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SUPREME COURT
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SO53228

IN THE
Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff and Respondent,

v.

ANDRE STEPHEN ALEXANDER

Defendant and Appellant.

APPEAL FROM A JUDGMENT OF DEATH
SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE CHARLES E. HORAN, JUDGE PRESIDING

LOS ANGELES SUPERIOR COURT NO. BA065313

APPELLANT'S OPENING BRIEF
[Volume 2 of 5; Pages 58-105]

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Under Appointment by the California Supreme Court*

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II. POST-TRIAL MOTION TO DISMISS FOR INTERFERENCE WITH THE RIGHT TO COUNSEL

On February 6, 1996, the defense filed a motion to dismiss for interference with his right to counsel and a motion to suppress electronic surveillance evidence. (CT 3731-3781, 3782-3792.)³⁵ The court heard the former motion on April 23, 1996, after the verdict of death had been returned. (RT 8456.) The court denied the latter motion on February 8, 1996, before the verdict was returned. (CT 3811.)

A. Defense Testimony in Support of the Motion

1. Appellant

Between January 4 and 18, 1996, appellant was housed in the Los Angeles County Jail. (RT 8460.) He had access to a telephone from where he phoned his mother and father from time to time. (RT 8461.)

Donald Ingwersen was the defense investigator in the case. If appellant had a message to contact Mr. Ingwersen, he would ask his mother to dial Mr. Ingwersen's number. This then was a three-way call. Such three-way calls involving appellant, his mother and Mr. Ingwersen were frequent (RT 8461.)

Appellant had the conversation reflected at p. 12 et seq. of Exhibit A with Mr. Ingwersen because he wanted Mr. Ingwersen to contact witnesses related to the defense of this case. (RT 8464.) Appellant's mother was on the phone because that was the only way appellant could get through to Mr. Ingwersen. The information was supplied to Mr. Ingwersen at Mr. Klein's request. (RT 8464.)

³⁵ The motion regarding the electronic surveillance is not addressed further in this brief.

During the three-way conversation, appellant's mother responded to some questions appellant had. (RT 8465.) Appellant asked his mother to contact his father to help identify a certain person. (RT 8466.)

Appellant's mother was involved in the conversation until it ended. (RT 8568.) Appellant had a short conversation with her after Mr. Ingwersen disconnected. (RT 8468.)

2. Donald Ingwersen

Referring to Exhibit A (RT 8471), Mr. Ingwersen testified that Mr. Klein had asked him to find a witness and Mr. Ingwersen thought that appellant might have some information that would help him find this witness. Mr. Ingwersen did not expect anyone to overhear this conversation by wiretapping. (RT 8472.) Appellant's mother participated in this conversation. (RT 8476.)

Exhibit B was a conversation Mr. Ingwersen had with appellant's mother at Mr. Klein's request about where appellant had attended school. He did not expect anyone to overhear this conversation. (RT 8472.)

Exhibit C (RT 8472) was a conversation with appellant's mother when she called Mr. Ingwersen back to give him more information about the times that appellant attended high school. Mr. Ingwersen had this conversation at Mr. Klein's request and it related to a potential defense in the case. Mr. Ingwersen did not expect anyone to overhear this conversation. (RT 8473.)

All three conversations took place on January 9, 1996. (RT 8474.)

3. Detective Henry

Detective Henry was called by the defense. (RT 8477.)

Between January 4 and 18, 1996, Henry was aware that a wiretap had been ordered for the telephone of appellant's parents. Henry supervised the wiretap. (RT 8478.) The person monitoring a call would complete a wire monitor log and Henry would then review the log. He reviewed all the

logs but did not listen to all the tapes. (RT 8483.) The wire monitor log contained synopses of the conversations. (RT 8484.)

Henry knew prior to January 4, 1996 that the defense investigators were Donald Ingwersen and Richard Lonsford. (RT 8478.) He knew that Mr. Klein was appellant's attorney. (RT 8478-8479.)

Henry was present and monitored the first three-way conversation. He directed the conversation to be tape-recorded. (RT 8479.) He knew during this conversation that Ingwersen was an investigator for the defense. (RT 8479.)

Henry was not present for the conversation reflected in Ex.'s B and C. (RT 8480.) Henry may or may not have listened to the conversation shown in Exhibit A. (RT 8482.)

After these three calls took place, Henry directed the personnel monitoring the wiretap to minimize the wiretap of these calls. (RT 8481.) This meant that the wiretap was deactivated in every conversation involving the investigator. (RT 8482.)

The court at this point ruled that there is a difference between inadvertent eavesdropping and reckless and egregious eavesdropping. (RT 8486.)

In training, Henry had been told that if a third party was present during a conversation with the client, the privilege was waived. (RT 8488.) He had also been told that a conversation between attorney and client was privileged. Such a conversation would then be "minimized." (RT 8488.)

Henry directed that there would be total minimization of the conversation was between defense investigator or the attorneys and appellant. If a family member or third party was involved in the three-way call, Henry thought the privilege was waived. (RT 8489.)

Exhibit A was the first time there was a three-way conversation that fell within the parameters described in the preceding paragraph. (RT 8489.)

One of the monitors came out and told Henry that appellant was on the line with his mother. Henry went into the wire room and began listening to the conversation. When appellant directed his mother to connect him with the investigator, Henry told the monitor, Gene Salvino, to stay up on the conversation. (RT 8490.)

Deputy district attorney Peterson was on the premises. Henry told Peterson that a three-way conversation was taking place and that he understood the privilege to have been waived but that he wanted to make sure they were on firm ground. (RT 8490-8491.) Petersen said she wanted to call personnel in the District Attorney's Office, including prosecutor Kuriyama. As Peterson was doing so, Henry was going in and out of the wire room, monitoring the conversation. Henry was also checking back with Petersen because he wanted to make sure that they had no problems with the wire interception. (RT 8491.)

The prosecutors [Peterson, Kuriyama and Felker] agreed that the privilege was waived but they opined that one had to be "careful of trial strategy." (RT 8391-8492.) Henry became concerned because he had 30 people monitoring the calls who had not been advised of "trial strategy." Trial strategy had not been addressed in the training session. Henry therefore advised everybody involved in the interception operation that no further communications between the investigators or the attorneys would not be monitored until Henry had discussed it with the judge who had authorized the wiretapping. (RT 8492.)

Henry went to see Judge Ouderkirk and advised him of the three-way conversation that had taken place. He asked Judge Ouderkirk whether, in his opinion, that the privilege had been waived. Judge Ouderkirk advised Henry that he should be concerned about this. Henry ordered that these three-way conversations not be taped and this was discontinued from then on. (RT 8493.)

The court ruled that the defense had made a prima facie showing that when the conversation occurred, the mother was present to further appellant's interest and that the conversations "bears the indicia of attorney/client privilege." (RT 8513-8514.) This was true as to Exhibit A but it was not true of Exhibits B and C. (RT 8514.)

The court proceeded to the next issue, whether there should be sanctions as to Exhibit A. (RT 8514.) The People called Detective Henry and Salvino on this issue.

B. Testimony by the People in Opposition

1. Detective Henry

As soon as he listened to the three-way conversation, Henry gave instructions to "do total minimization as to investigators and attorneys." (RT 8516.) To his knowledge, no other conversations between appellant and defense investigators were recorded. (RT 8516-8517.) Henry never communicated the contents of the three-way conversation to the prosecutors. (RT 8517.) Henry never disclosed the contents of this conversation to anyone involved in this trial prior to yesterday. (RT 8517.)

Roughly a thousand telephone conversations were monitored during this two-week period. (RT 8517-8518.)

2. Investigator Salvino

Salvino is an investigator with the District Attorney's Office assigned to the major crimes unit. (RT 8520.) He was involved in the monitoring of the telephones and received training for it on January 4 and 5, 1996. (RT 8520.)

He monitored Exhibit A. (RT 8521.) No part of this call was minimized. (RT 8522.) He never communicated the contents of this conversation to any of the attorneys involved in this case. (RT 8524.)

C. Stipulation and Denial of the Motion

It was stipulated that deputy district attorney Petersen did not view or read the logs. (RT 8525.)

After hearing argument on the matter, the court denied the motion to dismiss. The court observed that it had given the defense the benefit of the doubt but no confidential information had been revealed to the prosecution. (RT 8527-8531.)

III. GUILT PHASE TRIAL

A. The People's Case-In-Chief

1. The Shooting – June 4, 1980

On June 4, 1980, Lloyd Bulman and Julie Cross, special agents of the United States Secret Service, were conducting a surveillance of a house in Los Angeles where a suspected counterfeiter was residing. (RT 4751, 4753.)

Bulman and Cross were in a Secret Service Vehicle, a blue, four-door 1975 Buick Electra with license plate 953MLR. (RT 4754.) The car was not marked. (RT 4914.) No one could tell that it was a Secret Service car. Bulman was not wearing a uniform; no one could tell he was a Secret Service agent. (RT 4914.)

Bulman had known Cross for a couple of months. (RT 4753.) Cross was working for the Los Angeles office of the Secret Service. (RT 4753-4754.) June 4, 1980 was the first day that Bulman worked with Cross. (RT 4912.)

The agents were on Interceptor Street, which runs east and west. Belford Street runs north and south. (RT 4752, 4753.) The Secret Service car was parked by a post just east of 5845 Interceptor (RT 4782-4783), west of the corner of Belford and Interceptor. (RT 4757.) The vehicle was facing west. (RT 4762.)

A chin link fence covered with bushes ran parallel to the sidewalk on Interceptor. (RT 4757.) There was an apartment complex on the north side of Interceptor and west of Belford. (RT 4757-4758.) There was a vacant lot to the south. (RT 4758.) It was very close to the Airport. (RT 4758.)³⁶ The agents could see the airplanes taking off and landing and could hear the noise. It was very noisy. (RT 4758.)

The agents arrived at the location at 7:30 p.m. and parked. Bulman was in the driver's seat; Cross was in the passenger seat. (RT 4759.) It was still light. (RT 4761.)

A search warrant was to be executed on a house with a suspect, close to Manchester, and across the street from a Secret Service surveillance van (RT 4762) which was parked on the southeast corner of Manchester and Belford. (RT 5186.) Secret Service special agent Terry Torrey was in the surveillance van and had arrived on the scene at 7:30 or 8:00 p.m. His assignment was to observe a vehicle parked across the street on the west side of Belford. (RT 5189.) There were four or five other Secret Service agents involved. (RT 4915.)

Bulman and Cross were at their location in case something went wrong. If the suspect took off on foot, they were there to intercept him and if he fled in a car, they were to block the intersection. (RT 4762.)

Bulman and Cross were in the vehicle, sitting and talking. (RT 4763.) They each had a .357 Magnum with two and a half inch barrels. The Magnums were in holsters. There was a Remington shotgun with a short barrel on the floorboard between the agents with the barrel pointing towards the front of the vehicle. (RT 4763.)

The pistol grip of the shotgun was towards the seat and the barrel pointed towards the engine. It was a type of shotgun special to the Secret Service. (RT 4764-4765.) It was a Remington .12 gauge, with a sawed-off

³⁶ The airport was "a little bit" west and south of the area. (RT 5061.)

short barrel and a pistol grip rather than a regular wooden stock. It had a fold-up metal stock. People's Exhibit 7 is a Remington 870 similar in design and configuration to the one just described. (RT 4765.)³⁷

The .357's were loaded with .38 rounds. (RT 4767.) Bulman had loaded the shotgun, alternating between rifle slugs and buckshot rounds, as was custom and practice in the Secret Service. (RT 4767, 4770.)³⁸ The shotgun holds five cartridges and one in the chamber. (RT 4767-4768.)

The shotgun did not have a round in the chamber. (RT 4770.) In order to fire the weapon, one would have to bring the wooden piece back which would feed the shell toward the barrel and the shell would be positioned in the barrel. (RT 4771.) The safety was behind the trigger. (RT 4772.)

The safety was off on the evening of June 4, 1980. All that had to be done to fire the weapon was to pull the wooden grip back and forward and then pull the trigger. (RT 4772.)

At some point after Bulman and Cross arrived on the scene, a car drove by. (RT 4773.) It was a little before dusk. (RT 4774.) The visibility was still good. (RT 4774.) Bulman's window was up and Cross's window was down. Both back windows were up. (RT 4774.)

³⁷ The barrel of the Remington was six or eight inches shorter than on a regular shotgun. (RT 4766.) The pistol grip allows one to hold it either at waist level or at the shoulder level so that it can be fired in either position. (RT 4766-4767.) The Secret Service shotgun has the initials "U.S.S.S." engraved on the side of the bluing of the weapon. (RT 4773.) The serial number identifies the weapon as a Secret Service weapon. On the fold-up stock there is the legend "For Law Enforcement Use Only." (RT 4773.)

³⁸ People's Exhibit 8 shows two empty shotgun cartridges. The green cartridge has "rifle slug" printed on it. A slug looks like an oversize bullet. (RT 4769.) It is made of lead and is bigger than a regular slug found in a pistol. (RT 4770.) The red cartridge has buckshot in it. A buckshot is a smaller round like a BB pellet but about five times the size of a BB pellet. A cartridge with buckshot has a number of pellets in it. (RT 4770.)

The car was driving slowly, at 10 or 15 m.p.h., down Interceptor and headed west, in the same direction the agents were facing. (RT 4774-4775.) Other traffic had passed the agents. This car was going slower than other traffic. (RT 4775.)

It was a big car with two doors. The trunk of the car slanted down. The car was medium brown in color. (RT 4776.) It was rusty and the vinyl appeared to be in very poor condition. There were spots all over the vehicle, including the trunk. The passenger side of the vehicle was visible to Bulman. The top of the car was a lighter tan. (RT 4776.)

Bulman was able to see the men in the car fairly clearly. When Bulman first noticed the vehicle, the car had driven just a little to the front of the agents' car. The car was at an angle to Bulman, on his front left side. (RT 4777.)

Bulman saw the driver and the passenger. The driver was a black male. His hair was very neat. He had a moustache. (RT 4777.) The passenger was wearing a knit stocking cap and he was also black. (RT 4777.) He had a black moustache. (RT 4777-4778.) The stocking cap was a dark color and it was pulled down over his head to the top of his forehead. It came to down an inch from his hairline on to his forehead. It was halfway between the hairline and eyebrows and it was lower in the back. (RT 4778.)

Both of the men looked at the agents. (RT 4778.) The passenger continued to look at them as the car continued down the street. (RT 4779.) Bulman made eye contact with him. The man looked over his right shoulder. Once the car was two or three car lengths ahead of the agents' car, the man looked forward again. (RT 4779.)

The car went down Interceptor to Airport Boulevard and then went right or north on Airport Boulevard. (RT 4779-4780.)

About three to five minutes later, the agents noticed the vehicle coming around the corner again. (RT 4780.) Bulman saw the car and Cross

said, "Here comes that car again." It had come down Belford Avenue from north to south, turned right and went down Interceptor Street. (RT 4781.)

Bulman saw it the second time as it was coming around the corner. (RT 4780-4781.) The car was again going slowly, about 10 to 15 m.p.h. (RT 4781.) The men looked at the agents again. Bulman made eye contact with them as they drove by. (RT 4785.) Neither of the men wore glasses. (RT 4896.)³⁹

The car drove west on Interceptor and parked by the apartment complex. (RT 4782.) The car parked four or five car lengths in front of the agents' car. (RT 4783.)

The driver and passenger got out and went in a small walkway to the east side of 5845 Interceptor. (RT 4783.) (The agents were parked just east of 5845 Interceptor. [RT 4782-4783].) The driver walked around the vehicle. (RT 4784.) They appeared to walk into some type of garage area. (RT 4783-4784.) Bulman was not able to see where the men went inside the building. He lost sight of them for two or three minutes. (RT 4784.)

The men came back out of the garage area, got in their vehicle and drove west on Interceptor and turned right on Airport. (RT 4786-4787.) This was the same path they had taken before. (RT 4787.) It was approximately 8 p.m. It was dusk and getting harder to see. (RT 4786-4787.)

Cross said, "I think somebody is coming up on my side of the car." (RT 4789.) Bulman and Cross drew their pistols out of the holsters and had the weapons by their sides. Bulman looked through the back window of the vehicle and Cross got out. (RT 4789.) Bulman saw that Cross' gun was in her hand at waist level. (RT 4790.) When she got out of the car, she had her weapon drawn. (RT 4947.)

³⁹ This significant because the prosecution tried to connect appellant with glasses that were found on the scene.

Bulman leaned over and tried to look out the vehicle to see where Cross was going but was not able to see anything. Bulman then turned to the driver's side door. (RT 4790.)

Bulman started to get out of the vehicle. As he turned toward his side of the vehicle, he looked over his left shoulder and saw a black male approaching Bulman's side of the car. (RT 4791.) The man was about three steps from the door. Bulman saw the man reaching toward his waist with his hand, Bulman took his eyes off him to look for the door handle, grabbed it and started to open it. The man had come to the door and just pulled it open all the way and stuck a pistol in and pointed it at Bulman's head. (RT 4791.) The gun was a six inch revolver, either a .357 or .38 Colt or Smith & Wesson. (RT 4793.) Bulman was still seated in the car. (RT 4792.) The pistol was slightly inside the car pointing at Bulman's head at a distance of about a foot. (RT 4792.)

The man was inside the space between the open door and the side of car, crouched down. His head was below the roof of the car. (RT 4792.)

The man told Bulman to get his hands up. Bulman put his gun down beside him on the seat because he thought the man would see it. There was no light in the car but Bulman could see the man. He was a black male with a fairly thick moustache neatly groomed. His hair was combed and short. (RT 4793.)

The man was wearing a dark jacket, what appeared to be a sweater or turtleneck and dark slacks. (RT 4794.) The jacket was a little below waist length and came down further than the man's buttocks. (RT 4907-4908.)

Bulman recognized this man as the driver from making eye contact with him when the car went by and from his facial features. (RT 4794.)

The man told Bulman to get his hand up. Bulman said he was a police officer. The man said, "I'm a police officer too." Bulman said,

“Well, let me show you my badge and you show me your badge. Let me out of the car and we’ll get this thing straightened out.” Bulman had his hands up by his ears during this conversation. (RT 4794.)

The gun was now between Bulman’s left hand and his head. (RT 4795.) The man said, “Shut up. You’re not getting out of the car. Tell your partner to drop her weapon.” Bulman said, “I am not going to tell her to drop her weapon. What we’ve got is a Mexican standoff. You’ve got me. My partner is on the other side of the car with your partner.” The man pressed the gun into Bulman’s left temple and bent him over with the pressure of the weapon to the car seat. The man said, “Tell your partner to drop her weapon or I’ll blow your head off.” Bulman said, “Julie, he wants you to drop your weapon but don’t do it. We need to straighten this out.” Bulman was not able to see what was going on on the other side of the car. (RT 4795.)⁴⁰

Bulman heard Julie say, “What are you doing? Get your hand back up on the car.” A few seconds later the other man showed up on Bulman’s side of the car and stood to the left side of the man with the gun. (RT 4796.) The second man stood in the open space between the car door and the body of the vehicle. (RT 4797.) He was standing closer to the front of the car. Bulman saw him but not very clearly; it was pretty dark. (RT 4797.) This man had on a dark colored jacket. (RT 4909.) Bulman didn’t know whether it was a leather jacket or not. (RT 4910.) He was wearing a knit, stocking cap. (RT 4912.) This man had a thinner moustache than the man on Bulman’s side of the car. (RT 4935.)

When Bulman was bent over, he noticed that the microphone of the car radio was hanging off the knob of the radio. He picked it up. (RT 4797.)

⁴⁰ Wayne Dahler, a resident in a nearby apartment building, drove by the scene at about this moment at about 9 p.m. (RT 4954.) He saw two figures

Bulman thought that the car radio might be on and that he could put the conversation he was having with these two individuals out over the air so other agents could hear it. (RT 4798.)

The police radio is attached to the dashboard with a cord. The radio is inside the glove box. The radio microphone has a button on its left side. (RT 4798.) If it is pushed in, that keys the microphone and sends out a transmission. (RT 4798-4799.)

Bulman attempted to push the button. (RT 4799.) Nothing happened; the ignition was not on. The keys were in the ignition but they were not turned on. (RT 4799.)

Bulman said, "Look, I'm a police officer. We need to get this thing straightened out. I have this microphone that will show you this is a police car." The second man looked in and saw the microphone in Bulman's hand and he said, "He's got a radio." (RT 4799.)

The second man reached in and pulled the keys out of the ignition and knocked the microphone out of Bulman's hand. As he did so, he looked down and saw the shotgun on the front floorboard. He said, "What do we have here," or words to that effect, and he reached in and pulled the shotgun out. He backed out of the driver's side door and went around the back of the vehicle. (RT 4800.)

The next thing Bulman saw was Cross jumping into the vehicle through the passenger side door, landing with her knees on the front seat, her lower legs on the seat facing toward the back of the car. She gave Bulman a little look and dove into the back seat of the vehicle. (RT 4800.) The look she gave Bulman was like an "Oh, shit;" it was a look of panic. (RT 4801-4802.) She was facing toward the back seat. She then dove into

on the driver's side and at least one on the passenger's side but did not see their faces. Dahler had nothing more of substance to relate. (RT 4958.)

the back seat. (RT 4801.) Cross had nothing in her hands. (RT 4802.) Bulman had not seen Cross before he saw her jump into the car. (RT 4800.)

Bulman then heard and felt the shotgun blast. It went across his lap and hit the door next to him and went on out of the vehicle. The blast came from the passenger side door. (RT 4802.)

When the blast came, Bulman was still leaned over with the pistol pressed against his forehead. Bulman grabbed the man's right hand, which held the gun, with his left hand. Bulman pushed the gun away from his head at which time the man took a shot. When the gun went off, it was pointed toward the front of the vehicle. Bulman then wrestled the man out of the vehicle. (RT 4802-4803.)

Bulman had a hold of the man's hand which was about waist high. The man had his other hand down and Bulman was trying to pull the weapon away. The man was trying to hang on to the weapon and to point it at Bulman. Both men had their hands on the gun. (RT 4803.) They were wrestling out into the street and toward the front of the vehicle and up the street a little ways. The man shot off the weapon a couple of more times. (RT 4803.)

The men wrestled towards the apartment complex, west on Interceptor. They were in the middle of the street and came to about three or four car lengths ahead of the agents' car.⁴¹ The man said, "Shoot the son of a bitch." The other man replied, "I can't. You're in the way." Bulman looked up and saw the individual pointing the shotgun at them. (RT 4804.) The two fighting men were approximately straight across from the man with the shotgun, in the middle of the street. (RT 4806.)

⁴¹ During a walk-through of the crime scene on May 19, 1993, Bulman put the struggle with his antagonist up to 35 to 40 feet ahead of the vehicle. (RT 5927.) Immediately after the shooting, Bulman told Thies that the struggle had been in an eastward direction. (RT 6851.)

The man with the shotgun was the man who had been the passenger in the car that drove by. He had on a stocking cap, the same moustache and the same facial features. Exhibit 9 is similar to the stocking cap that this man wore. (RT 4805.)

There is a garage is next to the apartment building at 5845 Interceptor. (RT 4834.) The struggle with the man with the gun took the two men approximately to the east side of that garage, which would have been at the end of the fence. (RT 4835.)

The man with the shotgun was on the north curb of Interceptor. (RT 4806.) He was holding the shotgun with the stock in his left hand and his right hand coming around and finger by the trigger. (RT 4807.) He was bouncing the gun up and down. (RT 4807.)

The man with whom Bulman was fighting was trying to turn Bulman around so Bulman would have his back to the man with the shotgun. Bulman was trying to do the same, to use the man's body as a shield. (RT 4807.) The man with the shotgun came off the curb and started trying to circle around the fighting pair. (RT 4808.)

As the man with the shotgun kept trying to come around, Bulman kept a hold of the man with the pistol and kept turning him around and around in circles. They were now moving eastward, towards Belford and the agents' car. (RT 4808.) The man with the shotgun was following them. (RT 4809.)

Bulman started to lose his balance. He tried to pull the man down on him to use as a shield but he let him go to break his fall. The man pulled away from Bulman. (RT 4809.)

Bulman was on his hands and knees. He looked back over his right shoulder. The man with the shotgun had run up on Bulman's right side and pointed the shotgun about six inches from his head. (RT 4809-4810.) The

men were now just about at the northwest corner of Belford and Interceptor. (RT 4810-4811.)

The man bent over with the shotgun in his hand. (RT 4811.) His left hand was extended on the barrel and his right hand was on the trigger. The gun was approximately two feet off the ground and Bulman's face was approximately six inches away from the end of the barrel. (RT 4811-4812.) As the gun pointed at Bulman's head, he looked up at the man and flinched away and looked at the ground. He felt the shotgun blast down the side of his face and then felt the pavement from the street come up in his face. (RT 4813.)

Bulman was stunned because he thought that the side of his face had been shot off. He couldn't see because the gravel and asphalt from the street had hit him in the eye. (RT 4813.)

Alvin Borges, who lives in the vicinity, witnessed the shooting as he was driving by shortly after 9 p.m. on June 4, 1980. (RT 4969.) As he was preparing to turn right on Interceptor, he saw two men beating up on a third man. (RT 4970.) One man, who was white, was on the ground and the other two men, who were black, were pummeling him. (RT 4971.) The man on the ground was saying "Oh, no" or "God, no" or "Please don't;" he was pleading for his life. (RT 4973.) He was on his back or his side. (RT 4973.) Borges thought of stopping to help him but when the man with the shotgun shot at the man on the ground, Borges just speeded up. (RT 4972.) When the shot was fired, Borges thought the man on the ground was dead. (RT 4979.)

The man with the shotgun was between 5'10" and 6' and was dressed in jeans and a leather jacket. (RT 4971.) He had short black hair. (RT 4986.) The jacket had a brownish color and was waist length; it was not very long. (RT 4974.)

Exhibit F is a leather jacket. (RT 4908.) It was recovered in a search of a closet containing appellant's clothing in his parents' house in 1990. (RT 5905.) On direct examination, Borges testified that Exhibit F could be consistent with the jacket that Borges saw on the shooter. (RT 4976.)⁴² On cross-examination, Borges stated that he couldn't say that Exhibit F was the jacket the shooter wore. (RT 4995.)

Borges did not get a good look at the face of the man with the shotgun. (RT 4977.) He did not get a good look at the other man, either. (RT 4978.) It was stipulated that Borges was not able to identify either Terry Brock or appellant in a photo line-up. (RT 4999.)⁴³

Bulman testified that this was the most traumatic event of his life. He has had flashbacks and other problems. (RT 4868.) Bulman has sought the help of mental health experts but, at the time of trial, he was doing fine. (RT 4868-4869.)

It was stipulated that Ida Moriel, records custodian of the Coroner's Office, determined that, except for the Cross murder, there were no records of homicides on June 3, 4 and 5, 1980 within the vicinity of the Los Angeles Airport. (RT 5383-5384.)

2. The Aftermath – June 4, 1980

(a) Bulman Gets Help

Bulman heard the two men running away, around the corner and northward on Belford Street. (RT 4813.) He rolled over to feel his face to

⁴² Exhibit F, the leather jacket, was manufactured between 1973 to 1976. (RT 5736.)

⁴³ After the shot was fired, Borges turned right on Interceptor and drove west to Airport Boulevard. (RT 4979.) Borges saw someone walking and told this person to call the police. (RT 4980.) Borges then drove a quarter of a mile to his friend's house and called the police from a phone at a neighbor's house. He then returned to the crime scene where he was interviewed by the police. (RT 4981.)

see how much damage had been done and realized that he had not been hit. (RT 4813.) He got up and ran back to the car and got his pistol. (RT 4813-4814.) It was still on the front seat. (RT 4814.) He did not see Cross' pistol anywhere. (RT 4814.)

Bulman checked Cross' neck vein to see if she was alive; he got no pulse. Cross was lying on the back seat. Bulman did not see any blood. (RT 4814.)

Bulman backed out of the vehicle and ran down to the corner of Interceptor and Belford and started northward on Belford. He had his gun. (RT 4814.) Bulman spoke to someone on the street, probably Mr. Zisko (see pp. 76-77, *infra*), and then continued running northward on Belford to the surveillance van to get some help. (RT 4815.) He did not see the two men again. (RT 4815.)

(b) The Getaway

Special agent Torrey was in the surveillance van on the corner of Manchester and Belford. (RT 5186.) As he was watching the vehicle under surveillance, Torrey heard a car speeding northward on Belford. He looked out and noticed that it was going at a high rate of speed, i.e., 40 to 50 m.p.h. (RT 5191), and that the headlights were out. (RT 5190.) Torrey could hear the engine racing as if the car was accelerating.

Torrey saw the car for only a few seconds. (RT 5191.) It was a large car, medium to dark; Torrey could not determine the exact color. (RT 5192.) The car was somewhat similar to a '76 Pontiac Grand Prix in basic dimension and size. (RT 5193.) Torrey did not recall if the car had a vinyl top. (RT 5195.)

As soon as the car pulled even with the van and drove past northbound, Torrey lost sight of it. (RT 5193.)

Within minutes after that, Torrey could see Bulman running up to the surveillance van. (RT 5194.) Bulman told Torrey that Cross had been

shot and that they needed to get hold of the rest of the surveillance team and go down to the car. (RT 4816.) They drove down to the car and parked behind it, to the east. (RT 4816-4817.)

When they arrived at the scene, they found Frank Kerr, a special operations inspector with the Immigration and Naturalization Service, who lived at 8819 Belford. (RT 5032.) (See pp. 77-79, *infra*, for Kerr's testimony.) Kerr had checked Cross, and had called the police and an ambulance to the scene. (RT 4828.)

(c) Two Neighbors Hear the Shooting and Witness the Getaway

Harry Zisko lived on the second floor of a two-story apartment building at 8817½ Belford Avenue. (RT 5014-5015.) At approximately 9 p.m. on June 4, 1980, Zisko was in the bedroom of his apartment that overlooks Belford. (RT 5015.)

Zisko heard two, maybe three loud booms or explosions. It didn't sound like car backfires and so this attracted his attention. He interpreted the noise to be gunshots which was unusual. (RT 5016.) His initial impression was that the shots were coming from the direction of Interceptor Street. (RT 5016-5017.) The first two shots were together and the third came after five or ten seconds. (RT 5017.)

Zisko was curious and he went to the window that looks out over Belford. (RT 5017.) One can see the street from the window fairly well. There are street lamps but there are a lot of tall trees. There were a lot of shadows. (RT 5017.) Zisko stepped to the window five or ten seconds after the shots were fired. (RT 5018.)

Five seconds after he had stepped to the window Zisko noticed a couple of figures running north on Belford in the middle of the street. (RT 5018.) Zisko saw the men when they were just south of his apartment. (RT 5018.) They were sprinting. (RT 5019.) Zisko assumed from their profiles that they were men. (RT 5020.)

The men were running side by side. Zisko could not tell whether they were thick or thin or what race they were. One was further away from Zisko; he seemed slightly shorter and was carrying something in one of his hands that extended about a foot and a half. (RT 5019.) The object was circular and about two inches in diameter. (RT 5020.)

There was a clanking side when the men ran by. (RT 5020.) Zisko thought this was weird. It was like metal striking metal. (RT 5021.) Exhibit 7, the Secret Service shotgun, could possibly have been the object the shorter man was carrying. It seemed about the right length. (RT 5029.)

The men ran up the street, towards where 88th Street, and they finally disappeared in the shadows around 8754 Belford. (RT 5021-5022.)

A car was parked on the east or opposite side of the street from Zisko's apartment, in the area of 8752 Belford. (RT 5022-5023.) About 10 to 20 seconds (RT 5024) after Zisko lost sight of the men, this car, that had been sitting at the curb with its lights on, pulled away from the curb very quickly. The car momentarily lost some control, recovered, and then went speeding down the street. It struck Zisko that the lights on the car were turned off once it left the curb. (RT 5021.) The car drove north on Belford and disappeared from Zisko's angle of vision. (RT 5023.)

Zisko heard a call for help from the street. (RT 5024.) He ran downstairs onto the street and looked around. (RT 5024-5025.) He didn't see anybody immediately and then noticed a man come out of the shadows with a gun. The man moved the gun away and identified himself as a police officer. He instructed Zisko to call 911 with the message "police officer has been shot" or "officer down." Zisko ran back upstairs and did as the man had asked. (RT 5025.)

Frank Kerr, a special operations inspector for the Immigration Service (RT 5032), was going to bed at 9 p.m. on June 4, 1980 when he heard loud shouting in the street just opposite to his bedroom window. (RT

5033.) He couldn't make out the words but he heard a very brief argument and then a volley of shots. He couldn't see anything out of his bedroom window because there was a six foot chain link fence overgrown with ivy that blocked his view of the street. (RT 5033.)

Kerr had been a military policeman in the service and was a shooting enthusiast. He could tell the difference between a handgun and a shotgun being fired. (RT 5034.) The first shots he heard were handgun shots and then the last rounds he heard were shotgun rounds. He told his wife to tell 911 that there was a shotgun involved. (RT 5036.)

There was an initial volley of four or five rounds that were not shotgun rounds. (RT 5054.) Then there were two shotgun blasts while Mrs. Kerr was on the phone. (RT 5054.) Probably 10 or 12 second elapsed between the initial volley and the two shotgun blasts. (RT 5055.) About 30 to 40 seconds later there came two more shotgun blasts that were not close together. (RT 5055.) Altogether there were four shotgun shots. (RT 5054.) About 30 or 40 second elapsed between the first volley of shots and the final shotgun volley. (RT 5052-5053.) Kerr heard probably eight or nine shots. (RT 5053.) There may have been an echo effect in the parking lot of Kerr's apartment building, so one shot might have sounded like two. (RT 5056.)

Kerr got back into his Levi's and asked his wife to call 911 to say that they had heard shots fired and to give the police a description of him so that the police would not misidentify him as a bad guy. (RT 5034.) He then picked up his I.D. and duty pistol and headed for the front door that faces north and parallel with Belford. Kerr had to turn right to get out to the street. (RT 5034-5035.)

As Kerr approached his front door, he heard two people running hard in front of his building going north on Belford. But Kerr was focused on what was happening on the south side where the shots had come from.

Kerr went out the front door and around the corner and saw Bulman (RT 5037) on the driver's side of a car talking into a microphone. Bulman was quite agitated and he had a pistol in his hand. (RT 5035.)

Bulman had a mike in his hand so Kerr assumed he was a police officer of some type. Kerr identified himself and showed Bulman his credentials and put his revolver away immediately since he didn't want to get misidentified as a bad guy. (RT 5038.)

Bulman was quite distraught and he kept saying, "They shot me. They shot me." He had his hands to his face. (RT 5039.) Kerr kept looking down the barrel of Bulman's pistol and suggested that Bulman give him the weapon or put it away because he didn't want to get shot by Bulman who was so distraught. Bulman immediately holstered it and said again, "They shot me." (RT 5039.)

Kerr looked him over, turned him around and asked him where he was hurt. (RT 5040.) Kerr had experience seeing people hurt, shot or killed. He checked on Bulman to see if Bulman was hurt. (RT 5040.) Bulman had little abrasions on his face and he looked like someone had thrown gravel at him. (RT 5040.) He did not appear to be hurt. (RT 5040.)

Bulman said, "They got my partner. She's in the back. I'm going to get them" and he ran north on Belford. (RT 5041.)⁴⁴

Kerr was surprised. He went around the back of the automobile. The right front door was open. The right rear door was closed. (RT 5041.) Kerr couldn't see through the window and so he opened the back passenger door. He saw the body of a Caucasian female. Her head was supported by the door and when he opened it, her head fell out. (RT 5041.) It was

⁴⁴ There is a discrepancy between the testimony given by Bulman and Kerr. Bulman testified that he and agent Torrey found Kerr on the scene when they returned from the surveillance van, while Kerr testified that Bulman ran north on Belford (which was the direction of the surveillance van) after he spoke with him.

obvious that the female had been shot. Kerr could see the hole in her chest and there was still smoke issuing from the hole in her sweater. (RT 5042.) Kerr checked for a pulse on her wrist and throat and found none. He touched the corner of her eyeball to see if there was any reaction. (RT 5044.)

Shortly thereafter two individuals ran south on Belford. Kerr identified himself and said they were going to need backup and that L.A.P.D. had been called. (RT 5044.)

3. The Night of June 4-5, 1980

On direct examination, Yvette Curtis, Terry Brock's girlfriend, testified that she remembered watching in her home a news broadcast on Channel 7 the night the Secret Service agent was murdered. (RT 5240.) Terry Brock was in Curtis' apartment prior to the newscast, then left and came back before the 11 o'clock newscast. (RT 5246.)

A little before 11, Kim, Curtis' sister, and Terry Brock were arguing because Kim wanted to watch Benny Hill and he wanted to watch the news. Curtis told Kim to let Brock watch the news and turned it to Channel 7. (RT 5247.)

Terry Brock appeared to be excited. (RT 5247.) Brock told Curtis that he wanted to see the news because a Secret Service agent had gotten killed when she was investigating a counterfeiting ring. This was before the news came on. (RT 5249-5250.) Curtis asked where it had happened and Terry Brock said that it happened at the airport in Westchester. (RT 5250.) Curtis asked where Westchester was and he said it was near the airport, by Venice. (RT 5250-5251.) Terry Brock left about 10 or 15 minutes after the news. (RT 5338.)

On cross-examination, Curtis testified that the day she saw the newscast about the murder, Terry Brock dropped her off at work at Western Bancorp in El Segundo. (RT 5273-5274.) When she was finished after eight

or ten hours, Terry Brock picked her up in his white Fleetwood Cadillac. They stopped to pick up pastrami and then went to her mother's house at 1952 South Bronson. They ate, sat and talked. (RT 5274.)

Terry Brock got a phone call and left. (RT 5275.) It was perhaps around 9:00 p.m. but it could have been earlier. Curtis did not remember telling the police later that Terry Brock was gone by 7:30. (RT 5275.)

Chino (Charles) Brock, Terry's brother, came to Yvette's house that night to pick up Terry. (RT 5280.) While Curtis initially testified that she did not remember whether Charles Brock came back later that night (RT 5281), she stated later that Steve Faulkner and Charles Brock came over late that night in the latter's car. (RT 5303, 5338.) Charles Brock's car was a brown, two-tone car but Curtis didn't remember if he had the car at the time of the Cross murder. (RT 5300-5301.)

On redirect, Curtis elaborated on her account of the evening of June 4, 1980. She testified that when Terry Brock came back the night of the murder after having been gone for two and a half hours,⁴⁵ he looked anxious and nervous and could not keep still. (RT 5334.) Terry Brock wanted to turn on the T.V. Curtis' sister said she wanted to see "Benny Hill" and he said that he wanted to see the news. The two had a few words and Curtis told her sister to let Terry Brock watch the news. Curtis asked him why he wanted to hear the news so bad. Terry said, "I want to hear about this Secret Service lady that got killed."⁴⁶ When Yvette asked what happened, Terry said that the Secret Service lady was investigating a

⁴⁵ Curtis testified twice that Terry Brock was gone for two and a half hours. (RT 5330, 5334.)

⁴⁶ Later, there was some colloquy between court and counsel over whether Curtis had said "I killed" or "got killed." (RT 5363-5364.) The record reflects the latter. (RT 5336:21.)

counterfeiting ring at the airport. (RT 5336.) Terry Brock never came out and said that he had killed the Secret Service lady. (RT 5358.)

Curtis was explicit in stating that she did not know what Terry Brock was doing for the two and a half hours that he was gone. (RT 5330.)

Curtis had several contacts with the police about the evening of June 4, 1980. She appears to have had two interviews in June 1980 and one on July 1, 1980. (RT 5283 [June 24, 1980]; RT 5329 [June 30, 1980]; RT 5301 [July 1, 1980].)

Curtis failed to tell the truth on any of these occasions. Curtis admitted she lied to the police because Terry Brock threatened her. She lied to the police to protect Terry Brock because she was afraid of him. Terry Brock used to beat her a lot and threaten her and said that if she ever left him, he would kill her. (RT 5282.)

Before June 24, 1980, when she was interviewed by the police, Terry Brock told Curtis to tell the police that he was with her the whole night. (RT 5283.) Terry Brock told Curtis to say nothing and to say that he was with her the whole night or he would kill her and cut her ears off. (RT 5326.) Thus, on June 24, 1980, Curtis lied to the police and told them Terry Brock had been with her the whole night. (RT 5283.)

The day after Terry Brock was arrested, the police came to Curtis' mother's house. Curtis told them nothing; she was still scared of Terry Brock. (RT 5327.) She told the police she watched a news program about the Secret Service murder with Terry Brock. (RT 5327.) She told the police that she asked Brock where Westchester was and he said it was near the airport. (RT 5328.)

Curtis admitted that she had lied to the police when she said that she saw a news flash about the Secret Service lady at 10:30. (RT 5292.) She lied again when she told the police that Terry Brock had said nothing about the Secret Service lady before the newscast. However, Curtis testified that

she does not call that lying – she was afraid of Terry Brock. (RT 5293-5294.)

The next time Curtis talked to the police was July 1, 1980. (RT 5301.) She told the police that Terry Brock was with her from 7:00 on June 4, 1980 to 1:00 in the morning. (RT 5301-5302.) This was a lie. (RT 5302.) A little later the police asked again whether Terry Brock had been with her all evening and she said he left at 8:10 and did not return till 10:15. (RT 5302.) That was a lie. (RT 5302.) The truth was that he came back at 10:45 or 10:50. (RT 5302.) Curtis was still scared of Terry Brock on July 1, 1980. (RT 5302.)⁴⁷

After the police contacts in 1980, it was another 10 or 11 years before Curtis was contacted again. (RT 5331.) Curtis first met Detective Henry when he interviewed her in January 1991. (RT 5331-5332.) At that time, Curtis admitted that she had withheld information from the police in 1980 because Terry Brock had threatened to cut off her ears and kill her if she talked to the police. Thus, when she first talked to the police she did not want to reveal what she knew. (RT 5332.) When she was interviewed by Henry in January 1991, Terry Brock was out of her life and she was not associated with appellant. (RT 5336-5337.) When she met Henry, it was a relief to tell everything because she had held it in for all those years. (RT 5337.)

When Curtis was interviewed by Henry, she saw a .38 caliber revolver that looked like the type of gun Terry Brock had. (RT 5334-5335.) Two weeks before the Cross murder, Curtis saw Terry Brock with a pistol and she thought he also had a sawed-off shotgun. (RT 5334.)

⁴⁷ Curtis contradicted this when she testified that during the second police interview in *June* 1980 (RT 5289) she was no longer afraid of Brock because he was in jail. (RT 5296.)

4. Investigation on the Scene – June 4-5, 1980

Detective Marvin Engquist was assigned to homicide with the Los Angeles Police Department on June 4, 1980. (RT 5057.) He was a 14-year veteran with L.A.P.D. at that time and had been in homicide for eight or nine years. (RT 5058.)⁴⁸ Engquist was contacted at home at 10 p.m. (RT 5110) and arrived at the intersection of Belford and Interceptor at 11:00 p.m. or a little later. (RT 5058.) The area had been secured by the police. (RT 5058.) There were police officers and several Secret Service agents on the scene. (RT 5107-5108.) The criminalist, photographer and fingerprint person were already there or arrived shortly thereafter. (RT 5110.)

Engquist was one of the first officers on the scene and therefore had the responsibility for the crime scene. (RT 5106.)

(a) The Secret Service Car

The Secret Service vehicle was parked 50 or 55 feet west of the intersection. (RT 5059-5060.) Engquist looked in the back seat of the car and saw Julie Cross lying on her back with her head and shoulders in the corner, kind of draped over the rear passenger seat area. (RT 5062.) Cross was wearing rust or red colored pants and a multi-colored knit sweater. Her shoes were in the front seat. (RT 5089.)

Engquist observed two gunshot holes in the car. One was in the front windshield above the steering wheel and a second and larger hole was through the driver's door through the inside panel and through the metal

⁴⁸ Engquist testified that robbery/homicide is an elite division within the L.A.P.D. (RT 5105.) The major crimes investigations section of the division had the responsibility for investigating the killing or attempted killing of a police officer. That is how this case was came to Engquist. He was not the assigned detective but he responded and assisted the detectives. (RT 5106.) Mike Thies was the assigned detective. (RT 5106.)

and out. (RT 5063-5064.) The angle of the shot went downward, i.e., it was higher on the inside of the door than on the outside. (RT 5067.)⁴⁹

There was blood in the back seat, blood on Julie Cross, blood on the back rest area and the seat cushion of the back seat. (RT 5067.)

Exhibit 32 is a photo of the back seat of the vehicle. (RT 5068-5069.) It shows blood on the rear seat and on the back rest portion of the rear seat. (RT 5069.)

Exhibit 33 shows all of the back seat. (RT 5069-5070.) It shows blood across the entire back seat. (RT 5070.)

Exhibit 33 does not show the blood on the back of the front seat but the blood was readily visible to Engquist. (RT 5071.) Engquist testified that the blood splatter on the back of the back seat was not shown in Exhibit 33 because there was a flashback from the photography and the back of the seat is not shown clearly at all. (RT 5103.)

There were blood spatters on the back of the front seat as well. (RT 5067-5068.) The blood on the back of the front seat appeared to Engquist to be a “spray of blood.” (RT 5071.) According to Engquist, the splatter on the back of the seat was not concentrated or wiped or smeared. It was a very fine mist. (RT 5103.)

On cross-examination, Engquist testified that he saw a mist of blood a little bit below the headrest on the back portion of the front back rest. (RT 5124.) The first time Engquist spoke about the fine mist on the back of the front seat was when he testified to that effect at the preliminary hearing. He did not speak to the district attorney about this any earlier than his testimony at the preliminary hearing. (RT 5121.) Engquist acknowledged

⁴⁹ Ex. 28 shows the gunshot hole in the windshield. (RT 5064.) Ex.’s 29, 30 and 31 show the hole in the driver’s door. (RT 5066-5067.)

that there was a photograph of the back side of the front seat and that one could not see blood on that photo. (RT 5120.)

Engquist testified that blood splatter is not commonly seen at a murder scene. But this was a shotgun fired in a closed area where blood spatter might be more common than in an outdoor scene. (RT 5131.) Engquist had seen such blood spatter in previous cases. (RT 5132.)

The Secret Service car was impounded and taken to Parker Center for further investigation. (RT 5112.)

(b) Cartridges, Slugs and Shells

Engquist observed three expended .12 gauge Remington shotgun cartridges (RT 5077-5078.) One shotgun cartridge was found at the front bumper of the Secret Service car. Another was found behind the car. A third cartridge was found outside the door of the car. (RT 5074.)

An expended shotgun slug was recovered by the right rear wheel of the vehicle (RT 5083) with possible body matter on it. (RT 5086.)

Metallic fragments or buckshot (RT 5101) which appeared to be from a shotgun (RT 5083) were recovered 4 feet west of the intersection and 1 foot out in the intersection, almost at the corner. (RT 5085.) The street appeared to be hollowed out where the metal fragments were found. (RT 5088.) Exhibit 45 is a photo (RT 5088) where the asphalt had been hollowed out and where the metal fragments were found. (RT 5089.)

It was stipulated that Secret Service Agent Charles Ortman recovered a .38 expended slug on Interceptor in a location that would have been just in front of the Secret Service car. It was found on June 20, 1980 with a metal detector. (RT 5383-5384.)

(c) Eyeglasses

Engquist recovered eyeglass frames, a broken eyeglass lens and a case for eyeglasses 57 feet in front of the vehicle further down the street

from the Secret Service car. They were 13 feet from the curb and in the street (RT 5078) and 121 feet from the corner. (RT 5079.)

Exhibit 39 is a photo of a gray plastic pair of eyeglass frames and what appears to be a leather or plastic case lying fairly close to each other on the street. (RT 5080.) Many glass fragments were found in the immediate area of the case and frame. (RT 5080.)

The eyeglass frame did not appear to be damaged or driven over. It was just empty. (RT 5090.) The ear pieces were bent in an awkward position. Beyond that there was nothing remarkable about the frame. (RT 5090.) The glass fragments were scattered within an area of two or three feet in diameter. (RT 5100.)

The eyeglass frames were kind of gray or smoky gray. (RT 5125.) They were bent where the two lenses would be. (RT 5125.)

There was no indication that either of the suspects had gone to the area where the glass case and the glass fragments were found. (RT 5941.)⁵⁰

(d) Fingerprints

10 fingerprints were lifted from the Secret Service vehicle. (RT 5928.) Three of these were not identifiable. (RT 5930.) Six of the seven were identified. (RT 5930.) Five were identified as Bulman's or Cross' (RT 5931), one as the print of a mechanic in a shop that services the Secret Service vehicles and one was never identified. (RT 5932.)

The unidentified print was in the inside rear driver's door of the vehicle on the window. (RT 5932.) Identification of the prints was attempted by matching the print, among other things, with prints on file of

⁵⁰ This information was elicited by this question on the cross-examination of Detective Henry by the defense: "And you were aware that as that report of Agent Renzi was written that there was no indication that either of the suspects had gone to the area where the glasses, the glass case and the fragments of the lens had been found," to which the answer was, yes. (RT 5941:18-24.)

anyone with an arrest record. (RT 5933.) This included appellant's print. (RT 5933.) There was no match. (RT 5934.) It also did not match the prints of either Terry or Charles Brock. (RT 5935.)

5. Investigation of the Physical Evidence – June 9, 1980

Purcell Schube, a detective supervisor with the L.A.P.D., was assigned in 1980 to the firearms and explosives section as a police officer. (RT 5135.) He had been in that section for fifteen years and has had training in firearms analysis. (RT 5136-5137.) He had test fired hundreds upon hundreds of weapons and had made hundreds of microscopic bullet studies. (RT 5137.)

On June 9, 1980, Schube viewed a 1975 Buick Electra 225, the Secret Service car used by Bulman and Cross, in the basement garage across from the Parker Center. (RT 5142.) He found evidence of three shotgun blasts that had been fired into the vehicle from the passenger side. (RT 5143.)

There was also evidence of a gunshot in the front windshield above the steering wheel. (RT 5143.) This shot had been fired from the inside. (RT 5144.) The bullet entered the windshield at an angle and exited at an angle. (RT 5145.) According to Schube, it was most likely that the shot had been fired from a handgun. (RT 5171.)

The driver's door had an exit hole on the exterior portion of the door and a hole in the interior of the door at the door handle. (RT 5146.) This shot, a large projectile, was fired from the passenger side through the driver's door. (RT 5146-5147.) This shot was at a downward angle at approximately 15 degrees. (RT 5148.) The door was probably open when it was hit. If the door had been closed, it would have punched a hole straight through, which it didn't. (RT 5147.)

From the rear seat of the car, Schube collected a plastic wad that comes from a rifle slug casing that covers the powder on top of the plastic wad. (RT 5150.) The wad was consistent with a wad from a .12 gauge Remington rifle slug casing. (RT 5153.) The lead slug and the wadding went into the seat. The lead slug continued through the vehicle and penetrated the floorboard of the vehicle. The plastic was in the seat itself. (RT 5150.)

Schube recovered two No. 4 buckshots from the rear area of the Buick. (RT 5154.)

The first shot, a rifle slug, was fired from the outside area by the front passenger door and went across to the driver's side and through the driver's door. (RT 5157-5158.) The second shot, a buckshot, was fired from the same location over the front seat area. (RT 5157-5159.)

The third shot, a rifle slug (RT 5157), was fired with the shooter leaning over the passenger seat, firing in a direct angle down into the body. (RT 5160.) The third shot was fired with the shooter's body in the car. (RT 5162.)

The white buffering agent from the cartridge was on portions of the front seat area, throughout the vehicle and the clothing. (RT 5159.) The buffering material strays approximately 10 feet and it then dissipates and blows away with the wind or falls to the ground and attaches itself to objects in its way. (RT 5164.) There was a lot of the buffering agent on the clothing, indicating that Cross was shot with a No. 4 buckshot. (RT 5160.) The white buffering agent was on the back of Cross' sweater. (RT 5160.)

Schube was given a coroner's envelope containing No. 4 shot pellets and wadding from the shell itself that was removed from Cross' body. (RT 5165.) The wadding can travel 15 or 20 feet depending on weather conditions. The fact that the pellets and wadding were inside Cross' body

indicate that the shot was fired at relatively close range, probably within 10 feet. (RT 5166.)

Both Cross' under- and outer garment had the same entry and exit holes. There was an entry hole caused by a very large projectile in the top chest area, with the fabric punched in. There was a corresponding exit hole in the back, with fabric pushed out. (RT 5167.) The projectile was a rifle slug. (RT 5167.)

The back of the sweater had two holes. One was an exit hole caused by the rifle slug. The other was an entry hole caused by the shotgun blast of the No. 4 buckshot. (RT 5169.) The blast to the back was at relatively close range, within 10 feet, and the rifle slug was fired from an extremely close range, within inches or closer. (RT 5169-5170.)

Schube did not look at the back of the front seat. (RT 5179.)

6. The Autopsy

William Sherry, Senior Deputy Medical Examiner with the Coroner's Office of the County of Los Angeles (RT 5365-5366), performed the autopsy on Julie Cross.

Dr. Sherry noted two gunshot wounds. (RT 5368.) One was on the midline upper chest in the front of the body (the "first wound"). There was no soot or stippling around it or on the overlying clothing that was discernible to the naked eye. Some scant gun powder residue was present in the wound. The exit wound was on the right back. (RT 5369.)

The entrance wound was consistent with a rifle slug from a .12 gauge shotgun. (RT 5370.) This slug perforated the sternum of the breast bone, disrupted the ascending aorta, passed through the right atrium of the heart, passed through the lung and the right eighth rib and exited on the right back. (RT 5371-5372.) It would be reasonable to expect blood spattering from this wound. (RT 5373.)

The other gunshot wound (“second wound”) was located on the left back eighteen and a quarter inches below the top of the head and three and three quarters of an inch left of the midline of the back of the body. There was a stippling-like pattern on the lower portion of the wound. There was no soot. There were some scattered propellant particles within the wound. (RT 5373.) Buckshot and a wadding were recovered from this wound. (RT 5373-5374.)

The ballpark figure for the distance of the gun from the entrance of the first wound is at least two feet but it could be further than that. (RT 5374-5375.)

The shotgun pellets found in the second wound were found in the abdominal cavity. This is because buckshot spreads out when it hits resistance. (RT 5376.) The pellets perforated the left lung, the spleen, the stomach, the intestine, the left kidney, the abdominal aorta, the spine and the liver. (RT 5377.)

The first wound traveled downward and left to right. (RT 5377.) The second wound was slightly downward and left to right. (RT 5379.)

The cause of death was shotgun wounds to the heart, aorta, lungs, spleen and left kidney. Either of the shots would have been fatal. (RT 5379.) Death would set in after a number of minutes to a fraction of an hour. (RT 5380.)

One cannot tell which shot was fired first. (RT 5382.) But they were fired relatively rapidly. (RT 5382.)

7. Attempts at Identification

Bulman was not able to identify appellant, sitting in court, as one of the people involved in the killing of Cross. (RT 4850.) Bulman testified that the first time he saw appellant in person was in 1993 when Bulman came to

court to testify. (RT 4932.)⁵¹ However, he couldn't say that appellant was one of the perpetrators. (RT 4933.)

(a) Preparation of the Composites

(i) Statements Made Prior to the Drawing of the Composites

In the early morning of June 5, 1980, Bulman went to the Los Angeles Field Office of the Secret Service and gave a statement to L.A.P.D. Detective Thies and Secret Service agent Renzi. (RT 4828.)

The statement to Thies and Renzi took about thirty or forty-five minutes. Bulman gave as much detail as possible, including a description of the two men. (RT 4829.) Bulman described the man who had come to the driver's side of the agents' car as a black male, approximately six feet tall, with a moustache, neatly combed hair and stocky build. (RT 4829-4830.) He described the man with a shotgun as a black male about 5'10" or 5'11", thinner build, with a moustache, wearing a dark knit hat and a dark jacket. (RT 4830.)

The first time Bulman saw the statement that Thies and Renzi had taken down was when Detective Henry⁵² brought it out to Denver in 1990 or 1991. (RT 4873.) Defendant's Exhibit A was the "Statement of S.A. Lloyd Bulman." (RT 4873.) This was the document Henry showed Bulman. (RT 4874.)

There were three errors in this statement. The statement read that Bulman put the gun on the seat next to him, while the fact was that Bulman kept the weapon in his hand until the man pushed him over in the seat. (RT 4874.) The second error was that it was omitted from the statement that the

⁵¹ Actually, the first time that Bulman saw appellant was in a lineup in April 1990 when he failed to identify appellant. (RT 4845-4846; p. 95, *infra*.)

⁵² Henry became the lead investigator in this case in 1990. (RT 5894.) He was a detective in the Homicide Special Section of the Robbery/Homicide

man put a pistol to Bulman's head and pushed him over. (RT 4874-4875.) Third, the statement does not say that the person with a shotgun had a moustache. (RT 4883.)

After making the statement, Bulman, Thies and Renzi returned to the scene and walked around. (RT 4928-4829.)⁵³

(ii) Drawing the Composites

At about 9 a.m. on June 6, 1980 Bulman met with police composite artist Fernando Ponce. (RT 4830.)

Ponce asked Bulman to describe the two individuals one at a time. Ponce then blocked out a basic picture of the individuals. Bulman added or took away from the composite and Ponce followed suit, until Ponce had a picture that Bulman agreed looked like the subject. (RT 4831.) This took about 45 minutes per composite. At the end, Bulman was satisfied with the way the composites looked. (RT 4831.) Bulman described the moustaches on the two men to Ponce. (RT 4935.) The drawings were done with a pencil. (RT 4878-4879.)

The composites done with Ponce appeared to be accurate representations of the people who killed Cross. (RT 4850.) Bulman did not think that any details were missing. (RT 4831-4832.) Bulman was still upset when the composites were drawn. (RT 4875.) Bulman did not recall giving any new information to the police or any special agent after the composites were finished. (RT 4836.)

Division of the L.A.P.D. with 24 years of service in the L.A.P.D. (RT 5893.)

⁵³ This was not the only statement Bulman made to the police. A few weeks after June 4, 1980, Bulman was interviewed by five or six police detectives in Los Angeles. It was an unpleasant experience. (RT 4870.) They made it seem he was a suspect. (RT 4871.) Bulman was very upset after he left that interview. (RT 4872.) The record contains no further reference to this interview.

Exhibit 12 is a photo of the two composites that Bulman gave to Ponce. (RT 4833.) The composites were in separate sheets of paper, not on one piece of paper, as in Exhibit 12. The composites still appeared to Bulman to be accurate as the descriptions of the two individuals. (RT 4834.) The person on the left-hand side of Ex. 12 was the man with the shotgun on the passenger side of the car. (RT 4860. The person on the right of Exhibit 12 was the man on Bulman's side of the car. (RT 4860-4861.)

(iii) Hypnosis and Post-Hypnosis

After finishing the composite, there was an attempt to hypnotize Bulman. (RT 4832.) Bulman remembered what happened during the hypnosis session; he did not believe there were any effects from the hypnosis. He did not feel like he was hypnotized; he knew everything that had gone on and nothing had changed. He testified that at no time during the hypnosis did he have an 'altered mind.' (RT 4832.)

After the hypnosis, Bulman was asked if he wanted to make any changes in the composites. He told them he wanted to make no changes. He felt the composites were as good as he could do. (RT 4833.)⁵⁴

(iv) Bulman's Cross-Examination; A Preview of the Defense Case re the Composites

On cross-examination, Bulman was shown Ex.'s B, C, D and E. According to Bulman, Ex.'s B and C are very poor Xerox copies, respectively, of the composite drawings of the person on Bulman's side of the car (Exhibit B) and of the person with the shotgun (Exhibit C). (RT 4877-4878.) Ex.'s B and C have the legend "pre-hypnosis composite." (RT 4882:11-2.) Exhibit E also shows the person with the shotgun. (RT

⁵⁴ It should be kept in mind that Ponce testified unequivocally in the preliminary hearing that modification were made to the original composites *during* the hypnosis session. (CT 432, 439; see pp. 20-21, *supra*.)

4882:19-21.)⁵⁵ Ex.'s C and E [person with the shotgun] differ in that Ex. C does not show a moustache. (RT 4882.)

(b) Lineups

Bulman attended a live line-up on June 7, 1980. (RT 4837.)

Exhibit 13 is a photo of a line-up with the date 6-9-1980. (RT 4838.) Bulman remembered being asked to look at the lineup and to see if he could recognize any of these people as one of the individuals that had been on the crime scene. (RT 4838-4839.) Bulman did not recognize anyone and he said so at the time. (RT 4839.)

Bulman went to another line-up on June 27, 1980. Exhibit 14 is a photo of this line-up. (RT 4839.) He was given a witness card to fill out at this line-up. (RT 4840.) There was a space for remarks and Bulman wrote under remarks as follows: "No. 4 looks similar to the person but I do not recall a beard." (RT 4840-4841.) This person looked like the person on Bulman's side of agents' vehicle but that person did not have a little goatee at the crime scene. (RT 4841.)

It was stipulated that person No. 4 in the line-up was Terry Brock. (RT 4841.)

Bulman went to another line-up on August 7, 1980. Exhibit 15 is a photo of that line-up. (RT 4842.) On the witness card for this line-up, Bulman wrote: "No. 1 if he had a mustache and no beard appeared similar." This meant that this individual looked similar to the man on Bulman's side of the vehicle, if he had a moustache and no beard. (RT 4843.)

Bulman attended another line-up on November 17, 1980. Exhibit 16 is a photo of that line-up. (RT 4843-4844.) On the witness card for this line-

⁵⁵ Exhibit E is unequivocally described at RT 4882:19-21 as the person with the shotgun. ("Q And [Exhibit] E was the person that you said had the shotgun. A Yes.") Counsel and the witness may have gotten confused a little earlier at RT 4881:16-22 when Exhibit E was identified as the person on Bulman's side of the car.

up, Bulman wrote: “No. 4 similar, but he has a beard now. Did not have one then.” (RT 4844.) He meant by this that this man was similar to the man on his side of the vehicle. (RT 4845.)

Bulman attended another line-up on April 19, 1990. Exhibit 17 is a photo and witness card of this line-up. (RT 4845.) Bulman made the comment that No. 6 looked like the person on the driver’s side of the car. It was stipulated that appellant was person No. 3 in the lineup. (RT 4846.) Detective Henry was present during this lineup. (RT 5896-5897.)

(c) The Hypnosis Sessions

Bulman testified that attempts at hypnosis did not affect his memory, i.e., they did not enhance or diminish it. (RT 4837.) He stated that when, in the 1987 hypnosis session, Dr. Stock asked him to raise his arm, he did, and had a flashback at that point. (RT 4890.) The flashback was of the shotgun being pointed at him and the man pulling the trigger. (RT 4936.) Bulman thought he was hypnotized because of the arm raise and the flashback. (RT 4936.)

(d) Renewed Interviews

Bulman was re-interviewed a number of times between 1980 and 1991 by different police officers. Among these interviewers was Detective Henry. (RT 4836.) Bulman did not feel that his statements changed over the years. (RT 4836-4837.) He testified that his memory did not change and that he did not come up with any new details. (RT 4837.)

Detective Henry went to the Denver Secret Service office on October 23, 1991 to meet Bulman and to interview him. (RT 5912.) Deputy District Attorney Kuriyama had given Henry specific questions to ask. (RT 5913.)

In the interview, Henry showed Bulman photographs of live lineups. He showed Bulman two photos of lineups and one snapshot. (RT 5913.)

Exhibit 13 was a photo of the lineup of June 9, 1980 (RT 5914) and Exhibit 14 was a photo of the lineup of June 27, 1980. (RT 5915.)

Prior to showing Bulman the photos, Henry told Bulman that charges could be filed in the Julie Cross murder and the attempted murder on Bulman and that Henry wanted Bulman to see some photographs to see if the persons in these photo were definitely not the suspects. (RT 5914.)

Bulman looked at the photo, Exhibit 13, and said that he did not believe any of those people were involved in the case. Henry pointed out photograph No. 3, a photo of Charles Brock, and asked if he could be possibly involved and Bulman said no. He said that, definitely, the hair was not right. (RT 5915.)

Henry showed Bulman the second lineup photo, Exhibit 14, of the lineup conducted on June 27, 1980. (RT 5915.) Before Henry could hand the photo to Bulman, Bulman pointed to the person in position No. 4 in this lineup and said, "I identified this guy in 1980 as looking like the guy that was on my side of the police car." Bulman told the detectives in 1980 that he looked like the person, except he did not have the beard or goatee. The person in position No. 4 was Terry Brock. (RT 5916.)

Exhibit 81 is a snap shot of Terry Brock that Henry showed Bulman during this interview. (RT 5917.) Henry had had this photo in his possession since 1980 or 1981. Exhibit 18 appears to be an enlargement of the head area of Exhibit 81. (RT 5917.) When shown Exhibit 81, Bulman said, "That looks most like the guy I was fighting with on my side of the car. He didn't have the beard. That looks like him." (RT 5918.)

The account of the interview in Denver is based on Henry's trial testimony. Bulman's testimony was less detailed but no different than Henry's. (RT 4847-4849 [Bulman's account of the Denver interview].)

(e) Photo Identification during Trial

The night before Bulman's instant testimony, i.e., on January 28, 1996, Bulman met with the prosecutors in their office and they showed him the composite. (RT 4851, 4927.) The composite was hanging on the wall and the prosecuting attorney, Ms. Petersen, asked whether Bulman remembered the composite and Bulman said yes. (RT 4928.) The composite stayed on the wall. Ms. Petersen then handed Bulman five photos that were marked as People's Exhibits No.'s 18, 19, 20, 21 and 22 (RT 4851) and asked Bulman if he recognized any of those photos. Bulman spread them out and looked at them. (RT 4928.)

Bulman immediately eliminated Exhibit 22 (RT 4929); he did not recognize the man shown in this exhibit. (RT 4862.) Exhibit 22 is a booking photo of Charles Brock. (RT 4853.)

Exhibit 18 is the closest looking photo of the person on Bulman's side of the car. (RT 4861.) It appeared to be similar to the snapshot Henry showed Bulman in 1991. (RT 4849; see pp. 96-97, *supra*.) Bulman had identified the person shown on Exhibit 18 in a line-up in 1980. (RT 4929-4930.) Bulman testified that Exhibits 18 and 21 showed the same person. (RT 4930.) Exhibit 21 is a booking photo of Terry Brock. (RT 4852.)

Exhibit 19 is a booking photo and Exhibit 20 is a driver's license photo of appellant (RT 4852.) According to Bulman, Exhibit 19 is the person with the shotgun on the passenger side of the car. (RT 4861.)⁵⁶

Exhibit 20 [appellant] looked like the person "on the left" [of Exhibit 12],⁵⁷ except he did not have a goatee or a moustache. (RT 4861.) Exhibit

⁵⁶ While it does not appear explicitly from the face of the record that Ex. 19 is a booking photo of appellant, the context of the ensuing debate over the defense's objection makes it clear that Exhibit 19 shows appellant. Later in the trial, a witness who knew appellant testified that Exhibits 19 and 20 show appellant. (RT 5239.) The defense objected that it was not informed of this identification of appellant by Bulman. (RT 4855-4856.)

21 shows a man [Terry Brock] who looked the one “on the right” [of Exhibit 12], i.e., on Bulman’s side of the car, except his hair was longer and he had a beard. (RT 4861.)

**8. Appellant’s Work Schedule in 1980 at Swift Foods;
Appellant’s Cars and Clothes While Working for Swift Foods**

Appellant was working for Swift Foods in June 1980. Appellant drove trucks, Bob-Tail trucks and tractor-trailers. (RT 5198.) Two of his co-workers at Swift Foods, Arthur Jackson and Richard Lamirande, testified on the captioned subjects.

(a) Appellant’s Work Schedule

Probably a year and a half or two years after Jackson started working at Swift Foods, appellant started driving a truck to San Francisco. (RT 5199.) No one other than appellant drove to San Francisco. Jackson was somewhat familiar with the schedule of deliveries to be made in San Francisco. (RT 5203.)

Jackson saw appellant a couple of times returning from San Francisco. This would be in the evenings, i.e., Tuesday and Friday. (RT 5202.) On cross-examination, Jackson testified that he could not say whether this was Tuesday or Friday. (RT 5213-5214.)

There was one specific tractor-trailer that would go to San Francisco. (RT 5204.) This truck was parked in one spot and so Jackson would know whenever it was in Los Angeles. The truck was gone early Monday and early Thursday mornings. Three or four times he would see appellant drive back Tuesday night and then early Thursday morning the truck would be gone. Appellant would drive the truck back Friday night. (RT 5204.) Jackson would arrive at the lot about 7 a.m., so the truck would have left before that time on Monday and Thursday. (RT 5205.)

⁵⁷ The only relevant Exhibit with a “left” and “right” side was Exhibit 12, a photo of the two composites. (See text, p. 100 and RT 4860-4861.) The

Richard Lamirande testified that appellant would leave Sunday night or early Monday morning, drive to San Francisco and come back late Tuesday afternoon. (RT 5742.) According to Lamirande, appellant would typically make it back by 1, 2 or 3 p.m. on Tuesdays. (RT 5745.) He would drive up again on Thursday morning and come back late Friday afternoon. He would be in Los Angeles on Wednesdays. (RT 5742.)

(b) Appellant's Cars

The employees all parked in one spot and Jackson was familiar with appellant's car. It was an older car, black and brown, a two-tone car. It had scratches and dents. It was faded. (RT 5206.) The top seemed to be a lighter color. (RT 5207.) It was a bit loud. (RT 5207.) Jackson saw appellant with this car in 1979 or 1980. (RT 5208.)

Jackson also saw appellant in a black car. (RT 5222.) Jackson did not remember what year he saw appellant with the black car. (RT 5216.)

Another witness, Jessica Brock, testified that in the late 1970's, appellant owned a black Buick Electra 225. (RT 6104-6105.) Appellant bought this car right after Jessica's son was born in May 1978. (RT 6105.)

Jackson was interviewed by Detective Henry. (RT 5219.) It was Henry who brought up the idea that appellant had a black car. (RT 5229.) Henry asked Jackson if he remembered appellant driving a black car. (RT 5229.) After Henry mentioned it, Jackson remembered appellant having a black car. (RT 5230.) He had a better memory of the black than of the brown car. (RT 5230.) Jackson mentioned to Henry that he had seen appellant in a brown car. (RT 5227.) He told Henry about the faded colors, brown, and the muffler or the noise that the car was making. (RT 5227-5228.) He could not say whether appellant was actually driving it. (RT 5228.) Other things that came up in the conversation with Henry were

man on the left was the man with the shotgun on the passenger side. (*Id.*)

glasses, a jacket and whether Jackson knew any of appellant's friends. (RT 5227.)

Jackson did not remember the make and year of either the brown or the black car. (RT 5223.) Jackson saw appellant in the black car about three or four times and in the brown car maybe two times. (RT 5224.)

Lamiranda testified that appellant drove a big black car. (RT 5746.)

(c) Appellant's Clothes

Appellant was required to wear a uniform to work. (RT 5742.) Lamiranda also saw appellant when he was not wearing a uniform. (RT 5742.) He would wear casual clothes. He would wear leather jackets and was dressed better than other workers. T's shirts and Levi's were not his style. Appellant had a brown leather jacket rust in color and might have had a black jacket too. Lamiranda testified that Exhibit F appeared to be a jacket that appellant might have worn. (RT 5744.) It is similar to the jacket that appellant wore but Lamiranda could not say whether it was the same jacket. (RT 5744.)

Jessica Brock testified that the night she saw appellant washing something off at her house (RT 6134), he was wearing dark, olive green slacks and a lighter colored shirt. (RT 6137.)⁵⁸

9. Appellant's Glasses

(a) 1978-79

In 1980, Terry Brock was Yvette Curtis' boyfriend. (RT 5236-5237.)⁵⁹ Curtis first met Terry Brock in 1977 (RT 5238) when she had just turned 17. (RT 5241.) Curtis remained friends with Terry Brock until 1982. (RT 5240.) On cross-examination, Curtis admitted that she was convicted of felony welfare fraud in 1993. (RT 5270.)

⁵⁸ Jessica had made a statement to this effect to Detective Henry and prosecutor Kuriyama in 1990. (RT 6137.)

Appellant was one of Terry Brock's friends and that is how she knew appellant (RT 5238) in 1979 and 1980. (RT 5240.) Curtis met appellant through Terry Brock. (RT 5239.) Terry Brock and appellant were associates in 1979 and 1980. (RT 5240.) Curtis characterized them as close associates. (RT 5238.)

Curtis had a brief affair with appellant in 1978 or 1979. During this period of time, she went on a trip up north with appellant. Curtis was about 18 at the time. (RT 5241.)

The trip up north was taken in a truck and it was only Curtis and appellant who went on the trip. He picked her up at her mother's house at night in a big truck that had a trailer. (RT 5242-5243.)

Appellant had glasses on during this trip; Curtis saw appellant put the glasses on (RT 5243) at nighttime. (RT 5247.) He got the glasses from an eye glass pouch on the console between the seats. (RT 5243-5244.) The glasses were black. (RT 5244.)

On cross-examination, Curtis testified that while she was sure that appellant wore glasses on the truck ride (RT 5310), she was not sure of their color because it was night; they could have been black. A few times she saw appellant with gold frame glasses but not on the ride. (RT 5311.)

The only time Curtis saw appellant wear glasses was at night when he was driving. (RT 5340.)

Curtis testified that she was the first one to bring up the subject of glasses, although Detective Henry did question her about them in 1991 or 1990. (RT 5311.) She told Henry at one time that the glasses could have been black and that at one time appellant wore gold frame glasses. (RT 5312.) In the preliminary hearing, she testified that she was confused about whether the glasses were gold-framed or not. (RT 5314.)

⁵⁹ Curtis confirmed that Exhibits 18 and 21 show Terry Brock as he looked in 1980. (RT 5237.)

Curtis was shown some glasses that she stated looked like, but were not, the glasses appellant put on. (RT 5245, 5315.)⁶⁰ The first time Curtis looked at these glasses was with Detective Henry. (RT 5315.) While these glasses were the style and frame of the glasses appellant used, they were not the same. (RT 5315.) In her statement to Henry she said that “I don’t hardly remember him wearing glasses.” (RT 5318.) In the same statement, Curtis stated that she was trying to “piece” (?) that appellant wore glasses in the daytime (RT 5319), that she didn’t remember whether he wore them in the daytime, but he did wear them at night. (RT 5320.) Detective Henry testified that Curtis told him that appellant wore prescription glasses. (RT 5945.)

Curtis was with appellant two or three days. After they got back from the trip, Curtis saw Terry Brock because he was still her boyfriend. She continued to see appellant for a short time until Terry Brock found out. She saw appellant for maybe a month, maybe less, maybe longer. (RT 5245.)

Appellant and Terry Brock still associated after she stopped having the affair with appellant. (RT 5246.)

(b) 1980, 1987

Dr. Harold Ross is an optometrist. (RT 5537.) On February 27, 1987, he was employed as an optometrist at A.R. Mass, Del Amo Optometry. (RT 5537.)

Dr. Ross examined appellant and found that his chief complaint was that he had trouble seeing in the distance. He had lost his glasses. He denied taking any medication, any family history of glaucoma or diabetes, and stated he was in good health and needed glasses for distance activities. (RT 5539.)

⁶⁰ It appears from the preceding questions and answers that these glasses were Exhibit 41. This is confirmed later in the record. (RT 5414-5416.)

Dr. Ross determined that appellant was myopic or nearsighted and that the amount in diopters, which is the unit that measures refractive error, in the right eye was minus .75, the left eye minus .75, and minus .25, showing a slight amount of stigmatism. (RT 5540.)

A change in seven years from a correction of minus .37 at age 28 to a correction of minus .75 at age 35 would be a normal refractive change. (RT 5541-5542.)⁶¹

There is not much change in vision between 25 and 40 because eyes stop growing and axial length will stay the same. (RT 5544.) A quarter change in not a substantial change. (RT 5545.) In terms of passing a driver's vision test, a person with a minus .37 is in about the same a position as a person with a minus .75. (RT 5547.)

Dr. Richard Hopping, an optometrist and President of the Southern California College of Optometry (RT 5551), examined Exhibit 41. (RT 5553-5554.)⁶² Exhibit 41 was three-eighths of a diopter or .37. (RT 5554.) Dr. Hopping agreed with Dr. Ross that a change in seven years in a man 28 to minus .75 is within the normal range. (RT 5555.)

According to Dr. Hopping, a person with a minus .37 would use glasses for distance vision beyond 10 or 20 feet, to see clearly down streets, movies or television. A person would be helped at night; some people see more poorly at night and such glasses would help them very much at night. (RT 5560-5561.)

Just by looking at appellant, Dr. Ross estimated that appellant's nose was a bridge size of 24 for the eyeglasses. A size 26 would stay on his nose. (RT 5549.) At a guess, it is questionable whether appellant has a size 26 bridge. (RT 5548-5549.)

⁶¹ Very few practitioners measure to an eighth and .37 is that. Usually they refract to a quarter, i.e., .25, .50, .75. (RT 5546-5547.)

Depending on the manufacturer, bridge sizes run from 12 to 26. (RT 5549-5550.)

The bridge size of the glasses that were made for appellant was 12. That is small. A bridge size of 26 is large and definitely at the higher end of the spectrum. (RT 55453.)

However, bridge sizes are measured by manufacturers at different points on the nose, depending on how the frame is designed. The frame selected by appellant was a Porsche Carrera design. A Carrera frame size would not indicate appellant's true bridge size. The reason for this is that the nose piece is high on this model. A size 12 is a pediatric size. (RT 5547-5548.)

Dr. Hopping found the bridge size of the glasses Detective Henry brought him in 1990 to be 26. (RT 5566.) The prescription for the Optiel Carrera Frame 5411 had a bridge size of 12. (RT 5566.) These frames are entirely different and there is no correlation between a size 12 and a size 26 because they fit the nose entirely differently. (RT 5568.)

(c) Ownership of Exhibit 41, the Glasses

Between June 14 and June 27, 1980, Torrey interviewed people who lived in the apartments on Interceptor to determine if they knew who the glasses, Exhibit 41, belonged to. (RT 5856-5857.)

Number 5845 Interceptor was a two story apartment that was the closest to where the glasses were found. (RT 5857.) Torrey showed a photo of the glasses to each of the persons who lived there. (RT 5858.) Torrey also checked several apartment buildings north of the complex at 5845. (RT 5859.)

Torrey was not able to determine if anyone there owned these glasses. (RT 5858.)

⁶² Dr. Hopping testified that Ex. 41 looked like what he had been shown by Detective Henry but he could not be certain. (5553-5554.)