

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.)
)
 REGIS DEON THOMAS,)
)
 DEFENDANT-APPELLANT.)

SUPERIOR COURT
NO. BA075063

AUG 31 1995

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE EDWARD A. FERNS, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 26 OF 33
PAGES 3919 THROUGH 3969, INCLUSIVE

COPY

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GEORGE W. SABIA, CSR #3336
OFFICIAL REPORTERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 106

HON. EDWARD A. FERNS, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

REGIS THOMAS,)

DEFENDANT.)

NO. BA075063

VOL 26

REPORTERS' DAILY TRANSCRIPT

APRIL 26, 1995
PAGES 3919 THROUGH 3969

FILED

LOS ANGELES SUPERIOR COURT

MAY 9 1995

APPEARANCES:

EDWARD M. KRITZMAN, CLERK

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C. PEREZ, DEPUTY

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OFFICIAL REPORTERS

I N D E X

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 26, 1995
2 DEPARTMENT NO. 106 HON. EDWARD A. FERNS, JUDGE
3 10:10 A.M.

4
5 (APPEARANCES AS HERETOFORE NOTED.)
6

7 THE COURT: RECALLING THE CASE OF REGIS THOMAS,
8 MR. THOMAS IS PRESENT WITH RESPECTIVE COUNSEL. WE'RE
9 OUT OF THE PRESENCE OF THE JURORS.

10 I HAVEN'T HAD A CHANCE TO GO THROUGH THE
11 INSTRUCTIONS, BUT MR. ARNOLD, HAVE YOU AND MR. JAFFE
12 DISCUSSED THE INSTRUCTIONS?

13 MR. ARNOLD: YES.

14 THE COURT: ARE THERE ANY DISAGREEMENTS AS FAR AS
15 YOU'RE CONCERNED?

16 MR. ARNOLD: TWO.

17 THE COURT: WHICH ONES ARE THEY?

18 MR. ARNOLD: THESE ARE BOTH INSTRUCTIONS THAT I
19 DO NOT FEEL IS APPROPRIATE BASED ON THE LAW AND THE USE
20 NOTES THAT MR. JAFFE WANTS.

21 ONE IS EYEWITNESS IDENTIFICATION
22 INSTRUCTIONS, THAT IS 291 AND 292. AND ALSO, MR. JAFFE
23 WANTS THE INSTRUCTIONS ON THE VOLUNTARY MANSLAUGHTER AND
24 INVOLUNTARY MANSLAUGHTER, AND MY READING OF THE
25 INSTRUCTIONS, IT WOULD NOT BE APPROPRIATE IN THIS CASE.

26 AND THEN WE WANT TO TALK ABOUT ONE OF THOSE
27 FIRST?

28 THE COURT: OKAY. WELL, LET ME JUST HEAR FROM

1 MR. JAFFE AND I'LL LET YOU RESPOND.

2 MR. JAFFE, IS IT 2.91 AND 2.92?

3 MR. JAFFE: YES.

4 THE COURT: AND YOUR BASIS FOR THEM OR YOUR
5 POSITION?

6 MR. JAFFE: YOUR HONOR, I BELIEVE THAT THE
7 INSTRUCTION SHOULD BE GIVEN BECAUSE EYEWITNESS
8 IDENTIFICATION IS A CRUCIAL ISSUE IN THIS CASE.

9 I DON'T BELIEVE THAT MERELY BECAUSE THE
10 HEADNOTE SAID BURDEN OF PROVING IDENTITY BASED SOLELY ON
11 EYEWITNESS IS CONTROLLING.

12 IN THE SUPPLEMENT, CALIFORNIA JURY
13 INSTRUCTIONS FIFTH EDITION, UNDER 2.92, IT STATES CALJIC
14 2.92 BY WHICH OF DICTUM APPROVED IN PEOPLE VERSUS
15 WRIGHT, 45 CAL.3D, 1126.

16 THEN STATES FURTHER THE COURT HELD AT PAGE
17 1144 THAT THIS INSTRUCTION, A COMPARABLE ONE SHOULD BE
18 GIVEN WHEN REQUESTED BY THE DEFENSE IN A CASE WHERE
19 IDENTIFICATION IS A CRUCIAL ISSUE AND THERE IS NO
20 SUBSTANTIAL CORROBORATIVE EVIDENCE BY IMPLICATION.
21 THERE IS NO SUA SPONTE DUTY TO SO INSTRUCT, AND THE
22 INSTRUCTION WOULD NOT BE REQUIRED EVEN WHEN REQUESTED
23 WHERE IDENTIFICATION IS NOT A CRUCIAL ISSUE OR WHETHER
24 IT IS SUBSTANTIAL CORROBORATIVE EVIDENCE.

25 WELL, IN THIS CASE, I THINK IDENTIFICATION
26 IS A CRUCIAL ISSUE. IT WOULD NOT NECESSARILY BE
27 REQUIRED IN A CASE WHERE THE CASE IS CIRCUMSTANTIAL.

28 THERE IS STRONG CORROBORATIVE EVIDENCE AND

1 THE EYEWITNESS IDENTIFICATION IS REALLY NOT A
2 SUBSTANTIAL PORTION OF THE PEOPLE'S CASE, BUT IN THIS
3 CASE, I THINK THAT ALICIA JORDAN'S TESTIMONY IS A
4 SUBSTANTIAL PORTION OF THE PROSECUTION'S CASE.

5 THE COURT: OKAY.

6 MR. ARNOLD.

7 MR. ARNOLD: YOUR HONOR, 2.91 IS ENTITLED BURDEN
8 OF PROVING IDENTITY BASED SOLELY ON EYEWITNESSES.

9 WITHOUT GOING THROUGH THE EVIDENCE, I'M
10 SURE YOU WELL KNOW THAT THE IDENTIFICATION OF THE
11 DEFENDANT IS NOT BASED SOLELY ON EYEWITNESSES.

12 AND 2.92, THIS DISCUSSES WHEN
13 IDENTIFICATION IS A CRUCIAL ISSUE, AND I CERTAINLY AGREE
14 WITH MR. JAFFE THAT IDENTIFICATION IS A CRUCIAL ISSUE.

15 BUT THAT PORTION OF THE SENTENCE WHICH
16 FOLLOWS THAT TAKES 2.92 OUT OF THE RUNNING AS AN
17 APPROPRIATE INSTRUCTION BECAUSE IT SAYS AND THERE IS NO
18 SUBSTANTIAL CORROBORATIVE EVIDENCE.

19 THERE IS A LOT OF SUBSTANTIAL CORROBORATIVE
20 EVIDENCE COMING FROM DESHAUNNA CODY, COMING FROM
21 COOKSEY, COMING FROM KEYON PYE, AND AGAIN, WITHOUT GOING
22 INTO ALL OF THE PARTICULARS OF WHAT THEY SAID, THE FACT
23 THAT THERE IS A SIGNIFICANT AMOUNT OF CORROBORATIVE
24 EVIDENCE. AND, IN FACT, THIS IS MORE OF A
25 CIRCUMSTANTIAL EVIDENCE CASE THAN IT IS A DIRECT
26 EVIDENCE OR EYEWITNESS IDENTIFICATION CASE.

27 THE COURT: LET ME ASK YOU ON THE CARL ADKINS
28 KILLING.

1 MR. ARNOLD: I WOULD SAY -- WELL, THAT'S NOT
2 BASED SOLELY ON EYEWITNESSES BECAUSE OF THE STATEMENT
3 THAT THE EXTRA JUDICIAL ADMISSION THAT THE DEFENDANT
4 MAKES TO BERTRAND DICKSON ON SEPTEMBER 21ST IN THE
5 COMPTON COURT LOCKUP WHEN HE DISCUSSES THAT HE DID THIS
6 BECAUSE HE WAS UPSET AND IT WAS HIS GIRLFRIEND'S
7 BIRTHDAY.

8 THE COURT: BUT IT'S A CLOSER CALL THAN THAT ONE.

9 MR. ARNOLD: ABSOLUTELY.

10 THE COURT: THAT IS THE ONE THAT I WAS ACTUALLY
11 THINKING ABOUT WAS THE BERTRAND DICKSON ONE -- EXCUSE
12 ME -- THE CARLOS ADKINS ONE AS OPPOSED TO THE ONE
13 INVOLVING WHERE OFFICER MACDONALD AND OFFICER BURRELL
14 WERE THE ALLEGED VICTIMS.

15 I THOUGHT ABOUT IT LAST NIGHT. I KNEW THIS
16 ONE WOULD BE ONE. I HAVEN'T DONE RESEARCH.

17 MR. ARNOLD: WELL, I DON'T THINK IT'S A BAD CALL
18 FOR YOU TO GIVE IT IN CARLOS ADKINS.

19 THE COURT: ALL RIGHT.

20 AND I THINK THAT PROBABLY IT WILL BE A
21 SITUATION RATHER THAN HIGHLIGHT IT TO THE ONE AND
22 THROUGH ARGUMENT, OBVIOUSLY THERE IS A GENERAL
23 INSTRUCTION THAT ALL THE INSTRUCTIONS NEED NOT APPLY.

24 SO I THINK THAT PROBABLY I WOULD GIVE IT,
25 AND THEN YOU, THROUGH YOUR ARGUMENT, IF YOU FEEL IT'S
26 APPROPRIATE, MAKE THE DISTINCTION BETWEEN THE TWO CASES.

27 MR. ARNOLD: SO I WIN THE BATTLE BUT I LOSE THE
28 WAR. AS YOU SAID YESTERDAY, IT AIN'T ALWAYS FAIR. SO

1 THAT IS OKAY. ALL RIGHT.

2 THE COURT: I THINK IN THE ADKINS CASE IT'S A
3 DIFFERENT SITUATION.

4 MR. ARNOLD: I AGREE, JUDGE. I DON'T KNOW IF
5 EITHER ONE OF US WAS THINKING ABOUT ADKINS WHEN WE WERE
6 TALKING ABOUT 291 AND 292.

7 THE COURT: ALL RIGHT.

8 THE MANSLAUGHTER, ARE YOU REQUESTING IT AS
9 TO ALL THE KILLINGS?

10 MR. JAFFE: NO, JUST THE ADKINS CASE.

11 THE COURT: ALL RIGHT. AND YOUR BASIS FOR IT?

12 AND I HAVE SOME CASES I'M GOING TO READ. I
13 JUST FOUND THEM, AND IF YOU WANT, I CAN GIVE YOU THE
14 CITATIONS.

15 MR. JAFFE: ALL RIGHT.

16 THE COURT: BEFORE I MAKE A RULING. LET ME
17 GET --

18 MR. ARNOLD: WILL YOU HEAR FROM US BEFORE YOU
19 MAKE A RULING?

20 THE COURT: I'M GOING TO HEAR FROM YOU NOW. I'M
21 GOING TO GIVE YOU THE CITATIONS. I HAVEN'T READ THE
22 CASES. I WAS JUST DOING SOME RESEARCH BECAUSE I ASSUMED
23 THAT WAS GOING TO BE THE ISSUE.

24 I WAS KIND OF SURPRISED THERE WAS AN
25 INVOLUNTARY, BUT I ASSUMED THERE WAS GOING TO BE A
26 REQUEST FOR VOLUNTARY. JUST A SECOND.

27 NOW, I WILL TELL YOU I DON'T KNOW IF THEY
28 APPLY TO THE FACTS OF THIS CASE BECAUSE I HAVEN'T READ

1 THE CASES YET. JUST SO THAT YOU KNOW, PEOPLE VERSUS
2 DIXON AT 32 CAL.APP. 4TH, PAGE 1547.

3 MR. ARNOLD: SAY THE CITE, PLEASE.

4 THE COURT: 32 CAL.APP. 4TH, PAGE 1547, AND
5 PEOPLE VERSUS SEDENO, S-E-D-E-N-O, I BELIEVE, 10 CAL.3D,
6 703.

7 BUT AS I SAID, I HAVEN'T READ THE CASES,
8 BUT I'M GOING TO TAKE A BREAK AND READ THEM AFTER I HEAR
9 FROM YOU.

10 MR. JAFFE.

11 MR. JAFFE: WELL, THE INVOLUNTARY, THE THEORY
12 BEING THAT IT WAS A KILLING IN THE COURSE OF A
13 BRANDISHING OF A 417, AND THAT DURING THE COURSE OF THE
14 BRANDISHING, THE GUN WAS GRABBED OUT OF THE SHOOTER'S
15 HAND. THE GUN WENT OFF AT CLOSE RANGE AND THAT WOULD
16 HAVE BEEN AN INVOLUNTARY MANSLAUGHTER.

17 THE TESTIMONY IS BERTRAND DICKSON SAID THAT
18 HE HAD A CONVERSATION WITH MR. THOMAS. MR. THOMAS
19 ALLEGEDLY SAID, "HEY, IT WOULDN'T HAVE HAPPENED IF THE
20 GUY DIDN'T GRAB THE GUN."

21 AND I THINK THAT THE PEOPLE ARE -- THAT THE
22 PEOPLE HAVE TO TAKE THE GOOD WITH THE BAD, AND IF THAT'S
23 THE STATE OF THE RECORD, THE ONE INFERENCE FROM THAT
24 EVIDENCE IS THAT WAS NOT AN INTENTIONAL KILLING.

25 ON THE ISSUE OF VOLUNTARY MANSLAUGHTER, I
26 WOULD SUBMIT IT.

27 THE COURT: ALL RIGHT.

28 MR. ARNOLD.

1 MR. ARNOLD: YOUR HONOR, WITH RESPECT TO
2 MR. JAFFE'S CONTENTION THAT THIS IS A BRANDISHING, THERE
3 IS A CASE CALLED PEOPLE VERSUS SCHWARTZ,
4 S-C-H-W-A-R-T-Z, 2 CAL.APP. 4TH, 1319.

5 AT PAGE 1325 --

6 THE COURT: 2 CAL.APP. 4TH.

7 MR. ARNOLD: YES, 1319, AND AT PAGE 1325 THE
8 COURT SAYS THAT POINTING A LOADED GUN AT A PERSON IS
9 SUFFICIENT FOR 245 A2 WHICH IS ASSAULT WITH A FIREARM.

10 BRANDISHING IS WHERE THE GUN IS NOT POINTED
11 AT ANY PARTICULAR PERSON BUT IS BEING DISPLAYED IN A
12 THREATENING MANNER.

13 AS TESTIFIED TO BY BERTRAND DICKSON,
14 DEFENDANT IS ON HIS WAY OUT. CARLOS ADKINS MAKES THAT
15 WHAT AMOUNTS TO BE THE LAST THING HE EVER SAYS IS, "YOU
16 DON'T KNOW ME, EITHER," AT WHICH TIME THE DEFENDANT
17 WALKS BACK IN AND PLACES THE GUN BETWEEN CARLOS ADKINS'
18 EYES AND SAYS, "I'LL BLOW YOUR MOTHER FUCKING BRAINS
19 OUT."

20 THAT IS NOT A 417. IF ANYTHING THAT IS A
21 245 BECAUSE WE KNOW THE GUN WAS LOADED, THE GUN WAS
22 FIRED TWICE, A BULLET WHICH PENETRATED CARLOS ADKINS'
23 HEART.

24 SO I WOULD SAY THAT AN INVOLUNTARY SHOULD
25 NOT BE GIVEN BECAUSE THIS IS NOT A MISDEMEANOR.

26 REGARDING VOLUNTARY MANSLAUGHTER, AND I'M
27 LOOKING AT THE JURY INSTRUCTIONS WHICH IS WHAT YOU WOULD
28 GIVE THE JURY IF YOU WERE TO GIVE THESE, GIVE THE

1 VOLUNTARY INSTRUCTIONS, AND AS YOU KNOW, VOLUNTARY
2 INSTRUCTIONS ARE APPROPRIATE IN THREE POSSIBILITIES.

3 ONE IS THE HONEST BUT UNREASONABLE BELIEF
4 IN SELF-DEFENSE OR DEFENSE OF OTHERS.

5 THAT DOESN'T APPLY HERE. THE OTHER TWO IS
6 SUDDEN QUARREL OR HEAT OF PASSION BASED ON PROVOCATION.

7 NOW, I'M LOOKING AT 8.42, AND IT TALKS
8 ABOUT HERE THAT TO REDUCE AN INTENTIONAL FELONIOUS
9 HOMICIDE FROM THE OFFENSE OF MURDER TO MANSLAUGHTER UPON
10 THE GROUND OF SUDDEN QUARREL OR HEAT OF PASSION, THE
11 PROVOCATION MUST BE OF SUCH CHARACTER AND DEGREE AS
12 NATURALLY WOULD EXCITE AND AROUSE SUCH PASSION, AND THE
13 ASSAILANT MUST ACT UNDER THE INFLUENCE OF THAT SUDDEN
14 QUARREL OR HEAT OF PASSION.

15 THE STATEMENT OF CARLOS ADKINS THAT "YOU
16 DON'T KNOW ME, EITHER," THAT IS NOT OF THE TYPE OF
17 PROVOCATION THAT SHOULD NATURALLY EXCITE AND AROUSE SUCH
18 THAT THE DEFENDANT WOULD MAKE THE DECISION TO TURN
19 AROUND 180 DEGREES, WALK THE SEVEN OR NINE STEPS BACK
20 INTO THE APARTMENT AND PLACE THAT NINE MILLIMETER
21 BETWEEN CARLOS ADKINS' EYES.

22 IN ACCORDANCE, THE INSTRUCTIONS TALKS ABOUT
23 HEAT OF PASSION WHICH, OF COURSE, IF ACTING UNDER HEAT
24 OF PASSION, WOULD MITIGATE A MURDER TO MANSLAUGHTER.

25 IT SAYS, "THE HEAT OF PASSION WHICH WILL
26 REDUCE A HOMICIDE TO MANSLAUGHTER MUST BE SUCH A PASSION
27 AS NATURALLY WOULD BE AROUSED IN THE MIND OF AN ORDINARY
28 REASONABLE PERSON IN THE SAME CIRCUMSTANCES."

1 WITHOUT GOING INTO THIS AT ANY LENGTH, WHAT
2 CARLOS ADKINS DID IS NOT THE TYPE OF ACTIVITY THAT WOULD
3 RAISE THE PASSION IN A NORMALLY -- OR EXCUSE ME -- IN AN
4 ORDINARILY REASONABLE PERSON IN THE SAME CIRCUMSTANCES.

5 8.42 ON PAGE 2, IT TALKS ABOUT THE TEST OF
6 WHETHER THE MANSLAUGHTER IS APPROPRIATE EITHER UNDER
7 PROVOCATION OR HEAT OF PASSION.

8 IT SAYS, "THE QUESTION TO BE ANSWERED IS
9 WHETHER OR NOT AT THE TIME OF THE KILLING, THE REASON OF
10 THE ACCUSED WAS OBSCURED OR DISTURBED BY PASSION TO SUCH
11 AN EXTENT AS WOULD CAUSE THE ORDINARILY REASONABLE
12 PERSON OF AVERAGE DISPOSITION TO ACT RASHLY AND WITHOUT
13 DELIBERATION AND REFLECTION AND FROM SUCH PASSION RATHER
14 FROM JUDGMENT."

15 SO THE TEST SHOWS WOULD THE ORDINARY
16 REASONABLE MAN ACT SIMILARLY OR COULD HE ACT SIMILARLY
17 IN A SIMILAR CIRCUMSTANCE?

18 AND I WOULD SUBMIT TO THE COURT THAT IN NO
19 WAY WOULD A REASONABLE MAN ACT AS THE DEFENDANT DID IN
20 THIS CASE BEING CONFRONTED WITH THE STATEMENT, "YOU
21 DON'T KNOW ME, EITHER." THAT IS NOT THE TYPE OF
22 ACTIVITY THAT WOULD AROUSE THE PASSIONS OR PROVOCATION
23 IN AN ORDINARY REASONABLE PERSON.

24 8.44 TALKS ABOUT THAT REVENGE IN AND OF
25 ITSELF IS NOT SUFFICIENT TO MITIGATE MURDER TO
26 MANSLAUGHTER WHEN THE DEFENDANT IS ACTING OUT OF ANGER,
27 AND THEREFORE, SEEKS REVENGE.

28 OKAY.

1 I JUST LOOKED THROUGH SOME MORE OF MY
2 NOTES, BUT I WOULD SAY THAT JUST BASED ON THE JURY
3 INSTRUCTIONS, THE READING OF THE JURY INSTRUCTIONS, THIS
4 IS NOT A MANSLAUGHTER. IT'S A MURDER OR IT'S NOTHING.

5 THE COURT: ALL RIGHT.

6 AS I SAID, I JUST WANT TO LOOK AT THOSE
7 CASES BEFORE I MAKE A RULING.

8 MR. JAFFE: REGARDING THE INVOLUNTARY, I AGREE
9 THAT POINTING A GUN AT SOMEBODY RIGHT BETWEEN THEIR EYES
10 IS NOT NECESSARILY A 417 AND DOES QUALIFY FOR A 245.
11 THAT IS IF YOU BELIEVE THE TESTIMONY OF THE
12 PROSECUTION'S WITNESSES, AND THAT IS EXACTLY HOW IT
13 HAPPENED.

14 THE JURY MAY CHOOSE TO DISBELIEVE THE
15 PROSECUTION WITNESSES. THAT IS THE WAY IN WHICH IT
16 OCCURRED.

17 THE OTHER ISSUE IS REGARDLESS OF WHETHER OR
18 NOT YOU GET A MISDEMEANOR MANSLAUGHTER INSTRUCTION BY
19 VIRTUE OF THE 417, THE ACT OF STRUGGLING FOR THE GUN,
20 THAT IN AND OF ITSELF, IF THE ONLY RECORD IS THAT THE
21 SHOOTER WAS THE PERSON PROVOKING THE ACT BECAUSE THERE
22 IS NO OTHER EVIDENCE IN THE RECORD TO SUGGEST THAT IT
23 WAS ANY OTHER WAY.

24 BUT WE DO HAVE EVIDENCE THAT THE VICTIM DID
25 GRAB THE GUN AND THE VICTIM GRABBED THE GUN, AND IN THE
26 COURSE OF THE STRUGGLE FOR THE GUN, THE GUN GOES OFF.
27 AND THEN BY VIRTUE OF THE CRIMINAL NEGLIGENCE OF THE
28 SHOOTER IN HAVING THE GUN, THE GUN GOES OFF, IT WOULD BE

1 AN INVOLUNTARY MANSLAUGHTER.

2 THE COURT: I THINK THAT THAT IS WHAT THE DIXON
3 CASE TALKS ABOUT AND THAT IS WHAT I WANT TO READ.

4 I THINK DIXON TALKS ABOUT IF SOMEBODY
5 BASICALLY, I THINK IT MAY HAVE BEEN A SITUATION WHERE
6 THERE WAS A ROBBERY OCCURRING. SOMEBODY POINTS A GUN AT
7 SOMEBODY, AND THE ALLEGED VICTIM THEN GRABS THE GUN AND
8 THE GUN GOES OFF.

9 THEY SAY, MY RECOLLECTION IS, THAT THAT IS
10 NOT SUFFICIENT PROVOCATION TO MAKE IT A MANSLAUGHTER
11 THAT YOU RESPOND IN THAT FASHION.

12 SO THAT IS WHAT I WANT TO CHECK. I JUST
13 WANT TO LOOK AT THAT CASE.

14 MR. ARNOLD: ALL RIGHT.

15 SOMETHING ELSE TO KEEP IN MIND, THE
16 POINTING OF A LOADED GUN AT SOMEONE'S HEAD. EVEN IF
17 THERE IS NO INTENT TO KILL AND THEN THERE IS THE
18 STRUGGLE, IF THAT IS NOT A CLASSIC EXAMPLE OF IMPLIED
19 MALICE, THEN I DON'T KNOW WHAT IS.

20 THE COURT: MY OTHER QUESTION TO YOU, MR. ARNOLD,
21 I WAS LOOKING BRIEFLY, THERE ARE THE INSTRUCTIONS. I
22 HAVEN'T COMPLETED THEM, BUT 3.31.5, YOU DIDN'T GIVE ME
23 PAGE ONE, THE MENTAL STATE. YOU GAVE ME PAGE 2.

24 DO YOU HAVE A PAGE 1?

25 MR. ARNOLD: I GUESS IT'S BECAUSE I THOUGHT YOU
26 WOULD BE ABLE TO DO THAT FROM MEMORY.

27 YOU'RE RIGHT. OKAY.

28 THE COURT: I'LL GET IT OFF THE COMPUTER. I'LL

1 GET IT OUT OF MY COMPUTER.

2 MR. ARNOLD: I'M SORRY. I DON'T KNOW WHY IT'S
3 NOT THERE.

4 THE COURT: MY QUESTION IS, TO EACH OF YOU, IS IT
5 EACH OF YOUR FEELINGS THAT IT'S SATISFACTORY TO GIVE
6 3. -- THAT IS WHAT I WANTED TO SEE. TYPICALLY 3.31.5,
7 IT SAYS THAT THE MENTAL STATE FOR MURDER IS MALICE, AND
8 THEREFORE, 2.02 WHICH IS SUFFICIENCY OF CIRCUMSTANTIAL
9 EVIDENCE TO PROVE SPECIFIC INTENT OR MENTAL STATE.

10 IT WOULD BE LIMITED. I WOULD STRIKE THE
11 SPECIFIC INTENT.

12 IS THAT SATISFACTORY, MR. JAFFE?

13 MR. JAFFE: YES.

14 THE COURT: MR. JAFFE, MY OTHER QUESTION IS, I
15 HAVE TWO FACTORS. ACTUALLY IN OUR HASTE LAST NIGHT
16 WHERE WE ENDED UP TOWARDS THE END OF THE DAY, IT'S YOUR
17 REPRESENTATION TO ME THAT YOU INTEND TO REST AFTER
18 DISCUSSING THE EXHIBITS; IS THAT CORRECT?

19 MR. JAFFE: YES.

20 THE COURT: ALL RIGHT.

21 DO YOU HAVE ANY NEED FOR MR. COOKSEY TO BE
22 CONFINED IN THE COUNTY JAIL AS A MATERIAL WITNESS?

23 MR. JAFFE: I DON'T.

24 THE COURT: MR. ARNOLD, ASSUMING THAT HE RESTS ON
25 HIS REPRESENTATION, DO YOU HAVE ANY NEED FOR MR. COOKSEY
26 AS A MATERIAL WITNESS?

27 MR. ARNOLD: COULD I THINK ABOUT THIS FOR A
28 COUPLE OF MONTHS?

1 I DO NOT BELIEVE THAT I WOULD HAVE ANY
2 FURTHER NEED FOR MR. COOKSEY.

3 MR. JAFFE: IF THE JURY WERE TO HANG POTENTIALLY
4 AND WE WERE TO HAVE A NEW TRIAL --

5 THE COURT: WELL, THAT IS SOMETHING ELSE, YOU
6 KNOW, BUT I CAN'T CONFINED HIM. HE'S NOW BEING CONFINED
7 AS A MATERIAL WITNESS.

8 IF YOUR OFFER OF PROOF TO ME IS THAT HE'S
9 NOT NEEDED AS A MATERIAL WITNESS, THEN I AM GOING TO
10 HAVE MY CLERK WRITE UP A RELEASE FOR HIM.

11 ON MY DRIVE HOME LAST NIGHT, I WAS THINKING
12 ABOUT THE FACT THAT MR. COOKSEY WAS STILL CONFINED.

13 THERE IS A POSSIBILITY, IF YOU WANT -- I
14 DON'T KNOW WHERE MR. COOKSEY IS BEING HOUSED.

15 BUT DO YOU KNOW WHERE HE IS, ADAM?

16 THE BAILIFF: MEN'S CENTRAL JAIL.

17 THE COURT: IS THERE A POSSIBILITY THAT YOU CAN
18 GET HIM OVER HERE TODAY?

19 THE BAILIFF: YES.

20 THE COURT: I TELL YOU WHAT WE'LL DO. I'LL HAVE
21 HIM TRANSFERRED OVER, AND I'LL ORDER HIM TO APPEAR IN
22 THIS COURT A MONTH FROM NOW AND THEN I WILL RELEASE HIM.

23 MR. ARNOLD: GOOD.

24 THE COURT: AND IF, IN FACT, THERE IS A HUNG JURY
25 AND IT'S NECESSARY, THEN HE HAS BEEN ORDERED TO APPEAR,
26 AND IF THERE IS NO NEED FOR HIM AND HE SHOWS UP, THEN HE
27 CAN BE EXCUSED.

28 MR. JAFFE: THAT IS FINE.

1 MR. ARNOLD: THAT IS GOOD.

2 MR. JAFFE: ALTHOUGH I HAVE REPRESENTED THAT I'M
3 GOING TO REST, I MAY WANT TO ASK DETECTIVE BRANSCOMB ONE
4 QUESTION AND THEN I'LL REST.

5 THE COURT: NOTHING TO DO WITH MR. COOKSEY?

6 MR. JAFFE: NOTHING TO DO WITH MR. COOKSEY.

7 THE COURT: WHY DON'T I HAVE MY BAILIFF HAVE HIM
8 BROUGHT OVER TODAY. I WILL ORDER HIM TO RETURN AT SOME
9 POINT A MONTH DOWN THE ROAD HERE, AND THEN WE'LL KNOW
10 WHAT THE SITUATION IS, AND THAT WAY HE'LL BE UNDER THE
11 ORDER OF THE COURT IN CASE THERE IS A PROBLEM WITH
12 HAVING HIM APPEAR AGAIN.

13 MR. JAFFE: WILL YOU NEED US HERE FOR THAT?

14 THE COURT: NO. I'LL HAVE MY CLERK CALL
15 MR. ANDELIN'S OFFICE AND LEAVE A MESSAGE THAT HE'S BEING
16 RELEASED TODAY.

17 ALL RIGHT.

18 THE OTHER SITUATION IS --

19 MR. JAFFE: I CERTAINLY HOPE THAT MR. ANDELIN
20 DOES NOT HAVE A PRESS CONFERENCE RIGHT WHEN THE JURY IS
21 GOING TO START DELIBERATING, THOUGH.

22 THE COURT: WELL --

23 MR. JAFFE: I MEAN THAT IS --

24 THE COURT: I AGREE WITH YOU, BUT IF, IN FACT,
25 MR. ANDELIN HAS A TRUE CONCERN OF THE SAFETY OF
26 MR. COOKSEY, HE SHOULD THEN JUST HAVE MR. COOKSEY RIDE
27 OFF INTO THE SUNSET.

28 MR. JAFFE: THAT HAS NOT BEEN HIS M.O. I CAN

1 JUST SEE WHAT IS GOING TO HAPPEN.

2 THERE IS GOING TO BE PHOTOGRAPHERS AND THE
3 MEDIA AT THE MEN'S CENTRAL JAIL TONIGHT WHEN COOKSEY IS
4 RELEASED. THEY'RE GOING TO PUT THE HOOD BACK ON HIS
5 HEAD. THEY'RE GOING TO HAVE A BIG NEWS CONFERENCE. I
6 KNOW YOU CAN'T CONTROL IT.

7 MR. ARNOLD: YES, HE CAN.

8 WHY DO YOU HAVE TO NOTIFY ANDELIN? YOU ARE
9 RELEASING COOKSEY AS A MATERIAL WITNESS.

10 THE COURT: I WILL RELEASE HIM TODAY, AND I'LL
11 HAVE MY CLERK CALL MR. ANDELIN TOMORROW, AND WE'LL DO IT
12 THAT WAY, THAT HIS CLIENT HAS BEEN RELEASED. BECAUSE WE
13 DID NOTIFY HIM IF HE WAS GOING TO BE CALLED AS A
14 WITNESS, WE WOULD CALL AND HAVE HIM COME TO COURT.

15 WE'LL HANDLE THAT SITUATION AND WE'LL
16 HANDLE IT IN THAT FORM.

17 MY OTHER QUESTION IS, I HAD YOU DEFER YOUR
18 1118.1 MOTION.

19 DO YOU WANT TO MAKE THAT NOW OR SUBMIT IT
20 ON THE FACTS OF THE CASE OR WHAT IS THE SITUATION?

21 MR. JAFFE: I GUESS I'LL MAKE IT -- I WILL
22 WITHDRAW MAKING IT AT THE END OF THIS CASE AND MAKE IT
23 AT THE END OF MY CASE AND SUBMIT IT.

24 SHOULD I DO IT THAT WAY?

25 THE COURT: OR WHICHEVER WAY YOU WANT TO DO IT.
26 I CAN DEEM THAT IT WAS MADE AT THE END OF THEIR CASE AND
27 IF YOU'RE GOING TO SUBMIT IT.

28 MR. JAFFE: I'M JUST GOING TO SUBMIT IT.

1 THE COURT: I MEAN THE STANDARD THAT IS USED IS
2 WHETHER THERE IS SUFFICIENT EVIDENCE TO SUSTAIN A
3 CONVICTION ON APPEAL, AND, THEREFORE, THE MOTION WILL BE
4 DENIED.

5 AND READING INTO YOUR SUBMISSION, I TAKE IT
6 MANY TIMES IT'S DONE IN THAT FASHION SO YOU DON'T
7 PREVIEW YOUR FINAL ARGUMENT. SO I TAKE IT THAT IS WHY
8 IT'S DONE IN THAT FORM.

9 LET ME TAKE A BREAK AND TAKE A LOOK AT THAT
10 CASE, AND THEN I'LL MAKE A DECISION ON THE LESSERS, AND
11 I WAS READING MS. JORDAN'S TESTIMONY.

12 MY QUESTION, THAT IS A QUESTION THAT I HAD
13 OF YOU, MR. JAFFE. YOUR QUESTION TO HER OR ACTUALLY
14 YOUR QUESTION TO DETECTIVE BUMCROT WAS, "DID YOU EVER
15 SHOW HER ANY PHOTOGRAPHS"?

16 MR. JAFFE: NO. THE QUESTION WAS ON APRIL 20TH.

17 THE COURT: THAT IS THE DATE I WANTED TO KNOW.
18 APRIL 20TH.

19 MR. JAFFE: THE QUESTION WAS, "ON APRIL 20TH, DID
20 YOU SHOW ALICIA JORDAN THE PHOTOGRAPHS?"

21 THE COURT: ALL RIGHT.

22 AND HIS RESPONSE WAS?

23 MR. JAFFE: WAIT A SECOND. LET ME GET THE
24 QUESTION.

25 MR. ARNOLD: HIS RESPONSE WAS, "YES."

26 YOU ALLOWED ME TO ASK, "DID SHE LOOK AT
27 THEM?" AND IT WAS, "NO."

28 THE COURT: BUT I WAS LOOKING THROUGH HER

1 TESTIMONY AND THERE WAS SEVERAL DAYS SHE WAS ASKED ABOUT
2 THE PHOTOGRAPHS.

3 MR. ARNOLD: ONE OTHER THING. IT MIGHT NOT EVEN
4 HAVE GOT TO YOU BUT YOUR CLERK POINTED OUT TO ME THAT --

5 THE COURT: PEOPLE'S 113.

6 MR. ARNOLD: IS THAT THE TAPE?

7 THE COURT: YES.

8 MR. ARNOLD: YES.

9 MR. JAFFE: THE QUESTION WAS ON PAGE 3868.

10 "DETECTIVE BUMCROT, WHEN YOU SHOWED THE
11 PHOTOGRAPHS TO ALICIA JORDAN ON APRIL 20TH, 1993,
12 WHERE WAS THAT?"

13 WAIT A SECOND. WAIT A SECOND.

14 MR. ARNOLD: IT SOUNDS LIKE MINE. IT SOUNDS LIKE
15 MY HIGHLY SKILLED CROSS-EXAMINATION OF DETECTIVE
16 BUMCROT.

17 MR. JAFFE: QUESTION, 3866.

18 "ON APRIL 20, 1993, DID YOU SHOW ALICIA
19 JORDAN PHOTOGRAPHS?

20 "A. YES.

21 "AND WAS REGIS THOMAS' PHOTOGRAPH CONTAINED
22 WITHIN THAT GROUP OF PHOTOGRAPHS?

23 "A. YES."

24 THAT WAS IT.

25 THE COURT: I WAS TRYING TO FIND THAT.

26 ALL RIGHT.

27 I'LL TAKE A BREAK.

28 WHY DON'T YOU COME BACK AT 11:00, AROUND

1 THERE.

2
3 (RECESS.)
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1 THE COURT: ALL RIGHT. RECALL THE CASE OF REGIS
2 THOMAS. MR. THOMAS IS PRESENT. RESPECTIVE COUNSEL. WE
3 ARE OUT OF THE PRESENCE OF THE JURORS.

4 ALL RIGHT. AS FAR AS THE LESSERS OF
5 VOLUNTARY AND INVOLUNTARY MANSLAUGHTER, THAT WILL BE
6 DENIED.

7 I AM RELYING ON PEOPLE VERSUS DIXON,
8 D-I-X-O-N, AT 32 CAL.APP.4TH 1547. THEY CITE PEOPLE
9 VERSUS SEDENO, S-E-D-E-N-O, PEOPLE VERSUS BALDERAS,
10 B-A-L-D-E-R-A-S.

11 AND WHEN I SPOKE EARLIER, I SAID SOMETHING
12 ABOUT RESISTING A ROBBERY OR RESISTING A FELONY. THAT WAS
13 ACTUALLY IN THE BALDERAS CASE. THOSE WERE THE FACTS WHERE
14 IT WAS SOMEBODY WAS RESISTING.

15 THEY ALSO CITED PEOPLE VERSUS -- WHEN YOU
16 READ BALDERAS -- IT'S BALDERAS. THEY CITE PEOPLE VERSUS
17 JACKSON.

18 BASICALLY THE LANGUAGE TALKS ABOUT FOR THE
19 VOLUNTARY MANSLAUGHTERS, THE LANGUAGE IN DICKSON CITING
20 SEDENO SAYS THAT BECAUSE THE EXISTENCE OF MALICE IS
21 PRESUMED WHEN THE CIRCUMSTANCES OF A KILLING SUGGEST AN
22 INTENT TO KILL OR THAT THE KILLING PROXIMALLY RESULTED
23 FROM AN ACT, THE NATURAL CONSEQUENCES OF WHICH WERE
24 DANGEROUS TO LIFE, WHICH ACT -- EXCUSE ME -- WAS
25 DELIBERATELY PERFORMED BY A PERSON WHO KNOWS THAT HIS
26 CONDUCT ENDANGERS THE LIFE OF ANOTHER, AND WHO ACTS WITH
27 CONSCIOUS DISREGARD FOR LIFE, PROVOCATION AND HEAT OF
28 PASSION MUST BE AFFIRMATIVELY DEMONSTRATED. IT IS NOT

1 ENOUGH THAT PROVOCATION ALONE BE DEMONSTRATED. THERE MUST
2 ALSO BE EVIDENCE THAT THE DEFENDANT'S REASON WAS IN FACT
3 OBSCURED BY PASSION AT THE TIME OF THE ACT.

4 AND THE ONLY -- IF YOU -- MRS. CHAPPELL'S
5 TESTIMONY WOULD NOT PROVIDE ANY EVIDENCE FOR A STRUGGLE OR
6 WHAT HAVE YOU.

7 BERTRAND DICKSON AT PAGE 1428, LINE 17
8 THROUGH 18 SAID THAT -- IT'S NOT VERBATIM BECAUSE I HAVE
9 NOTES THAT I MADE, BUT IT SAYS THE GUN WAS THEN POINTED AT
10 CARLOS -- AND I'VE GOT MY NOTES. THE SHOOTER SAYS, "I'M
11 GOING TO BLOW YOUR BRAINS OUT." CARLOS THEN GRABBED THE
12 GUN.

13 PAGE 1429, LINES 9 THROUGH 12: THEY
14 STRUGGLED, THEY FELL ON THE COUCH, AND THE GUN WENT OFF.

15 AND WHERE SOMEBODY IS ACTUALLY RESISTING
16 SOMEBODY POINTING A GUN AT THEIR HEAD SAYING, "I'M GOING
17 TO BLOW YOUR BRAINS OUT," I DON'T FEEL IS A SUFFICIENT
18 BASIS FOR A VOLUNTARY MANSLAUGHTER OR AN INVOLUNTARY
19 MANSLAUGHTER.

20 MR. JAFFE: MY RECOLLECTION WAS THAT THE STATEMENT
21 WAS "I OUGHT TO BLOW YOUR BRAINS OUT" MORE IN THE --
22 RATHER THAN A STATEMENT OF FUTURE INTENT.

23 THE COURT: OKAY. WELL --

24 MR. JAFFE: BUT --

25 THE COURT: I DON'T -- I CAN GET THE -- BUT THAT
26 WAS MY RECOLLECTION.

27 FOR BERTRAND DICKSON TO SAY "OUGHT" MIGHT BE
28 A STRETCH FROM HIS TESTIMONY JUST BECAUSE OF --

1 MR. JAFFE: WELL, MAYBE THE WORD WASN'T "OUGHT."
2 IT MIGHT HAVE BEEN "I SHOULD," BUT IT WAS MORE OF A
3 QUALIFICATION. SORT OF THOSE KINDS OF CASES THAT YOU
4 LEARN IN LAW SCHOOL WHERE YOU REALLY DON'T HAVE AN
5 ASSAULT, WHERE THERE --

6 THE COURT: IF IT WERE NOT ASSIZE TIME.

7 MR. JAFFE: PARDON ME?

8 THE COURT: IF IT WERE NOT ASSIZE TIME OR WHAT HAVE
9 YOU.

10 MR. JAFFE: YEAH, IF THERE WAS SUGGESTION THAT IT
11 WAS NOT IMMEDIATE INTENT.

12 THE COURT: RIGHT.

13 MR. JAFFE: "I SHOULD HAVE" OR "I COULD IF I WANTED
14 TO," THAT WAS WHAT I GOT OUT OF THE STATEMENT FROM
15 DICKSON.

16 THE COURT: ALL RIGHT. BUT THE REQUEST FOR THE
17 LESSERS IS DENIED.

18 IS IT NECESSARY -- SINCE I HAVE INDICATED
19 THAT I'M NOT GOING TO GIVE THE LESSERS, IS IT NECESSARY
20 FOR YOU -- I THINK THAT THE RECORD IS CLEAR, BUT WHETHER
21 AS FAR AS THE INSTRUCTIONS ARE CONCERNED TO PULL THE
22 INSTRUCTIONS AND THEN HAVE THEM DENIED, BUT I THINK -- I
23 MEAN I DON'T REALLY SEE A NEED FOR IT.

24 MR. JAFFE: WELL, PERHAPS I SHOULD PULL THOSE TWO
25 INSTRUCTIONS SO WHEN THE -- IF THERE IS A CONVICTION, THAT
26 THE PACKAGE SHOWS PHYSICALLY THAT THOSE INSTRUCTIONS WERE
27 IN THE PACKET.

28 THE COURT: WERE REQUESTED AND DENIED, REFUSED.

1 MR. JAFFE: RIGHT.

2 THE COURT: ALL RIGHT. WHY DON'T YOU DO THAT.

3 MR. JAFFE: I WILL.

4 THE COURT: ALL RIGHT. AS FAR AS THE REDIRECT BY
5 MR. ARNOLD OF DETECTIVE BUMCROT REGARDING THE SHOWING OF
6 THE PHOTOGRAPHS, AT PAGE 2360 OF THE TRANSCRIPT, LINE 9
7 THROUGH 18, QUESTIONING BY MR. JAFFE:

8 "YOU DID NOT" -- THIS IS OF MISS JORDAN.

9 "YOU DID NOT WANT TO BE INVOLVED ON APRIL 7;
10 RIGHT?

11 "ANSWER: RIGHT.

12 "QUESTION: AND YOU DID NOT WANT TO BE
13 INVOLVED ON APRIL 20TH. THAT WAS THE DAY YOU WERE SHOWN
14 SOME PHOTOGRAPHS; RIGHT?

15 "ANSWER: YES."

16 AND THEN LINE 17:

17 "QUESTION: AND YOU DID NOT WANT TO BECOME
18 INVOLVED JULY 10. THAT WAS THE DATE THAT YOU HAD A LATER
19 INTERVIEW WITH THE POLICE; CORRECT?

20 "ANSWER: CORRECT."

21 AND THEN AT 2393, LINE 14, BY MR. JAFFE:

22 "QUESTION: MISS JORDAN, I AM SHOWING YOU A
23 PHOTOGRAPH OF SIX PEOPLE WHO APPEAR TO BE STANDING AND ASK
24 YOU IF YOU HAVE EVER SEEN THIS PHOTOGRAPH BEFORE.

25 "ANSWER: I SEEN IT TODAY.

26 "QUESTION: HAVE YOU EVER SEEN IT BEFORE
27 TODAY?

28 "ANSWER: NO, NOT THAT I REMEMBER.

1 "QUESTION: WERE YOU EVER SHOWN A PHOTOGRAPH
2 BY ANY POLICE OFFICER WHERE REGIS THOMAS' PHOTOGRAPH WAS
3 IN THE GROUP OF PHOTOGRAPHS?

4 "ANSWER: NOT THAT I CAN REMEMBER, NO."

5 MY INTERPRETATION OF THAT IS IF -- THOSE
6 PHOTOGRAPHS I TAKE IT WERE THE PHOTOGRAPHS THAT YOU WERE
7 DISCUSSING ON APRIL 20TH.

8 I WILL PERMIT MR. ARNOLD TO FOLLOW UP AND
9 ELICIT SOME OF THE INFORMATION THAT WAS PREVIOUSLY
10 ELICITED ON PAGE 2360, IF YOU WANT TO, ON
11 CROSS-EXAMINATION.

12 IT IS IN THE RECORD, BUT BASED ON THAT IT WAS
13 POSED AGAIN. SHE SAYS AT ONE POINT THAT SHE WAS SHOWN
14 PHOTOGRAPHS, AND THEN SHE SAYS SHE WASN'T.

15 BUT YOU HAVE A SITUATION OF WHAT HER DEMEANOR
16 WAS, AND I THINK THAT WAS WHAT MR. ARNOLD WAS ATTEMPTING
17 TO ELICIT. SO I WILL PERMIT THAT IF YOU WANT TO GO INTO
18 IT.

19 MY RULING STANDS ON THE -- MY TENTATIVE ON
20 THE INFERENCE THAT THE FACTS -- THE EVIDENCE IN FRONT OF
21 THE JURY, IF YOU ASK THEM TO DRAW AN INFERENCE THAT ONE
22 SHOT WAS FIRED BECAUSE OF FINDING THE ONE CASING, I WILL
23 PERMIT THAT.

24 AGAIN, MR. ARNOLD, IT IS SOMETHING I HAVE
25 TOSSED AROUND BACK AND FORTH, AND I AM GOING TO PERMIT HIM
26 TO DO IT.

27 MR. ARNOLD: ALL RIGHT. I UNDERSTAND YOUR RULING.
28 BUT --

1 THE COURT: I THINK THAT IN RESPONSE TO THAT YOU
2 CAN THEN SAY SOMETHING TO THE EFFECT THAT THERE WAS A
3 DELAY OF TWO TO THREE DAYS, WHICH IS IN THE TRANSCRIPT,
4 BEFORE THEY THEN REVIEWED THE INTERIOR AND WENT TO THE
5 INTERIOR.

6 MANY THINGS COULD HAVE -- NOT SPECIFIC THAT
7 ONE GUY COULD HAVE THROWN A BULLET OUT THE WINDOW OR
8 SOMEBODY COULD HAVE FLUSHED IT DOWN THE TOILET, BUT MANY
9 THINGS MAY HAVE HAPPENED THAT WERE NOT WITHIN THE POLICE'S
10 CONTROL.

11 MR. ARNOLD: YOU ARE SAYING I CANNOT SAY THAT OR I
12 CAN?

13 THE COURT: YOU CAN SAY THE GENERAL TERMS. I THINK
14 THAT THAT'S REASONABLE.

15 MR. JAFFE: GENERAL TERMS I THINK, BUT --

16 THE COURT: I'M SAYING HE CANNOT SAY SOMEBODY MAY
17 HAVE THROWN A CASING OUT THE WINDOW.

18 MR. ARNOLD: LIKE YOU NEVER KNOW WHAT COULD HAVE
19 HAPPENED. ANDRE CHAPPELL MIGHT HAVE BEEN CONCERNED ABOUT
20 BEING EVICTED IF THE MURDER WAS IN THE APARTMENT, AND HE
21 FLUSHED THE CASE.

22 MR. JAFFE: I'M NOT SAYING THAT THAT HAPPENED.

23 MR. ARNOLD: YOU NEVER KNOW.

24 THE COURT: RIGHT. I AM SAYING IN GENERAL TERMS
25 YOUR RESPONSE IF YOU DEEM IT APPROPRIATE --

26 MR. ARNOLD: ALL RIGHT. A LOT OF THINGS CAN
27 HAPPEN. PARAMEDICS WALKING IN AND OUT.

28 THE COURT: OR JUST A LOT OF THINGS CAN HAPPEN.

1 THE POLICE DIDN'T HAVE -- THEY DIDN'T FOCUS FOR TWO OR
2 THREE DAYS ACCORDING TO PETERSON'S TESTIMONY TO THE
3 INTERIOR.

4 MR. ARNOLD: ON THE NIGHT OF THE INCIDENT WE KNOW
5 PARAMEDICS WERE THERE. WE KNOW OFFICERS WERE WALKING IN
6 AND OUT. WE KNOW PETERSON WALKED IN AND OUT.

7 THE COURT: YOU NEVER KNOW WHAT HAPPENED.

8 MR. ARNOLD: YOU NEVER KNOW.

9 MR. JAFFE: WHAT ABOUT --

10 MR. ARNOLD: ONE NEVER KNOWS.

11 MR. JAFFE: -- REFERENCE TO WHAT ANDRE CHAPPELL
12 MIGHT HAVE SAID?

13 THE COURT: THERE WILL BE NOTHING ABOUT THAT.

14 MR. ARNOLD: I WON'T.

15 THE COURT: NOTHING ABOUT THAT.

16 ALL RIGHT. HAVE YOU GONE OVER THE DEFENSE
17 EXHIBITS?

18 MR. ARNOLD: YES.

19 THE COURT: HAVE YOU TALKED ABOUT THEM?

20 MR. ARNOLD: YES.

21 THE COURT: ALL RIGHT. I MEANT TO BRING THAT UP
22 WHEN I WAS OUT EARLIER, BUT I DIDN'T.

23 ALL RIGHT. WHAT IS -- THE OBJECTIONS ARE TO
24 WHICH ONES?

25 WELL, ARE YOU MOVING ALL THE EXHIBITS,
26 MR. JAFFE, OR ARE YOU SPECIFYING CERTAIN EXHIBITS?

27 WE'LL DO IT THAT WAY INITIALLY.

28 MR. JAFFE: I AM REQUESTING ALL OF THEM.

1 THE COURT: ALL RIGHT.

2 MR. JAFFE: WELL, DEFENSE A IS --

3 THE COURT: JUST A SECOND. I'VE GOT TO FIND -- I'M
4 MISSING A PAGE OF MY -- HERE IT IS.

5 ALL RIGHT. DEFENSE A IS THE "L.A. TIMES"
6 ARTICLE.

7 MR. JAFFE: RIGHT. I'M NOT REQUESTING THAT.

8 THE COURT: THAT WAS -- YOU ARE NOT REQUESTING
9 THAT.

10 MR. JAFFE: THAT IS ONLY FOR THE PURPOSES OF THE
11 HEARING.

12 THE COURT: RIGHT. CORRECT.

13 MR. JAFFE: NOT BEFORE THE JURY.

14 THE COURT: WHAT ABOUT B WHERE -- WASN'T THERE JUST
15 ONE SENTENCE OF A TAPE? THAT WAS USED JUST TO -- I
16 BELIEVE IT WAS ONLY USED TO -- WAS IT USED TO ASK MR.
17 DICKSON A QUESTION?

18 MR. ARNOLD: THAT WAS THE TAPE THAT WAS MADE
19 BETWEEN DICKSON AND THE DEPUTY D.A. IN COMPTON AFTER
20 DICKSON WAS WITH --

21 THE COURT: RECANTED.

22 MR. ARNOLD: -- THE DEFENDANT. BASICALLY HE
23 RECANTED AND SAID THAT THE PERSON I IDENTIFIED WAS NOT THE
24 PERSON.

25 THE COURT: AND YOU HAD HIM ARTICULATE THAT.

26 MR. JAFFE: YES.

27 THE COURT: DID YOU HEAR THAT.

28 SO, THEREFORE, I DON'T BELIEVE THAT SHOULD GO

1 TO THE JURY.

2 MR. JAFFE: ALL RIGHT.

3 (REJECTED:= DEFT'S. B.)

4

5 THE COURT: ALL RIGHT. AND THEN WE HAVE -- SO THE
6 REST YOU ARE REQUESTING BE RECEIVED?

7 MR. JAFFE: YES.

8 THE COURT: MR. ARNOLD, YOUR OBJECTIONS?

9 DO YOU HAVE THEM LISTED AS TO THE SPECIFIC
10 ONES?

11 MR. ARNOLD: YES.

12 THE COURT: WHY DON'T YOU TELL ME WHICH ONE.

13 MR. ARNOLD: DEFENSE I IS THE TAPE OF MRS. GULLY.

14 I BELIEVE THAT -- I DON'T REMEMBER THAT ANY TAPE WAS
15 PLAYED FOR HER.

16 THE COURT: WHAT WAS DONE WITH MRS. GULLY IT'S MY
17 RECOLLECTION WAS THAT THERE WAS A TAPE, AND I DON'T KNOW
18 IF THE TAPE WAS PLAYED, BUT THERE WAS A TRANSCRIPT WHEREIN
19 YOU MARKED SECTIONS OF THE TRANSCRIPT.

20 MR. JAFFE: I ALSO DID THE SAME THING FOR POLIDORE.
21 I ONLY PLAYED THE TAPE FOR POLIDORE, BUT IT HAPPENS TO BE
22 THE SAME TAPE. BOTH WITNESSES HAPPEN TO BE ON THAT TAPE.

23 THE COURT: ALL RIGHT. NOW, ON THE POLIDORE TAPE,
24 WAS IT NOT -- WELL, OKAY.

25 YOUR POSITION ON THE PORTION WITH MRS. GULLY,
26 THAT WAS NEVER PLAYED FOR HER?

27 MR. JAFFE: THAT'S CORRECT.

28 THE COURT: SO ARE YOU MOVING THAT PORTION IN

1 EVIDENCE?

2 MR. JAFFE: I HAVE NEVER PLAYED THAT, AND I AM NOT.

3 THE COURT: OKAY.

4 NOW, HOW DO YOU WANT TO HANDLE THE SITUATION
5 WITH J?

6 I THINK THAT WHAT HAPPENED WAS YOU READ INTO
7 THE RECORD THOSE PORTIONS. SO, THEREFORE, I DON'T SEE A
8 NEED FOR THE TRANSCRIPT TO GO TO THE JURY.

9 DO YOU?

10 MR. JAFFE: WELL, WE COULD HAVE THE TRANSCRIPT AND
11 NOT THE TAPE.

12 THE COURT: RIGHT. BUT THEN YOU ARE GOING TO HAVE
13 TO EXCISE THE OTHER PORTIONS OF THE TRANSCRIPT, SIMILAR TO
14 WHAT I HAD -- BECAUSE EACH TIME -- WHEN I SAY YOU READ IT
15 INTO THE RECORD, YOU ALSO READ IT IN FRONT OF THE JURY.

16 MR. JAFFE: UH-HUH.

17 THE COURT: I THINK THAT --

18 MR. JAFFE: NOT ON EVERY ONE. THERE WAS SOME THAT
19 WE DID NOT, READ AND SOME WERE JUST LEFT IN THE
20 TRANSCRIPT. I CAN'T DISTINGUISH WHICH ONE.

21 THE COURT: WHERE YOU HAD HER READ OR NOT READ?

22 MR. JAFFE: NOT GULLY. I'M TALKING ABOUT POLIDORE.

23 THE COURT: I'M TALKING ABOUT MS. GULLY RIGHT NOW.

24 BECAUSE THERE WERE PORTIONS OF THAT
25 TRANSCRIPT THAT I RECALL YOU MARKING J-1, J-2, IN WHICH
26 YOU DID NOT PLAY THE TAPE, BUT YOU EITHER READ INTO THE
27 RECORD TALKING TO MRS. GULLY THOSE PORTIONS OR YOU HAD HER
28 READ THOSE PORTIONS. BUT MY RECOLLECTION IS YOU ACTUALLY

1 READ IT IN FRONT OF THE JURY.

2 MR. JAFFE: I CANNOT REMEMBER.

3 THE COURT: TELL YOU WHAT. WHY DON'T YOU REVIEW
4 YOUR NOTES, AND I WILL TAKE IT UP TOMORROW. BUT THAT'S MY
5 RECOLLECTION.

6 AND IF IN FACT YOU WANT -- IF IN FACT YOU DID
7 NOT READ IT INTO THE RECORD EACH AND EVERY TIME AND YOU
8 WANT THOSE PORTIONS TO GO IN, IN OTHER WORDS, YOU HAD HER
9 LOOK AT THEM, THEN I WOULD SUGGEST THAT YOU CREATE AN
10 EDITED VERSION.

11 MR. JAFFE: ALL RIGHT.

12 THE COURT: ALL RIGHT. SO -- I'M SORRY, MR.
13 ARNOLD. DO YOU HAVE ANY OTHER OBJECTIONS?

14 MR. ARNOLD: YES, ON DEFENSE L.

15 THE COURT: AND YOUR BASIS FOR THAT?

16 MR. ARNOLD: WELL, THE -- THESE ARE BLOWUPS OF
17 THREE PHOTOGRAPHS OF THE TRUCK THAT IS A DIFFERENT TRUCK.

18 THOSE PHOTOGRAPHS OF THAT SAME TRUCK ARE ON
19 THE DEFENSE EXHIBIT, THE TRUCK BOARD FOR LACK OF A BETTER
20 TERM, WHERE ALL THE PHOTOGRAPHS ARE ON THE ONE BOARD OF
21 THE VARIOUS TRUCKS.

22 I DON'T -- CERTAINLY DON'T HAVE A PROBLEM
23 WITH THE TRUCK BOARD BEING ADMITTED, BUT HERE NONE OF THE
24 WITNESSES TESTIFIED THAT THIS WAS THE TRUCK. NONE OF THE
25 WITNESSES TESTIFIED THAT THERE IS ANY CHARACTERISTIC ABOUT
26 THIS -- THESE TRUCKS THAT THE SUSPECT'S VEHICLE HAD.

27 THERE'S BEEN NO CONNECTION BETWEEN THE
28 DEFENSE L AND THIS CRIME, AND I WOULD SAY THAT THERE IS NO

1 FOUNDATION AND IT'S IRRELEVANT.

2 THE COURT: MR. JAFFE, YOUR RECOLLECTION OF THE USE
3 OF THOSE?

4 MR. JAFFE: MY RECOLLECTION -- WELL, ONE, I KNOW
5 CALVIN COOKSEY SAID THAT THE PHOTOGRAPHS IN L LOOK LIKE
6 REGIS THOMAS' TRUCK WITH HIS BROTHER'S --

7 THE COURT: RIMS.

8 MR. JAFFE: -- DAYTONS, HIS BROTHER'S RIMS ON THEM.

9 AND ALSO I BELIEVE THAT THERE IS SOME
10 EVIDENCE IN THE RECORD THAT DE'MORYEA POLIDORE -- I DON'T
11 KNOW IF I QUESTIONED SPECIFICALLY ABOUT L. I THINK I DID.

12 I KNOW HE SAID THAT THE TIRES THAT HE
13 OBSERVED ON THE VEHICLE PUFFED OUT AND STUCK OUT A LITTLE
14 BIT, AND I BELIEVE I SHOWED HIM L.

15 THE COURT: ALL RIGHT. I AM GOING TO LOOK THAT UP.
16 BUT IF IT -- I JUST WANT TO SEE HOW IT WAS UTILIZED IN
17 QUESTIONING THE WITNESSES.

18 MR. ARNOLD, ANY OTHERS?

19 MR. ARNOLD: YES, GOING ON TO DEFENSE BB AND CC.
20 THESE ARE CERTIFIED COPIES OF COOKSEY'S CONVICTIONS FOR
21 RECEIVING STOLEN -- RECEIVING STOLEN PROPERTY AND ROBBERY.

22 THE PURPOSE IS IMPEACHMENT. COOKSEY ADMITTED
23 ON THE STAND IN FRONT OF THE JURY THAT HE HAD IN FACT BEEN
24 CONVICTED OF THESE CRIMES. AND I AM NOT AWARE OF ANY
25 STATUTE OR ANY CASE THAT THEN PERMITS THE ADDITIONAL
26 EXTRINSIC EVIDENCE OF THOSE CONVICTIONS.

27 THE COURT: MR. JAFFE?

28 MR. JAFFE: WELL, I WANT TO INDEPENDENTLY PROVE

1 THAT HE HAS THESE CONVICTIONS. I DON'T WANT TO HAVE TO
2 RELY ON WHAT CALVIN COOKSEY SAYS EVEN THOUGH HE ADMITTED
3 IT.

4 THE JURY THEORETICALLY COULD SAY THIS GUY IS
5 SO UNBELIEVABLE WE DON'T KNOW WHEN HIS CONVICTIONS WERE.
6 HE DOESN'T EVEN KNOW WHEN THEY WERE.

7 THE COURT: MY INCLINATION IS NOT TO HAVE THEM GO
8 IN, BUT I AM GOING TO READ IT. I WANT TO LOOK UP
9 SOMETHING. I'LL DEFER ON IT.

10 MR. ARNOLD: COME TO THINK OF IT, I THINK THERE'S A
11 CASE THAT ONLY ALLOWS EXTRINSIC PROOF OF THE CONVICTION IF
12 THERE IS A DENIAL.

13 THE COURT: YES, I'M GOING TO CHECK ON THAT.

14 MR. ARNOLD: ALL RIGHT. IF THERE IS SOME AUTHORITY
15 THAT PERMITS THE ADMISSION OF THE CERTIFIED COPIES EVEN
16 THOUGH THE WITNESS ADMITS IT, THEN I AM NOT GOING TO
17 OBJECT. BUT BASED ON MY --

18 THE COURT: I AM GOING TO LOOK.

19 MR. ARNOLD: ALL RIGHT.

20 MR. JAFFE: WE DON'T HAVE A STIPULATION. I THINK A
21 STIPULATION IS BETTER THAN HAVING CALVIN COOKSEY ADMIT IT.

22 THE COURT: ALL RIGHT.

23 MR. JAFFE: ALL RIGHT.

24 MR. ARNOLD: DEFENSE EE. THIS IS COPIES OF
25 RECEIPTS FOR MONEY TO COOKSEY.

26 I THINK IT'S HEARSAY, PLUS COOKSEY
27 ACKNOWLEDGED RECEIVING THESE VARIOUS AMOUNTS OF MONEY WHEN
28 HE WAS ASKED ABOUT IT.

1 THE COURT: OKAY. THE OBJECTION WILL BE OVERRULED.
2 THAT WILL COME IN.

3 MR. ARNOLD: FF IS THE PHOTO OF THURSTON, THE
4 DEFENDANT'S BROTHER.

5 I OBJECT TO THAT. THERE IS NO -- THE ONLY
6 WAY THAT WAS USED WAS COOKSEY WAS ASKED IF HE KNEW WHO
7 THAT PERSON WAS, AND HE SAID THAT'S THE DEFENDANT'S
8 BROTHER.

9 THE COURT: OKAY. MR. JAFFE?

10 MR. JAFFE: SUBMIT IT.

11 THE COURT: OKAY. THAT WILL BE SUSTAINED. THAT
12 WILL NOT GO IN.

13
14 (REJECTED:= DEFT'S. FF.)

15
16 MR. ARNOLD: THAT'S FF.

17 GG IS THE PHOTO OF THURSTON'S TRUCK. THAT IS
18 A VERY DARK-COLORED BURGUNDY TRUCK WITH CLEAR WINDOWS AND
19 CUSTOM WHEELS. THAT VEHICLE WAS NOT CONNECTED IN ANY WAY
20 TO ANYTHING OTHER THAN COOKSEY SAYING THAT'S THURSTON'S
21 TRUCK.

22 THE COURT: MR. JAFFE?

23 MR. JAFFE: WELL, IT WAS TESTIFIED TO ONLY TO
24 SUPPORT CALVIN COOKSEY'S TESTIMONY, AND SUBMIT IT.

25 THE COURT: ALL RIGHT. THAT WILL BE -- I'LL
26 SUSTAIN THE PROSECUTION'S OBJECTION. THAT WILL NOT BE
27 RECEIVED.

28 (REJECTED:= DEFT'S. GG)

1 MR. ARNOLD: HH IS A COPY OF DETECTIVE BUMCROT'S
2 NOTES ON THE INTERVIEW WITH ROBERT ROJAS.

3 DETECTIVE BUMCROT -- THE IMPEACHMENT WAS
4 ELICITED FROM THE WITNESS STAND. THE NOTES ARE HEARSAY.

5 THE COURT: MR. JAFFE?

6 MR. JAFFE: THE NOTES WERE USED BY MR. ARNOLD TO
7 REFRESH THE WITNESS OR TO EVEN IMPEACH ROBERT ROJAS, HIS
8 TESTIMONY CONNECTION WITH --

9 THE COURT: WELL, TELL YOU WHAT MY NOTES REFLECT,
10 AND I AM GOING TO HAVE TO LOOK AT IT. BUT IT SAYS THAT
11 THE FIRST PARAGRAPH WAS READ INTO THE RECORD.

12 MR. JAFFE: UH-HUH.

13 THE COURT: AND I THINK THAT THE PURPOSE OF IT
14 BEING READ INTO THE RECORD WAS IT IS BEFORE THE JURY
15 WITHOUT THE OTHER PORTION OF THE STATEMENT GOING TO THE
16 JURY. BUT LET ME --

17 MR. JAFFE: WELL, THAT'S TRUE. BUT THERE ARE A
18 NUMBER OF THINGS THAT ARE READ INTO THE RECORD WHEN YOU
19 HAVE AN ITEM. MY ARGUMENT --

20 THE COURT: LET ME LOOK AT IT. IF I AM GOING TO
21 LET IT IN, WE'LL HAVE TO CUT THE -- I TAKE IT IT WAS A
22 WHOLE PAGE OF A REPORT?

23 MR. JAFFE: YES, IT WAS ONE PAGE. AND MR. ARNOLD
24 USED IT FIRST, AND THE SECOND PORTION OF THE -- OF THE
25 NOTES WERE USED BY MR. ARNOLD --

26 MR. ARNOLD: HOW COULD I USE IT FIRST? IT'S A
27 DEFENSE EXHIBIT.

28 MS. DOHERTY: YOU DID. YOU IMPEACHED YOUR OWN

1 WITNESS.

2 MR. JAFFE: IF I COULD LOOK AT IT, I WILL TELL YOU.

3 DO YOU HAVE IT, DAVID?

4 MS. DOHERTY: HH.

5 MR. JAFFE: HH.

6 MS. DOHERTY: IT HAD TO DO WITH THE TIME.

7 MR. JAFFE: I USED IT SECONDLY TO SHOW THAT HE
8 CONSISTENTLY SAID THAT IT WAS TWO TO THREE WEEKS BEFORE
9 APRIL 6TH.

10 MR. ARNOLD: EVEN IF THAT IS THE CASE, THEN WHAT IS
11 THE EXCEPTION TO THE HEARSAY RULE?

12 THE COURT: WELL, IT MIGHT BE --

13 MR. JAFFE: 77 --

14 THE COURT: IT MIGHT BE A PRIOR CONSISTENT
15 STATEMENT, BUT LET ME --

16 MR. ARNOLD: HE ACKNOWLEDGED IT.

17 MR. JAFFE: EVIDENCE CODE I THINK IT'S 771 PERHAPS.

18 ALL RIGHT. THE SECOND PARAGRAPH STATES:

19 "LAST FRIDAY CALVIN CAME BACK AND WAS
20 PRESSURING ME TO SELL IT BACK TO HIM. I TOLD HIM THAT --
21 I TOLD HIM THAT MY FRIEND HAD SHOT A CRIP WITH IT," AND IT
22 GOES ON, "I SOLD IT BACK TO CALVIN FOR \$350."

23 I THINK THAT WAS -- THERE'S THE USE OF THE
24 \$350. THAT'S WHY -- BECAUSE HE TESTIFIED IT WAS \$250, AND
25 THEN YOU WANTED TO IMPEACH HIM THAT HE SOLD IT FOR 350,
26 AND HE CONTINUED TO SAY IT'S 250.

27 THE COURT: ALL RIGHT. I'LL TAKE A LOOK AT THAT.

28 THEN WHAT OTHER OBJECTIONS?

1 MR. ARNOLD: THIS IS A CERTIFIED COPY OF I GUESS A
2 TRAFFIC WARRANT FOR SOMEONE NAMED RILO OR RICO MARTIN.

3 THE COURT: WHAT'S THE RELEVANCE OF THAT?

4 MR. JAFFE: THE RELEVANCE -- I WANTED TO READ IT
5 INTO THE RECORD, AND I WAS PRECLUDED BECAUSE MR. ARNOLD
6 MADE AN OBJECTION AND SAID THAT THE DOCUMENT SPEAKS FOR
7 ITSELF, AND IT DOES.

8 WHAT THAT DOCUMENT SHOWS IS THAT IN OCTOBER
9 OF 1992 THAT MR. MARTIN HAD RECEIVED A TRAFFIC VIOLATION
10 WHILE DRIVING REGIS THOMAS' TRUCK.

11 AND IT'S AN OFFICIAL COURT RECORD. IT'S
12 CERTIFIED. IT HAS THE LICENSE PLATE NUMBER ON THE
13 VEHICLE.

14 SO I THINK IT IS ADMISSIBLE FOR A COUPLE
15 PURPOSES. ONE, THAT THERE ARE OTHERS WHO HAVE ACCESS TO
16 HIS TRUCK, AND THAT THE TRUCK HAD A LICENSE PLATE NUMBER
17 ON IT PREDATING THE MURDERS.

18 THE COURT: ALL RIGHT. I AM GOING TO -- BECAUSE I
19 RECALL THAT -- NOW THAT YOU JOGGED MY MEMORY, THAT
20 MR. ARNOLD HAD OBJECTED AND SAID IT SPOKE FOR ITSELF.

21 I WILL OVERRULE THE OBJECTION AND PERMIT IT
22 TO COME IN.

23 MR. ARNOLD: I UNDERSTAND YOU ARE, BUT --

24 THE COURT: WELL, HE JUST GAVE YOU HIS OFFER OF
25 PROOF AS TO THE RELEVANCE. YOU KNOW, I MEAN I CANNOT
26 LIMIT -- HIS RELEVANCE IS SOMEBODY ELSE WAS ISSUED --
27 SOMEBODY IN THE NAME OF WHATEVER NAME WAS ISSUED A
28 CITATION IN THAT VEHICLE.

1 MR. ARNOLD: ALL RIGHT.

2 THE COURT: ON THAT PARTICULAR DAY.

3 MR. ARNOLD: ALL RIGHT.

4 THE LAST THING IS JJ AND NN. IT'S THE SAME
5 THING. IT'S THE HANDWRITTEN DAILY LOG OF BURRELL AND
6 MACDONALD. AND THE NN IS THE ENLARGED VERSION OF IT.

7 THE COURT: RIGHT.

8 WHICH ONE DO YOU WANT, MR. JAFFE?

9 MR. JAFFE: EITHER ONE. MR. ARNOLD HAD INDICATED
10 TODAY THAT HE WAS OBJECTING BECAUSE I HAD NOT ESTABLISHED
11 A FOUNDATION, AND I HAD ASKED EARLY ON WHETHER HE WOULD
12 STIPULATE THAT IT WAS THE LOG OF OFFICERS BURRELL AND
13 MACDONALD, AND WE DID ENTER INTO A STIPULATION.

14 BUT THIS MORNING MR. ARNOLD ADVISED ME THAT
15 HE STIPULATED THAT IT'S THE LOG, BUT HE DOES NOT BELIEVE
16 THAT IT'S --

17 THE COURT: A BUSINESS RECORD?

18 MR. JAFFE: EITHER A BUSINESS RECORD -- HE DOES NOT
19 BELIEVE THAT THERE IS SUFFICIENT FOUNDATION TO SHOW
20 RELIABILITY.

21 I COULD -- YOU KNOW, IT WAS BASED ON MY
22 UNDERSTANDING THAT THE STIPULATION WOULD INCLUDE THAT IT
23 WAS IN FACT A BUSINESS RECORD BY VIRTUE OF THE FACT THAT
24 IT IS KEPT IN THE ORDINARY COURSE OF THE BUSINESS.

25 THAT IT IS A LOG. IT IS NOT A POLICE REPORT.
26 IT'S THEIR OWN LOG. AND I BELIEVE IT WOULD QUALIFY AS A
27 BUSINESS RECORD, AND I COULD ESTABLISH THE FOUNDATION
28 THROUGH OTHER WITNESSES.

1 I DON'T THINK I HAVE TO ONLY ESTABLISH IT OR
2 THAT I WOULD BE REQUIRED TO ESTABLISH IT THROUGH BURRELL
3 OR MACDONALD. THAT WOULD BE NECESSARILY LUDICROUS THAT
4 YOU COULD NOT ESTABLISH A BUSINESS RECORD IF A PERSON IS
5 DECEASED WHO ENTERED THE NOTATION.

6 I COULD CALL A DISPATCHER. I COULD CALL
7 SOMEONE FAMILIAR WITH HOW LOGS ARE PREPARED. BUT I
8 THOUGHT THE STIPULATION HAD ENCOMPASSED THAT.

9 THE COURT: ALL RIGHT.

10 DO YOU STILL HAVE THE OBJECTION?

11 MR. ARNOLD: WELL, YES. I WAS WILLING TO STIPULATE
12 THAT THAT IS IN FACT THEIR LOG, BUT THE BASIS FOR THE
13 BUSINESS RECORDS EXCEPTION IS THAT THE INFORMATION WAS
14 ACCURATE AT THE TIME IT WAS INPUTTED AND THE -- REALLY THE
15 ONLY EVIDENCE WE HAVE ABOUT CAR LOGS COMES FROM OFFICER
16 METCALF. AND HE ADMITTED THAT THE TIMES ARE NOT
17 NECESSARILY ACCURATE.

18 AND IT WOULD SEEM TO ME THAT -- IT WOULD SEEM
19 TO ME THAT THE -- THERE WOULD HAVE TO BE SOME FOUNDATION
20 AS TO WHEN THE VARIOUS TIMES WERE PUT INTO THE LOG, THE
21 HANDWRITTEN LOG, AND WHEN IT WAS PUT IN TO ESTABLISH THE
22 UNDERLYING RELIABILITY IN THE FIRST PLACE.

23 YOU KNOW, THERE -- YES, CONCEIVABLY IT'S A
24 BUSINESS RECORD, BUT I THINK AS IN ANY EXCEPTION TO THE
25 HEARSAY RULE, THERE HAS TO BE A FOUNDING -- A FINDING BY
26 THE COURT THAT THE INITIAL INFORMATION IS RELIABLE.

27 AND HOW CAN THE COURT OR ANYBODY ELSE SAY
28 THAT THE TIMES THAT ARE WRITTEN IN THAT LOG ARE RELIABLE?

1 MR. JAFFE: WELL, WE HAVE TESTIMONY FROM OFFICER
2 METCALF THAT HE SAW OFFICERS MACDONALD AND BURRELL AT THE
3 MAHALO STREET ADDRESS.

4 HE SAW THEM AT THE -- THERE'S ANOTHER ADDRESS
5 THAT HE SAW THEM AT. I THINK -- THE WILLOWBROOK ADDRESS.
6 THE COMPUTER PRINTOUT -- YOU CAN CORRELATE THE TIMES WITH
7 THE COMPUTER PRINTOUT.

8 SO JUST BECAUSE METCALF MIGHT BE WRONG IN ONE
9 SPECIFIC INSTANCE, I THINK YOU HAVE TO MAKE A MORE GENERAL
10 OR, AS THE BUZZ WORD OF TODAY IS, THE MORE GLOBAL VIEW OF
11 THIS, AND THAT GENERALLY SPEAKING IT WOULD QUALIFY.

12 THE COURT: WELL, 1271 IS THE EXCEPTION, BUSINESS
13 RECORD EXCEPTION OF THE HEARSAY RULE.

14 AND I WOULD SAY IF SOMEBODY, WHETHER IT WAS
15 THE PROSECUTION OR DEFENSE, WERE TO CALL A WITNESS TO TELL
16 ME THAT THESE WRITINGS ARE MADE IN THE REGULAR COURSE OF
17 BUSINESS, AND TYPICALLY THE WRITING IS MADE AT OR NEAR THE
18 TIME OF THE ACT, CONDITION, OR EVENT, I THINK IF A
19 CUSTODIAN OR QUALIFIED WITNESS TESTIFIES TO ITS IDENTITY
20 AND THE MODE OF ITS PREPARATION AND THE SOURCES OF
21 INFORMATION AND THE METHOD OF TIME AND PREPARATION WERE
22 SUCH AS TO INDICATE ITS TRUSTWORTHINESS, THEN I WOULD FIND
23 IT TO BE VALID.

24 WHEN AN OFFICER SAYS THAT MINUTES ARE NOT
25 EXACTLY ACCURATE, THAT MAY BE ONE THING. BUT I THINK THAT
26 IT HAS TO DO WITH THE DOCUMENT ITSELF.

27 AND I WOULD FIND THAT IF A CUSTODIAN OR
28 SOMEBODY, WHOEVER KEEPS THESE AT THE STATION, COMES IN AND

1 TESTIFIES, WHETHER IT IS THE WATCH SERGEANT OR WHATEVER,
2 OBVIOUSLY THERE'S -- THERE'S A CERTAIN AMOUNT OF
3 RELIABILITY I WOULD HOPE IF THE POLICE DEPARTMENT BASED ON
4 METCALF'S TESTIMONY IS RUNNING STATISTICS AS A RESULT OF
5 IT.

6 I WOULD SAY THAT I DON'T -- I WAS SOMEWHAT
7 SURPRISED AT METCALF'S RESPONSE. I WOULD HAVE EXPECTED
8 THAT HE WOULD SAY IT WAS FOR US TO ACCOUNT FOR OUR TIME
9 RATHER THAN FOR THEM TO FIGURE OUT HOW MANY TICKETS WE
10 HAVE. BUT I THINK THAT'S TYPICALLY WHAT THEY ARE FOR.

11 SO THERE IS A BASIS OF THE FINDING OF THE
12 TRUSTWORTHINESS. SO IF YOU WANT TO BRING SOMEBODY IN,
13 I'LL HAVE THEM TESTIFY.

14 MR. ARNOLD: NO, THAT'S NOT NECESSARY. I
15 STIPULATED THAT IT IS THEIR LOG. TO ME IT WOULD BE JUST A
16 WASTE OF TIME FOR SOMEONE TO COME IN AND JUST GO THROUGH
17 THE DRILL OF --

18 THE COURT: SO BASED ON MY RULING, YOU ARE GOING TO
19 WITHDRAW AN OBJECTION TO THE FOUNDATION?

20 MR. ARNOLD: YES, BECAUSE I AM SURE THAT IF WE
21 WASTED THE TIME TO BRING THIS WITNESS IN, YOU WOULD ALLOW
22 IT ANYWAY. SO I SEE NO REASON TO BEAT A DEAD HORSE.

23 THE COURT: ALL RIGHT. SO WHICH ONE DO YOU WANT,
24 THE ENLARGEMENT?

25 MR. JAFFE: THE ENLARGEMENT.

26 THE COURT: SO THAT MEANS THEN THAT --

27 MR. JAFFE: THAT I WOULD WITHDRAW --

28 THE COURT: JJ WILL NOT GO TO THE JURY.

1 (WITHDRAWN:= DEFT'S. JJ.)

2
3 THE COURT: AND NN WILL; IS THAT CORRECT?

4 MR. JAFFE: YES.

5 THE COURT: NN IS AN ENLARGEMENT OF JJ.

6 MR. JAFFE: YES.

7 MR. JAFFE: AND KK WOULD NOT GO IN, AND MM WOULD.

8
9 (WITHDRAWN:= DEFT'S. KK.)

10
11 MS. DOHERTY: THEY'RE THE SAME DOCUMENT. JUST ONE
12 IS BLOWN UP.

13 THE COURT: OKAY. I MIGHT HAVE MISSED WHAT YOU
14 SAID.

15 MS. DOHERTY: OKAY. KK IS THE COMPUTER LOG
16 GENERATED BY THE POLICE DEPARTMENT IN THE SMALL VERSION.

17 THE COURT: RIGHT.

18 MS. DOHERTY: AND MM IS THE BLOWUP OF THAT.

19 THE COURT: SO KK WILL NOT GO IN.

20 MS. DOHERTY: RIGHT.

21 THE COURT: ANY OTHER OBJECTIONS, MR. ARNOLD?

22 MR. ARNOLD: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. THEN I WILL DEFER UNTIL
24 TOMORROW THE RULING ON L, BB, CC, AND HH.

25 IS THERE ANYTHING ELSE THAT HAS TO BE
26 BROACHED BEFORE I EXCUSE YOU?

27 WHAT I INTEND TO DO IS GO THROUGH THE
28 INSTRUCTIONS, MARK THEM WITH A FELT-TIP PEN OR PUT

1 WRITINGS IN OR WHAT HAVE YOU IF IT IS NECESSARY. I HAVE
2 NOT REVIEWED THEM YET.

3 THEN, MR. ARNOLD, IF YOU WANT TO, IF I
4 MAKE -- WHAT I INTEND TO DO IS LET COUNSEL LOOK AT THEM
5 BEFORE I READ THEM.

6 SO IF YOU GET HERE AT 11:00 OR WHATEVER AND
7 YOU CAN AGREE, OR IF THERE ARE ANY OBJECTIONS, YOU CAN
8 POSE THE OBJECTIONS TO THE LANGUAGE, EITHER SIDE. AND IF
9 I MADE AN ERROR, THEN I'LL CHANGE IT.

10 IF I ADD INSTRUCTIONS, I'LL FLAG THOSE SO
11 THAT I'LL PUT YOU ON NOTICE. THERE MAY BE SOMETHING I
12 FEEL IS APPROPRIATE IN A GENERAL INSTRUCTION, AND THEN YOU
13 CAN REVIEW THEM.

14 I WILL READ THEM TO THE JURORS. WE CAN DO IT
15 ONE OF TWO WAYS. EITHER, MR. ARNOLD, YOU CAN TAKE THEM,
16 PHOTOCOPY THEM, OR I CAN READ THEM TO THE JURORS AND THEN
17 YOU CAN TAKE THEM AND PHOTOCOPY THEM IF YOU WANT A COPY.
18 I DON'T KNOW WHETHER YOU DO OR YOU DON'T.

19 MR. JAFFE, SAME THING FOR YOU.

20 MR. ARNOLD: WHETHER I MAKE A PHOTOCOPY OR NOT IS
21 GOING TO DEPEND ON WHAT YOU WRITE. IF YOU MAKE ANY
22 SIGNIFICANT ALTERATIONS OR CHANGES, I WOULD WANT A COPY.
23 AND IF MR. JAFFE FEELS THE SAME WAY, I WOULD CERTAINLY
24 MAKE A COPY FOR HIM.

25 THE COURT: ALL RIGHT.

26 MR. JAFFE: IT IS MY PRESENT INCLINATION NOT TO
27 OBJECT TO ANY OF THE RENDERINGS AS IS. HOWEVER, IF I
28 SHOULD CHANGE MY MIND AND THE RENDERINGS WERE TO GO IN --

1 FOR INSTANCE, LET'S ASSUME THERE IS NOT SUFFICIENT
2 FOUNDATION FOR THE 454. THERE WAS NOT SUFFICIENT
3 FOUNDATION FOR THE LICENSE PLATE. THERE IS NO FOUNDATION
4 FOR THE LICENSE PLATE.

5 IF THEY WENT IN, WOULD THEY GO IN SOMEHOW
6 WHERE THE LICENSE PLATE WOULD BE COVERED?

7 THE COURT: RIGHT. IF YOU OBJECT -- THE LICENSE
8 PLATE IS MY BIGGEST CONCERN FROM REVIEWING -- WAS MY
9 BIGGEST CONCERN FROM REVIEWING THE EVIDENCE. THAT IS,
10 SOMEHOW EITHER WITH A MARKER OR WHATEVER, I'LL DELETE IT.

11 THE 454, DE'MORYEA POLIDORE SAID IT WAS 4
12 SOMETHING 4.

13 MR. JAFFE: YES.

14 THE COURT: TO THE BEST OF HIS RECOLLECTION.

15 MR. JAFFE: YES. OKAY.

16 THE COURT: I DON'T -- 4 BY 4 OR 4 SOMETHING 4. SO
17 I DON'T -- THAT I WOULD NOT NECESSARILY STRIKE THE 5 OUT
18 OF THE 454.

19 BUT THE LICENSE PLATE WAS THE SITUATION WHERE
20 I DID NOT FEEL THAT THERE WAS -- IT WAS ESTABLISHED, AND,
21 AGAIN, AS I SAID, IT'S STRICTLY A DECISION TO BE MADE BY
22 YOU FOR TACTICAL PURPOSES IN YOUR PRESENTATION.

23 MR. JAFFE: THE LAST THING THAT I WANT TO RAISE WAS
24 WE HAD EARLIER TALKED ABOUT A POSSIBLE INSTRUCTION
25 REGARDING THE DEATH OF ANDRE CHAPPELL. WE NEVER REALLY
26 ADDRESSED THAT ISSUE.

27 AND TACTICALLY I HAVE TO DECIDE WHETHER OR
28 NOT I WOULD REQUEST THE COURT TO INSTRUCT, GIVE AN

1 APPROPRIATE INSTRUCTION OR ADMONITION OR WHETHER I JUST
2 WANT TO LEAVE IT ALONE.

3 MR. ARNOLD: THERE WAS A STIPULATION.

4 MR. JAFFE: NO, NOT ON ANDRE CHAPPELL. THERE'S A
5 STIPULATION -- NO, THERE'S A STIPULATION REGARDING
6 COOKSEY'S MOTHER.

7 MR. ARNOLD: NO, NO, WE HAD A STIPULATION THAT --
8 WE READ IT. THAT ANDRE CHAPPELL, REMEMBER, WAS KILLED ON
9 SUCH AND SUCH A DATE, 114TH AND WHEREVER IT WAS.

10 MS. DOHERTY: AT THE LOCATION.

11 MR. JAFFE: AND I DID NOT GET INTO ANY -- THIS WAS
12 ALL WE SAID.

13 MR. ARNOLD: RIGHT.

14 MR. JAFFE: WE HAD A STIPULATION, BUT WE DIDN'T
15 HAVE ANY ADMONITION AS TO THE JURY NOT TAKING ANY CUE FROM
16 THAT AS IT RELATES TO REGIS THOMAS.

17 THE COURT: WELL, I THINK WE WERE GOING TO DEFER IT
18 TO SEE THE TESTIMONY OF MR. DICKSON.

19 AND FROM READING MR. DICKSON'S TESTIMONY, I
20 BELIEVE IT CAME OUT THAT HE SAID THAT IT -- MY INFERENCE
21 FROM READING THE TESTIMONY WAS THAT THERE WAS NO
22 CONNECTION NECESSARILY WITH YOUR CLIENT. IT WAS JUST A
23 MATTER OF WHAT HAPPENS IN THE COMMUNITY WITH HOMEYS OR
24 HOMEBOYS OR WHAT HAVE YOU IN GENERAL.

25 MR. JAFFE: OKAY.

26 THE COURT: SO IT WAS NOT A SITUATION WHEREIN --
27 WHAT MY CONCERN WAS, WAS THAT HE SAID AFTER, YOU KNOW --
28 AFTER MR. THOMAS OR REGGIE OR WHATEVER HAD SO AND SO

1 KILLED. THAT DIDN'T COME OUT IN THAT LANGUAGE. IT CAME
2 OUT THAT'S HIS CONCERN.

3 ALL RIGHT. ANYTHING ELSE?

4 MR. ARNOLD: OH, I WOULD JUST ASK THAT THE
5 PROSECUTION -- THE PEOPLE'S 113 FOR IDENTIFICATION BE
6 ADMITTED.

7 THE COURT: ALL RIGHT. MR. ARNOLD WENT UPSTAIRS
8 AND MADE ANOTHER COPY OF SEVEN SECONDS OF THE TAPE WHERE
9 METCALF LISTENED TO IT.

10 MR. JAFFE: OH, YES, YES, YES. THANK YOU FOR
11 REMINDING ME.

12 THE COURT: WHAT ABOUT 113 RIGHT NOW?

13 MR. JAFFE: RIGHT. ON 113, AT THE BEGINNING OF
14 THAT TAPE THERE IS A VOICE WHICH COMES ON AND SAYS 2315
15 HOURS, AND THEN YOU HEAR METCALF'S VOICE.

16 MR. ARNOLD: NO, 2316.

17 MR. JAFFE: 2316. THAT PORTION SHOULD NOT COME IN
18 BECAUSE THAT PORTION IS HEARSAY. IT WAS PLAYED MERELY FOR
19 METCALF TO TESTIFY AS TO WHEN HE ARRIVED, AND HE REFRESHED
20 HIS RECOLLECTION.

21 WE HAD -- THERE HAD BEEN A STIPULATION
22 THAT -- WE WENT THROUGH THE STIPULATION BECAUSE MR. ARNOLD
23 WANTED TO CALL MR. METCALF. AT LEAST THAT WAS MY
24 RECOLLECTION.

25 THE COURT: MR. ARNOLD?

26 MR. ARNOLD: THE JURY HEARD 2316. THAT'S THE WAY
27 IT STARTS. IT'S, YOU KNOW, BROADCAST 2316 HOURS. THAT'S
28 WHAT IS ON THE TAPE.

1 MR. JAFFE: BUT THAT 2316 IS NOT METCALF.

2 MS. DOHERTY: AND IT'S NOT THE DISPATCHER.

3 MR. JAFFE: IT WAS OFFERED TO SHOW THAT METCALF GOT
4 THERE IN SEVEN SECONDS. BUT IF THAT TAPE IS BEING OFFERED
5 TO NOW PROVE THAT IT IS 2316 HOURS BY VIRTUE OF WHAT
6 SOMEONE HAPPENS TO SAY -- I DON'T KNOW WHO THAT PERSON IS.

7 MR. ARNOLD: WELL, JUDGE, ON MR. JAFFE'S OWN CHART
8 THAT HE PLACED ON THE BOARD WHICH LISTED THE ARRIVAL TIMES
9 OF OFFICERS METCALF AND HIS PARTNER AND BURRELL AND
10 MACDONALD, HE HIMSELF PUT ROSECRANS, 2316 HOURS.

11 MR. JAFFE: THAT'S NOT -- BUT --

12 THE COURT: HIS POINT ISN'T THAT. IT ISN'T THAT
13 HE'S DISPUTING THAT IT IS 2316 HOURS. IT'S THAT THAT IS
14 ON THERE.

15 MR. JAFFE: RIGHT.

16 THE COURT: AS FAR AS -- I'LL LISTEN TO IT.

17 MR. ARNOLD: THAT'S BEING -- YOU KNOW, THAT'S
18 REALLY BEING HYPERTECHNICAL. COME ON.

19 THE COURT: WELL, I'LL LOOK -- I'LL LISTEN TO IT,
20 PEOPLE'S 113. I'LL RULE TOMORROW.

21 ALL RIGHT. IT IS COMING IN. WHETHER IT
22 COMES IN WITHOUT THOSE NUMBERS ON IT OR NOT, I'LL MAKE A
23 DECISION.

24 ANYTHING ELSE?

25 MR. JAFFE: NO.

26 THE COURT: ANYTHING ELSE, MR. ARNOLD?

27 MR. ARNOLD: NO, YOUR HONOR.

28 THE COURT: ALL RIGHT. THEN WHY DON'T -- COUNSEL,

1 WHY DON'T YOU COME TOMORROW AT 11:00, AND YOU CAN LOOK AT
2 THE INSTRUCTIONS.

3 MR. JAFFE: ALL RIGHT.

4 THE COURT: AND TELL ME IF EVERYTHING IS VALID.

5 WHAT I WILL ALSO HAVE IS I AM GOING TO HAVE
6 THE CLERK TYPE UP THE VERDICT FORMS TODAY AND PREPARE
7 THEM, AND I WANT YOU TO LOOK AT THEM SO IF THERE ARE ANY
8 CHANGES THAT ARE NECESSARY.

9 I KNOW TYPICALLY EVERYONE SAYS, YEAH, OKAY,
10 ON THE VERDICT FORMS, BUT ON THESE TYPES OF CASES I WANT
11 YOU TO TAKE A LOOK AT THEM.

12 MR. ARNOLD: DO YOU -- ON THE MURDER COUNTS, ON THE
13 GUILTY MURDER COUNTS, DO YOU INTEND TO HAVE SOMETHING TO
14 THE EXTENT THAT WE FIND THE DEFENDANT GUILTY OF MURDER,
15 THEN WITH THE SEPARATE PARAGRAPH WE FURTHER FIND THAT THE
16 MURDER IS WILLFUL, DELIBERATE, AND PREMEDITATED WITH A
17 SEPARATE PARAGRAPH, WE FIND IT IS -- THEY'RE TRUE OR NOT
18 TRUE, THAT THE DEFENDANT PERSONALLY USED A FIREARM?

19 THE COURT: TYPICALLY WHAT I DO ON MURDERS ARE WE,
20 THE JURY, FIND THE DEFENDANT GUILTY OF MURDER, AND THEN
21 THERE IS A BLANK -- AND THERE IS A BLANK. IT SAYS FIRST,
22 SECOND, AND THEY SELECT WHAT DEGREE IT IS.

23 IN OTHER WORDS, THEY WRITE IN FIRST OR SECOND
24 DEGREE. THEN THE ALLEGATION WILL BE THE USE OF A FIREARM
25 UNDER THAT, FIND IT TO BE TRUE OR NOT TRUE.

26 THEN AS TO COUNT I -- AND I AM GOING TO LOOK
27 AT ANOTHER VERDICT FORM THAT WILL SAY HAVING FOUND THE
28 DEFENDANT GUILTY OF MURDER IN THE FIRST DEGREE, WE FIND

1 THAT THE SPECIAL CIRCUMSTANCE OF HOWEVER THE LANGUAGE WILL
2 BE ABOUT ANOTHER -- FINDING THEM GUILTY OF ANOTHER KILLING
3 IN THIS CASE, WHATEVER, TRUE NOT TRUE.

4 BUT I AM JUST GOING TO LOOK AT THAT LIKE HOW
5 I WANT THAT TO WORK.

6 MR. ARNOLD: I BELIEVE THAT THAT -- THOSE TWO -- I
7 BELIEVE THE SPECIAL CIRCUMSTANCES SHOULD ONLY BE LISTED
8 ONCE.

9 THE COURT: WELL, I WAS TALKING TO JUDGE FLYNN
10 ABOUT THAT. HE WAS IN THIS MORNING, AND WE WERE
11 DISCUSSING THAT.

12 HE JUST HAD A CASE WHERE THERE WAS MULTIPLE
13 MURDERS. I REALIZE THAT THE COURTS SAY THAT IT CAN ONLY
14 BE ARTICULATED TO THE JURORS IF IT WERE TO GET TO A
15 PENALTY PHASE AS ONLY ONE SPECIAL CIRCUMSTANCE.

16 THAT'S WHAT I WANT -- IN OTHER WORDS, WHEN WE
17 ARE TALKING ABOUT OFFICERS BURRELL AND MACDONALD, THEIR
18 COUNTS, IT WILL BE MURDER, AND THEY FILL IN FIRST OR
19 SECOND DEGREE, THE USE, THE SPECIAL CIRCUMSTANCE
20 ALLEGATION THAT THE OFFICERS WERE IN THE COMMISSION OF
21 THEIR -- HE WAS IN THE COMMISSION OF HIS DUTY.

22 MR. ARNOLD: PEACE OFFICER.

23 THE COURT: WHAT I AM TRYING TO DECIDE RIGHT NOW IS
24 WHETHER I PUT THE MULTIPLE ON EACH GUILTY VERDICT OR NOT.
25 THAT'S WHAT I AM LOOKING AT.

26 AND I WANT -- WHEN I WAS TALKING TO JUDGE
27 FLYNN, I WANTED TO LOOK AT HOW HE HAD DONE IT IN THIS
28 OTHER CASE. WE WERE TALKING ABOUT IT THIS MORNING.

1 ALL RIGHT. AND YOU CAN LOOK AT THOSE
2 TOMORROW. OBVIOUSLY THE VERDICT FORMS WON'T BE GOING TO
3 THE JURORS UNTIL FRIDAY AT THE EARLIEST.

4 ALL RIGHT. ADAM, DID YOU CALL FOR
5 MR. COOKSEY?

6 THE BAILIFF: (NODS HEAD.)

7 THE COURT: ARE YOU GOING TO BE ABLE TO GET HIM
8 OVER HERE?

9 THE BAILIFF: HE WILL BE HERE TOMORROW.

10 THE COURT: I WILL ORDER HIM BACK IN A MONTH, AND
11 WE'LL NOTIFY HIS LAWYER TOMORROW AT THE REQUEST OF
12 COUNSEL. I'LL DO IT THAT WAY. WE'LL BE IN RECESS.

13
14 (AT 11:40 A.M., AN ADJOURNMENT WAS
15 TAKEN UNTIL 2:00 P.M. OF THE SAME DAY.)
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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 26, 1995

2 2:00 P.M.

3 DEPARTMENT NO. 106

HON. EDWARD A. FERNS, JUDGE

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN
5 OPEN COURT OUTSIDE THE PRESENCE OF ALL
6 PARTIES:)

7
8 (CALVIN COOKSEY IS PRESENT IN COURT.)

9 THE COURT: CALLING THE CASE OF REGIS THOMAS.

10 MR. THOMAS IS NOT PRESENT IN THE COURTROOM. THE DEFENSE
11 COUNSEL FOR MR. THOMAS ISN'T PRESENT. THE PROSECUTOR IS
12 NOT PRESENT. HOWEVER, THEY WERE AWARE THAT I WAS GOING TO
13 BRING YOU OUT, MR. COOKSEY. AND MR. COOKSEY, CALVIN
14 COOKSEY, IS PRESENT IN THE COURTROOM.

15 MR. COOKSEY, EACH OF THE LAWYERS HAVE
16 INDICATED TO ME THAT YOU ARE NO LONGER NECESSARY AS A
17 MATERIAL WITNESS. THEREFORE, I AM GOING TO ORDER THAT YOU
18 BE RELEASED TODAY.

19 CALVIN COOKSEY: THANK YOU. THANK YOU, SIR.

20 THE COURT: I AM ALSO GOING TO ORDER THAT YOU
21 APPEAR IN THIS COURT MAY 25TH AT 9:00 A.M. WITHOUT FURTHER
22 ORDER.

23 DO YOU UNDERSTAND THAT, SIR?

24 CALVIN COOKSEY: YES, SIR, THE DAY AFTER MY
25 BIRTHDAY.

26 THE COURT: OKAY. THEN YOU'LL KNOW.

27 CALVIN COOKSEY: YES, SIR.

28 THE COURT: SO DON'T OVERDO IT ON YOUR BIRTHDAY SO

1 YOU ARE HERE ON THE 25TH.

2 CALVIN COOKSEY: YES, SIR. I'LL BE HERE.

3 THE COURT: ALL RIGHT. THEN MY CLERK HAS WRITTEN
4 IT DOWN FOR YOU.

5 THE REASONS IS I JUST WANT TO SEE WHAT
6 HAPPENS WITH THE CASE.

7 CALVIN COOKSEY: YOUR HONOR, I WOULD LIKE TO
8 APOLOGIZE FOR WHEN I DIDN'T ANSWER YOU WHEN YOU DIRECTED A
9 QUESTION TO ME ABOUT BAIL. I WAS A LITTLE WORN OUT ABOUT
10 THE WAY THEY WERE TREATING ME. AND I APOLOGIZE TO YOU AND
11 THE COURT.

12 THE COURT: OKAY. AND I WILL -- WE ARE GOING TO
13 CALL MR. ANDELIN AND LET HIM KNOW THAT YOU HAVE BEEN
14 RELEASED.

15 CALVIN COOKSEY: OKAY.

16 THE COURT: OR YOU HAVE BEEN ORDERED TO BE RELEASED
17 TODAY.

18 CALVIN COOKSEY: OKAY.

19 THE COURT: BECAUSE THE LAWYERS HAD THOUGHT IF YOU
20 WERE GOING TO TESTIFY IT WOULD BE MONDAY, AND WE WOULD
21 NOTIFY HIM.

22 CALVIN COOKSEY: UH-HUH.

23 THE COURT: BUT THERE IS NO -- THEY BASICALLY
24 RESTED THEIR CASES -- THEY ARE GOING TO DO IT TOMORROW.
25 BUT THEY REPRESENTED TO ME THAT THEY DON'T NEED YOU AT
26 THIS TIME.

27 THEY MAY NEED YOU IN THE FUTURE IF IT'S A
28 HUNG JURY OR A MISTRIAL OR WHATEVER.

1 CALVIN COOKSEY: OKAY.

2 THE COURT: AND I AM ORDERING YOU BACK ON THAT DAY.

3 CALVIN COOKSEY: YES, SIR.

4 THE COURT: MAY 25TH. IF YOU DON'T SHOW --

5 CALVIN COOKSEY: I WON'T GO THROUGH THIS AGAIN.

6 THE COURT: -- I WILL ISSUE A WARRANT FOR YOU.

7 CALVIN COOKSEY: YES, SIR.

8 THE COURT: ALL RIGHT. OKAY, SIR. THANK YOU.

9 CALVIN COOKSEY: THANK YOU.

10 THE COURT: SO WE'LL PROCESS THE PAPERWORK. IF YOU
11 HAVE NO OTHER HOLD ON YOU, YOU WILL BE RELEASED.

12 CALVIN COOKSEY: THANK YOU, SIR.

13 THE COURT: ALL RIGHT.

14

15 (AT 2:05 P.M., AN ADJOURNMENT WAS
16 TAKEN UNTIL THURSDAY, APRIL 27, 1995, AT
17 11:00 A.M.)

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