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No. 88 DA 0269
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COURT OF APPEAL OF THE STATE OF CALIFORNIA  
 SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
 )  
 JOE HUNT, AKA JOSEPH HUNT, )  
 AKA JOSEPH HENRY GAMSKY, )  
 )  
 DEFENDANT-APPELLANT. )

SUPERIOR COURT  
 NO. A-090435

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
 HONORABLE LAURENCE J. RITTENBAND, JUDGE PRESIDING  
 REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: JOHN K. VAN DE KAMP  
 STATE ATTORNEY GENERAL  
 3580 WILSHIRE BOULEVARD  
 ROOM 800  
 LOS ANGELES, CALIFORNIA 90010

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 76 OF 101  
 (PAGES 12064 TO 13252 , INCLUSIVE)

COPY

ROSEMARIE GOODBODY, CSR NO. 932  
 SALLY YERGER, CSR NO. 2008  
 OFFICIAL REPORTERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WEST C

HON. LAURENCE J. RITTENBAND, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) VS. )  
 )  
 ) JOSEPH HUNT, )  
 )  
 ) DEFENDANT. )

NO. A-090435

REPORTERS' DAILY TRANSCRIPT

THURSDAY, APRIL 2, 1987

VOLUME 76

PAGES 12064 TO 12252, INCL.

APPEARANCES:

FOR THE PLAINTIFF: IRA REINER, DISTRICT ATTORNEY  
BY: FREDERICK N. WAPNER, DEPUTY  
1725 MAIN STREET  
SANTA MONICA, CALIFORNIA 90401

FOR THE DEFENDANT: ARTHUR H. BARENS, ESQ.  
10209 SANTA MONICA BOULEVARD  
LOS ANGELES, CALIFORNIA 90067

AND

RICHARD C. CHIER, ESQ.  
10920 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024

ROSEMARIE GOODBODY, CSR NO. 932  
SALLY YERGER, CSR NO. 2008  
OFFICIAL REPORTERS

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P.M.      12128

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(RESUMED)		12128	12135	12147
(FURTHER)			12167	
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EXHIBITS FOR VOLUME 76

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236 ORIGINAL OF EXHIBIT QQ - LINEUP	12096
237 POLICE REPORT	12148
238 PHOTOGRAPH OF GAS STATION	12209
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1 SANTA MONICA, CALIFORNIA; THURSDAY, APRIL 2, 1987; 10:43 A.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: GOOD MORNING.

6 YOU MAY PROCEED.  
7

8 CARMEN CANCHOLA,  
9 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED  
10 THE STAND AND TESTIFIED AS FOLLOWS:

11 THE CLERK: YOU HAVE PREVIOUSLY BEEN SWORN SO YOU ARE  
12 STILL UNDER OATH.

13 IF YOU WOULD JUST STATE YOUR NAME FOR THE  
14 RECORD.

15 THE WITNESS: CARMEN CANCHOLA.

16 CAN I SAY SOMETHING?

17 I WANT TO KNOW WHY I AM ASKED TO TELL THE WHOLE  
18 TRUTH AND I AM ONLY ALLOWED TO TELL PART OF THE TRUTH?

19 THE COURT: WE WILL STRIKE THAT.

20 EVERYTHING WILL COME OUT. YOU DON'T HAVE TO  
21 BE THE JUDGE OF THE CASE OR THE LAWYERS. YOU WILL GET THE  
22 TRUTH OUT. DON'T WORRY ABOUT IT.

23 GO AHEAD.  
24

25 CROSS-EXAMINATION (RESUMED)

26 BY MR. WAPNER:

27 Q MS. CANCHOLA, ABOUT THE CAR THAT YOU SAW THAT  
28 NIGHT, DO YOU REMEMBER WHAT SIZE IT WAS?

1           A           I DIDN'T GET A GOOD LOOK AT THE CAR.

2                        I WAS MOSTLY LOOKING AT THE FACE OF THE MAN.

3                        THE BEST RECOLLECTION I HAVE IS THAT IT WAS A  
4 TWO DOOR AND OF THE COLOR SOMEWHAT AND I WASN'T EVEN SURE  
5 ABOUT THE COLOR.

6                        YOU ASKED ME TO, IF I COULD, TRY AND REMEMBER  
7 WHAT COLOR IT WAS AND I GUESSED THAT IT WAS A METALLIC BEIGE.

8           MR. WAPNER: YOUR HONOR, MAY THE ANSWER BE STRICKEN  
9 AS NON-RESPONSIVE?

10                       THE QUESTION WAS: DO YOU REMEMBER WHAT SIZE  
11 IT WAS?

12           THE COURT: I WILL STRIKE THE ANSWER.

13                        PLEASE LISTEN TO THE QUESTION AND ANSWER THE  
14 QUESTION, IF YOU WOULD, PLEASE, WOULD YOU?

15           Q           BY MR. WAPNER: I WANT TO KNOW IF YOU HAVE A  
16 PRESENT RECOLLECTION OF WHAT SIZE THE CAR WAS?

17           A           YES, MEDIUM SIZED CAR.

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1 Q AND DID YOU SAY WHEN YOU WERE ASKED ABOUT THE CAR  
2 IN THE INTERVIEW ON NOVEMBER 22, DID YOU SAY, "I THINK IT WAS  
3 A TWO-DOOR. IT WAS A LONGER CAR. IT WASN'T A MID-SIZED CAR.  
4 IT WAS A LITTLE LONGER ONE, A BIGGER CAR. IT IS PROBABLY LATE  
5 FIFTIES OR EARLY SIXTIES."

6 DID YOU SAY THAT?

7 A RIGHT NOW, SEVEN MONTHS LATER, I REMEMBER A MID-  
8 SIZED CAR.

9 THE COURT: PARDON ME?

10 THE WITNESS: RIGHT NOW, SEVEN MONTHS LATER, I REMEMBER  
11 A MID-SIZED CAR.

12 MR. WAPNER: MAY THAT AGAIN BE STRICKEN AS NONRESPONSIVE?  
13 THE QUESTION THAT SHE WAS ASKED WAS WHETHER SHE GAVE THAT  
14 ANSWER.

15 THE COURT: ALL HE ASKED WAS WHETHER YOU MADE THAT  
16 PARTICULAR STATEMENT AT THAT TIME.

17 THE WITNESS: I DON'T REMEMBER.

18 Q BY MR. WAPNER: WERE YOU PROVIDED BY MR. BARENS  
19 WITH A TRANSCRIPT OF THE TAPE RECORDING?

20 A YES I WAS. BUT I DIDN'T READ IT CLOSELY. I JUST  
21 TOOK A GLANCE AT IT. THERE WAS NO POINT IN READING IT  
22 CLOSELY BECAUSE --

23 THE COURT: WELL, ALL HE ASKED YOU WAS YES OR NO. YOUR  
24 ANSWER IS YES, YOU WERE GIVEN THAT? IS THAT RIGHT?

25 THE WITNESS: YES.

26 MR. WAPNER: MAY THE BALANCE OF THE ANSWER BE STRICKEN  
27 AS NONRESPONSIVE?

28 THE COURT: STRICKEN.

1 Q BY MR. WAPNER: NOW, DO YOU SEE LOOKING AT THIS  
2 DOCUMENT -- DOES THAT APPEAR TO BE A COPY OF THE TRANSCRIPT  
3 OF THE TAPE?

4 A IT IS A CLEARER VERSION OF THE ONE I GOT. THE  
5 OTHER ONE WAS KIND OF FOGGY, THE PRINTING ON IT BECAUSE IT  
6 WAS A COPY OF A COPY.

7 MR. WAPNER: MAY THAT ANSWER BE STRICKEN AGAIN, AS  
8 NONRESPONSIVE, YOUR HONOR? I AM ASKING HER WHETHER THIS APPEARS  
9 TO BE A COPY OF THE TRANSCRIPT.

10 THE COURT: I WILL STRIKE IT.

11 Q BY MR. WAPNER: IN LOOKING AT THAT DOCUMENT, DOES  
12 THAT APPEAR TO BE A TRANSCRIPT OF THE TAPE RECORDING MADE OF  
13 YOUR INTERVIEW?

14 A THE FIRST INTERVIEW.

15 Q OKAY. AND CALLING YOUR ATTENTION TO PAGE 50, DO  
16 YOU SEE WHERE THERE IS A QUESTION YOU ARE ASKED ABOUT THE CAR  
17 AND THE ANSWER, THE STATEMENT ABOUT THAT ANSWER THAT WAS  
18 GIVEN?

19 A YES I DO.

20 Q ALL RIGHT. WOULD YOU READ THAT TO YOURSELF, PLEASE?

21 A ABOVE IT, THERE ARE PARTS --

22 Q JUST READ IT TO YOURSELF FOR RIGHT NOW, WOULD YOU  
23 PLEASE.

24 A OKAY.

25 Q NOW, HAVING READ THAT PORTION, DOES IT REFRESH  
26 YOUR RECOLLECTION AS TO WHAT YOU SAID AT THE INTERVIEW OF  
27 NOVEMBER 22ND?

28 A HOW COME NOT EVERYTHING I SAID IS IN THE TRANSCRIPT

1 AND SOME PARTS OF IT SAY THAT THE TAPE RAN OUT AND THERE ARE  
2 DIFFERENT THINGS THAT ARE MISSING FROM THE TRANSCRIPT?

3 MR. WAPNER: YOUR HONOR, MAY THAT BE STRICKEN.

4 THE COURT: THAT WILL BE STRICKEN. ALL HE ASKED IS  
5 WHETHER THAT REFRESHES YOUR RECOLLECTION AS TO WHAT YOU SAID  
6 AT THAT PARTICULAR TIME.

7 THE WITNESS: YES IT DOES.

8 Q BY MR. WAPNER: DID YOU SAY AT THAT PARTICULAR  
9 TIME THAT IT WAS A TWO-DOOR, IT WAS A LONGER CAR, IT WASN'T  
10 A MID-SIZED CAR, IT WAS A LITTLE LONGER ONE, A BIGGER ONE,  
11 PROBABLY LATE FIFTIES OR EARLY SIXTIES? DID YOU MAKE THAT  
12 STATEMENT?

13 A IF THAT IS WHAT IT SAYS ON THE TRANSCRIPT, THEN  
14 YES.

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1 Q CAN YOU DESCRIBE THE PHYSIQUE OF THE PERSON YOU  
2 SAW WITH THE SILVER HAIR IN THE GAS STATION?

3 A EXCUSE ME. CAN YOU REPEAT THE QUESTION, PLEASE?

4 Q SURE.

5 COULD YOU PLEASE DESCRIBE THE PHYSIQUE OF THE  
6 PERSON THAT YOU SAW WITH THE SILVER HAIR AT VICKERS GAS  
7 STATION SIX TO EIGHT WEEKS BEFORE NOVEMBER THE 21ST?

8 A YES. HE WAS A TALL, SLENDER MAN.

9 Q AND OTHER THAN SLENDER, CAN YOU DESCRIBE HIM  
10 AT ALL IN TERMS OF HIS PHYSIQUE?

11 A I SAID THAT HE WASN'T REAL MUSCULAR. HE WAS  
12 SLENDER. THAT HE DIDN'T -- HIS ARMS WEREN'T WELL DEFINED.

13 Q DID YOU SAY THAT HE WAS VERY WELL FIT?

14 A HIS CLOTHES FIT HIM WELL.

15 Q BUT IN DESCRIBING THE PERSON, DID YOU SAY HE  
16 WAS --

17 A I SAID HE WAS FIT AND THAT HE WASN'T FAT.

18 Q LET ME JUST ASK THE QUESTION FIRST.

19 IN DESCRIBING THE PERSON, DID YOU SAY THAT HE  
20 WAS REAL TRIM, WELL KEPT UP, VERY WELL FIT?

21 A YES, I DID.

22 Q ALL RIGHT. WHEN YOU SAID THAT HE WAS VERY WELL  
23 FIT, WHAT DID YOU MEAN BY THAT?

24 A THAT HE WASN'T FAT, WHEREAS THE PERSON THAT WAS  
25 WITH HIM WAS KIND OF FAT.

26 Q IN TERMS OF HIS MUSCLE TONE, HOW WOULD YOU DESCRIBE  
27 HIS MUSCLE TONE?

28 A I DIDN'T SEE ANY, WHEREAS WEIGHT-LIFTERS HAVE

1 REAL DEFINED MUSCLE AND THAT SORT OF THING, HE DIDN'T HAVE  
2 THAT. I DON'T REMEMBER HIM HAVING THAT.

3 Q WHAT WAS HE WEARING, BY THE WAY?

4 A DESIGNER JEANS AND A SHIRT. I DON'T REMEMBER  
5 THE COLOR OF THE SHIRT OR WHAT KIND OF SHIRT IT WAS.

6 Q WAS IT A SHORT-SLEEVED OR LONG-SLEEVED SHIRT?

7 A I WAS MOSTLY LOOKING AT THE MAN'S FACE.

8 Q DO YOU RECALL WHETHER IT WAS A SHORT-SLEEVED  
9 SHIRT OR LONG-SLEEVED SHIRT?

10 A I THINK IT MUST HAVE BEEN A SHORT SLEEVED SHIRT  
11 IF I NOTICED HIS ARMS.

12 Q WAS THERE ANYTHING SPECIAL ABOUT THE WAY HE WAS  
13 DRESSED?

14 A JUST THAT HIS CLOTHES LOOKED EXPENSIVE.

15 THE COURT: PARDON ME?

16 Q BY MR. WAPNER: WHAT WAS IT THAT LOOKED EXPENSIVE  
17 ABOUT THE DESIGNER JEANS?

18 A JUST, I GUESS, THE CONDITION THEY WERE IN.

19 IT IS HARD TO SAY. I WAS MOSTLY LOOKING AT THE  
20 MAN.

21 IF YOU SEE SOMEONE REALLY ATTRACTIVE, A LOT OF  
22 TIMES YOU ARE NOT LOOKING SO MUCH AT WHAT THEY ARE WEARING.  
23 YOU ARE JUST LOOKING AT THEM OR THEIR FACE OR THEIR EYES.  
24 HIS EYES WERE DISTINCTIVE, THAT IS WHAT I WAS LOOKING AT.

25 MR. WAPNER: MOTION TO STRIKE AS NON-RESPONSIVE.

26 THE COURT: IT WILL BE STRICKEN.

27 Q BY MR. WAPNER: WHAT I WANT TO KNOW IS: WHAT  
28 WAS DISTINCTIVE ABOUT THE CLOTHES, WHAT STOOD OUT ABOUT THE

1 CLOTHES?

2 A HOW WELL THEY FIT HIM.

3 Q AND WHAT WAS THE TEMPERATURE IN TUCSON AT THE  
4 END OF SEPTEMBER, 1986, ON THAT NIGHT?

5 A IT WAS PROBABLY COOL. AFTER THE SUN GOES DOWN,  
6 THE TEMPERATURE DROPS QUITE A BIT.

7 Q WHAT WAS THE TEMPERATURE DURING THE DAY?

8 A DURING THE DAY, IT -- DURING THE DAY, IT COULD  
9 BE 90 IN THE DAY AND AT NIGHT IT COULD HAVE BEEN 65. IT  
10 IS JUST, THE TEMPERATURE DROPS WHEN THE SUN GOES DOWN.

11 Q DO YOU HAVE ANY RECOLLECTION WHAT THE TEMPERATURE  
12 WAS THAT DAY?

13 A NO, I DON'T, EXCEPT I DON'T REMEMBER CHINO AND  
14 MYSELF WEARING JACKETS.

15 AND DURING THE QUESTIONING, YOU HAD ASKED ME  
16 IF THE MAN HAD A JACKET OR A SWEATER ON AND I SAID NO, BOTH  
17 MEN WERE WEARING SHIRTS.

18 MR. WAPNER: MAY THAT BE STRICKEN AS NON-RESPONSIVE,  
19 OTHER THAN THE WORD "NO", AS NON-RESPONSIVE?

20 THE COURT: ALL RIGHT, THAT WILL BE STRICKEN.

21 Q BY MR. WAPNER: WAS THERE ANYTHING OUTSTANDING  
22 ABOUT THIS PERSON'S CLOTHES, OTHER THAN THE FACT THAT HE  
23 HAD DESIGNER JEANS ON AND A SHIRT ON?

24 A I DON'T REMEMBER. I WAS MOSTLY LOOKING AT HIS  
25 FACE.

26 Q NOW, THE TIME THAT YOU SPENT AT THE GAS STATION,  
27 THIS WAS AT WHAT TIME, WHAT TIME OF THE DAY OR NIGHT WAS  
28 IT?

1           A           I REMEMBER IT BEING ABOUT 8:30, 9:00 O'CLOCK  
2           AT NIGHT.  
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1 Q AND THE PERSON THAT YOU SAW, ONE OF THE REASONS --  
2 ONE OF THE THINGS YOU SAID YOU NOTICED WAS HIS EYES; IS THAT  
3 RIGHT?

4 A HIS EYES.

5 Q AND SPECIFICALLY, WHAT COLOR WERE THEY?

6 A THEY WERE BLUE-GRAY.

7 Q NOW, WHERE WAS HE STANDING IN RELATION TO YOU,  
8 OR SITTING OR WHATEVER HE WAS DOING, WHEN YOU NOTICED THAT  
9 HIS EYES WERE BLUE-GRAY?

10 A I MUST HAVE GOTTEN A LOOK AT THE COLOR OF HIS EYES  
11 AS HE WALKED BY.

12 Q DO YOU REMEMBER THAT OR ARE YOU JUST GUESSING?

13 A I AM TRYING TO REMEMBER. IT HAS BEEN SEVEN MONTHS.

14 Q WELL, DO YOU REMEMBER SEEING HIS EYES AS HE WALKED  
15 BY YOU OR ARE YOU JUST GUESSING THAT THAT IS MAYBE WHEN YOU  
16 SAW THEM?

17 A I DON'T REMEMBER WHEN I NOTICED WHAT COLOR HIS  
18 EYES WERE.

19 Q NOW, DID YOU SPEND MOST OF YOUR TIME LOOKING AT  
20 THE PERSON WITH THE SILVER HAIR, AS OPPOSED TO THE OTHER  
21 PERSON THAT HE WAS WITH?

22 MR. BARENS: OBJECTION AS TO VAGUE AND AMBIGUOUS AS TO  
23 WHAT PART OF THE TIME MR. WAPNER IS REFERRING TO OUT OF THE  
24 TOTALITY OF THE TIME IN THE GAS STATION.

25 THE COURT: SUSTAINED.

26 Q BY MR. WAPNER: DURING THE TIME THAT YOU WERE AT  
27 THE GAS STATION, AS BETWEEN THE TWO PEOPLE, THE SILVER-HAIRED  
28 MAN AND THE PERSON THAT YOU SAW HE WAS WITH, WHICH PERSON DID

1 YOU SPEND MORE TIME LOOKING AT?

2 A THE MAN WITH THE SILVER HAIR.

3 Q HOW MUCH TIME DID YOU SPEND LOOKING AT THE OTHER  
4 PERSON?

5 A I GLANCED OVER AT HIM. I LOOKED AT HIM FOR I  
6 DON'T KNOW, MAYBE FIVE SECONDS. THEN I JUST LOOKED OVER AGAIN.

7 Q WHAT DID YOU NOTICE MOSTLY ABOUT THAT PERSON?

8 A THE PERSON THAT WAS WITH HIM?

9 Q YES.

10 A I NOTICED WHAT COLOR HIS HAIR WAS. I NOTICED WHAT  
11 COLOR HIS EYES WERE. I NOTICED THAT HE HAD A MUSTACHE, THAT  
12 HE WAS ABOUT THE SAME HEIGHT, THAT HE HAD KIND OF A PAUNCH.

13 BECAUSE MEN THAT ARE HEAVY, HAVE A TENDENCY TO  
14 PULL THEIR SHIRTS OUT TO KIND OF COVER THAT THEY HAVE PUT ON  
15 WEIGHT. AND I NOTICED HIS MOVEMENTS.

16 Q NOW, THIS WAS ALL IN FIVE SECONDS THAT YOU NOTICED?

17 A JUST MAYBE FIVE TO TEN SECONDS. YOU ARE ASKING  
18 ME TO GUESS AT TIME. I AM TRYING TO GUESS AT TIME.

19 Q WHERE WAS HE STANDING OR SITTING IN RELATION TO  
20 YOU WHEN YOU MADE THOSE OBSERVATIONS?

21 A I DON'T REMEMBER.

22 Q DO YOU REMEMBER WHETHER HE WAS IN THE CAR OR OUT  
23 OF THE CAR?

24 A THE OTHER FELLOW THAT WAS WITH HIM?

25 Q RIGHT.

26 A OUT OF THE CAR.

27 Q WAS HE ON THE RIGHT SIDE OF THIS CAR OR ON THE  
28 LEFT SIDE OF THE CAR?

1 A I DON'T REMEMBER WHERE HE WAS AT.

2 Q WAS THERE ANYTHING BETWEEN YOU AND HIM AT THE TIME  
3 THAT YOU LOOKED AT HIM?

4 A NO. I DON'T THINK SO.

5 Q WAS HE WEARING GLASSES?

6 A NO. HE WAS NOT.

7 Q WHAT COLOR WERE HIS EYES?

8 A HE HAD DARK EYES.

9 Q WHAT COLOR SPECIFICALLY?

10 A BROWN.

11 Q I ASKED YOU BEFORE ABOUT THE CARS. YOU WERE SHOWN  
12 SOME PHOTOGRAPHS OF AUTOMOBILES?

13 A YES I WAS.

14 MR. WAPNER: YOUR HONOR, I HAVE HERE AN EXHIBIT I WOULD  
15 LIKE TO MARK AS 234 FOR IDENTIFICATION.

16 THE COURT: SO MARKED.

17 MR. WAPNER: IT APPEARS TO BE A PHOTOGRAPHIC SHOWUP  
18 CONTAINING COLOR PHOTOGRAPHS OF SIX DIFFERENT VEHICLES.

19 Q SHOWING YOU 234 FOR IDENTIFICATION, IS THIS THE  
20 LINEUP THAT YOU WERE SHOWN OF THE DIFFERENT CARS?

21 A YES IT IS.

22 Q ALL RIGHT. DID YOU SELECT SOMETHING FROM THAT  
23 LINEUP?

24 A I SAID THAT I COULDN'T REMEMBER WHAT CAR IT REALLY  
25 WAS. BUT THAT THE CLOSEST CAR HAD MORE OF A SQUARE SHAPE  
26 WHEREAS ALMOST ALL OF THE OTHER CARS ARE ROUNDED OR HAVE  
27 CURVES.

28 Q DID YOU THEN PICK ONE OF THOSE AS LOOKING MOST

1 LIKE THE ONE YOU SAW?

2 A IT WAS NOT CLOSE BUT IT WAS CLOSER THAN THE OTHER  
3 ONES.

4 Q WHICH ONE IS THAT?

5 A I SAID IT WAS THE CENTER TOP.

6 MR. WAPNER: MAY I JUST BRIEFLY PASS THIS BY THE JURY,  
7 YOUR HONOR?

8 THE COURT: YES.

9 THE WITNESS: AND THE CAR HAD A SQUARE SHAPE, WHEREAS  
10 THE OTHERS ARE ALL MORE ROUND.

11 MR. WAPNER: MAY I HAVE JUST A MOMENT?

12 (PAUSE.)

13 MR. WAPNER: THANK YOU.

14 Q YOU WERE ABLE TO OBSERVE THIS MAN WITH THE SILVER  
15 HAIR WALKING IN THE GAS STATION, WEREN'T YOU?

16 A YES.

17 Q AND AS FAR AS HOW IT WAS THAT HE WALKED, DO YOU  
18 REMEMBER WHETHER IT WAS FAST, SLOW OR REGULAR PACED?

19 A I REMEMBER SAYING YESTERDAY THAT HE WASN'T REALLY  
20 IN ANY HURRY. HE JUST SORT OF TOOK HIS TIME.

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1 Q AND DID YOU ALSO -- DID YOU EVER SAY WHEN YOU  
2 WERE INTERVIEWED IN NOVEMBER THAT HE HAD A SLOWER THAN NORMAL  
3 WALK?

4 A I DON'T REMEMBER.

5 Q SHOWING YOU AGAIN THE TRANSCRIPT OF THE INTERVIEW-  
6 OF NOVEMBER 22, PAGE 43, WOULD YOU READ FROM LINE 4 DOWN  
7 THROUGH LINE 9? JUST READ THAT TO YOURSELF.

8 (PAUSE IN PROCEEDINGS.)

9 THE WITNESS: DO YOU WANT ME TO READ IT OUT LOUD?

10 MR. WAPNER: JUST READ IT TO YOURSELF FIRST.

11 Q HAVE YOU READ IT TO YOURSELF?

12 A IT SAYS -- YOU ARE HELPING ME GIVE ANSWERS AND  
13 LIKE IN DIFFERENT PARTS OF THE INTERVIEW, YOU HELPED ME  
14 GIVE ANSWERS.

15 MR. WAPNER: MAY THAT BE STRICKEN AS NON-RESPONSIVE?

16 THE COURT: YES, THAT WILL BE STRICKEN.

17 JUST LISTEN TO THE QUESTION AND ANSWER THE  
18 QUESTION. DON'T VOLUNTEER ANYTHING, IF YOU WILL, PLEASE.

19 THE WITNESS: YOU ASKED ME AT THE START OF THE TRIAL  
20 TO TELL THE WHOLE TRUTH.

21 MR. WAPNER: MAY THAT AGAIN BE STRICKEN, YOUR HONOR?

22 THE COURT: THAT WILL BE STRICKEN.

23 WILL YOU LISTEN TO ME NOW? I AM GIVING YOU AN  
24 ORDER. JUST ANSWER THE QUESTION. DON'T VOLUNTEER ANYTHING.  
25 THE TRUTH WILL COME OUT.

26 MR. BARENS: YOUR HONOR, I THINK THE PROBLEM WE ARE  
27 GETTING INTO IS, WE WOULD LIKE TO OBJECT NOW ON IMPROPER  
28 IMPEACHMENT. WHAT WE ARE GETTING INTO, THE WITNESS SAYS

1 TO HIM --

2 THE COURT: NOW YOU ARE ARGUING.

3 MR. BARENS: I AM NOT ARGUING.

4 MR. WAPNER: IF THERE IS GOING TO BE ARGUMENT, MAY  
5 IT BE DONE AT THE BENCH, PLEASE?

6 MR. BARENS: YES, FINE.

7 THE COURT: WILL YOU PLEASE?

8 (THE FOLLOWING PROCEEDINGS WERE HELD AT  
9 THE BENCH OUTSIDE THE HEARING OF THE  
10 JURY:)

11 THE COURT: YOU HAD SAID IN CHAMBERS, YOU SAID THIS  
12 IS A HOSTILE WITNESS.

13 MR. BARENS: YES, YOUR HONOR.

14 THE COURT: INDEED.

15 MR. BARENS: WAS I WRONG?

16 THE COURT: HOSTILE TO THE PROSECUTION, NOT THE DEFENSE.

17 MR. BARENS: YOUR HONOR, I DIDN'T BURN HER OFF. I  
18 TRIED TO REHABILITATE HER.

19 THE COURT: GO AHEAD.

20 MR. BARENS: WHAT WE HAVE HERE, MR. WAPNER ASKED THE  
21 WITNESS A QUESTION, SHE ANSWERED AND SAID "I DON'T REMEMBER."

22 AND TO TAKE A PRIOR STATEMENT FROM A PRIOR  
23 STATEMENT AND SAY TO A WITNESS WHO SAYS, "I DON'T REMEMBER",  
24 I AM IMPEACHING YOU BASED ON WHAT YOU SAID PREVIOUSLY --

25 THE COURT: HE HAS A RIGHT TO DO THAT.

26 MR. BARENS: SIR, IF YOU WOULD PLEASE LET ME FINISH.

27 THE COURT: IF A QUESTION IS ASKED A WITNESS AND SHE  
28 SAYS SHE DOESN'T KNOW --

1 MR. BARENS: YES, SIR.

2 THE COURT: -- COUNSEL HAS A RIGHT TO ASK THAT WITNESS,  
3 WILL THIS REFRESH YOUR RECOLLECTION AS TO WHETHER OR NOT  
4 SUCH AND SUCH AND THEN SHE READS IT AND THEN HE ASKS, "DOES  
5 IT REFRESH YOUR RECOLLECTION?" AND IF IT DOES, THEN SHE GIVES  
6 THE ANSWER.

7 MR. BARENS: SIR, IF I MIGHT BE HEARD, PLEASE. WHEN  
8 A WITNESS ANSWERS THAT AS OF TODAY'S TIME, I DON'T REMEMBER,  
9 YOU CANNOT IMPEACH, IT IS NOT IMPEACHMENT TO SHOW THAT AT  
10 AN EARLIER DATE SHE DID REMEMBER SOMETHING.

11 THE COURT: IT IS NOT IMPEACHMENT.

12 IT IS A QUESTION OF REFRESHING HER RECOLLECTION  
13 SO SHE CAN ANSWER THE QUESTION PRESENTLY ABOUT WHAT HE IS  
14 REFRESHING HER RECOLLECTION FROM.

15 MR. BARENS: RIGHT, THEN WHAT I AM SAYING IS --

16 THE COURT: IT IS NOT A QUESTION OF IMPEACHMENT.

17 MR. BARENS: WHAT I AM ASKING IS AN INSTRUCTION WHEN  
18 THE WITNESS SAYS, "I DON'T REMEMBER," THAT THE DISTRICT  
19 ATTORNEY THEN PROCEEDS TO SAY, TO READ THIS, BECAUSE WHAT  
20 HE HAS BEEN SAYING IS, "BUT YOU DIDN'T SAY ON AN EARLIER  
21 DATE."

22 THE COURT: HE HAS A RIGHT TO SAY THAT.

23 MR. BARENS: SIR, THAT IS AN IMPEACHMENT TYPE QUESTION  
24 AT THAT POINT.

25 THE COURT: LET'S GET ON, WILL YOU?

26 (THE FOLLOWING PROCEEDINGS WERE HELD  
27 IN THE PRESENCE AND HEARING OF THE  
28 JURY:)

4

1 Q BY MR. WAPNER: MISS CANCHOLA, SO WE DON'T HAVE  
2 ANY HIATUS HERE, COULD YOU READ AGAIN JUST TO YOURSELF, PAGE  
3 43, LINE 6 THROUGH LINE --

4 A MAY I HAVE SOME KLEENEX, PLEASE?

5 THE COURT: HERE, I HAVE GOT SOME.

6 Q BY MR. WAPNER: CAN YOU READ TO YOURSELF PAGE  
7 43, LINE 6 -- EXCUSE ME -- LINE 4 THROUGH LINE 9?

8 (PAUSE IN PROCEEDINGS.)

9 Q BY MR. WAPNER: HAVE YOU HAD THE OPPORTUNITY  
10 TO DO THAT?

11 A YES.

12 Q DOES THAT REFRESH YOUR RECOLLECTION ABOUT WHAT  
13 YOU SAID ON NOVEMBER THE 22ND OF 1986?

14 A YES.

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1 Q AND WHAT WAS IT THAT YOU SAID AT THAT TIME ABOUT  
2 HIS WALK?

3 A I SAID IT WAS SLOWER THAN NORMAL.

4 Q BUT NOT SLOW?

5 A BUT NOT SLOW IN THAT HE WAS JUST DRAGGING AND  
6 DRAGGING.

7 Q RIGHT. IT SAYS IN THERE THAT YOU SAID IT WAS  
8 SLOWER THAN NORMAL BUT NOT SLOW, RIGHT?

9 A YES.

10 Q OKAY. NOW, AT SOME POINT AFTER YOU READ THE  
11 MAGAZINE ARTICLE, YOU DECIDED THAT YOU WANTED TO DO SOMETHING  
12 ABOUT THAT, RIGHT?

13 A I DIDN'T SLEEP THAT NIGHT. I ALREADY SAID THAT  
14 YESTERDAY. THEN I WENT TO THE POLICE STATION THE NEXT DAY.

15 Q INCIDENTALLY, YOU TOLD US YESTERDAY THAT YOU HAVE  
16 INSOMNIA, RIGHT?

17 A I SOMETIMES DON'T SLEEP OR I GO TO SLEEP QUITE  
18 LATE.

19 Q IS IT USUAL OR WOULD YOU SAY THAT YOU USUALLY CAN'T  
20 SLEEP AT NIGHT?

21 A I USUALLY LIKE TO DO MY HOMEWORK AT NIGHT. IT  
22 IS THE MOST QUIET TIME OF THE DAY.

23 MR. WAPNER: MAY THAT BE STRICKEN AS NONRESPONSIVE?

24 THE COURT: YES. I WILL STRIKE THE STATEMENT.

25 Q BY MR. WAPNER: WOULD YOU SAY THAT YOU USUALLY  
26 CAN'T SLEEP AT NIGHT?

27 A I SLEEP AT NIGHT BUT I USUALLY GO TO SLEEP QUITE  
28 LATE.

1 Q DID YOU SAY IN THE INTERVIEW OF NOVEMBER THE 22ND,  
2 "I WAS SLEEPING ON THE SOFA, THEIR SOFA AND THE BASKET WITH  
3 THE MAGAZINES -- AT NIGHT I CAN'T SLEEP, I AM AN INSOMNIAC.  
4 I USUALLY CAN'T SLEEP AT NIGHT. I HAVE A DIFFICULT TIME  
5 SLEEPING."

6 A YES, IF IT IS IN THE TRANSCRIPT.

7 MR. BARENS: I OBJECT TO THAT. I MOVE TO STRIKE THAT.  
8 I DON'T SEE WHAT THE RELEVANCY OF THAT HAS TO THE  
9 IDENTIFICATION, WHETHER SHE SLEEPS MORE OR LESS.

10 THE COURT: WELL, SHE HAS ALREADY ANSWERED THAT. I WOULD  
11 SUGGEST THAT AFTER THE QUESTION IS ASKED, YOU MAKE YOUR  
12 MOTION. THEN I WILL RULE ON IT THEN.

13 Q BY MR. WAPNER: IN ANY EVENT, AFTER READING THIS  
14 MAGAZINE ARTICLE AND NOT BEING ABLE TO SLEEP THAT NIGHT, IT  
15 WASN'T TOO MUCH OUT OF THE ORDINARY, IS THAT TRUE?

16 A WHEN I USED THE TERM "INSOMNIAC" I DIDN'T MEAN  
17 IN TERMS OF I NEVER SLEEP AT ALL, I AM JUST A WALKING ZOMBIE.  
18 THERE ARE NIGHTS WHEN I CAN'T SLEEP VERY WELL.  
19 I DON'T GET TO BED TIL QUITE LATE, SO I WILL SPEND THE EVENING  
20 DOING MY HOMEWORK LATE AT NIGHT.

21 Q WHAT WAS YOUR THOUGHT ABOUT WHO YOU WERE GOING  
22 TO TELL THIS TO?

23 A I DIDN'T KNOW WHAT TO DO. I DIDN'T WANT TO TELL  
24 CHINO. I KNEW THAT HE WOULD GET MAD AND TELL ME JUST TO STAY  
25 OUT OF THIS, LET'S JUST STAY OUT OF IT. IT IS NOT OUR CONCERN.

26 THAT KIND OF THING. THAT IS WHY THE NEXT DAY,  
27 I TOLD MY FRIEND IN CLASS.

28 Q BUT WHEN YOU TOLD YOUR FRIEND IN CLASS, DID YOU

1 TELL HIM WHO YOU WERE THINKING OF TALKING TO?

2 A YES. I SAID A CLOSE FRIEND OF THE FAMILY WHO IS  
3 A REPORTER. BUT I DIDN'T SPEAK TO HER.

4 I NEVER SPOKE TO HER. I STILL HAVE NOT SPOKEN  
5 TO HER UP TO THIS TIME. I WENT TO THE POLICE VOLUNTARILY.

6 THE COURT: DID YOU BRING THE MAGAZINE TO CLASS WITH  
7 YOU?

8 THE WITNESS: YES I DID.

9 Q BY MR. WAPNER: NOW, IT WAS ONLY AFTER TALKING  
10 TO YOUR -- WHEN YOU MENTIONED TO YOUR FRIEND ABOUT WHAT YOU  
11 WERE GOING TO DO, WAS IT YOU WHO MENTIONED TO HIM ABOUT  
12 TALKING TO LUPITA MURILLO?

13 A YES. I DID MENTION IT TO HIM.

14 Q SHE IS THE REPORTER WHO IS KIND OF A FRIEND OF  
15 THE FAMILY?

16 A CLOSE FRIEND OF THE FAMILY FOR THE LAST SEVEN  
17 YEARS.

18 Q AND IT WAS THE FRIEND WHO SUGGESTED THAT IF YOU  
19 WERE GOING TO DO SOMETHING, THAT YOU SHOULD GO TO THE POLICE  
20 RATHER THAN TO THE REPORTER?

21 A I COULDN'T MAKE UP MY MIND WHAT TO DO. HE SAID,  
22 "DON'T BE SILLY. GO TO THE POLICE."

23 AND I DROVE STRAIGHT FROM THE CLASS TO THE POLICE  
24 DEPARTMENT WITHOUT TELLING CHINO OR ANYBODY.

25 Q AND AT THE POLICE DEPARTMENT ON FRIDAY,  
26 NOVEMBER 21, YOU TALKED TO JEFF MEYERS, RIGHT?

27 A YES I DID.

28 Q ALL RIGHT. AND WHEN YOU TALKED TO JEFF MEYERS,

1 WAS THAT WHEN YOU MADE THE STATEMENT DURING THAT FIRST  
2 INTERVIEW THAT YOU WERE 90 PERCENT SURE?

3 A I DON'T REMEMBER IF SAID IT AT THE FIRST ONE OR  
4 AT THE SECOND INTERVIEW.

5 Q ALL RIGHT. LET ME SHOW YOU A POLICE REPORT THAT  
6 IS DATED NOVEMBER 21, 1986.

7 MR. BARENS: WE OBJECT. THE WITNESS HAS NOTHING TO DO  
8 WITH THE PREPARATION OF THAT REPORT. IT IS PURELY HEARSAY.

9 THE COURT: BUT THE LAW IS THAT COUNSEL MAY SHOW A  
10 WITNESS ANYTHING FOR THE PURPOSES OF REFRESHING HER RECOLLECTION,  
11 WHETHER IT BE A POLICE REPORT OR --

12 MR. BARENS: CLEARLY, THAT IS ALL WE ARE DOING.

13 THE COURT: I SAID THAT HE HAS THE RIGHT TO REFRESH HER  
14 RECOLLECTION BY SHOWING HER ANYTHING.

15 MR. BARENS: ALL RIGHT.

16 THE COURT: TO SHOW WHETHER OR NOT IT REFRESHES HER  
17 RECOLLECTION.

18 MR. BARENS: ALL RIGHT. I WANTED THE RECORD TO BE CLEAR  
19 THAT IT IS FOR THAT LIMITED PURPOSE.

20 THE COURT: ABSOLUTELY.

21 Q BY MR. WAPNER: MS. CANCHOLA, THAT IS A REPORT  
22 FROM THE POLICE. IT SAYS "POLICE REPORT." AND IT SAYS,  
23 "TUCSON, ARIZONA," ON IT.

24 IT SAYS THAT THE DATE OF THE REPORT IS NOVEMBER 21,  
25 1986, RIGHT?

26 A YES. BUT THEY DIDN'T WRITE EVERYTHING DOWN THAT  
27 I SAID.

28 Q OKAY. DOES THIS APPEAR TO BE ON PAGE 4 OF 4, IT



1 SAYS, "OFFICER REPORTING, MEYERS," IS THAT RIGHT?

2 A WHERE?

3 Q ON THE BOTTOM?

4 A YES.

5 Q DOES THAT APPEAR TO BE A POLICE REPORT PREPARED  
6 BY DETECTIVE MEYERS OF THE INCIDENT THAT YOU TALKED TO HIM  
7 ABOUT?

8 MR. BARENS: HOW COULD SHE KNOW?

9 THE COURT: WELL, ASK HER TO READ WHATEVER PORTION YOU  
10 WANT HER TO READ AND THEN ASK HER WHETHER IT REFRESHES HER  
11 RECOLLECTION.

12 MR. WAPNER: I WILL. I DON'T WANT IT TO APPEAR THAT  
13 SHE HAS BEEN SHOWN SOMETHING SECRET OR ANYTHING LIKE THAT.

14 Q IT BEARS THE DATE OF THE REPORT OF NOVEMBER 21,  
15 RIGHT?

16 A YES.

17 THE COURT: SORRY? SPEAK UP?

18 THE WITNESS: YES.

19 Q BY MR. WAPNER: AND THAT IS THE DAY YOU WENT THERE,  
20 RIGHT?

21 A IT WAS A FRIDAY. I DON'T REMEMBER THE EXACT DAY.  
22 IT WAS A FRIDAY.

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1 MR. WAPNER: COULD THE COURT TAKE JUDICIAL NOTICE THAT  
2 NOVEMBER 21, 1986 WAS A FRIDAY?

3 THE COURT: WHAT DATE?

4 MR. WAPNER: NOVEMBER 21.

5 THE COURT: NOVEMBER 21 WAS A FRIDAY.

6 MR. WAPNER: THANK YOU.

7 Q AND WOULD YOU LOOK AT THE BOTTOM PARAGRAPH ON  
8 PAGE 3, GOING TO THE TOP PARAGRAPH ON PAGE 4 AND JUST PLEASE  
9 READ THAT TO YOURSELF?

10 (PAUSE IN PROCEEDINGS.)

11 MR. BARENS: YOUR HONOR, WE WOULD LIKE TO APPROACH  
12 ON THE ISSUE OF THE TESTIMONY USED -- OR STRIKE THAT -- THE  
13 INPUT USED TO REFRESH THIS WITNESS'S RECOLLECTION FROM THIS  
14 MAN, MEYERS, WHO WE CAN'T ISSUE A SUBPOENA TO.

15 THE COURT: NO, YOU NEEDN'T APPROACH IF THAT IS YOUR  
16 REASON FOR IT.

17 GO AHEAD.

18 MR. BARENS: WELL, OBJECTION GOES --

19 THE COURT: YOUR OBJECTION IS OVERRULED. LET'S GET  
20 ON, WILL YOU, PLEASE?

21 Q BY MR. WAPNER: MISS CANCHOLA, HAVE YOU HAD AN  
22 OPPORTUNITY TO READ THAT TO YOURSELF?

23 A NO, I HAVEN'T.

24 Q OKAY.

25 (FURTHER PAUSE IN THE PROCEEDINGS.)

26 THE WITNESS: MY NAME IS SPELLED WRONG THROUGHOUT IT.

27 I HAVE READ IT.

28 THE COURT: HAVE YOU EVER READ THAT BEFORE, THAT POLICE

1 REPORT?

2 THE WITNESS: NO, I HAVEN'T.

3 THE COURT: BUT YOU SAID A MINUTE AGO THAT IT DOESN'T  
4 CONTAIN EVERYTHING YOU SAID; HOW DID YOU KNOW THAT?

5 THE WITNESS: BECAUSE HE ONLY TOOK A FEW NOTES ON A  
6 SMALL NOTE PAD.

7 THE COURT: HOW DID YOU KNOW IT DIDN'T CONTAIN EVERYTHING  
8 THAT YOU SAID?

9 THE WITNESS: BECAUSE I WAS THERE FOR AN HOUR AND HE  
10 ONLY WROTE LIKE ON TWO PAGES OF THREE BY FIVE PAPER.

11 THE COURT: ALL RIGHT, GO AHEAD.

12 Q BY MR. WAPNER: AND HAVING READ THOSE PARAGRAPHS  
13 OF THE REPORT, DOES IT REFRESH YOUR RECOLLECTION AS TO WHETHER  
14 YOU TOLD DETECTIVE MEYERS WHEN YOU WENT TO THE POLICE ON  
15 FRIDAY, HOW THE PERCENTAGE, HOW YOU HAD ARRIVED AT THE  
16 PERCENTAGE YOU HAD AS TO THE IDENTIFICATION OF THIS PERSON?

17 A I SAID 90 PERCENT BECAUSE THE WAY IT WAS WRITTEN  
18 OUT, IT SOUNDED LIKE THE CONVERSATION CHINO AND I HAD HAD  
19 AS WE WERE LEAVING THE GAS STATION.

20 Q BUT THAT IS SOMETHING, THE 90 PERCENT FIGURE  
21 IS A FIGURE YOU GAVE TO DETECTIVE MEYERS WHEN YOU WERE THERE  
22 ON FRIDAY, RIGHT?

23 A YES.

24 Q AND DID YOU TELL HIM AT THAT TIME WHEN YOU SAID  
25 THAT YOU WERE 90 PERCENT SURE THAT IF YOU COULD SEE A PHOTO-  
26 GRAPH, THAT YOU WOULD THEN KNOW FOR SURE?

27 A IF I COULD SEE A PHOTOGRAPH, I WOULD FEEL BETTER  
28 ABOUT IT.

1 Q AND WAS IT THE NEXT DAY THAT YOU WERE INTERVIEWED  
2 BY ME, DETECTIVE MEYERS AND PATRICK MACMAC FROM THE DISTRICT  
3 ATTORNEY'S OFFICE?

4 A AND OFFICER FILIPPELLI.

5 Q WERE YOU INTERVIEWED BY ME -- AND EXCUSE ME --  
6 AND INVESTIGATOR MACMAC AND DETECTIVE MEYERS THAT NEXT DAY?

7 A YES, I WAS.

8 Q THE INTERVIEW WITH DETECTIVE FILIPPELLI WAS SOME-  
9 TIME LATER, RIGHT?

10 A YES.

11 Q THE SAME DAY BUT LATER IN THE DAY?

12 A FOR TWO HOURS LATER IN THE DAY.

13 HE IS A PERSON YOU TOLD I HAD TOLD THE TRUTH.

14 MR. WAPNER; MAY THAT BE STRICKEN AS NON-RESPONSIVE,  
15 YOUR HONOR?

16 THE COURT: IT WILL BE STRICKEN.

17 Q BY MR. WAPNER: AND AT THE TIME YOU WERE INTER-  
18 VIEWED BY ME AND INVESTIGATOR MACMAC AND DETECTIVE MEYERS,  
19 WERE YOU SHOWN SOME PHOTOGRAPHS?

20 A YES, I WAS.

21 Q AND BEFORE YOU WERE SHOWN THE PHOTOGRAPHS, WERE  
22 YOU READ AN ADMONITION OR A KIND OF WARNING AS TO HOW YOU  
23 WERE SUPPOSED TO VIEW THE PHOTOGRAPHS?

24 A YES.

25 Q AND WERE YOU READ A STATEMENT THAT SAID:

26 "I AM GOING TO SHOW YOU A GROUP OF  
27 PHOTOGRAPHS.

28 "THE FACT THAT THE PHOTOGRAPHS ARE

1 SHOWN TO YOU SHOULD NOT INFLUENCE YOUR JUDGEMENT.

2 "YOU SHOULD NEITHER CONCLUDE OR GUESS  
3 THAT THE PHOTOGRAPHS CONTAIN A PICTURE OF THE  
4 PERSON YOU SAW.

5 "YOU DO NOT HAVE TO IDENTIFY ANYONE.

6 "IT IS JUST AS IMPORTANT TO FREE  
7 INNOCENT PERSONS FROM SUSPICION AS IT IS TO  
8 IDENTIFY THOSE WHO ARE GUILTY.

9 "PLEASE KEEP IN MIND THAT HAIR STYLES,  
10 BEARDS AND MUSTACHES ARE EASILY CHANGED.

11 "PHOTOGRAPHS DO NOT ALWAYS DEPICT  
12 THE TRUE COMPLEXION OF THE SUBJECT, I.E., THEY  
13 MAY BE EITHER LIGHTER OR DARKER.

14 "PLEASE DO NOT DISCUSS THE CASE WITH  
15 OTHER WITNESSES OR INDICATE IN ANY WAY TO OTHER  
16 WITNESSES THAT YOU HAVE IDENTIFIED SOMEONE."

17 DO YOU RECALL THAT BEING READ TO YOU BY INVESTIGATOR  
18 MACMAC?

19 A YES, BUT I DON'T REMEMBER WHETHER IT WAS YOU  
20 OR HIM WHO READ IT TO ME.

21 Q IT WAS READ TO YOU, IN ANY EVENT?

22 A YES, IT WAS.

23 Q THAT WAS BEFORE YOU WERE SHOWN ANY PHOTOGRAPHS,  
24 RIGHT?

25 A YES.

26 Q AND THEN WERE YOU SHOWN THE CARD -- WERE YOU  
27 SHOWN THIS LINEUP CARD, WHICH IS IN ESSENCE, EXCEPT FOR THE  
28 FOLDER, THE SAME AS DEFENDANT'S EXHIBIT SS?

1           A       YES.

2           Q       AT THE TIME YOU WERE SHOWN THE DEFENDANT'S EXHIBIT --  
3 OR EXCUSE ME -- THE LINEUP, WHICH IS THE SAME AS DEFENDANT'S  
4 SS, WHAT DID YOU SAY?

5           A       I SAID THAT THE MAN WE SAW DID NOT HAVE A BEARD  
6 AND ALL OF THE PEOPLE IN THE PICTURES HAD BEARDS.

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1 THE COURT: I AM SORRY. PARDON ME. I DIDN'T HEAR  
2 THAT.

3 THE WITNESS: I SAID THAT THE MAN IN THE PICTURE HAD  
4 A BEARD AND ALL OF THE PEOPLE -- THE PERSON WE SAW THAT  
5 NIGHT DID NOT HAVE A BEARD.

6 Q BY MR. WAPNER: WHAT ELSE DID YOU SAY?

7 A I SAID THAT HIS HAIR WAS ALL SILVER AND THIS  
8 PERSON HAD SORT OF MOTTLED HAIR COLOR AND I SAID THAT HIS  
9 EYES WERE -- WHAT I THOUGHT LOOKED LIKE THE PERSON, BUT I  
10 COULDN'T BE SURE BECAUSE EVERYBODY LOOKS LIKE THEY JUST GOT  
11 OUT OF BED IN THE PHOTOS, THEY ALL LOOKED SCRUFFY.

12 Q DID YOU EVER SAY AT THAT TIME THAT THE PHOTOGRAPH  
13 IN THE BOTTOM RIGHT-HAND CORNER WAS THE PERSON THAT YOU  
14 SAW AT THE GAS STATION?

15 A I SAID HE LOOKED CLOSER TO THE -- OUT OF THE  
16 LINEUP -- TO THE PERSON THAT WAS AT THE GAS STATION.

17 Q BUT AT NO TIME WHILE YOU WERE THERE BEING INTER-  
18 VIEWED, DID YOU EVER SAY THAT THAT PERSON IN THE BOTTOM RIGHT-  
19 HAND PHOTOGRAPH WAS THE PERSON YOU SAW IN THE GAS STATION,  
20 DID YOU?

21 A I COULDN'T. THE PERSON AT THE GAS STATION DIDN'T  
22 HAVE A BEARD. HE HAD SHORTER HAIR.

23 Q AND WHEN YOU LOOKED AT THOSE PHOTOGRAPHS, DID  
24 YOU IMMEDIATELY ELIMINATE SOME OF THEM?

25 A YES.  
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1 Q HOW MANY?

2 A I DON'T REMEMBER. BUT IT WOULD HAVE BEEN DIFFERENT  
3 HAD YOU SHOWN US A BIGGER BLOWUP THAN A SMALL PICTURE LIKE  
4 THIS.

5 Q IF WE HAD SHOWN YOU THE BIGGER BLOWUP THAT IS ON  
6 THE BOARD, YOUR IDENTIFICATION WOULD HAVE CHANGED?

7 A NO. I MEAN, THAT LOOKS DARKER. I DON'T KNOW.

8 IT WAS THE EYES. THAT IS WHAT I TOLD YOU AT THE  
9 POLICE STATION.

10 Q WHEN YOU LOOKED AT THOSE PHOTOGRAPHS, DID YOU --

11 A I ASKED YOU IF YOU HAD MORE PICTURES. YOU SAID  
12 THAT YOU COULDN'T TELL US --

13 MR. WAPNER: MAY THAT BE STRICKEN AS NONRESPONSIVE?

14 THE COURT: AGAIN. I WILL ASK YOU TO PLEASE, JUST  
15 LISTEN TO THE QUESTION FIRST BEFORE YOU ANSWER. WILL YOU  
16 PLEASE?

17 Q BY MR. WAPNER: WHEN YOU LOOKED AT THOSE  
18 PHOTOGRAPHS, DID YOU IMMEDIATELY RULE OUT THE FIVE -- DID YOU  
19 IMMEDIATELY RULE OUT CERTAIN PEOPLE IN THAT PHOTOGRAPHIC  
20 LINEUP?

21 A I SAID TO YOU THAT THIS PERSON IS THE CLOSEST TO  
22 THE PERSON THAT WAS AT THE GAS STATION.

23 THE COURT: HE ASKED YOU IF YOU RULED OUT ANY OF THE  
24 SIX PHOTOGRAPHS?

25 THE WITNESS: I GUESS IN DOING THAT, I DID.

26 THE COURT: WHICH ONES DID YOU RULE OUT?

27 THE WITNESS: THE OTHER PHOTOS EXCEPT THE PERSON ON THE  
28 LOWER RIGHT-HAND CORNER.



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1 Q BY MR. WAPNER: DID YOU SAY, "EXCEPT FOR THE  
2 PERSON IN THE LOWER RIGHT-HAND CORNER, THE OTHER FIVE WEREN'T  
3 EVEN CLOSE"?

4 A YES I DID.

5 Q HOW LONG AFTER LOOKING AT THAT PHOTOGRAPHIC  
6 LINEUP, DID IT TAKE FOR YOU TO MAKE THE DECISION AS TO THE  
7 OTHER FIVE PHOTOGRAPHS, THAT THEY WEREN'T EVEN CLOSE?

8 A I THINK ABOUT FIVE TO TEN SECONDS.

9 Q AND AFTER THAT FIVE TO TEN SECONDS, WERE YOU ONLY  
10 DISCUSSING ONE PHOTOGRAPH, RIGHT?

11 A YES.

12 Q THAT WOULD BE THE ONE ON THE LOWER RIGHT-HAND  
13 CORNER?

14 A YES.

15 Q SO, IN ESSENCE, INSTEAD OF REALLY PICKING OUT OF  
16 SIX PHOTOGRAPHS, YOU WERE JUST PICKING FROM ONE, TRYING TO  
17 DECIDE IF THAT WAS THE PERSON?

18 MR. BARENS: OBJECTION, OBJECTION.

19 THE COURT: I WILL SUSTAIN THE OBJECTION. REPHRASE THE  
20 QUESTION.

21 Q BY MR. WAPNER: WERE YOU THEN TRYING AFTER THAT  
22 FIRST FIVE TO TEN SECONDS, TO DECIDE ONLY IF THAT ONE PERSON  
23 IN THE LOWER RIGHT-HAND CORNER WAS THE PERSON THAT YOU SAW?

24 A YES.

25 Q AND EVEN AT THAT POINT, YOU DID NOT SAY IT WAS  
26 THE PERSON THAT YOU SAW IN THE GAS STATION, RIGHT?

27 A THE PICTURE WAS TERRIBLE. ALL OF THE PICTURES  
28 ARE TERRIBLE.

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1 Q ALL OF THE PICTURES YOU HAVE SEEN HAVE BEEN  
2 TERRIBLE?

3 A NO, THE LINEUP AND EVERYTHING, THEY LOOK SO  
4 SCRUFFY.

5 Q AND SO, OF THOSE SIX PICTURES, YOU SAID THAT THE  
6 ONE IN THE LOWER RIGHT-HAND CORNER LOOKS THE CLOSEST, IS THAT  
7 RIGHT?

8 MR. BARENS: ASKED AND ANSWERED THREE TIMES.

9 THE COURT: SUSTAINED.

10 Q BY MR. WAPNER: WHAT WAS IT ABOUT THE EYES IN THE  
11 PICTURE THAT CAUSED YOU TO PICK THAT PERSON AS OPPOSED TO THE  
12 OTHER FIVE?

13 A JUST SOMETHING ABOUT THE WAY HIS EYES ARE -- JUST  
14 THE WAY HIS EYES ARE LOOKING INTO THE --

15 THE COURT: I DON'T HEAR YOU.

16 THE WITNESS: JUST THE WAY THE EYES ARE, JUST THE WAY  
17 I GUESS HIS EYES ARE LOOKING INTO THE CAMERA OR WHATEVER.

18 IT IS JUST HIS EYES, I GUESS. I THINK THAT I MIGHT  
19 HAVE SAID AT THE POLICE STATION THAT I AM NOT SURE.

20 I MIGHT HAVE SAID ALL OF THE OTHER PEOPLE IN THE  
21 PHOTOGRAPHS HAVE DARK EYES. THIS MAN HAS LIGHT-COLORED EYES.

22 Q BY MR. WAPNER: DO ALL OF THE OTHER PHOTOGRAPHS  
23 OF THE OTHER PICTURES HAVE DARK EYES?

24 A EXCEPT I THINK THE MAN ON THE TOP DOESN'T. BUT  
25 THIS PERSON -- WELL, THAT ONE LOOKS DIFFERENT THAN THIS.

26 Q YOU ARE LOOKING AT THE ACTUAL LINEUP THAT YOU WERE  
27 SHOWN AND THE PHOTOGRAPHS?

28 CAN YOU MARK YOUR HONOR THIS AS 235 FOR

1 IDENTIFICATION?

2 THE COURT: YES.

3 Q BY MR. WAPNER: ACTUALLY IN LOOKING AT THE LINEUP  
5 4 THAT YOU WERE SHOWN, WHICH IS 235, DOES THE PERSON IN THE TOP  
5 LEFT-HAND CORNER APPEAR TO HAVE LIGHT EYES TO YOU?

6 A YES.

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1 MR. WAPNER: MAY I JUST PASS THAT BY THE JURY BRIEFLY,  
2 YOUR HONOR?

3 THE COURT: YES.

4 (PAUSE.)

5 Q BY MR. WAPNER: AND WERE YOU LATER SHOWN NOT THAT  
6 DAY, BUT SOME TIME LATER, ANOTHER PHOTOGRAPHIC LINEUP, IS THAT  
7 RIGHT?

8 A I DON'T REMEMBER SEEING -- I REMEMBER BEING SHOWN  
9 TWO LINEUPS. BUT I JUST DON'T REMEMBER WHEN I WAS SHOWN THEM.

10 MR. WAPNER: THERE IS AN EXHIBIT MARKED QQ, YOUR HONOR,  
11 MAY THE ORIGINAL OF THAT EXHIBIT BE MARKED AS 236 FOR  
12 IDENTIFICATION?

13 THE COURT: SO MARKED.

14 MR. BARENS: THE RECORD SHOULD INDICATE THAT THE ORIGINAL  
15 IS A COLOR DEPICTION WHEREAS, WE WERE ONLY PROVIDED A  
16 BLACK AND WHITE.

17 THE COURT: VERY WELL. YES.

18 Q BY MR. WAPNER: AND WHEN YOU WERE SHOWN 236 FOR  
19 IDENTIFICATION, WERE ANY OF THOSE PEOPLE THAT ARE IN THERE,  
20 EVEN CLOSE TO THE PERSON THAT YOU SAW?

21 A NO.

22 Q ALL RIGHT. SO, AFTER HAVING SEEN AT DIFFERENT  
23 POINTS, 12 DIFFERENT PHOTOGRAPHS, YOU STILL HAD ONE THAT WAS  
24 THE ONLY ONE THAT WAS CLOSE TO THE PERSON THAT YOU SAW, IS  
25 THAT RIGHT?

26 A YES.

27 Q AND THAT WAS THE STATE OF MIND -- THE OTHER PICTURES  
28 THAT YOU WERE SHOWN THAT ARE 236, WERE ALSO DONE IN I BELIEVE

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1 IT WAS, NOVEMBER OF 1986 OR EARLY DECEMBER OF 1986?

2 A I DON'T REMEMBER WHEN I WAS SHOWN THIS LINEUP.

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1 Q THIS IS A PHOTOGRAPHIC LINEUP, A SET OF INSTRUCTIONS,  
2 WOULD YOU JUST LOOK AT THAT AND SEE IF IT HAS YOUR NAME ON  
3 THERE AND THE DATE?

4 A YES, IT HAS MY SIGNATURE ON IT.

5 THE COURT: AND THE DATE?

6 THE WITNESS: AND THE DATE. IT SAYS DECEMBER 3RD,  
7 1986.

8 Q BY MR. WAPNER: AND WOULD THAT BE AN ACCURATE  
9 DATE AS FAR AS WHEN YOU WERE SHOWN THIS SET OF PHOTOGRAPHS  
10 THAT IS 236?

11 A YES.

12 Q AND FROM DECEMBER 3RD THROUGH THE TIME THAT YOU  
13 WERE FIRST INTERVIEWED BY A REPRESENTATIVE OF THE DEFENSE  
14 IN THIS CASE, WAS YOUR STATE OF MIND REGARDING THE IDENTIFI-  
15 CATION OF THE PEOPLE IN THE PHOTOGRAPHS THE SAME?

16 DID YOU UNDERSTAND THAT QUESTION?

17 A NO. REPEAT THAT.

18 MR. BARENS: VAGUE AND AMBIGUOUS.

19 THE COURT: HE IS GOING TO REPHRASE IT.

20 MR. BARENS: THANK YOU.

21 Q BY MR. WAPNER: AFTER LOOKING AT THE PHOTOGRAPHS  
22 ON NOVEMBER THE 22ND, YOU PICKED OUT ONE AS BEING THE CLOSEST  
23 TO THE PERSON THAT YOU SAW, RIGHT?

24 A YES.

25 Q ON DECEMBER 3RD YOU SAW SOME OTHER PICTURES  
26 AND THERE WASN'T ANYBODY IN THERE WHO WAS CLOSE, RIGHT?

27 A YES.

28 Q SO AS OF DECEMBER THE 3RD, WOULD IT BE FAIR TO

1 SAY THAT YOUR STATE OF MIND WAS SUCH THAT YOU HAD SEEN --  
2 PICKED OUT ONE PHOTOGRAPH THAT YOU THOUGHT WAS THE CLOSEST  
3 TO THE PERSON YOU SAW IN THE GAS STATION?

4 A REPEAT THAT AGAIN, PLEASE.

5 Q OKAY. WOULD IT BE FAIR TO SAY THAT FROM --  
6 MR. BARENS: OBJECTION "FAIR TO SAY" IS NOT RELEVANT.

7 THE COURT: I WILL SUSTAIN IT.

8 Q BY MR. WAPNER: WAS YOUR STATE OF MIND AS OF  
9 DECEMBER THE 3RD, THAT OF ALL OF THE PHOTOGRAPHS THAT YOU  
10 HAD BEEN SHOWN, YOU HAD SEEN ONE THAT MOST CLOSELY RESEMBLED  
11 THE PERSON THAT YOU SAW AT THE GAS STATION?

12 A YES.

13 Q ALL RIGHT. AND AS OF THE DATE OF THE OPENING  
14 STATEMENTS IN THIS CASE, FEBRUARY THE 2ND OF 1987, HAD YOU  
15 TALKED TO MR. BARENS, MR. CHIER OR ANY REPRESENTATIVE OF  
16 THE DEFENSE?

17 A IN DECEMBER?

18 Q NO.

19 AS OF FEBRUARY OF '87.

20 A CAN YOU PLEASE REPEAT THE QUESTION?

21 Q SURE.

22 AS OF FEBRUARY --

23 THE COURT: WHY DON'T YOU SAY "UP TO"?

24 Q BY MR. WAPNER: UP TO AND INCLUDING FEBRUARY  
25 THE 2ND, 1987, HAD YOU TALKED TO ANYBODY REPRESENTING MR.  
26 BARENS, MR. CHIER AND MR. HUNT?

27 A NO, I WAS NOT ALLOWED TO TAKE PHONE CALLS.

28 Q AND THE FIRST TIME THAT YOU TALKED TO ANYBODY

1 REPRESENTING THE DEFENSE IN THIS CASE WAS WITHIN A MONTH  
2 OF TODAY'S OR YESTERDAY'S DATE?

3 A I THINK SO.

4 Q AND DO YOU REMEMBER WHO THE FIRST PERSON YOU  
5 TALKED TO WAS?

6 A MY ATTORNEY.

7 Q AND IS THAT ONE OF THE ATTORNEYS THAT IS HERE?

8 A NO.

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1 THE COURT: YOUR OWN ATTORNEY?

2 THE WITNESS: OUR OWN PERSONAL ATTORNEY.

3 THEY WOULDN'T ALLOW ME TO TALK TO ANYBODY.

4 Q BY MR. WAPNER: AND WHEN WAS THE FIRST TIME THAT  
5 YOU SPOKE DIRECTLY WITH A REPRESENTATIVE OF THE DEFENSE IN  
6 THIS CASE, NOT THROUGH YOUR LAWYER, BUT DIRECTLY?

7 A WHEN MY ATTORNEY REQUESTED THEY FLY OUT THERE  
8 IF THEY WANTED TO TALK TO ME, I WAS NOT GOING TO TALK TO  
9 THEM.

10 Q DO YOU REMEMBER WHEN THAT WAS?

11 A NO, I DON'T REMEMBER THE EXACT DATE.

12 Q WAS THAT IN TUCSON THAT YOU SPOKE TO THEM?

13 A YES, IT WAS.

14 Q WHO WAS IT YOU SPOKE TO?

15 A THAT WAS MR. RICHARD CHIERS.

16 Q THAT IS THE GENTLEMAN --

17 A YES.

18 Q -- AT COUNSEL TABLE?

19 A UH-HUH.

20 Q ALL RIGHT. AND WERE YOU SHOWN ANY PHOTOGRAPHS  
21 AT THAT TIME?

22 A YES, I WAS.

23 Q AND WHAT PHOTOGRAPHS WERE YOU SHOWN AT THAT TIME?

24 A IT WAS JUST THE SAME ONE. I TOLD HIM I COULDN'T  
25 BE SURE UNTIL I SAW MORE PHOTOS.

26 Q WHICH SAME ONE WAS THAT?

27 A IT WAS -- IT WAS BIGGER THAN THAT ONE BUT SMALLER  
28 THAN THAT PHOTO.

1 Q HOW MANY PHOTOGRAPHS WERE YOU SHOWN?

2 A JUST ONE, I THINK.

3 Q NOT SIX, JUST ONE PICTURE.

4 A I AM TRYING TO REMEMBER.

5 I JUST REMEMBER HIM HAVING ONE PHOTO. HE --  
6 IT WAS BIG. IT MIGHT HAVE BEEN THAT ONE THAT IS IN YOUR  
7 HAND RIGHT NOW.

8 Q SHOWING YOU PEOPLE'S 6, IS THIS THE PICTURE THAT  
9 YOU ARE TALKING ABOUT?

10 A YES.

11 Q ALL RIGHT. AND YOU WERE SHOWN THAT PICTURE BY  
12 MR. CHIER?

13 A YES.

14 Q AND AT THAT TIME, WHAT DID YOU TELL HIM?

15 A THAT I COULDN'T BE ABSOLUTELY SURE BECAUSE HE  
16 HAD A BEARD AND THAT THE GUY HAD SHORTER HAIR.

17 Q NOW, WHEN YOU SAW THE PICTURES IN THE PHOTOGRAPHIC  
18 LINEUP THAT WE HAVE MARKED AS 235, AND THE BLOW-UP OF WHICH  
19 IS ON THE BOARD, DID IT ALTER YOUR OPINION ABOUT BEING 90  
20 PERCENT SURE ABOUT THE PERSON YOU SAW?

21 A IN TERMS OF WHAT?

22 Q YOU SAID WHEN YOU WENT TO DETECTIVE MEYERS, THAT  
23 YOU WERE 90 PERCENT SURE THAT THE PERSON IN THE ARTICLE WAS  
24 THE PERSON YOU SAW IN THE GAS STATION, RIGHT?

25 A BECAUSE BASED ON CHINO'S AND MY CONVERSATION  
26 LEAVING THE GAS STATION.

27 Q RIGHT.

28 AND WHEN YOU SAW THE PICTURES THAT ARE DEPICTED

1 ON TH BOARD AND IN PEOPLE'S 235, DID YOUR OPINION CHANGE  
2 AS TO HOW CERTAIN YOU WERE ABOUT THE PERSON YOU SAW IN THE  
3 GAS STATION?

4 A NO, I WAS STILL NOT SURE.

5 Q WHEN MR. CHIER SHOWED YOU THAT INDIVIDUAL PICTURE  
6 THAT IS PEOPLE'S 6, WERE YOU STILL NOT SURE?

7 A I TOLD HIM I COULDN'T BE SURE UNTIL I WAS ABLE  
8 TO SEE A COLOR PHOTO, IN TERMS OF IT SHOWED -- I DIDN'T KNOW  
9 WHAT COLOR HIS COMPLEXION WAS, AND JUST A BETTER PHOTOGRAPH.

10 Q DID HE SHOW YOU A COLOR PHOTOGRAPH?

11 A I DON'T REMEMBER HIM SHOWING ME A COLOR PHOTOGRAPH.  
12 THAT IS WHY I TOLD HIM I WASN'T -- I DIDN'T WANT TO TESTIFY.

13 Q NOW, THEY EVENTUALLY GOT A SUBPOENA FOR YOU IN  
14 ARIZONA AND YOU CAME HERE, RIGHT?

15 A YES.

16 Q AND LAST SUNDAY, DID YOU SPEAK TO MR. CHIER AND  
17 MR. BARENS?

18 A YES, I DID.

19 Q WHERE DID THAT CONVERSATION TAKE PLACE?

20 A IN THEIR OFFICE.

21 Q AND WHO ELSE WAS PRESENT AT THAT TIME?

22 A CHINO.

23 Q AND THAT IS JESUS LOPEZ?

24 A JESUS LOPEZ.

25 Q AND BESIDES YOU, MR. LOPEZ AND MR. BARENS AND  
26 MR. CHIER, WHO ELSE WAS THERE?

27 A MR. HAPPY -- OR HAP LEE, OR SOMETHING LIKE THAT.

28 Q IS THAT AN INVESTIGATOR OR SOMETHING?

1           A        I THINK HE WORKS AS AN INVESTIGATOR FOR THEIR  
2 OFFICE.

3           Q        AT THAT TIME, WERE YOU SHOWN SOME PHOTOGRAPHS?

4           A        YES, I WAS.

5           Q        HOW MANY WERE YOU SHOWN?

6           A        I THINK ABOUT THREE OF THEM.

7           Q        AND WHEN YOU WERE SHOWN THOSE PHOTOGRAPHS, WHAT  
8 DID YOU DO, WHAT HAPPENED?

9           A        THE TWO OF THEM, I DIDN'T REACT BECAUSE -- BECAUSE  
10 TWO OF THE PHOTOS, I DID NOT REACT BECAUSE THEY HAD BEARDS.

11                    THE OTHER PHOTO, BEFORE EVEN HE PUT IT UP, I  
12 REACTED BECAUSE IT WAS A PHOTO OF THE GENTLEMAN WITHOUT THE  
13 BEARD, EVEN THOUGH IT WAS A BLACK AND WHITE, BUT IT WAS WITHOUT  
14 THE BEARD AND YOU COULD SEE HIS JAWLINE BETTER AND EVEN  
15 THOUGH -- AND I GOT SICK TO MY STOMACH, IT WAS THAT PHOTO  
16 ON YOUR DESK WHERE HE IS STANDING BETWEEN TWO WOMEN AND HE  
17 WAS TRYING TO PUT THE OTHER PHOTO AND --

18                    "NO," I GO, "I WANT TO SEE THAT ONE."

19                    AND HE PULLED IT OUT AND PUT IT ON THERE AND  
20 I STARTED CRYING A BIT AND I FELT SCARED BECAUSE I WAS ALMOST  
21 99 PERCENT THAT THAT WAS THE PERSON WE SAW, AND I ALMOST  
22 WASN'T GOING TO COME.

23           THE COURT: I DIDN'T GET THAT, ALL OF THAT.

24                    (RECORD READ BY THE REPORTER.)  
25  
26  
27  
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1 (THE RECORD WAS READ BY THE REPORTER.)

2 Q BY MR. WAPNER: THEY SHOWED YOU TWO COLOR  
3 PHOTOGRAPHS, DIDN'T THEY?

4 A YES.

5 Q ALL RIGHT. SHOWING YOU A PICTURE WE HAVE MARKED  
6 AS 152 -- WELL, THAT PICTURE THAT IS 152 FOR IDENTIFICATION,  
7 IS THAT ONE OF THE PICTURES THEY SHOWED YOU?

8 A YES IT IS.

9 Q WHAT HAPPENED WHEN YOU WERE SHOWN THAT PHOTOGRAPH?

10 A I JUST LOOKED AT IT. I DIDN'T LOOK AT THAT ONE  
11 FIRST. I LOOKED AT THE OTHER ONE, THE ONE ON THE DESK RIGHT  
12 THERE WHERE HE IS STANDING BETWEEN TWO WOMEN.

13 Q DID ANYTHING HAPPEN WHEN YOU WERE SHOWN THE  
14 PHOTOGRAPH, 152?

15 A I DON'T KNOW. IT MUST JUST BE THE ANGLE OR  
16 SOMETHING.

17 Q WERE YOU ABLE TO IDENTIFY THE PERSON IN THAT  
18 PICTURE?

19 A YES. IT WAS THE OTHER MAN -- IT WAS THAT MAN.  
20 IT IS THAT MAN THAT IS IN THE OTHER PHOTO.

21 Q WERE YOU SHOWN THIS PICTURE THAT IS 154 FOR  
22 IDENTIFICATION?

23 A YES I WAS.

24 Q THAT IS A PHOTOGRAPH, A COLOR PHOTOGRAPH, ISN'T  
25 IT?

26 A YES IT IS.

27 Q AND ONE OF THE THINGS THAT YOU HAD WANTED WAS TO  
28 SEE A COLOR PHOTOGRAPH, RIGHT?

Δ-2  
1 A YES.

2 Q AND WHEN YOU SAW THAT PERSON IN THE PHOTOGRAPH  
3 THAT IS 154, DOES HE RESEMBLE THE PERSON THAT YOU SAW AT THE  
4 GAS STATION?

5 A YES. BUT IT WAS THE OTHER PHOTO THAT MADE ME  
6 REACT, BECAUSE HE DIDN'T HAVE THE BEARD.

7 Q THAT IS THE PHOTO YOU ARE TALKING ABOUT, MARKED  
8 153 FOR IDENTIFICATION, RIGHT?

9 A YES.

10 Q NOW, THE PHOTOGRAPH THAT YOU SAW THAT IS 153 FOR  
11 IDENTIFICATION --

12 THE COURT: SO THE JURY WILL UNDERSTAND, WHY DON'T YOU  
13 EXHIBIT IT TO THEM SO THAT THEY CAN SEE IT?

14 MR. WAPNER: I WILL PUT THEM ON THE BOARD.

15 THE COURT: ALL RIGHT.

16 Q BY MR. WAPNER: DOES THE MAN IN THE PHOTOGRAPH  
17 THAT IS 153, APPEAR IN ALL RESPECTS AS THE PERSON THAT YOU  
18 SAW AT THE GAS STATION?

19 MR. BARENS: OBJECTION. SHE HAS TESTIFIED THAT THE MAN  
20 DIDN'T HAVE A BEARD. THAT IS MISLEADING THE WITNESS.

21 THE COURT: HE IS ASKNG THE QUESTIONS.

22 Q BY MR. WAPNER: DOES THE PERSON IN 153 HAVE A  
23 BEARD?

24 A WHICH ONE?

25 Q THE BLACK AND WHITE ONE?

26 A NO. HE DOESN'T HAVE A BEARD.

27 Q DOES HE APPEAR OTHER THAN THE WAY HE IS DRESSED --  
28 DOES HE APPEAR IN THAT PHOTOGRAPH IN ALL RESPECTS LIKE THE

A-3  
1 PERSON YOU SAW IN THE GAS STATION?

2 A YES.

3 Q WHAT IS IT ABOUT THAT PHOTOGRAPH? TELL US ABOUT  
4 THAT PHOTOGRAPH, WHAT IT IS EXACTLY THAT APPEARS EXACTLY THE  
5 WAY THAT PERSON WAS AT THE GAS STATION?

6 A I WAS ABLE TO GET A BETTER LOOK. I MEAN, ALL THE  
7 OTHER PHOTOS I HAD BEEN SHOWN, HE HAD A BEARD. THAT IS WHY  
8 I TOLD YOU I COULDN'T BE SURE.

9 BUT WHEN I SAW IT ON HIS DESK, BEFORE HE PUT IT --  
10 I DON'T THINK HE WAS GOING TO PUT IT UP. I SAID, "I WANT TO  
11 SEE THAT PHOTOGRAPH."

12 WHEN HE PUT IT UP, THAT IS WHEN I GOT REALLY  
13 UNCOMFORTABLE BECAUSE I WAS NOT GOING TO SHOW UP HERE.

14 MR. WAPNER: MOTION TO STRIKE AS NONRESPONSIVE. THE  
15 QUESTION WAS, WHAT WAS IT ABOUT THE PHOTOGRAPH.

16 THE COURT: ASK THE QUESTION AGAIN, WILL YOU PLEASE?

17 MR. WAPNER: THANK YOU.

18 Q WHAT IS IT ABOUT THE WAY HE APPEARS IN THAT  
19 PHOTOGRAPH, THAT IS LIKE THE PERSON YOU SAW AT THE GAS  
20 STATION?

21 A HIS EYES AND I GOT A GOOD LOOK AT THE JAWLINE,  
22 HIS FACE WITHOUT A BEARD.

23 Q NOW, WHAT IS IT ABOUT HIS EYES IN THIS PICTURE  
24 THAT MAKES YOU THINK IT IS THE SAME PERSON THAT YOU SAW AT  
25 THE GAS STATION?

26 MR. BARENS: YOUR HONOR, I BELIEVE THAT WE ARE AT  
27 REDUCTIO AD ABSURDUM BECAUSE WHEN YOU SAY WHAT IS IT ABOUT THE  
28 EYES, HOW CAN YOU SAY, YOUR HONOR? EYES ARE EYES, SIR.

Δ-4  
1 THE COURT: WELL, HE IS ASKING HER. YOU ARE NOT ASKING  
2 THE QUESTIONS.

3 MR. BARENS: BUT, IT IS VAGUE AND AMBIGUOUS. THE WITNESS  
4 SAID THOSE ARE THE EYES. WHAT ARE WE GOING TO DO?

5 THE COURT: OVERRULED. GO AHEAD.  
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R-1 1 Q BY MR. WAPNER: WHAT IS IT ABOUT HIS EYES IN THE  
2 PICTURE THAT IS 153, THAT IS THE SAME AS THE PERSON THAT YOU  
3 SAW?

4 A I REALLY CAN'T TELL YOU. THAT IS THE PERSON. I  
5 SAID THAT I WAS 99 PERCENT SURE.

6 WHAT MORE DO YOU WANT ME TO SAY? I WAS HELPFUL.  
7 I CAME FORWARD. I DIDN'T HAVE TO COME FORWARD. BUT I DID  
8 AND --

9 THE COURT: RESTRAIN YOURSELF A LITTLE BIT, WILL YOU  
10 PLEASE? IT WILL BE OVER IN A SHORT WHILE. JUST BE QUIET FOR  
11 A MOMENT. GO AHEAD.

12 Q BY MR. WAPNER: WHAT IS IT ABOUT THE EYES OF THE  
13 PERSON IN THAT PICTURE THAT ARE THE SAME AS THE EYES OF THE  
14 PERSON THAT YOU SAW?

15 A I GUESS THE WAY HE IS STARING. I DON'T KNOW. HIS  
16 EYES. I DON'T KNOW WHAT ELSE TO TELL YOU.

17 Q WHAT ABOUT HIS HAIR IN THAT PICTURE?

18 A THE MAN'S HAIR WAS SILVER. IT IS NOT THE SAME  
19 AS THIS HAIRCUT. IT WAS SHORTER.

20 Q WHAT ABOUT HIS HAIRCUT ON THE PERSON THAT YOU SAW?  
21 WAS IT SHORTER THAN IN THAT PICTURE?

22 A YES.

23 Q OTHER THAN THAT, IS THE HAIR THE SAME?

24 A I DON'T KNOW. BECAUSE I MEAN, AFTER A PERSON'S  
25 HAIR GETS LONGER, IT CAN LOOK DIFFERENTLY.

26 Q WHAT ABOUT THE COMPLEXION OF THE PERSON IN THAT  
27 PICTURE?

28 A I DIDN'T SEE THE COMPLEXION UNTIL I SAW THE

R-2

1 PICTURE WITH THE DOG. HE WAS LIKE A LIGHT-COMPLECTED MAN.

2 Q THE SKIN IN THE PICTURE THAT IS 153, AS OPPOSED  
3 TO THE SKIN IN THE PICTURE THAT IS 154, WHAT MORE CLOSELY  
4 RESEMBLES THE SKIN OF THE PERSON?

5 A EXCUSE ME?

6 Q LOOKING AT 153 AND 154, CAN YOU TELL WHICH ONE  
7 OF THOSE TWO --

8 MR. BARENS: YOUR HONOR, THAT IS AN ABSURD QUESTION.  
9 ONE IS BLACK AND WHITE AND ONE IS IN COLOR.

10 MR. WAPNER: IS THERE AN OBJECTION?

11 MR. BARENS: OBJECTION.

12 THE COURT: I WILL SUSTAIN THE OBJECTION.

13 Q BY MR. WAPNER: LOOKING AT THE COMPLEXION OF THE  
14 PERSON IN 153 AND 154, WHICH IS CLOSER TO THE PERSON?

15 MR. BARENS: OBJECTION TO THE QUESTION. ONE IS A BLACK  
16 AND WHITE PICTURE. THAT IS VAGUE AND AMBIGUOUS.

17 MR. WAPNER: IF SHE CAN ANSWER IT, SHE CAN. IF SHE  
18 CAN'T, SHE CAN'T.

19 THE COURT: WHY DON'T YOU ASK HER WITH RESPECT TO THE  
20 COLOR PICTURE, WHETHER THE COMPLEXION IS THE SAME AS THE MAN  
21 THAT SHE ALLEGEDLY SAW ON THAT PARTICULAR DAY?

22 MR. BARENS: THAT IS OBVIOUS.

23 THE COURT: I DON'T KNOW WHAT YOU MEAN BY OBVIOUS.

24 MR. BARENS: IT IS OBVIOUS FOR HIM TO ASK THAT QUESTION.  
25 WE HAVE TO ASK HER THE CONFUSING QUESTION BETWEEN LOOKING AT  
26 THE BLACK AND WHITE PHOTOGRAPH AND THE COLOR PHOTOGRAPH, TO  
27 PLAY HIDE THE BALL.

28 THE COURT: I WILL SUSTAIN THE OBJECTION. LET'S GET

1 ON, WILL YOU PLEASE?

2 MR. WAPNER: CAN YOU TELL ME IF IT IS POSSIBLE WHETHER  
3 THE COMPLEXION IN 153 OR 154 IS CLOSER TO THE PERSON YOU SAW?

4 MR. BARENS: OBJECTION.

5 THE COURT: I WILL OVERRULE THE OBJECTION. THAT STATES  
6 IT MORE CLEARLY.

7 Q BY MR. WAPNER: COULD YOU TELL ME WHICH IS CLOSER  
8 TO THE PERSON THAT YOU SAW?

9 A THE COLOR PHOTO.

10 Q AND WHEN YOU WERE SHOWN PICTURES, WHEN YOU WERE  
11 FIRST SHOWN THE PHOTOGRAPHS AT THE POLICE STATION, WHEN I WAS  
12 THERE AND INVESTIGATOR MACMAC WAS THERE AND DETECTIVE MEYERS  
13 AND YOU PICKED OUT SOMEONE, WERE YOU FAIRLY SURE THAT YOU HAD  
14 MADE A CORRECT IDENTIFICATION?

15 A NO. I WAS NOT CERTAIN BECAUSE THE PHOTO HAD A  
16 BEARD. IT WAS BLACK AND WHITE.

17 Q WHEN YOU TALKED TO DETECTIVE FILIPPELLI, DID YOU  
18 TELL HIM THAT YOU THOUGHT YOU HAD PICKED OUT THE CORRECT  
19 PERSON?

20 A I TOLD HIM -- I DON'T REMEMBER EXACTLY WHAT HE  
21 SAID. BUT I AM SURE THAT I SAID THAT IT WAS CLOSEST TO THAT  
22 PHOTO THAT WE HAD BEEN SHOWN OF THE PERSON.

23 Q FROM THAT DATE, WERE YOU LOOKING FOR SOME KIND  
24 OF VERIFICATION THAT IN FACT, YOU HAD PICKED THE RIGHT  
25 PHOTOGRAPH?

26 A I ASKED IF WE HAD PICKED THE RIGHT PERSON. I ASKED  
27 YOU. YOU SAID THAT YOU COULDN'T TELL US WHETHER OR NOT WE  
28 PICKED THE RIGHT PERSON. YOU SAID YOU WOULD LIKE US TO COME  
29 BACK TO BE INTERVIEWED BY OFFICER FILIPPELLI.

1 Q AND WHEN YOU WERE INTERVIEWED BY MR. FILIPPELLI,  
2 YOU DID TELL HIM YOU HAD ASSUMED THAT YOU HAD IN FACT PICKED  
3 THE RIGHT PHOTOGRAPH?

4 A MUST HAVE, OTHERWISE, YOU WOULDN'T HAVE MADE  
5 US GO THROUGH THAT OTHER INTERVIEW.

6 Q AND YOU TOLD HIM THAT BASICALLY?

7 A YES.

8 Q AND FROM THAT POINT FORWARD, WERE YOU LOOKING  
9 FOR VERIFICATION THAT YOU HAD IN FACT PICKED THE RIGHT PERSON?

10 A I DIDN'T NEED ANY VERIFICATION. THE VERIFICATION  
11 WAS THERE: YOU ASKED ME TO COME BACK AND GO THROUGH MORE  
12 QUESTIONING.

13 Q WHEN YOU WERE SHOWN PHOTOGRAPHS BY MR. CHIER  
14 AND MR. BARENS, DID THEY READ YOU ANY ADMONITION ABOUT LOOKING  
15 AT THE PHOTOGRAPH?

16 A EXCUSE ME?

17 Q WHEN YOU WERE SHOWN PHOTOGRAPHS BY MR. CHIER  
18 AND MR. BARENS, DID THEY READ YOU --

19 A I TOLD THEM I WOULDN'T TESTIFY UNLESS THEY SHOWED  
20 ME BETTER PHOTOS THAT I CAN BE SURE, BECAUSE I WOULDN'T FEEL  
21 COMFORTABLE WITH TESTIFYING UNLESS I WAS SURE.

22 Q AND YOU SAID THAT SINCE YOU HAD -- LET ME ASK  
23 YOU ANOTHER THING.

24 YOU WERE ASKED AT SOME POINT BY DETECTIVE EDHOLM  
25 OF THE BEVERLY HILLS POLICE DEPARTMENT TO TRY AND MAKE, LIKE  
26 A COMPOSITE PHOTOGRAPH, WEREN'T YOU?

27 A YES.

28 Q AND THAT WAS BY USING SOMETHING THEY CALLED AN

-2

1 IDENTI KIT?

2 A YES.

3 Q AND THAT WAS BY TAKING DIFFERENT TYPES OF EYES  
4 AND HAIR AND CHINS AND EVERYTHING AND PUTTING THEM ALL  
5 TOGETHER AND TRYING TO MAKE A COMPOSITE DRAWING OF THE PERSON  
6 YOU SAW, RIGHT?

7 A YES.

8 Q AND WHAT HAPPENED WHEN HE DID THAT?

9 A I COULDN'T DO IT BECAUSE HE DIDN'T HAVE THE  
10 RIGHT -- HE SAID HE DIDN'T HAVE ENOUGH PARTS OR PIECES TO  
11 HIS KIT. HE SAID HE DIDN'T HAVE ALL OF HIS EYES OR ALL OF  
12 THE DIFFERENT TYPES OF HAIR. IN OTHER WORDS, HE DIDN'T HAVE  
13 ALL OF THE RIGHT KIND OF JAWLINES. HE DIDN'T HAVE THE RIGHT  
14 PARTS FOR THE KIT.

15 Q YOU MEAN HE SAID --

16 YOU WERE WILLING TO DO IT BUT HE SAID HE HAD  
17 AN INCOMPLETE KIT?

18 A NO, NO.

19 HE KEPT TRYING TO DO IT AND HE SAID "THESE ARE  
20 ALL OF THE EYES THAT WE HAVE TO WORK WITH".

21 Q BUT HE DIDN'T SAY THAT THE KIT WAS INCOMPLETE,  
22 RIGHT?

23 A THAT IS WHAT HE MEANT. THAT HE DIDN'T HAVE ALL  
24 OF THE DIFFERENT TYPES OF FACE, FACIAL PARTS.

25 Q OKAY, I DON'T WANT TO ARGUE BUT LET ME JUST SEE  
26 IF MAYBE WE ARE NOT UNDERSTANDING EACH OTHER.

27 DID HE SAY THAT THERE WERE OTHER THINGS IN THE  
28 KIT BUT HE HAD, LIKE, LEFT THEM BEHIND OR THAT THE KIT ONLY

3

1 CONTAINED SO MANY PIECES?

2 A HE SAID HE HAD -- I THINK HE SAID HE LEFT SOME  
3 BEHIND, THAT HE COULDN'T TAKE --

4 I AM NOT SURE. I AM NOT SURE. IT HAS BEEN AWHILE.

5 Q HOW LONG DID YOU SPEND WITH HIM TRYING TO PUT  
6 THIS TOGETHER?

7 A ABOUT AN HOUR, WHILE MY FAMILY WAS WAITING.

8 Q AND WERE YOU ABLE TO --

9 DID HE SHOW YOU LOTS OF DIFFERENT TYPES OF EYES?

10 A NO, I DON'T REMEMBER.

11 I REMEMBER IT BEING LIMITED.

12 Q HOW MANY DO YOU THINK THAT HE SHOWED YOU?

13 A I DON'T KNOW.

14 Q AND DID HE SHOW YOU LOTS OF DIFFERENT TYPES OF  
15 HAIR?

16 A I DON'T REMEMBER.

17 Q AND DID HE SHOW YOU LOTS OF DIFFERENT TYPES OF  
18 CHINS?

19 A I DON'T REMEMBER.

20 I JUST REMEMBER IT WAS MY BROTHER'S BIRTHDAY.

21 MR. BARENS: OBJECTION, YOUR HONOR, RELEVANCY.

22 THE COURT: I WILL SUSTAIN THE OBJECTION.

23 LET'S GET AWAY FROM THIS.

24 Q BYMR. WAPNER: YOU WEREN'T ABLE TO MAKE A COMPOSITE,  
25 WERE YOU?

26 MR. BARENS: THAT QUESTION IS IRRELEVANT.

27 THE COURT: SUSTAINED.

28 Q BY MR. WAPNER: AFTER YOU TALKED TO THE DETECTIVES

4  
1 AT THAT TIME, YOU SAID THAT AT SOME POINT LATER YOU HAD  
2 BEEN -- YOU ALSO TALKED TO DEPUTY DISTRICT ATTORNEY LISA  
3 HART, RIGHT?

4 A I COULDN'T REMEMBER IF SHE HAD SAID THAT SHE  
5 WAS A -- WITH THE D.A.

6 I REMEMBER THAT SHE WAS WITH THE D.A.'S OFFICE,  
7 BUT I DON'T REMEMBER WHETHER SHE SAID SHE WAS AN INVESTIGATOR  
8 OR A DEPUTY DISTRICT ATTORNEY, I DON'T REMEMBER.

9 BUT WHAT SHE HAD TOLD ME WAS DIFFERENT THAN WHAT  
10 SHE HAD TOLD CHINO.

11 Q DID SHE IN FACT GIVE YOU HER CARD?

12 A I DON'T REMEMBER.

13 IF SHE DID, I THINK I THREW IT AWAY RIGHT AWAY.

14 I WAS UPSET.  
15  
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1 Q WELL, DIDN'T YOU WANT TO KNOW WHO SHE WAS?

2 A IT WAS MY BROTHER'S BIRTHDAY. WE HAVE GUESTS.  
3 THESE PEOPLE ARE AT OUR HOUSE, THEY HAVE BEEN THERE FOR TWO  
4 HOURS. THEY WERE THERE FOR TWO HOURS MORE.

5 MY FAMILY WAS UPSET.

6 Q WHEN SHE TALKED TO YOU, WHAT DID SHE SAY TO YOU?

7 A SHE WAS TRYING TO INTIMIDATE ME.

B 8 MR. WAPNER: MOTION TO STRIKE AS A CONCLUSION.

9 THE WITNESS: SHE WAS TRYING TO INTIMIDATE ME.

10 THE COURT: THAT MOTION WILL BE GRANTED.

11 Q BY MR. WAPNER: JUST TELL US WHAT SHE SAID.

12 A I DON'T REMEMBER THE EXACT WORDS. BASICALLY,  
13 WHAT SHE MEANT, WE WERE RUINING ALL OF THE INVESTIGATIVE  
14 WORK THAT HAD BEEN DONE, BY COMING FORWARD.

15 MR. WAPNER: MOTION TO STRIKE.

16 THE COURT: IS THAT WHAT SHE SAID?

17 THE WITNESS: THAT IS WHAT SHE WAS SAYING -- INTIMATING.

18 THE COURT: WERE THOSE THE EXACT WORDS?

19 THE WITNESS: I DON'T KNOW THE EXACT WORDS.

20 THE COURT: IN SUBSTANCE, IS THAT WHAT SHE SAID?

21 THE WITNESS: THAT IS WHAT SHE MEANT.

22 Q BY MR. WAPNER: SHE WAS BULLYING YOU?

23 MR. BARENS: SHE DIDN'T USE THAT WORD.

24 THE COURT: INTIMIDATED.

25 Q BY MR. WAPNER: WAS SHE BULLYING YOU?

26 A TRYING TO INTIMIDATE ME.

27 Q WHAT DID SHE TRY TO DO TO INTIMIDATE YOU?

28 A TRYING TO MAKE ME FEEL GUILTY ABOUT HAVING COME



1 FORWARD.

2 Q WHAT DID SHE SAY TO YOU ABOUT THAT, THAT MADE  
3 YOU FEEL THAT WAY?

4 A ABOUT -- TALKING ABOUT ALL OF THE WORK THAT HAD  
5 BEEN DONE, ALL OF THE LEG WORK FOR THIS CASE, ALL OF THE  
6 WORK THAT HAD BEEN GONE ON, YOU KNOW, I HAD BETTER BE SURE  
7 ABOUT THIS.

8 Q AND HOW LONG DID YOU SPEND TALKING TO HER?

9 A I DON'T REMEMBER.

10 IT WASN'T VERY LONG BECAUSE I DECIDED TO JUST  
11 GET UP AND WALK OUT OF MY LIVING ROOM, BECAUSE SHE WASN'T  
12 SUPPOSED TO SPEAK WITH ME.

13 I WAS ONLY SUPPOSED TO SPEAK TO --

14 Q DIDN'T SHE TELL YOU ON SEVERAL OCCASIONS THAT  
15 SHE HAD BEEN INSTRUCTED BY YOUR FATHER AND YOUR LAWYER NOT  
16 TO TALK TO YOU?

17 MR. BARENS: YOUR HONOR, THAT IS TESTIMONY.

18 THE COURT: HE HAS A RIGHT TO ASK HER, DID SHE SAY  
19 SUCH AND SUCH.

20 MR. BARENS: THEN HE IS MAKING A SPEECH.

21 THE COURT: THAT IS NO SPEECH. HE IS ASKING WHETHER  
22 OR NOT SHE HAD SAID SUCH AND SUCH. IT IS PERFECTLY PROPER.

23 Q BYMR. WAPNER: DIDN'T SHE IN FACT TELL YOU ON  
24 SEVERAL OCCASIONS THAT SHE HAD BEEN INSTRUCTED BY YOUR FATHER  
25 AND YOUR LAWYER NOT TO TALK TO YOU?

26 A YES, BUT SHE STILL KEPT TALKING TO ME.

27 Q SHE WAS THE ONE WHO KEPT INITIATING THE CONVER-  
28 SATION AND NOT YOU?

1 A YES.

2 Q AND AFTER TALKING TO PEOPLE ON THIS CASE, YOU  
3 SAID THAT YOU STARTED HAVING PROBLEMS?

4 A YES.

5 Q PEOPLE TRYING TO BREAK INTO YOUR HOUSE?

6 A THERE WAS A POLICE REPORT.

7 MR. BARENS: YOUR HONOR, THAT WAS STRICKEN FROM THE  
8 RECORD YESTERDAY WHEN DEFENSE COUNSEL BROUGHT THAT UP.

9 MR. WAPNER: I AM HAPPY TO HAVE HIM GO INTO IT EITHER  
10 ON REDIRECT OR REOPENING THE DIRECT.

11 MR. BARENS: IT WAS STRICKEN. THE JURY WAS ADMONISHED  
12 TO DISREGARD IT.

13 MR. WAPNER: MAY I MAKE AN OFFER OF PROOF?

14 THE COURT: ALL RIGHT. MAKE AN OFFER OF PROOF.

15 MR. BARENS: LET'S APPROACH THE BENCH.

16 (THE FOLLOWING PROCEEDINGS WERE HELD  
17 AT THE BENCH OUTSIDE THE HEARING OF THE  
18 JURY.)

19 MR. BARENS: YOUR HONOR, FOR THE RECORD --

20 MR. WAPNER: MAY I MAKE AN OFFER OF PROOF?

21 THE COURT: GO AHEAD.

22 MR. WAPNER: YOUR HONOR, IF SHE IS CLAIMING THAT THE  
23 REPRESENTATIVES OF THE DISTRICT ATTORNEY'S OFFICE AND THE  
24 POLICE DEPARTMENT ARE BADGERING HER, AND THAT HER HOUSE IS  
25 NOW BEING BROKEN INTO AS A RESULT OF THIS, THEREFORE, THE  
26 ONLY PEOPLE WHO COULD POSSIBLY BE RESPONSIBLE ARE PEOPLE  
27 WHO ARE CONNECTED WITH LAW ENFORCEMENT.

28 MR. BARENS: THAT IS PREPOSTEROUS.

1 MR. WAPNER: OF COURSE IT IS, AND THAT IS EXACTLY WHY  
2 I WANT TO ASK HER.

3 MR. BARENS: THE STATEMENT IS PREPOSTEROUS.

4 THERE WAS NO STATEMENT BY THIS WITNESS --

5 MR. WAPNER: YOUR HONOR, MAY I PLEASE BE HEARD?

6 HER INTIMATION IS THAT AS A RESULT OF ALL OF THESE  
7 PEOPLE TALKING TO HER, SHE STARTED TO HAVE PROBLEMS AND IT  
8 IS EITHER ONE OF TWO THINGS: IT IS EITHER THAT REPRESENTATIVES  
9 OF THE PROSECUTION AND LAW ENFORCEMENT ARE RESPONSIBLE FOR  
10 THIS OR SOMEHOW, SHE HAS HAD PROBLEMS COMPLETELY UNRELATED  
11 THAT SHE NOW SEEKS TO CONNECT UP WITH THIS AND IN EITHER  
12 EVENT, IT GOES TO HER STATE OF MIND AS TO WHAT IS GOING ON  
13 AND EXPLAINS THE TOTALLY IRRATIONAL BEHAVIOR ON THE WITNESS  
14 STAND, CRYING WHEN IT HAS NOTHING TO DO WITH HER.

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1 THE COURT: I THINK WE OUGHT TO DROP IT AT THIS  
2 PARTICULAR POINT.

3 MR. WAPNER: I HAVE SOMETHING MORE --

4 MR. BARENS: YOUR HONOR, I WOULD LIKE TO MENTION THAT --

5 THE COURT: I SUSTAINED THE OBJECTION.

6 MR. BARENS: I WOULD LIKE TO MENTION THAT WHILE WE ARE  
7 ON -- AT THE BENCH, ANOTHER SUBJECT. THAT IS LISA HART, THAT  
8 SHE IS TALKING ABOUT NOW, IS THE SAME LISA HART THAT WE WOULD  
9 LIKE TO CROSS-EXAMINE IN THIS COURTROOM.

10 BUT MR. WAPNER HAS SAID THAT SHE IS RESISTING A  
11 SUBPOENA THROUGH A MOTION IN LIMINE SO THAT WE CAN'T GO IN  
12 BACK OF THIS WITNESS'S TESTIMONY TO PRODUCE HER AS A WITNESS,  
13 FIRSTHAND.

14 THE COURT: WELL, DIDN'T YOU ORIGINALLY ON DIRECT  
15 EXAMINATION -- DIDN'T SHE TESTIFY PURSUANT TO QUESTIONS YOU  
16 ASKED ABOUT AN INTERVIEW SHE HAD WITH LISA HART AND WHAT WAS  
17 SAID?

18 MR. BARENS: BUT I WANT --

19 THE COURT: WAIT JUST A MINUTE, WILL YOU?

20 MR. BARENS: SORRY. I DIDN'T MEAN TO INTERRUPT.

21 THE COURT: SHE THEN VOLUNTEERED THE INFORMATION THAT  
22 SHE IS BEING PERSECUTED AND WORDS PUT IN HER MOUTH AND LISA  
23 HART SAID THAT SHE WAS RUINING THE ENTIRE CASE AND SO FORTH.  
24 YOU ARE THE ONE THAT ORIGINALLY BROUGHT ALL OF THIS THING OUT,  
25 DIDN'T YOU?

26 MR. BARENS: YES.

27 THE COURT: WELL, WHAT HE IS DOING NOW IS CROSS-  
28 EXAMINING AND GOING INTO SOMETHING THAT YOU HAVE ALREADY SAID.

A-2  
1 MR. BARENS: BUT I WAS SAYING THAT WE WOULD LIKE TO HAVE  
2 LISA HART HERE AS A WITNESS.

3 THE COURT: WELL, FORGET ABOUT THAT AT THE MOMENT. WE  
4 ARE TALKING NOW ABOUT HER TESTIMONY ABOUT LISA HART.

5 MR. WAPNER: YOUR HONOR, THE OTHER THING SHE MENTIONED  
6 YESTERDAY, BESIDES HER HOUSE BEING BROKEN INTO WAS THAT SHE  
7 HAD BEEN GETTING ANONYMOUS PHONE CALLS. I WANT TO INQUIRE  
8 WHAT THOSE ANONYMOUS PHONE CALLS ARE SAYING. DOES SHE THINK  
9 THEY ARE COMING FROM THE POLICE OR FROM THE D.A.'S OFFICE,  
10 TO TRY TO DISSUADE HER FROM TESTIFYING?

11 MR. BARENS: SHE HAS NEVER SAID THAT.

12 MR. WAPNER: YES. SHE SAID ON THE PHONE THAT --

13 THE COURT: ANONYMOUS PHONE CALLS?

14 MR. BARENS: SHE NEVER SAID SHE ATTRIBUTED IT TO LAW  
15 ENFORCEMENT.

16 MR. BARENS: SHE SAID SHE WAS GETTING ANONYMOUS PHONE  
17 CALLS AS A RESULT OF THIS. SHE HAS HAD ALL KINDS OF PROBLEMS.  
18 WHO IS GOING TO BE CAUSING THOSE PROBLEMS IF IT IS NOT PEOPLE  
19 THAT ARE TRYING TO FORCE HER AWAY FROM THIS IDENTIFICATION?

20 MR. BARENS: YOUR HONOR, SHE SAID --

21 MR. WAPNER: IT IS THE STATE OF THE EVIDENCE AND --

22 THE COURT: I THINK THAT THE JURY SUFFICIENTLY HAS MADE  
23 AN APPRAISAL OF THIS WITNESS AND HER CREDIBILITY. I DON'T  
24 THINK THAT YOU NEED TO GO INTO ANYTHING FURTHER. THANK YOU.  
25 THAT IS ALL.

26 (THE FOLLOWING PROCEEDINGS WERE HELD  
27 IN OPEN COURT:)

28 Q BY MR. WAPNER: YESTERDAY, YOU SAID THAT AS A RESULT

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1 OF ALL OF THIS, YOU WANTED TO DISAPPEAR. WHY WAS THAT?

2 A BECAUSE EVERYBODY AROUND ME WAS TRYING TO PRESSURE  
3 ME INTO GETTING OUT OF THIS. MY PARENTS WERE UPSET.

4 THE COURT: I DIDN'T HEAR. WHAT WAS THAT?

5 THE WITNESS: MY FAMILY WAS UPSET. CHINO WAS UPSET WITH  
6 ME. EVERYBODY WAS UPSET WITH ME, PLUS THE OTHER PROBLEMS THAT  
7 I HAD.

8 Q BY MR. WAPNER: WHAT OTHER PROBLEMS?

9 A THE ANONYMOUS PHONE CALLS THAT I GOT AND THE FACT  
10 THAT -

11 THE COURT: WHAT?

12 THE WITNESS: MY NEIGHBOR GOT A PHONE CALL WHERE SOMEONE  
13 CALLED AND HAD TRIED TO ASK HER WEIRD QUESTIONS ABOUT ME.  
14 THE GIRL LIVES ACROSS THE STREET. NO ONE COULD HAVE MY  
15 NEIGHBORS PHONE NUMBER. IT IS UNLISTED.

16 THEY HAVE CHANGED THEIR NUMBERS A FEW TIMES.

17 AND THE LITTLE GIRL ACROSS THE STREET WAS WAITING  
18 FOR THE SCHOOL BUS ON THE CORNER AND SHE SAW A GUY DRESSED  
19 LIKE A JOGGER, JOGGING.

20 HE CUT THROUGH MY DRIVEWAY AND HE STOPPED. HE  
21 STARTED TRYING TO LOOK THROUGH THE WINDOWS. HE WAS TRYING  
22 THE DOOR TO SEE IF HE COULD GET IN.

23 ALL OF A SUDDEN, HE SAW HER LOOKING.

24 I TOOK HER TO THE POLICE STATION TO FILE A POLICE  
25 REPORT.

26 Q BY MR. WAPNER: WHAT DID THAT HAVE TO DO WITH THIS  
27 CASE?

28 A ALL THESE THINGS DIDN'T HAPPEN TO ME BEFORE.

A-4  
1 Q DID YOU ATTRIBUTE THEM TO YOUR GETTING INVOLVED  
2 IN THIS CASE?

3 A WELL, YES. ALL THESE STRANGE THINGS STARTED  
4 HAPPENING.

5 Q HOW?

6 A JUST THE STRANGENESS OF THE THINGS THAT WERE  
7 HAPPENING. I DIDN'T FEEL COMFORTABLE AT HOME. I DIDN'T  
8 FEEL COMFORTABLE BEING BY MYSELF ANY MORE.

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1 Q HOW DO YOU ATTRIBUTE THAT TO THIS CASE?

2 MR. BARENS: YOUR HONOR, IT IS ASKED AND ANSWERED. THE  
3 WITNESS SAID IT DIDN'T HAPPEN BEFORE.

4 THE COURT: THAT IS THE LAST QUESTION I WILL PERMIT.

5 HOW DO YOU ATTRIBUTE THAT TO THIS CASE?

6 Q BY MR. WAPNER: HOW DO YOU ATTRIBUTE THAT TO THIS  
7 CASE?

8 A JUST THAT REPORTERS STARTED CALLING. I WAS NOT  
9 ALLOWED TO TAKE PHONE CALLS ANY MORE.

10 THE PHONE CALLS THAT I WAS GETTING -- MY LIFE WAS  
11 PRETTY NORMAL UP UNTIL I CAME TO THE POLICE TO TELL THEM ABOUT  
12 THIS.

13 MY LIFE WAS PRETTY NORMAL. I DIDN'T HAVE PROBLEMS  
14 LIKE THIS BEFORE.

15 Q WHAT WAS SAID TO YOU IN THOSE ANONYMOUS PHONE CALLS?

16 MR. BARENS: OBJECTION. YOUR HONOR, YOU SAID THAT THAT  
17 WAS THE END OF IT.

18 THE COURT: LET'S GET ON, WILL YOU PLEASE?

19 Q BY MR. WAPNER: WHEN YOU READ THE MAGAZINE ARTICLE  
20 THAT PERTAINED TO THIS CASE, WHERE WERE YOU SLEEPING?

21 MR. BARENS: ASKED AND ANSWERED, YOUR HONOR.

22 THE COURT: I THINK SHE SAID SOMETHING ABOUT A COUCH.

23 MR. WAPNER: IT IS JUST FOUNDATIONAL TO THE NEXT  
24 QUESTION.

25 THE COURT: SHE ANSWERED THAT SHE WAS SLEEPING ON A  
26 COUCH.

27 Q BY MR. WAPNER: WERE YOU SLEEPING ON A COUCH?

28 A YES.



R-2

1 Q WHY?

2 MR. BARENS: WHAT IS THE RELEVANCY OF THIS?

3 THE COURT: SUSTAINED.

4 MR. WAPNER: CAN I APPROACH THE BENCH?

5 THE COURT: NO.

6 Q BY MR. WAPNER: WAS THERE SOME KIND OF A BOUNDARY  
7 DISPUTE WITH YOUR HOUSE THAT CAUSED YOU NOT TO PUT THE  
8 BEDROOM FURNITURE IN THE BEDROOM?

9 MR. BARENS: YOUR HONOR, WHAT IS A BOUNDARY DISPUTE?

10 THE COURT: I WILL SUSTAIN THE OBJECTION.

11 Q BY MR. WAPNER: AND WHEN DID THESE STRANGE THINGS  
12 START HAPPENING TO YOU?

13 MR. BARENS: OBJECTION, YOUR HONOR.

14 THE COURT: I WILL SUSTAIN THE OBJECTION.

15 Q BY MR. WAPNER: AT SOME POINT IN JANUARY, DID YOU  
16 GO TO A DANCE OR A BALL IN PHOENIX THAT YOU THOUGHT YOU MIGHT  
17 SEE THIS PERSON AT, THAT YOU SAW AT THE GAS STATION?

18 A NO.

19 Q YOU NEVER DID THAT? YOU NEVER DID GO TO A DANCE  
20 OR A BALL AND TELL DETECTIVE MEYERS AHEAD OF TIME THAT YOU  
21 WERE GOING TO GO TO SOME FUNCTION AND YOU THINK THE PERSON  
22 MIGHT BE THERE?

23 A NO.

24 Q THAT NEVER HAPPENED?

25 A NOT THAT WAY YOU ARE WORDING IT, NO.

26 THE COURT: YOU WORD IT YOUR OWN WAY.

27 THE WITNESS: OKAY. IN DECEMBER I WENT TO A CHARITY  
28 FUNCTION. AND IF THIS PERSON IS A PERSON WHO IS SUPPOSED TO

1 BE AFFLUENT OR INVOLVED WITH THINGS OR JUST -- IT IS THAT A  
2 LOT OF IMPORTANT PEOPLE FROM TUCSON WERE GOING TO BE THERE.  
3 I TOLD DETECTIVE MEYERS THAT I WAS GOING TO BE MAKING A POINT  
4 OF LOOKING AROUND AND MAYBE THE PERSON I SAW -- IF IT IS NOT  
5 THE SAME PERSON -- SO THIS WAY, IF IT JUST HAPPENED TO BE A  
6 TUSCONIAN, MAYBE WE WOULD SEE HIM THERE. IF I DID SEE HIM  
7 THERE I WOULD LET DETECTIVE MEYERS KNOW.

8 I WAS STILL COOPERATING WITH THE POLICE. I WAS  
9 TRYING TO COOPERATE WITH THEM SO THEY COULD FIND WHOEVER IT  
10 WAS I SAW. THEN I WOULDN'T HAVE TO BE HERE.

11 Q YOU CALLED THE POLICE DEPARTMENT AND HAD THEM CALL  
12 DETECTIVE MEYERS AT HOME BEFORE YOU WENT TO THIS DANCE, RIGHT?

13 A I CALLED HIM FROM THE DANCE AND I TOLD HIM THAT  
14 I WAS GOING TO MAKE A POINT OF LOOKING AROUND AT THIS  
15 FUNCTION. I WAS GOING TO LOOK AROUND AND SEE IF I COULD SEE  
16 THE PERSON THAT I HAD SEEN THAT DAY BECAUSE MAYBE IT WAS  
17 SOMEONE FROM TUSCON. I DIDN'T TELL MY PARENTS I WAS GOING  
18 TO CALL.

19 I DIDN'T TELL CHINO THAT I WAS GOING TO CALL.  
20 BUT I WOUND UP TELLING CHINO BECAUSE HE WAS ANGRY WITH ME.

21 MR. WAPNER: WELL, I WILL HAVE A FEW QUESTIONS AFTER  
22 LUNCH. I ASSUME THERE WILL BE SOME REDIRECT.

23 MR. BARENS: WHY DON'T WE DO IT NOW?

24 THE COURT: FINISH WITH THE WITNESS?

25 MR. BARENS: YEAH. WELL, IF HE HAS ONLY GOT --

26 THE COURT: BUT YOU HAVE REDIRECT?

27 MR. BARENS: BRIEF.

28 MR. WAPNER: LET'S FINISH BRIEFLY AFTER LUNCH.

1 THE COURT: YES. LADIES AND GENTLEMEN OF THE JURY,  
2 WELL TAKE A RECESS AT THIS TIME UNTIL 1:30. THE SAME  
3 ADMONITION APPLIES.

4 (AT 12 NOON A RECESS WAS TAKEN UNTIL  
5 1:30 P.M. OF THE SAME DAY.)  
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1 SANTA MONICA, CALIFORNIA; THURSDAY, APRIL 2, 1987; 1:38 P.M.  
2 DEPARTMENT WEST C HON. LAURENCE J. RITTENBAND, JUDGE  
3 (APPEARANCES AS NOTED ON TITLE PAGE.)  
4

5 THE COURT: GOOD AFTERNOON.

6 YOU MAY GO AHEAD AND FINISH UP.

7 MR. WAPNER: THANK YOU, YOUR HONOR.  
8

9 CARMEN CANCHOLA,  
10 THE WITNESS ON THE STAND AT THE TIME OF ADJOURNMENT, RESUMED  
11 THE STAND AND TESTIFIED AS FOLLOWS:  
12

13 CROSS-EXAMINATION (RESUMED)

14 BY MR. WAPNER:

15 Q MISS CANCHOLA, AT ONE POINT DID YOU TELL THE  
16 TUCSON POLICE THAT YOU THOUGHT THE CAR YOU SAW WAS SOME SORT  
17 OF A CLASSIC CAR?

18 A YES, I DID.

19 Q DID YOU TELL THEM YOU THOUGHT IT MIGHT BE A HORNET?

20 A CHINO SAID IT MIGHT BE A HORNET SO I TOLD THEM I  
21 THOUGHT IT MIGHT BE A HORNET.

22 I DIDN'T KNOW WHAT A HORNET IS.

23 Q OKAY, BUT AFTER HE TOLD YOU THAT, YOU PASSED  
24 THAT ALONG TO DETECTIVE MEYERS --

25 A THE POLICE, YES.

26 Q WHEN --

27 A I AM SORRY.

28 Q -- WHEN YOU FIRST TALKED TO THEM?

1           A       UH-HUH, YES, I DID.

2           Q       OKAY.  AND SINCE YOU DON'T KNOW MUCH ABOUT CARS,  
3 I TAKE IT YOU DON'T KNOW WHETHER THERE IS A PICTURE OF A  
4 HORNET IN THIS DISPLAY OR NOT, RIGHT (COUNSEL INDICATING)?

5           A       NO, I DON'T.

6           Q       OKAY, LET ME ASK YOU, CAN YOU RECALL EVER MAKING  
7 A MISTAKE IN AN IDENTIFICATION OF ANYBODY, NOT JUST FOR COURT  
8 BUT JUST GENERALLY?

9           A       NOT THAT I CAN THINK OF, NO.

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1 Q HOW ABOUT SEEING FRIENDS THAT YOU THOUGHT YOU KNEW  
2 AND IT TURNED OUT THAT THEY WEREN'T THE PEOPLE THAT YOU THOUGHT  
3 THEY WERE?

4 A I DON'T THINK SO.

5 Q NEVER HAD THAT EXPERIENCE OF WALKING DOWN THE STREET  
6 AND THINKING THAT YOU SAW SOMEONE THAT WAS FAMILIAR TO YOU  
7 AND IT TURNED OUT NOT TO BE THAT PERSON?

8 A WELL FOR EXAMPLE, IF I SAW SOMEONE WEARING THE  
9 SAME OUTFIT AND I CAME UP BEHIND THEM AND I THOUGHT IT WAS  
10 MY FRIEND BECAUSE I RECOGNIZED THE CLOTHING OR SOMETHING. YES,  
11 I GUESS THAT I MIGHT HAVE DONE THAT ONCE.

12 Q I AM NOT TALKING ABOUT THE CLOTHES. I AM TALKING  
13 ABOUT SEEING SOMEBODY, THEIR FACE AND THINKING THAT IS  
14 SOMEBODY I KNOW.

15 THEN YOU EITHER GET CLOSER OR YOU TALK TO THEM  
16 AND YOU REALIZE IT IS NOT THE SAME PERSON. HAS THAT EVER  
17 HAPPENED TO YOU?

18 A I DON'T THINK SO. MAYBE COMING UP ON SOMEONE FROM  
19 BEHIND AND THINKING IT WAS THAT PERSON. I THINK THAT HAPPENED  
20 TO ME BEFORE, WHERE YOU COME UP BEHIND THE PERSON AND YOU  
21 RECOGNIZE THE JACKET OR THE SAME COLOR OF HAIR FROM THE BACK  
22 AND YOU COME UP AND YOU SAY HI AND YOU REALIZE THAT IT IS NOT  
23 THE PERSON YOU THOUGHT IT WAS.

24 Q HAVE YOU EVER HAD THE EXPERIENCE OF PEOPLE COMING  
25 UP TO YOU AND SEEING YOUR FACE AND SAYING THEY THOUGHT YOU  
26 WERE SOMEBODY ELSE?

27 MR. BARENS: OBJECTION, RELEVANCY.

28 THE COURT: SUSTAINED.

1 Q BY MR. WAPNER: THE PERSON THAT YOU SAW IN THE  
2 GAS STATION, DID HE DO ANYTHING THAT YOU WERE ABLE TO OBSERVE  
3 TO ATTEMPT TO CONCEAL HIS IDENTITY?

4 A NO. I DON'T THINK SO. I DON'T UNDERSTAND WHAT  
5 YOU MEAN BY THAT.

6 Q OKAY. DID HE DO ANYTHING THAT IN YOUR OPINION,  
7 MADE YOU THINK THAT HE WAS TRYING TO AVOID BEING RECOGNIZED?

8 MR. CHIER: BY WHOM?

9 THE WITNESS: PLEASE REPEAT THAT QUESTION.

10 Q BY MR. WAPNER: OKAY. WHEN YOU SAW THIS MAN WITH  
11 THE SILVER HAIR IN THE GAS STATION, DID HE TAKE ANY ACTIONS  
12 OR DID HE DO ANYTHING THAT MADE YOU THINK THAT HE DIDN'T WANT  
13 PEOPLE TO NOTICE HIM OR HE DIDN'T WANT PEOPLE TO SEE HIS FACE  
14 OR SOMETHING LIKE THAT?

15 A NO.

16 Q IN FACT, WASN'T IT KIND OF THE OPPOSITE THAT HE  
17 WAS BEING FAIRLY CONSPICUOUS BY STARING AT YOU AND THINGS OF  
18 THAT NATURE?

19 A WELL, I THOUGHT -- IT CROSSED MY MIND THAT MAYBE  
20 IT MIGHT HAVE BEEN SOMEONE WHO WAS A FRIEND OF MY DAD'S, AN  
21 ASSOCIATE OF MY DAD, IN A SENSE THAT THERE ARE PEOPLE WHO COME  
22 UP TO ME A LOT AND THEY SAY THAT -- DON'T YOU REMEMBER? WE  
23 MET AT SUCH AND SUCH AN OCCASION WHEN I WAS WITH YOUR FATHER  
24 AND NICE TO SEE YOU AGAIN.

25 THEY WILL TELL ME THEIR NAME AND I WILL SAY YES,  
26 THAT I REMEMBER THEM OR WHATEVER. WELL, I WAS THINKING MAYBE  
27 I KNEW HIM FROM SOME PLACE OR FROM SOMEWHERE. I DIDN'T THINK  
28 OF KNOWING HIM BECAUSE HE WAS STARING AT US AND --

1 Q BUT, BY STARING AT YOU, DID HE APPEAR TO BE DRAWING  
2 ATTENTION TO HIMSELF?

3 A I GUESS HE COULD HAVE BEEN.

4 Q AND REGARDING THE IDENTIFICATION THAT YOU MADE  
5 FROM THE INITIAL PHOTOGRAPHS THAT YOU WERE SHOWN ON  
6 NOVEMBER 22ND, DID YOU LATER TALK TO DETECTIVE EDHOLM ABOUT  
7 THE IDENTIFICATION THAT YOU HAD MADE AT THAT TIME?

8 A I DON'T REMEMBER THE CONVERSATION. I MEAN,  
9 EVERYTHING I SAID TO DETECTIVE EDHOLM. CAN I --

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1 Q LET ME SHOW YOU A POLICE REPORT THAT IS DATED  
2 NOVEMBER THE 28TH, 1986.

3 A YOU WANT ME TO READ EVERYTHING?

4 Q WELL, FIRST, IF YOU WANT TO JUST READ THAT TO  
5 FAMILIARIZE YOURSELF WITH WHAT IT IS AND SPECIFICALLY WHAT  
6 I WANT TO ASK YOU ABOUT IS THE STATEMENT THAT APPEARS ON  
7 THE SECOND PAGE, SO YOU CAN READ UP UNTIL YOU GET TO THAT  
8 STATEMENT IN THE MIDDLE OF THE SECOND PAGE.

9 READ IT TO YOURSELF, PLEASE.

10 (PAUSE IN PROCEEDINGS.)

11 THE COURT: DO YOU WANT HER TO READ AFTER THE PART  
12 OR UP TO THE PART WHERE YOU WANT TO ASK HER SOME QUESTIONS?

13 MR. WAPNER: YES, TO THE MIDDLE OF THE SECOND PAGE.

14 Q HAVE YOU FINISHED THAT?

15 A YES.

16 Q DOES THAT REFRESH YOUR RECOLLECTION AS TO A  
17 STATEMENT YOU MADE TO DETECTIVE EDHOLM?

18 A YES.

19 Q AND WHAT DID YOU TELL DETECTIVE EDHOLM ABOUT  
20 THE IDENTIFICATION THAT YOU HAD MADE?

21 A ON THE TRANSCRIPT, IT SAYS THAT I TOLD HIM THAT  
22 THE EYES WERE RIGHT. I JUST WASN'T SURE ABOUT IF -- THAT  
23 I DON'T KNOW IF IT WAS HIM OR NOT BECAUSE HIS FACE WAS --  
24 THE PICTURE THAT WAS SHOWN, HIS FACE WAS COVERED WITH A BEARD  
25 AND A MUSTACHE.

26 Q IS WHAT YOU SAID ACCURATE?

27 MR. BARENS: OBJECTION. I THOUGHT HE WAS GOING TO START  
28 READING THE POLICE REPORT, JUDGE.

1 THE COURT: ISN'T THIS WHAT YOU SAID?

2 Q BY MR. WAPNER: DID YOU MAKE THIS STATEMENT:  
3 "IT WASN'T SO MUCH THAT THAT WAS HIM BUT THE GUY WE SAW,  
4 BASED ON THE EYES, THE EYES WERE RIGHT," DIDN'T YOU MAKE  
5 THAT STATEMENT TO HIM IN REFERENCE TO THE IDENTIFICATION  
6 YOU HAD MADE INITIALLY FROM THE PHOTO LINEUP?

7 MR. BARENS: MAY WE HAVE HIM READ THE WHOLE SENTENCE?  
8 THERE IS SOME LANGUAGE THAT CONDITIONS IT PRECEDING THAT.

9 THE COURT: YOU CAN DO THAT LATER.

10 MR. BARENS: SIR, I THINK WE SHOULD DO IT NOW.

11 MR. CHIER: NOW.

12 MR. BARENS: LEST WE FORGET.

13 THE COURT: I CAN'T TELL HIM WHAT TO READ AND WHAT  
14 NOT TO READ. YOU HAVE THE RIGHT ON REDIRECT TO READ WHATEVER  
15 PORTION YOU WANT FROM THAT REPORT.

16 MR. BARENS: I THINK WE ARE GETTING A MISIMPRESSION.

17 THE COURT: IS THERE ANYTHING FURTHER IN THAT THAT  
18 NEEDS ELUCIDATION?

19 MR. BARENS: SHE IS REFERRING TO THE PHOTOGRAPH THERE,  
20 JUDGE.

21 MR. WAPNER: THAT IS WHAT I ASKED.

22 Q DID YOU UNDERSTAND THAT THESE QUESTIONS  
23 WERE BEING ASKED OF YOU ABOUT THE IDENTIFICATION THAT YOU  
24 MADE FROM THE PHOTOGRAPHIC LINEUP INITIALLY; DID YOU UNDER-  
25 STAND THAT?

26 A YES.

27 Q OKAY. AND WHEN DETECTIVE EDHOLM ASKED YOU ABOUT  
28 THE IDENTIFICATION THAT YOU MADE FROM THE SIX PHOTOGRAPHS

1 THAT ARE DEPICTED NOW SIDEWAYS ON THE BOARD, DID YOU SAY  
2 "IT WASN'T SO MUCH THAT THAT WAS HIM BUT THE GUY WE SAW,  
3 BASED ON THE EYES, THE EYES WERE RIGHT"?

4 A YES, I THINK I MIGHT HAVE SAID THAT STATEMENT.  
5 I DON'T REMEMBER.

6 IT HAS BEEN SEVEN MONTHS.

7 MR. WAPNER: THANK YOU. I HAVE NOTHING FURTHER.

8 THE COURT: ALL RIGHT, REDIRECT.

9 MR. BARENS: THANK YOU, YOUR HONOR.

10  
11 REDIRECT EXAMINATION

12 BY MR. BARENS:

13 Q MR. WAPNER ASKED YOU A MOMENT AGO IF YOU HAD  
14 EVER PREVIOUSLY MADE AN INCORRECT IDENTIFICATION OF SOMEONE,  
15 TO WHICH I BELIEVE YOU RESPONDED NO.

16 HAVE YOU EVER HAD A PRIOR POLICE CONTACT WHERE  
17 YOU MADE A CORRECT IDENTIFICATION OF SOMEONE?

18 A YES, I DID.

19 Q COULD YOU PLEASE TELL ME WHAT HAPPENED ON THAT  
20 OCCASION?

21 A I WAS AT THE LIBRARY AND SOMEONE FLASHED ME AND  
22 I WAS REALLY UPSET AND I WENT TO THE PERSON AT THE LIBRARY  
23 AND THEY CALLED THE POLICE.

24 THEY DIDN'T FIND SOMEONE AT THAT TIME. I LEFT  
25 MY NAME AND MY NUMBER.

26 LATER, I WAS CONTACTED AND TOLD -- I DON'T REMEMBER  
27 WHEN -- THEY FOUND THE GUY BUT THAT THE WEIGHT AND THE HEIGHT  
28 AND THE DESCRIPTION I GAVE OF THE GUY WAS EXACTLY ALMOST  
29 RIGHT ON THE BUTTON, IS WHAT I HAD BEEN TOLD AND THEY --

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1 Q AND ON THIS OCCASION YOU GAVE THE DESCRIPTION TO  
2 THE POLICE OF THE PERSON YOU HAD SEEN IN THE LIBRARY?

3 A I GAVE IT TO THE GUARD IN THE LIBRARY. I LEFT.  
4 I WAS REALLY UPSET ABOUT IT.

5 I WAS SUPPOSED TO HAVE BEEN STUDYING THERE.  
6 I JUST LEFT THE LIBRARY. I STAYED LONG ENOUGH TO GIVE A  
7 DESCRIPTION REAL QUICK TO THE GUARD. THEN I LEFT MY NAME AND  
8 NUMBER.

9 Q WAS YOUR DESCRIPTION CORRECT?

10 A I WAS TOLD YES.

11 MR. WAPNER: OBJECTION, CALLING FOR HEARSAY. MOTION  
12 TO STRIKE.

13 THE COURT: SUSTAINED.

14 Q BY MR. BARENS: HOW LONG DID YOU HAVE TO LOOK AT  
15 THE PERSON ON THE OCCASION THAT YOU JUST MADE REFERENCE TO?

16 A JUST A FEW SECONDS. WHEN I SAW HIM DOING IT, I  
17 JUST RAN. I RAN OUT OF THE ROOM.

18 I GRABBED MY BOOKS AND RAN OUT OF THE ROOM.

19 Q NOW, WOULD IT BE -- STRIKE THAT. WE CAN AGREE  
20 I BELIEVE, THAT I COULD TRIP YOU UP ON A LOT OF --

21 MR. WAPNER: OBJECTION, ARGUMENTATIVE.

22 THE COURT: SUSTAINED.

23 MR. BARENS: I HAVE NOT FINISHED IT YET.

24 THE COURT: SUSTAINED. THE THINGS THAT YOU HAVE JUST  
25 SAID INDICATE THAT IT IS OBJECTIONABLE.

26 Q BY MR. BARENS: IS IT TRUE THAT YOU WERE  
27 UNCERTAIN ABOUT A LOT OF THE DETAILS ABOUT FOR INSTANCE, THE  
28 DESCRIPTION OF THE LAYOUT OF THE GAS STATION?

6-2 1 A YES.

2 Q COULD YOU TELL ME WHERE THE CIGARETTE MACHINE WAS?

3 A NO. I DON'T SMOKE.

4 Q COULD YOU TELL ME WHAT KIND OF POP THEY SOLD IN  
5 THE COKE MACHINE?

6 A NO.

7 Q WAS YOUR ATTENTION PRIMARILY FOCUSED ON THE  
8 GENTLEMAN WHOSE PICTURE YOU HAVE IDENTIFIED?

9 A YES. IT WAS.

10 Q ALL RIGHT. WERE YOU PAYING MORE ATTENTION TO  
11 HIM AS A PERSON THAN YOU WERE TO THE OTHER CIRCUMSTANCES  
12 SURROUNDING YOU IN THE GAS STATION?

13 A YES. I WAS.

14 Q DO YOU NORMALLY TRY TO RETAIN ALL OF THE DETAILS  
15 ABOUT THE PHYSICAL LAYOUT AND DESCRIPTION OF A GAS STATION  
16 WHEN YOU ARE IN IT, WHEN YOU GO TO THE GAS STATION?

17 A NO.

18 Q PARTICULARLY IF YOU ARE NOT DRIVING WHEN YOU GO  
19 TO THE GAS STATION? ARE YOU PAYING ATTENTION, ANY PARTICULAR  
20 ATTENTION ABOUT WHO GOES TO THE CASHIER AND WHO DOESN'T GO  
21 AND IN WHAT ORDER THEY GO AND DON'T GO?

22 A NO.

23 Q AT THE CAFE NAPOLI WHERE YOU SAY YOU HAD DINNER  
24 BEFORE YOU SAW THIS PERSON, YOU HAD MET YOUR PARENTS, AS I  
25 RECALL, YOU SAID?

26 A AS CHINO AND I WERE LEAVING THE RESTAURANT, WE  
27 BUMPED INTO MY PARENTS.

28 Q DOES YOUR FATHER FREQUENT THAT RESTAURANT A LOT?

1 A YES. HE DOES.

2 Q DOES HE TO YOUR KNOWLEDGE, ALWAYS PAY CASH OR  
3 SOMETIMES DOES HE USE A CREDIT CARD THERE?

4 A EITHER WAY. IT VARIES.

5 Q ALL RIGHT. DOES HE SOMETIMES GO TO THAT RESTAURANT  
6 AND PAY CASH?

7 A YES, SOMETIMES.

8 Q HE IS IN THE RESTAURANT BUSINESS HIMSELF, IS HE  
9 NOT?

10 A YES. MY FATHER IS IN THE RESTAURANT BUSINESS.  
11 HE HAS SOME MC DONALDS FRANCHISES.

12 THE COURT: WHAT?

13 THE WITNESS: HE OWNS SOME MC DONALDS FRANCHISES IN  
14 TUCSON AND IN NOGALES.

15 THE COURT: IS THAT A LITTLE PLUG FOR HIM?

16 MR. BARENS: I DIDN'T QUITE HEAR.

17 THE COURT: IT IS ALL RIGHT FOR YOU TO GIVE A LITTLE  
18 PLUG FOR THE RESTAURANTS.

19 MR. BARENS: NOT AT ALL. WE SHOULD ALL HAVE ONE.

20 Q THE SKETCH YOU SAW IN ESQUIRE WAS A BLACK AND WHITE  
21 DRAWING, WAS IT NOT?

22 A YES. IT WAS BLACK AND WHITE.

23 Q ALL RIGHT. THE WORDS THAT YOU READ IN THE MAGAZINE  
24 GAVE COLOR TO THE PICTURE, DID THEY NOT, IN YOUR MIND?

25 A YES. BECAUSE IT SOUNDED LIKE THE CONVERSATION  
26 THAT CHINO AND I HAD HAD AS WE WERE LEAVING THE GAS STATION.

27 Q DID THE WORDS AND THE PICTURE MELD TOGETHER FOR  
28 YOU --

1 MR. WAPNER: OBJECTION, LEADING.

2 MR. BARENS: HOW ELSE CAN I ASK THIS?

3 THE COURT: ASK WHAT EFFECT THE TWO OF THEM HAD TOGETHER.

4 MR. BARENS: I AM ASKING A YES OR NO QUESTION.

5 THE COURT: ALL RIGHT. GO AHEAD.

6 MR. BARENS: THANK YOU, YOUR HONOR.

7 Q DID THE WORDS THAT YOU READ AND THE PICTURE THAT  
8 YOU SAW, MELD TOGETHER FOR YOU -- FOR THE IMPRESSION THAT YOU  
9 HAD OF THAT PICTURE?

10 A IT BOTHERED ME SO MUCH. I LOOKED BACK AT THE  
11 PICTURE. I JUST KEPT TRYING TO PICTURE IT WITH SILVER HAIR  
12 AND THE COLOR OF THE EYES AND EVERYTHING. THAT IS WHY THE  
13 VERY NEXT DAY, I WENT OVER TO THE POLICE STATION.

14 Q AS YOU WERE LOOKING BACK OVER YOUR RIGHT SHOULDER  
15 AT THE SUBJECT, WERE THERE ANY OSTRUCTIONS BETWEEN YOU AND  
16 THE PERSON THAT YOU SAW?

17 A NO. THERE WAS NOT.

18 Q AS THE PERSON STOPPED WHEN YOU DESCRIBED THE U-TURN,  
19 AFTER THE U-TURN, AS THE PERSON WAS EXITING IN THE VEHICLE  
20 AND STOPPED AND YOU LOOKED AGAIN AT THAT PERSON, WAS THERE  
21 ANYTHING OBSTRUCTING YOUR VIEW?

22 A NO. THERE WASN'T.

23 Q IS TUCSON A COOLER CITY THAN PHOENIX, TO YOUR  
24 KNOWLEDGE?

25 A IT IS ABOUT 10 TO 20 DEGREES COOLER THAN PHOENIX.

26 Q DO YOU HAVE AN OPINION AS TO WHAT THE TEMPERATURE  
27 HAD BEEN THAT DAY THAT YOU SAW THIS PERSON?

28 A TUCSON CAN BE HOT DURING THE DAY. BUT THE MINUTE

1 THE SUN GOES DOWN, THE TEMPERATURE DROPS QUITE A BIT. SO IT  
2 CAN BE CHILLY AND YOU NEED A SWEATER SOMETIMES.

3 Q DO YOU HAVE AN IDEA OR A BELIEF TODAY AS TO WHAT  
4 THE TEMPERATURE WAS ON THAT EVENING WHEN YOU MADE THIS  
5 OBSERVATION?

6 A I THINK IT COULD HAVE BEEN LIKE ABOUT MAYBE 70  
7 DEGREES OR 75.

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1 Q WERE YOU TOLD BY SOMEONE WHAT TO EXPECT FROM  
2 DEFENSE COUNSEL?

3 A YES, I WAS.

4 Q WHO TOLD YOU WHAT TO EXPECT FROM DEFENSE COUNSEL?

5 A MR. WAPNER.

6 Q AND WHAT WERE YOU TOLD?

7 A HE TOLD US THAT IF YOU THINK TODAY WAS BAD, THE  
8 OTHER GUYS ARE GOING TO BE A LOT WORSE.

9 Q ANYTHING ELSE SAID?

10 A I DON'T REMEMBER THE REST OF THE CONVERSATION.  
11 THERE WERE JUST DIFFERENT THINGS THAT WERE DISCUSSED, LIKE  
12 THE FOOTBALL GAME.

13 Q WERE YOU LOOKING FORWARD TO HEARING FROM DEFENSE  
14 COUNSEL?

15 A NO, WE WERE NOT.

16 Q WHEN YOU FIRST MET DEFENSE COUNSEL -- STRIKE  
17 THAT.

18 WHEN THE CAR STOPPED AFTER THE U-TURN ON THE  
19 WAY OUT, CAN YOU ESTIMATE FOR ME YOUR BEST RECOLLECTION OR  
20 YOUR BEST ESTIMATION AT THIS POINT AS TO HOW LONG THE  
21 VEHICLE STOPPED AFTER MAKING THE U-TURN WHEN YOU SAY THE  
22 MAN WAS LOOKING OVER HIS SHOULDER?

23 A I REALLY DON'T REMEMBER. IT COULD HAVE BEEN  
24 LIKE FIVE TO TEN SECONDS.

25 WE WERE JUST STOPPED AND I GUESS CHINO AND HIM  
26 LOCKED EYES BASED ON, YOU KNOW, WHAT CHINO HAD SAID AND STUFF,  
27 AND THEN HE LEFT.

28 Q NOW YOU TESTIFIED YESTERDAY THAT WHEN YOU SAW

1 THE PHOTOGRAPH AT THE BOTTOM OF THE SIX PHOTOGRAPHS THERE  
2 THAT YOUR STATE OF MIND WAS THAT YOU WERE 90 PERCENT SURE  
3 THAT THAT WAS THE PERSON YOU SAW AT THE GAS STATION?

4 A YES.

5 Q NOW, AFTER SEEING PEOPLE'S 153, AFTER SEEING  
6 THIS PHOTOGRAPH, YOU SAW IN THIS PHOTOGRAPH A PERSON  
7 OBVIOUSLY WITHOUT A BEARD?

8 A YES.

9 Q HAD YOU BEEN WANTING TO SEE A PICTURE OF THE  
10 PERSON YOU HAD SEEN WITHOUT A BEARD?

11 A I WAS KIND OF HOPING WHEN WE SAW THE PICTURE  
12 OF THE GUY WITHOUT THE BEARD, IT WOULDN'T LOOK ANYTHING AT  
13 ALL LIKE THE GUY WE HAD SEEN AND THAT WOULD BE THE END OF  
14 THIS.

15 Q WHAT PERCENTAGE OF CERTAINTY DID YOU HAVE IMMEDIATELY  
16 AFTER SEEING THAT PHOTOGRAPH THAT I HAVE JUST PUT ON THE  
17 BOARD?

18 A I SAID I AM 99 PERCENT.

19 Q AND AS YOU SEE THAT PHOTOGRAPH TODAY, ARE YOU  
20 99 PERCENT SURE THAT IS THE PERSON YOU SAW IN THE GAS  
21 STATION IN TUCSON, ARIZONA?

22 A I HAVE TO SAY 99 PERCENT.

23 Q ALL RIGHT. AND AS TO THE AMOUNT OF TIME THAT  
24 YOU SPENT IN THE GAS STATION FROM THE TIME YOU ENTERED THE  
25 GAS STATION WITH MR. LOPEZ TO THE TIME YOU EXITED THE GAS  
26 STATION, CAN YOU GIVE ME YOUR BEST ESTIMATE AS OF TODAY AS  
27 TO THE TOTAL TIME YOU WERE THERE?

28 A MAYBE ABOUT -- ABOUT 15 TO 20 MINUTES.

1 Q YESTERDAY, YOU SEEMED TO HAVE SOME DIFFICULTY  
2 IN STATING WHETHER THERE WAS SOME SPECIFIC FACT THAT MADE  
3 YOU THINK THAT THE PERSON WAS GAY. WAS THE IMPRESSION YOU  
4 HAD THAT HE WAS GAY BASED ON ONE FACTOR OR SOME TOTAL VIEW  
5 YOU HAD OF THE PERSON?

6 A CAN YOU REPEAT THE QUESTION, PLEASE?

7 THE COURT: WILL YOU READ IT, PLEASE?

8 (THE PENDING QUESTION WAS READ BY THE  
9 REPORTER.)

10 Q BY MR. BARENS: BY THAT, I MEAN THE TOTALITY  
11 OF THE CIRCUMSTANCES?

12 A WHEN I WAS JUST LOOKING AT HIM, I MEAN YOU  
13 WOULDN'T -- JUST THE WAY HE WALKED OR ANYTHING LIKE THAT,  
14 YOU COULDN'T MAKE THAT KIND OF AN ASSUMPTION.

15 BUT THEN WHEN I SAW THE PERSON THAT WAS WITH  
16 HIM AND THEN, YOU KNOW, WHEN THEY WERE BOTH IN THE CAR TOGETHER  
17 AND THAT THE OTHER GUY, YOU KNOW, SAID SOMETHING TO HIM,  
18 IT WAS REAL BRIEF, YOU KNOW, SAID SOMETHING TO HIM RIGHT  
19 AWAY, YOU KNOW, AND HE JUST KIND OF STOPPED PAYING ATTENTION  
20 AT US AND WAS LEAVING. AND I MEAN THAT GAVE ME THE IMPRESSION  
21 THAT HE WAS ALSO GAY.

22 Q SO IT IS MORE -- ARE YOU TELLING ME THAT IT WAS  
23 THE TOTALITY OF THE CIRCUMSTANCES?

24 A YES, PLUS THE FACT THAT THE GENTLEMAN HAD BEEN  
25 STARING AT MY BOYFRIEND.

26 HE WASN'T STARING AT ME.

27 Q DID YOU NEED TO READ THE TRANSCRIPT OF THE TAPE  
28 THAT WAS MADE OF YOUR CONVERSATIONS WITH THESE OFFICERS AND

1 THE DISTRICT ATTORNEYS BEFORE YOU CAME HERE TO PREPARE FOR  
2 YOUR TESTIMONY?

3 A I DIDN'T THINK I NEEDED TO.

4 I DIDN'T KNOW THEY WERE GOING TO GO OVER SO MANY  
5 FINE DETAILS.

6 Q ALL RIGHT. YOU WERE IN A HONDA PRELUDE, I  
7 BELIEVE, WHEN YOU WERE IN THE GAS STATION; IS THAT CORRECT?

8 A YES, WE WERE.

9 Q IS THAT A RELATIVELY SPEAKING, SMALL CAR?

10 A YES, IT IS.

11 Q WAS THE CAR THAT YOU OBSERVED THE PERSON IN,  
12 A BIGGER CAR THAN YOURS?

13 A YES, IT WAS.

14 Q WERE YOU MOSTLY LOOKING AT THAT PERSON'S FACE  
15 OR SOME OTHER PART OF THAT PERSON'S ANATOMY?

16 A I WAS MOSTLY LOOKING AT HIS EYES.

17 Q WAS THE GAS STATION WELL LIT?

18 A YES, IT IS VERY WELL LIT, BECAUSE I THINK A LOT  
19 OF THOSE PLACES ARE AFRAID THAT THEY CAN BE ROBBED OR SOME-  
20 THING AND THE PEOPLE THAT WORK THERE ARE KEPT IN A SMALL  
21 BOOTH.

22 I GUESS THE MONEY IS BEHIND THE BOOTH AND EVERY-  
23 THING.

24 Q IN TERMS OF PEOPLE'S 234, IN WHICH THERE ARE  
25 PICTURED SIX VEHICLES, I BELIEVE YOU HAVE SAID THAT THE  
26 SECOND FROM THE LEFT OR THE MIDDLE TOP ROW PICTURE, DOES  
27 THAT -- HOW WOULD YOU SAY, DOES THAT DESCRIBE THE CAR YOU  
28 SAW OR MORE CLOSELY RESEMBLED IT OR WHAT?

1           A           ALL I REMEMBER ABOUT THE CAR, AND I WASN'T EVEN  
2 SURE ABOUT THE COLOR, WAS THAT IT WAS SQUARE CUT. IT DIDN'T  
3 HAVE THE ROUNDNESS THAT THE OTHER VEHICLES HAVE, THE CURVES  
4 AND EVERYTHING. IT WAS MORE OF A SQUARE SHAPED AUTOMOBILE  
5 AND THAT IS THE ONLY AUTOMOBILE IN THE WHOLE LINEUP THAT  
6 HAS A SQUARE SHAPE TO IT.

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1 Q IS THIS IN FACT, THE CAR THAT YOU SAW ON THAT  
2 OCCASION?

3 A I DON'T KNOW.

4 Q ALL RIGHT. IF I TELL YOU THAT THE PHOTOGRAPH ON  
5 THE BOTTOM FARTHEST TO THE LEFT IS A CAR CALLED A HORNET, IS  
6 THAT THE CAR THAT YOU SAW?

7 A NO. IT IS NOT.

8 MR. BARENS: I THINK THAT IS A HORNET, JUDGE.

9 THE COURT: ANYTHING FURTHER?

10 MR. BARENS: PARDON ME?

11 THE COURT: ANYTHING FURTHER?

12 MR. BARENS: JUST A COUPLE OF BRIEF THINGS, YOUR HONOR.

13 THE COURT: GO AHEAD.

14 MR. BARENS: A MOMENT, YOUR HONOR.

15 (PAUSE.)

16 MR. BARENS: THANK YOU, YOUR HONOR.

17 THANK YOU, MS. CANCHOLA.

18 THE COURT: ANYTHING FURTHER?

19 MR. BARENS: I REST AT THIS MOMENT, WITH RESERVATION.

20 THE COURT: RESERVATION?

21 MR. BARENS: NOT FOR DINNER. I AM WAITING TO SEE WHAT  
22 MR. WAPNER IS GOING TO DO.

23 THE COURT: ALL RIGHT.

24 MR. WAPNER: MAY I HAVE A MOMENT?

25 THE COURT: YES.

26 (PAUSE.)  
27  
28

## 1 RE-CROSS-EXAMINATION

2 BY MR. WAPNER:

3 Q DID YOU MAKE A REPORT OF THIS OTHER INCIDENT WHERE  
4 YOU SUPPOSEDLY IDENTIFIED SOMEONE WHO COMMITTED ANOTHER CRIME?5 MR. BARENS: OBJECTION TO THE WORD "SUPPOSEDLY" AS  
6 ARGUMENTATIVE.

7 THE COURT: ALLEGED?

8 MR. BARENS: ALLEGED. SHE WAS THE VICTIM, JUDGE.

9 MR. WAPNER: DON'T WE HAVE AN ALLEGED MURDER HERE?

10 MR. BARENS: THANK GOD THAT MR. WAPNER --

11 MR. WAPNER: UNTIL WE GO TO COURT?

12 THE COURT: PLEASE, LET'S NOT HAVE THIS DIALOGUE. I  
13 WILL OVERRULE THE OBJECTION.

14 SO THEREFORE, THE QUESTION CAN BE ANSWERED.

15 MR. WAPNER: THANK YOU.

16 Q OF THE CRIME THAT YOU WITNESSED, DID YOU MAKE A  
17 POLICE REPORT?

18 A NO. I DID NOT. I WAS GIVEN THE OPPORTUNITY TO --

19 THE COURT: YOU HAVE ALREADY ANSWERED THE QUESTION.  
20 ALL RIGHT?

21 Q BY MR. WAPNER: WHERE DID THIS CRIME OCCUR?

22 A AT THE TUSCON MAIN LIBRARY, DOWNTOWN NEAR THE POLICE  
23 STATION.

24 Q WHEN DID THIS CRIME OCCUR?

25 A WHEN I SPOKE TO YOU IN NOVEMBER, I HAD SAID THAT  
26 IT HAPPENED TWO YEARS AGO. SO I GUESS NOW IT WOULD BE ALMOST  
27 TWO YEARS OR TWO AND A HALF YEARS AGO OR SOMETHING LIKE THAT.

28 Q SO, TWO YEARS, GIVE OR TAKE, BEFORE NOVEMBER OF

1 1986?

2 A YES.

3 Q AND IT HAPPENED AT THE CENTRAL LIBRARY?

4 A YES IT DID.

5 Q WAS THAT A CRIME THAT ALLEGEDLY OCCURRED BECAUSE  
6 SOMEBODY WAS EXPOSING THEMSELVES IN THE LIBRARY?

7 A DURING OUR MEETING -- DETECTIVE MEYER CHECKED IT  
8 OUT. DID HE SAY IT WAS TRUE?

9 THE COURT: WILL YOU ANSWER THE QUESTION, PLEASE.

10 Q BY MR. WAPNER: WHAT I WANT TO KNOW IS, WAS A REPORT  
11 OF THE CRIME OF SOMEBODY ALLEGEDLY EXPOSING THEMSELVES IN THE  
12 LIBRARY MADE?

13 A YES.

14 Q OKAY. NOW I WANT TO SHOW YOU A DOCUMENT THAT I  
15 WOULD LIKE TO HAVE MARKED AS 237 FOR IDENTIFICATION. I WILL  
16 ASK YOU IF YOU RECOGNIZE THAT.

17 A I HAVE NEVER SEEN THAT BEFORE. I DON'T THINK I  
18 HAVE.

19 Q WELL, FIRST OF ALL, DOES IT HAVE YOUR NAME ON THE  
20 FRONT?

21 A YES IT DOES.

22 Q AND TURN IT OVER. WOULD YOU JUST READ THE BACK,  
23 PLEASE?

24 A "VICTIM STATES THAT --"

25 Q NO. I AM ASKING YOU TO READ IT TO YOURSELF. SORRY.  
26 JUST READ IT TO YOURSELF.

27 A OKAY.

28 Q ALL RIGHT. NOW, DOES THAT APPEAR TO BE --



1 MR. BARENS: OBJECTION, JUDGE. HE MUST INQUIRE IF IT  
2 REFRESHES HER RECOLLECTION, FIRST.

3 MR. WAPNER: FIRST OF ALL, I WANT TO TRY TO LAY A  
4 FOUNDATION.

5 Q DOES THAT APPEAR TO BE A REPORT OF THE INCIDENT  
6 THAT YOU WERE REFERRING TO?

7 MR. BARENS: I DON'T THINK THAT IS RELEVANT, YOUR HONOR.

8 THE COURT: OVERRULED. YOU ASKED THE QUESTIONS. YOU  
9 OPENED THE DOOR TO IT.

10 HE IS ASKING QUESTIONS ABOUT IT.

11 MR. BARENS: NO. I AM ASKING --

12 THE COURT: THE OBJECTION IS OVERRULED.

13 Q BY MR. WAPNER: DOES THAT APPEAR TO YOU TO BE A  
14 REPORT OF THE INCIDENT THAT YOU WERE REFERRING TO?

15 A YES IT DOES.

16 Q SO, THAT IS THE ONE THAT YOU BELIEVED HAPPENED  
17 APPROXIMATELY TWO YEARS BEFORE NOVEMBER OF 1986, CORRECT?

18 A NO, NO. AT THE TIME IN NOVEMBER, I SAID A YEAR  
19 AND A HALF TO TWO YEARS AGO.

20 Q OKAY.

21 A NOW, SEVEN MONTHS LATER, I WOULD SAY TWO YEARS  
22 TO TWO AND A HALF YEARS.

23 Q OKAY. BUT IN FACT, THAT IS A REPORT OF THE  
24 INCIDENT THAT YOU WERE TALKING ABOUT?

25 A YES IT IS.

26 Q OKAY. AND IF YOU LOOK AT THIS REPORT, DOES IT  
27 REFRESH YOUR RECOLLECTION AS TO THE DATE?

28 A IT SAYS THE DATE OF INVESTIGATION, 8-29-85.

1 Q DOES THAT SOUND RIGHT TO YOU?

2 A IT HAS BEEN ABOUT -- IT HAS BEEN AWHILE.

3 IT SOUNDS ALL RIGHT, YES. IT SOUNDS ABOUT RIGHT.

4 Q IF I CAN HAVE THIS JUST FOR A MINUTE.

5 AND YOU SAID THAT YOU GAVE A PRECISE DESCRIPTION?

6 A THAT IS WHAT THEY TOLD ME ON THE TELEPHONE WHEN  
7 THEY CALLED ME.

8 Q WAIT --

9 THE COURT: HE HASN'T FINISHED HIS QUESTION YET.

10 THE WITNESS: OKAY.

11 Q BY MR. WAPNER: I WANT TO KNOW IF YOU GAVE THEM  
12 AT THE TIME OF THE INCIDENT A PRECISE DESCRIPTION OF THE  
13 PERSON WHO COMMITTED THE CRIME?

14 A WHAT DO YOU MEAN BY PRECISE EXACTLY?

15 YES, I THOUGHT I GAVE A PRETTY CLOSE DESCRIPTION  
16 OF THE PERSON I HAD SEEN.

17 Q OKAY. AND THE --

18 A I DIDN'T KEEP LOOKING OR LEERING AT HIM.

19 I LEFT RIGHT AWAY.

20 Q BUT YOU WERE VERY CLEAR THAT YOU HAD GIVEN AN  
21 EXACT DESCRIPTION OF THE PERSON, RIGHT?

22 A FOR THE FEW SECONDS THAT I GLANCED UP AT HIM,  
23 YES.

24 Q AND WHAT WAS THE DESCRIPTION THAT YOU CAN RECALL  
25 THAT YOU GAVE TO THEM?

26 A ACCORDING TO THE REPORT, IT SAYS --

27 I DIDN'T EVEN READ IT REAL CLOSE.

28 I GUESS IT SAYS "FIVE FOOT TEN" AND HE HAD DARK

1 HAIR, BROWN EYES, SLENDER.

2 THE COURT: WHAT?

3 THE WITNESS: SLENDER.

4 THE COURT: SLENDER?

5 THE WITNESS: SLENDER BUILD.

6 I THINK IT HAS BEEN ABOUT TWO YEARS, TWO AND  
7 A HALF YEARS.

8 Q BY MR. WAPNER: TAKE A LOOK AT THAT --

9 A TEEN-AGER.

10 Q -- TAKE A LOOK AT THE REPORT AND TELL ME IF THAT  
11 HELPS YOU AT ALL IN TERMS OF THE PRECISE NATURE OF THE  
12 DESCRIPTION THAT YOU GAVE THEM?

13 A BEING IT IS TWO YEARS LATER, I GUESS IT IS.

14 Q DOES THAT HELP YOU REFRESH YOUR RECOLLECTION?

15 A IT IS NOT SOMETHING PLEASANT THAT I REALLY WANT  
16 TO REMEMBER.

17 Q I KNOW THAT.

18 UNDER THE HEIGHT, CAN YOU TELL US WHAT IT SAYS  
19 THERE?

20 A FIVE FOOT TEN OR ELEVEN. THERE IS A SLASH. THERE  
21 IS FIVE FOOT TEN SLASH ELEVEN, WEIGHT, NO WEIGHT. HAIR,  
22 BLACK.

23 Q HOLD ON A SECOND. LET'S GO THROUGH IT ONE THING  
24 AT A TIME.

25 IS THERE A BOX THERE THAT INDICATES THE PRECISE  
26 DESCRIPTION OF THE WEIGHT THAT YOU GAVE HIM?

27 A YES, THERE IS.

28 Q AND WHAT IS CONTAINED IN THAT BOX?

1           A           I DON'T REMEMBER HAVING SPOKEN TO THE POLICE  
2 ABOUT IT.

3                       I JUST REMEMBER QUICKLY GIVING THIS INFORMATION  
4 TO THE GUARD.

5           THE COURT:   WHAT DOES IT SAY THERE?

6           THE WITNESS:  THERE IS JUST A SLASH THERE WHERE IT  
7 SAYS "WEIGHT".

8           Q           BY MR. WAPNER:  THERE IS A LITTLE DASH IN THERE,  
9 CORRECT?

10          A           YES, YES.

11          Q           INDICATING THERE WAS NO PRECISE WEIGHT GIVEN  
12 TO THEM, CORRECT?

13          A           I LEFT THE LIBRARY QUICKLY.

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1 Q AND DOES IT GIVE A DESCRIPTION OF WHAT THE HAIR  
2 WAS AT THAT TIME?

3 A THE HAIR WAS BLACK.

4 Q ALL RIGHT, AND THEN IT TALKS ABOUT EYES, RIGHT?

5 A YES.

6 Q THE NEXT BOX IS FOR EYES?

7 A YES, SIR.

8 Q THERE IS A SLASH IN THERE?

9 A IT IS NOT THAT I DIDN'T GIVE THEM THE EYES.

10 IF THERE IS A MAN IN FRONT OF YOU MASTURBATING,  
11 YOU SEE THEM AND YOU GET HELP AND YOU RUN OUT OF THE LIBRARY.

12 Q OKAY, THAT IS UNDERSTANDABLE.

13 THE COURT: THE ANSWER IS THAT YOU GAVE NO DESCRIPTION  
14 OF THE EYES; IS THAT CORRECT?

15 (LAUGHTER IN THE COURTROOM.)

16 MR. BARENS: EXCUSE ME, YOUR HONOR. MY OBJECTION GOES  
17 TO THE PROBLEM WE ARE HAVING HERE.

18 THE COURT: WELL, NOW YOU ARE MAKING A BIG ARGUMENT.

19 IT IS A VERY SIMPLE QUESTION. ALL HE ASKED HER  
20 IS, IS THERE ANYTHING IN THE COLUMN THERE FOR THE EYES AND  
21 THAT IS ALL HE ASKED HER.

22 MR. BARENS: THE PROBLEM WE GET, IT IS MISLEADING,  
23 JUDGE.

24 THE COURT: PARDON ME?

25 MR. BARENS: THE QUESTION IS MISLEADING. IT IS MISLEADING  
26 FOR THIS REASON --

27 THE COURT: IS IT MISLEADING? IS THERE ANYTHING MIS-  
28 LEADING ABOUT IT, MR. WAPNER?

1 MR. BARENS: CAN I TELL YOU WHAT IS MISLEADING?

2 MR. WAPNER: CAN WE APPROACH THE BENCH IF WE WANT TO  
3 MAKE AN ARGUMENT?

4 MR. BARENS: NO -- WELL, EITHER WAY.

5 THE COURT: ALL RIGHT, YOU HAVE GOT IT IN FRONT OF  
6 YOU. HAVEN'T YOU GOT IT IN FRONT OF YOU?

7 MR. BARENS: BUT IT DOESN'T ESTABLISH WHAT SHE SAID.  
8 IT ONLY ESTABLISHES WHAT WAS WRITTEN DOWN HERE, NOT BY HER.

9 THE COURT: WELL, WE PRESUME THAT WHEN ANYBODY TAKES  
10 A REPORT, THEY PUT DOWN WHAT THEY HAVE BEEN TOLD.

11 MR. BARENS: WHY DO WE PRESUME THAT?

12 THE COURT: ALL RIGHT. LET'S GO AHEAD.

13 THEY ARE POLICE OFFICERS, THAT IS WHAT THEY DO.

14 Q BY MR. WAPNER: WOULD IT BE FAIR TO SAY THAT  
15 YOU DIDN'T GIVE THEM A DESCRIPTION OF THE EYES?

16 MR. BARENS: OBJECTION AS TO "WOULD IT BE FAIR TO SAY".

17 THE COURT: IS THERE ANYTHING IN THERE ABOUT THE  
18 DESCRIPTION OF THE EYES?

19 THE WITNESS: NO, THERE ISN'T.

20 THE COURT: DID YOU GIVE THEM A DESCRIPTION OF THE  
21 EYES?

22 THE WITNESS: I THINK I TOLD THEM IT WAS A HISPANIC  
23 GENTLEMAN, THAT HE HAD DARK HAIR AND DARK EYES.

24 I DON'T REMEMBER GIVING THEM SPECIFIC COLOR.

25 THE COURT: THEY DIDN'T PUT IT DOWN, YOU MEAN?

26 THE WITNESS: I DON'T REMEMBER.

27 THE COURT: THEY DIDN'T PUT IT DOWN WHEN YOU TOLD THEM  
28 DARK EYES?

1 THE WITNESS: IT JUST SAYS "COMPLEXION, DARK."

2 THE COURT: ALL RIGHT, THERE IS NOTHING IN THERE ABOUT  
3 THE EYES, LET'S GET IT CLEAR.

4 MR. BARENS: YOUR HONOR, WE ARE OFF TRACK.

5 SHE DID NOT MAKE THE REPORT.

6 THE COURT: LET'S NOT MAKE AN ARGUMENT, WILL YOU, PLEASE?  
7 YOU CAN ARGUE THAT LATER ON TO THE JURY.

8 MR. BARENS: SHE DID NOT SPEAK TO THE POLICE, SHE SAID.

9 THE COURT: I ASSUME SHE DID.

10 MR. BRENS: NO, SIR. THIS IS A SECONDHAND REPORT.

11 MR. WAPNER: I DON'T WANT COUNSEL TESTIFYING.

12 THE COURT: WILL YOU GIVE HIM A CHANCE? HE DIDN'T  
13 INTERRUPT YOU DURING YOUR RECROSS.

14 MR. BARENS: BUT IT IS PATENTLY MISLEADING, YOUR HONOR.

15 THE COURT: GO AHEAD AND ARGUE THAT TO THE JURY.

16 Q BY MR. WAPNER: THE DESCRIPTION THAT YOU GAVE  
17 OF THE PERSON'S BUILD, WAS THAT A PRECISE DESCRIPTION?

18 A I JUST SAID THEN -- I WASN'T LOOKING AT HIM FOR  
19 A VERY LONG TIME.

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1 Q AND YOU GAVE THE FACT THAT HE WAS MALE HISPANIC  
2 AND APPROXIMATELY 16 YEARS OLD, RIGHT?

3 A YES.

4 Q NOW, THIS HAPPENED TO YOU AND YOU IMMEDIATELY  
5 RAN OUT OF THE LIBRARY; IS THAT RIGHT?

6 A YES, I DID.

7 Q AT WHAT POINT DID YOU CONTACT THE POLICE?

8 A I REMEMBER GETTING A PHONE CALL LATER ON, I DON'T  
9 KNOW WHEN, AND I DON'T REMEMBER IF IT WAS THE POLICE OR THE  
10 GUY FROM THE LIBRARY.

11 I REALLY DON'T REMEMBER SPEAKING TO THE POLICE.  
12 I JUST -- I THINK, BECAUSE IT HAS BEEN A WHILE, IT HAS BEEN  
13 ABOUT TWO YEARS AGO, BUT I THINK THAT THE GUY FROM THE LIBRARY,  
14 I THINK HE SAID THAT THEY HAD CAUGHT SOMEONE DOING THE SAME  
15 THING AGAIN AND THIS TIME, THEY CAUGHT HIM THAT DAY. THEY  
16 COULDN'T FIND HIM OR SOMETHING. AND THAT HE FIT THE  
17 DESCRIPTION THAT I HAD GIVEN AND THAT THEY THOUGHT IT WAS  
18 THE SAME PERSON THAT HAD FLASHED ME AND THAT I PROBABLY WOULD  
19 BE HEARING FROM THE POLICE LATER ABOUT IT.

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Δ-1 1 Q AND DID YOU HEAR FROM THE POLICE LATER?

2 A I DON'T REMEMBER EVER HEARING FROM THE POLICE ABOUT  
3 IT.

4 Q AND DID YOU DO ANYTHING WHEN YOU DIDN'T HEAR FROM  
5 THE POLICE?

6 A I THINK I MIGHT HAVE CALLED THE POLICE LATER ON.  
7 I NEVER HEARD ANYTHING BACK THAT THE PERSON INVOLVED -- I THINK --  
8 I DON'T REMEMBER. IT HAS BEEN A WHILE.

9 I JUST KNOW THAT I WILL NEVER GO BACK TO THAT  
10 LIBRARY AGAIN.

11 Q DID YOU EVER CALL THE POLICE AND ASK THEM WHY THEY  
12 DIDN'T CALL YOU TO TESTIFY?

13 MR. BARENS: OBJECTION, IRRELEVANT.

14 THE COURT: OVERRULED.

15 THE WITNESS: I DON'T REMEMBER.

16 Q BY MR. WAPNER: DO YOU REMEMBER SAYING IN THE  
17 INTERVIEW THAT YOU WERE ASKED BY THE POLICE IF YOU WOULD  
18 TESTIFY AND YOU TOLD THEM THAT YOU WOULD?

19 THE COURT: WHAT ARE YOU TALKING ABOUT? IN THAT CASE?

20 MR. WAPNER: RIGHT.

21 Q IN THAT CASE?

22 A I DON'T REMEMBER IF IT WAS THE POLICE OR THE GUY  
23 FROM THE LIBRARY WHO ASKED ME IF I WOULD BE INTERESTED IN  
24 TESTIFYING. I REMEMBER TELLING HIM YES. WHOEVER CALLED ME,  
25 I REMEMBER SAYING YES.

26 Q DO YOU REMEMER SAYING THAT HE NEVER CALLED YOU  
27 BACK AGAIN AFTER THAT?

28 A I THINK I DID SAY THAT. I DON'T REMEMBER BEING

A-2  
1 CALLED BACK AGAIN.

2 Q AND LET ME SHOW YOU THIS. THERE IS A REFERENCE  
3 HERE IN THE TRANSCRIPT. PLEASE LOOK AT PAGE 32. JUST READ  
4 IT.

5 MR. BARENS: DO YOU HAVE A PAGE AND LINE?

6 MR. WAPNER: YEAH. PAGE 32, STARTING AT LINE -- WELL,  
7 IF YOU WANT TO READ THE WHOLE THING, START AT PAGE 31, LINE  
8 20 AND READ DOWN THROUGH PAGE 32, AT LEAST LINE 10.

9 Q WHAT I WANT TO ASK YOU ABOUT IS THIS, THERE ARE  
10 A FEW LINES AT 8, 9 AND 10. THEY AREN'T EXACTLY CLEAR. IF  
11 YOU CAN CLEAR THAT UP --

12 A I CAN REMEMBER SOMETHING THAT HAPPENED TO ME ABOUT  
13 A YEAR AGO --

14 Q READ IT TO YOURSELF.

15 A SORRY. YOU DIDN'T SAY THAT.

16 MR. BARENS: WHICH TRANSCRIPT ARE WE ON, MR. WAPNER?  
17 THERE ARE THREE TRANSCRIPTS.

18 Q BY MR. WAPNER: HAVE YOU READ THAT?

19 A YES.

20 Q NOW, THERE IS A PART IN THERE WHERE IT TALKS ABOUT  
21 YOUR BEING ASKED IF YOU WOULD TESTIFY AND SAYING THAT YOU WOULD,  
22 RIGHT?

23 A YES.

24 Q AND THEN IT SAYS THAT THEY NEVER CALLED YOU BACK  
25 AGAIN, RIGHT?

26 A YES.

27 Q AND THEN THERE IS ANOTHER PART THAT STARTS AT LINE  
28 8 BUT IT JUST STARTS, "CALLED UP LATER." HAVE YOU READ THOSE

0A-3  
1 TWO AND A HALF LINES?

2 A YES. I DID READ THEM.

3 Q AND DOES THAT REFRESH YOUR RECOLLECTION AT ALL  
4 AS TO WHAT YOU SAID OR WHAT YOU DID AT THAT TIME?

5 A I THINK I REMEMBER SAYING THAT.

6 Q DOES IT REFRESH YOUR RECOLLECTION AS TO WHAT YOU  
7 DID IN THAT INCIDENT AS FAR AS WHAT YOU DID WHEN YOU DIDN'T  
8 HEAR ABOUT TESTIFYING?

9 A COULD YOU REPEAT THE QUESTION, PLEASE?

10 Q SURE. WHEN YOU READ THOSE THREE LINES, DOES IT  
11 REFRESH YOUR RECOLLECTION AS TO WHAT YOU DID AFTER YOU HAD BEEN  
12 TOLD OR AFTER YOU TOLD THEM THAT YOU WOULD TESTIFY BUT YOU  
13 HAD NOT HEARD ANYTHING?

14 A I THINK I HAD CALLED BACK. BUT I CAN'T REMEMBER  
15 NOW. I GUESS IF IT SAYS THAT I DID --

16 THE COURT: WELL READ IT. THAT IS THE PROPER WAY OF  
17 DOING IT. THEN ASK IF IT ISN'T TRUE THAT YOU SAID SO AND SO.  
18 THAT IS A MUCH EASIER WAY OF DOING IT.

19 MR. WAPNER: OKAY.

20 Q IS IT TRUE THAT YOU SAID ON NOVEMBER 22ND --

21 MR. BARENS: COULD I HAVE WHAT LINE IS ABOUT TO BE READ?

22 THE COURT: I THOUGHT HE GAVE IT TO YOU.

23 MR. BARENS: ARE WE STILL ON THE SAME LINES?

24 THE COURT: YES.

25 MR. BARENS: OKAY.

26 MR. WAPNER: 8 THROUGH 10.

27 Q "CALLED UP LATER AND THEY DIDN'T KNOW WHO  
28 WAS HANDLING THE CASE. AND THEY DIDN'T KNOW WHAT

A-4 1 IT WAS ABOUT. SO IT NEVER --"

2 AND IT STOPS.

3 A COULD YOU GIVE ME A MOMENT TO THINK?

4 Q SURE.

5 A (PAUSE.) I REMEMBER WHEN WE WERE GOING TO THE  
6 SESSION, I WAS TELLING YOU THAT I WAS UPSET AT ALL OF THE  
7 ERRORS AND MISTAKES AND THINGS THAT THE POLICE DEPARTMENT,  
8 THE TUCSON POLICE DEPARTMENT HAD DONE.

9 Q IN PREVIOUS CASES?

10 A PREVIOUS CASES WITH REGARDS TO US OR OUR NEIGHBORS  
11 AND I REMEMBER SAYING THAT THE POLICE OFFICER, THE TUCSON  
12 POLICE OFFICER THAT I WAS NOT PARTICULARLY IMPRESSED WITH THE  
13 TUCSON POLICE DEPARTMENT BECAUSE THEY HAVE KIND OF BUMBLER  
14 THINGS.

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1 Q YOU FELT THAT THIS WAS JUST ANOTHER EXAMPLE?

2 A ANOTHER EXAMPLE OF THE THINGS THAT YOU KNOW, THE  
3 WAY THEY HANDLE THINGS.

4 Q ALL RIGHT. AND YOU FELT THAT YOU HAD GIVEN THEM  
5 A PRECISE DESCRIPTION AND IT WAS YOUR UNDERSTANDING THAT THEY  
6 CAUGHT THE PERSON AND YOU WANTED TO COME IN TO TESTIFY?

7 A YES. BECAUSE I MEAN, IF THE GUY WAS GOING TO BE  
8 FLASHING IN THE LIBRARY, I MEAN CHILDREN GO INTO THAT  
9 LIBRARY, TOO, AND --

10 THE COURT: WELL, HE DIDN'T ASK YOU THAT. HE ASKED YOU  
11 A VERY SIMPLE QUESTION. PLEASE DON'T VOLUNTEER EVERY TIME.

12 Q BY MR. WAPNER: REGARDING THE LAYOUT OF THE  
13 GAS STATION, DID YOU TELL DETECTIVE MEYERS AT ONE POINT WHEN  
14 YOU FIRST TALKED TO HIM ON NOVEMBER THE 21ST, THAT YOU WERE  
15 CERTAIN THAT THE CASHIER WAS IN THE MIDDLE OF THE GAS STATION?

16 A YES, BECAUSE MOST VICKERS GAS STATIONS, THE CASHIER  
17 IN THE MIDDLE ISLAND.

18 Q AT THAT TIME WHEN YOU TOLD HIM THAT, WHAT DEGREE  
19 OF CERTAINTY DID YOU HAVE THAT THE CASHIER WAS IN THE MIDDLE  
20 OF THE GAS STATION?

21 A I DON'T REMEMBER.

22 Q YOU DON'T HAVE ANY RECOLLECTION OF HOW CERTAIN  
23 YOU WERE ABOUT THAT?

24 A AT THE TIME, I WAS REAL CERTAIN BECAUSE I ASSUMED  
25 THAT ALL THE VICKERS HAD THE SAME BASIC LAYOUT.

26 Q WAS THE STATEMENT THAT WAS MADE TO YOU BY ME ABOUT  
27 THINGS GETTING WORSE, MADE AT APPROXIMATELY 9:30 OR 10 O'CLOCK  
28 ON THE DAY OF NOVEMBER 22ND?

1 MR. BARENS: P.M.?

2 MR. WAPNER: IS THAT AN OBJECTION THAT IT IS VAGUE?

3 THE COURT: YES.

4 Q BY MR. WAPNER: WAS THE STATEMENT ABOUT THINGS  
5 GETTING WORSE FOR YOU MADE ABOUT 9:30 OR 10 O'CLOCK IN THE  
6 EVENING OF NOVEMBER 22ND?

7 A IT WAS AFTER -- YES.

8 Q AND WAS IT YOUR DESIRE AT THAT TIME JUST TO HAVE  
9 THE WHOLE THING OVER WITH AND PUT IT ALL BEHIND YOU?

10 A IT WAS TO HIDE FROM CHINO, BECAUSE I THOUGHT HE  
11 WAS GOING TO KILL ME AFTER THAT.

12 Q OKAY. BUT DID YOU HOPE AT THAT TIME, THAT THAT  
13 WOULD BE THE END OF IT, THAT THAT GRUELING DAY WOULD BE THE  
14 END OF IT?

15 MR. BARENS: IRRELEVANT AS TO WHAT HER HOPES WERE.

16 THE COURT: ALL RIGHT. I SUSTAIN THE OBJECTION.

17 Q BY MR. WAPNER: ALL RIGHT. WAS THIS STATEMENT  
18 ABOUT THINGS GETTING WORSE MADE IN THE CONTEXT OF EXPLAINING  
19 TO YOU ABOUT THE CRIMINAL JUSTICE SYSTEM AND WHAT YOU MIGHT  
20 EXPECT TO HAPPEN STARTING THEN AND CONTINUING DOWN THE LINE?

21 A I DON'T REMEMBER THE EXACT THING. CAN YOU PLEASE --

22 Q DID I EXPLAIN TO YOU ABOUT WHAT HAPPENS IN THE  
23 CRIMINAL JUSTICE SYSTEM, ABOUT THE FACT THAT --

24 A YOU SAID THAT WE WERE GOING TO GET A LOT OF PHONE  
25 CALLS AND --

26 THE COURT: HE HAS NOT FINISHED THE QUESTION YET.

27 THE WITNESS: I THOUGHT HE PAUSED.

28 THE COURT: HE HAD NOT.

A-7 1 Q BY MR. WAPNER: DID I TELL YOU FOR EXAMPLE, THAT  
2 THE REPORTS OF WHAT HAPPENED THAT DAY -- WELL, LET ME BACK  
3 UP.

4 DID YOU LEARN THAT DAY THAT THERE WAS IN FACT,  
5 A TRIAL ALREADY IN PROGRESS ON THIS CASE?

6 A YES. BECAUSE YOU TOLD ME. I THINK THAT IT MIGHT  
7 HAVE ALSO BEEN IN THE ARTICLE. I DON'T REMEMBER.

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1 Q ALL RIGHT, AND DID I TELL YOU THAT ANYTHING THAT  
2 WAS SAID THAT DAY WAS THEN GOING TO HAVE TO BE TURNED OVER  
3 TO THE OTHER SIDE?

4 A YOU SAID THAT THEY WOULD GET INFORMATION ABOUT  
5 US ON MONDAY, TO EXPECT A LOT OF PHONE CALLS, AND THINGS  
6 WERE GOING TO GET WORSE. AND YOU ALSO SAID THAT WE  
7 PROBABLY GOING TO BE HOUNDED BY THE PRESS AND BY PEOPLE.

8 Q YOU WERE AT THE GAS STATION -- LET ME BACK UP.  
9 WHEN YOU WENT TO THE GAS STATION TO GET GAS,  
10 DID YOU PULL IN AND STOP AND DID CHINO IMMEDIATELY GET OUT  
11 AND GO TO PUMP THE GAS?

12 MR. BARENS: ASKED AND ANSWERED, YOUR HONOR.

13 THE COURT: I DON'T REMEMBER THAT.

14 DO YOU REMEMBER THAT?

15 THE WITNESS: CAN YOU REPEAT THE QUESTION, PLEASE?

16 Q BY MR. WAPNER: SURE.

17 WHEN YOU WENT TO THE GAS STATION TO GET THE GAS,  
18 DID YOU PULL INTO THE GAS STATION, STOP THE CAR AND THEN CHINO  
19 GOT OUT TO PUMP THE GAS?

20 A YES, I GUESS SO, YES.

21 Q AND HE PUMPED THE GAS AND THEN HE WENT TO PAY  
22 FOR IT?

23 A I REMEMBER TELLING YOU THAT DAY THAT I WASN'T  
24 SURE IF CHINO HAD GOTTEN A SODA OR NOT, BECAUSE EVERY TIME  
25 WE STOP SOMEWHERE, HE GETS A SODA BECAUSE HE IS ALWAYS  
26 THIRSTY.

27 Q IF HE BOUGHT ONE THERE, DID HE THEN DRINK THE  
28 WHOLE SODA THERE?



2  
1 A NO.

2 WHEN WE USUALLY STOP, A LOT OF TIMES HE TAKES  
3 IT WITH HIM.

4 Q DID YOU STAY THERE THAT NIGHT UNTIL HE FINISHED  
5 THE SODA, IF HE GOT ONE?

6 A I DON'T REMEMBER.

7 IT HAS BEEN A WHILE.

8 Q WHAT I AM TRYING TO GET AT IS, WHAT TOOK 15 TO  
9 20 MINUTES AT THE GAS STATION?

10 Q WE PULLED IN. I REMEMBER FORGETTING TO PULL  
11 THE LEVER SO HE COULD GET AT THE GAS THING, BECAUSE YOU HAVE  
12 TO PULL THE LEVER FROM THE INSIDE THE CAR, SO HE HOLLERED  
13 AT ME TO PULL IT.

14 I THINK HE MIGHT HAVE LEFT HIS WALLET INSIDE  
15 THE CAR SO HE HAD TO COME BACK TO GET HIS WALLET OR SOMETHING.

16 I THINK -- I AM JUST GUESSING -- BECAUSE HE  
17 ALWAYS TAKES HIS WALLET OUT OF HIS POCKET AND TOSSES IT ON  
18 THE DASHBOARD.

19 I COULDN'T -- I DON'T KNOW IF HE FOUND THE OIL  
20 THING RIGHT AWAY EITHER, AS WELL AS THE OTHER DIP STICK FOR  
21 THE TRANSMISSION FLUID.

22 HE HAD TO GET THE HOOD OPEN. I DON'T THINK HE  
23 HAS EVER CHECKED THE OIL ON MY CAR BEFORE. THE HOOD ON THE  
24 ACCORD DOESN'T OPEN THE WAY THE ONES ON NORMAL CARS DO, I  
25 THINK HE HAD TO GO TO THE OTHER SIDE AFTER I HAD PULLED  
26 THE LEVER.

27 Q HOW LONG DID IT TAKE TO GET GAS ON THIS OCCASION,  
28 AS OPPOSED TO NORMALLY GET GAS?

1           A           MY GAS WAS ON EMPTY, THE LITTLE RED LIGHT WAS  
2 FLASHING AND IF WE DIDN'T GET GAS, WE COULDN'T GO MUCH LONGER.

3           MR. WAPNER:   COULD THAT BE STRICKEN AS NON-RESPONSIVE?

4           THE COURT:   LET IT STAND.

5           Q           BY MR. WAPNER: HOW MUCH LONGER DID IT TAKE ON  
6 THIS OCCASION TO GET GAS THAN IT DOES ON THE NORMAL OCCASIONS?

7           A           MUCH LONGER, BECAUSE WHEN YOU GO TO A GAS STATION,  
8 YOU GET GAS AND YOU KIND OF LEAVE.

9           Q           HOW MANY GALLONS DOES YOUR TANK HOLD, ABOUT 12,  
10 PROBABLY?

11          MR. BARENS:   RELEVANCY, YOUR HONOR.

12          THE COURT:   SUSTAINED. I THINK THAT OUGHT TO BE SUFFICIENT.

13          Q           BY MR. WAPNER: THE HONDA PRELUDE THAT YOU HAD,  
14 DOES IT HAVE HEADRESTS IN THE BACK OF THE TWO FRONT SEATS?

15          A           YES, IT DOES.

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1 Q AND THE HEADREST IS AN ADJUSTABLE HEADREST?

2 A I THINK IT ONLY GOES UP OR DOWN, I THINK IT IS  
3 SMALLER THAN THE REST OF THE SEAT. IT IS JUST A SMALL --  
4 AT LEAST ON MY CAR -- I AM THINKING. I AM TRYING TO PICTURE  
5 IT.

6 Q HOW TALL ARE YOU, BY THE WAY?

7 A I USUALLY LIKE TO SAY FIVE-ONE. I GUESS FIVE  
8 FEET HALF AN INCH.

9 Q AND WAS THE HEADREST AT THAT TIME AGAINST THE  
10 SEAT OR WAS IT RAISED?

11 A I DON'T REMEMBER, BECAUSE SOMETIMES, YOU KNOW,  
12 I WILL GIVE PEOPLE A RIDE OR SOMETHING AND MY FRIENDS OR  
13 MY SISTER OR SOMETHING, THEY WILL PLAY WITH THE HEADREST.  
14 SOME PEOPLE DO. SOME PEOPLE DON'T TOUCH IT.

15 MR. WAPNER: I HAVE NOTHING FURTHER.

16 THE COURT: GO AHEAD.

17 MR. BARENS: I WANT TO KNOW HOW MUCH OF THAT SODA HE  
18 DRANK.

19

20 FURTHER REDIRECT EXAMINATION

21 BY MR. BARENS:

22 Q MS. CANCHOLA, WERE YOU DELAYED IN THE GAS STATION  
23 ON THIS OCCASION BECAUSE OF THIS BUSINESS YOU HAVE BEEN  
24 DESCRIBING TO THE COURT AND THE JURY ABOUT MR. LOPEZ SEARCHING  
25 FOR THIS DIP STICK, ABOUT CHECKING THE OIL, IS THAT WHAT  
26 CAUSED THE DELAY?

27 A THAT IS -- I THINK THAT IS ONE OF THE MAIN THINGS  
28 THAT CAUSED THE DELAY.

1 HE DOESN'T LIKE MY CAR BECAUSE IT IS JAPANESE.

2 Q ALL RIGHT, AND SO THAT WAS AN ACTIVITY THAT YOU  
3 WERE DOING THAT YOU DON'T NORMALLY DO WHEN YOU STOP TO JUST  
4 FILL UP WITH GAS?

5 A WE DON'T, BUT THAT EVENING MY DAD WAS UPSET WITH  
6 MY BROTHER FOR BURNING OUT THE ENGINE ON HIS CAR.

7 Q AND THAT IS WHY YOU WERE CHECKING IT THAT NIGHT?

8 A THAT IS WHY CHINO SAID, "OH, WE HAD BETTER CHECK  
9 BECAUSE YOUR DAD WILL BE FURIOUS IF WE DO SOMETHING TO THE  
10 CAR."

11 Q HOW MUCH OF THAT SODA DID HE DRINK?

12 (NO AUDIBLE REPLY.)

13 MR. BARENS: THANK YOU. I HAVE NOTHING FURTHER.

14 THE COURT: ALL RIGHT, ANYTHING FURTHER?

15 MR. WAPNER: NO.

16 THE COURT: THANK YOU VERY MUCH. YOU ARE NOW RELEASED.

17 THE WITNESS: THANK YOU.

18 THE COURT: NEXT WITNESS.

19 MR. BARENS: MR. LOPEZ.

20 THE COURT: LOPEZ?

21 MR. BARENS: CHINO LOPEZ.

22 THE COURT: OH, CHINO.

23 MR. BARENS: THE WELL-KNOWN SODA DRINKER.

24 (PAUSE IN PROCEEDINGS.)

25 THE CLERK: IF YOU WOULD COME OVER HERE, PLEASE, TO  
26 BE SWORN.

27

28

1 JESUS ADELBERTO LOPEZ,  
2 CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED  
3 AS FOLLOWS:

4 THE CLERK: IF YOU WOULD RAISE YOUR RIGHT HAND TO BE  
5 SWORN.

6 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY  
7 GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE  
8 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO  
9 HELP YOU GOD.

10 THE WITNESS: I DO

11 THE CLERK: IF YOU WOULD BE SEATED THERE AT THE WITNESS  
12 STAND.

13 NOW WOULD YOU STATE YOUR NAME FOR THE RECORD,  
14 PLEASE.

15 THE WITNESS: JESUS ADELBERTO LOPEZ.

16 THE COURT REPORTER: J-E-S-U-S?

17 THE WITNESS: A-D-E-L-B-E-R-T-O.

18 THE CLERK: AND YOUR LAST NAME IS SPELLED?

19 THE WITNESS: L-O-P-E-Z.

20 THE COURT: TAKE THE MICROPHONE NEAR YOU AND SIT UP  
21 STRAIGHT IN THE CHAIR AND TURN AROUND, WILL YOU? YOU CAN  
22 LEAN BACK.

23  
24 DIRECT EXAMINATION

25 BY MR. BARENS:

26 Q GOOD AFTERNOON, MR. LOPEZ.

27 MR. LOPEZ, ARE YOU PRESENT IN THIS COURT PURSUANT  
28 TO A SUBPOENA PROCESS?

1           A       YES, I AM.

2           Q       MR. LOPEZ, WERE YOU WITH CARMEN CANCHOLA IN A  
3 VICKERS GAS STATION, AND PERMIT ME TO LEAD ON THIS JUST TO  
4 GET WHERE WE ARE GOING -- IN A VICKERS GAS STATION DURING  
5 THE MONTH OF SEPTEMBER, 1986?

6           A       YES, I WAS.

7           Q       DO YOU RECALL WHAT DAY OF THE WEEK THAT OCCURRED  
8 UPON?

9           A       IT WAS ON A THURSDAY.

10          Q       TO YOUR KNOWLEDGE, WOULD CARMEN NORMALLY HAVE  
11 BEEN A SCHOOL CLASS THAT EVENING?

12          A       YES, SHE WOULD.

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A-1 1 Q AND HAD SHE CUT CLASSES THAT DAY OR THAT EVENING?

2 A YES. SHE HAD.

3 Q AND YOU HAD BEEN TO DINNER WITH HER EARLIER THAT  
4 EVENING?

5 A YES. WE WERE.

6 Q AND DO YOU RECALL THE NAME OF THE RESTAURANT WHERE  
7 YOU HAD HAD DINNER WITH HER?

8 A CAFE NAPOLI.

9 MR. BARENS: A MOMENT IF YOU WOULD.

10 (PAUSE.)

11 Q BY MR. BARENS: BY THE WAY MR. LOPEZ, HOW ARE YOU  
12 EMPLOYED?

13 A I WORK FOR CARMEN'S DAD AT MC DONALD'S.

14 THE COURT: WORK WITH WHOM?

15 THE WITNESS: CARMEN'S DAD. I AM A MANAGER AT ONE OF  
16 THE MC DONALDS.

17 THE COURT: YOU WORK WITH HER DAD?

18 THE WITNESS: YES.

19 THE COURT: ALL RIGHT.

20 Q BY MR. BARENS: ARE YOU ALSO A STUDENT, SIR?

21 A YES I AM.

22 Q WHERE ARE YOU A STUDENT?

23 A UNIVERSITY OF ARIZONA.

24 Q WHAT IS IT YOU ARE STUDYING?

25 A FINE ARTS EDUCATION.

26 Q MR. LOPEZ, WHILE YOU WERE AT THE RESTAURANT, AFTER  
27 YOU HAD HAD DINNER WITH MS. CANCHOLA, DID YOU SEE HER PARENTS  
28 THERE?

1 A YES WE DID.

2 Q WHERE DID YOU GO IMMEDIATELY AFTER LEAVING THE  
3 RESTAURANT?

4 A WE WENT BACK TO HER HOUSE.

5 Q AND HOW LONG WERE YOU AT HER HOUSE ON THAT  
6 OCCASION?

7 A I WOULD SAY ABOUT AN HOUR.

8 Q AND WERE YOU GOING SOME PLACE WITH HER?

9 A YES. SHE WAS DRIVING ME BACK UP TO MY PLACE UP  
10 AT THE RANCH.

11 Q AND WHOSE CAR DID YOU LEAVE FOR THE RANCH IN?

12 A WE LEFT IN HER CAR.

13 Q WHAT SORT OF A CAR IS THAT?

14 A IT IS A PRELUDE.

15 Q WHO WAS DRIVING AFTER YOU LEFT THE HOUSE?

16 A I WAS.

17 Q AND DID YOU STOP THERE AT A VICKERS GAS STATION?

18 A YES WE DID.

19 Q AND WHAT INTERSECTION TO THE BEST OF YOUR  
20 RECOLLECTION, WAS THE VICKERS LOCATED AT?

21 A ON SIXTH AND CAMPBELL.

22 Q AND HAD YOU EVER BEEN TO THAT STATION BEFORE?

23 A YEAH. A COUPLE OF TIMES.

24 Q HOW MANY TIMES, SIR?

25 A ABOUT THREE OR FOUR.

26 Q IS THAT A SELF-SERVICE GAS STATION?

27 A YES IT IS.

28 Q HOW WERE YOU DRESSED?



2A-3

1           A           I BELIEVE I WAS JUST WEARING A SHIRT, SOME JEANS  
2 AND SOME COWBOY BOOTS.

3           Q           WHAT IS YOUR HEIGHT, SIR?

4           A           ABOUT FIVE-NINE OR FIVE-TEN, GIVE OR TAKE.

5           Q           BUT IF YOU ARE WEARING COWBOY BOOTS, ARE YOU  
6 TALLER?

7           A           YES.

8           Q           WHAT, TWO INCHES TALLER?

9           A           YEAH. ABOUT THAT.

10          Q           NOW, WHEN YOU PULLED INTO THE GAS STATION -- BY  
11 THE WAY, MOST OF THE GAS STATIONS IN THIS AREA ARE SELF-  
12 SERVICE, ARE THEY?

13          A           YES THEY ARE.

14          Q           WHEN YOU PULLED INTO THE GAS STATION, DID YOU PARK  
15 NEXT TO A PUMP?

16          A           YES. WE DID.

17          Q           GOOD THINKING, MR. LOPEZ.

18                    NOW, MR. LOPEZ, I AM GOING TO ASK YOU TO DISREGARD  
19 EVERYTHING ON THIS PHOTOGRAPH EXCEPT THE BLACK LINES.

20          MR. WAPNER: EXCUSE ME, COUNSEL.

21          MR. BARENS: YOU MAY HAVE TO TURN A BIT TO OBSERVE THIS  
22 WITH ME. BUT DO THE BEST YOU CAN.

23                    IN ANY EVENT, I ASK YOU TO DISREGARD FOR THE  
24 PURPOSES OF OUR DISCUSSION, DISREGARD THE RED MARKS AND THE  
25 BLUE MARKS FOR THIS DISCUSSION. GIVE YOUR ATTENTION TO  
26 EVERYTHING IN THIS SORT OF A BLACK FELT-TIP PEN MARKING.

27          Q           COULD YOU POINT FOR ME AS TO WHERE YOU STOPPED  
28 WHEN YOU PULLED INTO THE GAS STATION, TO THE BEST OF YOUR

1 KNOWLEDGE?

2 A STOPPED RIGHT IN HERE. THIS AREA (INDICATING).

3 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THAT  
4 THE WITNESS HAS INDICATED THAT HE STOPPED TO THE RIGHT SIDE  
5 OF THE GAS PUMPS IN THE CENTER OF THE THREE ISLANDS. IS THAT  
6 CORRECT?

7 THE WITNESS: YES.

8 MR. WAPNER: COULD WE HAVE THAT MARKED IN BLUE?  
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2-1 1 MR. BARENS: I HAVE HERE A TURQUOISE PEN.

2 Q COULD YOU DRAW IN FOR ME APPROXIMATELY WHERE YOU  
3 STOPPED YOUR VEHICLE, SIR?

4 A RIGHT IN THIS AREA, HERE.

5 Q WHILE YOU ARE AT THE BOARD, COULD YOU DRAW AN "X"  
6 WHERE THE CASHIER STATION IS?

7 A IT IS HERE.

8 Q WHILE YOU WERE STILL STANDING, DID YOU PASS A CAR --  
9 WAS THERE A CAR PARKED TO THE RIGHT OF YOU, SIR?

10 A YES. I BELIEVE THERE WAS. I BELIEVE THERE WAS  
11 ONE RIGHT HERE.

12 Q MR. LOPEZ, WAS YOUR CAR PARKED FACING WHAT WE ARE  
13 CALLING NORTH, BASED ON THIS DIAGRAM?

14 A YES IT WAS.

15 Q AND WAS THE CAR TO YOUR RIGHT ALSO FACING NORTH?

16 A I BELIEVE SO.

17 Q ALL RIGHT. NOW, WHEN YOU, AFTER YOU STOPPED THE  
18 CAR, WHAT IS THE FIRST THING THAT YOU DID?

19 A I GOT OUT AND PUMPED GAS INTO THE CAR.

20 Q NOW, WHILE YOU WERE PUMPING GAS, DID YOU NOTICE  
21 ANOTHER PERSON IN THE GAS STATION?

22 A YES I DID.

23 Q WHERE WAS THE OTHER PERSON LOCATED THAT YOU NOTICED?

24 A AT FIRST I NOTICED HIM AT THE CASH REGISTER.

25 Q ALL RIGHT. WHERE IS THE GAS CAP ON THE CAR THAT  
26 YOU WERE FILLING UP?

27 A DRIVER'S SIDE.

28 Q ON THE SIDE OR IN THE REAR?

3--2  
1 A ON THE SIDE.

2 Q ALL RIGHT. COULD YOU MAKE A DOT FOR ME, KIND OF  
3 A LARGE DOT SO YOU CAN SEE IT, APPROXIMATELY WHERE YOU WERE  
4 STANDING AND PUTTING GASOLINE IN THE TANK?

5 A I WOULD SAY RIGHT HERE (INDICATING).

6 MR. WAPNER: INDICATING BY A GREENISH CIRCLE ON THE  
7 DIAGRAM, YOUR HONOR? NEXT TO WHERE HE INDICATED WHERE HIS  
8 VEHICLE IS?

9 THE COURT: YES.

10 Q BY MR. BARENS: ALL RIGHT. AND THE PERSON THAT  
11 YOU ARE OBSERVING WAS WHERE, IN THE AREA AROUND THE "X", HERE?

12 A YES HE WAS.

13 Q NOW, AS YOU LOOKED AT THAT PERSON, WAS ANYTHING  
14 OBSTRUCTING YOUR VIEW OR DID YOU HAVE A CLEAR VIEW OF THE  
15 PERSON YOU OBSERVED?

16 A I HAD A CLEAR VIEW.  
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1 Q COULD YOU DESCRIBE FOR ME THE PERSON YOU OBSERVED  
2 ON THAT OCCASION WHEN YOU FIRST LOOKED OVER?

3 A I SAW LIKE A VERY ATTRACTIVE GUY, LIKE WITH SILVER  
4 HAIR.

5 HE HAS THIS REAL MEAN STARE ON HIM.

6 THE COURT: HE HAD WHAT?

7 THE WITNESS: A MEAN STARE.

8 THE COURT: BECAUSE HE WAS LOOKING AT YOU, IS THAT WHY  
9 YOU THOUGHT HE HAD A MEAN STARE?

10 MR. BARENS: HE HASN'T SAID HE WAS LOOKING AT HIM, SIR.

11 THE COURT: WAS HE LOOKING AT YOU?

12 THE WITNESS: HE WAS LOOKING IN OUR DIRECTION, YES.

13 THE COURT: HE WAS LOOKING AT YOU THEN, WAS HE?

14 THE WITNESS: YES.

15 THE COURT: AND IT WAS A MEAN STARE, WAS IT?

16 THE WITNESS: KIND OF LIKE IT, YES.

17 MR. BARENS: HAS YOUR HONOR CONCLUDED?

18 THE COURT: GO AHEAD. I JUST WANTED TO BE SURE FOR THE  
19 RECORD ABOUT THE STARE.

20 MR. BARENS: I WAS GOING TO COME TO IT.

21 THE COURT: GO AHEAD.

22 Q BY MR. BARENS: AND ANY EVENT, YOU SAW THIS PERSON  
23 STARING AT YOU, SIR?

24 A YES, I DID.

25 Q ALL RIGHT. WHEN YOU SAY "MEAN," SIR, IN THIS  
26 CONTEXT, ARE YOU SAYING THAT IT WAS A HOSTILE STARE OR A  
27 CONSISTENT STARE OR A FIXED GAZE, WHAT DO YOU MEAN BY THE USE  
28 OF THAT TERM?

1           A       IT WAS MORE LIKE A PIERCING STARE, LIKE HE WAS  
2       LOOKING RIGHT THROUGH YOU, LIKE HE IS -- I DON'T KNOW -- HE  
3       HAS A MORE PIERCING STARE.

4           Q       YOU ARE NOT USING THE WORD "MEAN" IN THIS INSTANCE  
5       TO INDICATE HOSTILE, AGGRESSIVE?

6           A       NO.

7           Q       OR SINISTER, BY ANY CHANCE, ARE YOU?

8           A       NO.

9           Q       ALL RIGHT, NOW YOU SAW HIM STARING AT YOU AND YOUR  
10      EYES MET AT THAT POINT?

11          A       YES, THEY DID.

12          Q       ON THAT FIRST OCCASION WHEN YOU SAW THAT PERSON,  
13      DID YOU NOTICE HOW HE WAS DRESSED?

14          A       I KIND OF NOTICED HIM, I MEAN HIS DRESS. IT WAS --  
15      HE WAS DRESSED LIKE IN A POLO SHIRT AND SOME JEANS.

16          Q       DO YOU RECALL WHETHER HE WAS WEARING A LONG-SLEEVED  
17      SHIRT OR SHORT-SLEEVED SHIRT?

18          A       SHORT-SLEEVED POLO SHIRT.

19          Q       DID THE PERSON HAVE A BEARD?

20          A       NO, HE DIDN'T.

21          Q       WHAT COLOR WAS THE PERSON'S HAIR?

22          A       IT WAS LIKE A SILVER OR WHITE HAIR KIND OF.

23          Q       WAS THE HAIR BRUSHED STRAIGHT BACK OR PARTED?

24          A       BRUSHED BACK.

25          Q       YOU SAID YOU CONSIDERED THE PERSON GOOD LOOKING  
26      OR ATTRACTIVE?

27          A       YES.

28          Q       NOW, WHEN YOU FIRST OBSERVED THIS PERSON, YOU HAD

1 NOT SAID ANYTHING, OR HAD YOU, TO CARMEN OR SHE TO YOU ABOUT  
2 THIS PERSON?

3 A NO.

4 Q DID THIS LOOK LIKE AN OLD PERSON OR A YOUNG PERSON  
5 TO YOU?

6 A I -- WELL, ME AND CARMEN TALKED ABOUT IT AND I  
7 SAID HE WAS AN OLDER PERSON THAT LOOKED REAL GOOD FOR HIS AGE.

8 Q ALL RIGHT. NOW WHEN YOU SAID "OLDER PERSON" IN  
9 THIS CONTEXT, SIR, HOW OLD DO YOU THINK THE PERSON WAS?

10 A ABOUT 40, 45.

11 (LAUGHTER IN COURTROOM.)

12 THE COURT: EVERYTHING IS RELATIVE.

13 Q BY MR. BARENS: SIR, HOW OLD ARE YOU?

14 A 25.

15 Q I FELT THE SAME WAY.

16 NOW WHEN YOU SAW THIS PERSON, WHAT WAS HE DOING  
17 AS FAR AS YOU COULD TELL?

18 A HE WAS PAYING FOR THE GAS, I BELIEVE.

19 Q DO YOU KNOW WHETHER THIS PERSON PAID --  
20 COULD YOU OBSERVE WHETHER THIS PERSON PAID IN CASH  
21 OR BY CREDIT CARD?

22 A NO, I DIDN'T, I DIDN'T OBSERVE THAT.

23 Q AFTER THAT, DID THE PERSON WALK BACK TOWARD HIS  
24 VEHICLE?

25 A YES, HE DID.

26 Q WHILE HE WAS WALKING BACK TOWARD HIS VEHICLE, WHERE  
27 WERE YOU?

28 A I BELIEVE I WAS STILL PUMPING GAS, FINISHING UP.

1 Q DID THE PERSON COME CLOSE TO YOUR VEHICLE AS HE  
2 WALKED BACK?

3 A I BELIEVE SO.

4 Q COULD YOU INDICATE BY MAKING A DOTTED LINE ON THE  
5 DIAGRAM, THIS TIME USING -- ALL RIGHT, USING THE SAME PEN YOU  
6 STARTED WITH -- THE DIRECTION OF TRAVEL THE PERSON TOOK AS  
7 HE WALKED, INDICATING HOW CLOSE HE CAME TO YOUR VEHICLE.

8 A I BELIEVE HE CAME THIS WAY AND IF I AM NOT  
9 MISTAKEN, I BELIEVE HE STOPPED HERE TO TALK TO HIS FRIEND,  
10 WHO WAS DRINKING A COKE (INDICATING).

11 Q AND THEN WHERE DID HE GO FROM THERE?

12 A THEN HE CAME AROUND HERE TO HIS CAR.

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R-1 1 Q NOW WHEN THE INDIVIDUAL -- YOU MAY BE SEATED, SIR --

2 A (WITNESS COMPLIES.)

3 Q WHEN THE INDIVIDUAL WALKED IN THIS DIRECTION HERE  
4 AND GOT INTO THIS AREA, WERE YOU STILL STANDING HERE  
5 (COUNSEL INDICATING)?

6 A YES, I WAS.

7 Q THUSLY, COULD YOU ESTIMATE FOR ME YOUR BEST  
8 ESTIMATE OF HOW MANY FEET AWAY YOU WERE FROM THE PERSON WHEN  
9 HE WALKED PAST THE FRONT OF YOUR CAR YOU WERE PUTTING GAS INTO?

10 A SIX OR SEVEN FEET.

11 Q ALL RIGHT. WAS HE AS CLOSE AS I AM NOW, SIR, OR  
12 TELL ME TO ADJUST MYSELF AND I WILL.

13 A I THINK JUST A LITTLE FURTHER.

14 Q ABOUT HERE, SIR?

15 THE COURT: BACK A LITTLE MORE, ASK HIM.

16 MR. BARENS: IF I GO BACK ANY FURTHER --

17 THE COURT: ASK HIM IF HE WANTS YOU TO GO BACK.

18 Q BY MR. BARENS: WOULD YOU LIKE ME TO GO BACK  
19 FURTHER?

20 A YES, LESS.

21 Q TELL ME WHEN TO STOP.

22 A ABOUT THERE APPROXIMATELY.

23 MR. BARENS: SO I DON'T KNOW, WE ARE AT --

24 THE COURT: SEVEN FEET.

25 MR. BARENS: IT IS MORE LIKE 6' 9".

26 (LAUGHTER IN COURTROOM.)

27 Q BY MR. BARENS: NOW, AS HE WAS WALKING PAST YOU  
28 ON THAT OCCASION, WAS HE LOOKING AT YOU?

1           A        YEAH, I BELIEVE OUR EYES MET ONE TIME AS HE WENT  
2 BY.

3           Q        COULD YOU ESTIMATE HOW LONG YOUR EYES MET WHILE  
4 THAT PERSON WAS WALKING PAST YOU?

5           A        I WOULD SAY ABOUT TWO, THREE SECONDS.

6           THE COURT:   WHAT? I DIDN'T HEAR THAT.

7           THE WITNESS:   JUST A GLANCE.

8           THE COURT:   TWO TO WHAT?

9           THE WITNESS:   TWO TO THREE SECONDS, SIR.

10          Q        BY MR. BARENS:  DID THAT INDIVIDUAL GET BACK IN  
11 HIS CAR?

12          A        I DON'T KNOW.

13                    THAT IS WHEN I WENT TO GO TO PAY THE CASHIER FOR  
14 GAS.

15                    AND AS SOON AS HE WENT BY ME, THAT IS WHEN I DIDN'T  
16 GET TO SEE HIM ANY MORE.

17          Q        YOU WENT OVER AND PAID FOR YOUR GASOLINE, SIR?

18          A        YES.

19          Q        AND YOU CAME BACK TO YOUR CAR, SIR?

20          A        YES, I DID.

21          Q        WAS THAT VEHICLE THAT YOU HAVE SHOWN, THAT WAS  
22 TO THE RIGHT OF YOUR VEHICLE, STILL PARKED WHERE IT IS SHOWN  
23 ON THE DIAGRAM, WHEN YOU GOT BACK TO YOUR CAR?

24          A        I BELIEVE SO.

25          Q        DID YOU GET BACK IN YOUR CAR AT THAT POINT OR WERE  
26 YOU STILL STANDING OUTSIDE OF YOUR CAR?

27          A        I WAS STILL STANDING OUTSIDE.

28          Q        WHY WERE YOU STILL STANDING OUTSIDE OF YOUR CAR?

1           A        I ASKED CARMEN TO PULL THE HOOD ON THE CAR.

2           Q        TO YOUR KNOWLEDGE, IS THERE A MECHANISM BY WHICH  
3 THE HOOD IS RELEASED THAT IS ON THE INTERIOR PORTION OF THE  
4 CAR?

5           A        YES, IT IS.

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1 Q NOW, WHILE YOU WERE STILL OUTSIDE OF THE CAR,  
2 DID YOU SEE THE OTHER CAR START UP AND GO INTO MOTION?

3 A NO. I DIDN'T.

4 Q DID YOU SEE THE CAR MOVE AT ANY TIME?

5 A NO -- YEAH, AFTER I GOT BACK INTO THE CAR.

6 Q ALL RIGHT. THAT IS WHEN IT WENT AROUND?

7 A THAT IS THE TIME I SAW IT.

8 Q I SEE. NOW, AFTER A WHILE, YOU GOT BACK INTO  
9 YOUR CAR?

10 A YES, I DID, AFTER I TRIED TO SEARCH FOR THE DIP  
11 STICK FOR THE TRANSMISSION OIL.

12 Q ALL RIGHT.

13 A IT IS A LITTLE HIDDEN BACK THERE SOMEWHERE.

14 Q AFTER THAT, YOU GOT BACK INTO YOUR CAR?

15 A YES, I DID.

16 Q WAS THE CAR STILL PARKED TO YOUR RIGHT, WHEN  
17 YOU GOT BACK INTO YOUR CAR?

18 A NO. I THINK IT WAS IN MOTION. IT WAS MOVING  
19 AROUND THERE.

20 Q ALL RIGHT. COULD YOU NOW, UTILIZE THE -- DID  
21 THE CAR STOP BEFORE IT EXITED THE GAS STATION?

22 A YES, IT DID.

23 Q ALL RIGHT. WOULD YOU PLEASE DRAW FOR ME  
24 UTILIZING THIS ORANGE MARKER, THE PATH OF TRAVEL THAT THE  
25 VEHICLE TOOK UNTIL IT CAME TO REST BEFORE LEAVING THE GAS  
26 STATION?

27 A OKAY. IT STOPPED RIGHT HERE.

28 Q ALL RIGHT, SIR. NOW, YOU HAVE INDICATED THAT

1 THE VEHICLE STOPPED PARALLEL TO YOUR CAR, SIR?

2 A NOT PARALLEL, JUST A LITTLE BIT MORE -- JUST  
3 A LITTLE BIT AHEAD OF THE PUMP.

4 Q ALL RIGHT. NOW, WAS THE PERSON YOU PREVIOUSLY  
5 DESCRIBED FOR THE JURY, DRIVING THE CAR?

6 A YES, HE WAS.

7 Q AND WERE YOU SEATED IN THE DRIVER'S SEAT OF YOUR  
8 CAR AT THIS POINT IN TIME?

9 A YES, I WAS.

10 Q COULD YOU SEE THE MAN DRIVING THAT CAR?

11 A YES.

12 Q WERE YOU OBSTRUCTED BY A GASOLINE PUMP OR ANYTHING  
13 ELSE AT THAT POINT IN TIME?

14 A NO.

15 Q DID YOU LOOK AT THAT PERSON?

16 A YES, I DID.

17 Q DID HE LOOK AT YOU?

18 A YES, HE DID.

19 Q TO THE BEST OF YOUR RECOLLECTION TODAY, HOW LONG  
20 WAS THAT CAR STOPPED ON THAT OCCASION?

21 A FIVE TO TEN SECONDS.

22 Q ALL RIGHT. COULD YOU SEE WHERE THE CAR WENT  
23 AFTER IT STARTED UP AGAIN?

24 A YES.

25 Q WHERE DID THE CAR GO?

26 A IT WENT OUT THROUGH SIXTH STREET.

27 Q WHAT DID IT DO WHEN IT GOT ONTO SIXTH STREET?

28 A IT MADE A RIGHT TURN ON CAMPBELL.

3

1 Q IT MADE A RIGHT TURN ON SIXTH?

2 A YEAH, MADE A RIGHT TURN ON SIXTH AND THEN A RIGHT  
3 TURN ON CAMPBELL.

4 Q COULD YOU PLEASE DRAW FOR ME, THE PATH THAT THE  
5 CAR TOOK FROM THAT POINT, UTILIZING THE SAME ORANGE PEN?

6 A WELL, HERE. IT WENT HERE. THEN IT WENT UP THIS  
7 WAY (INDICATING).

8 Q NOW SIR, DID YOU THINK THAT WAS UNUSUAL?

9 A YES, I DID.

10 Q WHY DID YOU THINK IT WAS UNUSUAL?

11 A BECAUSE THERE IS AN EXIT ON CAMPBELL THAT GOES  
12 RIGHT TO THE STREET.

13 Q ALL RIGHT. WOULD YOU MAKE AN X WHERE THE EXIT  
14 IS ON CAMPBELL?

15 A (WITNESS COMPLIES.)

16 Q THUS, WHEN YOU SAY THAT YOU THOUGHT IT WAS UNUSUAL,  
17 COULD YOU PLEASE BE MORE SPECIFIC AS TO WHY YOU THOUGHT THE  
18 PATH OF TRAVEL OF THE VEHICLE, THAT IT TOOK, WAS UNUSUAL?

19 A WELL, YOU CAN SEE THAT IT IS AN S-SHAPE INSTEAD  
20 OF JUST A DIRECT LINE TOWARD THE EXIT. HE COULD HAVE LEFT  
21 THIS WAY BUT HE DIDN'T.

22 HE PURPOSELY MADE A TURN AND STOPPED AND TOOK  
23 A LOOK AT US AND THEN WENT ON SIXTH AND WENT BACK OUT CAMPBELL.

24 Q THUS, THE PERSON HAD GONE OUT OF HIS WAY IT  
25 APPEARED TO YOU, TO MAKE THE STOP HE DID, WHERE HE WAS GOING?

26 A YES. HE DID.

27 Q AFTER YOU GOT BACK INTO THE CAR, DID YOU COMMENT  
28 TO CARMEN OR DID CARMEN COMMENT TO YOU ABOUT THE INDIVIDUAL

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1 YOU HAD OBSERVED?

2 A YES. WE DID. WE KIND OF TALKED ABOUT HIM.  
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1 Q WHAT DID YOU SAY AND WHAT DID SHE SAY?

2 A I ASKED HER IF THE GUY -- IF SHE WAS MAKING EYES  
3 AT THE GUY THAT WAS STANDING AT THE CASHIER. SHE SAID, "NO,  
4 THE GUY WAS CHECKING YOU OUT." AND THEN WE COMMENTED ABOUT  
5 HIS AGE.

6 SHE ASKED ME IF I THOUGHT HE WAS A YOUNG GUY  
7 WITH GRAY HAIR OR AN OLD GUY THAT JUST LOOKED REALLY GOOD.

8 Q WHAT DID YOU SAY, IF ANYTHING?

9 A I TOLD HER THAT IT WAS AN OLD GUY THAT LOOKED  
10 REAL GOOD.

11 Q ALL RIGHT. DID YOU DISCUSS ANYTHING ELSE ABOUT  
12 THAT PERSON ON THAT OCCASION?

13 A YES, HIS CAR. WE DISCUSSED HIS CAR.

14 Q WHAT DID THE CAR LOOK LIKE TO YOU, SIR?

15 A IT WAS A MID-SIZED OLDER MODEL CAR.

16 Q DID YOU HAVE A SENSE OF WHETHER IT WAS AN AMERICAN  
17 CAR OR A FOREIGN CAR?

18 A IT WAS AN AMERICAN CAR.

19 Q WHAT SORT OF CONDITION DID THE CAR APPEAR TO  
20 BE IN?

21 A IMMACULATE CONDITION, BEAUTIFUL CAR.

22 Q COULD YOU TELL WHAT TYPE OF A CAR IT WAS BY WAY  
23 OF GENDER, MAKE OR MODEL?

24 A NOT REALLY.

25 Q YOU COULDN'T TELL ME WHETHER IT WAS A LINCOLN  
26 OR A FORD OR A CHEVROLET TYPE OF CAR?

27 A NO.

28 Q NOW, DID THERE COME A TIME WHEN YOU WENT TO THE



1 POLICE STATION CONCERNING THIS PERSON THAT YOU HAD SEEN IN  
2 THE GAS STATION?

3 A YES, THERE WAS.

4 Q AT ANY TIME PRIOR TO GOING TO THE POLICE STATION,  
5 HAD YOU LOOKED AT OR READ AN ESQUIRE MAGAZINE INVOLVING AN  
6 ARTICLE ABOUT THE BILLIONAIRE BOYS CLUB?

7 A NO. I NEVER HAVE. I STILL HAVE NOT.

8 Q YOU HAVE NEVER READ OR SEEN THAT MAGAZINE ARTICLE,  
9 HAVE YOU, SIR?

10 A NO. I DID NOT WANT TO READ IT.

11 Q WHEN YOU WENT TO THE POLICE STATION, WHO DID  
12 YOU MEET?

13 A WE MET WITH MR. WAPNER, MR. MEYERS, MR. FILIPPELLI,  
14 MR. MACMAC -- IS THAT HIS NAME?

15 Q ALL RIGHT. WAS THAT ON NOVEMBER 22 -- NOVEMBER  
16 21, 1986?

17 A I DON'T KNOW.

18 Q ALL RIGHT. DO YOU REMEMBER WHAT DAY IT WAS?

19 A IT WAS A SATURDAY.

20 Q ALL RIGHT. WHATEVER DAY THAT WAS?

21 A YES.

22 Q ALL RIGHT, THE 22ND. DID YOU RELATE TO THOSE  
23 GENTLEMEN TOGETHER ASSEMBLED, ESSENTIALLY WHAT YOU HAVE SAID  
24 TODAY?

25 A YES, I DID.  
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1 Q ALL RIGHT, TOWARD THE END OF THAT DISCUSSION, WERE  
2 YOU GIVEN A PHOTOGRAPHIC LINEUP FROM WHICH TO MAKE AN  
3 IDENTIFICATION?

4 A YES, I WAS.

5 MR. CHIER: MR. BARENS --

6 Q BY MR. BARENS: I WILL SHOW YOU THE SMALL VERSION  
7 OF THIS FIRST.

8 IS THIS IN FACT, REFERRING TO PEOPLE'S 235 FOR  
9 IDENTIFICATION, IS THIS IN FACT THE PHOTOGRAPHIC LINEUP YOU  
10 WERE SHOWN ON THAT OCCASION?

11 A YES, IT WAS.

12 Q REFERRING YOU TO DEFENDANT'S PP FOR IDENTIFICATION,  
13 IS THAT A LARGE BLOWUP OF THE PHOTOGRAPHIC LINEUP WE JUST MADE  
14 REFERENCE TO?

15 A YES, IT IS.

16 Q ON THAT OCCASION, DID YOU MAKE AN IDENTIFICATION  
17 FROM THAT LINEUP CARD?

18 A YES, I DID.

19 Q COULD YOU PLEASE POINT FOR THE JURY TO THE PERSON  
20 YOU PICKED ON THAT OCCASION?

21 A THIS GUY HERE (WITNESS INDICATING).

22 MR. BARENS: COULD THE RECORD REFLECT THE WITNESS  
23 INDICATING THE PICTURE IN THE LOWER RIGHT-HAND CORNER?

24 THE COURT: YES.

25 Q BY MR. BARENS: WAS CARMEN CANCHOLA PRESENT WHEN  
26 YOU MADE THAT IDENTIFICATION?

27 A NO, SHE WASN'T.

28 Q DID YOU KNOW AT THAT POINT IN TIME WHICH PERSON

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1 SHE HAD PICKED IN THE PHOTOGRAPHIC LINEUP?

2 A NO, I DIDN'T.

3 Q DID YOU MAKE THAT IDENTIFICATION BASED SOLELY ON  
4 YOUR OWN OPINION RATHER THAN ANY SUGGESTION YOU HAD RECEIVED  
5 FROM ANY PERSON?

6 A YES.

7 Q AT THAT POINT IN TIME, DID YOU -- STRIKE THAT.  
8 AT THAT POINT IN TIME WHEN YOU LOOKED AT THAT  
9 PHOTOGRAPH, DID YOU HAVE A CERTAINTY OF HOW CORRECT YOUR  
10 OPINION WAS THAT THAT WAS THE PERSON IN FACT, THAT YOU COULD  
11 TELL ME TODAY.

12 A AT THE TIME HE ASKED ME?

13 Q STRIKE THAT.

14 WERE YOU ASKED WHAT PERCENTAGE OF CERTAINTY YOU  
15 WERE THAT THAT WAS IN FACT THE PERSON THAT YOU SAW IN THE GAS  
16 STATION?

17 A I BELIEVE SO.

18 Q AND DO YOU RECALL WHAT PERCENTAGE OF CERTAINTY  
19 YOU FELT THAT THAT WAS IN FACT THE PERSON YOU SAW AT THAT  
20 POINT IN TIME?

21 A I BELIEVE IT WAS LIKE 65 PERCENT.

22 Q ALL RIGHT. WERE YOU SHOWN ANY OTHER PHOTOGRAPHIC  
23 LINEUPS?

24 A YEAH, I BELIEVE WE WERE SHOWN ONE MORE.

25 Q DID YOU EVER AGAIN SEE A PERSON IN A PHOTOGRAPHIC  
26 LINEUP THAT YOU THOUGHT WAS IN FACT THE PERSON YOU HAD SEEN  
27 IN THE GAS STATION?

28 A NO.

1 Q ALL RIGHT, I BELIEVE YOU WERE THEREAFTER SHOWN  
2 PEOPLE'S 236 FOR IDENTIFICATION, IS THAT CORRECT, SIR, THIS  
3 SIX PERSON COLOR PHOTOGRAPH?

4 A YES, I WAS.

5 Q DID YOU SEE ANYONE IN THOSE PHOTOGRAPHS THAT YOU  
6 HAD ANY PERCENTAGE WHATEVER OF BELIEF THAT THAT WAS THE PERSON  
7 YOU SAW IN THE GAS STATION?

8 A NO, YOU KNOW.

9 Q IN THE PHOTOGRAPH THAT YOU MADE THE IDENTIFICATION  
10 ON, WAS THERE SOME DIFFERENCE IN THAT PHOTOGRAPH BETWEEN THE  
11 PERSON YOU SAW IN THE GAS STATION AND THE PERSON YOU SEE IN  
12 THE PHOTOGRAPH?

13 A YEAH, HE HAS GOT A BEARD AND HIS HAIR WAS A LOT  
14 MORE WHITER THAN YOU HAVE HERE. THAT IS ABOUT IT.

15 Q I SHOW YOU, SIR, PEOPLE'S 154 FOR IDENTIFICATION,  
16 A COLOR PHOTOGRAPH, WHEN YOU LOOK AT THAT PHOTOGRAPH, SIR,  
17 DOES THAT PHOTOGRAPH CHANGE YOUR PERCENTAGE OF CERTAINTY AS  
18 TO WHETHER OR NOT THAT THE PERSON IN THAT PHOTOGRAPH IS THE  
19 PERSON YOU SAW IN THE GAS STATION IN TUCSON?

20 A YES, IT DOES.

21 Q AS YOU LOOK AT THAT PHOTOGRAPH, WHAT PERCENTAGE  
22 OF CERTAINTY DO YOU HAVE THAT THAT IS IN FACT THE PERSON THAT  
23 YOU SAW THAT NIGHT IN THE GAS STATION?

24 A ABOUT 95 PERCENT.

25 Q IS IT YOUR BELIEF THAT YOU ARE 95 PERCENT CERTAIN  
26 THAT IS THE PERSON YOU IN FACT SAW?

27 A YES, IT IS.

28 Q THE COLOR PHOTOGRAPH IS A GREATER ASSIST TO YOU,

1 SIR, THAN THE BLACK AND WHITE PHOTOGRAPH?

2 A YEAH.

3 Q COULD YOU TELL ME WHY?

4 A I DON'T KNOW. I THINK THE COLOR OF THE SKIN --

5 THE COURT: WHAT?

6 THE WITNESS: THE COLOR OF THE SKIN, HIS HAIR.

7 Q BY MR. BARENS: CAN YOU SEE THE HAIR COLORATION

8 BETTER?

9 A NO. THE WAY IT IS STYLED; YOU CAN SEE IT BETTER  
10 AT THAT VIEW.

11 THE COURT: DID HE HAVE LONG HAIR THE DAY THAT YOU SAW --

12 THE WITNESS: NO, SIR.

13 THE COURT: -- SUPPOSEDLY SAW THE MAN?

14 THE WITNESS: NO, SIR.

15 THE COURT: HE HAD SHORT HAIR?

16 THE WITNESS: WELL GROOMED, SHORT HAIR.

17 Q BY MR. BARENS: HOW LONG IN TERMS OF GROSS AMOUNT  
18 OF TIME WERE YOU AT THE POLICE STATION ON NOVEMBER 21, 1986?

19 A I BELIEVE LIKE TEN HOURS.

20 Q IN TOTAL TIME?

21 A YES.

22 Q AND YOU HAD SOME BREAKS IN THERE, DID YOU NOT,  
23 SIR?

24 A YEAH, WE HAD ONE BREAK FOR, I GUESS, IT WAS DINNER  
25 BY THEN.

26 Q HOW LONG WERE YOU PERSONALLY INTERVIEWED?

27 A I WOULD GUESS ABOUT TWO AND A HALF HOURS.

28 Q AND BEFORE I FORGET, WHAT IS YOUR BEST ESTIMATE

1 AS TO HOW LONG YOU WERE IN THE GAS STATION ALTOGETHER ON THAT  
2 OCCASION?

3 A ABOUT 20 MINUTES.

4 Q AND OF THAT 20 MINUTES, HOW LONG WAS THE PERSON  
5 YOU HAVE IDENTIFIED IN THE GAS STATION?

6 A WHAT IS THAT? I AM SORRY. I DIDN'T HEAR THE  
7 QUESTION.

8 Q OF THE TOTAL TIME THAT YOU WERE IN THE GAS STATION,  
9 HOW LONG WAS THE OTHER CAR WITH THE PERSON YOU HAVE  
10 IDENTIFIED IN THE PHOTOGRAPHS, PRESENT IN THE GAS STATION?

11 A ABOUT THE SAME AMOUNT OF TIME.

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1 Q ALL RIGHT. DID YOU LEAVE SHORTLY AFTER THAT  
2 PERSON LEFT?

3 A YES. WE DID.

4 Q WHILE YOU WERE --

5 THE COURT: DO YOU WANT TO TAKE A RECESS NOW OR ARE  
6 YOU ABOUT FINISHED?

7 MR. BARENS: NO, SIR. PERHAPS WE SHOULD. I AM NOT  
8 QUITE FINISHED.

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE'LL  
10 TAKE A 15-MINUTE RECESS AT THIS TIME.

11 THE SAME ADMONITION PREVIOUSLY GIVEN STILL APPLIES.

12 (RECESS.)  
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1 THE COURT: YOU MAY PROCEED.

2 MR. BARENS: THANK YOU, SIR.

3 Q MR. LOPEZ, YOU MENTIONED THAT PRIOR TO LEAVING  
4 THE GAS STATION, YOU HAD HAD SOME DISCUSSION WITH MS.  
5 CANCHOLA CONCERNING THIS INDIVIDUAL.

6 WAS THERE ANY OTHER COMMENTS MADE BY YOURSELF  
7 AS TO THE TYPE OF PERSON THIS WAS?

8 A YEAH, WE DISCUSSED WHETHER HE WAS GAY OR STRAIGHT.

9 Q DID YOU FORM AN OPINION ABOUT WHETHER HE WAS  
10 GAY OR STRAIGHT BEFORE YOU SPOKE TO MS. CANCHOLA?

11 A YES, I DID.

12 Q AND WHAT OPINION DID YOU FORM, SIR?

13 A I THOUGHT HE WAS GAY.

14 Q WAS THERE SOMETHING IN SPECIFIC OR PARTICULAR  
15 YOU COULD TELL ME THAT MADE YOU HAVE THAT OPINION?

16 A JUST THE WAY HE ACTED, JUST KIND OF THE STYLE  
17 HE HAD.

18 THE COURT: THE WAY HE WHAT?

19 THE WITNESS: THE WAY HE ACTED.

20 THE COURT: HOW DID HE ACT?

21 (NO AUDIBLE RESPONSE.)

22 THE COURT: HOW DID HE ACT?

23 THE WITNESS: IT IS HARD TO EXPLAIN.

24 THE COURT: WELL, TELL US. YOU FORMED AN OPINION ON  
25 IT. TELL US HOW HE ACTED THAT MADE YOU THINK HE WAS GAY,  
26 HOW DID HE ACT?

27 THE WITNESS: OH, JUST THE WAY, YOU KNOW, HE KIND OF --

28 THE COURT: THE KIND OF WAY?



1 THE WITNESS: IT IS KIND OF HARD TO EXPLAIN, SIR.

2 THE COURT: I ASKED BEFORE, DID HE FLUTTER HIS HANDS  
3 LIKE THIS?

4 (LAUGHTER IN COURTROOM.)

5 THE COURT: DID HE ACT THAT WAY?

6 THE WITNESS: NO, HE DIDN'T.

7 THE COURT: HE DIDN'T?

8 THE WITNESS: NO.

9 THE COURT: TELL US WHAT HE DID THEN.

10 MR. BARENS: YOUR HONOR, I WOULD OBJECT TO THAT.

11 THE COURT: HOW DID HE ACT? TELL US WHAT HE DID THAT  
12 GAVE YOU THE IMPRESSION HE WAS GAY.

13 THE WITNESS: HE KIND OF JUST STOOD THERE.

14 THE COURT: WHAT?

15 THE WITNESS: HE KIND OF JUST STOOD THERE AND YOU KIND  
16 OF GOT THE SENSE HE WAS GAY.

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1 Q WAS IT BASED ON SOME GENERAL FEELING THAT YOU  
2 HAD OF THE TOTALITY OF THE PERSON, AS OPPOSED TO ONE SPECIFIC  
3 FACT?

4 A WHAT?

5 Q WAS YOUR OPINION BASED ON THE OVERALL GESTALT  
6 OR TOTALITY OF THE PERSON THAT YOU SAW, AS OPPOSED TO ANY  
7 SINGLE FACT?

8 A YEAH. OVERALL APPEARANCE.

9 Q WHEN YOU THINK OF A GAY PERSON, DO YOU NECESSARILY  
10 THINK OF SOMEONE WHO FLITS AROUND LIKE A FAIRY, SIR?

11 A NO.

12 Q ALL RIGHT. HAVE YOU SEEN GAY PEOPLE IN YOUR  
13 LIFE, WHO GENERALLY APPEARING WAS STRAIGHT APPEARING INSTEAD  
14 OF SOMEONE ACTING LIKE SOMETHING OUT OF A CARTOON?

15 A YES.

16 Q WAS THE PERSON YOU SAW DISTINCTIVE IN APPEARANCE?

17 A THE PERSON? THIS ONE OR --

18 Q YES, THE PERSON THAT YOU SAW THAT WE ARE  
19 DESCRIBING.

20 A YES. HE WAS. HE WAS VERY DISTINCTIVE.

21 Q WAS IT A PERSON THAT YOU WOULD REMEMBER IF YOU  
22 SAW HIM AGAIN?

23 A YES, DEFINITELY.

24 Q IS IT YOUR TESTIMONY THAT THE PERSON THAT YOU  
25 SAW IN THE COLOR PHOTOGRAPH TO YOUR RIGHT, IS THE PERSON  
26 THAT YOU SAW IN THE GAS STATION ON THAT NIGHT IN TUCSON?

27 A YES.

28 Q AND YOU ARE 95 PERCENT SURE YOU ARE CORRECT?

1 A YES.

2 Q SIR, WHEN WAS THE FIRST TIME THAT YOU EVER MET  
3 OR SPOKE TO ME IN YOUR LIFE?

4 A THE DAY WE FLEW IN HERE FOR THIS.

5 Q WAS THAT A SUNDAY OF THIS WEEK?

6 A YES.

7 Q AND PRIOR TO THAT, YOU HAD MET A REPRESENTATIVE  
8 FROM THE DEFENSE, RICHARD CHIER?

9 A YES, I HAVE.

10 Q AND THE FIRST TIME THAT YOU MET HIM WAS DURING  
11 THE MONTH OF MARCH OF 1987 OR WITHIN THE LAST 30 DAYS?

12 A YEAH, I BELIEVE SO.

13 MR. BARENS: THANK YOU, YOUR HONOR.

14

15 CROSS-EXAMINATION

16 BY MR. WAPNER:

17 Q MR. LOPEZ, WHEN YOU FIRST TALKED TO MR. CHIER,  
18 WAS IT IN TUCSON?

19 A YES.

20 Q DID HE SHOW YOU ANY PICTURE AT THAT TIME?

21 A HE SHOWED US THIS LINEUP.

22 Q THE LINEUP THAT --

23 A THAT YOU HAD SHOWED US.

24 Q OKAY. AND WHEN HE SHOWED YOU THE LINEUP, WHAT  
25 DID YOU TELL HIM AT THAT TIME?

26 A I TOLD HIM EXACTLY WHAT I TOLD YOU.

27 Q ALL RIGHT. DID YOU GIVE ANY PERCENTAGES AT THE  
28 TIME THAT YOU FIRST SPOKE TO ME?

1           A        I BELIEVE SO.

2           Q        WHEN YOU SAW MR. BARENS AND MR. CHIER ON SUNDAY,  
3 DID THEY GIVE YOU A COPY OF THE TRANSCRIPT OF THE INTERVIEW  
4 THAT WE DID TOGETHER?

5           A        YES, HE DID.

6           Q        DID YOU HAVE A CHANCE TO LOOK AT IT?

7           A        YES, I DID.

8           THE COURT: DID YOU READ IT?

9           THE WITNESS: YES, I DID.

10          Q        BY MR. WAPNER: WAS THERE ANYTHING IN THERE ABOUT  
11 THE PERCENTAGES OF HOW SURE YOU WERE?

12          A        THAT WHOLE THING WAS REALLY SPOTTY.

13          THE COURT: WHAT DO YOU MEAN?

14          THE WITNESS: THE TRANSCRIPT WAS REALLY SPOTTY. A  
15 LOT OF WORDS ARE LEFT OUT, A LOT OF STUFF WAS LEFT OUT.

16          Q        BY MR. WAPNER: DO YOU RECALL BEING ASKED IN  
17 THERE ABOUT YOUR IDENTIFICATION AND EVER SAYING ANYTHING  
18 ABOUT PERCENTAGES?

19          A        EXCUSE ME. YOU HAVE TO SPEAK AT ME. I DIDN'T  
20 HEAR YOU.

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1 Q DO YOU RECALL, DID YOU SEE ANYTHING WHEN YOU READ  
2 THE TRANSCRIPT ABOUT PERCENTAGES?

3 A NO, I DID NOT.

4 Q SO WHAT YOU ARE SAYING NOW, IT IS BASED ON YOUR  
5 RECOLLECTION OF THINGS THAT YOU THINK WERE LEFT OUT?

6 A YEAH, I THINK I GAVE YOU A PERCENTAGE WHEN WE --  
7 NOT ON THAT TRANSCRIPT -- BUT OUTSIDE.

8 THE COURT: OUT WHAT?

9 THE WITNESS: OUTSIDE OF THE ROOM WE WERE INTERROGATED  
10 AT IN TUCSON.

11 Q BY MR. WAPNER: JUST TALKING IN THE HALLWAY?

12 A YES, I BELIEVE SO.

13 Q DID YOU --

14 MR. BARENS: EXCUSE ME. MAY I APPROACH THE WITNESS FOR  
15 A MINUTE, YOUR HONOR, ON THE CAUTION WE HAD DISCUSSED?

16 MR. WAPNER: OH, CERTAINLY.

17 THE COURT: YES, GO AHEAD.

18 (UNREPORTED COLLOQUY BETWEEN MR. BARENS  
19 AND THE WITNESS.)

20 MR. BARENS: THANK YOU, YOUR HONOR.

21 Q BY MR. WAPNER: AT ONE POINT DURING YOUR  
22 INVOLVEMENT WITH THIS CASE, WERE YOU INTERVIEWED BY SOME OTHER  
23 OFFICERS FROM THE BEVERLY HILLS POLICE DEPARTMENT,  
24 SPECIFICALLY A DETECTIVE EDMONDS?

25 A YES.

26 Q AND WHERE DID THAT INTERVIEW TAKE PLACE?

27 A OUTSIDE A WRESTLING GYM.

28 THE COURT: OUT WHAT? I DIDN'T HEAR YOU.

1 THE WITNESS: A WRESTLING GYM.

2 (THE RECORD WAS READ BY THE REPORTER.)

3 THE WITNESS: WAIT A MINUTE. I'LL ASK YOU WHICH ONE.  
4 YOU SEE, WE WERE TWICE, THE ONE I WAS, WHERE THE LADY CAME  
5 OVER WITH RIO RICO, WITH TWO COPS --

6 Q BY MR. WAPNER: I WILL ASK YOU SPECIFICALLY.

7 A OKAY, BECAUSE I DON'T REMEMBER NAMES.

8 Q THERE WAS AN INTERVIEW THAT WAS CONDUCTED BY A  
9 POLICE OFFICER AND AN INVESTIGATOR FROM THE DISTRICT ATTORNEY'S  
10 OFFICE OUTSIDE OF A WRESTLING GYMNASIUM?

11 A YES.

12 Q WHERE WAS THAT WRESTLING GYMNASIUM LOCATED?

13 A AT TUSCON HIGH SCHOOL.

14 Q AND WHAT WERE YOU DOING AT THE WRESTLING GYMNASIUM?

15 A I WAS COACHING THE WRESTLING TEAM.

16 Q AND DID YOU WRESTLE, YOURSELF?

17 A YES, I DO.

18 Q DO YOU CONTINUE TO WORK OUT WITH WEIGHTS?

19 A NO.

20 Q DID YOU, WHEN YOU WERE WRESTLING?

21 A NO.

22 ACTUALLY, I WAS JUST STARTING IT UP AGAIN. I WAS  
23 JUST WORKING OUT TO GET BACK IN IT.

24 Q WERE YOU LIFTING WEIGHTS AT THE TIME YOU WERE  
25 INTERVIEWED BY THE DETECTIVES IN THIS CASE OR JUST STARTING  
26 UP AGAIN?

27 A NO, I WAS JUST WORKING OUT ON THE MATS.

28 Q AND ARE YOU FAMILIAR WITH WHAT PEOPLE WHO WORK

1 OUT LOOK LIKE IN TERMS OF MUSCLE DEFINITION, MUSCLE TONE AND  
2 THINGS LIKE THAT?

3 A YEAH, MOST OF THE TIME, YES.

4 Q WHEN YOU WERE IN THE GAS STATION ON THE NIGHT OF  
5 JUNE -- I AM SORRY -- SOMETIME IN SEPTEMBER OF 1986, THE PERSON  
6 THAT YOU SAW HAD ON A POLO SHIRT?

7 A RIGHT.

8 Q AND A POLO SHIRT IS A SHORT-SLEEVED T-SHIRT TYPE  
9 OF THING ONLY WITH LIKE A COLLAR AND A COUPLE OF BUTTONS?

10 A NO -- YES, RIGHT. OKAY, YEAH.

11 Q LIKE A RALPH LAUREN POLO SHIRT?

12 A YES, RIGHT.

13 Q SO IT HAD SHORT SLEEVES, RIGHT?

14 A RIGHT.

15 Q HOW DID THE SHIRT FIT THIS MAN, TIGHTLY OR LOOSELY  
16 OR SOMEWHERE BETWEEN?

17 A FIT HIM PRETTY GOOD. IT WAS GOOD ON HIM.

18 Q WHAT DO YOU MEAN YOU SAY "FIT HIM PRETTY GOOD"?

19 A I MEAN IT FIT HIM GOOD. I MEAN YOU PUT ON A  
20 T-SHIRT AND IT FITS NICE.

21 Q WHEN YOU SAY IT FITS NICE, WERE YOU ABLE TO SEE  
22 THE PHYSIQUE OF THIS PERSON AS HE WAS WEARING A T-SHIRT?

23 A YEAH, YEAH, MOST OF IT.

24 Q AND WERE YOU ABLE TO SEE THE MUSCLE TONE OF THIS PERSON?

25 A YES.

26 Q AND WHAT DID YOU OBSERVE ABOUT THE PHYSIQUE OR  
27 MUSCLE TONE OF THIS PERSON?

28 A THAT HE WORKED OUT.

1 Q HOW DO YOU KNOW THAT HE WORKED OUT?

2 A BECAUSE HE WAS THIN.

3 Q HE WAS WHAT?

4 A THIN.

5 Q ALL RIGHT. AND WHAT ABOUT THE FACT THAT HE WAS  
6 THIN MADE YOU THINK THAT HE HAD WORKED OUT?

7 A THE FACT THAT HE WAS YOU KNOW -- THAT HE WEIGHED  
8 ABOUT 155 OR 165.

9 Q AND DID HE HAVE MUSCLES -- HOW TALL WAS HE,  
10 APPROXIMATELY?

11 A I COULDN'T SAY. I SAID THAT HE WAS ABOUT FIVE-  
12 TEN, MAYBE TALLER. HE IS TALLER THAN I WAS.

13 Q AND YOU WERE HOW TALL?

14 A I AM FIVE-NINE OR FIVE-TEN.

15 Q HOW MUCH TALLER THAN YOU WAS HE?

16 A I COULDN'T TELL BECAUSE I WAS -- I KIND OF HAD  
17 A BAD PERSPECTIVE ON HIM.

18 I WAS STANDING ON TOP OF THE GAS ISLAND, AT THE  
19 PUMP. SO I HAD TO LOOK DOWN ON HIM, ANYWAY. BUT --

20 Q HE WAS 155 TO 165 POUNDS?

21 A YES.

22 Q AND WHAT ABOUT THE MUSCLE DEFINITION IN HIS CHEST  
23 AND HIS ARMS? COULD YOU TELL ME ABOUT THAT?

24 A HE JUST LOOKED GOOD WITH A T-SHIRT ON.

25 Q LIKE SOMEONE WHO WORKED OUT?

26 A RIGHT.

27 Q BASED ON YOUR FAMILIARITY WITH PEOPLE WHO WORK  
28 OUT, WOULD YOU SAY THAT -- WAS THERE ANY QUESTION IN YOUR



1 MIND THAT THIS WAS A PERSON WHO LIFTED WEIGHTS AND WORKED  
2 OUT?

3 A YES. I MEAN, HE WAS NOT FAT. SO HE HAD TO HAVE  
4 DONE SOMETHING.

5 Q COULD YOU SEE THE DEFINITION, THE MUSCLE  
6 DEFINITION IN HIS ARMS AND CHEST?

7 A YEAH. YOU COULD SEE THE DEFINITION OF THE MUSCLE  
8 IN THE ARMS.

9 Q WHEN YOU SAW THE PERSON THERE AT THE GAS STATION,  
10 DID IT APPEAR THAT HE HAD BEEN WORKING OUT?

11 A YEAH.

12 Q AND HE HAD ON A POLO SHIRT AND WHAT ELSE?

13 A SOME JEANS.

14 Q WHAT KIND OF JEANS?

15 A I DON'T KNOW. DESIGNER JEANS, I GUESS.

16 Q WHY DO YOU GUESS DESIGNER JEANS?

17 A BECAUSE BASICALLY -- BECAUSE I THOUGHT HE WAS  
18 GAY. I WAS NOT GOING TO, YOU KNOW, BE CHECKING THIS GUY  
19 OUT, I MEAN. I MEAN, THE GUY MIGHT TRY SOMETHING.

20 Q LET ME GET SOMETHING STRAIGHT. DO YOU THINK  
21 THAT THEY WERE DESIGNER JEANS BECAUSE YOU THOUGHT HE WAS  
22 GAY OR DO YOU THINK HE WAS GAY BECAUSE HE HAD ON DESIGNER  
23 JEANS?

24 A NO. HE HAD --

25 MR. BARENS: WAIT A MINUTE, YOUR HONOR. THAT IS ONE  
26 OF THOSE BEATING YOUR WIFE QUESTIONS. THE QUESTION IS  
27 CONFUSING AND ARGUMENTATIVE.

28 THE COURT: IS IT CONFUSING TO YOU?

1 THE WITNESS: YES.

2 THE COURT: THEN UNCONFUSE IT, WILL YOU PLEASE?

3 MR. WAPNER: I WILL TRY.

4 Q YOU SAID THAT YOU THOUGHT THEY WERE DESIGNER  
5 JEANS BECAUSE YOU THOUGHT THE GUY WAS GAY? IS THAT WHAT  
6 YOU JUST SAID?

7 A NO.

8 THE COURT: WHAT DID YOU SAY?

9 THE WITNESS: I SAID THAT I THOUGHT THAT IT WAS DESIGNER  
10 JEANS BECAUSE THE GUY WAS DRESSED REALLY WELL. THEY LOOKED  
11 GOOD ON HIM, I MEAN.

12 Q BY MR. WAPNER: AND THE DESIGNER JEANS, HE HAD  
13 DESIGNER JEANS AND A POLO SHIRT, RIGHT?

14 A RIGHT.

15 Q WAS THE CAR THAT THIS PERSON WAS DRIVING AT THE  
16 GAS STATION WHEN YOU PULLED IN?

17 A YEAH. I BELIEVE SO.

18 Q AND WHEN YOU PULLED -- FIRST PULLED INTO THE  
19 GAS STATION, DID YOU NOTICE THE PERSON WITH THE SILVER HAIR  
20 WHEN YOU FIRST DROVE IN?

21 A NO.

22 Q AND AFTER YOU DROVE IN, YOU GOT OUT OF YOUR CAR  
23 TO PUMP THE GAS, IS THAT RIGHT?

24 A RIGHT.

25 Q AT ANY TIME WHILE YOU WERE PUMPING THE GAS, DID  
26 YOU NOTICE THE PERSON WITH THE SILVER HAIR?

27 A YEAH, WHEN HE WAS PAYING AT THE CASHIER'S.

28 Q SO HE WAS OVER WHERE THIS GREEN X IS AND YOU

1 WERE WHERE THE LITTLE GREEN CIRCLE IS, RIGHT?

2 A RIGHT.

3 Q NOW, YOU PAY AT THE CASHIER BY STANDING FACING  
4 WHAT WOULD BE CAMPBELL AVENUE, RIGHT?

5 A NO.

6 Q WHERE DO YOU PAY?

7 A YOU PAY ON THE SOUTH SIDE.

8 Q ON THE BOTTOM?

9 A YES.

10 MR. WAPNER: MAY I HAVE A MOMENT?

11 (PAUSE.)

12 Q BY MR. WAPNER: HOW MANY TIMES HAVE YOU BEEN  
13 TO THE GAS STATION?

14 A ABOUT THREE OR FOUR TIMES.

15 Q AND DID YOU ALWAYS PAY IN THE SAME PLACE?

16 A YES, IT IS THE ONLY CASHIER.

17 Q THAT BOOTH, DOES IT HAVE SEVERAL DIFFERENT WINDOWS  
18 ON IT?

19 A YEAH. I BELIEVE SO.

20 Q AND DID YOU EVER GO BACK THERE AFTER THIS INCIDENT  
21 TO CHECK IT OUT?

22 A YEAH. YES, WE DID.

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1 Q WHEN YOU SAW THE PERSON --

2 WHEN YOU GOT OUT TO PUMP THE GAS IN YOUR CAR, DID  
3 YOU HAVE TO HOLD THE NOZZLE THE WHOLE TIME, HOLD THE HANDLE  
4 DOWN?

5 A YEAH.

6 Q AND WHICH DIRECTION WERE YOU FACING WHEN YOU WERE  
7 PUTTING THE GAS IN YOUR CAR?

8 A WEST.

9 Q AND SO YOU WOULD HAVE HAD YOUR BACK TO THE CAR  
10 AT THAT POINT?

11 A YES, BECAUSE I WAS LEANING ON IT, PUMPING IT.

12 Q THE PERSON WITH THE SILVER HAIR WHO WAS AT THE  
13 CASHIER PAYING, FOR HOW LONG DID YOU OBSERVE HIM AT THAT TIME?

14 A HE WAS STANDING THERE FOR A WHILE.

15 Q HOW LONG DID YOU HAVE TO SEE HIM AT THAT POINT?

16 A A GOOD FIVE MINUTES PROBABLY.

17 Q AND DID YOU LOOK AT HIM THE ENTIRE FIVE MINUTES?

18 A NO.

19 I WAS LOOKING AT HIM AND LOOKING AT THE AMOUNT ON  
20 THE GAS PUMP, LOOKING AT HIM, LOOKING AT THE GAS PUMP.

21 Q WAS THERE ANYBODY ELSE PAYING AT THAT TIME?

22 A OH, NO.

23 Q HE WAS THE ONLY ONE?

24 A YES.

25 Q AND HE APPEARED TO YOU TO PAY WITH CASH?

26 A I DON'T KNOW. I REALLY DON'T KNOW.

27 Q HOW LONG DID HE STAND AT THE CASHIER?

28 A HE STOOD THERE FOR A WHILE.

-2 1 Q WHAT PART OF HIM DID YOU SEE AT THAT TIME?

2 A MOSTLY, HIS FACE.

3 Q WHAT PART OF HIS FACE?

4 A I WOULD SAY HIS RIGHT SIDE.

5 Q AND DID YOU SAY BEFORE THAT YOU WERE LOOKING LIKE  
6 AT THE BACK OF HIS FACE?

7 A YES, THE BACK OF HIS HEAD PROBABLY, SOMETIMES.

8 MR. WAPNER: YOUR HONOR, I HAVE A PHOTOGRAPH THAT I WOULD  
9 LIKE TO HAVE MARKED AS PEOPLE'S 237 -- I AM SORRY -- 238 FOR  
10 IDENTIFICATION.

11 THE COURT: YES.

12 MR. WAPNER: IT IS ANOTHER PHOTOGRAPH OF THE GAS STATION.

13 THE COURT: ALL RIGHT.

14 Q BY MR. WAPNER: MR. LOPEZ, SHOWING YOU 238 FOR  
15 IDENTIFICATION, DOES THAT APPEAR TO BE A PHOTOGRAPH OF THE  
16 CASHIER'S WINDOW AT THE GAS STATION?

17 A YES, THAT'S IT.

18 Q AND THERE IS A DOOR IN THAT PICTURE, RIGHT?

19 A RIGHT.

20 Q AND IS THERE A WINDOW THROUGH THE DOOR THAT YOU  
21 PAY AT?

22 A NO.

23 Q WHERE DO YOU PAY?

24 A RIGHT HERE. IT WOULD BE ON THE SOUTH SIDE, RIGHT  
25 THERE, THAT IS THE WINDOW THERE (INDICATING).

26 Q YOU HAVE TO SPEAK LOUD ENOUGH SO THESE PEOPLE CAN  
27 HEAR.

28 A YOU CAN SEE A LITTLE WINDOW ON THE PICTURE, IF

1 YOU REALLY LOOK HARD.

2 Q THERE IS A WINDOW --

3 A ON THE DOOR.

4 Q -- ON THE EAST SIDE OF THIS ALSO, CORRECT?

5 A YOU MEAN ON THE OTHER SIDE?

6 Q ON THE EAST SIDE, WHICH WOULD BE ON THIS SIDE OF  
7 THE CASHIER NEXT TO THE DOOR.

8 A NO.

9 Q THERE IS NO WINDOW THERE?

10 A OKAY, YES, I BELIEVE SO. I DON'T KNOW -- YEAH.

11 MR. WAPNER: MAY I JUST PASS THIS BRIEFLY BY THE JURY,  
12 YOUR HONOR?

13 THE COURT: YES.

14 MR. WAPNER: MAYBE I WILL JUST GIVE IT TO THEM AND LET  
15 THEM PASS IT.

16 (EXHIBIT GIVEN TO JURY.)

17 MR. WAPNER: YOUR HONOR, WHILE THEY ARE DOING THAT, I  
18 HAVE ANOTHER PHOTOGRAPH THAT I WOULD JUST MARK FOR  
19 IDENTIFICATION AS 239.

20 THE COURT: ALL RIGHT.

21 MR. BARENS: COULD I SEE THAT?

22 MR. WAPNER: SURE.

23 YOUR HONOR, PERHAPS TO SAVE TIME, CAN I CIRCULATE  
24 THIS PHOTOGRAPH ALSO AT THE SAME TIME?

25 THE COURT: ALL RIGHT.

26 (EXHIBIT PASSED TO JURY.)

27 THE COURT: ALL RIGHT, THEY WILL BOTH BE RECEIVED IN  
28 EVIDENCE.

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MR. WAPNER: THANK YOU, YOUR HONOR.

(PAUSE IN PROCEEDINGS.)

F

1 MR. BARENS: ARE WE GOING TO RECEIVE ALL OF THOSE  
2 I.D. EXHIBITS INTO EVIDENCE?

3 THE COURT: WE WILL WAIT. THEY ARE SEEING THEM. LATER  
4 WE WILL TALK ABOUT RECEIVING THEM INTO EVIDENCE.

5 MR. BARENS: ALL RIGHT.

6 Q BY MR. WAPNER: MR. LOPEZ, AFTER YOU TALKED TO  
7 ME AND MR. MACMAC AND DETECTIVE MEYERS, AT SOME POINT AFTER  
8 THAT, DID YOU GO BACK OVER TO THIS VICKERS STATION JUST TO  
9 KIND OF CHECK IT OUT?

10 A WE PASSED BY IT.

11 Q DID YOU DRIVE BY TO KIND OF LOOK AT IT?

12 A JUST DRIVE BY IT, YEAH.

13 Q AND HAD IT CHANGED AT ALL AS FAR AS YOU COULD TELL  
14 FROM THE WAY IT WAS THE DAY THAT YOU WERE THERE?

15 A YEAH. ORIGINALLY, WE PUT THE CASHIER IN THE  
16 MIDDLE AISLE. AND IT WASN'T. IT WAS OVER ON THE LEFT SIDE.

17 Q OKAY. I THINK IS TWO SEPARATE THINGS. BUT LET  
18 ME ASK YOU FIRST OF ALL, WHEN YOU WENT BACK TO THE GAS STATION  
19 AND LOOKED AT IT, HAD THE STATION CHANGED FROM THE WAY IT WAS  
20 THE DAY THAT YOU SAW THE SILVER-HAIRED MAN?

21 A WE DIDN'T TAKE A GOOD LOOK. WE JUST KIND OF  
22 PASSED BY TO CHECK WHERE THE CASHIER WAS AT.

23 Q WELL, I GUESS WHAT I AM GETTING AT IS, DID THE  
24 VICKERS PEOPLE MOVE THE CASHIER'S BOOTH OR WHEN YOU WENT BACK  
25 THERE, DID IT CHANGE YOUR MEMORY OF EXACTLY WHERE THE CASHIER'S  
26 BOOTH WAS?

27 A YES. IT CHANGED MY MEMORY OF IT. I BELIEVE THAT  
28 IS WHAT YOU ARE ASKING.



1 Q WHAT I AM ASKING IS, WHEN YOU WENT BACK, YOU DROVE  
2 BY IT TO SEE IF THE GAS STATION LOOKED THE SAME WAY AS IT DID  
3 THE NIGHT YOU WERE THERE, RIGHT?

4 A YEAH. I BELIEVE SO.

5 Q WAS THAT THE PURPOSE FOR GOING BY THERE?

6 A YEAH. NO. THE PURPOSE WAS TO CHECK THE GAS  
7 STATION, TO SEE WHERE THE CASHIER WAS AT.

8 Q OKAY.

9 A BECAUSE DETECTIVE MEYERS KEPT INSISTING IT WAS  
10 THERE AND WE INSISTED IT WAS HERE. BUT --

11 Q INSISTED IT WAS WHERE?

12 A IN THE CENTER AISLE.

13 Q SO, YOU HAD BEEN INSISTING TO DETECTIVE MEYERS  
14 THAT THE CASHIER AT THE GAS STATION WHERE YOU WERE WAS IN THE  
15 MIDDLE HERE, WHERE THIS BLACK RECTANGLE AND THE RED "S" IS,  
16 RIGHT?

17 A RIGHT.

18 Q AND THEN YOU DROVE BY THERE AND IT TURNED OUT THAT  
19 YOU HAD BEEN WRONG ABOUT THAT?

20 A YES.

21 Q AND THAT THE CASHIER IN FACT WAS OVER HERE WHERE  
22 THIS GREEN "X" IS, RIGHT?

23 A YES.

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-1

1 Q AND WHEN YOU WENT BY THERE AND SAW THAT THE  
2 CASHIER WAS WHERE THE GREEN X WAS, YOU REMEMBER THAT A  
3 CASHIER HAD IN FACT BEEN AT THE WEST END OF THE STATION THE  
4 NIGHT YOU WERE THERE, RIGHT?

5 A YES, I BELIEVE SO, YES.

6 Q WELL, YOU DIDN'T GET THE IDEA THAT THE VICKERS  
7 PEOPLE HAD MOVED THE CASHIER IN THE MEANTIME IN THE FEW MONTHS  
8 IN BETWEEN, DID YOU?

9 A NO, NO.

10 Q I ASSUME THAT THE PLACE WHERE YOU PAID WAS AT  
11 THE SAME PLACE, THAT HADN'T BEEN MOVED EITHER, HAD IT?

12 A NO.

13 Q AND CALLING YOUR ATTENTION TO THE PHOTOGRAPH  
14 THAT IS 239 FOR IDENTIFICATION, IT IS A LITTLE HARD TO SEE,  
15 BUT DO YOU SEE A MAN STANDING AT WHAT APPEARS TO BE THE  
16 CASHIER'S BOOTH?

17 A YEAH, I DO.

18 Q ALL RIGHT, DOES IT APPEAR TO YOU FROM LOOKING  
19 AT THAT PHOTOGRAPH THAT HE IS PROBABLY PAYING -- OBVIOUSLY, YOU  
20 DON'T KNOW WHAT IS IN HIS MIND, BUT IS THAT WHAT IT APPEARS  
21 TO BE WHAT IT IS?

22 A YEAH, IT APPEARS THAT WAY.

23 Q WHAT DIRECTION IS HE STANDING FACING AS HE IS  
24 PAYING?

25 A HE IS FACING, I GUESS HE IS FACING WEST, RIGHT.

26 Q SO HE WOULD BE FACING --

27 A EAST, FACING -- OR WEST, YEAH, HE IS FACING WEST,  
28 THAT'S CORRECT.

1 Q HE IS FACING CAMPBELL AND THE UNIVERSITY OF  
2 ARIZONA, RIGHT?

3 A RIGHT.

4 Q AND IF THOSE PICTURES WERE TAKEN ON SUNDAY,  
5 NOVEMBER THE 23RD OF 1985, WOULD YOU SAY THAT THE CASHIER'S  
6 BOOTH AT THE PLACE THAT YOU PAID -- '86 -- THANK YOU -- WAS  
7 IN THE SAME PLACE AT THAT TIME AS IT WAS THE NIGHT THAT YOU  
8 WERE THERE?

9 A YES.

10 Q OKAY. IN LOOKING AT THAT PICTURE, DOES IT  
11 REFRESH YOUR RECOLLECTION AT ALL AS TO WHERE THE WINDOW --

12 A I ALSO SAW THERE IS A LITTLE WINDOW HERE, RIGHT?

13 Q THERE IS A WINDOW.

14 A ON THE SOUTH SIDE.

15 Q ON THE SOUTH SIDE?

16 A YES.

17 Q AND ALSO A WINDOW ON THE EAST SIDE?

18 A AND HE WAS PAYING ON THE SOUTH SIDE.

19 Q WAS THERE MORE THAN ONE PERSON LOCATED IN THE  
20 CASHIER'S BOOTH AT THAT TIME?

21 A NO, THERE WAS JUST ONE PERSON.

22 Q DO YOU REMEMBER WHERE YOU STOOD WHEN YOU WENT  
23 OVER AND PAID THE CASHIER AT THAT TIME?

24 A YEAH.

25 Q WHERE?

26 A AT THE SOUTH SIDE.

27 Q NOW, WHEN YOU WERE LOOKING AT THE PERSON AS HE  
28 WAS PAYING FOR THE GAS, HOW LONG DID HE STAND THERE?

1           A       HE STOOD THERE FOR A WHILE.

2           Q       HOW LONG IS A WHILE?

3           A       I SAID FIVE MINUTES BUT --

4           Q       DID HE STAND THERE ANY LONGER THAN IT TOOK HIM  
5 TO ACTUALLY PAY FOR THE GAS?

6           MR. BARENS:   OBJECTION.

7           THE WITNESS:  I DON'T KNOW.

8           MR. BARENS:  ASSUMES FACTS NOT IN EVIDENCE, THAT THE  
9 MAN KNOWS HOW LONG IT TOOK HIM TO PAY FOR THE GAS.

10          THE COURT:  ALL RIGHT, ASK THE QUESTION AGAIN, WILL  
11 YOU?

12          Q       BY MR. WAPNER:  WHEN YOU FIRST SAW HIM THERE,  
13 WHEN YOU FIRST LOOKED OVER AT HIM, WAS THERE ANYONE ELSE  
14 IN LINE AHEAD OF HIM?

15          A       NO, THERE WASN'T.

16          Q       AND WHEN YOU FIRST LOOKED OVER AT HIM, HOW MANY  
17 SECONDS OR MINUTES DID YOU SPEND LOOKING AT HIM AT THAT TIME?

18          A       I DON'T KNOW.  A COUPLE OF MINUTES, I GUESS.

19          THE COURT:  A COUPLE OF MINUTES?

20          THE WITNESS:  NO.

21                   A COUPLE OF SECONDS.

22                   SORRY.

23

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4-1  
1 Q AND WERE THERE OTHER CARS IN THE GAS STATION AT  
2 THAT TIME?

3 A NO THERE WASN'T. I DON'T THINK SO.

4 Q NONE AT ALL?

5 A EXCEPT MAYBE THE GUY -- NO. THERE WASN'T, JUST  
6 US TWO.

7 Q AND WHEN YOU FIRST SAW THAT, IT WAS A COUPLE OF  
8 SECONDS? THAT WAS WHAT PART OF HIS FACE NOW, DID YOU SEE?

9 A THE SIDE OF HIS FACE, THE RIGHT SIDE OF HIS FACE.

10 Q WOULD THAT BE THE BACK PORTION OF THE RIGHT SIDE  
11 OF HIS FACE?

12 A NO. BECAUSE HE WAS STANDING AND HE WAS LOOKING  
13 TOWARD -- HE WAS LOOKING -- I GUESS IT IS EAST.

14 Q DO YOU REMEMBER BEING ASKED THIS QUESTION AND  
15 GIVING THIS ANSWER ON NOVEMBER 22ND, COUNSEL, PAGE 10, LINES  
16 19 THROUGH 23 --

17 A YES. I THINK SO.

18 THE COURT: WAIT A MINUTE. HE HASN'T ASKED YOU YET.

19 (LAUGHTER IN THE COURTROOM.)

20 MR. WAPNER: THAT IS THE RIGHT ANSWER BUT --

21 MR. BARENS: WELL, CAN HE WITHDRAW THE ANSWER, YOUR HONOR?

22 THE COURT: ALL RIGHT.

23 Q BY MR. WAPNER: LET ME READ TO YOU AND SEE IF YOU  
24 REMEMBER IT.

25 "Q AS YOU WERE PUMPING GAS, YOU WERE LOOKING  
26 AT THE SIDE OF HIS FACE?

27 "A I WAS LOOKING AT THE BACK OF HIS FACE --"

28 THE COURT: THE BACK OF HIS FACE?

1 MR. WAPNER: I AM JUST READING WHAT IS HERE. I AM NOT  
2 MAKING THIS UP.

3 "A I WAS LOOKING AT THE BACK OF HIS FACE.  
4 I WAS LOOKING AT THE BACK. HE WAS KIND OF LIKE --  
5 YEAH, I GUESS IT WOULD HAVE BEEN AT HIS SIDE."

6 Q DO YOU REMEMBER SAYING THAT?

7 A YEAH.

8 THE COURT: WHAT DO YOU MEAN BY THE BACK OF HIS FACE?

9 THE WITNESS: I MEANT THE BACK OF HIS HEAD, YOUR HONOR.

10 THE COURT: OH.

11 Q BY MR. WAPNER: WAS IT THE BACK OF HIS HEAD THAT  
12 YOU SAW FOR THE TWO OR THREE SECONDS WHEN YOU FIRST LOOKED  
13 OVER?

14 A NO. IT WAS THE SIDE OF HIS FACE.

15 Q AFTER THAT TWO OR THREE SECONDS, WHEN DID YOU NEXT  
16 SEE HIM?

17 A HE TURNED AROUND AND LOOKED AT THE CASHIER, I GUESS.  
18 IT WAS AT THE BACK OF HIS HEAD THEN.

19 Q WHEN DID YOU NEXT SEE HIS FACE?

20 A WHEN HE WAS WALKING TOWARDS THE COKE MACHINE.

21 Q THE COKE MACHINES ARE IN THE MIDDLE WHERE IT SAYS  
22 "SODA", RIGHT?

23 A YEAH.

24 Q NOW, ARE YOU SURE THAT YOU SAW HIM AS HE WAS WALKING  
25 BACK FROM THE CASHIER TO HIS CAR?

26 A YES, NOT TO HIS CAR, TO THE SODA MACHINES.

27 Q DO YOU REMEMBER BEING ASKED ON NOVEMBER THE 22ND,  
28 HOW LONG YOU WERE STANDING AT THE CASHIER?

1 A YEAH.

2 Q AND DO YOU REMEMBER BEING ASKED WHAT DIRECTION  
3 HE WAS FACING AT THAT TIME?

4 A YEAH.

5 Q OKAY. DO YOU REMEMBER BEING ASKED --

6 MR. BARENS: WELL, NOW, UNLESS -- I SUPPOSE THE DEFENSE  
7 WOULD MOVE TO ADMIT THE WHOLE TRANSCRIPT, YOUR HONOR IF THEY  
8 ARE GOING TO READ FROM IT. LET'S JUST SUBMIT THE WHOLE THING.

9 THE COURT: YOU GO AHEAD WITH YOUR READING THAT PART  
10 OF IT THAT YOU WANT TO.

11 MR. BARENS: WELL YOUR HONOR, UNLESS IT IS REFRESHING  
12 HIS RECOLLECTION --

13 THE COURT: WILL YOU PLEASE?

14 MR. BARENS: WELL, YOUR HONOR --

15 THE COURT: HE HAS THE RIGHT TO ASK HIM QUESTIONS, DID  
16 HE AT A CERTAIN TIME GET ASKED A CERTAIN QUESTION AND DID HE  
17 ANSWER. THAT IS ALL HE IS ASKING.

18 MR. BARENS: THE DEFENSE WOULD THEN AT THIS POINT, MAKE  
19 A MOTION TO ADMIT THE WHOLE TRANSCRIPT.

20 THE COURT: NO.

21 MR. WAPNER: HAS COUNSEL HEARD OF PRIOR INCONSISTENT  
22 STATEMENTS?

23 MR. BARENS: WHAT IS INCONSISTENT?

24 THE COURT: THE DEFENDANT IS HERE TO TELL HIM. GO AHEAD.

25 Q BY MR. WAPNER: DO YOU REMEMBER BEING ASKED THIS  
26 QUESTION AND GIVING THIS ANSWER:

27 "HE IS STANDING -- YOU WERE STANDING  
28 NEXT TO YOUR CAR, PUMPING GAS, LOOKING NORTH AND

1 AND HE WAS STANDING FACING WEST?

2 "A FACING WEST.

3 "Q FACING WEST?

4 "A RIGHT."

5 DO YOU REMEMBER SAYING THAT ON NOVEMBER 22?

6 A COULD YOU REPEAT THAT AGAIN? SORRY.

7 Q SURE.

8 "Q HE IS STANDING -- YOU WERE STANDING  
9 NEXT TO YOUR CAR PUMPING GAS, LOOKING NORTH AND  
10 HE WAS STANDING FACING WEST?

11 "A FACING WEST.

12 "Q FACING WEST?

13 "A RIGHT."

14 DO YOU REMEMBER BEING ASKED THOSE QUESTIONS AND  
15 GIVING THOSE ANSWERS?

16 A YES.

17 Q OKAY. SO IF HE WAS FACING WEST AND HE WOULD BE  
18 STANDING -- HE WAS AT THE CASHIER, HE WOULD BE STANDING WITH  
19 HIS BACK TOWARD YOU AS YOU WERE PUMPING GAS, RIGHT?

20 A YEAH. BUT HE WAS NOT STANDING THERE ALL OF THE  
21 TIME. HE MOVED AROUND THIS AREA.

22 Q OKAY. AND DO YOU REMEMBER BEING ASKED HOW LONG  
23 HE WAS STANDING THERE?

24 A YEAH. I BELIEVE SO.

25 Q DO YOU REMEMBER SAYING, "AS LONG AS IT TOOK TO  
26 PAY"?

27 A YEAH.

28



1 Q AND THEN YOU REMEMBER BEING ASKED WHAT HAPPENED  
2 AFTER HE WENT TO THE -- AFTER HE PAID; SPECIFICALLY YOU  
3 REMEMBER BEING ASKED AT THE BOTTOM OF PAGE 12, LINE 28,  
4 CONTINUING ON TO PAGE 13, COUNSEL:

5 "AND AFTER HE PAID, DID YOU WATCH  
6 HIM AFTER THAT?

7 "A NO."

8 AND THE NEXT QUESTION, IF IT IS A QUESTION IS:

9 "OKAY.

10 "A THAT IS WHEN I FINISHED PUTTING AWAY  
11 THE PUMP.

12 "Q OKAY. AND SO YOU DIDN'T SEE HIM GO  
13 FROM THE CASHIER BACK OVER TO HIS CAR?

14 "A NO."

15 DO YOU REMEMBER BEING ASKED THOSE QUESTIONS AND  
16 GIVING THOSE ANSWERS?

17 A YEAH, I THINK SO. YEAH, I BELIEVE SO.

18 Q DID YOU SAY ANYTHING DURING THE INTERVIEW OF  
19 NOVEMBER THE 22ND ABOUT SEEING HIM FROM THE POINT WHERE HE  
20 LEFT THE CASHIER TO THE POINT WHERE HE WENT BACK OVER TO  
21 HIS CAR?

22 A I DON'T THINK SO.

23 Q AND DID YOU SAY ANYTHING AT THAT TIME ABOUT --  
24 MR. BARENS: YOUR HONOR, EXCUSE ME. THE OBJECTION  
25 IS THAT WE ARE NOW -- NOT INTO IMPEACHMENT. YOU CAN'T IMPEACH  
26 SOMEBODY ON WHAT THEY DIDN'T SAY. YOU CAN ONLY IMPEACH THEM  
27 ON WHAT THEY DID SAY. YOU CAN'T IMPEACH A NEGATIVE.

28 THE COURT: DID YOU LEARN THE LESSON NOW? LET'S PROCEED

5-2

1 ALONG THOSE LINES, SHALL WE?

2 MR. BARENS: WELL, YOU CAN'T --

3 Q BY MR. WAPNER: IS YOUR RECOLLECTION NOW BETTER  
4 THAN IT WAS ON NOVEMBER THE 22ND?

5 A YES, IT IS.

6 Q YOUR RECOLLECTION ABOUT THE EVENTS THAT HAPPENED  
7 IN SEPTEMBER IS BETTER NOW THAN IT WAS IN NOVEMBER?

8 A YES, IT IS.

9 Q SO YOU NOW RECALL SEEING HIM AT SOME POINT WHILE  
10 HE WALKED FROM THE CASHIER OVER TO HIS CAR?

11 A NOT TO THE CAR.

12 TO THE SODA FOUNTAIN -- OR TO THE SODA MACHINES,  
13 WHATEVER THEY WERE.

14 Q DID YOU TALK TO ANYBODY ABOUT THIS INCIDENT TO  
15 HELP REFRESH YOUR RECOLLECTION ABOUT WHAT HAPPENED?

16 A NO.

17 JUST I HAD MORE TIME TO THINK ABOUT IT.

18 Q HOW LONG DID YOU SEE HIM WHILE HE WAS STANDING  
19 AT THE SODA MACHINE AREA?

20 A HE STOOD THERE FOR -- IF YOU WANT TIME AGAIN,  
21 OH, HE STOOD THERE FOR ABOUT THREE MINUTES TALKING TO HIS  
22 FRIEND.

23 Q THREE MINUTES?

24 A YES, AND THAT IS WHEN I WENT TO GO PAY FOR MY  
25 GAS.

26 Q DURING THAT THREE MINUTES THAT HE WAS THERE,  
27 WHAT WERE YOU GOING?

28 A I WAS PUTTING AWAY THE GAS ON THE GAS PUMP.

-3

1 Q PUTTING THE PUMP, TAKING THE NOZZLE FROM YOUR  
2 CAR AND PUTTING IT ON THE PUMP?

3 A YES, I WAS FINISHED PUMPING GAS AND I WAS GOING  
4 TO GO PAY THE CASHIER.

5 Q OF THAT THREE MINUTES YOU THINK HE WAS THERE,  
6 HOW MUCH TIME DID YOU SPEND LOOKING AT HIM?

7 A ABOUT, I WOULD SAY, ABOUT A MINUTE, ABOUT OR  
8 30 --

9 Q OR WHAT?

10 A ABOUT A MINUTE TO 30 SECONDS.

11 Q AND WAS THERE ANYBODY ELSE IN THAT AREA BESIDES  
12 THIS MAN AND HIS FRIEND?

13 A NO.  
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1 Q OF THE MINUTE OR 30 SECONDS, DID YOU LOOK AT  
2 HIM THE WHOLE TIME OR AT THE FRIEND?

3 A BOTH, AT BOTH OF THEM, THEY WERE TOGETHER.

4 Q DID YOU DO ANYTHING ELSE DURING THAT MINUTE OR  
5 30 SECONDS BESIDES LOOK AT THEM?

6 A NO.

7 Q IN WHAT DIRECTION WAS THIS MAN WITH THE SILVER  
8 HAIR FACING AT THAT TIME?

9 A HE WAS FACING EAST, I BELIEVE. YEAH, FACING  
10 EAST.

11 Q THERE ARE TWO PUMPS ON THE SOUTH END OF THE MIDDLE  
12 AISLE, RIGHT?

13 A EXCUSE ME?

14 Q AT THE SOUTH END OF THIS MIDDLE ISLAND, THERE  
15 ARE TWO GASOLINE PUMPS, RIGHT?

16 A I BELIEVE SO. I DON'T KNOW.

17 Q TAKE A LOOK AT THIS PICTURE THAT WE HAVE MARKED  
18 AS 233; DOES THAT APPEAR TO BE ACCURATE?

19 A YEAH, YEAH, THERE IS TWO PUMPS IN THIS.

20 Q IF THIS DIAGRAM IS A ROUGH DEPICTION OF THE STATION,  
21 WOULD YOU SAY THAT THESE TWO RECTANGULAR, TWO SMALL RECTANGLES  
22 HERE REPRESENT THE TWO PUMPS AT THE SOUTH END OF THE MIDDLE  
23 ISLAND?

24 A YES, THEY DO.

25 Q WHICH OF THOSE TWO PUMPS WERE YOU PUMPING GAS  
26 FROM?

27 A THE UNLEADED ONE. I DON'T KNOW --

28 Q I DON'T KNOW WHICH ONE IS UNLEADED EITHER.

3-5

1 DO YOU REMEMBER WHETHER IT WAS THE ONE FARTHEST  
2 NORTH OR THE ONE FARTHEST TO THE SOUTH?

3 A I DON'T REMEMBER.

4 Q IN THIS PHOTOGRAPH THAT IS 233 FOR IDENTIFICATION  
5 DO YOU SEE THE SODA MACHINE IN THERE?

6 A YES.

7 Q IS THAT KIND OF THE RECTANGULAR OBJECT IN THE  
8 CENTER OF THE PICTURE?

9 A YES, I BELIEVE SO.

10 Q IS IT ONE OF THESE KIND OF MACHINES THAT IS MORE  
11 LIKE A COOLER WHERE YOU JUST REACH DOWN AND GET THE DRINK  
12 AND THEN YOU GO PAY FOR IT?

13 A RIGHT.

14 Q IT IS NOT A MACHINE WHERE YOU PUT THE MONEY IN --

15 A NO.

16 Q -- AND PRESS A BUTTON?

17 HOW HIGH WAS THAT SODA MACHINE?

18 A ABOUT FOUR FEET, I GUESS.

19 Q AND AFTER THAT 30 SECONDS TO A MINUTE OF SEEING  
20 THE PERSON THERE, WHAT DID YOU DO?

21 A I WENT AND PAID THE CASHIER.

22 Q WHEN YOU WERE PAYING THE CASHIER, COULD YOU SEE  
23 THE PERSON WITH THE SILVER HAIR?

24 A NO, I COULDN'T.

25 Q AND HOW LONG DID YOU SPEND PAYING THE CASHIER?

26 A WE PAID CASH. IT WASN'T VERY LONG.

27 Q AND WHEN YOU TURNED AROUND TO WALK BACK FROM  
28 THE CASHIER TO YOUR CAR, WHERE WAS THE GUY WITH THE SILVER

1 HAIR?

2 A I DON'T KNOW.

3 Q YOU DIDN'T SEE HIM AT THAT TIME?

4 A I DIDN'T SEE HIM AT THAT POINT.

5 Q THEN YOU WENT BACK OVER TO YOUR CAR, CARMEN'S  
6 CAR?

7 A RIGHT.

8 Q WHAT DID YOU DO WHEN YOU GOT THERE?

9 A I ASKED CARMEN TO LIFT THE HOOD ON HER CAR.

10 Q AND DID SHE DO THAT?

11 A YES, SHE DID.

12 Q WHAT DID YOU DO THEN?

13 A I CHECKED THE OIL IN IT AND THEN I -- I TRIED  
14 TO LOOK FOR THE TRANSMISSION OIL DIP STICK.

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1 Q HOW WAS YOUR OIL?

2 A FINE.

3 Q SO YOU DIDN'T HAVE TO ADD ANY?

4 A NO.

5 Q AND HOW LONG DID YOU SPEND LOOKING FOR THE  
6 TRANSMISSION DIP STICK?

7 A QUITE A WHILE. I COULDN'T FIND IT.

8 Q QUITE A WHILE? I GUESS THAT IS A PRETTY RELATIVE  
9 TERM.

10 CAN YOU GIVE US SOME INDICATION OF HOW MANY SECONDS,  
11 MINUTES OR HOURS IT WAS?

12 A THREE OR FOUR MINUTES, I GUESS.

13 Q AND AFTER YOU DIDN'T FIND IT, WHAT DID YOU DO?

14 A CLOSED THE HOOD.

15 Q DURING THE TIME THAT YOU WERE CHECKING THE OIL  
16 AND LOOKING FOR THE TRANSMISSION DIP STICK, DID YOU HAVE YOUR  
17 HEAD PRETTY MUCH BURIED IN THE ENGINE?

18 A YEAH.

19 Q SO YOU WEREN'T LOOKING --

20 A WELL, NOT BURIED. I MEAN, THE CAR IS ONLY THIS  
21 HIGH (INDICATING).

22 Q BUT YOU WEREN'T LOOKING AROUND AT OTHER PEOPLE  
23 AT THAT TIME?

24 A NO.

25 Q ALL RIGHT. AND AFTER FAILING TO FIND THE  
26 TRANSMISSION DIP STICK, WHAT DID YOU DO?

27 A CLOSED THE HOOD. GOT BACK INTO THE CAR.

28 Q WHEN YOU GOT BACK INTO THE CAR, WHERE WAS THE --

-2

1 WELL, WHAT DID YOU DO WHEN YOU GOT BACK INTO THE CAR?

2 A I STARTED LOOKING FOR THE KEYS TO THE CAR.

3 Q BY THE WAY, WHEN YOU WENT TO PAY, DID YOU HAVE  
4 TO ASK CARMEN TO FIND YOUR WALLET OR DID YOU HAVE IT WITH YOU?

5 A I HAD IT WITH ME, I BELIEVE.

6 Q AND AFTER YOU GOT BACK INTO THE CAR, WHAT DID YOU  
7 DO?

8 A I LOOKED FOR THE KEYS. ACTUALLY, THEY WERE BURIED  
9 IN MY PANTS.

10 IT IS ONE OF THOSE LITTLE CARS. YOU HAVE TO DIG  
11 IN YOUR PANTS TO GET THE KEYS.

12 Q THE CAR SITS PRETTY LOW TO THE GROUND?

13 A YES.

14 Q WHEN YOU WERE LOOKING FOR YOUR KEYS, WERE YOU  
15 LOOKING AROUND AT ANYBODY ELSE IN THE GAS STATION?

16 A NO.

17 Q AFTER YOU FOUND THE KEYS, WHAT DID YOU DO?

18 A I STARTED UP THE IGNITION AND TOOK OFF.

19 Q WHICH WAY DID YOU GO OUT OF THE GAS STATION?

20 A WE HEADED NORTH, TOOK A LEFT AT THE END OF THE  
21 GAS PUMPS AND TOOK OFF ON CAMPBELL.

22 Q AND WHEN WAS THE NEXT TIME THAT YOU SAW THIS PERSON  
23 WITH THE SILVER HAIR?

24 A WHEN HE WAS COMING AROUND.

25 Q NOW, AT WHAT POINT WAS THAT? WHAT WERE YOU DOING  
26 AT THAT POINT?

27 A I BELIEVE I WAS GETTING THE KEYS TO THE CAR.

28 Q WERE YOU LOOKING IN YOUR POCKET FOR THE KEYS TO



1 THE CAR?

2 A YES. I FOUND THEM. SO THAT IS WHEN I SAW HIM.  
3 HE WAS COMING AROUND THIS WAY.

4 Q WHERE WAS THE CAR WHEN YOU FIRST SAW IT? I MEAN,  
5 WAS IT COMING AROUND?

6 A IT WAS DRIVING AROUND THE GAS PUMP, THE END OF  
7 THE PUMP.

8 Q AT THE NORTH END?

9 A YES.

10 Q AND WHEN IT GOT TO THE -- AT SOME POINT, IT STOPPED,  
11 RIGHT?

12 A YES. RIGHT.

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1 Q AND DID IT STOP WHERE YOU HAVE PUT THAT ORANGE --  
2 IT LOOKS LIKE A DIAMOND, ALMOST?

3 A YES. IT STOPPED DIRECTLY ACROSS FROM US. YOU  
4 COULD SEE HE WAS DIRECTLY ACROSS FROM ME.

5 Q WHEN IT STOPPED DIRECTLY ACROSS FROM YOU --

6 A RIGHT.

7 Q YOU WERE STILL STOPPED AT THE PUMP?

8 A YES I WAS.

9 Q AND WERE THERE -- THERE WERE SOME GASOLINE PUMPS  
10 IN BETWEEN WHERE YOUR CAR AND HIS CAR WERE?

11 A WHAT DO YOU MEAN?

12 Q WELL --

13 A IN BETWEEN?

14 Q YOUR CAR WAS HERE WHERE THIS GREEN RECTANGLE IS.  
15 HIS CAR IS OVER HERE WHERE THE ORANGE DIAMOND IS. AREN'T THERE  
16 TWO GASOLINE PUMPS IN BETWEEN YOUR CAR AND HIS CAR?

17 A NO. SEE, --

18 Q WASN'T HE ON ONE SIDE OF THE ISLAND AND YOU WERE  
19 ON THE OTHER?

20 A RIGHT.

21 Q SO HOW COME THERE WEREN'T PUMPS IN THE MIDDLE  
22 BETWEEN YOU AND HIM?

23 A BECAUSE HE STOPPED DIRECTLY SO HE CAN SEE US.  
24 HE STOPPED BETWEEN -- I WOULD SAY BETWEEN THOSE  
25 PUMPS SO HE COULD TAKE A LOOK AT US. HE WAS LOOKING AT US.

26 Q HE WAS LOOKING AT YOU? DID IT APPEAR TO YOU THAT  
27 HE WAS TRYING TO HIDE OR BE INCONSPICUOUS?

28 A YEAH, KIND OF.

1 Q WHY IF HE STOPPED TO LOOK AT YOU, WHY DO YOU THINK  
2 HE WAS TRYING TO HIDE OR BE INCONSPICUOUS?

3 A BECAUSE HE HAD THIS LOOK TO HIM LIKE HE WAS --  
4 HE WAS --

5 THE COURT: RUNNING AWAY FROM SOMETHING?

6 THE WITNESS: NO. MORE LIKE HE HAD SOMETHING AGAINST  
7 US OR SOMETHING.

8 THE COURT: DID THAT MAKE YOU THINK THAT HE WAS HIDING  
9 FROM SOMETHING?

10 THE WITNESS: YEAH, SOMETHING LIKE THAT.

11 Q BY MR. WAPNER: HAD YOU EVER SEEN THIS PERSON  
12 BEFORE THAT DAY?

13 A NO.

14 Q HAVE YOU EVER SEEN THIS PERSON SINCE THAT DAY?

15 A NO.

16 Q AND DID HE MAKE ANY EFFORT TO HIDE HIS FACE FROM  
17 YOU AT THAT TIME?

18 A NOT AT THAT POINT, NO.

19 THE COURT: AT ANY POINT?

20 THE WITNESS: NO.

21 Q BY MR. WAPNER: AND AFTER HE LEFT, HE STOPPED AND  
22 YOU HAD ALREADY FOUND YOUR KEYS, RIGHT?

23 A YES.

24 Q AND AFTER HE STOPPED, DID YOU PULL OUT OF THE  
25 GAS STATION?

26 A YOU MEAN WHEN HE STOPPED? NO. I DID NOT.

27 Q AFTER HE TOOK OFF, WHAT DID YOU DO?

28 A THEN I TURNED AND STARTED TALKING TO CARMEN. WE

1 STARTED TALKING ABOUT HIM.

2 Q HOW LONG DID YOU STAY THERE AND TALK?

3 A ABOUT A MINUTE.

4 Q DURING THAT ENTIRE -- AFTER HE TOOK OFF -- STRIKE  
5 THAT.

6 AFTER HE STARTED TO DRIVE OUT OF THE STATION, IS  
7 THAT WHEN YOU TURNED AND TALKED TO CARMEN?

8 A YES.

9 Q FOR ABOUT A MINUTE?

10 A YES.

11 Q CARMEN WAS SITTING TO YOUR RIGHT?

12 A YES.

13 Q AND YOU TURNED TO TALK TO HER FOR THAT ENTIRE  
14 MINUTE?

15 A YEAH.

16 Q ALL RIGHT. AND IF YOU HAD TURNED FOR THAT MINUTE  
17 AND YOU WERE TALKING TO HER, HOW WAS IT THAT YOU NOTICED THAT  
18 THE CAR WENT NORTH ON SIXTH STREET -- NORTH ON CAMPBELL,  
19 SORRY.

20 A BECAUSE WE WATCHED HIM WENT OUT AND I WATCHED HIM  
21 AS HE TOOK OFF. AND THEN I TURNED TO TALK TO HER.

22 MR. WAPNER: MAY I HAVE A MOMENT, YOUR HONOR?

23 THE COURT: ALL RIGHT.

24 (PAUSE.)

25

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7-1

1 Q BY MR. WAPNER: DO YOU REMEMBER BEING ASKED ON  
2 NOVEMBER THE 22ND IF YOU KNEW WHICH WAY HE TRAVELED AFTER  
3 HE LEFT?

4 DO YOU REMEMBER BEING ASKED THESE QUESTIONS AT  
5 PAGE 41, LINE 22 TO LINE 26:

6 "Q DO YOU KNOW WHICH WAY HE WENT, HE  
7 TRAVELED AFTER HE LEFT?

8 "A NO. AFTER WE SAW HIM HERE, THEN WE  
9 TOOK -- THAT IS WHEN WE STARTED DISCUSSING IT OR  
10 SOMETHING LIKE THAT, WHY, WHY DID HE EVEN STOP  
11 LIKE THAT?"

12 DO YOU REMEMBER BEING ASKED THOSE QUESTIONS AND  
13 GIVING THAT ANSWER?

14 A YEAH, AT THAT TIME I SAID NO.

15 Q AND YOU THINK YOUR MEMORY IS BETTER NOW THAN  
16 IT WAS THEN?

17 A YES.

18 Q AND HOW LONG WAS HE STOPPED ACROSS FROM YOU AT  
19 THE GAS STATION?

20 A WHAT DO YOU MEAN STOPPED, WHERE?

21 Q AFTER HE MADE HIS U-TURN AND STOPPED ACROSS FROM  
22 WHERE YOU WERE?

23 A HE STOPPED THERE FOR ABOUT FIVE SECONDS.

24 Q HOW LONG DO YOU THINK YOU WERE THERE IN THE GAS  
25 STATION ALTOGETHER?

26 A ABOUT 20 MINUTES.

27 Q OTHER THAN PUMPING THE GAS, CHECKING THE OIL  
28 AND TRANSMISSION AND TALKING TO CARMEN FOR ABOUT A MINUTE,

1 DID YOU DO ANYTHING ELSE AT THE GAS STATION?

2 A DROVE OUT.

3 Q AND YOU HAD TO FILL THE TANK, RIGHT?

4 A YES.

5 Q AND THEN AT SOME POINT AFTER THAT, YOU WERE SHOWN  
6 SOME -- YOU CAME TO THE TUCSON POLICE STATION; IS THAT RIGHT?

7 A YES.

8 Q HOW WAS IT THAT YOU HAPPENED TO COME TO THE TUCSON  
9 POLICE STATION?

10 A CARMEN TOLD ME.

11 Q CARMEN ASKED YOU TO COME?

12 A YES, SHE ASKED ME TO COME.

13 Q WHEN YOU CAME TO THE STATION, WHAT TIME OF THE  
14 DAY OR NIGHT WAS IT?

15 A IT WAS ABOUT NOON.

16 Q WHEN YOU FIRST GOT THERE, WAS CARMEN INTERVIEWED  
17 BEFORE YOU WERE?

18 A YES, SHE WAS.

19 Q AND DID YOU JUST BASICALLY WAIT IN A WAITING  
20 AREA FOR A FEW HOURS?

21 A YES.

22 Q WAS ANYBODY WITH YOU AT THAT TIME?

23 A NO.

24 Q SO YOU JUST SAT ALONE FOR A COUPLE OF HOURS UNTIL  
25 CARMEN FINISHED, RIGHT?

26 A RIGHT.

27 Q WHEN SHE FINISHED, WERE YOU INTERVIEWED?

28 A YES.

1 Q WHEN YOU FIRST CAME TO THE POLICE STATION, YOU  
2 HAD COME FROM DOING SOME KIND OF PAINTING OR SOMETHING AND  
3 YOU WERE IN JEANS AND A T-SHIRT?

4 A RIGHT.

5 Q AFTER YOU WERE INTERVIEWED, DID YOU GO HOME FOR  
6 DINNER OR GO SOMEWHERE AND GET SOMETHING TO EAT?

7 A YES.

8 Q DID YOU ALSO CHANGE YOUR CLOTHES AND TAKE A  
9 SHOWER?

10 A NO.

11 Q YOU DIDN'T COME BACK THAT EVENING TO THE POLICE  
12 STATION --

13 A YES, I DID.  
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7-4

1 Q -- WEARING A COAT AND TIE?

2 A RIGHT, RIGHT.

3 Q AND WHEN YOU GOT BACK, DID YOU AGAIN HAVE TO  
4 WAIT IN THAT SAME WAITING AREA WHILE CARMEN WAS INTERVIEWED?

5 A NO.

6 ACTUALLY, I HAD TO WAIT OUTSIDE THE POLICE STATION  
7 BECAUSE THEY WOULDN'T LET ME IN.

8 Q AND HOW LONG DID YOU STAND OUTSIDE?

9 A ABOUT 45 MINUTES.

10 Q AND THEN DID YOU COME AFTER THAT 45 MINUTES,  
11 DID YOU COME UP AND SIT IN THE SAME WAITING AREA THAT YOU  
12 WERE IN BEFORE?

13 A NO.

14 Q SOMEWHERE ELSE?

15 A NO. THAT IS WHEN THE GUYS CAME OUT FOR ME TO  
16 GO IN FOR THE POLY -- CAME OUT FOR ME.

17 MR. WAPNER: MAY THAT LAST ANSWER BE STRICKEN, YOUR  
18 HONOR, WITHOUT BEING READ BACK OR WE CAN DO IT AT THE BENCH  
19 IF YOU WANT.

20 THE COURT: YOU CONSENT TO IT?

21 MR. BARENS: YES, YOUR HONOR.

22 THE COURT: ALL RIGHT, THAT PORTION WILL BE STRICKEN.

23 LISTEN TO THE QUESTIONS PLEASE, AND ANSWER THEM.

24 THE WITNESS: I DID ANSWER, SIR.

25 Q BY MR. WAPNER: AFTER YOU WAITED OUTSIDE, YOU  
26 CAME BACK AND YOU WERE INTERVIEWED FOR ABOUT ANOTHER HOUR?

27 A YEAH, ABOUT.

28 Q DID YOU EVER TELL CARMEN WHAT KIND OF A CAR IT



1 WAS THAT YOU THOUGHT YOU SAW THAT NIGHT?

2 A YEAH, LATER ON.

3 Q LATER ON, WHEN?

4 A WE WERE DRIVING AROUND, WE SAW THIS CAR.

5 Q WAS THAT BEFORE SHE ACTUALLY WENT -- STRIKE THAT.  
6 WAS THAT AFTER YOU SAW THIS PERSON AT THE STATION  
7 AND BEFORE SHE CAME TO THE POLICE FOR THE FIRST TIME?

8 A SAY THAT ONE MORE TIME.

9 Q OKAY. WHEN YOU SAY YOU SAW THIS SIMILAR CAR  
10 LATER ON, WAS THAT BETWEEN THE TIME THAT YOU HAD SEEN THIS  
11 PERSON AT THE STATION AND THE TIME THAT SHE WENT TO THE POLICE  
12 FOR THE FIRST TIME?

13 A NO.

14 Q IT WAS AFTER SHE WENT TO THE POLICE?

15 A AFTER.

16 Q WHAT KIND OF A CAR WAS IT THAT YOU SAW?

17 A I BELIEVE IT WAS A HORNET.

18 Q WHAT WAS THE -- THE HORNET WITH THE MODEL NUMBER --  
19 DO YOU KNOW WHO MADE THE HORNET, THE CAR  
20 MANUFACTURER?

21 A NO.

22 Q DO YOU KNOW MUCH ABOUT CARS?

23 A VERY LITTLE.

24 Q DO YOU KNOW ANYTHING ABOUT HUDSONS?

25 I KNOW THAT WAS BEFORE YOUR TIME.

26 IS THAT NO?

27 A THAT IS A NO.

28 Q WHAT KIND OF HORNET WERE YOU REFERRING TO WHEN

1 YOU SAID THAT?

2 A IT WAS A SQUARE LOOKING CAR, KIND OF MID-SIZED.

3 Q MADE BY AMERICAN MOTORS, MAYBE?

4 A I GUESS. I DON'T KNOW.

5 Q AND THE CAR THAT YOU SAW WAS -- CAN YOU DESCRIBE  
6 THE CAR YOU SAW AT THE GAS STATION?

7 A NOT REALLY.

8 ALL -- IT WAS A SQUARE CAR AND MID-SIZED, THAT  
9 IS ALL I RECOLLECT.

10 Q DID YOU THINK IT WAS A CLASSIC?

11 A YEAH. IT WAS AN OLDER CAR.

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A-1  
1 Q WELL MAINTAINED?

2 A WELL MAINTAINED CAR.

3 Q DID IT LOOK LIKE THE PERSON WHO WAS DRIVING IT  
4 OBVIOUSLY HAD AN INTEREST IN CARS?

5 A DEFINITELY.

6 Q WAS IT THE KIND OF CAR THAT ONE MIGHT TAKE TO A  
7 CAR SHOW AND SHOW OFF AT A CAR SHOW OR SOMETHING LIKE THAT?

8 A I GUESS YOU COULD.

9 Q YOU TOLD US THAT YOU CAN'T RECALL NOW HOW TALL  
10 YOU THINK THIS PERSON WAS?

11 A NO. I SAID THAT HE WAS ABOUT -- I SAID  
12 ORIGINALLY THAT -- I THINK I SAID THAT HE WAS ABOUT FIVE-TEN.  
13 THAT IS WHAT I SAID.

14 Q ALL RIGHT. YOU SAID IN NOVEMBER OF 1986, THAT  
15 HE WAS FIVE-TEN?

16 A YES.

17 Q ALL RIGHT. AND HOW MUCH DID YOU ESTIMATE HIS  
18 WEIGHT WAS AT THAT TIME?

19 A I BELIEVE I SAID 155 TO 165.

20 Q IF IT SAYS 165 TO 170, WOULD THAT BE ABOUT RIGHT?

21 A YEAH. I GUESS.

22 Q WHEN YOU WERE SHOWN THE PHOTOGRAPHIC LINEUP AT  
23 THE POLICE STATION, THAT HAS BEEN MARKED AS 235 FOR  
24 IDENTIFICATION, DO YOU REMEMBER WHAT YOU SAID AT THAT TIME?

25 A NO. I DON'T. I DON'T REMEMBER.

26 Q DO YOU REMEMBER SAYING THAT --

27 MR. BARENS: YOUR HONOR, COULD HE READ IT AND SEE IF  
28 IT REFRESHES HIS RECOLLECTION?

A-2  
1 THE COURT: ASK HIM WHETHER OR NOT HE MADE THAT  
2 STATEMENT AND THE QUESTION WAS ASKED OF HIM AND THEN THE ANSWER  
3 THAT HE GAVE.

4 MR. WAPNER: THANK YOU.

5 Q DO YOU REMEMBER FIRST OF ALL, BEING READ AN  
6 ADMONITION WHEN YOU WERE SHOWN THE PHOTOGRAPHS ABOUT HOW IT  
7 WAS THAT YOU WERE SUPPOSED TO VIEW THEM, SOME KIND OF A  
8 WARNING? DO YOU REMEMBER BEING READ THAT?

9 A YEAH.

10 Q AND THAT THAT WAS A WARNING ABOUT SHOWING YOU THE  
11 PHOTOGRAPHS AND THE FACT THAT THEY WERE SHOWN TO YOU SHOULD  
12 NOT INFLUENCE YOUR JUDGMENT, YOU SHOULD NEITHER CONCLUDE NOR  
13 GUESS THAT THE PHOTOGRAPHS CONTAIN A PICTURE OF THE PERSON  
14 THAT YOU SAW. YOU DO NOT HAVE TO IDENTIFY ANYONE. IT IS JUST  
15 AS IMPORTANT TO FREE INNOCENT PERSONS FROM SUSPICION AS IT  
16 IS TO IDENTIFY THOSE WHO ARE GUILTY. PLEASE KEEP THIS IN MIND.  
17 HAIRSTYLES AND BEARDS AND MUSTACHES ARE EASILY CHANGED.  
18 PHOTOGRAPHS DO NOT ALWAYS DEPICT THE PROPER COMPLEXION OF THE  
19 SUBJECT. THEY MAY BE EITHER LIGHTER OR DARKER. PLEASE DO  
20 NOT DISCUSS THE CASE WITH OTHER WITNESSES OR INDICATE IN ANY  
21 WAY TO OTHER WITNESSES THAT YOU HAVE IDENTIFIED SOMEONE.  
22 DO YOU REMEMBER BEING READ THAT?

23 A YES.

24 Q AND AFTER BEING READ THAT, YOU WERE SHOWN THE  
25 PICTURES THAT WERE PART OF 235 FOR IDENTIFICATION?

26 A YES.

27 Q AND AFTER BEING SHOWN 235 FOR IDENTIFICATION, DO  
28 YOU REMEMBER BEING ASKED -- THERE ARE CERTAIN THINGS THAT ARE

1 NOT IN HERE AT THE END OF ONE TAPE THE BEGINNING OF ANOTHER.

2 FIRST, DO YOU REMEMBER SAYING, "I WOULD SAY THAT  
3 THIS GUY HERE --" AND THEN THERE IS SOMETHING UNINTELLIGIBLE,  
4 YOUR HONOR, AND THEN THE QUESTION IS, "WHEN YOU SAY THAT, WHAT  
5 DO YOU MEAN?"

6 "A I AM SAYING THAT THIS GUY IS PRETTY  
7 CLOSE TO WHAT WE SAW AT THE GAS STATION."

8 DO YOU REMEMBER SAYING THAT?

9 A YES.

10 Q AND LATER, BEING ASKED IF YOU WANTED TO -- JUST  
11 SHORTLY AFTER THAT, IF YOU WANTED TO LOOK AT THE PICTURES  
12 AGAIN?

13 A YEAH.

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1 Q ALL RIGHT. AND YOU SAID -- DID YOU SAY AT THAT  
2 TIME, "YEAH. I WOULD SAY THIS GUY IS THE CLOSEST ONE OF THEM  
3 ALL."

4 A YES.

5 Q DID YOU EVER SAY AT THAT TIME THAT THAT PERSON  
6 IN THE PHOTOGRAPH WAS IN FACT, THE PERSON YOU HAD SEEN AT THE  
7 GAS STATION?

8 A NO.

9 Q AND DID YOU SAY THAT AT ANY TIME BETWEEN THAT DATE  
10 AND THE DATE THAT YOU CAME TO SPEAK TO MR. BARENS AND  
11 MR. CHIER ON SUNDAY?

12 A NO.

13 Q WHEN YOU SPOKE TO MR. BARENS AND MR. CHIER, DID  
14 THEY SHOW YOU SIX PHOTOGRAPHS TOGETHER? DID THEY ASK YOU TO  
15 TRY TO PICK --

16 A THOSE.

17 Q OR ANY SIX?

18 A WELL, THEY SHOWED US THESE.

19 Q THAT WAS ON SUNDAY?

20 A YEAH. I BELIEVE SO.

21 Q AND WHEN THEY SHOWED YOU THESE SIX PHOTOGRAPHS  
22 THAT ARE 235 FOR IDENTIFICATION, DID YOU STILL FEEL THE SAME  
23 WAY THAT YOU DID ON NOVEMBER THE 22ND WHEN YOU LOOKED AT THEM?

24 A YES, BASICALLY.

25 Q AFTER THAT, WHAT HAPPENED?

26 A HE SHOWED ME A LARGER PHOTO OF THIS ONE.

27 Q WHO SHOWED IT TO YOU?

28 A MR. BARENS.

1 Q WAS THAT A SINGLE PHOTOGRAPH?

2 A YES IT WAS.

3 Q IS THAT THE PICTURE OR A COPY OF THE EXHIBIT WE  
4 HAVE MARKED AS PEOPLE'S 6 FOR IDENTIFICATION?

5 A YES.

6 Q AND WHEN HE SHOWED YOU THAT PICTURE, WHAT DID HE  
7 SAY?

8 A HE SAID THAT THIS WAS A BLOWUP OF THAT ONE.

9 MR. BARENS: THAT ASSUMES A FACT NOT IN EVIDENCE, THAT  
10 ANYTHING WAS SAID.

11 THE COURT: WELL, HE JUST ASKED HIM WHAT WAS SAID.  
12 WAS THAT THE PICTURE?

13 THE WITNESS: THAT WAS THE BLOWUP OF THIS ONE.

14 Q BY MR. WAPNER: WHAT DID HE DO OR SAY WHEN YOU  
15 SAW THE BLOWUP THAT IS PEOPLE'S 6 FOR IDENTIFICATION?

16 A I SAID THAT THAT ONE THERE, WITH THE BIGGER ONE --  
17 THE COURT: INDICATING PEOPLE'S 6 FOR THE RECORD.

18 THE WITNESS: THAT IS THE ONE THAT GAVE ME MORE OF A  
19 FEELING THAT THAT WAS THE GUY.

20 Q BY MR. WAPNER: LOOKING AT PEOPLE'S 6?

21 A RIGHT.

22 Q IT IS THE SAME PICTURE, JUST BIGGER?

23 A YES.

24 MR. BARENS: YOUR HONOR, THAT IS MISLEADING BECAUSE THAT  
25 IS NOT THE SAME PICTURE THAT IS BIGGER. BECAUSE YOU CAN SEE  
26 MORE OF THE SUBJECT IN THAT PICTURE, FOR THE RECORD. SIR,  
27 IT MISSTATES THE OBVIOUS EVIDENCE, SIR.

28 MR. WAPNER: WELL, IF IT DOES, THE JURY WILL HAVE BOTH

1 PICTURES.

2 THE COURT: HE DIDN'T MISSTATE THE EVIDENCE. HE IS JUST  
3 ASKING THE QUESTIONS.

4 Q BY MR. WAPNER: AND DID MR. BARENS OR ANYBODY ELSE  
5 WHO IS PRESENT -- WELL, WHO WAS PRESENT THERE AT THE TIME THAT  
6 YOU WERE SHOWN THIS LARGER PHOTOGRAPH THAT IS PEOPLE'S 6?

7 A MR. CHIERS, MR. BARENS AND I BELIEVE MR. HAP.

8 THE COURT REPORTER: MR. WHO?

9 MR. BARENS: THAT IS HAP LEE, L-E-E.

10 Q BY MR. WAPNER: AND WHO ELSE?

11 A CARMEN AND ME.

12 Q WHEN YOU WERE SHOWN THE PICTURE, YOU AND CARMEN  
13 WERE TOGETHER?

14 A YES.

15 Q AT THE SAME TIME?

16 A YES.

17 Q AND HAD YOU AND CARMEN DISCUSSED THIS  
18 IDENTIFICATION BEFORE YOU GOT TO MR. BARENS' OFFICE? HAD YOU  
19 DISCUSSED THE CASE WITH CARMEN BETWEEN NOVEMBER THE 22ND AND  
20 THE TIME THAT YOU CAME TO MR. BARENS' OFFICE?

21 A YES.

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1 Q HAD YOU DISCUSSED THE IDENTIFICATION OF THE PERSON?

2 A VERY BRIEFLY, I BELIEVE.

3 Q AND DID YOU ASK HER AT ANY TIME WHETHER SHE HAD  
4 PICKED ANYBODY OUT OF THE PHOTOGRAPHS SHE HAD BEEN SHOWN  
5 IN NOVEMBER?

6 A NO.

7 I KIND OF TOOK IT SHE PICKED THE RIGHT ONE.

8 Q WHAT MADE YOU THINK SHE HAD PICKED THE RIGHT  
9 ONE?

10 A SINCE WE ARE HERE.

11 (LAUGHTER IN COURTROOM.)

12 Q WHEN WAS IT YOU DECIDED THAT YOU HAD PICKED THE  
13 RIGHT ONE?

14 A WHEN YOU KEPT QUESTIONING US, INSTEAD OF THROWING  
15 US OUT OF THE POLICE STATION.

16 Q SO THAT WAS THAT SAME DAY, NOVEMBER THE 22ND?

17 A YES.

18 Q ALL RIGHT. AND WHEN YOU SAY "THE RIGHT ONE,"  
19 WHAT DO YOU MEAN?

20 A OH, THE ONE YOU GUYS -- THIS ONE HERE (WITNESS  
21 INDICATING).

22 Q WELL, WHEN YOU SAY "THE RIGHT ONE," DOES THAT  
23 MEAN THE ONE YOU SAW AT THE GAS STATION?

24 A NO.

25 I MEAN THE PICTURE THAT YOU HAVE GOT HERE.

26 Q DID YOU THINK THAT YOU HAD IN FACT IDENTIFIED  
27 ON NOVEMBER THE 22ND, THE PERSON YOU HAD SEEN AT THE GAS  
28 STATION?

- 2

1 A YES, TO A CERTAIN POINT.

2 Q TO A CERTAIN POINT?

3 A RIGHT.

4 Q WHICH WAS TO SAY HE WAS THE CLOSEST OF ALL OF  
5 THOSE THAT YOU SAW?

6 A RIGHT.

7 Q DID ANY OF THOSE OTHER FIVE PICTURES LOOK TO  
8 YOU AT ALL LIKE THE PERSON THAT YOU SAW?

9 A YEAH, KIND OF.

10 THIS GUY HERE.

11 THE COURT: INDICATING NUMBER 2.

12 Q BY MR. WAPNER: THE ONE IN THE MIDDLE ON THE  
13 TOP?

14 A YEAH, MIDDLE TOP.

15 Q AND OTHER THAN THAT, DID ANY OF THE OTHER ONES  
16 LOOK AT ALL LIKE HIM?

17 A NO, NOT AT ALL.

18 Q HOW LONG DID YOU LOOK AT THOSE PHOTOGRAPHS  
19 INITIALLY BEFORE YOU PICKED OUT THE ONE ON THE BOTTOM RIGHT?

20 A I WOULD SAY, LIKE FIVE -- FIVE TO EIGHT SECONDS,  
21 I BELIEVE.

22 Q HOW LONG DID YOU TAKE TO ELIMINATE THE ONE WHO  
23 WAS IN THE TOP MIDDLE?

24 A NOT VERY LONG.

25 Q AND WHEN YOU WERE SHOWN THIS SINGLE PHOTOGRAPH  
26 IN THE PRESENCE OF MS. CANCHOLA AND MR. BARENS, DID THAT  
27 REENFORCE THE FACT THAT YOU THOUGHT YOU HAD PICKED THE RIGHT  
28 PERSON?

1 A YES.

2 Q AND WERE YOU READ ANY ADMONITION BY MR. BARENS,  
3 SUCH AS THE ONE YOU WERE READ ON NOVEMBER 22ND, ABOUT LOOKING  
4 AT GROUPS OF PHOTOGRAPHS?

5 MR. BARENS: OBJECTION AS TO RELEVANCY, AS MR. BARENS  
6 IS NOT A POLICE OFFICER.

7 THE COURT: OVERRULED.

8 Q BY MR. WAPNER: WERE YOU READ ANY ADMONITION  
9 BY MR. BARENS AT THE TIME THAT YOU WERE SHOWN THE INDIVIDUAL  
10 PHOTOGRAPH THAT IS PEOPLE'S 6 FOR IDENTIFICATION?

11 A NO.

12 Q YOU WEREN'T GIVEN ANY CAUTION ABOUT BEING CAREFUL  
13 TO PICK OUT THE RIGHT PERSON OR ANYTHING LIKE THAT?

14 A YEAH, WE WERE GIVEN A CAUTION BUT WE WEREN'T  
15 READ ANYTHING.

16 THE COURT: PARDON ME?

17 THE WITNESS: I SAID WE WERE GIVEN A CAUTION BUT WE  
18 WEREN'T READ ANYTHING.

19 THE COURT: WHO GAVE YOU A CAUTION?

20 THE WITNESS: MR. BARENS GAVE ME A CAUTION.

21 THE COURT: WHAT DID HE SAY TO YOU?

22 THE WITNESS: I CAN'T REMEMBER IT. IT IS JUST A  
23 CAUTION.

24 THE COURT: WHAT WAS THE CAUTION?

25 THE WITNESS: I DON'T REMEMBER IT RIGHT NOW, SIR.  
26 I DON'T RECALL I T RIGHT NOW.

27 Q BY MR. WAPNER: AND YOU WERE SHOWN THIS LARGER  
28 PICTURE, PEOPLE'S 6, AT THE SAME TIME AS MS. CANCHOLA?

1 A YES, I WAS.

2 Q AFTER YOU WERE SHOWN THE PICTURE THAT IS PEOPLE'S  
3 6, WHAT HAPPENED?

4 A THEN I BELIEVE HE SHOWED US THE OTHER PICTURES.

5 Q WHICH ONE WERE YOU SHOWN NEXT?

6 A I BELIEVE THE ONE WITH THE DOG.

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1 THE COURT: DID HE GIVE YOU A CAUTION AT THAT TIME?

2 THE WITNESS: I BELIEVE HE HAD GIVEN ME ONE BEFORE,  
3 SIR.

4 THE COURT: WHEN YOU LOOKED AT THAT ONE --

5 THE WITNESS: NO.

6 THE COURT: -- DID HE GIVE YOU A CAUTION ABOUT THAT,  
7 DID HE?

8 THE WITNESS: I DON'T THINK SO.

9 Q BY MR. WAPNER: WHEN HE SHOWED YOU THE FIRST  
10 PICTURE THAT IS PEOPLE'S 6, DID YOU SAY SOMETHING TO HIM  
11 AT THAT TIME?

12 A NO, I DIDN'T.

13 Q WHEN HE SHOWED YOU THE PICTURE THAT HAS BEEN  
14 MARKED AS 154 FOR IDENTIFICATION, DID YOU SAY ANYTHING AT  
15 THAT TIME?

16 A YES, THIS ONE HERE WAS THE ONE THAT DID IT FOR  
17 ME (WITNESS INDICATING).

18 Q WAS MISS CONCHOLA IN THE ROOM AT THAT TIME?

19 A YES, SHE WAS.

20 Q WHEN YOU WERE BOTH SHOWN THE PICTURE THAT IS  
21 PEOPLE'S 6, DID MISS CANCHOLA SAY ANYTHING?

22 A I CAN'T RECOLLECT RIGHT NOW.

23 Q WERE YOU SHOWN SOME OTHER PICTURES AFTER YOU  
24 WERE SHOWN THE PICTURE THAT IS 154?

25 A WE WERE SHOWN, I BELIEVE, THIS ONE HERE (WITNESS  
26 INDICATING).

27 Q IS THAT 153 FOR IDENTIFICATION?

28 A YES.

1 Q DID YOU SAY ANYTHING WHEN YOU WERE SHOWN THAT  
2 PICTURE?

3 A NO, I DIDN'T.

4 Q WHAT WAS SAID TO YOU AT THE TIME OR BEFORE YOU  
5 WERE SHOWN THE PHOTOGRAPH THAT IS PEOPLE'S 6?

6 A BY WHO?

7 Q BY ANYBODY IN THAT ROOM?

8 A WELL, WHAT WAS SAID TO ME WHEN HE SHOWED ME THAT  
9 ONE?

10 Q RIGHT.

11 I MEAN WHAT WAS SAID, LIKE, "CAN YOU IDENTIFY  
12 THIS PERSON, DO YOU RECOGNIZE THIS PERSON?" WHAT WAS SAID?

13 MR. BARENS: OR IF NOTHING WAS SAID.

14 THE COURT: YOU WILL HAVE A CHANCE AT HIM.

15 MR. BARENS: ASSUMING FACTS NOT IN EVIDENCE.

16 THE COURT: DON'T SUGGEST ANY ANSWER TO THE WITNESS,  
17 WILL YOU PLEASE?

18 MR. BARENS: ASSUMES FACTS NOT IN EVIDENCE.

19 THE COURT: OVERRULED.

20 Q BY MR. WAPNER: BEFORE YOU WENT INTO THE ROOM  
21 WITH MR. BARENS AND MR. CHIER AND THIS OTHER PERSON, WERE  
22 YOU TOLD WHY IT WAS YOU WERE BEING INTERVIEWED OR WAS IT  
23 PRETTY OBVIOUS?

24 A I THINK IT WAS OBVIOUS.

25 Q BEFORE YOU WERE SHOWN THE PHOTOGRAPH, DID SOME-  
26 BODY SAY ANYTHING LIKE WHY YOU WERE BEING SHOWN THESE  
27 PHOTOGRAPHS OR "TELL ME IF YOU RECOGNIZE HIM," SOMETHING  
28 LIKE THAT?

1           A       NO.

2                   THEY JUST PUT THEM UP, BECAUSE WE HAD -- WE HAD  
3 IN FACT ASKED YOU TO SEND US SOME BIGGER PICTURE.

4           THE COURT REPORTER: REPEAT THAT, PLEASE.

5           THE WITNESS: WE HAD ASKED MR. WAPNER TO SEND US SOME  
6 LARGER PHOTOS OF IT SO WE CAN MAYBE BE SURE.

7           Q       BY MR. WAPNER: SO YOU WANTED TO LOOK AT --

8           A       SO WE ASKED MR. CHIERS TO GET SOME BIGGER  
9 PRINTS OR OTHER PICTURES OF HIM SO WE CAN BE SURE, SO THEY  
10 HAD THEM FOR US.

11          Q       YOU WANTED TO SEE INDIVIDUAL PICTURES, RIGHT?

12          A       RIGHT.

13          Q       DID YOU MAKE THAT REQUEST INITIALLY IN NOVEMBER?

14          A       YES, WE DID.

15          Q       WERE YOU TOLD AT THAT TIME THAT WE WOULD NOT  
16 SUPPLY YOU WITH INDIVIDUAL PICTURES OF INDIVIDUAL PEOPLE?

17          A       I BELIEVE SO.

18          THE COURT: DO YOU THINK YOU WILL BE SOME TIME?

19          MR. WAPNER: I WILL BE.

20          THE COURT: WELL, I THINK WE HAD BETTER TAKE OUR  
21 ADJOURNMENT AT THIS TIME.

22                   LADIES AND GENTLEMEN OF THE JURY, WE WILL TAKE  
23 AN ADJOURNMENT AT THIS TIME UNTIL MONDAY MORNING AT 10:30.

24                   THE SAME ADMONITION I GAVE YOU ABOUT TALKING  
25 AMONG YOURSELVES AND THIRD PARTIES WOULD STILL APPLY.

26                   HAVE A PLEASANT WEEKEND AND GOOD NIGHT.

27                   YOU WILL COME BACK.

28                   THE WITNESS: THANK YOU.

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A JUROR: DAYLIGHT TIME CHANGES THE WEEKEND.

THE COURT: THAT IS RIGHT, CHANGE YOUR CLOCK.

(AT 4:33 P.M. AN ADJOURNMENT WAS TAKEN, TO  
RESUME MONDAY, APRIL 6, 1987 AT 10:30 A.M.)