOSE ENOUGH TO HEAR WHAT THEY  
26 WERE TALKING ABOUT AT ALL TIMES?  
27 A YES, I WAS.  
28 Q AND THEY DISCUSSED, I THINK YOUR TESTIMONY  
29 WAS, THAT THIS GENTLEMAN KEITH EXPRESSED HIS INTEREST IN THE VAN.  
30 A YES. THAT'S CORRECT.  
31 Q ALL RIGHT. O.K.  
32 DO YOU RECALL, DURING THE TIME THAT

1 YOUR HUSBAND WAS TALKING TO THIS MAN, DO YOU EVER RECALL YOUR  
2 HUSBAND TELLING THIS GENTLEMAN THAT HE HAD, YOUR HUSBAND, HAD A  
3 7:30 APPOI- -- DENTAL APPOINTMENT -- EXCUSE ME, STRIKE THAT. I  
4 WILL TRY AND REPHRASE IT.

5 DO YOU RECALL YOUR HUSBAND TELLING THIS  
6 MAN THAT HE, YOUR HUSBAND, HAD A 7:30 APPOINTMENT AT HIS OFFICE  
7 ON THE FOLLOWING MORNING?

8 A I DON'T RECALL HIM SAYING 7:30 SPECIFICALLY.  
9 HE TOLD HIM THAT HE WOULD BE IN THE OFFICE ALL DAY AND THAT HE  
10 STARTED AT 7:00 O'CLOCK.

11 Q IN FACT, HE TOLD HIM -- YOUR HUSBAND TOLD  
12 THIS MAN THAT IT WOULD BE BETTER IF HE CAME IN DURING THE EARLY  
13 MORNING HOURS; IS THAT CORRECT?

14 A HE TOLD HIM IT WOULD BE BETTER TO COME IN  
15 IN THE MORNING.

16 Q I SEE.

17 A HE HAD SEVERAL OPENINGS IN HIS SCHEDULE AND  
18 HE WAS BOOKED RATHER LIGHT IN THE MIDDLE OF THE MORNING. BUT I  
19 DON'T THINK HE MADE ANY SPECIFIC MID-MORNING/EARLY-MORNING. HE  
20 SAID COME BY IN THE MORNING SOMETIME.

21 THE COURT: COUNSEL, APPROACH THE BENCH.  
22 (WHEREUPON, SIDE BAR CONFERENCE  
23 WAS HELD AT THE BENCH; NOT  
24 REPORTED.)

25 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE  
26 WILL TAKE OUT AFTERNOON RECESS AT THIS TIME AND WE WILL BE IN  
27 RECESS IN THIS MATTER UNTIL 9:45 TOMORROW MORNING.

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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 COM-  
MENTARY 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 UNTIL 9:45 T MORROW  
MORNING.

(WHEREUPON, AT THE HOUR OF  
5:00 P.M., THE EVENING RECESS  
WAS HAD IN THE PROCEEDINGS.)

**CERTIFIED COPY**

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

DATE: **JUN 18 1991**  
LORETTA B. GORDON, County Clerk and Clerk  
of the Eighth Judicial District Court, in and  
for the County of Clark, State of Nevada  
By: *[Signature]* Deputy

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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

BY  DEPUTY

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  
THURSDAY, APRIL 14, 1983, AT 10:10 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

1 LAS VEGAS, NEVADA, THURSDAY, APRIL 14, 1983, AT 10:10 A.M.

2 \* \* \* \* \*

3 THE COURT: WILL COUNSEL STIPULATE TO THE  
4 PRESENCE OF THE JURY?

5 MR. SEATON: YES, YOUR HONOR, THE STATE WILL.

6 MR. COOPER: YES, YOUR HONOR.

7 THE COURT: ALL RIGHT. THE WITNESS YOU HAD ON  
8 THE STAND.

9 MR. HARMON: MRS. MONAHAN WAS ON THE STAND.

10 THE COURT: ALL RIGHT. MRS. MONAHAN, COME FORWARD  
11 PLEASE.

12 YOU'VE BEEN PREVIOUSLY SWORN. YOU ARE STILL  
13 UNDER OATH.

14 PROCEED, COUNSEL.

15 MR. COOPER: THANK YOU, YOUR HONOR.

16  
17 CROSS EXAMINATION CONTINUED  
18

19 BY MR. COOPER:

20  
21 Q MRS. MONAHAN, I THINK WHEN WE CONCLUDED  
22 YESTERDAY I WAS INQUIRING OF YOU WHETHER YOU OVERHEARD CONVER-  
23 SATIONS BETWEEN YOUR HUSBAND AND MR. -- THE GENTLEMAN WHO IDEN-  
24 TIFIED HIMSELF AS KEITH. AND I THINK YOUR ANSWER WAS THAT, YES,  
25 YOU DID; IS THAT RIGHT?

26 A YES, IT IS.

27 Q AND YOU AT NO TIME HEARD YOUR HUSBAND TELL  
28 THIS MAN THAT YOUR HUSBAND HAD A 7:30 APPOINTMENT THE FOLLOWING  
29 MORNING; IS THAT RIGHT?

30 A NOT 7:30 SPECIFICALLY, NO.

31 Q DO YOU RECALL YOUR HUSBAND TELLING THIS MAN  
32 THAT HE HAD AN APPOINTMENT SCHEDULED AT ANY TIME THE FOLLOWING

1499



1 MORNING?

2 A I HEARD MY HUSBAND SAY THAT HE WOULD BE IN  
3 THE OFFICE STARTING AT 7:00 THE NEXT MORNING.

4 Q AND, IN FACT, YOUR HUSBAND SUGGESTED THAT  
5 THE MAN COME IN EARLY IN THE MORNING BECAUSE YOUR HUSBAND WOULD  
6 BE FREE AT THAT TIME?

7 A HE SUGGESTED THAT HE COME IN IN THE MORNING,  
8 NOT NECESSARILY EARLY MORNING.

9 Q DID HE SAY WHY HE PREFERRED HIM COMING IN  
10 IN THE MORNING?

11 A BECAUSE HE SAID HIS SCHEDULE WOULD BE  
12 LIGHTER IN THE MORNING.

13 Q I SEE.

14 DO YOU KNOW OF YOUR OWN KNOWLEDGE  
15 WHETHER YOUR HUSBAND HAD APPOINTMENTS SCHEDULED FOR 7:00 O'CLOCK  
16 AND 7:30 THE FOLLOWING MORNING?

17 A TO THE BEST OF MY KNOWLEDGE, YES HE DID.

18 Q I SEE.

19 NOW, YOU'VE -- DID YOU HAVE OCCASION TO

20 DISCUSS YOUR TESTIMONY, WHAT YOU WOULD RECALL, WHAT YOU WOULD  
21 RECALL WHAT YOU TESTIFIED WHEN YOU CAME TO TRIAL? DID YOU HAVE  
22 AN OCCASION TO DISCUSS THAT WITH ANYONE FROM THE DISTRICT  
23 ATTORNEY'S OFFICE?

24 A I'M SORRY. WOULD YOU REPEAT THAT QUESTION?

25 Q DID YOU HAVE OCCASION TO DISCUSS YOUR TESTI-  
26 MONY WITH ANYONE IN THE DISTRICT ATTORNEY'S OFFICE BEFORE YOU  
27 CAME TO COURT TO TESTIFY YESTERDAY?

28 A YES. I TALKED TO THEM ON A NUMBER OF  
29 OCCASIONS.

30 Q I SEE.

31 WHO DID YOU TALK TO?

32 A MR. MEL HARMON AND DAN SEATON.

1 Q ON DIRECT EXAMINATION YESTERDAY YOU WERE  
2 ASKED A SERIES OF QUESTIONS REGARDING WHETHER -- EXCUSE ME,  
3 WHETHER THIS MAN KEITH HAD BEEN IN A POSITION TO PLACE -- TO GRAB  
4 THE DOOR KNOBS AND TOUCH OTHER PARTS OF THE VAN; DO YOU RECALL  
5 THAT?

6 A YES, SIR.

7 Q YOU STATED THAT HE WAS NOT IN A POSITION TO,  
8 OR EXCUSE ME, YOU TESTIFIED THAT AT NO TIME DID YOU SEE THIS MAN  
9 TOUCH THE DOOR HANDLES ON THE VAN; IS THAT RIGHT? THE DOOR KNOBS?

10 A THAT'S CORRECT.

11 Q I SEE.

12 NOW, THIS WAS AT ABOUT 8:00 O'CLOCK IN  
13 THE EVENING; IS THAT RIGHT?

14 A THAT'S RIGHT.

15 Q LET ME ASK YOU, MRS. MONAHAN, DID IT APPEAR  
16 TO YOU THAT THIS MAN WAS GENUINELY INTERESTED IN PURCHASING THE  
17 VAN?

18 A YES. VERY MUCH SO.

19 Q I MEAN YOU HAD NO REASON AT THAT TIME TO  
20 SUSPECT THAT THIS MAN, THAT HIS INTENTIONS WERE ANYTHING BUT  
21 HONORABLE, DID YOU?

22 A THAT'S CORRECT.

23 Q IS IT TRUE TO SAY THEN THAT YOU DIDN'T KEEP  
24 YOUR EYES RIVETED ON THIS MAN DURING THE ENTIRE TIME THAT HE  
25 WAS THERE WITH YOUR HUSBAND?

26 A EXCUSE ME. TO THE BEST OF MY KNOWLEDGE HE  
27 WAS ALWAYS WITHIN MY SIGHT. I WAS, YOU KNOW, STANDING ASIDE  
28 AND TALKING, YOU KNOW, TO THE GIRLS A LITTLE BIT ALSO, AT THE  
29 SAME TIME ALSO LISTENING IN ON THE CONVERSATION OF HE AND MY  
30 HUSBAND. I CAN'T SAY THAT I ACTUALLY STARED AT HIM THE WHOLE  
31 TIME WE WERE SHOWING THE VAN.

32 Q SO IT'S SAFE TO SAY -- IT'S TRUE TO SAY THEN

1501

1 THAT THERE WERE TIMES, EVEN FOR JUST A BRIEF SECOND, THAT YOU  
2 WEREN'T LOOKING AT THIS MAN; IS THAT RIGHT?

3 A THAT'S RIGHT.

4 Q WHEN THE VAN STOPPED AND THE DOORS WERE  
5 OPENED AND THIS MAN CAME OUT, I GATHER FROM THE DIAGRAM THAT WAS  
6 DRAWN YESTERDAY THAT YOU WERE STOPPED RIGHT AT -- ON THE -- ON  
7 THE ROADWAY THAT GOES INTO CAESARS PALACE THERE; IS THAT RIGHT?

8 A NO. WE WERE NOT. WE WERE STOPPED AT THE  
9 CURB AT THE SIDE ENTRANCE OF CAESARS PALACE.

10 Q WAS THERE TRAFFIC COMING BACK AND FORTH PAST  
11 WHERE YOU WERE STOPPED THERE?

12 A YES, THERE WAS.

13 Q WAS THE TRAFFIC HEAVY OR LIGHT; DO YOU  
14 RECALL?

15 A I DON'T RECALL THAT IT WAS FAIRLY HEAVY.

16 Q BUT YOU WERE ENGAGING IN CONVERSATION WITH  
17 YOUR SISTER-IN-LAW, OR EXCUSE ME, YOUR SISTER AND YOUR STEP-  
18 DAUGHTER, WEREN'T YOU?

19 A THAT'S CORRECT.

20 Q DID YOU HAVE OCCASION TO GLANCE TOWARDS THE  
21 STRIP AWAY FROM CAESARS PALACE WHILE THIS WAS GOING ON?

22 A I DON'T RECALL THAT I WOULD HAVE. WE WERE  
23 AT THAT POINT STANDING PRETTY FAR AWAY FROM THE STRIP ITSELF.  
24 IN FACT, WE WERE STANDING RIGHT NEXT TO A COLUMN ON THE SIDE OF  
25 CAESARS PALACE THERE.

26 Q WHICH COLUMN WAS THAT THAT YOU WERE STAND-  
27 ING NEXT TO?

28 A JUST THE SIDE.

29 Q WOULD THAT BE NEAR THE NORTH ENTRANCE OF  
30 CAESARS PALACE?

31 A IT WAS AT THAT NORTH SIDE ENTRANCE, BUT IT  
32 WAS, UH, NOT RIGHT IN FRONT OF THE ENTRYWAY.

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Q I SEE. I SEE.

AND IT WAS DARK OUTSIDE, WASN'T IT?

A I DON'T REALLY RECALL. WE'RE UNDER A LOT OF LIGHTS AT THE TIME.

Q WELL, IT WAS DARK ENOUGH TO TURN THE LIGHT ON IN THE VAN SO THAT THIS MAN COULD SEE WHAT THE VAN LOOKED LIKE INSIDE, WASN'T IT?

A WELL, THE LIGHT'S ON -- IN THE VAN ARE SPOT-LIGHT-TYPE LIGHTS THAT REALLY LIGHT IT UP. I THINK WE WOULD HAVE TURNED THAT ON REGARDLESS WHETHER IT WAS DARK OR LIGHT.

Q IS THAT YOU SAY THAT YOU WOULD HAVE TURNED IT ON IN BROAD DAYLIGHT?

A POSSIBLY TO SEE THE INSIDE OF THE VAN BETTER.

Q EVEN WITH THE DOORS OPEN?

A CORRECT.

Q CAN YOU STATE, MRS. MONAHAN, WITH ABSOLUTE CERTAINTY THAT THIS MAN NEVER TOUCHED SAY THE RIGHT DOOR -- THE DOOR KNOB ON THE RIGHT SIDE OF THE VAN?

A YES, I CAN.

Q CAN YOU STATE WITH EQUAL CERTAINTY THAT HE NEVER TOUCHED THE EXTERIOR DRIVER'S REAR VIEW MIRROR ON THE VAN?

A I'M SORRY.. TOUCH THE --

Q THE REAR -- THE DRIVER'S --

A ON THE DRIVER'S SIDE?

Q YES.

A THE ONLY OPPORTUNITY THAT HE WOULD HAVE HAD WOULD BE THE FIRST TIME WE STOPPED WHEN HE FLAGGED US DOWN. BUT TO THE BEST OF MY KNOWLEDGE, HE DID NOT.

Q SO YOU AREN'T SURE THEN THAT HE DID NOT TOUCH THE -- THAT MIRROR, AS YOU WEREN'T -- YOU AREN'T EQUALLY SURE THEN. YOU MEAN YOU STATED THAT YOU'RE CERTAIN THAT HE DIDN'T TOUCH THE DOOR KNOB ON THE RIGHT SIDE DOOR; IS THAT CORRECT?

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1 A THAT'S CORRECT.

2 Q BUT YOU AREN'T AS CERTAIN THAT HE DIDN'T  
3 TOUCH THE DRIVER'S REAR VIEW MIRROR, ARE YOU?

4 A THAT'S CORRECT.

5 Q WHAT ABOUT THE FRONT BUMPER ON THAT VAN?  
6 CAN YOU STATE WITH ABSOLUTE CERTAINTY THAT HE NEVER TOUCHED THE  
7 FRONT BUMPER ON THAT VAN?

8 A YES, I CAN.

9 Q WHAT ABOUT THE INTERIOR OF THE DRIVER'S  
10 DOOR WINDOW, CAN YOU STATE WITH EQUAL CERTAINTY THAT HE NEVER  
11 TOUCHED THAT?

12 MR. HARMON: YOUR HONOR, MAY WE HAVE CLARIFICATION.  
13 ARE THESE QUESTIONS DIRECTED TO THE TIME SPAN OF MARCH 26TH,  
14 1980, AT CAESARS PALACE IN HER PRESENCE?

15 MR. COOPER: YES, YOUR HONOR, THEY ARE.

16 THE COURT: ALL RIGHT.

17 THE WITNESS: WILL YOU REPEAT THE QUESTION.

18

19 BY MR. COOPER:

20

21 Q CAN YOU STATE WITH ABSOLUTE CERTAINTY THAT  
22 HE NEVER TOUCHED THE INTERIOR OF THE DRIVER'S DOOR WINDOW?

23 A I WOULD SAY WITH CERTAINTY HE DID NOT WHILE  
24 WE WERE PARKED AT THE CURB.

25 Q IN YOUR DISCUSSIONS YOU HAD WITH MEMBERS OF  
26 THE DISTRICT ATTORNEY'S OFFICE BEFORE COMING IN COURT TO TESTIFY,  
27 WERE YOU TOLD, MRS. MONAHAN, OF HOW THIS WHOLE BUSINESS OF WHERE  
28 THE DEFENDANT MIGHT HAVE TOUCHED AND SO FORTH, HOW THAT MIGHT  
29 TIE INTO THIS CASE?

30 A I'D SAY -- I'D SAY I WAS MADE AWARE AT SOME  
31 TIME OR ANOTHER PREVIOUS -- AFTER I MADE AN OFFICIAL STATEMENT TO  
32 THE POLICE.

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Q UH-HUH.

A THREE YEARS AGO.

Q SO YOU WERE TOLD THEN HOW THIS MIGHT BE  
SIGNIFICANT IN THIS CASE?

A YES, I WAS.

Q YOU OF COURSE DON'T KNOW WHETHER THIS MAN  
KEITH KEPT THE APPOINTMENT THAT WAS SCHEDULED WITH YOUR HUSBAND  
OR NOT, DO YOU?

A NO, I DO NOT.

Q AND OF COURSE YOU DON'T KNOW THAT THE  
GENTLEMAN SEATED TO MY LEFT WAS RESPONSIBLE FOR THE DEATH OF  
YOUR HUSBAND, DO YOU?

A I DO NOT.

Q REGARDING THE PHOTOGRAPHIC LINEUP THAT YOU  
WERE SHOWN, MRS. MONAHAN, IT'S YOUR TESTIMONY THAT YOU WERE  
SHOWN THAT LINEUP AT YOUR HOME; IS THAT RIGHT?

A THAT'S CORRECT.

Q AND THAT YOUR SISTER AND YOUR STEP-DAUGHTER  
WERE PRESENT AT THE TIME?

A THEY WERE NOT PRESENT IN THE ROOM. THE  
OFFICER ASKED THEM TO LEAVE THE ROOM.

Q WERE YOU PRESENT WHEN THE PHOTOGRAPHIC LINE-  
UP WAS SHOWN TO YOUR SISTER?

A NO, I WAS NOT.

Q DID YOU HAVE OCCASION TO TALK TO YOUR SISTER  
AFTER YOU, YOUR SISTER AND YOUR STEP-DAUGHTER HAD VIEWED THIS  
PHOTOGRAPHIC LINEUP?

A AFTER ALL OF US HAD VIEWED IT, YES.

Q AND YOUR STEP-DAUGHTER VIEWED IT AS WELL;  
IS THAT RIGHT?

A THAT'S CORRECT.

Q WHEN THE POLICE OFFICER CALLED YOU AND TOLD

1505

1 YOU THAT HE WANTED TO COME OVER AND WANTED YOU TO LOOK AT SOME  
2 PHOTOGRAPHS, IS THAT ALL THAT HE TOLD YOU?

3 A YES, IT IS.

4 Q DID HE TELL YOU WHAT KIND OF PHOTOGRAPHS HE  
5 HAD THAT HE WAS GOING TO SHOW YOU?

6 A NO, HE DID NOT.

7 Q HE DIDN'T TELL YOU THAT -- THAT THEY HAD A  
8 POSSIBLE SUSPECT, THAT THEY WANTED YOU TO TAKE A LOOK AT SOME  
9 PHOTOGRAPHS?

10 A NO, HE DID NOT.

11 Q DID HE MAKE ANY SUCH STATEMENT WHEN HE CAME  
12 TO YOUR HOME, PRIOR TO SHOWING YOU THE PHOTOGRAPHS?

13 A I'M SORRY.

14 Q WHEN HE CAME TO YOUR HOME, TELL ME WHAT  
15 HAPPENED WHEN HE ARRIVED, THE POLICE OFFICER.

16 A HE JUST ARRIVED, ASKED MY SISTER BARBARA  
17 AND MARY CATHERINE TO LEAVE THE ROOM, TOLD ME HE HAD SOME PHOTO-  
18 GRAPHS HE WANTED ME TO LOOK AT. HE LAID THEM OUT ON THE DINING  
19 ROOM TABLE AND THAT'S WHEN I VIEWED THEM.

20 Q AND YOU SELECTED PHOTOGRAPH NUMBER FIVE?

21 A THAT'S CORRECT.

22 Q WERE THOSE PHOTOGRAPHS NUMBERED AT THE TIME  
23 THEY WERE SHOWN TO YOU?

24 A I DON'T RECALL WHETHER THEY WERE OR NOT.

25 Q THE PHOTOGRAPHS THAT YOU WERE SHOWN YESTER-  
26 DAY, THEY ALL HAVE A NUMBER ON THEM, ON THE FRONT OF THEM; IS  
27 THAT RIGHT?

28 A YES, THEY DO.

29 Q AND THEY ALL HAVE THE NUMBERS ON SOME WHITE  
30 TAPE, ADHESIVE TAPE, TO THE PHOTOGRAPHS; IS THAT CORRECT?

31 A THAT'S CORRECT.

32 Q WERE THESE WHITE STRIPS THAT THE NUMBERS

1506

1 WERE WRITTEN ON, WERE THEY ON THESE PHOTOGRAPHS WHEN THEY WERE  
2 SHOWN TO YOU?

3 A I DON'T RECALL WHETHER THEY WERE OR NOT.  
4 THE FIRST TIME I WAS AWARE OF THE NUMBER ON THAT PARTICULAR  
5 PHOTOGRAPH WAS WHEN I VIEWED THEM AGAIN IN FRONT OF THE GRAND  
6 JURY.

7 Q YOU DON'T RECALL THOSE NUMBERS BEING ON THE  
8 PHOTOGRAPHS WHEN THEY WERE SHOWN TO YOU AT YOUR HOME BY THE  
9 POLICE OFFICER?

10 A I DON'T RECALL WHETHER THEY WERE OR NOT.

11 Q WHEN YOU WERE LOOKING AT THESE PHOTOGRAPHS  
12 DID YOU THINK THAT THESE WERE PHOTOGRAPHS OF MEN WHO MIGHT HAVE  
13 HAD SOME INVOLVEMENT WITH THE POLICE AT SOME TIME OR ANOTHER?

14 A I ASSUMED THAT THEY WOULD BE.

15 Q AND IT'S TRUE THAT IN THE PHOTOGRAPHS THAT  
16 YOU WERE SHOWN, PHOTOGRAPH NUMBER FIVE, THE PHOTOGRAPH OF  
17 MR. HOWARD, IS THE ONLY ONE THAT -- THAT HE'S THE ONLY -- THAT  
18 HIS PHOTOGRAPH IS THE ONLY ONE WHEREIN HE'S GOT ON SOME KIND OF  
19 ORANGISH- OR RUST-COLORED OUTER GARMENT; ISN'T IT?

20 A YES, I BELIEVE IT IS.

21 Q AND THE MAN YOU MET AT CAESARS PALACE WAS  
22 WEARING A RUST-COLORED OUTER GARMENT, WASN'T HE?

23 A HE WAS WEARING A LEATHER JACKET.

24 Q RUST-COLORED?

25 A YES.

26 Q THE WATCH THAT YOU TESTIFIED YOUR HUSBAND  
27 WORE ON THE MORNING THAT YOU LAST SAW HIM, CAN YOU DESCRIBE THAT  
28 WATCH FOR US, MRS. MONAHAN?

29 A IT'S A GOLD SEIKO WATCH, HAS A HEAVY MESH-  
30 TYPE LITTLE GOLD BAND ON IT, AND I BELIEVE A SILVER FACING.

31 Q DOES IT HAVE ROMAN NUMERALS OR YOUR STANDARD?

32 A I BELIEVE IT HAD THE ROMAN NUMERALS, TO THE

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1 BEST OF MY RECOLLECTION.

2 Q O.K.

3 DOES IT HAVE A CALCULATOR ON THE WATCH?

4 A YES, I BELIEVE IT DID.

5 Q IS THERE ANYTHING ELSE ABOUT THE WATCH THAT  
6 YOU COULD TELL US?

7 A I DON'T BELIEVE SO.

8 Q DO YOU REMEMBER WHETHER IT HAD ANY JEWELS  
9 ON THE FACE OF IT?

10 A NO, I DON'T BELIEVE IT DID.

11 Q YOU TESTIFIED THAT WHEN THE MAN KEITH FIRST  
12 APPROACHED YOU AND YOUR HUSBAND'S VAN, THAT YOU NOTICED IN HIS  
13 HAND A WALKIE-TALKIE; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q I THINK YOUR TESTIMONY WAS YESTERDAY --  
16 YESTERDAY WAS THAT WHEN YOU FINALLY STOPPED AND OPENED THE VAN  
17 UP AND HE APPROACHED THE VAN THE WALKIE-TALKIE WAS IN HIS WAIST-  
18 BAND; IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q IS IT -- AM I ACCURATE IN SAYING THAT IT WAS  
21 ONLY FOR A BRIEF SECOND OR SO THAT YOU SAW THIS WALKIE-TALKIE IN  
22 THE MAN'S HAND?

23 A I'D SAY PROBABLY TEN SECONDS.

24 Q WHEN DID YOU FIRST OBSERVE IT? WAS IT WHILE  
25 HE WAS STANDING AT THE VAN OR AS HE WAS COMING UP TO THE VAN?

26 A I OBSERVED IT WHILE HE WAS STANDING THERE,  
27 WHEN HE FLAGGED US DOWN.

28 Q HE FLAGGED YOU DOWN BY WAVING; IS THAT RIGHT?

29 A THAT'S CORRECT.

30 Q WAS HE WAVING WITH THE HAND THAT THE WALKIE-  
31 TALKIE WAS IN?

32 A I DON'T RECALL.

1 Q DO YOU RECALL IN WHICH HAND HE CARRIES THE  
2 WALKIE-TALKIE?

3 A NO, I DO NOT.

4 Q HOW FAR WOULD YOU HAVE BEEN FROM HIM WHEN  
5 YOU FIRST OBSERVED THIS WALKIE-TALKIE?

6 A PROBABLY THE FIRST TIME ABOUT 50 FEET FROM  
7 HIM.

8 Q WHAT COULD YOU TELL ABOUT THE WALKIE-TALKIE  
9 AT THAT DISTANCE?

10 A NOTHING IN PARTICULAR.

11 Q IN FACT, AT THAT DISTANCE YOU COULDN'T EVEN  
12 BE SURE IT WAS A WALKIE-TALKIE, COULD YOU?

13 A I THINK I COULD BE RELATIVELY SURE IT WAS,  
14 YES.

15 Q WHY?

16 A BECAUSE THAT'S WHAT MADE HIM LOOK LIKE A  
17 SECURITY GUARD TO ME, THE FACT THAT HE HAD THIS RADIO IN HIS  
18 HAND.

19 Q COULD YOU TELL THE COLOR OF THE RADIO FROM  
20 THAT DISTANCE?

21 A NO, NOT AT THAT POINT I DON'T THINK.

22 Q SO YOU FIRST OBSERVED IT AT APPROXIMATELY  
23 50 FEET OR SO; IS THAT RIGHT?

24 A THAT'S CORRECT.

25 Q AND WHEN YOU STOPPED INITIALLY, WHEN YOUR  
26 HUSBAND STOPPED THE VAN FOR THE FIRST TIME, THE PERSON CAME UP  
27 TO THE VAN; IS THAT RIGHT?

28 A THAT'S CORRECT.

29 Q TO THE DRIVER'S SIDE; IS THAT RIGHT?

30 A YES, SIR.

31 Q I SEE.

32 DID HE TALK TO YOUR HUSBAND AT THAT --

1509

1 POINT?

2 A YES, HE DID.

3 Q DID YOU SEE THE WALKIE-TALKIE IN HIS HAND?

4 A YES, I DID.

5 Q WAS HE CARRYING IT UP ABOVE HIS -- ABOVE  
6 HIS WAIST?

7 A HE WAS FAIRLY ACTIVE WITH HIS HANDS. I  
8 CAN'T SAY HE WAS HOLDING IT UP IN THE AIR, BUT HE WAS MOVING  
9 AROUND ALOT, WHICH MADE ME AWARE THAT HE HAD IT IN HIS HAND.

10 Q DID HE LEAN AGAINST THE VAN AT THAT TIME?

11 A NOT THAT I CAN RECALL.

12 Q IT'S POSSIBLE THEN THAT HE COULD?

13 A IT'S POSSIBLE.

14 Q AND I THINK YOUR TESTIMONY IS THAT IT WAS  
15 FOR ABOUT TEN SECONDS OR SO THAT HE WAS RIGHT AT THE VAN THERE  
16 WHEN YOU STOPPED INITIALLY; IS THAT RIGHT?

17 A IT WAS LONG ENOUGH FOR MY HUSBAND TO SAY,  
18 "ARE YOU KEITH?" AND HE SAID, "YES. I WOULD RECOGNIZE THAT VAN  
19 ANYWHERE. WHY DON'T YOU PULL UP A LITTLE BIT."

20 Q O.K.

21 NOW, YOU DIDN'T SEE THAT -- THIS --  
22 WHAT YOU'VE DESCRIBED AS A RADIO, TWO-WAY RADIO, UNTIL HE CAME  
23 UP TO THE VAN AFTER YOU STOPPED THE LAST TIME; IS THAT RIGHT?

24 A I'M SORRY.

25 Q YOU DIDN'T SEE THE RADIO AGAIN UNTIL YOU  
26 STOPPED THE VAN FOR THE LAST TIME; IS THAT RIGHT?

27 A THAT'S CORRECT.

28 Q AT THAT POINT IT WAS IN HIS WAISTBAND; IS  
29 THAT CORRECT?

30 A YES.

31 Q WAS IT IN FRONT OR TO THE LEFT SIDE OR THE  
32 RIGHT SIDE OR IN THE REAR WAISTBAND?

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1 A TO THE BEST OF MY RECOLLECTION, IT WAS LIKE  
2 POSITIONED TOWARDS THE FRONT.  
3 Q IT WAS TOWARDS THE FRONT?  
4 A NOT THE VERY FRONT, BUT OFF TO THE SIDE.  
5 Q I SEE. I SEE.  
6 THIS JACKET THAT HE WAS WEARING, WAS IT  
7 OPEN OR CLOSED?  
8 A I BELIEVE IT WAS OPEN.  
9 Q IS THAT TO SAY YOU CAN'T BE SURE?  
10 A I REMEMBER SEEING THAT RADIO ON HIS WAIST.  
11 SO I ASSUME THE JACKET WAS OPEN.  
12 Q YOU'VE DESCRIBED THIS JACKET AS A WAIST-  
13 LENGTH JACKET; IS THAT CORRECT?  
14 A THAT'S CORRECT.  
15 Q I SEE.  
16 WAS THE RADIO CONCEALED BY PART OF HIS  
17 JACKET?  
18 A I DON'T RECALL THAT IT WAS.  
19 Q IS THAT TO SAY THEN THAT YOU CAN'T BE SURE?  
20 A I JUST -- HE WAS MOVING AROUND. HE WAS VERY  
21 ACTIVE THE WHOLE TIME, AND AT SOME POINT I KNEW THAT HE HAD A  
22 RADIO ON HIS BELT.  
23 Q SO IS IT ACCURATE TO SAY THAT YOU HAD FLASH-  
24 ING GLANCES OF THIS, WHAT YOU BELIEVE TO BE A RADIO?  
25 A YES, IT IS.  
26 Q AND YOU DIDN'T STUDY THIS ITEM, DID YOU?  
27 A NO, I DID NOT.  
28 Q MAY I HAVE THE COURT'S INDULGENCE FOR A  
29 BRIEF MOMENT, PLEASE.  
30 MRS. MONAHAN, YOU TESTIFIED THAT YOU  
31 AND YOUR SISTER AND YOUR STEP-DAUGHTER WERE STANDING NEAR A  
32 PILLAR; IS THAT RIGHT?

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A THAT'S CORRECT.

Q I SEE.

AND WHERE WOULD THE VAN HAVE BEEN IN  
RELATION TO THIS PILLAR -- EXCUSE ME, THIS PILLAR THAT YOU WERE  
STANDING NEAR?

A THE FRONT OF THE VAN WAS PROBABLY EVEN WITH  
THE PILLAR.

Q I SEE.

WOULD THE DRIVER'S SIDE HAVE BEEN  
CLOSER TO THE PILLAR OR THE PASSENGER'S SIDE?

A THE PASSENGER'S SIDE.

Q THE PASSENGER'S SIDE.

AND I THINK YOUR TESTIMONY YESTERDAY  
WAS THAT THE THREE OF YOU WERE MORE TOWARDS THE FRONT OF THE VAN,  
IS THAT RIGHT?

A THAT'S CORRECT.

Q DID YOUR SISTER -- WHERE DID YOUR SISTER  
STAND IN RELATION TO THE VAN?

A SHE WAS STANDING RIGHT ALONG WITH ME NEAR  
THE PILLAR.

Q RIGHT BESIDE YOU?

A YES.

Q DID --

A I DON'T RECALL IF -- IT WAS JUST -- JUST  
ORDINARY. WE WERE STANDING, THE THREE OF US WERE JUST STANDING  
THERE TOGETHER.

Q I SEE.

WHILE YOU WERE STANDING THERE, DID SHE  
AT ANYTIME, OBSTRUCT YOUR VIEW OF THE VAN?

A NO, I DON'T BELIEVE SO.

Q SHE NEVER MOVED BETWEEN YOU AND THE VAN?

A NO.

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Q WHAT ABOUT YOUR STEP-DAUGHTER, DID SHE AT ANYTIME EVER MOVE BETWEEN YOU AND THE VAN?

A NO, SHE DID NOT.

PART OF THE TIME THE TWO OF THEM WERE STANDING THERE AND I WAS A LITTLE MORE INVOLVED IN WHAT WAS GOING ON.

Q THEN, FOR THE MOST PART, THE THREE OF YOU WERE JUST IN A ROW THERE?

A THAT'S CORRECT.

Q SIDE-BY-SIDE?

A THAT'S CORRECT.

Q FOR THE ENTIRE TIME?

A YES.

Q DID EITHER OF YOU EVER GO TO THE OTHERSIDE OF THE PILLAR?

A NO, WE DID NOT.

MR. COOPER: I HAVE NO OTHER QUESTIONS. I WOULD PASS THE WITNESS AT THIS TIME.

THE COURT: COUNSEL.

MR. HARMON: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. HARMON:

Q MRS. MONAHAN, YOU HAVE INDICATED THAT FOR THE MOST PART AT POINT NUMBER THREE ON THE DIAGRAM NEAR CAESARS PALACE, THAT MARY CATHERINE, YOUR SISTER BARBARA ZEMAN AND YOURSELF WERE STANDING TOWARDS THE FRONT OF THE VAN; IS THAT CORRECT?

A THAT'S CORRECT.

Q DID YOU SAY, HOWEVER, AT ONE TIME YOU BECAME A LITTLE MORE INVOLVED IN WHAT WAS GOING ON?

1 A YES, I DID.  
 2 Q WHAT WERE YOU REFERRING TO?  
 3 A WHEN THEY WERE TALKING ABOUT TEST RIDING IT  
 4 THE NEXT DAY AND MY HUSBAND WAS TELLING HIM THAT HE WOULD BE IN  
 5 THE OFFICE. THAT'S WHEN I STEPPED FORWARD AND GAVE HIM ONE OF  
 6 MY HUSBAND'S BUSINESS CARDS THAT I ALWAYS CARRIED IN MY WALLET.

7 Q MRS. MONAHAN, WHAT MAKES YOU POSITIVE THAT  
 8 THE DEFENDANT, MR. HOWARD, AT NO TIME TOUCHED ANY OF THE DOOR  
 9 HANDLES OR DOOR KNOBS ON THE PASSENGER'S SIDE OF THE VAN THE  
 10 EVENING OF MARCH THE 26TH, 1980?

11 A BECAUSE THE DOORS WERE WIDE OPEN ON THE  
 12 PASSENGER'S SIDE WHEN HE APPROACHED THE VAN, AND HE WALKED AWAY  
 13 FROM US AROUND THE CORNER OF THE HOTEL BEFORE WE GOT BACK INTO  
 14 THE VAN.

15 Q WHAT IS THE EFFECT IN REGARDS TO THE DOOR  
 16 HANDLES AND DOOR KNOBS WHEN ALL OF THE DOORS ARE SWUNG WIDE OPEN  
 17 ON THE PASSENGER'S SIDE OF THE VAN?

18 A THEN THERE WOULD BE NO WAY HE WOULD TOUCH  
 19 ANY OF THEM WHILE HE WAS OBSERVING THE VAN.

20 Q NOW, YOU'VE INDICATED ON CROSS EXAMINATION  
 21 THAT WHEN YOU FIRST BECAME AWARE THAT THE DEFENDANT HAD A RADIO  
 22 YOU WERE ABOUT 50 FEET AWAY PERHAPS WHEN HE FIRST WAVED.

23 A THAT'S CORRECT.

24 Q YOU AND YOUR PARTY DOWN?

25 A THAT'S CORRECT.

26 Q NOW, ONCE THE DEFENDANT HAD WALKED TO THE  
 27 REAR OF THE VAN AND AROUND TO THE PASSENGER -- AROUND TO THE  
 28 DRIVER'S SIDE WHERE HE HAD THE SHORT CONVERSATION WITH YOUR  
 29 HUSBAND GEORGE, HOW CLOSE WERE YOU TO HIM THEN?

30 A APPROXIMATELY FOUR - TO FIVE FEET AWAY.

31 Q YOU SAID AT THAT TIME THAT HE WAS FAIRLY  
 32 ACTIVE WITH HIS HANDS.

1 A YES, HE WAS.

2 Q DID YOU HAVE AN OPPORTUNITY THEN TO SEE THE

3 TWO-WAY RADIO?

4 A YES, I DID.

5 Q COULD YOU SEE ITS COLOR AT THAT TIME?

6 A YES, I COULD.

7 Q COULD YOU SEE THE SHAPE OF THE RADIO?

8 A YES.

9 Q DO YOU REMEMBER SEEING ANY TYPE OF ANTENNA?

10 A YES, I DID. I REMEMBER THAT IT HAD --

11 DEFINITELY HAD THE SHORT TYPE OF ANTENNA ON IT.

12 Q REFERENCE HAS BEEN MADE TO PREVIOUS TESTI-

13 MONY GIVEN IN THIS MATTER; IS THAT CORRECT?

14 A I'M SORRY. WOULD YOU REPEAT THE QUESTION?

15 Q YOU'VE BEEN ASKED QUESTIONS ABOUT TESTIMONY

16 BEFORE THE GRAND JURY?

17 A THAT'S CORRECT.

18 Q IN CONNECTION WITH THIS MATTER?

19 A THAT'S CORRECT.

20 Q DID YOU TESTIFY BEFORE THE CLARK COUNTY

21 GRAND JURY, ON OR ABOUT MAY THE 20TH, 1981?

22 A YES, I DID.

23 Q ON THAT DATE WERE YOU ASKED QUESTIONS ABOUT

24 WHETHER THE PERSON YOU ENCOUNTERED WHO SAID HIS NAME WAS KEITH,

25 HAD TOUCHED ANY OF THE DOORS ON THE PASSENGER'S SIDE OF THE VAN?

26 A YES, I WAS.

27 Q WAS YOUR TESTIMONY THE SAME ON MAY THE 20TH,

28 1981, AS IT IS TODAY?

29 A YES, IT IS.

30 Q THAT HE HAD NOT?

31 A THAT'S CORRECT.

32 Q MRS. MONAHAN, CAN YOU ESTIMATE, AS YOU THINK



1 BACK, ABOUT WHAT ACTIVITY THERE WAS BY YOU, YOUR HUSBAND, YOUR  
2 SISTER BARBARA ZEMAN, AND YOUR STEP-DAUGHTER MARY CATHERINE  
3 MONAHAN, IN CONNECTION WITH GETTING IN AND OUT OF YOUR 1977 DODGE  
4 VAN, MARCH 26TH, 1980? CAN YOU THINK HOW MANY TIMES YOU WOULD  
5 HAVE GOT IN AND OUT OF THE VAN?

6 A ON THAT PARTICULAR DAY?

7 Q MARCH 26TH, 1980, DURING THE AFTERNOON AND  
8 EVENING HOURS, UP UNTIL THE VAN WAS PARKED OUTSIDE OF YOUR  
9 HUSBAND'S OFFICE IN THE AREA OF 1700 EAST DESERT INN ROAD?

10 A WE WOULD HAVE BEEN GETTING INTO THE VAN AT  
11 THE OFFICE THAT EVENING. WE DROVE TO HENDERSON. WE WOULD HAVE  
12 BEEN GETTING IN THE VAN AGAIN IN HENDERSON TO DRIVE TO CAESARS  
13 PALACE; THEN GETTING INTO THE VAN AT CAESARS PALACE TO DRIVE IT  
14 BACK TO MY HUSBAND'S OFFICE ON DESERT INN ROAD.

15 Q NOW, ON EACH OF THOSE OCCASIONS WOULD SOME-  
16 ONE HAVE BEEN GETTING IN BOTH OF THE PASSENGER'S DOORS ON THE  
17 PASSENGER'S SIDE OF THE VAN?

18 A YES.

19 Q WHAT PERSONS?

20 A AT EACH OF THOSE TIMES MY SISTER BARBARA  
21 ZEMAN AND MARY CATHERINE WERE GETTING IN THE TWO CARGO-TYPE DOORS  
22 TO GET INTO THE BACK OF THE VAN. AND EACH OF THOSE TIMES I GOT  
23 INTO THE PASSENGER'S SEAT IN THE FRONT.

24 Q WOULD THEY HAVE TO GET IN THROUGH THE  
25 PASSENGER'S SIDE?

26 A YES, THEY WOULD.

27 Q WHY IS THAT?

28 A BECAUSE, THE SEAT -- THE FRONT SEATS WERE  
29 THE TALL, VERY WIDE-TYPE SEATS AND IT'S DIFFICULT TO GET IN THE  
30 FRONT AND CRAWL IN THE BACK. THAT WAS THE ONLY WAY.

31 Q THROUGH THE DRIVER'S DOOR?

32 A CORRECT.

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1 Q THERE'S ONLY ONE DOOR ON THE DRIVER'S SIDE  
2 INTO THE VAN?

3 A YES, THERE WAS.

4 Q AND THAT'S LOCATED WHERE?

5 A AT THE DRIVER'S SEAT.

6 Q ON EACH OF THE OCCASIONS THEN, WHEN SOMEONE  
7 HAD TO EITHER GET IN OR OUT OF THE VAN, THE AFTERNOON OR EVENING  
8 OF MARCH 26TH, 1980, IS IT LIKELY THAT AT LEAST ONE PERSON OR  
9 PERHAPS PERSONS, TOUCHED THE VARIOUS DOOR HANDLES OR DOOR KNOBS  
10 ON THE PASSENGER'S SIDE OF THE VAN?

11 A YES, IT IS.

12 Q DURING THE CONVERSATION THAT OCCURRED WITH  
13 DEFENDANT, MR. HOWARD, THE EVENING OF MAY -- OF MARCH 26TH, 1980,  
14 IN THE AREA OF CAESARS PALACE, DID HE GIVE ANY INDICATION OF  
15 BEING A PERSON WHO HAD CASH AVAILABLE TO BE USED IN THE PURCHASE  
16 OF THE VAN?

17 A YES, HE DID. HE STATED HE HAD ALREADY SOLD  
18 HIS CAR, THAT HE NEEDED SOMETHING RIGHT AWAY, AND THAT HE DID  
19 HAVE MONEY TO PAY FOR IT.

20 Q MRS. MONAHAN, YOU HAVE INDICATED THE AGE OF  
21 YOUR HUSBAND. DO YOU RECALL HIS HEIGHT AND APPROXIMATE WEIGHT  
22 ON MARCH 26TH AND 27TH, 1980?

23 A HE WAS APPROXIMATELY SIX FEET TALL, WEIGHED  
24 APPROXIMATELY 170 POUNDS.

25 Q WAS YOUR HUSBAND, GEORGE STEVEN MONAHAN, IN  
26 GOOD PHYSICAL CONDITION ON MARCH 26TH AND MARCH 27TH, 1980?

27 A YES, HE WAS.

28 Q WAS HE PHYSICALLY ACTIVE IN HIS DAILY LIFE?

29 A YES, HE WAS.

30 Q YOU HAVE IDENTIFIED IN THIS COURTROOM THE  
31 DEFENDANT, MR. HOWARD, AS THE PERSON WHO IDENTIFIED HIMSELF AS  
32 KEITH IN THE AREA OF CAESARS PALACE ON MARCH 26TH, 1980. HOW

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1 SURE ARE YOU OF THAT IDENTIFICATION?

2 A I'M POSITIVE.

3 Q MRS. MONAHAN, AS YOU LOOK AT THE DEFENDANT  
4 NOW IN THE COURTROOM, WHAT CAUSES YOU TO BE POSITIVE HE IS THE  
5 SAME PERSON WHO SAID HE WAS KEITH, A SECURITY OFFICER WITH CAESARS  
6 PALACE, ON MARCH 26TH, 1980?

7 A I JUST DON'T THINK I COULD EVER FORGET HIS  
8 FACE.

9 Q HAVE YOU GIVEN CONSIDERABLE THOUGHT SINCE  
10 THE DEATH OF YOUR HUSBAND TO THE PHYSICAL APPEARANCE OF THE  
11 PERSON YOUR PARTY ENCOUNTERED MARCH 26TH, 1980, AT CAESARS PALACE?

12 A YES, I HAVE.

13 Q AFTER THAT CONTACT WAS MADE WITH THE  
14 DEFENDANT, IS IT YOUR TESTIMONY THAT THE VAN WAS TAKEN AND PARKED  
15 FOR THE NIGHT OUTSIDE OF YOUR HUSBAND'S OFFICE?

16 A THAT'S CORRECT.

17 Q THAT WAS NEAR 1700 EAST DESERT INN ROAD?

18 A YES.

19 Q DO YOU KNOW IF THE DOORS TO THE VAN WERE

20 LOCKED AT THAT TIME?

21 A YES, THEY WERE.

22 MR. HARMON: THANK YOU.

23 THAT CONCLUDES REDIRECT, YOUR HONOR.

24 THE COURT: COUNSEL.

25 MR. COOPER: YES.

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RECROSS EXAMINATION

BY MR. COOPER:

Q MRS. MONAHAN, PRIOR TO YOUR TESTIFYING BEFORE THE GRAND JURY IN THIS CASE YOU WERE MADE AWARE OF THE SIGNIFICANCE OF THIS WHOLE LINE OF QUESTIONING HAVING TO DO WITH WHERE THE MAN MIGHT HAVE TOUCHED THE VAN AND SO FORTH, WEREN'T YOU?

A YES, I WAS.

Q WHO MADE YOU AWARE OF THAT?

A OFFICER LEAVITT, I BELIEVE, AFTER I MADE MY INITIAL STATEMENT TO THE POLICE.

Q IN YOUR INITIAL STATEMENT TO THE POLICE DID YOU MENTION ANYWHERE IN YOUR STATEMENT ABOUT WHERE THIS MAN MIGHT HAVE TOUCHED THE VAN AND WHERE HE DIDN'T TOUCH THE VAN AND SO FORTH?

A YES, I DID.

Q ARE YOU SURE OF THAT?

A THEY ASKED ME --

Q I MEAN IN YOUR WRITTEN STATEMENT THAT YOU GAVE TO THE POLICE.

A YES.

Q YOU WERE ASKED QUESTIONS ABOUT WHETHER THIS MAN KEITH OPENED ANY OF THE DOORS; IS THAT RIGHT?

A THAT'S CORRECT.

Q NOW, IN YOUR STATEMENT YOU SAY THAT THIS MAN LOOKED IN THE VAN FOR ABOUT PROBABLY BETWEEN FIVE AND SEVEN MINUTES, DIDN'T YOU?

A HE WASN'T -- THAT WAS THE LENGTH OF TIME THAT --

Q WELL, DIDN'T YOU SAY THAT IN YOUR STATEMENT, THAT HE LOOKED IN THE VAN PROBABLY BETWEEN FIVE AND SEVEN

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MINUTES?

A APPROXIMATELY, YES.

Q YOU TESTIFIED YESTERDAY THAT AS THE CARGO DOORS WERE OPEN, HE LEANED INSIDE; IS THAT RIGHT?

A THAT'S CORRECT.

Q THAT DIDN'T TAKE ALL OF FIVE TO SEVEN MINUTES, DID IT?

A I DID NOT MEAN THAT HE SPENT ALL OF THAT FIVE OR SEVEN MINUTES IN THE VAN, PEEKING INTO THE VAN.

Q WELL --

A HE SPENT THAT AMOUNT OF TIME LOOKING INTO THE VAN, DISCUSSING THE INSIDE OF IT, AND LEANED INTO THERE BRIEFLY.

Q WEREN'T YOU ASKED THE QUESTION IN YOUR STATEMENT:

APPROXIMATELY HOW LONG WAS IT THAT THE BLACK MAN LOOKED IN THE VAN?

AND YOU SAID:

I WOULD SAY ABOUT

PROBABLY BETWEEN FIVE TO SEVEN MINUTES.

A TO THE BEST OF MY KNOWLEDGE, YES.

Q NOW, YOU'RE QUALIFYING THAT TODAY NOW, AREN'T YOU?

A BY THAT STATEMENT IT SOUNDS TO ME LIKE THAT'S THE LENGTH OF TIME HE WAS LOOKING IN THE VAN. I DIDN'T MEAN THAT HE WAS LEANING -- KNEELING INTO THE VAN THAT WHOLE ENTIRE TIME.

MR. COOPER: I HAVE NOTHING FURTHER OF THE WITNESS, YOUR HONOR.

THE COURT: COUNSEL.

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1 MR. HARMON: YES, JUST A LITTLE BIT IN ADDITION,  
2 YOUR HONOR.

3 THE COURT: PROCEED.

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5 REDIRECT EXAMINATION

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7 BY MR. HARMON:

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9 Q MRS. MONAHAN, YOU HAVE BEEN ASKED ABOUT A  
10 STATEMENT YOU GAVE TO THE POLICE DEPARTMENT; IS THAT CORRECT?

11 A YES.

12 Q DO YOU REMEMBER WHEN THIS STATEMENT WAS  
13 GIVEN IN CONNECTION WITH MARCH 27TH, 1980?

14 A I BELIEVE IT WAS THAT FOLLOWING WEEK SOME-  
15 TIME.

16 Q DO YOU REMEMBER BEING ASKED SPECIFICALLY IF  
17 THE BLACK MAN WHO IDENTIFIED HIMSELF AS KEITH, OPENED ANY OF THE  
18 DOORS TO THE VAN ON MARCH 26TH, 1980?

19 A YES, I DO.

20 Q WHAT DID YOU SAY WHEN YOU GAVE THIS ORIGINAL  
21 STATEMENT TO THE POLICE?

22 A I TOLD THEM NO, THAT HE DID NOT OPEN ANY OF  
23 THE DOORS.

24 THEY CALLED ME ON THE PHONE AND ASKED  
25 ME THAT QUESTION AND I ANSWERED IT. AND THEY SAID, "WILL YOU  
26 COME DOWN TO THE POLICE STATION TODAY AND MAKE A STATEMENT TO  
27 THAT EFFECT?" WHICH IS WHAT I HAPPENED TO PUT DOWN ON THAT  
28 PARTICULAR DAY.

29 Q NOW, SPECIFICALLY IN REGARDS TO THE PASSEN-  
30 GER'S SIDE, DID YOU, WHEN YOU FIRST TALKED ABOUT THIS SUBJECT TO  
31 THE REPRESENTATIVES OF THE METROPOLITAN POLICE DEPARTMENT, TELL  
32 THEM THAT AT CAESARS PALACE WHEN THE DEFENDANT APPROACHED THE --

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1 PASSENGER'S SIDE, ALL THE DOORS WERE OPEN?

2 A THAT'S CORRECT.

3 MR. HARMON: THANK YOU.

4 THAT'S ALL, YOUR HONOR.

5 MR. COOPER: I HAVE NOTHING FURTHER.

6 THE COURT: YOU'RE EXCUSED.

7 (WHEREUPON, THE WITNESS WAS

8 EXCUSED.)

9 THE COURT: CALL YOUR NEXT WITNESS.

10 MR. HARMON: THANK YOU, YOUR HONOR. JOHN CONNER.

11

12 WHEREUPON,

13

14 JOHN CONNER,

15

16 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,

17 EXAMINED AND TESTIFIED AS FOLLOWS:

18

19 THE COURT: PROCEED, COUNSEL.

20 MR. HARMON: THANK YOU, YOUR HONOR.

21

22 DIRECT EXAMINATION

23

24 BY MR. HARMON:

25

26 Q WILL YOU STATE YOUR NAME, PLEASE.

27 A JOHN CONNER.

28 Q SPELL YOUR LAST NAME.

29 A C-O-N-N-E-R.

30 Q IS IT LIEUTENANT CONNER?

31 A YES, IT IS.

32 Q LIEUTENANT CONNER, WHERE ARE YOU EMPLOYED?

1522

1 A LAS VEGAS METROPOLITAN POLICE DEPARTMENT.  
2 Q WHAT ARE THE NATURE OF YOUR DUTIES WITH THAT  
3 DEPARTMENT?  
4 A I'M IN CHARGE OF HOMICIDE.  
5 Q HOW LONG HAVE YOU BEEN IN CHARGE OF THE  
6 HOMICIDE DEPARTMENT OF THE LAS VEGAS METROPOLITAN POLICE DEPART-  
7 MENT?  
8 A FOUR YEARS AND FOUR MONTHS.  
9 Q WERE YOU SO EMPLOYED ON MARCH 27TH, 1980?  
10 A YES, I WAS.  
11 Q AT ANY POINT ON THAT DATE, DID YOU BECOME  
12 INVOLVED IN INVESTIGATING THE DISAPPEARANCE OF A DENTIST, GEORGE  
13 STEVEN MONAHAN?  
14 A YES, I DID.  
15 Q AT WHAT POINT DID HIS DISAPPEARANCE COME TO  
16 YOUR ATTENTION?  
17 A ABOUT 9:00 A.M. IN THE MORNING.  
18 Q DID YOU, IN CONNECTION WITH THE INFORMATION  
19 ABOUT THE DISAPPEARANCE OF MR. MONAHAN, GET A DESCRIPTION OF A  
20 VAN THAT HE PURPORTEDLY WAS IN?  
21 A YES, I DID.  
22 Q DO YOU RECALL AT THIS TIME WHAT DESCRIPTION  
23 YOU HAD?  
24 A YES, I DO.  
25 Q WHAT WAS THE DESCRIPTION?  
26 A IT WAS A 1977 DODGE VAN, BLACK IN COLOR,  
27 WITH GOLD LETTERING OF "BLACK OAK" ON THE SIDE PANELS. THE  
28 LICENSE NUMBER WAS CVK 693.  
29 Q DID YOU ALSO HAVE A PHYSICAL DESCRIPTION OF  
30 MR. MONAHAN?  
31 A YES.  
32 Q LIEUTENANT CONNER, SOMETIME DURING THE DAY



1 OF MARCH 27TH, 1980, OR INTO THE EVENING, DID YOU RECEIVE INFOR-  
2 MATION AS TO THE WHEREABOUTS OF THE 1977 DODGE VAN, FITTING THE  
3 DESCRIPTION YOU HAVE JUST GIVEN?

4 A YES, I DID.

5 Q WHEN DID YOU RECEIVE THAT INFORMATION AND  
6 WHAT ACTION DID YOU TAKE?

7 A I RECEIVED THE INFORMATION JUST PRIOR TO  
8 6:45 P.M. IN THE EVENING, INDICATING THAT THE VAN HAD BEEN -- A  
9 VAN MATCHING THE DESCRIPTION HAD BEEN OBSERVED BY THE DEW DROP  
10 INN AT 4200 BOULDER HIGHWAY.

11 I PROCEEDED TO THAT LOCATION ALONG WITH  
12 OTHER LAW ENFORCEMENT PEOPLE, AND DID IN FACT FIND THE VAN WHICH  
13 I DESCRIBED TO THE REAR OF THE DEW DROP INN.

14 Q LIEUTENANT CONNER, IS THIS AREA TO THE REAR  
15 OF THE DEW DROP INN AT 4200 BOULDER HIGHWAY, IS THAT IN CLARK  
16 COUNTY, STATE OF NEVADA?

17 A YES, IT IS.

18 Q DO YOU RECALL ABOUT WHEN YOU ARRIVED AT THE  
19 LOCATION TO THE REAR OF THE DEW DROP INN ON BOULDER HIGHWAY?

20 A 6:45 P.M.

21 Q WERE YOU EITHER THE FIRST OR ONE OF THE  
22 FIRST REPRESENTATIVES OF THE LAS VEGAS METROPOLITAN POLICE DEPART-  
23 MENT TO THAT LOCATION?

24 A ONE OF THE FIRST. THE FIRST FROM HOMICIDE.

25 Q LIEUTENANT CONNER, WILL YOU DESCRIBE WHERE  
26 EXACTLY THE 1977 DODGE VAN WAS LOCATED AND WHAT YOU OBSERVED IN  
27 CONNECTION WITH IT?

28 A THE DEW DROP INN IS LOCATED NEAR THE CORNER  
29 OF DESERT INN AND THE BOULDER HIGHWAY. THE DEW DROP INN FACES  
30 THE BOULDER HIGHWAY, HOWEVER, THE ACTUAL ENTRANCE TO THE DEW  
31 DROP INN IS AROUND THE CORNER ON WHAT WOULD BE THE SOUTH SIDE.  
32 THE VAN WAS BACKED IN ON WHAT WOULD BE THE WEST SIDE OF THE DEW

1524

1 DROP INN, IF MY DIRECTIONS ARE CORRECT, AND IS NOT VISIBLE FROM  
2 THE HIGHWAY PROPER.

3 Q DID YOU AT SOME POINT, HAVE OCCASION TO  
4 EXAMINE THE INSIDE --

5 A YES..

6 Q (CONTINUING) -- OF THE VAN YOU OBSERVED?

7 A YES.

8 Q HOW DID YOU MAKE ENTRY INTO THE VAN AND WHAT  
9 DID YOU OBSERVE INSIDE?

10 A IT WAS NECESSARY FOR ENTRY TO BE MADE SINCE  
11 WE DID NOT HAVE A KEY. I.D. SPECIALIST, DAN CONNELL, MADE ENTRY  
12 THROUGH I BELIEVE THE RIGHT FRONT DOOR.

13 Q IS IT YOUR TESTIMONY THEN THAT THE VAN WAS  
14 LOCKED AT THE LOCATION YOU OBSERVED IT AT 6:45 P.M., MARCH 27TH,  
15 1980, TO THE REAR OF THE DEW DROP INN?

16 A YES, IT IS.

17 Q AFTER ENTRY WAS MADE INTO THE VAN BY I.D.  
18 SPECIALIST, DAN CONNELL, DID YOU THEN HAVE AN OPPORTUNITY TO VIEW  
19 THE INSIDE OF THE VAN?

20 A YES.

21 Q WHAT DID YOU OBSERVE?

22 A THE BODY OF A WHITE MALE LYING FACE DOWN  
23 WITH FEET FORWARD, THE HEAD ON THE LEFT SIDE FACING THE RIGHT  
24 REAR OF THE VAN.

25 Q DO YOU RECALL WHETHER ITEMS INSIDE THE VAN  
26 APPEARED TO HAVE BEEN DISTURBED?

27 A YES. THERE WAS A PEDESTAL-TYPE TABLE THAT  
28 WOULD NORMALLY HAVE BEEN SET UP IN THE VAN, AND THIS WAS ON TOP  
29 OF THE BODY.

30 MR. HARMON: YOUR HONOR, MAY I HAVE THE COURT'S  
31 INDULGENCE.

32 MAY I APPROACH THE WITNESS, YOUR HONOR?

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THE COURT: YES.

BY MR. HARMON:

Q LIEUTENANT CONNER, I AM GOING TO SHOW YOU A SERIES OF PHOTOGRAPHS. THEY ARE MARKED AS PROPOSED EXHIBITS 1 THROUGH 16. I'D LIKE YOU TO LOOK AT THEM ALL AND AFTER YOU'VE DONE SO, WILL YOU STATE WHETHER YOU RECOGNIZE WHAT IS SHOWN IN THE PICTURES?

A THIS -- THIS IS THE LEFT REAR --

Q WOULD YOU VIEW ALL OF THE PICTURES?

A O.K. AND THEN TELL YOU IF --

Q YES.

A O.K. SURE.

MR. FRANZEN: YOUR HONOR, SINCE THE WITNESS IS GOING TO BE TESTIFYING AS TO WHAT THESE DEPICT, WE OBJECT TO THE TESTIMONY UNTIL THEY HAVE BEEN ADMITTED INTO EVIDENCE.

MR. HARMON: YOUR HONOR, HE'S NOT NECESSARILY GOING TO BE DOING THAT. THIS IS GOING TO BE FOUNDATIONAL.

MR. FRANZEN: THAT'S WHAT HE WAS ASKED TO DO, YOUR HONOR, OR I BELIEVE HE WAS ASKED TO DO.

THE COURT: WELL, I THINK IT'S RATHER ANTICIPATORY AT THIS TIME, COUNSEL. LET'S SEE WHAT HE'S GOING TO DO AFTERWARDS.

BY MR. HARMON:

Q LIEUTENANT CONNER, DO YOU RECOGNIZE WHAT IS DEPICTED IN STATE'S PROPOSED EXHIBITS 1 THROUGH 16?

A YES.

Q WITHOUT GOING INTO SPECIFICS AS TO WHAT IS SHOWN IN EACH PHOTOGRAPH, WHAT GENERALLY IS PORTRAYED IN THESE

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PHOTOGRAPHS?

A THE VAN IN WHICH WE WERE SEEKING AND FOUND  
THE BODY OF THE VICTIM.

Q AT ITS LOCATION TO THE REAR OF THE DEW DROP  
INN?

A THAT'S CORRECT.

Q DO THESE PHOTOGRAPHS, PROPOSED EXHIBITS 1  
THROUGH 16, TRULY AND ACCURATELY PORTRAY THE ORIGINAL LOCATION  
WHERE YOU SAW THE VAN AT 6:45 P.M., MARCH 27TH, 1980?

MR. FRANZEN: YOUR HONOR, WE IMPOSE THE SAME  
OBJECTION.

THE COURT: OVERRULED.

BY MR. HARMON:

Q DO THE PHOTOGRAPHS ALSO TRULY AND ACCURATELY  
PORTRAY, AT LEAST UNTIL THE BODY WAS REMOVED, THE CONDITION OF  
THE INSIDE OF THE VAN AS YOU OBSERVED IT SHORTLY AFTER 6:45 P.M.,  
ON MARCH 27TH, 1980?

A YES, THEY DO.

Q IS THE CONDITION OF THE VICTIM TRULY AND  
ACCURATELY PORTRAYED?

A YES.

Q NOW, I DIRECT YOUR ATTENTION TO PROPOSED  
EXHIBIT 16. THAT APPEARS TO BE A PICTURE AFTER THE DECEASED WAS  
REMOVED FROM THE VAN; IS THAT CORRECT?

A (NO AUDIBLE RESPONSE.)

Q NEVERTHELESS, DOES THAT APPEAR TO TRULY AND  
ACCURATELY SHOW HIS CONDITION AS IT WOULD HAVE BEEN MARCH 27TH,  
1980, AT ABOUT 6:45 P.M.?

A YES.

MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER

1 PROPOSED EXHIBITS 1 THROUGH 16.

2 MR. COOPER: YOUR HONOR, MAY WE EXAMINE THOSE.

3 YOUR HONOR, WE HAVE NO OBJECTION TO THE  
4 INTRODUCTION OF A NUMBER OF THESE PHOTOGRAPHS.

5 THE COURT: WHICH ONES DON'T YOU OBJECT TO. LET'S  
6 GET THOSE NUMBERS IN THE RECORD, SIR.

7 MR. COOPER: WE HAVE NO OBJECTION TO STATE'S  
8 PROPOSED EXHIBITS 1,2,3,4,5,8,10,11,12,14 AND 15.

9 THE COURT: ALL RIGHT. MAY I SEE THOSE, PLEASE.  
10 SAME WILL BE RECEIVED.

11 MR. COOPER: YOUR HONOR, AS TO THE REMAINING  
12 EXHIBITS, THOSE BEING STATE'S PROPOSED EXHIBITS 6,7,9,13 AND 16,  
13 I THINK THAT THE ONLY -- THESE PHOTOGRAPHS CAN ONLY SERVE TO  
14 INFLAME THE JURY. THEY ARE DUPLICATES OF WHAT IS DEPICTED IN A  
15 NUMBER OF THE OTHER EXHIBITS OF WHICH WE HAVE NO OBJECTION TO.

16 THE COURT: LET ME SEE THEM, COUNSEL.

17 COUNSEL, YOUR OBJECTION AS TO 6 IS OVER-  
18 RULED. IT DOES APPEAR TO BE MATERIAL THAT SHOWS A PORTION OF  
19 THE BODY COVERED BY THE COUCH WHICH I THINK IS MATERIAL AND NOT  
20 DEPICTED IN ANY OF THE OTHER PICTURES WHICH HAVE BEEN SUBMITTED.

21 MR. COOPER: YOUR HONOR, I THINK THAT SOME OF THE  
22 OTHER PHOTOGRAPHS IN WHICH WE HAVE NO OBJECTION TO, DO DEPICT THE  
23 BODY COVERED BY, I COULD BE WRONG, BUT I SEEM TO RECALL THAT IT  
24 BEING INCLUDED AMONG THOSE PHOTOGRAPHS.

25 THE COURT: NOT THAT SPECIFIC ANGLE, SIR.

26 THE STATE, RESPOND TO 7,9,13 --

27 MR. HARMON: AND 16, YOUR HONOR.

28 THE COURT: (CONTINUING) -- AND 16.

29 MR. HARMON: MAY I HAVE THE PHOTOGRAPHS AGAIN,  
30 YOUR HONOR. MAY I ALSO SEE THOSE WHICH WERE ADMITTED. THANK YOU.

31 THE COURT: COUNSEL, WE WILL GIVE YOU AN OPPORTU-  
32 NITY TO GET YOUR ARGUMENT TOGETHER HERE. WE WILL TAKE A BRIEF

1528

1 RECESS AT THIS TIME.

2 LADIES AND GENTLEMEN, DURING  
3 THIS RECESS YOU ARE ADMONISHED NOT  
4 TO CONVERSE AMONG YOURSELVES OR  
5 WITH ANYONE ELSE ON ANY SUBJECT  
6 CONNECTED WITH THIS TRIAL, OR READ,  
7 WATCH OR LISTEN TO ANY REPORT OF OR  
8 COMMENTARY ON THIS TRIAL WITH ANY  
9 PERSON CONNECTED WITH THIS TRIAL BY  
10 ANY MEDIUM OF INFORMATION, INCLUDING  
11 WITHOUT LIMITATION, NEWSPAPER, TELE-  
12 VISION OR RADIO OR FORM OR EXPRESS  
13 ANY OPINION ON ANY SUBJECT CONNECTED  
14 WITH THIS TRIAL UNTIL THE CASE IS  
15 FINALLY SUBMITTED TO YOU.

16 WE WILL BE IN RECESS FOR TEN MINUTES.

17 (WHEREUPON, FROM 11:05 A.M.,  
18 UNTIL 11:20 A.M., A RECESS WAS  
19 HAD IN THE PROCEEDINGS, AT THE  
20 CONCLUSION OF WHICH THE FOLLOW-  
21 ING WAS HAD:)

22 THE COURT: WILL COUNSEL STIPULATE TO THE PRESENCE  
23 OF THE JURY?

24 MR. SEATON: YES, YOUR HONOR, THE STATE WOULD.

25 MR. FRANZEN: YES, YOUR HONOR.

26 THE COURT: ALL RIGHT. YOU MAY PROCEED.

27 MR. HARMON: THANK YOU, YOUR HONOR.

28 REGARDING THE OFFER OF PHOTOGRAPHS AS TO  
29 PROPOSED EXHIBITS 7,9 AND 16, AFTER REVIEWING THEM WE ARE CON-  
30 VINCED THAT PERHAPS THEY ARE DUPLICITAS. SO WE WILL NOT PERSIST  
31 IN OUR OFFER OF PROPOSED EXHIBITS 6,7 AND 16.

32 THE COURT: ALL RIGHT.

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MR. HARMON: YOUR HONOR, BUT AS TO PROPOSED --  
THE COURT: SO YOU ARE WITHDRAWING YOUR OFFERS  
SO THERE'S NO NEED TO WORRY ABOUT THEM.

MR. HARMON: YES.

AS TO PROPOSED 13, WE ALSO TEMPORARILY WITH-  
DRAW THE OFFER. WE EXPECT THAT THE NEXT WITNESS WILL LAY ADDI-  
TIONAL EVIDENCE, AND SUGGEST THE RELEVANCE AT THAT POINT.

THE COURT: ALL RIGHT. PROCEED.

MR. HARMON: MAY I APPROACH THE WITNESS, YOUR  
HONOR?

THE COURT: YOU MAY.

BY MR. HARMON:

Q LIEUTENANT CONNER, I AM SHOWING YOU NOW  
STATE'S EXHIBIT NUMBER 12. DID YOU, ON MARCH THE 27TH, 1980,  
OBSERVE TRAMATIC INJURY TO THE INDIVIDUAL DEPICTED IN THAT PHOTO-  
GRAPH?

A YES.

Q WHAT DID YOU OBSERVE?

A APPEARED TO BE A GUNSHOT TO THE LEFT REAR  
OF THE HEAD.

Q DID YOU, DURING THAT PERIOD OF TIME,  
MARCH 27TH, 1980, TO THE REAR OF THE DEW DROP INN WHEN YOU WERE  
EXAMINING THE INSIDE OF THE 1977 DODGE VAN, OBSERVE ANY TYPE OF  
DAMAGE TO THE HEADLINER AREA OF THE VEHICLE?

A ABOVE THE DRIVER'S COMPARTMENT, WIRES WERE  
HANGING AS THOUGH THERE HAD BEEN A RADIO, C.B., STEREO-TYPE  
INSTRUMENT MOUNTED THERE AND REMOVED FORCIBLY.

Q WAS THERE A C.B. RADIO OR CASSETTE PLAYER  
STILL PRESENT IN THE HEADLINER OF THE VEHICLE WHEN YOU SAW IT  
MARCH 27TH, 1980, SHORTLY AFTER 6:45 P.M.?

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A NO.

Q LIEUTENANT CONNER, ARE YOU FAMILIAR WITH THE LOCATION OF A BUSINESS KNOWN AS THE WESTERN SIX MOTEL IN RELATION TO THE DEW DROP INN AT 4200 BOULDER HIGHWAY?

A YES.

Q WHERE IS THE WESTERN SIX MOTEL FROM THE DEW DROP INN AT 4200 BOULDER HIGHWAY?

A IT WOULD BE ON THE OPPOSITE SIDE OF THE BOULDER HIGHWAY AND APPROXIMATELY HALF TO THREE-QUARTERS OF A BLOCK NORTH. IT'S ADJACENT TO THE SIZZLER, WHICH IS ON THE NORTHEAST CORNER OF BOULDER HIGHWAY AND DESERT INN.

Q WHAT ESSENTIALLY IS THE RELATIONSHIP THEN OF THIS LOCATION WHERE THE 1977 DODGE VAN WAS LOCATED SHORTLY AFTER 6:45 P.M., ON MARCH 27TH, 1980, TO THE WINCHESTER PLAZA OFFICE COMPLEX AT 1700 EAST DESERT INN ROAD?

A UH, ABOUT 17 -- 15 BLOCKS DUE EAST, MAYBE A BIT FURTHER, BUT DUE EAST ON THE SAME MAIN THOROUGHFARE, WHICH IS DESERT INN ROAD, AND A COUPLE MILES.

Q SO WHEN YOU REFERRED TO THE WESTERN SIX MOTEL BEING NEAR THE INTERSECTION OF BOULDER HIGHWAY AND DESERT INN ROAD, IS THAT THE SAME DESERT INN ROAD THAT THE WINCHESTER PLAZA IS LOCATED ON?

A THAT'S CORRECT. DESERT INN RUNS EAST AND WEST, AND IT WOULD BE EAST OF THE WINCHESTER PLAZA.

Q WHERE SPECIFICALLY IS THE DEW DROP INN LOCATED IN RELATIONSHIP TO THE INTERSECTION OF DESERT INN ROAD AND BOULDER HIGHWAY?

A AT THE INTERSECTION OF DESERT INN AND BOULDER HIGHWAY IS A EXXON STATION, NEXT TO THAT IS A MINI WAREHOUSE, AND NEXT TO THAT IS THE DEW DROP INN. SO IT'S ALMOST IMMEDIATELY ADJACENT TO D.I. AND BOULDER.

MR. HARMON: THANK YOU.

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THAT CONCLUDES DIRECT, YOUR HONOR.

THE COURT: CROSS.

MR. FRANZEN: NO QUESTIONS.

THE COURT: YOU'RE EXCUSED.

(WHEREUPON, THE WITNESS WAS  
EXCUSED.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. SEATON: CHRIS DERRICK.

THE COURT: JUST REMAIN STANDING.

THE WITNESS: THANK YOU, SIR.

THE COURT: SHE'LL SWEAR YOU.

WHEREUPON,

JOHN CHRISTOPHER DERRICK,

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 AND SPELL  
YOUR LAST NAME FOR THE RECORD?

A JOHN CHRISTOPHER DERRICK; D-E-R-R-I-C-K.

Q MR. DERRICK, WHAT IS YOUR OCCUPATION?

A I'M PRESENTLY EMPLOYED BY THE CITY OF HEN-  
DERSON AS A FIREFIGHTER.

Q AND HOW LONG HAVE YOU BEEN SO EMPLOYED?

1532

1 A NINE YEARS AND FIVE MONTHS.

2 Q AND HAVE YOU ALSO BEEN A DEPUTY CORONER FOR

3 CLARK COUNTY?

4 A YES, SIR, I HAVE.

5 Q AND DURING WHAT PERIOD OF TIME DID YOU HOLD

6 THAT CAPACITY?

7 A FOR THE PAST THREE AND A HALF YEARS, SINCE

8 JULY OF '79.

9 Q JULY OF '79 UNTIL WHEN?

10 A UNTIL THIS MONTH, WHEN I HAD TO RESIGN MY

11 POSITION THERE BECAUSE OF MEDICAL PROBLEMS.

12 Q I SEE.

13 WHEN YOU WERE A -- WHAT WAS YOUR TITLE

14 WITH THE CORONER'S OFFICE?

15 A INVESTIGATOR -- INVESTIGATOR-DEPUTY CORONER.

16 Q AND WHAT WERE YOUR DUTIES AS SUCH?

17 A MY DUTIES WERE TO RESPOND TO THE SCENE OF A

18 DEAD BODY, PER REQUEST OF THE LAW ENFORCEMENT AGENCIES, PRONOUNCE

19 THE DECEDENT DEAD LEGALLY, TAKE CONTROL OF ALL PERSONAL PROPERTY

20 AND TRANSPORTATION OF THE BODY TO THE CORONER'S OFFICE.

21 Q AND ON MARCH THE 27TH, 1980, AT APPROXI-

22 MATELY 7:40 P.M., DID YOU HAVE AN OPPORTUNITY TO RESPOND IN THAT

23 MANNER TO A LOCATION AT 4200 BOULDER HIGHWAY?

24 A I DID.

25 Q AND IS THAT HERE IN CLARK COUNTY, NEVADA?

26 A YES, SIR, IT IS.

27 Q AND WHAT IS THAT PARTICULAR ADDRESS?

28 A IT'S THE DEW DROP INN BAR.

29 Q AND COULD YOU BRIEFLY DESCRIBE THE SCENE FOR

30 US, AS YOU SAW IT, WHEN YOU ARRIVED?

31 A WHEN I ARRIVED AT THE SCENE, I IDENTIFIED

32 MYSELF AS THE INVESTIGATOR-CORONER ON DUTY TO THE GENTLEMAN THAT

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1 WAS IN CHARGE. LIEUTENANT CONNER WAS AT THE SCENE. HE AT THAT  
2 TIME TOLD ME HE HAD A BODY IN A VAN ON THE BACK PARKING LOT OF  
3 THE DEW DROP INN.

4 Q DID YOU SEE THE VAN AT THAT TIME?

5 A YES, I DID.

6 MR. SEATON: MAY I APPROACH THE WITNESS, YOUR  
7 HONOR?

8 THE COURT: YOU MAY.

9  
10 BY MR. SEATON:

11  
12 Q LET ME SHOW YOU STATE'S EXHIBIT 2, MR.  
13 DERRICK, AND ASK IF YOU ARE ABLE TO IDENTIFY THAT PHOTOGRAPH.

14 A YES, SIR. THIS IS THE VAN THAT I APPROACHED  
15 BEHIND THE DEW DROP INN BAR.

16 Q ON MARCH THE 27TH, 1980?

17 A THAT'S CORRECT.

18 Q AND WHAT DID YOU SUBSEQUENTLY DO WITH REGARD  
19 TO THAT VAN?

20 A O.K. WITH PERMISSION OF HOMICIDE INVESTI-  
21 GATION TEAM, I ENTERED THE VAN AND TOUCHED THE DECEDENT, FOUND  
22 HIM WITHOUT ANY LIFE SIGNS, AND THEN EXITED THE VAN.

23 Q HOW DID YOU TOUCH THE DECEDENT TO MAKE THAT  
24 DETERMINATION?

25 A I GRABBED HIS WRIST. I BELIEVE I HAD THE  
26 RIGHT HAND. THE LEFT ONE WAS DOWN INSIDE THE WHEELWELL OF THE  
27 VAN, BETWEEN THE WHEELS ON THE LEFT -- ON THE RIGHT SIDE. SO I  
28 TOUCHED THE RIGHT HAND. IT WAS COLD. THE WRIST WAS STIFF. THE  
29 ARM WAS STIFF. LEGALLY PRONOUNCED HIM DEAD AT THE TIME.

30 Q I SEE.

31 WOULD YOU ALSO LOOK AT THIS TIME AT  
32 STATE'S EXHIBIT, I'M NOT SURE IF THAT'S PROPOSED OR EXHIBIT 12.

1534

1 IT'S IN EVIDENCE.

2 TAKE A LOOK AT STATE'S EXHIBIT 12. ARE  
3 YOU ABLE TO RECOGNIZE THAT PARTICULAR PHOTOGRAPH?

4 A THIS PARTICULAR PHOTOGRAPH CORRESPONDS WITH  
5 THE DESCRIPTION IN MY REPORT I MADE AT THE SCENE AND THE CORONER'S  
6 OFFICE.

7 Q IS STATE'S EXHIBIT 12 A FAIR AND ACCURATE  
8 REPRESENTATION OF THE SCENE AT THE TIME THAT YOU LATER SAW IT?

9 A YES, SIR, IT IS.

10 Q WHEN AND WHERE WAS THIS PICTURE TAKEN?

11 A THIS PICTURE HERE WAS TAKEN AT THE CRIME  
12 LAB OF METRO CRIME DEPARTMENT.

13 Q THANK YOU.

14 NOW, LET ME SHOW YOU WHAT'S BEEN MARKED  
15 AS STATE'S EXHIBIT 8, AND ASK IF YOU ARE ABLE TO IDENTIFY THAT  
16 SCENE DEPICTED IN THAT PHOTOGRAPH?

17 A YES, SIR. THIS IS THE WAY THE BODY WAS  
18 LAYING WITH THE DEBRIS ON TOP OF IT BEFORE EVERYTHING WAS MOVED.  
19 THIS WAS STILL TAKEN AT THE CRIME LAB AT METRO.

20 Q THANK YOU.

21 IS THAT A FAIR AND ACCURATE REPRESENTA-  
22 TION?

23 A YES, SIR, IT IS.

24 Q THEN LET ME SHOW YOU STATE'S EXHIBIT --  
25 PROPOSED EXHIBIT 17, AND ASK IF YOU ARE ABLE TO RECOGNIZE THAT  
26 PHOTOGRAPH?

27 A BY THE DESCRIPTION OF CLOTHING AND MOUSTACHE,  
28 THE DECEDENT, HIS HAIR AND GENERAL DESCRIPTION THAT I WAS GIVEN  
29 PRIOR TO ENTERING THE VAN AND AFTER WE REMOVED HIM FROM THE VAN.

30 YES. THIS IS A ACCURATE DESCRIPTION.

31 Q IS THAT THE SAME INDIVIDUAL YOU SAW IN THE  
32 VAN AT 4200 BOULDER HIGHWAY ON MARCH THE 27TH, 1980, AT 7:40 P.M.?

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1 A YES, SIR, IT IS.

2 Q THANK YOU.

3 AND LET ME SHOW YOU WHAT HAS BEEN MARKED  
4 FOR PURPOSES OF IDENTIFICATION AS STATE'S PROPOSED EXHIBIT 13,  
5 AND ASK IF YOU ARE ABLE TO IDENTIFY WHAT IS DEPICTED IN THAT  
6 PHOTOGRAPH?

7 A YES, SIR. THIS IS THE DECEDENT DEPICTED  
8 HERE AS HE WAS LAYING AFTER THE DEBRIS WAS MOVED.

9 Q AFTER THE DEBRIS WAS MOVED.

10 IS THAT A FAIR AND ACCURATE REPRESENTA-  
11 TION OF THE SCENE AT THE TIME THAT PHOTOGRAPH WAS TAKEN?

12 A YES, SIR, IT IS.

13 Q WHEN YOU OBSERVED IT?

14 A YEAH.

15 Q AND DO YOU KNOW IF THIS PHOTOGRAPH WAS TAKEN  
16 AT THE SCENE OR THE I.D. LAB?

17 A THIS WAS TAKEN AT THE I.D. LAB.

18 Q WERE YOU PRESENT WHEN THAT PHOTOGRAPH WAS  
19 TAKEN?

20 A YES, SIR, I WAS.

21 Q WHEN YOU PRONOUNCED THE VICTIM DEAD AT 4200  
22 BOULDER HIGHWAY, DID YOU IN ANY OTHER WAY TOUCH THE BODY AT THAT  
23 TIME?

24 A NO, SIR, I DID NOT.

25 Q DID YOU TOUCH THE BODY AT ANY TIME WHILE THE  
26 VAN AND THE BODY IN IT WERE STILL PRESENT AT 4200 BOULDER HIGH-  
27 WAY?

28 A NO, I DID NOT.

29 Q DID YOU TOUCH ANY PART OF THE CLOTHING AT  
30 THAT TIME?

31 A NO, SIR, I DID NOT.

32 Q WITH PARTICULAR RESPECT TO ANY OF THE

1536

1 POCKETS OF THE DECEASED, DID YOU HAVE AN OPPORTUNITY TO TOUCH  
2 THOSE OR GO INTO THEM WHILE THE VAN WAS PRESENT AT 4200 BOULDER  
3 HIGHWAY?

4 A I HAD THE OPPORTUNITY TO, BUT I DID NOT.

5 Q I SEE.

6 DID YOU LATER TOUCH THE -- FURTHER  
7 TOUCH THE BODY WITH PARTICULAR REGARD TO THE CLOTHING AND POCKETS  
8 OF THE DECEASED?

9 A YES, SIR, I DID.

10 Q AND WHERE WAS THAT?

11 A IT WAS AT THE CRIME LAB AFTER THE BODY WAS  
12 REMOVED FROM THE VAN.

13 Q LET ME SHOW YOU STATE'S EXHIBIT 12, AND  
14 WITH PARTICULAR REFERENCE TO THE POCKETS OF THAT INDIVIDUAL,  
15 WOULD YOU DESCRIBE WHAT YOU SEE IN THAT PHOTOGRAPH?

16 A WHAT I SEE IN THIS ONE IS THE REAR PANTS  
17 POCKET OF THE DECEDENT ON THE LEFT SIDE, WHICH IS VISIBLE,  
18 CLEARLY VISIBLE, AND IT APPEARS TO HAVE BEEN PULLED OUT AS BEING  
19 SEARCHED.

20 Q WHAT DO YOU --

21 A THE RIGHT SIDE.

22 Q WHAT CAN YOU TELL ABOUT THE RIGHT REAR  
23 POCKET?

24 A WELL, ALL I CAN SEE ON THIS WHAT APPEARS  
25 TO BE ON A STRAIGHT-ON SHOT, IS A HANDKERCHIEF OUT OF THE  
26 POCKET.

27 NOW, GOING TO THE MIRROR ON THE BACKSIDE  
28 OF THAT CABINET, I SEE MORE OF A HANDKERCHIEF. IT APPEARS TO  
29 HAVE BEEN PULLED OUT AND POSSIBLY TUCKED BACK IN.

30 Q WITH REGARD TO THAT RIGHT REAR POCKET, LET  
31 ME SHOW YOU STATE'S PROPOSED EXHIBIT 13 AND ASK YOU IF THAT IS  
32 A CLEARER PICTURE OF THE RIGHT REAR POCKET OF THE DECEDENT?

1537

1 A YES, SIR, IT IS.

2 Q AND WHAT DO YOU OBSERVE FROM THAT PHOTO-

3 GRAPH?

4 A THAT YOU CAN SEE PLAINLY FROM THE SHOT WITH-

5 OUT THE MIRROR THAT THE HANDKERCHIEF IS OUT OF THE POCKET, HAD

6 BEEN PULLED OUT OF THE POCKET AND POSSIBLY PUT BACK IN.

7 Q THANK YOU.

8 NOW, LET'S REFER BACK TO STATE'S PRO-

9 POSED EXHIBIT -- STATE'S EXHIBIT 12. WITH REFERENCE TO THE RIGHT

10 FRONT POCKET -- EXCUSE ME, THE LEFT FRONT POCKET, ARE YOU ABLE

11 TO SEE THAT IN THAT PHOTOGRAPH?

12 A NOT THAT CLEARLY, NO. I CAN SEE WHAT

13 APPEARS TO BE A POCKET BUT IT'S JUST RUFFLED. THERE'S NOTHING

14 REALLY PULLED OUT OF IT.

15 Q THERE WAS NOTHING PULLED OUT OF IT AT THAT

16 TIME?

17 A NO.

18 Q NOW, DO STATE'S PROPOSED EXHIBITS, EXHIBIT

19 ~~13 AND STATE'S EXHIBIT 12, REFLECT THE WAY THE POCKETS LOOKED ON~~

20 THE DECEDENT ON MARCH 27TH, 1980, PRIOR TO THE TIME THAT YOU

21 TOUCHED THE POCKETS?

22 A YES, THEY DO.

23 Q LET ME SHOW YOU STATE'S PROPOSED EXHIBIT 17,

24 AND AGAIN WITH REFERENCE TO THE POCKETS CAN YOU SEE ANY OF THEM

25 IN THAT PHOTOGRAPH?

26 A I CAN SEE THE RIGHT FRONT POCKET ON THE

27 TROUSERS.

28 Q AND WHAT CONDITION IS IT IN?

29 A IT IS PULLED OUT.

30 Q NOW, LET ME ASK YOU THIS, MR. DERRICK:

31 WELL, WOULD YOU EXPLAIN FOR US WHAT YOU DID WHEN YOU TOUCHED THE

32 POCKETS OF THE DECEDENT?

1538

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FIRST OF ALL, WHERE WERE YOU?

A I WAS AT THE CRIME LAB AT METRO.

Q AND WAS THE BODY OF THE DECEDENT STILL IN,  
THE VAN?

A NO, SIR, IT WAS NOT.

Q WHERE HAD IT BEEN PLACED?

A IT HAD BEEN PLACED OR TAKEN OUT OF THE VAN  
AND PLACED IN A BODY BAG.

Q AND WHERE WAS IT IN REFERENCE TO THE VAN?

A REMEMBER RIGHT, IT WAS ON THE GROUND.

Q NEXT --

A NEXT TO THE VAN.

Q TO THE VAN?

A YES.

Q AND DID YOU AT THAT TIME, CHECK FOR VALU-  
ABLES?

A YES, SIR, I DID.

Q AND HOW DID YOU DO THAT?

A A SYSTEMATIC SEARCH THAT I GO THROUGH. YOU  
START AT THE NECK, SEARCHING FOR NECKLACES; YOU GO DOWN TO THE  
ARMS, TO THE WRIST PARTICULARLY FOR WATCHES, AND TO THE HANDS TO  
SEE IF THERE'S ANY RINGS ON THEM.

Q LET ME INTERRUPT YOU FOR JUST ONE MOMENT.

WHEN YOU MADE THAT SEARCH, DID YOU FIND  
ANY NECKLACES?

A NO, SIR, I DID NOT.

Q DID YOU FIND ANY WATCHES?

A NO, SIR.

Q DID YOU FIND ANY RINGS?

A NO, SIR.

Q DID YOU FIND ANY JEWELRY ON THE BODY?

A NO, SIR.

1539



1 Q WHAT DID YOU DO AFTER CHECKING THOSE PLACES?  
2 A I THEN WENT TO THE POCKETS OF ALL THE CLOTH-  
3 ING, STARTING WITH THE OUTSIDE GARMENT, GOING THROUGH THOSE  
4 POCKETS, SHIRT POCKETS, THEN THE TROUSER POCKETS.  
5 Q AND WHEN YOU WENT THROUGH THE TROUSER  
6 POCKETS, DO YOU REMEMBER IN WHICH ORDER YOU WENT?  
7 A NO, SIR, I DO NOT.  
8 Q COURT'S INDULGENCE FOR JUST A MOMENT.  
9 DID YOU FIND ANYTHING IN THE POCKETS  
10 OF THE JACKET? I BELIEVE YOU'VE DESCRIBED IT AS A OUTER GARMENT.  
11 A NO, SIR, I DID NOT.  
12 Q DID YOU FIND ANYTHING IN ANY OF THE TROUSER  
13 PANTS POCKETS?  
14 A YES, SIR, I DID.  
15 Q AND WHICH POCKET WAS IT THAT YOU FOUND SOME-  
16 THING IN?  
17 A I CANNOT REMEMBER --  
18 Q BUT IT WAS --  
19 A (CONTINUING) -- WHICH EXACTLY.  
20 Q WHICH ONE OF THE POCKETS?  
21 A WHICH OF THE POCKETS, YES.  
22 Q AND DID YOU GO THROUGH EACH OF THE POCKETS?  
23 A YES, SIR, I DID.  
24 Q AFTER YOU WENT THROUGH THE POCKETS, SHOWING  
25 YOU AGAIN, STATE'S PROPOSED 17, DID YOU LEAVE THE POCKETS IN THE  
26 CONDITION THAT THE RIGHT FRONT POCKET APPEARS TO BE IN IN THIS  
27 PICTURE?  
28 A YES, SIR. WHEN I EMPTIED IT, I TURNED THEM  
29 INSIDE OUT.  
30 Q ALL OF THEM INSIDE OUT?  
31 A YES.  
32 Q AND LEFT THEM IN THAT FASHION?

1540

1 AND WHAT IF ANYTHING DID YOU RECOVER  
2 FROM THE PANTS POCKETS OF THE DECEDENT?

3 A OH, AS I REMEMBER -- CAN I REFER TO MY  
4 PROPERTY RECEIPT?

5 Q WOULD IT REFRESH YOUR MEMORY TO DO SO?

6 A YES. PLEASE.

7 Q WOULD YOU PLEASE.

8 A THERE IS A COPY OF OUR PROPERTY RECEIPTS  
9 MADE OUT WITH EVERY DECEDENT THAT WE WORK AND IT REFLECTS --

10 Q MAY I -- WOULD IT TROUBLE YOU TO TEAR THAT  
11 PARTICULAR RECEIPT OUT AND LET ME HAVE IT MARKED AS EVIDENCE IN  
12 THIS CASE?

13 A O.K.

14 Q PLEASE DO.

15 MR. SEATON: IF I COULD DO THAT, MAY I HAVE IT  
16 MARKED AS THE NEXT EXHIBIT IN ORDER?

17 THE COURT: IT MAY BE.

18 MR. SEATON: THIS WILL BE MARKED NEXT IN ORDER.

19 MR. COOPER: MAY WE HAVE THAT NUMBER?

20 THE CLERK: NUMBER 56.

21 MR. FRANZEN: MAY WE SEE IT, COUNSEL?

22 MR. SEATON: YES. I'M GOING TO LET YOU SEE TWO  
23 AT THE SAME TIME.

24  
25 BY MR. SEATON:

26  
27 Q MR. DERRICK, LET ME SHOW YOU WHAT HAS BEEN  
28 MARKED AS STATE'S PROPOSED EXHIBIT 56, AND ASK IF YOU CAN IDEN-  
29 TIFY THAT OBJECT.

30 A YES, SIR. THIS IS MY PINK COPY OF THE  
31 PROPERTY RECEIPT BOOK THAT I IMPOUNDED OR THAT I WENT THROUGH  
32 THE BODY AND IMPOUNDED NO PROPERTY, BUT DID TURN OVER 11 CENTS

1 TO METRO.

2 Q IS THAT REFLECTED ON THIS PARTICULAR DOCU-  
3 MENT?

4 A YES, SIR, IT IS.

5 Q WHEN AND WHERE DID YOU MAKE OUT THIS DOCU-  
6 MENT?

7 A AT THE CRIME LAB AT METRO.

8 Q AND THEN HAVE YOU KEPT IT IN YOUR OWN  
9 PERSONAL FILES SINCE THAT TIME?

10 A YES, SIR, I HAVE.

11 MR. SEATON: YOUR HONOR, WE WOULD LIKE TO REFER  
12 MORE SPECIFICALLY TO THIS DOCUMENT AT THIS TIME. I WOULD MOVE  
13 FOR ITS ADMISSION.

14 THE COURT: ANY OBJECTION, COUNSEL?

15 MR. COOPER: WE HAVE NO OBJECTION, YOUR HONOR.

16 THE COURT: SAME WILL BE RECEIVED.

17 MR. SEATON: THANK YOU, YOUR HONOR.

18

19 BY MR. SEATON:

20

21 Q IF YOU NOW REFER TO STATE'S EXHIBITS 56,  
22 AND THE WRITING IS A LITTLE DIFFICULT WITH THE CARBON TO READ,  
23 WOULD YOU TELL US WHAT THAT DOCUMENT SAYS IN ESSENCE?

24 A O.K. IT IS A INVENTORY OF PERSONAL EFFECTS  
25 THAT THE INVESTIGATOR HAS. THE NUMBER ON IT IS 11336. THE  
26 REPORT NUMBER FOR OUR LOG AT THE CORONER'S OFFICE IS CASE NUMBER  
27 381-80 MADE OUT MARCH 27TH, 1980, TO THE DECEDENT OF GEORGE S.  
28 MONAHAN. LOCATION THE RECEIPT WAS MADE OUT WAS THE METRO CRIME  
29 LAB. THERE WAS NO CASH, COIN IMPOUNDED. THE PROPERTY THAT I  
30 HANDWROTE -- HANDWROTE MYSELF, IS "NO PROPERTY FOUND BY THIS  
31 OFFICE. ALL PROPERTY AND VEHICLE IMPOUNDED BY METRO," WITH  
32 11 CENTS IN PARENTHESIS. IT WAS SIGNED BY ME AS THE INVESTIGA-

1542

1 TOR, J. DERRICK; AND THE WITNESS OF DAN CONNELL, NUMBER 298, FROM  
2 THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT.

3 Q IS DAN CONNELL THE PERSON TO WHOM YOU TURNED  
4 THE 11 CENTS OVER TO?

5 A YES. I BELIEVE THAT IS HIS -- HIS P NUMBER  
6 IS 298.

7 Q ALL RIGHT.  
8 SHOWING YOU AGAIN STATE'S PROPOSED  
9 EXHIBIT 17, IS THAT THE INDIVIDUAL FROM WHOM YOU GOT THE 11 CENTS?

10 A YES, SIR.

11 Q TO DAN CONNELL?

12 A YES, SIR.

13 Q THANK YOU.

14 LET ME SHOW YOU NOW WHAT'S BEEN MARKED  
15 AS STATE'S PROPOSED EXHIBIT 35, WHICH PURPORTS TO BE A LAS VEGAS  
16 METROPOLITAN POLICE DEPARTMENT POLICE EVIDENCE ENVELOPE. DO YOU  
17 RECOGNIZE THAT?

18 A I RECOGNIZE IT AS AN EVIDENCE BAG, YES,  
19 FROM HOMICIDE WITH THE NAME OF PERSON MAKING IT OUT WAS DAN  
20 CONNELL, SAME P NUMBER IS 298.

21 Q DOES THAT, STATE'S PROPOSED EXHIBIT 35,  
22 APPEAR TO BE PRESENTLY INTACT, THAT IS, UNOPENED?

23 A YES, SIR, IT DOES.

24 Q IT'S COVERED WITH A EVIDENCE SEAL?

25 A EVIDENCE SEAL AND TAPE.

26 MR. SEATON: IF THE RECORD WOULD SO REFLECT, YOUR  
27 HONOR.

28 THE COURT: THE RECORD MAY SO SHOW.

29 ..  
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31 ..  
32 ..

1 BY MR. SEATON:

2

3 Q NOW, I WOULD LIKE THE WITNESS, IF YOU WOULD,  
4 TO TAKE THE SCISSORS AND CUT THE BOTTOM OF THE BAG PERHAPS ALONG  
5 ONE OF THE EDGES.

6 A (WHEREUPON, THE WITNESS COMPLIES.)

7 Q O.K. NOW THAT YOU HAVE OPENED THE BAG WITH  
8 THE SCISSORS, IF YOU COULD REMOVE THE CONTENTS, PLEASE.

9 A (WHEREUPON, THE WITNESS COMPLIES.)

10 Q AND IF YOU WILL DESCRIBE THE TWO ITEMS THAT  
11 YOU JUST WITHDREW, PLEASE.

12 A THE FIRST ITEM IS A CLEAR PLASTIC VILE WITH  
13 A WHITE TOP. THERE'S SOME WRITING ON IT.

14 Q WITHOUT DESCRIBING THE WRITING --

15 A NUMBER SEVEN.

16 Q (CONTINUING) -- JUST GENERALLY, WHAT'S  
17 INSIDE THERE?

18 A THERE ARE TWO NICKELS AND ONE PENNY.

19 Q IF YOU WOULD DESCRIBE THE OTHER ITEM THAT

20 YOU REMOVED FROM THE BAG.

21 A THIS APPEARS TO BE A INVITATION HONORING  
22 GEORGE S. MONAHAN, PUBLIC ADMINISTRATOR OF THE YEAR, IN --

23 MR. FRANZEN: I'M GOING TO OBJECT TO THIS.

24 MR. SEATON: IF I JUST MIGHT ADD IT --

25 THE COURT: SUSTAINED.

26 MR. FRANZEN: I REQUEST THE JURY BE ADMONISHED  
27 AT THIS TIME.

28 THE COURT: WELL, COUNSEL, IF IT ISN'T LATER  
29 CONNECTED UP I WILL SO ADMONISH THEM.

30 ..

31 ..

32 ..

1 BY MR. SEATON:

2

3 Q MR. DERRICK, YOU HAD INDICATED THAT YOU HAD  
4 REMOVED 11 CENTS FROM THE BODY OF THE DECEASED. DO YOU RECALL  
5 IN WHAT FORM THE 11 CENTS WAS? ALL PENNIES OR WHATEVER?

6 A NO, SIR, I DO NOT.

7 Q WHEN YOU REMOVED THE 11 CENTS FROM THE BODY  
8 OF THE DECEDENT, WHAT DID YOU DO WITH IT?

9 A I THEN GAVE IT TO DAN CONNELL, FROM THE I.D.  
10 TEAM.

11 Q FROM THE TIME YOU REMOVED THE 11 CENTS FROM  
12 THE BODY OF THE DECEDENT IN THE FRONT PANTS POCKET, UNTIL THE  
13 TIME YOU GAVE IT TO DAN CONNELL, WAS IT IN YOUR SOLE CARE AND  
14 CUSTODY?

15 A YES, SIR, IT WAS.

16 Q SHOWING YOU WHAT'S BEEN MARKED AS STATE'S  
17 PROPOSED EXHIBIT 35B, THE CONTENTS THEREOF. WITHOUT DESCRIBING  
18 IT, ARE YOU ABLE TO RECOGNIZE THAT PARTICULAR ITEM?

19 A NO, SIR, I AM NOT.

20 Q ALL RIGHT. THANK YOU.

21 DID YOU HAVE AN OPPORTUNITY, MR. DERRICK,  
22 IN YOUR CAPACITY AS DEPUTY CORONER, TO LOOK FOR ANY WOUNDS ON THE  
23 DECEDENT?

24 A YES, SIR, I DO.

25 Q WERE YOU ABLE TO OBSERVE ANY?

26 A YES, SIR, I WAS.

27 Q WHAT DID YOU OBSERVE?

28 A MAY I REFER TO MY REPORT?

29 Q WOULD IT REFRESH YOUR MEMORY?

30 A YES, SIR.

31 Q PLEASE DO.

32 A I OBSERVED WHAT APPEARED TO BE A GUNSHOT.

1545

1 WOUND APPROXIMATELY THREE INCHES BEHIND THE LEFT EAR AND WHAT  
 2 APPEARED TO BE AN EXIT WOUND ONE INCH ABOVE THE RIGHT EAR.  
 3 Q THANK YOU. COURT'S INDULGENCE AGAIN, PLEASE.  
 4 WHEN YOU PRONOUNCED THE DECEDENT DEAD,  
 5 DO YOU RECALL THE TIME?  
 6 A FROM MY REPORT I LOOKED AT MY WATCH AND  
 7 VERIFIED AT THAT TIME IT WAS 7:40 P.M.  
 8 Q THAT WAS ON MARCH THE 27TH, 1980?  
 9 A CORRECT.  
 10 Q JUST SO THE RECORD IS CLEAR, MR. DERRICK,  
 11 FROM THE TIME THAT YOU FIRST OBSERVED THE BODY IN THE VAN UNTIL  
 12 THE TIME THAT THE BODY WAS REMOVED FROM THE VAN AT THE I.D. LAB,  
 13 DID YOU EVER TOUCH THE POCKETS?  
 14 A NO, SIR, I DID NOT.  
 15 Q WHEN YOU WENT THROUGH THE POCKETS OF THE  
 16 CLOTHING, DID YOU FIND A WALLET?  
 17 A NO, SIR, I DID NOT.  
 18 MR. FRANZEN: OBJECTION, YOUR HONOR. THE WITNESS  
 19 HAS ALREADY TESTIFIED HE FOUND NOTHING IN ANY OF THE POCKETS.  
 20 IF HE FOUND NOTHING I DOUBT IF HE FOUND THE WALLET. THIS IS  
 21 DUPLICITAS.  
 22 THE COURT: OVERRULED.  
 23  
 24 BY MR. SEATON:  
 25  
 26 Q WOULD YOU PLEASE ANSWER?  
 27 THE COURT: HE'S ANSWERED, SIR.  
 28 MR. SEATON: O.K. THANK YOU.  
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 30 BY MR. SEATON:  
 31  
 32 Q DID YOU FIND ANY CREDIT CARDS?

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A NO, SIR.

Q AND JUST SO THAT WE ARE CLEAR, DID YOU FIND  
ANYTHING OTHER THAN THE 11 CENTS THAT YOU HAVE PREVIOUSLY DESCRIBED?

A NO, SIR.

MR. SEATON: THANK YOU. I HAVE NOTHING FURTHER.

THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE  
OUR NOON 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, TELE-  
VISION 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 UNTIL 1:30 THIS AFTER-  
NOON.

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1 LAS VEGAS, NEVADA, THURSDAY, APRIL 14, 1983, AT 1:45 P.M.

2 \* \* \* \* \*

3 (WHEREUPON, FROM 11:50 A.M.  
4 UNTIL 1:45 P.M., THE NOON RECESS  
5 WAS HAD IN THE PROCEEDINGS, AT  
6 THE CONCLUSION OF WHICH THE  
7 FOLLOWING PROCEEDINGS WERE HAD:)

8 THE COURT: COUNSEL, STIPULATE TO THE PRESENCE OF  
9 THE JURY?

10 MR. SEATON: YES, YOUR HONOR, THE STATE WOULD SO  
11 STIPULATE.

12 THE COURT: COUNSEL, APPROACH THE BENCH, PLEASE.  
13 (WHEREUPON, SIDE BAR CONFERENCE  
14 WAS HELD AT THE BENCH; NOT  
15 REPORTED.)

16 THE COURT: YOU MAY PROCEED, COUNSEL.  
17 MR. FRANZEN: THANK YOU.  
18

19 CROSS EXAMINATION

20  
21 BY MR. FRANZEN:

22  
23 Q SIR, SHOWING YOU STATE'S PROPOSED EXHIBIT  
24 35A, THE VILE WITH THE NICKELS AND THE PENNIES, DO YOU KNOW IF  
25 THE CHANGE WAS EVER DUSTED FOR PRINTS?

26 A CHANGE EVER DUSTED?

27 Q YES, SIR.

28 A NO, SIR, I DO NOT KNOW THAT.

29 Q YOU DON'T KNOW IF THEY WERE EVER HANDLED  
30 BY ANYONE THEN?

31 A BESIDES MYSELF?

32 Q YES, SIR.

1548

1 A I WOULD IMAGINE DAN CONNELL DID. I GAVE  
2 THEM TO HIM.

3 MR. FRANZEN: NO FURTHER QUESTIONS, YOUR HONOR.

4 MR. SEATON: JUST ONE BRIEFLY, YOUR HONOR.

5 THE COURT: PROCEED.

6  
7 REDIRECT EXAMINATION

8  
9 BY MR. SEATON:

10  
11 Q IN THE COURSE OF YOUR DUTIES, MR. DERRICK,  
12 AS A MATTER OF COURSE DO YOU NORMALLY TAKE OBJECTS OUT OF PEOPLE,  
13 DEAD PERSON'S POCKETS WITH ANY REGARD TO THE LATER TAKING OF  
14 PRINTS?

15 A NO. WE DO NOT UNLESS THEY'RE ENCASED IN  
16 PLASTIC OR SOMETHING LIKE THIS BECAUSE WHEN YOU GO THROUGH A  
17 POCKET YOU'VE GOT TO HAVE YOUR OWN PRINTS ON IT.

18 Q BY "YOUR OWN PRINTS" YOU MEAN YOUR --

19 A YES.

20 Q (CONTINUING) -- YOUR PERSONAL PRINTS?

21 A BY PHYSICALLY GRABBING THE ARTICLE IN THE  
22 POCKET AND PULLING IT OUT TO GET EVERYTHING OUT AND THEN TURNING  
23 THE POCKET INSIDE OUT.

24 MR. SEATON; THANK YOU.

25 I HAVE NOTHING FURTHER, YOUR HONOR.

26 MR. FRANZEN: NOTHING FURTHER.

27 THE COURT: YOU'RE EXCUSED, SIR.

28 THE WITNESS: THANK YOU.

29 (WHEREUPON, THE WITNESS WAS  
30 EXCUSED.)

31 THE COURT: COUNSEL, APPROACH THE BENCH.

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(WHEREUPON, SIDE BAR CONFERENCE  
WAS HELD AT THE BENCH; NOT  
REPORTED.)

THE COURT: LADIES AND GENTLEMEN OF THE JURY, IT  
APPEARS THAT WE WILL BE TAKING TESTIMONY OUTSIDE OF YOUR PRES-  
ENCE, AND PROBABLY WILL TAKE FURTHER ARGUMENT AFTER THE TESTI-  
MONY IS IN. SO AT THIS TIME, WE ARE GOING TO EXCUSE YOU. I  
ANTICIPATE THAT WE'LL PROBABLY BE AT LEAST A HALF AN HOUR.

IS THAT WHAT YOU WOULD ANTICIPATE, COUNSEL?

MR. HARMON: YES, YOUR HONOR.

THE COURT: SO I WOULD SUGGEST THAT WHEN YOU ARE  
EXCUSED, IF YOU WOULD BE BACK TO THE COURTROOM AREA IN ABOUT A  
HALF AN HOUR.

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, INCLUD-  
ING 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.

YOU ARE IN RECESS AND MAY LEAVE THE COURT-  
ROOM AT THIS TIME.

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(WHEREUPON, AT THE HOUR OF  
1:55 P.M., THE JURY LEFT THE  
COURTROOM AND THE FOLLOWING  
PROCEEDINGS WERE HAD OUTSIDE  
THEIR PRESENCE:)

THE COURT: OUTSIDE OF THE PRESENCE OF THE JURY.  
COUNSEL.

MR. FRANZEN: IT'S MY UNDERSTANDING BASED ON THE  
BENCH CONFERENCE, THAT THE STATE IS GOING TO PRESENT ONE WITNESS  
IN A OUT-OF-STATE ORDER AND THE COURT WILL BE RESERVING ITS  
RULING AS TO THE ADMISSIBILITY OF IT UNTIL LATER RECEIVED; IS  
THAT CORRECT?

THE COURT: WELL, I MAY OR MAY NOT, COUNSEL. BUT  
RIGHT NOW WE ARE GOING TO BE TAKING TESTIMONY OF AN OUT-OF-STATE  
WITNESS.

MR. HARMON: THANK YOU, YOUR HONOR.

WE WOULD LIKE TO CALL IN CONNECTION WITH  
OUR OFFER OF PROOF, ED SCHWARTZ.

THE COURT: COME FORWARD, SIR.

WHEREUPON,

EDWARD SCHWARTZ,

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

THE COURT: JUST BE SEATED, SIR. YOU CAN PULL  
THAT MIKE DOWN TO YOU AND YOU CAN PULL THAT CHAIR UP A LITTLE BIT.  
IT WILL BE MORE COMFORTABLE FOR YOU.

ALL RIGHT. PROCEED.

MR. HARMON: THANK YOU, YOUR HONOR.

155.1

DIRECT EXAMINATION

BY MR. HARMON:

Q WILL YOU STATE YOUR NAME, PLEASE?

A EDWARD SCHWARTZ.

Q AND SPELL YOUR LAST NAME, PLEASE.

A S-C-H-W-A-R-T-Z.

Q MR. SCHWARTZ, WHAT IS YOUR BUSINESS OR PROFESSION?

A I'M AN AUTOMOBILE SALESMAN.

Q HOW LONG HAVE YOU WORKED AS AN AUTOMOBILE SALESMAN?

A ROUGHLY ABOUT FOUR YEARS.

Q WERE YOU EMPLOYED AS A CAR SALESMAN ON OCTOBER THE 5TH, 1979?

A YES, I WAS.

Q WHERE DID YOU WORK ON THAT DATE?

A AT PARAGONS ON NORTHERN BOULEVARD, QUEENS.

Q FOR THE RECORD, WILL YOU SPELL PARAGONS, PLEASE?

A P-A-R-A-G-O-N-S OLDS.

Q MR. SCHWARTZ, WHERE IS PARAGONS OLDSMOBILE LOCATED?

A IT'S IN THE SECTION OF WOODSIDE, AROUND 65TH STREET AND NORTHERN BOULEVARD.

Q IN WHAT CITY AND IN WHAT STATE, SIR?

A IT'S NEW YORK CITY, COUNTY OF QUEENS.

Q MR. SCHWARTZ, DID YOU HAVE OCCASION TO GO TO WORK AS A CAR SALESMAN OF PARAGONS MOTORS, ON OR ABOUT OCTOBER THE 5TH, 1979?

A YES, SIR.

1 Q WHAT TIME DID YOU ARRIVE AT YOUR BUSINESS?

2 A APPROXIMATELY 9:00 A.M.

3 Q SHORTLY AFTER YOUR ARRIVAL DID YOU MAKE  
4 CONTACT WITH A BLACK MALE ADULT WHO EXPRESSED AN INTEREST IN  
5 PURCHASING A VEHICLE?

6 A YES, I DID.

7 Q WILL YOU EXPLAIN HOW YOU ENCOUNTERED THAT  
8 PERSON?

9 A UH, I ARRIVED AT THE SHOWROOM ROUGHLY ABOUT  
10 9:00 A.M. AND WALKED INTO THE SHOWROOM, AND THIS BLACK MALE  
11 APPROACHED ME, SAYING HE WAS INTERESTED IN BUYING A CAR.

12 Q ARE YOU ABLE --

13 A HE SAID --

14 Q EXCUSE ME.. ARE YOU ABLE TO PROVIDE A  
15 PHYSICAL DESCRIPTION OF THAT PERSON?

16 A YES.

17 Q DESCRIBE THE INDIVIDUAL.

18 A AT THE POINT I MET HIM?

19 Q YES.

20 A I WOULD SAY HE WAS ROUGHLY FIVE TEN, WEIGH-  
21 ED ABOUT 150, 155 POUNDS, SHORT CROPPED HAIR, LIGHT BLACK COM-  
22 PLEXION.

23 Q YOU SAY A "LIGHT BLACK COMPLEXION." WHAT  
24 DO YOU MEAN BY THAT?

25 A HIS -- HE WASN'T -- WELL, IN SHADES OR TONES,  
26 HE WASN'T A DARK BLACK BUT LIGHTER BLACK I WOULD SAY. IT'S A  
27 TAN TINT (SIC) BLACK, IF YOU WANT TO DESCRIBE HIM THAT WAY.

28 Q DID YOU FORM AN OPINION AS TO HOW OLD THE  
29 PERSON WAS?

30 A I WOULD SAY ROUGHLY AROUND 30 YEARS OLD.

31 Q MR. SCHWARTZ, WILL YOU LOOK AROUND THE COURT-  
32 ROOM TODAY AND STATE WHETHER YOU SEE THAT PERSON YOU ENCOUNTERED

1553

1 AT ABOUT 9:00 O'CLOCK A.M., NEAR THE SHOWROOM OCTOBER THE 5TH,  
2 1979?

3 A RIGHTHAND TABLE ON THE EXTREME RIGHT SIDE,  
4 MY RIGHT.

5 Q WILL YOU DESCRIBE HOW THAT INDIVIDUAL IS  
6 DRESSED AT THIS TIME?

7 A AT THIS TIME, LUMBER JACKET.

8 Q WHAT COLOR?

9 A GRAY, I BELIEVE THAT'S IT.

10 Q POINT TO THE PERSON YOU ARE DESCRIBING.

11 A (INDICATING).

12 MR. HARMON: YOUR HONOR, MAY THE RECORD SHOW THAT  
13 THE WITNESS HAS IDENTIFIED THE DEFENDANT, SAMUEL HOWARD.

14 THE COURT: THE RECORD MAY SO SHOW.

15 MR. HARMON: THANK YOU.

16

17 BY MR. HARMON:

18

19 Q MR. SCHWARTZ, WHAT WAS THE CONVERSATION YOU

20 HAD WITH DEFENDANT HOWARD AFTER YOU MADE CONTACT WITH HIM IN THE  
21 AREA OF THE SHOWROOM AT ABOUT 9:00 O'CLOCK A.M.?

22 A HE TOLD ME HE WAS INTERESTED IN PURCHASING  
23 AN OLDSMOBILE 98 AUTOMOBILE, NEW AUTOMOBILE. WE DISCUSSED A  
24 LITTLE BIT ABOUT THE AUTOMOBILE. HE ASKED ME WHAT I HAD IN STOCK  
25 AND I HAD A -- AN ADDITIONAL LOT ACROSS THE STREET WHERE WE KEPT  
26 STOCK CARS FOR DISPLAY IN TERMS OF COLOR, EQUIPMENT, ETCETERA.

27 AND AFTER DISCUSSING SEVERAL THINGS, WE  
28 TOOK A WALK ACROSS THE STREET AND I SHOWED HIM WHAT I HAD AVAIL-  
29 ABLE.

30 Q YOURSELF AND THE DEFENDANT?

31 A THAT IS CORRECT.

32 Q WHAT HAPPENED THEN?

1 A WE SPENT MAYBE TEN, TWELVE MINUTES WALKING  
2 AROUND CARS, LOOKING AT THEM, SEEING THE EQUIPMENT THAT WAS IN  
3 THEM, AND THEN WE PROCEEDED BACK TO THE SHOWROOM AT MY DESK.

4 Q WAS ATTENTION AT THAT POINT FOCUSED ON A  
5 PARTICULAR VEHICLE?

6 A I THINK AT THAT POINT WHERE HE PICKED OUT A  
7 PARTICULAR COLOR, I THINK THE FACT THAT THE PARTICULAR AUTOMOBILE,  
8 YES, WAS A 98 OLDSMOBILE.

9 Q A 98 OLDSMOBILE?

10 A THAT'S CORRECT.

11 Q WHAT YEAR, SIR?

12 A 1980.

13 Q AT SOME POINT WAS THERE ANY DISCUSSION ABOUT  
14 A DEM- -- DEMO RIDE IN THAT VEHICLE?

15 A NOT AT THIS POINT.

16 Q AT SOME POINT, SIR?

17 A AT SOME POINT, YES.

18 Q WILL YOU EXPLAIN HOW THAT OCCURRED?

19 A WELL, WHEN WE CAME BACK TO THE SHOWROOM WE

20 STARTED TO DISCUSS THE PURCHASE PRICE, DOWNPAYMENT, PAYMENTS,  
21 THINGS IN THAT VEIN. AND THE DEFENDANT AT THAT POINT BROUGHT  
22 OUT A TYPE OF A BANKBOOK, IN WHICH HE SHOWED ME HE HAD A SUM OF  
23 ROUGHLY \$3500 IN THE BANKBOOK, MATCHING LICENSE, AND TOLD ME HE  
24 HAD WORKED -- WAS WORKING -- I'M SORRY, IS WORKING FOR A  
25 SECURITY OUTFIT.

26 AT THAT POINT HE ASKED WHETHER IT WAS  
27 POSSIBLE FOR HIM TO HAVE A DEMO RIDE.

28 Q IS IT YOUR TESTIMONY THAT IN ADDITION TO  
29 SHOWING YOU HIS BANKBOOK AND APPARENTLY A SUM HE HAD ON DEPOSIT,  
30 THAT HE SHOWED YOU A DRIVER'S LICENSE?

31 A THAT'S CORRECT.

32 Q DO YOU REMEMBER WHAT NAME WAS ON THE DRIVER'S

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LICENSE?

A THAT I -- I CAN'T FOR CERTAIN SAY.

Q DO YOU RECALL ANYTHING ABOUT IT?

A MIGHT HAVE BEGUN SOMETHING WITH AN S OR SOMETHING. BUT I -- I COULDN'T SAY THE FULL NAME FOR SURE.

Q AT WHAT POINT DID MR. HOWARD TELL YOU HE WAS EMPLOYED IN SOME CAPACITY AS A SECURITY OFFICER?

A DURING THE COURSE OF THE CONVERSATION WHEN HE TOOK OUT HIS BANKBOOK, LICENSE, AT THAT POINT HE SAID HE WORKED FOR A SECURITY.

Q DID HE IDENTIFY THE NAME OF THE AGENCY HE WORKED FOR?

A I BELIEVE IT WAS BURNS, BUT I'M -- I'M NOT QUITE THAT SURE.

Q WAS IT AT THAT POINT THAT HE REQUESTED A TEST RIDE?

A YES.

Q WHAT HAPPENED THEN?

A IN VIEW OF ALL THE THINGS THAT I HAD SEEN AND DISCUSSED, I HAD SPENT APPROXIMATELY A HALF HOUR WITH THE CUSTOMER, I -- I PERSONALLY FELT AT THAT POINT IT WAS APPROPRIATE. AND THEN I WENT INTO THE SALES MANAGER, SINCE HE WANTED TO RIDE IN THE 98, MY AUTOMOBILE WAS A CUTLASS SUPREME, I ASKED PERMISSION TO OBTAIN A 98 FOR A DEMO RIDE. I EXPLAINED TO MY SALES MANAGER VERY BRIEFLY THE FACTS THAT I'VE JUST STATED, AND GAVE ME THE KEYS TO HIS CAR, SINCE HE HAD A 98.

Q WHAT HAPPENED THEN, MR. SCHWARTZ?

A AT THAT POINT WE WENT OUTSIDE TO THE CAR. I GOT IN THE CAR. THE DEFENDANT WAS ALONGSIDE ME. AND STARTING FROM THE POINT OF THE SHOWROOM, WE DROVE IN A -- WE WERE GOING TO DRIVE IN A CIRCLE AROUND THE SHOWROOM. WE GOT ABOUT THREE-QUARTERS OF THE WAY AROUND AND THE DEFENDANT ASKED WHETHER HE

1556

1 COULD DRIVE OR NOT. I SAID YES. I GOT OUT OF THE DRIVER'S SEAT,  
2 WALKED TO THE PASSENGER'S SEAT; AND HE WALKED INTO THE -- GOT  
3 OUT AND WENT INTO THE DRIVER'S SEAT. WE THEN CONTINUED TO COM-  
4 PLETE THE CIRCLE AT THE SHOWROOM.

5 AT THAT POINT HE ASKED WHETHER WE COULD  
6 GO AROUND AGAIN, SINCE HE ONLY DROVE A SHORT DISTANCE. I THOUGHT  
7 IT WAS A LOGICAL THING AND I SAID YES.

8 Q DID THE DEFENDANT THEN RESUME HIS DRIVING  
9 OF THE --

10 A YES, HE DID.

11 Q (CONTINUING) -- THE OLDSMOBILE 98?

12 A HE DROVE THEN APPROXIMATELY THREE OR FOUR  
13 BLOCKS ON NORTHERN BOULEVARD. THE DEFENDANT MADE A RIGHTHAND  
14 TURN, IT'S A ONE-WAY STREET, AND WENT DOWN, OH, I WOULD SAY ABOUT  
15 A QUARTER OR SO OF THE BLOCK, PULLED OVER TO THE RIGHTHAND SIDE,  
16 AND PULLED OUT A GUN.

17 Q DID YOU SEE WHERE THE DEFENDANT HAD THE GUN  
18 WHICH HE PRODUCED?

19 A THE GUN WAS IN HIS LEFT HAND.

20 Q DID YOU SEE WHERE HE GOT IT?

21 A HE JUST PULLED IT OUT AT THAT POINT. I  
22 DON'T KNOW.

23 Q WHAT TYPE OF GUN DID HE HAVE IN HIS LEFT  
24 HAND?

25 A I BELIEVE IT WAS SOME TYPE OF AUTOMATIC.

26 Q IT WAS A HANDGUN?

27 A YES. HANDGUN, AUTOMATIC. YES.

28 Q DO YOU HAVE ANY OPINION REGARDING THE CALIBER  
29 OF THE WEAPON?

30 A I'M POSITIVE IT WASN'T A .45. I DON'T THINK  
31 IT WAS A .22. I BELIEVE SOMEWHERE ABOVE A .22 AND UNDER A .45.

32 Q WHAT HAPPENED, SIR, AFTER THE DEFENDANT

1557

1 PRODUCED THE HANDGUN?

2 A HE THEN MADE ME CROUCH IN THE WELL ON THE  
3 PASSENGER'S SIDE. BY "WELL" I MEAN THE FLOOR OF THE PASSENGER'S  
4 SIDE OF THE CAR.

5 Q WAS THE GUN POINTED AT YOU?

6 A AT MY HEAD, YES.

7 Q WERE YOU GIVEN SOME INSTRUCTION AT THAT  
8 POINT?

9 A YES.

10 Q WHAT?

11 A I WAS TOLD TO REMOVE MY SHOES FIRST. HE  
12 THEN TOLD ME TO REMOVE MY PANTS, WHICH I DID. AND THEN HE TOLD  
13 ME TO THROW IT IN THE BACKSEAT, I BELIEVE PRIOR TO THE JACKET  
14 OFF INITIALLY.

15 SO I HAD TAKEN MY SHOES OFF AND MY PANTS  
16 OFF AND THROWN EVERYTHING IN THE BACKSEAT.

17 Q WHAT HAPPENED AFTER YOUR SHOES AND PANTS  
18 WERE REMOVED AND THROWN IN THE BACKSEAT?

19 A AT THAT POINT I WAS TOLD TO PLACE MY HANDS

20 ON THE, I GUESS YOU WOULD CALL IT THE TRANSMISSION HUMP OF THE  
21 CAR, BOTH HANDS FLAT. ALSO TOLD NOT TO MOVE OR DO ANYTHING.

22 Q WAS CERTAIN PROPERTY THEN REMOVED FROM YOUR  
23 PERSON?

24 A YEAH. MY -- I HAD A RING, PINKY RING, THAT  
25 WAS REMOVED AND A WATCH THAT WAS REMOVED.

26 Q DID THE DEFENDANT INSTRUCT YOU TO REMOVE THE  
27 RING AND THE WRISTWATCH OR DID HE PERSONALLY TAKE THOSE FROM YOUR  
28 PERSON?

29 A I BELIEVE I REMOVED THEM MYSELF.

30 Q AT HIS DIRECTION?

31 A LATER ON.

32 Q WERE ANY OTHER ITEMS OF PROPERTY TAKEN FROM

1 YOU BESIDES THE PINKY RING AND YOUR WRISTWATCH?

2 A WELL, THE -- I -- ARE YOU REFERRING TO THE  
3 THINGS THAT WERE IN MY JACKET AND PANTS?

4 Q YES. ANYTHING ELSE YOU HAD ANYWHERE IN YOUR  
5 CLOTHING OR ON YOUR PERSON.

6 A MY MONEY WAS TAKEN, MY WALLET WAS TAKEN,  
7 CREDIT CARDS, KEYS, AND ANY OTHER STUFF YOU WOULD NORMALLY CARRY  
8 IN YOUR POCKET.

9 Q DID THE DEFENDANT HAVE YOUR PERMISSION TO  
10 REMOVE THESE PROPERTIES FROM YOUR PERSON OR CLOTHING?

11 A NOT AT ALL. I WAS DOING IT AT GUNPOINT.

12 Q WHAT HAPPENED AFTER HE OBTAINED POSSESSION  
13 OF THE ITEMS YOU'VE REFERRED TO?

14 A AT THAT POINT HE INSTRUCTED ME TO REMAIN  
15 CROUCHED ON THE WELL -- ON THE WELL OF THE PASSENGER'S SEAT, AND  
16 HE DROVE I WOULD ESTIMATE ABOUT A QUARTER OF A MILE. FROM LAYING  
17 THERE I MADE A -- HE WENT DOWN A LITTLE TO THE CORNER, MADE A  
18 LEFT TURN, ANOTHER LEFT TURN, AND WENT BACK ON NORTHERN BOULE-  
19 VARD A SHORT DISTANCE, AND THEN HE PULLED UP TO A PARKING LOT

20 BY A BURGER KING OR ONE OF THE FAST FOOD-TYPE RESTAURANTS IN  
21 THE PARKING LOT.

22 Q WHAT HAPPENED AT THAT LOCATION, SIR?

23 A AT THAT POINT HE INSTRUCTED ME TO OPEN THE  
24 DOOR, TOLD ME TO GET OUT, TOLD ME TO WALK AGAINST THE WIRE FENCE,  
25 WHICH WAS ABOUT TEN FEET AWAY, DON'T LOOK BACK, AND THE NEXT  
26 THING I KNEW HE HAD DRIVEN OFF IN THE CAR.

27 Q THE DEFENDANT DROVE OFF IN THE 1980 OLDS-  
28 MOBILE 98 BELONGING TO PARAGON MOTORS?

29 A THAT IS CORRECT.

30 Q WHAT DID YOU DO THEN?

31 A WELL, AT THAT POINT I WAS STANDING IN MY  
32 BRIEFS AND SHORTS AND NO SHOES. FORTUNATELY SOMEBODY DROVE UP.

1 THE RESTAURANT WAS CLOSED. AND I DIDN'T WANT TO WALK ON THE  
2 STREET THAT WAY. AND I THINK HE WAS EITHER COMING TO THE RESTAU-  
3 RANT TRYING TO MAKE A PHONE CALL AND I CALLED OUT TO HIM AND HE  
4 STARTED SORT OF TO TURN AROUND, WALK AWAY, AND I YELLED OUT TO  
5 HIM, "WOULD YOU PLEASE CALL THE POLICE", AND ALSO IF HE COULD  
6 CALL PARAGON MOTORS.

7 Q MR. SCHWARTZ, ARE YOU ABLE TO ESTIMATE ABOUT  
8 WHAT TIME THIS WAS?

9 A SOMEWHERE AFTER 10:00 A.M.

10 Q HOW LONG WERE YOU IN THE PRESENCE OF THE  
11 DEFENDANT ON OCTOBER THE 5TH, 1979?

12 A IN TOTAL?

13 Q YES.

14 A IT WOULD BE OVER -- OVER AN HOUR.

15 Q DID YOU GET A GOOD LOOK AT HIM?

16 A YES, SIR.

17 Q DID YOU HAVE OCCASION THEREAFTER TO SPEAK  
18 WITH REPRESENTATIVES OF THE POLICE DEPARTMENT?

19 A YES, I DID.

20 Q WERE YOU ASKED TO GIVE A PHYSICAL DESCRIP-  
21 TION OF THE SUSPECT?

22 A YES.

23 Q DO YOU RECALL NOW, HOW THE DEFENDANT WAS  
24 DRESSED ON OCTOBER 5TH, 1979?

25 A I BELIEVE HE WAS WEARING PANTS, SHIRT, SOME  
26 KIND OF LUMBER JACKET, LUMBER JACKET, FAIRLY WELL DRESSED,  
27 INTELLIGENT.

28 Q I DIDN'T CATCH THE LAST THING YOU SAID.

29 A YOU -- I'M SORRY. YOU ASKED FOR A DESCRIP-  
30 TION OF THE CLOTHES.

31 Q A DESCRIPTION OF CLOTHING.

32 A THAT WAS -- THAT'S --

1 Q WHAT ABOUT HIS FOOTWEAR? DO YOU REMEMBER  
2 THAT?  
3 A I DON'T REMEMBER.  
4 Q ON OR ABOUT OCTOBER THE 18TH, 1979, DID YOU  
5 HAVE OCCASION TO BE SHOWN A SERIES OF PHOTOGRAPHS BY LAW ENFORCE-  
6 MENT?  
7 A YES, I WAS.  
8 Q EXPLAIN HOW THAT OCCURRED AND WITH WHAT  
9 RESULTS.  
10 A I WAS ASKED BY THE NEW YORK CITY POLICE  
11 DEPARTMENT WHETHER I WOULD COME DOWN TO THEIR, I DON'T KNOW THEIR  
12 CORRECT TITLE, BUT IT WAS THE IDENTIFICATION UNIT IN THE POLICE  
13 STATION OF FOREST HILLS, WHICH I DID. AND THROUGH A SERIES OF  
14 THEIR IDENTIFICATION EXCLUSION PROCEDURES, I PICKED OUT AN INDIV-  
15 VIDUAL THAT I THOUGHT WAS THE DEFENDANT.  
16 Q WHAT WAS THE PROCEDURE YOU'RE REFERRING TO?  
17 YOU SAY, "A SERIES OF EXCLUSION PROCEDURES."  
18 A WELL, THEY -- THEY ASKED ME THE PHYSICAL  
19 DESCRIPTION, FIVE TEN, WEIGHT, AND WHAT THEY DID, WAS ELIMINATE  
20 EVERYBODY SAY OVER SIX FOOT, EVERYBODY SAY OVER SAY 175 POUNDS.  
21 AND IT WAS A SERIES OF EXCLUSION PROCEDURES, AND THEN THEY  
22 NARROWED IT DOWN TO A SMALLER GROUP OF INDIVIDUALS AND SHOWN  
23 THOSE PICTURES. AND I PICKED OUT AN INDIVIDUAL WHO I THOUGHT  
24 WAS THE MAN THAT HELD ME UP.  
25 Q AS YOU LOOK AT THE DEFENDANT, MR. HOWARD IN  
26 COURT TODAY, HOW SURE ARE YOU HE IS THE PERSON WHO COMMITTED THE  
27 OFFENSE UPON YOU, OCTOBER 5TH, 1979?  
28 A HE'S GAINED WEIGHT, BUT PRETTY SURE HE'S  
29 THE INDIVIDUAL.  
30 MR. HARMON: THANK YOU.  
31 THAT CONCLUDES DIRECT EXAMINATION, YOUR  
32 HONOR.

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THE COURT: CROSS.

MR. COOPER: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. COOPER:

Q MR. SCHWARTZ, THIS INCIDENT YOU'VE DESCRIBED WAS AT THE TIME YOU WERE WORKING AS A AUTO SALESMAN; IS THAT RIGHT?

A THAT'S CORRECT.

Q THIS WAS FOR AN AUTO SALES BUSINESS?

A AGENCY, YES.

Q AN AGENCY. I SEE.

YOU WERE NOT SELLING THIS PARTICULAR CAR THOUGH, THE OLDSMOBILE, AS AN INDIVIDUAL CITIZEN, WERE YOU?

A I -- I DON'T UNDERSTAND THE QUESTION.

Q IT WASN'T YOUR VEHICLE THAT YOU WERE SELLING?

A NO. I WORKED FOR THE AGENCY PARAGON.

Q AND THAT VEHICLE, THE 98 OLDS THAT YOU'VE DESCRIBED, BELONGED TO PARAGON MOTORS?

A THAT'S CORRECT.

Q I SEE.

DID YOU GIVE A WRITTEN STATEMENT, MR. SCHWARTZ, TO THE POLICE?

A YES, I DID.

Q DETAILING THIS INCIDENT?

A YES.

Q YOU DID, SIR?

A YES, SIR.

Q YOU WOULDN'T HAPPEN TO HAVE A COPY OF THAT WITH YOU NOW, WOULD YOU?

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A NO, SIR.

Q HAVE YOU SEEN A COPY OF THAT OR WERE YOU GIVEN A COPY OF THAT SINCE THIS INCIDENT WAS REPORTED TO THE NEW YORK POLICE?

A I DON'T -- I DON'T FOLLOW.

Q WERE YOU EVER GIVEN A COPY OF THE STATEMENT YOU GAVE TO THE POLICE?

A MY POSSESSION?

Q YES.

A NO.

Q AS FAR AS YOU KNOW THEN, THE NEW YORK CITY POLICE WOULD STILL HAVE THAT WRITTEN STATEMENT YOU GAVE THEM?

A NOT AWARE OF WHAT THE NEW YORK POLICE HAVE OR HAVE NOT.

Q HOW MANY PAGES DOES THAT STATEMENT CONSIST OF?

A I REALLY DON'T KNOW. ROUGHLY ABOUT TWO PAGES.

Q I SEE.

DID YOU SIGN THE STATEMENT, SIR?

A I IMAGINE SO.

Q I SEE.

AND WAS THIS STATEMENT IN YOUR OWN HAND-WRITING, IF YOU RECALL?

A I -- I DON'T BELIEVE SO.

Q DO YOU THINK THAT MAYBE IT WAS A TYPED STATEMENT?

A POSSIBLY.

Q I SEE.

YOU WERE NEVER PHYSICALLY INJURED AS A RESULT OF YOUR ENCOUNTER WITH THIS MAN, WERE YOU, THE MAN YOU TESTIFIED DREW THE GUN ON YOU AND TOOK YOUR PROPERTY?

1563



1 A WHAT DO YOU MEAN "PHYSICALLY"?

2 Q PHYSICALLY. WERE YOU EVER PHYSICALLY

3 INJURED BY THIS MAN? DID YOU SUFFER ANY KIND OF PHYSICAL INJURY?

4 A WELL, I SUFFERED THE INJURY OF LOOKING AT

5 A GUN POINT.

6 Q I UNDERSTAND. BUT PHYSICALLY WERE YOU

7 INJURED, SIR?

8 A NO.

9 Q IN YOUR PARTICULAR CASE, THIS MAN TOOK THE

10 VEHICLE AS WELL AS YOUR ITEMS OF PERSONAL PROPERTY, DIDN'T HE?

11 A THE VEHICLE BELONGED TO PARAGON AGENCY, YES.

12 Q HE DIDN'T --

13 A PLUS MY PERSONAL POSSESSIONS, AND THEN HE

14 DROVE OFF IN THE VEHICLE.

15 Q HE DROVE OFF IN THE VEHICLE?

16 A THAT'S CORRECT.

17 Q DO YOU KNOW IF THAT VEHICLE WAS LATER

18 RECOVERED?

19 A I BELIEVE IT WAS.

20 Q DO YOU KNOW ABOUT WHEN IT WAS RECOVERED?

21 A ABOUT A MONTH LATER.

22 Q UH-HUH. THIS MAN, DID HE HAVE ON GLOVES AT

23 THE TIME HE EN- -- YOU ENCOUNTERED HIM?

24 A NO.

25 Q I SEE.

26 DO YOU KNOW OF YOUR OWN KNOWLEDGE

27 WHETHER ANY FINGERPRINTS WERE LIFTED FROM THAT VEHICLE?

28 A I HAVE NO IDEA.

29 Q YOU WOULDN'T KNOW IF ANY PRINTS WERE LIFTED

30 THAT WERE MATCHED UP WITH THAT MAN'S PRINTS THAT YOU'VE IDENTI-

31 FIED?

32 A (NO AUDIBLE RESPONSE.)

1 Q COULD YOU ANSWER LOUDER, SIR.  
2 A NO, SIR. NO.  
3 Q THIS GENTLEMAN HAD YOU REMOVE YOUR CLOTHES;  
4 IS THAT RIGHT?  
5 A THAT'S CORRECT.  
6 Q AMONG THE ITEMS OF PERSONAL PROPERTY TAKEN,  
7 MR. SCHWARTZ, WAS A CHECKBOOK OF YOURS, WASN'T IT?  
8 A THAT IS CORRECT. NOT A CHECKBOOK, SIR,  
9 BANK CHECKS.  
10 Q BANK CHECKS?  
11 A THAT IS CORRECT.  
12 Q HOW MANY CHECKS WERE TAKEN?  
13 A TWO OR THREE.  
14 Q AND SOMETIME SUBSEQUENT TO THE DATE THIS  
15 INCIDENT OCCURRED, YOU WERE INFORMED BY YOUR BANK THAT A MAN  
16 HAD PRESENTED ONE OF YOUR CHECKS AT THE BANK FOR -- TO CASH IT;  
17 ISN'T THAT TRUE?  
18 A SUBSEQUENT?  
19 Q YES, SIR.  
20 A YES. NOT AT -- NOT AT THE BRANCH THAT I  
21 DID BUSINESS.  
22 AFTER THE HOLDUP I WENT TO MY BRANCH  
23 MANAGER, TOLD HIM BRIEFLY WHAT HAD HAPPENED, AND ASKED HIM WHETHER  
24 HE WANTED TO PUT A STOP ON MY CHECKING ACCOUNT. HE SAID HE DIDN'T  
25 THINK THAT WOULD BE NECESSARY, BUT THEY WOULD RED FLAG MY ACCOUNT.  
26 AND THAT IS WHAT HE DID.  
27 Q DID YOU IN FACT --  
28 A SUBSEQUENTLY I WAS NOTIFIED THAT A CHECK OF  
29 MINE WAS CASHED.  
30 Q I SEE.  
31 ONE OF THE CHECKS --  
32 A AT A -- AT A DIFFERENT REGULAR SAVINGS BANK.

1565

1 Q BUT IT WAS ONE OF THE CHECKS THAT HAD BEEN  
2 TAKEN?

3 A YES, SIR.

4 Q FROM YOU BY THIS MAN?

5 A YES, SIR.

6 Q IS THAT RIGHT?

7 A YES.

8 Q DID YOU EVER TALK TO ANYONE AT THE BANK  
9 REGARDING THE DESCRIPTION OF THIS INDIVIDUAL WHO PRESENTED THAT  
10 CHECK?

11 A YES.

12 Q WERE YOU TOLD THAT IT WAS A BLACK MAN?

13 A YES.

14 Q DO YOU KNOW WHAT HAPPENED TO THAT CHECK?

15 A FROM WHAT I UNDERSTAND, THE BLACK INDIVI-  
16 DUAL PRESENTED THIS CHECK AT A BRANCH OF THE ORIGINAL SAVINGS  
17 BANK WITH MY LICENSE, MY NAME, MY LICENSE. THE TELLER THEN TOOK  
18 THE CHECK TO THE MANAGER AND THEY BOTH APPARENTLY O.K.'D THE  
19 CHECK.

20 Q I SEE.

21 A AND THE CHECK WAS CASHED.

22 Q I SEE.

23 DID YOU EVER GET THAT -- A COPY OF THAT  
24 CANCELLED CHECK IN YOUR BANK STATEMENT, SIR?

25 A I DON'T REMEMBER, BUT THE BANK REIMBURSED  
26 ME IMMEDIATELY FOR THE COST.

27 Q DID YOU INFORM THE NEW YORK CITY POLICE  
28 DEPARTMENT OF THIS, THE FACT THAT YOUR CHECK HAD BEEN CASHED?

29 A YES, SIR. YES, SIR.

30 Q I TAKE IT YOU WOULDN'T KNOW WHETHER THERE  
31 WAS ANY KIND OF HANDWRITING COMPARISON MADE TO DETERMINE WHO  
32 MIGHT HAVE -- WHO MIGHT HAVE FORGED YOUR CHECK?

1 A THINKING BACK NOW I DON'T REMEMBER WHETHER  
2 I RECEIVED IT AS A CANCELLED CHECK, BUT I REMEMBER SOMEWHERE  
3 ALONG THE LINE SEEING THE CHECK AND LOOKING AT THE SIGNATURE AND  
4 OBVIOUSLY TO ME, IT WAS A FORGERY.

5 Q I SEE.

6 BUT THE ANSWER TO MY QUESTION IS, MY  
7 QUESTION IS: DO YOU KNOW WHETHER THE NEW YORK CITY POLICE --  
8 YOU TESTIFIED YOU DID INFORM THEM OF THIS. DO YOU KNOW WHETHER  
9 THEY MADE ANY KIND OF HANDWRITING COMPARISON TO DETERMINE WHO  
10 MIGHT HAVE WRITTEN THAT?

11 A I DON'T KNOW THE PROCEDURES OF THE NEW YORK  
12 CITY POLICE DEPARTMENT.

13 Q O.K.

14 NOW, YOU TESTIFIED THAT THIS PERSON  
15 SHOWED YOU HIS LICENSE; IS THAT RIGHT?

16 A A LICENSE.

17 Q A LICENSE, EXCUSE ME.

18 AND IT WAS A NEW YORK STATE LICENSE?

19 A THAT IS CORRECT.

20 Q DIDN'T YOU TELL THE POLICE THAT THE NAME ON  
21 THE LICENSE WAS ONE LARRY STAREET, S-T-A-R-E-E-T, OR LARRY  
22 STANTON, S-T-A-N-T-O-N?

23 A I'M -- I MIGHT HAVE MENTIONED THE NAME AT  
24 THAT TIME OF THE INDIVIDUAL. BUT AT THIS POINT I COULDN'T SAY  
25 THE NAME OF THE PARTIES.

26 Q I SEE.

27 A BUT IT WAS A NEW YORK STATE LICENSE.

28 Q I SEE.

29 DO YOU RECALL, MR. SCHWARTZ, TELLING  
30 THE POLICE THAT YOU WERE CERTAIN THAT THE LAST LETTERS IN THAT --  
31 THAT THE LAST NAME YOU SAW ON THE DRIVER'S LICENSE CONTAINED NO  
32 MORE THAN FIVE OR SIX LETTERS?

1567

1 A YES. I BELIEVE I MENTIONED THAT TO THEM.  
2 Q NOW, YOU TESTIFIED THAT THIS WAS A -- THE  
3 MAN APPEARED INTELLIGENT; IS THAT RIGHT?  
4 A THAT IS CORRECT.  
5 Q WOULD YOU SAY HE WAS WELL SPOKEN?  
6 A YES.  
7 Q I SEE.  
8 AND BY "WELL SPOKEN" WHAT DO YOU MEAN?  
9 A THE MAN WAS ARTICULATE AND OBVIOUSLY HAD A,  
10 IN MY ESTIMATION, A DEGREE OF INTELLIGENCE.  
11 Q I SEE.  
12 DID YOU NOTICE ANY KIND OF DIALECT OR  
13 ACCENT TO HIS VOICE?  
14 A MINIMUM.  
15 Q I SEE.  
16 AND WERE YOU ABLE TO DISCERN WHAT TYPE  
17 OF DIALECT OR ACCENT IT MIGHT HAVE BEEN?  
18 A MINIMUM BLACK DIALECT.  
19 Q ALL RIGHT.  
20 AND WHAT LED YOU TO THAT OBSERVATION?  
21 A I SPOKE TO THE MAN FOR A HALF HOUR.  
22 Q WELL, WHEN YOU SAY HE HAD A "MINIMUM BLACK  
23 DIALECT" WHAT DO YOU MEAN?  
24 A I'M REFERRING TO A NEW YORK CITY ACCENT.  
25 WE HAVE MANY DIALECTS THERE. THIS WAS A MINIMUM.  
26 Q IT WAS --  
27 A HE WAS AN ARTICULATE PERSON.  
28 Q WOULD IT BE -- WOULD IT BE MORE ACCURATE TO  
29 SAY IT WAS MORE OF A NEW YORK CITY-TYPE ACCENT THAN A BLACK  
30 ACCENT?  
31 A WELL, IN SOME SENSES THEY'RE THE SAME. BUT  
32 IT WAS A MINIMUM AGAIN, WHATEVER DIALECT YOU WANT TO CALL IT. --

1568

1 Q BUT IN ANY EVENT, HE APPEARED TO YOU TO BE  
2 WELL SPOKEN; IS THAT CORRECT?

3 A THAT IS CORRECT.

4 Q THE PHOTO -- YOU WERE CONTACTED BY THE POLICE  
5 SUBSEQUENTLY AND ASKED TO COME INTO A PHOTO LINEUP; IS THAT RIGHT?

6 A IF THE NAME YOU'RE SAYING IS THE NAME OF  
7 THE UNIT, YES, IT WAS AN IDENTIFICATION UNIT. I DON'T KNOW THE  
8 EXACT NAME OF IT.

9 Q I SEE.

10 DID THEY CALL YOU ON THE PHONE AND ASK  
11 YOU TO COME TAKE A LOOK AT THIS?

12 A UH-HUH.

13 Q DO YOU RECALL WHAT YOU WERE TOLD IN THAT  
14 CONVERSATION?

15 A AS FAR AS WHAT?

16 Q WELL, DID THEY SAY, MR. SCHWARTZ, WOULD YOU  
17 COME DOWN TO SUCH AND SUCH PLACE AND TAKE A LOOK AT PHOTOGRAPHS?

18 A YES. WE -- WOULD I CARE TO COME DOWN AND  
19 TRY TO IDENTIFY THE MAN THAT HELD ME UP, YES.

20 Q DID THEY -- DID THEY LEAD YOU TO BELIEVE IN  
21 ANYWAY THAT THEY HAD A POSSIBLE SUSPECT?

22 A NO.

23 Q WHEN YOU ARRIVED AT WHEREVER IT WAS YOU TOOK  
24 A LOOK AT THESE PHOTOGRAPHS, I ASSUME AT SOME POINT YOU WERE  
25 SHOWN SEVERAL PHOTOGRAPHS; IS THAT RIGHT?

26 A WE USE THE WORD "PHOTOGRAPHS". THEY WEREN'T  
27 PHOTOGRAPHS.

28 Q WHAT WERE THEY, SIR?

29 A THE BEST THAT I CAN DESCRIBE IT IS A KODAK  
30 REPRODUCER, SOMETHING THAT YOU WOULD SEE IN THE LIBRARY IF YOU  
31 WANTED TO REPRODUCE A NEWSPAPER FROM A BACK ISSUE.

32 Q A COPIER?

1569

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NO, NOT COPY. IT WAS A SCREEN.

Q I SEE.

A AGAIN I DON'T KNOW THE --

Q WAS IT --

A IT WAS KODAK, I KNOW THAT.

Q WAS IT KIND OF LIKE A SLIDE PROJECTOR OR  
SOMETHING SIMILAR TO THAT?

A SOMETHING IN THAT VEIN, BUT IT WASN'T AN  
OUTSIDE PROJECTOR, IT WAS INTERNAL.

Q I SEE.

AND YOU WERE SHOWN PICTURES THEN OF  
INDIVIDUALS?

A THAT IS CORRECT.

Q HOW MANY INDIVIDUALS DID YOU LOOK AT?

A OH, I WOULD SAY A HUNDRED, A HUNDRED FIFTY.

Q I SEE.

DO YOU -- CAN YOU ESTIMATE FOR US ABOUT  
HOW MANY YOU LOOKED AT BEFORE YOU DECIDED ON THIS MAN'S PHOTO-  
GRAPH?

A THAT -- THAT'S ABOUT THE NUMBER.

AS I SAID, IT WAS AN EXCLUSION THING.  
SO YOU DIDN'T SEE A THOUSAND PHOTOGRAPHS, THEY ELIMINATED BETWEEN  
CERTAIN MAXIMUMS AND MINIMUMS.

Q BASED ON THE DESCRIPTION YOU HAD GIVEN THEM?

A THAT IS CORRECT.

Q AFTER THEY HAD GONE THROUGH THE MAXIMUMS  
AND MINIMUMS AND HAD ELIMINATED CERTAIN PHOTOGRAPHS, HOW MANY  
WERE LEFT?

A I'D SAY A HUNDRED, HUNDRED AND FIFTY.

Q WERE THEY -- ARE ALL OF THEM BLACK MALES?

A NO.

Q SOME OF THEM WERE WHITE MALES, I TAKE IT?

1570

1 A THAT IS CORRECT.

2 Q HOW ABOUT LATINO MALES? WERE THEY ALSO

3 INCLUDED IN THAT GROUP?

4 A YES. THEY HAD A WIDE RANGE OF ALL ETHNIC

5 GROUPS.

6 Q I SEE.

7 WELL, WHEN YOU SAY A "WIDE RANGE" ABOUT

8 HOW MANY PHOTOGRAPHS WERE THERE OF BLACK MALES, SIR?

9 A I COULDN'T GIVE YOU AN EXACT NUMBER.

10 Q HOW MANY OF THE PHOTOGRAPHS OF THE PICTURES

11 OF BLACK MALES APPEARED TO BE ABOUT 30 YEARS OF AGE?

12 A SEE, EACH -- EACH SORT OF STEP-OVER STAGE

13 ELIMINATED MORE AND MORE. YOU'RE ASKING ME A QUESTION THAT I --

14 I FIND HARD TO ANSWER.

15 Q I SEE.

16 YOU JUST DON'T KNOW THE ANSWER TO THAT?

17 A I DON'T KNOW AN EXACT ANSWER.

18 Q CAN YOU ESTIMATE?

19 A I'D SAY OVERALL I'D SAY ABOUT A HUNDRED OR

20 SO.

21 Q OF BLACK MALES?

22 A NO. I DIDN'T SAY THAT.

23 Q I UNDERSTAND.

24 YOU -- CAN YOU TELL US HERE NOW ABOUT

25 HOW MANY PICTURES OF BLACKS, BLACK MALES YOU SAW?

26 A ROUGHLY AROUND A HUNDRED, PLUS OR MINUS.

27 Q AND YOU CAN'T TELL US WHAT PERCENTAGE OF

28 THAT NUMBER WAS ABOUT --

29 A WELL, I DIDN'T CARE AT THE TIME.

30 Q (CONTINUING) -- ABOUT THE AGE OF THE MAN

31 THAT TOOK YOUR PROPERTY FROM YOU?

32 A BY PERCENTAGE, I COULDN'T GIVE YOU A PER-



1 CENTAGE.

2 Q YOU'VE IDENTIFIED THE GENTLEMAN SEATED TO  
3 MY LEFT AS THE MAN WHO TOOK YOUR PROPERTY, SIR.

4 LET ME ASK YOU THIS: DID IT APPEAR THAT  
5 HE HAD ANY FACIAL HAIR AT THE TIME?

6 A HE HAD A -- I BELIEVE HE HAD A SLIGHT  
7 BEARD.

8 Q I SEE.

9 DID YOU TELL THE POLICE THAT?

10 A (NO AUDIBLE RESPONSE.)

11 Q WOULD YOU ANSWER LOUD, SIR?

12 A YES.

13 Q WHEN YOU WERE SHOWN THESE PICTURES BY THE  
14 POLICE DO YOU RECALL HOW MANY OF THE BLACK MEN YOU SAW HAD BEARDS?

15 A NO, I COULDN'T ANSWER THAT QUESTION.

16 Q DID THE PICTURE OF THE GENTLEMAN SEATED TO  
17 MY LEFT, WHEN YOU VIEWED HIS PICTURE AT THE POLICE STATION AND  
18 WERE AWARE OF IT, THAT YOU VIEWED IT, DID HE HAVE A BEARD THEN?

19 A ON THE POLICE PHOTO, I DON'T BELIEVE SO.

20 Q WAS THERE A POLICE OFFICER PRESENT WITH YOU  
21 AS YOU VIEWED THESE PICTURES?

22 A I BELIEVE HE WAS IN AND OUT. I WAS IN A  
23 SMALL ROOM WITH THIS MACHINE.

24 Q I SEE.

25 DO YOU STILL DO BUSINESS WITH THE BANK  
26 THAT YOU DID BUSINESS WITH AT THE TIME?

27 A YES.

28 Q COURT'S INDULGENCE, PLEASE.

29 AT SOME POINT SUBSEQUENT TO THIS INCI-  
30 DENT YOU'VE DESCRIBED, MR. SCHWARTZ, DID YOU RECEIVE A PHONE CALL  
31 FROM SOMEONE YOU BELIEVED TO BE THIS INDIVIDUAL?

32 A I RECEIVED SEVERAL PHONE CALLS FROM THIS

1572

1 INDIVIDUAL. HE CONTACTED ME AND HE WANTED TO SELL -- NEGOTIATE  
2 OR SELL BACK MY JEWELRY.

3 Q I SEE.

4 A YES, WE DID.

5 Q DID HE THREATEN YOU IN ANYWAY IN THESE SUB-  
6 SEQUENT PHONE CALLS?

7 A NO. I DON'T BELIEVE SO. WE JUST WERE  
8 NEGOTIATING.

9 I THEN TOLD THE NEW YORK CITY POLICE  
10 DEPARTMENT DETECTIVES THAT WERE INVOLVED AND THEY TAPPED AND  
11 RECORDED BY PHONE. THEY WERE LOOKING TO SET UP A MEET, WHICH I  
12 HAD AGREED TO.

13 Q JUST ONE OR TWO ADDITIONAL QUESTIONS, MR.  
14 SCHWARTZ.

15 AS YOU VIEWED THESE PICTURES AT THE  
16 POLICE STATION WAS THERE ANYONE ELSE THERE VIEWING THE SAME  
17 PICTURES?

18 A NO. I WAS ALONE EXCEPT FOR THE, AS I MEN-  
19 TIONED BEFORE --

20 Q POLICE OFFICER?

21 A (CONTINUING) -- POLICEMAN COMING IN AND OUT.  
22 MR. COOPER: I SEE.

23 I HAVE NOTHING FURTHER OF THIS WITNESS.  
24 THERE IS ONE FINAL QUESTION, YOUR HONOR.

25 THE COURT: PROCEED.

26  
27 BY MR. COOPER:

28  
29 Q DO YOU RECALL TELLING THE POLICE, MR.  
30 SCHWARTZ, THAT THE GUN THE MAN HELD ON YOU LOOKED LIKE A .32  
31 CALIBER?

32 A I TOLD THEM THE SAME THING I'VE SAID HERE IN

1573

1 COURT. I'M NOT THAT FAMILIAR WITH GUNS, BUT I KNOW FOR SURE THAT  
2 IT WASN'T A .45, DIDN'T LOOK TO ME LIKE A .22. SO IT WAS SOME-  
3 WHERE IN CALIBER RANGE BETWEEN THOSE TWO.

4 MR. COOPER: I SEE.

5 I HAVE NOTHING FURTHER, YOUR HONOR.

6 MR. HARMON: NOTHING FURTHER AT THIS TIME, YOUR  
7 HONOR.

8 THE COURT: YOU'RE EXCUSED, SIR. JUST WAIT OUT-  
9 SIDE, SIR.

10 (WHEREUPON, THE WITNESS WAS  
11 EXCUSED.)

12 THE COURT: YOU MAY PROCEED.

13 MR. HARMON: THANK YOU, YOUR HONOR.

14 YOUR HONOR, WE OFFER THIS EVIDENCE PURSUANT  
15 TO NRS 48.045, SUB-HEADING 2. IT IS OUR BELIEF THAT EVEN THOUGH  
16 THE GENERAL RULE SOMEWHAT MILITATES AGAINST THE ADMISSION OF  
17 EVIDENCE OF A SEPARATE OFFENSE, THAT THE EVIDENCE OFFERED BY  
18 MEANS OF MR. SCHWARTZ, TENDS TO ESTABLISH MOTIVE, INTENT, AND  
19 IDENTITY. AND IN PARTICULAR, I STRESS THE LAST CATEGORY, IDEN-  
20 TITY.

21 THE STATE REALIZES, YOUR HONOR, PURSUANT  
22 TO THE AUTHORITY OF TUCKER VERSUS STATE, AT 82 NEV. 127, THE  
23 DECISION HANDED DOWN IN 1966, AND OTHER AUTHORITY IN THIS STATE,  
24 THAT A THRESHOLD BEFORE EVIDENCE OF A SEPARATE OFFENSE WILL BE  
25 ADMITTED IS THAT THE OFFENSE COMMITTED BY THE DEFENDANT BE PROVEN  
26 BY PLAIN, CLEAR AND CONVINCING EVIDENCE.

27 I WOULD SUBMIT TO THE COURT, EVEN THOUGH  
28 THE OFFER HAS NOT CLEARLY SPELLED THAT OUT, ASSUMING THAT THE  
29 COURT WAS RECEPTIVE TO OUR OFFER, THAT WE CAN PRODUCE DETECTIVES  
30 FROM THE NEW YORK CITY POLICE DEPARTMENT TO THE STAND, THAT THE  
31 PERSON IDENTIFIED ON OCTOBER 18TH, 1979, BY THE WITNESS WAS IN  
32 FACT THE DEFENDANT MR. HOWARD. I SUBMIT THAT HE HAS MADE AN

1 IDENTIFICATION IN COURT. HE'S THE ONLY PERSON REALLY IN A POSI-  
2 TION TO SAY WHO IT WAS THAT ROBBED HIM. SO I THINK THE STATE  
3 HAS MET THAT THRESHOLD REQUIREMENT OF THE ADMISSIBILITY.

4 WE FURTHERMORE ACKNOWLEDGE, PURSUANT TO  
5 THE AUTHORITY OF TUCKER, JONES VERSUS STATE, AND OTHER NEVADA  
6 AUTHORITY, THAT A FURTHER REQUIREMENT IS TO SHOW THAT THERE IS  
7 A NECESSITY FOR THE EVIDENCE COMING BEFORE THE COURT. OUR POSI-  
8 TION ON THAT, ON THAT, YOUR HONOR, IS:

9 NUMBER ONE, IN CONNECTION WITH THE KILL-  
10 ING OF GEORGE STEVEN MONAHAN WE HAVE A TOTALLY CIRCUMSTANTIAL  
11 CASE. THERE ARE NO EYE-WITNESSES. IT'S EXTREMELY IMPORTANT FOR  
12 THE STATE TO ESTABLISH EXACTLY WHO IT WAS THAT EVIDENTLY WENT FOR  
13 A RIDE WITH HIM IN HIS 1977 DODGE VAN.

14 AND, OF COURSE, IT'S IMPORTANT TO ESTAB-  
15 LISH WHO THE ACTUAL PERPETRATOR OF THE MURDER IS. IT IS FURTHER-  
16 MORE IMPORTANT BECAUSE WE HAD THE ADDITIONAL ALLEGATION OF ROB-  
17 BERY TO ESTABLISH THAT A ROBBERY OCCURRED AND THAT THERE WAS IN-  
18 TENT TO COMMIT ROBBERY.

19 OVER THREE YEARS HAS ELAPSED SINCE THE  
20 COMMISSION OF THAT OFFENSE. SO EVEN THOUGH WITNESSES HAVE COME  
21 IN, AND I THINK WE ARE BEGINNING TO BUILD A CIRCUMSTANTIAL CASE  
22 AGAINST MR. HOWARD, HOW THE JURY PERCEIVES THE IDENTIFICATION OF  
23 PERSONS MADE THIS REMOTE IN TIME, OF COURSE ONLY THEY CAN ANSWER.  
24 BUT WE BELIEVE, YOUR HONOR, THAT A STRONG CASE CAN BE MADE, THAT  
25 THIS TYPE OF EVIDENCE IS NECESSARY.

26 AT THIS JUNCTURE IN THE PROCEEDINGS, THE  
27 ONLY THING ADDITIONALLY I WOULD LIKE TO ADD IS TO STRESS ON THE  
28 SUBJECT OF THE IDENTITY, MOTIVE, AND INTENT CATEGORIES. IT'S  
29 OUR POSITION THAT A SUBSTANTIAL SIMILARITY IN OFFENSES HAS BEEN  
30 DEMONSTRATED TO THE COURT. AND I WANT SIMPLY TO LIST THE AREAS  
31 THAT WE BELIEVE ARE SUFFICIENTLY SIMILAR SO AS TO INTEND, BY  
32 PROOF, THAT THE DEFENDANT IS THE PERSON WHO ROBBED MR. SCHWARTZ,

1575

1 THAT WE MAY INFER FROM THAT THAT HE IS IN ALL PROBABILITY THEN  
2 THE PERSON WHO ROBBED AND MURDERED GEORGE MONAHAN:

3 NUMBER ONE, YOUR HONOR, IN BOTH CASES  
4 WE NOW HAVE EVIDENCE BEFORE THE COURT THAT THE DEFENDANT CONTACT-  
5 ED HIS INTENDED VICTIM AND EXPRESSED AN INTEREST IN THE PURCHASE  
6 OF A MOTOR VEHICLE. NOW, IT'S TRUE OF COURSE, AS I'M SURE  
7 DEFENSE COUNSEL WILL POINT OUT TO THE COURT, THE COURT HAS ALREADY  
8 TAKEN COGNIZANCE OF, MR. MONAHAN WAS NOT IN THE BUSINESS OF SELL-  
9 ING CARS. HE WAS TRYING TO SELL HIS OWN VEHICLE, WHEREAS MR.  
10 SCHWARTZ IS A CAR SALESMAN BY TRADE. BUT, NEVERTHELESS, THERE  
11 IS THE SIMILARITY OF THE DEFENDANT EXPRESSING AN INTEREST TO BOTH  
12 VICTIMS IN PURCHASING THE VEHICLE.

13 NUMBER TWO, IN BOTH INSTANCES, HE INDICATED, IN THE CASE OF MR. SCHWARTZ, THAT IT WAS BY SHOWING HIS  
14 BANKBOOK, SHOWING THAT HE HAD CASH AVAILABLE. I THINK MR.  
15 SCHWARTZ SAID \$3500 DOLLARS. MRS. MONAHAN HAS TESTIFIED THAT  
16 THE DEFENDANT EXPLAINED TO HER AND HER HUSBAND THAT HE JUST SOLD  
17 HIS OTHER VEHICLE AND HAD A SUBSTANTIAL AMOUNT OF CASH ON HAND  
18 THAT HE COULD USE IN THE PURCHASE OF THE VAN. IN FACT, MR.  
19 MONAHAN WAS SO SURE WHEN HE LEFT FOR WORK THE MORNING OF MARCH  
20 THE 27TH, 1980, THAT HE WAS GOING TO MAKE A SALE AND THAT IT  
21 WOULD BE A CASH SALE THAT HE TOOK THE TITLE TO THE VEHICLE, AS  
22 HAS BEEN ATESTED TO BY MRS. MONAHAN.

24 POINT NUMBER THREE, IT IS WE THINK  
25 REASONABLY CLEAR EVEN AT THIS POINT FROM THE TESTIMONY ADDUCED  
26 IN THESE PROCEEDINGS THAT A ROBBERY OCCURRED DURING A TEST RIDE  
27 THAT MR. MONAHAN WAS HAVING WITH THE DEFENDANT. WE THINK WE CAN  
28 REASONABLY INFER HE WAS THE PERSON WHO EXPRESSED AN INTEREST.  
29 IN ANY EVENT, WHOEVER IT WAS, IT'S REASONABLY CLEAR HE WAS ROBBED.  
30 HIS WIFE HAS TESTIFIED HE ALWAYS WORE A SEIKO WRISTWATCH. EVEN  
31 THOUGH THE AMOUNT OF CURRENCY HE TOOK WITH HIM TO THE OFFICE WAS  
32 SMALL, THERE WAS NO WRISTWATCH WHEN HIS BODY WAS RECOVERED.

1576

1 THERE WAS EXACTLY 11 CENTS, TWO NICKELS AND A PENNY, AS DESCRIBED  
2 AT LEAST BY A PROSPECTIVE EXHIBIT BEFORE THE COURT. THE CORONER  
3 WENT THROUGH ALL OF THE PERSONAL EFFECTS. THERE WAS NO WALLET.  
4 MRS. MONAHAN SAID HER HUSBAND ALWAYS CARRIED A WALLET. THERE  
5 WAS NO MONEY CLIP. ACCORDING TO HER, HE ALWAYS CARRIED A MONEY  
6 CLIP. NO CREDIT CARDS. NOTHING BUT 11 CENTS. THERE IS ALSO  
7 EVIDENCE FROM HER TESTIMONY, AND THAT OF LIEUTENANT CONNER, THAT  
8 THE C.B. RADIO AND THE CASSETTE PLAYERS WERE RIPPED OUT OF THE  
9 HEADLINER IN THE VEHICLE. SO, YOUR HONOR, WE THINK THERE'S  
10 EVIDENCE IN POINT NUMBER THREE, THAT A ROBBERY OCCURRED EACH TIME  
11 DURING A DEMONSTRATION DRIVE.

12 POINT NUMBER FOUR, A FIREARM WAS USED IN  
13 EACH INSTANCE. WE REALLY HAVE NOT REACHED THE POINT IN THESE  
14 PROCEEDINGS OF TYING DOWN THE EXACT COUNT, BUT I WOULD SUBMIT TO  
15 THE COURT AS AN OFFICER OF THE COURT THAT THE EVIDENCE VERY  
16 SHORTLY WILL ESTABLISH THAT A .357 MAGNUM THAT WAS RECOVERED FROM  
17 DOWNEY, CALIFORNIA, FROM A THRIFTY DRUG STORE IN AN AREA WHERE  
18 OFFICERS HAD SEEN THE DEFENDANT LOITERING ABOUT THE STORE, THAT  
19 THERE ALSO WILL BE EVIDENCE INTRODUCED, TO THE TESTIMONY OF DWANA  
20 THOMAS, WHO WAS A FEMALE COMPANION OF THE DEFENDANT DURING MARCH  
21 1980, AND SHE IS SUPPOSED TO IDENTIFY A .357 MAGNUM THAT WE'VE  
22 MARKED AS THE WEAPON THE DEFENDANT HAD WITH HIM DURING THIS  
23 PERIOD OF TIME IN LAS VEGAS, AND I'M REFERRING TO MARCH 1980 WHEN  
24 THE TWO OF THEM WERE IN THE CITY.

25 THE COURT: ALL RIGHT.

26 MR. HARMON: MR. SCHWARTZ HAS DESCRIBED A, WELL,  
27 IT MAY NOT HAVE BEEN A .357, BUT HE STATES IT WAS SOMEWHERE  
28 BETWEEN A .22 AND .45. IT WAS NEITHER OF THOSE. WE WILL FURTHER-  
29 MORE OFFER TESTIMONY FROM RICHARD GOOD, THE FIREARMS EXPERT, THAT  
30 HE HAS EXAMINED THE PROJECTILE RECOVERED FROM THE CRIME SCENE AND  
31 THAT IT IS IN ALL PROBABILITY EITHER A .38 OR .357.

32 POINT NUMBER FIVE, YOUR HONOR, IN EACH

1577

1 INSTANCE THE VEHICLE WAS TAKEN BY THE ASSAILANT. IT SEEMS  
2 OBVIOUS IN THIS CASE THAT THE VEHICLE WAS REMOVED AT SOME POINT  
3 BY THE ASSAILANT OF MR. MONAHAN AND DEPOSITED AT THIS POINT  
4 ALREADY DESCRIBED BY LIEUTENANT CONNER TO THE REAR OF THE DEW  
5 DROP INN. WE EXPECT, YOUR HONDR, TO OFFER FURTHER EVIDENCE THAT  
6 THAT PERSON IN ALL PROBABILITY WAS THE DEFENDANT, BECAUSE DWANA  
7 THOMAS, HIS COMPANION, IS EXPECTED TO TESTIFY THAT THEY STAYED  
8 FOR A PERIOD OF TIME IN THE WESTERN SIX MOTEL, WHICH LIEUTENANT  
9 CONNER HAS DESCRIBED AS BEING IN THE IMMEDIATE VICINITY OF WHERE  
10 THE VAN WAS ABANDONED WITH THE VICTIM INSIDE. MR. SCHWARTZ HAS  
11 TESTIFIED THAT THE OLDSMOBILE 98 WAS TAKEN, HE WAS TOLD TO GET  
12 OUT, AND IT WAS RECOVERED ABOUT A MONTH LATER.

13 POINT NUMBER SIX, IN EACH INSTANCE,  
14 PERSONAL EFFECTS WERE TAKEN FROM THE VICTIM. IT SEEMS REASONABLY  
15 CLEAR, AS I HAVE ALREADY RECITED, CREDIT CARDS, WALLET, MONEY  
16 CLIP, A SMALL AMOUNT OF MONEY, ANY JEWELRY THAT MR. MONAHAN HAD.  
17 MR. SCHWARTZ HAS TESTIFIED THAT HIS WALLET AND CREDIT CARDS WERE  
18 TAKEN AND A RING AND A WRISTWATCH.

19 POINT NUMBER SEVEN, YOUR HONOR, AND WE  
20 THINK THAT THIS IS VERY SIGNIFICANT IN THE CONTEXT OF THIS CASE,  
21 IT IS CLEAR THAT MRS. MONAHAN HAD STATED THAT THE PERSON WHO  
22 CONTACTED HER AND EXPRESSED AN INTEREST IN PURCHASING THEIR VAN  
23 SAID HE WAS WITH SECURITY. IN FACT, HE SAID HE WAS A SECURITY  
24 OFFICER EMPLOYED BY SEARS, AND HE GAVE HIS NAME AS KEITH. COIN-  
25 CIDENTALLY, IN THE CASE OF MR. SCHWARTZ, THE PERSON HE HAS IDEN-  
26 TIFIED AS THE DEFENDANT TOLD HIM HE HAD -- HE WAS WORKING IN  
27 SECURITY. MR. SCHWARTZ BELIEVED THAT. HE SAID THE AGENCY WAS  
28 BURNS SECURITY. HE WAS NOT POSITIVE ABOUT THAT, BUT IT'S BEEN  
29 UNEQUIVOCAL THAT THE MAN REPRESENTED THAT HE WAS INVOLVED IN  
30 SECURITY WORK.

31 YOUR HONOR, THERE IS EVIDENCE BEFORE  
32 THE COURT, MOVING ON TO POINT NUMBER EIGHT, THAT THE DEFENDANT

1 USED THE NAME HAROLD STANBACK AT LEAST ON THE PRECEDING DAY,  
2 MARCH 26TH, 1980, AT THE SEARS ROEBUCK STORE. THERE -- THERE  
3 WILL BE SUBSEQUENT EVIDENCE, ASSUMING THAT THE COURT IS RECEPTIVE  
4 TO THE STATE'S OFFER, THAT RECOVERED FROM A 1980 OLDSMOBILE  
5 CUTLASS, A VEHICLE FOUND IN A PARKING LOT IN DOWNEY, CALIFORNIA,  
6 OUTSIDE THE STONEWOOD SHOPPING CENTER WHERE THE DEFENDANT WAS  
7 ARRESTED APRIL THE 1ST, 1980, WAS A WORK CARD IN THE NAME OF  
8 HAROLD STANBACK. MR. SCHWARTZ COULD NOT REMEMBER WITH SPECIFICITY  
9 AT THIS POINT, NEARLY THREE -- MORE THAN THREE YEARS LATER, WHAT  
10 THE NAME GIVEN BY THE DEFENDANT WAS. HE ONLY REMEMBERS THAT IN  
11 ALL PROBABILITY IT STARTED WITH S AND THAT IN FACT IS CONSISTENT  
12 WITH THE INFORMATION HE GAVE THE NEW YORK CITY POLICE DEPARTMENT.  
13 ALTHOUGH HE COULDN'T REMEMBER AT THIS TIME, I WILL SUBMIT TO THE  
14 COURT THE QUESTIONS PROPOUNDED BY MR. COOPER ARE CERTAINLY  
15 ACCURATE WITH RESPECT TO INFORMATION THE PARTIES HAD BEFORE.  
16 APPARENTLY AT THE TIME MR. SCHWARTZ THOUGHT THE NAME WAS EITHER  
17 LARRY STAREET, S-T-A-R-E-E-T OR LARRY STANTON, S-T-A-N-T-O-N.  
18 AND THAT IS THE INFORMATION HE GAVE THE POLICE DEPARTMENT.

19 ~~STAREET ISN'T THAT SIMILAR BUT LARRY STANTON, THE STATE OBSERVES,~~  
20 IS SOMEWHAT SIMILAR TO HAROLD STANBACK. AND IT'S CERTAINLY NOT  
21 OUT OF THE REALM OF REASON TO THINK THAT THE DEFENDANT MAY EVEN  
22 HAVE USED THE SAME ALIAS ON OCTOBER 5TH, 1979, WITH MR. SCHWARTZ.

23 ANOTHER POINT, YOUR HONOR, IS TO --  
24 WELL, IS TO REFER TO THE PHYSICAL DESCRIPTION. IT SEEMS TO US  
25 THAT THE DESCRIPTION GIVEN, ALTHOUGH NOT SIMILAR IN CLOTHING,  
26 IS SUBSTANTIALLY THE SAME IN TERMS OF THE DESCRIPTION GIVEN OF  
27 THE DEFENDANT IN THIS CASE AND THAT GIVEN BY THE VICTIM, MR.  
28 SCHWARTZ. IN EACH OFFENSE THE OFFENSE APPARENTLY HAPPENED IN THE  
29 MORNING HOURS. MR. SCHWARTZ WAS ROBBED AT ABOUT 9:00 A.M. SUB-  
30 SEQUENTLY THERE WILL BE EVIDENCE IN THIS CASE OFFERED THAT SOME-  
31 WHERE AROUND 7:00 A.M. A MAN FITTING THE DESCRIPTION PHYSICALLY  
32 OF THE DEFENDANT, APPEARED AT MR. MONAHAN'S OFFICE AT 1700 EAST.



1 DESERT INN ROAD, AND AS A MATTER OF FACT ASKED IF MR. MONAHAN  
2 WAS THERE, AND ALSO INDICATED BY HIS STATEMENT HE HAD SOME  
3 KNOWLEDGE OF WHAT THE DENTIST'S SCHEDULE WOULD BE BECAUSE HE  
4 PURPORTEDLY TOLD HELENE ZUCKERMAN, Z-U-C-K-E-R-M-A-N, A DENTAL  
5 ASSISTANT THAT HE KNEW MR. MONAHAN HAD A 7:30 APPOINTMENT. SO  
6 IT'S APPARENT THAT MR. MONAHAN DIDN'T ARRIVE AT WORK. HE WAS  
7 NOTED TO BE MISSING WHEN HIS WIFE GOT THERE AT ABOUT 8:30 IN THE  
8 MORNING. BOTH OFFENSES THEN THEREFORE OCCURRED SOMEWHERE DURING  
9 THE MORNING HOURS.

10 IN EACH OFFENSE, IN TERMS OF THE ACTUAL  
11 M.O., THERE IS SOME INDICATION THAT THE VICTIMS WERE REQUIRED  
12 EITHER TO GET HANDS DOWN OR FACE DOWN. NOW, THIS POINT MAY BE,  
13 YOUR HONOR, ENTIRELY SPECULATION ON THE PART OF THE STATE, BUT  
14 WE THINK GIVEN THE SIMILARITY OF THE M.O., IT IS ENTIRELY CON-  
15 CEIVABLE THAT AT SOME POINT SOME REQUEST WAS MADE OF MR. MONAHAN  
16 TO WHICH HE RESISTED AND WHICH RESULTED IN HIS MURDER. AND I  
17 AM SUGGESTING THAT I BELIEVE A VIABLE THEORY IS THAT HE TOO, LIKE  
18 MR. SCHWARTZ, MAY HAVE BEEN ASKED TO REMOVE HIS SHOES AND TROUSERS  
19 AND MAY HAVE RESISTED AND THAT MAY BE AN EXPLANATION AS TO WHY HE  
20 WAS MURDERED.

21 WE HAVE NOTHING FURTHER, YOUR HONOR, AT  
22 THIS TIME TO SUBMIT IN TERMS OF THE SIMILARITY OF THE M.O.

23 MR. COOPER: YOUR HONOR, BEFORE I ADDRESS MR.  
24 HARMON'S ARGUMENT, I WOULD LIKE TO KNOW PRECISELY WHAT IT IS THAT  
25 THE STATE IS ASKING THE COURT TO RULE ON HERE. I AM NOT SURE  
26 WHETHER THEY ARE ASKING THE COURT TO MAKE A RULING AT THIS POINT  
27 IN TIME THAT THE EVIDENCE PROFFERED IS NECESSARY OR JUST WHAT IT  
28 IS THAT THEY'RE SEEKING TO ACCOMPLISH.

29 MR. HARMON: WELL, YOUR HONOR, THERE WAS A  
30 SUGGESTION EARLIER BY THE DEFENSE THAT PERHAPS OUR OFFER WAS  
31 PREMATURE.

32 DEFENDANT HOWARD: GIVE ME SOME WATER.

1 MR. HARMON: WE CONCEDE THAT THAT IS A POSSIBILITY.  
2 WE ARE CERTAINLY PREPARED TO MAKE CERTAIN REPRESENTATIONS REGARD-  
3 ING THE REMAINDER OF OUR EVIDENCE. BUT, AS WE EXPLAINED IN OUR  
4 CONFERENCE AT THE BENCH, MR. SCHWARTZ IS FROM OUT-OF-STATE. HE'S  
5 BEEN HERE FOR A NUMBER OF DAYS. AT THE LEAST, WE WERE DESIROUS  
6 OF GETTING HIS TESTIMONY BEFORE THE COURT. AND I WANTED TO SET  
7 FORTH THE STATE'S THEORY IN TERMS OF WHAT EVIDENTIARY EXCEPTIONS  
8 WE THOUGHT WERE COMING UNDER AND WHAT THE SIMILARITIES WERE.

9 THE COURT: IT IS, AS I STATED TO THE STATE, IF  
10 IT IS THAT IMPORTANT AND THE TESTIMONY IS PREMATURE, I WILL PLACE  
11 HIM IN CUSTODY IN ORDER TO ASSURE HIS TESTIMONY IF IT'S THAT  
12 NECESSARY.

13 THE ISSUE THAT I HAVE BEFORE ME OF COURSE  
14 SEEMS TO BE PREMATURE. AS I INDICATED TO YOU AT THE BENCH, IN  
15 ANY CASE WHERE YOU HAVE A -- YOU'RE TRYING TO BRING IN A TOTALLY  
16 SEPARATE AND DISTINCT OFFENSE, AS YOU WELL KNOW, THE RULE IS  
17 GENERALLY OTHER OFFENSES CANNOT BE USED IN A PRINCIPLE OFFENSE  
18 BEFORE THE COURT. IT HAS TO BE AN EXCEPTION. IT ISN'T MERELY  
19 ~~BECAUSE OF THE SIMILARITY THAT YOU ALLOW IT IN. YOU ALLOW IT~~  
20 IN BECAUSE OF THE FACT THAT THERE'S A NECESSITY FOR ALLOWING IT  
21 IN, AND THAT NECESSITY MUST APPEAR RATHER CLEARLY FROM THE RECORD.  
22 IT ISN'T WHAT WE WOULD LIKE TO DO, IT'S WHAT THE LAW SAYS WE CAN  
23 DO. AND THAT IS, NUMBER ONE, YOU CANNOT ADMIT AN OFFENSE APART  
24 FROM THE PRINCIPLE OFFENSE IN EVIDENCE AGAINST THE DEFENDANT  
25 UNLESS YOU SHOW A NUMBER OF THINGS; FIRST OF ALL YOU MUST SHOW  
26 NECESSITY; CLEARLY YOU HAVE TO SHOW CLEAR AND CONVINCING EVIDENCE  
27 OF THE FACT THAT THE OFFENSE DID IN FACT OCCUR; AND THIRDLY, YOU  
28 HAVE TO SHOW THAT IT FALLS WITHIN THE EXCEPTION. AND WHAT IS THE  
29 EXCEPTION? ARE YOU USING IT FOR THE PURPOSE OF IMPEACHMENT OR  
30 ARE YOU USING IT FOR THE PURPOSE UNDER WHAT WE CALL A MOLINAUE  
31 RULE, AND THAT IS INTENT, MOTIVE, COMMON SCHEME, ETCETERA. IF  
32 THAT THEN BECOMES NECESSARY THAT IT FALLS -- YOU CAN SHOW IT AS

1 NECESSARY FOR THOSE REASONS, THEN THE EXCEPTION MAY APPLY. BUT  
2 IT DOESN'T HAPPEN JUST MERELY BECAUSE YOU PRESENT IT. I WANT  
3 THAT VERY CLEARLY ESTABLISHED IN THE RECORD.

4 AT THIS POINT, YOUR CASE IS NOT EVEN  
5 HALF WAY IN YET, OR I WOULD KIND OF GATHER FROM WHAT YOU HAVE  
6 INDICATED TO ME AT THIS POINT OF THE NUMBER OF OTHER WITNESSES  
7 THAT YOU ARE GOING TO BRING IN. SO AT THIS POINT, I DON'T KNOW  
8 WHAT EVIDENCE IS GOING TO COME IN. I HAVE YOUR REPRESENTATIONS  
9 THAT THIS IS WHAT YOU ARE GOING TO PRESENT. I DON'T KNOW WHAT  
10 THE OBJECTIONS ARE GOING TO BE, IF IT'S GOING TO COME IN BECAUSE  
11 OF THE OBJECTIONS, IF THERE ARE ANY OBJECTIONS. SO I'M LEFT  
12 REALLY ON THE ISSUE OF NECESSITY BEING RATHER INCOMPLETE.

13 I WOULD HAVE TO SAY TO YOU THIS: THAT  
14 IF YOU MEET ALL OF THE CRITERIA THEN I THINK THAT THERE IS A  
15 POSSIBILITY IT'S GOING TO COME IN. BUT THEN I HAVE TO GO THROUGH  
16 THE BALANCING TEST AT THAT POINT, OF BALANCING WHETHER OR NOT THE  
17 PREJUDICE VERSUS THE EVIDENTIARY VALUE AND IF THE EVIDENTIARY  
18 VALUE OUTWEIGHS THE PREJUDICE, IT WILL COME IN. BUT I JUST THINK  
19 WE'RE JUST A HAIR PREMATURE AT THIS POINT FOR THIS TO COME IN.

20 I WOULD JUST SUGGEST TO YOU THAT IF YOU  
21 MEET THOSE OTHER CRITERIA AND YOU'RE FIRMLY CONVINCED IN YOUR OWN  
22 MIND THAT YOU CAN, THEN I WOULD ADVISE HIM ACCORDINGLY. BUT I  
23 KIND OF THINK YOU HAVE -- YOU HAVE A WITNESS PROBLEM MORE THAN AN  
24 EVIDENTIARY PROBLEM AT THIS POINT, AND THAT'S WHY HE'S BECOMING  
25 A LITTLE NERVOUS, BECAUSE HE'S BEEN HERE THIS LONG AND HE WANTS  
26 TO GET BACK HOME, AS ANYBODY AWAY FROM HOME WOULD WANT TO DO.

27 MR. HARMON: THANK YOU, YOUR HONOR.

28 THE COURT: BUT I THINK WE ARE JUST A LITTLE PRE-  
29 MATURE AT THIS POINT, COUNSEL.

30 MR. HARMON: WELL, YOUR HONOR, WE APPRECIATE THE  
31 COURT ACCOMMODATING US AT LEAST IN MAKING THE OFFER OF PROOF. WE  
32 DON'T INTEND AT THIS TIME TO OFFER HIM AS A WITNESS. WE WOULD

1 RESERVE THE RIGHT TO DO SO AT A LATER TIME, YOUR HONOR, IN THE  
2 CASE.

3 THE COURT: ALL RIGHT.

4 COUNSEL, WE WILL TAKE A BRIEF RECESS OF  
5 ABOUT TEN MINUTES AND THEN HAVE YOUR NEXT WITNESS ON, READY TO  
6 PROCEED.

7 WE WILL BE IN RECESS THEN FOR TEN  
8 MINUTES.

9 (WHEREUPON, FROM 2:55 P.M. UNTIL  
10 3:10 P.M., A RECESS WAS HAD IN  
11 THE PROCEEDINGS, AT THE CONCLU-  
12 SION OF WHICH THE FOLLOWING WAS  
13 HAD:)

14 THE COURT: WILL COUNSEL STIPULATE TO THE PRESENCE  
15 OF THE JURY?

16 MR. SEATON: YES, YOUR HONOR.

17 MR. COOPER: YES, YOUR HONOR.

18 THE COURT: CALL YOUR NEXT WITNESS, SIR.

19 MR. SEATON: BARBARA ZEMAN.

20  
21 WHEREUPON,

22  
23 BARBARA ZEMAN,

24  
25 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,  
26 EXAMINED AND TESTIFIED AS FOLLOWS:

27  
28 THE COURT: PROCEED.

29 ..  
30 ..  
31 ..  
32 ..

DIRECT EXAMINATION

BY MR. SEATON:

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

A BARBARA ZEMAN, Z-E-M-A-N.

Q IS IT MISS OR MRS.?

A MISS.

Q MISS ZEMAN, COULD YOU TELL US WHERE YOU LIVE,  
PLEASE?

A RIGHT NOW I LIVE IN OMAHA, NEBRASKA. MY  
PERMANENT HOME IS LAKEWOOD, CALIFORNIA.

Q IN WHERE?

A IN LAKEWOOD, CALIFORNIA.

Q WHAT DO YOU DO PRESENTLY IN OMAHA, NEBRASKA?

A I'M A SENIOR IN LAW SCHOOL.

Q IN WHAT LAW SCHOOL?

A CREIGHTON UNIVERSITY.

Q AND DO YOU HAVE A SISTER?

A YES, I DO.

Q WHAT IS HER NAME?

A I HAVE SEVERAL SISTERS.

Q DO YOU HAVE A SISTER BY THE NAME OF MARY LOU  
MONAHAN?

A YES, I DO.

Q AND WAS SHE MARRIED IN MARCH OF 1980?

A YES, SHE WAS.

Q WHO WAS HER HUSBAND?

A GEORGE MONAHAN.

Q DID YOU KNOW HIM PERSONALLY?

A YES, I DID.

1 Q I WOULD LIKE TO SHOW YOU WHAT HAS BEEN MARKED  
2 AS STATE'S PROPOSED EXHIBIT 17. WOULD YOU EXAMINE THAT, PLEASE,  
3 AND TELL ME IF YOU ARE ABLE TO IDENTIFY THE PERSON DEPICTED IN  
4 THAT PHOTOGRAPH?

5 A YES.

6 Q WHO IS THAT?

7 A THAT'S GEORGE MONAHAN.

8 Q THAT'S YOUR SISTER MARY LOU MONAHAN'S HUSBAND?

9 A YES.

10 Q THANK YOU VERY MUCH.

11 MISS ZEMAN, CALLING YOUR ATTENTION TO  
12 THE LATTER PART OF MARCH, 1980, WERE YOU IN SCHOOL THEN?

13 A YES, I WAS.

14 Q AND WHERE WERE YOU IN SCHOOL AT THAT TIME?

15 A I WAS A SENIOR AT COLORADO UNIVERSITY.

16 Q DID THERE COME A TIME AROUND MARCH OF 1980  
17 WHEN YOU TOOK A SPRING BREAK?

18 A YES. I HAD A WEEK OFF.

19 Q A WEEK OFF.

20 AND WHERE DID YOU GO?

21 A I WENT -- CAME OUT TO LAS VEGAS.

22 Q AND WHO DID YOU SEE IN LAS VEGAS?

23 A I CAME TO SEE MARY AND GEORGE AND SPEND THE  
24 WEEK WITH THEM.

25 Q AND WHERE DID YOU STAY WHILE YOU WERE HERE?

26 A I STAYED AT THEIR HOME.

27 Q DO YOU KNOW -- DO YOU RECALL THE ADDRESS OF  
28 THEIR HOME?

29 A NO, I DON'T. ROLLING GREEN BOULEVARD OR  
30 SOMETHING, BUT I DON'T KNOW THE ADDRESS.

31 Q DO YOU KNOW IF GEORGE AND MARY LOU HAD A  
32 VAN AT THAT TIME?

1 A YES, THEY DID.

2 Q AND WAS IT UP FOR SALE THEN?

3 A YES.

4 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S

5 EXHIBIT 2, MISS ZEMAN. IF YOU WOULD EXAMINE THAT PHOTOGRAPH AND

6 TELL ME WHETHER OR NOT YOU ARE ABLE TO IDENTIFY THE VEHICLE

7 DEPICTED IN STATE'S 2.

8 A THAT'S THE VAN THAT THEY HAD.

9 Q HOW ARE YOU ABLE TO --

10 A AT THE TIME.

11 Q (CONTINUING) -- RECOGNIZE IT.

12 A WELL, THE SCENERY ON THE SIDE AND THE NAME.

13 Q WHAT IS THE NAME?

14 A BLACK OAK.

15 Q AND YOU'D SEEN THE VAN IN THAT CONDITION

16 WHILE YOU WERE AT THEIR HOME?

17 A YES.

18 Q THANK YOU.

19 NOW, CALLING YOUR ATTENTION TO THE AFTER-

20 NOON HOURS OF MARCH THE 26TH, 1980, CAN YOU RECALL WHERE YOU WERE?

21 A ON WEDNESDAY?

22 Q YES.

23 A I WAS -- SPENT MOST OF THE AFTERNOON OUT BY

24 THE POOL.

25 Q WHERE?

26 A AT THEIR -- AT THEIR HOUSING AREA.

27 Q WHO DO YOU MEAN BY "THEIR HOUSING AREA"?

28 A AT GEORGE AND MARY LOU'S TOWNHOME AREA.

29 I -- THEY HAD A POOL OUTSIDE.

30 Q I SEE.

31 AND DID THERE COME A TIME WHEN YOU WENT

32 INTO THEIR HOUSE THAT AFTERNOON?

1 A YES. LATE -- LATER IN THE AFTERNOON WE WENT  
2 IN TO CLEAN UP.

3 Q WHO IS "WE"?

4 A MARY LOU HAD SPENT PART OF THE AFTERNOON OUT  
5 THERE WITH ME BECAUSE SHE WASN'T WORKING; AND GEORGE CAME OUT FOR  
6 A LITTLE WHILE AND TALKED TO US FOR AWHILE AND THEN HE LEFT; AND  
7 MARY LOU AND I CAME INTO THE HOUSE TO CLEAN UP.

8 Q DO YOU KNOW WHERE GEORGE WENT TO WHEN HE  
9 LEFT?

10 A HE WAS GOING TO PICK UP HIS DAUGHTER, MARY  
11 CATHERINE.

12 Q DO YOU KNOW WHERE HE WENT TO PICK HER UP?

13 A SOFTBALL PRACTICE, I THINK.

14 Q AND DID THERE COME A TIME WHILE YOU AND MARY  
15 LOU WERE IN THE HOUSE THAT YOU RECEIVED A PHONE CALL?

16 A YES.

17 Q AND WHO ANSWERED THAT PHONE CALL?

18 A I ANSWERED THE PHONE.

19 Q AND WHERE WAS MARY LOU AT THAT TIME?

20 A SHE WAS GETTING READY TO TAKE A BATH.

21 Q AND WHAT DID THE CALLER INDICATE TO YOU?

22 A THAT HE WANTED TO TALK TO SOMEBODY ABOUT THE  
23 VAN FOR SALE.

24 Q AND WHAT DID YOU SAY IN RESPONSE?

25 A THAT I WOULD LET HIM TALK TO SOMEONE THAT  
26 WOULD KNOW SOMETHING ABOUT IT.

27 Q AND DID YOU DO THAT?

28 A I CALLED MARY LOU.

29 Q AND WHAT DID SHE DO?

30 A SHE PICKED UP THE EXTENSION PHONE IN THE  
31 BEDROOM, AND I HUNG UP.

32 Q YOU HUNG UP?

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1 A I, YOU KNOW, HUNG UP THE PHONE I WAS ON.  
2 Q DID YOU HEAR ANY OF THE CONVERSATION THEN?  
3 A JUST -- I HEARD LITTLE PARTS OF WHAT SHE WAS  
4 SAYING.  
5 Q NOW, A LITTLE LATER THAT EVENING DID YOU GO  
6 ANYPLACE?  
7 A YES, WE DID.  
8 Q WHEN YOU SAY "WE" WHO DO YOU INCLUDE?  
9 A MARY LOU AND GEORGE AND MARY CATHERINE AND  
10 MYSELF.  
11 Q AND WHERE DID YOU LEAVE FROM?  
12 A WE LEFT FROM MARY LOU AND GEORGE'S HOUSE.  
13 Q ALL FOUR OF YOU DID?  
14 A YES.  
15 Q AND DID YOU USE A CAR?  
16 A WE TOOK MARY LOU'S SEDAN.  
17 Q WHAT KIND OF CAR WAS IT; DO YOU KNOW?  
18 A OLDSMOBILE I THINK, BUT I'M NOT POSITIVE.  
19 Q AND WHERE DID YOU GO?  
20 A WE DROVE TO THE OFFICE.  
21 Q NOW, IS THAT ALL FOUR OF YOU?  
22 A YES. WE WERE ALL FOUR IN THE CAR.  
23 Q AND WHAT DID YOU DO WHEN YOU ARRIVED AT THE  
24 OFFICE?  
25 A WE PARKED MARY LOU'S CAR ON THE SIDE OF THE  
26 OFFICE AND WE ALL WENT OVER AND GOT IN THE VAN.  
27 Q NOW, WHAT OFFICE IS THIS THAT YOU'RE SPEAK-  
28 ING ABOUT?  
29 A THAT'S GEORGE'S DENTAL OFFICE, MARY AND  
30 GEORGE'S DENTAL OFFICE.  
31 Q DO YOU RECALL WHERE THAT IS?  
32 A DESERT INN ROAD, I BELIEVE, BUT I'M NOT SURE

1 OF THE ADDRESS.

2 Q WHEN YOU SAY YOU GOT INTO A VAN --

3 A YES.

4 Q (CONTINUING) -- DID YOU GET INTO THE VAN  
5 THAT HAS BEEN MARKED AS STATE'S EXHIBIT 2?

6 A YES, I DID.

7 Q AND HOLDING THAT VAN OR THAT PHOTOGRAPH FOR  
8 A MOMENT, STATE'S EXHIBIT 2, WOULD YOU TELL US WHERE EACH OF THE  
9 FOUR OF YOU SAT?

10 A GEORGE WAS DRIVING; AND MARY LOU WAS IN THE  
11 PASSENGER'S SEAT; AND MARY CATHERINE AND I WERE BACK ON THE BENCH,  
12 THE LONGER BENCH THAT'S ON THE BACK OF THE VAN, AND I DON'T RECALL  
13 WHETHER I WAS SITTING ON THE RIGHT OR LEFT, BUT WE WERE BOTH BACK  
14 ON THE COUCH.

15 Q CAN YOU DESCRIBE THE DOORS THAT ARE ON THE  
16 PARTICULAR VAN SHOWN IN STATE'S PROPOSED EXHIBIT 2?

17 A WELL, THERE'S A DRIVER'S SIDE DOOR THAT JUST  
18 OPENS OUT; AND THERE'S THE PASSENGER -- FRONT SEAT PASSENGER DOOR  
19 THAT OPENS OUT; AND THE TWO DOUBLE DOORS TO THE MIDDLE OF THE VAN  
20 ON THE RIGHT SIDE THAT OPEN OUT. THEY HAVE -- I THINK THEY BOTH  
21 HAVE HANDLES ON THEM THAT OPEN OUT.

22 Q AND IF SOMEONE WERE TO WANT TO GET INTO THE  
23 BACK PART OF THE VAN WHERE YOU WERE SITTING, HOW WOULD THEY GET  
24 INTO THE VAN?

25 A THE EASIEST WAY WOULD BE TO GET IN THE DOUBLE  
26 DOORS ON THE SIDE.

27 Q HOW DID YOU AND MARY CATHERINE GET INTO THE  
28 VAN ON THAT EVENING, IF YOU CAN RECALL.

29 A WE GOT IN THE SIDE DOUBLE DOORS.

30 Q THE DOUBLE DOORS ON THE SIDE.

31 NOW, WHEN ALL OF YOU GOT INTO THE VAN,  
32 DID YOU GO SOMEPLACE?

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1 A YES, WE DID.  
2 Q WHERE?  
3 A WE DROVE TO HENDERSON TO GEORGE'S PARENTS'  
4 HOUSE.  
5 Q WHAT DID YOU DO THERE?  
6 A WE VISITED FOR AWHILE AND HAD DINNER.  
7 Q AND THEN DID THERE COME A TIME WHEN YOU LEFT?  
8 A YES, WE DID.  
9 Q AND DID THE FOUR OF YOU GET BACK INTO THE  
10 VAN?  
11 A YES, WE DID.  
12 Q IN THE SAME PLACES THAT YOU WERE SITTING WHEN  
13 YOU DROVE TO HENDERSON?  
14 A BASICALLY. AGAIN, I'M NOT SURE WHETHER I  
15 WAS ON THE RIGHT OR THE LEFT. BUT GEORGE WAS DRIVING AND MARY  
16 LOU WAS IN THE PASSENGER'S SEAT.  
17 Q AND YOU AND MARY CATHERINE --  
18 A AND MARY CATHERINE AND I WERE IN THE BACK ON  
19 THE COUCH.  
20 Q AND WHERE DID YOU GO FROM GEORGE'S PARENTS'  
21 HOUSE IN HENDERSON?  
22 A I THINK WE STOPPED AT THE MOTEL WHERE GEORGE'S  
23 BROTHER GREG WAS WORKING JUST FOR A FEW MINUTES TO SAY HELLO.  
24 Q DO YOU KNOW WHERE THAT'S LOCATED?  
25 A I DON'T. I THINK IT'S AROUND HENDERSON, BUT  
26 I'M NOT FAMILIAR WITH IT.  
27 Q DID ALL OF YOU GET OUT OF THE VAN AT THAT  
28 POINT?  
29 A YES, WE DID.  
30 Q AND DID YOU LATER GET BACK INTO THE VAN?  
31 A YES, WE GOT BACK IN.  
32 Q WAS EVERYBODY SITTING ESSENTIALLY IN THE SAME

1590

1 POSITIONS?

2 A YES.

3 Q AND WHERE DID YOU GO FROM THERE?

4 A WE DROVE FROM THERE AND CAME BACK INTO LAS  
5 VEGAS.

6 Q AND SPECIFICALLY WHERE DID YOU GO IN THE VAN?

7 A WE DROVE DOWN THE STRIP TO CAESARS PALACE.

8 Q WHEN YOU SAY "DOWN THE STRIP" WHERE DID YOU  
9 ENTER ONTO THE STRIP; IF YOU RECALL? DO YOU RECALL WHAT SIDE  
10 STREET?

11 A NO, I'M NOT FAMILIAR WITH THE STREET NAMES.  
12 I JUST REMEMBER DRIVING DOWN IN FRONT OF THE HOTELS.

13 Q DID YOU GO SOMEPLACE ON THE STRIP?

14 A WE TURNED LEFT INTO CAESARS PALACE.

15 Q DOES THAT MEAN THAT YOU WERE DRIVING NORTH  
16 ON LAS VEGAS BOULEVARD?

17 A I BELIEVE SO.

18 Q AND DID YOU KNOW THE REASON THAT YOU WERE  
19 GOING TO CAESARS?

20 A WE WERE GOING BECAUSE GEORGE HAD MADE  
21 ARRANGEMENTS TO MEET THE MAN HE HAD TALKED TO ON THE PHONE.

22 MR. FRANZEN: OBJECT, YOUR HONOR, FOUNDATION.  
23 FOUNDATION.

24 THE COURT: OVERRULED.

25

26 BY MR. SEATON:

27

28 Q PLEASE CONTINUE.

29 A HE HAD -- WE WERE GOING TO MEET THE MAN THAT  
30 GEORGE HAD TALKED TO ON THE PHONE TO SHOW HIM THE VAN.

31 Q DID YOU KNOW ANYTHING MORE?

32 A JUST THAT HE WORKED AT -- I UNDERSTAND HE..

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1 SAID HE WORKED AT CAESARS PALACE AS A SECURITY GUARD, THAT HE  
2 WOULD HAVE A BREAK AROUND 8:00 O'CLOCK AND THAT'S WHY WE WERE  
3 THERE AT 8:00 O'CLOCK.

4 Q WHEN YOU DROVE INTO CAESARS TELL US WHAT  
5 HAPPENED.

6 A WELL, WE PULLED IN AND DROVE IN JUST A LITTLE  
7 WAYS, AND THE MAN WAS ON THE RIGHT KIND OF WAVING DOWN, I THINK,  
8 AND WE PULLED UP A LITTLE BIT FURTHER, AND THEN I SAW HIM BY THE  
9 VAN ON GEORGE'S SIDE OF THE VAN, THE LEFT SIDE.

10 Q EXCUSE ME. EXCUSE ME JUST A MOMENT, MISS  
11 ZEMAN.

12 YOU SAY YOU SAW A MAN WAVING. CAN YOU  
13 DESCRIBE THAT MAN FOR US IN GENERAL TERMS?

14 A I JUST -- FROM WHERE I WAS SITTING IN THE  
15 VAN I NOTICED A BLACK MAN ON THE RIGHT SIDE.

16 Q THE RIGHT SIDE OF THE VAN?

17 A THE RIGHT SIDE OF THE VAN AS WE PULLED IN.

18 Q AND IN FRONT OF YOU?

19 A YES.

20 Q AND WHAT HAPPENED THEN WHEN YOU SAW HIM?

21 A AND THEN I WASN'T -- I WAS SITTING IN THE  
22 BACK AND WE PULLED UP A LITTLE WAYS FURTHER; AND THEN THE MAN  
23 THAT HAD WAVED AT US CAME AROUND THE VAN AND WAS ON THE LEFT SIDE  
24 OF THE VAN, ON GEORGE'S SIDE.

25 Q WAS HE NEAR GEORGE?

26 A RIGHT NEAR THE VAN, BUT I CAN'T TELL YOU FOR  
27 SURE HOW FAR AWAY. I JUST REMEMBER SEEING THE FACE.

28 Q AND WHAT DID YOU DO WHILE HE WAS NEAR GEORGE?

29 A WELL, GEORGE SAID, "ARE YOU KEITH?" OR  
30 SOMETHING, YOU KNOW, KEITH. AND HE SAID, "YEAH. I'D SPOT THIS  
31 VAN A MILE AWAY," OR "I'D SPOT THIS VAN ANYWHERE."

32 THEN GEORGE MOVED ON AND WENT UP AND

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1 TURNED RIGHT INTO THE AREA THAT WAS MARKED FOR VALET PARKING.

2 Q AND WHAT HAPPENED THERE?

3 A THERE WAS A MAN WORKING THERE THAT SAID WE  
4 COULDN'T STOP THERE. AND GEORGE SAID, "WE'RE GOING TO SHOW KEITH  
5 THE VAN," OR "WE'RE HERE TO MEET KEITH."

6 MR. FRANZEN: YOUR HONOR, I'M GOING TO OBJECT ON  
7 HEARSAY, THE CONFRONTATION --

8 MR. SEATON: I THINK THE STATEMENT OF THE DECEASED,  
9 PARTICULARLY FOR THIS PURPOSE AND SINCE THEY'VE ALREADY BEEN IN,  
10 I THINK THEY HAVE BEEN ALREADY THROUGH MARY LOU MONAHAN.

11 THE COURT: I BELIEVE SHE HAS ALREADY TESTIFIED  
12 IN THIS CASE. OVERRULED.

13 MR. SEATON: THANK YOU, YOUR HONOR.

14 THE WITNESS: SO GEORGE SAID THAT WE WERE GOING  
15 TO MEET KEITH.

16 AND HE SAID, "WELL, I'M SORRY." THE SECURITY  
17 MAN WORKING THAT LOT SAID, "I'M SORRY. YOU CAN'T STOP THE VAN  
18 HERE. IT'S FOR VALET PARKING."

19

20 BY MR. SEATON:

21

22 Q AND WHAT DID GEORGE DO AS A RESULT OF THAT?

23 A WELL, HE TURNED THE CAR AROUND IN THE LOT  
24 AND WENT OUT OF THE LOT AND TOOK A LEFT ACROSS THE DRIVE AREA,  
25 AND THEN --

26 Q THIS IS STILL IN THE CAESARS PALACE PARKING  
27 LOT?

28 A YEAH.

29 Q CAESARS PALACE PARKING LOT?

30 A YES.

31 Q O.K.

32 A AND HE TURNED LEFT AND PULLED UP ALONG THE

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1 CURB AT THE SIDE OF THE BUILDING.

2 Q AND DID HE STOP AT THAT TIME?

3 A HE STOPPED THE VAN AND GEORGE GOT OUT.

4 Q NOW, DID GEORGE GET OUT FIRST?

5 A YES. HE GOT OUT FIRST.

6 Q AND WHERE DID HE GO?

7 A HE WALKED AROUND TO THE SIDEWALK, I BELIEVE.

8 Q ON WHICH SIDE OF THE VAN?

9 A HE WALKED TO THE PASSENGER'S SIDE, WHICH WAS

10 RIGHT AT THE CURB.

11 Q AND WHAT DID HE DO THEN?

12 A MARY LOU HAD GOTTEN OUT OF THE CAR AND MARY

13 CATHERINE AND I WERE STILL SITTING THERE.

14 Q WHICH DOOR DID MARY LOU EXIT FROM?

15 A SHE EXITED FROM THE FRONT RIGHT DOOR, THE

16 PASSENGER'S DOOR AT THE FRONT OF THE VAN. AND GEORGE OPENED UP

17 THE SIDE DOORS. AND MARY CATHERINE AND I WERE STILL SITTING

18 THERE. AND EITHER MARY LOU OR GEORGE, AND I THINK MARY LOU, SAID

19 THAT MARY CATHERINE AND I SHOULD GET OUT SO THIS MAN COULD LOOK

20 INSIDE THE VAN.

21 Q AT THIS POINT, WHERE WAS THE BLACK MAN WHO

22 IDENTIFIED HIMSELF AS KEITH?

23 A AS I WAS GETTING OUTSIDE THE VAN, AS I WAS

24 COMING OUT, HE WAS COMING UP THE SIDEWALK FROM THE REAR END OF

25 THE VAN.

26 Q HOW FAR AWAY FROM THE VAN WAS HE WHEN YOU --

27 WHEN --

28 A WHEN I SAW HIM?

29 Q WHEN YOU GOT OUT OF THE VAN AND SAW HIM.

30 A OH, ONLY A COUPLE FEET. I THINK I -- WHEN

31 I FIRST SAW HIM I WAS RIGHT ABOUT THE CORNER OF THE VAN ON THE

32 SIDEWALK ON THE RIGHT SIDE OF THE VAN.

1 Q COMING FROM THE REAR?

2 A YEAH.

3 Q HOW WIDE OPEN WERE THE DOORS AT THAT TIME;

4 DO YOU RECALL?

5 A AS I RECALL, I BELIEVE THEY WERE OPEN ALL

6 THE WAY, BECAUSE IF THEY -- OTHERWISE THEY WOULD BLOCK THE SIDE-

7 WALK, AND I DON'T REMEMBER THE SIDEWALK BEING BLOCKED AT ALL. I

8 BELIEVE THEY WERE OPEN ALL THE WAY.

9 Q WHAT DOES THAT MEAN? HOW FAR WOULD THEY

10 OPEN?

11 A ALMOST FLAT AGAINST THE SIDES OF THE VAN

12 (INDICATING).

13 Q I SEE.

14 AND THE MAN WHO IDENTIFIED HIMSELF AS

15 KEITH CAME TO THE VAN, AND WHAT DID HE DO?

16 A WELL, HE AND GEORGE WERE TALKING ABOUT THE

17 VAN, DIFFERENT THINGS ABOUT IT, AND HE --

18 Q WHERE WERE THEY WHEN THIS CONVERSATION WAS

19 TAKING PLACE, THE DEF- -- THE BLACK MAN WHO IDENTIFIED HIMSELF

20 AS KEITH AND GEORGE?

21 A WELL, AT FIRST THEY WERE STANDING UP TOWARDS

22 THE FRONT OF THE VAN ON THE SIDEWALK ABOUT EVEN WITH THE FRONT

23 PASSENGER DOOR.

24 Q DO YOU KNOW HOW FAR AWAY FROM THE VAN THEY

25 WERE?

26 A TWO FEET. TWO -- ANYWHERE BETWEEN 0 AND

27 TWO FEET. AND THEY WERE WALKING AROUND ALONG THE VAN, YOU KNOW,

28 FROM THE -- FROM THE MID -- THE TWO LARGE DOORS WHERE THEY WERE

29 OPEN TO THE FRONT SO THAT THEY COULD LOOK IN. AND I WAS STANDING,

30 YOU KNOW, BACK AWAY FROM THE VAN ABOUT HALF WAY, HALF WAY BETWEEN,

31 YOU KNOW, HALF WAY THROUGH THE VAN.

32 Q WHERE WAS MARY LOU AT THIS POINT?

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A I BELIEVE SHE WAS STANDING TO MY RIGHT,  
WITHIN A FOOT OR SO.

Q AND MARY CATHERINE, WHERE WAS SHE STANDING?

A MARY CATHERINE, I BELIEVE, WAS ON MY LEFT.

Q AND DID THERE COME A TIME WHEN GEORGE  
MONAHAN AND THE MAN WHO IDENTIFIED HIMSELF AS KEITH, LOOKED INTO  
THE VAN?

A YES. AT ONE POINT GEORGE SAID, "WELL, TAKE  
A LOOK", OR WHATEVER. AND THIS MAN PUT -- HE LEANED INTO THE  
VAN. I THINK HE KIND OF STEPPED UP AND LOOKED AROUND THE VAN.

Q THAT IS THE MAN WHO IDENTIFIED HIMSELF AS  
KEITH?

A YES, SIR.

AND HE JUST LOOKED AROUND THE VAN AND  
STEPPED BACK ONTO THE SIDEWALK AND HE AND GEORGE CONTINUED TO  
TALK ABOUT DIFFERENT FEATURES ON THE VAN.

Q HOW MUCH TIME TRANSPIRED FROM THE TIME THAT  
YOU FIRST SAW THE MAN WHO IDENTIFIED HIMSELF AS KEITH, FLAGGING  
YOU DOWN, UNTIL THIS TIME THAT YOU'RE TESTIFYING RIGHT NOW?

A UNTIL THEN, I DON'T -- FIVE MINUTES. I'M  
NOT -- NOT TEN MINUTES AT THAT POINT.

Q DURING THAT PERIOD OF TIME DID YOU HAVE AN  
OPPORTUNITY TO LOOK AT THIS BLACK MAN WHO IDENTIFIED HIMSELF AS  
KEITH?

A YES, I DID.

Q FOR HOW MUCH OF A PERIOD OF TIME DURING THE  
TIME THAT YOU DID SEE HIM, WERE YOU ABLE TO OBSERVE HIM?

A OH, WELL, FROM THE TIME WE PARKED AND ACTUALLY  
GOT OUT OF THE VAN 'TIL THE TIME THIS MAN WALKED AWAY, AGAIN THAT  
PERIOD OF TIME WAS ABOUT FIVE MINUTES FROM THE TIME WE PARKED,  
FIVE -- NOT TEN MINUTES AGAIN.

Q MISS ZEMAN, WOULD YOU NOW LOOK ABOUT THE

1596

1 COURTROOM, IF YOU WOULD, AND TELL ME IF YOU CAN SEE ANYONE WHO  
2 YOU CAN IDENTIFY AS HAVING SEEN THAT PARTICULAR NIGHT?

3 A YES, I CAN.

4 Q WOULD YOU POINT TO THAT PERSON AND TELL US  
5 WHAT THAT PERSON IS WEARING NOW?

6 A HE'S (INDICATING) AT THE TABLE SITTING OVER  
7 THERE, IN I BELIEVE A BLUE SHIRT OR SWEATER AND JACKET.

8 MR. SEATON: YOUR HONOR, MAY THE RECORD REFLECT  
9 THE IDENTIFICATION OF DEFENDANT SAMUEL HOWARD.

10 THE COURT: THE RECORD MAY SO SHOW.

11  
12 BY MR. SEATON:

13  
14 Q NOW, MISS ZEMAN, CAN YOU TELL US WHETHER OR  
15 NOT IN YOUR OPINION DURING THE TIME THAT THE DEFENDANT WAS AROUND  
16 THE VAN THAT EVENING, HE HAD AN OPPORTUNITY OR YOU SAW HIM TOUCH  
17 ANY OF THE DOOR HANDLES OR DOOR KNOBS ON THE VAN THAT BELONGED TO  
18 GEORGE MONAHAN?

19 A I NEVER SAW HIM TOUCH ANY OF THE DOOR  
20 HANDLES.

21 Q WHILE THE DEFENDANT AND GEORGE WERE TALKING  
22 ABOUT THE PROPOSED SALE OF THE VAN, WAS ANYTHING MENTIONED ABOUT  
23 THEM GETTING TOGETHER THE NEXT DAY?

24 A YES.

25 Q COULD YOU TELL US ABOUT THAT, PLEASE?

26 A THE MAN INDICATED THAT HE WANTED TO TEST RIDE  
27 IT, AND THEY DISCUSSED -- THEY WERE DISCUSSING WHEN THE BEST TIME  
28 WOULD BE. AND GEORGE INDICATED THAT IT WOULD BE MOST CONVENIENT  
29 FOR HIM TO COME IN, IF HE CAME TO TAKE A RIDE IN IT, ON THURSDAY,  
30 THE NEXT MORNING SOMETIME, THAT THAT WOULD BE THE BEST TIME FOR  
31 GEORGE TO GET AWAY.

32 Q AND DID THE DEFENDANT SAY ANYTHING IN

1 RESPONSE TO THAT?

2 A THAT THAT WOULD BE GREAT. HE AGREED WITH  
3 THE -- THE NEXT MORNING WOULD BE FINE.

4 Q AND HOW DID HE KNOW HOW TO -- HOW DID THE  
5 DEFENDANT KNOW HOW TO GET TO GEORGE MONAHAN'S OFFICE THE NEXT  
6 MORNING?

7 A THEY -- MARY LOU AND GEORGE WERE LOOKING  
8 THROUGH THEIR THINGS AND FOUND -- I THINK MARY LOU GAVE HIM ONE  
9 OF THEIR BUSINESS CARDS FROM THE OFFICE.

10 Q AND GAVE THAT TO THE DEFENDANT?

11 A GAVE THAT TO HIM, AND TOLD HIM THAT THAT  
12 WOULD TELL HIM WHERE TO GO.

13 Q DID THERE COME A TIME THAT EVENING THEN WHEN  
14 THE -- THE LOOKING AT THE VAN WAS CONCLUDED AND THE DEFENDANT  
15 LEFT THE AREA?

16 A YES.

17 Q DID THAT OCCUR BEFORE OR AFTER ALL OF YOU  
18 GOT BACK INTO THE VAN?

19 A HE WALKED AWAY BEFORE WE ALL GOT INTO THE  
20 VAN.

21 Q WERE THE DOORS STILL OPEN AT THIS TIME?

22 A YES, THEY WERE. THEY STAYED OPEN THE WHOLE  
23 TIME.

24 Q NOW, THAT'S THE CARGO DOORS ON THE RIGHT  
25 SIDE PASSENGER, RIGHT SIDE DOOR?

26 A YES.

27 Q HOW ABOUT THE DRIVER'S DOOR, WAS THAT OPEN  
28 OR NOT?

29 A I BELIEVE THAT WAS SHUT BECAUSE THAT WAS  
30 THE -- A LINE OF TRAFFIC.

31 Q THEN DID YOU --

32 A I THINK.

1 Q OH, EXCUSE ME.  
2 A I THINK THAT THE DOOR WAS SHUT.  
3 Q THAT WAS OUT OF THE TRAFFIC SIDE OF THE  
4 STREET?  
5 A YEAH, ON THE DRIVER'S SIDE.  
6 Q DID YOU AND MARY CATHERINE GET BACK INTO THE  
7 BACK PART OF THE VAN?  
8 A YES, WE DID.  
9 Q AND SIT ON THE COUCH?  
10 A YES.  
11 Q AND WHO CLOSED THE CARGO -- DID YOU ENTER  
12 THROUGH THE CARGO DOORS?  
13 A YES, WE DID.  
14 Q AND WHO CLOSED THOSE DOORS?  
15 A I BELIEVE IT WAS GEORGE.  
16 Q AND DID MARY LOU GET BACK INTO THE PASSENGER'S  
17 SIDE THROUGH THAT DOOR?  
18 A SHE GOT BACK IN THROUGH HER DOOR ON THE  
19 PASSENGER'S SIDE.  
20 Q AND WHO CLOSED THAT DOOR; DO YOU RECALL?  
21 A I DON'T REMEMBER WHETHER SHE CLOSED HER OWN  
22 DOOR OR WHETHER GEORGE DID IT.  
23 Q AND DID GEORGE GET BACK INTO THE DRIVER'S  
24 SEAT?  
25 A HE GOT INTO THE DRIVER'S SIDE.  
26 Q THROUGH HIS SIDE?  
27 A YES.  
28 Q AND WHO CLOSED THAT DOOR?  
29 A HE WOULD -- HE CLOSED HIS OWN DOOR.  
30 Q WHERE DID YOU GO FROM THAT POINT IN THE VAN?  
31 A WE WENT FROM CAESARS PALACE BACK TO GEORGE'S  
32 OFFICE.

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Q AND WAS THE VAN PARKED AT THE OFFICE?

A WE PARKED THE VAN THERE AND WE ALL GOT OUT  
AND WE WENT INTO THE OFFICE FOR A LITTLE WHILE. I HAD NEVER SEEN  
THE OFFICE BEFORE, SO THEY WENT IN TO SHOW ME AROUND.

Q WHEN YOU GOT OUT OF THE VAN, THROUGH WHICH  
DOOR DID GEORGE GET OUT?

A I DON'T SPECIFICALLY REMEMBER. I BELIEVE  
THROUGH HIS OWN DOOR. I DON'T REMEMBER HIM GETTING OUT ANY OTHER  
DOOR.

Q WHICH DOOR DID MARY LOU GET OUT?

A HER OWN DOOR.

Q AND THROUGH WHICH DOOR DID YOU AND MARY  
CATHERINE LEAVE?

A THE DOUBLE DOORS.

Q DID YOU OPEN THAT DOOR OR DID SOMEONE ELSE?

A I DON'T REMEMBER AT THAT TIME.

Q AND WERE ALL THOSE DOORS CLOSED?

A WHEN -- ONCE WE GOT OUT?

Q YES.

A YES.

Q AND THEN YOU WENT TO THE OFFICE?

A YES.

MR. SEATON: THAT CONCLUDES OUR QUESTIONING, YOUR  
HONOR.

THE COURT: CROSS.

MR. FRANZEN: YES, YOUR HONOR.

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1600

CROSS EXAMINATION

BY MR. FRANZEN:

Q MA'AM, SHORTLY AFTER THE INCIDENT, DID YOU HAVE OCCASION TO BE REQUESTED BY THE POLICE TO LOOK AT SOME PHOTOGRAPHS?

A YES, SIR, I WAS.

Q DID YOU LOOK AT THE PHOTOGRAPHS IN THE RESIDENCE OF MRS. MONAHAN?

A YES, I DID.

Q IS THIS IN THE DINING ROOM?

A YES, THE DINING ROOM TABLE.

Q DID YOU IDENTIFY ANYBODY AT THAT TIME FROM THE PHOTOGRAPHS THAT WERE SHOWN TO YOU?

A NO, SIR, I DID NOT.

Q DO YOU KNOW IF THE MAN YOU'VE IDENTIFIED IN COURT TODAY AS KEITH, WAS HE DEPICTED IN ANY OF THOSE PHOTOGRAPHS?

A DID I KNOW IF HE WAS?

Q NO, MA'AM.

YOU HAVE IDENTIFIED THE GENTLEMAN TO MY LEFT AS THE MAN THAT YOU MET AT CAESARS PALACE, IS THAT CORRECT?

A YES, SIR.

Q AND THEN SHORTLY AFTER THE INCIDENT THAT WE'VE BEEN DISCUSSING, TO BE EXACT, ON MARCH 29, 1980, YOU WERE SHOWN SOME PHOTOGRAPHS.

A YES, SIR.

Q IN YOUR -- IN MRS. MONAHAN'S HOME?

A YES, SIR.

Q IS THE MAN ON MY LEFT, THE MAN THAT YOU IDENTIFIED, WAS HE IN ANY OF THOSE PHOTOGRAPHS?

1601

1 A I COULD NOT TELL YOU THAT.

2 Q HE MIGHT HAVE BEEN, HE MIGHT NOT HAVE BEEN,  
3 YOU DON'T KNOW?

4 A NO. I COULD NOT TELL YOU CERTAIN, YOU KNOW,  
5 CERTAINLY WHETHER I KNEW HE WAS.

6 Q WELL, WOULD YOU RECOGNIZE THE PHOTOGRAPHS  
7 THAT WERE SHOWN ON MARCH 29, 1980?

8 A YES, I WOULD.

9 Q WHAT WOULD CAUSE YOU TO RECOGNIZE THEM?

10 A I REMEMBER THAT AT THE TIME THEY SHOWED ME  
11 THE PICTURES AND I HAD NARROWED IT DOWN, IN -- IN LOOKING THROUGH  
12 THEM, TO TWO DIFFERENT PICTURES. AND THE ONE PICTURE THAT I HAD  
13 CONSIDERED AND THAT I WAS CONSIDERING IDENTIFYING AS THE MAN I  
14 HAD SEEN, WAS A MAN IN A ORANGE SHIRT. AND I LOOKED AT THAT  
15 PICTURE AND THE OTHER ONE AND I DID NOT PICK EITHER ONE OF THEM.  
16 I DID NOT PICK THE MAN IN THE ORANGE SHIRT BECAUSE HE -- I DON'T  
17 KNOW WHETHER IT WAS THE LIGHTING OR THE ORANGE SHIRT MADE HIS  
18 COMPLEXION -- MADE HIS COLORING SEEM LIGHTER COLORED THAN I  
19 REMEMBERED THE MAN I HAD SEEN.

20 Q SINCE THIS, HAVE YOU DISCUSSED THIS INCIDENT,  
21 YOUR IDENTIFICATION OR LACK OF IDENTIFICATION, WITH ANYONE?

22 A HAVE I DISCUSSED IT?

23 Q YEAH. HAVE YOU TALKED TO MRS. MONAHAN ABOUT  
24 IT?

25 A JUST THE FACT THAT I DIDN'T AND SHE DID.  
26 I DIDN'T.

27 Q DID SHE DESCRIBE TO YOU WHOM SHE PICKED?

28 A NO, SHE DID NOT.

29 Q AFTER THREE YEARS, YOU REMEMBER A MAN IN A  
30 YELLOW SHIRT?

31 A A MAN IN A ORANGE SHIRT, YES, SIR, I COULD.

32 Q ORANGE SHIRT.

1602

1 WHEN YOU WERE INTERVIEWED BY THE POLICE  
2 DID YOU MAKE A WRITTEN STATEMENT?  
3 A I DON'T RECALL EVER MAKING A WRITTEN STATE-  
4 MENT, NO, SIR.  
5 Q WHEN YOU ARRIVED AT CAESARS PALACE AND YOU  
6 GOT OUT OF YOUR VAN, WHERE DID YOU STAND IN RELATION TO THE VAN?  
7 A WHERE DID I STAND?  
8 Q YES, MA'AM.  
9 A I WAS ABOUT PROBABLY TWO OR THREE FEET AWAY;  
10 ABOUT THE HALF WAY DISTANCE OF THE VAN ACROSS FROM THE CARGO  
11 DOORS, DOUBLE DOORS. AND THEN -- UH, BACK BY THE -- THERE WAS  
12 SOME PILLARS AND I WAS STANDING BACK THERE. I THINK IT'S ABOUT  
13 TWO OR THREE FEET AWAY FROM THE VAN.  
14 Q IN RELATION TO THE VAN WHERE? FRONT? REAR?  
15 SIDE?  
16 A TO THE RIGHT SIDE OF THE VAN.  
17 Q ON THE BACK OR THE FRONT?  
18 A APPROXIMATELY HALF WAY. AS I RECALL, ABOUT  
19 ~~HALF WAY BETWEEN THE FRONT AND THE BACK OF THE VAN.~~  
20 Q CENTER OF THE VAN?  
21 A YES.  
22 Q MRS. MONAHAN WAS WITH YOU RIGHT THERE?  
23 A SHE WAS TO MY RIGHT, I REMEMBER THAT, BUT I  
24 COULDN'T TELL YOU HOW FAR TO MY RIGHT.  
25 Q WOULD SHE HAVE BEEN TO THE REAR OR TO THE  
26 FRONT OF THE VAN ON YOUR RIGHT?  
27 A SHE WOULD HAVE BEEN TOWARDS THE FRONT OF THE  
28 VAN.  
29 Q AND DID YOU CONVERSE WITH HER?  
30 A JUST GENERAL TALK, I BELIEVE. I DON'T  
31 REMEMBER ANYTHING SPECIFIC THAT WE SAID. WE WERE JUST STANDING  
32 THERE. GEORGE WAS TALKING TO THE GENTLEMAN ABOUT THE VAN, AND

1603



1 THEN LATER MARY LOU STARTED TALKING TO THEM, LOOKING FOR HER --  
2 THEIR BUSINESS CARD. BUT I DON'T REMEMBER SPECIFIC CONVERSATION  
3 THAT MARY LOU AND I HAD.

4 Q NOW, HAD YOU BEEN TO LAS VEGAS BEFORE?

5 A YES, SIR, I HAVE.

6 Q HAD YOU SEEN THE STRIP BEFORE AT NIGHT?

7 A YES, I DID.

8 Q DO YOU THINK YOU COMMENTED ON THE LIGHTS TO  
9 MRS. MONAHAN WHEN YOU LOOKED UP? WOULD THAT BE AN UNUSUAL THING  
10 FOR YOU TO DO OR DO YOU THINK YOU DID IT?

11 A I COULDN'T SAY WHETHER I DID OR NOT. IT  
12 WOULDN'T HAVE BEEN UNUSUAL. I --

13 Q WOULD SHE HAVE LOOKED AT ANY LIGHTS THAT YOU  
14 WERE ASKING ABOUT OR TELLING HER HOW NICE THEY LOOK?

15 A AGAIN, THAT'S VERY POSSIBLE. I CAN'T SAY  
16 YES OR NO.

17 Q O.K.

18 WHEN YOU SAY THAT THIS BLACK MAN AND  
19 MR. MONAHAN WERE STANDING NEAR THE FRONT PASSENGER DOOR, ABOUT,

20 OH, ZERO TO TWO FEET FROM IT; WOULD THAT BE CORRECT?

21 A WELL, THEY WERE -- THEY WERE AT VARIOUS  
22 POSITIONS DURING -- FROM THE TIME THAT WE PARKED, THEY GOT OUT,  
23 UNTIL THE TIME WHEN THEY FINISHED TALKING. THEY WERE AT VARIOUS  
24 POSITIONS ALONG THE VAN.

25 Q COULD -- I'M SORRY. GO AHEAD.

26 A FROM THE -- YOU KNOW, AROUND THE PASSENGER --  
27 THE FRONT PASSENGER DOOR, THAT AREA, ACROSS THE CENTER, YOU KNOW,  
28 TO AROUND THE BACK, THE DOUBLE DOORS, JUST WALKING.

29 Q DID THEY GO AROUND THE VAN?

30 A I DO NOT EVER REMEMBER THEM -- SEEING THEM  
31 LEAVE THE SIDEWALK.

32 Q COULD THEY HAVE AND YOU NOT HAVE SEEN THEM?

1604

1 A I -- STANDING RIGHT THERE, I THINK I WOULD  
2 HAVE SEEN THEM LEAVE THE SIDEWALK. AS I REMEMBER, THEY WERE IN  
3 MY VIEW AT ALL TIMES.

4 Q HAS ANYBODY MENTIONED TO YOU THE IMPORTANCE  
5 OF WHETHER OR NOT ANYONE TOUCHED THE VAN?

6 A YES, THEY HAVE.

7 Q WHEN WERE YOU TOLD THIS?

8 A AFTER THEY CALLED ME AND WERE ASKING ME SOME  
9 QUESTIONS LAST WEEK, AND I FINISHED TALKING TO THEM AND THEY TOLD  
10 ME THEY WOULD PROBABLY CALL ME TO TESTIFY, AND THAT WAS THE REASON.

11 Q BUT YOU'D MADE NO STATEMENT BACK IN MARCH OF  
12 1980 REGARDING WHETHER OR NOT ANYTHING WAS TOUCHED OR THE PATTERN  
13 OF WALKING AND TALKING UPON THE MARCH 26, 1980, INCIDENT, DID  
14 YOU?

15 A A FORMAL STATEMENT, NO, I DIDN'T.

16 Q DID YOU WRITE ONE OF YOUR OWN AND KEEP IT?

17 A AT -- NO, SIR, I DIDN'T.

18 Q YOU SAY YOU'RE A SENIOR YEAR OF LAW SCHOOL?

19 A YES, SIR.

20 Q HAVE YOU HAD CRIMINAL LAW?

21 A YES, SIR, I HAVE.

22 Q DO YOU KNOW THAT THE ACCUSED OR THE DEFENDANT  
23 SITS AT COUNSEL TABLE IN THE COURTROOM DURING A TRIAL?

24 A YES, I --

25 MR. SEATON: YOUR HONOR, I'D OBJECT. THIS IS  
26 IRRELEVANT.

27 THE COURT: SUSTAINED.

28 MR. FRANZEN: YOUR HONOR, I WOULD LIKE TO ARGUE  
29 RELEVANCY.

30 THE COURT: IT'S TOTALLY IRRELEVANT, COUNSEL.

31 PROCEED ON.

32 ..

1 BY MR. FRANZEN:

2

3 Q BEFORE YOU CAME INTO THE COURTROOM DID YOU  
4 KNOW THAT THE DEFENDANT WOULD BE IN THE COURTROOM?

5 A I ASSUMED HE WOULD.

6 Q BEFORE YOU CAME INTO THE COURTROOM DID YOU  
7 KNOW HE WOULD PROBABLY BE SITTING AT COUNSEL TABLE WITH HIS  
8 LAWYERS?

9 A I ASSUMED HE WOULD.

10 Q NOW, GOING BACK TO THIS PHOTO DISPLAY, DID  
11 YOU EVER REQUEST OF THE POLICE DEPARTMENT THAT YOU SEE A PHYSICAL  
12 LINEUP TO SEE IF YOU COULD IDENTIFY THE MAN WITH PROPER LIGHTING?

13 A THE ONLY TIME WHEN I WAS TALKING TO THE  
14 POLICE AT ALL IN THOSE FEW DAYS AND WHEN HE CAME -- WHEN THE  
15 DETECTIVE CAME IN TO HAVE US DO THE PHOTO LINEUP, HE SAID THAT --

16 Q JUST ANSWER THE QUESTION.

17 A WELL --

18 Q DID YOU EVER REQUEST A PHYSICAL LINEUP?

19 A NO.

20 Q OKAY.

21 DID YOU EVER REQUEST TO SEE A DIFFERENT  
22 SET OF PICTURES WITH A DIFFERENT HIGHLIGHTING, DIFFERENT LIGHTS?

23 A NO, SIR, I DIDN'T.

24 Q DID THE POLICE EVER VOLUNTEER TO HAVE A  
25 PHYSICAL LINEUP FOR YOU?

26 A NO, SIR. I LEFT TOWN.

27 Q DID THEY EVER ATTEMPT TO CONTACT YOU OUT-OF-  
28 TOWN AND ASK YOU TO COME FOR A PHYSICAL LINEUP?

29 A NOT TO MY KNOWLEDGE.

30 Q DURING THE PERIOD OF TIME THAT YOU WERE AT  
31 CAESARS PALACE DID YOU JUST STAND THERE AND STARE AT THE BLACK  
32 MAN SO THAT YOU KNEW ALL OF HIS MOVEMENTS?

1606

1 A NO.

2 Q WAS THERE ANYTHING SUSPICIOUS ABOUT HIM AT

3 THAT TIME TO YOUR MIND?

4 A NOT -- NOT TO MY MIND, NO.

5 Q SO AT THAT TIME YOU HAD NO REASON TO PAY

6 PARTICULAR ATTENTION TO HIM; WOULD THAT BE CORRECT?

7 A THAT WOULD BE CORRECT. I --

8 Q DID YOU NOTICE IF THE -- WHAT COLOR CLOTHES

9 THE MAN WAS WEARING?

10 A THE ONLY THING I REMEMBER AS FAR AS COLOR

11 WAS A BROWN JACKET. I DON'T KNOW WHAT COLOR ANYTHING ELSE HE HAD

12 ON WAS.

13 Q IN THIS PHOTO DISPLAY, DID ANYBODY ELSE HAVE

14 BROWN OR ORANGE ON?

15 A I DON'T KNOW.

16 Q DID YOU SEE THE MAN AT CAESARS PALACE, THE

17 BLACK MAN, CARRYING ANYTHING?

18 A HE DIDN'T HAVE ANY -- I DON'T REMEMBER ANY-

19 THING IN HIS HANDS.

20 Q DID HE HAVE A HAT?

21 A I DON'T REMEMBER A HAT. BUT THAT'S NOT --

22 I COULDN'T SAY FOR SURE.

23 Q DO YOU REMEMBER WHAT KIND OF HAIR STYLE HE

24 HAD?

25 A IT WASN'T -- IT WAS AFRO, AFRO HAIRCUT. NOT

26 A LONG, BUSHY AFRO. FAIRLY CLOSE CUT.

27 Q DID HE WEAR GLASSES?

28 A DID HE WEAR GLASSES? I DON'T -- I DIDN'T

29 NOTICE GLASSES.

30 Q YOU DON'T REMEMBER OR HE DIDN'T?

31 A I DON'T -- I DIDN'T SEE GLASSES.

32 Q DID YOU SEE HIS SHOES?

1 A NO. I DID NOT NOTICE HIS SHOES THAT I  
2 REMEMBER.  
3 Q DID HE SPEAK WITH AN ACCENT?  
4 A I DON'T REMEMBER.  
5 Q ARE YOU FROM THE WEST COAST?  
6 A NO, SIR, I'M NOT.  
7 Q THE EAST COAST?  
8 A I CAME FROM COLORADO.  
9 Q O.K. THE WEST.  
10 DO YOU THINK YOU'D RECOGNIZE A NEW YORK  
11 ACCENT OR WHAT WOULD BE CALLED A NEW YORK ACCENT?  
12 A A HEAVY ACCENT I MIGHT, BUT OTHER THAN THAT  
13 I DON'T KNOW IF I WOULD OR NOT.  
14 Q DID THE MAN YOU SPOKE TO, THE BLACK MAN AT  
15 CAESARS PALACE, WAS HE ARTICULATE OR EDUCATED OR COULD YOU TELL?  
16 A WELL, HE DIDN'T SPEAK ENOUGH TO ME THAT I  
17 WOULD BE ABLE TO TELL YOU THAT.  
18 Q WELL, DID YOU OVERHEAR ENOUGH OF THE CONVER-  
19 SATION WITH MR. MONAHAN AND THE --  
20 A THE DIFFERENT THINGS I REMEMBER HEARING HE  
21 DID NOT SOUND PARTICULARLY ARTICULATE, NO, NOT --  
22 Q DID HE SLUR HIS WORDS?  
23 A AS I WOULD CONSIDER SLURRING, I -- I DON'T  
24 THINK HE DID BUT --  
25 Q WAS HE WEARING ANY JEWELRY?  
26 A I DON'T REMEMBER JEWELRY.  
27 Q DOES THAT MEAN HE COULD HAVE BUT YOU OR YOU  
28 DON'T REMEMBER?  
29 A THAT'S CORRECT. I JUST DIDN'T NOTICE ANY,  
30 BUT THAT DOESN'T MEAN HE COULDN'T HAVE BEEN WEARING IT.  
31 Q DID HE HAVE A GOATEE OR A MOUSTACHE OR BEARD?  
32 A I DON'T REMEMBER. HE DIDN'T HAVE A MOUSTACHE

1608

1 THAT I REMEMBER OR A BIG BEARD. I DON'T REMEMBER HIM HAVING ALL  
2 THAT, EITHER A MOUSTACHE OR A BEARD.

3 Q NO MOUSTACHE AND NO BEARD?

4 A THAT I REMEMBER.

5 Q WELL, LET'S PIN IT DOWN. ARE YOU SAYING YOU  
6 DON'T REMEMBER HIM HAVING ANY MOUSTACHE? BY "MOUSTACHE" I MEAN  
7 BETWEEN THE NOSE AND THE UPPER LIP.

8 A RIGHT.

9 Q AND YOU DON'T REMEMBER SEEING -- THE BLACK  
10 MAN HAVING ANY BEARD?

11 A RIGHT.

12 Q DO YOU REMEMBER IF HE HAD A GOATEE?

13 A THE ONE THAT GOES (INDICATING)?

14 Q NO. A GOATEE IS LIKE A BILLY GOAT.

15 A CHIN DOWN. I DON'T RECALL A GOATEE.

16 Q IS THAT HE COULD HAVE HAD ONE, YOU DON'T  
17 REMEMBER, OR --

18 A I DON'T THINK HE DID.

19 Q (CONTINUING) -- OR HE DIDN'T HAVE ONE?

20 A I DON'T BELIEVE HE DID. I DON'T BELIEVE HE  
21 DID.

22 Q O.K.

23 DID YOU SEE HIS SHIRT?

24 A I DON'T REMEMBER WHAT KIND OF SHIRT HE HAD  
25 ON. I MAY HAVE SEEN IT, BUT I DON'T REMEMBER IT.

26 Q WAS THE JACKET A WIND BREAKER?

27 A I DON'T THINK I WOULD CALL IT A WIND BREAKER.

28 Q WAS IT OPEN OR CLOSED?

29 A I THINK IT WAS OPEN.

30 Q BUT YOU DON'T RECALL THE SHIRT?

31 A NO, I DON'T.

32 Q DID HE HAVE ANYTHING IN HIS POCKETS?

1609

1 A IN HIS POCKETS?

2 Q YES, MA'AM.

3 A I OI'DN'T SEE ANYTHING STUCK IN HIS POCKETS.

4 Q DID HE HAVE A GUN?

5 A I DID NOT SEE A GUN.

6 Q WHILE YOU WERE RIDING IN THE VAN, ALL FOUR

7 OF YOU, DID YOU HAVE OCCASION TO ENGAGE IN CONVERSATION WITH THE

8 OTHER THREE?

9 A IS THIS WHEN WE LEFT?

10 Q WHEN YOU LEFT HENDERSON COMING TO LAS VEGAS?

11 A I'M SORRY. CAN YOU RE- -- I'M --

12 Q WHEN YOU LEFT HENDERSON.

13 A OH.

14 Q AND WERE COMING DOWN TO LAS VEGAS, DID YOU

15 HAVE AN OCCASION TO ENGAGE IN A CONVERSATION WITH THE OTHER THREE

16 FAMILY MEMBERS IN THE VAN?

17 A GENERAL CONVERSATION, YES.

18 Q AFTER YOU MADE THE TURN TO GO DOWN INTO

19 CAESARS PALACE OFF THE STRIP, DID YOU CONTINUE TO ENGAGE IN CON-

20 VERSATION?

21 A I BELIEVE SO, YES.

22 Q WOULD THIS BE WITH GEORGE, MRS. MONAHAN AND

23 MARY CAT- -- WHO WAS THE OTHER LADY?

24 A AND MARY CATHERINE.

25 Q MARY CATHY?

26 A I BELIEVE WE DID.

27 Q WHEN SOMEBODY SITS IN THE FRONT PASSENGER'S

28 SEAT, THAT'S CALLED SOMETHING LIKE A CAPTAIN'S CHAIR; ISN'T IT?

29 A I DON'T KNOW.

30 Q IT'S A BIG, HIGH-BACK CHAIR?

31 A YES, IT IS.

32 Q IT'S NOT A BENCH SEAT?

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A RIGHT.

Q WHEN YOU TALKED TO MRS. MONAHAN, WAS SHE BENT AROUND THE CHAIR TO TALK TO YOU OR DID SHE TALK TO THE WINDSHIELD?

A WELL, IF SHE WAS TALKING DIRECTLY TO ME SHE WOULD TURN AROUND. BUT IF SHE WAS SAYING SOMETHING FOR THE BENEFIT OF EVERYBODY, PROBABLY JUST LOOKING AROUND, LOOKING LEFT OR LOOKING AHEAD.

Q IT'S COMMON SENSE, DO YOU AGREE WITH ME OR DISAGREE WITH ME, YOU BEND IN THE MIDDLE OF THE VAN TO SPEAK DOWN THE GAP BETWEEN THE TWO SEATS?

A I WOULD AGREE.

Q AND AS YOU WERE DRIVING INTO CAESARS PALACE, DO YOU THINK IT'S LIKELY THAT YOU WERE HAVING A CONVERSATION WITH MRS. MONAHAN OR SHE WAS TALKING OR LISTENING TO THE OTHER PASSENGERS?

A IT'S POSSIBLE, BUT I REALLY HAVE -- I DON'T I COULDN'T TELL YOU FOR SURE THAT SHE WAS TURNED AROUND, TALKING TO US OR NOT, AT THAT -- RIGHT WHEN WE TURNED IN.

MR. FRANZEN: PASS THE WITNESS, YOUR HONOR.

MR. SEATON: JUST A FEW MORE, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. SEATON:

Q MISS ZEMAN, DID YOU EVENTUALLY LEARN WHAT HAPPENED TO GEORGE MONAHAN?

A YES, I DID.

Q WHAT DID YOU LEARN?

A THAT HE HAD BEEN --

MR. FRANZEN: YOUR HONOR, I AM GOING TO OBJECT.

1611



1 THAT'S SO BROAD. IT'S EVERYTHING FROM PAST MARITALLIAN DISCRETION  
2 TO --

3 MR. SEATON: OH, I OBJECT TO THAT STATEMENT, YOUR  
4 HONOR. AND I WITHDRAW THE QUESTION.

5 MR. FRANZEN: I DON'T KNOW IF THAT'S --  
6 THE COURT: COUNSEL.

7 MR. FRANZEN: THAT'S THE BROADEST QUESTION YOU CAN  
8 HAVE.

9 THE COURT: COUNSEL, THE OBJECTION IS TOTALLY  
10 IMPROPER.

11 LADIES AND GENTLEMEN OF THE JURY, YOU ARE  
12 TO ENTIRELY DISREGARD THAT STATEMENT BY COUNSEL. THE OBJECTION  
13 IS OVERRULED.

14 YOU MAY PROCEED.

15 MR. SEATON: THANK YOU.

16  
17 BY MR. SEATON:

18  
19 Q DID YOU LEARN LATER THAT GEORGE MONAHAN WAS  
20 DEAD?

21 A YES, SIR, I DID.

22 Q THAT HE HAD BEEN MURDERED?

23 A YES, SIR, I DID.

24 MR. FRANZEN: YOUR HONOR, I WILL HAVE TO OBJECT TO  
25 THE LEADING CONCLUSION --

26 THE COURT: OVERRULED.

27  
28 BY MR. SEATON:

29  
30 Q DID THAT KNOWLEDGE CREATE A RATHER SIGNIFI-  
31 CANT EVENT IN YOUR MIND?

32 A YES, IT DID.

1 Q WITH THE KNOWLEDGE OF THAT -- WHEN DID YOU  
2 LEARN THAT?  
3 A WHAT --  
4 Q THAT GEORGE WAS DEAD?  
5 A WHAT ACTUALLY HAPPENED?  
6 Q YES.  
7 A ON THURSDAY EVENING, ABOUT 7 OR 8:00 O'CLOCK.  
8 Q THAT'S THE NIGHT AFTER YOU WERE AT CAESARS  
9 PALACE?  
10 A YES, SIR.  
11 Q AND DID THAT KNOWLEDGE CAUSE YOU TO THINK  
12 THE EVENTS OVER IN YOUR MIND?  
13 A YES. I STARTED THINKING THEM OVER THAT  
14 MORNING WHEN GEORGE WAS FIRST MISSING.  
15 Q I SEE.  
16 A I WAS RUNNING THROUGH, TRYING TO REMEMBER  
17 EVERYTHING I COULD ABOUT THE NIGHT BEFORE AND RECALLING THINGS  
18 ABOUT THE NIGHT BEFORE, AND THEN WE FOUND OUT ON THURSDAY NIGHT.  
19 Q I SEE.  
20 LET ME TAKE YOU BACK NOW TO MARCH 29,  
21 1980, WITH REGARD TO THE PHOTO LINEUP.  
22 A YES, SIR.  
23 Q DID DETECTIVE LEAVITT COME TO THE MONAHAN'S  
24 HOUSE?  
25 A I BELIEVE THAT'S WHO IT WAS.  
26 Q AND WHO VIEWED THE LINEUP, IF YOU KNOW?  
27 A I BELIEVE MARY LOU DID.  
28 Q ANYBODY ELSE?  
29 A AND THEN HE BROUGHT ME INTO THE DINING ROOM  
30 AND THEN HE BROUGHT MARY CATHERINE INTO THE DINING ROOM.  
31 Q AND DID YOU AND MARY CATHERINE HAVE AN  
32 OPPORTUNITY TO VIEW THAT PHOTO LINEUP?

1613

1 A YES, WE DID.

2 Q AND WHEN EACH OF THE THREE OF YOU VIEWED THE

3 LINEUP, WERE EITHER OF THE TWO OF YOU PRESENT AT THAT TIME?

4 A NO.

5 Q AND WHAT DID MR. LEAVITT, DETECTIVE LEAVITT,

6 SAY TO YOU WHEN HE SHOWED YOU THE PHOTOGRAPHIC LINEUP?

7 A I DON'T REMEMBER HIS EXACT WORDS. HE JUST

8 MAINLY TOLD US TO SEE IF -- I DON'T REMEMBER -- YOU KNOW, IF THE

9 MAN WE HAD SEEN OR IF WE RECOGNIZED ANY OF THE PICTURES.

10 Q AND DID HE DISPLAY THE PHOTOGRAPHS BY PLACING

11 THEM DOWN ON THE TABLE FACE UP?

12 A YES, HE DID.

13 Q DID YOU -- WHEN YOU WERE VIEWING THE PHOTO-

14 GRAPHIC LINEUP, DID YOU THEN LOOK AT THOSE PICTURES THAT WERE

15 FACE UP ON THE TABLE?

16 A YES, I DID.

17 Q AND DO YOU RECALL APPROXIMATELY HOW MANY

18 PICTURES WERE THERE?

19 A SEVEN.

20 Q DO YOU REMEMBER THE RACE? WAS THE RACE OF

21 ALL THE PEOPLE ON THE PICTURES THE SAME?

22 A I BELIEVE THEY ARE, YES.

23 Q AND WHAT IS THAT?

24 A BLACK.

25 Q AND WERE THEY ALL MALE OR FEMALE?

26 A THEY ARE ALL MEN.

27 Q DID YOU, WHILE LOOKING AT THAT PHOTOGRAPHIC

28 LINEUP, EVER HAVE AN OCCASION TO LOOK ON THE BACK OF ANY OF THOSE

29 PHOTOGRAPHS?

30 A NO.

31 Q AND AFTER HAVING VIEWED THE PHOTOGRAPHIC

32 LINEUP, DID YOU DISCUSS -- DID MARY LOU TELL YOU ANYTHING ABOUT

1614

1 HER IDENTIFICATION OF THE LINEUP?

2 A WHEN I WAS FINISHED?

3 Q YES. AFTER ALL OF YOU WERE FINISHED.

4 A I DON'T -- I DON'T THINK SHE DID. I JUST  
5 REMEMBER THAT WHEN SHE LEFT OR WHEN -- I DON'T REMEMBER HER EVER  
6 TELLING ME ANYTHING ABOUT WHO SHE PICKED.

7 Q AND DID MARY CATHERINE EVER TELL YOU ANY-  
8 THING ABOUT WHO SHE PICKED OR DIDN'T PICK?

9 A NO.

10 Q DID MARY LOU MENTION TO YOU ANYTHING ABOUT  
11 AN ORANGE SHIRT?

12 A NO.

13 Q DID MARY CATHERINE MENTION TO YOU ANYTHING  
14 ABOUT AN ORANGE SHIRT?

15 A NO.

16 Q DID AL LEAVITT MENTION ANYTHING TO YOU ABOUT  
17 AN ORANGE SHIRT?

18 A NO.

19 Q HAS ANYONE EVER MENTIONED ANYTHING TO YOU

20 ABOUT AN ORANGE SHIRT?

21 A NO. NO.

22 Q THIS OCCURRED ON MARCH 29, 1980. CAN YOU  
23 TELL US WHEN THE LAST TIME WAS THAT YOU SAW THAT PARTICULAR  
24 PHOTOGRAPHIC LINEUP?

25 A I BELIEVE IT WAS THAT SATURDAY.

26 Q MARCH THE 29TH, 1980?

27 A MARCH -- RIGHT.

28 Q COURT'S INDULGENCE, PLEASE.

29 MISS ZEMAN, I WOULD NOW LIKE TO SHOW YOU  
30 WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBITS 26A THROUGH 26G.  
31 WOULD YOU PLEASE TAKE A MOMENT AND EXAMINE EACH OF THOSE PICTURES.

32 A (WHEREUPON, WITNESS COMPLIES.)

1615

1 Q HAVE YOU EXAMINED THEM?

2 A YES, I HAVE.

3 Q CAN YOU TELL ME IF YOU RECOGNIZE THAT PAR-  
4 TICULAR GROUP OF PHOTOGRAPHS, MARKED STATE'S PROPOSED EXHIBITS  
5 26A THROUGH G.

6 A I THINK THESE ARE WHAT THEY SHOWED US FOR  
7 THE PHOTO LINEUP.

8 Q WHAT MAKES YOU THINK THAT THAT PARTICULAR  
9 GROUP IS THE ONE THAT THEY SHOWED YOU IN THE PHOTO LINEUP? AND  
10 IS THE PHOTO LINEUP THAT YOU'RE TALKING ABOUT THE ONE THAT  
11 OCCURRED ON MARCH 29TH, 1980?

12 A YES.

13 THIS IS THE PICTURE THAT I HAD -- ONE  
14 OF THEM THAT I HAD NARROWED IT DOWN TO.

15 Q WHEN YOU SAY, "THIS" DOES IT HAVE A NUMBER?

16 A NUMBER FIVE.

17 Q NUMBER FIVE.

18 MAY I SEE THE PHOTO. YOU'RE REFERRING  
19 TO STATE'S PROPOSED EXHIBIT 26E?

20 A YES, SIR.

21 Q O.K.

22 WHAT IS IT ABOUT PHOTOGRAPH FIVE, STATE'S  
23 PROPOSED EXHIBIT 26E, THAT MAKES YOU THINK THAT PARTICULAR GROUP  
24 IS THE GROUP THAT YOU LOOKED AT ON MARCH THE 29TH, 1980?

25 A WELL, THE MAN IN THE PICTURE IS WEARING AN  
26 ORANGE T-SHIRT AND THE -- IT'S A BRIGHTNESS IN THE CENTER OF HIS  
27 FACE.

28 Q AND YOU THINK THAT IS ONE OF THE PICTURES  
29 THAT YOU HAD CONSIDERED?

30 A YES.

31 Q COULD YOU LOOK THROUGH THE REMAINDER OF THE  
32 PICTURES, MISS ZEMAN, AND TELL ME IF YOU CAN FIND THE OTHER

1616

1 PICTURE WHICH YOU WOULD CONSIDER.

2 A I CAN'T BE SURE.

3 Q YOU CAN'T BE SURE?

4 A I CAN'T BE ABSOLUTELY CERTAIN.

5 Q ALL RIGHT. THANK YOU.

6 A SORRY.

7 Q WOULD YOU TAKE STATE'S PROPOSED EXHIBIT 26E,

8 PICTURE NUMBER FIVE, AND TURN IT OVER.

9 DO YOU SEE ANY SIGNATURES ON THE BACK  
10 OF THAT PICTURE WHICH YOU RECOGNIZE?

11 A YES, I DO.

12 Q AND WHOSE SIGNATURE WOULD THAT BE?

13 A THE FIRST ONE IS MARY LOU MONAHAN, MY SISTER.

14 Q AND WAS THERE A DATE WITH THAT?

15 A 3-29-80.

16 Q AND IS THERE ANY OTHER SIGNATURE ON THERE  
17 THAT YOU RECOGNIZE?

18 A NOT THAT I RECOGNIZE.

19 MR. SEATON: THANK YOU.

20 COURT'S INDULGENCE.

21 WE HAVE NO FURTHER QUESTIONS, YOUR HONOR.

22 THE COURT: COUNSEL.

23  
24 RE CROSS EXAMINATION

25  
26 BY MR. FRANZEN:

27  
28 Q MA'AM, YOU SAY THE MURDER OF MR. MONAHAN  
29 MADE AN IMPRESSION ON YOU, AND THAT'S WHY YOU REMEMBER THE PART  
30 AT CAESARS PALACE; IS THAT CORRECT?

31 A YES, SIR.

32 Q ON MARCH 29TH, 1980, YOU ALREADY KNEW THAT

1617

1 DR. MONAHAN WAS DEAD, DIDN'T YOU?  
2 A YES, I DID.  
3 Q BUT YOU DID NOT TELL THE POLICE OFFICER THAT  
4 THIS MAN IN THE ORANGE T-SHIRT WAS THE MAN YOU SAW AT CAESARS  
5 PALACE, DID YOU?  
6 A THAT'S CORRECT.  
7 Q NOR DID THAT POLICE OFFICER AT THAT TIME  
8 ASK YOU TO SIGN THE BACK OF ANY OF THESE PHOTOGRAPHS, DID HE?  
9 A NOT THAT I RECALL.  
10 Q IT'S NOW BEEN APPROXIMATELY THREE YEARS SINCE  
11 THE INCIDENT AT CAESARS PALACE, HAS IT NOT?  
12 A YES, SIR.  
13 MR. FRANZEN: NO FURTHER QUESTIONS, YOUR HONOR.  
14 MR. SEATON: NOTHING BY THE STATE, YOUR HONOR.  
15 THE COURT: YOU'RE EXCUSED.  
16 (WHEREUPON, THE WITNESS WAS  
17 EXCUSED.)  
18 THE COURT: WHO WILL BE YOUR NEXT WITNESS?  
19 MR. HARMON: HELENE ZUCKERMAN.  
20 THE COURT: ALL RIGHT. HAVE HER READY WHEN WE  
21 RECONVENE. WE WILL TAKE A TEN MINUTE RECESS AT THIS POINT.  
22 DURING THIS RECESS YOU ARE  
23 ADMONISHED NOT TO CONVERSE AMONG  
24 YOURSELVES OR WITH ANYONE ELSE ON  
25 ANY SUBJECT CONNECTED WITH THIS  
26 TRIAL, OR READ, WATCH OR LISTEN  
27 TO ANY REPORT OF OR COMMENTARY  
28 ON THIS TRIAL WITH ANY PERSON  
29 CONNECTED WITH THIS TRIAL BY ANY  
30 MEDIUM OF INFORMATION, INCLUDING  
31 WITHOUT LIMITATION, NEWSPAPER,  
32 TELEVISION OR RADIO OR FORM OR

1618

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EXPRESS ANY OPINION ON ANY  
SUBJECT CONNECTED WITH THIS  
TRIAL UNTIL THE CASE IS FINALLY  
SUBMITTED TO YOU.

WE WILL BE IN RECESS FOR TEN MINUTES.

(WHEREUPON, FROM 4:00 P.M.,  
UNTIL 4:15 P.M., A RECESS WAS  
HAD IN THE PROCEEDINGS, AT THE  
CONCLUSION OF WHICH THE FOLLOW-  
ING WAS HAD:)

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

MR. SEATON: YES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE COURT: WOULD YOU CALL YOUR NEXT WITNESS.

MR. SEATON: HELENE ZUCKERMAN.

WHEREUPON,

HELENE ZUCKERMAN,

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 AND SPELL  
YOUR LAST NAME FOR THE RECORD?

1619



1 A HELENE ZUCKERMAN, Z-U-C-K-E-R-M-A-N.  
2 Q COULD YOU SPEAK A LITTLE CLOSER TO THE MICRO-  
3 PHONE.  
4 THE COURT: JUST MOVE YOUR CHAIR UP A LITTLE BIT  
5 AND PULL THAT MICROPHONE OVER JUST A LITTLE BIT TO YOU.  
6  
7 BY MR. SEATON:  
8  
9 Q THANK YOU.  
10 IS IT MISS OR MRS.?  
11 A MISS.  
12 Q MISS ZUCKERMAN, IN WHAT CITY DO YOU PRESENTLY  
13 RESIDE?  
14 A BEVERLY HILLS.  
15 Q AND HAVE YOU EVER LIVED IN LAS VEGAS?  
16 A YES.  
17 Q WHEN DID YOU LIVE HERE IN LAS VEGAS?  
18 A 1979 AND 1980.  
19 Q AND WHAT WAS YOUR OCCUPATION AT THAT TIME?  
20 A DENTAL ASSISTANT.  
21 Q AND IS IT THE SAME TODAY?  
22 A YES.  
23 Q IN MARCH OF 1980 FOR WHOM WERE YOU WORKING?  
24 A DR. BOYD MAGDALL.  
25 Q AND WHERE WAS DR. BOYD MAGDALL'S OFFICE?  
26 A 1700 EAST DESERT INN.  
27 Q DO YOU KNOW THE NAME -- IS THAT A COMPLEX  
28 OF BUILDINGS OR A SEPARATE BUILDING?  
29 A TWO BUILDINGS.  
30 Q AND DOES IT HAVE A NAME?  
31 A WINCHESTER PLAZA, I BELIEVE.  
32 Q AND WHAT KIND OF A DOCTOR IS DR. MAGDALL?

1620

1 A A DENTIST.

2 Q DID HE EVER --

3 A AN ORAL, GENERAL DENTIST.

4 Q I'M SORRY?

5 A A GENERAL DENTIST.

6 Q DID HE HAVE A PARTNER?

7 A YES.

8 Q WHAT WAS THAT GENTLEMAN'S NAME?

9 A GEORGE MONAHAN.

10 Q AND THE BUILDING IN WHICH THEY -- YOU SAY

11 THERE WERE TWO BUILDINGS?

12 A UH-HUH.

13 Q DID THEY -- DID THE BUILDINGS RUN EAST AND

14 WEST OR NORTH AND SOUTH? CAN YOU DESCRIBE THEM A LITTLE FOR US?

15 A THE BUILDINGS RAN EAST AND WEST, I BELIEVE.

16 Q WAS ONLY ONE BUILDING EAST OF THE OTHER?

17 A YES.

18 Q O.K.

19 A WE WERE WEST.

20 Q YOU WERE IN THE WESTERN-MOST BUILDING?

21 A WESTERN-MOST, UH-HUH.

22 Q AND HOW MANY STORIES WERE THESE BUILDINGS?

23 A TWO STORIES.

24 Q AND WERE YOU IN THE UPSTAIRS OR DOWNSTAIRS

25 PORTION?

26 A UPSTAIRS.

27 Q UPSTAIRS.

28 WHERE IN RELATIONSHIP TO THESE BUILDINGS

29 WAS THERE PARKING AVAILABLE?

30 A THERE WAS PARKING BEHIND THE BUILDINGS; ON

31 THE SIDES OF THE BUILDINGS, OR AT LEAST ON OUR -- ON THE SIDE OF

32 OUR BUILDING, I DON'T KNOW IF THERE WAS PARKING ON THE SIDE -- ON

1621

1 THE EAST SIDE; AND THEN IN BETWEEN THE BUILDINGS THERE'S PARKING.  
2 Q AND WHERE DID EMPLOYEES GENERALLY PARK THEIR  
3 CARS?  
4 A BEHIND THE BUILDING.  
5 Q WAS THERE AN ALLEY ANYWHERE NEARBY THE  
6 WINCHESTER PLAZA?  
7 A BEHIND THE BUILDING.  
8 Q BEHIND THE BUILDING?  
9 A IS THE ALLEY.  
10 Q WHERE WAS THE BACK PARKING IN RELATIONSHIP  
11 TO THE ALLEY IN THE BUILDINGS?  
12 A RIGHT THERE, IT WAS OFF THE ALLEY. YOU HAD  
13 TO GO THROUGH THE ALLEY TO GET TO THE PARKING.  
14 Q WAS THE PARKING THEN IN BETWEEN THE ALLEY  
15 AND THE BUILDINGS?  
16 A YES.  
17 Q MISS ZUCKERMAN, DO YOU RECALL THE MORNING  
18 OF MARCH 27TH, 1980?  
19 A YES.  
20 Q CAN YOU RECALL, DID YOU WORK THAT DAY?  
21 A YES.  
22 Q AND WHO OPENED THE OFFICE?  
23 A I DID.  
24 Q HOW DID YOU OPEN THE OFFICE?  
25 A I UNLOCKED THE BURGLAR ALARM AND OPENED THE  
26 FRONT DOOR.  
27 Q AND DID YOU GO INSIDE THEN?  
28 A YES.  
29 Q AND DID YOU BUSY YOURSELF WITH VARIOUS THINGS  
30 THAT YOU HAD TO DO IN THE OFFICE?  
31 A UH-HUH.  
32 Q WAS THERE ANYONE PRESENT AT THE OFFICE WHEN

1622

1 YOU ARRIVED THERE?

2 A NO.

3 Q DO YOU KNOW WHO DR. MAGDALL'S FIRST APPOINT-  
4 MENT WAS ON THAT DAY?

5 A (NO AUDIBLE RESPONSE.)

6 Q WHAT WAS THE PERSON'S NAME?

7 A HIS NAME WAS STEVE JACKSON.

8 Q AND WHAT TIME WAS THAT APPOINTMENT SCHEDULED  
9 FOR?

10 A 7:00 O'CLOCK A.M.

11 Q IS IT YOUR RESPONSIBILITY TO TAKE CARE OF  
12 THE APPOINTMENTS?

13 A NO.

14 Q WHY IS IT YOU WOULD BE AWARE OF WHEN STEVE  
15 JACKSON WAS COMING IN THAT MORNING?

16 A I AM THE DENTAL ASSISTANT, I WOULD NEED TO  
17 KNOW WHO THE FIRST PATIENT WOULD BE SO I COULD SET UP FOR HIM.

18 Q I SEE.

19 A I DIDN'T SCHEDULE THE APPOINTMENT, BUT I  
20 KNEW WHO WAS SUPPOSED TO BE APPOINTED THAT DAY.

21 Q YOU MEAN DR. MAGDALL WAS THE DENTIST. YOU  
22 WOULD ASSIST HIM WITH THIS PARTICULAR PATIENT, WOULD YOU NOT?

23 A RIGHT.

24 Q AND OTHERS?

25 A RIGHT.

26 Q DO YOU KNOW WHO DR. MONAHAN'S FIRST PATIENT  
27 WAS THAT DAY?

28 A NO.

29 Q DO YOU KNOW IF HE HAD ANY APPOINTMENTS THAT  
30 DAY?

31 A YES.

32 Q WHEN WAS THE FIRST ONE, IF YOU KNOW,

1623

1 A HE HAD -- HIS FIRST APPOINTMENT WAS 7:30.  
2 I KNEW IT WAS A WOMAN. I DIDN'T -- I DO NOT KNOW WHO THE PATIENT  
3 WAS.

4 Q ALL RIGHT.

5 AFTER YOU HAD THE OFFICE OPENED AND HAD  
6 DONE SOME OF YOUR DUTIES, DID YOU HAVE OCCASION TO SEE ANYONE  
7 ENTER THE OFFICE?

8 A MY FIRST PATIENT CAME IN.

9 Q STEVE JACKSON?

10 A STEVE JACKSON.

11 Q AND WHAT HAPPENED WHEN HE CAME IN?

12 A HE CAME IN. I WENT TO THE DOOR TO GET HIM  
13 AND TOLD HIM TO SIT IN THE WAITING ROOM, THE DOCTOR WASN'T IN  
14 YET.

15 Q DID HE STAY IN THE WAITING ROOM?

16 A YES.

17 Q WHAT HAPPENED NEXT?

18 A I WENT TO THE BACK, TO THE BACK OF THE OFFICE,  
19 AND CONTINUED OPENING THE OFFICE, GETTING IT PREPARED.

20 Q AND DID YOU HEAR ANY VOICE SHORTLY THERE-  
21 AFTER?

22 A STEVE CALLED OUT TO ME AND ASKED ME IF DR.  
23 MONAHAN WAS IN THE OFFICE.

24 Q AND WHAT DID YOU DO?

25 A I WENT UP FRONT TO SEE STEVE AND WHY HE WAS  
26 ASKING THIS.

27 Q AND DID YOU SEE STEVE?

28 A YES.

29 Q AND DID YOU SEE ANYONE ELSE?

30 A A GENTLEMAN WALKED IN, WAS IN THE OFFICE IN  
31 THE FRONT.

32 Q AND CAN YOU DESCRIBE THAT GENTLEMAN FOR US?

1 A I'D SAY ABOUT FIVE-EIGHT, HE WAS A BLACK  
2 MAN BUT HE HAD LIGHT -- PRETTY LIGHT SKIN.

3 Q HOW HEAVY WOULD YOU SAY HE WAS?

4 A ABOUT MAYBE 165.

5 Q WERE YOU ABLE TO FORM AN OPINION AS TO HIS  
6 AGE?

7 A TWENTY EIGHTISH, SOMEWHERE IN THERE.

8 Q DID YOU NOTICE ANYTHING ABOUT HIS CLOTHES?

9 A HE WAS -- HE WASN'T DRESSED UP, IT WAS  
10 CASUAL. IT WAS -- I DON'T KNOW THAT IT WAS JEANS, BUT IT WAS  
11 JUST THAT TYPE OF CASUAL CLOTHING.

12 Q DID HE HAVE ANY OUTER GARMENT ON?

13 A I BELIEVE HE HAD SOME TYPE OF JACKET.

14 Q AND WAS HE CARRYING ANYTHING?

15 A I DON'T THINK SO.

16 Q ARE YOU REFERRING TO HIS HANDS?

17 A YES.

18 Q DO YOU KNOW IF HE WAS CARRYING ANYTHING ON  
19 HIS PERSON?

20 A I NOTICED SOMETHING AROUND HIS WAIST. I  
21 DON'T KNOW IF IT WAS ATTACHED TO HIS BELT OR A SEPARATE BELT. I  
22 NOTICED SOMETHING ON THE RIGHT SIDE. I THOUGHT THAT HE WAS --  
23 HE SEEMED TO BE A CONSTRUCTION WORKER OR SOMETHING TO FIX -- IT  
24 SEEMED THAT HE HAD SOMETHING ON HIS SIDE THAT WAS EITHER LIKE A  
25 TAPE MEASURE OR IT LOOKED LIKE MAYBE A RADIO, A WALKIE-TALKIE,  
26 SOMETHING WAS THERE I NOTICED. I DIDN'T NOTICE EXACTLY WHAT IT  
27 WAS.

28 Q MISS ZUCKERMAN, WOULD YOU LOOK AROUND THE  
29 COURTROOM NOW AND TELL US IF YOU SEE ANYONE PRESENTLY IN THE  
30 COURTROOM WHO WAS IN YOUR OFFICE ON THE MORNING OF MARCH 26TH,  
31 19 -- EXCUSE ME, MARCH 27TH, 1980?

32 A O.K. CAN YOU -- CAN YOU ASK ME THE QUESTION

1625

1 AGAIN?

2 Q YES. I'M SORRY.

3 A DO I SEE ANYONE HERE?

4 Q DO YOU SEE ANYONE PRESENTLY IN THE COURTROOM

5 WHO WAS IN YOUR OFFICE ON THE MORNING OF MARCH 27TH, 1980?

6 A I REALLY -- I DON'T KNOW.

7 Q FINE. THANK YOU.

8 A I'M NOT SURE.

9 Q WHAT STATEMENTS DID YOU MAKE AT THAT TIME

10 WHEN YOU SAW STEVE JACKSON AND THE BLACK MAN IN YOUR FRONT OFFICE?

11 A I SAID THAT DR. MONAHAN WAS NOT IN.

12 THE MAN TOLD ME OR REPLIED TO ME HE WILL

13 BE IN AT 7:30.

14 I LOOKED DOWN AT THE APPOINTMENT BOOK

15 AND SAW THAT HE DID HAVE A 7:30 PATIENT, AND I SAID, YES, I

16 EXPECT HIM AT 7:30.

17 Q AND WHAT HAPPENED THEN?

18 A THE GENTLEMAN LEFT.

19 Q DID THERE COME A TIME LATER IN THE MORNING

20 WHEN DR. MAGDALL CAME IN?

21 A YES.

22 Q AND DID THERE COME A TIME WHEN MARY LOU

23 MONAHAN CAME TO THE OFFICE?

24 A YES.

25 Q ABOUT WHAT TIME DID SHE ARRIVE?

26 A 7:45.

27 Q DID DR. MONAHAN COME TO WORK THAT DAY?

28 A NO.

29 Q DID YOU EVER SEE HIM AGAIN?

30 A NO.

31 Q DO YOU KNOW WHETHER OR NOT DR. AND MRS.

32 MONAHAN HAD A VAN THAT WAS FOR SALE?

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A YES. I KNEW THAT HE DID.

Q HAD YOU EVER SEEN THAT VAN BEFORE?

A YES.

Q AND WHERE DID HE NORMALLY KEEP THE VAN?

A AT THE OFFICE YOU MEAN?

Q DID HE KEEP IT AT THE OFFICE?

A I KNEW THAT HE DROVE IT TO THE OFFICE SOME-  
TIMES. I -- I DON'T KNOW WHERE HE KEPT IT THOUGH.

Q DO YOU KNOW WHERE AT THE OFFICE HE PARKED  
IT WHEN HE BROUGHT IT?

A IT WAS USUALLY IN THE BACK, I BELIEVE.

Q LET ME SHOW YOU STATE'S EXHIBIT 2. AND I'D  
ASK YOU TO EXAMINE THAT PHOTOGRAPH AND TELL ME IF YOU RECOGNIZE  
THE VEHICLE THAT'S PORTRAYED IN IT.

A YES. I BELIEVE THIS IS HIS VAN.

Q HOW DO YOU RECOGNIZE THAT AS BEING DR.  
MONAHAN'S VAN?

A THE PAINTING AND THE WORDS "BLACK OAK".

Q YOU HAD SEEN THAT BEFORE ON THE VAN?

A YES.

Q AND THE COLOR YOU'RE SAYING?

A UH-HUH.

MR. SEATON: THANK YOU VERY MUCH.

WE HAVE NO FURTHER QUESTIONS, YOUR HONOR..

THE COURT: CROSS.

MR. COOPER: THANK YOU, YOUR HONOR.

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CROSS EXAMINATION

BY MR. COOPER:

Q MISS ZUCKERMAN, YOU GAVE A STATEMENT TO THE POLICE ON THE 27TH OF MARCH, OF 1980, DIDN'T YOU?

A YES.

Q AND WHERE WAS THIS STATEMENT GIVEN?

A THEY TOOK ME TO THE POLICE DEPARTMENT. I DON'T KNOW EXACTLY WHERE THAT WAS.

Q CAN YOU RECALL APPROXIMATELY WHAT TIME IT WAS THAT YOU WENT TO THE POLICE DEPARTMENT?

A I THINK IT WAS AROUND 1:00 O'CLOCK. 1:00 O'CLOCK OR 2:00 O'CLOCK.

Q THAT AFTERNOON?

A YES.

Q SO IT WOULD HAVE BEEN SOME FIVE HOURS, SIX HOURS APPROXIMATELY AFTER YOU HAD SEEN THIS BLACK MAN IN THE OFFICE THAT MORNING; IS THAT RIGHT?

A RIGHT. I THINK SO.

Q WOULD IT BE ACCURATE TO SAY THAT YOUR MEMORY OF THIS PERSON WAS CLEARER THEN THAN IT IS NOW?

A YES.

Q AND HAVE YOU HAD A CHANCE TO REVIEW YOUR STATEMENT BEFORE YOU CAME TO COURT TODAY?

A YES, I DID.

Q YOU WERE GIVEN A COPY OF THAT?

A YES.

Q BY SOMEONE IN THE DISTRICT ATTORNEY'S OFFICE?

A YES.

Q DO YOU RECALL WHO GAVE YOU THAT?

A THIS GENTLEMAN HERE (INDICATING).

1628

1 Q ONE OF THE GENTLEMEN SEATED AT THE TABLE TO  
2 THE RIGHT?

3 A YES.

4 Q IN YOUR STATEMENT YOU GAVE THE POLICE, YOU  
5 DESCRIBED THIS MAN AS -- WELL, FIRST OF ALL, THE MAN ACTUALLY  
6 CAME -- THE BLACK MAN ACTUALLY CAME INSIDE THE OFFICE?

7 A YES.

8 Q HOW LONG WOULD YOU SAY HE STOOD THERE?

9 A THREE MINUTES, FOUR MINUTES.

10 Q AND YOU OBSERVED HIM FROM A DISTANCE OF HOW  
11 FAR?

12 A UH, TWO FEET.

13 Q I SEE.

14 YOU WERE AT VERY CLOSE PROXIMITY TO HIM?

15 A I WAS CLOSE, YES.

16 Q AND IN YOUR STATEMENT YOU DESCRIBED HIM AS  
17 A BLACK BUT LIGHT COMPLETED --

18 A UH-HUH.

19 Q (CONTINUING) -- MAN; IS THAT RIGHT?

20 A UH-HUH.

21 Q WOULD YOU SAY THAT HE WAS DARKER THAN I AM,  
22 ABOUT THE SAME SHADE AS I AM, OR LIGHTER THAN I AM?

23 A I WOULD SAY ABOUT THE SAME.

24 Q AND THE MAN THAT'S SEATED TO MY LEFT HERE,  
25 WOULD YOU SAY HE'S ABOUT THE SAME SHADE AS I AM, OR DARKER OR  
26 LIGHTER?

27 A I WOULD SAY DARKER.

28 Q AND THE MAN THAT YOU OBSERVED IN DR. MONAHAN'S  
29 OFFICE, THE BLACK MAN, APPEARED TO YOU TO BE TWENTY EIGHTISH?

30 A YES.

31 Q IN YOUR STATEMENT TO THE POLICE YOU TOLD  
32 THEM HE WAS ABOUT ANYWHERE FROM TWENTY FIVE TO THIRTY, DIDN'T YOU?

1629

1 A I BELIEVE SO, YES.

2 Q AND YOU DESCRIBED HIM AS BEING ABOUT FIVE

3 FEET EIGHT INCHES AND MAYBE 160 POUNDS; IS THAT RIGHT?

4 A YES.

5 Q YOU ALSO, IN YOUR STATEMENT, TOLD THE POLICE

6 THAT THE PERSON HAD A MEDIUM TO SHORT LENGTH HAIR, NO AFRO.

7 A RIGHT.

8 Q IS THAT RIGHT?

9 A RIGHT.

10 Q WHAT DOES AN AFRO MEAN TO YOU?

11 A I GUESS JUST LENGTH, JUST SIZE.

12 Q THIS MAN'S HAIR WAS FAIRLY SHORT?

13 A YES.

14 Q NOW, YOU GO ON IN YOUR STATEMENT AND YOU SAY

15 THAT THE MAN HAD BROWNISH HAIR; IS THAT RIGHT?

16 A UH-HUH.

17 Q WOULD YOU ANSWER LOUD, PLEASE?

18 A THAT'S WHAT WAS IN THE STATEMENT, YES.

19 Q THAT'S WHAT YOU OBSERVED?

20 A I DON'T REMEMBER EXACTLY TODAY. I CAN'T

21 REALLY PICTURE THE COLOR HAIR.

22 Q BUT AGAIN BECAUSE THIS STATEMENT WAS GIVEN

23 SHORTLY AFTER YOU OBSERVED THIS MAN, IT'S MORE LIKELY THAT YOUR

24 STATEMENT IS ACCURATE, ISN'T IT?

25 A YES.

26 Q AND HE WAS WEARING CASUAL CLOTHES?

27 A YES.

28 Q IS THERE ANYTHING YOU CAN TELL US ABOUT HIS

29 CLOTHES, OTHER THAN THAT THEY WERE CASUAL?

30 A I -- I DON'T REALLY KNOW WHAT I CAN ANSWER

31 TO THAT.

32 Q SO YOU JUST DON'T REMEMBER; IS THAT RIGHT?

1630