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SAMUEL HOWARD

VS.

Respondents.

Case No. 57469

Docket 57469 Document 2011-14201

1 A I HAVE A SENSE OF -- OF -- OF A TYPE DRESS,
2 YEAH.
3 Q DO YOU RECALL ANYTHING ABOUT THE SHOES?
4 A NO. I DID NOT SEE THE FEET.
5 Q WHAT ABOUT THE PANTS?
6 A JUST -- IT WAS NOT DRESSY CLOTHES AT ALL. I
7 DON'T THINK IT WAS JEANS. I DON'T REALLY REMEMBER.
8 Q DO YOU RECALL ANYTHING ABOUT THE SHIRT HE
9 HAD ON, IF HE HAD ON A SHIRT?
10 A NO.
11 Q NOW, IN YOUR STATEMENT IN DESCRIBING THIS
12 INDIVIDUAL AND WHAT HE WAS WEARING, YOU SAID THAT HE HAD CASUAL
13 CLOTHES AND YOU SAY A WINDBREAKER.
14 A UH-HUH.
15 Q DARK GREEN JACKET?
16 A UH-HUH.
17 Q IS THAT RIGHT?
18 A YES.
19 Q DO YOU RECALL THIS PERSON HAVING ON A DARK
20 GREEN JACKET?
21 A I DON'T RECALL THAT TODAY, NO.
22 Q I SEE.
23 BUT AT THE TIME YOU GAVE YOUR STATEMENT
24 YOU RECALLED THAT, DIDN'T YOU?
25 A I GUESS.
26 Q I MEAN YOU TESTIFIED THAT YOU WERE A FOOT
27 OR SO AWAY FROM THIS PERSON FOR ABOUT THREE MINUTES, RIGHT?
28 A YES.
29 Q YOU SAID THAT HE HAD A -- AROUND THE WAIST
30 HE HAD A BELT LIKE A CONSTRUCTION MAN, IN YOUR STATEMENT; IS THAT
31 RIGHT?
32 A UH-HUH.

1631

1 Q WHAT KIND OF BELT WAS IT? WAS IT JUST YOUR
2 REGULAR EVERYDAY, RUN OF THE MILL, BELT; OR WAS THERE ANYTHING
3 SPECIAL PARTICULARLY ABOUT THIS BELT THAT YOU NOTICED?

4 A I'M NOT REALLY CLEAR TODAY ON WHAT THE
5 ACTUAL BELT, IF -- AS I SAID, I'M NOT SURE IF IT WAS JUST A
6 REGULAR BELT WITH SOMETHING ATTACHED OR A SPECIFIC CONSTRUCTION
7 BELT.

8 Q I SEE.

9 BUT YOU DID SAY IN YOUR STATEMENT THAT
10 YOU NOTICED AROUND HIS WAIST A BELT LIKE A CONSTRUCTION MAN; IS
11 THAT RIGHT?

12 A YES. YES.

13 Q IN YOUR MIND NOW, WHAT DOES THAT MEAN?

14 A WELL --

15 Q IF I WERE TO TELL YOU THAT I HAD ON A BELT
16 LIKE A CONSTRUCTION MAN --

17 A I WOULD GUESS --

18 Q (CONTINUING) -- WHAT WOULD THAT MEAN TO YOU?

19 A LIKE A LIGHT BROWN LEATHER.

20 Q WOULD IT MEAN A WIDE BELT; A -- A SLIM --
21 SKINNY KIND OF BELT?

22 A I WOULD SAY FAIRLY WIDE WIDE.

23 Q AND YOU NOTICED SOMETHING ON THE BELT; IS
24 THAT RIGHT?

25 A UH-HUH. UH-HUH. YES.

26 Q WHEN YOU GAVE YOUR STATEMENT TO THE POLICE,
27 WHEN YOU GOT TO THAT PART OF YOUR STATEMENT WERE YOU YOURSELF
28 DESCRIBING WHAT'S ON THE BELT? DID THE POLICE OFFICERS ASK YOU
29 IF THIS COULD HAVE BEEN A WALKIE-TALKIE TYPE OF THING ON THE BELT?

30 A I DON'T THINK SO, NO.

31 Q THIS MAN TOLD YOU THAT DR. MONAHAN WAS COMING
32 IN AT 7:30?

1632

1 A YES.

2 Q IS THAT RIGHT?

3 A YES. IT SEEMS TO ME THAT HE HAD AN APPOINT-

4 MENT OR SOMETHING SET UP.

5 Q AND YOU CHECKED DR. MONAHAN'S SCHEDULE AND

6 SAW THAT HE DID IN FACT HAVE A 7:30 APPOINTMENT?

7 A RIGHT.

8 Q DID THAT LEAD YOU TO BELIEVE THAT THIS MAN

9 KNEW THAT DR. MONAHAN HAD A 7:30 APPOINTMENT?

10 A NOT NECESSARILY. IT JUST LED ME TO BELIEVE

11 THAT HE HAD MADE SOME ARRANGEMENTS TO MEET DR. MONAHAN THERE AT

12 THE OFFICE AT 7:30.

13 Q BUT THE MAN SAID THAT DR. MONAHAN IS COMING

14 IN AT 7:30?

15 A YES.

16 Q WHEN DID YOU FIRST TALK TO THE POLICE, MISS

17 ZUCKERMAN, REGARDING THIS CASE?

18 A I BELIEVE IT WAS AFTERNOON THAT DAY.

19 Q ~~DID THEY COME TO DR. MONAHAN'S OFFICE THERE~~

20 TO TALK TO YOU?

21 A YES.

22 Q AND I ASSUME THAT LATER ON THAT DAY, YOU

23 WENT DOWN TO THE POLICE STATION TO GIVE YOUR STATEMENT; IS THAT

24 RIGHT?

25 A YES.

26 Q DID YOU HAVE ANY SUBSEQUENT CONTACT WITH THE

27 POLICE REGARDING THIS CASE?

28 A SINCE THEN?

29 Q YES, SINCE YOU GAVE YOUR STATEMENT.

30 A NO.

31 Q SO THE POLICE NEVER ASKED YOU TO TAKE A LOOK

32 AT A PHOTOGRAPHIC LINEUP TO SEE IF YOU COULD IDENTIFY THE MAN YOU

1633

1 SAW STANDING IN DR. MONAHAN'S OFFICE THAT MORNING, DID THEY?

2 A NO.

3 MR. COOPER: I HAVE NOTHING FURTHER OF THE WITNESS,
4 YOUR HONOR.

5 MR. SEATON: JUST A FEW, YOUR HONOR.

6 THE COURT: PROCEED.

7

8 REDIRECT EXAMINATION

9

10 BY MR. SEATON:

11

12 Q ON CROSS EXAMINATION, IT WAS POINTED OUT
13 THAT IN YOUR STATEMENT YOU INDICATED THAT WHAT WAS ON THE INDIV-
14 IDUAL'S BELT WAS KEYS, SOME SORT OF TAPE OR A RADIO, A WALKIE-
15 TALKIE. COULD YOU THINK BACK FOR A MOMENT TO WHEN YOU MADE THAT
16 STATEMENT AND TELL US, IF YOU CAN, WHY YOU INDICATED THOSE ITEMS
17 WHICH APPEAR TO BE FAIRLY DIFFERENT IN NATURE?

18 A WHY I -- WHY YOU -- YOU MEAN -- I -- I DON'T
19 KNOW WHY THERE WOULD BE SUCH A DIFFERENCE. I JUST KNOW THAT I
20 SAW SOMETHING AND I THINK THAT I -- I HAD A FEEL WHEN HE FIRST
21 WALKED IN THAT HE WAS CONSTRUCTION OR MEETING WITH DR. MONAHAN
22 TO FIX SOMETHING IN THE OFFICE. AND IN MY HEAD, I BELIEVED CON-
23 STRUCTION TO BE SOMEONE WHO HAS ALOT OF KEYS TO -- TO -- TO GET
24 IN OR A MEASURING TAPE, OR SOMETHING LIKE THAT. SO I THINK THAT
25 THAT'S WHERE THAT CAME FROM, MY BELIEF THAT THIS PERSON WAS WITH
26 CONSTRUCTION. BUT --

27 Q WHERE DO YOU THINK THE RADIO OR THE WALKIE-
28 TALKIE CAME FROM THAT YOU MENTIONED IN YOUR STATEMENT?

29 A IT SEEMED REALLY THE MOST REAL TO ME OF WHAT
30 IT IS THAT I ACTUALLY SAW.

31 Q HOW DO YOU -- WOULD YOU EXPLAIN THAT A LITTLE
32 MORE CAREFULLY, PLEASE. WHAT DO YOU MEAN BY "IT SEEMS THE MOST

1634

1 REAL ... THAT YOU SAW"?

2 A WELL, GOSH.

3 I -- I GUESS MY EYES WEREN'T LYING. MY
4 HEAD WAS SAYING IF HE'S CONSTRUCTION THERE MUST BE SOMETHING
5 HAVING TO DO WITH THAT ON THE BELT. BUT WHAT SEEMS MOSTLY THAT
6 I REALLY SAW WAS SOMETHING SQUARE OR -- OR -- NOT EXACTLY SQUARE
7 BUT RECTANGLE AND BLACK. LIKE THAT (INDICATING).

8 Q IF YOU WERE TO HAVE TO PICK ONE OF THE THREE
9 ITEMS, OR ANY OTHER ITEM, TODAY AFTER GIVING IT SOME THOUGHT OF
10 WHAT YOU THINK WAS ON THAT INDIVIDUAL'S BELT, WHAT WOULD YOU SAY?

11 A I WOULD HAVE TO SAY THE WALKIE-TALKIE.

12 Q NOW, IN YOUR JOB IS IT TRUE THAT YOU HAVE TO
13 BE FAIRLY CONCERNED WITH TIME APPOINTMENTS?

14 A YES.

15 Q DO YOU RECALL ROUGHLY WHAT TIME IT WAS THAT
16 MORNING WHEN YOU FIRST SAW THIS INDIVIDUAL WHO YOU'VE DESCRIBED
17 AS A BLACK MAN STANDING IN THE -- WHAT TIME HE CAME IN WHEN HE
18 WAS STANDING, TALKING TO STEVE?

19 A 7:05 TO 7:10.

20 Q AND HOW LONG DID THAT CONVERSATION LAST?

21 A THREE, FOUR MINUTES.

22 Q SO WHAT TIME WOULD YOU SAY IT WAS WHEN HE
23 WALKED OUT THE FRONT DOOR?

24 A ANYWHERE FROM TEN AFTER SEVEN TO 7:14.

25 Q AND BY "HE" OF COURSE I'M REFERRING TO THE
26 BLACK MAN.

27 A YES.

28 Q STEVE STAYED IN THE OFFICE?

29 A YES.

30 Q DID YOU EVER SEE THE BLACK MAN AGAIN?

31 A NO.

32 MR. SEATON: THANK YOU.

1635

I HAVE NOTHING FURTHER, YOUR HONOR.

RE CROSS EXAMINATION

BY MR. COOPER:

Q MISS ZUCKERMAN, DID YOU HAVE OCCASION TO DISCUSS YOUR TESTIMONY BEFORE COMING TO COURT TODAY WITH ANYONE?

A YES.

Q DID YOU DISCUSS IT WITH ANYONE FROM THE DISTRICT ATTORNEY'S OFFICE?

A YES, I DID.

Q WHAT ABOUT MRS. MONAHAN? DID YOU DISCUSS IT WITH HER?

MR. SEATON: YOUR HONOR, I AM GOING TO OBJECT. I THINK THIS EXCEEDS THE SCOPE OF REDIRECT.

THE COURT: OVERRULED.

THE WITNESS: CAN I HEAR YOUR QUESTION AGAIN, PLEASE.

BY MR. COOPER:

Q DID YOU DISCUSS YOUR TESTIMONY WITH MRS. MONAHAN?

A NO. I DID NOT DISCUSS MY TESTIMONY.

Q BUT YOU DID DISCUSS IT WITH SOMEONE FROM THE DISTRICT ATTORNEY'S OFFICE?

A YES.

Q AT THE TIME YOU GAVE YOUR STATEMENT TO THE POLICE, YOU MENTIONED THAT ON THIS BELT WAS A BUNCH OF KEYS OR A MEASURING TAPE OR SOME KIND OF COMMUNICATION WALKIE-TALKIE.

A UH-HUH.

Q YOU DIDN'T MAKE A DISTINCTION IN YOUR STATE-

1636

1 MENT AS TO WHICH YOU THOUGHT IT WAS AT THAT TIME, DID YOU?
2 A NO, I DID NOT.
3 MR. COOPER: I HAVE NOTHING FURTHER, YOUR HONOR.
4 MR. SEATON: NOTHING BY THE STATE, YOUR HONOR.
5 THE COURT: YOU'RE EXCUSED.
6 (WHEREUPON, THE WITNESS WAS
7 EXCUSED.)
8 THE COURT: CALL YOUR NEXT WITNESS.
9 MR. SEATON: CHUCK MARINO.
10 THE COURT: COME FORWARD, SIR. STAND BEHIND THE
11 WITNESS BOX, PLEASE.
12 THE CLERK: RAISE YOUR RIGHT HAND.
13
14 WHEREUPON,
15
16 CHARLES MARINO,
17
18 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,
19 EXAMINED AND TESTIFIED AS FOLLOWS:
20
21 THE COURT: JUST BE SEATED, SIR.
22
23 DIRECT EXAMINATION
24
25 BY MR. SEATON:
26
27 Q PLEASE STATE YOUR NAME AND SPELL YOUR LAST
28 NAME.
29 A CHARLES MARINO, M-A-R-I-N-O.
30 Q MR. MARINO, AT ONE TIME DID YOU OWN A
31 BUSINESS ESTABLISHMENT CALLED THE DEW DROP INN?
32 A YES.

1 Q AND WHERE IS THAT LOCATED, PLEASE?

2 A ON BOULDER HIGHWAY AND DESERT INN.

3 Q DO YOU KNOW THE ADDRESS?

4 A 4200 BOULDER HIGHWAY.

5 Q AND DURING WHAT PERIOD OF TIME WERE YOU THE

6 OWNER OF THE DEW DROP INN?

7 A FROM 1975 TO SEPTEMBER OF '82.

8 Q COULD YOU -- DID YOU SPEND ALOT OF TIME AT

9 THAT ESTABLISHMENT?

10 A MOSTLY EVERYDAY IN THE MORNING.

11 Q COULD YOU DESCRIBE, IF YOU WOULD, PLEASE,

12 THE BUILDING OF THE DEW DROP INN AND THE PARKING THAT SURROUNDS

13 IT, AS ALL OF THAT RELATES TO BOULDER HIGHWAY.

14 A THE SIZE OF THE BUILDING OR --

15 Q NOT NECESSARILY THE SIZE, BUT THE SHAPE AND

16 OTHER THINGS AROUND IT.

17 A WELL, IT'S -- IF YOU GO TO THE CORNER OF

18 DESERT INN AND BOULDER HIGHWAY YOU HAVE AN EXXON STATION AND YOU

19 HAVE THE MINI WAREHOUSES, AND THEN YOU HAVE THE DEW DROP INN.

20 Q IN WHICH DIRECTION IS THIS GOING FROM DESERT

21 INN?

22 A IT WOULD BE GOING BACK TOWARDS THE HENDERSON

23 AREA.

24 Q O.K.

25 AND IT'S ON THE NORTH OR SOUTH SIDE OF

26 BOULDER HIGHWAY?

27 A IT WOULD BE ON THIS SIDE OF BOULDER HIGHWAY,

28 ACROSS -- ACROSS THE STREET THERE THERE WOULD BE MAYFAIR MARKET.

29 Q IS IT ON THE NELLIS AIR FORCE BASE SIDE OR

30 THE LOS ANGELES SIDE?

31 A UH, I GUESS IT WOULD BE ON THE LOS ANGELES

32 SIDE.

1638

1 Q WHAT IS THE PARKING LOT -- THE PARKING LIKE
2 AROUND THE BUILDING?

3 A IT'S ALL ON -- FROM THE FRONT TO THE RIGHT
4 OR THE LEFT SIDE OF THE BUILDING IF YOU ARE FACING THE BUSINESS
5 YOU'RE TO THE LEFT OF IT, TO THE RIGHT OF IT IT WAS JUST A LITTLE
6 DELIVERY AREA.

7 SO YOU HAD PARKING FROM THE FRONT TO
8 THE SIDE TO THE REAR.

9 Q AND HOW DO YOU GAIN ACCESS TO THAT PARKING
10 AREA?

11 A THERE'S TWO -- TWO OPENINGS IN THE STREET
12 THERE: ONE ON THE FIRST PART TO THE RIGHT SIDE OF THE BUILDING,
13 AND THEN JUST PAST THE LEFT CORNER OF THE BUILDING THERE WOULD
14 BE TWO ENTRANCE WAYS.

15 Q CALLING YOUR ATTENTION TO MARCH THE 27TH,
16 1980, CAN YOU RECALL THAT DAY?

17 A YES.

18 Q AND WHERE WERE YOU IN THE EARLY MORNING HOURS?

19 A WELL, I WAS -- USUALLY I'M AT THE BAR SEVEN,
20 7:30.

21 THIS PARTICULAR MORNING I WAS RUNNING
22 LATE. SO I WAS COMING FROM OFF SAY THE HENDERSON AREA GOING DOWN
23 BOULDER HIGHWAY.

24 Q WHERE WERE YOU COMING FROM?

25 A I WAS COMING FROM HOME.

26 Q AND WERE YOU GOING TOWARD LAS VEGAS THEN?

27 A YES.

28 Q ON BOULDER HIGHWAY?

29 A YES. MY HOME NOW, BOULDER HIGHWAY.

30 Q AND HOW WOULD YOU -- HOW WOULD YOU GO TO THE
31 -- TO YOUR BAR TRAVELING THAT ROUTE?

32 A WELL, I WOULD GO DOWN AND THEN I WOULD TURN

1639

1 LEFT ON DESERT INN AND MAKE A U-TURN BACK TO THE BAR.

2 Q I SEE.

3 APPROXIMATELY WHAT TIME, IF YOU KNOW,
4 DID YOU ARRIVE IN THE VICINITY OF THE BAR?

5 A APPROXIMATELY ABOUT 7:45 THAT MORNING.

6 Q WHEN YOU WERE ON BOULDER HIGHWAY, PRIOR TO
7 MAKING THE U-TURN, DID YOU NOTICE ANYTHING AT THE BAR THAT CAUGHT
8 YOUR ATTENTION?

9 A YES. I WAS JUST ABOUT DIRECTLY ACROSS IT
10 AND I WAS GETTING READY TO GET INTO THE LEFT TURNING LANE, AND I
11 NOTICED A -- A VAN BACKING UP TO THE REAR OF THE BUILDING.

12 Q CAN YOU DESCRIBE THAT VAN FOR US?

13 A WELL, IT WAS BLACK. A BLACK VAN.

14 Q DID YOU HAVE AN OPPORTUNITY TO VIEW THAT
15 SAME VAN LATER ON?

16 A YES.

17 Q COULD YOU DESCRIBE WITH A LITTLE MORE DETAIL,
18 HOW THE VAN BACKED INTO YOUR ESTABLISHMENT?

19 A WELL, IT WAS BACKING IN, WHICH STRUCK ME
20 FUNNY BECAUSE USUALLY IF ANYBODY WAS PULLING UP TO THE BAR THEY
21 PULLED IN FACE FIRST; AND ABOUT THE ONLY TIME ANYBODY WOULD BACK
22 UP WAS WHEN WE WERE MAKING DELIVERIES; AND THAT PARTICULAR PART
23 OF THE BAR THERE IS NO DOORS THERE TO MAKE DELIVERIES AT.

24 Q NOW, WHAT PARTICULAR PART OF THE BAR WAS IT
25 WHERE THE VAN WAS BACKING IN?

26 A IT WAS ON THE BACK CORNER OF THE LEFT SIDE
27 OF THE -- OF THE BAR.

28 Q WHEN YOU -- AFTER YOU SAW THE VAN BACKING IN,
29 DID YOU SEE IT COME TO A STOP?

30 A WELL, AS I WAS -- AS I WAS GOING BY I COULD
31 JUST SEE LIKE JUST A HALF TURN, LIKE IF SOMEBODY WAS PULLING OUT
32 AND THEY WERE JUST COMING TO A -- TO THE BACK END OF IT, AND THEN

1640

1 I KEPT ON GOING.

2 Q WHEN YOU LAST SAW IT, WAS IT GOING FORWARDS
3 OR BACKWARDS?

4 A I BELIEVE IT WAS JUST ABOUT STOPPED. IT
5 WAS BACKWARDS OR STOPPED.

6 Q AND AFTER YOU LOST SIGHT OF THE VAN WHERE
7 DID YOU THEN GO?

8 A I STOPPED AT THE -- I TURNED LEFT ON DESERT
9 INN AND I STOPPED AT THE EXXON STATION TO GET GAS.

10 Q AND HOW LONG WOULD YOU SAY YOU WERE THERE?

11 A OH, MAYBE FIVE, TEN MINUTES.

12 Q FROM WHAT TIME DID -- OR WHERE DID YOU GO
13 AFTER YOU GOT YOUR GAS?

14 A WELL, THEN I -- THEN I PULLED OVER TO THE --
15 TO THE DEW DROP, PARKED THE CAR, AND I HAVE A HABIT OF EVERY
16 MORNING I WOULD GET OUT THERE AND WALK THROUGH THE PARKING LOT
17 AND PICK UP ANY CANS OR BOTTLES OR PAPERS OR ANYTHING IN THE PARK-
18 ING LOT.

19 Q WHERE DID YOU PARK YOUR CAR?

20 A IN THE FRONT OF THE BUILDING, THE RIGHT
21 FRONT.

22 Q AND CAN YOU TELL US IN WHAT AREAS YOU PICKED
23 UP THE TRASH AROUND THE BUILDING?

24 A AROUND THE WHOLE PARKING LOT, IN THE FRONT
25 GOING TOWARDS THE BACK WHERE THE TRASH CAN WAS IN THE BACK.

26 Q DID YOU GO AROUND THE RIGHT SIDE OR THE LEFT
27 SIDE OF THE BUILDING?

28 A IT WOULD BE THE LEFT SIDE.

29 Q AND WHICH SIDE WAS THE VAN PARKED ON?

30 A THE LEFT SIDE.

31 Q AND WHEN YOU GOT AROUND TOWARDS THE BACK OF
32 THE BUILDING, PICKING UP THE TRASH, DID YOU SEE THE VAN PARKED

1641

1 THERE?

2 A YES.

3 Q AND DID YOU HAVE OCCASION TO LOOK IN IT AT
4 THAT TIME?

5 A YES, I DID, BECAUSE ALOT OF TIMES PEOPLE GET
6 UP THERE AND SOMETIMES THEY FALL ASLEEP IN THE VAN. SO AS I
7 WALKED BY IT, GOING TOWARDS IT, THE TRASH CANS, THEN I LOOKED INTO
8 THE DRIVER'S SIDE BUT I COULDN'T SEE ANYTHING AND I PROCEEDED TO
9 GO TO THE TRASH BIN.

10 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS
11 STATE'S EXHIBIT 2, AND I ASK IF YOU CAN IDENTIFY THE VEHICLE
12 DEPICTED IN THAT PHOTOGRAPH.

13 A YES. THAT'S THE ONE THAT WAS PARKED THERE.

14 Q HOW DO YOU KNOW THAT WAS THE ONE THAT WAS
15 PARKED THERE?

16 A WELL, IT LOOKS -- LOOKS LIKE THE ONE I SEEN
17 THERE AND -- AND IN THE SAME SPOT.

18 Q YOU SAY IT'S IN THE SAME SPOT WHERE IT WAS
19 PARKED?

20 A WELL, IT'S -- IT'S -- IF THE CORNER OF THE
21 BUILDING IS HERE, SO IT LOOKS TO ME VAGUELY JUST ABOUT WHAT IT
22 WAS.

23 Q O.K.

24 MR. FRANZEN: YOUR HONOR, I'M SORRY. I COULDN'T
25 HEAR THE WITNESS.

26 THE COURT: WILL YOU READ THAT BACK, PLEASE.

27 THE WITNESS: IT LOOKS JUST ABOUT WHERE I -- I
28 NOTICED THE VEHICLE BACKING UP WHEN I WAS ACROSS THE STREET.

29

30 BY MR. SEATON:

31

32 Q WHEN YOU -- WHICH WINDOW DID YOU LOOK IN?

1642

1 A THE DRIVER'S SIDE.

2 Q THE DRIVER'S WINDOW?

3 A UH-HUH.

4 Q CAN YOU RECALL WHAT SORT OF WINDOWS WERE ON

5 THE VAN?

6 A NO, NOT REALLY. JUST --

7 Q WERE THERE MORE THAN WINDOWS JUST FOR THE

8 DRIVER AND THE PASSENGER, DO YOU KNOW?

9 A YES. THERE WAS -- THERE WAS A SIDE WINDOW

10 TO THE VAN, TOO.

11 Q WAS THERE ONE ON THE DRIVER'S SIDE AS YOU

12 RECALL?

13 A YES.

14 Q BUT YOU DID NOT LOOK IN THAT WINDOW AT THAT

15 TIME?

16 A NOT AT THAT TIME.

17 Q AND AFTER LOOKING IN THE WINDOW, DID YOU SEE

18 ANYONE IN THERE AT THAT TIME?

19 A NO.

20 Q AND WHERE DID YOU GO AFTER HAVING LOOKED IN

21 THE WINDOW?

22 A WELL, I WENT INTO -- INTO THE BAR. AND AS

23 I RECALL, THERE WAS PROBABLY SEVEN OR EIGHT PEOPLE IN THERE. AND

24 I HAD NEVER SEEN THE VAN THERE BEFORE. AND I ASKED WHO THE BLACK

25 VAN BELONGED TO. EVERYBODY SAID, "NOT ME. NOT ME."

26 AND I WENT BACK OUT AND I LOOKED IN THE

27 DRIVER'S SIDE AGAIN AND IN THE BACK WINDOW.

28 Q WHAT?

29 A IN THE SIDE WINDOW.

30 Q WHEN YOU ASKED THAT QUESTION AS TO THE OWNER-

31 SHIP OF THE VAN, DID EVERYBODY IN THE BAR HEAR YOU?

32 A YES.

1643

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Q DID THEY ALL RESPOND?

A UH-HUH.

Q NOW, HOW --

MR. FRANZEN: OBJECT, YOUR HONOR.

THE COURT: WHAT?

MR. FRANZEN: I OBJECT, YOUR HONOR, HEARSAY AS TO
WHAT --

THE COURT: OVERRULED.

BY MR. SEATON:

Q HOW MUCH LONGER WAS IT BEFORE YOU WENT BACK
OUTSIDE TO LOOK IN THE WINDOW AGAIN?

A OH, PROBABLY MAYBE FIVE MINUTES.

Q AND WHEN YOU WENT BACK OUTSIDE TO LOOK IN
THE VAN AGAIN, WHAT WINDOW DID YOU LOOK INTO?

A I LOOKED INTO THE DRIVER'S SIDE AGAIN. THEN
I LOOKED INTO THE SIDE WINDOW.

Q ~~WAS THE SIDE WINDOW ON THE DRIVER'S SIDE OR~~
THE PASSENGER'S SIDE?

A ON THE DRIVER'S SIDE.

Q COURT'S INDULGENCE.

WHEN YOU LOOKED INTO THE WINDOW THAT
SECOND TIME, WERE YOU ABLE TO SEE INTO THE VAN?

A YEAH. I LOOKED IN THERE. SEEMED TO ME LIKE
-- I GOT THE IMPRESSION THAT THERE WAS PILLOWS OR SOMETHING, THAT
IT WASN'T, YOU KNOW, SOMETHING -- SOMETHING THAT WAS OUT OF ORDER,
IT WASN'T COMPLETELY FINISHED LIKE IN THE BACK THERE. BUT IT
SEEMED TO ME LIKE PILLOWS OR SOMETHING THAT WAS KIND OF IN THE
BACK END.

OF COURSE, I WAS USED TO THAT BECAUSE A-
LOT OF TIMES PEOPLE WOULD COME THERE WITH VANS AND THEY'D HAVE

1644

1 CLOTHES IN THERE, IN THEIR VEHICLE, AND THEY'RE TRAVELING ALOT
2 OF TIMES FROM OUT-OF-STATE.

3 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
4 PROPOSED EXHIBIT -- STATE'S EXHIBIT 14 AND STATE'S EXHIBIT 8 AND
5 STATE'S EXHIBIT 11.

6 WITH REFERENCE TO YOUR HAVING LOOKED
7 INTO THE VAN THE SECOND TIME AND SEEING THE PILLOWS AND THINGS
8 THAT YOU HAVE JUST DESCRIBED, DO ANY ONE OF THESE THREE PICTURES,
9 WHICH I'VE SHOWN YOU, RESEMBLE ANYTHING THAT YOU SAW IN THE VAN
10 THAT NIGHT?

11 A YEAH. I WOULD SAY THIS ONE (INDICATING).

12 THE COURT: YOU'LL HAVE TO SPEAK UP, SIR.

13 THE WITNESS: I WOULD SAY THIS, 8, LOOKED MORE
14 LIKE WHAT I SEEN.

15 Q YOU'RE SAYING STATE'S PROPOSED EXHIBIT 8
16 LOOKS MOST FAMILIAR TO YOU?

17 A YES. UH-HUH.

18 Q AND WOULD YOU SAY THAT DOES APPEAR TO FAIRLY
19 AND ACCURATELY LOOK LIKE THE INTERIOR OF THE VAN AS YOU LOOKED
20 INTO IT ON MARCH THE 27TH, 1980, THE SECOND TIME?

21 A YES. I WOULD SAY THAT WOULD BE MORE LIKE
22 WHAT I RECALL SEEING.

23 Q THANK YOU.

24 HOW LATE DID YOU STAY AT THE BAR THAT
25 DAY, IF YOU RECALL?

26 A OH, MAYBE 'TIL 1 - 2:00 O'CLOCK IN THE AFTER-
27 NOON.

28 Q BETWEEN THE TIME THAT YOU WENT OUT AND SAW
29 THE VAN OR LOOKED IN THE VAN THE SECOND TIME, AND WHEN YOU LEFT
30 AT 1 - 2:00 O'CLOCK, DID YOU HAVE OCCASION TO GO OUT IN BACK
31 AGAIN?

32 A NO, I DIDN'T.

1 Q AND WHEN YOU LEFT IN THE AFTERNOON AFTER
2 MARCH 27TH, WHICH DOOR DID YOU LEAVE FROM?
3 A I WENT OUT THROUGH THE FRONT DOOR.
4 Q FROM THAT POINT OF VIEW, COULD YOU SEE BACK
5 TO THE BACK WHERE THE VAN HAD BEEN PARKED EARLIER THAT MORNING?
6 A NO. NO.
7 Q DID YOU KNOW WHETHER OR NOT THE VAN WAS STILL
8 THERE DURING THOSE HOURS?
9 A NO, I DON'T.
10 Q DID YOU LATER IN THE EVENING RECEIVE A PHONE
11 CALL REGARDING THE VAN AT YOUR BAR?
12 A YES. I GOT A PHONE CALL IN THE EVENING FROM
13 A MANAGER AND SAID THAT I'D BETTER GET DOWN THERE BECAUSE THERE
14 WAS ALOT OF COP CARS AND NEWSPAPER PEOPLE AND EVERYTHING. AND
15 HE SAID HE FOUND A BODY IN THE VAN. AND SO I WENT BACK DOWN THERE.
16 Q AND WHEN YOU WENT BACK DOWN THERE APPROXI-
17 MATELY WHAT TIME WAS IT, IF YOU RECALL?
18 A OH, MAYBE 6 - 7:00 O'CLOCK AT NIGHT.
19 Q AND WHEN YOU WENT THERE, DID YOU SEE POLICE-
20 MEN IN THE AREA?
21 A YES.
22 Q AND DID YOU SEE ANY POLICEMEN THAT YOU KNEW?
23 A YES. I SEEN LIEUTENANT JOHN CONNER.
24 Q IS HE A PERSONAL FRIEND OF YOURS?
25 A YES.
26 Q AND DID YOU SPEAK WITH HIM?
27 A YES.
28 Q AND WHILE YOU WERE THERE, DID YOU HAVE AN
29 OPPORTUNITY TO VIEW THE SAME AREA WHERE THE VAN HAD BEEN EARLIER
30 THAT MORNING?
31 A YES. IT WAS STILL IN THE SAME SPOT THAT I
32 HAD SEEN IT.

1646

1 Q I SEE. I SEE,
2 TO CLARIFY THAT, LET ME SHOW YOU STATE'S
3 EXHIBIT 2 AGAIN. AND CAN YOU TELL US WHEN YOU SAW THE VAN THAT
4 EVENING WHEN YOU WERE WITH LIEUTENANT JOHN CONNER THAT THE VAN
5 WAS STILL IN THE SAME SPOT, WHICH IS DEPICTED IN STATE'S EXHIBIT
6 ??

7 A YES. I WAS THERE APPROXIMATELY MAYBE FOUR,
8 FIVE MINUTES. AND THEY WERE JUST HAULING IT AWAY.

9 Q I SEE.
10 HAD IT MOVED WHEN YOU GOT THERE?

11 A NO. NO. STILL IN THE SAME SPOT.
12 MR. SEATON: YOUR HONOR, I HAVE NO FURTHER
13 QUESTIONS.

14 THE COURT: CROSS.

15
16 CROSS EXAMINATION

17
18 BY MR. FRANZEN:

19
20 Q SIR, I MISSED WHEN YOU STATED WHAT TIME YOU
21 ARRIVED AT YOUR BAR. COULD YOU TELL ME AGAIN?

22 A APPROXIMATELY 7:45.

23 Q AND WHEN YOU WERE PICKING UP THE CANS AND
24 STUFF AROUND YOUR BAR, ABOUT HOW LONG WOULD THAT HAVE TAKEN YOU?

25 A OH, MAYBE TWO OR THREE MINUTES.

26 Q WHEN YOU LOOKED IN THE VAN THE FIRST TIME
27 THROUGH THE DRIVER'S SIDE, YOU SAID.

28 A YES.

29 Q DID YOU NOTICE ANY WIRES DANGLING OR ANYTHING
30 OF THAT NATURE?

31 A NO. I DIDN'T NOTICE. I JUST KIND OF WAS
32 LOOKING TO SEE IF SOMEBODY WAS LAYING ASLEEP THERE.

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Q WHEN YOU LOOKED IN THE DRIVER'S SIDE THE
FIRST TIME COULD YOU SEE THE BACK?

A I'M SORRY. I DIDN'T UNDERSTAND YOU.

Q WHEN -- THE FIRST TIME YOU SAW THE VAN AND
YOU LOOKED IN TO SEE IF ANYONE WAS THERE --

A UH-HUH.

Q (CONTINUING) -- COULD YOU SEE BETWEEN THE
SEATS INTO THE BACK PART OF THE VAN?

A I DIDN'T LOOK TOWARD THE BACK. I JUST KIND
OF GLANCED AS I WALKED BY IT. I KIND OF GLANCED ACROSS THE
DRIVER'S SEAT.

Q NOW, WHEN YOU FIRST SAW THE VAN AT APPROXI-
MATELY 7:45 IN THE MORNING, WOULD YOU SAY IT WAS ON THE LEFT
CORNER AS YOU LOOKED AT THE FRONT OF YOUR --

A YES.

Q (CONTINUING) -- BAR?

A IF YOU'RE LOOKING AT THE FRONT OF THE BAR
IT WOULD BE AT THE LEFT REAR CORNER.

Q LEFT REAR CORNER.

DID YOU MARK THE LOCATION WITH CHALK
MARKS OR SOMETHING?

A NO.

Q WHEN YOU SAW IT LATER THAT EVENING IF THAT
VAN HAD MOVED AND RETURNED AND PARKED IN THE SAME LOCATION, YOU
COULD HAVE TOLD?

A NO.

Q COULD THE VAN HAVE BEEN MOVED AND RETURNED
TO THAT LOCATION BETWEEN THE TIME WHEN YOU LOOKED IN THE SIDE
WINDOW AND THE TIME YOU RETURNED LATER IN THE EVENING AT APPROXI-
MATELY 6:30 OR 7:00 P.M.?

A IT -- ARE YOU ASKING ME IF IT'S POSSIBLE
THAT IT COULD HAVE BEEN MOVED?

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Q YES, SIR.

A YES.

Q IT COULD HAVE LEFT THE DEW DROP INN AND THEN
RETURNED AND THEN PARKED THERE?

A YES.

THE COURT: COUNSEL, APPROACH THE BENCH.

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

THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE
ARE GOING TO BE IN RECESS NOW. WE WILL BE IN RECESS IN THIS
MATTER UNTIL MONDAY. THE REASON, OF COURSE, IS THAT COUNSEL HAS
A MEDICAL APPOINTMENT TO SEE ABOUT HIS HAND, AND BASED ON THAT I
HAD INDICATED TO COUNSEL THAT WE WOULD NOT BE IN SESSION ON
FRIDAY. AND FOR THAT REASON WE ARE GOING TO CONTINUE THIS UNTIL
MONDAY MORNING AT THE HOUR OF 10:00 A.M.

SO, 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.

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WE WILL BE IN RECESS AT THIS TIME.

MR. WITNESS, YOU ARE ORDERED TO BE HERE
AT THE SAME TIME SO WE MAY CONTINUE WITH THE QUESTIONING.

WE WILL BE IN RECESS.

(WHEREUPON, AT THE HOUR OF
5:00 O'CLOCK P.M., THE EVENING
RECESS WAS HAD IN THE PROCEED-
INGS.)

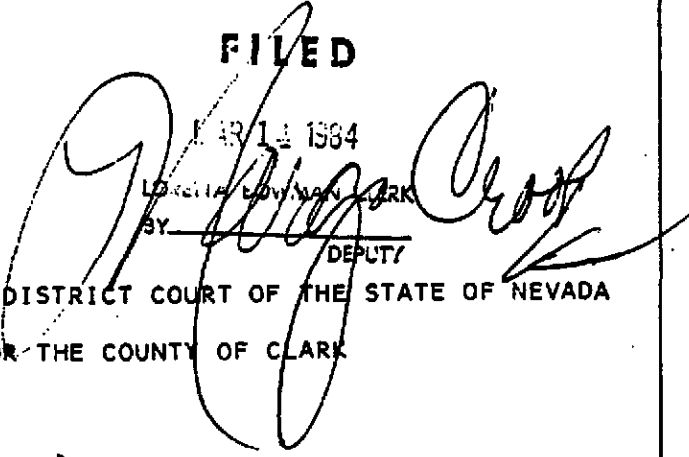
CASE NO. C53867

DEPARTMENT NO. V

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FILED

MAR 14 1984

LORETTA LOWMAN CLARK
BY  DEPUTY

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

THE STATE OF NEVADA,
PLAINTIFF,
VS.
SAMUEL HOWARD, AKA KEITH,
DEFENDANT.

REPORTER'S TRANSCRIPT OF

JURY TRIAL

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE

MONDAY, APRIL 18, 1983, AT 10:15 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, MONDAY, APRIL 18, 1983, AT 10:15 A.M.

2 * * * * *

3 (WHEREUPON, THE FOLLOWING
4 PROCEEDINGS WERE HAD OUTSIDE THE
5 PRESENCE OF THE JURY:)

6 THE COURT: PROCEED.

7 MR. COOPER: YES, YOUR HONOR.

8 YOUR HONOR, THIS IS ONE MATTER I WOULD LIKE
9 TO TAKE CARE OF OUTSIDE OF THE PRESENCE OF THE JURY.

10 MR. HOWARD PROVIDED ME WITH A LETTER
11 THIS MORNING, ADDRESSED TO YOUR HONOR. I HAVE PROVIDED THE STATE
12 WITH A COPY OF THE LETTER. IF I MAY APPROACH THE BENCH.

13 THE COURT: YOU MAY.

14 MR. COOPER: IT DEALS PRIMARILY, YOUR HONOR, WITH
15 THE PROBLEMS WE'VE HAD IN THE PAST IN THIS CASE, MR. HOWARD'S
16 DISCONTENT OF OUR REPRESENTING HIM. I THINK THAT MOST OF THE
17 POINTS ARE RAISED IN THE LETTER AND ADDRESSED BY THE COURT.

18 THERE IS ONE THING IN THE LETTER, YOUR HONOR,
19 THAT I WANT TO POINT OUT. IN THE SECOND PARAGRAPH ON PAGE ONE OF
20 THE LETTER, MR. HOWARD MENTIONS THAT PURSUANT TO THE COURT'S
21 ORDER, WE WERE NOT TO DISCUSS THIS CASE WITH MR. JACKSON OF OUR
22 OFFICE BECAUSE OF THE CLOSE TIES THAT MR. JACKSON APPARENTLY HAD
23 WITH THE ALLEGED VICTIM IN THIS CASE.

24 MR. HOWARD GOES ON TO STATE THAT I, ALONG
25 WITH MR. JACKSON, CAME TO THE COUNTY JAIL FOR AN INTERVIEW WITH
26 HIM, HOWEVER, HE DID NOT SPEAK TO EITHER OF US. I WOULD INFORM
27 THE COURT THAT THAT IS NOT THE CASE. I HAVE NEVER GONE WITH
28 MR. JACKSON TO THE COUNTY JAIL TO MEET WITH MR. HOWARD.

29 AND AS I INDICATED EARLIER ON IN THESE
30 PROCEEDINGS, WE HAVE COMPLIED WITH THE COURT'S ORDER AND WE HAVE
31 NOT DISCUSSED THIS CASE WITH NOT ONLY MR. JACKSON, BUT WITH ANY-
32 ONE ASSOCIATED WITH OUR OFFICE.

1 DEFENDANT HOWARD: MAY I BE HEARD, YOUR HONOR?
 2 THE COURT: STAND UP.
 3 DEFENDANT HOWARD: YOUR HONOR, MR. COOPER HERE IS
 4 LYING ABOUT THE MATTER THAT HE DIDN'T COME OUT. HIM AND MR.
 5 JACKSON CAME OUT. I DID NOT KNOW MR. JACKSON UNTIL HE CAME OUT
 6 WITH MR. COOPER, WITH A CAST ON HIS LEG, WITH A BROWN SUIT ON.
 7 AND WE SAT THERE AND I ASKED THE OTHER INMATES WHICH IS THE GUY,
 8 I HAVE HIS NAME, WHO THE ATTORNEY WAS THERE WITH THE CAST ON.
 9 AND HE SAID, IN FACT, IT WERE MR. JACKSON. SO IMMEDIATELY I
 10 TERMINATE THE INTERVIEW. I JUST WANTED TO MAKE IT A MATTER OF
 11 RECORD.

12 THE COURT: ALL RIGHT. YOU MADE IT A MATTER OF
 13 RECORD. THERE'S BEEN A DENIAL.

14 DEFENDANT HOWARD: SIR, THANK YOU.

15 THE COURT: YOU MAY BE SEATED.

16 DEFENDANT HOWARD: THANK YOU.

17 THE COURT: SAME MAY BE FILED. IT DOESN'T APPEAR
 18 THAT THERE IS ANY MERIT IN IT WHATSOEVER.

19 MR. FRANZEN: MAY WE HAVE THAT MARKED, YOUR HONOR,
 20 AS DEFENDANT'S EXHIBIT B, SO THAT WE CAN KEEP TRACK OF IT?

21 THE COURT: WELL, IT WON'T BE MARKED WITH THIS
 22 SERIES OF EXHIBITS IN THIS TRIAL.

23 YOU CAN MARK IT.

24 THE CLERK: AS COURT'S EXHIBIT?

25 THE COURT: MARK IT AS COURT'S EXHIBIT 1 AND PLACE
 26 IT IN THE LEFT SIDE OF THE FILE, RATHER THAN IN THE REGULAR SIDE.

27 THE CLERK: YES, SIR.

28 THE COURT: ARE YOU GENTLEMEN READY TO PROCEED?

29 MR. HARMON: YES, YOUR HONOR.

30 MR. FRANZEN: YES, YOUR HONOR.

31 THE COURT: CALL YOUR NEXT WITNESS.

32 MR. HARMON: YOUR HONOR, WE WOULD LIKE TO RECALL

1653

1 CHARLES MARINO, YOUR HONOR.

2 THE COURT: ALL RIGHT. LET'S GET THE JURY IN,
3 PLEASE.

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

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

9 MR. HARMON: THE STATE STIPULATES, YOUR HONOR.

10 MR. COOPER: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 YOU MAY PROCEED, COUNSEL.

13

14 CROSS EXAMINATION CONTINUED

15

16 BY MR. FRANZEN:

17

18 Q MR. MARINO, WHEN WE ADJOURNED LAST THURSDAY
19 FOR THE WEEK-END, YOU WERE ON THE STAND. WAS THERE ANYTHING
20 ABOUT YOUR TESTIMONY THAT YOU WOULD LIKE TO MODIFY OR CHANGE
21 TODAY?

22 A NO.

23 Q O.K.

24 IF I RECALL CORRECTLY, I BELIEVE YOU
25 STATED YOU SAW THE BLACK VAN WITH "BLACK OAK" BACKING UP TO THE
26 BACK OF YOUR ESTABLISHMENT, THE DEW DROP INN, AT ABOUT 7:45 A.M.,
27 AS YOU CAME TO THE DEW DROP INN?

28 A YES.

29 Q AND THAT YOU SUBSEQUENTLY WENT OUT TO THE
30 AREA AROUND THE DEW DROP INN, PICKING UP CANS; AND YOU LOOKED IN
31 THE SIDE FRONT WINDOW OF THE DRIVER'S SIDE AND SAW NOTHING UNUSUAL;
32 IS THAT CORRECT?

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A YES.

Q YOU WENT BACK INTO YOUR ESTABLISHMENT, THE DEW DROP INN, CAME OUT A SHORT TIME LATER, LOOKED AGAIN IN THE FRONT AND IN THE BACK SIDE, AND YOU SAW NOTHING UNUSUAL?

A YES, BASICALLY.

Q AND BETWEEN THE TIME YOU SAW IT THE SECOND TIME AND THE TIME YOU SAW IT THE LAST AND FINAL TIME, THE LAST AND FINAL TIME WOULD BE APPROXIMATELY 6:30, 6:45 P.M., ON THE EVENING OF MARCH 26TH?

A YES.

Q SO THAT YOU WERE UNABLE TO SAY WHETHER THE VAN HAD LEFT YOUR PREMISES BETWEEN THE SECOND TIME YOU SAW IT AND AROUND 8 OR 8:10 IN THE MORNING AND RETURNED TO YOUR PREMISES BEFORE YOU SAW IT AGAIN AT 6:45 OR 6:30 P.M. THAT EVENING?

A THAT'S CORRECT.

Q IT COULD HAVE LEFT, RETURNED, AND BEEN REPARKED?

A YES. IT'S POSSIBLE.

Q NOW, DO YOU KNOW A WILLIAM WILLIAMS?

A I DO NOT.

Q DO YOU RECALL IF, ON THE MORNING HOURS OF MARCH 27TH, 1980, THERE WAS A MAN IN YOUR ESTABLISHMENT, A WHITE MALE ADULT, WHO WAS SEEKING TO SELL A TELEPHONE?

A I DID NOT SEE HIM.

Q DO YOU RECALL IF THIS MAN REPRESENTED HIMSELF TO BE A CONVICT WHO WAS TRYING TO MAKE SOME MONEY?

A NO. I DID NOT SEE HIM AT ALL.

Q O.K.

DO YOU RECALL IF ANYTHING LIKE THAT HAPPENED IN YOUR ESTABLISHMENT ON MARCH 27, 1980?

A NO, I DON'T.

Q ARE YOU KNOWN BY THE NAME OF CHUCK, SIR?

1655

1 A YES.

2 Q AND PEOPLE WHO WOULD GO TO YOUR ESTABLISH-
3 MENT, THE DEW DROP INN, WOULD KNOW YOU AS CHUCK?

4 A YES.

5 Q MAY I HAVE THE COURT'S INDULGENCE FOR ONE
6 MINUTE, YOUR HONOR.

7 SIR, DO YOU RECALL BEING ASKED, IN THE
8 EARLY MORNING HOURS OF MARCH 27, 1983, IF A SUSPICIOUS GUY HAD
9 BEEN IN YOUR ESTABLISHMENT, WAS IN THE BLACK VAN?

10 A THAT I WAS ASKED THIS?

11 Q YES, SIR. DO YOU RECALL BEING ASKED THAT
12 QUESTION?

13 A NO, I DON'T.

14 Q THIS QUESTION WOULD HAVE BEEN BY A BARMAID
15 OF THE DEW DROP INN.

16 A NO, I DON'T RECALL IT.

17 Q DO YOU RECALL SAYING ANYTHING IN THE NATURE
18 OF, THAT A MAN WAS IN THE VAN, A SUSPICIOUS GUY WAS IN THE VAN?

19 A NO, I DON'T.

20 Q O.K. SHOWING YOU STATE'S 8. I BELIEVE THIS
21 IS THE PHOTOGRAPH THAT YOU WERE SHOWN BY MR. SEATON; AM I CORRECT?

22 A YES.

23 Q WOULD YOU CALL THAT DISHEVELED AND DISORDERED
24 WITHIN THE VAN?

25 A YES.

26 Q DO YOU RECALL RECEIVING A TELEPHONE CALL,
27 OR RATHER -- STRIKE THAT.

28 DO YOU RECALL RECEIVING A VISIT AT YOUR
29 HOME BY AN INVESTIGATOR NAMED MICHAEL KIDD, ON APRIL 13, 1983?

30 A YES.

31 Q THIS WOULD BE ABOUT 11:15 A.M.?

32 A YES, SIR.

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Q DO YOU RECALL BEING ASKED IF YOU NOTICED
ANYTHING UNUSUAL ABOUT THE VAN?

A NO. I REALLY DON'T.

Q DO YOU RECALL BEING ASKED WHETHER YOU SAW
ANYTHING ON THE FLOOR OF THE VAN?

A I BELIEVE YES, HE DID ASK THAT.

Q DID YOU TELL MR. KIDD THAT YOU SAW NOTHING
ON THE VAN FLOOR?

A NO. I RECALL SAYING SOMETHING WAS OUT OF
ORDER.

Q DO YOU RECALL TELLING MR. KIDD THAT YOU SAW
NOTHING UNUSUAL ABOUT THE POSITION OF THE TABLE IN THE VAN?

A I -- I DON'T RECALL MENTIONING ANYTHING
ABOUT A TABLE, UNLESS JUST THAT SOMETHING WAS OUT OF ORDER.

Q DO YOU RECALL TELLING MR. KIDD ON APRIL 13,
1983, AT APPROXIMATELY 11:15 A.M., IN YOUR LIVING ROOM, THAT YOU
DIDN'T NOTICE THAT THE VAN'S INTERIOR WAS DISSEMBLED AND MESSED
UP?

A NO. I DON'T RECALL THAT.

Q SHORTLY AFTER THAT MEETING WITH MR. KIDD,
AT ABOUT 11:15 A.M., ON APRIL 13, 1983, DID YOU HAVE A MEETING
WITH THE DISTRICT ATTORNEY?

A YES.

Q THAT WOULD BE SHORTLY AFTER SPEAKING WITH
MR. KITT?

A YES.

Q DO YOU KNOW A DANIEL MILLER, SIR?

A YES.

Q IS HE A PATRON OF YOUR ESTABLISHMENT, THE
DEW DROP INN?

A HE WORKED FOR ME.

Q HE WORKED FOR YOU.

1657

1 HAVE YOU BEEN IN CONTACT WITH HIM SINCE
2 YOU'VE CEASED TO OWN THE DEW DROP INN?
3 A A COUPLE TIMES.
4 Q WHAT WAS HE? A BARTENDER? A PICKUP MAN?
5 A A BARTENDER AND BAR MANAGER.
6 Q DID HE CONTINUE TO BE EMPLOYED AT THE DEW
7 DROP INN ONCE YOU SOLD IT?
8 A YES.
9 Q OH, ONE THING. WHEN YOU SAW THE VAN PARKED
10 IN THE BACK OF YOUR ESTABLISHMENT, DID IT LOOK PRETTY CLEAN?
11 A YES. ON THE OUTSIDE I'D SAY THAT IT LOOKED
12 PRETTY CLEAN BECAUSE IT DID CATCH MY ATTENTION OF LOOKING VERY
13 NICE.
14 Q IT WAS A SHARP-LOOKING VAN?
15 A YES.
16 Q WOULD HE -- NEVER MIND.
17 MR. FRANZEN: NO FURTHER QUESTIONS, YOUR HONOR.
18 MR. SEATON: COURT'S INDULGENCE.
19 WE HAVE NO FURTHER QUESTIONS OF THIS WITNESS.
20 SIR.
21 THE COURT: YOU'RE EXCUSED, SIR.
22 (WHEREUPON, THE WITNESS WAS
23 EXCUSED.)
24 THE COURT: CALL YOUR NEXT WITNESS.
25 MR. HARMON: HANK TRUSZKOWSKI.
26 THE CLERK: RAISE YOUR RIGHT HAND.
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WHEREUPON,

HENRY CHARLES TRUSZKOWSKI,

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

THE COURT: PROCEED.

DIRECT EXAMINATION

BY MR. HARMON:

Q STATE YOUR NAME, PLEASE.

A HENRY CHARLES TRUSZKOWSKI, T-R-U-S-Z-K-O-W-S-K-I.

Q MR. TRUSZKOWSKI, WHERE ARE YOU EMPLOYED?

A I'M EMPLOYED AT THE LAS VEGAS METROPOLITAN
POLICE DEPARTMENT AS A IDENTIFICATION SPECIALIST.

Q HOW LONG HAVE YOU BEEN AN IDENTIFICATION
SPECIALIST WITH THE POLICE DEPARTMENT?

A SINCE NOVEMBER OF 1976.

Q WHAT ARE YOUR DUTIES AS AN IDENTIFICATION
SPECIALIST?

A BASICALLY MY DUTIES INCLUDE TO COLLECT DOCU-
MENTS AND PRESENT PHYSICAL EVIDENCE OBTAINED IN CRIME SCENES.
OFTEN TIMES THIS INCLUDES SUCH THINGS AS PHOTOGRAPHY AND LATENT
FINGERPRINT PROCESSING.

Q DO YOU HAVE FORMAL TRAINING AND EXPERIENCE
IN THE FIELD OF LATENT FINGERPRINT PROCESSING?

A YES, SIR.

Q WILL YOU DESCRIBE YOUR TRAINING, PLEASE.

1659

1 A INITIALLY MY TRAINING WAS ON-THE-JOB TRAIN-
2 ING WITH THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT. IN ADDI-
3 TION TO THAT, I HAD A CORRESPONDENCE COURSE WITH THE INSTITUTE
4 OF APPLIED SCIENCE AND SEMINARS AND SCHOOLS PRESENTED BY THE
5 F.B.I. IN QUANTICO, VIRGINIA.

6 Q WILL YOU STATE HOW LONG YOU'VE BEEN INVOLVED
7 IN LATENT FINGERPRINT PROCESSING WORK?

8 A APPROXIMATELY SIX AND A HALF YEARS.

9 Q CAN YOU ESTIMATE HOW MANY ALLEGED CRIME
10 SCENES YOU HAVE PROCESSED FOR THE PRESENCE OF LATENT FINGERPRINTS
11 DURING THAT PERIOD?

12 A SEVERAL THOUSAND.

13 Q HAVE YOU QUALIFIED AS AN EXPERT BEFORE IN
14 THE FIELD OF PROCESSING SURFACES FOR THE PRESENCE OF LATENT
15 FINGERPRINTS?

16 A YES, SIR.

17 Q ON HOW MANY OCCASIONS?

18 A ROUGHLY FORTY OR SO.

19 Q THIS IS DURING THE PAST SIX YEARS?

20 A CORRECT.

21 Q OFFICER TRUSZKOWSKI, WERE YOU EMPLOYED AS AN
22 IDENTIFICATION SPECIALIST WITH THE LAS VEGAS METROPOLITAN POLICE
23 DEPARTMENT ON MARCH 27TH, 1980?

24 A YES, I WAS.

25 Q ON THAT DATE, DID YOU RESPOND TO THE 2400
26 BLOCK OF BOULDER HIGHWAY, IN THE AREA OF THE DEW DROP INN?

27 A YES, I DID.

28 Q AND WHAT TIME APPROXIMATELY?

29 A APPROXIMATELY 6:51 IN THE EVENING.

30 Q WHAT WAS YOUR PURPOSE IN GOING TO THAT
31 LOCATION?

32 A TO AID IN THE INVESTIGATION OF WHAT APPEARED

1660

1 TO BE A DEAD BODY.

2 Q DID YOU, IN FACT, AID IN THE INVESTIGATION
3 OF A REPORTED DEAD BODY AT THAT LOCATION?

4 A YES, SIR.

5 Q WERE OTHER REPRESENTATIVES OF THE CRIME LAB
6 OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT PRESENT?

7 A YES, SIR.

8 Q WHAT OTHER PERSONS?

9 A SHORTLY AFTER I ARRIVED, IDENTIFICATION
10 SPECIALIST DONALD CONNELL AND ROBERT CORSE ARRIVED TO ASSIST ME.

11 Q FOR THE RECORD, WILL YOU SPELL CONNELL AND
12 CORSE?

13 A CERTAINLY. C-O-N-N-E-L-L AND C-O-R-S-E.

14 Q DID YOU THEN ENGAGE IN A JOINT INVESTIGATION
15 WITH OFFICERS CONNELL AND CORSE OF THE CRIME LAB?

16 A YES, SIR.

17 Q EXPLAIN WHAT YOU DID.

18 A BASICALLY, WE DIVIDED UP THE ASSIGNMENT,

19 WHEREAS OFFICER -- SPECIALISTS CONNELL AND CORSE DI- -- DIAGRAM
20 AND SEARCH THE ADJACENT AREAS SURROUNDING THE VAN THAT WAS LOCATED
21 BEHIND THE DEW -- DEW DROP INN; THAT BEING THE REAR OF THE DEW
22 DROP INN, THE ROOF AREA AND THE SURROUNDING PARKING LOT.

23 I WAS ASSIGNED THE TASK OF PHOTOGRAPHING
24 THE GENERAL AREA AND INVESTIGATING THE VEHICLE ITSELF.

25 MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE.

26 MAY I APPROACH THE WITNESS, YOUR HONOR?

27 THE COURT: YOU MAY.

28

29 BY MR. HARMON:

30

31 Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU STATE'S
32 EXHIBITS 1 THROUGH 4. DO YOU RECOGNIZE THE LOCATION AND THE

1661

1 VEHICLE DEPICTED IN THE PHOTOGRAPHS?

2 A YES, SIR.

3 Q WHAT IS SHOWN IN STATE'S EXHIBITS 1 THROUGH
4 4?

5 A THIS IS THE REAR PARKING LOT AREA OF THE
6 DEW -- THE DEW DROP INN, SHOWING THE LOCATION AND IDENTIFICATION
7 OF THE VAN.

8 Q DID YOU, IN FACT, EXAMINE, ON MARCH 27, 1980,
9 THE VAN WHICH IS SHOWN IN STATE'S EXHIBITS 1 THROUGH 4?

10 A YES, SIR.

11 Q IS IT A 1977 DODGE VAN?

12 A YES, SIR.

13 Q DO THESE PHOTOGRAPHS SHOW THE VEHICLE
14 EXACTLY WHERE YOU FIRST OBSERVED IT?

15 A YEAH.

16 Q AT ABOUT 6:50 P.M., MARCH 27, 1980?

17 A YES, SIR.

18 Q DID YOU TAKE THESE PHOTOGRAPHS, STATE'S
19 EXHIBITS 1 THROUGH 4?

20 A I DID.

21 Q WAS THAT THE FIRST THING YOU DID, TO ENGAGE
22 IN SOME PHOTOGRAPHY OF THE VAN AND THE GENERAL LOCATION?

23 A YES, SIR, TO DOCUMENT THE VAN AS WE ORIGIN-
24 ALLY FOUND IT.

25 Q OFFICER TRUSZKOWSKI, AFTER YOU HAD DOCUMENTED
26 THE AREA BY TAKING CERTAIN PHOTOGRAPHS, WHAT WAS YOUR NEXT STEP
27 IN YOUR INVESTIGATION?

28 A MY NEXT STEP WAS TO INVESTIGATE THE AREA OF
29 THE VAN ITSELF. WE OBSERVED THAT THE -- ALL THE DOORS TO THE VAN
30 WERE LOCKED. AT THAT TIME, I BEGAN TO FINGERPRINT PROCESS THE
31 AREAS AROUND THE DOOR HANDLES OF THE -- OF THE VAN PRIOR TO GAIN-
32 ING ENTRY.

1662

1 Q WHAT WAS YOUR PURPOSE IN BEGINNING TO PROCESS
2 THE DOOR AREA -- AREAS FOR FINGERPRINTS BEFORE ATTEMPTING TO GAIN
3 ENTRY?

4 A SO THAT WE WOULD NOT LOSE ANY PHYSICAL
5 EVIDENCE THAT MIGHT BE ON THE DOOR HANDLES, THAT BEING ANY LATENT
6 FINGERPRINTS.

7 Q DID YOU, IN FACT, PROCESS VARIOUS DOOR
8 HANDLES FOR THE PRESENCE OF LATENT FINGERPRINTS?

9 A YES, SIR.

10 Q I'M REFERRING TO THE 1977 DODGE VAN,
11 DEPICTED IN STATE'S EXHIBITS 1 THROUGH 4.

12 A YES, SIR.

13 Q WHAT AREAS DID YOU PROCESS AND WHAT WAS YOUR
14 PROCEDURE?

15 A AT THAT TIME, AT THAT BLOCK OF BOULDER HIGH-
16 WAY, THE AREA THAT WE EXAMINED, OR THAT I PROCESSED FOR FINGER-
17 PRINTS, WERE THOSE AROUND THE DOOR HANDLES AND THE DOORS -- THE
18 DOORS THEMSELVES, NEXT TO THE -- TO THE DOOR HANDLES.

19 WHAT WE DO IS WE TAKE A COMMERCIAL
20 FINGERPRINT POWDER, IT'S BLACK, AND WE USE A FIBERGLASS-TYPE
21 BRUSH AND APPLY THE POWDER -- POWDER WITH THE BRUSH ONTO THE AREA
22 WE FEEL THAT MIGHT BEAR SOME FINGERPRINTS.

23 THE THEORY BEHIND THIS IS THAT THE BLACK
24 FINGERPRINT DUST WILL ADHERE TO THE MINUTE AMOUNT OF OIL AND
25 PERSPIRATIONS THAT ARE SECRETED THROUGH THE PORES IN YOUR FINGER-
26 TIPS.

27 IF, INDEED, WE DO DEVELOP A LATENT FINGER-
28 PRINT, A PIECE OF FINGERPRINT TAPE IS PLACED OVER -- OVER THE
29 PRINT. THE TAPE -- THE TAPE IS THEN LIFTED AND PLACED ON A CARD.

30 Q OFFICER TRUSZKOWSKI, WHAT IS A LATENT FINGER-
31 PRINT?

32 A A LATENT FINGERPRINT IS A -- IS A REPRODUC-

1663

1 TION OF THE PATTERN OR DESIGN OF THE FINGERPRINT RIDGES ON YOUR
2 FINGERTIPS OR ON YOUR PALMS OR EVEN YOUR FEET.

3 Q DID YOU, IN FACT, PROCESS THE DOOR HANDLES
4 AND DOOR KNOBS ON BOTH SIDES OF THE VEHICLE SHOWN IN STATE'S
5 EXHIBITS 1 THROUGH 4?

6 A YES, SIR.

7 Q DIRECTING YOUR ATTENTION SPECIFICALLY TO
8 THE DOOR KNOB, PASSENGER'S SIDE, OF THE CARGO DOOR OF THE VEHICLE
9 SHOWN IN STATE'S EXHIBITS 1 THROUGH 4, DID YOU PROCESS THAT AREA
10 FOR THE PRESENCE OF LATENT FINGERPRINTS?

11 A YES, SIR.

12 Q WITH WHAT RESULTS, SIR?

13 A WE DID -- OR I -- I DID DEVELOP A PARTIAL
14 LATENT FINGERPRINT, WHICH WAS SUBSEQUENTLY LIFTED.

15 Q FROM WHERE DID YOU OBTAIN A PARTIAL LATENT
16 FINGERPRINT, WHICH YOU --

17 A THIS WAS ON THE -- ON THE -- ON THE CARGO
18 DOOR. THE RIGHT SIDE OF THE VAN IS A HANDLE OF SUCH WHERE YOU
19 PLACE YOUR HAND AROUND THE METAL BAR AND PRESS A BUTTON IN, IN
20 ORDER TO OPEN THE DOOR. THE LATENT PRINT WAS RECOVERED FROM THE
21 BUTTON AREA.

22 Q ONCE YOU DEVELOPED THE LATENT PRINT FROM THE
23 BUTTON AREA OR KNOB AREA, PASSENGER'S SIDE, OF THE CARGO DOOR OF
24 THE VAN, WHAT STEPS THEN DID YOU TAKE TO, IN FACT, LIFT THE LATENT
25 PRINT WHICH YOU HAD DEVELOPED?

26 A WHEN I NOTICED THAT A PARTIAL LATENT PRA- --
27 PRINT WAS INDEED, VISIBLE ON THE BUTTON, I PLACED A LENGTH OF THE
28 FINGERPRINT TAPE ON THE BUTTON ITSELF AND THEN REMOVED THE TAPE,
29 PLACED IT ON A METROPOLITAN POLICE DEPARTMENT LIFT CARD, AND
30 FILLED OUT ALL THE NECESSARY INFORMATION ON THE CARD.

31 Q HAVE YOU BROUGHT THAT LATENT FINGERPRINT
32 CARD TO COURT WITH YOU TODAY?

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A YES, SIR.

Q WILL YOU PRODUCE IT, PLEASE?

MR. HARMON: YOUR HONOR, I WOULD LIKE TO HAVE THE
LATENT FINGERPRINT CARD MARKED AS THE STATE'S NEXT PROPOSED
EXHIBIT IN ORDER. I BELIEVE THAT WILL BE --

THE COURT: IT MAY BE MARKED.

THE CLERK: IT'S 57.

MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE.

MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YOU MAY.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW
PROPOSED EXHIBIT 57. ARE YOU ABLE TO IDENTIFY IT?

A YES, SIR.

Q WHAT IS PROPOSED 57?

A PROPOSED 57 IS A METROPOLITAN POLICE DEPART-
MENT LATENT FINGERPRINT CARD, BEARING THE LATENT FINGERPRINT THAT
I HAD LIFTED FROM THE CARGO DOOR OF THE '77 VAN, AT THE 4200
BLOCK OF BOULDER HIGHWAY.

Q THE SAME VEHICLE DEPICTED IN STATE'S PROPOSED
EXHIBITS 1 THROUGH 4?

A YES, SIR.

Q DID YOU PERSONALLY PREPARE THIS LATENT
FINGERPRINT CARD, WHICH IS IDENTIFIED NOW AS PROPOSED EXHIBIT 57?

A YES, I DID.

Q DESCRIBE HOW YOU PREPARED THE CARD.

A WELL, FIRST OF ALL, I REMOVED THE TAPE WITH
THE LATENT PRINT, PLACED IT ON THE CARD ITSELF, AND THEN FILLED
OUT ALL THE INFORMATION WHICH INCLUDES THE CASE NUMBER, MY NAME,
THE LOCATION OF THE OCCURRENCE, AND WHERE -- WHERE THE FINGER-

1665

1 PRINT WAS LIFTED FROM.

2 Q IS THE CARD IN SUBSTANTIALLY THE SAME CONDI-
3 TION NOW AS IT WAS ON THE DATE YOU PREPARED IT, MARCH 27, 1980?

4 A THERE ARE SEVERAL ADDITIONAL NOTATIONS ON
5 THE CARD.

6 Q DID YOU PLACE THOSE THERE OR WAS IT SOMEONE
7 ELSE?

8 A SOMEONE ELSE.

9 Q DO YOU KNOW THE IDENTITY OF THAT PERSON OR
10 PERSONS?

11 A YES. IT WOULD BE LATENT FINGERPRINT EXAMINER
12 MUNSON MOSER.

13 Q YOU RECOGNIZE HIS HANDWRITING?

14 A YES.

15 Q IS MUNSON MOSER ALSO EMPLOYED WITH THE CRIME
16 LAB OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT?

17 A YES, SIR.

18 Q EXCEPT FOR THE ADDITIONAL NOTATIONS ON
19 PROPOSED EXHIBIT 57 BY MR. MOSER, IS THE REST OF THE LATENT

20 FINGERPRINT CARD, INCLUDING THE LATENT PRINT WHICH YOU LIFTED FROM
21 THE DOOR KNOB ON THE PASSENGER'S SIDE OF THE CARGO DOOR OF THE
22 1977 DODGE VAN, IN SUBSTANTIALLY THE SAME CONDITION NOW?

23 A YES, SIR.

24 Q OFFICER TRUSZKOWSKI, YOU HAVE INDICATED THAT
25 THE PRINT, WHICH APPEARS ON THE LATENT FINGERPRINT CARD, PROPOSED
26 EXHIBIT 57, WAS A PARTIAL LATENT PRINT; IS THAT CORRECT?

27 A YES, SIR.

28 Q DO YOU RECALL AT THIS TIME, HOW EASILY OR
29 QUICKLY THE LATENT DEVELOPED WHEN YOU BEGAN YOUR PROCESSING OF
30 THAT PARTICULAR SURFACE? I'M REFERRING TO THE DOOR KNOB OF THE
31 PASSENGER CARGO DOOR.

32 A YES, SIR. THE LATENT PRINT DEVELOPED QUITE

1666

1 READILY, EASILY.

2 Q WELL, WHAT SIGNIFICANCE, IF ANY, DO YOU
3 ATTACH TO THE READINESS WITH WHICH THE LATENT PRINT DEVELOPED?

4 A IT'S BEEN MY EXPERIENCE THAT LATENT --
5 LATENT FINGERPRINTS WHICH TEND TO BE ON A -- ON A SURFACE FOR A
6 LONGER PERIOD OF TIME, TEND TO TAKE MORE OF AN EFFORT OR A LITTLE
7 BIT HARDER TO DEVELOP THAN LATENT FINGERPRINTS THAT HAVE BEEN
8 RECENTLY PLACED UPON AN OBJECT.

9 Q NOW, YOU'VE TESTIFIED THIS LATENT PRINT WAS
10 RIGHT ON THE KNOB ITSELF; IS THAT CORRECT?

11 A RIGHT, THAT PORTION OF THE HANDLE THAT YOU
12 MUST PRESS IN.

13 Q IS THAT IN AN AREA WHERE TYPICALLY WHEN A
14 PERSON OPENED THE CARGO DOOR ON THE PASSENGER'S SIDE A FINGER-
15 PRINT WOULD BE PLACED?

16 A YES, SIR.

17 Q DID YOU FIND ANY OTHER LATENT FINGERPRINTS,
18 LATENT PRINTS OR PARTIAL PRINTS THAT YOU RECOVERED?

19 A NO, SIR.

20 Q WHAT IS A "OVERLAY"?

21 A OFTEN TIMES ON OBJECTS SUCH AS DOOR KNOBS,
22 YOU'LL FIND MORE THAN ONE FINGERPRINT OR LATENT PRINT, THAT BEING
23 THAT THE OBJECT HAD BEEN HANDLED BY MORE THAN ONE INDIVIDUAL OR
24 EVEN MORE THAN ONE TIME.

25 THE PARTIAL LATENT PRINT THAT I RECOVER-
26 ED TENDED TO TAKE UP THE ENTIRE SURFACE PROVIDED BY THE BUTTON
27 AREA, AND I DID NOT SEE ANY OTHER INDICATION OF ANY OTHER LITTLE
28 LATENT FINGERPRINTS THAT HAD BEEN OBSCURED BY IT.

29 Q YOU DIDN'T SEE ANY OTHER LATENT PRINTS?

30 A NONE WHATSOEVER.

31 Q AND THERE WERE NO AREAS ON THE SURFACE OF
32 THE KNOB ITSELF WHICH WERE OBSCURED?

1667

1 A NO, SIR. THE PARTIAL LATENT PRINT TOOK UP
2 THE ENTIRE AREA OF THE BUTTON PORTION.

3 Q WHAT SIGNIFICANCE, IF ANY, DO YOU ATTACH TO
4 THE FACT THAT NO AREAS OF THE KNOB SURFACE WERE OBSCURED AND
5 THERE WERE NO OTHER LATENT OVERLAYS?

6 A I WOULD FIND IT MOST PROBABLE THAT THE INDIVIDUAL WHO PLACED THE PRINT ON THE BUTTON WAS PROBABLY THE LAST
7 ONE TO USE THAT BUTTON.

9 Q OFFICER TRUSZKOWSKI, AFTER YOU COMPLETED
10 PROCESSING THE DOOR HANDLE AREAS ON THE PASSENGER AND DRIVER'S
11 SIDE OF THE VAN, DEPICTED IN STATE'S EXHIBITS 1 THROUGH 4, WHAT
12 SUBSEQUENTLY WAS DONE IN CONNECTION WITH THE INVESTIGATION AT
13 4200 BOULDER HIGHWAY?

14 A THE NEXT STEP WAS TO GAIN ENTRANCE INTO THE
15 VAN ITSELF. WE RECEIVED ASSISTANCE FROM THE LOCAL TOW -- TOW
16 COMPANY, WHICH WAS ABOUT TO IMPOUND THE VEHICLE. THE DRIVER, I
17 DON'T RECALL EXACTLY, I BELIEVED HE SHIMMED -- WHAT HE CALLED
18 "SHIMMED" THE DRIVER'S SIDE DOOR, MANAGED TO GET THE DOOR OPEN.
19 AT THAT TIME THE DEPUTY CORONER AT THE SCENE, ENTERED THE VEHICLE
20 TO EXAMINE -- EXAMINE THE DECEASED. HE IMMEDIATELY EXITED THE
21 VEHICLE. THE VEHICLE WAS THEN PREPARED TO BE TOWED TO THE CRIME
22 LAB.

23 Q DO YOU RECALL THE NAME OF THE DEPUTY CORONER
24 AT THE SCENE?

25 A YES. CHRIS DERRICK, D-E-R-R-I-C-K.

26 Q NOW, YOU SAID YOU BELIEVE THE TOW DRIVER
27 SHIMMED THE VEHICLE TO GET INSIDE THE VEHICLE?

28 A YES, SIR.

29 Q WHAT DO YOU MEAN BY THAT? DID YOU OBSERVE
30 WHAT HE DID?

31 A I OBSERVED HIM WORKING AT THE DOOR. I DON'T
32 REMEMBER EXACTLY WHAT KIND OF TOOL HE USED.

1668

1 Q WHAT HAPPENED AFTER DEPUTY CORONER DERRICK
2 GOT INTO THE VEHICLE AND BRIEFLY EXAMINED THE DECEASED?

3 A HE EXITED THE VEHICLE, ADVISED US THAT THE
4 VICTIM WAS, INDEED, DECEASED. WE MADE ARRANGEMENTS TO HAVE THE
5 VEHICLE WITH THE VICTIM TOWED TO THE CRIME LAB.

6 Q WHEN YOU SAY "WE" ARE YOU REFERRING TO YOUR-
7 SELF, OFFICERS CONNELL AND CORSE?

8 A YES, IN CONSULTATION WITH THE HOMICIDE
9 DETECTIVES WHO WERE AT THE SCENE.

10 Q WAS THE VEHICLE, DEPICTED IN STATE'S EXHIBITS
11 1 THROUGH 4, THEN TRANSPORTED TO THE CRIME LAB OF THE LAS VEGAS
12 METROPOLITAN POLICE DEPARTMENT?

13 A YES, SIR.

14 Q BY WHAT MEANS?

15 A PARDON?

16 Q HOW WAS IT TAKEN FROM THE 2400 BLOCK OF
17 BOULDER HIGHWAY TO THE CRIME LAB?

18 A THE VEHICLE WAS TOWED AND FOLLOWED BY IDEN-
19 TIFICATION SPECIALISTS DAN CONNELL AND ROBERT CORSE.

20 Q WHERE IS THE CRIME LAB LOCATED?

21 A AT THAT TIME IT WAS LOCATED IN THIS BUILDING,
22 IN THE BASEMENT.

23 Q WAS THE CONDITION OF THE INSIDE OF THE VAN,
24 SHOWN IN STATE'S EXHIBITS 1 THROUGH 4, DISTURBED IN ANY MANNER AT
25 THE SCENE OF THE 2400 BLOCK OF BOULDER HIGHWAY?..

26 A WE TOOK GREAT EFFORTS NOT TO DISTURB THE
27 INTERIOR OF THE VAN AT THE SCENE ON BOULDER HIGHWAY SO TO PRE-
28 SERVE THE EVIDENCE FOR A LITTLE LATER INVESTIGATION.

29 Q WHAT HAPPENED WHEN THE VEHICLE WAS TOWED TO
30 THE CRIME LAB, LOCATED AT THAT TIME, IN THIS BUILDING.

31 A WE THEN PROCEEDED TO CONTINUE TO PHOTOGRAPH
32 THE VEHICLE, GAIN ENTRANCE INTO THE VEHICLE, OBSERVED THE AREA

166.9

1 AROUND THE VICTIM, MADE DETERMINATION AS TO PROBABLE CAUSE OF
2 DEATH, WHAT AREAS MAY OR MAY NOT HAVE BEEN HANDLED BY ANY SUSPECTS.

3 WE CONTINUED TO PROCESS FOR LATENT PRINTS,
4 COLLECTED BLOOD EVIDENCE, AND JUST DO A GENERAL INVESTIGATION.

5 Q OFFICER, TRUSZKOWSKI, WHEN YOU SAY "WE" ARE
6 YOU AGAIN REFERRING TO YOURSELF AND OFFICERS CONNELL AND CORSE?

7 A PRINCIPALLY MYSELF AND OFFICER CONNELL.

8 Q WHAT WAS THE POSITION OF THE DECEDENT INSIDE
9 THE VAN?

10 A WE OBSERVED THE BODY OF THE DECEDENT TO BE
11 FACE DOWN ON THE -- ON THE FLOOR WITH THE HEAD IN THE RIGHT REAR
12 FLOOR PORTION OF THE VAN; THE RIGHT ARM WAS FLEXED AT THE ELBOW,
13 EXTENDED OUTWARD; LEFT ELBOW WAS ALSO FLEXED AT THE ELBOW WITH
14 THE HAND MORE OR LESS DANGLING DOWN OVER -- OVER THE RUNNING
15 BOARD ON THE RIGHT SIDE OF THE VAN.

16 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR
17 HONOR?

18 THE COURT: YOU MAY.

19
20 BY MR. HARMON:

21
22 Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU PROPOSED
23 EXHIBIT 13. WILL YOU EXAMINE THE PHOTOGRAPH AND STATE WHETHER
24 YOU RECOGNIZE WHAT IS SHOWN IN THE PICTURE?

25 A YES, SIR. THIS IS THE POSITION OF THE DE-
26 -- DECEDENT'S BODY AS -- AS WE FOUND IT.

27 Q INSIDE THE VAN ON MARCH 27, 1980?

28 A YES, SIR.

29 Q TO THE BEST OF YOUR RECOLLECTION, IS THAT
30 EXACTLY HOW THE DECEDENT WAS LYING, AND WOULD THIS BE THE CONDI-
31 TION OF HIS CLOTHING?

32 A YES, SIR, JUST AS WE FOUND HIM.

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MR. HARMON: THANK YOU.

YOUR HONOR, I WOULD LIKE TO RENEW OUR OFFER
AT THIS TIME ON PROPOSED EXHIBIT 13.

THE COURT: I THOUGHT THAT WAS ADMITTED, COUNSEL.

THE CLERK: NO, SIR, 13 WAS NOT ADMITTED.

MR. COOPER: WE WOULD HAVE NO OBJECTION, YOUR
HONOR.

THE COURT: SAME WILL BE RECEIVED.

MR. HARMON: THANK YOU, YOUR HONOR.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, DIRECTING YOUR ATTENTION
IN PARTICULAR TO THE REAR POCKETS, DOES STATE'S EXHIBIT 13 POR-
TRAY THOSE EXACTLY AS THEY WERE WHEN YOU FIRST OBSERVED THE DE-
CEASED INSIDE THE VAN ON MARCH 27, 1980?

A THAT'S THE CONDITION AS I FIRST SAW IT, YES.

Q DID YOU, AT SOME POINT IN YOUR INVESTIGATION,
OBSERVE A PROJECTILE SOMEWHERE ON THE INTERIOR OF THE VAN?

A YES, SIR.

Q WILL YOU STATE WHERE THAT WAS LOCATED?

A WE OBSERVED, OR I -- I OBSERVED A PROJECTILE
TO BE LOCATED ON THE RUNNING BOARD ON THE RIGHT SIDE OF THE VAN,
THAT WOULD BE THE RUNNING BOARD ASSOCIATED WITH THE CARGO DOORS
UNDER THE -- UNDER THE LEFT HAND OF THE VEHICLE UP -- EXCUSE ME,
THE VICTIM'S LEFT HAND WAS DANGLING OVER THE EDGE BEFORE THE RUN-
NING BOARD ITSELF, AND THE PROJECTILE WAS FOUND UNDER HIS HAND ON
THE RUNNING BOARD.

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

THE COURT: YOU MAY.

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BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW STATE'S EXHIBIT NUMBER 6. DOES THIS PHOTOGRAPH SHOW THE AREA WHERE THE PROJECTILE WAS OBSERVED BY YOU ON MARCH 27, 1980?

A YES, SIR.

Q WHERE WERE YOU WHEN YOU FIRST SAW THE PROJECTILE IN THE LOCATION IT IS SHOWN IN STATE'S EXHIBIT 6?

A I WAS POSITIONED RIGHT OUTSIDE THE VAN AT THE CARGO DOORS.

Q WAS THIS AT THE CRIME LAB OR AT 4200 BOULDER HIGHWAY?

A THIS WAS AT THE CRIME LAB.

Q DO YOU SEE THE PROJECTILE SHOWN IN THIS PICTURE?

A YES, SIR.

Q I AM HANDING YOU A BLACK PEN. I WOULD LIKE YOU TO CIRCLE THE AREA WHERE THE PROJECTILE WAS SHOWN ON STATE'S EXHIBIT 6. AFTER YOU CIRCLE THIS AREA, WILL YOU PUT YOUR INITIALS OUTSIDE OF THE CIRCLE, PLEASE.

MR. HARMON: YOUR HONOR, MAY THE RECORD SHOW THAT THE WITNESS HAS COMPLIED WITH MY INSTRUCTION?

THE COURT: LET ME SEE IT. I CAN'T SEE IT FROM HERE.

THE RECORD MAY SO SHOW.

MR. HARMON: THANK YOU, YOUR HONOR.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, WAS THE PROJECTILE RECOVERED AS POTENTIAL EVIDENCE, WHICH YOU HAVE CIRCLED ON THE PHOTOGRAPH STATE'S EXHIBIT 6?

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A YES, SIR.

MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE,
PLEASE.

MAY I APPROACH THE WITNESS, YOUR HONDR?
THE COURT: YOU MAY.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW
AN EVIDENCE ENVELOPE WHICH HAS BEEN MARKED AS PROPOSED EXHIBIT 32.
DO YOU RECOGNIZE WHAT THIS IS?

A YES, SIR. I DO.

Q WHAT IS PROPOSED EXHIBIT 32? I'M DIRECTING
YOUR ATTENTION SIMPLY TO THE EVIDENCE ENVELOPE.

A YES. THIS IS THE LAS VEGAS METROPOLITAN
POLICE DEPARTMENT EVIDENCE ENVELOPE. THIS ENVELOPE WAS PREPARED
BY SPECIALIST DAN CONNELL PURSUANT TO THIS INVESTIGATION.

Q WAS THIS IN YOUR PRESENCE?

A YES, SIR.

Q WAS AN ITEM RECOVERED AND PLACED IN THIS
ENVELOPE FROM THE INSIDE OF THE VAN, SHOWN IN STATE'S EXHIBITS
1 THROUGH 4, AND ALSO SPECIFICALLY STATE'S EXHIBIT NUMBER 6?

A YES, SIR.

Q WHAT ITEM?

A A METAL PROJECTILE.

Q I AM HANDING YOU A PAIR OF SCISSORS NOW.
WILL YOU STATE FOR THE RECORD WHETHER THE ENVELOPE IS IN A SEALED
CONDITION?

A YES, IT IS.

Q WILL YOU NOW CUT THE ENVELOPE FROM THE BOTTOM,
LEAVING THE SEALS INTACT, AND REMOVE THE CONTENTS.

(WHEREUPON, WITNESS COMPLIES.)

1673

1 Q OFFICER TRUSZKOWSKI, WILL YOU DESCRIBE FOR
2 THE RECORD WHAT YOU HAVE JUST REMOVED FROM PROPOSED EXHIBIT
3 NUMBER 32?

4 A I'VE -- I'VE REMOVED A PLASTIC VILE WHICH
5 CONTAINS A METAL PROJECTILE.

6 MR. HARMON: THANK YOU.

7 YOUR HONOR, MAY WE HAVE THE PLASTIC VILE
8 AND ITS CONTENTS MARKED AS PROPOSED EXHIBIT 32-A.

9 THE COURT: IT MAY BE MARKED.

10 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR
11 HONOR?

12 THE COURT: YOU MAY.

13

14 BY MR. HARMON:

15

16 Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW
17 THE PLASTIC VILE AND CONTENTS NOW MARKED AS PROPOSED EXHIBIT 32-A.
18 ARE YOU ABLE TO IDENTIFY THIS PROPOSED EXHIBIT?

19 A YES, SIR. THE VILE BEARS ALL -- ALL OF THE
20 INFORMATION REGARDING THIS CASING IN OFFICER CONNELL'S HAND-
21 WRITING. IN ADDITION TO THAT, IT BEARS MY INITIALS AND PERSONNEL
22 NUMBER AND MY HANDWRITING.

23 Q WHAT EXACTLY IS THE ITEM WHICH IS IN THE
24 PLASTIC VILE, PROPOSED EXHIBIT 32-A?

25 A IT WOULD BE A METAL PROJECTILE, COMMONLY
26 REFERRED TO AS A SPENT BULLET.

27 Q WHERE WAS THIS METAL PROJECTILE OR SPENT
28 BULLET RECOVERED FROM?

29 A FROM THE RUNNING BOARD OF THE 1977 DODGE VAN.

30 Q THE SAME VEHICLE DEPICTED IN STATE'S EXHIBITS
31 1 THROUGH 4 AND 6?

32 A YES, SIR.

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Q IS THIS, IN FACT, THE PROJECTILE WHICH YOU
CIRCLED ON STATE'S EXHIBIT 6?

A INDEED IT IS.

Q IS THE PROJECTILE IN SUBSTANTIALLY THE SAME
CONDITION NOW AS IT WAS WHEN IT WAS RECOVERED MARCH 27, 1980?

A YES, SIR.

MR. HARMON: O.K.

YOUR HONOR, I OFFER AT THIS TIME PROPOSED
EXHIBITS 32 AND 32-A.

THE COURT: ANY OBJECTION, COUNSEL?

MR. COOPER: COURT'S INDULGENCE, PLEASE.

WE HAVE NO OBJECTION, YOUR HONOR.

THE COURT: SAME WILL BE RECEIVED.

MR. HARMON: THANK YOU, YOUR HONOR.

MAY I AGAIN APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YOU MAY.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW
AN EVIDENCE ENVELOPE MARKED AS PROPOSED EXHIBIT 35. INSIDE THAT
IS A ITEM FURTHER DESCRIBED AS PROPOSED EXHIBIT 35-A. AT SOME
POINT IN THE INVESTIGATION DID DEPUTY CORONER DERRICK TURN OVER
TO THE REPRESENTATIVES OF THE CRIME LAB A SMALL AMOUNT OF CHANGE
WHICH HE RECOVERED WHEN YOU INVENTORIED THE PERSONAL EFFECTS OF
THE DECEDENT?

A YES, SIR.

Q DO THE CONTENTS OF THE PLASTIC VILE, MARKED
AS PROPOSED EXHIBIT 35-A, APPEAR TO BE THE CHANGE TURNED OVER TO
THE I.D. SPECIALIST BY DEPUTY CORONER DERRICK?

A YES.

MR. HARMON: YOUR HONOR, WE HAD ONE OTHER ITEM

1675

1 THAT HAS BEEN MARKED. I AM REMOVING PROPOSED EXHIBIT 35-A -- B,
2 EXCUSE ME.

3 AT THIS TIME, I OFFER PROPOSED EXHIBIT
4 35, THE ENVELOPE; AND THE PLASTIC VILE, PROPOSED EXHIBIT 35-A.

5 MR. COOPER: NO OBJECTION, YOUR HONOR.

6 THE COURT: SAME WILL BE RECEIVED.

7

8 BY MR. HARMON:

9

10 Q OFFICER TRUSZKOWSKI, YOU'VE INDICATED THAT
11 YOU CONTINUED WITH LATENT PRINT PROCESSING OF THE INTERIOR OF
12 THE 1977 DODGE VAN, AT THE CRIME LAB.

13 A YES, SIR.

14 Q IN FACT, DID YOU DEVELOP AND LIFT A NUMBER
15 OF LATENT PRINTS?

16 A YES, SIR.

17 Q WERE THE LIFTS PLACED ON LATENT PRINT CARDS?

18 A YES, THEY WERE.

19 Q HAVE YOU BROUGHT ALL OF THOSE CARDS WITH YOU
20 TO COURT TODAY?

21 A I DID.

22 Q WERE THERE AREAS INSIDE THE VAN OF A BLOOD-
23 LIKE SUBSTANCE?

24 A YES, THERE WERE.

25 Q DO YOU RECALL WHERE THOSE WERE LOCATED?

26 A PRINCIPALLY AROUND THE AREA OF THE VICTIM,
27 EXTENDING FROM WHERE THE VICTIM'S HEAD WAS LOCATED TOWARD THE
28 LEFT HAND. A BLOOD-LIKE SUBSTANCE WAS ALSO OBSERVED -- WAS
29 OBSERVED ALSO TO HAVE DRIPPED DOWN THROUGH THE DOOR ONTO THE
30 EXHAUST PIPE BELOW THE CARGO DOORS.

31 Q OFFICER TRUSZKOWSKI, WHAT WAS THE ORIGINAL
32 CONDITION OF THE INSIDE OF THE VAN IN STATE'S EXHIBITS 1 THROUGH

1676

1 4 AND 6?

2 A THE INSIDE OF THE VAN WITH THE VICTIM WAS
3 OBSERVED TO BE A VERY DISRUPTED STATE. NUMEROUS CUSHIONS FROM
4 THE SOFA WERE THROWN ABOUT THE AREA PRINCIPALLY ON TOP OF THE
5 VICTIM. THERE WAS A WOODEN HEADLINER THAT NORMALLY IS POSITIONED
6 ABOVE THE DASHBOARD AND ADJACENT TO THE ROOF WHERE ONE MIGHT FIND
7 A STEREO TAPE DECK OR SORTS, THAT HAD APPARENTLY BEEN PULLED AWAY
8 AND ALSO THROWN ON TOP OF THE VICTIM.

9 Q DID YOU OBSERVE ANY LOOSE WIRES IN THAT AREA?

10 A YES, I DID.

11 Q AND YOU SAY THAT THIS HEADLINER PANEL, IN
12 FACT, WAS ONE OF THE ITEMS THROWN ON TOP OF THE DECEDENT?

13 A IT WAS OBSERVED ON THE DECEDENT, YES.

14 Q DID YOU EXAMINE THAT HEADLINER FOUND?

15 A YES, SIR.

16 Q WAS THERE ANY TYPE OF C.B. RADIO INSIDE THE
17 VAN?

18 A NO, SIR.

19 Q ~~DID YOU FIND A C.B. RADIO ANYWHERE INSIDE THE~~
20 VAN, STATE'S PROPOSED EXHIBITS 1 THROUGH 4 AND 6?

21 A I DON'T RECALL FINDING ONE.

22 Q DID YOU FIND ANY TYPE OF CASSETTE TAPE
23 PLAYER INSIDE THE HEADLINER ITSELF?

24 A NO, SIR.

25 Q DO YOU RECALL FINDING A CASSETTE TAPE PLAYER
26 ANYWHERE INSIDE THE VAN, SHOWN IN STATE'S EXHIBITS 1 THROUGH 4?

27 A NO, SIR.

28 Q I AM SHOWING YOU NOW PROPOSED EXHIBIT 17.
29 DOES THAT APPEAR TO BE THE SAME INDIVIDUAL THAT YOU SAW INSIDE
30 THE VAN, WHICH IS SHOWN IN STATE'S EXHIBITS 1 THROUGH 4?

31 A YES, IT DOES.

32 Q IN ADDITION TO THE MONEY BEING IMPOUNDED

1677

1 WHICH YOU'VE ALREADY IDENTIFIED, AND THE PROJECTILE WHICH WAS
2 FOUND ON THE RUNNING BOARD OF THE VAN, WERE CERTAIN OTHER ITEMS
3 RECOVERED?

4 A YES, SIR.

5 Q DO THOSE ITEMS INCLUDE THE HEADLINER WHICH
6 YOU FOUND ON TOP OF THE VICTIM?

7 A CORRECT.

8 Q WITH THE EXCEPTION OF THE HEADLINER, WERE
9 THE VARIOUS ITEMS RECOVERED LISTED ON A IMPOUND REPORT SIGNED BY
10 OFFICER CONNELL?

11 A THEY WERE.

12 MR. HARMON: COURT'S INDULGENCE AGAIN, PLEASE.

13 MAY I APPROACH THE WITNESS, YOUR HONOR?

14 THE COURT: YES.

15

16 BY MR. HARMON:

17

18 Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW

19 A TWO-PAGE DOCUMENT WHICH IS ADMITTED AS PROPOSED EXHIBIT 36.

20 DO YOU RECOGNIZE WHAT THIS IS?

21 A YES, SIR. YES, I DO.

22 Q WHAT IS IT?

23 A THIS IS A COPY OF THE IMPOUND REPORT PRE-
24 PARED BY OFFICER CONNELL AND MYSELF PURSUANT TO THIS INVESTIGATION.

25 Q IS THIS A LIST OF VARIOUS ITEMS RECOVERED
26 FROM INSIDE THE VAN WHICH IS SHOWN IN STATE'S EXHIBITS 1 THROUGH
27 4, AND ALSO AN INDICATION OF THE LOCATION OF WHERE THE VARIOUS
28 ITEMS WERE FOUND?

29 A THAT'S CORRECT.

30 Q IN FACT, DOES THIS LIST INCLUDE ALL ITEMS
31 RECOVERED WITH THE EXCEPTION OF THE HEADLINER?

32 A THAT'S CORRECT.

1678

1 Q WHY IS IT THE HEADLINER DOESN'T APPEAR IN
2 THIS PARTICULAR LIST?

3 A I RETAINED THE HEADLINER IN MY SOLE CARE AND
4 CUSTODY FOR SOMETIME IN AN ATTEMPT TO RECOVER SOME ADDITIONAL
5 PHYSICAL EVIDENCE.

6 Q DID YOU, IN FACT, PROCESS THE HEADLINER FOR
7 THE PRESENCE OF LATENT PRINTS?

8 A THAT'S CORRECT.

9 Q WERE YOU ABLE TO DEVELOP ANY?

10 A NO, SIR.

11 Q NOW, DOES THAT INDICATE NECESSARILY THAT NO
12 ONE EVER TOUCHED THE HEADLINER?

13 A CERTAINLY NOT.

14 Q DO YOU HAVE SOME EXPLANATION FOR WHY YOU WERE
15 UNABLE TO DEVELOP ANY LATENT PRINTS ON THAT ITEM?

16 A CERTAINLY. THE PRESENCE OF LATENT PRINTS
17 DEPENDS ON MANY, EXCUSE ME, FACTORS; THAT BEING THE WAY ONE HOLDS
18 AN OBJECT, THE WAY ONE RELEASES AN OBJECT, AND PROBABLY MORE IM-
19 PORTANTLY IN THIS CASE WOULD BE THE NATURE OF THE OBJECT ITSELF.
20 THIS HEADLINER WAS MADE OUT OF WOOD, A RATHER GRAINY-TYPE OF A
21 WOOD, AND THEREFORE IT WAS VERY HARD TO FIND AN IDENTIFIABLE
22 FINGERPRINT ON THE WOOD ITSELF.

23 MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER PRO-
24 POSED EXHIBIT 36.

25 MR. COOPER: NO OBJECTION, YOUR HONOR.

26 THE COURT: SAME WILL BE RECEIVED.

27 MR. HARMON: THANK YOU.

28
29 BY MR. HARMON:

30
31 Q OFFICER TRUSZKOWSKI, DURING YOUR INVESTIGA-
32 TION OF THE INTERIOR OF THE VAN, SHOWING YOU STATE'S EXHIBITS 1

1679

1 THROUGH 4, DID YOU FIND ANY CREDIT CARDS ANYWHERE INSIDE THE
2 VEHICLE?

3 A NO, SIR.

4 Q DID YOU FIND A SEIKO WRISTWATCH ANYWHERE?

5 A NO, SIR.

6 Q DID YOU FIND A MONEY CLIP OR ANY TYPE OF
7 WALLET?

8 A NO, SIR.

9 Q DID YOU FIND ANY TYPE OF IDENTIFICATION IN
10 THE NAME OF GEORGE STEVEN MONAHAN?

11 A NO, SIR.

12 Q DO YOU RECALL FINDING ANY PHOTOGRAPHS OF
13 CHILDREN?

14 A I DON'T RECALL ANY, NO.

15 Q OFFICER TRUSZKOWSKI, DIRECTING YOUR ATTENTION
16 NOW TO MARCH THE 2ND, 1983, DID YOU HAVE OCCASION TO CONTACT ANY-
17 ONE WHO WAS PRESENT IN COURT FOR THE PURPOSE OF OBTAINING EXEMPLAR
18 FINGERPRINTS?

19 A YES, I DID.

20 Q WHOM DID YOU CONTACT ON MARCH THE 2ND, 1983?

21 A THE DEFENDANT, MR. HOWARD.

22 Q WILL YOU POINT TO THAT PERSON AND DESCRIBE
23 HOW HE IS DRESSED AT THIS TIME?

24 A (INDICATING) WEARING A BEIGE BUTTON SHIRT.

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

27 THE COURT: THE RECORD MAY SO SHOW.

28 MR. HARMON: THANK YOU, YOUR HONOR.

29

30 BY MR. HARMON:

31

32 Q OFFICER TRUSZKOWSKI, ON MARCH THE 2ND, 1983,

1680

1 DID YOU PERSONALLY OBTAIN A CERTAIN FINGERPRINT FROM THE DEFENDANT
2 SAMUEL HOWARD?

3 A I DID.

4 Q WAS THIS DONE IN THE CLARK COUNTY JAIL?

5 A IT WAS.

6 Q WILL YOU DESCRIBE YOUR PROCEDURE IN OBTAINING
7 A CERTAIN FINGERPRINTS FROM THE DEFENDANT SAMUEL HOWARD,

8 A I DID.

9 Q WAS THIS DONE IN THE CLARK COUNTY JAIL?

10 A IT WAS.

11 Q WILL YOU DESCRIBE YOUR PROCEDURE IN OBTAIN-
12 ING A CERTAIN EXEMPLAR FINGERPRINTS?

13 A THE PROCEDURE ITSELF IS RATHER SIMPLE.

14 WITH THE COOPERATION OF THE INDIVIDUAL,
15 YOU MERELY TAKE ONE FINGER AT A TIME, PLACE THEM ON A -- ON A
16 SURFACE THAT HAS FINGERPRINT INK ON IT, AND ROLL THE FINGER FROM
17 ONE SIDE TO THE OTHER. THE INKED FINGER IS THEN PLACED ON A
18 EXEMPLAR CARD WHERE IT IS AGAIN ROLLED FROM END -- END TO END.

19 THIS SHOULD BE A GOOD READABLE IMPRESSION.

20 Q HAVE YOU, IN FACT, BROUGHT CERTAIN LATENT
21 FINGERPRINT AND THUMB PRINTS TO COURT WITH YOU TODAY WHICH YOU
22 RECOVERED FROM THE DEFENDANT MR. HOWARD ON MARCH THE 2ND, 1983?

23 A YES, SIR.

24 Q WILL YOU PRODUCE THOSE, PLEASE.

25 A UH-HUH.

26 MR. HARMON: YOUR HONOR, MAY WE HAVE THESE DOCU-
27 MENTS MARKED AS THE STATE'S NEXT PROPOSED EXHIBIT?

28 THE COURT: SAME MAY BE MARKED.

29 WHAT'S THE NUMBER?

30 THE CLERK: 58.

31 MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE.

32 MAY I APPROACH THE WITNESS, YOUR HONOR?

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THE COURT: YOU MAY.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW.
A NUMBER OF DOCUMENTS MARKED COLLECTIVELY AS PROPOSED EXHIBIT 58,
CAN YOU IDENTIFY THEM?

A YES, SIR.

Q HOW DO YOU IDENTIFY PROPOSED EXHIBIT 58?

A BY THE DATE AND MY SIG- -- SIGNATURE AND MY
HANDWRITING.

Q ARE THESE, IN FACT, LATENT FINGER AND THUMB
PRINTS RECOVERED FROM THE DEFENDANT SAMUEL HOWARD ON MARCH THE
2ND, 1983?

A THEY'RE FINGER AND THUMB PRINTS RECOVERED
FROM MR. HOWARD.

Q WERE THESE RECOVERED FROM YOU PERSONALLY?

A YES, SIR.

Q DID YOU RECOVER PRINTS FROM BOTH THE LEFT
AND RIGHT HANDS?

A YES, SIR.

Q AND HOW ARE THE PRINTS FROM THE VARIOUS
HANDS DISTINGUISHED ON PROPOSED EXHIBIT 58?

A NOTATIONS ARE MADE ON EACH -- EACH CARD AS
TO THE HAND THAT THEY'RE FROM, OTHERWISE IT'S PLAINLY VISIBLE AS
TO WHICH HAND THIS EXEMPLAR COMES FROM.

Q AFTER YOU HAD OBTAINED THE VARIOUS FINGER
AND THUMB PRINTS FROM BOTH THE LEFT AND RIGHT HANDS, WHICH ARE
SHOWN IN STATE'S PROPOSED EXHIBIT 58, WAS MR. HOWARD ASKED TO
SIGN THE -- THE VARIOUS EXEMPLAR PRINT CARDS?

A YES, HE WAS.

Q DID HE SIGN HIS NAME?

1 A INDEED HE DID.

2 Q TO EACH CARD?

3 A YES, SIR.

4 Q HOW MANY CARDS ARE THERE?

5 A FIVE CARDS.

6 Q WAS THE SIGNATURE OF MR. HOWARD PLACED ON

7 EACH OF THESE FIVE CARDS IN YOUR PRESENCE?

8 A YES, SIR.

9 Q ARE THESE EXEMPLAR FINGER AND PALM PRINT

10 CARDS IN SUBSTANTIALLY THE SAME CONDITION NOW AS THEY WERE WHEN

11 THEY WERE RECOVERED BY YOU ON MARCH THE 2ND, 1983?

12 A YES, SIR.

13 Q O.K. THE COURT'S INDULGENCE, PLEASE.

14 OFFICER TRUSZKOWSKI, ON APRIL THE 13TH,

15 1983, DID YOU HAVE OCCASION TO GO TO THE ADDRESS OF 3288 EAST

16 RUSSELL ROAD FOR THE PURPOSES OF EXAMINING A 1977 DODGE VAN?

17 A YES, I DID.

18 Q DID YOU LOCATE A 1977 DODGE VAN ON APRIL 13,

19 1983, IN THE AREA OF 3288 EAST RUSSELL ROAD?

20 A YES, SIR. THE VEHICLE WAS PARKED RIGHT IN

21 FRONT OF THE RESIDENCE.

22 Q WAS THAT LOCATION IN LAS VEGAS, CLARK COUNTY,

23 STATE OF NEVADA?

24 A YES, SIR.

25 Q DID YOU TAKE CERTAIN POLAROID PICTURES OF

26 THE VAN YOU OBSERVED ON APRIL 13, 1983?

27 A I DID.

28 Q WHAT THAT THE VEHICLE YOU HAD SEEN EARLIER

29 IN YOUR INVESTIGATION OF THIS CASE?

30 A YES, SIR, IT WAS.

31 Q WHERE HAD YOU FIRST SEEN THE VEHICLE THAT

32 YOU SAW IN THE 3200 BLOCK OF EAST RUSSELL ROAD?

1683

1 A I, AT FIRST, OBSERVED A VEHICLE ON MARCH 27,
2 1980, PURSUANT TO THIS INVESTIGATION.

3 Q HOW DID YOU KNOW IT WAS THE SAME VEHICLE
4 WHICH YOU SAW BOTH ON MARCH 27, 1980 AND APRIL 13TH, 1983?

5 A I COMPARED THE -- WHAT'S KNOWN AS THE VIN
6 NUMBER OR VEHICLE IDENTIFICATION NUMBER, AND FOUND THAT THE
7 V-I-N NUMBER ON THE VEHICLE ON RUSSELL ROAD WAS, INDEED, THE SAME
8 AS THE VEHICLE I EXAMINED ON MARCH 27TH, 1980.

9 Q WAS THE VEHICLE, IN TERMS OF APPEARANCE, IN
10 THE SAME CONDITION OR HAS THERE BEEN SOME CHANGE?

11 A BASICALLY IT WAS THE SAME. THERE HAS BEEN
12 SOME AL- -- ALTERATIONS AS FAR AS THE PAINT.

13 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR
14 HONOR?

15 THE COURT: YOU MAY.

16
17 BY MR. HARMON:

18
19 Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW
20 PROPOSED EXHIBITS 50 THROUGH 54. DO YOU RECOGNIZE THESE PHOTO-
21 GRAPHS?

22 A YES, SIR.

23 Q WHAT IS THE BASIS OF YOUR IDENTIFICATION?

24 A THESE PHOTOGRAPHS ARE THE -- ARE THE POLAR-
25 IZED PHOTOGRAPHS THAT I MADE ON APRIL 13TH, OF THIS MONTH, JUST
26 THE OTHER DAY.

27 Q DO THESE PHOTOGRAPHS TRULY AND ACCURATELY
28 PORTRAY THE APPEARANCE OF THE VAN YOU OBSERVED ON APRIL 13, 1983,
29 IN THE 3200 BLOCK OF EAST RUSSELL ROAD?

30 A YES, SIR.

31 Q WHAT WAS YOUR PURPOSE IN TAKING THE POLAR-
32 IZED PICTURES OF THE VAN?

1684

1 A TO MORE CLEARLY DOCUMENT THE CONDITION OF
2 THE CARGO DOORS AND THE ASSOCIATED DOOR KNOBS, DOOR HANDLES.

3 Q SPECIFICALLY, ON THE PASSENGER'S SIDE WERE
4 THE DOOR HANDLES IN THE SAME LOCATION ON APRIL 13, 1983 AS YOU
5 OBSERVED THEM TO BE ON THE VAN MARCH 27, 1980?

6 A YES, SIR.

7 Q DIRECTING YOUR ATTENTION SPECIFICALLY TO
8 PROPOSED EXHIBIT 51. DOES THAT PHOTOGRAPH SHOW THE EXACT CARGO
9 DOOR KNOB WHERE YOU RECOVERED THE PARTIAL LATENT PRINT ON MARCH
10 THE 27TH, 1980, IN THE AREA OF THE DEW DROP INN AT THE 3200
11 BLOCK OF BOULDER HIGHWAY?

12 A YES, IT DOES.

13 Q I DIRECT YOUR ATTENTION TO THE LATENT PRINT
14 CARD, WHICH IS MARKED AS PROPOSED EXHIBIT 57. IS THAT THE LATENT
15 PRINT CARD YOU PREPARED AS A RESULT OF PROCESSING THE SPECIFIC
16 AREA SHOWN IN PROPOSED EXHIBIT 51?

17 A YES, SIR.

18 Q I'D LIKE YOU, WITH THE BLACK PEN I'M GIVING
19 YOU NOW, TO CIRCLE THE DOOR KNOB ON PROPOSED EXHIBIT 51 WHERE
20 YOU DEVELOPED AND LIFTED THE LATENT PRINT.

21 A (WHEREUPON, WITNESS COMPLIES.)

22 Q WILL YOU PUT YOUR INITIALS OUTSIDE OF THE
23 CIRCLE, PLEASE.

24 HAVE YOU CIRCLED THE AREA WHERE YOU LIFTED
25 THE PRINT, WHICH IS SHOWN ON PROPOSED EXHIBIT 57?

26 A YES, SIR.

27 Q NOW, YOU'VE CIRCLED AN AREA LARGER THAN THE
28 KNOB ITSELF; IS THAT CORRECT?

29 A THAT'S TRUE.

30 Q FROM WHERE WAS THE PARTIAL LATENT PRINT
31 LIFTED?

32 A FROM THAT AREA WHICH MUST BE DEPRESSED TO

1 OPEN THE DOOR. THAT'S LIKE A LITTLE BUTTON.

2 Q IN FACT, DOES PROPOSED EXHIBIT 57 SHOW THE
3 CONTOUR OF THE DOOR KNOB ITSELF?

4 A YES, IT DOES.

5 Q AND HOW IS THAT, SIR?

6 A WHEN I LIFTED THE LATENT FINGERPRINT ON THE
7 NIGHT OF THE 27TH I PLACED A PIECE OF FINGERPRINT TAPE OVER THE
8 ENTIRE AREA PROVIDED BY THE BUTTON ITSELF. THIS PROVIDED A GOOD
9 OUTLINE OF THE SURFACE FROM WHICH THE FINGERPRINT WAS LIFTED.

10 Q IN REGARDS TO PROPOSED EXHIBIT 50, IT SHOWS
11 THE PASSENGER'S SIDE OF THE VEHICLE WITH THE DOOR SHUT; IS THAT
12 CORRECT?

13 A YES, SIR.

14 Q AT SOME POINT, AS PORTRAYED IN PROPOSED
15 EXHIBITS 52 THROUGH 54, YOU OPENED ALL OF THE DOORS IN THE PAS-
16 Senger's SIDE OF THE VAN; IS THAT CORRECT?

17 A YES, SIR.

18 Q WAS THAT FOR ILLUSTRATIVE PURPOSES?

19 A THAT'S CORRECT.

20 Q WHAT WERE YOU ATTEMPTING TO PORTRAY?

21 A IN PROPOSED 54, THE PHOTOGRAPH WAS TAKEN TO
22 SHOW THE EXTENT OF WHICH THE DOORS WERE OPEN.

23 ON PROPOSED 52 AND 53, THE PHOTOGRAPHS
24 WERE SHOWN -- WERE SUPPOSED TO SHOW THE INTERIOR LOCK MECHANISM
25 FOR THE CARGO DOORS.

26 MR. HARMON: THANK YOU.

27 YOUR HONOR, AT THIS TIME I WILL OFFER PRO-
28 POSED EXHIBITS 50 THROUGH 54.

29 MR. COOPER: WE'D HAVE NO OBJECTION, YOUR HONOR.
30 THE COURT: SAME WILL BE RECEIVED.

31 MR. HARMON: THANK YOU.

32 COURT'S INDULGENCE, PLEASE.

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MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YOU MAY.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, I AM SHOWING YOU NOW PROPOSED EXHIBITS 22 AND 23. ARE THESE ADDITIONAL PHOTOS OF THE 1977 DODGE VAN; THE 1977 DODGE VAN WHICH YOU EXAMINED ON MARCH 27TH, 1980, AND WHICH YOU LATER PHOTOGRAPHED ON APRIL 13, 1983?

A YES, SIR.

Q WHERE WERE THESE PHOTOGRAPHS TAKEN, PROPOSED EXHIBITS 22 AND 23?

A THESE PHOTOGRAPHS WERE TAKEN IN THE METROPOLITAN POLICE DEPARTMENT CRIME LAB ROOM.

Q AT THE POINT WHERE YOU CONDUCTED YOUR INVESTIGATION AND PROCESSING OF THE INSIDE OF THE VAN?

A THAT'S CORRECT.

MR. HARMON: I OFFER PROPOSED EXHIBITS 22 AND 23, YOUR HONOR.

MR. COOPER: I HAVE NO OBJECTION, YOUR HONOR.
THE COURT: SAME WILL BE RECEIVED.

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, WERE YOU ABLE TO DETERMINE, AT THE TIME YOU DEVELOPED AND LIFTED THE PARTIAL LATENT PRINT, WHICH IS SHOWN IN THE CARD PROPOSED EXHIBIT 57, AND WERE YOU ABLE TO DETERMINE AT THE TIME WHAT FINGER PLACED THE PRINT AT THAT LOCATION?

A NOT AT THAT TIME, NO.

Q HAVE YOU HAD OCCASION TO SUBSEQUENTLY EXAMINE THAT PARTICULAR PARTIAL LATENT PRINT?

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A YES, SIR.

Q WERE YOU ABLE AT THAT TIME TO DETERMINE, IN YOUR MIND AT LEAST, THE POSITION OF THE HAND OR FINGER WHEN THAT PRINT WAS PLACED AT THAT LOCATION?

A WE WERE ABLE TO -- OR I WAS ABLE TO MAKE A -- A DETERMINATION WHEN THE LATENT PRINT WAS IDENTIFIED.

Q DO YOU HAVE AN OPINION AS TO WHAT THE POSITION OF THE FINGER WAS WHEN IT WAS PLACED AT THAT LOCATION?

A YEAH. IT'S -- IT'S APPARENT THAT THE LEFT THUMB WAS PLACED ON THE BUTTON PORTION OF THE HANDLE, WITH THE TOP OF THE THUMB TOWARDS THE LEFT; AS YOU WOULD LOOK STRAIGHT ON AT THE DOOR KNOB, THE TOP OF THAT THUMB WOULD BE EXTENDING TOWARD THE LEFT.

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

THE COURT: YOU MAY.

BY MR. HARMON:

Q I'M SHOWING YOU STATE'S EXHIBIT 51. WHEN YOU SAY THE TOP OF THE THUMB WOULD BE EXTENDING TOWARDS THE LEFT, WILL YOU INDICATE IN WHAT DIRECTION?

A AS YOU WOULD HOLD THE PHOTOGRAPH IN FRONT OF YOU, AS I AM DOING RIGHT NOW (INDICATING). AFTER EXAMINATION OF THE LATENT FINGERPRINT, IT'S APPARENT THAT THE THUMB WAS PLACED ON THE BUTTON SO THAT THE TOP OR THE END OF THE THUMB WOULD BE TOWARD THE LEFT, AS -- AS YOU LOOK AT THE PHOTOGRAPH ITSELF.

Q I WOULD LIKE YOU TO PLACE AN ARROW THEN IN THAT DIRECTION. AND AT THE END OF THE ARROW, WOULD YOU WRITE "END OF THUMB," PLEASE?

A (WHEREUPON, WITNESS COMPLIES.)

Q NOW, HAVE YOU PLACED THAT JUST TO THE LEFT

1688

1 OF THE CIRCLE?

2 A CORRECT.

3 Q AND THAT IS TO INDICATE MERELY IN WHAT DIREC-
4 TION, IN YOUR OPINION, THE THUMB WOULD HAVE BEEN FACING WHEN IT
5 WAS PLACED ON THE DOOR KNOB, WHICH IS SHOWN IN STATE'S EXHIBIT
6 51?

7 A YES, SIR.

8 MR. HARMON: O.K. THANK YOU.

9 YOUR HONOR, THAT CONCLUDES DIRECT EXAMINA-
10 TION.

11 THE COURT: CROSS EXAMINATION?

12

13 CROSS EXAMINATION

14

15 BY MR. COOPER:

16

17 Q SPECIALIST TRUSZKOWSKI, YOU TESTIFIED THAT
18 YOU HAD SOME ON-THE-JOB TRAINING FOR FINGERPRINT ANALYSIS AND
19 COMPARISON, AND THAT SORT OF THING; IS THAT RIGHT?

20 A YES.

21 Q I SEE.

22 AND THAT YOU TOOK A CORRESPONDENCE
23 COURSE?

24 A YES. I'M STUDYING A CORRESPONDENCE COURSE.

25 Q WHAT WAS THE CORRESPONDENCE YOU TOOK?

26 A THE INSTITUTE OF APPLIED SCIENCE.

27 Q AND WHO WAS THAT GIVEN BY?

28 A WELL, THAT WAS THE NAME OF THE AGENCY OR --
29 OR ORGANIZATION THAT PROVIDES THE STUDY COURSE.

30 Q I SEE.

31 AND THIS WAS THE COURSE WHERE YOU -- YOU
32 TAKE EXAMINATIONS, THAT SORT OF THING, BY MAIL?

1689

1 A THAT'S CORRECT.

2 Q HOW LONG WAS THAT COURSE? HOW LONG DID IT

3 LAST?

4 A WELL, THE COURSE ITSELF IS QUITE EXTENSIVE.

5 IT'S ROUGHLY 90 OR 100 LESSONS, BUT NOT ALL OF IT PERTAINS TO

6 FINGERPRINTS.

7 Q I SEE.

8 AND DID YOU HAVE ANY OTHER CORRESPONDENCE

9 COURSES?

10 A NO, SIR.

11 Q YOU INDICATED YOU HAD A SEMINAR IN VIRGINIA;

12 IS THAT CORRECT?

13 A YES.

14 Q WHEN WOULD THAT HAVE BEEN?

15 A THAT WAS I BELIEVE IN 1978.

16 Q AND HOW LONG WAS THAT SEMINAR?

17 A 40 HOURS.

18 Q UH-HUH. DID YOU HAVE ANY OTHER TRAINING,

19 FORMAL TRAINING, TO QUALIFY YOU AS A FINGERPRINT EXPERT?

20 A WELL, LIKE I SAID, I'VE HAD INSURREPTITIOUS

21 (SIC) TRAINING IN THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT,

22 ALSO FROM SENIOR OFFICER IN THE BUREAU, AS WELL AS HAVING --

23 HAVING EXAMINED A LARGE NUMBER OF CASES.

24 Q WHAT DID YOU -- WERE YOU EMPLOYED WITH METRO

25 PRIOR TO BECOMING AN IDENTIFICATION SPECIALIST?

26 A NO, SIR.

27 Q I SEE.

28 HAVE YOU HAD ANY PRIOR EXPERIENCE AS A

29 IDENTIFICATION SPECIALIST PRIOR TO JOINING METRO, THAT IS --

30 A NO, SIR.

31 Q (CONTINUING) -- WOULD YOU SAY THAT THE

32 GREATEST PART OF YOUR EXPERTISE, OR THE ACQUIRING OF YOUR EXPER-

1690

1 TISE, CAME THROUGH ON-THE-JOB TRAINING?

2 A YES, SIR.

3 Q I SEE.

4 NOW, BASICALLY WHAT YOU DO, OFFICER, IS
5 WHEN YOU GO OUT AND YOU INVESTIGATE A CRIME SCENE, YOU TESTIFIED
6 THAT'S IT'S YOUR JOB TO -- TO LOOK FOR EVIDENCE, POSSIBLE EVI-
7 DENCE; IS THAT RIGHT?

8 A CORRECT.

9 Q AND WHEN YOU FIND IT YOU TRY AND PRESERVE IT?

10 A THAT'S CORRECT.

11 Q FOR LATER USE?

12 A YES.

13 Q I SEE.

14 AND PART OF THAT INCLUDES LOOKING FOR
15 LATENT FINGERPRINTS?

16 A CORRECT.

17 Q IS THAT RIGHT?

18 A YEAH.

19 Q AND ONCE YOU GET THOSE PRINTS, YOU, IF YOU'VE
20 GOT A SUSPECT IN MIND, GET THE EXEMPLARS FROM THE SUSPECT, THAT
21 IS HIS PRINTS FROM EACH OF THE FINGERS AND THE THUMB AND PALM AND
22 SO FORTH, AND THEN YOU COMPARE THE LATENT PRINT THAT YOU RECOVER-
23 ED FROM THE CRIME SCENE WITH THE PRINTS YOU GOT FROM THE SUBJECT;
24 IS THAT RIGHT?

25 A YES, SIR.

26 Q AND THAT'S ESSENTIALLY WHAT YOU DID IN THIS
27 CASE; IS THAT CORRECT?

28 A YES, I DID DO THAT IN THIS CASE.

29 Q I SEE.

30 YOU COMPARED THE LATENT PRINT YOU TESTI-
31 FIED THAT WAS LIFTED FROM THE DOOR KNOB, THE CARGO DOORS, WITH
32 THE -- WITH THE PRINT YOU GOT FROM MR. SAMUEL HOWARD WHILE HE WAS

1691

1 IN JAIL; IS THAT CORRECT?

2 A I COMPARED THEM AGAINST AN EXEMPLAR FROM
3 MR. SAMUEL (SIC), YES.

4 Q I SEE.

5 AND DID YOU PERSONALLY COMPARE THE LATENT
6 AND THE EXEMPLAR?

7 A AT ONE TIME, YES.

8 Q NOW, YOU TESTIFIED, I THINK ON DIRECT EXAMI-
9 NATION YOU WERE ASKED THE QUESTION IF THERE WAS ANYTHING IN PAR-
10 TICULAR, WELL, IN RECOVERING THIS PRINT. I THINK YOUR TESTIMONY
11 WAS THAT IT DEVELOPED QUITE READILY.

12 A YES, SIR.

13 Q ALL RIGHT.

14 IS THERE -- YOU FILED REPORTS AS A
15 RESULT OF YOUR INVOLVEMENT IN THIS CASE, DIDN'T YOU?

16 A YES, SIR.

17 Q YOU FILED TWO REPORTS; IS THAT RIGHT?

18 A I FILED A CRIME -- CRIME SCENE REPORT AND I
19 THINK TWO PROPERTY REPORTS, WHICH MY NAME WAS ON EACH.

20 Q I SEE.

21 THE CRIME SCENE REPORT CONSISTS OF SOME
22 THREE AND A HALF PAGES OR SO; IS THAT RIGHT?

23 A APPROXIMATELY.

24 Q I SEE.

25 IN ANY OF YOUR REPORTS, DID YOU MENTION
26 ANYTHING ABOUT THE FACT THAT THIS PRINT, THIS LATENT PRINT,
27 DEVELOPED READILY?

28 A NO, SIR.

29 Q AND EVEN THOUGH IT'S BEEN OVER THREE YEARS
30 AGO, YOU REMEMBER THAT THAT ONE PRINT DEVELOPED READILY?

31 A YES, I DO.

32 Q HOW MANY FINGERPRINTS, LATENT FINGERPRINTS,

1692

1 HAVE YOU HAD SINCE THE RECOVER OF THIS ONE ON MARCH 27, 1980?
2 JUST AN ESTIMATE, PLEASE.

3 A OH, MAYBE OVER THE PAST TWO AND A HALF YEARS,
4 THREE YEARS?

5 Q YES.

6 A HARD TO SAY. HUNDREDS.

7 Q WOULD YOU BE IN A POSITION TO STATE WHETHER
8 ANY OF THOSE PRINTS YOU LATER RECOVERED DEVELOPED READILY?

9 A A CERTAIN NUMBER OF THEM, YES.

10 Q YOU DID EXAMINE THE INTERIOR AND EXTERIOR OF
11 THE VAN FOR PRINTS; IS THAT RIGHT?

12 A YES, SIR.

13 Q AND IT'S A FACT THAT YOU RECOVERED OTHER
14 LATENT FINGERPRINTS, DIDN'T YOU?

15 A YES, SIR.

16 Q UH-HUH. WHERE WERE THESE PRINTS RECOVERED
17 FROM?

18 A I WOULD HAVE TO CONSULT WITH THE LIST CARDS.

19 Q WOULD YOU PLEASE?

20 A CERTAINLY.

21 FROM THE INTERIOR SURFACE OF THE LEFT
22 REAR WINDOW.

23 Q O.K.

24 LET ME ASK YOU ABOUT THAT PRINT. DID
25 THAT PRINT DEVELOP READILY, QUITE READILY?

26 A YES, IT DID.

27 Q WOULD YOU GO ON, PLEASE?

28 A THE INTERIOR SURFACE OF THE LEFT WING WIN-
29 DOW.

30 Q DID THAT PRINT DEVELOP QUITE READILY?

31 A NO, SIR.

32 Q IS THERE ANY MENTION ON YOUR REPORT THAT --

1693

1 WHETHER THESE PRINTS DEVELOPED READILY OR NOT?

2 A NO, SIR.

3 Q YOU JUST RECALL THIS AFTER SOME THREE YEARS
4 WHETHER THEY DEVELOPED READILY OR NOT; IS THAT TRUE?

5 A OFTEN TIMES BY THE NATURE OF THE FINGERPRINT
6 DUST AND HOW IT -- HOW IT'S LIFTED AND PLACED ON MY CARD, YOU
7 COULD STILL GET AN IDEA AS TO HOW READILY THEY WERE OBTAINED.

8 Q WOULD YOU GO ON AND LIST THE OTHER PRINTS
9 THAT YOU WERE ABLE TO LIFT, PLEASE?

10 A CERTAINLY.

11 THERE WERE SEVERAL LIFTED BY OFFICER
12 CONNELL. THESE --

13 Q I'M JUST CONCERNED NOW WITH THE PRINTS THAT
14 YOU LIFTED.

15 A CORRECT.

16 THE INTERIOR PANEL OF THE LEFT FRONT DOOR.

17 Q DID THAT PRINT DEVELOP QUITE READILY?

18 A I DON'T HAVE AN OPINION ON THAT.

19 Q O.K.

20 WILL YOU GO ON, PLEASE.

21 A THE INTERIOR PANEL OF THE LEFT FRONT DOOR.

22 Q DID THAT PRINT DEVELOP QUITE READILY?

23 A NO, SIR.

24 THE INTERIOR FRAME OF THE LEFT REAR
25 WINDOW.

26 Q DID THAT LATENT PRINT DEVELOP QUITE READILY?

27 A NO, SIR.

28 Q ARE THOSE THE ONES THAT YOU LIFTED?

29 A I'LL HAVE TO LOOK AT SOME OTHER ENVELOPES.

30 Q O.K. THANK YOU.

31 AS YOU ARE SEARCHING FOR THOSE, OFFICER
32 TRUSZKOWSKI, IS THERE ANYTHING IN YOUR REPORT REGARDING THESE

1694

1 PRINTS THAT YOU LIFTED WHICH INDICATES HOW THE DUST SETTLED, OR
2 IS THERE ANYTHING HERE THAT WOULD INDICATE TO YOU FROM YOUR
3 REPORT AS TO WHETHER THESE PRINTS DEVELOPED --

4 A NO, SIR. I HAVE NO SUCH DETERMINATION.
5 THAT'S ABOUT THE EXTENT OF IT.

6 Q I SEE.

7 SO COULD YOU TELL US HOW MANY PRINTS
8 HAVE YOU IDENTIFIED HERE THAT YOU LIFTED FROM IN OR ON THE VAN IN
9 QUESTION?

10 A IT MUST HAVE BEEN ABOUT EIGHT OR SO. I
11 DIDN'T KEEP COUNT.

12 Q DID YOU COMPARE ALL OF THESE PRINTS THAT
13 YOU LIFTED, THESE EIGHT PRINTS OR SO, WITH THE EXEMPLARS THAT YOU
14 GOT FROM MR. HOWARD?

15 A NO, SIR.

16 Q WHO DID THE PRINT ON THE EXTERIOR SURFACE
17 OF THE LEFT DOOR, BELOW THE -- THE LEFT DOOR ADJACENT TO THE
18 HANDLE? IS THAT WHERE YOU LIFTED ONE OF THE PRINTS?

19 A YES. THERE'S NO INDICATION ON THE CARD THAT
20 IT'S BEEN IDENTIFIED TO ANYONE.

21 Q WHAT ABOUT THE INTERIOR? I THINK YOUR TESTI-
22 MONY WAS THAT YOU'VE LIFTED SOME POINT FROM THE INTERIOR SURFACE
23 OF THE LEFT WING WINDOW.

24 A RIGHT.

25 Q THAT'S INSIDE THE VAN?

26 A YES.

27 AGAIN, THERE ARE NO INDICATIONS THAT
28 THESE HAVE BEEN IDENTIFIED BY ANYONE.

29 Q I THINK YOUR TESTIMONY WAS ALSO THAT THERE
30 WAS AN INTERIOR -- A PRINT FROM AN INTERIOR PANEL OF THE LEFT
31 FRONT DOOR; IS THAT RIGHT?

32 A YES, SIR.

1695

1 Q WHO DOES THAT PRINT BELONG TO?
2 A THEY WERE IDENTIFIED AS BEING MR. MONAHAN'S.
3 Q I SEE.
4 DID YOU ALSO LIFT A PRINT FROM THE
5 INTERIOR OF THE LEFT REAR WINDOW?
6 A YES, I DID.
7 Q WHO DID THAT PRINT BELONG TO?
8 A I THINK AGAIN THAT WAS IDENTIFIED AS BEING
9 MR. MONAHAN'S.
10 Q DID YOU LIFT A PRINT FROM THE EXTERIOR OF
11 THE RIGHT WING WINDOW?
12 A I HAVE A LATENT PRINT FROM THE INTERIOR OF
13 THE LEFT WING WINDOW.
14 Q THE INTERIOR OF THE LEFT FRONT WINDOW?
15 A LEFT WING WINDOW.
16 Q I SEE.
17 WHO DID THAT PRINT BELONG TO?
18 A IT'S UNIDENTIFIED.
19 Q WHAT ABOUT THE EXTERIOR OF THE RIGHT REAR
20 WINDOW? WAS A PRINT LIFTED FROM THAT AREA?
21 A THAT'S EXTERIOR, THE RIGHT REAR WINDOW?
22 Q WELL, LET ME ASK YOU THIS: THE POINT IS
23 THERE WERE A NUMBER OF LATENT PRINTS THAT WERE LIFTED FROM IN
24 AND ON THE OUTSIDE OF THIS VEHICLE; IS THAT RIGHT?
25 A THAT'S CORRECT.
26 Q THEY WERE LIFTED BY BOTH OFFICER CONNELL
27 AND YOURSELF?
28 A CORRECT.
29 Q ALL RIGHT.
30 IS IT TRUE THAT AT THE BOTTOM OF A TABLE
31 INSIDE THE VAN, THERE WAS A LATENT PRINT LIFTED THERE; IS THAT
32 RIGHT?

1696

1 A THAT'S CORRECT.

2 Q IT'S TRUE THAT YOU HAVE NOT BEEN ABLE TO
3 IDENTIFY THAT PRINT AS BELONGING TO SAMUEL HOWARD, ISN'T IT?

4 A THAT'S CORRECT.

5 Q IT'S ALSO TRUE THAT ON THE WOODEN PORTION
6 OF THE HEAD VISOR PANEL THERE WAS A LATENT PRINT LIFTED; ISN'T
7 THAT TRUE?

8 A THERE WERE SOME INDICATION OF -- WE -- THERE
9 WAS NOT AN IDENTIFICATION PRINT LEFT FROM THERE.

10 Q I SEE.

11 YOU WEREN'T ABLE TO IDENTIFY WHAT YOU
12 LIFTED FROM THIS WAS MR. HOWARD'S; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q NOW, IT'S TRUE IN YOUR AREA OF EXPERTISE,
15 OFFICER, THAT IT IS VIRTUALLY IMPOSSIBLE TO TELL THE AGE OF A
16 FINGERPRINT; ISN'T THAT GENERALLY CONCEDED IN YOUR PROFESSION?

17 A TO ANY PERSISTENCE, THAT'S CORRECT.

18 Q I SEE.

19 IT'S TRUE THAT THERE ARE CERTAIN --

20 CERTAIN SIGNS THAT YOU LOOK FOR THAT MIGHT GIVE YOU SOME IDEA
21 WHETHER IT'S A FAIRLY OLD PRINT OR FAIRLY NEW PRINT; IS THAT
22 RIGHT?

23 A CERTAINLY.

24 Q BUT YOU CANNOT PINPOINT WITH ANY DEGREE OF
25 CERTAINTY AS TO THE AGE OF A FINGERPRINT, CAN YOU?

26 A NO, SIR.

27 Q SO WHEN YOU SAID THAT THE PRINT THAT YOU DID
28 LIFT FROM THE CARGO DOOR DEVELOPED QUITE READILY, I THINK YOU
29 WANT TO STATE THAT WHAT THAT SIGNIFIES TO YOU IS THAT IT WAS A
30 RELATIVELY RECENT-MADE PRINT; IS THAT EXACTLY WHAT YOU SAID?

31 A AS OPPOSED TO A LATENT FINGERPRINT THAT HAD
32 DEVELOPED MORE ARDUOUSLY.

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Q UH-HUH.

WHEN YOU SAY THAT IT WAS RELATIVELY NEW,
ARE YOU TALKING ABOUT 24 HOURS? 48 HOURS? LONGER? WHAT DO YOU
MEAN BY THAT -- WITH THAT TERM, THAT TERM "RELATIVELY NEW"?

A I HESITATED TO PUT A CERTAIN LENGTH OF TIME
ON IT. THERE WAS ALOT OF OTHER FACTORS INVOLVED, INCLUDING THE
WEATHER, HUMIDITY, THINGS LIKE THAT.

Q SO AS TO THIS PARTICULAR PRINT YOU LIFTED
FROM THE BOARD OR NOT, YOU CANNOT SAY WHETHER THAT PRINT WAS
PLACED THERE TEN HOURS BEFORE YOU EXAMINED IT OR 24 HOURS BEFORE
YOU EXAMINED IT, CAN YOU?

A I WOULDN'T BE ABLE TO MAKE THAT DISCREPANCY,
NO.

Q I SEE.

NOW, ON THIS VAN THAT YOU EXAMINED, YOU
DON'T HAVE TO ENTER THE CARGO DOORS IN ORDER TO GET TO THE
DRIVER'S SEAT OF THE VAN, DO YOU?

A NO, SIR.

Q THE AREA OF THE GEARSHIFT IN THE VAN AND THE
INSTRUMENT PANEL, WAS THAT ALSO EXAMINED FOR POSSIBLE PRINTS?

A YES, SIR.

Q WHEN YOU SAY A PARTIAL LATENT PRINT, WHAT
DOES THAT MEAN, COMPARED TO A FULL -- SAY A FULL LATENT PRINT?

A SORT OF ODD, BECAUSE IT WOULD BE VIRTUALLY
IMPOSSIBLE TO GET A FULL PRINT BECAUSE THAT -- THAT WOULD BE
RECOVERING ANY AVAILABLE RIDGE STRUCTURE ON ONE'S FINGERTIPS.

Q LET ME ASK YOU: WHAT WAS THE SIZE OF THE
PRINT THAT YOU LIFTED FROM THE DOOR KNOB OF THE VAN?

A THE ONES FROM THE CARGO DOOR?

Q YES.

A ROUGHLY, UH, ROUGHLY THREE-EIGHTH OF AN INCH
BY AN INCH.

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Q I SEE.

A COUPLE OF ADDITIONAL QUESTIONS,
OFFICER. I THINK IN ONE OF YOUR REPORTS, YOU INDICATED THAT WHEN
YOU ARRIVED AT THE SCENE YOU LOOKED INSIDE THE VAN; IS THAT RIGHT?

A YES, SIR.

Q THIS WAS BEFORE ENTERING THE VAN?

A CORRECT.

Q RIGHT?

A YEAH.

Q AND I THINK YOUR REPORT REFLECTS THAT AS YOU
LOOKED IN THE VAN YOU COULD SEE PORTIONS OF THIS PERSON'S BODY
SITUATED ON THE REAR FLOOR AREA OF THE VAN; IS THAT CORRECT?

A YES, SIR.

Q AND THIS WAS VISIBLE TO YOU THROUGH THE
WINDOWS OF THE VAN?

A CORRECT.

Q SO THIS VAN DIDN'T HAVE TINTED WINDOWS THAT
MAKE IT EXTREMELY DIFFICULT FOR YOU TO LOOK INSIDE, WAS THERE,
SIR?

A NO, SIR.

Q WAS THERE LIGHTS ON INSIDE THE VAN WHEN YOU
LOOKED INSIDE?

A NO, SIR.

Q DID ANYONE ASSIST YOU WITH THE AID OF A
FLASHLIGHT OR ANYTHING IN LOOKING INSIDE THE VAN, AS YOU LOOKED
IN THERE?

A YES, SIR.

Q FROM THE OUTSIDE?

A CORRECT.

Q WAS IT DARK WHEN YOU ARRIVED ON THE SCENE?

A WELL, PRETTY MUCH SO, YEAH.

Q THE SUN HAD GONE DOWN?

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A YES, SIR.

MR. COOPER: I HAVE NO ADDITIONAL QUESTIONS OF
THE WITNESS, YOUR HONOR.

THE COURT: REDIRECT?

MR. HARMON: THANK YOU, YOUR HONOR.

• REDIRECT EXAMINATION

BY MR. HARMON:

Q OFFICER TRUSZKOWSKI, IN CONNECTION WITH YOUR
INVESTIGATION REGARDING CERTAIN LATENT PRINTS, WHICH WERE RECOV-
ERED FROM THE VAN SHOWN IN STATE'S EXHIBITS 1 THROUGH 4 AND 6,
WERE EFFORTS MADE TO ELIMINATE ANY PERSON WHO MAY HAVE HAD ACCESS
ON A DAILY BASIS TO THE VEHICLE?

A I KNOW THAT EFFORTS WERE MADE TO ELIMINATE
MR. MONAHAN'S.

Q GEORGE STEVEN MONAHAN?

A YES, SIR.

Q IN FACT, WERE SOME OF THE LATENTS RECOVERED
MATCHED TO THE PRINTS OF GEORGE STEVEN MONAHAN?

A THAT'S CORRECT.

Q COULD YOU KNOW WHETHER EFFORTS WERE MADE TO
COMPARE ANY OF THE LATENTS RECOVERED WITH THOSE OF MR. MONAHAN'S
WIFE, MARY LOU MONAHAN?

A I HAVE NO PERSONAL KNOWLEDGE OF THAT.

Q WHAT ABOUT THE STEP-DAUGHTER OF MR. MONAHAN,
THE NATURAL DAUGHTER OF GEORGE STEVEN MONAHAN, MARY CATHERINE
MONAHAN?

A I HAVE NO IDEA OF THAT.

Q DO YOU HAVE ANY KNOWLEDGE OF THE ELIMINATION
OF PRINTS PERHAPS PLACED THERE BY BARBARA ZEMAN, THE WIFE OF --

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A NO, SIR.

Q DO YOU KNOW IF ANY FRIENDS OR BUSINESS ASSOCIATES OF MR. MONAHAN HAD THEIR KNOWN PRINTS COMPARED WITH LATENTS REPORTS FROM THE VAN?

A I HAVE NO IDEA.

Q WHAT IS THE DIFFERENCE BETWEEN AN IDENTIFI-
ABLE AND UNIDENTIFIABLE LATENT PRINT?

A WELL, BRIEFLY, TO MAKE AN IDENTIFICATION OF -- OF A LATENT FINGERPRINT COMPARED TO A KNOWN EXEMPLAR YOU HAVE TO CONSIDER SEVERAL FACTORS: THAT BEING THE FLOW OF THE FINGER-
PRINT RIDGE PATTERNS, THE DIFFERENT CHARACTERISTICS. WE KNOW RESULTING CHARACTERISTICS. THESE ARE OFTEN CALLED POINTS -- PHARIN POINTS. THE NUMBER OF THESE POINTS THAT COINCIDE WITH EACH OTHER ON THE LATENT AND THE KNOWN EXEMPLAR. THE RELATION OF THESE POINTS IN SPACE, THAT IS, HOW DO THEY LOOK TO EACH OTHER WHEN YOU LOOK AT THE FINGERPRINTS THEMSELVES, ARE THEY IN THE SAME ORDER? DO THEY HAVE THE SAME SPECIAL RELATIONSHIP? AND PROBABLY JUST AS IMPORTANT IS THAT THERE MUST BE NO INCONSISTENCIES BETWEEN THE LATENT AND THE KNOWN EXEMPLAR THAT CANNOT BE EXEMPT.

Q NOW, YOU WERE ASKED, ON CROSS EXAMINATION, ABOUT SOME TYPE OF PARTIAL PRINT RECOVERED FROM THE BASE OF A TABLE INSIDE THE VAN.

A YES.

Q WAS THAT AN IDENTIFIABLE LATENT PRINT?

A I BELIEVE IT WAS IDENTIFIABLE. OFFICER CONNELL WAS, INDEED, THE ONE WHO LIFTED THAT.

Q WERE THERE ANY IDENTIFIABLE PRINTS RECOVERED FROM THE STEERING WHEEL OF THE VAN OR FROM THE GEARSHIFT?

A NO, SIR.

Q DO YOU HAVE ANY EXPLANATION FOR THAT?

A ONLY THAT IN MY EXPERIENCE IT'S AN AREA

1701

1 WHERE YOU WOULD NORMALLY FIND ALOT OF FINGERPRINTS, PROBABLY
2 BECAUSE THE OBJECTS ARE HANDLED SO EXTENSIVELY THAT ONE PRINT
3 TENDS TO OBSCURE THE NEXT.

4 Q NOW, AS I UNDERSTAND YOUR TESTIMONY, YOU
5 CANNOT SAY WHEN THE PRECISE MOMENT WAS THAT ANY OF THE PRINTS
6 WERE PLACED AT THE LOCATION WHERE LATENT PRINTS WERE DEVELOPED
7 INSIDE THE VAN OR OUTSIDE THE VAN; IS THE CORRECT?

8 A THAT'S CORRECT.

9 Q WHAT ARE SOME OF THE FACTORS THAT ARE SIG-
10 NIFICANT IN DETERMINING HOW LONG A LATENT PRINT IS GOING TO
11 REMAIN TO WHERE IT WILL DEVELOP WHEN YOU SUBJECT IT TO YOUR
12 PROCESS?

13 A ONE OF THE MOST IMPORTANT FACTORS, I BELIEVE,
14 IS WEATHER, THAT BEING THE HUMIDITY ALSO. CERTAINLY IF IT IS
15 RAINING OUTSIDE THAT WOULD TEND TO DESTROY FINDING FINGERPRINTS
16 THAT YOU WOULD FIND.

17 ALSO, FINGERPRINTS, PARTICULARLY ON THE
18 OUTSIDE OF SOMETHING LIKE A VEHICLE, TEND TO LOSE THE MOISTURE
19 THAT'S CONTAINED WITHIN THE OILS. AS TIME GOES ON, THIS MOISTURE
20 EVAPORATES. AS THIS EVAPORATION OCCURS, IT BECOMES A LITTLE BIT
21 MORE DIFFICULT TO RAISE THE FINGERPRINT WITH THE POWDER.

22 MR. HARMON: THANK YOU.

23 THAT CONCLUDES REDIRECT EXAMINATION, YOUR
24 HONOR.

25 THE COURT: RECROSS?

26 MR. COOPER: THANK YOU, YOUR HONOR.

27
28 RECROSS EXAMINATION

29
30 BY MR. COOPER:

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32 Q OFFICER TRUSZKOWSKI, HOW MANY -- HOW MANY --

1 LATENT PRINTS DID YOU LIFT FROM THE INSIDE OR THE OUTSIDE OF
2 THIS VAN?

3 A I DON'T HAVE THE EXACT NUMBER.

4 MR. HARMON: THAT'S BEEN ASKED AND ANSWERED, YOUR
5 HONOR. I THINK HE SAID EIGHT PRINTS IN OR ON THE VAN.

6 MR. COOPER: WELL, I THINK HE SAID THERE MIGHT
7 HAVE BEEN EIGHT TOTAL. I DON'T THINK THAT HE SAID HE WILL HAVE
8 HAD ALL EIGHT.

9 THE COURT: THE OBJECTION IS OVERRULED.

10

11 BY MR. COOPER:

12

13 Q COULD YOU TELL US HOW MANY YOU LIFTED,
14 OFFICER?

15 A EIGHT.

16 Q THANK YOU.

17 DO YOU KNOW IF THERE WERE OTHER PRINTS
18 LIFTED IN ADDITION TO THE EIGHT THAT YOU LIFTED?

19 A YES, SIR.

20 Q DO YOU KNOW HOW MANY AND BY WHOM?

21 A I HAVE SEVERAL CARDS THAT WERE PREPARED BY
22 SPECIALIST CONNELL.

23 Q DO YOU KNOW APPROXIMATELY HOW MANY PRINTS
24 OFFICER CONNELL LIFTED?

25 A I HAVE SEVEN CARDS.

26 Q THAT WOULD MEAN SEVEN PRINTS; IS THAT RIGHT?

27 A YES, SIR.

28 Q SO, WE'RE TALKING ABOUT IN THE NEIGHBORHOOD
29 OF 15 LATENT PRINTS OR SO THAT WERE LIFTED FROM EITHER THE INSIDE
30 OR THE OUTSIDE OF THE VAN; IS THAT RIGHT?

31 A YES, SIR.

32 Q I SEE.

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DID YOU COMPARE ALL OF THE PRINTS THAT
YOU LIFTED WITH MR. HOWARD'S EXEMPLAR CARD?

A NO, SIR.

Q ARE ALL OF THE PRINTS THAT YOU LIFTED,
IDENTIFIABLE PRINTS?

A YES, SIR.

Q UH-HUH.

WHAT ABOUT THE PRINTS THAT OFFICER
CONNELL LIFTED? ARE THOSE IDENTIFIABLE PRINTS AS WELL?

A WELL, I WOULD HESITATE TO SAY THAT UNDER
THESE CONDITIONS I WOULD PREFER TO LOOK AT THEM IN THE LAB, BUT
THEY DO INDEED APPEAR TO BE.

Q I SEE.

FROM WHAT YOU CAN OBSERVE THERE LOOKING
AT THEM ON THE STAND?

A YES.

Q I UNDERSTAND.

DO YOU KNOW IF THE PRINTS THAT WERE
LIFTED FROM THE VAN, EITHER BY YOU OR OFFICER CONNELL, IF THEY
WERE COMPARED WITH ANYONE'S EXEMPLAR CARD OTHER THAN MR. HOWARD'S?

A MR. MONAHAN'S.

Q WELL, MRS. MONAHAN AND DR. MONAHAN?

A I HAVE NO IDEA.

Q YOU DON'T KNOW THAT THEY WERE COMPARED WITH
DR. MONAHAN'S WIFE'S FINGERPRINT EXEMPLAR?

A NO, SIR.

Q IN OTHERWORDS, YOU DIDN'T GO TO DR. MONAHAN'S
WIFE AND GET AN EXEMPLAR AS YOU DID WITH MR. HOWARD, AND COMPARE
THE PRINTS TO SEE IF ANY OF THOSE PRINTS WERE HERS?

A NO, SIR. I DID NOT.

Q WHAT ABOUT HER SISTER, BARBARA ZEMAN? DID
YOU DO THAT WITH HER?

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A I DID NOT, NO.

Q DO YOU KNOW IF IT WAS, IN FACT, DONE?

A I HAVE NO KNOWLEDGE OF IT.

MR. COOPER: I SEE.

I HAVE NOTHING FURTHER OF THE WITNESS, YOUR
HONOR.

MR. HARMON: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU'RE EXCUSED, SIR.

THE WITNESS: THANK YOU, YOUR HONOR.

(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: LADIES AND GENTLEMEN, WE ARE GOING TO
BE IN RECESS UNTIL 1:30 THIS AFTERNOON.

DURING THIS RECESS, YOU ARE
ADMONISHED NOT TO CONVERSE AMONG
YOURSELVES OR WITH ANYONE ELSE ON
ANY SUBJECT CONNECTED WITH THIS
TRIAL, OR READ, WATCH OR LISTEN
TO ANY REPORT OF OR COMMENTARY

ON THIS TRIAL WITH ANY PERSON
CONNECTED WITH THIS TRIAL BY ANY
MEDIUM OF INFORMATION, INCLUDING
WITHOUT LIMITATION, NEWSPAPER,
TELEVISION OR RADIO OR FORM OR
EXPRESS ANY OPINION ON ANY
SUBJECT CONNECTED WITH THIS
TRIAL UNTIL THE CASE IS FINALLY
SUBMITTED TO YOU.

WE'LL BE IN RECESS UNTIL 1:30 THIS
AFTERNOON.

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1705

1 LAS VEGAS, NEVADA, MONDAY, APRIL 18, 1983, AT 2:00 P.M.

2 * * * * *

3 (WHEREUPON, FROM 11:55 A.M.

4 UNTIL 2:00 P.M., THE NOON RECESS

5 WAS HAD IN THE PROCEEDINGS, AT

6 THE CONCLUSION OF WHICH THE

7 FOLLOWING WAS HAD:)

8 THE COURT: COUNSEL, STIPULATE TO THE PRESENCE OF

9 THE JURY?

10 MR. HARMON: THE STATE DOES, YOUR HONOR.

11 MR. FRANZEN: YES, YOUR HONOR.

12 THE COURT: CALL YOUR NEXT WITNESS.

13 MR. HARMON: SHELDON GREEN.

14 THE COURT: COME FORWARD, DR. GREEN.

15 THE CLERK: RAISE YOUR RIGHT HAND.

16

17 WHEREUPON,

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19 SHELDON GREEN,

20

21 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,

22 EXAMINED AND TESTIFIED AS FOLLOWS:

23

24 THE COURT: PROCEED.

25

26 DIRECT EXAMINATION

27

28 BY MR. HARMON:

29

30 Q STATE YOUR NAME, PLEASE.

31 A GILES SHELDON GREEN, G-R-E-E-N.

32 Q IS IT DR. GILES SHELDON GREEN?

1706

1 A THAT'S CORRECT.
2 Q DR. GREEN, WHAT IS YOUR BUSINESS OR PROFES-
3 SION?

4 A I'M A PHYSICIAN. MY SPECIALTY IS FORENSIC
5 PATHOLOGY.

6 Q WHAT IS FORENSIC PATHOLOGY?

7 A FORENSIC PATHOLOGY IS A SUB-SPECIALTY IN
8 THE GENERAL FIELD OF PATHOLOGY, WHICH, OF COURSE, IS ONE OF THE
9 MANY SPECIALTIES IN THE WHOLE FIELD OF MEDICINE.

10 FORENSIC PATHOLOGY DEALS WITH THE IN-
11 VESTIGATION OF SUDDEN, UNEXPECTED AND VIOLENT DEATH. THE RESPON-
12 SIBILITY OF THE FORENSIC PATHOLOGIST, WHO IS GENERALLY A MEDICAL
13 EXAMINER OR CORONER, BY WHATEVER TITLE HE'S CALLED, IS TO INVES-
14 TIGATE THE DEATHS IN HIS AREA OF JURISDICTION IN WHICH THERE IS
15 NO PHYSICIAN IN ATTENDANCE; FOR EXAMPLE, SOMEONE DIES ON THE
16 STREET OR AT HOME, ELSEWHERE, OUTSIDE A HOSPITAL; AND TO INVESTI-
17 GATE, OH, VIOLENT DEATHS, WHETHER THEY BE ACCIDENTAL, SUICIDAL,
18 OR HOMICIDAL.

19 Q DR. GREEN, WHAT TYPE OF FORMAL TRAINING DO
20 YOU HAVE IN YOUR SPECIAL FIELD OF FORENSIC PATHOLOGY?

21 A I ATTENDED THE UNIVERSITY OF OREGON MEDICAL
22 SCHOOL IN PORTLAND, AND RECEIVED MY DEGREE OF DOCTOR OF MEDICINE
23 IN 1959.

24 I SERVED ONE YEAR OF INTERNSHIP AT ST.
25 MARY'S HOSPITAL IN SAN FRANCISCO. AND THEN ONE YEAR OF POST
26 GRADUATE OR RESIDENCY TRAINING IN THE FIELD OF OBSTETRICS AND
27 GYNECOLOGY, THAT ALSO WAS AT ST. MARY'S.

28 I THEN SPENT THE NEXT TWO YEARS IN
29 RESIDENCY TRAINING IN THE FIELD OF PATHOLOGY AT ST. JOSEPH'S
30 HOSPITAL IN SAN FRANCISCO.

31 IN 1963 I MOVED TO HOUSTON, TEXAS, AND
32 SPENT THE NEXT THREE YEARS IN POST GRADUATE TRAINING IN PATHOLOGY

1707

1 AT THE UNIVERSITY OF TEXAS, AND ANDERSON HOSPITAL AND TUMOR
2 INSTITUTE.

3 FOLLOWING THAT, I WAS APPOINTED TO THE
4 STAFF OF ANDERSON HOSPITAL AS ASSISTANT PATHOLOGIST AND ASSISTANT
5 PROFESSOR OF PATHOLOGY IN THE UNIVERSITY OF TEXAS SYSTEM.

6 I REMAINED ON THE STAFF THERE FOR A
7 LITTLE OVER TWO YEARS. IN SEPTEMBER OF 1968, I JOINED THE HARRIS
8 COUNTY MEDICAL EXAMINER'S DEPARTMENT IN HOUSTON. I SERVED WITH
9 THAT DEPARTMENT FOR APPROXIMATELY SEVEN YEARS, FIRST AS AN
10 ASSISTANT MEDICAL EXAMINER AND LATER AS DEPUTY CHIEF MEDICAL
11 EXAMINER.

12 IN 1975 I MOVED HERE TO LAS VEGAS TO
13 JOIN THE CORONER MEDICAL EXAMINER DEPARTMENT HERE AS CHIEF MEDICAL
14 EXAMINER.

15 I AM LICENSED TO PRACTICE MEDICINE HERE
16 IN NEVADA, OF COURSE. I MAINTAIN MY LICENSES IN TEXAS AND CALI-
17 FORNIA.

18 I AM CERTIFIED BY THE AMERICAN BOARD OF
19 PATHOLOGY IN THE FIELDS OF ANATOMIC PATHOLOGY, CLINICAL PATHOLOGY,
20 AND FORENSIC PATHOLOGY. AND I AM A MEMBER OF MOST OF THE PROFES-
21 SIONAL ORGANIZATIONS WHICH DEAL IN ONE WAY OR ANOTHER WITH THE
22 PROBLEMS OF FORENSIC PATHOLOGY.

23 Q DR. GREEN, HAVE YOU BEEN THE CHIEF MEDICAL
24 EXAMINER IN CLARK COUNTY, STATE OF NEVADA, SINCE 1975?

25 A YES, SIR.

26 Q DURING THE PERIOD OF TIME THAT YOU SERVED
27 AS A MEDICAL EXAMINER, BOTH IN HARRIS COUNTY, TEXAS, AND IN CLARK
28 COUNTY, STATE OF NEVADA, HAVE YOU PERFORMED A LARGE NUMBER OF
29 AUTOPSY EXAMINATIONS?

30 A YES, I HAVE.

31 Q CAN YOU ESTIMATE ABOUT HOW MANY, SIR?

32 A WELL, AS A ROUGH ESTIMATE, AND I HOPE IT

1708

1 SHOULD BE, PROBABLY AROUND NINE THOUSAND.

2 Q AND HAVE A SUBSTANTIAL NUMBER OF THOSE DEALT
3 WITH GUNSHOT WOUNDS?

4 A YES.

5 Q WHAT IS AN AUTOPSY EXAMINATION?

6 A AN AUTOPSY IS AN EXAMINATION OF A DECEASED
7 HUMAN BODY. IT IS PERFORMED FOR THE PURPOSE OF DETERMINING THE
8 CAUSE OF DEATH, AND ALSO FOR THE PURPOSE OF DETERMINING THE
9 GENERAL STATE OF HEALTH OF THE INDIVIDUAL PRIOR TO HIS OR HER
10 DEATH.

11 WE'RE NOT ONLY INTERESTED IN THE IMMEDI-
12 ATE THING, WHATEVER IT WAS, THAT DESTROYED THIS PERSON'S LIFE,
13 BUT ALSO IN ANY OTHER DISEASE OR INJURY OR PROCESS OF ANY KIND,
14 WHICH MIGHT IN SOME FASHION, CONTRIBUTE TO DEATH OR PERHAPS IS
15 SIMPLY THERE AND HAS NOTHING WHATEVER TO DO WITH THE PERSON'S
16 DEATH.

17 SO, WE'RE LOOKING AT NOT ONLY THE IMMEDI-
18 ATE CAUSE BUT THE TOTAL STATE OF HEALTH OF THE INDIVIDUAL IN
19 QUESTION.

20 Q DR. GREEN, HAVE YOU HAD OCCASION, DURING
21 YOUR CAREER, TO QUALIFY AS AN EXPERT IN COURTS OF LAW?

22 A YES.

23 Q IN YOUR SPECIALTY AS A DOCTOR OF MEDICINE
24 AND FORENSIC PATHOLOGY?

25 A YES.

26 Q CAN YOU ESTIMATE ABOUT HOW MANY TIMES YOU
27 HAVE QUALIFIED AS AN EXPERT IN YOUR SPECIAL FIELD AND IN WHAT
28 JURISDICTIONS?

29 A AGAIN, I HAVE NO SOLID SET OF NUMBERS. I'VE
30 BEEN QUALIFIED AS AN EXPERT IN THIS AREA MANY HUNDREDS OF TIMES
31 IN THE DISTRICT COURTS OF TEXAS, PARTICULARLY IN HARRIS COUNTY.
32 I'VE BEEN QUALIFIED IN A NUMBER OF SURROUNDING COUNTIES IN SOUTH

1 TEXAS. I'VE BEEN QUALIFIED HERE IN CLARK COUNTY IN THE JUSTICE
2 COURTS, BEFORE THE GRAND JURY, BEFORE THE DISTRICT COURTS. I'VE
3 TESTIFIED IN OTHER JURISDICTIONS HERE IN NEVADA; NYE COUNTY,
4 LINCOLN COUNTY, WHITE PINE COUNTY. I'VE TESTIFIED IN -- HAVE
5 BEEN ACCEPTED AS AN EXPERT IN ONE CASE IN UTAH, A COUPLE OF CASES
6 IN ARIZONA AND ALSO BEFORE THE FEDERAL DISTRICT COURT OF ARIZONA.

7 Q DR. GREEN, DIRECTING YOUR ATTENTION TO
8 MARCH 28, 1980, DID YOU PERFORM AN AUTOPSY EXAMINATION ON THAT
9 DATE?

10 A YES, I DID.

11 Q WHERE WAS THE EXAMINATION PERFORMED AND WILL
12 YOU DESCRIBE THE INDIVIDUAL UPON WHOM IT WAS PERFORMED?

13 A THE EXAMINATION WAS PERFORMED IN THE CLARK
14 COUNTY CORONER MEDICAL EXAMINER FACILITY. THIS IS LOCATED AT
15 1704 PINTO LANE, HERE IN LAS VEGAS.

16 WHAT WAS THE SECOND -- THE EXTERNAL --

17 Q YES. WILL YOU DESCRIBE THE INDIVIDUAL UPON
18 WHOM THE EXAMINATION WAS PERFORMED?

19 A THANK YOU.

20 THIS WAS AN ADULT WHITE MALE. HIS AGE
21 HAD BEEN REPORTED TO US AS 39. HIS GENERAL APPEARANCE WAS
22 ENTIRELY CONSISTENT WITH THAT AGE.

23 THE BODY WAS APPROXIMATELY SIX FEET
24 THREE TALL, WEIGHED 189 OR 190 POUNDS.

25 Q DO YOU RECALL THE PERSONS WHO WERE PRESENT
26 DURING YOUR EXAMINATION ON MARCH 28, 1980?

27 A IN ADDITION TO THE PERSONNEL OF OUR OWN
28 DEPARTMENT, OUR OWN DEPARTMENT; DETECTIVE GOOD, FROM THE HOMICIDE
29 DETAIL OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT WAS THERE;
30 AND OFFICER MOSER, FROM THE CRIMINALISTICS BUREAU, ALSO FROM THE
31 LAS VEGAS METROPOLITAN POLICE DEPARTMENT, WAS THERE. BOTH OF
32 THESE OFFICERS WERE THERE THE ENTIRE TIME OF THE EXAMINATION.

1710

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

THE COURT: YOU MAY.

BY MR. HARMON:

Q DR. GREEN, I AM SHOWING YOU NOW PROPOSED EXHIBITS 17 THROUGH 21. I WOULD LIKE YOU TO LOOK AT ALL THE PICTURES. AND AFTER YOU'VE DONE SO, WILL YOU STATE WHETHER THESE ARE PHOTOGRAPHS OF THE PERSON UPON WHOM YOU PERFORMED YOUR AUTOPSY EXAMINATION ON MARCH 28, 1980?

A YES, SIR, THEY ARE.

Q DO THESE PHOTOGRAPHS TRULY AND ACCURATELY SHOW THE APPEARANCE AND CONDITION OF THIS INDIVIDUAL AT THE TIME OF YOUR EXAMINATION?

A YES, SIR, THEY DO.

MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER PROPOSED EXHIBITS 17 THROUGH 21.

MR. FRANZEN: YOUR HONOR, WE WOULD OBJECT TO SOME OF THESE BEING DUPLICATES. WE OBJECT BEING UNNECESSARILY INFLAMMATORY.

WE HAVE NO OBJECTION TO 21 AND 20. AND ANY ONE OF THE THREE --

THE COURT: ALL RIGHT. THOSE ARE THE OTHER ONES YOU OBJECT TO AT THIS TIME?

MR. FRANZEN: YES, YOUR HONOR. WE THINK WOULD BE APPROPRIATE, RATHER THAN ALL THREE.

THE COURT: COUNSEL.

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

THE COURT: ALL RIGHT.

EXHIBIT 20 AND 21 ARE ADMITTED.

1711

1 MR. HARMON: YOUR HONOR, AS TO PROPOSED 17, THIS
2 IS THE PHOTO WE'VE BEEN USING FOR IDENTIFICATION PURPOSES. THIS
3 IS THE ONE THAT WE WOULD ELECT TO REOFFER OUT OF PROPOSED 17, 18
4 AND 19. WE WITHDRAW THE OFFER AS TO 18 AND 19.

5 THE COURT: ALL RIGHT.

6 EXHIBIT 17 IS ADMITTED.

7 MR. HARMON: THANK YOU.

8
9 BY MR. HARMON:

10
11 Q DR. GREEN, I AM SHOWING YOU NOW STATE'S
12 EXHIBITS 17 THROUGH 20 AND 21. DID YOU, ON MARCH THE 28TH, 1980,
13 PERFORM AN EXTERNAL EXAMINATION UPON THE PERSON DEPICTED IN THOSE
14 PHOTOGRAPHS?

15 A YES, I DID.

16 Q WILL YOU STATE YOUR SIGNIFICANT FINDINGS AS
17 A RESULT OF THE EXTERNAL EXAMINATION.

18 A THE SIGNIFICANT EXTERNAL FINDINGS CONSISTED
19 OF A GUNSHOT WOUND OF THE HEAD. THE WOUND OF ENTRY, WHICH IS
20 WELL SHOWN IN YOUR EXHIBIT 20, WAS IN THE LEFT SIDE OF THE BACK.
21 OF THE HEAD, OH, JUST APPROXIMATELY WHERE I AM POINTING WITH MY
22 FINGER RIGHT NOW (INDICATING), THREE AND THREE-QUARTERS INCHES
23 BEHIND THE LEFT EAR CANAL AND ABOUT AN INCH ABOVE THAT POINT.
24 SO IT'S SOMEWHERE RIGHT ABOUT HERE (INDICATING).

25 THERE WAS A WOUND OF EXIT ON THE RIGHT
26 SIDE OF THE HEAD, WHICH IS SHOWN IN NUMBER 22. THIS WAS ABOVE
27 THE RIGHT EAR ABOUT THREE INCHES ABOVE THE EAR CANAL AND ABOUT
28 AN INCH BEHIND THAT POINT. SO IT'S ROUGHLY SOMEWHERE ABOUT WHERE
29 I'M POINTING WITH MY RIGHT HAND RIGHT NOW (INDICATING).

30 THE WOUNDS OF THE LEFT SIDE OF THE BACK
31 OF THE HEAD HAD ALL OF THE CHARACTERISTIC CONFIGURATIONS OF A
32 BULLET WOUND OF ENRTY. THE EDGES WERE ROLLED IN, ABRADED OR.

1712

OR SCRAPED AND TOTALLY BLACKENED.

THE WOUND OF EXIT HAD A RATHER RAGGED-
APPEARING CONFIGURATION WITH THE VETS OF TISSUE PUSHED OUTWARD.

OTHER THAN THIS, WE FOUND NOTHING OF ANY
SIGNIFICANCE EXTERNALLY.

Q DID YOU EXAMINE THE ENTIRE BODY EXTERNALLY?

A YES, WE DID.

Q DR. GREEN, DID YOU ALSO PERFORM AN INTERNAL
EXAMINATION UPON THE PERSON DEPICTED IN STATE'S EXHIBITS 17, 20
AND 21?

A YES, SIR.

Q HOW EXTENSIVE WAS THAT EXAMINATION AND WHAT
WERE YOUR SIGNIFICANT FINDINGS?

A THE INTERNAL EXAMINATION CONSISTS, FIRST,
OF OPENING THE BODY AND LOOKING AT ALL OF THE VARIOUS ORGANS OF
THE CHEST AND ABDOMEN AS THEY LIE TOGETHER IN THEIR NORMAL RELA-
TIONSHIPS, IF YOU'RE LOOKING FOR ANYTHING THAT IS OUT OF ORDINARY
WHETHER IT'S AN ACCUMULATION OF FLUID OR EVIDENCE OF INJURY OR
ADHESION OR WHATEVER.

THE SAME PRINCIPLE APPLIES TO THE HEAD.
ONCE YOU HAVE EXAMINED THE VARIOUS ORGANS AND THEIR NORMAL RELA-
TIONSHIPS, THEN THEY'RE REMOVED AND EXAMINED INDIVIDUALLY, AGAIN
LOOKING FOR ANYTHING THAT IS OUT OF ORDINARY, EVIDENCE OF DISEASE
OR INJURY.

THE PRIMARY FINDINGS WERE IN THE HEAD,
RELATING TO THE GUNSHOT WOUNDS. THE ONLY OTHER FINDINGS OF ANY
SIGNIFICANCE WHATSOEVER WAS EVIDENCE OF SOME HARDENING OF THE
ARTERIES ABOUT THE HEART, THAT IS THE CORONARY ARTERIES OF THE
THREE MAJOR ENTRIES. ONE SHOT SOME EVIDENCE OF ARTERIAL SCLER-
OTIC CHANGE, OR SO-CALLED HARDENING OF THE ARTERIES. THAT'S A
MORE COMMON TERM. THIS WAS NOT ENOUGH TO BE EXPECTED TO CAUSE
HIM ANY TROUBLE AT THAT POINT IN TIME.

1713

1 IN THE HEAD WE FOUND THAT THE BULLET
2 HAD ENTERED, AS I HAVE INDICATED, ON THE LEFT SIDE OF THE BACK
3 OF THE HEAD, GONE THROUGH THE BRAIN, EXITED ABOVE THE RIGHT EAR.
4 THERE WERE A NUMBER OF FRACTURE LINES IN THE SKULL, PARTICULARLY
5 ASSOCIATED WITH THE WOUND OF EXIT. THERE WAS SOME HEMORRHAGE,
6 BOTH AT THE SITE OF ENTRY AND THE EXIT IN THE SCALP TISSUES, AND
7 THERE WAS A SMALL AMOUNT OF HEMORRHAGE INSIDE THE SKULL AROUND
8 THE BRAIN, AS WELL AS WITHIN THE WOUND TRACT.

9 Q DR. GREEN, WERE YOU ABLE TO DETERMINE THE
10 PATH OF THE BULLET THROUGH THE HEAD?

11 A YES, SIR.

12 Q WILL YOU STATE YOUR FINDINGS, PLEASE?

13 A THE BULLET WENT FROM LEFT TO RIGHT, FROM
14 BACKWARDS FRONT, AT ROUGHLY A 45-DEGREE ANGLE BETWEEN THOSE TWO
15 PLANES.

16 Q FROM BACK TO FRONT?

17 A FROM BACK TO FRONT, AND ALSO SLIGHTLY UP-
18 WARDS. I THINK I MENTIONED THAT IT WAS -- IT STARTED ABOUT AN
19 INCH ABOVE THE RIGHT -- LEFT EAR CANAL AND CAME OUT ABOUT THREE
20 INCHES ABOVE THE RIGHT EAR CANAL, GIVING IT AN UPWARD DIRECTION
21 OF PERHAPS 10 TO 15 DEGREES ABOVE A HORIZONTAL PLANE.

22 Q IN REGARD TO THE ANGLE, WOULD REFERENCE TO
23 YOUR AUTOPSY REPORT REFRESH YOUR MEMORY AS TO THE EXACT ESTIMATE
24 ON THAT ANGLE? I THINK YOU INDICATED ABOUT 10 TO 15. COULD IT
25 HAVE BEEN 5 TO 10 DEGREES?

26 A THAT'S ENTIRELY POSSIBLE, YES, SIR.

27 IF I MAY, I'LL TAKE A LOOK. I MAY HAVE
28 BEEN OFF A LITTLE THERE.

29 Q THAT WILL ASSIST YOU IN REFRESHING YOUR
30 MEMORY, DOCTOR?

31 A YES, SIR.

32 YOU ARE CORRECT. I HAD ORIGINALLY

1714

1 ESTIMATED IT BETWEEN 5 AND 10 DEGREES. I'M SORRY.

2 Q SO THE PATH OF THE BULLET WAS SLIGHTLY UP-
3 WARD AT PERHAPS A 5 TO 10 DEGREE ANGLE?

4 A YES.

5 Q DR. GREEN, AS A RESULT OF BOTH YOUR INTERNAL
6 AND EXTERNAL EXAMINATIONS OF THE PERSON SHOWN IN STATE'S EXHIBIT
7 17, 20, AND 21, DID YOU FORM AN OPINION REGARDING THE CAUSE OF
8 DEATH?

9 A YES.

10 Q WHAT IS YOUR OPINION?

11 A DEATH WAS A RESULT OF A GUNSHOT WOUND TO THE
12 HEAD.

13 Q DO YOU HAVE AN OPINION AS TO WHETHER DEATH
14 OCCURRED BECAUSE OF ANY DISEASE PROCESS OR ANY NATURAL REASON?

15 A THERE IS NO NATURAL DISEASE PROCESS WHICH
16 WOULD BE EXPECTED TO TAKE HIS LIFE AT THAT POINT IN TIME.

17 Q DO YOU HAVE AN OPINION AS TO WHETHER DEATH
18 WAS -- THE GUNSHOT WOUND WAS SELF-INFLICTED?

19 A I DO.

20 Q WHAT IS YOUR OPINION?

21 A MY OPINION IS THAT IT WAS NOT.

22 Q WHAT IS THE BASIS OF THAT OPINION?

23 A THE REASON THAT I SAY THAT IS THAT SELF-
24 INFLECTED GUNSHOT WOUNDS CHARACTERISTICALLY ARE INFLECTED WITH
25 THE WEAPON ACTUALLY IN PHYSICAL CONTACT WITH SOME PORTION OF THE
26 BODY, WHETHER IT'S THE HEAD OR THE CHEST. THERE IS NO EVIDENCE
27 WHATSOEVER OF A CONTACT OR EVEN A CLOSE-RANGE WOUND IN THIS CASE.

28 Q DO YOU HAVE AN OPINION AS TO WHETHER DEATH
29 WAS ACCIDENTAL?

30 A I DO. IT'S BASED IN PART AT LEAST ON HEAR-
31 SAY EVIDENCE.

32 Q WHAT IS YOUR OPINION?

1715

1 A IT'S MY OPINION IT WAS NOT ACCIDENTAL.

2 Q IS THAT BASED IN PART BECAUSE OF THE POSI-
3 TION OF THE WOUND OF ENTRY?

4 A THE POSITION OF THE WOUND OF ENRTY IS
5 CERTAINLY NOT CONSISTENT IN ANY SENSE WITH A SELF-INFLICTED WOUND.
6 OBVIOUSLY THERE CAN BE SUCH A THING AS AN ACCIDENTAL DISCHARGE OF
7 THE FIREARM. IT'S UNUSUAL, BUT IT HAPPENS.

8 Q DOCTOR, IN CONNECTION WITH THE PERSON SHOWN
9 IN STATE'S EXHIBITS 17, 20, AND 21, DID YOU FORM AN OPINION AS
10 TO THE APPROXIMATE TIME OF DEATH?

11 A I DON'T RECALL THAT THE QUESTION AROSE. THE
12 INDIVIDUAL, WHEN I SAW HIM, AS BEST I RECALL NOW, WAS IN FULL
13 RIGOR MORTIS. I REALLY DON'T RECALL THAT THAT QUESTION AROSE
14 PARTICULARLY AT THE TIME OF THE EXAMINATION.

15 Q YOU SAY THAT THE PERSON WAS IN A STATE OF
16 FULL RIGOR MORTIS. WHAT IS THE SIGNIFICANCE OF THAT?

17 A WELL, RIGOR, OF COURSE, IS THE STIFFENING
18 OF THE MUSCLES WHICH OCCURS SLOWLY AND PROGRESSIVELY AFTER DEATH.

19 WHEN WE FIND A BODY FULLY IN RIGOR, IT
20 CLEARLY HAS BEEN DEAD PROBABLY FOR AT LEAST EIGHT TO TEN HOURS.

21 THE CONDITION REMAINS ESSENTIALLY UN-
22 CHANGED FOR APPROXIMATELY 24 HOURS, DEPENDING UPON ENVIORNMENTAL
23 TEMPERATURE. IF THE DEATH OCCURS IN A VERY COLD AREA OR IF THE
24 BODY IS REFRIGERATED, THE RIGOR MORTIS WILL REMAIN FOR A CONSIDER-
25 ABLE LONGER PERIOD OF TIME.

26 Q CONSIDERABLE LONGER THAN 24 HOURS?

27 A YES.

28 Q WHAT TIME DID YOU PERFORM YOUR AUTOPSY EXAM-
29 INATION ON MARCH 28, 1980?

30 A APPROXIMATELY 1:00 P.M.

31 Q DO YOU HAVE AN OPINION, GIVEN THE LOCATION
32 OF THE GUNSHOT WOUND OF ENTRY AND WHERE YOU OBSERVED THE PATH OF

1716

1 THE BULLET TO BE, AS TO HOW SOON THERE WOULD HAVE BEEN A LOSS OF
2 CONSCIOUSNESS?

3 A LOSS OF CONSCIOUSNESS WOULD BE INSTANTANEOUS.

4 Q IN YOUR OPINION WAS THIS A DEATH WHICH OCCUR-
5 RED AS A RESULT OF A CRIMINAL AGENCY?

6 A I BELIEVE IT WAS.

7 Q DID YOU OBSERVE ANY EVIDENCE OF POWDER BURN
8 IN THE AREA OF THE ENTRY WOUND?

9 A NO, SIR.

10 Q DID YOU LOOK FOR EVIDENCE OF POWDER BURN?

11 A YES.

12 Q DO YOU ATTACH ANY SIGNIFICANCE TO YOUR FAIL-
13 URE TO FIND ANY EVIDENCE OF POWDER BURN?

14 A THE ONLY SIGNIFICANCE WHICH THAT HAS IS TO
15 INDICATE THAT THE WEAPON WAS AT LEAST FAR ENOUGH AWAY FROM HIS
16 HEAD THAT POWDER -- BURNING POWDER PARTICLES WOULD NOT REACH IT.

17 Q DO YOU HAVE A MINIMUM DISTANCE THEN IN VIEW
18 OF YOUR FAILURE TO FIND EVIDENCE OF POWDER BURN?

19 A WELL, YES. WE DON'T KNOW BY EXPERIENCE, AND
20 ALOT OF EXPERIMENTAL WORK THAT'S GONE INTO THIS AS WELL, THAT AN
21 AVERAGE PISTOL, ALMOST REGARDLESS OF ITS CALIBER, WILL THROW
22 POWDER PARTICLES AND LEAVE POWDER MARKS ON THE SKIN OUT TO ABOUT
23 TWO FEET. NOW, SOME MAY BE A LITTLE LESS, SOME MAY BE A LITTLE
24 MORE, SOME MAY GO PERHAPS OUT TO THREE FEET; BUT TWO FEET JUST IS
25 A GENERAL RULE, IS A REASONABLE FINDING.

26 Q SO YOU'RE INDICATING THEN FROM ABOUT TWO
27 FEET OUT?

28 A AT LEAST THAT, YES.

29 Q IN YOUR OPINION, THE WEAPON WHICH CAUSED THE
30 GUNSHOT WOUND, YOU OBSERVED IN STATE'S EXHIBITS 17, 20, AND 21,
31 WOULD NOT HAVE BEEN CLOSER THAN TWO FEET; IS THAT CORRECT?

32 A THAT'S CORRECT.

1717

1 MR. HARMON: COURT'S INDULGENCE, PLEASE.

2 THAT CONCLUDES DIRECT EXAMINATION.

3 THE COURT: CROSS.

4 MR. COOPER: THANK YOU, YOUR HONOR.

5
6 CROSS EXAMINATION

7
8 BY MR. COOPER:

9
10 Q DR. GREEN, WHEN YOU STATE THAT YOUR OPINION
11 IS THAT THE GUNSHOT WOUND TO THE INDIVIDUAL YOU EXAMINED WAS A
12 RESULT OF SOME CRIMINAL AGENCY, AM I CORRECT -- CORRECT IN SAYING
13 THAT THAT'S BASED ON WHAT YOU KNOW ABOUT THIS CASE AND HAVING
14 TALKED TO THE POLICE OFFICERS, THAT SORT OF THING?

15 A LARGELY, YES.

16 Q SO I MEAN IT'S CONCEIVABLE THAT THE GUN COULD
17 HAVE BEEN ACCIDENTALLY DISCHARGED AS FAR AS YOU KNOW?

18 A THAT IS ENTIRELY A POSSIBILITY, YES.

19 Q I SEE.

20 NOW, YOU EXAMINED -- PERFORMED YOUR
21 AUTOPSY ON THE 28TH OF MARCH OF 1980; IS THAT CORRECT?

22 A YES, SIR.

23 Q AT ABOUT 1:00 P.M.; IS THAT RIGHT?

24 A YES, SIR.

25 Q WAS THAT THE FIRST TIME YOU HAD HAD OCCASION
26 TO EXAMINE THE BODY?

27 A YES. THAT -- THIS WAS WHEN I FIRST SAW IT
28 EARLY ON THE AFTERNOON OF THE 20TH.

29 Q I SEE.

30 AND YOU INDICATED THAT AT THE TIME OF
31 YOUR EXAMINATION YOU HAD NOTICED THAT FULL RIGOR MORTIS HAD SET
32 IN?

1718

1 A THAT'S CORRECT.

2 Q AND IT'S YOUR TESTIMONY THAT BASED ON THAT
3 FACT THAT YOU CONCLUDED THAT DEATH WOULD HAVE BEEN AT LEAST
4 EIGHT TO TEN HOURS EARLIER; IS THAT RIGHT?

5 A YES.

6 Q AND THAT THERE ARE A NUMBER OF CONDITIONS
7 THAT AFFECT WHETHER FULL RIGOR MORTIS SETS IN OR NOT, DEPENDING
8 ON THE WEATHER, THE CLIMATE, TEMPERATURE, THAT SORT OF THING; IS
9 THAT RIGHT?

10 A YES. THE PROCESS IS QUITE TEMPERATURE
11 DEPENDENT. MUCH MORE RAPID THAN A HOT -- IN HOT SURROUNDINGS
12 AND IT LEAVES EARLIER IN HOT THAN IT DOES IN COLD.

13 Q NOW, YOU TESTIFIED THAT THERE WERE NO
14 POWDER BURNS AT THE ENTRY WOUND; IS THAT RIGHT?

15 A YES.

16 Q AND JUST FOR POINT OF CLARIFICATION, YOU SAY
17 THAT BASED ON YOUR EXPERIENCE, YOU WOULD HAVE TO CONCLUDE THAT
18 THE GUN THAT FIRED THIS SHOT, THE FATAL SHOT, WOULD HAVE BEEN
19 FIRED FROM A DISTANCE OF AT LEAST TWO FEET; IS THAT RIGHT?

20 A YES. I SAID THAT IS AN AVERAGE FIGURE. IT
21 DOES NOT PRECLUDE THERE BEING A WEAPON, WHICH WOULD ONLY SHOOT
22 POWDER SAY FOR 20 INCHES.

23 Q I SEE.

24 A BUT AS AN AVERAGE, IT'S A GOOD WORKING FIGURE.

25 Q ARE YOU ABLE TO TELL, BASED ON YOUR EXAMI-
26 NATION, ARE YOU ABLE TO OFFER AN OPINION AS TO IN WHAT POSITION
27 THE DECEASED WOULD HAVE BEEN AT THE TIME THE FATAL SHOT WAS FIRED?

28 A NO, SIR. THERE IS NO WAY THAT I CAN HELP
29 YOU ON THAT ONE.

30 Q SO THEN YOU COULDN'T SAY WHETHER HE WAS
31 STANDING, SITTING, KNEELING, OR WHAT HIS POSITION WAS?

32 A NO, SIR. THE -- THE HEAD OBVIOUSLY IS AN

1719

1 EXTREMELY MOBILE PART OF OUR BODY; WE CAN TURN IT, WE CAN LIFT
2 IT, WE CAN PUSH IT DOWN. THERE IS NO WAY OF TELLING AT AUTOPSY
3 WHAT POSITION THE HEAD WAS IN OR WHAT POSITION THE BODY WAS IN.

4 MR. COOPER: I SEE.

5 MAY I HAVE THE COURT'S INDULGENCE.

6 DR. GREEN, LET ME ASK YOU -- I HAVE NO
7 FURTHER QUESTIONS OF DR. GREEN, YOUR HONOR.

8 THE COURT: THE STATE?

9 MR. HARMON: THANK YOU, YOUR HONOR.

10
11 REDIRECT EXAMINATION

12
13 BY MR. HARMON:

14
15 Q DR. GREEN, AT THE TIME OF YOUR AUTOPSY EXAM-
16 INATION, DID YOU RECOVER ANY TYPE OF BULLET OR PROJECTILE?

17 A NO, SIR.

18 Q DID THE WOUND APPARENTLY -- THE BULLET
19 APPARENTLY WENT COMPLETELY THROUGH THE HEAD; IS THAT CORRECT?

20 A YES, SIR. I WAS NOT ABLE TO IDENTIFY ANY
21 PART OF IT IN THE BODY.

22 MR. HARMON: THANK YOU.

23 THAT'S ALL.

24 MR. COOPER: I HAVE NOTHING FURTHER.

25 THE COURT: YOU'RE EXCUSED.

26 THE WITNESS: THANK YOU, YOUR HONOR.

27 (WHEREUPON, THE WITNESS WAS
28 EXCUSED.)

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

31 THE COURT: YOU MAY.

32 ..

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

4 THE COURT: AT THIS TIME, COUNSEL, YOUR REQUEST
5 TO SHOW THE ADMITTED PHOTOGRAPHS TO THE JURY IS GRANTED, YOU
6 MAY PASS THOSE TO THE JURORS, IF YOU WILL.

7 MR. HARMON: THANK YOU, YOUR HONOR.

8 (WHEREUPON, THE PHOTOGRAPHS WERE
9 EXHIBITED TO THE JURY.)

10 MR. HARMON: MAY WE BE AT EASE, YOUR HONOR?

11 THE COURT: YES.

12 AS YOU VIEW THEM, WOULD YOU PASS THEM ON TO
13 THE NEXT JUROR.

14 COUNSEL, IT'S YOUR REQUEST NOW THAT WE
15 HAVE A MATTER OUTSIDE OF THE PRESENCE OF THE JURY; IS THAT
16 CORRECT?

17 MR. HARMON: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 LADIES AND GENTLEMEN OF THE JURY,

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

32 WE WILL BE IN RECESS SUBJECT TO CALL.

1721

1 BE BACK AROUND THE COURTROOM PROBABLY IN ABOUT -- HOW MANY
2 WITNESSES DO YOU HAVE? JUST ONE?

3 MR. HARMON: WE HAVE TWO, YOUR HONOR.

4 THE COURT: TWO. PROBABLY ABOUT 3:20 OR THERE-
5 ABOUTS.

6 WE WILL BE IN RECESS FOR FIFTEEN MINUTES,
7 AND THEN WE WILL COME BACK. HAVE YOUR WITNESS IN HERE AT THAT
8 TIME.

9 (WHEREUPON, FROM 2:45 P.M. UNTIL
10 3:00 P.M., A RECESS WAS HAD IN
11 THE PROCEEDINGS, AT THE CONCLU-
12 SION OF WHICH THE FOLLOWING WAS
13 HAD OUTSIDE THE PRESENCE OF THE
14 JURY:)

15 THE COURT: PROCEED, COUNSEL. DID YOU HAVE --

16 MR. FRANZEN: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 PROCEED. CALL YOUR NEXT WITNESS.

19 MR. SEATON: BOB SMITH, PLEASE.

20 THE CLERK: RAISE YOUR RIGHT HAND.

21
22 WHEREUPON,

23
24 ROBERT SMITH,

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

28
29 THE COURT: PROCEED.

30 ..
31 ..
32 ..

DIRECT EXAMINATION

BY MR. SEATON:

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

A MY NAME IS ROBERT SMITH.

I'M SORRY. WHAT WAS THE OTHER QUESTION?

Q SPELL YOUR LAST NAME, PLEASE.

A SMITH, S-M-I-T-H.

Q AND, MR. SMITH, HOW ARE YOU EMPLOYED?

A I'M EMPLOYED BY SEARS ROEBUCK AND COMPANY IN SAN BERNARDINO.

Q THAT'S IN CALIFORNIA?

A YES.

Q IS THAT WHERE YOU ALSO RESIDE?

A YES, IT IS.

Q HOW LONG HAVE YOU -- WELL, LET ME ASK YOU THIS: WHAT IS YOUR TITLE WITH SEARS IN SAN BERNARDINO?

A MY TITLE IS DIVISION MANAGER.

Q OF A PARTICULAR DEPARTMENT?

A OF THE HARDWARE DEPARTMENT.

Q AND HOW LONG HAVE YOU BEEN IN THAT CAPACITY?

A SIX YEARS.

Q HOW LONG HAVE YOU WORKED FOR SEARS ROEBUCK?

A THIRTY TWO YEARS.

Q AND HOW LONG HAVE YOU BEEN WITH THE SAN BERNARDINO STORE?

A SINCE 1957.

Q LET ME CALL YOUR ATTENTION TO MARCH 28, 1980 DO YOU RECALL AN INCIDENT THAT OCCURRED -- WERE YOU WORKING ON THAT DAY?

1723

1 A YES, I WAS.

2 Q IN THE CAPACITY THAT YOU HAVE JUST DESCRIBED?

3 A YES, I WAS.

4 Q AND DO YOU RECALL AN INCIDENT THAT HAPPENED

5 THAT DAY? IT WAS IN THE SEARS STORE?

6 A YES.

7 Q APPROXIMATELY WHAT TIME OF THE DAY WAS IT

8 WHEN YOU FIRST BECAME AWARE OF THIS OCCURING?

9 A IT WAS IN THE AFTERNOON.

10 Q NOW, WHAT CAME TO YOUR ATTENTION AT THAT

11 TIME?

12 A WELL, THIS GENTLEMAN BROUGHT A SANDER-GRIND-

13 ER TO THE COUNTER TO HAVE A REFUND ISSUE.

14 Q NOW, WHEN YOU SAY HE BROUGHT A SANDER-GRIND-

15 ER TO THE COUNTER, HOW DID HE DO THAT?

16 A IT WAS IN A CARTON, IN A BOX.

17 Q IS THAT THE BOX IN WHICH THE SANDER-GRINDER

18 COMES?

19 A YES, IT IS.

20 Q AND WAS THAT BOX OPEN OR CLOSED?

21 A OPEN.

22 Q AND DID YOU -- WHAT DID HE REQUEST WHEN HE

23 CAME TO THE COUNTER?

24 A HE REQUESTED A REFUND.

25 Q NOW, WHAT KIND OF COUNTER WAS IT THAT HE

26 CAME TO AND MADE THAT REQUEST?

27 A WELL, WE CALL IT A CASH WRAP, IT'S WHERE

28 OUR CASH REGISTERS ARE LOCATED AND WHERE WE RING UP TRANSACTIONS

29 AND PACKAGES.

30 Q ALL RIGHT.

31 AND WHAT DID HE INDICATE TO YOU THAT HE

32 DESIRED?

1 A WELL, HE INDICATED THAT HE HAD PURCHASED
2 THIS AND HE WANTED A REFUND FOR IT -- FOR THE ITEM.
3 Q DID YOU LOOK AT THE ITEM?
4 A YES, I DID.
5 Q AND DO YOU RECALL HOW MUCH THE ITEM COST?
6 A IT WAS IN THE NEIGHBORHOOD OF 94 - \$95. .
7 Q DID YOU LOOK INSIDE THE BOX?
8 A YES.
9 Q AND WHAT CONTENTS DID YOU FIND WITHIN THE
10 BOX?
11 A THE GRINDER ONLY.
12 Q WHEN YOU SAY "ONLY" --
13 A WELL, NORMALLY IT IS PACKAGED WITH PACKING
14 MATERIAL AND AN OWNER'S MANUAL.
15 Q AND WAS THE PACKING MATERIAL PRESENT IN THE
16 BOX?
17 A NO.
18 Q AND WAS THE OWNER MANUAL PRESENT IN THE BOX?
19 A NO.
20 Q WHAT DID YOU DO THEN?
21 A WELL, BEFORE WE ISSUE A REFUND WE ASK FOR A
22 RECEIPT. IF THERE IS NO RECEIPT, THEN WE ASK FOR IDENTIFICATION.
23 Q DID THE INDIVIDUAL SHOW YOU A RECEIPT?
24 A NO.
25 Q HAD YOU ASKED HIM FOR ONE?
26 A I DID.
27 Q AND WHEN HE DIDN'T SHOW YOU A RECEIPT DID
28 HE TELL YOU WHY HE DIDN'T HAVE ONE?
29 A NO.
30 Q DID YOU THEN ASK FOR IDENTIFICATION?
31 A I DID.
32 Q DID HE SHOW YOU IDENTIFICATION?

1 A YES, HE DID.

2 Q WHAT WAS THE NATURE OF THAT IDENTIFICATION?

3 A WELL, IT INDICATED THAT HE WAS AN EMPLOYEE

4 FOR SEARS ROEBUCK AND COMPANY IN THE SECURITY DEPARTMENT IN ONE

5 OF THE LAS VEGAS STORES.

6 Q WHEN YOU SAY "IT INDICATED" WHAT DO YOU

7 MEAN? WHAT WAS THE --

8 A IT WAS AN I.D. CARD, STATING HE WAS A

9 SECURITY AGENT.

10 Q I SEE.

11 AND THERE WAS A NAME ON THAT CARD?

12 A THERE WAS.

13 Q DO YOU RECALL IT TODAY?

14 A NO, I DON'T.

15 Q DID YOU WRITE THAT NAME ON THE RETAIL CREDIT

16 CHECK?

17 A I DID.

18 Q DID YOU DO IT AT THAT TIME?

19 A YES.

20 Q CAN YOU DESCRIBE THE INDIVIDUAL FOR US TODAY

21 THAT WAS ASKING FOR MONEY BACK ON THIS SANDER-GRINDER ON

22 MARCH 28, 1980, IN THE SAN BERNARDINO SEARS STORE?

23 A WELL, HE WAS A BLACK MALE ADULT, ABOUT AT

24 THE LATE TWENTIES, MEDIUM BUILD, REAL CLEAN CUT LOOKING INDIVI-

25 DUAL, NICE LOOKING GUY.

26 Q WERE YOU ABLE --

27 A SHORT HAIR.

28 Q SHORT HAIR.

29 WERE YOU ABLE TO ESTIMATE HIS APPROXI-

30 MATE HEIGHT?

31 A FIVE TEN, FIVE ELEVEN.

32 Q WERE YOU ABLE TO APPROXIMATE HIS WEIGHT?

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A 165 TO 170,

Q CAN YOU TELL US ANYTHING ABOUT HIS COMPLEX-
ION, AS TO HIS COLOR?

A WELL, HE WAS NOT DARK. HE WAS -- HE'S
WHAT I WOULD CALL A LIGHT BLACK.

Q DO YOU RECALL ANYTHING ABOUT HIS CLOTHING?

A HE WAS WEARING NICE CLOTHING, SPORTS-TYPE
ATTIRE: SLACKS, SHIRT, JACKET.

Q MR. SMITH, LET ME ASK YOU AT THIS TIME IF
YOU WOULD LOOK ABOUT THE COURTROOM AND TELL US IF THERE IS ANY-
ONE PRESENT IN THE COURTROOM TODAY WHO WAS IN THE SEARS STORE ON
MARCH 28, 1980?

A THE GENTLEMAN IN THE LIGHT TAN SHIRT.

Q WOULD YOU POINT AT HIM, PLEASE,

A THE ONE ON THE RIGHT,

Q TO THE -- ON THE TABLE JUST TO US?

A SITTING AT THE TABLE (INDICATING).

Q TO OUR LEFT?

A TO YOUR LEFT.

MR. SEATON: YOUR HONOR, MAY THE RECORD REFLECT
THE IDENTIFICATION OF THE DEFENDANT, SAMUEL HOWARD.

THE COURT: THE RECORD MAY SO SHOW.

MR. SEATON: THANK YOU, YOUR HONOR.

BY MR. SEATON:

Q WELL, WHAT DID YOU DO WITH THE RETAIL CREDIT
CHECK?

A I -- WELL, WHEN I SUSPECTED THE I.D. I
CALLED -- I WENT BACK TO MY OFFICE, WHICH IS OFF THE SALESFLOOR.

Q BEFORE YOU GO ON, YOU SAY YOU HAD SUSPECTED
THE I.D.; WHAT DO YOU MEAN BY THAT?

1727

1 A WELL, HAD HE BEEN A SECURITY MAN FOR
2 SEARS HE CERTAINLY WOULDN'T HAVE BROUGHT A PIECE OF MERCHANDISE
3 UP FOR A REFUND WITHOUT A RECEIPT. AND HAD HE NOT HAD A
4 RECEIPT, BEING AN EMPLOYEE, I FELT THAT HE WOULD HAVE GOT
5 AHOLD OF SOMEBODY IN THE STORE WHO WORKED FOR OUR SECURITY
6 DEPARTMENT. THAT WOULD HAVE BEEN NORMAL PROCEDURE FOR ANYBODY
7 THAT KNOWS ANYTHING ABOUT SEARS SECURITY.

8 Q AND AS A RESULT OF THOSE THOUGHTS, WHAT
9 DID YOU DO?

10 A WELL, I EXCUSED MYSELF AND WENT BACK TO
11 MY OFFICE, AND I HAD THE OPERATOR PAGE OUR SECURITY LADY THAT
12 WAS ON DUTY AT THE TIME.

13 Q AND WHAT IS HER NAME?

14 A NORMA DONALDSON.

15 Q NORMA DONALDSON.

16 WITH REGARD TO THE IDENTIFICATION THAT
17 WAS SHOWN TO YOU BY THE DEFENDANT, SAM HOWARD, DID IT INDICATE
18 WHICH SEARS THAT THAT IDENTIFICATION WAS FROM?

19 A IT NO DOUBT DID, BUT I DID NOT AT THE TIME
20 NOTICE IT.

21 Q I SEE.

22 WHAT DID YOU DO WHEN YOU CALLED --
23 AFTER YOU CALLED NORMA DONALDSON?

24 A OKAY. I CALLED NORMA OR I CALLED THE
25 OPERATOR AND SHE GOT AHOLD OF NORMA, AND NORMA CAME BACK TO MY
26 OFFICE AND I TOLD HER WHAT I HAD OBSERVED, AND SAID -- AND
27 ASKED -- SUGGESTED THAT SHE CALL THE LAS VEGAS STORE TO CONFIRM
28 THIS MAN'S EMPLOYMENT.

29 Q WHEN YOU SAY THAT YOU TOLD HER WHAT YOU
30 OBSERVED, DO YOU MEAN THAT YOU TOLD HER THE THINGS THAT YOU SAID
31 TO US TODAY IN COURT?

32 A THAT'S CORRECT.

1 Q AND YOU INDICATED THAT YOU ASKED HER TO
2 CALL THE LAS VEGAS STORE. WHY WAS IT THAT YOU ASKED HER TO CALL
3 THE LAS VEGAS SEARS STORE?

4 A WELL, I WANTED TO CONFIRM THAT THIS GENTLE-
5 MAN PRESENTED THE I.D. WAS INDEED AN EMPLOYEE OF SEARS.

6 Q WHAT WAS IT IN YOUR MIND THAT CAUSED YOU
7 TO THINK THAT HE WAS FROM LAS VEGAS?

8 A I'M SORRY. WOULD YOU REPEAT THAT?

9 Q WHAT WAS IT THAT CAUSED YOU TO BELIEVE
10 THAT HE WAS FROM LAS VEGAS?

11 A THE I.D. THAT HE PRESENTED SAID IT WAS FROM
12 THE LAS VEGAS STORE.

13 Q I SEE.

14 A AT THE TIME I DIDN'T REMEMBER THAT WE HAD
15 TWO STORES HERE.

16 Q AND DID SHE MAKE A PHONE CALL THERE IN
17 YOUR PRESENCE?

18 A YES, SHE DID.

19 Q AND WHO DID SHE CALL, IF YOU KNOW?

20 A SHE GOT AHOLD OF THE SECURITY PERSONNEL
21 ON DUTY IN ONE OF THE LAS VEGAS STORES, I'M NOT SURE WHICH.

22 Q AND AFTER TALKING TO THAT -- MAKING THAT
23 PHONE CONVERSATION, WERE YOU PRESENT WHEN SHE HUNG UP?

24 A YES.

25 Q DID SHE TELL YOU WHAT HAD TRANSPIRED IN
26 THAT CONVERSATION?

27 A YES, SHE DID.

28 Q WOULD YOU TELL US WHAT THAT WAS, PLEASE?

29 A SHE INDICATED TO ME THAT THEY HAD NO
30 EMPLOYEE --

31 MR. FRANZEN: YOUR HONOR, WE WOULD OBJECT.

32 THE WITNESS: (CONTINUING) -- IN THAT STORE.

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MR. FRANZEN: HEARSAY, CONFRONTATION.

MR. SEATON: I'M SORRY. I DIDN'T HEAR THE --

MR. FRANZEN: YOUR HONOR, WE WOULD OBJECT ON THE BASIS OF HEARSAY AND CONFRONTATION, AND ALSO, SINCE HE DID NOT PLACE THE CALL, HE REALLY DOESN'T KNOW TO WHOM THE OPERATOR IS SPEAKING. THE FOUNDATION WOULD BE INADEQUATE.

MR. SEATON: THESE ARE NOT BEING OFFERED FOR THE TRUTH OF THE MATTER ASSERTED, YOUR HONOR, JUST SIMPLY TO SHOW WHY THE INDIVIDUAL DID WHAT HE DID NEXT.

AND AS FAR AS THE CONFRONTATION IS CONCERNED, THE NEXT WITNESS WILL BE NORMA DONALDSON. AND SHE WILL BE AVAILABLE AND SHE WILL BE ADEQUATELY CROSS EXAMINED AS TO THESE MATTERS.

THE COURT: THE OBJECTION IS OVERRULED, BASED ON THAT REPRESENTATION.

BY MR. SEATON:

Q WOULD YOU TELL US, PLEASE, WHAT NORMA DONALDSON SAID TO YOU WHEN SHE GOT OFF OF THE TELEPHONE?

A SHE SAID TO ME THAT THE PARTY THAT SHE TALKED TO SAID THEY HAD NO EMPLOYEE AT THAT STORE BY THAT NAME.

Q BY WHAT NAME?

A SANGER OR -- I DON'T RECALL THE NAME.

Q HAD YOU AT THAT TIME -- AT THAT TIME HAD YOU TOLD NORMA DONALDSON WHAT THE NAME WAS THAT THE DEFENDANT HAD USED WHEN YOU FILLED OUT THE RETAIL CREDIT CHECK?

A I DID.

Q AND THAT WAS THE NAME THAT SHE GAVE TO THE --

A I CAN'T REMEMBER THAT.

Q (CONTINUING) -- THE LAS VEGAS STORE?

1730

1 AND AFTER SHE TOLD YOU THAT THE LAS
2 VEGAS STORE SAID THAT THEY HAD NO EMPLOYEE BY THAT NAME, WHAT
3 DID YOU DO THEN?

4 A WELL, SHE SAID, WELL, WE BETTER GO TALK TO
5 THE -- TO THE MAN, OR SOMETHING TO THAT EFFECT. AND WE GOT
6 UP -- OR I LEFT THE OFFICE WITH HER AND WE WENT UP TO CONFRONT
7 THE MAN.

8 Q WHERE DID YOU GO TO CONFRONT THE MAN?

9 A TO WHERE WE HAD LEFT HIM OR WHERE I HAD
10 LEFT HIM, AT THE CASH WRAP.

11 Q AND WAS HE THERE WHEN YOU RETURNED?

12 A NO.

13 Q AND WHAT DID YOU DO UPON DISCOVERING THAT
14 HE WAS NO LONGER THERE?

15 A WELL, WE QUICKLY LOOKED AROUND THE
16 DEPARTMENT TO SEE IF HE HAD, YOU KNOW, BROWSED AROUND OR WHAT-
17 EVER. AND THEN, NOT SEEING HIM, WE NORMALLY, IN A CASE LIKE
18 THIS, WE WOULD GO OUT THE DOOR AND SEE IF HE'S -- OR THE PARTY
19 HAS SPLIT.

20 Q AND DID YOU GO OUT THE DOOR?

21 A YES.

22 Q AND WHAT DID YOU DO WHEN YOU WENT OUT THE
23 DOOR?

24 A WELL, WE LOOKED AROUND THE PARKING LOT FOR
25 ANYBODY THAT WAS WALKING OR LOOKED LIKE THE PERSON.

26 Q AND WERE YOU ABLE TO FIND ANYBODY?

27 A NO.

28 Q DID YOU THEN RETURN TO WORK?

29 A YES.

30 Q AND CAN YOU TELL US IF THE PACKAGING
31 MATERIALS AND MANUAL THAT YOU REFERRED TO EARLIER WERE EVER
32 DISCOVERED?

1 A WE FOUND THEM LATER IN THE DAY IN THE
2 SPORTING GOODS DEPARTMENT.

3 MR. SEATON: COURT'S INDULGENCE.

4 WE HAVE NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: CROSS?

6 MR. FRANZEN: YES, YOUR HONOR.

7
8 CROSS EXAMINATION

9
10 BY MR. FRANZEN:

11
12 Q SIR, DID YOU REPORT THIS INCIDENT TO THE
13 POLICE?

14 A I DID NOT.

15 Q HAVE YOU EVER HAD THE OPPORTUNITY TO SEE
16 A LINEUP OF PHYSICAL PEOPLE TO ASK IF YOU COULD IDENTIFY THE
17 INDIVIDUAL WHOM YOU HAD SEEN IN THE SEARS STORE?

18 A WELL --

19 Q IN SAN BERNARDINO?

20 A NO, I HAVE NOT.

21 Q HAVE YOU EVER BEEN ASKED TO SEE A PHOTO-
22 GRAPHIC DISPLAY?

23 A NO.

24 Q PHOTOGRAPHS OF PEOPLE, THEN ASKED TO SEE
25 IF YOU COULD IDENTIFY THE PERSON?

26 A NO, I HAVE NOT.

27 Q ABOUT HOW MUCH TIME DID YOU SPEND WITH THE
28 INDIVIDUAL WHO SHOWED HIMSELF OR FALSELY REPRESENTED HIMSELF TO
29 BE A SECURITY GUARD FOR SEARS?

30 A OH, IN THE NEIGHBORHOOD OF TEN MINUTES.

31 Q HAVE YOU EVER BEEN CALLED TO TESTIFY ON
32 ANY OF THIS BEFORE?

1 A HAVE I BEEN CALLED TO TESTIFY WHAT?
2 Q ABOUT THIS INCIDENT?
3 A NO.
4 Q WAS THIS THE FIRST TIME THAT YOU'VE BEEN
5 CALLED TO TESTIFY ABOUT THIS INCIDENT?
6 A YES, IT IS.
7 Q AND WHAT WAS THE DATE OF THIS INCIDENT,
8 PLEASE?
9 A MARCH THE 28TH, 1980.
10 Q WHEN WAS THE LAST TIME THAT YOU SPOKE TO
11 ANY LAW ENFORCEMENT PEOPLE ABOUT THIS INCIDENT?
12 A I NEVER HAVE.
13 Q DO YOU RECALL IF THE MAN WAS WEARING ANY
14 JEWELRY?
15 A NO, I DON'T.
16 Q DO YOU RECALL WHAT COLOR THE MAN'S EYES
17 WERE?
18 A NO, I DON'T.
19 Q DO YOU RECALL WHAT TYPE OF SHOES HE WAS
20 WEARING?
21 A NO, I DON'T.
22 Q DO YOU RECALL IF HE WAS WEARING TENNIS
23 SHOES?
24 A NO, I DON'T.
25 Q DO YOU RECALL IF HE WAS CARRYING A RADIO?
26 A I DON'T REMEMBER A RADIO.
27 Q DO YOU RECALL WHAT COLOR SHIRT HE HAD ON?
28 A NO, I DON'T.
29 Q HOW LONG, SIR, HAVE YOU BEEN HERE IN LAS
30 VEGAS AWAITING YOUR OPPORTUNITY TO TESTIFY?
31 A I ARRIVED AT 9:15 THIS MORNING.
32 Q HAD YOU SPOKEN WITH ANYONE FROM THE LAS

1733

1 VEGAS POLICE DEPARTMENT PRIOR TO ARRIVING THIS MORNING?
2 A WITH THE POLICE DEPARTMENT?
3 Q YES.
4 A NO. NO.
5 Q DID YOU SPEAK WITH ANYONE FROM THE DISTRICT
6 ATTORNEY'S OFFICE?
7 A YES, I DID.
8 Q PRIOR TO YOUR ARRIVING IN LAS VEGAS?
9 A YES, I HAVE.
10 Q WHAT DID THEY EXPLAIN TO YOU, SIR, IF
11 ANYTHING?
12 A BASICALLY EXPLAINED THAT I WOULD BE CALLED
13 TO -- POSSIBLY TO TESTIFY OF WHAT I HAD OBSERVED ON THAT
14 PARTICULAR DAY.
15 Q ANYTHING ELSE?
16 A NO.
17 Q WHEN YOU ARRIVED HERE IN LAS VEGAS DID YOU
18 GO TO THE DISTRICT ATTORNEY'S OFFICE?
19 A YES.
20 Q DID YOU DISCUSS YOUR PROPOSED TESTIMONY
21 WITH ANYONE?
22 A YES.
23 Q WITH WHOM DID YOU DISCUSS IT?
24 A MR. -- MR. EATON (SIC).
25 Q MR. SEATON?
26 A SEATON. I'M SORRY.
27 Q IT'S OKAY.
28 MR. SEATON: THAT'S ALL RIGHT.
29
30 BY MR. FRANZEN:
31
32 Q WAS ANYONE PRESENT AT THE TIME THAT YOU HAD

1734

1 THIS DISCUSSION WITH MR. SEATON?

2 A NORMA DONALDSON.

3 Q ABOUT WHAT TIME OF DAY DID YOU HAVE THIS
4 DISCUSSION WITH MR. SEATON IN THE PRESENCE OF MISS DONALDSON?

5 A ABOUT 1:00 P.M.

6 Q WAS THIS A GENERAL DISCUSSION WITH EVERYONE
7 HELPING EACH OTHER TO RECALL WHAT HAD HAPPENED BACK ON MARCH 28TH,
8 1980?

9 A IT WAS A QUESTION/ANSWER-TYPE DISCUSSION.

10 Q WITH THE QUESTIONS BEING ASKED TO NORMA
11 AND TO YOU?

12 A SEPARATELY, YES.

13 Q DID YOU EVER QUESTION NORMA AS TO HER
14 RECOLLECTION?

15 A DID I?

16 Q YES, SIR.

17 A NO.

18 Q DID SHE EVER CONTRADICT YOUR RECOLLECTION?

19 A NOT THAT I RECALL.

20 Q DID SHE EVER COMPLIMENT YOUR RECOLLECTION?

21 A THE ONLY THING IT MIGHT HAVE BEEN THE TIME
22 OF DAY.

23 Q WHEN YOU WERE CONTACTED TO COME HERE TO
24 TESTIFY, WHO CONTACTED YOU?

25 A MR. SEATON.

26 Q MR. SEATON?

27 A YES.

28 Q DID ANYONE ELSE CONTACT YOU?

29 A WE SPOKE TO THE LADY THAT ARRANGED TO
30 TRAVEL.

31 Q WOULD SHE BE -- WOULD SHE HAVE IDENTIFIED
32 HERSELF FROM THE VICTIM-WITNESS --

1 A AS WHAT?

2 Q VICTIM-WITNESS DIVISION?

3 A NO.

4 Q WAS SHE AN ATTORNEY OR DO YOU KNOW?

5 A SHE WAS A CLERK TO THE DISTRICT ATTORNEY'S

6 -- TO THE DISTRICT ATTORNEY, AS FAR AS I KNOW.

7 Q SIR, IT'S BEEN ABOUT THREE YEARS. WHAT

8 DO YOU BASE YOUR IDENTIFICATION ON THIS MORNING OR THIS AFTER-

9 NOON?

10 A IN WHAT THE -- IN WHAT MANNER DO YOU MEAN?

11 Q WELL, IT'S BEEN THREE YEARS ABOUT SINCE

12 THIS INCIDENT AND YOU HAVEN'T SEEN ANY PHOTOGRAPHS OR PHYSICAL

13 PEOPLE, AND YOU HAVE BEEN ASKED TO SEE IF YOU CAN IDENTIFY HIM.

14 WHAT IS THERE ABOUT THIS MAN, AS HE SITS IN THIS COURTROOM NOW,

15 THAT CAUSES YOU TO IDENTIFY HIM?

16 A WELL, THE MAN THAT I REMEMBER HAS VERY

17 SMOOTH, CLEAN-CUT LOOKING FEATURES, AND THAT'S WHAT I REMEMBER.

18 I DON'T REMEMBER A MOUSTACHE.

19 Q SO YOUR IDENTIFICATION THEN IS BASED

20 PRIMARILY UPON THE FACT THAT HE WAS A SMOOTH, CLEAN-CUT INDIVI-

21 DUAL?

22 A UH-HUH.

23 Q HERE IN THE COURTROOM TODAY?

24 A UH-HUH.

25 Q YOU'LL HAVE TO SAY YES OR NO.

26 A YES.

27 Q AND YOU WERE ASKED TO COME TO TESTIFY ABOUT

28 THAT PARTICULAR INSTANCE?

29 A YES.

30 Q IN MARCH OF 1980?

31 A YEAH.

32 Q IS THERE ANY OTHER BLACK MAN IN THE COURTROOM

1 NOW, OR AT THE TIME THAT YOU MADE YOUR IDENTIFICATION HERE IN
2 THE COURTROOM, THAT YOU WOULD CLASSIFY AS A SMOOTH -- IS IT
3 SMOOTH, CLEAN-CUT --

4 A LOOKING INDIVIDUAL.

5 Q (CONTINUING) -- LOOKING INDIVIDUAL?

6 A NO, THERE ISN'T.

7 Q THAT'S WHAT I THOUGHT.

8 THE COURT: LET'S PROCEED, COUNSEL.

9
10 BY MR. FRANZEN:

11
12 Q DO YOU RECALL, SIR, IF THE INDIVIDUAL THAT
13 YOU SAW ON MARCH 28, 1980, WAS WEARING, IN THE SEARS STORE, WAS
14 WEARING A GOLD WRISTWATCH?

15 A I DON'T RECALL ANY JEWELRY WHATSOEVER.

16 Q SO THAT ELIMINATES A GOLD WRISTWATCH. YOU
17 DID NOT SEE ONE; IS THAT CORRECT?

18 A THAT'S CORRECT.

19 Q DID HE SHOW YOU A BADGE, SIR, OR WAS THIS

20 AN I.D. CARD?

21 A I ONLY SAW AN I.D. CARD.

22 Q DID HE SHOW YOU A WALLET?

23 A IT WAS IN A WALLET-TYPE CASE, TO THE BEST
24 OF MY RECOLLECTION.

25 Q A WALLET-TYPE CASE. WOULD THAT BE A WALLET
26 SUCH AS YOU WOULD PUT MONEY IN, OR WOULD THIS BE A SPECIALLY
27 DESIGNED BADGE CASE?

28 A A WALLET THAT YOU WOULD PUT MONEY IN.

29 Q OKAY.

30 DID YOU GET A GOOD LOOK AT THIS WALLET?

31 A NO.

32 Q DO YOU RECALL WHAT COLOR THE WALLET IS OR

1737

1 WAS?

2 A I DON'T.

3 Q DID THIS WALLET HAVE ONE OF THESE PLASTIC
4 EXPANDO DISPLAY CASES THAT YOU WOULD PUT CREDIT CARDS IN OR
5 PHOTOGRAPHS IN?

6 A NOT THAT I RECALL.

7 Q YOU SAY THAT THE MAN THAT YOU SAW IN YOUR
8 SEARS STORE HAD A SHORT HAIRCUT. COULD THIS HAVE BEEN AN AFRO
9 HAIRCUT OR A SHORT -- WHAT DO YOU MEAN BY "SHORT HAIRCUT"?
10 I GUESS THAT'S WHAT I'M ASKING.

11 A THE OPPOSITE OF AN AFRO IT WOULD HAVE
12 BEEN.

13 Q IT WAS NOT AN AFRO THEN?

14 A SHORT -- THAT'S CORRECT.

15 Q OKAY.

16 DID HE EVER USE ANY SWEAR WORDS?

17 A NOT THAT I RECALL.

18 Q SPECIFICALLY, DID HE EVER USE THE SWEAR
19 WORD "MOTHER FUCKER"?

20 A NO.

21 Q DID HE SPEAK WITH AN ACCENT?

22 A NO.

23 Q IN THE TEN MINUTES -- WELL, LET'S BACK UP
24 A SECOND.

25 THIS ENTIRE INCIDENT, FROM THE TIME
26 THAT THE GENTLEMAN CAME UP AND ASKED FOR THE REFUND TO THE TIME
27 THAT YOU LEFT TO GET NORMA, HOW LONG DID THAT TAKE?

28 A FIFTEEN MINUTES.

29 Q WHAT WAS IT THAT CAUSED YOU TO SAY THIS
30 TAKES FIFTEEN MINUTES? WAS THERE A DISCUSSION OR WHAT?

31 A WELL, IT TAKES -- IT TAKES AWHILE TO,
32 NUMBER ONE, LOOK AT THE ITEM THAT THE CUSTOMER IS RETURNING;

1 AND, NUMBER TWO, TO LOOK AT THE I.D. AND START ISSUING THE
2 REFUND OR R.C.C., RETAIL CREDIT CHECK, THAT WE DO ISSUE.

3 Q WELL, WHEN THE MAN COMES UP TO YOU AND SAYS,
4 I WORK FOR SEARS, HERE'S MY I.D. CARD, AND HERE'S WHAT I WISH
5 TO REFUND --

6 A THAT --

7 Q (CONTINUING) -- GET A REFUND ON --

8 A THAT WAS NOT THE WAY IT WAS WORDED.

9 Q WHAT -- HOW DID HE WORD IT?

10 A HE CAME TO ME AND SAID HE WANTED A REFUND
11 FOR THIS PARTICULAR ITEM.

12 Q DID HE THEREUPON SHOW YOU THE ITEM?

13 A YES. IT WAS SITTING ON THE COUNTER.

14 Q AND YOU LOOKED AT IT?

15 A YES.

16 Q AND THEN WHAT HAPPENED?

17 A THEN I ASKED FOR A RECEIPT.

18 Q AND HE SAID HE HAD NONE?

19 A HE HAD NONE.

20 Q AND THEN YOU ASKED FOR SOME OTHER TYPE OF
21 IDENTIFICATION?

22 A YES.

23 Q AND THEREUPON HE SHOWED YOU THE SEARS
24 IDENTIFICATION CARD?

25 A AT WHICH POINT I THEN STARTED MAKING THE
26 REFUND -- THE R.C.C. OUT.

27 Q IS THIS A DOCUMENT YOU WRITE OUT?

28 A YES.

29 Q I TAKE IT WHILE YOU'RE WRITING THIS OUT
30 YOU'RE NOT LOOKING AT THE INDIVIDUAL YOU'RE TALKING ABOUT, BUT
31 YOU'RE WATCHING WHAT YOU'RE WRITING?

32 A THAT'S CORRECT.

1 Q ABOUT HOW LONG DOES IT TAKE TO WRITE OUT
2 THIS REFUND DOCUMENT?

3 A OH, THREE, FOUR MINUTES.

4 Q AND THEN WHAT HAPPENED?

5 A THEN I SAID -- I TOLD THE CUSTOMER I WOULD
6 HAVE TO CHECK THE TRANSACTION OUT AND I WILL BE RIGHT BACK, AND
7 THEN I WENT BACK INSIDE.

8 Q AND THAT WAS THE LAST YOU SAW OF HIM?

9 A YES.

10 Q SIR, LET'S WATCH SOMETHING.

11 MR. FRANZEN: MAY I APPROACH THE WITNESS, YOUR
12 HONOR?

13 THE COURT: YOU MAY.

14
15 BY MR. FRANZEN:

16
17 Q NOW, LET'S WATCH THE CLOCK. IF I'M THE
18 GENTLEMAN THAT COMES UP WITH THE REFUND AND I COME UP TO YOU --

19 A UH-HUH.

20 Q (CONTINUING) -- IT'S NOW 3:25 BY THE COURT
21 CLOCK. LET'S REINACT WHAT OCCURRED IN MARCH OF 1980 AND SEE
22 WHAT HAPPENS WITH THE CLOCK.

23 A OKAY.

24 Q PRETEND I'M THE MAN AND I COME IN AND I
25 LAY ON THE COUNTER THE ITEM I WISH TO HAVE REFUNDED, AND I'M
26 SAYING TO YOU, WOULD YOU GIVE ME A REFUND. WHAT HAPPENS THEN?

27 A WELL, NUMBER ONE, I WOULD ASK YOU WHY YOU
28 WANTED TO REFUND IT.

29 Q WHAT DID THE MAN SAY?

30 A HE SAID HE DIDN'T NEED IT.

31 Q AND THEN WHAT HAPPENED?

32 A I SAID DO YOU HAVE A RECEIPT.

1740

1 Q AND HE REPLIES HE DOES NOT?
2 A YEAH.
3 AND THEN I ASKED FOR IDENTIFICATION.
4 AND I STARTED FEELING -- FILLING OUT THE R.C.C. BOOK.
5 Q OKAY.
6 AND WHILE YOU'RE FILLING OUT THE R.C.C.
7 BOOK HE HANDS YOU THE SEARS IDENTIFICATION CARD?
8 A YEAH.
9 Q AND HOW LONG IS THE R.C.C. CARD?
10 A IN --
11 Q THIS REFUND DOCUMENT?
12 A IN TERMS OF SIZE?
13 Q YES, SIR.
14 A LIKE SO (INDICATING).
15 Q JUST -- WHAT? SIX BY THREE? IS IT A
16 SLIP?
17 A PROBABLY FOUR BY SIX.
18 Q DOES IT HAVE ALOT OF DOCUMENTATION THAT
19 HAS TO BE FILLED OUT?
20 A AS FAR AS NAME, ADDRESS, ZIP CODE, PHONE
21 NUMBER, CASH OR CHARGE.
22 Q OKAY.
23 A DRIVER'S NUMBER.
24 Q OKAY.
25 SO I TELL YOU THAT MY NAME IS JOHN
26 SMITH. I LIVE AT 8125 JONES STREET, ZIP CODE 123456.
27 A UH-HUH.
28 Q CHARGE OR CASH, WHICHEVER, AND WHAT ELSE?
29 A ITEM NUMBER, DESCRIPTION.
30 Q I HAVE ONE SANDER.
31 A PRICE, TAX.
32 Q TAX. OKAY.

1 A REASON FOR RETURNING IT.
2 Q DIDN'T NEED IT.
3 WHAT ELSE, SIR?
4 A AND WHETHER THE TYPE OF REFUND WAS A RETURN
5 OR AN ALLOWANCE OR --
6 Q OKAY.
7 AND THESE BOXES YOU CHECK, OR DO YOU
8 WRITE IT OUT ALL THE WAY?
9 A THERE'S ONE BOX THAT YOU CHECK. THE REST
10 OF THEM YOU WRITE OUT.
11 Q OKAY.
12 WHILE YOU'RE --
13 A AND THEN --
14 Q I'M SORRY.
15 A THEN I ALSO LOOK AT THE TOOL AND MAKE SURE
16 IT'S IN SALEABLE CONDITION, THAT IT HASN'T BEEN USED.
17 Q OKAY. YOU PICK IT UP?
18 A MAKE SURE IT'S ALL THERE.
19 Q AND YOU LOOK AT IT. YOU DON'T TAKE IT
20 APART?
21 A HUH-UH.
22 Q YOU JUST PICK IT UP OUT OF THE BOX. HOW
23 LONG DO YOU THINK IT WOULD TAKE YOU TO INSPECT THE TOOL OR THE
24 MACHINE?
25 A OH, JUST A COUPLE MINUTES.
26 Q OKAY.
27 AND AT THAT TIME, YOU'RE LOOKING AT THE
28 MACHINE AND NOT AT THE CUSTOMER?
29 A USUALLY, YEAH.
30 Q AND THAT'S BECAUSE YOU WANT TO KNOW THE
31 MACHINE'S IN GOOD CONDITION OR DAMAGED, AND IF IT'S INJURIOUS
32 TO SEARS PROBLEM?

1742

1 A RIGHT.

2 Q WELL, WE'RE DOWN TO TWO MINUTES NOW, SO

3 3:27. AND YOU FILLED OUT YOUR CARD AND YOU TELL THE GENTLEMAN

4 THAT YOU'RE GOING TO LEAVE AND CHECK IT OUT, AND THAT'S THE

5 LAST YOU SEE OF HIM?

6 A I THEN GO BACK TO THE OFFICE.

7 Q WELL, WE'RE A LONG WAYS SHORT OF 15 MINUTES.

8 IS THERE ANYTHING ELSE THAT HAPPENED IN THIS INTERVAL?

9 A NO.

10 Q IS THERE ANYTHING ELSE THAT YOU SHOULD HAVE

11 SAID THAT WOULD HAVE EXPANDED THE TIME PERIOD?

12 A NOT UNLESS I WOULD HAVE BEEN INTERRUPTED BY

13 OTHER CUSTOMERS AT THE TIME. I DON'T KNOW.

14 Q AND AT THAT -- OKAY.

15 YOU MIGHT HAVE BEEN, BUT YOU DON'T

16 KNOW?

17 A YEAH.

18 Q AND AT THAT TIME YOUR ATTENTION WOULD HAVE

19 BEEN ON THE NEW CUSTOMERS AND NOT UPON THE INDIVIDUAL WHO HAD

20 BEEN TRYING TO REFUND THE SANDER?

21 A USUALLY.

22 Q OKAY.

23 DO YOU THINK YOU COULD BE INCORRECT

24 ABOUT THIS 15-MINUTE TIME PERIOD?

25 A COULD VERY POSSIBLY BE.

26 Q DO YOU THINK PERHAPS A MINUTE OR TWO

27 MINUTES WOULD BE MORE ACCURATE?

28 A PROBABLY THREE, FOUR.

29 Q THREE.

30 NOW, DID THE POLICE EVER COME OUT TO

31 SPEAK WITH YOU OR TO YOUR STORE SECURITY PEOPLE?

32 A NOT TO --

1743

1 Q REGARDING THIS?

2 A NOT TO ME. THAT'S ALL I KNOW.

3 Q DID YOU EVER SEE THE POLICE AT YOUR STORE?

4 A DURING -- FOR THIS INCIDENT?

5 Q YES, SIR.

6 A NO.

7 Q DID YOU EVER SEE THIS MAN BEFORE, THE MAN

8 WHO CAME IN WITH THE SANDER AND ASKED FOR A REFUND?

9 A NEVER.

10 Q HAVE YOU EVER SEEN HIM SINCE?

11 A NO.

12 Q DID YOU KNOW IF HE WAS ACCOMPANIED BY

13 ANYONE?

14 A HE WAS NOT TO MY KNOWLEDGE, NO.

15 MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

16 THE COURT: COUNSEL?

17 MR. SEATON: YES. THANK YOU, YOUR HONOR.

18

19 REDIRECT EXAMINATION

20

21 BY MR. SEATON:

22

23 Q MR. SMITH, YOU INDICATED THAT YOU DIDN'T

24 SEE ANY JEWELRY OR WATCH. IS THERE A POSSIBLE EXPLANATION WHY

25 YOU MAY NOT HAVE SEEN ANY OF THOSE ITEMS?

26 A NO. I HAVE NO EXPLANATION FOR THAT.

27 Q DID YOU SAY THAT THE DEFENDANT WAS WEARING

28 A JACKET?

29 A YES.

30 Q WAS IT A LONG SLEEVE OR SHORT SLEEVE

31 JACKET?

32 A I -- I DON'T KNOW.

1 Q DO YOU RECALL ANYTHING? HOW LONG IT WAS IN
2 THE WAIST?

3 A NO, I DON'T.

4 Q YOU INDICATED HE SHOWED YOU AN I.D. CARD.
5 I AM NOT SURE IF WE COVERED THIS. WHAT DID THAT IDENTIFICATION
6 CARD SHOW?

7 A IT SHOWED A NAME AND A SIGNATURE, AND IT
8 SHOWED THAT THE PERSON WAS AN EMPLOYEE FOR SEARS IN LAS VEGAS
9 IN THE SECURITY DEPARTMENT.

10 Q ALL RIGHT. COURT'S INDULGENCE.

11 MR. SMITH --

12 MR. FRANZEN: MAY I SEE THAT, COUNSEL?

13 THE COURT: COUNSEL, ALLOW HIM TO PROCEED. IF
14 YOU HAVE AN OBJECTION YOU CAN STATE IT.

15 MR. FRANZEN: YES, YOUR HONOR.

16 THIS APPEARS -- WE DO OBJECT UNTIL WE GET
17 A PROPER REASON FOR THE SHOWING. THIS IS A RECEIPT FOR A --

18 MR. SEATON: THIS IS STATE'S EXHIBIT 38, YOUR
19 HONOR, WHICH IS A RETAIL CREDIT CHECK THAT HAS BEEN RECEIVED
20 INTO EVIDENCE IN THE EARLIER TESTIMONY.

21 MY ONLY PURPOSE IN SHOWING IT TO THE
22 WITNESS IS TO MAKE A DETERMINATION THAT THIS IS THE SAME KIND
23 OF RETAIL CREDIT CHECK THAT HE'S BEEN REFERRING TO IN HIS
24 TESTIMONY. I'M NOT GOING TO GO INTO ANY OF THE MATTERS THAT ARE
25 CONTAINED WITHIN THAT EXHIBIT.

26 THE COURT: ALL RIGHT. PROCEED.

27

28 BY MR. SEATON:

29

30 Q MR. SMITH, LET ME SHOW YOU STATE'S
31 EXHIBIT 38, WHICH IS A COPY. ARE YOU ABLE TO RECOGNIZE THE
32 ITEM THAT IS SHOWN THERE AS A COPY, NOT KNOW THE WRITING ON IT,

1 BUT THE KIND OF DOCUMENT THAT IT IS?

2 A YES, I AM.

3 Q AND WHAT IS IT?

4 A IT'S A RETAIL CREDIT CHECK, R.C.C. WE HAVE
5 A REFUND SLIP.

6 Q IS IT SIMILAR TO THE KIND YOU USED IN
7 YOUR SAN BERNARDINO SEARS ROEBUCK STORE ON MARCH 28TH, 1980?

8 A YES, IT IS.

9 Q THANK YOU.

10 YOU INDICATED ON CROSS EXAMINATION THAT
11 THE SHORT HAIR THAT YOU REFERRED TO THAT THE DEFENDANT HAD WAS
12 THE OPPOSITE OF AN AFRO?

13 A THAT'S CORRECT.

14 Q WOULD YOU LOOK AT THE DEFENDANT NOW AND
15 TELL ME WHAT DOES HIS HAIR LOOK LIKE NOW AS COMPARED TO HOW YOU
16 SAW IT ON THE DAY IN, GEE, MARCH 28TH OF 1980?

17 A VERY, VERY SIMILAR, A LITTLE LONGER IN THE
18 BACK.

19 Q WHILE YOU WERE IN THE OFFICE WITH NORMA
20 DONALDSON DID THERE COME A TIME THAT SHE LEFT THE OFFICE PRIOR
21 TO MAKING THE TELEPHONE CALL?

22 A SHE SLIPPED OUT FOR A FEW MINUTES TO LOOK
23 AT THE PERSON THAT WAS STANDING AT THE COUNTER THAT WANTED TO
24 RETURN THE SANDER-GRINDER.

25 Q AND DID YOU GO WITH HER?

26 A NO.

27 Q SUBSEQUENT TO THESE EVENTS, WERE YOU TOLD
28 ANYTHING MORE ABOUT THE DEFENDANT BY NORMA DONALDSON?

29 A YOU MEAN LATER ON IN THE DAY?

30 Q YES.

31 A YES, I WAS.

32 Q WHAT DID SHE TELL YOU?

1 MR. FRANZEN: YOUR HONOR, AGAIN, THIS IS COMING
2 OUT OF THE -- OUR OBJECTION AS TO MRS. --

3 THE COURT: OVERRULED.

4 MR. FRANZEN: HEARSAY AND CONFRONTATION.

5 THE COURT: PROCEED.

6 THE WITNESS: WE WENT OUT TO THE PARKING LOT TO
7 SEE IF WE COULD FIND THE PERSON, AND WE COULD NOT. SO WE CAME
8 BACK IN. AND NORMA WAS BEING PAGED.

9 I THEN LEFT HER AND WENT BACK TO WORK. SHE
10 CAME UP TO ME LATER AND SAID THE PERSON'S I.D. THAT WE WERE
11 SHOWN, THAT IT HAD BEEN STOLEN A COUPLE OF DAYS PRIOR IN LAS
12 VEGAS AT SEARS, AND IT DID BELONG TO A SECURITY AGENCY FOR THE
13 STORE.

14 Q DID SHE TELL YOU HOW THAT ITEM WAS STOLEN?

15 A YES.

16 Q HOW WAS THAT?

17 A SHE SAID THAT A SECURITY AGENT WAS HELD AT
18 GUNPOINT AND HIS IDENTIFICATION WAS TAKEN; AND THERE WAS
19 ANOTHER PERSON INVOLVED, TOO, THAT WAS ALSO HELD AT GUNPOINT BUT
20 HIS I.D. WAS NOT TAKEN.

21 Q AND DID SHE TELL YOU ANYTHING ELSE THAT SHE
22 HAD HEARD ABOUT THE DEFENDANT FROM HER PHONE CONVERSATION WITH
23 THE SEARS STORE?

24 A WE WERE TOLD AT THE TIME, OR SHE WAS TOLD
25 AT THE TIME THAT WE HAUL OFF FOR SHOPLIFTING, HE HAD BEEN --
26 WAS WANTED FOR MURDER OF A DOCTOR -- DENTIST OR SOMETHING IN LAS
27 VEGAS.

28 Q WHAT KIND OF A PSYCHOLOGICAL IMPACT DID
29 THAT HAVE ON YOU AT THE TIME?

30 A WELL, IT WAS VERY MUCH OF A SHOCK. SO,
31 THEREFORE --

32 MR. COOPER: YOUR HONOR, I'M GOING TO INTERJECT

1747

1 AN OBJECTION. I FAIL TO SEE THE RELEVANCY OF THIS.

2 THE COURT: RELEVANCY?

3 MR. SEATON: THE RELEVANCY IS QUITE SIMPLE, YOUR
4 HONOR. THE WITNESS' CREDIBILITY HAS BEEN SEVERELY CHALLENGED
5 ON CROSS EXAMINATION AND I'M MERELY BRINGING OUT THE REASONS
6 WHY THESE EVENTS WOULD STAND OUT SO CLEARLY IN HIS MIND TODAY,
7 SOME THREE YEARS LATER.

8 THE COURT: FOR THAT LIMITED PURPOSE, THE
9 OBJECTION IS OVERRULED.

10 MR. SEATON: THANK YOU, YOUR HONOR.

11

12 BY MR. SEATON:

13

14 Q AND LET ME ASK YOU A QUESTION IN LIGHT OF
15 THAT COMMENTARY, MR. SMITH. IS THERE A PARTICULAR REASON THAT
16 THESE EVENTS THAT YOU'VE TESTIFIED TO TODAY STAND OUT IN YOUR
17 MIND AFTER THREE YEARS OF TIME PASSING?

18 A WELL, I FOUND OUT -- FOUND THIS OUT ABOUT
19 AN HOUR LATER, AND IT REALLY KIND OF FRIGHTENED ME AND NORMA

20 BOTH, BECAUSE WE THOUGHT IF THAT PERSON HAD DONE WHAT THEY SAID
21 HE HAD DONE THE DAY BEFORE, THERE WAS A GOOD POSSIBILITY THAT
22 WE COULD HAVE BEEN HURT IN SOMEWAY HAD WE TRIED TO STOP THE
23 PERSON.

24 Q AND AS A RESULT OF THOSE THOUGHTS, DID YOU
25 GIVE SOME CONSIDERATION TO THE EVENTS THAT HAD JUST TRANSPIRED
26 WITH REGARD TO THE DEFENDANT IN YOUR SEARS STORE?

27 A ABSOLUTELY.

28 Q AND HAS THAT REMAINED IMPRESSIONABLE UPON
29 YOU OVER THIS PERIOD OF TIME?

30 A YES.

31 MR. SEATON: THAT CONCLUDES OUR QUESTIONING, YOUR
32 HONOR.

1748

THE COURT: RECROSS?

RECROSS EXAMINATION

BY MR. FRANZEN:

Q SIR, DID YOU SAY YOU FOUND OUT THE MAN WAS
WANTED IN LAS VEGAS ABOUT ONE HOUR AFTER THE INCIDENT?

A THAT'S WHEN I FOUND OUT.

Q OKAY.

AND THE RETAIL CREDIT CHECK SLIP, THE
R.C.C. THAT WAS SHOWN TO YOU BY THE STATE AS STATE'S EXHIBIT 38,
THAT IS -- IS THAT THE SAME -- THAT'S A RETAIL CREDIT SLIP THAT
YOU FILLED OUT WHEN THE MAN TRIED TO RETURN THE SANDER?

A YES.

Q WHEN YOU WERE WITH THE DISTRICT ATTORNEY
MR. SEATON TODAY, DID YOU ASK TO SEE A PHOTOGRAPH OF THE MAN?

A NO, I DID NOT.

Q WAS ANY -- WAS THERE ANY OPPORTUNITY TO
SEE PHOTOGRAPHS VOLUNTARILY BY THE DISTRICT ATTORNEY?

A NO, THERE WAS NOT.

MR. FRANZEN: NOTHING FURTHER.

MR. SEATON: NOTHING FURTHER BY THE STATE.

THE COURT: YOU'RE EXCUSED.

(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. SEATON: NORMA DONALDSON.

THE COURT: COUNSEL, COME FORWARD. WATCH OUT SO
YOU DON'T TRIP THERE.

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

THE CLERK: RAISE YOUR RIGHT HAND.

WHEREUPON,

NORMA DONALDSON,

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 NORMA DONALDSON, D-O-N-A-L-D-S-O-N.

Q IS IT MISS OR MRS.?

A MRS.

Q MRS. DONALDSON, HOW ARE YOU EMPLOYED?

A SEARS AND ROEBUCK.

Q WHERE IS THAT LOCATED?

A SAN BERNARDINO.

Q IS THAT WHERE YOU LIVE, ALSO?

A YES.

Q AND IN WHAT CAPACITY DO YOU WORK FOR SEARS

ROEBUCK IN SAN BERNARDINO?

A I'M THE ASSISTANT SECURITY MANAGER THERE.

1750

1 Q AND HOW LONG HAVE YOU BEEN IN SECURITY
2 WITH SEARS IN SAN BERNARDINO?
3 A NINE YEARS.
4 Q IS THAT ALL AT THE SAME STORE?
5 A YES.
6 Q AND WERE YOU A SECURITY AGENT PRIOR TO
7 THAT TIME?
8 A YES, I WAS.
9 Q AND WHAT'S THE TOTAL TIME THAT YOU'VE BEEN
10 A SECURITY AGENT?
11 A APPROXIMATELY 13 YEARS.
12 Q CALLING YOUR ATTENTION TO MARCH THE 28TH,
13 1980, CAN YOU RECALL RECEIVING A CALL HAVING TO DO WITH BOB
14 SMITH?
15 A YES.
16 Q AND APPROXIMATELY WHAT PART OF THE DAY WAS
17 THAT?
18 A AFTERNOON.
19 Q AND WHAT DID YOU DO IN RESPONSE TO THAT
20 CALL?
21 A I WENT TO HIS DEPARTMENT, WHICH WAS THE
22 TOOL DEPARTMENT.
23 Q AND DID YOU MEET WITH HIM?
24 A YES, I DID.
25 Q WAS THAT -- DID YOU MEET WITH HIM IN THE
26 TOOL DEPARTMENT?
27 A IN HIS OFFICE.
28 Q IN HIS OFFICE?
29 A YES.
30 Q IS THAT NEAR THE TOOL DEPARTMENT?
31 A YES.
32 Q AND WAS THERE ANYONE ELSE IN THE OFFICE?

1751

1 A NO.

2 Q WHAT DID HE TELL YOU AT THAT TIME?

3 A HE INFORMED ME THAT HE HAD A REFUNDER AT

4 HIS COUNTER THAT HAD I.D. BEING A SECURITY AGENT FROM LAS VEGAS.

5 Q ANY PARTICULAR TYPE OF SECURITY AGENT?

6 A JUST --

7 Q DID HE INDICATE WHERE THE GENTLEMAN WORKED

8 WHO WAS ASKING FOR A REFUND?

9 A YES. IN LAS VEGAS.

10 Q AT ANY --

11 A PARTICULAR STORE?

12 Q YES. WELL, WHAT KIND OF A STORE?

13 A A SEARS STORE.

14 Q I SEE.

15 A I'M SORRY.

16 Q AND DID HE TELL YOU AT THAT TIME WHAT THE

17 INDIVIDUAL'S NAME WAS WHO WAS ASKING FOR THE REFUND?

18 A YES, HE DID.

19 Q AND WHAT WAS THAT?

20 A KEITH KINSEY, KINSEY.

21 Q KEITH KINSEY?

22 A YES.

23 Q OKAY.

24 AFTER RECEIVING THAT INFORMATION DID

25 YOU GO ANYWHERE?

26 A YES, I DID.

27 Q WHERE DID YOU GO?

28 A I -- WELL, I WAS STILL IN HIS OFFICE, BUT

29 I WENT TO THE PHONE TO MAKE A CALL TO LAS VEGAS --

30 Q DID YOU HAVE AN OPPORTUNITY --

31 A (CONTINUING) -- TO SEARS.

32 Q PRIOR TO MAKING THAT PHONE CALL, DID YOU

1 HAVE AN OPPORTUNITY TO OBSERVE THE DEFENDANT OR THE INDIVIDUAL
2 AT ALL?

3 A YES, I DID.

4 Q HOW DID YOU GO ABOUT DOING THAT?

5 A I WENT BACK OUT ON THE FLOOR AND OBSERVED
6 HIM AND WENT BACK IN THE OFFICE AND MADE THE PHONE CALL.

7 Q FOR HOW LONG A PERIOD OF TIME DID YOU
8 OBSERVE HIM?

9 A APPROXIMATELY A MINUTE.

10 Q WHAT WAS THE PURPOSE OF DOING THAT?

11 A SO THAT I COULD I.D. HIM TO THE LAS VEGAS
12 SECURITY.

13 Q I SEE.

14 AND DID YOU REDUCE YOUR THOUGHTS OF
15 IDENTIFICATION TO WRITING AT THAT TIME?

16 A YES, I DID.

17 Q AND THEN DID YOU GO BACK AND MAKE THE
18 TELEPHONE CALL?

19 A YES, I DID.

20 Q AND WHERE DID YOU CALL?

21 A I CALLED THE SEARS STORE IN LAS VEGAS.

22 Q AND DID YOU SPEAK TO SOMEONE THERE?

23 A YES, I DID.

24 Q DO YOU KNOW WHO THAT WAS?

25 A NO, I DON'T, NOT RIGHT OFF HAND. IT WAS
26 THE SECURITY PERSONNEL.

27 Q WOULD YOU TELL US THE NATURE OF THAT CON-
28 VERSATION, PLEASE?

29 MR. FRANZEN: YOUR HONOR, WE WOULD OBJECT TO
30 WHATEVER SHE RECEIVED FROM AN UN-- WHATEVER INFORMATION SHE
31 RECEIVED FROM AN UNIDENTIFIED INDIVIDUAL AT AN UNIDENTIFIED
32 SEARS STORE IN LAS VEGAS AS A DENIAL OF CONFRONTATION AND HEAR-

1753

1 SAY.

2 THE COURT: OVERRULED.

3 MR. FRANZEN: AND I DON'T BELIEVE SHE TESTIFIED
4 SHE PLACED THE CALL, BUT I THINK SHE HAD THE OPERATOR PLACE THE
5 CALL.

6 THE COURT: YOU MAY PROBE THAT ON CROSS EXAMI-
7 NATION.

8 PROCEED.

9
10 BY MR. SEATON:

11
12 Q WOULD YOU TELL US THE NATURE OF THE CONVER-
13 SATION THAT YOU HAD WITH THE PEOPLE IN LAS VEGAS AT THE SEARS
14 STORE?

15 A I ASKED THE SECURITY UP THERE IF THEY HAD
16 AN EMPLOYEE NAMED KEITH KINSEY WORKING AS A SECURITY. I TOLD
17 THEM WE HAD A PERSON DOWN HERE AT OUR STORE THAT WAS REFUNDING
18 A TOOL IN THE TOOL DEPARTMENT AND HE HAD SECURITY I.D., AND I
19 JUST WANTED TO VERIFY HIS POSITION.

20 Q AS WELL AS ASKING THEM OR TELLING THEM HIS
21 NAME, DID YOU GIVE THEM HIS -- A DESCRIPTION THAT YOU HAD JUST
22 GOTTEN YOURSELF?

23 A YES, I DID.

24 Q AND WOULD YOU TELL US AT THIS TIME WHAT
25 THAT DESCRIPTION WAS?

26 A IT WAS A BLACK MALE, APPROXIMATELY, WELL,
27 IN HIS LATE TWENTIES AND HOW TALL HE WAS.

28 Q HOW TALL DID YOU THINK HE WAS?

29 A I THOUGHT HE WAS BETWEEN FIVE ELEVEN AND
30 SIX FOOT.

31 Q AND DID YOU ESTIMATE HIS WEIGHT?

32 A YES. I ESTIMATED IT BETWEEN 150, 160

1754

1 POUNDS.

2 Q AND DID YOU NOTICE HIS COMPLEXION AS TO
3 THE DARKNESS OR LIGHTNESS OF IT?

4 A YES, I DID.

5 Q HOW DID YOU CHARACTERIZE THAT?

6 A MEDIUM COLOR.

7 Q AND DID YOU DESCRIBE HIM IN ANY OTHER WAY?

8 A NO.

9 Q DID YOU NOTICE WHAT -- ANYTHING ABOUT HIS
10 CLOTHING? WHAT KIND OF SHIRT HE HAD ON?

11 A I DID ON MY OWN NOTES. I DIDN'T REALLY
12 LEAVE IT TO THEM.

13 Q AT THIS TIME WOULD YOU TELL US WHAT YOU
14 NOTICED ABOUT HIS SHIRT?

15 A HE HAD ON A DARK BROWN SHIRT, TAN PANTS AND
16 A JACKET, KIND OF A SHORTY-TYPE -- IT WASN'T LONG AND IT WASN'T
17 SHORT JACKET.

18 Q IN RELATION TO HIS WAIST, HOW LONG WAS HIS
19 JACKET?

20 A IT WENT PAST HIS WAIST.

21 Q IN RELATION TO --

22 A ACROSS HIS HIPS.

23 Q ACROSS HIS HIPS?

24 A YES.

25 Q ALL RIGHT.

26 AND DID YOU NOTICE ANYTHING ABOUT HIS
27 HAIR AT THAT TIME?

28 A IT WAS SHORT AND NEAT.

29 Q AFTER YOU GAVE THE INFORMATION TO THE SEARS
30 SECURITY IN LAS VEGAS, WHAT SORT OF RESPONSE DID YOU RECEIVE
31 FROM THEM?

32 A THEY SIMPLY HAD NO BLACK AGENT WORKING FOR

1755

1 THEM IN SECURITY.

2 Q AND WHAT DID YOU DO AT THAT TIME?

3 A I HUNG UP AND INFORMED BOB WHAT I HAD
4 FOUND OUT.

5 Q WHAT DID YOU DO AFTER THAT?

6 A I TOLD BOB I WOULD HAVE TO STOP THE
7 GENTLEMAN AND ASK HIM SOME QUESTIONS.

8 Q AND ARE YOU --

9 A REGARDING HIS SECURITY CARD.

10 Q AND DID YOU ATTEMPT TO DO THAT?

11 A YES.

12 Q HOW DID YOU DO THAT?

13 A WE WENT BACK OUT ON THE FLOOR. AT THIS
14 TIME THE GENTLEMAN WAS NOT THERE IN THE DEPARTMENT.

15 Q DID YOU LOOK ABOUT FOR HIM?

16 A YES.

17 Q AND WERE YOU ABLE TO FIND HIM AT ALL IN
18 THE STORE?

19 A NO.

20 Q DID YOU LOOK ANYWHERE ELSE?

21 A WE LOOKED INSIDE AND WE DID NOT LOCATE HIM.

22 Q I SEE.

23 DID YOU COME BACK INTO THE STORE AFTER
24 HAVING BEEN OUTSIDE?

25 A YES, I DID.

26 Q AND WHAT HAPPENED AT THAT TIME?

27 A AT THAT TIME I CALLED THE SECURITY OFFICE
28 ON THE PHONE.

29 Q AND WHO WAS ON THE PHONE?

30 A I WAS. I DIALED THE SECURITY OFFICE.

31 Q AND WHO WAS ON THE PHONE?

32 A IT WAS LAS VEGAS SECURITY, SEARS.

1756

1 Q THE SAME PERSON YOU JUST SPOKE TO?
2 A NO. IT WAS ANOTHER GENTLEMAN.
3 Q AND DID HE WORK AT THE SAME STORE AS THE
4 GENTLEMAN WHO YOU SPOKE TO THE FIRST TIME?
5 A NO. HE WORKED AT ANOTHER SEARS IN LAS
6 VEGAS.
7 Q WERE EITHER OF THEM ABLE TO IDENTIFY MORE
8 CLEARLY WHICH STORE IT WAS THAT THEY WERE CALLING FROM?
9 A THEY PROBABLY DID, BUT I HAVE FORGOTTEN AT
10 THIS TIME.
11 Q OKAY.
12 NOW, THIS PERSON WHO WAS WITH SECURITY
13 CALLED YOU THE SECOND TIME?
14 A YES, HE WAS.
15 Q AND WHAT DID HE TELL YOU?
16 A HE INFORMED ME THAT ONE OF HIS AGENTS HAD
17 BEEN -- HAD TAKEN A SHOPLIFTER TO THE OFFICE, AT WHICH TIME THEY
18 WERE HELD AT GUNPOINT AND THEIR SECURITY BADGES AND I.D. WAS
19 TAKEN AT THAT TIME.
20 Q DID HE TELL YOU THE NAME OF THAT SECURITY
21 AGENT WHO HAD BEEN HELD AT GUNPOINT?
22 A YES.
23 Q WHAT WAS THAT?
24 A KEITH KINSEY.
25 Q AND WHAT ELSE DID -- WAS HE ABLE TO TELL
26 YOU?
27 A WELL, HE INFORMED ME SOME OF THE INCIDENTS
28 THAT FOLLOWED.
29 Q AND WHAT WERE THEY?
30 A THAT THE SAME SUBJECT THAT THEY HAD BROUGHT
31 TO THE OFFICE HAD BEEN INVOLVED IN A MURDER.
32 Q DO YOU MEAN THE SAME SUBJECT WHO HAD HELD

1757

1 KEITH KINSEY AT GUNPOINT AT THE SEARS OFFICE?
2 A YES.
3 Q HE HAD BEEN -- I'M SORRY. WOULD YOU
4 CONTINUE?
5 A HE HAD BEEN INVOLVED IN A MURDER AND HAD
6 A -- A CAR THEFT.
7 Q AND THAT --
8 A THAT HE HAD SHOT A DOCTOR UP HERE IN LAS
9 VEGAS.
10 Q DID HE SAY ANYTHING ABOUT HIM WITH REGARD
11 TO WHETHER OR NOT HE MAY BE ARMED?
12 A YES. THEY INFORMED ME THAT HE WAS ARMED.
13 Q DID THEY TELL YOU HOW HE WAS ARMED?
14 A WITH A GUN.
15 Q DID THEY SAY WHAT KIND OF A GUN IT WAS?
16 A I UNDERSTOOD A .357. I COULD BE WRONG.
17 Q DID THEY TELL YOU ANYTHING ABOUT AN AUTO-
18 MOBILE WITH -- THAT WAS IN RELATION TO THIS INDIVIDUAL WHO HAD --
19 WHO WAS SUSPECTED OR MURDERING SOMEONE AND WHO HAD HELD THE
20 SECURITY GUARD AT GUNPOINT IN THE SECURITY STORE?
21 A THEY GAVE ME A DESCRIPTION OF THE CAR AND
22 A LICENSE NUMBER.
23 Q DO YOU RECALL THE DESCRIPTION OF THE CAR?
24 A 1980 OLDS CUTLASS.
25 Q DO YOU REMEMBER THE LICENSE NUMBER?
26 A NO, I DO NOT.
27 Q COURT'S INDULGENCE.
28 DID YOU MAKE OUT A REPORT OF THIS
29 INCIDENT AFTER IT HAD OCCURRED?
30 A YES. ON MY -- ON A SLIP OF PAPER, YES.
31 Q AND WAS THIS INCIDENT LATER PUT INTO A LOG
32 SHEET THAT YOU KEEP AT THE SEARS ROEBUCK STORE IN SAN BERNARDINO?

1 A YES, IT WAS.

2 Q DID YOU PLACE THAT INFORMATION ON THE LOG

3 SHEET?

4 A NO, I DIDN'T.

5 Q WHO DID, IF YOU KNOW?

6 A I HAD AN AGENT STEVE.

7 Q HERE?

8 A I HAD ONE OF THE OTHER AGENTS STEVE LUNE

9 (SIC) INTERJECT IT IN THE LOG FOR ME.

10 Q AND DID HE DO THAT AT YOUR DIRECTION?

11 A YES, HE DID.

12 Q AND WHAT INFORMATION DID HE UTILIZE IN

13 ORDER TO MAKE THAT LOG SHEET?

14 A FROM MY NOTES.

15 Q AND DID YOU LATER LOOK AT THAT LOG ENTRY

16 TO DETERMINE WHETHER OR NOT IT WAS CORRECT?

17 A YES, I DID.

18 Q AND WAS IT CORRECT?

19 A YES.

20 Q IF I WERE TO SHOW YOU THAT, A COPY OF THAT,

21 OR IF I WERE TO SHOW YOU THAT LOG AT THIS TIME, WOULD THAT

22 REFRESH YOUR MEMORY AS TO THE LICENSE NUMBER THAT THE SEARS

23 STORE IN LAS VEGAS GAVE TO YOU ON MARCH 28TH, 1980?

24 A YES. IT WOULD.

25 Q IF YOU WOULD JUST READ THIS:

26 SHE'S READING AND I SHOULD -- THE

27 DOCUMENT THAT I'VE GIVEN TO YOU HAS BEEN MARKED AS STATE'S

28 PROPOSED EXHIBIT 59.

29 DOES READING STATE'S PROPOSED EXHIBIT

30 59 REFRESH YOUR MEMORY AS TO THE LICENSE NUMBER THAT THE SEARS

31 PEOPLE IN LAS VEGAS GAVE TO YOU ON THE PHONE THAT DAY?

32 A YES, IT DOES.

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Q AND WHAT IS THAT?

A 614 ZHQ.

Q AND WHAT STATE WAS THAT LICENSE PLATE FROM?

A I BELIEVE IT SAID NEW YORK.

Q THANK YOU.

LET'S GO BACK TO STATE'S PROPOSED
EXHIBIT 59 FOR A MOMENT. WOULD YOU TELL US WHAT THAT IS,
PLEASE?

A PARDON ME?

Q WOULD YOU TELL US WHAT STATE'S PROPOSED
EXHIBIT 59 IS?

A NEW YORK.

Q NO. WHAT THIS WHOLE PIECE OF PAPER IS?

A OKAY. THIS IS A LOG SHEET THAT WE LOG
INCIDENTS THAT HAPPEN DURING THE DAY DURING OUR SHIFT.

Q WHILE YOU'RE EMPLOYED AS A SEARS SECURITY
AGENT?

A YES.

Q AND --

A IT'S A DAILY LOG.

Q AND THIS IS THE SAME LOG THAT YOU TESTIFIED
TO THAT YOU -- THAT THE GENTLEMAN MADE THE ENTRY FOR YOU
REGARDING THIS INCIDENT?

A YES, IT IS.

Q AND DID YOU THEN GO BACK TO STATE'S
PROPOSED EXHIBIT 59 AND REVIEW THAT LOG TO SEE IF THE INFORMATION
HE PUT IN IT WAS CORRECT?

A YES, WE DID.

Q IT IS CONTAINED NOW THERE AT THE PRESENT
TIME?

A YES, SIR.

MR. SEATON: YOUR HONOR, THE STATE WOULD DO TWO

1760

1 THINGS NOW: MOVE FOR THE ADMISSION OF STATE'S PROPOSED EXHIBIT
2 59, AND ALSO TO SUBSTITUTE FOR IT A COPY WHICH WE HAVE MADE
3 ALREADY SO THE WITNESS MIGHT BE ABLE TO TAKE THIS BACK TO THE
4 SEARS STORE IN SAN BERNARDINO.

5 THE COURT: ANY OBJECTION TO THE COPY, COUNSEL?

6 MR. FRANZEN: NO, YOUR HONOR, IF WE COULD SEE
7 THE ORIGINAL.

8 THE COURT: YES.

9 MR. FRANZEN: YOUR HONOR, ON THE BASIS OF SUB-
10 STITUTION OF THE COPY FOR THE ORIGINAL, WE HAVE NO OBJECTION.

11 THE COURT: ALL RIGHT.

12 MR. FRANZEN: WE DO HAVE OUR OBJECTIONS, IF THE
13 COURT WILL LISTEN AT THIS TIME.

14 THE COURT: ALL RIGHT.

15 MR. FRANZEN: YOUR HONOR, WE OBJECT IN THAT THERE
16 ARE THINGS ON THIS DOCUMENT THAT HAVE NOTHING TO DO WITH THIS
17 CASE AND WHICH ARE PREJUDICIAL, THAT THEY APPEAR TO DESCRIBE
18 CRIMES AND ALSO APPARENTLY DESCRIBE THE YOUNG WOMAN WHO MAY OR
19 MAY NOT BE THE INDIVIDUAL WHOM THE DEFENDANT WAS IN THE COMPANY
20 OF. I DON'T KNOW.

21 THE COURT: LET'S SEE IT.

22 DO YOU HAVE A COPY OF IT?

23 MR. FRANZEN: I ALSO NOTE THAT -- I WOULD ALSO
24 NOTE THAT THE PARAGRAPH THAT SHE IS REFERRING TO THAT WAS
25 WRITTEN BY THE OTHER AGENT AT HER REQUEST DESCRIBES THE
26 DEFENDANT BEING WANTED FOR HOMICIDE. THIS MAY BE SELF EVIDENT
27 THROUGH OUR EVIDENCE BUT IT'S CERTAINLY NOT THROUGH THIS
28 WITNESS, AND I THINK IT INVADES THE PROVINCE OF THE JURY. IT'S
29 FOR THEM TO DECIDE, NOT FOR THE SECURITY AT AN UNIDENTIFIED
30 SEARS STORE TO INFORM THIS LADY, ALSO SECURITY OF AN IDENTIFIED
31 SECURITY -- SEARS STORE, THAT THE MAN IS WANTED FOR A HOMICIDE.

32 MR. SEATON: YOUR HONOR, PARDON ME FOR INTERRUPT-

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1 ING, BUT PERHAPS I COULD SHORT CIRCUIT THIS.

2 THE STATE WOULD BE WILLING TO OFFER THIS
3 SOLELY FOR THE PURPOSE OF THIS HEARING ONLY. AND GIVEN THE
4 SAME TESTIMONY IN FRONT OF THE JURY, SHOULD THE COURT ALLOW
5 THIS WITNESS TO TESTIFY WE WOULD CHOOSE NOT TO OFFER STATE'S
6 PROPOSED EXHIBIT 59 INTO EVIDENCE AT THAT TIME.

7 MR. FRANZEN: THAT SOUNDS ACCEPTABLE, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. SEATON: WITH THAT IN MIND, WE PROBABLY WILL
10 NOT NEED THE XEROX COPY. WE CAN JUST COPY IT AS IT IS, UNLESS
11 THE COURT WILL KEEP THAT.

12 WELL, IF IT'S OFFERED FOR -- OR ACCEPTED
13 FOR ADMISSION, THE COURT WILL KEEP IT. WE WILL LEAVE THE XEROX
14 COPY.

15 THE COURT: ALL RIGHT. WHY DON'T YOU SUBSTITUTE
16 A XEROX COPY AND THEN THE SAME MAY BE KEPT FOR THE PURPOSES OF
17 THIS HEARING.

18 MR. SEATON: THANK YOU, YOUR HONOR.

19 IF I MAY NOW, I WILL RETURN THE LOG TO THE
20 WITNESS.

21
22 BY MR. SEATON:

23
24 Q WHEN YOU SPOKE WITH THE SEARS SECURITY IN
25 LAS VEGAS THE SECOND TIME, DID THEY INDICATE TO YOU A NAME THAT
26 THE DEFENDANT -- THAT THE VICTIM MIGHT BE USING?

27 A YES.

28 Q AND WHAT WAS THAT NAME?

29 A HAROLD STANBACK.

30 Q THANK YOU.

31 MRS. DONALDSON, WOULD YOU NOW LOOK
32 ABOUT THE COURTROOM AND TELL US IF YOU ARE ABLE TO IDENTIFY

1 ANYONE SEATED IN THE COURTROOM TODAY WHO WAS PRESENT IN YOUR
2 SEARS STORE IN SAN BERNARDINO ON MARCH THE 28TH, 1980?

3 A THE GENTLEMAN THERE IN THE BEIGE SHIRT,
4 OTHER THAN THE FACT THAT HE'S A LITTLE HEAVIER THAN WHEN HE WAS
5 IN MY STORE.

6 Q WOULD YOU POINT TO THE INDIVIDUAL TO WHOM
7 YOU HAVE REFERRED?

8 A (INDICATING).

9 Q AND DESCRIBE A LITTLE MORE CLEARLY WHAT
10 HE'S WEARING?

11 A OKAY. HE HAS A MOUSTACHE, CLEAN SHAVEN
12 OTHER THAN THE MOUSTACHE, AND THE SHORT BLACK HAIR.

13 MR. SEATON: MAY THE RECORD REFLECT THE IDENTIFI-
14 CATION OF THE DEFENDANT, YOUR HONOR?

15 THE COURT: THE RECORD MAY SO SHOW.

16 MR. SEATON: WE HAVE NO FURTHER QUESTIONS, YOUR
17 HONOR.

18 THE COURT: CROSS?

19 MR. COOPER: YES.

20

21 CROSS EXAMINATION

22

23 BY MR. COOPER:

24

25 Q MRS. DONALDSON, WHAT HAPPENED TO THE SLIP
26 OF PAPER THAT YOU MADE YOUR NOTES ON?

27 A THEY WERE PROBABLY THROWN AWAY. I DON'T
28 HAVE THEM.

29 Q YOU GAVE THEM TO SOMEONE TO PREPARE THE
30 LOG FROM; IS THAT RIGHT?

31 A YES, SIR.

32 Q THEY WEREN'T -- THE PAPER WASN'T RETURNED

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1 TO YOU?

2 A NO.

3 Q WHEN YOU TALKED TO WHOEVER IT WAS THAT YOU
4 TALKED TO ON THE PHONE IN LAS VEGAS, DID THIS PERSON TELL YOU
5 HOW THEY CAME ABOUT THIS INFORMATION THAT THIS GENTLEMAN WAS
6 WANTED FOR MURDER IN LAS VEGAS?

7 A NO.

8 Q DID YOU MAKE INQUIRY AS TO HOW THEY KNEW
9 THAT?

10 A DID I MAKE INQUIRY?

11 Q YES.

12 A NO, SIR.

13 Q WHEN YOU HAD THE OPERATOR TO PLACE THE CALL;
14 IS THAT RIGHT?

15 A YES, I DID.

16 Q WHERE DID YOU CALL FROM?

17 A I CALLED -- SHE CALLED -- SHE GAVE ME THE
18 NUMBER AND I DIALED IT.

19 Q EXCUSE ME. THE NUMBER TO WHAT?

20 A TO THE SEARS STORE.

21 Q YOU'RE NOW AWARE THAT THERE ARE TWO SEARS
22 STORES IN LAS VEGAS?

23 A I AM NOW.

24 Q AND THERE WERE TWO SEARS STORES IN LAS
25 VEGAS ON MARCH 28TH, 1980?

26 A YES.

27 Q YOU DON'T RECALL WHICH SEARS STORE YOU
28 CALLED THOUGH?

29 A NO, I DON'T.

30 Q YOU DON'T KNOW WHO YOU SPOKE TO?

31 A NO, I DON'T.

32 Q NOW, YOU TESTIFIED THAT AFTER YOU HAD YOUR

1 CONVERSATION WITH MR. SMITH YOU WERE GOING TO MAKE A PHONE CALL,
2 THAT YOU STOPPED AND YOU LOOKED AT THIS PERSON FOR A MINUTE
3 BEFORE CONTINUING ON; IS THAT RIGHT?

4 A THAT'S RIGHT.

5 Q WHERE WAS THIS MAN IN RELATION TO MR.
6 SMITH'S OFFICE?

7 A HE WAS STANDING OUT ON THE SALESFLOOR.

8 Q UH-HUH. APPROXIMATELY HOW FAR WOULD THAT
9 HAVE BEEN FROM MR. SMITH'S OFFICE?

10 A APPROXIMATELY, I'M NOT GOOD AT JUDGING
11 DISTANCE, BUT APPROXIMATELY 50 OR 60 FEET WOULD BE THE BACK OF
12 THE WALL THERE, THAT'S APPROXIMATELY HOW FAR.

13 Q ABOUT THE LENGTH OF THIS COURTROOM?

14 A NOT QUITE AS FAR. I'D SAY THREE -- THREE
15 SEATS UP BEFORE THE WALL.

16 Q THE PHONE THAT -- IS THERE ANY REASON YOU
17 DIDN'T USE THE PHONE IN MR. SMITH'S OFFICE TO MAKE YOUR CALL?

18 A I DID USE THE PHONE IN MR. SMITH'S OFFICE.

19 Q SO WHAT YOU DID WAS YOU LEFT THE OFFICE,
20 WENT OUT AND TOOK A LOOK AT THIS PERSON, AND THEN WENT BACK TO
21 THE OFFICE?

22 A YES, SIR.

23 Q IS THAT RIGHT?

24 A UH-HUH.

25 Q WOULD IT BE ACCURATE TO SAY THAT YOU LOOKED
26 AT HIM AT A DISTANCE OF MAYBE 40, 50 FEET?

27 A WHATEVER THAT DISTANCE WOULD BE, YES.

28 Q YOU DIDN'T WALK -- JUST WALK RIGHT UP TO
29 HIM?

30 A I HAD PASSED HIM ON MY WAY TO MR. SMITH'S
31 OFFICE.

32 Q BUT AT THAT TIME YOU HAD NO REASON TO

1 BELIEVE THAT THIS MAN WAS THE ONE WHO -- THAT MR. SMITH HAD
2 CALLED YOU REGARDING THIS PARTICULAR PERSON THOUGH, DID YOU?

3 A HE HAD CALLED ME ON A REFUNDER.

4 Q UH-HUH.

5 A AND I ASSUMED, AS I WAS GOING TO MR.
6 SMITH'S OFFICE, THAT HE WAS THE ONE IN QUESTION.

7 Q WHY DID YOU ASSUME THAT?

8 A BECAUSE HE WAS THE ONLY ONE STANDING AT
9 THE COUNTER.

10 Q SO YOU ASSUMED THAT THIS PERSON WHO WAS
11 STANDING AT THE COUNTER --

12 A YES, SIR.

13 Q YOU JUST WALKED RIGHT PAST HIM; IS THAT
14 RIGHT?

15 A YES. THAT'S RIGHT.

16 Q DID YOU OBSERVE HIM JUST FOR SECONDS THEN?

17 A RIGHT.

18 Q AND WHEN YOU CAME OUT OF MR. SMITH'S OFFICE

19 AND YOU -- YOU TAKE A LOOK AT THIS INDIVIDUAL, WAS HE FACING
20 YOU AT ALL TIMES?

21 A WAS THE GENTLEMAN FACING ME?

22 Q YES.

23 A NO.

24 Q SO AT LEAST PART OF THAT TIME HE WASN'T
25 LOOKING AT YOU OR, I GUESS, YOU WEREN'T LOOKING AT HIM STRAIGHT-
26 ON?

27 A THAT'S RIGHT.

28 Q FOR HOW MUCH OF THAT MINUTE THAT YOU SAID
29 YOU LOOKED AT THIS MAN WOULD YOU SAY THAT YOU SAW HIS FRONTAL
30 VIEW OF HIS FACE?

31 A OKAY. EXCUSE ME. I'M CONFUSED ON YOUR
32 QUESTION THERE. I THOUGHT YOU WERE ASKING ME WHEN I FIRST WENT

1 TO MR. SMITH'S OFFICE.

2 ARE YOU REFERRING NOW --

3 Q I'M REFERRING TO THE TIME AFTER YOU'D GONE
4 TO MR. SMITH'S OFFICE, CONFERRED WITH MR. SMITH, CAME OUT OF
5 THE OFFICE AND YOU LOOKED AT THIS INDIVIDUAL.

6 A I LOOKED AT HIM STRAIGHT OUT FOR THAT
7 LENGTH OF TIME I TOLD YOU.

8 Q FOR ABOUT A MINUTE YOU WERE LOOKING RIGHT
9 AT HIS FACE, NO PROFILE SHOT BUT A FRONTAL VIEW OF HIS FACE;
10 IS THAT RIGHT?

11 A RIGHT.

12 Q HE WASN'T TURNING TO THE SIDE OR MOVING
13 ABOUT THERE? HE WAS STANDING?

14 A HE WAS JUST STANDING THERE VERY PATIENTLY.

15 Q AND LOOKING AT YOU?

16 A NO, NOT LOOKING AT ME.

17 Q WAS HE LOOKING IN YOUR DIRECTION?

18 A YES.

19 Q SO YOU STOOD THERE FOR A MINUTE STUDYING

20 THIS MAN?

21 A NOT RIGHT OUT IN THE OPEN.

22 Q WHEN YOU SAY "NOT RIGHT OUT IN THE OPEN"
23 WHAT DO YOU MEAN?

24 A OKAY. WE HAVE SHELVES IN THE DEPARTMENT.
25 OKAY. I CAN LOOK OVER THE SHELF AND THAT'S THE WAY I SEEN HIM.

26 Q OKAY.

27 A I WAS NOT STANDING RIGHT OUT IN THE OPEN,
28 BUT --

29 Q I SEE.

30 WHAT WAS YOUR PURPOSE IN GOING TO LOOK
31 AT THIS MAN?

32 A SO THAT I COULD HAVE A DESCRIPTION TO GIVE

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1 THE SECURITY IN LAS VEGAS A DESCRIPTION OF.

2 Q DIDN'T YOU THINK IT WAS IMPORTANT TO NOTE
3 WHAT KIND OF CLOTHES HE HAD ON?

4 A I DID NOT.

5 Q WELL, THAT'S NOT IN THE LOG, IS IT?

6 A WELL, IT'S IN MY MIND.

7 NO, IT'S NOT IN THE LOG.

8 Q WAS THAT IN YOUR NOTES THAT YOU GAVE THE
9 GENTLEMAN WHO PREPARED THE LOG?

10 A APPARENTLY IT WASN'T.

11 Q UH-HUH.

12 HOW LONG HAD YOU BEEN WITH SECURITY AT
13 THE TIME THIS HAPPENED?

14 A PROBABLY WITH SEARS SEVEN -- SIX OR SEVEN
15 YEARS.

16 Q YOU KNEW THAT THE ONLY RECORD THAT SEARS
17 WOULD HAVE OF THIS WOULD BE YOUR -- THE LOG THAT YOU DIRECTED;
18 ISN'T THAT TRUE?

19 A RIGHT.

20 Q YET YOU MADE NO NOTE OF COLOR OF CLOTHES,
21 THE TYPE OF CLOTHES, NOTHING ABOUT THIS MAN'S CLOTHING WHATSOEVER;
22 IS THAT RIGHT?

23 A NO, I DID NOT.

24 Q DID YOU HAVE ANY CONVERSATION WITH THIS
25 MAN AT ALL?

26 A NO, SIR.

27 Q YOU NEVER SAW HIM -- IT NEVER APPEARED TO
28 YOU THAT HE WAS WITH ANYONE ELSE; IS THAT CORRECT?

29 A NO.

30 Q DID YOU SEE THE IDENTIFICATION CARD THAT
31 MR. SMITH MENTIONED ABOUT -- MENTIONED TO YOU?

32 A NO, I DID NOT.

1 Q YOU GOT ALL OF YOUR INFORMATION, WITH THE
2 EXCEPTION OF HAVING ACTUALLY OBSERVED THIS MAN, FROM MR. SMITH?

3 A YES, I DID.

4 Q DID YOU -- DID YOU SEE THIS MAN WITH A
5 RADIO AT ALL?

6 A NO, SIR. I DID NOT.

7 Q DO YOU KNOW WHAT A TWO-WAY RADIO IS?

8 A YES. I KNOW WHAT A TWO-WAY RADIO IS.

9 Q DO YOU USE ANY KIND OF A TWO-WAY RADIO OR
10 A WALKIE-TALKIE IN YOUR JOB THERE AT SEARS?

11 A YES, I DO.

12 Q DID YOU SEE THIS PERSON WITH ANY SIMILAR
13 TYPE OF RADIO?

14 A NO, I DID NOT.

15 Q HOW WOULD YOU DESCRIBE HIS -- HIS BUILD
16 AT THE TIME?

17 A THINNER.

18 Q THINNER?

19 A YES.

20 Q WOULD YOU SAY AT THAT TIME THAT HE WAS --
21 THAT HE WAS MUSCULAR?

22 A YES. HE'S -- HE WAS MUSCULAR BUILT, BUT
23 NOT AS HEAVY.

24 Q WAS HE --

25 A HE WASN'T AS HEAVY THEN.

26 MR. COOPER: I HAVE NOTHING FURTHER, YOUR HONOR.

27 MR. SEATON: WE HAVE NO FURTHER QUESTIONS, YOUR
28 HONOR.

29 THE COURT: YOU'RE EXCUSED.

30 (WHEREUPON, THE WITNESS WAS
31 EXCUSED.)

32 THE COURT: FURTHER WITNESSES?

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MR. SEATON: YOUR HONOR?

THE COURT: ANY FURTHER WITNESSES OUTSIDE OF THE PRESENCE OF THE JURY?

MR. SEATON: NO, YOUR HONOR. THAT'S ALL. THANK YOU.

THE COURT: COUNSEL, WE'LL TAKE ABOUT A TEN-MINUTE RECESS AND THEN I'LL LISTEN TO YOUR ARGUMENTS.

MR. FRANZEN: THANK YOU, YOUR HONOR.

(WHEREUPON, FROM THE HOUR OF 4:10 P.M. UNTIL 4:25 P.M., A RECESS WAS HAD IN THE PROCEEDINGS, AT THE CONCLUSION OF WHICH THE FOLLOWING PROCEEDINGS WERE CONTINUED OUTSIDE THE PRESENCE OF THE JURY:)

THE COURT: PROCEED, COUNSEL.

MR. SEATON: THANK YOU, YOUR HONOR.

YOUR HONOR, THE STATE WISHES TO OFFER THE EVIDENCE WHICH WAS JUST SHOWN THROUGH THE WITNESSES OF BOB SMITH AND NORMA DONALDSON.

UNDER N.R.S. 48.045, SUBSECTION 2, WHICH WE ARGUED BEFORE IN THIS PARTICULAR CASE, IT COMES FROM THE NESTER EXCEPTION THAT THE COURT IS WELL AWARE OF.

AND WHILE PROOF OF OTHER OFFENSES IS NOT NORMALLY RECEIVED IN CRIMINAL CASES, IF THE PROOF OF THE OTHER OFFENSE FALLS INTO ONE OF THE ENUMERATED EXCEPTIONS THE COURT WILL SOMETIMES LET THOSE OFFENSES IN. WE FEEL THAT UNDER FOUR OF THE EXCEPTIONS, IN N.R.S. 48.045, SUB 2, THIS PARTICULAR TESTIMONY SHOULD COME IN. TO LIST THEM QUITE QUICKLY, IT'S THE EXCEPTIONS OF MOTIVE, INTENT, IDENTITY, AND PLAN.

NOW, I WOULD LIKE TO TALK FOR A MOMENT ABOUT IDENTITY, BECAUSE, AND I WILL GO INTO THE -- A LIST OF

1 SIMILARITIES BETWEEN THE TWO CRIMES, BUT BECAUSE OF THAT LIST,
2 WHICH I AM GOING TO REFER TO, THE MODUS OPERANDUS OF THE
3 DEFENDANT WAS SO REMARKABLY SIMILAR IN THESE TWO CASES IT WOULD
4 GREATLY ASSIST THE STATE IN THE PROOF OF THE IDENTITY OF THE
5 DEFENDANT IN THE SEARS ROBBERY, WHICH HAS BEEN CHARGED IN THIS
6 CRIMINAL INDICTMENT.

7 AND ALTHOUGH I DO NOT HAVE CASES HERE
8 FOR THE COURT AT THIS TIME, I CAN REPRESENT TO THE COURT THAT I
9 THINK IT WAS ARGUED THE OTHER DAY WHEN WE ARGUED THE SAME ISSUE,
10 THE FACT THAT PEOPLE HAVE MADE EYE-WITNESS IDENTIFICATIONS DOES
11 NOT PRECLUDE THE USE OF SEPARATE OFFENSES TO ASSIST IN SHOWING
12 IDENTITY. AS A MATTER OF FACT, THERE IS A CASE, THE NAME OF
13 WHICH ESCAPES ME, THAT I READ JUST RECENTLY THAT INDICATES EVEN
14 IN FINGERPRINT CASES, WHICH IS CONSIDERED TO BE MORE RELIABLE
15 THAN THAT OF EYE-WITNESS TESTIMONY, SUCH PROOF OF SEPARATE
16 OFFENSES FOR THE PURPOSES OF PROVING IDENTITY HAS BEEN RECEIVED,
17 AND FAVORABLY SO, BY THE NEVADA SUPREME COURT.

18 AS TO MOTIVE AND INTENT, PARTICULARLY
19 WITH REGARD TO INTENT, THE STATE IS SOMEWHAT CONCERNED THAT THE
20 DEFENDANT MAY CHOOSE TO ARGUE THAT IN THE KEITH KINSEY ROBBERY
21 THE ONLY REASON HE PULLED HIS GUN, AND DID WHAT HE DID SUBSEQUENT
22 TO THE PULLING OF THAT GUN, WAS BECAUSE OF THE ACTIONS OF KEITH
23 KINSEY. ON CROSS EXAMINATION WE HAVE SEEN ALLUSIONS TO THAT IN
24 THAT IT HAS BEEN BROUGHT OUT THAT THERE WERE -- KEITH HAD
25 GRABBED AHOLD OF THE DEFENDANT, AND PERHAPS IT WOULD BE
26 ARGUED LATER THAT THAT PRECIPITATED THE DEFENDANT'S ACTIONS,
27 WHICH OF COURSE WOULD BE ARGUED IN ORDER TO NEGATE ANY INFERENCE
28 OF INTENT THAT THE DEFENDANT MAY HAVE FORMULATED PRIOR TO
29 COMMITTING WHAT HAS BEEN CHARGED AS A ROBBERY IN THIS CASE.

30 AND WITH REFERENCE TO PLAN, WHEN
31 NESTER WAS WRITTEN THE TERMINOLOGY THAT THEY USED WAS COMMON
32 SCHEME OR PLAN. AND WITH THE CODIFICATION OF N.R.S. 48.045,

1 SUB 2, THE LEGISLATURE LEFT OUT THE TERMINOLOGY "COMMON SCHEME"
2 AND THEY JUST USED THE WORD "PLAN". NONETHELESS, IN THE
3 SUBSEQUENT CASES, THE NESTER CASE HAS BEEN REFERRED TO FAVORABLY
4 JUXTAPOSE, RIGHT UP ALONGSIDE OF, 48.045, SUB 2; AND, IN FACT,
5 CASES HAVE USED THE TERMINOLOGY OF "COMMON SCHEME OR PLAN" OUT
6 OF THE NESTER CASE WHEN REFERRING TO THE WORD "PLAN" IN N.R.S.
7 48.045, SUB 2.

8 I WOULD REFER THE COURT TO TWO CASES
9 IN REGARDS TO THIS COMMON SCHEME OR PLAN ARGUMENT: WILLET,
10 W-I-L-L-E-T V. STATE. I DID NOT HAVE THE RECENT CITE, BUT IT
11 WAS ADVANCED OPINION 1974 584 P2ND 648, 1978, NEVADA SUPREME
12 COURT.

13 IN WILLET, YOUR HONOR, THE CHARGES
14 WERE OF A SEXUAL NATURE AND THE EVIDENCE SHOWED THAT THE
15 DEFENDANT WILLET COMMITTED SEVERAL ACTS OF ORAL COPULATION ON
16 A MINOR BOY. HE COMPLAINED THAT THE TRIAL COURT HAD ADMITTED
17 TESTIMONY OF SIMILAR ACTS THAT WERE COMMITTED CLOSE IN TIME,
18 WITHIN A MONTH WAS IN THIS PARTICULAR CASE, AND UNDER CERTAIN
19 CIRCUMSTANCES, THAT IS WHILE WILLET WAS WORKING AS A VOLUNTEER
20 AT A HOME FOR BOYS, AND THERE UNDER THOSE FACTS THE COURT
21 UPHELD THE DISTRICT COURT'S RULING THAT THE TESTIMONY WAS
22 ADMISSIBLE TO SHOW A COMMON SCHEME OR PLAN. AND IN HOLDING
23 THAT, THEY CITED BOTH THE N.R.S. STATUTE THAT WE'VE REFERRED TO
24 AND NESTER V. STATE, 75 NEVADA 41, A 1959 CASE.

25 THE OTHER CASE THAT I WISH TO REFER TO
26 IS SIMPSON V. STATE, NEVADA -- 94 NEVADA ADVANCED OPINION 222,
27 A 1978, NEVADA SUPREME COURT, IN WHICH WILLET V. STATE IS
28 REFERRED TO, JUST REFERRED TO, WAS CITED PREVALENTLY. AND THERE
29 IT WAS A SEXUAL CASE AGAIN WITH A MINOR VICTIM. AND OUT OF THE
30 PRESENCE OF THE JURY THE COURT HEARD EVIDENCE AS TO THE
31 DEFENDANT'S CONTINUING COURSE OF ILLICIT SEXUAL ACTS WITH THE
32 MINOR CHILD, AND IT WAS ALLOWED TO COME IN RECOGNIZING THAT

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1 THERE WAS SOME PREJUDICIAL AFFECT OF HIS TESTIMONY, AND THE
2 COURT, IN THAT CASE THE DISTRICT COURT, ADMITTED THE TESTIMONY
3 AS PROOF AGAIN OF A COMMON SCHEME OR PLAN UNDER N.R.S. 48.045,
4 SUB 2.

5 THOSE TWO CASES, IT WOULD APPEAR,
6 UPHOLD IN CASES WHERE THERE ARE SIMILAR SETS OF CIRCUMSTANCES
7 BETWEEN THE TWO CRIMES TO ALLOW THE PROOF OF THE SECOND SEPARATE
8 OFFENSE IN ORDER TO SHOW COMMON SCHEME OR PLAN.

9 IN THIS CASE, WE HAVE SO MANY MORE THAN
10 EITHER OF THOSE OTHER TWO CASES. IT ALMOST DEFIES BELIEF. AND
11 IF I MAY, FOR THE RECORD, I WILL LIST THE SERIES OF SIMILARITIES
12 BETWEEN THE KEITH KINSEY ROBBERY AND THE ACTIVITIES OF THE
13 DEFENDANT IN THE SAN BERNARDINO STORE TWO DAYS LATER:

14 IN BOTH SITUATIONS IT WAS A SEARS STORE
15 IN WHICH THE ACT WAS COMMITTED. IT OCCURRED IN THE AFTERNOON.
16 BOTH TIMES THE DEFENDANT APPROACHED THE CASHIER. HE HAD A
17 SANDER THAT HE WISHED TO RETURN. HE DID NOT HAVE A RECEIPT IN
18 EITHER CASE. HE ASKED FOR HIS MONEY BACK IN BOTH CASES, AND IN
19 BOTH SITUATIONS HE GAVE AS HIS REASON THE FACT THAT HE DIDN'T

20 NEED THIS PARTICULAR ITEM. BOTH SANDERS HAD BEEN OPENED AND
21 THE CONTENTS REMOVED AND CHANGED WITHIN THE STORE, THE SANDER
22 PUT BACK INTO THE BOX AND THEN BROUGHT TO THE CASHIER;

23 IN BOTH SITUATIONS, THE -- THE
24 INDIVIDUAL AT THE CASHIER COUNTER ASKED FOR IDENTIFICATION. AND
25 IN BOTH SITUATIONS THE DEFENDANT PROVED -- PROVIDED FALSE
26 IDENTIFICATION; THE FIRST TIME HE PROVIDED THE IDENTIFICATION
27 AS ONE HAROLD STANBACK, THE SECOND TIME HE GAVE HIMSELF IDENTI-
28 FICATION AS KEITH KINSEY;

29 IN BOTH SITUATIONS A RETAIL CREDIT
30 CHECK WAS MADE OUT WITH THE IDEA IN MIND BEING THAT THE DEFENDANT
31 WOULD RECEIVE CASH FOR THIS RETURNED ITEM.

32 THOSE ITEMS THAT I HAVE JUST LISTED ARE

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1 SO SIMILAR THAT THEY SHOW -- THEY COULDN'T MORE DISTINCTLY SHOW
2 THE SAME MODUS OPERANDUS, NOR COULD THEY SHOW A MORE SIMILAR
3 COMMON SCHEME OR PLAN.

4 THE ONLY THING THAT THE STATE WOULD
5 ADD IS THAT THERE, EVEN IN SPITE OF THE VIGOROUS CROSS EXAMINA-
6 TION, THERE CANNOT BE MUCH DOUBT AS TO THE IDENTIFICATION OF
7 THE DEFENDANT AS BEING THE PERSON WHO DID THIS. AND I WON'T
8 REITERATE ALL THAT THE COURT HAS HEARD, EXCEPT FOR TWO VERY
9 INTERESTING ITEMS: ONE OF WHICH IS THAT BOB SMITH INDICATED
10 THAT -- LET'S GO TO NORMA, BECAUSE I REMEMBER THAT ONE. I'LL
11 TRY TO REMEMBER BOB.

12 NORMA REMEMBERED THAT HE -- OR SAID
13 THAT THE DEFENDANT APPEARED TO HAVE GAINED WEIGHT SINCE SHE LAST
14 SAW HIM. AND WE'VE HAD ANOTHER WITNESS IN THIS CASE WHO SAID
15 PRECISELY THE SAME THING IN MAKING THE IDENTIFICATION.

16 WITH REGARD TO BOB SMITH, HE SAID THAT
17 THE DEFENDANT LOOKED VERY SIMILAR IN REGARDS TO HIS HAIR, WITH
18 THE EXCEPTION OF THE BACK OF HIS HAIR WAS A LITTLE LONGER TODAY
19 THAN IT WAS THEN, WHICH IS SIMILARLY THE PRECISE TESTIMONY THAT
20 WE'VE HAD FROM ANOTHER WITNESS WHO HAS MADE AN ON-THE-STAND
21 EYE-WITNESS IDENTIFICATION OF THE DEFENDANT.

22 FOR THOSE REASONS, YOUR HONOR, THE
23 COURT IS URGED TO ALLOW INTO EVIDENCE THE TESTIMONY OF BOB SMITH
24 AND NORMA DONALDSON.

25 THE COURT: COUNSEL?

26 MR. FRANZEN: WE WOULD RESPECTFULLY OBJECT TO
27 THE ADMISSION. THE ARGUMENT THAT THE STATE NEEDS THIS IN ORDER
28 TO SHOW A COMMON PLAN OR MOTIVE TO TENDER IDENTITY IS INFLAMA-
29 TIOUS (SIC) IN LIGHT OF THE EVIDENCE THAT WILL BE COMING FORWARD
30 THAT WE KNOW ABOUT, DUE TO OUR BEING PROVIDED WITH DISCOVERY.
31 I ANTICIPATE THERE WILL BE A CONFESSION COMING IN. IN LIGHT OF
32 THAT, I DOUBT THAT THERE WOULD BE ANY DOUBT AT ALL ABOUT ANY OF

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1 THE PLANNED MOTIVE, INTENT, OR IDENTITY. AND IF ANY DOUBT DOES
2 ARISE AFTER THIS TESTIMONY COMES IN, THEN IT WOULD BE THE
3 APPROPRIATE TIME TO HAVE THIS EVIDENCE CONSIDERED TO BE
4 ADMITTED.

5 WE WOULD ASK -- WE ARE, AS WAS STATED TO
6 YOUR HONOR PRIOR TO CONVENING THIS AFTERNOON --

7 THE COURT: COUNSEL, IF THERE'S GOING TO BE A
8 CONFESSION, THEN WHAT DIFFERENCE DOES IT MAKE?

9 MR. FRANZEN: WELL, I'M JUST GETTING TO THAT
10 PART, YOUR HONOR.

11 WE, BEING STRUCK BY SURPRISE BY THE ADMIS-
12 SION OF THE -- THE PROPOSAL OF THIS TESTIMONY, WE WOULD LIKE
13 THE OPPORTUNITY TO INVESTIGATE IT, TO FIND OUT IF MR. HOWARD
14 HAS AN ALIBI FOR THAT DATE OR IF MR. HOWARD WAS STILL HERE IN
15 LAS VEGAS ON THAT DATE. WE WOULD NEED TIME TO INVESTIGATE THIS
16 NEW AND SEPARATE OFFENSE, AND WE WOULD REQUEST TIME FROM YOUR
17 HONOR TO DO SO.

18 I NOTE ADDITIONALLY, AS POINT NUMBER
19 THREE, THAT THE STATE HAS CITED A SERIES OF SEXUAL OFFENSE
20 CASES FOR THE ADMISSION OF OTHER CRIMES EVIDENCE. I HAVE
21 NOTED, AS A PERSONAL OBSERVATION, SEX CRIMES ARE TREATED
22 DIFFERENTLY BY THE COURTS. THERE APPEARS TO BE MORE LENIENCY
23 TOWARDS THE STATE FOR THE ADMISSION OF SUCH EVIDENCE. THIS IS
24 NOT THAT TYPE OF CASE, AND ON THOSE GROUNDS WE WOULD OBJECT.

25 THE LISTING OF SIMILARITIES ARE
26 SIMILARITIES THAT DON'T STAND OUT AS A DISTINCTIVE FOOTPRINT
27 THAT IDENTIFIES THE DEFENDANT FROM ANY OTHER PERSON WHO WOULD
28 COME INTO A SEARS STORE AND ASK FOR A REFUND AND NOT HAVE
29 IDENTIFICATION, THAT HAPPENED IN THE AFTERNOON. I'M SURE MANY
30 TIMES IN THE AFTERNOON AN INDIVIDUAL WOULD COME INTO A SEARS
31 STORE AND ASK FOR A REFUND. AFTER ALL, THEY'RE OPEN IN THE
32 AFTERNOON. THEY HAVE THEIR R.C.C. -- R.C.C. DOCUMENTS READY

1 FOR SUCH AN OCCASION, AS INDEED THEY HAD READY IN THE AFTERNOON
2 OF MARCH 28TH, 1980.

3 I'M SURE THEY'VE BEEN ASKED FOR
4 REFUNDS ON SANDERS AND -- AND ON OTHER HEAVY EQUIPMENT. I'M
5 SURE IN THE AFTERNOON THEY'VE ASKED FOR RECEIPTS AND NOT HAD
6 BEEN SUPPLIED WITH RECEIPTS. I'M SURE, SINCE THEY HAVE A
7 PROCEDURE SET UP FOR IT, THAT THEY'VE BEEN GIVEN FALSE IDENTIFI-
8 CATION IN THE PAST, AND IN THE FUTURE, SINCE MARCH OF 1980.

9 THE FACT THAT THE INDIVIDUAL ASKED FOR
10 A CASH REFUND FROM THE INDIVIDUAL, ASKS TO REFUND AN ITEM AND
11 DOESN'T HAVE A RECEIPT, I THINK THAT WOULD BE THE NORM. THERE'S
12 NOT THAT DISTINCTIVE FOOTPRINT THAT IDENTIFIES THIS CRIME FROM
13 OTHER CRIMES.

14 AGAIN I APOLOGIZE TO YOUR HONOR IF THIS
15 APPEARS DISORGANIZED, AS THIS WAS GIVEN TO US AFTER THE COURT
16 CONVENED. WE WOULD OBJECT TO THE ADMISSION OF THESE OTHER
17 CRIMES WITHOUT OUR OPPORTUNITY TO INVESTIGATE.

18 THE COURT: WELL, AS I UNDERSTAND IT, COUNSEL, IT
19 ~~APPEARS THAT THIS MATTER WILL NOT PROBABLY GO TO THE JURY BEFORE~~
20 THURSDAY. OBVIOUSLY, IF YOU THINK THAT YOU'LL NEED ADDITIONAL
21 TIME TO INQUIRE INTO IT, YOU HAVE A FEW MORE DAYS TO DO SO.

22 THE STATE HAD INDICATED EARLIER, WHEN WE
23 TALKED ABOUT THIS IN CHAMBERS, THAT SOME OF THIS HAD ALREADY
24 BEEN MADE PART OF THE RECORD OR -- WHAT WAS THE REPRESENTATION?
25 I JUST WANT TO GET THAT CLEAR?

26 MR. SEATON: IS THE COURT REFERRING TO THE FACT
27 THAT WE HAD AN OFFICER'S REPORT OF DETECTIVE BRADLEY WHICH
28 REFERRED TO NEAR ALLEGATIONS AT LEAST THAT THIS SORT OF ACTIVITY
29 HAD TAKEN PLACE?

30 THE COURT: THERE WAS AN INDICATION THAT THIS WAS
31 IN THE REPORT AND THAT THEY WERE AWARE OF, AS YOU SAY, THE BARE
32 ALLEGATIONS?

1776

1 MR. SEATON: YES. MR. HARMON HAS JUST PROVIDED
2 ME WITH A HOMICIDE FOLLOW-UP REPORT, WHICH I WOULD GUESS IS A
3 PART OF THE DISCOVERY, SINCE WE HAVE TRIED TO GIVE TOTAL
4 DISCOVERY TO THE DEFENSE.

5 IT IS MADE OUT BY OFFICER BRADY AND IT
6 INDICATES THAT HE RECEIVED A TELEPHONE CALL FROM ASSISTANT
7 CHIEF OF SECURITY AT THE MEADOWS MALL STORE. AND HE SAID THAT
8 HE RECEIVED A PHONE CALL FROM SAN BERNARDINO. IT GOES ON TO
9 SOME DEGREE INDICATING WHAT WE'VE LEARNED HERE TODAY AS A RESULT
10 OF THE PAST TWO WITNESSES.

11 THE COURT: SO THIS DOESN'T COME AS A COMPLETE
12 SURPRISE?

13 MR. SEATON: OH, NO.

14 THE COURT: THEY DO HAVE A COPY OF THIS
15 DISCOVERY?

16 MR. SEATON: THEY SHOULD HAVE A COPY OF THIS
17 DISCOVERY. I CANNOT MAKE THAT REPRESENTATION, YOUR HONOR.

18 I CAN MAKE THE REPRESENTATION THAT WE'VE
19 GIVEN THEM EVERYTHING THAT --

20 MR. COOPER: IF I COULD SEE THE REPORT, YOUR
21 HONOR.

22 THE COURT: WHY DON'T YOU SHOW IT TO HIM?

23 MR. COOPER: I DO HAVE A COPY OF THE REPORT
24 REFERRED TO, YOUR HONOR.

25 THE COURT: NOW, AS I UNDERSTAND, THIS WAS TWO
26 DAYS AFTER THE LAS VEGAS ROBBERY; IS THAT CORRECT?

27 MR. SEATON: YES. THIS WAS ON THE 28TH, AND THE
28 LAS VEGAS ROBBERY WAS ON THE 26TH OF MARCH.

29 THE COURT: IS THE MATTER SUBMITTED AT THIS
30 POINT, I TAKE IT?

31 MR. SEATON: YES, YOUR HONOR.

32 MR. FRANZEN: YES, SIR, IT IS.

1777

1 THE COURT: I HAVE SOME QUESTIONS, AND PARTICU-
2 LARLY ABOUT THE HEARSAY ASPECT OF THIS DEFENDANT BEING A
3 SUSPECT IN A MURDER CASE, THAT PORTION OF IT SEEMS TO BE A
4 LITTLE BEYOND WHAT YOU'RE ACTUALLY ASKING FOR IN THIS CASE.

5 MR. SEATON: I THINK I CAN PUT THE COURT'S MIND
6 AT EASE. WE WOULD NOT INTEND TO BRING THAT OUT IN FRONT OF THE
7 JURY.

8 THE COURT: SO YOU'RE GOING TO BE ELIMINATING
9 THAT ASPECT OF IT?

10 MR. SEATON: I WILL STOP -- IN FACT, I WOULD EVEN
11 SUGGEST THAT I TELL NORMA DONALDSON BEFORE SHE RETAKES THE
12 STAND THAT WE ARE NOT TO HAVE ANY ELUSIONS -- ALLUSIONS TO THAT
13 PARTICULAR PART OF THE TESTIMONY, YES, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 THE ISSUE BEFORE THE COURT IS WHETHER OR
16 NOT THE OFFER OF THE STATE IN THIS CASE SHOULD BE ACCEPTED.
17 IN EFFECT, THE STATE BELIEVES THAT THIS EVIDENCE IS ADMISSIBLE
18 UNDER 48.045, WHICH STATES:

19 EVIDENCE OF OTHER CRIMES,
20 WRONGS OR ACTS IS NOT ADMISSIBLE
21 TO PROVE THE CHARACTER OF THE
22 PERSON IN ORDER TO SHOW THAT
23 HE'S ACTUALLY PERFORMING THERE-
24 WITH. IT MAY, HOWEVER, BE
25 ADMISSIBLE FOR OTHER PURPOSES,
26 SUCH AS PROOF OF MOTIVE, OPPOR-
27 TUNITY, INTENT, PREPARATION,
28 PLAN, KNOWLEDGE, OR IDENTITY,
29 AND ABSENT OF MISTAKE OR
30 ACCIDENT.

31 AS COUNSEL IS AWARE, OUR NEVAOA CASES
32 REQUIRE THAT BEFORE THIS EVIDENCE IS ADMISSIBLE THE COURT MUST

1 WEIGH FACTORS, FIRST OF ALL, OF PREJUDICE VERSUS THE EVIDENTIARY
2 EFFECT.

3 I AM TRYING TO FIND THAT OTHER SECTION.
4 DO YOU HAVE THAT OTHER STATUTE THAT --

5 MR. SEATON: DO YOU WISH THE STATUTE?

6 THE COURT: YES, THE COMPANION STATUTE.

7 THE STATUTE THAT THE COURT HAS REFERENCE
8 TO IS 48.035 WHICH STATES:

9 ALTHOUGH RELEVANT EVIDENCE
10 IS NOT ADMISSIBLE, IF ITS PROBA-
11 TIVE VALUE IS SUBSTANTIALLY OUT-
12 WEIGHED BY THE DANGER OF UNFAIR
13 PREJUDICE, CONFUSION OF ISSUES
14 OF MISLEADING THE JURY.

15 WELL, HERE WE DON'T HAVE THE ISSUE OF
16 MISLEADING, NOR DO WE HAVE THE ISSUE OF CONFUSING. THE ONLY
17 ISSUE THAT COUNSEL HAS RAISED HAS BEEN THE ISSUE OF UNFAIR
18 PREJUDICE.

19
20 OUTWEIGHED BY CONSIDERATION OF
21 UNDUE DELAY, A WASTE OF TIME,
22 NEEDLESS PRESENTATION OF
23 CUMULATIVE EVIDENCE.

24 THOSE CLEARLY DO NOT APPLY HERE. AND
25 IT GOES ON:

26 EVIDENCE OF OTHER ACT OR
27 CRIME WHICH IS CLOSELY RELATED
28 TO THE ACT IN CONTROVERSY FOR
29 A CRIME CHARGED, THAT AN
30 ORDINARY WITNESS CANNOT DESCRIBE
31 THE ACT IN CONTROVERSY OR THE CRIME
32 CHARGED WITHOUT REFERRING TO THE

1 OTHER ACT OR CRIME, SHALL
2 NOT BE EXCLUDED.

3 WE DON'T HAVE THAT SITUATION APPEARING
4 HERE. WE DO, HOWEVER, IN THIS SECTION, HAVE A FURTHER LANGUAGE
5 THAT GOES:

6 BUT AT THE REQUEST OF AN
7 INTERESTED PARTY, A CAUTIONARY
8 INSTRUCTION SHALL BE GIVEN
9 EXPLAINING THE REASON FOR ITS
10 ADMISSION.

11 KEEPING IN MIND THAT BALANCING TEST,
12 TOGETHER WITH THE NEVADA CASES THAT HAVE INTERPRETED BOTH OF
13 THOSE STATUTES, LET'S TAKE A LOOK AT WHETHER OR NOT THERE IS
14 A BASIS FOR THE INTRODUCTION OF THIS EVIDENCE.

15 CLEARLY COUNSEL HAS SET FORTH THE FACT
16 THAT HE BELIEVES THAT THIS EVIDENCE, PARTICULARLY THE EVIDENCE
17 OF THE SAN BERNARDINO -- OF THE SAN BERNARDINO EVIDENCE, I SHOULD
18 SAY, MAY SHOW THAT THIS WOULD INDICATE THE DEFENDANT'S MOTIVE,
19 INTENT, IDENTITY AND PLAN.

20 CLEARLY THE WAY IN WHICH THE OFFENSES
21 WERE COMMITTED, BOTH IN LAS VEGAS AND IN SAN BERNARDINO, WOULD
22 ESTABLISH A CLEAR PLAN AND SCHEME. I THINK THE UNIQUENESS OF
23 IT IS RATHER CLEAR. I DON'T REALLY FIND THAT WE CAN COME TO
24 ANY OTHER CONCLUSION WHEN THE MODUS OPERANDUS OF COMMITTING OR
25 ATTEMPTING TO COMMIT, A FRAUD IN EFFECT UPON SEARS IS COMMITTED
26 IN BOTH CASES. THE APPROACH IS THE SAME; THE VICTIM IS THE SAME;
27 THE MODUS OPERANDUS OF HOW THE SANDER IN EACH CASE WAS SECURED,
28 IT WAS SECURED FROM SEARS PREMISES ITSELF, THE WRAPPING AND
29 OTHER IDENTIFYING INSTRUCTION MANUALS AND THAT SORT OF THING WERE
30 REMOVED; IN EACH CASE THE DEFENDANT ATTEMPTED TO CONCEAL HIS
31 IDENTITY, IN THE LATTER CASE HE ATTEMPTED TO REPRESENT HIMSELF
32 AS A SECURITY GUARD; IN EACH CASE IT WAS A REQUEST FOR RETURN OF

1780

1 MONEY, THAT HE ALLEGEDLY HAD PAID FOR THE ITEM.

2 IT FURTHER GOES, I THINK, TO CLEARLY
3 ESTABLISH HIS IDENTITY, FOR THE IDENTITY OF ONE IS IN GOOD
4 MEASURE ESTABLISHED BY THE OTHER. HIS REPRESENTATION THAT HE
5 WAS A SECURITY GUARD; THAT HE WAS IN TRUTH AND EFFECT KEITH
6 KINSEY, THE SECURITY GUARD FROM LAS VEGAS, AN INDIVIDUAL THAT,
7 ACCORDING TO THE EVIDENCE HERE, HE HAD ROBBED JUST TWO DAYS
8 BEFORE, USING THE SAME SCHEME TO ATTEMPT TO SECURE PROPERTY,
9 CLEARLY ESTABLISHES IDENTITY.

10 THE INTENT ASPECT I THINK IS SHOWN. IT
11 WAS HIS INTENT TO COMMIT THIS OFFENSE. IT'S NOT AN ACCIDENT OR
12 IT WASN'T AS IF THAT OCCURRED ONE TIME, BUT IT WAS OF A
13 CONSISTENT SCHEME AND PLAN. IT OBVIOUSLY SHOWS MOTIVE.

14 ALL OF THESE FACTORS I THINK HAVE BEEN
15 ESTABLISHED BY THE EVIDENCE AND CLEARLY ESTABLISHES RELEVANT
16 EVIDENCE TO SHOW THE FACTORS INDICATED TO CONNECT HIM TO THE
17 CRIME OF ROBBERY FOR WHICH HE STANDS ACCUSED.

18 I DON'T THINK THERE'S ANY QUESTION THAT
19 ANYTIME YOU BRING FORTH OTHER EVIDENCE OF OTHER OFFENSES THAT IT
20 WOULD HAVE A TENDENCY TO PREJUDICE OR HURT A DEFENDANT. HOWEVER,
21 THE QUESTION IS: IS IT UNFAIR PREJUDICE? I DON'T THINK IT IS.
22 I THINK IN MEASURING THE RELEVANCE AND THE PROBATIVE VALUE, SO
23 TO SPEAK, CLEARLY IT SUBSTANTIALLY OUTWEIGHS THE DANGER OF
24 UNFAIR PREJUDICE.

25 AS COUNSEL HAS INDICATED TO THE COURT,
26 AND I DON'T KNOW WHETHER IT IS TRUE, BUT BASED ON YOUR REPRESENTATION,
27 COUNSEL, I FIND THAT THERE IS A CONFESSION IN WHICH THE
28 DEFENDANT WILL BE CONFESSING TO THIS INFORMATION.

29 DEFENDANT HOWARD: NO, YOUR HONOR. I'M NOT EVEN
30 CONSIDERING THAT, YOUR HONOR.

31 THE COURT: BUT I'M NOT SAYING THAT, THAT WAS JUST
32 ARGUE TO THE COURT.

1781

1 IT DOES APPEAR, THEREFORE, THAT THIS
2 TESTIMONY IS RELEVANT AND HAS HIGH PROBATIVE VALUE ON THE ISSUE
3 BEFORE THE COURT. SINCE COUNSEL HAS RAISED THE ISSUE THROUGHOUT
4 THIS CASE, THE ISSUE OF IDENTITY, I THINK THAT THEY HAVE DONE
5 A RATHER THOROUGH JOB THROUGHOUT THE CASE TO ATTEMPT TO CONFUSE
6 OR ATTEMPT TO SHOW IN EFFECT THAT THIS DEFENDANT WAS NOT THE
7 INDIVIDUAL WHO COMMITTED THE ROBBERY BEFORE THE COURT. FOR
8 THOSE REASONS, THIS EVIDENCE IS MATERIAL, IS RELEVANT, AND I
9 WILL ADMIT IT WITH THE LIMITATION THAT I HAVE PREVIOUSLY
10 INDICATED TO COUNSEL, THAT THE WITNESSES ARE NOT TO TESTIFY WITH
11 REGARDS TO WHAT THIS DEFENDANT WAS OTHERWISE SUSPECTED OF, OTHER
12 THAN THIS PARTICULAR OFFENSE.

13 MR. SEATON: THANK YOU, YOUR HONOR.

14 THE COURT: CALL THE JURY, PLEASE.

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

18 MR. SEATON: MAY WE RETRIEVE THE EVIDENCE CODE,
19 YOUR HONOR?

20 THE COURT: YES.

21 COUNSEL, APPROACH THE BENCH, PLEASE.

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 HAVE JUST COMPLETED TAKING TESTIMONY FROM WITNESSES AND LISTEN-
27 ING TO ARGUMENTS. THE WITNESSES WILL BE TESTIFYING TOMORROW.
28 HOWEVER, IN VIEW OF THE HOUR, WE ARE GOING TO HAVE TO RECESS
29 TODAY. WE WILL BE BACK AT 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 COMMENTARY
ON THIS TRIAL WITH ANY PERSON
CONNECTED WITH THIS TRIAL BY ANY
MEDIUM OF INFORMATION, INCLUDING
WITHOUT LIMITATION, NEWSPAPER,
TELEVISION OR RADIO OR FORM OR
EXPRESS ANY OPINION ON ANY
SUBJECT CONNECTED WITH THIS
TRIAL UNTIL THE CASE IS FINALLY
SUBMITTED TO YOU.

WE'LL BE IN RECESS UNTIL 9:45 TOMORROW
MORNING.

(WHEREUPON, AT THE HOUR OF
4:55 P.M., THE EVENING RECESS
WAS HAD IN THE PROCEEDINGS.)

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 LORRA BOWMAN CLARK 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
TUESDAY, APRIL 19, 1983, AT 10:00 A.M.

APPEARANCES:

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

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

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

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 19, 1983, AT 10:00 A.M.

2 * * * * *

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

5 MR. SEATON: YES, YOUR HONDR. THE STATE WOULD
6 SO STIPULATE.

7 MR. COOPER: YES.

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

9 MR. HARMON: BOB SMITH.

10
11 WHEREUPON,

12
13 ROBERT SMITH,

14
15 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF, HAVING BEEN PRE-
16 VIOUSLY DULY SWORN, EXAMINED AND TESTIFIED AS FOLLOWS:

17
18 THE COURT: YOU'VE BEEN PREVIOUSLY SWORN.

19 HE WAS SWORN PREVIOUSLY, LADIES AND GENTLE-
20 MEN OF THE JURY, OUTSIDE OF YOUR PRESENCE, SO IT WON'T BE
21 NECESSARY TO SWEAR HIM.

22 YOU MAY PROCEED. PROCEED, SIR.

23 MR. SEATON: THANK YOU, YOUR HONOR.

24
25 DIRECT EXAMINATION

26
27 BY MR. SEATON:

28
29 Q PLEASE STATE YOUR NAME, AND SPELL YOUR LAST
30 NAME FOR THE RECORD.

31 A ROBERT SMITH, S-M-I-T-H.

32 Q MR. SMITH, WHERE DO YOU RESIDE?

1785

1 A SAN BERNARDINO, CALIFORNIA.
2 Q ARE YOU EMPLOYED THERE?
3 A YES, I AM.
4 Q HOW ARE YOU EMPLOYED?
5 A BY SEARS ROEBUCK AND COMPANY.
6 Q AND WHAT IS YOUR TITLE WITH SEARS ROEBUCK
7 AND COMPANY?
8 A DIVISION MANAGER.
9 Q IS THAT IN THE SEARS ROEBUCK AND COMPANY IN
10 SAN BERNARDINO?
11 A YES, IT IS.
12 Q HOW MANY STORES ARE THERE IN SAN BERNARDINO?
13 A THERE'S TWO.
14 Q I SEE.
15 AND HOW LONG HAVE YOU BEEN A DIVISION
16 MANAGER?
17 A THIRTY TWO YEARS.
18 Q HOW LONG HAVE YOU BEEN -- WHAT DEPARTMENT
19 ARE YOU DIVISION MANAGER OF NOW?
20 A THE HARDWARE DEPARTMENT.
21 Q HOW LONG HAVE YOU BEEN DIVISION MANAGER OF
22 THAT DEPARTMENT?
23 A SIX YEARS.
24 Q HOW LONG HAVE YOU BEEN WITH THE SEARS STORE
25 IN SAN BERNARDINO?
26 A SINCE 1957.
27 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH
28 SEARS ROEBUCK AND COMPANY?
29 A THIRTY TWO YEARS.
30 Q LET ME CALL YOUR ATTENTION TO MARCH THE
31 28TH, 1980, WERE YOU WORKING ON THAT DAY?
32 A YES, I WAS.

1 Q AND DID YOU HAVE OCCASION TO BE APPROACHED
2 BY A BLACK MALE WHILE WORKING IN THE STORE?

3 A THAT'S CORRECT.

4 Q WHERE WERE YOU IN THE STORE -- IS THIS THE
5 SAN BERNARDINO SEARS STORE THAT YOU'RE TALKING ABOUT?

6 A YES.

7 Q AND WHERE WERE YOU IN THE STORE WHEN
8 APPROACHED?

9 A I WAS IN THE HARDWARE DEPARTMENT, IN THE
10 CASH WRAP.

11 Q WHAT IS THE CASH WRAP?

12 A THAT'S THE AREA WITHIN THE DEPARTMENT AT
13 THAT TIME THAT WE TRANSACT, UH, BUSINESS. WE RING UP THE SALES,
14 WRAP THE MERCHANDISE, CALL FOR CREDIT APPROVAL.

15 Q AND YOU WERE IN THAT AREA AT THIS TIME?

16 A YES, I WAS.

17 Q AND DID SOMEONE APPROACH YOU THEN?

18 A YES.

19 Q AND WHAT DID -- WHO WAS THIS INDIVIDUAL,
20 JUST A BRIEF DESCRIPTION?

21 A WELL, HE WAS A BLACK MALE.

22 Q WHAT DID HE SAY TO YOU WHEN HE CAME --

23 A THAT HE WANTED A REFUND ON A SANDER-GRINDER.

24 Q DID HE HAVE ANYTHING WITH HIM AT THAT TIME?

25 A HE HAD A TOOL. HE HAD A TOOL.

26 Q DID HE TELL YOU WHY HE WANTED A REFUND?

27 A NO, JUST WANTED HIS MONEY BACK.

28 Q AND WHAT DID YOU DO AT THAT TIME?

29 A WELL, I LOOKED AT THE TOOL AND ASKED HIM
30 FOR A RECEIPT.

31 Q DID HE HAVE A RECEIPT?

32 A NO, HE DID NOT.

1787

1 Q NOW, WHEN YOU LOOKED AT THE TOOL WAS THE
2 TOOL JUST OUT IN THE OPEN? HOW DID YOU LOOK AT IT?
3 A NO, IT WAS IN A BOX.
4 Q WHAT KIND OF A BOX?
5 A A BOX.
6 Q WHAT KIND OF A BOX WAS IT IN?
7 A THE BOX THAT IT COMES IN.
8 Q AND DID YOU TAKE POSSESSION OF THAT BOX
9 THEN AND LOOK AT IT?
10 A YES, I DID.
11 Q WAS THE BOX OPEN OR CLOSED?
12 A IT WAS OPEN.
13 Q AND DID YOU REMOVE THE SANDER FROM IT?
14 A YES, I DID.
15 Q AND WAS THERE ANYTHING ELSE IN THE BOX
16 OTHER THAN THE SANDER?
17 A NO.
18 Q WHAT WOULD NORMALLY -- IS THIS A SANDER
19 THAT'S SOLD AT SEARS?
20 A YES.
21 Q IN YOUR HARDWARE DEPARTMENT?
22 A THAT'S CORRECT.
23 Q AND WHAT WOULD NORMALLY BE CONTAINED IN A
24 BOX WITH A SANDER IN IT THAT WAS ON THE SHELF?
25 A THE OWNER'S MANUAL AND THE CARDBOARD PACK-
26 ING THAT IT'S PACKED IN.
27 Q AND WHEN YOU LOOKED INSIDE THE BOX OF THIS
28 PARTICULAR SANDER, DID IT HAVE THE OWNER'S MANUAL IN IT?
29 A NO, IT DID NOT.
30 Q DID IT HAVE ANY PACKING MATERIAL?
31 A NO, IT DID NOT.
32 Q WHAT WAS THE COST OF THIS PARTICULAR SANDER?

1788

1 A AROUND 94 - \$95.

2 Q ONCE YOU RECOGNIZED THAT THE INDIVIDUAL

3 HAD NO RECEIPT FOR THE SANDER, DID YOU ASK FOR ANYTHING?

4 A I ASKED FOR IDENTIFICATION.

5 Q AND DID HE SHOW YOU ANY IDENTIFICATION?

6 A YES, HE DID.

7 Q WHAT DID HE SHOW YOU?

8 A HE SHOWED ME AN I.D. CARD THAT IDENTIFIED

9 HIM AS BEING AN EMPLOYEE FOR SEARS IN LAS VEGAS IN THE SECURITY

10 DEPARTMENT.

11 Q DID THAT IDENTIFICATION CARD HAVE THE

12 INDIVIDUAL'S NAME ON IT?

13 A YES, IT DID.

14 Q DO YOU RECALL TODAY WHAT THAT NAME WAS?

15 A NO, I DO NOT.

16 Q COULD YOU AT THIS TIME DESCRIBE FOR US THE

17 INDIVIDUAL WITH WHOM YOU WERE HAVING THE CONVERSATION?

18 FIRST OF ALL, CAN YOU TELL US HOW TALL

19 HE WAS?

20 A IN MY ESTIMATION, HE WAS BETWEEN FIVE TEN

21 AND FIVE ELEVEN.

22 Q AND COULD YOU APPROXIMATE HIS WEIGHT?

23 A 170.

24 Q DID YOU MAKE ANY ESTIMATE OF HOW OLD THE

25 INDIVIDUAL WAS?

26 A I -- I ESTIMATED HE WAS IN HIS MID TO LATE

27 TWENTIES.

28 Q AND DID YOU -- COULD YOU DESCRIBE HIS HAIR?

29 A SHORT.

30 Q HOW SHORT DO YOU MEAN?

31 A WELL, IT WAS NOT AN AFRO. IT WOULD BE

32 SHORT. I DON'T KNOW HOW TO DESCRIBE IT.

1789

1 Q COURT'S INDULGENCE.

2 CAN YOU RECALL THE NATURE OF THIS BLACK

3 MAN'S COMPLEXION, WHETHER HE WAS LIGHT SKINNED OR DARK SKINNED?

4 A LIGHT SKINNED.

5 Q DID YOU FORM ANY OPINION AS TO WHETHER HE

6 WAS A CLEAN CUT OR A ROUGH SORT OF AN INDIVIDUAL? WHAT DID YOU

7 THINK ABOUT THIS?

8 A WELL, I MADE THE COMMENT LATER TO OUR SECU-

9 RITY PERSON IN THE STORE AT THE TIME THAT HE WAS A CLEAN CUT LOOK-

10 ING INDIVIDUAL AND I DID NOT SUSPECT THAT IT WAS A SHOPLIFTED --

11 HE DIDN'T LOOK LIKE THE TYPE THAT WOULD SHOPLIFT SOMETHING.

12 Q DID YOU NOTICE ANYTHING ABOUT HIS CLOTHING?

13 A SPORT CLOTHING, NEATLY DRESSED.

14 Q NEATLY DRESSED.

15 DID HE HAVE A JACKET ON, CAN YOU RECALL?

16 A YES.

17 Q CAN YOU RECALL IF HE HAD A HAT ON?

18 A I DO NOT REMEMBER A HAT AT ALL.

19 Q WOULD YOU LOOK AROUND THE COURTROOM NOW, MR.

20 SMITH, AND TELL US IF YOU SEE ANYONE PRESENT IN COURT TODAY WHO

21 WAS PRESENT IN THE SAN BERNARDINO SEARS STORE ON MARCH THE 28TH,

22 1980?

23 A THE GENTLEMAN SITTING AT THE TABLE IN THE

24 LIGHT TAN SHIRT.

25 Q WOULD YOU POINT TO HIM?

26 A (INDICATING).

27 MR. SEATON: YOUR HONOR, MAY THE RECORD REFLECT

28 IDENTIFICATION OF THE DEFENDANT SAMUEL HOWARD.

29 THE COURT: THE RECORD MAY SO SHOW.

30 MR. SEATON: THANK YOU.

31 ..

32 ..

1790

1 BY MR. SEATON:

2

3 Q AFTER HAVING LOOKED AT THE IDENTIFICATION
4 AND HAVING SPOKEN TO THE DEFENDANT, WHAT DID YOU THEN DO?

5 A WELL, I PROCEEDED TO FILL OUT A RETAIL
6 CREDIT CHECK, WHICH IS A FORM OF A REFUND, OR IS OUR REFUND SLIP.

7 Q DID --

8 A PARDON ME?

9 Q DID YOU PUT HIS NAME ON THAT?

10 A YES, I DID.

11 Q ON THE REFUND SLIP?

12 A YES.

13 Q AND THAT WAS THE NAME THAT WAS ON THE IDEN-
14 TIFICATION CARD FROM SEARS?

15 A YES.

16 Q AND AFTER HAVING DONE THAT WHAT DID YOU DO?

17 A I EXCUSED MYSELF AND WENT BACK TO MY OFFICE,
18 WHICH IS OFF THE SALESFLOOR, AND I CALLED OUR SECURITY PERSON
19 WHO WAS IN THE STORE AT THE TIME.

20 Q WHY DID YOU DO THAT?

21 A BECAUSE IT DIDN'T -- IT DIDN'T JIVE THAT A
22 SECURITY EMPLOYEE FROM SEARS WOULD BRING AN ITEM TO BE REFUNDED
23 WITHOUT A RECEIPT TO US AND EXPECT US TO GIVE HIM A REFUND.

24 Q AND SO -- AND WHAT WAS THE REASON THEN THAT
25 YOU WENT TO CONTACT THE SECURITY?

26 A WELL, I WANTED TO HAVE NORMA, OUR SECURITY
27 GUARD AT THE TIME, VERIFY THIS PERSON'S EMPLOYMENT.

28 Q WHAT IS NORMA'S FULL NAME?

29 A NORMA DONALDSON.

30 Q AND SHE WAS A SECURITY GUARD WITH THE SAN
31 BERNARDINO SEARS STORE AT THE TIME?

32 A YES, SHE WAS.

1791

1 Q AND DID YOU, IN FACT, CONTACT NORMA IN YOUR
2 OFFICE?
3 A I CALLED THE OPERATOR, WHO THEN CONTACTED
4 NORMA.
5 Q AND DID NORMA COME TO THE OFFICE?
6 A YES.
7 Q AND DID YOU HAVE A CONVERSATION WITH HER AT
8 THAT TIME?
9 A YES.
10 Q WHAT EXACTLY DID YOU TELL NORMA AT THAT TIME?
11 A I TOLD HER -- I TOLD HER WHAT I THOUGHT,
12 AND THEN I FELT -- AND WHAT I THOUGHT WAS THAT I FELT SOMETHING
13 WAS FISHY AND THAT SHE SHOULD CONTACT AND VERIFY EMPLOYMENT.
14 Q DID YOU TELL NORMA AT THAT TIME THE NAME OF
15 THE INDIVIDUAL THAT YOU HAD GOTTEN OFF OF THE SECURITY CARD
16 IDENTIFICATION --
17 A YES.
18 Q (CONTINUING) -- FROM LAS VEGAS?
19 AND WHAT DID NORMA DO?
20 A SHE THEN HAD THE OPERATOR GET THE LAS VEGAS
21 STORE ON THE PHONE AND SHE SPOKE WITH THEM.
22 Q DID SHE LEAVE THE OFFICE PRIOR TO MAKING
23 THAT PHONE CALL?
24 A NO. SHE WAS -- SHE WAS IN OUR OFFICE WHEN
25 SHE MADE THE PHONE CALL. IS THAT WHAT YOU MEAN?
26 Q I UNDERSTAND THAT. BUT DID SHE GO OUT OF
27 THE OFFICE FOR ANY PURPOSE?
28 A SHE WENT OUT TO TAKE A LOOK TO SEE IF THE
29 INDIVIDUAL -- TO SEE WHICH INDIVIDUAL I WAS SPEAKING OF.
30 Q I SEE.
31 AND THEN SHE CAME BACK IN AND MADE THE
32 PHONE CALL?

1792

1 A YES.

2 Q AND IN FACT DID SHE PUT A PHONE CALL THROUGH?

3 A YES.

4 Q AND TO WHOM WAS THAT, DO YOU KNOW?

5 A TO SOMEBODY IN THE SECURITY DEPARTMENT IN

6 THE LAS VEGAS STORE.

7 Q WAS --

8 A I DON'T KNOW WHICH STORE.

9 Q ARE YOU AWARE THAT THERE WAS MORE THAN ONE

10 STORE?

11 A YES, AND I WAS THEN, BUT IT SLIPPED MY MIND.

12 Q AND DID SHE HAVE A CONVERSATION THEN WITH

13 THE SECURITY PERSON FROM ONE --

14 A YES.

15 Q (CONTINUING) -- OF THE LAS VEGAS SEARS STORES?

16 A YES.

17 Q AND AFTER SHE -- DID SHE HANG UP THE PHONE?

18 A YES.

19 Q AND ONCE HAVING HUNG UP THE PHONE DID SHE

20 TELL YOU WHAT THE CONVERSATION WAS THAT SHE HAD HAD WITH THE

21 SECURITY OFFICER FROM THE SEARS STORE?

22 A YES, SHE DID.

23 Q AND WOULD YOU TELL US WHAT THAT WAS, PLEASE?

24 A SHE TOLD ME THAT THEY HAD NO BLACK MALE

25 WORKING FOR THEM BY THAT NAME.

26 Q ONCE YOU HAD THAT CONVERSATION WITH NORMA,

27 WHAT DID THE TWO OF YOU DO?

28 A WELL, WE KIND OF LOOKED AT EACH OTHER AND

29 DECIDED, WELL, WE BETTER GO OUT AND SPEAK FURTHER WITH THE PERSON.

30 Q AND DID YOU GO OUT AND SPEAK FURTHER WITH

31 THE PERSON?

32 A YES.

1 Q WHERE DID YOU GO?
2 A OUT TO THE HARDWARE DEPARTMENT.
3 Q IS THAT WHERE --
4 A WHERE WE LEFT HIM.
5 Q AND WAS HE THERE WHEN YOU GOT THERE?
6 A NO.
7 Q WHAT DID YOU DO THEN?
8 A WELL, WE LOOKED AROUND THE DEPARTMENT TO
9 SEE IF -- AROUND THE DEPARTMENT TO SEE IF MAYBE HE WANDERED
10 AROUND THE DEPARTMENT, AS SOMETIMES THEY DO, AND HE WASN'T THERE.
11 Q WHEN YOU SAY "WE" ARE YOU --
12 A NORMA AND I.
13 Q (CONTINUING) -- ARE YOU REFERRING TO NORMA
14 AND YOURSELF?
15 A YES.
16 Q AND WHAT DID THE TWO OF YOU DO THEN AFTER
17 SEEING THAT HE WASN'T IN THE HARDWARE DEPARTMENT?
18 A WELL, WE ARE RIGHT BESIDE AN EXIT. SO
19 ~~WE WENT OUT THAT EXIT TO SEE IF MAYBE HE HAD GONE OUT THE DOOR.~~
20 Q AND WHAT IS JUST OUTSIDE THE EXIT?
21 A OUR PARKING LOT.
22 Q AND WHAT DID THE TWO OF YOU DO ONCE YOU GOT
23 OUTSIDE THE DOORWAY INTO THE PARKING LOT EXIT?
24 A WELL, WE LOOKED AROUND TO SEE IF WE COULD
25 SEE ANYBODY WALKING OR MAYBE GETTING INTO A CAR AND DRIVING OFF.
26 Q DID JUST THE TWO OF YOU GO OUT THAT EXIT
27 TO PERFORM THAT TASK?
28 A TO THE BEST OF MY RECOLLECTION THERE WAS
29 ONLY THE TWO OF US.
30 Q OKAY.
31 AND HOW LONG WOULD YOU SAY YOU WERE OUT
32 THERE?

1 A JUST A MINUTE OR SO.
2 Q AND DID YOU SEE ANYONE OUT THERE?
3 A NO.
4 Q WHAT DID YOU DO AFTER STAYING OUT THERE FOR
5 A MINUTE OR TWO?
6 A WELL, WE CAME BACK INTO THE STORE AND I
7 WENT BACK TO WORK.
8 Q WERE THE PACKAGING MATERIAL AND THE MANUAL
9 EVER FOUND?
10 A YES. WE FOUND THEM LATER ON THAT DAY AND
11 THIS --
12 MR. FRANZEN: OBJECTION, FOUNDATION, YOUR HONOR:
13 WHO? WHAT? WHERE? WHEN?
14 THE COURT: I BELIEVE YOU CAN TOUCH THAT OR
15 REACH THAT BY CROSS, COUNSEL.
16 THE OBJECTION IS OVERRULED.
17 MR. SEATON: THANK YOU, YOUR HONOR.
18
19 BY MR. SEATON:

20
21 Q LET ME PROCEED TO ASK THE QUESTION.
22 DID YOU EVER FIND THE PACKAGING MATERIAL
23 AND THE MANUAL WHICH CAME FROM THE BOX THAT CONTAINED THE SEARS
24 SANDER THAT THE DEFENDANT PRESENTED TO YOU ON MARCH THE 28TH,
25 1980, IN YOUR SAN-BERNARDINO SEARS STORE?
26 A WE FOUND IT IN THE SPORTING GOODS DEPART-
27 MENT LATER THAT DAY.
28 MR. SEATON: YOUR HONOR, THAT QUESTION CONCLUDES
29 OUR QUESTIONING ON DIRECT.
30 THE COURT: CROSS EXAMINATION?
31 ..
32 ..

CROSS EXAMINATION

BY MR. FRANZEN:

Q MR. SMITH, ABOUT HOW LONG A PERIOD OF TIME ELAPSED BETWEEN THE TIME THAT THE MAN CAME TO YOU AND ASKED FOR THE REFUND AND YOU WENT BACK TO CONSULT WITH NORMA DONALDSON?

A THREE OR FOUR MINUTES.

Q DO YOU RECALL TESTIFYING YESTERDAY IN THIS COURTROOM THAT IT WAS MOST PROBABLY THREE MINUTES?

A YES.

Q NOW, DURING THE TIME PERIOD THAT THESE THREE MINUTES ELAPSED, YOU WERE DOING A VARIETY OF MANUAL -- MANUAL ACTIONS; WERE YOU NOT?

A THAT'S TRUE.

Q YOU WERE PICKING UP THE DEVICE, THE SANDER, AND INSPECTING IT; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND YOU WERE INSPECTING THE SANDER TO MAKE SURE IT WAS A SEARS PRODUCT; IS THAT CORRECT?

A YES.

Q OKAY.

YOU WERE INSPECTING IT TO MAKE SURE IT WAS NOT DAMAGED SO IT COULD BE RE- -- COULD HAVE A REFUND AND BE EXCHANGED OR RETURNED OR WHATEVER; WOULD THAT BE CORRECT?

A THAT'S CORRECT.

Q DO YOU INSPECT ANYTHING ELSE ON THE MACHINE WHEN YOU INSPECT IT FOR THAT PURPOSE? DO YOU LOOK FOR ANYTHING ELSE?

A JUST TO MAKE SURE THAT ALL THE HARDWARE IS ATTACHED TO IT THAT'S SUPPOSED TO BE.

Q ALL THE PARTS?

1 A YEAH.

2 Q AFTER YOU GOT DONE DOING THIS INDIVIDUAL
3 INSPECTION OF THE SANDER, YOU OBTAINED A REFUND CREDIT --
4 WHAT'S THAT CALLED?

5 A A RETAIL CREDIT CHECK.

6 Q A RETAIL CREDIT CHECK SLIP, AND YOU FILLED
7 OUT THE RETAIL CREDIT SLIP, AND I PRESUME YOU WERE WATCHING WHAT
8 YOU WERE FILLING OUT?

9 A OH, YES.

10 Q AND THERE WERE OTHER CUSTOMERS?

11 A YES.

12 Q AND DO YOU RECALL WAITING ON OTHER
13 CUSTOMERS DURING THIS PERIOD OF TIME?

14 A I DON'T RECALL WAITING ON ANYBODY ELSE AT
15 THAT TIME. IT'S A POSSIBILITY I DID.

16 Q DO YOU REMEMBER WHAT TIME OF DAY THIS
17 OCCURRED?

18 A IT WAS IN THE AFTERNOON. THAT'S ALL I
19 REMEMBER.

20 Q NOW, IT'S ABOUT THREE YEARS AGO. I
21 REALIZE THAT.

22 COULD YOU -- THAT'S THE BEST YOU CAN
23 DO, IS IN THE AFTERNOON SOMETIME?

24 A NO, WELL IT WAS -- IT HAPPENED ON A FRIDAY
25 AND I WORK UNTIL 9:00 O'CLOCK ON FRIDAY. I WORK FROM 12:00 TO
26 9:00. IT COULD HAVE BEEN 4, 4:30. I HADN'T BEEN TO LUNCH.

27 Q COULD IT HAVE BEEN -- OH, YOU HAD NOT BEEN
28 TO LUNCH?

29 A NO.

30 Q WHAT TIME DO YOU NORMALLY GO TO LUNCH?

31 A FIVE.

32 Q NOW, THIS MAN THAT YOU WAITED ON, ON

1797

1 MARCH 28TH, 1980, YOU DIDN'T SEE A GOLD WRISTWATCH ON HIM, DID
2 YOU?

3 A NO, I DID NOT.

4 Q AND THIS MAN THAT YOU WAITED ON, ON MARCH
5 28TH, 1980, YOU DIDN'T SEE HIM CARRYING A WALKIE-TALKIE OR A --
6 ANY TYPE OF RADIO COMMUNICATION EQUIPMENT, DID YOU?

7 A NO, I DID NOT.

8 Q NOW, THIS MAN THAT YOU WAITED ON, ON MARCH
9 28TH, DID HE SHOW YOU ANY TYPE OF BADGE?

10 A NO.

11 Q DO YOU RECALL WHAT COLOR EYES THIS MAN HAD?

12 A NO, I DO NOT.

13 Q DO YOU RECALL WHAT TYPE OF FOOTWEAR HE WAS
14 WEARING?

15 A NO. I WOULDN'T HAVE SEEN HIS FEET PROBABLY.

16 Q SO HE COULD HAVE BEEN WEARING COWBOY BOOTS
17 TO TENNIS SHOES?

18 A RIGHT.

19 Q DO YOU RECALL IF THE MAN SPOKE WITH AN
20 ACCENT?

21 A NO, I DON'T.

22 Q IN THE INTERVENING THREE YEARS THAT HAVE
23 ELAPSED, SINCE MARCH 28TH, 1980, HAVE YOU EVER BEEN ASKED TO
24 LOOK AT A PHOTOGRAPHIC DISPLAY OF NUMEROUS BLACK ADULTS TO
25 ATTEMPT TO IDENTIFY THE INDIVIDUAL WHO PRESENTED THIS SANDER TO
26 YOU?

27 A NO, I HAVE NOT.

28 Q IN THE INTERVAL, SINCE MARCH 28TH, 1980,
29 HAVE YOU EVER BEEN ASKED TO ATTEND A PHYSICAL LINEUP WHERE
30 ACTUAL BLACK MEN ARE PRESENTED TO YOU AND ASKED TO SEE IF YOU
31 COULD PICK OUT AND IDENTIFY THE MAN WHO PRESENTED THE SANDER ON
32 MARCH 28TH, 1980, FOR A REFUND?

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A NO.

Q NOW, YOU TESTIFIED IN COURT YESTERDAY AFTERNOON; IS THAT CORRECT?

A YES, I DID.

Q AND PRESENT WERE THE TWO DEPUTY DISTRICT ATTORNEYS, MYSELF, MR. COOPER ON MY LEFT, AND THE MAN THAT YOU IDENTIFIED AS THE MAN ON MARCH 28TH, 1980, THAT PRESENTED THE SANDER TO YOU; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND YOU HAD NOT SEEN THIS MAN FOR APPROXIMATELY THREE YEARS?

A THAT'S CORRECT.

Q AND YOU HADN'T SEEN ANY PICTORIAL REPRESENTATION OF HIM FOR APPROXIMATELY THREE YEARS?

A THAT'S CORRECT.

Q AND WHEN YOU IDENTIFIED HIM HERE IN THE COURTROOM HE WAS THE ONLY BLACK MAN IN THE COURTROOM AT THAT TIME; IS THAT CORRECT?

A NO.

Q WAS THERE ANY OTHER BLACK MAN IN THIS COURTROOM?

A THE GENTLEMAN TO YOUR LEFT.

Q WHEN I ASKED YOU IF THERE WAS ANYTHING OUTSTANDING OR ANYTHING THAT CAUSED YOU TO IDENTIFY THE MAN TO MY EXTREME LEFT AS THE MAN WHO YOU SAW IN YOUR SEARS STORE ON MARCH 28TH, YOU REPLIED THAT IT WAS BECAUSE HE WAS CLEAN AND SMOOTH?

A CLEAN CUT LOOKING.

Q CLEAN CUT LOOKING?

A UH-HUH.

Q AND SMOOTH?

A SMOOTH FEATURED.

1 Q AND I ASKED YOU IF THERE WAS ANYONE ELSE
2 IN THE COURTROOM AT THE TIME OF THE IDENTIFICATION THAT WAS
3 CLEAN CUT LOOKING AND SMOOTH; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND YOU REPLIED THAT THERE WAS NO ONE ELSE

6 --

7 A THAT'S CORRECT.

8 Q (CONTINUING) -- THAT WOULD FIT THAT
9 DESCRIPTION.

10 IN OTHERWORDS, THE SOLE INDIVIDUAL IN
11 THE COURTROOM, AFTER THREE YEARS HAVE ELAPSED, WHO POSSIBLY
12 COULD MEET YOUR DESCRIPTION OF BEING CLEAN AND SMOOTH AND BLACK
13 WAS ALONE IN THIS COURTROOM?

14 A YES.

15 Q NOW, YOU HAD BEEN CONTACTED PRIOR TO COMING
16 TO COURT YESTERDAY, HAD YOU NOT?

17 A LAST FRIDAY.

18 Q AND YOU HAD BEEN CONTACTED BY THE OFFICE
19 OF THE DISTRICT ATTORNEY?

20 A YES.

21 Q AT THAT TIME DID THE OFFICE OF THE DISTRICT
22 ATTORNEY SUGGEST THAT IT MIGHT BE BEST FOR YOU TO SEE A PHOTO
23 DISPLAY AND SEE IF YOU COULD IDENTIFY THE MAN OUT OF A NUMBER OF
24 INDIVIDUALS?

25 A NO.

26 Q DID YOU REQUEST SUCH A PROCEDURE?

27 A DID I SUGGEST IT?

28 Q YES, SIR.

29 A NO.

30 Q DID THE MAN THAT YOU SAW ON MARCH 28TH,
31 1980, EVER ADDRESS CUSS OR SWEAR WORDS TO YOU OR ANYONE ELSE?

32 A NO.

1 Q WAS THERE ANY VIOLENCE INVOLVED IN ANYTHING
2 THAT HAPPENED IN THE SEARS STORE AT SAN BERNARDINO ON MARCH 28TH,
3 1980?

4 A NONE WHATSOEVER.

5 Q DO YOU HAVE, IN YOUR POSSESSION, THE RETAIL
6 CREDIT CHECK SLIP THAT YOU FILLED OUT ON MARCH 28TH, 1980, IN
7 THE PRESENCE OF -- WAS IT IN THE PRESENCE OF THE BLACK MALE
8 ADULT WHO WAS ATTEMPTING A REFUND OF THE SANDER? WAS IT IN HIS
9 PRESENCE?

10 A YES.

11 Q DO YOU HAVE THAT SLIP?

12 A NO, I DON'T.

13 Q THIS SLIP WOULD HAVE THE NAME OF THE INDI-
14 VIDUAL?

15 A YES.

16 Q DO YOU KNOW WHAT HAPPENED TO THE SLIP?

17 A IT, NO DOUBT, IS FILED IN OUR -- IN OUR
18 MORGUE AT THE OFFICE. THAT'S WHERE WE KEEP ALL OF OUR OLD
19 DOCUMENTS.

20 Q WHEN THE MAN SHOWED YOU THE -- WELL, LET'S
21 BACK UP A SECOND.

22 DO YOU RECALL IF THE MAN WAS WEARING A
23 JACKET OR IF HE WAS WEARING A SWEATER?

24 A HE WAS WEARING A WHAT?

25 Q A SWEATER OR JACKET, OR WHAT HE WAS WEARING
26 AS OUTER COVERING OF THE UPPER BODY?

27 A HE WAS WEARING A JACKET. AND I CAN
28 ELABORATE ON THAT IF YOU LIKE.

29 Q DO YOU RECALL THE COLOR?

30 A NO.

31 Q DID HE HAVE ANY NECKLACES OR RINGS?

32 A I NOTICED NO JEWELRY WHATSOEVER.

1801

1 Q DO YOU RECALL WHAT COLOR PANTS HE HAD ON?
2 A NO.
3 Q DO YOU RECALL IF HE WAS WEARING A BELT?
4 A I DID NOT SEE HIS BELT.
5 Q DID HE HAVE HIS JACKET OPEN OR CLOSED?
6 A I DON'T KNOW.
7 Q WAS THIS A ZIPPER OR BUTTON JACKET?
8 A I COULD NOT TELL YOU.
9 Q NOW, PRIOR TO COMING INTO THE COURTROOM
10 YESTERDAY YOU HAD BEEN INFORMED THAT THE PURPOSE OF YOUR TESTI-
11 MONY WOULD BE TO IDENTIFY THE PARTY INVOLVED ON THE MARCH THE
12 28TH, 1980, INCIDENT IN YOUR STORE?
13 A YES.
14 Q AND DID IT ASSIST YOU IN YOUR IDENTIFICATION
15 -- STRIKE THAT.
16 AFTER YOU WENT BACK AND TALKED TO NORMA
17 DONALDSON AND SHE WENT OUT TO LOOK AT THE INDIVIDUAL, HOW LONG
18 WAS SHE GONE?
19 A OH, JUST A MINUTE.
20 Q A MINUTE?
21 A A MINUTE OR TWO.
22 Q COULD IT HAVE BEEN LESS THAN A MINUTE?
23 A IT COULD HAVE BEEN.
24 Q HOW FAR DID SHE HAVE TO WALK TO GET TO THE
25 POSITION WHERE SHE WOULD VIEW THIS INDIVIDUAL?
26 A MAYBE TEN, FIFTEEN FEET.
27 Q DID SHE HAVE TO GO THROUGH A DOORWAY?
28 A YES.
29 Q DID YOU OBSERVE HER WHEN SHE MADE HER
30 OBSERVATIONS?
31 A NO. I WAS SITTING AT MY DESK.
32 Q IF SHE STOOD IN THE DOORWAY WOULD SHE HAVE -

1 SOME COUNTERS OR SHELVES BETWEEN HER AND THE AREA OF THE CASH
2 REGISTER?

3 A YES.

4 Q SO SHE WOULD ONLY -- WELL, HOW TALL IS SHE?
5 IS SHE ABOUT YOUR HEIGHT?

6 A OH, NO. SHE'S PROBABLY FIVE THREE, FOUR.

7 Q SO IF SHE WAS LOOKING OVER THE SHELVING SHE
8 WOULD ONLY SEE THE HEAD, OR WOULD SHE BE ABLE TO SEE A FULL
9 LENGTH VIEW OF HIM?

10 A I'M NOT SURE FROM WHICH POINT SHE VIEWED
11 HIM.

12 Q WELL, ASSUMING THAT YOU'RE -- IF YOU STOOD
13 IN THAT DOORWAY AND LOOKED TOWARDS THE CASH REGISTER --

14 A WELL, IT WOULD NOT --

15 Q (CONTINUING) -- WOULD SHELVING BE IN THE
16 WAY?

17 MR. SEATON: YOUR HONOR, I'M GOING TO OBJECT. I
18 THINK THAT CALLS FOR SPECULATION ON THIS WITNESS' PART.

19 THE COURT: SUSTAINED.

20 YOU CAN ASK HIM FOR HIS PHYSICAL DESCRIPTION,
21 COUNSEL. BUT WHETHER HE COULD OR COULD NOT SEE IS
22 ENTIRELY SPECULATIVE.

23

24 BY MR. FRANZEN:

25

26 Q HOW HIGH WAS THE SHELVING, SIR, ON MARCH
27 28TH, 1980, IN THE SEARS STORE IN THE VICINITY OF THE CASH
28 REGISTER?

29 A FOUR FEET.

30 Q AND I BELIEVE THAT YOU TESTIFIED THAT A
31 BLACK MALE ADULT, WHO WAITED ON YOU -- OR WISHED TO MAKE A
32 REFUND, WAS FIVE SIX, FIVE SEVEN --

1 MR. SEATON: THAT'S NOT THE TESTIMONY, YOUR
2 HONOR. I BELIEVE IT WAS FIVE TEN OR FIVE ELEVEN.

3 THE COURT: I BELIEVE THAT'S RIGHT.

4
5 BY MR. FRANZEN:

6
7 Q DO YOU RECALL TESTIFYING YESTERDAY AFTER-
8 NOON, SIR?

9 A YES.

10 Q YOU, IN YOUR TESTIMONY YESTERDAY AFTERNOON,
11 HAD SAID ABOUT FIVE SIX OR FIVE SEVEN.

12 DEFENDANT HOWARD: NO.

13 THE COURT: THAT WAS NOT HIS TESTIMONY AT ALL,
14 COUNSEL. HIS TESTIMONY WAS FIVE TEN, 165 TO 170 POUND LIGHT
15 BLACK.

16 MR. FRANZEN: I'LL ACCEPT THE COURT'S CORRECTION,
17 YOUR HONOR. MY NOTES SAY FIVE SIX, FIVE SEVEN.

18 THE COURT: YOU'RE WRONG.

19
20 BY MR. FRANZEN:

21
22 Q NOW, ASSUMING THAT HEIGHT, COULD YOU SEE
23 BELOW THE WAIST IF YOU WERE LOOKING OVER THE -- THE SHELF?

24 MR. SEATON: IT CALLS FOR SPECULATION. IT
25 DEPENDS ON RELATIVE DISTANCE, HOW FAR THE DEFENDANT WAS FROM
26 WHERE --

27 MR. FRANZEN: FROM THE DOORWAY.

28 MR. SEATON: IF SHE WAS RIGHT UP TO IT HE MAY NOT
29 BE ABLE TO SEE JUST BELOW THE SHOULDERS. BUT IF HE WERE FAR
30 AWAY FROM IT HE MAY HAVE A BETTER ANGLE. IT'S PURELY SPECULA-
31 TION, YOUR HONOR.

32 MR. FRANZEN: I DON'T BELIEVE IT IS SPECULATION,

1804

1 YOUR HONOR. HE'S TESTIFYING -- HE'S IDENTIFIED HOW TALL THE
2 MAN WAS. HE'S FAMILIAR WITH HIS OWN STORE. HE KNOWS THE VIEW
3 FROM THE DOOR TO THE CASH REGISTER.

4 AS OF MARCH 28TH, 1980, WHAT CAN YOU SEE
5 FROM THAT DOOR?

6 MR. SEATON: ADDITIONALLY, YOUR HONOR, IT'S AN
7 IMPROPER HYPOTHETICAL. THIS WITNESS HAS NEVER BEEN IN THAT
8 POSITION AND HE DOESN'T -- DOESN'T KNOW OF THE POSITION OF THE
9 DEFENDANT RELATIVE TO THE SHELVING.

10 THE COURT: SUSTAINED.

11 WHY DON'T YOU ASK HIM IF HE COULD SEE HIM?

12
13 BY MR. FRANZEN:

14
15 Q CAN YOU SEE THE MAN FROM THE DOORWAY IF YOU
16 WERE STANDING IN THE VICINITY OF THE CASH REGISTER AS OF
17 MARCH 28TH, 1980?

18 A NOT FROM THE DOORWAY. YOU'D HAVE TO GO
19 AROUND A -- A CORNER BECAUSE THE DOORWAY FACED --

20 Q OKAY.

21 A (CONTINUING) -- ANOTHER DIRECTION. IN
22 OTHERWORDS, YOU WOULD HAVE TO STEP OUT OF THE DOOR AND STEP TO
23 THE RIGHT MAYBE TWO FEET AND THEN YOU CAN SEE THE CASH REGISTER.

24 Q OKAY.

25 HAVING TAKEN YOUR TWO STEPS, YOU CAN
26 SEE THE CASH REGISTER. CAN YOU SEE THE COUNTERTOP FROM THERE?

27 A YES.

28 Q WHEN YOU WENT AND SPOKE TO NORMA WAS THERE
29 ANY OTHER CUSTOMERS IN THE AREA OF THE CASH REGISTER?

30 A NOT THAT I CAN RECALL.

31 Q WERE THERE ANY OTHER CUSTOMERS IN THE HARD-
32 WARE SECTION?

1 A OH, YES.

2 Q DO YOU RECALL HOW MANY?

3 A NOT EXACTLY. I CAN ESTIMATE THERE WERE

4 THREE OR FOUR.

5 Q WHEN YOU WENT BACK TO CONSULT WITH NORMA

6 DID YOU DESCRIBE THE MAN THAT YOU WERE DEALING WITH?

7 A I DID.

8 Q HOW DID YOU DESCRIBE HIM?

9 A THAT HE WAS AS I DESCRIBED HIM TODAY. HE

10 WAS WEARING A JACKET AND NICE LOOKING FELLOW AND APPROXIMATE AGE.

11 Q DID YOU NOTICE IF THE MAN HAD A BEARD OR

12 MOUSTACHE?

13 A I'M SORRY?

14 Q DID YOU NOTICE IF THE MAN HAD A BEARD OR

15 MOUSTACHE?

16 A I DID NOT. I THOUGHT HE WAS CLEAN SHAVEN.

17 Q YOU DID NOT NOTICE ONE WAY OR THE OTHER OR

18 HE WAS CLEAN SHAVEN?

19 A IT -- AS I RECALL, HE WAS CLEAN SHAVEN.

20 THERE WAS NO BEARD FOR SURE.

21 Q NOW, WHEN YOU WERE WAITING ON THE DEFENDANT

22 YOU SAID THAT YOU POSSIBLY COULD HAVE BEEN DISTRACTED AND WAIT-

23 ING ON OTHER CUSTOMERS. DO YOU RECALL WHO THESE OTHER

24 CUSTOMERS WERE?

25 A I DON'T RECALL THAT THEY'RE -- THAT I

26 ACTUALLY WAS DISTRACTED. IT'S A POSSIBILITY I WAS DISTRACTED.

27 Q OKAY.

28 IS IT A POSSIBILITY THERE WOULD HAVE

29 BEEN OTHER CUSTOMERS AT THE CASH REGISTER AS YOU TURNED TO LEAVE

30 TO GO BACK TO CONSULT NORMA?

31 A THERE'S A POSSIBILITY.

32 MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

THE COURT: COUNSEL?

REDIRECT EXAMINATION

BY MR. SEATON:

Q ARE YOU AWARE OF A PHONE CALL THAT NORMA RECEIVED UPON YOUR COMING BACK INTO THE STORE?

A VERY MUCH SO.

Q AND THAT WAS AFTER YOU HAD BEEN OUT IN THE PARKING LOT?

A YES.

Q DID SHE GO AND ANSWER THAT TELEPHONE CALL?

A YES, SHE DID.

MR. FRANZEN: YOUR HONOR, CROSS -- BEYOND CROSS. WE WOULD OBJECT. IT'S BEYOND CROSS EXAMINATION, THE SCOPE OF CROSS EXAMINATION.

THE COURT: COUNSEL?

MR. SEATON: WELL, YOUR HONOR, THIS IS GOING TO GO, AS YOU RECALL FROM THE HEARING YESTERDAY, TO THE VERY CREDIBILITY OF THE WITNESS, THE REASONS THAT HE MAY HAVE FOR RECALLING THESE EVENTS, AND THAT'S EXACTLY WHAT'S BEEN TESTIFIED THROUGHOUT CROSS EXAMINATION. AND I CAN ASSURE THE COURT I'LL BE QUITE BRIEF AND ONLY TO THE POINT THAT WE WENT TO YESTERDAY.

THE COURT: THE OBJECTION IS OVERRULED.

MR. SEATON: THANK YOU.

BY MR. SEATON:

Q DID YOU HAVE AN OCCASION, AFTER NORMA HAD RECEIVED THAT PHONE CALL, TO TALK WITH HER ABOUT IT?

A YES, I DID.

1807

1 Q DID SHE TELL YOU WITH WHOM SHE HAD SPOKEN?

2 A SHE HAD SPOKEN TO A SECURITY AGENT IN THE
3 OTHER LAS VEGAS STORE.

4 Q THE OTHER LAS VEGAS STORE --

5 A YEAH.

6 Q (CONTINUING) -- YOU SAY?

7 SHE HAD NOT TALKED TO THAT STORE
8 EARLIER?

9 A THAT'S CORRECT.

10 Q AND WHAT DID SHE SAY THAT SECURITY AGENT
11 TOLD HER WITH REGARD TO THE EVENTS THAT HAD HAPPENED AT THE
12 SEARS STORE?

13 MR. COOPER: I'M GOING TO OBJECT TO THAT AS
14 HEARSAY.

15 THE COURT: OVERRULED.

16 COUNSEL, YOU OPENED IT UP. AND I WOULD
17 SUGGEST, COUNSEL, WHOEVER IS QUESTIONING MAKE THE OBJECTION,
18 OTHER THAN THE OTHER WAY.

19 PROCEED.

20
21 BY MR. SEATON:

22
23 Q COULD YOU ANSWER THE QUESTION?

24 A SHE TOLD ME THAT THE PERSON SHE TALKED TO
25 TOLD HER THAT THE I.D. THAT WE SAW HAD BEEN STOLEN THE DAY OR SO
26 BEFORE IN LAS VEGAS AT GUNPOINT, AND THE PERSON WHO HAD POSSES-
27 SION OF IT POSSIBLY WAS ARMED AND COULD BE DANGEROUS, WHICH --

28 Q DID SHE TELL YOU IF THE SECURITY OFFICER
29 FROM THE SEARS STORE TOLD HER WHERE THAT ROBBERY TOOK PLACE?

30 A YES.

31 Q WHERE WAS THAT?

32 A IN THE SECURITY OFFICE OF THE SEARS STORE.-

1808

1 Q AND DID THE -- DID NORMA INDICATE TO YOU
2 WHETHER OR NOT THE SECURITY OFFICER FROM THE SEARS STORE HAD
3 SAID WHETHER OR NOT A WEAPON WAS USED?

4 A YES.

5 Q AND WAS THERE?

6 A YES, THERE WAS A WEAPON. YES.

7 Q AS A RESULT OF LEARNING THIS INFORMATION
8 FROM NORMA DONALDSON -- WELL, FIRST OF ALL, TELL ME WHEN DID YOU
9 LEARN THIS INFORMATION? HOW SHORTLY AFTER YOUR CONFRONTATION
10 WITH THE DEFENDANT SAMUEL HOWARD?

11 A APPROXIMATELY AN HOUR.

12 Q AS A RESULT OF HEARING THAT INFORMATION
13 HOW DID YOU FEEL ABOUT THE EVENTS THAT HAD TRANSPIRED JUST
14 APPROXIMATELY AN HOUR EARLIER IN YOUR SEARS STORE?

15 A WELL, WE WERE -- I WAS QUITE FRIGHTENED, TO
16 BE FRANK, BECAUSE OF WHAT POSSIBLY COULD HAVE HAPPENED HAD WE
17 ACTUALLY STOPPED THE PERSON.

18 Q IN YOUR MIND WAS THIS A RATHER SIGNIFICANT
19 EVENT?

20 A IF YOU CALL IT EXCITING, IT'S PROBABLY THE
21 MOST EXCITING THING THAT'S HAPPENED IN MY CAREER WITH SEARS.

22 Q DID IT CAUSE YOU TO, AFTER HEARING THAT
23 INFORMATION FROM NORMA, DID IT CAUSE YOU TO GO OVER THE EVENTS
24 IN YOUR MIND THAT HAD TRANSPIRED APPROXIMATELY AN HOUR EARLIER?

25 A YES.

26 Q CAREFULLY?

27 A YES.

28 Q HAVE YOU HAD OCCASION TO THINK THOSE
29 THOUGHTS MANY TIMES?

30 A YES. IN FACT, I WENT TO LUNCH RIGHT AFTER
31 THAT, AND I GO HOME FOR LUNCH, AND I TALKED TO MY WIFE AND
32 DAUGHTERS ABOUT IT AND IT WAS VIVID IN MY MIND AT THAT TIME.

1 Q HAVE YOU TOLD THE STORY ON OCCASIONS OTHER
2 THAN JUST THEN?

3 A YES.

4 Q WOULD YOU LOOK AT THE DEFENDANT AGAIN FOR
5 ME, MR. SMITH, AND PLEASE TAKE YOUR TIME.

6 TELL ME IN WHAT WAY, IF ANY -- NO. LET
7 ME ASK IT THIS WAY: WOULD YOU COMPARE HIM TODAY TO THE WAY YOU
8 SAW HIM ON MARCH 28TH, 1980? IS HE THE SAME OR ARE THERE ANY
9 CHANGES?

10 A HIS HAIR LOOKS LONGER IN THE BACK THAN IT
11 DID -- THAN I REMEMBER IT THREE YEARS AGO.

12 Q YESTERDAY YOU MADE THE SAME SORT OF IDENTI-
13 FICATION IN COURT THAT YOU MADE TODAY. CAN YOU RECALL BACK TO
14 THAT MOMENT AND RECALL WHETHER OR NOT YOU TOOK MORE OR LESS TIME
15 TO MAKE THAT IDENTIFICATION YESTERDAY THAN YOU DID TODAY?

16 A I PROBABLY DID.

17 Q WHY IS THAT?

18 A WELL, I -- I REMEMBER NOW THAT HIS HAIR
19 WAS SHORTER THEN THAN IT -- THAN I REMEMBER IT BEING, THAN IT IS
20 NOW.

21 Q DO YOU RECALL THE SERIOUSNESS OF THE
22 CHARGES THAT WE'RE HERE TODAY FOR?

23 A YES. YES.

24 Q IS THERE ANY DOUBT IN YOUR MIND THAT THE
25 DEFENDANT WHOM YOU HAVE IDENTIFIED AS BEING THE PERSON THAT YOU
26 SAW ON MARCH 28TH, 1980, IN THE SEARS STORE IN SAN BERNARDINO
27 IS IN FACT ONE IN THE SAME PERSON?

28 A THERE'S NO DOUBT.

29 MR. SEATON: THANK YOU.

30 WE HAVE NO FURTHER QUESTIONS.

31 THE COURT: RECALL.

32 ..

RECROSS EXAMINATION

BY MR. FRANZEN:

Q SIR, YOU SAY THIS WAS AN EXCITING OCCASION. I PRESUME THAT YOU DON'T MEAN THE ATTEMPTED REFUND WAS AN EXCITING OCCASION. WHAT YOU'RE REFERRING TO IS SOMETHING THAT COULD HAVE HAPPENED THAT DID NOT HAPPEN; WOULD THAT BE CORRECT?

A I'M SORRY. WOULD YOU REPEAT THE QUESTION?

Q YOU SAY THIS WAS AN EXCITING OCCASION. I PRESUME, CORRECT ME IF I'M WRONG, YOU ARE NOT REFERRING TO THE ATTEMPT TO REFUND, OBTAIN A REFUND ON A SANDER. YOU'RE REFERRING TO SOMETHING THAT MIGHT HAVE HAPPENED BUT DID NOT HAPPEN?

A NO. CREATING A REFUND WAS NOT EXCITING.

Q OKAY.

AND YOU HAD NO OCCASION TO BECOME EXCITED ABOUT IT UNTIL YOU WERE SUBSEQUENTLY TOLD THIS INFORMATION BY NORMA; WOULD THAT BE CORRECT?

A NOT ENTIRELY.

Q YOU SAID THIS WAS THE MOST EXCITING THING THAT HAD EVER HAPPENED TO YOU AT SEARS. IT DIDN'T BECOME THAT UNTIL NORMA TOLD YOU THIS; IS THAT RIGHT?

A WELL, IT BECAME EXCITING FROM THE MOMENT THAT WE -- I NEVER HAD A --

Q SIR --

A (CONTINUING) -- EVER HAD A --

Q SIR, USING YOUR PHRASE --

MR. SEATON: YOUR HONOR, COULD THE WITNESS BE ALLOWED TO ANSWER THE QUESTION.

THE COURT: LET HIM ANSWER, COUNSEL. STATE YOUR QUESTION CLEARLY AND LET HIM ANSWER.

..

1811

1 BY MR. FRANZEN:

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3 Q THE REFUNDING OF THE SANDER WAS NOT THE
4 MOST EXCITING THING THAT HAS HAPPENED TO YOU IN YOUR CAREER?

5 A THAT'S CORRECT.

6 Q IN THE 32 YEARS AT SEARS.

7 IT BECAME THE MOST EXCITING THING AFTER
8 YOU GAINED THIS INFORMATION FROM NORMA; IS THAT CORRECT?

9 A YES.

10 Q YOU SAID YOU HAD OCCASION TO DESCRIBE THIS
11 EVENT BEFORE. HAVE YOU EVER HAD OCCASION TO TESTIFY IN COURT
12 BEFORE THIS INCIDENT?

13 A NO.

14 Q YOU CONTACTED THE POLICE REGARDING THIS
15 INCIDENT?

16 A I DID NOT.

17 Q DID THE POLICE EVER COME OUT TO THE SEARS
18 STORE TO YOUR KNOWLEDGE?

19 A THEY DID COME OUT TO THE STORE BUT NOT TO
20 SEE ME.

21 Q DO YOU KNOW IF THEY TOOK ANY FINGERPRINTS?

22 A I DO NOT.

23 Q DID YOU EVER GIVE A STATEMENT TO THE POLICE
24 ABOUT THIS?

25 A NO, I HAVE NOT.

26 MR. FRANZEN: I HAVE NOTHING FURTHER OF THE
27 WITNESS.

28 MR. SEATON: NOTHING BY THE STATE.

29 THE COURT: ALL RIGHT. YOU ARE EXCUSED, SIR.

30 (WHEREUPON, THE WITNESS WAS
31 EXCUSED.)

32 THE COURT: CALL YOUR NEXT WITNESS.

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MR. SEATON: NORMA DONALDSON.

WHEREUPON,

NORMA DONALDSON,

CALLED AS A WITNESS HEREIN BY THE PLAINTIFF, HAVING BEEN PREVIOUSLY DULY SWORN, EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: YOU HAVE BEEN PREVIOUSLY SWORN. YOU ARE STILL UNDER OATH.

YOU MAY PROCEED.

MR. SEATON: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. SEATON:

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

A NORMA DONALDSON, D-O-N-A-L-D-S-O-N.

Q IS IT MISS OR MRS.?

A MRS.

Q MRS. DONALDSON, WHERE DO YOU RESIDE?

A GRANTAIRS, CALIFORNIA.

Q AND WHERE DO YOU WORK?

A SEARS, SAN BERNARDINO, CALIFORNIA.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH SEARS IN SAN BERNARDINO?

A NINE YEARS.

Q AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH SEARS?

1 A I'M THE ASSISTANT SECURITY MANAGER.
2 Q AND AS SECURITY MANAGER, WHAT ARE YOUR
3 DUTIES?
4 A WELL, SHOPLIFTERS, BAD CHECKS, ET CETERA;
5 THINGS LIKE THAT.
6 Q HOW LONG HAVE YOU BEEN EMPLOYED, WHETHER
7 WITH SEARS OR ANYONE ELSE, AS A SECURITY GUARD?
8 A THIRTEEN YEARS.
9 Q AND DO YOU CARRY A FIREARM?
10 A NO.
11 Q DO YOU KNOW MUCH ABOUT FIREARMS?
12 A NO.
13 Q ON MARCH THE 28TH, 1980, WERE YOU WORKING
14 AS A SECURITY AGENT FOR THE SEARS STORE IN SAN BERNARDINO?
15 A YES, I WAS.
16 Q AND DID YOU HAVE OCCASION THAT DAY TO
17 BECOME INVOLVED WITH AN INCIDENT THAT HAD TO DO WITH BOB SMITH,
18 THE GENTLEMAN WHO JUST TESTIFIED?
19 A YES.
20 Q HAVE YOU KNOWN BOB SMITH FOR SOME TIME?
21 A YES.
22 Q YOU WORK TOGETHER IN THE SEARS STORE?
23 A YES, WE DO.
24 Q CAN YOU TELL US HOW THIS PARTICULAR INCIDENT,
25 TO WHICH YOU'RE REFERRING, BEGAN?
26 A I RECEIVED A CALL FROM OUR STORE OPERATOR
27 THAT BOB HAD A SUSPICIOUS REFUNDER IN HIS DEPARTMENT AND WANTED
28 ME TO COME THERE AND MEET HIM.
29 Q AND DID YOU GO TO MEET HIM?
30 A YES, I DID.
31 Q AND WHERE DID YOU GO TO MEET HIM?
32 A TO HIS OFFICE.

1814

1 Q AND WHERE IS HIS OFFICE LOCATED RELATIVE TO
2 THE HARDWARE DIVISION?

3 A IT'S ADJACENT TO IT. IT'S A SEPARATE
4 LITTLE OFFICE OFF THE SALESFLOOR.

5 Q AND WHEN YOU WENT INTO THE OFFICE DID YOU
6 HAVE OCCASION TO WALK BY THE CASH REGISTER WITHIN THAT DEPART-
7 MENT?

8 A YES, I DID.

9 Q AND DID YOU NOTICE ANYONE THERE?

10 A YES.

11 Q BRIEFLY DESCRIBE THAT PERSON.

12 A I NOTICED A BLACK MALE GENTLEMAN STANDING
13 AT THE CASH WRAP.

14 Q WAS THAT THE ONLY PERSON WHO WAS STANDING
15 AT THE CASH WRAP AT THAT TIME?

16 A YES, SIR.

17 Q AND DID YOU SUBSEQUENTLY GO IN THE OFFICE
18 AND TALK WITH BOB SMITH?

19 A YES, I DID.

20 Q AND WHAT WAS THE NATURE OF YOUR CONVERSA-
21 TION THERE?

22 A HE INFORMED ME HE HAD A GUY THAT IDENTIFIED
23 HIMSELF AS SEARS SECURITY FROM LAS VEGAS THAT WAS REFUNDING A
24 SANDER WITHOUT A RECEIPT.

25 Q AND DID HE TELL YOU THE NAME OF THIS
26 INDIVIDUAL?

27 A YES, HE DID.

28 Q AND WHAT WAS THAT NAME?

29 A KEITH KINSEY.

30 Q I'M SORRY?

31 A KEITH KINSEY.

32 Q KEITH KINSEY?

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A YES.

Q THANK YOU.

AFTER RECEIVING THIS INFORMATION FROM
BOB SMITH WHAT DID YOU THEN DO?

A I WENT BACK OUT ON THE SALESFLOOR TO GET A
BETTER LOOK AT THE GENTLEMAN STANDING AT THE CASH WRAP.

Q DOES THAT MEAN THAT YOU HAD TO WALK
THROUGH THE DOOR OF THE OFFICE?

A YES.

Q AND HOW FAR AWAY FROM THE DOOR DID YOU GO
IN ORDER TO OBSERVE THIS INDIVIDUAL?

A AWAY FROM THE DOOR, PROBABLY TEN FEET.

Q AND DID YOU SEE SOMEONE?

A YES.

Q AND WHO WAS IT THAT YOU WERE LOOKING AT?

A THE GENTLEMAN STANDING AT THE CASH WRAP.

Q HE WAS THERE WHEN YOU CAME BY THE FIRST
TIME?

A YES.

Q COULD YOU -- WELL, LET ME ASK YOU THIS:
HOW FAR AWAY WOULD YOU SAY YOU WERE FROM THAT INDIVIDUAL AT THE
TIME?

A APPROXIMATELY 30, 40 FEET.

Q AND WOULD YOU PLEASE DESCRIBE HIM FOR US
NOW?

A HE WAS A BLACK GENTLEMAN; APPROXIMATELY
FIVE ELEVEN TO SIX FEET TALL; NEAT IN APPEARANCE; SHORT BLACK
HAIR; APPROXIMATELY 150 POUNDS TO 160.

Q DID YOU -- I DON'T KNOW IF YOU SAID THIS
OR NOT, BUT DID YOU APPROXIMATE HIS AGE?

A LATE TWENTIES.

Q AND DID YOU NOTICE ANYTHING ABOUT HIS

1816

1 CLOTHING?

2 A JUST THE FACT THAT IT WAS LIGHT TROUSERS
3 AND DARK PINNING, AND A SHIRT DARK BROWN.

4 Q WAS HE WEARING A JACKET?

5 A YES.

6 Q COULD YOU TELL US ANYTHING ABOUT THE
7 JACKET?

8 A NO. IT WAS MORE OR LESS A WINDBREAKER
9 TYPE. IT CAME BELOW, HITTING HIM ABOUT THE WAIST.

10 Q AND DID YOU FORM ANY OPINION AS TO WHETHER
11 -- WHETHER THIS BLACK INDIVIDUAL WAS A LIGHT-COMPLECTED BLACK
12 OR A DARK-COMPLECTED BLACK? HOW WOULD YOU SAY?

13 A HE WASN'T REAL DARK. HE WAS A MEDIUM OR
14 ON THE LIGHTER SIDE.

15 Q HOW LONG DID IT TAKE YOU TO MAKE THESE
16 OBSERVATIONS?

17 A OH, APPROXIMATELY A MINUTE.

18 Q DID YOU JOT DOWN ANY NOTES AT THAT TIME
19 REGARDING THE OBSERVATION THAT YOU MADE ABOUT THE DESCRIPTION

20 OF THE INDIVIDUAL STANDING AT THE CASH WRAP?

21 A NOT AT THE TIME. WHEN I WENT BACK INTO THE
22 OFFICE I DID.

23 Q DID YOU DO -- IMMEDIATELY DO THAT UPON
24 GOING BACK INTO THE OFFICE?

25 A YES.

26 Q AND AFTER HAVING MADE THOSE NOTES, WHAT
27 DID YOU DO?

28 A I CALLED THE OPERATOR TO GET ME THE NUMBER
29 OF THE LAS VEGAS STORE.

30 Q AND DID SHE GET YOU A NUMBER?

31 A YES.

32 Q DID YOU PLACE A CALL?

- 1817

1 A YES.

2 Q ARE YOU AWARE TODAY THAT THERE ARE MORE

3 THAN ONE SEARS STORES IN LAS VEGAS?

4 A I AM NOW.

5 Q DO YOU KNOW WHICH STORE IT WAS AT THE

6 NUMBER YOU RECEIVED IS FOR?

7 A NO, I DON'T.

8 Q DID YOU CALL THAT NUMBER?

9 A YES, I DID.

10 Q AND WITH WHOM DID YOU SPEAK AFTER HAVING

11 CALLED THAT NUMBER?

12 A I SPOKE TO ONE OF THEIR SECURITY PERSONNEL.

13 Q NOW, THIS IS A SECURITY PERSONNEL WITH ONE

14 OF THE SEARS STORES IN LAS VEGAS?

15 A YES.

16 Q AND WHAT DID YOU SAY TO THAT PERSON?

17 A I ASKED THEM IF THEY HAD A BLACK MAN NAMED

18 KEITH KINSEY WORKING SECURITY. AND THEY STATED TO ME THEY DID

19 NOT.

20 Q AND WAS THAT THE FULL EXTENT OF THE CONVER-

21 SATION?

22 A WELL, I HAD GIVEN THEM A FULLER DESCRIPTION

23 OF THE GUY.

24 Q DID YOU GIVE THE DESCRIPTION THAT YOU GAVE

25 TO US --

26 A YES.

27 Q (CONTINUING) -- HERE IN COURT?

28 AND THEY INDICATED THAT THEY DIDN'T

29 HAVE ANYONE LIKE THAT?

30 A THAT'S RIGHT.

31 Q WHAT DID YOU DO AFTER THAT?

32 A I INFORMED BOB THAT THEY HAD TOLD ME THEY -

1818

1 HAD NO MALE EMPLOYEE MATCHING THAT DESCRIPTION OR BY THAT NAME.
2 AND I STATED THAT I WOULD HAVE TO STOP THE INDIVIDUAL FROM --
3 AND QUESTION HIM.

4 Q THAT WAS THE INDIVIDUAL THAT WAS OUT AT THE
5 CASH REGISTER?

6 A YES.

7 Q AND AFTER YOU SAID AND DECIDED THAT, WHAT
8 DID YOU DO?

9 A BOB AND I IMMEDIATELY WENT OUT ON THE SALES-
10 FLOOR, AT WHICH TIME I HAD -- AT WHICH TIME THE MALE SUBJECT WAS
11 NOT AT THE CASH WRAP.

12 Q DID YOU LOOK FOR HIM?

13 A YES.

14 Q WHERE DID YOU LOOK FOR HIM FIRST?

15 A WE LOOKED OVER THE DEPARTMENT AND WE DIDN'T
16 SEE HIM, AND THEN WE EXITED THE DOOR.

17 Q YOU MEAN YOU LOOKED AROUND THE HARDWARE
18 DEPARTMENT?

19 A YES, SIR.

20 Q ANY OTHER PLACES INSIDE THE STORE?

21 A NO.

22 Q JUST THAT IMMEDIATE AREA. AND THEN WHERE
23 DID YOU GO?

24 A WE EXITED THE STORE THROUGH THE DOORS THAT
25 ARE ADJACENT TO BOB'S DEPARTMENT. WE WENT OUT ON THE SIDEWALK
26 AND CHECKED THE PARKING LOT.

27 Q AND FOR HOW LONG A PERIOD OF TIME DID YOU
28 CHECK THE PARKING LOT WOULD YOU SAY?

29 A TWO TO THREE MINUTES.

30 Q AND WHEN YOU WERE OUT THERE CHECKING THE
31 PARKING LOT DID YOU SEE ANYONE THAT MATCHED THE DESCRIPTION OF
32 THE PERSON YOU WERE LOOKING FOR?

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A NO.

Q MRS. DONALDSON, COULD YOU AT THIS TIME
LOOK ABOUT THE COURTROOM AND TELL US IF YOU SEE ANYONE WHO IS
PRESENT HERE TODAY WHO YOU RECOGNIZE AS HAVING BEEN PRESENT IN
YOUR SAN BERNARDINO SEARS STORE ON MARCH THE 28TH, 1980?

A THE GENTLEMAN THERE IN THE --

Q WOULD YOU POINT TO HIM AND DESCRIBE WHAT
HE'S WEARING, PLEASE?

A OKAY. (INDICATING), THE GENTLEMAN THERE.
I BELIEVE IT'S THE TAN SHIRT, SHORT BLACK HAIR, A MOUSTACHE.

MR. SEATON: YOUR HONOR, MAY THE RECORD REFLECT
THE IDENTIFICATION OF THE DEFENDANT SAMUEL HOWARD.

THE COURT: THE RECORD MAY SO SHOW.

MR. SEATON: THANK YOU.

BY MR. SEATON:

Q WHEN YOU CAME BACK INTO THE SEARS STORE,
AFTER BEING OUT IN THE PARKING LOT LOOKING FOR THE DEFENDANT,
DID YOU RECEIVE A PHONE CALL?

A YES, I DID.

Q AND WHERE DID YOU GO TO RECEIVE THAT?

A I WENT TO THE PLUMBING DEPARTMENT, WHICH IS
NEXT TO THE TOOL DEPARTMENT.

Q AND WHO WAS THAT PHONE CALL FROM?

A A LAS VEGAS STORE.

Q WELL, WHAT KIND OF --

A A SEARS STORE.

Q IT WAS A SEARS STORE IN LAS VEGAS.

WAS IT THE SAME SEARS STORE THAT YOU
TALKED TO THE FIRST TIME?

A NO. IT WAS ANOTHER.

1 Q ANOTHER?

2 A YES.

3 Q AND WHO WAS THE INDIVIDUAL WHO WAS ON THE

4 LINE AT THAT TIME?

5 A IT WAS A SECURITY PERSONNEL. I DON'T

6 RECALL HIS NAME.

7 Q AND WHAT DID THAT INDIVIDUAL TELL YOU?

8 MR. COOPER: I'M GOING TO OBJECT, YOUR HONOR, AS

9 HEARSAY.

10 THE COURT: OVERRULED.

11

12 BY MR. SEATON:

13

14 Q PLEASE, CAN YOU TELL US NOW WHAT THAT

15 INDIVIDUAL SAID?

16 A OKAY.

17 Q AND WHAT HE SPOKE OF?

18 A OKAY.

19 HE HAD INFORMED ME THAT HE HAD

20 RECEIVED A CALL FROM THE FIRST GENTLEMAN THAT I SPOKE WITH IN

21 THE SEARS LAS VEGAS STORE REGARDING AN EMPLOYEE KEITH KINSEY.

22 AND HE INFORMED ME THAT HIS AGENT WAS HELD AT GUNPOINT, AT

23 WHICH TIME HIS SECURITY I.D. WAS TAKEN FROM HIM.

24 Q DID HE TELL YOU WHEN THAT HAD OCCURRED?

25 A THE DAY BEFORE, WHICH WOULD HAVE BEEN --

26 Q AND DID HE --

27 A (CONTINUING) -- THE 27TH.

28 Q THE 27TH.

29 AND DID HE TELL YOU WHETHER OR NOT

30 THERE WERE ANY WEAPONS USED IN THAT PARTICULAR INCIDENT?

31 A YES, HE DID.

32 Q WHAT DID HE SAY?

1 A I UNDERSTOOD HIM TO SAY IT WAS A .357
2 MAGNUM.
3 Q DID HE TELL YOU ANYTHING ABOUT AUTOMOBILES?
4 A YES.
5 Q WHAT DID HE TELL YOU?
6 A HE DESCRIBED THE CAR IN WHICH THE SA- --
7 SUBJECT WAS DRIVING.
8 Q AND HOW DID HE DESCRIBE THAT CAR?
9 A AS A 1980 OLDSMOBILE CUTLASS.
10 Q DID HE TELL YOU WHAT COLOR IT WAS?
11 A YES. I BELIEVE IT WAS BLACK.
12 Q DID HE TELL YOU WHAT THE -- WHAT STATE THE
13 AUTOMOBILE WAS LICENSED UNDER?
14 A NEW YORK.
15 Q DID HE TELL YOU WHAT THE NUMBERS OF THE
16 LICENSE PLATE WERE?
17 A YES, HE DID.
18 Q DO YOU RECALL WHAT THOSE ARE?
19 A NO. NOT BY NUMBER.
20 Q DID YOU HAVE THE INFORMATION THAT YOU HAD
21 WRITTEN DOWN ON THE NOTES THAT YOU TOLD US ABOUT EARLIER, DID
22 YOU HAVE THAT PUT INTO ANY ORDER OF A LOG?
23 A YES, I DID.
24 Q HOW DID YOU DO THAT?
25 A LATER IN THE AFTERNOON I HAD A SECURITY
26 AGENT WORKING FOR ME. I HAD HIM LOG IT IN THE BOOK IN MY NOTES.
27 Q AND HE USED YOUR NOTES?
28 A YES.
29 Q AND IS THAT A LOG THAT IS REGULARLY KEPT
30 IN THE NORMAL COURSE OF BUSINESS WITH SEARS?
31 A YES, IT IS.
32 Q AND IT'S USED BY THE SECURITY AGENTS WITHIN

1822

1 THAT STORE?

2 A YES.

3 Q AND DID YOU HAVE AN OPPORTUNITY THE NEXT
4 DAY TO REVIEW THE LOG THAT HE HAD WRITTEN YOUR INFORMATION IN?

5 A YES, I DID.

6 Q AND DID IT FAIRLY AND ACCURATELY REFLECT
7 THE EVENTS AS YOU HAD DESCRIBED THEM THE DAY BEFORE?

8 A YES.

9 Q AND WAS THE LICENSE NUMBER THAT THE SEARS
10 SECURITY GUARD IN LAS VEGAS, THAT HE GAVE YOU, WAS THAT ONE OF
11 THE THINGS THAT YOU HAD WRITTEN DOWN AND HE IN TURN HAD PUT INTO
12 THE LOG?

13 A YES.

14 Q AND THAT IS IN THE LOG TODAY?

15 A YES, IT IS.

16 Q DID YOU BRING THAT PAGE OF THE LOG WITH
17 YOU TODAY?

18 A YES, I DID.

19 Q WOULD LOOKING AT THAT LOG REFRESH YOUR

20 MEMORY AS TO THE LICENSE NUMBER OF THE NEW YORK PLATES ON THE
21 1980 OLDSMOBILE CUTLASS?

22 A YES, IT WOULD.

23 Q WOULD YOU LOOK AT THAT NDW, PLEASE, AND
24 JUST READ IT TO YOURSELF.

25 DOES READING THAT REFRESH YOUR RECOLLEC-
26 TION?

27 A YES.

28 Q WOULD YOU TELL US WHAT THE LICENSE PLATE
29 NUMBERS WERE THAT THE SEARS STORE GAVE YOU ON THAT DAY?

30 A 614 ZHQ.

31 Q THANK YOU.

32 WHY DID YOU HAVE ANOTHER AGENT WRITE IN

1823

1 THE LOG FOR YOU?

2 A WELL, FOR THE SIMPLE REASON THAT IT WAS
3 TIME FOR ME TO GET OFF WORK AND I HAD HIM DO IT. I WAS FAIRLY
4 SHOOK UP THAT DAY.

5 Q WHAT DO YOU MEAN THAT YOU WERE FAIRLY SHOOK
6 UP THAT DAY?

7 A WELL, LEARNING THE DETAILS OF THE INCIDENT
8 THAT I WAS INVOLVED IN, THE GUY HAVING THE GUN AND EVERYTHING,
9 IT SHOOK ME UP.

10 Q I SEE.

11 DID YOU HAVE AN OCCASION TO LATER TELL
12 BOB SMITH ABOUT THE NATURE OF THE TELEPHONE CALL, THE SECOND
13 TELEPHONE CALL BETWEEN YOU AND THE SEARS SECURITY AGENT IN LAS
14 VEGAS?

15 A YES, I DID.

16 Q DID YOU TELL HIM ALL OF THE DETAILS THAT
17 YOU JUST TOLD US HERE TODAY?

18 A YES.

19 Q PURSUANT TO MY REQUEST OVER THE WEEKEND,
20 DID YOU HAVE AN OPPORTUNITY TO GO THROUGH CERTAIN FILES IN THE
21 SAN BERNARDINO SEARS STORE?

22 A YES.

23 Q AND WHAT WAS IT THAT I HAD ASKED YOU TO
24 LOOK FOR?

25 A THE RETAIL CREDIT SLIP.

26 Q WHICH RETAIL CREDIT SLIP?

27 A WRI- -- THAT WAS WRITTEN. IT'S AN R.C.C.,
28 A RETAIL CREDIT SLIP, FOR RETURNED ITEMS.

29 Q AND WHO HAD FILLED OUT THAT PARTICULAR
30 RETAIL CREDIT SLIP?

31 A BOB SMITH.

32 Q AND ON WHAT DAY HAD HE DONE THAT?

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A THE DAY OF THE INCIDENT, THE 28TH.

Q I SEE.

AND WHOSE NAME HAD HE PUT ON THAT
RETAIL CREDIT SLIP?

A KEITH KINSEY.

Q AND WERE YOU SUCCESSFUL IN LOCATING THAT
SLIP THAT I'D ASKED YOU TO FIND?

A NOT AT THAT TIME.

Q AND WHY NOT?

A THE PERSONNEL AT OUR AUDITING DEPARTMENT
WAS OFF FOR THE WEEKEND BEFORE I COULD GET IT. BUT I DIDN'T
KNOW EVERYPLACE TO LOOK FOR THE RE- -- FOR THE DAILY.

Q AND WHEN DID I HAVE YOU COME TO LAS VEGAS?

A YOU HAD ME COME MONDAY.

Q I'M SORRY?

A MONDAY.

Q MONDAY WHEN?

A I ARRIVED HERE SUNDAY NIGHT AND --

Q I SEE.

A (CONTINUING) -- I WAS DUE IN COURT MONDAY.

Q I SEE. THANK YOU VERY MUCH.

A YEAH.

MR. SEATON: THAT CONCLUDES THE QUESTIONS BY
THE STATE, YOUR HONOR.

THE COURT: CROSS.

MR. COOPER: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. COOPER:

Q MRS. DONALDSON, YOU ARE SURE THE PERSON

1825

1 SEATED TO MY LEFT IS THE MAN YOU SAW IN THE STORE NEAR MR.
2 SMITH'S REGISTER SOMETIME THREE YEARS AGO; IS THAT RIGHT?

3 A I'M FAIRLY SURE.

4 Q WHEN YOU SAY "FAIRLY SURE" I GOT THE
5 IMPRESSION ON DIRECT EXAMINATION YOU WERE CERTAIN OF THAT. ARE
6 YOU SAYING NOW THAT YOU AREN'T CERTAIN OF THAT?

7 A THERE ARE A FEW SLIGHT DIFFERENCES AT THIS
8 TIME.

9 Q WELL, TAKING INTO ACCOUNT THOSE DIFFERENCES,
10 CAN YOU SAY THAT THIS GENTLEMAN SEATED TO MY LEFT IS THE MAN YOU
11 SAW IN THE STORE OR NOT?

12 A YES, HE IS.

13 Q YOU AREN'T ONE OF THESE EXTRAORDINARY
14 PEOPLE WHOSE MEMORY GETS BETTER AS TIME GOES BY, ARE YOU? OR
15 ARE YOU MORE LIKE MOST OF US, WHOSE MEMORY SEEMS TO FAIL AS TIME
16 GOES BY?

17 A I'M AN AVERAGE PERSON, YES.

18 Q UH-HUH.

19 WHEN YOU GOT YOUR CALL FROM MR. SMITH

20 TO COME TO HIS OFFICE, IS THAT ALL HE TOLD YOU, TO COME TO HIS
21 OFFICE?

22 A I DIDN'T RECEIVE THE CALL FROM MR. SMITH.
23 IT WAS OUR OPERATOR.

24 Q THE OPERATOR?

25 A YES.

26 Q I SEE.

27 WHAT DID THE OPERATOR TELL YOU?

28 A THAT BOB SMITH WANTED ME TO COME TO HIS
29 OFFICE REGARDING A SUSPICIOUS REFUNDER IN HIS DEPARTMENT.

30 Q UH-HUH.

31 SO IN ROUTE TO MR. SMITH'S OFFICE YOU
32 SEE THIS MAN STANDING BY HIS REGISTER; IS THAT RIGHT?

1826

1 A YES.

2 Q HOW LONG DID YOU TAKE A LOOK AT THIS MAN?

3 A AS I PASSED I LOOKED AT HIM.

4 Q WALKING BY AND YOU GAVE HIM A GLANCE; IS

5 THAT RIGHT?

6 A CORRECT.

7 Q AND AT THAT POINT YOU WOULDN'T HAVE BEEN

8 ABLE TO GIVE THE DETAILED DESCRIPTION THAT YOU GAVE TO THE --

9 TO THE SEARS PEOPLE HERE IN LAS VEGAS LATER ON?

10 A CORRECT.

11 Q WEREN'T THERE OTHER PEOPLE STANDING THERE

12 AT THE CASH REGISTER WITH THIS MAN?

13 A NO, SIR, THERE WEREN'T.

14 Q ARE YOU CERTAIN OF THAT?

15 A YES.

16 Q YOU THEN WENT INTO MR. SMITH'S OFFICE WHERE

17 HE TOLD YOU WHAT WAS HAPPENING; IS THAT RIGHT?

18 A YES.

19 Q YOU WENT BACK OUTSIDE TO TAKE A LOOK AT

20 THIS MAN?

21 A YES, SIR.

22 Q HOW LONG DID YOU LOOK AT HIM?

23 A APPROXIMATELY A MINUTE.

24 Q BY STANDING AT MR. SMITH'S REGISTER AS IT

25 WAS ON MARCH 28TH OF 1980, AND IF I'M FACING THE REGISTER,

26 WOULD I BE LOOKING TOWARDS MR. SMITH'S DOOR OR AWAY FROM HIS

27 DOOR?

28 A YOU WOULD BE LOOKING TOWARDS MR. SMITH'S

29 OFFICE.

30 Q SO WHEN YOU CAME OUT OF MR. SMITH'S OFFICE

31 YOU WENT SOME, I THINK YOUR TESTIMONY WAS, SOME TEN FEET OR SO

32 FROM HIS DOOR; IS THAT RIGHT?

1 A YES.

2 Q DID YOU JUST GO RIGHT OUTSIDE HIS DOOR AND

3 STAND THERE?

4 A I WENT TO AN AISLE OF THE DEPARTMENT AND

5 STOOD THERE.

6 Q IS THIS IN THE HARDWARE DEPARTMENT?

7 A YES.

8 Q UH-HUH.

9 SO WAS THAT IN ORDER FOR YOU TO GET A

10 LOOK AT THIS PERSON?

11 A YES.

12 Q WHY WAS THAT NECESSARY IF AS HE'S STANDING

13 THERE AT THE REGISTER HE WOULD BE FACING MR. SMITH'S DOOR?

14 A HE WOULDN'T BE FACING THE DOOR PER SE. HE

15 WOULD BE FACING THAT GENERAL AREA, BUT NOT THE DOOR OF MR.

16 SMITH'S OFFICE.

17 Q YOU FOUND IT NECESSARY TO GO BEHIND ONE OF

18 THE SHELVES TO GET A BETTER VANTAGE POINT?

19 A YES.

20 Q DURING THIS -- COULD IT HAVE BEEN LESS THAN

21 APPARENT THAT YOU WERE OUTSIDE TAKING A LOOK AT THIS PERSON?

22 A I DOUBT IT.

23 Q AND DURING THAT MINUTE OR SO THAT YOU

24 LOOKED AT THIS PERSON, I MEAN YOU WENT OUT SPECIFICALLY FOR THE

25 SOLE PURPOSE OF GETTING A PHYSICAL DESCRIPTION OF THIS PERSON;

26 ISN'T THAT RIGHT?

27 A THAT'S RIGHT.

28 Q AND AS YOU ARE STANDING THERE LOOKING AT

29 THIS PERSON, ARE YOU LOOKING AT A PROFILE VIEW OR ARE YOU LOOK-

30 ING FROM THE BACK OF THIS PERSON OR STRAIGHT-ON?

31 A A STRAIGHT-ON LOOK.

32 Q FOR A FULL MINUTE?

1 A YES.

2 Q AND HE'S -- HE DOESN'T TURN DURING THAT

3 FULL MINUTE. HE DOESN'T TURN HIS BACK TO YOU OR SIDE TO YOU?

4 A NO, HE DID NOT.

5 Q HOW LONG HAD YOU BEEN IN THE SECURITY

6 BUSINESS WHEN THIS HAPPENED?

7 A APPROXIMATELY NINE YEARS.

8 Q UH-HUH.

9 HAVE YOU TRAINING OF ANYKIND PRIOR TO

10 BECOMING A SECURITY OFFICER?

11 A ON-THE-JOB TRAINING.

12 Q I TAKE IT THEN YOU'VE HAD EXTENSIVE

13 EXPERIENCE IN MAKING IDENTIFICATIONS OF SUSPECTS?

14 A YES.

15 Q WHEN YOU -- WHEN YOU MADE YOUR NOTES THAT

16 YOU LATER GAVE TO THE SECURITY AGENT TO LOG IN, WHAT INFORMATION,

17 AFTER YOU HAD MADE YOUR MINUTE OR MORE OBSERVATION OF THIS

18 PERSON, WHAT INFORMATION DID YOU GIVE THE SECURITY AGENT

19 REGARDING THE PHYSICAL DESCRIPTION OF THIS PERSON?

20 A THE SAME AS I STATED AWHILE AGO.

21 Q THAT HE WAS A BLACK MALE, LATE TWENTIES,

22 SHORT HAIR, NEAT APPEARANCE, BETWEEN FIVE ELEVEN AND SIX FEET,

23 WEIGHED 150 POUNDS?

24 A CORRECT.

25 Q RIGHT?

26 AND DID YOU TELL THE AGENT WHAT KIND OF

27 COAT THIS MAN HAD ON?

28 A I DON'T RECALL IF I DID OR NOT.

29 Q WAS THAT INCLUDED IN THE NOTES THAT YOU

30 GAVE THE AGENT?

31 A IT PROBABLY WAS.

32 Q WELL, WOULDN'T HE -- DO YOU HAVE YOUR --

1 YOUR LOG SHEET BEFORE YOU?

2 A YES, I DO.

3 Q WOULD YOU TAKE A LOOK AT IT, PLEASE.

4 HAVE YOU HAD A CHANCE TO READ THAT
5 ENTRY?

6 A YES.

7 Q IS THERE ANY MENTION THERE ABOUT THE COAT
8 THE MAN HAD ON?

9 A NO, THERE ISN'T.

10 Q IN YOUR NOTE THAT YOU GAVE, AND I THINK
11 YOUR TESTIMONY WAS THAT YOU MADE THIS NOTE IMMEDIATELY UPON
12 RETURNING TO MR. SMITH'S OFFICE AFTER YOU OBSERVED THIS PERSON;
13 IS THAT RIGHT?

14 A YES, I DID.

15 Q DID YOU MENTION ANYTHING ABOUT THE KIND OF
16 SHIRT HE HAD ON?

17 A I PROBABLY NOTED IT ON MY NOTES.

18 Q BUT IT'S NOT IN THE LOG, IS IT?

19 A NO, IT'S NOT.

20 Q ALL RIGHT.

21 DID YOU MENTION ANYTHING ABOUT THE
22 PANTS THE MAN HAD ON?

23 A NO..

24 Q WAS THAT IN THE NOTE?

25 A NOT IN THIS NOTE.

26 Q UH-HUH.

27 IS IT IN THE LOG?

28 A NO. IT'S NOT IN THIS LOG.

29 Q DID YOU MAKE THAT -- MENTION THAT IN YOUR
30 NOTES THAT YOU GAVE THE SECURITY AGENT?

31 A MORE THAN LIKELY, YES.

32 Q DIDN'T IT APPEAR A BIT UNUSUAL THAT THE

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1 SECURITY AGENT WOULD FAIL TO MENTION ANYTHING ABOUT THE CLOTH-
2 ING OF THIS PERSON IN THE LOG THAT'S MADE? ISN'T THAT A BIT
3 UNUSUAL?

4 A NO, NOT REALLY.

5 Q AND WHY ISN'T -- WHY ISN'T IT UNUSUAL?

6 A BECAUSE I'M ASSUMING HE JUST PUT THE
7 PARTICULARS ON THERE THAT HE THOUGHT WAS IMPORTANT.

8 Q OH, I SEE.

9 WHEN YOU TESTIFIED YESTERDAY YOU
10 WEREN'T SO SURE THAT YOU INCLUDED THE CLOTHING DESCRIPTION IN
11 YOUR NOTES, WERE YOU?

12 A I DON'T KNOW IF I WAS OR NOT.

13 Q WELL, DID YOU -- DID YOU OR DIDN'T YOU?
14 DID YOU OR DIDN'T YOU INCLUDE, IN THE NOTES THAT YOU MADE THAT
15 YOU GAVE THE SECURITY AGENT, A DESCRIPTION OF THIS PERSON'S
16 CLOTHING?

17 A I, LIKE I SAY, I PROBABLY HAD IT ON MY
18 NOTE IN MY MEMORY WHEN I CALLED THE LAS VEGAS STORE AT THE TIME
19 THAT I TOOK MY NOTES.

20 Q WELL, WHEN YOU SAY YOU PROBABLY DID, IT
21 CAN ALSO BE SAID THEN THAT YOU PROBABLY DIDN'T?

22 A I WOULD SAY IT WAS MOST LIKELY I DID.

23 Q YOU TESTIFIED ON DIRECT EXAMINATION TODAY
24 THAT THE PERSON HAD ON A WINDBREAKER-TYPE JACKET THAT WAS WAIST
25 LENGTH; IS THAT RIGHT?

26 A RIGHT.

27 Q WHY DID YOU SAY YESTERDAY THAT HE HAD ON A
28 JACKET THAT CAME DOWN -- COURT'S INDULGENCE, PLEASE.

29 WHY DID YOU SAY YESTERDAY THAT HE HAD
30 ON A JACKET THAT CAME ACROSS HIS HIPS?

31 A I BELIEVE IN MY STATEMENT THIS MORNING I
32 DID SAY HIP LENGTH.

1 Q WELL, I -- I BEG TO DIFFER, I THINK YOUR
2 TESTIMONY WAS THAT IT CAME DOWN TO HIS WAIST. DO YOU RECALL
3 WHICH -- WHICH IT WAS, WHETHER IT WAS DOWN TO HIS HIP OR DOWN
4 TO HIS WAIST?

5 A I KNOW IT WAS PAST HIS WAIST. HIP LENGTH.
6 Q DO YOU RECALL THE LENGTH OF THE JACKET BUT
7 YOU DON'T RECALL THE COLOR OF THE JACKET?

8 A I STATED IT WAS A LIGHT COLOR, MOST LIKELY
9 A TAN.

10 Q TAN WINDBREAKER-TYPE?
11 A YES.

12 Q YOU WERE TOLD -- NOW, THIS INCIDENT
13 OCCURRED ON THE 28TH OF MARCH, 1980; IS THAT RIGHT?

14 A YES, SIR.

15 Q DO YOU RECALL APPROXIMATELY WHAT TIME IT
16 WAS THAT IT OCCURRED?

17 A IN THE AFTERNOON.
18 Q EARLY AFTERNOON? LATE AFTERNOON?
19 A OH, PROBABLY SOMEWHERE THREEISH OR SOME-

20 THING LIKE THAT.

21 Q AROUND 3:00 OR SO?
22 A YEAH. RIGHT.

23 Q WHATEVER HAPPENED TO THE NOTES THAT YOU
24 MADE WHERE YOU GAVE THE DESCRIPTION OF THIS PERSON ALONG WITH
25 THE CLOTHING?

26 A APPARENTLY GOT THROWN AWAY.
27 Q PARDON?
28 A APPARENTLY IT GOT THROWN AWAY.
29 Q THAT KIND OF INFORMATION ISN'T -- ISN'T
30 KEPT IN SEARS ROEBUCK'S RECORDS?

31 A NO. JUST WHAT WAS NOTATED IN THE LOG.
32 MR. COOPER: I SEE.

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I HAVE NOTHING FURTHER OF THE WITNESS,
YOUR HONOR.

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

THANK YOU.

THE COURT: ALL RIGHT. YOU ARE EXCUSED.

(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: WHO WILL BE YOUR NEXT WITNESS?

MR. HARMON: ROBERT SLATER.

MR. COOPER: EXCUSE ME, YOUR HONOR. I FAILED TO
ASK ONE QUESTION.

THE COURT: ALL RIGHT. JUST BE SEATED.

CROSS EXAMINATION

BY MR. COOPER:

Q MRS. DONALDSON, DURING THE INTERIM, FROM
THE TIME THAT THIS INCIDENT HAPPENED UP UNTIL YOUR COMING INTO
COURT TO TESTIFY IN HERE, DID YOU EVER VIEW A LINEUP REGARDING
THIS INCIDENT THAT INCLUDED BLACK MALES?

A NO, I HAVE NOT.

Q A PHOTO OR A PHYSICAL LINEUP?

A NO, SIR.

Q SO YESTERDAY WHEN YOU CAME INTO COURT WAS
THE FIRST TIME YOU HAD SEEN THIS MAN TO MY LEFT SINCE SOME THREE
YEARS AGO?

A YES, SIR.

MR. COOPER: I HAVE NOTHING FURTHER.

MR. SEATON: NOTHING BY THE STATE.

THE COURT: YOU ARE EXCUSED.

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(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: LADIES AND GENTLEMEN, WE WILL TAKE A
BRIEF RECESS FOR ABOUT TEN MINUTES.

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

WE'LL BE IN RECESS FOR TEN MINUTES.

(WHEREUPON, FROM 11:06 A.M.
UNTIL 11:20 A.M., A RECESS WAS
HAD IN THE PROCEEDINGS, AT THE
CONCLUSION OF WHICH THE FOLLOW-
ING WAS HAD OUTSIDE THE
PRESENCE OF THE JURY:)

THE COURT: COUNSEL?

MR. COOPER: MAY I HAVE THE COURT'S INDULGENCE
FOR A BRIEF MOMENT, PLEASE.

YOUR HONOR, WE HAD ANTICIPATED RAISING A
MOTION AT THIS TIME, BUT WE DECIDE TO FOREGO THAT AND WE'RE
READY TO PROCEED.

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THE COURT: CALL THE JURY.

HOW MANY MORE WITNESSES DO YOU ANTICIPATE,
COUNSEL?

MR. HARMON: APPROXIMATELY EIGHT, YOUR HONOR.

(WHEREUPON, THE JURY ENTERED
THE COURTROOM; AND THE FOLLOW-
ING PROCEEDINGS WERE HAD:)

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

MR. SEATON: YES, YOUR HONOR.

MR. COOPER: YES, YOUR HONOR.

THE COURT: CALL YOUR NEXT WITNESS. HAVE YOUR
NEXT WITNESS COME FORWARD.

MR. HARMON: THANK YOU.

THE CLERK: RAISE YOUR RIGHT HAND.

WHEREUPON,

ROBERT SLATER,

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

THE COURT: PROCEED.

MR. HARMON: THANK YOU.

DIRECT EXAMINATION

BY MR. HARMON:

Q WILL YOU STATE YOUR NAME, PLEASE.

A ROBERT SLATER, S-L-A-T-E-R.

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Q MR. SLATER, WHERE ARE YOU EMPLOYED?

A LOS ANGELES POLICE DEPARTMENT AND JEWEL
COR SECURITY.

Q HOW LONG HAVE YOU WORKED WITH THE LOS
ANGELES POLICE DEPARTMENT?

A FIFTEEN AND A HALF YEARS.

Q NOW, YOU SAY YOU ALSO ARE EMPLOYED AS A
SECURITY OFFICER FOR JEWEL COR?

A YES.

Q WHAT TYPE OF BUSINESS IS JEWEL COR?

A IT'S A CATALOG JEWELRY STORE.

Q FOR THE RECORD, IT'S SPELLED J-E-W-E-L
C-O-R?

A YES.

Q HOW LONG HAVE YOU WORKED AS A SECURITY
OFFICER FOR JEWEL COR?

A APPROXIMATELY FOUR YEARS.

Q OFFICER SLATER, WERE YOU EMPLOYED AS A
SECURITY OFFICER WITH JEWEL COR ON APRIL THE 1ST, 1980?

A YES.

Q DID YOU, ON THAT DATE, HAVE OCCASION TO BE
AT THE STONEWOOD SHOPPING CENTER IN DOWNEY, CALIFORNIA?

A YES.

Q IS THERE A JEWEL COR JEWELRY STORE IN THE
STONEWOOD SHOPPING CENTER?

A YES.

Q SOMEWHERE SHORTLY BEFORE NOON, 12:00 O'CLOCK
NOON, ON APRIL THE 1ST, 1980, INSIDE THE STONEWOOD SHOPPING
CENTER, DID YOU HAVE OCCASION TO SEE ANYONE WHO WAS PRESENT IN
COURT?

A YES.

Q POINT TO THE INDIVIDUAL THAT YOU SEE IN THE

1836

1 COURTROOM WHOM YOU SAW ON THAT DAY, AND DESCRIBE HOW HE'S
2 DRESSED?

3 A THE GENTLEMAN IN THE BEIGE SHIRT AT THE
4 END OF DEFENSE TABLE.

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

7 THE COURT: THE RECORD MAY SO SHOW.

8 MR. HARMON: THANK YOU.

9
10 BY MR. HARMON:

11
12 Q OFFICER SLATER, WHERE WAS MR. HOWARD, THE
13 DEFENDANT, WHEN YOU SAW HIM SHORTLY BEFORE 12:00 O'CLOCK NOON
14 ON APRIL THE 1ST, 1980?

15 A HE HAD JUST ENTERED THE SOUTH DOOR OF
16 JEWEL COR STORE.

17 Q WAS HE BY HIMSELF OR WITH SOMEONE ELSE?

18 A I SAW HIM ALONE.

19 Q WHAT DID YOU SEE HIM DO AND WHAT, IF ANY-
20 THING, ATTRACTED YOUR ATTENTION TO HIM?

21 A HE WAS WALKING IN THE DOOR TOWARDS MY
22 LOCATION. I WAS STANDING BY THE JEWELRY DEPARTMENT. I NOTICED
23 HIM CARRYING A -- WHAT APPEARED TO BE A POLICE-TYPE OR A SMALL
24 WALKIE-TALKIE RADIO IN HIS HAND.

25 Q DO YOU RECALL IN WHICH HAND HE WAS CARRYING
26 THE WALKIE-TALKIE RADIO?

27 A NO, I DON'T.

28 Q DID THAT FIRST DRAW YOUR ATTENTION TO HIM?

29 A YES.

30 Q WHAT THEN DID YOU OBSERVE?

31 A AS HE PASSED MY LOCATION WHERE I WAS
32 STANDING I OBSERVED A GRIP BUTT OF A GUN STICKING OUT OF HIS

1837

1 WAISTBAND AREA ON THE RIGHT SIDE OF HIS BACK.

2 Q WAISTBAND ON THE RIGHT SIDE OF HIS BACK?

3 A RIGHT.

4 Q WERE YOU POSITIVE IT WAS SOME TYPE OF

5 FIREARM?

6 A FROM WHAT I'VE EXPERIENCED, YES.

7 Q YOU HAVE EXTENSIVE EXPERIENCE IN LAW

8 ENFORCEMENT WITH GUNS, DO YOU NOT?

9 A YES.

10 Q OFFICER SLATER, HOW CLOSE WAS THE DEFENDANT

11 TO YOU WHEN HE PASSED BY YOUR STATION?

12 A THREE TO FIVE FEET.

13 Q COULD YOU SEE HIM WELL AT THAT DISTANCE?

14 A YES.

15 Q DID HE STILL HAVE THE POLICE-TYPE WALKIE-

16 TALKIE RADIO IN ONE OF HIS HANDS?

17 A YES.

18 Q WHAT HAPPENED THEN, SIR?

19 A HE WALKED THROUGH THE STORE AND STOPPED BY

20 ONE OF MY SECURITY AGENTS BY THE NAME OF MANNY VELASQUEZ, AND

21 IT APPEARED THAT THEY WERE HAVING A SHORT CONVERSATION. I

22 COULDN'T HEAR ANY WORDS, BUT THEY WERE -- MOUTHS WERE MOVING.

23 HE THEN WALKED OUT THE NORTH DOOR OF

24 JEWEL COR.

25 Q YOU REFERRED TO A SECURITY OFFICER NAMED

26 MANNY VELASQUEZ?

27 A YES.

28 Q HOW IS THE FIRST NAME SPELLED?

29 A M-A-N-N-Y.

30 Q AND IS VELASQUEZ, V-E-L-A-S-Q-U-E-Z?

31 A YES.

32 Q WHAT HAPPENED THEN?

1 A I WENT OVER AND TALKED TO MANNY AND ASKED
2 MANNY IF THE GENTLEMAN HE WAS TALKING TO WAS A POLICEMAN. AND
3 HE SAID NO. HE SAID, "I DON'T THINK SO."

4 I THEN INFORMED MANNY AT THIS TIME THAT
5 I OBSERVED A GUN IN HIS WAISTBAND AREA AND DECIDED TO CALL THE
6 LOCAL POLICE DEPARTMENT AT THAT TIME.

7 Q DID YOU, IN FACT, CONTACT A REPRESENTATIVE
8 OF THE DOWNEY POLICE DEPARTMENT?

9 A YES, I DID.

10 Q IN DOWNEY, CALIFORNIA?

11 A YES.

12 Q DID THERE COME A TIME WHEN SOMEONE FROM
13 THE DOWNEY POLICE DEPARTMENT RESPONDED TO THE STONEWOOD SHOPPING
14 CENTER?

15 A YES.

16 Q ABOUT WHEN WAS THAT?

17 A PROBABLY ABOUT 15 TO 20 MINUTES AFTER I
18 FIRST OBSERVED HIM.

19 Q THAT WOULD BE APPROXIMATELY WHAT TIME THEN
20 ON APRIL THE 1ST, 1980?

21 A IT WOULD BE SHORTLY AFTER 12:00; 12:10,
22 12:15, SOMEWHERE IN THERE.

23 Q WHAT HAPPENED AFTER THE ARRIVAL OF
24 REPRESENTATIVES OF THE DOWNEY POLICE DEPARTMENT?

25 A I HAD DIRECTED THEM TOWARDS THE WEST END
26 OF THE SHOPPING CENTER, WHERE I'D SEEN MR. HOWARD WALKING.

27 Q DO YOU RECALL THE NAMES OF THE OFFICERS
28 WHO RESPONDED?

29 A OFFICER CONNELLY AND CAMPOS.

30 Q C-A-M-P-O-S?

31 A YES.

32 Q AND CONNELLY IS, C-O-N-N-E-L-Y?

1 A I DON'T KNOW HOW HE SPELLS CONNELLY.
2 Q WHERE HAD YOU LAST SEEN THE DEFENDANT
3 MR. HOWARD?
4 A MIDWAY BETWEEN JEWEL COR STORE AND A
5 BREEZEWAY IN THE MALL, WHICH WOULD BE A THRIFTY STORE.
6 Q A THRIFTY DRUG STORE?
7 A YES.
8 Q ALSO LOCATED INSIDE THE STONEWOOD SHOPPING
9 CENTER MALL?
10 A YES.
11 Q DID OFFICERS CONNELLY AND CAMPOS RESPOND TO
12 THE AREA WHERE YOU DIRECTED THEM TO?
13 A YES.
14 Q DO YOU KNOW WHETHER SOMEONE WAS SUBSEQUENTLY
15 TAKEN INTO CUSTODY?
16 A YES.
17 Q WHO WAS IT?
18 A MR. HOWARD.
19 Q THE DEFENDANT IN THIS COURTROOM?
20 A YES.
21 Q AFTER HE WAS TAKEN INTO CUSTODY DID YOU
22 SEE AGAIN THE POLICE-TYPE WALKIE-TALKIE RADIO THAT HE HAD IN
23 HIS POSSESSION?
24 A YES.
25 Q DID IT APPEAR TO BE THE SAME RADIO?
26 A YES.
27 Q THEREAFTER, DID YOU HAVE OCCASION TO GO
28 INTO THE THRIFTY DRUG STORE?
29 A YES.
30 Q FOR WHAT PURPOSE?
31 A TO LOOK FOR THE GUN THAT I OBSERVED ON THE
32 DEFENDANT.

1840

1 Q AT THE TIME HE WAS APPREHENDED WAS HE
2 CARRYING A GUN?

3 A NO.

4 Q WERE YOU ASSISTED IN SEARCHING FOR THE GUN
5 YOU HAD SEEN IN THE THRIFTY DRUG -- STRIKE THAT.

6 WERE YOU ASSISTED IN SEARCHING FOR THE
7 GUN YOU HAD SEEN ON THE DEFENDANT BY ANY OTHER PERSON OR
8 PERSONS?

9 A YES.

10 Q WHO ASSISTED YOU?

11 A MANNY VELASQUEZ, MY SECURITY AGENT AND
12 OFFICER CAMPOS, FROM THE DOWNEY POLICE DEPARTMENT.

13 Q WHERE DID YOU SEARCH FOR THE WEAPON?

14 A I SEARCHED ONE AISLE IN THRIFTY'S.

15 Q IN A THRIFTY DRUG STORE?

16 A YES.

17 Q WHY DID YOU GO TO THAT PARTICULAR STORE?

18 A THE OFFICERS HAD INFORMED ME THAT --

19 MR. COOPER: OBJECTION, YOUR HONOR. IT'S HEARSAY

20 WHAT THESE OFFICERS INFORMED HIM OF.

21 THE COURT: ARE THEY GOING TO TESTIFY?

22 MR. HARMON: YES, YOUR HONOR. IT'S NOT OFFERED
23 FOR THE TRUTH IN ANY EVENT. IT'S OFFERED TO EXPLAIN WHAT HIS
24 SUBSEQUENT CONDUCT WAS.

25 THE COURT: AND THEY WILL BE DISCUSSING --

26 MR. HARMON: OFFICER CAMPOS WILL BE THE NEXT
27 WITNESS, YOUR HONOR.

28 THE COURT: THE OBJECTION IS OVERRULED.

29

30 BY MR. HARMON:

31

32 Q WHY DID YOU GO TO THE THRIFTY DRUG STORE?

1 A OFFICER CAMPOS HAD INFORMED ME THAT THE
2 DEFENDANT HAD EXITED THRIFTY'S AND THAT HE HAD BEEN IN A CERTAIN
3 LOCATION IN THE STORE, CERTAIN AISLES.

4 Q DID YOU SEARCH VARIOUS AISLES INSIDE THE
5 THRIFTY DRUG STORE?

6 A YES.

7 Q WHAT HAPPENED?

8 A I FOUND A SMALL FOLD -- BIFOLD WALLET WITH
9 SECURITY IDENTIFICATION INSIDE OF IT.

10 Q WHAT TYPE OF SECURITY IDENTIFICATION WAS
11 INSIDE THE WALLET?

12 A I BELIEVE IT WAS SEARS.

13 Q YOU SAY YOU FOUND THAT ITEM?

14 A YES.

15 Q DO YOU REMEMBER WHERE IT WAS?

16 A IT WAS IN A AISLE MIDWAY IN THE STORE CLOSE
17 TO THE PHARMACY AREA. IT WAS IN A TOWEL SECTION.

18 Q DO YOU HAVE A SPECIFIC RECOLLECTION AS TO
19 WHICH AISLE NUMBER INSIDE THE THRIFTY DRUG STORE IT WAS?

20 A NO, I DON'T.

21 Q IT WAS IN A MIDAISLE SECTION IN THE TOWEL
22 SECTION?

23 A YES.

24 Q WAS SOMETHING ELSE ALSO DISCOVERED INSIDE
25 THE THRIFTY DRUG STORE IN ADDITION TO THE SEARS SECURITY BADGE?

26 A YES, A WEAPON WAS FOUND.

27 Q DO YOU KNOW WHERE THAT WEAPON WAS FOUND?

28 A THE AISLES TO THE REAR, WHERE HE WAS
29 SEARCHING.

30 Q ALSO IN THE THRIFTY DRUG STORE?

31 A YES.

32 Q DO YOU KNOW WHAT TYPE OF WEAPON WAS FOUND?

1 A I BELIEVE IT WAS A .357 BLUE STEEL
2 REVOLVER, BROWN GRIPS.

3 Q WHO FOUND THAT PARTICULAR WEAPON?

4 A OFFICER CAMPOS AND MANNY VELASQUEZ WERE AT
5 THAT LOCATION FOUND IT.

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

8 MAY I APPROACH THE WITNESS, YOUR HONOR?

9 THE COURT: YOU MAY.

10
11 BY MR. HARMON:

12
13 Q OFFICER SLATER, I'M SHOWING YOU FIRST WHAT
14 HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 24-B. IT APPEARS
15 TO BE SOME TYPE OF TWO-WAY OR WALKIE-TALKIE RADIO. WILL YOU
16 LOOK AT THIS ITEM AND STATE WHETHER IT APPEARS TO BE THE SAME
17 WALKIE-TALKIE RADIO YOU SAW IN POSSESSION OF THE DEFENDANT MR.
18 HOWARD ON APRIL THE 1ST, 1980, INSIDE THE STONEWOOD SHOPPING
19 CENTER IN DOWNEY, CALIFORNIA?

20 A IT APPEARS TO BE THE ONE THAT I SAW THAT
21 DAY.

22 Q WHAT WAS THE DEFENDANT DOING WITH THE
23 RADIO WHEN YOU SAW HIM WITH IT ON APRIL THE 1ST, 1980?

24 A HE WAS SIMPLY CARRYING IT IN HIS HAND AND
25 WALKING. HE WAS NOT TALKING ON IT.

26 Q DID YOU SEE THE SAME RADIO, PROPOSED
27 EXHIBIT 24-B, ONCE IT HAD BEEN RECOVERED BY OFFICER CONNELLY?

28 A YES.

29 Q EXCEPT FOR THE COURT MARKINGS AND WHAT
30 APPEARS TO BE SOME TYPE OF ENTRY BY A REPRESENTATIVE OF THE LAS
31 VEGAS POLICE DEPARTMENT ON THE FRONT, DOES THE RADIO APPEAR TO
32 BE IN SUBSTANTIALLY THE SAME CONDITION AS IT LOOKED ON APRIL THE

1843

1 1ST, 1980?

2 A YES.

3 Q I'M NOW SHOWING YOU AN ITEM MARKED AS
4 PROPOSED EXHIBIT 24-B. WILL YOU EXAMINE THAT ITEM AND STATE
5 WHETHER IT APPEARS TO BE THE CASE AND BADGE WHICH YOU LOCATED
6 INSIDE THE THRIFTY DRUG STORE ON APRIL THE 1ST, 1980, IN THE
7 TOWEL SECTION?

8 A YES, IT DOES.

9 Q WHAT ABOUT IT CAUSES YOU TO SAY IT LOOKS
10 LIKE THE ITEM YOU RECOVERED?

11 A I REMEMBER THE POLICE-TYPE STYLE OF THE
12 BIFOLDED WALLET, AND THE SECURITY IDENTIFICATION IN THE CLEAR
13 PLASTIC AREA FOR I.D. CARDS FOR A PERSON TO CARRY. IT'S THE
14 SAME SIZE AND SHAPE.

15 Q IN TERMS OF THE BADGE ITSELF AND THE CASE,
16 DOES IT APPEAR TO BE IN SUBSTANTIALLY THE SAME CONDITION NOW
17 EXCEPT FOR THE COURT MARKINGS?

18 A IT APPEARS TO BE IN THE SAME CONDITION.

19 I DON'T KNOW IF THIS TRESPASS WARNING
20 THAT'S IN THERE WAS THERE THAT DAY. I DON'T RECALL THAT AT ALL.
21 BUT IT APPEARS TO BE IN THE SAME CONDITION OTHER THAN WHAT'S
22 SHOWN IN THE PLASTIC AREA.

23 MR. HARMON: THANK YOU.

24 MAY I APPROACH THE WITNESS, YOUR HONOR?

25 THE COURT: YOU MAY.

26
27 BY MR. HARMON:

28
29 Q OFFICER SLATER, I'M SHOWING YOU NOW A FIRE-
30 ARM MARKED AS PROPOSED EXHIBIT 31-D. IS THE WEAPON CLEAR?

31 A YES, IT'S CLEAR.

32 Q WILL YOU EXAMINE THE FIREARM AND STATE

1 WHETHER THIS LOOKS LIKE THE GUN THAT WAS RECOVERED BY YOUR
2 SECURITY OFFICER MANNY VELASQUEZ AND OFFICER CAMPOS, ALSO INSIDE
3 THE THRIFTY DRUG STORE, ON APRIL THE 1ST, 1980, IN DOWNEY,
4 CALIFORNIA?

5 A IT APPEARS TO BE THE SAME WEAPON.

6 Q WHEN, TO YOUR RECOLLECTION, HAD YOU FIRST
7 SEEN A WEAPON WHICH LOOKED LIKE THE GUN NOW MARKED AS PROPOSED
8 EXHIBIT 31-B ON APRIL THE 1ST, 1980?

9 A WHEN IT WAS FOUND IN THE THRIFTY STORE IN
10 THE AISLE.

11 Q WELL, HAD YOU PREVIOUSLY SEEN AT LEAST THE
12 GRIPS OR THE BUTT OF THE GUN WHICH FITS THE DESCRIPTION OF THIS
13 WEAPON, PROPOSED EXHIBIT 31-B?

14 A YES, ORIGINALLY IN JEWEL COR, JUST THE BUTT
15 OF THE GUN.

16 Q WHERE WAS IT INSIDE JEWEL COR?

17 A IT WAS ON THE DEFENDANT IN HIS WAISTBAND.
18 JUST THE BUTT WAS SHOWING.

19 Q THE RIGHT SIDE OF HIS WAISTBAND, IS THAT
20 CORRECT?

21 A YES, IN THE REAR.

22 Q AND WHEN YOU SAY, "JUST THE BUTT WAS
23 SHOWING" WILL YOU INDICATE WHAT PART OF THE FIREARM YOU'RE
24 REFERRING TO?

25 A WELL, THE WOOD GRIP HERE (INDICATING).

26 Q THE HANDLE OR WOOD GRIP AREA?

27 A YES.

28 Q OFFICER SLATER, WERE YOU PROVIDED A
29 PHYSICAL DESCRIPTION OF THE DEFENDANT MR. HOWARD AS YOU REMEMBER
30 HIM ON APRIL THE 1ST, 1980?

31 A HE WAS A MALE, BLACK, APPROXIMATELY FIVE
32 EIGHT OR FIVE NINE, FIVE NINE OR FIVE TEN, 140 OR 150 POUNDS,

1845

1 CLEAN CUT, CLEAN APPEARANCE, LONG-SLEEVED SWEATER SHIRT OR PULL-
2 OVER-TYPE SHIRT, AND I BELIEVE HE HAD BLUE PANTS ON.

3 Q DO YOU REMEMBER WHAT TYPE OF FOOTWEAR HE
4 HAD?

5 A NO, I DON'T.

6 Q DID YOU ESTIMATE HIS APPROXIMATE AGE?

7 A I DID AT THE TIME I CALLED DOWNEY POLICE.
8 I CAN'T REMEMBER WHAT I TOLD THEM. HE APPEARED 25 TO 30.

9 Q AS YOU LOOK AT THE DEFENDANT NOW IN COURT,
10 DID YOU SEE ANY CHANGES IN HIM PHYSICALLY?

11 A HE SEEMS TO BE ALOT HEAVIER THAN HE WAS ON
12 THAT DATE.

13 Q ON APRIL THE 1ST, 1980?

14 A RIGHT.

15 MR. HARMON: COURT'S INDULGENCE, PLEASE.

16 THAT CONCLUDES DIRECT, YOUR HONOR.

17 THE COURT: CROSS?

18 MR. COOPER: THANK YOU, YOUR HONOR.

19

20 CROSS EXAMINATION

21

22 BY MR. COOPER:

23

24 Q OFFICER SLATER, WHEN YOU FOUND THE WALLET
25 WAS THERE ANYTHING IN THE WALLET OTHER THAN WHAT YOU SAW HERE
26 TODAY?

27 A I DON'T KNOW EXACTLY WHAT WAS IN THE WALLET
28 ON THAT DAY. I NEVER WENT THROUGH IT. SO THERE COULD HAVE BEEN
29 OTHER THINGS INSIDE.

30 Q IS THAT TO SAY YOU CAN'T BE CERTAIN THAT
31 THAT'S THE SAME WALLET YOU FOUND THAT DAY?

32 A WELL, IT APPEARS TO BE THE SAME WALLET THAT

1846

1 I FOUND THAT DAY.

2 Q WHAT DO YOU BASE THAT ON?

3 A THE SIZE, THE BIFOLDED, THE COLOR, AND
4 SOMETHING THAT SAID, "SEARS SECURITY".

5 Q YOU DISTINCTLY REMEMBER THAT?

6 A YEAH.

7 Q NOW, YOU -- WAS IT YOU OR YOUR -- THE OTHER
8 SECURITY OFFICER WHO CALLED THE POLICE?

9 A I CALLED THE POLICE.

10 Q AND YOU WERE PRESENT WHEN THE POLICE
11 ARRIVED?

12 A I WAS AT THE JEWEL COR WHEN THEY ARRIVED
13 DOWN BY THE THRIFTY'S.

14 Q DID THE POLICE COME TO YOU AND ASK FOR A
15 DESCRIPTION OF THIS INDIVIDUAL?

16 A NOT TO ME PERSONALLY AT THAT TIME, NO.

17 Q DO YOU KNOW IF THEY WENT TO SOMEONE ELSE
18 AND ASKED FOR A DESCRIPTION OF THE PERSON?

19 A I BELIEVE THEY TALKED TO SECURITY OFFICER
20 VELASQUEZ DOWN BY THRIFTY'S.

21 Q I SEE.

22 SO WHEN YOU SAW THE POLICE THERE; IS
23 THAT RIGHT?

24 A YES.

25 Q AND YOU KNEW WHY THEY WERE THERE?

26 A YES.

27 Q AND AT SOME POINT YOU SAW THAT THEY HAD
28 APPREHENDED THE GENTLEMAN SEATED TO MY LEFT?

29 A YES.

30 Q AND THIS WAS PRIOR TO YOUR DISCOVERING THE
31 WALLET OR THIS GUN BEING FOUND?

32 A YES.

1 Q WOULD YOU KNOW WHY HE WOULD HAVE BEEN UNDER
2 ARREST AT THAT POINT?

3 A IF THE DOWNEY POLICE WERE LOOKING FOR THE
4 MAN I DESCRIBED WITH A GUN, I ASSUME THAT'S WHY HE WAS UNDER
5 ARREST.

6 Q I SEE.

7 THE GUN THAT YOU'VE IDENTIFIED, YOU
8 SAID IT LOOKS MUCH LIKE THE SAME WEAPON?

9 A YES.

10 Q IS THAT RIGHT?

11 A YES.

12 Q AND THAT'S BASED ON THE GRIP THAT YOU SAW
13 EARLIER?

14 A AND THE LOCATION IT WAS FOUND IN THRIFTY'S.

15 Q I SEE.

16 A BOTH.

17 MR. COOPER: I HAVE NOTHING FURTHER OF THE
18 WITNESS, YOUR HONOR.

19 MR. HARMON: NO REDIRECT, YOUR HONOR.

20 THE COURT: YOU'RE EXCUSED.

21 (WHEREUPON, THE WITNESS WAS
22 EXCUSED.)

23 THE COURT: CALL YOUR NEXT WITNESS.

24 MR. HARMON: THANK YOU, YOUR HONOR. ROY CAMPOS.

25 THE CLERK: SIR, RAISE YOUR RIGHT HAND.

26
27 WHEREUPON,

28
29 ROY CAMPOS,

30
31 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,
32 EXAMINED AND TESTIFIED AS FOLLOWS:

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THE COURT: PROCEED.

MR. HARMON: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. HARMON:

Q STATE YOUR NAME, PLEASE.

A ROY CAMPOS.

Q WILL YOU SPELL YOUR LAST NAME?

A C-A-M-P-O-S.

Q IS IT OFFICER ROY CAMPOS?

A YES.

Q OFFICER CAMPOS, WHERE ARE YOU EMPLOYED?

A BY THE CITY OF DOWNEY, AS A UNIFORMED
POLICEMAN.

Q HOW LONG HAVE YOU WORKED AS A UNIFORMED
POLICEMAN FOR THE DOWNEY POLICE DEPARTMENT?

A FOUR YEARS.

Q THIS IS DOWNEY, CALIFORNIA?

A YES.

Q WHERE IS DOWNEY IN THE STATE OF CALIFORNIA
FROM SAN BERNARDINO, CALIFORNIA?

A IT'S APPROXIMATELY 50 MILES OR SO TO THE
WEST.

Q OFFICER CAMPOS, WERE YOU SO EMPLOYED AS A
POLICE OFFICER FOR DOWNEY, CALIFORNIA, ON APRIL THE 1ST, 1980?

A YES.

Q DID YOU, ON THAT DATE, HAVE OCCASION TO
RESPOND TO THE STONEWOOD SHOPPING CENTER IN DOWNEY, CALIFORNIA?

A YES.

Q AT ABOUT WHAT TIME?

1 A APPROXIMATELY 11:40 IN THE MORNING.

2 Q DID YOU GO TO THAT LOCATION WITH SOMEONE
3 ELSE?

4 A I WENT BY MYSELF IN MY OWN POLICE UNIT;
5 HOWEVER, I ARRIVED SIMULTANEOUSLY WITH ANOTHER OFFICER, WHO WAS
6 THERE.

7 Q WHAT WAS THE NAME OF THAT OFFICER?

8 A HORVATH.

9 Q WILL YOU SPELL HORVATH FOR THE RECORD,
10 PLEASE?

11 A H-O-R-V-A-T-H.

12 Q WHAT HAPPENED AFTER YOU ARRIVED AT THE
13 STONEWOOD SHOPPING CENTER?

14 A WE ARRIVED AT THE SOUTH ENTRANCE OF
15 MILLER'S OUTPOST. THE RADIO BROADCAST TOLD US THERE WAS A MALE
16 SUSPECT NEAR THE MILLER'S OUTPOST WITH A GUN.

17 THE SUSPECT WAS DESCRIBED AS A MALE
18 NEGRO WITH A BEARD WITH SHORT BLACK HAIR WEARING GRAY LONG-
19 SLEEVED SWEATER WITH BLUE PANTS.

20 OFFICER HORVATH AND I WALKED
21 NORTHBOUND THROUGH THE MILLER'S OUTPOST AND FOUND NO ONE FITTING
22 THAT DESCRIPTION. WE ENTERED INTO THE MALL AREA OF THE SHOPPING
23 CENTER, LOOKING AROUND, AND A CITIZEN --

24 MR. FRANZEN: OBJECTION, YOUR HONOR --

25 THE WITNESS: TOLD --

26 MR. FRANZEN: (CONTINUING) -- TO WHAT THE
27 CITIZEN SAID. IT'S HEARSAY.

28 MR. HARMON: I'D SUBMIT IT, YOUR HONOR. THAT'S
29 FINE.

30 THE COURT: IS IT FOR THE TRUTH OF THE MATTER OR
31 MERELY FOR THE PURPOSE OF --

32 MR. HARMON: IT'S NOT REALLY FOR THE TRUTH. IT'S

1850

1 TO EXPLAIN WHAT HE DID. BUT WE DON'T NECESSARILY --
2 THE COURT: ALL RIGHT. PROCEED.
3 MR. HARMON: WE DON'T NECESSARILY HAVE TO GET IN
4 THE CONVERSATION.
5
6 BY MR. HARMON:
7
8 Q OFFICER CAMPOS, YOU HAD A CONVERSATION WITH
9 A CITIZEN?
10 A YES.
11 Q YOU ACQUIRED CERTAIN INFORMATION?
12 A YES.
13 Q AS A RESULT OF THAT, WHAT DID YOU DO?
14 A I WALKED OVER TO THE NORTHWEST GLASS WINDOW
15 OF THE THRIFTY'S DRUG STORE.
16 Q THAT BUSINESS IS ALSO INSIDE THE STONEWOOD
17 SHOPPING MALL?
18 A YES.
19 Q WHAT HAPPENED AS YOU LOOKED IN THROUGH THE
20 WINDOW OF THE THRIFTY DRUG STORE?
21 A I SAW A MAN, A MALE NEGRO, WITH A BEARD AND
22 SHORT BLACK HAIR, WITH A GRAY, LONG-SLEEVED SWEATER.
23 Q OFFICER CAMPOS, IS THE MAN YOU SAW INSIDE
24 THE THRIFTY DRUG STORE ON APRIL THE 1ST, 1980, PRESENT IN COURT?
25 A YES.
26 Q POINT TO HIM AND DESCRIBE HOW HE'S DRESSED.
27 A RIGHT THERE TO MY FAR RIGHT (INDICATING),
28 IN THE TAN, LONG SLEEVED SHIRT.
29 MR. HARMON: YOUR HONOR, MAY THE RECORD SHOW THAT
30 THE WITNESS HAS IDENTIFIED DEFENDANT SAMUEL HOWARD.
31 THE COURT: THE RECORD MAY SO SHOW.
32 MR. HARMON: THANK YOU.

1 BY MR. HARMON:

2
3 Q WHERE EXACTLY WAS MR. HOWARD INSIDE THE
4 THRIFTY DRUG STORE WHEN YOU SAW HIM SOMEWHERE AROUND 11:40 A.M.,
5 ON APRIL THE 1ST, 1980?

6 A HE WAS WANDERING ABOUT THREE AISLES
7 SPECIFICALLY.

8 Q WHICH AISLES?

9 A AISLES NUMBER 25, 26 AND 27.

10 Q DID YOU OBSERVE WHAT THE DEFENDANT WAS
11 DOING IN THOSE THREE AISLES?

12 A YES. HE REPEATEDLY GRABBED THE ITEMS FROM
13 THE AISLES AND WOULD TOSS THEM FROM HAND TO HAND AND MERELY
14 TOSS THE ITEM BACK TO THE SHELF AND HE WOULD REPEAT THIS WITH
15 VARIOUS ITEMS ON THOSE THREE AISLES.

16 Q DID YOU, AT SOME POINT, GO INSIDE THE
17 STORE?

18 A YES.

19 Q EXPLAIN WHAT HAPPENED?

20 A AFTER WANDERING ABOUT THOSE THREE AISLES,
21 THE SUSPECT WALKED OUT THE WEST EXIT OF THE THRIFTY'S. AND I
22 RADIOED TO MY PARTNERS, OFFICER CONNELLY AND HORVATH, WHO WERE
23 OUTSIDE THE WEST EXIT, THAT THE SUSPECT WAS IN FACT COMING OUT
24 OF THE STORE.

25 THEY DETAINED THE SUSPECT AS HE EXITED
26 THE THRIFTY'S AND PATTED HIM DOWN.

27 Q "THEY" BEING OFFICERS HORVATH AND CONNELLY
28 OF THE DOWNEY POLICE DEPARTMENT?

29 A YES.

30 Q WHERE WERE YOU AT THE TIME THE DEFENDANT
31 WAS DETAINED BY THOSE OFFICERS?

32 A I WAS WALKING FROM MY POINT OUTSIDE THE

1852

1 NORTHWEST WINDOW TO THE WEST EXIT, WHICH IS APPROXIMATELY 30
2 YARDS AWAY.

3 Q WAS A GUN RECOVERED INITIALLY AT THE TIME
4 THE DEFENDANT MR. HOWARD WAS DETAINED BY OFFICERS CONNELLY AND
5 HORVATH?

6 A NO.

7 Q DID YOU HAVE OCCASION THEREAFTER TO SEARCH
8 SOME AREA FOR A GUN?

9 A YES.

10 Q WHERE DID YOU SEARCH?

11 A BACK INSIDE THE THRIFTY'S, AND THE SPECIFIC
12 AISLES WHERE I HAD SEEN THE SUSPECT WANDER.

13 Q THE SUSPECT BEING DEFENDANT HOWARD?

14 A YES.

15 Q WERE YOU ASSISTED IN YOUR SEARCH BY ANYONE
16 ELSE?

17 A YES. THE REPORTING PARTY ON THE RADIO
18 CALLED THE JEWEL COR SECURITY GUARD MR. SLATER AND HIS PARTNER
19 MR. VELASQUEZ. THEY ACCOMPANIED ME INTO THE THRIFTY'S AND WE
20 BEGAN LOOKING IN THE AISLES WHERE I HAD SEEN SUSPECT HOWARD.

21 Q YOU LOOKED SPECIFICALLY IN AISLES 25, 26
22 AND 27?

23 A YES.

24 Q WHAT OCCURRED THEN?

25 A AS I WAS LOOKING ON AISLE 26, RIGHT ABOUT
26 THE MIDDLE OF THE AISLE AND ABOUT THE MIDDLE SHELF, I FOUND A
27 BLACK WALLET WHICH CONTAINED A SEARS ROEBUCK SECURITY GUARD'S
28 BADGE WITH "SERGEANT" IMPRINTED, AND IT CONTAINED MISCELLANEOUS
29 I.D. AS WELL.

30 Q HAD YOU SEEN THE DEFENDANT MR. HOWARD IN
31 THAT SAME AREA?

32 A YES. THAT'S WHERE I SAW HIM HANDLE THE

1 ITEMS FROM HAND TO HAND.

2 Q DID YOU, SOMETIME LATER, HAVE OCCASION TO
3 DISCOVER A WEAPON?

4 A YES. I WENT OVER TO AISLE 27, ALONG WITH
5 SECURITY OFFICER VELASQUEZ, AND RIGHT ABOUT MID AISLE, MIDSHELF
6 AGAIN, I FOUND A HANDGUN, A LOADED HANDGUN. IT WAS A SMITH AND
7 WESSON .357, TWO AND A HALF INCH BLUE STEEL REVOLVER WITH BROWN
8 WOODEN GRIPS.

9 Q YOU SAID IT WAS LOADED; IS THAT CORRECT?

10 A YES.

11 Q DO YOU RECALL HOW MANY LIVE ROUNDS THE .357
12 SMITH AND WESSON MAGNUM CARRIED IN IT?

13 A THERE WERE SIX.

14 Q WHAT DID YOU DO WITH THE CASE AND SEARS
15 BADGE AND ALSO WITH THE FIREARM YOU LOCATED?

16 Q I UNLOADED THE GUN. AND I TOOK BOTH THE
17 GUN AND THE WALLET, ALONG WITH LIVE ROUNDS OF AMMUNITION, BACK
18 OUTSIDE THE WEST EXIT, WHERE OFFICER CONNELLY HAD SUSPECT HOWARD
19 DETAINED.

20 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR
21 HONOR?

22 THE COURT: YOU MAY.

23

24 BY MR. HARMON:

25

26 Q OFFICER CAMPOS, I'M SHOWING YOU NOW PROPOSED
27 EXHIBIT 24-A. I'D LIKE YOU TO EXAMINE THE OUTSIDE AND INSIDE
28 OF THAT ITEM. AFTER YOU'VE DONE SO, WILL YOU STATE WHETHER YOU
29 RECOGNIZE IT?

30 A I DO.

31 Q HOW DO YOU IDENTIFY PROPOSED EXHIBIT 24-A?

32 A BY THE IMPRINT OF THE "SERGEANT" RANK AND

1854

1 SEARS ROEBUCK LOGO ON THE BACK AS WELL.

2 Q DID YOU ALSO NOTE, ON APRIL THE 1ST, 1980,
3 A PARTICULAR NUMBER ON THE BADGE OF A SEARS STORE WHICH YOU
4 LOCATED?

5 A I DID NOT REPORT IT AT THE TIME, THE SERIAL
6 NUMBER.

7 Q IS THIS, IN FACT, THE WALLET AND SEARS
8 BADGE WHICH YOU LOCATED INSIDE THE THRIFTY DRUG STORE?

9 A THIS IS.

10 Q IN AISLE 26 ON APRIL THE 1ST, 1980?

11 A YES. THIS IS THE SAME WALLET AND BADGE.

12 Q DOES IT APPEAR TO BE IN SUBSTANTIALLY THE
13 SAME CONDITION?

14 A YES. THERE'S SOME IDENTIFICATION PAPER --
15 PAPER IDENTIFICATION WHICH I DON'T SEE HERE WHICH I DID THAT
16 DAY.

17 Q DO YOU RECALL THE IDENTIFICATION WHICH WAS
18 INSIDE THE WALLET ON APRIL 1, 1980?

19 A YES. THERE WAS SOME PAPER IDENTIFICATION
20 IN THE NAME OF A DAVID HILYER.

21 Q DAVID OR JAMES HILYAR?

22 A IT WAS JAMES HILYAR.

23 Q H-I-L-Y-A-R?

24 A YES.

25 Q : EXCEPT FOR THAT, DOES THE WALLET AND ITS
26 CONTENTS APPEAR TO BE -- DO THEY APPEAR TO BE IN SUBSTANTIALLY
27 THE SAME CONDITION?

28 A YES.

29 Q I AM SHOWING YOU NOW A FIREARM MARKED AS
30 PROPOSED EXHIBIT 31-B. ARE YOU ABLE TO IDENTIFY THAT?

31 A YES.

32 Q HOW DO YOU IDENTIFY PROPOSED EXHIBIT 31-B?

1855

1 A BY -- BY BEING THE SAME MODEL OF THE GUN
2 WAS THE ONE I RECOVERED IN THE MIDAISLE SHELF OF AISLE 27.

3 Q DID YOU, ON APRIL THE 1ST, 1980, BECOME
4 INVOLVED IN IMPOUNDING THIS PARTICULAR FIREARM?

5 A YES.

6 Q DID YOU ALSO IMPOUND THE BULLETS?

7 A YES.

8 Q DID YOU AT THAT TIME RECORD THE SERIAL
9 NUMBER OF THE WEAPON?

10 A YES.

11 Q WAS THAT ON SOME TYPE OF REPORT WHICH YOU
12 PREPARED?

13 A IT WAS ON MY REPORT AND ON THE EVIDENCE
14 ENVELOPE AND ON A PROPERTY CARD, WHICH GOES ALONG WITH THE
15 EVIDENCE ENVELOPE.

16 Q DO YOU RECALL AT THIS TIME WHETHER THE
17 SERIAL NUMBER ON PROPOSED EXHIBIT 31-B IS A NUMBER YOU RECOGNIZE?

18 A THE SERIAL NUMBER IS.

19 I'M NOT SURE WHICH NUMBERS ARE THE
20 SERIAL NUMBERS AND WHICH ONE IS THE MODEL NUMBER ON THIS
21 PARTICULAR WEAPON.

22 Q WOULD IT ASSIST YOU IN REFRESHING YOUR
23 MEMORY REGARDING THE EXACT MODEL AND SERIAL NUMBERS OF THE
24 WEAPON YOU RECOVERED APRIL 1, 1980, TO REFER TO YOUR OFFICER'S
25 REPORT?

26 A YES.

27 Q I'M SHOWING YOU NOW A THREE-PAGE DOCUMENT,
28 WHICH APPEARS TO BE SOME TYPE OF OFFICERS REPORT PREPARED BY
29 YOURSELF, ROY CAMPOS; IS IT?

30 A YES.

31 Q WILL REFERENCE TO THIS REPORT ASSIST YOU IN
32 REFRESHING YOUR MEMORY REGARDING THE MODEL AND SERIAL NUMBERS OF

1856

1 THE WEAPON YOU RECOVERED IN THE THRIFTY DRUG STORE ON APRIL THE
2 1ST, 1980?

3 A THE SERIAL NUMBER LISTED ON MY REPORT IS
4 20K3348.

5 Q NOW, CAN YOU EXAMINE THE FIREARM AND STATE
6 WHETHER THAT ITEM APPEARS ON IT?

7 A I DON'T SEE IT ON THE WEAPON.

8 Q DO YOU SEE THE SERIAL NUMBER?

9 A YES. I -- I BELIEVE THIS IS THE SERIAL
10 NUMBER HERE (INDICATING).

11 Q IS THERE ALSO A NUMBER ON THE BUTT OF THE
12 GUN?

13 A YES. THE NUMBER ON THE BUTT OF THE GUN IS
14 20K3348, THE SAME AS I RECORDED ON MY INITIAL REPORT.

15 Q SO IS 31 -- PROPOSED EXHIBIT 31-B, IN FACT,
16 THE WEAPON YOU RECOVERED ON APRIL THE 1ST, 1980?

17 A YES.

18 Q EXCEPT FOR THE FACT THAT THE SIX LIVE
19 ROUNDS HAVE NOW BEEN REMOVED, IS THE GUN IN SUBSTANTIALLY THE
20 SAME CONDITION NOW AS IT WAS ON THE DATE YOU FOUND IT?

21 A YES.

22 MR. HARMON: THANK YOU.

23 THE COURT: COUNSEL, WE'LL TAKE OUR RECESS AT
24 THIS TIME.

25 ..
26 ..
27 ..
28 ..
29 ..
30 ..
31 ..
32 ..

WE'LL BE IN RECESS UNTIL 2:00 THIS AFTER-

[illegible]

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 19, 1983, AT 2:20 P.M.

2 * * * * *

3 (WHEREUPON, FROM 12:00 P.M.
4 UNTIL 2:20 P.M., A RECESS WAS
5 HAD IN THE PROCEEDINGS, AT
6 THE CONCLUSION OF WHICH THE
7 FOLLOWING WAS HAD:)

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

10 MR. SEATON: YES, YOUR HONOR.

11 MR. COOPER: YES, YOUR HONOR.

12 THE COURT: CALL YOUR NEXT WITNESS.

13 MR. HARMON: WE WOULD LIKE TO RECALL OFFICER
14 CAMPOS, YOUR HONOR.

15 THE COURT: OFFICER CAMPOS, COME FORWARD.
16 PROCEED.

17 MR. HARMON: THANK YOU, YOUR HONOR.

18
19 BY MR. HARMON:

20
21 Q OFFICER CAMPOS, DO YOU RECALL HOW THE
22 DEFENDANT MR. HOWARD WAS DRESSED ON APRIL THE 1ST, 1980?

23 A HE HAD ON A GRAY, LONG-SLEEVED SWEATER AND
24 BROWN PANTS. THAT IS ALL I RECALL.

25 Q ASIDE FROM THE CLOTHING, WILL YOU GIVE US
26 A PHYSICAL DESCRIPTION OF THE DEFENDANT AS YOU REMEMBER HIM FROM
27 THAT DAY?

28 A HE WAS STOCKY WITH A MUSCULAR BUILD. THAT
29 ABOUT SUMS IT UP.

30 Q WILL YOU BE ABLE TO ESTIMATE HIS APPROXI-
31 MATE WEIGHT AND HEIGHT?

32 A THE HEIGHT APPROXIMATELY FIVE SEVEN, AND

1859

1 THE WEIGHT I WOULD ESTIMATE AT 165 TO 170.

2 MR. HARMON: THANK YOU.

3 THAT CONCLUDES DIRECT, YOUR HONOR.

4 THE COURT: CROSS.

5 MR. FRANZEN: YES.

6

7 CROSS EXAMINATION

8

9 BY MR. FRANZEN:

10

11 Q OFFICER CAMPOS, AT THE TIME YOU ARRESTED
12 THE MAN, OR OBSERVED THE MAN ON APRIL THE 1ST, 1980, YOU SAID
13 HE HAD A BEARD.

14 A YES.

15 Q DID HE HAVE A MOUSTACHE, TOO, OR JUST A
16 BEARD?

17 A I DON'T RECALL.

18 Q MR. HARMON ASKED ABOUT THE CLOTHING THE
19 MAN HAD ON HIM. DID HE HAVE A GOLD WRISTWATCH ON HIM?

20 A I DON'T REMEMBER.

21 MR. FRANZEN: MAY I APPROACH THE WITNESS, YOUR
22 HONOR?

23 THE COURT: YOU MAY.

24

25 BY MR. FRANZEN:

26

27 Q OFFICER CAMPOS, I'D LIKE TO SHOW YOU A
28 REPORT AND ASK YOU IF YOU RECOGNIZE IT, SIR?

29 A IT'S MY REPORT.

30 Q ON THE LAST PAGE --

31 A IT'S PARTIALLY FILLED OUT BY MYSELF.

32 Q IS THE LAST PAGE A PROPERTY REPORT?

1860

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A YES.

Q AND DOES THAT CONCERN THE ARREST OF MR.
HOWARD?

A YES.

Q AND DOES THAT LIST IN HIS POSSESSION A
GOLD -- A GOLD-COLORED WRISTWATCH?

A YES.

Q WHAT KIND OF WRISTWATCH IS IT?

A A CRITERION QUARTZ, YELLOW METAL, MAN'S
WRISTWATCH.

Q THANK YOU.

AND THAT WOULD HAVE BEEN IN MR. HOWARD'S
POSSESSION AT THE TIME HE WAS ARRESTED, OTHERWISE IT WOULDN'T BE
ON THE PROPERTY REPORT?

A RIGHT. IT COULD HAVE BEEN IN HIS POCKET
OR SOMEWHERE ON HIS PERSON.

Q IT WOULD HAVE BEEN ON HIS PERSON?

A SOMEWHERE. NOT NECESSARILY ON HIS WRIST
BUT SOMEWHERE ON HIS PERSON.

MR. FRANZEN: ALL RIGHT.

I HAVE NO FURTHER QUESTIONS.

THE COURT: THE STATE?

MR. HARMON: YOUR HONOR, WE HAVE NO ADDITIONAL
QUESTIONS.

THE COURT: YOU ARE EXCUSED, SIR.

(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: CALL YOUR NEXT WITNESS.

MR. HARMON: THANK YOU. MIKE CONNELLY.

THE CLERK: SIR, RAISE YOUR RIGHT HAND.

1 WHEREUPON,

2

3

MICHAEL ROBERT CONNELLY,

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. HARMON:

13

14

Q WILL YOU STATE YOUR NAME, PLEASE?

15

A MICHAEL ROBERT CONNELLY.

16

Q SPELL YOUR LAST NAME.

17

A C-O-N-N-E-L-Y.

18

Q IS IT OFFICER MICHAEL CONNELLY?

19

A THAT'S CORRECT, YES, SIR.

20

Q OFFICER CONNELLY, WHERE ARE YOU EMPLOYED?

21

A CITY OF DOWNEY, CALIFORNIA.

22

Q AS A POLICE OFFICER?

23

A THAT'S CORRECT.

24

Q HOW LONG HAVE YOU WORKED WITH THAT DEPART-

25

MENT?

26

A APPROXIMATELY ELEVEN AND A HALF YEARS.

27

Q WERE YOU EMPLOYED AS A POLICE OFFICER WITH

28

THE DOWNEY, CALIFORNIA, POLICE DEPARTMENT ON APRIL THE 1ST,

29

1980?

30

A YES, I WAS.

31

Q DID YOU HAVE OCCASION ON THAT DATE, IN THE

32

AREA OF THE STONEWOOD SHOPPING CENTER, IN DOWNEY, CALIFORNIA, TO

1862

1 PLACE SOMEONE UNDER ARREST?

2 A YES, I DID.

3 Q IS THE PERSON YOU ARRESTED PRESENT IN
4 COURT?

5 A YES, HE IS.

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

8 A HE IS THE MALE NEGRO SUBJECT ON THE FAR
9 END OF COUNSEL TABLE THERE WITH THE BEIGE SHIRT ON (INDICATING).

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

12 THE COURT: THE RECORD MAY SO SHOW.

13 MR. HARMON: THANK YOU.

14
15 BY MR. HARMON:

16
17 Q OFFICER CONNELLY, WHERE WAS THE DEFENDANT
18 MR. HOWARD EXACTLY WHEN YOU PLACED HIM UNDER ARREST ON APRIL
19 THE 1ST, 1980?

20 A WHEN I PLACED HIM UNDER ARREST HE HAD JUST
21 EXITED THE WEST DOOR OF A THRIFTY'S DRUG STORE. THE DRUG STORE
22 IS LOCATED APPROXIMATELY THE CENTER OF A SHOPPING MALL CALLED
23 THE STONEWOOD SHOPPING CENTER.

24 Q DID YOU, AT THE TIME YOU APPREHENDED THE
25 DEFENDANT, HAVE OCCASION TO RECOVER ANY PROPERTY FROM HIM?

26 A YES, I DID.

27 Q WHAT DID YOU RECOVER?

28 A FROM HIS RIGHT REAR PANTS POCKET I RECOVERED
29 A WALKIE-TALKIE RADIO.

30 Q ARE YOU ABLE TO PROVIDE A PHYSICAL
31 DESCRIPTION OF THE WALKIE-TALKIE RADIO YOU RECOVERED?

32 A I BELIEVE IT WAS BLACK, GRAY/BLACK, AND

1863

1 CHROME IN COLOR, ABOUT THREE INCHES WIDE BY EIGHT OR NINE
2 INCHES TALL, AN INCH AND A HALF THICK, AND IT HAD AN ANTENNA ON
3 IT WITH A SIX-INCH ANTENNA.

4 Q DO YOU RECALL THE BRAND NAME OF THE RADIO?

5 A I BELIEVE IT WAS A MOTOROLA RADIO.

6 Q WHAT DID YOU DO WITH THE RADIO?

7 A I REMOVED IT FROM HIS POCKET. I TOOK IT
8 INTO CUSTODY AND RETAINED IT UNTIL A LATER TIME, WHICH IT WAS
9 TURNED OVER AND BOOKED IN AS EVIDENCE.

10 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR
11 HONOR?

12 THE COURT: YOU MAY.

13
14 BY MR. HARMON:

15
16 Q OFFICER CONNELLY, I'M SHOWING YOU AN ITEM
17 MARKED AS STATE'S PROPOSED EXHIBIT 24-B. WILL YOU EXAMINE THIS
18 ITEM AND STATE WHETHER YOU ARE ABLE TO IDENTIFY IT.

19 A IT APPEARS TO BE THE SAME RADIO THAT I
20 REMOVED FROM HIS POCKET.

21 Q AND HOW ARE YOU ABLE TO IDENTIFY IT?

22 A MY REPORT, I DON'T RECALL THAT THE SERIAL
23 NUMBER WAS WRITTEN DOWN ON THE REPORT OF THE RADIO.

24 Q YOUR HONOR, MAY I HAVE THE COURT'S
25 INDULGENCE.

26 DID YOU PREPARE A REPORT IN CONNECTION
27 WITH THIS MATTER?

28 A YES, I DID.

29 Q ARE YOU ALSO ACQUAINTED WITH AN OFFICER
30 ROY CAMPOS OF THE DOWNEY POLICE DEPARTMENT?

31 A YES, I AM.

32 Q WAS HE INVOLVED IN THE SAME INCIDENT?

1 A YES, HE WAS.

2 Q TO YOUR KNOWLEDGE, DID HE ALSO PREPARE A
3 REPORT?

4 A YES, HE DID.

5 Q , WOULD REFERENCE TO EITHER YOUR REPORT OR
6 THAT OF OFFICER CAMPOS PERHAPS REFRESH YOUR MEMORY AS TO WHETHER
7 A SERIAL NUMBER WAS NOTATED?

8 A YES, I BELIEVE IT WAS.

9 Q WELL, I'M FURNISHING YOU TWO REPORTS. ONE
10 APPEARS TO BE A REPORT BY YOURSELF, OFFICER CONNELLY; AND THE
11 SECOND APPEARS TO BE AN OFFICER'S REPORT OF OFFICER CAMPOS.
12 WOULD YOU REFER TO THESE REPORTS AND STATE WHETHER YOUR MEMORY
13 IS REFRESHED REGARDING THE SERIAL NUMBER ON THE TWO-WAY RADIO
14 YOU RECOVERED APRIL THE 1ST, 1980?

15 A YES. LOOKING ON THE EVIDENCE SECTION OF
16 OFFICER CAMPOS' REPORT, ITEM 2-B INDICATES ONE MOTOROLA WALKIE-
17 TALKIE, MODEL MX320, SERIAL NUMBER 3379.

18 Q WILL YOU EXAMINE THE RADIO, WHICH IS MARKED
19 NOW AS STATE'S PROPOSED EXHIBIT 24-B, AND STATE WHETHER THE

20 SERIAL NUMBER IS THE SAME AS THE ITEM RECOVERED BY YOU FROM THE
21 DEFENDANT MR. HOWARD APRIL THE 1ST, 1980?

22 A IT'S A MODEL MX320, SERIAL NUMBER OF 3379.

23 Q IS, IN FACT, PROPOSED EXHIBIT 24-B, THE
24 MOTOROLA TWO-WAY RADIO YOU RECOVERED FROM THE DEFENDANT APRIL
25 THE 1ST, 1980?

26 A YES, IT IS.

27 Q IS THIS ITEM IN SUBSTANTIALLY THE SAME
28 CONDITION NOW, EXCEPT FOR THE COURT MARKINGS, AS IT WAS ON THE
29 DATE YOU RECOVERED IT?

30 A YES, IT APPEARS TO BE JUST ABOUT THE SAME.

31 MR. HARMON: THANK YOU.

32 YOUR HONOR, AT THIS TIME I OFFER PROPOSED

1865

1 EXHIBIT 24-B.

2 THE COURT: ANY OBJECTION?

3 MR. COOPER: NO OBJECTION.

4 THE COURT: SAME WILL BE RECEIVED.

5 MR. HARMON: AND ALSO, YOUR HONOR, 24-A, THE
6 BADGE AND WALLET.

7 MR. COOPER: NO OBJECTION.

8 THE COURT: SAME WILL BE RECEIVED.

9

10 BY MR. HARMON:

11

12 Q OFFICER CONNELLY, IN ADDITION TO RECOVERING
13 THE RADIO, STATE'S EXHIBIT 24-B, DID YOU HAVE OCCASION TO
14 RECOVER ANY SET OF CAR KEYS FROM THE DEFENDANT MR. HOWARD?

15 A YES. HE HAD A SET OF CAR KEYS IN HIS
16 POCKET. I DON'T -- THEY WERE ON A KEY RING. I DON'T REMEMBER
17 EXACTLY WHAT TYPE. I BELIEVE THEY WENT TO A FOREIGN-TYPE
18 VEHICLE. THE KEY DIDN'T INDICATE EXACTLY WHAT TYPE. BUT FROM
19 THE APPEARANCE, THE KEY APPEARED TO BE FROM A FOREIGN VEHICLE.

20 Q WHAT WAS YOUR PURPOSE ORIGINALLY FOR STOP-
21 PING THE DEFENDANT MR. HOWARD?

22 A MYSELF, ALONG WITH SEVERAL OTHER OFFICERS
23 OF OUR DEPARTMENT, RECEIVED A RADIO CALL FROM TWO OFF DUTY LOS
24 ANGELES POLICE DEPARTMENT OFFICERS WHO WERE WORKING PLAIN CLOTHES
25 SECURITY AT ANOTHER STORE IN THE SHOPPING CENTER, THEY HAD TOLD
26 OUR DISPATCHER THAT THEY HAD OBSERVED A MALE NEGRO SUBJECT WALK-
27 ING THROUGH THEIR STORE AND THEY INDICATED THEY OBSERVED THE
28 BUTT HANDLE OF A WEAPON PROTRUDING FROM THE WAISTBAND AREA OF
29 THIS PERSON.

30 Q WHEN YOU OBSERVED THE SUSPECT MR. HOWARD,
31 WHAT WERE YOUR INTENTIONS?

32 A MY INITIAL INTENTION WAS TO DETAIN HIM AND

1866

1 MAKE SURE THAT HE DID NOT -- TO SEE IF HE STILL HAD THE WEAPON
2 AND REMOVE IT FOR MY OWN SAFE BEING AND OTHER PEOPLE IN THE AREA.

3 Q NOW, AT THE TIME YOU ORIGINALLY STOPPED
4 THE DEFENDANT MR. HOWARD JUST OUTSIDE THE THRIFTY DRUG STORE --

5 A THAT'S CORRECT.

6 Q (CONTINUING) -- DID HE, IN FACT, HAVE A
7 GUN ON HIS PERSON?

8 A I DID NOT FIND ONE, NO.

9 Q WAS A GUN SUBSEQUENTLY RECOVERED BY OFFICER
10 CAMPOS OF THE DOWNEY POLICE DEPARTMENT?

11 A YES. APPROXIMATELY FIVE MINUTES AFTER MY
12 INITIAL CONTACT WITH MR. HOWARD, OFFICER CAMPOS ADVISED ME BY
13 WAY OF OUR RADIO THAT HE HAD LOCATED A WEAPON, I BELIEVE IN SOME
14 TOWELS, IN ONE OF THE AISLES IN THE STORE.

15 Q DID YOU AT ANYTIME HAVE ANY SORT OF CONVER-
16 SATION WITH THE DEFENDANT REGARDING WHO HE WAS AND WHAT HE WAS
17 DOING IN THE PARTICULAR AREA WHERE YOU FOUND HIM?

18 A YES. MY INITIAL CONTACT, AFTER I PATTED
19 HIM DOWN FOR THE WEAPON, I ASKED HIM FOR IDENTIFICATION. AND
20 HE REMOVED FROM HIS POCKET A CARD WHICH STATED AT THE TOP
21 "PERSONAL IDENTIFICATION" AND UNDER IT IT HAD THE NAME GEORGE
22 WILLIAMS. HE INDICATED THAT HE WAS GEORGE WILLIAMS.

23 I EXPLAINED TO HIM THAT THIS FORM OF
24 IDENTIFICATION HAD NO BEARING FROM WHERE IT HAD COME FROM. IT
25 WASN'T FROM ANY GOVERNMENT AGENCY. IT APPEARED TO BE SOMETHING
26 THAT HE HAD GOTTEN POSSIBLY IN A PRINT SHOP OR SOMETHING ALONG
27 THAT LINE. I TOLD HIM THAT I REALLY DIDN'T FEEL THIS WAS
28 SUBSTANTIAL IDENTIFICATION.

29 HE THEN PRODUCED A SOCIAL SECURITY
30 CARD IN THE SAME NAME OF GEORGE WILLIAMS.

31 AND I ALSO INDICATED THAT SOCIAL
32 SECURITY CARDS IN MY OPINION WERE ALSO NOT A VALID FORM OF IDEN-

1 TIFICATION DUE TO THE FACT THAT ITS USE -- IT CAN BE GOTTEN VERY
2 SIMPLY IN ANY NAME JUST BY ASKING FOR THEM.

3 HE -- I DON'T BELIEVE HE HAD ANY
4 OTHER IDENTIFICATION WITH HIM OTHER THAN THOSE TWO PIECES.

5 Q BOTH IN THE NAME GEORGE WILLIAMS?

6 A GEORGE WILLIAMS, THAT'S CORRECT.

7 Q OFFICER CONNELLY, AT SOME POINT DID YOU ASK
8 THE DEFENDANT HOW HE HAPPENED TO BE IN POSSESSION OF THE MOTOROLA
9 TWO-WAY RADIO?

10 A YES.

11 Q STATE'S EXHIBIT 24-B?

12 A PART OF THE CONVERSATION WAS I JUST ASKED
13 HIM WHERE THE RADIO HAD COME FROM AND HE INDICATED TO ME THAT HE
14 HAD FOUND IT ON THE GROUND IN THE MALL.

15 Q NOW, YOU'VE INDICATED THAT YOU FOUND A SET
16 OF KEYS?

17 A THAT'S CORRECT.

18 Q I THINK YOU INDICATED YOU THOUGHT PERHAPS
19 THAT WAS TO SOME FOREIGN MAKE OF VEHICLE; IS THAT CORRECT?

20 A I BELIEVE SO, YES.

21 Q COULD YOU RECALL IF IT WAS ONE OR TWO SETS
22 OF KEYS THAT YOU FOUND ON THE PERSON OF THE DEFENDANT MR. HOWARD?

23 A I DON'T RECALL.

24 Q WOULD REFERENCE TO YOUR OFFICER'S REPORT
25 REFRESH YOUR MEMORY?

26 A POSSIBLE.

27 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR
28 HONOR?

29 THE COURT: YOU MAY.

30 ..

31 ..

32 ..

1868

1 BY MR. HARMON:

2

3 Q OFFICER CONNELLY, I'M DIRECTING YOUR
4 ATTENTION TO THE THIRD PAGE OF WHAT APPEARS TO BE YOUR OFFICER'S
5 REPORT. I DIRECT YOUR ATTENTION TO THE FIRST PARAGRAPH ON THAT
6 PAGE. WOULD YOU READ THAT TO YOURSELF, PLEASE.

7 A (WHEREUPON, THE WITNESS COMPLIES.)

8 Q DOES THAT REFRESH YOUR MEMORY?

9 A YES, IT DOES.

10 Q WAS A SECOND SET OF KEYS, IN FACT, RECOVERED
11 FROM THE DEFENDANT?

12 A YES, THEY WERE.

13 Q AND DO YOU RECALL WHETHER THERE WAS ANY
14 INDICATION ON THE KEYS AS TO THE MAKE OF THE VEHICLE TO WHICH
15 THEY WENT?

16 A YES. THE SECOND SET OF KEYS HAD THE
17 INSIGNIA ON THE LETTERS G.M. ON IT, INDICATING IT WAS FROM A
18 GENERAL MOTORS VEHICLE.

19 Q DID YOU, DURING YOUR INITIAL CONVERSATION
20 WITH THE DEFENDANT, AT ANYTIME ASK HIM IF HE HAD A VEHICLE?

21 A YES. I ASKED HIM IF HE HAD A VEHICLE AND
22 HE INDICATED THAT HE DID NOT. HE INDICATED THAT HE HAD BEEN
23 DROPPED OFF AT THE LOCATION.

24 Q DROPPED OFF AT THE LOCATION?

25 A AT THE STONEWOOD SHOPPING CENTER.

26 Q OFFICER CONNELLY, AFTER THE RECOVERY BY
27 YOUR FELLOW OFFICER, OFFICER CAMPOS, OF A FIREARM, WAS THE
28 DEFENDANT MR. HOWARD FORMALLY PLACED UNDER ARREST?

29 A YES. IMMEDIATELY UPON RECEIVING INFORMA-
30 TION THAT A LOADED WEAPON HAD BEEN FOUND OR NOTED, I PLACED THE
31 HANDCUFFS ON THE SUBJECT AND PLACED HIM UNDER ARREST FOR
32 CALIFORNIA PENAL CODE SECTION 120.25 AND 120.31, WHICH IS

1869

1 CARRYING A CONCEALED WEAPON AND ALSO CARRYING A LOADED WEAPON.

2 Q OFFICER CONNELLY, WHAT, IF ANY, WAS THE
3 REACTION OF THE DEFENDANT MR. HOWARD ONCE YOU HAD HANDCUFFED
4 HIM, HAVING PLACED HIM FORMALLY UNDER ARREST?

5 A PRIOR TO BEING HANDCUFFED, MR. HOWARD WAS
6 RELATIVELY COOPERATIVE. ONCE CUFFS WERE PLACED ON HIM HE
7 BECAME VERY VIOLENT, SCREAMING, YELLING AT THE TOP OF HIS VOICE.
8 HE MADE SEVERAL REFERENCES TO WANTING US TO KILL HIM RIGHT THEN
9 AND THERE. JUST THIS CONTINUED ON FOR PROBABLY TWO, THREE
10 MINUTES, UNTIL WHICH TIME WE COULD TRANSPORT HIM BACK TO THE
11 VEHICLE. HE STRUGGLED VIOLENTLY ALL THE WAY BACK TO THE VEHICLE,
12 REFUSED TO COOPERATE IN ANYWAY.

13 MR. HARMON: THAT CONCLUDES DIRECT, YOUR HONOR.

14 MR. COOPER: MAY I HAVE THE COURT'S INDULGENCE,
15 PLEASE.

16

17 CROSS EXAMINATION

18

19 BY MR. COOPER:

20

21 Q OFFICER CONNELLY, DID -- ASIDE FROM YOU,
22 WHAT OTHER POLICE OFFICERS WENT TO THE LOCATION IN QUESTION AND
23 WERE INVOLVED IN THIS --- IN THIS INCIDENT?

24 A OTHER THAN MYSELF, THERE WAS OFFICER
25 CAMPOS.

26 Q UH-HUH.

27 A AND THERE WAS ANOTHER OFFICER NAMED OFFICER
28 JACK HORVATH.

29 Q I SEE.

30 A AND I DON'T REMEMBER IF THERE WAS ANY OTHER
31 ONES THERE. I BELIEVE THERE WAS, BUT I DON'T RECALL WHO THEY
32 WERE.

1870

1 Q THE SECURITY GUARDS WHO WERE THERE, DO YOU
2 RECALL THEM BEING THERE?

3 A YES. I TALKED TO ONE.

4 Q I SEE.

5 DID THEY -- DID THEY PARTICIPATE IN
6 ANYWAY IN THE ARREST OF THE DEFENDANT?

7 A THE ACTUAL ARREST?

8 Q YES.

9 A NO.

10 Q I SEE.

11 YOU TESTIFIED THAT HE WAS -- THAT HE
12 WAS PLACED UNDER FORMAL ARREST ONCE THE WEAPON HAD BEEN FOUND;
13 IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q YOU DIDN'T FIND THE WEAPON?

16 A NO, I DID NOT.

17 Q YOU PLACED HIM UNDER ARREST?

18 A THAT'S RIGHT.

19 Q ~~PRIOR TO THE TIME THAT HE WAS HANDCUFFED~~
20 AND FORMALLY PLACED UNDER ARREST, HE WASN'T FREE TO LEAVE, WAS
21 HE?

22 A HE WAS BEING DETAINED. HE WAS NOT UNDER
23 ARREST. HE WAS NOT FREE TO LEAVE. HE WAS BEING DETAINED.

24 Q HOW LONG WAS HE DETAINED BEFORE THE WEAPON
25 WAS FOUND?

26 A FROM THE INITIAL CONTACT WHEN HE EXITED THE
27 DOOR UNTIL THE TIME HE WAS CUFFED WAS APPROXIMATELY FIVE
28 MINUTES.

29 Q HE PRODUCED IDENTIFICATION IN THE NAME OF
30 GEORGE WILLIAMS?

31 A THAT'S CORRECT.

32 Q BUT IN YOUR MIND THAT WASN'T A VALID IDEN-

1871

1 TIFICATION?

2 A THAT'S CORRECT, SIR.

3 Q WHAT DO YOU CONSIDER A VALID IDENTIFICATION?

4 DRIVER'S LICENSE?

5 A POSSIBLY.

6 Q OKAY.

7 WAS IT YOUR INTENTION TO KEEP HIM THERE
8 UNTIL HE CAME UP WITH THE VALID IDENTIFICATION?

9 A NO, IT WAS NOT.

10 Q WHAT WAS YOUR INTENTION TO DO THEN?

11 A TO DETAIN HIM A REASONABLE AMOUNT OF TIME
12 DUE TO THE FACT THAT TWO OTHER OFF DUTY POLICE OFFICERS HAD
13 OBSERVED THE SUBJECT WITH A WEAPON. OFFICER CAMPOS HAD OBSERVED
14 THE SUBJECT WALKING UP AND DOWN SEVERAL AISLES WITHIN THRIFTY'S
15 REMOVING ARTICLES, PUTTING THEM BACK, REMOVING THEM, PUTTING
16 THEM BACK.

17 Q YOU DIDN'T KNOW OF YOUR OWN PERSONAL
18 KNOWLEDGE THAT HE HAD A WEAPON, DID YOU?

19 A NO, I DID NOT.

20 Q YOU DIDN'T KNOW THAT A WEAPON WAS GOING TO
21 BE FOUND?

22 A NO, I DID NOT.

23 Q DID YOU?

24 WHAT WERE YOUR INTENTIONS IN QUESTION-
25 ING HIM?

26 MR. HARMON: OBJECTION, ASKED AND ANSWERED.

27 THE COURT: SUSTAINED.

28

29 BY MR. COOPER:

30

31 Q WELL, ASSUMING A WEAPON HAD NOT BEEN FOUND,
32 OFFICER, WHAT WAS YOUR PURPOSE IN KEEPING HIM THERE TO QUESTION?

1872

1 MR. HARMON: I OBJECT TO THE FORM OF THAT
2 QUESTION. IT'S AN IMPROPER HYPOTHETICAL. IT ASSUMES FACTS NOT
3 IN EVIDENCE. A WEAPON WAS FOUND, SO IT'S IRRELEVANT.

4 MR. COOPER: YOUR HONOR, THE OFFICER HAS TESTIFIED
5 THAT THEY QUESTIONED THE DEFENDANT FOR SOME FIVE MINUTES OR SO,
6 AND THE DEFENDANT WAS -- PRODUCED IDENTIFICATION. I REALLY
7 WANTED TO KNOW WHAT HIS INTENTIONS WERE. HE HAD NO -- NO WAY OF
8 KNOWING THAT A WEAPON WOULD HAVE BEEN FOUND. AND I JUST SIMPLY
9 WANT TO KNOW WHAT HIS INTENTIONS WERE.

10 THE COURT: IT'S REASONABLE EITHER WAY, COUNSEL.

11 THE OBJECTION IS OVERRULED.

12 MR. COOPER: THE OBJECTION IS OVERRULED?

13 THE COURT: THE OBJECTION IS SUSTAINED, PARDON ME.

14

15 BY MR. COOPER:

16

17 Q IN YOUR EXPERIENCE AS A POLICE OFFICER,
18 OFFICER CONNELLY, WHEN YOU -- WHEN YOU BELIEVE THAT A PERSON MAY
19 HAVE COMMITTED SOMEKIND OF CRIMINAL OFFENSE DO YOU NORMALLY --
20 LET ME ASK YOU THIS: HOW LONG DO YOU NORMALLY QUESTION AN
21 INDIVIDUAL?

22 A IT ALL DEPENDS ON THE TYPE OF CRIME THAT'S
23 BEEN COMMITTED.

24 Q WELL, IN THIS TYPE OF CRIME HOW LONG WOULD
25 YOU NORMALLY DETAIN A PERSON WHERE YOU HAVE NO ACTUAL PROOF OF
26 THEM HAVING COMMITTED THE CRIME?

27 MR. HARMON: OBJECTION, YOUR HONOR. THAT ASSUMES
28 FACTS NOT IN EVIDENCE. HE STATED WHAT THE PROOF WAS.

29 THE COURT: THE OBJECTION IS SUSTAINED.

30 ..

31 ..

32 ..

1 BY MR. COOPER:

2

3 Q HOW LONG DO YOU NORMALLY DETAIN A PERSON
4 IN A SITUATION SUCH AS THIS, OFFICER?

5 A SUCH AS THE SITUATION WITH A SUBJECT
6 CARRYING A WEAPON?

7 Q A SITUATION WHERE YOU HAVE REASON TO BELIEVE
8 A SUBJECT IS CARRYING A WEAPON.

9 A I WOULD SAY AN ESTIMATION OF 20 MINUTES TO
10 A HALF HOUR WOULD BE NOT UNREASONABLE, BASED ON THE AMOUNT OF --
11 THE AMOUNT OF REASONABLE CAUSE TO BELIEVE THAT THERE IS A WEAPON
12 BEING SOUGHT.

13 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

14 A ELEVEN AND A HALF YEARS.

15 Q DO YOU KNOW IF THERE IS A PROVISION IN THE
16 CALIFORNIA LAW, DO YOU KNOW IF THERE WAS A PROVISION AT THE TIME
17 YOU MADE THE ARREST OF MR. SAMUEL -- MR. HOWARD, AS TO HOW LONG
18 YOU CAN DETAIN AN INDIVIDUAL UNDER THE CIRCUMSTANCES UNDER WHICH
19 YOU DID DETAIN HIM?

20 A UNDER THOSE PARTICULAR CIRCUMSTANCES I DID
21 NOT KNOW THE EXACT AMOUNT OF TIME. HOWEVER, I BELIEVE
22 CALIFORNIA CASE LAW INDICATES THAT A MISDEMEANOR ARREST, THE
23 DETENTION FOR A WARRANT IS GOOD FOR ABOUT 20 MINUTES. SO THAT
24 CAN BE CONFIRMED.

25 Q I SEE. I SEE.

26 AND THESE WERE MISDEMEANOR OFFENSES?

27 A THIS WAS A MISDEMEANOR OFFENSE, YES, IN THE
28 STATE OF CALIFORNIA.

29 Q DID YOU HAVE A WARRANT FOR HIS ARREST?

30 A NO, I DID NOT.

31 Q YOU LATER HAD OCCASION TO, FOLLOWING MR.
32 HOWARD'S ARREST, TO CONTACT A DWANA BOYD, DIDN'T YOU?

1874

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A THAT'S CORRECT.

Q ALL RIGHT.

AND YOU QUESTIONED MS. DWANA BOYD
ABOUT THE VEHICLE WITH THE NEW YORK LICENSE PLATES, DIDN'T YOU?

A I BELIEVE SO.

Q WELL, DID YOU OR DIDN'T YOU?

A I THINK -- I BELIEVE SO, YES, SIR.

Q DID YOU GO -- DID YOU TALK TO HER ON THE
PHONE OR DID YOU GO TO SEE HER IN PERSON?

A CONVERSATION ON THE PHONE. I NEVER SAW
HER IN PERSON.

Q DID SHE CALL YOU OR DID YOU CALL HER?

A I DON'T RECALL.

Q YOU WERE TOLD BY HER THAT --

MR. HARMON: OBJECTION.

MR. COOPER: (CONTINUING) -- THIS VEHICLE
BELONGED --

MR. HARMON: THAT IS HEARSAY, YOUR HONOR.

THE COURT: IS SHE GOING TO BE A WITNESS IN THIS
CASE?

MR. HARMON: SHE IS EXPECTED TO BE A WITNESS,
BUT I DON'T THINK THAT CHANGES THE CHARACTER OF THE EVIDENCE.

THE COURT: WELL, THE OBJECTION SEEMS TO BE,
BY YOUR OWN THEORY, THAT IT'S HEARSAY, NOT ADMISSIBLE; BUT IF
THE PARTY IS GOING TO BE MADE AVAILABLE THEN IT LOSES ITS HEAR-
SAY CHARACTER.

MR. HARMON: WELL, IT ALSO CLEARLY EXCEEDS THE
SCOPE OF DIRECT EXAMINATION, YOUR HONOR. I MADE NO INQUIRY AT
ALL IN ANY CONVERSATION WITH DWANA BOYD.

THE COURT: SUSTAINED.

MR. COOPER: YOUR HONOR, IF I MIGHT, HE CERTAINLY
RAISED THE QUESTION ABOUT THE CAR AND THE CAR KEYS AND SO FORTH.

1 I THINK IT'S PROPER WITHIN THE SCOPE OF DIRECT EXAMINATION.

2 THE COURT: THE OBJECTION IS SUSTAINED. IT'S
3 BEYOND THE SCOPE.

4
5 BY MR. COOPER:

6
7 Q THE KEYS, THE G.M. KEYS THAT YOU REMOVED
8 FROM MR. HOWARD'S PERSON, WHAT HAPPENED TO THOSE KEYS?

9 A WELL, THEY WERE REMOVED FROM HIS PROPERTY,
10 HELD BY MYSELF, AND THEN THEY WERE SUBSEQUENTLY -- SUBSEQUENTLY
11 -- THE VEHICLE THAT MATCHED THE KEYS WAS SUBSEQUENTLY LOCATED.

12 Q WHAT WAS THE VEHICLE?

13 A THE TYPE OF VEHICLE?

14 Q YES.

15 A I BELIEVE IT WAS A BLACK OLDSMOBILE.

16 Q WAS THERE ANY REGISTRATION FOUND IN THE
17 VEHICLE?

18 A I DON'T KNOW.

19 Q YOU DIDN'T PERSONALLY SEARCH THE VEHICLE
20 THEN?

21 A NO, I DID NOT.

22 Q DO YOU KNOW WHO DID THAT?

23 A I BELIEVE IDENTIFICATION TECHNICIAN ROY
24 HOOKER.

25 Q IS HE WITH THE DOWNEY POLICE DEPARTMENT?

26 A YES, HE IS.

27 MR. COOPER: YOUR HONOR, MAY COUNSEL APPROACH THE
28 BENCH?

29 (WHEREUPON, SIDE BAR CONFERENCE
30 WAS HELD AT THE BENCH; NOT
31 REPORTED.. AT THE CONCLUSION OF
32 WHICH THE FOLLOWING WAS HAD:)

1876

1 MR. COOPER: I WOULD PASS THE WITNESS AT THIS
2 TIME, YOUR HONOR.

3 THE COURT: PROCEED.

4

5 REDIRECT EXAMINATION

6

7 BY MR. HARMON:

8

9 Q OFFICER CONNELLY, REGARDING I THINK YOU SAID
10 IT WAS A BLACK OLDSMOBILE THAT WAS LOCATED IN THE PARKING LOT --

11 A I BELIEVE THAT'S CORRECT, YES.

12 Q (CONTINUING) -- DID YOU, IN FACT, HAVE A
13 CONVERSATION WITH THE SUBJECT WHO IDENTIFIED HERSELF AS DWANA
14 BOYD BY TELEPHONE IN CONNECTION WITH THE --

15 A YES, I DID.

16 Q DO YOU REMEMBER WHEN THE CONVERSATION
17 OCCURRED?

18 A LATER ON THAT AFTERNOON. I DON'T RECALL
19 EXACTLY THE TIME. PROBABLY A MATTER OF TWO TO THREE HOURS AFTER
20 THE INITIAL INCIDENT.

21 Q AND HOW DID A SUBJECT FEMALE, WHO IDENTIFIED
22 HERSELF AS DWANA BOYD, COME TO YOUR ATTENTION?

23 A I BELIEVE THE DEFENDANT, AFTER BEING BOOKED
24 AT OUR STATION, WAS CALLING HER, AND I BELIEVE WE PHONED HER AND
25 I BELIEVE WE RECEIVED HER NAME FROM HIM AS BEING THE GIRL -- THE
26 GIRLFRIEND.

27 Q DID SHE CALL INTO THE POLICE DEPARTMENT AT
28 THE TIME YOU SPOKE TO HER?

29 A I DON'T RECALL IF SHE CALLED OR I CALLED
30 HER.

31 Q IN ANY EVENT, SOMETIME LATER IN THE AFTER-
32 NOON OF APRIL 1, 1980, YOU SPOKE TO A FEMALE WHO IDENTIFIED HER-

1.877

1 SELF ON THE TELEPHONE AS DWANA BOYD?

2 A THAT IS CORRECT.

3 Q HAD YOU KNOWN DWANA BOYD?

4 A NO. I HAVE NOT MET HER.

5 Q DID YOU KNOW ANYTHING ABOUT HER PHYSICAL
6 DESCRIPTION AT THE TIME YOU SPOKE WITH HER?

7 A NOTHING AT ALL.

8 Q DID YOU HAVE A CONVERSATION WITH HER CON-
9 CERNING A BLACK OLDSMOBILE, BEARING THE VEHICLE LICENSE NUMBER
10 614 ZHQ?

11 A YES, I DID.

12 Q WHAT WAS THE CONVERSATION?

13 A THE EXTENT OF THE CONVERSATION WAS THAT WE
14 ASKED HER -- I ASKED HER IF THE DEFENDANT HAD DRIVEN A VEHICLE
15 TO THE SHOPPING CENTER.

16 SHE INDICATED YES, THAT IT WAS A BLACK
17 OLDSMOBILE WITH THE LICENSE YOU MENTIONED, A NEW YORK LICENSE
18 PLATE.

19 MR. HARMON: THANK YOU.

20 THAT CONCLUDES REDIRECT, YOUR HONOR.

21 THE COURT: CROSS.

22 MR. COOPER: THANK YOU, YOUR HONOR.

23
24 RECROSS EXAMINATION

25
26 BY MR. COOPER:

27
28 Q OFFICER CONNELLY, ISN'T IT TRUE THAT THIS
29 DWANA BOYD TOLD YOU THAT THIS VEHICLE BELONGED TO HER, AND GAVE
30 YOU THE LICENSE PLATE ON THE -- NUMBER ON THE VEHICLE?

31 A I BELIEVE THAT'S CORRECT.

32 Q AND THAT SHE -- ISN'T IT TRUE THAT SHE

1 TELEPHONED YOU?

2 A WELL, LIKE I INDICATED, I DON'T KNOW THAT
3 SHE CALLED ME AND I DON'T RECALL.

4 Q DO YOU HAVE YOUR RECORD THAT YOU MADE IN
5 THIS CASE?

6 A I DON'T HAVE A COPY WITH ME PERSONALLY, NO.
7 MR. COOPER: MAY I APPROACH THE WITNESS, YOUR
8 HONOR?

9 THE COURT: YOU MAY.

10

11 BY MR. COOPER:

12

13 Q I SHOW YOU A THREE-PAGE COURT DOCUMENT, A
14 REPORT, AND ASK YOU IF YOU RECOGNIZE THAT?

15 A YES, I DO.

16 Q IS THAT THE REPORT YOU PREPARED?

17 A YES, IT IS.

18 Q NOW, REFERRING YOU TO THE LAST PAGE IN THAT

19 REPORT. I THINK IT'S THE SECOND PARAGRAPH. BEGINNING ON THE

20 SECOND PARAGRAPH WOULD YOU READ THAT TO YOURSELF, PLEASE.

21 A OKAY.

22 Q AND YOUR REPORT REFLECTS THAT DWANA BOYD
23 CALLED YOU; IS THAT CORRECT?

24 A THAT'S CORRECT. THAT'S CORRECT.

25 MR. COOPER: I HAVE NOTHING FURTHER. I PASS THE
26 WITNESS.

27 MR. HARMON: NOTHING FURTHER.

28 THE COURT: YOU ARE EXCUSED.

29 (WHEREUPON, THE WITNESS WAS
30 EXCUSED.)

31 THE COURT: CALL YOUR NEXT WITNESS.

32 MR. HARMON: BOYD HOOKER.

THE CLERK: RAISE YOUR RIGHT HAND, SIR.

WHEREUPON,

DWIGHT RUSSELL HOOKER,

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

THE COURT: PROCEED.

MR. HARMON: THANK YOU.

DIRECT EXAMINATION

BY MR. HARMON:

Q WILL YOU STATE YOUR NAME?

A MY NAME IS DWIGHT RUSSELL HOOKER, H-O-O-K-

E-R.

Q HOW DO YOU SPELL YOUR FIRST AND MIDDLE
NAMES?

A THE FIRST NAME IS D-W-I-G-H-T. MY MIDDLE
NAME IS R-U-S-S-E-L-L.

Q MR. HOOKER, WHERE ARE YOU EMPLOYED?

A I'M EMPLOYED BY THE -- BY THE COUNTY POLICE
DEPARTMENT IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

Q WHAT ARE THE NATURE OF YOUR DUTIES WITH THE
DOWNEY POLICE DEPARTMENT?

A I'M AN IDENTIFICATION OFFICER. MY DUTIES,
I'M ASSIGNED TO THE IDENTIFICATION DIVISION OF THE DETECTIVE
BUREAU. I COLLECT EVIDENCE, LATENT FINGERPRINTS. I TESTIFY AS
AN EXPERT ON LATENT FINGERPRINTS, PHOTOGRAPHY, AND POLYGRAPH

1880