

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

SAMUEL HOWARD

VS.

Respondents.

Electronically Filed
May 12 2011 04:35 p.m.
Tracie K. Lindeman

Case No. 57469 Tracie K. Lindeman

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

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

Docket 57469 Document 2011-14202

1 EXAMINATIONS.

2 Q WHAT TYPE OF FORMAL TRAINING DO YOU HAVE
3 INTO THE FIELD OF PROCESSING SURFACES, DEVELOPING AND LISTING
4 LATENT FINGERPRINTS?

5 A I HAVE AN ASSOCIATE OF ARMS DEGREE IN
6 POLICE SCIENCE. THE COURSES SPECIALIZING IN CRIME SCENE INVES-
7 TIGATION, RECOGNITION OF FINGERPRINTS, HENRY'S SYSTEM OF CLASSI-
8 FICATION, I'VE BEEN IN THE POSITION OF CRIME SCENE INVESTIGATION
9 SINCE OCTOBER OF 1973. DURING THAT PERIOD OF TIME I'VE PROCESSED
10 SEVERAL THOUSAND SURFACES, LISTED SEVERAL THOUSAND LATENT FINGER-
11 PRINTS FROM DIFFERENT SURFACES. I'VE ATTENDED AND SUCCESSFULLY
12 COMPLETED ADVANCED COURSES ON LATENT PRINT IDENTIFICATION, ON
13 CRIME SCENE INVESTIGATION. I HAVE QUALIFIED AS AN EXPERT IN
14 MUNICIPAL COURTS, JUVENILE COURTS, SUPERIOR COURTS, AND THE
15 UNITED STATES FEDERAL COURT AS AN EXPERT IN FINGERPRINTS AND
16 COMPARISON OF THOSE FINGERPRINTS.

17 Q DID THAT INCLUDE THE LISTING OF LATENT
18 FINGERPRINTS?

19 A YES, SIR, IT DOES.

20 Q OFFICER HOOKER, WERE YOU EMPLOYED AS AN
21 I.D. OFFICER WITH THE DOWNEY POLICE DEPARTMENT ON APRIL THE 1ST,
22 1980?

23 A YES, SIR, I WAS.

24 Q DID YOU HAVE OCCASION AT SOME POINT ON THAT
25 DATE TO BECOME INVOLVED IN A SITUATION ARISING OUT OF THE ARREST
26 OF ONE SAMUEL HOWARD AT THE STONEWOOD SHOPPING CENTER?

27 A YES, SIR, I DID.

28 Q IN CONNECTION WITH THAT ARREST, DID YOU
29 RECEIVE A DESCRIPTION OF A CERTAIN MOTOR VEHICLE?

30 A YES, I DID.

31 Q WHAT INFORMATION DID YOU HAVE REGARDING AN
32 AUTOMOBILE TALKING WITH DETECTIVE LEAVITT OF THE LAS VEGAS POLICE

1881

1 DEPARTMENT?

2 NOW, I DON'T WANT IN REGARDS TO
3 DETECTIVE LEAVITT OF THE POLICE DEPARTMENT HERE. WHAT INFORMA-
4 TION, IF ANY, DID YOU HAVE FROM PERSONS WITH THE DOWNEY POLICE
5 DEPARTMENT REGARDING THE EXISTENCE OF A CERTAIN VEHICLE?

6 A NONE.

7 Q ARE YOU AWARE THAT A SET OF KEYS TO A G.M.
8 PRODUCT WAS RECOVERED FROM THE DEFENDANT MR. HOWARD?

9 A YES, I WAS.

10 Q YOU'VE INDICATED THAT AT SOMETIME YOU DID
11 HAVE A -- THAT AT SOME POINT YOU DID HAVE A CONVERSATION WITH
12 DETECTIVE LEAVITT FROM THE LAS VEGAS POLICE DEPARTMENT?

13 A YES, SIR, I DID.

14 Q WITHOUT GOING INTO WHAT WAS TOLD TO YOU BY
15 DETECTIVE LEAVITT, DID YOU RECEIVE INFORMATION REGARDING THE
16 DESCRIPTION OF A CERTAIN MOTOR VEHICLE?

17 A YES, SIR, I DID.

18 Q WHAT WAS THE DESCRIPTION OF THE VEHICLE YOU
19 RECEIVED?

20 A THE VEHICLE WAS DESCRIBED AS A 1980
21 OLDSMOBILE, BLACK IN COLOR, BEARING NEW YORK LICENSE PLATE
22 614 ZEBRA HENRY QUEEN.

23 Q ZHQ?

24 A YES.

25 Q OFFICER HOOKER, DID YOU BEGIN A SEARCH OF
26 THE PARKING LOT AREA IN THE AREA OF THE STONEWOOD SHOPPING CENTER
27 ON APRIL THE 1ST, 1980, LOOKING FOR A VEHICLE FITTING THAT
28 DESCRIPTION?

29 A YES, I DID.

30 Q WHERE DID YOU LOOK AND WHAT WAS THE RESULT
31 OF YOUR SEARCH?

32 A MYSELF, I WENT DIRECTLY TO THE NORTHEAST

1882

1 PORTION OF THE SHOPPING CENTER AND STARTED SEARCHING FOR THE
2 VEHICLE I JUST DESCRIBED.

3 AND APPROXIMATELY FIVE MINUTES INTO MY
4 SEARCH I LOCATED THE VEHICLE BEARING THE SAME LICENSE PLATES
5 PARKED ON THE EASTERN PORTION OF THE STONEWOOD SHOPPING CENTER,
6 APPROXIMATELY THE MID-AREA.

7 Q WHAT, IF ANYTHING, DID YOU DO AFTER YOU
8 LOCATED THE VEHICLE, WHICH WAS DESCRIBED TO YOU BY DETECTIVE
9 LEAVITT?

10 A AFTER I FOUND THE VEHICLE, OFFICER CONNELLY
11 ARRIVED AT THE SAME LOCATION WHERE I FOUND THE VEHICLE. AND I
12 FOUND AT THAT TIME THAT, DUE TO MY LIMITED INFORMATION ABOUT THE
13 CASE, I DECIDED TO TRANSPORT THE VEHICLE BACK TO MY POLICE
14 STATION, TO SAFEKEEPING, DUE TO THE AREA TENDS TO, WITH CIVILIAN
15 TRAVEL AND TRAFFIC, POSSIBLE CONTAMINATION OF EVIDENCE.

16 SO I FOUND THAT THE KEYS THAT OFFICER
17 CONNELLY HAD ON HIS PERSON FIT, AND STARTED THE VEHICLE. SO I
18 THEN DROVE THAT VEHICLE BACK TO MY POLICE DEPARTMENT.

19 Q WHAT OCCURRED IN REGARDS TO THE VEHICLE
20 WHEN YOU ARRIVED BACK AT YOUR DEPARTMENT?

21 A I PARKED THE VEHICLE IN THE AREA OF OUR
22 POLICE UNITS, SECURED IT, AND THEN I AGAIN CONTACTED DETECTIVE
23 LEAVITT FROM THE LAS VEGAS POLICE DEPARTMENT.

24 Q DID YOU RECEIVE ADDITIONAL INFORMATION
25 FROM DETECTIVE LEAVITT?

26 A AT THAT --

27 Q YES OR NO, SIR?

28 A PARDON ME?

29 Q YES OR NO?

30 A YES.

31 MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE.
32 MAY I APPROACH THE WITNESS, YOUR HONOR?

1883

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

THE COURT: YOU MAY.

BY MR. HARMON:

Q OFFICER HOOKER, I'M SHOWING YOU NOW STATE'S PROPOSED EXHIBITS 60 THROUGH 63. ARE YOU ABLE TO IDENTIFY THE VEHICLE SHOWN IN THESE PICTURES?

A YES, SIR.

Q DO YOU KNOW WHERE THESE PICTURES WERE TAKEN?

A YES, SIR, I DO.

Q WHERE?

A THESE VEHICLES WAS TAKEN --

Q PICTURES.

A PICTURES, PARDON ME.

THE PICTURES WERE TAKEN OF THE VEHICLE AT UNITED TOWING SERVICE IN DOWNEY. THE ADDRESS IS 11530 RYERSON AVENUE, IN DOWNEY, CALIFORNIA.

Q ARE THESE PHOTOGRAPHS, PROPOSED EXHIBITS 60 THROUGH 63, PICTURES OF A 1980 BLACK OLDSMOBILE CUTLASS, BEARING NEW YORK PLATES, WHICH YOU ORIGINALLY LOCATED PARKED OUTSIDE OF THE STONEWOOD SHOPPING CENTER IN DOWNEY, CALIFORNIA?

A YES, SIR, THEY ARE.

Q DO THESE PHOTOGRAPHS TRULY AND ACCURATELY DEPICT THE APPEARANCE OF THAT VEHICLE AS YOU OBSERVED IT APRIL THE 1ST, 1980?

A YES, SIR. TO THE BEST OF MY KNOWLEDGE THEY DO.

MR. HARMON: YOUR HONOR, I OFFER PROPOSED EXHIBITS 60 THROUGH 63.

MR. FRANZEN: NO OBJECTION.

THE COURT: SAME WILL BE RECEIVED.

1884

1 BY MR. HARMON:

2

3 Q OFFICER HOOKER, BASED IN PART UPON INFORMA-
4 TION RECEIVED FROM DETECTIVE LEAVITT OF THE LAS VEGAS METROPOLI-
5 TAN POLICE DEPARTMENT, DID YOU HAVE OCCASION TO PROCESS THE
6 VEHICLE SHOWN IN STATE'S EXHIBITS 60 THROUGH 63 FOR THE PRESENCE
7 OF LATENT FINGERPRINTS?

8 A YES, SIR, I DID.

9 Q WILL YOU EXPLAIN WHEN YOU CONDUCTED THAT
10 EXAMINATION AND WHAT YOUR PROCEDURE WAS?

11 A THE NEXT MORNING, APRIL 2ND, AT APPROXI-
12 MATELY 9:00 O'CLOCK IN THE MORNING, BETWEEN 9:00 AND 9:30, I
13 RECEIVED INFORMATION THAT IT WAS REQUESTED THAT WE DUST FOR
14 FINGERPRINTS OF THAT OLDSMOBILE FOR LATENT FINGERPRINTS.

15 AT THAT TIME I RESPONDED TO THE UNITED
16 TOWING SERVICE, WHERE THE VEHICLE WAS BEING HELD IN IMPOUND.
17 AND BY THE USE OF A SUBSTANCE, I DUSTED POWDER. WITH THIS
18 POWDER AND WITH THE DUSTING BRUSH, I DUSTED THE OLDSMOBILE FOR
19 LATENT PRINTS, INSIDE AND OUTSIDE.

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

21 MAY I APPROACH THE WITNESS, YOUR HONOR?

22 THE COURT: YOU MAY.

23

24 BY MR. HARMON:

25

26 Q OFFICER HOOKER, I'M SHOWING YOU NOW WHAT
27 APPEARS TO BE SOME TYPE OF EVIDENCE ENVELOPE. IT'S MARKED AS
28 PROPOSED EXHIBIT 28. IS IT IN A SEALED CONDITION?

29 A YES. THIS ENVELOPE IS IN A SEALED CONDI-
30 TION WITH SEALS ON BOTH ENDS OF THE ENVELOPE.

31 Q I'M HANDING YOU A PAIR OF SCISSORS. WILL
32 YOU CUT THE ENVELOPE FROM THE SIDE, LEAVING THE SEALS INTACT,

1885

1 AND WILL YOU THEN REMOVE THE CONTENTS, PLEASE.

2 A OKAY. I AM -- WITH THE ENVELOPE FACING ME,
3 I WILL CUT THE RIGHT SIDE OF THE ENVELOPE SO AS NOT TO SEVER
4 ANY WRITING ON THE ENVELOPE, TO GET OR GAIN ACCESS INTO THE
5 INTERIOR OF THE ENVELOPE.

6 I NOW HAVE -- INSIDE THIS ENVELOPE I
7 AM REMOVING SEVERAL WHITE FINGERPRINT LIFT CARDS, WHICH WERE IN
8 THE INTERIOR OF THE ENVELOPE AND THEY WERE CLAMPED TOGETHER WITH
9 A PAPERCLIP.

10 MR. HARMON: THANK YOU, YOUR HONOR.

11 YOUR HONOR, MAY WE HAVE THE LATENT PRINT
12 CARDS MARKED COLLECTIVELY AS PROPOSED EXHIBIT 28-A?

13 THE COURT: SAME MAY BE MARKED.

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

15 MAY I APPROACH THE WITNESS, YOUR HONOR?

16 THE COURT: YOU MAY.

17
18 BY MR. HARMON:

19
20 Q OFFICER HOOKER, I'M SHOWING YOU NOW STATE'S
21 PROPOSED EXHIBIT 28-A. IT APPEARS TO CONSIST OF EIGHT LATENT
22 PRINT CARDS. ARE YOU ABLE TO IDENTIFY THESE CARDS?

23 A YES. I CAN IDENTIFY ALL EIGHT CARDS.

24 Q WHAT IS THE BASIS OF YOUR IDENTIFICATION OF
25 THE VARIOUS LATENT PRINT CARDS?

26 A ON THE FACE OF EACH -- EACH INDIVIDUAL CARD
27 THERE IS WRITING WHICH I RECOGNIZE AS MY WRITING; AND ALSO I
28 PLACE MY INITIALS D.H. AS WELL AS MY BADGE NUMBER, NUMBER FOUR,
29 ON EACH ONE OF THE CARDS.

30 Q DID YOU, IN FACT, EVENTUALLY PREPARE THESE
31 EIGHT LATENT PRINT CARDS?

32 A YES, I DID.

1 Q FROM WHERE DID YOU OBTAIN THE LATENT
2 PRINTS WHICH ARE FOUND ON THE VARIOUS LATENT PRINT CARDS?

3 A THE LATENTS, ALL THE LATENTS ON ALL THE
4 CARDS CAME FROM VARIOUS PORTIONS OF THE -- THE '80 BLACK OLDS-
5 MOBILE CUTLASS WITH THE NEW YORK LICENSE PLATE OF 614 ZEBRA
6 HENRY QUEEN, WHICH I DUSTED AT THE UNITED TOWING SERVICE. THEY
7 ALL CAME FROM THAT SAME -- FROM VARIOUS IMPRESSIONS.

8 Q IS THAT THE SAME VEHICLE SHOWN IN STATE'S
9 EXHIBITS 60 THROUGH 63?

10 A YES, SIR.

11 Q HAVE YOU INDICATED AT THE TOP OF EACH CARD
12 THE LOCATION ON THE VEHICLE, THE BLACK OLDSMOBILE CUTLASS, WHERE
13 YOU RECOVERED THE PARTICULAR LATENT PRINTS APPEARING ON THAT?

14 A YES, SIR. FOR EACH SERIES OF LATENT
15 FINGERPRINTS LIFTED FROM THE VEHICLE -- AND WHEN I SAY "LIFTED,"
16 AFTER DUSTING A VEHICLE WITH A DUST POWDER, I HAVE A SPECIAL
17 TAPE THAT I PUT OVER THE LATENT PRINT AND I LIFT THAT PRINT FROM
18 THE LOCATION ON THE VEHICLE AND PHYSICALLY TRANSFER IT TO THE
19 LITTLE WHITE CARD. AND WITH EACH ONE OF THOSE LISTS OF THE
20 LATENT FINGERPRINT I HAVE WRITTEN THE EXACT LOCATION THAT THE
21 LATENTS CAME FROM IN THE VEHICLE ON THE WHITE CARDS.

22 Q ARE ALL THE LATENT PRINT CARDS, WHICH MAKE
23 UP PROPOSED EXHIBIT 28-A, IN SUBSTANTIALLY THE SAME CONDITION
24 NOW AS THEY WERE ON THE DATE THAT YOU PREPARED THEM, APRIL THE
25 2ND, 1980?

26 A BASICALLY, THEY ARE. THEY ARE.

27 THERE ARE CERTAIN FOREIGN WRITINGS
28 WHICH ARE NOT MINE ON THE CARDS. BUT AS FAR AS THE LATENTS AND
29 THE DESCRIPTION OF WHERE THE LATENTS CAME FROM, YES, THEY'RE
30 THE SAME AS THEY WERE WHEN I RELINQUISHED CUSTODY OF THE CARDS.

31 Q TO WHOM DID YOU RELINQUISH CUSTODY OF THESE
32 LATENT PRINT CARDS, WHICH ARE PROPOSED EXHIBIT 28-A?

1887

1 A TO DETECTIVE LEAVITT OF THE LAS VEGAS
2 POLICE DEPARTMENT.

3 Q DO YOU RECALL ON WHAT DATE THAT WAS?

4 A I BELIEVE IT WAS ALSO ON THE 2ND.

5 Q APRIL THE 2ND, 1980?

6 A YES.

7 Q THANK YOU.

8 OFFICER HOOKER, ALSO IN CONNECTION
9 WITH THE VEHICLE SHOWN IN STATE'S EXHIBITS 60 THROUGH 63, DID
10 YOU HAVE OCCASION TO RECOVER A LEATHER HOLSTER AND ALSO A CLOTH
11 BAG WITH SOME CONTENTS?

12 A YES, SIR, I DID.

13 Q DO YOU RECALL WHERE IT WAS YOU LOCATED THE
14 LEATHER HOLSTER AND A CLOTH BAG WITH CONTENTS?

15 A THE BLACK LEATHER HOLSTER I FOUND ON THE
16 TOP OF THE BACKSEAT OF THE VEHICLE. AND THE CLOTH BAG, CONTAIN-
17 ING 12 AMMUNITION -- ROUNDS OF .357 AMMUNITION.

18 Q YOU SAY IT WAS 12 ROUNDS OF .357 CALIBER
19 AMMUNITION?

20 A YES, SIR.

21 Q WERE THEY LIVE ROUNDS?

22 A YES, THEY WERE COMPLETE ROUNDS. I FOUND
23 THOSE ON THE FLOORBOARD OF THE LEFT REAR BEHIND THE DRIVER'S
24 SEAT OF THE VEHICLE.

25 MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE.
26 YOUR HONOR, MAY I HAVE THE COURT'S INDUL-
27 GENCE?

28 THE COURT: YOU MAY.

29 MR. HARMON: MAY I APPROACH THE WITNESS?

30 ..

31 ..

32 ..

1 BY MR. HARMON:

2

3 Q OFFICER HOOKER, I'M SHOWING YOU NOW
4 PROPOSED EXHIBIT 25-A. IT APPEARS TO BE A BLACK HOLSTER. ARE
5 YOU ABLE TO IDENTIFY IT?

6 A YES, I AM.

7 Q HOW DO YOU IDENTIFY PROPOSED EXHIBIT 25-A?

8 A WHEN I RECOVERED THE HOLSTER FROM THE
9 VEHICLE AND BOOKED IT INTO EVIDENCE, AS I WAS BOOKING IT INTO
10 EVIDENCE ON THE INSIDE OF THE STRAP OF THE HOLSTER I AGAIN
11 PLACED MY INITIALS D.H. AND MY BADGE NUMBER FOUR, ON THE HOLSTER.

12 Q IS THE BLACK LEATHER HOLSTER, PROPOSED
13 EXHIBIT 25-A, IN SUBSTANTIALLY THE SAME CONDITION NOW AS IT WAS
14 ON THE DATE YOU RECOVERED IT?

15 A SUBSTANTIALLY. I DIDN'T HAVE THIS TAG ON
16 IT.

17 Q REFERRING TO THE COURT TAG?

18 A YES. YES. BUT OTHER THAN THE COURT TAG,
19 YES, THIS IS THE SAME HOLSTER.

20 Q DID YOU RECOVER THIS ITEM APRIL THE 2ND,
21 1980?

22 A YES, I DID.

23 Q FROM WHERE IN THE VEHICLE?

24 A FROM THE REAR SEAT, TOP OF THE REAR SEAT OF
25 THE OLDSMOBILE.

26 Q THE SAME VEHICLE SHOWN IN STATE'S EXHIBITS
27 60 THROUGH 63, THE PHOTOGRAPHS?

28 A YES, SIR.

29 Q I'M SHOWING YOU NOW WHAT APPEARS TO BE SOME
30 TYPE OF CLOTH BAG WITH SOME CONTENTS. IT'S MARKED AS PROPOSED
31 25-B. WILL YOU EXAMINE THIS PROPOSED EXHIBIT AND STATE WHETHER
32 YOU RECOGNIZE IT?

1889

1 A YES, I DO.

2 Q HOW DO YOU IDENTIFY PROPOSED EXHIBIT 25-B?

3 A AGAIN, AS WITH THE HOLSTER, WHEN I WAS

4 BOOKING IT INTO EVIDENCE I PLACED MY INITIALS D.H. AND MY BADGE

5 NUMBER, NUMBER FOUR, ON THE ITEM AS I WAS BOOKING IT INTO

6 EVIDENCE.

7 Q WHERE DID YOU FIRST OBSERVE PROPOSED

8 EXHIBIT 25-B?

9 A ON THE FLOORBOARD BEHIND THE DRIVER'S SEAT

10 ON THE --

11 Q OF THE BLACK OLDSMOBILE CUTLASS?

12 A YES, SIR.

13 Q SHOWING YOU STATE'S EXHIBITS 60 THROUGH 63.

14 A YES, SIR.

15 Q WAS THIS ON APRIL THE 2ND, 1980?

16 A YES, SIR, IT WAS.

17 Q NOW, WHAT DID YOU FIND INSIDE THIS BAG ON

18 APRIL THE 2ND, 1980?

19 A I FOUND TWELVE .357 ROUNDS INSIDE OF THE

20 BAG.

21 Q WILL YOU EXAMINE THE CONTENTS OF THE BAG

22 NOW TO SEE IF THOSE TWELVE ROUNDS ARE STILL INSIDE?

23 A OKAY. I'M REMOVING THE COURT TAG FROM THE

24 TOP OF THE BAG, WHICH IS BINDING THE BAG.

25 I'M CARRYING THE INSIDE OF THE BAG. I

26 FIND THREE, FOUR, FIVE, SIX -- TWELVE ROUNDS OF AMMUNITION, .357

27 AMMUNITION. TO MY BEST RECOLLECTION THESE ARE THE SAME ROUNDS

28 THAT WERE IN THE BAG WHEN I RECOVERED THEM.

29 Q DID THEY LOOK EXACTLY THE SAME?

30 A YES, SIR, AS FAR AS I CAN REMEMBER THEY DO.

31 Q THANK YOU.

32 WILL YOU PLACE THE TWELVE ROUNDS BACK

1 INSIDE THE BAG AND WILL YOU PLACE THE COURT TAG BACK AROUND THE
2 TOP, PLEASE?

3 A YES, SIR. I'M PLACING THE ROUNDS BACK IN
4 THE BAG, TWELVE ROUNDS, AND RESECURING THE COURT TAG AROUND THE
5 TOP OF THE BAG.

6 MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER
7 PROPOSED EXHIBITS 25-A AND B.

8 THE COURT: ANY OBJECTIONS?

9 MR. COOPER: NO OBJECTION, YOUR HONOR.

10 THE COURT: SAME WILL BE RECEIVED.

11 MR. HARMON: THANK YOU.

12 COURT'S INDULGENCE FOR A MINUTE.

13 THAT CONCLUDES DIRECT EXAMINATION,
14 YOUR HONOR.

15 THE COURT: CROSS?

16 MR. FRANZEN: NO QUESTIONS.

17 THE COURT: YOU'RE EXCUSED, SIR.

18 THE WITNESS: THANK YOU.

19 (WHEREUPON, THE WITNESS WAS
20 EXCUSED.)

21 THE COURT: APPROACH THE BENCH, PLEASE.

22 (WHEREUPON, SIDE BAR CONFERENCE
23 WAS HELD AT THE BENCH; NOT
24 REPORTED. AT THE CONCLUSION
25 OF WHICH THE FOLLOWING WAS HAD:)

26 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
27 WE WILL BE IN RECESS FOR ABOUT TEN TO FIFTEEN MINUTES.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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

WE WILL BE IN RECESS FOR FIFTEEN MINUTES.

(WHEREUPON, FROM 3:20 P.M.

UNTIL 3:50 P.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: YOU MAY PROCEED, COUNSEL.

WOULD THE RECORD REFLECT THAT THIS IS OUT-
SIDE THE PRESENCE OF THE JURY.

MR. SEATON: THE STATE FEELS THAT IT'S THE
DEFENDANT'S MOTION, YOUR HONOR, AND THEY SHOULD --

THE COURT: COUNSEL?

MR. SEATON: (CONTINUING) -- BEAR THE BURDEN OF
PROCEEDING.

MR. COOPER: YES, YOUR HONOR.

WE WOULD REQUEST THAT THE WITNESS IN COURT,

1 DWANA, MS. THOMAS, BE EXCUSED FROM THE COURTROOM. IT'S OUR
2 INTENTION TO CALL AT THIS TIME MR. HOWARD.

3 ESSENTIALLY, YOUR HONOR, AS WE STATED
4 IN CHAMBERS, IT'S COME TO OUR ATTENTION, BASED ON CONVERSATIONS
5 HAD WITH MR. HOWARD, THAT HE -- HE HAS STATED TO US THAT AT
6 SOMETIME IN THE PAST HE WAS LEGALLY MARRIED TO STATE'S NEXT
7 WITNESS DWANA THOMAS. AND, OF COURSE, IF THAT IS THE CASE, HE
8 HAS THE RIGHT TO CONSENT TO HER TESTIFYING OR IF HE CHOOSES NOT
9 FOR HER TO TESTIFY OF COURSE HE HAS THAT PRIVILEGE, HAS THE
10 RIGHT TO INVOKE THAT PRIVILEGE.

11 AS I INDICATED IN CHAMBERS, YOUR HONOR,
12 WE HAVE NO LEGAL DOCUMENTS AS SUCH THAT WOULD VERIFY THE MAR-
13 RIAGE, AND FOR THAT LIMITED PURPOSE ONLY, WHILE TESTIFYING, WE
14 WOULD ASK THAT DWANA THOMAS BE EXCUSED FROM THE COURTROOM.

15 THE COURT: THE STATE?

16 MR. HARMON: THAT'S FINE, YOUR HONOR.

17 THE COURT: WOULD YOU WAIT OUTSIDE THE COURTROOM,
18 PLEASE.

19 ALL RIGHT. HAVE YOU ADVISED THE DEFENDANT
20 OF HIS CONSTITUTIONAL RIGHTS, COUNSEL?

21 MR. COOPER: YOUR HONOR, NO, WE HAVEN'T. WE
22 HAVEN'T HAD TIME TO ADVISE HIM.

23 THE COURT: ADVISE HIM, SIR.

24 MR. COOPER: YOUR HONOR, I HAVE DISCUSSED WITH
25 MR. HOWARD HIS RIGHT TO TESTIFY OR NOT TO TESTIFY. AND IT'S HIS
26 DECISION TO TAKE THE STAND AND TESTIFY.

27 THE COURT: MR. HOWARD, HAS YOUR ATTORNEY ADVISED
28 YOU, SIR, FOR THE RECORD?

29 DEFENDANT HOWARD: YES. HE HAS ADVISED ME OF MY
30 RIGHT, YOUR HONOR.

31 THE COURT: AND WHAT DID HE ADVISE YOU, SIR?

32 DEFENDANT HOWARD: THAT I -- I -- IT'S UP TO ME

1 TO GET ON THE STAND AND TESTIFY IN REFERENCE TO THE MARRIAGE.
2 AND AT THAT POINT STICK TO THAT POINT AND NOTHING OTHER THAN THE
3 MARRIAGE. AND THE STATE ATTORNEY CAN CROSS EXAMINE ME. SO I
4 FULLY UNDERSTAND.

5 THE COURT: DO YOU UNDERSTAND THAT IF YOU GET
6 INVOLVED IN ANY OTHER ISSUE OTHER THAN THE ISSUE BEFORE THIS
7 COURT THAT THE STATE CAN THEN BRING TESTIMONY TO REBUT THAT
8 PARTICULAR TESTIMONY AND ANY ADMISSIONS THAT YOU MAKE WOULD BE,
9 USED AGAINST YOU. DO YOU UNDERSTAND THAT?

10 DEFENDANT HOWARD: UNEQUIVOCALLY. YES, YOUR
11 HONOR.

12 THE COURT: DO YOU FURTHER UNDERSTAND THAT THIS
13 HAS TO BE OF YOUR OWN FREE AND VOLUNTARY WILL?

14 DEFENDANT HOWARD: YES.

15 THE COURT: YOU'RE FURTHER AWARE OF THE LAWS OF
16 PERJURY IN THIS REGARD FOR FAILING TO TELL THE TRUTH?

17 DEFENDANT HOWARD: YES.

18 THE COURT: ALL RIGHT. MR. BAILIFF, WOULD YOU
19 GET OVER HERE IN THE CORNER AND BRING HIM ON OVER AND HE CAN
20 TAKE THE STAND.

21 THE CLERK: RAISE YOUR RIGHT HAND.

22
23 WHEREUPON,

24
25 SAMUEL HOWARD,

26
27 BEING CALLED AS A WITNESS HEREIN BY THE DEFENDANT WAS READ THE
28 OATH BY THE CLERK.

29
30 THE WITNESS: FOR RELIGIOUS REASONS I DO NOT
31 SWEAR BUT I AFFIRM TO TELL THE TRUTH.

32 THE CLERK: WOULD YOU LIKE TO GIVE HIM THE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

AFFIRMATION?

THE COURT: YES, PLEASE.

WHEREUPON,

SAMUEL HOWARD,

BEING CALLED AS A WITNESS HEREIN BY THE DEFENDANT, AFFIRMED TO
TELL THE TRUTH, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE COURT: YOU MAY BE SEATED.

DIRECT EXAMINATION

BY MR. FRANZEN:

Q MR. HOWARD, WOULD YOU PLEASE GIVE YOUR FULL
NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER?

A SAMUEL HOWARD. LAST NAME H-O-W-A-R-D.

Q DO YOU KNOW A YOUNG LADY NAMED DWANA THOMAS,
OTHERWISE KNOWN AS DWANA BOYD?

A YES, I DO.

Q ARE YOU MARRIED TO HER? DID YOU MARRY HER?

A AT ONE TIME I DID.

Q WHEN DID YOU GO THROUGH A MARRIAGE CEREMONY?

A AROUND -- THE YEAR WAS '79.

Q DO YOU REMEMBER WHAT STATE YOU WENT THROUGH
THE MARRIAGE CEREMONY IN?

A YES. MY HOME STATE, NEW YORK.

Q WAS THIS A CIVIL CEREMONY OR DID YOU GO TO
A CHURCH?

A IT WAS CIVIL. IT WASN'T NO CHURCH.

1 Q TO YOUR KNOWLEDGE, DID YOU EVER OBTAIN A
2 LEGAL DIVORCE?

3 A NO.

4 MR. FRANZEN: NO FURTHER QUESTIONS, YOUR HONOR.
5 THE COURT: CROSS?

6
7 CROSS EXAMINATION

8
9 BY MR. HARMON:

10
11 Q MR. HOWARD, ARE YOU CONVICTED OF A FELONY,
12 SIR?

13 MR. FRANZEN: OBJECTION, YOUR HONOR, IRRELEVANT
14 TO THIS ISSUE. WE HAVE NO --

15 MR. HARMON: HIS CREDIBILITY IS AT ISSUE, YOUR
16 HONOR. THEY PLACED HIM ON THE STAND.

17 MR. FRANZEN: WE HAVE NO JURY PRESENT BEFORE YOUR
18 HONOR.

19 MR. HARMON: IT'S STILL RELEVANT.

20 MR. COOPER: MIGHT I INQUIRE ON WHAT BASIS IT'S
21 RELEVANT?

22 MR. HARMON: HIS CREDIBILITY IS IN ISSUE, YOUR
23 HONOR. THE COURT HAS TO DECIDE WHETHER THIS WITNESS IS BEING
24 TRUTHFUL WHEN HE SAYS HE MARRIED.

25 THE COURT: WELL, COUNSEL, WHY DON'T YOU GET INTO
26 THAT BECAUSE I THINK BY MOTION YOU'VE ALREADY RAISED THAT ISSUE;
27 AND I'M AWARE OF IT FROM THE MOTIONS, THAT THE MAN HAS BEEN
28 CHARGED AND CONVICTED OF A FELONY. I DON'T KNOW WHY THAT'S NEW
29 AT THIS POINT. THAT I THINK WAS CONTAINED IN YOUR MOTION FOR
30 OTHER OFFENSES.

31 SO WHY DON'T WE GET ON WITH THE ISSUE BEFORE
32 THE COURT. THE OBJECTION IS SUSTAINED.

1 BY MR. HARMON:

2

3 Q MR. HOWARD, WHEN IN 1979 DID YOU MARRY
4 DWANA THOMAS?

5 A TO BE SPECIFIC, SIR, I WOULDN'T RECALL THE
6 EXACT MONTH, BUT IT WAS DURING THE SUMMER OF '79.

7 Q ALL -- ALL YOU REMEMBER IS THE SUMMER OF
8 1979?

9 A '79.

10 Q YOU CAN'T TELL US WHAT DAY OR WHAT MONTH
11 IT WAS?

12 A NO, I CAN'T. NOT SPECIFICALLY I CAN'T.

13 Q BUT YOU SAY YOU MARRIED DWANA THOMAS IN
14 NEW YORK?

15 A YES.

16 Q WHERE?

17 A NEW YORK CITY.

18 Q NEW YORK CITY?

19 A YES.

20 Q WHERE, SIR?

21 A QUEENS, NEW YORK.

22 Q MORE SPECIFICALLY WHERE IN QUEENS, NEW YORK?

23 A IT WOULD BE JAMAICA, NEW YORK.

24 Q WHERE IN JAMAICA, NEW YORK?

25 A IT WOULD BE NEW YORK BOULEVARD.

26 Q WHAT TYPE OF BUILDING ON NEW YORK BOULEVARD?

27 A WELL, THERE'S LOTS OF BUILDINGS.

28 Q THAT'S WHY I'M ASKING, SIR.

29 A SIR, IT'S -- IT'S A GHETTO AND JUST AN
30 AVERAGE BUILDING, NOTHING SPECIFIC, NOTHING DISTINCT.

31 Q WHAT TYPE OF AVERAGE BUILDING?

32 A JUST AN AVERAGE BUILDING, NOT FANCY, JUST AN

1897

1 AVERAGE BUILDING, NOTHING DISTINCTIVE ABOUT IT, BECAUSE I DIDN'T
2 HAVE THE MONEY.

3 Q IT WAS NOT A COURTHOUSE?

4 A NO. IT WAS DONE MORE OR LESS IN A -- HOW
5 DO YOU SAY -- A ONE-STORY BUILDING.

6 Q WAS IT A CHURCH?

7 A NO. IT WAS A CIVIL -- IT WAS A CIVIL -- IT
8 WASN'T A CHURCH.

9 Q WHO PERFORMED THE CEREMONY?

10 A MICHAEL. THAT'S HIS FIRST NAME, MICHAEL.
11 -- IT WAS -- LET'S SEE. MY BEST RECOLLECTION, IT WASN'T VERY
12 LONG. IT'S BEEN A LONG PERIOD OF TIME, SIR.

13 I HAVE A LITTLE PROOF UPSTAIRS IN MY
14 PROPERTY I COULD BRING DOWN. I TOLD MY ATTORNEY'S IN THE
15 MORNING TO CONFIRM THAT.

16 MR. HARMON: I OBJECT TO THIS. THIS IS NON-
17 RESPONSIVE, YOUR HONOR.

18 THE COURT: JUST ANSWER THE QUESTION.

19 THE WITNESS: YES.

20

21 BY MR. HARMON:

22

23 Q WHAT IS MICHAEL'S LAST NAME?

24 A I WOULDN'T RECALL, SIR.

25 Q WHO IS MICHAEL?

26 A SOME TYPE OF CLERK, COUNTY CLERK, QUEENS
27 COUNTY CLERK, NEW YORK.

28 Q YOU SAY MICHAEL IS SOME TYPE OF QUEENS
29 COUNTY CLERK?

30 A YES.

31 Q AND YET THIS IS A CEREMONY NOT PERFORMED IN
32 THE COURTHOUSE, JUST IN A REGULAR BUILDING SOMEWHERE?

1 A IT WASN'T A CHURCH. IT WAS JUST A REGULAR
2 BUILDING LIKE ONE-STORY. AND I DIDN'T HAVE THE FUNDS TO GET
3 MARRIED, YOU KNOW, FANCY -- NOTHING FANCY OR A CHURCH. AND WE
4 WANTED TO FOR MONEY -- OBTAINING WELFARE. SO THAT'S WHY WE GOT
5 MARRIED.

6 Q WHAT PROOF DO YOU HAVE THAT MICHAEL, LAST
7 NAME UNKNOWN, REALLY POSITION UNKNOWN, WAS REALLY AUTHORIZED BY
8 THE STATE OF NEW YORK TO PERFORM A MARRIAGE?

9 A WELL, THE PROOF I HAVE UPSTAIRS I'LL BRING
10 IT DOWN FOR YOU IN THE MORNING.

11 Q WHAT PROOF DO YOU HAVE UPSTAIRS, SIR?

12 A I WILL BRING IT DOWN, SIR.

13 Q WHAT PROOF DO YOU HAVE?

14 A I WILL BRING IT DOWN, SIR, IN THE MORNING.
15 THE COURT: ANSWER HIS QUESTION, SIR.

16 THE WITNESS: EXCUSE ME, YOUR HONOR?

17 THE COURT: ANSWER HIS QUESTION. WHAT PROOF DO
18 YOU HAVE?

19 THE WITNESS: WELL, IT'S -- IT'S -- I GUESS IT'S
20 SOME SORT OF LEGAL DOCUMENT. WHAT IT IS IS NOT A MARRIAGE
21 CERTIFICATE, BUT IT WOULD -- IT WOULD SUPPORT MY ASSERTION.

22
23 BY MR. HARMON:

24
25 Q YOU DO NOT HAVE A MARRIAGE CERTIFICATE?

26 A NO. ALOT -- THE MARRIAGE CERTIFICATE IDEN-
27 TIFICATION, IT WAS TAKEN DURING MY PROPERTY IN CALIFORNIA.

28 MR. HARMON: YOUR HONOR, THIS IS NON-RESPONSIVE.
29 I MOVE TO STRI- --

30 MR. FRANZEN: I BELIEVE IT IS RESPONSIVE.

31 THE COURT: I THINK HE WAS TRYING TO, COUNSEL.

32 OVERRULED.

1 BY MR. HARMON:

2

3 Q MY QUESTION, MR. HOWARD, IS: DO YOU HAVE
4 A MARRIAGE CERTIFICATE, YES OR NO?

5 A CERTIFICATE, SIR, I JUST MENTIONED IT WAS
6 TAKEN AWAY FROM ME.

7 Q AND THE ANSWER IS: NO, YOU DON'T HAVE A
8 MARRIAGE CERTIFICATE; IS THAT CORRECT?

9 A NO. NOT ON ME, NO.

10 Q WHEN DID YOU FIRST MEET DWANA THOMAS?

11 A THE YEAR OF '79.

12 Q SOMETIME IN THE YEAR 1979?

13 A YES.

14 Q WHEN AND WHERE, SIR?

15 A IN NEW YORK.

16 Q DIDN'T SHE ADVISE YOU THAT SHE WAS ALREADY
17 MARRIED?

18 A YES, SHE DID. SHE SAID SHE ONCE WAS MAR-
19 RIED AND WAS DIVORCED BY A GUY BY THE NAME OF -- THE LAST NAME
20 I THINK WAS THOMAS OR WHATEVER.

21 Q SHE TOLD YOU SHE WAS DIVORCED?

22 A YES.

23 Q DID YOU EVER --

24 A AS A MATTER OF FACT, I MEANT TO TELL THE
25 OFFICER.

26 Q DID YOU EVER SEE A DIVORCE DECREE?

27 A DID I EVER -- NO, I DIDN'T.

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

29 WE HAVE NO FURTHER QUESTIONS, YOUR HONOR.

30 ..

31 ..

32 ..

1900

REDIRECT EXAMINATION

BY MR. FRANZEN:

Q MR. HOWARD, YOU GOT MARRIED IN THE SUMMER
OF 1979 TO DWANA THOMAS UNDER THE NAME OF HOWARD SAMUEL; IS THAT
CORRECT?

A YES. I -- I JUST REVERSED IT, MY NAME.

Q DO YOU THINK YOU HAVE A LEGAL DOCUMENT
UPSTAIRS THAT WOULD VERIFY YOUR POSITION?

A PRETTY MUCH SURE, SURE.

MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

MR. HARMON: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: YOU'RE EXCUSED.

(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: FURTHER EVIDENCE?

MR. FRANZEN: EXCEPT FOR THE DOCUMENT THAT MR.
HOWARD REPRESENTS HE HAS IN HIS POSSESSION IN PROPERTY UPSTAIRS,

THAT IS THE EXTENT OF THE EVIDENCE, YOUR HONOR.

THE COURT: THE STATE?

MR. SEATON: THE STATE WOULD CALL DWANA THOMAS.

THE COURT: CALL DWANA THOMAS.

JUST COME FORWARD, PLEASE, AND BE SEATED
THERE.

MS. THOMAS: BE SEATED?

THE COURT: NO, JUST REMAIN STANDING UNTIL SHE
SWEARS YOU.

THE CLERK: RAISE YOUR RIGHT HAND.

..

..

..

1 WHEREUPON,

2
3 DAWANA THOMAS,

4
5 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN
6 EXAMINED AND TESTIFIED AS FOLLOWS:

7
8 THE COURT: PROCEED.

9
10 DIRECT EXAMINATION

11
12 BY MR. SEATON:

13
14 Q PLEASE STATE YOUR NAME.

15 A DAWANA THOMAS.

16 Q HOW DO YOU SPELL DAWANA?

17 A D-A-W-A-N-A.

18 Q AND HOW DO YOU SPELL THOMAS?

19 A T-H-O-M-A-S.

20 Q IS IT MRS. OR MISS THOMAS?

21 A MISS.

22 Q MISS.

23 ARE YOU ACQUAINTED WITH THE DEFENDANT
24 IN THIS ACTION SAMUEL HOWARD?

25 A YES.

26 Q WOULD YOU POINT HIM OUT AND DESCRIBE WHAT
27 HE'S WEARING?

28 A OVER THERE (INDICATING). HE HAS A BEIGE
29 SHIRT ON.

30 Q THANK YOU.

31 MAY THE RECORD REFLECT --

32 A AND A BLACK COLLAR.

1902

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

MR. SEATON: (CONTINUING) -- THE IDENTIFICATION
OF THE DEFENDANT BY THE WITNESS.

THE COURT: THE RECORD MAY SO SHOW.

BY MR. SEATON:

Q MISS THOMAS, WHERE DO YOU RESIDE NOW?

A IN TUSCON, ARIZONA.

Q AND HOW LONG HAVE YOU LIVED IN TUSCON?

A OFF AND ON, SINCE '67.

Q AND DID THERE COME A TIME IN 1979 WHEN YOU
MOVED FROM TUSCON TO LAS VEGAS?

A YES.

Q AND DO YOU RECALL THE MONTH THAT YOU MOVED
FROM TUSCON TO LAS VEGAS?

A IN NOVEMBER.

Q IN NOVEMBER OF 1979?

A OF -- YES.

Q 1979.

AND PRIOR TO MOVING TO LAS VEGAS IN
NOVEMBER OF 1979 HOW LONG HAD YOU LIVED DURING THAT PERIOD OF
TIME IN TUSCON?

A SINCE '67.

Q ALL RIGHT.

WHAT DID YOU COME TO LAS VEGAS FOR?

A WELL, ME AND MY EX-HUSBAND WERE SEPARATED
AND I CAME DOWN TO LIVE WITH MY GIRLFRIEND.

Q AND DID YOU ATTEMPT TO GAIN EMPLOYMENT HERE
IN LAS VEGAS?

A YES, SIR.

Q AND DID YOU GET A JOB HERE?

A YES, SIR.

1903

1 Q WHERE DID YOU GET A JOB?
2 A AT THE NEVADA HOTEL CASINO.
3 Q AND IN WHAT MONTH WAS THAT?
4 A THAT WAS IN NOVEMBER.
5 Q OF 1979?
6 A I THINK NOVEMBER OR -- OR THE BEGINNING OF
7 DECEMBER.
8 Q OF 1979?
9 A YES.
10 Q DURING THE SUMMER MONTHS OF 1979 SPECIFI-
11 CALLY CAN YOU TELL US WHERE YOU RESIDED AT THAT TIME?
12 A THE SUMMER MONTHS?
13 Q YES, OF 1979.
14 A IN -- IN ARIZONA.
15 Q TUSCON?
16 A UH-HUH.
17 Q NOW, YOU MENTIONED YOUR EX-HUSBAND. WHAT
18 IS HIS NAME?
19 A HIS NAME IS LENON THOMAS.
20 Q LENON THOMAS?
21 A UH-HUH.
22 Q HOW DO YOU SPELL LENON?
23 A L-E-N-O-N.
24 Q AND WHEN DID YOU MARRY LENON THOMAS?
25 A IN JULY 31ST OF '74.
26 Q AND ON JULY 31ST OF 1974 WHEN YOU MARRIED
27 LENON THOMAS DID YOU RECEIVE A MARRIAGE CERTIFICATE?
28 A YES, SIR.
29 Q WHERE WERE YOU MARRIED?
30 A TUSCON, ARIZONA.
31 Q WHO MARRIED YOU, IF YOU REMEMBER?
32 A THE JUDGE AT THE JUSTICE OF THE PEACE.

1904

1 Q DID YOU LATER GET A DIVORCE FROM MR. LENON
2 -- MR. THOMAS, EXCUSE ME?

3 A YES.

4 Q AND CAN YOU RECALL WHEN YOU OBTAINED THAT
5 DIVORCE?

6 A SEPTEMBER 1980.

7 Q SEPTEMBER OF 1980?

8 A YES, SIR.

9 Q IS IT FAIR TO SAY THEN THAT UP THROUGH 1979
10 YOU WERE MARRIED TO MR. THOMAS?

11 A YES, SIR.

12 Q WHEN DID YOU FIRST MEET SAMUEL HOWARD?

13 A I MET SAM -- IT WAS IN NOVEMBER I --
14 NOVEMBER, YES, OF '79.

15 Q AND WHERE WAS IT THAT YOU MET HIM?

16 A AT A FRIEND OF THE LAS VEGAS -- NOT LAS
17 VEGAS, NEVADA HOTEL CASINO.

18 Q IS THAT WHERE YOU HAD GAINED YOUR EMPLOY-
19 MENT?

20 A YES. THE FIRST DAY.

21 Q YOU MET HIM ON THE FIRST DAY OF YOUR EMPLOY-
22 MENT?

23 A YES.

24 Q HAD YOU EVER KNOWN SAM HOWARD BEFORE THAT
25 DAY IN NOVEMBER WHEN YOU GAINED EMPLOYMENT WITH THE NEVADA
26 CASINO?

27 A NO. I NEVER SAW HIM BEFORE IN MY LIFE.

28 Q YOU NEVER SAW HIM BEFORE?

29 A NO.

30 Q DID THERE COME A TIME IN EARLY 1980, IN
31 FEBRUARY, WHEN YOU AND SAM HOWARD WENT TO NEW YORK?

32 A DID WE?

1 Q YES.

2 A YES.

3 Q AND HOW -- FOR HOW LONG A PERIOD OF TIME

4 WERE YOU THERE?

5 A FOR A MONTH.

6 Q HAD YOU EVER BEEN TO NEW YORK BEFORE?

7 A YES.

8 Q AND WHEN HAD YOU BEEN TO NEW YORK?

9 A I HAD BEEN TO NEW YORK ABOUT THREE TIMES

10 BEFORE THEN.

11 Q IS IT POSSIBLE THAT YOU MET SAM WHILE YOU

12 WERE IN NEW YORK IN ONE OF THOSE OTHER OCCASIONS?

13 A NO. I NEVER MET SAM BEFORE IN NEW YORK.

14 Q WERE YOU AND THE DEFENDANT SAM HOWARD EVER

15 MARRIED?

16 A NO.

17 Q DID YOU AND THE DEFENDANT SAM HOWARD EVER

18 GO THROUGH ANY SORT OF A CEREMONY THAT WOULD CREATE THE SITUATION

19 OF MATRIMONY?

20 A NO. I WAS ALREADY MARRIED.

21 Q YOU WERE ALREADY MARRIED?

22 A YES.

23 Q DID YOU TELL SAM THAT YOU WERE MARRIED?

24 A YES.

25 Q HE KNEW THAT?

26 A UH-HUH.

27 Q DID YOU EVER TELL SAM THAT YOU WERE

28 DIVORCED?

29 A NO.

30 Q COURT'S INDULGENCE.

31 MISS THOMAS, IN THE SUMMER OF 1979 DID

32 YOU EVER MEET A PERSON BY THE NAME OF MICHAEL WHO PERFORMED A

1906

1 CEREMONY BETWEEN YOU AND SAM HOWARD?
2 A NO.
3 Q DURING THOSE MONTHS, THE SUMMER OF 1979,
4 WERE YOU IN JAMAICA, NEW YORK, IN A GHETTO AREA, WITH SAM HOWARD?
5 A I DON'T KNOW WHERE JAMAICA IS, NO.
6 Q HOW ABOUT IF WE SAID WERE YOU IN QUEENS,
7 NEW YORK, IN A GHETTO AREA? DO YOU KNOW WHERE QUEENS IS?
8 A IN '79?
9 Q IN 1979, IN THE SUMMER OF 1979.
10 A NO. I NEVER BEEN TO NEW YORK IN THE SUMMER.
11 Q ARE YOU FAMILIAR WITH NEW YORK BOULEVARD?
12 A NO.
13 Q DID YOU EVER MEET ANYONE DURING THE SUMMER
14 OF 1979 IN NEW YORK WHO HELD HIMSELF OUT AS A QUEENS COUNTY
15 CLERK, WHO HAD THE CAPABILITY OF PERFORMING MARRIAGE CEREMONIES?
16 A NO.
17 Q HAVE YOU EVER SEEN A CERTIFICATE OF MARRIAGE
18 BETWEEN YOU AND SAM HOWARD?
19 A NO.
20 Q OR ANY DOCUMENT --
21 A NO.
22 Q (CONTINUING) -- THAT PURPORTED TO HOLD OUT
23 YOU AND SAM AS HUSBAND AND WIFE?
24 A NO.
25 MR. SEATON: I HAVE NO FURTHER QUESTIONS, YOUR
26 HONOR.
27 THE COURT: CROSS?
28 ..
29 ..
30 ..
31 ..
32 ..

CROSS EXAMINATION

BY MR. FRANZEN:

Q MRS. THOMAS, IT'S YOUR TESTIMONY THEN THAT FROM APPROXIMATELY 1967 YOU WERE IN TUSCON, ARIZONA, RESIDING IN TUSCON, ARIZONA, UNTIL UP ABOUT NOVEMBER OF 1979, WHEN YOU CAME TO LAS VEGAS; IS THAT CORRECT?

A ALL OF THE TIME?

Q WAS YOUR RESIDENCE IN TUSCON, ARIZONA?

A YES, SIR.

Q FROM 1967?

A I HAVE BEEN A FEW PLACES WITH MY HUSBAND, BUT OTHER THAN THAT, I'VE BEEN IN TUSCON, ARIZONA.

Q OKAY. AND IT'S YOUR TESTIMONY THAT YOU FIRST MET MR. HOWARD IN NOVEMBER OF 1979?

A YES, SIR.

Q AND THAT WOULD BE FOUR MONTHS BEFORE MARCH OF 1980?

A YES.

Q DO YOU RECALL TELLING, ON APRIL 2ND, 1980, AT APPROXIMATELY 6:20 P.M., TELLING DETECTIVE LEAVITT OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT THAT YOU HAD KNOWN SAMUEL HOWARD FOR APPROXIMATELY ONE YEAR?

A NO. I DON'T RECALL.

Q THAT WOULD NOT BE TRUE?

A I'M NOT SAYING THAT IT WOULDN'T BE TRUE. BUT I'M JUST SAYING THAT I DON'T RECALL.

Q DID YOU EVER WRITE TO MR. HOWARD USING THE NAME DAWANA HOWARD?

A NOT THAT I KNOW OF.

MR. FRANZEN: MAY I APPROACH THE WITNESS, YOUR

1908

1 HONOR?

2 THE COURT: YOU MAY.

3

4 BY MR. FRANZEN:

5

6 Q I'D LIKE TO SHOW YOU A XEROX REPRODUCTION
7 OF A DOCUMENT, AND ASK YOU IF THIS IS IN YOUR HANDWRITING?

8 A IS IT --

9 MR. SEATON: BEFORE ANY FURTHER QUESTIONS ARE
10 ASKED, COULD WE SEE THE DOCUMENT, YOUR HONOR?

11

12 BY MR. FRANZEN:

13

14 Q IS THAT IN YOUR WRITING?

15 A YEAH. I GUESS SO.

16 Q IT IS?

17 A LET ME -- I HAVE THOMAS --

18 THE COURT: YOU'LL HAVE TO SPEAK UP. I CAN'T

19 HEAR YOU.

20 THE WITNESS: OH, YES.

21 MR. SEATON: MAY I TAKE THE WITNESS ON VOIR DIRE,
22 YOUR HONOR?

23 THE COURT: ARE YOU THROUGH WITH THAT DOCUMENT
24 THEN?

25 MR. FRANZEN: NO, YOUR HONOR. I HAVE SOME
26 QUESTIONS TO ASK.

27 MR. SEATON: PERHAPS COUNSEL CAN DO IT FOR ME.
28 I JUST WANT TO CLEARLY ESTABLISH. I DON'T THINK HER ANSWERS
29 WERE QUITE CLEAR THAT THIS IS, IN FACT, HER HANDWRITING.

30 THE COURT: ALL RIGHT. YOU MAY ON VOIR DIRE FOR
31 THAT PURPOSE ALONE, AS TO THE AUTHENTICITY OF THAT DOCUMENT.

32

..

VOIR DIRE EXAMINATION

BY MR. SEATON:

Q MISS THOMAS, SHOWING YOU THIS DOCUMENT, WHICH COUNSEL HAS JUST SHOWN YOU, WOULD YOU LOOK THAT OVER CAREFULLY AND TELL US WHETHER OR NOT THAT IS, IN FACT, YOUR HANDWRITING?

A UH --

THE COURT: YOU WILL HAVE TO SPEAK UP.

THE WITNESS: YES.

THE COURT: YES, IT IS YOUR HANDWRITING?

THE WITNESS: UH-HUH.

MR. SEATON: THANK YOU.

MR. FRANZEN: MAY I RESUME, YOUR HONOR?

THE COURT: YOU MAY.

CROSS EXAMINATION RESUMED

BY MR. FRANZEN:

Q MISS THOMAS?

A YES.

Q IN THE UPPER RIGHT HAND -- PERHAPS I SHOULD HAVE THIS MARKED.

THE COURT: WHY DON'T YOU GO AHEAD AND FINISH. SO WE DON'T SPEND THAT MUCH TIME. LET'S JUST GET ON WITH IT, COUNSEL.

BY MR. FRANZEN:

Q SHOWING YOU THIS DOCUMENT YOU HAVE IDENTI-

1910

1 FIED AS BEING IN YOUR HANDWRITING, DO YOU OR DO YOU NOT, IN THE
2 UPPER RIGHT HAND CORNER, IDENTIFY YOURSELF AS DAWANA HOWARD?

3 A YES.

4 Q AND YOU ADDRESS -- IS THIS LETTER ADDRESSED
5 TO MR. HOWARD?

6 A YES.

7 Q AND YOU CALL HIM, "DEAR LOVE"?

8 A YES...

9 Q AND YOU SAY THAT YOU MISS HIM?

10 A YES.

11 Q AND YOU TELL HIM THAT YOU ARE IN SCHOOL,
12 TELL HIM THAT YOU ARE IN SCHOOL?

13 A YES.

14 Q WHO'S THE FRIENDS THAT YOU'RE TALKING ABOUT
15 IN HERE? DO YOU REMEMBER YOUR FRIENDS?

16 MR. SEATON: YOUR HONOR, I THINK THIS IS GETTING
17 OUT OF THE SCOPE OF WHAT THIS HEARING IS TRYING TO ACCOMPLISH.

18 THE COURT: WE ARE NOT IN DISCOVERY HERE,
19 COUNSEL. WE ARE ATTEMPTING TO ESTABLISH COMMUNICATION BETWEEN

20 THE PARTIES, OR TRYING TO ESTABLISH THE RELATIONSHIP IF ANY.

21

22 BY MR. FRANZEN:

23

24 Q AND YOU ASKED SAM HOWARD TO SEND YOU SOME
25 MONEY; IS THAT CORRECT?

26 A DO YOU WANT ME TO ANSWER ABOUT WHO WAS THE
27 FRIEND?

28 THE COURT: NO.

29

30 BY MR. FRANZEN:

31

32 Q NO. THE JUDGE DIRECTED YOU NOT TO, MA'AM.

1911

1 A OH, YES.

2 Q MY NEXT QUESTION IS: YOU ASKED HIM TO SEND

3 YOU SOME MONEY?

4 A YES.

5 MR. FRANZEN: COULD WE HAVE THIS MARKED, YOUR

6 HONOR? I'M THROUGH WITH THE WITNESS.

7 THE COURT: WHAT'S THE NEXT NUMBER? WHAT'S THE

8 NEXT NUMBER?

9 THE CLERK: SIR, THIS IS A, DEFENDANT'S A.

10 MR. FRANZEN: I HAVE NO FURTHER QUESTIONS OF THIS

11 WITNESS -- YES, YOUR HONOR, I DO.

12

13 BY MR. FRANZEN:

14

15 Q WERE YOU EVER WITH MR. HOWARD IN THE LONG

16 ISLAND CITY, NEW YORK PROJECTS?

17 A WITH HIM?

18 Q YES, MA'AM.

19 A YES, BEFORE. YES, I'VE BEEN THERE BEFORE

20 WITH HIM, YES.

21 Q AND WAS THAT PRIOR TO NOVEMBER OF 1979?

22 A IT WAS AFTER.

23 Q AND WERE YOU INTRODUCED THERE AS HIS WIFE?

24 A NO.

25 Q DO YOU KNOW A RETA ELLIS?

26 A NO.

27 Q A TONY NELSON?

28 A NO.

29 Q THESE WOULD BE PEOPLE --

30 A OH, WAIT. A TONY NELSON?

31 Q YES, MA'AM.

32 A HE MENTIONED HIM BEFORE WHEN -- WHEN HE WAS

1912

1 IN CALIFORNIA WITH THE DOWNEY POLICE.

2 Q YOU HAVE NEVER MET MR. NELSON?

3 A NO. I NEVER MET HIM.

4 MR. FRANZEN: THAT CONCLUDES THE EXAMINATION OF
5 THIS WITNESS AT THIS TIME, YOUR HONOR.

6 MR. SEATON: VERY BRIEFLY, YOUR HONOR.

7

8 REDIRECT EXAMINATION

9

10 BY MR. SEATON:

11

12 Q CAN YOU EXPLAIN WHY YOU USED THE NAME
13 DAWANA HOWARD ON THE DOCUMENT THAT'S JUST BEEN MARKED AS AN
14 EXHIBIT?

15 A YES. SAM WANTED TO MARRY ME AND I WAS
16 JUST -- I GUESS FANTASIZED. I JUST PUT IT ON THERE. I WAS
17 ALREADY MARRIED. MY DIVORCE PAPERS WAS IN, BUT SAM WAS ALREADY
18 IN PRISON -- NOT IN PRISON BUT IN JAIL THEN.

19 Q WHEN WAS THIS LETTER WRITTEN THAT'S MARKED
20 AS EXHIBIT A?

21 A THAT LETTER WAS WRITTEN SOMETIME -- THAT
22 LETTER HAD TO BE WRITTEN SOMETIME IN THE LATTER PART OF '80,
23 AFTER APRIL OF '80.

24 Q DO THE COMMENTS THAT THE ATTORNEY ASKED YOU
25 ABOUT IN THE LETTER, HAVING TO DO WITH "DEAR LOVE" AND "I MISS
26 YOU" AND "I'M IN SCHOOL" AND "SEND ME MONEY"; IN YOUR MIND DO
27 THOSE MEAN THAT -- DOES THIS INDICATE THAT YOU ARE MARRIED TO
28 SAM HOWARD?

29 A NO. SAM SAID HE WAS GOING TO GET A
30 VETERAN'S CHECK AND THAT HE WOULD SEND ME MONEY.

31 MR. SEATON: NO FURTHER QUESTIONS, YOUR HONOR.

32 THE COURT: QUESTIONS?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

MR. FRANZEN: NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. SEATON: THE STATE HAS NO FURTHER WITNESSES.

THE COURT: WHAT WAS YOUR HUSBAND'S NAME?

THE WITNESS: LENON THOMAS. IT'S IN THE --

THE COURT: HOW DO YOU SPELL THAT?

THE WITNESS: L-E-N-O-N THOMAS SENIOR. I HAVE A
JUNIOR BY HIM.

THE COURT: AND WHERE WERE YOU DIVORCED?

THE WITNESS: IN TUSCON, ARIZONA.

THE COURT: AND THAT WAS IN SEPTEMBER OF 1980?

THE WITNESS: YES, SIR.

THE COURT: ANYTHING FURTHER?

MR. SEATON: THE STATE HAS NOTHING FURTHER.

MR. COOPER: YOUR HONOR, WE DO HAVE ONE ADDITIONAL
QUESTION.

THE COURT: ALL RIGHT. ASK IT.

RECROSS EXAMINATION

BY MR. FRANZEN:

Q IN 1981, MISS THOMAS, DID YOU WRITE TO
MR. HOWARD?

A I HAD WROTE LOTS OF LETTERS, AND HE HAD
WROTE LOTS OF LETTERS.

Q DID HE OR DID YOU REQUEST OF HIM THAT HE
SEND YOU ALL PICTURES AND LETTERS THAT HE HAD FROM YOU?

A DID I REQUEST THAT?

Q YES, MA'AM.

A I DON'T REMEMBER.

Q YOU COULD HAVE BUT YOU DON'T REMEMBER?

1914

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A YES, SIR.

MR. FRANZEN: I BELIEVE THAT'S IT, YOUR HONOR.

MR. SEATON: NOTHING FURTHER.

THE COURT: YOU'RE EXCUSED. YOU MAY STEP DOWN
AND WAIT OUT IN THE HALL.

THE WITNESS: OKAY.

(WHEREUPON, THE WITNESS WAS
EXCUSED.)

THE COURT: COUNSEL?

MR. FRANZEN: WE HAVE ONE ADDITIONAL WITNESS,
YOUR HONOR, THAT WOULD BE DETECTIVE LEAVITT REGARDING THE STATE-
MENT THAT INQUIRED OF HER, THE APRIL 2ND, 1980, STATEMENT IN
WHICH SHE RELATED THAT AS OF APRIL 2ND, 1980, SHE AND HER CHILD
HAD BEEN WITH MR. HOWARD FOR APPROXIMATELY ONE YEAR, RATHER THAN
MERELY HAVE MET HIM ON NOVEMBER OF 1979.

THE COURT: WELL, I DON'T THINK YOU NEED MR.
LEAVITT JUST TO PUT THAT INTO EVIDENCE.

MR. HARMON: NO. BUT WE CAN STIPULATE THAT THAT'S
IN THE OFFICER'S REPORT, YOUR HONOR, BY OFFICER LEAVITT.

THE COURT: ALL RIGHT.

PROCEED.

MR. FRANZEN: YOUR HONOR, WE COULD RECALL MR.
HOWARD FOR ONE LIMITED PURPOSE, AND THAT IS TO BRING THE DOCU-
MENTS OR DOCUMENT THAT HE HAS THAT HE BELIEVES IS IN HIS POS-
SESSION IN CUSTODY IN THE JAIL.

HE'D ALSO FURTHER TESTIFY THAT DURING THE
TRANSPORTATION BETWEEN THE VARIOUS PRISONS HE HAS BEEN IN AND
THIS COUNTY JAIL, THE OTHER SUPPORTING DOCUMENTS HAVE BEEN LOST
OR MISLAID.

THE COURT: WHERE IS THIS DOCUMENT NOW? WHERE
IS IT?

MR. FRANZEN: I BELIEVE IT'S IN HIS JAIL PROPERTY.

1915

1 DEFENDANT HOWARD: YES. YES, YOUR HONOR.

2 THE COURT: HOW LONG WOULD IT TAKE ONE OF THE
3 JAILERS TO TAKE HIM UP AND GET IT OUT OF HIS PROPERTY AND BRING
4 HIM BACK DOWN?

5 THE BAILIFF: AS BEST AS WE CAN. 15 MINUTES
6 PROBABLY AT THE MOST.

7 THE COURT: ALL RIGHT. WE WILL TAKE A RECESS,
8 A BRIEF RECESS. RUN HIM UP THERE, BRING DOWN WHAT YOU'VE GOT.
9 IN THE MEANTIME, I WOULD SUGGEST TO THE STATE TO CALL THE TUSCON
10 COUNTY CLERK FORTHWITH AND FIND OUT IF THIS YOUNG LADY IS STILL
11 MARRIED TO THE PARTIES INVOLVED AND GET A VERBAL, SOME TYPE OF
12 VERBAL RESPONSE FROM THE COUNTY CLERK OF TUSCON TO SEE WHETHER
13 OR NOT SHE WAS MARRIED, IN FACT, DURING THAT PERIOD OF TIME.

14 MR. SEATON: MAY WE HAVE THE WITNESS DWANA THOMAS
15 WITH US AS WE MAKE THAT CALL TO FEED INFORMATION BACK AND FORTH
16 SO WE CAN --

17 THE COURT: WE'LL BE IN RECESS, AND AS SOON AS
18 YOU CAN COME BACK IN.

19 WE'LL BE IN RECESS.

20 (WHEREUPON, FROM 4:20 P.M.
21 UNTIL 4:50 P.M., A RECESS WAS
22 HAD IN THE PROCEEDINGS, AT THE
23 CONCLUSION OF WHICH THE FOLLOW-
24 ING WAS HAD OUTSIDE THE PRES-
25 ENCE OF THE JURY:)

26 THE COURT: YOU MAY PROCEED, COUNSEL.

27 MR. FRANZEN: YOUR HONOR, MR. HOWARD HAS BROUGHT
28 FROM THE JAIL A DOCUMENT WHICH IS NOT AN OFFICIAL DOCUMENT BUT
29 WHICH IS A LETTER FROM DAWANA HOWARD IN WHICH SHE IDENTIFIES HER-
30 SELF IN THE SALUTATION AT THE CONCLUSION OF PAGE THREE AGAIN AS
31 DAWANA HOWARD AND AS HIS WIFE, QUOTE, "I LOVE YOU, YOUR WIFE,
32 DAWANA HOWARD".

1 THE COURT: ALL RIGHT. BRING IT FORWARD.

2 MR. FRANZEN: IT IS DATED DECEMBER 16, 1981,
3 YOUR HONOR.

4 THE COURT: LET'S MARK THIS --

5 THE CLERK: B, DEFENDANT'S B.

6 THE COURT: YES.

7 MR. HARMON: YOUR HONOR, PURSUANT TO THE COURT'S
8 INSTRUCTION, WE DID CONTACT THE SUPERIOR COURT CLERK'S OFFICE
9 IN KING COUNTY, ARIZONA. I SPOKE PERSONALLY WITH THE RECORDS
10 SUPERVISOR, LEANNE WILSON. THE FIRST NAME, FOR THE RECORD, IS
11 L-E-A-N-N-E. AND SHE VERBALLY, OVER THE PHONE, CONFIRMED TO ME
12 THAT THEY HAVE ON FILE A DIVORCE DECREE INDICATING THAT ON
13 SEPTEMBER THE 5TH, 1980, THAT DAWANA THOMAS, D-A-W-A-N-A, WAS
14 DIVORCED FROM LENON THOMAS, L-E-N-O-N.

15 THE COURT: COUNSEL?

16 MR. FRANZEN: YOUR HONOR, WE'D ALSO ASK THAT
17 MR. HOWARD BE GIVEN THE OPPORTUNITY TO EXPLAIN TO YOUR HONOR THE
18 SALU- -- OR THE POSTSCRIPT ON THE UPPER LEFT CORNER OF DEFENSE B,
19 WHERE WE BELIEVE DAWANA HOWARD, WHO WROTE THIS LETTER, STATES,
20 "BABY, SEND ME THE PICTURES," WHICH MR. HOWARD WILL IDENTIFY TO
21 YOUR HONOR AS BEING THE WEDDING PICTURES.

22 MR. HARMON: YOUR HONOR, YOUR HONOR, IF MR.
23 HOWARD ISN'T THE PERSON WHO WROTE THE WORDS ON DEFENDANT'S
24 EXHIBIT B, THEN IT WOULD BE SUPPOSITION ON HIS PART.

25 THE COURT: WHAT DIFFERENCE WOULD IT BE IF YOU
26 HAD WEDDING PICTURES WITH A WHITE TRAIL AT THIS POINT? IT
27 REALLY WOULDN'T MAKE A BIT OF DIFFERENCE BECAUSE ONE PERSON
28 CANNOT BE MARRIED TWICE TO THE -- TO TWO SEPARATE INDIVIDUALS.

29 THE TESTIMONY OF MR. HOWARD IS THAT IN THE
30 SUMMER OF 1979 HE WAS -- HE WENT THROUGH A MARRIAGE CEREMONY.
31 THE TESTIMONY UNEQUIVOCALLY HERE IS THAT DURING THAT PERIOD OF
32 TIME THE PERSON HE ALLEGEDLY MARRIED WAS ALREADY MARRIED.

1917

1 MR. FRANZEN: WELL, WE HAVE A PROBLEM WITH THAT,
2 YOUR HONOR, IN THAT ALTHOUGH WE ARE PROCEEDING A BIT INFORMALLY
3 HERE, I THINK THE PROPER TYPE OF EVIDENCE FROM THE STATE'S
4 POINT OF VIEW IS THEY'RE GOING TO HAVE TO PRESENT TO YOUR HONOR
5 THE DIVORCE DECREE.

6 THE COURT: NO. NO. THE BURDEN IS ON YOU, NOT
7 ON THEM.

8 MR. FRANZEN: YOUR HONOR, WE HAVE MET OUR BURDEN
9 IN THE FORM OF --

10 THE COURT: YOU HAVE NOT MET YOUR BURDEN, COUNSEL.
11 SO LET'S NOT --

12 MR. FRANZEN: I BELIEVE WE HAVE MET OUR BURDEN,
13 YOUR HONOR.

14 THE COURT: OKAY. AND I FIND THAT YOU HAVEN'T.

15 I WOULD SUGGEST TO THE STATE IF YOU HAVE
16 ANY TYPE OF WIRE OR SOMETHING THAT YOU CAN RECEIVE FROM THIS
17 INDIVIDUAL FOR THE PURPOSES OF RECORD CONFIRMING WHAT HAS BEEN
18 BROUGHT BEFORE THE COURT.

19 MR. HARMON: NO, YOUR HONOR, BUT WE HAVE THE
20 VERBAL COMMUNICATIONS FROM THE RECORDS SUPERVISOR.

21 THE COURT: SEE WHAT YOU CAN GET IN WRITING FROM
22 THAT CLERK FOR THE RECORD.

23 WE'LL BE IN RECESS UNTIL TOMORROW. AND IF
24 YOU GET YOUR INVESTIGATORS TO DO SOMETHING ABOUT 8:00 O'CLOCK IN
25 THE MORNING, THEY OUGHT TO BE ABLE TO GET SOMETHING HERE. IF
26 COUNSEL WANTS TO PRESENT SOMETHING FURTHER, YOU MAY DO SO
27 BECAUSE YOU WILL BE ON AT 9:00 O'CLOCK IN THE MORNING. IF THERE
28 IS ANYTHING TO VERIFY BACK IN QUEENS YOU CAN DO SO, AND THAT
29 OUGHT TO BE CLEAR. IF YOU WANT TO MAKE A VERBAL REPRESENTATION
30 YOU MAY AT THAT TIME.

31 MR. FRANZEN: YOUR HONOR, I'M SORRY.

32 THE COURT: BUT AS OF RIGHT NOW, COUNSEL, YOU

1 HAVEN'T MET YOUR BURDEN SO I DON'T WANT TO GO ON WITH IT.

2 MR. FRANZEN: YES, YOUR HONOR.

3 JUST FOR CLARIFICATION THEN, WILL YOUR
4 HONOR ACCEPT THAT WITHOUT FURTHER TESTIMONY OF MISS HOWARD WE
5 WOULD -- OR MISS THOMAS WE WOULD LIKE TO CALL TO IDENTIFY
6 DEFENDANT'S B AS HAVING BEEN WRITTEN BY HER TO MR. HOWARD?

7 THE COURT: WELL --

8 MR. HARMON: WE CAN STIPULATE.

9 THE COURT: I UNDERSTAND THAT.

10 BRING HER IN.

11

12 WHEREUPON,

13

14 DAWANA THOMAS,

15

16 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF HAVING BEEN PREVI-
17 OUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18

19 THE COURT: YOU'VE BEEN PREVIOUSLY SWORN. YOU
20 ARE STILL UNDER OATH, PLEASE.

21 COUNSEL, YOU MAY PROCEED.

22

23 DIRECT EXAMINATION

24

25 BY MR. FRANZEN:

26

27 Q MISS THOMAS?

28 A YES.

29 MR. FRANZEN: MAY I APPROACH THE WITNESS, YOUR
30 HONOR?

31 THE COURT: YES.

32

1919

1 BY MR. FRANZEN:

2

3 Q I'D LIKE TO SHOW YOU ANOTHER DOCUMENT AS
4 DEFENSE PROPOSED EXHIBIT B. I ASK IF YOU, IF THIS IS A LETTER
5 WRITTEN BY YOU IN WHICH --

6 A YES.

7 Q AND IS THIS A LETTER WRITTEN BY YOU TO
8 SAM HOWARD?

9 A YES.

10 Q I NOTE THAT YOU AGAIN USE THE NAME DAWANA
11 HOWARD. HOW LONG DID YOU CONTINUE TO USE THAT NAME?

12 A I ONLY USED THAT NAME A FEW TIMES, MAYBE
13 TWO OR THREE LETTERS. NOT ALL MY LETTERS WAS LIKE THAT.

14 Q OKAY.

15 IN THE UPPER LEFT CORNER --

16 YOUR HONOR, THE CLERK HAS STAPLED
17 OVER THE POSTSCRIPT.

18 THE COURT: TAKE IT OFF, PLEASE. . .

19

20 BY MR. FRANZEN:

21

22 Q WOULD YOU PLEASE AGAIN LOOK AT DEFENDANT'S
23 PROPOSED -- WELL, LET'S BACK UP A SECOND.

24 YOUR HONOR, WE WOULD MOVE TO ADMIT
25 DEFENDANT'S B.

26 THE COURT: ANY OBJECTION?

27 MR. SEATON: NO, YOUR HONOR.

28 THE COURT: SAME WILL BE RECEIVED.

29

30 BY MR. FRANZEN:

31

32 Q DIRECTING YOUR ATTENTION AT DEFENDANT'S

1920

1 EXHIBIT B, THE POSTSCRIPT ON THE UPPER LEFT CORNER OF PAGE 1,
2 WHICH READS "P.S. BABY, SEND ME THE PICTURES." DO YOU RECALL
3 WHAT YOU'RE REFERRING TO IN THAT POSTSCRIPT?

4 A I DON'T -- I DON'T REMEMBER.

5 Q YOU DO NOT REMEMBER?

6 A HUH-UH.

7 Q YOU HAVE TO ANSWER OUTLOUD.

8 A OH, I DON'T REMEMBER.

9 Q COULD THESE HAVE BEEN PICTURES OF THE WED-
10 DING?

11 A NO.

12 Q THE SALUTATION AT PAGE 3 OF THAT LETTER
13 IDENTIFIES YOU, THE WRITER, AS "YOUR WIFE." THAT WAS ALSO IN
14 YOUR HANDWRITING?

15 A YES.

16 Q YOU DID IDENTIFY YOURSELF TO MR. HOWARD AS
17 HIS WIFE?

18 A PLAY -- PLAY -- PLAY WIFE. PLAY WIFE.

19 Q DOES IT SAY "PLAY WIFE"?

20 A NO.

21 Q IT SAYS "YOUR WIFE," DOESN'T IT?

22 WOULD YOU LIKE TO SEE IT AGAIN?

23 THE COURT: COUNSEL --

24 THE WITNESS: YES.

25 THE COURT: (CONTINUING) -- SHE'S ANSWERED THE
26 QUESITON.

27 MR. FRANZEN: I HAVE NOTHING FURTHER REGARDING
28 THE LETTER, YOUR HONOR.

29 MR. SEATON: JUST A FEW QUESTIONS, YOUR HONOR.

30 ..

31 ..

32 ..

CROSS EXAMINATION

BY MR. SEATON:

Q MISS THOMAS, DO YOU REMEMBER BEING IN SAN BERNARDINO FOR A TRIAL HELD AGAINST SAMUEL HOWARD IN MAY OF 1982?

A YES, SIR.

Q AND DID YOU TESTIFY IN THAT TRIAL?

A YES, SIR.

Q AND WAS THE DEFENDANT SAMUEL HOWARD IN THIS CASE THE DEFENDANT IN THAT PARTICULAR CASE?

A YES, SIR.

Q WELL, DID THEY HAVE A HEARING LIKE THIS, TALKING ABOUT HUSBAND AND WIFE AND MARRIAGE AND THINGS LIKE THAT?

A NO.

Q WHEN YOU GAVE YOUR TESTIMONY WAS THE QUESTION EVER ASKED OF YOU IF YOU WERE THE WIFE OF SAM HOWARD?

A NO, SIR.

Q OR IF YOU HAD EVER BEEN THE WIFE OF SAM HOWARD?

A NO, SIR.

Q DURING THAT TRIAL DID THE DEFENDANT SAM HOWARD ASSERT THE HUSBAND AND WIFE PRIVILEGE?

A NO.

Q AND YOU DID TESTIFY?

A YES.

Q IT WAS -- DID YOU TESTIFY ON BEHALF OF THE STATE OF CALIFORNIA?

A YES.

MR. SEATON: THAT CONCLUDES THE STATE'S QUESTIONS, YOUR HONOR.

MR. FRANZEN: NOTHING FURTHER, YOUR HONOR.

1 THE COURT: WHEN YOU TESTIFIED DID YOU TESTIFY
2 ABOUT CONFIDENTIAL COMMUNICATIONS BETWEEN YOURSELF AND MR. HOWARD?

3 THE WITNESS: NO.

4 THE COURT: WHAT DID YOU TESTIFY TO?

5 THE WITNESS: TO THE CAR THEFT OF A MERCEDES.

6 THE COURT: IN EFFECT, YOU TESTIFIED THEN AGAINST
7 MR. HOWARD ON BEHALF OF THE STATE OF CALIFORNIA, AND YOU IMPLICA-
8 TED HIM IN A CAR THEFT; IS THAT CORRECT?

9 THE WITNESS: I DON'T UNDERSTAND.

10 THE COURT: YOU HAVE TO SAY YES OR NO.

11 THE WITNESS: I DON'T UNDERSTAND WHAT YOU MEAN.

12 THE COURT: WELL, DID YOU SAY THAT HE WAS INVOLVED
13 IN A CAR THEFT? DID YOU TESTIFY TO THAT?

14 THE WITNESS: OH, YES, SIR.

15 THE COURT: AND AT ANYTIME WHEN YOU WERE TESTIFY-
16 ING AGAINST HIM DID HE RAISE THE ISSUE THAT YOU WERE HIS WIFE?

17 THE WITNESS: NO, SIR.

18 THE COURT: OR THAT HE WAS YOUR HUSBAND?

19 THE WITNESS: NO, SIR.

20 MR. SEATON: YOUR HONOR, MAY I ASK JUST ONE OTHER
21 QUESTION?

22 THE COURT: ALL RIGHT.

23

24 CROSS EXAMINATION RESUMED

25

26 BY MR. SEATON:

27

28 Q DURING THAT SAME TIME, MISS THOMAS, DID YOU
29 EVER RELATE TO THE COURT CONVERSATIONS THAT YOU AND SAM HOWARD
30 HAD?

31 A CONVERSATIONS?

32 Q ANY -- DID YOU TELL THE JURY IN THAT CASE

1923

1 ANY OF THE THINGS THAT SAM HAD SAID TO YOU AT ALL?

2 A YES, SIR.

3 Q AND WERE ANY OF THOSE THINGS ABOUT -- AND

4 LET ME ASK ANOTHER PRIMARY QUESTION: WAS THIS A CASE OF CAR

5 THEFT OR DID IT ALSO INCLUDE A ROBBERY CHARGE?

6 A BOTH.

7 Q BOTH?

8 A UH-HUH.

9 Q AND SAM WAS CHARGED BOTH WITH CAR THEFT AND

10 WITH ROBBING SOMEONE?

11 A YES, SIR. UH-HUH.

12 Q WITH A GUN?

13 A YES, SIR.

14 Q AND DID YOU RELATE IN THE COURTROOM ANY

15 THINGS THAT HE TOLD YOU ABOUT THAT CAR THEFT OR ABOUT THE ROBBERY

16 WITH THE GUN?

17 A YES, SIR.

18 MR. SEATON: THANK YOU.

19 I HAVE NOTHING FURTHER, YOUR HONOR.

20 THE COURT: YOU'RE EXCUSED.

21 (WHEREUPON, THE WITNESS WAS

22 EXCUSED.)

23 THE COURT: COUNSEL, WE WILL CONTINUE THIS MATTER

24 UNTIL 10:00 O'CLOCK TOMORROW MORNING.

25 I WOULD SUGGEST THAT WE BRING THE JURY IN

26 AND JUST SET THEM OUT IN THE COURTROOM THERE, AND YOU DON'T NEED

27 TO PUT THEM IN THE BOX. I'LL MERELY ADVISE THEM THAT THEY HAVE

28 BEEN PREVIOUSLY ADMONISHED, THEY'RE STILL UNOER THAT ADMONITION,

29 AND CONTINUE IT UNTIL 10:00 O'CLOCK TOMORROW MORNING.

30 CALL THEM IN.

31 ..

32 ..

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

(WHEREUPON, THE JURY ENTERED
THE COURTROOM AND THE FOLLOW-
ING PROCEEDINGS WERE HAD:)

THE COURT: WOULD YOU MOVE OVER SO THAT THE OTHER
JURORS CAN SIT THERE.

WOULD YOU PLEASE BE SEATED. I'M TRYING TO
MAKE IT AS EASY FOR YOU, RATHER THAN HAVING YOU COME ALL THE WAY
UP HERE.

WE HAVE BEEN IN SESSION, AS YOU KNOW,
ALL AFTERNOON. YOU HAVE PREVIOUSLY BEEN ADMONISHED ABOUT TALKING
ABOUT THIS CASE WITH ANYONE.

IN VIEW OF THE HOUR, WE ARE GOING TO
TAKE OUR AFTERNOON RECESS AT THIS TIME AND RECONVENE AT 10:00
O'CLOCK IN THE MORNING. YOU ARE STILL UNDER THE SAME ADMONITION
AND WE WILL BE IN RECESS THEN IN THIS MATTER UNTIL 10:00 O'CLOCK
A.M., TOMORROW MORNING, AND PROCEED THEN.

THAT'S ALL.

(WHEREUPON, AT THE HOUR OF
5:07 P.M., THE EVENING RECESS
WAS HAD IN THE PROCEEDINGS.)

CASE NO. C53867

DEPARTMENT NO. V

DOCKET H

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

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

FILED
APR 1 1984
LORETTA BOWMAN CLARK
BY
DEPUTY

REPORTER'S TRANSCRIPT OF

JURY TRIAL

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT JUDGE
WEDNESDAY, APRIL 20, 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

VOLUME VII

1926

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 20, 1983, AT 10:15 A.M.

2 * * * * *

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

6 THE COURT: YOU MAY PROCEED.

7 MR. COOPER: YOUR HONOR, I THINK WHERE WE STOPPED
8 OFF YESTERDAY WE WERE AT THE QUESTION OF WHETHER OR NOT THE
9 DEFENDANT WAS MARRIED TO THE STATE'S NEXT WITNESS, ONE DAWANA
10 THOMAS.

11 THE COURT: YES.

12 MR. COOPER: WE HAD OUR INVESTIGATOR CALL NEW
13 YORK. AND I DON'T KNOW WHO EXACTLY HE SPOKE TO, BUT HE DID
14 CALL QUEENS, NEW YORK, WHO MR. HOWARD TESTIFIED THAT THE
15 MARRIAGE OCCURRED IN THE SUMMER OF '79.

16 AFTER SPEAKING WITH MY INVESTIGATOR, I AM
17 TOLD BY HIM THAT WHOEVER HE SPOKE TO, HE WAS INFORMED THAT THEY
18 WEREN'T ABLE TO FIND ANY RECORD OF THE MARRIAGE BETWEEN SAMUEL
19 HOWARD AND DAWANA THOMAS, OR HOWARD SAMUEL AND DAWANA THOMAS.

20 I HAVE INFORMED MR. HOWARD OF THAT FACT.
21 HE, NEVERTHELESS, INSISTS THAT THERE WAS, IN FACT, A MARRIAGE.

22 HE HAS INFORMED HIS COUNSEL, YOUR
23 HONOR, THAT WHILE IN LAS VEGAS WITH MISS THOMAS THERE WERE
24 SEVERAL WELFARE APPLICATIONS MADE, APPLICATIONS MADE FOR WELFARE
25 ASSISTANCE. AND ON THOSE APPLICATIONS THEY WERE LISTED AS
26 HUSBAND AND WIFE.

27 OUR INVESTIGATOR MADE AN ATTEMPT TO
28 SECURE THOSE DOCUMENTS, BUT WAS INFORMED THAT WE COULD NOT GET
29 THEM WITHOUT A COURT ORDER.

30 CONSIDERING THE GRAVITY OF THIS ISSUE,
31 YOUR HONOR, AND THE IMPORTANCE THAT THIS ISSUE PRESENTS, I WOULD
32 AT THIS TIME ASK THE COURT TO ISSUE AN ORDER THAT WE BE PROVIDED

1 WITH ANY DOCUMENTS IN POSSESSION OF THE NEVADA STATE WELFARE
2 DEPARTMENT THAT MIGHT SHED SOME LIGHT UPON THIS ISSUE.

3 THE COURT: COUNSEL, ISN'T THIS VERY MUCH AND
4 VERY SIMILAR TO THE SITUATION WHERE, AS YOU HAVE IN SOME STATES
5 COMMON LAW MARRIAGES, WHERE THE PARTIES HOLD THEMSELVES OUT IN
6 EFFECT AS HUSBAND AND WIFE BUT THE PARTY IS STILL MARRIED. SO
7 NO MATTER HOW MUCH, OR HOW OFTEN, THEY REPRESENT OR MISREPRESENT
8 TO ANYONE THAT THEY ARE HUSBAND AND WIFE, IT DOESN'T CHANGE THE
9 RELATIONSHIP. THEY CANNOT BY OPERATION OF LAW BE HUSBAND AND
10 WIFE BECAUSE THE WIFE, IN THIS INSTANCE, HAS NOT BEEN DIVORCED.

11 MR. COOPER: I CAN APPRECIATE THAT, YOUR HONOR.

12 I'M NOT FAMILIAR ENOUGH WITH THE LAWS OF
13 NEW YORK TO KNOW WHETHER OR NOT COMMON LAW MARRIAGES ARE
14 RECOGNIZED THERE. IF THAT IS THE CASE, YOUR HONOR, I, YOU KNOW,
15 IT WOULD BE OUR POSITION THAT IF THERE WAS A MARRIAGE, COMMON
16 LAW OR CIVIL, TO TAKE PLACE BETWEEN THE DEFENDANT AND MISS
17 THOMAS, EVEN IF SHE WAS NOT DIVORCED FROM HER PREVIOUS HUSBAND
18 AT THE TIME, OF COURSE, THAT WOULD BE GROUNDS TO ANNUL THE
19 MARRIAGE BETWEEN THE TWO OF THEM.

20 IT WOULD BE OUR POSITION, YOUR HONOR,
21 THAT IF THE DEFENDANT ACTED IN GOOD FAITH, AND HE INFORMED US
22 THAT HE DID, IN BELIEVING THAT A VALID MARRIAGE HAD TAKEN PLACE,
23 THEN THE PRIVILEGE WOULD NONETHELESS APPLY.

24 THE COURT: DO YOU HAVE ANY AUTHORITY ON THAT?

25 MR. COOPER: YOUR HONOR, I HAVE -- I HAVE THE
26 CASE OF PEOPLE VERSUS GODINES, IT'S G-O-D-I-N-E-S. IT IS A
27 1936 CALIFORNIA CASE. IT ESSENTIALLY, YOUR HONOR, I ONLY HAVE
28 ONE COPY. THE CALIFORNIA COURT APPARENTLY, IN 1936, THERE WAS
29 A LAW EXISTING IN CALIFORNIA THAT MADE IT UNLAWFUL FOR A MEMBER
30 OF THE WHITE RACE TO MARRY A MEMBER OF THE PHILIPPINO RACE.
31 THE WIFE, WHO WAS WHITE, SOUGHT TO HAVE THE MARRIAGE ANNULLED;
32 AND BASED UPON THE COMPLAINT THAT WAS FILED IN THE DIVORCE -

1928

1 PROCEEDINGS, AN ANNULMENT PROCEEDINGS, SHE MADE SEVERAL REPRESENTATIONS AND LATER WAS PROSECUTED FOR PERJURY.

2
3 IN THE PERJURY TRIAL, THE WIFE'S LETTERS
4 AND TESTIMONY -- LETTERS SENT BY THE WIFE TO THE HUSBAND AND
5 STATEMENTS MADE DURING THAT RELATIONSHIP, WERE ADMITTED INTO
6 EVIDENCE.

7 THE HUSBAND TESTIFIED AND GAVE HIS
8 EVIDENCE. THE WIFE OBJECTED TO THE ADMISSION OF THAT EVIDENCE
9 AND ACCLAIMED THE PRIVILEGE.

10 THE COURT, IN THAT PARTICULAR CASE,
11 HELD ESSENTIALLY THAT DESPITE THE FACT THAT THE MARRIAGE WAS
12 VOIDABLE AND COULD BE ANNULLED, THAT THE HUSBAND/WIFE PRIVILEGE
13 WOULD, NEVERTHELESS APPLY.

14 THE COURT: I UNDERSTAND. YOU'RE THERE TALKING
15 ABOUT A VOIDANCE SITUATION. IN THE CASE OF A, QUOTE, SECOND
16 MARRIAGE, WHERE THE PARTY IS ALREADY MARRIED. THE PARTY WOULD
17 NEVER HAVE THE RIGHT AND THE POWER IN THE FIRST INSTANCE. SO
18 THERE IS A BASIC DISTINCTION BETWEEN YOUR CASE AND THE CASE WE
19 HAVE WHEN THERE HAS BEEN A PREVIOUS MARRIAGE AND THAT MARRIAGE
20 IS IN EXISTENCE AT THE TIME, BECAUSE YOU CAN'T BE MARRIED TWICE.
21 AND, THEREFORE, THE LAW STATES THE SECOND ONE IS VOID, NOT
22 VOIDABLE, ABSOLUTELY VOID OF ANY LEGAL FORCE AND EFFECT.

23 MR. COOPER: I UNDERSTAND, YOUR HONOR.

24 YOUR HONOR, I THINK THAT THE PURPOSE OF
25 THE PRIVILEGE, TO BEGIN WITH, OF COURSE, IS TO PROTECT THE MARITAL
26 RELATIONSHIP, TO PROVIDE FOR HARMONIOUS RELATIONSHIP, SO
27 THAT A HUSBAND AND WIFE CAN FREELY COMMUNICATE DURING THAT
28 MARRIAGE. IT WOULD SEEM TO ME THAT IT WOULD UNDERMINE THAT PART
29 OF OUR EVIDENCE CODE IF ONE PARTY IN GOOD FAITH ENTERED INTO
30 WHAT THAT PARTY BELIEVED TO BE A VALID MARRIAGE WHEN, IN FACT,
31 IT WASN'T, AND COMMUNICATIONS WERE MADE. IT COULD SEEM THAT IT
32 WOULD UNDERMINE THE ENTIRE -- THE ENTIRE STATUTE IF WE WERE TO.

1929

1 SAY THAT, WELL, BECAUSE ONE PARTY MISREPRESENTED CERTAIN THINGS
2 AND THE MARRIAGE WAS VOIDABLE IN THE FIRST INSTANCE, THEN THE
3 PARTY WHO ACTED IN GOOD FAITH CAN'T RAISE ANY -- CAN'T RAISE THE
4 PRIVILEGE HERE.

5 I WOULD RESPECTFULLY SUBMIT, YOUR
6 HONOR, THAT EVEN ASSUMING THAT THE MARRIAGE WAS VOIDABLE IN THE
7 FIRST INSTANCE, THAT THE PRIVILEGE WOULD, NONETHELESS, APPLY.
8 AND I WOULD URGE THE COURT TO SO RULE.

9 THE COURT: THE STATE?

10 MR. SEATON: WELL, YOUR HONOR, FIRST OF ALL, I
11 SHOULD TELL YOUR HONOR THAT WE COMPLIED WITH YOUR REQUEST
12 YESTERDAY. AND I HAD DAWANA THOMAS CALL, DURING THE EVENING,
13 AN INVEIGATOR BY THE NAME OF BOB TREADWAY, T-R-E-A-D-W-A-Y,
14 WHO WORKS FOR THE PIMA COUNTY DISTRICT ATTORNEY'S OFFICE. AND
15 HE HAS BEEN WORKING WITH OUR OFFICE MAKING SURE THAT DAWANA
16 THOMAS GETS BACK AND FORTH TO LAS VEGAS AND TUSCON ALL RIGHT.
17 HE HAS COPIES OF THE MARRIAGE CERTIFICATE AND THE DIVORCE DECREE
18 AND CALLED ME THIS MORNING AND HE READ THEM TO ME.

19 FIRST OF ALL, AS AN OFFICER OF THE COURT,
20 I CAN TELL YOU THAT THEY SOUNDED LIKE TYPICAL CERTIFICATES AND
21 DIVORCE DECREES. I ASKED HIM TO PUT CERTAIN INFORMATION ON A
22 TELETYPE AND SEND IT TO OUR OFFICE, WHICH HE HAS DONE. I WOULD
23 LIKE THIS ENTERED INTO EVIDENCE, IF I MAY, YOUR HONOR.

24 THE COURT: SAME MAY BE MARKED FOR THE PURPOSES
25 OF THIS HEARING ONLY.

26 MR. SEATON: AND JUST BRIEFLY LET ME READ INTO
27 THE RECORD THE FOLLOWING INFORMATION YOU REQUESTED FOR MARRIAGE
28 LICENSE THAT I PERSONALLY VIEWED:

29 LENON THOMAS, HUSBAND, DAWANA
30 BOYD, WIFE. MARRIED 7-31-74, PIMA
31 COUNTY, ARIZONA. BY TOBY LABETTER.

32 HE TOLD ME THAT HE WAS JUSTICE OF THE

1 PEACE OVER THE TELEPHONE.

2 RECORDED BY SUPERIOR COURT
3 DEPUTY CLERK BARBARA PALMER ON
4 8-5-74. RECORDED AND BOOKED
5 1424, PAGE 993.

6 AS TO THE DIVORCE, THE TELETYPE READS:

7 DIVORCE GRANTED 9-5-80,
8 BY SUPERIOR COURT COMMISSIONER
9 WILLIAM N. SHERYL. LENON THOMAS
10 FILED FOR DIVORCE, WON BY DEFAULT.
11 CUSTODY OF TWO CHILDREN SPLIT.
12 GROUNDS, IRRECONCILABLE DIFFERENCES.
13 DIVORCE FILED UNDER COURT FILE NUMBER
14 D-31850K.

15 SEND CERTIFIED COPIES IF NEEDED.

16 ROBERT TREADWAY, INVESTIGATOR. STEVEN
17 DENELLI, ATTORNEY, PIMA COUNTY, ARIZONA.

18 THE COURT: ALL RIGHT. MAY I SEE IT, PLEASE?

19 MR. SEATON: YES, YOUR HONOR.

20 THE CLERK: DO YOU WANT THAT MARKED AS A COURT'S
21 EXHIBIT?

22 THE COURT: YES.

23 THE CLERK: THAT WILL BE NUMBER 2.

24 THE COURT: COUNSEL, HAVE YOU SEEN THIS?

25 MR. COOPER: NO, YOUR HONOR, I HAVE NOT.

26 MR. SEATON: YOUR HONOR, IN A HEARING SUCH AS
27 THIS, THE BURDEN IS ON THE DEFENDANT TO SHOW THAT A REASON FOR
28 THE MARITAL EXCEPTION EXISTS. THERE HAS BEEN ABSOLUTELY NO
29 PROOF IN THIS COURTROOM THAT THE DEFENDANT AND DAWANA THOMAS
30 EVER ENTERED INTO A MARITAL RELATIONSHIP, WITH THE EXCEPTION OF
31 THE TESIMONY FROM THE DEFENDANT HIMSELF. AND IT WAS THEN BROUGHT
32 OUT THAT HE COULD NOT REMEMBER THE NAME OF THE INDIVIDUAL WHO

1930

1 PERFORMED THE MARRIAGE CEREMONY, JUST IT WAS A GUY NAMED MICHAEL,
2 SOME SORT OF A COUNTY CLERK. IT WAS NOT PERFORMED IN A COUNTY
3 COURTHOUSE OR A CHURCH, JUST AN AVERAGE BUILDING ON NEW YORK
4 BOULEVARD. AND THEN, THROUGH THE DEFENSE'S OWN INVESTIGATIONAL
5 EFFORTS THEMSELVES, THEY DISCOVERED THIS MORNING THAT THERE IS
6 NO RECORD WHATSOEVER IN NEW YORK OF A VALID MARRIAGE.

7 'I THINK WE CAN CONCLUDE FROM THAT THAT NO
8 ACTUAL CIVIL OR RELIGIOUS CEREMONY TOOK PLACE IN THE CITY OF
9 NEW YORK, AND THAT THE ONLY QUESTION WOULD REMAIN THEN: IS
10 THERE SOME SORT OF A COMMON LAW MARRIAGE, AND THEN IF THERE IS
11 MUST WE RECOGNIZE THAT?

12 IN ORDER FOR THERE TO BE A COMMON LAW
13 MARRIAGE, I THINK BOTH PARTIES WOULD HAVE TO BE CONSENSUAL TO
14 SUCH A RELATIONSHIP.

15 DAWANA THOMAS, ON THE STAND, HAS INDICATED THAT SHE HAD NO DESIRE TO ENTER INTO THAT SORT OF A RELATIONSHIP, AND KNOWING NOTHING ABOUT THE LAW, SHE EVEN STATED
16 THAT SHE WAS MARRIED AT THE TIME AND COULD NOT HAVE ENTERED INTO
17 SUCH A RELATIONSHIP. AND OBVIOUSLY THE PROOF OF THAT MARRIAGE
18 HAS BEEN SHOWN RATHER CLEARLY IN THE PROCEEDINGS YESTERDAY
19 AFTERNOON AND TODAY.

22 WITH THOSE FACTORS IN MIND, IT WOULD
23 APPEAR THAT AT THE VERY BEST IF WE LOOK AT IT FROM THE BEST
24 ANGLE OF THE DEFENDANT, WHAT WE HAD WAS HIS WISHFUL THINKING
25 THAT A COMMON LAW RELATIONSHIP MAY BE BEGINNING, AND CERTAINLY
26 THAT NO MARRIAGE WAS GOING TO OCCUR.

27 DAWANA THOMAS SAID THAT HE HAD ASKED
28 HER TO ENTER INTO SUCH A RELATIONSHIP, AND THAT SHE HAD REFUSED
29 FOR THE GROUNDS THAT WE HAVE RECITED BEFORE.

30 CERTAINLY THE OCCURRENCES DOWN IN SAN
31 BERNARDINO, IN THE TRIAL THERE, MUST HAVE SOME BEARING HERE.
32 WHILE THE WAIVER OF THE DEFENDANT IN THAT CASE WOULD CERTAINLY

1 NOT BE A WAIVER IN THIS CASE, IT IS CERTAINLY AN INDICATOR OF
2 WHETHER OR NOT SUCH A MARITAL PRIVILEGE EXISTED AT THAT TIME,
3 AND OF COURSE IF IT EXISTED NOW IT EXISTED IN MAY OF '81, DURING
4 THE TRIAL IN SAN BERNARDINO. AND THE DEFENDANT DID NOT ASK FOR
5 IT THEN. IT WAS NEVER INVOKED. NO QUESTIONS WERE EVER ASKED
6 OF DAWANA THOMAS DURING THAT HEARING.

7 FOR THOSE REASONS, YOUR HONOR, THE
8 STATE FEELS THAT THIS MOTION IS BEING MADE PURELY AT THE LAST
9 MOMENT FOR THE PURPOSES OF TRYING TO DO SOME LAST STITCH EFFORT
10 TO HAVE DAWANA THOMAS NOT TESTIFY, AND THEY THINK THAT THERE IS
11 ABSOLUTELY NO REASON TO PRECLUDE HER TESTIMONY FROM BEING HEARD
12 BY THE JURY.

13 WE WOULD SUBMIT IT ON THAT.

14 MR. COOPER: MAY I BE HEARD, YOUR HONOR?

15 THE COURT: YOU MAY.

16 MR. COOPER: YOUR HONOR, FIRST OF ALL, I THINK
17 COUNSEL IS CLEARLY WRONG IN HIS STATEMENT THAT WE PRESENTED NO
18 PROOF OF THE MARRIAGE BETWEEN THE DEFENDANT AND DAWANA THOMAS.

19 IF YOUR HONOR MAY RECALL, YESTERDAY, WHEN
20 MISS THOMAS WAS TESTIFYING, SHE WAS SHOWN TWO LETTERS THAT SHE
21 ADMITTED WRITING TO THE DEFENDANT. SHE USED THE NAME DAWANA
22 HOWARD IN BOTH THOSE LETTERS. AND IN ONE OF THE LETTERS, IT
23 REFERRED TO IN HER SALUTATION SHE STATED "WITH LOVE, YOUR WIFE,
24 DAWANA THOMAS."

25 SO I THINK THERE HAS BEEN PROOF FROM
26 MRS. THOMAS' OWN MOUTH, AS A MATTER OF FACT, OF THE MARRIAGE
27 THAT THE DEFENDANT CLAIMS HERE.

28 COUNSEL SEEMS TO THINK THAT BECAUSE
29 MR. HOWARD WAS UNABLE TO REMEMBER THE NAME OF THE CLERK, COUNTY
30 CLERK, THE LAST NAME OF THE PERSON WHO PERFORMED THE MARRIAGE,
31 THAT THIS SHOULD HAVE SOME SIGNIFICANCE HERE. I WOULD SUBMIT
32 THAT THERE ARE FEW PEOPLE WHO CAN REMEMBER THE LAST NAMES OF

1933

1 THE PEOPLE WHO PERFORMED THEIR MARRIAGES.

2 ADDITIONALLY, YOUR HONOR, IT WOULD BE
3 TO THE INTRODUCTION INTO EVIDENCE OF THIS TELETYPE THE STATE
4 HAS RECEIVED, I DON'T THINK IT'S PROPER EVIDENCE. I THINK IT'S
5 HEARSAY, AND FOR THAT REASON IT'S INADMISSIBLE.

6 AGAIN, YOUR HONOR, I WOULD, GIVEN THE
7 GRAVE IMPORTANCE OF THIS PARTICULAR ISSUE, THAT I WOULD AGAIN
8 MOVE THE COURT FOR AN ORDER DIRECTING THE DEPARTMENT OF WELFARE
9 TO RELEASE TO MR. HOWARD'S COUNSEL THEIR RECORDS RELATING TO
10 APPLICATIONS FILLED OUT BY --

11 THE COURT: THE STATE MAY EVEN STIPULATE TO THAT,
12 COUNSEL. I DON'T KNOW IF THEY WOULD, BUT --

13 MR. COOPER: I THINK IT WOULD CERTAINLY SHED SOME
14 LIGHT ON THE SUBJECT, YOUR HONOR.

15 (WHEREUPON, MR. FRANZEN ENTERS
16 THE COURTROOM.)

17 MR. COOPER: I DON'T KNOW PRECISELY WHAT THE
18 APPLICATION WOULD SHOW, BUT THERE COULD WELL BE AN ADMISSION BY
19 MISS THOMAS IN THAT APPLICATION THAT SHE'S THE WIFE OF THE

20 DEFENDANT.

21 THE COURT: ONCE AGAIN, WE'RE RIGHT DOWN TO THE
22 SAME QUESTION AND REPRESENTATION BY THE PARTY WITHOUT ANY VERI-
23 FICATION, AND THAT'S WHAT WE HAVE HERE.

24 COUNSEL, I'M GOING TO OVERRULE YOUR OBJEC-
25 TION FOR THE PURPOSES OF THIS MOTION AND ADMIT THE WIRE.

26 FURTHER, I REQUIRE THE STATE TO, UPON
27 RECEIPT OF THE CERTIFIED COPIES OF THE DECREE OF DIVORCE AND THE
28 MARRIAGE CERTIFICATE, THE SAME ALSO BE LOGGED WITH THE CLERK.
29 I WOULD ASSUME THAT THOSE ARE ON THEIR WAY FROM ARIZONA, ARE
30 THEY NOT, COUNSEL?

31 MR. SEATON: WE HAVE NOT ASKED FOR THEM, BUT WE
32 WILL AT YOUR REQUEST, YOUR HONOR.

1934

1 THE COURT: DO YOU HAVE ANY OBJECTION TO HIS
2 REQUEST THAT THEY BE ALLOWED TO TAKE A LOOK AT THOSE RECORDS?

3 MR. SEATON: WELL, YOUR HONOR, I DO HAVE A
4 COMMENT THAT -- I DO HAVE AN OBJECTION TO IT. I THINK IT IS
5 WHOLLY IRRELEVANT FOR THIS REASON: THE DEFENDANT STATED THAT
6 THE MARRIAGE TOOK PLACE IN SEPTEMBER, IN THE SUMMER MONTHS OF
7 1979. NOW, WE KNOW ON ONE HAND THAT DAWANA THOMAS WAS MARRIED
8 AT THAT TIME. WE ALSO KNOW, BY HER TESTIMONY, THAT THEY HAD
9 NOT MET UNTIL NOVEMBER OF 1979, SOME FIVE OR SIX MONTHS, OR FOUR
10 MONTHS LATER, WHATEVER IT MIGHT BE. AND SHE DIDN'T GO TO NEW
11 YORK WITH HIM UNTIL FEBRUARY OF 1980. THEREFORE, IT IS IMPOSSI-
12 BLE THAT ANY KIND OF A CEREMONY COULD HAVE TAKEN PLACE.

13 AND THE HOLDING OUT FOR WELFARE PURPOSES,
14 OR WHATEVER IT MIGHT BE, IF THAT IN FACT DID OCCUR, WOULD BE
15 IRRELEVANT TO THIS BECAUSE IT IS HER ATTITUDE IN WHETHER OR NOT
16 A COMMON LAW MARRIAGE IS BEING CREATED THAT WOULD CONTROL.
17 SHE'S OBVIOUSLY STATED, AND WHEN CONTINUED TO DO SO, THAT THAT
18 JUST WASN'T THE CASE.

19 IN LIGHT OF HER HAVING SIGNED HER NAME,
20 WHICH IS PROBABLY SOME SORT OF HIGH SCHOOL FANTASY THAT WE ALL
21 GO THROUGH WITH THOSE WE ARE INFATUATED WITH, THE WELFARE
22 RECORDS ON THIS PARTICULAR ISSUE I THINK WOULD HAVE NO BEARING
23 AND WOULD BE WHOLLY IRRELEVANT.

24 MR. COOPER: ALL RIGHT.

25 THE COURT: COUNSEL, SUBMIT IT?

26 MR. SEATON: YES, YOUR HONOR.

27 MR. COOPER: IF YOUR HONOR PLEASE, I JUST MIGHT
28 MAKE ONE COMMENT.

29 IT SEEMS THAT MR. SEATON IS ASKING THE
30 COURT TO ACCEPT MRS. THOMAS' TESTIMONY AT FACE VALUE. FIRST,
31 SHE TESTIFIES THAT SHE WASN'T UNTIL NOVEMBER, 1979.

32 THE COURT: WELL, YOU'VE GOT TO ACCEPT SOMEBODY'S

1935

1 TESTIMONY.

2 MR. COOPER: I UNDERSTAND, YOUR HONOR.

3 BUT YOUR HONOR MIGHT RECALL THAT IT WAS
4 POINTED OUT THAT SHE TOLD DETECTIVE LEAVITT THAT SHE HAD MET
5 THE DEFENDANT APPROXIMATELY A YEAR PRIOR TO MARCH OF 1980,
6 CERTAINLY BEFORE NOVEMBER OF '79, AS SHE'S TESTIFIED.

7 AND TO SUGGEST THAT THE RECORDS OF THE
8 DEPARTMENT OF WELFARE WOULD HAVE -- WOULD HAVE -- WOULD SHED NO
9 LIGHT ON THIS ISSUE I THINK IS LUDICROUS.

10 AS I INDICATED, I DON'T KNOW WHAT IT
11 SHOWS, BUT IT COULD WELL CONTAIN AN ADMISSION ON HER PART THAT
12 THEY WERE, IN FACT, MARRIED, INVITING THE DATES OF THE MARRIAGE.

13 THE COURT: ALL RIGHT. THE EVIDENCE IS IN AND
14 I BELIEVE ARGUED.

15 I THINK THE FIRST AREA THAT WE HAVE TO
16 LOOK AT IS THE ISSUE OF COMMON LAW MARRIAGE IN NEVADA. AS BOTH
17 COUNSEL ARE AWARE, WE HAVE NOT RECOGNIZED COMMON LAW MARRIAGES
18 IN THIS STATE SINCE 1945. SO FOR ALL INTENTS AND PURPOSES,
19 SINCE 1979 TO PRESENT DATE THERE HAS NOT BEEN A STATUTE WHICH
20 WOULD AUTHORIZE THIS COURT TO RECOGNIZE A COMMON LAW MARRIAGE,
21 IF ONE EXISTED.

22 THE OTHER ISSUE IS WHETHER OR NOT THE
23 ACTUAL MARRIAGE EXISTED BETWEEN THE PARTIES. WE HAVE, BASED
24 UPON REPRESENTATIONS MADE BY THE PUBLIC DEFENDER/INVESTIGATOR
25 TO HIM, THROUGH A CLERK OF THE COURT IN QUEENS, NEW YORK, THAT
26 THEY HAVE NO RECORD OF A MARRIAGE BEING PERFORMED BY MR. HOWARD
27 WITH DAWANA THOMAS DURING 1979, EITHER UNDER THE NAME OF SAMUEL
28 HOWARD OR HOWARD SAMUEL. THE EVIDENCE OF THE SUPPOSED MARRIAGE
29 RELATIONSHIP IS BASED ENTIRELY UPON THE DEFENDANT'S OWN TESTI-
30 MONY AND SOME STATEMENTS MADE BY DAWANA HOWARD -- OR DAWANA THOMAS
31 AS THE RECORD REFLECTS.

32 THE ISSUE OF WHETHER OR NOT A MARRIAGE

1 DOES OR DOES NOT EXIST RAISES A NUMBER OF LEGAL ISSUES THAT
2 FIRST OF ALL HAVE TO BE ADDRESSED. AND THE FIRST ISSUE IS THAT
3 THE BURDEN OF ESTABLISHING THE PRIVILEGE IS UPON THE PARTY WHO
4 ASSERTS THE PRIVILEGE. IN THIS CASE, THE BURDEN IS UPON THE
5 MOVANT, MR. HOWARD, TO SHOW THAT HE WAS MARRIED.

6 IN THE CASE OF DAN SOLA VERSUS DURETA,
7 285 P2ND 97, THIS STATEMENT APPEARS:

8 A PERSON ASSERTING A STATUTORY
9 PRIVILEGE AS TO A COMMUNICATION HAS
10 THE BURDEN OF PROVING THE ABILITY OF
11 THE STATUTE THROUGH THE COMMUNICATION.
12 A PERSON WHO SEEKS TO INVOKE A STATU-
13 TORY PRIVILEGE AS TO A CONFIDENTIAL
14 COMMUNICATION HAS THE BURDEN OF
15 PROOF TO SHOW BOTH THE PERSON ASSERT-
16 ING THE PRIVILEGE AND THE NATURE OF
17 THE TESTIMONY ARE WITHIN THE AMBIT OF
18 THE STATUTE, ACCORDING TO THE PRIVI-
19 LEGE ASSERTED.

20 THE PRIVILEGE RELATING TO TESTIMONY OF
21 THIS CONFIDENTIAL COMMUNICATION BETWEEN HUSBAND AND WIFE IS LIKE
22 THAT STATED IN OUR SUBDIVISIONS OF THIS -- OF THE STATUTE
23 RELATING TO ATTORNEY/CLIENT, IF IT IS CLIENT, AND AS A CLERGYMAN
24 AND THE ONE MAKING THE ASSERTION.

25 WHAT'S THE EVIDENCE HERE? THE EVIDENCE
26 ESTABLISHES HERE, ACCORDING TO THE TESTIMONY OF MR. HOWARD, THAT
27 HE MARRIED DAWANA THOMAS IN 1979, DURING THE SUMMER OF THAT YEAR.
28 AND IT IS UPON THAT ASSERTION THAT HE CLAIMS THAT THEY ARE
29 MARRIED. WHAT EVIDENCE DO WE HAVE RAISED AGAINST THAT PARTICU-
30 LAR ASSERTION?

31 WELL, FIRST OF ALL, WE HAVE DAWANA
32 THOMAS, WHO SAYS THAT SHE DID NOT EVEN MEET THE DEFENDANT UNTIL--

1937

1 NOVEMBER OF 1979. THIS WAS SOMETIME AFTER THE SUMMER WHEN THEY
2 WERE ALLEGEDLY MARRIED. SHE NEVER WENT TO NEW YORK UNTIL
3 FEBRUARY OF 1980. AND THEN SHE WAS MARRIED AT THE TIME. IN
4 FACT, WAS MARRIED FROM 1979 THROUGH SEPTEMBER OF 1980.

5 FURTHER, THE REPRESENTATION WAS MADE
6 THAT WHAT HAPPENED IN QUEENS, THERE SEEMS TO BE NO VERIFICATION
7 OF THAT.

8 IS THERE ANY VERIFICATION OF DAWANA
9 THOMAS' TESTIMONY? YES. WE HAVE THE STATEMENT, BOTH OF THE
10 CLERK OF THE DISTRICT ATTORNEY, INVESTIGATOR, NOW THROUGH A
11 WIRETAP WHICH IS IN EVIDENCE, THAT SHE WAS MARRIED DURING THE
12 PERIOD OF TIME THAT THE DIVORCE -- THAT THE ALLEGED MARRIAGE IN
13 NEW YORK TOOK PLACE. THIS HAS BEEN VERIFIED AND IS IN THE COURT
14 RECORD AND WILL BE SUPPLEMENTED FURTHER BY THE MARRIAGE CERTI-
15 FICATE AND THE DECREE OF DIVORCE.

16 IT THEREFORE APPEARS THAT, ONE, THERE
17 WAS NO COMMON LAW MARRIAGE BETWEEN MR. HOWARD AND MISS THOMAS;
18 AND, TWO, THAT THERE WAS NO ACTUAL MARRIAGE BETWEEN MR. HOWARD
19 AND MISS THOMAS, AND ASSUMING REALLY FOR THE SAKE OF ARGUMENT
20 THAT SOME CEREMONY HAD BEEN PERFORMED, THAT CEREMONY WOULD BE
21 ABSOLUTELY VOID AND THE RELATIONSHIP COULD NOT HAVE EXISTED.

22 I INVITE THE CASE WHICH IS SIMILAR TO
23 THE CASE AT HAND WHICH THERE WERE SOME REPRESENTATIONS MADE BY
24 THE PARTIES THAT THEY WERE HUSBAND AND WIFE. THE CASE IS THE
25 CASE OF STATE VERSUS ALFORD. IT'S A NORTH CAROLINA CASE, CITED
26 AT 259 SOUTH 82ND 242. THE NORTH CAROLINA COURT HELD THAT A
27 DEFENDANT HAD FAILED TO ESTABLISH THAT THE WOMAN WITH WHOM HE
28 LIVED AND WHO BORE HIS CHILD WAS HIS COMMON LAW WIFE PURSUANT
29 TO THE LAWS OF PENNSYLVANIA. DESPITE THE FACT THAT THEY HAVE
30 LIVED TOGETHER FROM 1968 AND HELD THEMSELVES OUT AS HUSBAND AND
31 WIFE, AND SINCE THE WOMAN TESTIFIED UNEQUIVOCALLY THAT SHE DID
32 NOT MARRY DEFENDANT BECAUSE SHE WAS NOT DIVORCED FROM ANOTHER

1 MAN, THEREFORE, THE STATE'S STATUTE PROVIDING THAT THE SPOUSE
2 OF THE CRIMINAL DEFENDANT IS NEITHER COMPETENT, NOR COMPELLABLE
3 TO GIVE EVIDENCE AGAINST THE OTHER SPOUSE, DID NOT PRECLUDE THE
4 WOMAN FROM TESTIFYING AGAINST THE DEFENDANT.

5 I THINK THAT'S ABOUT AS CLOSE AS YOU
6 CAN GET TO THE FACTS. THE ISSUE HAS BEEN ADDRESSED BY OUR
7 JURISDICTION, THE VERY SAME SITUATION WE HAVE HERE. THE COURTS
8 IN THOSE JURISDICTIONS HAVE FOUND AGAINST THE DEFENDANT. AND
9 I FIND NO CREDIBLE OR BELIEVABLE TESTIMONY IN THIS RECORD TO
10 INDICATE THAT THE RELATIONSHIP OF HUSBAND AND WIFE EXISTS OR
11 EXISTED. THEREFORE, SHE MAY TESTIFY.

12 CALL HER, PLEASE.

13 MR. COOPER: EXCUSE ME.

14 THE COURT: YES?

15 MR. COOPER: YOUR HONOR, I WOULD ASSUME THEN,
16 BASED UPON THE COURT'S RULING, THAT OUR MOTION FOR AN ORDER TO
17 GET THE WELFARE RECORDS IS BEING DENIED THEN?

18 THE COURT: I WILL DENY IT ONLY ON THIS GROUND,
19 COUNSEL: ~~THAT IT DOES NOT APPEAR TO THIS COURT THAT THE DIS-~~
20 COVERABLE EVIDENCE THAT YOU WOULD FIND FROM THOSE RECORDS WOULD
21 ESTABLISH OTHER THAN THEY MAY BE HOLDING THEMSELVES OUT AS
22 HUSBAND AND WIFE. VERY SIMILAR TO HER REPRESENTATION THAT SHE
23 WAS, QUOTE, HIS WIFE, AND IN HER WORDS, "PLAY WIFE" THAT THEY
24 WERE HUSBAND AND WIFE, BUT IT WOULD NOT CHANGE THE BASIC FACTS
25 IN THIS CASE, AND THAT IS THE BASIC COURT FINDS THAT SHE WAS
26 MARRIED AT THE TIME OF THIS ALLEGED CEREMONY AND WAS NEVER HIS
27 WIFE, NOR EVER INTENDED TO BE HIS WIFE. YOUR RIGHT TO YOUR
28 MOTION IS DENIED.

29 MR. COOPER: YOUR HONOR, I DON'T KNOW IF OUR
30 EXHIBITS, THE TWO LETTERS THAT WERE MARKED YESTERDAY, WERE
31 ADMITTED.

32 THE COURT: THEY'RE ADMITTED.

1939

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

MR. COOPER: THEY ARE. THANK YOU.

YOUR HONOR, THERE IS ONE ADDITIONAL MATTER,
AND I WOULD ASK LEAVE OF THE COURT. YOUR HONOR IS AWARE, OF
COURSE, THAT WE FILED, PRIOR TO TRIAL, A MOTION TO SUPPRESS.
BASED ON EVIDENCE THAT'S BEEN PRESENTED DURING THE COURSE OF
THE TRIAL, I HAVE HAD OCCASION TO PREPARE A SUPPLEMENTAL TO OUR
MOTION TO SUPPRESS, AND I WOULD ASK LEAVE OF THE COURT TO FILE
THIS IN OPEN COURT AT THIS TIME.

THE COURT: YOU MAY.

MR. COOPER: I HAVE PROVIDED THE STATE WITH A
COPY.

THE COURT: WHEN DID YOU GIVE IT TO THE STATE,
COUNSEL?

MR. COOPER: JUST THIS MORNING.

THE COURT: YOU MAY FILE IT. LET ME SEE IT.

HAS THE STATE HAD AN OPPORTUNITY TO EXAMINE
THIS?

MR. HARMON: WE HAVE READ IT, YOUR HONOR.

THE COURT: AND RESPOND -- ARE YOU READY TO
RESPOND TO IT AT THIS TIME?

MR. HARMON: WE HAVE SEVERAL OBJECTIONS, YOUR
HONOR.

IT'S TRUE THAT A MOTION TO SUPPRESS WAS
FILED PRIOR TO TRIAL, BUT TO MY RECOLLECTION THAT ADDRESSED
ITSELF SOLELY TO STATEMENTS MADE BY THE DEFENDANT.

IF WE HAVEN'T REPRESENTED THIS BEFORE,
I WILL REPRESENT ON THE RECORD THAT IT IS NOT OUR INTENTION,
DURING OUR CASE IN CHIEF, TO INTRODUCE ANY, ANY FORMAL STATE-
MENTS WHICH WERE THE PRODUCT OF POLICE INTERROGATION, EITHER BY
THE DETECTIVE MONROE OF THE DOWNEY POLICE DEPARTMENT OR DETEC-
TIVE LEAVITT OR HATCH OF THE LAS VEGAS METROPOLITAN POLICE
DEPARTMENT. SO I THINK IT'S PREMATURE FOR THE COURT TO HAVE TO

1940

1 RULE ON THAT. I WOULD SUGGEST THAT IF IN THE REBUTTAL CASE WE
2 SHOULD ELECT TO PRESENT THAT TYPE OF EVIDENCE, THEN AT THAT
3 POINT WE COULD LITIGATE THE ISSUE.

4 NOW, IN REGARDS TO THE VERY BELATED
5 MOTION NOW TO SUPPRESS OTHER ITEMS, VERY FRANKLY THAT'S NOT
6 TIMELY, YOUR HONOR. THE DEFENSE HAS HAD REPORTS OUT OF THE
7 DOWNEY POLICE DEPARTMENT SINCE THE INCEPTION OF THIS CASE.
8 THEY UNDERSTOOD WHAT THE CIRCUMSTANCES WERE OF THE TEMPORARY
9 DETENTION OF THE DEFENDANT SAM HOWARD, IN THE STONEWOOD SHOPPING
10 CENTER. IT DOESN'T COME AS A SURPRISE TO THEM. THEY'RE CLEARLY
11 IN VIOLATION OF 174.125. THIS MOTION WAS NOT FILED 15 DAYS
12 BEFORE THE TIME OF TRIAL. THEY'RE IN VIOLATION OF THE DISTRICT
13 COURT RULES. THERE IS NO SUPPORTING AFFIDAVIT TO INDICATE WHY
14 IT IS UNTIMELY.

15 WE REALIZE, YOUR HONOR, WHERE A CON-
16 STITUTIONAL ISSUE IS RAISED THAT IT IS PRESERVED FOR APPELLATE
17 PURPOSES. ON THAT POINT, WE ARE PERFECTLY HAPPY TO RELY UPON
18 THE RECORD WE HAVE, BECAUSE WE THINK THAT THE RECORD CLEARLY
19 SHOWS, FROM THE TESTIMONY OF OFFICER SLATER AND ALSO FROM THE
20 TESTIMONY OF OFFICER CONNELLY, THAT THERE WAS A REPORT THAT MR.
21 HOWARD HAD BEEN SEEN CARRYING A CONCEALED WEAPON. MR. SLATER
22 PERSONALLY OBSERVED THAT. HE HAS STATED THAT HIS SECURITY
23 OFFICER, MANNY VELASQUEZ, ALSO OBSERVED IT. THEY REPORTED THAT
24 INFORMATION TO THE DOWNEY POLICE DEPARTMENT. AND IF WE HAD NO
25 OTHER INFORMATION THAN THAT, THERE WAS CERTAINLY PROBABLE CAUSE
26 TO ARREST THE DEFENDANT.

27 IN ANY EVENT, HE WAS TEMPORARILY DE-
28 TAINED FOR PERHAPS FIVE MINUTES, ACCORDING TO THE RECORD, AND
29 THEN IN AN AREA WHERE AN INDEPENDENT WITNESS, OFFICER CAMPOS,
30 HAD OBSERVED HIM TO BE STROLLING ABOUT THE AISLES IN A THRIFTY
31 DRUG STORE AND TRYING THEM, OR OTHER MERCHANDISE, FROM ONE HAND
32 TO THE OTHER, AND THEN PLACING THEM BACK ON THE SHELVES. A .357

1941

1 CALIBER REVOLVER WAS FOUND. THERE WAS AMPLE BASIS, YOUR HONOR,
2 TO JUSTIFY HIS TEMPORARY DETENTION AND HIS SUBSEQUENT ARREST.

3 WE HAVE ESTABLISHED PROBABLE CAUSE EVEN
4 ON THE MERITS. THE MOTION SHOULD BE DENIED, BUT IT SHOULD ALSO
5 BE DENIED BECAUSE IT'S CLEARLY UNTIMELY.

6 THE COURT: COUNSEL?

7 MR. COOPER: YOUR HONOR, OF COURSE OUR MOTION
8 SEEKS TO SUPPRESS STATEMENTS TAKEN FROM THE DEFENDANT BY POLICE
9 OFFICERS. I HAD ANTICIPATED THAT THE STATE WOULD BE PUTTING ON
10 THOSE OFFICERS TO TESTIFY REGARDING STATEMENTS THE DEFENDANT
11 MADE IN THEIR CASE IN CHIEF.

12 COUNSEL, I -- I MEAN IF IT'S THEIR INTEN-
13 TION TO PRESENT THIS EVIDENCE IN REBUTTAL, THEN I THINK PERHAPS
14 IT SHOULD BE ADDRESSED AT THAT TIME.

15 MR. HARMON SUGGESTS, YOUR HONOR, THAT
16 WE KNEW OF GROUNDS FOR THIS MOTION PRIOR TO TODAY. IF YOUR
17 HONOR RECALLS, THE OFFICERS TESTIFIED THAT MR. HOWARD WAS
18 DETAINED OUTSIDE THE THRIFTY STORE. HE WAS QUESTIONED FOR A
19 BRIEF PERIOD OF TIME, WEAPONS WERE -- A WEAPON WAS LATER FOUND
20 INSIDE THE STORE.

21 NOW, IT'S OUR POSITION THAT THE ARREST-
22 ING OFFICER, IT'S OUR POSITION, YOUR HONOR, THAT THE DEFENDANT
23 WAS ARRESTED FOR A MISDEMEANOR OFFENSE. AS OFFICER CONNELLY
24 TESTIFIED, IT'S OUR POSITION THAT IN THE STATE OF CALIFORNIA,
25 AND IN THE STATE OF NEVADA, A POLICE OFFICER CAN ONLY ARREST FOR
26 A MISDEMEANOR THAT'S COMMITTED IN HIS PRESENCE. IF THE MISDE-
27 MEANOR IS COMMITTED OUTSIDE OF THE PRESENCE OF THE OFFICER, HE
28 HAS NO GROUNDS TO ARREST IN ANY INSTANCE.

29 IF YOUR HONOR RECALLS, OFFICER CONNELLY
30 WAS ASKED THE QUESTION: DID OFFICER SLATER WHO PHONED THE
31 POLICE AND TOLD THEM THAT THERE WAS A GUY THERE WITH A GUN IN
32 HIS WAISTBAND, DID HE IN ANYWAY PARTICIPATE IN THE ARREST OF THE

1 DEFENDANT? OFFICER CONNELLY TESTIFIED NO. OFFICER SLATER DID
2 NOT PARTICIPATE IN THE ARREST OF THE DEFENDANT.

3 WE HAD NO WAY OF KNOWING, PRIOR TO
4 THESE PEOPLE COMING INTO COURT AND TESTIFYING, WHETHER OFFICER
5 SLATER PARTICIPATED IN THAT ARREST OR NOT. IF HE DID, IN FACT,
6 PARTICIPATE IN THE ARREST THEN OF COURSE WE WOULDN'T HAVE
7 GROUNDS FOR OUR MOTION HERE, AS STATED IN OUR POINTS AND AUTHOR-
8 ITIES.

9 THE COURT: WHAT DO YOU MEAN "PARTICIPATE"?

10 MR. COOPER: EXCUSE ME, YOUR HONOR?

11 THE COURT: WHAT DO YOU MEAN "PARTICIPATE"?

12 MR. COOPER: I THINK THAT IN AN INSTANCE WHERE
13 AN INDIVIDUAL IS ARRESTED FOR A MISDEMEANOR OFFENSE THAT'S
14 COMMITTED OUTSIDE THE PRESENCE OF THE POLICE OFFICER, THE PERSON
15 IN WHOSE PRESENCE THAT OFFENSE WAS COMMITTED IS THE INDIVIDUAL
16 WHO SHOULD MAKE THE ARREST.

17 I, IN RESEARCHING THIS ISSUE, YOUR HONOR,
18 I DID COME ACROSS SOME INDICATIONS, SOME CALCULATIONS, DEALING
19 WITH THAT SUBJECT. IN ONE PARTICULAR CASE, A WOMAN HAD SEEN A

20 PROWLER OUT AND ABOUT. THE POLICE WERE CALLED. THE DEFENDANT
21 IN THAT CASE WAS ARRESTED FOR A MISDEMEANOR OFFENSE. THE POLICE
22 OFFICER ACTUALLY MADE THE ARREST. BUT IN THAT PARTICULAR CASE
23 THE WOMAN WAS DRESSED IN HER NIGHT CLOTHES. SHE WAS STANDING
24 NEARBY. SHE TOLD THE POLICE OFFICER "ARREST THAT MAN BECAUSE
25 I'M IN MY NIGHT CLOTHES NOW." THE COURT HELD THAT PARTICULAR
26 INSTANCE THAT WAS A VALID ARREST, EVEN THOUGH THE PERSON MAKING
27 THE CALL AND WHOSE PRESENCE THE OFFENSE WAS COMMITTED, DIDN'T
28 ACTUALLY INFORM THE POLICE I WAS ARRESTING YOU FOR THIS MISDE-
29 MEANOR OFFENSE. GIVEN THE CIRCUMSTANCES IN THAT CASE THAT THAT
30 WOULD CONSTITUTE A VALID ARREST.

31 I'M SAYING IN THIS PARTICULAR INSTANCE
32 THAT WE DON'T HAVE ANYTHING CLOSE TO THAT. THERE WAS NO TESTI-

1 MONY FROM THE OFFICER THAT MR. SLATER, IN WHOSE PRESENCE THE
2 MISDEMEANOR OFFENSE WAS COMMITTED, HAD NOTHING TO DO WITH
3 ARRESTING HIM. HE POINTED THE DEFENDANT OUT TO THE POLICE
4 OFFICER. HE DIDN'T COME UP TO THE POLICE OFFICER AND SAY "THIS
5 IS THE MAN I SAW WITH THE GUN. I WANT YOU TO ARREST THIS MAN,"
6 OR ANYTHING SIMILAR.

7 I THINK IT'S CLEAR THAT THERE'S ABUN-
8 DANT CASE LAW IN THE STATE OF CALIFORNIA THAT IN A MISDEMEANOR
9 SITUATION THAT ONLY IF THE OFFENSE IS COMMITTED IN THE PRESENCE
10 OF THE ARRESTING OFFICER CAN THAT OFFICER MAKE THE ARREST. AND
11 IT'S OUR POSITION THAT BASED ON THE UNLAWFUL ARREST THAT ANY
12 EVIDENCE THAT'S TAINTED THEREBY IS SUPPRESSABLE. AND THAT'S
13 OUR POSITION, YOUR HONOR.

14 THE COURT: LET ME UNDERSTAND YOU.

15 HERE WE HAVE A POLICE OFFICER, A PEACE
16 OFFICER IN THE STATE OF CALIFORNIA, WHO OBSERVED THE DEFENDANT
17 COMMITTING AN OFFENSE. THIS PEACE OFFICER THEN CALLS OTHER
18 PEACE OFFICERS, WHO RESPOND TO HIS CALL. THE FIRST PEACE
19 OFFICER IS ATTEMPTING TO CONTINUE TO LOCATE THE DEFENDANT AFTER

20 HE SAW HIM COMMIT THE OFFENSE THE FIRST TIME. THE OTHER
21 OFFICERS, BASED UPON THE DESCRIPTION OF THE DEFENDANT, ACTUALLY
22 MAKE THE ARREST. THERE IS NO INTERVENTION OF ANY OTHER PERSONS.
23 IT'S POLICE OFFICER TO POLICE OFFICER TO DISPATCHER, WHO DIS-
24 PATCHES THE OFFICERS TO THE SCENE, WHO IN TURN, ARREST THE
25 DEFENDANT.

26 YOU ARE ARGUING THAT THE ARREST BY
27 FELLOW OFFICERS IS ILLEGAL BECAUSE THE FIRST OFFICER DIDN'T MAKE
28 THE ARREST; IS THAT YOUR ARGUMENT?

29 MR. COOPER: THAT'S ESSENTIALLY OUR POSITION,
30 YOUR HONOR, THAT THE LAW IN THE STATE OF CALIFORNIA IS THAT ONLY
31 IF THE OFFENSE IS COMMITTED IN THE PRESENCE OF THE ARRESTING
32 OFFICER CAN THAT OFFICER MAKE THE ARREST. I DON'T THINK IT -

1944

HELPS THE SITUATION IF ANOTHER POLICE OFFICER, IN WHOSE PRESENCE THE OFFENSE WAS COMMITTED, IS THERE IF HE DOESN'T MAKE THE ARREST. THEN IT'S AN INVALID AND UNLAWFUL ARREST. THAT CLEARLY SEEMS TO BE THE STATUS OF THE LAW IN THE STATE OF CALIFORNIA.

THE COURT: WELL, I'M GOING TO RULE AGAINST YOU ON TWO GROUNDS, COUNSEL:

FIRST OF ALL, YOU COME A LITTLE LATE. OBVIOUSLY YOU WERE AWARE OF A GOOD SHARE OF THE INFORMATION UPON WHICH TO BASE YOUR MOTION PRIOR TO TODAY. BUT IT WENT IN WITHOUT OBJECTION. IT'S ALREADY IN BEFORE THE COURT AND BEFORE THE JURY, AND IT JUST COMES A LITTLE BIT LATE.

I DON'T FIND THAT THERE IS ANY GOVERNMENTAL OVERREACHING HERE. IT DOES APPEAR TO THIS COURT TO BE A CONSISTENT EFFORT TO ARREST THIS DEFENDANT. THERE WAS NO BREAK BETWEEN THE TIME OF THE FIRST APPEARANCE TO CONTINUED POLICE ACTIVITY TO ARREST THE DEFENDANT. IT APPEARS TO BE CONSTANT AND ONGOING IN THE TIME OF THE OBSERVATION TO THE TIME OF THE ARREST.

IT WOULD SEEM TO ME THAT THE LAW WOULD BE RATHER LUDICROUS IF IN THIS SITUATION OTHER OFFICERS COULD NOT PURSUE A CRIMINAL DEFENDANT, WHO IS A PERSON CHARGED WITH A CRIME, IN TRYING TO ARREST HIM AND, THEREFORE, MAKE ANY EVIDENCE DISCOVERED INADMISSIBLE, PARTICULARLY WHERE YOU HAVE A CONTINUOUS COURSE OF POLICE ACTIVITY TO ARREST THE DEFENDANT FROM THE TIME OF THE RECOGNITION OF THE CRIME UNTIL THE APPREHENSION.

YOUR ARGUMENT, OF COURSE, WOULD BE MUCH STRONGER IF THERE HAD BEEN A GAP OF TIME IN THIS CASE BETWEEN THE OBSERVATION AND THE ARREST. BUT IN THESE CIRCUMSTANCES AN OFFICER WHO SAW AND PUT INTO MOTION AN ARREST FOR A CRIME I THINK HAS THE RIGHT TO RELY UPON HIS FELLOW OFFICERS IN APPREHENDING THE DEFENDANT.

I DON'T BELIEVE THAT THE FOURTH AMEND-

1945

1 MENT WOULD APPLY IN THE CIRCUMSTANCES OF THIS CASE. YOUR
2 MOTIONS ARE DENIED.

3 MR. COOPER: YOUR HONOR, AS I INDICATED EARLIER,
4 WE HAD ORIGINALLY FILED A MOTION TO SUPPRESS. THE BASIS OF
5 WHICH IS DIFFERENT FROM THE POINTS AND AUTHORITIES THAT WE
6 RAISED IN THIS PARTICULAR INSTANCE. AM I TO UNDERSTAND THAT THE
7 COURT IS NOT --

8 THE COURT: I'M JUST RULING ON THE PARTICULAR --

9 MR. COOPER: ON THE PARTICULAR?

10 THE COURT: IN VIEW OF THE FACT THAT THE STATE
11 HAS WITHDRAWN OR AT LEAST EXPLAINED THAT THEY DON'T INTEND TO
12 OFFER ANY ORAL STATEMENTS IN ITS CASE IN CHIEF. WE WILL COME
13 TO THAT ISSUE WHEN THE TIME IS RIGHT.

14 MR. COOPER: THANK YOU.

15 THE COURT: ARE WE NOW READY?

16 MR. SEATON: THE STATE IS READY, YOUR HONOR.

17 THE COURT: THE DEFENSE?

18 MR. COOPER: ALL RIGHT. I WILL CALL --

19 THE COURT: LET'S TAKE ABOUT A TEN MINUTE BREAK,

20 AND THEN WE WILL GET IN HERE THEN.

21 WE'LL BE IN RECESS.

22 (WHEREUPON, FROM 11:00 A.M.
23 UNTIL 11:05 A.M., A RECESS
24 WAS HAD IN THE PROCEEDINGS,
25 AT THE CONCLUSION OF WHICH THE
26 FOLLOWING WAS HAD:)

27 THE COURT: WILL COUNSEL STIPULATE TO THE PRES-
28 ENCE OF THE JURY?

29 MR. SEATON: YES, YOUR HONOR.

30 MR. COOPER: YES, YOUR HONOR.

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

32 MR. SEATON: DAWANA THOMAS.

- 1946

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

THE COURT: COME FORWARD, PLEASE.

YOU HAVE BEEN PREVIOUSLY SWORN AND CONFIRMED IN THIS MATTER.

THE WITNESS: YES, SIR.

THE COURT: YOU ARE STILL UNDER OATH.

YOU MAY PROCEED.

MR. SEATON: THANK YOU.

DIRECT EXAMINATION CONTINUED

BY MR. SEATON:

Q WILL YOU STATE YOUR NAME?

A MY NAME IS DAWANA THOMAS.

Q WILL YOU SPELL THAT AGAIN?

A D-A-W-A-N-A.

Q IS IT MISS OR MRS.?

A MISS.

Q AND MISS THOMAS, WHERE DO YOU REPSENTLY LIVE?

A IN TUSCON, ARIZONA.

Q HOW LONG HAVE YOU LIVED IN TUSCON, ARIZONA? HOW LONG ALL TOGETHER?

A ALL TOGETHER?

Q UH-HUH.

A ABOUT 12 YEARS.

Q AND WAS THERE A TIME WHEN YOU LIVED IN LAS VEGAS?

A YES, SIR.

Q WHEN DID YOU MOVE TO LAS VEGAS?

A WELL, IN NOVEMBER OF '79.

Q AND DID YOU MOVE FROM TUSCON?

1 A YES. UH-HUH.

2 Q WHY DID YOU COME TO LAS VEGAS?

3 A WELL, ME AND MY HUSBAND WAS INTO IT AND I

4 SEPARATED FROM HIM AND I CAME UP TO LAS VEGAS WITH MY BEST

5 FRIEND.

6 Q AND DID YOU LOOK FOR WORK WHILE YOU WERE

7 HERE?

8 A YES, SIR. UH-HUH.

9 Q DID YOU FIND A JOB?

10 A YES.

11 Q AND WHERE DID YOU FIND A JOB?

12 A AT THE NEVADA HOTEL CASINO.

13 Q WHAT WAS THE JOB THAT YOU FOUND?

14 A KENO RUNNER.

15 Q WAS THAT IN NOVEMBER OF 1979?

16 A YES. UH-HUH.

17 Q MISS THOMAS, DO YOU KNOW THE DEFENDANT IN

18 THIS ACTION, SAMUEL HOWARD?

19 A YES.

20 Q WOULD YOU POINT TO HIM AND DESCRIBE WHAT

21 HE'S WEARING?

22 A A YELLOW SHIRT.

23 MR. SEATON: MAY THE RECORD REFLECT THE IDENTI-

24 FICATION OF THE DEFENDANT, YOUR HONOR.

25 THE COURT: THE RECORD MAY SO SHOW.

26

27 BY MR. SEATON:

28

29 Q AND WHEN DID YOU FIRST COME TO KNOW SAMUEL

30 HOWARD?

31 A IN -- IN FRONT OF THE NEVADA HOTEL CASINO.

32 Q AND WHEN WAS THAT?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A IT WAS AROUND THE END PART OF NOVEMBER OF
'79.

Q WAS THAT CLOSE IN TIME TO WHEN YOU GOT THE
JOB?

A YES.

Q AT THE NEVADA CASINO?

A UH-HUH.

Q DID YOU TALK TO HIM THAT DAY?

A YES.

Q AND AFTER THAT DID YOU HAVE AN OPPORTUNITY
TO SPEND TIME WITH HIM AND BECOME FRIENDS?

A YES. UH-HUH.

Q DID HE AT THAT TIME TELL YOU WHAT HIS JOB
WAS?

A YES, HE DID.

Q WHAT WAS IT?

A HE WAS WORKING FOR THE --

MR. FRANZEN: YOUR HONOR, I WOULD OBJECT AS TO
RELEVANCY.

MR. SEATON: IT MAY HAVE SOME FUTURE RELEVANCE,
YOUR HONOR. IT WILL JUST TAKE A MOMENT.

THE COURT: ALL RIGHT. OVERRULED.

BY MR. SEATON:

Q WOULD YOU ANSWER THE QUESTION. DO YOU KNOW
OR WHAT WAS THE -- WHAT DID THE DEFENDANT TELL YOU HIS JOB WAS?

A HE WAS A DANCER FOR THE BROADWAY PRODUCTION
SHOW FROM NEW YORK.

Q WERE THEY PLAYING HERE?

A YES.

Q AS FAR AS YOU KNEW?

1949

1 A YES.

2 Q DID YOU EVER SEE HIM IN THAT SHOW?

3 A NO.

4 Q NOW, YOU MET HIM IN NOVEMBER OF '79. IN

5 FEBRUARY OF 1980 DID YOU TAKE A TRIP WITH THE DEFENDANT SAMUEL

6 HOWARD?

7 A YES.

8 Q AND WHERE DID YOU GO ON THAT TRIP?

9 A TO NEW YORK.

10 Q IS THAT NEW YORK CITY?

11 A YES, NEW YORK CITY.

12 Q AND FOR HOW LONG A PERIOD OF TIME WERE YOU

13 THERE?

14 A OH, I'D SAY ABOUT THREE WEEKS.

15 Q AND HOW DID YOU GET TO NEW YORK CITY FROM

16 LAS VEGAS, NEVADA, IN FEBRUARY OF 1980, WITH THE DEFENDANT?

17 A IN A VAN. WE DROVE UP THERE IN A VAN.

18 Q AND AFTER THE THREE-WEEK PERIOD OF TIME

19 THAT YOU SPENT IN NEW YORK CITY, DID YOU LATER RETURN? DID YOU

20 COME BACK OUT WEST?

21 A YES, I DID.

22 Q WHERE DID YOU GO?

23 A I WENT HOME TO MY MOTHER'S HOUSE.

24 Q WHERE IS THAT?

25 A IN TUSCON, ARIZONA.

26 Q AND DID YOU GO BY YOURSELF?

27 A YES. ME AND MY TWO KIDS.

28 Q DID THEY COME WITH YOU FROM NEW YORK CITY?

29 A YES. UH-HUH.

30 Q WHAT ABOUT SAM HOWARD?

31 A HE STAYED AT NEW YORK.

32 Q ALL RIGHT. DID YOU SEE SAM HOWARD AGAIN?

1 A YES, I DID.

2 Q AND WHERE DID YOU SEE SAM HOWARD AGAIN?

3 A I WAS OVER MY SISTER'S HOUSE AND MY MOTHER

4 HAD CALLED MY SISTER AND SAID THAT HE WAS THERE. SO I WENT OVER

5 THERE.

6 Q WAS THIS IN TUSCON, ARIZONA?

7 A YES, TUSCON, ARIZONA.

8 Q WAS IT SHORTLY AFTER YOU HAD RETURNED FROM

9 NEW YORK?

10 A YES. UH-HUH.

11 Q AND SUBSEQUENT TO SEEING HIM IN TUSCON DID

12 YOU TAKE ANOTHER TRIP WITH SAM HOWARD?

13 A YES, I DID.

14 Q AND WHERE DID YOU GO?

15 A TO -- CAME HERE TO LAS VEGAS.

16 Q I SEE.

17 AND HOW SOON WAS THAT AFTER YOU HAD

18 SEEN HIM IN TUSCON?

19 A I'D SAY ABOUT THREE DAYS, TWO OR THREE

20 DAYS.

21 Q WHEN YOU AND SAM HOWARD CAME TO LAS VEGAS

22 FROM TUSCON, WHERE DID YOU STAY?

23 A SOMEWHERE OFF OF BOULDER HIGHWAY, BLACK

24 JACK, A KITCHENETTE MOTEL PLACE.

25 Q WAS IT NEAR ANYTHING ---

26 A OH, THE SHOW --

27 Q (CONTINUING) -- THAT YOU ARE FAMILIAR WITH?

28 A IT WAS NEAR THE SHOWBOAT.

29 Q NEAR THE SHOWBOAT?

30 A YES, UH-HUH.

31 Q AND FOR HOW LONG A PERIOD OF TIME DID YOU

32 AND SAM HOWARD STAY AT THIS MOTEL NEAR THE SHOWBOAT HOTEL?

1 A FOR ABOUT A WEEK.

2 Q DID THERE COME A TIME TOWARD THE END OF
3 THAT WEEK WHEN YOU AND SAM HOWARD TOOK A DRIVE AND HE HAD YOU
4 DROP HIM OFF SOMEPLACE?

5 A YES, UH-HUH.

6 Q WHERE DID YOU GO?

7 A WENT OVER THERE BY MARYLAND PARKWAY AND
8 DESERT INN.

9 Q DO YOU RECALL THE APPROXIMATE ADDRESS ON
10 DESERT INN?

11 A AROUND THE 1500 BLOCK, RIGHT IN THAT AREA.

12 Q AND DO YOU KNOW WHAT KIND OF PLACE IT WAS
13 THAT YOU WENT TO ON THE 1500 BLOCK OF DESERT INN ROAD?

14 A IT WAS A -- A DENTIST'S OFFICE, SOMETHING
15 LIKE A DOCTOR'S OFFICE, DENTIST'S OFFICE.

16 MR. COOPER: EXCUSE ME, YOUR HONOR. COULD WE
17 HAVE A BIT OF FOUNDATION AS TO WHEN THIS WAS. I DON'T THINK
18 THERE'S BEEN ANY TESTIMONY REGARDING WHEN -- WHEN THIS OCCURRED.

19 MR. SEATON: I'LL DO THE BEST I CAN, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21

22 BY MR. SEATON:

23

24 Q DO YOU RECALL THE DATE OF THIS PARTICULAR
25 DRIVE?

26 A OH, IT HAD TO BE AROUND MARCH THE 24TH.

27 Q OKAY.

28 A AROUND THAT TIME.

29 Q DO YOU RECALL IF IT WAS IN THE MORNING OR
30 IN THE AFTERNOON?

31 A IT WAS IN THE AFTERNOON.

32 Q AND WHO ELSE WAS PRESENT WITH YOU AND SAM

1952

1 HOWARD, IF ANYONE, WHEN YOU TOOK THIS DRIVE?
2 A JUST ME AND SAM.
3 Q AND WHEN YOU WENT TO THE 1500 BLOCK OF
4 DESERT INN ROAD DID YOU GO ANYPLACE AND STOP?
5 A YES.
6 Q CAN YOU DESCRIBE WHERE -- WHO WAS DRIVING,
7 FIRST OF ALL?
8 A I WAS DRIVING.
9 Q AND WHERE DID YOU DRIVE TO WHEN YOU CAME --
10 BROUGHT THE CAR TO A STOP?
11 A WHERE -- I -- I DON'T UNDERSTAND.
12 Q DID YOU PARK THE CAR?
13 A OH, HE -- OH, YES.
14 Q AND WHERE DID YOU PARK THE CAR?
15 A IN THE -- IN THE BACK OF THE -- OF THIS
16 DENTIST OFFICE.
17 Q THIS WAS IN THE 1500 BLOCK?
18 A YES.
19 Q IS THERE AN ALLEY BACK THERE?
20 A YES. YES, SIR. THERE IS A LONG -- A -- A
21 LONG ALLEY IN THE BACK.
22 Q AND WHEN YOU -- WHEN YOU STOPPED THE CAR,
23 DID EITHER OF YOU GET OUT OF THE CAR?
24 A YES.
25 Q WHO DID?
26 A SAM GOT OUT OF THE CAR.
27 Q AND DID YOU STAY IN THE CAR?
28 A YES.
29 Q DID HE TELL YOU ANYTHING WHEN HE GOT OUT
30 OF THE CAR?
31 A NO.
32 Q DID HE -- DID YOU WAIT THERE FOR HIM?

1 A UH-HUH.

2 Q AND DO YOU KNOW WHERE HE WENT?

3 A NO. I JUST KNOW THAT HE WENT DOWN TOWARDS

4 DESERT INN, THAT STREET DESERT INN.

5 Q HE WENT -- HE WENT TOWARD DESERT INN?

6 A UH-HUH.

7 Q OKAY. AND DID YOU LOSE SIGHT OF HIM?

8 A YES. UH-HUH.

9 Q AND HOW LONG WAS HE GONE?

10 A I'D SAY ABOUT TEN, FIFTEEN MINUTES.

11 Q ALL RIGHT. DID HE COME BACK TO THE CAR?

12 A YES. UH-HUH.

13 Q DID HE GET INTO THE CAR?

14 A YES.

15 Q WHAT HAPPENED THEN?

16 A GOT IN AND DROVE OFF.

17 Q DO YOU RECALL A DAY WHEN YOU AND SAM HOWARD

18 WENT TO THE BOULEVARD MALL SHOPPING CENTER?

19 A YES.

20 Q AND HOW LONG AFTER THIS PARTICULAR INCIDENT

21 WE JUST SPOKE OF THAT OCCURRED ON MARCH THE --

22 MR. FRANZEN: YOUR HONOR, ASSUMING FACTS NOT IN

23 EVIDENCE. I DON'T BELIEVE SHE'S TESTIFIED IT WAS BEFORE OR

24 AFTER. THE WITNESS COULDN'T STATE ON HER OWN.

25 THE COURT: SUSTAINED.

26 MR. SEATON: I PROBABLY MISSTATED THAT, YOUR

27 HONOR. I APOLOGIZE.

28 THE COURT: PROCEED.

29

30 BY MR. SEATON:

31

32 Q CAN YOU TELL US IN RELATIONSHIP TO THE DAY

1954

1 OF MARCH THE 24TH, WHEN YOU WENT TO THE DENTIST'S OFFICE, WHEN
2 YOU AND SAM HOWARD WENT TO THE SEARS STORE, WAS IT BEFORE OR
3 AFTER THAT TIME AND HOW MANY DAYS?

4 A WELL, A COUPLE OF DAYS AFTER.

5 Q A COUPLE OF DAYS AFTER?

6 A UH-HUH.

7 Q THEN --

8 A I'LL SAY A DAY OR THE NEXT DAY.

9 Q ALL RIGHT.

10 A I WASN'T -- JUST MAYBE A DAY OR TWO RIGHT
11 AFTER.

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

13 THE WITNESS: OH, MAYBE A DAY OR TWO AFTER.

14

15 BY MR. SEATON:

16 Q THANK YOU.

17 AND WHERE WERE YOU BEFORE GOING TO
18 SEARS ON THAT DAY?

19 A BEFORE GOING TO SEARS?

20 Q YES.

21 A IN THE -- IN THE KITCHENETTE MOTEL OVER
22 THERE OFF OF BOULDER HIGHWAY.

23 Q AND WHAT WERE YOUR PLANS WITH REGARD TO
24 STAYING IN THAT MOTEL OFF BOULDER HIGHWAY?

25 A WELL, WE DIDN'T HAVE ANY MONEY. SO THE
26 PLANS WAS TO LEAVE THE MOTEL AND TO GET SOME -- SOME MONEY.

27 Q DID YOU PACK YOUR BAGS OR YOUR BELONGINGS?

28 A YES. UH-HUH.

29 Q CAN YOU RECALL WHAT TIME OF DAY IT WAS
30 WHEN YOU WENT TO THE BOULEVARD MALL?

31 A OH, ABOUT 11:30, 12:00; RIGHT AFTER CHECK-
32 OUT TIME IN THE MOTEL. I THINK IT WAS ABOUT 11:30 OR 12:00. --

1955

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Q DO YOU RECALL -- DO YOU RECALL WHO WAS
DRIVING THE CAR?

A SAM WAS.

Q AND WHERE DID YOU DRIVE THE CAR TO SPECI-
FICALLY?

A HE DROVE IT TO THE -- THE BOULEVARD MALL.
DO I -- DO I GIVE DIRECTIONS OR JUST SAY WHERE HE DROVE IT?

Q IF YOU CAN.

A OKAY. HE DROVE IT TO THE BOULEVARD MALL
AND WE WAS PARKED IN THE -- WELL, THE WEST PARKING LOT.

Q THE WEST PARKING LOT?

A IT WAS -- YEAH. RIGHT.

Q ARE YOU FAMILIAR WITH THE BOULEVARD MALL?

A NOT ALL OF IT. JUST WHERE -- JUST THAT
SECTION THAT I WAS IN.

Q OKAY. DO YOU KNOW WHAT STORE YOU WERE
NEAR IN THAT SECTION THAT YOU WERE IN?

A WELL, I WAS NEAR THE SEARS STORE. SEARS
IS PRETTY LONG. SO I WAS MORE NEAR THE SEARS PART THAN ANY-
THING ELSE.

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

THE COURT: YOU MAY.

BY MR. SEATON:

Q MISS THOMAS, I WOULD LIKE TO SHOW YOU
WHAT'S BEEN INTRODUCED INTO EVIDENCE AS STATE'S EXHIBITS 60
THROUGH 63. WOULD YOU TAKE A MOMENT AND LOOK AT EACH OF THOSE
EXHIBITS. AND AFTER YOU'RE FINISHED TELL ME IF YOU'RE ABLE TO
RECOGNIZE THE AUTOMOBILE DEPICTED IN STATE'S EXHIBITS 60 THROUGH
63.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A YES. THIS WAS SAM'S CAR.

Q DO YOU KNOW WHAT KIND OF CAR THIS WAS THAT IS SHOWN IN 60 THROUGH 63?

A IT'S AN OLDSMOBILE. I THINK IT'S A 1980 OLDSMOBILE CUTLASS.

Q THANK YOU.

WHEN YOU GOT TO THE PARKING LOT IN THE BOULEVARD MALL NEAR THE SEARS STORE, CAN YOU RECALL HOW SAM HOWARD WAS DRESSED?

A HE HAD ON SOME NEW WHITE TENNIS SHOES, SNEAKERS; AND BLUE JEANS; AND A CHECKERED SHIRT; AND A BASEBALL CAP; A SUEDE JACKET.

Q DO YOU KNOW IF HE WORE ANY JEWELRY?

A THAT DAY?

Q YES.

A NO, I DON'T REMEMBER IF HE WORE JEWELRY THAT DAY.

Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 40-A, AND ASK IF YOU WOULD LOOK AT THAT ITEM AND TELL ME IF YOU RECOGNIZE IT.

A YES. THIS IS PART OF HIS JEWELRY.

Q PART OF WHOSE JEWELRY?

A SAM HOWARD'S JEWELRY.

Q DO YOU KNOW WHETHER OR NOT SAM HOWARD WAS WEARING STATE'S EXHIBIT 40-A ON THAT DAY BY THE SEARS STORE?

A NO, I DON'T. NO.

Q WELL, MAYBE I SHOULD STAY UP HERE FOR A MOMENT.

LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S PROPOSED EXHIBIT 44-A. WOULD YOU HOLD THAT AND OPEN IT, LOOK IT OVER, FRONT AND BACK, AND TELL US IF YOU ARE ABLE TO RECOGNIZE THAT PARTICULAR JACKET.

1 A YES. THIS IS SAM HOWARD'S JACKET.

2 Q AND DO YOU KNOW IF SAM HOWARD WAS WEARING

3 THIS JACKET, MARKED AS STATE'S PROPOSED EXHIBIT 44-A, ON THAT

4 PARTICULAR DAY AT THE SEARS STORE?

5 A YES. UH -- YES. UH-HUH.

6 Q DO YOU HAVE A LEATHER JACKET -- DID YOU

7 HAVE A LEATHER JACKET --

8 A YES.

9 Q (CONTINUING) -- AT THAT TIME?

10 A UH-HUH.

11 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS

12 STATE'S PROPOSED EXHIBIT 44-B, AND ASK IF YOU WOULD SIMILARLY

13 EXAMINE THAT EXHIBIT AND TELL US WHETHER OR NOT YOU RECOGNIZE

14 IT.

15 A YES. THIS IS THE COAT THAT SAM GAVE ME.

16 Q COULD YOU SPEAK UP CLEARLY FOR US.

17 A OH, THIS IS THE COAT THAT SAM GAVE ME.

18 Q I SEE.

19 DID YOU OWN THIS COAT IN MARCH, AROUND

20 MARCH 26TH, 1980?

21 A YES, UH-HUH.

22 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS

23 STATE'S PROPOSED EXHIBIT 44-C, AND AGAIN I WILL ASK YOU TO

24 EXAMINE THAT PARTICULAR EXHIBIT AND TELL US IF YOU RECOGNIZE IT.

25 A YES. THIS IS HIS CAP.

26 Q SAM'S CAP?

27 A UH-HUH.

28 Q IS THIS THE CAP THAT SAM WAS WEARING AT

29 THE SEARS STORE ON THAT PARTICULAR DAY?

30 A I CAN'T REMEMBER IF THIS WAS THE CAP, BUT

31 I KNOW THAT HE HAD A CAP ON.

32 Q DID SAM HOWARD OWN ANY OTHER CAPS SIMILAR

1 TO STATE'S EXHIBIT 44-C?

2 A YES. HE AND MY SON HAD BASEBALL CAPS.

3 Q WHILE YOU WERE IN THE PARKING LOT AT SEARS,
4 DID EITHER OF YOU GET OUT OF THE CAR?

5 A YES. HE DID.

6 Q SAM DID?

7 A YES. SAM DID.

8 Q AND DID HE TAKE ANYTHING OUT OF THE CAR
9 WITH HIM?

10 A YES.

11 Q WHAT WAS IT?

12 A MY TRAVELING BAG.

13 Q WOULD YOU DESCRIBE THAT TRAVELING BAG FOR
14 US?

15 A IT'S BROWN, PLAIN SHOULDER BAG, HAS A
16 COUPLE OF POUCHES, ONE ON THE OUTSIDE OPENING AND THEN YOU ZIP
17 IT UP, AND THERE'S AN OPENING IN THERE WHERE YOU COULD PUT
18 STUFF IN.

19 Q WHEN HE TOOK THE BAG FROM THE CAR, DID IT
20 HAVE ANY OBJECTS IN IT?

21 A YES, SOME OF MY PERSONAL ARTICLES.

22 Q WHAT SORT OF THINGS DID YOU HAVE IN THE
23 BAG?

24 A I HAD THINGS LIKE TOOTHPASTE AND --
25 MR. FRANZEN: YOUR HONOR, I'M GOING TO OBJECT TO
26 RELEVANCY.

27 MR. SEATON: WE'LL MOVE ON, YOUR HONOR.

28 THE COURT: ALL RIGHT.

29

30 BY MR. SEATON:

31

32 Q WHAT HAPPENED, MISS THOMAS, TO THE ITEMS

1 THAT YOU HAD IN THE BAG?

2 A HE DUMPED THEM OUT.

3 Q SAM DUMPED THEM OUT?

4 A UH-HUH.

5 Q WHERE DID HE DUMP THEM OUT?

6 A IN THE CAR IN THE BACKSEAT.

7 Q AND THEN WHAT DID HE DO WITH THE BAG AFTER
8 DUMPING THE CONTENTS OF THE BAG OUT INTO THE BACKSEAT OF THE
9 CAR?

10 A HE -- HE TOOK THE -- TOOK THE BAG AND WENT
11 WALKING TOWARDS THE MALL.

12 Q DID YOU SEE HOW HE CARRIED THE BAG?

13 A ON HIS SHOULDER.

14 Q DID IT HAVE A SHOULDER STRAP?

15 A UH-HUH.

16 Q DO YOU KNOW WHETHER OR NOT SAM HOWARD AT
17 THAT TIME, THAT IS IN THE LATTER PART OF MARCH, 1980, OWNED A
18 PISTOL?

19 A YES.

20 Q AND DID HE HAVE A PISTOL WITH HIM ON THAT
21 DAY?

22 A UH-HUH, YES.

23 Q WHERE DID HE TYPICALLY KEEP THE PISTOL WHEN
24 HE HAD IT ON HIS PERSON?

25 A HE USUALLY KEPT IT ON EITHER HIS SIDE OR
26 IN BACK OF HIM.

27 Q HOW WOULD HE CARRY IT ON HIS SIDE OR IN
28 BACK OF HIM?

29 A IN HIS BELT.

30 Q INSIDE OF HIS BELT?

31 A UH-HUH.

32 Q AND HAD YOU SEEN THAT GUN BEFORE?

1959

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A YES.

Q MISS THOMAS, LET ME NOW SHOW YOU WHAT'S BEEN MARKED AS STATE'S PROPOSED EXHIBIT 31-B.

THE RECORD SHOULD SHOW THAT I'VE OPENED THE GUN AND IT IS CLEAN.

WOULD YOU HOLD IT?

A I DON'T TOUCH IT.

Q I'LL HOLD THE GUN. CAN YOU, AS I SHOW YOU THIS WEAPON, TELL ME IF YOU'RE ABLE TO RECOGNIZE IT AS THE WEAPON SIMILAR TO THE ONE YOU'VE SEEN BEFORE?

A YES, UH-HUH.

Q WHERE HAVE YOU SEEN THIS WEAPON BEFORE?

A WITH SAM.

Q I'M SORRY.

A WITH SAM.

Q IS THERE A WAY THAT YOU LOOK AT THIS AND IT CAUSES YOU TO RECOGNIZE IT?

A YES.

Q WHAT ABOUT IT IS SIMILAR?

A 'CUZ HE TOLD ME THAT IT WAS A SNUB-NOSE .357 -- .357 SNUB-NOSE, AND IT HAD THAT (INDICATING). I REMEMBER THIS RED LITTLE DOT UP AT THE TOP.

Q ON THE SIDE?

A UH-HUH. YES, SIR.

Q DO YOU RECALL WHETHER OR NOT THE WEAPON THAT YOU SEEN BEFORE HAD -- WHAT KIND OF HANDLES IT HAD?

A THAT -- I DON'T UNDERSTAND.

Q ARE THE HANDLES ON THIS WEAPON SIMILAR TO THE HANDLES ON THE WEAPON THAT SAM HOWARD --

A YEAH. THAT'S -- THAT'S THE GUN.

Q (CONTINUING) -- HAD? OKAY.

LET ME SHOW YOU WHAT'S BEEN MARKED AS -

1960

1 STATE'S PROPOSED EXHIBIT 25-A. WOULD YOU LOOK AT THAT EXHIBIT
2 FOR A MOMENT AND TELL US IF YOU HAVE EVER SEEN IT BEFORE?
3 A I DON'T REMEMBER THIS.
4 Q YOU DON'T REMEMBER EVER HAVING SEEN THAT
5 BEFORE?
6 A IF I HAVE SEEN IT. I JUST, YOU KNOW --
7 Q PLEASE SPEAK INTO THE MIKE.
8 A OH, IF I HAVE EVER SEEN IT I JUST DON'T,
9 YOU KNOW -- I ALWAYS REMEMBER THAT GUN, BUT THIS RIGHT HERE JUST
10 NEVER --
11 Q ALL RIGHT. THANK YOU.
12 MISS THOMAS, COULD I REMIND YOU THAT AS
13 YOU SPEAK TO ME I'M OVER HERE SO THAT THE JURY CAN WITNESS EVERY-
14 THING YOU'RE DOING. PLEASE TRY TO SPEAK INTO THE MICROPHONE.
15 A OKAY.
16 Q NOW, LET ME SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT 25-B, JUST THE BAG. WOULD YOU HOLD ONTO THAT,
18 PLEASE.
19 A OKAY.
20 Q HAVE YOU EVER SEEN A BAG LIKE THAT BEFORE?
21 A AH, YEAH.
22 Q AND WHERE HAVE YOU SEEN IT?
23 A AT THE HOUSE -- AT THE MOTEL.
24 Q AND WHO HAD THAT BAG MARKED 25-B?
25 A OH, THIS IS SAM'S BAG.
26 Q DO YOU KNOW WHAT -- IF HE KEPT ANYTHING IN
27 THE BAG?
28 A YEAH, THE BULLETS.
29 Q HE KEPT BULLETS IN THE BAG?
30 A UH-HUH.
31 Q DID YOU EVER SEE THOSE BULLETS BEFORE?
32 A HAVE I EVER SEEN THE BULLETS BEFORE? OH, -

1961

1 YEAH, I'VE SEEN THE BULLETS BEFORE.

2 Q WOULD YOU OPEN THE WIRE ON THE BAG AND
3 LOOK AT THE CONTENTS.

4 A UH-HUH --

5 MR. SEATON: THE RECORD SHOULD REFLECT THAT THE
6 WITNESS IS NOW OPENING THE WIRE THAT BINDS THE BAG.

7 THE COURT: THE RECORD MAY SO SHOW.

8 MR. SEATON: THANK YOU.

9

10 BY MR. SEATON:

11

12 Q AND WOULD YOU REACH IN AND PULL OUT AT
13 LEAST SOME OF THE CONTENTS.

14 A UH-HUH.

15 Q DO THOSE --

16 A WHAT?

17 Q DO THOSE APPEAR TO BE FAMILIAR TO YOU?

18 A I DON'T KNOW. THEY'RE BULLETS.

19 Q THEY'RE BULLETS?

20 A YEAH. THEY LOOK THE SAME.

21 Q ALL RIGHT.

22 WOULD YOU PLACE THEM BACK IN THE BAG,
23 PLEASE.

24 A THESE ARE BULLETS, BUT THOSE ARE THE KIND.

25 MR. SEATON: THE RECORD SHOULD REFLECT THAT I AM
26 PUTTING THE WIRE BACK ON THE BAG, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28

29 BY MR. SEATON:

30

31 Q AFTER SAM HOWARD GOT OUT OF THE CAR AND
32 HAD THE BAG AND WAS DRESSED AS YOU SAID HE WAS AND HAD THE GUN,

1 DID HE GO ANYPLACE?

2 A YES. HE WENT TOWARDS THE MALL.

3 Q AND DID HE GO INSIDE OF THE MALL?

4 A YES. HE WENT IN THE MALL.

5 Q WAS THERE A TIME WHEN HE CAME BACK TO THE

6 CAR?

7 A YEAH.

8 Q HOW LONG WAS HE GONE DURING THAT PERIOD OF

9 TIME?

10 A LONG TIME.

11 Q CAN YOU ESTIMATE IN TERMS OF MINUTES OR

12 HOURS?

13 A I'D SAY ABOUT HOUR AND A HALF, TWO HOURS.

14 Q AND WHEN HE CAME BACK TO THE CAR WERE YOU

15 ABLE TO SEE HIM COMING BACK?

16 A YES.

17 Q AND HOW WAS HE APPROACHING THE CAR?

18 A I WAS LOOKING OUT THE REAR VIEW MIRROR. I

19 LOOKED OUT THE MIRROR AND I JUST SAW HIM RUNNING. AND SO I

20 TURNED AND LOOKED AND HE WAS RUNNING.

21 Q HE WAS RUNNING?

22 A WITH A --

23 Q TOWARDS THE CAR?

24 A YES.

25 Q AND WHEN HE GOT TO THE CAR DID HE GET IN?

26 A I CAN'T -- YES.

27 Q DID HE STILL HAVE THE BAG --

28 A YEAH.

29 Q (CONTINUING) -- THAT GOES OVER THE

30 SHOULDER?

31 A UH-HUH.

32 Q DID YOU SEE ANYTHING OTHER THAN THAT IN

1963

1 HIS HANDS WHEN HE ENTERED THE CAR?

2 A YES. I SAW -- I SAW THE -- THE GUN. HE
3 HAD THE GUN.

4 Q AND DID YOU NOTICE ANYTHING SIGNIFICANT
5 ABOUT THE GUN?

6 A YEAH.

7 Q WHAT WAS THAT?

8 A IT WAS COCKED.

9 Q WHAT DO YOU MEAN BY "IT WAS COCKED"?

10 A I CALLED IT COCKED --

11 Q LET ME GET THE GUN --

12 A (CONTINUING) -- BECAUSE THE THING --

13 Q (CONTINUING) -- GET THE GUN AND WE'LL SEE
14 WHAT YOU MEAN.

15 A OKAY.

16 Q IF YOU DON'T WANT TO HOLD THE GUN, TELL
17 ME --

18 A NO.

19 Q (CONTINUING) -- IF YOU WOULD, INTO THE
20 MICROPHONE, HOW YOU MEAN THE GUN WAS COCKED.

21 A THE -- THIS WAS PULLED BACK.

22 Q IN THAT POSITION (INDICATING)?

23 A YEAH.

24 MR. SEATON: THE RECORD SHOULD REFLECT, YOUR
25 HONOR, THAT WHEN THE WITNESS SAID THAT, I PULLED THE HAMMER
26 BACK ON THE GUN AND IT REMAINED IN A OPEN, WHAT WE KNOW AS A
27 COCKED POSITION.

28 THE COURT: THE RECORD MAY SO SHOW.

29 MR. SEATON: AND I AGAIN CLOSED THE HAMMER.

30 ..
31 ..
32 ..

BY MR. SEATON:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Q DID HE GET INTO THE DRIVER'S SEAT?

A YES.

Q WHAT DID HE DO WITH THE GUN?

A HE STILL HAVE THE GUN IN HIS HAND.

Q DID YOU STAY THERE OR DID YOU DRIVE AWAY?

A DROVE AWAY.

Q AND WHO WAS DRIVING?

A HE WAS.

Q WHEN HE FIRST GOT INTO THE CAR DID HE SAY
ANYTHING TO YOU?

A NO -- OH. OH. I TAKE THAT BACK. NOT TO
ME -- WELL, YEAH, HE DID SAY SOMETHING TO ME.

Q OKAY. WHAT DID HE SAY TO YOU WHEN HE GOT
IN THE CAR?

A HE WAS SAYING TO HIMSELF THAT THEY'RE NOT
GOING TO TAKE ME ALIVE AND THINGS LIKE THAT.

Q AND DID HE BEGIN DRIVING AT THAT TIME?

A UH-HUH.

Q AND WERE YOU SEATED IN THE PASSENGER'S
SEAT?

A YES.

Q WERE YOU SEATED IN A TYPICAL UP-RIGHT
POSITION?

A HE TOLD ME TO GET ON THE FLOOR.

Q DID YOU?

A UH-HUH.

Q ON THE PASSENGER'S SIDE?

A UH-HUH, YES, SIR.

Q DO YOU KNOW THE DIRECTION THAT HE DROVE IN
FROM THE PARKING LOT?

1965

1 A WELL, I WAS ON THE FLOOR, BUT I FELT, YOU
2 KNOW, YOU COULD FEEL TURNS WHEN YOU'RE TURNING. AND WE WERE IN
3 THE PARKING LOT AND HE WENT OUT THE LEFT THEN TO THE RIGHT.

4 Q WELL, BEFORE YOU GET INTO THAT --

5 A OH.

6 Q (CONTINUING) -- DO YOU KNOW THE FIRST
7 STREET THAT YOU CAME TO WHEN HE WENT OUT OF THE PARKING LOT?

8 A YES, MARYLAND PARKWAY.

9 Q AND DID HE CROSS MARYLAND PARKWAY?

10 A YES.

11 Q DID YOU HAVE ANY IDEA WHAT THE TRAFFIC WAS
12 LIKE AT THAT TIME?

13 A HEAVY.

14 Q WHAT WERE YOUR THOUGHTS AS YOU WENT ACROSS
15 MARYLAND PARKWAY?

16 A THAT WE WAS GOING TO GET BANGED. I COULD
17 JUST FEEL ME GETTING, YOU KNOW, THE CAR GETTING BANGED UP.

18 Q AND WAS THERE, IN FACT, ANY KIND OF A CAR
19 WRECK AT THAT POINT?

20 A NOT THAT I KNOW OF.

21 Q A FEW MINUTES LATER WAS YOUR ATTENTION
22 DRAWN TO A WHITE CORVETTE?

23 A YES.

24 Q NOW, WHAT WAS IT ABOUT THE WHITE CORVETTE
25 THAT CAUSED YOU TO FOCUS IN ON IT?

26 A WELL, SAM AND THE MAN WAS ARGUING.

27 Q WHICH MAN ARE YOU SPEAKING OF?

28 A THE MAN IN THE CORVETTE, THE WHITE
29 CORVETTE, HIM AND SAM WAS ARGUING.

30 Q WAS THE MAN DRIVING THE WHITE CORVETTE?

31 A YES, UH-HUH.

32 Q AND WHERE WERE YOU WHEN THAT ARGUMENT WAS

1 GOING ON?

2 A I WAS -- AT THE TIME I WAS ON THE FLOOR.
3 BUT THEN WHEN I HEARD HIM CUSSING AT THIS GUY AND THIS GUY
4 CUSSING AT HIM, THEN I GOT UP OFF THE FLOOR TO SEE WHAT WAS
5 GOING ON.

6 Q WHERE WERE THE CARS AT THAT TIME?

7 A THEY WERE NEXT TO EACH OTHER AT A STOP
8 SIGN.

9 Q AT A STOP SIGN. SO THEY WERE STOPPED?

10 A UH-HUH.

11 Q AND DO YOU RECALL WHAT SAM WAS SAYING WHEN
12 HE WAS I THINK YOU SAID CUSSING AT THIS -- THE DRIVER OF THE
13 WHITE CORVETTE?

14 A DO I REMEMBER WHAT HE SAID?

15 Q YES.

16 A YES, UH-HUH.

17 Q WOULD YOU TELL US WHAT HE WAS SAYING,
18 PLEASE.

19 A IT WAS A CUSS WORD, "MOTHER FUCKER."

20 Q WE DON'T MEAN TO EMBARRASS YOU, BUT FOR THE
21 RECORD WE SHOULD KNOW JUST WHAT WAS SAID.

22 AND WAS THE OTHER MAN SIMILARLY CUSSING
23 AT SAM?

24 A YES.

25 Q DO YOU KNOW WHAT HE WAS SAYING?

26 A YOU KNOW, THINGS LIKE "SON OF A BITCH" AND
27 THINGS LIKE THAT, YOU KNOW.

28 Q DID SAM DO ANYTHING AT THIS TIME?

29 A YES.

30 Q WHAT DID HE DO?

31 A HE ROSE UP THE GUN FROM THE SEAT.

32 Q CAN YOU TELL WHERE HAD THE GUN BEEN FROM

1 THE TIME YOU FIRST SAW IT COCKED, WHEN HE CAME RUNNING FROM
2 SEARS AND GOT IN THE CAR, UNTIL THIS TIME, WHEN YOU SAW THE MAN
3 WITH THE WHITE CORVETTE, WHERE HAD THE GUN BEEN DURING ALL THAT
4 PERIOD OF TIME?

5 A IT WAS DOWN ON THE SEAT NEAR MY FACE.

6 Q DID HE STILL HAVE IT IN HIS HAND OR HAD HE
7 LET GO OF IT?

8 A YEAH. HE STILL HAD IT IN HIS HAND.

9 Q WAS IT STILL COCKED?

10 A YES, UH-HUH.

11 Q WOULD YOU TELL US NOW OR GIVE US A
12 DESCRIPTION OF WHAT SAM DID WITH THE GUN IN RELATIONSHIP TO THE
13 MAN WHO WAS DRIVING THE WHITE CORVETTE?

14 A GIVE A DESCRIPTION?

15 Q JUST TELL US WHAT HE DID.

16 A OH, OKAY.

17 HE ROSE THE GUN UP OUT OF THE WINDOW,
18 ACROSS ME, OUT THE WINDOW (INDICATING); AND POINTED IT AT THE
19 GUY.

20 Q ARE YOU SPEAKING ABOUT THE PASSENGER
21 WINDOW?

22 A YES, UH-HUH.

23 Q WAS THE CORVETTE THEN ON YOUR RIGHT?

24 A YES.

25 Q AT A STOP SIGN?

26 A YES, UH-HUH.

27 Q COULD YOU TURN YOUR CHAIR AROUND SO THAT
28 YOU ARE FACING THE JURY FOR JUST A MOMENT. I THINK THOSE TURN
29 OR YOU CAN JUST TURN KIND OF IN THAT DIRECTION AND SHOW THE
30 JURY, IF YOU WOULD, THE MOTION THAT SAM HOWARD MADE WITH THE
31 WEAPON, ASSUMING FOR A MOMENT -- WOULD IT BE FAIR TO STATE THAT
32 YOU WERE IN THE CAR THERE AND THE WHITE CORVETTE WAS --

1968

1 A THE WHITE CORVETTE IS RIGHT HERE (INDICA-
2 TING).
3 Q RIGHT THERE WHERE?
4 A I'M RIGHT HERE, HE'S RIGHT HERE, I'M DOWN,
5 HALFWAY LIKE THIS (INDICATING).
6 Q ALL RIGHT.
7 A AND HE'S --
8 Q AND HOW FAR AWAY IS THE WHITE CORVETTE,
9 WOULD YOU SAY, FROM YOUR CAR?
10 A ABOUT THAT FAR (INDICATING).
11 MR. SEATON: MAY THE RECORD REFLECT, YOUR HONOR,
12 THE WITNESS IS --
13 THE WITNESS: ABOUT THIS (INDICATING).
14 MR. SEATON: (CONTINUING) -- INDICATING PERHAPS
15 A FOOT.
16 THE COURT: THE RECORD MAY SO SHOW.
17
18 BY MR. SEATON:
19
20 Q NOW, IF YOU WOULD SHOW US HOW SAM HELD THE
21 GUN AND HOW HE POINTED IT, IF YOU WOULD.
22 A HE HELD THE GUN -- JUST ROSE IT UP, YOU
23 KNOW, JUST ROSE IT UP LIKE THIS (INDICATING).
24 Q AND WAS THAT IN FRONT OF YOUR FACE?
25 A YEAH.
26 Q AND WAS THE GUN POINTED AT ANYONE?
27 A YEAH.
28 Q WHO?
29 A YES, THE MAN.
30 Q THANK YOU. YOU MAY SWIVEL AROUND AGAIN.
31 THANK YOU.
32 WAS THE GUN STILL COCKED?

1969

1 A YES.

2 Q WHAT HAPPENED AFTER THAT?

3 A THEN THE MAN JUST -- HIS EYES GOT REAL BIG

4 AND HE JUST DROVE OFF.

5 Q AND WHAT DID SAM DO?

6 A SAM DROVE OFF, TOO.

7 Q AND WHERE DID YOU DRIVE TO AT THAT TIME?

8 A I THINK THE STREET WAS OFF ON TWAIN AND WE

9 WENT TO THE -- TOWARDS THE STRIP AT THE CASTAWAYS.

10 Q DID YOU SEE THE WHITE CORVETTE AGAIN?

11 A NO.

12 Q AND DID YOU, IN FACT, GO ON TWAIN TOWARDS

13 THE STRIP?

14 A YES.

15 Q AND DID YOU DRIVE INTO THE CASTAWAYS PARK-

16 ING LOT?

17 A YES.

18 Q YOU STATED EARLIER THAT, AND CORRECT ME IF

19 I'M WRONG, IT WAS EITHER 11:00 OR 11:30 THAT YOU THOUGHT YOU

20 ORIGINALLY HAD GONE TO SEARS. WHICH WAS IT, CAN YOU RECALL?

21 WHEN DID YOU ORIGINALLY GET TO SEARS? WHAT TIME WAS IT?

22 A ABOUT 11:30, 12:00.

23 Q OKAY.

24 DO YOU HAVE ANY IDEA WHAT TIME IT

25 WOULD HAVE BEEN WHEN YOU GOT TO THE CASTAWAYS PARKING LOT?

26 A ABOUT 2:00, 2:30.

27 Q WHERE DID YOU GO IN THE AUTOMOBILE -- ARE

28 WE STILL TALKING ABOUT THE 1980 OLDS CUTLASS?

29 A YES, UH-HUH.

30 Q WHERE DID YOU GO IN THAT AUTOMOBILE IN THE

31 CASTAWAYS?

32 A IN THE PARKING LOT.

1 Q AND DID YOU PARK THERE?
2 A YES.
3 Q DID YOU AND SAM HOWARD HAVE A CONVERSATION
4 AT THAT TIME?
5 A YES, SIR.
6 Q WHAT DID -- WHAT DID YOU TALK ABOUT?
7 A WELL, I ASKED HIM WHY -- WHAT HAPPENED?
8 YOU KNOW, YOU KNOW, LIKE WHAT DID YOU DO?
9 AND THEN HE TOLD ME THAT HE WENT IN --
10 Q THAT HE WENT IN WHERE?
11 A TO SEARS, AND HE WAS GETTING SOME -- NOT --
12 PICKING UP SOME KNIVES, CUTLERY SET.
13 Q UH-HUH.
14 A AND THAT HE TOOK IT UP TO THE COUNTER AND
15 HE TRIED TO GET A REFUND. HE GOT A REFUND. AND HE -- HE SAID
16 THAT WHEN HE WENT TOWARDS THE DOOR THEN A MAN, A DETECTIVE OR
17 SOMETHING, HAD STOPPED HIM AND THEY WERE TALKING AND HE TOLD
18 HIM --
19 Q STOPPED SAM?
20 A YES, STOPPED SAM.
21 Q ALL RIGHT.
22 A AND HE TOLD HIM THAT THEY WERE GOING TO
23 GO DOWNSTAIRS AND HE -- TO SEARCH HIM.
24 SO HE SAID THAT -- SAM SAID THAT TWO
25 MEN -- HE CALLED TWO OTHER GUYS, ONE, YOU KNOW, BIG FAT GUY AND
26 ANOTHER SECURITY GUY; AND THEY ALL WENT DOWN --
27 Q UH-HUH.
28 A (CONTINUING) -- STAIRS TO THE ROOM.
29 Q DID SAM -- TO A ROOM?
30 A YEAH.
31 Q DID SAM SAY ANYTHING ABOUT WHAT HE WAS
32 TELLING THESE PEOPLE, GIVING THEM SOME EXPLANATION?

1971

1 A OH, YES.

2 Q WHAT DID HE SAY?

3 A HE SAID THAT, YOU KNOW, HIS WIFE IS OUT IN

4 THE PARKING LOT AND THAT SHE WAS PREGNANT AND THAT HE NEEDED TO

5 TALK TO HIS WIFE.

6 Q WHO WAS HE REFERRING TO?

7 A HE WAS REFERRING TO ME.

8 Q WERE YOU HIS WIFE?

9 A NO.

10 Q WERE YOU PREGNANT?

11 A NO.

12 Q AND DID HE SAY WHAT HAPPENED ONCE HE AND

13 THE SECURITY GUARD AND THE OTHER TWO MEN GOT INTO THE ROOM DOWN-

14 STAIRS?

15 A YES. HE SAID THAT THEY WERE PUSHING HIM TO

16 GET ON THE WALL.

17 Q WHAT DO YOU MEAN "TO GET ON THE WALL"?

18 DID HE SAY --

19 A SO THAT THEY COULD SEARCH HIM.

20 Q OKAY.

21 A SO THEN HE SAID THAT -- HE TOLD THEM, OKAY,

22 OKAY, I'LL GET UP AGAINST THE WALL.

23 SO HE SAID WHEN HE GOT READY TO GO UP

24 AGAINST THE WALL, THEN HE -- HE RE- -- REACHED BEHIND HIM AND,

25 UH, GOT HIS GUN AND JUMPED UP ON THE CHAIR AND TOLD THEM TO

26 FREEZE -- AND MAY I SAY THE WORD? -- MOTHER FUCKERS.

27 Q DID HE SAY WHAT HE WAS DOING WITH THE GUN

28 WHILE HE HELD IT IN HIS HAND?

29 A HE SAID THAT HE, YOU KNOW, HAD IT POINTED

30 TOWARDS THEM.

31 Q AND ONCE HE GOT UP ON THE CHAIRS HE WAS

32 POINTING THE GUN AT THE THREE INDIVIDUALS IN THE ROOM WITH HIM.

1972

1 DID HE TELL YOU WHAT HAPPENED NEXT?

2 A HE SAID THAT HE SPREAD THEM OUT LIKE PIGS.

3 Q WHAT DO YOU MEAN HE SPREAD THEM OUT LIKE

4 PIGS?

5 A I DON'T KNOW. HE JUST SAID HE HAD THEM

6 SPREAD OUT, THEIR HANDS AND LEGS OUT LIKE PIGS.

7 Q AND WHAT DID HE DO NEXT AFTER HE HAD THEM

8 SPREAD OUT LIKE PIGS?

9 A AND HE TOOK THE SECURITY GUARD'S WALKIE-

10 TALKIE AND BADGE.

11 Q AND DID HE TELL YOU ANYTHING ELSE ABOUT

12 THIS INCIDENT?

13 A HE SAID HE RAN OUT THE -- HE RAN OUT THE

14 STORE, STARTED RUNNING THROUGH THE STORE OUT THE DOOR.

15 Q WHAT WAS HIS ATTITUDE WHILE HE WAS TELLING

16 YOU THIS STORY?

17 A HIS ATTITUDE?

18 Q YES.

19 A TO ME HE WAS HAPPY ABOUT IT; BOASTING, YOU

20 KNOW, BOASTING ABOUT IT; HAPPY.

21 Q DID HE SAY HE HAD FORGOTTEN ANYTHING?

22 A YES.

23 Q TELL US WHAT HE SAID ABOUT THAT.

24 A HE TOLD ME, YOU KNOW, WHY -- WHY COME I

25 DIDN'T THINK TO GET -- TO GET THE WALLETS. YOU KNOW, HE WAS MAD

26 BECAUSE HE DIDN'T GET THEIR WALLETS.

27 Q MISS THOMAS, LET ME SHOW YOU WHAT'S BEEN

28 MARKED -- WHAT DID I DO WITH IT? LET ME ASK YOU A COUPLE

29 QUESTIONS FIRST.

30 DID HE TELL YOU ANYTHING MORE? DID HE

31 MAKE ANY OTHER STATEMENTS ABOUT WHAT HAD OCCURRED AT SEARS?

32 A I -- I CAN'T THINK OF ANY RIGHT NOW.

1973

1 Q OKAY. DID HE SHOW YOU ANYTHING WHILE YOU
2 WERE SITTING IN THE CAR AT THE CASTAWAYS HOTEL HAVING THIS CON-
3 VERSATION ABOUT WHAT HAD OCCURRED IN THE SEARS STORE?

4 A HE SHOWED ME THE WALKIE-TALKIE AND THE
5 BADGE.

6 Q WHICH WALKIE-TALKIE AND BADGE?

7 A THAT HE HAD TOOK FROM THE SECURITY GUARD.

8 Q I SHOW YOU NOW WHAT'S BEEN MARKED AS STATE'S
9 EXHIBIT 24-B, AND I'LL ASK YOU TO LOOK THAT OVER CAREFULLY AND
10 TELL US WHETHER OR NOT YOU RECOGNIZE THAT AS THE RADIO THAT THE
11 DEFENDANT HAD IN THE CAR AFTER HE RAN OUT OF THE SEARS STORE
12 WITH HIM?

13 A YES, THIS IS THE RADIO.

14 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS
15 STATE'S EXHIBIT 24-A. I ASK YOU TO LOOK IT OVER AND TELL US IF
16 YOU ARE ABLE TO RECOGNIZE THAT AS THE BADGE THAT THE DEFENDANT
17 TOLD YOU HE HAD TAKEN FROM THE SEARS SECURITY GUARD THAT DAY.

18 A YES. THIS IS THE BADGE.

19 Q ~~DOES IT APPEAR TO BE THE SAME?~~

20 A YES, UH-HUH, BECAUSE IT WAS A SEARS --

21 Q THANK YOU.

22 A (CONTINUING) -- BADGE.

23 Q DID THERE COME A TIME WHEN YOU GOT OUT OF
24 THE AUTOMOBILE THERE AT THE CASTAWAYS PARKING LOT?

25 A YES.

26 Q HOW MUCH TIME DO YOU THINK WENT BY FROM THE
27 TIME YOU GOT TO THE PARKING LOT UNTIL YOU GOT OUT OF THE CAR
28 THAT FIRST TIME?

29 A ABOUT 30, 45 MINUTES.

30 Q AND WHEN YOU GOT OUT, DID BOTH OF YOU GET
31 OUT?

32 A YES, UH-HUH.

1 Q WHERE DID YOU GO?
2 A WE WENT WALKING ON THE STRIP.
3 Q HOW LONG DO YOU THINK YOU WERE GONE?
4 A WE STOPPED AND GOT SOMETHING TO EAT. SO
5 I'D SAY ABOUT TWO HOURS.
6 Q DID YOU COME BACK TO THE CAR?
7 A YES.
8 Q WAS IT STILL PARKED AT THE CASTAWAYS PARK-
9 ING LOT?
10 A YES.
11 Q DID YOU GET INTO THE CAR?
12 A YES.
13 Q DID YOU GO ANYWHERE?
14 A IN THE CAR?
15 Q YES, UH-HUH.
16 A NO. WE SAT IN THE PARKING LOT FOR AWHILE.
17 Q AND THEN WHAT HAPPENED?
18 A THEN SAM WENT SOMEWHERE FOR ABOUT, OH,
19 ABOUT AN HOUR, TWO HOURS.
20 Q DO YOU HAVE ANY IDEA ROUGHLY WHAT TIME IT
21 WAS ON THE DAY WHEN SAM WAS GONE?
22 A SAM WAS GONE ABOUT -- HOW LONG HE WAS GONE?
23 Q NO. WHAT TIME OF DAY IT WAS.
24 A OH. IT WAS LATE EVENING.
25 Q HAD HE MADE ANY TELEPHONE CALLS THAT YOU'RE
26 AWARE OF EARLIER IN THE DAY?
27 A YES.
28 Q AND WHEN DID THAT TAKE PLACE?
29 A THAT TOOK PLACE ABOUT -- IT WOULD HAVE TO
30 BE ABOUT 6:00 OR SO, 5:00 OR 6:00.
31 Q AND DID HE LEAVE THE CAR IN ORDER TO MAKE
32 THE PHONE CALL?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A YES.

Q DID YOU GO WITH HIM OR STAY IN THE CAR?

A NO. I STAYED IN THE CAR.

Q AND WHEN HE CAME BACK DID HE TELL YOU THAT HE'D MADE A PHONE CALL?

A YES.

Q DID HE TELL YOU -- BEFORE HE LEFT FOR THE TWO-HOUR PERIOD OF TIME, DID HE TELL YOU WHERE HE WAS GOING?

A UH, NO. HE DIDN'T TELL ME WHERE HE WAS GOING, JUST TOLD ME --

Q DID HE --

A (CONTINUING) -- HE HAD TO DRESS; HE WOULDN'T -- DO YOU WANT ME TO KEEP ANSWERING?

Q LET ME ASK YOU THE QUESTION.

DID HE TELL YOU WHAT HE WAS GOING TO DO WHEN HE LEFT THE CAR DURING THAT TWO-HOUR PERIOD OF TIME IN THE LATE EVENING?

A YES.

Q WHAT DID HE SAY HE WAS GOING TO DO?

A HE SAID THAT HE WAS GOING TO MEET A PIMP.

Q AND DID HE SAY WHAT HE WAS GOING TO DO WITH THE PIMP?

MR. COOPER: YOUR HONOR, I'M GOING TO ENTER AN OBJECTION AT THIS POINT.

MR. FRANZEN: YOUR HONOR, I ACKNOWLEDGE --

MR. COOPER: MAY COUNSEL APPROACH THE BENCH, YOUR HONOR?

THE COURT: YOU MAY.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED. AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

1976

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

3 DURING THIS RECESS YOU ARE
4 ADMONISHED NOT TO CONVERSE AMONG
5 YOURSELVES OR WITH ANYONE ELSE ON
6 ANY SUBJECT CONNECTED WITH THIS
7 TRIAL, OR READ, WATCH OR LISTEN
8 TO ANY REPORT OF OR COMMENTARY
9 ON THIS TRIAL WITH ANY PERSON
10 CONNECTED WITH THIS TRIAL BY ANY
11 MEDIUM OF INFORMATION, INCLUDING
12 WITHOUT LIMITATION, NEWSPAPER,
13 TELEVISION OR RADIO OR FORM OR
14 EXPRESS ANY OPINION ON ANY
15 SUBJECT CONNECTED WITH THIS
16 TRIAL UNTIL THE CASE IS FINALLY
17 SUBMITTED TO YOU.

18 YOU ARE EXCUSED AND MAY LEAVE THE COURTROOM
19 AT THIS TIME. WE WILL STILL BE IN SESSION. YOU ARE EXCUSED
20 AND MAY LEAVE.

21 (WHEREUPON, THE JURY LEFT THE
22 COURTROOM AND THE FOLLOWING
23 PROCEEDINGS WERE HAD OUTSIDE
24 OF THEIR PRESENCE:)

25 THE WITNESS: YOUR HONOR, CAN I STAY?

26 THE COURT: ALL RIGHT.

27 COUNSEL, OUTSIDE THE PRESENCE OF THE JURY
28 YOU CAN ASK HER THE QUESTION TO SEE WHAT HER RESPONSE WOULD BE.

29
30 BY MR. SEATON:

31
32 Q MISS THOMAS, WHEN SAM CAME BACK FROM MAKING

1-977

1 THE PHONE CALL WAS HE ABLE TO TELL YOU WHAT THE PURPOSE OF HIS
2 -- WHO HE WAS GOING TO SEE FOR THE TIME HE WAS GONE IN THE
3 EVENING?

4 A HE SAID THAT HE WAS GOING TO SEE A PIMP.

5 Q AND WHAT WAS HE GOING TO DO WHEN HE SAW
6 THE PIMP?

7 A HE SAID THAT THE PIMP HAD A LOT OF MONEY
8 AND HE WAS GOING TO ROB THE PIMP.

9 Q AND DID HE LEAVE INSTRUCTIONS FOR YOU WHEN
10 HE LEFT THE CAR IN THE EVENING HOURS?

11 A YES. HE TOLD ME TO WAIT IN THE CAR, I
12 THINK IT WAS ABOUT AN HOUR, I'M NOT SURE. BUT HE TOLD ME TO
13 WAIT IN THE CAR.

14 Q AND DO YOU REMEMBER THE APPROXIMATE TIME
15 THAT HE TOLD YOU TO LEAVE THE CAR?

16 A OH, I THINK IT WAS ABOUT 9:30 -- 9:00
17 O'CLOCK.

18 Q OKAY. AND WHERE DID HE -- DID HE TELL YOU
19 TO GO SOMEPLACE AT 9:00 O'CLOCK?

20 A TO THE TELEPHONE BOOTH.

21 Q WHERE WAS THE TELEPHONE BOOTH?

22 A IT WAS INSIDE THE CASINO.

23 Q THE CASTAWAYS CASINO?

24 A YES.

25 Q AND WAS HE GOING TO CALL YOU THEN?

26 A YES.

27 Q DID HE CALL YOU AT 9:00 O'CLOCK?

28 A YES.

29 Q AND WHAT DID HE TELL YOU THEN?

30 A HE TOLD ME TO COME AND PICK HIM UP.

31 Q DID YOU GO TO PICK HIM UP?

32 A YES.

1978

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Q AND WHERE DID YOU GO TO PICK HIM UP?

A OH, AT THE FLAMINGO HILTON.

Q OKAY.

THE FLAMINGO HILTON?

A YES.

Q AND AFTER PICKING HIM UP AT THE FLAMINGO HILTON HOTEL LATER THAT EVENING, DID YOU HAVE A CONVERSATION WITH SAM REGARDING WHAT HAPPENED WITH THE PIMP?

A YES.

Q WHAT DID SAM TELL YOU ABOUT THAT?

A HE TOLD ME THAT HE -- HE SAID THAT THE -- THE PIMP THAT HE WAS GETTING READY TO ROB HE COULDN'T ROB HIM BECAUSE HIS TWO WOMEN WAS THERE. HE HAD TWO PROSTITUTES WITH HIM.

Q AND HE GAVE THAT AS THE REASON FOR NOT HAVING COMMITTED THE ROBBERY?

A YES.

Q AND YET LATER THAT EVENING DID YOU HAVE ANOTHER CONVERSATION WITH SAM HOWARD ABOUT SEEING THE PIMP AT A LATER TIME?

A YES.

Q AND WHEN WAS HE GOING -- WHEN WAS HE GOING TO SEE THE PIMP THE NEXT TIME?

A HE SAID THAT HE COULDN'T GET HIM THEN BUT HE -- TO SEE EACH OTHER IN THE MORNING.

Q HAD THEY ARRANGED TO SEE EACH OTHER?

A YES.

Q HAD HE ACTUALLY SEEN THE PIMP THEN THAT NIGHT?

A YES.

Q DID HE SAY WHETHER OR NOT THE NEXT MORNING THE PIMP WOULD BE ALONE OR NOT?

1979

1 A YES, THE PIMP WOULD BE ALONE THEN.
2 Q WOULD BE ALONE?
3 A YES.
4 Q AND DID HE TELL YOU WHAT HIS PLANS WERE
5 WHEN HE MET THE PIMP THE NEXT MORNING WHEN THE PIMP WAS ALONE?
6 A TO ROB HIM.
7 Q AND AS A MATTER OF FACT DID YOU TAKE SAM
8 HOWARD SOMEPLACE THE NEXT MORNING?
9 A YES.
10 Q AND DID HE INDICATE TO YOU WHETHER OR NOT
11 AT THAT TIME HE WAS PLANNING ON SEEING THE PIMP?
12 A YES.
13 Q WHAT WAS -- WHAT DID HE SAY ABOUT THAT?
14 A HE JUST SAID THAT THIS IS THE DAY THAT WILL
15 MAKE ME OR BREAK ME, AND THAT -- AM I TALKING TOO LOW? -- THIS
16 IS THE DAY THAT IT WOULD MAKE HIM OR BREAK HIM AND THAT HE WAS
17 GOING TO SEE THE PIMP.
18 Q DID HE SAY HE WAS GOING TO ROB THE PIMP
19 THAT MORNING WHILE YOU WERE WITH HIM IN THE MORNING?
20 A YES. YES.
21 MR. SEATON: COURT'S INDULGENCE.
22 THE COURT: COUNSEL, WE'LL BE IN RECESS IN THIS
23 MATTER UNTIL 1:30 THIS AFTERNOON.
24 ..
25 ..
26 ..
27 ..
28 ..
29 ..
30 ..
31 ..
32 ..

1980

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 20, 1983, AT 1:50 P.M.

2 * * * * *

3 (WHEREUPON, FROM 12:00 A.M.
4 UNTIL 1:50 P.M., THE NOON
5 RECESS WAS HAD IN THE PROCEED-
6 INGS; AT THE CONCLUSION OF
7 WHICH THE FOLLOWING PROCEED-
8 INGS WERE HAD OUTSIDE THE
9 PRESENCE OF THE JURY:)

10 THE COURT: LET THE RECORD REFLECT THIS IS A
11 HEARING OUTSIDE THE PRESENCE OF THE JURY.

12 COUNSEL.

13 MR. SEATON: WE WOULD RECALL --

14 THE COURT: DID YOU FINISH WITH YOUR EXAMINATION?

15 MR. SEATON: NO, YOUR HONOR, I DID NOT.

16 THE COURT: ALL RIGHT. IF YOU WILL.

17 MR. SEATON: NO, YOUR HONOR, I DID NOT. I RECALL
18 DAWANA THOMAS TO THE STAND.

19 THE COURT: IF YOU WOULD COME FORWARD, PLEASE.

20 JUST BE SEATED. YOU'RE STILL UNDER OATH.

21
22 BY MR. SEATON:

23
24 Q MISS THOMAS, THE DAY AFTER THE INCIDENT AT
25 SEARS, WHICH I WOULD REFER TO NOW, DO YOU RECALL WAKING UP THAT
26 MORNING?

27 A YES.

28 Q WHERE WERE YOU STAYING THAT MORNING, THAT
29 NIGHT, EXCUSE ME.

30 A AT THE BEST WESTERN OFF OF BOULDER HIGHWAY.

31 Q DO YOU KNOW WHAT CROSS STREET IS CLOSE TO
32 THE BEST WESTERN MOTEL?

1981

1 MR. FRANZEN: YOUR HONOR, I'M GOING TO OBJECT.
2 THIS IS BEYOND THE SCOPE OF THE HEARING WHICH I THOUGHT WAS ABOUT
3 PRIOR --

4 MR. SEATON: ABOUT WHAT?

5 MR. FRANZEN: PRIOR EVENING.

6 MR. SEATON: WELL, YOUR HONOR, THE TESIMONY IS
7 GOING TO SHOW THAT THERE WILL BE MORE REFERENCES TO THE PIMP AND
8 THE ROBBERY THAT WAS GOING TO TAKE PLACE AND THE ROBBERY.

9 THE COURT: IT'S STILL CONNECTED IN THAT VEIN?

10 MR. SEATON: IT IS CONNECTED IN THAT VEIN, YES,
11 SIR.

12 THE COURT: ALL RIGHT. YOUR OBJECTION IS OVER-
13 RULED.

14 MR. SEATON: THANK YOU, YOUR HONOR.

15

16 BY MR. SEATON:

17

18 Q THE BEST WESTERN MOTEL IS LOCATED NEAR
19 BOULDER HIGHWAY AND WHAT ROAD?

20 A DESERT INN.

21 Q AND DID YOU STAY THERE THE EVENING OF THE
22 INCIDENT AT SEARS?

23 A YES.

24 Q AND CAN YOU RECALL AT WHAT TIME YOU WOKE UP
25 THAT MORNING?

26 A OH, ABOUT 6:00 O'CLOCK IN THE MORNING.

27 Q AND DID SAM HOWARD TELL YOU WHAT HE WAS
28 GOING TO DO THAT MORNING?

29 A YES.

30 Q WHAT DID HE SAY?

31 A HE SAID THAT HE WAS SUPPOSED TO MEET THE
32 PIMP ALONE.

1982

1 Q AND DID YOU GET -- THE TWO OF YOU GET
2 DRESSED AND PREPARE TO LEAVE THE MOTEL?
3 A YES.
4 Q WERE YOU IN ANY PARTICULAR HURRY OR WERE
5 YOU GOING SLOW?
6 A HURRY.
7 Q WHY?
8 A BECAUSE HE -- HE WAS JUST ALWAYS LIKE THAT.
9 Q SAM WAS ALWAYS LIKE THAT?
10 A YEAH.
11 Q AND DID YOU EVENTUALLY GET INTO THE AUTO-
12 MOBILE?
13 A YES.
14 Q IS THAT THE 1980 OLDS CUTLASS THAT WE'VE
15 BEEN TALKING ABOUT?
16 A YES.
17 Q AND WHO WAS DRIVING?
18 A I WAS.
19 Q AND WHERE WAS SAM HOWARD?
20 A SAM WAS UNDER -- IN THE PASSENGER'S SEAT.
21 Q AND DID HE HAVE YOU DRIVE SOMEPLACE?
22 A YES.
23 Q DID HE TELL YOU WHERE TO GO?
24 A YES.
25 Q AND WHERE DID YOU GO?
26 A I WENT TO -- BACK OVER THERE OFF OF DESERT
27 INN NEAR THE 1500 BLOCK.
28 Q DID YOU GO BACK IN THE ALLEY AGAIN?
29 A YES.
30 Q AND WHERE DID YOU ENTER THE ALLEY, NEAR
31 WHERE? WHAT SPOT?
32 A IT WAS OFF OF THE -- THE DESERT INN MAIN -

1983

1 STREET IN BACK BEHIND THE MANCHESTER PLAZA (SIC).
2 Q DO YOU MEAN THE WINCHESTER PLAZA?
3 A YEAH, THE WINCHESTER PLAZA.
4 Q DID YOU -- WHERE WAS THE WINCHESTER PLAZA
5 FROM THE BUILDING THAT YOU HAD DESCRIBED THAT IS IN THE 1500
6 BLOCK OF TROPICANA -- OF DESERT INN, I'M SORRY?
7 A CAN YOU RE- --
8 Q LET ME REPHRASE THAT.
9 A YEAH.
10 Q WHERE IS THE WINCHESTER PLAZA FROM THE
11 BUILDING WHICH IS AT THE 1500 BLOCK OF DESERT INN ROAD THAT YOU
12 FIRST WENT TO A FEW DAYS EARLIER?
13 A OH, THAT BUILDING WAS ABOUT LESS THAN A
14 BLOCK, ABOUT A BLOCK.
15 Q A BLOCK AWAY?
16 A A BLOCK AWAY, UH-HUH.
17 Q DID YOU REACH IT BY GOING THROUGH THE ALLEY?
18 A YES.
19 Q AND DID YOU DRIVE FROM THE 1500 BLOCK DOWN
20 TOWARDS THE WINCHESTER PLAZA?
21 A YES.
22 Q AND WHEN YOU GOT BEHIND THE WINCHESTER PLAZA
23 BUILDING DID YOU STOP THE AUTOMOBILE?
24 A YES.
25 Q WHERE WERE YOU --
26 A AT THE END --
27 Q (CONTINUING) -- AT THAT TIME?
28 A (CONTINUING) -- ALLEY.
29 Q AND IF YOU KEPT --
30 A I MEAN --
31 Q IF YOU KEPT GOING OUT THE ALLEY WHAT WOULD
32 YOU GO ONTO?

1 A THE SIDE STREET.

2 Q DOES THE SIDE STREET COME OFF OF DESERT INN

3 ROAD?

4 A YES, IT DOES.

5 Q DID YOU STOP THE CAR AT THAT POINT?

6 A YES. HE WANTED TO GET OUT. -- HE WANTED TO

7 GET OUT.

8 Q SAM WANTED TO GET OUT OF THE CAR?

9 A YES.

10 Q AND DID HE GET OUT OF THE CAR?

11 A YES.

12 Q AS HE WAS GETTING OUT OF THE CAR DID HE

13 GIVE YOU INSTRUCTIONS?

14 A YES.

15 Q WHAT DID HE TELL YOU?

16 A HE TOLD ME TO GO BACK TO THE ROOM.

17 Q WHICH ROOM?

18 A THE BEST WESTERN OFF OF BOULDER HIGHWAY,

19 GO BACK TO THE ROOM AND WAIT BY THE TELEPHONE AND HAVE THE BAGS

20 PACKED.

21 Q AND THEN DID HE GET OUT OF THE CAR?

22 A YES.

23 Q COULD YOU SEE WHERE HE WENT?

24 A NO, I DIDN'T LOOK BACK. I JUST DROVE OFF.

25 Q THEN DID YOU GO BACK TO THE MOTEL?

26 A YES.

27 Q IF YOU GOT UP AT ABOUT 6:00 O'CLOCK IN THE

28 MORNING AND THEN LATER WENT OVER TO THIS AREA, CAN YOU ESTIMATE

29 APPROXIMATELY WHAT TIME IT MIGHT HAVE BEEN WHEN YOU DROPPED SAM

30 HOWARD OFF BEHIND THE WINCHESTER PLAZA?

31 A WE GOT SOMETHING TO EAT IN THE MC DONALDS --

32 COULD I REPHRASE THAT AGAIN?

1 Q YES.

2 A I'M OFF --

3 Q COULD YOU TELL US TO THE BEST OF YOUR

4 KNOWLEDGE AND ABILITY WHAT TIME IT WAS APPROXIMATELY --

5 A UH-HUH.

6 Q (CONTINUING) -- WHEN YOU DROPPED SAM OFF

7 BEHIND THE WINCHESTER PLAZA?

8 A HAD TO BE ABOUT 7:00, 7:15.

9 Q THANK YOU.

10 DID SAM CALL YOU?

11 A NO.

12 Q DID YOU SEE HIM AGAIN?

13 A YES.

14 Q WHERE WERE YOU WHEN YOU SAW SAM HOWARD THE

15 NEXT TIME?

16 A AT THE BEST WESTERN, IN THE ROOM.

17 Q YOU WERE IN YOUR ROOM.

18 AND WHERE WAS SAM WHEN YOU SAW HIM?

19 A HE WAS COMING IN THE DOOR.

20 Q NOW, ABOUT HOW LONG AFTER YOU HAD LET HIM

21 OFF AT THE WINCHESTER PLAZA DID YOU SEE SAM COMING THROUGH THE

22 DOOR OF YOUR ROOM AT THE BEST WESTERN MOTEL?

23 A ABOUT 45 MINUTES TO AN HOUR.

24 Q WAS HE CARRYING ANYTHING?

25 A YES.

26 Q WHAT WAS HE CARRYING?

27 A SOME -- HE WAS CARRYING A C.B. AND --

28 Q STOP JUST THERE FOR A MOMENT, IF YOU WOULD,

29 MISS THOMAS.

30 WOULD YOU DESCRIBE WHAT YOU MEAN WHEN

31 YOU SAY A "C.B."?

32 A OH, A C.B. RADIO.

1 Q AND CAN YOU TELL US WHAT IT LOOKS LIKE?

2 A IT WAS BLACK AND WIRES WAS HANGING OUT OF

3 IT AND --

4 Q WHAT DO YOU MEAN WHEN YOU SAY THAT WIRES

5 WERE HANGING OUT OF IT?

6 A YOU KNOW, WIRES THAT WAS TO PLUG UP -- YOU

7 HAVE TO STICK THE OTHER WIRES TO PUT IN THE -- IN THE DASHBOARD

8 OF A CAR.

9 Q DID THE WIRES HAVE A PLUG ON THE END OF

10 THEM?

11 A I CAN'T REMEMBER. I JUST REMEMBER THE

12 WIRES.

13 Q OKAY.

14 WERE THERE MORE THAN ONE?

15 A YES.

16 Q AND WHAT ELSE WAS HE CARRYING WHEN HE CAME

17 INTO THE ROOM, IF ANYTHING?

18 A WALKIE-TALKIE.

19 Q IS THAT THE WALKIE-TALKIE THAT WE LOOKED AT

20 EARLIER, WHICH IS STATE'S EXHIBIT 24-B?

21 A YES.

22 Q WHAT ELSE WAS HE CARRYING?

23 A UH, THAT'S ALL THAT I CAN THINK OF.

24 Q DID YOU NOTICE ANYTHING OUT OF THE ORDINARY

25 WITH SAM AS HE WALKED INTO THE ROOM WITH REGARD TO JEWELRY?

26 A HE HAD A WATCH ON.

27 Q NOW, CAN YOU DESCRIBE THAT WATCH FOR US?

28 A IT WAS A GOLD WATCH.

29 Q DID YOU EVER LEARN THE NAME OF THE -- OF

30 THAT PARTICULAR WATCH?

31 A NO. I JUST THOUGHT IT WAS A SEIKO WATCH.

32 Q FOR THE RECORD, BY "SEIKO" ARE YOU SAYING

1987

1 S-E-I-K-O?

2 A YES, SIR.

3 Q DID SAM HOWARD LEAVE THE BEST WESTERN MOTEL
4 THAT MORNING TO GO TO THE WESTWOOD -- THE WINCHESTER PLAZA WEAR-
5 ING THAT PARTICULAR WATCH?

6 MR. FRANZEN: YOUR HONOR -- YOUR HONOR, UNLESS
7 THE PIMP SURFACES AGAIN I THINK WE'RE WAY BEYOND THAT AND LET'S
8 GET THE TRIAL MOVING.

9 MR. SEATON: WE ARE IN THE LAST STAGES OF PROVING
10 UP THE REASON THAT WE WILL BE ELUDING TO IN THE ARGUMENT REGARD-
11 ING THE PIMP, YOUR HONOR.

12 THE COURT: WELL, WHY DON'T WE GET TO THAT ISSUE,
13 BECAUSE THAT ISSUE IS REALLY WHAT HAVING THIS HEARING OUTSIDE
14 OF THE PRESENCE OF THE JURY IS FOR.

15 MR. SEATON: THAT'S CORRECT, YOUR HONOR. AND THIS
16 PARTICULAR WATCH IS FAIRLY IMPORTANT BECAUSE MARY LOU MONAHAN
17 INDICATED IN HER TESTIMONY THAT THIS KIND OF A WATCH WAS THE
18 LAST ITEM GEORGE MONAHAN WAS SEEN WITH, AS FAR AS A WATCH IS
19 CONCERNED, WHEN HE LEFT THE HOME NOT MORE THAN AN HOUR BEFORE
20 THIS. AND THIS ESTABLISHES, IN THE STATE'S MIND CERTAINLY, THAT
21 NOT ONLY DID A ROBBERY OCCUR BY THIS DEFENDANT BUT IT WAS THAT
22 OF GEORGE MONAHAN AND THAT IS GOING TO BE THE ANALOGY WE DRAW
23 TO THE PIMP STORY THAT HE WAS TELLING MISS THOMAS.

24 WE ARE QUITE CLOSE TO WRAPPING THIS UP.

25 THE COURT: ALL RIGHT. CONTINUE.

26

27 BY MR. SEATON:

28

29 Q DID SAM HOWARD LEAVE THE MOTEL THAT MORNING
30 BEFORE -- AS HE WAS GOING TO THE WINCHESTER PLAZA WITH THIS
31 PARTICULAR GOLD WATCH ON HIS WRIST?

32 A WELL, I DON'T REMEMBER -- SAM HAD PAWNED -

1988

1 -- WELL, I REMEMBER SAM HAD PAWNED HIS WATCH.

2 Q HOW LONG --

3 A HE HAD SEVERAL WATCHES, BUT HE PAWNED A
4 WATCH.

5 Q HOW LONG BEFORE THIS DAY HAD HE PAWNED A
6 WATCH?

7 A A FEW DAYS BEFORE.

8 Q NOW, IF YOU'D ANSWER MY OTHER QUESTION:
9 DID SAM HOWARD LEAVE THE BEST WESTERN MOTEL THAT MORNING ON HIS
10 WAY TO THE WINCHESTER PLAZA WITH THAT PARTICULAR GOLD SEIKO
11 WATCH ON HIS WRIST?

12 A NOT THAT I KNOW OF.

13 Q SUBSEQUENT TO THIS, LATER ON WERE YOU --
14 DID YOU AND SAM GET IN THE CAR TO LEAVE TOWN?

15 A YES.

16 Q AND BEFORE GETTING ON THE FREEWAY DID YOU
17 STOP AT A SERVICE STATION?

18 A YES.

19 Q NOW, PRIOR TO STOPPING AT THAT SERVICE
20 STATION --

21 MR. FRANZEN: YOUR HONOR --

22 THE COURT: I THINK YOU -- COUNSEL, LET'S GET TO
23 THE CONVERSATION AND YOU'RE STRETCHING THIS THING OUT AND IT
24 REALLY ISN'T MATERIAL TO THE ISSUE THAT WE'RE HERE TO TRY OUTSIDE
25 OF THE PRESENCE OF THE JURY, AND THAT IS WHETHER OR NOT THE
26 REFERENCE TO THE PIMP CAN GO IN. I SUGGEST YOU GET ON THAT
27 ISSUE, SIR.

28 THE OBJECTION IS SUSTAINED.

29

30 BY MR. SEATON:

31

32 Q DID SAM HOWARD, AFTER COMING INTO THE MOTEL

1989

1 ROOM WITH THE C.B. RADIO AND THE GOLD SEIKO WATCH, TELL YOU ANY-
2 THING MORE ABOUT THE PIMP THAT HE WAS GOING TO SEE THAT PARTICU-
3 LAR MORNING?

4 A NO.

5 MR. SEATON: THANK YOU.

6 THAT CONCLUDES THE STATE'S QUESTIONS, YOUR
7 HONOR.

8 MR. FRANZEN: NOTHING.

9 THE COURT: ALL RIGHT. ARGUMENT.

10 MR. SEATON: YOUR HONOR, THE TESTIMONY REGARDING
11 THE PIMP AND THE PROSTITUTE IS EXTREMELY RELEVANT TO THE CASE
12 AT HAND.

13 THE DEFENDANT HAS TOLD MISS THOMAS THAT HE
14 WAS GOING TO ROB A PIMP. THAT'S WHEN THEY WERE IN THE PARKING
15 LOT OF THE CASTAWAYS HOTEL. HE THEN TOOK OFF FOR ABOUT A TWO-
16 HOUR PERIOD OF TIME, WHICH I THINK ALIGNS UP WITH THE TIME THAT
17 HE WENT TO THE CAESARS PALACE, ACCORDING TO MARY LOU MONAHAN'S
18 TESTIMONY, AND VIEWED THE VAN. WE KNOW FROM THAT TESTIMONY THAT
19 ~~GEORGE MONAHAN, MARY LOU MONAHAN, BARBARA ZEMAN AND MARY~~
20 CATHERINE WERE ALL PRESENT AT THAT VIEWING OF THE VAN.

21 WHEN HE CAME BACK FROM HAVING VIEWED
22 THE VAN HE DIDN'T TELL MISS THOMAS THAT, HE TOLD HER THAT HE HAD
23 SEEN THE PIMP, HE HAD BEEN PREPARED TO ROB HIM, AND THAT HE DID
24 NOT BECAUSE THE PIMP HAD HIS PROSTITUTES WITH HIM. HE WENT ON
25 FURTHER TO STATE THAT HE HAD MADE ARRANGEMENTS WITH THE PIMP TO
26 MEET HIM THE NEXT MORNING AND THAT THE PIMP WOULD BE ALONE, AND
27 BECAUSE OF THAT FACTOR HE WOULD BE ABLE TO ROB THE PIMP.

28 THEN WE KNOW FROM MARY LOU MONAHAN AND
29 BARBARA ZEMAN THAT THOSE ARRANGEMENTS WERE MADE WITH DOCTOR
30 MONAHAN, THAT DOCTOR MONAHAN ANTICIPATED THE DEFENDANT COMING TO
31 HIS OFFICE AND MEETING FOR THE PURPOSE OF TAKING A TEST DRIVE IN
32 THE VAN.

1990

1 THE NEXT MORNING MISS THOMAS IS ABLE TO
2 TELL US THAT WHEN THEY GOT UP THE DEFENDANT INDICATED THAT HE
3 WAS GOING TO MEET THE PIMP AND HE WAS GOING TO ROB HIM, AND
4 AGAIN IT WAS BECAUSE HE WAS ALONE. HE HAD HER DRIVE HIM TO --
5 RIGHT BEHIND THE OFFICE IN WHICH DOCTOR MONAHAN WORKED, THAT IS
6 IN THE WINCHESTER PLAZA.

7 WE KNOW FROM BARBARA ZEMAN -- EXCUSE
8 ME, FROM HELENE ZUCKERMAN, DOCTOR MAGDALL'S DENTAL ASSISTANT,
9 THAT A PERSON MATCHING THIS DESCRIPTION, THE DESCRIPTION OF THE
10 DEFENDANT, SHOWED UP AT THE DENTAL OFFICE AT APPROXIMATELY 7:10,
11 WHICH LINES UP WITH THE TIME THAT MISS THOMAS BELIEVES THAT SHE
12 DROPPED THE DEFENDANT OFF RIGHT AT THAT BUILDING.

13 WE KNOW FROM CHARLES MARINO THAT THE
14 VAN THAT THE TEST DRIVE WAS GOING TO BE TAKEN IN WAS SEEN BACK-
15 ING INTO THE DEW DROP INN, WHICH IS ON THE CORNER OF, OR ALMOST
16 ON THE CORNER, OF DESERT INN AND BOULDER HIGHWAY; AND THAT HE
17 VIEWED IT WITHIN FIVE MINUTES OR SO AFTER HAVING ARRIVED THERE
18 AND THE INSIDE WAS IN DISARRAY, I THINK HE SAID. IT CERTAINLY
19 DID NOT LOOK LIKE THE CLEAN, EMPTY VAN THAT THE MONAHAN'S HAD
20 LEFT AT THE OFFICE THE NIGHT BEFORE WHEN THEY CAME BACK FROM
21 CAESARS PALACE.

22 WE KNOW FROM MISS THOMAS THAT WITHIN
23 AN HOUR AFTER DROPPING HIM OFF, THAT IS PROBABLY CLOSE TO 8:00
24 O'CLOCK, 45 MINUTES TO AN HOUR, THE DEFENDANT SHOWED UP IN HER
25 MOTEL ROOM WITH A.C.B. RADIO IN HIS ARMS AND THERE WERE WIRES
26 DANGLING FROM IT. WE KNOW FROM THE EVIDENCE THAT SUCH A RADIO
27 WAS TAKEN FROM THE VAN AND IT WAS RIPPED OUT BECAUSE THERE ARE
28 WIRES DANGLING WITHIN THE VAN.

29 WE KNOW FROM MARY LOU MONAHAN THAT THE
30 DENTIST, DOCTOR MONAHAN, HAD A GOLD SEIKO WATCH ON WHEN HE LEFT
31 THAT MORNING. THAT WATCH WAS MISSING WHEN THE BODY WAS FOUND.
32 THAT SAME KIND OF WATCH WAS OBSERVED BY MISS THOMAS AS THE

1991

1 DEFENDANT WALKED INTO THE MOTEL.

2 WHAT THE STATE IS CONTENDING, WITH ALL
3 OF THOSE FACTS IN MIND, IS THAT THE DEFENDANT IS TELLING DWANA
4 THOMAS HALF TRUTHS. HE WAS TELLING HER THAT HE PLANS TO GO OUT
5 AND ROB SOMEBODY BUT HE'S MAKING EXCUSES FOR NOT HAVING DONE IT
6 BY INDICATING THAT THERE WERE OTHER PEOPLE AROUND, WHICH THERE
7 WERE, BUT HE'S CALLING THEM PIMPS AND PROSTITUTES, AND THAT IS
8 WHAT SHE BELIEVED.

9 IT IS IMPORTANT TO SHOW THIS EVIDENCE
10 TO SHOW THE INTENT OF THE DEFENDANT; THAT WHEN HE, OBVIOUSLY
11 THE STATE'S POSITION IS GOING TO BE, THAT WHEN THE DEFENDANT MET
12 DOCTOR MONAHAN, IT WAS THE DEFENDANT WHO ROBBED HIM AND THE
13 DEFENDANT WHO KILLED HIM, AND WE NEED TO SHOW THE INTENT FOR
14 THAT ROBBERY AND FOR THE MURDER. THE BEST WAY WE CAN DO THAT
15 IS BY HIS OWN STATEMENTS.

16 NOW, THE MERE FACT THAT HE DISCLOSES
17 HIS STATEMENTS TO THIS WITNESS WITH THE USE OF PROSTITUTE AND
18 PIMP AS OPPOSED TO DENTIST AND WOMEN WHO ARE ACCOMPANYING HIM
19 SHOULD NOT -- SHOULD NOT PRECLUDE THE STATE FROM BEING ABLE TO
20 SHOW THAT EVIDENCE TO THE JURY. AND ON THAT WE WOULD SUBMIT IT,
21 YOUR HONOR.

22 THE COURT: COUNSEL?

23 MR. FRANZEN: YOUR HONOR, EXCEPT FOR THE TESTI-
24 MONY ABOUT THE PIMP, I DON'T HAVE ANY OBJECTION TO HER TESTIFY-
25 ING ABOUT DROPPING THE DEFENDANT OFF, SEEING HIM GET OUT OF THE
26 CAR, WHAT HE WAS WEARING. WHAT I'M CONCERNED ABOUT IS WHY THIS
27 BUSINESS ABOUT THE PIMP. THERE ARE MORE PEOPLE THAN PIMPS THAT
28 WEAR WRIST -- WRISTWATCHES.

29 AND ALSO THE DISTRICT ATTORNEY IS CONTEND-
30 ING HE'S MAKING THIS UP BECAUSE HE DOESN'T WANT TO DO A ROBBERY
31 WITH OTHER PEOPLE PRESENT. WELL, HE'S ALREADY PROVEN, OR
32 ATTEMPTED TO PROVE TO THE SATISFACTION OF THE JURY, THAT HE DID

1992

1 DO A ROBBERY IN THE PRESENCE OF THREE PEOPLE, THE SEARS ROBBERY.

2 I MAY BE MISSING SOMETHING, BUT AT THE
3 MOMENT I DON'T SEE THE RELEVANCY OF THIS ONE ASPECT OF HER
4 TESTIMONY.

5 THE COURT: THE STATE?

6 MR. SEATON: ONLY TO SAY, YOUR HONOR, THAT THE
7 SEARS ROBBERY CAN CLEARLY BE DISTINGUISHED. A CONFERENCE ENSUED
8 THERE AND THE DEFENDANT KNEW THAT IF IT WENT ON MUCH LONGER, HE
9 WAS GOING TO BE PATTED DOWN AND THE GUN WAS GOING TO BE FOUND
10 AND HE WAS GOING TO BE IN TROUBLE. AND SO HE WENT AHEAD AND GOT
11 THE MONEY AS HE ORIGINALLY PLANNED TO, PLUS THE OTHER THINGS
12 THAT HE WAS ABLE TO SECURE FROM THAT PARTICULAR ROBBERY.

13 WHEN HE MET WITH THE MONAHANS THE EVENING
14 BEFORE, THERE IS NOT ONE IOTA OF INFORMATION TO INDICATE THAT THE
15 NEED EVER AROSE TO TAKE OUT HIS GUN AND UTILIZE IT.

16 IF THE COURT REMEMBERS THE TESTIMONY OF
17 ED SCHWARTZ IN ANOTHER HEARING THAT WE'VE HAD IN HERE, THAT
18 ROBBERY WAS COMMITTED WHEN THE DEFENDANT WAS ALONE AND WITH --
19 HE DIDN'T DO IT AT A CAR DEALERSHIP, HE WAITED UNTIL HE WAS OFF
20 ALONE. AND I THINK ALL OF OUR COMMON SENSE WOULD INDICATE THAT
21 THAT'S THE TYPICAL WAY THAT A ROBBERY WOULD GO DOWN. COURT'S
22 INDULGENCE.

23 MR. FRANZEN: YOUR HONOR, IF I MIGHT, THE PROBLEM
24 WITH THIS IS THE JURY MIGHT NOT MAKE THAT DISTINCTION. I MEAN.
25 IN ADDITION TO -- I DON'T SEE THE RELEVANCY OF IT. THE JURY
26 MIGHT CONTEND OR BELIEVE THAT HE'S OFF ON A CRIME SPREE ROBBING
27 THIS PIMP, AS WELL AS WHOMEVER ELSE THE DISTRICT ATTORNEY WISHES
28 TO IMPLICATE THE DEFENDANT IN.

29 THE COURT: WELL, WE REALLY DON'T HAVE HIM ADMIT-
30 TING, ACCORDING TO THIS WITNESS' TESTIMONY, THAT HE COMMITTED
31 THE CRIME.

32 MR. FRANZEN: WHAT WE HAVE, YOUR HONOR, IS --

1993

1 THE COURT: WE REALLY --

2 MR. FRANZEN: (CONTINUING) -- INTENT.

3 THE COURT: WE REALLY DON'T HAVE ANY EVIDENCE TO
4 SHOW THAT HE HAS COMMITTED A ROBBERY.

5 MR. FRANZEN: THE STATEMENT THAT THAT'S WHAT HE
6 WISHED TO DO, TO ROB THE PIMP.

7 THE COURT: I UNDERSTAND THAT. BUT THAT IS
8 DIFFERENT THAN SAYING WE HAVE AN OFFENSE THAT'S BEEN COMMITTED.
9 ALL WE HAVE IS HIS STATEMENT TO HER THAT HE INTENDED TO COMMIT,
10 BUT THERE IS NO ADMISSION FROM HIM TO HER THAT IT WAS EVER
11 COMMITTED.

12 MR. FRANZEN: WELL, I WOULD RESPECTFULLY SUGGEST
13 FOR THE JURY THAT IS A FINE LINE WITH NO MEANING. HERE HE'S
14 GETTING OUT AND HE'S TELLING THIS WITNESS "I'M GOING OUT AND ROB
15 A PIMP." NOW, THE FACT THAT THE DISTRICT ATTORNEY HASN'T
16 BROUGHT IN THAT ADDITIONAL EVIDENCE IS IRRELEVANT, I WOULD
17 SUSPECT, TO THE LAY JURORS. AND THIS IS WHAT HE IS GETTING OUT
18 OF THE CAR TO DO, TO ROB A PIMP, WHICH IS A SEPARATE OFFENSE
19 FROM WHAT THE DEFENDANT IS NOW BEING TRIED FOR.

20 THE COURT: NO, BECAUSE THAT ISN'T THE INFERENCE
21 THE STATE IS TRYING TO RAISE. THE INFERENCE THE STATE IS TRYING
22 TO RAISE HERE IS THAT, IN FACT, HE DID NOT DRAW AN ATTEMPT BUT
23 DID NOT IN FACT ROB A PIMP BUT DID IN FACT ROB THE DENTIST, AND
24 SO THEREFORE YOU DON'T HAVE A SEPARATE OFFENSE. WHAT YOU HAVE
25 IS A, QUOTE, A STORY ABOUT ANOTHER OFFENSE, WHICH, IN FACT,
26 REALLY RELATES TO THE PRINCIPAL OFFENSE IN ISSUE. SO WE'RE
27 REALLY NOT TALKING IN THIS INSTANCE ABOUT A SEPARATE AND DIS-
28 TINCT OFFENSE, OR EVIDENCE OF OTHER OFFENSES. BUT WHAT WE'RE
29 TALKING ABOUT IS A COVER STORY, TO TRY TO COVER FOR THE PRINCIPAL
30 OFFENSE WITH WHICH HE'S BEING TRIED.

31 MR. FRANZEN: WELL, YOUR HONOR, THE COVER STORY
32 IS FOR A ROBBERY, IF YOU ACCEPT IT AS A COVER STORY, AND THAT IT

1994

1 WAS INDEED SAID WHAT IS SUPPOSED TO HAPPEN IS A ROBBERY, THAT IS
2 INDEED NOT A COVER STORY. THAT'S AN ADMISSION OF THE ROBBERY.
3 IT'S AN ADMISSION OF A ROBBERY OF SOME OTHER ROBBERY. THAT
4 DOESN'T COVER ANYTHING.

5 THE COURT: WELL, THE FACT THAT REMAINS IS:
6 THERE IS NO EVIDENCE, INDEPENDENT EVIDENCE, THAT HE EVER ROBBED
7 A PIMP, THAT HE EVER ADMITTED THAT HE EVER ROBBED A PIMP. SO,
8 THEREFORE, WE HAVE NO EVIDENCE IN THIS RECORD THAT, QUOTE, A
9 PIMP WAS ROBBED, WHICH WOULD SHOW EVIDENCE OF ANOTHER OFFENSE.

10 THE EVIDENCE THAT WE HAVE IN THIS PARTICULAR
11 CASE SHOWS THAT WHEN HE CAME BACK HE HAD A SEIKO WATCH IN
12 HIS POSSESSION.

13 MR. FRANZEN: YOUR HONOR, I BEG TO DIFFER. THAT'S
14 NOT WHAT THE WITNESS SAID. SHE SAID HE HAD A GOLD WATCH.

15 MR. SEATON: EXCUSE ME, COUNSEL. SHE NEVER --

16 THE COURT: SHE THOUGHT IT WAS A SEIKO; AND HAD
17 A C.B. THOSE TWO THINGS WOULD CONNECT THIS DEFENDANT BY INFER-
18 ENCE TO THE VICTIM IN THIS CASE, DOCTOR MONAHAN. SO, THEREFORE,
19 YOU DON'T HAVE THE EVIDENCE IN THIS CASE, THE SEPARATE EVIDENCE,

20 CONNECTING HIM WITH A SEPARATE OFFENSE.

21 YOUR OBJECTION IS OVERRULED. THE TESTIMONY
22 WILL BE ALLOWED.

23 MR. SEATON: THANK YOU, YOUR HONOR.

24 THE COURT: CALL THE JURY.

25 (WHEREUPON, THE JURY ENTERED
26 THE COURTROOM AND THE FOLLOW-
27 ING PROCEEDINGS WERE HAD:)

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

30 MR. HARMON: THE STATE DOES.

31 MR. FRANZEN: YES, YOUR HONOR, WE WILL.

32 THE COURT: YOU MAY PROCEED, COUNSEL.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

MR. SEATON: THANK YOU, YOUR HONOR.

BY MR. SEATON:

Q MISS THOMAS, YOU INDICATED EARLIER TODAY THAT WHEN YOU LEFT THE MOTEL YOU HAD TO LEAVE BECAUSE YOU HAD NO MONEY; IS THAT CORRECT?

A YES.

Q WHEN YOU AND SAM HOWARD WALKED ON THE STRIP FOR A COUPLE OF HOURS AND STOPPED AND HAD LUNCH, HOW DID YOU PAY FOR THE LUNCH?

A SAM HAD THE MONEY FROM -- AT SEARS. WELL, THEY STILL GAVE HIM THE REFUND MONEY.

Q I SEE.

DO YOU KNOW HOW MUCH THAT WAS?

A NO. I DON'T REMEMBER.

Q BUT HE USED THAT MONEY IN ORDER TO PAY FOR THE LUNCH; IS THAT RIGHT?

A YES.

Q DID YOU SEE THE MONEY WHILE YOU WERE IN THE CAR?

A NO, JUST WHEN WE GOT TO THE LINE FOR HIM TO PAY FOR THE FOOD.

Q I SEE.

WHEN WE LEFT THIS MORNING YOU WERE TESTIFYING ABOUT CONVERSATIONS THAT YOU HAD WITH SAM REGARDING A PIMP.

A YES.

Q WITH THAT IN MIND, WITH THAT IN MIND, DID SAM HOWARD MAKE A TELEPHONE CALL WHILE YOU WERE IN THE PARKING LOT AT THE CASTAWAYS?

A YES.

1996

1 Q AND DID HE COME BACK TO THE CAR AFTER THAT?
2 A YES.
3 Q AND THEN DID YOU STAY IN THE CAR FOR AWHILE
4 BEFORE HE LEFT FOR A COUPLE OF HOURS?
5 A YES, UH-HUH.
6 Q AND WHEN HE LEFT FOR A COUPLE OF HOURS DO
7 YOU KNOW APPROXIMATELY WHAT TIME IT WAS?
8 A ABOUT 7:00, 7:30; BETWEEN 7:00 AND 7:30.
9 Q DID HE TELL YOU WHO HE WAS GOING TO SEE
10 WHEN HE LEFT?
11 A YES.
12 Q WHO DID HE TELL YOU HE WAS GOING TO SEE?
13 A HE WAS GOING TO SEE THE PIMP.
14 Q HAD YOU EVER MET THE PIMP?
15 A NO.
16 Q OR SEEN HIM?
17 A NO.
18 Q SAM JUST TOLD YOU?
19 A UH-HUH.
20 Q AND DID HE SAY TO YOU WHAT HE AND THE PIMP
21 WERE GOING TO DO TOGETHER WHEN HE SAW THE PIMP?
22 A YES.
23 Q WHAT DID HE TELL YOU?
24 A HE WAS GOING TO ROB HIM.
25 Q WHO WAS GOING TO ROB HIM?
26 A SAM WAS GOING TO ROB THE PIMP.
27 Q AND THEN DID HE LEAVE THE CAR?
28 A YES.
29 Q AND THIS WAS ABOUT 7:00 O'CLOCK.
30 HOW LONG WAS HE GONE?
31 A HE WAS GONE, OH, I'D SAY AN HOUR AND A
32 HALF, GOING ON TWO HOURS ALMOST.

1997

1 Q DID YOU STAY IN THE CAR WHEN SAM LEFT TO
2 GO SEE THE PIMP?
3 A YES.
4 Q HAD SAM TOLD YOU WHERE HE WAS GOING?
5 A NO.
6 Q WHEN HE LEFT DID HE GIVE YOU ANY INSTRUCTIONS?
7 TIONS?
8 A UH, YES. THE -- HE WAS GOING TO CALL AT
9 THE TELEPHONE BOOTH WHERE HE HAD MADE THE CALL OUT AT.
10 Q UH-HUH. WHERE WAS THAT TELEPHONE BOOTH?
11 A THAT WAS IN A CASINO.
12 Q OF THE CASTAWAYS?
13 A YES.
14 Q AND WHAT DID HE ASK YOU TO DO?
15 A HE ASKED ME TO BE AT THE TELEPHONE BOOTH.
16 Q DID HE TELL YOU WHEN HE WANTED YOU TO BE
17 AT THE TELEPHONE BOOTH?
18 A I'M PRETTY SURE THAT IT WAS ABOUT, OH,
19 ABOUT 8:30 OR 9:00 THAT HE TOLD ME HE WOULD BE AT THE TELEPHONE
20 BOOTH.
21 Q AND DID YOU GO TO THE TELEPHONE BOOTH AT
22 8:30 OR 9:00?
23 A YES..
24 Q AND DID YOU RECEIVE A CALL WHILE YOU WERE
25 THERE?
26 A YES.
27 Q AND WHO WAS ON THE PHONE?
28 A SAM.
29 Q AND WHAT DID SAM TELL YOU WHEN YOU ANSWERED
30 THE TELEPHONE IN THE BOOTH AT THE CASTAWAYS?
31 A THAT HE WANTED ME TO COME PICK HIM UP.
32 Q DID HE TELL YOU WHERE HE WANTED YOU TO COME

1.998

1 -- HE WANTED YOU TO COME PICK HIM UP?

2 A OH, IT WAS AT THE FLAMINGO, THE FLAMINGO,
3 UH, HILTON IN -- THE HILTON -- THE BARBARY COAST --

4 Q THE FLAMINGO HILTON?

5 A UH-HUH.

6 Q THE ONE NEXT TO THE BARBARY COAST?

7 A YES.

8 Q AND DID YOU GO TO THE FLAMINGO HILTON?

9 A UH-HUH, YES, SIR.

10 Q DID YOU PICK HIM UP?

11 A YES.

12 Q AND AFTER YOU PICKED SAM UP WHO DROVE?

13 A SAM DID.

14 Q AND WHERE DID YOU GO?

15 A TO -- BACK TO -- IN THE AREA OF BOULDER
16 HIGHWAY TO THE BEST WESTERN MOTEL.

17 Q THE BEST WESTERN MOTEL.

18 IS THERE A CROSS STREET ON BOULDER
19 HIGHWAY NEAR THE BEST WESTERN MOTEL?

20 A YES.

21 Q WHAT IS THAT CROSS STREET?

22 A THE DESERT INN.

23 Q AND WHAT WAS YOUR PURPOSE IN GOING TO THE
24 BEST WESTERN MOTEL THAT EVENING?

25 A TO GET A MOTEL ROOM.

26 Q AND DID YOU GET A MOTEL ROOM?

27 A YES.

28 Q WHO REGISTERED FOR THE ROOM?

29 A ME.

30 Q DID SAM TELL YOU TO REGISTER FOR THE ROOM?

31 A YES.

32 Q WHAT DID HE TELL YOU ABOUT REGISTERING FOR-

1999

1 THE ROOM?

2 A HE TOLD ME DON'T USE MY REAL NAME, USE

3 DEBBIE JACKSON.

4 Q AND DID YOU USE DEBBIE JACKSON WHEN YOU

5 REGISTERED?

6 A YES.

7 Q WHERE WAS SAM WHILE YOU WERE REGISTERING?

8 A HE WAS OUT THERE IN THE CAR.

9 Q DID YOU GO BACK OUT TO THE CAR AFTER

10 REGISTERING?

11 A YES.

12 Q AND WHERE WAS SAM AT THAT TIME?

13 A HE WAS HIDING BEHIND A BRICK WALL.

14 Q DID YOU GO TO THE ROOM AFTER THAT?

15 A YES.

16 Q IN THE BEST WESTERN MOTEL?

17 A YES.

18 Q WHILE YOU WERE IN THE BEST WESTERN HOTEL --

19 MOTEL THAT EVENING, DID THERE COME A TIME WHEN SAM TOLD YOU WHAT

20 HAD HAPPENED WHEN HE WENT TO SEE THE PIMP?

21 A YES. HE SAID THAT HE COULDN'T ROB HIM 'CUZ

22 HIS TWO WOMEN WAS WITH HIM.

23 Q DID HE EXPLAIN THE TWO WOMEN?

24 A NO. HE DIDN'T REALLY EXPLAIN IT. HE JUST

25 SAID THERE'S TWO WOMEN, PROSTITUTES, OR TWO WOMEN WAS WITH HIM.

26 Q WAS WITH THE PIMP?

27 A WITH THE PIMP.

28 Q AND SO SAM DID NOT ROB HIM?

29 A YES.

30 Q DID HE TELL YOU IF HE PLANNED TO SEE THE

31 PIMP AGAIN?

32 A YES.

2000

1 Q AND WHEN DID HE PLAN TO SEE THE PIMP AGAIN?
2 A UH, IN THE MORNING.
3 Q THE NEXT MORNING?
4 A UH-HUH.
5 Q DID HE SAY IF ANYTHING WOULD BE SIGNIFICANT
6 ABOUT THAT PARTICULAR MEETING?
7 A THAT HE WAS GOING TO MEET HIM ALONE.
8 Q THAT SAM WAS GOING TO MEET THE PIMP ALONE?
9 A YES. SAM WAS GOING TO MEET THE PIMP ALONE.
10 Q AND WHY WAS THAT SIGNIFICANT?
11 A BECAUSE THAT -- IT'S -- HIS WOMEN WOULDN'T
12 BE WITH HIM.
13 Q AND WHY IS IT SIGNIFICANT THAT THE WOMEN
14 WOULDN'T BE WITH HIM? WHAT DID THAT MEAN TO SAM? DID HE TELL
15 YOU?
16 MR. COOPER: I'M GOING TO OBJECT, YOUR HONOR.
17 SHE HASN'T TESTIFIED THAT HE ADMITTED ANYTHING TO HER.
18 MR. SEATON: WELL, SHE'S RELATING I BELIEVE THE
19 CONVERSATION SHE HAD WITH SAM.
20 LET ME REPHRASE THE QUESTION, YOUR HONOR.
21 THE COURT: ALL RIGHT.
22
23 BY MR. SEATON:
24
25 Q DID SAM TELL YOU WHY IT WAS SIGNIFICANT
26 THAT HE WOULD BE MEETING THE PIMP THE NEXT MORNING ALONE WITHOUT
27 THE PROSTITUTES BEING WITH HIM?
28 A SO THAT HE COULD ROB HIM.
29 Q AND DID YOU SLEEP THERE AT THE MOTEL THAT
30 EVENING?
31 A YES.
32 Q CAN YOU RECALL THE NEXT MORNING APPROXI-

2001

1 MATELY WHAT TIME IT WAS WHEN YOU WOKE UP AT THE BEST WESTERN
2 MOTEL ON DESERT INN AND BOULDER HIGHWAY?
3 A OH, ABOUT 6:00 O'CLOCK.
4 Q AND DID SAM TELL YOU IF -- WHAT HIS PLANS
5 WERE FOR THE DAY?
6 A YES, TO GO AND MEET THE -- THIS PIMP.
7 Q AND DID YOU GET DRESSED TO DO THAT?
8 A YES.
9 Q AND DID YOU AND SAM GET IN THE AUTOMOBILE?
10 A YES.
11 Q WAS THAT THE 1980 CUTLASS?
12 A YES, IT IS.
13 Q AND WHO WAS DRIVING AT THAT TIME?
14 A ME.
15 Q CAN YOU RECALL HOW SAM HOWARD WAS DRESSED
16 AT THAT TIME?
17 A PRETTY SURE SAM HAD ON A GRAY -- GRAY PANTS
18 AND GRAY --
19 MR. FRANZEN: YOUR HONOR, MAY WE APPROACH THE
20 BENCH?
21 (WHEREUPON, SIDE BAR CONFERENCE
22 WAS HELD AT THE BENCH; NOT
23 REPORTED.. AT THE CONCLUSION
24 OF WHICH, THE FOLLOWING WAS
25 HAD:)
26 BY MR. SEATON:
27
28 Q CAN YOU RECALL AGAIN HOW SAM HOWARD WAS
29 DRESSED IN THE MORNING WHEN YOU LEFT TO DRIVE AWAY FROM THE
30 MOTEL?
31 A I'M PRETTY SURE THAT SAM HAD ON GRAY PANTS
32 AND A GRAY SWEATER AND A LEATHER COAT.

2002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Q WAS IT THE SAME LEATHER COAT WHICH YOU IDENTIFIED AS STATE'S PROPOSED EXHIBIT 44-A?

A YES.

Q DID HE HAVE THE RADIO WITH HIM THAT HAD BEEN IDENTIFIED AS 24-B?

A YES.

Q DID HE HAVE THE GUN WITH HIM THAT HAS BEEN IDENTIFIED AS STATE'S PROPOSED 31-B?

A YES.

Q WHERE WAS HE CARRYING THAT GUN?

A AT -- IN HIS BELT.

Q WAS HIS JACKET OVER THAT?

A YES.

Q AND YOU SAID YOU WERE DRIVING?

A YES.

Q DID SAM TELL YOU WHERE TO DRIVE?

A YES, OVER THERE OFF OF DESERT INN NEAR THE 1500 BLOCK.

Q THE SAME PLACE YOU DROVE TO A FEW DAYS EARLIER?

A YES.

Q AND LET HIM OFF?

A YES.

Q DID YOU LET HIM OFF IN THE -- DID YOU GO BACK BEHIND THAT BUILDING INTO THE ALLEYWAY AGAIN?

A YES.

Q DID YOU LET HIM OFF AT THE SCENE?

MR. FRANZEN: YOUR HONOR, COULD WE HAVE SOME NON-LEADING QUESTIONS. I OBJECT.

THE COURT: I BELIEVE YOU ARE LEADING, COUNSEL.

MR. SEATON: THANK YOU, YOUR HONOR.

..

2003

1 BY MR. SEATON:

2

3 Q WHERE DID YOU GO WHEN YOU GOT BACK IN THE
4 ALLEY BEHIND THE 1500 BLOCK OF DESERT INN ROAD?

5 A WE WENT IN THE ALLEY.

6 Q AND DID YOU STOP?

7 A YES.

8 Q WHERE DID YOU STOP?

9 A DOWN AT THE END OF THE ALLEY.

10 Q IS THERE A BUILDING DOWN AT THE END OF THE
11 ALLEY?

12 A YES.

13 Q DO YOU KNOW WHAT IT IS CALLED?

14 A WINCHESTER -- WINCHESTER PLAZA.

15 Q THE WINCHESTER PLAZA.

16 DOES THE ALLEY END AT THAT POINT?

17 A YES.

18 Q WHAT IS THERE IF YOU WERE TO DRIVE OUT OF
19 THE ALLEY ANY FURTHER?

20 A A SIDE STREET.

21 Q AND WHERE DOES THAT SIDE STREET COME FROM?

22 A DESERT INN.

23 Q AND WHERE IN RELATIONSHIP TO THE ALLEY AND
24 SIDE STREET DID YOU STOP?

25 A AT THE -- THE END OF THE ALLEY.

26 Q AND DID EITHER ONE OF YOU GET OUT OF THE
27 CAR AT THAT TIME?

28 A YES. SAM DID.

29 Q AND WHAT INSTRUCTIONS DID SAM GIVE YOU, IF
30 ANY, WHEN HE GOT OUT OF THE CAR?

31 A HE TOLD ME THAT -- TO LET HIM OFF THERE AND
32 TO DRIVE CAREFUL, DRIVE -- DRIVE THE SPEED LIMIT, DON'T RUN ANY

2004

1 LIGHTS, GO BACK TO THE ROOM, GO SIT AT THE TELEPHONE, AND WAIT
2 FOR HIM TO CALL ME.

3 Q DID HE ASK YOU TO DO ANYTHING ELSE AT THE
4 MOTEL?

5 A PACK THE BAGS.

6 Q WHEN SAM HOWARD GOT OUT OF THE 1980 BLACK
7 CUTLASS BEHIND THE WINCHESTER AS YOU SAY, THE PLAZA, AT THE
8 CORNER OF THE ALLEY AND THE STREET, WHERE WAS THE GUN?

9 A THE GUN WAS IN HIS BELT IN HIS PANTS.

10 Q AND DID HE TAKE IT WITH HIM WHEN HE LEFT
11 THE CAR?

12 A YES.

13 Q DID YOU DRIVE BACK TO THE MOTEL, AS HE
14 INSTRUCTED YOU TO DO?

15 A YES.

16 Q DID YOU RECEIVE THE PHONE CALL?

17 A NO.

18 Q DID YOU SEE SAM AGAIN?

19 A YES.

20 Q HOW MUCH LATER DID YOU NEXT SEE SAM HOWARD?
21 HOW MUCH TIME PASSED?

22 A AN HOUR.

23 Q AND WHERE WERE YOU WHEN YOU SAW SAM HOWARD
24 THE NEXT TIME?

25 A I WAS IN THE ROOM.

26 Q AND WHERE WAS SAM?

27 A IN THE MOTEL.

28 SAM WAS COMING IN THE FRONT DOOR.

29 Q IS THIS THE BEST WESTERN SIX MOTEL?

30 A YES.

31 MR. FRANZEN: YOUR HONOR, I BELIEVE ASSUMES FACTS
32 NOT IN EVIDENCE. IT'S LEADING.

1 MR. SEATON: YES. I PUT A WORD IN THERE I
2 SHOULDN'T HAVE.

3 MR. FRANZEN: MOVE TO STRIKE.

4
5 BY MR. SEATON:

6
7 Q WOULD YOU TELL US THE NAME OF THE MOTEL
8 WHERE YOU WERE?

9 A BEST WESTERN.

10 Q IS THAT THE MOTEL YOU'VE BEEN --
11 THE COURT: I BELIEVE THAT TAKES CARE OF IT,
12 COUNSEL.

13 MR. SEATON: THANK YOU.

14
15 BY MR. SEATON:

16
17 Q AND WHAT WAS SAM HOWARD DOING WHEN YOU
18 FIRST SAW HIM IN THE MOTEL ROOM AT THE BEST WESTERN?

19 A HE WAS, UH, GOING TO THE BATHROOM.

20 Q WHEN DID YOU FIRST SEE HIM?

21 A OH, I FIRST SEEN HIM COMING IN THE DOOR.

22 Q AND WAS HE CARRYING ANYTHING WHEN HE WALKED
23 IN THE DOOR OF THAT MOTEL ROOM?

24 A YES.

25 Q WOULD YOU TELL US WHAT HE WAS CARRYING?

26 A HE WAS CARRYING THE, UH, C.B. RADIO.

27 Q NOW, CAN YOU DESCRIBE THE C.B. RADIO THAT
28 YOU JUST MENTIONED?

29 A C.B. WAS -- IT'S A BLACK C.B., AND I THINK
30 IT HAD A -- SOMEKIND OF A IRON SILVER STICKING UP, LIKE A BAR,
31 AND IT HAD WIRES OUT OF IT.

32 Q HOW WOULD YOU --

2006

1 A COMING OUT OF IT.

2 Q HOW WOULD YOU DESCRIBE THOSE WIRES COMING

3 OUT OF IT?

4 A THEY WERE JUST, YOU KNOW, (INDICATING).

5 THEY WERE JUST STICKING OUT OF IT, SOME WIRES, OUT OF THE BACK

6 PART.

7 Q WAS THERE MORE THAN ONE?

8 A YES.

9 Q DID THEY HAVE PLUGS ON THE END OF THEM?

10 A NO.

11 Q AND WHAT ELSE WAS HE CARRYING WHEN HE

12 WALKED INTO THE MOTEL ROOM AT THE BEST WESTERN?

13 A A C. -- NOT A C.B., BUT A WALKIE-TALKIE.

14 Q IS THAT THE WALKIE-TALKIE THAT YOU

15 PREVIOUSLY IDENTIFIED?

16 A YES.

17 Q DID YOU NOTICE ANYTHING AT THAT TIME ABOUT

18 ANY JEWELRY THAT SAM HOWARD WAS WEARING AS HE WALKED INTO THE

19 MOTEL ROOM CARRYING THE C.B. RADIO AND THE WALKIE-TALKIE?

20 A SAM HAD A WATCH ON.

21 Q ON HIS WRIST?

22 A YES, SIR.

23 Q CAN YOU DESCRIBE THAT WATCH FOR US?

24 A GOLD WATCH.

25 Q DID IT HAVE A NAME ON IT?

26 A I THOUGHT THE WATCH WAS A SEIKO.

27 Q BY "SEIKO" FOR THE RECORD YOU MEAN

28 S-E-I-K-O?

29 A YES.

30 Q HAD YOU EVER SEEN SAM HOWARD WITH THAT

31 WATCH THAT SAID "SEIKO" ON IT BEFORE?

32 A HE HAD PAWNED A WATCH --

1 MR. FRANZEN: YOUR HONOR, I'M GOING TO OBJECT --
2 THE WITNESS: (CONTINUING) -- BEFORE.

3 MR. FRANZEN: (CONTINUING) -- ASKING QUESTIONS
4 ASSUMING FACTS NOT IN EVIDENCE. SHE DIDN'T SAY THAT SHE SAW
5 "SEIKO" ON IT. THE DISTRICT ATTORNEY'S QUESTION IS RAISED IN
6 SUCH A MANNER THAT SHE SAW IT ON THERE. SO FAR ALL WE HAVE IS
7 AN ASSUMPTION ON THE WITNESS, RATHER THAN ACTUALLY READING ANY-
8 THING.

9 MR. SEATON: I'LL REPHRASE, YOUR HONOR. I THINK,
10 IN FACT, I'LL ASK THE QUESTION.

11
12 BY MR. SEATON:

13
14 Q DID YOU EVER SEE THE NAME "SEIKO" ON THE
15 WATCH?

16 A NO.

17 Q HAD YOU EVER SEEN THE WATCH WHICH YOU THINK
18 IS A SEIKO THAT WAS ON SAM HOWARD'S WRIST AS HE WALKED INTO THE
19 MOTEL ROOM? HAD YOU EVER SEEN THAT WATCH ON HIM BEFORE?

20 A THE BAND WAS DIFFERENT FROM HIS WATCH. SO
21 I DON'T KNOW.

22 Q AND YOU SAID HE HAD PAWNED HIS WATCH BEFORE?

23 A YES.

24 Q HOW MUCH PRIOR -- HOW MANY DAYS BEFORE, IF
25 YOU KNOW, HAD HE PAWNED HIS WATCH?

26 A TWO OR THREE DAYS BEFORE THEN.

27 Q WHEN YOU AND SAM HOWARD GOT DRESSED THAT
28 MORNING AND LEFT FOR THE -- JUST BEHIND THE WINCHESTER PLAZA,
29 WAS HE WEARING A WATCH?

30 A NOT THAT I KNOW OF.

31 Q WHEN SAM HOWARD CAME BACK INTO THE MOTEL
32 ROOM CARRYING THE C.B. RADIO AND WEARING THE GOLD WATCH, DID HE

2008

1 SAY ANYTHING TO YOU?

2 A YES.

3 Q WHAT DID HE SAY?

4 A HE SAID, OH, DAWANA, YOU'RE DRESSED AND YOU
5 HAVE THE BAGS PACKED.

6 Q DID HE SAY ANYTHING MORE THAN THAT?

7 A THEN HE SAYS THAT HE'S GETTING TIRED OF
8 LAS VEGAS AND LET'S MOVE TO CALIFORNIA.

9 Q AND WHAT DID THE TWO OF YOU DO AFTER THAT?

10 A THEN HE WENT IN THE BATHROOM FOR AWHILE.
11 AND HE COME BACK OUT THE BATHROOM AND HE ASKED ME, WAS I READY.
12 AND I SAID, YES.

13 SO I GOT THE BAGS AND HE GOT THE BAGS
14 AND WE WENT AND GOT IN THE CAR.

15 Q AND WHO SAT IN THE DRIVER'S SEAT?

16 A UH, I DID.

17 Q AND WHERE WAS SAM HOWARD THEN?

18 A SAM WAS ON THE PASSENGER'S SIDE.

19 Q AND DID YOU DRIVE AWAY?

20 A YES.

21 Q AND DID SAM TELL YOU WHERE YOUR ULTIMATE
22 DESTINATION WAS?

23 A TO CALIFORNIA.

24 Q AND DID YOU START DRIVING TO CALIFORNIA?

25 A STOPPED AT THE GAS STATION;

26 Q WAS THAT BEFORE OR AFTER YOU GOT ON THE
27 FREEWAY?

28 A BEFORE WE GOT ON THE FREEWAY.

29 Q BEFORE YOU GOT TO THE GAS STATION DID YOU
30 SEE ANYTHING -- DID YOU SEE ANYTHING IN SAM'S POSSESSION THAT YOU
31 HAD NOT SEEN BEFORE?

32 A YES.

2009

1 Q WHAT WAS THAT?

2 A IT WAS A WALLET.

3 Q DO YOU REMEMBER THE COLOR OF THE WALLET?

4 A THE WALLET WAS BROWN.

5 Q AND WHAT DID YOU DO WITH THE WALLET?

6 A HE OPENED IT UP.

7 Q AND WHAT HAPPENED THEN?

8 A SOME -- SOME PICTURES AND CARDS CAME DOWN

9 (INDICATING).

10 Q WOULD YOU --

11 A IT WAS LONG --

12 Q WOULD YOU EXPLAIN THAT A LITTLE MORE

13 CLEARLY WHEN YOU SAY "SOME PICTURES AND CARDS CAME DOWN"?

14 A YOU KNOW, YOU HAVE SOME PLASTIC FOLDER-TYPE

15 OF WALLET, AND WHEN YOU LET OUT THEN THE PLASTIC PICTURES, YOU

16 KNOW, FALL DOWN (INDICATING).

17 Q AND DID YOU SEE THESE, WHAT WERE THE

18 PICTURES AND CARDS IN THAT PLASTIC --

19 A YES.

20 Q AND WERE YOU ABLE TO SEE THE PICTURES AND

21 THE CARDS?

22 A WHEN I WAS, YOU KNOW, DRIVING I GLANCED.

23 Q WERE YOU ABLE TO SEE THEM WHEN YOU GLANCED?

24 A YES.

25 Q COULD YOU SEE WHO THE PICTURES WERE OF?

26 A I SAW A PICTURE OF THIS LADY WITH SANDY

27 BROWN HAIR. I DIDN'T GET HER FACE. I JUST SAW SANDY BROWN HAIR

28 WITH SOME LITTLE KIDS.

29 Q COULD YOU TELL WHAT RACE THE LADY WAS?

30 A YES. SHE WAS WHITE.

31 Q COULD YOU TELL WHAT RACE THE LITTLE KIDS

32 WERE?

1 A WHITE.

2 Q AND DID YOU THEN STOP AT A GAS STATION?

3 A YES.

4 Q WHAT DID YOU DO WHILE YOU WERE AT A GAS

5 STATION?

6 A WELL, I ASKED SAM HOW MUCH MONEY DID HE --

7 DID HE GET.

8 SO HE SAID, PUT \$17 IN THE GAS TANK.

9 Q AND DID YOU PUT \$17 IN THE GAS TANK?

10 A YES, UH-HUH.

11 Q AND WHAT DID SAM DO WHILE THE CAR WAS BEING

12 FILLED WITH GAS?

13 A HE WENT TO THE GAS STATION.

14 Q DO YOU KNOW WHERE IN THE GAS STATION HE

15 WENT?

16 A TO THE BATHROOM.

17 Q AND HOW LONG WAS HE THERE BEFORE HE

18 RETURNED TO THE CAR?

19 A A LONG TIME.

20 Q CAN YOU GIVE US AN ESTIMATE?

21 A OH, ABOUT 40, 45 MINUTES, ALMOST.

22 Q DO YOU KNOW IF HE TOOK THE WALLET AND

23 CREDIT CARDS -- THE WALLET AND CARDS AND PICTURES WITH HIM?

24 A YES, HE DID.

25 Q WHAT HAPPENED AFTER HE CAME BACK INTO THE

26 CAR?

27 A HE SAID THAT HE WAS TIRED.

28 Q AND DID YOU GO ANYWHERE AT THAT TIME?

29 A OH, YES. HE SAID THAT HE WAS TIRED AND

30 HE WANTED ME TO DRIVE TO CALIFORNIA.

31 Q AND DID YOU?

32 A YES.

2011

1 Q AND WHAT CITY DID YOU GO TO IN CALIFORNIA?
2 A WE WENT TO SAN BERNARDINO.
3 Q AND DID YOU STOP IN SAN BERNARDINO?
4 A YES.
5 Q WHAT DID YOU DO WHEN YOU GOT TO SAN
6 BERNARDINO?
7 A I -- WE WENT AND GOT SOMETHING TO EAT AND
8 -- WAIT A MINUTE. TAKE THAT BACK.
9 BEFORE THEN WE STOPPED AT A, UH, A
10 BANK.
11 Q AND THEN DID YOU STOP AND GET SOMETHING TO
12 EAT?
13 A YES.
14 Q DID YOU -- WHERE DID YOU STAY THAT NIGHT?
15 A AT A -- IN A -- AT A MOTEL.
16 Q AND WHERE WAS THAT MOTEL LOCATED? IN WHAT
17 CITY?
18 A THIS WAS IN SAN BERNARDINO.
19 Q DID YOU SLEEP THERE THAT EVENING?
20 A YES.
21 Q THIS NEXT DAY AFTER YOU WOKE UP DID THERE
22 COME A TIME WHEN YOU AND SAM WENT SOMEWHERE?
23 A YES.
24 Q WHERE DID YOU GO?
25 A WE WENT TO A MALL.
26 Q A MALL?
27 A A SHOPPING MALL, UH-HUH, YES.
28 Q AND IN WHAT CITY WAS IT LOCATED IN?
29 A IT WAS ON THE OUTSKIRTS OF SAN BERNARDINO.
30 Q AND DID YOU PARK THERE AT THE MALL?
31 A YES.
32 Q WERE YOU NEAR ANY PARTICULAR STORE?

2012

1 A YES.

2 Q WHAT WAS THE NAME OF THAT STORE?

3 A THE SEARS.

4 Q AND WHEN YOU PARKED THERE DID EITHER OF YOU

5 GET OUT OF THE AUTOMOBILE?

6 A YES.

7 Q IS THIS STILL THE 1980 BLACK CUTLASS?

8 A YES.

9 Q WHEN YOU -- WHO GOT OUT OF THE AUTOMOBILE?

10 A SAM DID.

11 Q AND WHERE DID HE GO?

12 A HE WENT SOMEWHERE IN THE STORE.

13 Q IN THE MALL OR THE SEARS STORE?

14 A THE MALL. THE MALL.

15 Q AND DID HE RETURN TO THE CAR?

16 A YES.

17 Q HOW LONG WAS IT BEFORE HE CAME OUT -- HOW

18 LONG WAS IT BEFORE HE CAME BACK TO THE CAR?

19 A WELL, HE WENT IN TWICE. WHICH TIME?

20 Q WELL, LET'S TAKE THE FIRST TIME.

21 A OKAY.

22 Q HOW -- THE FIRST TIME THAT HE CAME BACK TO

23 THE CAR HOW MUCH TIME HAD GONE BY THAT HE HAD BEEN AWAY FROM THE

24 CAR?

25 A OH, TWO HOURS.

26 Q AND WHAT DID HE DO WHEN HE CAME BACK TO THE

27 CAR?

28 A HE CAME BACK AND WE TALKED AWHILE. AND THEN

29 HE SAID HE WAS GOING BACK INTO THE STORE.

30 Q AND DID HE GO BACK INTO THE STORE?

31 A YES.

32 Q WHEN YOU WERE AT THE MALL NEAR THE SEARS

1 STORE DO YOU KNOW WHERE THE GUN WAS?
2 A YES.
3 Q WHERE WAS IT?
4 A IN HIS BELT.
5 Q IN SAM'S BELT?
6 A YES.
7 Q WAS IT THERE WHEN HE WENT INTO THE MALL?
8 A YES.
9 Q ON BOTH OCCASIONS?
10 A YES.
11 Q AND HOW LONG WAS IT BETWEEN THE TIME THAT
12 HE WENT INTO THE MALL THE SECOND TIME AND WHEN HE CAME BACK TO
13 THE CAR?
14 A IT WASN'T THAT LONG. I'D SAY ABOUT 20
15 MINUTES.
16 Q AND WHAT HAPPENED WHEN HE CAME BACK TO THE
17 CAR THAT SECOND TIME?
18 A THAT SECOND TIME HE CAME BACK IN PRETTY
19 MUCH A HURRY.
20 Q WHAT DO YOU MEAN "PRETTY MUCH A HURRY"?
21 A LIKE ESCAPING.
22 Q AND WHAT DID HE DO WHEN HE GOT TO THE CAR?
23 A HE GOT IN THE CAR AND HE -- HE TOLD ME TO
24 GET DOWN.
25 Q WHAT DID YOU --
26 A SLOUCH DOWN.
27 Q SLOUCH DOWN?
28 A UH-HUH.
29 Q IN YOUR SEAT?
30 A UH-HUH.
31 Q WHERE WERE YOU SEATED?
32 A I WAS SITTING ON THE PASSENGER'S SIDE.

2014

1 Q AND HOW FAR AWAY WOULD YOU SAY THE CAR WAS
2 PARKED FROM THE SEARS BUILDING, THE SEARS STORE IN THE MALL?
3 A OH, I WOULD SAY ABOUT 20 FEET FROM THE DOOR.
4 Q THE DOOR OF THE SEARS?
5 A THE SEARS.
6 Q AND WHEN YOU SLOUCHED DOWN IN YOUR PASSEN-
7 GER'S SEAT, WHAT DID SAM HOWARD DO?
8 A HE SLOUCHED DOWN, TOO, AND WAS LOOKING NEAR
9 SEARS.
10 Q HE WAS LOOKING NEAR THE SEARS?
11 A YES, SIR.
12 Q AND WHERE WERE YOU LOOKING?
13 A I WAS LOOKING WHERE HE WAS LOOKING.
14 Q AND DID YOU SEE ANYONE?
15 A I SAW SOME PEOPLE COME TO THE DOOR.
16 Q AND CAN YOU TELL US HOW MANY PEOPLE CAME TO
17 THE DOOR?
18 A IT WAS THREE PEOPLE --
19 Q MEN?
20 A (CONTINUING) -- THAT I SAW.
21 Q MEN OR WOMEN?
22 A THERE WAS ONE WOMAN AND A COUPLE OF MEN.
23 Q AND DID THEY COME OUTSIDE THE DOOR OR STAY
24 IN?
25 A THEY CAME OUTSIDE THE DOOR.
26 Q AND WHAT DID THEY DO ONCE THEY GOT OUTSIDE
27 THE DOOR, THESE TWO MEN AND ONE WOMAN.
28 A THEY WERE LOOKING AROUND LIKE THAT (INDICA-
29 TING).
30 Q AND --
31 MR. FRANZEN: MAY THE RECORD REFLECT, YOUR HONOR,
32 THAT SHE PLACED HER HANDS ON THE BROW AND LOOKED UNDERNEATH HER

1 HANDS, OR HAND, HER LEFT HAND.

2 THE COURT: I CAN'T HEAR YOU, COUNSEL.

3 MR. FRANZEN: MAY THE RECORD REFLECT THAT THE
4 WITNESS RAISED HER I BELIEVE HER LEFT HAND TO HER BROW IN AN
5 EXTENDED POSITION AND LOOKED OUT FROM UNDERNEATH HER HAND.

6 MR. SEATON: AND FURTHER SWIVELED HER HEAD FROM
7 LEFT TO RIGHT.

8 MR. FRANZEN: THAT IS CORRECT.

9 THE COURT: THE RECORD MAY SO SHOW.

10

11 BY MR. SEATON:

12

13 Q HOW LONG DID THE THREE PEOPLE STAND OUT
14 THERE LOOKING AROUND?

15 A ABOUT FIVE MINUTES.

16 Q WHERE -- WHAT DIRECTION WERE THEY LOOKING
17 IN?

18 A UH, FROM THE WEST TO THE EAST.

19 Q WELL, WITHOUT DIRECTION --

20 A OH.

21 Q (CONTINUING) -- WERE THEY LOOKING INTO THE
22 BUILDING OR AWAY FROM THE BUILDING?

23 A OH, IN THE PARKING LOT.

24 Q IN THE PARKING LOT.

25 DID SAM HOWARD SAY ANYTHING ABOUT THOSE
26 PEOPLE AT THAT TIME?

27 A YES.

28 Q WHAT DID HE SAY?

29 A THEY WERE LOOKING FOR HIM.

30 Q IS THAT ALL HE SAID?

31 A NO. HE SAID, HE WENT IN, LOOKING AT THE
32 SECURITY GUARD.

2016

1 Q AND WHAT ELSE?
2 A AND THAT HE WANTED THE MONEY. AND I GUESS
3 THE WOMAN WENT TO CHECK IT OUT.
4 Q DID HE SAY HOW?
5 A WHEN HE WAS THERE.
6 Q EXCUSE ME.
7 DID HE SAY HOW HE WAS TRYING TO GET THE
8 MONEY THAT HE REFERRED TO, HOW SAM WAS TRYING TO GET THE MONEY?
9 A HE WAS TRYING TO GET IT LIKE HE WAS A
10 SECURITY GUARD.
11 Q AND WHAT WAS HE DOING IN ORDER TO GET
12 MONEY? DID HE TELL YOU THAT?
13 A SHOWING THE BADGE AND THE WALKIE-TALKIE.
14 Q AND HOW -- DID HE TELL YOU HOW -- WHAT HE
15 WAS GOING TO DO OR WHAT HE HAD DONE TO TRY TO GET MONEY?
16 A I DON'T REMEMBER.
17 Q WHAT HAPPENED AFTER THE TWO MEN AND THE
18 WOMAN WENT BACK, AFTER FIVE MINUTES PASSED AND THEY WENT BACK
19 INTO THE BUILDING?
20 A UH, HE DROVE AWAY FROM THE PARKING LOT.
21 Q SAM DROVE AWAY FROM THE PARKING LOT?
22 A YES. SAM -- SAM DROVE AWAY FROM THE PARK-
23 ING LOT.
24 Q COURT'S INDULGENCE.
25 MISS THOMAS, LET ME GO BACK TO THE AREA
26 WHERE YOU SAW THE WALLET JUST BEFORE THE GAS STATION. CAN YOU
27 DESCRIBE A LITTLE MORE CLEARLY THE CARDS THAT YOU SAW IN THE
28 PLASTIC PART, ALONG WITH THE PICTURES? WHAT DID THE CARDS LOOK
29 LIKE TO YOU?
30 A UH, I BASICALLY SAW A -- A CHARGE CARD, A
31 MASTER CARD -- A MASTER CHARGE CARD, AND I CAN'T REMEMBER THE
32 MAN'S OR THE PERSON'S NAME THAT WAS ON THAT CARD, BUT I SAW IT;

2017

1 AND THAT'S ONE OF THE -- AND THE PICTURES; THAT'S IT.

2 Q CAN YOU REMEMBER ANY OF THE OTHER CARDS
3 THAT WERE IN THAT PLASTIC PART OF THAT WALLET?

4 A NO.

5 Q WELL, LET ME GO BACK TO WHEN YOU WERE GET-
6 TING READY TO LEAVE THE BEST WESTERN MOTEL NEAR D.1. AND BOULDER
7 HIGHWAY TO GO TO THE WINCHESTER PLAZA. DID SAM HOWARD SAY
8 ANYTHING TO YOU AT THAT TIME ABOUT WHAT WAS GOING TO HAPPEN
9 THAT DAY, THAT MORNING?

10 A COULD YOU SAY THAT AGAIN?

11 Q WHEN YOU AND SAM HOWARD LEFT THE BEST
12 WESTERN MOTEL THE MORNING THAT YOU TOOK HIM BEHIND THE WINCHESTER
13 PLAZA, WHILE YOU WERE AT THE MOTEL DID HE SAY ANYTHING TO YOU
14 ABOUT WHAT WAS GOING TO HAPPEN THAT DAY OR THE IMPORTANCE OF
15 THAT DAY TO HIM?

16 A YES.

17 Q WOULD YOU TELL US, PLEASE, WHAT THOSE
18 STATEMENTS WERE?

19 A THAT THIS DAY WOULD EITHER MAKE HIM OR
20 BREAK HIM.

21 Q DID HE SAY ANYTHING ELSE IN THAT REGARD?

22 A NO. THAT HE WAS GOING TO ROB THE PIMP.

23 Q OKAY.

24 AND WHERE IS THE WINCHESTER PLAZA IN
25 YOUR MIND FROM THE BOULEVARD MALL?

26 A IT'S TOWARDS THE BOULEVARD MALL. IT'S
27 GOING --

28 Q FROM --

29 A (CONTINUING) -- FROM THE 1500 BLOCK OF
30 DESERT INN.

31 Q HOW FAR AWAY WOULD YOU SAY THE WINCHESTER
32 PLAZA WAS FROM THE BOULEVARD MALL?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A OH, I'D SAY ABOUT TWO LIGHTS, A COUP- --
FEW LIGHTS. NOT THAT FAR.

Q CAN YOU TELL US IN TERMS OF NUMBER OF
BLOCKS?

A NO.

MR. SEATON: ALL RIGHT. THANK YOU.

THAT CONCLUDES THE STATE'S QUESTIONS, YOUR
HONOR.

THE COURT: ALL RIGHT. WE'LL TAKE A RECESS AT
THIS TIME.

LADIES AND GENTLEMEN OF THE JURY, WE WILL
BE IN RECESS FOR 15 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 INFORMA-
TION, INCLUDING WITHOUT LIMITA-
TION, NEWSPAPER, TELEVISION OR
RADIO OR FORM OR EXPRESS ANY
OPINION ON ANY SUBJECT CONNECTED
WITH THIS TRIAL UNTIL THE CASE IS
FINALLY SUBMITTED TO YOU.

WE WILL BE IN RECESS FOR 15 MINUTES.

..
..
..
..

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

(WHEREUPON, FROM 2:55 P.M.
UNTIL 3:15 P.M., A RECESS WAS
HAD IN THE PROCEEDINGS. AT
THE CONCLUSION OF WHICH THE
FOLLOWING WAS HAD:)

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

MR. HARMON: THE STATE DOES, YOUR HONOR.

MR. FRANZEN: YES, YOUR HONOR.

THE COURT: WILL YOU RESUME THE STAND, PLEASE.
PLEASE BE SEATED.

YOU MAY PROCEED, COUNSEL.

MR. FRANZEN: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. FRANZEN:

Q IS IT MISS OR MRS. THOMAS?

A MISS THOMAS.

Q MISS THOMAS, HOW LONG HAVE YOU BEEN IN LAS
VEGAS THIS LAST TIME, INCLUDING TODAY?

A SINCE MONDAY.

Q HAVE YOU HAD ANY CONSULTATIONS WITH THE
DISTRICT ATTORNEY SINCE MONDAY REGARDING THIS CASE?

A YES.

Q DO YOU RECALL WHAT DISTRICT ATTORNEY YOU
CONSULTED, WHICH ONE, WHO YOU SPOKE WITH?

A OH, SEATON.

Q THE GENTLEMAN TO MY FAR RIGHT?

A YES.

Q ABOUT HOW MANY TIMES DID YOU MEET WITH HIM

1 AND DISCUSS YOUR TESTIMONY?

2 A TWICE.

3 Q DID YOU MEET WITH HIM ON MONDAY?

4 A YES.

5 Q YOU SOUND UNSURE OF YOURSELF. ARE YOU SURE

6 IT WAS MONDAY?

7 A YES.

8 Q WHEN DID YOU NEXT MEET WITH HIM?

9 A THIS MORNING.

10 Q ABOUT HOW LONG DID YOU MEET WITH HIM ON

11 MONDAY?

12 A ON MONDAY?

13 Q YES, MA'AM.

14 A OH, ABOUT TWO OR THREE HOURS.

15 Q DID YOU GO OVER YOUR PROPOSED TESTIMONY?

16 A YES.

17 Q WHEN YOU NEXT MET WITH HIM HOW LONG DID

18 YOU MEET WITH HIM?

19 A ABOUT TEN MINUTES.

20 Q DID YOU AGAIN GO OVER YOUR PROPOSED TESTI-

21 MONY?

22 A YES.

23 Q NOW, BACK IN JANUARY DID YOU ALSO COME HERE

24 TO LAS VEGAS, JANUARY OF 1983?

25 A YES, SIR.

26 Q AND AT THAT TIME DID YOU MEET WITH MR.

27 SEATON?

28 A YES, SIR.

29 Q DID YOU GO OVER YOUR TESTIMONY AGAIN THAT

30 TIME WITH MR. SEATON?

31 A YES, SIR.

32 Q WAS ANYONE ELSE PRESENT WHEN YOU WENT OVER

1 YOUR TESTIMONY WITH MR. SEATON?

2 A OH, I DON'T KNOW. NO. NO. I DON'T
3 BELIEVE SO.

4 Q WHEN YOU MET WITH MR. SEATON IN JANUARY OF
5 1983, ABOUT HOW MUCH TIME DID YOU SPEND WITH HIM?

6 A ABOUT TWO HOURS.

7 Q HAVE YOU EVER MET WITH ANY OTHER DISTRICT
8 ATTORNEYS REGARDING YOUR TESTIMONY?

9 A YES.

10 Q ABOUT HOW MANY TIMES, OTHER THAN THE THREE
11 THAT YOU JUST MENTIONED, HAVE YOU MET WITH DISTRICT ATTORNEYS
12 AND GONE OVER YOUR TESTIMONY?

13 A THAT'S -- THAT'S IT.

14 Q I'M SORRY, MA'AM, I DIDN'T UNDERSTAND.

15 A THAT'S ALL THAT I KNOW OF.

16 Q WELL, YOU SAID YOU HAD OTHER MEETINGS BUT
17 I DON'T UNDERSTAND YOUR ANSWER. DO YOU NOT REMEMBER HOW MANY
18 OTHER MEETINGS YOU HAD IN ADDITION TO THE THREE YOU'VE DESCRIBED?

19 A WELL, YOU'RE TALKING ABOUT THE GRAND JURY?

20 Q NO. I'M TALKING ABOUT MEETINGS WITH THE
21 DISTRICT ATTORNEYS --

22 A OH.

23 Q (CONTINUING) -- WHEN YOU WERE DISCUSSING
24 TESTIMONY.

25 A JUST TWO -- TWO OR THREE MEETINGS.

26 Q DID YOU MEET WITH A DEPUTY DISTRICT ATTORNEY
27 NAMED RAY JEFFERS OR RAYMOND JEFFERS BEFORE YOU TESTIFIED?

28 A THE GUY WITH A BEARD?

29 Q YES, MA'AM.

30 A GRAY HAired?

31 YES, UH-HUH.

32 Q YOU DISCUSSED YOUR TESTIMONY WITH HIM --

2022

1 MR. SEATON: YOUR HONOR, THE STATE WOULD OBJECT AND
2 ASK FOR A LITTLE BIT OF FOUNDATION AS TO WHEN THIS TOOK PLACE.

3 THE COURT: COUNSEL?

4 MR. FRANZEN: I'LL -- I DON'T THINK IT'S NECESSARY,
5 BUT I'LL CLARIFY IT.

6
7 BY MR. FRANZEN:

8
9 Q WAS THIS PRIOR TO YOUR TESTIFYING BEFORE
10 THE GRAND JURY?

11 A BEFORE I TESTIFIED TO THE GRAND JURY. I
12 THINK I DID TALK TO HIM BEFORE, YES.

13 Q DID YOU TALK TO HIM AFTER YOU TESTIFIED AT
14 THE GRAND JURY?

15 A NO.

16 Q DID YOU EVER TALK TO MR. HARMON, THE
17 GENTLEMAN TO THE LEFT OF MR. SEATON, REGARDING YOUR TESTIMONY?

18 A I THINK THAT I -- HE WAS AROUND THE FIRST
19 TIME THAT I TALKED TO MR. SEATON.

20 Q SO HE WAS PRESENT AT THE TIME YOU HAD THE
21 DISCUSSION WITH MR. SEATON REGARDING THE TESTIMONY?

22 A I THINK SO. I THINK HE CAME IN THE ROOM.

23 Q NOW, YOU TESTIFIED THAT, PRIOR TO THE JURY
24 COMING BACK IN, YOU TESTIFIED THAT SAM CAME BACK TO YOUR BEST
25 WESTERN MOTEL WITH A -- WELL, STRIKE THAT.

26 ARE YOU FAMILIAR WITH AUTOMOBILES,
27 MA'AM? ARE YOU A MECHANIC OR ANYTHING OF THAT NATURE?

28 A AM I FAMILIAR WITH THE -- THE MECHANICS?

29 Q THE MECHANICS OF AN AUTOMOBILE. HAVE YOU
30 EVER WORKED ON AUTOMOBILES FOR REPAIR?

31 A NO. I HEARD A FEW THINGS, YOU KNOW, BITS
32 AND PIECES ABOUT CARS. BUT I DON'T KNOW ANYTHING ABOUT FIXING

1 IT.

2 Q ARE YOU -- ARE YOU FAMILIAR -- HAVE YOU

3 EVER WORKED WITH C.B. RADIOS?

4 A YES.

5 Q DID YOU --

6 A I'VE PUT STEREOS AND DIFFERENT THINGS IN

7 CARS.

8 Q IN A CAR?

9 A YES.

10 Q WHAT KIND OF STEREO?

11 A WHAT KIND OF STEREO?

12 Q YES.

13 A A CASSETTE.

14 Q WAS THIS ONE YOU SLIDE UNDER THE DASHBOARD?

15 A YES. YOU CAN PUT IT UNDER THE DASHBOARD OR

16 UNDER YOUR SEAT OF YOUR CAR, ONE OR THE TWO.

17 Q NOW, YOU TESTIFIED THAT YOU HAVE KNOWN MR.

18 HOWARD AS OF MARCH OF 1980 FOR APPROXIMATELY FOUR MONTHS, GOING

19 BACK TO FEBRUARY OF 1979; IS THAT CORRECT -- OR NOVEMBER OF

20 1979; IS THAT CORRECT?

21 A YES.

22 Q DIDN'T YOU TESTIFY TO THE GRAND JURY THAT

23 YOU HAD KNOWN MR. HOWARD FOR NINE MONTHS?

24 A I THOUGHT IT WAS NINE MONTHS BUT NOW THAT

25 I COUNT BACK IT WAS ONLY -- IT WAS LESSER THAN THAT.

26 Q DIDN'T -- DIDN'T YOU ALSO, BACK IN APRIL

27 OF 1980, TELL DETECTIVE LEAVITT OF THE LAS VEGAS METROPOLITAN

28 POLICE DEPARTMENT THAT YOU HAD KNOWN THE DEFENDANT FOR APPROXI-

29 MATELY ONE YEAR?

30 A I DON'T KNOW. I CAN HAVE SAID THAT, SEEMED

31 LIKE IT.

32 Q NOW, WHEN YOU SAW MR. HOWARD RETURN TO THE

1 BEST WESTERN MOTEL, AFTER YOU DROPPED HIM OFF AT THE WINCHESTER
2 PLAZA, HE ENTERED THE MOTEL ROOM; IS THAT CORRECT?

3 A YES, SIR.

4 Q HE THEN WENT TO THE BATHROOM OR THE BATH-
5 ROOM AREA; IS THAT CORRECT?

6 A HE -- HE TALKED TO ME FOR A FEW SECONDS AND
7 THEN HE WENT TO THE BATHROOM.

8 Q THERE WAS THEN SOME DISCUSSION ABOUT GOING
9 TO CALIFORNIA; IS THAT CORRECT?

10 A ON THE WAY OUT, COMING OUT OF THE BATHROOM.

11 Q AND THEN YOU GOT INTO THE CAR WITH MR.
12 HOWARD?

13 A YES.

14 Q AND YOU -- YOU WERE DRIVING. YOU WENT TO
15 THE GAS STATION; IS THAT CORRECT?

16 A YES.

17 Q AND THEN SAM GOT OUT OF THE CAR?

18 A YES.

19 Q AND RETURNED TO THE CAR, CORRECT?

20 A YES.

21 Q AND YOU CONTINUED ON TO CALIFORNIA?

22 A YES.

23 Q SO EXCEPT FOR THOSE TWO PERIODS, ONCE WHEN
24 HE WENT TO THE BATHROOM IN THE MOTEL, THE BEST WESTERN --

25 A YES.

26 Q (CONTINUING) -- AND ONCE WHEN HE GOT OUT OF
27 THE CAR AT THE SERVICE STATION, HE WAS CONTINUALLY IN YOUR
28 PRESENCE ALL THE WAY TO CALIFORNIA; IS THAT CORRECT?

29 A NO.

30 Q WHEN DID HE LEAVE YOUR PRESENCE?

31 A WHEN HE WENT TO THE BATHROOM AGAIN AT THE
32

1 GAS STATION.

2 Q SORRY, MA'AM. I THOUGHT I MENTIONED THAT.

3 HE LEFT YOUR PRESENCE --

4 A OH, RIGHT.

5 Q (CONTINUING) -- TWICE: ONCE IN THE BEST

6 WESTERN MOTEL. WHEN HE RETURNED, WHEN YOU GOT INTO THE CAR WITH

7 HIM, YOU WENT TO A GAS STATION. HE AGAIN LEFT YOUR PRESENCE --

8 A UH-HUH.

9 Q (CONTINUING) -- AND RETURNED TO THE CAR.

10 NOW, EXCEPT FOR THOSE TWO INSTANCES HE

11 WAS CONTINUALLY IN YOUR PRESENCE ALL THE WAY TO CALIFORNIA?

12 A YES, SIR.

13 Q OKAY.

14 NOW, YOU WERE LIVING WITH SAM. SO I

15 PRESUME YOU KNOW HIS WARDROBE; WOULD THAT BE CORRECT; THE TYPE

16 OF CLOTHING HE HAD?

17 A YES, SIR.

18 Q SAM DOESN'T WEAR RED, DOES HE?

19 A NO, SIR.

20 Q IN FACT, HE HAD NO LOUD RED SHIRTS AT ALL;

21 WOULD THAT BE CORRECT?

22 A NO.

23 Q NEITHER AT THAT TIME DID SAM HAVE A BIG

24 AFRO HAIRCUT, DID HE, ONE THAT WAS REALLY BIG?

25 A NO.

26 Q IN FACT, AT THAT TIME HE HAD A SHORT HAIR-

27 CUT; WOULD THAT BE CORRECT?

28 A YES, SIR.

29 Q COMPARED TO AS SAM LOOKS NOW, WOULD IT BE

30 SIMILAR TO WHAT HE HAS NOW, HIS HAIR?

31 A YES.

32 Q YES, MA'AM?

2026

1 A YES.

2 Q NOW, YOU HAVE TESTIFIED -- LET ME BACK UP
3 A SECOND.

4 HAVE YOU BEEN TOLD BY THE POLICE THAT
5 YOU WOULD BE CHARGED WITH ANY OF THIS UNLESS YOU TOLD THEM THE
6 TRUTH?

7 A YES.

8 Q AND DID YOU SUBSEQUENTLY TELL SAM THAT NO
9 CHARGES WOULD BE BROUGHT AGAINST YOU IF YOU TESTIFIED THAT HE
10 DID THESE OFFENSES?

11 A WHAT? SAY THAT AGAIN.

12 Q DID YOU LATER TELL MR. HOWARD, SAM HOWARD,
13 THAT NO CHARGES WOULD BE BROUGHT AGAINST YOU --

14 A UH-HUH.

15 Q (CONTINUING) -- IF YOU TESTIFIED AS TO
16 THESE CRIMES?

17 A NO.

18 Q YOU HAVE HAD COMMUNICATIONS WITH MR. HOWARD
19 SINCE APRIL 1ST OF 1980, HAVE YOU NOT?

20 A YES.

21 Q NOW, YOU'VE TESTIFIED THAT YOU WENT TO THE
22 SEARS WITH MR. HOWARD WHEN HE RETURNED WITH THE C.B. RADIO, IS
23 THAT CORRECT?

24 A HE --

25 MR. SEATON: THAT'S NOT --

26 THE WITNESS: (CONTINUING) -- THE C.B. RADIO --

27 MR. SEATON: THAT'S NOT THE TESTIMONY, YOUR HONOR.

28 MR. FRANZEN: I'M SORRY. WITH THE WALKIE-TALKIE?

29 THE WITNESS: OH, YES.

30 ..

31 ..

32 ..

2027

1 BY MR. FRANZEN:

2

3 Q AND BY THE "WALKIE-TALKIE" I MEAN STATE'S
4 EXHIBIT 24-B, SHOWING YOU 24-B.

5 A YES, SIR, IT IS.

6 Q DID YOU PREVIOUSLY TELL DETECTIVE LEAVITT,
7 ON APRIL THE 2ND, 1980, THAT YOU SAW THIS WALKIE-TALKIE FOR THE
8 FIRST TIME AFTER HE RETURNED TO THE MOTEL?

9 A I DON'T REMEMBER.

10 Q COULD YOU HAVE TOLD HIM THAT?

11 A YEAH, PROBABLY COULD HAVE.

12 Q NOW, YOU'VE TESTIFIED THAT -- OR LET ME ASK
13 YOU IT THIS WAY: THE SAME DAY THAT MR. HOWARD RETURNED TO THE
14 BEST -- EXCUSE ME, BEST WESTERN MOTEL AFTER YOU DROPPED HIM OFF
15 AT WINCHESTER PLAZA, THAT YOU THEN LEFT TO GO TO CALIFORNIA; IS
16 THAT CORRECT?

17 A YES.

18 Q AND YOU DID NOT RETURN, I PRESUME, WITH SAM
19 HOWARD TO NEVADA; IS THAT CORRECT?

20 A NO, SIR.

21 Q YOU DID RETURN WITH MR. HOWARD TO NEVADA?

22 A AFTER THEN?

23 Q YES?

24 A AFTER WE LEFT? NO, SIR.

25 Q DO YOU RECALL TELLING DETECTIVE LEAVITT OF
26 THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT ON APRIL 2ND, 1980,
27 THAT AFTER SAM CAME HOME WITH THE WALKIE-TALKIE YOU STAYED HERE
28 IN LAS VEGAS FOR A COUPLE OF DAYS?

29 A NO, SIR. I DON'T REMEMBER THAT.

30 Q YOU DO NOT RECALL THAT? OKAY.

31 NOW, IS IT YOUR TESTIMONY THAT SAM TOLD
32 YOU THAT HE MADE HIS LIVING AND GOT HIS MONEY TO LIVE HERE IN

2028

1 LAS VEGAS AS A DANCER AT A BROADWAY PRODUCTION?

2 A YES, SIR.

3 Q AND THAT'S HOW HE GOT HIS MONEY FOR FOOD
4 AND GASOLINE? IS THAT HOW HE SURVIVED HERE IN LAS VEGAS?

5 A I DON'T KNOW.

6 HE SAID THAT THE -- THE SHOW WAS GOING
7 BACK TO NEW YORK AND HE WOULD BE HERE UNTIL APRIL.

8 Q OKAY.

9 BUT HE TOLD YOU THAT'S HOW HE MAKES
10 HIS LIVING HERE IN LAS VEGAS; IS THAT CORRECT?

11 A HE TOLD ME --

12 Q YOU NEVER --

13 A HE TOLD ME THAT THEY HADN'T STARTED YET.

14 Q OH, OKAY. I MISUNDERSTOOD YOU.

15 MR. SEATON: MAY WE HAVE A CLARIFICATION, YOUR
16 HONOR, A FOUNDATIONAL CLARIFICATION AS TO WHEN, WHAT PERIOD OF
17 TIME COUNSEL IS TALKING ABOUT THAT THE DEFENDANT MADE HIS
18 MONEY?

19
20 BY MR. FRANZEN:

21
22 Q DID SAM EVER TELL YOU HOW HE GOT HIS MONEY
23 FOR FOOD AND GAS?

24 A NO.

25 Q DO YOU RECALL TELLING DETECTIVE LEAVITT
26 ON APRIL 2ND, 1980, IN RESPONSE TO A QUESTION, THAT SAM WOULD
27 HAVE HIS MOTHER SEND HIM MONEY? DO YOU RECALL TELLING DETEC-
28 TIVE LEAVITT THAT ON APRIL 2ND, 1980?

29 A NO. I DON'T KNOW IF I --

30 Q COULD YOU HAVE TOLD HIM THAT?

31 A I COULD HAVE TOLD HIM THAT.

32 Q NOW, YOU'VE DESCRIBED THIS GUN, STATE'S

2029

1 EXHIBIT 31-B, SHOWING YOU 31-B.

2 A UH-HUH.

3 Q DO YOU RECALL BEING ASKED, ON APRIL 2ND,
4 1980, BY DETECTIVE LEAVITT TO DESCRIBE THAT GUN; TO WHICH YOU
5 REPLIED, "I DON'T KNOW ANYTHING ABOUT GUNS"?

6 A THERE'S ALOT OF POLICE OFFICERS, ASKED TO
7 LEAVE THINGS, AND I DON'T KNOW WHAT HE WAS SAYING BECAUSE THEY
8 WAS ALL COMING AT ME AT ONCE.

9 Q COULD YOU HAVE SAID THAT TO DETECTIVE
10 LEAVITT?

11 A PROBABLY SO. I COULD HAVE.

12 Q NOW, YOU'VE TESTIFIED THAT YOU RECOGNIZE
13 STATE'S 25-A; IS THAT CORRECT?

14 A YES, SIR.

15 Q AND THAT YOU RECOGNIZE IT AS BELONGING TO
16 SAM HOWARD?

17 A YES.

18 Q AND YOU HAD BEEN PREVIOUSLY SHOWN THIS, HAD
19 YOU NOT?

20 A YES, SIR.

21 Q YOU HAD BEEN PREVIOUSLY SHOWN THAT EXACT
22 SAME BAG ON MAY 2ND, 1981; IS THAT CORRECT?

23 A YES, SIR.

24 Q AND THAT WAS BEFORE THE GRAND JURY, WASN'T
25 IT?

26 A YES, SIR.

27 Q AND YOU TOLD THEM YOU DID NOT RECOGNIZE
28 THAT; IS THAT CORRECT?

29 A I DIDN'T REMEMBER THEN AT THE TIME.

30 Q NOW, YOU'VE TESTIFIED I BELIEVE THAT WHEN
31 YOU DROPPED SAM OFF AT THE WINCHESTER PLAZA, BEFORE HE RETURNED
32 -- JUST BEFORE HE RETURNED AND YOU LEFT FOR CALIFORNIA THAT SAM

2030

1 EXPLAINED THAT HE WAS GOING TO ROB A PIMP; IS THAT CORRECT?

2 A YES, SIR.

3 Q NOW, YOU TESTIFIED BEFORE THE GRAND JURY,
4 DID YOU NOT, ON MAY 20TH, 1981; IS THAT CORRECT?

5 A YES, SIR.

6 Q YOU REMEMBER THE DATE OR WOULD YOU LIKE ME
7 TO SHOW YOU THE --

8 A YOU CAN -- I KNOW IT WAS -- I WAS IN THE
9 HOSPITAL AT THE TIME THAT THEY SENT FOR ME.

10 Q DO YOU REMEMBER THE DATE OR WOULD YOU LIKE
11 ME TO SHOW IT TO YOU?

12 A YOU CAN SHOW IT TO ME.

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

15 THE COURT: YOU MAY.

16

17 BY MR. FRANZEN:

18

19 Q THAT'S ON MAY 20TH, 1981?

20 A YES, SIR.

21 Q AT THAT TIME YOU WERE SWORN TO TELL THE
22 TRUTH?

23 A YES, SIR.

24 Q THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

25 A YES, SIR.

26 Q THE QUESTION WAS ASKED YOU:

27 DID HE TELL YOU WHAT HE

28 WAS GOING THERE TO DO?

29 AND YOU REPLIED:

30 HUH-UH.

31 WOULD THAT BE YOUR CORRECT TESTIMONY

32 BEFORE THE GRAND JURY OR WOULD YOU LIKE TO LOOK AT THE TRAN-

2031

1 SCRIPT?

2 A YEAH. I CAN LOOK AT IT.

3 WAS IT UH-HUH AFTER OR A AH-HA?

4 Q A U-H HYPHEN U-H, UH-UH.

5 THE COURT: COUNSEL?

6 MR. FRANZEN: REFERRING TO PAGE 84, LINES 6 THROUGH
7 12, YOUR HONOR.

8 THE WITNESS: NO. HE DIDN'T TELL ME EXACTLY WHAT
9 HE WAS GOING TO DO, IF HE WAS GOING TO PHYSICALLY OR WHATEVER.

10
11 BY MR. FRANZEN:

12
13 Q BUT THE QUESTION THAT WAS PROPOSED TO YOU
14 ON THAT DAY BEFORE THE GRAND JURY WAS:

15 DID HE TELL YOU WHAT HE
16 WAS GOING TO DO -- GOING THERE
17 TO DO?

18 AND YOU REPLIED IN THE NEGATIVE; IS
19 THAT TRUE?

20 A I DON'T REMEMBER IF IT WAS. YOU KNOW, HE
21 TOLD ME WHAT HE WAS GOING TO DO, BUT IT WAS A AH-HA OR A HUH-UH
22 --

23 MR. FRANZEN: MAY I READ THIS INTO THE RECORD?

24 THE COURT: YOU MAY.

25 MR. FRANZEN: I GUESS I'LL BEGIN AT THE TOP OF THE
26 PAGE, YOUR HONOR. I BELIEVE IT CONFLICTS:

27 QUESTION: SO I JUMPED UP AND
28 I ASKED -- WASHED MY FACE AND EVERY-
29 THING AND PUT ON MY CLOTHES. AND HE
30 TOLD ME TO PUT -- HAVE THE BAGS PACKED,
31 AND HE TOLD ME TO DRIVE CAREFULLY. SO
32 THEN HE HAD ME TO GO -- IT WAS NEAR THE

1 MALL OR SOMETHING -- THIS OFFICE THERE.
2 PARAGRAPH.

3 SO THEN HE HAD ME TO DRIVE DOWN
4 THERE. AND THEN INSTEAD OF GOING TO
5 THIS MEDICAL PLACE, HE JUST HAD ME GO
6 THROUGH THE ALLEY OF THE PLACE THAT HAS
7 LIKE A PASSAGE OR ALLEY OR SOMETHING
8 BEHIND IT.. AND HE TOLD ME TO GO BACK
9 HOME AND WAIT FOR THE TELEPHONE UNTIL --

10 QUESTION: DID HE TELL YOU WHAT
11 HE WAS GOING TO DO QUESTION MARK.

12 ANSWER: UH-UH.

13
14 BY MR. FRANZEN:

15
16 Q NOW, YOU HAVE TESTIFIED THAT SAM HAD --
17 THIS AFTERNOON BEFORE THE JURY YOU HAD TESTIFIED --

18 A YES, SIR.

19 Q (CONTINUING) -- THAT SAM HAD THIS GUN,
20 STATE'S 31-B, WITH HIM WHEN HE GOT OUT OF THE CAR AT THIS
21 MEDICAL PLACE; IS THAT CORRECT?

22 A YES, SIR.

23 Q DO YOU RECALL TESTIFYING BEFORE THE GRAND
24 JURY, WHERE YOU WERE SWORN TO TELL THE TRUTH --

25 A YES, SIR.

26 Q (CONTINUING) -- THAT SAM DID NOT HAVE THE
27 GUN?

28 A I SAID SAM DID NOT HAVE THE GUN?

29 Q YES, MA'AM.

30 A OH, NO. NO.

31 Q WOULD IT ASSIST YOU IF I SHOWED YOU THE
32 TRANSCRIPT?

1 A YES, IT WOULD.

2 Q FROM THE GRAND JURY, AGAIN PAGE 84 --

3 A OKAY.

4 Q (CONTINUING) -- REFERRING TO LINES 12 AND

5 13.

6 A YES, SIR.

7 Q THIS IS IMMEDIATELY FOLLOWING THE SECTION

8 THAT YOU HAVE JUST READ, 11 AND 12 -- I'M SORRY, 13 AND 14.

9 A THIS SAYS "UH-UH".

10 Q UH-HUH?

11 A UH-HUH.

12 Q SO THERE'S A DIFFERENCE BETWEEN THE TWO?

13 A UH-HUH. JUST LIKE I'M SAYING "UH-HUH" NOW,

14 IT MEANS YES. THAT'S THE WAY, YOU KNOW, SOME OF US TALK.

15 Q NOW, I JUST WANT TO MAKE IT CLEAR TO YOU.

16 NOW, DO YOU RECALL A MEETING -- LET

17 ME BACK UP A SECOND.

18 YOU TESTIFIED THAT SAM HAD THE GUN IN

19 HIS BELT WHEN HE GOT OUT OF THE CAR AT THE WINCHESTER PLAZA,

20 RIGHT?

21 A YES, SIR.

22 Q DO YOU RECALL MEETING WITH MYSELF, MR.

23 COOPER HERE ON MY LEFT, AND AN INVESTIGATOR ON JANUARY 12TH,

24 1982?

25 A YES, SIR.

26 Q DO YOU RECALL BEING ASKED -- COURT'S

27 INDULGENCE, YOUR HONOR.

28 DO YOU RECALL BEING ASKED WHETHER HE

29 HAD THE GUN BY MYSELF OF ONE OF THE OTHER PARTIES WITH ME, WHEN

30 YOU DROPPED HIM OFF AT THE WINCHESTER PLAZA?

31 A NO, I DON'T REMEMBER. SO MANY PEOPLE. YES.

32 I DON'T REMEMBER.

1 Q DO YOU RECALL RESPONDING THAT YOU WERE
2 GUESSING OR SPECULATING THAT HE DID HAVE THE GUN WITH HIM, THAT
3 YOU DID NOT ACTUALLY SEE THE GUN?

4 A THE WAY YOU WORDED IT, YES.

5 Q DID YOU ACTUALLY SEE THE GUN WHEN YOU
6 DROPPED HIM OFF?

7 A THE GUN WAS --

8 Q DID YOU ACTUALLY SEE THE GUN WHEN YOU
9 DROPPED HIM OFF?

10 A (CONTINUING) -- OUT.

11 Q DID YOU ACTUALLY SEE THE GUN WHEN -- BY --
12 AT THE ALLEY OF THE WINCHESTER PLAZA WHEN YOU DROPPED HIM OFF?

13 A NO.

14 Q NOW, YOU'VE TESTIFIED THAT YOU NEVER --
15 THAT YOU THOUGHT THE GOLD WATCH THAT SAM WAS WEARING WAS A
16 SEIKO; IS THAT CORRECT?

17 A YES, SIR.

18 Q BUT YOU NEVER DID SEE THE BRAND NAME
19 WRITTEN ON THE WATCH; IS THAT CORRECT?

20 A I'VE SEEN THE -- THE WATCH.

21 Q IS IT --

22 A AND I --

23 Q (CONTINUING) -- CORRECT ---

24 A (CONTINUING) -- IT'S BEEN SO LONG SO I DON'T
25 REMEMBER.

26 Q DO YOU RECALL BEING ASKED ON MAY 20TH,
27 1981, BY THE DISTRICT ATTORNEY BEFORE THE GRAND JURY:

28 WHAT KIND OF WATCH DID
29 YOU SEE WHEN HE RETURNED TO
30 THE BEST WESTERN MOTEL?

31 A THEY ASKED ME A QUESTION ABOUT IT BUT I
32 DON'T REMEMBER THE -- THE QUESTION.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Q DO YOU RECALL ANSWERING:

I DIDN'T REALLY SEE IT.
HE MIGHT HAVE SHOWN ME THEN
BUT I DON'T REMEMBER.

QUESTION: DID YOU SEE
THE BRAND NAME?

ANSWER: NO. IT WAS JUST
A GOLD WRISTWATCH. THAT IS
ALL I SEEN.

AND HE SAYS, YOU KNOW,
I'M GETTING TIRED OF THIS
PLACE. HE SAID, LET'S GO.
WE WENT TO CALIFORNIA.

A YES.

Q DO YOU REMEMBER THAT?

A I REMEMBER HIM ASKING ABOUT THE WATCH.

Q DO YOU REMEMBER THIS ANSWER?

A OH, NO, BUT I COULD HAVE SAID IT.

Q OKAY.

NOW, YOU'VE GIVEN A DESCRIPTION OF SOME
ITEMS FOUND IN A WALLET THAT MR. HOWARD, YOU SAY, HAD IN HIS
POSSESSION WHEN HE RETURNED TO THE BEST WESTERN OR THE WESTERN
MOTEL AFTER YOU DROPPED HIM OFF AT THIS AREA OF THE WINCHESTER
COMPLEX; IS THAT CORRECT?

A YES, SIR.

Q DO YOU RECALL ON APRIL THE 24TH, 1980,
SPEAKING WITH DETECTIVE LEAVITT BY TELEPHONE?

A YES, SIR. SOMEBODY CALLED ME.

Q HE CALLED YOU?

A OR I CALLED HIM, ONE OF THE TWO. BUT I --

Q YOU DON'T REMEMBER WHICH?

A I DON'T REMEMBER IF I CALLED HIM OR HE

1 CALLED ME.

2 Q DO YOU RECALL TELLING DETECTIVE LEAVITT
3 THAT SAMUEL HOWARD RETURNED TO THE MOTEL ROOM WHERE YOU WERE
4 STAYING AND HAD IN HIS POSSESSION A BROWN OR BLACK WALLET?

5 A BROWN WALLET.

6 Q DO YOU RECALL TELLING DETECTIVE LEAVITT
7 THAT IT COULD HAVE BEEN A BLACK WALLET?

8 A NO. I DON'T REMEMBER THAT.

9 Q GOING ON FURTHER, DO YOU RECALL TELLING
10 DETECTIVE LEAVITT THAT YOU DID NOT LOOK INTO THE WALLET BECAUSE
11 YOU WERE AFRAID?

12 A I DIDN'T -- I GLANCED AT THE WALLET. I
13 DIDN'T -- I DIDN'T LOOK AT THE WALLET.

14 Q DO YOU RECALL TELLING DETECTIVE LEAVITT,
15 ON THIS SAME DATE, THAT YOU WERE AFRAID TO LOOK AT ANYTHING IN
16 THE WALLET, THAT ANYTHING SAM HOWARD HAD --

17 A IF I DIDN'T KNOW HOW HE GOT IT, YES, I
18 DIDN'T -- I DIDN'T LOOK IN NOTHING THAT, YOU KNOW, DIDN'T LOOK
19 RIGHT TO ME.

20 Q NOW, YOU TESTIFIED THAT YOU SAW A CREDIT
21 CARD IN THIS WALLET; IS THAT CORRECT; A MASTER CHARGE CREDIT
22 CARD?

23 A YES, SIR.

24 Q DO YOU RECALL TELLING DETECTIVE LEAVITT
25 ABOUT THREE YEARS AGO, ON APRIL 24, 1980 --

26 A UH-HUH.

27 Q (CONTINUING) -- AGAIN ON THE TELEPHONE THAT
28 YOU NEVER OBSERVED ANY CREDIT CARDS?

29 A NO.

30 Q DO YOU FURTHER RECALL TELLING DETECTIVE
31 LEAVITT THAT YOU NEVER LOOKED INTO THE WALLET?

32 A I DIDN'T LOOK INTO THE WALLET.

2037

1 Q DO YOU RECALL TELLING DETECTIVE LEAVITT
2 THAT?
3 A I DON'T REMEMBER.
4 Q COULD YOU HAVE TOLD DETECTIVE LEAVITT
5 THAT?
6 A THAT I DIDN'T LOOK INTO THE WALLET?
7 Q YES, MA'AM.
8 A YES, SIR.
9 Q AND THAT QUESTION, REGARDING LOOKING INTO
10 THE WALLET, WAS GIVEN TO YOU IN THE CONTEXT OF: DID YOU SEE
11 ANYTHING IN THE WALLET SUCH AS CREDIT CARDS; IS NOT THAT
12 CORRECT?
13 A IN THE WALLET OR OUTSIDE IN HIS HAND?
14 Q YES, MA'AM. IN THE WALLET, MA'AM.
15 A NO, I DIDN'T SEE ANYTHING IN THE WALLET.
16 Q WELL, WHEN DETECTIVE LEAVITT ASKED YOU IF
17 YOU SAW ANYTHING --
18 A OH. CAN I --
19 Q (CONTINUING) -- IN THE WALLET --
20 A (CONTINUING) -- SAY SOMETHING?
21 Q JUST WAIT A MINUTE THERE.
22 A OKAY.
23 Q WHEN DETECTIVE LEAVITT ASKED YOU IF YOU HAD
24 SEEN ANYTHING IN THE WALLET, WERE YOU MAKING A DISTINCTION
25 BETWEEN SAMUEL OPENING THE WALLET AND LOOKING IN IT OR YOUR
26 OPENING THE WALLET YOURSELF?
27 A I'M STATING THAT HE OPENED THE WALLET AND
28 I SEEN IN IT.
29 Q SO THAT'S DIFFERENT FROM YOUR NEVER LOOKING
30 IN THE WALLET?
31 A WITH MY HANDS?
32 Q YES.

1 A NO, SIR.

2 Q AND YOU DON'T BELIEVE DETECTIVE LEAVITT
3 WOULD HAVE BEEN INTERESTED AT THIS TIME IN WHAT YOU HAD SEEN --
4 MR. SEATON: THAT CALLS FOR SPECULATION AS TO WHAT
5 DETECTIVE LEAVITT THOUGHT.

6 MR. FRANZEN: NO. IT GOES DIRECTLY TO WHAT SHE
7 THOUGHT, YOUR HONOR. I HAVE AN OFFICER ASKING HER WHAT SHE SAW
8 IN THE WALLET. SHE'S NOW DESCRIBING A DISTINCTION. AND I'D
9 LIKE TO KNOW IF SHE AGREED WITH THE DISTINCTION.

10 THE COURT: RESTATE YOUR QUESTION, COUNSEL.

11
12 BY MR. FRANZEN:

13
14 Q YOU'RE MAKING A DISTINCTION THEN AT THIS TIME
15 BETWEEN WHAT YOU WOULD HAVE SEEN IN THE WALLET IF YOU HAD PICKED
16 THE WALLET UP AND LOOKED IN IT, AND BETWEEN WHAT YOU WOULD HAVE
17 SEEN IF MR. HOWARD PICKED THE WALLET UP AND LOOKED IN IT; IS
18 THAT CORRECT?

19 A OKAY. I DIDN'T TOUCH THE WALLET BUT HE
20 OPENED THE WALLET; IS THAT WHAT YOU'RE TALKING ABOUT?

21 Q YES, MA'AM.

22 A YES, HE OPENED THE WALLET AND THE PICTURES
23 -- IT'S ONE OF THOSE WALLETS WHERE YOU HAVE THE DIFFERENT --
24 WHERE YOU CAN PUT YOUR CARDS IN AND THEY'RE ALL IN PLASTIC AND
25 IT JUST CAME OUT WRONG (INDICATING).

26 Q BUT YOU DIDN'T TELL THAT TO DETECTIVE
27 LEAVITT AT THAT TIME, DID YOU?

28 A I -- I DON'T KNOW. I CAN'T REMEMBER WHAT
29 I TALKED TO HIM ABOUT THOSE YEARS AGO.

30 Q NOW, YOU'VE TESTIFIED THAT -- HAVE YOU EVER
31 RIDDEN IN A VAN, BLACK VAN, THAT HAS "BLACK OAK" WRITTEN ON IT?

32 A NO, SIR.

1 Q SHOWING YOU STATE'S EXHIBIT 1, HAVE YOU
2 EVER SEEN THIS BEFORE?

3 A HUH-UH.

4 Q HAVE YOU EVER RIDDEN IN IT BEFORE?

5 A NO, SIR.

6 Q AND WHEN YOU SAID HUH-UH, THAT WAS NO, YOU
7 HAD NEVER SEEN IT OR RIDDEN IN IT?

8 A NO, SIR.

9 Q BACK IN MARCH, 1980, AROUND MARCH 27, 1980,
10 DO YOU RECALL HOW YOU WERE WEARING YOUR HAIR?

11 A IN BRAIDS.

12 Q COULD YOU BE A LITTLE MORE PARTICULAR SO
13 WE MIGHT UNDERSTAND WHAT YOU MEAN BY "IN BRAIDS"?

14 A TWO FRENCH BRAIDS (INDICATING).

15 Q WHAT? I'M SORRY. I DON'T KNOW WHAT THAT
16 MEANS. CAN YOU EXPLAIN?

17 A THE WOMEN DO KNOW.
18 THAT MEANS THAT IT'S -- IT'S BRAIDED
19 AND (INDICATING) -- OH, BOY.

20 FRENCH BRAIDS ARE WHEN THEY'RE BRAIDED
21 IN A CHAIN ALL THE WAY DOWN (INDICATING).

22 Q NOW, ON APRIL 1ST, 1980, SAM WAS ARRESTED
23 IN CALIFORNIA, WASN'T HE?

24 A YES, SIR.

25 Q AND DID YOU CALL THE POLICE AND IDENTIFY
26 YOURSELF TO THE POLICE OFFICER AS BEING DAWANA BOYD?

27 A I DON'T KNOW.

28 Q WELL --

29 A THAT'S MY MAIDEN NAME.

30 Q DO YOU KNOW IF YOU CALLED THE POLICE?

31 A YES, I DID. I LEFT -- GOT A NUMBER LEFT
32 FOR ME.

1 Q AND DID YOU TELL THE POLICE OFFICER THERE
2 THAT THE BLACK OLDSMOBILE WAS YOUR CAR, YOUR VEHICLE?
3 A THEY ASKED ME WAS IT MINE, AND I SAID --
4 Q DID --
5 A (CONTINUING) -- YES.
6 Q NOW, DO YOU RECALL A MEETING WITH A
7 DETECTIVE G. MORROW AND DETECTIVE ROBERT BRADFORD OF THE DOWNEY
8 POLICE DEPARTMENT IN CALIFORNIA ON APRIL 2ND, 1980?
9 A SOME POLICE -- APRIL THE 2ND?
10 Q YES, MA'AM.
11 A I KNOW THEY CAME ON APRIL FOOLS DAY, APRIL
12 THE 1ST. THERE WAS LOTS OF THEM. I DON'T KNOW WHICH ONES WAS
13 WHO OR WHAT, BUT I KNOW SOME CAME FROM DOWNEY.
14 Q DO YOU RECALL TELLING THESE OFFICERS THAT
15 YOU HAD MET THE DEFENDANT MR. HOWARD ABOUT A YEAR AGO, AS OF
16 MARCH -- OR RATHER APRIL 2ND, 1980?
17 A I COULD HAVE, UH-HUH.
18 Q DO YOU RECALL TELLING THEM THAT YOU HAD
19 MET HIM AT A PARTY IN THE TUSCON AREA?
20 A NO. NO. I DON'T REMEMBER THAT.
21 Q DO YOU REMEMBER TELLING THEM, DURING THE
22 WEEK PRIOR, THAT IS THE WEEK PRIOR TO APRIL 2ND, 1980 --
23 A UH-HUH.
24 Q (CONTINUING) -- BEING THE WEEK OF MARCH
25 26TH THROUGH MARCH 28TH, THAT YOU WERE IN THE TUSCON, ARIZONA,
26 AREA?
27 A I -- I DON'T REMEMBER.
28 Q COULD YOU HAVE TOLD THEM THAT?
29 A I COULD HAVE TOLD THEM THAT. THEY DIDN'T
30 TELL ME WHAT THEY WAS THERE FOR.
31 Q AND THEN YOU TOLD THEM THAT DURING THIS
32 TIME PERIOD MR. HOWARD DISAPPEARED, YOU DIDN'T SEE HIM DURING

1 THAT TIME PERIOD. DO YOU RECALL TELLING THEM THAT?

2 A NO. I DON'T RECALL TELLING THEM THAT.

3 Q DO YOU RECALL TELLING DETECTIVE MORROW AND

4 DETECTIVE BRADFORD THAT MR. HOWARD, SAM, THEN REAPPEARED, PICKED

5 YOU UP IN TUSCON, ARIZONA, AREA, AND YOU DROVE TO LOS ANGELES,

6 THE LOS ANGELES AREA, ON SATURDAY, MARCH 29, 1980?

7 A MARCH 29TH?

8 Q YES, MA'AM.

9 A THIS WAS IN 1980?

10 Q YES, MA'AM.

11 A I DON'T REMEMBER.

12 Q COULD YOU HAVE TOLD THEM THIS?

13 MR. SEATON: YOUR HONOR, I'M GOING TO OBJECT AT

14 THIS TIME. THAT FORM OF QUESTION CALLS FOR SPECULATION.

15 MR. FRANZEN: IT DOESN'T CALL FOR SPECULATION,

16 YOUR HONOR.

17 MR. SEATON: ALL OF US COULD HAVE DONE ANYTHING.

18 SO THE ANSWER ALWAYS WOULD BE YES. I THINK THE QUESTION NEEDS

19 TO BE BETTER FORMED.

20 MR. FRANZEN: THAT'S NOT A CORRECT CHARACTERIZATION,

21 YOUR HONOR. SHE KNOWS HER OWN MIND AND WHAT SHE MIGHT HAVE TOLD

22 THESE PEOPLE.

23 THE COURT: I UNDERSTAND THAT. BUT I THINK THAT

24 THE FORM OF THE QUESTION WAS CONFUSING, COUNSEL. COULD YOU HAVE

25 DONE ANYTHING; ANYBODY CAN DO --

26 MR. FRANZEN: MIGHT -- MIGHT YOU HAVE TOLD --

27 MR. SEATON: SAME THING.

28 THE COURT: OBJECTION SUSTAINED.

29 MR. SEATON: THANK YOU.

30 ..

31 ..

32 ..

1 BY MR. FRANZEN:

2

3 Q NOW, IT'S YOUR TESTIMONY TODAY THAT AFTER
4 YOU DROPPED MR. HOWARD OFF AT THE WINCHESTER PLAZA HE REAPPEARED
5 AT THE APARTMENT WHERE YOU WERE STAYING, THE BEST WESTERN, ABOUT
6 AN HOUR LATER.

7 A JUST -- WOULD YOU STATE THAT OVER? I
8 CAN'T -- CAN YOU SAY THAT OVER AGAIN?

9 Q IT'S YOUR TESTIMONY TODAY THAT AFTER YOU
10 DROPPED SAM HOWARD OFF AT THE WINCHESTER PLAZA ON DESERT INN --

11 A UH-HUH.

12 Q (CONTINUING) -- YOU RETURNED TO YOUR HOTEL
13 AND HE APPEARED AT THE HOTEL APPROXIMATELY ONE HOUR LATER?

14 A YES, SIR.

15 Q DO YOU RECALL TESTIFYING BEFORE THE GRAND
16 JURY ON MAY 20TH, 1981, TELLING THEM THAT IT WAS ABOUT 30 MINUTES
17 LATER?

18 A I WASN'T INCLUDING THE TIME THAT I WAS
19 DRIVING.

20 Q NOW, YOU SAY THAT SAM TOLD YOU, WHEN YOU
21 DROPPED -- YOU DROPPED HIM OFF, THAT HE WAS GOING TO ROB A
22 PIMP; IS THAT CORRECT?

23 A YES, SIR.

24 Q THIS WAS AT THE WINCHESTER?

25 A YES, SIR.

26 Q DO YOU RECALL TELLING THE GRAND JURY ON
27 MAY 20, 1981:

28 I DIDN'T KNOW HE WAS GOING
29 TO KILL HIM -- NOBODY. I
30 THOUGHT HE WAS UP TO HIS
31 HUSTLING TRICKS BECAUSE HE
32 SAID, I KNOW HOW TO HUSTLE.

1 IS THAT WHAT YOU TOLD THE GRAND JURY?
2 A YES, SIR.
3 Q AND THEN THE NEXT QUESTION PROPOUNDED WAS:
4 ALL RIGHT. WHEN IS THE
5 NEXT TIME YOU SAW HIM?
6 ANSWER: I SAW HIM ABOUT
7 30 MINUTES LATER.
8 THAT'S 30 MINUTES AFTER YOU DROPPED HIM
9 OFF?
10 A I DIDN'T INCLUDE THE DRIVING TIME. NOW,
11 IF I INCLUDE THE DRIVING TIME, IT WOULD BE 40 -- I'D SAY BETWEEN
12 45 MINUTES AND AN HOUR.
13 Q NOW, WHEN YOU DROPPED SAM HOWARD OFF AT
14 THE MEDICAL BUILDING WHAT WAS SAM WEARING?
15 A SAM WAS WEARING THE LEATHER JACKET AND THE
16 GRAY SHIRT AND GRAY PANTS, I'M PRETTY SURE.
17 Q HE WASN'T WEARING A GREEN JACKET, WAS HE?
18 A HE DIDN'T OWN A GREEN JACKET.
19 Q HE WASN'T WEARING A BIG CONSTRUCTION-TYPE
20 BROWN LEATHER BELT, WAS HE?
21 A NO.
22 Q DID HE OWN SUCH AN ITEM?
23 A A BIG CONSTRUCTION-TYPE -- WHAT DO YOU
24 MEAN?
25 Q A BIG WIDE BELT.
26 A A BIG WIDE ONE?
27 Q THREE INCHES MAYBE.
28 A (INDICATING).
29 Q YES. SURE.
30 A LIKE THIS (INDICATING)?
31 Q YES.
32 A NO.

2044

1 MR. FRANZEN: MAY THE RECORD SHOW, YOUR HONOR,
2 THE WITNESS GESTURED AND IT LOOKED TO ME ABOUT THREE INCHES WHEN
3 SHE WAS DEMONSTRATING.

4 THE COURT: I DON'T KNOW WHETHER IT WAS OR NOT,
5 COUNSEL. I WOULD --

6 THE WITNESS: CAN I SAY THAT --

7 THE COURT: (CONTINUING) -- PLACE IN THE RECORD
8 THAT SHE DID GESTURE AND THERE WAS SOME DISTANCE BETWEEN THE
9 FINGERS, BUT I DON'T KNOW WHETHER IT WAS THREE INCHES OR NOT.

10 THE WITNESS: YOU SAID THE BELT WAS THAT BIG (INDI-
11 CATING), ABOUT THREE INCHES. AND I SAID, WELL, WHAT? THAT BIG
12 (INDICATING)? AND YOU SAID, OH, JUST --

13 THE COURT: THAT'S ALL RIGHT.

14
15 BY MR. FRANZEN:

16
17 Q NOW, YOU SAY THAT AFTER YOU LEFT HERE AND
18 WENT TO CALIFORNIA MR. HOWARD WENT INTO A BANK?

19 A YES, SIR.

20 Q DO YOU KNOW WHAT HE DID THERE?

21 A HE SAID THE -- THE CAR THAT HE HAD HE WAS
22 GOING TO SEE IF HE COULD GET SOME MONEY.

23 Q DID HE?

24 A WHEN HE COME BACK OUT HE HAD \$20.

25 MR. FRANZEN: COULD I HAVE THE COURT'S INDULGENCE
26 FOR ONE MOMENT, YOUR HONOR.

27 NO FURTHER QUESTIONS.

28 THE COURT: REDIRECT?

29 MR. SEATON: THANK YOU, YOUR HONOR.

30 ..

31 ..

32 ..

REDIRECT EXAMINATION

BY MR. SEATON:

Q HAVE YOU BEEN INTERVIEWED ALOT IN THIS CASE
BY DIFFERENT PEOPLE?

A YES. YES.

Q CAN YOU THINK ON HOW MANY OCCASIONS YOU AND
I HAVE SPOKEN?

A ABOUT THREE; THREE OR -- THREE OR FOUR TIMES.

Q CAN YOU THINK HOW MANY TIMES YOU'VE SPOKEN
WITH MEMBERS OF THE LAS VEGAS POLICE DEPARTMENT DETECTIVE
BUREAU?

A UH, YES.

Q HOW MANY TIMES?

A HOW MANY TIMES?

Q HOW MANY TIMES?

A OH, GOSH.

Q LET ME ASK THE QUESTION, MISS THOMAS.

A OKAY.

Q HOW MANY TIMES IN LAS VEGAS HAVE YOU
SPOKEN TO DETECTIVES FROM THE LAS VEGAS POLICE DEPARTMENT ABOUT
THIS CASE?

A SO MANY TIMES.

Q CAN YOU GIVE US A ROUGH NUMBER?

A CAN I -- INCLUDING WHEN I CALLED WHEN THE
TRIAL WAS GOING TO BE?

Q YEAH. LET'S INCLUDE THAT.

A OH, I'D SAY ABOUT 12 TO 15 TIMES.

Q AND DURING THOSE 12 OR 15 TIMES DID YOU
CONVERSE WITH THOSE PEOPLE ABOUT THE CASE?

A ABOUT THE -- OUT OF ALL THOSE TIMES?

1 Q YES.

2 A ABOUT THREE.

3 ARE YOU TALKING ABOUT THE DETECTIVES?

4 Q YES. LET ME REPHRASE THE QUESTION.

5 HOW MANY TIMES HAVE DETECTIVES FROM THE

6 LAS VEGAS POLICE DEPARTMENT ASKED YOU QUESTIONS ABOUT THIS CASE?

7 A TWICE.

8 Q HERE IN LAS VEGAS?

9 A ONCE IN CALIFORNIA AND THE OTHER TIME ON

10 THE TELEPHONE.

11 Q HAVE YOU BEEN ASKED QUESTIONS BY CALIFORNIA

12 POLICE OFFICERS ABOUT THIS CASE?

13 A YES, SIR.

14 Q HOW MANY TIMES?

15 A TWICE; TWO OR THREE TIMES.

16 Q HAVE YOU BEEN TALKED TO AT ALL -- HAVE YOU

17 BEEN ASKED QUESTIONS BY ANY DETECTIVES IN ARIZONA?

18 A I THINK ONCE BEFORE.

19 Q HAVE YOU BEEN ASKED ANY QUESTIONS ABOUT

20 THIS CASE BY DETECTIVES IN SAN BERNARDINO, CALIFORNIA?

21 A YES.

22 Q HOW MANY TIMES, IN YOUR OPINION?

23 A ONCE.

24 Q HAVE YOU BEEN ASKED ANY QUESTIONS --

25 A OH, NO. MORE THAN ONCE.

26 Q EXCUSE ME.

27 A THREE TIMES.

28 Q THREE TIMES?

29 A YEAH.

30 Q BY SAN BERNARDINO POLICE OFFICERS?

31 A YEAH, UH-HUH.

32 Q HAVE YOU EVER BEEN ASKED ANY QUESTIONS

1 ABOUT THIS CASE BY MEMBERS OF THE DISTRICT ATTORNEYS OFFICE OF
2 SAN BERNARDINO?

3 A YES, SIR.

4 Q HOW MANY TIMES?

5 A OH, LET'S SEE. HOW MANY TIMES WAS THAT?
6 I'D SAY ABOUT FIVE.

7 Q YOU SAID ON CROSS EXAMINATION THAT YOU AND
8 I HAD SPOKEN ABOUT THE CASE BACK IN JANUARY OF 1983; IS THAT
9 CORRECT?

10 A YES, SIR.

11 Q AND WE SPENT TWO OR THREE HOURS TOGETHER;
12 IS THAT WHAT YOU SAID?

13 A YES, SIR.

14 Q AT MY REQUEST, DURING THAT TWO- OR THREE-
15 HOUR PERIOD OF TIME, DID YOU AND I GO FOR A DRIVE?

16 A YES, SIR.

17 Q AND WHO DID THE DRIVING?

18 A YOU DID.

19 Q WHO DID THE DIRECTING WHERE WE WOULD GO?

20 A I DID.

21 Q DID I GIVE YOU ANY ASSISTANCE IN THAT
22 REGARD?

23 A NO.

24 Q WHERE DID WE GO?

25 A WE WENT TO SEARS PARKING LOT.

26 Q AND WHAT DID WE DO AFTER WE GOT TO SEARS
27 PARKING LOT?

28 A THEN I TOOK YOU TO THE SPOT -- YOU WERE
29 DRIVING BUT I WAS GIVING YOU DIRECTIONS, PARK HERE IN THIS AREA.
30 FROM THEN I HAD YOU BACK OUT AND GO TO THE LEFT AND THEN MAKE
31 A RIGHT AND THEN ANOTHER LEFT AND GO ONTO MARYLAND PARKWAY.
32 THIS IS -- THE LEFT TURN AND RIGHT WAS GETTING OUT OF THE PARK-

1 ING LOT. AND THEN I HAD TO -- TO GO STRAIGHT.

2 Q AND WHAT WERE WE TRYING -- WHAT WAS I TRY-
3 ING TO ACCOMPLISH WITH ALL OF THIS? WHAT WAS I WANTING TO
4 LEARN?

5 A YOU WERE LEARN -- WANTING TO LEARN TO SEE
6 IF I KNEW WHERE THIS DENTIST OFFICE --

7 MR. FRANZEN: YOUR HONOR, I'M GOING TO OBJECT TO
8 WHATEVER MR. SEATON TOLD THIS WITNESS. IF MR. SEATON WISHES TO
9 BE A WITNESS, THAT'S APPROPRIATE. IT'S NOT THROUGH THIS
10 WITNESS.

11 MR. SEATON: LET ME REPHRASE THE QUESTION, YOUR
12 HONOR. I'LL WITHDRAW THAT QUESTION.

13
14 BY MR. SEATON:

15
16 Q WHILE YOU WERE GIVING ME DIRECTIONS DID
17 YOU HAVE ME STOP AT A PARTICULAR PLACE AS WE WERE DRIVING?

18 A YES, SIR.

19 Q AND WHAT PLACE WAS THAT?

20 A THIS PLACE -- THIS WAS A DENTIST OFFICE.

21 Q AND AT THAT TIME WHEN WE STOPPED THERE DID
22 YOU KNOW THE ADDRESS OF THAT DENTIST OFFICE?

23 A YES, SIR, 'CUZ I LOOKED ON THE -- THE
24 STREET, TRYING TO FIND THIS DENTIST OFFICE THAT I KNEW.

25 Q DID I POINT THE DENTIST OFFICE OUT TO YOU?

26 A NO.

27 Q AND WHERE AROUND THE DENTIST OFFICE DID WE
28 GO TO?

29 A WE WENT INTO THE ALLEY.

30 Q AND WHAT DID WE DO WHEN WE GOT BACK INTO
31 THE ALLEY?

32 A I TOLD YOU, THIS IS THE PLACE.

2049

1 Q NOW, WHICH PLACE WAS THIS?

2 A THIS WAS THE DENTIST OFFICE AT THE 1500

3 BLOCK.

4 Q IS THAT THE FIRST PLACE THAT YOU HAD TAKEN

5 SAM?

6 A YES.

7 Q AND DID WE STAY THERE FOR ANY PERIOD OF

8 TIME?

9 A NO.

10 Q WHERE DID WE GO?

11 A JUST SECONDS.

12 Q WHERE DID WE GO AFTER THAT?

13 A I TOLD YOU, AND THAT WAS THE END OF THE

14 ALLEY WHERE I DROPPED HIM OFF THE SECOND TIME.

15 Q DID YOU TAKE ME TO THE END OF THE ALLEY?

16 A YES, SIR.

17 Q AND WAS IT AT YOUR DIRECTION?

18 A YES, SIR.

19 Q AND WHAT HAPPENED WHEN WE GOT TO THE END

20 OF THE ALLEY?

21 A NOTHING THAT I KNOW OF. WE JUST DROVE OFF

22 AND CAME BACK TO THE TOWN -- COURT -- THIS COURT PLACE.

23 Q IN ALL OF OUR TALKS WHAT DID YOU UNDERSTAND

24 THAT YOU WERE TO DO HERE ON THE STAND AS A WITNESS IN THIS CASE?

25 A TO TELL THE TRUTH AND TO -- IF I DON'T

26 KNOW ANYTHING DON'T SAY THAT I KNOW IT, JUST YOU DON'T RECALL;

27 IF YOU DO RECALL THEN TELL WHAT YOU RECALL.

28 Q THANK YOU.

29 YOU INDICATED ON CROSS EXAMINATION THAT

30 WHEN YOU CAME TO THE GRAND JURY, WHICH WAS HELD IN LAS VEGAS ON

31 MAY 20TH, 1981 --

32 A YES, SIR.

1 Q (CONTINUING) -- IN WHICH YOU TESTIFIED --
2 A YES, SIR.
3 Q (CONTINUING) -- THAT YOU CAME FROM A HOS-
4 PITAL; IS THAT CORRECT?
5 A YES, SIR.
6 Q WHERE IS THAT HOSPITAL?
7 A IN TUSCON, ARIZONA.
8 Q AND WERE YOU A PATIENT IN THAT HOSPITAL?
9 A YES, SIR.
10 Q WHY WERE YOU A PATIENT IN THAT HOSPITAL?
11 A BECAUSE I HAD A LIVER DISORDER. I HAD
12 STONES IN THE DUCTS OF MY LIVER IN THE PANCREAS, OVER A HUNDRED
13 OF THEM.
14 Q WHAT HAPPENED? HOW WERE YOU TREATED?
15 A I WAS GIVEN DEMEROL, 15 MILLIGRAMS.
16 Q AND DID IT CLEAR UP?
17 A NO, SIR.
18 Q WHEN YOU CAME TO TESTIFY AT THE GRAND JURY
19 DID YOU HAVE TO HAVE A DOCTOR'S PERMISSION?
20 A YES, SIR.
21 Q TWO DOCTORS' PERMISSIONS?
22 MR. FRANZEN: YOUR HONOR, COULD I HAVE THE RELEVANCE
23 OF THIS?
24 MR. SEATON: THEY RAISED THE ISSUE, YOUR HONOR.
25 THE COURT: I THINK WE'RE GOING ASTRAY, COUNSEL.
26 LET'S GET BACK ON THE CASE AT HAND.
27 MR. SEATON: COURT'S INDULGENCE.
28 THE COURT: ALL RIGHT.
29
30 BY MR. SEATON:
31
32 Q MISS THOMAS, TAKING YOU BACK TO WHEN YOU

1 DROPPED SAM HOWARD OFF BEHIND THE WINCHESTER PLAZA, ON CROSS
2 EXAMINATION, COUNSEL WAS ASKING WHETHER OR NOT YOU ACTUALLY SAW
3 THE GUN AS HE LEFT THE CAR. AND YOUR ANSWER TO THAT I BELIEVE
4 WAS NO; IS THAT CORRECT?

5 A YES, SIR.

6 Q WHEN YOU WERE IN THE MOTEL THAT MORNING AND
7 YOU AND SAM HOWARD WERE GETTING DRESSED, JUST PRIOR TO LEAVING
8 THE MOTEL AND GOING TO YOUR CAR, DID YOU SEE THE GUN AT THAT
9 TIME?

10 A YES, SIR.

11 Q AND WHERE WAS THE GUN AT THAT TIME?

12 A SAM WAS PUTTING THE GUN IN THE BELT OF HIS
13 PANTS.

14 Q AND HOW SHORTLY AFTER HE DID THAT DID YOU
15 WALK OUT OF THE DOOR AND GO TO THE CAR?

16 A ABOUT FIVE MINUTES AFTER THEN.

17 Q DURING THAT FIVE-MINUTE PERIOD OF TIME DID
18 YOU SEE HIM TAKE THE GUN OUT OF HIS PANTS AND PUT IT DOWN WITHIN
19 THAT ROOM?

20 A HUH-UH. NO, SIR.

21 Q DID YOU SEE THE GUN AGAIN THAT MORNING
22 BEFORE YOU LEFT SAM OFF BEHIND THE WINCHESTER PLAZA?

23 A DID I SEE THAT GUN AGAIN?

24 Q YES.

25 A YES.

26 Q WHERE DID YOU SEE THE GUN AGAIN?

27 A IN HIS HAND.

28 Q THIS IS THE MORNING YOU WENT TO MC DONALDS
29 AND GOT BREAKFAST?

30 A OH. THE GUN WAS UNDER HIS -- IN HIS BELT
31 WITH HIS SHIRT AND JACKET OVER IT.

32 Q YES.

2052

1 ONCE YOU LEFT THE MOTEL AND DROVE TO
2 MC DONALDS AND THEN TO THE WINCHESTER PLAZA AND LEFT -- LEFT
3 THE DEFENDANT SAM HOWARD OUT, DURING THAT PERIOD OF TIME DID
4 YOU SEE THE GUN AGAIN?
5 A WHEN HE GOT OUT THE CAR.
6 Q ANYTIME WITHIN THAT TIME PERIOD?
7 A NO. BUT -- NO, I DIDN'T SEE THE GUN. NO.
8 Q WHILE YOU WERE IN THE CAR GOING TO MC
9 DONALDS DID YOU SEE THE DEFENDANT TAKE THE GUN OUT OF HIS PANTS?
10 A NO.
11 Q DID YOU SEE THE GUN DURING THAT PERIOD OF
12 TIME ANYWHERE IN THE AUTOMOBILE?
13 A NO.
14 Q WHILE YOU WERE AT MC DONALDS DID YOU SEE
15 THE DEFENDANT TAKE THE GUN OUT OF HIS PANTS?
16 A NO, SIR.
17 Q WHEN YOU DROVE FROM MC DONALDS TO WINCHESTER
18 PLAZA DID YOU SEE THE DEFENDANT TAKE THE GUN OUT OF HIS PANTS?
19 A NO.
20 Q DID YOU, AT ANYTIME AFTER MC DONALDS, SEE
21 THE GUN IN THE CAR?
22 A NO.
23 Q WHEN YOU DROVE BACK TO THE MOTEL DID YOU
24 SEE THE GUN IN THE CAR?
25 A NO.
26 Q WHEN WAS THE NEXT TIME YOU SAW THE GUN?
27 A WHEN HE CAME BACK TO THE ROOM.
28 Q AND WHERE WAS --
29 A AT THE -- AT THE BEST WESTERN MOTEL ON
30 BOULDER.
31 Q IS THAT WHEN HE HAD THE C.B. IN HIS HANDS?
32 A UH-HUH.

2053

1 Q AND WHERE WAS THE GUN AT THAT TIME?
 2 A THE GUN WAS IN HIS PANTS.
 3 Q HOW DO YOU KNOW THAT?
 4 A BECAUSE WHEN HE WAS TAKING OFF, YOU KNOW,
 5 HE WENT IN THE BATHROOM HE HAD TO TAKE THE JACKET OFF AND STUFF
 6 AND WENT IN THE BATHROOM.

7 MR. SEATON: THANK YOU.
 8 I HAVE NO FURTHER QUESTIONS.
 9

10 RECROSS EXAMINATION

11
 12 BY MR. FRANZEN:

13
 14 Q MA'AM, IT'S YOUR TESTIMONY THAT YOU HAVE
 15 NEVER SEEN THIS HOLSTER, 25-A; IS THAT CORRECT?

16 A I MEAN I DIDN'T TESTIFY THAT I NEVER SEEN
 17 IT. I JUST DON'T REMEMBER ABOUT IT.

18 Q YOU DON'T REMEMBER.

19 NOW, YOU'VE TESTIFIED IN RESPONSE TO
 20 REDIRECT THAT YOU WERE HOSPITALIZED AND ON DEMEROL. IS IT YOUR
 21 TESTIMONY NOW WHEN YOU TESTIFIED BEFORE THE GRAND JURY YOU WERE
 22 ON SOME SORT OF NARCOTIC SUBSTANCE?

23 A SAY THAT AGAIN.

24 Q IS IT YOUR TESTIMONY TODAY THAT WHEN YOU
 25 TESTIFIED BEFORE THE GRAND JURY YOU WERE ON SOME TYPE OF NARCOTIC
 26 SUBSTANCE?

27 A NO. I WASN'T ON ANY -- I HAD BEEN GETTING
 28 IT.

29 Q BUT YOU WEREN'T ON IT WHEN YOU TESTIFIED ON
 30 MAY 20TH, 1981?

31 A ANTIDEPRESSANT.

32 Q IN APRIL OF 1980 DID YOU GO INTO THE KENO

1 HOSPITAL IN ARIZONA?

2 A 19 -- APRIL?

3 Q YES. AND THAT WAS THE PSYCHIATRIC WARD?

4 A YES.

5 MR. FRANZEN: I HAVE NO FURTHER QUESTIONS, YOUR
6 HONOR.

7 AS A PATIENT?

8 THE WITNESS: YES.

9
10 REDIRECT EXAMINATION

11
12 BY MR. SEATON:

13
14 Q MISS THOMAS, WOULD YOU REPEAT WHAT YOU JUST
15 ANSWERED. WHERE WERE YOU ADMITTED?

16 A IN KENO HOSPITAL.

17 Q WHERE IS THAT?

18 A THAT'S IN TUSCON, ARIZONA.

19 Q AND FOR WHAT PURPOSE WERE YOU ADMITTED AT
20 THAT HOSPITAL?

21 A I HAD A NERVOUS BREAKDOWN.

22 Q COULD YOU EXPLAIN THAT?

23 A THAT MEANS WHEN YOU JUST CAN'T TAKE NO MORE
24 AND YOU JUST GO TU-- (INDICATING), YOUR MIND STOPS. IT JUST
25 GETS TIRED. IT WON'T FUNCTION RIGHT ANYMORE. IT JUST GETS
26 TIRED.

27 Q WHAT IS IT THAT YOU COULDN'T TAKE ANYMORE
28 OF THAT CAUSED YOUR NERVOUS BREAKDOWN?

29 A I COULDN'T TAKE ANYMORE OF THIS, FINDING
30 OUT WHAT THEY TOLD ME THAT SAM DID THIS AND DID THAT. AND I JUST
31 TOO TOO (SIC), YOU KNOW, I WAS IN SHOCK (INDICATING).

32 Q DID YOU RECEIVE TREATMENT FOR YOUR NERVOUS

2055

1 BREAKDOWN AND FOR YOUR BEING IN SHOCK?

2 A YES, SIR.

3 Q WHAT KIND OF TREATMENT DID YOU RECEIVE?

4 LET ME ASK THIS, IF I MIGHT: DID YOU
5 CONSULT WITH PSYCHIATRISTS?

6 A YES, SIR.

7 Q DID YOU HAVE A PARTICULAR PSYCHIATRIST WITH
8 WHOM YOU WORKED?

9 A AT THE TIME IT WAS SMITH. YES, DOCTOR
10 SMITH.

11 Q HE WAS A MEMBER OF THAT HOSPITAL?

12 A YES, SIR.

13 Q AND FOR HOW LONG A PERIOD OF TIME DID YOU
14 CONSULT WITH -- I SHOULD ASK IT THIS WAY: ARE YOU STILL CON-
15 SULTING WITH DOCTORS REGARDING THIS NERVOUS BREAKDOWN?

16 A SINCE -- NOT RIGHT NOW.

17 Q HOW LONG HAS IT --

18 A I HAD AN APPOINTMENT WITH THEM BUT I
19 COULDN'T KEEP IT.

20 Q WELL, LET ME ASK YOU THIS: TODAY, SITTING
21 HERE, HOW DO YOU -- HOW IS YOUR MENTAL CONDITION COMPARED TO
22 THE NERVOUS BREAKDOWN THAT YOU HAD BACK IN APRIL OF 1980?

23 A WELL, I'M A CHRISTIAN. YOU KNOW, I'M
24 SAVED IN THE NAME OF JESUS CHRIST, AND I'M AT PEACE.

25 I FEEL -- I FEEL GOOD, VERY GOOD.

26 MR. SEATON: THANK YOU.

27 I HAVE NOTHING FURTHER, YOUR HONOR.

28 ..

29 ..

30 ..

31 ..

32 ..

RECROSS EXAMINATION

BY MR. FRANZEN:

Q MA'AM, YOU SAY YOU COULDN'T TAKE IT ANY-MORE. AFTER SAM WAS ARRESTED DID YOU WRITE HIM?

A RIGHT AFTER?

Q DID YOU WRITE TO HIM AT ANYTIME AFTER HE WAS ARRESTED ON APRIL 1ST, 1980?

A YES, SIR.

Q DIDN'T YOU WRITE HIM AND TELL HIM YOU LOVED HIM?

A YES, SIR.

Q AND YOU WROTE HIM AND ASKED FOR MONEY?

A YES, SIR.

MR. FRANZEN: I HAVE NO FURTHER QUESTIONS.

REDIRECT EXAMINATION

BY MR. SEATON:

Q WHY DID YOU WRITE HIM?

A WHY?

Q YES.

A BECAUSE I HAD RECEIVED A TELEPHONE CALL FROM SAM SAYING THAT THEY CAUGHT THE PERSON WHO DID IT.

Q WHO DID WHAT?

A DID THIS MURDER THAT THEY TOLD ME ABOUT THAT THEY WAS CHARGING HIM WITH.

Q WOULD YOU GO OVER THAT AGAIN. SAM TOLD YOU WHAT ON THE TELEPHONE?

A UH, I HAD A NERVOUS BREAKDOWN APRIL THE 3RD.

1 AND APRIL THE 4TH SAM CALLED ME AND THEY PUT THE TELEPHONE UP
2 TO MY EAR AND HE WAS TALKING TO ME. AND --

3 Q WHERE WERE YOU WHEN THEY PUT THE TELEPHONE
4 UP TO YOUR EAR?

5 A I WAS STILL IN THE PSYCHIATRIC WARD.

6 Q AND WHAT DID YOU HEAR SAM TELL YOU?

7 A HE WAS SAYING, BABY, THAT THEY CAUGHT THE
8 PERSON WHO DID THIS, THAT HE DIDN'T DO IT.

9 Q DIDN'T DO THE MURDER?

10 A YES.

11 Q AND WHAT ELSE DID HE SAY?

12 A THAT THEY HAVE HIM ON CAR THEFT BUT HE WAS
13 GETTING OUT, AND THAT WHEN I GET MY DIVORCE THEN WE WAS GOING
14 TO GET MARRIED.

15 Q AND HOW DID YOU REACT TO THIS WHILE YOU
16 WERE IN THE PSYCHIATRIC WARD RECEIVING THIS TELEPHONE CALL?

17 A I WAS CRYING.

18 Q NOW, BACK TO MY ORIGINAL QUESTION. WHY
19 THEN LATER ON DID YOU WRITE HIM?

20 A WHY? WHY? BECAUSE I, UH, YOU -- I DIDN'T
21 KNOW THAT, UH, HE HAD DID ANYTHING BUT CAR THEFT.

22 SO SAM TOLD ME HE HADN'T DID ANYTHING.
23 SO I DIDN'T SEE WHAT WAS WRONG WITH WRITING.

24 Q IT WAS BECAUSE SAM TOLD YOU THAT THAT YOU
25 BELIEVED HIM?

26 A YES. AND NO POLICEMEN GOT IN TOUCH WITH
27 ME ANYMORE. SO I JUST BELIEVED HIM. AFTER THAT I BELIEVED HIM.

28 Q AND HOW LONG DID YOU CONTINUE TO CORRES-
29 POND WITH THE DEFENDANT SAM HOWARD?

30 A UP UNTIL I'D SAY ABOUT JANUARY OR FEBRUARY.

31 Q OF WHAT YEAR?

32 A OF '81.

1 Q AND WHAT CAUSED YOU TO STOP CORRESPONDING
2 WITH THE DEFENDANT SAM HOWARD?

3 A BECAUSE MY PSYCHIATRIST WAS BREAKING
4 THROUGH SOME OF THE THINGS THAT -- THEY SAID I WAS SUFFERING
5 FROM CATASTROPHICAL STRESS, AND THEY WERE -- EVIDENTLY I WAS
6 COMING OUT OF IT.

7 Q DID THIS STRESS YOU WERE SUFFERING UNDER
8 AFFECT YOUR MEMORY AT ALL?

9 A YES, SIR.

10 Q IN WHAT WAY?

11 A I WAS -- I BLOCKED OUT WHAT THE POLICE
12 OFFICERS HAVE TOLD ME BECAUSE IT WAS VERY PAINFUL. I COULDN'T
13 TAKE WHAT THEY WAS TELLING ME ABOUT DIFFERENT THINGS. SO WHEN
14 I HAD THE NERVOUS BREAKDOWN I BLOCKED IT OUT.

15 AND THEN WHEN I STARTED COMING BACK TO,
16 THEY STARTED WORKING WITH ME AND I STARTED HAVING THERAPY. I
17 STARTED COMING BACK TO MY ORIGINAL SELF. I WAS STILL DEPRESSED,
18 BUT I WAS COMING BACK AND I JUST STARTED REMEMBERING THINGS.
19 AND I HAVE NIGHTMARES AND INSOMNIA.

20 Q HOW IS YOUR MEMORY NOW COMPARED TO WHAT IT
21 WAS, OH, WHAT IT WAS SIX MONTHS OR A YEAR AFTER SAM WAS ARRESTED?

22 A MY MEMORY IS FINE. I MEAN AT LEAST -- WHEN
23 I HAD CONVERSATIONS WITH PEOPLE, THEN IT WAS HARD TO REMEMBER..
24 BUT I REMEMBER THINGS THAT WAS PAINFUL TO ME THAT I -- YOU KNOW,
25 THINGS THAT WAS PERTAINING TO THIS WHOLE TRIAL AND PERTAINING
26 TO ME AND SAM LIVING TOGETHER. I REMEMBER THINGS CLEARLY.

27 Q AND YOU'RE AT PEACE NOW?

28 A YES, SIR.

29 MR. SEATON: NOTHING FURTHER, YOUR HONOR.

30 ..

31 ..

32 ..

RECROSS EXAMINATION

BY MR. FRANZEN:

Q WHEN YOU WERE ADMITTED TO THE HOSPITAL WERE YOU PLACED IMMEDIATELY ON DEMEROL?

A NO, SIR.

Q WHAT WERE YOU PLACED ON?

A WHEN I WAS ADMITTED I WAS PLACED ON NAVANE.

Q WHAT'S THAT?

A IT'S A PSYCHOTIC -- NOT PSYCHOTIC, BUT IT'S A -- WHAT KIND OF DRUG IS THIS? THIS IS A -- I DON'T KNOW. IT'S SOME KIND OF DRUG THAT MAKES YOU SLEEPY.

MR. FRANZEN: I HAVE NO FURTHER QUESTIONS.

THE COURT: NOTHING BY THE STATE?

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

THE COURT: YOU'RE EXCUSED.

(WHEREUPON, THE WITNESS WAS EXCUSED.)

THE COURT: COUNSEL, APPROACH THE BENCH.

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

THE COURT: LADIES AND GENTLEMEN, I'M ADVISED THAT THE STATE HAS ABOUT THREE WITNESSES THAT WE WOULD LIKE TO TRY TO FINISH TODAY IF WE COULD. SO WE ARE GOING TO BE GOING PAST 5:00 O'CLOCK. SO I KNOW SOME OF YOU HAVE MADE ARRANGEMENTS AND HAVE MADE A REQUEST ABOUT BUSES. I WOULD SUGGEST TO YOU THAT WE WILL BE GOING PAST 5:00 O'CLOCK, AND CERTAINLY, HOWEVER, NOT PAST 6:00 O'CLOCK. SO WE WILL BE TAKING TESTIMONY UNTIL THEN.

AT THIS TIME WE'LL TAKE A TEN-MINUTE RECESS AND THEN WE WILL COME BACK AND TAKE THESE OTHER WITNESSES FROM

1 THE STATE.

2 DURING THIS RECESS, YOU ARE
3 ADMONISHED NOT TO CONVERSE AMONG
4 YOURSELVES OR WITH ANYONE ELSE ON
5 ANY SUBJECT CONNECTED WITH THIS
6 TRIAL, OR READ, WATCH OR LISTEN
7 TO ANY REPORT OF OR COMMENTARY
8 ON THIS TRIAL WITH ANY PERSON
9 CONNECTED WITH THIS TRIAL BY ANY
10 MEDIUM OF INFORMATION, INCLUDING
11 WITHOUT LIMITATION, NEWSPAPER,
12 TELEVISION OR RADIO OR FORM OR
13 EXPRESS ANY OPINION ON ANY
14 SUBJECT CONNECTED WITH THIS
15 TRIAL UNTIL THE CASE IS FINALLY
16 SUBMITTED TO YOU.

17 WE WILL BE IN RECESS FOR TEN MINUTES.

18 (WHEREUPON, FROM 4:40 P.M.

19 UNTIL 4:45 P.M., A RECESS WAS
20 HAD IN THE PROCEEDINGS, AT THE
21 CONCLUSION OF WHICH THE FOLLOW-
22 ING WAS HAD:)

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

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

26 MR. FRANZEN: YES, YOUR HONOR.

27 MR. COOPER: YES, YOUR HONOR.

28 THE COURT: COME FORWARD, PLEASE.

29 THE CLERK: RAISE YOUR RIGHT HAND.

30 ..

31 ..

32 ..

1 WHEREUPON,

2

3

ALFRED B. LEAVITT,

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

MR. HARMON: THANK YOU.

10

11

DIRECT EXAMINATION

12

13

BY MR. HARMON:

14

15

Q STATE YOUR NAME, PLEASE.

16

A ALFRED B. LEAVITT, L-E-A-V-I-T-T.

17

Q IS IT DETECTIVE ALFRED LEAVITT?

18

A YES, IT IS.

19

Q DETECTIVE LEAVITT, WHERE ARE YOU EMPLOYED?

20

A LAS VEGAS METRO POLICE DEPARTMENT.

21

Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE

22

LAS VEGAS METROPOLITAN POLICE DEPARTMENT?

23

A NINETEEN YEARS.

24

Q WERE YOU EMPLOYED WITH THE LAS VEGAS METRO-

25

POLITAN POLICE DEPARTMENT ON MARCH THE 27TH, 1980?

26

A YES.

27

Q WHAT WERE THE NATURE OF YOUR DUTIES ON THAT

28

DATE?

29

A I WAS ASSIGNED TO THE HOMICIDE SECTION.

30

Q HOW LONG HAVE YOU WORKED WITH THE HOMICIDE

31

SECTION OF THE POLICE DEPARTMENT?

32

A FOURTEEN YEARS.

2062

1 Q IN CONNECTION WITH YOUR ASSIGNMENT TO THE
2 HOMICIDE SECTION OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT,
3 DID YOU BECOME INVOLVED IN THE INVESTIGATION OF THE MURDER OF
4 GEORGE STEVEN MONAHAN MARCH 27, 1980?

5 A YES, SIR, I DID.

6 Q IN CONNECTION WITH YOUR DUTIES ON THAT
7 NIGHT, MARCH 29TH, 1980, DID YOU CONTACT A NUMBER OF PEOPLE IN
8 REGARDS TO SHOWING THE PHOTOGRAPHIC LINEUP?

9 A YES, I DID.

10 Q DO YOU RECALL WHAT PERSONS YOU CONTACTED
11 AND WHERE IT WAS?

12 A I CONTACTED MRS. MONAHAN, MARY LOU MONAHAN,
13 AT HER RESIDENCE; ALONG WITH TWO OF HER DAUGHTERS; AND ALSO
14 KEITH KINSEY AT THE POLICE DEPARTMENT.

15 Q DO YOU RECALL ABOUT WHEN IT WAS THAT YOU
16 WENT TO THE RESIDENCE OF MARY LOU MONAHAN ON MARCH 29TH, 1980?

17 A YES. APPROXIMATELY 8:30.

18 Q EIGHT THIRTY?

19 A YES.

20 Q NOW, YOU INDICATED YOU ALSO CONTACTED TWO
21 OF HER DAUGHTERS. IS IT POSSIBLE THAT ONE OF THE WOMEN WAS A
22 STEP-DAUGHTER AND THE OTHER WAS A SISTER?

23 A YES.

24 Q DO YOU RECALL THE NAMES OF THE OTHER TWO
25 PERSONS YOU CONTACTED OTHER THAN MARY LOU MONAHAN AT HER
26 RESIDENCE?

27 A NO, I DON'T.

28 Q BUT YOU, IN FACT, DID SHOW A SERIES OF
29 PHOTOGRAPHS TO MARY LOU MONAHAN?

30 A YES.

31 Q THE WIFE OF VICTIM GEORGE STEVEN MONAHAN?

32 A YES, I DID.

2063

1 Q DO YOU RECALL HOW MANY PICTURES YOU HAD TO
2 SHOW?

3 A SEVEN.

4 Q DID YOU INCLUDE A PICTURE OF ANY PERSON WHO
5 IS PRESENT IN COURT?

6 A YES, THE DEFENDANT SAM HOWARD.

7 Q WILL YOU POINT TO THAT PERSON AND DESCRIBE
8 HOW HE'S DRESSED.

9 A THAT'S MR. HOWARD IN THE YELLOW SHIRT (INDI-
10 CATING), SITTING NEXT TO MR. COOPER.

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

13 THE COURT: THE RECORD MAY SO SHOW.

14 MR. HARMON: THANK YOU.

15

16 BY MR. HARMON:

17

18 Q DID THE SEVEN PHOTOGRAPHS HAVE NUMBERS ON
19 THE FACE OF THE PICTURES?

20 A YES.

21 Q HOW WERE THEY NUMBERED?

22 A ONE THROUGH SEVEN.

23 Q DO YOU RECALL WHAT NUMBER WAS ASSIGNED TO
24 THE PICTURE OF THE DEFENDANT SAMUEL HOWARD?

25 A PHOTOGRAPH NUMBER FIVE.

26 Q DESCRIBE, SIR, HOW YOU DISPLAYED THESE
27 SEVEN PHOTOGRAPHS TO MARY LOU MONAHAN ON MARCH THE 29TH, 1980.

28 A JUST SHOWED HER THE PHOTOGRAPHS. AND SHE
29 IDENTIFIED PHOTOGRAPH NUMBER FIVE, THE ONE DEPICTING MR. HOWARD.

30 Q DID YOU SHOW THE PHOTOGRAPHS TO MRS.
31 MONAHAN INDEPENDENTLY OF THE OTHER TWO PERSONS WHO WERE THERE AT
32 THE RESIDENCE?

1 A YES.

2 Q AT THE TIME YOU SHOWED MRS. MONAHAN THE
3 PICTURES DID YOU SUGGEST IN ANY MANNER TO HER WHO YOUR SUSPECT
4 WAS?

5 A NO.

6 Q NOW, YOU STATED SHE IDENTIFIED PHOTOGRAPH
7 NUMBER FIVE; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q WAS THAT THE PICTURE OF DEFENDANT SAMUEL
10 HOWARD?

11 A YES, IT WAS.

12 Q DID MRS. MONAHAN INDICATE TO YOU WHEN IT
13 WAS THAT SHE HAD SEEN THE PERSON SHOWN IN PHOTOGRAPH NUMBER FIVE?

14 A YES, ON THE 27TH OF -- AT THE PARKING LOT
15 AT CAESARS PALACE.

16 Q MARCH THE 27TH OR MARCH THE 26TH, SIR?

17 A TWENTY SIXTH, I'M SORRY.

18 Q 1980?

19 A YES, 1980.

20 Q DID SHE TELL YOU HOW SURE SHE WAS THAT THE
21 PHOTOGRAPH OF THE DEFENDANT WAS THE PERSON SHE HAD SEEN AT
22 CAESARS PALACE?

23 A MRS. MONAHAN MADE A POSITIVE IDENTIFICATION.

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

25 THE COURT: YOU MAY.

26

27 BY MR. HARMON:

28

29 Q DETECTIVE LEAVITT, I'M SHOWING YOU NOW A
30 SERIES OF PHOTOGRAPHS THAT ARE MARKED AS PROPOSED EXHIBITS 26-A
31 THROUGH 26-G. ARE YOU ABLE TO IDENTIFY THE PICTURES?

32 A YES. THESE ARE THE PHOTOGRAPHS I SAMPLED

1 FOR THE PHOTOGRAPHIC LINEUPS. THE PHOTOGRAPHS WAS SHOWN TO MRS.
2 MONAHAN AND SHE DID IDENTIFY PHOTOGRAPH NUMBER FIVE.

3 Q THE PICTURE OF DEFENDANT SAMUEL HOWARD; IS
4 THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AFTER SHE INDICATED TO YOU THAT SHE WAS
7 MAKING A POSITIVE IDENTIFICATION OF PHOTOGRAPH NUMBER FIVE, DID
8 YOU ASK HER TO PLACE ANY MARKINGS ON THE BACK OF THE PICTURE?

9 A YES. MRS. MONAHAN SIGNED THE REVERSE SIDE
10 OF THE PHOTOGRAPH, ALSO DATED AND PUT THE TIME ON THAT. I ALSO
11 SIGNED THE REVERSE SIDE OF THE PHOTOGRAPH, ALSO DATED AND PUT
12 THE TIME ON THAT.

13 Q ARE THESE PHOTOGRAPHS, STATE'S PROPOSED
14 EXHIBITS 26-A THROUGH 26-G, EXCEPT FOR THE COURT MARKINGS, IN
15 SUBSTANTIALLY THE SAME CONDITION NOW AS THEY WERE WHEN YOU
16 DISPLAYED THE PICTURES TO VARIOUS PERSONS MARCH 29, 1980?

17 A YES, THEY WERE.

18 Q DETECTIVE LEAVITT, AFTER MARY LOU MONAHAN
19 VIEWED THE SEVEN PHOTOGRAPHS, MARKED AS PROPOSED EXHIBITS 26-A
20 THROUGH 26-G, DID YOU ALSO HAVE OCCASION TO SHOW THESE SAME
21 PICTURES TO THE OTHER TWO PERSONS WHO WERE PRESENT AT THE
22 MONAHAN RESIDENCE?

23 A YES.

24 Q NOW, YOU INDICATED THAT YOU DIDN'T RECALL
25 NOW SPECIFICALLY THE NAMES. WOULD ONE OF THE PERSONS HAVE BEEN
26 BARBARA ZEMAN?

27 A YES.

28 Q AND WAS THE THIRD INDIVIDUAL MARY CATHERINE
29 MONAHAN?

30 A YES.

31 Q DID YOU SHOW THE SEVEN PHOTOGRAPHS INDEPEN-
32 DENTLY TO THOSE TWO PERSONS?

1 A YES, I DID.

2 Q DO YOU RECALL AT THIS TIME WHETHER EITHER

3 WAS -- WHETHER EITHER MADE AN IDENTIFICATION?

4 A THEY DID NOT.

5 Q DO YOU REMEMBER, DETECTIVE LEAVITT, ABOUT

6 HOW LONG YOU SPENT AT THE MONAHAN RESIDENCE AFTER YOUR ARRIVAL

7 SOMEWHERE AROUND 8:30 P.M.?

8 A A SHORT PERIOD OF TIME, FIVE OR TEN MINUTES.

9 Q DID YOU THEN GO TO THE DETECTIVE BUREAU OF

10 THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT?

11 A YES.

12 Q WAS CONTACT MADE THERE SOMEWHERE AROUND

13 9:00 O'CLOCK P.M., WITH KEITH KINSEY?

14 A YES.

15 Q DID YOU SHOW THE SAME SEVEN PHOTOGRAPHS TO

16 KEITH KINSEY, WHICH ARE NOW MARKED AS PROPOSED EXHIBITS 26-A

17 THROUGH 26-G?

18 A YES, I DID.

19 Q WHAT PERSONS WERE PRESENT WHEN YOU SHOWED

20 MR. KINSEY THESE PHOTOGRAPHS?

21 A MYSELF AND MR. KINSEY.

22 Q YOU WERE IN THE DETECTIVE BUREAU OF THE

23 POLICE DEPARTMENT?

24 A YES.

25 Q DESCRIBE THE MANNER IN WHICH YOU DISPLAYED

26 THE SEVEN PHOTOGRAPHS TO KEITH KINSEY.

27 A IN THE SAME FASHION I JUST SHOWED YOU. I

28 JUST SHOWED HIM THE PHOTOGRAPHS AND HE ALSO MADE A POSITIVE

29 IDENTIFICATION OF DEFENDANT HOWARD IN PHOTOGRAPH NUMBER FIVE.

30 Q DID YOU THEN ASK MR. KINSEY TO SIGN THE

31 BACK OF THE PHOTOGRAPH HE HAD IDENTIFIED?

32 A YES. HE ALSO SIGNED IT.

2067

1 Q I'M SHOWING YOU THE PHOTOGRAPH MARKED ON
2 THE FRONT AS NUMBER FIVE. IT IS, FOR THE RECORD, MARKED AS
3 STATE'S PROPOSED EXHIBIT 26-E. DO YOU SEE THE SIGNATURE OF
4 KEITH KINSEY ON THE BACK OF THIS PHOTOGRAPH?

5 A YES. THE SIGNATURE OF KEITH KINSEY APPEARS
6 ON THE REVERSE SIDE. ALSO HE PUT THE DATE AND THE TIME ON THERE.
7 MY SIGNATURE IS ON THE BOTTOM.

8 Q THE DATE BEING AGAIN 3-29-80?
9 A THAT'S CORRECT.
10 Q AND THE TIME --
11 A WELL --
12 Q (CONTINUING) -- WAS NOW 9:00 O'CLOCK P.M.;
13 IS THAT CORRECT?
14 A THAT'S CORRECT.
15 Q PRIOR TO MR. KINSEY MAKING HIS IDENTIFICA-
16 TION, WAS HE GIVEN AN OPPORTUNITY TO LOOK AT THE BACK OF THE
17 PHOTOGRAPH?
18 A NO.
19 Q STATE'S PROPOSED EXHIBIT 26-E?
20 A NO, HE WAS NOT.
21 Q AFTER HE SELECTED THE PHOTOGRAPH OF
22 DEFENDANT HOWARD, DID YOU ASK HIM HOW SURE HE WAS OF HIS IDENTI-
23 FICATION?
24 A YES. HE ALSO MADE A VERY POSITIVE IDENTI-
25 FICATION.
26 Q DID HE TELL YOU WHEN IT WAS THAT HE SAW
27 THE PERSON WHO WAS SHOWN IN STATE'S PROPOSED EXHIBIT 26-E?
28 A YES. NUMBER 26-E, DURING THE ROBBERY AT
29 SEARS.
30 Q AT THE BOULEVARD MALL IN LAS VEGAS, NEVADA?
31 A YES.
32 Q AND WHEN YOU SAY ON THE 26TH WERE YOU

2068

1 REFERRING TO MARCH 26TH, 1980?

2 A THAT'S CORRECT.

3 MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER
4 PROPOSED EXHIBITS 26-A THROUGH 26-G.

5 MR. FRANZEN: NO OBJECTION, YOUR HONOR.

6 THE COURT: SAME WILL BE RECEIVED.

7 MR. HARMON: THANK YOU.

8 MR. COOPER: YOUR HONOR, MAY COUNSEL APPROACH THE
9 BENCH?

10 (WHEREUPON, SIDE BAR CONFERENCE
11 WAS HELD AT THE BENCH; NOT
12 REPORTED. AT THE CONCLUSION OF
13 WHICH THE FOLLOWING WAS HAD:)

14 THE COURT: PROCEED.

15 MR. HARMON: THANK YOU, YOUR HONOR.

16
17 BY MR. HARMON:
18

19 Q DETECTIVE LEAVITT, ON OR ABOUT APRIL THE 1ST,
20 1980, DID YOU HAVE OCCASION TO RECEIVE CERTAIN INFORMATION FROM
21 LAW ENFORCEMENT AUTHORITIES IN THE STATE OF CALIFORNIA?

22 A YES, I DID.

23 Q AS A RESULT OF THE INFORMATION YOU RECEIVED,
24 DID YOU GO TO THE STATE OF CALIFORNIA ON OR ABOUT APRIL THE 2ND,
25 1980?

26 A YES.

27 Q DID YOU, ON APRIL THE 2ND, 1980, HAVE
28 OCCASION TO SPEAK WITH THE DEFENDANT SAMUEL HOWARD?

29 A YES, I DID.

30 Q DID YOU ALSO SPEAK WITH A YOUNG LADY IDENTI-
31 FIED AS DAWANA BOYD OR DAWANA THOMAS?

32 A YES, I DID.

2069

1 Q DID YOU SUBSEQUENTLY HAVE OCCASION TO SEARCH
2 A VEHICLE DESCRIBED AS A 1980 BLACK OLDSMOBILE CUTLASS?

3 A YES, I DID.

4 Q WHERE WAS THAT VEHICLE AT THE TIME YOU
5 SEARCHED IT?

6 A IT WAS IN THE TOW COMPANY, AUTO IMPOUND
7 YARD, IN DOWNEY, CALIFORNIA.

8 Q WERE YOU BY YOURSELF AT THIS TIME OR WITH
9 SOME OTHER DETECTIVE?

10 A DETECTIVE HATCH WAS WITH ME, ALONG WITH
11 DETECTIVE MORROW FROM THE DOWNEY POLICE DEPARTMENT.

12 Q MORROW IS M-O-R-R-O-W?

13 A I BELIEVE THAT'S CORRECT.

14 Q DETECTIVE LEAVITT, AS A RESULT OF YOUR
15 SEARCH OF A BLACK OLDSMOBILE CUTLASS DID YOU RECOVER CERTAIN
16 ITEMS OF EVIDENCE?

17 A YES, I DID.

18 Q WHAT DID YOU DO WITH THOSE ITEMS AFTER THEY
19 WERE RECOVERED?

20 A RETURNED THEM TO LAS VEGAS AND IMPOUNDED
21 THEM AS EVIDENCE.

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

23 THE COURT: YOU MAY.

24
25 BY MR. HARMON:

26
27 Q DETECTIVE, I'M SHOWING YOU NOW WHAT IS JUST
28 AN EVIDENCE BAG. IT IS MARKED AS PROPOSED EXHIBIT 44. DO YOU
29 RECOGNIZE IT?

30 A YES. I RECOGNIZE IT. IT HAS MY SIGNATURE
31 ON THE OUTSIDE OF THE BAG, ALSO A DATE AND A TIME ON IT.

32 Q DID YOU HAVE OCCASION TO PLACE CERTAIN ITEMS

2070

1 INTO THIS BAG WHICH YOU RECOVERED FROM A 1980 OLDSMOBILE CUTLASS
2 IN DOWNEY, CALIFORNIA?

3 A YES.

4 Q I'M SHOWING YOU NOW STATE'S EXHIBITS 60
5 THROUGH 63. DO YOU RECOGNIZE THE VEHICLE SHOWN IN THOSE PICTURES?

6 A YES. THESE ARE PHOTOGRAPHS TAKEN OF THE
7 1980 OLDSMOBILE CUTLASS IN THE IMPOUND YARD IN DOWNEY, CALIFOR-
8 NIA.

9 Q IS THIS THE SAME VEHICLE THAT YOU SEARCHED
10 AT THAT IMPOUND YARD IN DOWNEY, CALIFORNIA?

11 A YES, THEY ARE.

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

14 THE COURT: YES.

15

16 BY MR. HARMON:

17

18 Q DETECTIVE LEAVITT, I'M SHOWING YOU NOW
19 PROPOSED EXHIBIT 44-A. DO YOU RECOGNIZE THIS PARTICULAR ITEM?

20 A YES. I REMOVED THIS ITEM FROM THE AUTO-
21 MOBILE, THE 1980 OLDSMOBILE CUTLASS. THE REASON I KNOW IT'S
22 THE SAME JACKET IS IT HAS MY SIGNATURE AND PERSONNEL NUMBER ON
23 THE INSIDE OF THE JACKET.

24 Q DO YOU REMEMBER WHERE INSIDE THE VEHICLE,
25 SHOWN IN STATE'S EXHIBITS 60 THROUGH 63, YOU FOUND THIS LEATHER
26 JACKET?

27 A I BELIEVE IT WAS IN THE REAR SEAT.

28 Q IS THE JACKET SUBSTANTIALLY NOW AS IT WAS
29 WHEN YOU FOUND IT ON OR ABOUT APRIL THE 2ND, 1980?

30 A IT'S SUBSTANTIALLY THE SAME. THERE HAS
31 BEEN SOME PIECES CUT OUT OF THAT THAT I CUT OUT OF IT THAT I
32 REMOVED FOR ANALYSIS.

2071

1 Q DO YOU KNOW WHAT PERSON OR PERSONS HAVE BEEN
2 INVOLVED IN ANALYZING THE EXTERIOR OF THIS LEATHER JACKET,
3 PROPOSED EXHIBIT 44-A?

4 A OUR CRIME LAB WOULD HAVE BEEN INVOLVED IN
5 ANALYZING IT. I DON'T KNOW WHICH CHEMIST ACTUALLY ANALYZED IT.

6 Q WAS THAT DONE AT YOUR REQUEST?

7 A YES, IT WAS.

8 Q WAS THERE ANYTHING THAT PROMPTED YOUR
9 REQUEST THAT REPRESENTATIVES OF THE CRIME LAB BECOME INVOLVED
10 IN ANALYZING THE EXTERIOR OF THIS LEATHER JACKET?

11 A YES. OBSERVATION OF THE LEATHER JACKET BY
12 MYSELF, THERE WERE SOME SPOTS ON HERE THAT I THOUGHT MAYBE WERE
13 BLOOD.

14 Q DO YOU KNOW NOW WHAT THE RESULTS WERE OF
15 THE ANALYSIS OF THE OUTSIDE OF THE JACKET IN TERMS OF THE ACTUAL
16 VERIFICATION FOR PRESENCE OF BLOOD?

17 A IT'S MY UNDERSTANDING IT WAS NOT BLOOD.

18 Q NOW, THERE APPEARS TO BE CERTAIN MARKS --
19 IN FACT, THERE'S SOME MATERIAL REMOVED ON THE FRONT OF THE

20 JACKET AND THE MARKS APPEAR TO BE IN BLACK. WERE THOSE AREAS
21 APPARENTLY PLACED ON THE JACKET BY REPRESENTATIVES OF THE CRIME
22 LAB HERE IN LAS VEGAS, NEVADA?

23 A YES.

24 Q THOSE MARKINGS WERE NOT THERE AT THE TIME
25 YOU INITIALLY RECOVERED THE JACKET; IS THAT CORRECT?

26 A NO, THEY WERE NOT.

27 Q I'M SHOWING YOU NOW WHAT APPEARS TO BE A
28 SECOND LEATHER JACKET. IT'S MARKED AS PROPOSED EXHIBIT 44-B.
29 CAN YOU IDENTIFY IT?

30 A YES. THIS IS ALSO A JACKET THAT I REMOVED
31 FROM THE TRUNK OF THE VEHICLE, THE 1980 OLDSMOBILE CUTLASS, IN
32 DOWNEY, CALIFORNIA. IT HAS MY SIGNATURE AND PERSONNEL NUMBER ON

2072

1 THE INSIDE OF THE JACKET.

2 Q IS THIS JACKET IN SUBSTANTIALLY THE SAME
3 CONDITION NOW AS IT WAS WHEN YOU RECOVERED IT?

4 A YES. IT'S IN SUBSTANTIALLY THE SAME CON-
5 DITION, WITH THE EXCEPTION OF I BELIEVE THERE WAS ALSO A SPOT
6 REMOVED ON THERE FOR THE SAME TYPE OF ANALYSIS.

7 Q DO YOU KNOW WHETHER THE RESULT WAS THE SAME
8 AT THE TIME IT WAS ANALYZED BY REPRESENTATIVES OF THE LAS VEGAS
9 METROPOLITAN POLICE DEPARTMENT CRIME LAB?

10 A YES. MY UNDERSTANDING IT WAS NOT BLOOD.

11 Q I'M SHOWING YOU NOW WHAT APPEARS TO BE A
12 BLUE CAP THAT'S MARKED AS PROPOSED EXHIBIT 44-C. CAN YOU
13 IDENTIFY IT?

14 A YES. THE BLUE CAP WAS ALSO REMOVED BY MY-
15 SELF FROM THE TRUNK OF THE 1980 OLDSMOBILE CUTLASS IN DOWNEY,
16 CALIFORNIA. IT HAS MY SIGNATURE ON THE INSIDE OF THE CAP.

17 Q IS THE CAP IN SUBSTANTIALLY THE SAME CONDI-
18 TION NOW AS IT WAS WHEN YOU RECOVERED IT, EXCEPT FOR THE MARKINGS
19 YOU PLACED ON IT, AND THE --

20 A YES.

21 Q DID YOU PLACE EACH OF THESE ITEMS, THAT ARE
22 MARKED AS PROPOSED EXHIBITS 44-A, B AND C, AT SOME POINT INTO
23 THE EVIDENCE BAG, MARKED AS PROPOSED EXHIBIT 44?

24 A YES, I DID.

25 MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER
26 PROPOSED EXHIBITS 44, 44-A, B AND C.

27 THE COURT: ANY OBJECTION?

28 MR. FRANZEN: ONLY AS TO THE EVIDENCE BAG ITSELF,
29 YOUR HONOR. IF YOUR HONOR WILL LOOK AT IT YOU'LL FIND THERE ARE
30 SOME NOTATIONS ON THERE.

31 MR. HARMON: I'LL WITHDRAW THAT OFFER. IT'S NOT
32 NECESSARY, YOUR HONOR.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

THE COURT: ALL RIGHT. THE OTHER ITEMS ARE
RECEIVED AND ADMITTED.

MR. HARMON: THANK YOU.

YOUR HONOR, MAY I HAVE THE COURT'S INDUL-
GENCE?

THE COURT: YES.

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

THE COURT: YOU MAY.

BY MR. HARMON:

Q DETECTIVE LEAVITT, I'M SHOWING YOU NOW
PROPOSED EXHIBIT 41. CAN YOU IDENTIFY IT?

A YES. THIS IS ALSO AN EVIDENCE BAG CONTAIN-
ING SEVEN ITEMS. THE BAG HAS MY SIGNATURE AND PERSONNEL NUMBER
ON THE OUTER PORTION OF THE BAG.

Q DID YOU PLACE CERTAIN ITEMS YOU ALSO
RECOVERED FROM THE BLACK OLDSMOBILE CUTLASS INSIDE THIS BAG?

A YES. ALL THE ITEMS WERE REMOVED FROM THE
1980 OLDSMOBILE CUTLASS IN DOWNEY, CALIFORNIA, AND SUBSEQUENTLY
PLACED IN THE BAG BY MYSELF.

Q DO YOU RECALL ON WHAT DATE THAT WAS?

A APRIL 2ND, 19 --

Q 1980?

A YES.

Q IS THAT BAG IN A SEALED CONDITION AT THIS
TIME?

A YES, IT IS.

Q WILL YOU CUT THE BAG OPEN AT THE BOTTOM,
PLEASE.

WILL YOU REMOVE THE CONTENTS AND
DESCRIBE FOR THE RECORD WHAT YOU'RE REMOVING.

1 A A PHOTO I.D. CARD IN THE NAME OF ELIJAH
2 GILL, G-I-L-L; A STATE OF NEVADA WELFARE DIVISION DOCUMENT IN
3 THE NAME OF DAWANA THOMAS; AND A CERTIFICATE OF BIRTH IN THE
4 NAME OF ELIJAH GILL, G-I-L-L; AND A CONTINENTAL AIRLINES SEAT-
5 ING STUB; A CONTINENTAL AIRLINES TICKET RECEIPT IN THE NAME OF
6 MR. GILL FROM NEW YORK TO DENVER TO LAS VEGAS; A NUDE PHOTO-
7 GRAPH OF A FEMALE; A CONTINENTAL AIRLINES SEAT STUB; A PHOTO-
8 GRAPH OF A NUDE FEMALE; SOME KIND OF AN IDENTIFICATION IN THE
9 NAME OF HAROLD STANBACK, S-T-A-N-B-A-C-K, PART OF IT IS WRITTEN
10 IN SPANISH AND I CAN'T READ IT; SOME FIGHT NOTICE PAPER WITH
11 SOME WRITINGS ON THE OUTSIDE INDICATING JAMAICA, NEW YORK, IT
12 LOOKS LIKE SOME PHONE NUMBERS AND ADDRESSES; A CASSETTE TAPE;
13 A CARD CASE WITH A DEPARTMENT OF MOTOR VEHICLES IDENTIFICATION
14 CARD, IT HAS THE ADDRESS OF 510 CONEY ISLAND, LONG ISLAND,
15 NEW YORK; AND ALSO IN THE CARD CASE IS SOME BUSINESS CARDS IN
16 THE NAME OF COMMUNITY BROKERAGE; A SECOND CASSETTE TAPE; A
17 HOTEL NEVADA CASINO BUTTON WITH THE NAME DAWANA ON IT; I
18 BELIEVE THAT'S ALL THE ITEMS HE HAD.

19 Q DETECTIVE LEAVITT, WHERE DID YOU FIND ALL
20 THE ITEMS YOU'VE JUST REMOVED FROM PROPOSED EXHIBIT 41?

21 A IN THE OLDSMOBILE CUTLASS THAT -- FROM THE
22 IMPOUND YARD AT DOWNEY, CALIFORNIA.

23 Q DO YOU RECALL WHERE THESE ITEMS WERE
24 LOCATED INSIDE THE OLDSMOBILE CUTLASS?

25 A THE TRUNK IN THE VEHICLE, I BELIEVE.

26 MR. HARMON: YOUR HONOR, WITH THE COURT'S PERMIS-
27 SION, THERE ARE JUST CERTAIN SELECTED ITEMS. I'D LIKE TO HAVE
28 THEM MARKED WITH SUB-LETTERS.

29 THE COURT: ALL RIGHT.

30 MR. HARMON: SOME TYPE OF IDENTIFICATION CARD IN
31 THE NAME OF HAROLD STANBACK I WOULD LIKE MARKED AS PROPOSED
32 EXHIBIT 41-A.

2075

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

THE COURT: SAME MAY BE SO MARKED.

MR. HARMON: ALSO WHAT APPEARS TO BE AN APPLICATION TO THE WELFARE DIVISION IN THE NAME OF DAWANA THOMAS, MARKED AS PROPOSED EXHIBIT 41-B.

THE COURT: SAME MAY BE MARKED.

MR. HARMON: AND A HOTEL NEVADA CASINO BUTTON OF DAWANA THOMAS AS 41-C.

THE COURT: ALL RIGHT.

MR. HARMON: I'D FURTHER LIKE THE RECORD TO SHOW I'M RETURNING THE REMAINING ITEMS BACK INTO THE EVIDENCE BAG, PROPOSED EXHIBIT 41.

THE COURT: THE RECORD MAY SO SHOW.

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

THE COURT: YOU MAY.

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

BY MR. HARMON:

Q DETECTIVE LEAVITT, I'M SHOWING YOU NOW WHAT HAS BEEN MARKED AS PROPOSED EXHIBITS 41-A, B AND C. ARE YOU ABLE TO IDENTIFY EACH OF THESE ITEMS AS ITEMS RECOVERED BY YOU FROM THE TRUNK OF THE VEHICLE SHOWN IN PHOTOGRAPHS 60 THROUGH 63?

A YES, EXCEPT 41-A HAS MY SIGNATURE AND PERSONNEL NUMBER AND DATE ON THE BACK OF IT. THIS IS THE NEVADA HOTEL AND CASINO BUTTON THAT I REMOVED FROM THE 1981 -- EXCUSE ME, THE 1980 OLDSMOBILE CUTLASS, NUMBER 41-C. AND THE STATE OF NEVADA WELFARE DIVISION DOCUMENT HAS MY SIGNATURE ON THE REVERSE SIDE OF IT. THAT WAS ALSO REMOVED FROM THE 1980 OLDSMOBILE CUTLASS.

Q ARE EACH OF THESE ITEMS, PROPOSED EXHIBITS 41 A THROUGH C, IN SUBSTANTIALLY THE SAME CONDITION NOW AS THEY

2076

1 WERE ON THE DATE YOU RECOVERED THEM?

2 A YES.

3 MR. HARMON: YOUR HONOR, I OFFER PROPOSED EXHIBITS
4 41-A, B AND C.

5 THE COURT: ANY OBJECTIONS, COUNSEL?

6 MR. FRANZEN: NO, YOUR HONOR. NO OBJECTION.

7 THE COURT: SAME WILL BE RECEIVED.

8 MR. HARMON: THANK YOU.

9 MAY I HAVE THE COURT'S INDULGENCE.

10

11 BY MR. HARMON:

12

13 Q DETECTIVE LEAVITT, IN ADDITION TO ITEMS
14 YOU RECOVERED AS A RESULT OF YOUR SEARCH OF THE VEHICLE APRIL
15 THE 2ND, 1980, WHICH IS SHOWN AS STATE'S EXHIBITS 60 THROUGH 63,
16 WERE A NUMBER OF ITEMS TURNED OVER TO THE CUSTODY OF YOURSELF
17 AND DETECTIVE HATCH BY LAW ENFORCEMENT AUTHORITIES IN THE STATE
18 OF CALIFORNIA?

19 A YES.

20 Q DID THOSE ITEMS INCLUDE SOME EXEMPLAR
21 FINGER AND THUMB PRINTS PURPORTEDLY RECOVERED BY AN OFFICER
22 WILLIAM BLOCK FROM THE DEFENDANT SAMUEL HOWARD?

23 A YES.

24 Q MAY I APPROACH THE WITNESS, YOUR HONOR?
25 DETECTIVE LEAVITT, I'M SHOWING YOU
26 NOW PROPOSED EXHIBIT 29. THESE APPEAR TO BE FINGER AND PALM
27 PRINT CARDS. CAN YOU IDENTIFY THEM?

28 A YES. THESE ARE THE EXEMPLAR CARDS THAT
29 WERE TURNED OVER TO ME IN DOWNEY, CALIFORNIA, BY OFFICER BLOCK.

30 Q ARE THESE EXEMPLAR CARDS, PROPOSED EXHIBIT
31 29, IN SUBSTANTIALLY THE SAME CONDITION NOW AS THEY WERE WHEN
32 THEY WERE TURNED OVER TO YOU IN DOWNEY, CALIFORNIA, BY OFFICER

2077

1 WILLIAM BLOCK?

2 A YES. THEY APPEARED TO BE IN THE SAME CON-
3 DITION.

4 Q THANK YOU.

5 DETECTIVE LEAVITT, HAVE YOU HAD
6 OCCASION ON SEVERAL INSTANCES TO INTERVIEW A YOUNG LADY IDENTI-
7 FIED AS DAWANA THOMAS?

8 A YES, I HAVE.

9 Q DO YOU REMEMBER ON WHAT DATES YOU CONDUCTED
10 INTERVIEWS OF HER?

11 A I CONDUCTED AN INTERVIEW WITH DAWANA ON
12 APRIL THE 2ND, IN CALIFORNIA. I SPOKE WITH HER ON THE PHONE
13 SEVERAL TIMES. I DON'T KNOW WHETHER IT WAS APRIL 24TH SHE
14 CALLED COLLECT FROM ARIZONA; AND SHE ALSO CALLED ME AGAIN ON
15 I BELIEVE IT WAS NOVEMBER --

16 Q WILL YOU KEEP YOUR VOICE UP, PLEASE?

17 A (CONTINUING) -- NOVEMBER 4TH OF 1980 OF
18 THAT SAME YEAR.

19 Q AT ANYTIME DURING YOUR CONVERSATIONS WITH
20 DAWANA THOMAS HAVE YOU DISCUSSED WITH HER WHETHER SHE OBSERVED,
21 AT SOME POINT WHEN THE DEFENDANT SAMUEL HOWARD CAME BACK TO
22 THEIR MOTEL, ON OR ABOUT MARCH THE 27TH, 1980, HER SEEING HIM
23 WITH A WRISTWATCH?

24 A YES.

25 Q WHAT DID SHE TELL YOU ABOUT SEEING A WRIST-
26 WATCH?

27 A SHE INDICATED THAT SHE OBSERVED A WRIST-
28 WATCH WHEN HE CAME BACK TO THE MOTEL. I BELIEVE SHE SAID IT HAD
29 A GOLD BAND AND THE BRAND NAME WAS POSSIBLY SEIKO.

30 Q DETECTIVE LEAVITT, ON OR ABOUT MAY THE 20TH
31 1981, DID YOU HAVE OCCASION TO AGAIN MAKE CONTACT WITH DAWANA
32 THOMAS IN THE PRESENCE OF TWO REPRESENTATIVES OF THE DISTRICT

2078

1 ATTORNEYS OFFICE?

2 A YES, I DID.

3 Q DO YOU RECALL THE NAMES OF THE TWO REPRESENTATIVES OF THE CLARK COUNTY DISTRICT ATTORNEYS OFFICE?

4 A OH, ONE OF THEM WAS INVESTIGATOR LINDA
5 ANDERSON. I DON'T RECALL THE NAME OF THE OTHER MALE INDIVIDUAL.

6 Q WOULD THAT HAVE BEEN ED GUTKOWSKI?

7 A YES.

8 Q G-U-T-K-O-W-S-K-I?

9 A I BELIEVE THAT'S CORRECT.

10 Q WHAT WAS THE PURPOSE OF YOURSELF AND INVESTIGATORS GUTKOWSKI AND ANDERSON MAKING CONTACT WITH DAWANA
11 THOMAS ON MAY THE 20TH, 1981?

12 A WELL, IN AN EFFORT TO HAVE DAWANA THOMAS
13 SHOW US WHERE SHE HAD DROPPED OFF THE DEFENDANT SAM HOWARD ON
14 THE 27TH OF APRIL (SIC) 1980, AND WHERE SHE LIVED, AND WHERE SHE
15 HAD BEEN STAYING HERE IN TOWN.

16 Q NOW, YOU SAID THE 27TH OF APRIL, 1980.
17 DID YOU MEAN THE 27TH OF MARCH, 1980?

18 A YES.

19 Q ARE YOU REFERRING TO THE SAME DAY THE BODY
20 OF GEORGE STEVEN MONAHAN WAS DISCOVERED?

21 A THAT'S CORRECT.

22 Q DID DAWANA THOMAS DIRECT YOURSELF AND
23 INVESTIGATORS GUTKOWSKI AND ANDERSON TO A CERTAIN LOCATION?

24 A YES, SHE DID.

25 Q WHERE DID SHE DIRECT YOU TO ON MAY THE 20TH,
26 1980?

27 A TO WINCHESTER PLAZA, 1700 EAST DESERT INN
28 ROAD, AND THEN TO THE MOTEL WHERE SHE HAD BEEN STAYING.

29 Q WHAT REPRESENTATIONS WERE MADE TO YOU BY
30 DAWANA THOMAS IN TERMS OF THE SIGNIFICANCE OF THE WINCHESTER

2079

1 PLAZA COMPLEX ON DESERT INN ROAD?

2 A THIS WAS WHERE SHE DROPPED OFF THE DEFEN-
3 DANT ON MARCH 27TH IN THE ALLEYWAY IN THE REAR OF 1700 EAST
4 DESERT INN ROAD.

5 Q MARCH THE 27TH, 1980?

6 A YES.

7 Q NOW, YOU STATED SHE THEN DIRECTED YOU TO A
8 PLACE WHERE THEY WERE STAYING AT THAT TIME, MARCH 27TH, 1980;
9 IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q WHERE DID DAWANA THOMAS DIRECT YOU TO?

12 A TO THE WESTERN SIX MOTEL AT 4125 BOULDER
13 HIGHWAY.

14 Q YOU'VE INDICATED THE WESTERN SIX MOTEL.

15 A I -- I BELIEVE THAT'S THE NAME OF IT.

16 Q NOT THE BEST WESTERN MOTEL. THE WESTERN
17 SIX?

18 A WESTERN SIX.

19 Q WHERE DID YOU SAY THAT WAS LOCATED?

20 A 4125 BOULDER HIGHWAY.

21 Q DETECTIVE LEAVITT, WHERE IS THE WESTERN
22 SIX MOTEL AT 4125 EAST BOULDER HIGHWAY LOCATED FROM THE DEW
23 DROP INN AT 4200 EAST BOULDER HIGHWAY?

24 A ACROSS THE STREET ABOUT A BLOCK.

25 Q DID DAWANA THOMAS INDICATE, ON MAY 20, 1981,
26 WHERE SHE AND THE DEFENDANT WERE STAYING ON MARCH THE 27TH,
27 1980?

28 A SHE INDICATED THEY WERE STAYING AT THAT
29 PARTICULAR MOTEL OR SHE COULDN'T RECALL THE ROOM NUMBER.

30 Q THE WESTERN SIX MOTEL?

31 A YES.

32 Q FOR THE RECORD, DETECTIVE LEAVITT, WHERE

2080

1 IS THE CASTAWAYS HOTEL AND CASINO FROM CAESARS PALACE?

2 A THE CASTAWAYS WOULD BE NORTH OF CAESARS
3 PALACE ON THE STRIP, ABOUT THREE OR FOUR BLOCKS.

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

5 THAT CONCLUDES DIRECT, YOUR HONOR.

6 THE COURT: CROSS?

7 MR. COOPER: YOUR HONOR, THE COURT'S INDULGENCE,
8 PLEASE.

10 CROSS EXAMINATION

12 BY MR. COOPER:

14 Q DETECTIVE LEAVITT, YOU'VE BEEN WITH THE
15 LAS VEGAS METROPOLITAN POLICE DEPARTMENT FOR 19 YEARS; IS THAT
16 RIGHT?

17 A YES.

18 Q DID YOU HAVE PRIOR LAW ENFORCEMENT EXPERI-
19 ENCE BEFORE JOINING METRO?

20 A NO.

21 Q I SEE.

22 AND FOR 14 OF THOSE 19 YEARS YOU'VE
23 BEEN WITH THE HOMICIDE DIVISION; IS THAT RIGHT?

24 A YES.

25 Q AS A DETECTIVE?

26 A YES.

27 Q YOU'VE HAD EXTENSIVE TRAINING, I WOULD TAKE
28 IT THEN; IS THAT RIGHT?

29 A NO.

30 Q EXTENSIVE EXPERIENCE THEN?

31 A OKAY.

32 Q IS THAT RIGHT?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A YES.

Q DID YOU HAVE ANY KIND OF WEAPONS TRAINING
BEFORE YOU JOINED METRO?

A NO.

Q DID YOU HAVE ANY WEAPONS TRAINING DURING
THE TIME YOU WERE WITH METRO?

A YES.

Q HOW MUCH -- CAN YOU TELL US ABOUT THE TRAIN-
ING YOU'VE HAD IN FIREARMS?

A WELL, QUALIFY ONCE EVERY TWO MONTHS AT THE
PISTOL RANGE.

Q WHAT KIND OF WEAPON DO YOU CARRY?

A A 9 MILLIMETER 7 AUTOMATIC (SIC).

Q WOULD IT BE ACCURATE TO SAY THEN YOU ARE
THOROUGHLY FAMILIAR WITH WEAPONS, WITH HANDGUNS?

A NO.

Q YOU WORK HOMICIDE, RIGHT?

A RIGHT.

Q DO YOU KNOW THE DIFFERENCE BETWEEN A --
WHAT KIND OF GUN DO YOU CARRY?

MR. HARMON: OBJECTION, IRRELEVANT, YOUR HONOR.

BY MR. COOPER:

Q DO YOU KNOW THE DIFFERENCE BETWEEN A .38
AND A .357?

THE COURT: OVERRULED.

THE WITNESS: YES.

BY MR. COOPER:

Q STATE'S PROPOSED EXHIBIT 31-B, CAN YOU TELL

2082

1 ME WHAT KIND OF GUN THAT IS?
2 A YES.
3 Q AND WHAT IS IT?
4 A IT'S A .357 CALIBER SMITH AND WESSON
5 REVOLVER.
6 Q A .357; IS THAT RIGHT?
7 A THAT'S RIGHT.
8 Q DO YOU KNOW VERY MUCH ABOUT AMMUNITION FOR
9 GUNS?
10 A NO.
11 Q WELL, WOULD YOU TAKE A LOOK AT STATE'S
12 PROPOSED 25-B, AND TELL ME IF YOU CAN TELL US WHAT KIND OF
13 AMMUNITION THAT IS?
14 A IF I COULD GET IT UNPACKAGED HERE I WILL.
15 THAT PARTICULAR ONE IS A .38 SPECIAL.
16 Q UH-HUH.
17 A THIS ONE IS A SMITH AND WESSON .357 MAGNUM;
18 THIS ONE IS ALSO A .357 MAGNUM; THIS IS A .357 MAGNUM; THIS ONE
19 IS A .357 MAGNUM; THIS ALSO IS A .357 MAGNUM; ANOTHER .357
20 MAGNUM; A .357 MAGNUM; A .357 MAGNUM; ANOTHER .357 MAGNUM; AND
21 ANOTHER .357 MAGNUM; AND THE LAST ONE IS A .357 MAGNUM.
22 SHOULD I CLOSE IT?
23 Q I'LL CLOSE IT. THANK YOU.
24 YOU INDICATED EARLIER WHEN I ASKED
25 YOU IF YOU KNEW THE DIFFERENCE BETWEEN A .357 AND A MAGNUM; IS
26 THAT RIGHT?
27 A YES.
28 Q THERE CAME A TIME WHEN YOU WERE INVOLVED
29 IN THE INVESTIGATION OF THIS CASE WHERE YOU WENT TO THE DEW DROP
30 INN, LOCATED AT THE BOULDER HIGHWAY; IS THAT RIGHT?
31 A YES.
32 Q WERE YOU ONE OF THE OFFICERS ON THE SCENE?

2083

1 A NO.

2 Q DO YOU RECALL APPROXIMATELY WHAT TIME IT

3 WAS THAT YOU ARRIVED?

4 A OH, APPROXIMATELY 6:55 P.M.

5 Q I SEE.

6 THAT WOULD HAVE BEEN ON MARCH 27TH,

7 1980?

8 A YES.

9 Q YOU PREPARED, AS A RESULT OF YOUR INVESTI-

10 GATION, A NUMBER OF POLICE REPORTS INVOLVED -- A NUMBER OF

11 POLICE REPORTS IN THIS CASE, DIDN'T YOU?

12 A YES.

13 Q I SEE.

14 AND IN ONE SUCH REPORT, OFFICER --

15 DETECTIVE LEAVITT -- YOUR HONOR, MAY I APPROACH THE WITNESS?

16 THE COURT: YOU MAY.

17

18 BY MR. COOPER:

19

20 Q I WOULD LIKE TO SHOW YOU WHAT PURPORTS TO

21 BE A POLICE REPORT, OFFICER LEAVITT. AND I ASK YOU IF YOU

22 RECOGNIZE THAT. YOU CAN JUST DISREGARD THE WRITINGS. THAT'S

23 MY OWN.

24 A THIS APPEARS TO BE A COPY OF A POLICE

25 REPORT THAT BEARS MY NAME ON THE BOTTOM.

26 Q AND ON THE VERY LAST PAGE OF THAT REPORT,

27 AT THE PARAGRAPH NUMBER 6, THE TOP THERE, YOU INDICATE THERE

28 THAT LOCATED ON THE RUNNING BOARD --

29 MR. HARMON: OBJECTION, YOUR HONOR, TO REFERENCE TO

30 A DOCUMENT THAT ISN'T IN EVIDENCE. THERE'S NO INDICATION --

31 THE WITNESS: VERY WELL.

32 MR. HARMON: (CONTINUING) -- THAT THE WITNESS HAS

2084

1 TO REFRESH HIS MEMORY.

2 THE COURT: ALL RIGHT.

3
4 BY MR. COOPER:

5
6 Q DO YOU RECALL, DETECTIVE LEAVITT, FINDING
7 A PROJECTILE ON THE RUNNING BOARD OF THE REAR PASSENGER'S SIDE
8 OF THE VAN WHERE THE DOUBLE DOORS WERE LOCATED ON THE VAN?

9 A YES.

10 Q HOW DID YOU IDENTIFY THAT PROJECTILE?

11 A MYSELF AND DETECTIVE CONNELL EXAMINED THE
12 PROJECTILE.

13 Q PARDON.

14 A MYSELF AND DETECTIVE CONNELL EXAMINED THE
15 PROJECTILE.

16 Q AND HOW DID YOU INDICATE IN YOUR REPORT --
17 HOW DO YOU -- HOW DO YOU CLASSIFY THAT PROJECTILE IN YOUR
18 REPORT?

19 MR. HARMON: OBJECTION, YOUR HONOR, AS TO HOW HE
20 CLASSIFIED THEM, UNLESS A BETTER FOUNDATION IS LAID TO SHOW THAT
21 DETECTIVE LEAVITT WAS QUALIFIED TO MAKE ANY TYPE OF CLASSIFICA-
22 TION TO FORM AN OPINION.

23 MR. COOPER: YOUR HONOR, HE IS A POLICE OFFICER
24 WITH SOME 19 YEARS OF EXPERIENCE. HE'S HAD SOME TRAINING IN
25 FIREARMS. I THINK IT'S LUDICROUS THAT MR. HARMON WOULD SUGGEST
26 THAT THIS OFFICER IS NOT QUALIFIED TO OFFER HIS OPINION IN THIS
27 MATTER.

28 THE COURT: WELL, HE SAYS HE ISN'T AN EXPERT, AND
29 THAT'S THE ONLY EVIDENCE WE HAVE TO SHOW HE IS OR ISN'T.

30 ..
31 ..
32 ..

1 BY MR. COOPER:

2
3 Q NOW, LET ME ASK YOU THIS, OFFICER LEAVITT:
4 WHY DID YOU SAY IN YOUR REPORT THAT IT WAS A .38 CALIBER PRO-
5 JECTILE THAT YOU FOUND THERE?

6 A THAT'S WHAT IT APPEARED TO BE.

7 Q DID THE OTHER OFFICER WHO TOOK A LOOK AT IT,
8 DID HE CONCUR IN THAT --

9 MR. HARMON: OBJECTION. THAT CALLS FOR HEARSAY,
10 YOUR HONOR.

11 THE COURT: SUSTAINED.

12
13 BY MR. COOPER:

14
15 Q AS YOU WERE INVESTIGATING THIS OFFENSE,
16 OFFICER LEAVITT -- DETECTIVE LEAVITT, EXCUSE ME, DID YOU HAVE
17 OCCASION TO INTERVIEW A NUMBER OF PEOPLE?

18 A YES.

19 Q DID YOU INTERVIEW ONE DANIEL WADE MILLER?

20 MR. HARMON: YOUR HONOR, I'M GOING TO OBJECT TO
21 THIS LINE OF QUESTIONS. ALL THESE EXCEED THE SCOPE OF DIRECT.
22 AT NO TIME DID WE TALK ABOUT DETECTIVE LEAVITT GOING ON MARCH
23 THE 27TH, 1980, TO 4200 BOULDER HIGHWAY.

24 MR. COOPER: IT'S JUST IN THE INTEREST OF TIME,
25 YOUR HONOR. I MEAN WE CAN SUBPOENA HIM OR RECALL HIM.

26 THE COURT: WHY DON'T YOU DO THAT.

27
28 BY MR. COOPER:

29
30 Q DID YOU DISCOVER AS A RESULT OF YOUR INVES-
31 TIGATION IN THIS CASE, DETECTIVE LEAVITT, THAT A C.B. RADIO WAS
32 TAKEN FROM THE VAN?

1 A YES.

2 Q AND DID YOU ALSO DISCOVER THAT A CASSETTE

3 DECK WAS TAKEN FROM THE VAN?

4 A YES.

5 Q WERE YOU EVER GIVEN A DESCRIPTION OF THE

6 CASSETTE DECK THAT WAS TAKEN?

7 A NOT THAT I RECALL.

8 Q DID YOU EVER QUESTION MRS. MONAHAN ABOUT

9 THE CASSETTE DECK THAT WAS IN THE VAN?

10 A YES.

11 Q DID SHE TELL YOU -- DID SHE DESCRIBE IT FOR

12 YOU?

13 A IF SHE DID I DON'T RECALL WHAT SHE SAID.

14 Q DIDN'T INCLUDE THAT IN ANY OF YOUR REPORTS?

15 A I DON'T KNOW. I'D HAVE TO READ THEM TO

16 FIND OUT.

17 Q WELL, YOU INCLUDED THE DESCRIPTION OF THE

18 C.B. RADIO IN YOUR REPORTS, DIDN'T YOU?

19 A YES.

20 Q DO YOU HAVE YOUR REPORTS AVAILABLE TO YOU?

21 A NO.

22 Q WOULD YOU LIKE FOR ME TO GIVE THEM TO YOU

23 SO THAT YOU COULD GO THROUGH THEM AND SEE IF YOU DESCRIBED THE

24 CASSETTE DECK?

25 A WHATEVER YOU'D LIKE.

26 MR. COOPER: YOUR HONOR, THERE ARE A NUMBER OF

27 REPORTS HERE. I MIGHT SUGGEST THAT WE TAKE A RECESS WHILE THE

28 OFFICER HAS AN OPPORTUNITY TO GO THROUGH HIS REPORT. THERE'S

29 SOME FIVE -- SIX REPORTS HERE.

30 THE COURT: WELL, I DON'T KNOW IF HE'S GOING TO

31 NEED THEM. WHY DON'T YOU HAND THEM TO HIM AND FIND OUT.

32 THE WITNESS: THE CASSETTE TAPE PLAYER IS DESCRIBED

1 IN THIS REPORT.

2

3 BY MR. COOPER:

4

5 Q HOW DO YOU DESCRIBE THE TAPE PLAYER?

6 A CASSETTE TAPE PLAYER WITH A EJECT BUTTON,
7 FAST FORWARD, AND NO OTHER EQUIPMENT.

8 Q HOW DID YOU LEARN THAT THAT ITEM WAS TAKEN
9 FROM THE VAN?

10 A IN TALKING WITH MRS. MONAHAN.

11 Q I SEE.

12 DID YOU DETERMINE UPON YOUR EXAMINA-
13 TION OF THE VAN FROM WHAT LOCATION THAT WOULD HAVE BEEN TAKEN
14 WITHIN THE VAN?

15 A I BELIEVE IT WOULD HAVE BEEN REMOVED FROM
16 THE UPPER PORTION OR THE HEADLINER OF THE VAN.

17 Q IS THAT WHERE THE C.B. WAS LOCATED ALSO?

18 A YES.

19 Q YOU INDICATE IN YOUR REPORT THAT A LARGE
20 AMOUNT OF FRESH GRASS CLIPPINGS WERE FOUND ON THE REAR BUMPER,
21 DRIVER'S SIDE, OF THE VAN; IS THAT RIGHT?

22 A YES.

23 Q DID THAT -- DID THAT SIGNIFY ANYTHING TO
24 YOU?

25 A IT MEANS THE VAN HAD DRIVEN ACROSS A LAWN.

26 Q ACROSS A LAWN?

27 A SOMEWHERE WHERE THERE WOULD HAVE BEEN FRESH
28 GRASS CLIPPINGS.

29 Q DID YOU DETERMINE WHERE DOCTOR MONAHAN'S
30 VAN HAD BEEN PARKED THE DAY PRIOR TO YOUR FINDING HIM IN THE VAN
31 NEAR THE DEW DROP INN?

32 A AT THE PARKING LOT OF HIS OFFICE.

1 Q DID YOU GO THERE AND PERSONALLY EXAMINE
2 THAT AREA?
3 A YES.
4 Q IS IT A GRASSY AREA?
5 A NO.
6 Q IT'S AN ASPHALT AREA; IS THAT CORRECT?
7 A CORRECT.
8 Q AND THESE GRASS CLIPPINGS APPEARED TO BE
9 FRESH; IS THAT RIGHT?
10 A YES.
11 Q DO YOU KNOW IF THERE WERE ANY PHOTOGRAPHS
12 TAKEN OF THE VAN WITH THESE GRASS CLIPPINGS ON THEM?
13 A NO.
14 Q AND YOU DO INDICATE IN YOUR REPORT THAT IT
15 WAS A LARGE AMOUNT OF THESE FRESH -- FRESH GRASS CLIPPINGS; IS
16 THAT RIGHT?
17 A YES.
18 Q NOW, YOU HAD OCCASION TO INTERVIEW ONE
19 DAWANA THOMAS AS PART OF YOUR INVESTIGATION OF THIS CASE; IS
20 THAT RIGHT?
21 A YES.
22 Q WHEN WAS IT THAT YOU FIRST MADE CONTACT
23 WITH HER?
24 A APRIL THE 2ND, 1980.
25 Q AND THAT WOULD HAVE BEEN IN CALIFORNIA?
26 A YES.
27 Q THAT WOULD HAVE BEEN ON APRIL 2ND AT ABOUT
28 6:20 P.M.?
29 A YES.
30 Q AND DETECTIVE HATCH, WHO'S WITH THE LAS
31 VEGAS METROPOLITAN POLICE DEPARTMENT, WAS ALSO PRESENT?
32 A THAT'S CORRECT.

2089

1 Q YOU -- YOU DID QUESTION DAWANA THOMAS AS TO
2 HOW LONG SHE HAD -- SHE HAD KNOWN SAMUEL HOWARD; IS THAT RIGHT?

3 A I'D HAVE TO READ THE REPORT TO REFRESH MY
4 MEMORY.

5 MR. COOPER: IF I MIGHT APPROACH THE WITNESS, YOUR
6 HONOR.

7 THE COURT: YOU MAY.

8
9 BY MR. COOPER:

10
11 Q I WANT TO SHOW YOU PART OF WHAT I THINK IS
12 YOUR REPORT. YOU TELL ME, OFFICER, WHETHER THAT IS PART OF YOUR
13 REPORT OR NOT.

14 A YES. IT APPEARS TO BE, YES.

15 Q I SEE.

16 AND THAT STARTS AT PAGE 5 THERE; IS
17 THAT RIGHT; WHAT YOU HAVE BEFORE YOU NOW?

18 A YES, IT IS.

19 Q ~~ABOUT MIDWAY OF THAT PAGE YOU INDICATE THAT~~
20 YOU -- THAT DURING YOUR INTERVIEW OF DAWANA THOMAS YOU ASKED HER
21 HOW LONG SHE HAD KNOWN SAMUEL HOWARD; IS THAT RIGHT?

22 A YES.

23 Q AND SHE TOLD YOU THAT SHE AND HER BABY HAD
24 BEEN WITH HIM FOR APPROXIMATELY ONE YEAR; IS THAT RIGHT?

25 A YES.

26 Q IN THE VERY LAST PART OF PAGE 5, DETECTIVE
27 LEAVITT, YOU QUESTIONED DAWANA THOMAS REGARDING WHETHER SHE
28 RECALLED SEEING MR. HOWARD WITH A TWO-WAY RADIO WHILE IN LAS
29 VEGAS; IS THAT RIGHT?

30 MR. HARMON: YOUR HONOR, I OBJECT TO REFERENCE TO
31 A REPORT. I THINK IT WOULD BE PROPER FOR DIRECT QUESTIONS TO
32 BE ASKED AND WE CAN REFER TO THE REPORT IF THAT'S NECESSARY.

2090

1 THE COURT: SUSTAINED.

2
3 BY MR. COOPER:

4
5 Q WELL, COULD YOU JUST TURN THAT REPORT THAT
6 YOU HAVE BEFORE YOU OVER, DETECTIVE LEAVITT, AND NOT LOOK AT IT,
7 PLEASE.

8 DID YOU QUESTION DAWANA THOMAS REGARD-
9 ING WHETHER OR NOT SHE SAW MR. HOWARD WITH A TWO-WAY RADIO WHILE
10 IN LAS VEGAS?

11 A YES.

12 Q IN THAT REGARD, ISN'T IT TRUE THAT SHE TOLD
13 YOU THAT MR. HOWARD RETURNED TO THE MOTEL WHERE THEY WERE STAYING
14 AND HAD IN HIS POSSESSION A WALKIE-TALKIE TYPE RADIO; IS THAT
15 RIGHT?

16 A YES.

17 Q DID -- DID SHE GIVE YOU THE IMPRESSION AT
18 THAT TIME THAT SHE DID NOT ACCOMPANY MR. HOWARD AT THE TIME HE
19 GOT THIS TWO-WAY RADIO?

20 A WAS IT MY IMPRESSION SHE WAS NOT THERE? I
21 DON'T BELIEVE I ASKED HER THAT.

22 Q NOW, YOU QUESTIONED MISS THOMAS -- EXCUSE
23 ME, MISS THOMAS -- EXCUSE ME, STRIKE THAT, PLEASE.

24 DURING YOUR INTERVIEW OF MISS -- MISS
25 THOMAS, DID SHE STATE TO YOU THAT -- STRIKE THAT AS WELL.

26 COURT'S INDULGENCE, PLEASE.

27 YOU QUESTIONED -- DID MISS THOMAS TELL
28 YOU THAT -- DID SHE INDICATE TO YOU HOW LONG SHE AND MR. HOWARD
29 WERE IN LAS VEGAS?

30 A IF SHE DID I DON'T RECALL WHAT SHE SAID.

31 Q DID SHE TELL YOU THAT AFTER MR. HOWARD CAME
32 HOME WITH THE TWO-WAY RADIO THAT THEY REMAINED IN LAS VEGAS FOR

1 A COUPLE OF DAYS AFTER THAT AND THEN LEFT, DRIVING TO SOUTHERN
2 CALIFORNIA?

3 A YES.

4 Q YOU ALSO QUESTIONED HER AS TO HOW MR.
5 HOWARD MADE HIS MONEY IN ORDER TO BUY GAS AND FOOD WHILE IN LAS
6 VEGAS, DIDN'T YOU?

7 A YES.

8 Q AND SHE TOLD YOU THAT SHE, BEING DAWANA
9 THOMAS, THAT MR. HOWARD HAD TOLD HER THAT HIS MOTHER HAD SENT
10 HIM MONEY WHILE HERE IN LAS VEGAS; IS THAT RIGHT?

11 A YES.

12 Q NOW, WHEN DID YOU NEXT HAVE OCCASION TO
13 TALK TO DAWANA THOMAS?

14 A I TALKED WITH HER ON THE PHONE SEVERAL
15 TIMES, AND ABOUT MAY 20TH, I BELIEVE.

16 Q DID YOU QUESTION HER REGARDING WHETHER SHE
17 EVER SAW MR. HOWARD TO HAVE IN HIS POSSESSION A WALLET?

18 A YES.

19 Q WHAT DID SHE TELL YOU IN THAT REGARD?

20 A ON ONE OCCASION SHE TOLD ME SHE'D SEEN HIM
21 WITH A WALLET. AND ON ANOTHER OCCASION I BELIEVE SHE SAID SHE
22 DIDN'T RECALL IF SHE HAD SEEN A WALLET.

23 Q DID SHE TELL YOU SHE DID NOT LOOK INTO THE
24 WALLET?

25 A YES.

26 Q YOU QUESTIONED HER WHETHER SHE EVER
27 OBSERVED, IN MR. HOWARD'S POSSESSION, ANY CREDIT CARDS THAT WERE
28 MISSING FROM DOCTOR MONAHAN; ISN'T THAT RIGHT?

29 A YES.

30 Q AND SHE TOLD YOU THAT SHE NEVER OBSERVED
31 ANY CREDIT CARDS, DIDN'T SHE?

32 A ON ONE OCCASION, YES.

2092

1 Q WAS IT LATER THAT SHE CHANGED THAT?
2 A YES.
3 Q HOW MUCH LATER?
4 A IT WAS DURING ONE OF THE CONVERSATIONS I
5 HAD WITH HER ON THE TELEPHONE.
6 Q WELL, IT WAS IN MAY SOMETIME THAT SHE TOLD
7 YOU THAT SHE NEVER OBSERVED ANY CREDIT CARDS; ISN'T THAT RIGHT?
8 A IT WOULD HAVE BEEN IN NOVEMBER, I BELIEVE.
9 Q WELL, WAS IT IN NOVEMBER THAT SHE TOLD YOU
10 THAT SHE DID?
11 A YES.
12 Q SO IT WOULD HAVE BEEN SOME SIX, SEVEN
13 MONTHS LATER?
14 A CORRECT.
15 Q DID YOU CALL HER OR DID SHE JUST CALL YOU
16 UP?
17 A SHE CALLED ME COLLECT.
18 Q DID SHE EVER TELL YOU WHETHER THIS WALLET
19 THAT SHE SAW MR. HOWARD WITH WAS BROWN OR BLACK?
20 A I BELIEVE SHE SAID IT WAS BROWN.
21 Q DON'T YOU INDICATE IN YOUR REPORT THAT SHE
22 SAID IT WAS A BROWN OR BLACK WALLET?
23 A MAYBE I MADE A MISTAKE. IS THAT WHAT SHE
24 SAYS?
25 MR. COOPER: APPROACH THE WITNESS, YOUR HONOR?
26 THE COURT: YOU MAY.
27
28 BY MR. COOPER:
29
30 Q DO YOU -- CAN YOU IDENTIFY THIS DOCUMENT,
31 DETECTIVE?
32 A YES.

2093

1 Q WOULD YOU REFER TO PAGE 2 OF THAT, PLEASE,
2 ABOUT MIDWAY OF THE PAGE THERE. ISN'T THERE REFERENCE TO A
3 WALLET?
4 A YES. IT SAYS, "A BROWN OR BLACK WALLET."
5 Q IS THAT WHAT DAWANA THOMAS TOLD YOU?
6 A YES.
7 Q DID SHE LATER CLARIFY THAT AND SPECIFY THAT
8 IT WAS BROWN OR BLACK?
9 A NOT THAT I RECALL.
10 Q COURT'S INDULGENCE, PLEASE.
11 OFFICER, DID YOU -- DID YOU QUESTION
12 MISS THOMAS ABOUT A ROBBERY AT SEARS THAT OCCURRED ON MARCH 26TH
13 OF 1980?
14 A YES.
15 Q AND YOU QUESTIONED HER REGARDING WHAT SHE
16 AND MR. HOWARD MAY HAVE DONE THE FOLLOWING DAY, THE 27TH OF
17 MARCH, 1980; ISN'T THAT RIGHT?
18 A YES.
19 Q DO YOU RECALL MISS THOMAS TELLING YOU THAT
20 THE FOLLOWING DAY, THAT BEING MARCH 27TH OF 1980, SHE RECALLED
21 TAKING MR. HOWARD TO A RESIDENTIAL AREA AND DROPPING HIM OFF?
22 A YES.
23 Q SHE DID SPECIFY A RESIDENTIAL AREA?
24 A YES.
25 MR. COOPER: I PASS THE WITNESS AT THIS TIME, YOUR
26 HONOR.
27 THE COURT: THE STATE?
28 MR. HARMON: THANK YOU, YOUR HONOR.
29 ..
30 ..
31 ..
32 ..

SHWARD-PE15347

REDIRECT EXAMINATION

1
2
3 BY MR. HARMON:
4

5 Q DETECTIVE LEAVITT, IS THE AREA OF THE
6 WINCHESTER OFFICE COMPLEX IN CLOSE PROXIMITY TO RESIDENCES,
7 APARTMENTS AND HOUSES?

8 A YES, IT IS.

9 Q WHEN YOU SPOKE WITH MARY LOU MONAHAN DID
10 YOU, IN FACT, DEFINITELY GET INFORMATION THAT A CASSETTE PLAYER
11 AND A C.B. RADIO WERE MISSING FROM THE HEADLINER OF THE 1977
12 DODGE VAN?

13 A YES.

14 Q WHEN YOU SPOKE WITH DAWANA THOMAS DID SHE
15 TELL YOU WHETHER SHE SAW THE DEFENDANT WITH A C.B. RADIO WHEN HE
16 RETURNED TO THEIR MOTEL ON MARCH 27TH, 1980?

17 A YES.

18 Q WHAT DID SHE TELL YOU?

19 A SHE SAID HE HAD A CITIZEN BAND RADIO IN HIS
20 POSSESSION WHEN HE RETURNED TO THE MOTEL ROOM.

21 Q WHEN SHE SAID "HE" TO WHOM WAS SHE REFER-
22 RING?

23 A THE DEFENDANT MR. HOWARD.

24 Q NOW, YOU INDICATED DURING EARLIER CONVER-
25 SATIONS THAT MISS THOMAS DID NOT RECALL SEEING THE DEFENDANT
26 WITH CREDIT CARDS SOMETIME AFTER HE RETURNED TO THEIR MOTEL ROOM?

27 A THAT'S CORRECT.

28 Q DID SHE, DURING THE SUBSEQUENT CONVERSATION,
29 MENTION SEEING CREDIT CARDS SOMETIME AFTER THE DEFENDANT
30 RETURNED?

31 A YES.

32 Q WHEN WAS THAT AND WHAT DID SHE SAY?

1 A I BELIEVE THAT WAS DURING OUR PHONE CON-
2 VERSATION IN NOVEMBER OF 1980. SHE INDICATED THAT WHEN THEY
3 RETURNED TO THE MOTEL ROOM SHE HAD SEEN HIM WITH APPROXIMATELY
4 17 CREDIT CARDS AND THE WRISTWATCH. I BELIEVE SHE ALSO INDICA-
5 TED THAT ONE OF THE LETTERS SHE CAUGHT ON THE CREDIT CARD WAS
6 A LETTER "S". AND, OF COURSE, SHE INDICATED SE -- THE BRAND
7 NAME OF THE WATCH WAS SEIKO.

8 MR. HARMON: THANK YOU.

9 THAT CONCLUDES REDIRECT, YOUR HONOR.

10
11 RECROSS EXAMINATION

12
13 BY MR. COOPER:

14
15 Q ARE YOU TELLING US, DETECTIVE LEAVITT,
16 THAT MISS THOMAS TOLD YOU THAT SHE SAW THESE CREDIT CARDS WHEN
17 MR. THOMAS (SIC) RETURNED TO THE MOTEL ROOM; IS THAT CORRECT?

18 A YES.

19 Q MISS HOU- -- MISS THOMAS DIDN'T TELL YOU
20 THAT SHE DROPPED MR. HOWARD OFF NEAR A -- IN A BUSINESS DISTRICT
21 NEAR A RESIDENTIAL AREA, DID SHE?

22 A NO.

23 Q SHE TOLD YOU SHE DROPPED HIM OFF IN A
24 RESIDENTIAL AREA, DIDN'T SHE?

25 A YES.

26 Q AND SHE DIDN'T SAY THAT SHE DIDN'T RECALL
27 SEEING ANY CREDIT CARDS. WHEN YOU FIRST QUESTIONED HER ABOUT
28 THAT SHE SAID SHE NEVER OBSERVED ANY CREDIT CARDS; ISN'T THAT
29 TRUE?

30 A THAT'S TRUE.

31 MR. COOPER: NOTHING FURTHER OF THE WITNESS.

32 MR. HARMON: NOTHING FURTHER, YOUR HONOR.

1 THE COURT: YOU'RE EXCUSED.

2 (WHEREUPON, THE WITNESS WAS
3 EXCUSED.)

4 THE COURT: COME FORWARD, PLEASE.

5 MR. HARMON: APPROACH THE BENCH?

6 (WHEREUPON, SIDE BAR CONFER-
7 ENCE WAS HELD AT THE BENCH;
8 NOT REPORTED... AT THE CONCLU-
9 SION OF WHICH THE FOLLOWING
10 WAS HAD:)

11 THE CLERK: RAISE YOUR RIGHT HAND.

12
13 WHEREUPON,

14
15 RICHARD GEORGE GOOD, SENIOR,

16
17 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,
18 EXAMINED AND TESTIFIED AS FOLLOWS:

19
20 THE COURT: PROCEED.

21
22 DIRECT EXAMINATION

23
24 BY MR. SEATON:

25
26 Q WOULD YOU PLEASE STATE YOUR NAME?

27 A RICHARD GEORGE GOOD, SENIOR.

28 Q SPELL YOUR LAST NAME FOR THE RECORD.

29 A G-O-O-D.

30 Q MR. GOOD, WHAT IS YOUR OCCUPATION?

31 A I'M A FIREARMS EXAMINER WITH THE LAS VEGAS
32 METROPOLITAN POLICE DEPARTMENT.

1 Q AND HOW LONG HAVE YOU BEEN SO EMPLOYED?

2 A I'VE BEEN EMPLOYED IN THAT CAPACITY FOR
3 SEVEN YEARS.

4 Q AND HOW WERE YOU EMPLOYED PRIOR TO THAT
5 TIME?

6 A SIR, PRIOR TO THAT I WAS ALSO EMPLOYED WITH
7 THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT IN THE CRIME LAB BUT
8 IN GENERAL FIELD IDENTIFICATION WORK; AND PRIOR TO THAT WITH THE
9 CLARK COUNTY SHERIFF'S OFFICE, OF COURSE AGAIN IN FIELD IDENTI-
10 FICATION WORK.

11 Q AND CAN YOU EXPLAIN, IF YOU WOULD, YOUR
12 DUTIES AS A FIREARMS EXAMINER?

13 A YES. THE DUTIES ARE QUITE BROAD IN THEIR
14 NATURE. AND THEY INCLUDE SUCH THINGS AS THE EXAMINATION OF
15 FIREARMS AND TOOL MARKS; A GREAT NUMBER OF AUXILIARY SUBJECTS,
16 INCLUDING SERIAL NUMBER RESTORATIONS, GUNSHOT RESIDUES, THAT IS
17 DETERMINING THE DISTANCE FROM WHICH A GUN WAS FIRED.

18 BUT BASICALLY THE FIREARMS EXAMINER'S
19 CHOICE IS TO ATTEMPT TO DETERMINE IF A PARTICULAR BULLET OR
20 CARTRIDGE CASE WAS FIRED FROM A SPECIFIC FIREARM.

21 Q CAN YOU TELL US WHAT YOUR BACKGROUND AND
22 QUALIFICATIONS ARE AS A FIREARMS EXAMINER IN THE REGARD FROM
23 WHICH YOU JUST STATED, THAT IS COMPARING GUNS TO BULLETS.

24 A WELL, SIR, AGAIN WHEN I FIRST BECAME
25 EMPLOYED IN 1972 WITH THE CLARK COUNTY SHERIFF'S DEPARTMENT I
26 WAS, AT THAT TIME, INITIALLY TAUGHT THE BASICS OF FIREARMS IDEN-
27 TIFICATION BY VARIOUS OTHER OFFICERS WHO WERE ENGAGED IN THE
28 FIELD AT THAT TIME.

29 IN 1974 I GRADUATED FROM THE SMITH AND
30 WESSON ACADEMY IN SPRINGFIELD, MASSACHUSETTS. AND IN 1976 I WAS
31 ASSIGNED HEAD OF THE FIREARMS SECTION OF THE L.A.P.D. CRIME LAB.

32 I GRADUATED FROM THE F.B.I. ACADEMY,

2098

1 INVOLVING A CLASS IN GUNSHOT RESIDUE IN 1980.

2 AND DURING THE COURSE OF MY EMPLOYMENT
3 AS A FIREARMS EXAMINER, I'VE HAD OCCASION TO INSTRUCT CLASSES
4 INVOLVING FIREARMS IDENTIFICATION TO THE MEMBERS OF THE CLARK
5 COUNTY DISTRICT ATTORNEYS OFFICE, THE LAS VEGAS POLICE ACADEMY,
6 AND ALSO CLASSES AT THE UNIVERSITY OF NEVADA AT LAS VEGAS FOR THE
7 PAST TWO YEARS.

8 ADDITIONALLY, ON A PROFESSIONAL LEVEL,
9 I'M A MEMBER OF THE INTERNATIONAL ASSOCIATION FOR IDENTIFICATION
10 AND THE ASSOCIATION OF FIREARMS AND TOOL MARKS EXAMINERS.

11 Q HAVE YOU TESTIFIED AS TO FIREARMS IDENTIFI-
12 CATION IN COURT BEFORE?

13 A YES, I HAVE.

14 Q AND CAN YOU TELL US HOW MANY TIMES YOU HAVE
15 TESTIFIED?

16 A INCLUDING CLARK COUNTY, LINCOLN COUNTY, NYE
17 COUNTY; AND WASHINGTON COUNTY, UTAH; I'VE TESTIFIED PREVIOUSLY
18 141 TIMES.

19 Q HAVE YOU QUALIFIED AS AN EXPERT IN FIREARMS
20 IDENTIFICATION IN EACH OF THOSE SITUATIONS?

21 A YES, I HAVE.

22 Q COULD YOU EXPLAIN, IF YOU WOULD, THE PROCESS
23 OF FIREARMS IDENTIFICATION?

24 A BY "PROCESS" YOU MEAN THE BASIS OF IT, SIR?

25 Q HOW YOU GO ABOUT DOING IT.

26 A WELL, IF WE'RE SPEAKING SPECIFICALLY OF HOW
27 I DETERMINE WHETHER OR NOT A FIRED BULLET WAS FIRED FROM A
28 PARTICULAR GUN, IS THAT WHAT --

29 Q YES.

30 A WELL, THIS IS DONE MICROSCOPICALLY. IT'S
31 DONE THROUGH USE OF A AMERICAN OPTICAL FORENSIC COMPARISON MICRO-
32 SCOPE, OF WHICH WE HAVE TWO IN THE L.V.P.D. CRIME LAB.

2099

1 THIS MICROSCOPE, WHAT I DO IS AFTER I
2 OBTAIN THE SUSPECT OR RECOVERED BULLET OR BULLETS IS AFTER EXAM-
3 INING THEM MOST GENERALLY A WEAPON OF SOME SORT IS SUBMITTED TO
4 ME.

5 AFTER MAKING MY GROSS EXAMINATION OF
6 THE FIREARM, I THEN TEST FIRE THAT INTO THE RECOVERY TANK WE HAVE
7 IN THE FIREARMS SECTION. I OBTAIN MY RECOVERED OR TEST BULLET
8 THAT IS FROM THE SUSPECT -- SUSPECTED FIREARM. AND THEN MICRO-
9 SCOPICALLY I COMPARE THEM, ONE WITH EACH OTHER, TO DETERMINE WHAT
10 UNUSUAL FEATURES THAT THEY BEAR AND WHAT IT IS THAT I AM LOOKING
11 FOR IN RELATION TO THE OTHER RECOVERED BULLET.

12 AT THE OCCASION -- OR AT THE CONCLU-
13 SION OF THAT PROCEDURE, I THEN PLACE THE INITIALLY RECOVERED
14 SUSPECT BULLET ON ONE STAGE OF THE MICROSCOPE AND COMPARE IT
15 WITH ONE OF THE TEST FIRES FROM THE FIREARM. I EXAMINE IT AGAIN
16 MICROSCOPICALLY, AND THEN ON A BASIS OF MY EXPERIENCE I MAKE MY
17 CONCLUSIONS.

18 Q AND WHAT SORT OF THINGS DO YOU COMPARE
19 BETWEEN THE SUSPECT BULLET AND THE TEST FIRED BULLETS IN ORDER
20 TO DETERMINE WHETHER OR NOT THE SUSPECT BULLET CAME FROM THE
21 GUN FROM WHICH THE TEST FIRED BULLETS WERE FIRED?

22 A WELL, SEE, THERE'S TWO CHARACTERISTICS THAT
23 WE'RE LOOKING FOR. INITIALLY THE FIRST EXAMINATION IS CONCERNED
24 WITH THE CLASS CHARACTERISTICS OF BOTH THE BULLET AND THE GUN.

25 BY "CLASS CHARACTERISTICS" I'M REFER-
26 RING TO SUCH THINGS AS THE CALIBER OF A FIREARM; THE NUMBER OF
27 LANDS AND GROOVES THAT ARE IMPRINTED UPON THE FIRED BULLET AS IT
28 RELATES TO THE FIREARM; THE DEVICE AGAIN WHICH IS IMPARTED UPON
29 THE BULLET; AND THE LAND IMPRESSION WIDTH AND THE GROOVE IMPRES-
30 SION WIDTHS.

31 NOW, THIS IS DONE FIRST BECAUSE OF THE
32 EXPEDIENCY INVOLVED. OBVIOUSLY AN EXAMINER IS NOT GOING TO

2100

1 SPEND THE TIME COMPARING A RECOVERED .45 CALIBER WITH A .22
2 CALIBER FIREARM. BUT IF I CONCLUDE THAT THE CLASS CHARACTERIS-
3 TICS ARE SIMILAR, I THEN DO A MICROSCOPIC EXAMINATION TO
4 DETERMINE IF THE SUSPECT BULLET WAS FIRED FROM THE SUBMITTED
5 GUN.

6 THE THINGS I'M LOOKING FOR AT THIS
7 STAGE ARE VERY MICROSCOPIC STRIATIONS THAT ARE FOUND ON THE
8 BULLET.

9 Q WHAT DO YOU MEAN BY "STRIATIONS"?

10 A STRIATIONS ARE LONGITUDINAL SCRATCHES
11 THAT ARE FOUND ON THE BULLET THAT WILL RUN FROM THE NOSE TO THE
12 BASE END AND ARE A RESULT OF THE SOFTER MATERIAL OF THE BULLET
13 BEING ENGRAVED OR CARRYING THE RELEASE OF THE BAR- -- OR THE
14 INNER PORTION OF THE BARREL OF THE GUN ITSELF. FOR THE MOST
15 PART THESE ARE NUMEROUS AND THEY'RE VERY MICROSCOPIC IN THEIR
16 NATURE. AND IT IS THESE VERY CHARACTERISTICS, THAT IS THESE
17 STRIATIONS, THAT INDIVIDUALIZE ONE GUN BARREL FROM ANY OTHER GUN
18 BARRELS MANUFACTURED.

19 Q CAN YOU TELL US A LITTLE MORE ABOUT THE
20 LANDS AND GROOVES TO WHICH YOU REFERRED?

21 A YES, SIR. WHEN THE GUN BARREL IS MANU-
22 FACTURED IT GENERALLY AT LEAST THREE MAJOR PROVISIONS TAKE PLACE:
23 ONE IS THE UNUSUAL DRILLING OF THE
24 BARREL OF THE GUN. THIS IS DONE TO MAKE A HOLE FROM WHICH,
25 OF COURSE, THE BULLET CAN TRAVEL. AND IT IS DRILLED TO AN
26 APPROXIMATE DIAMETER OF WHAT THE MANUFACTURER WISHES THAT
27 PARTICULAR CALIBER TO BE.

28 AFTER THAT OPERATION IS CONCLUDED,
29 A SECOND OPERATION KNOWN AS "RIFLING" TAKES PLACE. AND THIS
30 IS TO FURTHER ENLARGE THE BARREL, AGAIN COMING CLOSER TO THE
31 DESIGNED CALIBER, AND ALSO TO BUFF OUT SOME OF THE MORE GROSS
32 IMPERFECTIONS THAT TAKE PLACE AS A RESULT OF THE DRILLING PRO-

2101

1 CEDURE.

2 LASTLY, A RIFLING OPERATION TAKES
3 PLACE. NOW, BY "RIFLING" I'M NOT REFERRING TO ANY TYPICAL TYPE
4 OF A FIREARM. I DON'T MEAN A RIFLE. I MEAN ANY MODERN FIREARM
5 WHICH IS DESIGNED TO SHOOT A SINGLE PROJECTILE. AND THIS
6 OPERATION ENTAILS EITHER THE CUTTING OF GOUGES OR GROOVES INTO
7 THE BARREL OF THE GUN OR A COLD SWAGE METHOD, A BUTTON RIFLE-
8 TYPING METHOD. BUT IN EITHER EVENT, THE EVIDENT RESULT IS THE
9 SAME, THE BARREL HAS GROOVES INSIDE IT, AND NOT ONLY THE GROOVES
10 PRESENT BUT THEY ARE ALSO TWISTED, EITHER TO THE RIGHT OR TO THE
11 LEFT, DEPENDING UPON THE INDIVIDUAL MANUFACTURER'S WISHES. AND
12 IT IS THESE GROOVES THAT GIVE THE BULLET THE BITE AND ALSO THE
13 SPIN WHICH -- OR THE DIRECTION OF THE TWIST, WHICH GIVES THE
14 BULLET ITS ROTATIONAL SPIN OR GYROSCOPIC EFFECTS, WHICH IS
15 NECESSARY IN ORDER TO HAVE AN ACCURATELY FIRED BULLET.

16 Q IN YOUR CAPACITY AS A FIREARMS EXAMINER
17 WITH THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT, HAVE YOU
18 BECOME AWARE OF THE CASE DEALING WITH THE DEFENDANT BY THE NAME
19 OF SAMUEL HOWARD?

20 A YES. YES, SIR, I HAVE.

21 Q HAVE YOU EXAMINED CERTAIN ITEMS WITH REGARD
22 TO THAT CASE?

23 A YES, SIR.

24 Q AND HAVE YOU PERFORMED TESTS ON THOSE ITEMS?

25 A YES, I HAVE.

26 Q COULD YOU DESCRIBE FOR US THE ITEMS THAT
27 YOU HAVE EXAMINED AND PERFORMED TESTS ON?

28 A YES, SIR. THERE WERE TWO ITEMS IN RELATION
29 TO THIS -- IN THIS CASE THAT I EXAMINED. ONE WAS A SEALED
30 EVIDENCE ENVELOPE BY IDENTIFICATION OFFICER CONNELL, WHICH I
31 EXAMINED ON MARCH 28TH OF 1980. THE PURPOSE WAS TO DETERMINE
32 THE CALIBER OF THE BULLET, ANY PHYSICAL CHARACTERISTICS ON THE

2102

1 FIRED BULLET, AND WHAT POSSIBLE GUN COULD HAVE BEEN USED TO FIRE
2 IT.

3 AT A LATER DATE, I BELIEVE THE 10TH OF
4 APRIL OF THAT YEAR, 1980, I ALSO EXAMINED A SMITH AND WESSON
5 FIREARM, WHICH WAS A .357 MAGNUM REVOLVER AND CALIBER. IT WAS
6 A DOUBLE SIX SHOT REVOLVER. I EXAMINED THE FIREARM AND I TEST
7 FIRED IT AND COMPARED THE TEST FIRES WITH THE FIRES EXHIBIT OR
8 THE BULLETS SUBMITTED BY OFFICER CONNELL IN MARCH OF THAT YEAR.

9 Q SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S
10 EXHIBIT 32-A. WOULD YOU EXAMINE THAT AND TELL ME IF YOU ARE
11 ABLE TO IDENTIFY IT?

12 A YES, SIR, I AM.

13 Q AND COULD YOU TELL US WHAT IT IS, PLEASE?

14 A WELL, SIR, THIS IS A PLASTIC VILE WHICH IS
15 IMPOUNDED BY OFFICER DAN CONNELL AND CONTAINS BULLET FRAGMENTS.

16 Q AND WHEN AND WHERE DID YOU FIRST SEE THAT
17 PARTICULAR EXHIBIT?

18 A ON THE 28TH OF MARCH OF 1980, IN THE FIRE-
19 ARMS SECTION OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT
20 CRIME LAB.

21 Q AND LET ME SHOW YOU WHAT'S BEEN MARKED FOR
22 PURPOSES OF IDENTIFICATION AS STATE'S PROPOSED 31-B. ARE YOU
23 ABLE TO RECOGNIZE THAT?

24 A YES, SIR, I AM.

25 Q AND WHAT IS IT, PLEASE?

26 A THIS IS THE REVOLVER I SPOKE OF A MOMENT
27 AGO. THIS IS A SMITH AND WESSON MODEL 19-4 .357 MAGNUM REVOLVER.

28 Q AND WHEN DID YOU FIRST SEE THAT PARTICULAR
29 EXHIBIT?

30 A I BELIEVE THE DATE WAS THE 10TH OF APRIL
31 OF 1980.

32 Q LET ME SHOW YOU NOW WHAT'S BEEN MARKED AS

2103

1 STATE'S PROPOSED EXHIBIT 34, AND ASK YOU TO EXAMINE THAT WHICH
2 PURPORTS TO BE A INTACT EVIDENCE ENVELOPE, AND TELL ME IF YOU
3 RECOGNIZE IT?

4 A YES, SIR, I DO.

5 MR. SEATON: MAY I HAVE IT FOR A MOMENT.

6 MAY THE RECORD REFLECT, YOUR HONOR, THAT
7 STATE'S PROPOSED EXHIBIT 34 IS PRESENTLY INTACT?

8 THE COURT: THE RECORD MAY SO SHOW.

9
10 BY MR. SEATON:

11
12 Q AND WHAT IS THE BASIS OF YOUR IDENTIFICA-
13 TION OF STATE'S PROPOSED EXHIBIT 34?

14 A STATE'S PROPOSED EXHIBIT 34 IS A EVIDENCE
15 ENVELOPE WHICH I PLACED SEVERAL ITEMS IN AND SIGNED AND
16 INITIALED THE ENVELOPE.

17 Q AND WHEN DID YOU DO THAT?

18 A THIS WAS ON THE 10TH OF APRIL OF 1980.

19 Q AND WHAT ITEMS DID YOU PLACE INTO STATE'S
20 PROPOSED EXHIBIT 34?

21 A SIX TEST FIRED BULLETS AND SIX TEST FIRED
22 CARTRIDGES WHICH I OBTAINED FROM THE REVOLVER, THAT IS STATE'S
23 31-B.

24 Q WOULD YOU TAKE THE SCISSORS TO YOUR RIGHT
25 AND CUT A HOLE IN STATE'S PROPOSED EXHIBIT 34, BEING CAREFUL
26 NOT TO DISTURB THE EVIDENCE.

27 NOW, HAVING DONE THAT, WILL YOU REMOVE
28 THE CONTENTS FROM STATE'S PROPOSED EXHIBIT 34 AND DESCRIBE THEM
29 AS YOU REMOVE THEM.

30 A I'VE REMOVED A STAPLED-COIN ENVELOPE,
31 BEARING A DATE 4-10-80, WITH THE WRITING "SIX TEST FIRED CAR-
32 TRIDGES" WITH MY SIGNATURE.

2104

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

I ALSO HAVE A SIMILAR ENVELOPE, AGAIN BEARING THE SAME DATE, 4-10-80. THIS ONE READS "SIX TEST FIRED BULLETS" AND AGAIN BEARS MY SIGNATURE.

Q MAY I HAVE THOSE TWO, PLEASE.

A YES, SIR.

MR. SEATON: YOUR HONOR, MAY THE TWO OBJECTS BE MARKED AS STATE'S PROPOSED EXHIBITS 34-A AND B?

THE COURT: THEY MAY.

LET'S MOVE IT ALONG, COUNSEL.

MR. SEATON: LET THE RECORD SHOW, YOUR HONOR, THAT STATE'S PROPOSED 34-A IS PRESENTLY INTACT.

BY MR. SEATON:

Q OFFICER GOOD, I WILL HAND YOU THAT EXHIBIT IN A MOMENT AND ASK YOU TO CUT A HOLE IN THE BOTTOM OF IT.

THE RECORD SHOULD ALSO REFLECT THAT 34-B IS PRESENTLY INTACT.

HANDING YOU NOW WHAT'S BEEN MARKED AS STATE'S PROPOSED EXHIBIT 34-A, WOULD YOU REPEAT AGAIN WHAT THAT PARTICULAR EXHIBIT IS?

A YES, SIR. THIS EXHIBIT IS SIX TEST FIRED BULLETS, WHICH I OBTAINED FROM STATE'S PROPOSED EXHIBIT 31-B.

Q AND WOULD YOU OPEN THE BOTTOM OF THAT BAG AND REMOVE THE CONTENTS, DESCRIBING IT AS YOU DO WHAT IT IS YOU'RE REMOVING?

THE COURT: COUNSEL, WHY IS THAT NECESSARY? WHY DON'T YOU JUST ASK HIM TO MAKE THE COMPARISON WITHOUT IT? HE DOESN'T HAVE ANY MICROSCOPE OR ANYTHING ELSE TO MAKE A COMPARISON. JUST LET HIM DESCRIBE IT. YOU DON'T HAVE TO DO THAT.

MR. SEATON: THAT'S FAIR ENOUGH, YOUR HONOR.

..

1 BY MR. SEATON:

2

3 Q DID YOU MAKE CERTAIN TESTS, OFFICER GOOD,
4 ON STATE'S PROPOSED EXHIBITS 34-A AND B?

5 A YES, I DID.

6 Q WHAT WERE THOSE?

7 A THE TESTS I PERFORMED ON STATE'S 31-B, THAT
8 IS THE REVOLVER, WAS INITIALED AND INITIALED "FIREARMS EXAMINA-
9 TION". AND AT THE CONCLUSION OF THE FIREARMS EXAMINATION, A
10 BULLET COMPARISON WITH STATE'S 34-A AND THE SUBMITTED BULLET,
11 STATE'S 32-A.

12 Q AND DID YOU MAKE THOSE TESTS IN THE SAME
13 WAY THAT YOU HAVE DESCRIBED THEM EARLIER IN YOUR TESTIMONY?

14 A YES, SIR, I DID.

15 Q AND CAN YOU TELL US THE RESULTS OF YOUR
16 EXAMINATION?

17 A THE RESULTS OF MY EXAMINATION WERE THAT THE
18 STATE'S EXHIBIT 32-A, THE SUBMITTED BULLET, BORE THE SAME CLASS
19 CHARACTERISTICS AS ALL OF THE TEST FIRES FROM STATE'S 31-B.

20 Q WHAT DOES THAT MEAN?

21 A BY THAT I REFER TO THE FACT THAT THEY WERE
22 OF THE SAME CALIBER. THEY WERE OF THE SAME PITCH, THAT IS THE
23 DIRECTION OF TWIST WAS THE SAME IN BOTH CASES. EACH BORE THE
24 SAME NUMBER OF LANDS AND GROOVES AND HAD THE SAME FRENCH LAND
25 IMPRESSION AND THE SAME WITH THE GROOVE IMPRESSION WIDTH.

26 HOWEVER, I HAD TO CLOSE MY EXAMINATION
27 WITH THE CLASS MAKE ONLY, AS OPPOSED TO THE INDIVIDUAL MAKE,
28 BECAUSE IT WAS MY OPINION THAT STATE'S 32-A WAS TOO SEVERELY
29 DEFORMED TO BE A VALUE FOR IDENTIFICATION PURPOSES.

30 Q AND TO WHAT EXTENT WERE YOU ABLE TO IDENTIFY
31 THE INDIVIDUAL PROJECTILE, WHICH IS MARKED AS 32-A?

32 A ONCE AGAIN, SIR, ONLY TO THE EXTENT THAT

2106

1 THE BOTTOM LINE WOULD BE THAT IT COULD HAVE BEEN FIRED FROM
2 STATE'S 31-B, HOWEVER, IT WAS JUST TOO BADLY MANGLED FOR ME TO
3 POSITIVELY STATE THAT IT HAD, IN FACT, BEEN FIRED FROM 31-B,
4 OR, ON THE OTHER HAND, TO AFFIRM THAT IT HAD NOT BEEN FIRED FROM
5 THAT EXHIBIT.

6 Q WERE YOU ABLE TO DETERMINE WHAT THE CALIBER
7 OF STATE'S PROPOSED -- OR STATE'S EXHIBIT 32-B WAS?

8 A YES, SIR, I WAS.

9 Q AND WHAT WAS THAT CALIBER?

10 A THE CALIBER OF THE BULLET IN 32-A WAS
11 CONSISTENT WITH A .38 SPECIAL, THAT IS THE BULLET, AND COULD
12 HAVE BEEN FIRED, IN MY OPINION, FROM A .38 SPECIAL CARTRIDGE OR
13 A .357 MAGNUM CARTRIDGE.

14 Q COULD YOU EXPLAIN FOR A MOMENT, AS A FIRE-
15 ARMS EXPERT, THE DISTINCTIONS BETWEEN A .357 CALIBER BULLET AND
16 A .38 CALIBER BULLET?

17 A ALL RIGHT. SIR, IF WE'RE DEALING WITH THE
18 BULLET ALONE, AND BY THAT I'M TALKING ABOUT THAT PORTION OF THE
19 CARTRIDGE THAT STRIKES THE TARGET, THERE IS NO DISTINCTION. A
20 .357 MAGNUM BULLET AND A .38 SPECIAL BULLET ARE INTERCHANGEABLE
21 AND, IN FACT, ARE -- IT'S THE SAME -- IT IS THE SAME -- SAME
22 BULLET, THE SAME BULLET WIDTH, THE SAME BULLET DIAMETER, ET CET-
23 ERA.

24 THE DIFFERENCE IN THE CALIBER DESIG-
25 NATION BETWEEN THE .38 SPECIAL AND A .38 MAGNUM (SIC) DEALS NOT
26 WITH THE BULLET BUT WITH THE OVERALL CARTRIDGE CASE LENGTH AND
27 THE AMOUNT AND TIME OF PROPELLANT OR GUNPOWDER THAT IS USED TO
28 DISCHARGE BOTH OF THE CARTRIDGES.

29 Q MR. GOOD, IN YOUR LAST STATEMENT YOU INDI-
30 CATED THE DIFFERENCE BETWEEN A .38 SPECIAL AND A .38 MAGNUM.
31 DID YOU MEAN .357 MAGNUM?

32 A I'M SORRY. A .357 MAGNUM IS WHAT I MEANT

2107

1 TO REFER TO.

2 Q ARE .38 SPECIAL CARTRIDGES AND .357 MAGNUM
3 CARTRIDGES CAPABLE OF BEING FIRED FROM THE SAME KIND OF WEAPON?

4 A YES AND NO. BOTH CAN BE FIRED FROM A .357
5 MAGNUM REVOLVER, IN FACT, IN MOST CASES THE NORMAL SHOOTER WILL
6 FIRE .38 SPECIAL REVOLVERS IN A .357 MAGNUM. HOWEVER, DUE TO
7 THE OVERALL DIFFERENCE IN CARTRIDGE LENGTH AND SIZE BETWEEN A
8 .357 MAGNUM AND A .38, THE .357 MAGNUM CANNOT BE INSERTED, NOR
9 FIRED, FROM A FIREARM SPECIFICALLY DESIGNATED AS A .38 SPECIAL.

10 Q I SEE.

11 A ONE CAN FIRE THE .38'S AND .357'S, THAT
12 BEING THE .357; HOWEVER, THE REVERSE IS NOT TRUE.

13 Q IS IT YOUR OPINION THAT STATE'S PROPOSED --
14 STATE'S EXHIBIT 32-A COULD HAVE BEEN FIRED FROM STATE'S PROPOSED
15 EXHIBIT 31-B, THE REVOLVER?

16 A YES, SIR, IT IS.

17 Q LET ME SHOW YOU NOW WHAT HAS BEEN MARKED
18 AS STATE'S EXHIBIT 25-B. I ASK YOU TO EXAMINE THAT AND TELL ME
19 IF YOU HAVE EVER SEEN THAT BEFORE?

20 A NO, SIR. I DON'T BELIEVE I HAVE.

21 Q WOULD YOU TAKE THE WIRE FROM THE BAG AND
22 REMOVE THE CONTENTS, PLEASE?

23 AND AS YOU ARE DOING THAT, LET ME ASK
24 YOU: AS A FIREARMS EXPERT ARE YOU ABLE TO EASILY IDENTIFY
25 VARIOUS BULLETS BY THEIR CALIBER, VARIOUS CARTRIDGES BY THEIR
26 CALIBER?

27 A CARTRIDGES, YES.

28 Q THANK YOU.

29 YOU'RE HOLDING IN YOUR HAND NOW I
30 BELIEVE ABOUT A DOZEN CARTRIDGES; IS THAT NOT CORRECT?

31 A TWELVE CARTRIDGES, THAT'S RIGHT. THAT'S
32 CORRECT.

1 Q WOULD YOU LOOK AT EACH ONE OF THEM AND TELL
2 US WHAT EACH -- THE CALIBER OF EACH CARTRIDGE IS?

3 A ELEVEN OF THE CARTRIDGES IN THIS EXHIBIT
4 ARE CALIBER .357 MAGNUM. THE 12TH CARTRIDGE IS A CALIBER .38
5 SPECIAL, PLUS P.

6 Q WOULD EACH OF THOSE TWELVE CARTRIDGES BE
7 CAPABLE OF BEING FIRED FROM THE PISTOL MARKED AS AN EXHIBIT IN
8 THIS CASE?

9 A YES, THEY WOULD.

10 MR. SEATON: THANK YOU.

11 THAT CONCLUDES THE STATE'S QUESTIONS, YOUR
12 HONOR.

13
14 CROSS EXAMINATION

15
16 BY MR. FRANZEN:

17
18 Q OFFICER, WHAT IS A .38 CALIBER, PLUS P?

19 A IT'S A RECENT DESIGNATION BY AN INSTITUTE
20 KNOWN AS SAMI.

21 BUT THE POINT OF IT IS: IT IS A HOT
22 .38 SPECIAL. THE "PLUS P" STANDS FOR ADDED POWER.

23 Q NOW, YOU DID YOUR EXAMINATION OF STATE'S
24 32-A, CONTAINING A MAGNUM BULLET AND PLASTIC VILE TO COMPARE IT
25 WITH YOUR TEST FIRED BULLETS IN STATE'S 34-A; IS THAT CORRECT?

26 A THAT'S CORRECT.

27 Q AND I GUESS THE BOTTOM LINE IS YOU CANNOT
28 TELL WHAT WEAPON FIRED THE MANGLED BULLET IN STATE'S 32-A;
29 WOULD THAT BE CORRECT? YOU CANNOT IDENTIFY A SPECIFIC --

30 A I CANNOT IDENTIFY A SPECIFIC GUN AS HAVING
31 FIRED IT. I CAN IDENTIFY WHAT TYPES OF GUNS COULD HAVE FIRED IT.

32 Q COULD IT HAVE BEEN A STURM-RUGER?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

A YES. I BELIEVE I INDICATED THAT IN MY INITIAL REPORT OF MARCH 28TH.

Q WHAT OTHER GUNS COULD HAVE FIRED IT?

A A FAIRLY LARGE NUMBER AND VARIETIES. THE TWO, THAT IS STURM-RUGER AND SMITH AND WESSON, ARE THE TWO MOST COMMON AMERICAN FIRMS WHICH MANUFACTURE .38 AND .357 REVOLVERS BEARING THAT SAME CLASS CHARACTERISTIC AS FOUND ON THE BULLET 32-A. HOWEVER, THERE ARE SEVERAL OTHER SPANISH AND SOUTH AMERICAN COUNTRIES THAT HAVE MADE SMITH AND WESSON COPIES AND THESE DO BEAR THE SAME OR SIMILAR RIFLING CHARACTERISTICS.

Q ARE THESE SPANISH AND SOUTH AMERICAN WEAPONS AVAILABLE IN THE UNITED STATES?

A YES, THEY ARE.

Q WELL, I GUESS THERE WOULD BE MILLIONS OF POTENTIAL WEAPONS THAT COULD HAVE FIRED STATE'S 32-A, THE MANGLED BULLET IN THE PLASTIC VILE?

A THAT'S CORRECT.

MR. FRANZEN: I HAVE NO OTHER QUESTIONS, YOUR HONOR.

MR. SEATON: NOTHING FURTHER, YOUR HONOR.

THE COURT: MAY I SEE COUNSEL, PLEASE.

YOU ARE EXCUSED.

(WHEREUPON, THE WITNESS WAS EXCUSED.

(WHEREUPON, SIDE BAR CONFERENCE WAS HELD AT THE BENCH; NOT REPORTED. AT THE CONCLUSION OF WHICH THE FOLLOWING WAS HAD:)

THE COURT: I BELIEVE THAT THERE WAS ONE JUROR THAT FORGOT TO CATCH A BUS. MY BAILIFF SAYS THAT HE WILL DRIVE SOMEONE, IF IT'S IN THE VALLEY ANYWHERE.

JUROR NUMBER 10, MS. MARILYN CAPASSO: THAT'S OKAY.

DON'T WORRY ABOUT IT.

THE COURT: WE'RE GOING TO BE IN RECESS UNTIL 9:30 TOMORROW MORNING. AS YOU NOTICE, WE'RE TRYING TO RUN A LITTLE LONGER IN ORDER TO GET ALL OF THE WITNESSES IN AND TRY TO FINISH THE CASE BY FRIDAY, OTHERWISE WE'RE GOING TO GO INTO THE WEEKEND. I DON'T WANT TO GO INTO THE WEEKEND. BUT I WOULD LIKE TO AT LEAST BE ABLE TO HAVE ALL OF THE EVIDENCE IN TOMORROW, AND HAVE YOU INSTRUCTED AND ARGUE THE CASE TO YOU SOMETIME FRIDAY. THAT'S WHAT I AM TRYING TO DO, AND THAT'S THE REASON WHY WE'RE RUNNING A LITTLE LONGER.

WHEN WE HAVE ARGUMENTS OUTSIDE OF YOUR PRESENCE, I KNOW IT'S DIFFICULT FOR YOU TO UNDERSTAND, BUT WE'RE WORKING IN HERE WHILE YOU'RE OUT THERE WAITING TO COME INTO COURT.

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 IN THIS MATTER UNTIL 9:30 TOMORROW MORNING.

2111

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32

(WHEREUPON, AT THE HOUR OF
6:30 P.M., THE EVENING RECESS
WAS HAD IN THE PROCEEDINGS.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

CASE NO. C53867
DEPARTMENT NO. V
DOCKET H

FILED

MAR 11 1984

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
THURSDAY, APRIL 21, 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, THURSDAY, APRIL 21, 1983, AT 10:00 A.M.

2 * * * * *

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

5 MR. SEATON: YES, YOUR HONOR.

6 MR. COOPER: YES, YOUR HONOR.

7 MR. FRANZEN: YES, YOUR HONOR.

8 THE COURT: CALL YOUR NEXT WITNESS.

9 MR. HARMON: THANK YOU, YOUR HONOR. MUNSON MOSER.

10 THE CLERK: RAISE YOUR RIGHT HAND.

11
12 WHEREUPON,

13
14 MUNSON EDWIN MOSER,

15
16 CALLED AS A WITNESS HEREIN BY THE PLAINTIFF WAS FIRST DULY SWORN,
17 EXAMINED AND TESTIFIED AS FOLLOWS:

18
19 THE COURT: PROCEED.

20 MR. HARMON: THANK YOU.

21
22 DIRECT EXAMINATION

23
24 BY MR. HARMON:

25
26 Q STATE YOUR NAME, PLEASE.

27 A MUNSON EDWIN MOSER, M-O-S-E-R.

28 Q MR. MOSER, WHERE ARE YOU EMPLOYED?

29 A I'M EMPLOYED WITH THE LAS VEGAS METROPOLI-
30 TAN POLICE DEPARTMENT, ASSIGNED TO THE CRIMINALISTICS BUREAU.

31 Q WHAT ARE THE NATURE OF YOUR DUTIES WITH THE
32 CRIMINALISTICS BUREAU?

1 A MY PRESENT ASSIGNMENT IS A LATENT PRINT
2 EXAMINER.

3 Q HOW LONG HAVE YOU BEEN A LATENT PRINT
4 EXAMINER WITH THE CRIMINALISTICS BUREAU OF THE LAS VEGAS METRO-
5 POLITAN POLICE DEPARTMENT?

6 A EIGHT YEARS.

7 Q DO YOU HAVE PRIOR EXPERIENCE TO THAT IN THE
8 FIELD OF LATENT PRINT EXAMINATION?

9 A I HAVE.

10 Q WHAT TYPE OF EXPERIENCE DO YOU HAVE?

11 A THAT WAS WITH THE LOS ANGELES POLICE DEPART-
12 MENT IN CALIFORNIA. I SERVED IN THAT CAPACITY THERE FOR 17
13 YEARS.

14 Q IN TOTAL HAVE YOU HAD APPROXIMATELY 25 YEARS
15 OF EXPERIENCE IN THE FIELD OF LATENT PRINT EXAMINATION?

16 A I HAVE.

17 Q WHAT IS YOUR FORMAL TRAINING?

18 A STUDIED FINGERPRINTS IN COLLEGE, SEMINARS,
19 SOME TRAINING BY F.B.I. INSTRUCTED CLASSES, NAMELY THE TRAINING
20 AND EXPERIENCE IN THE FIELD.

21 Q MR. MOSER, OVER THE PERIOD OF 25 YEARS CAN
22 YOU ESTIMATE HOW MANY LATENT PRINT EXAMINATIONS YOU HAVE CON-
23 DUCTED?

24 A IT WOULD BE IMPOSSIBLE. IT WAS A CONTINUING
25 THING ON A DAILY BASIS.

26 Q HAS THAT CONTINUED DURING THE EIGHT YEARS
27 YOU'VE BEEN EMPLOYED WITH THE LAS VEGAS METROPOLITAN POLICE
28 DEPARTMENT?

29 A IT HAS.

30 Q HAVE YOU QUALIFIED AS AN EXPERT IN THE
31 FIELD OF LATENT PRINT EXAMINATION IN COURTS OF LAW?

32 A I HAVE.

1 Q WILL YOU INDICATE WHERE AND ON ABOUT HOW
2 MANY OCCASIONS?
3 A IN THE MUNICIPAL AND SUPERIOR COURTS OF
4 CALIFORNIA, THE JUSTICE AND DISTRICT COURTS OF NEVADA, ALSO IN
5 FRONT OF NEVADA STATE GAMING COMMISSION, AND IN THE CIRCUIT COURT
6 OF SOUTH OAKOTA. AND APPROXIMATELY -- I NO LONGER ENUMERATE THE
7 AMOUNT OF TIMES, BUT AT THE LAST COUNT IT WAS SOMEWHERE IN EXCESS
8 OF 800 TIMES.
9 Q MR. MOSER, WERE YOU EMPLOYED AS A LATENT
10 PRINT EXAMINER FOR THE CRIMINALISTICS BUREAU OF THE LAS VEGAS
11 METROPOLITAN POLICE DEPARTMENT ON APRIL THE 18TH, 1980?
12 A YES, SIR.
13 Q DID YOU, ON THAT DATE, HAVE OCCASION TO
14 CONDUCT A LATENT PRINT EXAMINATION?
15 A I DID.
16 Q WILL YOU STATE WHAT YOU EXAMINED ON APRIL
17 18TH, 1980?
18 A I EXAMINED LATENT PRINTS THAT HAD BEEN
19 COLLECTED BY OTHER PERSONNEL HERE, SOME THAT HAD BEEN COLLECTED
20 OR RECOVERED BY A PERSON IN ANOTHER STATE IN CALIFORNIA, AND
21 COMPARED THOSE WITH AN INKED AND ROLLED EXEMPLAR OF A KNOWN
22 PERSON.
23 MR. HARMON: MAY I HAVE THE COURT'S INDULGENCE.
24 THE COURT: YOU MAY.
25
26 BY MR. HARMON:
27
28 Q MR. MOSER, WHEN YOU ENGAGE IN A LATENT PRINT
29 COMPARISON WHAT IS YOUR PROCEDURE?
30 A A FIVE-POWER MAGNIFYING GLASS IS USED,
31 WHICH WAS MANUFACTURED SPECIFICALLY FOR THAT PURPOSE. THE EXAM-
32 INATION IS STRICTLY VISUAL. IT IS EYE COMPARISON BETWEEN A

2116

1 KNOWN SET OF FINGERPRINTS THAT ARE INKED AND A QUESTIONED FINGER-
2 PRINT THAT WAS DEVELOPED IN SOME MANNER AND RECOVERED FROM SOME
3 SURFACE.

4 THE COMPARISON IS MADE BY COMPARING
5 THE INDIVIDUAL RIDGE CHARACTERISTICS THAT COMPRISE THE PATTERN
6 OF THE FINGERPRINT.

7 Q BASED UPON YOUR TRAINING AND EXPERIENCE,
8 DO YOU HAVE AN OPINION AS TO WHETHER ANY TWO PERSONS HAVE THE
9 SAME RIDGE CHARACTERISTIC ON A FINGERPRINT, IDENTICALLY THE
10 SAME?

11 A AS OF THIS DATE, I HAVE YET TO HEAR OF ANY
12 CASE, WITH ALL OF THE FINGERPRINTS THAT HAVE BEEN COMPARED, ANY
13 TWO DIFFERENT PEOPLE HAVING AN IDENTICAL FINGERPRINT.

14 Q IT IS YOUR OPINION THAT EACH PERSON HAS
15 UNIQUE RIDGE CHARACTERISTICS?

16 A YES, SIR. THAT IS MY OPINION.

17 MR. HARMON: MAY I APPROACH THE WITNESS, YOUR HONOR?
18 THE COURT: YOU MAY.

19
20 BY MR. HARMON:

21
22 Q MR. MOSER, I AM SHOWING YOU NOW STATE'S
23 PROPOSED EXHIBITS 28-A, 29 AND 57. WILL YOU EXAMINE THOSE
24 PROPOSED EXHIBITS AND STATE WHETHER, ON APRIL THE 18TH, 1980,
25 YOU CONDUCTED A LATENT PRINT COMPARISON REGARDING THESE VARIOUS
26 PROPOSED EXHIBITS?

27 A YES, SIR. I DO RECOGNIZE THE EXHIBITS.
28 AND I DID CONDUCT AN EXAMINATION ON THAT DATE, WHICH WAS APRIL
29 THE 18TH, 1980, BETWEEN STATE'S PROPOSED EXHIBIT NUMBER 29 AND
30 STATE'S PROPOSED EXHIBIT NUMBER 57.

31 AND I NOTE THAT -- I NOTED THAT ON
32 STATE'S PROPOSED EXHIBIT 28-A THAT I EXAMINED THAT ON APRIL THE

2117

1 -- APRIL THE 9TH, 1983. BUT THE THREE EXHIBITS WERE ORIGINALLY
2 COMPARED ON APRIL THE 18TH, 1980.

3 Q WILL YOU STATE FOR THE RECORD WHAT PROPOSED
4 EXHIBIT 29 IS?

5 A STATE'S PROPOSED EXHIBIT 29 IS A STANDARD
6 FINGERPRINT CARD BEARING TEN INKED AND ROLLED FINGERPRINTS OF
7 A KNOWN PERSON. THE CARD ATTACHED TO THE BACK OF STATE'S PRO-
8 POSED EXHIBIT 29 IS A RIGHT AND LEFT THUMB PRINT, ALSO INKED.

9 Q IS THE KNOWN PERSON ON PROPOSED EXHIBIT 29
10 IDENTIFIED AS SAMUEL HOWARD, ALSO KNOWN AS GEORGE WILLIAMS?

11 A YES, SIR.

12 Q AND ARE THOSE PRINTS PURPORTEDLY OBTAINED
13 BY SOMEONE NAMED BLOCK IN THE STATE OF CALIFORNIA?

14 A THAT'S CORRECT.

15 Q WERE THOSE THE STANDARD OR EXEMPLAR PRINTS
16 ORIGINALLY USED BY YOU ON APRIL 18, 1980, IN MAKING CERTAIN
17 LATENT PRINT COMPARISONS?

18 A YES, SIR, THEY ARE.

19 Q NOW, SPECIFICALLY REFERRING TO PROPOSED
20 EXHIBIT 57, WHAT DOES THAT PURPORT TO BE?

21 A STATE'S PROPOSED EXHIBIT 57 IS A LATENT
22 PRINT THAT WAS DEVELOPED BY A PERSON HERE EMPLOYED AND LIFTED
23 AND TRANSFERRED TO THIS CARD, WHICH IS PREPARED FOR THAT
24 PURPOSE.

25 Q NOW, WAS THE PERSON WHO LIFTED THAT PARTIC-
26 ULAR PRINT, IS HE IDENTIFICATION SPECIALIST HANK TRUSZKOWSKI?

27 A YES, SIR.

28 Q I DIRECT YOUR ATTENTION NOW TO THE REMAIN-
29 ING PROPOSED EXHIBITS, PROPOSED 28-A. WHAT DID THE LATENT PRINT
30 CARDS PURPORT TO BE, WHICH COMPRISED THAT PROPOSED EXHIBIT?

31 A STATE'S EXHIBIT -- PROPOSED EXHIBIT 28-A
32 IS A SERIES OF LIFTED LATENT PRINTS THAT WERE ALSO DEVELOPED --

1 AND LIFTED BY ANOTHER PERSON.

2 Q DOES THAT APPEAR TO BE OFFICER DWIGHT
3 HOOKER OF THE DOWNEY POLICE DEPARTMENT?

4 A YES, SIR, IT DOES.

5 Q DID THESE PURPORT TO BE LATENTS WHICH ARE
6 RECOVERED FROM AN OLDSMOBILE CUTLASS?

7 A YES, SIR.

8 Q MR. MOSER, SPECIFICALLY REGARDING PROPOSED
9 EXHIBIT 29, WHAT PURPORTS TO BE THE EXEMPLAR OR STANDARD PRINTS
10 OF ONE SAM HOWARD, ALSO KNOWN AS GEORGE WILLIAMS, AND STATE'S
11 PROPOSED EXHIBIT 57, THE LATENT PRINT RECOVERED BY IDENTIFICA-
12 TION SPECIALIST MR. TRUSZKOWSKI, WHAT WOULD YOUR PROCEDURE ON
13 APRIL 18, 1980, IN CONDUCTING YOUR LATENT PRINT COMPARISON?

14 A THE PROCEDURE WAS, AS I TOLD YOU BEFORE,
15 THAT OF USING A MAGNIFYING GLASS IN COMPARING THIS LATENT PRINT
16 TO THE FINGERPRINTS ON STATE'S PROPOSED EXHIBIT NUMBER 29 IN
17 AN EFFORT TO MATCH THEM.

18 Q DID YOU, AS A RESULT OF YOUR COMPARISON,
19 FORM AN OPINION ON APRIL THE 18TH, 1980?

20 A I DID.

21 Q HAVE YOU SUBSEQUENTLY TO THAT DATE COMPARED
22 THE LATENT PRINT RECOVERED BY IDENTIFICATION SPECIALIST HANK
23 TRUSZKOWSKI, WHICH IS MARKED AS PROPOSED EXHIBIT 57, AND THE
24 LATENT PRINTS RECOVERED BY DWIGHT HOOKER OF THE DOWNEY POLICE
25 DEPARTMENT FROM AN OLDSMOBILE CUTLASS. THEY ARE MARKED AS
26 PROPOSED EXHIBIT 28, WITH ADDITIONAL EXEMPLAR PRINTS OF SAM
27 HOWARD.

28 A I DID.

29 Q DO YOU RECALL ON WHAT DATE THAT WAS?

30 A ACCORDING TO MY NOTATION HERE, IT WOULD
31 HAVE BEEN MARCH THE 19TH, 1983, APPROXIMATELY.

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

2119

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

THE COURT: YES.

BY MR. HARMON:

Q MR. MOSER, I AM SHOWING YOU NOW AN ADDITIONAL EXEMPLAR -- A SERIES OF EXEMPLAR PRINT CARDS. THEY ARE MARKED AS PROPOSED EXHIBIT 58. ARE YOU ABLE TO RECOGNIZE THIS PROPOSED EXHIBIT?

A YES, I CAN. I PUT A DATE ON THE FACE OF IT AND MY INITIALS AND PERSONNEL NUMBER.

Q DID YOU, IN FACT, UTILIZE PROPOSED EXHIBIT 58, WHICH PURPORTS TO BE THE KNOWN FINGER AND THUMB PRINT OF DEFENDANT SAM HOWARD RECOVERED BY OFFICER HANK TRUSZKOWSKI IN COMPARING THOSE PRINTS WITH THE OTHER EXHIBITS YOU HAVE, PROPOSED EXHIBITS 29, 57 AND 28-A?

A I DID UTILIZE THEM AND MADE A SEPARATE COMPARISON, COMPARING STATE'S PROPOSED EXHIBIT 58 WITH EACH OF THE OTHER THREE EXHIBITS.

Q WAS THAT ON MARCH THE 14TH, 1983?

A YES, SIR, IT WOULD BE.

ALSO I HAVE HERE THE DATE OF MARCH THE 8TH, 1983, ON THE FACE OF THE EXHIBIT. SO THAT WOULD BE THE ORIGINAL DATE THAT I BEGAN. THE 14TH WOULD BE THE DATE THAT I COMPLETED ALL OF MY EXAMINATION AND WROTE THAT ON MY REPORT.

Q SPECIFICALLY REGARDING PROPOSED EXHIBIT 58 AND PROPOSED EXHIBIT 29, DID YOU MAKE AN EFFORT TO DETERMINE WHETHER THE TWO STANDARD OR EXEMPLAR SERIES OF PALM AND FINGER-PRINTS WERE BY THE SAME INDIVIDUAL?

A I DID.

Q WHAT IF ANY WAS THE OPINION YOU FORMED?

MR. FRANZEN: YOUR HONOR, WE WOULD RESPECTFULLY OBJECT. IF THIS WITNESS IS GOING TO TESTIFY REGARDING EXEMPLARS

2120

1 DONE BY AN OFFICER BLOCK, WE'VE HAD NO TESTIMONY THAT I RECALL
2 FROM AN OFFICER BLOCK.

3 THE COURT: I CAN'T HEAR YOU.

4 MR. FRANZEN: WE'VE HAD NO TESTIMONY FROM AN
5 OFFICER BLOCK, YOUR HONOR, IDENTIFYING FINGERPRINTS OR LATENTS.
6 AND I WOULD RESPECTFULLY OBJECT TO ANY TESTIMONY REGARDING ANY
7 COMPARISONS MADE FROM AN EXHIBIT, PROPOSED EXHIBIT, THAT'S NOT
8 IDENTIFIED THROUGH THE TESTIMONY BY OFFICER BLOCK.

9 MR. HARMON: YOUR HONOR, IT'S ONLY FOR CONTINUITY
10 SAKE. THE EVIDENCE WE HAVE IS THAT DETECTIVE LEAVITT RECEIVED
11 THOSE EXEMPLARS FROM THE DOWNEY POLICE DEPARTMENT. WE'VE
12 ESTABLISHED, WITHOUT GOING INTO WHAT HIS OPINION WAS, THAT ON
13 APRIL THE 18TH, 1980, THOSE EXEMPLARS WERE UTILIZED BY MR.
14 MOSER. AND NOW I'M ASKING HIM TO MAKE SURE OF THE IDENTITY OF
15 THE PERSON WHOSE PRINTS APPEARED ON THAT EXEMPLAR.

16 IF HE COMPARED THE EXEMPLARS IDENTIFIED BY
17 TRUSZKOWSKI IN THIS ROOM AS BEING TAKEN FROM THE DEFENDANT WITH
18 WHAT PURPORTS TO BE MR. BLOCK'S EXEMPLARS, I DON'T THINK, IN
19 VIEW OF THE LIMITED OPINION I'M ASKING, THERE'S ANY FOUNDATION
20 PROBLEM. HE'S BEEN SHOWN TO BE AN EXPERT. HE CAN SAY WHETHER
21 THE TWO STANDARD CARDS WERE TAKEN FROM THE SAME PERSON.

22 THE COURT: YOUR OBJECTION IS OVERRULED.

23 MR. HARMON: THANK YOU.

24
25 BY MR. HARMON:

26
27 Q WHAT IS YOUR OPINION?

28 A IN MY OPINION THE FINGERPRINTS APPEARING
29 ON -- AND THUMB PRINTS APPEARING ON STATE'S PROPOSED EXHIBIT 29
30 AND STATE'S PROPOSED EXHIBIT 58 WERE MADE BY ONE AND THE SAME
31 PERSON.

32 Q I'M SHOWING YOU NOW PROPOSED EXHIBIT 28-A.

2121

1 THESE PURPORT TO BE LATENT PRINT CARDS PREPARED BY OFFICER
2 DWIGHT HOOKER OF THE DOWNEY POLICE DEPARTMENT. THERE HAS,
3 FURTHERMORE, BEEN TESTIMONY THAT HE RECOVERED THOSE FROM A
4 BLACK OLDSMOBILE CUTLASS ON OR ABOUT APRIL THE 1ST OR 2ND, 1980,
5 IN DOWNEY, CALIFORNIA.

6 HAVE YOU HAD OCCASION TO COMPARE THE
7 KNOWN PRINTS OF DEFENDANT SAMUEL HOWARD AS THEY ARE PORTRAYED IN
8 PROPOSED EXHIBIT 58 WITH THE LATENT FINGERPRINTS RECOVERED BY
9 OFFICER DWIGHT HOOKER WHICH ARE IDENTIFIED AS PROPOSED EXHIBIT
10 28-A?

11 A YES, SIR, I DID.

12 Q WHAT WAS THE OPINION THAT YOU FORMED?

13 A OF THE SEVERAL LISTED LATENT PRINT CARDS,
14 I IDENTIFIED A LEFT MIDDLE FINGER AS MATCHING THE CORRESPONDING
15 FINGER ON STATE'S PROPOSED NUMBER 58, A LEFT THUMB --

16 Q AND WHERE WAS THE AREA THAT THAT LATENT
17 WAS PURPORTEDLY LIFTED FROM?

18 A ACCORDING TO THE NOTATION ON THE LIFT CARD,
19 THE INTERIOR PORTION OF THE DRIVER'S WINDOW.

20 Q PROCEED, PLEASE.

21 A ON THE SECOND CARD I IDENTIFIED THE LEFT
22 THUMB AS MATCHING THE CORRESPONDING FINGER ON STATE'S PROPOSED
23 EXHIBIT 58. AND THE NOTATION AS TO ITS LOCATION IS THE EXTERIOR
24 DRIVER'S REAR VIEW MIRROR, THE MIRROR PORTION.

25 ON THE NEXT CARD I IDENTIFIED A
26 PARTIAL LEFT THUMB PRINT AND THE NOTATION OF WHERE THIS LOCATION
27 WAS WAS ON THE FRONT BUMPER DRIVER'S SIDE.

28 MR. FRANZEN: I AM GOING TO HAVE TO INTERCEDE IF
29 HE IS MAKING COMPARISONS AND READING WHAT DETECTIVE BLOCK WROTE
30 ON HIS --

31 MR. HARMON: WELL, WE'LL OFFER THEM, YOUR HONOR.
32 THE FOUNDATION HAS BEEN LAID. WE WILL OFFER PROPOSED EXHIBIT -

2122

1 28-A, I BELIEVE THAT'S THE ONE.

2 MR. FRANZEN: THAT IS THE ONE FROM HOOKER OR BLOCK?

3 MR. HARMON: HOOKER.

4 MR. FRANZEN: NO OBJECTION.

5 THE COURT: SAME WILL BE RECEIVED.

6 PROCEED.

7
8 BY MR. HARMON:

9
10 Q CONTINUE, PLEASE.

11 A ON THE REVERSE SIDE OF THE LIFT THAT I
12 JUST IDENTIFIED IS ANOTHER ADDITIONAL LIFTED PARTIALLY PRINT,
13 PALM PRINT, WHICH WAS ALSO IDENTIFIED AS THE LEFT PALM. AND ITS
14 LOCATION WAS NOTED THE FRONT BUMPER, DRIVER'S SIDE.

15 ON THE NEXT CARD, ON THE FACE OF IT,
16 I IDENTIFIED A RIGHT INDEX FINGER. THESE IDENTIFICATIONS
17 CORRESPOND TO THE EXEMPLARS IN STATE'S EXHIBIT 58. I IDENTIFIED
18 A RIGHT INDEX FINGER. AND THE NOTATION THERE WAS FROM AN EMPTY
19 BOTTLE OF SPARKLING CHAMPAGNE ON THE RIGHT REAR FLOORBOARD.

20 AND ON THE REVERSE SIDE OF THE NEXT
21 CARD I IDENTIFIED A LEFT INDEX FINGER. THE NOTATION OF ITS
22 LOCATION IS EXTERIOR DRIVER'S DOOR WINDOW.

23 AND ON THE REMAINING THREE LATENT.
24 PRINT LIFTS, I DID NOT IDENTIFY THOSE.

25 Q IN ALL, MR. MOSER, HOW MANY IDENTIFICATIONS
26 DID YOU MAKE FROM PROPOSED -- IS IT PROPOSED EXHIBIT 28-A, THE
27 HOOKER LATENT PRINTS?

28 A IT IS 28-A.

29 Q 28-A.

30 A THAT WOULD BE ONE, TWO -- IN ALL SIX
31 PARTIAL LATENT PRINTS.

32 Q WHICH WERE MATCHED TO EXEMPLAR PRINTS OF

1 THE DEFENDANT SAM HOWARD; IS THAT CORRECT?

2 A THAT IS CORRECT.

3 Q I AM SHOWING YOU NOW PROPOSED EXHIBIT 57.
4 AS WE PREVIOUSLY INDICATED, THIS PURPORTS TO BE A LATENT PRINT
5 LIFTED BY IDENTIFICATIONS SPECIALIST TRUSZKOWSKI FROM A 1977
6 DODGE VAN. DID YOU HAVE OCCASION TO COMPARE THE KNOWN PRINTS
7 OF SAM HOWARD, RECOVERED BY THE SAME HANK TRUSZKOWSKI, WITH
8 PROPOSED EXHIBIT 57?

9 A I DID.

10 Q THE KNOWN PRINTS BEING IDENTIFIED AS
11 PROPOSED EXHIBIT 58?

12 A YES, SIR.

13 Q ON WHAT DATE DID YOU PERFORM THAT COMPARI-
14 SON?

15 A THIS COMPARISON WAS PERFORMED ON THE 8TH
16 OF MARCH, 1983, BETWEEN THE TWO EXHIBITS.

17 Q AND WHAT WAS YOUR PROCEDURE IN CONDUCTING
18 THE COMPARISON?

19 A IT WAS THE SAME AS I EXPLAINED BEFORE,
20 USING A MAGNIFYING GLASS AND COMPARING ALL OF THE VISIBLE RIDGE
21 CHARACTERISTICS ON THE LATENT PRINT WITH THOSE ON EACH EXEMPLAR
22 PRINT.

23 Q DID YOU FORM AN OPINION?

24 A I DID.

25 Q WHAT IS YOUR OPINION?

26 A IN MY OPINION, THE PORTION LATENT PRINT,
27 APPEARING ON STATE'S PROPOSED EXHIBIT NUMBER 57, MATCHES THE
28 SAME PORTION OF THE LEFT THUMB PRINT ON STATE'S PROPOSED 58.

29 Q MR. MOSER, AT THE REQUEST OF REPRESENTA-
30 TIVES OF THE CLARK COUNTY DISTRICT ATTORNEYS OFFICE REGARDING
31 THE LAST LATENT PRINT COMPARISON TO WHICH YOU HAVE REFERRED,
32 HAVE YOU PREPARED AN ENLARGED DISPLAY TO ILLUSTRATE THE BASIS OF

2124

1 YOUR OPINION?

2 A YES, SIR.

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

4 MAY I APPROACH THE WITNESS, YOUR HONOR?

5 THE COURT: YOU MAY.

6

7 BY MR. HARMON:

8

9 Q MR. MOSER, I'M SHOWING YOU NOW PROPOSED

10 EXHIBIT 64. ARE YOU ABLE TO IDENTIFY IT?

11 A YES, SIR, I PREPARED THIS MYSELF.

12 Q WHAT EXACTLY IS PROPOSED EXHIBIT 64?

13 A PROPOSED EXHIBIT 64 CONSISTS OF AN ENLARGED
14 PORTION OF THE LEFT THUMB PRINT APPEARING ON THE FACE OF STATE'S
15 PROPOSED EXHIBIT 58. AND AN ENLARGED PHOTOGRAPH OF THE PARTIAL
16 LATENT PRINT APPEARING ON THE FACE OF STATE'S PROPOSED EXHIBIT
17 57.

18 Q HOW DID YOU GO ABOUT MAKING THESE ENLARGE-
19 MENTS?

20 A IT IS A MATTER OF PHOTOGRAPHING THE
21 ORIGINAL FINGERPRINTS, MAKING NEGATIVES, AND THEN PRINTING THE
22 ENLARGED PRINTS FROM THOSE NEGATIVES, THEN CHARTING SEVERAL OF
23 THE RIDGE CHARACTERISTICS THAT I IDENTIFIED.

24 Q WOULD REFERENCE TO PROPOSED EXHIBIT 64 BE
25 HELPFUL TO YOU IN EXPLAINING TO THE COURT AND JURY THE BASIS OF
26 YOUR FINDINGS.

27 A YES, SIR, IT WOULD.

28 Q ARE THE ENLARGEMENTS TRUE AND ACCURATE
29 REPRODUCTIONS OF BOTH THE LATENT PRINTS RECOVERED BY OFFICER
30 TRUSZKOWSKI AND THE KNOWN LEFT THUMB PRINT OF DEFENDANT SAM
31 HOWARD?

32 A YES, SIR.

1 MR. HARMON: YOUR HONOR, AT THIS TIME I OFFER
2 PROPOSED EXHIBITS 57, 58, 29 AND 64.

3 THE COURT: ANY OBJECTION?

4 MR. COOPER: WE'D HAVE NO OBJECTION, YOUR HONOR.

5 THE COURT: SAME MAY BE RECEIVED.

6 MR. HARMON: THANK YOU, YOUR HONOR.

7 WITH THE COURT'S PERMISSION, MAY WE HAVE
8 MR. MOSER STEP DOWN TO THE BOARD?

9 THE COURT: HE MAY. PULL IT OUT.

10 MR. HARMON: THANK YOU, MR. BAILIFF.

11 THE COURT: COUNSEL, CAN YOU CLIP THAT TOP, I
12 BELIEVE.

13
14 BY MR. HARMON:

15
16 Q MR. MOSER, I'D LIKE YOU NOW, BY REFERRING
17 TO STATE'S EXHIBIT 64, AND AS OCCASION MAY ARISE, STATE'S
18 EXHIBITS 57 AND 58, TO EXPLAIN WHAT THE BASIS WAS OF YOUR
19 OPINION THAT THE LATENT PRINT RECOVERED BY OFFICER TRUSZKOWSKI
20 FROM A DOOR KNOB OF A CARGO DOOR ON THE PASSENGER'S SIDE OF THE
21 1977 DODGE VAN IS MATCHED TO THE LEFT THUMB PRINT OF THE
22 DEFENDANT SAM HOWARD.

23 A THE BASIS FOR THE CONCLUSION, TO BEGIN
24 WITH, IS THAT NO TWO DIFFERENT PEOPLE HAVE IDENTICAL FINGER-
25 PRINTS. THAT IS NOT TO SAY THE PATTERN OF THE PRINT, HOWEVER,
26 BECAUSE PEOPLE HAVE SIMILAR PATTERNS. IT IS THESE INDIVIDUAL
27 RIDGE CHARACTERISTICS THAT YOU CAN SEE A LITTLE MORE CLEARLY
28 ON THE INKED IMPRESSION SIDE THAT ARE THE DIFFERENCE IN ANY
29 INDIVIDUAL'S FINGERPRINTS, EVEN THOUGH THE PATTERN MAY BE THE
30 SAME.

31 THE BASIS FOR THE IDENTIFICATION IS
32 THAT THE SAME RIDGE CHARACTERISTICS THAT APPEAR IN THE KNOWN

2126

1 PRINT ALSO APPEAR IN THE QUESTIONED PRINT IN THE SAME NUMBERS AND
2 IN THE SAME LOCATIONS.

3 IN THE CASE OF NUMBER 1, IT IS AN END-
4 ING RIDGE, OR WHEN ONE OF THE FRICTION RIDGES ENDS. AND NUMBER
5 2 IS THE OPPOSITE END OF THE SAME RIDGE, WHICH ENDS IN THE SAME
6 LOCATION.

7 NUMBER 3 IS ALSO AN ENDING RIDGE, END-
8 ING IN A DOWNWARD MANNER.

9 NUMBER 4 AND NUMBER 5 ARE BOTH ENDS OF
10 A SHORT RIDGE THAT APPEARS IN THE SAME PORTION OF THE FINGER-
11 PRINT.

12 NUMBER 6 IS ALSO AN ENDING RIDGE,
13 CONTINUES ON TO THE LEFT.

14 NUMBER 7 IS ALSO AN ENDING RIDGE.

15 NUMBER 8 IS A -- WHAT IS KNOWN AS A
16 "BIFURCATION". THAT IS WHERE A SINGLE RIDGE SEPARATES OR
17 DIVIDES AND BECOMES TWO RIDGES. AT THE POINT WHERE IT DIVIDES,
18 IT IS CALLED A "BIFURCATION".

19 NUMBER 9 IS ALSO A BIFURCATION.

20 NUMBER 10 IS THE SAME CHARACTERISTIC
21 OF A BIFURCATION. THESE ALL APPEAR IN THE SAME LOCATION IN
22 RELATIONSHIP TO ONE ANOTHER AND THERE ARE NO CHARACTERISTICS
23 IN THE LATENT PRINT THAT DO NOT APPEAR IN THE INKED IMPRESSION
24 IN THE SAME LOCATION.

25 Q MR. MOSER, YOU HAVE POINTED OUT TEN SIMILAR
26 CHARACTERISTICS IN TERMS OF THE RIDGE CHARACTERISTICS. DID YOU
27 FIND ADDITIONAL POINTS IN SIMILARITY?

28 A THERE ARE SOME SLIGHTLY MORE VAGUE POINTS,
29 BUT NONETHELESS THERE ARE ONE OR TWO MORE IN THE PRINTS.

30 Q IS THERE ANY DOUBT IN YOUR MIND THAT BOTH
31 PRINTS WHICH APPEAR ON STATE'S EXHIBIT 64 WERE MADE BY THE SAME
32 ...

2127

1 PERSON?

2 A THERE IS NO DOUBT IN MY MIND.

3 Q NOW, ASSUMING FOR A MOMENT THAT THE LATENT
4 PRINT WAS RECOVERED FROM A DOOR KNOB, DID YOU OBSERVE ANY
5 EVIDENCE OF OVERLAY PRINTS OF THAT LATENT AT THE TIME OF YOUR
6 LATENT PRINT COMPARISON?

7 A NO, SIR, I DID NOT.

8 Q ASSUMING THAT IT WAS RECOVERED FROM A DOOR
9 KNOB, WHAT SIGNIFICANCE, IF ANY, CAN YOU ATTACH TO YOUR FINDING
10 THAT THERE WERE NO OVERLAY PRINTS ON IT?

11 A THE SIGNIFICANCE THERE WOULD BE IF THERE
12 WERE AN OVERLAY IT WOULD INDICATE TO ME THAT THE FINGERPRINT
13 THAT HAD BEEN PLACED THERE PRIOR WAS STILL IN FRESH ENOUGH CON-
14 DITION, THAT IS TO SAY THE MOISTURE WAS TRANSFERRED FROM THE
15 FINGER TO THE SURFACE HAD NOT YET DRIED OR EVAPORATED, RENDERING
16 THE FIRST PRINT TO BE ALSO PARTLY DEVELOPED, ALONG WITH THE
17 SECOND PRINT ON TOP OF IT.

18 SO THE FINDING THERE WOULD BE THAT THE
19 -- I DID NOT DETECT ANY PRIOR FRESH FINGERPRINT BENEATH THIS.

20 AND HAD THIS LATENT PRINT HAD A SECOND FINGERPRINT PUT ON TOP
21 OF IT, IT WOULD HAVE OR SHOULD HAVE DEVELOPED IN THE SAME MANNER,
22 INDICATING THE TWO -- THE TWO IMPRESSIONS.

23 Q DID YOU FIND ANY EVIDENCE OF ANY OTHER
24 PRINT BEING PLACED ON TOP OF THE LATENT PRINT, WHICH IS SHOWN
25 ON STATE'S EXHIBIT 64?

26 A NONE.

27 MR. HARMON: THANK YOU.

28 MAY I RETURN TO THE WITNESS CHAIR?

29 THAT CONCLUDES DIRECT, YOUR HONOR.

30 THE COURT: CROSS?

31 MR. COOPER: COURT'S INDULGENCE.

32 ..

CROSS EXAMINATION

BY MR. COOPER:

Q MR. MOSER, YOU TESTIFIED THAT YOU WERE GIVEN THE ONE LATENT PRINT THAT'S SHOWN ON THE BLOWUP THERE; IS THAT RIGHT?

A YES, SIR.

Q TO COMPARE WITH A KNOWN PRINT FROM THE DEFENDANT SAMUEL HOWARD?

A YES, SIR.

Q RIGHT?

WERE YOU ALSO GIVEN OTHER LATENT PRINTS TO COMPARE WITH MR. HOWARD'S PRINTS?

A NO, SIR. THE PRINTS I WAS REQUESTED TO COMPARE ARE THE ONES THAT ARE IN EVIDENCE.

Q I SEE.

THOSE BEING THE ONES THAT WERE LIFTED FROM THE 1980 OLDSMOBILE AND THE ONE PRINT THAT WAS PURPORTEDLY LIFTED FROM THE DOOR KNOB OF THE VAN; IS THAT RIGHT?

A YES, SIR.

Q YOU WEREN'T GIVEN LATENT PRINTS, SOME 15 OR SO LATENT PRINTS, THAT WERE PURPORTEDLY LIFTED FROM THE VAN TO COMPARE WITH MR. HOWARD'S KNOWN PRINTS?

A I'M SORRY. I'M IN ANOTHER -- THERE WERE SOME ADDITIONAL FINGERPRINTS, YES, FROM THE VAN.

Q OKAY. DO YOU RECALL HOW MANY PRINTS FROM THE VAN YOU WERE GIVEN TO COMPARE WITH MR. HOWARD'S PRINTS?

A I DO NOT RECALL THE EXACT NUMBER.

Q OKAY.

A THERE WERE SEVERAL.

Q OKAY. COULD IT HAVE BEEN IN EXCESS OF TEN?

2129