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2
3 COURT OF APPEAL OF THE STATE OF CALIFORNIA

4
5 In and for the

6 THIRD APPELLATE DISTRICT

7 ---oOo---

8 The People of the State of California
9 Plaintiff

Appellate No. C045882

10 Vs.

Shawn Michael Rodriguez

Case No. 62-34689

11 Defendant/ Appellant

12 Volume 1 of 2

Pages 1 through 777

13 ---oOo---

14 CLERK'S TRANSCR

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15 ---oOo---

16 THE FILING OF AN APPEAL
17 IN THE SUPERIOR COURT
18 OF THE STATE OF CALIFORNIA IN AND FOR
19 THE COUNTY OF PLACER

20 ---oOo---

HONORABLE FRANCES KEARNEY

21 -oOo---

22 Court of Appeal, Third Appellate District
900 N Street, Room 400
Sacramento, CA 95814-4869

23 Central California Appellate Program
2407 J Street, Suite 301
24 Sacramento, CA 95816

25 Department of Justice
Office of the Attorney General
26 1300 I Street, Suite 1101
27 Sacramento, CA 94244-2560
28

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

--o0o--

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Respondent,)	
)	
vs.)	No. 62-34689
)	
SHAWN MICHAEL RODRIGUEZ,)	
)	
Appellant.)	

REPORTER'S TRANSCRIPT ON APPEAL

--o0o--

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF PLACER

HONORABLE FRANCES A. KEARNEY, JUDGE

--o0o--

A-P-P-E-A-R-A-N-C-E-S

For the Respondent:	WILLIAM LOCKYEAR Attorney General 1300 I Street, Suite 1101 Sacramento, California 94244
---------------------	---

For the Appellant:	CCAP Attorneys at Law 2407 J Street Sacramento, California 95816
--------------------	---

Reported by:	PAMELA R. KATROS, 9383 KIM GOLDSBERRY, 10376 Official Court Reporters County of Placer
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PAGES 1 through 280

 **COPY**

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

--o0o--

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Respondent,)	
)	
vs.)	No. 62-34689
)	
SHAWN MICHAEL RODRIGUEZ,)	
)	
Appellant.)	

REPORTER'S TRANSCRIPT ON APPEAL

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For the Appellant:	CCAP Attorneys at Law 2407 J Street Sacramento, California 95816
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Reported by:	PAMELA R. KATROS, 9383 KIM GOLDSBERRY, 10376 Official Court Reporters County of Placer
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VOLUME I of III
PAGES 1 through 280

 **COPY**

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER
DEPARTMENT THREE HON. FRANCES A. KEARNEY, JUDGE

--o0o--

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff,)
)
vs.) No. 62-34689
)
SHAWN MICHAEL RODRIGUEZ,)
)
Defendant.)
_____)

--o0o--

REPORTER'S TRANSCRIPT ON APPEAL
SEPTEMBER 9, 10, 17, 22, 23, 24, 29, 30, 2003
OCTOBER 6, 2003
DECEMBER 5, 2003

--o0o--

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff: WILLIAM MARCHI
Deputy District Attorney,
County of Placer

For the Defendant: JESSE SERAFIN
Assistant Public Defender
County of Placer

Reported by: PAMELA R. KATROS, 9383
KIM GOLDSBERRY, 10376
Official Court Reporters
County of Placer

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF PLACER

Exhibit List

Case Name: People vs. Rodriguez
Case Number: 62-034689

** = Marked off the record

PARTY	IDENT. VOL/PG	EVD. VOL/PG	W/DRN	DESCRIPTION
1	**	II/514		Diagram of Old Juvenile Hall
2	**	II/514		Color photo of Front entrance
3	**	II/514		Color photo of front of Hall
4	**	II/514		Color photo of overview of street
5	**	II/514		Color photo of overview rear of building
6	**	II/514		Color photo of overview point of entry exterior
7	**	II/514		Color photo of overview rear of building
8	**	II/514		Color photo of Point of entry exterior
9	**	II/514		Color photo of point of entry exterior
10	**	II/514		Color photo of glass and bricks under window
11	**	II/514		Color photo of point of entry interior
12	**	II/514		Color photo of overview point of entry from inside
13	**	II/514		Color photo of overview point of entry from inside
14	**	II/514		Color photo of Kitchen
15	**	II/514		Color photo of Kitchen
16	**	II/514		Color photo of door entering into booking area
17	**	II/514		Color photo of booking area
18	**	II/514		Color photo of booking area window of holding cell
19	**	II/514		Color photo of booking area door to holding cell
20	**	II/514		Color photo of booking area
21	**	II/514		Color photo of booking area
22	**	II/514		Color photo of booking area outside holding cell
23	**	II/514		Color photo of booking area outside holding cell
24	**	II/514		Color photo of door of holding cell
25	**	II/514		Color photo of holding cell
26	**	II/514		Color photo of ceiling inside holding cell
27	**	II/514		Color photo of inside holding cell
28	**	II/514		Color photo of floor inside holding cell
29	**	II/514		Color photo of towel in sprinkler in holding cell
30	**	II/514		Color photo of towel in sprinkler in holding cell
31	**	II/514		Color photo of cell window from interior
32	**	II/514		Color photo of towel in sprinkler in holding cell
33	**	II/514		Color photo of cell door - closed - interior

34	**	II/514		Color photo of cell door with tape
35	**	II/514		Color photo of cell door with tape
36	**	II/514		Color photo of booking area
37	**	II/514		Color photo of booking area
38	**	II/514		Color photo of vent above cell door
39	**	II/514		Color photo of vent above cell door
40	**	II/514		Color photo of group area from booking
41	**	II/514		Color photo of overview of note in front hall
42	**	II/514		Color photo of midrange of note in hall (front)
43	**	II/514		Close up of note in hall front
44	**	II/514		White plastic material stuck to tape
45	**	II/514		White plastic material stuck to tape
46	**	II/514		Overview of vehicle
47	**	II/514		Overview fo vehicle
48	**	II/514		Front seat of car
49	**	II/514		Driver side rear seat
50	**	II/514		Passenger side interior
51	**	II/514		Center console area / ATM card
52	**	II/514		Center console / traffic ticket
53	**	II/514		Overview of trunk / hose
54	**	II/514		Duct tape on hose in trunk
55	**	II/514		Hose from trunk / end w/tape
56	**	II/514		Bag of gloves from rear passenger floor
57	**	II/514		Glove on rear seat
58	**	II/514		Photo of victims right hand
59	**	II/514		Photo of victims right hand
60	**	II/514		Photo of victims left hand
61	**	II/514		Photo of victims left hand
62	**	II/514		Photo of victim
63	**	II/514		One ATM card
64	**	II/514		Traffice citation
65	**	II/514		Flushing mechanism
66	**	II/514		Note
67	**		III/647	Rodriguez interview tape
68	**	II/514		Four receipts
69	**	II/514		Vent
70	**	II/514		Plexi glass window
71	**	II/514		Hose
72	**	II/514		Handwritten note
73	**	II/514		Color photo of old Juvenile Hall
74	**	II/514		Color photo of old Juvenile Hall
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76	**	II/514		Color photo of old Juvenile Hall
77	**	II/514		Color photo of old Juvenile Hall
78	**	II/514		Color photo of old Juvenile Hall
79	**	II/514		Color photo of old Juvenile Hall
80	**	II/514		Color photo of old Juvenile Hall
81	**	II/514		Color photo of old Juvenile Hall
82	**	II/514		Color photo of old Juvenile Hall

1 AUBURN, CALIFORNIA

2 TUESDAY, SEPTEMBER 9, 2003, 10:15 A.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ and ANNA MARIE RUGG,
6 defendants, Case No. 62-34689, came on regularly this day before
7 the HONORABLE FRANCES A. KEARNEY, Judge of the Superior Court of
8 the State of California, County of Placer, Department Number
9 THREE thereof.

10 The People were represented by WILLIAM MARCHI, Deputy
11 District Attorney, in and for the County of Placer, State of
12 California.

13 The defendant, SHAWN MICHAEL RODRIGUEZ, was not in
14 personal attendance upon the Court but represented by JESSE
15 SERAFIN, Assistant Public Defender, in and for the County of
16 Placer, State of California.

17 The defendant, ANNA MARIE RUGG, was not in personal
18 attendance upon the Court but represented by DAVID COHEN,
19 Attorney at Law, acting as her counsel.

20 The following proceedings were had, to wit:

21 --o0o--

22 THE COURT: All right. On the record in the matter of the
23 People versus Anna Marie Rugg and People versus Shawn Rodriguez,
24 Case Number 62-034689. Present in court is Mr. Cohen, counsel
25 for Ms. Rugg. And Mr. Serafin is counsel for Mr. Rodriguez.
26 And also present for the People, I just spaced your name.

27 MR. SERAFIN: Marchi.

28 MR. MARCHI: Bill Marchi for the People.

1 THE COURT: I have a really hard time with names. For the
2 People. The defendants are not present and their appearance
3 have been waived by counsel. Matters is pending motions in
4 limine, and the Court has read and considered the motions filed
5 by the People, the motions filed by Mr. Cohen. It is my
6 understanding that Mr. Serafin will be providing the Court with
7 a copy of your motions today.

8 MR. SERAFIN: That's correct.

9 THE COURT: And I've been asked to review some videotaped
10 confessions which the Court will do today, and then I'll put the
11 matter over to tomorrow morning.

12 MR. MARCHI: Your Honor, in that regard if I could have
13 these marked for purposes of the motion in limine People's 1A
14 and 1B, I suppose, and 1C. What I have are two tapes, two
15 videotapes; one of Mr. Rodriguez, one of Ms. Rugg. I also have
16 a CD audiotape of a second interview in the jail of Ms. Rugg
17 where she gave some additional information.

18 THE COURT: A CD?

19 MR. MARCHI: Yeah. It is audio only.

20 THE COURT: All right.

21 MR. MARCHI: That's the way they presented it. So I have
22 also a taped transcript for each of these, and those I also will
23 offer as an exhibit. Ms. Rugg's is 1 and 2, and Mr. Rodriguez
24 is all one, so if I could leave that with the Court.

25 THE COURT: And it has been agreed that the first issue
26 that the Court will need to rule on is the defense motion for
27 severance and then once the Court has ruled on that motion, then
28 the rest of the motions will be dealt with. If there is a

1 severance granted, it is understood that the first trial to go
2 forward would be Mr. Rodriguez.

3 MR. MARCHI: That's agreed.

4 THE COURT: And Ms. Rugg would trail.

5 MR. COHEN: Trail or other options as may be available for
6 us at that time.

7 MR. MARCHI: At this time I have also additional matters
8 to file with the Court. I have a witness list. I also have the
9 jury instructions that will be requested. This one as if
10 they're being tried together. I also have jury instructions, I
11 can give copies to everyone. Included in that is a special
12 instruction which goes back to my motion in limine, if I could
13 file --

14 THE COURT: Yes.

15 MR. COHEN: I acknowledge receipt and appreciate the
16 prompt and early service of these from Mr. Marchi.

17 THE COURT: And the time estimate for the trial, assuming
18 for the sake of argument it was a severed trial, is about six or
19 seven court days; is that right?

20 MR. MARCHI: Again, I think it is going to depend upon
21 some of the rulings and 352 issues that will be before the
22 Court, but I think that is pretty close.

23 MR. SERAFIN: I hope -- I actually hope --

24 MR. COHEN: When you say estimate, post-selection of jury
25 or inclusive of selection?

26 THE COURT: Inclusive.

27 MR. COHEN: That was if it was severed as opposed to
28 together. Is the Court, in terms of scheduling tomorrow, the

1 Court indicated the there might be issues regarding
2 availability.

3 THE COURT: Apparently I don't have anything as yet, so I
4 can do this at 8:30 in the morning.

5 MR. COHEN: Great.

6 THE COURT: And we'll just have the defendants return.

7 MR. COHEN: Thank you, your Honor.

8 THE COURT: All right.

9 MR. MARCHI: Thank you.

10 THE COURT: Off the record.

11 (Proceedings concluded at 10:20 a.m. to
12 reconvene Wednesday, September 10, 2003, at
13 8:30 a.m.)

14 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 WEDNESDAY, SEPTEMBER 10, 2003, 9:20 A.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ and ANNA MARIE RUGG,
6 defendants, Case No. 62-34689, came on regularly this day before
7 the HONORABLE FRANCES A. KEARNEY, Judge of the Superior Court of
8 the State of California, County of Placer, Department Number
9 THREE thereof.

10 The People were represented by WILLIAM MARCHI, Deputy
11 District Attorney, in and for the County of Placer, State of
12 California.

13 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
14 attendance upon the Court and represented by JESSE SERAFIN,
15 Assistant Public Defender, in and for the County of Placer,
16 State of California.

17 The defendant, ANNA MARIE RUGG, was in personal attendance
18 upon the Court and represented by DAVID COHEN, Attorney at Law,
19 acting as her counsel.

20 The following proceedings were had, to wit:

21 --o0o--

22 THE COURT: We're on the record in the matter of the
23 People versus Shawn Rodriguez and People versus Anna Rugg, Case
24 Number 62-034689. Both defendants are present in court with
25 counsel. Will counsel please state your appearance for the
26 record?

27 MR. MARCHI: Bill Marchi for the People.

28 MR. COHEN: David Cohen on behalf of Anna Rugg, who is

1 present in custody.

2 MR. SERAFIN: Jesse Serafin on behalf of Mr. Rodriguez,
3 who is present in custody.

4 THE COURT: All right. The first issue to be addressed is
5 the motion to sever, and I have read and considered the points
6 and authorities. I have also taken the opportunity to watch not
7 all, but a large portion of the videotapes. And I have read the
8 transcripts of all of them. I have taken all of that into
9 consideration, and is there anything further before I rule?

10 MR. MARCHI: I just like to say if the Court is not in a
11 position to do dual juries, then I would have to say the Court
12 should probably sever the matters.

13 THE COURT: Well my tentative is to grant the request for
14 severance.

15 MR. MARCHI: Because the Court can't do dual juries?

16 THE COURT: For a variety of reasons. One, obviously,
17 physically that is difficult, but that's the least of our
18 problems. The other problems I think would be after reviewing
19 all of the evidence and what the issues are going to be in this
20 case, I think logistically it would be quite difficult to do
21 this with two juries. There is a lot of potential for error and
22 it, frankly, would not save a great deal of time, so the Court
23 is prepared to grant the request for severance unless there's
24 any other argument before I rule.

25 MR. MARCHI: I'll submit the matter.

26 THE COURT: Motion is granted. The first trial will be
27 the trial of the People versus Shawn Rodriguez. I believe
28 that's been stipulated that the Court would grant the request

1 that trial would go first and Ms. Rugg is going to trail.

2 MR. COHEN: If I could address the Court regarding that
3 issue? I spoke with Mr. Marchi about what option we might have
4 should the severance motion be granted, as it now has. I
5 understand that the People have a couple of witness issues with
6 respect to witnesses. I also understand that the People have
7 two witnesses coming by subpoena through the out-of-state
8 subpoena process who will be in the jurisdiction and available
9 for personal service for a trial in Ms. Rugg's matter. It would
10 be my request that we actually, instead of having her matter
11 trail, set a separate trial date as to Ms. Rugg in November,
12 which will be after the two law enforcement officer witnesses
13 are no longer unavailable and will be back, and additionally
14 those two witnesses can be subpoenaed while they're here for
15 that process.

16 Additionally, it would be my request we set a trial
17 confirming conference in mid-October on Ms. Rugg's behalf, and
18 then we can address the possibility of her matter settling at
19 that time, which gives the People a sufficient opportunity to
20 call off witnesses if we do have a resolution as to her case. I
21 think an October date would give us an opportunity to also have
22 some information as to the status of the Rodriguez trial.

23 THE COURT: Mr. Marchi?

24 MR. MARCHI: Yes. I think we discussed dates of the trial
25 on November the 4th with a TAC on the 3rd, and then for the
26 October date an ESC/TCC on October the 13th, I believe was the
27 date.

28 MR. COHEN: I believe that's a holiday so if we could go

1 one further week to the 20th.

2 MR. MARCHI: Columbus Day is a holiday still?

3 THE COURT: Yeah.

4 MR. MARCHI: The 14th will work.

5 MR. COHEN: We could do the 14th. I do have a matter in
6 another department, but I could be in 13 on the 14th as well.

7 MR. MARCHI: Yeah. I would like to give them time to call
8 off if it resolves.

9 THE COURT: October 14th, which is a Tuesday at 8:30 in
10 Department 13 for trial confirming conference. Trial, November
11 4th, 8:30, department to be assigned. Trial assignment,
12 November 3rd, Monday, 1 o'clock, Department 1. And again, the
13 time estimate, this is about six to seven days?

14 MR. MARCHI: I believe so.

15 MR. COHEN: Yeah. And Ms. Rugg will continue to waive
16 time for that purpose. And I'd ask -- I know I filed motions in
17 limine related to other issues -- that we table all issues
18 related to Ms. Rugg at that time.

19 THE COURT: Yes. I'll let the trial judge handle those.
20 All right.

21 MR. COHEN: Thank you, your Honor.

22 THE COURT: Now, Ms. Rugg can leave, I believe. I don't
23 know how the bailiffs want to handle that, but she's done.

24 MR. MARCHI: One other matter, I don't know that we need a
25 time waiver from the defendant.

26 THE COURT: Ms. Rugg, you agree to continue to waive time?

27 DEFENDANT RUGG: Yeah.

28 THE COURT: That is also in Case Number 62-035922, which

1 is an infraction case that is trailing. You agree?

2 DEFENDANT RUGG: Yeah.

3 THE COURT: Okay. See you then.

4 (Defendant Rugg exits the courtroom.)

5 THE COURT: Now, with respect to Mr. Rodriguez, he also
6 has a misdemeanor case, Case Number 62-031679, and I assume that
7 is just trailing with a time waiver?

8 MR. SERAFIN: Correct.

9 MR. MARCHI: That's my understanding.

10 THE COURT: So the case we're dealing with now is Case
11 Number 62-034689. That is currently set for trial to commence
12 next Tuesday. As, I believe I may have indicated to counsel,
13 there were two other matters that I had forgotten about that
14 were calendared for Tuesday morning, so I will have the jury get
15 called in for Tuesday afternoon so they should be here at 1
16 o'clock on Tuesday afternoon. Will that work?

17 MR. SERAFIN: It will. Is there any way we can have them,
18 the normal questioning and things that are done, all that done
19 in the morning maybe so that at 1 o'clock we can actually begin
20 with voir dire?

21 THE COURT: You know, that is not a bad idea. Are you
22 going to do a special questionnaire?

23 MR. MARCHI: No, I don't anticipate any.

24 THE COURT: What we could do, people show up sometime in
25 the late morning, fill out their questionnaires and leave and
26 come back at 1 o'clock.

27 MR. SERAFIN: Anything that -- I do have time issues so --

28 THE COURT: Okay. That is a good idea so we can talk some

1 more about that.

2 Now, in terms of motion in limine, I have the People's
3 motions and I have the defense motions, and then I have the
4 People's opposition, but for some reason I keep misplacing your
5 motion.

6 MR. MARCHI: Okay.

7 THE COURT: I know I read it. Here it is.

8 MR. MARCHI: Some of mine might go fairly quickly. Is
9 there any objection to the stipulation regarding photographs?

10 MR. SERAFIN: No.

11 MR. MARCHI: What I'm proposing, there is, I actually
12 have -- I'll show it to counsel here. What I have here is a
13 photograph book where the exhibits are all marked, actually kind
14 of premarked but not officially in order. And then I have what
15 is called thumbnails. I have an extra copy for the defense to
16 actually use on their own, and what this does, it projects the
17 actual images as we see it through the photograph book through
18 the computer so rather than have each and every witness, does
19 that look the same in this book as you see it on the screen, we
20 call it by exhibit number.

21 THE COURT: That's fine.

22 MR. MARCHI: Can we have that stipulation?

23 MR. SERAFIN: That's fine.

24 MR. MARCHI: I will make the computer and scan gun
25 available for the defense for use on cross or use with their
26 witnesses.

27 THE COURT: You're going to be projecting the picture
28 through the computer?

1 MR. MARCHI: Yeah. In that regard I would like to have
2 the screen in here. If we can -- we have used it in the corner
3 back there, but it is not good.

4 THE COURT: If we can put it behind my clerk and take the
5 picture down.

6 MR. MARCHI: Even if right here, that will be okay. I
7 have a media cart that won't be a problem with regards to
8 placement of the computer.

9 THE COURT: In terms of what the Court needs to provide?

10 MR. MARCHI: Just the screen if you can. Our screen,
11 apparently, was given to the court so we don't have any more
12 screens.

13 THE COURT: We'll have to check on that.

14 MR. MARCHI: I can leave the photograph book with the
15 clerk, and my only request is when she is finished, I marked
16 these in order. They're all numbered. If she can mark that in
17 that order.

18 THE COURT: Can I take a look at it first? You want each
19 photograph as individually marked?

20 MR. MARCHI: Yeah.

21 THE COURT: So you want this to be People's 1, People's 2,
22 People's 3, People's 4?

23 MR. MARCHI: Yeah, correct. I will have some physical
24 items. I don't know if the clerk wants those brought in ahead
25 of time or just what.

26 THE CLERK: Any time you want to bring them in is fine.

27 MR. MARCHI: Maybe tomorrow afternoon. I will have to get
28 with Auburn PD.

1 THE CLERK: How big, physically, are you talking about?

2 MR. MARCHI: Well, there's one window about this big and a
3 few other smaller items. I don't think it's too much.

4 THE COURT: Are we going to leave them here?

5 THE CLERK: Well, we have our storage locker; however, it
6 is a little inundated with the Romero, Romero exhibits.

7 MR. MARCHI: We can wait until next week if that's better.

8 THE CLERK: Anything that is not too big, we'll find a
9 place to put it.

10 THE COURT: That takes care of number one, the People's
11 motion in limine. Number two is use of prior conviction for
12 impeachment. That would probably require some discussion. I
13 think there was some that were --

14 MR. MARCHI: Yes. In addition that crosses over to what
15 the defense proposes in terms of allowing, somewhat, what I
16 would call bad acts or whatever, uncharged crimes against the
17 victim, to be used, and also I think he's seeking some acts of
18 Ms. Rugg, kind of interrelated, as to how much the Court is
19 going to allow in that area in terms of impeachment and in terms
20 of other possible theories of admissibility.

21 THE COURT: Do you want any further argument with respect
22 to that?

23 MR. MARCHI: Well, the only thing I would indicate is with
24 regard to the main victim, Mr. -- Mr. Hamman, he does have a
25 rather remote 1985 forcible sodomy, and I realize he does have
26 several other felonies in the '90s.

27 On the other hand, if I were sitting here trying to get in
28 that old of a case against a defendant, I have a feeling that

1 the Court may find that the more recent three felonies that are
2 of moral turpitude would be sufficient if you're using that for
3 impeachment, which would seem to me to be the only use. If the
4 Court, in fact, decides to let in the 1985 sex crime and he
5 doesn't have any other sex crime arrests that I'm aware of since
6 then, I would ask it be limited only to the name of the crime,
7 the date and place of conviction, and not any of the underlying
8 factors.

9 And in addition if the Court is going to allow that in, it
10 would seem to me that some of these other claimed bad acts would
11 be basically under 352 should not be admitted. I know counsel
12 wants to allow in any of his misconduct in prison or at least
13 that is the pocket of discovery he's requested, and also claimed
14 acts of violence that opens up a whole new can of worms.

15 The defendant has had several more or less violent-type
16 conduct himself while in the jail setting, normally violent acts
17 are only allowable where a defendant knows of the prior violent
18 acts and somehow it usually is involved as a self-defense issue.
19 And then when that is tendered against a victim, the People have
20 a right to rebut that with violent acts of the defendant
21 himself. I just don't see that in this case. We have the
22 victim being confined against his will. I don't think there's
23 any relevant issue about that.

24 THE COURT: Maybe we could bifurcate those issues a little
25 bit. The first issue is the felony convictions, and that is
26 more when Mr. Hamman testifies. Then the question is, can he be
27 impeached with those on the issue of his credibility? And that
28 would be a separate issue, I believe, from what the defense is

1 tendering with respect to the bad acts. That has more to do
2 with his reputation.

3 MR. MARCHI: It is separate, but in a way related because
4 there's only a certain degree of usefulness after a certain
5 point of how many incidents you're going to allow in of
6 different types of conduct.

7 THE COURT: One -- unless I'm misunderstanding, one has to
8 do with his credibility. The other has to do with what the
9 defense argument that Mr. Rodriguez was afraid to let him out of
10 the holding cell.

11 MR. MARCHI: Right.

12 THE COURT: So those are two different issues, so I would
13 like to approach them differently.

14 MR. MARCHI: Okay.

15 THE COURT: On the credibility issue, what is the defense
16 position?

17 MR. SERAFIN: And that's the crimes against the past --

18 THE COURT: The crimes of moral turpitude felonies and
19 more importantly, the sodomy.

20 MR. SERAFIN: I did not brief the issue because to me it
21 seems fairly straightforward and obvious that the moral
22 turpitude things that are more recent, obviously, they can -- I
23 mean, they're by law allowed in. They're not the -- I don't
24 think they really are going to carry a great weight on the case.
25 The significant one is the sodomy. There's been no crimes of
26 violence since that 1985 case. While I've traced his history,
27 he's only spent two years out of prison custody since 1985, so
28 that's not a real strong argument, that and more importantly

1 what you have in this case is that the victim is a 40 year old
2 running around with two 19 year olds, and there will be evidence
3 that he spends a lot of time with 15, 16, 17 year olds in his
4 day-to-day life. The fact that he's convicted of sodomy when he
5 was 25 on an eight-year-old boy, I think, is clearly significant
6 and is clearly a crime of moral turpitude and it has to come in.

7 Though I do agree with counsel, I requested that the
8 police report and got it, but I don't see any particular similar
9 striking similarities that would even allow me to make an
10 argument that I could talk about the actual facts of it. I
11 agree it comes in just in terms of the conviction; where it was.
12 That's really about it.

13 THE COURT: The date, the offense, and when it was, the
14 place of conviction, the date of conviction, and the crime of
15 which he was convicted.

16 MR. SERAFIN: The only other thing I would argue is
17 relevant would be the age difference because I do believe it is
18 relevant. Here the chief contention from Anna Rugg, who I
19 believe was 19 at the time, was that this 40 year old basically
20 tried to feel her up and that is why she locked him in the cell,
21 so I think the credibility of that statement, with that in mind,
22 that is certainly the fact that he has done something on a
23 victim of similar age difference is, I would think, is relevant,
24 but just as a one liner to the boy's age.

25 MR. MARCHI: In that regard, I find that to be highly
26 prejudicial, that the law does not provide for going behind the
27 actual conviction. I might add that this defendant was -- or
28 this victim, Mr. Hamman, was 22 years old in 1985 when he did

1 this act. He has had no sexual crimes, and that's my statement,
2 not, no violent crimes. No sexual crime since then. I have
3 cited some cases in my brief that says it is highly
4 inappropriate to go behind it. I guess my argument is if you're
5 really just trying to impeach his credibility for truthfulness
6 and veracity, you have three other felonies or four: 1976
7 felony conviction, a 12021 in '98, a 4501.1 in '02, so --

8 THE COURT: Well, it does strike me that this information
9 will be before the jury regardless because --

10 MR. MARCHI: It will be to a degree.

11 THE COURT: Because both of the defendants in their
12 statements talk about the fact that they know he's a 290
13 registrant, and they know he has a record of sexual behavior,
14 and that's so entwined with their statements that that is going
15 to get before the jury anyway.

16 MR. MARCHI: True.

17 THE COURT: I don't know how you'll be able to keep it
18 out. It had a lot to do with what they were reporting to be the
19 reasons for their behavior, so the Court will allow it. The
20 Court will allow the more recent felonies. The Court will also
21 allow the sodomy, but it will only be the crime, the date, and
22 the place of conviction.

23 MR. MARCHI: No mention of the age of the victim?

24 THE COURT: No.

25 MR. MARCHI: Thank you.

26 THE COURT: Now, that issue is as to Mr. Hammer. You also
27 raised the impeachment issue with respect to Mr. Hammer, who is
28 a witness; right?

1 MR. MARCHI: Correct. He was actually the attendant at
2 the Shell Station. He apparently has two convictions out of
3 Oregon in 1990 and '91. He apparently has had no arrest since
4 that I'm aware of. He would have been about 19 at the time of
5 those. They just seem like somewhat remote.

6 MR. SERAFIN: If I could circumvent the issue, I'm not
7 interested in impeaching Mr. Hammer so that is not an issue.

8 THE COURT: There will no discussion of his prior
9 felonies?

10 MR. SERAFIN: That's fine, unless he starts saying
11 something strange that is not currently before us, but as far as
12 his statement is consistent with, you know, what it is in the
13 police report, I have no interest in impeaching him.

14 THE COURT: Why don't we do this? The Court will accept
15 the defense stipulation that they do not intend to impeach him,
16 therefore, I will not rule on that. However, if something
17 occurs during the course of the trial that leads you to believe
18 that you want to revisit that, then you need to give counsel and
19 the Court heads up so we can have a conversation about it before
20 the question is posed.

21 MR. SERAFIN: Okay.

22 THE COURT: And then if there's anything that --
23 Ms. Hughes does not have any felony convictions and as far as
24 the defense knows; is that correct?

25 MR. MARCHI: I'm not actually planning on calling her as a
26 witness anymore. I will say that from the People's point of
27 view, I don't know of any impeachable offenses that I will use
28 against her should she testify. Again, in speaking to

1 Mr. Bolton, he did call me yesterday afternoon and informed me
2 that apparently he will want to be here and will want a hearing
3 outside the presence of the jury to see if she has any Fifth
4 Amendment rights to claim.

5 THE COURT: Who is this?

6 MR. MARCHI: Ms. Hughes. She has made a completely
7 different statement from her original one and there's some
8 material changes, and so I think there are some possible Miranda
9 rights issues on her behalf that Mr. Bolton may want to assert,
10 and I think I told counsel that yesterday.

11 MR. SERAFIN: I talked to Mr. Bolton.

12 MR. MARCHI: You did?

13 THE COURT: When does he want to do this?

14 MR. SERAFIN: What I told Mr. Bolton on the phone
15 yesterday is we wouldn't even be potentially getting to Erin
16 Hughes until at least the 23rd or 24th of September, the second
17 week of trial. So I told him we'll kind of keep him posted on
18 the schedule and when we have a better idea of the day she might
19 testify, I will notify him and he can appear and we can have a
20 402 hearing where he could advise her of any rights.

21 THE COURT: My preference is we do those either early in
22 the morning or late in the day so it doesn't cause the jury to
23 be hanging out in the hallway, so we're going to defer on
24 Hughes. And Richard Romines, there are no felony convictions?

25 MR. MARCHI: Not that I'm aware of. He has a couple
26 misdemeanor convictions. That's about it.

27 THE COURT: Is there anything we need to talk about in
28 terms of impeaching him?

1 MR. SERAFIN: No.

2 THE COURT: And is that it?

3 MR. MARCHI: I believe that's primarily it.

4 THE COURT: Regarding Mr. Rodriguez, should he choose to
5 testify, do we need to discuss that right now?

6 MR. SERAFIN: I don't think so.

7 THE COURT: He's not planning to testify?

8 MR. SERAFIN: Not at this point, no.

9 THE COURT: So I will defer on that. In the event there
10 is a change, we may need to then have a discussion about what he
11 can be impeached on.

12 MR. SERAFIN: Understood.

13 THE COURT: Did you talk about the jury instructions or do
14 you want to defer that?

15 MR. SERAFIN: I didn't even read the special instructions
16 so perhaps we can defer that.

17 MR. MARCHI: Well, I'll need to know before I give my
18 opening statement.

19 MR. SERAFIN: Okay. Maybe I'll let the district attorney
20 make his pitch.

21 MR. MARCHI: Basically, most all the instructions are
22 basically CALJIC instructions. I did request one special
23 instruction that basically involves --

24 THE COURT: Could you hold on one second? Go ahead.
25 Which number was that?

26 MR. MARCHI: I think the main -- I actually ask the Court
27 to look at the instructions. Some of them are CALJIC
28 instructions, which probably won't be a problem, but I intend to

1 utilize some of them in my opening statement. But the only one
2 that is a special instruction is at the very end, and it has to
3 do with the apparent possibility involving an attempted murder.
4 This revolves around the fact that there is a vent right at the
5 top of the cell door and the vent from the outside, it looks
6 like that vent up above us here. It looks like it goes right
7 into the cell. That is where the hose was placed for the carbon
8 monoxide poisoning.

9 As it turns out it actually doesn't vent into the cell,
10 but it has the apparent look that it does, and that relates to
11 the attempted murder issue, and that's why I propose that
12 instruction, and I believe that is the correct summary of the
13 law there.

14 MR. SERAFIN: At this point, Judge, I have no objection to
15 it; though, I would like to reserve the right to later object
16 once I take a look at these cases, but it seems on its face that
17 makes sense and is probably the state of the law.

18 THE COURT: Then what I'm going to interpret your
19 statement to be is that you are not objecting to the use of this
20 instruction in the opening statement?

21 MR. SERAFIN: Correct. Correct. Though I am reserving
22 the right to make an argument beforehand if I do some research
23 that leads me to some different conclusion than I have right
24 now.

25 THE COURT: Before the opening?

26 MR. SERAFIN: Correct, before the opening.

27 MR. MARCHI: That's fine.

28 MR. SERAFIN: Which I highly doubt.

1 THE COURT: The balance of the instructions are pretty
2 much just CALJIC instruction with no modifications other than
3 the usual.

4 MR. MARCHI: Right. I think they're all pretty much
5 standard from there.

6 THE COURT: And so the only one for which you would really
7 need us to have some orders on would be the special instruction
8 before your opening?

9 MR. MARCHI: Right.

10 THE COURT: So then the Court will assume, unless I hear
11 from counsel otherwise, that this is -- there is no objection
12 and that will be allowed.

13 The next one you have is use of incident records of
14 Rodriguez.

15 MR. MARCHI: Yes. I think that actually related to what
16 Defendant Rugg was going to do. The only way that would now
17 become an issue is if the defense is allowed to use any type of
18 violent behavior against Mr. Hamman.

19 THE COURT: Why don't we table that?

20 MR. MARCHI: And kind of the same thing implies with the
21 next one, impeach with prior acts. They sought the victim's CDC
22 records. Again, that goes to -- I'm not sure to what degree
23 counsel intends to try to get any of that in.

24 THE COURT: Let's go then to the defense in limines.

25 MR. MARCHI: Okay.

26 MR. SERAFIN: I will actually begin with the -- I think
27 the smaller matter, which is anything regarding Nicholas Hamman.
28 The issue we're talking about, I'm not intending -- I'm not

1 trying to bring in all his CDC violations as 1101(b) or anything
2 like that. I am -- I just want to reserve that issue for
3 impeachment depending upon how he might testify. If he were to
4 take the stand and it somehow came out through maybe other
5 people that were there, like Erin Hughes, that he was
6 threatening both the defendants, threats to injure them if they
7 opened the door, and he on the stand said: I would never make
8 those threats. I'm not a violent person. I didn't do it.
9 That's not my character, something like that, then I would want
10 to at least have the opportunity to bring a motion in front of
11 the Court, perhaps in chambers or obviously outside of the jury,
12 that that opens the door to certain very distinct acts that he's
13 made in the past where maybe he made similar threats or
14 identical threats in a similar or identical situation. I'm
15 simply bringing the issue now.

16 THE COURT: So you are stipulating that his prison record,
17 his CDC records, would not be used unless he raises the issue of
18 his -- he testifies basically that he's not a violent person and
19 he would never do the things he's accused of doing?

20 MR. SERAFIN: Correct. And even then I am in total
21 agreement with counsel that I would not want to retrace two
22 years of prison rules violations and the last six months of
23 Shawn Rodriguez's rules violation, that would not be in
24 anybody's interest. So it would be very specific incidents that
25 would only come about based on rather specific statements by the
26 victim on the stand.

27 THE COURT: All right.

28 MR. MARCHI: Now, the only thing I would ask that if some

1 does arise that counsel has to approach the sidebar and we
2 can --

3 MR. SERAFIN: Understood.

4 MR. MARCHI: Thank you.

5 THE COURT: That deals with his CDC records. What
6 specifically are you asking to bring out, if anything, regarding
7 other aspects of his violence?

8 MR. SERAFIN: I did not include it in the brief I did
9 yesterday which I struggled to get in on time. I was really
10 focused on, to me, what was the real primary issue, which is the
11 1101(b) stuff regarding Anna Rugg, and I knew that counsel had
12 an issue with the CDC records so I put that in there.

13 The other impeachment things regarding Nicholas Hamman
14 seem fairly obvious to me. I have extensive psych records from
15 CDC, as does the district attorney regarding the mental state of
16 Nicholas Hamman, and I have some. We have also interviewed him
17 with my investigator and obviously he's a key witness. His
18 perception of the events is key in this case. And any psych
19 records he has to that pertain to his perception, his memory,
20 the fact that he hears voices, he has delusions, those would
21 certainly, I think, be obviously relevant for impeachment
22 purposes.

23 MR. MARCHI: I guess my only reply would be all those
24 documents are hearsay. I suppose counsel would have a
25 legitimate line of inquiry about any diagnosed mental conditions
26 and does he have certain perception problems. Then should he
27 deny that, then a material witness would have to be produced.

28 MR. SERAFIN: Understood. I am -- I have under subpoena

1 several of the CDC doctors so I would simply ask him about those
2 incidents and those diagnoses and assume he would tell the
3 truth. If he does not for some reason, I would bring those
4 doctors on the stand.

5 MR. MARCHI: I guess --

6 THE COURT: Before we -- I understand that issue, but we
7 need to go back to the issues regarding alleged violence of the
8 victim. I'm not quite sure we're all on the same page here. I
9 understand that he has CDC records, and you are conceding those
10 will not be used unless he raises the issue. But you have
11 raised in your brief substantial other issues related to both
12 the defendant's perception of his violence and what you feel
13 that there are witnesses who are prepared to testify about his
14 history of violence. And I'm not quite sure, are you saying
15 you're not bringing any of that up, or what is your position?

16 MR. SERAFIN: There are a couple of witnesses who have
17 mentioned some prior acts of violence involving Nicholas Hamman;
18 however, I do not feel that the statements that I have so far, I
19 agree with counsel, I don't believe they rise to the level of
20 coming in under 1101(b).

21 Again, similar to the CDC records, in very specific
22 instances if he makes very specific denials on the stand, he may
23 open the door to where I think those become legally relevant. I
24 will not ask him any cross-examination questions before
25 consulting with the Court on that issue, but at this point I do
26 not have any prior acts of violence that I intend to bring in
27 our case in chief.

28 THE COURT: Is that clear enough? And if you choose to do

1 so, you're going to request a sidebar; is that correct?

2 MR. SERAFIN: Correct.

3 THE COURT: All right. Then I don't think we need to get
4 into all of the other issues that you raised in objection.

5 MR. MARCHI: Right. I am just a little unclear as to the
6 psych records, exactly what we're referring to. It seems to me
7 he should be entitled to inquire if he does have some kind of
8 perception problem and is it due to some kind of mental
9 condition, but actually delving in dates, times, and places he
10 may have been interviewed and/or diagnosed, that I would have a
11 problem with. I don't know how that would, you know, if the
12 victim admits, yes, I have certain conditions and these are what
13 they are. Sometimes I hear voices. I think he'll probably say
14 that. Whether he even knows what his diagnosis is, I don't
15 know. He probably does and to what extent that diagnosis may
16 have an effect on his perception may be relevant, but other than
17 that, as far as going into every doctor that may have
18 interviewed him or whatever, that I would oppose. I'm just not
19 sure to the extent counsel wants to utilize this information.

20 MR. SERAFIN: I do not want or initially intend to bring
21 in every doctor that has ever seen him. I think that would be a
22 waste of time. I believe I will be able to ask him on the stand
23 and be honest and tell me about it. However, the extent of
24 his -- if he admits having a psychological issue, the extent of
25 those psychological issues are very pertinent to his perception,
26 his memory.

27 THE COURT: I don't think there's any dispute that if he
28 is hearing voices, if he's subject to delusions, if he has

1 memory problems, if he has perception problems, if he has any of
2 those kind of issues, that is relevant if he's testifying and
3 describing an event. So there's no question about that.

4 Assuming he concedes all of that, you bet. Got delusions, can't
5 remember all of the things you believe are true about him, then
6 is it your position you're not going to then be bringing in
7 other people to testify about it?

8 MR. SERAFIN: Correct.

9 THE COURT: Now, if he denies those, then I think what the
10 People are wondering is so what are we going to have a three-day
11 trial about his psychiatric history or what are we talking
12 about?

13 MR. SERAFIN: No. I have two doctors and I just
14 subpoenaed them two days ago. I will get you the information.
15 I specifically picked out two out of the about seven that seem
16 to have spent the most time with him and written up the most
17 clear, concise evaluation. I picked those two for that exact
18 purpose. Subpoenaed them. They are on standby. And both of
19 their reports are about two pages long, so I would not
20 anticipate their testimony being any more than half an hour to
21 an hour at the max, combined.

22 THE COURT: So to the extent that the witness may deny any
23 of these difficulties and the defense feels that they have
24 evidence to the contrary, then it would be allowable to present
25 expert testimony as to the diagnosis and as to the symptoms
26 which are directly related to ability to perceive, to recall, to
27 testify truthfully.

28 MR. MARCHI: Yes. That would be fine, and the only

1 reservation I would have is if counsel does feel that issue has
2 developed, I'd ask for a 402 -- 403 hearing with those doctors
3 so we can limit the parameters.

4 THE COURT: That's fine. I think that is a reasonable
5 request.

6 MR. SERAFIN: Fine.

7 THE COURT: Does that finish the issues of the victim?

8 MR. SERAFIN: Yes.

9 THE COURT: Okay. So then the next issue of some
10 significance is the 1101(b) issues as to the codefendant.

11 MR. SERAFIN: Correct.

12 THE COURT: Is there anything else that you would like to
13 say as the moving party before I hear from him?

14 MR. SERAFIN: Yes, because I just received counsel's brief
15 this morning and read it while we were waiting, so I do want to
16 summarize a few thing and address a few of the points in his
17 brief.

18 In reviewing the tapes and the taped transcript,
19 Mr. Rodriguez's original statement is very lengthy and includes
20 a great deal of things and it goes back and forth. Among his
21 statement are these basic areas: One, the entire thing was Anna
22 Rugg's idea. She created the -- she created this idea to lock
23 him in, rob him, take his money, and she is the one who
24 originally locked him in the cell. Those are all statements he
25 makes.

26 The messages that he is -- I'm sorry, the supposed basis
27 for him being charged with theft, robbery, asking for the ATM
28 card, asking for the car keys, he tells the cops he's

1 relaying -- those are Anna's idea. He is simply relaying her
2 thoughts because he's the only one that can get on the table and
3 yell through the window so Nick can hear.

4 He further states at that point it is her idea to turn up
5 the heat and form this idea of actually killing Mr. Hamman, and
6 that it was never his idea and it was never his intent to go
7 along with that, and finally, she only left the note. The note
8 is significant in blaming him. And the defense theory is that
9 she only left that note in an attempt to exonerate herself, pin
10 it all on Shawn Rodriguez. Those are things that came out in
11 his statement.

12 All the prior conduct that I have discovered to counsel
13 and the Court that I attempt to get in are all prior instances
14 where Anna Rugg has done those same things. A jury has to
15 believe his statement on all those things. The only way they
16 are going to believe it, the only way it becomes believable is
17 if you see the six or seven prior incidents where she does the
18 same things. She, in her mind, has a reason to rob someone or
19 hurt them. She then, rather than do it herself, brings in
20 someone else, always a young male, always in the same situation
21 as Shawn Rodriguez where he's got some juvenile history, a lack
22 of credibility, and probably a willingness to go along with
23 certain crimes.

24 She then at that point is prone to, if things don't go
25 well, she will then blame other people that may not have been
26 involved at all or may have some involvement, but not nearly to
27 the same point as her involvement. Those are all the exact
28 things that Shawn Rodriguez is contending she is doing to him.

1 It is not a matter of he's afraid of her. That's not the issue.
2 And so I think when you look at the fairly low level of
3 similarity that we need for a common plan, and that even lower
4 level of similarity that the case law requires for intent, they
5 make it. They flat out, they make it.

6 You know, I, as a defense attorney, I've had a lot less
7 similarity come in against my clients than there are in these
8 particular cases.

9 Now, that's only the first step and just to summarize what
10 is in my brief, once you show a certain similarity, I think what
11 the prosecution's big complaint is that it doesn't matter if it
12 is not relevant to a material fact in this case. And it doesn't
13 go to have a tendency to prove a material fact in this case.
14 And my response to that is that those prior acts, they are not
15 only material, they have a tendency to prove the material issue
16 in this case, and that's intent.

17 We know what happened in those two days in a sense. We
18 know he was locked in there. We know he was there for two days.
19 The question is what was the intent of Anna Rugg and Shawn
20 Rodriguez in not letting him out? And that is the sole
21 question. And the prosecution might argue these things may show
22 Anna Rugg's intent and, quite frankly, I don't know why the
23 prosecution doesn't want to use them in prosecuting Anna Rugg,
24 but what do they have to do with? And my answer on this is
25 everything. Anna Rugg's intent is on the teetertotter with
26 Shawn Rodriguez. The higher Anna Rugg's intent in this case,
27 the lower Shawn Rodriguez is. There is no -- if both of them
28 want to let Nick out, he's out. If both of them didn't want to

1 lock him up, he never would have been locked up. Clearly the
2 entire defense in this case is that one of them wants to do
3 these acts and the other went along with it. And so whether you
4 believe it or not, the fact that Anna has done this same thing
5 in five or six different instances is certainly relevant, and
6 certainly goes -- has a tendency to prove this material fact and
7 that's the intent of Shawn Rodriguez.

8 Finally, assuming you meet those two, then the big issue
9 becomes 352. It is a big issue normally because this is the
10 prosecution trying to use 1101(b) against a defendant, and
11 there's a lot of prejudicial issues that come up with when you
12 have a defendant. In this case, the evidence is the Anna Rugg
13 jury is going to hear nothing about these prior instances so
14 there's no prejudice to a human being. It may affect -- it may
15 hurt the People's case, but that's not the issue and prejudice,
16 it may make our trial take a day longer, but that is not an
17 issue in prejudice. Nobody is being prejudiced here because it
18 is a defendant offering it against a codefendant to show his own
19 lack of intent.

20 The only thing I would finish, and I don't think I really
21 put this in my motion, I think this is somewhat of an unusual
22 request, and I think that the prosecution is somewhat startled
23 by this request because they're afraid of mudslinging. They're
24 afraid of taking a focus off the trial, off Shawn Rodriguez
25 where it should be, and slinging mud saying Anna Rugg is a bad
26 person. I agree that's not relevant. The law doesn't allow
27 that.

28 If I was going to go into all the instances of Anna Rugg

1 that I have of bad acts by Anna Rugg, my brief would be about
2 four pages longer. I have really limited it to the five or six
3 incidences that I think are directly relevant to her intent at
4 the scene because they show the same common plan, the same
5 similarities and action, and remember anything that goes to her
6 intent points to Shawn's lack of intent. And so I would say
7 that we're not making any groundbreaking rule here. I think
8 this is just an unusual situation.

9 I mean, I really think that since the day one of this
10 arrest, because Anna left the note, everyone sort of just took
11 it at face value and assumed Shawn was the heavy in this case in
12 this, but I am startled as to how many people I have talked to
13 that have been very specific with specific events very similar
14 to this that were all conjured up and initiated by Anna Rugg.
15 And I think it is a very unusual situation, but that doesn't
16 mean it doesn't come in.

17 I think they're directly relevant, and they fit under
18 1101(b), and just to emphasize all these witnesses are going to
19 be very impeachable. You can cross-examine them, argue the
20 weight of them. You know, we can have 402 hearings beforehand
21 to limit their testimony only to what the Court finds fits under
22 1101(b). It is not like this ends the case. There's a ton of
23 things the DA can do with these witnesses, but I do think they
24 have to be heard.

25 THE COURT: People?

26 MR. MARCHI: Yes. Counsel purports to get this evidence
27 in under common scheme and plan and, quite frankly, there's
28 really nothing all that unusual about what he's talking about.

1 Defendants often solicit others to commit crimes, and sometimes
2 one is a leader over the other. Sometimes some participants
3 say, I don't want to go forward and some agree to go forward and
4 oftentimes when we arrest multiple defendants they point the
5 finger at each other. The classic case is a dope case, two
6 people in the car with the dope. So I think as far as
7 materiality and relevance, that kind of serves as the backdrop.
8 It is really not that unusual of a concept that we have here
9 that someone solicits to commit crimes and then would point the
10 figure at their associates.

11 Now, when you view that in the backdrop, I don't know how
12 much of the tape the Court has had a chance to review, but I did
13 outline what I thought in my reply brief that I thought were
14 salient points from Defendant Rodriguez's case. He talks about
15 his own state of mind when he's going through this and really at
16 no time does he say that Ms. Rugg forced him to do anything.
17 And I only mention this because it is relevant to the conspiracy
18 instruction 6.11 and 6.20 that talk about when you agree to
19 start an enterprise, you are responsible for the natural and
20 foreseeable consequences of that conspiracy and even though the
21 situation may evolve into something else, you have an
22 affirmative duty to disassociate yourself from that conspiracy,
23 and that's where 6.20 comes in from.

24 The defendant stated he never said that I'm going to rob
25 this guy, and I'm going to tag along. He mentioned that's the
26 plan and he is going along. He doesn't mention anything that he
27 doesn't want to do it. He's going along. He's going to
28 participate. He agrees he's going to share in the benefits of

1 whatever they get from the ATM card. He goes on to say towards
2 the end that he goes back there knowing it was her idea to gas
3 the victim, but he's going back there knowingly to participate
4 and he actually outlines, "I taped it around the door, and I put
5 the hose in, but that's it." And then he goes on to
6 acknowledge, which I thought was quite significant at the end of
7 the transcript on page 19, where he talked about, they asked
8 him, "What do you think ought to happen to somebody who did
9 something like this? How would you like it if somebody did this
10 to your friend, Mr. Romines?"

11 He said, "Well, I see one as being more involved than the
12 other." And he goes on to say, "but, you know, but the other,"
13 meaning the tagalong, "isn't innocent either. Yeah. I see
14 time."

15 And I think what that tells you is that they went along
16 with the conspiratorial enterprise. She didn't make him do
17 anything that he didn't want to do for any reason. Then when
18 you start looking at the actual events that counsel proposes
19 that somehow becomes material to her making him do things, I
20 think that is where it breaks down.

21 The one with Ian Grimes is a theft at a church.
22 Mr. Wilson declined that case -- that was a case from Auburn
23 PD -- basically for insufficient evidence. There's apparently,
24 Anna Rugg solicited him to commit a crime, and he didn't
25 participate; and, obviously, our office didn't find enough
26 evidence to prosecute it. I just think there's very little
27 relevance one could get out of that incident that would bear on
28 this case.

1 You go on to Travis Welty, he was also a participant of
2 the church situation. Again, I think what small degree of
3 relevance that she solicited someone else to commit a crime,
4 he -- they say they weren't involved in which is unclear if she
5 blamed them or not. Some of this is hearsay that we're
6 apparently relying on. Again, very little materiality. Then
7 you go to Ms. Cypert talking about numerous instances of
8 violence and theft involving Anna.

9 She tried to get him to rob the stepfather. Apparently he
10 said no, and that was the end of that. She stated he would
11 regret it if he mentioned the incident. Again, I don't know.
12 He said, "No, I'm not going to go along with an enterprise she
13 tried to get him involved in and that was basically the end of
14 it. "

15 Again, the materiality as to what we have here in view of
16 Mr. Rodriguez's own statements, it seems to be very, very
17 little. Going again to Mr. Hands, in that one he describes her
18 as manipulative. Well, okay. Again, not really material. She
19 tried to get him to rob apparently Nick Hamman, this victim,
20 which apparently he again said, no he wasn't going to do that
21 and she is involved in a number of bad act incidents. Again, I
22 don't see how any of these are going to bear on the facts of
23 this case and the intent of Mr. Rodriguez, which is really the
24 only real way this may have some relevance.

25 And then they want to go into the Yolo County case which
26 is a burglary of a probation officer's home at the time when she
27 was on vacation apparently. This was known to Anna Rugg
28 apparently. And she and some other people went there and broke

1 into her home and took her car.

2 Again, I just don't see the materiality here in view of
3 what we have and in view of Mr. Rodriguez's own statements, so I
4 don't know if the Court would want to reserve ruling on this
5 until more of the facts develop in the case and then hold
6 hearings outside the presence of the jury to decide what, if
7 any, this would become focused and relevant. Right now it
8 looks --

9 THE COURT: Mr. Serafin, exactly what do you think this
10 evidence proves?

11 MR. SERAFIN: It proves -- well, I want to clarify
12 something from the very beginning. We're doing this motion
13 under 1101(b) for common scheme or plan and/or intent. In
14 intent, "The least degree of similarity is required in order to
15 prove intent. . . In order to be admissible to prove intent,
16 the uncharged misconduct must be sufficiently similar to support
17 the inference that the defendant probably harbored the same
18 intent in each instance."

19 THE COURT: So what you're talking about is her intent?

20 MR. SERAFIN: Correct.

21 THE COURT: Her intent is what?

22 MR. SERAFIN: Her intent in each instance is to commit a
23 violent act against someone that she knows and has motive to
24 commit the violent act. Rather than do it herself, bring in
25 someone else, always a young male, always someone with history
26 so if things go bad, they have lack of credibility and if things
27 go bad, she has a tendency to blame them. In other words, when
28 the police contact her.

1 THE COURT: Assuming all that is true, what does that do
2 to Mr. Rodriguez's case?

3 MR. SERAFIN: One, it lends credibility to his entire
4 story to the police, which is that this wasn't his idea. He
5 just went along with it, and once things originally -- and once
6 things went to murder, that's what this is all about. Did Shawn
7 Rodriguez have the intent to murder Nick Hamman? And the whole
8 point is, no, he did not have that intent. That was all -- Anna
9 had that intent. The fact that she has, on six other occasions,
10 created the same kind of plan, robbed someone, taken their
11 money, if they get hurt in the instance, doesn't matter to me,
12 just like Nick Hamman. In all those instances, she had the
13 motivation, just like she did with Nick Hamman. In all those
14 incidents, she brought someone in to do her dirty work, which is
15 what she tried to do with Shawn Rodriguez. In all those
16 instances, she was contacted by law enforcement or if she got in
17 trouble with it, she immediately would blame whoever else she
18 had brought along.

19 THE COURT: Assuming all of that is true, I'm struggling
20 with this a bit by his own statement, he did it. He did certain
21 acts. He did certain things. He didn't back out. He went
22 along until the very end until he was arrested, and so the
23 argument seems to be that yes, she recruited him. Yes, she made
24 him do it. She scoped out who he was as a person and figured he
25 was the prime candidate to do her bidding, and so he did it, and
26 he did it to the very end. And so the issue then is so what?

27 If, in fact, she has a record and a history of soliciting
28 young men to do these kind of things and then ratting on them at

1 the end, what does the jury do with this? What does that do in
2 terms of Mr. Rodriguez's culpability?

3 MR. SERAFIN: My response to that is what exactly did he
4 do? The whole question, the only way you can put him in jail
5 for life with murder, conspiracy for murder, intent to kidnap is
6 you have to prove that he had the intent to do those things.
7 I'm not focused on the vehicle theft. I'm not concerned with
8 the false imprisonment. What we're focused on is what Shawn's
9 intent after this guy was locked up to kill him, and in that
10 sense his intent or lack thereof is directly related to her
11 intent. His lack of intent is directly related to her intent.

12 In other words, that's what I was trying to say about
13 clearly one of them had the intent to lock this guy up and keep
14 him in there and gas him. Okay. One of them had that intent.
15 If neither of them had it, it wouldn't have happened. So the
16 point is from Shawn Rodriguez's point of view, it wasn't his
17 intent to do any of that. It was Anna's Rugg. It is her
18 intent, not mine. They're not independent of each other.

19 If Shawn -- if Anna's got the intent, it makes Shawn's
20 case that he doesn't have the intent. It doesn't make it a slam
21 dunk. The DA, obviously, has charged both because he thinks
22 they both have the intent. He gets to argue that. He gets to
23 put on his case. It is a very strong case. All Shawn wants to
24 do is to present the evidence that she had the intent. That's
25 directly relevant because if a jury doesn't think she has the
26 intent, then obviously they have to convict Shawn. If there's
27 no evidence pointing to her intent, then there's no evidence
28 pointing to Shawn's innocence. ✓

1 So the whole point is we have to allow the evidence in
2 that points to her intent because that's the only way he could
3 have gone along with it. I mean, the DA can say, that's
4 ridiculous like they're doing in this argument. He can argue
5 that to the jury, but in 1101(b) it's directly relevant to her
6 intent. I think the Court is saying it is sort of relevant to
7 Anna's intent, and my summary again is that Anna's intent is
8 crucial in showing Shawn's lack of intent, and that is the
9 material issue is intent, intent, intent. Not what was done,
10 but the intent of Shawn Rodriguez while it was done and that's
11 why I think it comes in.

12 THE COURT: Assuming that to be true, then what I see you
13 focusing on, though, is not -- is her previous conduct in
14 soliciting young men to do dirty deeds for her, not necessarily
15 the conduct, which you're saying she demonstrated in which she
16 falsely accuses other people of doing crimes that they didn't
17 do.

18 MR. SERAFIN: The primary focus is the fact that she -- it
19 shows -- all these prior acts show she is very capable of doing
20 what Shawn said. She is very capable of creating this plan
21 itself. One of things that the DA is going to prove is that
22 Shawn had a part in planning this. They talked about it the
23 night before. That is a key part of their case, and a jury --
24 it is going to be a key factual difference of who locked him in
25 the cell. Shawn had nothing to do with that, and it was all
26 Anna. She created this scheme of let's rob him and steal his
27 car and Shawn said, "Well, all right. The guy is a bad guy.
28 Sure. I'll get 40 bucks out of it and a car for a couple of

1 days." That's a lot different than Shawn went along with the
2 plan to lock him up to rob him and then kill him. Those are
3 huge factual differences in his intent, and the fact that she's
4 done that, that she's done the same kind of thing with the same
5 kind of motive, the same kind of incentive on six, seven other
6 occasions is relevant to Shawn's exact statement, which is, "I
7 never planned this. This was all her plan."

8 THE COURT: For the enhancement, what is it that you have
9 to prove?

10 MR. MARCHI: The enhancement basically -- you don't want
11 to address the other issue yet?

12 THE COURT: I would like an answer to that first.

13 MR. MARCHI: The enhancement has to do with manner he was
14 confined. I'm not going after the injury. The manner of which
15 he was confined. Well, by the defendant, of his own admission,
16 the water was at least three feet high. The victim says it was
17 up to his neck or shoulder.

18 THE COURT: That is not related to preplanning of the --

19 MR. MARCHI: No. I think just an enhancement that is
20 there in case that happens. If I might address his other issue?
21 Actually, I think his argument actually works against him if you
22 look at 611 conspiracy and joint responsibility, down to the
23 third paragraph it says: A member of a conspiracy is not only
24 guilty of the particular crime that to his or her knowledge his
25 or her confederates agreed to and did commit, but is also liable
26 for the natural and probable consequence of any crime or act of
27 a co-conspirator to further the object of the conspiracy even
28 though that crime or act was not intended as part of the agreed

39

1 upon objective and even though he or she was not present at the
2 time of the commission of the crime or act.

3 Now, if we assume it was Anna Rugg's sole intention to
4 kill him and he then willingly goes along, which he does, and he
5 is the one that buys the duct tape, which the receipt is found
6 among his personal belongings for the duct tape bought the same
7 day, it was put up -- he, by his own admission, puts up the duct
8 tape. He, by his own admission, sticks the hose in there, helps
9 tie off the other end of the hose to the tail pipe. I mean,
10 he's way -- he's actually going along with her intent but even
11 if he doesn't think or want necessarily him to die, he is going
12 along with what the other co-conspirator wants to do, and the
13 natural and probable consequence could well have been this man
14 was killed had they intended to kill him.

15 So actually her state of mind and his state of mind in a
16 conspiracy become one unless under 620 you divorce yourself
17 affirmatively, and it says: In order to effectively withdraw
18 from a conspiracy, there must be an affirmative and good faith
19 rejection or repudiation of the conspiracy, which must be
20 communicated to the other conspirators of whom he or she has
21 knowledge.

22 So he would have had to have affirmatively told her, I'm
23 not going down there. I'm not buying the duct tape. I'm not
24 putting the duct tape up. I'm not going to gas this guy. He
25 must have effectively withdrawn from this conspiracy, which as
26 he put it initially, he was going along with as a tagalong on
27 the 211 or to rob the man. Basically as he keeps going along,
28 it doesn't matter that he's more reluctant than her, which it

1 sounds like that is all they're saying here. In order to -- you
2 have to completely disassociate yourself or you're liable for
3 the natural and probable consequence, and so that's where I
4 think the materiality is of these other events.

5 All these other guys, by the way, basically rejected,
6 according to them, going along with her so -- and he didn't. So
7 again, I don't know what the materiality is. It is very weak.

8 THE COURT: I'm going to have to give that some thought,
9 and I will give you, hopefully, a decision by the end of the
10 day. I'll give you a written decision. I'll fax it to you.

11 MR. MARCHI: I might add if the Court is unclear, we can
12 certainly reserve that and have 402 hearings later on depending
13 on how the facts of the case develop.

14 THE COURT: That might be something that I would consider
15 because when I originally read your motion, Mr. Serafin, I saw
16 it being approached from two angles. One was the whole issue
17 whose intent was this? And as you've articulated very well
18 today, I saw you approaching it from another angle, which was
19 that you seem to be implying that Mr. Rodriguez had knowledge of
20 her reputation and knew allegedly that she causes other people
21 to get in trouble for her bad deeds and, therefore, he couldn't
22 extricate himself, but in order to use that aspect, he would
23 have to testify, and it doesn't sound like he's going to, so
24 that would be one thing.

25 If what we're saying is that he was stuck in this and
26 couldn't get out because he knew she was going to blame the
27 whole thing on him, because this is a whole other issue, this
28 idea of intent, and I'll have to think about that one.

1 MR. SERAFIN: If I could just focus one thing. We're not
2 just talking about conspiracy though. Everything that was just
3 said was talking about the conspiracy charge. I agree with much
4 of what Mr. Marchi says. If he wants to dismiss everything of
5 the -- but the conspiracy charge, that carries much more water,
6 but there's other charges that it carries much more.

7 MR. MARCHI: If we were still doing a joint trial and if
8 Ms. Rugg, through her attorney, was directly claiming that he
9 caused me duress, he made me do this, he made me do that, he
10 wouldn't let the victim do this, he wouldn't let me let the
11 victim out, then I think there would be a better argument for
12 letting these incidents in. We're not facing this here.

13 THE COURT: Right. What else do we need to talk about?

14 MR. SERAFIN: We have -- we discussed the Erin Hughes
15 issue.

16 THE COURT: One other thing, assuming the Court was to
17 allow some testimony, have you already explored the impeachment
18 aspect? Do you have the records already?

19 MR. MARCHI: No. I just got the information yesterday or
20 whatever, so I haven't had a chance to do so. I was busy doing
21 the reply brief.

22 MR. SERAFIN: You have the witness list.

23 MR. MARCHI: I will do that. I will try and find that
24 out.

25 THE COURT: Based on what you have described here, I
26 assume they probably have records.

27 MR. SERAFIN: I will certainly get date of birth out to
28 whoever is going to testify. What I will -- couple things I do

1 want to address a little later. I do have potentially other
2 witnesses that are actually being interviewed today on the same
3 lines. Every time we find one it leads to two others so I
4 would, you know, I will be giving everyone notice. I will be
5 attempting to bring those in if I deem they're relevant, and we
6 can address the issues of them coming last minute and things
7 like that, I understand, but I'm giving everyone a heads up.
8 Also, I want to reserve the right to bring any future jury
9 instruction. I will not have them.

10 MR. MARCHI: No objection. That's fine.

11 MR. SERAFIN: And do you need -- I do need to clarify, my
12 client needs to be dressed for trial on Tuesday. I have had
13 problems with that. I will provide clothes. How should I do
14 that? I have been told different things. To the jail the night
15 before? Okay.

16 MR. MARCHI: I think I can say we can sharpen up, but I
17 believe we do have a stipulation as to bank records and I'll get
18 with counsel to sharpen that up before that happens.

19 THE COURT: Okay.

20 MR. MARCHI: And the only other thing is, I think actually
21 Mr. Hamman, we're going to be providing him with some civilian
22 clothes also. He's currently in jail due to his DUI conviction,
23 so --

24 THE COURT: Okay.

25 MR. MARCHI: That's that.

26 THE COURT: Is there any others that I'm missing?

27 MR. SERAFIN: I don't think so.

28 MR. MARCHI: I don't think so.

1 THE COURT: Mr. Rodriguez is not testifying so we don't
2 need to talk about that. We worked out Mr. Hamman, and so the
3 only issue I need to address in my decision is the 1101(b) issue
4 as to Ms. ~~Rugg~~, correct?

5 MR. SERAFIN: Correct. I want to back up a second.
6 Obviously, we still -- Mr. Rodriguez still has a right to
7 testify if he so chooses at this point.

8 THE COURT: Right. If he does, then we would have to
9 revisit some of those issues.

10 MR. SERAFIN: (Nods head.)

11 THE COURT: If you can give me as much heads up as you
12 can.

13 MR. SERAFIN: I will.

14 THE COURT: I'm trying to think of what else. You're just
15 going to use the standard jury questionnaires?

16 MR. MARCHI: Yes. And does the Court do the preliminary
17 discussion and then open it up to each counsel?

18 THE COURT: Yes. And maybe we can spend a little time
19 going over that this morning. I have a couple of other things
20 I'll confirm with you. Some of them, just so I don't forget, I
21 do request that challenges for cause be done in chambers.

22 MR. MARCHI: Okay.

23 THE COURT: And then I can either bring in the court
24 reporter or if there's no objection, we can have the discussion
25 and then if there's no objection, I can go out and discharge the
26 jury. If there's an objection, later outside the presence of
27 the jury, we can put it on the record. You need to let me know
28 if it is okay to do it outside the presence of the defendant and

1 in chambers and memorialize it later or if you prefer to have my
2 court reporter come into chambers and I think that is it.

3 I do the standard questions. When I'm done with the
4 questions, I will ask you if there's any more questions you
5 wanted me to ask, and then I will give you each an opportunity
6 to conduct voir dire. Just so you know, number one seat is up
7 there in the upper left, and we go all the way across to ten and
8 we go around. I seat the full 18 every time. I will probably
9 request a larger panel. We have large panels and small panels
10 so I'll have a larger panel come. My thinking is maybe we could
11 have them come at 10:30, and I'll have my clerk go out and do
12 the initial screening and give them the questionnaires and then
13 have them come back after lunch.

14 MR. MARCHI: We don't need to appear for that?

15 THE COURT: If you want to, you could be here to collect
16 the questionnaires so you can be looking at them over the lunch
17 hour. I think that's all we need to put on the record.

18 MR. MARCHI: I believe since it is a life case, it is 20
19 preempts for each side?

20 THE COURT: I believe so.

21 MR. MARCHI: When we challenge on the preempts, it is out
22 of the first 12?

23 THE COURT: Yes.

24 MR. SERAFIN: Number 11 to left or the right?

25 THE COURT: Number 11 is in this corner and continues on
26 in the first row.

27 THE CLERK: What time on Tuesday?

28 THE COURT: The jurors will be here at 10:30, and the case

) 1 will be on at 1 o'clock. We won't do anything on the record in
2 the morning other than you will go out, but the lawyers will
3 probably come right before noon to pick up their questionnaires.

4 MR. MARCHI: This is on Tuesday; right?

5 THE COURT: Tuesday.

6 THE CLERK: So 1 o'clock for him in custody, he needs to
7 be back here?

8 THE COURT: Uh-huh.

9 MR. MARCHI: There is one other situation. I may want at
10 some point, for at least some of the witnesses, to have Ms. Rugg
11 brought over so that she could be identified by the witnesses,
12 but I'll try and let everyone know that ahead of time, including
13 the jail.

) 14 THE COURT: We'll need to -- you will need to let her
15 lawyer know.

16 MR. MARCHI: Yes, I will.

17 THE COURT: We'll need to get the dress order for her
18 also. Okay. Anything else?

19 MR. SERAFIN: I guess I should clarify something. Well,
20 the marshals are here. We're not -- I don't want my client in
21 handcuffs. The intent is that why the long sleeves?

22 THE BAILIFF: The long sleeve would be because of his
23 wristband.

24 MR. SERAFIN: Okay. I just want to make clear, I know I
25 just want to make clear I don't want him in handcuffs.

26 THE BAILIFF: It also depends on his conduct in court.

) 27 MR. SERAFIN: Agreed.

28 THE COURT: Assuming he behaves appropriately, he won't

1 have cuffs, but the long sleeves cover the fact that he has the
2 wrist band.

3 MR. SERAFIN: Fine.

4 THE COURT: Anything else?

5 MR. SERAFIN: No.

6 THE COURT: Anything else, Counsel?

7 MR. MARCHI: No.

8 THE COURT: We're in recess and then I just want to see
9 you in chambers for a couple of other things.

10 (Proceedings concluded at 10:40 a.m. to
11 reconvene on Tuesday, September 16, 2003,
12 at 1 p.m.)

13 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 WEDNESDAY, SEPTEMBER 17, 2003, 11:30 A.M.

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4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --o0o--

18 THE COURT: Court is back in session. Do we have
19 everybody? Yes. Jury is all present. Counsel and parties are
20 present. Are you ready to proceed? Ready to proceed?

21 MR. MARCHI: Yes.

22 MR. SERAFIN: Yes, your Honor.

23 THE COURT: All right. Members and alternate members of
24 the jury, you have been selected and sworn as jurors and as
25 alternate jurors. I shall now instruct you as to your basic
26 functions, duties, and conduct. At the conclusion of the case I
27 will give you further instructions on the law. All of the
28 Court's instructions whether given before, during, or after the

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1 taking of testimony are of equal importance.

2 You must base your decision on the -- you make on the
3 facts and the law. First, you must determine the facts from the
4 evidence received from the trial and not from any other source.
5 A fact is something proved by the evidence or by stipulation. A
6 stipulation is an agreement between attorneys regarding the
7 facts.

8 Second, you must apply the law that I state to you to the
9 facts as you determine them, and in this way arrive at your
10 verdict and any finding you are instructed to include in your
11 verdict.

12 You must accept and follow the law as I state it to you
13 whether or not you agree with the law. If anything concerning
14 the law said by the attorneys in their arguments or at any other
15 time during the trial conflicts with my instructions on the law,
16 you must follow my instructions.

17 You must not be influenced by pity for a defendant or by
18 prejudice against him. You must not be biased against the
19 defendant because he has been arrested for this offense, charged
20 with a crime, or brought to trial. None of these circumstances
21 is evidence of guilt, and you must not infer or assume from any
22 or all of them that he is more likely to be guilty than
23 innocent.

24 You must not be influenced by sentiment, conjecture,
25 sympathy, passion, prejudice, public opinion, or public feeling.
26 Both the People and the defendant have a right to expect that
27 you will conscientiously consider and weigh the evidence, apply
28 the law, and reach a just verdict regardless of the

1 consequences.

2 Statements made by the attorneys during the trial are not
3 evidence. However, if the attorneys stipulate or agree to a
4 fact, you must regard that fact as proven as to the party or
5 parties making the stipulation. If an objection is sustained to
6 a question, do not guess what the answer might have been. Do
7 not speculate as to the reason for the objection. Do not assume
8 to be true any insinuation suggested by a question asked a
9 witness. A question is not evidence and may be considered only
10 as it helps you to understand the answer.

11 Do not consider for any purpose any offer of evidence that
12 is rejected or any evidence that is stricken by the Court.
13 Treat it as though you have never heard of it.

14 You must not independently investigate the facts or the
15 law or consider or discuss facts as to which there is no
16 evidence. This means, for example, that you must not on your
17 own visit the scene, conduct experiments or consult reference
18 works or persons for additional information. You must not
19 converse among yourselves or with anyone else on any subject
20 connected with the trial except when all of the following
21 conditions exist: The case has been submitted to you for your
22 decision by the Court following arguments by counsel and jury
23 instruction. You are discussing the case with a fellow juror
24 and all 12 jurors and no other persons are present in the jury
25 deliberating room.

26 You must not read or listen to any accounts or discussions
27 of the case reported by newspapers or other news media,
28 including radio and television. And as I mentioned earlier, you

1 may ask your relatives to scan the papers for you and cut the
2 articles out and save them for you, and you can read them after
3 the case is over, but you may not read them while the case is in
4 progress and until such time as a decision has been reached by
5 the jury.

6 You will be given notebooks and pencils. Leave them on
7 your seat when you leave each day and at each recess. You will
8 be able to take them into the jury room when you deliberate. A
9 word of caution: You may take notes; however, you should not
10 permit note-taking to distract you from the ongoing proceedings.
11 Remember, you are the judges of the believability of the
12 witnesses. Notes are only an aid to memory and should not take
13 precedence over your recollection.

14 A juror who does not take notes should rely on his or her
15 recollection of the evidence and not be influenced by the fact
16 that other jurors do take notes. Notes are for the note-taker's
17 own personal use in refreshing his or her recollection of the
18 evidence. Should a discrepancy exist between a juror's
19 recollection of the evidence and a juror's notes or between a
20 juror's recollection and that of another, you may request that
21 the court reporter read back the relevant testimony, which must
22 prevail.

23 You will be permitted to separate at recesses. You must
24 return following the recesses at the time I instruct you.
25 During the periods of recess, you must not discuss with anyone
26 any subject connected with this trial. As for our alternate
27 jurors, you are bound by the same admonitions. You must not
28 converse with anyone else on any subject connected with the

1 trial. You are not to form or express any opinions on it until
2 the case is submitted to you, which means until such time as you
3 are substituted in for one of the 12 jurors and begin
4 deliberating on the case. This means that you must not decide
5 how you would vote if you were deliberating with the other
6 jurors, and that you must not form or express an opinion about
7 the case unless and until you have been substituted in as a
8 juror in the case.

9 You must not visit or view the premises or place where the
10 crime or crimes charged were allegedly committed or any other
11 premises or place mentioned or involved in the case. During the
12 course of this trial and before you begin your deliberations,
13 you must keep an open mind in this case and upon the issues that
14 you will be asked to decide. In other words, you must not form
15 or express any opinions on this case until the matter is finally
16 submitted to you.

17 Before and within 90 days of your discharge as a juror in
18 this matter, you must not request, accept, agree to accept, or
19 discuss with any person receiving or accepting any payment, or
20 benefit in consideration for supplying information concerning
21 the trial.

22 You must promptly report to the Court any incident within
23 your knowledge involving an attempt by any person to improperly
24 influence any member of the jury.

25 Now, at this time the lawyers will be permitted to make an
26 opening statement if they choose to do so. An opening statement
27 is not evidence. Neither is it an argument. Counsel are not
28 permitted to argue the case at this point in the proceedings.

1 An opening statement is simply an outline by counsel of what he
2 believes or expects the evidence will show in this trial. Its
3 sole purpose is to assist you in understanding the case as it is
4 presented to you.

5 And lastly as a reminder, as I mentioned before, you have
6 now been introduced to the attorneys and as the case progresses,
7 you will be meeting various witnesses and the parties in the
8 case. They know that it is their obligation not to speak to any
9 of you, and it is your obligation not to speak to any of them
10 and so they will be walking by you as if they don't see you.
11 When the case is over, if you wish to, you may talk to the
12 lawyers, and they usually like to talk to the jurors. You don't
13 have to, so don't worry that you may have to speak to the
14 lawyers if you don't want to. But at the end of the case if you
15 do want to, then you would be allowed to do so, but not until
16 the case is over.

17 This also applies to me. If I'm seen talking to jurors
18 out in the parking lot, then, you know, what was I talking to
19 them about? And we have to have a hearing about that. So I'm
20 friendly too, but I'll be walking by you like I don't see you as
21 well. If there are problems, things you need to get to the
22 Court's attention, the person to speak to is the bailiff and
23 they bring it to my attention. If I need to let the lawyers
24 know, we will have a discussion.

25 And so at this point I believe we're going to start with
26 the opening arguments after the lunch break, and so I'll give
27 you a little bit longer lunch than normally, and I need you all
28 to return here at 1 o'clock. There are various restaurants in

1 the general area. If you have any questions about local
2 restaurants, I'm sure my bailiff can help you out and just
3 report back here at 1 o'clock. And unless there's anything
4 else, we'll recess until 1:00. All right. See you at 1
5 o'clock.

6 (Jury exits the courtroom.)

7 THE COURT: Is there anything else we need to talk about?
8 The record will reflect the jury is not present. Defendant and
9 counsel are present. Go ahead.

10 MR. MARCHI: The only thing I'm trying to arrange is
11 getting Ms. Rugg over here in her civilian clothes with
12 hopefully one of her attorneys from the conflict firm. I called
13 Mr. Cohen last week and he never got back to me. I have a call
14 in now for him and Mr. Berg. It shouldn't be a problem. The
15 only witness that would have to deal with her is Officer
16 Hopping, so I could flip-flop the two officers.

17 THE COURT: What are you anticipating you're going to do?

18 MR. MARCHI: I have Hamelin and Hopping coming in first
19 this afternoon after the opening statements. I have a backup in
20 Dale Hutchins. That's out of order, but probably now that's all
21 we will get to today. We picked the jury a little faster than I
22 thought we would. Next week I'll have some out-of-state
23 witnesses and the main victim. I should go fairly fast. I
24 should complete my evidence next week.

25 THE COURT: If I could make a suggestion, we do the
26 opening arguments. You start with your first witness. That may
27 be at the point where we will be taking the break. Hopefully
28 Ms. Rugg will be here by then. The bailiff can bring her out

1 and she can be seated, and then you can take that witness, which
2 is Hopping. Is that going to work?

3 MR. MARCHI: Yeah. I mean at some point during Hopping's
4 testimony, he needs to identify her.

5 THE COURT: Where did you want to put her? Where are we
6 going to do that?

7 MR. SERAFIN: That's my question. Where is she going to
8 be sitting, in the audience?

9 MR. MARCHI: Yeah. My suggestion would be, perhaps, she
10 could be brought through the hall into here briefly for an
11 identification and just take her back. That's all we need to do
12 with her.

13 THE BAILIFF: Okay. May I comment, your Honor?

14 THE COURT: That may cause my bailiffs a little bit of
15 consternation.

16 MR. MARCHI: Whatever way we need to bring her in.

17 MR. SERAFIN: I have an idea. How about when we break,
18 we'll bring her in. You can uncuff her. Sit her back here. Do
19 the ID, and then we break again. I think your point is you
20 don't want to take her out that way?

21 THE BAILIFF: That's my whole point. I'm not taking her
22 out in the hall uncuffed and the jury is going to be out in the
23 hallway so that is kind of a Catch 22.

24 MR. MARCHI: I think bring her in right here so the jury
25 can see her and the witness can see her and just take her back
26 out. That's all I need to have done.

27 THE COURT: Would that be the only thing the witness would
28 be doing?

1 MR. MARCHI: No. No. No. I can actually call Officer
2 Hamelin first and he actually never saw her, I don't believe,
3 and Hopping would be after. He can identify her at any point in
4 time in his testimony. It could be towards the end.

5 THE COURT: When you first come back --

6 MR. MARCHI: I'll be calling the jail and Mr. Berg to try
7 to make sure she gets over here.

8 THE COURT: Keep my bailiff apprised of when she is
9 expected, and let Mr. Serafin know and my -- my clerk when she
10 is expected, and I'll just have to work a recess around that.

11 MR. MARCHI: That's fine.

12 THE COURT: What might work best, depending on timing, is
13 if midway through Hopping's testimony, we take a break because
14 it is appropriate for a break. Have her come in and stand there
15 and she can walk out.

16 MR. MARCHI: There will be other witnesses, not today, but
17 other witnesses that will need to do the same thing.

18 MR. SERAFIN: That's true. Mr. Hamelin, I know. I think
19 Mr. Cohen -- wasn't Mr. Cohen going on his fishing trip this
20 week? Isn't that why he might be gone.

21 THE CLERK: I have a call into -- his secretary is calling
22 him on his cell phone. He's just at lunch so he is supposed to
23 be calling back.

24 THE COURT: Then I will -- why don't you all plan on being
25 back here at least by five to 1:00 in case there's something you
26 need to talk to me about.

27 MR. MARCHI: Okay.

28 MR. SERAFIN: Okay.

1 THE COURT: Thank you.

2 (Lunch recess taken at 11:44 a.m. to
3 reconvene at 1 p.m.)

4 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 WEDNESDAY, SEPTEMBER 17, 2003, 1:00 P.M.

3 --oOo--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --oOo--

18 THE COURT: We're back on the record. The jury is
19 present. Counsel and parties are present. Are the People ready
20 to proceed?

21 MR. MARCHI: Thank you, your Honor.

22 (Opening statement of Mr. Marchi given.

23 Reported but not transcribed.)

24 THE COURT: Mr. Serafin, did you wish to make an opening
25 statement?

26 MR. SERAFIN: I do, your Honor. I'll wait until counsel
27 can get this off.

28 MR. MARCHI: Sorry.

1 MR. SERAFIN: Can you turn it off, Bill?

2 MR. MARCHI: Yeah, I did.

3 (Opening statement given by Mr. Serafin.

4 Reported but not ordered transcribed.)

5 THE COURT: Are you ready to proceed with your first
6 witness?

7 MR. MARCHI: Yes. We'll call Officer Gary Hopping at this
8 time.

9
10 GARY HOPPING

11 called as a witness on behalf of the People herein was sworn,
12 examined, and testified as follows:

13 THE COURT: I need you to please come forward all the way
14 up here by my court reporter and right before you take a seat, I
15 need you to turn, face my clerk, and raise your right hand to be
16 sworn.

17 THE CLERK: Do you solemnly state that the testimony you
18 shall give in the cause now pending before this court shall be
19 the truth, the whole truth, and nothing but the truth so help
20 you God?

21 THE WITNESS: I do.

22 THE CLERK: Please state your name and spell your last for
23 the record.

24 THE WITNESS: My name is Gary Hopping, H-o-p-p-i-n-g.

25 THE CLERK: Thank you. Go ahead and have a seat.

26 THE COURT: Are you going to be using the video at this
27 point?

28 MR. MARCHI: Yes.

1 THE COURT: Did you want some of the lights turned out?

2 MR. MARCHI: We'll have to see how it goes, I guess.

3 THE COURT: Go ahead.

4 DIRECT EXAMINATION

5 Q. BY MR. MARCHI: Sir, by whom are you employed?

6 A. The Auburn Police Department.

7 Q. And what capacity?

8 A. I'm a patrol officer.

9 Q. And how long have you been so employed?

10 A. Just a little over four years.

11 Q. And, sir, were you on duty on March the 16th and March the
12 17th of 2003?

13 A. Yes, I was.

14 Q. And what shift did you work that day?

15 A. I was working the 1500 hours, which is 3 p.m. to 3 a.m.

16 Q. So 3 p.m. on the 16th through 3 p.m. on the 17th?

17 A. Yes, sir.

18 Q. Okay. And what were the nature of your duties that day,
19 sir?

20 A. I'm a patrol officer, routine patrol, regular patrol.

21 Q. All right. And calling your attention to March 17, 2003,
22 at about two in the morning, did you have occasion to respond to
23 an area on 49 and Elm Street, a Shell Gas Station, sir?

24 A. Yes, I did.

25 Q. That's in Auburn?

26 A. Yes, it is.

27 Q. Here in Placer County?

28 A. In the city, in Placer County.

1 Q. And did you happen to make contact with a person known as
2 Robert Hammer there?

3 A. Yes, I did.

4 Q. All right. And who was Robert Hammer?

5 A. He was an employee at the Shell Gas Station.

6 Q. And did Mr. Hammer indicate to you he had found something?

7 A. Yes, he did.

8 Q. Did he give that to you?

9 A. Yes.

10 Q. Showing you what's been marked 72; do you recognize that
11 item?

12 A. Yes, I do.

13 Q. And is that the item Mr. Hammer gave you?

14 A. Yes, it is.

15 Q. All right. And as a result of having received that item,
16 what is that item, first of all, in general?

17 A. I believe it's a credit card blank.

18 Q. Okay. And there's some handwriting on it?

19 A. Yes, there's a note on it.

20 Q. Okay. And based on what was on that note did you, in
21 fact, go somewhere else?

22 A. Yes, I did.

23 Q. Where did you go?

24 A. I went to the old juvenile hall building, which is on
25 Epperle?

26 THE REPORTER: Where?

27 THE WITNESS: E-p-p-e-r-l-e.

28 Q. BY MR. MARCHI: Why did you do that?

1 A. Because the note here states that Nick Hamman was locked
2 inside there, and he was drowning.
3 Q. And was that document or that item handed to you, was that
4 signed by anybody?
5 A. Yes, it is.
6 Q. Who is it signed by?
7 A. There is a name signed Anna Rugg.
8 Q. All right. And was there any other name referenced on
9 there?
10 A. Yes.
11 Q. What name was that?
12 A. Two names, Mike Hamman and then Shawn Rodriguez.
13 Q. So you, in fact, did go over to the old juvenile hall?
14 A. Yes, I did.
15 Q. Okay. And what was the purpose of doing that, sir?
16 A. The note indicated that Mr. Hamman -- I'm not quite sure
17 of the pronunciation -- was locked inside in there, drowning,
18 and I needed to determine if that was, in fact, the case.
19 Q. Where is the old juvenile hall located?
20 A. It's up Epperle Drive which is off Auburn Ravine directly
21 across Epperle, the Gottschalk's Town Center.
22 Q. And that's in Placer County; correct?
23 A. Yes.
24 Q. Is that hall in use anymore?
25 A. No.
26 Q. To your knowledge, how long has it not been in use, if you
27 know?
28 A. Estimate about a year and a half.

1 Q. So it basically was abandoned at that point?
2 A. Yes.
3 Q. Did you meet up with any other officers at the hall?
4 A. My shift partner, Stan Hamelin, was there.
5 Q. He was also in a patrol car?
6 A. Yes.
7 Q. In uniform as you are here?
8 A. Yes.
9 Q. And where did you proceed to initially when you got to the
10 hall?
11 A. When I got to the hall, I went around back to the back of
12 the building.
13 Q. Okay. And you just did that on happenstance or why did
14 you go back there?
15 A. Officer Hamelin was checking the front of the building.
16 Q. So he went to the front; you went to the back?
17 A. Yes.
18 Q. Did you find anything unusual about the back end of the
19 building?
20 A. Initially there was a lot of water coming out underneath
21 the doors, a lot of water.
22 Q. Okay. So as -- noticing the great deal of water, did you
23 notice anything about any of the windows back there, sir?
24 A. There was a window broken open.
25 Q. Let me show you Exhibit 6. Do you recognize what is
26 depicted in Exhibit 6, sir?
27 A. Yes, I do.
28 Q. This appears to have kind of some jagged edges. What are

1 we looking at there, sir?

2 A. That window is over the -- I believe it is the kitchen
3 sink inside the old juvenile hall.

4 Q. Okay. And what's the condition of that window, sir?

5 A. Right now it appears totally broken out.

6 Q. All right. I have a pointer here. Could you point to
7 what you're describing there?

8 A. This window here appears now to be broken out, completely
9 broken out.

10 Q. Was it in that condition when you arrived?

11 A. Not completely broken out.

12 Q. Just somewhat broken out?

13 A. There was a large hole in the window.

14 Q. All right. And when you discovered that, did you get a
15 hold of your partner to let him know what you found?

16 A. Yes, I did. Via the radio I told him that I had an open
17 window in the back.

18 Q. Did he come around to where you were, sir?

19 A. Yes, he did.

20 Q. And what did you proceed to do from that point?

21 A. We spoke with -- we conferred on the note that there was
22 exigent circumstances, and we made a plan to enter the building.

23 Q. All right. And did you do anything to gain further access
24 to the area?

25 A. Yes. I struck it several times with my baton.

26 Q. As we -- as we see it now, is that how it ended up with
27 more of the glass broken out?

28 A. More. I don't recall directly if that's the extent of my

1 work.

2 Q. Okay. In Exhibit 9 as we see it here, is that the window
3 you gained entry to the building, sir?

4 A. Yes, sir.

5 Q. Who went in the building first?

6 A. Officer Hamelin.

7 Q. You followed him in?

8 A. Yes, I did.

9 Q. When you got inside, what did you notice about the
10 condition inside the building?

11 A. Immediately as we entered, the floor was completely
12 flooded. Estimate one to two inches of running water, standing
13 water.

14 Q. Showing you what's been marked as Exhibit 11; do you
15 recognize what's depicted there, sir?

16 A. Yes, I do.

17 Q. What is that?

18 A. That is the window we made entrance in.

19 Q. And this will be an inside view as I'm using the pointer
20 here on this exhibit showing the window broken out, inside, sir?

21 A. Yes.

22 Q. That's the area you came into?

23 A. Yes.

24 Q. Now, showing you what's been marked Exhibit 15, again, is
25 that the same area in question?

26 A. Better indicator, yes.

27 Q. And was there water also on the floor in the kitchen area
28 here?

1 A. Yes.

2 Q. Substantial amount?

3 A. At least -- well, I'd estimate one to two inches of
4 standing water.

5 Q. Okay. Where did you and Officer Hamelin proceed to go
6 from that point, sir?

7 A. We entered the hall without a diagram of it. It would be
8 hard to show you exactly, but I would say we went in a northerly
9 direction down the hallways.

10 Q. Showing you Exhibit 1, this is a -- reportedly a floor
11 plan of the juvenile hall. With this being the kitchen area,
12 that's the area of entry, sir?

13 A. Yes.

14 Q. Could you use your pointer and describe your route that
15 you went, sir?

16 A. We entered here.

17 Q. In the kitchen area?

18 A. In the kitchen. We came -- we made our direction, I would
19 say, immediately we went west and then started making a
20 northerly, going north this way toward the building, in the
21 building.

22 Q. And actually these black lines, just so an exhibit, this
23 is a hallway area here; is that correct?

24 A. This is a hallway, yes.

25 Q. What did you find about the condition of the flooring
26 there?

27 A. Again one to two inches of standing water.

28 Q. All right. And where did you proceed to go from there,

1 sir?

2 A. We went down the hallway checking each room as we went.

3 Q. All right. Did you find anybody in the rooms?

4 A. No.

5 Q. Now, there's an area marked here, the booking area?

6 A. Yes.

7 Q. And other enclosed area here. Do you recognize that area?

8 A. Yes, I do. Booking area and the cell.

9 Q. Did you ultimately end up near that area, sir?

10 A. Yes.

11 Q. What route do you go to get there, sir?

12 A. We came back down the hallway in this direction right down
13 the hallway.

14 Q. And you're using your pointer on Exhibit 1 indicating you
15 went back down the original point you came in?

16 A. Yes.

17 Q. And then you then proceeded where, sir?

18 A. I went to this door expecting it to be locked; however,
19 when I pushed it, it came open.

20 Q. And as you came into the area, this will be on the other
21 side of this little area here, is there like a counter area
22 here, sir?

23 A. This triangle -- not triangle -- half shape, half block
24 shape is a short wall. Approximately three feet tall.

25 Q. All right. And what, if anything, did you see when you
26 got into that area?

27 A. Immediately upon opening the door entering, I heard a loud
28 banging from inside.

1 Q. Showing you what's been marked Exhibit 18; do you
2 recognize what is depicted here, sir?
3 A. Yes, I do.
4 Q. Okay. Here's what appears to be a countertop, and it
5 appears to have some water on it. Is that the L-shaped counter
6 we saw on the other diagram, sir, if you know?
7 A. I don't think it is.
8 Q. Okay. And this window here; do you recognize that?
9 A. Yes, I do.
10 Q. What is that?
11 A. That is Plexiglas window into. It was a holding cell when
12 the hall was operational.
13 Q. All right. And as -- so you actually entered into this
14 area behind exhibit, this Exhibit number 18, so -- excuse me, so
15 you had a view of this Plexiglas area?
16 A. Yes, I did.
17 Q. And who was entering this area first, you or Officer
18 Hamelin?
19 A. I was.
20 Q. And did something come to your attention as you got in
21 this area?
22 A. Yes.
23 Q. What was that, sir?
24 A. When I entered this room, I heard a loud banging coming
25 from that direction.
26 Q. All right. And did you move closer to this Plexiglas
27 window area, sir?
28 A. Yeah. Immediately I went there when I overcame my shock,

1 yes, I did.

2 Q. What did you see that surprised you, sir?

3 A. When I lit it up with my flashlight, I could see a face, a
4 male face in the window.

5 Q. You're referring again to the Plexiglas window on 18?

6 A. Yes.

7 Q. Was the person saying anything?

8 A. "Get me out of here," screaming.

9 Q. And did the person appear to be upset, sir?

10 A. His face, you can't describe the panic look in his eyes.

11 Q. All right. Where was Officer Hamelin at that point?

12 A. He was still behind me.

13 Q. And did he come to your area when you made that discovery?

14 A. Yes, we both -- he entered the room behind me.

15 Q. And what did you say to the individual inside that room?

16 A. I don't remember speaking with him.

17 Q. All right. Was he highly agitated at that point, sir?

18 A. Absolutely. Banging with open hand on the window ✓
19 screaming, "Get me out of here."

20 Q. As he was screaming, did he ever indicate how he got in
21 there, voluntarily, in other words?

22 A. No.

23 Q. At some point he made a statement as to who put him in
24 there?

25 A. Yes, sir, he did.

26 Q. Before we get to that area, what -- did you try to get him
27 out initially, sir?

28 A. I did not initially.

1 Q. Okay. What did you do initially?
2 A. I told my sergeant the situation. My initial belief was
3 that cell was locked. When it was a juvenile hall, it took a
4 key to open the door, which is to the left of this picture, the
5 door to that room.
6 Q. Okay. So you didn't know that the door was -- you could
7 open from the outside, sir?
8 A. I didn't know that.
9 Q. Showing you Exhibit 34; do you recognize what's depicted
10 here, sir?
11 A. Yes, I do.
12 Q. Is that the cell door, the holding cell door?
13 A. Yes, it is.
14 Q. That's where the man was?
15 A. He was inside that room.
16 Q. All right. As we see Exhibit 34, you thought you needed a
17 key there?
18 A. Yes, that's what I thought.
19 Q. After a period of time did you discover that the handle
20 here actually operated the door?
21 A. Yes, I did make that discovery.
22 Q. Is there any handle inside the cell, sir?
23 A. No, there is not.
24 Q. You can't open it from inside?
25 A. Can't.
26 Q. Once you discovered that door, you could operate from the
27 outside, did you open the door?
28 A. I didn't immediately open the door.

1 Q. Why is that?

2 A. I was not certain of Mr. Hamman's behavior, how he would
3 react upon his release.

4 Q. Was he still pretty excited at the time?

5 A. Yes, he appeared excited.

6 Q. Were you able to calm him down?

7 A. Once he got outside, he was calm.

8 Q. At some point you made a decision to open that door?

9 A. Yes.

10 Q. As we see it here in 34?

11 A. Yes.

12 Q. Now, as we see it, there's some tape around the edge, is
13 that how you found it, sir?

14 A. In that fashion, yes. I think it was more sealed.

15 Q. Before you opened it?

16 A. Yes.

17 Q. And once you opened it, what did you do?

18 A. My partner and I escorted Mr. Hamman out of the room.

19 Q. Did you have to help him in moving?

20 A. Basically we had to assist him on his arms.

21 Q. Why was that, sir?

22 A. He was shivering. His muscles, he was -- appeared to be
23 shivering from hypothermia. He had difficulty moving himself.

24 Q. Were you able to get him a blanket or something and calm
25 him down some, sir?

26 A. Yes. When we got him outside in the patrol unit, I put an
27 emergency blanket we have in our cars over his shoulders.

28 Q. Now, before you opened the door, did you have to move any

1 objects on the ground, sir?

2 A. Yes, I did.

3 Q. And what was that?

4 A. It was a white, large white, I would say, a bookcase of

5 some sort.

6 Q. Showing you Exhibit 21; do you recognize that item, sir?

7 A. That's the bookcase.

8 Q. That's the bookcase in question?

9 A. I call it a bookcase.

10 Q. Okay. And where was that item as we see it in Exhibit 21?

11 A. It was near the door on the ground, laying as it is now

12 near the door.

13 Q. And when you arrived at the cell, was there any water

14 coming out of there?

15 A. Yes. A large amount of water was coming out from

16 underneath the door.

17 Q. Was the actual water source still on when you got there?

18 A. Yes, it was.

19 Q. And this was in the middle of winter?

20 A. Yes.

21 Q. March?

22 A. Yes.

23 Q. Showing you what's been marked Exhibit 26; do you

24 recognize what's depicted here, sir?

25 A. Yes, I do.

26 Q. What are we looking at in Exhibit 26?

27 A. That is the interior of that holding cell.

28 Q. Now, this object on the right of Exhibit 26 appears to be

1 some sort of towel. Is that how it looked then, sir?

2 A. Yes.

3 Q. What is that that we're looking at?

4 A. At the time I didn't know. Later on I was told it was his
5 shirt.

6 Q. Was there an item attached to something, sir?

7 A. That article of clothing or cloth was on the fire
8 sprinkler that is in that room.

9 Q. Showing you Exhibit 29, is that another view of the same
10 sprinkler in question, sir?

11 A. Yes.

12 Q. And in the background here this is the Plexiglas that you
13 first caught the view of the person inside?

14 A. Yes, this is from the inside.

15 Q. And showing you Exhibit 30, is this a closer view of the
16 same thing?

17 A. Yes.

18 Q. Now, there was still water coming down, and what fashion
19 was it coming down when you got there, sir?

20 A. When I first entered the room and saw Mr. Hamman in a
21 cell, I could see the water cascading over his head.

22 Q. Now, sir, where did the -- where did you take the victim
23 after you were able to get him out of the cell? Where did you
24 take Mr. Hamman?

25 A. I found a door on the southern end of the building that I
26 could open from the outside. Officer Hamelin and I escorted
27 Mr. Hamman outside to our -- the sergeant's patrol car, and
28 Hamelin's patrol car were in the parking lot.

1 Q. Did he have any physical complaints that he told you
2 about?
3 A. He was freezing.
4 Q. You could see him audibly shivering?
5 A. Yes.
6 Q. And did you take him where, sir?
7 A. I didn't take him anywhere other than to the patrol unit.
8 Q. And thereafter was he transported to the hospital?
9 A. He was.
10 Q. Did you get some preliminary information from him, sir, as
11 to how he got in the cell?
12 A. Yes. While he was outside in the unit, he said that Shawn
13 Rodriguez and Anna Rugg had locked him in the cell.
14 Q. All right. Now, at that point did he turn over the crime
15 scene to someone else?
16 A. Sergeant Burns was on the scene at the time and stayed
17 there to secure the evidence.
18 THE COURT: Did you say Burns?
19 THE WITNESS: Sergeant Burns, yes, ma'am.
20 Q. BY MR. MARCHI: Now, sir, showing you what's been marked
21 Exhibit 4 here; do you recognize what is depicted in there?
22 A. Yes, I do.
23 Q. And what are we looking at here?
24 A. We're looking down Epperle towards Auburn Ravine Road.
25 Q. And is this the front end, if you will, of the juvenile
26 hall area?
27 A. Yes.
28 Q. That's where your partner went?

1 A. That's where my partner and the sergeant's car were
2 parked, yes.

3 Q. And showing you Exhibit 2; do you recognize what's
4 depicted in here?

5 A. Yes, I do.

6 Q. What are we looking at?

7 A. That was the door I was able to open.

8 Q. That's the front door?

9 A. Yes.

10 Q. Okay. And there's a little latch inside that unlocks?

11 A. Yes.

12 Q. Okay. And is that where you left Sergeant Burns in charge
13 of the operation?

14 A. He was at the scene. I don't remember specifically where
15 he was standing.

16 Q. Now, showing you Exhibit 5, does that depict an area where
17 you initially responded, a different view of it, sir?

18 A. Yes, that does.

19 Q. That's the other driveway on the -- behind the entrance of
20 the hall; correct?

21 A. Yes.

22 Q. And again showing you Exhibit 7, is that another view of
23 that same area?

24 A. From the other way, from the other direction, it is.

25 Q. Okay. All right. Now, after -- how long were you at the
26 hall, sir?

27 A. From the time I arrived until I left?

28 Q. Yes.

1 A. I didn't indicate that. I would have to estimate 25 to 30
2 minutes.
3 Q. Okay. And had Mr. Hamman been transported yet to the
4 hospital?
5 A. Yes.
6 Q. Do you know how long that took for him to be transported?
7 A. The actual transporting?
8 Q. No. How long before the ambulance arrived?
9 A. I would say I left shortly after the ambulance left with
10 him in it.
11 Q. Okay. And where did you head to after Mr. Hamman was
12 taken from the hall?
13 A. Back to the 49er Shell on the corner of Elm and State
14 Route 49.
15 Q. Where you got the note?
16 A. Yes, sir.
17 Q. And now, you looked through the entire hall while you were
18 out there, sir?
19 A. Yes, we did.
20 Q. And let me go back here to Exhibit 1 and did you find
21 anyone else in the area, sir?
22 A. No, we did not.
23 Q. So the only person you found was the one locked down in
24 this booking area?
25 A. Yes.
26 Q. Now, when you went back to the Shell Station, what was
27 your purpose in doing that, sir?
28 A. To recontact Mr. Hammer.

1 Q. Mr. Hammer?
2 A. Mr. Hammer.
3 Q. The Shell Station attendant?
4 A. The employee at the Shell, yes, sir.
5 Q. Why did you want to do that?
6 A. I wanted to get a more accurate statement from him, more
7 detail on the two people he described.
8 Q. Okay. Did he describe two people and a vehicle in
9 connection with a note, sir?
10 A. Yes, he did.
11 Q. And what did he describe these two people looking like?
12 MR. SERAFIN: Objection; hearsay.
13 THE COURT: Sustained.
14 Q. BY MR. MARCHI: He told you about a specific description
15 of a vehicle; correct?
16 A. Yes, he did.
17 Q. And did you ask him to point out where, in fact, he last
18 saw this vehicle?
19 A. Yes, I did.
20 Q. Meaning on the premises of the station?
21 A. At the pumps, yes.
22 Q. All right. Did he proceed to do that, sir?
23 A. Yes, he did. We walked out the doors to the gas station.
24 And he pointed over towards pump three.
25 Q. All right. And you had already -- he had already given
26 you a description of the vehicle?
27 A. Yes. He already described the red Beretta.
28 MR. SERAFIN: Objection; move to strike. That was

1 hearsay.

2 THE COURT: Sustained.

3 Q. BY MR. MARCHI: Based on the description he gave you, did
4 you then see a vehicle that seemed to match that vehicle?

5 A. Yes, I did.

6 Q. What kind of vehicle was that?

7 A. It was a red Chevy Beretta.

8 Q. All right. Did you have your patrol car in the area, sir?

9 A. Yes. My patrol car was parked near the front of the
10 entrance.

11 Q. And what did you proceed to do then, sir?

12 A. I was with a deputy, and both of us went to our patrol
13 cars and pulled in behind the red Beretta.

14 Q. All right. Showing you what's been marked Exhibit 47; do
15 you recognize this vehicle?

16 A. Yes, I do.

17 Q. Is that the red Beretta in question?

18 A. Yes, it is.

19 Q. And do you recognize the license plate 3FHS432?

20 A. From my notes, I recall that's the plate.

21 Q. And that is the car?

22 A. Yes, it is.

23 Q. Did you then proceed to make a vehicle stop on that
24 vehicle?

25 A. Yes, we did.

26 Q. How did you do that?

27 A. We did what is called a high risk felony stop.

28 Q. What is that?

1 A. I can describe that as when there's a high risk situation
2 typically two officers will pull in behind the vehicle parallel
3 to each other, next to each other, facing the vehicle when it
4 comes to a stop. At that point the officers step out of the
5 vehicle but do not approach the car. We simply order the driver
6 out one by one, one at a time using the PA, public address
7 system. We take them into custody when they come out.

8 Q. All right. And how many occupants were in the vehicle?

9 A. Two.

10 Q. And is one of them in the courtroom today?

11 A. Yes.

12 Q. Would you point to that person and describe what they're
13 wearing.

14 A. I recognize Shawn Rodriguez with the blue shirt.

15 MR. MARCHI: May the record reflect identification of the
16 defendant, Shawn Rodriguez, your Honor?

17 THE COURT: Yes, noted for the record.

18 Q. BY MR. MARCHI: Thank you. And who was driving the
19 vehicle?

20 A. At the time, Shawn Rodriguez.

21 Q. And was there another person in the vehicle?

22 A. Yes.

23 Q. And who was that?

24 A. Anna Rugg.

25 Q. All right. Now, sir, were you involved in looking for any
26 items that you seized, sir?

27 A. Yes, I was.

28 Q. And what was that that you were looking for? Who did you

1 find items on?

2 A. We found items on both Mr. Rugg -- or Mr. Rodriguez and
3 Ms. Rugg.

4 Q. Okay. And what item did you find on Mr. Rodriguez?

5 A. I'd have to refer to my notes to be accurate. Can I do
6 that?

7 Q. Please do.

8 A. Mr. Rodriguez had two receipts from Bank of America.

9 Q. All right. And did you find any receipts on Ms. Rugg?

10 A. Yes, we did.

11 Q. And what did you find in that regard?

12 A. There were also bank withdrawal receipts.

13 Q. Okay. I think in a moment we'll have those here. Now,
14 were you actually involved in the search of the car itself?

15 A. No, I was not.

16 Q. Who did you turn that over to, sir?

17 A. Auburn Police Department investigations.

18 Q. Was Dale Hutchins involved in that, to your knowledge?

19 A. I believe he was.

20 Q. I have what's been marked as Exhibit 68. This is an
21 Albertsons receipt and it says duct tape. Do you recognize
22 finding that item, sir?

23 A. Yes, I do.

24 Q. Who did you find that on?

25 A. I have to refer to my notes to be accurate.

26 Q. Would you, please.

27 A. That was found on Mr. Rodriguez.

28 Q. The defendant here?

1 A. Yes.

2 Q. Okay. Where did you find that on Mr. Rodriguez?

3 A. It was in his pants pocket.

4 Q. And it actually has a date and time on it of 3/16/03,
5 2:55; is that correct.

6 A. I have written here 2155.

7 Q. Okay. So it is dated there?

8 A. Yes.

9 Q. And you indicated you found some items. What other items
10 did you find on Mr. Rodriguez?

11 A. I found the two bank receipts, withdrawal receipts, and a
12 balance inquiry, an ATM balance inquiry.

13 Q. And also on Exhibit 68; do you recognize this balance
14 inquiry?

15 A. Yes.

16 Q. All right. Was that on Mr. Rodriguez?

17 A. Yes, it was.

18 Q. All right. And that actually references a card number
19 2013; correct?

20 A. Yes.

21 Q. Is that the last four digits of the card?

22 A. Typically the last four digits of the ATM credit card.

23 Q. Where did you find that on Mr. Rodriguez?

24 A. That was also in his pocket.

25 Q. And showing you these other two receipts, they're
26 referenced Rocklin and Sunset Boulevard; do you recognize these
27 two items?

28 A. Yes, I do.

1 Q. Where did you find these? This is all part of Exhibit 68.

2 A. The \$40 receipt, I found those on -- I believe I found
3 those on Anna Rugg. Yes, I did.

4 Q. Where did she have those at?

5 A. I don't indicate. I believe they were in her pocket as
6 well.

7 Q. All right. They both have dates on them; do they not?

8 A. Yes, they do.

9 Q. 3/16/03 and a time of 3:54 p.m.?

10 A. Yes.

11 Q. Presumably?

12 A. Presumably.

13 Q. Okay. Well, it is 3:54?

14 A. 3:54.

15 Q. On the 16th; correct?

16 A. Yes.

17 Q. And again, does that refer to a card number 2013, 2013 on
18 both of these items?

19 A. It does.

20 Q. So these are connected with this balance check of 2013,
21 that is the same account?

22 A. I believe so.

23 MR. MARCHI: Could we approach quickly, your Honor?

24 THE COURT: Sure.

25 (Bench conference held off the record.)

26 THE COURT: Ladies and gentlemen, we'll take our recess
27 for the afternoon, and we will resume again in 15 minutes, so I
28 need you back here at 20 minutes to 3:00. I would remind you it

1 is your duty not to converse among yourselves or anyone else on
2 any subject connected with the case and not to form or express
3 any opinions on the case until it is submitted to you after you
4 heard all the evidence, and we'll see you back here at 20 till.

5 (Jury exits the courtroom at 2:23 p.m.)

6 THE COURT: We're on the record.

7 MR. MARCHI: We're outside of the presence. I need to get
8 back out of the evidence the tape so we can basically, we'll
9 have to make another copy to get rid of two areas where there's
10 a reference to certain kind of --

11 THE COURT: Can we do that? Are you going to be using
12 that today?

13 MR. MARCHI: I need to get that now so I don't forget.

14 THE COURT: The two tapes, he needs them back because
15 they're going to edit them.

16 MR. MARCHI: I think what I'll do is probably have to copy
17 the original, editing out the two spots, and leave the original
18 as it is most likely --

19 THE COURT: He's trying to make a statement here on the
20 record, and it is a little hard for my court reporter. The
21 record will reflect that the jury is not present. Counsel and
22 parties are present. Mr. Marchi is requesting that I return to
23 him the two tapes so they can be very briefly edited to delete
24 the one portion you requested. Is that understood, Mr. Serafin?

25 MR. SERAFIN: No objection.

26 THE COURT: Number two, shortly before the jury returns,
27 my bailiff is going have Ms. Rugg come out. She's here in
28 street clothes. She will not be in handcuffs. She will be

1 seated here so the witness can identify her. Once she is done,
2 he'll have her stand up and he'll walk out with her this way and
3 what they do after that is up to them. And the jury will all be
4 in here and so is there anything else we need to talk about
5 before I give my court reporter a break?

6 MR. MARCHI: No.

7 THE COURT: All right. I would like the defendant back in
8 here ready to go and Ms. Rugg ready to go before 20 minutes till
9 so the jury can come in in 20 minutes.

10 THE BAILIFF: Yes, your Honor. Consider it done.

11 (Recess taken at 2:25 p.m.)

12 THE COURT: All right. Record will reflect the defendant
13 is present. Also present in court is Ms. Rugg who is seated in
14 street clothes without handcuffs. It is understood, Ms. Rugg,
15 after the officer testifies, and I assume presumably you would
16 get up and leave and just walk out the with the officer. And
17 are we ready to proceed?

18 MR. MARCHI: Yes.

19 MR. SERAFIN: Yes.

20 THE COURT: All right. Go ahead.

21 (Jury enters the courtroom at 2:37 p.m.)

22 THE COURT: All right. We're back on the record. The
23 jury is all present. Counsel and parties are present. The
24 witness is on the witness stand. Are you ready to proceed?

25 MR. MARCHI: Yes.

26 THE COURT: Go ahead.

27 Q. BY MR. MARCHI: And, Officer Hopping, did you discuss
28 having found a passenger in the red Beretta, that person now in

1 the courtroom?

2 A. Yes, she is.

3 Q. And would you point to her and describe what she's wearing
4 here today?

5 A. I recognize Ms. Rugg with the blue shirt and black
6 trousers.

7 MR. MARCHI: May the record reflect identification of the
8 Anna Rugg?

9 THE COURT: Yes, noted for the record.

10 Q. BY MR. MARCHI: And can I have Ms. Rugg stand up for a
11 moment. Is her size consistent with what was described to you
12 from the attendant, sir?

13 A. Yes.

14 MR. MARCHI: Thank you. I have no further questions.

15 THE COURT: All right. Cross?

16 MR. SERAFIN: Is the Court going to excuse?

17 THE COURT: Unless you have any other questions related to
18 identification of Ms. Rugg, I could excuse her at this point.

19 MR. SERAFIN: I do not.

20 THE COURT: Okay. Ms. Rugg, you're free to go. All
21 right. Go ahead, cross.

22 MR. SERAFIN: Thank you, your Honor.

23 CROSS-EXAMINATION

24 Q. BY MR. SERAFIN: Officer Hopping, on the note that was
25 discovered by the gas station attendant, did it also say on it
26 that Shawn Rodriguez kidnapped me?

27 A. Yes, it did.

28 Q. And when you arrived at the hall and you found that there

1 was an individual in the cell, you initially did not open the
2 door. You called for backup; correct?

3 A. Yes, I did.

4 Q. And you called for backup because you were unsure how that
5 person in the cell may react, what they may be going through and
6 how they may react towards you?

7 A. Correct.

8 Q. You thought they might -- there was some risk they might
9 get physical with you?

10 A. Possibly.

11 Q. When were -- when you arrested Shawn Rodriguez you
12 searched his pockets and you found the two bank receipts, you
13 mentioned earlier; correct?

14 A. Yes.

15 Q. One was an ATM withdrawal about ten days earlier, I
16 believe March 5th; correct?

17 A. I can't recall that. I have to look at my notes.

18 Q. If looking at your notes would refresh your recollection,
19 please do that.

20 A. Thank you. I found that in my note.

21 Q. And after reviewing your notes do you now have a
22 recollection of a receipt that Shawn Rodriguez had from March
23 5th?

24 A. Yes.

25 Q. And March 5th obviously was about ten days prior to this
26 incident, so it really had no bearing on anything that happened
27 at the juvenile hall; correct?

28 A. I didn't know if it had bearing or not.

1 Q. And now that you know the statements that the ATM was used
2 March 15 or March 16th, would you agree that a receipt of March
3 5th really is irrelevant?

4 A. I couldn't agree to that. I don't know that.

5 Q. Did you do any investigation on whether or not it was
6 relevant?

7 A. I did not.

8 Q. So there's been nothing from a March 5th receipt traced to
9 Nicholas Hamman?

10 A. Not to my knowledge.

11 Q. And the other receipt was not actually a withdrawal but
12 was an account balance inquiry; correct?

13 A. Yes.

14 Q. That's an account that you believe to be Nicholas Hamman's
15 account?

16 A. I suspected.

17 Q. And the two receipts that you found from the codefendant,
18 Ms. Rugg, those were both cash withdrawals; correct?

19 A. Yes.

20 Q. Both in the amount of \$40?

21 A. Yes.

22 Q. Both to Ms. Rugg's person?

23 A. Yes.

24 Q. And both from the account which you believe to be Nicholas
25 Hamman's?

26 A. Yes.

27 Q. And no such receipts in the same manner were found on
28 Mr. Rodriguez?

1 A. Cash withdrawal receipts.

2 THE COURT: I'm sorry?

3 THE WITNESS: I'm agreeing with him.

4 Q. BY MR. SERAFIN: Roughly can you describe the -- or
5 estimate the distance from the bottom of the cell door, that
6 Nicholas Hamman was behind, and the floor?

7 A. Bottom of the cell door and the floor.

8 Q. Clearly there's a gap at the bottom of the door?

9 A. If I had to estimate right now, I would say one inch.

10 Q. And you noticed the towel around the sprinkler; correct?

11 A. Yes.

12 Q. Did you also notice a towel on the table inside the
13 holding cell?

14 A. I did not.

15 Q. There was an evidence sheet prepared in this case that
16 listed all the evidence taken from items 1 to I believe it was
17 in the 30s. Did you have anything to do with preparing that?

18 A. No, I did not.

19 Q. That was one of the officers that took over?

20 A. Yes.

21 MR. SERAFIN: If I could have counsel just click on to the
22 diagram on number 1, the overall diagram.

23 Q. Officer Hopping, using your cool little pointer thing, can
24 you diagram for the jury your general path from once you got
25 inside the window that led to the actual door that was locked?

26 A. Yeah. Would you like me to narrate?

27 Q. If you could.

28 A. We came in through the window here, through the day room.

1 I can't remember where the door was to this hallway. However,
2 we entered this hallway and went down this hallway checking the
3 rooms as we went. We went down to the end to the rec room,
4 searched it, made sure the door was locked and went down the
5 hallway this way.

6 Q. As you indicated, this is the cell that Mr. Hamman was in;
7 is that correct?

8 A. Yes, it is.

9 Q. What angle did you approach the cell door?

10 A. What angle? 90 degrees.

11 Q. Not 45 degree angle?

12 A. No.

13 Q. From what side did you approach the door; in other words,
14 did you come in from the left side or from the office area?

15 A. From this hallway, down this hallway.

16 Q. Okay. And then the door leads from this hallway to this
17 room?

18 A. No. There's a doorway directly into the booking room from
19 this area.

20 Q. As you come in the doorway, the first thing you would then
21 see is this L-shaped bookcase?

22 A. It is.

23 Q. Not the bookcase, but the L-shaped countertop?

24 A. Yeah. It is short, yes.

25 Q. Okay. And so you come in this way. Then did you walk --
26 do you have to walk around the countertop to come to the door
27 which is over here?

28 A. Yes.

1 Q. So as you approached the door, you were approaching it
2 from this side; correct?
3 A. Yes, I was.
4 Q. Is there any way to get to the door from the other side
5 that you know of?
6 A. I think there might be a door. I don't know if it is here
7 to this room. I can't recall at this time.
8 Q. So you're not sure if there's another way, but you and the
9 other officer, you came from the right side; correct?
10 A. Yes.
11 Q. Directing your attention to number 34, this is the door to
12 the holding cell; correct?
13 A. Yes.
14 Q. And this is -- we can barely make out the countertop which
15 is the first thing you saw when you came into the room; right?
16 A. Correct.
17 Q. You had to walk around that countertop so you were coming
18 ahead to the door this way?
19 A. Correct.
20 Q. And the door opens from left to right?
21 A. Yes.
22 Q. So that if the door were opened, the door would be resting
23 against this counter?
24 A. I would assume.
25 Q. If I could have you go to one more, number 21, which is
26 the bookcase. This is the bookcase that you said was near the
27 door, though not actually pushed up against it?
28 A. That is right.

1 Q. How far was it actually from the actual cell door if you
2 remember?

3 A. I didn't measure. If I have to remember, it was
4 approximately 6 to 12 inches away from the door.

5 Q. And it appears to me from looking at the bottom of this
6 shelf that there is a space from the bottom shelf to the floor;
7 is that an inaccurate conclusion by me?

8 A. I can't remember the bookcase specifically and from that
9 picture, I can't tell.

10 Q. Looking at it now, doesn't it appear there's an end here
11 that goes slightly further than the actual bottom shelf?

12 A. It does appear that way.

13 Q. And when you stopped the red Beretta that Shawn Rodriguez
14 was driving, did -- once you activated your lights, did he stop
15 immediately?

16 A. They -- the car turned on to the frontage road of Auburn
17 Ravine and then stopped.

18 Q. And nobody tried to get out and run obviously?

19 A. Nobody did.

20 MR. SERAFIN: No further questions.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 Q. BY MR. MARCHI: As we look at Exhibit 21 here, is that
24 what was in the bookcase when you found it there, sir, with the
25 paint cans?

26 A. It was dark. I recall there were items in there. If
27 those are the items, it could be. I can't recall.

28 Q. You did not move any of the items as the bookcase sat

1 other than to move it out of the way of the door?
2 A. Correct. I didn't pull anything out of there.
3 Q. Did you have to move the bookcase in Exhibit 21 to have to
4 swing the door open?
5 A. I did.
6 Q. How far away was it from the actual cell door?
7 A. As I recall it was 6 inches to 12 inches away from the
8 door.
9 Q. And that's not the cell door there; is it? That's a
10 different door or can you tell?
11 A. From that picture I can't tell.
12 Q. Okay. And so you would have turned over the scene to
13 Sergeant Burns and any other detectives that processed the
14 scene?
15 A. Sergeant Burns took the scene. I left, yes.
16 Q. Now, when you did go throughout the hall and counsel
17 directed you here on Exhibit 1, the route you went, was there
18 any lighting at all inside the hall?
19 A. No.
20 Q. So it was completely dark?
21 A. Other than our flashlights, no light.
22 Q. And this was at 2:00 in the morning?
23 A. Yes.
24 Q. Counsel asked you about another item, a different bank
25 card receipt that you found on Mr. Rodriguez. And what bank was
26 that, sir?
27 A. I'd have to refer to my notes.
28 Q. Okay.

) 1 A. It was also Bank of America.
2 Q. And did you reference the card number in your report, sir?
3 A. I did not.
4 Q. Okay.
5 A. I'm sorry, on that one I did, yes.
6 Q. What card number did you reference?
7 A. 5764.
8 Q. So a different card number than 2013?
9 A. Yes.
10 Q. And now you wrote down in your report that it was March
11 5th of '03; is that correct?
12 A. March 5th, yes, I did.
13 Q. I'm just going to show you this to see if this refreshes
) 14 your memory. Could it have been a different day, if you
15 remember? If you don't --
16 A. The date on the card? On the receipt?
17 Q. On the receipt.
18 A. I don't recall it being a different date.
19 Q. I'm going to show this and see if this refreshes his
20 memory. I'm showing you here what is a Bank of America card
21 receipt dated 3/15/03, account number 5764; do you recognize
22 that item?
23 A. I do.
24 Q. Is that the one you reference in your report as 3/5 when,
25 in fact, it is 3/15?
26 A. I may have made a mistake.
) 27 Q. That happens. So that appears to be the one?
28 A. Yes.

1 Q. And, of course, that is a different card number; correct?

2 A. Yes, it is.

3 THE COURT: Are you marking all of those as Exhibit 28?

4 MR. MARCHI: This one I've not marked. I just showed it
5 to refresh his memory. I'm not offering it into evidence. The
6 others are all marked as a package.

7 THE COURT: Okay.

8 MR. MARCHI: Thank you. No further questions.

9 THE COURT: Any further on cross?

10 MR. SERAFIN: Briefly, your Honor.

11 RECROSS-EXAMINATION

12 Q. BY MR. SERAFIN: Officer, the receipt that counsel just
13 showed you to refresh your recollection, that is still using a
14 different account number than the two receipts found on
15 Ms. Rugg; correct?

16 A. Correct, yes.

17 Q. You said when you first arrived to the holding cell, you
18 assumed the door was locked; correct?

19 A. The one where Mr. Hamman was in, yes.

20 Q. Yes. And, in fact, you called the fire department
21 originally to come and try to open the door; correct?

22 A. Yes, I did.

23 MR. SERAFIN: No further questions.

24 THE COURT: Anything else?

25 MR. MARCHI: Yes.

26 FURTHER REDIRECT EXAMINATION

27 Q. BY MR. MARCHI: Just to clarify here. The one that is not
28 in evidence was on a different account number, correct, that you

94

1 found on Mr. Rodriguez?

2 A. With one you just showed me, correct.

3 Q. However, you did find another receipt on Mr. Rodriguez,
4 correct, that was a Bank of America receipt?

5 A. Yes, correct.

6 Q. And that was on account number 3013?

7 A. 2013.

8 Q. That was found on Mr. Rodriguez; correct?

9 A. I have to refer.

10 Q. Please do. That was the account balance inquiry?

11 THE COURT: I'm sorry.

12 Q. BY MR. MARCHI: But that was found on Mr. Rodriguez;
13 correct?

14 A. Yes.

15 Q. So this is an account balance receipt as part of Exhibit
16 68, on account number with the last four digits 2013 found on
17 Mr. Rodriguez; correct?

18 A. Correct.

19 Q. And the other two receipts which were actually
20 transactions, the same account number 2013, two of them were
21 found on Ms. Rugg?

22 A. Ms. Rugg.

23 Q. But they are the same account, but this is just an account
24 balance check?

25 A. Correct.

26 Q. On Mr. Rodriguez and two transactions on Ms. Rugg?

27 A. Correct.

28 MR. MARCHI: Okay. Thank you. No further questions.

1 MR. SERAFIN: No further questions, but I would like to
2 keep this officer subject to recall.

3 THE COURT: All right. You may step down, but you are
4 subject to recall.

5 THE WITNESS: Will that be for today?

6 THE COURT: Probably not for today. Your next witness.

7 MR. MARCHI: Yes. At this time I will call Officer Stan
8 Hamelin.

9
10 STANLEY HAMELIN

11 called as a witness on behalf of the People herein was sworn,
12 examined, and testified as follows:

13 THE COURT: I need you to please come forward and when you
14 get right up here by my court reporter, just stop and face my
15 clerk and raise your right hand to be sworn.

16 THE CLERK: Do you solemnly state that the testimony you
17 shall give in the cause now pending before this court shall be
18 the truth, the whole truth, and nothing but the truth so help
19 you God?

20 THE WITNESS: I do.

21 THE CLERK: Please state your name and spell your last for
22 the record.

23 THE WITNESS: Stan Hamelin, H-a-m-e-l-i-n.

24 THE CLERK: Thank you. Go ahead and take a seat.

25 DIRECT EXAMINATION

26 Q. BY MR. MARCHI: Officer Hamelin, by whom are you employed,
27 sir?

28 A. City of Auburn.

1 Q. In what capacity?

2 A. Police officer.

3 Q. And how long have you been a police officer, sir?

4 A. About eight and a half years.

5 Q. Has that entire time been with Auburn PD?

6 A. Correct.

7 Q. And do you know the officer that just left, Hopping?

8 A. I do.

9 Q. Okay. And calling your attention to March the 16th and
10 March the 17th of 2003, did you have occasion to be working for
11 the Auburn PD as a patrol officer that day?

12 A. I did.

13 Q. What shift were you working?

14 A. That shift would have been the graveyard shift from 19 --
15 1900 hours to 0700 hours, I believe.

16 Q. So for us regular people that would be 7 p.m.?

17 A. 7 p.m. to 7 a.m.

18 Q. Thank you. And during the course of your shift, calling
19 your attention to March 17th at about 2:00 in the morning, did
20 you have occasion to be dispatched somewhere, sir?

21 A. Yes, I did.

22 Q. And where was that?

23 A. That would have been called -- Officer Hopping initially
24 received which is in regards to a kidnapping. He was being
25 dispatched to the 49er Shell, and I was directed to check the
26 area of the juvenile hall which would be off of Epperle.

27 Q. All right. So you were in radio communication with
28 Officer Hopping?

1 A. Yeah, I was.

2 Q. And he went to the Shell Station and you went to the hall?

3 A. Correct.

4 Q. And is that on the basis of what Officer Hopping directed

5 you to, sir?

6 A. Yes, off the information. Apparently there was an

7 associated vehicle, red in color, from my memory, Chevy, and

8 although without reading my notes, I don't recall exactly why I

9 was directed to the juvenile hall. I believe Officer Hopping

10 might have directed me there.

11 Q. Did you again get to the hall right away, sir?

12 A. I did.

13 Q. Was Officer Hopping there yet?

14 A. I passed him. He was over at the 49er Shell because I was

15 out of position. It was easier for me to go to the juvenile

16 hall and he was taking the information.

17 Q. And what part of the hall did you respond to, sir?

18 A. Well, actually I drove up Epperle Street initially went

19 past it, and I didn't see anything out of the ordinary from the

20 street, and I drove and checked the back parking lot behind

21 Gottschalks and came back around.

22 Q. Showing you what's been marked Exhibit 4; do you recognize

23 what is depicted here, sir?

24 A. That's Epperle Lane.

25 Q. All right. And let me -- here's a little pointer for you.

26 Can you show us where you were coming up; is that Epperle Lane

27 there, sir?

28 A. Yes.

1 Q. And how did you proceed?

2 A. Well, right now we're looking what would be westbound.
3 This down here is Auburn Ravine Road, and this street going this
4 way is Epperle and that little driveway you see right there
5 comes out of the Town Center. This would be the driveway
6 leading into the juvenile hall in that area.

7 Q. All right.

8 A. The old juvenile hall, excuse me.

9 Q. So you did go over to the Town Center driveway briefly; is
10 that correct?

11 A. Negative. I came up driving along Auburn Ravine this way,
12 turned up Epperle, and proceeded and you can't see from this
13 photo, but it wraps around Gottschalks and Town Center.

14 Q. Actually did you position yourself somewhere at the hall?

15 A. Yes.

16 Q. And front or back, sir?

17 A. I believe I would have parked my car somewhere in this
18 area here. I don't remember specifically, but I parked here at
19 the scene.

20 Q. And do you know where Officer Hopping went?

21 A. Officer Hopping, by that time, had come around and had
22 showed up on the scene as well.

23 Q. Were you stationed on different ends of the building, is
24 what I'm getting at or do you remember?

25 A. Our vehicles, I don't remember. I do know that -- go
26 ahead.

27 Q. Initially did Officer Hopping call your attention to the
28 rear of the building at the juvenile center, sir?

1 A. We both walked back there about the same time from my
2 memory.

3 Q. Okay.

4 A. I know we came upon an open window or window that had
5 shown forced entry.

6 Q. Showing you what's been marked Exhibit 5; does this look
7 familiar to you, sir.

8 A. Yeah. That's the rear of the juvenile hall.

9 Q. All right. And showing you here Exhibit 6; is that a
10 different angle showing the building, sir?

11 A. That's the window that they had forced entry right there.

12 Q. Okay. And that is a different angle from the other
13 Exhibit 5, sir?

14 A. Yes.

15 Q. And you found that window with some of the glass broken
16 out; is that correct?

17 A. Correct.

18 Q. And this was at 2:00 in the morning on the March the 17th?

19 A. I would have to get the exact date. That would have been
20 March 17, 2:00 in the morning.

21 Q. Okay. Was it dark in the back here, sir?

22 A. Yes.

23 Q. Inside the building, was it dark?

24 A. Absolutely.

25 Q. And was Officer Hopping, were you both right there at the
26 window together pretty much?

27 A. Yes, we were together.

28 Q. And did one of you decide to go in at that point?

) 1 A. Not exactly at that point. We did eventually decide to go
2 in, yes.

3 Q. Initially what were you doing?

4 A. See, after we discovered the forced entry, Officer
5 Hopping, he showed me the note. I just briefly scanned it.
6 Said something about somebody drowning in the juvenile hall,
7 something along those lines. And, of course, given the forward
8 entry, I remember we had the on-duty supervisor, which would
9 have been Sergeant Burns, respond to the scene.

10 Q. Can I have you talk a little slower? That would help us.
11 So at some point then after conferring with Sergeant Burns, did
12 you and Officer Hopping decide to enter the juvenile hall, sir?

13 A. Yes.

) 14 Q. Where did you enter at?

15 A. Through the point of entry right there, the forced entry
16 window.

17 Q. This same window?

18 A. Correct.

19 Q. And who went in first?

20 A. Me.

21 Q. Showing you what's been marked Exhibit 12; do you
22 recognize what is depicted here, sir?

23 A. Yes. That's the window from inside the kitchen looking at
24 the exact same window, the point of entry. This being the
25 window that is broken out.

26 Q. All right. And how did you -- were you using something to
) 27 illuminate the area, sir?

28 A. My flashlight.

1 Q. And this is the area you went into first?

2 A. Correct.

3 Q. Now, I'm going to show you a diagram that has been marked
4 Exhibit 1. This purports to be a floor plan of the hallway, the
5 juvenile hall with the kitchen area back here. Is that the area
6 where you entered, sir?

7 A. Correct.

8 Q. All right. And this purports to be a day room, office,
9 booking area, holding cell, and some other areas here. Do you
10 recognize the route that you and Officer Hopping took when you
11 first went inside?

12 A. I do.

13 Q. And could you use the pointer and describe on Exhibit 1
14 what you did?

15 A. My aim is poor. This will be about the point of entry
16 right here, and we came in. I had my firearm drawn with my
17 flashlight. Officer Hopping came in second and provided a
18 cover. We made announcements. We had come through the day room
19 and proceeded along this route through the office to this door
20 right here where we ended up in the booking room, I guess you
21 would call that. I know it as the intake when the building was
22 in commission.

23 Q. All right. Showing you what's been marked Exhibit 18; do
24 you recognize what is depicted here, sir?

25 A. That would be the intake room or the previous footage is
26 showed as -- labeled as being booking.

27 Q. And specifically this window right here; do you recognize
28 that, sir?

1 A. I do.

2 Q. And what is that we're looking at?

3 A. That's the window where when Officer Hopping and I first
4 came into that room, an individual later identified as Hamman
5 was in there.

6 Q. Now, were you the first one into this area here, sir, as
7 you were approaching this Plexiglas area?

8 A. I don't remember if I was the first one. Officer Hopping
9 and I were together, moving together as a team. He may have
10 opened the door and entered first or vice versa, but we were
11 together.

12 Q. And were you and Officer Hopping on Exhibit 18
13 illuminating this Plexiglas window soon after you got into that
14 area?

15 A. Correct.

16 Q. And when you did that did you see something?

17 A. Yes.

18 Q. What did you see?

19 A. Well, you could see that there was water, a large amount
20 of water which when we initially entered the room, the building
21 itself, you could hear rushing. That's why we were moving in
22 that direction. When we first opened that door to the booking
23 room through that day room or whatever it was called, you could
24 see a large amount of water being rained down in that area, and
25 then Mr. Hamman suddenly pasted himself against the window there
26 and kind of shocked us.

27 Q. All right. And do you recall -- well, there was one man
28 flashed up against that Plexiglas window; is that what you're

1 saying, sir?

2 A. Yes.

3 Q. And do you remember if the man you later identified him as
4 Nick Hamman?

5 A. Yes.

6 Q. Could you remember what the man said, if anything, when
7 that happened?

8 A. Yes. I wrote it down verbatim in my notes.

9 Q. Would that refresh your memory to refer to that to get it
10 correct?

11 A. Yes.

12 Q. Would you do that?

13 MR. SERAFIN: I'm going to object as it's becoming hearsay
14 if it does come in anyway, your Honor.

15 MR. MARCHI: It wouldn't be hearsay. It sounds pretty
16 spontaneous.

17 THE COURT: Objection overruled.

18 Q. BY MR. MARCHI: You may answer. You have this in quotes;
19 correct?

20 A. I do.

21 Q. You wrote this soon after it was said to you?

22 A. Yes.

23 Q. What did Mr. Hamman say?

24 A. He yelled out in a shrieking voice, quote-unquote: "Get
25 me out of here. I'm going to fucking die." And he also said,
26 "They tried to kill me."

27 Q. And this was just, he just blurted this out and flashed up
28 against the window?

) 1 A. Yeah.

2 Q. And you, in your report, actually described the tone of

3 his voice; do you know --

4 A. Yes.

5 Q. Do you remember that tone of voice?

6 A. Yes.

7 Q. What was that like?

8 A. It sounded like somebody that was petrified. It was a

9 shrieking voice.

10 Q. That's how you describe it in your report?

11 A. Yeah.

12 Q. How did he appear to you? How did he look?

13 A. Terrified.

) 14 Q. And at that point did you or Officer Hopping try and calm

15 him down or what were you doing, sir?

16 A. No. Officer Hopping asked him a couple of questions, I

17 believe. I remember the man identifying individuals who had

18 attempted to kill him and he identified them by name. And then

19 Officer Hopping, I remember Officer Hopping asked him if there

20 was anybody else in the building and the man didn't know.

21 Q. So Officer Hopping did ask him a question if there was

22 anyone else in the building. Did you look throughout the rest

23 of the building?

24 A. Yeah. Immediately following that we went and made -- did

25 what we call a safety clear of the building to make sure that

26 nobody else was in there.

) 27 Q. Before you were going to deal with Mr. Hamman?

28 A. Yes.

1 Q. And that's for your own safety?
2 A. Yes.
3 Q. Did you find anybody else?
4 A. No, we did not.
5 Q. Did you find a lot of water throughout the premises?
6 A. Oh, yeah.
7 Q. And was the water still going on in the room that
8 Mr. Hamman was in?
9 A. Yes.
10 Q. Now, you indicated that Mr. Hamman made some statements
11 about who tried to kill him. Was that in response to
12 questioning by Officer Hopping or did he volunteer that
13 information?
14 A. In regards to the identification of the suspects, I don't
15 remember if that was in response to a question that Officer
16 Hopping asked.
17 Q. But from what -- what you got out of it, there was no
18 doubt in his mind who had done that to him?
19 A. Oh, no. There was no doubt in his mind.
20 Q. And after you cleared the building, did you have a
21 conversation with Officer Hopping about trying to get Mr. Hamman
22 out of the room?
23 A. Yeah. There was a time when we were kind of perplexed as
24 to what we were looking at and how we were going to get him out
25 of there. We called for Auburn Fire Department to assist in the
26 extraction to see if we could get a key from them. I had
27 also -- during that time I noticed that -- I had figured out
28 that the front door, you can't see from the photo. There is a

1 door leading out on that side of the building. I noticed it was
2 open so I let the sergeant in.

3 Q. So you did find one door that was open?

4 A. From the inside. It was not -- it was locked from the
5 outside.

6 Q. Showing you Exhibit 2; do you recognize that door?

7 A. That's the door I opened.

8 Q. Okay. And there's actually -- I might use the pointer
9 here on Exhibit 2; do you see this long latch area here?

10 A. Yes.

11 Q. Is that a lock that just flips from the inside open and
12 closed, sir, if you remember?

13 A. I don't remember.

14 Q. Okay. But that was in -- that was not locked when you
15 tried that door; correct?

16 A. That door was not locked. I do not remember. I believe
17 it was locked.

18 Q. Okay. So you were able to let the sergeant in, however,
19 just by flipping the latch?

20 A. I had to turn the bar open, and open it. The door was
21 shut.

22 Q. Okay. So when you did that, let me find another exhibit
23 here. Showing you 34, when you discovered that that door was
24 open, did you get some kind of idea about this door here in 34?

25 A. We thought it was locked too.

26 Q. Did you at some point try the handle?

27 A. Yes. Officer Hopping went ahead and did the obvious and
28 just went ahead and tried it.

1 Q. And it opened?

2 A. And it opened.

3 Q. And where does this door lead to, sir? What's in there?

4 A. That's the custody cell room door to the actual intake

5 cell that Mr. Hamman was in.

6 Q. That's where you found Mr. Hamman?

7 A. Correct.

8 Q. And so the Plexiglas door is where in relation to this

9 door, sir, the Plexiglas window, I'm sorry?

10 A. It would be -- I'm sorry, well, from this point of view,

11 it would be to the right of that door around the corner.

12 Q. All right. So on this diagram here, sir, what we're

13 looking at, this being the cell door, is the cell door somewhere

14 or this side of Exhibit 1, sir?

15 A. The cell door being right where the 45 degree angle is or

16 actually it is depicted here.

17 Q. That little line?

18 A. That little line, yeah.

19 Q. Okay. Thank you. Now, were you able to calm Mr. Hamman

20 down before you opened the door?

21 A. I wouldn't say he was calm, no.

22 Q. He was still acting in an agitated state?

23 A. He was still frightened. Still, yeah, he was pretty

24 overwhelmed of the whole situation.

25 Q. Okay. And the people that he named, he was convinced they

26 had tried to kill him; is that correct?

27 A. Yes.

28 Q. Now, did you have to help him move from inside the cell to

1 somewhere else, sir?

2 A. Yeah, we assisted him outside.

3 Q. And how was he moving?

4 A. Very -- he was having trouble moving. He was cramped up,
5 having difficulty walking, like he'd been in -- consistent with
6 his statement he'd been standing up for a long time.

7 Q. Did he have any complaints, sir?

8 A. Yes. He said he was having trouble walking. He was
9 cramped up and he was cold.

10 Q. Did you cause him -- did you get something for him to try
11 to warm up with, sir?

12 A. Yes.

13 Q. What did you do in that regard?

14 A. When we got him outside, at this time we were still trying
15 to gather statements, and he made his complaint about his
16 condition. We went ahead and called for the fire department and
17 ambulance. We retrieved an emergency blanket from the vehicle,
18 which is -- it feels like a thin plastic sheet. I don't know
19 what else to describe it. It has an insulation layer, I
20 suppose; and, of course, we placed him in the car to warm him up
21 with the heater.

22 Q. All right. And did you cause any sort of an emergency
23 medical personnel to arrive on the scene, sir?

24 A. Yes.

25 Q. And what did you do in that regard?

26 A. We asked for their assistance to let them know we needed
27 medical assistance for Mr. Hamman.

28 Q. And did someone show up?

1 A. Yes.

2 Q. About how long after you first got Mr. Hamman out of the
3 cell, sir?

4 A. It took -- the fire department got there first, and I'd
5 say they probably got there five minutes, and then I'd say --
6 maybe I'd say 15 minutes for the ambulance.

7 Q. All right. And at some point did you accompany an
8 ambulance somewhere, sir?

9 A. Yes, to the hospital.

10 Q. And which hospital is that?

11 A. Auburn Faith.

12 Q. And about how long did it take between the time you first
13 found Mr. Hamman until you arrived at the hospital?

14 A. About -- at that time of night I would say it is probably
15 an eight-minute drive, seven-minute drive. From the time that
16 the ambulance personnel got there?

17 Q. No. I'm talking about when you were first able to get him
18 out of the cell and put a blanket on him until they actually
19 arrived at the hospital?

20 A. Total time maybe 20 minutes; 15, 20 minutes, 20 minutes.

21 Q. Showing you here what's been marked Exhibit 24; do you
22 recognize that, sir?

23 A. I do.

24 Q. What is that you're looking at?

25 A. That is the custody door that Mr. Hamman was secured in
26 his cell with.

27 Q. Now, here's some duct tape around this area. Was that the
28 condition you found it in, sir?

1 A. With the exception of the portion on the top, the tape was
2 affixed to the door when the door was shut, sealing the edges.
3 As far as the part being across the top, I can't say for 100
4 percent certainty, but I don't believe it was hanging down. I
5 think that was the condition that we might have caused after
6 opening it.

7 Q. Opening the door itself?

8 A. Yeah.

9 Q. I'm showing you Exhibit 21 and this purports to depict a
10 bookcase with some paint cans in it; do you recognize that, sir?

11 A. Yes.

12 Q. What is that?

13 A. Well, the container that is in the box looking thing that
14 is a bookshelf. And those paint cans and things like that are
15 items that were placed in it.

16 Q. And is that how you found it, sir?

17 A. The items in the bookshelf, yes.

18 Q. And where was that in relation to the cell door?

19 A. When we initially got there, that whole contraption, the
20 bookshelf with the paint cans in it, was pushed up against the
21 cell door.

22 Q. How close was it to the cell door when you arrived?

23 A. It looked to me like it was right up against it.

24 Q. And when you did first arrive, was there water coming out
25 from underneath that cell door that we've looked at?

26 A. Yeah.

27 Q. And what was the water flow like?

28 A. I don't know how to explain it other than there's a good

1 amount of water coming out. It was flowing pretty freely and
2 regularly. There was a large amount coming out from underneath.

3 Q. Was the whole hall filled with water?

4 A. Yeah, the whole building was.

5 Q. About what depth, sir?

6 A. It was over my boots, so I estimate it -- I believe I put
7 it in my report somewhere four to six inches.

8 Q. Showing you Exhibit 29; do you recognize what is depicted
9 here, sir?

10 A. That is the towel that was hanging over the sprinkler that
11 is inside the cell where Mr. Hamman was when we found him, and
12 that window right there is the window that he initially popped
13 up against when we walked in the actual booking room.

14 Q. This would be the view he would have had from inside the
15 cell; correct?

16 A. Yes.

17 Q. Approximately. And showing you Exhibit 30, is this
18 another view of the sprinkler head closer up?

19 A. Yes.

20 Q. And was there quite a bit of water still running down at
21 the time you arrived, sir?

22 A. Oh, yes.

23 Q. So it was free flowing at that point?

24 A. Yes.

25 Q. By the time you did get Mr. Hamman to the hospital --
26 well, strike that?

27 Did you make recontact with Mr. Hamman at the hospital
28 after you followed the ambulance, sir?

1 A. Yes. I was asked to do that by Sergeant Burns.

2 Q. And by the time Mr. Hamman got to the hospital, were you
3 able to observe him further, sir?

4 A. Yes.

5 Q. Was he still shivering at that time?

6 A. In the beginning initially, yes.

7 MR. MARCHI: Thank you, no further questions?

8 THE COURT: Cross?

9 MR. SERAFIN: Thank you, your Honor.

10 CROSS-EXAMINATION

11 Q. BY MR. SERAFIN: Officer, you said that the first time you
12 actually noticed that anybody was in that cell was when Nick
13 Hamman pressed his face against the window and you or Officer
14 Hopping shined their light on the window; is that right?

15 A. Well, we were shining our lights already in the room.

16 Q. When you first shined your light on, you couldn't see
17 anything in the room until he pressed his face against the
18 window?

19 A. From my memory from my view, yes.

20 Q. I assume that had a great deal to do with the fact that
21 the water was coming down on the window?

22 A. Yeah. There was, like, the way to describe it was it
23 would be like it was raining, raining against the window. ✓

24 Q. And you were trying to look?

25 A. And like I said, we were trying to flash our light and
26 look around. At least when I first took notice of him, I can't
27 speak for Officer Hopping, but I think it was the same time. We
28 had the same reaction. It was like a class B scary move when he

1 popped up.

2 Q. Until his face appeared in the window, it was as if you
3 were looking at a windshield without windshield wipers when it
4 was raining; it was very difficult to see in?

5 A. That's a good analogy, sure.

6 Q. And it was dark in the cell, obviously?

7 A. Well, yeah. There was no light in there.

8 Q. Wouldn't that be dark?

9 A. Well, but when you shine the light on, you can see through
10 the window when he popped through.

11 Q. It was your impression that the bookcase was pretty much
12 up against the door when you arrived? ✓

13 A. Yeah.

14 Q. Yet the water was still flowing out. You -- I think you
15 said flowing very freely?

16 A. Yeah. There was water coming from underneath.

17 Q. The water level in the cell was pretty much the same as
18 the water level throughout the juvenile hall?

19 A. I didn't look in the cell on the ground before we opened
20 the door. So if you're asking before we opened the door, I
21 don't know.

22 Q. As you opened the door, did you get a big burst of water
23 come flying out?

24 A. I don't believe so. I believe that the water level was,
25 you know, still pretty, you know, it wasn't like what he
26 described earlier up to his neck. It was about four to six
27 inches or so.

28 Q. And you -- the statement that he made initially said in

1 quotes, "They tried to kill me"; correct?

2 A. Yes.

3 Q. It didn't say, Shawn Rodriguez tried to kill me?

4 A. Not his first statement, the very first statement, no.

5 Q. And he didn't yell out any exclamatory statement about
6 Anna Rugg being kidnapped?

7 A. I don't recall that.

8 Q. You -- when you put it in your report, you put it around
9 quotes. When I say "it," I mean the statement that you do
10 remember, I would assume, if he shouted that Anna Rugg had been
11 kidnapped, that's probably something you would have thought
12 important to put it in your report?

13 A. Yeah, if I heard that.

14 Q. By the fact that it was not in your report, can you assume
15 that it is not said?

16 A. Yeah, but there was a time when I was separated by
17 Mr. Hopping.

18 Q. Let me interrupt you. I'm simply speaking to the original
19 statement right when he first put his face against the window.

20 A. Yeah, I didn't hear that statement from him.

21 Q. You didn't hear any statement about being kidnapped?

22 A. I didn't, no.

23 Q. You just heard, "They tried to kill me"?

24 A. The only statement I heard that I recall that I
25 memorialized in my report is what I wrote.

26 Q. And then you took a second statement while Mr. Hamman was
27 outside waiting for the fire department, is that correct, or the
28 ambulance?

1 A. Yeah. We were asking him some questions.

2 Q. And then you, yourself, took a third statement from
3 Mr. Hamman while he was at the hospital; correct?

4 A. Sure.

5 Q. Well, sure or you did?

6 A. Yeah, we did.

7 Q. And after your third statement from him you then advised
8 Detective Coe or whether you advised or not, Detective Coe came
9 while he was still at the hospital and took yet a fourth
10 statement from Mr. Hamman; is that correct?

11 A. Yeah.

12 MR. SERAFIN: No further questions, your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 Q. BY MR. MARCHI: So part of your job was to get some
16 preliminary on possible suspects; is that correct?

17 A. That's what we are trying to do, find out who, what,
18 where, when, why, so we could get the information out. Time is
19 of the essence. He indicated his car was stolen and he was
20 kidnapped. We were trying to get out enough information to be
21 on the lookout broadcast.

22 Q. Based on what he told you, did your investigation focus on
23 both Shawn Rodriguez and Anna Rugg?

24 A. Yeah. That was where it focused, sure.

25 MR. MARCHI: Thank you. No further questions.

26 MR. SERAFIN: Nothing further, your Honor, but I would
27 like to keep this witness subject to recall.

28 THE COURT: You are free to go today, but you are subject

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1 to recall.

2 MR. MARCHI: Your Honor, I believe that's all the
3 witnesses I have for today. Things went a little faster than
4 expected with the jury selection.

5 THE COURT: Okay. You thought jury selection went really
6 slow? It went faster than we thought it was going to go. We
7 are going to recess for the day so you will get done a little
8 bit earlier today. We will resume next Monday, and that will be
9 here in Department 3 at 8:30 in the morning next Monday.

10 I would remind you it is your duty not to converse among
11 yourselves or with anyone else on any subject connected with the
12 case. You are not to form or express any opinions on the case
13 until it is submitted to you after you heard all the evidence.

14 I would again remind you to be careful about any articles that
15 may be in the newspaper and because you would be restricted from
16 reading any such articles.

17 Is there anything else I need the say to them?

18 THE CLERK: Actually, no. I do need them to fill out this
19 before they leave.

20 THE COURT: We also need all of their phone numbers?

21 THE CLERK: Yeah.

22 THE COURT: So my clerk will need to meet with you because
23 we do need to take all your phone numbers in case something
24 comes up so we can get a hold of you and let you know, and I
25 believe we're in recess. Probably if you just wait out in the
26 hallway, my clerk will meet you out in the hallway. And leave
27 all your binders, and we'll take care of it.

28 (Jury exits the courtroom at 3:25 p.m.)

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1 THE COURT: Before I let my court reporter go, is there
2 anything we need to put on the record?

3 MR. MARCHI: No.

4 MR. SERAFIN: Your Honor, at some point and now is as good
5 a time as any, we have to take up the one line statement I'm
6 asking to be stricken.

7 THE COURT: You want to take that up now?

8 MR. MARCHI: I agree with that. I think it appears twice,
9 and I was going -- what I'll have to do is make a whole other
10 copy of it and hope it comes out right and excerpt out that
11 little area.

12 MR. SERAFIN: Okay. Thank you. I think that's --

13 THE COURT: Is there anything else?

14 MR. SERAFIN: No. Obviously, we'll have to visit the
15 1101(b) issue before I start my case in chief, but that's it.

16 THE COURT: I'll give you -- I will try to get something
17 to you in writing before. Just so the record is clear, you were
18 both talking back and forth to each other, and I don't -- I
19 don't know if the record is clear in terms of the tape. There
20 are one or possibly two references on the interview confession
21 of Mr. Rodriguez; is that correct?

22 MR. SERAFIN: Correct.

23 THE COURT: In which he refers to a certain object and
24 describes it in a certain way, and it is agreed that that will
25 be excerpted from the tape?

26 MR. SERAFIN: That's correct.

27 THE COURT: Okay.

28 MR. MARCHI: Thank you.

) 1 (Proceedings concluded at 3:30 p.m.)

2 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 MONDAY, SEPTEMBER 22, 2003, 8:45 A.M.

3 --oOo--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --oOo--

18 THE COURT: All right. We're on the record. The jury is
19 all present. Defendant and parties are present. And are you
20 ready to proceed?

21 MR. MARCHI: Yes, your Honor.

22 MR. SERAFIN: Yes, your Honor.

23 THE COURT: Your next witness?

24 MR. MARCHI: At this time we call Dr. Harris.

25 THE COURT: I need you to please come forward all the way
26 up here. When you get to my court reporter, please stop raise
27 your hand to be sworn.

28 THE CLERK: Do you solemnly state that the testimony you

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1 shall give in the cause now pending before this court shall be
2 the truth, the whole truth, and nothing but the truth so help
3 you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Please state your name and spell
6 your last for the record.

7 THE WITNESS: Andrea Harris, H-a-r-r-i-s.
8

9 ANDREA HARRIS

10 called as a witness on behalf of the People herein was sworn,
11 examined, and testified as follows:

12 THE CLERK: Thank you. Go ahead and have a seat.

13 THE COURT: Counsel, go ahead.

14 DIRECT EXAMINATION

15 Q. BY MR. MARCHI: Dr. Harris, by whom are you employed?

16 A. SEMA, Sutter Emergency Medical Associates.

17 Q. And that's commonly known as Auburn Faith Hospital?

18 A. I work for SEMA. We're a group. They contract with the
19 hospital to staff the emergency room.

20 Q. Are you an emergency room doctor, ma'am?

21 A. Yes, I am.

22 Q. And what background and training have you had to become an
23 emergency room doctor?

24 A. Well, I went to college at U.C. Santa Barbara, and then I
25 went to medical school in Detroit, Michigan, Wayne State
26 University in Detroit from 1987 to 1991. And then I did a
27 residency in emergency medicine from 1991 to 1994 at Wayne State
28 in Detroit.

1 Q. And how long have you been working at Auburn Faith?

2 A. I've been working at Auburn Faith for about a little over
3 a year and a half. Prior to that I was working down at Sutter
4 General and Sutter Memorial.

5 Q. And you are licensed in the state of California for
6 emergency room physician service?

7 A. Yes, I am.

8 Q. Yes?

9 A. Yes, I am.

10 MR. MARCHI: Counsel, care to inquire?

11 MR. SERAFIN: No, your Honor.

12 Q. BY MR. MARCHI: Were you working, ma'am, on March the
13 17th, 2003, at about 3:00 in the morning at Auburn Faith
14 Hospital?

15 A. Yes, I was.

16 Q. And that's here in Placer County; correct?

17 A. Yes.

18 Q. And at that time did you have occasion to examine a
19 Nicholas Hamman?

20 A. I did.

21 Q. All right. And what were his complaints initially that
22 you were going to examine him about?

23 A. He was brought in at about, like you said, 3:00 in the
24 morning, I believe, by the ambulance personnel and the police
25 for feeling cold and shivering, and he had told me that he had
26 been detained or locked up in some sort of old juvenile hall
27 cell for anywhere from two to three days.

28 MR. SERAFIN: Objection; hearsay.

1 MR. MARCHI: I'm not offering it for the truth of the
2 matter, only to serve as some background of why she took
3 subsequent medical treatment.

4 THE COURT: The Court will allow it as a basis of the
5 doctor's actions. Go ahead.

6 Q. BY MR. MARCHI: He gave you some medical history prior to
7 your treating him or some history, I'm sorry, not medical
8 history. He told you he was locked in a cell?

9 A. He told me he had been taken to some old juvenile hall
10 building and locked in a cell from anywhere from two to three
11 days and he had been standing in cold water for that period of
12 time.

13 Q. All right. And as a result of this history that you
14 received from him, did you then proceed to examine him?

15 A. Certainly.

16 Q. And what were you looking for at that point?

17 A. Well, as with any patient we pretty much do a head-to-toe
18 question about his symptoms and complaints, and then a
19 head-to-toe examination.

20 Q. And when you -- did you observe him shivering in any way?

21 A. Yes, he was shivering initially.

22 Q. And did he have complaints of being cold?

23 A. He complained of being cold. He complained of having some
24 pains in his hands and his feet.

25 Q. And as a result of his complaining of being cold and
26 having pain in the hands and feet, did you have his temperature
27 taken?

28 A. Yes.

1 Q. Do you remember about what time that was done initially?

2 A. From the records, the nurse checked the patient in at
3 approximately, I believe, 2:40 in the morning, and the nurse
4 traditionally takes the temperature at that time, documented
5 which I believe it was 94.4. I believe that was oral. I
6 personally checked the patient's temperature rectally as I was
7 examining him which is documented on my records to be at about
8 2:50 in the morning.

9 Q. All right. And what was the temperature taken in that
10 fashion?

11 A. It was 97 degrees.

12 Q. You consider that to be a little more accurate?

13 A. Definitely. The rectal temperature is the most accurate.

14 Q. And a normal temperature is what for most people?

15 A. 98.6 is considered normal.

16 Q. Did you make any observations about the man's pulse rate?

17 A. The pulse rate was fast.

18 Q. And what was it; do you recall?

19 A. I can check my dictation. It was 120.

20 Q. All right. And that's considered more than normal?

21 A. Yes.

22 Q. And was he having any difficulty breathing at all?

23 A. I don't recall any significant difficulty breathing.

24 Q. Okay. Now, did you also examine Mr. Hamman's feet that
25 day?

26 A. I did.

27 Q. And what observation, if any, did you make about that?

28 A. His feet basically looked like somebody who had been

1 soaking in a tub or in water for prolonged period of time. The
2 so-called dish pan hands. They were white and pale and kind of
3 soggy looking. He had been wearing his boots in the situation
4 and was standing in water for some period of time.

5 Q. And is there something in the medical field known as
6 trench foot?

7 A. Yes.

8 Q. What is that?

9 A. That basically describes injuries they used to see in the
10 military commonly where the soldiers would be working in the
11 trenches and in cold conditions with their boots and their socks
12 and in wet, cold conditions for long periods of time where
13 basically their feet were exposed to the elements and they had
14 no way to dry out or warm up. There could be tissue damage and
15 injury to the extremities from that kind of an injury.

16 Q. And did you then examine his feet to see if he had any
17 sort of trench foot?

18 A. From the history that he gave me of being -- standing in
19 this water for several days or two to three days in the boots
20 and the appearance of his foot, I felt that he may of a had mild
21 situation like that; although, it did improve during his
22 emergency room course and prior to his discharge.

23 Q. What do you mean "improved"? Was he having certain
24 symptoms regarding his feet?

25 A. He was having some symptoms of pain and numbness and
26 initially his feet were, as I described, and kind of white and
27 pale looking, but that did improve.

28 Q. All right. And is there something in your field known as

1 hypothermia?

2 A. Certainly.

3 Q. And what is that, if you can explain to us?

4 A. Hypothermia is a below normal body temperature typically
5 described in my emergency medicine textbook as below 95 degrees
6 core temperature which would be measured rectally. There are
7 various degrees of that which go anywhere from very mild to very
8 severe and life threatening.

9 Q. And can you die from hypothermia?

10 A. Certainly.

11 Q. And what happens when that happens?

12 A. Well, the body gets cold and stiff. Basically slows down
13 and shuts down. The heart can become very slow. You can go
14 into a coma, basically all the systems pretty much shut down,
15 and we can't really say that anybody is dead until we
16 technically warm them up to a certain temperature and then try
17 to revive them.

18 Q. And sometimes you can revive them in that condition and
19 sometimes you can't?

20 A. Correct.

21 Q. And that would, of course, be a severe form of hypothermia
22 when you get to the unconscious stage?

23 A. Very severe.

24 Q. And, of course, in this situation we're no near that stage
25 at this point?

26 A. Right.

27 Q. Are some of the other symptoms of a milder form of
28 hypothermia that you shiver?

) 1 A. That can be a very early symptom in mild hypothermia.
2 Q. And why does your body shiver?
3 A. Your body shivers to generate heat to warm you up.
4 Q. So your body is kind of working against the hypothermic
5 conditions to try to warm you up internally that way?
6 A. Yes.
7 Q. The muscles more or less contract involuntarily?
8 A. Yes.
9 Q. And you did observe some of that in his case?
10 A. He did have that initially mild; although, certainly
11 people can shiver and shake for other causes as well.
12 Q. Right. And is another form of the more mild form of
13 hypothermia that a person would have difficulty in trying to
14 work or motor coordination skills would be impaired?
15 A. That can be, yes.
16 Q. Now, in this case we've had testimony from Officer Stan
17 Hamlin that, in fact, when Mr. Hamman was removed from a cell at
18 about 2:00 in the morning at the old juvenile hall, he was wet
19 and shivering and had trouble walking, that the officers had to
20 try to guide him. He felt very stiff and unable to ambulate by
21 himself. Are those some symptoms of a mild form of hypothermia?
22 A. They may be. Those symptoms are somewhat nonspecific. I
23 don't know what his rectal temperature was at 2 o'clock in the
24 morning so we would have to correlate that with his temperature,
25 which obviously isn't available.
26 Q. Right. And he was -- the testimony further from Officer
) 27 Hamlin was they put some sort of emergency type blanket around
28 him, put him in the patrol car until the ambulance got there.

1 By the time you saw him, it would have been about 40 minutes
2 later. Can your body warm up a few degrees over that period of
3 time?

4 A. Certainly.

5 Q. And now how long was Mr. Hamman in the hospital?

6 A. He checked in, like I noted before, the nurse checked him
7 in at 2:40 and let's see, I don't have the full nursing notes
8 that includes the -- oh, here it looks like he signed out at
9 5:30. In the morning, from the discharge paperwork where he
10 signs when he leaves, it notes 5:30 a.m. so that was about two
11 and a half hours.

12 Q. And what did you do to get him back to where his
13 temperature was normal and he was otherwise feeling better?

14 A. Well, as noted, his temperature was basically normal when
15 he arrived. We gave him some nausea medication because he
16 complained of being -- feeling a little nauseated. He hadn't
17 eaten in several days. We fed him. We gave him intravenous
18 fluid and gave him routine blood work to make sure there was
19 nothing else going on.

20 Q. Did you have any dehydration at all?

21 A. There was some mild dehydration noted on his blood work.

22 Q. That's why you gave him the liquids?

23 A. Yes.

24 Q. Now, ma'am, if one is left long enough in such an
25 environment where water is dripping on your head and your feet
26 are getting cold, can you -- and this would be in the middle of
27 March in the winter of 2003, can you die if those conditions --
28 if you're left in there long enough?

) 1 A. I think there's a lot of variables, you know, how long
2 you're in those conditions, how cold it is, and how much of your
3 body is exposed.

4 Q. And again if you're left in there with no food, does that
5 weaken your body also?

6 A. Yes.

7 Q. Without food -- well does the digestion of food warm up
8 your body a little bit too?

9 A. Not --

10 Q. As far as fighting hypothermia?

11 A. Well, certainly becoming dehydrated and not having fluids
12 would contribute to the hypothermia, but one can go without
13 solid food for long periods of time without significant
) 14 suffering. He was surrounded by water so I would assume he
15 could drink water if he needed to.

16 Q. And, of course, if you were not found, you could die of
17 starvation; correct?

18 A. Yes.

19 Q. Let me ask you one other thing. Are you familiar in the
20 course of your study as a doctor of carbon monoxide poisoning?

21 A. Yes.

22 Q. What is that exactly?

23 A. Well, that's -- traditionally you hear when people try to
24 kill themselves by breathing in their exhaust fumes from their
25 car, basically carbon monoxide can come from a number of sources
26 and it displaces the oxygen in our blood and basically you again
) 27 go through several phases. The most mildest form consists of
28 headaches, some nausea, and vomiting, all the way to coma and

1 seizures.

2 Q. And what is it is that is bad about the carbon monoxide
3 getting into your blood?

4 A. Basically it affects the oxygeneration of your cells. It
5 affects the red blood cells and how they carry oxygen to your
6 system, so basically your body and cells are deprived of the
7 appropriate amount of oxygen to survive.

8 Q. And again when you do receive the carbon monoxide
9 poisoning, do you lose consciousness in a severe situation?

10 A. In a severe situation, yes.

11 Q. People have died from being found in a car?

12 A. Certainly.

13 MR. SERAFIN: Objection; leading.

14 THE COURT: Sustained.

15 MR. MARCHI: Well, she's an expert, your Honor. I believe
16 I'm allowed to lead an expert.

17 THE COURT: To a certain extent, yes.

18 Q. BY MR. MARCHI: You have known of medical cases where
19 people have died in the car circumstance that you told us about?

20 A. Yes.

21 Q. You say that one of the symptoms, the early symptom, is
22 nausea?

23 A. Nausea can be a symptom, again, nonspecific. That is a
24 symptom of a lot of problems.

25 Q. It is. And that is one of the symptoms Mr. Hamman had?

26 A. Yes.

27 Q. As far as trying to figure out how long it would take
28 to -- for someone to die of carbon monoxide poisoning in a cell

1 such as we have in the juvenile hall, is that pretty much a
2 difficult task for someone like you, a doctor, to perform?

3 A. Yes, I could not predict that.

4 Q. Why is that?

5 A. Personally I don't even know what a juvenile hall cell
6 looks like, but that all depends on the amount of exposure, any
7 ventilation, you know, I think there's numerous circumstances
8 that would predict that. I can't tell you how long it would
9 take for a person to die and different individuals are more
10 susceptible than others. You and I may not react in the same
11 way to being in that cell if we were exposed to carbon monoxide
12 poisoning.

13 Q. So there's way too many variables?

14 A. Yes.

15 Q. And when Mr. Hamman was released, did you give him any
16 advice as to what to do to take care of himself in that sort of
17 fashion or any follow-up treatment?

18 A. He was asked to follow up at the Placer County Clinic,
19 which is where he received his routine medical care. As always
20 he was told to come back to the emergency room if there were any
21 problems. He was specifically told to keep an eye on his feet
22 and make sure he doesn't develop any sores or blisters due to
23 his injuries.

24 Q. Would it be fair to say that is the only time you saw
25 Mr. Hamman, on March 17th of 2003?

26 A. Actually I have seen him as an emergency room patient
27 subsequent to that for a different problem.

28 MR. MARCHI: Thank you very much. No further questions.

1 THE COURT: Cross?

2 MR. SERAFIN: Thank you, your Honor.

3 CROSS-EXAMINATION

4 Q. BY MR. SERAFIN: Dr. Harris, I assume one of your common
5 practices with all your patients is to talk to them briefly
6 about any prior medical issues they may have before you treat
7 them or diagnose them; is that correct?

8 A. Yes.

9 Q. And so I assume you did that with Mr. Hamman?

10 A. Yes.

11 Q. And one of his prior medical issues included angina, which
12 he received when he took nitroglycerin pills; is that correct?

13 A. That's what he indicated, yes.

14 Q. And he indicated to you that he also had a history of
15 psychiatric disease; correct?

16 A. Yes.

17 Q. For that he took the following medications: Depakote?

18 MR. MARCHI: I object as to relevance, your Honor.

19 MR. SERAFIN: Any prior medicine that he may be taking, or
20 may have been deprived, or may not be taking may have
21 alternative --

22 THE COURT: I'll allow it.

23 MR. SERAFIN: -- for his --

24 THE COURT: Do you recall the question?

25 Q. BY MR. SERAFIN: For his prior psychiatric disease did he
26 tell you he was taking Depakote?

27 A. Yes.

28 Q. And Zyprexa?

1 A. Yes.

2 Q. And Cogentin?

3 A. Yes.

4 Q. And Paxil?

5 A. Yes.

6 Q. And would it be fair so say that just using your general
7 experience with patients of all different walks of life that
8 Nicholas Hamman is not exactly in a tiptop physical condition
9 human being?

10 A. Yes.

11 Q. As far as the carbon monoxide testimony, is it that you
12 made -- what cases have you specifically read relating to death
13 caused by carbon monoxide?

14 A. I can't say I've recently read any specific cases. I
15 think now and then we hear just as lay people, you know, in the
16 news that somebody killed themselves by closing their garage
17 door, sitting in their car. I have not personally ever seen
18 anybody die of a carbon monoxide injury.

19 Q. Have you, yourself, ever read any specific medical cases
20 that related to someone dying of carbon monoxide?

21 A. Yes.

22 Q. And describe that for me.

23 A. As I said earlier, there's several stages of carbon
24 monoxide poisoning. The most common incident would be a fire
25 fighter who -- or somebody involved in a fire. Those people are
26 always assessed for carbon monoxide poisoning.

27 Q. The carbon monoxide poisoning from the fire?

28 A. From the fumes from the fire, yes.

1 Q. Have you specifically been involved or read a specific
2 case where somebody has died from carbon monoxide poisoning from
3 an automobile or are you just speaking in general terms, we hear
4 it on the news or we see it on TV?

5 A. I think it is in the emergency medical textbooks and all
6 medical textbooks that is a medical term of dying from carbon
7 monoxide. If you're asking if I have a specific name or date,
8 no.

9 Q. Have you ever in your history as a doctor either yourself
10 or been around or been in the hospital where somebody died of
11 carbon monoxide poisoning from an automobile?

12 A. I can't recall.

13 Q. So when you say you heard of people dying from carbon
14 monoxide poisoning from an automobile, you're referring to just
15 maybe a general thing that we've heard in the past on the news;
16 you're not speaking of any specific incidence that you can
17 recall?

18 A. Well, I'm saying that that is what I've been taught and
19 learned in my medical practice. I certainly have not seen every
20 case of every sort of medicine that occurs in my career. I have
21 not personally cared for that patient or necessarily been, you
22 know, working at a time when one of those patients presents, but
23 certainly I have learned of that and read that in my literature
24 when we study about different medical conditions.

25 Q. In your literature did it talk anything specific about how
26 long somebody would have to be exposed to carbon monoxide and
27 exactly how much carbon monoxide would be needed before they
28 would be knocked unconscious or killed?

1 A. Again, there's no number that can be given to that. A
2 pregnant person, an older person, a younger person may be more
3 at risk than a young, healthy person. There's many variables
4 that contribute, and like I said, you and I may not be the same
5 situation. I may live and you may not and vice versa. There's
6 not a number that can be put on that. It is a very variable
7 situation.

8 Q. Understand. The temperature that you took, you said you
9 took a rectal temperature of Mr. Hamman that evening while your
10 nurse took oral; correct?

11 A. Let's see. The nurse took -- yes, that's correct.

12 Q. Is it fair to say the rectal temperature is far more
13 accurate than the oral temperature?

14 A. Yes.

15 Q. And I think at a preliminary hearing when asked which is
16 more accurate you, yourself, said the rectal temperature is far
17 more accurate; is that correct?

18 A. Yes.

19 Q. The rectal temperature in this case was 97?

20 A. 97 and 97.1. I took it on two occasions.

21 Q. And general hypothermia range you would have to get down
22 anywhere from a level of 86 to 92 degrees; is that correct?

23 A. From my most recent reading, 95 degrees is considered the
24 onset of mild hypothermia.

25 Q. And severe hypothermia. You would be down in the mid-80s;
26 is that correct?

27 A. Yes.

28 Q. And in this case I believe your final conclusion in

1 letting Mr. Hamman out was, I do not think that the patient has
2 suffered any significant hypothermia or cold injury; is that
3 correct? ✓

4 A. Yes.

5 Q. And you said he hadn't sustained any significant
6 hypothermia, meaning he had not sustained it, not only the
7 period when you evaluated him on but in the two days previous;
8 is that fair to say?

9 A. From my assessment of the patient in the period of time
10 that I saw him, he was not having any significant hypothermia.
11 I can't be specific for what his temperature was two days prior
12 to that or really even prior to me assessing him, but he did not
13 seem to have any long-term effects of that or serious effects
14 such as cardiac effects, neurological effects, loss of
15 consciousness.

16 Q. And I assume if he had any legitimate symptoms of
17 hypothermia that it would take more than just putting a blanket
18 around him to cure that; is that fair to say?

19 A. Mild hypothermia often is cured with just removal of wet
20 clothes and wrapping somebody in a warm blanket. That's called
21 rewarming. That's a sort --

22 Q. But is it fair to say he didn't have serious hypothermia
23 but mild by 2, 2:50 when you saw him, he was cured of that
24 serious hypothermia?

25 A. I can't say that.

26 Q. You can't say that?

27 A. He may have had a more serious -- he may have a definable
28 case of hypothermia at midnight that could have been cured by

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1 removing his wet clothes and warming him within a warm blanket.
2 The temperature can increase in a --

3 Q. But at 2:40 there was no injury he needed to -- required
4 to stay in the hospital for any length of time?

5 A. Correct.

6 Q. He didn't require any medication when he was released from
7 the hospital?

8 A. Correct.

9 Q. He was told to return in a couple days if he had any
10 problems with his feet; correct?

11 A. Correct.

12 Q. He didn't return?

13 A. Not that I'm aware of.

14 Q. For that issue, I should say?

15 A. Right.

16 MR. SERAFIN: No further questions?

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION

19 Q. BY MR. MARCHI: Ma'am what is angina?

20 A. Angina is pain in the chest related to blockage of the
21 coronary artery disease, particularly what precedes a heart
22 attack.

23 Q. If someone does have a condition of angina, if you put
24 them in more severe conditions such as water dropping on their
25 head, is that a more dangerous condition for that person than,
26 say, for someone without angina?

27 A. Well, I think carbon monoxide poisoning and hypothermia in
28 a significant degree can certainly make the angina work or

1 precipitate the angina.

2 Q. And in extreme cases could lead to a heart attack; right?

3 A. Yes.

4 Q. There's no evidence of a heart attack in this case; was
5 there?

6 A. There was no evidence of a heart attack, and Mr. Hamman's
7 history of having angina was somewhat vague.

8 Q. But overall you would consider him not to be in tiptop
9 condition, in other words, as he presented himself?

10 A. That's true.

11 Q. Okay. Now, counsel asked you about carbon monoxide
12 poisoning and you are a medical doctor assigned to emergency
13 room problems. If one were to come through the front door you
14 are qualified to treat such a condition; are you not?

15 A. Yes.

16 Q. You have studied it in medical school and know the
17 parameters of treatment and what to expect?

18 A. Yes.

19 Q. And when you saw Mr. Hamman and had his temperature taken,
20 was he in dry clothes by then?

21 A. From my best recollection he was undressed and in a
22 hospital gown as are most of my patients. When his clothes were
23 removed, I'm really not sure if those were removed by the nurse
24 or it sounds like possibly the police or emergency people did
25 that.

26 Q. And, of course, that could make it a small difference in
27 his body core temperature getting him out of the wet clothes?

28 A. Yes.

1 MR. MARCHI: Thank you. No further questions.

2 THE COURT: Any further questions?

3 MR. SERAFIN: Briefly, your Honor?

4 RECROSS-EXAMINATION

5 Q. BY MR. SERAFIN: I believe you spoke to the fact that
6 Mr. Hamman felt some nausea; is that correct?

7 A. Yes.

8 Q. And I believe you also mentioned that nausea is one of the
9 very generic -- could be one of the generic symptoms of someone
10 who had carbon monoxide poisoning?

11 A. Yes.

12 Q. However, nausea could also be a generic symptom of about a
13 thousand other possible symptoms as well?

14 A. Yes.

15 Q. Other than that, there are no specific symptoms that
16 Mr. Hamman -- you noticed on Mr. Hamman that are specifically
17 related to your training in carbon monoxide poisoning?

18 A. Right. And I was never given any information that
19 Mr. Hamman potentially was exposed to carbon monoxide poisoning.
20 Typically, we think of that in fires. We think of that in
21 people lighting barbecues in their house to stay warm and also
22 having symptoms, especially in the wintertime that would suggest
23 that headache, nausea, vomiting, loss of consciousness,
24 seizures. There was nothing in his presentation that even
25 triggered that thought. And as I said, there was no information
26 given to me that he possibly had had that exposure. If I had
27 been given that information, we may have done further testing.

28 Q. However, from what you did do, nothing jumped out at you?

1 A. Right. But there's a specific test we do on the blood
2 that was not done, so I can't really testify as to whether or
3 not he had any carbon monoxide exposure. People who smoke all
4 have elevated carbon monoxide levels as opposed to somebody who
5 doesn't smoke, so that test may have come back abnormal whether
6 or not he had been exposed or because he just had a cigarette.
7 It is hard to predict.

8 MR. SERAFIN: Thank you. No further questions.

9 MR. MARCHI: No questions.

10 THE COURT: Is this witness excused?

11 MR. MARCHI: Yes.

12 MR. SERAFIN: Yes, your Honor.

13 THE COURT: Thank you. You're free to go.

14 Your next witness?

15 MR. MARCHI: Yes. It would be Robert Hammer.

16

17 ROBERT HAMMER

18 called as a witness on behalf of the People herein was sworn,
19 examined, and testified as follows:

20 THE COURT: Mr. Hammer, I need you to come all the way up
21 here to the front. Right before you take a seat, I need you to
22 turn, face my clerk, and raise your right hand to be sworn.

23 THE CLERK: Do you solemnly state that the testimony you
24 shall give in the cause now pending before this court shall be
25 the truth, the whole truth, and nothing but the truth so help
26 you God?

27 THE WITNESS: Yes, I do.

28 THE CLERK: Please state your name and spell your last for
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1 the record.

2 THE WITNESS: Robert Hammer, H-a-m-m-e-r.

3 THE CLERK: Thank you. Go ahead and have a seat.

4 MR. MARCHI: Can we approach the sidebar just briefly,
5 your Honor?

6 THE COURT: Sure.

7 (Bench conference held off the record.)

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION

10 Q. BY MR. MARCHI: Sir, calling your attention to March 17th
11 of 2003, were you employed at a Shell Station on 49 and Elm
12 Avenue in Placer County, sir?

13 A. Yes, sir.

14 Q. And what was the nature of your duties there?

15 A. Substantially running the store. I ran the till, got it
16 cleaned up for the morning shift, morning rush.

17 Q. If I could get you to talk a little slower so the court
18 reporter can take it down.

19 A. No problem.

20 Q. Were you basically the station attendant, if you will?

21 A. Yes.

22 Q. And was part of your job to run the store inside?

23 A. Yes, it was.

24 Q. And that's typically just selling people items as well as
25 gas?

26 A. Yes.

27 Q. All right. And calling your attention to March 17th of
28 2003, did you have occasion at around 2:00 in the morning to

1 subsequently report an incident because something happened?

2 A. Yes, I did.

3 Q. All right. And the something that happened before you
4 reported the incident to the police, I take it?

5 A. Yes.

6 Q. And before doing that, was there a vehicle associated with
7 this incident?

8 A. Yes, there was.

9 Q. And do you remember what kind of a vehicle it was?

10 A. Yes. It was a red Beretta.

11 Q. All right. I'll show you a photograph and see if you can
12 recall what's depicted here. If I could have you look at the
13 screen, sir. This is a red vehicle. Do you recognize this?

14 A. Yes, I do, sir.

15 Q. And, in particular, is that the general type of vehicle
16 that you saw?

17 A. Yes, it is.

18 Q. You didn't get a license plate or anything?

19 A. No. No, I didn't.

20 Q. And showing you Exhibit 46; is this also consistent with
21 the vehicle you saw that day?

22 A. Yes, it is.

23 Q. We're looking at the same red vehicle here; right? Okay.
24 And did you have anyone associated with that vehicle that had
25 come into the Shell; did you see anybody around that vehicle?

26 A. Yes. Actually, a young man was gassing it up, and a young
27 lady actually came into the store and asked to use the rest
28 room.

1 Q. And the man that was gassing it up, did he ever come into
2 the store?

3 A. Yes, he did.

4 Q. And the man that was gassing it up, was -- is he in the
5 courtroom today?

6 A. Yes, he is.

7 Q. Sir, could you point to him and describe what he's
8 wearing?

9 A. This gentleman here.

10 Q. What is he wearing?

11 A. A long sleeved shirt, long sleeved dark shirt.

12 Q. No tie?

13 A. No tie.

14 MR. MARCHI: May the record reflect the identification of
15 Defendant Rodriguez?

16 THE COURT: Yes, noted for the record.

17 Q. BY MR. MARCHI: Thank you. And who had come into the
18 store first that day?

19 A. The young lady.

20 Q. All right. And can you describe her for us?

21 A. It was -- she was a slight bit heavy, a little short, had,
22 I believe, lighter brown hair, little bit short clipped, had
23 seemed extremely nervous.

24 Q. Why do you say that, sir?

25 A. She had -- I was in front of the door cleaning the carpets
26 and she had walked in the front door, asked immediately for the
27 rest room. I pointed down the hallway. On the way down the
28 hallway, she leaned over her left shoulder and asked me for a

1 pen and paper, which I thought was a bit odd.

2 Q. Let me stop you there. She asked you for a pen and paper?

3 A. Yes.

4 Q. And what did you get her, if anything?

5 A. A pen and paper.

6 Q. And what sort of paper was it?

7 A. It was a gas -- an old gas ticket that we don't use

8 anymore. We use them for notes in the gas station. We have

9 thousands of them.

10 Q. All right. I'm going to show you an item here, 72.

11 Showing you what's been marked Exhibit 72; does this item look

12 familiar to you?

13 A. Yes, this is exactly the one.

14 Q. So you flipped it over and you have seen some writing on

15 the back as well?

16 A. That's the first thing I saw.

17 Q. When you handed -- does this look like the one you handed

18 the young woman?

19 A. Yes, certainly.

20 Q. Was there anything written on the back side of it when you

21 gave it to her?

22 A. Not a thing.

23 Q. Okay. And you also gave the woman a pen?

24 A. Yes.

25 Q. And there is a female bathroom in there or is it just one?

26 A. Actually after she had asked me for the pen and paper, I

27 had walked down the aisle towards her and I noticed she seemed

28 very quiet and was standing very, very still. So when I walked

) 1 up and gave her the pen and paper, I allowed her to use the
2 employee rest room and showed her how to use the lock because it
3 seemed like something was wrong.

4 Q. Okay. And did she then go into the employee rest room?

5 A. Yes, she did.

6 Q. Do you know about how long she was in there, sir?

7 A. Less than two or three minutes.

8 Q. And while the female was in the employee rest room, did
9 the Defendant Rodriguez come inside, the gentleman you've
10 identified?

11 A. Right towards the end, yes.

12 Q. And what did you observe him do, if anything?

13 A. He came up to the counter and immediately asked me where
) 14 the rest rooms were. I pointed down the hallway to where they
15 were.

16 Q. Let me stop you there. Were these the public rest rooms
17 as opposed to the employee that you pointed him to?

18 A. The employee rest room and the public rest room are side
19 by side.

20 Q. So you pointed him down in the area where you sent the
21 woman?

22 A. Yes.

23 Q. And what, if anything, did you see Mr. Rodriguez do?

24 A. It wasn't so much what I saw him do, but what I heard him
25 do.

26 Q. What did you hear him do?

) 27 A. He immediately started banging on the bathroom doors
28 asking her to hurry up.

1 Q. And in what manner did he do that?
2 A. Very loudly and very persistent, like he really was in a
3 hurry and wanted to get going.
4 Q. All right. And did the female come out right away?
5 A. Yes, right away.
6 Q. And when the female came out of the bathroom, did she have
7 that slip you gave her and the pen?
8 A. No, she didn't.
9 Q. All right. And did both Mr. Rodriguez and the female
10 person leave?
11 A. No. Actually, they came back to the front counter and
12 she -- the young lady had asked the male for a quarter because
13 she wanted to buy a 25-cent pack of gum, was very persistent
14 about it. He pulled a quarter from his pocket, gave it to her.
15 As she picked up the quarter for the pack of gum, she told me
16 she accidentally knocked over the laundry hamper in the rest
17 room, and she was sorry and at that point she left.
18 Q. And was there, in fact, a laundry hamper in the employees'
19 rest room?
20 A. Yes, there was.
21 Q. Okay. Did you go in there right away, sir, or did you --
22 A. As soon as I saw him hit the brake lights on the car and
23 put it in drive.
24 Q. So you actually saw this same vehicle, as you identified,
25 leave?
26 A. Yes. It was on pump three, yes.
27 Q. Do you know who was driving when it left?
28 A. Mr. Rodriguez.

1 Q. So after you saw the vehicle leave, what did you do?

2 A. I immediately ran back to the employee rest room, unlocked
3 the door, and sure enough sitting on top of the laundry hamper,
4 which wasn't knocked over, right on the corner of it was this
5 note.

6 Q. And you pointed here to this item, this same slip you
7 gave --

8 A. Yes.

9 Q. -- the lady?

10 All right. And I would ask you to read what's on it now.
11 I'm only offering this only on the limited purpose to give
12 meaning to what he did thereafter and not the truth of the
13 matter.

14 A. The first thing I did.

15 Q. Before we get there, did you then go find this note and
16 pen in the bathroom?

17 A. Yes, I did.

18 Q. Where was it at?

19 A. The note was immediately to the right of the door lying
20 right on the corner of the laundry hamper. The pen was sitting
21 on the sink.

22 Q. And if you could tell us what does this say, just to give
23 purpose to what you did later?

24 A. What it says is, "call 911. We are driving his red
25 Beretta. Nick Hamman is located in the cell at the old juvenile
26 jail drowning. Anna Rugg. Shawn Rodriguez kidnapped me."

27 Q. And as a result of having found that note, did you call
28 the police?

1 A. Immediately.

2 Q. And did an officer come out, sir?

3 A. Immediately within 60 seconds.

4 Q. Do you know which officer that was, if you know?

5 A. No. I would recognize him by face, but I don't know his

6 name.

7 Q. What did you do with this note that you found when the

8 officer came out?

9 A. The officer came around the corner. He stopped in my

10 handicapped zone, and I walked out and my exact words were that

11 a young lady in distress came into the store with another

12 gentleman and this is the note she gave me, and I handed it to

13 the officer. He read it briefly. Didn't say a word. Slammed

14 the door to his rig and took off.

15 Q. And was that about 2:00 in the morning?

16 A. Yes, it was a little after 2:00.

17 Q. Did you ever see that officer again later that day?

18 A. About an hour, 15 minutes later he came back with several

19 other police officers and police agencies.

20 Q. And at that time did you give the officer the description

21 of the vehicle?

22 A. Yeah. We gave him -- I gave him as many details as I

23 possibly could of what had happened.

24 Q. All right. And while the officer was there, did he ask

25 you to show him where you had last seen the vehicle you have

26 previously identified?

27 A. Yes, I did.

28 Q. Did you start to do that, sir?

1 A. No. Actually, I never really -- I pointed out to where
2 the vehicle was, but I never left from behind the counter.

3 Q. Where was the vehicle when you last saw it in the station?

4 A. It was on pump three.

5 Q. So did you point the officer over towards pump three?

6 A. Yes, I did. It is very visible.

7 Q. When you did that, did you see a red vehicle in the area?

8 A. Right after I got done giving the officer the details,
9 almost the second I stopped giving him the details, an officer
10 who was straddling the door looked at us and the red car drove
11 past the station and every single one of them bailed out the
12 door.

13 Q. Did you see that vehicle?

14 A. Oh, certainly.

15 Q. Did it look like the same one?

16 A. Yes. It looked like the exact same one.

17 MR. MARCHI: Your Honor, this might be a time for us to
18 take a brief pause.

19 THE COURT: Ladies and gentlemen, we're going to take a
20 short recess, about five minutes. I need you to all step out in
21 the hallway, and I would remind you it is your duty not to
22 converse among yourselves or with anyone else on any subject
23 connected with the case, not to form or express any opinions on
24 the case. We'll resume in about five minutes.

25 (Recess taken at 9:28 a.m. Reconvened at
26 9:35 a.m.)

27 THE COURT: All right. Are we ready to proceed?

28 MR. MARCHI: Yes, your Honor.

1 MR. SERAFIN: Yes, your Honor.

2 THE COURT: Go ahead.

3 Q. BY MR. MARCHI: Now, Mr. Hammer, to your right is a young
4 lady seated in front of the jury box. Do you recognize that
5 person?

6 A. Yes, I do.

7 Q. And who is that?

8 A. Anna Rugg.

9 Q. That's the person you gave this slip to?

10 A. Yes, it is.

11 Q. Exhibit 72?

12 A. Yes, it is.

13 Q. Okay. And she's the one that told you about the hamper
14 being knocked over?

15 A. Yes, she is.

16 Q. And if Ms. Rugg could stand at this time. Is that
17 consistent with the size that you recall Ms. Rugg presenting
18 herself that day?

19 A. Yes, I do.

20 MR. MARCHI: Thank you. I have no further questions.

21 THE COURT: All right.

22 CROSS-EXAMINATION

23 Q. Mr. Hammer, I assume you have a surveillance video in your
24 store at all times?

25 A. Yes, I do.

26 Q. Was that ever turned over to the police in this case?

27 A. Yes, it was.

28 Q. Do you know what officer that was turned over to?

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1 A. It was given over to a detective, but I don't remember his
2 name.

3 Q. Did you ever view the video?

4 A. No.

5 MR. SERAFIN: No further questions.

6 MR. MARCHI: No questions.

7 THE COURT: All right. Is Ms. Rugg free to go?

8 MR. MARCHI: Yes, your Honor.

9 THE COURT: And is the witness free to go?

10 MR. MARCHI: Yes, stipulate to his release.

11 MR. SERAFIN: Yes.

12 THE COURT: Is he free to go?

13 MR. SERAFIN: Yes.

14 THE COURT: Your next witness?

15 MR. MARCHI: At this time we would call Richard Romines.

16
17 RICHARD ROMINES

18 called as a witness on behalf of the People herein was sworn,
19 examined, and testified as follows:

20 THE COURT: Mr. Romines, I need you to please come forward
21 up here to the front and right before you take a seat, I need
22 you to turn, face my clerk, and raise your right hand to be
23 sworn.

24 THE CLERK: Do you solemnly state that the testimony you
25 shall give in the cause now pending before this court shall be
26 the truth, the whole truth, and nothing but the truth so help
27 you God?

28 THE WITNESS: I do.

1 THE CLERK: Please state your name and spell the last for
2 the record.

3 THE WITNESS: Richard Romines, R-o-m-i-n-e-s.

4 THE COURT: Thank you. Go ahead and have a seat. Go
5 ahead.

6 DIRECT EXAMINATION

7 Q. BY MR. MARCHI: Sir, what is your name?

8 A. Richard Romines.

9 Q. And do you know a Shawn Rodriguez?

10 A. Yeah.

11 Q. Where is he seated at or what is he wearing today?

12 A. He's right there wearing the long sleeved shirt.

13 MR. MARCHI: May the record reflect identification of the
14 defendant?

15 THE COURT: Yes.

16 Q. BY MR. MARCHI: And how do you know Mr. Rodriguez, sir?

17 A. He was a foster child in my mom's home.

18 Q. Okay. If you could try and speak into the mike just a
19 little.

20 A. He was a foster child in my mom's house.

21 Q. How long have you known him, sir?

22 A. Since he was 12.

23 Q. Now, calling your attention to Saturday, March 16 of 2003,
24 and -- excuse me, Saturday, March 15th of 2003, and Sunday,
25 March 16 of 2003; do you recall seeing Mr. Rodriguez that
26 weekend, sir?

27 A. Yeah, I believe so.

28 Q. This would have been the weekend before you spoke to the

) 1 police?
2 A. Yeah.
3 Q. Okay. And at the time you saw Mr. Rodriguez, was he there
4 with anyone else?
5 A. Yeah.
6 Q. And who was that, sir?
7 A. Anna.
8 Q. Anna Rugg?
9 A. Yeah. I don't know her last name.
10 Q. An Anna?
11 A. Yeah.
12 Q. What did she look like, sir?
13 A. Short. She had short black hair. Little heavysset.
) 14 Q. Was there anyone else there?
15 A. Erin.
16 Q. Erin who, sir?
17 A. I don't know her last name.
18 Q. Okay. Does the name Hughes ring a bell for you?
19 A. I never knew their last names.
20 Q. Okay. When did you first see Shawn Rodriguez on the 16th,
21 sir?
22 A. He came over that evening and he asked me if Erin could
23 stay the night or the weekend or something.
24 Q. Let me stop you there. Were you expecting to see
25 Mr. Rodriguez that day?
26 A. No.
) 27 Q. So he just kind of dropped by?
28 A. Yeah.

1 Q. And when you saw Mr. Rodriguez, was he in possession of a
2 vehicle, sir?

3 A. Yes.

4 Q. And who was driving the vehicle?

5 A. He was.

6 Q. Okay. And let me show you an exhibit here, sir. Showing
7 you what's been marked Exhibit 47; do you recognize this
8 vehicle, sir?

9 A. Yeah.

10 Q. Is that the vehicle you saw Mr. Rodriguez driving?

11 A. Uh-huh.

12 Q. And showing you Exhibit 46, that would be also a red
13 vehicle. Does that appear consistent with the vehicle that you
14 saw?

15 A. Yeah.

16 Q. The one, the main one in the picture, this one?

17 A. Uh-huh.

18 Q. Okay.

19 THE COURT: Could you instead of saying uh-huh or huh-uh,
20 could you say yes or no because it is hard for the court
21 reporter to distinguish whether it is an affirmative or
22 negative?

23 THE WITNESS: Sorry.

24 Q. BY MR. MARCHI: Uh-huh means yes?

25 A. Yes.

26 Q. Okay. Thank you. Now, had you ever seen Mr. Rodriguez
27 with that vehicle before?

28 A. No, not before that evening.

1 Q. Okay. And was the request made of you for some of them to
2 stay over that day?

3 A. Uh-huh, yes.

4 Q. Who asked to stay over?

5 A. Shawn did.

6 Q. And did anyone stay over at your house?

7 A. Erin did that evening.

8 Q. Okay. And what about Anna and Mr. Rodriguez?

9 A. They came back early in the morning. I think it was in
10 between 3:30, 4:30, around there, and they came in and they laid
11 down on my Hide-A-Bed and went to sleep.

12 Q. Okay. That would have been -- if you first saw them on
13 the Saturday, that would be early morning hours of Sunday you're
14 describing?

15 A. Yes.

16 Q. So they did sleep over, so to speak?

17 A. Yeah.

18 Q. Did you know they were coming back or not?

19 A. He said they might, but he wasn't sure so...

20 Q. And what time on Saturday, the 15th, did they first show
21 up, sir; Erin, Anna, and Mr. Rodriguez?

22 A. I think it was in between 7:00 and 8:00, somewhere around
23 in there.

24 Q. P.M.?

25 A. Yeah.

26 Q. Okay. And what sort of residence did you have at that
27 time?

28 A. I owned a fifth-wheel trailer.

1 Q. Where was that located at?

2 A. Auburn and Morse.

3 Q. Is that in Sacramento County?

4 A. Yes.

5 Q. Now, sir, how did you know they came back?

6 Did you hear them come back at 3:00 in the morning?

7 A. Well, I was up taking care of my son because he wasn't
8 feeling very well.

9 Q. Okay.

10 A. And he knocked on the door. Anyway --

11 Q. So you let him in?

12 A. Yeah.

13 Q. And you think it was about what time Sunday morning?

14 A. It was in between 3:30 and 4:00, somewhere around in
15 there.

16 Q. A.M.?

17 A. Yes.

18 Q. Okay. And Anna and Mr. Rodriguez slept on the premises;
19 correct?

20 A. Uh-huh, yes.

21 Q. Do you remember about what time they got up?

22 A. In between 9:00 and 10:00.

23 Q. A.M.?

24 A. Yes.

25 THE COURT: Could you hold on one second? I'm sorry. Go
26 ahead.

27 Q. BY MR. MARCHI: Thank you. When Mr. Rodriguez, Erin, and
28 Anna came to your place the first time, did he ever mention

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1 anything about an old juvenile hall in the Placer County area
2 the first time?

3 A. No, not at first. He just asked -- when they first came
4 by that evening, they asked if Erin can stay there for a while.
5 And I said, yeah, and they brought her in and she was already
6 sleeping so I just let her sleep up on my bed, and then they
7 left.

8 Q. And how long did Erin stay at your house?

9 A. She ended up staying there most of the weekend, and I
10 think Monday and Tuesday as well.

11 Q. All right. And when Mr. Rodriguez and Anna returned at
12 about 3:00 in the morning, did you have a conversation with
13 Mr. Rodriguez then, revolving around an old juvenile hall?

14 A. Yes.

15 Q. And what did Mr. Rodriguez tell you about this old
16 juvenile hall?

17 A. All he said is that he thought that he killed this other
18 guy that was at the juvenile hall.

19 Q. Did he tell you where this guy was at the hall?

20 A. He just said that he was in a cell. That's all he really
21 told me.

22 Q. All right. And what did you -- did he ask you any advice
23 of you at that time, sir; Mr. Rodriguez?

24 A. At that point he more or less told me, and I was kind of
25 stumped so I -- but I asked him how it happened, you know, what
26 happened and everything, and he briefly told me what had, you
27 know, what had occurred.

28 Q. Let me stop you there. So what did Mr. Rodriguez tell you
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1 about the juvenile hall and this other person, sir?

2 A. He just said that he was in a cell and --

3 Q. Let me stop you there. Okay. Did Mr. Rodriguez tell you

4 how this guy got in the cell?

5 A. No, he didn't.

6 Q. And according to Mr. Rodriguez, he thought he was dead?

7 A. Yes.

8 Q. Was there any discussion about getting rid of the body at

9 that point?

10 A. No.

11 Q. Was there at a later point?

12 A. Yes.

13 Q. And when was that, the next morning?

14 A. I think it was the next day or the day after that.

15 Q. And what did Mr. Rodriguez say about getting rid of this

16 body?

17 A. He just -- by then he realized that the gentleman wasn't

18 dead, and I was sitting around with, you know, with a friend

19 drinking and stuff, and he asked me how many different ways can

20 you kill somebody.

21 I didn't think anything of it so I told him one or two,

22 and then I just went about drinking with my company and stuff.

23 Q. Well, sir, was there any discussion from Mr. Rodriguez as

24 to where to put the body?

25 A. No.

26 Q. Was there any mention of a quarry, sir?

27 A. Of a what?

28 Q. Quarry or a pond?

1 MR. SERAFIN: Objection; leading.

2 THE COURT: Sustained. Next question.

3 MR. MARCHI: Just one moment.

4 Q. When Mr. Rodriguez had the discussion with you that he now
5 didn't think he was dead, did you give Mr. Rodriguez any advice
6 as to what to do at that point?

7 A. Yeah. I asked him, do you know -- are you going to check
8 on him and see if he's okay? And that's when it really started
9 sinking in, and that's when I was telling him to let him go.

10 Q. You told him to let him out of the cell?

11 A. Yeah.

12 Q. How many times did you tell Mr. Rodriguez that?

13 A. Several.

14 Q. Now, at any time during your discussion when he returned,
15 did Mr. Rodriguez ever mention any water inside the cell?

16 A. Yes.

17 Q. And what did Mr. Rodriguez tell you about that?

18 A. He said that when the individual got up he -- I guess he
19 said he lit a cigarette and the fire sprinklers came on, and it
20 filled up the cell up to his knees, I believe.

21 Q. All right. And at that point did Mr. Rodriguez ever have
22 a discussion with you about filling up the cell with water?

23 A. Yeah.

24 Q. What did he say about that?

25 A. He said that he wanted -- that he was going to turn the
26 main on and let it fill up.

27 Q. And did you advise him not to do that, sir?

28 A. No, I didn't.

1 Q. You just were listening?

2 A. He was just telling me, and I was kind of soaking it all

3 in and --

4 Q. And during that -- around the time of that discussion, was

5 there any mention of carbon monoxide, sir?

6 A. Yeah.

7 Q. And what did Mr. Rodriguez tell you about that?

8 A. Well, actually he had asked me -- and because I had seen

9 it on TV before, so I mentioned it, not thinking about it and --

10 Q. What did you mention?

11 A. That you could take a hose and run a hose to a small room

12 or something, and it would fill with carbon monoxide because I

13 had seen it on TV a few times on -- on shows and stuff.

14 Q. You didn't want him to do that, did you?

15 A. No.

16 Q. You didn't think he would ever do that, did you?

17 A. No, I didn't.

18 Q. ~~Was Ms. Rugg~~ present when these statements were being

19 made?

20 A. Actually, he was talking with me the majority of the time

21 out front on my patio. A lot of times he would talk to me, he

22 would always talk to me outside or in the bathroom, away from

23 Mrs. Rodriguez (sic).

24 Q. I'm sorry, away from Anna you mean?

25 A. Yeah.

26 Q. Was he also away from Erin?

27 A. Yeah.

28 Q. Did Mr. Rodriguez ever tell you whose vehicle it was that

1 he was driving?

2 A. Yes, he did. Later he did tell me that it belonged to the
3 gentleman that was at the juvenile hall.

4 Q. The one in the cell?

5 A. Yeah.

6 Q. How many times did you tell Mr. Rodriguez to let this man
7 out of the cell?

8 A. Several.

9 Q. More than three or four?

10 A. Yeah.

11 Q. Did you ever have a discussion with Mr. Rodriguez about
12 turning off the water?

13 A. Yes, I did. I told him to turn it off and let him go.

) 14 Q. Those were your words?

15 A. Yeah.

16 Q. And did Mr. Rodriguez explain to you how he might be able
17 to turn that water off?

18 A. He said that there was a chain on the main and that he
19 needed to cut it, and at that point that was when he asked me to
20 borrow a hacksaw, and then I gave it to him to borrow.

21 Q. All right. And he indicated he wanted to do that to shut
22 the water off?

23 A. Yes.

24 Q. When Mr. Rodriguez first came back at about 3:00 in the
25 morning Sunday morning and you were made aware of what was going
26 on, when did you first tell Mr. Rodriguez that he needed to let
) 27 this guy out of the cell?

28 A. The very first time.

1 Q. So as soon as you heard about what was going on?

2 A. As soon as I realized it was actually happening, that's

3 when I was telling him, you know, he should let him go.

4 Q. And at some point during this conversation is that

5 when -- was there anybody that made a comment about cement

6 shoes, sir?

7 A. Yeah. I made a comment about it when we were drinking or

8 when I was drinking anyways, but he knew that I was just teasing

9 at the time.

10 Q. You were joking around?

11 A. Yeah.

12 Q. How did that come up?

13 In what context did you talk about it?

14 A. When he was first asking me, you know, I was -- I thought

15 he was curious or wanting to know, and I made the comment about

16 the cement shoes the first time, and the second time it was

17 about the gas and then soon after that, that's when I realized

18 that it was really happening.

19 Q. At first asking you about what, sir?

20 A. At a point in time he asked me how many different ways can

21 you kill a person, and not thinking I was just telling him, I

22 was rambling on, and then after I told him, that part of the

23 conversation just stopped and he just, you know, played with my

24 son and --

25 Q. And in the context of how to kill a person, was part of

26 that how to get rid of the body, sir?

27 A. No.

28 Q. You never discussed that?

1 A. No, not to my knowledge.

2 Q. So when Mr. Rodriguez came back at about 3:00 in the
3 morning, Sunday morning, you said he slept in about 10:00?

4 A. Around 9:00 or 10:00 in between there.

5 Q. Do you know when Mr. Rodriguez left your premises?

6 A. Around 30 to 45 minutes after he had woken up.

7 Q. So roughly 10:00 and 11:00; would that be fair to say?

8 A. Yeah. Yes.

9 Q. And after he left 10:00, 11:00, this would have been on
10 Sunday, sir, did you ever see him again?

11 A. I don't think I saw him that day until the next day.

12 Q. Okay. In relation to the hacksaw?

13 A. No. After I let him borrow the hacksaw, I didn't see him
14 again. That was the next morning after that, I believe. That
15 is when the detectives came to my house.

16 Q. When is the last time you recall currently seeing
17 Mr. Rodriguez that weekend, sir, which day?

18 A. The day before he was picked up.

19 Q. So the day before you talked to the police?

20 A. Yes.

21 Q. And do you remember what time of day that was, sir?

22 A. I think it was -- because they came by and they left again
23 and they came back at -- it was after midnight sometime. I
24 don't recall the exact time.

25 Q. So would that have been after midnight, early morning
26 hours of Monday?

27 A. Yes.

28 Q. And do you remember -- you don't remember about what time?

1 A. Not the exact time. I -- because I remember looking up at
2 the clock, and I knew it was after midnight. It might have been
3 closer to 1:00 or after 1:00.

4 Q. Okay. And how long did Mr. Rodriguez stay then?

5 A. He only stayed for roughly maybe 15, 20 minutes, if that.
6 And that was when he asked me if I had a hacksaw, and that's
7 when I let him borrow it.

8 Q. All right. And was Anna with him at that time?

9 A. She was, but I believe she stayed outside in the car
10 because when he came in, I didn't see her.

11 Q. And at that point did Mr. Rodriguez -- what did he tell
12 you he was going to do with this hacksaw?

13 A. He said -- he said something about the main because there
14 was a chain around it. He said he just needed to cut the chain
15 off. That's pretty much all he really said, and he said that he
16 might be back in a couple hours and that was when I didn't see
17 him. He never came back, and that morning, later on in the
18 morning, that's when the detectives came to my house, came to
19 the door.

20 Q. Did Mr. Rodriguez ever say anything about, just give me
21 the hacksaw; don't ask any questions?

22 MR. SERAFIN: Objection; leading.

23 THE COURT: Sustained.

24 Q. BY MR. MARCHI: You do recall an extended discussion with
25 him about the hacksaw?

26 A. I don't recall. I don't recall him saying, Don't ask any
27 questions.

28 Q. But you had a conversation about the hacksaw with him?

1 A. Well, he said he needed it to cut the chain, and I said
2 okay. And I went and got it for him. And he said that he
3 might -- that they might be back, you know, in a couple hours or
4 in the morning.

5 Q. And at that time did you see this Anna out in the same
6 vehicle?

7 A. I didn't even -- I didn't even go outside. I walked to my
8 front door because it's got steps. I walked to the front door,
9 and I saw him out and I went back inside and I shut the door.

10 Q. So you assumed she was out there. You never actually saw
11 her?

12 A. Yeah.

13 MR. MARCHI: Okay. Thank you. No further questions.

14 THE COURT: Cross?

15 MR. SERAFIN: Can we approach briefly before?

16 THE COURT: Sure.

17 (Bench conference held off the record.)

18 THE COURT: All right. Ladies and gentlemen of the jury,
19 we're going to take our morning recess, and that will be a
20 15-minute recess, and I will remind you it is your duty not to
21 converse among yourselves or anyone else on any subject
22 connected to the case, and not to form or express any opinions
23 on the case until it is submitted to you after you heard all the
24 evidence. The rest rooms are, again, on the fourth floor or on
25 the first floor. We'll see you back here at 10:20.

26 (Jury exits the courtroom at 10:05 a.m.)

27 THE COURT: The record will reflect the jury is not
28 present. Counsel and parties are present. And you wish to

1 question the witness outside the presence of the jury initially?

2 MR. SERAFIN: Yes.

3 THE COURT: Go ahead.

4 MR. SERAFIN: Well, yes, your Honor. This is a bit
5 unusual so I'm not quite sure how to do this exactly.

6 But, Mr. Romines, I will be asking you questions in regard
7 to your potential involvement in this based upon how you've
8 testified. It is quite a bit differently than the report that
9 my investigator wrote of your statements, and based upon the
10 accusation you've made against Shawn, I will have to explore
11 some details as to the things that you created, the ideas you
12 created, and any potential involvement that flows from that.

13 I only tell this to you now, and I brought this to the
14 Court's attention because I believe you should know, you know,
15 of your basic rights to an attorney. if you think that anything
16 may incriminate you. That's why I bring it up so I don't
17 know --

18 THE COURT: Well, my suggestion would be that you ask the
19 question. And that if it seems appropriate, I can instruct him
20 as to his rights.

21 MR. SERAFIN: I don't really want to ask the specific
22 cross-examination questions because, I mean, his reaction in
23 front of the jury, obviously, and how he answers them, that
24 should be seen by the jury. That's why I was a little bit
25 confused at this process but --

26 MR. MARCHI: Well, that's the process we've used in the
27 past, your Honor. I don't get a clear understanding that
28 Mr. Romines necessarily has anything to incriminate himself.

1 THE COURT: Well, Mr. Romines, apparently you have given
2 statements to the police, and apparently you have given
3 statements to the defense investigator. I don't know what those
4 statements were. You will be cross-examined at this point by
5 the counsel for the defendant, and he will be asking you about
6 your statements that you gave to the police, as well as any
7 other statements that you may have given.

8 Obviously, if the statements are consistent or
9 inconsistent, that may be areas in which you will be questioned.
10 Do you feel that you need to consult with an attorney to advise
11 you as to what your exposure would be for any criminal
12 liability?

13 THE WITNESS: No, because I just plan on telling the
14 truth, and that's it.

15 THE COURT: All right. Do you understand that if you --
16 anything that you say in these proceedings could be used against
17 you in prosecution if you -- if there's any evidence that you
18 have participated in the crime?

19 THE WITNESS: I have -- I don't think I need to talk to a
20 lawyer about that.

21 THE COURT: Pardon me?

22 THE WITNESS: I don't think I need to talk to a lawyer
23 about that because I wasn't involved in any way.

24 THE COURT: Is there anything else I need to do in terms
25 of advising him of his rights?

26 MR. MARCHI: I don't believe so, your Honor.

27 MR. SERAFIN: I think that covers it.

28 THE COURT: Do you understand you do have a right to

1 consult with an attorney?

2 THE WITNESS: Uh-huh.

3 THE COURT: Anything else before we recess?

4 MR. SERAFIN: No, Judge.

5 THE COURT: As I mentioned earlier, we're a little tight
6 in the holding cells so I'm assuming we don't have too many more
7 questions of this witness, and if we could take Mr. Hamman and
8 at least do the identification issue, then at least Ms. Rugg
9 could leave and that would free up one holding cell.

10 MR. MARCHI: We have one additional problem. The person
11 that was supposed to bring Mr. Hamman's civilian clothes
12 apparently did not, and that is an additional problem here. I
13 don't know if there's some possibility of solving that quickly.

14 THE COURT: Were you intending on not disclosing the fact
15 that he is currently --

16 MR. MARCHI: I will disclose it, but it is still somewhat
17 prejudicial that he's sitting in jail garb while Mr. Rodriguez
18 and Ms. Rugg are not; but yes, I intend to disclose it.

19 THE COURT: You may -- we're going to recess until 10:20.
20 You may step down. You may not discuss your testimony with
21 anybody until you have been released from the stand. Do you
22 understand?

23 THE WITNESS: Yes.

24 THE COURT: All right. Report back here at 10:20. We're
25 in recess. Off the record.

26 (Recess taken at 10:10 a.m. Reconvened at
27 10:20 a.m.)

28 THE COURT: You're (230084651)?

1 JUROR 230084651: (230084651).

2 THE COURT: You wanted to see me?

3 JUROR 230084651: Yes. I had an emergency situation come
4 up. I've been caring for a lady and getting her meds and
5 getting her groceries, and she was admitted to emergency three
6 times this past week. I had to take her. She has no family
7 here whatsoever. Her only daughter is in the middle of Wyoming
8 and she's disabled.

9 THE COURT: So you're asking to be excused?

10 JUROR 230084651: Well, they admitted her to ER Friday and
11 they kept her, and I went last night and she's on oxygen. She's
12 got fluid in her lungs and around her heart, and I'm just -- I'm
13 the only contact the hospital has for this person so if there
14 was any way that you can carry on with two alternates, I would
15 appreciate being excused. If not, I'll do what I have to do.

16 THE COURT: All right. Why don't you step outside for
17 just a second. Did you have any questions for the juror, either
18 of you?

19 MR. MARCHI: No, your Honor.

20 MR. SERAFIN: I don't.

21 THE COURT: All right.

22 MR. MARCHI: I'd stipulate to releasing her. We still
23 have two other alternates. We're moving along pretty quickly.

24 MR. SERAFIN: I'm fine with that.

25 THE COURT: Why don't you ask her to step back in, and
26 actually, you can bring them all in now. Are we ready to go?

27 MR. SERAFIN: Yes.

28 (Jury enters the courtroom at 10:24 a.m.)

1 THE COURT: (230086451), I have discussed it with the
2 attorneys, and they have agreed that I should release you at
3 this point due to --

4 JUROR 230086451: I'm sorry?

5 THE COURT: We are going to release you at this point due
6 to your family hardship, so you are free to go.

7 JUROR 230086451: Thank you so much.

8 THE COURT: Good luck. You're now our second alternate.

9 JUROR 230092561: Am I supposed to move over now?

10 THE COURT: No. You can stay where you are.

11 All right. Mr. Romines, you may take the stand, and I
12 remind you, you are still under oath. We're back in session.
13 The jury is all present. Counsel and parties are present. And
14 counsel for the People, are you finished and we were now in
15 cross?

16 MR. MARCHI: Yes.

17 THE COURT: Counsel, are you ready to proceed?

18 MR. SERAFIN: I am, your Honor.

19 CROSS-EXAMINATION

20 Q. BY MR. SERAFIN: Mr. Romines, as you testified here today,
21 are you testifying strictly on your memory of what happened six
22 months ago in March?

23 A. Yes.

24 Q. Have you reviewed any documents such as from police
25 reports prior to coming in to testify today?

26 A. Yeah. I heard the recording from the statements that I
27 gave to the detectives before I came in.

28 Q. And when was that?

1 A. Fifteen minutes before I got here.

2 Q. So the detective played a recording of what you stated
3 back in March, he played that for you this morning; correct?

4 A. Yes.

5 Q. So your testimony today is based in large part upon what
6 you heard in that recording; is that correct?

7 A. What I heard and what I can remember.

8 Q. And you had mentioned several times that you had been
9 doing quite a bit of drinking during that weekend?

10 A. No. I had been drinking, but I wasn't doing quite a bit
11 of drinking.

12 Q. And was that drinking on Saturday and Sunday or just on
13 Sunday?

14 A. I did a little both on Saturday and Sunday.

15 Q. During the day or evening or both?

16 A. Just during the evening.

17 Q. Okay. When you testified to the various statements that
18 you made, some of them are based upon remembering them and some
19 of them are based upon what you said on the recording that you
20 listened to this morning; is that fair to say?

21 A. Yes.

22 Q. And what I'm going to try to ask you to do is focus what
23 you remember specifically from Saturday and Sunday in March.

24 A. Okay.

25 Q. Do you consider Shawn Rodriguez a brother?

26 A. Yes.

27 Q. And you're older than him. How much older than him are
28 you?

1 A. Well, I'm 32.

2 Q. Twelve years older than Shawn?

3 A. Yeah.

4 Q. And growing up did you get the feeling that like most
5 little brothers, Shawn would look up to you, attempt to impress
6 you a little bit?

7 A. Yes.

8 Q. And you said that several times in reference to statements
9 that you may or may not remember were said, you said that as far
10 as what you said you were saying it in jest; correct?

11 A. Excuse me?

12 Q. You were joking when you would make statements such as
13 cement shoes?

14 A. Yes.

15 Q. Or ways to kill people?

16 A. Yes.

17 Q. Did it ever occur to you that Shawn might have been saying
18 some of these things in jest or did you think he was serious?

19 A. I --

20 MR. MARCHI: Objection. That's a compound question and
21 somewhat confusing and may call for some speculation.

22 MR. SERAFIN: I can simplify it, I suppose.

23 THE COURT: All right.

24 Q. BY MR. SERAFIN: Did you think Shawn might have said those
25 things in jest?

26 A. What do you mean by "in jest"?

27 Q. Jokingly?

28 A. Yeah. I was under the impression that he was joking. He
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1 was just, you know, wondering, and I had told him, not knowing.

2 Q. Based on his attitude that day, did you think he was
3 actually trying to kill people?

4 A. No.

5 Q. And when you say that at one point you said to the
6 investigator or the police officer that you thought actually he
7 was just blowing smoke; is that correct?

8 A. Yes.

9 Q. And that's when he made the statement about he thought
10 that somebody might be dead or he wanted to kill somebody;
11 correct?

12 A. Yes.

13 Q. As you testified today, what was the statement?

14 Was it, I think I might have killed someone or I think
15 somebody might be dead?

16 A. He said, "I think I might have killed someone."

17 Q. When did he supposedly say this?

18 A. When he came over the first night, first or second night.
19 That's when he said that, and that was when I asked him, you
20 know, how and why.

21 Q. And what were his answers?

22 A. They said that he was a pedophile and something about
23 burning Anna's arm or something.

24 Q. Okay. So was Shawn -- when you said "they said," is Shawn
25 doing the talking or are they both?

26 A. Well, she was still out at the car, and Shawn was -- Shawn
27 was telling me this stuff, and that's when -- that was when he
28 asked if the girl, the other girl, could stay while they go and

1 came back, up to Auburn.

2 Q. This was Saturday. Was it during the day or the evening?

3 A. It was evening.

4 Q. And they had -- was it your impression that they had just
5 returned from the juvenile hall building?

6 A. They didn't tell me where they exactly came from. They
7 just asked if Erin could stay at my trailer for a couple hours
8 or a day or so, and that's when I said yeah.

9 Q. And at that point did Anna come -- did Ms. Rugg come
10 inside to your house?

11 A. No. She didn't come inside at that point. I went out. I
12 had went out to the street because I was walking Shawn out to
13 the car, and then up to that point that's when I actually met
14 her.

15 Q. And at this point up until now, Shawn hasn't actually
16 described giving you any details as to following up the
17 statement that I may have killed somebody or a guy may be dead;
18 correct?

19 A. Uh-huh, yes.

20 Q. And so at this point you're thinking he's probably just
21 blowing smoke. You don't really know if there's any seriousness
22 behind his statement?

23 A. At first I didn't believe him and then when they came
24 back, you know, a couple times after that, that was when I was
25 really realizing that what he was telling me was actually true.

26 Q. And when they came back at that point Anna had joined
27 Shawn; right?

28 A. Yes.

1 Q. And at that point Anna and Shawn were in your house
2 together; correct?

3 A. Correct.

4 Q. And you stated both to the police and to my investigator
5 that you believed, based upon their actions, that Anna was
6 actually the mastermind in this; is that correct?

7 A. Yeah, because whatever she said, if it was time to go or
8 time to go somewhere or whatever, she would tell Shawn, We have
9 to go here or we have to go there, and then they would get up
10 and Shawn would tell me they would be back, and then they would
11 leave.

12 Q. Did Anna ever talk to you directly or did Shawn do most of
13 the talking?

14 A. She didn't really talk to me too much directly.. It was
15 mainly Shawn talking to me. But when he did talk to me, he had
16 to pull me aside away from her, and there was one occasion where
17 he was in the bathroom and she knew he was talking to me, and
18 she knocked on the door and she looked, you know, upset or
19 perturbed and took him outside and talked with him so nobody
20 else could hear what she was saying to him.

21 Q. Is that something that she did on more than one occasion?

22 A. Yes.

23 Q. When Shawn would make various statements to you, was it --
24 to her statement to the police and to my investigator -- that he
25 would often look over to her for approval based on things he was
26 saying to you?

27 A. Yes.

28 Q. Did you get the impression that Shawn was relaying his own

1 thoughts or questions or that he was actually relaying what Anna
2 had told him to say?
3 A. I don't know if that's what Anna told him to say to me.
4 Q. Now, this statement where you thought he was just blowing
5 smoke, you thought he had killed a guy. That was on Saturday;
6 correct?
7 A. Yeah.
8 Q. That was the first time they came to your house; correct?
9 A. Yes.
10 Q. And then it was Sunday, the following day, where this
11 conversation about carbon monoxide came up; correct?
12 A. Yes, I believe so.
13 Q. Do you know what time that was, roughly?
14 A. I know it was in the evening. I can't remember the exact
15 time they came over. But I know -- I know it was in the
16 evening. It had to be, I would say, between the hours of 8:00
17 and 9:00, around that area.
18 Q. And that was during the time where you had been drinking;
19 correct?
20 A. Yeah. I did have a few beers at that time.
21 Q. And it was not actually Shawn's idea to carbon monoxide
22 anybody; it was actually your idea; is that correct?
23 A. No, it wasn't my idea.
24 Q. It was not your idea?
25 A. He had asked me how many different ways you can kill
26 somebody.
27 Q. Let me stop you there and we'll go step by step. When he
28 asked you that, did you think he was serious about trying to

1 legitimately try to kill someone?

2 A. No, I didn't think he was serious.

3 Q. When he asked you that, was Anna present?

4 A. I don't -- I don't recall. I don't remember. I believe
5 that we were outside on the patio talking, and I don't think
6 Anna was there at the time.

7 Q. But you don't remember?

8 A. I don't remember.

9 Q. Was she there at the house, somewhere in the house or do
10 you remember?

11 A. Yeah, she was there. On Sunday she was there, but she was
12 inside and outside.

13 Q. And because you didn't believe the question -- well, let
14 me ask you this. Why did you believe the question was serious?

15 A. Because the expression on Shawn's face, it didn't, you
16 know, it wasn't believable to me.

17 Q. And when you gave -- what was your answer specifically?

18 A. Oh, what I told him?

19 Q. Correct.

20 A. Well, I said I seen stuff on TV where they hooked the hose
21 to the pipe of a muffler and to a small sealed room and before I
22 had said that, I said something about cement shoes.

23 Q. Something about cement shoes, what?

24 A. I said, "Do you know about making cement shoes?" That's
25 all I said to that. And after that I mentioned stuff I had seen
26 on TV.

27 Q. And did Shawn respond at all? Did you guys have any
28 further discussion on it?

1 A. He acknowledged what I had said, and he was mentioning
2 that he might have to go back up to Auburn and then back to --
3 after that, I went back inside because my son was inside with a
4 friend of mine, and we discussed other things and then a while
5 later, then they left.

6 Q. And at that point you're not sure exactly whether Anna was
7 present and where she was present during these various
8 conversations?

9 A. Most of the time Shawn would talk to me by myself away
10 from her because I got the impression that when he did talk to
11 me, you know, she would get upset.

12 Q. And, in fact, at one point didn't you mention -- didn't
13 Shawn tell you about them taking his credit card and his ATM
14 machine -- and his ATM card and Anna actually got upset that he
15 told you that?

16 A. I knew about -- he did tell me about the ATM card, but I
17 can't remember about the credit card or not.

18 Q. When he mentioned the ATM card to you, is that when Anna
19 got upset with him?

20 A. Yeah. That's when she took him outside and she was
21 talking to him and stuff, and I had to go outside and tell them
22 to quiet down because I had neighbors and stuff, and I came back
23 inside the trailer.

24 Q. Were they yelling at each other?

25 A. She was talking loudly.

26 Q. Was this on Saturday night or Sunday morning? What time
27 are we on?

28 A. It was in the late afternoon time.

1 Q. Saturday or Sunday?
2 A. I believe it was -- I believe it was Sunday.
3 Q. And was it after this that Shawn told you that he wanted
4 to let the water out or shut the water off; was it after that
5 discussion?
6 A. I believe so.
7 Q. And at that point is it -- was it then that he asked you
8 for the hacksaw or did he actually come back later that night to
9 get the hacksaw?
10 A. He came back later that night.
11 Q. So first he drove to Auburn with Anna, and then he
12 returned sometime later?
13 A. Yes, and asked for the hacksaw.
14 Q. And at that point you didn't have a long conversation with
15 him; did you?
16 A. No.
17 Q. He just came in, said, "I need the hacksaw," and you gave
18 him the hacksaw?
19 A. Yes.
20 Q. And that was roughly about what time on either Sunday
21 night or Monday morning?
22 A. It was pretty late because I was up with my son.
23 Q. Like 1:00 or 2:00 a.m.?
24 A. Yeah. I knew it was after midnight, but --
25 Q. And after that you never saw Shawn again; correct?
26 A. Correct.
27 Q. After he came and got the hacksaw?
28 A. Yeah.

1 MR. SERAFIN: No further questions, at this time, your
2 Honor.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 Q. BY MR. MARCHI: When Mr. Rodriguez first approached you
6 and indicated he thought he might have killed somebody, did
7 Mr. Rodriguez seem serious in his tone?

8 A. Yeah. He seemed a little scared, and he told me that and
9 I asked him, you know, Are you sure? How do you know? Did you
10 check, you know, to see if he was okay or if he was actually
11 really deceased?

12 Q. And was that before or after the discussion about the ATM
13 card that he indicated he thought he might have killed somebody?

14 A. That was -- when he told me about the ATM card, he told
15 me -- when he told me he thought he might have killed somebody,
16 he told me that before and then I found out later that they had
17 the ATM card.

18 Q. All right. And when you had the discussion about
19 different ways to kill someone, this is again just with Shawn
20 Rodriguez?

21 A. Yes.

22 Q. All right. And was that after the ATM card, sir?

23 A. I think it was a little before.

24 Q. Okay. And, of course, you were just joking around about
25 the classic cement shoes thing?

26 A. Yes. Yes.

27 Q. And you did, however, describe the CSI show, is that what
28 you were referring to?

1 A. Yeah, because I had seen -- me and my fiance, watch CSI,
2 and I had seen it on there, and I was telling them what I saw on
3 the CSI.

4 Q. All right. And obviously you never thought Mr. Rodriguez
5 would do something like that; did you?

6 A. No.

7 Q. What did you tell Mr. Rodriguez about the CSI show?

8 A. I told him that, you know, that on -- they showed it to
9 where they hook a hose to a car instead of putting the hose
10 inside the car with the window up that, you know, it was in a
11 room, a sealed room, with like towels covering the bottom of the
12 door and stuff like that.

13 Q. All right. And according -- did you tell him what
14 happened on the show or not? Did you tell Mr. Rodriguez?

15 A. No. I just told him the basics of the program.

16 Q. All right. And so, again, you didn't think he'd do
17 something like that; right?

18 A. No. At that time I didn't believe -- I didn't believe
19 anything that he was saying to me. I didn't believe to be true.

20 Q. After you told Mr. Rodriguez about this CSI show and how
21 to gas somebody, did you again tell him to let the man go from
22 the cell?

23 A. After I realized that it was, in fact, true, I did tell
24 him to let -- he should let him go. Even if he had to leave
25 Anna, to ditch her, and drive to a pay phone or...

26 Q. Now, you're not actually blood brothers, are you? You
27 just know each other?

28 A. We're actually foster brothers. My mom did foster care

1 and he came to the home and --
2 Q. Lived there for a while?
3 A. Yeah. We got close and...
4 Q. So when you were talking to Mr. Rodriguez about this CSI
5 show and how they gas someone by sticking the hose instead of
6 inside the car but into a room, was Anna present?
7 A. I think she was.
8 Q. Are you sure about that?
9 A. I believe she was because he had talked to me about it on
10 two occasions.
11 Q. On two occasions?
12 A. Yeah. Well, after that, after the first time he asked me
13 about it later, before they left. Anna was inside and he had
14 brought it up again and I said, "Yeah, I seen it on CSI" and --
15 Q. So the first time it was just you and Mr. Rodriguez, the
16 discussion?
17 A. Yeah. The second time it was in the house, and Anna was
18 in there. ~~Erin was in there.~~
19 Q. And that's when it was brought up again, you say?
20 A. It was just mentioned about it from what I had said to
21 him, and I said, "Yeah, I seen it on CSI."
22 Q. And who brought it up the second time? ✓
23 A. I think Shawn did. I'm not exactly sure.
24 Q. All right. When you first discussed with Mr. Rodriguez
25 about the fact that you thought he had killed someone, was there
26 any discussion about water being on in the cell that the man was
27 in?
28 A. After he told me that he thought he killed someone, when

1 he left and then they came back, he told me that the water, the
2 sprinkler came on and it was filling up with water.. And at that
3 point, that was when I was telling him to let him go, turn the
4 water off.

5 Q. All right. Did Mr. Rodriguez say he wanted to block the
6 door and fill the water up in the cell?

7 A. He asked, but he didn't directly indicate that he wanted
8 to. He asked -- because he said the water was coming out of
9 there. He asked that -- about not being able to block the
10 water.

11 MR. MARCHI: I have no further questions.

12 THE COURT: Anything further on cross?

13 MR. SERAFIN: Briefly, your Honor.

14 RECROSS-EXAMINATION

15 Q. BY MR. SERAFIN: Rick, do you remember Shawn mentioning
16 anything to you about a court date that he had Monday morning?

17 A. He did mention that he had to go to court.

18 Q. Do you remember him mentioning that as possibly an
19 opportunity to get out of this situation?

20 MR. MARCHI: I'd object as to the relevance, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: He may have mentioned that he had court. I
23 didn't know if that was a way to get out of the situation or
24 not. I wasn't sure.

25 Q. BY MR. SERAFIN: When you told him -- when you mentioned
26 to him, "You've got to let this guy out, you are" -- his answer
27 was, "I will"; is that correct?

28 A. Yes.

1 Q. When you told him about this thing you saw on CSI where
2 people could put hoses together and carbon monoxide someone, you
3 told him this outside the presence of Anna, first?

4 A. Yes.

5 Q. Then the two of you went inside to the TV room where Anna
6 was present; correct?

7 A. Yes.

8 Q. At that point Shawn, off his own, brought up what you just
9 talked about outside in front of Anna; correct?

10 A. Yes.

11 Q. He wanted Anna to hear what you had suggested about this
12 putting hoses together from CSI; am I correct?

13 A. Yes.

14 MR. SERAFIN: No further questions.

15 THE COURT: Anything further on redirect?

16 MR. MARCHI: No, your Honor.

17 THE COURT: Is this witness excused?

18 MR. SERAFIN: Yes. I would like to keep him subject to
19 recall.

20 MR. MARCHI: I ask that not be done, your Honor. He's
21 from out of state and he needs to be released.

22 MR. SERAFIN: Perhaps we can inquire as to his travel and
23 stuff.

24 MR. MARCHI: He has an afternoon flight today.

25 THE COURT: He may need to be subject to recall. He can
26 go ahead and leave today, and if he needs to be brought back,
27 when do you think you might need him?

28 MR. SERAFIN: I anticipate that it not happening, but he

1 would only come back if it was extremely crucial.

2 THE COURT: No objection to him going back, just being
3 subject to recall?

4 MR. SERAFIN: No, that's fine.

5 THE COURT: You're free to go, Mr. Romines, but you may be
6 subject to recall, but you need to be available and you'll get
7 notice.

8 THE WITNESS: Okay.

9 THE COURT: You're free to go. Your next witness?

10 MR. MARCHI: We'll need to approach at this time, your
11 Honor.

12 THE COURT: Okay.

13 (Bench conference held off the record.)

14 THE COURT: We need to set up some equipment, ladies and
15 gentlemen, and rather have you all sit here while we're doing
16 that, we're going to take a five-minute recess, and we'll have
17 you all step out and we'll resume in about five minutes.

18 (Jury exits the courtroom.)

19 THE COURT: What we're going to do, Andy, we would like
20 you to bring Mr. Hamman and also bring out Ms. Rugg and you can
21 do it whatever order you feel is appropriate, but we need them
22 both out here at the same time, and then we'll let Ms. Rugg go
23 right away.

24 MR. SERAFIN: Your Honor, can I use the telephone in the
25 back to call my investigator?

26 THE COURT: Uh-huh.

27 (Recess taken.)

28 THE COURT: All right. We're on the record. Counsel and

1 parties are present. The jury is not present. Present on the
2 witness stand is Mr. Hamman who is in the orange jail clothing
3 and apparently there was a -- clothing was not brought for him
4 so there's no street clothing brought for him to wear, and I
5 understand the People are going to proceed anyway.

6 MR. MARCHI: Yes.

7 THE COURT: It wasn't going to be hidden anyway because he
8 was in custody. There was a request for street clothing, but
9 we're ready to proceed?

10 MR. MARCHI: I am on that aspect, but I ask that his
11 handcuffs be removed.

12 THE COURT: From in court in rather close proximity to
13 Mr. Hamman is Ms. Rugg, and it is my understanding her purpose
14 in being here is for identification, and I don't know how my
15 bailiffs feel about the situation. Are you comfortable in
16 removing the handcuffs?

17 THE BAILIFF: Your call, Judge.

18 MR. MARCHI: It will be --

19 THE COURT: I assume the biggest security issue is that
20 they're in close proximity to each other.

21 MR. MARCHI: That is one of the first questions that I'm
22 going to ask him. During the time frame when you refer to Anna
23 Rugg, is that person in the courtroom, have him identify her,
24 and have her close. It will be the first question.

25 THE COURT: I'll order the removal of the handcuffs, and
26 there's to be no discussion between the two of you.

27 MR. MARCHI: Do you understand that, Mr. Hamman?

28 MR. HAMMAN: Yes.

1 THE COURT: I don't have to tell either of you, move an
2 inch, these bailiffs are going to be all over you. Are we ready
3 to proceed?

4 MR. MARCHI: Yes, your Honor.

5 THE COURT: You may bring in the jury.

6 (Jury enters the courtroom at 11 a.m.)

7 THE COURT: All right. We're back on the record. The
8 jury is all present. Counsel and parties are present. Counsel,
9 are you ready to proceed?

10 MR. MARCHI: Yes, your Honor. Next witness will be
11 Nicholas Hamman.

12
13 NICHOLAS HAMMAN

14 called as a witness on behalf of the People herein was sworn,
15 examined, and testified as follows:

16 THE COURT: All right. Mr. Hamman, you may remain seated.
17 I need you to raise your right hand to be sworn.

18 THE CLERK: Do you solemnly state that the testimony you
19 shall give in the cause now pending before this court shall be
20 the truth, the whole truth, and nothing but the truth so help
21 you God?

22 THE WITNESS: Yes, I do.

23 THE CLERK: Please state your name and spell the last for
24 the record.

25 THE WITNESS: Nicholas Hamman, H-a-m-m-a-n.

26 THE COURT: Thank you. Go ahead, Counsel.

27 DIRECT EXAMINATION

28 Q. BY MR. MARCHI: Mr. Hamman, I'm going ask you some

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1 questions that revolve around the weekend, Saturday of March
2 15th, 2003, through the early morning hours, Monday morning of
3 March 17th of 2003. And during the course of your testimony, we
4 expect that some of your discussion will revolve around a person
5 named Anna Rugg. You have to answer out loud.

6 A. Yes.

7 Q. Do you understand that?

8 A. Yes, sir.

9 Q. Is that person in the courtroom today?

10 A. Yes, sir.

11 Q. Where is she seated and what is she wearing?

12 A. Orange and black.

13 Q. Seated to your right?

14 A. Seated to my right.

15 Q. In front of the jury?

16 A. Yes.

17 MR. MARCHI: May the record reflect the identification of
18 Anna Rugg, your Honor?

19 THE COURT: Yes.

20 Q. BY MR. MARCHI: Each of the times that you refer to Anna
21 Rugg, this is the person that you would be talking about; is
22 that correct?

23 A. Yes, sir.

24 THE COURT: Thank you.

25 MR. MARCHI: That's all I have of Ms. Rugg.

26 THE COURT: Any objection to my excusing Ms. Rugg?

27 MR. SERAFIN: No, your Honor.

28 MR. MARCHI: No, your Honor.

1 THE COURT: All right. Ms. Rugg, you are free to go.

2 (Ms. Rugg escorted out of the courtroom.)

3 THE COURT: All right. Go ahead.

4 Q. BY MR. MARCHI: Sir, you are currently in the Placer
5 County Jail yourself, correct?

6 A. Yes, sir.

7 Q. And that's because of a drunk driving case?

8 A. Yes, sir.

9 Q. And when did that happen?

10 A. May 7th.

11 Q. Of 2003?

12 A. Yes, sir.

13 Q. So a couple months after the March 15th date I referred
14 to?

15 A. Yes, sir.

16 Q. And you're also there subject to a parole hold because of
17 this driving under the influence; isn't that correct?

18 A. Yes, sir.

19 Q. Okay. Now, the person you just identified as Anna Rugg,
20 prior to March 15th of 2003, sir, did you know Anna Rugg?

21 A. Yes, sir.

22 Q. How long did you know her?

23 A. Since about July of the prior year.

24 Q. July of 2003 or --

25 A. 2002.

26 Q. Okay. So you knew her a little over a year?

27 A. Not quite a year.

28 Q. Okay. And do you know a person named Shawn Rodriguez?

1 A. Yes, sir.

2 Q. And is he in the courtroom today?

3 A. Yes, sir. He's sitting over there wearing a gray plaid
4 striped shirt.

5 Q. No tie, sir?

6 A. No.

7 MR. MARCHI: May the record reflect identification of
8 Shawn Rodriguez, your Honor?

9 THE COURT: Yes, noted for the record.

10 Q. BY MR. MARCHI: I want to call your attention to March 15,
11 2003, a Saturday.

12 A. Yes, sir.

13 Q. At about 9:30 in the morning. Did you have occasion to be
14 in the area in Auburn known as Randy Rowdy's Gas Station (sic)?

15 A. Yes, I was driving by.

16 Q. And was anyone with you at the time, sir?

17 A. It was a guy from the parole house with me, at the time,
18 in my car.

19 Q. What's his name?

20 A. I don't remember his name offhand.

21 Q. All right. And, sir, why were you going to Randy Rowdy's
22 that morning?

23 A. I wasn't. I was heading towards my AA -- NA meeting.

24 Q. All right. And did something cause you to go into Randy
25 Rowdy's Gas Station?

26 A. Yes. Shawn and Anna and Erin Hughes flagged me down.

27 Q. Okay. What do you mean by flagged you down?

28 A. (Demonstrating.)

) 1 Q. Just kind of waving you over?
2 A. Waved over for me to come into Rowdy Randy's.
3 Q. Were you driving your vehicle that day?
4 A. Yes, sir.
5 Q. What kind of vehicle is that?
6 A. Chevy Beretta.
7 Q. What color was it?
8 A. Red, '92.
9 Q. You were driving, and where was the other gentleman
10 seated?
11 A. Beside me in the passenger seat.
12 Q. Showing you Exhibit 47; do you recognize that vehicle,
13 sir?
) 14 A. Yes, sir.
15 Q. Whose vehicle is that?
16 A. That's mine.
17 Q. That's the one you were driving that day?
18 A. Yes, sir.
19 Q. Showing you 46, again; is that your vehicle, sir?
20 A. Yes, sir.
21 Q. All right. That's the front end of it; correct?
22 A. Yes, sir.
23 Q. So did you then pull into the gas station known as Randy
24 Rowdy's?
25 A. Yes, sir, I did.
26 Q. All right. And what did you do at that point then?
) 27 Did you have a discussion with anyone?
28 A. Yes.

1 Q. Who?
2 A. With Anna and Shawn.
3 Q. And did they ask you to do something for them, sir?
4 A. Yes, sir. They asked me to help them move out of the
5 Elmwood Motel.
6 Q. All right. And at that time did you know where they
7 wanted to move to at that time, sir?
8 A. No, not at that time.
9 Q. All right. So they just wanted to move somewhere; is that
10 correct?
11 A. Yes, sir.
12 Q. All right. And did you agree to do that?
13 A. I told them I had to take my friend back first.
14 Q. But that you would help them?
15 A. Yes.
16 Q. All right. Did you, in fact, take your friend somewhere?
17 A. Yes. I took him back to the Ophir and Warner House.
18 Q. Is that where you were living at the time, sir?
19 A. Yes, sir.
20 Q. And about how far is that from Auburn?
21 A. About five, ten minute drive.
22 Q. Okay. And how long did it take you to get back to Randy
23 Rowdy's, sir?
24 A. About 20 minutes.
25 Q. All right. And did you go back to Randy Rowdy's or
26 somewhere else?
27 A. I went back to the Elmwood Motel.
28 Q. Where is the Elmwood from Randy Rowdy's?

1 A. Right across the street.

2 Q. Okay. And did you go to a particular location at the
3 Elmwood?

4 A. Yeah, to, I think it was, room 207.

5 Q. And, to your knowledge, who was staying there at the time?

6 A. Anna Rugg, Shawn Rodriguez, and Erin Hughes.

7 Q. And had you been to that motel room prior to Saturday,
8 March 15th, 2003?

9 A. Yes.

10 Q. When was that?

11 A. The night before.

12 Q. Friday?

13 A. Yes.

14 Q. And why were you over there Friday?

15 A. To help them move in.

16 Q. To the Elmwood?

17 A. Yeah.

18 Q. Did you give them a ride from somewhere on Friday?

19 A. Bus station, I think.

20 Q. Is that in Auburn?

21 A. Yes. It is downtown by the -- by Placer County Bank.

22 Q. All right. And do you remember about what time of day
23 that was that you gave them a ride the previous day?

24 A. I'm not positive. I think it was somewhere around 10
25 o'clock.

26 Q. All right. When you arrived Saturday morning back at the
27 Elmwood after dropping your friend off, do you remember about
28 what time it was you arrived at the Elmwood Saturday morning?

1 A. 9:30, 10:00, somewhere.
2 Q. Somewhere in that range?
3 A. Yes, sir.
4 Q. All right. When you get back to the Elmwood, did you have
5 any discussion with anyone about where you were going to be
6 taking them that day?
7 A. The discussion didn't really start until we got into the
8 car.
9 Q. All right. You just knew they were going to be moving; is
10 that right?
11 A. Yes, sir.
12 Q. Did anyone load anything into your vehicle?
13 A. Yes.
14 Q. Who did?
15 A. Pretty much everyone there did.
16 Q. And who was riding in the vehicle with you, sir?
17 A. Anna and Erin.
18 Q. And do you know where Mr. Rodriguez was?
19 A. He was on his bike.
20 Q. Okay. And at that time did you have an agreement to meet
21 with Mr. Rodriguez somewhere with Ms. Rugg and Ms. Hughes?
22 A. After we first started, they told us.
23 Q. Who told you?
24 A. Anna said we was going to the old juvenile hall.
25 Q. Okay. So were you driving the vehicle, sir?
26 A. Yes.
27 (Bailiff hands witness his glasses.)
28 Q. Those are your reading glasses?

1 A. Yes, sir.

2 Q. Okay. So you were driving and who was seated in the front
3 area of the vehicle, sir, as a passenger?

4 A. Anna Rugg.

5 Q. And where was Erin Hughes?

6 A. In the back.

7 Q. By herself?

8 A. Yes.

9 Q. And how far away from the Elmwood did you get before you
10 had a discussion about where you were going?

11 A. About to the first side street where we had the argument.

12 Q. All right. Where was Mr. Rodriguez at that time, if you
13 know?

14 A. Going over the hill towards the side street, I think. I'm
15 not sure.

16 Q. Did you actually have a visual view of him when you first
17 started having the discussion?

18 A. No, sir.

19 Q. All right. Now, you say you got in an argument with
20 Ms. Rugg at that time?

21 A. Yes.

22 Q. What about?

23 A. She said I wasn't going the right way.

24 Q. Okay. Before we get to there, did she tell you where she
25 wanted to go?

26 A. Yes.

27 Q. Where did she tell you she wanted to go?

28 A. To the old juvenile hall.

1 Q. Did you know where that was at?

2 A. I knew it was roughly somewhere behind Gottschalks over in
3 that area, so I was going through the back part by Albertsons.

4 MR. SERAFIN: Your Honor, can I interrupt quickly for a
5 really brief sidebar, very short?

6 THE COURT: All right.

7 (Bench conference held off the record.)

8 THE COURT: All right. Go ahead.

9 Q. BY MR. MARCHI: Mr. Hamman, I believe when we left off you
10 indicated you were starting to have an argument with Ms. Rugg
11 over directions, sir?

12 A. Yes, sir.

13 Q. Okay. And where is the Elmwood in relation to the old
14 juvenile hall? Where do you have to go to get there, sir?

15 A. The way I assumed was to go down the -- I think it is High
16 Street, right beside the Elmwood to Albertsons, and take a turn
17 through Albertsons and go through the back.

18 Q. So there were other ways to get there, but that was one
19 way?

20 A. That was the only way, I assumed.

21 Q. So you say you started to drive when you got into the
22 argument or were you stationary, still?

23 A. No, we were driving.

24 Q. Whereabouts were you from the Elmwood when you got into
25 this verbal argument?

26 A. By that side street that goes up to the side before the
27 bridge.

28 Q. Okay. Do you know about how far that is from the actual

1 old juvenile hall, sir? How many blocks, if you know?

2 A. Maybe a block or two from the Elmwood.

3 Q. Okay. So you hadn't gotten very far away from the
4 Elmwood. And did Ms. Rugg tell you she wanted to go a different
5 way?

6 A. Yeah.

7 Q. And did she say why that was?

8 A. She wanted me to follow Shawn.

9 Q. Now, prior to loading up everything in the car when you
10 first got back to the Elmwood, Mr. Rodriguez, was he present
11 then before everybody loaded up your car?

12 A. I believe so.

13 Q. Okay. Was there any discussion at the Elmwood as to where
14 you were going to go?

15 A. Not that I remember.

16 Q. Okay. So you never told Mr. Rodriguez you were going to
17 meet him anywhere or he never told you anything?

18 A. Not that I remember.

19 Q. So the first time you remember being told that you
20 wanted -- they wanted to go to the old juvenile hall, you were
21 already in motion about two blocks away from the Elmwood?

22 A. Yes, sir.

23 Q. And that came from Anna Rugg?

24 A. Yes, sir.

25 Q. Why did she want you to go a certain way?

26 A. She wanted me to follow Shawn is what she said.

27 Q. All right. And did you have Mr. Rodriguez within sight at
28 that time when you were a couple blocks away from the Elmwood?

1 A. Like I said, he went up the side street, I think. I'm not
2 sure.
3 Q. So you had lost visual contact with him?
4 A. Yes.
5 Q. She wanted you to go the same route that Mr. Rodriguez was
6 going; is that fair to say?
7 A. Yes.
8 Q. All right. And did you actually stop the car type of
9 argument or are you driving and discussing it?
10 A. We continued to discuss for a little ways, and I turned
11 into the parking lot right by the Wells Fargo Bank there. I
12 guess it is Wells Fargo Bank. It is right by -- right there
13 behind the grocery store.
14 Q. All right. And at that time did you see Mr. Rodriguez on
15 his bicycle then, sir?
16 A. He drove up a little later.
17 Q. So you stayed right there at the Wells Fargo until
18 Mr. Rodriguez arrived?
19 A. Yeah.
20 Q. And who asked you to do that, if anyone?
21 A. Erin. Anna got mad and got out of the car.
22 Q. Why was she mad, sir?
23 A. Because she said I wasn't going the right way.
24 Q. Okay. After Mr. Rodriguez arrived, did you have a
25 conversation with him at the Wells Fargo?
26 A. Yes.
27 Q. What was that about, sir?
28 A. We was talking about how I went the wrong way and this and

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1 that, and he said he was going to talk to Anna and he went and
2 got Anna and they came back.

3 Q. All right. So Anna was, as far as you could tell, upset
4 at you for going the wrong way?

5 A. Yes.

6 Q. Okay. And so did Anna Rugg get back in the vehicle at
7 that point, sir?

8 A. Yes.

9 Q. And where was Erin Hughes then after Anna Rugg got back
10 inside the vehicle?

11 A. I think she was in the same spot.

12 Q. In the back seat?

13 A. Yes.

14 Q. And with regard to Mr. Rodriguez, did he continue on his
15 bicycle at that time?

16 A. Yes, sir.

17 Q. Okay. And did you follow him somewhere, sir, from that
18 point forward?

19 A. From that point forward we went the way I suggested,
20 through Albertsons.

21 Q. Did you tell Mr. Rodriguez that's where you were going?

22 A. I don't remember if I actually told him that's the way or
23 not.

24 Q. So you ended up over at the hall; is that correct?

25 A. Yes, sir.

26 Q. And when you got to the hall, did you see Mr. Rodriguez?

27 A. No, I did not.

28 Q. Did he come up on his bicycle at some point?

1 A. I assume he was already there.

2 Q. Okay. I'm going to show you what's been marked as Exhibit

3 4. What we have is a street here. Here's a fence to this side.

4 Do you recognize what is depicted in the photograph, sir?

5 A. Yes, sir.

6 Q. What are we looking at?

7 A. The street beside the juvenile hall, beside Gottschalks.

8 Q. I have here just a little pointer for you to use and just

9 press that button. Would you point out -- is the old juvenile

10 hall, a portion of it, depicted there, sir?

11 A. (No audible response.)

12 Q. You have to answer yes or no.

13 A. Yes.

14 Q. Would you point to it?

15 A. Yes, I am.

16 Q. You're pointing at the fence area; correct?

17 A. Yes.

18 Q. And, sir, does this street show where your vehicle ended

19 up at once you got to the hall?

20 A. Somewhere over in this not showing open area.

21 Q. So your answer is yes?

22 A. Yes, sir.

23 Q. You say where you parked the vehicle is depicted just

24 outside the photograph?

25 A. Yes, sir.

26 Q. About how far up; do you think, sir?

27 A. About 10 feet.

28 Q. So it is just outside the photograph itself. Okay. Thank

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1 you.

2 And did you actually park on this street, sir?

3 A. Yes, sir.

4 Q. And the area you've pointed to is just off this diagram?

5 A. Yes, sir.

6 Q. And when you parked there, sir, what happened next?

7 A. Shawn opened the front door, came out the front door a
8 little while afterwards, and we started moving stuff over to the
9 juvenile hall.

10 Q. Okay. So you didn't actually see where Mr. Rodriguez was
11 when you first parked the car?

12 A. No.

13 Q. All right. You say you saw him come out a front door,
14 sir?

15 A. Yes, sir.

16 Q. Of the juvenile hall?

17 A. Yes, as we were bringing bags over.

18 Q. All right. Showing you what's been marked Exhibit 2; do
19 you recognize the door area here, sir, in Exhibit 2?

20 A. Yes, sir.

21 Q. And what door is that in relation to Mr. Rodriguez?

22 A. That's the front door.

23 Q. Is that the one you saw him come out of?

24 A. I think so.

25 Q. Okay. Going back here a moment to 4 then. You have
26 pointed that this is the corner of the fence. This is the
27 doorway area somewhere inside that area, sir, or around the
28 corner of it as we see it in Exhibit 4; do you understand my

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1 question?

2 A. Around the front.

3 Q. Okay. So that's the front area there?

4 A. Yes, sir.

5 Q. Okay. Thanks. All right. When Mr. Rodriguez appeared,
6 you say that all the parties started moving the items they had
7 put in your car; is that correct?

8 A. I didn't see him until we already had gotten some bags up
9 to the front door.

10 Q. Okay. And why did you start bringing bags to the front
11 door?

12 A. Because Anna said start bringing it to the front door.

13 Q. She asked you to help her?

14 A. Yes.

15 Q. You agreed to do that?

16 A. Yes, sir.

17 Q. Where was Ms. Hughes at that time?

18 A. She was getting bags out of the trunk too.

19 Q. So you and Anna and Erin were all starting to unpack the
20 car?

21 A. Yes, sir.

22 Q. All right. And where did you bring bags to, sir?

23 A. To the front door.

24 Q. All right. And at that time, showing you here again
25 Exhibit 2, this front door area you have identified in Exhibit
26 2; where did you put the bags at, sir? Can you point to an
27 area?

28 A. Right there beside --

1 Q. You're pointing to some steps just to the left side of the
2 front door, sir?

3 A. Yes, sir.

4 Q. And that is where you started putting bags?

5 A. Yes, sir.

6 Q. What about the other parties, what were they doing with
7 the bags? What was Anna doing?

8 A. Carrying them inside.

9 Q. Was Erin Hughes carrying them inside also?

10 A. Yes, sir.

11 Q. And what about Mr. Rodriguez, what was he doing?

12 A. He grabbed a bag also.

13 Q. From your car or from this front door area?

14 A. From me.

15 Q. From you?

16 A. (Nods head.)

17 Q. Okay. How many trips did you make from the car to this
18 front door area?

19 A. Two or three.

20 Q. Okay. And each time you would take a load, so to speak?

21 A. Yes, sir.

22 Q. All right. And, sir, was there a point in time when the
23 car was unpacked fully?

24 A. Yes, sir.

25 Q. And when was that? How many trips did you have to take?

26 A. Two or three.

27 Q. Were other people also making trips to the car or simply
28 getting what you put at the door step?

1 A. Just getting what I put at the door.

2 Q. So there was a point where you are fully unloaded; is that
3 correct?

4 A. Yes, sir.

5 Q. Where did you go after that, sir? After all the bags were
6 unloaded, what did you do?

7 A. I shut the car trunk and got the keys and went up to the
8 door and asked them if there was anything else.

9 Q. By the door, you're, again, referring to this front door
10 here in Exhibit 4?

11 A. Yes, sir.

12 Q. Okay. Just wait until I'm finished. Thank you. All
13 right. And who were you asking was there anything else I could
14 do?

15 A. Anna Rugg.

16 Q. Okay. Do you know where Mr. Rodriguez or Ms. Hughes was
17 at that time?

18 A. No, sir.

19 Q. And what, if anything, happened at that point, sir?

20 A. Anna said that Erin had gotten hurt.

21 Q. Somewhere inside?

22 A. Yes.

23 Q. And did Ms. Rugg ask you to do something?

24 A. Asked me to come in.

25 Q. All right. And what was the tone of Ms. Rugg's voice when
26 she made that statement to you, sir?

27 A. Kind of hysterical.

28 Q. You thought she was excited?

1 A. Yes.

2 Q. And did you proceed to follow her?

3 A. Yes, sir.

4 Q. Did you go inside the building, sir?

5 A. Yes, sir, I did.

6 Q. And can you describe for us where you went initially

7 inside the building?

8 A. Went through the door to the left, down a long corridor,

9 and around and up to another corridor.

10 Q. All right. And how is it that you went that route, sir?

11 A. That's the way she was leading.

12 Q. Was she in front of you at that time?

13 A. Yes.

14 Q. Okay. And at some point when you got to the end of this

15 route, did Ms. Rugg point something out to you?

16 A. Yeah. She said she was in the room there.

17 Q. All right. And what kind of room was this?

18 A. Like a small, like, cell, like, room.

19 Q. When you first saw that room, did you know what kind of

20 room it was?

21 A. No.

22 Q. You found out later; is that right?

23 A. Yes.

24 Q. And the door to that room, was it open or closed, sir,

25 when you first arrived?

26 A. About halfway open.

27 Q. All right. Did Ms. Rugg go in first to that room?

28 A. No.

1 Q. Did she point to the room, sir?
2 A. Yes.
3 Q. What did you do?
4 A. I ran inside.
5 Q. All right. How far inside did you get?
6 A. Foot or two, couple feet.
7 Q. And why didn't you go all the way in the room?
8 A. I just went in to look around to see where she was, where
9 Erin was.
10 Q. When you looked around this room, what did you see?
11 A. Nothing.
12 Q. Okay. And when you saw nothing, did you say anything or
13 do anything, sir?
14 A. I spun around.
15 Q. Why did you do that?
16 A. Because I heard a creak.
17 Q. A creak?
18 A. Like a creak, like the door sliding.
19 Q. All right. When you spun around, what did you see
20 happening?
21 A. Saw Anna shutting the door.
22 Q. All right. What, if anything, did you do?
23 A. Stuck my leg out.
24 Q. Why?
25 A. To try to stop it from being shut.
26 Q. Were you able to put your leg in the door jamb, sir?
27 A. Yes, sir.
28 Q. All right. And were you able to keep it there?

1 A. No.

2 Q. Why is that?

3 A. Because Shawn Rodriguez kicked me in the thigh.

4 Q. This gentleman you've identified kicked you; is that
5 right?

6 A. Yes, sir.

7 Q. And did that cause you some pain?

8 A. Yes, sir.

9 Q. And when you were kicked, what happened next?
10 What did you do with your leg?

11 A. Pulled my leg back out.

12 Q. Then what happened, sir?

13 A. Then the door shut.

14 Q. And was there any handles inside this room where you could
15 open the door?

16 A. No, sir.

17 Q. So you aren't able to get out at that point?

18 A. No, sir.

19 Q. Showing you what's been marked Exhibit 1 here, sir; this
20 is purported to be the layout of the juvenile hall, the old
21 juvenile hall. Does that look familiar to you, sir?

22 A. Yes, sir.

23 Q. And here we have marked a staff door intended to be
24 consistent with Exhibit 4; is that the front door you talked
25 about?

26 A. Yes, sir.

27 Q. Can you use your laser pointer and show for us the route
28 that Anna Rugg led you on, sir, and take your time.

1 A. Up here, down this way, back and around, and over to this
2 room here.

3 Q. All right. Do you see this little area just to the left
4 of your pointer, sir?

5 A. Yes, sir.

6 Q. Do you recognize that area, if you do? If not, that's
7 fine.

8 A. Not off this diagram, no.

9 Q. Okay. Let me show you a photograph here. Showing you
10 Exhibit 24; does that door look familiar, sir?

11 A. Yes, sir.

12 Q. All right. And by that door in 24, I'm referring to the
13 one with this tape around it.

14 A. Yes, sir.

15 Q. It has a door handle here and it is halfway open?

16 A. Yes, sir. That's the room I was in.

17 Q. That's the one you got locked in, sir?

18 A. Yes, sir.

19 Q. And do you recognize this little area here with the
20 counter?

21 A. Yes, sir.

22 Q. Okay. Showing you here Exhibit 1; if this is the counter
23 here, sir, do you now recognize the area that would be to its
24 left, if you do? If you don't, that's fine.

25 A. No, sir.

26 Q. That's fine.

27 THE COURT: Can you see that?

28 THE WITNESS: Yes, I can see it.

1 Q. BY MR. MARCHI: Going back here to 24, when you came
2 around the last corner that Anna Rugg was directing you to, you
3 say she never actually went inside this room you've identified;
4 correct?

5 A. Yes, sir.

6 Q. Where was she in relation to this door?

7 A. Foot or two in front of me.

8 Q. In front of you?

9 A. (Nods head.)

10 Q. And how did you go in this door here, sir?

11 A. I ran straight through.

12 Q. And as you see this door in 24, it's part way open. Is
13 that consistent at all with how much it was open when you saw
14 it?

15 A. About the same amount.

16 Q. Approximately?

17 A. Yeah, approximately.

18 Q. All right. And was she standing in front of the door
19 itself or where was she, sir?

20 A. About right here, straight in front this way.

21 Q. Of the edge of the door as we see it?

22 A. Yes, sir.

23 Q. All right. And were you able to see anything in the area
24 behind the doorway where this counter is or the door itself,
25 sir, when you first came around there?

26 A. No, sir.

27 Q. And you didn't hear anyone else in the area when you first
28 came around?

1 A. No, sir.

2 Q. And how far into this doorway did you get, sir, when you
3 were looking for Ms. Hughes?

4 A. Couple feet.

5 Q. All right. And then you then heard the creaking sound?

6 A. Yes, sir.

7 Q. Can you show us with the pointer where your leg ended up?

8 A. (Pointing.)

9 Q. You're pointing to the left edge of the doorway?

10 A. Yes, sir.

11 Q. All right. And for a while you were able to maintain the
12 door being open?

13 A. Yes, sir.

14 Q. And at that time did you actually know who was pushing on
15 the door?

16 A. Yes, Anna.

17 Q. And when was it you first realized Mr. Rodriguez was
18 somewhere in the area?

19 A. When he kicked at me.

20 Q. How many times did he kick at you?

21 A. Once.

22 Q. And where did it hit you?

23 A. In the thigh.

24 Q. And did you actually have a bruise from that, sir?

25 A. Yes, sir.

26 Q. You see this gentleman to my right?

27 A. Yes, sir.

28 Q. Do you know him?

1 A. Yes, that's Detective Dan Coe.

2 Q. Okay. Did you later show Mr. Coe the bruise you say
3 Mr. Rodriguez caused from the kick?

4 A. Yes, sir.

5 Q. Showing you what's been marked Exhibit 62; do you
6 recognize this red spot here, sir?

7 A. Yes, sir.

8 Q. Is that part of you?

9 A. Yes, sir. That's the inside of my thigh.

10 Q. All right. And what is this red spot?

11 A. Where I was kicked.

12 Q. By Mr. Rodriguez?

13 A. Yes, sir.

14 Q. You also see on here some little small cuts. Did you have
15 those before this incident occurred?

16 A. No, sir.

17 Q. Okay. How did that happen?

18 A. I broke my glasses trying to dig out through the window.

19 Q. Okay. We'll cover that a little more later. And did you
20 show this bruise to Mr. Coe, the same day you finally got out of
21 the cell?

22 A. Yes, sir.

23 Q. Do you remember him, Detective Coe, taking a photograph of
24 it?

25 A. Yes, sir.

26 Q. And that was the only leg injury you showed him?

27 A. Yes. That's the only one I showed him at the time.

28 Q. And after the door was closed on you -- well, strike that.

1 Did you actually see who closed the door after you pulled
2 your foot away?

3 A. Yes, Anna Rugg.

4 Q. What was Mr. Rodriguez doing, if anything?

5 A. Standing behind her.

6 Q. Okay. And did you try and get out at that point, sir?

7 A. Yes. I tried to push the door, tried to open it, but it
8 wouldn't open.

9 Q. And there were no handles?

10 A. No, sir.

11 Q. And did you have a conversation with Ms. Rugg at about
12 that time about getting out of --

13 A. Yes, sir.

14 Q. Okay. Did Ms. Rugg agree to let you out?

15 A. She said she'd let me out after she calmed down.

16 Q. Was she still mad about something, sir?

17 A. She said she was mad about the argument.

18 Q. And did you ever try and touch her in any way, sir, that
19 day?

20 A. No, sir.

21 Q. Did Ms. Rugg know about the fact that you're a 290
22 registrant?

23 A. Yes, sir.

24 Q. And you had told her this?

25 A. Yes, sir.

26 Q. Did you ever have a conversation with Mr. Rodriguez about
27 this?

28 A. No.

1 Q. All right. How long did your conversation with Ms. Rugg
2 last where you were trying to get her to open the door, sir?

3 A. Five, ten minutes.

4 Q. All right. And did she ever indicate she had no ability
5 to open the door?

6 A. No, she didn't indicate that.

7 Q. She just didn't want to; is that right?

8 A. She just didn't open it.

9 Q. And at that time was -- did Mr. Rodriguez come up at all
10 and join in the conversation?

11 A. No. He was sitting up on the counter stuffing toilet
12 paper up above.

13 Q. All right.

14 A. I didn't know there was a vent there at the time. That's
15 what he was doing.

16 Q. Let me show you what's been marked Exhibit 19. Again, do
17 you recognize that door with the tape on it, sir?

18 A. Yes, sir.

19 Q. That's again the cell door you were in?

20 A. Yes, sir.

21 Q. All right. And you refer to a counter. Do you see the
22 counter you're saying Mr. Rodriguez was sitting on?

23 A. Right here.

24 Q. All right. How were you able to see that, sir?

25 A. Through the side of the window.

26 Q. Pardon me?

27 A. Through the window and the door.

28 Q. That door window right there?

1 A. Yes, sir.
2 Q. All right. The little narrow one?
3 A. Yes, sir.
4 Q. All right. Was there any other windows in that cell, sir?
5 A. One to the side over between the counter.
6 Q. Showing you Exhibit 31; do you recognize what is depicted
7 here, sir?
8 A. Yes, sir.
9 Q. What are we looking at?
10 A. That's the window that I was trying to dig out.
11 Q. All right. That's from the inside, you think?
12 A. Yes.
13 Q. Okay. Did you have any view through that window of where
14 Mr. Rodriguez was?
15 A. No.
16 Q. So as you recall your view, it would have been through the
17 narrow slit?
18 A. Yes, sir.
19 Q. Now, you say Mr. Rodriguez was putting toilet paper in the
20 vent, sir?
21 A. Yes, sir.
22 Q. How do you know he was doing that?
23 A. Because I could see him taking toilet paper and sticking
24 it up above.
25 Q. What you saw was Mr. Rodriguez taking toilet paper and
26 sticking it up above. You don't know what it was in at that
27 time?
28 A. Not at that time, no.

1 Q. Did Mr. Rodriguez say anything to you while he was doing
2 that?

3 A. Said he was going to burn the building down.

4 Q. How long did he make that statement after you had been in
5 the room, sir?

6 A. Maybe 20, 30 minutes.

7 Q. Were you still at that point trying to talk Anna Rugg to
8 let you out?

9 A. No, that conversation was over.

10 Q. Okay. When that conversation ended where Ms. Rugg wasn't
11 going to let you out, did she promise to let you out later, sir?

12 A. She said as soon as she calmed down.

13 THE REPORTER: As soon as she calmed down?

14 THE WITNESS: Yeah, when she calmed down.

15 Q. BY MR. MARCHI: After Mr. Rodriguez put the toilet
16 paper -- was putting the toilet paper up above and then made the
17 statement about burning the place down, did you say anything to
18 him at that point?

19 A. No.

20 Q. So you never really said anything to Mr. Rodriguez at that
21 time?

22 A. No, not that I remember.

23 Q. At that time you thought they would let you out, sir?

24 A. I thought they would eventually.

25 Q. All right. And after a period of time -- well, strike
26 that.

27 After Mr. Rodriguez put the paper -- was putting paper up
28 above as you saw him do, where did he go or could you see?

1 A. After he got done?
2 Q. Yes.
3 A. Went through the side door.
4 Q. All right. So that was the last time you saw him for a
5 while?
6 A. Yeah.
7 Q. And by side door here, can you point out in the diagram
8 what you're talking about?
9 A. There's a door over here.
10 Q. Are you referring to a door back from the staff door or
11 from the office side?
12 A. The room here, there's a door over here, and there's a
13 door here and they went through this door.
14 Q. To the right?
15 A. Yeah.
16 Q. As you're pointing?
17 A. Yeah, straight across.
18 Q. Up into this area up above here, sir --
19 A. Yeah.
20 Q. -- is that right? Okay. That's where you saw him go?
21 A. Yes, sir.
22 Q. And how did you have a view of that?
23 A. Through the side window of the cell.
24 Q. Okay. And again showing you Exhibit 32; that's the same
25 window we discussed, sir?
26 A. Yes, sir.
27 Q. So you had a view through this window?
28 A. Yes, sir.

1 Q. And could you hear any conversation going on in the other
2 room at that time after Mr. Rodriguez left, if you could?
3 A. No, not at that time.
4 Q. All right. And was there a point in time when you thought
5 they were no longer there, sir?
6 A. Yeah.
7 Q. About how long was that from when you were first locked
8 into the room?
9 A. Maybe half hour or so.
10 Q. Okay. Did anyone come up to you after you saw
11 Mr. Rodriguez leave the room, sir, and say they were leaving or
12 anything?
13 A. No.
14 Q. You just didn't hear anything anymore?
15 A. Just didn't hear anything.
16 Q. And after a period of time after you didn't hear anything
17 and you were obviously still in the room, what, if anything, did
18 you do?
19 A. Started screaming, trying to get some attention.
20 Q. You started making noise?
21 A. Yes, sir.
22 Q. That was pretty loud?
23 A. Yeah.
24 Q. And do you know how long you tried to continue doing that?
25 A. Probably off and on for an hour or more.
26 Q. And during that time frame, did Mr. Rodriguez, Ms. Rugg,
27 or Ms. Hughes ever come up to you, sir?
28 A. No. Hughes did before that though.

1 Q. Okay. But after Mr. Rodriguez left through that one area,
2 all that yelling produced no one?
3 A. No.
4 Q. Now, you say that you did see Ms. Hughes at some point?
5 A. Yeah.
6 Q. After you were in the room?
7 A. Yes.
8 Q. Did you see where she came from?
9 A. Came from the side.
10 Q. What side, sir?
11 A. The side door that I pointed to a moment ago.
12 Q. Okay. And what window did you view her from?
13 A. The side window.
14 Q. The bigger one we've looked at?
15 A. Yes, sir.
16 Q. Showing you Exhibit 18; is that the same window again,
17 sir?
18 A. Yes, sir.
19 Q. And this is -- actually, this is an area outside?
20 A. Outside.
21 Q. And so you were inside here behind this Plexiglas?
22 A. Yes, sir.
23 Q. You got a view of Ms. Hughes in the area?
24 A. Yes.
25 Q. Was this before or after Mr. Rodriguez was putting the
26 toilet paper up above?
27 A. It was after he had got done putting the toilet paper up
28 above.

1 Q. And before he left the room?

2 A. Yes.

3 Q. Where was Anna Rugg at that time, if you know?

4 A. I guess she was in -- somewhere in the building. I don't
5 know where.

6 Q. You did not have -- you did not see her?

7 A. No.

8 Q. All right. But you did see Erin Hughes show her face or
9 show her area; right?

10 A. Yes.

11 Q. Were you actually able to see her or just hear Erin at
12 that time?

13 A. I -- I saw her and heard her.

14 Q. Was she talking to somebody?

15 A. Yeah. She was talking to Shawn about letting me out.

16 Q. All right. And did Mr. Rodriguez agree to let you out at
17 that time?

18 A. No.

19 Q. And do you remember hearing what Ms. Hughes had to say
20 about that?

21 A. Said, "If you don't let him out, it's attempted murder."

22 Q. What did Mr. Rodriguez say?

23 A. I didn't hear him say anything to that.

24 Q. All right. And he never came up -- up to let you out of
25 the room?

26 A. No.

27 Q. How soon to that was that when you got locked in the room?

28 A. About 45, 50 minutes.

1 Q. And is that an approximation?
2 A. Approximation. I'm just guessing.
3 Q. Did you ever see Erin Hughes again after that, sir?
4 A. No, sir.
5 Q. And she never helped push you in the room; did she?
6 A. No, sir.
7 Q. Now, after you were, like, yelling on and off to gain
8 attention, did you quit doing that after a period of time?
9 A. Yeah.
10 Q. Did you think of another way to try to get some attention?
11 A. Yes, sir.
12 Q. And can you tell us what was the other way you described?
13 A. I thought about setting the fire alarm off.
14 Q. Why did you want to try to do that?
15 A. Because I thought the sprinkler would be hooked up to the
16 fire alarm. I thought it would bring the fire department.
17 Q. Okay. And was there some sort of sprinkler system inside
18 the cell you were in, sir?
19 A. Yes, sir.
20 Q. What, if anything, did you do with the sprinkler?
21 A. I took my lighter out and lit up, up underneath the
22 sprinkler.
23 Q. And what was your purpose in doing that?
24 A. To try to get the fire alarm to go off to get the fire
25 department to come and let me out.
26 Q. Do you know what happens when you put a lighter up against
27 the sprinkler like that?
28 A. Yes.

) 1 Q. What happens?
2 A. After a while it blows up.
3 Q. Okay. So water starts coming out; is that right?
4 A. Yes.
5 Q. Showing you what's been marked here Exhibit 29; do you
6 recognize what's depicted here? There appears to be a white
7 object hanging from an item on the ceiling; do you recognize
8 that?
9 A. Yes, sir.
10 Q. What is that?
11 A. That's the sprinkler alarm with the towel hanging.
12 Q. Were you able to reach up there in order to get the heat
13 source close to the sprinkler?
14 A. Yes. I was able to step on top of the table.
15 Q. There was a table inside?
16 A. Yes, sir.
17 Q. And how long did you have to hold that lighter up there,
18 sir?
19 A. Minute or two maybe.
20 Q. Where did you get this lighter?
21 A. It was in my pocket. I smoke cigarettes.
22 Q. So you still had it with you?
23 A. Yes, sir.
24 Q. Showing you what's been marked Exhibit 27; do you
25 recognize this area right in the center, sir?
26 A. Yes.
27 Q. It appears to have two seats?
28 A. Yes, that's the table.

1 Q. What part of the table did you stand on to activate the
2 sprinkler?
3 A. The table itself.
4 Q. Go ahead and point to that.
5 A. (Pointing.)
6 Q. You talking about the flat top?
7 A. The flat top.
8 Q. Now, that appears to have some sort of towel on it;
9 doesn't it, sir?
10 A. Yes, sir.
11 Q. Was that there when you activated the sprinkler system?
12 A. No.
13 Q. Where did you get that towel from?
14 A. I got it and the other towel out from underneath the door.
15 Q. Later on?
16 A. Yes, sir.
17 Q. Showing you Exhibit 30; do you recognize this again, sir?
18 A. Yes, sir.
19 Q. What is that?
20 A. That's the sprinkler with a towel.
21 Q. That appears to have a towel wrapped around it too?
22 A. Yes, sir.
23 Q. Was it that way when you first tried to put the lighter up
24 there?
25 A. No, sir.
26 Q. How did that towel get up there, if you know, sir?
27 A. I stuck it up there.
28 Q. Why did you do that?

1 A. To redistribute the water off of me.

2 Q. So after the sprinkler was activated, did it cover the
3 whole room, sir?

4 A. Yes, sir.

5 Q. So you weren't able to deflect it from you for a while?

6 A. No.

7 Q. Did this towel that you placed on there, did that help
8 deflect the water?

9 A. Yes, a little.

10 Q. And how long had that sprinkler been on when you did that?

11 A. Couple hours, four or five.

12 Q. Now, sir, after you activated the sprinkler, did the fire
13 department come?

14 A. No, sir.

15 Q. No police?

16 A. No, sir.

17 Q. And did you ever see Shawn Rodriguez and Anna Rugg again
18 that day?

19 A. Yeah, later on in the afternoon.

20 Q. Okay. And who did you see first later on in the
21 afternoon?

22 A. Shawn Rodriguez.

23 Q. Did you see Ms. Rugg?

24 A. Not until later.

25 Q. Okay. So as you were in that room, at this point in time,
26 would it be fair to say you hadn't put the towel up yet?

27 A. No, sir.

28 Q. And where did Mr. Rodriguez appear from? How did you get

1 a view of him?

2 A. Through the side door.

3 Q. Okay. And again you're referring to the large Plexiglas

4 window?

5 A. Yes, sir.

6 Q. Showing you here from number 18; does that window there,

7 is that what you're referring to?

8 A. Yes, sir.

9 Q. Right here, sir?

10 A. Yes, sir.

11 Q. Where was Mr. Rodriguez when you saw him reappear?

12 A. He came through the side door, the door that I pointed to

13 earlier, straight across from the window.

14 Q. All right. And did you proceed to have a conversation

15 with Mr. Rodriguez when you saw him again?

16 A. Yes.

17 Q. And who initiated the conversation?

18 A. Shawn Rodriguez.

19 Q. What did Mr. Rodriguez say to you?

20 A. He said he wanted me to give him my ATM card, my money,

21 and my PIN number.

22 Q. All right. And what did you say?

23 A. I said no.

24 Q. All right. And did Mr. Rodriguez say anything in reply to

25 your refusal, sir, if you remember?

26 A. He said I was going to drown if I didn't.

27 Q. Now, when Mr. Rodriguez came through and saw the sprinkler

28 going off and you were obviously getting wet at this point?

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1 A. Yes, sir. I was soaked.

2 Q. And did Mr. Rodriguez say anything about your condition
3 initially or did he seem surprised?

4 A. No.

5 Q. He just asked for these items?

6 A. Yes, sir.

7 Q. And did you continue to have an ongoing conversation at
8 that point about your ATM card, your PIN number, et cetera?

9 A. Yes, sir.

10 Q. And what did you keep telling Mr. Rodriguez?

11 A. I originally told him I would give him my PIN number and
12 not the card.

13 Q. And he also wanted some cash; didn't he?

14 A. Yes.

15 Q. Do you remember at this time about your car keys?

16 A. Yes, sir.

17 Q. Was that part of what you thought you were giving over?

18 A. Yes.

19 Q. Okay. Now, did you have two sets of car keys, sir?

20 A. No, sir.

21 Q. Okay. You didn't have a spare set?

22 A. Yeah. I had a spare set, but I don't think I had them on
23 me at that time.

24 Q. Okay. So you finally told Mr. Rodriguez you would just
25 give up your PIN number; is that right?

26 A. Yes, sir.

27 Q. Did you recite to him some numbers?

28 A. Yes.

1 Q. And what, if anything, did you see him do after you gave
2 him the numbers, if you saw him do anything?
3 A. Went back through the door.
4 Q. So you never saw him write them down or anything; is that
5 right?
6 A. No, sir.
7 Q. At the time you agreed to give up your PIN number, had you
8 seen Ms. Rugg yet?
9 A. Yeah. I had seen her in the back room.
10 Q. So you had a view of her in the back room?
11 A. Yes, sir.
12 Q. Did she come up and join Mr. Rodriguez at that point in
13 this discussion about your PIN and your ATM?
14 A. They came up and talked and then went back into the back
15 room.
16 Q. What do you mean by, "They came up and talked"?
17 A. I couldn't hear.
18 Q. You saw them do something?
19 A. Yeah.
20 Q. What did you see them do?
21 A. Walk up to each other and have a little discussion.
22 Q. Were you able to hear anything?
23 A. No.
24 Q. How far away were they?
25 A. By the door.
26 Q. All right. And finally you agreed to give up your PIN
27 number; is that right?
28 A. Yes, sir.

1 Q. Why did you do that?

2 A. I was scared.

3 Q. Well, if you gave up your PIN number, did you ask that
4 anything be done at that point, sir?

5 A. I asked for them to let me out.

6 Q. What did Mr. Rodriguez say he'd do to you if you gave up
7 your PIN number?

8 A. He said he'd shut the water off, but he didn't.

9 Q. What, in fact, did you see Mr. Rodriguez do, if anything?

10 A. Eventually they went and got a crate and put it in front
11 of the door with some cans and stuff in it and rags.

12 Q. I'm going to show you Exhibit 57; do you recognize this
13 item right here, this silver object?

14 A. Yes, sir.

15 Q. What is that?

16 A. It is some kind of toilet fixture that they used to hit
17 the window with.

18 Q. That's my question. Did you ever see Mr. Rodriguez do
19 anything with this silver object?

20 A. Yeah, but that was much later.

21 Q. That -- was that before or after the PIN number was given
22 out?

23 A. That was after.

24 Q. Much more after?

25 A. Much more after.

26 Q. So after you gave up the PIN number, you thought you were
27 going to get out?

28 A. Yeah, I guess.

1 Q. And were you let out at that time, sir?
2 A. No, sir.
3 Q. All right. Did you have a further conversation with
4 Mr. Rodriguez about getting out at that time then?
5 A. No, sir.
6 Q. What, if anything, did you see Mr. Rodriguez do?
7 A. I saw them go get a crate.
8 Q. And what did they do with the crate?
9 A. Put it in front of the door.
10 Q. And did you see them do anything else with the crate?
11 A. They had these cans, paint thinner and stuff, and rags.
12 Q. You keep saying "they." Who are you talking about?
13 A. Anna Rugg and Shawn Rodriguez.
14 Q. Were they both helping each other?
15 A. Yes.
16 Q. And you don't know where this crate came from?
17 A. No, sir.
18 Q. Showing you Exhibit 21; do you recognize this big box-like
19 area here, sir?
20 A. Yes.
21 Q. What is that?
22 A. That's the crate and those are the cans and stuff that
23 they stuck in it.
24 Q. All right. And where was this crate-like object put?
25 A. In front of the door.
26 Q. In front of your cell door?
27 A. Yes, sir. They had rags up in front of the crate. They
28 were pushing the crate to hold the rags.

1 Q. All right. Showing you what's been marked here 29; is
2 that one of the rags you're talking about?

3 A. Yes, sir.

4 Q. So that was put where, sir?

5 A. Up underneath the door.

6 Q. What door?

7 A. The door of the cell.

8 Q. Okay. How much space was underneath this cell door?

9 A. Half an inch, inch. About an inch.

10 Q. All right. And then showing you 27, okay. You've
11 previously described this towel. Is that another one of the
12 rags put underneath the cell door?

13 A. Yes, sir.

14 Q. So showing you what's been marked Exhibit 24; this is
15 actually the cell door you previously identified as being open.
16 It was closed, and you're saying you saw them put this
17 crate-like object along with the towels right up against this
18 door?

19 A. Yes, sir.

20 Q. All right. Now, did you ever see anyone put any of this
21 tape that we see here around the door?

22 A. No, sir, I did not.

23 Q. Now, you recognize this is duct tape; do you not, sir?

24 A. Yes, sir.

25 Q. You never saw anyone doing anything there?

26 A. No, sir.

27 Q. And as Mr. Rodriguez and Ms. Rugg were putting the crate
28 and the towels up against the cell door, did they have any

1 conversation with you?

2 A. No, sir.

3 Q. Did you say anything to them?

4 A. Asked them what they were doing, and they ignored me.

5 Q. Okay. Were you still asking them to get out at that

6 point?

7 A. Yes, sir.

8 Q. And was anybody replying to you?

9 A. No, sir.

10 Q. And after these items were placed up against the door,

11 what happened next?

12 A. The water started to rise.

13 Q. Okay. Was Mr. Rugg (sic) and Ms. Rodriguez (sic) still in

14 the area at that point in time?

15 A. Yes, sir.

16 Q. Did you mention anything about the water rising?

17 A. Yes, sir.

18 Q. What did you say?

19 A. I told them the water is rising.

20 Q. And was there any reply at that point?

21 A. Shawn again said I'd drown unless I gave him my ATM card,

22 keys, and cash.

23 Q. Did you agree to do that?

24 A. No, not at that time.

25 Q. All right. And after a period of time, how high did the

26 water get?

27 A. Approximately to my shoulders.

28 Q. All right. And was Ms. Rugg and Mr. Rodriguez present the

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1 whole time that the water was rising up to your shoulders?

2 A. No, sir.

3 Q. They left for a period of time?

4 A. They left for some time.

5 Q. Do you have any idea how much time it was, if you know?

6 A. Hour, two. I'm not sure.

7 Q. Now, when you first activated the sprinklers, do you know
8 when that was in relation to when you got locked in there?

9 A. I believe it was one or two o'clock.

10 Q. In the afternoon?

11 A. In the afternoon.

12 Q. On that same day?

13 A. Yes, sir.

14 Q. And you did pick them up from the Elmwood about 10:00;
15 correct?

16 A. About 9:30, 10:00.

17 Q. All right. And were locked into the cell shortly
18 thereafter?

19 A. Yes, sir.

20 Q. So you believe between 1:00 and 2:00 is when you activated
21 the sprinklers?

22 A. Yes, sir.

23 THE COURT: Mr. Marchi, it is 12:00. Is this a good place
24 to stop?

25 MR. MARCHI: Yes.

26 THE COURT: We're going to recess, ladies and gentlemen.
27 And are counsel going to need to see me at all during the noon
28 hour and maybe we should take an hour and a half lunch today

1 because we need to talk. We're going to recess for lunch. You
2 can take an hour and a half for lunch today and please return at
3 1:30. And we'll see you then. We're in recess.

4 (Jury exits the courtroom at 12 p.m.)

5 THE COURT: All right. Counsel and parties are present.
6 The jury is not present. Is there anything we need to do on the
7 record before we break for lunch?

8 MR. MARCHI: Shall we have Mr. Hamman go back in the cell?

9 THE COURT: Sure. Mr. Hamman can leave right now.

10 All right. Go ahead. Anything else?

11 MR. SERAFIN: I don't have -- so, I mean, before the
12 officers take the stand and testify as to any of this newfound
13 conclusion about the vent, I want to have -- I want to get that
14 on the record and clarify.

15 THE COURT: Would you both plan on being back here at 1:00
16 so that if we need to talk about that?

17 MR. SERAFIN: I don't know we'll get to that issue.

18 MR. MARCHI: I don't know we'll get to that. It might be
19 a little easier to handle after this witness. Then we'll have
20 to shuffle him out, and the next witness probably would be Dale
21 Hutchins, which may be relevant, and we can take a recess at
22 that time. It might be better.

23 THE COURT: Is there anything we need to talk about before
24 we resume at 1:30?

25 MR. MARCHI: Not that I'm aware of. As I told your
26 investigator, it is Gene Shorely (phonetic). You can probably
27 still go look at things today.

28 MR. SERAFIN: If we can't get a hold of Gene Shorely, if

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) 1 there's anything we can do during the lunch hour, I have my
2 investigator here. Is there anyone that can get in there
3 briefly?

4 THE COURT: Do you guys have access to the juvenile hall?

5 THE BAILIFF: You're talking about the old one?

6 MR. MARCHI: Only access is Mr. Shorley. It could be open
7 because they're open anyway. Let me give you the number here
8 anyway.

9 THE COURT: I'm going to ask that you be back no later
10 than 1:15 because there always seems to be something we need to
11 talk about, and I told the jury to come back at 1:30, and I
12 would like to start with them right at 1:30, so I'll see you
13 both at 1:15.

) 14 (Lunch recess taken at 12:03 p.m. to
15 reconvene at 1:30 p.m.)

16 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 MONDAY, SEPTEMBER 22, 2003, 1:30 P.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --o0o--

18 THE COURT: Back on the record. The jury is all present.
19 Counsel and parties are present. The witness, when we left off,
20 was still on direct; and, sir, I will remind you, you are still
21 under oath.

22 And go ahead. Are the People ready to proceed?

23 MR. MARCHI: Yes. Thank you, your Honor.

24 DIRECT EXAMINATION RESUMED

25 Q. BY MR. MARCHI: Good afternoon, Mr. Hamman.

26 A. Good afternoon.

27 Q. Before we left for break, you had been describing giving
28 your PIN number up.

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1 A. Yes.

2 Q. And you also described both Mr. Rodriguez and Ms. Rugg
3 placing the object in front of the cell door?

4 A. Yes, sir.

5 Q. And I believe you started to describe how high the water
6 got?

7 A. Yes, sir.

8 Q. And about how high was the highest that it got, sir?

9 A. To just above my shoulders, to my neck.

10 Q. And, sir, how tall are you?

11 A. Five foot, seven.

12 Q. All right. And at some point did you become concerned
13 when the water got that high, sir, up towards your neck?

14 A. Yes, sir.

15 Q. And what -- were you concerned for your safety?

16 A. For my life.

17 Q. And what did you do to try and temper the height of the
18 water, if you will?

19 A. Stepped on top of the step, of the table.

20 Q. Show you what's been marked here Exhibit 27. I believe
21 you previously identified this as the area inside the cell?

22 A. Yes, sir.

23 Q. Could you use -- do you have the pointer up there? Yes.
24 Could you show us where you stepped?

25 A. Right up there.

26 Q. You're pointing to one of the silver seats?

27 A. Yes, sir.

28 Q. Was it the one closest to the wall or the other one, if

1 you remember?

2 A. I'm not sure which one. It was the one closest to the
3 window.

4 Q. All right. And that got you up a little bit higher, sir?

5 A. Yes, sir.

6 Q. And when you were standing on the seat like that, where
7 did the water strike you?

8 A. About to my stomach.

9 Q. Your stomach area?

10 A. Yeah, somewhere in that area.

11 Q. All right. Did you ever see Mr. Rodriguez and Ms. Rugg
12 again after you had stood up on this seat area?

13 A. Yes.

14 Q. And about how long after you first did that?

15 A. About a half hour after I got up there that I saw.

16 Q. Who did you see approach your area first, sir?

17 A. Shawn followed by Anna.

18 Q. All right. And when Mr. Rodriguez came over, did he ever
19 ask something of you?

20 A. Yes. He asked me to give him my ATM card, my keys, and my
21 cash.

22 Q. And were you still standing here on one of these seats,
23 sir, on Exhibit Number 27?

24 A. No. I had gotten down to talk to him.

25 Q. Okay. And initially as they approached, were you standing
26 on --

27 A. Yes.

28 Q. -- the chair?

1 Okay. And what -- what window were you at when you were
2 talking to him?
3 A. The side window.
4 Q. Okay. Were you looking at -- showing you Exhibit 32; is
5 that the window in question, the big Plexiglas.
6 A. Yes, sir.
7 Q. Okay. And you were able to hear him through the
8 Plexiglas, I take it?
9 A. Yes.
10 Q. And did you ask Mr. Rodriguez something first or did he
11 say something to you?
12 A. He said something to me first.
13 Q. What did Mr. Rodriguez say?
14 A. He said, "You got one choice. Either give up your ATM
15 card, keys, cash, or you're going to drown."
16 Q. At that point were you starting -- were you afraid --
17 A. Yes, sir.
18 Q. -- for your safety?
19 A. Yes, sir.
20 Q. And what did you say back to Mr. Rodriguez?
21 A. I said, "Let the water out," and I'd give it to him.
22 Q. All right. And what was Ms. Rugg doing at that time?
23 A. Just standing there.
24 Q. Okay. She wasn't saying anything?
25 A. No, sir.
26 Q. And when you made that statement, "Let the water out," did
27 anyone proceed to take away these items to let the water out,
28 sir?

1 A. A few minutes later, yes.

2 Q. And who did that?

3 A. I believe it was Anna.

4 Q. All right. And did Mr. Rodriguez help her in that regard
5 or could you tell?

6 A. I don't remember him helping. I just saw Anna doing it.

7 Q. So showing you Exhibit 21. That's the item you briefly
8 discussed that was up against the cell door?

9 A. Yes.

10 Q. Were the towels also up against the cell door?

11 A. Yes. The towels were in front of it.

12 Q. Okay. What did you see Ms. Rugg do, if anything?

13 A. She moved it back, moved the rags.

14 Q. And you're referring to this big case here?

15 A. The crate, yes.

16 Q. And what happened when that happened?

17 A. Water started to go down.

18 Q. And how far did the water go down?

19 A. It went all the way down to about four inches.

20 Q. And there was still water coming out, is that right, out
21 of the sprinkler head?

22 A. Yes. Yes, sir.

23 Q. And after the water was let out, what, if anything, did
24 you do?

25 A. When the water went down, I slid my ATM card, my cash, and
26 my keys underneath the door.

27 Q. And there was enough room in order to do that underneath
28 the cell door, sir?

1 A. Yes, sir.

2 Q. Did you see anyone pick it up?

3 A. Yes, Anna picked them up.

4 Q. What was Mr. Rodriguez doing, if anything, at that point?

5 A. Still standing by the door -- window.

6 Q. All right. And after you gave over the items, did you ask

7 either Mr. Rodriguez or Ms. Rugg to do something?

8 A. Yes. Rugg said he'd try to -- Shawn said he'd try to

9 break the window.

10 Q. Mr. Rodriguez said that?

11 A. Yes.

12 Q. And what did he then do?

13 A. He then hit it with a fixture.

14 Q. And showing you Exhibit 57; is that the fixture or does

15 that look like it?

16 A. Yes, that looks like it.

17 Q. Do you recognize that seat area that's depicted there,

18 sir?

19 A. Yes, that's my car.

20 Q. That looks like the inside of your car?

21 A. Yes, it is.

22 Q. What area?

23 A. The back seat.

24 Q. Okay. I'm going to show you what's been marked Exhibit

25 63. It appears to be some sort of card. Do you recognize this

26 card, sir?

27 A. Yes, sir, that's my ATM card.

28 Q. All right. And it actually has your name at the bottom;

1 doesn't it?

2 A. Yes, sir, it does.

3 Q. Is that the one you gave over that Ms. Rugg took?

4 A. Yes, sir.

5 Q. Showing you what's been marked as Exhibit 65; do you

6 recognize that item?

7 A. Yes, sir.

8 Q. And what is this?

9 A. That's the item that Shawn hit the window with.

10 Q. That we saw in Exhibit 57?

11 A. Yes, sir.

12 Q. How many times did Mr. Rodriguez hit the window?

13 A. One time.

14 Q. And which window was it?

15 A. The big Plexiglas window.

16 Q. Okay. I'm going to, with the help of Detective Coe, show

17 you what's been marked Exhibit 70, or 31 first, the picture of

18 it. Is that the window we're referring to?

19 A. Yes, sir.

20 Q. I'd like to actually show you what's been marked Exhibit

21 70. The detective is unsealing a bag. Okay. The detective is

22 holding up an item; do you recognize this, sir?

23 A. Yes, sir.

24 Q. What is that?

25 A. That's the Plexiglas window that I was looking out of that

26 was inside of the cell.

27 Q. Okay.

28 A. You can see the groove where I tried to cut out.

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1 Q. All right. Showing you on Exhibit 70, let me go ahead and
2 have you use your laser pointer. Would you point out the groove
3 you're talking about?

4 A. (Pointing.)

5 Q. Right there?

6 A. Right there.

7 Q. Okay. If you would flip it the other way, Detective.

8 Okay. There is a depression right in the area here?

9 A. Yes, sir.

10 Q. What were you doing there, sir?

11 A. Digging with my glass trying to get a crease big enough so
12 I could hit it and break it.

13 Q. When were you doing that?

14 A. While the water was coming down while I was in the cell.

15 Q. Okay. How many times did Mr. Rodriguez hit the window,
16 sir?

17 A. Just once.

18 Q. Did it do anything to the window?

19 A. No.

20 Q. And when you saw that, what -- did you have a further
21 conversation with Mr. Rodriguez about letting you out since you
22 gave him the stuff?

23 A. Yeah. And he said he'd call the police and tell them that
24 I was in there.

25 Q. All right. And is it fair to say that because you were
26 afraid for your safety you gave up this property?

27 A. Yes, sir.

28 Q. And did Ms. Rugg say anything this whole time?

1 A. No, sir.

2 Q. But did she promise to get you out of the cell or
3 anything?

4 A. No, sir.

5 Q. But Mr. Rodriguez did?

6 A. Yes.

7 Q. And did you think that, you know, that was going to happen
8 pretty quickly?

9 A. I didn't know.

10 Q. And after the -- after the period of time that both
11 Mr. Rugg -- and Ms. Rugg and Mr. Rodriguez leave that day?

12 A. Yes, sir.

13 Q. How much more time did they remain on the premises after
14 you gave up the ATM, card and the money?

15 A. Maybe ten minutes.

16 Q. All right. And did you ever see them again at the
17 juvenile hall, sir?

18 A. No, sir.

19 Q. So the next day, which would have been Sunday, the 16th,
20 you never saw them returning to the hall, sir?

21 A. No, sir, I did not.

22 Q. And did not see them the early morning hours of the 17th?

23 A. No, sir.

24 Q. And I'm going to roll this over quickly. This is Exhibit
25 72, a hose. It's got two ends to it and some duct tape. Did
26 you ever see this anywhere, any part of the hose near the front
27 of the cell, sir?

28 A. No, sir.

1 Q. As you were in there on Sunday, the next day, sir, did you
2 continue to work on that Plexiglas trying to scrape your way out
3 of there?

4 A. Yes, sir, I did.

5 Q. All right. And you were not successful in getting that
6 window to break?

7 A. No, sir.

8 Q. Did you have some markings on your hands because of that,
9 sir?

10 A. Yes, sir.

11 Q. Showing you what's been marked Exhibit 58; do you
12 recognize the hand there?

13 A. Yes, sir. That's my hand.

14 Q. All right. And did you have some injuries as a result of
15 trying to get through the Plexiglas?

16 A. On my thumb there's cuts right there.

17 Q. So is the answer yes?

18 A. Yes, sir.

19 Q. Do you see any others on your hands, sir, in that
20 photograph?

21 A. No, sir.

22 Q. Okay. Showing you Exhibit 59, any similar cuts there?

23 A. Yes, sir. On my index finger and right on the -- I think
24 there.

25 Q. Is that from the Plexiglas then?

26 A. It's from the eyeglasses where I was cutting with -- the
27 metal was cutting my fingers.

28 Q. What part of the eyeglasses were you using, sir?

1 A. The arms.

2 Q. You actually removed the glasses you're wearing here and
3 are indicating the arms of it, sir?

4 A. Yes.

5 Q. Are those the actual glasses?

6 A. No, these are a new pair.

7 Q. Okay. Showing you Exhibit 60; do you recognize what is
8 depicted here?

9 A. Yes, sir.

10 Q. What is that?

11 A. There's a cut right there on the middle of my hand and one
12 on the palm of my hand right here.

13 Q. What was that from, sir?

14 A. And one on my little pinky on the inside there.

15 Q. Okay.

16 A. From cutting with the glass.

17 Q. And finally 62; do you recognize what is depicted there,
18 sir?

19 A. Yes. On the side there's also another cut from my
20 eyeglasses.

21 Q. Now, after Mr. Rodriguez and Ms. Rugg left on Saturday,
22 the water was still going inside the cell, sir?

23 A. Yes, sir.

24 Q. Were you ever able to turn the water off?

25 A. No, sir.

26 Q. You were able to tie the towel around it?

27 A. Yes.

28 Q. When did you do that in relation to having given up the

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1 ATM card?

2 A. After they asked me for the PIN number, after they put the
3 crates up, I couldn't get the towel until they put the crates
4 with the rags there to get the towel from underneath the door.

5 Q. Was it before you actually gave up the ATM card?

6 A. Yes.

7 Q. Now, sir, prior to Mr. Rodriguez leaving the premises, did
8 he ever tell you not to tell anyone what was going on there at
9 the hall?

10 A. Yes, sir, he did.

11 Q. When did he do that?

12 A. Sometime during the time he asked me to, I gave him the
13 PIN number.

) 14 Q. Before you actually gave over the ATM card?

15 A. Yes.

16 Q. And what did Mr. Rodriguez say about that?

17 A. He said he had friends in the HA, and he would make sure I
18 disappeared if I ever testified or said anything.

19 Q. All right. And was anything ever mentioned about child
20 molestation, sir?

21 A. Not that I remember.

22 Q. Did he -- did anyone ever say that they would claim
23 something was done to Anna Rugg?

24 A. Yes.

25 MR. SERAFIN: Objection; leading.

26 THE COURT: Overruled.

) 27 Q. BY MR. MARCHI: Okay. You answered yes. Let's go back
28 and clarify it. Does that refresh your memory some now?

1 A. Yes, it does now.

2 Q. Just in general did someone make a statement that --
3 regarding reporting you about child molestation?

4 A. Yes, they did. Now I remember what you're talking about.
5 He said if I --

6 Q. Let me stop you. Who is he?

7 A. Shawn Rodriguez.

8 Q. Said what?

9 A. Said that if I said anything he would say that I accosted
10 Anna.

11 Q. All right. Where -- did he say where you supposedly
12 accosted her?

13 A. No, he didn't say where.

14 Q. Did you touch her in any way at that point, sir?

15 A. No.

16 Q. Did you consider Anna Rugg to be a friend of yours?

17 A. I did.

18 Q. And up until that weekend did you also consider
19 Mr. Rodriguez to be a friend or least an acquaintance?

20 A. Yes.

21 Q. How long had you known Mr. Rodriguez?

22 A. I'd known Rodriguez maybe a month or so.

23 Q. And, of course, you already told us how long you have
24 known Ms. Rugg. In fact, sir, you have been convicted of
25 several felonies; correct?

26 A. Yes, sir.

27 Q. Okay. And on June 20th of 1985, in the state of Missouri
28 you were convicted of forcible sodomy, a felony; correct?

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1 A. Yes, sir.

2 Q. On March the 4th of 1996, you were also convicted of
3 writing checks with insufficient funds, a felony, out of Nevada
4 County, California?

5 A. Yes, sir.

6 Q. And on March 13th, 1998, you were also convicted of being
7 an ex-felon with a firearm out of Los Angeles County; correct?

8 A. Yes, sir.

9 Q. And finally on July 3rd of 2002, you were convicted of
10 aggravated battery on a custodial officer out of San Joaquin
11 County, also a felony; weren't you, sir?

12 A. Yes, sir.

13 Q. That actually involved you throwing human waste at some of
14 these officers; correct?

15 A. Yes, sir.

16 Q. You admitted all of these things?

17 A. Yes, sir.

18 Q. And you are required to register under 290 of the Penal
19 Code?

20 A. Yes, sir. I was current.

21 Q. And that's a fact that you had made known to Ms. Rugg?

22 A. Yes.

23 Q. At some point in time on the early morning hours of March
24 17, a Monday, 2003, did you hear something in the hall, sir, in
25 the old juvenile hall?

26 A. I saw flashlights.

27 Q. You saw flashlights. And where did you first see the
28 flashlights, sir?

1 A. Coming through the back door.
2 Q. All right. And at some point did you actually see
3 flashlights somewhere close to yourself?
4 A. Yes, sir.
5 Q. Which window, sir?
6 A. The side window. The big Plexiglas window.
7 Q. This one you've been dealing with here?
8 A. Yes, sir.
9 Q. Showing you Exhibit 18; do you recognize what's depicted
10 here, sir?
11 A. Yes, sir. That's the window.
12 Q. You previously identified this; correct?
13 A. Yes, sir.
14 Q. Is that the window you saw the flashlights coming from?
15 A. I saw them coming outside that window, not coming from it,
16 but outside it.
17 Q. At some point were the flashlights right there, sir?
18 A. They were going past it.
19 Q. Okay. Did you do anything to gain someone's attention at
20 that time?
21 A. Yes. I ran to the window, started banging on the window,
22 screaming, "Get me out of here."
23 Q. All right. And do you remember making any other
24 statements about your situation there?
25 A. Yeah. I believe I said, "Get me the "F out of here."
26 Q. All right. Did you ever, at that point as the police
27 first came in, make any statement about what you thought
28 somebody was trying to do to you?

1 A. Yeah, trying to kill me.

2 Q. What was the full statement you made to the police, sir,
3 if you remember?

4 A. Something like, Get me the heck out of here. They're
5 trying to drown me.

6 Q. And later on they were able to get you out of the cell;
7 correct?

8 A. Yes, sir.

9 Q. Later on did you name who was trying to drown you?

10 A. Yes, sir.

11 Q. Who did you name?

12 A. Shawn Rodriguez and Anna Rugg.

13 Q. And you did not mention Erin Hughes?

14 A. No.

15 Q. Why is that?

16 A. I didn't think she was involved in it.

17 Q. You never saw her reappear again after the water was
18 going?

19 A. No, sir.

20 Q. Now, when the officers first arrived, were you pretty
21 excited at that point?

22 A. Yes, sir.

23 Q. And did they get you out right away or did it take a
24 while?

25 A. It took a few minutes. They thought they had to cut the
26 door at first.

27 Q. All right. And ultimately how were they able to get you
28 out, if you know?

1 A. They just opened the door.
2 Q. The handle on the door?
3 A. Yes.
4 Q. So showing you Exhibit 34; are we referring to this handle
5 here?
6 A. Yes, sir.
7 Q. Did you get a view of that through this window here, sir?
8 A. Yes, sir.
9 Q. Now, after you got outside the cell, were you able to walk
10 on your own?
11 A. No, I had to be assisted.
12 Q. Why is that?
13 A. Because I was freezing cold and wobbly.
14 Q. And were you -- you know, were you shaking in any way,
15 sir?
16 A. Yes, sir.
17 Q. Describe that for us. What were you doing?
18 A. I was shivering, freezing cold, and shaking like crazy.
19 Q. You couldn't seem to get warm?
20 A. No.
21 Q. And did you ever notice on Exhibit 34 here, this tape, the
22 duct tape that is on the outside?
23 A. Not until I got out.
24 Q. So you don't know how that got there?
25 A. No, sir.
26 Q. And similarly with Exhibit 38 here; did you ever see -- do
27 you ever remember looking at this duct after you were let out of
28 the cell, sir?

1 A. No, sir.

2 Q. Okay. You say you did see, however, Shawn Rodriguez with
3 toilet paper reaching above?

4 A. Yes, sir.

5 Q. This cell door here?

6 A. Yes, sir.

7 Q. Okay. Now, sir, you've indicated that you were first in
8 there roughly around 10 o'clock or so on Saturday and then you
9 didn't actually get out until the police let you out; correct?

10 A. Yes, sir.

11 Q. And during the course of that time you didn't actually see
12 anybody then all day long Sunday, to your knowledge?

13 A. No, sir.

14 Q. Were you in fear for your life, sir?

15 A. Yes, sir, very much.

16 Q. Did that cause you to do something?

17 A. To scream, to yell, to try to get attention.

18 Q. Let me show you one other item. Do you see here we have
19 what's been marked Exhibit 41?

20 A. Yes, I wrote a note.

21 Q. I'm referring to this little object right here on the
22 ground. Can you see that, sir?

23 A. Yeah, I got my pointer on it.

24 Q. All right. Do you think you wrote that note?

25 A. Yes, sir, I did.

26 Q. Let me show you Exhibit 42, a little closer view. Does
27 that look familiar to you?

28 A. Yes, sir.

1 Q. And then finally a little closer version, Exhibit 43; do
2 you see that, sir?

3 A. Yes, sir.

4 Q. What does that say?

5 A. "Help me. I'm trapped inside."

6 Q. Whose handwriting is that?

7 A. Mine.

8 Q. When did you write that note?

9 A. After I turned the sprinklers on, and they had left the
10 second time.

11 Q. Was it before you think you gave the ATM card over or
12 after, sir?

13 A. I'm not sure which.

14 Q. So you don't know if you wrote it sometime on Saturday or
15 sometime on Sunday?

16 A. I don't know for sure.

17 Q. All right. What did you do with this item after you wrote
18 it, sir, the note?

19 A. I slid it under the door.

20 Q. All right. So at that point nothing was blocking the
21 door?

22 A. Yes, sir.

23 Q. But there was water?

24 A. Yes.

25 Q. Okay. And did you see what happened to the note?

26 A. It floated outside towards the door. I was hoping it
27 would go through the door, but it didn't. There's another side
28 door.

1 Q. Okay. And you indicated that it was around 9:30 or 10:00
2 in the morning when you did pick up -- well, when you first saw
3 the three individuals at Randy Rowdy's; correct?

4 A. Yes, sir.

5 Q. Had you had breakfast that day?

6 A. No, sir.

7 Q. When was the last time you ate before being put in the
8 cell, sir?

9 A. Friday night around 4 o'clock.

10 Q. What did you have to eat then, if you remember?

11 A. I'm not sure; pizza or chicken. I'm not sure.

12 Q. A regular meal for you?

13 A. Yeah.

14 Q. Up until the time that the police got you out of there,
15 early morning hours on Monday, did you have anything to eat?

16 A. No, sir.

17 Q. Did you have anything to chew at all?

18 A. I had a pack of gum.

19 Q. That was it?

20 A. That's it.

21 Q. Sir, you have identified previously your credit card,
22 Exhibit 63; correct?

23 A. Yes, sir.

24 Q. And what are the last four numbers on your card?

25 A. 213 -- 2013.

26 Q. That's the part in the silver here?

27 A. Yes, sir.

28 Q. Showing you out of Exhibit 68, we have here several

1 receipts here. First of all, we have a receipt. It is dated
2 3/16/03, Sunset Boulevard in Rocklin; do you see the numbers
3 2013 on this, sir?
4 A. Yes, sir.
5 Q. Did you find some charges later on in relation to your
6 last four digits of your account 2013 that appeared on your bank
7 statement?
8 A. Yes, sir.
9 Q. How much were they for?
10 A. 20 -- 20, 40, some duct tape. 20-some dollars from a gas
11 station.
12 Q. Do you ever recall any \$40 charges, sir?
13 A. Yes, sir.
14 Q. Showing you this one. This appears to be a \$40 charge on
15 March the 16th, the Saturday you were at the hall. Did you make
16 this charge?
17 A. No, sir.
18 Q. Was anyone authorized to make that charge?
19 A. No, sir.
20 Q. You had given up your ATM card?
21 A. Yes, sir.
22 Q. But you did that, why?
23 A. Because I was forced to, for fear of my life. ✓
24 Q. Showing you again what appears to be another one that is
25 also for \$40 on the same account on the same date. Did you make
26 that charge?
27 A. No, sir.
28 Q. And again, same explanation, nobody was authorized to?

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1 A. Yes, sir.

2 Q. Now, here's an account inquiry on 2013, again your
3 account, March 16 of '03, at about 3:43. Did you make that
4 inquiry, sir?

5 A. No, sir.

6 Q. You would have been in the hall at that time?

7 A. Yes, sir.

8 Q. And showing you Exhibit 66, again, Exhibit 66. I'm
9 removing here a small note. Do you recognize this?

10 A. Yes, sir. That's my note that I wrote.

11 Q. That's the one that says, "Help me"?

12 A. "I'm trapped inside."

13 Q. What's this off of, sir?

14 A. Off my checkbook.

15 Q. You still had that on your person inside there?

16 A. Yes, sir.

17 Q. Did you have a pen to write with?

18 A. Yes.

19 Q. Sir, would you have given up your ATM card if you didn't
20 think you were going to get any help, sir?

21 A. No, sir.

22 Q. Now, sir, you were taken to the hospital; were you not?

23 A. Yes, sir.

24 Q. After you were let out of the cell by the police?

25 A. Yes, sir.

26 Q. And when you arrived at the hospital, were you as cold as
27 you were in the cell?

28 A. Yes.

1 Q. Okay. Had the police helped you in any way to try to make
2 you warmer?
3 A. The ambulance attendants gave me blankets.
4 Q. Okay. And you were basically treated and released at the
5 hospital, sir?
6 A. Yes, after a couple of hours.
7 Q. Okay. And had you had a chance to warm up after you were
8 in the hospital?
9 A. Yes.
10 Q. And did you have any complaints regarding your feet that
11 day when you finally got out of your cell?
12 A. Yes, sir.
13 Q. What was the matter with your feet?
14 A. They were cold, aching. I couldn't walk.
15 Q. Now, sir, after a day or so did you have occasion to come
16 down to the Auburn Police Department?
17 A. Yes, sir.
18 Q. Did they show you your vehicle at that point, sir?
19 A. Yes, sir.
20 Q. All right. Which you previously identified; correct?
21 A. Yes, sir.
22 Q. All right. Did they have you look at anything else to see
23 if it was yours, sir?
24 A. Yes, sir.
25 Q. And what was that?
26 A. Some property and stuff.
27 Q. Okay. Was one of those items this credit card that I've
28 already shown you?

1 A. Yes, sir.

2 Q. Showing you again Exhibit 57; you have told us about the
3 plumbing fixture. Do you recognize this black glove here?

4 A. No, sir.

5 Q. Is that yours?

6 A. No.

7 Q. That was not in your vehicle before someone else had it
8 that weekend?

9 A. No, sir.

10 Q. Sir, you were in there from 10 o'clock or so on Saturday
11 until about 2 a.m. on Monday when the police let you out, around
12 40 hours. At any point there, sir, did you think you were close
13 to death?

14 A. Yes, sir.

15 Q. And when was that?

16 A. Before I got let out and the water was coming up to my
17 neck.

18 Q. You didn't know if anybody was ever going to find you in
19 there?

20 A. No, sir, I did not.

21 Q. And you knew Anna Rugg for about nine months and
22 Mr. Rodriguez you said about six weeks?

23 A. Yeah.

24 Q. Did you think they were just kidding around with you that
25 weekend?

26 MR. SERAFIN: Objection; calls for speculation at this
27 point.

28 MR. MARCHI: I think he would know based on his

1 acquaintance with him.

2 THE COURT: Is his perception relevant?

3 MR. MARCHI: I can withdraw the question.

4 Q. Did you feel that based on what you were doing that your
5 life was in danger, sir?

6 A. Yes, sir.

7 Q. And you're basing that on what was done with the water,
8 sir?

9 A. Yes. That and the fact that I was locked in the cell.

10 MR. MARCHI: Thank you. No further questions.

11 THE COURT: Cross?

12 MR. SERAFIN: Yes, I have a few questions, your Honor.

13 CROSS-EXAMINATION

14 Q. BY MR. SERAFIN: Mr. Hamman, did you review a police
15 report prior to coming to testify today?

16 A. Today?

17 Q. No, prior. Any time prior to coming to testify today?

18 A. Yes.

19 Q. And was the police report the report written by Detective
20 Coe from the interview that he conducted with you in the
21 hospital on March 17th?

22 A. That and also when I came to the police department, yes.

23 Q. And in that -- when did you review that police report?

24 A. Couple weeks ago, I think.

25 Q. Couple weeks ago. When Detective Coe and the district
26 attorney came to visit you in jail; correct?

27 A. Yes, sir.

28 Q. At that point they showed you the police reports?

1 A. Actually they asked me questions to refresh my memory, but
2 I didn't read the police report.

3 Q. Now, you're saying you didn't actually review the police
4 report; correct?

5 A. I didn't actually read it, no.

6 Q. Did they read to you what you said in the police report?

7 A. They asked me questions referring to it.

8 Q. Did they give you the answers you gave on March 17 in the
9 police report?

10 A. I gave the answers I gave then.

11 Q. They didn't ever correct you and explain to you what you
12 had said on March 17th?

13 A. Occasionally they had to correct me because I had
14 forgotten.

15 Q. When you testified today, you're not actually testifying
16 to what you remember happening that weekend back in March,
17 you're actually testifying to what you remember reading from
18 that police report a couple of weeks ago; isn't that true?

19 A. No.

20 Q. You said you had forgotten many things. Are you saying
21 now you didn't forget anything?

22 A. I forgot a few things, but I remember most of it.

23 Q. One of the things -- do you remember myself and my
24 investigator coming to interview you about five weeks ago?

25 A. Yes.

26 Q. And do you remember then telling me that Shawn Rodriguez,
27 that you had remembered that he threatened you with a gun. He
28 threatened to go get a gun and shoot you if you didn't do what

1 he said?

2 A. He said he had a gun.

3 Q. You didn't mention that today when you testified; did you?

4 A. Wasn't asked.

5 Q. You were asked if any threats were made at the outset when

6 you were first locked in the hall and you said no?

7 A. He made that threat after the ATM card. I forgot to

8 mention it.

9 Q. You forgot to mention it because you -- it wasn't listed

10 in the police report from March 17th that you went over with the

11 district attorney; was it?

12 A. Yes, it was.

13 Q. Oh, it was in that police report?

14 A. As far as I remember, yes.

15 Q. So you remember seeing it in that police report. As you

16 reviewed that police report, you remember seeing a statement

17 about Shawn Rodriguez saying he had a gun?

18 A. I remember him telling Detective Coe that he threatened to

19 shoot me. That was after he broke the window, after he

20 attempted to break the window.

21 Q. You remembered Shawn telling Detective Coe that?

22 A. Shawn Rodriguez said, quote-unquote, after he broke the

23 window, "I'll shoot you if you try to do anything once you get

24 out."

25 Q. He said that to you?

26 A. To me.

27 Q. And yet you did not mention that today on direct

28 examination; did you?

1 A. No, sir.

2 Q. And you did not mention that to Detective Coe when he
3 first interviewed you in the hospital on March 17th when you
4 were in the hospital bed; did you?

5 A. I don't know if I said it in the hospital, but I believe I
6 did say it in that report.

7 Q. You remember saying it to someone at some point; don't
8 you?

9 A. Yes.

10 Q. In fact, you said it to me and my investigator when we
11 came to interview you; didn't you?

12 A. Yes.

13 Q. I believe you explained that was something that you had
14 remembered in a dream?

15 A. No, I did not.

16 Q. Since this incident?

17 A. No, I did not.

18 Q. You didn't say that?

19 A. No.

20 Q. You mentioned it to us, and you said that was the first
21 time you told anybody. You said you just remembered that; do
22 you remember that?

23 A. No.

24 Q. You are denying that?

25 A. I know what I said. I remember a dream, but it wasn't
26 that. You've got it mistaken.

27 Q. Okay. You said today on direct examination that the only
28 threats were -- the only thing you remember Erin saying was

1 quote, "You got to let him out because it will be an attempted
2 murder if you don't." Do you remember saying that earlier?

3 A. Yes.

4 Q. And that you also said that exact same thing to Detective
5 Coe on March 17th when you were in the hospital; correct?

6 A. Yes.

7 Q. And that indeed was included in the police report that you
8 reviewed prior to testifying today; correct?

9 A. Yes.

10 Q. However, when I interviewed you and asked you if anything
11 was said that day by Erin, you told me that you didn't remember
12 her saying anything; isn't that correct?

13 A. I don't remember what I told you.

14 Q. And then on March 20, three days after Detective Coe
15 interviewed you in the hospital, you were, in fact,
16 reinterviewed at the police station and it was taped; do you
17 remember that?

18 A. Yes.

19 Q. In that taped interview you also did not mention a
20 statement from Erin Hughes regarding the attempted murder if we
21 don't let him out?

22 A. I think I did.

23 Q. You think you did. But do you remember saying it?

24 A. I believe I said it.

25 Q. And you also said this morning that you remembered Shawn
26 saying, "I'm going to burn the place down"; correct?

27 A. Yes.

28 Q. And that was something that you told Detective Coe on

1 March 17th; correct?

2 A. Yes.

3 Q. And that was in the police report that you reviewed prior
4 to coming to court to testify?

5 A. Yes.

6 Q. However, again when I went to interview you five weeks ago
7 and asked you any threats that Shawn made, you mentioned the
8 gun, but you did not mention anything about him burning the
9 place down; did you?

10 A. I don't remember everything I said to you that day.

11 Q. Do you remember on the March 20th interview, the taped
12 interview with Detective Coe, do you remember if you mentioned
13 it to him, the threat about Shawn said he was going to burn this
14 brick building down?

15 A. I think I did.

16 Q. You think you did, but you're not sure?

17 A. I can't be positive of everything I've said.

18 Q. You've been interviewed several times for this; haven't
19 you?

20 A. Several times, yes.

21 Q. So the only time you specifically remember that threat and
22 the threat Erin made, you remember those from the March 17th
23 interview with Detective Coe while you were at the hospital;
24 correct?

25 A. Yes.

26 Q. And those are both in the police report that you reviewed
27 prior to your testimony today; correct?

28 A. Yes.

1 Q. When I interviewed you with my investigator, I couldn't
2 show you any police report to refresh your recollection; did I?

3 A. No.

4 Q. You had to go just by memory; didn't you?

5 A. Yes.

6 Q. When Detective Coe interviewed you on tape on March 20th,
7 he didn't show you any police report; did he?

8 A. No.

9 Q. Again you had to go just straight from your memory?

10 A. Yes.

11 Q. Nick, where do you live when you're not in custody?

12 MR. MARCHI: Objection to the relevance.

13 MR. SERAFIN: It is background. Can't hurt, Judge.

14 THE COURT: I'll allow it.

15 Q. BY MR. SERAFIN: Where do you live?

16 A. Ophir and Warner House. It's up off Pear Ranch Road.

17 Q. How many people live with you?

18 A. About 15, 16.

19 Q. How big is the outside?

20 MR. MARCHI: I'm going to object. This is irrelevant.

21 THE COURT: I'm not sure I see the relevance.

22 MR. SERAFIN: I'll get off it.

23 Q. What do you do for a living?

24 MR. MARCHI: Same objection.

25 MR. SERAFIN: I think it is relevant where he is and why
26 he knows these people and why he's running with these people,
27 meaning, Shawn and Anna and anybody else that might be relevant.

28 THE COURT: I'll allow it. Go ahead.

) 1 Q. BY MR. SERAFIN: What do you do for a living?
— 2 A. I work at the DeWitt Diner.
3 Q. How often do you work?
4 A. Five days a week.
5 Q. How did you meet Anna?
6 A. Down at the bus station.
7 Q. And this is about nine months ago?
8 A. Yes.
9 Q. What were you doing at the bus station where you met Anna?
10 A. Going to work.
11 Q. And was she just hanging out there?
12 A. Yes.
13 Q. Or was she on the bus?
) 14 A. Sometimes she hangs out there. Sometimes she rides the
15 bus.
16 Q. Did you strike up a conversation with her?
17 A. No, she struck it up with me.
18 Q. And you've known her fairly well for the past nine months;
19 correct?
20 A. Not really well, off and on.
21 Q. Not really well. In fact, you told the police officers
22 that you had only known her for a couple of months; didn't you?
23 A. No, I did not.
24 Q. What's that?
25 A. No, I did not.
26 Q. You told them that you had known her for the past nine
) 27 months?
28 A. I told them I had known her since July when I got out.

1 Q. That's what you told us this morning, but you remember
2 saying that to the police?

3 A. Yes.

4 Q. How old are you?

5 A. Forty.

6 Q. How old is Anna?

7 A. Twenty something. I don't know.

8 Q. Do you know how old Shawn is?

9 A. No.

10 Q. You said earlier that you had to register for 290. For
11 the jurors who don't know what that means, what does that mean?

12 A. It is a sex offense.

13 Q. You say now that you didn't particularly know Anna well;
14 however, you told me and Detective Coe that you considered her
15 to be your girlfriend; didn't you?

16 A. I was thinking about having a relationship with her.
17 That's why I told her about my sex charge.

18 Q. Did you tell myself and my investigator that you thought
19 she was your girlfriend?

20 A. I said I was thinking about making her my girlfriend or
21 having her as a girlfriend.

22 Q. In fact, you also told Detective Coe on tape that you
23 thought of her as your girlfriend; didn't you?

24 A. I guess I may have thought of it at that time, yes.

25 Q. And you thought of her as your girlfriend at the time when
26 she locked you in the cell; correct?

27 A. Yes.

28 Q. And at that point you had only met Shawn Rodriguez once or
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) 1 twice before; right?

2 A. Yeah, approximate.

3 Q. You only knew him just barely through Anna; correct?

4 A. Yes.

5 Q. Never had any problems with him?

6 A. No.

7 Q. No arguments?

8 A. No.

9 Q. Did you and Anna have some problems together, any

10 arguments?

11 A. Not that I remember other than the one at the motel.

12 Q. That one at the motel where you got lost?

13 A. Yes.

) 14 Q. And at that point you actually got heated enough that you

15 actually got out of the car; correct?

16 A. No, I didn't get out of the car. She did.

17 Q. She got out of the car. Was she yelling at you?

18 A. Yeah.

19 Q. Were you yelling back?

20 A. Yeah.

21 Q. But that was your first argument in nine months?

22 A. That I remember, yes.

23 Q. Do you remember being at the hotel the very night before

24 this with Anna, with Erin and with Shawn?

25 A. Yes.

26 Q. And do you remember being on a hotel bed with Anna?

) 27 A. No.

28 Q. You were never sitting on the bed with Anna in that hotel

1 room?

2 A. Anna was sitting in the back room on another bed. Erin
3 Hughes and Shawn Rodriguez was laying on the bed that I was
4 sitting on.

5 Q. So there's two rooms, you said, in that hotel?

6 A. Yes.

7 Q. And so she was in the back room by herself and you, Erin,
8 and Shawn were hanging out in the front room bed?

9 A. Yes.

10 Q. And did she stay in there the entire time you were there?

11 A. I don't remember. She came out, I think, once or twice.

12 Q. So you barely know Shawn Rodriguez. You only have seen
13 him once or twice, Erin was your girlfriend --

14 MR. MARCHI: Objection. That misstates Erin's testimony.
15 He never said she was his girlfriend.

16 THE COURT: Sustained.

17 Q. BY MR. SERAFIN: You actually did tell Detective Coe on
18 tape that you thought she was your girlfriend; correct?

19 MR. MARCHI: Asked and answered, and I believe the answer
20 was no.

21 THE COURT: Overruled.

22 Q. BY MR. SERAFIN: You actually did say that you told
23 Detective Coe on tape that you thought Anna Rugg was your
24 girlfriend at that time; correct?

25 A. Yes.

26 Q. And so you're at the hotel room with a girl you think is
27 your girlfriend and instead of -- rather than hang out with her
28 in the back room, you're telling us now you spend the whole time

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1 with Shawn, who you barely know, and another girl sitting on the
2 front room bed?

3 A. Yes. I wanted to go. I didn't want to be there to begin
4 with.

5 Q. You're the one with the car. Why didn't you just leave
6 then?

7 A. Because they wanted me to hang around.

8 Q. They wanted you to hang around. In fact, didn't Shawn end
9 up having to kick you out because you were trying to get too
10 touchy-feely with Anna?

11 A. No.

12 Q. And at no time did you get touchy-feely with Anna?

13 A. Erin is a disgusting looking girl, real scraggly teeth.
14 She looks pretty bad. Bad.

15 Q. Yet you thought she was your girlfriend?

16 A. I'm talking about Erin. You said I was touching Erin, and
17 I said Erin is a rather disgusting looking woman, scraggly
18 teeth, dingy looking. She uses speed all the time that's why
19 her teeth are rotten and falling out. I don't see why anyone
20 would roll with her.

21 Q. That would be great if we were talking about Erin, but
22 actually Anna was the one you considered to be your girlfriend;
23 correct?

24 A. I had a relationship with her I thought, maybe.

25 Q. So while you've described Erin in a very poor light,
26 clearly you must have had some attraction towards Anna?

27 A. A little bit.

28 Q. And are you the -- is it your testimony today -- I have to

1 repeat because maybe you were confused with Erin and Anna that
2 you did not spend any time on the bed with Anna in that hotel
3 room that night?

4 A. No, I did not.

5 Q. You didn't get touchy-feely with her in any way?

6 A. No.

7 Q. You said Anna, you considered her your girlfriend, and yet
8 have you guys ever been intimate together?

9 A. No.

10 Q. What makes you think that she was your girlfriend if you
11 never had been intimate together?

12 A. I was thinking of having a relationship with her. I
13 wasn't really -- didn't look at her as a girlfriend other than
14 as far as a friend friend.

15 Q. So when you told Detective Coe that you considered her
16 your girlfriend, which you told myself and my investigator that
17 you considered her your girlfriend, were you just making that
18 up?

19 A. I was hoping.

20 MR. MARCHI: I object. That mischaracterizes his
21 statements, your Honor. It is argumentative also.

22 MR. SERAFIN: We have the statement.

23 THE COURT: Overruled.

24 Q. BY MR. SERAFIN: When you made that statement to Detective
25 Coe, to myself, to my investigator, that you considered Anna to
26 be your girlfriend at that time, were you making that up?

27 A. I was hoping she was my girlfriend. I was hopeful of
28 having a relationship with her.

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1 Q. Was there any particular reason that you guys were never
2 intimate?

3 A. Yes.

4 Q. What's that?

5 A. She likes S and M.

6 Q. What's that?

7 A. Sadomasochism, roughness. She likes people to beat on her
8 and mark her, use knives and stuff, and that is why I got turned
9 away with from her. That's why I never had a relationship.

10 Q. So had she tried to be intimate with you before?

11 A. She tried to get me to do something with her under the
12 bridge, and she wanted me to use a knife on her.

13 Q. In what way did she want you to use a knife on her?

14 A. To cut, cut her arm. She said it turns her on.

15 Q. Never did that?

16 A. No.

17 Q. Did you ever burn her with a cigarette?

18 A. No.

19 Q. Did she ever ask you to?

20 A. Yes.

21 Q. Why did she ask you to do that?

22 A. She said it turns her on.

23 Q. But you never did that?

24 A. No, sir.

25 Q. Did you see she has a burn mark on her arm? Did you ever
26 notice that?

27 A. I don't know.

28 Q. At the time of this incident, were you in love with Anna?

1 A. No.

2 Q. Do you recall telling myself and my investigator that you
3 thought you may have been in love with her at this time before
4 she did this to you?

5 A. Before she did this to me, I was having feelings towards
6 her, yes.

7 Q. And like many of us, if you have feelings towards someone,
8 you don't want to see them get hurt; is that correct?

9 A. Yes.

10 Q. In fact, there's sort of a natural instinct to protect
11 them; isn't there?

12 A. Yes.

13 Q. Since this time have you sent Anna any love letters while
14 you were in custody?

15 A. No.

16 Q. Did you ever write on holding cell walls to her messages
17 such as --

18 A. No.

19 Q. Did she ever write any to you?

20 A. She wrote a letter through someone else, made a statement,
21 but I don't think it was her handwriting. It was someone else.

22 Q. Did it profess her love for you?

23 A. I don't remember what it says. I think it said she still
24 cared, but it didn't say any mushiness.

25 Q. Did it say she loves you. Shawn is a lying snitch,
26 something like that?

27 MR. MARCHI: I'll object. It is hearsay and irrelevant.

28 MR. SERAFIN: I think it goes to his state of mind.

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1 MR. MARCHI: It's hearsay. It is an out-of-court
2 statement.

3 THE COURT: The Court will allow it on the issue of what
4 may have been said to him and on the issue of credibility.

5 THE WITNESS: If there was such a letter, I would have
6 given it to the district attorney if it would have said anything
7 inherent or anything like that.

8 Q. BY MR. SERAFIN: Didn't you say there was one letter?

9 A. It wasn't directly from her. It was from another girl.

10 Q. But it was regarding her feelings towards you?

11 A. One small statement that she said she still cared.

12 Q. So I assume you turned that over to the district attorney?

13 A. No.

14 Q. Now, after the night at the Elmwood Hotel, well, actually
15 let's stay on that for a moment. You're saying you hung out
16 there just with Shawn and Erin while Anna stayed in the back
17 room and you didn't spend any time with her; correct?

18 A. Yes.

19 Q. How long did you stay there before you left?

20 A. A few hours.

21 Q. You didn't leave because they asked you to leave because
22 you were acting inappropriate; you're saying you left by your
23 own free will because you wanted out of there?

24 A. Yes.

25 Q. And you said that you didn't want to be there in the first
26 place, but you stayed for a couple of hours because they wanted
27 you to stay; right?

28 A. Yes.

1 Q. And they, by they, you mean Shawn, the guy?
2 A. Shawn, Anna, and Erin.
3 Q. Okay. So Anna did want you to stay?
4 A. Yes.
5 Q. But you weren't spending any time with her?
6 A. No.
7 Q. Did she ever come out of that back room?
8 A. I think she came out once or twice, like I said before.
9 Q. What were you guys doing?
10 A. Sitting, watching TV. They were eating some stuff out of
11 can foods.
12 Q. Okay. Taking us to the next morning when you guys
13 actually find yourself going to the juvenile hall. It was Anna
14 that actually suggested to you, "Let's go to the juvenile hall";
15 correct?
16 A. Yes.
17 Q. And Anna suggested that to you in part because the two of
18 you had been there before; right?
19 A. Yes.
20 Q. Did you ever think to mention that to the police, that you
21 and Anna had been together at that juvenile hall before?
22 A. I think I mentioned it.
23 Q. You think you did?
24 A. I know I said she broke the window prior to that.
25 Q. But in actuality you never told anyone except for myself
26 when I interviewed you that you and Anna had actually been at
27 the hall previously together?
28 A. Yes, but I've never been in it.

1 Q. And she told you that you moved -- that she needed your
2 help to move some stuff over to the hall; correct?

3 A. Yes.

4 Q. So you get in the car and you're driving, and she's the
5 passenger; right?

6 A. Yes.

7 Q. You had this argument. You said she got out of the car;
8 correct?

9 A. Yes.

10 Q. But you then talked her back in?

11 A. No, Shawn Rodriguez talked her back in.

12 Q. And at no time are you saying that you did give the keys
13 to Anna Rugg?

14 A. No, sir, I did not.

15 Q. In fact, you had been very adamant about this every time
16 you were interviewed; correct?

17 A. Yes.

18 Q. Every time the police interviewed you they asked you
19 oftentimes three or four times; are you sure?

20 MR. MARCHI: Objection; that mischaracterizes any
21 testimony before the Court, your Honor.

22 MR. SERAFIN: I'll be happy to show it later.

23 MR. MARCHI: Same objection.

24 THE COURT: I don't have sufficient information to rule on
25 that, Counsel. Maybe you can rephrase the question.

26 Q. BY MR. SERAFIN: Sure. Every time you're interviewed by
27 the police, they ask you about those car keys; don't they?

28 A. Yes.

1 Q. And you always tell them, I never gave it to anybody. I
2 had them the whole time; correct?

3 A. Yes.

4 Q. You have been very adamant that you kept them all the way
5 until you were in the cell, and you had to actually slide them
6 under the door; correct?

7 A. Yes.

8 Q. You're positive of that fact?

9 A. Yes.

10 Q. As positive of the fact as you were about every other fact
11 as you testify to under oath; correct?

12 A. Yes.

13 Q. Now, after you're at the hall you say you're carrying some
14 bags in. Are they just Anna's bags or do you know?

15 A. I don't know whose bags they are.

16 Q. What are they; just like clothing stuff, food? What's in
17 them; do you have any idea?

18 A. Clothes, food.

19 Q. You're carrying them to the front door, but you don't know
20 where Shawn is; correct?

21 A. I saw Shawn when he opened the door that one time and that
22 was it.

23 Q. And you didn't see him again?

24 A. Until I was inside.

25 Q. You didn't see Erin again; did you?

26 A. No.

27 Q. And do you know anything about the relationship between
28 Shawn and Erin?

1 A. Other than what I've heard, rumors.

2 Q. Such as?

3 A. That they're boyfriend/girlfriend.

4 Q. Okay. So is it reasonable -- did you think that maybe
5 when Shawn wasn't there and Erin wasn't there, they were
6 somewhere together? Did that cross --

7 MR. MARCHI: Objection. Calls for speculation on the part
8 of the witness.

9 THE COURT: Sustained.

10 Q. BY MR. SERAFIN: Withdrawn. As you're going -- as you're
11 taking the things to the door, at what point does Anna
12 supposedly come out and tell you that Erin is hurt?

13 A. After I'm fixing to leave, after the last bag.

14 Q. Where were you standing when she came out?

15 A. I don't know; 10, 15 feet away.

16 Q. Away from where?

17 A. The door.

18 Q. Okay. And are you -- you're done carrying things. Are
19 you just waiting for her, or why are you staying there still?

20 A. Waiting to see if they needed anything else.

21 Q. How long had you been there at the hall?

22 A. Fifteen minutes.

23 Q. And prior to that?

24 THE COURT: I'm sorry, did you say 15 minutes?

25 THE WITNESS: Approximately 15 minutes.

26 Q. BY MR. SERAFIN: Prior to that, you had been in the car
27 with Anna and Erin; correct?

28 A. Yes.

1 Q. Did you notice anything wrong with Erin?
2 A. No.
3 Q. She seemed fine; didn't she?
4 A. Yes.
5 Q. And all of a sudden Anna supposedly comes out and says,
6 "Erin is hurt," and that gets you running into the hall;
7 correct?
8 A. Yes.
9 Q. Did she describe what was wrong with her?
10 A. She said she had fallen.
11 Q. Oh, she said she had fallen. Did she say where she had
12 fallen?
13 A. No. She just said she had fallen.
14 Q. Is this statement about her having fallen, had you
15 mentioned that to the police at all when you'd been interviewed?
16 A. Yes.
17 Q. And did she say anything else about how she sustained an
18 injury or how she was hurt?
19 A. No.
20 Q. Did you ask any other questions?
21 A. No.
22 Q. So when you went to the hall, were you and Anna actually
23 running?
24 A. We were walking rather fast.
25 Q. And you walked in the front door of the hall; correct?
26 A. Yes.
27 MR. SERAFIN: At this point, your Honor, I'd ask if we
28 could take a brief recess, and I want to talk to my investigator

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1 about a couple of things.

2 THE COURT: All right. Ladies and gentlemen, we'll take a
3 short recess, and we'll resume again at 10 minutes to 3:00.

4 (Jury exits the courtroom.)

5 MR. MARCHI: There's been a request that copies that I got
6 of the tapes or Anna Rugg's copy and Rodriguez's copy, I think
7 the original Rodriguez tape is still with the Court, and there's
8 a request that my -- from my office that we work off of that.

9 THE COURT: Do we still have that?

10 THE CLERK: The one that you marked with these exhibits?

11 MR. MARCHI: Yeah.

12 THE CLERK: The ones I gave you were the ones I marked in
13 the motion. The other tape is marked, and it is in the box.

14 MR. MARCHI: What I need to do is check out the original.
15 They're having a little trouble with the copy since it is a
16 copy.

17 THE COURT: There's parts of it that would get --

18 MR. MARCHI: There's some of that, but it's difficult when
19 you get more.

20 THE COURT: Any objection, Counsel?

21 MR. SERAFIN: No.

22 THE COURT: All right. Anything else?

23 MR. MARCHI: No.

24 THE COURT: We're in recess.

25 (Brief recess taken. Reconvened at

26 2:54 p.m.)

27 THE COURT: All right. The jury is all present. Counsel
28 and all parties. I'll remind the witness he's still under oath.

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1 Go ahead.

2 Q. BY MR. SERAFIN: Thank you. All right. Nick, I believe
3 we left off talking about Anna had come out, told you Erin is
4 hurt and you, without asking any more questions, followed her,
5 walking very fast into the juvenile hall; correct?

6 A. Yes.

7 Q. This is a diagram of the juvenile hall, and I want to
8 clarify something that I believe you testified to earlier. Can
9 you describe to us what is your claimed path as you followed
10 Anna into the hall to go rescue Erin -- oh, do you have your
11 little cool thing? All right.

12 A. Through here, up around like this, and I believe through
13 here. I'm not sure.

14 Q. And when you --

15 THE COURT: Could you -- when you say I believe through
16 here, not sure, can you try and hold the clicker because it is
17 bouncing around a little bit.

18 THE WITNESS: We went through the front door. Then we
19 went to the left for a long distance down a long hallway, and we
20 came and went to the right and came back.

21 Q. BY MR. SERAFIN: Hold on. Stop. Slow down for us. You
22 went around to the right, but you pointed your clicker towards
23 the left where your clicker is now, you're in a hallway sort of?

24 A. Yes.

25 Q. Now, are you saying you made a left-hand turn there or
26 right-hand turn?

27 A. Left.

28 Q. Okay. Did you go through a -- is there a door; do you

280

1 remember?

2 A. I don't remember exactly.

3 Q. So, Nick, let me --

4 A. It was so fast. I don't remember exactly. I know we went
5 through the front door to the left, down a long corridor, and
6 then came to the left again and to another left and up around to
7 the door this way.

8 Q. Okay. But you don't remember if when you went to the
9 left, if you went through doors?

10 A. It was a doorway of some kind, yeah.

11 Q. Do you remember if you had to open the door?

12 A. No, it was already open.

13 Q. The door was already open. Are you saying there's a door
14 somewhere in this area that is already open?

15 A. Somewhere.

16 Q. Okay. And how many doors did you have to go through
17 before you came around back into the holding cell?

18 A. Went through the front door, went to the left, two, three,
19 three doors before I got the door.

20 Q. And all those doors are taking you down the hallway left
21 and left; correct?

22 A. Yes.

23 Q. And did you ever discuss this pathway that you are
24 discussing today, did you ever discuss that with any of the
25 police officers?

26 A. I said the direction we went, yeah.

27 Q. You told them that you -- did you describe anything like
28 the detail you are describing today?

1 A. I don't know if I described it in as great as detail as I
2 did now.

3 Q. Did you tell them what angle you were coming into the room
4 from?

5 A. I don't remember.

6 Q. Did you discuss the pathway that you took, the pathway
7 that you just told us about, have you discussed that with any
8 detectives or the district attorney in the last few weeks?

9 A. Yes.

10 Q. When did you do that?

11 A. Couple weeks ago when they came to see me.

12 Q. And how did you discuss it? Did they show you a diagram?

13 A. Yes.

14 Q. Was it the same diagram you're looking at today?

15 A. Yes.

16 Q. Shawn, could you click on number 24 for me? This, we've
17 mentioned several times. This is the actual door that you went
18 inside; correct?

19 A. Yes.

20 Q. As you approached that door, you come into the room; do
21 you see Shawn anywhere?

22 A. No.

23 Q. And then, in fact, you get about a foot into the doorway,
24 you said?

25 A. Foot or two.

26 Q. And then Anna began to close the door?

27 A. Yes.

28 Q. And that must have taken a split second at the most;

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1 correct?

2 A. I don't know exactly how long.

3 Q. At that point you whip around to see Anna closing the door
4 on you and just have enough time to get your foot in the door;
5 is that right?

6 A. Yes.

7 Q. And you can see Anna. How do you see her? Do you see her
8 through the window or do you see her through the space in the
9 door?

10 A. Both.

11 Q. Okay. And you've gotten your foot in the door so maybe
12 about this wide of space?

13 A. Yes.

14 Q. And you can see Anna through that wide space?

15 A. Yes.

16 Q. And at that point it is your testimony that Shawn
17 Rodriguez appeared, appears out of nowhere and kicks you in the
18 leg?

19 A. Came from around the side of Anna.

20 Q. Came from around where?

21 A. The side of Anna.

22 Q. Which side of Anna; left side or right side of Anna?

23 A. I guess he was behind the door, but I'm guessing.

24 Q. In fact, you told the officers you thought he was behind
25 the door; didn't you?

26 A. Thought so.

27 Q. When Detective Coe interviewed you, you had said you
28 didn't say you thought. You said, "Shawn Rodriguez came out

1 from behind the door"; right?
2 A. That's the direction he came from.
3 Q. And the door you said was about this much open that day,
4 roughly?
5 A. Yes.
6 Q. We're all looking at that door. This much open. How is
7 Shawn Rodriguez going to hide behind that door and you don't see
8 him?
9 A. I could do it very easily by crouching down underneath the
10 counter.
11 Q. Crouch down right here?
12 A. Right below the window, crouch down.
13 Q. So if I'm walking into this room, going into this door
14 right here, you think you can crouch down right here and I can't
15 see you?
16 A. Yeah.
17 Q. Okay. And so it is your testimony that Shawn Rodriguez
18 jumped out of this spot right here and kicked your leg so that
19 you could not block the door anymore?
20 A. Yes.
21 Q. When he kicked your leg, how did you see him?
22 A. Through the side of the door.
23 Q. So you saw him through the same crack that you saw Anna?
24 A. Yes.
25 Q. His head appeared right next to hers?
26 A. Yes.
27 Q. If his head is right next to hers, obviously, his body is
28 right next to hers?

) 1 A. Behind. Behind her directly.
2 Q. And so he's standing behind her?
3 A. Yes.
4 Q. And almost looking over her shoulder; correct?
5 A. Sort of, yeah.
6 Q. Sort of as I'm standing behind the district attorney
7 looking over his shoulder; is that right?
8 A. Yes.
9 Q. And from here he was able to kick around Anna and kick
10 your foot through the door without touching Anna; correct?
11 A. Yes.
12 Q. And your statement is he kicked you, knocked your foot out
13 of the door?
) 14 A. Kicked me in the thigh.
15 Q. Okay. And how high up on the thigh was that picture you
16 showed us?
17 A. (Pointing.)
18 Q. Right about here?
19 A. Yeah, a little bit lower.
20 Q. Right around thigh high?
21 A. Yeah.
22 Q. But I believe on the inside?
23 A. Yeah.
24 Q. Did you have your right leg or left leg blocking the door?
25 A. Left -- right.
26 Q. Which is it?
) 27 A. My right.
28 Q. Are you pretty sure?

1 A. Yes.

2 Q. Now, you think it is your right leg?

3 A. Yes, it was my right.

4 Q. And so your right foot is blocking the door like this, and
5 Anna is standing in front of you very close to you, obviously,
6 because she's got her hand on the door; correct?

7 A. Anna was more towards the front of the door, not to the
8 side and --

9 Q. And Shawn is leaning over her shoulder?

10 A. Anna was more to the front of the door, the front part of
11 the door. Shawn was to the side of the opening.

12 Q. And did he kick you with his right foot or left foot?

13 A. His right.

14 Q. Kicked you with his right foot.

15 MR. SERAFIN: Oh, jeez, Bill. I'm sorry. That was not
16 intentional, I promise.

17 (Computer problems.)

18 MR. MARCHI: Which photograph would you like?

19 MR. SERAFIN: 24.

20 Q. Thank you. So as we're looking at this door, it is your
21 testimony that Anna was standing maybe more to the side, kind of
22 like this; is that maybe on this edge of the door?

23 A. Anna was more towards the front of the door, right in this
24 area.

25 Q. Okay. And then where is Shawn?

26 A. To the side.

27 Q. Okay. So are you changing your story? Shawn was behind
28 the door?

1 A. I'm not changing my story. I'm saying Shawn was to the side of Anna.

3 Q. He's not behind her looking over her shoulder; is that

4 correct? Is he behind her or over her shoulder or not?

5 A. He's to the side of her.

6 Q. So he's not behind her now?

7 A. I didn't say he was behind her. I said he was off towards

8 the side.

9 Q. Earlier you said he was behind her looking over her

10 shoulder; do you remember that?

11 A. No. You said he was looking over her shoulder. I said he

12 was to the side.

13 Q. Okay. We'll move on. Now, you're saying she's to the

14 side or Shawn is here and she's roughly in that area; correct?

15 A. Yes.

16 Q. So from this spot he kicks you with -- you said his right

17 leg or you didn't know?

18 A. Right.

19 Q. So he does an, I guess, a swing kick to get your inside

20 foot, which is blocking the door; correct?

21 A. Yes.

22 Q. Up on the upper thigh?

23 A. Yes.

24 Q. If Shawn came from behind the door on this side, you're

25 saying he whipped -- went from the crouch position here as Anna

26 shut the door, Shawn whipped out this way towards myself, around

27 Anna this way, all the way to the left side and then delivered

28 the blow; correct?

1 A. Yes.

2 Q. And at that point the door was shut and you were locked
3 inside?

4 A. Yes.

5 Q. And Anna said, I'll let you out when I'm not mad at you,
6 something to that effect?

7 A. Yes.

8 Q. And Shawn doesn't say anything to you?

9 A. No.

10 Q. And they both leave?

11 A. No, they both don't leave.

12 Q. In about, what, you said about 40 minutes later you said
13 they left?

14 A. Yeah.

15 Q. Nobody at this point asked you for your ATM, your PIN,
16 anything like that?

17 A. No.

18 Q. And at this point nobody is making any threats to you?

19 A. No.

20 Q. But actually was that the point where Shawn said he was
21 going to burn the place down?

22 A. That was a little bit after.

23 Q. But was it the same, the first time he was there?

24 A. Yes.

25 Q. But there are threats being made?

26 A. Yes.

27 Q. Anything else?

28 A. He's putting toilet paper up above the window, the door.

1 Q. Is he saying why he's doing that?

2 A. That he's going to burn the building down.

3 Q. And the threat about the gun at this point is that --

4 A. That hasn't been made yet.

5 Q. But it does come in there somewhere?

6 A. Yes.

7 Q. At this present time in March of last year, are you taking
8 medications?

9 A. No, I was not.

10 Q. And do you normally take medications for your psychiatric
11 issues?

12 A. Yes.

13 Q. And do those medications include Zyprexa?

14 A. Yes.

15 Q. Do they include Depakote?

16 A. Yes.

17 Q. Conoplin (phonetic)?

18 A. I don't recognize that name.

19 Q. Prolixin?

20 A. Nope.

21 Q. Cogentin?

22 A. Yes.

23 Q. Olanzapine?

24 A. No.

25 Q. And the ones that you said you were taking or you have
26 taken in the past, you're saying you weren't taking them in
27 March of this year?

28 A. I don't remember two of those names that you said but

1 ever.

2 Q. Out of four that you remember, are you saying you have
3 taken them in the past, but you weren't taking them in March?

4 A. I only remember three of the ones you named.

5 Q. Were you taking those three in March?

6 A. No.

7 Q. But you have taken them in the past?

8 A. Yes.

9 Q. In fact, you have been diagnosed with schizophrenic
10 tendencies; correct?

11 A. No.

12 Q. You have never been diagnosed with schizophrenic
13 tendencies?

14 A. No.

15 Q. You've never been diagnosed with schizoaffective disorder?

16 A. Voices is my diagnosis, and depression.

17 Q. Well, voices isn't exactly a professional term. Have you
18 ever heard the term "schizoaffective disorder"?

19 A. No. Schizoid means multiple personalities. Voices does
20 not.

21 Q. How about polysubstance dependence; have you heard of that
22 in relation to yourself?

23 A. No.

24 Q. Okay. And are you saying you haven't heard those terms or
25 you have never been diagnosed with those particular mental
26 diseases?

27 A. I've never been diagnosed with schizophrenia. As far as I
28 know, I have been diagnosed with voices and depression.

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1 Q. And the voices you say aren't linked to schizophrenia
2 because you say -- explain that.

3 A. Schizophrenia is multiple personalities where you take on
4 the personality of another person or more, more than one
5 personality. Voices are just voices you hear in your head that
6 are multiple voices, sometimes, that you hear, you believe. The
7 voices tell you to hurt yourself or to hurt other people.

8 Q. So you don't have any issues with taking on somebody
9 else's personality; correct?

10 A. No.

11 Q. Your issues only revolve around the voices in your head;
12 correct?

13 A. Yes.

14 Q. Are there generally three voices you generally hear in
15 your head?

16 A. It varies from the amount.

17 Q. And the amount of what?

18 A. Anywhere from one to a dozen.

19 Q. And I assume the number of voices you hear at any given
20 time, does that vary upon whether or not you're taking your
21 medications?

22 A. Yeah.

23 Q. And obviously when you're not taking your medication,
24 you're going to be more likely to hear various voices; correct?

25 A. Yes.

26 Q. And I believe you have stated on a couple of occasions
27 that sometimes these voices tell you to hurt people; correct?

28 A. To hurt myself most generally.

1 Q. But they do sometimes tell you to hurt other people as
2 well?

3 A. Occasionally.

4 Q. And would you say that the voices are a reason that you've
5 had some of the problems that you've had that the district
6 attorney mentioned?

7 A. Like what?

8 Q. Like when you threw feces at the guard while you were in
9 custody; would that be an example of something the voice told
10 you to do?

11 A. Yes.

12 Q. And when those incidents come up, do you generally have
13 trouble remembering them afterward?

14 A. No.

15 Q. You're always -- in those circumstances when you act on
16 your voices, you're always able to have a clear memory and
17 explain them afterwards?

18 A. Not every single time, no, but sometimes I do.

19 Q. Explain that a little bit more. What does it depend on?

20 A. I don't know what it really depends on. I'm not really a
21 psychiatrist. I just sometimes remember. Sometimes I don't.

22 Q. And I believe we talked when I came to visit you with my
23 investigator a little bit about some of the voices you had, and
24 you also mentioned that you have some dreams. Do you remember
25 talking to me about that?

26 A. Yes.

27 Q. And do you remember explaining that sometimes those dreams
28 occur in the evening, but sometimes they will hit you during the

1 day as well?

2 A. I remember saying that I had some nightmares concerning
3 this incident.

4 Q. What about your dreams, dreams during the day; did you
5 ever have that?

6 A. I don't remember talking to you about anything like that.
7 All I remember saying to you is that I had nightmares concerning
8 this incident.

9 Q. Well, it is hard. That was about a month ago. It is hard
10 to remember everything that we talked about.

11 A. I remember.

12 Q. Why don't you tell us about some of the dreams that you
13 have.

14 MR. MARCHI: I will object. It is irrelevant.

15 MR. SERAFIN: I will rephrase, your Honor.

16 THE COURT: All right.

17 Q. BY MR. SERAFIN: How about some of the dreams that you
18 have during the day, not like sleeping dreams like you all have,
19 but some of the dreams you have in the day while you're awake?

20 MR. MARCHI: I have the same objection. I would say it is
21 irrelevant and also I'm -- I don't have any discovery in this
22 area.

23 MR. SERAFIN: It's your witness. Go into it.

24 THE COURT: I don't find it to be irrelevant. If you need
25 to see me in chambers on a discovery issue, fine.

26 MR. MARCHI: I think we will, yes.

27 (Bench conference held off the record.)

28 THE COURT: All right. We're back on the record. Go

1 ahead.

2 Q. BY MR. SERAFIN: Nick, it's fair to say in your lifetime
3 you have seen several psychiatrists for various reasons?

4 A. Yes.

5 Q. And one of those reasons is your voices like you mentioned
6 earlier; correct?

7 A. Yes.

8 Q. Your voices telling you to do certain things?

9 A. Yes.

10 Q. And another one of those reasons is your delusions,
11 your -- what psychiatrists may refer to as delusions, but what
12 you more commonly refer to as your dreams; is that correct?

13 A. I don't ever remember referring to anything as dreams.

14 Q. Do you remember talking to me and my investigator about
15 dreams that you have, not just at night while you're sleeping,
16 but visions that come to your head about a variety of things?

17 A. No, I do not.

18 Q. Do you remember talking specifically about a dream or a
19 vision that you've had about this specific incident at the
20 juvenile hall?

21 A. Yes. I remember some nightmares I told you I had, yes.

22 Q. Didn't you actually tell us that you had a dream where
23 Anna -- I'm sorry, where Shawn actually threatened to throw Anna
24 in the cell with you if she didn't be quiet?

25 A. Yes.

26 Q. And that didn't actually happen; did it?

27 A. I guess not. I'm not sure. It was a dream.

28 Q. So you're not sure if it actually happened or you were

1 just seeing it in the dream; is that fair to say?

2 A. I guess it was a dream.

3 Q. But you're not sure?

4 A. I didn't remember it at the time so it must be a dream.

5 Q. This was obviously a very traumatic experience, I'm sure.
6 If you have visions about anything, I'm sure you have a lot of
7 visions about this incident since March of this year; correct?

8 A. Yes.

9 Q. And in those when you envision the incident, I'm sure you
10 see a lot of different things happening; don't you?

11 A. Basically it remains the same.

12 Q. But sometimes people are saying things in one dream that
13 they're not saying in another; correct?

14 A. That's the only incident that I remember that was not --
15 that I don't remember actually happening in the first place. It
16 only has happened once.

17 Q. Okay. Getting back to the day of the juvenile hall,
18 trying to remember from that day, not remember from the police
19 reports you've reviewed. When -- once they left, when did they
20 return?

21 A. Couple hours later, a few hours later.

22 Q. Was it still light out?

23 A. Yes.

24 Q. And at that point your testimony today was that Shawn
25 demanded the PIN number first; correct?

26 A. Demanded my PIN number, ATM card, and my keys and cash.

27 Q. Did he do it all at the same time?

28 A. He asked them in that direct order.

1 Q. At the same time?
2 A. Yes.
3 Q. And so earlier this morning you said he asked for your PIN
4 number first and you gave it to him separately. Do you remember
5 saying that this morning?
6 A. Yes.
7 Q. Now, you're saying he asked you for all three; which is
8 it?
9 A. I said that this morning, and I also said I gave him the
10 PIN number separate. I'm not changing my testimony.
11 Q. Okay. What is your testimony now? Did he ask for the PIN
12 number first?
13 A. He asked for my PIN number, my ATM card, and my cash and
14 keys, and I gave him my PIN number.
15 Q. Okay. So he asked them for all of it, and you just gave
16 him the PIN number?
17 A. Yes.
18 Q. He took that PIN number without any ATM; correct?
19 A. Yes.
20 Q. And what did you think -- what good did you think that was
21 going to do him?
22 A. I thought it would stall.
23 Q. Okay. And what did he do with that information?
24 A. I guess he just stored it in his mind.
25 Q. In fact, isn't that the time where he took the sprinkler
26 cover, the thing that looked like the toilet fixture that we
27 described earlier and banged on the window in an attempt to get
28 you out?

) 1 A. No, I believe he did that later.
2 Q. Did you tell the police that he did it after this time or
3 did you tell the police that he did it later?
4 A. Later, I believe.
5 Q. But you don't really remember; do you?
6 A. I believe it was later.
7 Q. As you're picturing the day now?
8 A. Yes, it was later.
9 Q. So after he gets the ATM PIN number from you, he actually
10 leaves your line of sight, leaves the room; correct?
11 A. No.
12 Q. He stayed there?
13 A. They began stacking stuff in front of the door, as I said
) 14 before.
15 Q. Oh, so just right away they just start stacking stuff?
16 A. Five or ten minutes later.
17 Q. In those five, ten minutes, Shawn actually left the room;
18 didn't he?
19 A. I think so, yes.
20 Q. And he was with -- you would presume he was with Anna
21 because he came back with Anna?
22 A. Yes.
23 Q. He asked you for the ATM, and he was present with just
24 Anna, correct, I mean without Anna?
25 A. Yes.
26 Q. Then he leaves the room, comes back in with Anna, and they
) 27 start stacking stuff against the door?
28 A. Yes.

1 Q. And now he's stacking the -- he stacks the cart against
2 the door and stacks the -- puts the towels, shoves the towels in
3 the crack of the door; right?

4 A. (Nods head.)

5 Q. When he shoves the towels in the crack of the door, that's
6 what makes the water begin to rise; correct?

7 A. Yes.

8 Q. Because the water was leaking out the door when there's no
9 towels there?

10 A. Yes.

11 Q. In fact, if there's no towel blocking the water, the water
12 stays at a level of maybe three to five inches; is that fair to
13 say?

14 A. Approximate.

15 Q. It stays there all the time. It never in the 40 hours you
16 were in there, that water never got any higher than, say, three
17 to five inches unless the towels were shoved in the cracks of
18 the door; is that right?

19 A. Yes.

20 Q. Okay. They shoved the towel in the cracks of the door,
21 and then they disappeared?

22 A. Yes.

23 Q. And you say maybe one to two hours later the water was
24 shoulder high?

25 A. I think it was more than two hours later.

26 Q. Okay. Well, you told the police officers two hours;
27 didn't you?

28 A. I think I said a few hours.

1 Q. You think you said a few hours, but you don't really know?

2 A. I believe I said a few hours.

3 Q. And you testified earlier today it was actually one to two
4 hours; do you remember saying that?

5 A. As I said before, I think I said a few hours.

6 Q. Did you say that to the police or did you say that to the
7 jury earlier this morning or both?

8 A. Both.

9 Q. So you didn't say one to two hours?

10 A. I said a few hours.

11 Q. All right. And you come back or they come back at some
12 point and later when they came back, the water was up to your
13 shoulder?

14 A. Yes.

15 Q. And you told Detective Coe on March 17 that it was up to
16 your shoulders; correct?

17 A. Yes.

18 Q. And that information that the water was up to your
19 shoulder was in the police report that you reviewed before
20 coming to court today; correct?

21 A. Yes.

22 Q. And in the taped interview with Detective Coe when he
23 asked you how high the water was, you actually said it was up to
24 your neck; do you remember that?

25 A. Yes.

26 Q. But that wasn't in the police report that you reviewed
27 before coming to court today; the police report said shoulder?

28 A. Neck and shoulder are about the same height.

1 Q. Okay. And did Shawn just -- well, let me clarify. So is
2 it up -- I don't think they're quite the same. Is it up to your
3 shoulder or up to your neck?

4 A. To me I don't see maybe more than less than a half an inch
5 difference.

6 Q. So maybe right about here, somewhere in between?

7 A. Up to my shoulders, up to my neck which are about the same
8 to me.

9 Q. Work with me, Nick. Picture yourself standing. There was
10 the water right here or would it be more right here?

11 MR. MARCHI: Your Honor, I'm going to object. This is
12 argumentative. He's also pointing to himself as opposed to the
13 witness. I suppose --

14 MR. SERAFIN: The witness can point it on himself.

15 MR. MARCHI: I suppose he could point to the witness
16 perhaps.

17 THE COURT: Just point.

18 THE WITNESS: This is the shoulders. Not this. This
19 would be the bottom of the arms. This is the shoulders up here.

20 MR. MARCHI: For the record he is gesturing to the top of
21 his right shoulder as he's sitting in the box so may the record
22 so reflect?

23 THE COURT: Noted for the record.

24 Q. BY MR. SERAFIN: At that point if the water gets a little
25 higher, it will be up to your mouth and a little higher, that it
26 is going to be up to your nose and you're going to be in big
27 trouble; correct?

28 A. Yes.

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1 Q. At that point whether it be one, two hours or a few hours,
2 depending upon what statement we use, at that point Shawn
3 happened to show up; correct?

4 A. Yes.

5 Q. Okay. So he shows up in the nick of time, and you say at
6 that point, All right. I'll give you the ATM card and the car
7 keys?

8 A. After he demanded it, yes. Car keys, cash, and ATM.

9 Q. So he removes all the towels and the water comes gushing
10 out; right?

11 A. Yes.

12 Q. How long did it take the water to drain out of the cell?

13 A. Few hours.

14 Q. Okay. So now we've got -- there's not only a few hours
15 where the water is filling up, but now it is taking a few hours
16 to drain out; is that what your testimony is?

17 A. Yes.

18 Q. Did you ever mention that fact to the police?

19 A. Yes. I think I said an hour, two hours, three. I don't
20 know, few.

21 Q. Okay. And so where were Shawn and Anna or could you see
22 them during the few hours that it took the water to drain out?

23 A. They were in the room off to the side. That's where they
24 went.

25 Q. So they were out of your line of vision; correct?

26 A. Yes.

27 Q. And you don't know what they did at that point; correct?

28 A. Nope.

1 Q. So now, they have essentially been at the hall for a few
2 hours while it filled up, a few hours while it emptied; right?

3 A. I don't know if they were there when it was filling up or
4 not.

5 Q. But at some point they come back after a few hours, and it
6 empties and then when it is emptied, you're able to slide your
7 ATM card and your keys; is that right?

8 A. Yes.

9 Q. And they take your ATM card and your keys. Now, how --
10 you said the length under the door is an inch, half inch maybe?

11 A. Approximately an inch.

12 Q. You don't have a lot of keys in your key ring, able to
13 slide it right through?

14 A. Just two.

15 Q. And you're still positive about sliding those keys under
16 there?

17 A. Yes.

18 Q. You would have no reason to know how they or where they
19 had been going for the past 16 hours while you were in the cell;
20 correct?

21 MR. MARCHI: Objection. That question is unclear.

22 MR. SERAFIN: Calls for speculation. Withdrawn.

23 THE COURT: All right.

24 Q. BY MR. SERAFIN: At that point the towels are never put
25 back in the door, correct?

26 A. Not that I know of, no.

27 Q. And certainly if the towels are put back in the door, it
28 would cause the water to rise very fast again?

1 A. Yes.

2 Q. And so certainly you would have noticed?

3 A. Yes.

4 Q. So it is fair to say the towels were never put back in the
5 door?

6 A. Yes.

7 Q. Clearly there's at least one towel in your room because we
8 have seen it several times on the photos; right?

9 A. Yes.

10 Q. That's the towel that you put to divert the water. You
11 put it over the sprinkler; correct?

12 A. Yes.

13 Q. And wasn't there also another towel found on the table in
14 there? Do you remember putting another towel on the table?

15 A. Yes.

16 Q. So there's two towels and you pulled those from under the
17 doorway; correct?

18 A. Yes.

19 Q. If the towels are the thing that is blocking the door
20 causing the water to shoot up to your shoulders, when you bent
21 down and you pulled two of them out of the door, how come that
22 didn't let the water out?

23 A. Because there were more towels behind it.

24 Q. So you just pulled the front ones?

25 A. I pulled them as they were shoving them in.

26 Q. And the ones you could pull were the ones that you could
27 reach; correct?

28 A. Yes.

1 Q. And you got an inch -- you can clearly slide your fingers
2 all the way under the door; correct?

3 A. Yes.

4 Q. The only towel you couldn't reach had to be towels that
5 weren't actually touching the door?

6 A. After they shoved the crate up against there, they were
7 all touching the door.

8 Q. The ones that were touching the door, any towels behind
9 the door so they could block water? You were able to reach the
10 finger in and pull them out?

11 A. Not once they put the crate up against there. It was too
12 heavy.

13 Q. You said they put the crate up there right at the
14 beginning; correct?

15 A. They shoved towels into the door, and then they pushed the
16 crate up in front of it.

17 Q. But it was your testimony once they put the towels in, the
18 water began to rise?

19 A. Yes.

20 Q. So my question is, when you pulled the towels out, why
21 doesn't the water then go out?

22 A. Because there were more towels behind it.

23 Q. And the towels behind it were not --

24 A. Were blocked by the crate so I didn't pull them out.

25 Q. Don't get upset. And there were more towels behind it.
26 Why didn't you reach through and pull those out like the ones in
27 the front?

28 A. Like I said before, a fourth time, they were blocked by

1 the crate because they were -- the crate was heavy.

2 Q. So were those towels on the other side of the crate?

3 MR. MARCHI: I'll object. That question is somewhat
4 vague. The side of what side of the crate.

5 MR. SERAFIN: I asked were --

6 THE COURT: Overruled. He can answer it. Did you
7 understand the question?

8 THE WITNESS: Towels were in front of the crate with the
9 crate behind it pushing against it with the weight from the cans
10 and the paint thinner and the other stuff in the crate.

11 Q. BY MR. SERAFIN: So the only thing in between the crate
12 and the door were the towels; correct?

13 A. Yes.

14 Q. And you pulled a couple through; right?

15 A. I pulled a couple through before they put the crate up.

16 Q. Why not just pull the rest through?

17 A. Because they got smart and they started shoving them
18 tighter, put the crates up against them so I couldn't.

19 Q. Tighter. Where tighter, under the door?

20 A. Yes.

21 Q. Well, the first few they're under the door. The closer it
22 is for you to reach and pull them out?

23 A. No. They weren't stuffing them that far.

24 Q. Well, how far were they stuffing them under the door if
25 the width of the door is let's say six --

26 A. Once towels get wet --

27 THE COURT: Sir, sir, you need to let him finish the
28 question so we know what you're answering.

1 Q. BY MR. SERAFIN: If the width of the door is, say, four,
2 five inches long, okay; how far under the door are they sliding
3 these towels?

4 A. Once you -- I can only tell this from something that I
5 already know. If you flood a cellar or whatever, water makes
6 towels puff up. When they first stuffed them under there, they
7 were dry. I was able to get a hold of a couple of them. I
8 wasn't able to get a hold of the others.

9 Q. Is it your testimony that the others were also shoved
10 under the door though?

11 A. They were shoved but not far, as far.

12 Q. So you couldn't reach them?

13 A. I could reach them, but I couldn't get a hold of them.

14 Q. Okay. Is it -- it was your testimony that after the first
15 time they put towels and the crate against the door, they left?

16 A. Yes.

17 Q. And by the time they came back, the water was up to your
18 neck or your shoulder; correct?

19 A. Yes.

20 Q. So are you now saying that they actually came back after a
21 certain amount of time and then replaced some of the towels that
22 you had pulled through?

23 A. No. They replaced them as I pulled some of them in.

24 Q. Okay. How long did they stay there then? They just
25 didn't block the stuff and leave now. They stayed there for a
26 certain period of time?

27 MR. MARCHI: Objection. That mischaracterizes his
28 testimony, your Honor, and this has been asked and answered many
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1 times.

2 MR. SERAFIN: No offense, the answers have changed.

3 MR. MARCHI: Shut up.

4 THE COURT: Overruled. You may ask the question.

5 MR. SERAFIN: I heard a shut up.

6 MR. MARCHI: I don't appreciate a speaking objection.

7 THE COURT: Counsel, Counsel. The court reporter will
8 read back the question.

9 MR. MARCHI: Thank you.

10 (Requested portion read back.)

11 THE WITNESS: It took them a matter of time for them to
12 put the towels down. As they were putting them down, I was able
13 to get two of them away. They were continuing to stick more
14 towels until they stuck the crate against the door, and I
15 couldn't get anymore.

16 Q. BY MR. SERAFIN: How long has it been that you have been
17 taking your psych meds?

18 A. Nine months.

19 Q. So you haven't taken them pretty much all this year?

20 A. Yes.

21 Q. And you weren't taking them back in March, clearly;
22 correct?

23 A. Nope.

24 Q. What impact does the drug use have on your psychiatric
25 issues?

26 A. Sometimes they help. Sometimes they don't.

27 Q. I believe you told me that in many instances because you
28 had trouble getting medication that you would sort of

1 self-medicate yourself by trying various drugs; is that correct?

2 A. I don't remember saying that to you.

3 Q. Is that true?

4 A. I don't remember if I self-medicated myself. I have used
5 drugs before.

6 Q. Were you using any drugs in March of that year?

7 A. No.

8 Q. Well, you said you were on your way to NA that day;
9 correct?

10 A. Yes.

11 Q. Narcotics Anonymous?

12 A. It's required of all of us at the parole house since we're
13 all there, we are required to attend AA or NA.

14 Q. So you weren't using any drugs at that time?

15 A. No.

16 Q. Do you recall in your past instances with psychiatrists
17 explaining to them that you've been diagnosed as a compulsive
18 liar?

19 A. I tell stories about my life.

20 Q. Stories that aren't true?

21 A. Yes.

22 Q. Maybe grandiose stories to draw attention to yourself?

23 A. Yes.

24 MR. SERAFIN: No further questions.

25 REDIRECT EXAMINATION

26 Q. BY MR. MARCHI: Sir, calling your attention back again to
27 March 15th when Anna Rugg asked you to come inside the juvenile
28 hall. Did you consider her to be a friend of yours at that

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1 time?

2 A. Yes.

3 Q. Did you trust her?

4 A. Yes.

5 Q. Did you have any reason to think she would be trying to
6 lure you inside for some other purpose other than to help Erin
7 Hughes?

8 A. No, sir.

9 Q. And as you look back on it now, I realize you do have
10 problems sometimes with dreams; correct?

11 A. Yes, sir.

12 Q. And can you distinguish what you remember that weekend
13 from dreams at this time, sir?

14 A. Yes, sir.

15 Q. All right. Is there any doubt that you were with Anna
16 Rugg, Shawn Rodriguez, and Erin Hughes on March 15th?

17 A. No, sir.

18 Q. And is there any doubt in your mind that Ms. Rugg
19 basically asked you to go inside to help someone else, a mutual
20 acquaintance?

21 A. No, sir.

22 Q. And did you -- as you look back on it now, do you
23 understand that that was a trick, sir?

24 A. Yes, sir.

25 Q. All right. This door here, when you finally did get
26 around to the other side, where was Anna Rugg at, sir, when the
27 door was open?

28 A. She was in front of me.

1 Q. All right. And where was she in relation to this corner
2 of the door as she directed you?

3 A. As she directed me?

4 Q. Yes.

5 A. On the front edge right here.

6 Q. And she's kind of a wider person; isn't she?

7 A. Yes.

8 Q. So she took up a little space back away from the corner of
9 the door?

10 A. Yes.

11 Q. As you sit here now, you never saw Shawn Rodriguez
12 initially; did you?

13 A. No, I did not.

14 Q. You don't know if he was behind this door; correct?

15 A. I don't know.

16 MR. SERAFIN: Objection; leading. All of these are
17 leading.

18 MR. MARCHI: I don't think so, your Honor.

19 THE COURT: I'll allow that question.

20 Q. BY MR. MARCHI: Do you know for a fact he was behind this
21 door? Did you see him?

22 A. Not absolutely for a fact, no.

23 Q. Did you see him behind this counter area here, sir?

24 A. No, sir.

25 Q. All right. When you say he came from behind the door, are
26 you basically --

27 A. I'm assuming.

28 Q. Basically trying to put two and two together; are you

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1 surmising?

2 A. Yes. I'm surmising, assuming.

3 Q. When is the first time you saw Shawn Rodriguez in relation
4 to this door and Ms. Rugg?

5 A. As Rugg was shutting the door.

6 Q. This door is halfway open or so; correct?

7 A. Yes.

8 Q. That's pretty close to what you saw when you were directed
9 in -- you testified before; correct?

10 A. Yes.

11 Q. When Anna Rugg was pushing on the door and you had your
12 foot in it, how much -- how wide was this door then, sir?

13 A. About like that.

14 Q. You're gesturing about a foot and a half?

15 A. Yeah, about that. About 12 inches.

16 Q. All right. And at some point was -- it was your leg being
17 pinched by the door jamb?

18 A. Yes.

19 Q. And the edge of the door?

20 A. Yes.

21 Q. And how wide was it at that point, sir?

22 A. Seven, eight inches.

23 Q. The width of your leg?

24 A. Yeah.

25 Q. Could you stand up and show us that?

26 A. (Witness complies.)

27 Q. Okay. So the width of your right leg or thigh, sir?

28 A. Yes.

1 Q. Is there any doubt in your mind that Shawn Rodriguez
2 appeared from somewhere and kicked you in the leg?

3 A. No, sir, there was not.

4 Q. Where was Anna Rugg when the kick occurred, sir, if you
5 could point to the diagram?

6 A. She was in front of the door.

7 Q. Which was now in an almost shut position?

8 A. Yes.

9 Q. And was she doing something with the knob or pushing up
10 against it?

11 A. She was pushing on the door.

12 Q. All right. And you're not sure exactly where Shawn
13 Rodriguez came from; is that correct?

14 A. I'm not exactly sure, no.

15 Q. What view did you get of Shawn Rodriguez just prior to him
16 kicking you?

17 A. Coming from the direction of the door.

18 Q. All right. And previously you also described your route;
19 did you not, sir?

20 A. Yes.

21 Q. One more time. Would you -- I don't know if the witness
22 can maybe approach. He's having a little trouble being that
23 distance keeping his pointer straight, but if you can, can you
24 show us where you entered and where you went. You're swaying a
25 little bit. Are you pointing to the staff door? There you go.
26 Where did you go from there?

27 A. Down this way and up there.

28 Q. All right. So you're pointing basically a large left-hand

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1 turn here, sir, as I'm facing this?

2 A. Yes.

3 Q. In here, in through here, and then into this area?

4 A. Yes.

5 Q. All right. And is that what you told the officers
6 originally, sir?

7 A. Yes, sir.

8 Q. And do you remember talking to this officer, Detective
9 Coe?

10 A. Yes.

11 Q. Do you remember a Dale Hutchins?

12 A. Yes.

13 Q. And did you try to tell them as best you could the route
14 that you were led on?

15 A. Yes.

16 Q. All right. And as you sit here today, did you have any
17 reason to think that Anna Rugg was trying to trick you before
18 you ended up in the cell?

19 A. No.

20 Q. And as you sit here today, you indicate that you gave up
21 your PIN number only first?

22 A. Yes, sir.

23 Q. And again why was that?

24 A. To stall.

25 Q. Okay. What did you think the
26 PIN number would do for you?

27 A. Buy me some time, maybe. Show them I was being
28 reasonable.

1 Q. And that didn't work, obviously?

2 A. No, sir.

3 Q. Now, when Mr. Rodriguez and Ms. Rugg returned and the
4 water was already rising, you indicated that it was Shawn
5 Rodriguez that saw you in the cell, sir?

6 A. Yes.

7 Q. Would he have had an opportunity to see where that water
8 was?

9 A. Yes, he did.

10 Q. All right. In your mind is there any doubt that Shawn
11 Rodriguez would have had that opportunity to see how far the
12 water had gotten?

13 A. No, sir. There was no doubt.

14 Q. On cross-examination you testified about several towels
15 being put up against the underside of the door?

16 A. Yes, sir.

17 Q. And you say that you were able to slip a couple of the
18 towels through?

19 A. Yes, sir.

20 Q. And again was the bookcase up against the door when you
21 were able to slide a couple of the towels through?

22 A. No, sir, it was not.

23 Q. All right. And after you were able to do that what, if
24 anything, did Rugg and Rodriguez do?

25 A. They started packing them tighter and more careful.

26 Q. So they put additional towels under there?

27 A. Yes.

28 Q. And then the bookcase?

1 A. Yes.

2 Q. And then when that happened; were you able to get any more
3 towels out of there?

4 A. No, sir, I was not.

5 Q. When they did remove the bookcase, when they came back
6 later, Rugg and Rodriguez, were the towels also removed?

7 A. I believe so, yes.

8 Q. So the other two towels were removed from the outside from
9 that point?

10 A. Yes.

11 Q. And what happened with the water?

12 A. It went down.

13 Q. Okay. So you really don't know why they put the bookcase
14 up against the towels; would that be fair to say, sir? You just
15 saw them doing it?

16 A. Yes.

17 MR. MARCHI: Thank you. No further questions.

18 THE COURT: Anything further on cross?

19 MR. SERAFIN: Yes, your Honor.

20 RECROSS-EXAMINATION

21 Q. BY MR. SERAFIN: Earlier, Nick, you testified that Anna --
22 or you stopped the door from being closed with your foot. Is it
23 now your statement that you stopped it with your entire leg?

24 A. I said with my leg.

25 Q. You never said it with your foot?

26 A. No, I did not.

27 Q. You never said with your foot, and then I emphasized my
28 right foot blocking the door?

1 A. You said foot. I said leg.

2 Q. Okay. So it is leg. Clearly my mistake.

3 A. Yes.

4 Q. So you put your entire leg in the door to stop it?

5 A. Yes.

6 Q. And your entire leg pretty much all the way up to your
7 upper thigh?

8 A. Yes.

9 Q. Right about as high as that bruise was; correct?

10 A. Yes.

11 Q. And your upper thigh right up to where the bruise was is
12 in between the door, and Anna takes it and shoves the door into
13 your leg, put your leg between the door and the wall; correct?

14 A. Yes.

15 Q. Maybe that's how you got that bruise in that exact spot.

16 MR. MARCHI: Is that a question or I move to strike if it
17 isn't, your Honor.

18 THE COURT: Is that a question?

19 Q. BY MR. SERAFIN: Is that maybe how you got that bruise on
20 your leg at that exact spot?

21 A. I don't believe so. I believe I got it from Shawn
22 Rodriguez kicking me.

23 Q. But you're not exactly sure; are you?

24 A. It is the exact same spot where he kicked me.

25 Q. If the door is up against your leg and it is pressing your
26 leg into the wall, how does a kick make contact with your thigh
27 exactly the same point that the door is pressing against?

28 A. It wasn't in the exact same spot of the door. It was a

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1 little bit past the door.

2 Q. You've got your entire leg against the door. The door is
3 pushing against your thigh, putting your thigh in between the
4 door and the wall. How does Shawn then kick you on the inside
5 of the thigh?

6 A. May I stand up to demonstrate?

7 THE COURT: Yes.

8 THE WITNESS: My leg was out like this and the kick was --
9 here is where the bruise was.

10 Q. BY MR. SERAFIN: And where you put your leg against the
11 rail there is also where the door was leaning against the leg?

12 A. The door would have been up here. The bruise was here.

13 Q. He kicked it on the side?

14 A. On this side.

15 Q. And knocked it backward?

16 A. I pulled it back because of the pain.

17 Q. You said that you were not able to pull the towels out
18 after the bookcase was placed; correct?

19 A. Yes.

20 Q. What did the bookcase do to affect the towels?

21 A. I guess the weight of it held them.

22 Q. You testified the bookcase is just behind the towels
23 pushing the towels against the door. It is not actually sitting
24 on the towels; correct?

25 A. I don't know. I wasn't outside.

26 Q. Well, you've testified that you're pretty sure of what
27 happened. Are you saying now you don't know where the bookcase
28 was exactly?

1 A. The bookcase is against the towels against the door. It
2 could have been sitting on top of some of them too.

3 Q. Okay. And actually I believe it was your statement that
4 as the towels sat there and got wetter, they began to swell up
5 and that made it hard for them to pull under the door; is that
6 right?

7 A. Yes.

8 Q. So when they pushed the towels under the door, you were
9 able to pull out, but the backup towel, they sat there for a
10 while and got wet and they swell up and you weren't able to pull
11 through the door; is that what you're saying?

12 A. Yes.

13 Q. You say they put the backup towels there right after you
14 pulled the first towels through; right?

15 A. I don't know if they put them right after or if they were
16 already there. They could have been already there and they
17 shoved them up.

18 Q. It took a couple seconds to pull the first ones; right?

19 A. Took a couple minutes.

20 Q. Okay. So now two minutes have past. You pulled the first
21 ones out. Why not immediately begin pulling the second ones out
22 before they have time to sit in the water and swell up?

23 A. I couldn't get them. That's all I know.

24 Q. Uh-huh. When Shawn and Anna returned to the juvenile hall
25 after you had set off the sprinkler system, you were, and for
26 good reason, quite upset at that point, I would assume; is that
27 fair to say?

28 A. Yes.

1 Q. In fact, you threatened both of them they better let you
2 out of there or else; correct?

3 A. No, I did not.

4 Q. You didn't threaten to get violent with them at that
5 point?

6 A. No, I did not.

7 Q. You forcibly sodomized another human being?

8 MR. MARCHI: Objection, your Honor.

9 THE COURT: Sustained.

10 Q. BY MR. SERAFIN: Were you, in fact, convicted of forcible
11 sodomy?

12 A. No. I was not convicted. I took a plea bargain because I
13 was scared.

14 Q. So you did -- you admitted forcible sodomy?

15 MR. MARCHI: I'm going to object, your Honor. This is
16 improper mode of questioning.

17 THE COURT: Sustained. Move on, Counsel.

18 Q. BY MR. SERAFIN: And although you have a conviction for
19 that act, you did not get mad at all at these two people for
20 locking you in the cell?

21 A. I was upset, but I tried to maintain peaceful demeanor
22 because I was afraid for my life if I did anything crazy.

23 Q. Like what do you mean, do anything crazy?

24 A. Like getting upset, showing my anger.

25 Q. And at no point while you were in there did you smell any
26 carbon monoxide or have any idea they were trying to carbon
27 monoxide you to death?

28 A. No, sir, I did not.

1 Q. You said earlier to the district attorney that you felt
2 that you were close to death; correct?

3 A. Yes.

4 Q. Were you close to starving to death; is that what your
5 theory on how you were about to die is?

6 A. Close to drowning.

7 Q. Close to drowning. But at the point the officers arrived,
8 the water was about three to five inches?

9 A. Yes.

10 Q. And it had been that way since the towels were removed
11 approximately 18, 19 hours earlier; correct?

12 A. About that, yeah.

13 Q. How were you going to drown in three to five inches?

14 A. Water was up to my shoulders at one time, if you don't
15 remember.

16 Q. I do. I remember the shoulder-neck thing, but that was 19
17 to 20 hours prior; correct?

18 A. Yes.

19 Q. So at the time the officers found you and you said you
20 were close to death, how did you think you were close to
21 drowning at that particular moment?

22 A. Not only was I also close to drowning when I was in the
23 room, at one time I was also freezing to death, and I also had
24 nothing to eat and I also had no water to drink because you
25 can't drink the sprinkler water.

26 Q. Did you think you were going to starve to death?

27 A. Yes.

28 Q. How long before you thought you were going to starve to

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1 death?

2 A. I don't know.

3 Q. In the past while you've been in custody, haven't you, in
4 fact, fasted for days on end to make a point?

5 A. Yes.

6 MR. SERAFIN: No further questions.

7 THE COURT: Anything further on redirect?

8 FURTHER REDIRECT EXAMINATION

9 Q. BY MR. MARCHI: Would it be fair to say that you didn't
10 know if anybody would be coming back after you had been in there
11 18 or 19 hours?

12 A. Yes, sir.

13 Q. Were you pretty happy to see the police?

14 A. Yes, I was.

15 MR. MARCHI: No further questions.

16 MR. SERAFIN: Nothing further, your Honor.

17 THE COURT: Is this witness excused?

18 MR. SERAFIN: Yes. I would like to keep him subject to
19 recall.

20 MR. MARCHI: Yes.

21 THE COURT: He's free to go subject to being recalled.
22 We're going to recess for the day. I would remind you that it
23 is your duty not to converse among yourselves or with anyone
24 else on any subject connected to the case. You're not to form
25 or express any opinions on the case until it is submitted to you
26 after you heard all the evidence. We are going to start
27 tomorrow at 9:00 because I have every -- oh, actually that is
28 on -- never mind. That's on Wednesday. So we can start

1 tomorrow at 8:30, so we'll see you tomorrow at 8:30.

2 (Jury exits the courtroom at 3:54 p.m.)

3 THE COURT: Go ahead and take a seat. We did have a --
4 we're still on the record. The jury is not present. Counsel
5 and parties are present. We did have a conversation earlier in
6 chambers and did you want to put that on the record? I
7 indicated you could put your respective arguments on the record.

8 MR. MARCHI: Argument about?

9 MR. SERAFIN: It's been a long day. Which one was this,
10 Judge?

11 THE COURT: If you don't remember?

12 MR. SERAFIN: Was this about the path, the angle, and the
13 juvenile hall?

14 THE COURT: It had to do with his dreams. You were asking
15 the witness questions about his dreams. Counsel for the People
16 objected. We did have a conversation in chambers in which we
17 discussed -- it was presented to me as a discovery issue, but
18 really the conversation we had was more of a relevancy issue,
19 and the issue was whether or not probing into the witness's
20 dreams or lack of dreams or when he has dreams whether or not
21 that would be relevant.

22 And after hearing argument from counsel, I ruled that if,
23 in fact, he is subject to dreams such that it is difficult for
24 him on occasion to differentiate between what may have really
25 happened and what he dreamt, then that would be, obviously, very
26 relevant on the issue of credibility. That he is describing for
27 the jury an event which occurred, and his ability to recall that
28 event and accurately describe it, it is obviously critical. And

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1 if, in fact, he was suffering from dreams on that occasion or if
2 subsequently he has suffered from dreams in which he is now
3 having difficulty distinguishing between what may have really
4 happened and what he may have dreamt that would be relevant so I
5 did allow that questioning.

6 In addition, I ruled that if he has a history of that,
7 that would obviously be relevant as well in helping us to
8 determine whether or not on this occasion he did or did not
9 suffer from an inability to recall or to distinguish between a
10 dream and an actual event.

11 MR. MARCHI: I think I can probably help here. My
12 objection at the time was the open-ended question he asked here
13 in open court. I had no problem with his line of questioning
14 after he narrowed the issues. I want to apologize for asking
15 you to shut up; however, you were making a speaking objection on
16 some things that I didn't think it was proper for the jury to
17 hear. I am sorry.

18 MR. SERAFIN: It is clearly unprofessional, but I do tend
19 invoke that reaction.

20 MR. MARCHI: I don't like to object, but when we're start
21 to put facts behind --

22 THE COURT: I wasn't quite sure that I really heard that.

23 MR. MARCHI: I surprised myself, quite frankly, but I did
24 shut you up.

25 THE COURT: Anything else before we release?

26 MR. MARCHI: No, your Honor.

27 MR. SERAFIN: No.

28 THE COURT: We're in recess.

1 MR. MARCHI: One other thing. I anticipated calling
2 Detective Hutchins, and I think you're actually making clear
3 some of the other concerns you had. Also we have officer -- the
4 tape of Mr. Rodriguez and Detective Coe that will follow one
5 from another. We still have a Ms. Garcia. I can either call
6 her or enter into a stipulation. I don't know what counsel
7 wants to do. The only thing she is going to talk about is the
8 bank records.

9 MR. SERAFIN: I'll stipulate to any of the bank stuff. I
10 didn't -- we would have stipulated to the entire ATM.

11 MR. MARCHI: I didn't want it getting lost in the shuffle
12 so the remaining witnesses I have here then are Officer
13 Hutchins. The tape which I believe will be ready, and then
14 Detective Coe for a few cleanup matters. We'll enter into the
15 stipulation of Mr. Rodriguez, and then I will rest. I think we
16 will be able to finish that up by noon.

17 MR. SERAFIN: In that case I need to, whether it be now or
18 tomorrow morning, we need to officially address the 1101(b)
19 stuff.

20 THE COURT: And I would --

21 MR. MARCHI: Actually, it may be a little longer than noon
22 come to think about it. The tape is 40 minutes.

23 THE COURT: I do know I need to rule on that, and I did
24 have a couple of questions on that and we can do that on the
25 record as well as in chambers. I went back through your
26 argument, Mr. Serafin, and I think, if I could paraphrase it a
27 bit, I understand that it is your position that the 1101(b) is
28 relevant on the issue of intent, and that if she, being Anna

1 Rugg, if she had the intent to kidnap and if she had the intent
2 to murder, that that would deflect from the jury finding that
3 your client had the intent. So in other words, she was the
4 mastermind and it was her intent all along to do that.

5 In furtherance of that theory, you have presented the
6 Court with six or seven events, all of which, unless I'm missing
7 something, are her conduct in committing robberies and
8 theft-related crimes. And so they show her intent to commit
9 robberies. They show her intent to commit theft. One of them
10 was stealing from a church. One of them was stealing a car.
11 One was stealing from the probation officer's home that was
12 helping her out. Another one was stealing from her stepfather,
13 and the last one was Mr. Hamman. It was going to that on three
14 occasions she asked people to help her rob people, but on no
15 occasion did she ask them to kill somebody or help her kidnap
16 somebody.

17 The closest would be when she asked someone to help her
18 rob her stepfather and said, You can hit him on the head with a
19 stick. That would be the closest of the -- of what occurred to
20 me is if that kind of evidence shows intent to commit kidnapping
21 and murder, then I think we have a problem of Mr. Rodriguez, and
22 Mr. Rodriguez has a conviction for a 12021 in 2001, a 10851 in
23 2002 and a 496, and so those -- well, two of those three are
24 theft-related crimes so they each have a history of -- and those
25 are just convictions. Those aren't maybe unproved conduct and
26 so we -- what I'm left with is both defendants have conduct and
27 convictions in which they have committed theft-related offenses,
28 and I didn't see anything that distinguished Anna's behavior

1 from Shawn Rodriguez in that regard. They both admitted to
2 being a thief or trying to be a thief, but nothing which would
3 lead to believe that Anna had a history of trying to kill people
4 or kidnap them.

5 And again, there's this slight -- this situation with
6 Mr. Hands where he thought that white powder was rat poisoning,
7 but that is pretty tenuous in my view. That's where I'm at, and
8 again, unless you can distinguish between Anna's behavior and
9 Mr. Rodriguez's behavior in terms of committing robberies and
10 thefts, if it is in for one, it is in for the other.

11 MR. SERAFIN: I have a couple of things on that. One is I
12 would be fine with that because I think that actually Anna's
13 acts can be distinguished as much more focused towards violence,
14 and the things that we have from the investigator are thumbnail
15 sketches of what these people are going to testify to. And
16 they, actually most of them besides the church one, they do
17 generally involve theft by violence. I mean, they are
18 robberies. There's no specific, let's go kidnap this person,
19 but the way in which she has talked about doing these certain
20 crimes, they do involve holding a person against their will.

21 I mean, if that's the Court's ruling, I would at least ask
22 that we have a 402 hearing and hear what these witnesses have to
23 say because I will say that the investigation reports are just
24 thumbnail sketches of what they are going to testify to. And I
25 certainly -- I mean, robbery is one of the charges here. We're
26 focused on certain charges.

27 THE COURT: Correct. But you have conceded that if we
28 were just talking about robberies, it wouldn't be relevant

1 because Mr. Rodriguez conceded he went along with this. He went
2 along with the robbery. What his argument is, is that, I didn't
3 intend to kill him. I didn't intend to kidnap him. I just
4 intended to rob him.

5 MR. SERAFIN: I understand.

6 THE COURT: So we have Ms. Rugg, who has a pattern of
7 stealing from people and trying to get people to rob other
8 people, which seems to be what Mr. Rodriguez is saying the game
9 plan was, and neither of them are saying that they intended to
10 kill him or to kidnap him. And I don't see where Anna has a
11 history of trying to kidnap people and murder them.

12 MR. SERAFIN: Well, there's two things there. One, I
13 would agree with the Court in that avenue. I would say that,
14 let's give them an opportunity, a brief 402 hearing on these
15 kids, that are here briefly and see what they have to say. It
16 would take approximately three to four minutes with each kid,
17 and it is something -- and there's some I wouldn't bother
18 bringing because they're not close to that.

19 THE COURT: I would consider that if you believe that one
20 or more of them is going to say that she tried to get someone to
21 kidnap someone or to murder someone.

22 MR. SERAFIN: Well, I don't know exactly if it would go
23 that far. I have not -- many of them, I have not spoken to.
24 Obviously, it makes more sense to have an investigator go out
25 and do that in case they have to testify.

26 THE COURT: At this point unless there's something other
27 than a pattern of robbing people and stealing from people and
28 committing burglaries and blaming other people basically --

1 MR. SERAFIN: I do have one other avenue. Part of the
2 prosecution's theory has clearly been laid out most dramatically
3 in the presentation of the note, but clearly part of their, --
4 the prosecution's theory is Shawn Rodriguez was not the follower
5 as his defense may say, and that he was an equal participator,
6 if not the primary guy. And a lot of the statements of Rick
7 Romines were directed upon who came up with that idea. Was it
8 Shawn's idea? And in order to defend that theory, any acts
9 where Anna Rugg did create these crimes, Anna Rugg did say, I
10 want to rob this guy. It is my plan. Help me do that, that
11 would be directly relevant to the fact that she was the
12 instigator of this current plan.

13 I agree with you that as far as intent on murdering, the
14 past acts as I've given them to you don't actually show her
15 intent to do that, but they clearly show a common plan or scheme
16 and intent on Anna's part to create these crimes, create the
17 crimes that may or may not take violence but get people in a
18 situation where I can get their money and take whatever they
19 have got and it doesn't matter if they get hurt. And that, I
20 think, is relevant in this case because that's what she said.
21 So Shawn -- so it would be relevant to the fact she's the
22 leader, and I think the jury needs -- they're not going to
23 believe -- ~~there's no chance of believing that~~ Shawn didn't
24 intend to murder this guy if they don't believe that Anna kind
25 of got him into this, and he sort of got along and things
26 escalated from there.

27 I believe, I think the fact she's capable of coming up
28 with these fairly diabolical crimes where they may not be to the

1 point of kidnap and murder originally, I don't know that this
2 one was a kidnapping and murder originally. It appears this one
3 is she wanted to get him in the cell, lock him in there, and
4 then maybe have the intent to rob him later. But you can't even
5 tell whether that intent was at the beginning, but there's
6 nothing to indicate that her goal was to kill him, and that's
7 the same thing in the other cases. She comes up with these
8 plans to get them in certain situations, take their money, use
9 other people in it and it escalates from there.

10 That's what we're trying to use the points and authorities
11 to show, we could offer it to show the limited purpose to show
12 she instigated the original plan here and that's it, and not
13 actually to her intent to murder, but just her intent to
14 instigate this particular plan because she's done it on six or
15 seven occasions before.

16 MR. MARCHI: I guess my response to that is just trying to
17 show a propensity to commit general crimes and in reality all
18 these other guys refused to go along with her, so apparently
19 she's not that persuasive. We've actually had testimony here
20 from Mr. Romines that he apparently may have actually planted
21 the seed, if you will, based on this show he watched regarding
22 the gassing at a time when Ms. Rugg was not even in the room.
23 That that was reaffirmed in her plans would seem to cut the
24 other way. Frankly, if the Court thinks it needs to hear some
25 of these witnesses in a 402 hearing, I have no objection. I
26 just don't think we've reached the threshold area yet.

27 THE COURT: I'm trying to decide what -- we're bouncing
28 around a little bit on the theories.

1 MR. SERAFIN: Part of the bouncing was the Court does make
2 a very legitimate point, and one that I totally get about we are
3 conceding everything up to the kidnap and the murder. So if
4 there's nothing that shows her propensity to do that, there
5 should be nothing admissible for that purpose. I agree with
6 that.

7 THE COURT: Here's the way I see it. There seems to be
8 two theories. The one theory is that maybe it was Anna's idea.
9 Maybe it was Shawn and Anna's idea, but the idea was to rob
10 Mr. Hamman, and they put him in a holding cell and it spun
11 completely out of control, and they never intended originally to
12 commit a murder and a kidnapping. They intended to rob him
13 somehow and it spun out of control. That seems to be one
14 theory.

15 The second theory seems to be that from the very beginning
16 it was Anna's idea to murder him, kidnap him, and murder him,
17 but all she told your client was that she was going to rob him.
18 And so with going first to theory number two, I don't see
19 anything in the 1101(b) that would be relevant on that issue
20 because I don't see where there's any history of an intent to
21 commit murders and kidnappings, only to commit robberies.

22 Going to the second theory, which is that they both
23 intended to rob him and it spun out of control, what I am not
24 tracking maybe as clearly as you're hoping to make the point is
25 what difference does it make if she was the ring leader?

26 MR. SERAFIN: You actually took the theory number two a
27 little bit out of the -- it's that she intended to lock him in
28 and --

1 THE COURT: Right.

2 MR. SERAFIN: Shawn did not intend to do that.

3 THE COURT: Theory number two is that Anna harbored an
4 intent to kidnap him, rob him, and murder him, but that all
5 Shawn had an intent to do was to rob him because that's all Anna
6 told him.

7 MR. SERAFIN: No. That's not his -- his whole point was
8 he didn't have an intent to do anything originally. What I
9 consented to you --

10 THE COURT: Well, in his statement to the police, which is
11 coming into evidence, is that Anna told him, I want to rob this
12 guy. I think that's what he said.

13 MR. MARCHI: Yes.

14 THE COURT: His first statement was that it was because he
15 was touching her or something and she shoved him in there. He
16 then changed his story and he said, Okay. Now, I'm going to
17 tell the truth. And he said, We were going to rob the guy. I'm
18 paraphrasing, but that's basically what he said.

19 MR. SERAFIN: I think he said she was going to rob him,
20 and he would not take any part of that, but he would go along to
21 get her back, which is the exact thing what --

22 THE COURT: Get her back?

23 MR. SERAFIN: That was his statement which -- in other
24 words, she wanted to lock him in there, take his money. He
25 didn't want any part of that, but in case it got ugly and he
26 started attacking her or getting physical with her, Shawn would
27 then jump in to get her back and protect her. That was his
28 statement to the police.

1 THE COURT: Bottom line being he agreed to participate in
2 a robbery.

3 MR. SERAFIN: He agreed to be at the scene.

4 THE COURT: He agreed to participate in some fashion in
5 accordance with the statement and the fact that she has a
6 history of committing theft-related crimes. If that comes to
7 show that she was the ring leader, then we get into Shawn's
8 history of stealing cars and receiving stolen property and
9 having a gun. Because they're all -- it is all showing
10 propensity to commit a crime so as to theory number two, I don't
11 think it flies.

12 Theory number one, which is he didn't know that she all
13 along was intending on doing this and he didn't know.

14 MR. MARCHI: It was actually contradicted by the tape. I
15 think when the Court hears the tape played in front of the
16 entire jury that becomes clear there's two portions of the tape
17 where he actually admitted, We put him in the cell. That's on
18 two different spots, so it pretty much ties himself into the
19 whole scenario on the tape.

20 THE COURT: If you believe that you have a witness who is
21 going to describe past conduct which demonstrates that she has a
22 pattern of committing murders or has solicited murders or
23 solicited kidnapping or done kidnappings or attempted murders,
24 I'll allow a 402 hearing.

25 MR. SERAFIN: I'll go into more details with my witnesses.
26 I haven't done that because I didn't know.

27 THE COURT: We'll start with the 402 hearing so we hear
28 what they have to say.

1 MR. SERAFIN: I would like to reserve the right to revisit
2 this issue if additional evidence comes in.

3 THE COURT: Absolutely. My initial ruling was if as the
4 case progresses if I see different theories being argued, we
5 will take a look at that.

6 MR. MARCHI: We may have to recess early tomorrow. I
7 don't know if those witnesses will be available.

8 MR. SERAFIN: I'll work on it so I can try to have those
9 witnesses available.

10 THE COURT: Can you please try to be here early by 8:15 so
11 that if there's anything we need to talk about.

12 MR. MARCHI: I think it is 9:00.

13 THE COURT: No. I told them 8:30. I changed my mind.

14 MR. MARCHI: Sorry. I missed that. It is 8:30.

15 THE COURT: Hopefully they didn't miss it. I started to
16 tell them I have a meeting, but I realize now my meeting is on
17 Wednesday.

18 (Proceedings concluded at 4:15 p.m. to
19 reconvene on Tuesday, September 23, 2003,
20 at 8:30 a.m.)

21 (Nothing omitted.)

22 --o0o--
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1 AUBURN, CALIFORNIA

2 TUESDAY, SEPTEMBER 23, 2003, 8:40 A.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --o0o--

18 THE COURT: All right. We're on the record. Counsel and
19 parties are present. The jury is all present. Counsel, are you
20 ready to proceed?

21 MR. MARCHI: Yes, your Honor.

22 THE COURT: All right. Your next witness?

23 MR. MARCHI: Dale Hutchins.

24
25 DALE HUTCHINS

26 called as a witness on behalf of the People herein was sworn,
27 examined, and testified as follows:

28 THE COURT: Mr. Hutchins, I need you to please come

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1 forward. When you get right up here by the court reporter, just
2 turn, face my clerk, and raise your right hand to be sworn.

3 THE CLERK: Do you solemnly state that the testimony you
4 shall give in the cause now pending before this court shall be
5 the truth, the whole truth, and nothing but the truth so help
6 you God?

7 THE WITNESS: I do.

8 THE CLERK: Please state your name and spell your last for
9 the record.

10 THE WITNESS: Dale Hutchins, H-u-t-c-h-i-n-s.

11 THE CLERK: Thank you. Go ahead and have a seat.

12 THE COURT: Go ahead.

13 DIRECT EXAMINATION

14 Q. BY MR. MARCHI: Sir, by whom are you employed?

15 A. The city of Auburn Police Department.

16 Q. In what capacity?

17 A. Detective.

18 Q. And how long have you been a peace officer in the state of
19 California?

20 A. Since 1985.

21 Q. And has all of that, your time, been with the Auburn
22 Police Department, sir?

23 A. No.

24 Q. Where else have you worked?

25 A. City of Santa Barbara Police Department.

26 Q. And how long were you there, sir?

27 A. Six years.

28 Q. And, sir, in March of 2003 what unit were you assigned to

1 for Auburn Police Department?

2 A. Investigations.

3 Q. Have you had any special training in regards to detective
4 work, sir?

5 A. Various law enforcement related schools.

6 Q. Over the years?

7 A. Yes, sir.

8 Q. Okay. And calling your attention to March 17th of 2003,
9 in the morning hours, were you called in to work early that day,
10 sir?

11 A. Yes, I was.

12 Q. And what time were you called in?

13 A. It was after 3 a.m.

14 Q. All right. And were you asked to respond initially to a
15 specific area?

16 A. Initially to the Auburn Police Department.

17 Q. All right. And subsequently were you asked to go to a
18 particular location?

19 A. Yes, to the former Placer County Juvenile Hall on Epperle
20 Lane.

21 Q. All right. And has that facility not been used for the
22 last several months?

23 A. I don't think it's been used for a couple years now, if I
24 remember right.

25 Q. So it was basically abandoned, if you will?

26 A. Yes.

27 Q. And is that within the jurisdiction of the Auburn Police
28 Department then; that is something within your territory?

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1 A. Yes, it is.

2 Q. Okay. Showing you here what's been marked Exhibit 4; do
3 you recognize what is depicted here, sir?

4 A. That's Epperle Lane. The street on the right is the fence
5 around juvenile hall.

6 Q. All right. Are you referring to this fence right here on
7 the right, sir?

8 A. That's correct.

9 Q. And what side of the juvenile hall is that?

10 A. That would be the -- depending on who you would talk to, I
11 would call that the south side.

12 Q. Okay. And calling your attention to this Exhibit Number
13 2; do you recognize what is depicted there, sir?

14 A. That's the staff entry door.

15 Q. Okay. And how does that door lock; do you know?

16 A. If you -- depends if you were to get into it from the
17 outside, someone would have to -- you either would have to get a
18 key to get in it, or from the inside you can just open it up and
19 walk out.

20 Q. All right. And referring to that, do you recognize this
21 little area right here I'm pointing to on this exhibit?

22 A. The interior of the door?

23 Q. Yeah. And specifically the locking mechanism?

24 A. That's correct.

25 Q. Is that what you're talking about?

26 A. Yes.

27 Q. That's kind of a throw latch, if you will?

28 A. Sure.

1 Q. Okay. And when you arrived that day, what entrance did
2 you go in initially, sir?

3 A. I believe it was that entry right there.

4 Q. Okay. And who else was on the premises when you arrived,
5 sir?

6 A. Detective Coe was there.

7 Q. And that's the gentleman to my right?

8 A. Yes, it is.

9 Q. Okay. And who else, sir?

10 A. I believe officer Hamelin, and several other officers.

11 Q. Okay. And do you remember about what time you arrived at
12 the scene, sir?

13 A. Not off the top of my head. I would say it had to be
14 around 4 o'clock, 4:30, maybe later.

15 Q. And later on did you come to know that a person named
16 Mr. Hamman had been locked in the juvenile facility?

17 A. Yes.

18 Q. And was he still on the premises when you arrived?

19 A. No.

20 Q. All right. And what were you assigned to do when you
21 arrived, sir?

22 A. I was assigned to collect evidence.

23 Q. Okay. And was anyone assisting you in that regard?

24 A. Yes.

25 Q. And who was that?

26 A. I can't pronounce -- her first name or her last name? I
27 think it was Jane. She's an evidence tech from Placer County.

28 Q. Does Expoleas sound correct?

1 A. Yes.

2 Q. And she was there to assist Auburn Police Department with
3 the gathering of the evidence?

4 A. That's correct.

5 Q. All right. And in that regard what did you proceed to do
6 initially, sir?

7 A. We did a walkthrough.

8 Q. What do you mean by that?

9 A. We did a walkthrough of the interior. Took photos. A
10 walkthrough of the interior of the juvenile hall.

11 Q. Showing you what's been marked here as Exhibit 1, sir; do
12 you recognize the diagram here that purports to be the inside
13 view of the juvenile hall; does that look familiar to you?

14 A. Yes.

15 Q. We have here on the diagram a kitchen area. Towards the
16 back of that kitchen area, did you notice anything unusual about
17 the window, sir?

18 A. There was a smashed window to the south of the entry door
19 on the rear door.

20 Q. So showing you Exhibit 12, sir; does that look familiar to
21 you?

22 A. That's the broken window.

23 Q. On the right here?

24 A. Yes.

25 Q. Okay. And did you find any other broken windows in the
26 place?

27 A. Not that I can remember.

28 Q. Okay. Now, you say -- going back to your Exhibit 1, you

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1 did the walkthrough. Did you start at the service or the staff
2 door entrance and walk all the way through, or where did you
3 start your walkthrough?

4 A. Well, I believe we started it in the back.

5 Q. By this kitchen area?

6 A. That's correct.

7 Q. And then where did you go from there, sir?

8 A. Through the day room.

9 Q. All right. Maybe I can have you use this pointer. You
10 have to use the red button only on this one.

11 A. Okay. We came in through this door right here into the
12 day room. From the day room we walked into the little area
13 right here between -- there's a door right there that goes into
14 the booking area. And there's a very small kind of a -- they
15 have like a door right over there between aisles over there. It
16 is a short door into the booking area, and that's the holding
17 cell right there in the booking area. We photographed that and
18 numerous items in this area we photographed.

19 We went back out, I'm not sure the exact route that we
20 followed, but we videotaped the office. The staff door area.
21 Collected some evidence in that area. Back out around down the
22 hallway. Basically just walking through juvenile hall.

23 Q. Looking for items?

24 A. That's correct.

25 Q. All right. And you've indicated of course that staff door
26 if you unlatch it can be open and stay open; correct?

27 A. From the inside.

28 Q. From the inside?

1 A. Yes.

2 Q. And is there a doorway leading up to this little area

3 right in here, sir? Can you walk straight back up through here?

4 A. You can walk straight through there.

5 Q. Can you turn left and proceed along this dark line here,

6 sir?

7 A. Yes.

8 Q. Is that another doorway there?

9 A. Yes.

10 Q. Can you then proceed along further to here, sir?

11 A. Yes.

12 Q. Can you turn left and go through a doorway here?

13 A. Yes.

14 Q. And can you again proceed left again, go through another

15 doorway?

16 A. That's correct.

17 Q. And that will get you right into the holding cell area?

18 A. That's correct. That's an accurate diagram.

19 Q. Were you able to go through that area that day without

20 having to unlock any doors?

21 A. That's correct. Didn't need any keys to walk through

22 there at all.

23 Q. And you went through that area?

24 A. Yes.

25 Q. Now, you indicated that primarily you dealt with the

26 holding cell; would that be fair to say, sir?

27 A. We collected a lot of evidence in that area, yes.

28 Q. Right. And in particular did you find a Plexiglas-type

1 window there, sir?

2 A. Yes.

3 Q. Showing you what's been marked Exhibit 15; do you

4 recognize the Plexiglas window there?

5 A. Yes, I do.

6 Q. Could you go ahead and use the red button pointed to it?

7 A. Right there.

8 Q. And how did you examine that, sir?

9 A. From the outside, which is you're looking at it from the

10 staff area behind the counter, looking through that Plexiglas

11 window, you would look into the holding cell.

12 Q. Now, here, sir, it appears to be kind of a wet spot here;

13 is that how you found it that day?

14 A. Everything was wet in there, yeah. It was very wet.

15 Q. When you arrived, was the water still going in the holding

16 cell, sir?

17 A. No.

18 Q. Someone had turned it off by then?

19 A. That's correct.

20 Q. There was still standing water in the building?

21 A. There was still water flowing out of the building, yeah.

22 Q. The whole building?

23 A. Yes.

24 Q. Now, this Plexiglas window, did you go into the holding

25 cell and look at it from the inside, sir?

26 A. Yes, I did.

27 Q. Showing you Exhibit 32; does that look accurate to you,

28 sir?

1 A. That's standing inside the cell looking out.

2 Q. All right. And there appears to be kind of an area over
3 here that is a little lighter in the picture; do you know what
4 that is?

5 A. That's a gouge in the Plexiglas.

6 Q. All right. And did you cause that Plexiglas window to be
7 removed that day?

8 A. Yes, I did.

9 Q. What did you have to do to do that?

10 A. Had to call out facility maintenance from Placer County to
11 come out and unscrew the window frame and take the window out.

12 Q. All right. I'm going to have Detective Coe approach here
13 and showing you this is Exhibit 70; do you recognize this item?

14 A. Yes, I do.

15 Q. What is this?

16 A. That is the Plexiglas window.

17 Q. All right.

18 A. This would be inside the cell just like I directed here.
19 This is the gouge mark area right here.

20 Q. And that's how you found it that day, sir?

21 A. Exactly.

22 THE COURT: Can you turn and make sure all the jurors can
23 see where you're pointing at.

24 Q. BY MR. MARCHI: Again Detective Coe is displaying the
25 inside of the window?

26 A. To the jury, yeah.

27 Q. And the gouge mark would be to the right as the jury looks
28 at it?

1 A. To the lower right side of the window, yes.

2 Q. And, sir, did you further examine inside the cell that
3 day, sir?

4 A. Yes.

5 Q. And showing you Exhibit 28; do you recognize what is
6 depicted here?

7 A. That's the interior of the cell.

8 Q. All right. And here, there appears to be some sort of
9 bench or table; is there not, sir?

10 A. That's correct.

11 Q. And this is a bench over here?

12 A. That's correct.

13 Q. And again, the floor appears to be wet. Is that water or
14 no?

15 A. It was standing water, yes.

16 Q. At that point how much water is in there approximately?

17 A. Oh, it might have been an eighth to a quarter inch. It
18 was enough to get my shoes wet.

19 Q. Showing you Exhibit 27; is that another view of the same
20 thing you saw on the last exhibit?

21 A. That's correct.

22 Q. Now, there is what appears to be a towel draped on the
23 table. Is that how you found it that day, sir?

24 A. Exactly.

25 Q. And speaking of towels, did you see any other towels
26 inside the actual cell, sir?

27 A. Yes.

28 Q. And where was that at?

1 A. It was hanging on the upper right of that picture from a
2 fire sprinkler.

3 Q. Showing you what's been marked Exhibit 29; is that what
4 you're referring to, sir, the towel hanging from the sprinkler?

5 A. Yes.

6 Q. And similarly a little closer view is in Exhibit 30; is
7 that the same sprinkler head and towel?

8 A. Yes.

9 Q. This sprinkler head here, did you cause that to be removed
10 that day?

11 A. Yes, I did.

12 Q. And you put that into evidence?

13 A. Yes, I did.

14 Q. Showing you Exhibit 38; do you recognize what's depicted
15 here, sir?

16 A. Yes.

17 Q. What is that?

18 A. That's the exterior of the cell. That's the entry door
19 with the tape on it, and above it is an air vent with toilet
20 tissue plugging the vent.

21 Q. All right. And there appears to be a small hole on the
22 right lower side right here; correct?

23 A. That's correct.

24 Q. On Exhibit 38?

25 A. That's correct.

26 Q. Is that how you found it?

27 A. Yes.

28 Q. All right. And this is directly above the cell door?

1 A. Yes, it is.

2 Q. And is that like the top area of the door there, sir?

3 A. That's correct.

4 Q. And is this how you found it with the tape around it?

5 A. Yes, it is.

6 Q. And showing you Exhibit 39, that's a closer view of the

7 same thing, sir?

8 A. Yes, it is.

9 Q. And this white stuff, what is that?

10 A. Toilet paper, I believe.

11 Q. All right. And did you find like a roll of toilet paper

12 around the premises there, sir?

13 A. Yes.

14 Q. Where was that located at?

15 A. I believe it was on the counter, the staff counter there.

16 I remember seeing it in the room.

17 Q. All right. Now, showing you what's been marked as Exhibit

18 25. Again, do you recognize what is depicted in the photograph,

19 sir?

20 A. Yep.

21 Q. What are we looking at?

22 A. We're looking at the entry door into the cell, and there's

23 toilet paper on the lower right side. ✓

24 Q. You're referring to this little roll here, sir?

25 A. That's correct.

26 Q. Is that where you found it that day?

27 A. Yes.

28 Q. Of course, the cell door as it appears now is open;

) 1 correct?

2 A. That's correct.

3 Q. Is there any locking -- any mechanism inside the cell door
4 to unlock that door, sir, on the inside?

5 A. No.

6 Q. From the outside, can you open it from turning the handle?

7 A. Yes.

8 Q. And again all this duct tape you found it as it appears,
9 sir?

10 A. Yes.

11 Q. Showing you what's been marked here as Exhibit 21; do you
12 recognize this item, sir?

13 A. Yes.

) 14 Q. What is that?

15 A. I believe it was a shelf of some sort that was laying on
16 the floor inside the booking area, just outside the door of the
17 cell.

18 Q. What are these items that we're looking at inside this
19 case, sir?

20 A. Paint cans, I believe.

21 Q. Going back here to Exhibit 1, and again we're speaking of
22 the booking area here, was this bookcase found somewhere in that
23 booking area?

24 A. Well, right where it says booking.

25 Q. Okay. Let me have you use the pointer and show us where
26 you found it.

) 27 A. Right where it says booking, that shelf was positioned
28 right about right there.

1 Q. When you arrived?

2 A. Yes.

3 Q. All right. Now, sir, the vent that we've already
4 discussed, did you cause that to be gathered up into evidence as
5 well, sir?

6 A. Yes.

7 Q. All right. Let me show you that. Showing you what's been
8 marked as Exhibit 69; and is this how it appeared when you found
9 it, sir?

10 A. Yes, it is.

11 Q. Except for maybe the exhibit stamp?

12 A. We set it out to dry.

13 Q. Okay. And the hole is on the lower right, sir?

14 A. Yes, right here.

15 Q. Could you hold it up in the way in which you saw it that
16 day?

17 A. It would have been up on the wall somewhere in this
18 fashion with the hole right over here.

19 Q. All right. And before removal you had a chance to look at
20 it from the outside, obviously, of the cell?

21 A. Yeah. I stood up on the counter and looked at it.

22 Q. Did it appear to vent directly into the cell?

23 A. It appeared so, yes.

24 Q. Now, sir, did you also look on the ceiling on the inside
25 of the cell?

26 A. Yes, I did.

27 Q. All right. And did you see any sort of plate on the
28 inside of the door that day?

1 A. On the inside of the door?

2 Q. I'm sorry, on the inside of the ceiling of the cell
3 itself?

4 A. Yes.

5 Q. And what did that plate appear to be, sir?

6 A. I didn't know. It didn't look like a vent. It didn't
7 look like an air vent that had louvers on it. I didn't know
8 what it was.

9 Q. But can you describe what this looked like, sir?

10 A. Small square with holes in it.

11 Q. Okay. I'm going to show you here what's been marked as
12 Exhibit 68, or, excuse me, this is Exhibit -- hold on a second.
13 That's the wrong number. It should be 76. Does that look
14 familiar to you, sir?

15 A. I remember that being in the cell.

16 Q. Okay. And these are little holes, if you will, in a metal
17 plate?

18 A. That's correct.

19 Q. And the plate approximately extends in this fashion?

20 A. Yes.

21 Q. All right. And you didn't think much of it at that time?

22 A. No.

23 Q. Now, showing you Exhibit 73, is that how the hole appeared
24 after you took the plate out?

25 A. Yes.

26 Q. Did you ever go step up inside there to take a further
27 look at that time, sir?

28 A. No.

1 Q. Now, showing you Exhibit 29; do you see the plate in this
2 photograph, sir?
3 A. Yes. It is almost centered on the right side.
4 Q. Could you use the pointer and point to it, sir?
5 A. Right there.
6 Q. Okay. When was this picture taken?
7 A. That was taken that morning.
8 Q. On the 17th of March?
9 A. Yes. Jane took the photo.
10 Q. And that's how it appeared that day?
11 A. Yes.
12 Q. I'm going to show you what's been marked as Exhibit 41;
13 let me direct your attention to this white object here on the
14 floor. Do you recognize that, sir?
15 A. Yes, I do.
16 Q. What is that?
17 A. It is a note.
18 Q. Showing you Exhibit 42; again, does that look familiar to
19 you, sir?
20 A. It is a closer up view of the note.
21 Q. And finally Exhibit 43?
22 A. That is the note.
23 Q. All right. And did you gather that up into evidence that
24 day, sir?
25 A. Yes, I did.
26 Q. Showing you Exhibit 1, let me have you use the pointer
27 here and can you point on the diagram where that note was found,
28 sir?

1 A. Sure. Right about there.

2 Q. How far is that from the actual booking door, sir, or the
3 are where the holding cell is?

4 A. From there through there, I guess it would be about, oh,
5 15 feet or so and then another 10 feet to the door, somewhere
6 around there approximately.

7 Q. All right. And so that's where you found it that morning?

8 A. Yeah, right inside the staff door. You know, actually I
9 think Officer Hamelin pointed it out to me, and that's when I
10 went down and got a closer look at it.

11 Q. Was that soon after you arrived there?

12 A. Oh, yeah.

13 Q. Showing you Exhibit 66; do you recognize this, sir?

14 A. That's the note.

15 Q. Okay.

16 THE COURT: I'm sorry, did you say 66?

17 MR. MARCHI: Yes.

18 Q. Showing you what's been marked here as Exhibit 10; do you
19 recall this picture being taken, sir?

20 A. Yes.

21 Q. What does that show us there?

22 A. That's the east side of the building right below the
23 window. Well, the lower part of the window that was smashed to
24 the ground and a brick.

25 Q. Okay. And that's how it appeared that morning, sir?

26 A. Yes.

27 Q. And showing you Exhibit 11; what are we looking at here,
28 sir?

1 A. That's the interior kitchen area looking out the broken
2 window to the east side of the building.

3 Q. All right. And is this glass we're looking at here, sir?

4 A. Yes.

5 Q. And that's how you found it that day?

6 A. Yes.

7 Q. Now, sir, showing you this is the actual cell door;
8 correct, in Exhibit 34?

9 A. That's the exterior, yes.

10 Q. And is that in a fully closed position at that point?

11 A. Yes.

12 Q. And along here we see the gray object, and what is that,
13 sir?

14 A. Duct tape.

15 Q. All right. And did you examine the floor area between the
16 bottom of the door and the floor?

17 A. Sure.

18 Q. And was there space underneath the door, sir?

19 A. Yes.

20 Q. About how much?

21 A. Oh, there might have been a quarter, maybe a half inch,
22 quarter inch.

23 Q. Was there any duct tape on the bottom that you found, sir?

24 A. No.

25 Q. Showing you what's been marked Exhibit 40 here; now, I see
26 there appears to be a couple more rolls of toilet paper; do you
27 recognize that?

28 A. That's correct.

) 1 Q. Is that how you found those items that day?
2 A. Yes.
3 Q. And where is that in relation to the cell door, sir?
4 A. Well, if you were to stand behind the counter right there
5 and face towards the toilet paper, the window, the Plexiglas
6 window into the cell would be right there, just maybe a little
7 to the right of the toilet paper.
8 Q. Again going back to Exhibit 1 on the diagram, can you
9 point to what you're looking at there with the rolls of toilet
10 paper, sir?
11 A. Okay. There's the counter. If you were standing right
12 there where that black dot is, the toilet paper would be right
13 about there, and there's the window inside the cell right there.
14 Q. Okay. Again, going back to 40, what is this area behind
15 the counter here, sir?
16 A. That's the -- well, the staff area. They stood there and
17 completed paperwork and did whatever they had to do back there
18 for booking.
19 Q. So would it be fair to say the booking area is out here in
20 front of this counter?
21 A. From where the picture is taken, that's where the
22 juveniles would be standing in the booking area.
23 Q. On the other side, on my side of the counter, so to speak?
24 A. That's correct.
25 Q. Where is the actual holding cell from this counter?
26 A. Right to the left.
27 Q. All right.
28 A. From right where you're standing, right there where that

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1 photo is taken, if you were to look, I don't know, maybe 45
2 degrees to the left, you would see the entry door to the holding
3 cell.

4 Q. All right. And is that like a half wall we're looking at,
5 that this counter sits on, sir?

6 A. Just a counter, I mean, yeah.

7 Q. What I mean is, is there a solid wall?

8 A. Yes.

9 Q. That is holding up the counter?

10 A. It is solid from the counter down to the floor.

11 Q. It makes that little L-shaped thing?

12 A. Yeah. To the right. I can't see it, but to the right I
13 believe there's a little small, little short door.

14 Q. Sir, if you're back behind this counter here and were to
15 crouch down, would you be necessarily visible from the other
16 side of the counter if you were approaching the cell door, sir?

17 A. No.

18 Q. So showing you Exhibit Number 19; this is the very edge of
19 the counter; is it not, sir?

20 A. That's correct.

21 Q. This would be the cell door as it swings toward the
22 counter?

23 A. That's correct.

24 Q. And then if we were to position someone right here by the
25 edge of the door, someone could be on the other side of the
26 counter not visible, in your opinion?

27 A. Absolutely.

28 Q. I want to show you what's been marked as Exhibit 44, sir;

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1 do you recognize what is depicted here?

2 A. Yes, I do.

3 Q. I'm going to have you use the pointer here. It might be a
4 little hard to view. What are we looking at, first of all, in
5 general?

6 A. We're looking at three rows of duct tape and right there
7 is a piece of latex gloves.

8 Q. Now, the duct tape that we saw, is this the same one that
9 was around the door?

10 A. That is the duct tape around ~~the door~~. It is laid on the
11 counter, the staff counter, in the receiving area.

12 Q. So the other stuff looked grayer. Are we looking at the
13 sticky side here?

14 A. That's correct.

15 Q. Again, what is that whiter object in the center, sir?

16 A. That is what appeared to me to be latex material from
17 latex gloves.

18 Q. All right. And did you ever find a box of latex gloves in
19 some other location later that day, sir?

20 A. I found a bag of latex gloves.

21 Q. Where did you find that at?

22 A. That was in the interior of the car, of Hamman's vehicle.

23 Q. And showing you Exhibit 45; are these the same pieces of
24 tape or different, sir?

25 A. I'm not sure if they're same or different, but the same
26 tape. There were several pieces of tape around the door.

27 Q. Again, is that a white piece of glove there, the whiter
28 spot?

1 A. That's white latex material that I believe is from a latex
2 glove, yes.

3 Q. And then showing you Exhibit 47, and do you know whose
4 vehicle that is?

5 A. Yes.

6 Q. Whose is it?

7 A. Mr. Hamman's.

8 Q. And before we move off into this other area, showing you
9 Exhibit 36, again we're still at the hall; correct?

10 A. That's correct.

11 Q. What are we looking at here, sir?

12 A. Well, you're looking at where that cabinet is. That is
13 the receiving area of the booking room. And as you are looking
14 at the cabinet to the left would be the holding cell.

15 Q. Right around this door here on the left-hand side?

16 A. If you were to go through that doorway right there and
17 hang a left, you would run right into the holding cell.

18 Q. All right. And this is a different door, is it not, than
19 the staff door?

20 A. That's correct.

21 Q. So back to Exhibit 1 here briefly; if you could use the
22 pointer and show us what we were just looking at on the actual
23 diagram?

24 A. That last photo you would be standing, oh, right about in
25 there. You look through into here. Like I said, you come
26 through this doorway and hang a left. There's the doorway into
27 the holding cell. As you look straight through it, you saw that
28 other door, that goes into the sally port area, and I remember

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1 that very well because you would drive up here from Epperle into
2 the sally port, take your in-custody people out, walk them
3 through that door into the booking area.

4 Q. And then showing you Exhibit 22; what are we looking at
5 here, sir?

6 A. Well, you're looking at the cabinet lying on the floor
7 full of paint cans and whatever else is there. That door to the
8 right with the duct tape on it is the entry door into the
9 holding cell. The doorway to the top of the screen was where
10 that previous photo was taken.

11 Q. You're talking about this doorway here at the top or
12 little bit right of center?

13 A. That's correct.

14 Q. And is that how you found the bookcase with all of this
15 stuff in it, sir?

16 A. Yes.

17 Q. And finally showing you here Exhibit 23; do you recognize
18 what is depicted here, sir?

19 A. Sure.

20 Q. What are we looking at?

21 A. The very same -- well, the entry door to the juvenile hall
22 is the one that -- I mean, the holding cell is the one with the
23 duct tape on it on the right with the door knob.

24 Q. Over here, sir?

25 A. That's correct. If you look straight through the photo,
26 that's the door where that previous photo was taken.

27 Q. Okay. All right. Later on that same day were you asked
28 to look at the vehicle that you already identified as

1 Mr. Hamman's?
2 A. Yes.
3 Q. All right. And did you, in fact, do that, sir?
4 A. Yes, I did.
5 Q. What time of day did you do that?
6 A. Much later in the morning.
7 Q. All right. And where was the vehicle when you went to
8 look at it, sir?
9 A. It was in the east sally port at the Auburn Police
10 Department.
11 Q. And did you just look at the vehicle yourself, sir, or was
12 anybody helping you at that point?
13 A. Ms. --
14 Q. Jane?
15 A. Jane was with me, yeah.
16 Q. All right. And did you look both in the passenger area
17 and in the trunk of the vehicle?
18 A. Yes, I did.
19 Q. Where did you first start at, sir, in the vehicle?
20 A. I believe we started in the -- I believe it would be the
21 driver's seat area, I believe.
22 Q. So you started in the interior of the vehicle as opposed
23 to the trunk?
24 A. That's correct.
25 Q. Okay. Showing you what's been marked Exhibit 48; do you
26 recognize what is depicted here, sir?
27 A. Yes.
28 Q. What are we looking at?

1 A. You're looking into the vehicle from the driver's door.
2 Q. And can you see anything that you gathered up from inside
3 this area, sir?
4 A. Yes. I gathered this ATM Visa credit card, a bank card
5 that had Hamman's name on it. I collected this jacket right
6 here. This cell phone. And right in there was a -- I believe,
7 was a citation from the CHP for Mr. Rodriguez.
8 Q. Showing you what's been marked Exhibit 63; is this the
9 card that you, in fact, gathered that day, sir?
10 A. Yes, it is.
11 Q. It does have the name Nicholas Hamman on the bottom?
12 A. Yes, it does.
13 Q. What is the last four digits of the card?
14 A. 2013.
15 Q. That's the exact spot you found it that day?
16 A. Yes.
17 Q. Showing you Exhibit 64, I'm pulling out a California
18 Highway Patrol citation; do you recognize that item?
19 A. I sure do. This is the citation that I found in that
20 center console. It is issued to Shawn Rodriguez. The CHP
21 officer, Steve Merchang, I worked with him down in Santa
22 Barbara.
23 Q. You personally know him, sir?
24 A. Oh, sure.
25 Q. What is the date on this citation?
26 A. That is the 15th, March 15th.
27 Q. At what time?
28 A. 6:59 p.m.

1 Q. All right. Showing you Exhibit 52, sir, I think I left
2 you the pointer. Do you see that citation, now?
3 A. Yes.
4 Q. Could you use that pointer, the red dot there?
5 A. Right there.
6 Q. And is that how you found it that day?
7 A. Yes.
8 Q. Showing you Exhibit 49; do you recognize what is depicted
9 here, sir?
10 A. Yes.
11 Q. What are we looking at?
12 A. That is the rear seat of the vehicle. I took into
13 evidence that knife right there. That hacksaw. And I
14 believe -- I believe that's it.
15 Q. All right. And the particular knife you've pointed to,
16 the actual blade is not visible; is that correct?
17 A. No. That's a brown leather sheath that I found the knife
18 in. The sheath is right there. The handle of the knife would
19 be right there.
20 Q. Underneath the seat belt?
21 A. That's correct.
22 Q. Showing you what's been marked Exhibit 50; do you
23 recognize what is depicted here, sir?
24 A. Yes.
25 Q. What are we looking at?
26 A. That is the passenger side area of the vehicle. That's
27 the jacket that I took into evidence. And there's a wood billy
28 that I took into evidence right there.

1 Q. All right. And then showing you Exhibit 51; what does
2 this show us, sir?

3 A. That is Mr. Hamman's bank card.

4 Q. So that's just another view of the same thing, if you
5 will?

6 A. That's correct.

7 Q. Okay. Showing you what's been marked Exhibit 56; do you
8 recognize this item, sir?

9 A. Yes, I do.

10 Q. What are we looking at?

11 A. That's a plastic bag with a whole bunch of latex gloves in
12 it.

13 Q. Did those seem consistent with the type you found on the
14 tape around the cell door, sir?

15 A. Yes.

16 Q. Where did you find that item at?

17 A. I believe I found them in the rear seat of the vehicle.

18 Q. All right. And then showing you Exhibit 57; what are we
19 looking at?

20 A. If I could go back? I'm not real sure if I found those in
21 the rear seat of the vehicle or the trunk of the vehicle now.
22 I'd have to look at the evidence sheet to be sure.

23 Q. All right. Do you think that would refresh your memory?

24 A. Yeah.

25 Q. Do you have a copy?

26 A. I do have a copy. Yeah, that was in the rear seat of the
27 vehicle.

28 Q. Okay. And you noted that down in your report that you're

1 refreshing your memory with?

2 A. Yes, I did.

3 Q. Again we're looking at Exhibit 56. Now, showing you
4 Exhibit 57; do you recognize what is depicted in Exhibit 57,
5 sir?

6 A. Yes.

7 Q. What are we looking at here?

8 A. That's the rear seat of the vehicle. And I took into
9 evidence this black glove right there, and this urinal plumbing
10 fixture or it could have been -- I suppose it could have been a
11 toilet flushing, but a plumbing fixture.

12 Q. The glove, sir, why did you gather that up that day?

13 A. There was a glove that I found in juvenile hall, just a
14 single glove that looked to be the mate to that one.

15 Q. The plumbing fixture, was there significance to that item?

16 A. Yes.

17 Q. What was that?

18 A. During Mr. Rodriguez's statement he mentioned that he used
19 a pipe or some type of metal object to hit the window of the
20 that Plexiglas window in the holding cell, and that right there
21 was later identified by Mr. Hamman as what Mr. Rodriguez used to
22 hit the window.

23 Q. Did you show that to Mr. Hamman in the past? Had you
24 shown the plumbing fixture to Mr. Hamman?

25 A. At this time?

26 Q. No, later on?

27 A. Yes, later on.

28 Q. And, in fact, did Mr. Hamman come into the department to

1 identify some items, sir?

2 A. Yes, he did.

3 Q. And when was that in relation to when you gathered them?

4 A. Well, sometime later. It wasn't that day, I don't

5 believe.

6 Q. Okay. Now, finally, sir, did you look into the trunk of

7 the car?

8 A. Yes, I did.

9 Q. Did you gather up anything out of the trunk?

10 A. Yes, I did.

11 Q. And what was that?

12 A. Two sections of hose that were connected together, garden

13 hose.

14 Q. Showing you Exhibit 53; do you recognize what is depicted

15 here?

16 A. That's the trunk.

17 Q. Do you see the hoses?

18 A. Yes.

19 Q. That's on top?

20 A. Yep. The gray hose and the green hose.

21 Q. And showing you Exhibit 54; is this another view of the

22 hoses, sir?

23 A. Yes.

24 Q. Are they still in the trunk at that point?

25 A. Yes, they are.

26 Q. That's just a closer up view?

27 A. That's correct.

28 Q. What is the silver item there, sir?

1 A. That is duct tape.

2 Q. And what is the duct tape, is it covering something?

3 A. It's covering part of the hose.

4 Q. Okay. Is there a connection or fitting at that point,

5 sir?

6 A. Not there, no.

7 Q. Showing you Exhibit 55; do you recognize what is depicted

8 there, sir?

9 A. That is the duct tape right there that we were just

10 looking at.

11 Q. Okay.

12 A. In the previous photo you could see this black thing right

13 there. I don't know what you would call that, but that's the

14 end of the hose.

15 Q. All right. And did you find the duct tape in the position

16 that you see it now, sir, about several inches away from the end

17 of the hose?

18 A. That's exactly where we found it.

19 Q. So you did gather up the hoses that day, sir?

20 A. I gathered them up. I put those bands on it.

21 Q. I'm showing you now Exhibit 71 which are the hoses in

22 question; correct?

23 A. That's correct.

24 Q. All right. And you're now holding up the end that shows

25 the tape; correct?

26 A. That's correct. Tape, it is right here; black thick (in

27 the photo. The end of the hose.

28 Q. And showing you Exhibit 69, sir, will one end of the hose,

1 can you fit that to Exhibit 69?

2 A. (Demonstrating.)

3 Q. For the record you were putting one end of the hose, which
4 is Exhibit 71, into that little hole where there's no tissue on
5 69 at this time; correct?

6 A. That's correct.

7 Q. I want to show you what's been marked again as Exhibit 38,
8 and again what are we looking at here, Officer?

9 A. That's the air vent, air conditioning vent, I guess, on
10 the outside of the holding cell above the door. The duct tape
11 is around the entry door into the holding cell, and there's a
12 hole in the --

13 Q. I just want to direct you over here on the right on the
14 exhibit. Do you see these two pipes here?

15 A. Yes, I do.

16 Q. Do you know what those are?

17 A. I think they're electrical conduit. I'm not sure.

18 Q. Did those pipes appear to go actually inside the cell,
19 sir?

20 A. No.

21 Q. Did you find any pipes here that might perhaps carry water
22 that appeared to go inside the cell?

23 A. Not to my knowledge.

24 Q. All right. And you were present during the interview of
25 Mr. Rodriguez when he mentioned cutting a pipe outside the cell
26 door; correct?

27 A. No. He made mention that he was going to cut a pipe.

28 Q. Right.

1 A. Right.

2 Q. That led into the cell door?

3 A. Right.

4 Q. And that is why he put duct tape around?

5 MR. SERAFIN: Objection; leading.

6 THE COURT: Sustained.

7 Q. BY MR. MARCHI: He had an explanation for the duct tape in
8 relation to a pipe leading into the cell door; correct, if you
9 recall. Well -- strike that.

10 Did you find any pipes, in other words, that appeared to
11 lead directly inside the actual cell area?

12 A. No.

13 Q. That would include on the ceiling?

14 A. Yes.

15 MR. MARCHI: Okay. Thank you. Thank you. I have no
16 further questions.

17 THE COURT: Cross?

18 MR. SERAFIN: Thank you, your Honor.

19 CROSS-EXAMINATION

20 Q. BY MR. SERAFIN: Good morning, Detective Hutchins. How
21 are you?

22 A. Good morning, sir. Fine, thanks.

23 Q. You sat in with Detective Coe on both the interviews of
24 Shawn Rodriguez and Anna Rugg in this case; correct?

25 A. Yes, I did.

26 Q. Do you remember Anna Rugg saying that she got the keys --

27 MR. MARCHI: Objection, your Honor. That's hearsay as it
28 may apply to this matter.

1 MR. SERAFIN: It's under hearsay exception. It is a
2 statement of interest against Ms. Rugg offered to impeach
3 Mr. Hamman's statement.

4 MR. MARCHI: Can we approach, your Honor?

5 THE COURT: Sure.

6 (Bench conference held off the record.)

7 Q. BY MR. SERAFIN: Detective Coe, did you write any police
8 reports yourself in this case?

9 A. Detective Hutchins.

10 Q. I'm sorry. Actually what I meant, Detective Coe actually
11 wrote most of the police reports, didn't he, in this case?

12 A. He interviewed Anna Rugg and Shawn Rodriguez and he -- he
13 wrote reports to that, yeah.

14 Q. You were present in those interviews, but you didn't
15 actually, yourself, write up reports?

16 A. I was present during various parts of the interview, sure.

17 Q. Did you -- you were brought in, obviously, as one of the,
18 along with Detective Coe, lead investigators in this case; is
19 that correct?

20 A. I was brought in to assist Detective Coe, yes.

21 Q. You didn't -- did you write any police report yourself at
22 all?

23 A. Yes, I did those reports.

24 Q. Did they state anything more than the evidence gathered?

25 A. I made some comments in my report about the evidence and
26 statements made.

27 Q. And how those statements linked to how the various
28 evidence was relative to the various statements made?

1 A. Yes.

2 Q. And I assume that you spoke, yourself, with other officers
3 that had conducted interviews and have gathered a fairly good
4 grasp of what went on?

5 A. I talked to everyone there that day.

6 Q. I would assume so. Did you come to a conclusion as to
7 whether or not Anna Rugg and Shawn Rodriguez drove Nick Hamman's
8 car during the day of Saturday, from between Saturday morning
9 and Saturday evening?

10 A. I came to the belief that Mr. Rodriguez drove the vehicle
11 and Anna Rugg was inside.

12 Q. During -- on Saturday?

13 A. Yes.

14 Q. Did you -- did you take fingerprints from the outside of
15 the window attached to the cell?

16 A. No.

17 Q. Did someone take fingerprints?

18 A. Yes.

19 Q. And I believe those are referenced in the evidence form;
20 correct?

21 A. Yes, they are.

22 Q. The fact that prints were taken, and prints were taken
23 from the outside of the window?

24 A. You know, I didn't take those prints. That was Jane and I
25 could reference my report as to where she took them from.

26 Q. If you could reference your evidence report and see if
27 that refreshes your recollection.

28 A. It would be Evidence Item Number 2. It lifted a standard

1 latent tape lift from the cell, lifted from cell window
2 exterior.

3 Q. Do you know what was ever done with that print?

4 A. I believe it was booked into evidence at Auburn PD.

5 Q. Do you know if it was ever examined to see who it belonged
6 to?

7 A. No.

8 Q. Was there anything in your records or in the police report
9 records that you have or in your conversation with the other
10 officers that would lead you to believe that there was ever
11 fingerprint matches or tests done?

12 A. Other than that tape print being lifted and booked in
13 evidence, I have no knowledge of anything past that.

14 Q. Lifted but not actually examined or compared?

15 A. I have no knowledge of it being compared or anything past
16 it being lifted.

17 Q. You're familiar, obviously, with the note that Anna Rugg
18 left at the gas station; correct?

19 A. I never saw the note. I heard about the note.

20 Q. Are you familiar with its contents?

21 A. Vaguely.

22 Q. If you're not, I'll move on. You don't know what the note
23 says?

24 A. Not exactly, no. I mean I could give you a vague
25 description of what I believe it said.

26 Q. Did you know it said, "Shawn Rodriguez kidnapped me"?

27 A. No.

28 Q. We'll move on then.

1 A. Okay.

2 Q. You said that all -- you went through the entire juvenile
3 hall building on March 17th, and all the doors were locked or
4 unlocked; correct?

5 A. Yeah. When I got there, the only part of the building I
6 didn't go through would be the south hallway of the building.
7 That would be the hallway, the holding cell going south towards
8 Epperle Lane from the entry door, the staff door.

9 Q. I'm going to pull up a diagram. Do you have your little
10 flashlight thingy?

11 A. Nope. It's up there.

12 Q. Only hit the red button or counsel gets very upset.

13 A. He doesn't get upset.

14 Q. He got upset at me. What is the only area that you said
15 you didn't go through?

16 A. That would be from here through this area here.

17 Q. And how come you didn't go through that area?

18 A. I don't know. I didn't -- it didn't seem pertinent at the
19 time.

20 Q. That's an honest answer. But on the other side -- on the
21 doors you went through, it is your memory now that they were
22 all -- all the inside doors were unlocked?

23 A. That's correct. I mean, all throughout here, this door,
24 this door, this door, they're all unlocked all the way through.

25 Q. And did you put any of that -- was that ever mentioned in
26 a report, in the report summarizing your surveillance of the
27 hall?

28 A. I didn't mention it.

1 Q. So you're just remembering back from March of this year?

2 A. Yes.

3 Q. And from between March of this year up until last week,
4 you never went back to the hall, correct, in regards to this
5 investigation or case?

6 A. That's correct.

7 Q. And when did you go back the very next time since March of
8 this year?

9 A. Well, I know I was scheduled to go back a couple times to
10 assist counsel, but I don't think I went.

11 Q. Did you go back last week? Were you involved in that?

12 A. No.

13 Q. So you haven't been back since March?

14 A. No. I do remember that these cell doors going into the
15 cells, most of them were open. And I remember thinking how it
16 would be unfortunate if someone accidentally got locked in
17 there, but that's about all.

18 Q. In fact, you are aware of some changes that the hall went
19 through immediately after this incident probably for the same
20 similar concerns that you had?

21 A. I am aware of changes, yes.

22 Q. And at some point they removed all the doors; are you
23 aware of that?

24 A. Yes.

25 Q. And they began to make plans to tear the building down?

26 A. That was in the paper, sure.

27 Q. Are you aware that as of the last week or two all the
28 doors of the entire hall are torn down, are removed on the

1 inside?

2 A. On the inside?

3 Q. Correct.

4 A. That's what I heard.

5 Q. You don't have any personal knowledge of it?

6 A. I haven't been in there. I couldn't tell you.

7 MR. SERAFIN: Counsel, if you could help me out with the
8 pictures.

9 Q. Directing your attention to the picture of the door that
10 you said was open. I forget which number it was. It was in the
11 60s I believe. The door where you said you make a left turn and
12 you're in the hall.

13 MR. MARCHI: The one we showed previously?

14 THE WITNESS: I think he's talking about that door right
15 there.

16 Q. BY MR. SERAFIN: You saw a picture of that door?

17 A. Yeah.

18 Q. Was that a picture you took at the scene on --

19 A. I didn't take it. Jane took it.

20 Q. But you were there on March 17th?

21 A. Yeah.

22 Q. The one of the picture that we saw from inside the cell
23 looking up through that square thing with holes in it, that was
24 taken on March 17th as well?

25 A. Yes.

26 Q. But in neither of those or did you mention anything in
27 regards to that in a report that that was important to your
28 conclusions for any reason?

1 A. To what conclusion?

2 Q. Any conclusion that you think might have been pertinent to
3 the case?

4 A. I didn't -- it didn't seem significant to me.

5 Q. You never mentioned them in any report?

6 A. Mentioned what?

7 MR. SERAFIN: That the -- can you find the picture that
8 has the inside looking up through the holes and you can see the
9 light?

10 Q. This was a picture that was taken while you were present
11 in March?

12 A. No.

13 Q. You weren't present?

14 A. I was not present when that photo was taken.

15 Q. Was it taken in March?

16 A. No.

17 Q. When was that one taken?

18 A. I don't know. You would have to ask counsel.

19 Q. Well, you testified to it earlier so I thought you had
20 known when that was taken?

21 A. No, I did not. I testified to a different photo with the
22 fire sprinkler to the right where that was pictured. That photo
23 was not taken on the 17th. If you go back to the sprinkler with
24 the towel hanging from it.

25 Q. You're saying this picture was never up while you had been
26 on the stand?

27 A. No. That was there, sure, and I have seen that photo.

28 Q. You have seen it. When did you see it?

1 A. Today. Yes. I testified that is in the cell. I did not
2 testify that that is -- that photo was taken on the 17th.
3 Q. Okay.
4 A. There you go.
5 Q. This is the picture that was taken on March 17 while you
6 were present?
7 A. That's correct.
8 Q. Clearly you cannot see from below up into this area; is
9 that right?
10 A. I didn't know what that was. Yeah. Correct. You can't
11 see up in there.
12 Q. And you didn't check it out because you didn't think it
13 was important at the time?
14 A. No, I did not.
15 Q. Okay. You removed the vent on March 17th; is that right?
16 A. No. That would be facility maintenance for Placer County
17 removed it. I took custody of it from them.
18 Q. And at that time did you have an occasion to look where
19 the vent was just removed from?
20 A. I'm standing on the floor, sure.
21 Q. Did you ever get up and try to look inside?
22 A. Nope.
23 Q. Okay. You testified today on direct examination, quote,
24 "It appeared that to you that vent went into the cell," is that
25 accurate?
26 A. I testified that the vent with the toilet paper appeared
27 to go into the cell.
28 Q. Correct. Do you remember testifying under oath at a

1 preliminary hearing on this case?

2 A. No.

3 Q. Okay. Do you remember the events of March last year that
4 all the doors were unlocked, but you don't remember testifying
5 on May 28th in regards to an attempted murder case?

6 A. I don't remember if I testified there or not.

7 Q. Perhaps a transcript of the preliminary hearing might
8 refresh your recollection?

9 A. Sure.

10 Q. Directing your attention first to the index on the front
11 page, listing all the witnesses at that preliminary hearing in
12 May; do you see your name?

13 A. Yes, I do.

14 Q. Now, directing your attention to page 53, if you could
15 turn to page 53.

16 A. Okay.

17 Q. I have highlighted a conversation between you and defense
18 counsel, not myself, in regards to whether you had an opinion of
19 whether the vent that you removed or had removed from the
20 outside of the cell went directly into the cell. Can you read
21 me the highlighted question and answer from that preliminary
22 hearing?

23 A. (Reading)

24 "QUESTION: He also talked about a vent,
25 air conditioning vent, that was above
26 the door of this particular room. I'm
27 talking about the room that Mr. Hamman
28 was found in.

1 My answer was: That's correct, yes.

2 QUESTION: There was a toil -- there was

3 toilet paper was punched up in the air

4 conditioning unit.

5 ANSWER: Yes, there was.

6 All right. QUESTION: All right. You

7 have no knowledge as to whether that

8 vent is going directly into the room or

9 it is coming from some other area of the

10 building; is that correct?

11 I do. "

12 (End of reading.)

13 Q. When you answered "I do," you're actually saying, no,

14 Counsel, you're wrong. I do have some knowledge as to where

15 that vent is going because the question says you have no

16 knowledge. Do you -- the question essentially says, you don't

17 know where that vent goes. You don't know if it goes into the

18 cell or not. Your answer was actually, "I do." Is that a fair

19 representation?

20 A. Correct.

21 Q. So you followed that by saying?

22 A. Well, then counsel asked: (Reading)

23 "Where it's coming from?"

24 And I said, "It's from the knowledge I

25 have limited to construction knowledge,

26 it appeared to be an air conditioning

27 vent that would come from the main unit

28 outside into the booking area."

1 (End of reading.)

2 Q. And then counsel asked?

3 A. Counsel asked: (Reading)

4 "Okay. So it wasn't a direct link into
5 the room that Mr. Hamman was found in;
6 is that correct?"

7 And I said, "As far as I know, it was
8 not."

9 (End of reading.)

10 Q. Thank you. So at the preliminary hearing in May that you
11 don't remember, you actually testified that it was your general
12 opinion that that vent with the toilet paper in it didn't
13 actually go into the cell that Mr. Hamman was held in?

14 A. You know, I do remember now. I do after reading it.
15 Yeah, I didn't -- from looking at it and looking on the inside,
16 I didn't think it went in there.

17 Q. But now after we start trial, are you changing that
18 opinion and saying you did think it went into the cell?

19 A. No.

20 Q. Okay. So you're staying by that, that it did not appear
21 to you that it goes into the cell?

22 A. From the outside looking in, yes. When I stood inside the
23 cell looking, I didn't see what I thought was an air
24 conditioning vent, you know, with the louvers on it and so on
25 and so forth, so I didn't think it went in there.

26 MR. SERAFIN: No further questions.

27 THE COURT: Redirect?

28 MR. MARCHI: Yes, just a couple.

REDIRECT EXAMINATION

Q. BY MR. MARCHI: Again, showing you Exhibit 39, from looking at that, did that appear that it might, in fact, go through into the cell just as you look at it from the outside, sir?

A. Yes.

Q. All right. Now, you went inside the cell; correct?

A. Yes.

Q. And let me find the picture we referred you to before. Showing you here Exhibit 29; based on what you saw outside the cell, did you expect to find some kind of box along the upper wall, some kind of a vent like before?

A. I expected to see an air conditioning vent. That's what I expected to see and I didn't see what I typically thought to be an air conditioning vent.

Q. However, you did see this little plate here; correct?

A. Yes.

Q. And did you actually stand up and have someone illuminate a light from inside the box to see if anything shone through this little vent we see in this Exhibit Number 29? Was that done in your presence?

A. No.

Q. Now, the one exhibit I did show you, 76, you do recognize as the same box in the previous exhibit; correct?

A. Sure.

Q. If I tell you that is illuminated with a flashlight from inside the box, then that might change your opinion, sir?

A. It might change my opinion.

1 Q. As to whether or not, in fact, air could get into that
2 room from that location?

3 A. Sure.

4 Q. You didn't know what that was; fair to say?

5 A. No, I did not.

6 Q. You didn't think it was any way connected to the vent we
7 see from outside the cell block, which the actual vent here in
8 line is in place?

9 A. That's correct.

10 Q. You thought it would be a straight shot through the wall
11 and not some little round thing in the ceiling?

12 A. Right.

13 Q. And most of the air-conditioning vents you're familiar
14 with, what do they look like?

15 A. They look like that. They look like that. That's what is
16 commonly known as a register in the air-conditioning vent.
17 Louvers, you can open and close them. I didn't recognize that
18 vent, if you call it that, on the inside as an air-conditioning
19 vent.

20 Q. And you don't actually know what the inside of the box
21 looked like on February 17th; correct?

22 A. That's correct.

23 Q. Because you didn't go in there?

24 A. Nope.

25 Q. But you do know what the front, this picture here looked
26 like?

27 A. Yes.

28 Q. And you do know what the top of the cell looked like, this
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1 exhibit up here I'm referring to as 39, and again you do know in
2 Exhibit 29, again that this plate was in place on the 17th?

3 A. Yes.

4 Q. That's all you can really testify to; is that right?

5 A. That's correct.

6 MR. MARCHI: Thank you.

7 THE COURT: Can I see counsel in chambers for just a
8 second?

9 (Bench conference held off the record.)

10 THE COURT: We are at the point where we do need to take a
11 break, and so are there any other questions at this point?

12 MR. SERAFIN: Not at this point. We'll wait to after the
13 break.

14 THE COURT: We'll take a 15-minute recess, and we'll
15 resume again at 10:20, and I remind you, it is your duty not to
16 converse among yourselves or with anyone else on any subject
17 connected to this case.

18 (Jury exits the courtroom at 10:04 a.m.)

19 THE COURT: All right. Go ahead and take a seat. We're
20 still on the record. The jury is not present. Counsel and
21 parties are present. As we discussed in chambers, there is a
22 limited evidentiary issue that is in dispute as to whether or
23 not the officer can be questioned regarding the statement of
24 Ms. Rugg and some things, admissions, that reportedly she made.
25 You're asking I defer ruling on that so you can further argue
26 it. That would require the officer to remain subject to recall.

27 Are there going to be any other questions for him or can I
28 excuse him subject to being recalled this afternoon or do you

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1 want him to come back after the break?

2 MR. SERAFIN: I believe since it is a short break, I just
3 have a couple of questions.

4 THE COURT: After the break?

5 MR. SERAFIN: After the break.

6 THE COURT: And you may need him to come back this
7 afternoon?

8 MR. SERAFIN: Depending upon the Court's ruling.

9 THE COURT: Are you available this afternoon?

10 THE WITNESS: Let me check my -- yes, I'm available.

11 THE COURT: There's a bit of evidentiary dispute that we
12 need to resolve.

13 MR. SERAFIN: Actually, your Honor, depending on the
14 ruling either way, we can probably use Detective Coe for the
15 same thing because he was there too, so I'm not going to make a
16 decision on it now, but the more I think about it there's
17 probably no reason to call him back.

18 THE COURT: But you do have a few more questions after the
19 break?

20 MR. SERAFIN: I do.

21 THE COURT: We'll see you back at 10:20.

22 (Recess taken at 10:08 a.m. Reconvened at
23 10:20 a.m.)

24 THE COURT: All right. We're back on the record. Go
25 ahead. Anything further on cross?

26 MR. SERAFIN: Now, that I've made him wait, no. I have no
27 further questions, Judge.

28 THE COURT: Anything further on redirect?

1 MR. MARCHI: No further questions.

2 THE COURT: All right. You are excused at this point

3 subject to being recalled, and do we have a number where we can

4 reach you?

5 THE WITNESS: Detective Coe has mine.

6 THE COURT: Okay. You're free to go at this point.

7 THE WITNESS: Thank you.

8 THE COURT: Your next witness?

9 MR. MARCHI: It would be Detective Dan Coe.

10

11 DANIEL COE

12 called as a witness on behalf of the People herein was sworn,

13 examined, and testified as follows:

14 THE COURT: You have already testified; right?

15 THE WITNESS: No.

16 THE COURT: I need you to please come forward, face the

17 clerk, and raise your right hand to be sworn.

18 THE CLERK: Do you solemnly state that the testimony you

19 shall give in the cause now pending before this court shall be

20 the truth, the whole truth, and nothing but the truth so help

21 you God?

22 THE WITNESS: I do.

23 THE CLERK: Please state your name and spell your last for

24 the record.

25 THE WITNESS: Daniel Coe, C-o-e.

26 THE CLERK: Thank you.

27 THE COURT: Go ahead.

28 ////

DIRECT EXAMINATION

1 Q. BY MR. MARCHI: Sir, by whom are you employed?

2 A. City of Auburn Police Department.

3 Q. And in what capacity?

4 A. I'm a detective.

5 Q. And how long have you been so employed, sir?

6 A. Little over seven and a half years.

7 Q. Has all your law enforcement career been with the Auburn
8 Police Department?

9 A. Yes, it has.

10 Q. And currently what are you assigned to, what unit, sir?

11 A. The investigations division.

12 Q. How long have you been doing that?

13 A. Total of little over four years.

14 Q. And calling your attention to March the 17th of 2003, were
15 you assigned to the detectives unit then, sir?

16 A. Yes, I was.

17 Q. And were you called into work early morning hours of March
18 17th of 2003?

19 A. Yes, I was.

20 Q. What time did you arrive at the police station?

21 A. I arrived sometime between 3 and 4 a.m.

22 Q. And where were you originally directed to, sir?

23 A. I originally responded out to the Auburn Faith Hospital to
24 interview the victim in this incident, Mr. Hamman.

25 Q. All right. That was the gentleman who testified in court
26 and identified himself as such, sir?

27 A. That's correct.

1 Q. So he was already in the hospital by the time you got
2 there?
3 A. Yes, he was.
4 Q. Did you notice any physical problems that he was having,
5 if any, at that point, sir?
6 A. He was noticeably shaking. He had several blankets
7 wrapped around his extremities, torso.
8 Q. All right. And at some point, sir, did you take some
9 photographs of Mr. Hamman?
10 A. Yes, I did.
11 Q. And when did you do that?
12 A. It was, I believe, the following day.
13 Q. And where was that done at, sir?
14 A. At the Auburn Police Department.
15 Q. Showing you Exhibit 58; do you recognize what is depicted
16 here, sir?
17 A. Yes, that's Mr. Hamman's right hand.
18 Q. Was he showing you something there, sir?
19 A. There's some injuries on his right thumb, the red marks.
20 Q. And showing you Exhibit 69, this again is still the right
21 hand, sir?
22 A. Yes. You see the injuries on his index finger right
23 there.
24 Q. All right. And similarly on Exhibit 60, which hand is
25 this?
26 A. That's his left hand injuries visible on his palm here,
27 here, and also on his pinky finger. Looks like right here on
28 his index finger, too.

1 Q. Okay. And then showing you Exhibit 61; what's depicted
2 here, sir?

3 A. That's his left hand, outer pinky, and you can see the
4 mark right there.

5 Q. All right. And according to Mr. Hamman, did he receive
6 these injuries somehow with the incident that occurred on March
7 15 through March 17 of 2003?

8 A. Yes. He advised me that he got those injuries trying to
9 dig out from the cell through the window. ✓

10 Q. And then showing you Exhibit 62, what are we looking at
11 here?

12 A. There's a bruise here. This would be his inner right
13 thigh. He advised me he was kicked in that area by ✓
14 Mr. Rodriguez.

15 Q. And this was the 18th of March when he told you that?

16 A. Yes.

17 Q. And this actually, the picture, is kind of cropped so we
18 only see the leg part; correct?

19 A. That's correct.

20 Q. And did you have a chance to look at that injury, sir?

21 A. I took that photograph.

22 Q. Okay. All right. And did you actually at some point on
23 the 17th, going back to that, sir, did you respond out to the
24 hall itself?

25 A. Yes, I did.

26 Q. What time of day did you do that?

27 A. It was later in the morning. After I had talked to Nick
28 Hamman, I returned back to the police department, conducted

1 interviews on both Shawn Rodriguez and Anna Rugg prior to going
2 out to juvenile hall. So it was probably, I would say, at least
3 8 o'clock in the morning on Monday, the 17th, before I got out
4 to the hall.

5 Q. And when you were there, was there a Sergeant Burns there?

6 A. Yes, there was.

7 Q. Do you know what his job was that day?

8 A. He was the supervisor during the graveyard shift starting
9 on Sunday, the 16th, and ending on Monday, the 17th at 7 a.m.
10 He was at the scene securing it along with Officer John Lloyd
11 who was also there keeping track of who was coming in and out of
12 the scene.

13 Q. And is part of Sergeant Burn's job to direct police
14 personnel to do certain things?

15 A. That's correct.

16 Q. Did he direct you to do anything, sir?

17 A. At that particular time I wasn't directed to really do
18 anything. I had gone out to the scene to get a better
19 understanding of what happened and look around the facility.

20 Q. All right. And showing you here Exhibit Number 1, this is
21 the diagram we have been looking at all trial of the inside of
22 the hall?

23 A. Correct.

24 Q. Did you walk inside the hall that day, sir?

25 A. Yes, I did.

26 Q. And you heard Mr. Hamman describe his route that he took
27 when Ms. Rugg let him in?

28 A. Yes.

1 Q. All right. And did you happen to go into those areas that
2 day, sir, on the 17th?

3 A. Yes.

4 Q. And could you show us what -- where you went that seems to
5 coincide with at least some of the areas the defendant said he
6 went?

7 A. Actually, I went through all the areas of the juvenile
8 hall that day, just looking around. I had access pretty much to
9 everything inside. All the doors were unlocked and open so I
10 could basically have free reign throughout the facility.

11 Q. All right. And so when you went in, were you able to go
12 in through the front staff door, sir?

13 A. Yeah. This staff door here is how we gained entrance
14 there. As far as my understanding from what I saw, it is the
15 only door that you could open that didn't require a key because
16 there was some doors in the back here, but you needed a key to
17 open them to gain entrance to the interior.

18 Q. All right. And do you see where this big black dot is
19 here, sir, right here?

20 A. This one?

21 Q. Yes. Is that also a doorway here?

22 A. There's a doorway there, yes.

23 Q. Was that doorway unlocked when you got there?

24 A. Yes.

25 Q. So it was open. Did you actually go around to the left
26 over here to what appears to be another door, sir?

27 A. Yes, I did.

28 Q. And was there a door that was open there, sir?

1 A. Yes.

2 Q. And did you continue around over here to the left and go
3 through this doorway?

4 A. Yes, I did.

5 Q. And again was that doorway unlocked?

6 A. Yes.

7 Q. And then coming around did you come around to this
8 doorway?

9 MR. SERAFIN: Objection; leading. Can we have the officer
10 say where he went?

11 MR. MARCHI: Okay. That's fine.

12 Q. Show us where you went.

13 A. As I said before, I went through all the rooms. If you're
14 asking about the route that Mr. Hamman told me that he went, he
15 came in through the staff door here, made a left through the day
16 room through a door leading to this hallway into the school
17 office, into the booking area, and then eventually into the
18 cell. And all those doors were open and accessible when I was
19 walking through that morning.

20 Q. All right.

21 THE COURT: Could I ask, when you say "open," are you
22 saying unlocked or are you saying ajar?

23 THE WITNESS: I didn't have to open any doors. They were
24 all open.

25 THE COURT: By that do you mean ajar? In other words, the
26 door was wide open?

27 THE WITNESS: The doors --

28 THE COURT: Or are you saying the doors were unlocked?

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1 THE WITNESS: The doors were wide open.

2 Q. BY MR. MARCHI: In that regard you did attempt to
3 interview Mr. Hamman at the hospital on the 17th?

4 A. Correct.

5 Q. And how was he feeling the first day, sir?

6 A. He was a little hard to follow. Shivering, cold. His
7 statement was a little erratic.

8 Q. That was at the hospital?

9 A. That was at the hospital.

10 Q. Did you interview Mr. Hamman the next day?

11 A. Yes, I did.

12 Q. And where was that done at?

13 A. That was done at the Auburn Police Department.

14 Q. On the 18th?

15 A. Yes.

16 Q. And how did he physically appear that day?

17 A. He appeared normal. He was in his clothes, came in,
18 wasn't shivering. Everything appeared to be fine.

19 Q. And the route that was described to you on March the 18th,
20 is that the same route you just traced for us here today? ✓

21 A. That is what he described to me a few weeks ago when I
22 contacted him out at the Placer County Jail.

23 Q. Were there any differences between the 18th and a few
24 weeks ago, sir?

25 A. When I talked to him on the 18th, I didn't ask his exact
26 route, which way he came into the hall.

27 Q. All right. When you talked to him a few weeks ago, who
28 told you what route was taken, sir?

1 A. He did, Mr. Hamman.

2 Q. And did he use this diagram in doing that, sir?

3 A. Yes, he did.

4 Q. Now, as far as the actual physical gathering here at the
5 hall, you left that up to Dale Hutchins, Detective Dale
6 Hutchins, sir?

7 A. Yes. I was responsible for conducting interviews and
8 didn't collect any evidence either at the hall or from the
9 vehicle.

10 Q. Now, recently, sir, actually last week, did you attempt to
11 go back to the hall and retrace the steps Mr. Hamman told you
12 about three weeks ago?

13 A. Yes, I did.

14 Q. So you actually got into the inside of the hall?

15 A. Correct.

16 Q. And were there some differences in the hall when you got
17 there?

18 A. All the doors had been removed from the hinges.

19 Q. Okay. Did you still recall the route that you had gone
20 through that the victim described three weeks ago, sir, when you
21 went in there?

22 A. I did retrace the route that he explained to me.

23 Q. And was this the same area you had also walked on the 17th
24 of March?

25 A. Yes. I had walked that area, among other places.

26 Q. I'm going to show you what's been marked Exhibit 77, and
27 do you recognize what's depicted here, sir?

28 A. Yes, I do.

1 Q. What are we looking at?

2 A. That would be the little hallway. Once you enter the
3 front entrance door looking into the diagram, the big area in
4 the back is the day room.

5 Q. Now, there's a door visible to the right here, sir?

6 A. Correct.

7 Q. That was off the hinges?

8 A. Correct. It was leaning against the wall.

9 Q. Was that on the hinges on the 17th of March?

10 A. Yes, it was.

11 Q. And was it in an open condition as we view it here?

12 A. It was open.

13 Q. All right. Showing you Exhibit 78, what are we looking at
14 here, sir?

15 A. That's standing in the back of the day room. The opening
16 on the left leads out through the front entrance door.

17 Q. Could you use the pointer, please?

18 A. This leads out to the outside, the door we were able to
19 access.

20 Q. Is that the door we just looked at in the previous
21 exhibit?

22 A. That's correct.

23 Q. Okay.

24 A. This entrance here leads into the back hallway and also
25 into the cell area or the booking area of the old juvenile hall.

26 Q. All right. And what is the area with the windows there,
27 sir?

28 A. This is an office where they used to just -- the front

1 office where they would stay and keep an eye on things.

2 Q. And showing you Exhibit 79, what are we looking at here,
3 sir?

4 A. This would be in the last pictures, the opening on the
5 right, this would be looking down that upper hallway commonly
6 known as where all the male inmates were housed at the hall.

7 Q. And, of course, we see all the doors in an open condition
8 today; correct?

9 A. That's correct. They were, however, on their hinges at
10 the time on the 17th.

11 Q. Were they open or closed at that time?

12 A. To the best of my knowledge, all the doors were open.

13 Q. And then showing you Exhibit 80, what are we looking at
14 here, sir?

15 A. This would be standing in that hallway depicted in the
16 last picture looking into what used to be the school office and
17 this would be the office area, and then this room back here
18 would be the actual classroom area where they -- where the
19 juveniles had class during the day. And this opening here, this
20 leads into the booking area.

21 Q. So there's actually two doors, one straight back and one
22 to the left, sir?

23 A. There's actually one to the far right, which I believe is
24 open, if I remember correctly.

25 Q. The one to the far left that leads to the booking area on
26 the 17th, was that open when you went there?

27 A. Yes, it was.

28 Q. It was both unlocked and in an open position?

1 A. Correct.

2 Q. And showing you Exhibit 81; what does this show us, sir?

3 A. This was taken from inside that school office area looking
4 into the booking area. This door here is the actual door that
5 was on the holding cell where Mr. Hamman was confined and this
6 is the shelf, bookshelf, that was lying on the ground and then
7 this is the exit door leading to the sally port area.

8 Q. Now, this picture was taken just last week; correct?

9 A. Correct.

10 Q. Is that how you found the door in the open position as we
11 see it there on the 17th?

12 A. Yes, it was open.

13 Q. Let me show you Exhibit 36, Detective Hutchins just
14 testified that this picture was, in fact, taken on March 17th;
15 do you recall that testimony?

16 A. That's correct.

17 Q. Does this show basically the same view that we saw in the
18 very last exhibit that you were looking at?

19 A. Just a little more close up, correct.

20 Q. To the left, what door is that one, sir?

21 A. Around to the left here would be the holding cell. This
22 door here leads into the office where this picture was taken.
23 And then if you go around the corner from here is where the
24 holding cell is.

25 Q. And the holding cell door, that swings the other way, sir?

26 A. Correct.

27 Q. Now, showing you Exhibit 72, what are we looking at here,
28 sir?

1 A. This would be just coming into the booking area and this
2 doorway here would be the holding cell, and you can see that the
3 door has been removed from the hinges, obviously.

4 Q. So that's the actual holding cell right there with the
5 door removed?

6 A. Right. And the countertop is in the booking area and this
7 door leads into the day room. This door here leads into the
8 main office.

9 Q. With the exception of that door being removed, does it
10 otherwise appear similar to what it did on the 17th, sir?

11 A. Yes.

12 Q. In fact, do you see some toilet paper?

13 A. Yeah, toilet tissue is still there.

14 Q. And you pointed that out in this exhibit?

15 A. Correct.

16 Q. Number 72. Okay. And showing you finally 73, what are we
17 looking at here, sir?

18 A. That is standing in the booking area looking directly into
19 the holding cell.

20 Q. All right. With the door missing last week, but was in
21 place on the 17th?

22 A. Correct.

23 Q. Okay. Now, going back to 1, those series of pictures,
24 does that correspond to the route that you showed us Mr. Hamman
25 described?

26 A. Correct. Start with the little hallway here. Then I
27 stood back here. You can see this opening and this opening.

28 Then I stood here, took a picture of the hallway. Then I stood

1 here in the hallway taking this photo. Then I stood here taking
2 this photo. And I stood here, here and --

3 Q. In the booking area?

4 A. In the booking area.

5 Q. All right. Now, in a moment, Officer, we're going to play
6 a tape and did you have an occasion to interview Mr. Rodriguez
7 on December 17th of -- excuse me, on March the 17th of 2003?

8 A. Yes, I did.

9 Q. And the person known to you as Shawn Rodriguez, is he in
10 the courtroom?

11 A. Yes, he is.

12 Q. Where is he seated at and what is he wearing?

13 A. Sitting next to counsel with a long sleeve, blue shirt, no
14 tie, blond hair.

15 MR. MARCHI: Can the record reflect identification of the
16 defendant?

17 THE COURT: Yes, noted for the record.

18 Q. BY MR. MARCHI: You're familiar with the tape and the
19 contents of it; correct?

20 A. Yes, I am.

21 Q. The tape quality itself, are there some interference with
22 the transmission of it?

23 A. Yes, there was. We had a new system in there and we found
24 out that sometimes when officers would come in to look in on the
25 interview behind the one-way mirror, their radio would interfere
26 with the frequency, so there's a couple of spots in the tape
27 that are kind of scratchy, actually rather scratchy.

28 Q. But you were present throughout the whole interview?

1 A. Yes, I was.

2 Q. And was Detective Hutchins also present?

3 A. Yes, he was.

4 Q. And despite a few scratchy spots, is there anything
5 material that was obliterated because of that, sir?

6 A. No.

7 Q. And basically just to kind of give some meaning here, does
8 the tape itself kind of break itself down into, shall we say,
9 two stories?

10 A. Yes, it does.

11 Q. So initially what happens, sir?

12 A. Well, initially when I spoke to Mr. Rodriguez, he gave me
13 a story and then about halfway through the interview he said,
14 hold on. I'm going to tell you what really happened, and then
15 kind of gave a different variation of the story, changing a
16 couple of facts.

17 Q. All right. And there's also one area of omission
18 involving a club, sir, that is on the tape. Can you tell the
19 jury just so they will know, was some sort of club referenced as
20 a possible item that might be used by the parties here?

21 A. Yes. There was a spot where, like, a billy club type item
22 was omitted from the tape. I believe Detective Hutchins
23 mentioned it in his testimony, too, that it was found in the
24 car.

25 MR. MARCHI: All right. At this point I'm going to go
26 ahead and play the tape. I do have a transcription for
27 everyone, your Honor, so I would ask the jury be allowed -- we
28 have had one marked.

1 THE COURT: Can I see counsel before you do that?

2 MR. MARCHI: Sure.

3 (Bench conference held off the record.)

4 THE COURT: Would you mark that next in order?

5 JUROR 230076278: Your Honor, could I move right there? I
6 can't see.

7 THE COURT: Absolutely. And actually if you would like to
8 move up closer, if that's a bad spot for you, too, you can do
9 that.

10 (Exhibit No. 85
11 was marked for identification.)

12 Q. BY MR. MARCHI: If I might ask another question here.
13 Before we get started, Detective Coe, you did have someone
14 transcribe part of this tape as best they could, sir?

15 A. That's correct.

16 Q. And someone from my office, and there are some things that
17 are not quite accurate that you can hear differently?

18 A. Yeah. And in all interviews we do, there's parts where it
19 is low audible or someone talks too fast where you can't pick
20 out exactly what they say, so you will see spots on here where
21 it says "unclear," which is we couldn't decipher what exactly
22 they said.

23 Q. There are some things that you can decipher that the
24 secretary got a little bit wrong?

25 A. That can be true.

26 Q. You're asking that we use it as a good --

27 A. Yes.

28 JUROR 230024581: Can we write on this?

1 THE COURT: Are we going to be re-collecting these?

2 MR. MARCHI: I've done it both ways.

3 THE COURT: My suggestion would be since you're indicating
4 that there are parts where the transcription may not be accurate
5 and if you're listening along and you hear something that is not
6 consistent with the transcript, you could write on the
7 transcript and that would be my suggestion if both counsel
8 agrees.

9 MR. MARCHI: I have no objection.

10 MR. SERAFIN: That's fine.

11 THE COURT: We also -- there is a stipulation that my
12 court reporter does not need to transcribe what she's hearing on
13 the tape. Other than if anyone else says anything, she will
14 take that down; is that correct, Counsel?

15 MR. SERAFIN: Yes.

16 THE COURT: People stipulate?

17 MR. MARCHI: Yes, your Honor.

18 THE COURT: And would you prefer to have the lights dimmed
19 a bit? Is it easier to see if the light is dimmed?

20 MR. MARCHI: That probably would be helpful.

21 Q. All right. At this time, Officer, I am going to start the
22 tape. There may be a couple of spots that I may pause it and
23 ask you a couple of questions, kind of relevant, but outside the
24 tape area. (Playing videotape.) I'm going to try to adjust the
25 volume here.

26 Now, some of that is the transmission interference you're
27 referring to?

28 A. That's correct. We did not know it happened until

1 afterwards.

2 Q. Do you recall what area was being discussed at that point,
3 if you recall?

4 A. He was telling me about all of them going to his foster
5 brother's house in Sacramento.

6 Q. So it was still surrounding those events that you can't
7 hear?

8 A. Correct. (Playing videotape.)

9 Q. Stopping the tape there, Detective. Mr. Rodriguez is
10 actually describing to you cutting a pipe, apparently, leading
11 into the cell, the holding cell area, sir?

12 A. That's what I got from it.

13 Q. Showing you Exhibit 38 here, same photograph I showed
14 Detective Hutchins, was there any pipe that you saw on the 17th
15 or even recently that appeared to be some sort of pipe going
16 directly into the cell room where the sprinkler was exposed,
17 sir?

18 A. No.

19 Q. And going back here to Exhibit 30, that's the actual
20 ceiling, is it not, of the cell?

21 A. Yes. There's an area in the cell that drops down a little
22 bit. That sprinkler is attached to that.

23 Q. And then showing you 29, is this another view of the same
24 thing, sir?

25 A. Yes.

26 Q. All right. And so did you find any visible pipes inside
27 or outside, sir, that could be cut?

28 A. No.

1 Q. And so later on in the tape we actually hear something
2 about a hose and a different reason for the duct tape; do we
3 not, sir?

4 A. Correct.

5 Q. At this point there was no mention of the hose found in
6 the trunk; correct?

7 A. That's correct.

8 Q. All right. And we're not yet at the point where the
9 defendant says, "Okay. This is going to be the real story";
10 correct?

11 A. That's correct.

12 Q. Continue here. (Playing videotape.)

13 Let me pause the tape there. Basically every defendant
14 has a right to remain silent and can invoke that at any time;
15 correct?

16 A. That's correct.

17 Q. You're now clarifying whether he wanted to stop talking
18 altogether?

19 A. I wasn't sure whether he wanted to stop questions
20 altogether or about the topic we were talking about which was
21 the duct tape.

22 Q. Right. And you didn't know anything about what was in the
23 trunk at that point?

24 A. No, I hadn't looked in the vehicle.

25 Q. That's what Dale Hutchins did?

26 A. Correct.

27 Q. All right. (Playing videotape.) I believe that's about
28 where we left off. (Playing videotape.)

1 All right. Now, Detective, at this point Mr. Rodriguez
2 has just denied the making up the story about the sex
3 registration situation?

4 A. Correct.

5 Q. When the real story comes out, does he change that again,
6 sir?

7 A. Yes, he does.

8 Q. And says that was, in fact, a made-up story?

9 A. Correct.

10 MR. SERAFIN: Your Honor, before we continue, I'd like to
11 clarify something. I didn't catch the bottom of 236 where it
12 starts with --

13 MR. MARCHI: 236?

14 MR. SERAFIN: Well, might be page 5 where it says, "Where
15 is Erin now? Where is Erin at now?" I don't know if I just
16 missed it.

17 MR. MARCHI: I might have skipped over it. We can go
18 back.

19 THE COURT: We should all go back to page 5. I think when
20 you left off it was at, "Do you want me to stop questioning
21 you?"

22 Q. MR. MARCHI: We're almost there. We're on page 6, I
23 believe now. Okay. This is the part where he wanted to start
24 over again that we discussed previously?

25 A. Yes.

26 Q. And then there are some differences?

27 A. Some differences and also some similarities.

28 Q. All right. (Playing videotape.) That's the part we

1 discussed earlier, Detective Coe, where there's a discussion of
2 using a club on the victim?

3 A. That's correct.

4 Q. And there is some interference here, obviously. (Playing
5 videotape.) Again that interference had to do with getting the
6 club, sir?

7 A. Correct.

8 (Playing videotape.)

9 MR. MARCHI: Do you want to take the noon recess?

10 THE COURT: All right. Ladies and gentlemen, we will
11 recess for the noon hour. You are reminded it is your duty not
12 to converse among yourselves on any subject connected with the
13 case, not to form or express any opinions on the case until it
14 is submitted to you after you heard all the evidence, and we
15 will recess until 1:30. See you back at 1:30.

16 (Jury exits the courtroom at 12:08 p.m.

17 The following proceedings took place
18 outside the presence of the jury.)

19 THE COURT: For this afternoon, can you give me some idea
20 where we're going? Detective Coe will finish testifying and
21 then do you have any other witnesses for this afternoon?

22 MR. MARCHI: Yes. There could well be someone from the
23 County regarding the juvenile hall building itself.

24 THE COURT: Okay.

25 MR. MARCHI: And I don't know yet whether I'll call Jane
26 Expoleous to talk about the prints or not. I don't know if they
27 were usable, but that may be an additional and whatever is left
28 of Detective Coe.

1 THE COURT: The evidentiary issue we talked about, if that
2 goes forward, you're going to address that through Detective
3 Coe?

4 MR. SERAFIN: That would be fine.

5 MR. MARCHI: Before we do that, I would like a chance to
6 look up the law. I think it is back at my desk.

7 THE COURT: Do you want to be back here at 1:15 so we can
8 discuss that?

9 MR. SERAFIN: Sure.

10 THE COURT: Before you leave if you just come in to
11 chambers so I can tell you what my research has shown so far,
12 and then we can do the argument on the record at 1:15.

13 MR. MARCHI: And we're actually progressing pretty
14 quickly. If I haven't got a definitive answer from the County,
15 I would like to keep my case in chief open in order to cover
16 that. This kind of came up as the last minute as you saw Dale
17 Hutchins overlooked the fact that it appeared a vent inside.
18 When we looked at it last week, there didn't appear to be
19 anything removed from inside. There were no bolts or nuts or
20 anything, but we wanted to find the appropriate County
21 authority. They have taken some of the doors off and that sort
22 of thing. Before I finish my case in chief, I want to verify
23 one way or another whether that vent has been changed.

24 THE COURT: That is your last witness?

25 MR. MARCHI: Detective Coe would be, unless I call Jane
26 Expoleous, and then whoever from the County would be.

27 THE COURT: So we're getting close to the end?

28 MR. MARCHI: Yes, we are.

1 THE COURT: From what I understand your request is, is if
2 you decide you want that County person, they're not here today.
3 You would want to recess early and start with them tomorrow
4 morning. Is that what you're saying?

5 MR. MARCHI: Preferably.

6 MR. SERAFIN: Judge, we have to take another issue then.
7 I'll object to any new witnesses. I don't see it as being a
8 rebuttal witness. I see it as being a fairly important factual
9 discrepancy in the case, one that the prosecution presented, in
10 police reports that were given to me, and I then turned around
11 and presented it in opening argument so then after I opened,
12 based upon what is told to me by the prosecution's witnesses in
13 discovery, to then come and bring up new witnesses that are
14 going to contradict what I opened with, I think is highly
15 inappropriate and, you know, based upon lack of discovery and
16 not speaking to these witnesses, never having a chance to talk
17 to them, I would object to them coming in.

18 MR. MARCHI: I might add I made the same mistake in my
19 opening argument. In fact, I even had the apparent possibility
20 instruction so this was not discovered until Detective Coe went
21 and I went over and made one last look at it. We were also
22 looking to see about the route in question, again, that
23 Mr. Hamman described, so we were just as surprised as anyone.

24 I did call Mr. Goodrich from counsel's office last
25 Thursday and got a hold of him. Well, actually I called
26 Mr. Serafin on Thursday. He was not in. I called Mr. Serafin
27 on Friday. I got a hold of Mr. Goodrich because Mr. Serafin was
28 ill. According to Mr. Goodrich, they already knew that the

1 whole thing vented into the cell.

2 MR. SERAFIN: That's absolutely correct. I said it every
3 time.

4 THE COURT: I need you both to stop.

5 MR. MARCHI: So --

6 THE COURT: Stop. We have not been on the record, I
7 believe, before on this issue. And so --

8 MR. MARCHI: I think that's correct.

9 THE COURT: You need to make it clear for the record and
10 for me what I believe you're talking about is just recently you
11 have -- it is your belief that you have discovered that in point
12 of fact the vent that is over the cell door does, in fact, vent
13 into that room; is that correct?

14 MR. MARCHI: Yes. I'm sorry I didn't make that clear.

15 THE COURT: It would be your request that you have a
16 witness that would be a juvenile hall maintenance person of some
17 sort who would testify that in point of fact it does vent into
18 that room in some fashion; is that correct?

19 MR. MARCHI: Well, actually, Detective Coe can testify to
20 that. What I need from the hall personnel is to verify whether
21 or not anything has been removed from inside of the actual vent
22 itself. These are the new photographs that I had marked and
23 that's what they show. I only showed Detective Hutchins the one
24 from inside because that's all he really saw and could testify
25 about, which also appeared on one of the old photographs, the
26 vent that is actually inside the cell.

27 THE COURT: So it is your belief that Detective Coe can
28 testify that he's been able to trace the source from the vent

1 over the door all the way through into the holding cell?

2 MR. MARCHI: He did, in fact. That's what Exhibit 73
3 shows, the outside. Detective Coe, himself, personally popped
4 himself inside the vent, took this photograph 74, which shows --
5 actually, that's like the top where it goes down into the cell,
6 and then took 75, which actually is the actual vent that you see
7 from the other side in 76, which is the same one that Dale
8 Hutchins did see in another photograph back in 75. So the only
9 thing I'm waiting on is to verify that nothing has been changed
10 inside of that box, and I only need only one County person. I
11 had Gene Shorely working on this since yesterday.

12 THE COURT: Okay. So I understand what you're saying is
13 that Detective Coe would testify that he just went and traced
14 the vent, from vent to vent, and is prepared to testify that it
15 is unobstructed, the vent over the door into the holding cell,
16 and that any kind of a gas that would be put through the vent
17 over the holding cell door would have made its way into the
18 holding cell?

19 MR. MARCHI: That's certainly the inference. What we do
20 is shine a light and show it goes through.

21 THE COURT: The inference being the gas would have gone
22 through. The person from the juvenile hall staff would only be
23 there to testify that they haven't done anything to that vent
24 since March 17?

25 MR. MARCHI: Correct, and that's what I'm trying to
26 verify.

27 THE COURT: Now, it is the defense argument that this is
28 too late, that the whole tenor of the case from the beginning

1 has been that that vent didn't go anywhere near the holding
2 cell. It was above the holding cell, but it didn't actually
3 vent into the holding cell; and, therefore, the gas, whatever
4 gas may have been put into that hole, did not get into the
5 holding cell; is that correct?

6 MR. SERAFIN: Correct. It is one thing to bring -- to
7 have the officer change his opinion. I can -- certainly I had
8 at least some notice of the officer's first statement. There's
9 some impeachment issues there. I can cross-examine on those
10 issues. That is shaky, but that's my job to cross-examine on
11 why that is shaky. I understand that.

12 However, to bring in a brand new witness I wasn't notified
13 of before and we have had no chance to interview beforehand, and
14 that is a fairly relevant fact and that is something that could
15 conceivably change the whole outlook to the case, and then you
16 go and you pin it in your opening and argue it, then to bring in
17 that new witness that is undiscovered, that's what I object to.

18 THE COURT: All right. I see two issues. The first issue
19 is as to what Detective Coe would testify to, and I'm not
20 hearing an objection to that. The second issue, although
21 presumably you might argue it has been changed.

22 MR. SERAFIN: Correct.

23 THE COURT: And that's not as accurate as one would think.
24 But the second issue has to do with who this person would be
25 from the juvenile hall or the maintenance staff, and I think
26 what I would have to do at a limited thing would be have a 402
27 hearing to see exactly what they would say. There's two issues.
28 One is the lateness of it, and number two is the reliability of

1 it. And I think the defense has an argument that they will have
2 no ability, assuming I allow it, they will have no ability to go
3 out now and verify that this guy knows what he's talking about,
4 so we will have to do a 402 hearing, and I will decide whether
5 or not I will rule on that.

6 I guess it would be helpful for me to know exactly what
7 you each feel is the relevance of the evidence because it
8 strikes me that a lot of very skilled people, since March 17th
9 on, have thought that didn't vent into the room. And so
10 officers have looked at it. We had officers testify none of
11 whom thought that it vented into the room, and so what the
12 defendant may or may not have known, we don't know, but the
13 reality of whether it did or did not vent into the room, I'm not
14 sure I track the significance of the issue.

15 MR. MARCHI: Well, you know, it is true that the apparent
16 possibility is sufficient. The fact that it actually did and
17 does, I think, is even more significant. It has some degree of
18 significance in that not only is it just apparently possible,
19 but it actually could well have happened and some gas could have
20 gone in there. It just goes to the intent, to the degree in the
21 attempted murder. I agree with you the apparent possibility, it
22 is still that. They're hooking the hose up assuming that it is
23 going in there. On the other hand, they're saying they're
24 surprised, but they knew about this. I did not. Apparently
25 Martie, from their office, went out there and looked at this
26 before I did about two months ago. And Mr. Goodrich claims they
27 already knew this. This was a fact that was a surprise to me
28 because as you heard Dale Hutchins, he did not actually climb

1 up. He took the vent cover off, but he didn't climb up and look
2 inside.

3 THE COURT: Let me ask the defense what is the distinction
4 in your mind between the apparent possibility and the actual
5 ability; is there a significant difference?

6 MR. SERAFIN: I am going to answer that, but I do want to
7 clarify for the fifth time, I know nothing about how air
8 conditioning goes and my sole basis of making my argument was
9 the fact that the police, or whoever investigated this case,
10 concluded the vent didn't go into the room. I had no knowledge
11 of that at all. I want that to be absolutely clear about that.
12 That being said, I do think it is relevant. It is not
13 dispositive. I agree with your Honor. Clearly it doesn't, you
14 know, you -- the apparent possibility is the issue. Understood.

15 However, clearly it is logical if you're making an
16 argument to a jury that a person only did an act because they
17 knew it wouldn't work, the fact that it indeed couldn't work is
18 clearly relevant. It clearly is something that any logical
19 person is going to factor in their mind.

20 MR. MARCHI: Can I make one quick comment? On the tape
21 the only thing the defendant says why he didn't think it would
22 work even though he asked whether the man was dead or not --

23 THE COURT: I get it.

24 MR. MARCHI: Was the 15 minutes, nothing to do with --

25 THE COURT: I got it. I get it.

26 MR. MARCHI: Thank you.

27 THE COURT: Before you leave, I will want to see both of
28 you in chambers, and we will go back on the record before 1:30.

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(Lunch recess taken at 12:21 p.m. to
reconvene at 1:30 p.m.)

(Nothing omitted.)

--oOo--

1 AUBURN, CALIFORNIA

2 TUESDAY, SEPTEMBER 23, 2003, 1:20 P.M.

3 --oOo--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --oOo--

18 (The following proceedings took place
19 in open court outside the presence of
20 the jury.)

21 THE COURT: All right. We're back on the record. The
22 jury is not present. Counsel and parties are present. The
23 issue we were going to discuss at this point is Ms. Rugg's
24 statement; is that correct?

25 MR. SERAFIN: That's correct.

26 THE COURT: I have taken an opportunity to read the
27 transcripts of her interviews. There were two of them, but I
28 couldn't tell the date of the second one.

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1 DETECTIVE COE: I can get this for you.

2 THE COURT: Well, was it a couple days later or weeks
3 later.

4 DETECTIVE COE: March 18th, your Honor.

5 THE COURT: So it was the next day.

6 DETECTIVE COE: At 5:20 in the evening.

7 THE COURT: Did she ask you to come back?

8 DETECTIVE COE: She had called and left a message for me
9 to come talk to her at the jail.

10 THE COURT: Well, as we discussed in chambers what the
11 Court -- let me take it back a step. It is my understanding
12 that the defense is seeking to question Detective Coe regarding
13 statements that Ms. Rugg made in her interviews with the police
14 on both on 17th and the 18th in which apparently she indicates
15 that the defendant did not shut the door, and that she was the
16 one that shut the door and also on the issue of the fact that
17 she had obtained the keys from the victim prior to the victim
18 being locked in the holding cell. The issue then is whether or
19 not that is a -- if there is an exception to the hearsay rule
20 and the exception that has been presented by the defense is
21 declaration against interest.

22 The Court has taken a look at the code section. The first
23 requirement is she be an unavailable witness and she is an
24 unavailable witness by operation of law. The second issue would
25 be whether or not the defense can present the statement of a
26 declarant which would tend to be an inculpatory statement for
27 her but would provide exculpatory evidence for the defendant.
28 The defendant can do that but the issue is that the statement

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1 be -- the trustworthiness of the statement, and so that's what
2 the Court has been doing. I've been looking at the statements
3 to see whether or not under all of the circumstances of the
4 statement, the purposes of the statement, whether they have
5 trustworthiness attached to the statements. My recollection now
6 in reading both her first statement and her second statement,
7 twice she says that the defendant did not shut the door and that
8 she shut the door, but on one occasion she does say the
9 defendant kicked the door closed. But all of those are related
10 to her story which is that the victim was sexually molesting
11 her, and she never really changes that. She varies on theme,
12 but her theme seems to be that the victim was harassing her,
13 touching her, and that somehow then he got shoved into the
14 holding cell, whether she did it or the door was kicked shut by
15 the defendant. So it seems to me on two occasions she said she
16 did it and Shawn had nothing to do with it, and on one occasion
17 she said he kicked it shut. So she has two different stories,
18 but the real question is whether or not the whole statement is
19 trustworthy. So I'll hear from the People first.

20 MR. MARCHI: Yes. I reviewed Mr. Rodriguez's and
21 Ms. Rugg's transcript over the lunch hour and again I did find
22 as the Court has pointed out she did indicate in the context of
23 the sexual battery of the closing of the door. The defendant,
24 on the other hand, on page 11 of the transcript of the tape we
25 just heard, he repudiates his initial story that there was any
26 sexual conduct. In the initial story of sexual conduct, he
27 admits to actually going inside the cell and hitting the victim
28 and backing out, almost getting locked in. But on page 11 he

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1 retracts and indicates:

2 (Reading) "You know, when we got" -- he
3 states that "they had planned to rob the
4 guy, and he was going to tag along."

5 Let me see if I can pick this up a
6 little cleaner here. "When we got to
7 the juvenile hall, Nick was going to an
8 AA meeting. We flagged him down. She
9 told me the night before she wanted to
10 rob him. I said, 'Well, you know, I'm
11 not going to beat the guy down or
12 nothing, but I'll tag along.' We got to
13 the hall. She told me and Erin to go
14 outside, get the other bags. Told Nick
15 she wanted to talk to him. She got the
16 keys from him, took him into the holding
17 cell and said, 'Come over here. I want
18 to show you this.' I could hear it
19 because I'm walking outside. I heard
20 the door slam. Then I heard it slam
21 again. Then I heard Nick say, 'Anna,
22 come off it.'"

23 (End of reading.)

24 He follows that statement up on page 18. He's asked by
25 Detective Dale Hutchins:

26 (Reading) "Did anyone tell him if he
27 didn't give up the ATM card and the
28 money that you guys were going to drown

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him?"

The answer from Mr. Rodriguez was, "No, that was -- that was never said. Those threats, that was never made. The threat that was made was that if he didn't give us the ATM card and it was a bluff, we hoped he did call it, was that we were going to call the police and report a sex offender in there that had tried to commit a sex offense and they had gotten locked in there. And we told him, the six of us, that were going to corroborate the story and he was going to go back to the joint."

(End of reading.)

In addition, there are a couple other spots in the transcript of Mr. Rodriguez where he talks about, "We put him in the cell." And that's on page 11.

THE COURT: Oh, I'm very aware of the fact that Ms. Rugg is saying in her -- the two times where she says Shawn had nothing to do with it, at no point in Mr. Rodriguez's statement does he verify that. He never says that he had nothing to do with getting him in the holding cell.

MR. MARCHI: And he actually does affirmatively, you know, at least from the context indicate that he was involved in putting her in the cell (sic). When he talks about getting caught and then Shawn Rodriguez and Anna Rugg or going to get blamed for pushing him in there and robbing him, words to that

1 effect.

2 MR. SERAFIN: What page are you on there?

3 MR. MARCHI: I think the first one is on page 11.

4 THE COURT: What are you looking for?

5 MR. MARCHI: I have it tabbed here. I'm looking for the
6 indication where he indicated that we put him in there. It
7 appears twice.

8 THE COURT: Well, I don't think I really need to see that.

9 MR. MARCHI: Okay.

10 THE COURT: I don't quarrel with the People in the fact
11 that what Ms. Rugg is reportedly saying in her statement on at
12 least two occasions that being that she pushed him in the cell
13 by himself, that at no time does Mr. Rodriguez ever verify that.
14 His statement is entirely different.

15 MR. MARCHI: Yes. And in at least two or three times he
16 says he does in some fashion does push.

17 THE COURT: Right.

18 MR. MARCHI: The only other comment I have from -- if you
19 look over all the tenor of her statement, she basically does try
20 to push off all the blame on Mr. Rodriguez.

21 THE COURT: I noticed that.

22 MR. MARCHI: She does kind of put the whole thing as if
23 the assault, she's sexually assaulted, like it was not
24 preplanned whereas Mr. Rodriguez does finally admit they had a
25 plan so I think it is unreliable when you look at all that.

26 THE COURT: Let me hear from the defense.

27 MR. SERAFIN: Most of the statement, it is pointing at
28 Shawn Rodriguez. In this particular -- these two aspects, most

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1 notably the one where she says she locked him in the cell, it is
2 only incriminating herself. Whether it is in context of a story
3 of sexual assault, whether or not that story of sexual assault
4 is true or not, regardless, she is still incriminating herself
5 by saying for some reason she locked him in the cell. It had
6 nothing to do with Shawn. There is no reason she would make
7 that up. I mean, we're talking about reliability. She has
8 nothing to gain by adding that one line. Obviously by adding
9 these things about he sexually assaulted me, that is for her own
10 benefit. Certainly if I was trying to admit that statement and
11 I thought about bringing up that statement to impeach Nick, it
12 would be relevant to my case. There's no reliability there
13 because that is not a statement against her interest. That is a
14 statement supporting her interest, but the statement, Shawn had
15 nothing to do with locking the door, in any context there's no
16 reason for her to make that up or to lie and to bring in
17 anything that Shawn said, you know, later in questions where he
18 made a reference to "we," that's clearly taken out of context.
19 It is clear he's talking about how we are in trouble and "we,"
20 meaning both of us, are going to be linked to this because I
21 didn't do anything to stop it, and I'm right there at the scene
22 and it is pretty clear, he's adamant even while he makes candid
23 admissions, he's pretty adamant that he had nothing to do with
24 the original locking in the cell. And so I just don't see
25 anything that points towards there being unreliability to this.

26 THE COURT: All right. I think the law is correctly
27 stated that a statement tending to expose the declarant to
28 criminal liability and offered to exculpate the accused is not

1 admissible unless corroborating circumstances clearly indicate
2 the trustworthiness of the statement. Having reviewed all of
3 the statements, both Mr. Rodriguez's statement and Ms. Rugg's
4 two statements, I cannot find that to be true. I cannot find
5 that it is clearly under all of the corroborating circumstances
6 that it clearly indicates the trustworthiness of the statement.
7 What I'm looking at is the fact that it would appear to be
8 Ms. Rugg's story that this all was precipitated by an unplanned
9 event where she was sexually harassed by the victim and that
10 caused him to suddenly be pushed into the holding cell. That
11 story is not consistently corroborated.

12 In order for that story to play out, it would be
13 consistent that she would be the one that shoved him in there
14 instead of the defendant. Therefore, the Court cannot find it
15 is properly admissible.

16 The second issue was whether or not the statement would
17 come in about the key. I'm less concerned about that. That's
18 been pretty consistent with both defendants' statements. It is
19 also pretty corroborated by the evidence.

20 MR. MARCHI: It is.

21 THE COURT: Because if they didn't have a key, they were
22 flying all over Sac and Placer County in that car, so I think
23 that is pretty corroborated by all of the evidence.

24 MR. MARCHI: I don't know if that's much an issue, quite
25 frankly.

26 THE COURT: All right. Anything else?

27 MR. MARCHI: There is one other thing. I did find out and
28 informed Mr. Serafin there is a Steve Heckert waiting outside.

1 THE COURT: Steve who?

2 MR. MARCHI: Heckert. He works for County maintenance.
3 He's a supervisor. He would have been in charge of the old
4 hall. He -- either he or the one person working for him, Glen
5 Johnson, would have been the only people to work on the old
6 juvenile hall duct work. And he and Glen Johnson, from what
7 I've been told from Mr. Heckert, are prepared to say that none
8 of them from March 15th to this date have done anything with the
9 internal duct working. That it is in the same shape it was in
10 the same weekend of March 15 to March 17th.

11 I do have Detective Coe that is going indicate he went out
12 last week so this would cover this time frame. Nothing has been
13 done, including through last week, and the pictures were taken
14 and that's where he got Mr. Coe in the box, followed the path
15 down to the other side of the vent inside the cell to show that
16 it directly routes inside. I was just as surprised as anyone.
17 That's why I called Mr. Serafin Thursday afternoon or actually
18 Thursday before noon and then Friday and got ahold of his
19 investigator.

20 THE COURT: Well, we discussed this briefly before the
21 break. I had indicated that I was leaning towards doing a 402
22 hearing with Mr. Heckert.

23 MR. MARCHI: They're here.

24 THE COURT: But we also have the jury so if you just have
25 Detective Coe and then you would want -- I could let the jury go
26 and we can have the 402 hearing, and the jury can come back
27 first thing tomorrow morning, that might work better for the
28 jury. If you think we can do that quickly and you would be able

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1 to rest today.

2 MR. MARCHI: I don't think I have that much for Detective
3 Coe left, but part of what I have left involves the photographs,
4 and I don't know that it is going to take more than five or ten
5 minutes.

6 THE COURT: Ask Mr. Heckert to step in.

7
8 STEVEN HECKERT

9 called as a witness on behalf of the People herein was sworn,
10 examined, and testified as follows:

11 THE COURT: Sir, I need you to come up here next to my
12 court reporter and face my clerk and raise your right hand to be
13 sworn.

14 THE CLERK: Do you solemnly state that the testimony you
15 shall give in the cause now pending before this court shall be
16 the truth, the whole truth, and nothing but the truth so help
17 you God?

18 THE WITNESS: I do.

19 THE CLERK: Please state your name and spell your last for
20 the record.

21 THE WITNESS: Steven Heckert, H-e-c-k-e-r-t.

22 THE COURT: Go ahead and take a seat. We're going to
23 conduct a brief hearing initially outside the presence of the
24 jury. Go ahead.

25 DIRECT EXAMINATION

26 Q. BY MR. MARCHI: Sir, by whom are you employed?

27 A. Whom am I employed by?

28 Q. Yes.

1 A. I work for Placer County Building Maintenance Department.
2 Q. And are you a supervisor, sir?
3 A. Correct.
4 Q. And how long have you performed that job?
5 A. Probably about a year and a half.
6 Q. And so all of 2003?
7 A. Yes.
8 Q. And was part of your job to be responsible for the old
9 juvenile hall facilities, the one that is not being used
10 anymore, sir?
11 A. Yes. My staff used to perform maintenance on that
12 building.
13 Q. All right. And if there were anything to be done to the
14 air-conditioning vents inside the -- on the inside of the
15 premises, would that fall to you or your staff, sir?
16 A. Yes.
17 Q. All right. And just so we're all talking about the same
18 thing here, do you recognize what is depicted here in this
19 exhibit, sir, 2?
20 A. Yes. It is the old juvenile hall building. I haven't
21 been down there for quite some time so I'm not exactly -- is
22 that the main entrance? I'm not sure.
23 Q. It has been called the staff entrance.
24 A. Yes.
25 Q. Okay. And from March 17th of 2003, to the present date,
26 have you, yourself, performed any work on the duct work inside
27 the building, sir?
28 A. No, I have not.

1 Q. And you do have one other employee that could have been
2 involved in the matter?

3 A. Yes. One of my technicians that works for me, he works on
4 the heating and air-conditioning units throughout the County and
5 I asked him.

6 Q. Well, we'll get there. What's his name, sir?

7 A. Glen Johnson.

8 Q. And would you have directed him to do something at the old
9 hall, if required?

10 A. Yeah. It would have came through me, the service request
11 or through my supervisor. My superintendent would have issued
12 it and would -- then it would go through me and I would assign
13 to it my technicians.

14 Q. Did you, in fact, direct him to do anything from March 17,
15 2003, to the present date?

16 A. No.

17 Q. All right. And is he present in the hallway now?

18 A. Yes, he is.

19 Q. And just one other thing here. Just showing you Exhibit
20 73 here, that's purportedly part of the outside of what would
21 lead into some duct work in the old juvenile hall, and you've
22 never performed any service from March 17th of 2003, to the
23 present date?

24 A. No, I have not.

25 Q. And would it be you or your staff the only persons that
26 would be involved with such a task?

27 A. Yes.

28 MR. MARCHI: Okay. Thank you.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 Q. BY MR. SERAFIN: Yeah. You said you haven't been there
4 for a while. When was the last time you were there?

5 A. In terms of -- I drove by the facility probably a month
6 ago.

7 Q. Okay. I've driven by it a few times, but how about
8 actually being inside it, you know, doing work, whatever you do?

9 A. I couldn't give you the exact date, but I was in the
10 building, like it would have been probably one or two days, I
11 believe, after the incident took place.

12 Q. Right after the incident took place?

13 A. Within a few days. I don't recall how many days exactly.

14 Q. So back in March you haven't been there since back in
15 March?

16 A. No, not inside the premises.

17 Q. What did you do in March?

18 A. We went down there to check the security of the building
19 and at that time they were talking about -- I believe they were
20 looking at the building to determine what they wanted to do
21 about securing the building.

22 Q. Okay. They were going to take some steps to secure the
23 building?

24 A. Yes.

25 Q. And make sure this didn't happen in the future again?

26 A. Yes.

27 Q. Were you doing anything there in regards to the
28 air-conditioning vents?

1 A. No. We never did anything on the HVAC system.
2 Q. I missed it. What is your job title?
3 A. Supervising building crafts mechanics.
4 Q. What other buildings are you responsible for?
5 A. Every building in the County.
6 Q. Every building in the County. And your job is in regards
7 to the juvenile hall building is what; what is your
8 responsibility?
9 A. As a supervisor I'm in charge. I have the -- I'm over the
10 HVAC technicians, the fire technicians, and the electricians for
11 the County.
12 Q. If anything is done with the -- in regards to the fire, or
13 the electrical stuff, or the HVAC stuff, then you're the one
14 that has to authorize it; is that what your testimony is?
15 A. Yes.
16 Q. Okay. So did you authorize any such work at all in any of
17 those fields in the hall since March?
18 A. No, I have not.
19 Q. Okay. So you wouldn't have anything to do with any of the
20 doors being taken off?
21 A. No. There's three supervisors. Some of them, depending
22 on what the trade is, what type of work may be assigned to
23 another supervisor if that's in his field.
24 Q. Did people go into the hall and take off things, do things
25 in the hall that you would know nothing about; correct?
26 A. Correct.
27 Q. So your testimony is that you know nothing was done with
28 the HVACs because nobody talked to you?

1 A. Yeah. With -- no. My boss never gave me a service
2 request to issue to my staff to do any work down there on the
3 HVAC system.

4 Q. Who is your boss?

5 A. Tom Prsar.

6 Q. What is his last name?

7 A. P-r-s-a-r, yes.

8 Q. He would have final say to authorize you to authorize
9 someone else to go do something else he authorized you to do?

10 A. Right.

11 Q. When I mean, did you have occasion to look at this
12 particular vent when you were back there in March?

13 A. No.

14 Q. You didn't look at the vent at all?

15 A. No.

16 Q. In fact do you know where this vent is?

17 A. No.

18 Q. You don't know which door it is to?

19 A. Not without going to the building by that slide, no.

20 MR. SERAFIN: I have no further questions.

21 REDIRECT EXAMINATION

22 Q. BY MR. MARCHI: You're part of the department, are you,
23 that highly specialized where your end of the department would
24 be the only ones to deal with air-conditioning vents?

25 A. Yes.

26 Q. So you don't do doors but you do vents?

27 A. Yes.

28 MR. MARCHI: Thank you.

1 THE COURT: Anything further?

2 MR. MARCHI: Not from this witness. I have Mr. Johnson
3 outside.

4 THE COURT: Could you step outside and ask Mr. Johnson to
5 step in.

6 MR. MARCHI: If you could please remain.

7 THE COURT: Don't leave.

8

9 GLEN JOHNSON

10 called as a witness on behalf of the People herein was sworn,
11 examined, and testified as follows:

12 THE COURT: I need you to please come up and face my clerk
13 and raise your right hand to be sworn.

14 THE CLERK: Do you solemnly state that the testimony you
15 shall give in the cause now pending before this court shall be
16 the truth, the whole truth, and nothing but the truth so help
17 you God?

18 THE WITNESS: I do.

19 THE CLERK: Please state your name and spell your last for
20 the record.

21 THE WITNESS: My name is Glen Johnson, and I work for the
22 County of Placer Facilities Services.

23 THE CLERK: Okay. Go ahead and have a seat.

24 THE COURT: Go ahead.

25 DIRECT EXAMINATION

26 Q. BY MR. MARCHI: Sir, by whom are you employed?

27 A. I am employed by the facility service division of Placer
28 County.

1 Q. What is -- what is the nature of your job?
2 A. I am the central refrigeration and air conditioning
3 mechanic.
4 Q. And was the gentleman that just left here, Steve Heckert,
5 your boss?
6 A. Yes, he's my immediate supervisor.
7 Q. And do you work on all the County buildings, sir?
8 A. Yes. All the businesses from Roseville to Lake Tahoe,
9 other than leased buildings. Well, other than --
10 Q. And are you familiar with the old juvenile hall facility?
11 A. I am.
12 Q. Have you worked on that in the past?
13 A. Yes, I have.
14 Q. And calling your attention to March 17, 2003, to the
15 present, have you been assigned to go over to the old juvenile
16 hall and do any work, sir?
17 A. No, sir.
18 Q. All right. And showing you Exhibit 73, this is
19 purportedly the exterior after a certain grille has been removed
20 from inside the hall. Did you ever do any work from and after
21 March 17, 2003, to the present on or inside any of these air
22 conditioning duct units?
23 A. No, sir, I have not.
24 MR. MARCHI: Thank you. No further questions.
25 THE COURT: Cross?
26 MR. SERAFIN: I have no questions.
27 THE COURT: Could you step out in the hallway but don't
28 leave. Anything else on that issue?

1 MR. MARCHI: No, your Honor. It is all the witnesses I
2 have except for Detective Coe. I don't know that you need to
3 have his testimony or --

4 THE COURT: Did you want a 402 on that as to what he's
5 going to say?

6 MR. SERAFIN: No, that's fine. I think I know what he's
7 going to say.

8 THE COURT: Argument?

9 MR. MARCHI: I would just indicate that I was just as
10 surprised as anyone when we went over there last Thursday. We
11 were going to take some photographs when we realized we didn't
12 have -- of the route of Mr. Hamman at the hall. We decided to
13 go ahead and take a look and we both, Detective Coe and I, found
14 that vent inside the cell, which we overlooked and then
15 Detective Coe got up on -- I think he used the actual counter
16 and looked inside and kind of felt around and sure enough, it
17 went down there, in there, which is where some of the other
18 photographs -- what he decided to do is take a photograph from
19 the outside of 73, which we displayed, and then actually inside
20 74. 75 is from the top showing that same vent that Detective
21 Hutchins said was present, but he didn't know what it was. He
22 saw it from the underside, and 76 is the underside shot with the
23 light shining down.

24 So basically Detective Coe can indicate that he did trace
25 all of this through. That it appears to be no obstructions so
26 if someone was sticking the hose through the exterior vent, it
27 could well go into the cell.

28 THE COURT: Counsel?

1 MR. SERAFIN: Okay. Well, just as an aside, many of the
2 things I have requested, every time I requested something from
3 counsel in this case or asked for a continuance, I was always
4 told, well, you had the case since March. My response is
5 basically the same here. They have had the case since March.
6 To wait until after we start the trial, after witness lists are
7 given, after we make opening argument, after we have two
8 witnesses and then decide to go down to the crime scene and come
9 up with a different conclusion than you've come up with,
10 anything that has come up with before, and present that in the
11 middle of a trial via other witnesses that were never on the
12 witness list, I think is highly inappropriate.

13 I think that counsel has to have very good, very good
14 reason to bring in brand new witnesses, and it has to be on a
15 fairly critical issue. This is not a critical issue; although,
16 we both think it is worth arguing about. And while you can
17 bring in these two guys that know nothing about the hall the
18 last six months, they have done no work on it. They heard
19 nothing about it, and they're saying, well, they have done
20 nothing and that's, of course, the theory, that nothing has been
21 done and yet we're looking at a picture where there used to be
22 an air conditioning vent on one side and a hall on the other and
23 now you can see both are removed in some fashion, and you can
24 see straight from the outside into the cell right into the back
25 of the cell wall.

26 I mean, clearly something has been done. Maybe it wasn't
27 Mr. Johnson or Mr. Prasr, but whether it is the police or other
28 maintenance people, there have been things done in that area

1 where the air conditioning is and so to bring them on with the
2 conclusion that because they haven't got the call, therefore,
3 nothing has been altered, I think is highly inappropriate.

4 THE COURT: Anything else?

5 MR. MARCHI: Well, just that the way the County works and
6 I think these witnesses will indicate that you just can't walk
7 into a County building and start working on things. You have to
8 be authorized. They're the ones.

9 THE COURT: Well, apparently a lot of people were getting
10 in and out of the hall.

11 MR. MARCHI: They were, but I think it will go -- if you
12 look at the pictures, it doesn't -- there were no markings
13 inside the box to look like there was anything that was removed.
14 That's the only point I would make.

15 THE COURT: I think it is a little late in the game.

16 MR. MARCHI: Well, it was inadvertence. If counsel needs
17 a continuance, that's one remedy as opposed to blocking it. It
18 was not intentional on our part to bar the introduction of the
19 evidence under 1054.

20 THE COURT: Is there any -- and so what else do we have
21 today, just those two witnesses?

22 MR. MARCHI: That's all we have. I have about half a
23 dozen questions of Detective Coe with some of which revolve
24 around the vent. Couple other questions. He did measurements
25 that we discovered earlier of the table inside the holding cell.
26 And then those two quick witnesses. That's it.

27 MR. SERAFIN: I may have quite a few questions for
28 Detective Coe.

1 THE COURT: And then are you going to start with your case
2 tomorrow?

3 MR. SERAFIN: I would like to because Erin Hughes is,
4 likely the way it's going, maybe the only witness that I will
5 have, and we need to contact her attorney, Michael Bolton, and
6 have him be here present with her.

7 MR. MARCHI: We'll need a 402 hearing for that definitely.

8 THE COURT: I'm struggling with this a bit because as
9 firstly, I don't necessarily see it as a critical issue. The
10 position of the People from the beginning has been the apparent
11 possibility. Certainly there was nothing in the statements of
12 either of the defendants which would suggest that they didn't
13 think it went into the holding cell. So the whole theory of the
14 case from beginning has been whether it did or it didn't, this
15 is an attempted murder case and they thought it was going to
16 work and that it went in there. So it is not necessarily a
17 critical issue to either the People's case or to the defense
18 case.

19 On the other hand, I'm not necessarily fully cognizant of
20 what everybody's argument and theories are going to be, and it
21 is a bit troubling in terms of the security of the juvenile
22 hall, the fact that there were apparently homeless people going
23 in and out of there, juveniles going in and out of there, all
24 unknown by facility services and who knows what, who is doing
25 what. And so it makes it difficult for me to, without granting
26 a significant continuance to give someone an opportunity to
27 examine that and make sure that there weren't blockages that
28 have been removed, and I think that weighing the significant

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1 nature of that evidence to the People's case versus the fact
2 that it is coming in at that point and what the implications to
3 the defense might be, I'm kind of talking out loud here,
4 thinking out loud, but the bottom line is I'm not going to allow
5 it. I think it is risky at this point.

6 MR. MARCHI: And with regard to the photographs
7 themselves, can I not still present them as the apparent
8 possibility of actually going into the cell?

9 THE COURT: Actually, those picture have already been
10 thrown up on the screen.

11 MR. MARCHI: I only used 73, which shows the vent removed
12 which, of course, Hutchins would have seen and then 76. I don't
13 know that counsel started to have the 02 --

14 THE COURT: I think to show them as an example of the
15 apparent possibility is not unduly prejudiced. That's been the
16 People's theory from the beginning that as far as the defendant
17 and codefendant knew, it wasn't going to work. Are you ready to
18 proceed?

19 MR. MARCHI: Yes.

20 THE COURT: We'll allow the jury in.

21 (Jury enters the courtroom at 1:54 p.m.)

22 THE COURT: We're back on the record. The jury is all
23 present. Counsel and parties are present. And are the People
24 ready to proceed.

25 MR. MARCHI: Yes.

26 THE COURT: All right. And Detective Coe is still on the
27 witness stand, and I think we were still on direct. Go ahead,
28 Counsel.

1 MR. MARCHI: Thank you, your Honor.

2 DIRECT EXAMINATION RESUMED

3 Q. BY MR. MARCHI: Detective Coe, did you happen to get ahold
4 of a Karen Garcia, an assistant bank manager with Washington
5 Mutual?

6 A. Yes, I did.

7 Q. And according to her was she -- did she have some
8 information regarding Mr. Hamman's account?

9 A. Yes, she did.

10 Q. And let me just show you quickly Exhibit 68. And again,
11 what we had was an account inquiry to the account card with the
12 last four digits of 2013 and two charges of \$40 that go back to
13 the same account; correct?

14 A. Correct.

15 Q. All right. And you did ask her to check on whether the
16 two charges actually came back to Mr. Hamman's account?

17 A. Yes, I did.

18 MR. MARCHI: Okay. And I believe we have a stipulation
19 that if Ms. Garcia was called to testify, she did verify these
20 two charges in Exhibit 68 came back to Mr. Hamman's account?

21 MR. SERAFIN: That's correct.

22 THE COURT: All right.

23 Q. BY MR. MARCHI: Sir, I'm showing you here what's been
24 marked Exhibit 27; and do you recognize that?

25 A. Yes, this is the holding cell in question.

26 Q. Did you take some measurements of the holding cell, sir?

27 A. Yes, I did.

28 Q. And in particular did you measure this table, including

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1 the tabletop and the chairs?

2 A. Actually, I just measured from the ground floor to the top
3 of the table.

4 Q. That's what I meant. From the ground floor to the metal
5 seats, what measurements did you obtain, sir?

6 A. It was 2 feet, 4 1/2 inches high off the ground so from
7 down here up to the top.

8 Q. All right. And what did you measure from the tabletop to
9 the floor, sir?

10 A. That was the measurement from the tabletop to the floor,
11 sir.

12 Q. What about the seats?

13 A. I didn't measure the distance. It was approximately, from
14 what I saw, a foot difference.

15 Q. And did you actually measure dimensions of the cell
16 itself, sir?

17 A. Yes, I did.

18 Q. What are they?

19 A. This wall right here was 9 feet in length. This wall back
20 here was 7 feet 6 inches. The wall that would be on this side
21 where the Plexiglas window was located, that was 5 feet 10
22 inches, and it kind of does a 45-degree angle right here where
23 the door is at, and that is 4 feet 7 inches. And then over on
24 this side there's another little area that is 4 feet 5 inches.

25 As far as the height of the room, it's 8 feet 4 1/2
26 inches, and then above the window there's a little duct, or I
27 don't know even know if it is a duct, but an area that comes
28 down above the window and the floor to that area is 7 feet 1 1/2

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1 inches.

2 Q. And, sir, you've previously testified that you went out
3 last week and took the photographs. You've already discussed
4 about Mr. Hamman's route through the hall that Ms. Rugg led him
5 on?

6 A. Correct.

7 Q. While you were there, you took some other pictures?

8 A. Yes, I did.

9 Q. What was that of?

10 A. I took pictures of the -- where the vent with the toilet
11 tissue was removed. Took pictures inside the duct work there
12 and also from inside the holding cell.

13 Q. And showing you Exhibit 38; what are we looking at here,
14 sir?

15 A. That's the vent that's above the holding cell door with
16 the toilet tissue and the hole in the lower right-hand corner.

17 Q. And showing you Exhibit 73; and what is that of?

18 A. That's a photo I took of the vent removed from last week
19 when I took it.

20 Q. All right. And there's actually a flashlight being held;
21 is there not?

22 A. Yes. I had my partner, Detective Garlic, with me and I
23 had him shine a flashlight through a vent in the cell upward and
24 it contacted, came in through the duct work.

25 Q. So he was actually inside the cell?

26 A. That's correct.

27 Q. Doing that?

28 A. Yes. I was standing on the L-shaped countertop when I

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1 took this photo.

2 Q. And showing you Exhibit 29, the one Detective Hutchins
3 referred to, is that area where the flashlight is being held,
4 does that show up here?

5 A. Yes, this area right here.

6 Q. All right. And then showing you Exhibit 75; what are we
7 looking at there, sir?

8 A. This is -- I stuck my arm in the duct work and held the
9 camera and took a picture of that vent going down towards the
10 cell area.

11 Q. And finally Exhibit 76, sir?

12 A. That's from shining a flashlight, reaching in the duct
13 above the cell door, shining a flashlight down towards the cell
14 illuminating that duct and photographing it.

15 Q. So that is from within the cell, but the flashlight being
16 held above illuminating it, sir?

17 A. Through the duct from the removed vent.

18 Q. Which shows a closer up view of the one you already told
19 us about on Exhibit 29?

20 A. Correct.

21 Q. You actually did get to look inside the box of the vent,
22 sir?

23 A. Yes. I was standing on the counter looking in, and I
24 actually had to reach inside to take one of those pictures.

25 Q. Did you see any holes where bolts might go or other plates
26 may have been removed in any fashion, sir?

27 A. Not to my knowledge.

28 Q. And then you discussed this previously. Exhibit 73, what

1 are we looking at again?

2 A. That's standing in the booking area taking the photo
3 inside the cell.

4 Q. All right. And that's, what, with the cell door removed?

5 A. Correct.

6 Q. And is that door still in the room somewhere?

7 A. It was last time I was there, yes.

8 Q. Which was when?

9 A. Thursday of last week.

10 Q. And can you tell us, do you know what the door is made out
11 of?

12 A. It's metal outside. I'm not sure what's inside, but it's
13 heavy.

14 Q. Very heavy?

15 A. Very heavy.

16 MR. MARCHI: Thank you. No further questions.

17 THE COURT: Cross?

18 MR. SERAFIN: Thank you, your Honor.

19 CROSS-EXAMINATION

20 Q. BY MR. SERAFIN: Detective, as we look at the picture, the
21 one you were just looking at, you stood on this counter, is that
22 correct, when you were analyzing the vent?

23 A. Yes, I did.

24 Q. And you stood on this counter and the vent is directly
25 above the door up here; correct?

26 A. That's correct.

27 Q. But the area, the other little square thing that we're
28 talking about where you shined your flashlight up through,

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1 that's not above the door. That's actually to the right side of
2 the wall; is that right? It is inside but on --
3 A. I can explain it a little better. It's --
4 Q. I'm sure you can.
5 A. You have the vent in front of you, and then it kind of
6 does a 45-degree angle and goes back. Approximately a foot and
7 a half in the duct there's an opening at the bottom where that
8 vent sits. So it is not -- it's not like on the wall. It's
9 inside the room. It kind of drops down. There's like an
10 18-inch area that comes down about a foot and it is on that
11 part.
12 Q. And in order -- when you're standing on this counter in
13 order to -- can you actually see through the vent if you're
14 standing on this counter? Can you see through the vent above
15 the door?
16 A. Yes.
17 Q. And when you said you took a picture from the vent through
18 the separate little slot, you said you actually had to reach in
19 to do it?
20 A. Right.
21 Q. You couldn't peer your head through the vent and see
22 through that?
23 A. I'm not small enough to go through the vent.
24 Q. So it is your conclusion today that the vent must have
25 gone directly into the cell; is that what you're saying?
26 A. From what I saw that vent did go into that holding cell.
27 MR. MARCHI: For the record that was actually Exhibit 83,
28 which I think I misstated as 73 previously. This is Exhibit 73.

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1 Q. BY MR. SERAFIN: And is this the outside of the vent or
2 the inside; are you on the outside set of the cell looking in?
3 A. Correct. You can see the white. That's the cylinder or
4 block wall that is comprised of what the juvenile hall is, and
5 that's where the vent, where the toilet paper was removed.
6 Q. This is the back wall of the holding cell where Nicholas
7 Hamman was; correct?
8 A. That is the wall of the vent.
9 Q. Okay. So this is -- actually, you're not actually looking
10 into the cell itself?
11 A. No, I'm not.
12 Q. It is the back wall of the vent?
13 A. You can't -- unless you're real small and can crawl in
14 there, you can't see down into that cell from standing out here.
15 Q. When you originally did your investigation on this case
16 back in March --
17 A. Right.
18 Q. -- you came to the -- or you actually, I think you heard
19 Detective Hutchins say he came to the conclusion after doing
20 investigation that that air conditioning was a central unit and
21 did not actually go into the cell; do you recall him saying
22 that?
23 A. I do recall him -- his belief was that it did not go into
24 the cell.
25 Q. Did you come to a similar conclusion back in March when
26 you were originally doing the investigation on this case?
27 A. You know, I didn't process that scene out there. I wasn't
28 out there very long. Like I said earlier, I was just there kind

1 of to get an idea of the route and what I was looking at, what
2 everybody had told me so I didn't really -- I wasn't out there a
3 great deal of time.

4 Q. And you sat in here as the lead investigator on this case;
5 correct?

6 A. Correct.

7 Q. You have been essentially the lead investigator on this
8 case since March 17th when this happened?

9 A. Correct.

10 Q. And in the six months between March and now you have not
11 done anything to come to a different conclusion than Detective
12 Hutchins; correct?

13 A. That's correct.

14 Q. Until last Thursday, when you went out to the scene;
15 correct?

16 A. That's correct.

17 Q. After we started the case, gave opening argument; correct?

18 A. Correct.

19 Q. In fact, I believe two witnesses had already testified on
20 the stand; correct?

21 A. Correct.

22 Q. And now your basis for the fact that the Detective
23 Hutchins was wrong and that the air conditioning vent must go
24 into the cell is because you shined a flashlight up through
25 those square holes and --

26 A. From shining the flashlight up from the cell and also down
27 through the duct.

28 Q. But clearly that's not something you did on March 17th;

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1 correct?

2 A. As I said, that wasn't my job to do during this time. I
3 was doing mostly interviews.

4 Q. And in reviewing the report, nobody did anything like that
5 at that time in March; correct?

6 A. Not that I've seen.

7 Q. And since then after this incident there was quite a bit
8 done to the hall; is that right?

9 A. The only thing I know for sure was the doors were removed
10 and also the table and two chairs from the cell were removed.

11 Q. Are you aware that the County immediately began planning
12 to tear down the building in hopes this would never happen
13 again?

14 A. Immediately, I didn't know that. I know they had gone out
15 there a day or two later and boarded up the busted out window,
16 but as far as when they determined that they were going to tear
17 it down, I don't know when that was.

18 Q. Are you aware on Friday, the day after you went to visit
19 this building last week, they began the process of tearing it
20 down?

21 A. I know they have been out there for the past several
22 weeks.

23 Q. And they're currently out there now; aren't they?

24 A. I don't know about today, but I would imagine during the
25 week they're out.

26 Q. When you originally discussed this case with the victim,
27 Nicholas Hamman, he was in the hospital; is that right?

28 A. That's correct.

1 Q. And then you did a subsequent interview three days later?
2 A. I don't know if it was three, but it was later on.
3 Q. But --
4 A. Couple days later.
5 Q. And on his original interview and the subsequent
6 interview, he did not discuss any particular route that he took
7 from outside into the cell?
8 A. That's correct.
9 Q. In fact, he just said I followed her. We got there and
10 that was the end of it, and then he started beginning to explain
11 how he got actually pushed in?
12 A. Yes. He said that he received word that Erin was hurt and
13 injured.
14 Q. And you wrote a report on March 17th basically detailing
15 that simple fact?
16 A. Correct.
17 Q. And you didn't write a specific report on March 20th, but
18 the interview was taped and you did mention that the report on
19 March 20th was still similar to the information taken on March
20 17th; is that right?
21 A. Correct.
22 Q. In neither of those was any specific route mentioned?
23 A. That's correct.
24 Q. But apparently you went to visit him some two or three
25 weeks ago in the jail; is that right?
26 A. Yeah, it was a couple weeks ago.
27 Q. And at that point he supposedly explained to you a very
28 detailed route; correct?

1 A. He showed me the route they went in, yes.

2 Q. At that time he came out with the route that you already

3 detailed where he came in the staff door and rather than taking

4 a left through the office and into booking, they went all the

5 way past the office, down the hall and came back in somewhere on

6 this side, correct, and then back into -- is that a fairly --

7 A. He pointed out he came into the one that is marked school

8 office. The other room you point to is --

9 Q. Right here?

10 A. Yes.

11 MR. MARCHI: For the record we are viewing Exhibit 1.

12 THE COURT: All right. Noted for the record.

13 Q. BY MR. SERAFIN: And I assume when he explained that, you

14 had that chart; correct?

15 A. Yes.

16 Q. Was it this exact one?

17 A. Yes.

18 Q. And this was the first time you ever asked him to describe

19 in detail your route to the cell; correct?

20 A. Correct.

21 Q. And now we were set to go to trial about five weeks ago,

22 and we got a continuance at the last second. Before that you

23 never went and interviewed Mr. Hamman to try to get an exact

24 route to the cell; did you?

25 A. That was the first time I asked him about the route taken.

26 Q. And that interview wasn't taped, obviously?

27 A. No.

28 Q. Didn't write up a report of that one?

1 A. No.

2 Q. How come you asked him then and not any of the two times
3 you interviewed him very close to the incident?

4 A. No reason.

5 Q. Well, there must be a reason. I mean, I'm not meaning
6 that argumentative.

7 A. Sure.

8 Q. You would -- obviously, your goal as being the lead
9 investigator is to come up with anything relevant. At the time
10 you didn't think it was relevant, but now you've got this chart.
11 You think it is relevant. Was there anything that changed
12 between March and three weeks ago that made you think that
13 absolutely the route was relevant?

14 A. I think it was just done to establish clarity on how he
15 went in.

16 Q. And did you trace the route or did he trace the route?

17 A. He traced it.

18 Q. You didn't refresh his recollection similar to his
19 recollection being refreshed in some of his original statements?

20 A. Prior to just a few weeks ago when I talked to him at the
21 County jail, I had no knowledge of which route he took. So he's
22 the one that had to point it out so I had -- because I had no
23 knowledge.

24 Q. Shifting gears a bit, did you have occasion to speak with
25 Mr. Hammer, the store owner, who originally made the 911 call?

26 A. No.

27 Q. In reviewing your -- all the police reports as a lead
28 investigator, are you aware of any store videotape was received

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1 into evidence?

2 A. There was a surveillance video booked into evidence, yes.

3 Q. Did you ever review that?

4 A. Yes.

5 Q. You don't have that here?

6 A. No.

7 Q. Do you have any idea what happened to it?

8 A. It's probably still in evidence at the police department.

9 Q. Do you know if anybody has reviewed it?

10 A. I don't know.

11 Q. If someone did, I assume as the lead investigator that
12 would be something you would know about?

13 A. Not necessarily. Once items are booked into evidence, it
14 is on the part of our evidence technician to sign out items to
15 different people and to sign those items back in. I don't know
16 which items are checked out, which items aren't checked out.

17 Q. So there could be items in a specific case where you're
18 the lead investigator that someone, random officers, could come
19 in and check them out and view them and write no report on them
20 and then check them back in and never mention that to you?

21 A. Typically that is not how it is to done. Usually items
22 such as videotapes or copies of audiotapes, we have requests
23 from the district attorney's office to get copies of those, and
24 those are signed out. Typically the only officers involved in
25 the case are ones that check out items for that particular case.
26 Whereas in this case we did have officers, several different
27 officers, who had worked on the case. Detective Hutchins,
28 Officer Hopping, Officer Hamelin, Sergeant Burns, whether or not

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1 they viewed it, I have no idea. If they told me or I don't know
2 if they checked it out.

3 Q. You probably have some idea, would it be fair to say, they
4 probably didn't because that would be a little bit against
5 standard procedure?

6 A. The only person I think could have seen it would be
7 Detective Hutchins, but I don't know. I have never seen the
8 surveillance tape.

9 Q. And since the beginning, since the initial reports where
10 the officers were called on the scene such as Hamelin, they --
11 since they originally wrote their reports, the follow-up reports
12 as far as interviewing the defendant and Anna Rugg, Nicholas
13 Hamman, Rick Romines, those have all been done by you; is that
14 correct?

15 A. That is correct.

16 Q. You're obviously familiar with the note that was left at
17 the gas station; correct?

18 A. Yes.

19 Q. Do you know what the note said?

20 A. For the most part.

21 Q. And if you need to refresh your report or to refresh your
22 recollection, could you tell the jury exactly what was said?

23 A. I have to see the note to be exact, but it said something
24 similar to: We're driving his red Beretta. Nick Hamman is
25 locked in the cell at juvenile hall drowning. Shawn Rodriguez
26 kidnapped me.

27 Q. And that note was reportedly left by Anna Rugg; correct?

28 A. Correct.

1 Q. Saying, among other things, Nicholas Hamman is drowning
2 and Shawn Rodriguez has kidnapped her; correct?

3 A. Correct.

4 Q. You obviously conducted a lot of interviews on this case,
5 done a lot of follow-up because it is an attempted murder case.
6 Have you come to a conclusion as to whether or not Anna Rugg was
7 kidnapped by Shawn Rodriguez?

8 A. No, she wasn't.

9 Q. So if she indeed wrote that note, it is your conclusion
10 that she was lying as far as the part about Shawn Rodriguez
11 kidnapping her?

12 MR. MARCHI: Well, I'm going to object, your Honor. This
13 is really calling for speculation, hearsay, and clearly
14 inadmissible.

15 MR. SERAFIN: He just said --

16 THE COURT: Overruled.

17 Q. BY MR. SERAFIN: So in that case if Anna Rugg made the
18 note that said Shawn Rodriguez kidnapped me, she was lying?

19 A. Throughout the interviews I did in this case, I found
20 nothing to substantiate the fact that she was kidnapped.

21 Q. So that would be a lie?

22 A. Correct.

23 Q. Now, I know when -- we obviously all noticed when
24 reviewing the videotape of Shawn's testimony there was a lot of
25 cut out scratches, some as long as 12 to 14 seconds. We can't
26 know what was said in those scratchouts exactly; is that fair to
27 say?

28 A. That's fair to say.

1 Q. And we can get a context based on the question we can hear
2 before and the question after it, but as far as the details
3 inside, we don't know?

4 A. That's correct.

5 Q. And it was your testimony before we started that you
6 remember that there was nothing material missing in those
7 various scratchouts; is that stated in your testimony
8 accurately?

9 A. I don't think I said there was anything nonmaterial in
10 them. I don't know what was said during the those segments.

11 Q. I believe counsel asked you was there anything material
12 that was blocked out in those passages, and I believe your
13 answer was no. Is that inaccurate?

14 A. Looking at the tape and the flow of how the interview was
15 going, it would be my best educated guess that there was nothing
16 of great significance in those scratches.

17 Q. Okay. And that is based upon your memory of the specific
18 statements that were made that we cannot hear on the tape?

19 A. As I said before, I don't recall exactly what was said.
20 However, in a case like this you do recall quite a bit of
21 information.

22 Q. Certainly. But for the most part you, like the most of
23 us, are sort of stuck with conjecture based upon the last
24 statement we heard and the first one that becomes clear, we have
25 to sort of make conjecture as to what might have been in those
26 missing pieces?

27 A. Sure.

28 Q. Now, you didn't do the initial arrest?

1 A. That's correct.

2 Q. But you -- do you know roughly what time the Beretta was
3 pulled over and Shawn and Anna were both arrested; does roughly
4 3 a.m. or between 2:45 and 3 a.m. sound accurate?

5 A. I was going to say between 2:30 and 3:00.

6 Q. Okay. And where were the two of them taken?

7 A. Back to the Auburn Police Department.

8 Q. And how far from where they were stopped to the Auburn
9 Police Department?

10 A. Half a mile.

11 Q. So they were certainly, both of them were at the police
12 station by no later than 3 a.m.; is that fair?

13 A. You know, I don't know. I don't know if they did any
14 search or if they -- I don't know exactly how long they sat out
15 at the arrest place until they came back to the police
16 department.

17 Q. Where were you when they were being arrested?

18 A. At home sleeping.

19 Q. What time did you get the call?

20 A. I got called probably between 3:00 and 3:30.

21 Q. You arrived at the station roughly what time?

22 A. Probably between 3:45 and 4:00 in the morning.

23 Q. Okay. And at that time when you arrived at the station,
24 Shawn Rodriguez was handcuffed to a bench in the booking room;
25 is that right?

26 A. You know, at that time I don't know because I didn't stay
27 at the police department very long. I went out to the hospital
28 to talk to Mr. Hamman. So I didn't -- I think I just got a

1 preliminary statement from an officer, I don't know who, of kind
2 of the background of what was going on so I knew what I was
3 going to talk to Mr. Hamman about.

4 Q. So you don't remember seeing Shawn when you arrived at the
5 police station?

6 A. I remember seeing him at one point. I don't know if it
7 was right when I arrived.

8 Q. Where was he when you saw him?

9 A. He was in our booking room.

10 Q. Can you describe roughly -- I know we don't have pictures.
11 I don't have a diagram. Can you give us a rough description of
12 your booking room?

13 A. It is a pretty simple room. There's a bench on one side
14 with a bolt in the wall so we can handcuff people who we have
15 arrested to the wall to protect us so we can do report writing
16 or whatever we need to get done before we take them to the jail.
17 There's a little table we write the report on, countertop and
18 some cupboards that contain paperwork, and I know there's a
19 little closet at the very back that contains rubber gloves and
20 stuff to clean our hands with, just a little supply closet.

21 Q. Are there generally officers coming in and out of that?

22 A. There's two doors into it and one is a hallway and one is
23 from our sally port outside that you walk through.

24 Q. But I would assume as the station would be sort of a main
25 hub of activity with different officers maybe doing different
26 reports, making different arrests, coming and going?

27 A. It can be.

28 Q. And I assume at whatever, 3:00 or 3:45 in the morning on

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1 Monday morning, this was probably the big case going on; is that
2 a fair assumption?

3 A. Oh, yes.

4 Q. And there were quite a few officers coming in and out,
5 people getting assigned to do various things in this case?

6 A. Yes.

7 Q. Were there people there actually just watching without
8 really any assignments?

9 A. You know, I don't know. I -- when I went back there, I
10 talked to them briefly, left, and then when he wanted to talk to
11 me, I came back and brought him to the interview room. So I
12 wasn't back there the whole time. I don't know who came in and
13 out.

14 Q. When you saw him, him being Shawn, at the station, you did
15 try to talk to him?

16 A. After I had gotten back from the hospital.

17 Q. After you talked to Mr. Hamman?

18 A. That's correct.

19 Q. And what did you -- how did you initiate a conversation
20 with Shawn?

21 A. What I did is I gave him a bifurcated Miranda
22 admonishment, and I'm sure the jury has all seen on TV. You
23 have the right to remain silent and so on and so forth.
24 Bifurcated is just basically I asked him, you know, you have the
25 right to remain silent. Do you understand?

26 He says, "Yes." And at that point I go, "Okay. Having
27 that right in mind, do you want to talk to me?" And at that
28 point he said, "No," so I terminated everything right there.

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1 Q. Okay. Did you ask him to talk at any other time?
2 A. He had initiated conversation with me later on by asking
3 me, you know, "What kind of charge am I facing?"
4 Q. When was that?
5 A. I'm not exactly sure how long after. I think it might
6 have been after I already talked to Anna Rugg.
7 Q. But that particular conversation is not in your report;
8 correct?
9 A. I did mention that, yes.
10 Q. Could, perhaps, reviewing your report refresh your
11 recollection as to a time table?
12 A. Yes, it would.
13 Q. Please, if you have it.
14 A. If I can find it here. Bear with me a second. I have a
15 lot of reports here.
16 Q. That's fine. I can relate.
17 A. It looks like my first initial contact with Mr. Rodriguez
18 in the back booking room on the 17th was at 6 a.m.
19 Q. And now that was at the time you gave him, when you just
20 were explaining the bifurcated Miranda admonishment?
21 A. That's correct.
22 Q. He at that point said, "I don't want to talk"?
23 A. Correct.
24 Q. You said earlier, I think you estimated a couple hours
25 earlier at one point at the booking facility?
26 A. As I said, I'm not sure if I actually saw him at that
27 time. I'm kind of hazy on that. I think I might have just went
28 to the hospital and talked to him when I got back.

1 Q. So to the best of your recollection 6 a.m. may be the
2 first time you arrived at the station?

3 A. No. I had been to the station to get some background as
4 to what I needed to go talk to Mr. Hamman about. I don't know.
5 I don't recall if I walked to the back of the police department
6 and saw Mr. Rodriguez.

7 Q. That's where the booking cell is, in the back?

8 A. It is in the back by our parking lot area.

9 Q. All right. In your report it says you first contacted him
10 at 6:00. He didn't want to talk, but ten minutes later he
11 changed his mind. Anything happen there that you noticed? I'm
12 not asking you to go inside Shawn's head. Anything that you
13 noticed that might have encouraged him to change his mind?

14 MR. MARCHI: Well, I object. That would be calling for
15 speculation on what is in the mind of the defendant, Shawn
16 Rodriguez.

17 MR. SERAFIN: I knew you were going to say that. That's
18 why I specifically --

19 THE COURT: As phrased, it is still calling for
20 speculation. As phrased, sustained.

21 Q. BY MR. SERAFIN: Any officers have any discussion in front
22 of Shawn about maybe what was going to happen to him?

23 A. Again, I don't know what was said to him at any time. I
24 know there is an officer -- if there's someone in our booking
25 room, there's an officer with him at all times. Whether that
26 officer said something to him, I don't know.

27 Q. Well, between 6:00 and 6:10 you had some hesitation as to
28 whether or not there was some incident beyond Shawn's control,

1 maybe some incident that he witnessed personally that may have
2 changed his mind?

3 MR. MARCHI: Well, objection. That --

4 THE COURT: Sustained.

5 Q. BY MR. SERAFIN: Did you see -- did you see any officers,
6 besides yourself, attempting to contact or talk to Shawn?

7 A. Nothing specific, no.

8 Q. How about unspecific, maybe; did you see officers having a
9 conversation among each other about the harshness of the
10 situation within hearing distance of Shawn?

11 MR. MARCHI: Well, again, that calls for speculation as to
12 what Mr. Rodriguez is hearing, the distance would be --

13 MR. SERAFIN: I'm asking --

14 THE COURT: Overruled. He may answer.

15 Q. BY MR. SERAFIN: Did you hear any such conversation?

16 A. I didn't hear anything that stands out, no.

17 Q. And so after he agrees to talk to you ten minutes later
18 you take him into an interview room?

19 A. Correct.

20 Q. And Detective Hutchins is in there with you as we heard on
21 the tape; correct?

22 A. That's correct.

23 Q. And you had mentioned before, we played the tape that the
24 fade outs, if you will, or the garbled communication that we had
25 at various points in the tape, that was due in some part to
26 officer's radio frequency?

27 A. Yeah. What we determined was, like I said, it was a new
28 camera system they have in there. And what had happened is

1 sometimes, you know, high profile cases or case that might
2 interest another officer, they will go into. We have an
3 interview room on one side and a room that has all our recording
4 equipment and another interview room. They will go in the
5 recording room equipment and watch the interview or listen to
6 it, and their radios and their cell phones they bring in there
7 were affecting the transmission.

8 Q. Okay. When you say brand new, was this the first time you
9 ever used this recording equipment?

10 A. No. It was the first time I recall it being garbled like
11 this.

12 Q. So in no other time when you used this recording equipment
13 did officers go in and watch it?

14 A. I can't say at no time because when I'm interviewing
15 somebody, I don't know who goes in there.

16 Q. But it seems safe to assume from your conclusion that it
17 was the radios that caused the problem, that this was the first
18 time that problem had ever occurred?

19 A. It is the first time that I've watched one of my
20 interviews take place where I saw this bad interference.

21 Q. How did you guys come to that conclusion later?

22 A. Actually, it wasn't too long ago that we figured out what
23 was going on because it started doing it on the interview and
24 then we removed everybody's radios and it cleared up. We
25 started bringing someone back in, it started getting garbled
26 again.

27 Q. Jurors all over Placer County are going to have to watch
28 those garbled tapes, huh?

1 At roughly 2:30, 2:45, Shawn was stopped driving the red
2 Beretta. In your investigation either that night or since then,
3 and I realize you are not the actual arresting officer, do you
4 have any idea what Shawn was doing between or what you guys had
5 Shawn doing between 2:30 and 2:45 and 6 a.m. when you finally
6 got to interviewing him?

7 A. Sitting in the booking room.

8 Q. Does it seem somewhat unusual to you, as it does to me,
9 that he was there for three and a half hours before anybody
10 interviewed him?

11 MR. MARCHI: I'm going to move to strike as to what
12 counsel's personal opinion is in that regard, your Honor.

13 MR. SERAFIN: I'll withdraw my personal opinion.

14 Q. Does it seem odd or is it unusual that he was in there for
15 three and a half hours before anyone bothered to interview him?

16 A. Not particularly, especially when you have a case where
17 you have multiple suspects or multiple victims or multiple
18 witnesses. Sometimes that happens.

19 Q. What time was Anna Rugg interviewed?

20 A. I'd have to look for specifics.

21 Q. I was going to do the same thing. It looks like she was
22 interviewed --

23 A. It looks like she was interviewed at -- hold on a second.
24 I don't indicate what time she was talked to, what time I talked
25 to her. But it was before Mr. Rodriguez, if my memory serves me
26 correct. It was about an hour interview.

27 Q. Okay. In your interview with Shawn Rodriguez, you taped
28 it, but you also wrote a report of it; correct?

1 A. Correct.

2 Q. And what is the standard purpose for writing a report if
3 you have it on tape?

4 A. Just a summary of some facts that were outlined in the
5 interview.

6 Q. In fact, would it be fair to say that it is a backup in
7 case you have problems with the tape either at the time or in
8 the future such as the problems we have here?

9 A. That and the fact that we either videotape or audiotape a
10 good majority of our interviews in all cases and a majority of
11 them aren't transcribed so we refer to just the summary of the
12 interview as our guide.

13 Q. And there may be occasions where tapes sort of get lost in
14 the shuffle such as the store video that you're not exactly sure
15 where it is; is that fair to say?

16 A. You know, items can be damaged. As far as the
17 surveillance, it is an evidence item, so it is in evidence.

18 Q. In fact, that whole tape could have -- if officers had
19 watched the entire thing or if their frequency were turned up,
20 it is possible that entire tape or much more of it could have
21 ended up as garbled as some of the certain sections we saw
22 today; is that fair to say?

23 A. Any time you deal with technical equipment there's always
24 a chance there would be problems to arise.

25 Q. The goal is to memorialize a key event in your report so
26 if you have to testify on a case that you may not have specific
27 memory of six months, a year, two years down the road, you can
28 refer to your report?

1 A. Correct.

2 Q. So when you wrote this report regarding Shawn Rodriguez's
3 statements, you wrote it from the point of view that I may have
4 to refer to this in the future in explaining to jurors or other
5 people what his statements were; is that correct?

6 A. I wrote it to help me out, yes, in the future.

7 Q. And oftentimes as police officers with the number of cases
8 you do and the fact that the legal system can be slow and you
9 have to testify many, many, many months down the road, you use
10 your reports as your guide to what went on in a certain case?

11 A. Correct.

12 Q. And in this case you obviously then would try to put the
13 key points that Shawn Rodriguez made and include all those in
14 your report?

15 A. Correct.

16 Q. And do you believe you did that?

17 A. I hope I got most of them.

18 Q. The goal is not to put in just the key points that
19 indicate guilt towards a certain person or another, the goal is
20 to put in anything that is relevant to what may or may not have
21 happened in the case as a goal?

22 A. Anything that I determine is a key point, I try to get it
23 down on paper.

24 Q. Not just a key point towards someone's guilt?

25 A. Any key point.

26 Q. Even if that key point pointed toward your innocence?

27 A. Possibility, sure.

28 Q. Possibility or yes if someone --

1 A. Oh, yeah. If I talked to somebody and they say, Oh,
2 there's no way this person could have done it, oh, yeah, that is
3 going to go in a report, sure.

4 Q. When you interviewed Shawn Rodriguez, one of the things he
5 stated in regards to the carbon monoxide poisoning as we watched
6 and read the transcript was, and I'm paraphrasing, put the hose
7 in there. Let it sit for 15 minutes. Smoked a cigarette. And
8 said that should do it. I think he's dead now. Is that a fair
9 paraphrase of a statement that we heard today?

10 A. It is a rough statement.

11 Q. Okay. Do you want to review the transcript and give the
12 exact statement?

13 MR. MARCHI: I object. The tape speaks for itself at this
14 point, your Honor.

15 THE COURT: Overruled.

16 Q. BY MR. SERAFIN: Would you like to read -- do you have the
17 transcript up there, Officer?

18 A. I do. Do you have a page number? I believe it was page
19 17, I got on my copy.

20 Q. Page 14, one, two, three, four, five paragraphs down.

21 A. Okay.

22 Q. I believe the last sentence says, "The car made it about
23 15 minutes, and I'm like, I was like, that's enough. He's dead
24 by then."

25 Is that correct?

26 A. Correct.

27 Q. Now, in your police report where you are memorializing the
28 key statements or piece of evidence in a case, you put in the

1 police report that statement?

2 A. Let me refer to my summary here. You want me to read it
3 exactly out of my summary?

4 Q. Yes.

5 A. "Rodriguez said that hose was placed in the vent above the
6 door and was hooked to the car for approximately 15 minutes.
7 After that time period had passed and Rodriguez had a chance to
8 smoke a cig, he said that Hamman was probably dead."

9 Q. And that is the only statement in your summary referring
10 to the carbon monoxide incident; is that correct?

11 A. In that paragraph, yes.

12 Q. How about in that entire report?

13 A. In that paragraph, yes.

14 Q. Where else in the report did you reference Shawn
15 Rodriguez's statements on the carbon monoxide?

16 A. It just -- it builds up to it about getting the hoses,
17 duct tape, the door, cutting the pair of pants and so on and so
18 forth.

19 Q. And it finishes with the statement you just read?

20 A. Correct.

21 Q. After that statement there's nothing else in your summary?

22 A. Correct.

23 Q. Regarding the hose?

24 A. Correct.

25 Q. You left out the following statement in the transcript
26 where he says, "You know damn well" -- I'm going to leave out
27 the expletives -- "it is going take an hour and a half, two
28 hours in a room that size for carbon monoxide poisoning to

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1 happen, you know, with all the water and shit. It is not going
2 to happen in 15 minutes."

3 You left that part out of your summary; didn't you?

4 A. Yes.

5 Q. Now, you're charging or attempting to gather evidence and
6 determine whether or not an individual committed attempted
7 murder. Don't you think the fact that -- I mean, you wrote that
8 first statement. "Put it in for 15 minutes. Let him sit there.
9 Thought he was dead. End of story." You wrote that to indicate
10 that he actually thought he had just killed a human being; isn't
11 that correct?

12 A. That's what he said.

13 Q. Well, doesn't the follow-up where he clearly says, "I only
14 did that because I knew it wasn't going to work in 15 minutes.
15 It was going to take an hour and a half to two hours," doesn't
16 that have some tendency to show maybe he didn't think he had the
17 intent?

18 A. It conflicts is what it does.

19 Q. Okay. Well, if you're trying to do an objective report
20 and you're trying to memorialize this so that you can, you know,
21 accurately tell people later whether or not you thought he had
22 the intent or not, wouldn't it be important to examine not just
23 the side that points toward guilt, but maybe the side that
24 points towards innocence?

25 A. The best way I can explain this report is that it is a
26 summary. I can't write fast enough to record every single thing
27 he said down. That's the purpose of videotaping, audiotaping.

28 Q. And certainly the point is to put the key points?

1 A. I try to get all the key points.

2 Q. And key points not only pointing towards guilt but towards
3 innocence; right?

4 MR. MARCHI: Excuse me, I object. I ask the witness be
5 allowed to finish his answer before there's an interjection at
6 this time.

7 THE COURT: Objection is noted for the record. I'll ask
8 both sides to make sure to let everybody finish their questions
9 and their answers. Go ahead.

10 Q. BY MR. SERAFIN: Not just their key points for guilty, but
11 any key point that points towards innocence?

12 A. As I said, this is a summary. It is not word for word
13 what someone says. We would never get any work done if we had
14 to write word for word what everybody said.

15 Q. That's why I'm not going through the 17, 20 pages of
16 transcript saying you left this out in your summary. I'm
17 picking one or two things that I think are fairly important.

18 A. Sure. I understand.

19 Q. You had said earlier that clearly these two statements,
20 the statement, "I thought he was dead," and the follow-up
21 statement, "You know damn well that's not possible. I didn't
22 really think he was dead," you stated they're in direct
23 contradiction?

24 A. They do contradict, yes.

25 Q. Yet you only included the one that pointed toward his
26 guilt?

27 A. That's all that is in there, yes.

28 Q. At one point the defendant, Shawn Rodriguez, told you that

1 he tried to undue some screws on the window; do you remember
2 that?
3 A. Yes.
4 Q. And there were fingerprints taken from the window;
5 correct?
6 A. I did not know that until Detective Hutchins --
7 Q. But you heard Detective Hutchins read it off the evidence
8 list, I believe it was Evidence Item Number 2, that there were
9 prints taken off the window?
10 A. Correct.
11 Q. As you said, you knew nothing about it so you obviously
12 did nothing with the prints?
13 A. I didn't do anything with the prints.
14 Q. We don't know if the prints were from the outside of the
15 window?
16 A. That I don't know.
17 Q. You also -- do you remember in Mr. Rodriguez's statement
18 that he said that the water level was about 3 feet high?
19 A. That's what he said, yes.
20 Q. And did you ever ask him how he knew that?
21 A. Not specifically, no.
22 Q. Well, not even generally. There was no follow-up question
23 as to how he knew the water level was 3 feet high? He said you
24 said, "How high was the water?" He said, "3 foot"?
25 A. I took it at that.
26 Q. Could have very well been that is what Nick, the guy in
27 the cell, told him?
28 A. That would be speculation on my part.

1 Q. It would, but it would be as much speculation as to say
2 that he looked in and saw the water was 3 feet and that's how he
3 knew?
4 A. That's the way I took it, and that's the way I understood
5 it.
6 Q. But you didn't ask any follow-up questions such as, How
7 did you know that?
8 A. No.
9 Q. Either way you're forced to speculate as to how he came to
10 the conclusion that the water is 3 feet; correct?
11 A. Just from his own statement that it was 3 feet.
12 Q. And have you ever pictured this, picture being in your
13 automobile and it is pouring rain and you're looking through the
14 windshield and you don't have any windshield wipers. Pretty
15 tough to see?
16 A. Depends on the type of flow, the water flow.
17 Q. Pouring rain, pretty tough to see?
18 A. Sure.
19 Q. Then add the fact that it is pitch black, even tougher to
20 see?
21 A. Yeah.
22 Q. Imagine while it is pitch black in the middle of the night
23 at the juvenile hall building with no lights on, Shawn Rodriguez
24 or Anna Rugg peering through this window with the sprinkler
25 coming down on the window looking into a pitch black room.
26 Reasonable to assume it is going to be pretty tough to judge a
27 water level?
28 A. It would be hard for me to judge because I didn't see it

1 when the water was running. As it was stated before, he had put
2 a towel over the sprinkler to divert the water. Whether it was
3 hitting both windows or one window, I don't know.

4 Q. Well, every time I read in the report in anybody's report,
5 including your own, about water sprinklers, it's greatly
6 exaggerated to the point where it is spraying all over the
7 place. Now, in this one central issue you say maybe it wasn't,
8 maybe it was, maybe it was barely coming out. You don't know?

9 A. I have no firsthand knowledge. I just write down what
10 people -- how they describe how the sprinkler was going.

11 Q. How did Nick generally describe it?

12 A. He said he was getting -- before he put the towel on, he
13 said he was getting rained on throughout the whole room. When
14 he put the towel on, he said the water was diverted.

15 Q. Now, at some point towards the end of Shawn's statement,
16 he explained to you that he wanted to get the water off and he
17 was going to use a hacksaw to do that; is that correct?

18 A. Correct.

19 Q. And at another point in Shawn's statement he explained
20 that he attempted to turn valves off in the outside of the
21 juvenile hall building because he thought maybe those would get
22 the water off; is that correct?

23 A. Correct.

24 Q. The part about him hitting various valves in the back to
25 attempt to get the water off and, in fact, one came up and
26 squirted Anna and she got very upset, that was left out of your
27 summary report; is that right?

28 A. I don't know if I put that in there or not.

1 Q. Feel free to refresh your recollection.

2 A. I just indicated in the summary of wanting to cut the pipe
3 with the hacksaw.

4 Q. Nothing about any of the valves in the back that he's
5 trying to turn off?

6 A. No, but it's in the transcript.

7 Q. And also in the transcript we clearly heard today, I don't
8 know if we clearly heard, but we read a point where Shawn said
9 and I quote, "I fucked myself. I see time coming." Do you
10 recall that?

11 A. Yes.

12 Q. And that part you included in your report; correct?

13 A. Yes.

14 Q. Now, referring your attention to page 19 of the
15 transcript, about seven statements from the bottom, starts off
16 with Shawn saying, "See, I see it the way I saw it, and I see
17 two different parties in two different positions. And I think
18 that in one position punishment would be firmer than the other,
19 but the tagalong isn't innocent either. I see time for me."

20 That's exactly actually the entire statement taken in its
21 context; isn't it?

22 A. That is.

23 Q. Your summary from that is only the one line: "I fucked
24 myself. I see time coming"?

25 A. That's what I have.

26 Q. Does that seem like an accurate representation telling
27 both sides, both those sides that point towards innocence and
28 guilt?

1 A. He does mention the two different positions, and I'm
2 looking at the transcript.

3 Q. And at that point in his statement Shawn told you that
4 that's where Anna had mentioned she wanted to beat the guy to
5 death with the barb wire post?

6 A. She did mention that to him, yes.

7 Q. That's where he explained to you he drew the line and he
8 said, "We're getting out of here"?

9 A. That's what he says.

10 Q. And that's, according to his statement, when he got in the
11 car and headed toward Sacramento. Shortly thereafter they pull
12 over and she leaves the note; correct?

13 A. Correct.

14 Q. And they did actually go to Sacramento and get a hacksaw
15 and then they were arrested on the way back; correct?

16 A. Correct.

17 Q. Shifting gears for a moment. You interviewed Nicholas
18 Hamman on 3/17, and it might have been March 18th, early morning
19 hours at the hospital; right? And then again on March 20th on a
20 taped interview?

21 MR. SERAFIN: Actually, your Honor, before I get into
22 this, which will be sort of similar to the last, would this be a
23 decent time for a short recess?

24 THE COURT: Okay. Why don't we take a 15-minute recess.
25 We'll resume at five minutes after 3:00.

26 (Recess taken at 2:53 p.m. Reconvened at
27 3:07 p.m.)

28 THE COURT: We're back on the record. The jury is all

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1 present. Counsel and parties are present. Go ahead.

2 MR. SERAFIN: Thank you, your Honor.

3 Q. Detective Coe, just to get back where we were, you
4 conducted two interviews with Nicholas Hamman; correct?

5 A. Yes.

6 Q. One while you were in the hospital on March 18th, what you
7 made the report of?

8 A. The 17th.

9 Q. And then one a few days later that was taped; correct?

10 A. Correct.

11 Q. And you heard -- you sat in here like all of us and heard
12 Mr. Hamman's testimony on the stand; correct?

13 A. Correct.

14 Q. Did you have -- you read your report from March 17th
15 before you come to trial to kind of refreshed your recollection
16 on some of the key things he stated to you?

17 A. Yes.

18 Q. And, in fact, on March 17th, I'm sorry, between then and
19 now when you went to see Mr. Hamman a few weeks ago, I believe
20 you used that report from March 17th in questioning Mr. Hamman
21 while he was at the jail; is that right?

22 A. Correct.

23 Q. Is there anything -- from you sitting here watching his
24 testimony, is there anything that you think he left out from
25 your March 17th interview with him?

26 A. I'm trying to think about everything he said.

27 Q. Let's go over some of the specifics without going over his
28 entire testimony.

1 A. Thank you.

2 Q. He said that he drove to the juvenile hall with Anna and
3 Erin in the car; correct?

4 A. Yes.

5 Q. That was consistent with what you had in your report from
6 his statement on March 17th?

7 A. I believe so, yes.

8 Q. And he said that at the hall they were all moving some
9 various things into the hall and that at some point Shawn and
10 Erin disappeared out of his sight and it was just him and Anna;
11 is that correct?

12 A. Correct.

13 Q. That's consistent with what is in your report from March
14 17th?

15 A. Yes.

16 Q. And then at some point Anna came out, told him Erin was
17 hurt. He followed her back into the cell where she then began
18 to push him in, and Shawn Rodriguez appeared, kicked him in the
19 leg and then shoved him in. Is that -- was that roughly his
20 statement?

21 A. That was his statement, yes.

22 Q. And was that the statement that is in your police report
23 from March 17th?

24 A. No. That interview at the hospital he made mention that
25 both Rodriguez and Rugg shut the door on him.

26 Q. And I believe on the stand yesterday he also said that
27 Shawn contributed to getting the door shut on him?

28 A. By kicking him, yes.

1 Q. Okay. So to clarify, Anna was doing the pushing of the
2 door, and Shawn kicked him to get his leg out from out of
3 this?
4 A. That's my understanding.
5 Q. Did he give the statement of Shawn kicking him in the leg
6 on March 17th?
7 A. No.
8 Q. In fact, in that time he said, I think Shawn appeared and
9 helped Anna push the door shut?
10 A. That's my understanding, yes.
11 Q. So that would be a minor difference, but nothing huge?
12 A. It is a difference.
13 MR. MARCHI: Objection as to the conclusion, your Honor.
14 THE COURT: Sustained.
15 Q. BY MR. SERAFIN: Could be a huge difference would be fine
16 with me. Now --
17 MR. MARCHI: Can I move to strike the comment, your Honor?
18 THE COURT: Sustained. Granted.
19 MR. SERAFIN: Withdrawn.
20 Q. At that point I believe the testimony from Mr. Hamman was
21 that they eventually left and that the only real threat he heard
22 was or comment he could remember was Erin Hughes saying, "Shawn,
23 you got to let him out otherwise it is an attempted murder"; is
24 that correct?
25 A. Prior to them leaving the first time he got locked in the
26 cell?
27 Q. Correct.
28 A. No, there was another threat made.

1 Q. What was that?

2 A. The threat that Rodriguez said he was going to burn the
3 place down.

4 Q. You're correct. And that is -- both of those threats were
5 in your police report dated March 17th; correct?

6 A. Correct.

7 Q. And both of those he testified to yesterday?

8 A. Yes.

9 Q. At that point -- let's get beyond that for a second. So
10 at least up to what we've covered, his testimony seems -- it
11 doesn't seem like he left anything out from the March 17 police
12 report; fair to say?

13 A. It is fairly consistent.

14 Q. March 20th, you conducted a longer more extensive taped
15 interview with Mr. Hamman once he was outside the hospital;
16 right?

17 A. Yes.

18 Q. And at that point rather than write a full police report
19 on his statements, you simply wrote in a very brief paragraph
20 that all his statements on March 20th were consistent with his
21 March 17th statements with one exception; is that right?

22 A. The facts that he lined out were fairly consistent with
23 what he said. I mean, every time someone tells a story, there's
24 going to be different variation or maybe he elaborates on
25 something a little bit more or a little bit less, but the gist
26 of it was consistent from my eyes.

27 Q. Do you have your, be it brief, police report from March
28 20th when he came --

1 A. I do. Let me find it.

2 Q. Page 87 in my discovery. I don't know if yours are
3 numbered the same. Probably not.

4 A. No.

5 Q. Would you like to see a copy? I believe I have a copy.

6 A. I think I may have found it here. Okay. I'll have to see
7 your copy. Okay.

8 Q. Once he arrived at the station for the scheduled
9 interview, about third sentence down, you said, The statement
10 that I received from Hamman was very similar to the one he gave
11 me out in the Auburn Faith Emergency Room; correct?

12 A. Correct.

13 Q. And that the Auburn Faith Emergency Room was the interview
14 we were just talking about from March 17 that you wrote a report
15 on?

16 A. Right.

17 Q. And you followed up by saying, One thing that he did add
18 was a threat that Rodriguez had made toward him while he was in
19 the cell. Rodriguez told him that he had a gun and would shoot
20 him if he tried to do anything toward him or Rugg; correct?

21 A. Correct.

22 Q. You follow-up with saying that everything else stayed very
23 consistent; right?

24 A. Correct.

25 Q. In the interview on the 20th Nicholas Hamman said at one
26 point that he barely knew Shawn; do you remember him saying
27 that?

28 A. I remember him saying that he knew him through Anna and

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1 only met him a few times, if I'm remembering correctly.

2 Q. Okay. He also stated that he had been to the juvenile
3 hall before with Anna; is that correct?

4 A. I believe he did say that, yes.

5 Q. What I'd like to do, just to be more detailed, I actually
6 transcribed that videotaped interview so it might be a little
7 easier to follow along. Directing your attention to page 6 of
8 your interview. Right at the top, fourth line. "You knew it
9 was abandoned because you had taken her there before"; is that
10 correct?

11 A. That's what it says here.

12 Q. Okay. Well, and it says that next to D.C.; is that you?

13 A. I'm assuming, yes.

14 Q. Okay. So -- and his answer to that was, Well -- actually,
15 it was just your statement; correct?

16 A. That's my statement.

17 Q. And did you include in your summary of the report that
18 Anna had been to the juvenile hall building before with the
19 defendant, I'm sorry, with Nicholas Hamman?

20 A. I don't believe that's in there, no.

21 Q. It is not in your March 17 report; correct?

22 A. No.

23 Q. It is something you added in the March 20th interview;
24 correct?

25 A. That's in the transcript.

26 Q. You don't think it's at all significant that they had been
27 there before together?

28 A. Like I said, anytime that I interview somebody, I tape it.

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1 If I interview a witness or a suspect or anything, that's what
2 it is there for is to be as accurate as possible.

3 Q. Okay.

4 A. When, in fact, something is transcribed.

5 Q. But again, the purpose for keeping a report is we never
6 know what is going to happen to physical evidence. Sometimes
7 the tape doesn't work out. Sometimes the tape could be lost and
8 the same thing went over in Shawn's statement; correct?

9 A. Correct.

10 Q. In Shawn's you had the taped statement, but you still took
11 the time to write a report; right?

12 A. Right.

13 Q. So in this one you would have wrote a report, but for the
14 fact that you felt it was very consistent with the report you
15 already wrote?

16 A. The chain of events is what I'm telling you about as far
17 as what happened. That stayed consistent.

18 Q. Well, if something happens to the tape and we don't have
19 it, and a case comes before a jury and they want to know is
20 Nicholas Hamman believable and they have his statement from
21 March 17, based upon your report, aren't they going to want to
22 know what his statement was on March 20th once he got out of the
23 hospital?

24 MR. MARCHI: I object. This is an irrelevant line of
25 questioning, and I move to exclude under 352.

26 THE COURT: Overruled.

27 THE WITNESS: Again, the only way I can answer that is
28 that's why we videotape and audiotape things.

1 Q. BY MR. SERAFIN: Well, do you agree then that it would be
2 important to know the difference, if there were any, between
3 what he said on March 17 and what he said on March 20th?

4 A. Sure.

5 Q. If we don't have the tape, and you don't write a report,
6 we wouldn't know; correct?

7 A. Again, that's why we tape things.

8 Q. Okay. But --

9 A. I understand what you're saying, but the fact is that we
10 do rely on tapes in high profile cases. We transcribe them.

11 Q. But if you don't have the tape and you don't have a
12 report, we're not going to know what it says?

13 A. If I knew the fact that his statement is as far as the
14 chain of events was consistent, that was what I was looking for.

15 Q. Okay. Let's focus on the consistency of the statement on
16 the chain of events. If I could direct your attention to the
17 top of page 9. Actually, starting with actually the bottom of
18 page 8. You said, "And then what happened?"

19 And then Mr. Hamman replied, "Then they slammed the
20 door shut."

21 You then said, "Who's they?"

22 He replied, "Anna and Rodriguez."

23 You agree so far?

24 A. Yes.

25 Q. And then go ahead, and actually why don't you read from
26 there what your next question is.

27 A. Okay. "When they slammed the door shut, did anything else
28 happen?"

1 Q. And Mr. Hamman's response?
2 A. "No, it just locked."
3 Q. So at that point you have, he said, "They slammed the
4 door."
5 You said, "Did anything else happen?"
6 And he said, "No"; correct?
7 A. At that point in time.
8 Q. Then you asked him a follow-up question. What was that?
9 A. "Did anybody touch you at that time?"
10 Q. And his answer was then?
11 A. "Oh, yeah. I forgot I had my -- I turned around and put
12 my foot through the door to block it a little bit, and Shawn
13 Rodriguez kicked me."
14 Q. So he didn't mention that the first time; did he?
15 A. No.
16 Q. Or the second time when you then ask him again, "Did
17 anybody touch you," right?
18 A. Correct.
19 Q. Then after he finally made the statement you were looking
20 for you, then said, "Okay. Just kicked you the one time in the
21 leg, and that's that mark you showed me the other day?"
22 A. Correct.
23 Q. He said, "Yeah." Directing your attention to page 14, a
24 little bit towards the bottom half talking about the sliding the
25 money, the ATM card, and the keys. Nicholas Hamman's statement
26 to you on March 20th, "Slid it under. Anna grabbed it, and I
27 slid the keys under. Shawn was over there and then he grabbed
28 the keys and that was it. They said they would call the police

1 and they left."

2 You then responded, what?

3 A. "Did you have any spare keys in the car?"

4 Q. Answer: "No. I had the spare keys on me."

5 You then asked again -- go ahead.

6 A. "I guess my question is, is when they left you in there
7 originally, they were out driving your car, so how do you know
8 how they were driving your car if you had the keys?"

9 Q. Mr. Hamman's answer, "I don't know."

10 You then asked him a third time?

11 A. "You sure you didn't leave the keys in your car? Are you
12 sure you slid them underneath the door?"

13 Q. His answer, "Yeah. I'm sure I slid them under the door."

14 You asked him a fourth time.

15 A. "Okay. You didn't -- you didn't slide them under earlier
16 than what you're telling me?"

17 Q. Answer: "I don't think so."

18 You then go at it a different way for a fifth time.

19 A. "Okay. I know it's kind of hard to think back and
20 remember stuff with all the stuff that must have been going on
21 through your mind. And there were no other keys in the car that
22 you're aware of?"

23 Q. Answer: "No. I had the keys in my pocket."

24 At that point you said?

25 A. "Okay."

26 Q. And then he answered. "These are the spares. The others,
27 the originals, got black things on them."

28 And then you said for a sixth time?

1 A. "Where are the originals at?"

2 Q. And he said, "With me."

3 Now, you asked him on six different occasions in six
4 different ways where were those keys. You did that because you
5 knew that Anna had already gotten the keys; correct?

6 A. What I had known is that they had been driving around in
7 the car.

8 Q. And they had been driving around in the car since they
9 first left him at the juvenile hall that morning; correct?

10 A. That was my understanding, yes.

11 Q. So it -- he couldn't have given them the keys at the --
12 slid them under the cell door later that night; correct?

13 A. I don't think he did, no.

14 Q. And that fact, the fact that he is so adamant about
15 sliding those keys under the door when, in fact, he clearly did
16 not slide the keys under the door, that's a bit of a damaging
17 statement towards his credibility; isn't that fair to say?

18 MR. MARCHI: Objection, your Honor.

19 THE COURT: Sustained.

20 Q. BY MR. SERAFIN: If you were interviewing, if you were
21 cross-examining a defendant trying to figure out the truth and
22 they were very adamant about two separate statements and you
23 found one of those two statements to be an outright lie, would
24 it cause you, as a police officer, to then doubt their second
25 statement?

26 MR. MARCHI: I object. This is irrelevant.

27 THE COURT: Sustained.

28 MR. SERAFIN: Your Honor, can I be heard on that?

1 THE COURT: You can ask him how that would affect the
2 writing of his report; but as phrased, sustained.

3 Q. BY MR. SERAFIN: When you wrote the report on March 20th
4 or when you wrote your paragraph, you did not include this
5 exchange with Mr. Hamman in that paragraph; correct?

6 A. I think by this time, being that I talked to the two
7 defendants already, I already knew that wasn't the case, and I
8 had the other reports to show that probably didn't happen.

9 Q. If you already knew that was the case, then why did you
10 ask Nicholas Hamman six separate ways, where were the keys?

11 A. Because when you talk to people at different times, they
12 had a day or two to think about things, sometimes they remember
13 things and sometimes their stories do change a little.

14 Q. One of the charges in this case is vehicle theft, among
15 other theft-related charges. The fact that he on March 17th
16 said he slid keys under the door based upon their threats to
17 him, and the fact that this is totally a false statement by your
18 opinion --

19 MR. MARCHI: Objection, your Honor, move to strike.

20 THE COURT: Let him ask the question, and I'll rule.

21 Q. BY MR. SERAFIN: You've given the opinion that's a false
22 statement that based on your investigation he didn't actually
23 slide the keys because they must have already had the keys; is
24 that correct?

25 MR. MARCHI: Again, move to strike. Mischaracterizes his
26 testimony. He didn't say he lied. Could be wrong.

27 THE COURT: Sustained.

28 Q. BY MR. SERAFIN: You came to the conclusion that Nicholas
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1 Hamman didn't have the keys to slide under the door because Anna
2 Rugg or Shawn Rodriguez already had them; correct?

3 A. They did have -- well, whether there were keys or not,
4 they were driving the car around.

5 Q. Okay. Well, so was it your conclusion that maybe they
6 were driving the car around without the keys?

7 A. At the time I was doing this interview, I didn't know if
8 they had hot-wired it or what.

9 Q. Did you go back and look at the car to see if they
10 hot-wired it?

11 A. No. Detective Hutchins processed the car. I do believe
12 they did have a set of keys further on in my investigation,
13 which led me to believe that this was -- and with the
14 defendant's statements that they probably already had the keys.

15 Q. That's why you questioned him so many times to see whether
16 or not he was really, really sure that he had the keys; right?

17 A. Sure.

18 Q. He, being Nicholas Hamman, because you didn't think he had
19 them because you thought he was either lying or mistaken about
20 having the keys that evening?

21 A. Yeah. I thought he was mistaken.

22 Q. You didn't think it was a relevant thing to include in the
23 police report?

24 A. As I said, all the other reports that are written kind of
25 showed that wasn't correct.

26 Q. Wouldn't that tend to make that statement that much more
27 valuable?

28 MR. MARCHI: Objection, your Honor, as to what this

1 officer thinks of value is irrelevant.

2 THE COURT: Overruled.

3 Q. BY MR. SERAFIN: Wouldn't the fact that the statement was
4 wrong, wouldn't it make it more pertinent to your case
5 investigation?

6 A. Sure. It is a concern when you have a discrepancy, but on
7 the other hand, in my experience in talking with several victims
8 or suspects or whatever, there is some fabrication that involves
9 about any case.

10 Q. Okay. And the fabrication, do you sometimes think it is
11 not important and sometimes you think it is important?

12 A. You always look for the most reliable statements.

13 Q. Okay. But -- all right.

14 Did you conduct, along with Detective Hutchins, an
15 interview of Anna Rugg?

16 A. Yes.

17 Q. And at some point did she actually tell you and Detective
18 Hutchins --

19 MR. MARCHI: I'm going to object to this line of
20 questioning, your Honor, calls for hearsay as to whatever she
21 may have said.

22 MR. SERAFIN: I think we already have had this discussion,
23 and it was ruled on.

24 THE COURT: It was ruled inadmissible.

25 MR. SERAFIN: Can we approach?

26 THE COURT: Are we talking about the key?

27 MR. SERAFIN: Correct.

28 THE COURT: I'm sorry.

1 Q. BY MR. SERAFIN: When you interviewed Anna Rugg, didn't
2 she, in fact, tell you that she had gotten the keys away from
3 Nicholas Hamman before he was locked in the cell?

4 A. I believe that she said the keys were left in the car.

5 Q. Well, without bothering going through the transcript,
6 either way, they clearly, by their statement, assuming it to be
7 true, Nicholas Hamman had keys to slide them through the door
8 later that evening; correct?

9 A. As I said, from both defendants' statements, I don't
10 believe they were given the keys or I believe that they weren't
11 given the keys by Mr. Hamman from his cell.

12 MR. SERAFIN: One moment, your Honor.

13 Q. Directing your attention to page 20 in the transcript,
14 about 5 lines down, you asked Nicholas Hamman what his
15 relationship was with Ms. Rugg; correct?

16 A. Yes.

17 Q. And she said or he said, quote, "I thought we were
18 boyfriend-girlfriend"; is that correct?

19 A. Correct.

20 Q. You said, "Why did you think that?"

21 And he answered, "Because we'd been seeing each other for
22 about four or five months"; correct?

23 A. Correct.

24 Q. Now, you're investigating an attempted murder with two
25 codefendants. The fact that one defendant had a relationship or
26 was a girlfriend to the supposed victim, wouldn't that be a
27 pretty relevant fact?

28 A. Not necessarily.

1 Q. You don't think the fact that a defendant is dating a guy
2 that she may or may not have tried to kill is relevant to her
3 motive or could potentially be relevant to a motive?
4 A. Sure it could be. It could be relevant to a motive.
5 Q. But you don't really think it is relevant?
6 A. In this case, no.
7 Q. And that's why you left it out of any police reports at
8 all?
9 A. It wasn't recorded in anything I wrote.
10 Q. So you left it out of the police report?
11 A. Yes.
12 Q. And he later in that interview explained that he was a 290
13 registrant; correct?
14 A. He did tell me about that, yes.
15 Q. You left that out of the -- out of any of your reports;
16 correct?
17 A. I believe it was addressed in one of the transcripts.
18 Q. Did you include it in either of your police reports
19 that --
20 A. No.
21 Q. -- that you summarized, and in your police report you're
22 supposed to summarize the key details; correct?
23 A. It is not in any of my reports, no.
24 Q. Does that mean you did not think it was an important
25 detail?
26 A. The importance, like I said, my summaries are just kind
27 of, it is what it is. It is a summary.
28 Q. I summary of what, of the important details; correct?

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1 A. Yeah.

2 Q. So by not putting it in your summary, you clearly didn't
3 think it was an important detail?

4 A. I'm not going to say it is not an important detail, but it
5 wasn't included in my summary.

6 Q. And Nicholas Hamman is about 40 years old; correct?

7 A. I can get you -- yes, he is.

8 Q. And Anna Rugg is about 22, 23, I believe; is that correct?

9 A. Twenty-one.

10 Q. He tells you, this 40-year-old man, he tells you he
11 registers as a sex offender and he is dating a 21-year-old
12 woman, girl, even though they have never actually been intimate
13 together, do you find that relevant considering that he is the
14 supposed victim and she is supposedly trying to kill him?

15 A. The age difference, do I find that relevant?

16 Q. The combination of the age difference, the fact he is a
17 registered sex offender, the fact he claims it is his girlfriend
18 and, in fact, they never have been intimate with each other?

19 A. I didn't say that was irrelevant.

20 Q. That's -- explain why that information is not in your
21 report.

22 A. It is not in my report.

23 Q. In following that, actually, without a question, he then
24 went on to explain that they have not been intimate together
25 because she's into pain, S and M stuff; do you remember that?

26 A. Yes.

27 Q. That was his statement under oath at trial, but it was
28 also his statement to you back on March 20th; correct?

1 A. Correct.

2 Q. That also wasn't included in your report?

3 A. No.

4 Q. None of these were details that you thought were
5 significant or mattered as being different than the March 17th
6 interview?

7 A. Again, my summary was kind of the sequence of events.

8 MR. SERAFIN: No further questions, your Honor.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 Q. BY MR. MARCHI: Officer, what is the purpose of writing a
12 police report?

13 A. As I said before, it is a summary of our investigation.
14 Obviously, it's hard -- actually, it is impossible to include
15 every single detail in an investigation. That's why we opt to
16 tape record and videotape things, which is a summary of events
17 to help us if we need to refresh our memories.

18 Q. So officers oftentimes review the report and oftentimes
19 review the actual tapes to refresh their memories before coming
20 to court?

21 A. Correct.

22 Q. And did you do that in this case

23 A. Yes.

24 Q. All right. Now, basically when counsel refers you to the
25 interview of March 20th, talking about page 20, the last event
26 there, the testimony that is outlined that counsel had you
27 discuss about them being boyfriend and girlfriend but they
28 weren't intimate, that was entirely consistent with Mr. Hamman's

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1 in-court testimony; isn't that correct?

2 A. Correct.

3 Q. And, frankly, the fact that she's 21 and he's 40, they're
4 both adults; correct?

5 A. Correct.

6 Q. So you didn't attach any significance to that factor of
7 them being --

8 MR. SERAFIN: Objection; these are all leading questions.

9 MR. MARCHI: I don't think that was a leading question. I
10 can rephrase it.

11 THE COURT: Why don't you rephrase it.

12 Q. BY MR. MARCHI: The fact that she's an adult, 21, and he's
13 40, did that cause you to believe that since they're both
14 adults, you should put that in your report?

15 A. No.

16 Q. And he further clarified in that previous statement on
17 page 20, did he not, that when they were hanging out, they were
18 never intimate; isn't that what he said before?

19 A. Correct.

20 Q. On the 20th?

21 A. Correct.

22 Q. And what did he say in court?

23 A. He said they were never intimate.

24 Q. Now, when you first interviewed Mr. Hamman on March the
25 17th, that was at the hospital; correct?

26 A. Correct.

27 Q. And I believe you previously described his condition while
28 you're at the hospital?

1 A. Correct.

2 Q. Mind refreshing our memory about that?

3 A. He was shaking, a little incoherent. He kind of bounced
4 around, and I had to go back and make sure things were in order.

5 Q. All right. And were you being interrupted by hospital
6 personnel as well, sir?

7 A. At that time, no.

8 Q. Did you feel based on his demeanor that he wasn't entirely
9 well at that time, sir?

10 A. As I said, he was shivering and upset so he wasn't normal.
11 Of course, I never met him before, but to me, he didn't appear
12 that was his normal demeanor.

13 Q. So then did you request that he come to your office on
14 March the 20th to talk again?

15 A. Yes, I did.

16 Q. Why did you do that?

17 A. Just so I could basically go over what he told me to see
18 if that was the chain of events of what happened and to get it
19 put on videotape.

20 Q. Did he do -- do you do that sometimes in these
21 investigations, sir?

22 A. In any large case we do that.

23 Q. What about when someone had suffered a traumatic event
24 like this one, is that common to reinterview them after a while?

25 A. Yes, it is.

26 Q. Why is that?

27 A. People who have experienced a traumatic event oftentimes,
28 you know, their emotions are high. They forget stuff or leave

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1 out stuff or exaggerate things and when they're calm down, you
2 get a cleaner statement.

3 Q. And because of a traumatic event, have you had the
4 experience in the course of your many investigations that they
5 just sometimes plain get things wrong?

6 A. All the time.

7 Q. When you talked to Mr. Hamman on the 17th, the 20th, and
8 then you observed him here in court, did you get the feeling
9 that he was convinced that he did slide the keys under the door?

10 MR. SERAFIN: Objection; calls for speculation.

11 MR. MARCHI: He observed the demeanor all three events,
12 your Honor.

13 THE COURT: I'll allow it.

14 THE WITNESS: In the times talking to Mr. Hamman he was
15 adamant that he delivered the key under the door.

16 Q. BY MR. MARCHI: Counsel asked you about the six times that
17 you were basically confronting him about the keys; correct?

18 A. Correct.

19 Q. Is that a common technique that you use to interview all
20 witnesses in a case?

21 A. A lot of times.

22 Q. And, in fact, you even did that in Mr. Rodriguez's tape;
23 didn't you?

24 A. Yeah. We do it sometimes with witnesses, victims, and
25 suspects, just so we can make sure we're getting the information
26 we need.

27 Q. All right. And what's the overall purpose of that, when
28 you challenge a potential witness or a victim?

1 A. You want to make sure that, I guess, they stand their
2 ground and make sure it is what their belief is.

3 Q. All right. And even in the face of other evidence they
4 sometimes may be correct or they may not be telling you the
5 truth willfully?

6 A. Correct.

7 Q. And you knew after investigating the case that
8 Mr. Rodriguez said he already had the keys in his pocket as the
9 water was filling up?

10 A. Correct.

11 Q. And you knew something at least at some point during the
12 investigation about the car being used elsewhere; correct?

13 A. Correct.

14 Q. All right. And is there anything about the fact that
15 Mr. Hamman got that wrong about the car keys that you thought
16 that was so important you had to include it in your report?

17 A. It is not included in my report. In my eyes it didn't
18 have anything to do with the main indication in the case.

19 Q. Did my office request the actual tapes that were done on
20 Mr. Hamman to be produced, sir, if you know?

21 A. That I don't know. That's -- that goes through our
22 evidence tech.

23 Q. Let me ask you this, all of that information was available
24 on the actual recorded statements exactly what was said as
25 counsel read that to you on the March 20th trip?

26 A. That's correct.

27 Q. And that's from a tape of Mr. Hamman?

28 A. Correct.

1 Q. All right. Now, let me refer you to page 9 of this same
2 interview with Mr. Hamman on the 20th, and counsel asked you a
3 series of questions regarding the victim putting his foot in the
4 door. Do you recall that?

5 A. Yes.

6 Q. Now, when you asked the question, "Did anybody touch you
7 at that time," why did you ask that question?

8 A. That question, you know, this is from memory, but from
9 Mr. Rodriguez's statement that he had hit him at one time.

10 Q. All right. So you had information from Mr. Rodriguez
11 that, in fact, he may have physically struck Mr. Hamman?

12 A. Correct.

13 Q. And where did that information come from?

14 A. That was from Mr. Rodriguez during my interview with him.

15 Q. And that's on the tape here that we heard, sir?

16 A. Yes.

17 Q. All right. Now, the overall quality of the videotape
18 you've explained?

19 A. Correct.

20 Q. You didn't put everything down in the report that was on
21 tape; correct?

22 A. That's correct. I can't write fast enough.

23 Q. Now, did you feel that three and a half hours for this
24 defendant to wait, if that was the waiting time, is that unusual
25 in these kinds of cases, sir?

26 A. In a case, like I said, where there's several people,
27 defendants that need to be interviewed, it can take that long
28 because you don't want to rush through an interview, and you

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1 want to be as thorough as possible so it could take a while.

2 Q. And what time did you actually start interviewing
3 Mr. Rodriguez on the 17th?

4 A. Let me go back and refer here. It was at 6:33 in the
5 morning on the 17th.

6 Q. That was Mr. Rodriguez?

7 A. Yes.

8 Q. All right. Now, the actual tape, as we see it, it appears
9 to read later. Is there a reason for that?

10 A. That just wasn't -- the date wasn't set and the time
11 wasn't set.

12 Q. Okay. And the reports in this case that you did write,
13 were they soon after the interviews in question?

14 A. I try to write my reports soon after. Sometimes it's
15 hard, but that's why I take notes when I interview people so I
16 can refer to those.

17 Q. All right. Now, you previously indicated that you had
18 information from Mr. Rodriguez that he had somehow struck the
19 victim, Mr. Hamman, and that's why you asked that question of
20 Mr. Hamman; correct?

21 A. Correct.

22 Q. Let me refer you to page 2 of the transcript of Shawn
23 Rodriguez. Do you have that before you, sir?

24 A. Yes, I do.

25 Q. Let me refer you to the upper area of that, the first real
26 paragraph or the first paragraph. Is there an indication there
27 that Mr. Rodriguez admitted to striking the victim, Mr. Hamman,
28 in some way?

1 A. Yes.

2 Q. What does it say in that regard, sir?

3 A. It said, "I ran up on him and I hit him." *Not kicked. Was B.S. Anyway.*

4 Q. All right. Let me refer you to page 8, sir.

5 A. Of which transcript?

6 Q. Again, Mr. Rodriguez.

7 A. Okay.

8 Q. And we're about two-thirds of the way down, and it

9 indicates S.R. for Shawn Rodriguez. Is there any indication

10 there where Mr. Shawn Rodriguez is admitting to putting the

11 victim in the cell, sir?

12 A. Let me refer to my copy here.

13 Q. Let me read this to you. It says DH: Is that for Dale

14 Hutchins?

15 A. Dale Hutchins.

16 Q. You were present at the time?

17 A. Yes.

18 Q. Mr. Hutchins asked, "Why not just drive off then like you

19 did and make an anonymous call to the fire department, and tell

20 them there's some guy --"

21 Shawn Rodriguez: "Thought about that, but the first thing

22 he's going to say, Shawn Rodriguez and Anna Rugg put me in

23 here."

24 A. That's correct.

25 Q. So you understood that here to mean the cell?

26 A. That was my assumption.

27 Q. And this is Shawn Rodriguez talking about himself and Anna

28 Rugg?

1 A. Correct.

2 Q. Which is basically him admitting he participated in
3 putting him in the cell?

4 MR. SERAFIN: Objection.

5 THE COURT: Sustained.

6 Q. BY MR. MARCHI: And then you were referred, sir, to why
7 you didn't put in your reports about the gassing incident and
8 that Mr. Rodriguez indicated it is not going to happen in 15
9 minutes, words to that effect. It would take more than that
10 amount of time. Do you remember that?

11 A. Yes.

12 Q. All right. And during the course of this interview and
13 there were some problems with the tape, did Mr. Rodriguez ever
14 indicate he was a chemist?

15 A. No.

16 Q. How about a physicist?

17 A. No.

18 Q. Some sort of engineer?

19 A. No.

20 Q. Did he indicate any basis as to how he would know how long
21 it would take for someone to gas someone?

22 A. No.

23 Q. And you would have put that in the report, wouldn't you,
24 if he claimed to have some expertise?

25 A. I would hope so.

26 Q. In fact, let me refer you to page 2, and it is about
27 two-thirds of the way down. This is when Mr. Rodriguez starts
28 basically crying, as it indicates here. What did he ask at that

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1 point, sir?

2 A. "He didn't die; did he?"

3 Q. All right. So he's asking you whether or not the man is
4 still alive, meaning Mr. Hamman?

5 A. Correct.

6 Q. So that seems to -- is that the reason you didn't put the
7 statement in your report because perhaps you weren't sure he
8 really knew that it took 15 minutes?

9 MR. SERAFIN: Objection; leading.

10 THE COURT: Sustained.

11 Q. BY MR. MARCHI: Well, let's go to page 9 then. Did you
12 ever mention to Mr. Rodriguez that Mr. Hamman was in a coma
13 during the course of your interview, sir?

14 A. No.

15 Q. Did he ever bring up the subject?

16 A. Yes.

17 Q. And does that appear on page 9?

18 A. Yes, it does.

19 Q. And that reads, Shawn Rodriguez: "Is he in a coma?" Do
20 you remember that?

21 A. Yes.

22 Q. And Dale Hutchins says, "What's that?" And then that was
23 repeated?

24 A. Correct.

25 Q. He was never informed of the actual condition of
26 Mr. Hamman?

27 A. No.

28 Q. Showing you what's been marked as Exhibit 68, again these

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1 are the credit card slips we previously discussed. These two
2 here, the \$40 ones found on Ms. Rugg, as you recall, and the one
3 found on Mr. Rodriguez, the inquiry being the victim's account.
4 And there are times on these; correct?

5 A. Yes.

6 Q. What are the time frames?

7 A. The two withdrawals time is 0354 and the inquiry is 3:43
8 a.m. on the 16th.

9 Q. All right. And that's on all three of these items;
10 correct?

11 A. Yes.

12 Q. And did Mr. Rodriguez ever indicate exactly when the ATM
13 card was obtained during the course of his interview?

14 A. When the ATM card was obtained?

15 Q. Yes.

16 A. When the shelf was pulled away from the door and the water
17 was let out.

18 Q. Did he put an exact time on it, sir?

19 A. Not that I recall.

20 Q. You were asked about the 3 foot high level that
21 Mr. Rodriguez saw the victim standing in, and you actually
22 reaffirmed that was as high as it got, did you not, during the
23 interview?

24 A. He said it got to 3 feet.

25 Q. Did Mr. Rodriguez ever indicate to you that he couldn't
26 actually see that or he had some difficulty or not?

27 A. No, he didn't say anything like that.

28 Q. Now, sir, counsel asked you about the shut off of the

1 water and what you included in your report there, and you only,
2 again, put part of that in your report; correct?
3 A. Correct.
4 Q. All right. Did you put anything in your report about the
5 water shooting up in the air when he was trying to turn the
6 valves off?
7 A. I don't believe so, no.
8 Q. Again, that is in the tape; correct?
9 A. Correct.
10 Q. You heard it here today?
11 A. Yes.
12 Q. And you were asked why you didn't put the part in about
13 Anna wanting to hit Mr. Hamman on the head; correct?
14 A. Correct.
15 Q. All right. You were asked some questions about whether
16 that should be put in your report because it might be
17 exonerating evidence; correct?
18 A. Correct.
19 Q. Did you put in your report on page 15 about the middle of
20 the page where Mr. Rodriguez indicates: "We're gonna get the
21 hacksaw. I'm gonna turn this "f-ing" water off. We're gonna
22 hope the guy doesn't "f-ing" die or somebody finds him. End of
23 story. If I need to "f-ing" bounce and lay low for a couple of
24 days, that's what I'm gonna do. But I'm not gonna -- no and
25 "f-ing" we bounce down to the Shell. We're coming out of the
26 Shell. She's acting really funny."
27 Did you put that in your report?
28 A. Just about the hacksaw, wanting to turn off the water that

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1 way.

2 Q. In fact, this indicates Mr. Rodriguez wanting to turn off
3 the water but not actually wanting to let anybody out, correct,
4 of the cell?

5 A. Correct.

6 Q. And then further down at the bottom of page 15 there's a
7 reference to when Officer Hopping spotted them and they were
8 going to stop them; correct?

9 A. Yes.

10 Q. And is there any indication there as to whether
11 Mr. Hamman, if he had turned off the water, was going to
12 actually tell the police about the victim?

13 MR. SERAFIN: Objection; calls for speculation.

14 THE COURT: Would the court reporter read the question
15 back?

16 (Requested portion read back.)

17 THE COURT: Overruled. You may answer that. I think he
18 meant Rodriguez though, not Hamman.

19 MR. MARCHI: Yes, I'm sorry.

20 Q. If I could rephrase that?

21 A. Okay.

22 Q. Does Mr. Rodriguez indicate whether or not he is going to
23 tell the police, namely, Officer Hopping at that point, about
24 the location of Mr. Hamman when he turned off the water, sir?

25 A. No.

26 Q. In fact, what does he say in that regard?

27 A. He says that they just said they were borrowing his car.

28 THE COURT: Counsel, it is very close to 4 o'clock.

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1 MR. MARCHI: Okay.

2 THE COURT: Are you able to finish?

3 MR. MARCHI: Perhaps we should recess for today. I think
4 I'm pretty close, but we have a little more probably tomorrow.

5 THE COURT: Before we recess, I just need to check with
6 you on a scheduling issue so I can let the jury know where we
7 are on that.

8 (Bench conference held off the record.)

9 THE COURT: All right. Ladies and gentlemen, we're going
10 to recess for the day and what we are going to do is start a
11 little bit later tomorrow, and we will start at 10 o'clock
12 tomorrow so you can sleep in or go to work, get some things done
13 before you show up, but we will start tomorrow at 10 o'clock,
14 and I think that's -- there's nothing else.

15 Just to remind you, it is your duty not to converse among
16 yourselves or with anyone else on any subject connected with the
17 case and not to form or express any opinions until the case is
18 submitted to you after you heard all the evidence, and again I
19 would remind you about newspapers and things like that. There
20 were a couple of articles so just make sure you have someone
21 scan the paper for you, cut them out and save them for you, and
22 we'll see you tomorrow at 10 o'clock.

23 If counsel could be here tomorrow by quarter to 10:00 at
24 the latest so you can check in with me and let me know if
25 there's anything we need to talk about. It is my understanding
26 the People are getting very close and chances are you will rest
27 before noon, and the defense will start immediately after the
28 People rest. If we do finish tomorrow, it is understood that we

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1 would then recess for the rest of the day and make sure the
2 instructions are ready to go and then I would instruct first
3 thing on Monday. Obviously, if we don't finish, we would recess
4 tomorrow and start again on Monday. I have not pursued the
5 working straight through next week because it looks to me like
6 we are going to be done by Monday or Tuesday so I wasn't going
7 to worry about it. All right. We'll see you tomorrow.

8 (Jury exits the courtroom at 4 p.m.)

9 MR. MARCHI: We need to get a hold of Mr. Bolton.

10 THE COURT: And Mr. Bolton, because he needs to be here
11 when Ms. Hughes testifies?

12 MR. SERAFIN: He wants to be.

13 MR. MARCHI: I'm going to be requesting a hearing outside
14 the presence of the jury. I think she does have some legal
15 issues.

16 THE COURT: Then ideally I would like to see, even if the
17 People have not rested yet, if we can do that -- either we could
18 break at 11:30 and do it between 11:30 and 12:00, or
19 alternatively do it between 1:00 and 1:30 so the jury can have a
20 longer lunch while we're doing that.

21 MR. SERAFIN: I will call Attorney Bolton, but you know,
22 he is an attorney so I don't know how flexible he'll be.

23 THE COURT: So 11:30 or 1:00 would be ideal.

24 (Proceedings concluded at 4:03 p.m. to
25 reconvene Wednesday, September 23, 2003,
26 at 10 a.m.)

27 (Nothing omitted.)

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AUBURN, CALIFORNIA

WEDNESDAY, SEPTEMBER 24, 2003, 10:04 A.M.

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The matter of the People of the State of California, plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No. 62-34689, came on regularly this day before the HONORABLE FRANCES A. KEARNEY, Judge of the Superior Court of the State of California, County of Placer, Department Number THREE thereof.

The People were represented by WILLIAM MARCHI, Deputy District Attorney, in and for the County of Placer, State of California.

The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal attendance upon the Court and represented by JESSE SERAFIN, Assistant Public Defender, in and for the County of Placer, State of California.

The following proceedings were had, to wit:

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THE COURT: We're on the record in the matter of People versus Shawn Rodriguez. Counsel and parties are present. The jury is all present. Counsel, ready to proceed?

MR. MARCHI: Yes, your Honor.

MR. SERAFIN: Yes, your Honor.

THE COURT: Detective Coe is still on the witness stand and has been previously sworn, and I believe we were still on direct.

MR. MARCHI: Yes, redirect. Thank you, your Honor.

REDIRECT EXAMINATION RESUMED

Q. BY MR. MARCHI: Officer Coe, counsel asked you a series of

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1 questions about the keys that Mr. Hamman had in the holding cell
2 and you talked about that. At any time during the interviews of
3 Mr. Hamman did he ever say anyone had permission to drive his
4 vehicle with or without keys, sir?

5 A. No, he did not.

6 Q. So no one had permission?

7 A. No one had permission.

8 Q. He was consistent on that, sir?

9 A. Yes.

10 Q. All right. Now, you did actually, after court, view the
11 video from the Shell Station, sir?

12 A. Yes, I did.

13 Q. All right. First of all, what is the quality of those
14 kinds of videos?

15 A. They're very poor. Most gas stations, convenience stores,
16 their camera systems are run on a time lapse high speed type
17 film and so playing it on a regular video -- I played it on a
18 jog shuttle VCR. It is made to slow down the tapes but still
19 the quality is poor. Hard to see. And come to find out, it
20 appeared to be the wrong tape.

21 Q. And the jog shuttle is actually a device that you can
22 actually go frame by frame and freeze the picture?

23 A. Correct.

24 Q. And even then was it broken up?

25 A. Yes.

26 Q. And was there any audio on it, sir?

27 A. No audio.

28 Q. And that's typical, there's never any audio on those?

1 A. In most cases there isn't any audio.
2 Q. And there wasn't on this one?
3 A. No.
4 Q. And you figured out it was the wrong one, why?
5 A. Because I looked through the whole tape and nothing seemed
6 to match up with -- no officers were seen in the store or
7 anything like that so it was not on.
8 Q. And the time frame seemed to be moved someway?
9 A. Yes. It looked like it had been. I'm not sure what
10 happened, but the time periods are off and the time period in
11 question wasn't on there.
12 Q. Okay. All right. Now, counsel discussed a series of
13 questions about the actual tape of Mr. Rodriguez and there are
14 some transmission interferences due to the radio frequency?
15 A. Correct.
16 Q. You, however, and Detective Hutchins were there for the
17 whole interview and, of course, you would not have had any radio
18 interference inside the room; correct?
19 A. Correct.
20 Q. So you heard everything?
21 A. Yes.
22 Q. At any time during that interview did Defendant Rodriguez
23 claim he wasn't there at all on the weekend of March 15th
24 through March 17th?
25 A. No, he did not.
26 Q. At any time did he say he didn't know Ms. Rugg?
27 A. No.
28 Q. At any time did he say he didn't know Mr. Hamman?

1 A. No.

2 Q. Or Ms. Hughes?

3 A. No.

4 Q. And at any time did Defendant Rodriguez ever claim that
5 when they returned and there was the discussion regarding the
6 ATM, did he ever claim he never returned?

7 A. No.

8 Q. Did he ever claim that it was not him that discussed
9 giving up the ATM with Mr. Hamman?

10 A. No.

11 Q. And again, finally, did Mr. Rodriguez during any of the
12 interview, whether it is currently audible or not, ever say he
13 never came back to help Rugg hook up the hoses?

14 A. No.

15 Q. And finally did the defendant ever claim he never went to
16 Mr. Richard Romines' house that weekend?

17 A. No, he did not.

18 MR. MARCHI: Thank you. I have no further questions.

19 THE COURT: Anything further on cross?

20 MR. SERAFIN: Briefly, your Honor.

21 RE CROSS-EXAMINATION

22 Q. BY MR. SERAFIN: Detective, we spoke yesterday in regards
23 to trying to figure out when Shawn and Anna got a hold of the
24 car keys to Mr. Hamman's vehicle; right?

25 A. Correct.

26 Q. And I believe when you looked at all the investigation and
27 all the statements you came to the conclusion that they probably
28 got the car keys in the morning after they originally left the

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1 hall; correct?

2 A. That's my belief, yes.

3 Q. And, in fact, that's the statement that Anna Rugg gave you
4 as well; correct?

5 A. Correct.

6 Q. And while we disagreed in its importance, I think we both
7 agreed that was relevant, at least in some way relevant to the
8 case, correct, that fact?

9 A. It is a factor in the case, sure.

10 Q. And it is a factor in the case because it would dispute
11 Mr. Hamman's statements, repeated statements, that he later that
12 evening slid his car keys under the door; correct?

13 A. I believe that didn't happen.

14 Q. And that is significant because it means that either
15 Mr. Hamman was mistaken about it or he was lying about it;
16 correct?

17 MR. MARCHI: Objection. That calls for a conclusion by
18 the witness. I think that is ultimately a jury conclusion, your
19 Honor.

20 THE COURT: Sustained.

21 Q. BY MR. SERAFIN: And at that point you, in questioning
22 Mr. Hamman, went through a series of follow-up questions. I
23 believe we read the transcript and there were roughly six
24 questions in that area where you tried to clarify whether or not
25 he was absolutely positive that he slid those keys under the
26 door that night; is that right?

27 A. Yes, I did.

28 Q. I think the district attorney talked on redirect about how
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1 that is sort of a common police tactic you would use to try to
2 gain information; right?

3 A. Correct.

4 Q. I mean, if there's a piece of evidence in the case or
5 there's a statement in the case and you have reason to think
6 that a witness may not be telling the truth in that or they may
7 be mistaken, you have a series of questions that you will ask
8 them that may help them refresh their recollection or at least
9 back off that story; is that right?

10 A. Correct.

11 Q. And that was the procedure you were using in order to see
12 if Mr. Hamman would, in fact, admit he didn't remember or maybe
13 he could be mistaken; is that the purpose of those questions?

14 A. I was trying to get further information, yes.

15 Q. And in that 40-minute interview with Mr. Hamman, the taped
16 interview, that was the only time, the only point where you used
17 those police tactics; isn't that right?

18 A. I would have to see the transcript. I don't know.

19 Q. To your recollection was there any other point that
20 Mr. Hamman stated where you questioned him five or six times to
21 clarify his answer?

22 A. That I don't know.

23 Q. You don't remember?

24 A. No.

25 Q. Well --

26 A. I've never seen -- other than yesterday, that was the
27 first time I had seen a transcript of that interview.

28 Q. And you don't have any personal recollection of it?

1 A. No.

2 Q. Rather than go through the entire transcript, can you
3 remember if when Nicholas Hamman told you that he was with --
4 said Shawn contributed in kicking him in the cell, did you
5 question that at all?

6 A. About him kicking him? He had told me that information
7 the previous day.

8 Q. So on March 20th when he made those statements or even on
9 March 17th, the previous day, did you ever question that
10 statement?

11 A. About Rodriguez kicking him?

12 Q. Uh-huh.

13 A. I did. And that's when I took the photographs. He talked
14 to me about that.

15 Q. What about when Mr. Hamman said that Rodriguez had pushed
16 him in the cell; did you question that or take it at face value?

17 A. I don't know specifically what I asked him.

18 Q. What about when Nick Hamman said the water rose to 5 feet
19 or to his neck, did you question the believability of that at
20 all?

21 A. He told me on two different occasions how high the water
22 was. Don't know for sure. I wasn't in the cell.

23 Q. But you never questioned it?

24 A. Other than asking him about it on the two different times.

25 Q. You said yesterday that you did not include the -- either
26 your questions or the information regarding your conclusion on
27 the car keys, you didn't include that in either of your police
28 reports; is that right?

1 A. Specifically, no.

2 Q. So in nowhere in any of your police reports would there be
3 any information saying that based upon my investigation, I came
4 to the conclusion that Nicholas Hamman was not -- did not have
5 his car keys that night when he claims that he slid them under
6 the door?

7 A. No. The way I looked at it is the totality of all the
8 interviews we'd done pretty much showed that didn't happen.

9 Q. But none of that was mentioned in your police report?

10 A. No. I didn't voice my opinion on that, no.

11 Q. I believe yesterday on redirect you told the prosecution
12 that you didn't put it in there because you didn't think it was
13 relevant to the main allegation in the case; correct?

14 A. To me it is not one of the larger crimes that we're
15 looking at.

16 Q. And you -- okay. Do you only put crimes in your police
17 report?

18 A. No.

19 Q. Of course not. You put any evidence that may lead to
20 supporting or denying those crimes; correct?

21 A. Correct.

22 Q. And I believe -- tell me if you remember making the quote
23 that you did not include it in your report because you did not
24 think it was relevant to the main allegations in the case.

25 A. I said that, yes.

26 Q. And this case is an attempted murder and a kidnapping
27 against Shawn Rodriguez, right, among other things?

28 A. Correct.

1 Q. The sole victim that was supposedly kidnapped and
2 supposedly attempted to be murdered was Nicholas Hamman;
3 correct?

4 A. Correct.

5 Q. And in the interview with Shawn Rodriguez he said he did
6 not intend to kill him or kidnap him; right?

7 A. He did say that, yes.

8 Q. And there are no other witnesses besides Shawn Rodriguez
9 and Nicholas Hamman that were at the scene; correct?

10 A. There's another codefendant.

11 Q. Which we don't have here today?

12 A. Correct.

13 Q. So knowing that, you don't think that the credibility, the
14 perception, the memory, the statements of Nicholas Hamman and
15 whether or not those are truthful, you don't think that is
16 relevant to the main charges in the crime?

17 A. I don't feel that the car keys were a major issue at the
18 time. Sure, there was concerns as to how the actual car keys
19 got in the car or who had them. But when I have a victim who is
20 adamant, maybe he's mistaken, I don't know. I can't push him
21 and make him tell me something else versus what he thinks
22 happened.

23 Q. If you didn't think it was a big issue, why was it the
24 only time in your investigation of him and your interview of him
25 that you asked approximately six follow-up questions trying to
26 clarify?

27 A. I was trying to clarify because I talked to Mr. Rodriguez
28 and Anna Rugg who gave me two variations, so I was trying to --

1 trying to figure out exactly what happened with the keys.

2 Q. Why bother if it doesn't matter?

3 A. It matters. I said it is not one of the major crimes in
4 the case.

5 MR. SERAFIN: No further questions, your Honor.

6 FURTHER REDIRECT EXAMINATION

7 Q. BY MR. MARCHI: Was there any -- Mr. Rodriguez did admit
8 getting the ATM and the cash pursuant to sliding it under the
9 door after the water filled up; correct?

10 A. Correct.

11 Q. All right. So did you feel that whether or not the keys
12 were also slid underneath that significant in your mind to the
13 kidnapping for extortion?

14 A. No.

15 Q. And again, you can, of course, hot-wire a car; can you
16 not?

17 A. Sure.

18 Q. So a 10851 doesn't require keys; does it?

19 A. A 10851, yeah, exactly.

20 Q. And you did ask him a series of questions about these
21 keys. Is that the one thing that he seemed to be off on, sir?

22 A. From my interviews with Rodriguez and Rugg, that is one of
23 the main issues that I still had a question about when I was
24 talking to him.

25 MR. MARCHI: Thank you. No further questions.

26 THE COURT: Counsel?

27 FURTHER RECROSS-EXAMINATION

28 Q. BY MR. SERAFIN: Is it the one thing he appeared to be

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1 off on or the one thing that didn't support the guilt of
2 Mr. Rodriguez?

3 A. It is the one thing he was off on because of the two
4 defendants' statements that they had been driving the car prior
5 to when he is saying, he slid the keys under the door.

6 MR. SERAFIN: No further questions.

7 MR. MARCHI: Just one further.

8 FURTHER REDIRECT EXAMINATION

9 Q. BY MR. MARCHI: What is the nature of your overall job,
10 sir, what do you do?

11 A. Basically we're out there to collect facts.

12 Q. What do you do with those facts after you collect them?

13 A. Write them down in reports and ultimately our reports are
14 sent to the district attorney's office.

15 Q. And is the district attorney -- it is the district
16 attorney's office that decides whether those facts mean
17 anything; is that correct?

18 A. They ultimately are the ones that decide what charges to
19 link to a person.

20 Q. So you do the best you can to clarify facts during the
21 course of your investigation?

22 A. Correct.

23 MR. MARCHI: No further questions.

24 MR. SERAFIN: Nothing further, your Honor.

25 THE COURT: Is this witness excused?

26 MR. SERAFIN: Subject to recall, yes.

27 MR. MARCHI: He'll be here in the courtroom, but --

28 THE COURT: You may step down.

1 MR. MARCHI: Subject to the admission of the People's
2 exhibits, the People would rest their case in chief at this
3 time.

4 THE COURT: Okay. Is there any objection to our handling
5 the exhibits maybe a little bit later on?

6 MR. SERAFIN: No, your Honor.

7 THE COURT: Because that will take a little bit of time
8 and I'm sure the jury doesn't want to sit through all of that.
9 Is the defense ready to proceed at this time?

10 MR. SERAFIN: The defense has a witness coming in at 1:30,
11 I believe. There's some matters we need to handle before that
12 so not at this point.

13 THE COURT: All right. Ladies and gentlemen, we try our
14 best to coordinate the scheduling of witnesses and sometimes
15 trials are kind of a free flowing thing, so we miscalculated a
16 bit and I apologize for that. So we are going to recess at this
17 point and so you are excused until 2 o'clock, and we will resume
18 this afternoon.

19 I believe counsel feels that most likely all of the
20 evidence will be concluded today, and then you will return on
21 Monday for instructions and the case will be submitted to you
22 sometime on Monday, I believe. That's where we're anticipating;
23 although, like I said before, things could change this
24 afternoon, but at this point you are excused until 2 o'clock.
25 And you are reminded it is your duty not to converse among
26 yourselves or with anyone else on any subject connected to the
27 case. You are not to form or express any opinions on the case
28 until it is submitted to you after you heard all the evidence

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1 and we'll see you back here at 2 o'clock.

2 (Jury exits the courtroom at 10:20 a.m.)

3 THE COURT: Do you want to handle the exhibits at this
4 point?

5 MR. SERAFIN: We can do that.

6 THE COURT: Do you want to do the exhibits at this point?

7 MR. SERAFIN: We can do that.

8 THE COURT: I need my list. I have numbers A1, through
9 83. Do I have them all?

10 THE CLERK: Through 85.

11 THE COURT: So 84 is what?

12 THE CLERK: 84 is the video from yesterday, and 85 is the
13 transcript of the video.

14 THE COURT: Of Mr. Hamman?

15 THE CLERK: Rodriguez.

16 THE COURT: Oh, okay. So which exhibits do the People
17 seek to have admitted?

18 MR. MARCHI: I move them all in. I think we discussed
19 them all.

20 THE COURT: Are there any objections? Do you want me to
21 go through them one by one?

22 MR. SERAFIN: No, not at all. The only issue I have are
23 the transcripts. And I ask it not really knowing. I'm asking
24 the Court, it is unusual to me, I've never done a case where the
25 jury, every jury member all had a transcript of a taped
26 statement. If there's no legal reason why that shouldn't be,
27 then fine, but it did cause me some concern. I have seen a time
28 whereas if they could obviously have things read back to them

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1 and we stipulated not to have the tape transcribed so I
2 understand there's one copy of it. It seemed odd to me they all
3 have their own copy. It seems to me there is one copy as if
4 they had a question about the issue and they asked the court
5 reporter to read it back.

6 MR. MARCHI: There's a local court rule that we do have to
7 supply copies to each and every juror as we play the tape, and
8 we always lodge a copy. And, you know, I've had it done both
9 ways where the jury is allowed to take their copy into the room
10 or not. But there's one that is always lodged as an exhibit as
11 well. It is a guide or aid for them. It is all it is meant to
12 be.

13 MR. SERAFIN: I have no problem with one.

14 THE COURT: I guess my issue with that is it did come up.
15 It came up rather suddenly, and I thought there was a
16 stipulation that they could each retain their copies because as
17 I indicated to both of you earlier, there were, in my view,
18 errors in the transcript and as you listen to it, it is clear
19 that the transcriber heard things incorrectly. And I had
20 suggested to the jurors that they could, and actually one of the
21 jurors asked can we write on this, and I thought there was a
22 stipulation that they could. So as they were listening, I
23 noticed that some of them were writing and correcting the
24 transcript based on what they were hearing in the tape.

25 So to gather them up at this point, I mean, I could do
26 that, but I don't know what the benefit would be necessarily
27 because they have all listened to the entire tape. They have
28 written down their notes, and they will take them into the jury

1 room and if there's a discrepancy, I suppose at that point, it
2 would be a request we actually let them listen to the tape
3 again.

4 MR. MARCHI: Normally I believe the tape goes into the
5 jury room with them and they can play it to themselves. They
6 just need a TV set.

7 MR. SERAFIN: I'll let the issue go then.

8 THE COURT: Were there any other objections to any of the
9 exhibits?

10 MR. SERAFIN: No.

11 THE COURT: So then Exhibits A1 through A85 will be
12 received into evidence.

13 (Exhibit Nos. 1 through 85 were received
14 into evidence.)

15 THE COURT: And that includes each juror's copy of the
16 transcript of Mr. Rodriguez's taped interview and so that means
17 that each juror has their own individual copy of Exhibit A85
18 which they were allowed to retain and write notes on and that's
19 by stipulation. Is there anything else we need to do with
20 respect to the exhibits?

21 MR. MARCHI: No, your Honor. I do have still the one
22 exhibit on Ms. Rugg and I didn't really want to get it
23 accidentally mixed in. I don't know if the Court -- does the
24 Court still need to retain that? That was really part of the
25 motion for Ms. Rugg and I think Mr. Cohen.

26 THE COURT: Those are the ones that we had marked as --

27 MR. MARCHI: That's 1B is what I still have. 1A has been
28 remarked 84. We had to make the admission for the --

1 THE COURT: Is there any objection to returning to the
2 People the statements of Ms. Rugg? Actually I have one marked
3 3A, and I think that is from the preliminary hearing.

4 MR. MARCHI: It could be.

5 THE CLERK: No. Those were actually marked at the same
6 time when we marked those. We had the three transcripts and we
7 also have the CD. We marked the two tapes, the CD, the three
8 transcripts.

9 THE COURT: So is there any objection to returning to the
10 People all of the exhibits that are related to the interviews of
11 Ms. Rugg, both the transcripts and the tapes?

12 MR. SERAFIN: No, not at all.

13 THE COURT: That will be the order. The only -- the
14 interviews of Ms. Rugg are tied in very closely with the rulings
15 that I made on the in limines however. So I don't know how you
16 want to go about preserving that issue. But obviously the Court
17 very carefully reviewed the interviews of Ms. Rugg and the
18 interviews of Mr. Rodriguez in order to rule on the 1101(b)
19 issue.

20 MR. SERAFIN: That's a good point.

21 THE COURT: So I can return them to the People, but if
22 that were to become an issue at a later time, I suppose that can
23 just be supplied.

24 MR. SERAFIN: As far as preserving the record, I wonder if
25 those statements need to be in the record somewhere down the
26 road if there were an appeal. That is a good point. They
27 probably should be.

28 THE COURT: Why don't you think how you want me to do that
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1 because if there was an appeal on that issue, the appellate
2 court is going to want to see that transcript.

3 MR. SERAFIN: They're going to want to know what you're
4 looking at.

5 MR. MARCHI: In that regard I think the easiest way is for
6 you to retain them all. I ask you to segregate them off.

7 THE COURT: I trust my clerk. She'll do it.

8 MR. MARCHI: Okay.

9 THE COURT: Nothing related to Ms. Rugg, none of the
10 statements or the tapes will go to the jury.

11 All right. Now, it is my understanding now that the
12 People have rested. The defense is going to proceed with
13 Ms. Hughes, but first we're going to do an out of the jury
14 interview with her, and her lawyer will be here on her Fifth
15 Amendment issues.

16 MR. SERAFIN: You want us here at 1:30 for that?

17 THE COURT: If you could be here at 1:30, I'll do my best
18 to get back at 1:30. I have a judges' meeting that starts at
19 noon in DeWitt. And if Ms. Hughes goes forward and testifies,
20 is that your only witness that you're anticipating?

21 MR. SERAFIN: No. Actually, I am anticipating probably
22 bringing both my investigators in today. I'll be honest, I
23 don't remember if I put them on the list. They were -- the
24 problem they will clearly be rebuttal witnesses to Mr. Hamman's
25 statement and anything, depending upon how Erin Hughes's
26 statement comes out, they would be rebuttal, but I anticipate
27 they probably would be called. I probably should have put them
28 on the witness list.

1 THE COURT: You need them here at 2 o'clock.

2 MR. SERAFIN: I will.

3 THE COURT: And you anticipate you might have rebuttal
4 witnesses?

5 MR. MARCHI: I won't know until that happens. I would
6 point out for hearing at 1:30, she does have a privilege under
7 940 of the Evidence Code against self-incrimination and related
8 to that is Evidence Code Section 913, which does require the
9 hearing outside the presence of jury. If she doesn't invoke the
10 Fifth Amendment, I do not intend to grant her immunity, and that
11 is also under 9 -- well, under 913. If she does invoke,
12 there's -- it is not to be done in front of the jury and
13 actually when counsel argues, neither one of them can comment on
14 her absence.

15 I believe that one jury instruction controls that says
16 don't speculate why certain parties aren't here even though
17 their names are involved. 1324 is the actual of the Penal Code
18 talks about the granting of immunity, and it is basically a
19 prosecutorial prerogative and there's one case if the People
20 feel she might be giving perjured testimony, that is certainly
21 one of the main areas we don't have to grant immunity for, so I
22 will allow an -- allowing a witness a license to steal, People
23 versus Irvin, 2000 case, 22 Cal.4th 48, and I would state for
24 the record that originally she was on the list. However, the
25 public defender interviewed her and her statements materially
26 differ. She talked originally about them planning the episode
27 Friday night, Saturday at the Elmwood to actually roll this guy
28 and then her current story is it basically was all spontaneously

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1 happened, basically involving Rugg. Everything is on Ms. Rugg
2 so I, because of that material change, I don't find her to be
3 credible and that's why I would not offer her immunity. That's
4 where we stand with it.

5 Last time I talked to Mr. Bolton, obviously, it is his
6 client's privilege and I know he wasn't wild about her assuming
7 any Fifth Amendment problems, but we'll have to deal with that.

8 THE COURT: So procedurally she is sworn. Her lawyer is
9 here with her. We proceed with the questions as to what the
10 questions would be is of no import. When it comes to a point
11 where it may cause her to have some criminal liability, I advise
12 her --

13 MR. MARCHI: The way I have done it before and normally
14 her attorney would be up there on the stand sitting next to her
15 and can actually advise her not to answer at that point, which
16 is why we don't do this in front of the jury.

17 THE COURT: We go through basically the entire testimony?

18 MR. MARCHI: What would we be asking?

19 THE COURT: All right. So it seems possible we might
20 finish with the evidence today. After I said that to the jury,
21 I started thinking. Wait a minute. I forget to ask whether
22 there were rebuttal witnesses. If not, there's a strong
23 likelihood that we will be done on Monday with the evidence.

24 MR. SERAFIN: There is. I am actually attempting to get
25 the doctors or at least one of the two doctors that are on the
26 list to come on Monday, but that should be in regards to
27 Nicholas Hamman, but that should be very brief.

28 THE COURT: So I am not going to see about getting someone

1 to cover for me the end of next week.

2 MR. SERAFIN: For Thursday and Friday, I see no reason.

3 THE COURT: I think we'll be done no later than Tuesday.

4 MR. SERAFIN: I agree with that.

5 THE COURT: Anything else before I recess?

6 MR. MARCHI: No.

7 THE COURT: See you back here at 1:30.

8 (Recess taken at 10:32 a.m. to reconvene at
9 1:30 p.m.)

10 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 WEDNESDAY, SEPTEMBER 24, 2003, 1:42 P.M.

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4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

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18 (The following proceedings took place
19 outside the presence of the jury.)

20 THE COURT: We're on the record. The jury is not present.
21 Counsel and parties are present. Are you ready to proceed?

22 MR. SERAFIN: Yes, your Honor.

23 THE COURT: Go ahead.

24 MR. SERAFIN: Well, I guess in regards to the 402 hearing
25 the defense calls Erin Hughes.

26 THE COURT: All right.

27
28 ERIN HUGHES

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1 called as a witness on behalf of the Defendant herein was sworn,
2 examined, and testified as follows:

3 THE COURT: I need you to please come forward. Face my
4 clerk and raise your right hand to be sworn.

5 THE CLERK: Do you solemnly state that the testimony you
6 shall give in the cause now pending before this court shall be
7 the truth, the whole truth, and nothing but the truth so help
8 you God?

9 THE WITNESS: I do.

10 THE COURT: Please state your name for the record and
11 spell your last.

12 THE WITNESS: Erin Hughes, H-u-g-h-e-s.

13 THE COURT: Go ahead have a seat. And the record will
14 reflect that sitting with Ms. Hughes is her lawyer, Mr. Bolton.

15 MR. BOLTON: Yes.

16 THE COURT: Go ahead.

17 DIRECT EXAMINATION

18 Q. BY MR. SERAFIN: Hi Erin, do you know why we're here
19 today?

20 A. Yes.

21 Q. I'm going to ask you a few questions and they will be very
22 similar, if not identical, to the questions I asked you before
23 in Mr. Bolton's office. Do you remember when I asked you those
24 questions?

25 A. Yes.

26 Q. One of the first things I want to ask you is at any time
27 prior to the juvenile hall incident did Anna Rugg threaten you?

28 A. Yes.

1 Q. What was that threat?

2 A. Then to say she was going to kill me if I said anything to
3 anybody.

4 Q. About what?

5 A. About what she wanted to do to Nick or what she, you know,
6 did to Nick.

7 Q. And when was this threat given?

8 A. Many times.

9 Q. Can you?

10 MR. BOLTON: Excuse me, Counsel.

11 (Attorney-client conference.)

12 MR. BOLTON: Okay.

13 Q. BY MR. SERAFIN: Can you remember any specific time where
14 you were threatened before you ended up going to the juvenile
15 hall?

16 A. On the bus going to Roseville.

17 Q. And roughly, and I know it was a long time ago, roughly
18 how many days prior to the juvenile hall incident was this
19 threat?

20 A. The day after.

21 Q. The day after what?

22 A. The day after the incident happened.

23 Q. Okay. Let's clarify that then and we'll see if we can
24 proceed. Saturday morning was the morning that the four of you
25 went to the juvenile hall; is that right?

26 A. Yes.

27 Q. And sometime that morning Nick got locked in the cell;
28 right?

1 A. Yes.

2 Q. Are you saying that this threat on the bus came after
3 that?

4 A. Came after that, and it came before and after. It came
5 about three times, she said it, and I don't remember which time
6 anyway because it's been so long.

7 Q. Let me be more general. At any time did you relay any of
8 these threats from Anna, did you have any opportunity to relay
9 those to Shawn?

10 (Attorney-client conference.)

11 A. No.

12 Q. Okay. Do you remember being -- do you remember being at
13 the Elmwood Hotel on Friday night with Shawn and Nick and Anna?

14 A. Yes.

15 Q. Do you remember where you guys were sitting while you were
16 in the hotel room, the four of you?

17 A. On the bed.

18 Q. Were you all four sitting on the same bed?

19 A. Yeah.

20 Q. And how were Nick and Anna sitting on the bed? Were they
21 sitting next to each other or do you remember?

22 A. Nick was sitting by the wall, and Anna was laying down and
23 over on the edge of the bed.

24 THE COURT: I'm sorry?

25 THE WITNESS: Nick was sitting on the edge of the bed, and
26 Anna was laying down on the bed.

27 Q. BY MR. SERAFIN: At any point did Nick make inappropriate
28 physical touching that Anna got upset with?

1 A. Yes.

2 Q. And do you remember what that was?

3 A. He touched her. He touched her, and she got mad about it.

4 Q. Do you remember specifically what she said?

5 A. "Don't touch me." That's all she said.

6 Q. Skipping ahead to the next morning when you all four

7 arrive at the juvenile hall together; were you or Shawn present

8 when Anna locked Nick in the cell?

9 A. No.

10 Q. Where were you and Shawn?

11 A. Outside the door, heading outside the door. She told us

12 to go away.

13 Q. She told you to go away?

14 A. Yeah.

15 Q. How much longer after she told you to go away -- well, let

16 me back up.

17 How did you know at some point Anna did lock Nick in the

18 cell?

19 A. Two minutes, three minutes before we got to the door, at

20 the door, at the other side of the room, we heard a bang and the

21 door slammed.

22 Q. And at that point you ran back into the room where you

23 heard the door slam?

24 A. Yes.

25 Q. Before you got -- I'll ask this. After the door is shut,

26 did Shawn say anything to Anna about what she had just done?

27 (Attorney-client conference.)

28 A. I refuse to testify under Fifth Amendment privilege.

1 Q. I'm going to back up then. I'm going to back up to the
2 day, that morning before you even got to juvenile hall; okay?

3 How did you come into contact with Nick, the three of you?

4 (Attorney-client conference.)

5 A. Anna tried to call him on the cell phone, and he didn't
6 have minutes on his cell phone so she didn't try again. So what
7 happened was we saw him a couple minutes later going to AA
8 meetings with him and a friend.

9 Q. And you guys just flagged him down or someone flagged him
10 down and he stopped?

11 A. No, he saw us.

12 Q. Okay. At that point were you present with any
13 conversation between Anna and Nick about going to the juvenile
14 hall building?

15 (Attorney-client conference.)

16 A. No.

17 Q. And so you didn't hear any discussion about going to
18 juvenile hall?

19 A. No.

20 Q. At that point did you then get in the car that Nick was
21 driving?

22 A. No. He drove off with his friend first.

23 Q. At some point that morning did you get in the car with
24 Nick and with Anna and head towards the juvenile hall?

25 A. Yes.

26 Q. Did you have any knowledge as to why they were going to
27 the juvenile hall?

28 (Attorney-client conference.)

1 MR. BOLTON: Would you mind rephrasing?

2 Q. BY MR. SERAFIN: Sure. You were driving -- you were being
3 taken to the juvenile hall building by Nick and by Anna. Did
4 you know why Nick and Anna wanted to go to the juvenile hall
5 building?

6 A. No.

7 THE COURT: Ms. Hughes, if you don't understand the
8 question, you need to make sure you let us know you don't
9 understand.

10 Q. BY MR. SERAFIN: Well, you were in the car with them going
11 to the juvenile hall building; right?

12 A. Yeah.

13 Q. But there was no discussion as to why you guys were headed
14 there?

15 (Attorney-client conference.)

16 A. Anna was tricking him of going there to have sex in there.

17 Q. What made you think Anna was tricking him? What did you
18 hear that made you think that?

19 A. I don't trust her.

20 THE COURT: I'm sorry?

21 THE WITNESS: I don't trust her.

22 Q. BY MR. SERAFIN: Okay. But did Anna say anything that you
23 heard to Nick in regards to having sex or taking you to the
24 juvenile hall?

25 (Attorney-client conference.)

26 A. I'm not sure how to answer that one.

27 Q. When you say that Anna tricked Nick to go into the
28 juvenile hall to have sex, is that just a feeling that you had

1 in your head or was there something said that made you think
2 that?

3 A. Just a feeling.

4 MR. SERAFIN: I don't think I have any more questions. I
5 don't think we're going to go get -- it sound like we're not
6 going to be able to go into any incident after Nicholas Hamman
7 was locked in the cell.

8 MR. BOLTON: That would be my position, my advice.

9 MR. SERAFIN: Then I think that's where I stand right now
10 as far as questions beforehand.

11 THE COURT: Did you want to ask her any questions?

12 MR. MARCHI: Are you still intending to call her?

13 MR. SERAFIN: Uh-huh.

14 MR. MARCHI: Okay.

15 MR. SERAFIN: Is that funny?

16 MR. MARCHI: No. I'm going to go into the incident of
17 March the 17th. Does counsel have a copy of that report,
18 Mr. Bolton?

19 MR. BOLTON: What I have is a summary.

20 THE COURT: By report what are you referring to?

21 MR. MARCHI: It is Detective's Coe report of an interview
22 of March 17 of Ms. Hughes.

23 THE COURT: So you're going to be asking her about her
24 statement of March 17?

25 MR. MARCHI: Correct. About this incident.

26 THE COURT: All right.

27 MR. BOLTON: Yeah, I have that.

28 MR. MARCHI: Okay.

1 MR. BOLTON: Is it just the two pages?

2 MR. MARCHI: Right.

3 CROSS-EXAMINATION

4 Q. BY MR. MARCHI: Ms. Hughes, do you recognize this
5 gentleman to my right, Mr. Coe?

6 A. Yes.

7 Q. And he came and interviewed you on March the 17th, didn't
8 he, about 10:30 in the morning at Mr. Romines'?

9 A. Yes.

10 Q. Okay. And this would have been kind of right after this
11 weekend involving Nick Hamman?

12 A. Yes.

13 Q. All right. And you told Detective Coe that on Friday
14 night, March 14th that you were there with Mr. Rodriguez, and
15 Ms. Rugg; right?

16 A. Yes.

17 Q. All right. And you also told him that Mr. Hamman was
18 there; didn't you?

19 A. Yes.

20 Q. Okay. And didn't you also tell Detective Coe that both
21 Ms. Rugg and Mr. Rodriguez discussed taking Mr. Hamman's car the
22 next day?

23 A. Yes.

24 Q. Okay. And didn't you also tell Detective Coe that
25 Ms. Rugg was talking about killing Mr. Hamman; do you recall
26 that?

27 A. Yeah.

28 Q. You did tell Detective Coe that?

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1 A. (Nods head.)
2 Q. You have to answer out loud.
3 A. Huh?
4 Q. You have to answer out loud.
5 A. Yes.
6 Q. You went on to say that there was some discussion by
7 Ms. Rugg about pushing Mr. Hamman off the Foresthill Bridge and
8 stabbing him; do you remember that?
9 A. Yes.
10 Q. And that's what you told Detective Coe was done that
11 night, Friday night; right?
12 A. Yes.
13 Q. You also recall telling Detective Coe that instead,
14 Ms. Rugg and Mr. Rodriguez agreed to lock Mr. Hamman up at the
15 old juvenile hall the next day; do you remember telling him
16 that?
17 (Attorney-client conference.)
18 A. Yes.
19 Q. Okay. And do you remember also telling Detective Coe that
20 Mr. Rodriguez agreed to go along with this plan?
21 A. Yes.
22 MR. SERAFIN: I'm going to object as to where that is
23 supposedly stated, and I would ask counsel to rephrase the -- or
24 not rephrase, just actually, just repeat the last two questions
25 because I don't --
26 MR. MARCHI: I have a transcript here if you want.
27 THE COURT: Could I have one? I don't have one.
28 MR. SERAFIN: Hold on, your Honor. If this was -- was

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1 this a taped conversation?

2 MR. MARCHI: Yes. It is discovery item 33 which was
3 discovered on April 10th when Mr. Benca had the case.

4 MR. SERAFIN: I was certainly never discovered the
5 transcript of it.

6 MR. MARCHI: It was just finished this morning, Counsel,
7 and I went back and picked it up.

8 THE COURT: You have the actual tape?

9 MR. SERAFIN: Who knows?

10 MR. MARCHI: It is a CD actually.

11 THE COURT: What page were you looking at?

12 MR. SERAFIN: What page are we on when Erin Hughes says
13 they make an agreement to go lock him up; what page is that on?

14 MR. MARCHI: I'm referring to the bottom of the first
15 page. Ms. Hughes, do you remember making this statement to
16 Detective Coe on the 17th, and this is you speaking:

17 (Reading) "First, one of them was, uh,
18 I didn't -- I was half asleep. I was
19 really -- but I know with this one, they
20 were planning on saying that she wanted
21 to take him to the -- Anna wanted to.
22 But I've got to tell you something. All
23 right. Anna has been talking about
24 taking him to the juvenile hall.

25 DETECTIVE COE: Okay.

26 ERIN HUGHES: Okay. So Shawn's, like,
27 okay. We can do that. Right. And
28 she's like, all right. First she wanted

1 to kill him."

2 (End of reading.)

3 Do you remember making those statements?

4 A. Yes.

5 Q. All right. And do you also remember indicating here -- at
6 the top of this, Counsel -- do you remember before that telling
7 detective:

8 (Reading) "Okay. All right. Well,
9 they'd been planning on, um, you know,
10 I -- I don't know. It was supposed to
11 be a game, I guess. But, um, you know,
12 with Nick. So what I -- what happened
13 was, um, they were planning on it in the
14 motel room."

15 (End of reading.)

16 Do you remember making that statement?

17 A. Yes.

18 Q. And do you remember Detective Coe asking you:

19 (Reading)

20 "Planning on what?"

21 Your answer: "Taking Nick's car and
22 doing whatever, you know, because -- I
23 don't know. Because Anna says that he's
24 a sex offender and I guess she wanted
25 revenge on him. I'm not sure."

26 (End of reading.)

27 Did you make that statement to Detective --

28 A. Yes.

1 Q. Is that what happened?

2 A. (Nods head.)

3 Q. You have to answer out loud.

4 A. Yes.

5 Q. (Reading)

6 "But all I know is -- all I know is, um,
7 the next day, that the next morning, um,
8 we went, um, Shawn, um, no. Actually,
9 we didn't go. We were in the motel
10 room, and we were looking for Nick.
11 Nick came by, and then he had a friend
12 in the car."

13 (End of reading.)

14 Do you remember making that statement?

15 A. Yes.

16 Q. In fact, what you told Detective Coe was that there was a
17 discussion in the motel room between Shawn Rodriguez and Anna,
18 about locking Mr. Hamman up in the hall the next day to take his
19 car; right?

20 (Attorney-client conference.)

21 A. I refuse to answer that.

22 Q. You're asserting the Fifth Amendment?

23 A. Yes.

24 Q. All right. And knowing that, you actually went over to
25 the hall the next day with Mr. Hamman, Shawn Rodriguez, Anna
26 Rugg and yourself; didn't you?

27 MR. SERAFIN: Objection as to knowing what? Knowing the
28 things she just refused to answer?

1 MR. MARCHI: I can rephrase.

2 THE COURT: All right.

3 Q. BY MR. MARCHI: Knowing that they plan to take his car,
4 lock him up in the cell and take his car, you went over there
5 with him; didn't you?

6 A. I refuse to answer on my Fifth Amendment.

7 Q. All right. And, in fact, you were present when Anna went
8 outside and told Nick Hamman that you were hurt inside; was that
9 part of the plan?

10 MR. BOLTON: I'm sorry, Counsel, she said?

11 Q. BY MR. MARCHI: Was it part of the plan the night before
12 that Anna Rugg was going to lure Mr. Hamman into the hall by
13 saying you had hurt yourself inside the hall?

14 (Attorney-client conference.)

15 A. No.

16 Q. And, in fact, you actually saw Mr. Hamman locked up in the
17 hall; didn't you?

18 (Attorney-client conference.)

19 A. I refuse to testify on my Fifth Amendment privilege.

20 Q. And then, in fact, you later on rode in Mr. Hamman's
21 vehicle; didn't you?

22 A. I refuse --

23 (Attorney-client conference.)

24 A. I refuse to testify on my Fifth Amendment privilege.

25 MR. MARCHI: Your Honor, at this point I would move that
26 this witness's testimony be excluded. She is asserting the
27 Fifth Amendment right on some very critical areas. These are
28 previous statements she made to the detective. I have a right

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1 to fully confront and cross-examine any witnesses, her being one
2 of them, and if she's going to assert the privilege in this
3 area, I submit that she's not available under 940 of the
4 Evidence Code and she could actually be liable for certain
5 crimes perhaps as 10851 or 496, also for lying to a police
6 officer, you know, if she came in later and there's another
7 story she told and other things. I don't know how much more the
8 Court wants to hear of this.

9 THE COURT: Counsel?

10 MR. SERAFIN: Well, I would like to focus -- the only
11 issues I was focusing on were issues that were nonrelated to
12 actually knowing about any plans or any crimes that were
13 occurring. Anything that would be totally -- that would be no
14 way it could be twisted to implicate her. I did go one step
15 beyond that in asking about a discussion the night of the
16 Elmwood Hotel between Anna and Shawn in regards to Nick. I
17 asked that question. It was not answered. She didn't remember
18 any of that, though she did remember about a specific statement
19 when counsel asked her on cross-examination, which is obviously,
20 I would agree, is very peculiar and is not consistent and
21 probably not all that reliable.

22 However, I don't think that the question in regards to
23 where they were at the hall before a crime had committed before
24 Nicholas Hamman had been locked in the cell, I don't believe
25 that that incriminates her in any way, and that's a question
26 that she answered. I don't believe the fact that the victim the
27 night before was sitting on the bed with Anna Rugg and acted
28 inappropriately, and Anna Rugg told him to knock it off, both of

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1 those things do not incriminate her, and they both go to impeach
2 the victim's statement, which is in direct opposition to both of
3 them.

4 THE COURT: The witness has made it very clear through
5 counsel that she intends to assert the Fifth Amendment privilege
6 as to anything which happened, may have happened, may not have
7 happened after they got in the car and headed towards the
8 juvenile hall. That point seems to be rather clear. However,
9 there were some questions asked of her as to what may or may not
10 have happened the night before when they were all at the
11 Elmwood. What's the People's position about that?

12 MR. MARCHI: She has another problem there. In the
13 discovery I received from the public defender's office, on the
14 bottom of page 2, Ms. Hughes is quoted as stating that the
15 juvenile hall incident was not planned, but really an incident
16 at random, and that would basically directly impeach herself
17 already.

18 THE COURT: But Ms. Hughes is here with her lawyer. She's
19 asserted a privilege to certain questions and has not asserted
20 the privilege as to other questions.

21 MR. MARCHI: I don't think it --

22 THE COURT: So the first series of questions has to do
23 with what may have happened at the Elmwood in terms of the
24 actions going on between Anna and Mr. Hamman, what she may have
25 overheard between Anna and Mr. Hamman. There was also some
26 questions about whether or not Anna ever threatened her. She
27 didn't assert the privilege to any of those questions and all of
28 those transpired prior to the starting point of the events,

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1 getting in the car and heading towards the juvenile hall, then
2 all of those things occurred prior to that event.

3 It seems to be, it is her position she's going to assert
4 her privilege on any questions as to anything that may or may
5 not have happened after that. Are you saying that because she
6 is asserting the privilege as to that time period that the Court
7 should not allow her to testify as to anything that may have
8 happened the day before?

9 MR. MARCHI: Yes. I believe the Court will find under 940
10 of the Evidence Code that basically she becomes unavailable.
11 I'm entitled to fully confront and cross-examine her. It was
12 the same situation really in Rugg when Rugg was the codefendant.
13 And unless I could excise certain things successfully, you know
14 I could not have a joint trial. But, on the other hand,
15 Mr. Cohen had a right to fully confront and cross-examine and
16 bring in things in that statement that impeached Mr. Rodriguez,
17 and it is the same thing here. A witness cannot be partially
18 available. They have to be available for all the events that
19 they would be a percipient witness to, which I submit, starts on
20 Friday, continues into Saturday evening and parts of Sunday at
21 Mr. Romines's residence.

22 So I think, you know, otherwise to have her assert the
23 Fifth in front of the jury, I'm going to go into these areas.
24 I'm entitled to fully confront and cross-examine her and she's
25 basically unavailable if she's not going to completely testify.
26 I told Mr. Bolton I am not in a position to offer her immunity
27 because I feel that based on her initial statement and now based
28 on her most recent statement, there's a major inconsistency and

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1 I don't believe she's truthful.

2 MR. SERAFIN: Judge, I'm only planning to -- I'm calling
3 this witness and my intention is to call her to ask two
4 questions, three questions. Was she at the juvenile hall that
5 morning, on Saturday morning? Where was she when Nicholas
6 Hamman was locked in the cell? Who was she with? And then
7 actually four questions, the night before at the hotel room, who
8 was with her and where were they sitting? That's it, and there
9 can't be any cross beyond the scope of those so everything that
10 counsel has mentioned that does cut both ways, and that she has
11 been inconsistent with, those aren't going to be able to be
12 asked on cross-examination anyway because they're going to be
13 beyond the scope.

14 And further, I would object to anything being used from
15 this transcript as I was pretty much sabotaged on the issue and
16 in reviewing the police report, unless I'm missing it, I don't
17 see anywhere where it says it was taped. And that's why I
18 didn't think it was taped, and that's why I assume we were -- we
19 would be going off statements from the police report. So to
20 then throw the transcript in my face once the witness is on the
21 stand, I think is highly inappropriate and should my original
22 argument fail and counsel attempts to use that transcript, I
23 would object to that.

24 MR. MARCHI: I have a discovery sheet here that Ms. Grubbs
25 provided on April 10th, four interview CDs of which this was
26 one. It was supplied to Mr. Benca at the time. I wasn't going
27 to call her as a witness. Counsel revealed she would be, and so
28 we did the best we could to get the transcript done. He's got

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1 the tape.

2 THE COURT: Well, I have not read the transcript. If she
3 becomes an unavailable witness in any regard, obviously, I need
4 to deal with the issue of the transcript. I believe getting --
5 clearly getting into questions about where she was in the
6 juvenile hall and what she heard and what she saw is
7 problematic. She starts answering those questions, I think
8 counsel is right, he can start probing. Well, why do you say
9 you were there? Why weren't you there? Did you see this? Did
10 you hear that? As soon as she steps foot into that juvenile
11 hall, it pretty much becomes open season in terms of what she
12 saw and what she heard and what she was doing.

13 I view the night before a little bit differently, and so
14 are there any more questions of this witness before I rule?

15 MR. MARCHI: No. I would just point out, I would be going
16 into the night before, and it may not have -- it may have an
17 incriminating effect if she knows what the plan is and goes
18 along with it.

19 THE COURT: Why don't you ask those questions?

20 MR. MARCHI: I did.

21 THE COURT: Well, she didn't assert the Fifth then.

22 MR. MARCHI: No, she didn't but --

23 THE COURT: Well, I can't -- I have to go by what I heard
24 in this hearing. Let me see counsel in chambers for just a
25 second.

26 MR. MARCHI: Excuse me, I do have one other little
27 question.

28 THE COURT: All right.

1 Q. BY MR. MARCHI: You are currently in mental health court;
2 are you not?
3 A. No.
4 Q. Didn't you have a couple cases assigned to mental health
5 court, check cases?
6 A. No. Oh, just one.
7 Q. And you're undergoing a treatment program with them?
8 A. Yeah. It is -- (Attorney-client conference.)
9 It is not a treatment program.
10 Q. Do you currently have any prescriptions?
11 (Attorney-client conference.)
12 A. For what?
13 Q. For anything?
14 (Attorney-client conference.)
15 A. Just my Zoloft.
16 Q. Is that for your mental condition?
17 A. My depression.
18 Q. That's what you're diagnosis is, depression?
19 A. Yeah.
20 Q. Okay. Are you -- have you currently taken some today?
21 A. Yeah.
22 Q. Do you feel the effects of it?
23 A. Sometimes, yeah.
24 Q. Do you right now?
25 A. I'm just tired and nervous.
26 MR. MARCHI: Thank you.
27 THE COURT: Can I see counsel in chambers for a second?
28 (Bench conference held off the record.)

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1 THE COURT: All right. The Court has considered the
2 matter and here's my ruling: It is clear, as I indicated
3 earlier, that the witness intends to claim the Fifth Amendment
4 privilege as to anything that may have transpired, anything that
5 was said, anything she may have saw, anything she may have seen,
6 anything that may have occurred on the day of the incident in
7 question. So that would be from anything that transpired on, I
8 think it was, Saturday morning is when this allegedly all
9 started.

10 If she's asked those questions, then I think it does
11 certainly bring up her being an unavailable witness. If,
12 however, the questions are very narrowly limited to the
13 questions that were posed earlier, which was, who was present in
14 the room in the Elmwood Motel on the night before, where were
15 they seated, where Anna was sitting, where Shawn was sitting,
16 and whether there was any physical interaction between Nick and
17 Anna, and whether Anna made any reaction to that, if it is
18 limited to those questions and those questions only, then I do
19 not believe that it would cause the previous statement to come
20 into evidence.

21 On the other hand, if there are statements asking her to
22 talk at all about who said what, what conversation she
23 overheard, then I think the People are correct, then this can or
24 they're entitled to cross-examine her as to her credibility as
25 to what she recalls at all of the conversations, we're going to
26 be very quickly getting into an area where she is likely to
27 claim the Fifth.

28 Now, obviously, the People can ask her if she's given

1 statements before, that would be a different issue in light of
2 has she ever given statements regarding the topics in which
3 she's going to be questioned. Is that clear?

4 MR. MARCHI: Yes, but I believe there's an additional area
5 that comes to mind, and that is part of the fake plan, if you
6 will, was to claim a sexual act occurred but in the hall and if
7 she's now going to describe an incident at the motel room, I
8 believe I would be entitled to really say, wasn't that really
9 part of the plan for the next day, and I think that's how we get
10 there, and that does restore her credibility.

11 THE COURT: Was she ever asked that question in the
12 statement?

13 MR. MARCHI: No. But she was -- well, she was asked about
14 what the plan was and according to our transcript, there was no
15 mention about any touching in the motel room at all. In fact,
16 the whole thing revolved around planning to rob and lock up the
17 victim the next day.

18 MR. SERAFIN: That's because those were the only questions
19 asked.

20 THE COURT: You may ask her, Has she given statements to
21 the police? You may ask her, Has she ever told the police that
22 before? Has she ever said that she saw Nick touch her? Has she
23 ever told the police that Anna said, stop it? All of those are
24 not inappropriate questions.

25 MR. MARCHI: Well, I think I could also ask her, Isn't
26 that a made-up story, since it doesn't appear on this
27 transcript?

28 THE COURT: Ask her that question.

1 Q. BY MR. MARCHI: Are You making up the story about Anna
2 Rugg being touched by Nick Hamman at the motel on Friday night?
3 A. No.
4 Q. You never told Detective Coe about that; did you?
5 A. (Shakes head.)
6 Q. You have to answer out loud.
7 A. No.
8 Q. In fact, what you told him had only something to do with a
9 plan the next day; isn't that right?
10 MR. SERAFIN: Objection. That goes beyond the scope.
11 MR. MARCHI: It doesn't. It's impeachment of her
12 statement.
13 THE COURT: We're outside the presence of the jury.
14 MR. SERAFIN: Okay. But --
15 THE WITNESS: I refuse to answer on the Fifth Amendment
16 privilege.
17 MR. MARCHI: Again, I think that is a legitimate question
18 area because the incident was not described to Detective Coe,
19 and I believe it to be a fabrication.
20 THE COURT: Well, my ruling is if the questions are in
21 that very limited narrow area, then the statement will not come
22 in. The written statement will not come in. I will not
23 consider her to be an unavailable witness. If she -- if the
24 area of questions goes into other areas, then I think the People
25 should seek to approach and we'll revisit it.
26 MR. SERAFIN: To clarify for the record, and I understand
27 the Court's ruling, but to clarify for the record if I then
28 followed with the simple question, where were you when Nick was

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1 locked in the cell and was Shawn with you? It would be the
2 Court's position that by asking those two questions, I have then
3 opened the door to any of her past statements with regards to
4 any incident or statements or argument or conversations about
5 anything that happened at the hall that day?

6 THE COURT: Yes, because the location of all of these
7 people inside the juvenile hall is so intertwined as to what
8 they saw, what they heard, and who did what, that absolutely the
9 People would be entitled to probe that area.

10 MR. SERAFIN: Okay.

11 THE COURT: Anything else before we call in the jury?

12 MR. BOLTON: Your Honor, just a point of clarification.
13 Ms. Hughes testified that her diagnosis was depression. I have
14 come to understand that that is incorrect.

15 THE COURT: Can you all hear what he's saying?

16 MR. MARCHI: Barely.

17 MR. SERAFIN: No.

18 MR. BOLTON: Her diagnosis is not depression. It is, she
19 is developmentally disabled. I think that bears upon where
20 Mr. Marchi might go if he were to attack her credibility.

21 THE COURT: That does bring up another area which I
22 mentioned briefly to counsel in chambers. It did appear to me
23 that, perhaps, Ms. Hughes, you were having some difficulty
24 understanding the questions.

25 THE WITNESS: (Nods head.)

26 THE COURT: So if you don't understand what they're asking
27 you, it's okay to say, I don't understand. They will repeat the
28 question for you; okay?

1 THE WITNESS: Yeah.

2 THE COURT: Because we don't want people guessing.

3 THE WITNESS: Okay.

4 THE COURT: So it's -- it is not a problem if you don't
5 understand the words they're using. They can use different
6 words. All right?

7 THE WITNESS: Uh-huh.

8 MR. SERAFIN: Judge, in light of this and in light of all
9 this discussion and the mystery transcript, I actually think it
10 would confuse the jury more than help them, and I don't
11 intend -- I don't intend to bring her on to ask her the one
12 question.

13 THE COURT: All right.

14 MR. SERAFIN: I just think it makes a mountain out of a
15 mole hill.

16 THE COURT: So is Ms. Hughes excused?

17 MR. SERAFIN: As far as I'm concerned at this point, yes.

18 MR. MARCHI: Yes, she's excused.

19 THE COURT: Thank you, Ms. Hughes. You're free to go.
20 The jury is waiting and what are we going to do at this point?

21 MR. SERAFIN: I'm just going to put my investigator on in
22 regards to some brief impeachment of Nicholas Hamman.

23 THE COURT: And then are you going to rest or are you
24 asking that I recess until Monday?

25 MR. SERAFIN: I would like to recess until Monday so I can
26 try to officially arrange the doctors, two doctors from CDC, to
27 come testify Monday. And I will give full warning. I am not
28 positive. It is difficult to get doctors to be all that

1 cooperative, and it is not a crucial enough issue that I'm going
2 to force their presence here, but I would like an opportunity to
3 try.

4 MR. MARCHI: What I mentioned to counsel off the record
5 was I'm not sure -- he said there were a couple small areas. If
6 I knew what those were, we might be in a position to stipulate,
7 but that's up to him.

8 MR. SERAFIN: It would be areas from their official
9 report, what we all have, that I subpoenaed from CDC records on
10 actually what Mr. Hamman was diagnosed as and what that means
11 because he denied a couple of things that he actually has been
12 diagnosed as having, and the doctors could clarify that.

13 THE COURT: I would like to suggest that, perhaps, we take
14 the time, maybe we can put your next witness on. Then we can
15 take a short recess. We take the time to see if we can craft a
16 stipulation because then we would -- I believe the defense would
17 be at a point where you would rest, and then I would be able to
18 determine whether or not there's going to be any rebuttal and
19 then I would be able to tell the jury what we're doing, and it
20 sounds like we might start with instruction on Monday.

21 MR. SERAFIN: The problem is, I'm also trying to attempt
22 to use that time. We are still -- there are two other witnesses
23 that we have been led to, actually one that was already on the
24 list and one that was not, in regards to their statements that I
25 have reason to believe would be -- might be admissible under the
26 Court's 1101(b) ruling, and that was -- when the Court made the
27 ruling, I said there were --

28 THE COURT: Why don't we do this, I'll call in the jury.

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1 We'll have the next witness testify, and it sounds like we have
2 nothing else left for today, and that way I can let them go and
3 tell them to be back Monday morning. So bring in the jury.

4 THE BAILIFF: Yes, your Honor.

5 (Jury enters the courtroom at 2:32 p.m.)

6 THE COURT: All right. We're back on the record. The
7 jury is all present. Counsel and parties are present. Counsel,
8 are you ready to proceed?

9 MR. SERAFIN: Yes, your Honor.

10 THE COURT: Go ahead.

11 MR. SERAFIN: The defense calls Martie McKenney, and I
12 believe she's waiting in the hall.

13

14 MARTHA MCKENNEY

15 called as a witness on behalf of the Defense herein was sworn,
16 examined, and testified as follows:

17 THE COURT: I need you to please come forward and when you
18 get right up here near the front, I need you to turn, face my
19 clerk, and raise your right hand to be sworn.

20 THE CLERK: Do you solemnly state that the testimony you
21 shall give in the cause now pending before this court shall be
22 the truth, the whole truth, and nothing but the truth so help
23 you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Please state your name and spell
26 your last for the record.

27 THE WITNESS: Martha McKenney, M-c-k-e-n-n-e-y.

28 THE COURT: Go ahead.

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1 MR. SERAFIN: Thank you, your Honor.

2 DIRECT EXAMINATION

3 Q. BY MR. SERAFIN: Martie, where do you work?

4 A. At the Placer County Public Defender's Office.

5 Q. And what is your title there?

6 A. I'm the chief investigator.

7 Q. And what are your -- as chief investigator, what are your
8 basic job duties?

9 A. Oversee all of the cases that come through that need
10 investigation done on them. A assign them to specific
11 investigators, match up investigators to work with the attorneys
12 in the office. And any law, case law that comes in, we talk
13 about it at investigator meetings, as well as ways we can
14 improve our performance as investigators.

15 Q. And do you, yourself, conduct interviews on witnesses in
16 certain cases?

17 A. Yes, I do.

18 Q. And did you conduct an interview of Nicholas Hamman in
19 regards to the case of the People against Shawn Rodriguez?

20 A. Yes, I did.

21 Q. And when did you conduct that interview?

22 THE WITNESS: Your Honor, could I refer to my notes?

23 THE COURT: Yes, as long as you indicate you're looking at
24 them.

25 THE WITNESS: According to my report, it was July 30th of
26 this year.

27 Q. BY MR. SERAFIN: And was I present with you at that
28 interview?

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1 A. Yes.

2 Q. Was anybody else present?

3 A. Just Nicholas Hamman.

4 Q. And the jury has heard much of Nick Hamman's testimony.

5 I'm going to touch on a couple of issues with you. At any point

6 in the interview with Mr. Hamman, did he talk about voices that

7 he sometimes had in his head?

8 A. Yes, he did.

9 Q. What did he say in regards to his voices in his head?

10 A. According to my report, he told us that he had been

11 diagnosed as being bipolar with voices, is how he stated it, and

12 depression. He stated that he had this condition for many

13 years. He had not been on medication for some time, and he is

14 currently hearing voices. He said he didn't recall at what age

15 the voices started but recalled that they got worse after a car

16 accident at age 21. He stated that sometimes the voices tell

17 him about past events and current situations. Sometimes the

18 voices tell him to hurt people.

19 Q. And in regard to those voices, did Mr. Hamman mention to

20 you any particular memories or visions that he had of the case

21 against Shawn Rodriguez?

22 A. According to my report, he did say at one point that there

23 was -- there was a memory that was a repeating nightmare that

24 had come to him in the form of voices or dreams, and that was

25 that when he was in the cell that he heard Mr. Rodriguez say to

26 Ms. Rugg, "Shut up, stupid bitch, or I'll throw you in there

27 too." He told me he didn't tell this to Detective Coe because

28 it had just recently come to him, that this memory in the form

1 of a voice or a dream.

2 Q. So did he tell you that whether or not that vision or
3 memory had come to him since he last talked to Detective Coe?

4 A. He wasn't specific as to that, I don't think. He just
5 told me he didn't tell Detective Coe about it, according to my
6 notes.

7 Q. And in regards to the dreams, was he referring to
8 nightmares that you and I or any of us would have while they
9 were sleeping?

10 A. That wasn't the feeling that I got necessarily. He said
11 the information comes to him during the day and sometimes at
12 night. He says it is like a repeating nightmare, so I would
13 think if it came to him during the day, it would not be like a
14 typical nightmare.

15 Q. Did he mention anything to you during the interview that
16 suggested to you or any of the average person, nonexpert, a
17 rather delusional thought pattern?

18 A. Yes. He talked about -- according to my notes, he talked
19 about being in a movie with Pauley Shore. He said he was in a
20 movie call Johns, which is a pornographic film about people
21 becoming prostitutes, and he played the pimp in the movie. And
22 he was dressed like Truman Capote. He said he was in two Star
23 Trek movies. He said he'd been one of the android characters
24 that was used in the movies that Leonard Nimoy and William
25 Shatner were trying to fight a new alien character.

26 MR. MARCHI: I'm going to object at this point. The
27 witness seems to be reading straight from her report.

28 THE COURT: You do need to indicate whether you're

1 recalling something or you're reading.

2 THE WITNESS: It is from the report, yes.

3 THE COURT: You can use that to refresh your recollection.

4 Q. BY MR. SERAFIN: Martie, why don't you use your report to
5 refresh your recollection, and then I'll ask you a question when
6 you're finished. In regards to creating a new character for
7 some Star Trek movie, how did he describe that?

8 A. He said that he had taken a paddle ball toy away from a
9 child. He was playing while he was standing in line and he used
10 that paddle ball along with some aluminum foil and made horns
11 and then stuck the horns to his head with Super Glue and he
12 showed us some spots on his head, some bald spots on his head,
13 where he said the hair never grew back. And he said that
14 Leonard Nimoy liked this idea and used it in the film.

15 MR. SERAFIN: I have no further questions, your Honor.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 Q. BY MR. MARCHI: Ma'am, how long have you been an
19 investigator in the public defender's office?

20 A. Approximately about seven years, I think.

21 Q. Okay. And what sort of special training have you had?

22 A. I've completed the Defense Investigators Association
23 training program, which is an intensive four session program
24 that each session entails a four day or five day conference.
25 I've gone -- I've completed the 832 Penal Code class that is
26 required by DA investigators. I have -- I was trained by the
27 chief prior to me, Chuck Mierkey, who was a Stockton Police
28 officer for 18 years prior to being in the defense world for

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1 another, about ten, I think. I have an AA from Sierra College.
2 And I've attended the death penalty conference in Monterey a
3 couple of times, as well as several other defense investigator
4 conferences addressing domestic violence, death penalty cases,
5 so on.

6 Q. Yes. Chuck Mierkey was an ex-law enforcement officer for
7 at least ten years in San Joaquin County?

8 A. Yes, 18, I think.

9 Q. Do you have any law enforcement experience?

10 A. I don't.

11 Q. And, ma'am, I noticed you refer quite often to your
12 report. Are you having some trouble remembering exactly what
13 Mr. Hamman told you?

14 A. It's -- it has been a little bit of time, and it was a
15 fairly long interview so yes, I did have to refer to it.

16 Q. Now, you did -- he did tell you about some dreams or
17 visions or whatever they were, he referred to them as nightmares
18 sometimes during the day and sometimes at night?

19 A. Yes.

20 Q. Did you ask him whether he was sleeping during the day
21 when he had the nightmare?

22 A. I don't recall asking him that specifically, no.

23 Q. And, of course, at night did you assume he was sleeping?

24 A. Probably.

25 Q. So you didn't really ask him whether or not he was
26 sleeping?

27 A. Asleep during that time no, I didn't.

28 Q. Because someone is sleeping, of course, we all do have

1 dreams; don't we?

2 A. Yes, we do.

3 Q. Now, his statement that Mr. Hamman attributed to Shawn
4 Rodriguez regarding Ms. Rugg, Mr. Hamman told you, in fact, it
5 was a dream in his opinion; did he not?

6 A. Regarding the statement?

7 Q. Yes, the one about throwing her in the cell with
8 Mr. Hamman?

9 A. He stated that this specific statement was not something
10 that he told to Detective Coe because it had come to him
11 recently in the form of voices or dreams was how he stated it to
12 me.

13 Q. Okay. And did you inquire as to whether he was awake or
14 sleeping at the time?

15 A. No, I didn't.

16 MR. MARCHI: Okay. Thank you. I have no further
17 questions.

18 REDIRECT EXAMINATION

19 Q. BY MR. SERAFIN: Martie, when did you write the report
20 that you have used this morning?

21 A. I wrote it the same day that we visited him.

22 MR. SERAFIN: No further questions?

23 MR. MARCHI: No questions.

24 THE COURT: Is this witness excused?

25 MR. SERAFIN: Yes.

26 MR. MARCHI: Yes.

27 THE COURT: Thank you. You're free to go. Do you have
28 any other witnesses for today?

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1 MR. SERAFIN: Not at this time, your Honor.

2 THE COURT: May I see counsel in chambers?

3 (Bench conference held off the record.)

4 THE COURT: As I mentioned earlier, ladies and gentlemen,
5 we have had some scheduling difficulties today and counsel and
6 the Court are very aware of how important your time is, and we
7 really try hard not to take advantage of your time, but
8 unfortunately we have no further witnesses today. And so we are
9 going to recess for today. There may be a few more witnesses, a
10 few more evidentiary things on Monday, and we're pretty
11 confident this will be submitted to you no later than Tuesday,
12 possibly Monday, but no later than Tuesday. So we are moving
13 actually a little faster than I had told you. So I think we got
14 ahead of ourselves here, so I am going to recess for the day and
15 you are to return here Monday, and that will be at 9 a.m.

16 And you are reminded it is your duty not to converse among
17 yourselves or with anyone else on any subject connected with the
18 case, not to form or express any opinions until the matter is
19 submitted to you until after you heard all the evidence, and
20 we're in recess and we'll see you Monday at 9 a.m.

21 (Jury exits the courtroom at 2:50 p.m.)

22 THE COURT: Is there anything else we need to put on the
23 record before we recess for today?

24 MR. MARCHI: No, your Honor.

25 MR. SERAFIN: No, your Honor.

26 THE COURT: All right. We're going to work a little bit
27 on jury instructions this afternoon since we have some time.

28 I'll give you a chance to get all your materials together here,

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1 and then just let my clerk know when you're ready.

2 MR. SERAFIN: Nine o'clock on Monday?

3 THE COURT: Although I do prefer you be here earlier. In
4 fact, why don't I have you here at 8:30 because we do have to
5 talk about -- you said you might have wanted to revisit that
6 1101(b) issue?

7 MR. SERAFIN: That's true.

8 THE COURT: Also if you are going to be revisiting that
9 because investigation has disclosed -- additional witnesses have
10 information that witnesses have information in addition to what
11 you had originally told me, I'm going to ask that you let the
12 People know as soon as possible and also give them their names
13 and dates of birth so they can run the raps so if we have any
14 impeachment issues, we can get that all worked out. So if you
15 would all be here at 8:30 in the morning preferably, that will
16 give us time. If you need to address the issue sooner than
17 that, I'll be in Department 13 on Thursday and Friday.

18 MR. SERAFIN: Okay.

19 (Proceedings concluded at 2:52 p.m.)

20 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 MONDAY, SEPTEMBER 29, 2003, 9:34 A.M.

3 --oOo--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --oOo--

18 THE COURT: All right. We're on the record. The jury is
19 all present. Counsel and parties are present. We've all had
20 our coffee and donuts. We're all jittery now. Are you ready to
21 proceed?

22 MR. SERAFIN: Yes, your Honor.

23 THE COURT: All right. Your first witness?

24 MR. SERAFIN: The defense calls the defendant, Shawn
25 Rodriguez, to the stand.

26 SHAWN RODRIGUEZ

27 called as a witness on behalf of the Defense herein was sworn,
28 555

1 examined, and testified as follows:

2 THE COURT: I need you to, first of all, stand, face my
3 clerk, and raise your right hand to be sworn.

4 THE CLERK: Do you solemnly state that the testimony you
5 shall give in the cause now pending before this court shall be
6 the truth, the whole truth, and nothing but the truth so help
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Go ahead and take a seat.

10 THE COURT: Go ahead.

11 MR. SERAFIN: Thank you, your Honor.

12 DIRECT EXAMINATION

13 Q. BY MR. SERAFIN: Shawn, how old are you?

14 A. Twenty years old.

15 Q. Where were you born?

16 A. In Roseville. Roseville Hospital.

17 Q. Where?

18 A. Roseville Hospital; Roseville, California.

19 Q. Were you raised pretty much by your parents?

20 A. No.

21 Q. Who raised you?

22 A. Group homes, foster homes and the like.

23 Q. On the date of March 16, 17, the weekend we've been
24 talking about through this entire trial, where were you living
25 at that particular time in your life?

26 A. More or less transient, staying with my brothers and
27 friends when I could.

28 Q. Without going into too much detail, how did you end up

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1 transient at that time?

2 A. I stole a car last year and when I got out of jail in
3 January, I didn't have anywhere to go.

4 Q. And besides stealing the car that year before, had you
5 been convicted of any other crimes?

6 A. No, I had not.

7 Q. How did you know Anna Rugg?

8 A. I met Anna Rugg at a bus stop here in Auburn.

9 Q. And when was that roughly?

10 A. Around the end of February, beginning of March, about two
11 weeks before the incident.

12 Q. And when -- how was your -- how did you become to know
13 Erin Hughes?

14 A. I met Erin two weeks before Anna, so about the middle of
15 February at the bus stop.

16 Q. How would you describe your relationship with Erin Hughes?

17 A. We were together.

18 Q. When you say "together," did you consider her your
19 girlfriend?

20 A. Yes, I did.

21 Q. And at the time of this incident, there's been some
22 mention that she was pregnant; is that true?

23 A. Yes.

24 Q. Was it your child?

25 A. No, it was not.

26 Q. That occurred before you met her?

27 A. Yes.

28 Q. How did you know Nicholas Hamman?

1 A. I met Nick just before I met Erin at the bus stop very
2 briefly.

3 Q. And how many times before the hotel on Friday, March 15,
4 how many times had you been in the same area or talked to
5 Nicholas Hamman?

6 A. Twice, maybe three times briefly.

7 Q. What was your first impression of Nicholas Hamman?

8 A. Pathological liar. He was kind of a weirdo. He struck me
9 as a weirdo.

10 Q. Did he say anything to you that made you think that?

11 A. The first thing Nick said to me was that he had taken a
12 knife for Sonny Barcher on a yard in prison.

13 Q. Did you have any idea what that meant?

14 A. Well, I know who Sonny Barcher is, and I figured he
15 stepped in the way when someone was trying to stab Sonny.

16 Q. And you said that he just blurted that out to you before
17 you had any conversation with him?

18 A. No. It wasn't the very first thing he said to me. He
19 said, "Hi, how are you doing?" And I saw a bunch of tattoos and
20 I asked him if he'd been to prison and he told me about that.

21 Q. Now, you had met him at the bus stop. Were you there
22 catching a bus or is that kind of a hangout place?

23 A. I was catching a bus. I was on my way to Colfax from
24 Sacramento.

25 Q. After you met Anna Rugg in, say, late February, did you
26 spend much time with her between then and the weekend in
27 question?

28 A. Yes.

1 Q. And where did you guys stay in those two or three weeks?
2 A. Various places. The first night we met we stayed the
3 night in a church that she was sleeping in.
4 Q. And what was your first impression of Anna Rugg?
5 A. I had seen Anna around. The first impression I got from
6 Anna, everybody called her Half-pint. Nobody knew whether she
7 was male or female. Just a kid.
8 Q. Did you like her?
9 A. I didn't know her.
10 Q. But you seemed to spend a lot of time with her over the
11 next few weeks?
12 A. Yeah. I got stuck in Auburn and me and her kind of
13 latched on.
14 Q. When you say latched on, was she in a similar situation to
15 you?
16 A. Yes.
17 Q. She was basically transient as well?
18 A. Yes.
19 Q. Taking us to the night, Friday night, March 15th, where
20 were you?
21 A. At what time?
22 Q. In the evening.
23 A. In the evening?
24 Q. Let me ask you this. Let me clarify. Where did you stay
25 that night, if you remember?
26 A. Elmwood Hotel room 205 or 207.
27 Q. Who did you stay with?
28 A. Erin and Anna.

1 Q. How could you afford the Elmwood hotel?
2 A. We got a voucher from the Salvation Army.
3 Q. How are you affording to eat and live, in general, at this
4 time?
5 A. Doing what I can.
6 Q. Did you -- did you hold a job?
7 A. At that point I was doing more Labor Ready, stuff like
8 that.
9 Q. Have you ever held a regular 8:00 to 5:00 job?
10 A. Yes, I have.
11 Q. And what kind of jobs have you done?
12 A. Done a lot of different things. I worked a lot of fast
13 food. Retail manager at a hair salon in Arden Mall, done a lot
14 of construction work, framing, cement, HVAC, construction work,
15 plumbing.
16 Q. But at this particular time you weren't holding one
17 particular steady thing. You were doing odd jobs?
18 A. You go to Labor Ready and tell them you're there. If
19 someone calls in and says they need manual labor, they send you
20 out.
21 Q. Did you have occasion on that Friday night when you were
22 staying at the Elmwood to see Nicholas Hamman?
23 A. Yes, I did.
24 Q. And how -- where was that?
25 A. Inside the hotel room.
26 Q. How did he show up there?
27 A. He worked the bus stops to begin with in the morning and
28 he gave us a ride to the Salvation Army to pick up our voucher

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1 and we ended up in the hotel room later that night, all of us
2 together.

3 Q. And did he show up on his own or did he show up with Anna?

4 A. What do you mean?

5 Q. Did he show up at the hotel after the three of you were
6 already there or did you all go there together?

7 A. We all went together.

8 Q. And you went in his car?

9 A. Yes.

10 Q. What did you guys do at the hotel that night, if you
11 remember?

12 A. Just moved in. We were watching TV for a while.

13 Q. And where were you watching -- well, actually describe the
14 room; is it one room with two beds and two, or two beds with a
15 bed in each room.

16 A. I think a few of the rooms there, the ones next to the
17 stairs have two rooms. There's a front room and a bedroom in
18 the back that also has a bed. The front room has a TV and bed.
19 That's where the bathroom is located, and then there's another
20 room in the back with just a bed in it.

21 Q. When you say you were watching TV, was that in the front
22 room?

23 A. Yes.

24 Q. And who was in that front room on that bed watching TV?

25 A. All of us.

26 Q. The four of you?

27 A. Yes.

28 Q. Where were you and Erin?

1 A. Me and Erin were at the head of the bed.
2 Q. Were you guys somewhat intimate like boyfriend girlfriend
3 would be, kissing, that sort of thing?
4 A. Somewhat, yeah.
5 Q. Where were, if you can remember, Anna and Nick?
6 A. At the foot of the bed.
7 Q. Were they both on the bed?
8 A. Anna was on the bed. Nick was partially on the bed.
9 Q. Were -- did you notice any physical interaction between
10 them that night?
11 A. A little bit, but Anna didn't let it get far.
12 Q. Explain that. What physical interaction did she allow and
13 at what point did she not let it go any further?
14 A. I remember that Anna was laying on the bed, and Nick had
15 his butt on the bed but feet on the floor. He had his arm
16 draped across her, but he kept trying to feel her up. I guess
17 she wasn't having it.
18 Q. You say you guess, did you see it happen from time to time
19 or did you hear it?
20 A. I would hear it. I was watching TV. I wasn't watching
21 them.
22 Q. What would Anna say if he supposedly went too far?
23 A. Exactly that, "You're going too far. Quit."
24 Q. Did they seem to argue about it?
25 A. A little bit but very briefly.
26 Q. But it wasn't a hostile situation?
27 A. No.
28 Q. Did you know anything -- let me ask you this. Had you

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1 been around Anna and Nick very much prior to that Friday night?
2 A. The day leading up is the most time I spent around them
3 together.
4 Q. And did you know of any relationship that the two of them
5 had together?
6 A. When me and Anna met in the beginning I came right out and
7 I asked her, I said, "Half-pint, are you male or female?" She
8 told me she was female. She had a boyfriend, but she wouldn't
9 tell me who. After seeing them together, I pretty much figured
10 out who it was.
11 Q. You then know that Nicholas Hamman was the person she was
12 referring to as her boyfriend?
13 A. I didn't know at first. I came to realize that after
14 seeing the way they interacted together.
15 Q. Did Nicholas Hamman stay the night with the three of you
16 in the hotel?
17 A. No, he did not.
18 Q. And why didn't he, if you know?
19 A. After it got dark, he'd been there an hour, hour and a
20 half, I was tired. I wanted to get to bed. Seemed about the
21 time for him to see the door, so I told him, "We're going to get
22 to bed now." And he got up to leave, and there wasn't an
23 argument and he left.
24 Q. Had you ever had in the brief time you had been around
25 Nick, because you mentioned earlier that he may be very strange,
26 did you ever have a problem with him, an argument, a fight?
27 A. He might have been strange, but he didn't bother me.
28 Q. I'm sorry?

1 A. He didn't start problems with me. He just acted kind of
2 creepy, you know.

3 Q. You probably meet quite a few strange people on the
4 streets I would assume?

5 A. Yeah.

6 Q. Taking you to later that evening after Nick has left, did
7 you and Anna have any discussion about wanting to do anything
8 harmful to Nick Hamman?

9 A. Much later that night, and it wasn't about harming him.
10 She said she wanted to rob her boyfriend.

11 Q. Did she explain that her boyfriend was Nick Hamman?

12 A. Yeah.

13 Q. And did she say how she wanted to rob him?

14 A. No. At that point it was just real vague. She wanted to
15 rob him. She wanted his car, and I guess he got direct deposit
16 SSI every month, and she wanted his ATM card.

17 Q. Did you make any response that -- how did you react to her
18 saying she wanted to rob him?

19 A. I was really noncommittal. She asked me to do things with
20 her before, but never really elaborative. I figured it was the
21 same type of thing. I was going to sleep.

22 Q. Did you think she was serious?

23 A. I thought that maybe she wanted to do it. She was serious
24 about wanting to do it, but I didn't think she would ever do
25 anything.

26 Q. Did she specifically mention to you any plan about the
27 juvenile hall?

28 A. She mentioned it that night.

1 Q. Did she mention it that night?

2 A. Yes.

3 Q. Did you know what she was talking about, the old juvenile
4 hall?

5 A. No. I didn't where know where it was, exactly what she
6 was talking about. She'd thrown out numerous plans that night.

7 Q. Do you remember any of the other plans she threw out?

8 A. She said something about throwing him off the Foresthill
9 Bridge and climbing down, get his stuff from himself, get his
10 keys and stabbing him and shooting him and all kinds of stuff.

11 Q. Shawn, did that alarm you?

12 A. Not really. I didn't take her seriously.

13 Q. This is a person you've been spending a couple weeks with.
14 Now, she's talking about shooting or stabbing her boyfriend,
15 that didn't alarm you?

16 A. After the instance of the night, no. I figured it will
17 blow over. She'll get over it.

18 Q. When you woke up the next morning, did you have any plans
19 to contact Nick Hamman?

20 A. No, I did not.

21 Q. What was your plan, your general plan, for Saturday?

22 A. Well, Erin recently got kicked out of her halfway house.
23 She came up pregnant and she needed to find a place. I had an
24 old friend of mine that lives down in Sacramento that ran, I
25 guess it is, a drug rehab program called Amigos, and I was going
26 take her down there and see if there were any places to get her
27 into.

28 Q. How were you going to get her down there?

1 A. The bus.

2 Q. And at that point did you guys head over to the bus stop?

3 A. No. First we needed to get our things out of the hotel.

4 Q. And what was the plan for doing that?

5 A. We were going to go try to call somebody for a ride.

6 Q. And did you go to a pay phone then?

7 A. No, we walked across the street.

8 Q. Was your goal to call Nick Hamman for a ride?

9 A. No.

10 Q. Who were you going to call?

11 A. My brother and my brother's friend, maybe my mother.

12 Q. When you say your brother, are you referring to Rick

13 Romines?

14 A. Yes.

15 Q. He lives in Sacramento?

16 A. Yes.

17 Q. Did you ever get to call him that morning?

18 A. No, I did not.

19 Q. When did you guys then see Nick Hamman?

20 A. As we were walking through the parking lot around Randy's.

21 Q. Did he stop?

22 A. After we all waved him down, yeah.

23 Q. At that point when he stopped, to your knowledge, had

24 anybody in the group, besides you, called and asked him to meet

25 you there?

26 A. No.

27 Q. So --

28 A. I think Anna had tried. I'm not sure though.

1 Q. Did you feel it was a chance encounter?
2 A. Yeah. He was driving down High Street about to turn on
3 Elm, and we saw him and waved him down.
4 Q. When he stops, talks to the three of you, did you have any
5 specific conversation with Nick?
6 A. No.
7 Q. Who was speaking to him?
8 A. Anna, and I think -- I can't recall offhand. I think Erin
9 was over there. I was on my bicycle.
10 Q. From there was an alternative plan created that involved
11 Nick?
12 A. Excuse me?
13 Q. Was there another idea that was -- that came about from
14 that conversation between Anna and Nick?
15 A. Was to take our things to the juvenile hall.
16 Q. Did that involve your things as well?
17 A. Yes.
18 Q. And did he take you right then and there to the old
19 juvenile hall?
20 A. No, he did not.
21 Q. What did he do?
22 A. He left. Anna told me he was going to pick us up, get our
23 stuff packed. We needed to be out by 11:00. This was 9:30 or
24 10:00.
25 Q. Was the plan to stay at the juvenile hall?
26 A. Mine wasn't, no.
27 Q. Your plan in going to the juvenile hall was what?
28 A. Was put my things there for the day.

1 Q. Had you ever been there?
2 A. No. Well, when I was a child.
3 Q. Okay. But you hadn't been there since it had been closed
4 down?
5 A. No, I had not.
6 Q. When Nick comes back, who got in the car?
7 A. We all threw our things in the car. We all got in the
8 car. Well, they took off first, and I was going to throw my
9 bike in the bushes behind the Elmwood Hotel, and I was supposed
10 to get there, in the car on the side of the road. He kept going
11 so I went up on the top of the hill and I waited, and he came
12 back around and picked me up and Anna got out of the car.
13 Q. Why did Anna get out of the car?
14 A. They were having some type of argument like they always
15 do.
16 Q. At that point you did get into the car?
17 A. Yeah.
18 Q. Did you talk Anna back into the car?
19 A. No. We went over the freeway and went into the Bank of
20 the America parking lot and was walking. She was walking back
21 over the freeway and I -- I got out and told her to come get in.
22 Q. Did she eventually get in the car?
23 A. Yes.
24 Q. At that point did you hear any particulars as to why they
25 were arguing?
26 A. Something about directions.
27 Q. Did it seem like a heated argument?
28 A. Not really. There was a little bit of yelling, but it

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1 wasn't -- I guess you would call expletives. They weren't
2 cussing at each other. They were just arguing.

3 Q. When you arrived at the juvenile hall, how did you get
4 inside?

5 A. At first, apparently, Anna and Erin had been there before.
6 And she had made Erin climb through the window and Erin was
7 pregnant and I told Erin, no. I went and climbed through the
8 window.

9 Q. Was it already broken?

10 A. Yes.

11 Q. How did you let the rest of them in?

12 A. I went around the front, and I opened the door.

13 Q. Okay. At that point did you have -- had you and Anna had
14 any conversation about, let's lock him in the cell?

15 A. No.

16 Q. Did you think Anna was going to do something bad to Nick
17 Hamman?

18 A. Not at that point, no.

19 Q. What did you and Erin do while you were there?

20 A. To begin with, we all went out and got our bags.

21 Q. After that?

22 A. After that we, me and Erin, Anna and Nick had brought our
23 stuff in. And Anna told me and Erin to go take a walk. She
24 told Nick, "Come here. I want to show you something" and told
25 me and Erin to go away.

26 Q. Did you have any idea why she was telling you to take a
27 walk?

28 A. As I was walking away, it kind of dawned on me. I wasn't

1 positive, but I had a feeling.

2 Q. You had a feeling what?

3 A. That she was going to do something, probably lock him in
4 the cell.

5 Q. How long or how far did you walk away?

6 A. Got through, I guess it's called the office, is it the
7 office? And then through the breezeway into the hallway leading
8 to, I think it was the dorm 16. We got about halfway through
9 that hallway.

10 Q. At that point?

11 A. We heard the slam twice and she yelled my name.

12 Q. And who yelled your name?

13 A. Anna did.

14 Q. Did you go back where she was?

15 A. Yeah, we both did.

16 Q. What did you see?

17 A. Anna was standing by the door, shut, and smiling, and
18 holding up his keys.

19 Q. Holding up Nick's keys?

20 A. Yes. Nick was locked inside the cell.

21 Q. Did you know how Anna got those keys?

22 A. No, I didn't.

23 Q. Was Nick saying anything?

24 A. Nick was saying a number of things.

25 Q. Anything that you remember right at the beginning when he
26 was first locked in?

27 A. I can quote, "Anna, get off it. Anna, let me out, and I
28 love you."

1 Q. And did Anna have any response to this?
2 A. Not from the beginning, no. She just ignored him.
3 Q. At some point that morning did Anna have any discussion
4 with him about him being in that cell that you remember?
5 A. Two, three minutes afterward I think there was a
6 discussion. I cannot remember. I can't tell you exactly what
7 it was, but when he asked to get out, her reply was, "When I'm
8 not mad at you anymore."
9 Q. Did you have any discussion with Nick while he was in that
10 cell that morning?
11 A. I can't recall. At the -- when he was locked in
12 initially?
13 Q. Yes.
14 A. I can't recall. I don't think so.
15 Q. At this point did you and Anna discuss, What do we do now?
16 A. Not explicitly. Not, What do we do now?
17 Q. Did you implicitly discuss it?
18 A. Just get out of there.
19 Q. Well, she has just locked a guy in a cell. Were you going
20 to get out of there with his car?
21 A. I wasn't. It wasn't really decided until we were walking
22 past his car.
23 Q. And did you then decide to get in the car?
24 A. Yes, we did.
25 Q. You knew obviously the car didn't belong to you; right?
26 A. Yeah.
27 Q. There's a guy locked in the cell?
28 A. Yes.

1 Q. What's going on in your mind as you climb into this car as
2 he's locked in the cell?

3 A. I can't recall. My head was kind of spinning at that
4 point.

5 Q. Where did you guys go from the juvenile hall?

6 A. We went to the Foresthill Bridge.

7 Q. Who drove that morning?

8 A. Anna did.

9 Q. What did you do at the Foresthill Bridge or was there a
10 particular purpose for going there?

11 A. I guess you could say somehow or another, me and Anna
12 went -- kept ending up there the two weekends up to that. It
13 felt like a place to go, kind of like the local place. It was
14 where we went.

15 Q. Is that your hangout place?

16 A. I guess you would call it that. We just ended up down
17 there. I don't think it was really any plans.

18 Q. For the rest of Saturday, leaving out, you know, some
19 details, but roughly what did you do?

20 A. After the Foresthill Bridge we went down to Sacramento to
21 see my brother, and Rick woke up briefly but he was kind of
22 cranky. We went back up to the juvenile hall. We left Erin in
23 the parking lot. Me and Anna went back in and the water was
24 going.

25 Q. And at that point did you have any discussion with Nick?

26 A. He was asking if we'd let him out, and there wasn't really
27 any discussion then and there.

28 Q. How long roughly did you stay at the juvenile hall that

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1 particular time?

2 A. Two or three minutes.

3 Q. This is Saturday afternoon?

4 A. Yes.

5 Q. And so then you left from there?

6 A. Yes, we did.

7 Q. What did you do with Erin?

8 A. What did I?

9 Q. What did you guys do with Erin at that point?

10 A. We took Erin back down to Sacramento.

11 Q. Where did she stay?

12 A. She stayed with Rick.

13 Q. At that point Nick has been in the cell for roughly seven,
14 eight hours. It is becoming evening; correct?

15 A. Yes.

16 Q. Did you and Anna at that point have any discussion about
17 what to do with him?

18 A. There wasn't really a discussion so much as an unspoken
19 agreement, I guess. I kind of figured, Okay, here comes the
20 robbing point. There wasn't a discussion. It wasn't decided
21 verbally. Just --

22 Q. But now at this point you've remembered the conversation
23 she had the night before?

24 A. Definitely, yes.

25 Q. You figured that's the plan?

26 A. Yes.

27 Q. Okay. Did you say anything to stop her?

28 A. No, I did not.

1 Q. Did you go along with getting his ATM card?
2 A. Not quite. It's more complicated than that.
3 Q. Explain what happened when you guys went back to the cell.
4 A. Later that night we got there, and it was dark when we got
5 back up there. We went inside. Nick was banging on the window
6 again. And Anna went and talked with him. Couldn't hear what
7 they were saying. She came back out and she said, "Well, we're
8 going to get his PIN number first. Let's go in and ask him his
9 PIN number." He wouldn't tell us at first.
10 Q. Who asked him for his PIN number?
11 A. Anna did.
12 Q. Did he eventually at some point give you his PIN number?
13 A. Yes.
14 Q. And obviously his PIN number is not too much good without
15 an ATM card; correct?
16 A. Yeah.
17 Q. Did you eventually ask for his ATM card as well?
18 A. No. We went back in to the office area and she said, "How
19 did we know it was real? Wait 15 minutes and let's go ask him
20 the PIN number again."
21 Q. You did that?
22 A. Yes.
23 Q. It was the same PIN number?
24 A. Yes, it was.
25 Q. At that point did you proceed to try to get the card?
26 A. No. The agreement they had made, she told him, "You know,
27 if you give us the PIN number, then we'll break the window and
28 we'll leave and get you -- let you get out." At first he didn't

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1 want to give it up. She said, "If you give us the PIN, we'll
2 break the window and leave."

3 Q. What good was the PIN going to do without the card?

4 A. That's what I thought. It was pretty stupid. I didn't
5 really ask her. It was pretty stupid. I said, "Oh, well."

6 Q. At that point did you make any attempt after he gave you
7 the PIN number to break the window?

8 A. Yes, I did.

9 Q. Was that -- did that involve that toilet fixture that they
10 have brought around a couple of times?

11 A. Yes.

12 Q. How many times did you hit the window?

13 A. Twice.

14 Q. Were you faking it or were you trying to break it?

15 A. I tried to break the window. She didn't want me to, but I
16 was having second thoughts from the very beginning, and I wanted
17 the dude out of there.

18 Q. What's your plan when you're trying to break the window?

19 A. Getting in his car and leave.

20 Q. Okay. Did you think after you broke the window your plan
21 was to get in his car and leave?

22 A. Huh?

23 Q. After you broke the window, then you were then going to
24 get in his car and leave?

25 A. Yes.

26 Q. But the thought process is that he can then get out?

27 A. Yeah, through the window.

28 Q. Did that plan work?

1 A. The window didn't break.
2 Q. Why not just open the door?
3 A. That dude was going crazy. I didn't want to be there when
4 he got out.
5 Q. So then why the window?
6 A. Because he'd have to spend some time climbing through the
7 window first.
8 Q. And you could get in the car and leave?
9 A. Yes.
10 Q. All right. After that plan didn't work, at that point was
11 there a suggestion about the card or did you guys leave?
12 A. Anna didn't want me to break the window to begin with so
13 everything seemed normal to her after the window didn't break.
14 And I said, "Well what now?" And, you know, "Are we going to
15 call the fire department or what?"
16 And she said, "No. We'll wait until he dies and we'll go
17 get the card."
18 And I said, "Why don't we get the card and go to Reno and
19 call the cops or something?"
20 Q. What did she say to that?
21 A. She said, "Let's go get the card."
22 Q. How did you do that?
23 A. We went in and she started asking him for the card. He
24 said, "What? I can't hear you. What? What?"
25 She asked me to climb on the counter and tell him what she
26 was saying.
27 Q. Why would climbing up on the counter make a difference of
28 what he was hearing?

1 A. If you climb up on the counter, he was speaking into a
2 small -- I guess there was a gap between the windowsill and the
3 window and he was yelling through that because the water was
4 loud inside the cell, and I got up on the counter so I could
5 yell in that gap.

6 Q. And at that point did he agree to give over his card?

7 A. No, he did not.

8 Q. That's when you guys started blocking the door?

9 A. Yes.

10 Q. What was the point of blocking the door?

11 A. To scare him into giving us his card.

12 Q. How did you do it?

13 A. We threw some towels down by the door and moved the shelf
14 in front of the door.

15 Q. Do you remember him pulling towels out when you were
16 putting towels down?

17 A. It was dark. I couldn't tell. I don't know.

18 Q. Was water -- after you did that was water still coming out
19 the door?

20 A. Yeah.

21 Q. But was it at a less rate than it was before?

22 A. Yeah.

23 Q. So clearly the blocking of the door had some effect on
24 raising water level inside the room?

25 A. I would assume so.

26 Q. And did you ever -- were you ever able to personally see
27 in and see how high the water got?

28 A. No, I was not.

1 Q. Why not?

2 A. It was dark inside the cell. There was water coming down
3 over the window, and the street lights were shining into the
4 room outside the cell so it was kind of a glare on the window.
5 Altogether I could not see into it.

6 Q. Do you remember telling the officers you said you thought
7 the water rose to about a 3 foot level?

8 A. Yes, I do.

9 Q. Where did you come to that?

10 A. I asked Nick.

11 Q. Did he tell you?

12 A. He told me 3 feet.

13 Q. Did he ever tell you how high?

14 A. No, he didn't tell me 3 feet. He told me it was at his
15 waist.

16 Q. Did he tell you higher than that?

17 A. No, he did not.

18 Q. How long did you leave the towels in the door and chest
19 against the door before Nick eventually said, "Okay. I'll give
20 you my ATM"?

21 A. He never said, Okay. I'll give you my ATM card. I went
22 back in 20 minutes later, tops. I went in and asked how high
23 the water was. He said 3 feet. And I pulled the plug. Anna
24 came in and said, "Are you going to give us the ATM card now?"

25 And he said, "Yes." He slid us the ATM card and some
26 cash.

27 Q. How much cash; do you remember?

28 A. Not offhand, I don't know.

1 Q. And over the next day did you and Anna use that ATM card?
2 A. I did not.
3 Q. She used it?
4 A. Yes, she did.
5 Q. How much money did you -- did she get, if you know?
6 A. I think she got 40 -- \$80.
7 Q. Did any of that money go to your benefit in any way?
8 A. Gas money, yeah.
9 Q. Where did you guys stay that night?
10 A. We went back to Rick's at about 2:00, 3 a.m., and we
11 stayed there.
12 Q. All right. At this point, Shawn, you wake up the next
13 morning, Sunday morning, and you know Nick has been in the cell
14 now for approximately 24 hours; right?
15 A. Yes.
16 Q. What is your thoughts on the situation?
17 A. My first thought was to get the water off and get him out.
18 Q. Why not just call the police?
19 A. I think if I called the police and I was still in the
20 state, it would not have been a violation. It would have been a
21 super violation of my probation.
22 Q. At that point you were on probation?
23 A. Yes, I was.
24 Q. Was that for the vehicle theft?
25 A. Yes, it was.
26 Q. Did you have any other pending charges?
27 A. At that point, yes.
28 Q. What was that?

1 A. We had just got out of the county jail for -- I don't know
2 what hers was. Mine was a petty theft, stolen property from
3 last year. They didn't tell me what it was.

4 Q. When was your next court date for the petty theft?

5 A. It was Monday morning.

6 Q. The next day?

7 A. Yes.

8 Q. At what time?

9 A. Eight o'clock a.m.

10 Q. On Sunday, did you and Anna have a discussion, a further
11 discussion, about what to do with this guy who is in the
12 juvenile hall?

13 A. No.

14 Q. There was mention --

15 A. She didn't seem worried about it at all.

16 Q. But you were worried?

17 A. Yeah.

18 Q. But you didn't actually do anything to get him out that
19 day?

20 A. Not until later that night, no.

21 Q. Did you have a plan during that day?

22 A. That day we went up there, and I tried turn the water off.

23 Q. How did you do that?

24 A. There was some valves outside the juvenile hall and
25 against the street, Epperle, behind Gottschalks.

26 Q. What made you think those valves had anything to do with
27 the water, just a guess?

28 A. I'd done plumbing.

1 Q. Did that work?

2 A. No. No. I started hitting valves and there was water
3 going everywhere, and I hit one that was a double pull, double
4 throw and got all over Anna. When I tried to shut it off, I
5 pulled it back the other way and came back on and got her again,
6 but the water didn't go off.

7 Q. Okay. You told the police that at some point that day, it
8 is a little unclear when, that you had discussions with Anna
9 about what to do with the body if Nick died or if you killed
10 him; do you remember that?

11 A. Yes, that was later that night.

12 Q. And was it your intent at any point to injure or kill Nick
13 Hamman?

14 A. No. That's why I was trying to rule out ways to dispose
15 of a body.

16 Q. So if it is not your intent to kill Hamman, why are you
17 discussing what to do with the body?

18 A. She brought it up. She was telling me all these different
19 things, and I kept ruling everything out. The first thing she
20 said is the Foresthill Bridge. And I said, "There's a bunch of
21 rocks there. You can't bury a guy."

22 And then she said, Griffin Quarry. And I said, "How are
23 you going to get the body from the parking lot to the quarry?"

24 Q. As she is talking about what to do with the body. Did she
25 also talk about ways to kill him?

26 A. At that point, no.

27 Q. At any point on Sunday?

28 A. Yes.

1 Q. And what were her suggestions to kill him?

2 A. She was talking about shooting him, stabbing him, going in
3 and beating him with barbed wire poles.

4 Q. Did she talk about these thing all the same time or were
5 they sporadic?

6 A. Sporadic over a period of two hours.

7 Q. What are your answers when she says things like this?

8 A. Kind of noncommittal. I didn't know what to do at that
9 point.

10 Q. What did you say to her; do you remember?

11 A. I can't recall. I didn't tell her, Okay. Let's go do it.
12 Obviously, it would have been done if I had, but that wasn't
13 something that I planned on doing.

14 Q. How were you -- if she came up with these ideas to shoot
15 him or stab him or beat him to death, how were you preventing
16 her from actually going and doing it?

17 A. Trying -- trying to blow it off.

18 Q. Similarly to how you handled her conversation on Friday
19 night originally at Elmwood Motel?

20 A. I wanted to stall for time so that I could get -- so we
21 could get him out instead of her wanting to go in there and beat
22 him to death.

23 Q. What are you stalling for? What did you think was going
24 to happen?

25 A. Well, one way or another I figured since we had the ATM
26 card, we could either leave the state and maybe call the cops
27 from Reno.

28 Q. Let me stop you there. Why would you call the cops from

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1 Reno and not just call them from Auburn?

2 A. We would be out of state and have a head start in running
3 from them.

4 Q. Why didn't you do that that night?

5 A. She wouldn't come with me.

6 Q. Because she was intent on killing the guy?

7 A. She didn't give me a reason. She just didn't want to
8 leave.

9 Q. And did you have any thoughts about what would happen if
10 you went to court Monday morning and that guy was still in the
11 cell?

12 A. Yeah, that's what I was trying to tell you.

13 Q. What's that?

14 A. That would have been the easiest way out right there.

15 Q. How so?

16 A. Anna wouldn't have been around. I -- personally I was
17 thinking I could use that as a bargaining chip. I tell them the
18 dude is there and they give me a good deal.

19 Q. And so on Sunday, did you guys eventually end up at your
20 brother's, Rick's, on Sunday night?

21 A. Yes, we did.

22 Q. At that point -- you were here. You saw your brother,
23 Rick, mention that you came in and said something to the effect
24 of, you think you might have just killed a guy; is that what you
25 said?

26 A. No.

27 Q. Did you say anything like that to Rick?

28 A. I said I thought a guy might be dead.

1 Q. And at that point did you think Nicholas Hamman was dead?
2 A. No, it was more of an exaggeration.
3 Q. Hadn't you just come from the juvenile hall?
4 A. Yes, we had.
5 Q. And at that point was Nick alive?
6 A. Yes.
7 Q. Did he seem on death's doorstep to you?
8 A. No.
9 Q. Why not? What made you think that?
10 A. Beating the hell out of the window, yelling, kicking.
11 Q. Why did you discuss with your brother, Rick, ways of
12 killing people?
13 A. Anna was intent on killing that dude at that point. I
14 wanted a way out.
15 Q. And why did you think you could get a way out by
16 discussing it with your brother?
17 A. Well, there's got to be a way I can come up with something
18 that has a large margin of error.
19 Q. Who came up with this idea of carbon monoxide?
20 A. Rick said something about carbon monoxide. He'd seen it
21 on TV, and then I remembered what I read out of The Client,
22 things like that. There was a large margin for error.
23 Q. Did you or Rick relay that idea to Anna?
24 A. I did.
25 Q. And did you do it while you were at Rick's house?
26 A. Yes.
27 Q. Did you guys go from there to proceed with this plan of
28 carbon monoxizing him to death?

1 A. No, we didn't leave until later that night.
2 Q. How much later?
3 A. Three, four hours.
4 Q. What did you do in the interim? What did you do in the
5 interim?
6 A. Laundry, ate.
7 Q. What made -- after those three or four hours was there a
8 particular conversation that made you guys to suddenly decide
9 now it's time we've got to go to the juvenile hall?
10 A. There wasn't a conversation. Well, much like other times,
11 there wasn't still much of a conversation as an unspoken
12 agreement, We have to go. Something has to be done.
13 Q. And at that point what was it that you decided had to be
14 done?
15 A. Well, she wanted to go up there and do what she was going
16 to do. I didn't want to go.
17 Q. And you say what she was going to do, what was she going
18 to do at this point?
19 A. I didn't know. She wanted to go up there for some reason.
20 She want to do what she wanted to do. I didn't want to go. I
21 told her to drop me off at a friend's house.
22 Q. Did she?
23 A. No. My friend wasn't home.
24 Q. Why wouldn't you just stay at Rick's and let her --
25 separate yourself from the situation. Let her go do what she
26 wanted to do?
27 A. She wouldn't leave. She just kept telling me to come with
28 her.

1 Q. At this point did you proceed with this idea of carbon
2 monoxizing him?
3 A. No.
4 Q. When did you do that?
5 A. We stopped at Fliers Gas Station. She went in and talked
6 to her uncle a half hour, hour.
7 Q. Did you hear what they were talking about?
8 A. No. I was out in the car with the stereo on.
9 Q. Did she come out from that?
10 A. We got there and I said, "What are we going to do? We got
11 his ATM card. What are we going to do?"
12 And she told me she wanted to gas him.
13 Q. When she said "gas him," she was referring to that plan
14 that Rick had come up with?
15 A. Yes, carbon monoxide.
16 Q. At that point did -- did you go along with the plan?
17 A. Oh, yeah.
18 Q. If you didn't want to kill him, why did you agree to go
19 along with the carbon monoxide plan?
20 A. I figured it would shut her up, and it wouldn't work.
21 Q. And so what did you guys do in regards to that plan?
22 A. She took off to the right up here -- no, over there by
23 DeWitt Center. She took off and got some hoses. I went into
24 Albertsons and got some duct tape.
25 Q. Did you tie the hoses together?
26 A. Yes.
27 Q. And who took the hoses from the outside into the juvenile
28 hall?

1 A. I did.

2 Q. And did you take one -- what did you do with one end of
3 the hose?

4 A. I put it in the vent.

5 Q. When you went into the juvenile hall with the hose, was
6 Anna in there?

7 A. No.

8 Q. Did you let her in at some point?

9 A. Yeah, because I climbed through the window. She couldn't
10 get through the window so I had to go up to the front and open
11 the door so she could get in.

12 Q. So she was inside when you put the hose to the vent?

13 A. Yes.

14 Q. And this is the vent outside of Nick's cell?

15 A. Yeah.

16 Q. At that point was the other end of the hose connected to
17 anything?

18 A. No.

19 Q. So the general plan was you then go back outside, hook up
20 the other hose to the car, and turn it on?

21 A. Yes.

22 Q. At that point how did you get out of the juvenile hall
23 after you put the hose in the vent?

24 A. There's more to it than that. She came in. She looked --
25 you know, we talked for a second. She was going to go out
26 there. I went behind her and locked the door, grabbed the hose,
27 pulled that out, went and got the back window and cut a pair of
28 pants and told her to wrap this around the end of the hose.

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1 Q. So you let her out the front door?
2 A. Yes.
3 Q. And you relocked it?
4 A. Yes.
5 Q. As you were going from the front door to the back window
6 to climb out, you pulled the hose out?
7 A. Uh-huh.
8 Q. Where did you put the hose?
9 A. In the hallway. I pulled it out. I just pulled on it.
10 It was going through the background through the kitchen, through
11 the day room, and then there's a door from the day room to the
12 hallway, and then there's another door in the back way and
13 that's where the hose was -- the hose went through both the
14 doorways and into the booking room.
15 Q. So when you climbed outside, then who puts the other end
16 of the hose to the car exhaust?
17 A. She tried.
18 Q. And when you say "she tried," did she ever succeed?
19 A. Eventually.
20 Q. But it took a few tries?
21 A. Yeah.
22 Q. What was happening?
23 A. The hose kept flying out of the exhaust pipe.
24 Q. When she's doing this, what were you doing?
25 A. I was having a cigarette, listening to the radio.
26 Q. How long from when she finally turned the car off until
27 you told her to -- when she finally turned the car on until you
28 told her to turn it off?

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1 A. Fifteen, twenty minutes tops. Enough time to have a
2 cigarette.
3 Q. You told the police that "I waited 15 minutes and figured
4 that would be enough. The guy is dead by now." Do you remember
5 saying that on tape?
6 A. I didn't tell them I figured that would be enough. I told
7 them that's what I told her.
8 Q. You told Anna that?
9 A. Yes.
10 Q. Why did you tell Anna that?
11 A. So we could get the hell out of there.
12 Q. Did you think 15 minutes was going to be enough to kill
13 him?
14 A. No way.
15 Q. Did you think Nick Hamman was dead at that point?
16 A. No.
17 Q. Then what was your hope, what was your purpose in doing
18 that?
19 A. To leave, and I could show up to court tomorrow and get
20 him out.
21 Q. Your thought was Anna would assume and believe you and
22 think he's dead?
23 A. He's dead and we can leave and be done.
24 Q. Did she believe you?
25 A. I don't know if she did or not initially. She said
26 something about going in and getting his body and I said, "Why
27 can't we bail?"
28 And she wanted to go in and get it and get him.

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1 Q. Did she eventually go in there?
2 A. Yes.
3 Q. How did she get in, same way?
4 A. Went through the front, and I figured she's going to
5 notice the hose. Put the hose back in, went in and opened the
6 door. She came through and he was standing up talking to
7 himself.
8 Q. Now, you stated all along that you did not have any intent
9 to kill the guy; right?
10 A. Yes, I did not.
11 Q. Yet you went through a fairly intricate plan of putting
12 the hose together and putting it inside. You're telling us now
13 you pulled the hose out of the vent; correct?
14 A. Yes.
15 Q. Why did you do that? Why did you do that?
16 A. Why did I pull the hose out?
17 Q. Right.
18 A. I didn't want the hose anywhere near that guy.
19 Q. Shawn, if you didn't want to kill the guy, why are you
20 going through all of these stuffs?
21 A. I wanted to shut her mouth.
22 Q. Why not just walk at that point? It is Sunday night.
23 A. It's more complicated than that. There's -- you're not in
24 my shoes.
25 Q. Well, Shawn, explain to me what you mean by that. Try to
26 put us in your shoes.
27 A. If you knew Anna like I knew Anna, you wouldn't have just
28 walked either. The things that I have seen and heard, when I

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1 first met Anna, it was because I got stuck in Auburn and didn't
2 have a place to stay. She said, you know, you can stay at the
3 church with me. The next morning she told me about how she had
4 robbed the church with two other kids and took some stuff, and
5 she said she wanted me to say I was there and said she didn't
6 break in to rob the church. It was the other two kids.

7 Q. To your knowledge, had she been blamed for robbing the
8 church?

9 A. Yeah. The pastor in the church that allowed her to stay
10 there confronted on her details.

11 Q. She turned on the other two kids?

12 A. Yes.

13 Q. Asked you to say what?

14 A. That I had been there that night, and they were the ones
15 that had broken in.

16 Q. How does that experience with Anna relate to you being
17 afraid to just walk?

18 A. I didn't wanted her to throw it on me, among other things.

19 Q. When you say "throw it on me," for those us who aren't
20 very good at following slang, what did you mean about that?

21 A. Put it all off on me. Tell the police that I did it.

22 Q. Okay. So you're following the plan in hopes that she'll
23 think you're on board?

24 A. Yes.

25 Q. Is there any other -- is there anything about her comments
26 as the day goes on on Sunday that make you begin to fear her?

27 A. I didn't especially fear Anna, but I didn't want -- I
28 didn't want to go against Anna, not just Sunday or Saturday but

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1 before that. She's not nice, like I said. They -- people think
2 she's a guy sometimes.

3 Q. Well, what does that have to do with not wanting to follow
4 her plan or wanting to follow her plans?

5 A. There were a lot of different things in my mind that Anna
6 could have done to hurt me in the future, maybe not just
7 physically but among other things.

8 Q. Like what?

9 A. Like what do you mean when you say that?

10 Q. Well, you said that you were afraid she may hurt you in
11 some way in the future. What was going through your mind that
12 day? What did you think she may do in the future?

13 A. One, she could call the police and say it was all me. She
14 could go in there and walk in there and tell Nick that I made
15 her do it. She didn't want to and all of a sudden, it would be
16 all me.

17 Erin had pulled me aside because when we got in the hotel
18 room later that night, her and Anna had left for a period of
19 time. When they came back, Erin pulled me aside and told me
20 they went and picked up a knife, and she was afraid Anna was
21 going to stab somebody with it.

22 Q. Now, you had said earlier, for instance, on Friday night
23 when she talked about wanting to rob her boyfriend, throw him
24 off the bridge and some of the discussions on Saturday, that you
25 didn't really think she was going to go through with it, that
26 you didn't really take her seriously; right?

27 A. No.

28 Q. By Sunday evening had that changed in your mind?

1 A. Yes.

2 Q. And what made it change?

3 A. Well, from the beginning I didn't think she had the balls
4 to even lock the door, but then she did and now she's talking
5 about killing this dude, so she even went and picked up the
6 hoses and sent me to get duct tape.

7 Q. So at this point you're now starting to begin to think
8 that she could be serious about some of the stuff?

9 A. Yes.

10 Q. After -- after she finds that he's still alive, what's the
11 next step, what's the next thing you guys talk about doing?

12 A. She went out. I wasn't sure what to do at that point.
13 Actually I was kind of struggling at that point. She said
14 something about beating him with barb wire poles, and I said,
15 "No, we're going to get the water off now. Go over there and
16 tell me if the water turns off." I start flipping switches
17 again. It didn't happen, and I went and pulled the hoses back
18 out all the way out of the window and put them in the trunk.
19 And I said, "Come on. We're going to get the hacksaw so we can
20 get the water off." I figured it was the two top valves and she
21 said, "Let's get the barb wire poles and beat him to death."

22 Q. At that point are there barb wire poles around?

23 A. Yeah, out back.

24 Q. You didn't agree with that plan?

25 A. No.

26 Q. Did she then agree willingly to go with you to Sacramento?

27 A. No. She kept telling me she wanted to get the barb wire
28 poles and beat that dude to death. I told her, "If you want to

1 beat him so bad, you go in and do it yourself. I told you I
2 didn't want to kill that dude. I didn't want to beat that
3 dude."
4 Q. But --
5 A. You can't fake that, so I got in the car and started to
6 leave. She got in.
7 Q. She eventually did get in?
8 A. Yes, she did.
9 Q. Did you go straight from there to Sacramento?
10 A. No. She said, "We need gas and I need to use the
11 bathroom," so we stopped at the gas station.
12 Q. That's where she left that note?
13 A. From what I hear.
14 Q. And from the gas station did you go straight to
15 Sacramento?
16 A. Yes.
17 Q. And did you go to your brother's, Rick?
18 A. Yes.
19 Q. What did you do there?
20 A. I told him, "I don't have time for questions. Give me the
21 saw. Let's go."
22 Q. Where from there?
23 A. Back up.
24 Q. Back up back to the juvenile hall?
25 A. Yes.
26 Q. And at that point you were stopped by the police?
27 A. No. We were -- I was going to get off at Elm and go
28 straight down Auburn Ravine. She told me, "Go down 49 and see

1 if there's cops there." So I got off on 49 and made a left on
2 Elm, and she said there were cops in the parking lot and running
3 out to their cars and getting in. And I said, "Maybe they think
4 we're here. They're looking for him, and we'll just say we're
5 using his car and go up there and turn that water off."

6 We got to the stop light. They got behind us and yeah,
7 they pulled us over, and she told me, "Go. Go. Go," and I
8 pulled over.

9 Q. She said, "go" meaning like ditch the cops?

10 A. Yeah. She wanted me to run. The car's got an overheating
11 problem, bad suspension. It just rained. It's at night.
12 You're talking about up and down hills and sharp corners. We'd
13 die if I left.

14 Q. So you just pulled over?

15 A. Yeah, I just pulled over.

16 Q. Shawn, you mentioned on several different occasions that
17 if she had wanted to rob this guy, that you would go to get her
18 back. Do you remember saying that on that tape?

19 A. Yes, I do.

20 Q. What do you mean by that?

21 A. I was supposed to be there if it was ever supposed to
22 happen. When we had been discussing it, I didn't think it would
23 happen at all, but my role was going to be to be a mediator. If
24 it didn't work out right and he started kicking her ass, then if
25 he started beating on her, I'd back her up. I'd jump in for
26 her.

27 Q. Did you ever expect it to come to that?

28 A. No, I did not.

1 Q. Did you ever intend at any point to kill Nick Hamman?

2 A. No, I did not. In fact, I prevented it, I believe.

3 Q. Now, if he died it would certainly help keep you out of
4 trouble potentially?

5 A. No.

6 Q. No, you don't think so?

7 A. No.

8 MR. SERAFIN: I have no further questions at this time,
9 your Honor.

10 THE COURT: Do you want to take a ten-minute recess at
11 this point?

12 MR. MARCHI: Sure.

13 THE COURT: We'll take a ten-minute recess, and we'll
14 resume again at twenty till.

15 (Recess taken at 10:27 a.m.

16 Reconvened at 10:45 a.m.)

17 THE COURT: The jury is all present. Counsel and parties
18 are present. Go ahead.

19 MR. SERAFIN: Yes, your Honor, I had just a couple more
20 questions briefly.

21 Q. Shawn, you've said two different things in regards to your
22 thought process with Anna Rugg that weekend. In one breath you
23 have told us that you didn't really directly fear her. In
24 another breath you have said that you feared what she might do
25 to you in the future. Which is it? Explain that please.

26 A. Do I fear her physically harming me?

27 Q. Did you?

28 A. Not in the beginning. But as things progressed, I saw a
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1 different side of Anna.

2 Q. And when she said, "Let's put the hoses together and gas
3 him," if you just said, no, I'm not doing any of that. I'm done
4 with this. Did you think she was going to do something to you
5 right then and there?

6 A. No.

7 Q. Well, then what -- what was your fear in regards to?

8 A. Future happenings.

9 Q. After this was all said and done?

10 A. Yes.

11 Q. Did you have any knowledge of anything that Anna had done
12 in the past that made you worry about that?

13 A. Such as?

14 Q. Anything you knew about her past?

15 A. A lot of things I knew about her past.

16 Q. Was there anything in particular that made you afraid of
17 her or afraid of what she might do in the future?

18 A. Yeah.

19 Q. Explain.

20 A. There were a couple of instances, things she asked me to
21 do with her. At that time I didn't think whatever happened, but
22 as things progressed I realized she was serious when she asked
23 me things before.

24 Q. What had she asked you to do before that was relative to
25 this?

26 A. She asked me if I would help her rob her stepfather. She
27 wanted to hit him in the head with a shovel.

28 Q. When did she talk to you about this?

1 A. Maybe a week prior to this.
2 Q. And did she elaborate on the plan?
3 A. No. I didn't want anything to do with it.
4 Q. Did she say you would get anything out of it?
5 A. She told me she'd give me a Toyota Tacoma. I assumed it
6 was his truck.
7 Q. According to this statement, were you the one that was
8 supposed to beat him over the head with the shovel?
9 A. Yeah.
10 Q. And she would take his car keys or whatever money he had
11 on him?
12 A. Exactly.
13 Q. Did you think she was serious at this point at that time
14 when she said it to you a week prior?
15 A. No.
16 Q. Any other similar incidences?
17 A. Something I heard from her and then another friend of mine
18 also told me about it. She --
19 Q. Let me focus your attention on only things that you
20 personally witnessed.
21 A. Nothing she told me about?
22 Q. Correct.
23 A. Well, there was an incident with a Laura and Erin.
24 Q. Who was Laura?
25 A. Laura was Erin's friend. She -- Erin was supposedly
26 assaulted one night. When Anna found out the next day, she
27 tried to throw everything off on Laura. She said Laura should
28 have stopped it and she went and found Laura by the bar by the

1 Elvis Transfer Station.

2 Q. Anna found out or thought it was Laura's fault that Erin
3 was assaulted?

4 A. Exactly.

5 Q. Erin went to -- Anna went to get retribution with Laura?

6 A. Keep in mind Laura has a prosthetic leg and couldn't run
7 very fast.

8 Q. Were you present?

9 A. Yeah.

10 Q. Did she end up catching Laura and chase her with the pole?

11 A. No. Four guys came out of the bar and took the bar from
12 Anna and made her leave.

13 Q. Come Sunday evening after you spent the last 48 hours with
14 Anna in the very situation that you described, are these past
15 incidences creeping in your mind?

16 A. Yes.

17 MR. SERAFIN: No further questions.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 Q. BY MR. MARCHI: Mr. Rodriguez, if you had these fears of
21 Ms. Rugg, why did you let her stay at the Elmwood on Friday
22 night with you and Ms. Hughes?

23 A. Those fears weren't as so they were two days later.

24 Q. Well --

25 A. I had just seen those incidences and, you know, they
26 weren't real. They weren't sticking out in my mind then.

27 Q. Well, in fact, it was you and Erin Hughes that went to a
28 pastor and got a pass for the Elmwood; isn't that right?

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1 A. No. We did not go to the pastor. We went to the
2 Salvation Army.
3 Q. And you met with a Mark --
4 A. Excuse me?
5 Q. What was the name you met with to get the voucher?
6 A. I have no idea.
7 Q. And the voucher basically allowed Ms. Hughes to stay at
8 the Elmwood for one night; correct?
9 A. No. It allowed both of us as a couple.
10 Q. So you didn't have to have Anna Rugg there; did you?
11 A. No, we did not.
12 Q. But you allowed her to hang around you; didn't you?
13 A. Yes.
14 Q. So you really weren't afraid of her; were you?
15 A. Two days previous, no, I was not.
16 Q. All right. Now, you remember being interviewed by
17 Detective Coe, the gentleman to my right, and Dale Hutchins; do
18 you remember that?
19 A. Yes, I do.
20 Q. That would have been on the morning of March 17, 2003?
21 A. Yes.
22 Q. After you had been apprehended; right?
23 A. Yes.
24 Q. You remember initially you told a story about Anna Rugg
25 being touched inappropriately by Mr. Hamman in the actual cell;
26 remember that story?
27 A. Yes, I do.
28 Q. And that was not true?

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1 A. No, it was not.

2 Q. In fact, in the middle of the actual interview, page 11 on
3 the transcript, you actually told the detective, "Okay. Let's
4 stop now. I'm going to tell you the whole story"; right?

5 A. Yes, I did.

6 Q. And you also remember now at the end of the interview,
7 remember Dale Hutchins telling you, "This is going to be the
8 last time you're going to be able to tell someone like myself
9 this story. If you want to change anything, or is there
10 anything you want to add to it so we know the whole truth?"

11 You didn't say anything or add anything; did you?

12 A. No, I did not.

13 Q. You didn't say anything about your fear of Anna Rugg?

14 A. No.

15 Q. You didn't say --

16 A. No, at that point I didn't.

17 Q. In fact, you already made a lot of statements that weekend
18 about what you did know about that weekend; correct?

19 A. Excuse me?

20 Q. I'm repeating that you made a lot of statements in your
21 tape which is on the transcript telling the detectives what you
22 did know about March 15th, 16th, and then 17th?

23 A. Yes.

24 Q. Okay. And first of all, you didn't like Mr. Hamman; did
25 you?

26 A. Excuse me?

27 Q. You didn't like Mr. Hamman; did you?

28 A. I didn't know Mr. Hamman well enough to dislike him or

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1 like him.

2 Q. All right. Well, didn't you tell the detectives that you
3 didn't like him?

4 A. No, I didn't. I didn't tell them I don't like him.

5 Q. Didn't you -- you did tell the detectives that Erin Hughes
6 was someone near and dear to you basically?

7 A. Yes, I did.

8 Q. In fact, she's currently your fiancée; is that right?

9 A. At this time, no.

10 Q. At one time she was?

11 A. Yes.

12 Q. And didn't you describe to the detectives two friends,
13 meaning Anna Rugg and Erin Hughes, that were close to you at
14 that time, sir?

15 A. Yes.

16 Q. Okay. And one being closer than the other, Ms. Hughes?

17 A. Yes.

18 Q. And didn't you also tell the detectives that Mr. Hamman
19 made some sort of moves on Erin while you were in jail; do you
20 remember making that statement?

21 A. Yes.

22 Q. So you really didn't like him because of that; did you?

23 A. I believe that was said before I began telling the truth;
24 was it not?

25 Q. Well, sir, did, in fact, Mr. Hamman make moves, to your
26 knowledge, on Erin while you were in jail?

27 A. I was in jail.

28 Q. Okay. Had Erin told you that?

1 A. No, she had not.

2 Q. Why did you make that statement to the detectives, sir?

3 A. Because that's what Anna told me to tell them.

4 Q. All right. And you did indicate that your genuine emotion
5 is about Erin; right?

6 A. Yes.

7 Q. You also told them you're not really a violent person
8 unless it comes to family; right?

9 A. Yes.

10 Q. To you at that time Erin Hughes was your family; wasn't
11 she?

12 A. No.

13 Q. In fact, you didn't like Mr. Hamman at all; isn't that
14 right?

15 MR. SERAFIN: Objection; asked and answered several times.

16 THE COURT: Sustained.

17 Q. BY MR. MARCHI: Okay. And the reason you didn't like him
18 was that --

19 A. I believe I just stated that I did not dislike nor like
20 Mr. Hamman.

21 Q. Well, let's get into that. You understood that a roommate
22 of Mr. Hamman hit Erin Hughes in the stomach while she was
23 pregnant; is that right?

24 A. No. One of her ex-boyfriends had known about a roommate
25 of Mr. Hamman.

26 Q. Didn't you say it was a roommate of Mr. Hamman that
27 punched Erin Hughes in the stomach so she would lose the baby?

28 A. I don't know that he was a roommate. He lived in the same

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1 halfway house.

2 Q. Okay. You never told the detectives that you didn't
3 particularly like Mr. Hamman; you told us that; is that right?

4 A. Yes.

5 Q. Let me refer you to page 2 of the transcript.

6 MR. SERAFIN: Objection, your Honor. That actually
7 misstates his statements. He did say he made that statement.
8 He said he made it the first time before he began telling the
9 truth which would be consistent with Page 2 of the transcript.

10 THE COURT: Sustained.

11 MR. MARCHI: Well, I'm trying to clarify.

12 THE COURT: As phrased. You can clarify.

13 Q. BY MR. MARCHI: This statement says, "I don't particularly
14 like the guy," referring to Mr. Hamman on page 2 of the
15 transcript. Are you lying to the detectives at that point?

16 A. When I say I don't particularly like somebody, that
17 doesn't specify whether I like or dislike that person. As I
18 said before, that was before I began telling the truth.

19 Q. So if you said I don't particularly like the guy; is that
20 true?

21 A. I don't particularly like you. I don't dislike nor like
22 you. The same for Mr. Hamman.

23 Q. So you didn't particularly like the guy; right?

24 A. If that's what I said, then that's what I said.

25 Q. Well, is it true or not?

26 A. Like I said, I didn't like nor dislike Mr. Hamman. I
27 don't particularly like the guy. That states I have no opinion
28 at that point.

1 Q. All right. And you actually refer to a Jeremy was the one
2 beating Erin; correct?
3 A. No.
4 Q. You never said that?
5 A. No, I did not.
6 Q. Who is Jeremy?
7 A. I have no idea. I know who Jared is.
8 Q. And who is Jared?
9 A. Jared was Erin's ex-boyfriend.
10 Q. And he's the one you said used to live with Mr. Hamman;
11 correct?
12 A. In the same house, halfway house, with Mr. Hamman.
13 Q. Okay. Now, do you remember, sir, when you were discussing
14 with the police early on that you actually told them that you
15 hit Mr. Hamman?
16 A. No, I later stated --
17 THE COURT: Let him finish the question.
18 Q. BY MR. MARCHI: -- which allowed Anna Rugg to close the
19 cell door; didn't you tell them that initially?
20 A. Didn't I tell them later it was a lie?
21 Q. Did you tell them that, sir?
22 A. Yes, I did.
23 Q. In fact, the only thing you said was a lie, later on in
24 the transcript, was the part about the touching; isn't that
25 right?
26 A. No.
27 Q. In fact, you describe yourself in the same position
28 Mr. Hamman does with Ms. Rugg by the door and you coming in and

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1 hitting the victim; didn't you?

2 A. Are you asking if I described myself in the same position
3 as that he described when he was up here?

4 Q. You described the position that Mr. Hamman was inside the
5 cell partially, that Ms. Rugg was by the open door, and that's
6 when you came in and hit him; isn't that what you told them
7 initially?

8 A. No.

9 Q. All right. Well, let me see if this refreshes your memory
10 at the top of page 2:

11 (Reading) "I came back. Anna was
12 yelling and when I came in we were -- I
13 can't remember the exact position, but
14 Anna was" -- it said I, but it should
15 read, "Anna was closer to the door than
16 he was in the holding cell, and Anna's
17 shirt was up and the guy was doing what
18 the "F" he wanted to do. He was trying
19 to do that. I ran up on him, and I hit
20 him. He shouldn't have slammed the door
21 on me. I got out and she slammed the
22 door."

23 (End of reading.)

24 Do you remember making that statement to the police?

25 A. Yes, I do.

26 Q. Is that a true statement, sir?

27 A. No, it is not.

28 Q. So now the statement here in court is the true statement;

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1 is that right?

2 A. No. The statement I made after that was where I told him
3 that was a lie.

4 Q. All right. And you initially told the police that you
5 didn't want to let the guy out because you had hit him; do you
6 remember making that statement?

7 A. I remember making the statement, yes.

8 Q. And that's true; isn't it?

9 A. Excuse me?

10 Q. Is that a true statement?

11 A. No.

12 Q. So you were lying to the police?

13 A. Yes.

14 Q. Now, you've told us in your testimony that you knew
15 Mr. Hamman wasn't dead; isn't that what you said?

16 A. Yes.

17 Q. Mr. Hamman never saw you after Saturday again; did he?

18 A. I'm not Mr. Hamman. I couldn't tell you.

19 Q. Well, you heard him testify that he never saw anybody
20 connecting up the hoses. You never had any conversation with
21 Mr. Hamman when you returned; did you?

22 A. No, I did not.

23 Q. And no one did; did they?

24 A. Not that I'm aware of.

25 Q. In fact, you thought he might be dead when you talked to
26 the police; didn't you?

27 A. I just stated that I did not.

28 Q. Well, let me refresh your memory on page 2 of the

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1 transcript. Do you remember starting to cry and you asked, "He
2 didn't die; did he?" And Detective Coe said, "What's that?"
3 And you asked again, "He didn't die; did he?" And Coe says,
4 "No, he's in the hospital." So you didn't know whether or not
5 he was dead or not when you got arrested; did you?
6 A. When I got arrested, I was under the impression that
7 Mr. Hamman was alive and well.
8 Q. Well, on page 2 of the transcript you're asking if he's
9 dead; do you remember making that statement?
10 A. Yes, I do.
11 Q. Well, you weren't faking like you were concerned for his
12 well-being at that time; were you?
13 A. I was not faking anything, no.
14 Q. So you thought he might be dead; is that right?
15 A. At that point, yes.
16 Q. So really you don't have any idea if 15 minutes of gas
17 would kill Mr. Hamman or not; do you?
18 A. I'm sure that it wouldn't.
19 Q. Have you studied chemistry?
20 A. Actually I have, yes.
21 Q. Okay. How many courses have you ever had?
22 A. Just high school.
23 Q. Did you pass?
24 A. Yes, I did.
25 MR. SERAFIN: Objection; relevance.
26 Q. BY MR. MARCHI: Did you study --
27 THE COURT: Overruled.
28 Q. BY MR. MARCHI: Did you study bioengineering, sir?

1 A. Bioengineering?

2 Q. Have you ever heard of biochemical engineering?

3 A. I believe that's a college course, no.

4 Q. You heard Dr. Harris, who has had many chemistry courses,
5 she couldn't tell you how long it would take for somebody to die
6 and you didn't know either; did you?

7 A. I can't testify as to what her testimony was, but I
8 believe she said probably not.

9 Q. Well, in fact, you wouldn't want to be put in that cell
10 with gas coming in for any period of time; would you, sir?

11 A. Well, the impression I had was --

12 Q. Would you, sir?

13 A. No.

14 Q. Because you might die; right?

15 A. Oh, no.

16 Q. Well, you've never done anything like put carbon monoxide
17 poisoning in a room with persons before; had you, sir?

18 A. I've done it with myself many times. I've worked on cars
19 a lot inside closed garages.

20 Q. I see. Have you ever caused carbon monoxide fumes to go
21 into a holding cell like this one with yourself inside, sir?

22 A. Oh, no.

23 Q. All right. Now, in fact, sir, you did have a plan at the
24 Elmwood to roll Mr. Hamman before you went to the hall; isn't
25 that right?

26 A. There was no plan outlined but a vague idea, a vague idea
27 that was never solid. That's an assumption you're making.

28 Q. All right. Well, you remember when you got to the second
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1 half of the story that you call the real story; do you remember
2 Detective Dale Hutchins telling you that he started asking you
3 if you ever -- if you had to do it over again, what would you
4 change? Do you remember being asked that? Its on page 19 of
5 the transcript.

6 A. Yes, I do.

7 Q. And you said the conversation. You were referring to the
8 conversation at the Elmwood the night before?

9 A. I never specified what conversation I was referring to.

10 Q. And then Mr. Hutchins said, "What, you mean about getting
11 the guy over there and rolling him?" And your answer, "And
12 rolling him." So, in fact, you did have a plan with Ms. Hughes?

13 A. Is there a period or question mark at the end of that
14 sentence.

15 Q. You did have a plan with Ms. Hughes the night before at
16 the --

17 THE COURT: Excuse me. Wait. Wait. He needs to finish
18 the question or we don't understand your answer.

19 Q. BY MR. MARCHI: So you and Ms. Rugg did talk at the
20 Elmwood the night before about luring Mr. Hamman over to the
21 Elmwood, locking him up in the cell and rolling him; isn't that
22 right?

23 A. No. I don't believe there's a cell at the Elmwood.

24 Q. And that's why when you got out of there after locking him
25 up, you tried to shoo the homeless people away from there; do
26 you remember that, sir?

27 A. Yes, I do.

28 Q. And the reason you shooed them away is you wanted to come
610

1 back and get the property from him after he had a chance to stew
2 in there for a while; isn't that right?

3 A. Are you saying that, or am I?

4 Q. Isn't that right, sir?

5 A. No, it is not.

6 Q. Why did you shoo the homeless people away?

7 A. She said I was supposed to be some county inspector about
8 vandalism and we shooed the homeless people away.

9 Q. Why did you bother if you didn't want Mr. Hamman locked up
10 in there, sir?

11 A. Like I said, at that point I didn't know exactly what to
12 do.

13 Q. Sir, at that point you could have stuck with your original
14 story which you say was a lie that Mr. Hamman tried to touch
15 Ms. Rugg because this was soon after he'd been locked in; right?

16 A. Can you restate that please? I don't understand what
17 you're asking.

18 Q. Yes, I'll be happy to. At that point your only liability
19 was that Mr. Hamman had been locked up in that cell not very
20 long, hadn't gotten property yet. You had the phony story about
21 her being touched. The only reason you wanted to dissuade the
22 homeless was you didn't want them finding Mr. Hamman, because
23 you wanted to come back and roll him; isn't that right?

24 A. At that point we didn't have any story made up at all.
25 And like I said, at that point I didn't know what to do. It
26 just didn't seem like a good idea to have those homeless people
27 there at that time.

28 Q. Well, you had the discussion the night before that

1 Ms. Rugg wanted to rob him and you were going to go along;
2 right?
3 A. Yes.
4 Q. But you didn't want to beat him down or nothing?
5 A. Exactly.
6 Q. You wanted them to lock him in the room; didn't you?
7 A. No, that was never said.
8 Q. You didn't want any direct confrontation with the man; did
9 you?
10 A. I just said no, I didn't.
11 Q. In fact, when you were talking about the duct tape; do you
12 remember that, sir, in the first part of your story, you claimed
13 that you were going to put duct tape around the door to keep the
14 water from going in the room in case you cut the pipe overhead?
15 Do you remember making that statement to the police?
16 A. Yes, I do.
17 Q. That was not true; correct?
18 A. No, it was not.
19 Q. The real reason for putting the duct tape around was to
20 seal off the room for the carbon monoxide poisoning; correct?
21 A. No.
22 Q. It wasn't?
23 A. No, it was not.
24 Q. Well, why were you doing it, sir?
25 A. To appease Anna.
26 Q. In fact, that is not what you told the police; is it?
27 A. I later told them that was a lie.
28 Q. In fact, sir, when you came back you found Mr. Hamman

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1 quite wet because of the overhead sprinkler he had turned on?

2 A. Yes.

3 Q. And you did have some concerns after he was in there for a
4 couple of days of him being subject to hypothermia; correct?

5 A. I stated that and I also stated that it didn't look like
6 he was dead.

7 Q. So between the carbon monoxide poisoning and the
8 hypothermia, that is why you asked about whether he was dead or
9 not; isn't it?

10 A. No, it is not.

11 Q. All right. And your concern was that if Mr. Hamman got
12 out, he was going to say Shawn Rodriguez and Anna Rugg put me in
13 the cell; wasn't that your concern, sir?

14 A. Yes.

15 Q. So you did help put him in the cell?

16 A. No, I did not.

17 Q. Well, you did state that Shawn Rodriguez, that if
18 Mr. Hamman got out, that Shawn Rodriguez and Anna Rugg were
19 going to put me in here, that Mr. Hamman would make that, let me
20 rephrase that. You did make the statement?

21 MR. SERAFIN: What page are you on, Counsel?

22 MR. MARCHI: Eight. That -- well, let me just indicate
23 this is a statement from you. "Thought about that" -- well, the
24 detective asked you, "Why not drive off like you did, make an
25 anonymous phone call to the fire department, tell them that
26 there is some guy" -- and you interjected. "Thought about that,
27 but the first thing he's going to say is Shawn Rodriguez and
28 Anna Rugg put me in here." Remember making that statement?

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1 A. Yes. I assumed there would be guilt by association.
2 Q. Why would you say Shawn Rodriguez put you in there when
3 you say it was only Anna Rugg put you in there?
4 A. I told you I thought it was -- it would be guilt by
5 association.
6 Q. Why would you make that assumption, sir?
7 A. Well, if one person locks you in, and the other is there
8 while it happens, you would assume those two were together since
9 the other one didn't let you out; right.
10 Q. Or if both people assist by putting you in by you kicking
11 Mr. Hamman; isn't that what you did, sir?
12 A. No, that is not what I did.
13 Q. And again, you also had the concern that Mr. Hamman was
14 injured to the extent that he actually might be in a coma;
15 right?
16 A. That was something I heard, yes.
17 Q. And you asked the detectives about that, "Is he in a
18 coma?" Do you remember that?
19 A. Yes, I did.
20 Q. And you thought that might be as a result of the
21 hypothermia and the gassing, sir?
22 A. I have no idea why.
23 Q. Now, you testified here on direct that when you came back
24 you didn't really have a plan per se, sir. By the plan and the
25 ATM card?
26 A. Which time?
27 Q. I'm talking about here in court, your third statement,
28 sir.

1 A. What time? We came back.

2 Q. Didn't you say after you came back the first time when you

3 first saw the water on that you didn't have a plan about the PIN

4 or the ATM card; isn't that what you said in court?

5 A. I can't recall.

6 Q. Well, that's not what you told the police; right?

7 A. I can't recall.

8 Q. Well, let me refer you to page 11, in the middle and it

9 says, "And we came back. The plan was to have him slide her --

10 his ATM card and his cash, give her his PIN. Come back and

11 there's water pouring out the "f-ing" door." And you saw the

12 cigarettes so you drew your conclusion; do you remember making

13 that statement to the police?

14 A. If it is there, I made it, yes.

15 Q. And it was after you said this is the real story, remember

16 that, sir?

17 A. I can't recall.

18 Q. Let me refresh your memory.

19 MR. MARCHI: If I might approach the witness, your Honor?

20 THE COURT: Uh-huh.

21 Q. BY MR. MARCHI: This is on the top of page 11, sir. Do

22 you remember saying, "You know what, let's just start from the

23 beginning. Obviously, Anna was telling her cock and bull and I

24 have too." Do you remember that?

25 A. Yes, I do.

26 Q. And from there on you're telling the real story; right?

27 A. Uh-huh.

28 Q. You have to speak into the mike.

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1 A. Yes.

2 Q. And then down later on the same page you said, "And we
3 came back. The plan was to have him slide her -- his ATM card
4 and his cash, give her his PIN." Do you remember making that
5 statement?

6 A. I remember making that statement. I don't remember
7 specifying whether the plan when we got there was to do that or
8 which time it was that we came back.

9 Q. Well, it does refer to your having seen for the first time
10 the water pouring out?

11 A. How much before that?

12 Q. Let me approach you. And it said, "And we came back. The
13 plan was to have him slide her -- his ATM card and his cash and
14 give her his PIN. Come back and there's water pouring out the
15 "f-ing" door. And like I said, Yes, I saw a cigarette and I
16 knew what the "F" happened." You see that, sir?

17 A. Yes, I see that.

18 Q. You indicated there was a plan when you first came back
19 and found the water coming out; isn't that what you said there,
20 sir?

21 A. No.

22 Q. Okay. And, of course, that's not the same story you told
23 us on direct; is it?

24 A. No way.

25 Q. All right. And again, sir, this is on page 12 at the
26 bottom. Remember making the statement to Detective Coe that you
27 did try and break the window with two good solid hits. Do you
28 remember making that?

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1 A. Yes, I do.

2 Q. And you also stated that at that point I should have just
3 opened the door. Do you remember making that statement?

4 A. No.

5 Q. Okay. Do you remember saying, "I'm screwed, because I
6 don't want to go back, and now I got this. We did put him in
7 there. And now it is an attempted murder because we only locked
8 him in there a couple hours with water going." Do you remember
9 making that statement?

10 A. If it is there, I said it.

11 Q. Well, let me refresh your memory. We're on page 12 here.
12 It says, Shawn Rodriguez, "And, uh, got that, tried to break the
13 window with two good solid hits. We couldn't, wouldn't give,
14 wasn't breaking. And at that point I should probably just have
15 "f-ing" opened the door. But like I said, I'm "f-ing" screwed
16 because I don't want to go back and now I got this. We did put
17 him in there, and now it is an attempted murder because we only
18 locked him in there a couple hours with the water going." Do
19 you remember making that statement?

20 A. Yes, I do. And while the videotape was on, I remember
21 making a notation for myself where there was a mistake in the
22 transcript. It says, "At that point I should have just said,
23 Fuck it. Open the door." At which point I would have been
24 speaking to Anna.

25 Q. And you did say, "We did put him in there"; didn't you,
26 sir?

27 A. I'm not sure.

28 Q. It said that in the transcript; doesn't it? And it said

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1 that on the tape; doesn't it?

2 A. Okay.

3 Q. Because you did help put him in there; didn't you?

4 A. No, I did not. That would again -- I would again refer
5 you to guilt by association. I was speaking at that time to
6 what would be seen by authorities and people from the outside
7 looking in.

8 Q. Now, sir, before the gassing incident, you didn't want to
9 let Mr. Hamman out; did you?

10 A. No, I did not.

11 Q. You didn't want anybody to find out about Mr. Hamman; did
12 you?

13 A. Never said that.

14 Q. Didn't you make the statement, sir, on page 13 that you
15 really didn't want Erin Hughes to go see a shrink because you
16 were afraid at that point that she might tell on you and Anna
17 Rugg?

18 A. Yes.

19 Q. Okay. Well, if you didn't do anything wrong, what were
20 you afraid of?

21 A. I was afraid of numerous things. And Anna putting it all
22 off on me, and again guilt by association. Erin didn't know
23 everything that was going on, and I really didn't want anybody
24 else coming to bungling it before there was some resolution that
25 we could come to.

26 Q. And your main concern was that some independent person
27 might see the water coming out of the hall and find Mr. Hamman;
28 isn't that right?

1 A. I don't recall what you're referring to.

2 Q. Wasn't that your main concern that whole weekend that you
3 were afraid somebody was going to find Mr. Hamman in there?

4 A. I don't recall saying that, but yes, that was on my mind.

5 Q. Because you would rather have him die?

6 A. No. I would rather get him out or have a resolution to
7 get him out.

8 Q. You could have made a phone call to the fire department or
9 police if you wanted to?

10 A. I could have left the state by myself and made a call from
11 Reno, but that would have left Anna in a position to say it was
12 all me and that had numerous problems in itself. Either way he
13 would have been out by Monday morning.

14 Q. All right. Well, you did make the statement, sir, did you
15 not, at the top of page 14 here that, "People are going to
16 notice the water going in there and find him, and we can't let
17 him out." Remember making that statement?

18 A. Yes, sir. I remember that and also what was said before
19 it.

20 Q. And then the same context you said, "If we let him out,
21 he's probably going to go "f-ing" talk to everybody about it."
22 Did you make that statement?

23 A. Yes.

24 Q. And you stated, "Anyway, I would rather not kill him
25 because that's not my thing. I'm not a violent person unless it
26 comes to family; you know what I mean?" Do you remember making
27 that statement?

28 A. Yes. And I think you are using that all out of context.

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1 Q. Let's see.
2 A. Would you like me to read it back to you?
3 Q. On the top of page 14, this is all in the same paragraph,
4 sir. It says yeah --
5 A. I read that paragraph.
6 Q. All right. You've read that paragraph?
7 A. Just the other day while I was -- it was on video. Would
8 you like me to read it back to you and tell you your errors?
9 Q. In fact, sir, you didn't like him because he hit on Erin
10 Hughes?
11 A. I never said.
12 MR. SERAFIN: Objection; asked and answered. He's
13 answered that question about liking Nick Hamman many, many
14 times.
15 THE COURT: Overruled. The Court will allow that question
16 at this point. Go ahead.
17 Q. BY MR. MARCHI: In context, sir, in fact, that's why you
18 did participate with Anna Rugg because of your dislike with Nick
19 Hamman, and you are a violent person when it comes to family,
20 and isn't it true then, sir, that that's why you joined in this
21 enterprise with Ms. Rugg?
22 MR. SERAFIN: Objection; foundation. Question -- there
23 was about four questions in that.
24 THE WITNESS: No.
25 THE COURT: Sustained; compound.
26 Q. BY MR. MARCHI: Now, you never told the police that
27 Mr. Romines is the one that came up with the gassing idea; did
28 you?

1 A. No, I did not.
2 Q. In fact, you blamed Anna Rugg; didn't you?
3 A. There were many reasons for saying exactly what I said.
4 Q. You blamed Anna Rugg; didn't you?
5 A. Yes.
6 Q. Anna Rugg is what, about 5 feet 1 inches tall?
7 A. I have no idea.
8 Q. Pretty short; isn't she?
9 A. Yes.
10 Q. She is somewhat stout; would you say?
11 A. Not the word I'd use. Yes.
12 Q. Not particularly muscular; is she?
13 A. You never know.
14 Q. You weren't afraid of her; were you, sir?
15 A. Not particularly afraid of physical violence at that
16 point, no.
17 Q. In fact, you were her muscle behind this incident?
18 A. No, I was not.
19 Q. She didn't want to go in there and confront him directly
20 any more than you did; did she?
21 A. Yes. Actually, she did, but she wanted me to do the
22 confronting.
23 Q. In fact, she wanted that to happen after the gassing
24 incident; is that right?
25 A. Yes.
26 Q. How did you know?
27 A. And before.
28 Q. How did you know he was still alive after the gassing?

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1 A. I knew he would still be alive, but I didn't want her to
2 find out. And when she wanted to go in there, she wanted to get
3 his body out, we went in there and she figured it out.

4 Q. Didn't she want to just open the door so maybe he could
5 get out if he woke up, sir?

6 A. Excuse me?

7 Q. Didn't she want to just open the cell door so he could get
8 out when he woke up?

9 A. No.

10 Q. Wasn't it you that wanted to turn the water off and lay
11 low for a couple days?

12 A. No. That is what I stated to her, but I did clarify that
13 was something I said to her.

14 Q. All right. Well, on page 15, you remember telling the
15 police again, "This is the real story here. That she's the one
16 that wanted to go in with some barb wires and hit him"?

17 A. Barb wire poles, yes.

18 Q. You said, "No, get in the car." Remember making that
19 statement?

20 A. Yes, I do.

21 Q. And you remember saying, "We're going back -- we're gonna
22 fly down to Sacramento. We're gonna get -- we're gonna get the
23 hacksaw. I'm going to turn the water off and we're gonna hope
24 that guy doesn't die. Somebody finds him. End of story." Do
25 you remember making that statement?

26 A. Yes.

27 Q. And do you remember --

28 A. I remember specifying that statement was made to Anna

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1 also.

2 Q. And do you remember also stating, "If I need to "f-ing"
3 bounce and lay low for a couple of days, that's what I'm gonna
4 do. But I'm not gonna -- no and "f-ing" we, uh, bounce down to
5 the Shell and we're coming out of the Shell and she's acting
6 "f-ing" funny." Do you remember making that statement?

7 A. Yes, I do.

8 Q. What you're saying is you want to turn the water off and
9 lay low for a couple days, whereas she wants to confront him
10 directly; correct?

11 A. That's what I told her, yes.

12 Q. You would expect that's what you told the police too;
13 didn't you?

14 A. I told the police that's what I told her.

15 Q. And, in fact, you went down and got the hacksaw from
16 Mr. Romines?

17 A. Yes, I did.

18 Q. And you actually described how fast you went down there to
19 the police?

20 A. Yes, I did very graphically.

21 Q. And you were going to go come back and how were you going
22 to turn the water off?

23 A. There were chains running from the two valves at top. The
24 plan was to cut the chains, and I know exactly what you're going
25 to say.

26 Q. I'm going to show you Exhibit 4, sir. You see this area
27 right over here?

28 A. Yes, I do.

623

1 Q. It appears to be some valves. Are those the valves you
2 are referring to?
3 A. Yes, they are.
4 Q. On top was there some type of bar with a lock on it, sir,
5 and some chains?
6 A. There were two valves with wheels on the top so you could
7 turn them, but those were locked in place by a chain.
8 Q. And that chain you were going to cut; right?
9 A. Yes, I was.
10 Q. So you thought then that you would be able to shut the
11 water off right here if you cut that chain; right?
12 A. Yes, I did.
13 Q. And up against the wall over here is actually a sign there
14 that indicates this water goes into the fire suppression system;
15 isn't there, sir?
16 A. I don't know.
17 Q. You didn't remember seeing that?
18 A. No.
19 Q. So you were going to cut this chain, turn the water off,
20 and still not report Mr. Hamman was in the cell, sir?
21 A. I believe I already stated that my plan was to report it
22 tomorrow morning in court. Sorry. Monday morning in court.
23 Q. Or go to Reno?
24 A. If everything could be taken care of before court and she
25 wanted to leave, yes, then Reno.
26 Q. Or not show up to court, sir?
27 A. If I went to Reno, yeah.
28 Q. Bounce and lay low for a couple days, sir?

1 A. Yes.

2 Q. And leave Mr. Hamman in to die there sir; is that right?

3 A. No, I just stated I would call from Reno.

4 Q. Why drive all the way to Reno to call, sir?

5 A. Because you're out of state.

6 Q. So you can't go to a pay phone and make an anonymous phone
7 call?

8 A. And then they have the license plate number and they can
9 give it to every CHP in the state.

10 Q. It was Anna Rugg that wanted Mr. Hamman to be found; isn't
11 that right, sir?

12 A. No.

13 Q. And that's why she left the note in the Shell Station;
14 isn't it?

15 A. No.

16 Q. You didn't know she left a note in the Shell Station; did
17 you?

18 A. Not until later. I had suspicions, but --

19 Q. Wasn't that why you stated if when the police stop us,
20 we'll just tell them we're borrowing the car because you had no
21 idea a note had been written, sir?

22 A. I had no idea.

23 Q. That's why you made the statement that even when they
24 stopped you, you weren't going to tell the police that
25 Mr. Hamman was locked out in the cell; isn't that right?

26 A. Well, I figured if they let us go like they had when we
27 had been pulled over by the CHP, we would go over and do what we
28 had to do without going to jail.

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1 Q. You were driving the day before, Saturday; is that right?
2 A. Depends on where we were.
3 Q. Were you driving when the CHP stopped you?
4 A. Yes, I was.
5 Q. And who was in the car?
6 A. Erin and Anna and myself.
7 Q. And how long was this after you first got the car?
8 A. It was dark so 10, 12, 6, 8 hours, 9 hours.
9 Q. Before you discovered the fact that Mr. Hamman set off the
10 sprinkler system?
11 A. No. Four hours, five hours.
12 Q. Had you discovered that Mr. Hamman had already set off the
13 sprinkler system?
14 A. Yes.
15 Q. Ms. Hughes wasn't with you when you made that discovery;
16 was she, sir?
17 A. No, she was not.
18 Q. Well, how was it she was with you then later when the
19 police stopped you in the car?
20 A. The first time we went back to the juvenile hall we parked
21 in the Albertsons parking lot and left Erin in the car.
22 Q. Well, you say the highway patrol stopped you and gave you
23 a cite; right?
24 A. Yes.
25 Q. This is on Saturday?
26 A. Yes.
27 Q. Way before anybody gassed anybody; right?
28 A. I don't believe anybody was gassed.

1 Q. All right. And at that point, sir, why didn't you just
2 tell the highway patrolman that Mr. Hamman was locked out in the
3 cell?

4 A. That defeats the purpose of going along with Anna at all
5 because then she's right there when I say it.

6 Q. You didn't want Mr. Hamman to get out; did you?

7 A. Actually, I believe I told you many times that I did.

8 Q. Anna Rugg took you back after you got the hacksaw down
9 towards the Shell Station so that you could be stopped by the
10 police as you look back on it now; isn't that right?

11 A. Yeah, that's what I came to figure.

12 Q. And she actually hoped then that Mr. Hamman was found at
13 that point?

14 MR. SERAFIN: Objection; calls for speculation.

15 THE COURT: Sustained.

16 Q. BY MR. MARCHI: It was you that asked Mr. Romines about
17 how to kill Mr. Hamman; isn't that right?

18 A. I didn't specify Mr. Hamman, but yes, I asked him how to
19 kill people.

20 Q. And your foster brother was quite clear that it was just
21 you and him that talked about it separate, away from Ms. Rugg
22 initially; do you remember that testimony, sir?

23 A. Out in the patio, yes.

24 Q. And that's true?

25 A. Yes.

26 Q. And you brought Anna Rugg in and Mr. Romines had to repeat
27 the story; isn't that right?

28 A. No.

1 Q. Do you remember Mr. Romines saying that, that you went and
2 got Anna and that you then asked him to repeat the same CSI
3 gassing story?
4 A. No.
5 Q. That never happened, sir?
6 A. No.
7 Q. Your foster brother is lying about that?
8 A. I don't remember him saying that. I remember I, myself,
9 remember exactly what happened. We went back inside the trailer
10 and sat down and continued watching TV because I knew that plan
11 had a large margin for error. I'm the one that brought it up.
12 As I was sitting on the couch watching TV with Anna in the room,
13 I brought it up to her.
14 Q. You didn't have enough money to rent any place at the
15 Elmwood or any other place, did you, that weekend, sir?
16 A. No.
17 Q. And you didn't have a car; correct?
18 A. No, I did not.
19 Q. So you didn't mind taking Mr. Hamman's car; is that right?
20 A. No, I didn't.
21 Q. And you drove it; right?
22 A. Yes, I did.
23 Q. In Placer County?
24 A. Yes, I did.
25 Q. Without the permission of Mr. Hamman?
26 A. Yes, I did.
27 Q. All right. And you are the one that did the talking
28 trying to persuade Mr. Hamman to give up his ATM card; isn't

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1 that right.

2 A. Not all of it but most of it, yes.

3 Q. I think you described it in the tape that Anna was talking
4 through you; is that right?

5 A. Yes, I did.

6 Q. In fact, you're the one that went there and did all the
7 talking when you came back and found him with the water going;
8 correct?

9 A. No, this is not correct.

10 Q. And you're the one that asked him for the PIN number;
11 didn't you?

12 A. Not the first time, no.

13 Q. The second time, sir?

14 A. No.

15 Q. And you're the one that eventually asked him for his ATM
16 card; correct?

17 A. Excuse me?

18 Q. You're the one that asked him for his ATM check card;
19 right?

20 A. Yes.

21 Q. And you told him if he didn't give it to you he was going
22 to drown; is that right?

23 A. No, I did not tell him that.

24 Q. Why did you put the bookcase up against there, sir?

25 A. To scare him.

26 Q. To scare him thinking he might drown?

27 A. I didn't know what he'd think, but yeah, I could assume
28 that is a possibility, yes.

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1 Q. And you were pretty certain in there that you thought the
2 water was three feet high and no higher. Do you remember making
3 that statement?
4 A. Yes.
5 Q. Three feet high would be above that little table. You
6 might have heard officers indicate that the table was a little
7 over two feet high. Do you remember seeing that, sir?
8 A. No, I did not see it.
9 Q. So when you talked about three feet high, you just made
10 that up?
11 A. No. That is what Nicholas told me.
12 Q. Well, you stated three feet high and no higher, sir. Are
13 you saying that Mr. Hamman said three feet high and no higher?
14 A. Mr. Hamman said 3 foot high and that's when I pulled the
15 plug and so that's why it never got any higher after that.
16 Q. You were present -- in fact, you drove Ms. Rugg to the ATM
17 machines, correct, to use the card?
18 A. Yes.
19 Q. And you actually told the police you might actually be on
20 camera; correct?
21 A. Uh-huh.
22 Q. And then after two to three different questions you
23 admitted the card was used in Rocklin; correct?
24 A. I believe I told them the card was used in Rocklin, and I
25 stated there was a Safeway on Sunset where the card was used and
26 they could see me in a camera angle probably standing behind
27 Anna. And I believe I pushed the cancel button once and I told
28 them that.

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1 Q. So you drove her there knowing she was going to use the
2 card; right?

3 A. That's what she wanted.

4 Q. And you benefited because you got gas; correct?

5 A. I didn't benefit at all.

6 Q. Didn't you say you put gas in the car, Mr. Hamman's car?

7 A. Thirty-something dollars just before we went to Sacramento
8 to get the hacksaw because she told me we needed gas and she
9 needed to use the bathroom, and she was right. We needed gas.

10 Q. Sir, isn't it true that Anna Rugg got upset when
11 Mr. Hamman passed you up on the bicycle because that interfered
12 with the plan you had from the Elmwood; isn't that right?

13 MR. SERAFIN: Objection; calls for speculation on Anna
14 Rugg's part.

15 THE COURT: Sustained.

16 Q. BY MR. MARCHI: Well, after you stopped and heard part of
17 the conversation between Mr. Hamman and Ms. Rugg, did you not --
18 you met up with them near the bank?

19 A. She got out of the car and I got in. He took off.

20 Q. You were on a bicycle; correct, sir? You were going to
21 bike over to the hall?

22 A. No.

23 Q. You never were going to do that?

24 A. No. I was never ever going to ride across down to the
25 hall. I didn't even know where it was. We were specific when
26 we said I was going to throw my bike in the bushes behind the
27 Elmwood so it wouldn't get stolen and he was supposed to wait
28 for me.

1 Q. Well, you had been there before. You told us; right?

2 A. When I was a child, 12 years ago, 13 years ago when I
3 lived in Rocklin. I had almost no knowledge of Auburn.

4 Q. There was never any intent on anybody staying at the hall
5 that weekend; was there, sir, other than Mr. Hamman?

6 A. There was never intent for Mr. -- to begin with there was
7 never any intent for Mr. Hamman to stay there. That was a place
8 to put our stuff because we had to be out by 11 o'clock. That
9 was the checkout time for the hotel.

10 Q. You weren't going to stay there?

11 A. No.

12 Q. Ms. Hughes wasn't going to stay there?

13 A. I actually can't recall that at that point. I didn't know
14 where I was going to stay, but I wasn't planning on staying
15 there.

16 Q. And you did tell the detectives that the plan was to take
17 him over there and roll him; didn't you?

18 A. I said that had been a plan that had been discussed, but
19 it was never decided upon.

20 MR. MARCHI: I have no further questions.

21 THE COURT: Redirect?

22 MR. SERAFIN: Thank you, your Honor.

23 REDIRECT EXAMINATION

24 Q. BY MR. SERAFIN: Shawn, did you ever specifically have a
25 discussion with Anna about taking Nick to the juvenile hall and
26 locking him in?

27 A. There had been discussion about locking him in a room.

28 Q. Was it specific to the juvenile hall that morning?

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1 A. No, not at all.

2 Q. Moving on to that issue on page 19 in the transcript
3 where the district attorney claims that you made a specific plan
4 to go roll Nick at the juvenile hall.

5 A. I don't have the transcript.

6 Q. I'm going to read to you and you tell me if you remember
7 saying this.

8 A. Okay.

9 Q. Detective Hutchins, "If you had to do it over again would
10 you change -- or what would you change?" Do you remember him
11 asking you that?

12 A. Yes, I do.

13 Q. Do you remember your answer being something to the effect
14 of the conversation?

15 A. Yes.

16 Q. Is Detective Hutchins what you mean about getting the guy
17 over there and rolling him as a question; correct?

18 A. Yes.

19 Q. And your response was, "and rolling him?"

20 MR. MARCHI: There's no question mark, your Honor.

21 MR. SERAFIN: There is also no period.

22 Q. When you gave that answer "and rolling him," were you
23 confirming Detective Hutchins's theory that you had made a plan
24 to go roll him or were you simply asking him to clarify his
25 question?

26 A. I'm not sure. I can't remember. I would assume I was
27 asking a question.

28 Q. Why would you assume that?

1 A. Because it seems to me after you refreshing my memory and
2 Mr. Marchi also, it seems to me that he was asking me if we had
3 had the conversation about that explicitly and that had never
4 taken place.

5 Q. When you were discussing the conversation, you weren't
6 referring to the conversation Friday night at the Elmwood; were
7 you?

8 A. No. There were many different conversations.

9 Q. In fact, what the district attorney left out was Detective
10 Hutchins, after you clarified the statement by repeating his
11 last three words "and rolling him" was, "Okay. The
12 conversation, what about after that, anything else? If you had
13 it to do over again today, let's say today, the conversation was
14 the same at the Elmwood, would you still go ahead and do it if
15 you had to do it over again? Would you still go along with it
16 because there's a point in time here where you could have bailed
17 out; right?" Do you remember that question?

18 A. Yes, I do.

19 Q. Do you remember your answer being as soon as the water
20 turned on, we could have bailed out?

21 A. Yes.

22 Q. Clearly that wasn't referring to Friday night at the
23 Elmwood; was it?

24 A. No.

25 Q. Nor was it referring to any conversation taking place
26 Saturday morning before Nick Hamman was locked in the cell; was
27 it?

28 A. No.

1 Q. It was in regards to a conversation after the water had
2 already been turned on?

3 A. Yes.

4 Q. And you were saying that in retrospect, if you could do it
5 over again at that point you should have found a way out?

6 A. Yes. At the point the water had been turned on.

7 Q. Moving to page 8 where the district attorney claims that
8 you stated, "I contributed in locking Anna Rugg in the cell."
9 Do you remember making the statement or Detective Hutchins
10 asking you why not just drive off like you did, make an
11 anonymous call to the fire department, tell them there's some
12 guy; do you remember him asking you about that?

13 A. Yes, I do.

14 Q. And your first sentence was, "Thought about that, but the
15 first thing he's going to say is Shawn Rodriguez and Anna Rugg
16 put me in here." Do you remember that?

17 A. Yes, I do.

18 Q. When you said, "The first thing he's going to say," who
19 are you referring to?

20 A. Nicholas Hamman.

21 Q. So you weren't actually telling the detective that you had
22 anything to do with locking him in; were you?

23 A. No.

24 Q. You were telling them that if I call the fire department,
25 Nick is going to blame me as well as Anna?

26 A. Yes.

27 Q. Which is exactly what he ended up doing?

28 A. Yes.

1 Q. After you were arrested, Shawn, and taken to the police
2 station, how long were you sitting at the station before you
3 were taken into the interrogation room?

4 A. I can't be definite because there was no clock. I believe
5 we were pulled over around 2:30 and by the time I got in there
6 the sun was up.

7 Q. About three, three and a half hours?

8 A. Something like that.

9 Q. And where were you being held during that three, three and
10 a half hours?

11 A. I was in a holding sell handcuffed to a bench, not a
12 holding cell, but -- well, a small room with -- it was just a
13 desk in it where they could do paperwork and I was handcuffed to
14 a bench.

15 Q. Were officers coming in and out of that room where you
16 were handcuffed to the bench?

17 A. Yeah.

18 Q. Were there a lot of officers?

19 A. Everybody wanted to stop and see the circus.

20 Q. Do you remember Detective Coe and Detective Hutchins?

21 A. Yes.

22 Q. They weren't there the whole time though?

23 A. Oh, no.

24 Q. You said on cross-examination that at the time you were
25 arrested you had no reason to think that Nick was injured at
26 all; correct?

27 A. Correct.

28 Q. In fact, you had just left the juvenile hall?

1 A. And he was --
2 Q. And about four minutes prior?
3 A. He was standing and talking to himself.
4 Q. You then said on cross-examination by the time you got in
5 the interrogation room you asked them the question, you asked
6 him: Is he in a coma? At that point you had some concern about
7 his well-being; is that right? Is that what you stated?
8 A. That's exactly what I stated.
9 Q. What made you have concern by the time you went in the
10 interrogation room that you didn't have the time you were
11 arrested?
12 A. Things that I heard.
13 Q. Things you heard from who?
14 A. Different officers coming into the room I was in.
15 Q. For the three, three and a half hours you were sitting
16 there in -- before you were taken into the interrogation room
17 and the tape was turned on?
18 A. Yes.
19 Q. What kind of things were they telling you?
20 A. I heard coma. I heard dead. I heard coroner. I heard
21 one officer, I believe it was Dale Hutchins, say, My parole
22 officer, who he'd be retired by the time my parole officer was
23 born.
24 Q. At one point toward the end of the interview with Dale
25 Hutchins you asked him what were you looking at; do you remember
26 that?
27 A. Yes.
28 Q. And his response was, remember the charges I talked to you

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1 about back in the room?

2 A. Yes.

3 Q. That's what you're looking at; do you remember that?

4 A. Yes.

5 Q. And this was the conversation he had with you before you
6 were actually taken into the interrogation room and the tape was
7 turned on; right?

8 A. Yes.

9 Q. Was attempted murder one of the things that he mentioned?

10 A. I believe conspiracy to commit murder, murder and
11 attempted murder were thrown out there.

12 Q. Now, on page 15 of the transcript where the district
13 attorney claims you made an unequivocal statement that you were
14 going to low lay -- been a long day. Lay low for a couple days,
15 the statement that he quoted was after an eight line
16 conversation where he, being the detective, was asking you about
17 a conversation you had with Anna; is that right

18 A. Yes.

19 Q. Starting with, "And I told her come on. And then she
20 said, 'Where are we going?' And you, 'Just, just "f-ing" don't
21 worry about it.' And she said, 'Where are we going?'"

22 A. Yes.

23 Q. It was after that part in the tape where you were clearly
24 talking about a conversation you had with Anna where you then
25 said, "I'm gonna bounce for a couple of days. We can lay low";
26 is that right?

27 A. Yes.

28 Q. When you said that, I was gonna bounce for a couple of

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1 days, is that what you were telling the officers you actually
2 planned to do?

3 A. That's what I told the officers I was telling Anna.

4 Q. In fact, was your plan on Sunday evening when you had this
5 conversation to leave and get out of town for several days and
6 just leave Nick to die?

7 A. At that time I was six hours from my court date, so six
8 hours if the guy is standing talking to himself, I planned on
9 telling the police.

10 Q. And why did you tell the other story, "I wanted to bounce
11 for a couple of days," to Anna?

12 A. Because it kind of would have defeated the purpose, you
13 know, I'm going to tell the police tomorrow when I go to court.

14 Q. When you first took in this case when you guys get to the
15 juvenile hall and he's locked in there, between the time he's
16 locked in there, the time you leave in the morning, did you ever
17 talk about taking anything from Nick Hamman?

18 A. While he was locked in there?

19 Q. In the morning, yes.

20 A. No.

21 Q. Did you discuss taking his ATM card there?

22 A. No.

23 Q. Did Anna try to get his ATM card there?

24 A. No.

25 Q. It was about 12 hours later that same day that you guys
26 came up with the plan to get his ATM card; correct?

27 A. Yeah, about 12 hours, I can't remember.

28 MR. SERAFIN: No further questions.

1 THE COURT: Anything further?

2 RE CROSS-EXAMINATION

3 Q. BY MR. MARCHI: Yes. Sir, you had some concerns that
4 Mr. Hamman might die from hypothermia after a couple of days;
5 didn't you?

6 A. I believe that hypothermia could be a possibility, and I
7 never thought that after only a couple of days and hypothermia
8 had started, he could have died from it. I knew there were
9 varying degrees of hypothermia. I've been there myself,
10 actually.

11 Q. So you were going to wait another six hours for your court
12 appearance and thereafter before you told anybody about
13 Mr. Hamman even though he might die of hypothermia?

14 A. He wasn't going to die of hypothermia in six hours if he
15 hasn't been affected in 40 hours.

16 Q. Are you a doctor, sir?

17 A. No, I'm not but I'm --

18 Q. Water was still going on in the cell; wasn't it?

19 A. Yes.

20 Q. And he was soaking wet; wasn't he?

21 A. Yes.

22 Q. This was wintertime?

23 A. Almost spring. Yeah, winter. If I may, water wouldn't
24 have been going after that because in that six-hour period, I
25 think I stated that.

26 Q. Again, when Detective Hutchins is asking you about, what
27 would you do if you had to change, he's asking you when would
28 you have bailed out, and you indicated when the water was going.

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1 He asked you, "Well, you could have bailed out before that"; do
2 you remember him asking you that?

3 A. Yes.

4 Q. Your answer was the conversation; right?

5 A. Yeah.

6 Q. And that would have been the conversation at the Elmwood
7 to kill Mr. Hamman?

8 A. There was no conversation at the Elmwood to kill
9 Mr. Hamman. There was a conversation at the Elmwood, a very
10 vague, like I stated before, conversation about robbing her
11 boyfriend. I think if I would have done more to decline, that
12 would have consisted of bailing out there.

13 Q. Well, on page 20 Mr. Hutchins asks you in response to your
14 saying, "I could have bailed out when I saw the water." He
15 says, "Before that." And your answer, "We could have bailed
16 out, yeah. Before you ever went to the juvenile hall, that's
17 what I'm saying. If you had to do it over again, what point in
18 time would you say, you know," now he's referring you to a point
19 in time before the juvenile hall, and your answer is, "The
20 conversation." So again, you're referring him back to the
21 conversation at the Elmwood; aren't you, sir?

22 A. I just told you about that conversation, yes.

23 Q. And that conversation you admitted is taking him over
24 there and rolling him?

25 A. No. I never said the conversation was taking him over
26 there and rolling him. I never ever said that. I believe I
27 questioned -- actually, I don't know for sure, but I mean, I
28 believe I questioned it at that time when he suggested it.

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1 Q. Is it your testimony you never had any conversation at the
2 Elmwood the night before about wanting to rob Mr. Hamman?

3 A. I just told you no. No, I never said that I wanted to rob
4 him, but there was a conversation. Nothing was ever outlined.
5 Nothing was ever cement. It was a very vague conversation.

6 Q. Ms. Rugg never told you the night before she wanted to rob
7 Mr. Hamman, and this would have been at the Elmwood; is that
8 your testimony?

9 A. Yes, she did tell me.

10 Q. All right. Again, at the top of page 11, when you started
11 telling the police, "This is the true story." You made the
12 statement, "When we first got to the juvenile hall, first off
13 Nick was going to an AA meeting. We flagged him down. She told
14 me the night before she wanted to rob him. I said, 'Well, you
15 know, I'm not going to beat the guy down or nothing, but I'll
16 tag along.'" So, in fact, you did have a conversation the night
17 before about robbing or rolling Nick Hammon at the hall; didn't
18 you, sir?

19 A. No, not at the hall and not that morning.

20 Q. I'm referring you to a conversation the night before at
21 the Elmwood. Isn't that what this statement says, sir, right
22 after you say this is the real story?

23 A. It says, it refers to a conversation the night before.
24 But I never ever said that I planned on killing, rolling, or
25 taking Nicholas Hamman to the juvenile hall the next morning.

26 Q. And you indicated you would tag along; is that right?

27 A. In the future.

28 Q. In fact, you knew that Anna Rugg didn't want to confront

1 Mr. Hamman all by her little self; did she?

2 A. I don't know if she didn't want to or if she wanted me
3 there in case something happened or if she was going to use me
4 as a scapegoat like she's doing now. I can't tell you exactly
5 what she wanted or didn't want.

6 Q. At all times she wanted you to go in first to the cell and
7 confront Mr. Hamman?

8 A. Yeah.

9 Q. So you were the muscle man; weren't you?

10 MR. SERAFIN: Objection; calls for speculation.

11 THE WITNESS: No, I wasn't.

12 MR. SERAFIN: And misstates his testimony.

13 THE COURT: Overruled.

14 Q. BY MR. MARCHI: You don't think you were?

15 A. She wanted me to be, but I wasn't. If I was, I would
16 know.

17 Q. Well, if you weren't, you had no reason to tag along; did
18 you, sir?

19 A. Actually, yeah.

20 MR. MARCHI: I have no further questions.

21 MR. SERAFIN: Nothing further, your Honor.

22 THE COURT: All right. Thank you. You may step down and
23 I need to see counsel in chambers for a second for a timing
24 issue.

25 (Bench conference held off the record.)

26 THE COURT: Ladies and gentlemen, I've been discussing
27 this schedule with counsel, and it would appear that we are
28 very, very close to the end of the evidence part of the trial.

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1 I do need to spend -- we usually spend quite a few hours working
2 on the instructions on the law that I will be instructing you
3 on. We were going to attempt to do that and have you take a
4 really long lunch hour, but I think there wouldn't be time today
5 to do instructions and closing arguments and we'll be running
6 the risk you come back after lunch and we wouldn't be quite
7 ready.

8 So at this point what we're going to do is recess for the
9 day, and then I need you back tomorrow at 8:30, and the case
10 will conclude tomorrow. And so I will be instructing you on the
11 law, and then counsel will have time to make their closing
12 arguments tomorrow.

13 So at this point you are recessed for the day, and I would
14 remind you it is your duty not to converse among yourselves or
15 with anyone else on any subject connected with the case, and
16 you're not to form or express any opinions on the case until it
17 is submitted to you after you heard all the evidence, and I need
18 you back here tomorrow at 8:30. We'll be working this
19 afternoon.

20 (Jury exits the courtroom.)

21 THE COURT: The record will reflect the jury is not
22 present. Counsel and parties are present. It is my
23 understanding the defense is most likely going to close first
24 thing in the morning, but there's a chance you might have a very
25 brief witness

26 MR. SERAFIN: A brief witness or two depending upon what
27 happens this afternoon.

28 THE COURT: But the game plan is we would instruct and

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1 have closing arguments and finish the trial tomorrow?

2 MR. SERAFIN: Absolutely.

3 THE COURT: It is my understanding at this point the
4 People are not anticipating rebuttal?

5 MR. MARCHI: Not at this time, your Honor.

6 THE COURT: What I would like to do is spend the afternoon
7 with you on the instructions. As I indicated to you in chambers
8 there are some things that, I think, need to be worked on a bit
9 on the instructions that I was handed, and then if you want to
10 take an hour for lunch and then come back at 1 o'clock or 1:15.
11 Would that work?

12 MR. SERAFIN: Can we come back at 1:15?

13 THE COURT: Okay. So I'll see you at 1:15, and we'll
14 start working on the instructions.

15 (Proceedings concluded at 12:08 p.m. to
16 reconvene Tuesday, September 30, 2003, at
17 8:30 a.m.)

18 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 TUESDAY, SEPTEMBER 30, 2003, 8:40 A.M.

3 --oOo--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --oOo--

18 (The following proceedings took place
19 outside the presence of the jury.)

20 THE COURT: On the record in the matter of the People
21 versus Shawn Rodriguez, Case Number 62-034689. The defendant is
22 present in court with counsel. Also present, counsel for the
23 People. The jury is not present. A couple issues. I met with
24 counsel last night on jury instructions, and I have a set of
25 jury instructions that have been prepared by the People. And
26 after conversation with counsel for the defense, it's my
27 understanding that the package of jury instructions that I now
28 have in final form are by stipulation of both sides; is that

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1 correct?

2 MR. SERAFIN: That's correct.

3 MR. MARCHI: Yes, your Honor.

4 THE COURT: In that jury instructions conversation we
5 discussed several things, and I think it is important to put
6 some of them on the record. First of all, that the jury
7 instructions are all by stipulation, and there were no
8 objections.

9 Number two, that it was agreed by both counsel for the
10 People and counsel for the defense that the lesser included of
11 manslaughter would not be appropriate in this case and,
12 therefore, the Court would not be instructing -- excuse me,
13 attempted manslaughter. Also that grand theft and attempted
14 robbery are potential lesser included to the crime of robbery,
15 but it was agreed that it is not appropriate for the Court in
16 this case to instruct on grand theft and attempted robbery; is
17 that correct?

18 MR. SERAFIN: That's correct, your Honor.

19 MR. MARCHI: Yes, your Honor.

20 THE COURT: Also with respect to exhibits, the People have
21 withdrawn Exhibit 67, which is the taped interview of
22 Mr. Rodriguez without the redaction.

23 MR. MARCHI: Correct. In its place we have substituted
24 84, which is in evidence which has been redacted in two spots by
25 stipulation.

26 (Exhibit No. 67 was withdrawn.)

27 THE COURT: All right. And the Court has returned to
28 counsel for the People Exhibits 1C and 1B, which are a tape and

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1 a CD ROM of interviews with Ms. Rugg, and those have been
2 returned to the People and obviously will be preserved for the
3 eventual trial of Ms. Rugg; is that correct?

4 MR. MARCHI: Yes, your Honor. And I might add for the
5 record what is now currently Exhibit 84 was formally Exhibit 1A
6 in the severance motion that the Court heard as part of the
7 pretrial procedures, just so the record is clear as to what
8 happened to that.

9 THE COURT: But 1A was not given to the jury either.

10 MR. MARCHI: 1A is the one we redacted which is now 84.

11 THE COURT: I just want to make sure we don't
12 inadvertently send in the unredacted tape.

13 MR. MARCHI: I returned it to the detective to put in his
14 evidence locker.

15 THE COURT: Because I switched clerks. I have a different
16 clerk today so I don't want to have any problems.

17 MR. MARCHI: Yes.

18 THE COURT: We've also talked about the fact that there
19 was a stipulation that each of the jurors would have a copy of
20 the transcript of the taped interview of Mr. Rodriguez to read
21 along. So they were using it to read along, and there was
22 originally a stipulation that they could keep their copies of
23 the transcript and write any changes on it. It being agreed by
24 counsel and the Court that the transcript was not particularly
25 accurate and there were some places in which certainly I would
26 have disagreed with the way in which the transcriber interpreted
27 what was being said on the tape and not horribly so, but there
28 were places in which there were some inaccuracies and so it was

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1 agreed that the jurors could have their copies and write on it
2 what they heard.

3 After reflection and upon request from the defense, it has
4 been requested that the Court collect all of those transcripts
5 from the jurors, and that the jurors would be provided with the
6 actual videotape. And they could take that into the jury room,
7 and that would be the final version and if they have any
8 disagreements, they can just listen to the tape and I believe
9 there's a stipulation to that. And that the Court will instruct
10 the jury that both the Court and counsel agree that the
11 transcript should be returned. That it's agreed that the
12 transcripts are not necessarily accurate, and that they're the
13 ones that are to decide what was said, not a transcriber. And
14 that, therefore, they will be collected and they will be given
15 the tape; is that correct?

16 MR. SERAFIN: It is, your Honor.

17 MR. MARCHI: I agree to that. I would just ask the Court
18 to give each juror the opportunity to remove any notes they may
19 have made and put them in their other notes, because I believe
20 some were putting notations on the transcript they may want to
21 summarize. They may not, but they may want to summarize it.

22 THE COURT: Page 6 they do note the changes.

23 MR. MARCHI: If they wanted to.

24 THE COURT: It is also agreed that each of the jurors will
25 be provided with a copy of the jury instructions to read along
26 as the Court is reading the instructions, but then they will all
27 be collected and the jury will only receive one set of the
28 official jury instructions; is that agreed?

1 MR. SERAFIN: Yes.

2 MR. MARCHI: Yes, your Honor.

3 THE COURT: And anything else from counsel for the People
4 before we proceed?

5 MR. MARCHI: No, your Honor.

6 THE COURT: Anything else from counsel for the defense?

7 MR. SERAFIN: No, your Honor.

8 THE COURT: And it is my understanding that the defense
9 will be resting?

10 MR. SERAFIN: Yes.

11 THE COURT: You can bring in the jury.

12 (Jury enters the courtroom at 8:44 a.m.)

13 THE COURT: All right. We're on the record in the matter
14 of the People versus Shawn Rodriguez. The jury is all present.
15 Good morning. And also present is counsel for the People and
16 counsel for the defense. Defendant is present. Is there
17 anything further on behalf of the counsel for the defense?

18 MR. SERAFIN: The defense rests, your Honor.

19 THE COURT: And People?

20 MR. MARCHI: People have no rebuttal, your Honor.

21 THE COURT: All right. And then at this point, ladies and
22 gentlemen, we will begin with what we refer to as jury
23 instructions, but there's a couple of things we need to go over,
24 first of all. I had previously provided each of you a copy of
25 the transcript of the taped interview, and you were allowed to
26 keep a copy and write notes on it. Upon reflection both counsel
27 for the People and counsel for the defense and the Court agree
28 that is not appropriate that I leave the transcripts with you.

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1 What we are thinking about is the fact that the tape itself
2 speaks for itself, and the transcript is just a transcriber
3 somewhere who wasn't there transcribing what they thought they
4 heard. You are the ones who decide what you think you hear, not
5 the transcriber. And I think we all agree that there were parts
6 in there that were probably not accurate. And so we are going
7 to collect from you the transcripts, and the tape itself will go
8 with you into the jury room.

9 And now, I know some of you may have written notes on the
10 transcript and so if any of you would like to take a few minutes
11 to put your notes on another piece of paper, I can certainly
12 give you that opportunity. Is there anyone who would like to
13 take a few minutes to do that? It doesn't look like it. Then
14 my bailiff will collect the transcripts.

15 All right. Now, we also -- I am going to provide each you
16 a copy of the jury instructions that I will be reading. The law
17 requires that I read them to you. Most people have trouble
18 listening for long periods of time without actually getting to
19 read it, at least I do. I like to read along. So I'm going to
20 provide each of you a copy of the jury instructions so you can
21 read along with me, and then when we're done, I will be
22 collecting them from you, and one set, an official set, will go
23 in with you into the jury room. All right. Everyone has this
24 set?

25 Members of the jury, you have heard all the evidence and
26 the arguments of the attorneys, and now it is my duty to
27 instruct you on the law that applies to this case. The law
28 requires that I read the instructions to you. You will have

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1 these instructions in written form in the jury room to refer to
2 during your deliberations. You must base your decision on the
3 facts and the law. You have two duties to perform. First, you
4 must determine what facts have been proved from the evidence
5 received from the trial and not from any other source. A fact
6 is something proved by the evidence or by stipulation. A
7 stipulation is an agreement between the attorneys regarding the
8 facts.

9 Second, you must apply the law that I state to you to the
10 facts as you determine them and in this way arrive at your
11 verdict and any finding you are instructed to include in your
12 verdict. You must accept and follow the law as I state it to
13 you regardless of whether you agree with it. If anything
14 concerning the law said by the attorneys in their argument or at
15 any other time during the trial conflicts with my instructions
16 on the law, you must follow my instructions.

17 You must not be influenced by pity for or prejudice
18 against a defendant. You must not be biased against a defendant
19 because he has been arrested for this offense, charged with a
20 crime, or brought to trial. None of these circumstances is
21 evidence of guilt, and you must not infer or assume from any or
22 all of them that a defendant is more likely to be guilty than
23 not guilty.

24 You must not be influenced by sentiment, conjecture,
25 sympathy, passion, prejudice, public opinion, or public feeling.
26 Both the People and a defendant have a right to expect that you
27 will conscientiously consider, weigh the evidence, apply the
28 law, and reach a just verdict regardless of the consequences.

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1 If any rule, direction, or idea is repeated or stated in
2 different ways in these instructions, no emphasis is intended,
3 and you must not draw any inference because of its repetition.
4 Do not single out any particular sentence or any individual
5 point or instruction and ignore the others. Consider the
6 instructions as a whole and each in light of all the others.
7 The order in which the instructions are given has no
8 significance as to their relative importance.

9 Statements made by the attorneys during the trial are not
10 evidence. However, if the attorneys have stipulated or agreed
11 to a fact, you must regard that fact as proven. If an objection
12 was sustained to a question, do not guess what the answer might
13 have been. Do not speculate as to the reasons for the
14 objection. Do not assume to be true any insinuation suggested
15 by a question asked a witness. A question is not evidence and
16 may be considered only as it helps you to understand the answer.
17 Do not consider for any purpose any offer of evidence that was
18 rejected or any evidence that was stricken by the Court. Treat
19 it as though you never heard of it.

20 You must decide all questions of fact in this case from
21 the evidence received in this trial and not from any other
22 source. You must not independently investigate the facts or the
23 law or consider or discuss facts as to which there is no
24 evidence. This means, for example, that you must not on your
25 own visit the scene, conduct experiments, or consult reference
26 works or persons for additional information. You must not
27 discuss this case with any person except a fellow juror and then
28 only after the case is submitted to you for your decision and

1 only when all 12 jurors are present in the jury room.

2 You have been given notebooks and pencils. Leave them on
3 the seat in the jury room when you leave each day and at each
4 recess. You will be able to take them into the jury room when
5 you deliberate. A word of caution, you may taken notes;
6 however, you should not permit note-taking to distract you from
7 the ongoing proceedings. Remember, you are the judges of the
8 believability of witnesses. Notes are only an aid to memory and
9 should not take precedence over your recollection.

10 A juror who did take notes should rely on his or her
11 recollection of the evidence and not be influenced by the fact
12 that other jurors did take notes. Notes are for the
13 note-taker's own personal use in refreshing his or her
14 recollection of the evidence.

15 Finally, should any discrepancy exist between a juror's
16 recollection of the evidence and a juror's notes, or between one
17 juror's recollection and that of another, you may request that
18 the court reporter read back the relevant testimony which must
19 prevail.

20 The word "willfully" when applied to the intent with which
21 an act is done or omitted means with a purpose or willingness to
22 commit the act or to make the omission in question. The word
23 "willfully" does not require any intent to violate the law or to
24 injure another or to acquire any advantage.

25 The word "knowingly" means with knowledge of the existence
26 of the facts in question. Knowledge of the unlawfulness of any
27 act or omission is not required. A requirement of the knowledge
28 does not mean the act must be done with any specific intent.

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1 The word "malice" and "maliciously" mean a wish to vex,
2 defraud, annoy, or injure another person or an intent to do a
3 wrongful act.

4 Evidence consists of the testimony of witnesses, writings,
5 material objects, or anything presented to the senses and
6 offered to prove the existence or nonexistence of a fact.
7 Evidence is either direct or circumstantial. Direct evidence is
8 evidence that directly proves a fact. It is evidence which by
9 itself, if found to be true, establishes that fact.

10 Circumstantial evidence is evidence that, if found to be
11 true, proves a fact from which an inference of the existence of
12 another fact may be drawn. An inference is a deduction of fact
13 that may logically and reasonably be drawn from another fact or
14 group of facts established by the evidence.

15 It is not necessary that facts be proved by direct
16 evidence. They also may be proved by circumstantial evidence,
17 or by a combination of direct and circumstantial evidence. Both
18 direct and circumstantial evidence are acceptable as a means of
19 proof. Neither is entitled to any greater weight than the
20 other.

21 However, a finding of guilt as to any crime may not be
22 based on circumstantial evidence unless the proved circumstances
23 are not only one, consistent with the theory that the defendant
24 is guilty of the crime, but two, cannot be reconciled with any
25 other rational conclusion.

26 Further, each fact which is essential to complete a set of
27 circumstances necessary to establish the defendant's guilt must
28 be proved beyond a reasonable doubt. In other words, before an

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1 inference essential to establish guilt may be found to have been
2 proved beyond a reasonable doubt, each fact or circumstance on
3 which the inference necessarily rests must be proved beyond a
4 reasonable doubt.

5 Also, if the circumstantial evidence as to any particular
6 count permits two reasonable interpretations, one of which
7 points to the defendant's guilt and the other to his innocence,
8 you must adopt that interpretation that points to the
9 defendant's innocence and reject the interpretation that points
10 to his guilt.

11 If, on the other hand, one interpretation of this evidence
12 appears to you to be reasonable and the other interpretation to
13 be unreasonable, you must accept the reasonable interpretation
14 and reject the unreasonable.

15 The specific intent or mental state with which an act is
16 done may be shown by the circumstances surrounding the
17 commission of the act. However, you may not find the defendant
18 guilty of the crimes charged in Count One, Two, Three, Four, and
19 Six unless the proved circumstances are not only, one,
20 consistent with the theory that the defendant had the required
21 specific intent or mental state, but (2) cannot be reconciled
22 with any other rational conclusion.

23 Also, if the evidence as to any specific intent or mental
24 state permits two reasonable interpretations, one of which
25 points to the existence of the specific intent or mental state
26 and the other to its absence, you must adopt that interpretation
27 which points to its absence.

28 If, on the other hand, one interpretation of the evidence

1 as to the specific intent or mental state appears to you to be
2 reasonable and the other interpretation to be unreasonable, you
3 must accept the reasonable interpretation and reject the
4 unreasonable.

5 If you find that before this trial the defendant made a
6 willfully false or deliberately misleading statement concerning
7 the crimes for which he is now being tried, you may consider the
8 statement as a circumstance tending to prove a consciousness of
9 guilt. However, that conduct is not sufficient by itself to
10 prove guilt and its weight and significance, if any, are for you
11 to decide.

12 Neither side is required to call as witnesses all persons
13 who may have been present at any of the events disclosed by the
14 evidence or who or may appear to have some knowledge of the
15 events. Neither side is required to produce all objects or
16 documents mentioned or suggested by the evidence. There has
17 been evidence in this case indicating that persons other than
18 the defendant were or may have been involved in a crime for
19 which the defendant is on trial. There may be many reasons why
20 other persons are not here on trial. Therefore, do not discuss
21 or give any consideration as to why the other persons are not
22 being prosecuted in this trial or whether they have been or will
23 be prosecuted.

24 Your sole duty is to decide whether the People have proved
25 the guilt of the defendant on trial. Evidence that at some
26 other time a witness made a statement or statements that is or
27 are inconsistent or consistent with his or her testimony in this
28 trial may be considered for you -- by you, I'm sorry, not only

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1 for the purpose of testing the credibility of the witness, but
2 also as evidence of the truth of the facts as stated by the
3 witness on that former occasion. If you disbelieve a witness's
4 testimony that he or she no longer remembers a certain event,
5 that testimony is inconsistent with a prior statement or
6 statements by him or her describing that event.

7 Every person who testifies under oath is a witness. You
8 are the sole judges of the believability of a witness and the
9 weight to be given the testimony of each witness. In
10 determining the believability of a witness you may consider
11 anything that has a tendency reasonably to prove or disprove the
12 truthfulness of the testimony of the witness, including but not
13 limited to any of the following:

14 The extent of the opportunity or ability of the witness to
15 see, or hear, or otherwise become aware of any matter about
16 which the witness testified; the ability of the witness to
17 remember or to communicate any matter about which the witness
18 has testified; the character and quality of that testimony; the
19 demeanor and manner of the witness while testifying; the
20 existence or nonexistence of a bias, interest, or other motive;
21 the existence or nonexistence of any fact testified to by the
22 witness; the attitude of the witness towards this action or
23 toward the giving of testimony; a statement previously made by
24 the witness that is consistent or inconsistent with his or her
25 testimony; an admission by the witness of untruthfulness; the
26 witness's prior conviction of a felony; past criminal conduct of
27 a witness amounting to a misdemeanor.

28 Discrepancies in a witness's testimony or between a

1 witness's testimony and that of other witnesses, if there were
2 any, do not necessarily mean that a witness should be
3 discredited. Failure of recollection is common. Innocent
4 misrecollection is not uncommon. Two persons witnessing an
5 incident or a transaction often will see or hear it differently.
6 You should consider whether a discrepancy relates to an
7 important matter or only to something trivial.

8 You are not required to decide any issue of fact in
9 accordance with the testimony of a number of witnesses which
10 does not convince you as against the testimony of a lesser
11 number or other evidence which you find more convincing. You
12 may not disregard the testimony of a greater number of witnesses
13 merely from caprice, whim, or prejudice or from a desire to
14 favor one side against the other.

15 You must not decide an issue by the simple process of
16 counting the number of witnesses who have testified on the
17 opposing sides. The final test is not in the relative number of
18 witnesses, but in the convincing force of the evidence.

19 The fact that a witness has been convicted of a felony, if
20 there is a fact, may be considered by you only for the purpose
21 of determining the believability of that witness. The fact of a
22 conviction does not necessarily destroy or impair a witness's
23 believability. It is one of the circumstances that you may
24 consider in weighing the testimony of that witness.

25 Motive is not an element of the crime charged and need not
26 be shown. However, you may consider motive or lack of motive as
27 a circumstance in this case. Presence of motive may tend to
28 establish the defendant is guilty. Absence of motive may tend

1 to show the defendant is not guilty.

2 A confession is a statement made by a defendant in which
3 he has acknowledged his guilt of the crimes for which he is on
4 trial. In order to constitute a confession the statement must
5 acknowledge participation in the crimes as well as the required
6 criminal intent or state of mind. An admission is a statement
7 made by the defendant which does not by itself acknowledge his
8 guilt of the crimes for which the defendant is on trial, but
9 which statement tends to prove his guilt when considered with
10 the rest of the evidence.

11 You are the exclusive judges as to whether the defendant
12 made a confession or an admission, and if so, whether that
13 statement is true in whole or in part. Evidence of an oral
14 confession or oral admission from the defendant not made in
15 court should be viewed with caution.

16 An admission is a statement made by the defendant which
17 does not by itself acknowledge his guilt of the crime for which
18 the defendant is on trial, but which statement tends to prove
19 his guilt when considered with the rest of the evidence.

20 You are the exclusive judges as to whether the defendant
21 made an admission, and if so, whether that statement is true in
22 whole or in part. Evidence of an oral admission of the
23 defendant not made in court should be viewed with caution.

24 Evidence has been received from which you may find that an
25 oral statement of intent, plan, motive, or design was made by
26 the defendant before the offense for which he is charged was
27 committed. It is for you to decide whether the statement was
28 made by the defendant. Evidence of an oral statement ought to

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1 be viewed with caution.

2 No person may be convicted of a crime unless there is some
3 proof of each element of the crime independent of any confession
4 or admission made by him outside of the trial. The identity of
5 the person who is alleged to have committed the crime is not an
6 element of the crime, nor is the degree of the crime. The
7 identity or degree of the crime may be established by a
8 confession or admission.

9 A witness who has special knowledge, skill, experience,
10 training, or education in a particular subject has testified to
11 certain opinions. This type of witness is referred to as an
12 expert witness. In determining what weight to give to any
13 opinion expressed by an expert witness, you should consider the
14 qualifications and believability of the witness, the facts and
15 materials upon which each opinion is based, and the reason for
16 each opinion. An opinion is only as good as the facts and
17 reasons from which it is based.

18 If you find that any fact has been proved or has been
19 disproved, you must consider that in determining the value of
20 the opinion. Likewise, you must consider the strength and
21 weaknesses on the reasons on which it is based. You are not
22 bound by an opinion. Give each opinion the weight you find it
23 deserves. You may disregard any opinion if you find it to be
24 unreasonable.

25 A defendant in a criminal action is presumed to be
26 innocent until the contrary is proved and in case of a
27 reasonable doubt whether his guilt is satisfactorily shown, he
28 is entitled to a verdict of not guilty. This presumption places

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1 upon the People the burden of proving him guilty beyond a
2 reasonable doubt. Reasonable doubt is defined as possible -- as
3 excuse me, as follows:

4 It is not a mere possible doubt because everything
5 relating to human affairs is open to some possible or imaginary
6 doubt. It is that state of the case which, after the entire
7 comparison and consideration of all the evidence, leaves the
8 minds of the jurors in that condition that they cannot say they
9 feel an abiding conviction of the truth of the charge.

10 Persons who are involved in committing or attempting to
11 commit a crime are referred to principals in that crime. Each
12 principal, regardless of the extent or manner of participation,
13 is equally guilty. Principals include those who directly and
14 actively commit or attempt to commit the act constituting the
15 crime or those who aid and abet the commission or attempted
16 commission of the crime.

17 A person aids and abets the commission or attempted
18 commission of a crime when he or she, with knowledge of the
19 unlawful purpose of the perpetrator and with the intent or
20 purpose of committing or encouraging or facilitating the
21 commission of the crime, and by act or advice aids, promotes,
22 encourages, or instigates the commission of the crime. A person
23 who aids and abets the commission or attempted commission of a
24 crime need not be present at the scene of the crime. Mere
25 presence at the scene of the crime, which does not itself assist
26 the commission of the crime does not amount to aiding and
27 abetting. Mere knowledge that a crime is being committed and
28 the failure to prevent it does not amount to aiding and

1 abetting.

2 One who aids and abets another in the commission of a
3 crime or crimes is not only guilt of those crimes, but is also
4 guilty of any other crime committed by a principal which is a
5 natural and probable consequence of the crimes originally aided
6 and abetted.

7 In order to find a defendant guilty of the crimes as
8 charged in Counts One through Eight, you must be satisfied
9 beyond a reasonable doubt that the crime or crimes charged were
10 committed; that the defendant aided and abetted these crimes;
11 that a co-principal in that crime committed the crimes as
12 charged in Counts One through Eight; and the crimes were a
13 natural and probable consequence of the commission of the crimes
14 as charged in Count One through Eight.

15 In determining whether a consequence is natural and
16 probable, you must apply an objective test based on not what the
17 defendant actually intended, but on what a person with
18 reasonable and ordinary prudence would have expected likely to
19 occur. The issue is to be decided in light of all the
20 circumstances surrounding the incident. A natural consequence
21 is one in which is within the normal range of outcomes that may
22 reasonably be expected to occur if nothing unusual has
23 intervened.

24 Probable means likely to happen. You are not required to
25 unanimously agree as to which originally contemplated crime the
26 defendant aided and abetted so long as you are satisfied beyond
27 a reasonable doubt and unanimously agree that the defendant
28 aided and abetted the commission of an identified and defined

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1 target crime, and that the remaining crimes were a natural and
2 probable consequence of the commission of that target crime.

3 Before the commission of the crimes charged in Counts One
4 through Eight, an aider and abettor may withdraw from
5 participation in those crimes and thus avoid responsibility for
6 those crimes by doing two things. First, he must notify the
7 other principal known to him of his intention to withdraw from
8 the commission of those crimes. Second, he must do everything
9 in his power to prevent its commission.

10 An accomplice is a person who is subject to prosecution
11 for the identical offense charged Counts One through Eight
12 against the defendant on trial by reason of aiding and abetting
13 or being a member of a criminal conspiracy.

14 Merely assenting to or aiding or assisting in the
15 commission of a crime without knowledge of the unlawful purpose
16 of the perpetrator and without the intent or purpose of
17 committing, encouraging, or facilitating the commission of the
18 crime is not criminal. Thus a person who assents to or aids and
19 assists in the commission of a crime without that knowledge and
20 without that intent or purpose is not an accomplice in the
21 crime.

22 In the crimes charged in Count Five, Seven and Eight,
23 namely the crimes of false imprisonment by violence, using
24 another's name to obtain credit or property, and using another's
25 name to obtain credit or property, there must exist a union or
26 joint operation of act or conduct and general criminal intent.
27 General intent does not require an intent to violate the law.
28 When a person intentionally does that which the law declares to

1 be a crime, he is acting with general criminal intent even
2 though he may not know that his act or conduct is unlawful.

3 In the crimes and allegations charged in Count One, Two,
4 Three, Four, and Six, namely, kidnapping for ransom, conspiracy
5 to commit murder, attempted murder, robbery, and unlawful
6 driving or taking of a motor vehicle, there must exist a union
7 or joint operation of act or conduct and a certain specific
8 intent in the mind of the perpetrator. Unless the specific
9 intent exists, the crime or allegation to which it relates is
10 not committed or is not true. The specific intent required is
11 included in the definition of the crimes or allegation set forth
12 elsewhere in these instructions.

13 In the crimes charged in Count Two and Three, namely,
14 conspiracy to commit murder and attempted murder, there must
15 exist a union or join operation of act or conduct and a certain
16 mental state in the mind of the perpetrator. Unless this mental
17 state exists, the crime to which it relates is not committed.
18 The mental states required are included in the definitions of
19 the crime set forth elsewhere in these instructions.

20 An attempt to commit a crime consists of two elements,
21 namely, a specific intent to commit the crime, and a direct but
22 ineffectual act done towards its commission. In determining
23 whether this act was done, it is necessary to distinguish
24 between mere preparation on the one hand and the actual
25 commencement of doing of the criminal deed on the other. Mere
26 preparation, which may consist of planning the offense or
27 devising, or obtaining, or arranging the means for its
28 commission is not sufficient to constitute an attempt.

1 However, acts of a person who intends to commit a crime
2 will constitute an attempt when those acts clearly indicate a
3 certain, unambiguous intent to commit that specific crime.
4 These acts must be an immediate step in the present execution of
5 the criminal design, the progress of which would be completed
6 unless interrupted by some circumstance not intended in the
7 original design.

8 A person who has once committed an act which constitutes
9 an attempt to commit a crime is liable for the crime of
10 attempted murder even though he does not proceed further with
11 the intent to commit the crime either by reason of voluntarily
12 abandoning his purpose or because he was prevented or interfered
13 with in completing the crime.

14 If a person intends to commit a crime but before
15 committing any act toward the ultimate commission of the crime
16 freely and voluntarily abandons the original intent and makes no
17 effort to accomplish it, that person has not attempted to commit
18 the crime.

19 The defendant is accused in Count One of having violated
20 Section 209(a) of the Penal Code, a crime. And, ladies and
21 gentlemen, I would point out here that in some of these jury
22 instructions there are brackets. That's just because we
23 inadvertently forget to delete the brackets. They don't mean
24 anything. Just pretend they're not there. Let me start over.

25 The defendant is accused in Count One of having violated
26 Section 209(a) of the Penal Code, a crime. Every person who
27 confines, inveigles, entices, decoys, conceals, holds or detains
28 another person by any means whatsoever with the specific intent

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1 to hold or detain that person to commit extortion is guilty of a
2 violation of Penal Code Section 209, a crime.

3 It is not essential to that crime that the person be
4 carried or otherwise moved for any distance or at all. In order
5 to prove this crime, each of the following elements must be
6 proved:

7 A person was confined, inveigled, enticed, decoyed,
8 concealed, held or detained; and two, the confining, inveigling,
9 enticing, decoying, concealing, holding, or detaining of that
10 person was done with the specific intent to commit extortion.
11 The person from whom the property is obtained may be the same
12 person who is being confined, inveigled, enticed, decoyed,
13 concealed, or held or detained.

14 If you find the defendant guilty of the charge against him
15 under Count One, you must also find whether the defendant or his
16 co-conspirator intentionally confined the person kidnapped in a
17 manner which exposed that person to a substantial likelihood of
18 death and state your decision in that respect in your verdict.

19 In considering whether the person kidnapped was
20 intentionally confined in a manner which exposed him to a
21 substantial likelihood of death, you may consider the
22 circumstances of confinement for as long as the detention
23 continues even though the property sought by the defendant has
24 been given up by the victim.

25 The words, quote, substantial likelihood of death, unquote
26 are to be given their plain ordinary meaning. You may consider
27 whether or not the kidnapper intentionally increased the risk of
28 death otherwise inherent in kidnapping.

1 Where a person is charged with a crime of kidnapping for
2 the purpose of extortion, it is not necessary to establish that
3 this purpose was accomplished. The crime is complete if the
4 kidnapping is done for that purpose.

5 Every person who obtained money, property, or other things
6 of value from another with his consent which consent has been
7 induced by a wrongful use of force or fear is guilty of the
8 crime of extortion in violation of Penal Code Section 518. In
9 order to prove this crime each of the following elements must be
10 proved:

11 A person obtained property from the alleged victim; the
12 property was obtained with the consent of the alleged victim;
13 the alleged victim's consent was induced by the wrongful use of
14 force or fear; and the person who wrongfully used force or fear
15 did so -- I'm sorry, the person who wrongfully used force or
16 fear did so with the specific intent to induce the alleged
17 victim to consent to the giving up of his property.

18 Fear may be induced by a threat to inflict an unlawful
19 injury on a person threatened.

20 To constitute extortion, the force or fear induced by the
21 threat must be the operating or inducing cause which produces
22 consent and results in the property, money, or other thing of
23 value being delivered to another. If some other cause is the
24 primary controlling cause for the consent to the property being
25 delivered to another, the crime of extortion has not been
26 proved.

27 As used in the law of extortion, consent is obtained:

28 From the person threatened when money, property, or other

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1 thing of value is turned over to another with the understanding
2 that the person threatened will be saved from injury to himself;
3 the delivery of the money, property, or other thing of value is
4 the lesser of two unpleasant alternatives. Consent as used in
5 the law of extortion exists under these circumstances
6 notwithstanding the fact that the person threatened may silently
7 protest in his own mind against the circumstances which compel
8 the choice.

9 A coerced and unwilling consent compelled by the wrongful
10 use of force or fear constitutes consent and extortion.

11 The defendant is accused in Count Five of having committed
12 the crime of false imprisonment by violence or menace, a
13 violation of Section 236 of the Penal Code. Every person who by
14 violence or menace violates the liberty of another person by
15 intentionally and unlawfully restraining, confining, or
16 detaining that person and compelling that person to stay or go
17 somewhere without his consent is guilty of the crime of false
18 imprisonment by violence or menace in violation of Penal Code
19 Section 236.

20 Violence means the exercise of physical force used to
21 restrain over and above the force reasonably necessary to effect
22 the restraint. Menace means a threat of harm expressly or
23 implied -- excuse me, means a threat of harm express or implied
24 by word or act.

25 False imprisonment does not require that there be
26 confinement in a jail or prison. In order to prove this crime
27 each of the following elements must be proved:

28 One, a person intentionally and unlawfully restrained,

1 confined, or detained another person compelling him to stay or
2 go somewhere; the other person did not consent to the restraint,
3 confinement, or detention; and that restraint, confinement, or
4 detention was accomplished by violence or menace.

5 The defendant is accused in Count Three of having
6 committed the crime of attempted murder in violation of Section
7 664 and 187 of the Penal Code. Every person who attempts to
8 murder another human being is guilty of a violation of Penal
9 Code Sections 664 and 187. Murder is the unlawful killing of a
10 human being with malice aforethought.

11 In order to prove attempted murder, each of the following
12 elements must be proved:

13 A direct but ineffectual act was done by one person
14 towards killing another human being; and the person committing
15 the act harbored express malice aforethought, namely, a specific
16 intent to kill unlawfully another human being. In deciding
17 whether or not such act was done, it is necessary to distinguish
18 between mere preparation on the one hand and the actual
19 commencement of the doing of the criminal deed on the other.
20 Mere preparation, which may consist of planning the killing or
21 of devising, obtaining, or arranging the needs for its
22 commission, is not sufficient to constitute an attempt.

23 However, acts of a person who intends to kill another
24 person will constitute an attempt where those acts clearly
25 indicate a certain unambiguous attempt to kill. The acts must
26 be an immediate step in the present execution of the killing,
27 the progress of which would be complete unless interrupted by
28 some circumstances not intended in the original design.

1 It is also alleged in Count Three that the crime attempted
2 was willful, deliberate, premeditated murder. If you find the
3 defendant guilty of attempted murder, you must determine whether
4 this allegation is true or not true. Willful means intentional.
5 Deliberate means formed or arrived at or determined upon as a
6 result of careful thought in weighing of considerations for and
7 against the proposed course of action. Premeditated means
8 considered beforehand.

9 If you find that the attempted murder was preceded and
10 accompanied by a clear, deliberate intent to kill, which was the
11 result of deliberation and premeditation, so that it must have
12 been formed upon preexisting reflection and not under a sudden
13 heat of passion or other condition precluding the idea of
14 deliberation, it is an attempt to commit willful and deliberate
15 premeditated murder.

16 The law does not undertake to measure in units of time the
17 length of the period for which the thought must be pondered
18 before it can ripen into an intent to kill which is truly
19 premeditated and deliberate. The time will vary with different
20 individuals and under varying circumstances.

21 The true test is not the duration of time, but rather the
22 extent of the reflection. A cold, calculated judgment and
23 decision may be arrived at in a short period of time, but a mere
24 unconsidered and rash impulse, even though it includes an intent
25 to kill, is not deliberation and premeditation.

26 To constitute willful, deliberate, and premeditated
27 attempted murder, the would-be slayer must weigh and consider
28 the question of killing and the reasons for and against such a

1 choice and, having in mind the consequences, decides to kill and
2 makes a direct but ineffectual act to kill another human being.

3 The People have the burden of proving the truth of this
4 allegation. If you have a reasonable doubt that it is true, you
5 must find it to be not true. You will include a special finding
6 on that question in your verdict using a form that will be
7 supplied for that purpose.

8 The defendant is accused in Count Two of having committed
9 the crime of conspiracy to commit murder in violation of Section
10 182(a)(1) of the Penal Code.

11 Every person who conspires with any other person or
12 persons to commit the crime of murder is guilty of a violation
13 of Penal Code Section 182(a)(1), a crime. Murder is the
14 unlawful killing of a human being with malice aforethought.

15 A conspiracy to commit murder is an agreement entered into
16 between two or more persons with the specific intent to agree to
17 commit the crime of murder, and with the further specific intent
18 to commit that murder, followed by an overt act committed in
19 this state by one or more of the parties for the purpose of
20 accomplishing the object of the agreement. Conspiracy is a
21 crime.

22 The crime of conspiracy to commit murder requires proof
23 that the conspirators harbored express malice aforethought,
24 namely, the specific intent to kill unlawfully another human
25 being. In order to find a defendant guilty of conspiracy, in
26 addition to proof of the unlawful agreement and specific intent,
27 there must be proof of the commission of at least one of the
28 acts alleged in the information to be an overt act, and that act

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1 found to have been committed was an overt act. It is not
2 necessary to the guilt of any particular defendant that
3 defendant personally committed an overt act, if he was one of
4 the conspirators when the overt act was committed.

5 The term "overt act" means any step taken or act committed
6 by one or more of the conspirators which goes beyond the mere
7 planning or agreement to commit a crime and which step or act is
8 done in furtherance of the accomplishment of the object of the
9 conspiracy. To be an overt act the step taken or act committed
10 need not, in and of itself, constitute the crime or even an
11 attempt to commit the crime which is the ultimate object of the
12 conspiracy. Nor is it required that the step or act, in and of
13 itself, be a criminal or an unlawful act.

14 In order to prove this crime each of the following
15 elements must be proved:

16 Two or more persons entered into an agreement to kill
17 unlawfully another human being. Two, each of the persons
18 specifically intended to enter into an agreement with one or
19 more other persons for that purpose.

20 Each of the persons to the agreement harbored express
21 malice aforethought, namely, a specific intent to kill
22 unlawfully another human being.

23 And the overt act was committed in this state by one or
24 more of the persons who agreed and intended to commit murder.

25 A conspiracy is an agreement entered into between two or
26 more persons with the specific intent to agree to commit the
27 crime of murder and with the further specific intent to commit
28 that crime followed by an overt act committed in this state by

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1 one or more of the parties for the purpose of accomplishing the
2 object of the agreement. Conspiracy is a crime.

3 In order to find a defendant guilty of conspiracy in
4 addition to proof of the unlawful agreement and specific intent,
5 there must be proof of the commission of at least one of the
6 acts alleged in the information, to be an overt act and that the
7 act found to have been committed was an overt act. It is not
8 necessary to the guilt of any particular defendant that he
9 personally committed an overt act, if he was one of the
10 conspirators when the alleged overt act was committed.

11 The term "overt act" means any step taken or act committed
12 by one or more of the conspirators which goes beyond mere
13 planning or agreement to commit a crime in which step or act is
14 done in furtherance of the accomplishment of the object of the
15 conspiracy. To be an overt act, the step taken or act committed
16 need not, in and of itself, constitute the crime or even an
17 attempt to commit the crime which is the ultimate object of the
18 conspiracy. Nor is it required the step or act, in and of
19 itself, be a criminal or unlawful act.

20 Each member of a criminal conspiracy is liable for each
21 act and bound by each declaration of every other member of the
22 conspiracy if that act or declaration is in furtherance of the
23 object of the conspiracy. The act of one conspirator pursuant
24 to or in furtherance of the common design of the conspiracy is
25 the act of all conspirators.

26 A member of a conspiracy is not only guilty of a
27 particular crime that to his knowledge his confederates agreed
28 to and did commit, but is also liable for the natural and

1 probable consequence of any crime or act of a co-conspirator to
2 further the object of the conspiracy, even though that crime or
3 act was not intended as a part of the agreed upon objective and
4 even though he was not present at the commission of that crime
5 or act.

6 You must determine whether the defendant is guilty as a
7 member of a conspiracy to commit the originally agreed upon
8 crime or crime and, if so, whether the crime alleged in Count
9 Two was perpetrated by a co-conspirator in furtherance of that
10 conspiracy and was a natural and probable consequence of the
11 agreed upon criminal objective of that conspiracy.

12 In determining whether a consequence is natural and
13 probable, you must apply an objective test based not on what the
14 defendant actually intended but on what a person of reasonable
15 and ordinary prudence would have expected would be likely to
16 occur. The issue is to be decided in light of all the
17 circumstances surrounding the incident. A natural consequence
18 is one which is within the normal range of outcomes that may be
19 reasonably expected to occur if nothing unusual has intervened.
20 Probable means likely to happen.

21 The formation and existence of a conspiracy may be
22 inferred from all circumstances tending to show the common
23 intent and may be proved in the same way as any other fact may
24 be proved, either by direct testimony of the fact or by
25 circumstantial evidence or by direct and circumstantial
26 evidence. It is not necessary to show a meeting of the alleged
27 conspirators or the making of an express or formal agreement.

28 A member of a conspiracy is liable for the acts and

1 declarations of his co-conspirators until he effectively
2 withdraws from the conspiracy or the conspiracy has terminated.
3 In order to effectively withdraw from a conspiracy, there must
4 be an affirmative and good faith rejection or repudiation of the
5 conspiracy which must be communicated to the other conspirators
6 of whom he has knowledge.

7 If a member of a conspiracy has effectively withdrawn from
8 the conspiracy, he is not thereafter liable for any act by the
9 co-conspirators committed after his withdrawal from the
10 conspiracy, but he is not relieved of responsibility for the
11 acts of his co-conspirators committed while he was a member.

12 The defendant, Shawn Michael Rodriguez, in this case is
13 individually entitled to, and must receive, your determination
14 whether he was a member of the alleged conspiracy. As to this
15 defendant, you must determine whether he was a conspirator by
16 deciding whether he willfully, intentionally, and knowingly
17 joined with any other or others in the alleged conspiracy.

18 Before you may return a guilty verdict as to the
19 defendant, Shawn Michael Rodriguez, of the crime of conspiracy,
20 you must unanimously agree and find beyond a reasonable doubt
21 that, one, there was a conspiracy to commit the crime of murder
22 and defendant -- excuse me, and two, defendant, Shawn Michael
23 Rodriguez, willfully, intentionally, and knowingly joined with
24 any other or others in the alleged conspiracy.

25 You must also unanimously agree and find beyond a
26 reasonable doubt that an overt act was committed by one of the
27 conspirators. You are not required to unanimously agree as to
28 who committed an overt act or which overt act was committed so

1 long as each of you finds beyond a reasonable doubt that one of
2 the conspirators committed one of the acts alleged in the
3 information to be overt acts.

4 In this case the defendant is charged with conspiracy to
5 commit the following public crimes:

6 Willful, deliberate, premeditated murder. It is alleged
7 that the following acts were committed in this state by one or
8 more of the defendants and were overt acts and committed for the
9 purpose of furthering the object of the conspiracy:

10 Overt Act No. 1: Defendant, Shawn Michael Rodriguez, and
11 Anna Marie Rugg, drove to Albertsons Supermarket in the City of
12 Auburn, California, County of Placer, and purchased duct tape.

13 Overt Act No. 2: Defendant, Shawn Michael Rodriguez, and
14 Anna Marie Rugg, drove to the DeWitt Center in the city of
15 Auburn, county of Placer, and obtained two garden hoses.

16 Overt Act No. 3: Defendant, Shawn Michael Rodriguez, and
17 Anna Marie Rugg, drove to the old juvenile hall in the city of
18 Auburn, county of Placer, and taped duct tape around the outside
19 of the holding cell door behind which Nicholas Hamman was
20 confined.

21 Overt Act No. 4: Defendant, Shawn Michael Rodriguez, and
22 Anna Marie Rugg, drove to the old juvenile hall in the city of
23 Auburn, county of Placer, and attached one end of the garden
24 hose to a vent above the holding cell door behind which Nicholas
25 Hamman was confined, and tied the other end of the garden hose
26 to the exhaust system of a 1992 Chevy Beretta, California
27 license number 3FHS432. The defendant is also charged with the
28 commission of the remaining crimes as listed in the information.

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1 The defendant is accused in Count Four of having committed
2 the crime of robbery, a violation of Section 211 of the Penal
3 Code. Every person who takes personal property from the
4 possession of another, against the will and from the person or
5 immediate presence of that person, accomplished by means of
6 force or fear and with the specific intent permanently to
7 deprive that person of the property is guilty of crime of
8 robbery in violation of Penal Code Section 211. The words
9 "takes" or "taking" require proof, one, taking possession of the
10 personal property, and, two, carrying it away for some distance
11 slight or otherwise. Immediate presence means an area within
12 the alleged victim's reach, observation, or control so that he
13 or she could, if not overcome by violence or prevented by fear,
14 retained possession of the subject property.

15 Against the will means without consent. In order to prove
16 this crime each of the following elements must be proved:

17 One, a person had possession of property of some value
18 however slight; two, the property was taken from that person or
19 from his immediate presence; three, the property was taken
20 against the will of that person; four, the taking was
21 accomplished either by force or fear; and five, the property was
22 taken with the specific intent permanently to deprive that
23 person of that property.

24 The commission of the crime of robbery is not confined to
25 a fixed place or a limited period of time and continues so long
26 as the stolen property is being carried away to a place of
27 temporary safety.

28 The element of fear in the crime of robbery may be either,
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1 one, the fear of an unlawful injury to the person or property of
2 the person robbed or to any of his relatives or family members
3 or two, the fear of an immediate and unlawful injury to the
4 person or property of anyone in the company of the person robbed
5 at the time of the robbery. That's my fault. I was leaning
6 against -- we're getting feedback.

7 There are two degrees of robbery. If you find the
8 defendant guilty of the crime of robbery, I instruct you that it
9 is robbery in the second degree as a matter of law.

10 The defendant is accused in Count Six of having violated
11 Section 10851 of the Vehicle Code, a crime. Every person who
12 drives or takes a vehicle not his own without the consent of the
13 owner and with the specific intent to deprive the owner either
14 permanently or temporarily of his title to or possession of the
15 vehicle is guilty of a violation of Vehicle Code Section 10851,
16 a crime.

17 In order prove this crime each of the following elements
18 must be proved:

19 One, a person took or drove a vehicle belonging to another
20 person; the person had not consented to the taking or driving of
21 his vehicle; and when the person took or drove the vehicle, he
22 had the specific intent to deprive the owner either permanently
23 or temporarily of his title to or possession of the vehicle.

24 If you find that a defendant was in conscious possession
25 of recently stolen extorted property, the fact of that
26 possession itself -- excuse me, the fact of that possession is
27 not by itself sufficient to permit an inference that the
28 defendant, Shawn Michael Rodriguez, is guilty of the crime of

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1 robbery, unlawful taking or driving of a motor vehicle, or using
2 another's name to obtain property or credit. Before guilt may
3 be inferred, there must be corroborating evidence tending to
4 prove defendant's guilt. However, this corroborating evidence
5 need only be slight and need not by itself be sufficient to
6 warrant an inference of guilt.

7 As corroboration, you may consider the attributes of
8 possession -- time, place, and manner, that the defendant had an
9 opportunity to commit the crime charged, the defendant's
10 conduct, his false or contradictory statements, if any, and
11 other statements he may have made with reference to the
12 property, a false account of how he acquired possession of the
13 stolen property, and any other evidence which tends to connect
14 the defendant with the crime charged.

15 The defendant is accused in Count Seven and Eight of
16 having violated Section 530.5 of the Penal Code, a crime. Every
17 person who willfully obtains personal identifying information of
18 another person without the authorization of that person and uses
19 that information for any unlawful purpose, including to obtain
20 or attempt to obtain credit, goods, service, or medical
21 information in the name of the other person without the consent
22 of that person is guilty of a violation of Penal Code Section
23 530.5 a crime.

24 The phrase "personal identifying information" means the
25 name, address, telephone number, driver's license number, social
26 security number, place of employment, employee identification
27 number, mother's maiden name, demand deposit account number,
28 savings account number, or credit card number of an individual

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1 person.

2 In order to prove this crime each of the following
3 elements must be proved:

4 A person willfully obtained personal identifying
5 information of another person; two, the person obtaining the
6 information did so without the authorization of the other
7 person, and three, the person used that information for any
8 unlawful purpose, including the obtaining or attempted obtaining
9 of credit, goods, service, or medical information in the name of
10 the other person without the consent of that person.

11 Each count other than Counts One and Four charges a
12 distinct crime. You must decide each count except for Count One
13 and Four separately. The defendant may be found guilty or not
14 guilty of Count Two, Three, Five, Six, Seven and Eight charged
15 in the information. Your finding as to each count must be
16 stated in a separate verdict.

17 The defendant is accused in Count One of having committed
18 the crime of kidnapping for extortion and in Count Four of
19 having committed the crime of robbery and in Count Five of
20 having committed the crime of false imprisonment by violence.
21 The charges of robbery and false imprisonment by violence are
22 made in the alternative to the crime of kidnapping for extortion
23 and in effect allege that the defendant committed an act or acts
24 which constitutes either the crime of kidnapping for extortion
25 or the crimes of robbery and/or false imprisonment by violence.

26 If you find that the defendant committed an act or acts
27 constituting one of the charged crimes, you must then determine
28 which of the crimes so charged was thereby committed. In order

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1 to find the defendant guilty, you must all agree as to the
2 particular crime committed. And if you find the defendant
3 guilty of kidnapping for extortion, you must find him not guilty
4 of the other crimes. And if you find him guilty of false
5 imprisonment and/or robbery, you must find him not guilty of
6 kidnapping for extortion.

7 If you are not satisfied beyond a reasonable doubt that
8 the defendant is guilty of the crime charged, you may
9 nevertheless convict him of any lesser crime, if you are
10 convinced beyond a reasonable doubt that the defendant is guilty
11 of the lesser crime. The crime of robbery as charged in Count
12 Four, the crime of false imprisonment by violence as charged in
13 Count Five of the information, and the lesser-included crime of
14 extortion are lesser to that of kidnapping for extortion charged
15 in Count One of the information. Thus, you are to determine
16 whether the defendant is guilty or not guilty of the crimes
17 charged in Count One, Four, and Five and the lesser-included
18 crime of extortion.

19 In doing so, you have discretion to choose the order in
20 which you evaluate each crime and consider the evidence
21 pertaining to it. You may find it productive to consider and
22 reach a tentative conclusion on all charges and lesser crimes
23 before reaching any final verdicts. However, the Court cannot
24 accept a guilty verdict on Count Four, Five and the lesser crime
25 of extortion unless you have unanimously found the defendant not
26 guilty of Count One, kidnapping for extortion.

27 I have not intended by anything I have said or done or by
28 any questions that I may have asked or by any ruling I may have

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1 made to intimate or suggest what you should find to be the facts
2 or that I believe or disbelieve any witness. If anything I have
3 done or said has seemed to so indicate, you will disregard it
4 and form your own conclusion. The purpose of the Court's
5 instructions is to provide you with the applicable law so that
6 you may arrive at a just and lawful verdict. Whether some
7 instructions apply will depend upon what you find to be the
8 facts. Disregard any instruction which applies to facts
9 determined by you not to exist. Do not conclude that because an
10 instruction has been given, I'm expressing an opinion as to the
11 facts.

12 Now, that concludes the instructions that I will be giving
13 you before counsel does their closing argument, and then after
14 they finish their closing arguments, we'll have some brief final
15 instructions. I think my court reporter is probably desperately
16 in need of a break so we're going to take a 15-minute recess,
17 and then we'll resume with closing argument and we'll see you
18 back here about 10 till -- 5 till, sorry.

19 (Recess taken at 9:43 a.m. Reconvened at
20 10 a.m.)

21 THE COURT: All right. We're back on the record. Counsel
22 and parties are present. The jury is present. Counsel, are you
23 ready to proceed?

24 MR. MARCHI: Thank you, your Honor. Ladies and gentlemen,
25 this is now the final argument in the case. I go initially.
26 Then counsel has a chance to address you, and then I have one
27 final opportunity. You only get a few brief instructions at the
28 end. You got most of the instructions read to you. I'm sure

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1 you're thankful for that. You will have a copy to take into the
2 jury room with you. You won't have to worry about taking notes.

3 Basically the purpose of a final argument is basically
4 each side gets a chance to review with you the evidence and what
5 inferences to draw, who may be telling the truth, who may not be
6 under what circumstances, and each side is going to do the best
7 they can to try to be accurate; however, you must rely on your
8 own notes and you need to compare your notes when you're in the
9 jury room and hopefully, you can compare notes and not have any
10 real factual issues. If you get to the point where you can't
11 resolve that, then we have a court reporter who does come in and
12 can do rereads for you in selective areas; and, of course, it is
13 hoped you don't have to do that too often because it is kind of
14 a large process for her. She has to hunt through all of her
15 notes and has to isolate what you want and come in there. If
16 you need it, she can do it and she'll be available.

17 We'll also have available for you a television set, VCR so
18 you can re-watch the tape, and I'll be urging you to re-watch
19 the whole tape. As I'm going through the matters here today,
20 I'm not going to play the whole tape for you again. I am going
21 to play a few excerpts for you and, obviously, you need to look
22 at the whole tape in the context everything has been in. And,
23 frankly, if you look at the tape more than once, you probably
24 will need to at least look at it at least one more time and
25 perhaps other areas more than one time. When you do that, you
26 start to see things you may have missed the first time.

27 Now, let's review here, and I'm going to try and stay out
28 of your way as much as I can, and we have the screen here at an

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1 angle. What I'm going to do at this point is review with you,
2 again, basically the charges and kind of how they're grouped.
3 The Court told you a little bit about it. First of all, Count
4 One is the kidnapping for extortion. And as the Court told you,
5 that's the main count in Count One, and there are some
6 alternatives connected with it. Number one, Count Four,
7 robbery. And then Count Five, the false imprisonment, and then
8 another matter that is not charged. It is called in the law, a
9 lesser included. That is actual extortion. Actually, your
10 verdicts are going to be segregated in that fashion. Count One
11 followed by in the alternative robbery, false imprisonment and
12 extortion.

13 If you find guilt as to Count One, you need not consider
14 the other three. You have to vote, basically, not guilty on
15 those. And so you'll get them grouped in that manner. Also if
16 you find guilt as to Count One, there's the enhancement to Count
17 One, the substantial likelihood of death, and we'll talk about
18 that more and what that means. There's a special instruction
19 that she read you.

20 Count Two, this is the other crime against the person,
21 conspiracy to commit murder with the overt acts. And then you
22 have Count Three, a related but actually somewhat different
23 offense, and we'll be discussing how that relates. Enhancement,
24 if you find guilt on Count Three is whether or not the murder,
25 the attempted murder was willful, premeditated, and deliberate.

26 Finally, you have Count Six, the unlawful taking of a
27 vehicle. And then Count Seven or Eight, which are basically the
28 same count but the different occurrence, that two uses of the

1 ATM card for \$40 each. And those are the counts that you're
2 going to have to consider.

3 Basically in regard to that, what you're going to need to
4 apply, of course, is the burden of proof, and it is only as to
5 the elements. And again, reasonable doubt is it is not a mere
6 possible doubt. Anything is subject to any possibility. It is
7 not imaginary doubt. So you'll be listening to Mr. Rodriguez's
8 tape. And you're not to use your imagination. You're to work
9 with the tape and not try and imagine or create possibilities.
10 The tape has a couple of problems in it, however, from the
11 context you will see when you listen to the whole tape that
12 nothing was omitted that has anything to do with this crime.

13 Detective Coe also testified that there was never any
14 indication by the defendant that he wasn't there, that he didn't
15 ask the victim for the ATM and the cash. He never said he
16 didn't know any of these parties. He never said he didn't help
17 put the bookcase in front. He never said that he didn't connect
18 up the hose. You heard a little bit of different variations in
19 court when he took the stand. We'll talk about that in a
20 minute.

21 And so basically when you look at that whole tape, work
22 with the tape and you will see from the context that nothing
23 that relates to any of the elements is missing, and again, the
24 burden of proof is only as to the elements. It is that state of
25 the case after comparison and consideration of all the evidence,
26 that means, Mr. Hamman, the tape from Mr. Rodriguez, the
27 physical evidence, everything.

28 All right. Now, I bring this to your attention early on

1 and it does relate to Count One, and it talks about no need to
2 actually extort. And it kind of relates a little bit to a lot
3 of questions you heard about whether the keys were slipped under
4 the door or not when Mr. Hamman was confined. And this
5 instruction indicates where a person is charged with a crime of
6 kidnapping for the purpose of extortion, that's Count One, it is
7 not necessary to establish that this purpose is accomplished.
8 The crime is complete if the kidnapping is done for that
9 purpose.

10 What that means is you don't actually have to get the
11 property from the person. You do have to demand the property.
12 You see that some property was obtained, the ATM card and the
13 cash and yes, there is a controversy over whether or not he
14 passed the keys underneath the door; but you know what? You
15 don't actually have to get any of that property. All you have
16 to do is demand it, so the extortion may need not be completed;
17 however, in this case, it was, at least as to the ATM card and
18 the cash and the PIN number, actually.

19 Before we get to that, let me just also indicate to you
20 this burden of proof is only as to the elements as we've
21 discussed not to these extraneous matters, whether or not keys
22 passed or not is irrelevant. Also as you apply that burden of
23 proof we talked early on and you all promised early on that you
24 would follow the law and give this victim, even though he has
25 four prior felony convictions, the same consideration as you
26 would any other, and that means looking at all the evidence
27 before you. You know, the burden is not higher or lower because
28 you have a famous person as a victim. It is not higher or lower

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1 because Mr. Hamman is the victim. I might add, you know,
2 there's no license to kill or attempt to kill a four-time felon.
3 Not in this country, so everyone is entitled to the same fair
4 shake.

5 You can consider his conviction on whether or not you
6 think they impeach his credibility. You will see as to at least
7 the elements that are important, maybe not the keys, but all the
8 important elements, he is corroborated by all the evidence and
9 really the defendant himself.

10 Now, I'm going to suggest to you a way, and you can
11 consider all the charges in any order you want. I'm going to
12 consider -- I'm going to suggest to you a way that may make it a
13 little easier for you. Things that maybe aren't quite in as
14 much controversy, you can consider first. First of all, the
15 10851, the unlawful taking of a vehicle, that is actually Count
16 Six. And the elements are that the defendant drove, took or
17 drove the victim's vehicle, that the victim did not consent to
18 the taking or driving of the vehicle, and that the defendant had
19 the specific intent to deprive either permanently or temporarily
20 title or possession of the vehicle.

21 Well, you've heard that the defendant, in fact, told you
22 himself he took the vehicle, that he told you himself he didn't
23 have permission. You know that Officer Hopping stopped him in
24 the vehicle. Of course, his vehicle. There it is. It is quite
25 bright and distinctive, so the officer saw that vehicle when he
26 went back to the Shell Station on March 17th in the early
27 morning hours around 3:00 in the morning, made the vehicle stop,
28 behind the wheel is the defendant. He was driving the vehicle.

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1 He had temporarily, at least, deprived the victim of the
2 vehicle. He had no permission, and he so admits, so we'll be
3 asking you for your guilty verdict as to that count, and there
4 doesn't seem to be a lot of controversy about that.

5 Okay. That brings us to the next one, and that's Count
6 Seven and Eight, which has to do with the use of the personal ID
7 information. There may be a little more issues for you here,
8 but really this is also fairly clear. You know from the case
9 both Mr. Hamman and the defendant tell you that finally he did
10 give up his ATM card, his PIN number. You also know that it was
11 used. We have Exhibit 68, which I'm going to need to grab from
12 the clerk here. We'll get to that in a minute. Exhibit 68 are
13 the slips, one of which was found on the defendant where there
14 was a check done on the ATM card. The other two were the actual
15 \$40 uses that Mr. Rodriguez said Ms. Rugg did. He admits he
16 drove her there. He admits that he knew she was going to use
17 the card. And whether he admitted that or not, he tried not to
18 admit it, he was going to benefit from it and did actually when
19 they -- when they filled up the car with gas. And again, in 68
20 are the different slips and that's card number 2013. You will
21 actually have the card -- I'm not going to show you -- and the
22 last four digits match. The one for the actual checking on the
23 account was found for Mr. Rodriguez. The other two are the two
24 different transactions in Rocklin referred to again. The same
25 account number for \$40 each. And the day of 3/16/03 is on each
26 of these slips, and also the time is recorded and it is just
27 before 4 a.m., so that would be the 15th was a Saturday, so this
28 would be the early morning hours of Sunday afternoon. They --

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1 after the they got the card from Mr. Hamman and both slips are
2 similarly dated, same date and time on them. They were
3 apparently used one right after the other. Apparently at the
4 same machine.

5 In addition, in Exhibit 68, what you will find is the
6 Albertsons receipt for the duct tape and that applies later on
7 to the conspiracy to commit murder and the attempted murder.
8 That was also found on the defendant as testified to by the
9 officers.

10 So the elements here are that the defendant obtained
11 personal identifying information and that he did so without the
12 authorization of the victim, and he did so, he used the
13 information for the unlawful purpose. Namely, he was able to
14 use the ATM check card to get money out of the victim's account
15 or at least Ms. Rugg did.

16 Now, remember the Court read to you the instructions about
17 principal and aider and abettor and when there's two People
18 involved in crimes often each does the crime if they know what
19 the purpose is and help in any way, they're just as guilty. And
20 this is kind of an example here. It comes up in some of the
21 rest of the case as well.

22 But here what you have, it indicates under principal,
23 persons who are involved in committing or attempting to commit a
24 crime are referred to principals in that crime. Each principal,
25 regardless of the extent or manner of participation, is equally
26 guilty. Principals include those who directly or actively
27 commit or attempt to commit the act constituting the crime and
28 in part, the defendant did part of that. He's the one that got
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1 the ATM or the PIN number given up by the defendant by his own
2 admission and by the statements of Mr. Hamman; and in addition,
3 he also drove Ms. Rugg to the Rocklin areas to use the card
4 knowing what she was going to do.

5 And then finally the second one, those who aid and abet in
6 the commission or who aid and abet the commission or attempted
7 commission of the crime. So basically they're both involved
8 helping each other using the ATM card. First they get the PIN.
9 Then they get the card. Then they go down to use it shortly
10 after getting it.

11 And aiding and abetting defined talks about, okay, if you
12 know what the purpose of what your partner is and you help them
13 in any way, you're just as guilty. That's called aiding and
14 abetting, and that's kind of what you have going here. Each,
15 two persons, Anna Rugg and Mr. Rodriguez, each did part of the
16 crime together knowing what the overall purpose is. They're
17 both principals, and they're both equally guilty. And so again,
18 he's guilty of both Counts Seven and Count Eight since the card
19 was used twice.

20 All right. Now, that brings us to kidnapping for
21 extortion. As I indicated, this is just a suggested way of your
22 considering the charges. You can do it in any order that you
23 want. And with regard to Count One, you are kind of looking at
24 all those as a group. Count One, if you find guilt, then you
25 are required to find not guilty on Count Four, the 211, not
26 guilty on the false imprisonment by force, 236, and same thing
27 with the lesser extortion. Those you do need to consider as a
28 general group. You can consider them in any order that you

1 want. And the suggestion here is that really you never get past
2 Count One, and there's a number of ways to find guilt under
3 Count One, and I'll go into that in a minute.

4 First of all, what are the elements? The victim must be
5 confined. This case, he's confined in a holding cell. You
6 can't get any more confined than that. The confining was done
7 with the specific intent to commit extortion. Now, remember,
8 you don't have to actually commit the extortion. You just have
9 to intend to do so. And then if you find guilt on Count One,
10 then separately in a separate verdict you have to consider the
11 enhancement, whether or not that confinement exposed Mr. Hamman
12 to a substantial likelihood of death, and we'll be talking about
13 that in a minute. And he was in there for 40 hours under
14 various conditions, we'll be talking about.

15 Now, I said there was a few different ways -- well, before
16 we get there, in kidnapping for extortion, there's no need to
17 move the victim, so you can trick them in there. You can
18 actually find them in there, maybe if they accidentally locked
19 themselves in, and then you try to extort and you continue to
20 detain, that's just as good.

21 And the property itself, it doesn't -- normally you think
22 of extortion, you think of maybe he's trying to get at some
23 third person. That's one way to do it, but you can actually get
24 the property from the person confined himself, that being
25 Mr. Hamman in this case. Right now, as I indicated there's
26 actually three ways to get to Count One, a guilty verdict. One
27 is that Mr. Rodriguez and Ms. Rugg had a plan prior to going to
28 the hall to confine the victim by enticing or decoying him into

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1 the holding cell with the intent to extort him.

2 Now, we'll be discussing that aspect, which those facts
3 are there, and that has to do with Mr. Hamman's description of
4 how things occurred. And to a certain extent Mr. Rodriguez's
5 own admissions in there when he refers back to the Elmwood,
6 there's some argument as to what he was really referring to "the
7 conversation."

8 As it turns out, it really doesn't matter in that regard
9 because the second way to do it is that Mr. Rodriguez and
10 Ms. Rugg, after the victim was confined, formulated a plan to
11 extort him while the victim continues to be held or detained in
12 the cell. And you certainly -- well, you know, he's in there 40
13 hours and as you might recall, there is testimony regarding
14 three of the parties; Rugg, Rodriguez, and Hughes leaving.

15 And the only two returning parties were Rodriguez and
16 Rugg, and Mr. Rodriguez, as you will see in the tape, indicates
17 that they have a plan at least by the time they come back, and
18 that plan is to get the PIN, the ATM, and the cash, and what
19 happens? Do they let him out of the cell before they do that?
20 No, they don't. They continue to detain. They continue to
21 hold. That is another way to get there, just as good.

22 And finally number three, another way to get there is that
23 Mr. Rodriguez aided and abetted; in other words, helped somehow
24 Ms. Rugg, and it was only Ms. Rugg that wanted to get the ATM
25 card, which is what he tries to tell you. When you look at all
26 the evidence, that's not what happened here. They were both
27 going to share in the proceeds. But even if you assume that as
28 long as he knows what her plan is, and he indicates there's a

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1 plan on the tape, that's the third way you get there. It is --
2 two or three is somewhat related with the small refining.

3 What does it mean, you might be asking yourself, to
4 extort? Okay. First of all, the defendant has to obtain
5 property from the victim. Property must be obtained with the
6 consent of the victim. We're going to talk about that again for
7 a minute. Consent is kind of a strange definition for this
8 crime. Coerced consent works just as good, the lesser of two
9 evil counts. And that the consent was induced by wrongful use
10 of force and fear, and you're going to see, you not only have
11 the confinement, but then you have, it's basically enhanced with
12 the water, and that the defendant did so with the specific
13 intent to induce Mr. Hamman to consent to giving up the
14 property.

15 And, of course, you really see that working when
16 Mr. Hamman only gives up the PIN, and then later after they put
17 the bookcase in and the water fills up, he gives up the ATM card
18 and the cash.

19 All right. Now, again, let's go over what is consent and
20 extortion. Okay. The meaning is coerced and unwilling consent
21 compelled by use of force or fear and, for example, if you give
22 money or property as a lesser of two unpleasant alternatives,
23 believe it or not, that's consent. Mr. Hamman is faced with the
24 prospect of the water filling up. Actually, he was faced with
25 the prospect of being detained. When he gave up the PIN, that
26 right there is enough, and again, all you have to have is the
27 demand. You don't have to have the actual giving up of the
28 property, as we discussed earlier, so once they demand the PIN,

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1 that's -- the crime is complete. And once Mr. Rodriguez further
2 puts the bookcase with Ms. Rugg and the water fills up and they
3 demand the ATM and the money, again, it is just a demand.
4 That's sufficient. The crime is committed, but you actually see
5 that the property is given over, so the extortion is actually
6 complete.

7 And that, believe it or not, is consent because his
8 unpleasant alternative was to stay in there in the holding cell
9 and drown. They promised to try to get him out initially with
10 the PIN but by hitting on the Plexiglas and later they promised
11 to call the police.

12 And part of this is, you know, the victim may silently
13 protest the circumstances and maybe not silently, he may not be
14 happy about it, but it is the lesser of the two evils.

15 And again, we have this word "consent" is obtained from
16 the victim because he's threatened with further injury or at
17 least staying in the circumstance with the water filling up if
18 he doesn't give the property up.

19 Okay. Now, why isn't this a robbery? Robbery, the giving
20 up of the property, has to be against the will, and that means
21 no consent, whether it is coerced or otherwise. There is no
22 lesser of two evils in robbery. You got one evil and the
23 typical way is that person is -- the suspect is pointing a gun
24 or knife on someone and demands property. And a person gives it
25 over, and there's no promise to do anything. You hope they
26 leave, but you don't know. And it is a little more direct than
27 this.

28 You can see when you review the tape, the defendant really
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1 didn't want to go in and confront Mr. Hamman at any time, and it
2 appears Ms. Rugg didn't either. She kept wanting Mr. Rodriguez
3 to go in first.

4 Now, what evidence do we actually have supporting this
5 kidnapping for extortion? And we're going to break this down
6 into kind of two areas. One is what Mr. Hamman, himself, tells
7 you, and you're going to find that most of the things he says
8 are, in fact, what happened except the keys, which doesn't
9 matter. As you might remember, he indicated he was flagged down
10 at 9:30 a.m. at the gas station, agreed to give them a ride to
11 the hall, does so, and ends up parking just outside in the
12 picture here on this exhibit. This is the front of the hall, as
13 you might recall the testimony.

14 He does help put the different bags out and helps them
15 unpack while Mr. Rodriguez disappears, apparently behind the
16 building, and you might recall Mr. Hamman indicates he's putting
17 the bags here kind of in the front of this picture. This is the
18 staff door that unlocks inside with this little latch that just
19 flips.

20 As you might recall, Mr. Hamman indicated after he's
21 pretty much done unloading, that's when Ms. Rugg came out.
22 Ms. Rugg was claiming Erin Hughes, who was pregnant, had injured
23 herself inside. He became concerned. Ms. Rugg then said
24 basically to come help and he follows her. He follows her on an
25 unusual path. This is Exhibit 1 here. Here's the staff door.
26 And as you might recall, Mr. Hamman remembers going in through
27 this open door here, turning to the left, going past this area
28 to another open door here, again turning left to this area over

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1 here, and again turning left to another open door which gets you
2 right into the booking area. This is the holding cell, and this
3 is kind of the holding cell door. It is a little bit short on
4 the diagram, but it is kind of at a 45-degree angle.

5 And remember, both Detective Dale Hutchins and Detective
6 Coe indicated that they walked this route that day just going
7 through the premises, and all the doors were open and unlocked.
8 Yes, no one asked him about it until weeks, months later. You
9 know, he still remembered it. And he had no reason to make
10 anything up about that. He's not -- you know, he didn't make up
11 anything about seeing anyone put the hose in the vent above the
12 cell door. You know, if he was going to make something up,
13 you'd think he'd make something up there. He didn't. This is
14 what he remembers.

15 Now, as he gets around the area in question, remember, we
16 have the cell door here. And Mr. Hamman describes Ms. Rugg as
17 positioning herself -- this is about the way the door was. It
18 was partially opened. Of course, there was no duct tape on it
19 at the time, and that Ms. Rugg had stationed herself immediately
20 against the left side here of the door, and you saw her.

21 You might wonder why she was brought in here so many
22 times. For one thing, you need to see what she looked like, and
23 she's not a tall person. She's not particularly an athletic
24 shape. She is wide enough to obscure the view a little bit and,
25 quite frankly, she's not going to be dealing with Mr. Hamman all
26 by herself.

27 But she stationed herself to the left here, pointed that
28 out as the area in which Erin Hughes had hurt himself. He

1 starts in, and the defendant comes out of -- came in somewhere.
2 Yes, he could have been behind the counter. He could have been
3 behind the doorway, and he could have been anywhere in the
4 general area. He appears and strikes the victim, and Mr. Hamman
5 indicates it is a kick to his right leg. And this is the
6 same -- this was taken actually basically either the day or the
7 day after the actual events, and he showed the bruise on his
8 leg.

9 Okay. So he's locked down in there. According to
10 Mr. Hamman, both Ms. Rugg and Mr. Rodriguez participated in some
11 way. He describes Mr. Rodriguez only doing the kick, and
12 Ms. Rugg pushing the door closed. He was able to kind of keep
13 it open before that happened. And at this point there's no
14 water going or anything like that, and he wanted to get out. He
15 has a conversation with Ms. Rugg about it, and she's not going
16 to let him out.

17 At some point they disappear and, you know, he's not
18 really good on times. And if you're in a cell like that for 40
19 hours, you probably wouldn't expect him to be. They do -- he
20 does realize they do return and when they return, what do they
21 try and do? Extort property from him. Again, you will see on
22 the tape that the defendant says by then, at least, they had a
23 plan, if not at the Elmwood. And the plan was to get his PIN,
24 his ATM card, and his cash. And again, once the demand is made
25 for this, the crime is complete. No need to actually get any
26 property.

27 But they got kind of a bonus; when they came back, both
28 Mr. Rugg and Ms. Rodriguez, (sic) both weren't very good

1 conditions for Mr. Hamman, that is, he set the sprinkler off
2 thinking help would arrive and, of course, he didn't know, but
3 it was no longer connected up to the fire department so nobody
4 did arrive. As a result of that, he was getting pretty well
5 soaked in there. So at first the demand is made for his PIN,
6 his cash, and his ATM card, and he's kind of stubborn. He only
7 gives up his PIN initially, and he is still getting soaked in
8 there.

9 So all of a sudden, both Mr. Rugg and Ms. Rodriguez (sic)
10 start putting the bookcase and the towels underneath the door,
11 up against the wall, and the paint cans in the bookcase starts
12 the water to fill up. Now, actually once he gives up the PIN,
13 that's an extortion all by itself. It is considered property
14 even though it is just a personal identification number; and
15 again, as we said, there's no need actually to get this property
16 but they did.

17 And so basically they kind of up the ante here at this
18 point. They put the bookcase up there because they want the
19 rest of the stuff, and that really tells you that they did have
20 a plan, at least by the time they came back, if not at the
21 Elmwood, but at least at the time they came back to make sure he
22 gave up the property, and he's continuing to be detained and
23 held. When they left him and when they came back the second
24 time, well, we're not sure they had a plan back at the Elmwood
25 or not. They came back and let him out, didn't continue to
26 detain him. That's not what happened. They continue to hold
27 and detain him a lot of hours, even after they get the property
28 out.

1 Finally they wear Mr. Hamman down. Mr. Hamman says the
2 water is finally up here to his shoulder. The defendant
3 describes on the tape the water going to 3 foot high, and then
4 he further qualifies it in court claiming that only the
5 defendant told him that. Well, when you hear the tape, he's
6 awfully certain it is 3 feet high. He doesn't say anybody told
7 him that. We don't know exactly what time it was when that
8 happened. But, you know, your eyes do adjust, even if it is not
9 that bright out; and he at least indicated to the officers that
10 that's what he saw. And, you know, in reality, it doesn't
11 matter. Again, it is one of those doesn't matters because you
12 don't have to -- an element of the crime is not how high the
13 water got. The crime is complete once they demand the property,
14 but we see they actually get the property however high the water
15 got.

16 So finally the agreement was made that this is after he
17 gave up the PIN, and they hit the door or the Plexiglas window,
18 and it didn't break. They put the bookcase up, the water fills
19 up. Mr. Hamman decides, Well, okay. I will go ahead and give
20 you what you want if you let the water out and get me some help.
21 So they do finally pull the bookcase away, the towels. The
22 water goes down to 3 or 4 inches. He is able to slide the ATM
23 card and the cash underneath the door, and, he thinks, the other
24 set of keys. It doesn't matter. And they, in fact, complete
25 the extortion.

26 At that point they promise to get a hold of the police and
27 get him out which, as we see, never happens. At least it
28 doesn't matter if they actually went right away and went to the

1 police to get him out, the crime would still be complete. It
2 wouldn't have relieved them of the responsibility. Again, it is
3 actually complete when they demand the property, not when they
4 get the property.

5 All right. So that's what comes from the victim, but
6 there's more. You really have the tape of Mr. Rodriguez that
7 tells you all these same things, corroborates most of the things
8 except for the exact level of the water and the keys. And there
9 also is some physical evidence we'll discuss as it may relate.

10 Now, what tells you here about what Mr. Rodriguez had to
11 say and whether or not there was a plan. Well, there is the
12 tape, and I will play excerpts from the tape later because to
13 play the whole tape would take a long time. You really need to
14 look at the whole tape so you can see the exact context of
15 everything.

16 I'm not going to play it now, but there are certain areas
17 that apply. I'm going to read off here some tape times and
18 remember the tape time is offered because it wasn't really set
19 to the exact time. And these times may be helpful for you when
20 you review it later. And the first one that is involved is tape
21 time 7:57, from -- to 7:58:26. And that's where Mr. Rodriguez
22 admits to hitting the victim and helped putting him in the cell.
23 Of course, he gives the story about the inappropriate touching,
24 which he later admits is false, the inappropriate touching of
25 Ms. Rugg, and he rushed up and hit him. He almost got locked
26 into the cell himself.

27 Now, really, that is an admission on his part that he was
28 involved directly as Mr. Hamman said in striking him in some way

1 to lock him up.

2 You're going to have another taped excerpt 8:04 to 8:44.
3 And in that one, again, there's an admission by the defendant of
4 hitting the victim and not wanting to let him out. Then you're
5 going to go to tape time 8:09:26 to 8:10:04. That has to do
6 with Ms. Rugg and Mr. Rodriguez leaving the area after the
7 Victim Hamman has been locked in there, and then he tells the
8 police, this kind of comes out of nowhere because, obviously,
9 Mr. Hamman didn't know what was going on outside, so he didn't
10 tell the detectives about it. But the defendant says, Well,
11 yeah. He shooed away the homeless, pretends he was some type of
12 official and told them they couldn't be around the grounds.

13 Now, what that tells you is really, they really did have a
14 plan before they got there from the Elmwood. Again, it doesn't
15 matter, but they did because why else would you shoo away the
16 homeless if in reality Ms. Rugg had been inappropriately
17 touched, and he'd only been detained for a little while? All
18 three of them could have said, Well, he touched her. We were
19 just trying to protect her. What criminal liability would they
20 have at that point unless they really had the intent to come
21 back and extort property? And it is circumstantial evidence,
22 but it is strong circumstantial evidence if the homeless found
23 them in there and candidly, they had their story, although
24 untrue, but three against one.

25 Okay. That brings you to another tape time 8:16:20 to
26 8:18:17, and again, the defendant was concerned about letting
27 him out and he actually says the words, You know, that the
28 defendant, if he got out, if they let him out would say that

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1 Shawn Rodriguez and Anna Rugg put him in there. Well, now, why
2 would he say that unless he actually did assist in putting him
3 in there just like Mr. Hamman said? And you heard the defendant
4 said, "Well, guilt by association." Well, you know what,
5 Mr. Hamman never said Anna Rugg (sic) put him in there. In
6 fact, he said he heard her say, "Let him out. You guys need to
7 let him out." But, in fact, this is another admission kind of
8 slipped here a little bit, and that is an admission that he also
9 helped put him in there.

10 Then again you have tape time 8:23:17 to 8:23:42 where he
11 actually says on there, this was actually page 11 of the
12 transcript which you don't have anymore, but they admitted, he
13 admitted that they had preplanned it the night before or --
14 well, the night before was the Elmwood. And he talked about
15 yeah, you know, Anna wanted to rob him, and I'd tag along.
16 Well, you know, if you know what the other guy is doing and you
17 tag along to assist him, again, that aider and abettor is
18 guilty.

19 And again, he says rob. Now, rob is kind of a misnomer.
20 A lot of people say, hey, my house was robbed and when you talk
21 to them, that's really not a legal definition of robbery. What
22 they're talking about is somebody broke into their house and
23 they weren't home and that's a burglary. Now, if you are home
24 and somebody comes in and robs you personally, you're there,
25 they take it from your immediate presence, yeah, that's a
26 residential robbery. People use it as slang. Yeah, we're going
27 to rob.

28 They were clearly referring to it at the end of the tape.

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1 They were going to shake him down. They were going to get his
2 property from him, and they had talked about it at the Elmwood
3 and this again tells you that.

4 And then you get to tape time 8:26:14 to 8:26:30, and this
5 one kind of leaves no doubt here. This, again, would have been
6 your page 11 of the transcript, and he does make the statement,
7 "We came back. The plan was to have him slide the ATM card and
8 cash and give us the PIN. You know, that is exactly what
9 happened as Mr. Hamman indicated, and he continued to be held
10 and he continued to be detained when they asked for his
11 property. He's guilty by his own admission.

12 That gets you to tape time 8:36:16 to 8:33:04. There he
13 makes an admission that he should have let him out. And he also
14 admits, we did put him in there and now it is attempted murder
15 with the water going. Well, at that point he'd been in there a
16 few hours, and you might think, well, maybe, we'll get to that
17 later. When you look at everything later, you'll see the intent
18 was finally after they went down to Romines' to kill him, but
19 already he's thinking he's got a problem with attempted murder.

20 Then you get down to tape time 8:55:42 to 8:56:58, and the
21 conversation, and this revolved around him being asked if you
22 had to do it over again, what would you change? And then he
23 says "the conversation." And it is clarified, if you listen to
24 all the stuff at the end there, that it is the conversation at
25 the Elmwood, and getting him over there and rolling him is what
26 is mentioned.

27 And then the detective further clarifies, Well, you could
28 have bailed out before that, couldn't you? You didn't have to

1 go all the way over there, and there was some discussion. Yeah,
2 the conversation, that's when I could have bailed out. Because
3 initially Mr. Rodriguez says, Yeah, I should have bailed out,
4 you know, when the water went on, and the detective clarified,
5 Well, you could have bailed out before that and the reference
6 was to the conversation at the Elmwood, and that's was verified
7 by the detective; however, the defendant denies that.

8 Now, what other evidence is there besides both Mr. Hamman
9 and Mr. Rodriguez himself? Well, you know what? Well, there's
10 Ms. Rugg, herself, and again, you saw her in here several times.
11 She's not a very big person. There's no way she's going to
12 confront Mr. Hamman by herself. It is clear that Mr. Rodriguez
13 is backing her up for whatever use of force is needed. It is
14 also clear when you look at this, that it is Mr. Rodriguez doing
15 all the talking when they come back. He's demanding the PIN.
16 He's demanding the ATM. He's demanding the cash also.

17 It is also Mr. Rodriguez that gets rid of the homeless
18 before -- before they come back to do that, it is Mr. Rodriguez
19 that bangs on the Plexiglas. It is Mr. Rodriguez, with the help
20 of Ms. Rugg, that put the bookcase up against it so when you
21 consider all of those things in the different ways, you can get
22 to it. There's no doubt but that he is guilty of Count One, the
23 kidnapping for extortion.

24 And again, you can either believe that the plan started at
25 the Elmwood, or you can believe the plan was when they came back
26 after the initial lockdown, and they continued to hold him.
27 Then they then formulate a plan. Either way.

28 So if you find guilt on Count One, there's no need to look

1 at robbery and false imprisonment and extortion. You
2 automatically have to vote the other way on those because they
3 are in the alternative.

4 Now, I'm just going to summarize this for you here as
5 briefly as I can here, and this is a summary of the facts from
6 the victim himself. Again, he's flagged down by the suspects.
7 It is not his idea here. Ms. Rugg is mad about Mr. Hamman
8 passing up Mr. Rodriguez. I forgot to mention that, but
9 basically you remember that testimony and actually the defendant
10 confirmed that.

11 Why would you be mad unless you didn't have a plan ahead
12 of time? He's messing up the plan accidentally because
13 Mr. Rodriguez is expected to get in there first and get in
14 position. Again, the route taken after Rugg claims that Hughes
15 was hurt. Again, the injury to the leg, this is all coming from
16 Mr. Hamman. Again, the actual extortion of the property kind of
17 confirms the plan when they actually do get the stuff. Then
18 what else do you have?

19 You have Mr. Rodriguez's statements just summarizing he
20 admits hitting the victim in the cell. He again admits hitting
21 the victim. He admits getting rid of the homeless. He admits
22 that Rodriguez and Rugg put me in here, admits he planned the
23 night before, admits the plan was to slide the ATM card under
24 along with the cash, gets the PIN, admits in another part of the
25 transcript, we did put him in there. So you look at it
26 altogether. There's no doubt that he's guilty, and you can
27 really get there all three ways.

28 The plan at the Elmwood that it was preplanned before they

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1 locked him down, the plan when they came back after he was
2 already locked down and continued to be detained, given the ATM
3 card or even if he was just going there to help Ms. Rugg, which
4 is really not believable that he wouldn't participate in the
5 benefits from the ATM card since he didn't have any money, but
6 even if you believe that, that he just assisted her, aided and
7 abetted her, did all the heavy work, that's good too.

8 Now, that brings us to the enhancement, and that's special
9 instruction number two. And what does it mean, substantial
10 likelihood of death? And it says, you may consider the
11 circumstances of the confinement for as long as the detention
12 continues even after the property is given up. So as we know,
13 of course, you don't have to give up any property, but it was
14 and he's in there for 40 hours. What does substantial
15 likelihood of death mean? That's called plain, ordinary
16 English. You just attach the dictionary definition here, and
17 you're basically looking at, was the risk increased over the
18 normal confinement? And the normal confinement will be just
19 that he's confined in the cell for a period of time until he
20 gives up the property.

21 Well, the risk was increased in a number of ways. There
22 was, of course, himself putting the water there so you can't
23 really blame them for that. However, they enhanced that with
24 the bookcase causing that to fill up. And that is a risk of
25 death when you leave somebody in those conditions with the water
26 up high if he slips and falls and becomes unconscious, that's a
27 problem.

28 However, it doesn't end there. It doesn't end once you

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1 get the property. They left him in there for 40 hours, and he's
2 all wet even after they take the water away. There's a chance
3 of hypothermia, especially if they left them in there even
4 longer. The next thing they did is they came back with the
5 gassing incident. Again, substantially increasing the risk.

6 You heard Dr. Harris indicate that even she, as a trained
7 expert, taken many chemistry, physics, biology classes, there's
8 no -- whether she could tell you whether that was a safe action
9 or not or under what circumstances how long a person might live.
10 She also went on to say it kind of depended on the physical
11 condition of the victim and commented at one point she didn't
12 think Mr. Hamman was in particularly good shape, so again, they
13 substantially increased the risk.

14 You heard the testimony that he supposedly pulled out the
15 hose. That never happened. He never says that on the tape. If
16 that happened, he would have told the detectives that. And
17 again after they did the gassing, they don't even go get him.
18 They don't get him out. They don't make an anonymous call.
19 They -- he's still in this. They take the time to run down and
20 get the hacksaw and turn the water off and leave him in there,
21 so the whole scenario of the 40 hours substantially increased
22 the risk over what was really necessary to get the property.
23 They could have just left him in there and not put the bookcase
24 up there, not done the gassing and all that. So we'll be asking
25 for your true finding as to that allegation.

26 All right. Now that brings us to this, "Help me, I'm
27 trapped." Now, that's pretty desperate. You write out a note
28 on your check ledger and you throw it underneath the door hoping

1 somebody sees it out the front door, and it was found out
2 towards the front door. It is amazing how far that thing got.
3 That shows you that this man thought he was under a substantial
4 risk of death. That's pretty desperate. And he does that and
5 he is thinking that he's going to die. And when he's found in
6 there, he's basically shivering, wet, hysterical, and you would
7 be do.

8 That brings us to the conspiracy to commit murder. Now,
9 there was a brief break in the action here. They go down to
10 Mr. Romines' house after they get the -- again, after they get
11 the ATM card and use it. And at this point, obviously, they're
12 putting him under circumstances, over 40 hours, that lean
13 towards attempted murder; but when they come back to do this,
14 this leaves no doubt that, number one, there is a conspiracy to
15 commit murder. And, number two, there is an attempt to murder
16 him.

17 And we kind of have to consider both of these sort of
18 together, but the conspiracy to commit murder, first, the
19 elements, two or more persons entered into an agreement to kill
20 unlawfully a human being. He's -- each person intended to enter
21 into such an agreement. Each person to the agreement harbored
22 express malice aforethought, which is a specific intent to kill,
23 and overt act was committed by one or more of the conspirators.

24 As the Court told you, it only has to be one overt act.
25 You don't have to get anywhere near the actual attempting to
26 kill, which would be the hooking up to the tailpipe. The other
27 three in front of that count just as well. And basically you
28 don't have to agree among yourselves which of the overt acts

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1 were committed or even which co-conspirator committed the overt
2 act.

3 You just have to all agree that one overt act was
4 committed by one of the conspirators. You can all pick
5 different ones and different people if you want as long as you
6 all agree that one of the conspirators did one of the overt
7 acts, and you're going to see they were all committed.

8 Now, where does this agreement start here, this agreement
9 between two or more persons? Remember, the testimony of
10 Mr. Romines? Now, he's the foster brother of the defendant.
11 Probably somewhat sympathetic to Mr. Rodriguez. And he tells
12 you that it was Mr. Rodriguez, himself, that got him off to one
13 side wanting to know how to kill somebody. And remember,
14 Mr. Romines had already told him because he had told him about
15 the guy in the cell, let him out of there, get him out, and you
16 see that the defendant does not heed foster brother's advice.
17 He never lets him out. It ends up being the note by Ms. Rugg.

18 Instead, he's asking how to kill somebody. And
19 Mr. Romines says, Well, there's allegations of the cement shoes.
20 Well, the defendant doesn't want to do that. He would have to
21 directly confront Mr. Hamman, which he is not willing to do.
22 But then there's that gassing, and Mr. Romines explains the CSI
23 program, how someone instead of putting the hose from the
24 exhaust into the car, they put it into some kind of cell-like
25 room, and he explains that to Mr. Rodriguez.

26 Then Mr. Rodriguez goes and gets Ms. Rugg, brings her
27 over, and has Mr. Romines specifically repeat the CSI program.
28 Well, that's the beginning of the conspiracy, at least as to

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1 Mr. Rugg and Ms. -- Ms. Rugg and Mr. Rodriguez. Mr. Romines, we
2 don't know about, he tries, claims he was just kidding. Maybe
3 he was. Maybe he wasn't. But for your purposes you do know
4 what Mr. Rodriguez and Ms. Rugg did, and what they did was to
5 follow basically Mr. Romines' recipe for murder. They went and
6 got duct tape at Albertsons, and that's the receipt you find in
7 Exhibit 68 that was found in Mr. Rodriguez's pocket. And he
8 told you he got the duct tape.

9 They then go get hoses at the DeWitt Center, they claim.
10 They got two hoses, pretty long. They're in evidence. They
11 proceed to tape around the door, the cell door, and the
12 defendant admits himself that's what he did. He also admits
13 that he puts the hose into that vent, which is also in evidence,
14 which we also have pictures of and he helps, he says, Ms. Rugg
15 connect the other end to the tailpipe.

16 All the overt acts were committed by agreement. He tries
17 to tell you, Well, I knew 15 minutes wasn't, you know, he's
18 going to be okay. No, he doesn't. He has no specialized
19 degrees to know that. You'd have to have a biochemical engineer
20 to figure that out. You'd have to do much higher math called
21 calculus to try to figure that out.

22 He had no idea and was trying to kill him. And what else
23 tells you that is the fact that he never wants to let this guy
24 out. He's going to leave him in there and lay low, which is why
25 he went back to go get the hacksaw. And again, an overt act,
26 any step or act committed, you don't even have to get close to
27 actually trying to kill him; but, obviously, by connecting the
28 hoses up to the vent and to the car, it's there.

1 Just to repeat here. Okay. He drove to Albertsons to get
2 the duct tape, which the defendant actually admitted he got.
3 They drove to DeWitt, which he claims Rugg got the garden hoses.
4 He drove to the hall, and they personally put the duct tape
5 around there. He personally attached it to one end to the cell
6 and claims he helped her with the other end and there, of
7 course, is the duct tape. And it probably has dislodged
8 somewhat when they got the victim out. And there, of course, is
9 the vent where the hose was placed and the hoses.

10 So he is guilty of conspiracy to commit murder. His story
11 that, oh, he knew that that wasn't going to happen. There's no
12 way he would be killed. No, he couldn't know that. And again,
13 Dr. Harris says it depends on the ability of the person's
14 physical shape, which Mr. Hamman wasn't good. We really don't
15 know how long they did run the gas in there. First, he says 15.
16 On the stand he says 15 to 20. You really don't know how long
17 it was run. And it really doesn't matter because they tried to
18 kill him. He never intended to let him out. He's going to make
19 sure he's good and dead in there.

20 So since the overt acts were committed with the necessary
21 intent, I'll ask for your guilty verdict as to that, which
22 brings to us the attempted murder. Now, this is a direct but
23 ineffectual act done by the defendant and Ms. Rugg towards
24 killing another human being, and the defendant must have
25 harbored express malice aforethought, which namely means
26 specific intent to kill Mr. Hamman.

27 And we see that by hooking up the hose in the way in which
28 they did. That is actually the intent that they both had. Now,

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1 put yourself in Mr. Hamman's place for just a minute. How would
2 you like to be in that cell? Of course, he doesn't even know
3 what is going on, and you're in there for at least 15, 20
4 minutes with the gas coming in. You know nobody is going to be
5 able to guarantee your safety, not even Dr. Harris. That is the
6 specific intent to kill, and it is further manifested when the
7 defendant tells you he just wants to shut that water off and
8 leave him in there, lay low. He wasn't going to report it.
9 Probably wasn't going to go to court. He was just going to
10 leave him in there to die.

11 And you know what? Even when the police let him out,
12 Officer Hopping there, he was going to give him the phony story,
13 Oh, we were just borrowing the guy's car, still wasn't going to
14 give up his whereabouts. If that doesn't tell you a specific
15 intent to kill, what does?

16 Now, we do have an issue of apparent possibility because
17 it was thought that, you know, when you put the hose in there,
18 maybe the gas didn't go in there. And that's possible; however,
19 when you look at that, that's straight in front of the wall. It
20 appears that it does. And again, we see here, this is actually
21 the inside vent, which Dale Hutchins thought was not a vent.
22 But then we see with further looking in there, shining the light
23 through, it appeared to have vented.

24 Now, we don't know 100 percent whether anyone in any way
25 modified the inside of the unit going into there, but it
26 certainly doesn't appear that they did. It didn't appear to be
27 any markings, according to Detective Coe, and again it doesn't
28 matter. It had the apparent possibility. That's good for

1 attempted murder.

2 Now, at this point I'm going to just briefly play a few
3 excerpts, and I will try to move this along as quick as I can.
4 These basically cover many of the points we've already talked
5 about, but it is important for you, again, to see this. In the
6 first one is the tape time 7:54:30 to 7:55:22, and this talks
7 about what we're going to see initially is five excerpts that
8 talk about motive.

9 Now, motive is not an element of any of these crimes. I
10 don't have to prove motive, but it is a factor that tells you
11 why he may have done some of the things here or all of the
12 things, I should say. Let me get it to work here. Well, it
13 helps to put the tape actually in, and let me try and get out of
14 the way. (Playing videotape.)

15 Let me stop you there before we get to the next one. He
16 was referring to Ms. Rugg and Ms. Hughes as two close friends of
17 his and later on, of course, he doesn't consider Ms. Rugg to be
18 his friend because apparently he finds out later she talked to
19 the police. But at any rate at that point, he describes them as
20 his friends, and that you will see in the next excerpt, he
21 doesn't like some of the things that happened to at least one of
22 his friends. (Playing videotape.)

23 And again, that's his -- this statement comes out of the
24 blue. The police apparently don't know about this. And it
25 tells you, again, a little bit about what he thinks of
26 Mr. Hamman and that he really doesn't like him.

27 (Playing videotape.)

28 And again, he was talking there about a roommate of

1 Mr. Hamman's beating up Ms. Hughes, hitting her in the stomach,
2 I believe he said. Again, this comes out of the blue. The
3 police don't know about this, but again he's associating this
4 with Mr. Hamman. He says he's a roommate to Mr. Hamman and
5 again, seems to attribute somewhat to Mr. Hamman.

6 (Playing videotape.)

7 Now, he's saying there you heard Anna -- Erin, referring
8 to Hamman apparently, and again, this is coming out of nowhere
9 about how he feels about the situation with Mr. Hamman.

10 (Playing videotape.)

11 And again, there he's talking about going back and how a
12 special person that she was.

13 (Playing videotape.)

14 Okay. Stop it right there. The first five or so were
15 having to do with motive, that he really had reasons not to like
16 Mr. Hamman. This first one here again talks about where he
17 describes initially the phony part of the story about
18 inappropriate touching on Anna in the cell. And he actually
19 described him as you heard him coming up hitting the victim,
20 almost getting trapped in the cell himself, and they get out of
21 there, so actually he does make an admission that is consistent
22 with what Mr. Hamman says.

23 Now, he doesn't say he kicked him, but he does say he hit
24 him, which takes us to the next one.

25 (Playing videotape.)

26 There he gives a number of excuses to not letting him out.
27 This is kind of earlier on in the actual detention and
28 confinement of the victim, and he tells you the story about

1 getting in trouble with parole, but you learn later in the tape
2 that, in fact, he is out of parole time, and they can't really
3 do anything to him.

4 (Playing videotape.)

5 Again, this tells you again about his intent and state of
6 mind. He knows that there was a pretty good chance that this
7 guy was dead. Forty hours, connecting up the gas, the
8 hypothermia. He tries to tell you on the stand that he heard
9 officers talking. Well, no one ever went to the morgue. That
10 was a reference he talked about. Nobody talked about the
11 coroner.

12 Nobody talked to him about anything. That's another
13 made-up story to try to cover for this, and the fact that he
14 later asked whether or not the man was in a coma. He knows how
15 serious and what a real attempt both he and Ms. Rugg made on the
16 life of Mr. Hamman.

17 (Playing videotape.)

18 And again, that's the part about shooing away the homeless
19 before they came back to demand the ATM card. And again, the
20 only logical inference he wouldn't have had anything to do at
21 that point unless they were coming back for the card and the
22 PIN. (Playing videotape.)

23 Now, there he just is plain making up a story about
24 cutting the pipe, which there was no pipe over the door. He
25 later added it on the stand, and at this point when you listen
26 to the tape, he doesn't yet know that Ms. Rugg has talked.
27 That's brought up by Dale Hutchins much later in the interview,
28 and that's when he finally talks about what they really did with

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1 the duct tape and what they really did with the hoses.

2 (Playing videotape.)

3 Here you probably know when -- well, he does know that
4 they found duct tape so he's trying to create a story for
5 himself to avoid responsibility.

6 (Playing videotape.)

7 You know right at the end there you kind of hear a cold,
8 calculating nature of his voice. Cut and dry, same conclusion
9 all around. He doesn't care about Mr. Hamman at all. And you
10 notice he does say again he talks about himself in the third
11 person, but he talks about Shawn Rodriguez and Anna Rugg put me
12 in here. Again, that seems to corroborate what Mr. Hamman told
13 you. Again, Mr. Hamman did not mention that Erin Hughes put me
14 in there. There's no guilt by association had he not done
15 anything, but he did.

16 THE COURT: Counsel, we're probably at a point where we
17 should take a short break.

18 MR. MARCHI: Okay. This is a good point.

19 THE COURT: We'll take a ten-minute break, and I would
20 like you back at 11:25.

21 (Recess taken at 11:15 a.m. Reconvened at
22 11:25 a.m.)

23 THE COURT: Back in session. Jury is all present.
24 Counsel and parties are present. Go ahead.

25 MR. MARCHI: Thank you.

26 (Playing videotape.)

27 Now, there out of the blue he's asking whether or not the
28 victim is in a coma. He tries to provide you with an

1 explanation on the stand that he supposedly overheard things,
2 but he knows what they did in terms of the gassing, him and
3 Ms. Rugg; and he knows that the man was in there for 40 hours
4 under some trying circumstances. What he doesn't know is
5 whether or not the man is dead or near death, and that's why
6 he's asking about that.

7 (Playing videotape.)

8 Again, that really tells you that there was a plan the
9 night before to end up confining the victim and the route that
10 they led him around and extort out of him his ATM and cash and
11 PIN and, of course, get control of his vehicle. And certainly
12 if there wasn't that plan there, there was the plan when they
13 came back after he was initially detained. Once again, either
14 way.

15 (Playing videotape.)

16 And there is the second plan, if you need to go there.
17 And that is that when he came back, they had the plan to try to
18 slide the ATM card to get the PIN and the cash, and they were
19 surprised to find basically the water going.

20 (Playing videotape.)

21 And again, there he is telling you that he should have let
22 him out. He knows he should have let him out, and he knows by
23 continuing to detain him, it is attempted murder. And this is
24 way before the gassing happens.

25 (Playing videotape.)

26 Okay. Let me pause there. That is an excerpt that
27 actually did not come out, and that one just talked about -- and
28 this is referred to earlier about not wanting Erin Hughes to go

1 to a psychologist or psychiatrist because it might be disclosed
2 what was going on with Mr. Hamman. Again telling you that he
3 had no intent to let this guy out, and then he started
4 formulating a plan to get rid of him.

5 (Playing videotape.)

6 In there he says I'm not a violent person unless it comes
7 to family; and again, this goes back to Erin Hughes. He
8 basically considers her as family, and he doesn't like
9 Mr. Hamman because of some of the things we talked about on the
10 first few taped excerpts. He doesn't want to let him out. He's
11 not going to let him out, and he's concerned at this point about
12 shutting off the water because he might be found, which means he
13 might get in trouble.

14 He's willing to jeopardize Mr. Hamman's life and later
15 actually decides to go ahead and do away with him with the
16 gassing incident.

17 (Playing videotape.)

18 And again, there's no mention there of ever pulling the
19 hose out of the vent like he told you on the stand, and that's
20 because that didn't happen. If he had done that, he certainly
21 would have told the police about it at that point. In fact, he
22 basically described to you all the overt acts. He never wanted
23 to let this guy out. He has the intent to kill and he certainly
24 had the means to do so or at least Dr. Harris wasn't willing to
25 say otherwise.

26 (Playing videotape.)

27 Again, his concern there is turning the water off. As you
28 heard him say, he was going to bounce and lay low for a couple

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1 of days. He wasn't going to report anything to the police. By
2 then there was a good chance that Mr. Hamman might be dead if he
3 wasn't dead already. He didn't know if he was still alive or
4 not. And at that point, he is suspecting, he says, Ms. Rugg;
5 but really what he does later tells you that's not true, because
6 he allows her to drive him right past the Shell Station again.

7 Now, she knows what's going on. She wants the thing to
8 end. He doesn't want him to be found, and when she gets him to
9 drive past the Shell Station, again, that's when Hopping sees
10 them. That's when the stop was made. So he doesn't know at
11 that point that there was a note left. His thing is to hurry
12 her out of there and go get the hacksaw, shut off the water so
13 nobody finds this guy.

14 (Playing videotape.)

15 And again, he said never got to shut the water off. He
16 also never got to lay low because he wasn't going to report
17 anything. And again, even to the very end, he was not going to
18 tell the police even when stopped in the man's vehicle where he
19 was. He simply was going to claim he borrowed the car, and at
20 that point he doesn't know whether or not Mr. Hamman has been
21 found and he really doesn't know about the note. Sure, he
22 figures it out later. If he'd known about the note, he would
23 have never come back to the area.

24 (Playing videotape.)

25 And now again at that point, first of all, here when the
26 detective asked him about talking about the dumping of the body,
27 you hear the tone of his voice, and it is not somebody that was
28 just playing along trying to sabotage Ms. Rugg's gassing

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1 attempt. It's real. They talk about dumping him in several
2 locations. The whole tenor and tone of his voice tells you that
3 they were both serious about killing this man, and that's
4 exactly what they tried to do. They discuss Robbies Point,
5 Foresthill Bridge, Griffin Quarry. This is not someone who
6 claims they have sabotaged Ms. Rugg's attempt by pulling out the
7 hoses. He was right there doing it all with them. And, in
8 fact, he never had a change of heart as far as leaving the guy
9 there to die.

10 (Playing videotape.)

11 At that point right there when you listen carefully to the
12 beginning of this excerpt that's found at 8:55:42 tape time, he
13 actually does respond. Conversation at the Elmwood. The
14 transcript wasn't very good there; but if you listen to that,
15 you will actually hear that. There's no controversy about what
16 he was talking about.

17 Again, it really didn't matter if the plan started at the
18 Elmwood. If the plan started at the Elmwood or if the plan was
19 developed when they came back and found the water going, either
20 way, he's guilty on Count One.

21 Now, you really need to look at the whole tape. Again,
22 these are excerpts, and you need to evaluate the whole tape. In
23 the jury room. You will be able to listen to it much better
24 than this large room, and there will be a TV with a VCR for your
25 use. And these are some of the excerpts that tell you his state
26 of mind and his motive and there are others, and you can play
27 this tape as long as you want to play it. And the more you
28 listen to it, the more you're going to find on it.

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1 All right. What we're looking at here, again, this was
2 the valves he was talking about. He actually explained on the
3 stand there was a set of chains in here that lock it down.
4 That's what he was going to cut and turn the water off because
5 when he tried to turn it over, the water was spraying out
6 because of the chains, and he couldn't shut it off. And he
7 wasn't going to let him out. He was just going to leave him in
8 there.

9 You know, really what this tells you is that his whole
10 intent was to make sure that Mr. Hamman was dead. He was going
11 to shut the water off. Who would then notice anything unusual
12 with an abandoned building such as we have here? Lay low until
13 he's dead. There would be no witness. Who knows when the
14 victim would be discovered?

15 You know, now, on the other hand, Ms. Rugg, and you don't
16 know, for some reason had a change of heart here. You start
17 talking about, well, let's just go in there and hit him on the
18 head. Could have hit him on the head, left him there, and that
19 way he would have been free from his confinement. The defendant
20 didn't want to do that. He wanted to shut the water off and lay
21 low and leave him to die. And before they went down to get that
22 hacksaw, she maneuvers him over to the Shell Station and leaves
23 her note.

24 And yes, she does say she's kidnapped. Who's going to
25 believe that? There's obviously many witnesses that would
26 impeach that. Mr. Romines. Even Erin Hughes, I suppose, and
27 other people. So yes, she does that to try to make herself look
28 better; but for whatever reason, they don't really know if the

1 man is dead or alive at this point. Maybe she doesn't want to
2 take the chance of him being dead, if he's not dead already, so
3 she leaves the note and ends up saving his life.

4 The defendant, on the other hand, even when the police
5 stopped him, had no change of heart. He still wasn't going to
6 tell him where the man was. He was just going to make up the
7 story about driving his car.

8 What this tells you is that they did at Mr. Romines' house
9 start conspiring to kill Mr. Hamman. They had gone this far
10 along. They didn't want to get arrested for it. They did the
11 overt acts. They went there and tried to kill him. This
12 defendant had the intent to kill and was never going to let the
13 man out until he was dead. So we will be asking for guilty
14 verdict, again, of conspiracy to commit murder and the attempted
15 murder.

16 Which now brings us to the enhancement for Count Three of
17 premeditated attempted murder. So the jury instruction is
18 guilty, not guilty of attempted murder, and then the enhancement
19 is considered separately. Okay. And it is an allegation of
20 willful, deliberate, and premeditated attempted murder. Willful
21 means intentional. Deliberate means arrived or determined upon
22 as a result of careful thought. And premeditated, considered
23 beforehand.

24 Well, isn't that what we have here? They start with
25 basically the Defendant Rodriguez soliciting from Mr. Romines
26 how to do it. The CSI program is talked about not once, but
27 twice. Once with Mr. Rodriguez and repeated for a second time
28 for the benefit of Ms. Rugg. So actually the idea came from

1 Mr. Romines, not Ms. Rugg, as he states on the tape.

2 They then proceed to do everything they need to do and try
3 to do exactly that. They connected it all up. Who knows how
4 long they ran it for? They don't know if he's dead or alive,
5 but they're going to turn the water off and make sure he's not
6 found alive, so it certainly was deliberate. It certainly was
7 arrived at or determined as a result of some careful thought and
8 planning. They had to go to a lot of different spots here.

9 Every overt act is part of premeditation. Going out to
10 DeWitt, getting the hoses, going to get the duct tape, putting
11 the duct tape around the cell, connecting it to the vent,
12 connecting it to the exhaust pipe. And considered beforehand,
13 it certainly was.

14 So as a summary here, the People ask for your guilty
15 verdict as to Count One, kidnapping for extortion, with the
16 enhancement to be found true, that there was a substantial
17 likelihood of death created under the circumstances.

18 Count Two, the conspiracy to commit murder. Also asking
19 for a guilty verdict, Count Three, the attempted murder. We ask
20 for a guilty verdict with the enhancement of premeditation true.
21 Also guilty verdicts on 10851 and the two counts of 530.5.
22 Thank you.

23 THE COURT: All right. We will recess for the noon hour
24 and resume at 1 o'clock back here in Department 3. I will
25 remind you it is your duty not to converse among yourselves or
26 anyone else on any subject connected with the case and not to
27 form or express any opinions until the case is submitted to you.
28 And we'll see you back here at 1 o'clock.

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(Lunch recess taken at 11:48 a.m. to
reconvene at 1 p.m.)

(Nothing omitted.)

--o0o--

1 AUBURN, CALIFORNIA

2 TUESDAY, SEPTEMBER 30, 2003, 1 P.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE
7 FRANCES A. KEARNEY, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number THREE thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --o0o--

18 THE COURT: We're back on the record. The jury and all
19 parties are present. Counsel, are you ready to proceed?

20 MR. SERAFIN: I am, your Honor.

21 Ladies and gentlemen of the jury, let me caution you from
22 the outset that a lot of talk is not necessarily equated to a
23 lot of evidence. What the district attorney did this morning
24 was regurgitate a long list of facts that we all already knew.
25 We know most of them straight from the mouth of Shawn Rodriguez.
26 What he spent almost no time addressing is the entire central
27 issue in this case, not what was done that weekend in March, but
28 why. All the acts that he has asked you to convict Shawn

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1 Rodriguez of, they don't mean anything if Shawn did not act with
2 a specific intent to commit those crimes. He had to have the
3 specific intent to kidnap for extortion, to murder, and to
4 conspire to commit murder.

5 Now, I've been on both sides of this business. I was a
6 prosecutor for several years before I became a defense attorney,
7 and people would talk to me a lot about how you make that
8 switch. It must be difficult. It wasn't tough because the way
9 I see it, the goal is really the same on both sides. The goal
10 on both sides is to hold people accountable for the crimes they
11 do commit and try to make sure that whatever punishment they get
12 is in proportionate to those crimes. It is the same goal.

13 However, there is one thing that I learned very quickly on
14 the defense side and you have to, and that's empathy. That's
15 the simple fact that they're not a bunch of evil people running
16 around committing crimes. It is not that simple. People are
17 committing crimes for the most part for a reason. It has to do
18 with their background, their circumstances. There is a reason.

19 Now, the district attorney acts as if this is very simple.
20 He looks at it black and white. You're in a bad situation.
21 You're hanging out with very shady people. You don't do
22 anything to get yourself out of that situation. In fact, you do
23 things to make it worse. Therefore, you must be a killer. You
24 must have intended all that to happen. It must be Shawn's
25 intent that he was in that situation and no other alternative.

26 It is not that black and white. You have to look at why.
27 What means nothing unless you have why. And to find out why,
28 you have to walk a few steps in Shawn's shoes. These are

1 juvenile delinquents. Any of you, myself, Mr. Marchi, Detective
2 Coe, we're not going to be in that situation. We're not going
3 to be hanging with those people. And if we get in that
4 situation, we're quickly going to walk, call the police. It is
5 simple.

6 But in their world, they don't get to pick and choose
7 their friends. They don't even get to pick and choose where
8 they stay on given nights. They don't get to pick their rides.
9 The reality of their world is you know that you're going to be
10 in bad circumstances. You're going to make bad decisions. You
11 may even steal if it means you can get a free room or get food.
12 That's the reality. Does it make it right? No. Is there an
13 excuse for those crimes, the crimes of theft? No. If they do
14 it, they're guilty of it; but it goes to explain why they're
15 there, and it goes to explain why Shawn Rodriguez in the world
16 he lives in can end up in a situation that is very tough for us
17 to even imagine and can do, in fact, that situation that are
18 very tough for us to imagine.

19 But remember, as I go through all the elements of these
20 crimes, and the facts that support them or do not support them,
21 remember what they are asking you to conclude at the end beyond
22 a reasonable doubt. Not that Shawn made mistakes. Not that
23 Shawn acted inappropriately. Doesn't matter if Shawn acted
24 recklessly or stupidly. It doesn't matter if what they did was
25 dangerous. What they must convince you of beyond a reasonable
26 doubt is that, that as cold-blooded killer, he woke up that
27 morning with the intent to rob, kidnap, and kill another human
28 being. And that somehow he wasn't able to succeed in doing

1 that.

2 Three important crimes, the rest doesn't matter. There's
3 only three to focus on. Kidnapping for extortion, attempted
4 murder, and conspiracy to commit murder. There's one element in
5 all of that; intent, intent, intent.

6 Now, the district attorney stated on several times if you
7 as an aider know what someone is doing and you contribute in
8 helping them do that, then you're guilty. Absolutely wrong.
9 Here is the jury instruction on criminal intent: Merely
10 assenting or aiding or assisting in the commission of the crime
11 without knowledge of the unlawful purpose of the perpetrator and
12 without the intent or purpose of committing, encouraging, or
13 facilitating the commission of the crime is not criminal. You
14 have to have that intent. So Shawn may know Anna wants to do
15 all these things; but if Shawn is going along with it for some
16 other reason, not to fulfill those crimes, he's not guilty. The
17 evidence has to show his intent.

18 So you start with kidnapping for extortion. And again,
19 the only issue is did Shawn have the intent to extort Nick
20 Hamman and did he then kidnap him for the purpose of carrying
21 out that extortion? Now, in his opening statement what the DA
22 told you the facts would prove, he told you the facts would
23 prove that Shawn planned it with Anna the night before in the
24 hotel, and the facts would prove that Shawn then hid while Anna
25 tricked Nick into the cell. And as soon as he got in the cell,
26 Shawn jumped out from behind somewhere and either shoved him
27 himself or kicked him in the door, and he said, Anna, get the
28 door shut, and from there they didn't let him out.

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1 Clearly the facts have not shown that, and I'm going to
2 get to that. So what the district attorney now throws out very
3 casually in his opening statement is this theory that perhaps
4 even if Shawn knew nothing about the plan, did nothing to lock
5 Nick in, but then later, 14 hours that night, decides, oh, I'm
6 going to go, since he's in there, I'm going to take his wallet,
7 ATM card, whatever; therefore, he is joined in a kidnapping and
8 a kidnapping for the purpose of extortion. That's wrong. You
9 don't have to throw out your common sense. You know what
10 kidnapping for extortion is. It is -- it is like you see in the
11 movie Ransom. You can confine someone. You confine them for
12 the purpose of getting money for someone else or getting money
13 from them. I won't let you out until you give me that. They're
14 done at the same time. The intent to get the money is done at
15 the same time the attempt to confine a person.

16 Let me put it to you in a very simple example. If a
17 person, I take Mr. Marchi and I lock him in a room and I said,
18 Mr. Marchi, I won't let you out until you give me your money.
19 Mr. Marchi gives me his money. I have committed a 209(a), the
20 kidnapping for the purposes of extortion, done. If Mr. Marchi
21 accidentally locks himself in a room and I'm walking by and he
22 said, help me out. I'm in the room. Let me out. And I say,
23 no. I'll let you out, but you have to give me your money. I
24 have committed an extortion. It is still a serious crime. It
25 is a felony that happened Saturday night. Shawn joined in an
26 extortion. It was as an aider he joined --

27 MR. MARCHI: I object. I believe that misstates the law
28 that we discussed.

1 MR. SERAFIN: No, it doesn't.

2 THE COURT: Why don't you continue.

3 MR. SERAFIN: See, the whole point is they have to work in
4 conjunction. They have to work in conjunction. The whole point
5 is in order to prove that Shawn is a kidnapper and Shawn
6 intended to kidnap and Shawn intended to kidnap for the purpose
7 of extortion, you have to believe he knew about it.

8 Now, they will start with this notion that he had a
9 conversation the night before in the hotel with Anna, and that
10 they planned to go to the Elmwood Hotel. I'm sorry, to go to
11 the old juvenile hall and lock him in. No evidence of it.
12 None. There's evidence of a conversation. The conversation is
13 very ambiguous. She says, starts talking about robbing this
14 guy, throwing him off the Foresthill Bridge. Says things.
15 Shawn doesn't take her very seriously. Says, look, if you ever
16 wanted to go through that and may need help to make sure you
17 don't get hurt, fine, I'll get your back. That's the world they
18 live in. There's no evidence he took her seriously. There's no
19 evidence she said tomorrow morning. They get up in the hotel.
20 Nick Hamman is the furthest thing on his mind. He has things to
21 do that day. He has to try to get his pregnant girlfriend a
22 place to live. That's what he's focused on, and Nick happened
23 to drive by.

24 They flag him down. Anna says, give us a ride to the
25 juvenile hall. We can store our things there. Shawn gets in
26 the car just thinking they're going to the juvenile hall to
27 store his things there. At some point there Anna locks him in.
28 Shawn was in a different room with his girlfriend. That is his

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1 statement. And the district attorney, in order to convict him
2 of this serious crime, he must prove to you beyond a reasonable
3 doubt that Shawn is flat-out lying. He was lying to the police,
4 and he lied to you on the stand.

5 And, you know, the evidence that he brings to you to prove
6 that Shawn is lying, he brings Nicholas Hamman. Nicholas Hamman
7 is crazy. I thought of bringing in psychiatrists to support
8 that, but I figured that we could all figure it out from his
9 testimony on the stand. He's not schizophrenic, as he explained
10 to us. He reacts to voices in his head. Voices that tell him
11 to do various things, including hurt himself and hurt other
12 people. He has delusions. Not nightmares. Now, we all have
13 with when we sleep. He has delusions.

14 Trust me, Nicholas Hamman's interpretation of his dreams
15 on the stand was much different after he spoke to the police two
16 weeks before the trial than it was when myself and my
17 investigator went to visit him in the jail. He did not know the
18 difference between reality and those delusions. In fact, he
19 explained to us that in his dreams he remembers Shawn making a
20 threat to Anna. I'll throw you in there too, bitch, if you
21 don't come along, and he remembers Shawn having a gun. These
22 are things that he thought actually happened. He didn't think
23 they happened at the time. He felt they happened later.

24 Nick is a four-time felon. Nick has so many mental
25 problems and is on so many medications, which by the way, he
26 wasn't taking in March and isn't taking now. He's on so many
27 medications that, ladies and gentlemen, he's forcibly sodomized
28 another human being. I hate to get graphic; but while in

1 custody, he throws his feces on prison guards. This is not an
2 individual we can trust. His statements cannot be believed.
3 They can't be used to prove anything beyond a reasonable doubt.

4 Add to that that one of the very last things he said on
5 the stand: Yes, I am a compulsive liar. Yes, I do tend to make
6 up stories, grandiose stories to draw attention to myself.

7 Now, as if that's not enough, I'm going to spend a little
8 time breaking down his story because his story is important.
9 His story that Shawn Rodriguez kicked him in the leg and shoved
10 him in that door, it is the only link to Shawn wanting to kidnap
11 Nick. It is the only link.

12 Now, at first he tells the story Shawn was hiding behind
13 the door, and we all clearly saw a picture up there with the
14 door halfway open. And I said, he was hiding right there, right
15 where we can see? I could hide there, he said. The district
16 attorney realized that was not a very believable story. So the
17 officer on the stand then said, well, could have been hiding
18 behind that counter and then maybe in a split second that Anna
19 shut the door, Shawn goes leaning over the counter, runs around
20 the counter and delivers the kick to Mr. Hamman, and that's what
21 gets him into the room because that's what Mr. Hamman said.

22 Well, the problem is that Nick Hamman describes that kick
23 in many different ways. It may seem an unimportant detail, but
24 again, it is the only link. He describes the kick as causing a
25 bruise to his right thigh because he puts his leg in the door.
26 So as the door is closing, his leg is essentially jammed up
27 against the door jamb and the door, and Anna he's -- he can see
28 in that little window. This is a space that the door hasn't

1 closed. Shawn comes around behind Anna, and somehow delivers
2 the kick through Anna and through the door and on to his thigh.
3 He instantly changes. I have reread the transcript. He
4 instantly within two minutes changes and says, no, okay. He
5 wasn't behind him. Now, Shawn was to this side. Anna was to
6 this side and then he kicked him. You still have the door
7 pinched against his door leg and door jamb here. There's a
8 bruise where the door is. There can't be a kick through the
9 door. It is simply impossible. You see the kick, seeing
10 Shawn's face, I don't know if Nick is making it up because he's
11 in love with Anna. He wants to protect her and because he
12 thinks she couldn't have done this to him without Shawn or I
13 don't know if he really believes it and sees it in his head.

14 Because once he believes something and gets it in his
15 head, he's not to going back off it, is he? Look at those car
16 keys. I mean, we spent a lot of time on it when everybody knew
17 the answer. All the detectives, they knew the answer. Shawn
18 and Anna had been driving that car for 14 hours before Nick
19 said, I slid it under the door.

20 I'm going to read you a part of the transcript regarding
21 those keys. My question:

22 (Reading) "Nick, you've been very
23 adamant that you kept them all the way
24 until you were in the cell, and you had
25 to actually slide them under the door;
26 correct.

27 Yes.

28 You're positive of that fact?

1 Yes.

2 As positive of that fact as you were
3 about every other fact that you
4 testified to under oath; correct?

5 Yes."

6 (End of reading.)

7 The cops knew he didn't have the keys. Everybody knew he
8 didn't have the keys. He remembers it that way. I don't know
9 why, but once the vision is in his head, he's not going to
10 change. You have nothing concrete that supports the evidence
11 that Shawn knew about that plan or did anything to instigate it.

12 Now, you may have false imprisonment. It is 40 hours have
13 passed. At this point Shawn has -- he's there. He's not
14 letting him out. You want to find false imprisonment, it is
15 pretty hard to argue with that. That's a general intent crime.
16 That means if you do it, you did it. We don't need to get into
17 your head. If you wanted to find extortion, well, there was an
18 extortion. It occurred 14 hours later. It occurred that night.
19 There's not much way around that.

20 But kidnapping for the purpose of extortion are specific
21 intent crimes, and unless you can link Shawn's head, I want to
22 kidnap this guy I barely knew, and I want to take his money and
23 I instigate that plan on Saturday morning, he's not guilty of
24 that crime, and that brings you to the murder or the attempted
25 murder.

26 Actually, although there's not a kidnap, you do have --
27 there is that issue of if you find that Shawn kidnapped this
28 guy, did he do it intentionally in a manner that is

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1 substantially likely to cause death? First hurdle you have
2 there is the guy didn't die. How are we going to find that the
3 circumstances would substantially likely to cause death when he
4 didn't die? It better have been quite the miracle. That law is
5 meant for the terrible kidnapping that you may read about in the
6 newspaper where someone takes a girl off into the woods and
7 takes her money and jewelry and stabs her and shoots her and
8 leaves her for dead and she miraculously survives. We don't
9 want to give that evil guy the benefit of the doubt, the benefit
10 of the fact that he got totally lucky, and his victim didn't
11 die. That's the purpose of this law.

12 Now, don't get me wrong, 40 hours in that tank with water
13 coming down sucks. I mean, there's no legal way to say it
14 better than it just sucks. And Nick absolutely did not deserve
15 that. No question about it. No matter what a terrible human
16 being he is, that is a bad situation. But let's be realistic,
17 nobody is going to die from that. We're not -- even on the
18 verge of mild hypothermia, the doctor told you he had no real
19 injury. They kept him for a couple hours. They made him warm
20 again. They gave him food. They sent him home with no
21 medication and follow-up. That is clearly not a circumstance
22 likely to cause death.

23 We could debate for hours how high the water actually got.
24 Chances of it getting to the neck is one of those grandiose
25 things he exaggerates to you, draws attention to himself. If
26 you want to think it got to his neck, it really doesn't matter
27 because in the end, Shawn and Anna purposely removed any objects
28 blocking the water. It came down to a 3 or 4 inch level and

1 that's where it stayed.

2 That brings us to the attempted murder. The attempted
3 murder must be a direct but ineffectual act done by one person
4 towards killing another. The person committing the act harbored
5 express malice aforethought, namely, a specific intent to kill.
6 And I want to direct your attention to a point down here. It
7 says, act of a person who intends to kill another person will
8 constitute an attempt where those acts clearly indicate a
9 certain unambiguous intent to kill. The act must be an
10 immediate step in the present execution of the killing, the
11 progress of which would be completed unless interrupted by some
12 circumstances not intended in the original design.

13 Again, the first hurdle the evidence has to get over is
14 the fact that he didn't die. A second hurdle the evidence has
15 to overcome is the fact that Shawn has got no real motive. The
16 prosecution knows that motive is importance so he's going to try
17 to build one. They asked him on the stand eight different ways,
18 you don't like Nick much, do you? You don't like him at all.
19 He doesn't care about Nick. Yeah, he thinks he's weird. He
20 doesn't particularly like him; but, you know what, in that world
21 you're around a lot of people that are weird and a lot of people
22 you may not particularly like, and that's goes back to walking a
23 mile in his shoes. You don't get to necessarily pick and choose
24 your friends. That doesn't mean he wants to murder them.
25 That's not a motive for murder.

26 I guess you can argue after he takes the ATM card maybe if
27 he kills the guy, he can avoid a theft, a vehicle theft. Again,
28 he's clearly stated he doesn't want to get in trouble. I don't

1 want to call the cops because I am going to be in trouble, and I
2 may be in more trouble if Anna blames it all on me. But do you
3 think that's enough to actually murder a guy? This is a
4 19-year-old kid with no history of violence. He stole this
5 stuff. He admits stealing stuff in this case. It's pretty
6 tough to all of a sudden say he's a cold-blooded murderer, and
7 he wants to do it to a virtual stranger, a guy he barely knows.

8 Now, the district attorney has tried to created a bunch of
9 motive from the tape. They only focus on the first part of the
10 tape. The first part of the tape we all know is a story. Even
11 the cops know. They accept it. Anna tells him, make up this
12 story. This is the story we're going to go with. If we get
13 caught, you come up with this story. It has to do with me
14 getting assaulted and Erin being assaulted in the past, so we
15 were afraid of Nick, so we had to lock him up in the cell for
16 our own protection. That's the story we'll come up with to try
17 to save each other.

18 After he keeps talking to the cops and they clearly
19 indicate she's not selling the same story, she's basically
20 blaming everything on him, that's when he changes. So
21 everything that is talked about, all those were blushes from the
22 video. They're all that, that first story and he's already
23 admitted he made up because that was the plan, and there's been
24 nothing to question that, so it doesn't really change it.

25 The only evidence they have to support Shawn's intent to
26 kill is Shawn's own statement. They have nothing without his
27 statement. They believe everything he says. When he said, I
28 went with certain things. I committed theft. I did certain

1 things. I had conversations about the body. I did all these
2 acts. They believe all that. Now doubt about that. But when
3 he clearly says, never wanted to hurt the dude, never wanted to
4 kill the dude, all of a sudden that is an outright lie, and the
5 evidence that they have to show you that's a lie is, again, his
6 own statement.

7 Now, they want you to ignore everything he said on the
8 stand. On the stand he explained to you why he did that, what
9 he did, with the carbon monoxide idea. He went in, had to let
10 Anna in. Once she's in there, puts the hose in the vent. Once
11 she goes out, removes the hose from the vent. District attorney
12 says, why would you never tell that? Of course, you would tell
13 that to the police. He tried. He tried to tell them. They
14 only put in the report, "I waited 15 minutes, thought that would
15 be enough, so I said, 'all right. He's dead. Turn the car
16 off.'"

17 They left out the part where he attempted to explain to
18 them that, you know, it is going to take longer than that under
19 the conditions, and he starts talking about the water.

20 Now, it is not about whether he's a chemist or physicist
21 or whatever else. We're mocking his lack of education. That's
22 not the issue. The point is Shawn attempted to explain under
23 those circumstances no human being is really going to believe
24 that carbon monoxide poisoning is going to happen in 15 minutes.
25 That was his true belief at the time. That's what he said all
26 along. That's what he clarified for you on the stand.

27 Let me ask you this, if it did work, if Shawn didn't pull
28 the hose out of the vent, if that air conditioning vent did go

1 straight in the cell and it was such a great idea and could have
2 killed the guy, why did Nick Hamman smell nothing? Come on,
3 we've all been at a stop light. There's a car in front of you.
4 Maybe five, six cars in front of you. It is the old beater.
5 You have your window down. He floors it, and you get the fumes
6 in your face. You cough and gag. We have all had that happen,
7 man. Someone is shoving a carbon monoxide hose, and it is going
8 right into the room. You are under for 15 minutes. You don't
9 think you're going to smell a thing?

10 The only evidence that Shawn didn't do what he said he did
11 is the district attorney calling him a liar. It is consistent
12 with the entire prosecution's case from arrest to closing
13 argument. That's why I talked about the one sided police
14 report. That's why I brought up the fact that the police report
15 about Nicholas Hamman and his statement, none of the police
16 report acknowledge he is a sex registrant. None of them mention
17 that he is 40, hanging out with a 22 year old that he thinks is
18 his girlfriend. None of them mention that he engages in weird
19 sex games or at least talks about them. None of the police
20 mention that while he thinks she's his girlfriend, he barely
21 knows Shawn. These are important things to motive.

22 If you think one of two or both people murdered another
23 person and kidnapped them, and one person has a very serious
24 relationship with the victim, that's important to know. If in a
25 police report you have a statement where it says, I thought I
26 waited 15 minutes, thought that would be enough to kill the guy
27 so I turned off the car, and then he says, but I didn't think it
28 would work because of the conditions, and the only 15 minutes,

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1 and you leave out the "and then part" and you only put the part
2 of the 15 minutes, that's a one sided police report.

3 Now, the reason I bring that up is because it is
4 consistent with the fact that nobody is looking for evidence
5 that points to Shawn's guilt. It is the evidence that points --
6 I'm sorry, the evidence that points to his innocence. It is the
7 evidence that points to his guilt that they focus on. Nobody
8 ever asks him why.

9 See the police's job, and I'm not saying that there's any
10 sort of a frame thing here or they're trying to set Shawn up,
11 not at all. In fact, I think Detective Coe did exactly what
12 he's supposed to do. His job is to determine what acts were
13 done, what acts were done by who. It is the job at trial to
14 determine why. That's the purpose of the trial. That's why
15 Shawn gets a trial.

16 So you want to prosecute him for a statement he made to
17 the police after the worst 48 hours of his life, after three and
18 a half hours handcuffed to a bench and after some threats and
19 insinuation by various officers walking around. That's the
20 statement we want to take. That's the one we want to bank
21 everything on. But see that's why he gets a jury trial. That's
22 why he gets to stand up in front of objective people who are
23 looking to hear the bad and the good, who want to hear the why
24 and give his statement.

25 Now, the logical thing to think of once you hear this is
26 okay, all right. Shawn, if you really didn't try to kill the
27 guy, why didn't you just leave? Why were you there? Why do you
28 have to appease Anna? Well, again, think of who he's with.

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1 Friday night she starts talking about this stuff. He doesn't
2 think too much of it. Saturday rolls around and now she's
3 locked this guy in a cell. She's taken a step that Shawn never
4 thought she would actually do. Sunday rolls around and now she
5 is stepping up to talk about let's beat this guy to death.

6 Okay. Now, he's really starting to think she is serious.
7 Then you add the fact that although he's only known her a couple
8 of weeks, here's what he knows about her already. He knows that
9 she committed a burglary, blamed it on two kids about a week
10 prior, and then asks Shawn to lie to the police and say she was
11 with him. We know that he watched her chase a one-legged girl
12 around a bar with a metal pipe because she was mad at her and
13 four guys had to stop her. I mean, these are some pretty
14 serious things.

15 We know that about a week earlier this same girl, Anna
16 Rugg, asked Shawn to help her rob her grandfather. He could
17 beat her over the head with a shovel and he could get a Toyota
18 Tacoma out of the deal. At the time Shawn watches all this and
19 hears this and again, he's thinking she is just blowing smoke.
20 But by the time Sunday afternoon rolls around, it is starting to
21 look pretty real, and at the very least there's certainly an
22 indication if he calls the cops or lets the guy out, she is
23 going to maybe blame him, which she eventually did or maybe try
24 to harm him in the future or maybe try to harm his girlfriend.
25 He's not afraid she's going to fight him and beat him up right
26 then and there. That's not the issue. It is not that simple.
27 So he figures if I can appease her, why not if I can get through
28 these a couple of days, if I can get through the Monday morning

1 when I go to court and it is a little safer and she's not there
2 and I can tell, here's what happened and I can face the music,
3 if I can stall all until then, but all the way Anna thinks I'm
4 on board, why not do that? Why risk it is what he's thinking?
5 He's thinking that because this guy is not going to die, ladies
6 and gentlemen, why do you think he picked the most ambiguous
7 possible way to kill people?

8 It is an idea that comes off a television show. He's got
9 a guy in there for 40 hours where nobody can hear him or see
10 him. There's a knife in the car. If you're a cold-blooded
11 killer and that's your sole motive, go stab him. Why doesn't he
12 go with Anna, let's go beat him to death? I mean, fighting a
13 guy, that's tough. If you want to fight him, you don't mind
14 just killing him. It is, he's not as tough. Grab the barb wire
15 poles. How about get a gun? You think it's tough for a guy
16 like Shawn Rodriguez and the circle he runs with to get a hold
17 of a handgun? Do you think that will be difficult?

18 See the point is he latched on to that idea because it was
19 a very ambiguous idea. I want to reread to you an aspect of
20 this jury instruction. The acts must be an immediate step in
21 the present execution of the killing, the progress of which
22 would be completed unless interrupted by some circumstances not
23 intended in the original design. What circumstances interrupted
24 this supposed act to kill? What interrupted it?

25 If Shawn is a murderer and he wants to kill this stranger,
26 and the water thing works so great, you just plug up the door
27 and the water rises in a matter of hours up to the guy's neck,
28 leave it in there for another hour, be done with it. Why didn't

1 he do that? There's nothing stopping him.

2 Better yet if he wants to carbon monoxide the guy to
3 death, why would he shut off the gas in 15 minutes? Why not an
4 hour? Why not two hours? I mean, if you do it for 15 minutes
5 and you go see and the guy is still alive, do it for some more.
6 The only act that stopped Shawn from killing Nick was Shawn
7 stopping the act. There's no evidence that contradicts that
8 beyond a reasonable doubt. It is just not there.

9 Now, I'm going to read you a jury instruction that talks
10 about circumstantial evidence. If the circumstantial evidence
11 as to any particular count permits two reasonable
12 interpretations, one pointing to the defendant's guilt and the
13 other to his innocence, you must adopt the interpretation that
14 points to the defendant's innocence and reject that which points
15 to his guilt.

16 That's by a matter of law. Now, what the district
17 attorney will predictably come back and tell you is that well,
18 this theory, this thing that Shawn is throwing out, it is
19 unreasonable. Not in his world. It is not unreasonable at all.
20 What's unreasonable is to think that a 40 year old (sic) with no
21 history of violence suddenly wants to kill this guy for a
22 virtually nothing. That's unreasonable. What's unreasonable is
23 to think he could have done it if he wanted to.

24 See, the law makes inferring intent very difficult, and
25 I'll explain that. The problem with an attempted murder, the
26 most difficult thing about proving it is, obviously, the murder
27 didn't work. So in order to prove the seriousness of that
28 intent, I mean, that's some serious stuff. You're a murderer

1 and in order to prove that, you're rarely going to get the case
2 where you -- the guy says, well, I want to kill him. I love
3 killing. Doesn't happen too often. Yet the guy is still alive,
4 but you have to infer that his acts were so unambiguous that
5 they should have worked, but for something unforeseeable and
6 unexpected, I'll give you some examples. If Shawn goes in and
7 starts stabbing him and stabs him 20 times and leaves him for
8 dead or takes his body somewhere and leaves it there, pretty
9 clear, but he miraculously survives, pretty clear you can infer
10 an intent to kill.

11 If Shawn, while doing the gassing in the middle of it with
12 that hose right from the cell, the cops roll up and Shawn has to
13 run and abandon his acts, then you have a decent argument, well,
14 why else would he? Well, looks like he was going to keep doing
15 it until the cops came and scared him away. If they were in the
16 process of beating him to death and someone heard and ran in and
17 stopped them, and you can argue why else did you stop beating
18 the guy and probably was going to happen -- probably was going
19 to continue until death but for you were stopped. That's what
20 inference requires. But see, you don't have that here because
21 Shawn stopped it himself.

22 Now, what the DA will suggest to you is that, no, it
23 wasn't Shawn. The savior here is Anna by leaving that note.
24 The only thing Anna is attempting to save by leaving that note
25 is herself. Only two reasons you drop that note, only two.
26 One, she drops that note because Shawn really is a killer and
27 she wants to save Nick Hamman. Okay. Problem with that
28 reasoning is if that's true, why do you lie on the note and say

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1 the guy is drowning when you just left him and he's fine, and
2 he's in three inches of standing water and more importantly if
3 your sole goal is to save him, why did she say she was kidnapped
4 by Shawn? Why lie? We know she wasn't kidnapped by Shawn. Why
5 make up that lie? Because she knows they're about to be caught,
6 and she's beginning her defense.

7 That leads to number two of the second reason. She knows
8 it is coming to an end, and she's got to start making herself
9 look good. And that leads me to another question. Assuming
10 that's the reason, what possible explanation is there for her
11 leaving that note to begin her defense right then and there?
12 She's had opportunity to do it for two days. Why did she pick
13 that time to drop the note?

14 Because Shawn was going to end it. It is totally
15 consistent with Shawn's story. There's no other reason. She
16 wouldn't just drop the note and have the police arrest her, so
17 now she's got to face the music. She had to know it was coming
18 anyway. And the only -- there's no -- no one stopped them,
19 right? Before she leaves the note, there's no indication that
20 they're going to be busted or this thing isn't going to go on
21 for days if she wants to and yet she drops the note. Because he
22 just finished telling her just like he told the cops and just
23 like he told us on the stand, "That's it. I can't do it
24 anymore." He fakes the carbon monoxide because he thought
25 they'll think he's dead. I can get out of there and Monday
26 morning I can say hey, get this guy some help or maybe I'm
27 bouncing to Reno, but what they left out when they bounce to
28 Reno, I'll call the cops and maybe I'm far enough away, and now

1 I can run, but at least the guy is safe. That's the only
2 explanation. And it's totally consistent with Shawn saying, I
3 drove immediately to Sacramento. I got the hacksaw and I drove
4 immediately back. Remember this is just after he has stopped
5 the gassing idea. He doesn't go to another. It didn't work in
6 15 minutes. Let's try something else. He goes and gets the
7 hacksaw. While the district attorney says he's getting the
8 hacksaw to shut the water off so nobody will ever find this guy
9 and he can leave him for dead, that's his conclusion. That's
10 his conclusion for it is just as reasonable that he wants to get
11 the water off so the guy doesn't have to deal with the water for
12 the next 12 or 13 hours until Shawn gets to court in the morning
13 and he can end this thing. There's two reasonable reasons. You
14 just can't take one and say, I assume it must be because he's a
15 killer. It is not that simple.

16 So what you have in the end is a kid with no history of
17 violence, a guy he barely knows. A girl they're both running
18 with who has motive, who has some sort of weird relationship
19 with this guy, who has talked about wanting to rob this guy
20 before. You have Shawn's statement saying very candidly, I'll
21 go along with certain things, but I'm not going to hurt the guy.
22 I'm certainly not going to kill the guy. You've got no specific
23 plan, and you've got Shawn doing nothing to get the guy locked
24 in. The evidence isn't there.

25 Now, it is a difficult burden. You have to understand
26 what beyond a reasonable doubt is. The district attorney will
27 go through different statements that Shawn made. He'll make his
28 conclusion that those statements point to an intent to kidnap,

1 an intent to kill. He'll take statements such as, I didn't want
2 to call the fire department because he will then say that Shawn
3 Rodriguez and Anna Rugg locked him in there. He'll take a
4 statement like that and call it an admission when anybody with
5 common sense says, well, that is not an admission. That's the
6 reason he doesn't want to call the fire department is because he
7 knows if they let the guy out, the guy will immediately blame
8 him, which the guy immediately did.

9 You can go through statements like that and make your own
10 conclusion, but it is not evidence. You make sure the same
11 hunch -- some of you may share the same assumption, and that's
12 not evidence. It is not beyond a reasonable doubt. You see
13 what the law says, if you think Shawn meant to kidnap and murder
14 Nick Hamman, he's not guilty. If you're pretty sure, he's not
15 guilty. If you think probably, probably he's a killer wanting
16 to kidnap this guy so he could get this money, he's not guilty.

17 The evidence has to leave no other reasonable alternative.
18 And that's some strong stuff, and it is the DA's burden and
19 that's why they get to go last. He's going to need some
20 powerful evidence at this point, so I'm going to sit back, and
21 I'm going to wait for that powerful evidence. But as I do, I
22 caution you to one thing. Regardless of what the lawyers or
23 what judges say, the reality is, and it is unfortunate in a
24 lesser case juror's make decisions every day based on hunches,
25 conjecture, the way they judge a witness's appearance, maybe the
26 facial expression the defendant makes. I caution you take -- if
27 you come back guilty, you are finding this man is a kidnapper
28 and a murderer. You need more. You need the evidence. You

1 need the evidence.

2 Now, finally I am going to shut up, and I'm going to let
3 you draw your conclusions. Thank you.

4 THE COURT: Counsel for the People, rebuttal?

5 MR. MARCHI: I may need this set up. I have -- I had to
6 move the machine here, if I could have a moment. All right.
7 Ladies and gentlemen, this is the last time I'll have to address
8 you. The decision is yours. Please do review all the evidence.
9 Counsel was indicating to you that perhaps there's not more than
10 one way to commit this, that the actual confinement has to occur
11 before the plan has to occur, before they went down there, in
12 other words, at the Elmwood.

13 Well, let me read to you the statute. It indicates any
14 person who seizes, confines, inveigles, entices, decoys,
15 abducts, conceals, kidnaps, or carries away another person by
16 any means whatsoever with intent to hold or detain. Now, so far
17 that sounds like you have to have a plan because there are "ors"
18 in each one of those words is the way it reads. You have to
19 have the plan ahead of time. To seize, confine or whatever.
20 Now, that's not the whole statute. It also breaks it down into,
21 or who holds or detains that person for ransom, reward, or to
22 commit extortion or to exact from another person any money or
23 valuable thing or any person who aids or abets such act. And
24 what the second two "ors" tell you are the second and third
25 method that we talked about. And yes, they did plan it at the
26 Elmwood and yes, he tells you that from the excerpts that we
27 played.

28 But even if any of you have a problem with that, he

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1 definitely tells you in the tape that once he was held and
2 detained, once he came back and again or hold or detains, they
3 then went in there and the plan to get the PIN, to get the ATM
4 and to get the cash. Clearly that is there. There's just no
5 doubt about that. And certainly, by his own admission when he's
6 on the stand, he told you he helped. She's quote, "talking
7 through him," whatever that means. No he's talking for himself
8 because here's a person who has no money. You have to remember
9 he -- the voucher the night before, a freebie, if you will, for
10 one night. He had nowhere to go. He had no car. He had
11 nothing, and that's motive. We don't have to prove it. It is
12 not an element of the crime. You won't find it anywhere so, in
13 fact, there are a number of ways to get there and there are a
14 number of ways on the tape that tell you about that.

15 Now, counsel wants you to throw the tape out. Well, don't
16 do it. On page -- actually on page 12, and I believe it is the
17 tape time 8:26:14 through 8:26:30 they're asking him about a
18 number of things including -- excuse me, it was 8:32:16 to
19 8:33:04, I believe is correct. And 8:26:14 to 8:26:30 and
20 they're asking him about what he was doing. He talked about
21 getting rid of the homeless and then at 8:32:16 to 8:33:04, he
22 admits she should have let him out at that point. He admitted
23 we did put him in there. He also admitted and do listen to
24 that. They are 8:32:16 to 8:33:04. He does say the only real
25 change in his story was just the touching so you don't throw out
26 the whole beginning part of the tape. The touching was the lie.
27 That was the precanned story and doesn't that -- you also add to
28 the conspiracy that these two people were involved in that they

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1 had their little story in case they get caught. They got
2 caught. So again if you review that clearly, you don't throw
3 the tape out. It is all relevant.

4 And, you know, the defendant didn't have to take the
5 stand, but, you know, he did take the stand. And at no time did
6 he ever tell you, this is significant about what he didn't tell
7 you, he never told you there was anything on the tape that you
8 couldn't hear that was otherwise different than what had already
9 been summarized for you. He just tried to give you a new spin
10 on things. He tried, but he failed.

11 Had he really pulled the hose out of the vent, he would
12 have told the detective that. You know, I was just playing
13 along with her. I pulled the hose out. She didn't even notice
14 it. That's just common sense. That's an obvious thing. You
15 would say he didn't say that. He said it on the stand, and it
16 wasn't true. What he told on the tape, he realized that for
17 thinking this is true, you should actually convict him of all
18 the crimes.

19 Now, counsel urges you that he would have to have the
20 specific intent to kidnap in mind. Well, not exactly. All of
21 you saw from the jury instruction. You will get this 9.53.
22 Kidnapping for extortion. The elements are a person was
23 confined, inveigled, enticed, decoyed, concealed, held, or
24 detained. Again that can come later, and here is where the
25 specific intent comes in that during this confining, inveigling,
26 enticing, decoying, concealing, holding or detaining, that it
27 was done with a specific intent to extort, so you don't have to
28 have a specific intent to kidnap. In fact, you may not realize

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1 if you come across a person that's locked in a cell, that maybe
2 locked himself in the cell like Mr. Hamman did, and you walk up
3 and demand their property in exchange for getting him out, if he
4 says, no, you can't hold him and hold him and hold him, you just
5 committed the crime, may not understand or realize that is
6 kidnapping, but the specific intent is not that you knew that
7 the specific intent is that you try to extort --

8 MR. SERAFIN: Objection. That misstates the law.

9 MR. MARCHI: No, it doesn't, your Honor.

10 MR. SERAFIN: We can argue about it later, I guess.

11 THE COURT: Just continue.

12 MR. MARCHI: Read the elements. That's what it says, and
13 a lot of times people commit crimes that they don't understand
14 exactly what they have done. With murder, now that's a little
15 bit different. In fact, with murder you do have to have a
16 specific intent to kill, and we'll get to all the reasons why
17 that is the situation here in a few minutes. This part I just
18 am going to touch on some things that the defense raised. I'm
19 not entitled to repeat everything again.

20 And the criticism was made of Mr. Hamman that you really
21 can't trust what he says. Well, again, when you look at all the
22 tape, it is all there. The basics are all there. If
23 Mr. Rodriguez didn't do anything initially to confine him and he
24 doesn't have to but if he didn't, why does he keep saying Shawn
25 Rodriguez and Anna Rugg confined me? That's what he's going to
26 say if I let him out of there. Why does he say we confined him?

27 Again, you find that on the other taped excerpt I referred
28 you to where he also says the only difference was the holding in

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1 the cell.

2 You know, on behalf of the People we don't go out to the
3 church choir and pick our victims, but he is entitled to the
4 same consideration as anyone else; but, you know, what if you're
5 a defendant, Mr. Rodriguez, what a better victim to pick out for
6 you. Here's a guy that has got a bad record. They're hoping he
7 won't tell. In fact, at one point he indicates on the tape that
8 they basically threatened him not to tell or else they were
9 going to the cops about the story with the touching, and he goes
10 on, on that tape, but he says we weren't really going to the
11 cops. But so again, what a perfect victim, and they get to pick
12 their victim, and they want you to throw out his testimony
13 because he's an easy target. He is an easy target. He's a guy
14 that is a little bit slower than other people, and if you had to
15 pick a victim out, that is a person you would like to pick if
16 you were somebody like Mr. Rodriguez.

17 And they make another try to make an issue around the car
18 keys. Again, you don't even have to complete the extortion.
19 There is in the jury instructions it tells you that sometimes,
20 you know, people are wrong and misrecollection is common. And
21 you can see that he was doing the best to tell you everything he
22 remembered. Was he wrong about that? Probably. Do we know for
23 sure? Not really because as he told you, he did have two sets
24 of keys. Was that the spare set that actually went under there
25 that Mr. Rodriguez didn't bother to tell us about? We don't
26 know. You know what? It's irrelevant. It doesn't matter. You
27 don't actually have to take the property, and they did anyway.
28 They certainly took the PIN. They certainly took the ATM. They

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1 certainly took his cash.

2 When you look at all the statements from Mr. Rodriguez, it
3 really does parallel Mr. Hamman. The little admissions when you
4 put them all together with all the facts, that's what is called
5 an admission in the law. It is not a whole confession. It is a
6 little part here and little part there, and they all add up.
7 And, you know, he really does -- Mr. Rodriguez himself to
8 confine Mr. Hamman initially. We don't have to prove that he
9 did come back to get the ATM after he continued to confine him
10 and continued to confine him even after they have the property.

11 Now, as far as the substantial likelihood to cause death,
12 counsel just kind of ended with the actual giving up of the
13 property and letting out of the water. Well, that's not it. As
14 you read that instruction, it is the whole time he's confined
15 until he is finally let out. When is he finally let out? Only
16 when Hopping and the other officer shows up to let him out, and
17 he's, you know, he's blurting out, They tried to kill me. And
18 soon after he names both Shawn Rodriguez and Anna Rugg and he
19 does not name Ms. Hughes, who he has -- he views didn't do
20 anything.

21 So this tells you, first of all, you're not to just cut
22 off the point where the property was given over as to whether
23 he's confined with a substantial likelihood of death. You must
24 also consider the fact that they came back and you must also
25 consider the fact that they left him in there even after that.
26 It was only because of the note that he was rescued and because
27 of being in there for 40 hours with hypothermia starting to come
28 on.

1 Now, remember, although the doctor couldn't verify it one
2 way or another, she said you could walk, a couple three days
3 before the time the officers got him out of there. You know,
4 the officers sure were convinced that he was suffering from
5 hypothermia, shaking, could hardly walk. It was definitely a
6 significant and traumatic situation when you view the whole 40
7 hours he was in there, so that's why that is also true.

8 Now, the claim is made, you know, that why didn't
9 Mr. Hamman smell the carbon monoxide poisoning if, in fact, he
10 didn't connect the hose and try to kill him for who knows how
11 long they ran it? He said 15 to 20. It could have been a lot
12 longer than that. Remember, Mr. Hamman says, I didn't hear or
13 see anybody much. I was probably sleeping, and remember this
14 appeared to be later at night. In fact, not that long before
15 they were apprehended and so quite likely, he was sleeping so
16 would you expect him to smell the carbon monoxide poisoning if,
17 in fact, he was sleeping?

18 Now, the suggestion is made to you that Mr. Rodriguez just
19 got sucked along with Ms. Rugg and he really didn't intend any
20 of these things. You know, when you really look at it, you
21 could really view it the other way around. Ms. Rugg wanted to
22 get the property. Did she really want to be involved in the
23 gassing and then certainly in the cutting off of the water?
24 She's trying to talk him into more direct action, the hitting
25 over the head. No, she's maybe letting him out of the cell to
26 be found later.

27 Mr. Rodriguez is the one that is insistent on shutting off
28 the water. All right. Insistent on not telling anybody, even

1 when the police stop him, he's going to make up a story. He
2 claims he's going to call from Reno, but that's nonsensical.
3 Why would you call from Reno? You can go to any pay phone. You
4 can call the fire department if you don't want to call the
5 police. You can call, say I'm an anonymous caller. I heard
6 noises down at the hall. You need to check it out. That's all
7 he would have to do. He could have gotten away from Ms. Rugg at
8 any time.

9 If you look at her, note it looks like she's trying to get
10 away from him at this point. He's starting to scare her. Yes,
11 she indicates in there he kidnapped me. Does she do that to
12 avoid responsibility? Even she can't believe that's going to
13 work for her. Mr. Hamman, if he's still alive, is going to
14 impeach that. If not, there's Mr. Romines and Ms. Hughes
15 around. No. Does it get your attention however? Yes, it would
16 if you're the Shell Station man. You're going to call the
17 police right away if you see a note like that.

18 And then the suggestion was made to you with, you know, is
19 he really a killer? And different people kill in different
20 ways. You don't have to go in and directly stab someone. That
21 is probably the most personal way to kill someone. If you shoot
22 a gun at them, it is probably less personal because it can be
23 done from long distance even if you're an expert with the
24 marksman type rifle. Yes, they chose this way to do it, by
25 gassing and yes, they were both involved. They both got the
26 idea from Mr. Romines. They both went out and got out the
27 things necessary to do that. And they both participated in all
28 the acts necessary.

1 He tries to soft pedal on the tape and assess well, it was
2 only 15 minutes. I knew. He didn't know. There's no way he
3 could know. When a doctor can't know, he's not going to know.
4 What he attempts to do is minimize his liability and when that
5 doesn't work, he makes up a new story on the stand that he
6 yanked the hose out. Again, had he done that, he would have
7 told you that. Had he said that he told him that, and it was
8 missing from the tape, he would have told you that he never said
9 anything was missing from the tape.

10 And then it is asked of you, well, is it reasonable to
11 believe that just kill him over the car and the ATM and cash?
12 You know people get killed all the time for a lot less. Tennis
13 shoes, gang-related incidents. They get killed over nothing, so
14 really, that is immaterial. But we do know he is destitute at
15 that point. He needs money. We do know he doesn't want to go
16 back to any jail setting. We do know that he's not letting him
17 out at any cost. He says that over and over and over on the
18 tape. We do know that he's going to do anything he can so he
19 doesn't have to go back, and we do know he was going to shut the
20 water off and leave him for dead because he was never going to
21 report it.

22 He wasn't going to go to court and report it. He wasn't
23 going to go to Reno and report it. He was going to lay low.
24 That's exactly what he tells you for two days or more. Who
25 knows? By then, good chance hypothermia would have set in and
26 Mr. Hamman would have been dead, if he didn't think he was dead
27 already.

28 Again, some question is called about the actual gassing.

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1 You really think it is an attempted murder? Again, put yourself
2 in the cell. How would you like Mr. Rodriguez connecting up the
3 hose on one end of the car and the other end into the cell and
4 you're supposed to be comfortable with that? Don't you think
5 he'd be trying to kill you under those circumstances for any
6 amount of time?

7 And again, the suggestion is made to you that, well, you
8 know, since he was there, he really didn't aid and abet because
9 Mr. Rodriguez really didn't do anything. Well, you could
10 probably say that to some degree about Ms. Hughes. Okay.
11 Whatever discussion they did have the night before at the
12 Elmwood where they were going to roll the guy and that is again
13 on the tape and in the second half, she did not actively do
14 anything. She didn't prevent the other two, that's true. She
15 didn't report it. That's also true. Probably should have, but
16 didn't. She was even heard by Mr. Hamman to say, you guys
17 better let him out of there.

18 Also, Mr. Romines was telling them to let him out of
19 there. Mr. Rodriguez knows that he did plenty. He's in there
20 with Ms. Rugg thicker than thieves, if you will. He did assist
21 in every aspect of all the crimes involved. That's why he
22 doesn't want to let him out. That's why he doesn't want to call
23 the fire department. That is why when he realizes Mr. Hamman is
24 in there and the water is coming down and they decide to put the
25 bookcase up there, and then the water rises and then what does
26 he think?

27 He thinks at that point that he's going to be involved in
28 an attempted murder. You know what? That's pretty accurate.

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1 When you let water rise up like that and jeopardize somebody's
2 life, you bet. But it he didn't end with that. He continues
3 with the gassing, and he didn't end with that. He continues on
4 by wanting to shut the water off and basically not report the
5 guy ever.

6 So again, I ask for your guilty verdicts as charged and as
7 suggested in my opening argument. Thank you.

8 THE COURT: Could I see counsel in chambers for just a
9 second?

10 (Bench conference held off the record.)

11 THE COURT: All right. Ladies and gentlemen, there is
12 just some brief final instruction starting with 17.40 if you did
13 want to read along. The People and the defendant are entitled
14 to the individual opinion of each juror. Each of you must
15 consider the evidence for the purpose of reaching a verdict if
16 you can do so. Each of you must decide the case for yourself,
17 but you should do so only after discussing the evidence and
18 instructions with the other jurors.

19 Do not hesitate to change an opinion if you are convinced
20 it is wrong. However, do not decide any question in a
21 particular way because a majority of the jurors, or any of them,
22 favor that decision. Do not decide any issue in this case by
23 the flip of a coin or by any other chance determination. The
24 attitude and conduct of jurors at all times are very important.
25 It is rarely helpful for a juror at the beginning of
26 deliberations to express an emphatic opinion on the case or to
27 announce a determination to stand for a certain verdict. When
28 one does that at the outset, a sense of pride may be aroused and

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1 one may hesitate to change a position even if shown it is wrong.

2 Remember, you are not partisan or advocates in this
3 matter. You are impartial judges of the fact. In your
4 deliberations do not discuss or consider the subject of penalty
5 or punishment. That subject must not in any way affect your
6 verdict.

7 During deliberations any questions or requests you may
8 have should be addressed to the Court on a form that will be
9 provided. If there is any disagreement as to the actual
10 testimony, you have the right, if you choose, to request a
11 readback by the reporter. You may request a partial or a total
12 readback but any readback should be a fair presentation of that
13 evidence.

14 If a readback of testimony is requested, the court
15 reporter will delete objections, rulings, and sidebar
16 conferences so that you will hear only the evidence that was
17 actually presented. Please understand that counsel must first
18 be contacted, and it may take time to provide a response or
19 readback. Continue deliberating until you are called back into
20 the courtroom.

21 The instructions which I am now giving to you will be made
22 available in written form for your deliberations. They must not
23 be defaced in any way. You will find that the instructions may
24 be typed, printed, or handwritten. Portions may have been added
25 or deleted. You must disregard any deleted portion of an
26 instruction and not speculate as to what it was or as to the
27 reason for its deletion. You are not to be concerned with any
28 reason for any modification. Every part of the text of an

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1 instruction whether typed, printed, or handwritten is of equal
2 importance. You are to be governed only by the instruction in
3 its final wording.

4 Do not disclose to anyone outside the jury, not even to me
5 or to any member of my staff, either orally or in writing how
6 you may be divided numerically in your balloting as to any issue
7 unless I specifically direct otherwise.

8 Now, on this next one the blanks were not filled in so if
9 you would just flip over 1749 I will read it to you the way it
10 should be, and I will give you a corrected copy. In this case
11 the defendant has been charged with kidnapping for ransom,
12 conspiracy to commit murder, attempted murder, robbery, unlawful
13 taking of a motor vehicle, false imprisonment by violence, and
14 using another's name to obtain credit. The foregoing charged
15 crimes include the lesser offenses of robbery, false
16 imprisonment by violence and extortion. You will be given
17 verdict forms encompassing both the charged crimes and the
18 lesser-included offenses.

19 Since the lesser offenses are included in the greater, you
20 are instructed if you find the defendant guilty of the greater
21 offense, you should not complete the verdicts on the
22 corresponding lesser offenses, and those verdicts should be
23 returned to the court unsigned by the foreperson.

24 If you find the defendant not guilty of the felonies
25 charged, you then need to complete the verdicts on the
26 lesser-included offenses by determining whether the defendant is
27 guilty or not guilty of the lesser-included crimes, and the
28 corresponding verdicts should be complete and returned to the

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1 the court signed by the foreperson.

2 You shall now retire and select one of your number to act
3 as foreperson. He or she will preside over your deliberations.
4 In order to reach verdicts all 12 jurors must agree to the
5 decision and to any finding you have been instructed to include
6 in your verdict. As soon as you have agreed upon a verdict so
7 that when polled, each may state truthfully that the verdicts
8 express his or her vote, have them dated and signed by your
9 foreperson and return with them to the courtroom. Return any
10 unsigned verdict forms.

11 When you reach a verdict as to any particular count, place
12 all verdict forms for that count in a sealed envelope which will
13 be held by the clerk until all verdicts on all counts have been
14 reached. At that time the sealed verdicts will be returned to
15 the foreperson, and the jury will return with them to the
16 courtroom. Return any unsigned verdict forms.

17 You will be permitted to separate at the noon and evening
18 recesses. During your absence the jury room will be locked.
19 You are to return following the recesses on the next succeeding
20 court date. During period of recess, you must not discuss with
21 anyone any subject connected with the trial, and you must not
22 deliberate further upon the case until all 12 of you are
23 together and reassembled in the jury room. At that time you
24 shall notify the bailiff the jury has reassembled and continue
25 your deliberations.

26 As for our alternate jurors, you are still bound by the
27 admonition that you are not to converse among yourselves or with
28 anyone else on any subject connected with the trial or to form

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1 or express any opinion on it until the case is submitted to you,
2 which means until such time as you are substituted in for one of
3 the 12 jurors now deliberating on the case. This also means you
4 are not to decide how you would vote if you were deliberating
5 with the other jurors.

6 I now need you to all please hand to my bailiff your
7 copies of the jury instruction and then as I said before, I will
8 be sending in one copy that you can all use.

9 And I will now have the bailiff sworn to take charge of
10 the jury.

11 THE CLERK: Raise your right hand. Do you solemnly state
12 that you will take charge of the jury and keep them together;
13 that you will not speak to them yourself, nor allow anyone to
14 speak to them upon matters connected with this case, and when
15 they have agreed upon a verdict, you will return them to the
16 courtroom, so help you God?

17 THE BAILIFF: I swear.

18 THE COURT: All right. Now, you are no longer subject to
19 our schedule, so you can set your recesses whenever you want.
20 My bailiff will be taking our first 12 jurors to the jury room.
21 We will be sending you up, in a little bit, the evidence that
22 has been received into evidence, as well as the jury
23 instructions. For our two alternate jurors, you are free to go
24 at this point. But leave us your phone number, and we will call
25 you if and when the jury reaches a verdict. And, of course, if
26 we do need to get a hold of you and substitute you in. Leave
27 everything here, but we will call you. I'm sure you're going to
28 want to know. Unless there's anything further, we are in

1 recess.

2 (Jury exits the courtroom to begin
3 deliberations at 2:17 p.m.)

4 (Nothing omitted.)

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1 AUBURN, CALIFORNIA

2 MONDAY, OCTOBER 6, 2003, 1:48 P.M.

3 --o0o--

4 The matter of the People of the State of California,
5 plaintiff, versus SHAWN MICHAEL RODRIGUEZ, defendant, Case No.
6 62-34689, came on regularly this day before the HONORABLE JOHN
7 L. COSGROVE, Judge of the Superior Court of the State of
8 California, County of Placer, Department Number TWO thereof.

9 The People were represented by WILLIAM MARCHI, Deputy
10 District Attorney, in and for the County of Placer, State of
11 California.

12 The defendant, SHAWN MICHAEL RODRIGUEZ, was in personal
13 attendance upon the Court and represented by JESSE SERAFIN,
14 Assistant Public Defender, in and for the County of Placer,
15 State of California.

16 The following proceedings were had, to wit:

17 --o0o--

18 THE COURT: This is matter of People versus Shawn
19 Rodriguez, Case Number 62-034689. And also some -- is the
20 primary case, and there are a couple cases that are apparently
21 trailing also. Are you Shawn Rodriguez?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: Mr. Rodriguez is present with counsel.
24 District attorney is present. Mr. Rodriguez, I'm filling in for
25 Judge Kearney, judge who heard your trial. Our situation is
26 that I have here seven sealed envelopes, which I've been
27 informed have been presented by the jury. And I understand
28 there are eight counts in this information. And I also have

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1 received a note from the jurors indicating and reads as follows:

2 "We are unable to reach a unanimous decision on the final
3 count being deliberated. We have spent 12 hours approximately
4 over three days discussing the complaints. Please provide
5 direction." So that my impression is that they have decisions
6 on seven of the eight counts, and that's what these envelopes
7 represent. They are -- they may be deadlocked on the one count
8 or they just may need some guidance as to what to do or I don't
9 know. We won't know what they mean until we bring them in here,
10 but they could very well be deadlocked.

11 I understand you are willing to waive your appearance here
12 in court for the purpose of the Court determining from the jury
13 how they stand on this count they're referring to in this
14 message?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And that would include then making a
17 determination, the Court inquiring of the jurors how they stand
18 on this case or on this count, and if they would be hopelessly
19 deadlocked then a mistrial would be declared as to that count,
20 so that the proceedings which you will not be present for will
21 include that. The declaration of a mistrial as to that count if
22 the jurors are unable to decide. Are you in agreement with
23 this?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Counsel join?

26 MR. SERAFIN: I do, your Honor.

27 MR. MARCHI: Yes, your Honor.

28 THE COURT: Fine. Then Mr. Rodriguez can step outside,

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1 and then we'll bring the jurors in and find out what is going on
2 in this count.

3 (Defendant leaves the courtroom.)

4 THE COURT: I should probably state the reason why we're
5 going through this process is I have been informed he may cause
6 some disruption. If once a verdict has been rendered in this
7 case and so to preclude his acting out in front of the jury and
8 unshackled, we've gone through the process of he's now waived
9 his appearance for this determination. If the jurors are, in
10 fact, deadlocked as to this count, and they have then reached
11 verdicts on the seven remaining counts, he will be brought back
12 in and he should be in a shackled condition at that time;
13 agreed?

14 MR. SERAFIN: Agreed.

15 MR. MARCHI: Fine, your Honor.

16 (Jury enters the courtroom at 1:53 p.m.)

17 THE COURT: Good afternoon, ladies and gentlemen. I am
18 not Judge Kearney. She's been called out. She had to go to
19 another department this afternoon so I'm filling in for her, but
20 I received a notification from the jury foreman, is it
21 (230078370) right there, juror number ten. It says, "We are
22 unable to reach a unanimous decision on the final count being
23 deliberated. We have spent 12 hours approximately over three
24 days discussing the complaint. Please provide direction."

25 First of all, which count are you referring to?

26 JUROR 230078370: On number Three, your Honor.

27 THE COURT: Count Three. And along with that I do have at
28 least there's seven envelopes here.

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1 JUROR 230078370: Correct.

2 THE COURT: Were these earlier returned by the jury?

3 JUROR 230078370: Yes, your Honor.

4 THE COURT: And these are all sealed, and they all reflect
5 a decision as to a count in this case, apparently all counts
6 except Count Three?

7 JUROR 230078370: Yes, your Honor.

8 THE COURT: And then Count Three -- now, my complaint
9 indicates the charge there is the willful, deliberate
10 premeditated attempted murder. That's the one --

11 JUROR 230078370: Yes, your Honor.

12 THE COURT: -- you're having difficulty with. Without
13 telling me which way the vote is, whether it be guilty or not
14 guilty, without telling me that, can you tell me what the
15 numerical breakdown is in numbers 10-2, 8-4?

16 JUROR 230078370: 9-2 and 1.

17 THE COURT: 9-2 and 1. Okay. Is there --

18 JUROR 230078370: That was the last vote, your Honor. We
19 took several votes and that happened to be the last one.

20 THE COURT: That's the important one, the last one. Is
21 there any way that I can assist you in coming to a decision on
22 this case, on this count rather?

23 JUROR 230078370: We went through a very long discussion
24 on each of these, and there were some very honest input by each
25 member of the jury. We tried to encourage each member to
26 participate in that particular discussion. At this point, we
27 basically can't agree to come up with a final decision, and it
28 doesn't look like we're going to be able to. We could continue

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1 to discuss, but I doubt very much we'll be able to come to a
2 unanimous decision.

3 THE COURT: Would restating the jury instructions or a
4 portion of the evidence or an instruction; would that be of
5 assistance?

6 JUROR 230078370: Once we've gone through the jury
7 instructions, we went through them quite a number of times. We
8 read and reread the instructions. I'm not sure that in itself
9 would end up coming up with a different decision.

10 THE COURT: Is the problem in the interpretation of the
11 evidence?

12 JUROR 230078370: Partly the interpretation, partly the
13 lack of evidence, partly the interpretation by the individual of
14 the evidence that they saw.

15 THE COURT: Okay.

16 JUROR 230078370: It is really complex.

17 THE COURT: This tells me there's not much I can do to
18 help. If in your opinion, do you believe that the jury is
19 hopelessly deadlocked?

20 JUROR 230078370: That would be a conclusion I would
21 reach, and I think the rest of the jury can speak for
22 themselves, but based upon the last vote and having had several
23 other votes very similar over the period, and the 12 hours was
24 actually 12 hours we spent discussing, not the lunch periods or
25 anything of this nature, actual work on the case, that we don't
26 feel we can gain anything by additional discussion.

27 THE COURT: I'm going to ask the clerk to go down each
28 individual juror, and you'll be asked a question if in your

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1 opinion do you believe that additional deliberations would be of
2 any benefit or would help you arrive at a decision in this case.

3 JUROR 230024581: Your Honor, I have a question? The
4 question that is going to be asked of us, is this to me
5 specifically or do I --

6 THE COURT: I'm asking for your opinion.

7 JUROR 230024581: In terms of me, not in terms of the
8 group?

9 THE COURT: In terms of you in your own personal -- do you
10 believe additional -- if you deliberated more, is there, you
11 know, a good chance that you would arrive at a verdict in this
12 case.

13 THE CLERK: As I call your name, please answer yes or no
14 to the following question, do you think additional deliberations
15 would help, juror number one?

16 JUROR 230076278: No.

17 THE COURT: She said no.

18 THE CLERK: Juror number two?

19 JUROR 230140124: No.

20 THE CLERK: Juror number three?

21 JUROR 230268646: No.

22 THE CLERK: Juror number four?

23 JUROR 230085548: No.

24 THE CLERK: Juror number five?

25 JUROR 230094038: No.

26 THE CLERK: Juror number six?

27 JUROR 230081403: No.

28 THE CLERK: Juror number seven?

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1 JUROR 230106246: No.
2 THE CLERK: Number eight?
3 JUROR 230027425: No.
4 THE CLERK: Juror number nine?
5 JUROR 230170400: No.
6 THE CLERK: Juror number ten?
7 JUROR 230078370: No.
8 THE CLERK: Juror number 11?
9 JUROR 230085685: No.
10 THE CLERK: Juror number 12?
11 JUROR 230024581: No.
12 THE COURT: Okay. All jurors have indicated no.
13 Anything, Counsel, before I declare a mistrial as to Count
14 Three?
15 MR. SERAFIN: No, your Honor.
16 MR. MARCHI: No, your Honor.
17 THE COURT: It appears that the jurors are hopelessly
18 deadlocked and a mistrial is declared as to Count Three.
19 Now, then, just to make sure I understand, you do have the
20 remaining counts you have verdicts for in each of those, and
21 those are all reflected in the envelopes that I -- sealed
22 envelopes that I have here; is that correct?
23 JUROR 230027821: Yes, your Honor.
24 THE COURT: We will take a short recess and --
25 THE BAILIFF: He's ready to come back up.
26 THE COURT: Take the jurors back to the jury room.
27 (Jury exits the courtroom at 2:01 p.m.
28 Defendant is brought back into the

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1 courtroom as well as the jury at 2:45 p.m.)

2 THE COURT: Okay. The jurors have returned to the
3 courtroom, also the defendant, Mr. Rodriguez, is present with
4 counsel and district attorney is present. I'm going to proceed
5 now with the taking of the verdicts on the remaining counts. I
6 have the seven envelopes here. You all have a number in the
7 upper left-hand corner. Does that number correspond to the
8 count?

9 JUROR 23002821: Yes.

10 THE COURT: They're also dated and have initials on them.
11 Okay. I'll hand those envelopes to the clerk. The clerk
12 may open them up and read the verdicts.

13 THE CLERK: Superior Court of Placer County, state of
14 California. The People of the state of California versus Shawn
15 Michael Rodriguez, Case Number 62-034689. We, the jury in the
16 above-entitled action, find the defendant, Shawn Michael
17 Rodriguez, guilty of a violation of Penal Code Section 209(a),
18 kidnapping for extortion, a felony, as charged in Count One of
19 the information dated October 3rd, 2003, and signed by the
20 foreperson.

21 Same title, court and cause. We, the jury in the
22 above-entitled action, find the allegation that the defendant,
23 Shawn Michael Rodriguez, intentionally confined the victim,
24 Nicholas Hamman, in a manner which exposed him to a substantial
25 likelihood of death within the meaning of Penal Code Section
26 209(a), to be not true, dated October 3rd, 2003, and signed by
27 the foreperson.

28 Same title, court and cause. We, the jury in the

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1 above-entitled action, find the defendant, Shawn Michael
2 Rodriguez, not guilty of a violation of Penal Code Section 518,
3 extortion, a felony, a lesser but necessarily included offense
4 to the offense charged in Count One of the information, dated
5 October 3rd, 2003, and signed by the foreperson.

6 Same title, court and cause. We, the jury in the
7 above-entitled action, find the defendant, Shawn Michael
8 Rodriguez, guilty of a violation of Penal Code Section
9 182(a)(1)/187(a), conspiracy to commit murder, a felony as
10 charged in Count Two of the information and agree that one or
11 more of the overt acts alleged has been committed by a
12 conspirator, dated October 2nd, 2003, and signed by the
13 foreperson.

14 Same title, court and cause. We, the jury in the
15 above-entitled action, find the defendant, Shawn Michael
16 Rodriguez, not guilty of a violation of Penal Code Section 211,
17 second degree robbery, a felony as charged in Count Four of the
18 information, dated October 3rd, 2003, and signed by the
19 foreperson.

20 Same title, court and cause. We, the jury in the
21 above-entitled action, find the defendant, Shawn Michael
22 Rodriguez, not guilty of a violation of Penal Code Section 236,
23 false imprisonment by violence, a felony, as charged in Count
24 Five of the information, dated October 3rd, 2003, and signed by
25 the foreperson.

26 Same title, court and cause. We, the jury in the
27 above-entitled action, find the defendant, Shawn Michael
28 Rodriguez, guilty of a violation of Vehicle Code Section

1 10851(a), unlawful driving or taking of a vehicle, a felony, as
2 charged in Count Six of the information, dated October 1, 2003,
3 signed by the foreperson.

4 Same title, court and cause. We, the jury in the
5 above-entitled action, find the defendant, Shawn Michael
6 Rodriguez, guilty of a violation of Penal Code Section 530.5,
7 using another's name to obtain credit, property, a felony, as
8 charged in Count Seven of the information, dated October 1,
9 2003, and signed by the foreperson.

10 Same title, court and cause. We, the jury in the
11 above-entitled action, find the defendant, Shawn Michael
12 Rodriguez, guilty of a violation of Penal Code Section 530.5,
13 using another's name to obtain credit, property, a felony, as
14 charged in Count Eight of the information, dated October 1,
15 2003, and signed by the foreperson.

16 Ladies and gentlemen of the jury, is this your verdict?

17 THE JURY: Yes, it is.

18 THE COURT: Does either side wish to have the jury polled?

19 MR. SERAFIN: No, your Honor.

20 MR. MARCHI: No, your Honor.

21 THE COURT: Can I see counsel for a moment, please?

22 (Bench conference held off the record.)

23 THE COURT: Okay. The verdicts will be entered in the
24 minutes of the court. The verdicts will be entered into the
25 minutes. And, ladies and gentlemen, that concludes your
26 services here as jurors in this case. I'd like to thank you
27 very much on behalf of Judge Kearney and the other judges in our
28 court system for the time and the effort that you put into this.

1 We recognize that you took time out of your own busy lives to be
2 here and be a part of the system and without your assistance,
3 the system can't function properly so we do thank you for your
4 participation. And with that, you folks will all be excused.
5 You are also released from the admonition about talking about
6 the case. You are free to talk about the case now, and you're
7 free to not talk about the case. That is your call. Thank you
8 very much, and jurors are excused.

9 MR. SERAFIN: Judge, may we have a moment to talk to the
10 jury outside before we proceed?

11 THE COURT: I just -- well, I'll set a date for
12 sentencing. Matter will be referred to the probation
13 department. Is time waived?

14 MR. SERAFIN: Yes.

15 THE COURT: We'll set this for two months for judgment and
16 sentencing.

17 MR. SERAFIN: Actually, Judge, could we have it within the
18 statutory time? We would like it within the statutory time.

19 THE COURT: Twenty-one days, and it should be in
20 Department 3.

21 MR. MARCHI: I would just ask that any bail that has been
22 set be revoked at this time.

23 THE COURT: Bail is revoked.

24 THE CLERK: It will be set for October 23rd at 8:30 in
25 Department 13, 1 o'clock.

26 THE REPORTER: She does sentencings at 1 o'clock.

27 THE CLERK: One o'clock.

28 THE COURT: That concludes these proceedings. The only

1 thing as far as the evidence is concerned, stipulate it can be
2 returned?

3 MR. SERAFIN: Yes, your Honor.

4 MR. MARCHI: Thank you, your Honor, yes.

5 THE COURT: The evidence will be returned to whoever
6 presented it, and thank you, ladies and gentlemen of the jury.
7 You're excused. You're free to talk about the case and free to
8 not talk about the case, and we'll be in recess.

9 (Jury exits the courtroom at 2:17 p.m.

10 Defendant exits the courtroom.)

11 THE COURT: We're convening. Of course, the jurors have
12 been released. Mr. Rodriguez is not present in court. Counsel
13 for Mr. Rodriguez is present. District attorney is present. I
14 want to get together and make some determination with regard to
15 Count Three. That is a hung jury. That is the mistrial was
16 declared for.

17 MR. MARCHI: We are outside the presence of the defendant.
18 I assume that defense counsel is okay with that.

19 MR. SERAFIN: That's fine.

20 MR. MARCHI: I would move to dismiss Count Three in view
21 of the other verdicts without prejudice. You know, if there
22 were to be a reversal for any other reason for other counts, I
23 would reserve the right to refile that, but at this time I would
24 move to dismiss it.

25 THE COURT: Any objection?

26 MR. SERAFIN: No objection.

27 THE COURT: Granted. Count Three is dismissed.

28 (Proceedings concluded.)

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(Nothing omitted.)

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

DEPARTMENT THREE HON. FRANCES A. KEARNEY, JUDGE

--oOo--

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,)	
vs.)	No. 62-34689
)	
)	
SHAWN MICHAEL RODRIGUEZ,)	REPORTER'S
)	CERTIFICATE
Defendant.)	
_____)	

STATE OF CALIFORNIA)	
)	ss
COUNTY OF PLACER)	

I, PAMELA R. KATROS, Certified Shorthand Reporter of the Superior Court of the State of California, for the County of Placer, do hereby certify that the foregoing PAGES 411 through 777, inclusive, comprise a full, true, and correct transcript of the proceedings had in the above-entitled matter held on September 23, 24, 29, 30, 2003, and October 6, 2003.

I also certify that if portions of the transcript are governed by the provisions of CCP 237(a)(2), all personal juror identifying information has been redacted.

IN WITNESS WHEREOF, I have subscribed this certificate at Auburn, California, this 29th day of February, 2016

PAMELA R. KATROS, CSR, RPR
License No. 9383
Official Court Reporter
County of Placer